2026 KENTUCKY SCHOOL LAWS

Annotated

Complete to October 2026



Kentucky Department of
EDUCATION

Robbie Fletcher, Ed.D.
Commissioner of Education



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FOREWORD

This 2026 Edition of *Kentucky School Laws Annotated* has been published and distributed in accordance with KRS 156.240. It contains those provisions of the Kentucky Constitution and the Kentucky Revised Statutes pertaining to schools and education. In addition, it contains the new laws enacted through 2026 Regular Session.

Interpretations of the laws which have resulted from court decisions and opinions of the Attorney General are included in notes at the end of sections. In addition, to facilitate research, cross references and citations to other sources are provided. Finally, at the end of this edition, you will find a "Kentucky School Laws — Quick Reference" to aid in searching for statutes by subject.

I trust this volume will serve as a valuable resource for all those with an interest in the education of Kentucky's children.

Robbie Fletcher, Ed.D.

Commissioner of Education

October 2026



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238.55	Amended	HB 904	184	44
304.13-167	Amended	SB 343	61	15
337.01	Amended	HB 185	72	6
416.55	Amended	HB 542	112	3
416.56	Amended	HB 542	112	4
416.57	Amended	HB 542	112	7
416.6	Amended	HB 542	112	8
416.61	Amended	HB 542	112	5
416.63	Amended	HB 542	112	9
416.64	Amended	HB 542	112	10
416.65	Amended	HB 542	112	11
416.66	Amended	HB 542	112	6
424.11	Amended	HB 869	198	38
424.22	Amended	SB 192	91	3
424.25	Amended	HB 67	129	12
424.26	Amended	SB 20	90	4
424.26	Amended	HB 392	39	5
506.16	Amended	HB 521	67	13
508.025	Amended	HB 188	28	1
508.09	Amended	HB 778	68	11
508.1	Amended	HB 778	68	12
508.11	Amended	HB 778	68	13
508.12	Amended	HB 778	68	14
508.13	Amended	HB 521	67	1
508.14	Repealed	HB 521	67	16
508.15	Repealed	HB 521	67	16
508.155	Amended	HB 521	67	14
525.09	Amended	HB 904	184	37
600.02	Amended	HB 778	68	3
600.02	Amended	SB 170	69	9
630.01	Amended	SB 170	69	17
630.04	Amended	SB 170	69	18
620.055	Amended	SB 17	53	3
620.055	Amended	HB 778	68	8
620.05	Amended	HB 778	68	6
630.08	Amended	SB 170	69	21
630.07	Amended	SB 170	69	20
157.655	Amended	HB 727	196	13
159.17	Amended	SB 101	50	4
159.99	Amended	HB 727	196	8

CONSTITUTION OF KENTUCKY

Bill of Rights, §§ 1 to 26.
The Legislative Department, §§ 29 to 62.
The Executive Department, §§ 69 to 108.
Suffrage and Elections, §§ 145 to 155.
Municipalities, §§ 156 to 168.
Revenue and Taxation, §§ 169 to 182.
Education, §§ 183 to 189.
General Provisions, §§ 224 to 255.

BILL OF RIGHTS

That the great and essential principles of liberty and free government may be recognized and established, we declare that:

Section
5. Right of religious freedom.

§ 5. Right of religious freedom.

No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

NOTES TO DECISIONS

Analysis

1. Hospitals.
2. Oaths.
3. Schools.
4. — Religious Beliefs of School Administration.
5. — Compulsory Attendance.
6. — Achievement Testing.
7. — Maintenance.
8. — Student Transportation.
9. — Place of Worship.
10. Religion.
11. — Beliefs.
12. — Witnesses.
13. — Materials.
14. — — Distribution.
15. — Services.
16. — — Public Safety.
17. — — Reptiles.
18. Sunday Laws.
19. Taxation.
20. Employment Discrimination.
21. Use of Vehicle.
22. Scope of Protection.

1. Hospitals.

The drafters of our Constitution did not intend to go so far as to prevent a public benefit, like a hospital in which the followers of all faiths and creeds are admitted, from receiving state aid merely because it was originally founded by a certain religious denomination whose members now serve on its board of trustees. Kentucky Bldg. Com. v. Effron, 310 Ky. 355, 220 S.W.2d 836, 1949 Ky. LEXIS 915 (Ky. 1949).

The provision in Const., § 5 prohibiting preference by law to any religious sect, society or denomination was not violated by provisions of law which authorized allocation of state tax funds to nonprofit, privately owned hospitals which were governed and controlled by the members of certain religious faiths. Kentucky Bldg. Com. v. Effron, 310 Ky. 355, 220 S.W.2d 836, 1949 Ky. LEXIS 915 (Ky. 1949).

Lease of city-county hospital to religious organization did not violate this section. Abernathy v. Irvine, 355 S.W.2d 159, 1961 Ky. LEXIS 16 (Ky. 1961), cert. denied, 371 U.S. 831, 83 S. Ct. 49, 9 L. Ed. 2d 67, 1962 U.S. LEXIS 649 (U.S. 1962).

2. Oaths.

Fact that jurors were given oath ending with "so help me God" did not violate constitutional rights of person accused of felony. Pierce v. Commonwealth, 408 S.W.2d 187, 1966 Ky. LEXIS 81 (Ky. 1966).

3. Schools.

4. — Religious Beliefs of School Administration.

Where school administrator's use of her religious beliefs in exercising her administrative duties and in exercising authority over teachers was offensive to some of the staff, it did not invariably pose some substantial threat to public safety, peace or order, and thus, her behavior in this regard was protected conduct. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

5. — Compulsory Attendance.

While the state has an interest in the education of its citizens which could be furthered through compulsory education, the rights of conscience of those who desire education of their children in private and parochial schools should be protected. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

The language of this section concerning compulsory school attendance is intended to permit the Commonwealth to prepare its children to intelligently exercise the right of suffrage by compelling attendance at a formal school, public or private or parochial, for a legislatively determined period each year. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

If the legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979),

cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

6. — Achievement Testing.
Requiring students to take the Kentucky Instructional Results Information System (KIRIS) examination did not violate students' constitutional rights of freedom of religion. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771, 1999 U.S. LEXIS 599 (U.S. 1999).

7. — Maintenance.
Contract by school district trustees to maintain sectarian school free of charge from public funds in return for sectarian school teaching common school pupils free of charge was in violation of this section. Williams v. Board of Trustees, 173 Ky. 708, 191 S.W. 507, 1917 Ky. LEXIS 518 (Ky. 1917) (Ky. 1917).

8. — Student Transportation.
A county fiscal court's resolution which provided approximately 65 percent of the total cost of transporting non-public elementary school students was not unconstitutional where (1) funds were not paid directly to any private or parochial school and were, instead, paid to the individual local board of education operated transportation system of contracted bus and vehicle companies, (2) the benefit provided by the resolution went directly toward the safety and welfare of elementary age school children and not into the accounts of non-public schools, and (3) the resolution did not establish a tuition ceiling as a requisite to eligibility for the transportation subsidy. Neal v. Fiscal Court, 986 S.W.2d 907, 1999 Ky. LEXIS 24 (Ky. 1999).

9. — Place of Worship.
A public school opened with prayer and the reading without comment of passage from King James' translation of the Bible, during which pupils are not required to attend, is not a place of worship, nor are its teachers ministers of religion within the meaning of this section. Hackett v. Brooksville Graded School Dist., 120 Ky. 608, 87 S.W. 792, 27 Ky. L. Rptr. 1021, 1905 Ky. LEXIS 144 (Ky. 1905).

10. Religion.
Taxpayers could not intervene in a suit by a religious non-profit against the Commonwealth regarding a tourism incentive program as the required significant legal interest they alleged was rooted in their status as taxpayers, and their generalized interest in how their tax dollars were used was insufficient to intervene as of right under Fed. R. Civ. P. 24(a); they did not establish direct personal injury and mere disagreement over litigation strategy was not inadequacy of representation. Ark Encounter, LLC v. Stewart, 311 F.R.D. 414, 2015 U.S. Dist. LEXIS 147650 (E.D. Ky. 2015), dismissed in part, 152 F. Supp. 3d 880, 2016 U.S. Dist. LEXIS 8405 (E.D. Ky. 2016).

Taxpayers could not intervene in a suit by a religious non-profit against the Commonwealth regarding a tourism incentive program because the potential strains on judicial economy and delays, confusion, and prejudice to the existing parties that would result from unrestricted intervention by taxpayers weighed against allowing permissive intervention under Fed. R. Civ. P. 24(b). Ark Encounter, LLC v. Stewart, 311 F.R.D. 414, 2015 U.S. Dist. LEXIS 147650 (E.D. Ky. 2015), dismissed in part, 152 F. Supp. 3d 880, 2016 U.S. Dist. LEXIS 8405 (E.D. Ky. 2016).

11. — Beliefs.
KRS 39A.285 and 39G.010 do not violate the First and Fourteenth Amendments, U.S. Const. amend. I and XIV, and Ky. Const. § 5 as the legislation merely pays lip service to a commonly held belief in the puissance of God; the legislation does not seek to advance religion, nor does it have the effect of advancing religion, but instead seeks to recognize the historical reliance on God for protection. Ky. Office of Homeland Sec. v. Christerson, 371 S.W.3d 754, 2011 Ky. App. LEXIS 209 (Ky. Ct. App. 2011), cert. denied, 568 U.S. 1228, 133 S. Ct. 1582, 185 L. Ed. 2d 577, 2013 U.S. LEXIS 2211 (U.S. 2013).

12. — Witnesses.
A witness may not be cross-examined as to his religious belief for the purpose of discrediting him, as by Const., § 2 and this section, all persons are placed on the same footing as witnesses, without regard to religious beliefs. Louisville & N. R. Co. v. Mayes, 80 S.W. 1096, 26 Ky. L. Rptr. 197 (1904).

13. — Materials.

14. — — Distribution.
One distributing religious tracts for Jehovah's Witnesses, either selling or donating them, is engaged in religious and not commercial activity and an ordinance forbidding commercial peddling, if applicable, would violate this section guaranteeing freedom of religion. Seevers v. Somerset, 295 Ky. 595, 175 S.W.2d 18, 1943 Ky. LEXIS 304 (Ky. 1943). See Hibsman v. Madisonville, 295 Ky. 601, 175 S.W.2d 21, 1943 Ky. LEXIS 305 (Ky. 1943).

15. — Services.
Award of 99 percent of fiscal court's transportation subsidy to educational institutions that promoted religious teachings and beliefs, while equivalent support for the public school optional program was withheld violated this section and Const., § 189. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

16. — — Public Safety.
A legislature may prohibit the practice of a religious rite or ceremony that endangers the lives, health or safety of the participants or other persons. Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972, 1942 Ky. LEXIS 254 (Ky. 1942).

The legislature has no right to interfere with religious beliefs, but it does have the right to impose reasonable limitations upon acts done under color of the exercise of religious beliefs, including the power to regulate the times, places and manner of performing such acts when necessary to safeguard the health, good order and comfort of the community. Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972, 1942 Ky. LEXIS 254 (Ky. 1942).

17. — — Reptiles.
Statute prohibiting handling of snakes in religious services was valid, notwithstanding that harmless as well as poisonous snakes were included, since ordinary person cannot distinguish between them. Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972, 1942 Ky. LEXIS 254 (Ky. 1942).

18. Sunday Laws.
Statute pertaining to and regulating certain amusements, work and labor on Sabbath could not be constitutionally enforced as regulation of religion under this section. Commonwealth v. Phoenix Amusement Co., 241 Ky. 678, 44 S.W.2d 830, 1931 Ky. LEXIS 150 (Ky. 1931).

19. Taxation.
Notwithstanding this section or Const., §§ 170 or 189, trust fund devoted to propagation of Christian principles as taught by Christian church was not exempt from taxation as church property. Commonwealth v. Thomas, 119 Ky. 208, 83 S.W. 572, 26 Ky. L. Rptr. 1128, 1904 Ky. LEXIS 160 (Ky. 1904).

KRS 158.115 authorizing county to use county funds to provide transportation for school children attending school in compliance with compulsory attendance laws, where children did not reside within reasonable walking distance of school

and there were no sidewalks upon which they could travel, did not violate this section, notwithstanding that it would authorize transportation of children to parochial schools as well as public schools for it is simply an exercise of police power for the protection of children against the inclemency of weather and hazards of highway traffic. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

20. Employment Discrimination.

KRS 344.030(5) and 344.040 prohibiting employers from discriminating on the basis of religion unless the employer is unable to reasonably accommodate to the employee's religious observance do not violate the establishment clauses of the federal or state Constitutions since the statutes have a secular purpose to promote equal employment opportunity, do not have a primary effect which either advances or inhibits religion and do not involve excessive entanglement of the government in religion. Kentucky Com. on Human Rights v. Kerns Bakery, Inc., 644 S.W.2d 350, 1982 Ky. App. LEXIS 277 (Ky. Ct. App. 1982), cert. denied, 462 U.S. 1133, 103 S. Ct. 3115, 77 L. Ed. 2d 1369, 1983 U.S. LEXIS 635 (U.S. 1983).

City and county ordinances which prohibited employment discrimination on the basis of sexual orientation or gender identity did not violate the constitutional prohibition against interference with the rights of conscience. Hyman v. City of Louisville, 132 F. Supp. 2d 528, 2001 U.S. Dist. LEXIS 4016 (W.D. Ky. 2001).

21. Use of Vehicle.

KRS 189.820 does not infringe upon the right to exercise religion by restricting religious worship rituals or enforcing compulsory conduct to which a person is conscientiously opposed; driving an automobile is not a fundamental constitutional right, but a legitimately regulated privilege, like the use of public roads, and the use of a vehicle and the public roads are not acts of religious worship. KRS 189.820 is a neutral law of general applicability, and does not invoke strict scrutiny analysis; the Commonwealth's objective of ensuring public safety through the most effective means possible by use of an emblem to alert to a slow-moving vehicle overshadowed any encumbrances on religious practices. KRS 189.820 would have passed constitutional muster if a strict scrutiny analysis was applied; an argument that a bicycle exemption created a showing of legislative belief that slow-moving vehicle emblems did not promote roadway safety was rejected, and an argument that reflective tape was a less restrictive alternative was also rejected. Gingerich v. Commonwealth, 2011 Ky. App. LEXIS 97 (Ky. Ct. App. 2011), sub. op., 2011 Ky. App. Unpub. LEXIS 963 (Ky. Ct. App. June 3, 2011).

Drivers who refused to display a slow-moving vehicle emblem on horse-and-buggy vehicles for religious reasons could be ticketed and fined under KRS 189.820 without violating their right to the free exercise of religion under Ky. Const. §§ 1, 5. Under the rational basis standard of review, which was appropriate because § 189.820 is a public safety statute that generally applies to all slow-moving vehicles and does not prohibit any religious practice, there was ample rational basis for a statute regulating slow-moving vehicles for safety reasons. Gingerich v. Commonwealth, 382 S.W.3d 835, 2012 Ky. LEXIS 175 (Ky. 2012).

22. Scope of Protection.

Free-exercise-of-religion protections in Ky. Const. §§ 1, 5 provide no more protection than the First Amendment, U.S. Const. amend. I; thus, generally applicable statutes that provide for the public health, safety, and welfare and only incidentally affect the practice of religion are subject to rational basis review under the Kentucky Constitution, as they are under the federal Constitution. Enactments that directly prohibit or restrain a religious practice are subject to a strict scrutiny standard of review under Kentucky law. Gingerich v. Commonwealth, 382 S.W.3d 835, 2012 Ky. LEXIS 175 (Ky. 2012).

Cited:

Calvary Baptist Church v. Milliken, 148 Ky. 580, 147 S.W. 12, 1912 Ky. LEXIS 486 (Ky. 1912); Kerr v. Louisville, 271 Ky. 335, 111 S.W.2d 1046, 1937 Ky. LEXIS 241 (Ky. 1937); Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942); Ashland v. Calvary Protestant Episcopal Church, 278 S.W.2d 708, 1955 Ky. LEXIS 483 (Ky. 1955); Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983).

OPINIONS OF ATTORNEY GENERAL.

Under subsection (2) of KRS 160.290, a school board may make regulations designed to protect the general welfare and safety of students and in doing so may take into account specific standards of moral conduct so that school dances could be eliminated as an approved school function by the board unless such ban were imposed for religious reasons, in which case it would violate this section and the first amendment to the federal Constitution. OAG 70-167.

For the Commonwealth to grant to a private college the power to exercise eminent domain, from a public-purpose standpoint the private institution of higher learning would have to be one which accords entrance privileges to qualified applicants on an open and equal basis without discrimination as to race, national origin or religious belief. OAG 70-567.

The benefits of eminent domain could be given to certain qualifying private colleges either by providing for the exercise of the right in behalf of a particular qualifying private college through a designated state agency, with related over-all responsibilities for higher education, or by extending the right to certain specified classes of private colleges and private universities. OAG 70-567.

The acceptance by the Commonwealth for a possible erection on the capitol grounds of a monolith and base on which is inscribed the Ten Commandments would, as a replica of a recognized code of law or moral conduct, not appear to offend either the Kentucky or United States Constitutions. OAG 71-179.

Voluntary and spontaneous prayer meetings by students on school property not held during regular school hours constitute no violation of this section. OAG 72-386.

While conceivably a state university might legally employ a minister to teach or perform services not related to his professional status as a minister or to the promotion of any religion, this section prohibits the appointment of financial aid from state funds to a chaplain or religious education director of a state subsidized college or university. OAG 73-563.

A local board of education may constitutionally conduct within its school speech therapy courses for parochial school pupils residing within the school district. OAG 75-639.

A nonprofit organization, created for the production of outdoor "religious dramas" such as to contribute to the "religious well-being" of county citizens, is nonsecular or sectarian in its publicly declared and avowed character; thus, even though it produces other than religious dramas, the financial support by the government with coal funds runs afoul of the first amendment. OAG 79-490, 1979 Ky. AG LEXIS 142.

County money cannot be legally used to maintain a cemetery or cemetery road if the cemetery only allows burial of persons of a particular religion, since such expenditure would involve the use of public funds with a preference for a particular religious faith; however, even though the cemetery is maintained by a particular religious faith, if the cemetery is available for the public generally, regardless of the particular faith of the maintaining church, the expenditure would be constitutional. OAG 82-101, 1982 Ky. AG LEXIS 536.

There is no statute that regulates the entrance age for a child to attend a nonpublic school and one could not constitutionally be enacted due to the Kentucky Supreme Court's view of this section and the proscription against state regulation of nonpublic schools. OAG 82-408, 1982 Ky. AG LEXIS 240.

Since the statutory powers of a county fiscal court do not include carrying on or promoting the work of the church or churches, a fiscal court cannot legally expend county tax money in putting rock and gravel upon church parking lots, meritorious as it might otherwise be in relation to spiritual and moral training. OAG 83-175, 1983 Ky. AG LEXIS 321.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Freedom of worship, Const., § 1.

Religious instruction in schools, KRS 158.170 to 158.260.

School money not to be used for sectarian schools, Const., § 189.

Kentucky Law Journal.

Weber and Olsen, Religious Property Tax Exemptions in Kentucky, 66 Ky. L.J. 651 (1977-1978).

Comment, Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-1979).

Weigand and Farr, Part of the Moving Stream: State Constitutional Law, Sodomy, and Beyond, 81 Ky. L.J. 449 (1992-93).

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Comments, Their Life Is In The Blood: Jehovah's Witnesses, Blood Transfusions And The Courts, 10 N. Ky. L. Rev. 281 (1983).

The Establishment Clause: A Survey of Recent Religion Cases Decided Within the Sixth Circuit, 29 N. Ky. L. Rev. 73 (2002).

Bartlett, Displaying the Ten Commandments on Public Property: The Kentucky Experience: Wasn't It Written In Stone?, 30 N. Ky. L. Rev. 163 (2003).

THE LEGISLATIVE DEPARTMENT

Section

55. When laws to take effect — Emergency legislation.
55. When laws to take effect — Emergency legislation. [Contingently enacted].
59. Local and special legislation.

§ 55. When laws to take effect — Emergency legislation.

No act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the Governor; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House.

History.

Repeal, proposed by Acts 2021, ch. 27, § 1, and is contingent upon ratification.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Application.
3. Emergency Clause.
4. — Approval of Governor.
5. — Judicial Review.
6. — Legislative Intent.
7. — Signature of Governor.
8. — Entry in Journal.
9. — Validity.
10. Retroactivity.

1. Construction.

Under this section and Const., § 58, the legislature is empowered to provide that a particular thing may or may not be done after a given date which is subsequent to the time the act so providing becomes a law. Commonwealth by Byars v. Hemingray's Ex'r, 185 Ky. 393, 215 S.W. 69, 1919 Ky. LEXIS 308 (Ky. 1919).

This section, insofar as it conflicts with referendum clause, Const., § 171, must be controlled by latter. State Nat'l Bank v. Board of Councilmen, 207 Ky. 543, 269 S.W. 726, 1925 Ky. LEXIS 134 (Ky. 1925).

2. Application.

Statute providing that no appeal should be taken from judgment for recovery of money or personal property if value in controversy be less than $200 was passed at session of legislature which adjourned March 15, 1898, took effect 90 days thereafter and therefore applied to an appeal granted June 15, 1898. Piper v. Spencer, 58 S.W. 815, 22 Ky. L. Rptr. 780, 1900 Ky. LEXIS 275 (Ky. Ct. App. 1900).

Act approved March 10, 1908, relating to violation of local option law did not apply to a transaction made in March of that year. Boggs v. Commonwealth, 134 Ky. 500, 121 S.W. 433, 1909 Ky. LEXIS 405 (Ky. 1909).

Act of March 17, 1914, fixing minimum jurisdiction of Court of Appeals at $500, which, under this section, did not become effective until 90 days thereafter did not govern an appeal granted by circuit court June 9, 1914. Ockerman v. Woodward, 162 Ky. 134, 172 S.W. 92, 1915 Ky. LEXIS 18 (Ky. 1915).

Legislature did not impermissibly designate 2017 Ky. Acts 1 as emergency legislation because its proffered reason for an emergency had a rational basis. Zuckerman v. Bevin, 565 S.W.3d 580, 2018 Ky. LEXIS 502 (Ky. 2018).

3. Emergency Clause.

4. — Approval of Governor.

Under this section an act embracing an emergency clause, when passed over the Governor's veto, as provided by Const., § 88, becomes a law at once, though never approved by the Governor. Commissioners of Sinking Fund v. George, 104 Ky. 260, 47 S.W. 779, 20 Ky. L. Rptr. 938, 1898 Ky. LEXIS 211 (Ky. 1898).

Statute containing an emergency clause which is neither approved nor disapproved by the Governor takes effect from the time the governor returns it to the secretary of state. Ficke v. Board of Trustees, 262 Ky. 312, 90 S.W.2d 66, 1936 Ky. LEXIS 25 (Ky. 1936).

5. — Judicial Review.

The legislature has the power to decide what are sufficient grounds for existence of an emergency, as it is a legislative and not a judicial question. Lakes v. Goodloe, 195 Ky. 240, 242 S.W. 632, 1922 Ky. LEXIS 342 (Ky. 1922).

In the case of a statute changing the existing method of breaking deadlocks in fiscal courts, the Court of Appeals would not review the legislature's determination that an emergency

existed requiring the statute to take effect under an emergency clause. Hill v. Taylor, 264 Ky. 708, 95 S.W.2d 566, 1936 Ky. LEXIS 388 (Ky. 1936).

Since it is conclusively presumed that the legislative journals of the General Assembly set forth sufficient reasons for the insertion of an emergency clause in a statute, the reviewing court in a proceeding to test the statute is not bound by the allegations in the petition to the contrary. Hill v. Taylor, 264 Ky. 708, 95 S.W.2d 566, 1936 Ky. LEXIS 388 (Ky. 1936).

If there is any rational basis for concluding that the circumstances cited as constituting an emergency justified more expeditious action than would ordinarily be true, the courts should not interfere with the legislative discretion. American Ins. Asso. v. Geary, 635 S.W.2d 306, 1982 Ky. LEXIS 265 (Ky. 1982).

Although the court must have the ultimate authority of determining whether an emergency actually existed, the legislative judgment in that respect must be accorded the same presumption of validity that it enjoys in other instances of constitutional inquiry. American Ins. Asso. v. Geary, 635 S.W.2d 306, 1982 Ky. LEXIS 265 (Ky. 1982).

6. — Legislative Intent.

Statutes enacted at the same session of the legislature are presumed imbued with the same spirit and policy and must be construed if possible to effectuate both acts; however, if one of the acts, inconsistent with another, contains an emergency clause and the other does not, the act containing the emergency clause must prevail on the presumption that this was the intent of the legislature. Campbell County Election Com. v. Weber, 240 Ky. 373, 42 S.W.2d 511, 1931 Ky. LEXIS 407 (Ky. 1931).

7. — Signature of Governor.

Governor's signature to bill containing emergency clause is not necessary to give effect to emergency clause for, upon his failure to return bill within ten (10) days, it takes effect at once as if signed by him; retaining of bill by Governor is, for legislative purposes, the same as signing it and signing it, as used in Const., § 88, is synonymous with approving it, as used in this section. Boggs v. Commonwealth, 15 Ky. L. Rptr. 653 (1894).

8. — Entry in Journal.

When the reason for declaring an emergency is sufficiently expressed in the legislation itself, the requirement that it be cited in the journal is satisfied. American Ins. Asso. v. Geary, 635 S.W.2d 306, 1982 Ky. LEXIS 265 (Ky. 1982).

9. — Validity.

The validity of an "emergency clause" may be determined in the same way and upon the same evidence that the validity of the other parts or sections of the act is determined; bill that has been properly enrolled, signed by presiding officer of both houses, and approved by governor will be presumed to have been enacted into a law in the manner prescribed by the constitution, and cannot be impeached by reference to the journals of either house. Commonwealth v. Hardin County Court, 99 Ky. 188, 35 S.W. 275, 18 Ky. L. Rptr. 113, 1896 Ky. LEXIS 67 (Ky. 1896).

An emergency clause is invalid if the act shows on its face that no emergency exists. McIntyre v. Commonwealth, 221 Ky. 16, 297 S.W. 931, 1927 Ky. LEXIS 655 (Ky. 1927), limited, Hill v. Taylor, 264 Ky. 708, 95 S.W.2d 566, 1936 Ky. LEXIS 388 (Ky. 1936).

Where no emergency actually existed, the emergency provision of an act declaring that due to the congested condition of the docket in a certain judicial district an emergency existed and that the act should be effective upon its passage, thus eliminating the April term of the Perry Circuit Court, was invalid under this section. McIntyre v. Commonwealth, 221 Ky. 16, 297 S.W. 931, 1927 Ky. LEXIS 655 (Ky. 1927), limited, Hill v. Taylor, 264 Ky. 708, 95 S.W.2d 566, 1936 Ky. LEXIS 388 (Ky. 1936).

Where emergency clause was invalid on its face, act took effect 90 days after adjournment of legislature. Combs v. Commonwealth, 224 Ky. 653, 6 S.W.2d 1082, 1928 Ky. LEXIS 657 (Ky. 1928).

Where statute already had taken effect under the general rule of this section, an appeal from a judgment attacking the validity of an emergency clause in the act will be dismissed as moot. Lyttle v. Keith, 264 Ky. 652, 95 S.W.2d 299, 1936 Ky. LEXIS 384 (Ky. 1936).

The reason stated in the emergency clause of Acts 1982, Ch. 246 which act deals generally with a surcharge upon certain insurance premiums collected in the state which is intended to fund a trust for the payment of incentives to the fire fighters and policemen of the various municipalities, to the effect that the general fund appropriations for fiscal year 1981-82 for the professional fire fighters foundation program fund as provided by KRS 95A.200 through 95A.990, and the law enforcement foundation program fund as provided by KRS 15.410 through 15.510 would lapse on June 30, 1982, sufficiently supported the legislative declaration of emergency. American Ins. Asso. v. Geary, 635 S.W.2d 306, 1982 Ky. LEXIS 265 (Ky. 1982).

10. Retroactivity.

Since Court of Appeals' decision, holding that a wife had a cause of action for loss of consortium resulting from negligence of a third party in Kotsiris v. Ling, 451 S.W.2d 411, 1970 Ky. LEXIS 390 (Ky. Ct. App. 1970), applied retroactively whereas the prior statute did not, wife's cause of action claiming for loss of consortium resulting from negligence of defendants which was filed prior to the effective date of KRS 411.145 stated the claim, and hence defendant's motion to dismiss the complaint on the ground of failure to state a claim was denied. Thomas v. Deason, 317 F. Supp. 1098, 1970 U.S. Dist. LEXIS 9915 (W.D. Ky. 1970).

Cited:

Kentucky Union Co. v. Kentucky, 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137, 1911 U.S. LEXIS 1626 (1911); Hawkins v. Commonwealth, 70 S.W. 640, 24 Ky. L. Rptr. 1034 (1902); Louisville Car Wheel & R. Supply Co. v. Louisville, 146 Ky. 573, 142 S.W. 1043, 1912 Ky. LEXIS 102 (Ky. 1912); Lambert v. Board of Trustees, 151 Ky. 725, 152 S.W. 802, 1913 Ky. LEXIS 562 (Ky. 1913); State Board of Charities & Corrections v. Hays, 190 Ky. 147, 227 S.W. 282, 1920 Ky. LEXIS 554 (Ky. 1920); Breeding v. Commonwealth, 190 Ky. 207, 227 S.W. 151, 1921 Ky. LEXIS 411 (Ky. 1921); State Board of Election Comm'rs v. Coleman, 235 Ky. 24, 29 S.W.2d 619, 1930 Ky. LEXIS 305 (Ky. 1930); Ward v. Lester, 235 Ky. 595, 31 S.W.2d 924, 1930 Ky. LEXIS 413 (Ky. 1930); Kirkman v. Williams' Ex'r, 246 Ky. 481, 55 S.W.2d 365, 1932 Ky. LEXIS 790 (Ky. 1932); Green v. Moore, 281 Ky. 305, 135 S.W.2d 682, 1939 Ky. LEXIS 33 (Ky. 1939); Board of Aldermen v. Hunt, 284 Ky. 720, 145 S.W.2d 814, 1940 Ky. LEXIS 551 (Ky. 1940); Reid v. Robertson, 304 Ky. 509, 200 S.W.2d 900, 1947 Ky. LEXIS 643 (Ky. 1947); Taylor v. Commonwealth, 305 Ky. 75, 202 S.W.2d 992, 1947 Ky. LEXIS 758 (Ky. 1947); Wiggins v. Stuart, 671 S.W.2d 262, 1984 Ky. App. LEXIS 513 (Ky. Ct. App. 1984); Spurlin v. Adkins, 940 S.W.2d 900, 1997 Ky. LEXIS 34 (Ky. 1997); Benson's Inc. v. Fields, 941 S.W.2d 473, 1997 Ky. LEXIS 32 (Ky. 1997); Johnson v. Wells Fargo Bank, N.A. (In re Neal), — B.R. —, 2006 Bankr. LEXIS 885 (Bankr. E.D. Ky. 2006).

OPINIONS OF ATTORNEY GENERAL.

Bills are not required to provide in their title a statement to the effect that they are emergency legislation, nor is it necessary to provide in the body of the bills themselves reasons or justification for the emergency as this section

simply requires that the reasons for the emergency are to be set out in the journal of each house. OAG 60-274.

Where a regulation is adopted by an existing state agency and such regulation is required to give meaning and effect to the statute but it is not to be enforced prior to the effective date of the act, such regulations should be accepted by the Legislative Research Commission for filing notwithstanding the fact that they may have been adopted by an existing agency prior to the effective date of enabling legislation. OAG 64-391.

Ordinary legislation passed at the 1970 regular session of the Kentucky general assembly became effective on June 18, 1970. OAG 70-145.

The failure to include § 26 (which removes the circuit clerks from KRS 64.010 (now repealed)) of S.B. 15 (Acts 1976 (Ex. Sess.), ch. 14) in § 492 (providing an effective date of January 2, 1978) of said bill was obviously a clerical or grammatical error and was not intended to deprive the clerks of the circuit court of their fees during the period from March 19, 1977 to January 2, 1978 and thus the circuit clerks should have continued to apply the fee statute, KRS 64.010 (now repealed), until January 2, 1978. OAG 77-109, 1977 Ky. AG LEXIS 664.

The General Assembly may condition the effectiveness of the Kentucky coal legislation and implementing regulations upon the approval of the secretary of interior without violating any Kentucky constitutional section because of the supremacy clause of the United States Constitution and the necessity for enacting state strip mining legislation that will be in accord with the Federal Strip Mining Law of 1977. OAG 80-99, 1980 Ky. AG LEXIS 534.

The emergency clause of Acts 1982, Ch. 282 related solely to § 3 of the act which amended KRS 45A.335 to exclude members of state boards and commissions from the term "officer or employee," as used in the conflict of interest statute, KRS 45A.340(5); it not only did not relate to the other sections of the bill, which were separable, but it gave no reason to justify that an emergency existed with respect to these sections. In view of the fact that this section requires an act to express in plain language what the emergency is in order for it to be effective, only § 3 became effective on April 2, 1982, upon the passage of the act and approval of the Governor, and the remaining sections of the act became effective as ordinary legislation on July 15, 1982. OAG 82-308, 1982 Ky. AG LEXIS 335.

The day of adjournment must be excluded in determining the effective date of ordinary legislation. OAG 86-6, 1986 Ky. AG LEXIS 79.

The effective date of ordinary legislation enacted during the 1987 special session of the General Assembly that adjourned sine die Thursday, October 22, 1987 is January 21, 1988. OAG 87-74, 1987 Ky. AG LEXIS 12.

In determining the effective date of ordinary legislation adopted at the 1988 Special Session of the General Assembly, December 14, 1988, the day of adjournment, must be excluded, which means that March 14, 1989, would be the 90th day following adjournment which day must be included in computing the 90-day period of time provided in this section, thereby making all ordinary legislation effective March 15, 1989. OAG 89-1, 1989 Ky. AG LEXIS 10.

Where the Regular Session of the General Assembly adjourns sine die on April 13, the effective date of ordinary legislation passed at that session would be July 13. OAG 89-56, 1989 Ky. AG LEXIS 56.

If the Regular Session of the General Assembly adjourns sine die on April 15, the effective date of ordinary legislation passed at that session would be July 15. OAG 92-12, 1992 Ky. AG LEXIS 12.

Where the Regular Session of the General Assembly adjourns sine die on April 14, 1992, the effective date of ordinary legislation passed at the session would be July 14, 1992. OAG 92-72, 1992 Ky. AG LEXIS 72.

For an opinion indicating the effective date of Senate Bill 7 (1993 [1st Extra. Sess.] Ky. Acts ch. 4), passed during the session with an emergency provision, as well as certain dates in a "transition schedule" contained in that legislation, see OAG 93-25, 1993 Ky. AG LEXIS 63.

The "normal" effective date for legislation enacted during the 1993 First Extraordinary Session of the Kentucky General Assembly, that is, the effective date for legislation which does not contain an emergency provision or a delayed effective date, is May 18, 1993. OAG 93-25, 1993 Ky. AG LEXIS 63.

The language "ninety days after adjournment," as used in Ky. Const., § 55, indicates that the day of adjournment (meaning day of final adjournment for the session, termed "adjournment sine die") is to be excluded in computing the 90 day period set forth in the above cited Constitutional provision, and that the 90th day shall be included in the period, in order that 90 full days shall pass after enactment of certain legislation, before the legislation becomes effective. OAG 94-17, 1994 Ky. AG LEXIS 244.

The "normal" effective date of legislation enacted during the 1994 Regular Session of the Kentucky General Assembly is Friday, July 15, 1994, final adjournment having been on April 15, 1994. OAG 94-30, 1994 Ky. AG LEXIS 259.

"Until ninety days after the adjournment", as used in this section indicates that the day of adjournment (meaning the day of final adjournment for the session, termed "adjournment sine die") is to be excluded in computing the 90-day period set forth in this constitutional provision, and that the 90th day shall be included in the period, so that 90 full days shall pass after enactment of certain legislation, before the legislation becomes effective. OAG 95-32, 1995 Ky. AG LEXIS 74.

The effective date of legislation, other than general appropriation bills and acts containing emergency or delayed effective date provisions, passed during the 1996 Regular Session of the Kentucky General Assembly, is the first moment of Monday, July 15, 1996, where the first day of the 90-day period after the session was Tuesday, April 16, 1996, and the 90th day of that period was Sunday, July 14, 1996, then when the last moment of that 90th day has expired, 90 full days will have passed after the adjournment "sine die" of the 1996 Regular Session of the Kentucky General Assembly. OAG 96-19, 1996 Ky. AG LEXIS 22.

Legislation (except for general appropriation measures and those containing emergency or delayed effective date provisions) passed during the 2000 Regular Session of the Kentucky General Assembly will be effective on the first moment of Friday, July 14, 2000. OAG 00-4, 2000 Ky. AG LEXIS 91.

Legislation (except for general appropriation measures and those containing emergency or delayed effective date provisions) passed during the 2001 Regular Session of the Kentucky General Assembly, which was adjourned sine die on Thursday, March 22, 2001, became effective on the first moment of Thursday, June 21, 2001. OAG 01-4, 2001 Ky. AG LEXIS 1.

The effective date of legislation, other than general appropriation bills and acts containing emergency or delayed effective date provisions, passed during the 2002 Regular Session of the Kentucky General Assembly, is the first moment of Monday, July 15, 2002. OAG 02-3, 2002 Ky. AG LEXIS 2.

Legislation (except for general appropriation measures and those containing emergency or delayed effective date provisions) passed during the 2003 Regular Session of the Kentucky General Assembly were effective on the first moment of Tuesday, June 24, 2003. OAG 03-002, 2003 Ky. AG LEXIS 2.

The effective date of legislation passed by the 2004 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Tuesday July 13, 2004. OAG 04-002, 2004 Ky. AG LEXIS 3.

The effective date of legislation passed by the 2005 Regular Session of the Kentucky General Assembly, except for general

appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Monday, June 20, 2005, since 90 full days will then have passed after final adjournment on March 21, 2005. OAG 2005-04, 2005 Ky. AG LEXIS 3.

The effective date of legislation passed by the 2006 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Wednesday, July 12, 2006, since 90 full days will then have passed after final adjournment on April 12, 2006. OAG 2006-01, 2006 Ky. AG LEXIS 1.

The effective date of legislation passed by the 2007 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Tuesday, June 26, 2007, since 90 full days will then have passed after final adjournment on March 27, 2007. OAG 2007-02, 2007 Ky. AG LEXIS 2.

Since the General Assembly adjourned sine die on April 15, 2008, legislation except for general appropriation measures and those containing emergency or delayed effective date provisions passed during the 2008 Regular Session of the Kentucky General Assembly will be effective on the first moment of Tuesday July 15, 2008. OAG 2008-01, 2008 Ky. AG LEXIS 1.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2009 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Thursday, June 25, 2009, since 90 full days will then have passed after final adjournment on March 26, 2009. OAG 2009-03, 2009 Ky. AG LEXIS 221.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2010 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Thursday, July 15, 2010, since 90 full days will then have passed after final adjournment on April 15, 2010. OAG 10-002, 2010 Ky. AG LEXIS 71.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2010 Extraordinary Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Saturday, August 28, 2010, since 90 full days will then have passed after final adjournment on May 29, 2010. OAG 10-004, 2010 Ky. AG LEXIS 130.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2011 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Wednesday, June 8, 2011, since 90 full days will then have passed after final adjournment on March 9, 2011. OAG 11-002, 2011 Ky. AG LEXIS 37.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2012 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Thursday, July 12, 2012, since 90 full days will then have passed after final adjournment on April 12, 2012. OAG 12-006, 2012 Ky. AG LEXIS 93.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2012 Extraordinary Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Friday, July 20, 2012, since 90 full days will then have passed after final adjournment on April 20, 2012. 12-007, 2012 Ky. AG LEXIS 82.

In accordance with Section 55 of the Constitution of Kentucky, the effective date of legislation passed by the 2013 Regular Session of the Kentucky General Assembly, except for general appropriation measures and those containing emergency or delayed effective date provisions, is the first moment of Tuesday, June 25, 2013, since 90 full days will then have passed after final adjournment on March 26, 2013. OAG 13-005, 2013 Ky. AG LEXIS 35.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Date of approval or passage to be stated at end of act, KRS 6.240.

Kentucky Bench & Bar.

Palmore, A Summary of Significant Decisions by the Supreme Court of Kentucky April 1982 — April 1983, Vol. 47, No. 3, July 1983, Ky. Bench & Bar 14.

Kentucky Law Journal.

Snyder and Irland, The Separation of Governmental Powers Under the Constitution of Kentucky: A Legal and Historical Analysis of L.R.C. v. Brown, 73 Ky. L.J. 165 (1984-85).

Treatises

Petrilli, Kentucky Family Law, Court Procedure, § 23.2.

§ 55. When laws to take effect — Emergency legislation. [Contingently enacted]

No act, except general appropriation bills, shall become a law until July 1 of the year in which it was passed, or until ninety days after it becomes law under Section 88 of this Constitution, whichever occurs later, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the Governor or when it otherwise becomes a law under Section 88; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House.

History.

Repeal and reenactment, proposed by Acts 2021, ch. 27, § 4, and is contingent upon ratification.

§ 59. Local and special legislation.

The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely:

First: To regulate the jurisdiction, or the practice, or the circuits of the courts of justice, or the rights, powers, duties or compensation of the officers thereof; but the practice in circuit courts in continuous session may, by a general law, be made different from the practice of circuit courts held in terms.

Second: To regulate the summoning, impaneling or compensation of grand or petit jurors.

Third: To provide for changes of venue in civil or criminal causes.

Fourth: To regulate the punishment of crimes and misdemeanors, or to remit fines, penalties or forfeitures.

Fifth: To regulate the limitation of civil or criminal causes.

Sixth: To affect the estate of cestuis que trust, decedents, infants or other persons under disabilities, or to authorize any such persons to sell, lease, encumber or dispose of their property.

Seventh: To declare any person of age, or to relieve an infant or feme covert of disability, or to enable him to do acts allowed only to adults not under disabilities.

Eighth: To change the law of descent, distribution or succession.

Ninth: To authorize the adoption or legitimation of children.

Tenth: To grant divorces.

Eleventh: To change the names of persons.

Twelfth: To give effect to invalid deeds, wills or other instruments.

Thirteenth: To legalize, except as against the Commonwealth, the unauthorized or invalid act of any officer or public agent of the Commonwealth, or of any city, county or municipality thereof.

Fourteenth: To refund money legally paid into the State Treasury.

Fifteenth: To authorize or to regulate the levy, the assessment or the collection of taxes, or to give any indulgence or discharge to any assessor or collector of taxes, or to his sureties.

Sixteenth: To authorize the opening, altering, maintaining or vacating of roads, highways, streets, alleys, town plats, cemeteries, graveyards, or public grounds not owned by the Commonwealth.

Seventeenth: To grant a charter to any corporation, or to amend the charter of any existing corporation; to license companies or persons to own or operate ferries, bridges, roads or turnpikes; to declare streams navigable, or to authorize the construction of booms or dams therein, or to remove obstructions therefrom; to affect toll gates or to regulate tolls; to regulate fencing or the running at large of stock.

Eighteenth: To create, increase or decrease fees, percentages or allowances to public officers, or to extend the time for the collection thereof, or to authorize officers to appoint deputies.

Nineteenth: To give any person or corporation the right to lay a railroad track or tramway, or to amend existing charters for such purposes.

Twentieth: To provide for conducting elections, or for designating the places of voting, or changing the boundaries of wards, precincts or districts, except when new counties may be created.

Twenty-first: To regulate the rate of interest.

Twenty-second: To authorize the creation, extension, enforcement, impairment or release of liens.

Twenty-third: To provide for the protection of game and fish.

Twenty-fourth: To regulate labor, trade, mining or manufacturing.

Twenty-fifth: To provide for the management of common schools.

Twenty-sixth: To locate or change a county seat.

Twenty-seventh: To provide a means of taking the sense of the people of any city, town, district, precinct or county, whether they wish to authorize, regulate or prohibit therein the sale of vinous, spirituous or malt liquors, or alter the liquor laws.

Twenty-eighth: Restoring to citizenship persons convicted of infamous crimes.

Twenty-ninth: In all other cases where a general law can be made applicable, no special law shall be enacted.

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1. In General.

The general law, consisting of fragmentary and incomplete enactments, on subject of turnpikes, passed since adoption of Constitution, did not affect local act providing for free turnpike roads in Mason County, the alleged general law showing an absence of legislative intent to affect the local act, though

policy of Constitution demands the substitution of general laws for all local ones. Pearce v. Mason County, 99 Ky. 357, 35 S.W. 1122, 18 Ky. L. Rptr. 266, 1896 Ky. LEXIS 94 (Ky. 1896).

Changes in the organic law of the Commonwealth have been in the direction of more strictly limiting the legislative power. This section is an indication that there existed in the minds of the people a deep-seated distrust of legislative methods and a fear of legislative usurpation of power. Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901).

Workers' compensation act did not violate this section since classifications made therein were reasonable. Greene v. Caldwell, 170 Ky. 571, 186 S.W. 648, 1916 Ky. LEXIS 126 (Ky. 1916).

Law permitting counties to dispose of unappropriated land consisting of a portion of the bed of the Ohio River lying within the county is not unconstitutional as special legislation. Willis v. Boyd, 224 Ky. 732, 7 S.W.2d 216, 1928 Ky. LEXIS 676 (Ky. 1928).

Act prohibiting operation on highway of any motor truck or semi-trailer truck exceeding 18,000 pounds in gross weight was not violative of this section or Ky. Const., § 60 as being class legislation. Whitney v. Johnson, 37 F. Supp. 65, 1941 U.S. Dist. LEXIS 3654 (D. Ky.), aff'd, 314 U.S. 574, 62 S. Ct. 117, 86 L. Ed. 465, 1941 U.S. LEXIS 262 (U.S. 1941).

The portion of law which required that excess fees in counties containing a city of the first class be paid into the state treasury was not subject to the criticism that it was local legislation inhibited by this section and Ky. Const., § 60. Jefferson County Fiscal Court v. Trager, 302 Ky. 361, 194 S.W.2d 851, 1946 Ky. LEXIS 686 (Ky. 1946).

Statutory provision authorizing issuance of veterinary license, without examination, to persons who had practiced for one (1) year prior to effective date of original licensing law, which provision was contained in an act revising the veterinary law, was not unconstitutional as being special or class legislation or as granting special privileges or emoluments. Doller v. Reid, 308 Ky. 348, 214 S.W.2d 584, 1948 Ky. LEXIS 939 (Ky. 1948).

Act of the General Assembly granting a named individual the right to practice dentistry and directing the state board of dental examiners to issue a license was void as constituting special legislation in violation of this section. Bentley v. Commonwealth, 239 S.W.2d 991, 1951 Ky. LEXIS 931 (Ky. 1951).

A law is not local or special merely because it does not relate to the whole state or to the general public. Commonwealth v. Moyers, 272 S.W.2d 670, 1954 Ky. LEXIS 1125 (Ky. 1954).

KRS 67.320 (now repealed), did not violate this constitutional provision since it was a general statute authorizing any county to have a fire department and directing that a duplication of services should be avoided in those instances in which a municipally maintained fire department existed. Johnson v. Peak, 407 S.W.2d 692, 1966 Ky. LEXIS 171 (Ky. 1966).

The standard to which all legislation must conform to avoid unconstitutionality under this section is that the legislation must (1) apply equally to all in a class, and (2) there must be distinctive and natural reasons inducing and supporting the classification. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

A general law relates to persons or things as a class, while a special law relates to particular persons or things of a class. Waggoner v. Waggoner, 846 S.W.2d 704, 1992 Ky. LEXIS 189 (Ky. 1992), cert. denied, 510 U.S. 932, 114 S. Ct. 346, 126 L. Ed. 2d 310, 1993 U.S. LEXIS 6585 (U.S. 1993).

The fact that the General Assembly deals with a special subject does not per se make it special legislation. Waggoner v. Waggoner, 846 S.W.2d 704, 1992 Ky. LEXIS 189 (Ky. 1992), cert. denied, 510 U.S. 932, 114 S. Ct. 346, 126 L. Ed. 2d 310, 1993 U.S. LEXIS 6585 (U.S. 1993).

Classifications based upon reasonable and natural distinctions that relate logically to the purpose of the act do not violate this section. Waggoner v. Waggoner, 846 S.W.2d 704, 1992 Ky. LEXIS 189 (Ky. 1992), cert. denied, 510 U.S. 932, 114 S. Ct. 346, 126 L. Ed. 2d 310, 1993 U.S. LEXIS 6585 (U.S. 1993).

2. Purpose.

The aim and purpose of this section is to prevent special privileges to bar favoritism and discrimination and to insure equality under law. Department of Finance v. Dishman, 298 Ky. 545, 183 S.W.2d 540, 1944 Ky. LEXIS 948 (Ky. 1944).

The purpose of the constitutional inhibition in this section and Const., § 60 is to require that all laws upon a subject shall operate alike upon all individuals and corporations. Jefferson County Police Merit Bd. v. Bilyeu, 634 S.W.2d 414, 1982 Ky. LEXIS 260 (Ky. 1982).

The express purpose of the fifth clause of this section is to prevent those who have sufficient political power or who can afford a persuasive lobbyist from achieving immunity from accountability to the law that governs others. Tabler v. Wallace, 704 S.W.2d 179, 1985 Ky. LEXIS 291 (Ky. 1985), cert. denied, 479 U.S. 822, 107 S. Ct. 89, 93 L. Ed. 2d 41, 1986 U.S. LEXIS 3436 (U.S. 1986).

This section is more than simply another way of restating the generalized language of the equal protection clause of the Fourteenth Amendment to the United States Constitution; Ky. Const., §§ 1, 2 and 3 which provide that the General Assembly is denied arbitrary power and shall treat all persons equally, suffice to embrace the equal protection clause to the Fourteenth Amendment. Tabler v. Wallace, 704 S.W.2d 179, 1985 Ky. LEXIS 291 (Ky. 1985), cert. denied, 479 U.S. 822, 107 S. Ct. 89, 93 L. Ed. 2d 41, 1986 U.S. LEXIS 3436 (U.S. 1986).

3. Construction.

The true test of whether a law is a general one is not alone that it applies equally to all in a class but in addition there must be distinctive and natural reasons inducing and supporting the classification. Safety Bldg. & Loan Co. v. Ecklar, 106 Ky. 115, 50 S.W. 50, 20 Ky. L. Rptr. 1770, 1899 Ky. LEXIS 31 (Ky. 1899), overruled, Linton v. Fulton Bldg. & Loan Ass'n, 262 Ky. 198, 90 S.W.2d 22, 1936 Ky. LEXIS 22 (Ky. 1936).

This section was restriction upon future legislation and in no way impaired validity of former laws or rights secured under them. Guthrie v. Sparks, 131 F. 443, 1904 U.S. App. LEXIS 4299 (6th Cir. Ky.), cert. denied, 195 U.S. 633, 25 S. Ct. 790, 49 L. Ed. 353, 1904 U.S. LEXIS 741 (U.S. 1904).

In determining whether an act relating to a particular class of city is local and special legislation, Ky. Const., § 156 must be considered in connection with this section and Ky. Const., § 60. Mannini v. McFarland, 294 Ky. 837, 172 S.W.2d 631, 1943 Ky. LEXIS 539 (Ky. 1943).

For a special law to be constitutional, there must be a substantial reason why a particular law is made to operate upon a class of citizens and not generally upon all. Walters v. Bindner, 435 S.W.2d 464, 1968 Ky. LEXIS 210 (Ky. 1968).

The usual test applied to determine whether a particular law is general or special is: Does it embrace all of the class to which it relates? Walters v. Bindner, 435 S.W.2d 464, 1968 Ky. LEXIS 210 (Ky. 1968).

There must be a substantial and justifiable reason apparent from legislative history, from the statute's title, preamble or subject matter, or from some other authoritative source to uphold discriminatory legislation. Tabler v. Wallace, 704 S.W.2d 179, 1985 Ky. LEXIS 291 (Ky. 1985), cert. denied, 479 U.S. 822, 107 S. Ct. 89, 93 L. Ed. 2d 41, 1986 U.S. LEXIS 3436 (U.S. 1986).

4. Application.

The same rules relative to classification and uniformity in application apply as well to police measures as to other acts.

Chandler v. Louisville, 277 Ky. 79, 125 S.W.2d 1026, 1939 Ky. LEXIS 624 (Ky. 1939).

The "cost of production" includes the cost of raw materials as well as the cost of processing; thus, a vegetable oil refining and distribution company was required to include the cost of the crude oil itself in its cost of production for the purposes of the revenue statute. Also, the fact that the cost-of-energy computation must be made on the basis of plant facilities at one (1) location does not serve to limit taxpayer's production costs. Further, the statute does not violate the equal protection provisions of the Kentucky Constitution because a processor of bought materials is not similarly situated to a processor of materials owned by others or a processor of its own materials. Louisville Edible Oil Prods. v. Revenue Cabinet Commonwealth, 957 S.W.2d 272, 1997 Ky. App. LEXIS 81 (Ky. Ct. App. 1997).

This section applies only to laws passed by the General Assembly and, therefore, does not apply to city and county ordinances. Hyman v. City of Louisville, 132 F. Supp. 2d 528, 2001 U.S. Dist. LEXIS 4016 (W.D. Ky. 2001).

Since city ordinances which sought to reduce the deer population by prohibiting residents from feeding them, by permitting residents to use a bow or crossbow to assist in culling the deer population, and by imposing field dressing requirements for deer kills within city limits were enacted by the city council, and not Kentucky's General Assembly, the prohibition of Ky. Const. § 59 did not affect those ordinances. Kelly v. City of Fort Thomas, 610 F. Supp. 2d 759, 2009 U.S. Dist. LEXIS 1146 (E.D. Ky. 2009), aff'd in part and rev'd in part, 620 F.3d 596, 2010 FED App. 0285P, 2010 U.S. App. LEXIS 18437 (6th Cir. Ky. 2010).

Legislation lawfully passed by the Kentucky General Assembly which amended the power of the Governor of the Commonwealth of Kentucky to respond to emergencies did not violate the Kentucky Constitution because the Kentucky Legislature did not identify or single out any particular person, business, school, locality or entity to which the legislation was to apply. Instead, the legislation applied statewide. Cameron v. Beshear, 628 S.W.3d 61, 2021 Ky. LEXIS 240 (Ky. 2021).

5. Classification.

Fact that certain levee district was the only one that had ever been formed under levee law did not make such law local or special in violation of this section, since it was applicable to every county in state with less than 200,000 population where levee might be needed and since population specification was not unreasonable and arbitrary with reference to purpose of such law. Board of Drainage Comm'rs v. Board of Levee Comm'rs, 191 Ky. 470, 230 S.W. 959, 1921 Ky. LEXIS 348 (Ky. 1921).

Prohibition by statute of street trades by boys in cities of the first, second or third class is based on a reasonable classification and is not special or local legislation. Commonwealth v. Lipginski, 212 Ky. 366, 279 S.W. 339, 1926 Ky. LEXIS 147 (Ky. 1926). See Commonwealth v. Jarrett, 213 Ky. 618, 281 S.W. 805, 1926 Ky. LEXIS 581 (Ky. 1926).

Classification by the General Assembly for legislative purposes will not be disturbed by the courts under the above section unless it is so unjust or arbitrary as to exclude one (1) or more of a class. Middendorf v. Jameson, 265 Ky. 111, 95 S.W.2d 1057, 1936 Ky. LEXIS 417 (Ky. 1936). See Louisville v. Coulter, 177 Ky. 242, 197 S.W. 819, 1917 Ky. LEXIS 592 (Ky. 1917) (Ky. 1917); Jones v. Russell, 224 Ky. 390, 6 S.W.2d 460, 1928 Ky. LEXIS 606 (Ky. 1928); Mansbach Scrap Iron Co. v. Ashland, 235 Ky. 265, 30 S.W.2d 968, 1930 Ky. LEXIS 338 (Ky. 1930); Shannon v. Wheeler, 268 Ky. 25, 103 S.W.2d 718, 1937 Ky. LEXIS 422 (Ky. 1937).

Legislation based on a classification which is so manifestly unreasonable and arbitrary that it imposes a burden on or excludes one (1) or more of a class without reasonable basis in fact is forbidden, but legislation based on reasonable and natural destruction of fact is not. Withers v. Board of Drainage Comm'rs, 270 Ky. 732, 110 S.W.2d 664, 1937 Ky. LEXIS 150 (Ky. 1937).

An act applying only to a particular class of cities or counties, if based on a legal classification, will supersede general laws on the same subject as far as that class is concerned. Jefferson County Fiscal Court v. Thomas, 279 Ky. 458, 130 S.W.2d 60, 1939 Ky. LEXIS 258 (Ky. 1939).

Former decision that act which concerned salaries of constables and deputies in counties over 250,000 was based on reasonable classification and that act was not special or local was conclusive of question of classification both in original act and amendment, which merely broadened purposes of original act. Jefferson County Fiscal Court v. Thomas, 279 Ky. 458, 130 S.W.2d 60, 1939 Ky. LEXIS 258 (Ky. 1939).

Law requiring that certain appliances be sold only by registered pharmacists where it was reasonable to assume that pharmacists were especially qualified to determine whether the appliances complied with the specifications required by the act constituted a classification based on reasonable and natural distinctions and is constitutional under this section. Markendorf v. Friedman, 280 Ky. 484, 133 S.W.2d 516, 1939 Ky. LEXIS 130 (Ky. 1939).

In making a classification of persons to whom a law applies, it is not necessary that the legislature state its reasons and if any possible reasonable basis can be conceived to justify the classification, it should be upheld. Meredith v. Ray, 292 Ky. 326, 166 S.W.2d 437, 1942 Ky. LEXIS 81 (Ky. 1942).

Mathematical exactness in classification is impossible, and an act will not be declared unconstitutional merely because in practice it results in some inequality provided there is some general basis for the division. Meredith v. Ray, 292 Ky. 326, 166 S.W.2d 437, 1942 Ky. LEXIS 81 (Ky. 1942).

References in subsection (3) of KRS 76.080 to "Louisville" and "Jefferson County" did not render metropolitan sewer district law unconstitutional as local or special legislation where other sections properly referred to "city of first class and county containing such city" and it was apparent that the one reference to Louisville and Jefferson County by name was inadvertent. Veail v. Louisville & Jefferson County Metropolitan Sewer Dist., 303 Ky. 248, 197 S.W.2d 413, 1946 Ky. LEXIS 830 (Ky. 1946).

Law was not special or local solely because it did not relate to general public; it could relate to special class or special locality if facts reasonably differentiated such class or locality from general public or state at large. Young v. Willis, 305 Ky. 201, 203 S.W.2d 5, 1947 Ky. LEXIS 773 (Ky. 1947).

Legislation establishing a classification, the wisdom of which is a legislative function, is not in violation of the Constitution prohibition against special legislation where the classification is based on natural and reasonable distinction. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949).

Law authorizing board of education in any county containing a city of the first class to impose occupational license fees is not special legislation prohibited by this section, although at present the statute applies in fact only to one (1) county. Sims v. Board of Education, 290 S.W.2d 491, 1956 Ky. LEXIS 329 (Ky. 1956).

Under this section and United States Const., Amend. 14, KRS 277.330, providing that the mere fact of injury to livestock by a train constitutes prima facie evidence of the negligence of the railroad, is unconstitutional as class legislation. Louisville & N. R. Co. v. Faulkner, 307 S.W.2d 196, 1957 Ky. LEXIS 83 (Ky. 1957).

Former prohibition of KRS 436.160 against allowing poolroom operators to open for business on Sunday was not unconstitutional, even though amateur sports were allowed. Walters v. Bindner, 435 S.W.2d 464, 1968 Ky. LEXIS 210 (Ky. 1968).

The fact that a statute discriminates in favor of a certain class does not render it unconstitutional if the discrimination is founded upon a reasonable distinction, or if any state of facts reasonably can be conceived to sustain it. Kentucky Milk Marketing & Anti-Monopoly Com. v. Borden Co., 456 S.W.2d 831, 1969 Ky. LEXIS 5 (Ky. 1969).

Classification of cities and counties on the basis of size and population alone for any purpose other than their organization or government is permissible only if size and population has an appreciable relevancy to the subject matter of the legislation. Board of Education v. Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

Since KRS 132.487(3), which excludes motor vehicles from the calculation of the compensating and maximum possible tax rates, applies equally to all vehicles which are to be operated on the highways of the state and since there are distinctive and natural reasons inducing and supporting the classification of motor vehicles because of their mobility, rapid depreciation and frequency of transfer and because they stand virtually alone in licensing requirements, the classification of motor vehicles was valid and did not contravene this section prohibiting special legislation. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Where legislation establishes a classification made upon a reasonable and natural distinction which relates logically to the purpose of the act, there is no violation of this section. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Since motor vehicles are a separate, distinct and reasonable classification, the mere fact that the dates of assessment and collection vary from real property or other personalty does not offend the provisions of this section prohibiting special legislation. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

The fact that ad valorem taxes on motor vehicles are collected by the county clerk rather than the sheriff does not render the legislation unconstitutional; as long as the taxes are uniform, within a valid classification, it is not a "local or special" act. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Act 264 of 1982, governing motor vehicle taxation was not special legislation for failure to provide for a two percent (2%) discount which is granted to real property and other personal property under KRS 134.020 since motor vehicles are a classification based upon distinctive and natural reasons, and under this act no motor vehicles are subjected to a discount within the classification; the mere fact that all taxes are not paid in a short period of time, as envisioned in KRS 134.020, et seq., does not render the legislation unconstitutional. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

The fact that a legislative act deals with a special subject does not make it special legislation where the Legislature establishes a classification based on reasonable and natural distinctions. Graham v. Mills, 694 S.W.2d 698, 1985 Ky. LEXIS 236 (Ky. 1985).

Although classifications according to population are allowable, where the subject is one of general application throughout the state and has been so treated in the general scheme of legislation, distinctions favorable or unfavorable to particular localities resting alone upon numbers and density of population would be violative of this section and Ky. Const., § 60. Tri-City Turf Club, Inc. v. Public Protection & Regulation Cabinet, 806 S.W.2d 394, 1991 Ky. App. LEXIS 2 (Ky. Ct. App. 1991).

The Supreme Court will not permit a statute to survive by simply defining a class in a narrow fashion, which will yield, ipso facto, a self-sustaining classification. Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 1998 Ky. LEXIS 140 (Ky. 1998).

A State Health Plan issued by the Cabinet for Health and Family Services which established criteria for a pilot project to study the risks and benefits of allowing angioplasty at hospitals without immediate access to an open-heart surgery facility, was limited to one hospital in eastern Kentucky and one hospital in western Kentucky, and required the hospitals to be located thirty (30) minutes from an on-site open-heart surgery center, was not unconstitutional, as: (1) such did not constitute special or local legislation, in violation of Ky. Const. §§ 59 and 60; (2) the classification was reasonable, natural, and consistent with the legitimate purpose of the government; and (3) it passed the rational basis test. St. Luke Hosps., Inc. v. Commonwealth, 254 S.W.3d 830, 2008 Ky. App. LEXIS 146 (Ky. Ct. App. 2008).

6. — Population.

Where subject of classification is one reasonably depending upon or affecting the number or density of population as a correlative fact in the scheme of the particular legislation, classification according to population is allowable, but where subject is one of general application throughout state and has been so treated in general scheme of legislation, distinctions favorable or unfavorable to particular localities rested alone upon numbers and density of population would be violative of subsections Eighteenth and Twenty-ninth of this section and Const., § 60. James v. Barry, 138 Ky. 656, 128 S.W. 1070, 1910 Ky. LEXIS 117 (Ky. 1910).

Legislation operating in like manner on all persons in like circumstances is not special or local. While an act making arbitrary and unreasonable classification of political subdivisions for the purpose of making laws applicable to them alone will not be upheld, cities and counties may be classified according to population for the purpose of making laws applicable to them. Connors v. Jefferson County Fiscal Court, 277 Ky. 23, 125 S.W.2d 206, 1938 Ky. LEXIS 564 (Ky. 1938).

Classification of political subdivisions based on population did not offend this section if such classification was rested upon some reasonable basis and not upon mere arbitrary division without any real or substantial distinction. Chandler v. Louisville, 277 Ky. 79, 125 S.W.2d 1026, 1939 Ky. LEXIS 624 (Ky. 1939).

Classification on the basis of population must have a reasonable relation to purposes and objects of the legislation and must be based upon a rational difference in the necessities or conditions found in the groups subjected to different laws. Chandler v. Louisville, 277 Ky. 79, 125 S.W.2d 1026, 1939 Ky. LEXIS 624 (Ky. 1939).

Act relating to compensation and expenses of sheriff, in county having an assessed valuation of more than $100,000,000, containing a population of less than 75,000, comprising a separate judicial district, and containing a second-class city, did not violate this section, the elements of the classification having a logical and reasonable relation to the purpose of the act. Thompson v. Shipp, 298 Ky. 805, 184 S.W.2d 245, 1944 Ky. LEXIS 1028 (Ky. 1944).

Where an act relates to local county government, the amount of population and its density, the wealth of the community, and the size of the cities in the county are proper and logical elements upon which to base a classification. Thompson v. Shipp, 298 Ky. 805, 184 S.W.2d 245, 1944 Ky. LEXIS 1028 (Ky. 1944).

Density of population of a county is not alone a sufficient basis for classification of counties in a law, although density of population may be a proper foundation if there exists some natural, logical, or reasonable basis of support to take the act out of the category of arbitrary selection. Wehrman v. Steltenkamp, 304 Ky. 409, 200 S.W.2d 949, 1947 Ky. LEXIS 660 (Ky. 1947).

The merger of city and county governments under KRS 67A.010 to 67A.040 (KRS 67A.040 now repealed) does not violate this section by confining its application to counties other than one containing a city of the first class, as an act classifying counties or cities upon the basis of size alone has

always been permissible under this section if the subject of the act was the organization or government of the classified governmental units. Pinchback v. Stephens, 484 S.W.2d 327, 1972 Ky. LEXIS 148 (Ky. 1972).

A classification according to population and its density, and according to the division of cities into classes, is not a natural and logical classification and cannot be sustained unless the act pertains to the organization or government of cities and towns or is incident thereto, or unless the classification has a reasonable relation to the purpose of the act. Jefferson County Police Merit Bd. v. Bilyeu, 634 S.W.2d 414, 1982 Ky. LEXIS 260 (Ky. 1982).

The subject matter of KRS 78.428, which removes certain officers from the protection of a merit system in counties having a population of 600,000 or more, is governmental in nature and is constitutional under this section and Ky. Const., § 60. Jefferson County Police Merit Bd. v. Bilyeu, 634 S.W.2d 414, 1982 Ky. LEXIS 260 (Ky. 1982).

Although classifications according to population are allowable, where the subject is one of general application throughout the state and has been so treated in the general scheme of legislation, distinctions favorable or unfavorable to particular localities resting alone upon numbers and density of population would be violative of Ky. Const., § 60 and this section; an act based upon a classification merely according to classes of cities cannot be upheld unless it pertains to the organizations or government of the classified cities or unless the classification has a reasonable relation to the purpose of the act. Miles v. Shauntee, 664 S.W.2d 512, 1983 Ky. LEXIS 282 (Ky. 1983).

7. —Cities.

Law providing that when any public improvement ordered to be constructed in a city of the first class is such that it may be lawfully constructed at cost of owners of adjacent land the cost thereof shall be apportioned against real estate owned by state in like manner as against any other land does not violate prohibition against local or special legislation, although act applies only to cities of first class and there is only one (1) first-class city within the Commonwealth. Hager v. Gast, 119 Ky. 502, 84 S.W. 556, 27 Ky. L. Rptr. 129, 1905 Ky. LEXIS 25 (Ky. 1905).

Law providing that use of escheats in cities of first class shall be for public schools in such cities and authorizing school board to sue for same is not special legislation within the meaning of this section notwithstanding that same privilege is not allowed to school boards of other cities. Commonwealth use of Louisville School Board v. Chicago, S. L. & N. O. R. Co., 124 Ky. 497, 99 S.W. 596, 30 Ky. L. Rptr. 673, 1907 Ky. LEXIS 207 (Ky. 1907).

Since the Constitution provides that cities of Commonwealth shall be divided into classes, the fact that Louisville is only city of first class does not invalidate legislation pertaining to that city alone. Kirch v. Louisville, 125 Ky. 391, 101 S.W. 373, 30 Ky. L. Rptr. 1356, 1907 Ky. LEXIS 294 (Ky. 1907).

Act permitting all second-class cities to adopt commission form of government as provided therein was not special legislation contrary to this section. Bryan v. Voss, 143 Ky. 422, 136 S.W. 884, 1911 Ky. LEXIS 429 (Ky. 1911).

Law which requires proper construction scaffolding only in cities of the first and second classes does not constitute special legislation. Jones v. Russell, 224 Ky. 390, 6 S.W.2d 460, 1928 Ky. LEXIS 606 (Ky. 1928).

So much of law regarding appointment of city administrators that provided that the city administrator of each city of the first class shall be appointed by the commissioner of revenue (now secretary of revenue), with the approval of the governor, contravened this section and Ky. Const., §§ 60 and 160 and was void, since the attempted separate classification of cities of the first class was not based on natural or distinctive reasons. Chandler v. Louisville, 277 Ky. 79, 125 S.W.2d 1026, 1939 Ky. LEXIS 624 (Ky. 1939).

An act based on a classification merely according to classes of cities cannot be upheld unless it pertains to the organization or government of the classified cities, or unless the classification has a reasonable relation to the purpose of the act. Mannini v. McFarland, 294 Ky. 837, 172 S.W.2d 631, 1943 Ky. LEXIS 539 (Ky. 1943).

KRS 81.195 (repealed) is not constitutional because it does not provide for the same treatment for all cities of the third class. Corbin v. Roaden, 453 S.W.2d 603, 1970 Ky. LEXIS 329 (Ky. 1970).

KRS 64.510 (repealed) and KRS 69.010 providing that only Commonwealth Attorneys whose districts contained a first- or second-class city or an urban county government shall receive an increase in compensation did not deny equal protection to those districts which did not qualify but had a population as large as those districts which did qualify since the problem of crime being greater in the former districts was a reasonable basis for classification. Commonwealth ex rel. Hancock v. Davis, 521 S.W.2d 823, 1975 Ky. LEXIS 162 (Ky. 1975).

Section 156 of the Constitution is an exception to this section that prohibits special legislation. Hall v. Miller, 584 S.W.2d 51, 1979 Ky. App. LEXIS 433 (Ky. Ct. App. 1979).

An act, based on a classification merely according to classes of cities cannot be upheld unless it pertains to the organizations or government of the classified cities or unless the classification has a reasonable relation to the purpose of the act. Hall v. Miller, 584 S.W.2d 51, 1979 Ky. App. LEXIS 433 (Ky. Ct. App. 1979).

The 1968 Act (Acts 1968, ch. 5) reclassifying the city of Edgewood from a sixth to a fourth-class city did not vitiate the 1962 annexation ordinance of city attempting to annex Edgewood nor prevent the annexing city from going forward with the proposed annexation, for the legislative intent of said act was to do nothing more than carry out the mandate of Ky. Const., § 156 to make changes in classification as the population of the cities and towns increases or decreases and was not indicative of an intent to legislate the corporate limits of Edgewood, and even if it had been the intent of the legislature to set corporate limits of said city such intent would have been frustrated by this section and Ky. Const., § 159 prohibiting establishment of city boundaries by special and local laws. Covington v. Beck, 586 S.W.2d 284, 1979 Ky. App. LEXIS 453 (Ky. Ct. App. 1979).

Statutory classification system limiting restaurant tax authority to cities officially designated as fourth or fifth class as of January 1, 2014 was not unconstitutional special or local legislation. Commonwealth ex rel. Att'y Gen. Russell Coleman v. Perry Cnty. Fiscal Ct., 2025 Ky. App. LEXIS 82 (Ky. Ct. App. 2025).

8. — Reasonable.

Law regulating the appearance of lobbyists before the legislature is not class legislation prohibited by this section, although it does not apply to those appearing without compensation or on behalf of themselves or the public. Campbell v. Commonwealth, 229 Ky. 264, 17 S.W.2d 227, 1929 Ky. LEXIS 756 (Ky. 1929).

KRS 231.020 does not violate this section, although it regulates only places of entertainment located outside of cities, since there is a reasonable basis for such classification arising from the fact that cities have their own police protection. Ratliff v. Hill, 293 Ky. 36, 168 S.W.2d 336, 1943 Ky. LEXIS 556 (Ky. 1943).

The sanitation district law is not unconstitutional as class or special legislation because it applies only to counties having cities of the first three (3) classes, in view of the more serious sanitation and sewerage problems facing dwellers in the larger cities and suburban areas. Somsen v. Sanitation Dist. of Jefferson County, 303 Ky. 284, 197 S.W.2d 410, 1946 Ky. LEXIS 828 (Ky. 1946).

Where Department of Welfare filed claim for maintenance and board of patient in state hospital, provision of subsection (2) of KRS 203.110 (now KRS 210.330) was applicable and not unconstitutional and five (5) year statute of limitations would not begin to run against the department until acquisition by patient of an estate which could be subject to debt, since the classification by KRS 203.110 (now KRS 210.330) is not arbitrary but has a sound and reasonable basis. Department of Welfare v. Fox, 240 S.W.2d 65, 1951 Ky. LEXIS 944 (Ky. 1951).

The requirement of law that real estate brokers and salesmen need be licensed only in cities of the first three (3) classes and within five (5) miles thereof is not unconstitutional as special legislation, since the classification therein is reasonable and germane to the purpose of the law. Sims v. Reeves, 261 S.W.2d 812, 1953 Ky. LEXIS 1063 (Ky. 1953).

Veterans' bonus statute restricting payments to residents of the state and providing larger bonus for veterans having service overseas established reasonable classification and was not unconstitutional as special legislation. Watkins v. State Property & Bldgs. Com., 342 S.W.2d 511, 1960 Ky. LEXIS 94 (Ky. 1960).

Antidiscrimination ordinance of first-class city which prohibits the refusal of restaurant owner to serve food to Negroes was not a special law and did not provide a reasonable classification. Commonwealth v. Beasy, 386 S.W.2d 444, 1965 Ky. LEXIS 502 (Ky. 1965).

The legislature is not prohibited from making reasonable classifications. Kentucky Milk Marketing & Anti-Monopoly Com. v. Borden Co., 456 S.W.2d 831, 1969 Ky. LEXIS 5 (Ky. 1969).

Statutory provisions (KRS 160.040-160.210) that allowed special structuring of a new school board upon the merger of the school district of a city of the first class with the county school district did not constitute forbidden local or special legislation where the reasons for treatment different from other mergers were justified by the factors of urbanization which differentiate school problems in cities of the first class. Board of Education v. Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

A city ordinance which made a permanent, continuing increase of 35% in the pensions of police officers who retired prior to a certain date and other beneficiaries who were receiving benefits attributable to such a police officer's service had a reasonable basis in that its purpose was to correct inequities in the retirement benefits for policemen who retired before the specified date, and therefore the law did not constitute special or local legislation. Hyde v. Haunost, 530 S.W.2d 374, 1975 Ky. LEXIS 52 (Ky. 1975).

There is a reasonable basis in the General Assembly's contrasting sexual offenders who are strangers or mere acquaintances of the abused child from those who abuse not only the child, but their advantageous position as a person who society teaches the child to regard as an adult role model; therefore, subdivision (2) of KRS 532.045, prohibiting probation, parole, or conditional discharge for persons convicted of certain crimes, does not violate this section as being class legislation. Owsley v. Commonwealth, 743 S.W.2d 408, 1987 Ky. App. LEXIS 589 (Ky. Ct. App. 1987).

For a law to be constitutionally general and not special legislation, the classification must be based upon a reasonable and natural distinction which relates to the purpose of the act and the legislation must apply equally to all in a class. St. Luke Hosp. v. Health Policy Bd., 913 S.W.2d 1, 1996 Ky. App. LEXIS 4 (Ky. Ct. App. 1996).

"Zero tolerance" provisions of KRS 189A.010, pertaining to underage drinking and driving, are rationally related to a legitimate state purpose and are based on a valid distinction; therefore, such provisions are valid under the equal protection clauses of the United States and Kentucky Constitutions and do not constitute special legislation in violation of Ky. Const., § 59. Commonwealth v. Howard, 969 S.W.2d 700, 1998 Ky. LEXIS 95 (Ky. 1998).

When asserting the validity of a classification, the burden is on the party claiming the validity of the classification to show that there is a valid nexus between the classification and the purpose for which the statute in question was drafted; there must be substantially more than merely a theoretical basis for a distinction; rather, there must be a firm basis in reality. Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 1998 Ky. LEXIS 140 (Ky. 1998).

Amendments to KRS 68.197 retroactively restoring a provision that two (2) counties were not required to give taxpayers credit for city occupational license fees paid did not violate Ky. Const. § 59 as a local or special act because there were distinctive and natural reasons setting those two (2) counties apart from other counties such that a legitimate legislative purpose to relieve threatened fiscal hardship was served by requiring the latter counties to credit the fees but relieving the former counties from the requirement. The fees were authorized for the two (2) counties pursuant to a public question ballot approved by the voters and thus was a legitimate and unique classification. King v. Campbell County, 217 S.W.3d 862, 2006 Ky. App. LEXIS 331 (Ky. Ct. App. 2006).

9. — — Pensioners.

There are real and substantial distinctions between public and private employment sufficient to justify the separate classification of governmental pensioners and private industry pensioners under Ky. Const., § 59(15) for purposes of Kentucky income taxation of their pension benefits. Commonwealth Revenue Cabinet v. Cope, 875 S.W.2d 87, 1994 Ky. LEXIS 15 (Ky.), cert. denied, 513 U.S. 931, 115 S. Ct. 324, 130 L. Ed. 2d 284, 1994 U.S. LEXIS 7146 (U.S. 1994).

10. — Rural Road Fund Allocation.

Although the allocation of the rural secondary road fund among all counties on the basis of rural population and rural road use, regardless of the amount of tax collected in each county, did not consider the over-all population of each county or the number of vehicles per mile of rural roads in accordance with the formulae for distribution of road funds prescribed by KRS 177.360 and KRS 179.410, the allocation was not unconstitutionally arbitrary under § 2 of the Constitution nor did it constitute special or local legislation as prohibited by this section or § 60, since those formulae were not so directly related to the public purpose of improving and maintaining rural roads as to require their inclusion in the basis used for allocation, the basis used was reasonably related to the public purpose, and the resulting classification was reasonable. Jefferson County v. King, 479 S.W.2d 880, 1972 Ky. LEXIS 320 (Ky. 1972).

11. — Unreasonable.

Spot zoning of property for the construction of a doctor's office building is a discriminatory classification of property and, as such, unconstitutional under this section, although it might result in some contribution to the public welfare. Parker v. Rash, 314 Ky. 609, 236 S.W.2d 687, 1951 Ky. LEXIS 696 (Ky. 1951).

Law making the right to operate a motor vehicle dependent upon payment by the owner of his personal property taxes and exempting from this requirement carriers for hire of vehicles designed to carry more than nine persons is in violation of this section as special legislation. Schoo v. Rose, 270 S.W.2d 940, 1954 Ky. LEXIS 1027 (Ky. 1954).

Law that provides that uniform time observance will apply to certain categories of activity (i.e., business and government) but not to others is unconstitutional under this section, since the classification established is unreasonable and arbitrary. Dawson v. Hamilton, 314 S.W.2d 532, 1958 Ky. LEXIS 300 (Ky. 1958).

An act violates this section if it contains no justification for the requirement that a county containing a city of the first class that also contains a city of some other class with an independent school district that would be required under such an act to use an entirely different procedure to annex adjacent areas to its independent school district from the procedure used by independent school districts in cities of the same class in all the remaining counties in the state. Board of Education v. Board of Education, 472 S.W.2d 496, 1971 Ky. LEXIS 200 (Ky. 1971).

Since a review of the legislation that enacted present subsection (5) of KRS 230.377 in 1988 as subsection (3) discloses no legislative history concerning intertrack wagering in Kentucky and the title of the statute does not reflect a substantial justification for the distinction which affects Henderson County alone, subsection (5) of KRS 230.377 is determined to be unconstitutional as special or local law. Tri-City Turf Club, Inc. v. Public Protection & Regulation Cabinet, 806 S.W.2d 394, 1991 Ky. App. LEXIS 2 (Ky. Ct. App. 1991).

Subdivision (1)(b) of KRS 189A.200 which mandates pretrial suspension of an operator's license when the accused individual is under the age of twenty-one (21) is an arbitrary classification based on age and is manifestly unreasonable; therefore, it is violative of the Fourteenth Amendment of the United States Constitution and Ky. Const., § 59. Commonwealth v. Raines, 847 S.W.2d 724, 1993 Ky. LEXIS 51 (Ky. 1993), overruled in part, Commonwealth v. Howard, 969 S.W.2d 700, 1998 Ky. LEXIS 95 (Ky. 1998), overruled in part, Commonwealth v. Carman, 455 S.W.3d 916, 2015 Ky. LEXIS 66 (Ky. 2015).

12. Courts.

Special act regulating practice in a discontinued Circuit Court held in terms, passed before adoption of present Constitution, was not in violation of this section, since such provision is prospective in its operation and, under it, the special act remained in force until passage of a general law regulating practice in Circuit Courts held in terms. Piper v. Guenther, 95 Ky. 115, 23 S.W. 872, 15 Ky. L. Rptr. 462, 1893 Ky. LEXIS 131 (Ky. 1893).

A local act passed prior to present Constitution regulating practice in a court not of continuous session ceased to be operative after expiration of six (6) years from adoption of Constitution. Morgan v. Wickliffe, 110 Ky. 215, 61 S.W. 13, 22 Ky. L. Rptr. 1648, 1901 Ky. LEXIS 66 (Ky. 1901).

Provision that practice in Circuit Courts of continuous session may by general law be made different from practice of Circuit Courts held in terms is, by implication, a restriction on power of legislature to make the practice different in the several Circuit Courts held in terms, for the one exception is necessarily an exclusion of others. Morgan v. Wickliffe, 110 Ky. 215, 61 S.W. 13, 22 Ky. L. Rptr. 1648, 1901 Ky. LEXIS 66 (Ky. 1901).

This section is not violated by a joint resolution authorizing certain claimants to sue the Commonwealth in a named court. Commonwealth v. Lyon, 72 S.W. 323, 24 Ky. L. Rptr. 1747, 1903 Ky. LEXIS 435 (Ky. Ct. App. 1903).

Law providing that legality of ordinance of first-class city may be tested by city by appeal to Jefferson Circuit Court and then to Court of Appeals, as other cases in Circuit Court are appealed, is not invalid local law regulating jurisdiction of courts. Louisville v. Wehmhoff, 116 Ky. 812, 76 S.W. 876, 79 S.W. 201, 25 Ky. L. Rptr. 1924, 25 Ky. L. Rptr. 995, 1903 Ky. LEXIS 250 (Ky. 1903).

Law providing that in all counties having town not larger than the fourth class and containing population larger than county seat and over 17 miles therefrom the Circuit Court should be held alternately in county seat and in larger town was not violative of this section. Johnson v. Fulton, 121 Ky. 594, 89 S.W. 672, 28 Ky. L. Rptr. 569, 1905 Ky. LEXIS 243 (Ky. 1905).

Statute, insofar as it undertook to divide the terms of McCracken Circuit Court into civil terms and criminal terms, was unconstitutional. Smedley v. Commonwealth, 138 Ky. 12, 129 S.W. 547 (Ky. 1910).

Act providing that in case railroad company does not comply with award of railroad commission within ten (10) days a copy of such award and the evidence shall be filed with clerk of proper Circuit Court, on which action may be maintained, and in which no other testimony than that introduced before commission shall be heard, was not unconstitutional. Illinois C. R. Co. v. Paducah Brewery Co., 157 Ky. 357, 163 S.W. 239, 1914 Ky. LEXIS 300 (Ky. 1914).

Law creating three (3) magisterial districts in counties having over 250,000 population and that fees therefrom be paid to general fund of the county is not unconstitutional as special legislation applying to particular persons or places as distinguished from classes of places or persons. Greene v. Caldwell, 170 Ky. 571, 186 S.W. 648, 1916 Ky. LEXIS 126 (Ky. 1916). See Shaw v. Fox, 246 Ky. 342, 55 S.W.2d 11, 1932 Ky. LEXIS 761 (Ky. 1932).

Law providing that railroad commission shall hear complaints against carriers for correction of extortionate rates and, if its award be not satisfied within ten (10) days, file copy of evidence and award in a Circuit Court, whereupon summons shall issue as in other cases, and trial be had as in ordinary action, is not unconstitutional in that an award of commission may be proceeded upon and judgment rendered without complainant filing a petition, since law applies to all Circuit Courts in state in which designated cause of action may arise. Louisville & N. R. Co. v. Greenbrier Distillery Co., 170 Ky. 775, 187 S.W. 296, 1916 Ky. LEXIS 144 (Ky. 1916).

Act conferring juvenile jurisdiction on Circuit Courts having seven (7) judges and relieving respective county courts of such jurisdiction was violative of this section and former section of Constitution regarding jurisdiction of county courts, since act was applicable to Jefferson County only and took from Jefferson County Court jurisdiction that would remain in county court of other counties. Neutzel v. Williams, 191 Ky. 351, 230 S.W. 942, 1921 Ky. LEXIS 343 (Ky. 1921).

Law authorizing appeal by a taxpayer from a decision of the state tax commission equalizing assessments only to the Franklin Circuit Court and thence to the Court of Appeals is a regulation of venue and is not special or local legislation which would be prohibited under this section. Johnson v. Fordson Coal Co., 213 Ky. 445, 281 S.W. 472, 1926 Ky. LEXIS 535 (Ky. 1926), writ of error dismissed, 275 U.S. 494, 48 S. Ct. 82, 72 L. Ed. 391, 1927 U.S. LEXIS 310 (U.S. 1927).

Law changing specified judicial district without creating a new one was not based on any general division of the state into judicial districts with due regard to territory, business and population and is unconstitutional as to local or special act. Fields v. Nickell, 248 Ky. 526, 58 S.W.2d 912, 1933 Ky. LEXIS 264 (Ky. 1933).

Law that created a special juvenile court in cities of the third class located more than ten (10) miles from the county seat, in counties not having a Circuit Court of continuous session, violated this section, since there was no discernible reason for separately classifying such cities. Barry v. Giles, 300 Ky. 22, 187 S.W.2d 827, 1945 Ky. LEXIS 800 (Ky. 1945).

Law exempting candidates for the position of circuit or appellate judge from the provision that no candidate who has been defeated in a primary election shall have his name placed on the ballot in the succeeding general election, is based on a reasonable classification and thus is not special legislation unconstitutional under this section. Rosenberg v. Queenan, 261 S.W.2d 617, 1953 Ky. LEXIS 1025 (Ky. 1953).

Since this section, providing that the practice in courts of continuous session may by general law be made different from the practice of Circuit Courts held in terms, implies the right of the legislature to designate certain courts as being courts of continuous session and which right is not qualified elsewhere

in the Constitution, the Legislature thus has the right to say whether the courts of a particular district shall be of continuous session or of terms and the mere fact that legislature at one time passed a law, fixing a standard of population alone as the basis for determining whether a court should be in continuous session was of no significance, because the matter was not one required to be dealt with by general law. Harrod v. Meigs, 340 S.W.2d 601, 1960 Ky. LEXIS 58 (Ky. 1960).

13. Jurors.

Law that provided for longer grand jury sessions in counties containing cities of the first class than in other counties, established a classification based upon reasonable and natural distinction and was not unconstitutional as local or special legislation. Miller v. Hoblitzell, 271 S.W.2d 899, 1954 Ky. LEXIS 1064 (Ky. 1954).

14. Prosecutions.

KRS 15.715(4), relating to intervention in certain prosecutions by the Attorney General, is not local and special legislation contrary to this section. Graham v. Mills, 694 S.W.2d 698, 1985 Ky. LEXIS 236 (Ky. 1985).

15. Punishment.

Defendant cannot complain that penalty of a local law instead of that of a general law has been inflicted where the penalty imposed is less than the minimum amount prescribed in the general law. Stamper v. Commonwealth, 102 Ky. 33, 42 S.W. 915, 19 Ky. L. Rptr. 1014, 1897 Ky. LEXIS 64 (Ky. 1897).

This section, in conjunction with law providing for punishment of offense of embezzlement by officer or agent of any bank, operated to repeal a bank charter granted by special act of the legislature prior to adoption of Constitution to the extent that it provided for the punishment of the offense of embezzlement of the bank's funds by any of its officers or agents. Commonwealth v. Porter, 113 Ky. 575, 68 S.W. 621, 24 Ky. L. Rptr. 364, 1902 Ky. LEXIS 81 (Ky. 1902).

This section does not prohibit legislature from repealing an existing statute and giving to the repeal its common-law effect of taking away from courts the power to enforce penalties incurred thereunder, as the legislature, unlike the congress, has all power that is not expressly taken away from it. Pannell v. Louisville Tobacco Warehouse Co., 113 Ky. 630, 68 S.W. 662, 23 Ky. L. Rptr. 2423, 1902 Ky. LEXIS 87 (Ky.), modified, 113 Ky. 640, 82 S.W. 1141, 1902 Ky. LEXIS 248 (Ky. Ct. App. 1902).

Law declaring that any person who shall unlawfully take, drive or operate a motor vehicle without knowledge or consent of owner shall be guilty of an offense punished by imprisonment in the penitentiary was not unconstitutional, since purpose of Constitution was to prevent passing of acts applicable only to special localities. Singleton v. Commonwealth, 164 Ky. 243, 175 S.W. 372, 1915 Ky. LEXIS 364 (Ky. 1915).

16. Limitation of Civil or Criminal Causes.

KRS 413.135 is not applicable in an action against manufacturers of products used in the design or construction of a permanent improvement to real estate; if KRS 413.135 did include such manufacturers within its protected class, it would be unconstitutional as special legislation in violation of this section. In re Beverly Hills Fire Litigation, 672 S.W.2d 922, 1984 Ky. LEXIS 239 (Ky. 1984).

KRS 413.135 as amended in 1986 providing for limitations for actions for damages arising out of injury is constitutionally defective as special legislation and further attempts to amend it to overcome the constitutional defects fatally impale upon Ky. Const., §§ 14, 54 and 241. Perkins v. Northeastern Log Homes, 808 S.W.2d 809, 1991 Ky. LEXIS 44 (Ky. 1991).

17. Actions.

Law providing a special limitation of six (6) months as to actions against cities of first class by members of police force to recover any salary withheld for any cause, or for reinstatement to the force or department, was both a local and special act. Gorley v. Louisville, 104 Ky. 372, 47 S.W. 263, 20 Ky. L. Rptr. 602, 1898 Ky. LEXIS 175 (Ky. 1898).

The special limitation of six (6) months provided by charter of cities of first class as to actions against such cities for damages violated provision against General Assembly passing local or special acts to regulate limitation of civil or criminal causes. Louisville v. Kuntz, 104 Ky. 584, 47 S.W. 592, 20 Ky. L. Rptr. 805, 1898 Ky. LEXIS 198 (Ky. 1898).

Subsection Twenty-nine (29) of this section does not prohibit Commonwealth from giving its consent, by joint resolution of the General Assembly, to the bringing of a particular suit against it in the Franklin Circuit Court, though Ky. Const., § 231 empowers the General Assembly to direct, by general law, in what manner and in what courts suit may be brought against the Commonwealth. Commonwealth v. Haly, 106 Ky. 716, 51 S.W. 430, 21 Ky. L. Rptr. 666, 1899 Ky. LEXIS 93 (Ky. 1899), limited, Carr v. Jefferson County, 275 Ky. 685, 122 S.W.2d 482, 1938 Ky. LEXIS 475 (Ky. 1938), limited, Wright's Adm'r v. Carroll County, 275 Ky. 690, 122 S.W.2d 485, 1938 Ky. LEXIS 476 (Ky. 1938).

Charter of city of Louisville fixing six (6) months as limitation within which actions for damages against the city may be instituted was unconstitutional. City of Louisville v. Hegan, 49 S.W. 532, 20 Ky. L. Rptr. 1532, 1899 Ky. LEXIS 438 (Ky. Ct. App. 1899).

Law providing that in actions by city of first class to enforce liens for cost of street improvements copies of ordinance, contract and apportionment shall be prima facie evidence of every fact necessary to enable plaintiff to recover relates to matter affecting municipal government and is valid through special legislation, since Ky. Const., § 156 authorizes special legislation for purposes of municipal government. Richardson v. Mehler, 111 Ky. 408, 63 S.W. 957, 23 Ky. L. Rptr. 917, 1901 Ky. LEXIS 214 (Ky. 1901).

Act of General Assembly permitting motorist to bring tort action against the Commonwealth based on alleged negligence of the State Highway Department is not unconstitutional as special legislation under this section, since a general law creating such causes of action would be impractical and does not exist. Commonwealth v. Bowman, 267 Ky. 50, 100 S.W.2d 801, 1936 Ky. LEXIS 751 (Ky. 1936). See Commonwealth v. Daniel, 266 Ky. 285, 98 S.W.2d 897, 1936 Ky. LEXIS 643 (Ky. 1936).

An act of the General Assembly authorizing an individual to sue a particular county on a subject to which a general law could be made applicable is unconstitutional as special and local legislation. Carr v. Jefferson County, 275 Ky. 685, 122 S.W.2d 482, 1938 Ky. LEXIS 475 (Ky. 1938). See Wright's Adm'r v. Carroll County, 275 Ky. 690, 122 S.W.2d 485, 1938 Ky. LEXIS 476 (Ky. 1938).

So long as parties are dealing at arms length they may fix a period of limitations shorter than the statutory period, provided such period is not unreasonably short; if the period fixed is a reasonable one, it will be enforced. Burlew v. Fidelity & Casualty Co., 276 Ky. 132, 122 S.W.2d 990, 1938 Ky. LEXIS 521 (Ky. 1938).

Resolution authorizing individual to sue state, although special in being for sole benefit of individual, has not been regarded as within meaning and spirit of subsection Twenty-ninth of this section, providing that where general law can be made applicable to special law shall be enacted, and under doctrine of stare decisis that construction should be adhered to. Daniel's Adm'r v. Hoofnel, 287 Ky. 834, 155 S.W.2d 469, 1941 Ky. LEXIS 654 (Ky. 1941).

KRS 411.100, requiring the giving of notice to city authorities within 90 days as a condition precedent to the bringing of an action against city for personal injuries resulting from defect in street, was not a statute of limitations giving cities special rights not given to other tortfeasors and was not unconstitutional as class or special legislation. Galloway v.

Winchester, 299 Ky. 87, 184 S.W.2d 890, 1945 Ky. LEXIS 388 (Ky. 1945).

Law providing that all actions against only cities of the first class for taxes and assessments illegally paid or collected shall be commenced within six (6) months, is unconstitutional under this section's prohibition against local or special legislation. Louisville v. Louisville Taxicab & Transfer Co., 238 S.W.2d 121, 1951 Ky. LEXIS 795 (Ky. 1951).

KRS 44.070 to 44.110, 44.120 to 44.160, authorizing individuals to maintain claims against the Commonwealth for damages resulting from negligence but limiting any award thereunder to $5,000 (now $10,000), is a general statute under this section and a legislative resolution authorizing two (2) individuals to sue the Commonwealth in the amount of $15,000 for personal injuries is unconstitutional under the provision of this section that prohibits the passing of a local or special law where a general law could be made applicable. Commonwealth v. McCoun, 313 S.W.2d 585, 1958 Ky. LEXIS 272 (Ky. 1958).

The three (3) year statute of limitations for stock frauds provided by subsection (3) of KRS 292.480 is not unconstitutional under this section and Ky. Const., § 60 as a local law. Hutto v. Bockweg, 579 S.W.2d 382, 1979 Ky. App. LEXIS 389 (Ky. Ct. App. 1979).

18. Disabled Persons.

Legislature has no power to fix one rate for any pay patients who are admitted into a state asylum as such and to fix another rate one-third greater for patients who are admitted as paupers but subsequently become able to pay, though the latter pay only at the end of a suit, the discrimination being an arbitrary one without any proper or reasonable relation to the object sought to be accomplished, and such a law is void as fixing an arbitrary penalty. Schroer v. Central Kentucky Asylum for Insane, 113 Ky. 288, 68 S.W. 150, 24 Ky. L. Rptr. 150, 1902 Ky. LEXIS 57 (Ky. 1902).

Law requiring that children provide necessaries to a destitute parent, which law applied only to adult children residing within the state and possessing the necessary means and ability, did not involve an arbitrary classification and was not, therefore, special legislation prohibited by this section. Wood v. Wheat, 226 Ky. 762, 11 S.W.2d 916, 1928 Ky. LEXIS 164 (Ky. 1928).

19. Relief of Disability.

20. — Feme Covert.

A special act of the legislature empowering a married women to trade as a feme sole and hold by purchase real and personal property free from her husband's debts is constitutional since passed before the adoption of the present Constitution. Eskridge v. Carter, 29 S.W. 748, 16 Ky. L. Rptr. 760 (1895).

21. — Minors.

The workmen's compensation act does not fall within the constitutional prohibition against local or special legislation by empowering a minor to accept the provisions of the act for compensation in lieu of the right to sue for damages in cases where he is not employed in wilful violation of any law. D. E. Hewitt Lumber Co. v. Brumfield, 196 Ky. 723, 245 S.W. 858, 1922 Ky. LEXIS 596 (Ky. 1922).

22. Descent.

Law declaring child of a mother divorced on the ground of pregnancy before marriage a bastard is not unconstitutional as special legislation. Richardson's Adm'r v. Borders, 246 Ky. 303, 54 S.W.2d 676, 1932 Ky. LEXIS 733 (Ky. 1932).

KRS 381.280, providing that any heir or beneficiary under a will who takes the life of another and is convicted of a felony therefor forfeits any interest as an heir, legatee, or devisee in the property of the decedent, is not special legislation unconstitutional under this section, since the law operates uniformly throughout the state upon all members of the classes named. Wilson v. Bates, 313 Ky. 333, 231 S.W.2d 39, 1950 Ky. LEXIS 873 (Ky. 1950).

23. Divorce.

Under the present Constitution, the legislature is prohibited from granting divorces. Iring v. Iring, 188 Ky. 65, 221 S.W. 219, 1920 Ky. LEXIS 232 (Ky. 1920).

24. Compensation for Services.

A special act in favor of an attorney, validating a contract made between him and the state for rendition of services, is not invalid under this section, the legislature inferentially being given the power to enact a local law to legalize the contract. Carroll v. Bosworth, 151 Ky. 337, 151 S.W. 916, 1912 Ky. LEXIS 803 (Ky. 1912).

Joint resolution of the General Assembly ordering repayment to a sheriff of his personal expenses incurred in returning a fugitive from out of state, which reimbursement had not previously been authorized by law, did not violate this section as special legislation. Pennington v. Shannon, 270 Ky. 142, 109 S.W.2d 389, 1937 Ky. LEXIS 37 (Ky. 1937).

25. Taxation.

Act authorizing city of Louisville to levy taxes on property within its limits and enforce its lien thereon by an equitable action remained in full force after adoption of present Constitution and after passage of act incorporating cities of first class, as to taxes levied prior to passage of last act, since both of the latter enactments were prospective only and moreover expressly declared that their provisions should not affect former taxes lawfully levied and assessed. Long v. Louisville, 97 Ky. 364, 30 S.W. 987, 17 Ky. L. Rptr. 253, 1895 Ky. LEXIS 201 (Ky. 1895).

Law requiring the taxation of the same property in the possession of and owned by one who owes taxes thereon to the United States in a different manner or mode than required on the same character of property in the hands of and owned by those citizens who have paid taxes to the United States is special legislation and unconstitutional. Commonwealth ex rel. Armstrong v. Taylor, 38 S.W. 10 (Ky. 1896).

Act providing that distilled spirits in bonded warehouses should be assessed by state board of valuation and assessment, instead of by the county assessor, as other property is assessed was not unconstitutional. Commonwealth ex rel. Armstrong v. E. H. Taylor Jr. Co., 101 Ky. 325, 41 S.W. 11 (Ky. 1897).

Law relating to salaries of officers and their deputies in counties of 75,000 inhabitants or more and requiring monthly reports to auditor was not unconstitutional, although having application to Jefferson County alone. Winston v. Stone, 102 Ky. 423, 43 S.W. 397, 19 Ky. L. Rptr. 1483, 1897 Ky. LEXIS 95 (Ky. 1897), overruled, Vaughn v. Knopf, 895 S.W.2d 566, 1995 Ky. LEXIS 49 (Ky. 1995).

Fact that law imposes upon corporations, for failure to report, a penalty different from that imposed upon an individual who fails to list his property for taxation does not render it objectionable as special legislation. Louisville & J. Ferry Co. v. Commonwealth, 104 Ky. 726, 47 S.W. 877, 20 Ky. L. Rptr. 927, 1898 Ky. LEXIS 216 (Ky. 1898).

A city ordinance fixing a certain fee for license to sell liquor on any street other than Main Street and fixing a larger fee for license to sell on that street is invalid to the extent that it discriminates against business conducted on Main Street, being to that extent special legislation. Board of Council of Harrodsburg v. Renfro, 58 S.W. 795, 22 Ky. L. Rptr. 806, 1900 Ky. LEXIS 290 (Ky. Ct. App. 1900).

Provision of charter of first-class cities requiring payment of interest on taxes past due is not void as special legislation, though the statutes do not provide for payment of interest on

taxes due to cities of other classes, or to state or county. Walston v. Louisville, 66 S.W. 385, 23 Ky. L. Rptr. 1852 (1902).

Special act of legislature incorporating taxing district with many of the governmental powers of towns and cities was not repealed by Constitution, though that instrument prohibits legislature from passing such special laws in the future and provides for the repeal of all laws inconsistent with its provisions. Covington v. District of Highlands, 113 Ky. 612, 68 S.W. 669, 24 Ky. L. Rptr. 433, 1902 Ky. LEXIS 89 (Ky. 1902).

This provision looked altogether to future legislation and did not affect directly or indirectly the laws already in force at the time of the adoption of the present Constitution. Covington v. District of Highlands, 113 Ky. 612, 68 S.W. 669, 24 Ky. L. Rptr. 433, 1902 Ky. LEXIS 89 (Ky. 1902).

Law was not unconstitutional as special or local legislation insofar as it allowed taxes to be collected by suit in cities of first class, similar provisions being made for suits in other classes of cities. Woolley v. Louisville, 114 Ky. 556, 71 S.W. 893, 24 Ky. L. Rptr. 1357, 1903 Ky. LEXIS 36 (Ky. 1903).

Where the subject of classification was land which had been omitted from taxation for a great many years, the act did not violate this section though it did not apply to every county in the state. Eastern Kentucky Coal Lands Corp. v. Commonwealth, 127 Ky. 667, 106 S.W. 260 (Ky. 1907), aff'd, 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137, 1911 U.S. LEXIS 1626 (U.S. 1911).

If a few, or any number of persons less than all, who follow a designated trade, occupation, or profession may be exempt, while others are taxed, the law imposing the tax would not be general, but special or local, and forbidden by this section and Ky. Const., § 60. Hager v. Walker, 128 Ky. 1, 107 S.W. 254, 32 Ky. L. Rptr. 748, 1908 Ky. LEXIS 29 (Ky. 1908).

The provisions of the Constitution prohibiting special legislation and providing that taxation must be levied by general laws did not repeal or make inoperative special laws passed before its adoption, but it was contemplated that such laws should remain in force until changed by legislature unless in conflict with some constitutional provision. Smith v. Simmons, 129 Ky. 93, 110 S.W. 336, 33 Ky. L. Rptr. 503, 1908 Ky. LEXIS 134 (Ky. 1908).

Law providing a minimum school tax rate of 36 mills for cities of second class was not unconstitutional as local or special legislation. Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411, 1909 Ky. LEXIS 399 (Ky. 1909).

Act that added to list of fourth-class cities a taxing district incorporated by a special act existed only as a taxing district under such special act and amendment until adoption of Constitution, consisted of considerable territory not used for urban purposes, and which should not be included within the boundaries of a city was violative of subsection Twenty-nine of this section and of Ky. Const., § 156. Albershart v. Donaldson, 149 Ky. 510, 149 S.W. 873, 1912 Ky. LEXIS 647 (Ky. 1912).

Since Const., § 182 permits legislature to provide how railroad property shall be assessed, law providing that where lines of domestic railroad corporation are outside state the board of valuation and assessment shall fix the value of the capital stock in manner provided and apportion to state the proper proportion was not in violation of this section. Commonwealth by Anderson v. Southern Pac. Co., 150 Ky. 97, 149 S.W. 1105, 1912 Ky. LEXIS 821 (Ky. 1912), overruled, Commonwealth v. Kentucky Heating Co., 176 Ky. 35, 195 S.W. 459, 1917 Ky. LEXIS 40 (Ky. 1917).

Law authorizing the valuation and assessment of franchises by cities was not unconstitutional but rather is a legitimate exercise of the legislative power to confer on the assessing authorities of cities the right to assess for taxation for municipal purposes franchises of corporations doing business in the city. Kentucky Heating Co. v. Louisville, 174 Ky. 142, 192 S.W. 4, 1917 Ky. LEXIS 165 (Ky. 1917), writ of error dismissed, 250 U.S. 653, 40 S. Ct. 53, 63 L. Ed. 1191, 1919 U.S. LEXIS 1804 (U.S. 1919).

Exemption of mortgages to building and loan associations when the debt does not mature within five (5) years from general tax on recording of mortgages is not prohibited by this section as local or special legislation. Middendorf v. Goodale, 202 Ky. 118, 259 S.W. 59, 1923 Ky. LEXIS 360 (Ky. 1923).

To permit application of tax rate prevailing at time of actual assessment or levy, although made subsequent to time directed by law, would result in legislative establishment of different rate in different counties, dependent upon the time assessments or levies were actually made, and would thus violate subsection Fifteenth of this section by making possible application of different law to different counties for same fiscal year for same class of property. Ross v. First Nat'l Bank, 213 Ky. 453, 281 S.W. 517, 1926 Ky. LEXIS 536 (Ky. 1926).

Law providing that in counties containing cities of the first class the tax commissioner (now secretary of revenue) should be paid monthly advances for the expenses of his office is not in violation of this section as local or special legislation even though only one (1) county in the state contains a city of the first class. Shannon v. Wheeler, 268 Ky. 25, 103 S.W.2d 718, 1937 Ky. LEXIS 422 (Ky. 1937).

Law providing differing rates of assessments between counties with 75 or more drainage districts and all other counties is unconstitutional as special legislation, since it is based on an arbitrary classification. Withers v. Board of Drainage Comm'rs, 270 Ky. 732, 110 S.W.2d 664, 1937 Ky. LEXIS 150 (Ky. 1937).

Law permitting only cities of the first and third classes to make assessments against state property for internal improvements is based on a reasonable classification, since the bulk of the state's property is located within Louisville and Frankfort, cities of these classes, and thus is not in violation of this section. Logan v. Louisville, 283 Ky. 518, 142 S.W.2d 161, 1940 Ky. LEXIS 379 (Ky. 1940).

Act which imposed license tax upon "each peddler with a vehicle" but exempted from such tax all other peddlers was void as unreasonably discriminatory and as being special or local in application contrary to this section. Denton v. Potter, 284 Ky. 114, 143 S.W.2d 1056, 1940 Ky. LEXIS 450 (Ky. 1940).

Law authorizing establishment of libraries only by cities and counties having a minimum assessed valuation of $5,000,000 did not violate this section, since public libraries are matters of statewide rather than local concern, and therefore the classification of cities made by Const., § 156 was not applicable, and since assessed valuation had a direct bearing on ability to support a library, and therefore furnished a reasonable basis for classification. Board of Trustees v. Newport, 300 Ky. 125, 187 S.W.2d 806, 1945 Ky. LEXIS 801 (Ky. 1945).

Provisions of KRS 160.475 and 160.476, leaving it optional with county boards of education as to amount of tax necessary to operate district schools and to request county fiscal court to make levy accordingly, did not violate subsection Fifteenth of this section, since such act was general statute applicable to all fiscal courts and county public school districts equally throughout state. Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218, 1946 Ky. LEXIS 891 (Ky. 1946).

KRS 132.380, in exempting incumbent tax commissioners from taking further examinations in order to succeed themselves, establishes a reasonable classification and is not unconstitutional as special legislation or in violation of Const., § 3. Department of Revenue ex rel. Allphin v. Turner, 260 S.W.2d 658, 1953 Ky. LEXIS 983 (Ky. 1953).

Provision of KRS 96.182 authorizing board of first-class cities to use surplus revenues for purpose of purchasing, paying, retiring, guaranteeing the payment of, or underwriting revenue bonds issued by any third-class city was not special legislation. Perkins v. Frankfort, 276 S.W.2d 449, 1955 Ky. LEXIS 422 (Ky. 1955).

Provisions of KRS 68.180 to 68.195, permitting fiscal court of county having population of at least 300,000 to impose

occupational license tax and allowing credits against such tax for fees paid to first-class cities within such counties, did not constitute special legislation in contravention of this section or Const., § 60. Kupper v. Fiscal Court of Jefferson County, 346 S.W.2d 766, 1961 Ky. LEXIS 337 (Ky. 1961).

There was no unconstitutional distinction in the use of tax revenue as between counties containing a city of the first class and all other counties, since the legislature had reason to provide an additional function for tourist and convention commissions in counties other than those containing a city of the first class. Second Street Properties, Inc. v. Fiscal Court of Jefferson County, 445 S.W.2d 709, 1969 Ky. LEXIS 179 (Ky. 1969).

The "Roll-Back" law is not special or local legislation within the prohibition of this section. Miller v. Nunnelley, 468 S.W.2d 298, 1971 Ky. LEXIS 334 (Ky.), cert. denied, 404 U.S. 941, 92 S. Ct. 286, 30 L. Ed. 2d 255, 1971 U.S. LEXIS 564 (U.S. 1971).

As a consequence of the disparity between the numbers of eligible producers voting in successive referenda required to adopt and to terminate or discontinue the assessment program for tobacco promotion (KRS 247.780(1)), the votes of those producers who favor the assessment program is accorded substantially greater weight than votes of those persons in the same class of producers who are opposed to the program; thus the terms and conditions of subsection (1) of KRS 247.780 effectively operate to deny the producers of burley tobacco who are opposed to an assessment program the equal protection of the law required by the Fourteenth Amendment to the Constitution of the United States, and the same contravenes Const., § 3 and this section and, therefore said subsection (1) is discriminatory and void. Tabor v. Council for Burley Tobacco, Inc., 599 S.W.2d 466, 1980 Ky. App. LEXIS 319 (Ky. Ct. App. 1980).

Law which authorized the fiscal court to levy tax for purpose of constructing and maintaining Campbell County courthouse, violated this section and Const., § 60, which prohibit local and special legislative authorization of tax levies. Whitford v. Hehl, 612 S.W.2d 759, 1980 Ky. App. LEXIS 426 (Ky. Ct. App. 1980).

While KRS 186A.120(3)(b), 186A.220 and 186A.230 exempt dealers who hold vehicles for resale from payment of the ad valorem tax, this is not a "halving" of a classification, but is only a method of fixing the time and the person responsible for payment of the ad valorem tax on all motor vehicles — to-wit, the purchaser of the vehicle at the time the vehicle is registered for use upon the highway, and the tax is payable by all persons, including an individual or a dealer, who intend to operate the vehicle on the highways of the state; these sections, read in conjunction with KRS 134.810(4), do not violate subsection (15) of this section or Const., § 171. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Legislation which extended a provider tax to hospitals did not constitute invalid special legislation. Children's Psychiatric Hosp., Inc. v. Revenue Cabinet, 989 S.W.2d 583, 1999 Ky. LEXIS 43 (Ky. 1999).

A county ordinance, which levied an occupational license fee on the gross compensation of all persons employed or self-employed within the county, did not constitute local or special legislation in violation of the Kentucky Constitution as the occupational license fee applied to every employed or self-employed entity in that county. Preston v. Johnson County Fiscal Court, 27 S.W.3d 790, 2000 Ky. LEXIS 119 (Ky. 2000).

Challenged portions of the amendments to certain taxation statutes were not impermissible special legislation in violation of Ky. Const. § 59 with respect to regulating the rate of interest. Revenue Cabinet v. Asworth Corp., 2009 Ky. App. LEXIS 229 (Ky. Ct. App. 2009), cert. denied, 562 U.S. 1200, 131 S. Ct. 1046, 178 L. Ed. 2d 865, 2011 U.S. LEXIS 1056 (U.S. 2011).

26. Public Property.

Law permitting cities of the second class to condemn land for proper public purposes does not constitute special or local legislation prohibited by this section. Shipp v. Lexington, 212 Ky. 702, 279 S.W. 1094, 1926 Ky. LEXIS 221 (Ky. 1926).

Law designating a short stretch of county road as part of the state highway system is not purely local in nature, since it deals with a statewide system as distinguished from merely local county roads and does not constitute unconstitutional local or special legislation. Smith v. State Highway Com., 247 Ky. 816, 57 S.W.2d 1014, 1933 Ky. LEXIS 460 (Ky. 1933).

27. Corporations.

Act providing for establishment and maintenance of state fair to be under management and control of specified livestock breeders' association, an existing corporation, was not a local or special act to grant a charter to any corporation or amend the charter of any existing corporation. Kentucky Live Stock Breeders' Ass'n v. Hager, 120 Ky. 125, 85 S.W. 738, 27 Ky. L. Rptr. 518, 1905 Ky. LEXIS 83 (Ky. 1905).

Act empowering cities of first class to construct system of sewerage and providing that mayor of first-class cities may appoint four (4) persons who, with mayor, shall constitute sewerage commission which shall constitute a body corporate with capacity to contract, to be contracted with and to sue and be sued was not in conflict with this section, though there is only one (1) city of the first class. Miller v. Louisville, 99 S.W. 284, 30 Ky. L. Rptr. 664 (1907).

Act creating board of waterworks for cities of first class with authority to own all stock in waterworks corporations and to take possession of property and franchises of water companies and operate them for benefit of city did not create corporation to carry on private business contrary to this section. Kirch v. Louisville, 125 Ky. 391, 101 S.W. 373, 30 Ky. L. Rptr. 1356, 1907 Ky. LEXIS 294 (Ky. 1907).

There being no right at common law to incorporate trading or manufacturing corporations, and the Constitution providing against their creation by special law, when incorporated under general law by articles placing limit on corporation's indebtedness, the incurring of indebtedness in excess of the limit is express violation of law. Randolph v. Ballard County Bank, 142 Ky. 145, 134 S.W. 165, 1911 Ky. LEXIS 171 (Ky. 1911).

Although the legislature is empowered to create corporations, it is prohibited from doing so by the passage of local or special acts. Handley v. Graham, 187 Ky. 316, 219 S.W. 417, 1920 Ky. LEXIS 121 (Ky. 1920).

Legislation which exempts vehicles owned by the United States, the state, counties, or municipal corporations from the statutory limitations on weight, dimensions, speed, operation and use of motor trucks and semi-trailers involves a classification based on distinctive and natural reasons and is not unconstitutional as special legislation. Whitney v. Fife, 270 Ky. 434, 109 S.W.2d 832, 1937 Ky. LEXIS 87 (Ky. 1937).

28. Highways.

Prohibition of this section against local or special legislation does not prevent legislature prescribing different standards for highway use between use by individuals for private gain and use by the state for public purposes. Whitney v. Fife, 270 Ky. 434, 109 S.W.2d 832, 1937 Ky. LEXIS 87 (Ky. 1937).

29. Bridges.

Laws authorizing cities of the first class to construct and operate bridges across any navigable stream forming state boundary property comes within Const., § 156, dividing cities for purpose of organization and government, and is not special legislation prohibited under this section. Klein v. City of Louisville, 224 Ky. 624, 6 S.W.2d 1104, 1928 Ky. LEXIS 663 (Ky. 1928).

State highway toll bridge act that empowered the state highway commission to build or cause to be built bridges over streams that were the boundary line between Kentucky and another state was not special legislation but was a general act and was simply a supplement to previous acts that looked to

construction of adequate state highways. Bloxton v. State Highway Com., 225 Ky. 324, 8 S.W.2d 392, 1928 Ky. LEXIS 762 (Ky. 1928).

30. Livestock.

Statutory provision that all suits against a railroad or corporation for injury to livestock must be brought within one (1) year is not unconstitutional as special legislation, since it classifies reasonably and operates equally upon all falling within the class. Carr v. Texas Eastern Transmission Corp., 344 S.W.2d 619, 1961 Ky. LEXIS 243 (Ky. 1961).

31. Public Officers.

An act authorizing state departments to employ attorneys did not violate subsection Eighteenth or Twenty-ninth of this section. Johnson v. Commonwealth, 291 Ky. 829, 165 S.W.2d 820, 1942 Ky. LEXIS 329 (Ky. 1942).

32. — Compensation.

Law fixing compensation of officers in counties having population of over 40,000 and under 75,000 in manner different from similar officers in other counties was not special or local legislation, since classification was reasonable. Stone v. Wilson, 39 S.W. 49, 19 Ky. L. Rptr. 126 (1897), overruled, Vaughn v. Knopf, 895 S.W.2d 566, 1995 Ky. LEXIS 49 (Ky. 1995).

Law providing differing methods of compensation for court reporters in chancery and common pleas courts is a classification based on natural and reasonable distinction and does not constitute local or special legislation. Jefferson County v. Cole, 204 Ky. 27, 263 S.W. 1114, 1924 Ky. LEXIS 441 (Ky. 1924).

Act doubling pensions of policemen in first-class cities was not unconstitutional, since, although there is only one (1) first-class city, the legislature must provide by general law for the government of cities of that class. Board of Trustees v. Schupp, 223 Ky. 269, 3 S.W.2d 606, 1928 Ky. LEXIS 315 (Ky. 1928).

Law fixing salaries of constables and deputy constables in counties containing 250,000 people was based on reasonable classification and was not special or local legislation. Jefferson County Fiscal Court v. Thomas, 279 Ky. 458, 130 S.W.2d 60, 1939 Ky. LEXIS 258 (Ky. 1939).

33. — Fees.

Section 106 of the Constitution, requiring that the fees of county officers shall be regulated by law, means a general law applicable alike to every officer of the class. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910). See Madison County Fiscal Court v. McChord, 145 Ky. 727, 141 S.W. 377, 1911 Ky. LEXIS 945 (Ky. 1911).

Law regulating fees for county officers in counties having a population of 75,000 or more is a valid exercise of the power delegated to the legislature by Const., § 106 and does not constitute special or local legislation prohibited by this section. Herold v. Talbott, 261 Ky. 634, 88 S.W.2d 303, 1935 Ky. LEXIS 703 (Ky. 1935).

Act that authorized civil service and pensions for county employees in counties containing a city of the second class and having a population in excess of 80,000 was unconstitutional as local or special legislation prohibited by this section. Wehrman v. Steltenkamp, 304 Ky. 409, 200 S.W.2d 949, 1947 Ky. LEXIS 660 (Ky. 1947).

Act that authorized civil service and pensions for county employees in counties containing a city of the second class and having a population of more than 80,000 could not be upheld on claim that density of population in such counties required more employees and made it difficult for fiscal court to investigate, classify and fix compensation of its employees, in view of fact that same condition existed in several slightly smaller counties with similar density of population. Wehrman v. Steltenkamp, 304 Ky. 409, 200 S.W.2d 949, 1947 Ky. LEXIS 660 (Ky. 1947).

Law which fixed maximum compensation of county police officers at $25.00 per year in counties of less than 25,000 and $2,400 and up per year in counties over 70,000, was not unconstitutional as special or discriminatory legislation against the lesser populated counties which in effect would prevent the establishment of police forces in these counties, since the Legislature obviously believed that in small counties such a police force would only be needed in emergencies to supplement sheriff's force and there being no requirement that such officers devote full time to their office. Metcalf v. Howard, 304 Ky. 498, 201 S.W.2d 197, 1947 Ky. LEXIS 666 (Ky. 1947).

34. — Income.

Law requiring that tax collection commissions of outgoing sheriff be included in sheriff's income for the preceding year but not affecting some outgoing sheriffs was not special legislation prohibited by this section. Petty v. Talbott, 256 Ky. 688, 76 S.W.2d 940, 1934 Ky. LEXIS 475 (Ky. 1934).

35. Elections.

Law providing for holding of local option elections, regulating time for holding such elections in towns, cities, districts, or precincts, differentiating between counties having cities of fourth class or larger and those not having cities within fourth class was constitutional, since such classification was proper. Board of Trustees v. Scott, 125 Ky. 545, 101 S.W. 944, 30 Ky. L. Rptr. 894, 1907 Ky. LEXIS 313 (Ky. 1907).

Primary election law providing that all officers, with certain exceptions, should be nominated at the primaries was not unconstitutional as class legislation, since class legislation is repugnant to the Constitution only when it is special and the classification is not reasonable, and the Legislature, in its discretion, might properly exempt certain officers, because the small salary or the nominal position prevented them from being the object of political corruption. Hodge v. Bryan, 149 Ky. 110, 148 S.W. 21, 1912 Ky. LEXIS 595 (Ky. 1912).

Provision in act that when it shall be made to appear, by affidavit filed in Circuit Court, that an error or omission has occurred, or is about to occur, in the placing of any name on an official primary ballot the court shall order the correction of the error, that order of the court shall be final and not appealable, and that only candidates may institute proceedings thereunder is not special legislation, since, while it confers upon candidates as a class a right not conferred upon any other class, it applies to all candidates and, there being no constitutional right of appeal, the disallowance of appeal does not render it class or special legislation. Hager v. Robinson, 154 Ky. 489, 157 S.W. 1138, 1913 Ky. LEXIS 129 (Ky. 1913).

Exemption by law of nominations by political parties for certain offices from compulsory provisions of general primary election law does not violate this section prohibiting special legislation. Stevenson v. Hardin, 238 Ky. 600, 38 S.W.2d 462, 1931 Ky. LEXIS 288 (Ky. 1931).

Law providing for pay to members of the county board of registration and purgation in Jefferson County only did not violate this section, since duties may be more arduous in Jefferson County, but did violate this section insofar as it provided for compensation of purgation officers in Jefferson County only, since duties of officers would be no different than in other counties. Burton v. Mayer, 274 Ky. 245, 118 S.W.2d 161, 1938 Ky. LEXIS 233 (Ky. 1938).

Law classifying counties for purposes of state's contribution to election expenses upon whether county had acquired voting machines is not discriminatory, is based on reasonable classification, and is not unconstitutional as special legislation. State Property & Bldg. Com. v. Hays, 346 S.W.2d 3, 1961 Ky. LEXIS 277 (Ky. 1961).

Law specifying time for filing of candidates for office in fourth-class cities was not violative of this section or Const., § 6 or § 60. Hallahan v. Moody, 419 S.W.2d 770, 1967 Ky. LEXIS 196 (Ky. 1967).

So much of KRS 121.045 as prohibits donations to the election campaigns of candidates for the office of property valuation administrator by persons whose property he may assess is unconstitutional. Lee v. Commonwealth, 565 S.W.2d 634, 1978 Ky. App. LEXIS 511 (Ky. Ct. App. 1978).

36. — Voting.

Law regulating voter's registration in counties containing cities of the first class is unconstitutional as special legislation, since it is applicable only to one (1) county which contains other cities and rural areas. Atherton v. Fox, 245 Ky. 718, 54 S.W.2d 11, 1932 Ky. LEXIS 647 (Ky. 1932).

Provisions of law establishing federal employees and full-time students as two (2) general classes eligible to vote by absentee ballot did not constitute special legislation under this section, since such classification was reasonable. Hallahan v. Mittlebeeler, 373 S.W.2d 726, 1963 Ky. LEXIS 171 (Ky. 1963).

37. Interest Rates.

Law providing system for licensing and regulation of those in business of making loans of $300 or less but exempting those engaged in automobile financing business was not unconstitutional as local or special law to regulate rate of interest or as class legislation, though including as an incident of such regulation provisions regulating the charging and collection of interest by those within the act. Ravitz v. Steurele, 257 Ky. 108, 77 S.W.2d 360, 1934 Ky. LEXIS 511 (Ky. 1934).

Building and loan associations authorized by law to assess dues and premiums against their members in addition to six percent (6%) interest on their loans are a proper subject of classification and independent legislation regulating them is not unconstitutional as special legislation. Linton v. Fulton Bldg. & Loan Ass'n, 262 Ky. 198, 90 S.W.2d 22, 1936 Ky. LEXIS 22 (Ky. 1936).

Because KRS 360.040, which permits accrual of interest in accordance with a written obligation, applies equally to all persons who entered into written obligations containing interest accrual rates, and the reasons that support excepting those interest rates from the general 12% per annum rate are constitutional reasons, KRS 360.040 is not unconstitutional special legislation relating to regulation of the rate of interest. Union Trust, Inc. v. Brown, 757 S.W.2d 218, 1988 Ky. App. LEXIS 133 (Ky. Ct. App. 1988).

38. Liens.

Lien law in favor of mechanics is founded on a reasonable and natural classification. Safety Bldg. & Loan Co. v. Ecklar, 106 Ky. 115, 50 S.W. 50, 20 Ky. L. Rptr. 1770, 1899 Ky. LEXIS 31 (Ky. 1899), overruled, Linton v. Fulton Bldg. & Loan Ass'n, 262 Ky. 198, 90 S.W.2d 22, 1936 Ky. LEXIS 22 (Ky. 1936).

Law providing that in actions by first-class city to enforce liens for cost of street improvements copies of the ordinance, contract and apportionment shall be prima facie evidence of every fact necessary to enable plaintiff to recover is valid, though special legislation, since Const., § 156, providing for classification of towns and cities, authorizes special legislation for purposes of municipal government. Richardson v. Mehler, 111 Ky. 408, 63 S.W. 957, 23 Ky. L. Rptr. 917, 1901 Ky. LEXIS 214 (Ky. 1901).

Law giving a garage keeper or repairman a lien for repairs, service, or accessories and the right to sell an automobile in satisfaction thereof without personal notice to the owner does not constitute special legislation which is prohibited by the Constitution. Willis v. La Fayette-Phoenix Garage Co., 202 Ky. 554, 260 S.W. 364, 1924 Ky. LEXIS 759 (Ky. 1924).

39. Fish and Game.

Law providing that a certain per cent of fines imposed for catching fish with seine shall be paid to officer securing apprehension and conviction of offender and giving Circuit Courts exclusive jurisdiction to indict and punish was constitutional. Commonwealth v. Drain, 99 Ky. 162, 35 S.W. 269, 18 Ky. L. Rptr. 50, 1896 Ky. LEXIS 63 (Ky. 1896).

Department of Fish and Wildlife resources forbidding the use of hoop nets, seines and other types of commercial fishing gear except trot lines and snag lines in the Tennessee River from its mouth upstream to the Kentucky Dam is based on reasonable classification and is not unconstitutional as local or special legislation. Commonwealth v. Moyers, 272 S.W.2d 670, 1954 Ky. LEXIS 1125 (Ky. 1954).

40. Manufacturing.

Law prohibiting use of milk bottles and other containers by others than those whose names are branded thereon was constitutional, since law does not create arbitrary class but class created is reasonable one, based upon consideration of public policy. Commonwealth v. Goldburg, 167 Ky. 96, 180 S.W. 68, 1915 Ky. LEXIS 818 (Ky. 1915).

41. Mining.

Fact that law relating to issuance of due bills by certain companies engaged in mining applied only to companies employing ten (10) or more persons did not render it unconstitutional as special legislation, since the classification was natural and reasonable. Commonwealth v. Hillside Coal Co., 109 Ky. 47, 58 S.W. 441, 22 Ky. L. Rptr. 559, 1900 Ky. LEXIS 166 (Ky. 1900).

KRS 352.540, relating to payment of wages to miners, although partaking of special legislation inhibited by this section, is valid as consistent with end sought by Const., § 244 respecting payment to wage earners in lawful money. Barker v. Stearns Coal & Lumber Co., 287 Ky. 340, 152 S.W.2d 953, 1941 Ky. LEXIS 534 (Ky. 1941).

42. Schools.

Special acts concerning school districts in towns and cities were repealed by the general law relating to common schools to extent that they were inconsistent with the general law. Hickman College v. Colored Common School Dist., 111 Ky. 944, 65 S.W. 20, 23 Ky. L. Rptr. 1271, 1901 Ky. LEXIS 278 (Ky. Ct. App. 1901).

Act providing that any graded school district created by special act and having school fund other than that provided by general law shall have power to issue bonds with coupons attached not to exceed certain amount was not unconstitutional, since terms of act were applicable to all of separate class of schools to which it related. Smith v. Board of Trustees, 171 Ky. 39, 186 S.W. 927, 1916 Ky. LEXIS 300 (Ky. 1916).

Since act providing for a visitor for Negro but not white schools did not give the Negro race the benefit of a Negro visitor in addition to a trustee but only in place of a trustee, it is not unconstitutional under this section. Daviess County Board of Education v. Johnson, 179 Ky. 34, 200 S.W. 313, 1918 Ky. LEXIS 171 (Ky. 1918).

Law requiring a county to pay the tuition of pupils authorized to attend the most convenient high school in their county of residence is not unconstitutional as special or local legislation. Madison County Board of Education v. Smith, 250 Ky. 495, 63 S.W.2d 620, 1933 Ky. LEXIS 738 (Ky. 1933).

Law which exempts fifth and sixth-class city school districts from the obligation imposed on other districts to provide educational facilities for Negroes is unconstitutional as special legislation. Board of Education v. Board of Education, 264 Ky. 245, 94 S.W.2d 687, 1936 Ky. LEXIS 324 (Ky. 1936).

Exemption of incumbent members of board of education from meeting new educational qualifications does not make law local or special legislation. Commonwealth v. Griffen, 268 Ky. 830, 105 S.W.2d 1063, 1937 Ky. LEXIS 536 (Ky. 1937).

The fundamental mandate of the Constitution and statutes is that there shall be equality and that all public schools shall be nonpartisan and nonsectarian. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

The phrase "standards promulgated by the state board of education" in subsection (3) of KRS 157.305 (now repealed) was a mandate to formulate and establish such reasonable and uniform regulations as were necessary to a just and proper administration of the act and thus this section was not violated. Butler v. United Cerebral Palsy, Inc., 352 S.W.2d 203, 1961 Ky. LEXIS 200 (Ky. 1961).

Under KRS 157.305 (now repealed), exceptional children, for whose education the common schools were not adequate, were proper subjects of classification. Butler v. United Cerebral Palsy, Inc., 352 S.W.2d 203, 1961 Ky. LEXIS 200 (Ky. 1961).

The ordinary duties of a school principal differ greatly from those of a school teacher, as administrative personnel have either fiscal management duties and educational supervisory duties, or both, with responsibilities which are quite different from those of classroom teachers; the role of an administrator in carrying out policy and in formulating overall policy is also quite different from that of a teacher, and it is certainly not beyond reason that the Legislature would deem it advisable not to give one whose supervisory and policy role is so different, the same kind of job protection given to a classroom teacher. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

The proper test to be applied under the equal protection clause and this section of the Kentucky Constitution is whether there is a rational basis for the different treatment of school administrators from that of school teachers. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

Statutory grant of authority under KRS 156.160 and KRS 189.540 to Department of Transportation to adopt regulations to govern the design and operation of school buses was not unconstitutional special legislation because it applied only to public and not to private or parochial school bus drivers; the statutes apply equally to a class and further a legitimate state interest in safe transportation of public school children. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

Where the Kentucky General Assembly passed a bill that gave greater autonomy and power to school superintendents, but only applied to one school district, the challenged provisions were intended to apply only to a specific locale, not a class, and consequently were local or special legislation prohibited under Ky. Const. §§ 59 and 60. Cameron v. Jefferson Cnty. Bd. of Educ., 2023 Ky. App. LEXIS 79 (Ky. Ct. App. Oct. 6, 2023, sub. op., 2023 Ky. App. Unpub. LEXIS 754 (Ky. Ct. App. Oct. 6, 2023).

In an action challenging Kentucky Senate Bill 1 to restructure the relationship between school boards and superintendents in counties with a consolidated local government, a County Board of Education had constitutional standing to challenge the constitutionality of SB 1 and SB 1 did not violate Ky. Const. §§ 59 and 60 because it applied to an open class of county school districts in a county with a consolidated local government, rather than a particular individual, object, or locale. Coleman v. Jefferson Cnty. Bd. of Educ., 2024 Ky. LEXIS 400 (Ky. 2024).

43. Liquor Laws.

Act making it unlawful to sell liquor in certain magisterial district of Pendleton County or to obtain license for such sale and providing for punishment of persons who violated the act was not repealed by the subsequent adoption of this section. Brann v. Hart, 97 Ky. 735, 31 S.W. 736, 17 Ky. L. Rptr. 462, 1895 Ky. LEXIS 236 (Ky. 1895).

Act which left no discretion in board of trustees to refuse to issue liquor license where majority of townspeople voted in favor of sale of liquor changed the general law, under which the licensing authorities had discretion, and therefore violated prohibition against enactment of any special law to regulate or prohibit the sale of liquor or alter the liquor laws. Riley v. Rowe, 112 Ky. 817, 66 S.W. 999, 23 Ky. L. Rptr. 2168, 1902 Ky. LEXIS 228 (Ky. 1902).

Under this section and Const., §§ 61 and 154, the Legislature is without authority to prohibit a citizen from having in his possession intoxicating liquors for his own use, though it has power to regulate the sale of liquor or any other use of it which, in itself, is inimical to the public health, morals, or safety. Commonwealth v. Campbell, 133 Ky. 50, 117 S.W. 383, 1909 Ky. LEXIS 169 (Ky. 1909).

Act prohibiting the possession of intoxicating liquors unlawfully acquired did not constitute local or special legislation under this section, since the act applied equally to all persons and places within the state. Lakes v. Goodloe, 195 Ky. 240, 242 S.W. 632, 1922 Ky. LEXIS 342 (Ky. 1922).

Law that prohibited the keeping of pool tables in a room in a city of the fourth class where alcoholic beverages were sold was invalid local and special legislation. Mannini v. McFarland, 294 Ky. 837, 172 S.W.2d 631, 1943 Ky. LEXIS 539 (Ky. 1943).

The special character of the alcoholic beverage business is such that it may be treated as a special category for purposes of regulation and license taxation and a law limiting license fees on brewers is not special legislation in violation of this section. George Wiedemann Brewing Co. v. Newport, 321 S.W.2d 404, 1959 Ky. LEXIS 282 (Ky. 1959).

Although the Court of Appeals correctly upheld the Alcoholic Beverage Control Board's reading of KRS 241.075(3), because the Board's decision was premised on requiring that a measurement be taken along a route that was both lawful and safe, its distance measurement was proper, irrespective of legal pedestrian laws in KRS 189.570; accordingly, the constitutionality of KRS 241.075(3) under Ky. Const. §§ 59 and 60 should not have been addressed. Louisville/Jefferson County Metro Gov't v. TDC Group, LLC, 2009 Ky. LEXIS 35 (Ky. 2009).

KRS 241.075(2) is unconstitutional as local or special legislation in violation of Ky. Const. §§ 59 and 60. Therefore, it was improper to deny an applicant's request for a retail liquor by the drink license merely because the license would have been located within 700 feet of another similarly situated establishment. O'Shea's-Baxter, LLC v. Commonwealth, 2013 Ky. App. LEXIS 1 (Ky. Ct. App. 2013), sub. op., 2013 Ky. App. Unpub. LEXIS 983 (Ky. Ct. App. Jan. 4, 2013).

44. — Local Option.

Where question submitted to voters was adoption of special local option law for certain precinct, election was void, since such special legislation was violation of this section. Reynolds v. Commonwealth, 106 Ky. 37, 49 S.W. 969, 20 Ky. L. Rptr. 1681, 1899 Ky. LEXIS 10 (Ky. 1899).

Where the sale of liquor was prohibited by special act of the General Assembly prohibiting the sale in a special locality, the local law remained in full force until repealed or until the sale of liquor was permitted by an election held under the general local option law. Buskirk v. Commonwealth, 162 Ky. 118, 172 S.W. 99, 1915 Ky. LEXIS 21 (Ky. 1915).

Under this section the Legislature cannot constitutionally prohibit a person from bringing liquor into local option territory for his own use. Barber v. Commonwealth, 182 Ky. 200, 206 S.W. 290, 1918 Ky. LEXIS 342 (Ky. 1918).

Law which provides for separate local option elections for cities of the first four (4) classes located in counties which either have voted dry or hold a countywide election on the question of local option in counties that are wet is not

unconstitutional as special legislation. May v. Drake, 309 Ky. 819, 219 S.W.2d 31, 1949 Ky. LEXIS 816 (Ky. 1949).

KRS 242.125, permitting cities of first four (4) classes to decide for themselves whether or not to adopt prohibition, was not violative of this section as being special legislation, since such classification was reasonable in relation to subject matter and no discrimination had been made between members of same class. McMullin v. Richmond City Council, 312 Ky. 430, 227 S.W.2d 975, 1950 Ky. LEXIS 663 (Ky. 1950).

Subdivision (10)(a) of KRS 242.1292, which allows the city governing body of second-class cities to designate precincts as limited sale ("wet") precincts, is clearly premised on a finding by the governing body that the economy of a certain precinct has been adversely affected by the prohibition against the sale of alcoholic beverages; accordingly, the subdivision bears a reasonable relationship to the purpose of the act, which is to help the precinct's economy, and is constitutional. United Dry Forces v. Lewis, 619 S.W.2d 489, 1981 Ky. LEXIS 260 (Ky. 1981).

Subdivision (10)(b) of KRS 242.1292 providing that the city governing body in second-class cities should order a local option election in a dry precinct upon petition of 33% of the voters bears no relationship to the statutory purpose of helping the precinct's economy and is unconstitutional as special and local legislation, and elections held pursuant to that subdivision were void; however, because of the implied severability clause in KRS 446.090, the remainder of KRS 242.1292 is constitutional. United Dry Forces v. Lewis, 619 S.W.2d 489, 1981 Ky. LEXIS 260 (Ky. 1981).

Classifications in KRS 242.185(6) were reasonably related to the statute's purpose and the statute did not violate the Kentucky Constitution. Temperance League of Ky. v. Perry, 74 S.W.3d 730, 2002 Ky. LEXIS 95 (Ky. 2002).

Although the Alcoholic Beverage Control Board incorrectly measured the 700-foot distance between licensees required by KRS 241.075, because there was no rational basis to presume that the evils associated with a concentration of liquor licensees in a mixed-use area were any different in large or small cities, KRS 241.075(2) did not satisfy the reasonable-relation element under either the *Schoo* or the *United Dry Forces* test; consequently, the statute is unconstitutional as local or special legislation in violation of Ky. Const. §§ 59 and 60. Louisville/Jefferson County Metro Gov't v. TDC Group, LLC, 2007 Ky. App. LEXIS 102 (Ky. Ct. App. Apr. 6, 2007), aff'd on other grounds, 283 S.W.3d 657, 2009 Ky. LEXIS 28 (Ky. 2009).

45. Medical Malpractice.

The provisions of subsections (2) and (5) of KRS 304.40-330 (now repealed), authorizing the commissioner to exempt certain physicians from the patient compensation fund and to fix the rate of surcharges, were not unconstitutional on their faces and, if properly implemented, would not violate this section. McGuffey v. Hall, 557 S.W.2d 401, 1977 Ky. LEXIS 533 (Ky. 1977).

The provision of KRS 304.40-330 (6) (now repealed) limiting the number of members insured in the patient compensation fund did not constitute special legislation in violation of this section. McGuffey v. Hall, 557 S.W.2d 401, 1977 Ky. LEXIS 533 (Ky. 1977).

The "University of Kentucky Medical Malpractice Insurance" Act, KRS 164.939 to 164.944, is not arbitrary and discriminatory in violation of this section. Dunlap v. University of Kentucky Student Health Servs. Clinic, 716 S.W.2d 219, 1986 Ky. LEXIS 300 (Ky. 1986).

46. General Laws.

Under subsection Twenty-ninth of this section and under Const., §§ 58 and 230, a contention that act appropriating money for benefit of destitute children of state to a particular, private, charitable institution, organized under laws of this state, is special legislation within the prohibition of this section is untenable, as the selection of one agency to apply money so appropriated, from the nature of the case, calls for an act of appropriation applicable to it alone. Hager v. Kentucky Children's Home Soc., 119 Ky. 235, 83 S.W. 605, 26 Ky. L. Rptr. 1133, 1904 Ky. LEXIS 166 (Ky. 1904).

Law vesting escheated property within cities of first class in board of education for use of schools was not unconstitutional as local or special legislation. Ky. v. Thomas' Admr, 140 Ky. 789, 131 S.W. 797, 1910 Ky. LEXIS 362 (Ky. Ct. App. 1910).

This section recognizes that there may be subjects of legislation to which a law which may be enacted may apply alone and expressly allows legislation local in its application, and does not forbid any legislation of local application where every similar locality in the state is embraced by the act. Ky. v. Thomas' Admr, 140 Ky. 789, 131 S.W. 797, 1910 Ky. LEXIS 362 (Ky. Ct. App. 1910).

Act that granted pensions to indigent Confederate soldiers was not a special law, since they were placed upon a different basis from other indigent persons because of public services rendered by them to state. Bosworth v. Harp, 154 Ky. 559, 157 S.W. 1084, 1913 Ky. LEXIS 114 (Ky. 1913).

Under subsection Twenty-ninth of this section, there had to be created in general act some method of ascertaining when law was accepted, and this could be properly ascertained by court judgment. Boone County v. Verona, 190 Ky. 430, 227 S.W. 804, 1921 Ky. LEXIS 468 (Ky. 1921).

An act providing for the abatement of a disorderly house as a nuisance is not local or special legislation and thus unconstitutional under this section. King v. Commonwealth, 194 Ky. 143, 238 S.W. 373, 1922 Ky. LEXIS 119 (Ky. 1922).

Act relating to sheriff's commissions for collecting school taxes in counties of certain population did not violate subsection Twenty-ninth of this section. Ross v. Board of Education, 196 Ky. 366, 244 S.W. 793, 1922 Ky. LEXIS 520 (Ky. 1922).

Act dealing with "all valid existing or future contracts and leases for oil and gas rights upon and under the lands of this Commonwealth" was not special legislation within inhibition of subsection Twenty-ninth of this section, since such act applied to all persons and contracts of class described and such classification was justifiable. Roberts v. Atlantic Oil Producing Co., 295 F. 16, 1924 U.S. App. LEXIS 3144 (6th Cir. Ky.), cert. denied, 265 U.S. 582, 44 S. Ct. 465, 68 L. Ed. 1190, 1924 U.S. LEXIS 3185 (U.S. 1924).

Law providing lesser compensation to nonresident alien dependents of a deceased workman is based on a reasonable classification of persons and is not special legislation prohibited by this section. Maryland Casualty Co. v. Chamos, 203 Ky. 820, 263 S.W. 370, 1924 Ky. LEXIS 1022 (Ky. 1924).

Law providing for resolution of deadlock in vote of county fiscal court by action of county judge is not local or special legislation. Kirchdorfer v. Tincher, 204 Ky. 366, 264 S.W. 766, 1924 Ky. LEXIS 458 (Ky. 1924).

Statutory regulation of public auction sales of leaf tobacco classifying all warehouses the same and making them subject to the same requirements is not special legislation. Jewell Tabacco Warehouse Co. v. Kemper, 206 Ky. 667, 268 S.W. 324, 1925 Ky. LEXIS 1023 (Ky. 1925).

Legislation providing for the organization of cooperative tobacco marketing associations is not violative of this section as special legislation. Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Ass'n, 208 Ky. 643, 271 S.W. 695, 1925 Ky. LEXIS 358 (Ky. 1925), aff'd, 276 U.S. 71, 48 S. Ct. 291, 72 L. Ed. 473, 1928 U.S. LEXIS 62 (U.S. 1928).

Law providing for escheat of property to a board of education does not violate this section as special legislation. Shanks v. Board of Education, 221 Ky. 470, 298 S.W. 1111, 1927 Ky. LEXIS 754 (Ky. 1927).

Law providing that probation officers in counties having cities of the first class shall be appointed under the merit system is not in violation of this section as local or special

legislation. Beauchamp v. Silk, 275 Ky. 91, 120 S.W.2d 765, 1938 Ky. LEXIS 370 (Ky. 1938).

KRS 92.280 is general in its application in that any or all cities of the third class are granted the same power and privilege; therefore it does not violate subsection Twenty-ninth of this section. Planters Bank & Trust Co. v. Hopkinsville, 289 Ky. 451, 159 S.W.2d 25, 1942 Ky. LEXIS 584 (Ky. 1942).

A law which relates to persons or things as a class is a general law, while a law which relates to particular persons or things of a class is a special law. Johnson v. Commonwealth, 291 Ky. 829, 165 S.W.2d 820, 1942 Ky. LEXIS 329 (Ky. 1942).

The laws providing state aid for dependent children do not violate this section and the fact that aid is provided only for children living with certain relatives does not constitute an unreasonable classification. Meredith v. Ray, 292 Ky. 326, 166 S.W.2d 437, 1942 Ky. LEXIS 81 (Ky. 1942).

Provision in former law regarding right to collect fair wage allowing attorney's fees to successful female or minor claimant was not violative of subsection Twenty-ninth of this section, since the general assembly was justified in prescribing special conditions and protective provisions for class of workers involved. W. W. Mac Co. v. Teague, 297 Ky. 475, 180 S.W.2d 387, 1944 Ky. LEXIS 752 (Ky. 1944).

KRS 184.010 to 184.300, which provide for public road districts in counties containing cities of the first class, are not special legislation in violation of this section. Allison v. Borders, 299 Ky. 806, 187 S.W.2d 728, 1945 Ky. LEXIS 796 (Ky. 1945).

Section 156 of the Constitution, classifying cities according to population for purposes of organization and government, constitutes an exception to this section and Const., § 60; therefore, an act of the Legislature limited to a city of a certain class and pertaining to municipal affairs is valid as being general rather than special legislation. Dieruf v. Louisville & Jefferson County Bd. of Health, 304 Ky. 207, 200 S.W.2d 300, 1947 Ky. LEXIS 613 (Ky. 1947).

Act in which cost of living was made element in determination of fair minimum wage was not violative of subsection Twenty-ninth of this section, since it was common knowledge that wide discrepancy existed between cost of living in different localities in the Commonwealth. Young v. Willis, 305 Ky. 201, 203 S.W.2d 5, 1947 Ky. LEXIS 773 (Ky. 1947).

As KRS 96.171 to 96.188 apply to all cities of a certain class, they do not violate this section even if, at the time of passage, there was only one (1) city in that class in a position to take advantage of the provisions of these sections. Settle v. Jones, 306 Ky. 9, 206 S.W.2d 59, 1947 Ky. LEXIS 946 (Ky. 1947).

KRS 160.045, granting owners of realty in territory which may become incorporated in any municipality and is located in county school district the right to demand that property be placed in school district in which greater part of municipality is located, does not violate the Constitution prohibiting special legislation where a general law can be made applicable. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949).

KRS 160.045 was not special legislation and did not violate subsection Twenty-ninth of this section. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949).

The mere fact that a legislative enactment works to the benefit of some and is sponsored by persons interested by no means makes that act special legislation. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949).

KRS 132.670, providing the Department of Revenue (now Revenue Cabinet) authority to provide personnel and other assistance to aid county tax commissioner in tax reappraisal on petition by county on order of the fiscal court, is not unconstitutional under this section on the ground that there is no assurance that such action will be taken by all counties. Borders v. Cain, 252 S.W.2d 903, 1952 Ky. LEXIS 1042 (Ky. 1952).

Law providing termination of water service to customers not paying sanitation district service charges is not unconstitutional under this section as special legislation. Covington v. Sanitation Dist. of Campbell & Kenton Counties, 301 S.W.2d 885, 1957 Ky. LEXIS 488 (Ky. 1957).

The milk marketing act is not unconstitutional as being prohibited special legislation. Kentucky Milk Marketing & Anti-Monopoly Com. v. Borden Co., 456 S.W.2d 831, 1969 Ky. LEXIS 5 (Ky. 1969).

An ordinance that authorizes all vehicles engaged in a funeral procession to proceed through or against red traffic lights is not class legislation which is forbidden by this section. Newman v. Lee, 471 S.W.2d 293, 1971 Ky. LEXIS 229 (Ky. 1971).

KRS 427.010(4), which denies to debtors bankruptcy exemptions in property subject to consensual liens, clearly lies beyond any of the 29 enumerated types of "special legislation" specifically prohibited by this section and is therefore "general legislation" well within the province of the Legislature to enact. In re Bennett, 36 B.R. 893, 1984 Bankr. LEXIS 6282 (Bankr. W.D. Ky. 1984).

47. Special Laws.

Act amending law which made sheriff ex officio member of county board of election commissioners, so as to provide that in counties containing second-class cities the Circuit Court clerk, instead of the sheriff, shall be a member of the board, was unconstitutional as providing special law where general law can be made applicable. Droege v. McInerney, 120 Ky. 796, 87 S.W. 1085, 27 Ky. L. Rptr. 1137, 1905 Ky. LEXIS 153 (Ky. 1905).

Barbering is not such a business as warranted a law putting it into a class by itself and visiting on barbers a penalty more severe and different than those imposed by another section of the act on others following their usual occupations on Sunday. The law violated subsection Twenty-ninth of this section. Stratman v. Commonwealth, 137 Ky. 500, 125 S.W. 1094, 1910 Ky. LEXIS 594 (Ky. 1910).

Law providing for different authorities to administer motor vehicle registration in different counties depending on county population is in violation of this section as special or local legislation. Nuetzel v. State Tax Com., 205 Ky. 124, 265 S.W. 606, 1924 Ky. LEXIS 74 (Ky. 1924).

Law creating a county budget system but exempting counties having a commission form of government is violative of this section as special legislation, since it is based on a classification for which there is no natural or distinctive reason, all county-governing bodies discharging identical duties. Felts v. Linton, 217 Ky. 305, 289 S.W. 312, 1926 Ky. LEXIS 90 (Ky. 1926).

Requirement of law that counties containing a city of the fifth class support and maintain a community hospital is special legislation and unconstitutional, since it is based on a classification of counties, which is without distinctive or natural reason. Community Hospital v. Barren County Fiscal Court, 244 Ky. 672, 52 S.W.2d 896, 1932 Ky. LEXIS 518 (Ky. 1932).

Law which established office of district detective in all judicial districts composed of two (2) counties having a population of 100,000 or more according to the 1930 United States census is unconstitutional as special legislation, since only one (1) district had such a population in 1930 and no other district could ever qualify, the operation of the law being limited by the population as of a specific date. Harlan County v. Brock, 246 Ky. 372, 55 S.W.2d 49, 1932 Ky. LEXIS 775 (Ky. 1932).

Act that provided for the reimbursement of property owners of the city of Grayson for street improvement assessments paid by them in the construction of a street by the city to connect with a primary state highway was special legislation

and violated subsection Twenty-ninth of this section. Commonwealth v. Grayson, 278 Ky. 450, 128 S.W.2d 770, 1939 Ky. LEXIS 436 (Ky. 1939).

An act providing for issuance of a veterinarian's license to a named individual without examination violated this section as being a special law, within the meaning of subsection Twenty-ninth of this section, where a general law could be made applicable to all other persons similarly situated. Reid v. Robertson, 304 Ky. 509, 200 S.W.2d 900, 1947 Ky. LEXIS 643 (Ky. 1947).

The failure of the division of forestry of the Department of Conservation to place itself and its employees within the application of the compensation act does not, on the theory of granting redress to a claimant against the state, justify the action of the General Assembly in attempting to apply retroactively to a particular person and to no other the substantive provisions of an existing general law and contravenes the letter and spirit of subsection Twenty-ninth of this section. Department of Conservation v. Sowders, 244 S.W.2d 464, 1951 Ky. LEXIS 1220 (Ky. 1951).

Law that applied only to cities of the first class and imposed on an abutting property owner liability for injuries resulting from failure to repair defects in a sidewalk was special legislation and, as such, unconstitutional under this section, since there was no reasonable or proper distinction between cities of different sizes which in this instance justified the arbitrary classification imposed and a general law could readily apply. Louisville v. Klusmeyer, 324 S.W.2d 831, 1959 Ky. LEXIS 396 (Ky. 1959).

Law that required proof of payments of ad valorem before registration receipts for motor vehicles could be issued, as it pertained to vehicles required to be licensed by county clerks, was special legislation in violation of subsection Twenty-ninth of this section, since three (3) classifications of motor vehicles were specifically excluded from operation of such law. Department of Revenue ex rel. Scent v. Williams, 351 S.W.2d 875, 1961 Ky. LEXIS 186 (Ky. 1961).

KRS 242.1292, providing for special precinct elections in second-class cities on the question of prohibition, does not deal with government organizations or structure; accordingly, it does not fall within the exception provided by Const., § 156 to the prohibitions against local and special legislation contained in this section and Const., § 60. United Dry Forces v. Lewis, 619 S.W.2d 489, 1981 Ky. LEXIS 260 (Ky. 1981).

The Uniform Residential Landlord and Tenant Act (KRS 383.505 to 383.715), which was limited by KRS 383.715 to apply only to counties containing cities of the first class and urban-county governments, was special legislation within the prohibition of the Kentucky Constitution and was therefore invalid since the act only applied in two (2) of the 120 counties in the state and the problems of public health, economic waste and substandard dwelling dealt with by the act were no less important in the other 118 counties in the Commonwealth. Miles v. Shauntee, 664 S.W.2d 512, 1983 Ky. LEXIS 282 (Ky. 1983).

Where the only apparent basis for KRS 413.135 is that a special class faced with a growing exposure to litigation, lobbied for a statute limiting their liability, there is no social or economic basis presented to justify a special class, and other groups similarly situated do not share in their legislative windfall. Therefore, KRS 413.135 is in fundamental conflict with the fifth clause of this section and its historical development. Tabler v. Wallace, 704 S.W.2d 179, 1985 Ky. LEXIS 291 (Ky. 1985), cert. denied, 479 U.S. 822, 107 S. Ct. 89, 93 L. Ed. 2d 41, 1986 U.S. LEXIS 3436 (U.S. 1986).

KRS 189A.070, governing license revocations for operating a motor vehicle while under the influence of alcohol, does not fail the "rational basis test" of equal protection, it does not constitute special legislation in contravention of this section, it does not violate Const., § 3, and it does not contravene the prohibition against cruel and unusual punishment found in the Eighth Amendment to the United States Constitution and Const., § 17. Praete v. Commonwealth, 722 S.W.2d 602, 1987 Ky. App. LEXIS 416 (Ky. Ct. App. 1987).

Special legislation is that which favors a special interest to the detriment of the rest of society; it is not legislation which is merely designed to further a specific purpose. Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 1998 Ky. LEXIS 140 (Ky. 1998).

Individual counties and cities were authorized to adopt the provisions of the Uniform Residential Landlord Tenant Act (URLTA), KRS 383.500 et seq., and such a limited and local adoption did not lend itself to a conclusion that the Legislature intended a sweeping modification of the common law; to the contrary, such a piecemeal abrogation of the common law would have violated the constitutional provisions against local or special legislation. Miller v. Cundiff, 245 S.W.3d 786, 2007 Ky. App. LEXIS 143 (Ky. Ct. App. 2007).

KRS 164.7901, which provided scholarship money to individual students who attended the university's pharmacy school, was a special legislation in contravention of Ky. Const. § 59 because in restricting scholarships to those attending the university's pharmacy school, the Kentucky General Assembly failed to treat equally all members of the pharmacy student class, precisely the type of special privilege and favoritism that § 59 condemned. Univ. of the Cumberlands v. Pennybacker, 308 S.W.3d 668, 2010 Ky. LEXIS 97 (Ky. 2010).

48. Workers' Compensation.

The interpretation of KRS 342.740 and KRS 342.730, prior to the 1976 amendment of the latter, to allow minimum weekly benefits for permanent, partial disability was not unconstitutional. Yocum v. Gantley, 566 S.W.2d 176, 1978 Ky. App. LEXIS 517 (Ky. Ct. App. 1978).

The pre-1994 version of KRS 342.732 does not constitute special legislation in violation of this section. Leeco, Inc. v. Asher, 919 S.W.2d 227, 1996 Ky. App. LEXIS 36 (Ky. Ct. App. 1996); Leeco, Inc. v. Brock, 919 S.W.2d 229, 1996 Ky. App. LEXIS 32 (Ky. Ct. App. 1996); Leeco, Inc. v. Asher, 919 S.W.2d 232, 1996 Ky. App. LEXIS 31 (Ky. Ct. App. 1996); Leeco, Inc. v. Caldwell, 919 S.W.2d 234, 1996 Ky. App. LEXIS 41 (Ky. Ct. App. 1996); Leeco, Inc. v. Sizemore, 919 S.W.2d 237, 1996 Ky. App. LEXIS 54 (Ky. Ct. App. 1996).

Legislature's purpose for enacting KRS 342.732 was to encourage coal workers who have contracted occupational pneumoconiosis but who have not as yet sustained a significant respiratory impairment to leave the industry before they become disabled and the means by which the Legislature sought to accomplish this was by providing for retraining incentive benefits, therefore KRS 342.732 does not amount to special legislation in violation of this section. Kem Coal Co. v. Baker, 918 S.W.2d 236, 1996 Ky. App. LEXIS 37 (Ky. Ct. App. 1996).

The two (2) year limitation period provided for by the 1996 amendment to KRS 342.125(3) applied to an injury which occurred before the effective date of the amendment and did not constitute special legislation with regard to the regulation of labor, trade, mining, or manufacturing. Brooks v. University of Louisville Hosp., 33 S.W.3d 526, 2000 Ky. LEXIS 198 (Ky. 2000).

Ky. Rev. Stat. Ann. § 342.750(6) did not violate Ky. Const. §§ 59 and 60 because it did not apply to a particular individual, object or locale, but applied statewide to all employers and employees. Calloway Cty. Sheriff's Dep't v. Woodall, 607 S.W.3d 557, 2020 Ky. LEXIS 300 (Ky. 2020).

Statutory amendment, which terminated workers' compensation income benefits when the recipient reached the age of 70 or four years from the date of injury or last injurious exposure, whichever event occurred last, was not unconstitutional because the amendment was not special legislation as it did not identify an individual, object, or locale. Cates v. Kroger, 627 S.W.3d 864, 2021 Ky. LEXIS 311 (Ky. 2021).

49. Special Legislation.

Former KRS 65.115 is unconstitutional as special legislation in violation of this section and Const., § 60. Monticello Co. v. Natural Resources & Envtl. Protection Cabinet, 864 S.W.2d 921, 1993 Ky. App. LEXIS 65 (Ky. Ct. App. 1993).

The mere fact that the legislative treatment of coal workers' pneumoconiosis is different from that of other occupational pneumoconiosis does not make it arbitrary or unfair to either group where the legislative history provides distinctive and natural reasons for classifying them separately; therefore, KRS 342.732 is not unconstitutional as special legislation. Kentucky Harlan Coal Co. v. Holmes, 872 S.W.2d 446, 1994 Ky. LEXIS 6 (Ky. 1994), overruled in part, Vision Mining, Inc. v. Gardner, 364 S.W.3d 455, 2011 Ky. LEXIS 177 (Ky. 2011).

KRS 216B.020, which grants a limited exemption from the Certificate of Need (CON) requirement of KRS 216B.061 does not violate this section and Const., § 60 as a "special act" since the legislation treats all members within the class of existing health facilities equally and provides them all with the same opportunity to take advantage of the CON exemption at the same cost with the same time constraints. St. Luke Hosp. v. Health Policy Bd., 913 S.W.2d 1, 1996 Ky. App. LEXIS 4 (Ky. Ct. App. 1996).

Under Ky. Const. § 59, S.B. 86 was not unconstitutional special or retroactive legislation, as KRS 304.50-005 defined the class and provided it was applicable to all members; there were distinctive and natural reasons supporting the classification, which was met by the nature of self-insured groups, the similarity of such groups and the legitimate legislative interest in regulating the risks and liabilities of injured employees and their members. There was nothing indicating that S.B. 86 would apply only to the plaintiff group if there were other workers' compensation self-insured groups. Curtis Green & Clay Green, Inc. v. Clark, 318 S.W.3d 98, 2010 Ky. App. LEXIS 89 (Ky. Ct. App. 2010).

2017 Ky. Acts 1 applies to all collective bargaining agreements entered into on or after January 9, 2017, with the exception of certain employees covered or exempted by federal law; with the exceptions required by federal law, it applies to all employers and all employees, both public and private, it does not single out any particular union, industry or employer, and it applies statewide. Zuckerman v. Bevin, 565 S.W.3d 580, 2018 Ky. LEXIS 502 (Ky. 2018).

2017 Ky. Acts 1 does not violate the constitution because the legislature clearly established a rational basis for the Act, to promote economic development, to promote job growth, and to remove Kentucky's economic disadvantages in competing with neighboring states. Zuckerman v. Bevin, 565 S.W.3d 580, 2018 Ky. LEXIS 502 (Ky. 2018).

Purpose of the section is not to prevent the legislature from enacting any laws concerning labor, trade, mining or manufacturing. That would be absurd; rather, the intent is for any acts touching these subjects be general acts. Zuckerman v. Bevin, 565 S.W.3d 580, 2018 Ky. LEXIS 502 (Ky. 2018).

50. Tax on Physicians' Gross Revenues.

Two percent (2%) tax on physicians' gross revenues utilized to obtain federal matching money to support Kentucky Medicaid provided for in House Bill 1 [Enact. Act 1993 (2nd Ex. Sess.), ch. 2], did not violate Const., § 59. Revenue Cabinet v. Smith, 875 S.W.2d 873, 1994 Ky. LEXIS 34 (Ky.), cert. denied, 513 U.S. 1000, 115 S. Ct. 509, 130 L. Ed. 2d 417, 1994 U.S. LEXIS 8026 (U.S. 1994).

51. Justification.

Justification under Const., § 59 equates to reasonable justification under Const., §§ 2 and 3. Revenue Cabinet v. Smith, 875 S.W.2d 873, 1994 Ky. LEXIS 34 (Ky.), cert. denied, 513 U.S. 1000, 115 S. Ct. 509, 130 L. Ed. 2d 417, 1994 U.S. LEXIS 8026 (U.S. 1994).

52. Health Care Legislation.

Health care legislation which provided for wide-ranging health care reforms, including, but not limited to, creation of a Health Policy Board, provider arbitration, certificate of need procedures, insurance reform, medical education and medical taxation, was not special legislation, notwithstanding that a private foundation was actively involved in the drafting and passage of the bill and that it was granted special privileges and emoluments, since there were clear social and economic goals which the bill was designed to further. Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 1998 Ky. LEXIS 140 (Ky. 1998).

53. Utilities.

KRS 278.183 is not invalid special legislation since it is uniform upon the class to which it applies, the class in question is that of electric utilities and not utility costs, and the statute does not single out any utility for special treatment. Kentucky Indus. Util. Customers, Inc. v. Kentucky Utils. Co., 983 S.W.2d 493, 1998 Ky. LEXIS 165 (Ky. 1998).

54. Insurance.

The Unfair Claims Settlement Practices Act is not contrary to this section and Section 60 of the Constitution of Kentucky, which prohibit the enactment of special legislation. Farmland Mut. Ins. Co. v. Johnson, 36 S.W.3d 368, 2000 Ky. LEXIS 122 (Ky. 2000).

55. Liquidated Damages.

KRS 382.365 is not unconstitutional under the Due Process Clause and Ky. Const. § 2 in providing a severe penalty as a mortgagor has a duty to act reasonably and in good faith and the mortgagor's rights flow from a contract, in which there is an implied covenant of good faith and fair dealing; further, the exclusion of line of credit and revolving credit plan mortgages from KRS 382.365 does not violate Ky. Const. § 59. Union Planters Bank, N.A. v. Hutson, 210 S.W.3d 163, 2006 Ky. App. LEXIS 170 (Ky. Ct. App. 2006).

Cited:

Paramino Lumber Co. v. Marshall, 309 U.S. 370, 60 S. Ct. 600, 84 L. Ed. 814, 1940 U.S. LEXIS 1056 (U.S. 1940); Louisville & N. R. Co. v. Siler, 186 F. 176, 1911 U.S. App. LEXIS 5131 (C.C.D. Ky. 1911); Louisville v. Louisville R. Co., 281 F. 353, 1922 U.S. App. LEXIS 2083, 1922 U.S. App. LEXIS 2084 (6th Cir. Ky. 1922); National Accounting Co. v. Dorman, 11 F. Supp. 872, 1935 U.S. Dist. LEXIS 1484 (D. Ky. 1935); Lawrence v. Louisville, 96 Ky. 595, 29 S.W. 450, 16 Ky. L. Rptr. 672, 1895 Ky. LEXIS 131 (Ky. 1895); Lewis v. Brandenburg, 105 Ky. 14, 47 S.W. 862, 20 Ky. L. Rptr. 1011, 1898 Ky. LEXIS 238 (Ky. 1898); Gastenau v. Commonwealth, 108 Ky. 473, 56 S.W. 705, 22 Ky. L. Rptr. 157, 1900 Ky. LEXIS 61 (Ky. 1900); Lawson v. Commonwealth, 66 S.W. 1010, 23 Ky. L. Rptr. 1983, 1902 Ky. LEXIS 546 (Ky. Ct. App. 1902); Kirk v. Roberson, 76 S.W. 183, 25 Ky. L. Rptr. 633 (1903); Hancock v. Bingham, 102 S.W. 341, 31 Ky. L. Rptr. 427 (1907); Carrithers v. Shelbyville, 126 Ky. 769, 104 S.W. 744, 31 Ky. L. Rptr. 1166, 1907 Ky. LEXIS 92 (Ky. 1907); Earle v. Latonia Agricultural Ass'n, 127 Ky. 578, 106 S.W. 312, 32 Ky. L. Rptr. 469, 32 Ky. L. Rptr. 586, 1907 Ky. LEXIS 171 (Ky. 1907); Grinstead v. Kirby, 110 S.W. 247, 33 Ky. L. Rptr. 287 (1908); Brady v. Brannon, 134 Ky. 769, 121 S.W. 679, 1909 Ky. LEXIS 438 (Ky. 1909); Board of Council v. Raum, 141 Ky. 198, 132 S.W. 1019, 1910 Ky. LEXIS 466 (Ky. 1910); Madden v. Meehan, 151 Ky. 220, 151 S.W. 681, 1912 Ky. LEXIS 798 (Ky. 1912); Kenton Water Co. v. Covington, 156 Ky. 569, 161 S.W. 988, 1913 Ky. LEXIS 489 (Ky. 1913); Board of Levee Comm'rs v. Johnson, 178 Ky. 287, 199 S.W. 8, 1917 Ky. LEXIS 748 (Ky. 1917) (Ky. 1917); Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922); Coleman v. Hurst, 226 Ky. 501, 11 S.W.2d 133, 1928 Ky. LEXIS 121 (Ky. 1928); Richardson v. Mason Const. Co., 235 Ky. 17, 29 S.W.2d 615, 1930 Ky. LEXIS 302 (Ky. 1930); Fox v. Petty, 244 Ky. 385,

51 S.W.2d 260, 1932 Ky. LEXIS 446 (Ky. 1932); Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932); Robertson v. Hopkins County, 247 Ky. 129, 56 S.W.2d 700, 1933 Ky. LEXIS 349 (Ky. 1933); Great Atlantic & Pacific Tea Co. v. Kentucky Tax Com., 278 Ky. 367, 128 S.W.2d 581, 1939 Ky. LEXIS 406 (Ky. 1939); Keller v. Kentucky Alcoholic Beverage Countrol Board, 279 Ky. 272, 130 S.W.2d 821, 1939 Ky. LEXIS 293 (Ky. 1939); Dumesnil v. Reeves, 283 Ky. 563, 142 S.W.2d 132, 1940 Ky. LEXIS 370 (Ky. 1940); Burrow v. Kapfhammer, 284 Ky. 753, 145 S.W.2d 1067, 1940 Ky. LEXIS 577 (Ky. 1940); Talbott v. Thomas, 286 Ky. 786, 151 S.W.2d 1, 1941 Ky. LEXIS 277 (Ky. 1941); Beauchamp v. Henning, 292 Ky. 557, 166 S.W.2d 427, 1942 Ky. LEXIS 78 (Ky. 1942); Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942); Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943); Cotton v. Walton-Verona Independent Graded School Dist., 295 Ky. 478, 174 S.W.2d 712, 1943 Ky. LEXIS 262 (Ky. 1943); Commonwealth v. Tate, 297 Ky. 826, 181 S.W.2d 418, 1944 Ky. LEXIS 820 (Ky. 1944); Louisville v. Presbyterian Orphans Home Soc., 299 Ky. 566, 186 S.W.2d 194, 1945 Ky. LEXIS 469 (Ky. 1945); Fraysure v. Kentucky Unemployment Compensation Com., 305 Ky. 164, 202 S.W.2d 377, 1947 Ky. LEXIS 709 (Ky. 1947); Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490, 1947 Ky. LEXIS 825 (Ky. 1947); Manning v. Sims, 308 Ky. 587, 213 S.W.2d 577, 1948 Ky. LEXIS 864 (Ky. 1948); Cornett v. Clements, 309 Ky. 80, 216 S.W.2d 417, 1948 Ky. LEXIS 1076 (Ky. 1948); Keck v. Manning, 313 Ky. 433, 231 S.W.2d 604, 1950 Ky. LEXIS 897 (Ky. 1950); Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952); Daly v. Look, 267 S.W.2d 77, 1954 Ky. LEXIS 827 (Ky. 1954); Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956); Blackburn v. Maxwell Co., 305 S.W.2d 112, 1957 Ky. LEXIS 297 (Ky. 1957); Commonwealth, Dep't of Highways v. Meyers, 307 S.W.2d 179, 1957 Ky. LEXIS 75 (Ky. 1957); Dearing v. McCormack, 352 S.W.2d 197, 1961 Ky. LEXIS 196 (Ky. 1961); Riddle v. Howard, 357 S.W.2d 705, 1962 Ky. LEXIS 139 (Ky. 1962); Freeman v. Danville Tobacco Board of Trade, Inc., 380 S.W.2d 215, 1964 Ky. LEXIS 284 (Ky. 1964); Hobbs v. Markey, 398 S.W.2d 54, 1965 Ky. LEXIS 39 (Ky. 1965); Otto v. Kosofsky, 476 S.W.2d 626, 1971 Ky. LEXIS 64 (Ky. 1971); Gay v. Board of Registration Comm'rs, 466 F.2d 879, 1972 U.S. App. LEXIS 7729 (6th Cir. Ky. 1972); Holsclaw v. Stephens, 507 S.W.2d 462, 1973 Ky. LEXIS 3 (Ky. 1973); United Dry Forces v. Citizens for Progressive Community, 635 S.W.2d 478, 1982 Ky. LEXIS 272 (Ky. 1982); Clay v. Terrill, 670 S.W.2d 492, 1984 Ky. App. LEXIS 507 (Ky. Ct. App. 1984); Louisville v. Miller, 697 S.W.2d 164, 1985 Ky. App. LEXIS 646 (Ky. Ct. App. 1985); Howard v. Salyer, 695 S.W.2d 420, 1985 Ky. LEXIS 247 (Ky. 1985); Massie v. Persson, 729 S.W.2d 448, 1987 Ky. App. LEXIS 444 (Ky. Ct. App. 1987); Hayes v. State Property & Bldgs. Com., 731 S.W.2d 797, 1987 Ky. LEXIS 217 (Ky. 1987); McKee v. Cutter Laboratories, Inc., 866 F.2d 219, 1989 U.S. App. LEXIS 722 (6th Cir. Ky. 1989); Nucor Corp. v. General Electric Co., 812 S.W.2d 136, 1991 Ky. LEXIS 54 (Ky. 1991); RAZ, Inc. v. Mercer Cnty. Fiscal Crt., 2022 Ky. App. LEXIS 87 (Ky. Ct. App. Sept. 30, 2022).

NOTES TO UNPUBLISHED DECISIONS

1. Workers' Compensation.

Unpublished decision: KRS 342.125(8), which limited the period in which an employee could reopen a claim after December 31, 1996, afforded the employee a reasonable four-year period after December 12, 1996 in which to assert a right to increased compensation, and did not violate Ky. Const. § 59(24), as the provision served a legitimate purpose. Johnson v. Gans Furniture Indus., Inc., 114 S.W.3d 850, 2003 Ky. LEXIS 204 (Ky. 2003).

OPINIONS OF ATTORNEY GENERAL.

Where the general assembly passed a joint resolution authorizing an individual to sue the Commonwealth and the Department of Highways but the resolution became lost and failed to get enrolled and sent to the Governor's office, there is no way the individual involved can pursue his claim because the resolution violated this section and, even if the resolution had been properly enrolled and sent to the Governor's office, the individual involved could not have recovered in the courts. OAG 61-629.

A system of tax collection whereby an automobile on which the motor vehicle license is to be renewed, and which has an outstanding personal property tax bill against it will not be registered or renewed by the county until such time as the taxes are satisfied, would not be legal. OAG 70-700.

The water pollution control commission cannot arbitrarily set standards which provide a greater burden or provide greater benefits for citizens of one part of the state and not the other, but if facts reasonably differentiate a class or locality from the general public or the state at large, the regulation will not run afoul of the constitutional provision. OAG 71-110.

The provisions of KRS 61.710 requiring financial disclosure by any employee of a daily newspaper with a circulation of 50,000 or more published in Kentucky who either orally or in writing contributes to the editorial policy of the newspaper and by any employee of a radio or television station that is owned in common with such a newspaper who directly or indirectly contributes to the editorial policy of the station are unconstitutional under this section and sections 3 and 60 of the Constitution as establishing an arbitrary classification and as special legislation. OAG 72-289.

The fiscal court can, by appropriate ordinance, establish a merit system for county employees if the ordinance is not in conflict with the county police force merit system or the fire department merit system and providing that said ordinance is not otherwise in conflict with constitutional or statutory provisions. OAG 73-829.

The county clerk has no statutory or constitutional authority to impose the condition of showing a tax receipt to prove payment of property taxes before issuing a vehicle registration license plate since KRS 186.035 (repealed) was found to be unconstitutional as special legislation. OAG 74-3; 74-34.

The coal severance tax imposed by KRS 143.010 to 143.990, as distributed to the counties pursuant to KRS 42.300 (repealed), is not unconstitutional in violation of this section or Ky. Const., §§ 3, 51, 177 or 181. OAG 75-76.

The Department of Fish and Wildlife Resources cannot require a person to be a member of a nonprofit corporation as a prerequisite to using the shooting ranges at a certain wildlife area since such requirement would be an unlawful endorsement of such nonprofit corporation to the exclusion of other private corporations, commercial or nonprofit, and would be illegal and in violation of the Constitution, and since there is no basis for such a classification, the requirement would violate §§ 59 and 60 of the Kentucky Constitution. OAG 76-617.

The provisions of House Bill 514, enacted by the regular session of the 1978 Kentucky General Assembly, (Chapter 372, KRS 81.015) are applicable only to the Fairdale area of Jefferson County and purport to designate that specific area as an "unincorporated urban place" within the meaning of KRS 177.365 to 177.368 (KRS 177.367 and 177.368 repealed), thereby by-passing the statutory procedure set forth in those provisions which are applicable to all other areas seeking such designation, and is probably unconstitutional as being in violation of subsection (29) of this section and § 60 of the Kentucky Constitution. OAG 78-394, 1978 Ky. AG LEXIS 376.

KRS 186.230(9) is unconstitutional because the classification set out therein is arbitrary and, consequently, is in

violation of Ky. Const., § 2 and this section. OAG 79-445, 1979 Ky. AG LEXIS 194.

It is not lawful to pay group insurance for part of the county employees and not all of them since, for purposes of hospitalization insurance, all county employees would be in the same class and discrimination cannot be made against persons in the same class. OAG 81-188, 1981 Ky. AG LEXIS 237.

KRS 290.295 (now repealed) did not violate any constitutional provisions, even though the effect of the section was to permit credit unions consisting of state employees to merge under the provisions of KRS Chapter 271A (now repealed or renumbered in KRS Chapter 271B), which only requires the affirmative vote of a majority of the shareholders of each such credit union desiring to merge, while the only manner in which the members of other types of credit unions could effectively unite their credit unions was by dissolution under KRS 290.290 (now repealed), a prerequisite of which was a four-fifths (⅘) affirmative vote of the shareholders. OAG 82-467, 1982 Ky. AG LEXIS 177.

Neither KRS 186.193 nor 186.232 support an arbitrary classification in violation of this section and § 2 of the Constitution; these statutes apply equally to all vehicles and trailers which are to be operated on the highways of this state. OAG 84-339, 1984 Ky. AG LEXIS 46.

Where the state has occupied the field of prohibitory legislation on a particular subject, local government lacks authority to legislate with respect thereto; thus, a county may not enact an ordinance requiring all mopeds operated within the county to display a sticker showing that the vehicle may only be operated by a person having a valid motor vehicle operator's license. OAG 84-380, 1984 Ky. AG LEXIS 7.

There is a reasonable distinction which justifies the separate treatment given to the salaries of beginning teachers in the state-supported vocational schools, the state school for the deaf, and the state school for the blind, and therefore KRS 163.032 is not "special" legislation in violation of either this section or § 60 of the Kentucky Constitution. OAG 85-86, 1985 Ky. AG LEXIS 64.

KRS 17.165, which exempts church-sponsored day care centers from its requirement that child care centers request a sex crime records check as to their applicants for employment, is unconstitutional as special legislation in violation of this section and Ky. Const. § 60. OAG 87-13, 1987 Ky. AG LEXIS 74.

The classifications contained in subsections (2) to (4) of KRS 230.377, which are based upon population of counties, constitute an exception for one county without any rational basis for doing so. Such an arbitrary classification is special and local legislation and violates this section and Ky. Const., § 60. OAG 88-51, 1988 Ky. AG LEXIS 51.

House Bill 89 (Acts 1992, ch. 105) contains objective standards for the Economic Development Finance Authority to use in certifying qualified counties and eligible companies involved in an economic job development program, which provides a reasonable classification that supports the application of the Act to the particular counties and companies that are certified; therefore the attorney general opined that House Bill 89 (Acts 1992, ch. 105) does not violate sections 59 and 60 of the state Constitution as to the enactment of local or special legislation. OAG 92-55, 1992 Ky. AG LEXIS 55.

Limitation of the benefits under the enterprise zones program to ten (10) areas selected by the enterprise zone authority does in fact confer a special status on these areas, denying benefits they receive to other areas similarly situated; since unique benefits are provided to designated areas having no natural and reasonable basis to distinguish them from other similarly situated areas, and since the legislation in question exempts certain districts from the operation of general laws, the legislation is both local and special in character, and thus violative of this section and Ky. Const., § 60; therefore, the following sections are unconstitutional local or special legislation in contravention of this section and Ky. Const., § 60: KRS 154.45-001, 154.45-020, 154.45-030, 154.45-040, 154.45-050, 154.45-070, and 154.45-090; furthermore, although House Bill 66, [Acts 1992, ch. 35] enacted by the 1992 General Assembly, makes numerous changes to various provisions in the enterprise zone statutes, it did not affect the conclusion of unconstitutionality. OAG 92-86, 1992 Ky. AG LEXIS 80.

Acts 1994, ch. 87 (KRS 42.700 (now repealed) and amendments to KRS 21A.140 and 311.610) is unconstitutional as it is violative of subdivision (15) of this section, as special legislation, in that there is no rational basis for the singling out of physicians and attorneys to pay for medical malpractice insurance for charitable health care facilities and certain of those volunteering at such facilities. OAG 95-21, 1995 Ky. AG LEXIS 179.

The General Assembly may permit referenda on local school curriculum; however, in doing so, the General Assembly must not violate equal protection provisions and special and local legislation provisions of the Kentucky Constitution. OAG 00-3, 2000 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

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THE EXECUTIVE DEPARTMENT

Officers for the State at Large.

Section

91. Constitutional State officers — Election — Qualifications — Term of office — Duties — Secretary of State to record acts of Governor and report them to General Assembly.
93. Succession of elected Constitutional State Officers — Duties — Inferior officers and members of boards and commissions.
95. Time of election of elected Constitutional State officers.
96. Compensation of Constitutional State officers.

OFFICERS FOR THE STATE AT LARGE

§ 91. Constitutional State officers — Election — Qualifications — Term of office — Duties — Secretary of State to record acts of Governor and report them to General Assembly.

A Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of State, and Attorney-General, shall be elected by the qualified voters of the State at the same time the Governor and Lieutenant Governor are elected, for the term of four years, each of whom shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the State at least two years next before his election. The duties of all these officers shall be such as may be prescribed by law, and the Secretary of State shall keep a fair register of and attest all the official acts of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before either House of the General Assembly. The officers named in this section shall enter upon the discharge of their duties the first Monday in January after their election, and shall hold their offices until their successors are elected and qualified.

History.

Amendment, proposed by Acts 1992, ch. 168, § 11, and ratified November 3, 1992.

Compiler's Notes.

The General Assembly in 1992 (Acts 1992, ch. 168, § 11) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read: **"§ 91. Constitutional state officers — Election, qualification, term of office — Duties — Secretary of State to record acts of Governor and report them to General Assembly.** — A Treasurer, Auditor of Public Accounts, Register of the Land Office, Commissioner of Agriculture, Labor and Statistics, Secretary of State, Attorney General and Superintendent of Public Instruction, shall be be elected by the qualified voters of the State at the same time the Governor is elected, for the term of four years, each of whom shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the State at least two years next before his election. The duties of all these officers shall be such as may be prescribed by law, and the Secretary of State shall keep a fair register of and attest all the official acts of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before either House of the General Assembly. The officers named in this section shall enter upon the discharge of their duties the first Monday in January after their election, and shall hold their offices until their successors are elected and qualified."

Section 19 of Acts 1992, ch. 168 provided: "It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding: **"(1)** The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

"(2) The term of office of Commonwealth's Attorneys and Circuit Clerks elected in 1993 shall be for a single term of seven years. The regular election for those offices shall then be held in 2000 and every six years thereafter.

"(3) The term of office of District Judges, Mayors, County Judges/Executive, and local officers who regularly serve a four-year term and who are scheduled to be elected in 1993 shall be for a single term of five years. The regular election for those offices shall then be held in 1998 and every four years thereafter.

"(4) The term of office for local officers who regularly serve a two-year term and who are scheduled to be elected in 1993 shall be for a single term of three years. The regular election for those offices shall then be held in 1996 and every two years thereafter.

"(5) The term of office for Circuit Judges and Judges of the Court of Appeals elected in 1999 shall be for a single term of seven years. The regular election for those offices shall then be held in 2006 and every eight years thereafter.

"(6) The term of office for mayor, magistrate, or other officer not specifically provided for in subsection (4) of this section elected in 1995 shall be extended for one year and subsequent elections for offices subject to the provisions of this subsection shall be held in even-numbered years.

"(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years."

NOTES TO DECISIONS

Analysis

1. Attorney General.
2. Commissioner of Agriculture.
3. Secretary of State.
4. — Register.
5. Auditor of Public Accounts.
6. Control of Governor.

7. Powers and Duties.
8. — Transfer by Governor.

1. Attorney General.

Legislature was to prescribe duties of Attorney General. Commonwealth v. Southern Pac. Co., 127 Ky. 358, 105 S.W. 466, 32 Ky. L. Rptr. 259, 32 Ky. L. Rptr. 285, 1907 Ky. LEXIS 138 (Ky. 1907).

Although the Attorney General possesses duties and rights deriving from the common law, the Legislature, under the mandate of this section, may restrict his powers as well as add to them, providing such action does not strip his office of such duties as to leave it ineffective or unable to fulfill its necessary functions. Johnson v. Commonwealth, 291 Ky. 829, 165 S.W.2d 820, 1942 Ky. LEXIS 329 (Ky. 1942).

Unless authorized by law or decision of the Court of Appeals, the Attorney General has no authority to intervene in will contests which may involve a charitable trust absent a showing that such intervention would have been permitted under the established and recognized common law of England before 1607. Commonwealth ex rel. Ferguson v. Gardner, 327 S.W.2d 947, 1959 Ky. LEXIS 82 (Ky. 1959).

In addition to duties prescribed by law pursuant to this section, the Attorney General had certain common-law duties. Matthews v. Pound, 403 S.W.2d 7, 1966 Ky. LEXIS 310 (Ky. 1966).

2. Commissioner of Agriculture.

The specific powers and duties of the State Commissioner of Agriculture must be ascertained from the specific legislation passed by the General Assembly pursuant to this section and provided for therein. Ferguson v. Chandler, 266 Ky. 694, 99 S.W.2d 732, 1936 Ky. LEXIS 709 (Ky. 1936).

3. Secretary of State.

4. — Register.

The General Assembly was charged with notice of appointments by the Governor to the State Textbook Commission, since these appointments were duly recorded in the register kept by the Secretary of State in accordance with this section. Bell v. Sampson, 232 Ky. 376, 23 S.W.2d 575, 1930 Ky. LEXIS 11 (Ky. 1930). See McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584, 1930 Ky. LEXIS 12 (Ky. 1930).

Pursuant to this section which requires the Secretary of State to maintain a register of the official acts of the Governor, gubernatorial appointments to the State Highway Commission must be made in writing. Johnson v. Sampson, 232 Ky. 648, 24 S.W.2d 306, 1930 Ky. LEXIS 57 (Ky. 1930).

5. Auditor of Public Accounts.

Where this section and Ky. Const., § 93, provide that the duties and responsibilities of the Auditor of Public Accounts shall be prescribed by law, the Auditor cannot, with respect to the judicial branch of the government, constitutionally be given any authority that the legislative body has no right to confer. Ex parte Auditor of Public Accounts, 609 S.W.2d 682, 1980 Ky. LEXIS 274 (Ky. 1980).

6. Control of Governor.

As the Governor is the supreme executive power, it is not possible for the General Assembly to create another executive officer or officers who will not be subject to that supremacy, but it definitely has the prerogative of withholding executive powers from him by assigning them to the constitutional officers named in this section who are not amenable to his supervision and control. Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982).

Except for the informational duty specified in Const., § 78, the officers named in this section are not and cannot be placed under the control or supervision of the Governor. Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982).

7. Powers and Duties.

The officers named in this section have no powers or duties not assigned to them by statute, except for the clerical duties placed on the Secretary of State by the Constitution and the common-law prerogatives of the Attorney General that have not been removed or diminished by statute. Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982).

Whatever powers, duties, personnel, funds or property are given by statute to an officer named in this section, they may be removed by statute and may be transferred by executive order if, and only if, such a transfer is authorized by statute. Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982).

Because the Kentucky General Assembly lawfully passed legislation which amended the power of the Governor of the Commonwealth of Kentucky to respond to emergencies, the Governor's complaint did not present a substantial legal question that necessitated staying the effectiveness of the legislation, and the equities favored implementation of the legislation pending an adjudication of the constitutionality of the legislation, the circuit court abused its discretion by issuing a temporary injunction against implementation of the legislation. Cameron v. Beshear, 628 S.W.3d 61, 2021 Ky. LEXIS 240 (Ky. 2021).

8. — Transfer by Governor.

The Governor has no constitutional or statutory power to transfer powers, duties, personnel, funds or property that have been assigned by the General Assembly to a department headed by an officer named in this section. Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982).

Cited:

Campbell v. Dotson, 111 Ky. 125, 23 Ky. L. Rptr. 510, 63 S.W. 480, 1901 Ky. LEXIS 193 (Ky. 1901); Olmstead v. Augustus, 112 Ky. 365, 23 Ky. L. Rptr. 1772, 65 S.W. 817, 1901 Ky. LEXIS 318 (Ky. 1901); Smith v. Coulter, 113 Ky. 74, 23 Ky. L. Rptr. 2384, 67 S.W. 1, 1902 Ky. LEXIS 11 (Ky. 1902); Byrne & Speed Coal Co. v. Louisville, 189 Ky. 346, 224 S.W. 883, 1920 Ky. LEXIS 429 (Ky. 1920); Booth v. Board of Education, 191 Ky. 147, 229 S.W. 84, 1921 Ky. LEXIS 267 (Ky. 1921); Schardein v. Harrison, 230 Ky. 1, 18 S.W.2d 316, 1929 Ky. LEXIS 5 (Ky. 1929); Royster v. Brock, 258 Ky. 146, 79 S.W.2d 707, 1935 Ky. LEXIS 134 (Ky. 1935); Ferguson v. Redding, 304 S.W.2d 927, 1957 Ky. LEXIS 291 (Ky. 1957); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865, 1974 Ky. LEXIS 181 (Ky. 1974); Graham v. Mills, 694 S.W.2d 698, 1985 Ky. LEXIS 236 (Ky. 1985); Commonwealth v. Johnson, 423 S.W.3d 718, 2014 Ky. LEXIS 87 (Ky. 2014).

OPINIONS OF ATTORNEY GENERAL.

An executive order relating to reorganization becomes effective when properly filed with the secretary of state. OAG 69-51.

The Attorney General is charged with the duty of serving as chief law officer and adviser, but he has no law enforcement power or authority. OAG 70-522.

The Governor may under KRS 12.025 (repealed) reorganize by executive order the Department of Agriculture, which is administered by a constitutional officer, until the General Assembly reconvenes since the Department of Agriculture is clearly a department for Chapter 12 purposes under KRS 12.020, since the General Assembly has not specifically exempted a department headed by an elected official from the KRS 12.025 (repealed) reorganization powers of the Governor, as was done with certain other departments, and since the Governor in the absence of the General Assembly can prescribe through executive order the duties and responsibilities of the Commissioner of Agriculture under this section and Const., § 93; however, the Governor cannot strip a constitu-

tional officer of all duties under KRS 12.025 (repealed) and leave an empty shell for him to administer since the General Assembly could not do this while it was in session. OAG 81-3, 1981 Ky. AG LEXIS 416.

Since the auditor is required to audit the accounts of Circuit Court clerks, the Legislature is required to appropriate moneys to fund the audit activity. OAG 81-41, 1981 Ky. AG LEXIS 386.

The Auditor of Public Accounts has no right to conduct audits of Circuit Court clerks, as a permissive mandatory matter, if he is not statutorily required or permitted to conduct such audits; however in view of the direct involvement of the Circuit Court clerks in putting money into the State Treasury and expending money coming out of the State Treasury, and in view of the express language of KRS 43.050(2)(a) and 43.010, the Auditor of Public Accounts is required to audit the Circuit Court clerks of Kentucky in the areas of state treasury involvement, within the practical capabilities of his staff and budget, and considering other mandatory audits. OAG 81-41, 1981 Ky. AG LEXIS 386.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Attorney general, KRS ch. 15.

Auditor of public accounts, KRS ch. 43.

Commissioner of agriculture, KRS ch. 246.

Official acts to be attested by secretary of state, KRS 14.040.

Register of land office, secretary of state to perform duties of, KRS 56.230 to 56.320.

Secretary of state, KRS ch. 14.

Superintendent of public instruction, KRS ch. 156.

Treasurer, KRS ch. 41.

Kentucky Law Journal.

Snyder and Irland, The Separation of Governmental Powers Under the Constitution of Kentucky: A Legal and Historical Analysis of L.R.C. v. Brown, 73 Ky. L.J. 165 (1984-85).

§ 93. Succession of elected Constitutional State Officers — Duties — Inferior officers and members of boards and commissions.

The Treasurer, Auditor of Public Accounts, Secretary of State, Commissioner of Agriculture, Labor and Statistics, and Attorney General shall be ineligible to reelection for the succeeding four years after the expiration of any second consecutive term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior State officers and members of boards and commissions, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, which may include a requirement of consent by the Senate, for a term not exceeding four years, and until their successors are appointed or elected and qualified.

History.

Amendment, proposed by Acts 1992, ch. 168, § 12, and ratified November 3, 1992.

Compiler's Notes.

The General Assembly in 1992 (Acts 1992, ch. 168, § 12) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read: **"§ 93. Constitutional state officers not to succeed themselves — Duties — Fees — Inferior state officers — Term.** — The Treasurer, Auditor of Public Accounts, Secretary of State, Commissioner of Agriculture, Labor and Statistics, Attorney General, Superintendent of Public Instruction and Register of the Land Office shall be ineligible to re-election for the succeeding four years after the expiration of the term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior state officers, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, for a term not exceeding four years, and until their successors are appointed or elected and qualified."

Section 19 of Acts 1992, ch. 168 provided: "It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding: **"(1)** The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

"(2) The term of office of Commonwealth's Attorneys and Circuit Clerks elected in 1993 shall be for a single term of seven years. The regular election for those offices shall then be held in 2000 and every six years thereafter.

"(3) The term of office of District Judges, Mayors, County Judges/Executive, and local officers who regularly serve a four year term and who are scheduled to be elected in 1993 shall be for a single term of five years. The regular election for those offices shall then be held in 1998 and every four years thereafter.

"(4) The term of office for local officers who regularly serve a two-year term and who are scheduled to be elected in 1993 shall be for a single term of three years. The regular election for those offices shall then be held in 1996 and every two years thereafter.

"(5) The term of office for Circuit Judges and Judges of the Court of Appeals elected in 1999 shall be for a single term of seven years. The regular election for those offices shall then be held in 2006 and every eight years thereafter.

"(6) The term of office for mayor, magistrate, or other officer not specifically provided for in subsection (4) of this section elected in 1995 shall be extended for one year and subsequent elections for offices subject to the provisions of this subsection shall be held in even-numbered years.

"(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years."

NOTES TO DECISIONS

Analysis

1. Creation of Officers.
2. — Appointment.
3. — — Senate Approval.
4. — Election.
5. Duties.
6. Term.
7. — Hold Over After Expiration.
8. — Separate.

1. Creation of Officers.

Under this section only inferior state officers could be created. Pratt v. Breckinridge, 66 S.W. 405, 23 Ky. L. Rptr. 1858, 1902 Ky. LEXIS 463 (Ky. 1902).

2. — Appointment.

The act known as the "Goebel Election Law," to the extent that it provided for the appointment of election commissioners by the Legislature, was an invasion of the powers of the executive and therefore unconstitutional. Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901).

Law in which the General Assembly specifically named the first members of a State Highway Commission created thereby is not authorized by this section and is unconstitutional as a violation of the separation of powers under Const., §§ 27 and 28. Sibert v. Garrett, 197 Ky. 17, 246 S.W. 455, 1922 Ky. LEXIS 639 (Ky. 1922). See Sewell v. Bennett, 187 Ky. 626, 220 S.W. 517, 1920 Ky. LEXIS 179 (Ky. 1920).

The General Assembly may, under this section, authorize the Speaker of the House and the President of the Senate to appoint a commission to establish normal schools. Craig v. O'Rear, 199 Ky. 553, 251 S.W. 828, 1923 Ky. LEXIS 894 (Ky. 1923).

The appointment of an examiner to hold office at the pleasure of the court does not conflict with this section. Kratzer v. Commonwealth, 228 Ky. 684, 15 S.W.2d 473, 1929 Ky. LEXIS 616 (Ky. 1929).

This section constitutes a limitation on the Governor's constitutional power to fill vacancies and, under this section, a law providing that members of the State Highway Commission be appointed by a board created by that law is valid. Rouse v. Johnson, 234 Ky. 473, 28 S.W.2d 745, 1930 Ky. LEXIS 220 (Ky. 1930).

This section does not invalidate law creating a city personnel commission and empowering it to appoint a personnel director to hold office during good behavior. Kerr v. Louisville, 271 Ky. 335, 111 S.W.2d 1046, 1937 Ky. LEXIS 241 (Ky. 1937).

Trial court erred in dismissing an appointed education council member's declaratory action that claimed appointment of a nominee when the general assembly was not in session was invalid, because Ky. Const. § 93 was ambiguous and language permitting the senate to confirm nominees led to a strong presumption that the house was intentionally excluded from the confirmation process. Fox v. Grayson, 317 S.W.3d 1, 2010 Ky. LEXIS 88 (Ky. 2010).

3. — — Senate Approval.

The General Assembly, in providing for the method of appointment by the Governor of members of the Workers' Compensation Board, was fully empowered by this section to condition such appointments on the approval or rejection of the senate. Sewell v. Bennett, 187 Ky. 626, 220 S.W. 517, 1920 Ky. LEXIS 179 (Ky. 1920).

The Kentucky State Senate has the inherent power to advise and consent on executive branch appointments of inferior state officers. Kraus v. Kentucky State Senate, 872 S.W.2d 433, 1993 Ky. LEXIS 169 (Ky. 1993), limited, Fox v. Grayson, 317 S.W.3d 1, 2010 Ky. LEXIS 88 (Ky. 2010).

The procedure for advice and consent of subsection (3) of KRS 342.230 is constitutional; there is no violation of the separation of powers doctrine because the statute does not permit the Senate to make appointments of administrative law judges but only to accept or reject the decision of the Worker's Compensation Board. Kraus v. Kentucky State Senate, 872 S.W.2d 433, 1993 Ky. LEXIS 169 (Ky. 1993), limited, Fox v. Grayson, 317 S.W.3d 1, 2010 Ky. LEXIS 88 (Ky. 2010).

4. — Election.

Under this section and Const., § 107, the Legislature had power to pass an act creating Board of Penitentiary Commissioners and providing for their election by the Legislature. Commissioners of Sinking Fund v. George, 104 Ky. 260, 47 S.W. 779, 20 Ky. L. Rptr. 938, 1898 Ky. LEXIS 211 (Ky. 1898). See Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901).

5. Duties.

Although the Attorney General possesses duties and rights deriving from the common law, the Legislature, under the mandate of Const., § 91, may restrict his powers as well as add to them, providing such action does not strip his office of such duties as to leave it ineffective or unable to fulfill its necessary functions. Johnson v. Commonwealth, 291 Ky. 829, 165 S.W.2d 820, 1942 Ky. LEXIS 329 (Ky. 1942).

Legislative designation of specific duties and responsibilities of treasurer under this section did not extinguish implied obligations of his office, and thus treasurer could raise good faith constitutional question concerning legality of claim upon treasury. Raney v. Stovall, 361 S.W.2d 518, 1962 Ky. LEXIS 246 (Ky. 1962).

Where Const., § 91, and this section provide that the duties and responsibilities of the auditor of public accounts shall be prescribed by law, the auditor cannot, with respect to the judicial branch of the government, constitutionally be given any authority that the legislative body has no right to confer. Ex parte Auditor of Public Accounts, 609 S.W.2d 682, 1980 Ky. LEXIS 274 (Ky. 1980).

6. Term.

Where an act creating the office of prison commissioners provided a term of six (6) years for one of the commissioners, the excess of the term over four (4) years was void. Commissioners of Sinking Fund v. George, 104 Ky. 260, 47 S.W. 779, 20 Ky. L. Rptr. 938, 1898 Ky. LEXIS 211 (Ky. 1898).

A law providing that policemen shall not be removed by the board of safety during good behavior would seem, to the extent that it attempted to give a term of more than four (4) years, to be violative of this section. Fiscal Court of Franklin County v. Commonwealth, 139 Ky. 307, 117 S.W. 301, 1909 Ky. LEXIS 3 (Ky. 1909). See Louisville v. Ross, 138 Ky. 764, 129 S.W. 101, 1910 Ky. LEXIS 131 (Ky. 1910).

The metropolitan police bill providing for the appointment of policemen to hold office either during good behavior or at the pleasure of the appointing power was not unconstitutional as authorizing an appointment for a longer term than a term of years. Louisville v. Ross, 138 Ky. 764, 129 S.W. 101, 1910 Ky. LEXIS 131 (Ky. 1910).

An act creating the office of railroad policeman is not violative of this section in failing to limit the term of office for a time not exceeding four (4) years, but the term of office is limited to four (4) years. Cincinnati, N. O. & T. P. R. Co. v. Cundiff, 166 Ky. 594, 179 S.W. 615, 1915 Ky. LEXIS 755 (Ky. 1915).

Where the university trustee's six (6) year term had expired, and the 1988 General Assembly repealed the provisions in KRS 164.130 (now repealed), 164.320 (now repealed), and 164.820 (now repealed) providing for six (6) year terms for trustees and regents at various state universities, the trustee's appeal from judgments declaring the six (6) year term unconstitutional was moot, even though the action was transferred to the Supreme Court under subsection (2) of CR 76.18 (deleted by Supreme Court Order) because it was of great and immediate public interest. Jones v. Forgy, 750 S.W.2d 434, 1988 Ky. LEXIS 28 (Ky. 1988).

7. — Hold Over After Expiration.

This section, with others of constitution, make it plain that the constitution makers intended that all public officers, except members of the General Assembly and members of municipal legislative boards, should hold over after the expiration of their fixed terms and until their successors are elected and qualified. Byrne & Speed Coal Co. v. Louisville, 189 Ky. 346, 224 S.W. 883, 1920 Ky. LEXIS 429 (Ky. 1920). See

Booth v. Board of Education, 191 Ky. 147, 229 S.W. 84, 1921 Ky. LEXIS 267 (Ky. 1921).

8. — Separate.

Law providing for the sheriff to act as delinquent tax collector after his term does not extend his term as sheriff but creates an entirely separate and distinct office and term, and is not violative of this section. Petty v. Talbott, 256 Ky. 688, 76 S.W.2d 940, 1934 Ky. LEXIS 475 (Ky. 1934).

Cited:

Kirkpatrick v. Brownfield, 97 Ky. 558, 31 S.W. 137, 17 Ky. L. Rptr. 376, 1895 Ky. LEXIS 222 (Ky. 1895); Campbell v. Dotson, 111 Ky. 125, 63 S.W. 480, 23 Ky. L. Rptr. 510, 1901 Ky. LEXIS 193 (Ky. 1901); Olmstead v. Augustus, 112 Ky. 365, 65 S.W. 817, 23 Ky. L. Rptr. 1772, 1901 Ky. LEXIS 318 (Ky. Ct. App. 1901); Schardein v. Harrison, 230 Ky. 1, 18 S.W.2d 316, 1929 Ky. LEXIS 5 (Ky. 1929); Ferguson v. Redding, 304 S.W.2d 927, 1957 Ky. LEXIS 291 (Ky. 1957); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865, 1974 Ky. LEXIS 181 (Ky. 1974); Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982); Legislative Research Com. by Prather v. Brown, 664 S.W.2d 907, 1984 Ky. LEXIS 300 (Ky. 1984); Graham v. Mills, 694 S.W.2d 698, 1985 Ky. LEXIS 236 (Ky. 1985); Commonwealth v. Johnson, 423 S.W.3d 718, 2014 Ky. LEXIS 87 (Ky. 2014).

OPINIONS OF ATTORNEY GENERAL.

Acts 1966, ch. 93 (KRS 164.740 to 164.764) is unconstitutional insofar as it attempts to authorize terms of office of eight (8) years for the board of directors of the Kentucky Higher Education Assistance Authority, but the unconstitutional portion is severable from the remainder of the act. OAG 66-447.

Two (2) members of the State Labor Relations Board whose terms have expired without their reappointment or the appointment of new members by the Governor could continue to serve in their positions until they were either reappointed or until their successors were appointed and qualified. OAG 76-309.

The Governor may under KRS 12.025 (repealed) reorganize by executive order the Department of Agriculture, which is administered by a constitutional officer, until the General Assembly reconvenes since the Department of Agriculture is clearly a department for Chapter 12 purposes under KRS 12.020, since the General Assembly has not specifically exempted a department headed by an elected official from the KRS 12.025 (repealed) reorganization powers of the governor, as was done with certain other departments, and since the governor in the absence of the General Assembly can prescribe through executive order the duties and responsibilities of the commissioner of agriculture under Const., § 91 and this section; however, the governor cannot strip a constitutional officer of all duties under KRS 12.025 (repealed) and leave an empty shell for him to administer since the General Assembly could not do this while it was in session. OAG 81-3, 1981 Ky. AG LEXIS 416.

The State Legislature cannot establish a six (6) year term for the office of property valuation administrator in view of the fact that this office is a minor state office, the term of which is limited to four (4) years pursuant to this section. OAG 82-38, 1982 Ky. AG LEXIS 597.

The position of member of a state university board of trustees or board of regents meets the criteria of a state office, the term of which is limited to four (4) years pursuant to this section; therefore, the State Legislature cannot establish a six (6) year term for the office of state university board of regents or board of trustees member. OAG 85-141, 1985 Ky. AG LEXIS 9.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Fees to be paid into treasury, KRS 41.070.

When officers to enter upon duties, KRS 61.030 (see cross-references under Const., § 91).

Kentucky Bench & Bar.

Lear and Fleenor, Board and Commission Appointments: Executive Power — With Limits, Vol. 72, No. 4, July 2008, Ky. Bench & Bar 23.

Kentucky Law Journal.

Snyder and Irland, The Separation of Governmental Powers Under the Constitution of Kentucky: A Legal and Historical Analysis of L.R.C. v. Brown, 73 Ky. L.J. 165 (1984-85).

§ 95. Time of election of elected Constitutional State officers.

The election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Attorney General, Secretary of State, and Commissioner of Agriculture, Labor and Statistics, shall be held on the first Tuesday after the first Monday in November, eighteen hundred and ninety-five, and the same day every four years thereafter.

History.

Amendment, proposed by Acts 1992, ch. 168, § 13, and ratified November 3, 1992.

Compiler's Notes.

The General Assembly in 1992 (Acts 1992, ch. 168, § 13) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read: **"§ 95. Time of election of constitutional state officers.** — The election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Register of the Land Office, Attorney General, Secretary of State, Superintendent of Public Instruction, and Commissioner of Agriculture, Labor and Statistics, shall be held on the first Tuesday after the first Monday in November, eighteen hundred and ninety-five, and the same day every four years thereafter."

Section 19 of Acts 1992, ch. 168 provided: "It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding: **"(1)** The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

"(2) The term of office of Commonwealth's Attorneys and Circuit Clerks elected in 1993 shall be for a single term of seven years. The regular election for those offices shall then be held in 2000 and every six years thereafter.

"(3) The term of office of District Judges, Mayors, County Judges/Executive, and local officers who regularly serve a four-year term and who are scheduled to be elected in 1993 shall be for a single term of five years. The regular election for those offices shall then be held in 1998 and every four years thereafter.

"(4) The term of office for local officers who regularly serve a two-year term and who are scheduled to be elected in 1993 shall be for a single term of three years. The regular election

for those offices shall then be held in 1996 and every two years thereafter.

"(5) The term of office for Circuit Judges and Judges of the Court of Appeals elected in 1999 shall be for a single term of seven years. The regular election for those offices shall then be held in 2006 and every eight years thereafter.

"(6) The term of office for mayor, magistrate, or other officer not specifically provided for in subsection (4) of this section elected in 1995 shall be extended for one year and subsequent elections for offices subject to the provisions of this subsection shall be held in even-numbered years.

"(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years."

NOTES TO DECISIONS

1. County Officers.

This section and Const., §§ 97, 99 and 234 notwithstanding, social security contributions for county court clerk, county Circuit Court clerk and county sheriff were to be paid from State Treasury, not county fiscal court. Shamburger v. Commonwealth, 240 S.W.2d 636, 1951 Ky. LEXIS 1014 (Ky. 1951).

Cited:

Smith v. Coulter, 113 Ky. 74, 23 Ky. L. Rptr. 2384, 67 S.W. 1, 1902 Ky. LEXIS 11 (Ky. 1902); Ferguson v. Redding, 304 S.W.2d 927, 1957 Ky. LEXIS 291 (Ky. 1957); Brown v. Barkley, 628 S.W.2d 616, 1982 Ky. LEXIS 232 (Ky. 1982).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Time of election of public officers generally, Const., § 148.

§ 96. Compensation of Constitutional State officers.

All officers mentioned in Section 95 shall be paid for their services by salary, and not otherwise.

NOTES TO DECISIONS

1. Estoppel.

When the salary of a public officer is illegally reduced, he is not estopped from claiming the full amount by having accepted a lesser sum. Altes' Ex'x v. Beauchamp, 277 Ky. 491, 126 S.W.2d 867, 1939 Ky. LEXIS 679 (Ky. 1939).

Cited:

Louisville v. Louisville R. Co., 111 Ky. 1, 23 Ky. L. Rptr. 390, 63 S.W. 14, 1901 Ky. LEXIS 174 (Ky. 1901); Ferguson v. Redding, 304 S.W.2d 927, 1957 Ky. LEXIS 291 (Ky. 1957).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Compensation of constitutional state officers, KRS 64.480.

Maximum limit on salaries, Const., § 246.

SUFFRAGE AND ELECTIONS

Section

152. Vacancies — When filled by appointment, when by election — Who to fill.
155. School elections not governed by Constitution.

§ 152. Vacancies — When filled by appointment, when by election — Who to fill.

Except as otherwise provided in this Constitution, vacancies in all elective offices shall be filled by election or appointment, as follows: If the unexpired term will end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment for the remainder of the term. If the unexpired term will not end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, and if three months intervene before said succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment until said election, and then said vacancy shall be filled by election for the remainder of the term. If three months do not intervene between the happening of said vacancy and the next succeeding election at which city, town, county, district or State officers are to be elected, the office shall be filled by appointment until the second succeeding annual election at which city, town, county, district or State officers are to be elected; and then, if any part of the term remains unexpired, the office shall be filled by election until the regular time for the election of officers to fill said offices. Vacancies in all offices for the State at large, or for districts larger than a county, shall be filled by appointment of the Governor; all other appointments shall be made as may be prescribed by law. No person shall ever be appointed a member of the General Assembly, but vacancies therein may be filled at a special election, in such manner as may be provided by law.

NOTES TO DECISIONS

Analysis

1. In General.
2. Construction.
3. Application.
4. Appointive Offices.
5. Appointment.
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7. — Issuance of Writ.
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10. — Time.
11. — Late.
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13. — County.
14. — School Board.
15. — Town Trustee.
16. — Sheriff.
17. — Police Judge.
18. — Circuit Judge.
19. — District Judge.
20. — Commonwealth's Attorney.
21. State Officers.
22. Term.
23. Three-month Period.
24. Vacancy.

1. In General.

The Legislature has the power to prescribe how a vacancy in

the office of county judge shall be filled. Frost v. Johnston, 262 Ky. 592, 90 S.W.2d 1045, 1936 Ky. LEXIS 82 (Ky. 1936).

The Legislature has the power to prescribe by general law how county or district offices smaller than a county may be filled. Barton v. Brafford, 264 Ky. 480, 95 S.W.2d 6, 1936 Ky. LEXIS 354 (Ky. 1936), overruled, Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

2. Construction.

This section is mandatory, and has to be used in construing Const., § 160. Scott v. Singleton, 171 Ky. 117, 188 S.W. 302, 1916 Ky. LEXIS 306 (Ky. 1916).

3. Application.

This section applies only to vacancies. Campbell v. Dotson, 111 Ky. 125, 63 S.W. 480, 23 Ky. L. Rptr. 510, 1901 Ky. LEXIS 193 (Ky. 1901).

4. Appointive Offices.

This section does not affect the question of filling vacancies in appointive offices. Poyntz v. Shackelford, 107 Ky. 546, 54 S.W. 855, 21 Ky. L. Rptr. 1323, 1900 Ky. LEXIS 132 (Ky. 1900), overruled, St. Bernard Coal Co. v. Pittsburg Coal Co., 112 Ky. 418, 64 S.W. 288, 23 Ky. L. Rptr. 52, 1901 Ky. LEXIS 282 (Ky. 1901), overruled, Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901); Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901).

This section embraces only vacancies in elective offices, whether constitutionally or statutorily created, and has no application to the filling of vacancies in appointive offices. Rouse v. Johnson, 234 Ky. 473, 28 S.W.2d 745, 1930 Ky. LEXIS 220 (Ky. 1930).

5. Appointment.

Where a vacancy was created in the office of county coroner more than three (3) months before the next succeeding annual election, a new coroner was properly appointed only until his successor was elected at that election. Berry v. McCullough, 94 Ky. 247, 22 S.W. 78, 15 Ky. L. Rptr. 117, 1893 Ky. LEXIS 38 (Ky. 1893).

Where an elected city officer dies, a temporary appointment can be made only until the next time when a legal election of a successor can be held. Shelley v. McCullouch, 97 Ky. 164, 30 S.W. 193, 17 Ky. L. Rptr. 53, 1895 Ky. LEXIS 162 (Ky. 1895).

When three (3) months intervene between the time a vacancy occurs in an office and the next succeeding annual election, the appointment made to fill the vacancy properly lasts only until that election. Pence v. Frankfort, 101 Ky. 534, 41 S.W. 1011, 19 Ky. L. Rptr. 721, 1897 Ky. LEXIS 224 (Ky. 1897).

When the entire city board of trustees is vacated, the county judge is empowered to fill said vacancies by appointment, but only if the county court is in session. Chapman v. Horton, 59 S.W. 743, 22 Ky. L. Rptr. 1022 (1900).

Where the statute so directs, the Governor, and not the county judge, has the power to fill a vacancy in the office of justice of the peace. Daugherty v. Arnold, 110 Ky. 1, 60 S.W. 865, 22 Ky. L. Rptr. 1504, 1901 Ky. LEXIS 54 (Ky. 1901). See Olmstead v. Augustus, 112 Ky. 365, 65 S.W. 817, 23 Ky. L. Rptr. 1772, 1901 Ky. LEXIS 318 (Ky. Ct. App. 1901).

This section and Const., § 160 authorized legislature to enact law requiring that town board of trustees should by ordinance provide who would act in place of absent police judge. Grayson v. Bagby, 115 Ky. 651, 74 S.W. 659, 25 Ky. L. Rptr. 44, 1903 Ky. LEXIS 135 (Ky. 1903).

Where so provided by statute, the city council has authority to fill vacancy in office of police judge. Traynor v. Beckham, 116 Ky. 13, 74 S.W. 1105, 1903 Ky. LEXIS 167 (Ky. Ct. App. 1903).

An appointment cannot be made to fill a vacancy until a vacancy actually occurs. Shepherd v. Gambill, 75 S.W. 223, 25 Ky. L. Rptr. 333 (1903).

The provision that "all other appointments shall be made as may be prescribed by law" controls the appointment of school board members to fill vacancies in a school district that is not larger than the county. Glass v. Hopkinsville, 225 Ky. 428, 9 S.W.2d 117, 1928 Ky. LEXIS 798 (Ky. 1928).

Resignations of city officials are not effective until accepted by the city council, so that no vacancies exist and no appointments can be made until that time. Tabor v. Webb, 227 Ky. 611, 13 S.W.2d 758, 1929 Ky. LEXIS 919 (Ky. 1929).

6. Election.

7. — Issuance of Writ.

Issuance of a writ of election is a condition precedent to holding a valid election to fill a vacancy, and any steps theretofore taken by primary, convention or party authority, looking to filling of the vacancy, are absolutely void. Furste v. Gray, 240 Ky. 604, 42 S.W.2d 889, 1931 Ky. LEXIS 458 (Ky. 1931).

8. — General.

Vacancies in city offices may be filled at a general election of either state, county, town or district officers. Mullins v. Jones, 290 Ky. 796, 162 S.W.2d 761, 1942 Ky. LEXIS 488 (Ky. 1942).

9. — Special.

A special election to fill a vacancy in a city office may be held in a year in which congressmen are elected. Smith v. Doyle, 76 S.W. 519, 25 Ky. L. Rptr. 958 (1903).

Provision of Const., § 148 prohibiting election of local officers in same year in which members of congress are elected, and provision of Const., § 167 requiring election of city officers in odd years, do not apply to special elections to fill vacancies prescribed by this section. Smith v. Ruth, 308 Ky. 60, 212 S.W.2d 532, 1948 Ky. LEXIS 847 (Ky. 1948).

10. — Time.

The time when the election to fill a vacancy shall be held is fixed by this section, and cannot be prescribed by the Legislature. Todd v. Johnson, 99 Ky. 548, 36 S.W. 987, 18 Ky. L. Rptr. 354, 1896 Ky. LEXIS 121 (Ky. 1896).

11. — Late.

Even though election to fill vacancy in office that had been temporarily filled by appointment of city council should have been held in November, 1950 but due to an oversight was not held until November, 1951, the 1951 election was authorized. Cawood v. Hensley, 247 S.W.2d 27, 1952 Ky. LEXIS 661 (Ky. 1952).

12. — Territory.

The provision of this section for filling vacancies at the next succeeding annual election at which either city, town, county, district, or state officers are to be elected, places a limitation not only as to time but also as to territory, and the regular election must be one in territory of the same boundary, or contain the entire district or unit of government to which the office being filled belongs. Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946). See White v. Hubbard, 302 Ky. 820, 195 S.W.2d 781, 1946 Ky. LEXIS 739 (Ky. 1946).

13. — County.

An election under this section, to fill the unexpired term of an officer elected by the voters of a single county, could not be held in the November 1946 election, where the only officer to be elected at that time, representing a territory coextensive with the county, was a representative in congress, who was not a district or state officer within the meaning of this section.

Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946). See White v. Hubbard, 302 Ky. 820, 195 S.W.2d 781, 1946 Ky. LEXIS 739 (Ky. 1946).

14. — School Board.

Election for school board members, in scattered districts and parts of districts within a county, was not an election for city, town, county, district, or state officers at which an election to fill a vacancy in an office elected by the entire county could be held. Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946). See White v. Hubbard, 302 Ky. 820, 195 S.W.2d 781, 1946 Ky. LEXIS 739 (Ky. 1946).

A person appointed under KRS 160.190 to fill a vacancy on the school board would be entitled to serve for the balance of the unexpired term. Shields v. Wilkins, 449 S.W.2d 220, 1969 Ky. LEXIS 33 (Ky. 1969).

15. — Town Trustee.

Where a vacancy exists in the office of trustee of a town of the sixth class, it cannot be filled at a regular election at which members of congress only are elected. Provence v. Lucas, 107 S.W. 755, 32 Ky. L. Rptr. 1058 (1908).

16. — Sheriff.

A vacancy in the office of sheriff cannot be filled at an election at which only a representative in congress is to be voted for in the county in which the vacancy exists. Neeley v. McCollum, 107 Ky. 143, 53 S.W. 37, 21 Ky. L. Rptr. 823, 1899 Ky. LEXIS 150 (Ky. 1899). See Commonwealth v. Bush, 131 Ky. 384, 115 S.W. 249, 1909 Ky. LEXIS 37 (Ky. 1909).

17. — Police Judge.

A vacancy in the office of police judge and town marshal cannot be filled at an election at which no officer other than a member of congress is to be elected. Ferguson v. Hackett, 74 S.W. 708, 25 Ky. L. Rptr. 170, 1903 Ky. LEXIS 353 (Ky. Ct. App. 1903).

18. — Circuit Judge.

A vacancy in the office of Circuit Judge cannot be filled at an election at which no city, town, county, district, or state officer is to be elected in the judicial district in question. Eversole v. Brown, 53 S.W. 527, 21 Ky. L. Rptr. 925, 1899 Ky. LEXIS 634 (Ky. Ct. App. 1899).

An election to fill unexpired term of Circuit Judge must be held at an election at which either city, town, county, district or state officers are to be elected, which includes members of county board of education. Ward v. Siler, 272 Ky. 424, 114 S.W.2d 516, 1938 Ky. LEXIS 139 (Ky. 1938).

This section clearly prohibited an election during the November, 1978, election to fill the vacancy in the unexpired term in the 13th Division of Jefferson Circuit Court because there was no regular election to be held in Jefferson County embracing the entire county at that time. Peers v. Davis, 573 S.W.2d 331, 1978 Ky. LEXIS 405 (Ky. 1978).

19. — District Judge.

Where the appeal from the order of the Judicial Retirement and Removal Commission removing a district judge was affirmed by the Supreme Court on July 5, 1984, and a petition for rehearing was denied by the Supreme Court on August 1, 1984, whereupon the opinion affirming the Commission became final immediately, as of August 1, 1984, a vacancy occurred in the office of the district judge. Since this date was more than three (3) months before the next general election, the vacancy was required to be filled by election. Ashcraft v. Currier, 694 S.W.2d 707, 1985 Ky. LEXIS 243 (Ky. 1985).

20. — Commonwealth's Attorney.

Where there is a vacancy in the office of Commonwealth's Attorney, it should be filled at the next regular election where there is to be elected a member of the Court of Appeals, in the district which covers all the counties in the judicial district, even though members of congress are also elected. Robinson v. McCandless, 123 Ky. 602, 96 S.W. 877, 29 Ky. L. Rptr. 1088, 1906 Ky. LEXIS 187 (Ky. 1906).

21. State Officers.

As to the filling of a vacancy at election, where state officers are to be elected, presidential electors are "state officers" within the meaning of the provisions of this section and law providing for the filling of a vacancy in office of mayor, therefore, vacancy in office of mayor of Louisville could be filled at presidential election. Smith v. Ruth, 308 Ky. 60, 212 S.W.2d 532, 1948 Ky. LEXIS 847 (Ky. 1948).

22. Term.

An appointee has the right to hold his office until a successor is elected, but if that successor for any reason fails to qualify, a vacancy exists, and the appointee is not entitled to hold over for a second term. Terry v. Hargis, 74 S.W. 271, 24 Ky. L. Rptr. 2498, 1903 Ky. LEXIS 474 (Ky. Ct. App. 1903).

A person appointed to fill a vacancy must relinquish his right to the office immediately upon the election and qualification of his successor. Jones v. Sizemore, 117 Ky. 810, 79 S.W. 229, 25 Ky. L. Rptr. 1957, 1904 Ky. LEXIS 248 (Ky. 1904).

General Assembly had power under Const., § 160 to prescribe qualifications and fix manner of filling vacancies for municipal offices, but not to extend length of time of office holding beyond time fixed by this section. Scott v. Singleton, 171 Ky. 117, 188 S.W. 302, 1916 Ky. LEXIS 306 (Ky. 1916).

This section indicated, through its language, that "term" was to mean full term of four (4) years, as opposed to "part of a term." Schardein v. Harrison, 230 Ky. 1, 18 S.W.2d 316, 1929 Ky. LEXIS 5 (Ky. 1929), overruled, Little v. Bogie, 300 Ky. 668, 190 S.W.2d 26, 1945 Ky. LEXIS 625 (Ky. 1945).

The term of one appointed to fill a vacancy in the office of justice of the peace comes to an end at the next succeeding election at which the vacancy could have been filled. Anderson v. McBrayer, 230 Ky. 93, 18 S.W.2d 859, 1929 Ky. LEXIS 7 (Ky. 1929). But see Hester v. Robbins, 292 Ky. 12, 165 S.W.2d 817, 1942 Ky. LEXIS 15 (Ky. 1942).

One appointed to fill a vacancy in the sheriff's office may exercise the rights and duties of that office until the next election at which a successor may be elected. McWilliams v. Madison County, 243 Ky. 498, 49 S.W.2d 319, 1932 Ky. LEXIS 144 (Ky. 1932).

Where vacancy in office of sheriff occurs at a time requiring an election to fill the remaining portion of the term at the next regular election, the appointee occupies the office to the end of the vacated term with rights and duties of one who was elected to a full term. Jordon v. Baker, 252 Ky. 40, 66 S.W.2d 84, 1933 Ky. LEXIS 1007 (Ky. 1933).

The term of a police judge is four (4) years. Mullins v. Jones, 290 Ky. 796, 162 S.W.2d 761, 1942 Ky. LEXIS 488 (Ky. 1942).

If the only annual election for officers occurring between the time of an appointment to fill a vacancy and the time at which the next regular term for the office will commence is the election at which the office is to be filled for the next four (4) year term, the appointee shall continue in office until the new term commences, and there shall be no election to fill the vacancy for the short period between the November election and the beginning of the new term in January. Hester v. Robbins, 292 Ky. 12, 165 S.W.2d 817, 1942 Ky. LEXIS 15 (Ky. 1942).

23. Three-month Period.

The three (3) month intervening period has no application in those cases in which the term or unexpired term ends with a succeeding annual election at which city, town, county, district or state officers may be elected under provisional laws. Mullins v. Jones, 290 Ky. 796, 162 S.W.2d 761, 1942 Ky. LEXIS 488 (Ky. 1942).

24. Vacancy.

On the creation of a new Circuit judgeship in a district, a vacancy exists, and the Legislature has no power to provide for an election to fill the office at an election at which there would be no election to elect other state, district, or county officers. Yates v. McDonald, 123 Ky. 596, 96 S.W. 865, 29 Ky. L. Rptr. 1056, 1906 Ky. LEXIS 186 (Ky. 1906).

A vacancy in office exists in the contemplation of the law when it is not filled by one who is legally qualified to fill it, and who has a right to continue therein. Eagle v. Cox, 268 Ky. 58, 103 S.W.2d 682, 1937 Ky. LEXIS 411 (Ky. 1937). See Long v. Bowen, 94 Ky. 540, 23 S.W. 343, 15 Ky. L. Rptr. 276, 1893 Ky. LEXIS 92 (Ky. Ct. App. 1893).

A public official has the right to hold his office until the expiration of his term, at which time a vacancy occurs if no successor is appointed or elected. Warren v. Blatt, 280 Ky. 185, 132 S.W.2d 933, 1939 Ky. LEXIS 95 (Ky. 1939).

By statute, an officer of a fourth-class city who becomes financially interested in any contract with the city shall vacate his office, but he is not disqualified from being elected in the next annual election to serve for the remainder of the term. Commonwealth ex rel. Funk v. Huntsman, 237 S.W.2d 876, 1951 Ky. LEXIS 793 (Ky. 1951).

An office is vacant when it is without an incumbent who is legally qualified to hold it or incumbent has no right to exercise its functions or receive emoluments thereof. Hancock v. Queenan, 294 S.W.2d 92, 1956 Ky. LEXIS 117 (Ky. 1956).

Legislature has power to prescribe condition which, when voluntarily accepted by incumbent officer, would bring about event which has legal effect of vacating office. Hancock v. Queenan, 294 S.W.2d 92, 1956 Ky. LEXIS 117 (Ky. 1956).

When Circuit Judge's application for transfer or assignment to office of special judge was accepted by order of Court of Appeals, vacancy was ipso facto created by operation of law, for purpose of constitutional provision making appointment to vacated office effective only until next election, if it occurs more than three (3) months thereafter. Hancock v. Queenan, 294 S.W.2d 92, 1956 Ky. LEXIS 117 (Ky. 1956).

Cited:

Belknap v. Louisville, 99 Ky. 474, 36 S.W. 1118, 18 Ky. L. Rptr. 313, 1896 Ky. LEXIS 122 (Ky. 1896); Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901); Morgan v. Goode, 151 Ky. 284, 152 S.W. 584, 1912 Ky. LEXIS 820 (Ky. 1912); Murray v. Irvan, 170 Ky. 290, 185 S.W. 859, 1916 Ky. LEXIS 43 (Ky. 1916); Meagher v. Howell, 171 Ky. 238, 188 S.W. 373, 1916 Ky. LEXIS 341 (Ky. 1916); Jarvis v. Stanley, 176 Ky. 630, 197 S.W. 183, 1917 Ky. LEXIS 94 (Ky. 1917); Patton v. Jarvis, 185 Ky. 402, 215 S.W. 71, 1919 Ky. LEXIS 310 (Ky. 1919); Craft v. Baker, 194 Ky. 205, 238 S.W. 389, 1922 Ky. LEXIS 126 (Ky. 1922); Baker v. Combs, 194 Ky. 260, 239 S.W. 56, 1922 Ky. LEXIS 165 (Ky. 1922); Revis v. Daugherty, 215 Ky. 823, 287 S.W. 28, 1926 Ky. LEXIS 818 (Ky. 1926); Anderson v. McBrayer, 230 Ky. 93, 18 S.W.2d 859, 1929 Ky. LEXIS 7 (Ky. 1929); Douglas v. Pittman, 239 Ky. 548, 39 S.W.2d 979, 1931 Ky. LEXIS 811 (Ky. 1931); Ginsburg v. Giles, 254 Ky. 720, 72 S.W.2d 438, 1934 Ky. LEXIS 146 (Ky. 1934); Ball v. Cawood, 275 Ky. 108, 120 S.W.2d 776, 1938 Ky. LEXIS 373 (Ky. 1938); Culbertson v. Moore, 302 Ky. 768, 196 S.W.2d 308, 1946 Ky. LEXIS 742 (Ky. 1946); Commonwealth ex rel. Funk v. Huntsman, 237 S.W.2d 876, 1951 Ky. LEXIS 793 (Ky. 1951); In re Appointment of Clerk of Court of Appeals, 297 S.W.2d 764, 1957 Ky. LEXIS 357 (Ky. 1957).

OPINIONS OF ATTORNEY GENERAL.

Where a constable moved out of state and his whereabouts were unknown and his bond was cancelled, the county court could require him to renew his bond and upon his failure to do so declare the office vacant, whereupon an appointment could be made to the office until an election could be held. OAG 60-371.

Where a vacancy occurs in the office of county tax commissioner by reason of the death of the incumbent, a successor appointed to fill out the term serves until a successor is elected in an election held under the terms of this section of the Constitution and qualifies for office. OAG 60-530.

Where a vacancy occurs in the office of police judge and there is no other provision by law for filling the vacancy, the vacancy is to be filled by the Governor as provided in KRS 63.190, subject to the provisions of this section of the Constitution. OAG 61-231.

Where the appointment of a successor was made to fill the office of a county clerk who died after his election but before assuming office, he would serve until the next regular election embracing that county. OAG 61-1014.

The city council in a city of the fifth class is authorized to fill vacancies in city offices including councilmen. If a person who was elected to the council in November was serving as a member of the council at the time of his death, the vacancy should be filled by the city council only until the expiration of his term on the first Monday in January following. At that time a vacancy would again be created and the incoming council would appoint someone to fill such vacancy until an election could be held under the terms of this section of the Constitution. On the other hand, if the newly elected but deceased member was not serving on the board, then no vacancy would exist until the first Monday in January at which time the new council would fill the vacancy until an election could be held as above indicated. OAG 61-1075.

The terms of this section control the time for filling vacancies regardless of any statutes that may conflict herewith. OAG 62-381.

Where a commissioner assumed the office of mayor pro tem, the other commissioners with the mayor pro tem voting as mayor, would appoint a new commissioner to serve out the term. OAG 62-1151.

Where the mayor of the city died and a mayor pro tem was appointed, under this section of the Constitution the pro tem mayor would serve for the balance of the deceased mayor's elected term. OAG 62-1151.

Federal elections are not state elections within the meaning of this section of the Constitution. OAG 65-864.

Where it was anticipated that the police judge would resign, the vacancy could be filled by an appointment of the city council but the appointment would only be valid until the next regular election that embraced the city. OAG 65-877.

Where a county had gone under the commission form of government and no one ran for the office of constable, the county judge could appoint a constable to fill the constable vacancy existing in each magisterial district of the county, subject to the provisions of this section of the Kentucky Constitution. OAG 66-105.

Where no election that qualified as a regular election was to be held in the fall, a person appointed to fill the vacant office of county tax commissioner could not be placed on the primary ballot to run for the unexpired term. OAG 66-230.

Where a dormant city was never dissolved, all that was necessary to activate it was for the county court to fill by appointment, subject to this section of the Constitution, the board of trustees pursuant to KRS 88.230 (repealed). OAG 66-335.

Where two (2) cities of the fourth class merge, only the tenure of the two (2) legislative bodies is preserved and all other elective offices are abolished, including police judge; the new offices created by the merger must be filled by the combined legislative bodies pursuant to KRS 86.240 (repealed) and the unexpired term of such offices must be filled at the next regular election pursuant to this section of the Constitution. OAG 67-149 and OAG 67-514.

This section is applicable to determine the procedure for filling a vacancy in the office of county attorney created by the death of the incumbent. OAG 67-195.

Where a city commissioner served as mayor pro tem following the death of the mayor in the last year of the mayor's term of office the pro tem would continue to serve until the expiration of the regular term. OAG 67-296.

Where a police judge was appointed it was necessary that he be nominated in a primary before he could run for the unexpired term. OAG 67-512.

Officers of a city of the sixth class appointed by the Circuit Court should serve only until the November general election following appointment at which time, if no one is elected to these offices, the vacancies should be filled by the county court pursuant to KRS 88.230 (repealed) except the office of city judge which should be filled by the Governor pursuant to KRS 63.190. OAG 68-3.

Presidential electors are state officers and the election at which they are elected is a statewide election. OAG 68-199 and 68-371.

If a vacancy occurs in the office of city police judge less than 70 days before a primary election, there would be no primary election to determine a party candidate for the office, but major parties would be permitted to nominate a candidate under the provisions of KRS 119.030 (repealed). OAG 68-243.

The prohibition against electing city, county or state officers at the same election in which members of congress are elected contained in Const., § 148 is applicable only to general elections and not to special elections held to fill a vacancy pursuant to this section. OAG 68-275.

Where vacancies occurred in the offices of magistrate and constable more than three (3) months before the general election, they had to be filled at said election for the unexpired term. OAG 68-467.

Officers elected to fill vacancies created by the merger of cities and the reclassification of the new city to that of a city of the fourth class, hold office for the unexpired term of the office to which they are elected. OAG 68-575.

A vacancy in the office of jailer filled by appointment by the county judge must, under this section of the Constitution, be filled by an election held for this purpose at the next succeeding general election at which there is a regular election embracing the area in which the vacancy occurred. OAG 70-160.

Congressional elections are federal elections and do not qualify as a regular state election within the meaning of this section. OAG 70-197, 70-232, 70-247 and 70-266.

Persons appointed to the office of city commissioner to fill vacancies created when candidates for the office failed to qualify, hold the office until an election can be held pursuant to this section, and an election for school board members is a "regular election embracing the area in which the vacancies occur" if the school district for which the board members are to be elected embraces the entire city. OAG 70-228.

This section requires a vacancy that occurs more than three (3) months prior to the November election to be filled at said election provided there is a regular election embracing the area in which the vacancy has occurred and if there is no such election the vacancy will be filled at the succeeding annual election. OAG 70-247.

School board elections are not county wide and consequently do not qualify as regular elections embracing the entire county as required by this section. OAG 70-266 and 70-347.

The only possible regular election to fill a vacancy in a city office in November 1970 would be a school board election and that would qualify only if it embraced the entire city. OAG 70-606.

A school district election would not qualify as a state election so that a person appointed to fill a vacancy in the office of police judge could run for the unexpired term where the school district boundaries did not embrace the entire city. OAG 70-631.

The only possible regular election in November 1970 at which a vacancy in the office of police judge could be filled would be a school board election embracing the entire city. OAG 70-635.

Where a vacancy occurs in the office of county attorney and the vacancy is not filled with reasonable haste, if there is one lawyer in the county who meets the constitutional requirements for the office, the county judge is subject to a mandamus action by a taxpayer in which the plaintiff could procure an order of the Circuit Court requiring the county court to fill the vacancy. OAG 70-650.

Where there was a vacancy on the city council filled by appointment prior to a regular school board race, the vacancy on the council would have to be placed on the ballot even though no candidate filed for the unexpired term. OAG 70-732.

Where a vacancy occurred in the office of magistrate but there was no regular election for public office embracing the area of the magisterial district, an attempted election to fill the office would be considered a void election under this section. OAG 70-767.

This section requires all vacancies in elective office to be filled at the next regular election embracing the area where the vacancy occurs. If the incumbent resigns less than three (3) months before the general election, the appointee would then hold until the next succeeding general election. If the incumbent retires after the primary but more than three (3) months prior to the November election, the major political parties may nominate a candidate pursuant to local party rules for the November election and independent candidates may also file petitions under KRS 118.135 (repealed). OAG 71-9.

Where a new judicial district was created and a Commonwealth Attorney appointed on January 1, 1971, but a regular election was to be held in 1971, there would have to be an election at the regular election to fill the vacancy in the office of Commonwealth Attorney. OAG 71-40.

Where a magistrate died after the primary election in a year in which a statewide election was to be held, a replacement could be appointed to hold office only until the November election at which time a magistrate would be elected to take office immediately. OAG 71-257.

Where the county attorney was nominated to run for the office of Commonwealth Attorney, no vacancy would occur in the office of county attorney until the incumbent resigned or assumed his duties as Commonwealth Attorney following his election. OAG 71-267.

Where the county clerk's wife had always worked in the county clerk's office, she would not automatically become county clerk on his death but she could be appointed to fill the vacancy. OAG 71-375.

Where a mayor resigned effective July 31 and the city council appointed one of its members to fill the vacancy, both the vacancy in the office of mayor and the vacancy on the city council would have to be filled at the November election. OAG 71-381.

Those appointed to fill vacancies in the offices of Commonwealth's Attorney and county attorney will hold office until the next general election, at which time there must be an election to fill the unexpired terms pursuant to this section. OAG 72-10.

Where city police judge retired in February with one (1) year and eleven (11) months to go in his term, the vacancy must be filled at the next regular election embracing the area in which the vacancy occurs. OAG 72-83.

Where the mayor and city police judge resigned their offices in January, 1972, the vacancies existing until December 31, 1973 must be filled at the next regular election, in November, 1972, embracing the area in which the vacancies occurred,

even though the city council appointed individuals to fill the vacancies. OAG 72-87.

Since the 1972 election of presidential electors constitutes a statewide election, a vacancy in the office of county jailer must be filled at that election, even though the next countywide election will not be until 1973. OAG 72-101.

Where the city council voted to replace one of their number after he resigned his office in 1972, the remainder of the term must be filled at the statewide election in November, 1972, so that the newly appointed member must run for election at that time if he desires to complete the entire term of the resigned councilman. OAG 72-172.

Where a vacancy in office had been filled by appointment by the Governor and the person so appointed did not seek to fill the unexpired term at the last November election, the vacancy must be filled at the next general election in the area in which the vacancy occurred. OAG 72-332.

A vacancy which occurred on a city council on June 12 must be filled in the next November election as provided in this section. OAG 72-527.

Where a vacancy occurred on August 7, that day must be excluded in computing the three (3) month period which would be on a calendar basis and, therefore, the period of time to be computed would begin on August 8 and end at midnight November 7, 1972 and three (3) months would not intervene between the time the vacancy occurred and the day of the election. OAG 72-625.

A person appointed to fill a vacancy in office which had occurred on May 30, 1972 may be a candidate for the unexpired term of office in the November, 1972 election. OAG 72-626.

A vacancy in the office of Circuit Court clerk occurring more than three (3) months before the general election would be filled at that time but a vacancy occurring less than 70 days before the primary should be made in a manner determined by the governing authority of the political party concerned, pursuant to KRS 119.030 (repealed). OAG 73-587.

If a Circuit clerk retires effective January 1, 1974, the Circuit Judge of the district is empowered to fill the vacancy by appointment, but all vacancies in an elective office must be filled at the succeeding regular election which in this case would be the regular election for Circuit clerk in November, 1975. OAG 73-606.

When there is no constable presently serving in a district and no one applied for nomination, the county court could appoint someone to fill the unexpired term ending this year, but since it is too late for any person to file for this office and have his name appear on the ballot, the only method whereby a candidate can be elected in November for the office would be by write-in votes. OAG 73-648.

Where the office of sheriff was forfeited and vacated and a new sheriff was appointed to fill the office, the newly appointed sheriff fills the unexpired term and the person elected sheriff in the following November election would take office on the first Monday in January 1974 after that election. OAG 73-687.

Where an incumbent mayor who had been reelected to another term beginning January 7, 1974, died on December 15, 1973, the present city council would be authorized to appoint someone as mayor to fill the vacancy for the remainder of this term and the newly elected council would then appoint someone to serve as mayor until the next regular election for the area in which the vacancy occurred which would be the 1975 general election. OAG 73-863.

A police court judge appointed by a city council to fill a vacancy would serve until the next election for statewide offices and until the person elected at that time received his certificate of election and qualified. OAG 74-120.

Where sixth-class city was reclassified to a fifth-class city, vacancies on the city council and the office of mayor were filled by appointment of the council until the next regular election for all of the county pursuant to this section. OAG 74-286.

The election of city officers has to be held when there is a regular election for appellate court judge for the district in which the city is located. OAG 74-338.

The election of members of the United States Senate and House of Representatives does not qualify as a state election under this section. OAG 74-338.

If the mayor of a fourth-class city resigns three (3) months prior to a November school board election embracing the city, this requires the vacancy to be filled at the election, but if the resignation is less than three (3) months prior to such an election, the appointee would automatically serve until the second succeeding election. OAG 74-558.

Federal elections for United States Senator and members of the House of Representatives do not qualify as regular elections under the terms of this section. OAG 74-655.

If a vacancy occurs in the office of city council less than 70 days before the primary preceding a regular school board election embracing the entire city and is filled by appointment, the major parties may nominate to fill, or any independent may file a petition for, the vacancy at the coming election and the person elected would be entitled to take office immediately after receiving his certificate of election and executing the oath of office. OAG 74-655.

Since the November, 1975 election embraced the entire state, an election at that time to fill the vacancy in the office of city prosecutor who had to be nominated at the special city primary was proper. OAG 75-245.

Pursuant to KRS 88.180 (repealed), members of the boards of trustees in cities of the sixth class must be elected every two (2) years in the odd years although an election was held in 1974 at which the present officers were elected to fill vacancies for the remainder of the unexpired term in compliance with § 152, Const. OAG 75-473.

Where mayor of city resigned in December 1975, the city council should appoint a successor who would serve until the 1976 general election (statewide election) whereupon a successor would be elected to serve out the unexpired term. OAG 75-660.

Where a vacancy in the office of mayor existed more than three (3) months prior to the next regular statewide election and where at election time there would be a two (2) year unexpired term to fill, the vacancy had to be filled at the next regular election and if no candidate filed for the unexpired term then the office of mayor was legally required to be listed on the ballot to enable voters to write in a candidate. OAG 75-707.

As presidential electors are considered state officers, election of such electors is a regular statewide election which means that any vacancies in elective offices should be filled at that time by election. OAG 75-672 and 76-24.

Neither a "write-in" candidate nor any other who did not receive sufficient votes to be elected to city council would be entitled to assume office if a duly elected member in the same election could not for any reason take office, since the proper procedure would be for the council to declare a vacancy which could then be filled pursuant to this section and KRS 86.240 (repealed). OAG 75-673.

An appointee to a vacancy in an elected office serves until the next general election in the area served by that office. However, if the vacancy occurs less than three (3) months before the election, the appointee serves until the succeeding election. OAG 76-103.

The election of presidential electors qualifies as a state election which embraces the area in which the vacancy in the office of sheriff has occurred. OAG 76-103.

The election of presidential electors qualifies as a state election which embraces the area in which the vacancy in the office of magistrate has occurred. OAG 76-119.

Where a vacancy occurs in a magisterial district and is temporarily filled by appointment by the Governor, the vacancy must be filled at the next regular election which embraces the area in which the vacancy occurred. OAG 76-179.

Where vacancies caused by resignations in the office of mayor and the city council for a city of the fourth class were to be filled at the next annual election, the appointees to fill such vacancies would serve only until the election. OAG 76-179.

After the resignation of a member of the common council of a third class city the council is authorized at the same meeting, if it so desires, to appoint, pursuant to motion, a successor and nominations to fill vacancies can be made by any member of the council. OAG 76-470.

Where a vacancy occurred in a county office less than three (3) months prior to the coming November election and where the unexpired term ended at the next general election, the person appointed to fill the vacancy would serve out the remainder of the unexpired term and there would be no short term election. OAG 76-534.

All vacancies in elective offices must be filled at the next regular election embracing the area in which the vacancy occurs. OAG 78-16, 1978 Ky. AG LEXIS 698.

Where a redistricting created a new magisterial district and where the only elections to be held in the county where a federal election and school board elections which would not embrace the entire district, no election could be held to fill the unexpired term of magistrate until the statewide election in the following year. OAG 78-98, 1978 Ky. AG LEXIS 622.

Federal elections do not qualify under this section as State elections. OAG 78-98, 78-126.

Where a vacancy in the office of county attorney was filled by appointment and no elections were scheduled for November of that year which would embrace the entire county, the appointee would hold office until the statewide election in November of the following year. OAG 78-126, 1978 Ky. AG LEXIS 599.

Where the county judge has died between terms, an election to fill that office in 1978 is mandatory where there is, scheduled in 1978, a Supreme Court race in the district which embraces the county in question. OAG 78-154, 1978 Ky. AG LEXIS 574.

This section of the Constitution applies to all vacancies in elective offices except as otherwise provided in the Constitution, thus where a Circuit Judge resigned and a replacement to fill the vacancy was appointed on February 9, 1978, a candidate for the unexpired term must run in the November, 1979, election. OAG 78-194, 1978 Ky. AG LEXIS 517.

Where a person was appointed to fill vacancy of Commonwealth Attorney on January 2, 1978, he would not be required to run for the unexpired term at any time prior to November, 1978. OAG 78-198, 1978 Ky. AG LEXIS 528.

Where the duly elected jailer died on February 18, 1978, and the county judge/executive appointed a jailer to take his place, the date that an election would be required to fill this vacancy for the unexpired term would be November, 1979. OAG 78-200, 1978 Ky. AG LEXIS 511.

If a vacancy on the town board occurred more than three (3) months prior to the 1978 general election, this section of the Constitution would require the vacancy be filled at that time, provided there was a regular election embracing the city, otherwise the appointee would serve out the remainder of the unexpired term which ended January, 1980, since the next regular election would be in November, 1979. OAG 78-217, 1978 Ky. AG LEXIS 533.

Federal congressional elections in 1978 did not qualify as State elections under this section. OAG 78-229, 1978 Ky. AG LEXIS 516.

If there were parts of the city that were not included in either or both of two (2) school elections there would be no regular election embracing the entire city within the meaning of this section of the Constitution and no election could be held for the unexpired term of a city council member and, accordingly, an appointee could serve out the remainder of the unexpired term ending in January, 1980, since the next regular election for city council would be at the November, 1979, election. OAG 78-229, 1978 Ky. AG LEXIS 516.

If there were school elections in both the county and independent school districts in 1978 and their territory is adjacent to each other and at the same time (by the combined elections) takes in the entire City of Murray though neither alone embraces the City of Murray, the terms of § 152 would be complied with in that there would be regular elections at which all of the voters of the city would participate though they would not be entitled to vote for the same officers and, consequently, a vacancy on the city council would have to be filled in those November elections rather than allowing an appointee to finish the term. OAG 78-229, 1978 Ky. AG LEXIS 516.

Where a county's magisterial districts are reapportioned pursuant to KRS 67.045 and as a result of such reapportionment more districts are established than existed prior to reapportionment, vacancies are auto matically created in the new districts at the time the reapportionment becomes effective and these vacancies must be filled by appointment of the Governor until an election can be held for the unexpired term or terms, pursuant to this section of the Constitution. OAG 78-282, 1978 Ky. AG LEXIS 463.

Where an appointment has been made to fill a vacancy, and an election must be made to fill the unexpired term, it must occur at the same time as the next regular election embracing the entire area where the vacancy occurred, and this may include a school board election, provided the school district covers the entire jurisdiction, but does not include a federal election. OAG 78-439; OAG 78-451, 1978 Ky. AG LEXIS 278.

This section requires that all vacancies in elective offices must be filled at the next regular election embracing the area in which the vacancies have occurred, and although federal elections do not qualify, school elections can qualify if all of the qualified voters of the city will be entitled to vote in the school election. OAG 78-552, 78-566.

Special elections involving public questions would not qualify as a regular election during which a special election to fill a vacancy might be filled since this section refers only to regular elections for public officers. OAG 78-566, 1978 Ky. AG LEXIS 258.

A town which lost a city commissioner due to death and has filled the post by appointment and which is having school board elections which cover the whole town must fill this vacancy with a special election at that time. OAG 78-612, 1978 Ky. AG LEXIS 214.

Once a municipality is incorporated it remains so incorporated unless its charter is forfeited in a legal proceeding in Circuit Court, and if a city has not been dissolved, it still exists and all that is necessary to activate it would be for the county court to fill by appointment, subject to this section of the Constitution, the board of trustees pursuant to KRS 88.230 (repealed), which in turn can fill all other appointive offices, including that of marshal; and once the necessary officials have been appointed, they can proceed to operate under the charter of sixth-class cities. OAG 78-632, 1978 Ky. AG LEXIS 199.

When the mayor resigns, a vacancy is automatically created which is to be filled by the city council as provided in KRS 87.210 (repealed), which would be subject to the requirement of this section of the Constitution concerning the filling of vacancies for unexpired terms, and the appointee would serve until an election could be held, which obviously could not be held this coming November election if the vacancy occurred immediately, or less than three (3) months before the November election as provided by the Constitution, but it must be filled at the November, 1979, election if the term does not end

that year because there is a statewide election which obviously would embrace the entire city. OAG 78-647, 1978 Ky. AG LEXIS 187.

If the mayor of a fourth-class city resigns his office in January of 1979 or at any time less than 70 days before the May primary (May 29), party nominations would have to be made at the May primary for the November election, which would be an election for an unexpired term since the present term would not expire until January, 1982, the next regular election being in November, 1981, but candidates for the vacancy could run as independents by filing not less than 55 days before the November election, and parties could make a nomination for the November election if the vacancy occurred less than 70 days before the May primary, and regardless of whether anybody files for the vacancy, the office would have to be listed on the November ballot, providing of course the vacancy occurs less than three (3) months before the November election as provided in this section of the Constitution. OAG 78-784, 1978 Ky. AG LEXIS 44.

A person elected to office may resign from office at any time and for any reason, and such resignation of itself does not in any way affect his qualifications to hold office or his right to change his mind and decide to run for the unexpired term to which he was elected. OAG 79-65, 1979 Ky. AG LEXIS 550.

A person initially elected for the regular four (4) year term as jailer, but who subsequently resigned, can run for nomination in the May primary and, if nominated, for election in November for the unexpired term. OAG 79-65, 1979 Ky. AG LEXIS 550.

Where a vacancy occurred in the office of county attorney and the regular county attorney term would end December 31, 1981, the office would be filled by appointment until the election of November, 1979, at which election the vacancy would be filled by election for the remainder of the term. OAG 79-266, 1979 Ky. AG LEXIS 364.

Where a county clerk died in office July 5, 1979, his successor was appointed July 10, 1979, his term would not expire in 1979, and the 1979 general election would be held on November 6, there were more than three (3) months between the date of death and election day, and therefore an election would be held to fill the vacancy, for the remainder of the term, on November 6, 1979. OAG 79-419, 1979 Ky. AG LEXIS 211.

Where a county jailer, elected in 1977, resigned in July, 1978, his appointed successor would be required to seek election to fill the vacancy in the 1979 election, since, as a statewide election, that would be the first election embracing the area in which the vacancy occurred. OAG 79-462, 1979 Ky. AG LEXIS 170.

Where a mayor of a city of the fifth class, elected in November, 1977, resigned in May, 1978, the position should have been filled by an election in November, 1979, and failure to do so created a vacancy which would have to be filled until November, 1980, at which time it must be filled pursuant to this section. OAG 79-653, 1979 Ky. AG LEXIS 6.

A vacancy on the board of commissioners in a city of the fourth class created in April, 1980, must be filled at the November, 1980, election under the terms of this section irrespective of the provisions of KRS 89.140 (repealed), since under this section, which supersedes any statute to the contrary, all vacancies must be filled at the next regular election embracing the area in which they occur if three (3) months intervene. OAG 80-322, 1980 Ky. AG LEXIS 339.

Since this section requires that a city hold an election in November, 1980, to fill a vacancy on the city commission that occurred in April, 1980, even though the unexpired term ran through December, 1981, and since the city will be operating under the general election laws as of July 15, 1980, any candidate desiring to run for the unexpired term must file an independent petition not less than 55 days before the November election on the form prescribed by the state board of elections and KRS 118.365(2). OAG 80-322, 1980 Ky. AG LEXIS 339.

Where a justice of the peace, whose term was to expire at the end of December, 1981, moved out of his district in July, 1980, a vacancy was thereby created on the fiscal court; the Governor fills the vacancy by appointment until the November, 1980, general election, at which time the vacancy will be filled by election for the remainder of the unexpired term. OAG 80-425, 1980 Ky. AG LEXIS 234.

Where a vacancy occurred in the office of city commissioner under the commission form of government in June, 1979, and no election was or could be held that November under this section, the vacancy would have to be filled at the November, 1980, general election since the voters are electing presidential electors who are classified as state officers. OAG 80-267, 1980 Ky. AG LEXIS 376.

Where a vacancy in the office of mayor occurred in October, 1979, which was too late for the office to be placed on the November, 1979, ballot, it must be placed on the November, 1980, ballot, to be filled for the unexpired one (1) year term, irrespective of whether or not anyone files for the office, since presidential electors, who are statewide officers, are being elected in November, 1980. OAG 80-405, 1980 Ky. AG LEXIS 256.

Where vacancies occur in the office of mayor and in one of the positions on a city council, the city council or its clerk should notify the county clerk that the two (2) vacancies exist, and the fact that they must be filled at the November election pursuant to this section; any person who desires to run for the unexpired terms of said offices will be required to file a petition under the terms of KRS 118.215 and 118.315. OAG 80-386, 1980 Ky. AG LEXIS 264.

Where vacancies occur in the office of mayor and in one of the positions on the city council in July, 1980, this section requires that the unexpired terms be filled at the November, 1980, general election, since presidential electors will be elected then and they are considered statewide officers which would make that election qualify under the terms of this section. OAG 80-386, 1980 Ky. AG LEXIS 264.

A city council may increase the size of the council from seven (7) to eight (8) by appropriate ordinance at any time, but preferably before the filing deadline for a nonpartisan primary procedure adopted pursuant to KRS 83A.170, and may immediately fill the vacancy by appointment, subject to an election for the unexpired term as required by this section. OAG 81-131, 1981 Ky. AG LEXIS 312.

Where a city has enacted an ordinance providing for nonpartisan city elections under KRS 83A.170, and at the special city primary in May nominations were made for only three (3) of the four (4) city commissioner positions, write-in votes cannot be cast for the fourth position at the November election, since KRS 83A.170 requires a person to be nominated in a special city primary in order to hold the office to be filled in the November election; thus, because only three (3) commissioners were nominated, only three (3) can be elected at the November election and a vacancy will be created when the new commission members are to take office on the first Monday in January, at which time the elected commissioners would be authorized to fill the vacancy pursuant to subsection (4) of KRS 83A.040, subject to the provisions of this section governing the filling of all vacancies in elective office which would require an election to be held at the next regular election. OAG 81-263, 1981 Ky. AG LEXIS 176.

If letter of the elected county jailer, which contained an explicit resignation effective April 1, 1982, was tendered to the county judge/executive, then the resignation was effective, regardless of a later letter in which the jailer attempted to withdraw his resignation, where the county judge/executive communicated no acceptance of the resignation, but did the equivalent of appointing a successor. OAG 82-222, 1982 Ky. AG LEXIS 436.

Where upcoming school board race would not embrace entire magisterial district, as would be required in order to qualify as a regular election embracing the magisterial district under the terms of this section, and there were no other regular state or local elections embracing the county (federal elections for members of Congress not qualifying as state elections under the terms of this section), vacancy in the office of justice of the peace in the magisterial district could not be filled at the coming November 1982 election, and the Governor's appointee to fill this vacancy would have to serve until the 1983 general election, at which time an election for statewide officers would have to be held. OAG 82-257, 1982 Ky. AG LEXIS 377.

City council vacancy existing in April, 1982, could not be filled for the unexpired term unless there was no regular election in the fall of 1982 embracing the city. If there was such an election as, for example, a school board election or an election for the Supreme Court, then this section would require the vacancy to be filled at that time for the unexpired term; if there was no qualifying election under the terms of the Constitution, then the mayor's appointee would serve for the remainder of the term. OAG 82-351, 1982 Ky. AG LEXIS 298.

Where a vacancy was created in the office of mayor on March 1, 1982, in a city of the sixth class, and was properly filled by appointment, if there was a regular school board election that embraced such city to be held at the November 1982 election, the vacancy in the office of mayor must be filled at that time; furthermore, as a member of the city commission was appointed to fill the vacancy in the office of mayor, the vacancy on the commission must also be filled for the unexpired term at the same time the office of mayor was filled. OAG 82-397, 1982 Ky. AG LEXIS 244.

Where the constable elected at the November 1981 election resigned before serving any of his term, the vacancy in the office of constable had to be filled at the November 1982 election under the terms of this section since there was a regular election, for Justice of the Supreme Court, embracing the county to be held at that time. OAG 82-415, 1982 Ky. AG LEXIS 221.

Where a vacancy occurred on August 2, such day had to be excluded under KRS 446.030, and thus, August 3 would be the initial day that the three (3) month period would begin to run, which period would end at midnight on November 2 — election day; therefore, three (3) months would not intervene as required by this section, and the vacancy could not be filled at the November, 1982 election. OAG 82-428, 1982 Ky. AG LEXIS 211.

Where a county increased its magisterial districts from four (4) to five (5), a vacancy would automatically exist in the fifth district which must be filled for the unexpired term in accordance with the requirements of this section and said election would be held in the next regular November election; prior to the election for the unexpired term, the Governor could fill the vacancy by appointment pursuant to KRS 63.190 which would end when the person elected in November received his certificate of election and qualified for the office. OAG 83-55, 1983 Ky. AG LEXIS 441.

All newly elected councilmen at the November 1983 election must take office on January 10, 1984 and any vacancy that previously occurred during the year and had been filled by appointment would not be filled at said election since the appointee would serve out the remainder of the term as authorized under this section. On the other hand, if the term did not end in 1983, the person elected to fill the vacancy at the November election for the remaining two (2) years of the term would be entitled to take office immediately after the election or as soon as he received his certificate of election and qualified. OAG 83-467, 1983 Ky. AG LEXIS 35.

Where a person is elected to fill a vacancy for an unexpired term, such person is entitled to take office immediately after his election or as soon thereafter as he receives his certificate of election and qualifies; he would then hold office for the remainder of the unexpired term. OAG 84-244, 1984 Ky. AG LEXIS 141.

Where a constable resigned his office in early 1984, but neither major party nominated a candidate for the office in the May 1984 primary, regardless of whether or not anyone filed as an independent for constable, this section would require the office to be placed on the November 1984 ballot for "write-in" purposes, since the office must be filled by an election; if no one is elected, then a vacancy occurs to be filled by the county judge/executive for the remainder of the term ending in January 1986. OAG 84-244, 1984 Ky. AG LEXIS 141.

A person elected to fill vacancy in the office of Commonwealth's Attorney in November election was entitled to assume the office as soon as he received his certificate of election and executed the oath of office. He was not required to wait until the first Monday in January. OAG 84-304, 1984 Ky. AG LEXIS 82.

Where the membership of a city council is increased from seven (7) to nine (9) effective January 1, 1986, since staggered terms for members of said city council had been established pursuant to KRS 83A.110, the establishment of staggered terms by prior referendum would necessarily include the two (2) additional members; thus when the vacancies are filled by appointment pursuant to KRS 83A.040 those selected must draw in the manner provided in KRS 83A.110 to determine who will serve a two (2) year term and who will serve only a one (1) year term. The member drawing the two (2) year term would have to run for the one (1) year unexpired term at the November 1986 election, as required by this section of the Constitution. The member drawing the one (1) year term would have to run for a regular two (2) year term at the November 1986 election. OAG 85-106, 1985 Ky. AG LEXIS 43.

A special election may be called immediately upon the Governor's acceptance of a resignation from a legislator, even if the resignation states that it is to be effective at a future date. OAG 93-81, 1993 Ky. AG LEXIS 208.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

How and by whom vacancies filled, Const., § 76; KRS 63.150 to 63.220.

Special election to fill vacancy in general assembly, KRS 118.730.

Kentucky Bench & Bar.

Bartlett, The Selection and Election of Judges in Kentucky, Vol. 53, No. 3, Summer 1989, Ky. Bench & Bar 26.

Kentucky Law Journal.

Kentucky Law Survey, Morris, Municipal Law, 70 Ky. L.J. 287 (1981-82).

§ 155. School elections not governed by Constitution.

The provisions of Sections 145 to 154, inclusive, shall not apply to the election of school trustees and other common school district elections. Said elections shall be regulated by the General Assembly, except as otherwise provided in this Constitution.

NOTES TO DECISIONS

Analysis

Cross-References
1. In General.
2. Bond Issuance.
3. School Officers.

4. Right to Vote.
5. School Districts.
6. Time of Elections.
7. Corrupt Practice Act.
8. Filling of Vacancies.

Cross-References

See note to Const., § 147 under heading "24. — School Elections": Moss v. Riley, 102 Ky. 1, 43 S.W. 421, 19 Ky. L. Rptr. 993, 1897 Ky. LEXIS 104 (Ky. 1897).

1. In General.

Under this section, common school district elections were not required to be held on regular election day. Sisk v. Gardiner, 74 S.W. 686, 25 Ky. L. Rptr. 18 (1903).

This section confers on the Legislature full power to regulate everything relating to the management and control of the common schools of this state. Shields v. Wilkins, 449 S.W.2d 220, 1969 Ky. LEXIS 33 (Ky. 1969).

This section would indicate that Const., §§ 145 to 154 should not apply to school elections. Shields v. Wilkins, 449 S.W.2d 220, 1969 Ky. LEXIS 33 (Ky. 1969).

2. Bond Issuance.

In the absence of statutory limitation, school trustees may submit for election more than once in the same year the question of issuing bonds, even though such issue was previously defeated. McKinney v. Board of Trustees, 144 Ky. 85, 137 S.W. 839, 1911 Ky. LEXIS 555 (Ky. 1911).

A school district bond issue election held on day other than the regular election day provided by law, and at which the vote was viva voce instead of by ballot, was not for those reasons invalid. Smith v. Board of Trustees, 171 Ky. 39, 186 S.W. 927, 1916 Ky. LEXIS 300 (Ky. 1916).

Legislature can confide to school board the power to order and conduct an election on the question of issuance of school bonds without any restriction requiring it to be held on a day of general election. Rogan v. Board of Education, 192 Ky. 770, 234 S.W. 443, 1921 Ky. LEXIS 152 (Ky. 1921).

3. School Officers.

The Legislature has the liberty to determine everything relating to the management and control of the schools of the state, including the right to determine who may vote for school superintendent and other school officers. Crook v. Bartlett, 155 Ky. 305, 159 S.W. 826, 1913 Ky. LEXIS 254 (Ky. 1913).

4. Right to Vote.

This section confers on the Legislature full power to regulate everything relating to the management and control of the common schools of the state, and the Legislature has the power to give women the right to vote in them. Stuessy v. Louisville, 156 Ky. 523, 161 S.W. 564, 1913 Ky. LEXIS 484 (Ky. 1913).

Illiterate women, no less than illiterate men, may exercise their right to vote at school elections. Prewitt v. Wilson, 242 Ky. 231, 46 S.W.2d 90, 1932 Ky. LEXIS 255 (Ky. 1932).

5. School Districts.

The city of Louisville being a school district, an election therein on a tax measure is a school district election, and under the regulation of the General Assembly. Stuessy v. Louisville, 156 Ky. 523, 161 S.W. 564, 1913 Ky. LEXIS 484 (Ky. 1913).

6. Time of Elections.

School elections of every character are not required to be held on a regular election day. Clark v. Board of Trustees, 164 Ky. 210, 175 S.W. 359, 1915 Ky. LEXIS 359 (Ky. 1915). See Sisk v. Gardiner, 74 S.W. 686, 25 Ky. L. Rptr. 18 (1903); Weil, Roth & Co. v. Paris, 176 Ky. 841, 197 S.W. 461, 1917 Ky. LEXIS 130 (Ky. 1917).

The Legislature is at liberty to fix the time for regular or general election of school trustees on a day other than the first Tuesday after the first Monday in November. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053, 1937 Ky. LEXIS 242 (Ky. 1937).

7. Corrupt Practice Act.

Members of school board, like all other elected county and district officers, are subject to the provisions of the corrupt practice act, KRS 123.030 (repealed). Ridings v. Jones, 213 Ky. 810, 281 S.W. 999, 1926 Ky. LEXIS 626 (Ky. 1926). See Hart v. Rose, 255 Ky. 576, 75 S.W.2d 43, 1934 Ky. LEXIS 297 (Ky. 1934).

Although this section relieved Legislature of necessity of applying corrupt practice measures to schools, it did not forbid Legislature from such application; thus, corrupt practice act could apply to school elections. Hart v. Rose, 255 Ky. 576, 75 S.W.2d 43, 1934 Ky. LEXIS 297 (Ky. 1934).

8. Filling of Vacancies.

The selection of a person to fill a vacancy in a common school district office is synonymous with an election within the meaning of this section. Shields v. Wilkins, 449 S.W.2d 220, 1969 Ky. LEXIS 33 (Ky. 1969).

Cited:

Belknap v. Louisville, 99 Ky. 474, 36 S.W. 1118, 18 Ky. L. Rptr. 313, 1896 Ky. LEXIS 122 (Ky. 1896); Chambers v. Adair, 110 Ky. 942, 62 S.W. 1128, 23 Ky. L. Rptr. 373, 1901 Ky. LEXIS 157 (Ky. 1901); Trustee of Paintsville Graded Free School Dist. v. Davis, 64 S.W. 438, 23 Ky. L. Rptr. 838 (1901); Hollar v. Cornett, 144 Ky. 420, 138 S.W. 298, 1911 Ky. LEXIS 625 (Ky. 1911); Morgan v. Goode, 151 Ky. 284, 152 S.W. 584, 1912 Ky. LEXIS 820 (Ky. 1912); Trustees of Slaughterville Graded School Dist. v. Brooks, 163 Ky. 200, 173 S.W. 305, 1915 Ky. LEXIS 179 (Ky. 1915); Penny v. McRoberts, 163 Ky. 313, 173 S.W. 786, 1915 Ky. LEXIS 223 (Ky. 1915); Murray v. Irvan, 170 Ky. 290, 185 S.W. 859, 1916 Ky. LEXIS 43 (Ky. 1916); Payne v. Providence Graded Common School Dist., 173 Ky. 753, 191 S.W. 477, 1917 Ky. LEXIS 506 (Ky. 1917); Hoskins v. Ramsey, 197 Ky. 465, 247 S.W. 371, 1923 Ky. LEXIS 663 (Ky. 1923); Alsip v. Perkins, 236 Ky. 5, 36 Ky. 5, 32 S.W.2d 565, 1930 Ky. LEXIS 684 (Ky. 1930); Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311, 1931 Ky. LEXIS 847 (Ky. 1931); Ginsburg v. Giles, 254 Ky. 720, 72 S.W.2d 438, 1934 Ky. LEXIS 146 (Ky. 1934); Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490, 1947 Ky. LEXIS 825 (Ky. 1947).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School elections, KRS 160.200 to 160.260.

MUNICIPALITIES

Section

157. Maximum tax rate for cities, counties, and taxing districts.
157b. Adoption of budget required for cities, counties, and taxing districts — Expenditures not to exceed revenues for fiscal year.
158. Maximum indebtedness of cities, counties, and taxing districts — General Assembly authorized to set additional limits and conditions.
165. Incompatible offices and employments.

§ 157. Maximum tax rate for cities, counties, and taxing districts.

The tax rate of cities, counties, and taxing districts, for other than school purposes, shall not, at any time,

exceed the following rates upon the value of the taxable property therein: For all cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars.

History.

Amendment, proposed by Acts 1994, ch. 168, § 2, and ratified November 8, 1994.

Compiler's Notes.

The General Assembly in 1994 (Acts 1994, ch. 168, § 2) proposed an amendment to this section, which amendment was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994. Prior to this amendment this section read:

"§ 157. Maximum tax rate for cities, counties and taxing districts — Indebtedness exceeding income provided for year not to be incurred without popular vote.

The tax rate of cities, towns, counties, taxing districts and other municipalities, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein, viz: For all towns or cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all towns or cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all towns or cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars; unless it should be necessary to enable such city, town, county, or taxing district to pay the interest on, and provide a sinking fund for the extinction of, indebtedness contracted before the adoption of this Constitution. No county, city, town, taxing district, or other municipality, shall be authorized or permitted to become indebted, in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof, voting at an election to be held for that purpose; and any indebtedness contracted in violation of this section shall be void. Nor shall such contract be enforceable by the person with whom made; nor shall such municipality ever be authorized to assume the same."

Section 5 of Acts 1994, ch. 168 provides: "It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires."

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Many of the decisions under this section regarding indebtedness were decided prior to the 1994 amendment of this section which deleted that portion of the section prohibiting an entity from becoming indebted in amount exceeding yearly income and revenue. Now see Const., § 157b.

1. Constitutionality.

This section does not impair obligation of contract in violation of the federal Constitution where a contract entered into prior to the adoption of this section gave a city an option to purchase a waterworks plant after a ten (10) year term where the contract imposed no obligation to exercise the option and the section in no way affected the city's obligation to allow the waterworks company to exercise its contractual rights. Ashland Waterworks Co. v. Ashland, 230 F. 254, 1916 U.S. Dist. LEXIS 965 (D. Ky. 1916), rev'd, 251 F. 492, 1918 U.S. App. LEXIS 1721 (6th Cir. Ky. 1918).

2. Purpose.

The purpose of this section was to protect the people of counties and cities from improvident contracts by county and city officials for public improvements. Hopkins County v. St. Bernard Coal Co., 114 Ky. 153, 70 S.W. 289, 24 Ky. L. Rptr. 942, 1902 Ky. LEXIS 142 (Ky. 1902).

The purpose of this section and Const., § 158 is to require counties, municipalities, and other taxing units to adopt the pay-as-you-go plan and not to incur obligations in excess of their current revenues. Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

It is doubtful whether it was the intention of this section to allow a county or city to incur a debt which could not be paid before the end of its fiscal year, even on the basis of bona fide anticipation. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

It is clearly the purpose of this section to enforce upon officials a pay-as-you-go plan of financing. Banks-Miller Supply Co. v. Carter County, 45 F. Supp. 521, 1942 U.S. Dist. LEXIS 2830 (D. Ky. 1942).

This section and Const., § 159 were intended, first, to prohibit the creation of indebtedness by taxing districts without making provisions for its payment and, second, to require that every valid debt of a taxing district be paid. Griffin v. Clay County, 304 Ky. 592, 201 S.W.2d 733, 1947 Ky. LEXIS 684 (Ky. 1947).

The intent and purpose of this section was to prevent local governments from incurring indebtedness that would be carried from one (1) year to the next, thereby precluding effective operation of the government. Caywood v. Stivers, 430 S.W.2d 327, 1968 Ky. LEXIS 398 (Ky. 1968).

3. Construction.

This section is to be construed with reference to the time the indebtedness is contracted and not with reference to the time when authority may have been given to contract an indebtedness at some future time when such authority may or may not be exercised. Audit Co. v. Louisville, 185 F. 349, 1911 U.S. App. LEXIS 3993 (6th Cir. Ky. 1911).

The limitation imposed by this section on indebtedness of counties is entitled to a strict construction. Banks-Miller Supply Co. v. Carter County, 45 F. Supp. 521, 1942 U.S. Dist. LEXIS 2830 (D. Ky. 1942).

The limit of municipal tax rate fixed by this section is mandatory, and is not modified by Const., §§ 158 and 159. Tipton v. Shelbyville, 139 Ky. 541, 107 S.W. 810, 32 Ky. L. Rptr. 1123, 1908 Ky. LEXIS 8 (Ky. 1908).

Constitution § 157a only enlarges and extends this section, and does not conflict with it. Hughes v. Eison, 190 Ky. 661, 228 S.W. 676, 1921 Ky. LEXIS 509 (Ky. 1921).

It is the duty of county fiscal courts and other taxing authorities in other governmental units to observe the limitations on indebtedness. Hockley v. Carter County, 267 Ky. 250, 101 S.W.2d 928, 1937 Ky. LEXIS 298 (Ky. 1937).

The constitutional limit on county and municipal indebtedness is mandatory, not a mere restriction upon the Legislature's power, and leaves no discretion to legislators, judges or administrative officials. Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

This section and Const., § 158 are self-executing, and require no legislation to give them effect. Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

This section and Const., § 158 must be read together. Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

This section should be strictly interpreted to effectuate obvious and salutary purposes intended. Miles v. Lee, 284 Ky. 39, 143 S.W.2d 843, 1940 Ky. LEXIS 436 (Ky. 1940).

Road and bridge bonds must be issued under this section or the provisions of Const., § 157A. Defoe v. Perry County, 293 Ky. 487, 169 S.W.2d 309, 1943 Ky. LEXIS 647 (Ky. 1943).

The tax limits of this section are absolute and to no extent modified by the provisions of Const., §§ 158 and 159. Rea v. Gallatin County Fiscal Court, 422 S.W.2d 134, 1967 Ky. LEXIS 38 (Ky. 1967).

The Legislature may constitutionally fix city tax rate limits below the maximums specified in this section. Ashland v. Webb, 470 S.W.2d 604, 1971 Ky. LEXIS 279 (Ky. 1971).

4. Application.

The limitation of indebtedness applies to common school districts. Perry v. Brown, 51 S.W. 457, 21 Ky. L. Rptr. 344 (1899).

The debt limit provisions of this section limit the power of the municipality only, and not the power of the General Assembly in adjusting taxation. Covington & C. Bridge Co. v. Davison, 102 S.W. 339, 31 Ky. L. Rptr. 425 (1907).

An urban-county government is subject to the tax limitations imposed by this section upon cities having the same population, subject to such more restrictive statutory limitations as the General Assembly may see fit to impose. Jacobs v. Lexington-Fayette Urban County Government, 560 S.W.2d 10, 1977 Ky. LEXIS 564 (Ky. 1977).

5. 1994 Amendment.

Ballot question by which 1994 amendment was adopted was not misleading or inconsistent, but revealed the substance of the amendment, and was therefore constitutional and in compliance with KRS 120.280. Chandler v. City of Winchester, 973 S.W.2d 78, 1998 Ky. App. LEXIS 63 (Ky. Ct. App. 1998).

6. Income and Revenue.

Fines and license fees are too uncertain to be estimated as part of a city's yearly revenue. Overall v. Madisonville, 125 Ky. 684, 102 S.W. 278, 31 Ky. L. Rptr. 278, 1907 Ky. LEXIS 329 (Ky. 1907), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

License taxes, where they have become stabilized, may be anticipated and the income therefrom estimated, in estimating the city's income for the year. Premier Constr. Co. v. Kimmell, 230 Ky. 439, 20 S.W.2d 77, 1929 Ky. LEXIS 111 (Ky. 1929).

In anticipating revenue it would not render an assumed indebtedness invalid where license fees, fines, receipts from cemetery lots and miscellaneous receipts were included in the revenue estimate, even though such receipts are uncertain, where the total of such estimates would not have changed the results. Nourse v. Russellville, 265 Ky. 96, 95 S.W.2d 1096, 1936 Ky. LEXIS 433 (Ky. 1936).

In the conduct of fiscal affairs, a city may take into consideration fixed revenue that may be reasonably anticipated and, therefore, revenues from municipally owned utilities may be anticipated where net revenues from past years were known. Kockritz v. Henderson, 269 Ky. 334, 107 S.W.2d 245, 1937 Ky. LEXIS 602 (Ky. 1937).

In the estimation of revenues of previous years, it is error to include both delinquent taxes for a certain year and the amount that might have been collected if the maximum rate had been applied. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

This section is concerned only with such future revenues as can be exacted in the form of taxes. Skidmore v. Elizabethtown, 291 S.W.2d 3, 1956 Ky. LEXIS 352 (Ky. 1956).

Under this section the phrase "income and revenue" refers to that which the particular taxing district has actually provided for in reasonable and good faith anticipation in collecting. Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

7. Governmental Expenses.

The constitutional prohibition refers only to improvident contracts, voluntarily entered into by the county, and not to necessary expenses of government, and therefore a statute authorizing a guard to keep down mob violence is not unconstitutional. Hopkins County v. St. Bernard Coal Co., 114 Ky. 153, 70 S.W. 289, 24 Ky. L. Rptr. 942, 1902 Ky. LEXIS 142 (Ky.

1902). See Louisville v. Gorley, 80 S.W. 203, 25 Ky. L. Rptr. 2174 (1904).

This section does not apply to contracts designed to maintain the public peace or protect the good name of the state. Hopkins County v. St. Bernard Coal Co., 114 Ky. 153, 70 S.W. 289, 24 Ky. L. Rptr. 942, 1902 Ky. LEXIS 142 (Ky. 1902).

Expenses for essential governmental functions do not constitute an indebtedness within the meaning of this section. Russell County Fiscal Court v. Russell County, 246 Ky. 529, 55 S.W.2d 337, 1932 Ky. LEXIS 779 (Ky. 1932).

Fees and salaries for county officers are not within the limitation of this section. Breathitt County v. Cockrell, 250 Ky. 743, 63 S.W.2d 920, 1933 Ky. LEXIS 764 (Ky. 1933).

This section applies to contract indebtedness and not to necessary governmental expenses and, therefore, bonds executed for a sewer system were valid even though the total obligation created by the bond was in excess of the year's revenue. Francis v. Bowling Green, 259 Ky. 525, 82 S.W.2d 804, 1935 Ky. LEXIS 351 (Ky. 1935).

The expense of services of official court stenographer is a governmental expense, but stenographer could not compel fiscal court to levy tax in excess of constitutional limitation to pay warrants for services rendered in previous years. Landrum v. Ingram, 274 Ky. 736, 120 S.W.2d 393, 1938 Ky. LEXIS 339 (Ky. 1938).

The incurrence of debt for essential governmental purposes is valid, even though the debt limit fixed by this section is exceeded. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

Claims for county poor farm are necessary and indispensable governmental expenses. First Nat'l Bank v. Hays, 288 Ky. 297, 156 S.W.2d 121, 1941 Ky. LEXIS 95 (Ky. 1941).

Claims for pauper idiots' support are necessary and indispensable governmental expenses. First Nat'l Bank v. Hays, 288 Ky. 297, 156 S.W.2d 121, 1941 Ky. LEXIS 95 (Ky. 1941).

Claims of county livestock inspector are necessary and indispensable governmental expenses. First Nat'l Bank v. Hays, 288 Ky. 297, 156 S.W.2d 121, 1941 Ky. LEXIS 95 (Ky. 1941).

Tax money obtained by the district board under KRS 107.310 to 107.500 as a county tax must be expended only for projects that constitute valid county purposes and any tax so levied must be counted under this section as part of the regular tax rate of the county. Lowery v. Jefferson, 458 S.W.2d 168, 1970 Ky. LEXIS 167 (Ky. 1970).

8. School Purposes.

The tax rate provided for cities and towns of less than 10,000 population applies to an indebtedness for school purposes as well as for strictly municipal purposes. Richmond v. Powell, 101 Ky. 7, 27 S.W. 1, 16 Ky. L. Rptr. 174, 1894 Ky. LEXIS 133 (Ky. 1894).

The limitation on indebtedness in this section also applies to debts incurred for school purposes. Commonwealth v. Louisville & N. R. Co., 105 Ky. 206, 48 S.W. 1092, 20 Ky. L. Rptr. 1127, 1899 Ky. LEXIS 203 (Ky. 1899).

The tax rates of this section do not place a limit on rates that may be levied for school purposes but the debt limit does include indebtedness for school purposes. Walsh v. Pineville, 152 Ky. 556, 153 S.W. 1002, 1913 Ky. LEXIS 721 (Ky. 1913).

The limitations imposed by this section have no application to the property tax voted for school purposes under authority of a valid election. Christopher v. Robinson, 164 Ky. 262, 175 S.W. 387, 1915 Ky. LEXIS 368 (Ky. 1915).

The provisions of this section fixing tax rates for other than school purposes were not intended as an exception to the debt limits of Const., § 158, which limits no city, town, county, taxing district and municipality can exceed even for school purposes. Booth v. Board of Education, 229 Ky. 719, 17 S.W.2d 1013, 1929 Ky. LEXIS 833 (Ky. 1929).

There is no constitutional limitation on tax rates for school purposes. Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

9. Determination of Population.

The methods used under Const., § 156 apply to ascertaining the population of cities under this section. O'Bryan v. Owensboro, 113 Ky. 680, 68 S.W. 858, 69 S.W. 800, 24 Ky. L. Rptr. 469, 24 Ky. L. Rptr. 645, 1902 Ky. LEXIS 92 (Ky. 1902), overruled, Nelson County Fiscal Court v. McCrocklin, 175 Ky. 199, 194 S.W. 323, 1917 Ky. LEXIS 316 (Ky. 1917).

A city council may itself ascertain that the city has more inhabitants than shown by the United States census and apply a tax rate justified by the actual population. Moss v. Frankfort, 231 Ky. 470, 21 S.W.2d 813, 1929 Ky. LEXIS 304 (Ky. 1929).

10. Indebtedness.

A city contract to pay water rent which was entered into prior to the adoption of the Constitution is an indebtedness within the meaning of this section. Mayfield Woolen Mills v. Mayfield, 111 Ky. 172, 61 S.W. 43, 22 Ky. L. Rptr. 1676, 1901 Ky. LEXIS 169 (Ky. 1901).

The word "indebtedness," as used in this section, refers to indebtedness created by contract, and the current expenses for the year are not to be counted as an existing debt. O'Bryan v. Owensboro, 113 Ky. 680, 68 S.W. 858, 69 S.W. 800, 24 Ky. L. Rptr. 469, 24 Ky. L. Rptr. 645, 1902 Ky. LEXIS 92 (Ky. 1902), overruled, Nelson County Fiscal Court v. McCrocklin, 175 Ky. 199, 194 S.W. 323, 1917 Ky. LEXIS 316 (Ky. 1917).

An indebtedness is a liability voluntarily incurred by a city by express contract and which it is bound to pay in money. Overall v. Madisonville, 125 Ky. 684, 102 S.W. 278, 31 Ky. L. Rptr. 278, 1907 Ky. LEXIS 329 (Ky. 1907), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

A contract which provides for $3,000 a year payments for five (5) years creates an indebtedness. Board of Education v. Board of Trustees, 154 Ky. 309, 157 S.W. 697, 1913 Ky. LEXIS 73 (Ky. 1913).

The provision that the tax rate of cities shall not at any time exceed the rate of 75 cents on the value of taxable property therein in cities of less than 10,000 inhabitants was intended to protect municipal corporations from their own extravagance, and applies only to indebtedness created or attempted to be incurred by contract and not where the liability incurred is for a tort caused by or resulting from its own negligence. Menar v. Sanders, 169 Ky. 285, 183 S.W. 949, 1916 Ky. LEXIS 704 (Ky. 1916). See Catlettsburg v. Davis' Adm'r, 262 Ky. 726, 91 S.W.2d 56, 1936 Ky. LEXIS 99 (Ky. 1936).

A contract requiring a city at the end of 25 years either to exercise a purchase option for a waterworks plant or to renew its lease for another 25 years created an indebtedness within the meaning of this section and Const., § 158. Benjamin v. Mayfield, 170 Ky. 446, 186 S.W. 169, 1916 Ky. LEXIS 87 (Ky. 1916).

The court's appointment of a county agent and the appropriation of money to be used to pay the agent's salary was the creation of an indebtedness within the meaning of this section. Carman v. Hickman County, 185 Ky. 630, 215 S.W. 408, 1919 Ky. LEXIS 351 (Ky. 1919).

The limitations of this section apply to indebtedness created by contract. Catlettsburg v. Fabric Fire Hose Co., 264 Ky. 594, 95 S.W.2d 285, 1936 Ky. LEXIS 382 (Ky. 1936).

Determination of validity of existing debts is inconclusive of county's right to fund a particular debt. First Nat'l Bank v. Hays, 288 Ky. 297, 156 S.W.2d 121, 1941 Ky. LEXIS 95 (Ky. 1941).

The indebtedness referred to in this section means one created by contract or voluntarily incurred in such manner as would otherwise bind the municipality to pay and does not

include a liability imposed by law for what is done without right or what is done negligently. Knepfle v. Morehead, 301 Ky. 417, 192 S.W.2d 189, 1946 Ky. LEXIS 493 (Ky. 1946).

The limitation on indebtedness that can be incurred in any one (1) year means that obligations cannot be entered into to be paid out of revenues to be collected after the termination of the fiscal year. Meyers v. Louisville, 310 Ky. 348, 220 S.W.2d 852, 1949 Ky. LEXIS 923 (Ky. 1949).

An obligation from which county cannot disengage itself without abandoning an unavoidable function of government is a debt within the meaning of this section. State Property & Bldg. Com. v. Hays, 346 S.W.2d 3, 1961 Ky. LEXIS 277 (Ky. 1961).

An indebtedness authorized by the voters pursuant to this section is not subject to the limitations of KRS 132.010. Raque v. Louisville, 402 S.W.2d 697, 1966 Ky. LEXIS 375 (Ky. 1966).

When the public improvements finance board borrows money and pledges in payment thereof the annual appropriations for future years which the county is committed to make out of its general revenues, a debt has been created within the meaning of this section. Sawyer v. Jefferson County Fiscal Court, 438 S.W.2d 531, 1969 Ky. LEXIS 411 (Ky. 1969).

The Tax Increment Act, KRS 99.750 to 99.770 (repealed), which permits various taxing districts to release increments expected to be derived by such districts as a result of the undertaking of a renewal or redevelopment project by an urban renewal community agency or authority to be used as a special fund for bond payments on the project is invalid since ad valorem taxes cannot be pledged as the source of bond payments under a special fund as such tax is a mandatory tax and any obligation that is payable from it is a debt within the meaning of this section. Miller v. Covington Development Auth., 539 S.W.2d 1, 1976 Ky. LEXIS 40 (Ky. 1976).

Fiscal court did not violate this section by establishing a nonprofit corporation to float a bond issue to fund the repair of county roadways since, although the corporation would assume ownership of the roadways and lease them back to the fiscal court until the rental payments were sufficient to retire the bond issue, at which time the roads would be reconveyed to the county, the debt incurred was not a debt of the county or enforceable against it in any way. Hoskins v. Wilson, 778 S.W.2d 654, 1989 Ky. App. LEXIS 142 (Ky. Ct. App. 1989) (decided prior to 1994 amendment).

11. — When Created.

A city council resolution to employ engineers and accountants did not create an indebtedness until the employments provided for in the resolution were actually made. Louisville v. Parsons, 150 Ky. 420, 150 S.W. 498, 1912 Ky. LEXIS 903 (Ky. 1912).

An indebtedness is not created until the city has obtained the consent at an election of two thirds (⅔) of the voters voting on the question and has issued the bonds evidencing the debt. Barry v. New Haven, 162 Ky. 60, 171 S.W. 1012, 1915 Ky. LEXIS 13 (Ky. 1915).

A vote in favor of a road and bridge bond issue does not of itself create an indebtedness, as the debt is not incurred until the bonds are issued and sold, so that election as to incurring the indebtedness by the issuance of such bonds is not invalid merely because at the time of the election the debt limit would be exceeded, where it is not exceeded at the time of issuance and sale of the bonds. Young v. Fiscal Court of Trimble County, 190 Ky. 604, 227 S.W. 1009, 1921 Ky. LEXIS 479 (Ky. 1921).

12. — Old Debt Renewed.

This section does not prohibit a fiscal court from recalling outstanding bonds and issuing new bonds in lieu of the old bonds as provided in KRS 66.090 and 66.100. Richmond Cemetery Co. v. Sullivan, 66 Ark. 646, 104 Ky. 723, 47 S.W. 1079, 20 Ky. L. Rptr. 1028, 1898 Ky. LEXIS 222 (Ky. 1898).

The debt limit set by this section applies only to the creation of a new debt, and does not prevent the renewal of an existing debt without such a vote. Culbertson v. Louisville, 138 Ky. 747, 128 S.W. 292, 1910 Ky. LEXIS 127 (Ky. 1910).

13. — Not Debts.

The pledging of unappropriated funds by the city to guarantee payment of revenue bonds was not the creation of a debt against the city. Martin County v. Cassady, 307 Ky. 728, 212 S.W.2d 281, 1948 Ky. LEXIS 823 (Ky. 1948).

KRS 90.300 to 90.410, and city ordinance passed thereunder, do not, in guaranteeing tenure and pension benefits to city employees, create a debt against the city in violation of this section. Henderson v. Thomy, 307 Ky. 783, 212 S.W.2d 303, 1948 Ky. LEXIS 831 (Ky. 1948).

Issuance of bonds by a county board of education was not the creation of a debt in violation of this section where anticipated tax revenues on which the anticipated tax revenues on which the school budget was based were reduced as a result of judicial decisions with respect to methods of computing assessed valuations of certain property. Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

The creation of a library district does not permit an indebtedness of the taxing authority without a vote of the people within the prohibition of this section. Boggs v. Reep, 404 S.W.2d 24, 1966 Ky. LEXIS 286 (Ky. 1966).

Since the commitment by the county to make the appropriations to the public improvements finance board does not, in and of itself, create a debt, there is no violation of this section in the mere statutory direction to the county to make the appropriations for public improvements, nor in the resolution of the fiscal court so doing. Sawyer v. Jefferson County Fiscal Court, 438 S.W.2d 531, 1969 Ky. LEXIS 411 (Ky. 1969).

14. — Floating.

A fiscal court has no power to borrow money to pay a floating indebtedness which was void because the voters had never approved the incurring of such excess debts. Tarter v. Wesley, 200 Ky. 14, 252 S.W. 109, 1923 Ky. LEXIS 6 (Ky. 1923).

A county cannot expend all of its revenues on mere nongovernmental matters and then pass on its indispensable governmental obligations as a floating debt for future generations. Ballard v. Adair County, 268 Ky. 347, 104 S.W.2d 1100, 1937 Ky. LEXIS 465 (Ky. 1937).

The floating debt of a county or municipality may be funded without a vote of the people if the debts were valid and not in violation of this section and Const., § 158. Williams v. Taylor Count, 274 Ky. 217, 118 S.W.2d 526, 1938 Ky. LEXIS 244 (Ky. 1938).

City seeking approval of bonds issued to fund floating debt must show that debt was incurred for necessary governmental expenses and that no particular debt, other than for necessary governmental expenses, when added to the other debts of the city, exceeded the limitations of this section. Henderson v. Mt. Vernon, 279 Ky. 829, 132 S.W.2d 322, 1939 Ky. LEXIS 359 (Ky. 1939).

The city cannot issue bonds to cover that portion of the floating indebtedness incurred for other than necessary governmental expenditures, incurred after January 16, 1939, the effective date of Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549, 122 A.L.R. 321 (Ky. 1938), notwithstanding the fact that during the prior years in which the expenditures exceeded its actual resources, it might lawfully have created a much larger indebtedness. Chestnut v. Bowling Green, 285 Ky. 800, 149 S.W.2d 523, 1941 Ky. LEXIS 469 (Ky. 1941).

15. — Created Before Constitution.

Where a statute passed prior to the Constitution allowed a city to incur a certain type of debt, the city may continue to do so even after the adoption of the Constitution or until such time as the Legislature shall again act. Lexington's Appeal, 96

Ky. 258, 28 S.W. 665, 16 Ky. L. Rptr. 467, 1894 Ky. LEXIS 124 (Ky. Ct. App. 1894).

This section does not forbid an indebtedness to be incurred where all the necessary steps had been taken pursuant to a statute and prior to the adoption of the Constitution. Ludlow v. Board of Education, 29 S.W. 854, 16 Ky. L. Rptr. 805 (1895).

This section does not apply to an indebtedness for public improvements authorized prior to the adoption of the Constitution by the Legislature where subsequent to the Constitution another act authorized the issuance of bonds to pay for improvements allowed by the first act. Warren v. Newport, 64 S.W. 852, 23 Ky. L. Rptr. 1006, 1901 Ky. LEXIS 623 (Ky. Ct. App. 1901).

The tax limits of this section are not applicable where an excess tax levy was made in order to obtain money to pay a debt which was validly incurred under a statute in effect prior to the adoption of the present Constitution. Bank of Columbia v. Taylor County, 112 Ky. 243, 65 S.W. 451, 23 Ky. L. Rptr. 1483, 1901 Ky. LEXIS 304 (Ky. 1901).

A county may issue bonds to pay a debt incurred prior to the adoption of the present Constitution without submitting the issue to the voters. Hawkins v. Nicholas County, 89 S.W. 484, 28 Ky. L. Rptr. 479 (1905).

This section does not prevent compliance with a valid contract which was entered into before the adoption of the Constitution. Slade v. Lexington, 141 Ky. 214, 132 S.W. 404, 1910 Ky. LEXIS 430 (Ky. 1910).

Where a city was under a contractual obligation when the Constitution was adopted, it may issue bonds to take care of the obligation. Benjamin v. Mayfield, 170 Ky. 446, 186 S.W. 169, 1916 Ky. LEXIS 87 (Ky. 1916).

A city may issue bonds to discharge a debt incurred prior to the adoption of the Constitution without submitting the issue to the electorate so long as the debt does not exceed the principal of all debts acquired before the Constitution or require a tax levy in excess of the limits of this section. Phipps v. Mayfield, 194 Ky. 130, 238 S.W. 195, 1922 Ky. LEXIS 113 (Ky. 1922).

A bond issue to refund an indebtedness incurred prior to the adoption of the present Constitution is valid though the amount surpasses the limits of Const., § 158 and was not authorized by the voters as prescribed in this section. Rice v. Pineville, 207 Ky. 530, 269 S.W. 719, 1925 Ky. LEXIS 129 (Ky. 1925).

The limits in this section do not preclude a tax levy to pay the interest on and provide a sinking fund for the payment of an indebtedness contracted before the adoption of the Constitution. Frank v. Fuss, 235 Ky. 143, 29 S.W.2d 603, 1930 Ky. LEXIS 300 (Ky. 1930).

16. — Subsequent Illegal Debts.

Where debts were created in 1903 and 1904 and could have been paid in those years had the sheriff not defaulted, those debts may be paid at a later time because if those debts did not exceed the income from those years, then no subsequent occurrence can render them void. Lawrence County v. Lawrence Fiscal Court, 130 Ky. 587, 113 S.W. 824, 1908 Ky. LEXIS 302 (Ky. 1908).

County warrants which were presumably issued before the fiscal court excluded the debt limitations are valid. Geveden v. Fiscal Court of Carlisle County, 263 Ky. 465, 92 S.W.2d 746, 1936 Ky. LEXIS 190 (Ky. 1936).

If a debt is valid when created, it cannot be invalidated by subsequent illegal expenditures. Penrod v. Sturgis, 269 Ky. 315, 107 S.W.2d 277, 1937 Ky. LEXIS 608 (Ky. 1937).

Fact that aggregate amount of warrants issued over a period of three (3) years exceeded revenues for those years did not establish invalidity of any particular warrant; to show that any particular warrant was invalid, it was necessary to plead and prove that anticipated revenue was exceeded at time warrant was issued and, if warrant was valid when issued, subsequent issuance and payment of their obligations exceeding revenues would not render valid warrant invalid. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

Debts of municipalities constitute valid and binding obligations if, at the time they were made, they were legal. Winchester v. Winchester Bank, 306 Ky. 45, 205 S.W.2d 997, 1947 Ky. LEXIS 928 (Ky. 1947).

Where the governing body of a city assumes an obligation and executes notes therefore and, at the time the notes are executed, they do not cause the city's anticipated income provided for the year to be exceeded, the notes are valid under this section, even though subsequent expenditures of the city for the year actually exceed the income collected. Winchester v. Winchester Bank, 306 Ky. 45, 205 S.W.2d 997, 1947 Ky. LEXIS 928 (Ky. 1947).

17. — Partial Invalidity.

When an indebtedness is in excess of constitutional limits, only the excess will be void. McKinney v. Board of Trustees, 144 Ky. 85, 137 S.W. 839, 1911 Ky. LEXIS 555 (Ky. 1911).

In an election approving bond issues for several purposes, where some of the debts were invalid, the election was still valid as to the other debts involved. Snow v. Providence, 202 Ky. 627, 260 S.W. 389, 1924 Ky. LEXIS 770 (Ky. 1924).

18. — Estimation of Amount.

In order to ascertain whether a county has incurred debt in any year beyond its income for that year, it is necessary to know the tax levy for that year as well as the value of taxable property and the amount of total indebtedness. Maysville & L. Turnpike Road Co. v. Wiggins, 104 Ky. 540, 47 S.W. 434, 20 Ky. L. Rptr. 724, 1898 Ky. LEXIS 189 (Ky. 1898).

Under this section it is the amount of tax that may be levied which must be considered in determining whether there is an excess indebtedness, and a city may not levy a lesser amount in order to defeat the collection of a debt. Providence v. Providence Electric Light Co., 122 Ky. 237, 91 S.W. 664, 28 Ky. L. Rptr. 1015, 1906 Ky. LEXIS 36 (Ky. 1906), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

Current expenses are to be included in the estimates of indebtedness under the limitations of this section. Winchester v. Nelson, 175 Ky. 63, 193 S.W. 1040, 1917 Ky. LEXIS 287 (Ky. 1917).

In estimating total indebtedness of a county for the purpose of tax levy, current expenses must be included but it must appear that such current expenses consist of salaries and other charges necessary to the maintenance of the county government or arose out of binding obligations incurred prior to the creation of the debt in question. Carter v. Krueger & Son, 175 Ky. 399, 194 S.W. 553, 1917 Ky. LEXIS 346 (Ky. 1917), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

In determining the amount of annual indebtedness, an indebtedness created pursuant to a vote of the people is not to be considered and only the sum necessary to pay annual expenses, the annual interest and the annual sum necessary to create a sinking fund sufficient to discharge the indebtedness shall be considered. Ballard v. Shelbyville, 180 Ky. 135, 201 S.W. 452, 1918 Ky. LEXIS 4 (Ky. 1918).

A debt which was invalidly incurred may not be considered in arriving at a conclusion as to the amount of additional debt which a county is authorized to incur. Hogan v. Lee Fiscal Court, 235 Ky. 100, 29 S.W.2d 611, 1930 Ky. LEXIS 301 (Ky. 1930).

In determining whether nongovernmental expense will exceed this section's limitation on county indebtedness, valid floating indebtedness of county must be added to necessary governmental expense for the year, and if these items equal or exceed revenue for the year, an indebtedness for a purpose not

governmental cannot thereafter be incurred. Jackson County v. Madden, 271 Ky. 535, 112 S.W.2d 986, 1938 Ky. LEXIS 20 (Ky. 1938).

The validity of a note of a board of education given in exchange for warrants previously issued must be determined by the financial status of the school district when the original indebtedness was created. Citizens Bank v. Rowan County Board of Education, 274 Ky. 481, 118 S.W.2d 704, 1938 Ky. LEXIS 266 (Ky. 1938).

A debt created pursuant to a vote of the people is not to be considered in the comparison of a city's annual indebtedness with its annual income if the debt so created would otherwise increase the total indebtedness beyond the maximum limit. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

An estimate of indebtedness permissible under this question must include current expenses for the current year. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

19. — — Debts of School Boards.

Where a board of education was authorized by statute to issue bonds and hold an election for approval, the indebtedness is that of the board alone and the debt of the city is not considered in determining when the limits of this section are reached. Rogan v. Board of Education, 192 Ky. 770, 234 S.W. 443, 1921 Ky. LEXIS 152 (Ky. 1921).

The outstanding indebtedness of a municipality may not be taken into consideration in determining whether a graded school district has reached the constitutional limitation on indebtedness. Fall v. Read, 194 Ky. 135, 238 S.W. 177, 1922 Ky. LEXIS 105 (Ky. 1922). See Dayton v. Board of Education, 201 Ky. 566, 257 S.W. 1021, 1923 Ky. LEXIS 345 (Ky. 1923).

An indebtedness of a municipality is not to be taken into account in estimating the indebtedness of a school board of the district which covers the same territory. Dayton v. Board of Education, 201 Ky. 566, 257 S.W. 1021, 1923 Ky. LEXIS 345 (Ky. 1923).

20. — — Amount of Levy.

Income and revenue refer to the revenue actually levied and not the maximum levy that could have been made and, therefore, a taxing unit may not lawfully incur debts in excess of the revenues actually levied for the current year. Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938); Overall v. Madisonville, 125 Ky. 684, 102 S.W. 278, 31 Ky. L. Rptr. 278, 1907 Ky. LEXIS 329 (Ky. 1907), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938); Carter v. Krueger & Son, 175 Ky. 399, 194 S.W. 553, 1917 Ky. LEXIS 346 (Ky. 1917), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938); Vaughn v. Corbin, 217 Ky. 521, 289 S.W. 1104, 1927 Ky. LEXIS 4 (Ky. 1927); Frank v. Fuss, 235 Ky. 143, 29 S.W.2d 603, 1930 Ky. LEXIS 300 (Ky. 1930); Stratton v. Jessamine County, 257 Ky. 302, 77 S.W.2d 955, 1934 Ky. LEXIS 555 (Ky. 1934); Harrison v. Roberts, 264 Ky. 62, 94 S.W.2d 296, 1936 Ky. LEXIS 277 (Ky. 1936); Hill v. Covington, 264 Ky. 618, 95 S.W.2d 278, 1936 Ky. LEXIS 380 (Ky. 1936); Nourse v. Russellville, 265 Ky. 96, 95 S.W.2d 1096, 1936 Ky. LEXIS 433 (Ky. 1936).

In determining the validity of an indebtedness incurred prior to the decision in Payne v. Covington (1938), 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549, 122 A.L.R. 321, it is permissible to assess the revenue which would have been raised had the maximum tax rate been imposed Payne v. Covington, 283 Ky. 848, 143 S.W.2d 727, 1940 Ky. LEXIS 427 (Ky. 1940).

Any indebtedness incurred in any year in excess of the amount actually derived from the tax imposed, rather than the amount which the city or other taxing district might have collected if it had levied the maximum tax, is invalid. Chestnut v. Bowling Green, 285 Ky. 800, 149 S.W.2d 523, 1941 Ky. LEXIS 469 (Ky. 1941).

21. — Anticipated Revenue.

Borrowing immediate and necessary funds in anticipation of future collection of revenue for the current fiscal year is not the creation of such an indebtedness as is inhibited by this section. Waddle v. Somerset, 281 Ky. 30, 134 S.W.2d 956, 1939 Ky. LEXIS 4 (Ky. 1939).

City of fourth class has right to borrow money in anticipation of current revenues. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

Fact that warrants were payable in a future year did not invalidate them if anticipated revenue of year in which they were issued was not exceeded by their issuance. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

22. — Uncollected Revenue.

A city may borrow against an occupational tax collected by employers even though the money is not received by the city until after the fiscal year, because when the employer collects the tax during the fiscal year the funds are constructively received by the city at the time the employers collect the taxes. Meyers v. Louisville, 310 Ky. 348, 220 S.W.2d 852, 1949 Ky. LEXIS 923 (Ky. 1949).

The fiscal court could pledge tax funds which had already accrued but had not been collected. Caywood v. Stivers, 430 S.W.2d 327, 1968 Ky. LEXIS 398 (Ky. 1968).

23. — Annexed or Merged Entities.

A county cannot assume the liability of a road district without popular consent. Carpenter v. Central Covington, 119 Ky. 785, 81 S.W. 919, 26 Ky. L. Rptr. 430, 1904 Ky. LEXIS 130 (Ky. 1904).

A city, as authorized by statute, acquiring the stock of a water company which had incurred an indebtedness and had issued bonds therefor, can issue bonds to refund the indebtedness of the company without submitting the proposition to the voters of the city. Gaulbert v. Louisville, 97 S.W. 342, 30 Ky. L. Rptr. 50 (1906).

A county school board would not be permitted to assume the debts of another school district which it had absorbed, assuming such debt would create a total indebtedness in excess of the income for that year. Owsley County Board of Education v. Owsley County Fiscal Court, 251 Ky. 165, 64 S.W.2d 179, 1933 Ky. LEXIS 797 (Ky. 1933).

Where an annexing city assumes the debts of an annexed city, an illegal indebtedness is not created where the debts of the annexed city were validly created because only the amount of interest and the sinking fund need be considered and this does not bring the debt within the prohibitions of this section. Matz v. Newport, 265 Ky. 126, 95 S.W.2d 1071, 1936 Ky. LEXIS 422 (Ky. 1936).

This section does not relieve a county school board from liability for a judgment against an independent school district which had been merged with the county district by order of the state board of education. Board of Education v. Nelson, 268 Ky. 83, 103 S.W.2d 691, 1937 Ky. LEXIS 413 (Ky. 1937).

A county board of education could be liable for the debts of an independent school district when the district was merged and issue bonds to satisfy the indebtedness, since it was a debt which the board did not voluntarily incur. Bales v. Holt, 270 Ky. 272, 109 S.W.2d 632, 1937 Ky. LEXIS 68 (Ky. 1937).

If the question of incurring an indebtedness and issuing general obligation bonds had been submitted to the voters in accordance with this section and had received the required two-thirds (⅔) vote in favor, then property in the district at the time the vote was taken would remain liable for the tax required to pay the indebtedness, regardless of the transfer of the property to another school district. Board of Education v.

Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

24. — Approval of Voters.

The constitutional provision prohibiting a city from incurring any indebtedness beyond a certain limit, unless authorized by a two-thirds (⅔) vote at a special election, does not require such an election where for any reason the proposed indebtedness is not within the prohibition. Ashland Waterworks Co. v. Ashland, 251 F. 492, 1918 U.S. App. LEXIS 1721 (6th Cir. Ky. 1918).

A statute enacted prior to the adoption of the Constitution and providing for the creation of indebtedness in acquiring and maintaining turnpikes is subject to the two-thirds (⅔) approval of voters requirement of this section. O'Mahoney v. Bullock, 97 Ky. 774, 31 S.W. 878, 17 Ky. L. Rptr. 523, 1895 Ky. LEXIS 242 (Ky. 1895).

The question of whether to incur an indebtedness must be submitted to the voters at a regular election. Ashland v. Culbertson, 103 Ky. 161, 44 S.W. 441, 19 Ky. L. Rptr. 1812, 1898 Ky. LEXIS 41 (Ky. 1898), overruled, Weil, Roth & Co. v. Paris, 176 Ky. 841, 197 S.W. 461, 1917 Ky. LEXIS 130 (Ky. 1917).

Even where, under Const., § 158, a city may exceed its revenues to meet an emergency, the proposed indebtedness must still be approved by the voters as required by this section. Knipper v. Covington, 109 Ky. 187, 58 S.W. 498, 22 Ky. L. Rptr. 676, 1900 Ky. LEXIS 171 (Ky. 1900).

In submitting the question of a bond issue to the voters, it is not necessary that the terms of the bonds to be issued and the rate of interest be given. McGinnis v. Bardstown Graded School Dist., 108 S.W. 289, 32 Ky. L. Rptr. 1289 (1908).

A city of the second class may order an election to obtain voter approval for a proposed indebtedness for the construction of sewers. Bain v. Lexington, 121 S.W. 620 (Ky. 1909).

The submission to the voters of a county of the question whether they were in favor of an appropriation of $75,000 for building a new courthouse was sufficient to authorize the issuance of bonds by the county. Logan v. Gilbert, 151 Ky. 659, 152 S.W. 778, 1913 Ky. LEXIS 553 (Ky. 1913).

The requirement of ratification by a two-thirds (⅔) vote in this section does not apply to debts incurred for road construction under Const., § 157a. Gatton v. Fiscal Court of Daviess County, 169 Ky. 425, 184 S.W. 1, 1916 Ky. LEXIS 705 (Ky. 1916).

An indebtedness approved by the voters is valid even though the debt is greater than could be satisfied from the year's revenue. Samuels v. Clinton, 184 Ky. 97, 211 S.W. 567, 1919 Ky. LEXIS 41 (Ky. 1919).

Where there is no suggestion that a proposed bond issue would result in an excess indebtedness, there is no reason to submit the question of whether the city should be allowed to exceed its current income to the voters. Hunter v. Louisville, 208 Ky. 326, 270 S.W. 841, 1925 Ky. LEXIS 280 (Ky. 1925).

Under this section county school district has no right to anticipate more than one (1) year's taxes at a time without a two-thirds (⅔) vote of the people. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

25. — — Two-thirds Vote.

A prospective indebtedness may be approved by two-thirds (⅔) of the voters voting on the question and it is not necessary to have the assent of two thirds (⅔) of the electorates or two-thirds (⅔) who vote for the candidates in the election. Montgomery County Fiscal Court v. Trimble, 104 Ky. 629, 47 S.W. 773, 20 Ky. L. Rptr. 827, 1898 Ky. LEXIS 210 (Ky. 1898); Owensboro v. Baker, 37 S.W. 1129, 18 Ky. L. Rptr. 324 (1896), overruled, Montgomery County Fiscal Court v. Trimble, 104 Ky. 629, 47 S.W. 773, 20 Ky. L. Rptr. 827, 1898 Ky. LEXIS 210 (Ky. 1898); McGoodwin v. Franklin, 38 S.W. 481, 18 Ky. L. Rptr. 752 (1896), overruled, Montgomery County Fiscal Court v. Trimble, 104 Ky. 629, 47 S.W. 773, 20 Ky. L. Rptr. 827, 1898 Ky. LEXIS 210 (Ky. 1898). See Worthington v. Board of Education, 71 S.W. 879, 24 Ky. L. Rptr. 1510 (1903); Board of Education v. Winchester, 120 Ky. 591, 87 S.W. 768, 27 Ky. L. Rptr. 994, 1905 Ky. LEXIS 139 (Ky. 1905); Kentucky Light & Power Co. v. James H. Williams & Co., 124 S.W. 840, 1910 Ky. LEXIS 696 (Ky. 1910); Iglehart v. Dawson Springs, 143 Ky. 140, 136 S.W. 210, 1911 Ky. LEXIS 376 (Ky. 1911); Logan v. Gilbert, 151 Ky. 659, 152 S.W. 778, 1913 Ky. LEXIS 553 (Ky. 1913); Fowler v. Oakdale, 158 Ky. 603, 166 S.W. 195, 1914 Ky. LEXIS 687 (Ky. 1914).

The two-thirds (⅔) vote requirement of this section refers to two-thirds (⅔) of the votes actually cast on the issue. Frost v. Central City, 134 Ky. 434, 120 S.W. 367, 1909 Ky. LEXIS 396 (Ky. 1909), overruled, Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946).

The two-thirds (⅔) vote requirement refers to two-thirds (⅔) of those voting on the issue and not two-thirds (⅔) of all qualified voters. Marion v. Haynes, 157 Ky. 687, 164 S.W. 79, 1914 Ky. LEXIS 373 (Ky. 1914).

The election provision of this section refers to assent by two-thirds (⅔) of those who do not vote in the election and not to two-thirds (⅔) of all voters in the area. Bowman v. Fayette County, 168 Ky. 524, 182 S.W. 633, 1916 Ky. LEXIS 587 (Ky. 1916).

Where the territory of a city was organized into two (2) separate free graded public school districts, one for white and one for colored children, and the proposition to incur indebtedness for school building for colored school district, to be paid by taxation on the property of the colored people only, was submitted to the colored voters and adopted, there was compliance with this section. Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842, 1919 Ky. LEXIS 218 (Ky. 1919).

Where the bond issues were approved by more than two-thirds (⅔) of those voting on the question, this is all that is necessary to meet the requirement of this section. Wilkerson v. Lexington, 188 Ky. 381, 222 S.W. 74, 1920 Ky. LEXIS 290 (Ky. 1920).

26. — — Time of Election.

An election under this section must be held on the first Tuesday after the first Monday in November as provided by Const., § 148. Murray v. Irvan, 170 Ky. 290, 185 S.W. 859, 1916 Ky. LEXIS 43 (Ky. 1916).

A special levy approved at an election held on a day other than the regular election day is invalid. Rockcastle County v. Louisville & N. R. Co., 232 Ky. 439, 23 S.W.2d 276, 1929 Ky. LEXIS 447 (Ky. 1929).

27. — — Effect of Vote.

Where the voters approved a free-turnpike system which involved the purchase or condemnation of roads, this vote necessarily was a vote in favor of incurring the necessary indebtedness. Whaley v. Commonwealth, 110 Ky. 154, 61 S.W. 35, 23 Ky. L. Rptr. 1292, 1901 Ky. LEXIS 73 (Ky. 1901). See Maysville & L. Turnpike Road Co. v. Wiggins, 104 Ky. 540, 47 S.W. 434, 20 Ky. L. Rptr. 724, 1898 Ky. LEXIS 189 (Ky. 1898).

A vote to incur indebtedness and a vote to issue bonds to meet the debt are not necessarily the same thing and two thirds (⅔) of the voters may approve the bond issue. Bardstown & L. Turnpike Co. v. Nelson County, 117 Ky. 674, 78 S.W. 851, 25 Ky. L. Rptr. 1900, 1904 Ky. LEXIS 229 (Ky. 1904).

28. — — Tax Rate.

A city of the fourth class, free from debt and with $1,350,954 taxable property, may contract an indebtedness of $60,750, payable in annual instalments of $4,500, where two-thirds (⅔) of the city voters assent thereto, and the tax levy, in order to meet the interest and provide a sinking fund for the principal, need but slightly exceed 25 cents per $100 of taxable property.

Shelbyville v. Shelbyville Water & Light Co., 27 S.W. 85, 16 Ky. L. Rptr. 176 (1894).

Subject to the provisions of Const., § 158, a county may exceed the 50-cent levy for the purpose of providing a sinking fund to meet bonds voted by the people pursuant to this section. Carter v. Krueger & Son, 175 Ky. 399, 194 S.W. 553, 1917 Ky. LEXIS 346 (Ky. 1917), overruled, Payne v. Covington, 276 Ky. 380, 123 S.W.2d 1045, 1938 Ky. LEXIS 549 (Ky. 1938).

Where an indebtedness was incurred with the consent of the electorate, the rate of taxation in this section does not apply where it was necessary for the city to exceed the rate in order to discharge the debt and the only limits that apply to this sort of debt are those of Const., § 158. Nall v. Elizabethtown, 200 Ky. 321, 254 S.W. 893, 1923 Ky. LEXIS 64 (Ky. 1923).

A tax in excess of the limitation of this section may be authorized in an election as long as the debt refunded was within the limitations of Const., § 158. Wheeler v. Hopkinsville, 269 Ky. 289, 106 S.W.2d 1016, 1937 Ky. LEXIS 594 (Ky. 1937).

Where voters authorized a bond issue with the provision that the tax levied should not exceed the limits of this section, no tax could be levied in excess of the limit without another vote. Hopkinsville v. Wheeler, 269 Ky. 291, 269 Ky. 292, 106 S.W.2d 1017, 1937 Ky. LEXIS 595, 1937 Ky. App. LEXIS 595 (Ky. 1937).

Where voters authorized a bond issue with the provision that the tax should not exceed the constitutional limitation, the city could not, without another vote, fix a higher rate on excess of the limit. Hopkinsville v. Wheeler, 269 Ky. 291, 269 Ky. 292, 106 S.W.2d 1017, 1937 Ky. LEXIS 595, 1937 Ky. App. LEXIS 595 (Ky. 1937).

In order to pay off a debt created or assumed by a vote of the people, the county or other taxing district may levy a special tax in addition the maximum rate prescribed by this section. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

Although KRS 107.310 to 107.500 does not validly provide for the establishment of a separate, independent taxing district, the district board may be established and function under the terms of the act as a corporate arm of the county government, with the tax, upon voter approval of projects, being levied as a county tax. Lowery v. Jefferson, 458 S.W.2d 168, 1970 Ky. LEXIS 167 (Ky. 1970).

29. — Revenue Bonds.

The issuance of revenue-producing bonds under KRS ch. 58 is not violative of this section or Const., § 158. Davis v. Water-Sewer & Sanitation Com., 223 F. Supp. 902, 1963 U.S. Dist. LEXIS 6540 (W.D. Ky.), aff'd, Davis v. Bowling Green, 375 U.S. 43, 84 S. Ct. 149, 11 L. Ed. 2d 107, 1963 U.S. LEXIS 391 (U.S. 1963).

Bonds for the construction of a waterworks plant which are to be paid from the revenue from the plant do not constitute an indebtedness within the meaning of this section. Bowling Green v. Kirby, 220 Ky. 839, 295 S.W. 1004, 1927 Ky. LEXIS 603 (Ky. 1927).

A statute authorizing cities to issue bonds for the building of bridges was not a violation of this section or Const., § 158 where the bonds were to be paid solely from tolls and revenues of the bridges. Klein v. City of Louisville, 224 Ky. 624, 6 S.W.2d 1104, 1928 Ky. LEXIS 663 (Ky. 1928).

A city's lease of machinery with a purchase option was valid where the payments for the machinery were to come from the revenue of the plant in which the machinery was used. Jones v. Corbin, 227 Ky. 674, 13 S.W.2d 1013, 1929 Ky. LEXIS 945 (Ky. 1929).

Waterworks bonds which are to be paid solely from the income from the waterworks are not an indebtedness of the city within the provisions of this section. Kentucky Utilities Co. v. Paris, 248 Ky. 252, 58 S.W.2d 361, 1933 Ky. LEXIS 195 (Ky. 1933). See Juett v. Williamstown, 248 Ky. 235, 58 S.W.2d 411, 1933 Ky. LEXIS 218 (Ky. 1933).

A bond issue by a city to be paid solely out of a fixed portion of the revenue from a municipally owned electric light plant will not constitute an indebtedness within the meaning of this section. Security Trust Co. v. Paris, 264 Ky. 846, 95 S.W.2d 781, 1936 Ky. LEXIS 408 (Ky. 1936).

Bonds for the construction of a hospital which were to be paid solely from rental to be received by the county from leasing the hospital were not an indebtedness within the meaning of this section. State Bank & Trust Co. v. Madison County, 275 Ky. 501, 122 S.W.2d 99, 1938 Ky. LEXIS 455 (Ky. 1938).

City of third class purchasing combined water and electric system had power, without popular vote, to issue bonds payable solely from revenues, and constituting a lien only on revenues, such bonds not constituting a debt of the city. Cawood v. Coleman, 294 Ky. 858, 172 S.W.2d 548, 1943 Ky. LEXIS 515 (Ky. 1943).

This section has no controlling force where interest payments and liquidation of bonds issued for the purpose of equipping an already acquired airfield must be met solely by revenues derived from operation of the field. Droege v. Kenton County Fiscal Court, 300 Ky. 186, 188 S.W.2d 320, 1945 Ky. LEXIS 518 (Ky. 1945).

Metropolitan sewer district law, KRS 76.010 to 76.210, did not violate this section on ground that obligations of district would become obligations of city, thus causing debt limitations to be exceeded, in view of express provision of the law that obligations of district should not constitute obligations of the city, that debts were to be paid from district sewer revenues, and in view of fact that district was made a separate municipality independent of the city. Veail v. Louisville & Jefferson County Metropolitan Sewer Dist., 303 Ky. 248, 197 S.W.2d 413, 1946 Ky. LEXIS 830 (Ky. 1946).

Bonds issued for public projects which were to be paid from the revenues derived from the project did not constitute a debt against the city. Dunn v. Murray, 306 Ky. 426, 208 S.W.2d 309, 1948 Ky. LEXIS 578 (Ky. 1948).

Revenue bonds for county jail, issued pursuant to KRS 103.290 to 103.410 (repealed) and to be paid out of yearly rentals paid by county for each year it elected to use the jail, did not constitute a debt in violation of this section. Martin County v. Cassady, 307 Ky. 728, 212 S.W.2d 281, 1948 Ky. LEXIS 823 (Ky. 1948).

The provisions of this section do not apply to the issuance and sale of revenue bonds. Selle v. Henderson, 309 Ky. 599, 218 S.W.2d 645, 1949 Ky. LEXIS 772 (Ky. 1949).

County revenue bonds issued under the authority of KRS ch. 58 and KRS 103.290 to 103.410 (repealed) to finance the building of a courthouse were valid revenue bonds and were not obligations of the county in violation of this section. Anderson v. Wayne County, 310 Ky. 597, 221 S.W.2d 429, 1949 Ky. LEXIS 970 (Ky. 1949).

A bond issue to be paid from revenues from the operation of the improved waterworks system does not constitute a debt within the meaning of this section or Const., § 158. Burkholder v. Louisville, 276 S.W.2d 29, 1955 Ky. LEXIS 411 (Ky. 1955).

Bonds payable solely from revenues other than taxes and not secured by liens on physical properties are not an indebtedness within the meaning of this section or Const., § 158. Perkins v. Frankfort, 276 S.W.2d 449, 1955 Ky. LEXIS 422 (Ky. 1955).

The pledging of parking meter revenues for a combined parking facility project does not create a debt within the meaning of this section. Skidmore v. Elizabethtown, 291 S.W.2d 3, 1956 Ky. LEXIS 352 (Ky. 1956).

It is not illegal to use, where authorized, surplus revenues from public utilities to pay bonds issued for unrelated public

projects. Grimm v. Moloney, 358 S.W.2d 496, 1962 Ky. LEXIS 180 (Ky. 1962).

Ordinarily, constitutional restrictions on municipal indebtedness are not applicable to obligations which are payable out of money derived from income and revenues of city-owned and revenue-producing public utilities. Grimm v. Moloney, 358 S.W.2d 496, 1962 Ky. LEXIS 180 (Ky. 1962).

Revenue from parking meters is not tax revenue and may be pledged for the payment of bonds. White v. Common Council of Middlesboro, 414 S.W.2d 569, 1967 Ky. LEXIS 357 (Ky. 1967).

Bonds meeting the requirements of KRS 58.010 to 58.140 do not violate the constitutional prohibitions on indebtedness because such bonds are paid solely from revenues of the designated system and do not encumber the city itself. Baker v. Richmond, 709 S.W.2d 472, 1986 Ky. App. LEXIS 1136 (Ky. Ct. App. 1986).

30. — Special Assessments.

A bond issue for street improvements which provided for payment of the bonds from assessments against abutting property owners did not create a debt within the meaning of this section. Catlettsburg v. Self, 115 Ky. 669, 74 S.W. 1064, 25 Ky. L. Rptr. 161, 1903 Ky. LEXIS 156 (Ky. 1903). See Adams v. Ashland, 80 S.W. 1105, 26 Ky. L. Rptr. 184 (1904); Gedge v. Covington, 80 S.W. 1160, 26 Ky. L. Rptr. 273 (1904).

The tax rate limitations of this section have no application to local assessments to pay for local improvements. Dyer v. Newport, 80 S.W. 1127, 26 Ky. L. Rptr. 204 (1904).

The provision of this section limiting taxation and the provisions of Const., § 158 do not apply to special assessments authorized by statute to pay for the construction of drains. Williams v. Wedding, 165 Ky. 361, 176 S.W. 1176, 1915 Ky. LEXIS 531 (Ky. 1915).

A local assessment on property specially benefited by a local improvement for the cost is but a charge for the improvement and is not a tax. Vogt v. Oakdale, 166 Ky. 810, 179 S.W. 1037, 1915 Ky. LEXIS 780 (Ky. 1915). See Wickliffe v. Greenville, 170 Ky. 528, 186 S.W. 476, 1916 Ky. LEXIS 102 (Ky. 1916).

Local improvement bonds which are to be paid from the benefited property do not constitute an indebtedness unless the credit of the city is pledged for the payment of the principal and interest. Castle v. Louisa, 187 Ky. 397, 219 S.W. 439, 1920 Ky. LEXIS 134 (Ky. 1920).

This section has no application to assessments for public improvements such as sewers. Shaw v. Mayfield, 204 Ky. 618, 265 S.W. 13, 1924 Ky. LEXIS 529 (Ky. 1924), limited, Marion v. Paris, 237 Ky. 305, 35 S.W.2d 311, 1931 Ky. LEXIS 592 (Ky. 1931).

Assessments for improvements levied against the benefited property are not taxes within the meaning of this section. Board of Drainage Comm'rs v. Graves County, 209 Ky. 193, 272 S.W. 387, 1925 Ky. LEXIS 461 (Ky. 1925).

Special assessments for street improvements and other similar public works are not taxes within the meaning of this section and are not to be considered in determining the municipal tax rate or indebtedness. Shaver v. Rice, 209 Ky. 467, 273 S.W. 48, 1925 Ky. LEXIS 523 (Ky. 1925). See Gosnell v. Louisville, 104 Ky. 201, 46 S.W. 722, 20 Ky. L. Rptr. 519, 1898 Ky. LEXIS 156 (Ky. 1898), limited, Kirwin v. Nevin, 111 Ky. 682, 64 S.W. 647, 23 Ky. L. Rptr. 947, 1901 Ky. LEXIS 246 (Ky. 1901).

Sewer improvement bonds were validly issued where they were to be paid by assessments against the improved property and, therefore, were not an indebtedness of the city. Carey-Reed Co. v. Sisco, 251 Ky. 22, 64 S.W.2d 430, 1933 Ky. LEXIS 803 (Ky. 1933).

Improvement bonds which were to be paid through assessments against the property benefited were not an indebtedness requiring approval of the voters. Prestonsburg v. People's State Bank, 255 Ky. 252, 72 S.W.2d 1043, 1934 Ky. LEXIS 202 (Ky. 1934).

Refunding bonds to be issued by a county water district and payable solely from assessments against the property in the district are not prohibited by this section. Middendorf v. Jameson, 265 Ky. 111, 95 S.W.2d 1057, 1936 Ky. LEXIS 417 (Ky. 1936).

The improvement of streets and public ways of a municipality at the cost of the owners of the abutting property is not a debt against the municipality within the meaning of this section. Coke v. Dowell, 281 Ky. 362, 136 S.W.2d 3, 1940 Ky. LEXIS 31 (Ky. 1940).

Liability of city for deficiencies where street improvement assessments exceeded 50 per cent of value of property, for failure to collect full assessments, and for failure to enforce assessment liens assumed by city in issuance of street improvement bonds did not constitute indebtedness of city beyond income and revenue for the year in violation of this section, at least where there was no evidence of extravagant or unreasonable estimates at time of issuing bonds. Knepfle v. Morehead, 301 Ky. 417, 192 S.W.2d 189, 1946 Ky. LEXIS 493 (Ky. 1946).

Street improvement bonds issued by city of fifth class under ten-year assessment plan did not constitute an obligation of the city in violation of this section. Knepfle v. Morehead, 301 Ky. 417, 192 S.W.2d 189, 1946 Ky. LEXIS 493 (Ky. 1946).

Special assessment bonds payable from collections from property owners assessed for the benefits received are not debts within the meaning of this section or Const., § 158. Rivers v. Owensboro, 287 S.W.2d 151, 1956 Ky. LEXIS 443 (Ky. 1956).

Special assessments for benefits from public improvements payable from assessments against improved properties are not ad valorem taxes and are not subject to constitutional limitations on taxation. Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

31. — — Liability of City.

Bonds for street improvements are to be paid from assessments against property owners but where the faith and credit of the city were pledged for payment of the bonds, the question must be submitted to a vote of the electorate. Covington v. McKenna, 99 Ky. 508, 36 S.W. 518, 18 Ky. L. Rptr. 288, 1896 Ky. LEXIS 108 (Ky. 1896).

Street improvement bonds which are to be paid out of assessments which are made a lien upon the property benefited are not valid without the approval of the electorate for the excess debt where the city's faith and credit were pledged for the payment of the bonds. German Nat'l Bank v. Covington, 164 Ky. 292, 175 S.W. 330, 1915 Ky. LEXIS 346 (Ky. 1915).

A city may not create an indebtedness for street improvements under a ten-year bond plan where such debt would be in excess of annual revenue without the assent of the electorate, because the debt is primarily that of the city even though abutting properties will be subject to liens for the cost of improvements and the assessments are to be paid by the owners annually for ten years. Schuster v. Oakdale, 180 Ky. 760, 203 S.W. 715, 1918 Ky. LEXIS 142 (Ky. 1918).

Where bonds were issued for building a sewer system and the property owners were able to elect to pay their assessments in equal instalments and there was no provision in the ordinance that the bonds should not be a liability of the city, the plan was invalid as incurring an excess debt without a vote of the electorate. Little v. Southgate, 221 Ky. 604, 299 S.W. 587, 1927 Ky. LEXIS 809 (Ky. 1927).

A provision wherein a city is directly liable to bondholders for any deficiencies arising from the city's failure to pursue all remedies available to collect improvement assessments does not make the public improvement bonds an indebtedness within the meaning of this section. Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

32. — Valid Expenditures.

Where a city agreed to appropriate $3,000 annually to support a library building in accordance with an agreement

with the donor of the building, there was no violation of this section where the appropriation was made out of each year's revenues. Lambert v. Board of Trustees, 151 Ky. 725, 152 S.W. 802, 1913 Ky. LEXIS 562 (Ky. 1913).

Where a county, under a state-aid plan, undertook to build a road and to pay only a quarter of the cost while issuing warrants for the remaining cost conditioned upon the receipt of the sums due from the state, this agreement is not invalid under this section where the pursuit of this plan leaves no doubt that the county would not be indebted beyond its annual revenue. Tartar v. Skaggs, 184 Ky. 58, 211 S.W. 203, 1919 Ky. LEXIS 17 (Ky. 1919).

Where a city had sold construction bonds for $9,660 and there was no evidence that this sum was expended before the city had purchased certain materials, the payment for which is now sought by the seller, then it is not established that the city had exceeded its debt limitation before it made purchases in question and, therefore, such purchases were valid. Cahill-Swift Mfg. Co. v. Bardwell, 219 Ky. 649, 294 S.W. 171, 1927 Ky. LEXIS 416 (Ky. 1927).

A statute providing for state colleges to lease buildings for a term which would amortize the cost of the buildings did not violate this section, as this section applies only to self-governing political subdivisions of the state and the statute made renewal of the leases optional from year to year. McDonald v. University of Kentucky, 225 Ky. 205, 7 S.W.2d 1046, 1928 Ky. LEXIS 734 (Ky. 1928).

Where a school district employed a contractor to build a schoolhouse and the total price was beyond the amount of funds available, there was no proof that the debt was invalid where there was no contract executed and the builder agreed not to do any more than could be paid from yearly revenue. Cockrell v. Board of Trustees, 237 Ky. 280, 35 S.W.2d 310, 1931 Ky. LEXIS 591 (Ky. 1931).

Financing plan whereby banks agreed to advance money to pay condemnation award on acquisition of additional land to extend airfield and to obtain lien therefor on land, but without obligation by air board to repay the money or by city to levy tax for board's benefit, did not constitute borrowing of money by board and obligation to repay it out of revenues for ensuing year in violation of KRS 183.200 and this section. Miles v. Lee, 284 Ky. 39, 143 S.W.2d 843, 1940 Ky. LEXIS 436 (Ky. 1940).

County warrants were not issued in violation of this section, because they were not to be paid until succeeding years, in absence of anything in written contract indicating they were not to be paid from revenues collected in years in which obligations were made. Banks-Miller Supply Co. v. Carter County, 45 F. Supp. 521, 1942 U.S. Dist. LEXIS 2830 (D. Ky. 1942).

Payment of increased teachers' salaries from a capital outlay item of the education budget was not improper where it was within the limits and constituted a part of the anticipated revenues. Dunn v. Allen, 308 Ky. 774, 215 S.W.2d 957, 1948 Ky. LEXIS 1047 (Ky. 1948).

Since county containing city of sixth class could, under KRS 67.080(8), issue bonds for the purpose of constructing and furnishing a county public health clinic and hospital and the procedure of this section was followed and the amount of indebtedness was within Const., § 158, there was no merit in suggestion that issuance of the bonds would violate this section. Demunbrun v. Browning, 311 Ky. 71, 223 S.W.2d 372, 1949 Ky. LEXIS 1058 (Ky. 1949) (decision prior to 1978 amendment of KRS 67.080).

33. — — Accumulating Funds.

The fiscal court may, within lawful limits, make levies to accumulate a fund with which to pay for a courthouse when erected in the future, since this section does not prohibit such levies. Combs v. Letcher County, 107 Ky. 379, 54 S.W. 177, 21 Ky. L. Rptr. 1057, 1899 Ky. LEXIS 182 (Ky. 1899).

34. — — Ordinances.

An ordinance providing for construction of waterworks system was not invalid as creating an unauthorized debt or otherwise because of the provision that the city should pay current prices for water. Williams v. Raceland, 245 Ky. 212, 53 S.W.2d 370, 1932 Ky. LEXIS 573 (Ky. 1932).

An ordinance which encouraged a housing authority to proceed with development of slum clearance project but made absolute commitment of city only in regard to tax exemption was not invalid under this section, Const., § 158 or KRS 89.590 (repealed). Jones v. Paducah, 283 Ky. 628, 142 S.W.2d 365, 1940 Ky. LEXIS 386 (Ky. 1940).

Bond issue voted by citizens of second-class city for purpose of raising funds with which to acquire rights of way for floodwall to be constructed with federal funds was valid, notwithstanding fact that, at time of passage of ordinance submitting question to voters and at time of election, federal government had not set apart or made available the funds with which to construct the floodwall. Schatzman v. Covington, 301 Ky. 832, 193 S.W.2d 447, 1946 Ky. LEXIS 583 (Ky. 1946).

A bond issue for urban renewal which would be paid from occupational license fees from the area "if and when such fees are received" did not create an unvoted debt because the ordinance did not bind the city to continue for any period of time to impose such fees. Watkins v. Fugazzi, 394 S.W.2d 594, 1965 Ky. LEXIS 194 (Ky. 1965).

35. — — Contracts.

An insurance agreement with a cooperative assessment fire insurance company is not invalid as assuming a liability in excess of revenue without approval of the electorate where the liability of the members of the insurance company is not unlimited and is capable of practical ascertainment. Dalzell v. Bourbon County Bd. of Education, 193 Ky. 171, 235 S.W. 360, 1921 Ky. LEXIS 209 (Ky. 1921).

A contract by which the board of education sold a school building for a fixed consideration to a corporation organized to purchase the building, with option by the board to lease and rebuy the building but with no obligation to do so, did not require the board to incur an indebtedness in excess of that authorized by this section and Const., § 158, without a vote of the voters thereon. Waller v. Georgetown Board of Education, 209 Ky. 726, 273 S.W. 498, 1925 Ky. LEXIS 589 (Ky. 1925).

A contract between a school corporation and a corporation where the corporation was to build a school to be rented by the city for the term of one (1) year with an option to renew from year to year for a yearly rent within the constitutional debt limit was valid. Kirkpatrick v. City Board of Education, 234 Ky. 836, 29 S.W.2d 565, 1930 Ky. LEXIS 281 (Ky. 1930). See Holman v. Glasgow Graded Common School Dist., 237 Ky. 7, 34 S.W.2d 733, 1931 Ky. LEXIS 529 (Ky. 1931).

Where a lease entered into by a school board was for one (1) year with options to renew on a year-to-year basis, this did not create an indebtedness for more than a year and such yearly rent was not in excess of anticipated revenue; therefore, there was no violation of this section. Davis v. Board of Education, 260 Ky. 294, 83 S.W.2d 34, 1935 Ky. LEXIS 396 (Ky. 1935).

Under this section a county, like other governmental units, may raise money for construction by conveying realty to a corporation which had the power to borrow money, issue bonds and rent the realty back to the county where there is no showing that the rent and other governmental expenses would exceed the amount of revenue that could be raised in any year. Sizemore v. Clay County, 268 Ky. 712, 105 S.W.2d 841, 1937 Ky. LEXIS 521 (Ky. 1937).

An agreement by a district board to rent property for one (1) year, where the year's rent is to come from funds at hand with an option to renew the lease at the end of a year, does not amount to an indebtedness in violation of this section. Warren

County Fiscal Court v. Warren County Tuberculosis Sanitorium Corp., 272 S.W.2d 331, 1954 Ky. LEXIS 1089 (Ky. 1954).

Contract between two (2) cities of the fourth class whereby one city agreed to pay the other over a period of 20 years a monthly sum to be determined by the amount of the first city's sewage collected and treated by the other did not create an indebtedness in violation of this section and Const., §§ 158 and 159. Russell v. Flatwoods, 394 S.W.2d 900, 1965 Ky. LEXIS 218 (Ky. 1965).

36. — — Leases.

Although the provision of KRS 107.410 authorizes the district board, on a year-to-year basis, to agree to contribute a portion of the rental payments under a lease agreement, the power of the district board to agree, for any year, to contribute such rental payments must be confined to payment from such income and revenue as actually has been provided to the board for that year and only for projects that would serve a county purpose. Lowery v. Jefferson, 458 S.W.2d 168, 1970 Ky. LEXIS 167 (Ky. 1970).

37. — Invalid Expenditures.

Bonds issued by county of the commonwealth in an amount exceeding income and revenue provided for year in which bonds were issued, without assent of two-thirds (⅔) of voters, are void even in hands of holder in due course, and cannot be enforced. Women's Catholic Order of Foresters v. Trigg County, 38 F. Supp. 398, 1941 U.S. Dist. LEXIS 3475 (D. Ky. 1941). See Banks-Miller Supply Co. v. Carter County, 45 F. Supp. 521, 1942 U.S. Dist. LEXIS 2830 (D. Ky. 1942).

Where $18,452 had been appropriated for roads and the road revenues would not exceed $20,000, an additional appropriation of $7,000 without the assent of two-thirds (⅔) of the voters was invalid. Lankford v. Burton, 167 Ky. 445, 180 S.W. 784, 1915 Ky. LEXIS 860 (Ky. 1915).

Approval of $3,800 for school improvements by the school trustees was improper where the revenue was only $2,800 and the voters had disapproved a bond issue for these improvements. Flanders v. Board of Trustees, 170 Ky. 627, 186 S.W. 506, 1916 Ky. LEXIS 115 (Ky. 1916).

A county may not incur an excess indebtedness by appropriating money for a specified purpose where this is a mere subterfuge to create an indebtedness. Carman v. Hickman County, 185 Ky. 630, 215 S.W. 408, 1919 Ky. LEXIS 351 (Ky. 1919).

Where the Legislature increased the maximum rate of levy but the board of education did not request the fiscal court to impose this new maximum, then the board was without power to issue bonds to fund a floating indebtedness. Hockensmith v. County Board of Education, 240 Ky. 76, 41 S.W.2d 656, 1931 Ky. LEXIS 345 (Ky. 1931).

A board of education may not fund an indebtedness by issuing bonds when the fiscal court failed to act on the board's request for an additional levy. Downey v. Board of Education, 243 Ky. 66, 47 S.W.2d 931, 1932 Ky. LEXIS 30 (Ky. 1932).

Where appropriation to pay salary and expenses of county farm agent would have carried county indebtedness beyond constitutional limit, fiscal court properly refused to make the appropriation, since employment of such an agent was not a necessary governmental expense. Adair County Farm Bureau v. Fiscal Court of Adair County, 263 Ky. 23, 91 S.W.2d 537, 1936 Ky. LEXIS 122 (Ky. 1936).

The mere fact that a school board has exceeded the amount of its realized annual revenue does not violate the constitutional debt limitation where the board stays within the amount of its budget, if its excess expenditure over realized income is within the amount which the board might reasonably have anticipated would be received by it from the tax levy, but where board did not reduce the amount of its budgets, notwithstanding repeated annual experience of failing to realize revenue called for by its budgets, it did not keep its expenditures within required reasonably anticipated amount. Fiscal Court of Lincoln County v. Lincoln County Board of Education, 273 Ky. 174, 115 S.W.2d 891, 1937 Ky. LEXIS 704 (Ky. 1937).

A board of education could not validly issue bonds with maturity dates antedating the issuance, thereby making them past due and payable with accumulated interest at the time they are issued. Abbott v. Oldham County Board of Education, 272 Ky. 654, 114 S.W.2d 1128, 1938 Ky. LEXIS 176 (Ky. 1938).

Any obligation is void which exceeds the revenues that it was reasonably anticipated would be produced by taxes actually levied and the miscellaneous income which could be actually counted on. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

38. — — Ordinances.

An ordinance obligating a city to guarantee $1,000 annually for maintenance of a library in return for a grant to build the library was invalid because the agreement was not approved by the voters. Ramsey v. Shelbyville, 119 Ky. 180, 83 S.W. 116, 26 Ky. L. Rptr. 1102, 1904 Ky. LEXIS 151 (Ky. 1904).

39. — — Contracts.

A contract by which a school district was to pay for the building of a school through the levy of a tax for four (4) years was invalid where the contract was not authorized by the voters. Grady v. Pruit, 111 Ky. 100, 63 S.W. 283, 23 Ky. L. Rptr. 506, 1901 Ky. LEXIS 180 (Ky. 1901).

The acts of school trustees in contracting an indebtedness for the building of a schoolhouse in excess of the revenues, and in levying a tax to pay the debt, are void. Howard v. Trustees of School Dist., 102 S.W. 318, 31 Ky. L. Rptr. 399 (1907).

A city, without a vote of the people, cannot in one (1) year create a debt to be thereafter paid in subsequent years out of the income and revenue for such subsequent years, where the obligation is in excess of the income for the year in which the contract was made. Southern Bitulithic Co. v. Detreville, 156 Ky. 513, 161 S.W. 560, 1913 Ky. LEXIS 483 (Ky. 1913).

A construction contract in which the cost of the building was to be paid over ten (10) years out of annual revenues was invalid when not submitted for approval of the voters, as a debt payable in the future is no less a debt than if payable immediately. Bradford v. Fiscal Court of Bracken County, 159 Ky. 544, 167 S.W. 937, 1914 Ky. LEXIS 864 (Ky. 1914).

A contract by which a board of education agreed to rent of building for seven (7) years at the end of which time the building would be conveyed to the board was invalid as not having been approved by the electorate even though each yearly rental could be paid out of the annual revenue. Billings v. Bankers' Bond Co., 199 Ky. 490, 251 S.W. 643, 1923 Ky. LEXIS 875 (Ky. 1923).

Where a city leased machinery for a certain monthly rental with an option to purchase the equipment at the end of the rental period for $1.00, this was in effect an obligation to buy the machinery and, therefore, constituted an invalid present indebtedness under this section. Jones v. Rutherford, 225 Ky. 773, 10 S.W.2d 296, 1928 Ky. LEXIS 882 (Ky. 1928).

A contract by a board of education to convey property to a private corporation which was in its effect a mortgage of the property is invalid as a creation of indebtedness under this section. Hardin v. Owensboro Educational Ass'n, 244 Ky. 390, 50 S.W.2d 968, 1932 Ky. LEXIS 430 (Ky. 1932).

A plan to convey property to the fiscal court which would lease the school building to be constructed to the school board for a year-to-year lease with rent sufficient to amortize the mortgage and then reconvey the building to the board was invalid. Fiscal Court of Jackson County v. Board of Education, 268 Ky. 336, 104 S.W.2d 1103, 1937 Ky. LEXIS 466 (Ky. 1937).

A joint agreement by a city and county to lease and operate a hospital with provisions that the buildings would be re-

placed if totally or partially destroyed constituted an obligation for the term of 20 years or until the bonds were paid and therefore was an indebtedness in excess of anticipated revenue in violation of this section. Booth v. Owensboro, 274 Ky. 325, 118 S.W.2d 684, 1938 Ky. LEXIS 258 (Ky. 1938).

A plan by which a school board was to convey school properties to a nonprofit corporation which would erect a new school building to be leased to the board for a period of years after which the board was to become owner of the property conveyed to the corporation was invalid. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

In an agreement between a county and a corporation where the county agreed to lease a bridge for one (1) year with an option to renew and to pay the expenses of operation, a judgment approving the agreement was improper where there was not sufficient evidence to indicate whether the annual revenue of the initial year of the lease would enable the county to meet the rent and expenses. Wells v. Pendleton County, 283 Ky. 546, 142 S.W.2d 178, 1940 Ky. LEXIS 384 (Ky. 1940).

Contract pursuant to which county agreed to pay annual rental of specified amount for a period of 20 years, the rent to be paid out of revenues from the rented property but the county being obligated to appropriate funds to make up any deficit arising through insufficiency of operating revenues, created an indebtedness for the aggregate amount of rent for the specified term and, where that amount exceed the income for the year in which the contract was made, the contract violated this section. Kenton County Fiscal Court v. Richards, 291 Ky. 132, 163 S.W.2d 302, 1942 Ky. LEXIS 193 (Ky. 1942).

If a board of education incurs an indebtedness by contracting for construction of a school, and its cost exceeds its income and revenue for the current year, the contract is unenforceable unless it has been approved by two thirds (⅔) of the voters of the area affected. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

Where a construction company was attempting to maintain an action on the basis that it had a valid contract with the school board, the contract was unenforceable because the approval of the voters of the county was not obtained, as required by this section; on the other hand, if the construction company was attempting to maintain the action on the basis that the revenue bond methods provided for in KRS 162.120 to KRS 162.290 were followed, the contract was unenforceable because the only government agency possessing the power and authority to execute such a contract failed to do so. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

40. — Excess Levies.

Three (3) tax levies of 25 cents each made by a county exceeds the limitation of this section where there is no indication that any of the levies was made for the purpose of paying a debt created before the adoption of the present Constitution. McIntire v. Powell, 137 Ky. 477, 125 S.W. 1087, 1910 Ky. LEXIS 590 (Ky. 1910).

A levy by the fiscal court of a county in excess of the 50-cent limit cannot be justified on the ground that numerous residents in the county requested the fiscal court to make the levy and agreed not to resist its collection. Hammond v. Lester, 159 Ky. 310, 166 S.W. 976, 1914 Ky. LEXIS 768 (Ky. 1914).

41. — — Sheriff's Liability.

Where a sheriff collected taxes levied by the county and the levy was in excess of the limits of this section, the sureties of the sheriff's bond were not liable for the excess taxes collected. Commonwealth use of Nicholas County v. Stone, 114 Ky. 511, 71 S.W. 428, 24 Ky. L. Rptr. 1297, 1903 Ky. LEXIS 7 (Ky. 1903). See Boone v. Powell County, 108 S.W. 251, 32 Ky. L. Rptr. 1172 (1908).

42. — Valid Levies.

A tax levy for a six (6) month period beginning January 1, 1935, which was necessitated by an act changing the fiscal year of counties was not invalid where the previous levy was for an entirely different period. Ward v. Adams, 258 Ky. 721, 81 S.W.2d 574, 1935 Ky. LEXIS 234 (Ky. 1935).

Tax imposed under KRS 173.720 on behalf of library district is imposed by the fiscal court as an agent of the district and it does not constitute a county tax; consequently, the fact that the amount of the tax when added to that of the county tax exceeds the maximum for counties does not make it violative of the Constitution. Boggs v. Reep, 404 S.W.2d 24, 1966 Ky. LEXIS 286 (Ky. 1966).

Where it was stipulated that taxable property in county was assessed at an average of 21.1% of fair value, a 53-cent tax rate would not violate the constitutional limit. Floyd County v. Kentucky-West Virginia Gas Co., 407 S.W.2d 721, 1966 Ky. LEXIS 188 (Ky. 1966).

43. — Payment of Deficits.

If a municipality does not collect its anticipated revenue during a year or if it fails to apply that revenue to the payment of that year's valid debts, these debts must be paid out of the revenue for the next year. First Trust Co. v. County Board of Education, 5 F. Supp. 49, 1933 U.S. Dist. LEXIS 1138 (D. Ky. 1933), rev'd, 78 F.2d 114, 1935 U.S. App. LEXIS 3651 (6th Cir. Ky. 1935).

A casual deficit which had occurred although there had been a good faith anticipation and reasonable estimates of both revenues and expenditures is not illegal or invalid, but it should be carried over as an obligation to be paid during the following year. Swinburne v. Newport, 297 Ky. 820, 181 S.W.2d 421, 1944 Ky. LEXIS 821 (Ky. 1944).

Where county borrowed $12,000 in excess of the limit of the county's power to go into debt for a given year and repaid that amount to the bank, the county was not entitled to recover the amount loaned from the bank. Fannin v. Davis, 385 S.W.2d 321, 1964 Ky. LEXIS 158 (Ky. 1964), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

44. — Constitutional Statutes.

An act authorizing cities to issue bonds for hospital construction if approved by the voters was not unconstitutional because it failed to incorporate the specific two-thirds (⅔) approval required by this section. Render v. Louisville, 142 Ky. 409, 134 S.W. 458, 1911 Ky. LEXIS 200 (Ky. 1911).

KRS 80.010 to 80.257, creating municipal housing commissions and authorizing bond issues, do not violate this section or Const., § 158 as the bonds to be issued do not constitute debts against the taxpayers of the municipality. Webster v. Frankfort Housing Com., 293 Ky. 114, 168 S.W.2d 344, 1943 Ky. LEXIS 559 (Ky. 1943).

KRS 68.245 does not violate this section when it is construed together with Const., § 181, as it must be. Rea v. Gallatin County Fiscal Court, 422 S.W.2d 134, 1967 Ky. LEXIS 38 (Ky. 1967).

45. — Unconstitutional Statutes.

The provisions of KRS 162.090, making school bonds the obligation of the city in cases where the city school district embraces the city, cannot constitutionally be applied where the city boundaries extend beyond those of the school district, therefore the bonds constitute obligations of the school district, for which only property within the district may be taxed and for which only voters in the district may vote on the question of issuance of bonds. Board of Education v. Louisville, 258 S.W.2d 707, 1953 Ky. LEXIS 877 (Ky. 1953).

The provision of a statute regarding cost of elections which provided that a county budget would be disapproved if it did not provide for the payment of rent for voting machines regardless of whether the county had renewed its year-to-year

lease for the machines was in violation of this section as imposing a debt. State Property & Bldg. Com. v. Hays, 346 S.W.2d 3, 1961 Ky. LEXIS 277 (Ky. 1961).

KRS 66.510 violates this section to the extent that it authorizes the improvement board to pledge to the payment of its debts appropriations required to be made to it by the fiscal court in future years from the proceeds of general tax revenues. Sawyer v. Jefferson County Fiscal Court, 438 S.W.2d 531, 1969 Ky. LEXIS 411 (Ky. 1969).

46. — Municipality or Taxing District.

A county is for school purposes a taxing district and a municipality, within the meaning of this section and Const., § 158 limiting indebtedness but permitting issuance of bonds to fund floating indebtedness, but county board of education is not, but is merely an arm through which the taxing district operates. Farson v. County Board of Education, 100 F.2d 974, 1939 U.S. App. LEXIS 4586 (6th Cir. Ky. 1939). See First Trust Co. v. County Board of Education, 78 F.2d 114, 1935 U.S. App. LEXIS 3651 (6th Cir. Ky. 1935).

A board of education is a municipality within the meaning of this section and may not create an indebtedness in excess of revenues without approval of the voters. Brown v. Board of Education, 108 Ky. 783, 57 S.W. 612, 22 Ky. L. Rptr. 483, 1900 Ky. LEXIS 102 (Ky. 1900).

A county board of education may not assume an illegally created debt incurred by trustees of a school district, as a school district is a "taxing district or other municipality" within the meaning of this section. Scobee v. County Board of Education, 157 Ky. 510, 163 S.W. 472, 1914 Ky. LEXIS 315 (Ky. 1914).

Morehead College is not a municipality or taxing district within the provisions of this section. Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550, 1934 Ky. LEXIS 341 (Ky. 1934).

A county board of education is an entity subject to the provisions of this section. Lee v. Board of Education, 261 Ky. 379, 87 S.W.2d 961, 1935 Ky. LEXIS 666 (Ky. 1935).

The fact that the public improvements finance board itself has no power to levy taxes does not keep it from being classed as a municipality within the meaning of this section so long as it can compel the tax-levying unit of government to pay over proceeds of taxes levied by the latter. Sawyer v. Jefferson County Fiscal Court, 438 S.W.2d 531, 1969 Ky. LEXIS 411 (Ky. 1969).

47. — Judgments.

Allowing debts to assume the form of a judgment will not authorize the levy of a tax in excess of the limitations of this section. Perry County v. Kentucky River Coal Corp., 268 Ky. 78, 103 S.W.2d 689, 1937 Ky. LEXIS 412 (Ky. 1937).

A city may not be compelled to levy a tax in excess of the rates in this section in order to pay a contractual debt which has been reduced to judgment. James C. Willson & Co. v. Ravenna, 268 Ky. 232, 104 S.W.2d 965, 1937 Ky. LEXIS 443 (Ky. 1937).

48. — Injunctions.

So long as municipal governments make levies of taxes within the limits prescribed by this section, courts of equity will not inquire into the necessity of the levy in a taxpayer's suit to enjoin the collection of the tax. McInerney v. Huelefeld, 116 Ky. 28, 75 S.W. 237, 25 Ky. L. Rptr. 272, 1903 Ky. LEXIS 173 (Ky. 1903).

A taxpayer has the right to sue for an injunction to prevent the fiscal court from incurring debts against the county in excess of its annual revenue. Wesley v. Tartar, 197 Ky. 493, 247 S.W. 353, 1923 Ky. LEXIS 650 (Ky. 1923).

In an action to enjoin a tax collection to pay an allegedly invalid indebtedness, the holders of the indebtedness are necessary parties to the action. Beaver Dam v. Vinson, 223 Ky. 490, 3 S.W.2d 1090, 1928 Ky. LEXIS 368 (Ky. 1928).

A bond issue may not be enjoined by a taxpayer when it appeared that the bonds were issued according to proper procedures and would not create an excess indebtedness. Field v. Catlettsburg, 270 Ky. 25, 108 S.W.2d 1017, 1937 Ky. LEXIS 15 (Ky. 1937).

49. — Validity.

50. — — Assumption.

In the absence of allegations or proof to the contrary it will be presumed that an indebtedness was legally contracted. Bond v. Corbin, 241 Ky. 663, 44 S.W.2d 576, 1931 Ky. LEXIS 133 (Ky. 1931).

51. — — Proof.

Under KRS 66.210 and 66.220, a proposed bond issue must be approved by a court of competent jurisdiction as being within the limits of the Constitution and the city must affirmatively show by pleading and proof that the proposed issue is valid. Rohde v. Newport, 246 Ky. 476, 55 S.W.2d 368, 1932 Ky. LEXIS 793 (Ky. 1932).

Under KRS 66.210 and 66.220, the burden of proof is on the county to plead and prove the validity of a proposed bond issue. Randolph v. Shelby County, 257 Ky. 297, 77 S.W.2d 961, 1934 Ky. LEXIS 557 (Ky. 1934). See Lock v. Middlesboro, 267 Ky. 19, 101 S.W.2d 203, 1937 Ky. LEXIS 279 (Ky. 1937); Kockritz v. Henderson, 269 Ky. 334, 107 S.W.2d 245, 1937 Ky. LEXIS 602 (Ky. 1937).

52. — Invalidity.

53. — — Assertion.

An assertion that an indebtedness was in excess of revenues should have been brought in the original action to enforce notes given for the repair of a school building. Trustees of Common School Dist. v. Miller, 105 S.W. 457, 32 Ky. L. Rptr. 367 (1907).

54. — — — Pleading and Proof.

A petition alleging an indebtedness in excess of revenue must plead facts as to the amount of taxable property and the rate of taxation as well as the amount of indebtedness. Lexington & E. K. R. Co. v. Trustees of School Dist., 54 S.W. 712, 21 Ky. L. Rptr. 1205, 1900 Ky. LEXIS 335 (Ky. 1900).

In order to invalidate a contract as creating an excess indebtedness, facts indicating this effect of the contract must be alleged. City of Louisville v. Gosnell, 61 S.W. 476, 22 Ky. L. Rptr. 1524 (1901).

In an action to recover taxes collected in excess of the limitations of this section, the petition must specifically allege that no indebtedness contracted prior to the adoption of the Constitution is in existence. Sparks v. Robinson, 115 Ky. 453, 74 S.W. 176, 24 Ky. L. Rptr. 2336, 1903 Ky. LEXIS 114 (Ky. 1903).

In an action to recover taxes, the burden is on the taxpayer to prove that the tax is in excess of the limitations of this section. Frankfort v. Morgan, 110 S.W. 286, 33 Ky. L. Rptr. 297 (1908).

Where it is not alleged or proved that a tax in excess of the limits of this section was not levied to pay an indebtedness contracted prior to the adoption of the present Constitution, the court will not presume that this section has been violated. Morgan v. Board of Councilmen, 135 Ky. 178, 121 S.W. 1033 (Ky. 1909).

In an action to prevent the collection of taxes allegedly in excess of the limits of this section, the facts as to this contention must be alleged and proved. Asher v. Pineville, 140 Ky. 670, 131 S.W. 512, 1910 Ky. LEXIS 343 (Ky. 1910).

In a case involving the assertion that an indebtedness has been illegally created, it is necessary to allege facts with respect to this assertion. Streine v. Comm'rs of Campbell

Courthouse Dist., 149 Ky. 641, 149 S.W. 928, 1912 Ky. LEXIS 672 (Ky. 1912).

In questioning the validity of an indebtedness, the pleader should state facts from which it follows that the indebtedness is illegal. McCreary County v. J. C. Mayer & Co., 178 Ky. 366, 198 S.W. 909, 1917 Ky. LEXIS 722 (Ky. 1917).

It is incumbent upon the party attacking the validity of an indebtedness to allege and prove that the limits of this section were exceeded. Elliott County Fiscal Court v. Elliott County Board of Education, 193 Ky. 66, 234 S.W. 947, 1921 Ky. LEXIS 181 (Ky. 1921).

Where the pleadings do not state the amount of indebtedness or the amount of resources at the time an allegedly invalid contract was executed, there is no basis for finding that the contract created an invalid indebtedness. Conrad v. Pendleton County, 209 Ky. 526, 273 S.W. 57, 1925 Ky. LEXIS 535 (Ky. 1925).

A taxpayer attacking the validity of a contract has the burden of establishing the invalidity by showing that the obligation, when added to anticipated expenses for the year for governmental purposes and to previous contractual obligations, would exceed the income and revenue for that year. Covington v. O. F. Moore Co., 218 Ky. 102, 290 S.W. 1066, 1927 Ky. LEXIS 106 (Ky. 1927).

An indebtedness is presumed within constitutional limits and the burden of alleging and proving that an indebtedness is invalid is on the party challenging the validity of the indebtedness. Pike County v. Day & Night Nat'l Bank, 236 Ky. 202, 32 S.W.2d 969, 1930 Ky. LEXIS 707 (Ky. 1930).

In order to show that a contract is void under this section, the facts should be definitely pleaded. Lee County v. Hieronymus, 240 Ky. 490, 42 S.W.2d 730, 1931 Ky. LEXIS 444 (Ky. 1931).

A party attacking the validity of a municipal indebtedness must allege facts showing its invalidity. Williams v. Estill County, 253 Ky. 417, 69 S.W.2d 683, 1934 Ky. LEXIS 655 (Ky. 1934).

One asserting the invalidity of a municipal debt must plead and prove facts to show such invalidity including sources of revenue for the year, rate of taxation, amount of possessed property and the fact that the total revenue had been extended at the time the allegedly invalid debts were incurred. Waddle v. Somerset, 281 Ky. 30, 134 S.W.2d 956, 1939 Ky. LEXIS 4 (Ky. 1939).

55. — — Defense.

56. — — — Pleading and Proof.

In defense to suit on county warrants, county had burden of proving amount of warrants exceeded constitutional limits and that prior indebtedness was valid. Rowan County v. Banks-Miller Supply Co., 95 F.2d 904, 1938 U.S. App. LEXIS 4252 (6th Cir. Ky. 1938). See Banks-Miller Supply Co. v. Carter County, 45 F. Supp. 521, 1942 U.S. Dist. LEXIS 2830 (D. Ky. 1942).

Where a county being sued for road work alleged that the contract was void as creating an invalid indebtedness, the county was obliged to establish facts as to this defense. Durrett Const. Co. v. Caldwell County, 196 Ky. 158, 244 S.W. 409, 1922 Ky. LEXIS 479 (Ky. 1922).

In mandamus action to compel fiscal court to levy tax to pay judgment for jailer's services, answer admitting validity of claim and alleging that all anticipated revenues were budgeted for fixed expenses is insufficient to deny all relief unless facts are pleaded to show that the constitutional limitations as to county tax rates would be violated. Duvall's Adm'x v. Elliott County, 275 Ky. 85, 120 S.W.2d 782, 1938 Ky. LEXIS 729 (Ky. Ct. App. 1938).

In an action to recover on county warrants, where county sought to defend action on ground of illegality of warrants because the obligations exceeded the revenues for the year in which created, county had burden to plead and prove the specific ground of illegality, and mere denial that any sum was due on the warrants was not sufficient. Fiscal Court of Magoffin County v. Gardner, 302 Ky. 826, 196 S.W.2d 597, 1946 Ky. LEXIS 759 (Ky. 1946).

Where city alleged that notes were contracted by the defendant in excess of the revenues levied, collected and deposited in the general fund of city instead of alleging that the obligations sued on or referred to constituted an indebtedness at the time it was made in excess of the income and revenue provided for that year, city's allegation was insufficient to show a violation of this section. Winchester v. Winchester Bank, 306 Ky. 45, 205 S.W.2d 997, 1947 Ky. LEXIS 928 (Ky. 1947).

In action on city warrants, defense of invalidity under this section was good only if city pleaded and proved that at time the indebtedness evidenced by each warrant was created the city had already expended or contracted to expend all revenue provided for that year. Magoffin Fiscal Court v. Gardner, 308 Ky. 220, 214 S.W.2d 100, 1948 Ky. LEXIS 901 (Ky. 1948).

The defense of illegality of a contract as violative of this section is an affirmative defense which should be specially pleaded. Whitesburg v. Bates, 320 S.W.2d 316, 1959 Ky. LEXIS 233 (Ky. 1959).

57. — — — Waiver.

Where a city of the sixth class had agreed in a previous action to entry of a judgment against it for amount of alleged debt and, having failed in that action, to set up or raise question that the debt was invalid and uncollectible by reason of having been contracted by city at a time when it had contracted liabilities to full extent of corporate indebtedness and was indebted in an amount equal to revenue and income for that year, the city thereby waived such defense. Mt. Vernon v. General Electric Supply Corp., 289 Ky. 355, 158 S.W.2d 649, 1942 Ky. LEXIS 551 (Ky. 1942).

58. — — — Estoppel.

Under recitals on fact of bonds, setting forth that all requirements of law had been complied with, county was estopped from claiming bond issue was void. Knott County v. Aid Asso. for Lutherans, 140 F.2d 630, 1944 U.S. App. LEXIS 4002 (6th Cir. Ky. 1944). See Woodmen of World v. Rowan County, 23 F. Supp. 903, 1938 U.S. Dist. LEXIS 2081 (D. Ky. 1938); Women's Catholic Order of Foresters v. Carroll County, 34 F. Supp. 140, 1940 U.S. Dist. LEXIS 2754 (D. Ky. 1940); Women's Catholic Order of Foresters v. Trigg County, 38 F. Supp. 398, 1941 U.S. Dist. LEXIS 3475 (D. Ky. 1941). (In case of bonds issued since 1934, the above rule may be qualified by KRS 422.140).

Cited:

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LEXIS 108 (Ky. 1901); Whitney v. Kentucky M. R. Co., 110 Ky. 955, 63 S.W. 24, 23 Ky. L. Rptr. 472, 1901 Ky. LEXIS 161 (Ky. 1901); Grady v. Landram, 63 S.W. 284, 23 Ky. L. Rptr. 506 (1901); Maze v. Owingsville Banking Co., 63 S.W. 428, 23 Ky. L. Rptr. 574 (1901); McDonald v. Louisville, 113 Ky. 425, 68 S.W. 413, 24 Ky. L. Rptr. 271, 1902 Ky. LEXIS 64 (Ky. 1902); Covington v. District of Highlands, 113 Ky. 612, 68 S.W. 669, 24 Ky. L. Rptr. 433, 1902 Ky. LEXIS 89 (Ky. 1902); Bank of Cumberland v. Simpson, 77 S.W. 695, 25 Ky. L. Rptr. 1227 (1903); Board of Trustees v. Postel, 121 Ky. 67, 88 S.W. 1065, 28 Ky. L. Rptr. 37, 1905 Ky. LEXIS 178 (Ky. 1905); Raymer v. Trustees White School Dist., 124 Ky. 96, 98 S.W. 323, 30 Ky. L. Rptr. 332, 1906 Ky. LEXIS 243 (Ky. 1906); Troutman v. Hays, 101 S.W. 976, 31 Ky. L. Rptr. 204 (1907); Bardwell v. Southern Engine & Boiler Works, 130 Ky. 222, 113 S.W. 97, 1908 Ky. LEXIS 258 (Ky. 1908); Morris v. Hoagland, 116 S.W. 684 (Ky. 1909); Fiscal Court of Franklin County v. Commonwealth, 139 Ky. 307, 117 S.W. 301, 1909 Ky. LEXIS 3 (Ky. 1909); Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910); White Common School Dist. v. Grady, 138 Ky. 128, 127 S.W. 537, 1910 Ky. LEXIS 49 (Ky. 1910); Ex parte Newport, 141 Ky. 329, 132 S.W. 580, 1910 Ky. LEXIS 462 (Ky. 1910); Bradford v. Glasgow, 143 Ky. 401, 136 S.W. 647, 1911 Ky. LEXIS 411 (Ky. 1911); Floyd County v. Owego Bridge Co., 143 Ky. 693, 137 S.W. 237, 1911 Ky. LEXIS 492 (Ky. 1911); Morgan v. Goode, 151 Ky. 284, 152 S.W. 584, 1912 Ky. LEXIS 820 (Ky. 1912); Board of Education v. Lee, 153 Ky. 661, 156 S.W. 375, 1913 Ky. LEXIS 906 (Ky. 1913); Stuessy v. Louisville, 156 Ky. 523, 161 S.W. 564, 1913 Ky. LEXIS 484 (Ky. 1913); Bernheim v. Anchorage, 159 Ky. 315, 167 S.W. 139, 1914 Ky. LEXIS 792 (Ky. 1914); Kash v. Jackson, 159 Ky. 523, 167 S.W. 676, 1914 Ky. LEXIS 823 (Ky. 1914); Mitchell v. 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OPINIONS OF ATTORNEY GENERAL.

A special election to determine whether or not the maximum tax rate should be increased can be held on the regular election day. OAG 60-563.

This section requires that a city of the sixth class, in order to raise the maximum tax rate from 75 cents for the purchase of fire equipment, must have the assent of two thirds (⅔) of the voters voting on the question. OAG 60-563.

A contract entered into by the fiscal court for delivery of a piece of equipment during the current fiscal year but for which the first payment would be deferred until the next fiscal year would be void where the budge for the year in which payment would be made had not been approved when the contract was made. OAG 61-408.

A special tax to be levied for the operation of a county health department could only be levied in the manner provided in KRS 212.720 to 212.740. OAG 62-618.

The county fiscal court could not make a special tax levy to finance a county health department. OAG 62-618.

The debt of a watershed conservancy district created by judgment of the circuit court in a reverse condemnation proceeding could perhaps be satisfied by an additional tax levy in excess of the maximum rate set out in this section and KRS 262.760. OAG 63-995.

A tax for a fire protection district levied by the fiscal court must be included in the computation of the 50-cent county tax limit. OAG 63-1079.

Under KRS 173.520(2)(b), the entire principal sum borrowed shall not exceed 50 per cent of the anticipated revenue for the fiscal year in which the money is borrowed. OAG 64-207.

The special library tax levy must be included in determining the maximum tax levy permitted under this section. OAG 64-250.

The incurrence of debt for essential governmental purposes is valid though the results may exceed the limitations of Const., § 158, but payment must be effected out of funds raised within the tax rate structure limitations of this section. OAG 64-700.

A county library district could not borrow funds to build a new building to be repaid from tax revenues over a period of 20 years. OAG 65-261.

The execution of a mortgage by a municipality on the physical properties of an off-street parking project as additional security for the revenue bonds issued to finance the project would create a prohibited indebtedness of the city under this section and Const., § 158. OAG 65-473.

A first mortgage executed by a city on parking meters partially financed by money from the general fund would create a prohibited indebtedness within the meaning of this section and Const., § 158. OAG 65-485.

If a city borrowed the sum of $17,000 by executing a note for that amount to a local bank, even though the city were permitted to pay off the note in equal instalments over a period of five (5) years, such a loan would involve the aggregate or total amount of $17,000, rather than the $17,000 being broken into five (5) equal parts. OAG 66-689.

The metropolitan sewer district building corporation, a nonprofit, no-stock, public organization, organized pursuant to KRS ch. 273, is the lawful agency and instrumentality of Louisville and Jefferson County metropolitan sewer district in the implementation and carrying out of the lawful corporate purposes of the joint district, and particularly in the implementation of the power granted metropolitan sewer district by KRS 76.080(6), and the interest on the bonds issued by it is exempt from both federal and state income taxation and from Kentucky state ad valorem taxation. OAG 67-197.

The fact that a town did not collect taxes in 1965 would not prevent it from collecting taxes in subsequent years, using this section to find the base rate and applying the compensating factor of KRS 132.027 to it. OAG 67-449.

An urban service district created under KRS ch. 108 does not qualify as a taxing district within the meaning of this section and Const., § 158. OAG 68-248.

A county hospital could acquire equipment on a lease purchase arrangement whereby a rental would be paid monthly over a period of months in excess of 12 and, upon the completion of the required rental payments, the hospital would exercise its option to purchase. OAG 68-280.

A county hospital could not legally purchase equipment on a monthly instalment payment plan that would extend over a period in excess of 12 months. OAG 68-280.

A county hospital could not legally purchase equipment which could not be paid for within the fiscal year in which it was purchased. OAG 68-280.

If a city borrows the sum of $249,800 by executing a note for that amount to a local bank, even though the city were permitted to pay the note over a short-term period, such loan would be construed to involve the aggregate or total amount of $249,800 in determining the limitation of the indebtedness of the city. OAG 68-479.

A city's borrowing $60,000 from its depository under a five (5) year note to purchase new garbage equipment would be a violation of this section. OAG 68-578.

The establishment of a revolving capital improvement fund with money borrowed from the city investment fund and to be repaid over a five (5) year period from ad valorem taxes would be a violation of Const., § 158. OAG 69-255.

A proposed financial plan for the city to acquire an off-street parking facility which would extend over four (4) years at a total cost equal to the approximate income of the city could violate this section and Const., § 158 which provide that the city may not incur indebtedness in excess of the anticipated revenue for the year unless there is an affirmative vote by two thirds (⅔) of the city's inhabitants. OAG 69-258.

This section refers to an indebtedness created by contract only and has no application to liability incurred for a part caused by or resulting from negligence and, as a consequence, a city can be required to levy a special tax in excess of the maximum rate permitted by this section to pay any judgment against it resulting from a tort action. OAG 69-555.

Where six (6) years earlier the people of a city voted a bond issue for the construction of a floodwall but nothing further was done, the city would now be authorized to levy the special tax irrespective of the fact that the flood control project has not yet begun nor have the bonds actually been issued. OAG 69-577.

The tax levied for county library purposes is a part of the county's maximum permissible ad valorem tax rate authorized by this section (the county library is not a separate taxing district). The rolled back rate for the library tax levy is not to

be counted or included in the county's general tax levy. OAG 70-327.

Under subsection (2) of KRS 216.317, regardless of whether the voting method or the petition method is used, a hospital district is created which constitutes a separate taxing district. This method of establishing the district is reasonably suited to its purpose and does not contravene this section particularly since the petition method is equivalent to the voting method since a majority of the voters must sign the petition. OAG 70-816.

While a city may create an indebtedness for a public purpose, there is a constitutional debt limit for each class of city which cannot be exceeded without an affirmative vote of two thirds (⅔) of the people living within the city. OAG 70-817.

A library district cannot obligate itself to spend more money in a particular year than the anticipated income and revenue provided for such year. OAG 71-34.

The entire principal indebtedness would govern and not the amount of principal to be paid each year in measuring an obligation of the library district against the requirements of this section. OAG 71-34.

Where a proposed library building would exceed the debt limitations of the library district, a holding company could be used to borrow the necessary funds and lease the library building to the library district. OAG 71-34.

Where, due to litigation, tax bills were not sent out until June 1 and the books were to be closed as of June 30, the county treasurer could, for the purpose of making properly budgeted expenditures, authorized by the fiscal court to be paid from the tax revenue collected from the June 1 tax bills, keep his accounting books open for the 75-day period required for the collection of the taxes. OAG 71-264.

A second-class city may borrow money in anticipation of revenue for the fiscal half year in which the money is borrowed. OAG 71-460.

County does not violate this section's limitation on indebtedness by selling courthouse to a holding corporation for $1.00, after which the corporation borrows funds to renovate the courthouse and sells it back to the county by means of a lease purchase contract. OAG 72-32.

A watershed conservancy district with an annual tax revenue of $17,000 may not procure a loan of $17,000 where that district has a previous obligation of $14,000 even though that obligation is broken down into instalments. OAG 72-568.

For the purpose of the indebtedness limitations of the Constitution under this section and § 158 of the Constitution, the revenue-sharing money actually made available to the city and county for the year in which the proposed new indebtedness for the buildings will be incurred is a valid part of the two (2) governmental units' revenue for that particular year. OAG 73-263.

A city may borrow money to meet its pension fund obligations if such funds are not available in the city's 1973 budget provided the total amount of the money borrowed does not exceed its anticipated revenue for the year in violation of this section and § 158. OAG 73-283.

A county library board can obtain the levy of a tax by the county fiscal court over and beyond the county's general tax levy by either establishing a library district and thus a separate taxing district organized under KRS 173.470 or KRS 173.720 or it may request the fiscal court, pursuant to KRS 67.083, to present to the voters the question of an additional tax levy, which if assented to by two-thirds (⅔) of those voting upon the question, would be an intended, authorized "voting levy" and therefore not subject to KRS 68.245 (1) or prohibited by this section. OAG 73-291.

When a county establishes a garbage district, such district can levy an annual tax on the property within the district or it may impose a service charge for users. The affairs of such a district would be controlled and managed by a board of directors who could operate the system directly or let a franchise and contract out on bids and, while the fiscal court may establish such district and boundaries for it, the legislative bodies of incorporated cities within the county boundary would have to approve their being made a part of the district and the fiscal court would have no authority to specify the methods of financing the district may use. OAG 73-487.

All taxes levied by a county in one (1) year constitute one fund and are to be taken in the aggregate in computing the commission due the collecting officer except that where a special district is a separate taxing district and where commission procedure is not otherwise provided apart from KRS 134.290(2), the county should be reimbursed for that portion of the sheriff's commission allocated to the collection of such separate taxing district taxes and paid by the county, as the library tax, under KRS 173.720, and the public health taxing district tax, under KRS 212.720, are not a part of the county tax within the prohibition of this section. OAG 73-647.

If the county decides to issue county government obligation bonds, instead of revenue bonds, which would not be county obligations, then the limitations of this section and § 158 would have to be considered and, if an emergency were shown, the 2 per cent limit could be exceeded, but if the obligation exceeded the income and revenue of the county for a one-year period, the question would have to be submitted to the voters and whatever amount was borrowed would have to be measured against these limitations. OAG 73-764.

A garbage and refuse disposal district is a public agency, rather than a private agency, since the directors on the governing body of the district must take an oath of office and have a definite term of office, the plans and operations of the district are governed by statute, and the board of directors has condemnation, bond issuing, and taxing power. OAG 73-813.

A county cannot pledge money, pursuant to KRS 183.132, to an airport board for airport purposes out of the general fund, without the vote of the people, unless the amount pledged can be found within the available income for the fiscal year. OAG 74-399.

A fiscal court may pass an ordinance submitting the question as to the voting of an ad valorem tax, for the purpose of financing county ambulance service, at the general election, regardless of whether the county directly provides such services or contracts for such services, without being in conflict with any constitutional or statutory provision. OAG 75-158.

Since KRS 75.040 authorizes the board of trustees of fire protection districts to levy taxes and as a separate taxing district under this section and § 158; it may borrow money in anticipation of but not in excess of its annual revenue for the year unless by an affirmative vote of the voters living within the district, it could borrow funds from a savings and loan association to purchase land and to erect a building to house its fire fighting facilities. OAG 75-511.

This section does not authorize a special election for any situations coming under it. OAG 75-690.

Neighborhood improvement districts do not have the authority to levy ad valorem property taxes as they are not taxing districts. OAG 76-33.

A contract entered into by a county to pay an annual rental for a period of years is a creation of indebtedness for the aggregate amount of the rentals in the year in which the contract is made and where such indebtedness would exceed the revenue of the county for the year, it may not be contracted without the assent of two thirds (⅔) of the voters of the county. OAG 76-150.

A county judge, on behalf of the fiscal court, could not validly enter into a lease contract with the United States for a 50-year term without a vote of approval by two thirds (⅔) of the voters at an election. OAG 76-538.

A maintenance agreement in which the fiscal court agrees to the expenditure of county funds over a number of years to maintain an earthen dam for flood control purposes would violate this section. OAG 77-322, 1977 Ky. AG LEXIS 465.

Industrial revenue bonds issued by a county pursuant to KRS Chapter 103 are not an indebtedness of the county within the meaning of this section. OAG 77-422, 1977 Ky. AG LEXIS 351.

Control by the fiscal court of land acquisitions and capital expenditures of separate taxing districts would in effect strike down the autonomy of separate taxing districts within the meaning of this section. OAG 77-433, 1977 Ky. AG LEXIS 359.

The entire amount of the obligation for whatever number of years must be considered in the initial year in determining the total indebtedness that the city will be obligated for as opposed to its anticipated revenue for said year, and if the total indebtedness exceeds the anticipated revenue in the initial year, this section would be violated. OAG 78-452, 1978 Ky. AG LEXIS 279.

If fire trucks are purchased on a lease-purchase basis (that is, when so many rentals are paid on the truck then the title will be transferred to the city) and if the city would only obligate itself in renting the equipment for one (1) year, subject to renewals one (1) year at a time, and if the annual installments on the truck can be paid from current revenues within the fiscal year in which the loan is made, then the loan would be legal under this section. OAG 78-572, 1978 Ky. AG LEXIS 272.

If the aggregate loan amount for foreclosing and remodeling a building cannot be paid by receipts during the fiscal year from current revenues, then such loan would be illegal under this section without a vote of the people. OAG 78-572, 1978 Ky. AG LEXIS 272.

Without a vote of the people, any loan made to the city must not exceed, when considering the total financial obligations of the city for the particular fiscal year, the anticipated current revenue of the city for that fiscal year. OAG 78-572, 1978 Ky. AG LEXIS 272.

A hospital district is a special taxing district, and the hospital district tax rate is entirely separate from the county tax ad valorem rate. OAG 79-100, 1979 Ky. AG LEXIS 544.

When an indebtedness is incurred in excess of the anticipated revenue and it is not for essential governmental purposes, only the excess of the anticipated revenue would be considered void. OAG 79-126, 1979 Ky. AG LEXIS 501.

A contract to pay an annual amount for a period of years creates an indebtedness for the aggregate amount in the year in which the contract is made. OAG 79-226, 1979 Ky. AG LEXIS 413.

The tax rate restriction applicable to a separate taxing district does not involve the tax rate restriction of the county in which it is located. OAG 79-273, 1979 Ky. AG LEXIS 398.

The limit of tax rate as fixed by this section is mandatory and absolute. OAG 79-273, 1979 Ky. AG LEXIS 398.

Under this section the Legislature intended to create the extension district as a separate entity of government, a separate "governmental subdivision of the Commonwealth," a separate public body corporate, and a separate taxing district. OAG 79-273, 1979 Ky. AG LEXIS 398.

There is no requirement that the Legislature, in order to create a separate taxing district, must employ in the statute the magic words "shall constitute a separate taxing district within the meaning of § 157 of the Constitution." OAG 79-273, 1979 Ky. AG LEXIS 398.

The mortgage provision applied in KRS 103.251 is constitutional in terms of the indebtedness restrictions of this section and § 158 of the Constitution; since no general fund revenues or tax revenues of the city will ever be involved, even should the mortgage ever be foreclosed and the property sold, no deficiency judgment can be obtained against the city and the bond transaction does not fall within the rule given in Bowling Green v. Kirby, 220 Ky. 839, 295 S.W. 1004, 1927 Ky. LEXIS 603 (Ky. 1927), that where a mortgage could foreclose on project property, which was acquired by city revenues, the foreclosure and sale constituted payment of a debt by the municipality. OAG 79-439, 1979 Ky. AG LEXIS 192.

While a city has an obligation of good faith to the industrial building revenue bondholders under the bond documents, that is not equivalent to the financial obligation of the city or city indebtedness under this section and § 158 of the Constitution. OAG 79-439, 1979 Ky. AG LEXIS 192.

A fire protection district is a special and separate taxing district under this section and § 158 of the Constitution. OAG 79-647, 1979 Ky. AG LEXIS 2.

The county judge/executive, with approval of the fiscal court as a body, could dissolve an agricultural extension district, provided it meets certain minimal constitutional requirements: (1) the fiscal court would hold a public hearing on the matter of dissolution; (2) all liabilities and contractual obligations of the district would have to be settled completely prior to dissolution. OAG 80-67, 1980 Ky. AG LEXIS 583.

When this section and Const., § 158 are read in their entirety, the restrictions of those sections are to be applied to a unit of government constituting a "municipality" and a "taxing unit" at the same time, in other words, those designated categories must coexist in order for the restrictions to apply; an urban-county airport board has no taxing power, and since it is not a "taxing unit" it is not subject to the restrictions of this section and Const., § 158. OAG 80-333, 1980 Ky. AG LEXIS 329.

A county fiscal court has the authority, pursuant to this section, to place the question of a special ad valorem tax levy for park construction and maintenance on the November general election ballot, if a contractual indebtedness in connection with the park is envisioned and such contractual indebtedness cannot be funded out of current county revenues; the requisite vote for passage is two-thirds (⅔) of the voters voting at such election. OAG 80-381, 1980 Ky. AG LEXIS 271.

The issue of a special tax for the maintenance of a county park can be included on the same ballot with the question of a bond issue for the construction of the county park, provided the questions on the ballot clearly delineate the precise indebtedness involved in both categories; the bond issue question, under KRS 66.040, requires two-thirds (⅔) of the votes on the question, and the special tax voted on must fund both the construction and maintenance of the county park. OAG 80-381, 1980 Ky. AG LEXIS 271.

A fiscal court could engage in a five (5) year contract with a landfill operator at an agreed-to price for handling the county's garbage and solid waste, but with the express understanding that payments to the landfill operator will come only out of the receipts to the county in the form of garbage system user charges; the contract should by an express provision make it clear that the fiscal court is not obligated to fund out of its general funds, created by tax revenues, the landfill contract and the hauling of the garbage and solid waste from the transfer station in the county to the landfill; the contract could also provide that during the five (5) year period the fiscal court would covenant to maintain the specific user charges agreed on, and that all county garbage would be delivered to that landfill operator. OAG 80-455, 1980 Ky. AG LEXIS 201.

An emergency ambulance service district created either by referendum under KRS 108.100 or by action of the fiscal court under KRS 108.105 would be a special taxing district under this section, since KRS 108.100 and KRS 108.105 must be read together under the doctrine of in pari materia and since an autonomous special taxing district would not be included in the county's ad valorem tax levy under KRS 68.245. OAG 81-99, 1981 Ky. AG LEXIS 356.

Where a hospital district is created pursuant to KRS 216.317 and is established by the secretary for human resources pursuant to KRS 216.320 so that it is a separate "taxing district" under this section, but the fiscal court has not levied an ad valorem tax to fund its operations, the district cannot constitutionally enter into a contract for a period in

excess of one (1) year obligating it to pay a debt which cannot be funded from revenues available in the year in which the obligation is created unless it is specifically approved, pursuant to this section, by two thirds (⅔) of the voters residing in the taxing district. OAG 81-128, 1981 Ky. AG LEXIS 314.

An ambulance service district is a special taxing district under subdivision (3) of KRS 108.100 and this section, and as such, the tax rate and debt limitations referred to in this section relate to that district rather than the county in which it is located; thus the sheriff, rather than the county, has the authority to collect the special ad valorem tax for the district. OAG 81-319, 1981 Ky. AG LEXIS 110.

Since KRS 108.105 relates to an "alternative means of creating an ambulance service district," that section and KRS 108.100 should be construed together in pari materia, in construing KRS 108.105 to involve a taxing district within the meaning of this section which involves a separate tax independent of the county tax levy. OAG 81-344, 1981 Ky. AG LEXIS 95.

Where a vote of the people is necessary under this section, to validate a contractual debt occasioned by subsidizing a person or a company holding an emergency ambulance service franchise, the election law contains no minimum time for the fiscal court's certifying by a formal order the question under this section to the county clerk before the regular election but it should be so certified to the county clerk, by a formal fiscal court order, before the ballots are printed. OAG 81-344, 1981 Ky. AG LEXIS 95.

Future receipts of county coal severance funds could not be obligated by a fiscal court beyond its present term of office for the future construction of a high school pursuant to subsection (2)(f) of KRS 42.455; a fiscal court cannot, due to the restrictions of this section, create county obligations in any year which would be in excess of the county's income and revenue for that particular year without a vote of the people. OAG 81-408, 1981 Ky. AG LEXIS 23.

A county fiscal court can lease real property to a private entrepreneur for a five (5) year period without violating this section and Const., § 158 if the contractual obligation by the county for maintenance and repair during that period can be funded out of the current revenues available to the county in the year the lease is executed; otherwise the proposed lease must be approved by two-thirds (⅔) of the voters at an election held pursuant to this section. OAG 82-60, 1982 Ky. AG LEXIS 578.

Where there is no contractual financial obligation created on the part of a county, the limitations of this section and § 158 of the Constitution do not come into play. OAG 82-60, 1982 Ky. AG LEXIS 578.

The Legislature, in connection with a health taxing district under both KRS 212.725 and 212.755, intended to make each type of health district a separate or special taxing district under this section. OAG 82-151, 1982 Ky. AG LEXIS 489.

There is no rational basis for a distinction between a public health district created under KRS 212.720 and one created under KRS 212.750. Both types of districts were intended to be special taxing districts under this section. OAG 82-151, 1982 Ky. AG LEXIS 489.

Once a fiscal court properly set a county attorney's salary as to maximum amount, the inability of the county to pay all of the salary at a certain time because the budget only provided for payment of a lesser amount would not constitutionally prevent the attorney's later recovery of the balance owed under the appropriate statute of limitation. OAG 82-159, 1982 Ky. AG LEXIS 486.

Where proposed water improvement and expansion project to be constructed by Corps of Engineers involves the exercise of governmental or legislative powers or the exercise of discretion, as opposed to the exercise of business or proprietary powers, the city legislative body may not enter into a contract to obligate itself to operate and maintain the project beyond the terms of its members. In addition, the constitutional debt limit question could be involved where the agreement extends for many years as a city cannot become indebted in an amount exceeding in any year the income and revenue provided for such year. OAG 82-235, 1982 Ky. AG LEXIS 394.

A library district can qualify to issue revenue bonds under KRS Ch. 58, since it is a special taxing district under this section and is a "governmental agency" under KRS 58.010(3). If it issues revenue bonds for a proposed project, the library district board can exercise the power to condemn real estate pursuant to KRS 58.140. OAG 82.343, 1982 Ky. AG LEXIS 302.

If a proposed loan from local banks to a county hospital could not be completely funded out of tax revenues available in the accounting year in which the loan was made, the loan would be void without a vote of the people, as required by this section. That would be true even if the debt were within the limits set by Const., § 158. OAG 82-401, 1982 Ky. AG LEXIS 231.

Patient revenues cannot be included as "income and revenue" of a hospital within the meaning of this section. OAG 82-401, 1982 Ky. AG LEXIS 231.

The future revenues envisioned in this section relate only to such future revenues as can be exacted in the form of taxes. OAG 82-401, 1982 Ky. AG LEXIS 231.

The payment of expenses of the usual and current administration of government, i.e., compulsory obligations of government arising out of statutory law, are not within the prohibitive range of this section. However, the operation of a hospital by the county is not mandatory; therefore, a proposed debt relating to a hospital fell within the operative provisions of Const., § 158 and this section. OAG 82-401, 1982 Ky. AG LEXIS 231.

Where a county hospital faced a cash-flow crisis and needed to acquire funds to meet that crisis, the proposed debt could be validated by submitting it to a vote of the people under this section if such debt would exceed the available tax revenues for the particular year. The necessary affirmative vote required by this section would validate such an obligation either with government obligation bond financing or without any bond issue assuming that the limits of Const., § 158 were observed. OAG 82-401, 1982 Ky. AG LEXIS 231.

This section only places an inhibition on the "indebtedness" of a county or municipality; it does not purport to direct any specific form or type of indebtedness. Obviously, this section was written for the protection of the taxpayers of counties and municipalities. OAG 82-446.

Where a county, in order to fund an operating deficit of the county hospital, proposed to enter into an obligation in the form of notes payable solely and only out of a "special fund," i.e., the revenues of the county hospital and, although the notes would probably be set up in terms of one (1) year obligations, it would be the intention of the county and the hospital, on the one hand, and the owners of the notes on the other hand, to renegotiate the contract each year for a period of seven (7) years with a continually decreasing total such that the entire obligation would be paid in seven (7) years time, and where the notes would declare on their face that payment would be made solely and only from the revenues of the hospital and that the county would have no obligation, directly or indirectly, to pay the notes from the county treasury or budgeted funds of the county, such proposed loan would not violate this section and would be legal. OAG 82-446.

Pursuant to Const., § 158 and this section, a county is required to adopt, budget-wise, the pay-as-you-go plan and not to incur obligations in excess of its current revenues. OAG 83-49, 1983 Ky. AG LEXIS 447.

The library tax imposed under KRS 173.720 is not a part of the county tax within the prohibition of this section; to the contrary, the library tax is a tax levied by a new authorized

and separate taxing district pursuant to statutory authority. OAG 83-310, 1983 Ky. AG LEXIS 187.

Road equipment expense is not a necessary and compulsory governmental expense. OAG 83-323, 1983 Ky. AG LEXIS 174.

There is an exception to the restrictions of Const., § 158 and this section which consists of obligations for essential governmental services and functions; examples of "essential governmental expenses" are salaries of county officials and employees, expenses of holding county elections and the expense of maintaining a county hospital. OAG 83-323, 1983 Ky. AG LEXIS 174.

Since the leasing of road equipment does not involve an essential and compulsory governmental service or function, if a lease contract involves an assumption by the county of a total debt of lease payments which exceeds the income and revenue available to the county for the particular year in which the lease is executed, the contract would violate this section in the absence of a requisite vote of the people; in the event that such lease would involve a lease for only one (1) year, which could at the option of fiscal court be renewed from year to year (the county only being obligated for one (1) year at a time), and assuming that the county has currently available revenue to cover the first year's rental (and has available the current revenue to cover any subsequent one (1) year renewal), and assuming the limit of Ky. Const., § 158 is met, then this section would not be violated. OAG 83-323, 1983 Ky. AG LEXIS 174.

A board of managers of the city/county hospital, selected by the county judge and city mayor to operate the affairs of the hospital, is not a municipality within the meaning of this section. OAG 83-388, 1983 Ky. AG LEXIS 106.

A city commission of a third-class city could not undertake to purchase real property on an installment contract basis from general revenues of the city at a total cost in excess of anticipated revenue for the current fiscal year without enactment of an ordinance pursuant to KRS 91A.030 and without compliance with the referendum requirement of this section. OAG 84-74, 1984 Ky. AG LEXIS 316.

The manifest purpose of this section was to inaugurate and perpetuate the "pay-as-you-go" plan of government in the local branches of government and to prevent fiscal authorities invested with the power to appropriate public moneys from incurring obligations in excess of the income and revenue, actually provided for by levy or otherwise, in the absence of the necessary constitutional vote. OAG 84-293, 1984 Ky. AG LEXIS 101.

A fire protection district is a "governmental agency," as defined in KRS 58.180, and could thus use the corporate bond mechanism established in KRS 58.180. Therefore, a fire protection district may create a nonprofit corporation and provide for the issuance of the corporation's revenue bonds to finance a firehouse and related facilities. OAG 84-328, 1984 Ky. AG LEXIS 56.

A fire protection district, as a special taxing district under this section and § 158 of the Constitution, is a "governmental agency," as defined in KRS 58.010(3); thus, it has the authority to acquire, construct, and maintain a firehouse or other directly related facilities by the issuance of revenue bonds, pursuant to KRS 58.020. OAG 84-328, 1984 Ky. AG LEXIS 56.

The health district, acting through the health board, may execute a land contract for the purchase of property for district purposes, pursuant to KRS 212.740, subject to this section, payable from district ad valorem taxes, under KRS 212.725 and 212.755. OAG 84-385, 1984 Ky. AG LEXIS 1.

Public health taxing district was designated as a separate taxing district within the meaning of this section, pursuant to KRS 212.720 and 212.750. Thus, where county board of health sought to purchase property for the purpose of expansion by way of a conventional 10- or 15-year note and mortgage, this section required that the total indebtedness be fundable from the revenue available to the district for the year in which the obligations were executed; if the indebtedness would exceed the income and revenue actually available for the year in which the obligation was incurred, the assent of two-thirds (⅔) of the voters of the district at an election for that purpose would be required. OAG 84-385, 1984 Ky. AG LEXIS 1.

A fire protection district is a special and separate taxing district under this section and Const., § 158. OAG 85-65, 1985 Ky. AG LEXIS 85.

In a county with a population of less than thirty thousand, a fiscal court can produce new or additional revenue other than that derived from the ordinary ad valorem tax rate by levying a license or occupational tax without a vote of the people if the county does not already have a general license or occupational tax. OAG 85-84, 1985 Ky. AG LEXIS 66.

By exempting school districts from the scope of application of the act, and by permitting termination by a taxing district on a year-to-year basis of a contractual arrangement with an agency, Acts 1986, ch. 13, which repealed the Tax Increment Act, KRS 99.750, and enacted KRS 99.751, 99.756, 99.761, 99.766 and 99.771 (now see KRS 65.490 et seq.), has remedied the constitutional problems under this section and Const., § 184 that the Supreme Court in Miller v. Covington Development Authority, 539 S.W.2d 1, 1976 Ky. LEXIS 40 (Ky. 1976), found with the Tax Increment Act. OAG 86-48, 1986 Ky. AG LEXIS 37.

Constitution §§ 26, 158, 162, 179 and this section do not impose a general ban upon a county agreeing to joint and several liability with other counties or political entities; furthermore, these constitutional sections do not prohibit payment of obligations incurred in a prior year, from moneys of a subsequent year. OAG 93-54, 1993 Ky. AG LEXIS 288.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

City taxes, levy of, KRS 91.260 to 91.280, 92.280 to 92.320.

County taxes, levy of, KRS 68.090.

County tax in excess of 50 cents per hundred for maintenance of tubercular institution, KRS 68.090.

Improvements, financing through special assessments, KRS 91A.200 to 91A.290.

School taxes, levy of, KRS 160.460 to 160.477.

Taxation by cities and counties, Const., § 181.

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Stephenson, Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

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Notes, County Government — Home Rule —The General Assembly Must Grant Governmental Powers to Fiscal Courts "With the Precision of a Rifle Shot and Not With the Casualness of a Shotgun Blast" — Fiscal Court v. City of Louisville, 559 S.W.2d 478, 1977 Ky. LEXIS 554 (Ky. 1977), 5 N. Ky. L. Rev. 107 (1978).

§ 157b. Adoption of budget required for cities, counties, and taxing districts — Expenditures not to exceed revenues for fiscal year.

Prior to each fiscal year, the legislative body of each

city, county, and taxing district shall adopt a budget showing total expected revenues and expenditures for the fiscal year. No city, county, or taxing district shall expend any funds in any fiscal year in excess of the revenues for that fiscal year. A city, county, or taxing district may amend its budget for a fiscal year, but the revised expenditures may not exceed the revised revenues. As used in this section, "revenues" shall mean all income from every source, including unencumbered reserves carried over from the previous fiscal year, and "expenditures" shall mean all funds to be paid out for expenses of the city, county, or taxing district during the fiscal year, including amounts necessary to pay the principal and interest due during the fiscal year on any debt.

History.
Adoption proposed by Acts 1994, ch. 168, § 3, and ratified November 8, 1994.

Compiler's Notes.
The General Assembly in 1994 (Acts 1994, ch. 168, § 2) proposed that a new section be added to the Constitution to be numbered as section 157b. Such proposed section was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994.

Section 5 of Acts 1994, ch. 168 provides: "It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires."

NOTES TO DECISIONS

Analysis

1. In General.
2. Violation.
3. No Violation.

1. In General.
KRS 91A.030(8) is clear that no budget ordinance shall be adopted which provides for appropriations to exceed revenues in any one fiscal year in violation of Ky. Const. § 157, which provides that the legislative body of a city shall adopt a budget showing total expected revenues and expenditures for the fiscal year. Likewise, KRS 91A.030(10) is equally clear that any amendments made to the original ordinance must continue to satisfy the same requirement of balance between revenue and expenditures. Taylor v. Carter, 333 S.W.3d 437, 2010 Ky. App. LEXIS 250 (Ky. Ct. App. 2010).

2. Violation.
At the time that a budget, or an amendment to a budget is passed, it need not be literally, "in balance" as of the date of passage because a city is certainly not expected to have, at the moment of passage, revenues adequate to meet all anticipated expenditures; however, the budget must be "in balance" insofar as anticipated expenditures not exceed anticipated revenues. Therefore, LaGrange, Ky., Ordinance 10-2008 violated KRS 91A.030(8), (10) and Ky. Const. § 157 because a tax decrease caused anticipated revenues to be less than anticipated expenditures; the city did not know at the time the ordinance was passed that it would later receive donations that served to offset the reduction in revenue. Taylor v. Carter, 333 S.W.3d 437, 2010 Ky. App. LEXIS 250 (Ky. Ct. App. 2010).

3. No Violation.
Contract for fire protection services did not violate Ky. Const. § 157b as that constitutional provision did not prohibit the district from creating obligations beyond one year, and the 10-year contract renewal only obligated it to only spend those tax revenues collected. Se. Bullitt Fire Prot. Dist. v. Se. Bullitt Fire & Rescue Dep't, 537 S.W.3d 828, 2017 Ky. App. LEXIS 397 (Ky. Ct. App. 2017).

§ 158. Maximum indebtedness of cities, counties, and taxing districts — General Assembly authorized to set additional limits and conditions.

Cities, towns, counties, and taxing districts shall not incur indebtedness to an amount exceeding the following maximum percentages on the value of the taxable property therein, to be estimated by the last assessment previous to the incurring of the indebtedness: Cities having a population of fifteen thousand or more, ten percent (10%); cities having a population of less than fifteen thousand but not less than three thousand, five percent (5%); cities having a population of less than three thousand, three percent (3%); and counties and taxing districts, two percent (2%), unless in case of emergency, the public health or safety should so require. Nothing shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, county, or taxing district. Subject to the limits and conditions set forth in this section and elsewhere in this Constitution, the General Assembly shall have the power to establish additional limits on indebtedness and conditions under which debt may be incurred by cities, counties, and taxing districts.

History.
Amendment proposed by Acts 1994, ch. 168, § 4, and ratified November 8, 1994.

Compiler's Notes.
The General Assembly in 1994 (Acts 1994, ch. 168, § 4) proposed an amendment to this section of the Constitution which was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994. Prior to this amendment this section read:

"§ 158. Maximum indebtedness of cities, counties, and taxing districts — Indebtedness authorized or incurred prior to Constitution

The respective cities, towns, counties, taxing districts, and municipalities shall not be authorized or permitted to incur indebtedness to an amount, including existing indebtedness, in the aggregate exceeding the following named maximum percentages on the value of the taxable property therein, to be estimated by the assessment next before the last assessment previous to the incurring of the indebtedness, viz.: Cities of the first and second classes, and of the third class having a population exceeding fifteen thousand, ten per centum; cities of the third class having a population of less than fifteen thousand, and cities and towns of the fourth class, five per centum; cities and towns of the fifth and sixth classes, three per centum; and counties, taxing districts and other municipalities, two per centum: Provided, any city, town, county, taxing district or other municipality may contract an indebtedness in excess of such limitations when the same has been authorized under laws in force prior to the adoption of this Constitution, or when necessary for the completion of and payment for a public improvement undertaken and not completed and paid for at the time of the adoption of this Constitution: And provided further, If, at the time of the adoption of the Constitution, the aggregate indebtedness, bonded or floating, of any city, town, county, taxing district, or other municipality, including that which it has been or may be

authorized to contract as herein provided, shall exceed the limit herein prescribed, then no such city or town shall be authorized or permitted to increase its indebtedness in an amount exceeding two per centum, and no such county, taxing district or other municipality, in an amount exceeding one per centum, in the aggregate upon the value of the taxable property therein, to be ascertained as herein provided, until the aggregate of its indebtedness shall have been reduced below the limit herein fixed, and thereafter it shall not exceed the limit, unless in case of emergency, the public health or safety should so require. Nothing herein shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, town, county, taxing district or other municipality.

Section 5 of Acts 1994, ch. 168 provides: "It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires."

NOTES TO DECISIONS

Analysis

Cross-References.
1. Construction.
2. Application.
3. Determination of Population.
4. Indebtedness.
5. — Governmental Purposes.
6. — Current Expenses.
7. — Special Assessments.
8. — Created Before Constitution.
9. — Excess at Time of Constitution.
10. — Estimation of Amount.
11. — — Current Expenses.
12. — — School Debts.
13. — — Road Bonds.
14. — — Sinking Funds.
15. — — Time of Bond Sale.
16. — Assessment.
17. — Floating.
18. — — Funding.
19. — — — Judgments.
20. — — — Deficits in Revenue.
21. — — — School Debts.
22. — Refunding Bonds.
23. — Emergencies.
24. — — Not Emergencies.
25. — — Question of Fact.
26. — Municipalities and Taxing Districts.
27. — Delay in Bond Issue.
28. — Partial Invalidity.
29. — Subsequent Invalid Debts.
30. — Election Ordinance.
31. — Valid Bond Issue.
32. — Invalid Debts.
33. — Valid Statutes.
34. — Invalid Statutes.
35. — Tax Levies.
36. — Pleading and Proof.
37. — Injunctions.
38. — — Parties.
39. — Revenue Bonds.

Cross-References.

See notes to Const., § 157.

1. Construction.

This section, along with Const., § 157, fixes a maximum of indebtedness which may not be exceeded except for the reasons specified in the sections. Bardwell v. Harlin, 118 Ky. 232, 80 S.W. 773, 26 Ky. L. Rptr. 101, 1904 Ky. LEXIS 22 (Ky. 1904).

The debt limitation of this section contemplates a present and not a future indebtedness. Barry v. New Haven, 162 Ky. 60, 171 S.W. 1012, 1915 Ky. LEXIS 13 (Ky. 1915).

This section limits aggregate indebtedness permitted to be incurred with the assent of two-thirds (⅔) of the voters pursuant to Const., § 157. Parsons v. Arnold, 235 Ky. 600, 31 S.W.2d 928, 1930 Ky. LEXIS 416 (Ky. 1930).

The provision with respect to renewal bonds and bonds to fund a floating indebtedness is self-executing and requires no specific statutory implementation. Johnson v. Middleton, 243 Ky. 251, 47 S.W.2d 1030, 1932 Ky. LEXIS 61 (Ky. 1932). See Baker v. Rockcastle County Court, 225 Ky. 99, 7 S.W.2d 846, 1928 Ky. LEXIS 715 (Ky. 1928); Geveden v. Fiscal Court of Carlisle County, 263 Ky. 465, 92 S.W.2d 746, 1936 Ky. LEXIS 190 (Ky. 1936); Harrison v. Roberts, 264 Ky. 62, 94 S.W.2d 296, 1936 Ky. LEXIS 277 (Ky. 1936); McHargue v. Laurel County, 270 Ky. 638, 110 S.W.2d 419, 1937 Ky. LEXIS 128 (Ky. 1937).

The limitations on counties in this section are inapplicable to bonds issued for roads and bridges. Shearin v. Ballard County, 266 Ky. 806, 100 S.W.2d 836, 1937 Ky. LEXIS 12 (Ky. 1937). See Shearin v. Ballard County, 267 Ky. 737, 103 S.W.2d 292, 1937 Ky. LEXIS 393 (Ky. 1937).

That part of this section requiring payment in 40 years must be read with that part of Const., § 158 permitting renewal of bonds. Pulaski County v. Ben Hur Life Ass'n, 286 Ky. 119, 149 S.W.2d 738, 1941 Ky. LEXIS 210 (Ky. 1941).

This section and Const., §§ 157 and 157a have been construed to be complementary for some purposes and to be independent for other purposes. Defoe v. Perry County, 293 Ky. 487, 169 S.W.2d 309, 1943 Ky. LEXIS 647 (Ky. 1943).

2. Application.

Funding bonds are within the limitations of this section. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

Voted bonds are also within the limitations of this section. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

Ordinarily, constitutional restrictions on municipal indebtedness are not applicable to obligations which are payable out of money derived from income and revenues of city-owned and revenue-producing public utilities. Grimm v. Moloney, 358 S.W.2d 496, 1962 Ky. LEXIS 180 (Ky. 1962).

3. Determination of Population.

For the purpose of determining the population and so the limit of indebtedness, a city may take a census pursuant to an ordinance, though a federal census has been taken two (2) months before, especially where territory has been added in the meantime. Lancaster v. Owensboro, 72 S.W. 731, 24 Ky. L. Rptr. 1978, 1903 Ky. LEXIS 334 (Ky. Ct. App. 1903).

4. Indebtedness.

When a city contracts to pay a certain sum per year for a given number of years for water and electric light, it "incurs an indebtedness" within the meaning of the Constitution, for the total amount which the contract provides shall be paid during all the years it is to continue. Beard v. Hopkinsville, 95 Ky. 239, 24 S.W. 872, 15 Ky. L. Rptr. 756, 1894 Ky. LEXIS 9 (Ky. 1894).

Bonds which were issued prior to the adoption of the Constitution and short-term notes are debts within the meaning of this section. Jones v. Board of Education, 191 Ky. 198, 229 S.W. 1032, 1921 Ky. LEXIS 295 (Ky. 1921).

The legislature has the power to prescribe the form and manner of the issuing and sale of bonds as long as the right and power of a governmental subdivision to pay its debts is not destroyed. Rohde v. Newport, 246 Ky. 476, 55 S.W.2d 368, 1932 Ky. LEXIS 793 (Ky. 1932).

Interest to become due in future would not be considered as an indebtedness within constitutional debt limitations. Dalton v. State Property & Bldgs. Com., 304 S.W.2d 342, 1957 Ky. LEXIS 276 (Ky. 1957).

5. — Governmental Purposes.

The incurrence of debt for essential governmental purposes is valid even though the debt limitations fixed by this section and Const., § 157 are exceeded, but payment of such a debt must be made out of funds raised within those limitations. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

6. — Current Expenses.

Appropriations for current operation of the county do not constitute a debt within the limitations prescribed by this section where such appropriations are within a reasonable anticipation of all taxes and other revenues to be collected during the current year. Estill County v. Noland, 295 Ky. 753, 175 S.W.2d 341, 1943 Ky. LEXIS 324 (Ky. 1943).

7. — Special Assessments.

Where statute authorized city council to order street pavements at cost of property owners and to provide a fund for the immediate payment of the entire cost or for payments on a ten (10) year plan and to borrow money in anticipation by issuing bonds, the city had authority to order the work done and to order immediate payment therefor by the property owners, and one could not avoid payment on the ground that the city had no power to order the improvement. Covington v. Nadaud, 103 Ky. 455, 45 S.W. 498, 20 Ky. L. Rptr. 151, 1898 Ky. LEXIS 84 (Ky. 1898).

8. — Created Before Constitution.

The provisions of this section and Const., § 157 do not affect an indebtedness of a town created by vote of its taxpayers before the Constitution was adopted. Aydelett v. South Louisville, 26 S.W. 717, 16 Ky. L. Rptr. 166 (1894).

The provisions of this section do not prohibit the incurring of an indebtedness in excess of the amount by the issuance of bonds where, before the adoption of the Constitution, all the steps required by the charter necessary to the issuance of the bonds had been taken. Ludlow v. Board of Education, 29 S.W. 854, 16 Ky. L. Rptr. 805 (1895).

The provisions of this section and Const., § 157 do not apply to an indebtedness for public improvements which a city of the second class was specially authorized, prior to the adoption of the Constitution, to contract. Warren v. Newport, 64 S.W. 852, 23 Ky. L. Rptr. 1006, 1901 Ky. LEXIS 623 (Ky. Ct. App. 1901).

9. — Excess at Time of Constitution.

Where the indebtedness of a city at the time of the adoption of the Constitution exceeded the prescribed limit by the Constitution, it matters not how great the excess, the city may, so long as the indebtedness has never been reduced below the limit prescribed, increase its indebtedness to the extent of two percent (2%) on the value of the taxable property in the city, but any increase since the adoption of the Constitution is to be estimated in determining whether a further increase will exceed the two percent (2%) limit. Ashland v. Culbertson, 103 Ky. 161, 44 S.W. 441, 19 Ky. L. Rptr. 1812, 1898 Ky. LEXIS 41 (Ky. 1898), overruled, Weil, Roth & Co. v. Paris, 176 Ky. 841, 197 S.W. 461, 1917 Ky. LEXIS 130 (Ky. 1917).

Where a city of the fourth class decreases its indebtedness existing at the time of the adoption of the Constitution below the five percent (5%) maximum, the two percent (2%) extension does not apply. Walsh v. Pineville, 152 Ky. 556, 153 S.W. 1002, 1913 Ky. LEXIS 721 (Ky. 1913).

Where a city's indebtedness has exceeded five percent (5%) of its taxable property at the adoption of the Constitution and ever since, it is entitled to incur the additional indebtedness permitted by this section. Bosworth v. Middlesboro, 190 Ky. 246, 227 S.W. 170, 1921 Ky. LEXIS 420 (Ky. 1921).

10. — Estimation of Amount.

City bonds expressly issued to retire bonds issued to take up the city's floating debt are not to be considered in determining whether the limit of indebtedness as fixed by the Constitution has been exceeded. Farson, Leach & Co. v. Board of Comm'rs, 97 Ky. 119, 30 S.W. 17, 16 Ky. L. Rptr. 856, 1895 Ky. LEXIS 160 (Ky. 1895).

In determining whether the indebtedness created by the issuance of bonds by a city will exceed the limit prescribed by the Constitution, only the face of the bonds, and not the future interest, is to be estimated. Ashland v. Culbertson, 103 Ky. 161, 44 S.W. 441, 19 Ky. L. Rptr. 1812, 1898 Ky. LEXIS 41 (Ky. 1898), overruled, Weil, Roth & Co. v. Paris, 176 Ky. 841, 197 S.W. 461, 1917 Ky. LEXIS 130 (Ky. 1917).

In determining the amount of indebtedness of a city of the third class, an indebtedness created prior to the adoption of the Constitution should not be considered. Kimbley v. Owensboro, 176 Ky. 532, 195 S.W. 1087, 1917 Ky. LEXIS 75 (Ky. 1917).

Previously issued warrants which were void cannot be considered in determining the validity of a proposed expenditure. Williams v. Estill County, 253 Ky. 417, 69 S.W.2d 683, 1934 Ky. LEXIS 655 (Ky. 1934).

11. — — Current Expenses.

Current expenses of a city for the current year are not to be included in an estimate of a city's existing indebtedness. O'Bryan v. Owensboro, 113 Ky. 680, 68 S.W. 858, 69 S.W. 800, 24 Ky. L. Rptr. 469, 24 Ky. L. Rptr. 645, 1902 Ky. LEXIS 92 (Ky. 1902), overruled, Nelson County Fiscal Court v. McCrocklin, 175 Ky. 199, 194 S.W. 323, 1917 Ky. LEXIS 316 (Ky. 1917).

In determining the total indebtedness under this section, there must be included the proposed indebtedness and all outstanding contracted indebtedness, whether bonded or floating, but it is not necessary to include current expenses for the current year. Winchester v. Nelson, 175 Ky. 63, 193 S.W. 1040, 1917 Ky. LEXIS 287 (Ky. 1917).

An estimate of indebtedness permitted under this section must include the proposed indebtedness and all outstanding indebtedness, whether bonded, floating or otherwise, but must not include current expenses for the current year. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

12. — — School Debts.

Where a city includes an independent school district which is an independent corporation, the indebtedness of the school district is not to be treated as a part of the city's indebtedness, in determining whether the city has reached its maximum constitutional debt limit, so as to preclude the issuance of further bonds. Ex parte Newport, 141 Ky. 329, 132 S.W. 580, 1910 Ky. LEXIS 462 (Ky. 1910), overruled, Ex parte Ashland, 256 Ky. 384, 76 S.W.2d 43, 1934 Ky. LEXIS 415 (Ky. 1934).

In estimating the indebtedness of a city in order to determine whether a proposed bond issue would exceed the limits of this section, the bonded indebtedness of the school board is not considered as part of the city's indebtedness. Rash v. Madisonville, 148 Ky. 154, 146 S.W. 386, 1912 Ky. LEXIS 406 (Ky. 1912).

An indebtedness of cities of the second class for school purposes is distinct from that of any other municipal corporation or political body, including the school district, and in reckoning the indebtedness thereof to determine whether contemplated school bonds would exceed the city's debt limit, the indebtedness of a school corporation wholly or partially within the city is not to be considered. Coppin v. Board of Education, 155 Ky. 387, 159 S.W. 937, 1913 Ky. LEXIS 258 (Ky. 1913).

School improvement bonds which were approved by the voters of the city were debts of the city and not of the board of education with respect to the determination of debt limitations of this section. Hager v. Board of Education, 254 Ky. 791, 72 S.W.2d 475, 1934 Ky. LEXIS 160 (Ky. 1934).

Outstanding bonds of two (2) school districts which were authorized by the voters and which are being taken care of by special taxes are not to be considered in determining whether the contemplated increase in the bonded indebtedness is within the limits of this section. Rowan County Board of Education v. Citizens Bank, 279 Ky. 413, 130 S.W.2d 832, 1939 Ky. LEXIS 297 (Ky. 1939).

13. — — Road Bonds.

In determining the total indebtedness under this section, the amount of debt under Const., § 157a is not included. Bird v. Wilson, 171 Ky. 807, 188 S.W. 899, 1916 Ky. LEXIS 439 (Ky. 1916).

In determining the total indebtedness of a city, bonds approved under Const., § 157a are not taken into consideration. Stratton v. Pike County, 269 Ky. 273, 106 S.W.2d 1014, 1937 Ky. LEXIS 593 (Ky. 1937).

Bonds issued under Const., § 157a are not to be considered in determining whether the two percent (2%) limit of this section has been exceeded. Richardson v. Monroe County, 271 Ky. 368, 112 S.W.2d 47, 1937 Ky. LEXIS 244 (Ky. 1937), overruled, Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

14. — — Sinking Funds.

In determining the indebtedness under this section, a sinking fund created to pay bonds not yet due should be deducted from the total amount of outstanding indebtedness. First Nat'l Bank v. Jackson, 199 Ky. 94, 250 S.W. 795, 1923 Ky. LEXIS 767 (Ky. 1923).

Cash on hand in sinking fund to meet bonds, and taxes levied for sinking fund account, must be deducted in computing outstanding indebtedness. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

15. — — Time of Bond Sale.

It is sufficient under this section, limiting the indebtedness of fourth-class cities to five percent (5%) of the assessed value of the property, that the indebtedness does not exceed the constitutional limitation at the time of the issuance and sale of the bonds, and the fact that the existing indebtedness, together with that created by the bonds, exceeded the limitation at the time of the election to authorize the issuance of the bonds would not make them invalid, the indebtedness not being created until the bonds were sold. Frost v. Central City, 134 Ky. 434, 120 S.W. 367, 1909 Ky. LEXIS 396 (Ky. 1909), overruled, Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946).

An indebtedness is determined at the time the bonds are sold and not at the time of the election approving the bond issue. Boll v. Ludlow, 234 Ky. 812, 29 S.W.2d 547, 1930 Ky. LEXIS 274 (Ky. 1930).

In determining whether indebtedness of town exceeds constitutional limit, time when bonds are sold is controlling and not time of election. Howard v. Loyall, 284 Ky. 233, 144 S.W.2d 502, 1940 Ky. LEXIS 481 (Ky. 1940).

16. — Assessment.

Where a city is divided into colored and white school districts, the taxable property to be included in assessments for the colored school district includes the property owned by colored citizens and the proportion of corporate property in the city that the number of colored children bears to the whole number of children of school age in the city. Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842, 1919 Ky. LEXIS 218 (Ky. 1919).

Under this section, the amount of indebtedness which might be incurred by board of education was not controlled by assessment next before election at which bonds were authorized but by assessment next before indebtedness was incurred by issuance and sale of the bonds. Sutherland v. Board of Education, 209 Ky. 351, 272 S.W. 887, 1925 Ky. LEXIS 498 (Ky. 1925).

The assessed valuation of the property taxable for the support of the county board of education when the bonds are sold determines the constitutional limitation of the debt, but that value is presumed to be the same as the last complete and final assessment. Rowan County Board of Education v. Citizens Bank, 279 Ky. 413, 130 S.W.2d 832, 1939 Ky. LEXIS 297 (Ky. 1939).

Assessment of 1939 controlled question whether amount of bonds authorized by town to construct bridge would exceed constitutional limitation of three percent (3%) of value of taxable property in town, where issuance was not authorized by town until after 1939 assessment and sale could not be made until after 1940 assessment date. Howard v. Loyall, 284 Ky. 233, 144 S.W.2d 502, 1940 Ky. LEXIS 481 (Ky. 1940).

Although certain property is not subject to the maximum tax a city can levy on other property, its assessed valuation must be considered in determining whether debt limit has been exceeded. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

The value of bank shares is taxable property in a city and must be considered in determining whether debt limit has been exceeded. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

Property exempted from taxation by statute but not by the Constitution may not be included in the value of taxable property of the county in determining the debt limitations of this section. Monroe County v. County Debt Com., 247 S.W.2d 507, 1952 Ky. LEXIS 708 (Ky. 1952).

17. — Floating.

This section does not restrict the issuing of bonds to fund a valid floating indebtedness. Frank v. Fuss, 235 Ky. 143, 29 S.W.2d 603, 1930 Ky. LEXIS 300 (Ky. 1930).

An outstanding valid floating indebtedness may be funded by a bond issue. Hogan v. Lee Fiscal Court, 235 Ky. 100, 29 S.W.2d 611, 1930 Ky. LEXIS 301 (Ky. 1930).

The power to issue bonds to fund a floating indebtedness is a continuing power which may be exercised at any time when justified by the circumstances. Hall v. Fiscal Court of Fleming County, 239 Ky. 425, 39 S.W.2d 656, 1931 Ky. LEXIS 786 (Ky. 1931).

A board of commissioners has the power to issue bonds to fund a valid floating indebtedness. Pace v. Paducah, 241 Ky. 568, 44 S.W.2d 574, 1931 Ky. LEXIS 132 (Ky. 1931). See Bond v. Corbin, 241 Ky. 663, 44 S.W.2d 576, 1931 Ky. LEXIS 133 (Ky. 1931); Hall v. Hopkinsville, 242 Ky. 339, 46 S.W.2d 497, 1932 Ky. LEXIS 277 (Ky. 1932).

The issuing of bonds to fund a valid floating indebtedness is not limited to the kinds of debts set out in KRS 66.080. Rose v. Owen County, 266 Ky. 422, 99 S.W.2d 177, 1936 Ky. LEXIS 672 (Ky. 1936).

The last sentence of this section refers to funding of debts incurred after the adoption of the present Constitution. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

18. — — Funding.

A city is authorized to issue funding bonds to make payment on contract debt in amount not increasing the indebtedness beyond the constitutional limit in order to avoid imposing a heavy tax in one (1) year to pay the entire debt. Wilson v. Covington, 220 Ky. 798, 295 S.W. 1068, 1927 Ky. LEXIS 636 (Ky. 1927). See Davis v. Newport, 224 Ky. 546, 6 S.W.2d 693, 1928 Ky. LEXIS 635 (Ky. 1928).

An indebtedness may be funded by a bond issue if the aggregate debts were valid when created and the total bonded

indebtedness does not exceed the limits of this section. Tuggle v. Knox County, 268 Ky. 260, 104 S.W.2d 954, 1937 Ky. LEXIS 438 (Ky. 1937). See Bartlett v. Winchester, 261 Ky. 694, 88 S.W.2d 698, 1935 Ky. LEXIS 723 (Ky. 1935); Ochs v. Fiscal Court of Spencer County, 261 Ky. 692, 88 S.W.2d 700, 1935 Ky. LEXIS 724 (Ky. 1935); Stumbo v. Dingus' Adm'x, 265 Ky. 673, 97 S.W.2d 585, 1936 Ky. LEXIS 560 (Ky. 1936); Pace v. Greenville, 267 Ky. 83, 101 S.W.2d 189, 1937 Ky. LEXIS 274 (Ky. 1937); Marcum v. Borders, 269 Ky. 59, 106 S.W.2d 122, 1937 Ky. LEXIS 560 (Ky. 1937); Smith v. Mayfield, 270 Ky. 784, 110 S.W.2d 1081, 1937 Ky. LEXIS 163 (Ky. 1937); Williams v. Taylor Count, 274 Ky. 217, 118 S.W.2d 526, 1938 Ky. LEXIS 244 (Ky. 1938); Tuggle v. Barbourville, 294 Ky. 351, 171 S.W.2d 1008, 1943 Ky. LEXIS 457 (Ky. 1943).

Matured interest on bonds validly issued to fund a floating indebtedness is also a valid floating indebtedness which may be funded. Jones v. Fiscal Court of Fulton County, 275 Ky. 619, 122 S.W.2d 510, 1938 Ky. LEXIS 484 (Ky. 1938).

Proposed funding bond issue of city was approved subject to requirement that ordinance providing for sinking fund to retire bonds, which referred to a tax levy but did not actually levy any tax, be amended so as to impose the necessary tax levy within the limits prescribed by Const., § 157. Rowland v. Winchester, 306 Ky. 772, 209 S.W.2d 305, 1948 Ky. LEXIS 646 (Ky. 1948).

Where city had a population of less than 15,000 and the limitation of its indebtedness was five percent (5%) of the assessed value of the taxable property and the city proved that at the end of the year 1947 its outstanding obligations were approximately $35,000 and the assessed valuation of the taxable property was greater than $8,000,000, it was evident that $12,000 bond issue to fund valid floating debt would not create an indebtedness in excess of the constitutional maximum. Rowland v. Winchester, 306 Ky. 772, 209 S.W.2d 305, 1948 Ky. LEXIS 646 (Ky. 1948).

19. — — — Judgments.

A judgment is a floating indebtedness which may be funded by a bond issue. Elliott v. Fiscal Court of Pike Coutny, 237 Ky. 797, 36 S.W.2d 619, 1931 Ky. LEXIS 693 (Ky. 1931).

A judgment which cannot be satisfied from available funds is a floating indebtedness and may be included in levies in subsequent years or funded by a fiscal court without a vote. Knox County v. Newport Culvert Co., 248 Ky. 661, 59 S.W.2d 558, 1933 Ky. LEXIS 287 (Ky. 1933).

A county may pay a judgment by the issuance of funding bonds where the debt on which the judgment was issued was valid when created. Coil v. Ham, 260 Ky. 650, 86 S.W.2d 529, 1935 Ky. LEXIS 527 (Ky. 1935).

An issue of bonds to fund a judgment debt was valid where evidence showed that the indebtedness incurred for each year plus the total indebtedness for the preceding years was not in excess of the limits of this section. Hundley v. Board of Education, 265 Ky. 33, 95 S.W.2d 1091, 1936 Ky. LEXIS 429 (Ky. 1936).

20. — — — Deficits in Revenue.

A floating debt accumulated over several years from unexpected deficits in revenue and based on obligations assumed pursuant to a fair estimate of revenue was a valid obligation for which bonds could be issued. Lee v. Board of Education, 261 Ky. 379, 87 S.W.2d 961, 1935 Ky. LEXIS 666 (Ky. 1935).

An indebtedness which resulted from a failure of anticipated revenue is a valid floating indebtedness where the entire indebtedness of the city has not exceeded the limits of this section. Jones v. Paducah, 263 Ky. 542, 92 S.W.2d 811, 1936 Ky. LEXIS 213 (Ky. 1936).

Where city's floating indebtedness, resulting from deficits in revenues over series of years, constitutes city's only direct obligation and was smaller than amount of indebtedness which city could have incurred in year during which assessed valuation of city property was smallest, bonds issued to fund such floating indebtedness would not be prohibited under constitutional provision limiting authorized indebtedness to specified percentage of assessed valuation. Penrod v. Sturgis, 269 Ky. 315, 107 S.W.2d 277, 1937 Ky. LEXIS 608 (Ky. 1937).

A floating indebtedness incurred by failures in revenue and failure of fiscal authorities to levy the full amount of the authorized poll tax is a valid indebtedness and may be funded through a bond issue. Hockley v. Carter County, 270 Ky. 594, 110 S.W.2d 292, 1937 Ky. LEXIS 123 (Ky. 1937).

21. — — — School Debts.

Issue of bonds of school district to refund validly created debts was authorized even though the debt did accumulate over a period of years, and the board of education should have paid the preceding year's indebtedness from revenues of the succeeding year. Meade v. Board of Education, 268 Ky. 71, 103 S.W.2d 701, 1937 Ky. LEXIS 417 (Ky. 1937).

In order to approve a bond issue to fund an indebtedness of a school board, it must be shown that the anticipated revenue of the board is its budgeted revenue. Arrowood v. Board of Education, 269 Ky. 464, 107 S.W.2d 324, 1937 Ky. LEXIS 626 (Ky. 1937).

A board of education which has kept its expenditures within its budget may fund a floating indebtedness caused by an unexpected failure in its revenue. Ebert v. Board of Education, 277 Ky. 633, 126 S.W.2d 1111, 1939 Ky. LEXIS 706 (Ky. 1939).

A floating indebtedness of a board of education incurred for valid obligations and within constitutional limits which resulted from deficits in revenue caused by judicial invalidation of certain assessments could be funded by a bond issue. Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

22. — Refunding Bonds.

Under a statute authorizing the city to retire existing bonds by payment from the sale of new bonds, or by direct exchange, the city has no right to sell more bonds than are required to pay the existing indebtedness, and cannot be allowed to realize a premium by the sale of bonds to the full amount of those outstanding. Commissioners of Sinking Fund v. Zimmerman, 101 Ky. 432, 41 S.W. 428, 19 Ky. L. Rptr. 689, 1897 Ky. LEXIS 212 (Ky. 1897).

A statute empowering the fiscal courts of the several counties to call in outstanding bonds, and issue new bonds in lieu thereof, is valid. Richmond Cemetery Co. v. Sullivan, 66 Ark. 646, 104 Ky. 723, 47 S.W. 1079, 20 Ky. L. Rptr. 1028, 1898 Ky. LEXIS 222 (Ky. 1898).

Where a city, as authorized by statute, bought the stock of a water company which had incurred an indebtedness and had issued bonds therefor, an issue of bonds to refund the indebtedness was within the provisions of this section relating to the renewal of bonds to refund an existing indebtedness. Gaulbert v. Louisville, 97 S.W. 342, 30 Ky. L. Rptr. 50 (1906).

A city had the power to issue refunding bonds, proceeds of which were to be used to retire outstanding bonds, without calling an election and submitting the matter to vote of the people. Welch v. Nicholasville, 225 Ky. 312, 8 S.W.2d 400, 1928 Ky. LEXIS 768 (Ky. 1928). See Rowland v. Paris, 227 Ky. 570, 13 S.W.2d 791, 1929 Ky. LEXIS 937 (Ky. 1929).

A board of education could issue refunding bonds for previous valid bonds as this would create no additional liability. Wilson v. Board of Education, 226 Ky. 476, 11 S.W.2d 143, 1928 Ky. LEXIS 124 (Ky. 1928).

A refunding bond issue may not be approved where there was a lack of evidence as to the amount of anticipated revenue, outstanding obligations, value of property in the district and other facts as to the financial status of the taxing district. Marcum v. Borders, 266 Ky. 579, 99 S.W.2d 760, 1936 Ky. LEXIS 720 (Ky. 1936).

Refunding bonds may be issued to take up funding bonds which had been issued to care for a floating indebtedness, where the refunding bonds plus the existing indebtedness do not exceed the limit set by the Constitution. Daniel v. Johnson County, 267 Ky. 44, 101 S.W.2d 199, 1937 Ky. LEXIS 277 (Ky. 1937).

The issuance of bonds for the purpose of paying or funding other outstanding bonds or other valid indebtedness is not an increase in the taxing district's indebtedness. Abbott v. Oldham County Board of Education, 272 Ky. 654, 114 S.W.2d 1128, 1938 Ky. LEXIS 176 (Ky. 1938).

This section does not authorize the refunding of sewer bonds issued under law providing for ten (10) year payment of bonds and for statutory lien on property liable for the tax, because such bonds are not obligations or debts of the city. Paducah v. Jones, 274 Ky. 460, 118 S.W.2d 753, 1938 Ky. LEXIS 282 (Ky. 1938).

Bonds issued to retire the floating indebtedness of a county may be refunded without submitting the matter to popular vote. Jones v. Fiscal Court of Fulton County, 275 Ky. 619, 122 S.W.2d 510, 1938 Ky. LEXIS 484 (Ky. 1938).

Matured interest on bonds validly issued is itself a valid floating indebtedness, and can be refunded. Whitworth v. Breckinridge County Board of Education, 276 Ky. 346, 124 S.W.2d 495, 1939 Ky. LEXIS 534 (Ky. 1939).

A bond issue to pay off and retire bonds of a like sum where there will be no duplication of principal and interest is valid, as it is merely a renewal of an outstanding valid indebtedness. Frankfort v. Harrod, 283 Ky. 755, 143 S.W.2d 292, 1940 Ky. LEXIS 406 (Ky. 1940).

23. — Emergencies.

A city of the fifth class cannot incur an indebtedness beyond the percentage fixed, or which would require the imposition of a tax rate in excess of 75 cents on the $100, as fixed by Const., § 157, except in cases of emergency. Marion v. Haynes, 157 Ky. 687, 164 S.W. 79, 1914 Ky. LEXIS 373 (Ky. 1914).

The term "emergency" means some pressing necessity out of the ordinary state of affairs which could be remedied only by unusual expedients, an emergency ordinarily meaning a crisis on the outcome of which everything depends, while an exigency is merely an occasion of urgency and suddenness. Marion v. Haynes, 157 Ky. 687, 164 S.W. 79, 1914 Ky. LEXIS 373 (Ky. 1914).

Bonds in excess of the constitutional limit are valid where the bonds were issued to meet an emergency need for a waterworks system. Samuels v. Clinton, 188 Ky. 300, 221 S.W. 1075, 1920 Ky. LEXIS 275 (Ky. 1920).

A city of the fourth class could exceed the debt limit for the purpose of making a necessary improvement in its water supply rendered necessary by abandonment of mine from which water had been taken. Harris v. Morganfield, 201 Ky. 588, 257 S.W. 1032, 1924 Ky. LEXIS 603 (Ky. 1924).

Where evidence indicated a city of the fourth class could expect a flood of much greater height than it had heretofore experienced due to the removal of timber in the river watershed, an emergency existed and bond issue which exceeded five percent (5%) of the assessment of taxable property was valid. Hill v. Pineville, 314 Ky. 359, 235 S.W.2d 776, 1951 Ky. LEXIS 654 (Ky. 1951).

The debt limitation may be exceeded by a city of the fourth class when an emergency threatens the public health and safety. Williams v. Barbourville, 246 S.W.2d 591, 1952 Ky. LEXIS 642 (Ky. 1952).

Where city was subjected to recurring floods which caused extensive property damage, emergency existed within meaning of this section and city could exceed debt limitation and city had duty under Const., § 159 to provide payment for debt even though city had to levy tax in excess of maximum rate specified in Const., § 157. Williams v. Barbourville, 246 S.W.2d 591, 1952 Ky. LEXIS 642 (Ky. 1952).

The need to construct a courthouse after the old courthouse had been totally destroyed constitutes an emergency within the meaning of this section. Magoffin County v. Rigsby, 303 S.W.2d 545, 1957 Ky. LEXIS 266 (Ky. 1957).

An emergency may be something other than a sudden or unexpected circumstance or condition and may be a pressing necessity requiring immediate attention, and the failure to provide such immediate attention does not make the pressing necessity any less an emergency. Rodgers v. Crittenden County, 337 S.W.2d 728, 1960 Ky. LEXIS 368 (Ky. 1960).

The need for a new courthouse constitutes an emergency where the old courthouse is over 75 years old, has been rapidly deteriorating since being condemned in 1919 and constitutes a fire hazard which endangers irreplaceable records as well as the health and safety of those frequenting the building. Rodgers v. Crittenden County, 337 S.W.2d 728, 1960 Ky. LEXIS 368 (Ky. 1960).

The gross inadequacy of hospital facilities in a county constitutes an emergency within the meaning of this section and permits a county to exceed its normal debt limitation. Miller v. County of Breckinridge, 361 S.W.2d 283, 1962 Ky. LEXIS 235 (Ky. 1962).

24. — — Not Emergencies.

A county indebted up to the constitutional limit, and having a courthouse which may be used without endangering the public health or safety, cannot incur further indebtedness for the construction of a new courthouse, though the community has outgrown the existing courthouse. Fiscal Court of Franklin County v. Commonwealth, 139 Ky. 307, 117 S.W. 301, 1909 Ky. LEXIS 3 (Ky. 1909). See Bradford v. Fiscal Court of Bracken County, 159 Ky. 544, 167 S.W. 937, 1914 Ky. LEXIS 864 (Ky. 1914).

The need for an electric light system is not so great as to create an emergency and the limits of this section may not be exceeded by acquisition of a light plant and water system even where the need for a water system would be an emergency need. Samuels v. Clinton, 184 Ky. 97, 211 S.W. 567, 1919 Ky. LEXIS 41 (Ky. 1919).

The need to replace a school building destroyed by fire does not constitute an emergency within the meaning of this section. Nelson v. Board of Education, 213 Ky. 714, 281 S.W. 808, 1926 Ky. LEXIS 603 (Ky. 1926).

The fact that present sanitary facilities were inadequate and posed a potential health problem did not create such an unforeseen condition requiring immediate attention as to constitute an emergency within the meaning of this section. Hurst v. Millersburg, 220 Ky. 108, 294 S.W. 788, 1927 Ky. LEXIS 469 (Ky. 1927).

The need for an electric light plant does not constitute an emergency where it is not apparent that a delay in obtaining the service would imperil the public health and safety. Kentucky Utilities Co. v. Ginsberg, 255 Ky. 148, 72 S.W.2d 738, 1934 Ky. LEXIS 180 (Ky. 1934).

25. — — Question of Fact.

Whether a school bond issue was necessitated by an emergency is a question of fact on which the finding of the board of education is not conclusive. Buckner v. Board of Education, 236 Ky. 768, 34 S.W.2d 236, 1930 Ky. LEXIS 837 (Ky. 1930).

26. — Municipalities and Taxing Districts.

A board of education may not incur an indebtedness in excess of the limitations of this section which are applicable to counties, taxing districts and other municipalities, as the debts are those of the board itself and not part of the city's debt. Sutherland v. Board of Education, 200 Ky. 23, 252 S.W. 123, 1923 Ky. LEXIS 12 (Ky. 1923).

A board of education which can mandatorily require the fiscal court to make a school levy is a taxing district, and may issue bonds to fund its floating indebtedness. Ebert v. Board of

Education, 277 Ky. 633, 126 S.W.2d 1111, 1939 Ky. LEXIS 706 (Ky. 1939).

27. — Delay in Bond Issue.

A delay of eight (8) years between an election and the issuing of bonds was not unreasonable and would not render the bonds invalid. Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440, 1937 Ky. LEXIS 135 (Ky. 1937).

28. — Partial Invalidity.

An order for an election to authorize an issue of school district bonds, exceeding the limitation fixed by this section, is not invalid as to the issuance of the legal amount. McKinney v. Board of Trustees, 144 Ky. 85, 137 S.W. 839, 1911 Ky. LEXIS 555 (Ky. 1911).

Where the voters had approved a $50,000 bond issue and $25,000 worth of bonds were issued, the additional amount of bonds cannot later be issued where at the time of the election the assessed property of the district would have supported an issue of only $22,000. Nelson v. Williamsburg Independent Graded School Dist., 265 Ky. 792, 97 S.W.2d 814, 1936 Ky. LEXIS 579 (Ky. 1936).

29. — Subsequent Invalid Debts.

Where county bonds were issued to an amount within the constitutional limits and later the assessed valuation of the county decreased and other debts were created so that the constitutional limits were exceeded, such facts would not invalidate either the bonds or the interest due thereon, but any portion of the later debts created for nongovernmental expenses would be void. Jones v. Fiscal Court of Fulton County, 275 Ky. 619, 122 S.W.2d 510, 1938 Ky. LEXIS 484 (Ky. 1938).

Any subsequent obligation of a county, after the aggregate of all the debts reaches the maximum allowed by this section, is void. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

30. — Election Ordinance.

An ordinance providing for a bond election need not state the value of assessed property, as such a statement would have no influence on the determination of whether the bond issue would create an indebtedness in excess of the limitations of this section. King v. Katterjohn, 193 Ky. 359, 236 S.W. 250, 1922 Ky. LEXIS 3 (Ky. 1922).

31. — Valid Bond Issue.

A provision in an ordinance that a city contribute to the payment of bonds issued for a sewer system did not create a debt in excess of the limits of this section where the ordinance specifies that the bonds are to be paid from the revenues from the sewer system and that they are not to constitute an indebtedness of the city. Francis v. Bowling Green, 259 Ky. 525, 82 S.W.2d 804, 1935 Ky. LEXIS 351 (Ky. 1935).

A bond issue to fund an indebtedness must be approved where the debt appears to be within constitutional limits. Letcher County Board of Education v. Bank of Whitesburg, Inc., 271 Ky. 166, 111 S.W.2d 656, 1937 Ky. LEXIS 225 (Ky. 1937).

A bond issue approved by the voters to pay for construction of a floodwall is valid where there is no evidence that the limits of this section would be exceeded in liquidating the bonds. Miller v. Ashland, 310 Ky. 680, 221 S.W.2d 620, 1949 Ky. LEXIS 986 (Ky. 1949).

A bond issue which would be valid within the limits of this section will not be invalidated by the fact that the accomplishment of the purpose for which the bonds were issued would cost four times the amount of the bond issue. Howard v. Board of Education, 311 Ky. 130, 223 S.W.2d 721, 1949 Ky. LEXIS 1076 (Ky. 1949).

32. — Invalid Debts.

A contract by a city of the fourth class incurring an indebtedness in excess of the five percent (5%) limit, made after the adoption of the Constitution but before the formal classification of the cities into classes by the general assembly, as required by the Constitution, was void. Beard v. Hopkinsville, 95 Ky. 239, 24 S.W. 872, 15 Ky. L. Rptr. 756, 1894 Ky. LEXIS 9 (Ky. 1894).

A subscription by a county in aid of a railroad, even if it would otherwise be valid, is unauthorized, where it would create indebtedness in excess of the limit prescribed. Whitney v. Kentucky M. R. Co., 110 Ky. 955, 63 S.W. 24, 23 Ky. L. Rptr. 472, 1901 Ky. LEXIS 161 (Ky. 1901).

33. — Valid Statutes.

KRS 66.310, in forbidding counties to incur indebtedness in excess of one half (½) of one percent (1%) of their assessed valuation without the approval of the county debt commission, does not contravene this section which merely limits the power of the Legislature and does not preclude it from fixing a lower limit. Boll v. Ludlow, 227 Ky. 208, 12 S.W.2d 301, 1928 Ky. LEXIS 483 (Ky. 1928). See Booth v. Board of Education, 229 Ky. 719, 17 S.W.2d 1013, 1929 Ky. LEXIS 833 (Ky. 1929).

The provision of KRS 66.310 prohibiting a county from contracting a debt in excess of one-half (½) of one percent (1%) of the value of its taxable property without approval of the state local finance officer is not an attempt to reduce the constitutional debt limit but to require the statutory procedure to be followed before exceeding the statutory limit. Lincoln Nat'l Bank, Inc. v. County Debt Com., 294 Ky. 642, 172 S.W.2d 463, 1943 Ky. LEXIS 513 (Ky. 1943).

34. — Invalid Statutes.

A statute raising the limit of indebtedness which may be incurred by a school district from two percent (2%) to four percent (4%) is unconstitutional. Boll v. Ludlow, 227 Ky. 208, 12 S.W.2d 301, 1928 Ky. LEXIS 483 (Ky. 1928). See Booth v. Board of Education, 229 Ky. 719, 17 S.W.2d 1013, 1929 Ky. LEXIS 833 (Ky. 1929).

35. — Tax Levies.

A court may not compel a city to levy a tax to pay an indebtedness which exceeded the limitations of this section. Bardwell v. Southern Engine & Boiler Works, 130 Ky. 222, 113 S.W. 97, 1908 Ky. LEXIS 258 (Ky. 1908).

36. — Pleading and Proof.

A petition which merely avers that a floating indebtedness was illegally incurred is insufficient where it states conclusions rather than facts. King v. Christian County Board of Education, 229 Ky. 234, 16 S.W.2d 1053, 1929 Ky. LEXIS 728 (Ky. 1929).

Where a school board's proof in a proceeding to approve a bond issue was inconsistent, the validity of the indebtedness cannot be established. Arrowood v. Board of Education, 271 Ky. 812, 113 S.W.2d 466, 1938 Ky. LEXIS 65 (Ky. 1938).

37. — Injunctions.

38. — — Parties.

In taxpayer's action to enjoin the collection of a tax levied to pay county courthouse bonds, the county issuing the bonds should be made a party, since it will be directly affected by the result of the litigation, but the holders of outstanding county warrants, which the county in the same action alleges are invalid, need not be made parties, since such warrants could not possibly be affected. Cincinnati, N. O. & T. P. R. Co. v. Kinman, 280 Ky. 148, 132 S.W.2d 735, 1939 Ky. LEXIS 73 (Ky. 1939).

There could be no valid judgment in either an ex parte proceeding or a taxpayer's suit for injunction as to the validity of warrants issued by a county where the holders of the

warrants were not made parties to either proceeding. Cincinnati, N. O. & T. P. R. Co. v. Kinman, 280 Ky. 148, 132 S.W.2d 735, 1939 Ky. LEXIS 73 (Ky. 1939).

39. — Revenue Bonds.

Bonds meeting the requirements of KRS 58.010 to 58.140 do not violate the constitutional prohibitions on indebtedness because such bonds are paid solely from revenues of the designated system and do not encumber the city itself. Baker v. Richmond, 709 S.W.2d 472, 1986 Ky. App. LEXIS 1136 (Ky. Ct. App. 1986).

Cited:

Roberts & Co. v. Paducah, 95 F. 62, 1899 U.S. App. LEXIS 3132 (C.C.D. Ky. 1899); Ashland Waterworks Co. v. Ashland, 230 F. 254, 1916 U.S. Dist. LEXIS 965 (D. Ky. 1916); Ashland Waterworks Co. v. Ashland, 251 F. 492, 1918 U.S. App. LEXIS 1721 (6th Cir. Ky. 1918); Commissioner v. Carey-Reed Co., 101 F.2d 602, 1939 U.S. App. LEXIS 4416 (6th Cir. 1939); O'Mahoney v. Bullock, 97 Ky. 774, 31 S.W. 878, 17 Ky. L. Rptr. 523, 1895 Ky. LEXIS 242 (Ky. 1895); Covington v. McKenna, 99 Ky. 508, 36 S.W. 518, 18 Ky. L. Rptr. 288, 1896 Ky. LEXIS 108 (Ky. 1896); Maysville & L. Turnpike Road Co. v. Wiggins, 104 Ky. 540, 47 S.W. 434, 20 Ky. L. Rptr. 724, 1898 Ky. LEXIS 189 (Ky. 1898); Brown v. Board of Education, 108 Ky. 783, 57 S.W. 612, 22 Ky. L. Rptr. 483, 1900 Ky. LEXIS 102 (Ky. 1900); Knipper v. Covington, 109 Ky. 187, 58 S.W. 498, 22 Ky. L. Rptr. 676, 1900 Ky. LEXIS 171 (Ky. 1900); Mayfield Woolen Mills v. Mayfield, 111 Ky. 172, 61 S.W. 43, 22 Ky. L. Rptr. 1676, 1901 Ky. LEXIS 169 (Ky. 1901); Maze v. Owingsville Banking Co., 63 S.W. 428, 23 Ky. L. Rptr. 574 (1901); Covington v. District of Highlands, 113 Ky. 612, 68 S.W. 669, 24 Ky. L. Rptr. 433, 1902 Ky. LEXIS 89 (Ky. 1902); Catlettsburg v. Self, 115 Ky. 669, 74 S.W. 1064, 25 Ky. L. Rptr. 161, 1903 Ky. LEXIS 156 (Ky. 1903); Commonwealth v. Citizens' Nat'l Bank, 117 Ky. 946, 80 S.W. 158, 25 Ky. L. Rptr. 2100, 1904 Ky. LEXIS 265 (Ky. 1904); Dyer v. Newport, 80 S.W. 1127, 26 Ky. L. Rptr. 204 (1904); Carpenter v. Central Covington, 119 Ky. 785, 81 S.W. 919, 26 Ky. L. Rptr. 430, 1904 Ky. LEXIS 130 (Ky. 1904); Arbuckle v. McKinney, 97 S.W. 408, 30 Ky. L. Rptr. 55 (1906); Troutman v. Hays, 101 S.W. 976, 31 Ky. L. Rptr. 204 (1907); Tipton v. Shelbyville, 139 Ky. 541, 107 S.W. 810, 32 Ky. L. Rptr. 1123, 1908 Ky. LEXIS 8 (Ky. 1908); McGinnis v. Bardstown Graded School Dist., 108 S.W. 289, 32 Ky. L. Rptr. 1289 (1908); Morris v. Hoagland, 116 S.W. 684 (Ky. 1909); Rees v. Kranth, 120 S.W. 370 (Ky. 1909); Kentucky Light & Power Co. v. James H. Williams & Co., 124 S.W. 840, 1910 Ky. LEXIS 696 (Ky. 1910); Snyder v. Board of Trustees, 142 Ky. 739, 135 S.W. 271, 1911 Ky. LEXIS 282 (Ky. 1911); Covington v. Bussart, 149 Ky. 288, 148 S.W. 68, 1912 Ky. LEXIS 612 (Ky. 1912); Rhea v. Newman, 153 Ky. 604, 156 S.W. 154, 1913 Ky. LEXIS 900 (Ky. 1913); Southern Bitulithic Co. v. Detreville, 156 Ky. 513, 161 S.W. 560, 1913 Ky. LEXIS 483 (Ky. 1913); Falls City Const. Co. v. Fiscal Court of Wolfe County, 160 Ky. 623, 170 S.W. 26, 1914 Ky. LEXIS 524 (Ky. 1914); Christopher v. Robinson, 164 Ky. 262, 175 S.W. 387, 1915 Ky. LEXIS 368 (Ky. 1915); Phelps v. Lexington, 167 Ky. 451, 180 S.W. 786, 1915 Ky. LEXIS 862 (Ky. 1915); Gatton v. Fiscal Court of Daviess County, 169 Ky. 425, 184 S.W. 1, 1916 Ky. LEXIS 705 (Ky. 1916); Smith v. Board of Trustees, 171 Ky. 39, 186 S.W. 927, 1916 Ky. LEXIS 300 (Ky. 1916); Marz v. Newport, 173 Ky. 147, 190 S.W. 670, 1917 Ky. LEXIS 416 (Ky. 1917); McCrocklin v. Nelson County Fiscal Court, 174 Ky. 308, 192 S.W. 494, 1917 Ky. LEXIS 197 (Ky. 1917); Nelson County Fiscal Court v. McCrocklin, 175 Ky. 199, 194 S.W. 323, 1917 Ky. LEXIS 316 (Ky. 1917); Carter v. Krueger & Son, 175 Ky. 399, 194 S.W. 553, 1917 Ky. LEXIS 346 (Ky. 1917); In re Covington, 176 Ky. 140, 195 S.W. 439, 1917 Ky. LEXIS 32 (Ky. 1917); Tartar v. Skaggs, 184 Ky. 58, 211 S.W. 203, 1919 Ky. LEXIS 17 (Ky. 1919); Hopkins v. Dickens, 188 Ky. 368, 222 S.W. 101, 1920 Ky. LEXIS 288 (Ky. 1920); Moores v. Board of Trustees, 189 Ky. 148, 224 S.W. 645, 1920 Ky. LEXIS 393 (Ky. 1920); Percival v. Covington, 191 Ky. 337, 230 S.W. 300, 1921 Ky. LEXIS 318 (Ky. 1921); Shaw v. Mayfield, 191 Ky. 389, 230 S.W. 539, 1921 Ky. LEXIS 327 (Ky. 1921); Rogan v. Board of Education, 192 Ky. 770, 234 S.W. 443, 1921 Ky. LEXIS 152 (Ky. 1921); Billeter & Wiley v. State Highway Com., 203 Ky. 15, 261 S.W. 855, 1924 Ky. LEXIS 847 (Ky. 1924); Corbin v. Board of Education, 206 Ky. 787, 268 S.W. 560, 1925 Ky. LEXIS 1049 (Ky. 1925); Pulliam v. Board of Trustees, 216 Ky. 266, 287 S.W. 735, 1926 Ky. LEXIS 902 (Ky. 1926); Ravenna v. Boyer Fire Apparatus Co., 218 Ky. 429, 291 S.W. 782, 1927 Ky. LEXIS 200 (Ky. 1927); Wilson v. Covington, 220 Ky. 795, 295 S.W. 1069, 1927 Ky. LEXIS 637 (Ky. 1927); State Budget Com. v. Lebus, 244 Ky. 700, 51 S.W.2d 965, 1932 Ky. LEXIS 502 (Ky. 1932); W. T. Congleton Co. v. Williamsburg, 253 Ky. 704, 70 S.W.2d 376, 1934 Ky. LEXIS 726 (Ky. 1934); Middlesboro v. Kentucky Utilities Co., 255 Ky. 140, 72 S.W.2d 734, 1934 Ky. LEXIS 179 (Ky. 1934); Hager v. Cisco, 256 Ky. 708, 76 S.W.2d 614, 1934 Ky. LEXIS 446 (Ky. 1934); J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936); Ballard v. Adair County, 264 Ky. 490, 95 S.W.2d 18, 1936 Ky. LEXIS 359 (Ky. 1936); Ex parte Marshall Fiscal Court, 264 Ky. 550, 95 S.W.2d 33, 1936 Ky. LEXIS 366 (Ky. 1936); Matz v. Newport, 265 Ky. 126, 95 S.W.2d 1071, 1936 Ky. LEXIS 422 (Ky. 1936); Towe v. Scottsville, 269 Ky. 486, 107 S.W.2d 326, 1937 Ky. LEXIS 628 (Ky. 1937); First Nat'l Bank v. Princeton, 273 Ky. 601, 117 S.W.2d 210, 1938 Ky. LEXIS 676 (Ky. 1938); Williams v. Board of Education, 274 Ky. 624, 119 S.W.2d 642, 1938 Ky. LEXIS 301 (Ky. 1938); Board of Education v. Louisville & N. R. Co., 280 Ky. 650, 134 S.W.2d 219, 1939 Ky. LEXIS 184 (Ky. 1939); Middlesboro v. Kentucky Utilities Co., 284 Ky. 833, 146 S.W.2d 48, 1940 Ky. LEXIS 587 (Ky. 1940); Payne v. Covington, 285 Ky. 14, 146 S.W.2d 54, 1940 Ky. LEXIS 593 (Ky. 1940); Wallins v. Luten Bridge Co., 291 Ky. 73, 163 S.W.2d 276, 1942 Ky. LEXIS 181 (Ky. 1942); Board of Education v. Highland Cemetery, 292 Ky. 374, 166 S.W.2d 854, 1942 Ky. LEXIS 99 (Ky. 1942); Allen County Fiscal Court v. Allen County Farm Bureau, 298 Ky. 220, 182 S.W.2d 660, 1944 Ky. LEXIS 877 (Ky. 1944); W. C. Thornburgh Co. v. Fiscal Court of Trigg County, 299 Ky. 578, 186 S.W.2d 185, 1945 Ky. LEXIS 465 (Ky. 1945); Silk v. Louisville, 299 Ky. 736, 187 S.W.2d 286, 1945 Ky. LEXIS 790 (Ky. 1945); Jody v. London, 305 Ky. 303, 203 S.W.2d 41, 1947 Ky. LEXIS 786 (Ky. 1947); Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947); Sanitation Dist. of Jefferson County v. Louisville, 308 Ky. 368, 213 S.W.2d 995, 1948 Ky. LEXIS 879 (Ky. 1948); Rash v. Louisville & Jefferson County Metropolitan Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, 1949 Ky. LEXIS 670 (Ky. 1949); Demunbrun v. Browning, 311 Ky. 71, 223 S.W.2d 372, 1949 Ky. LEXIS 1058 (Ky. 1949); Farmers State Bank v. Owsley County, 314 Ky. 856, 238 S.W.2d 471, 1951 Ky. LEXIS 815 (Ky. 1951); Deters v. Louisville, 249 S.W.2d 796, 1952 Ky. LEXIS 870 (Ky. 1952); Maggard v. Marcum, 252 S.W.2d 41, 1952 Ky. LEXIS 977 (Ky. 1952); Burke v. Louisville, 275 S.W.2d 899, 1955 Ky. LEXIS 386 (Ky. 1955); Miller v. Louisville, 321 S.W.2d 237, 1959 Ky. LEXIS 269 (Ky. 1959); Petrey v. Hazard, 346 S.W.2d 534, 1961 Ky. LEXIS 314 (Ky. 1961); Dixon v. County of Elliott, 357 S.W.2d 852, 1962 Ky. LEXIS 148 (Ky. 1962); Raque v. Louisville, 402 S.W.2d 697, 1966 Ky. LEXIS 375 (Ky. 1966); Rea v. Gallatin County Fiscal Court, 422 S.W.2d 134, 1967 Ky. LEXIS 38 (Ky. 1967).

OPINIONS OF ATTORNEY GENERAL.

The incurrence of debt for essential governmental purposes is valid though the results may exceed the limitations of this section, but payment must be effected out of funds raised within the tax rate structure limitations of Const., § 157. OAG 64-700.

The execution of a mortgage by a municipality on the physical properties of an off-street parking project as addi-

tional security for the revenue bonds issued to finance the project would create a prohibited indebtedness of the city under this section and Const., § 157. OAG 65-473.

A first mortgage executed by a city on parking meters partially financed by money from the general fund would create a prohibited indebtedness within the meaning of Const., § 157 and this section. OAG 65-485.

If a city borrowed the sum of $17,000 by executing a note for that amount to a local bank, even though the city were permitted to pay off the note in equal instalments over a period of five (5) years, such a loan would involve the aggregate or total amount of $17,000, rather than the $17,000 being broken into five (5) equal parts. OAG 66-689.

An urban service district created under KRS ch. 108 does not qualify as a taxing district within the meaning of Const., § 157 and this section. OAG 68-248.

A county hospital could not legally purchase equipment which could not be paid for within the fiscal year in which it was purchased. OAG 68-280.

A city's borrowing $60,000 from its depository under a five (5) year note to purchase new garbage equipment would be a violation of Const., § 157. OAG 68-578.

The establishment of a revolving capital improvement fund with money borrowed from the city investment fund and to be repaid over a five (5) year period from ad valorem taxes would be a violation of this section. OAG 69-255.

A proposed financial plan for a city to acquire an off-street parking facility which would extend over four years at a total cost equal to the approximate income of the city could violate Const., § 157 and this section, which provide that the city may not incur indebtedness in excess of the anticipated revenue for the year unless there is an affirmative vote by two-thirds (⅔) of the city's inhabitants. OAG 69-258.

Where six (6) years earlier the people of a city voted a bond issue for the construction of a floodwall but nothing further was done, the city would now be authorized to levy the special tax irrespective of the fact that the flood control project has not yet begun nor have the bonds actually been issued. OAG 69-577.

A city could not borrow on a ten (10) year loan the money to construct a fire station and office building without the debt being voted on in a general election if it exceeded the annual income of the city and, even if the vote was in favor of the indebtedness, it could not exceed the constitutional debt limit set by this section. OAG 70-24.

County does not violate this section's limitation on indebtedness by selling courthouse to a holding corporation for $1.00, after which the corporation borrows funds to renovate the courthouse and sells it back to the county by means of a lease purchase contract. OAG 72-32.

For the purpose of the indebtedness limitations of the constitution under section 157 and this section of the constitution, the revenue sharing money actually made available to the city and county for the year in which the proposed new indebtedness for the buildings will be incurred is a valid part of the two governmental units' revenue for that particular year. OAG 73-263.

A city may borrow money to meet its pension fund obligations if such funds are not available in the city's 1973 budget provided the total amount of the money borrowed does not exceed its anticipated revenue for the year in violation of this section and § 157. OAG 73-283.

If the county decides to issue county government obligation bonds instead of revenue bonds which would not be county obligations, then the limitations of this section and § 157 would have to be considered and if an emergency were shown, the two percent (2%) limit could be exceeded, but if the obligation exceeded the income and revenue of the county for a one (1) year period, the question would have to be submitted to the voters and whatever amount was borrowed would have to be measured against the limitations. OAG 73-764.

Since KRS 75.040 authorizes the board of trustees of fire protection districts to levy taxes and as a separate taxing district under Const., § 157 and this section, it may borrow money in anticipation of but not in excess of its annual revenue for the year unless by an affirmative vote of the voters living within the district, it could borrow funds from a savings and loan association to purchase land and to erect a building to house its fire fighting facilities. OAG 75-511.

Neighborhood improvement districts do not have the authority to levy ad valorem property taxes as they are not taxing districts. OAG 76-33.

When an indebtedness is incurred in excess of the anticipated revenue and it is not for essential governmental purposes, only the excess of the anticipated revenue would be considered void. OAG 79-126, 1979 Ky. AG LEXIS 501.

A contract to pay an annual amount for a period of years creates an indebtedness for the aggregate amount in the year in which the contract is made. OAG 79-226, 1979 Ky. AG LEXIS 413.

The mortgage provisions applied in KRS 103.251 is constitutional in terms of the indebtedness restrictions of § 157 of the Constitution and this section, since no general fund revenues or tax revenues of the city will ever be involved, even should the mortgage ever be foreclosed and the property sold, no deficiency judgment can be obtained against the city and the bond transaction does not fall within the rule given in Bowling Green v. Kirby, 220 Ky. 839, 295 S.W. 1004, 1927 Ky. LEXIS 603 (Ky. 1927), that where a mortgage could foreclose on project property, which was acquired by city revenues, the foreclosure and sale constituted payment of a debt by the municipality. OAG 79-439, 1979 Ky. AG LEXIS 192.

While a city has an obligation of good faith to the industrial building revenue bondholders under the bond documents, that is not equivalent to the financial obligation of the city or city indebtedness under § 157 of the Constitution and this section. OAG 79-439, 1979 Ky. AG LEXIS 192.

A fire protection district is a special and separate taxing district under § 157 of the Constitution and this section. OAG 79-647, 1979 Ky. AG LEXIS 2.

When Const., § 157 and this section are read in their entirety, the restrictions of those sections are to be applied to a unit of government constituting a "municipality" and a "taxing unit" at the same time, in other words, those designated categories must coexist in order for the restrictions to apply; an urban-county airport board has no taxing power, and since it is not a "taxing unit" it is not subject to the restrictions of Const., § 157 and this section. OAG 80-333, 1980 Ky. AG LEXIS 329.

A county fiscal court can lease real property to a private entrepreneur for a five (5) year period without violating this section and Const., § 157 if the contractual obligation by the county for maintenance and repair during that period can be funded out of the current revenues available to the county in the year the lease is executed; otherwise the proposed lease must be approved by two-thirds (⅔) of the voters at an election held pursuant to Const., § 157. OAG 82-60, 1982 Ky. AG LEXIS 578.

Where there is no contractual financial obligation created on the part of a county, the limitations of this section and § 157 of the Constitution do not come into play. OAG 82-60, 1982 Ky. AG LEXIS 578.

Where proposed water improvement and expansion project to be constructed by Corps of Engineers involves the exercise of governmental or legislative powers or the exercise of discretion, as opposed to the exercise of business or proprietary powers, the city legislative body may not enter into a contract to obligate itself to operate and maintain the project beyond the terms of its members. In addition, the constitutional debt limit question could be involved where the agreement extends for many years as a city cannot become indebted in an amount

exceeding in any year the income and revenue provided for such year. OAG 82-235, 1982 Ky. AG LEXIS 394.

If a proposed loan from local banks to a county hospital could not be completely funded out of tax revenues available in the accounting year in which the loan was made, the loan would be void without a vote of the people, as required by Const., § 157. That would be true even if the debt were within the limits set by this section. OAG 82-401, 1982 Ky. AG LEXIS 231.

The payment of expenses of the usual and current administration of government, i.e., compulsory obligations of government arising out of statutory law, are not within the prohibitive range of Const., § 157. However, the operation of a hospital by the county is not mandatory; therefore, a proposed debt relating to a hospital fell within the operative provisions of Const., § 157 and this section. OAG 82-401, 1982 Ky. AG LEXIS 231.

Where a county hospital faced a cash-flow crisis and needed to acquire funds to meet that crisis, the proposed debt could be validated by submitting it to a vote of the people under Const., § 157 if such debt would exceed the available tax revenues for the particular year. The necessary affirmative vote required by Const., § 157 would validate such an obligation either with government obligation bond financing or without any bond issue assuming that the limits of this section were observed. OAG 82-401, 1982 Ky. AG LEXIS 231.

Pursuant to Const., § 157 and this section, a county is required to adopt, budget-wise, the pay-as-you-go plan and not to incur obligations in excess of its current revenues. OAG 83-49, 1983 Ky. AG LEXIS 447.

Road equipment expense is not a necessary and compulsory governmental expense. OAG 83-323, 1983 Ky. AG LEXIS 174.

There is an exception to the restrictions of Const., § 157 and this section which consists of obligations for essential governmental services and functions; examples of "essential governmental expenses" are salaries of county officials and employees, expenses of holding county elections and the expense of maintaining a county hospital. OAG 83-323, 1983 Ky. AG LEXIS 174.

Since the leasing of road equipment does not involve an essential and compulsory governmental service or function, if a lease contract involves an assumption by the county of a total debt of lease payments which exceeds the income and revenue available to the county for the particular year in which the lease is executed, the contract would violate Const., § 157 in the absence of a requisite vote of the people; in the event that such lease would involve a lease for only one (1) year, which could at the option of fiscal court be renewed from year to year (the county only being obligated for one (1) year at a time), and assuming that the county has currently available revenue to cover the first year's rental (and has available the current revenue to cover any subsequent one (1) year renewal), and assuming the limit of this section is met, then Const., § 157 would not be violated. OAG 83-323, 1983 Ky. AG LEXIS 174.

A fire protection district is a special and separate taxing district under this section and Const., § 157. OAG 85-65, 1985 Ky. AG LEXIS 85.

Constitution §§ 26, 157, 162, 179 and this section do not impose a general ban upon a county agreeing to joint and several liability with other counties or political entities; furthermore, these constitutional sections do not prohibit payment of obligations incurred in a prior year, from moneys of a subsequent year. OAG 93-54, 1993 Ky. AG LEXIS 288.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Issuance of bonds, KRS ch. 66.

Law for borrowing money must specify purpose, Const., § 178.

Kentucky Bench & Bar.

Tobergte, The Impact of Kentucky's Present Constitution Upon Business Growth & Development, Volume 51, No. 3, Summer 1987 Ky. Bench & B. 21.

§ 165. Incompatible offices and employments.

No person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution; but a Notary Public, or an officer of the militia, shall not be ineligible to hold any other office mentioned in this section.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Construction.
3. Application.
4. State Officer.
5. Municipal Officer.
6. Incompatible Offices.
7. — Legislative Approval.
8. — Effect of Officer's Actions.
9. Compatible Offices.
10. Valid Statutes.
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12. Hospital Board Member.

1. Purpose.

It is the purpose of the Constitution and a high policy of the law not to permit the same person to fill two (2) incompatible offices at the same time and this policy recognizes that it is the duty of a public officer or servant to discharge his duties uninfluenced by the duties and obligations of another office whatever the title or duties may be. Rash v. Louisville & Jefferson County Metropolitan Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, 1949 Ky. LEXIS 670 (Ky. 1949).

2. Construction.

This section refers only to the incompatibility of offices within the state and does not prohibit any other than municipal officers from holding a state office or a deputyship under a state officer. Baker v. Dixon, 295 Ky. 279, 174 S.W.2d 410, 1943 Ky. LEXIS 222 (Ky. 1943).

KRS 61.080 represents the construction placed by the General Assembly on this section of the Constitution. O'Mara v. Mt. Vernon, 299 Ky. 401, 185 S.W.2d 675, 1945 Ky. LEXIS 436 (Ky. 1945).

3. Application.

This section applies only to state, county, and municipal officers and not to a Commonwealth Attorney becoming a United States army officer. Caudel v. Prewitt, 296 Ky. 848, 178 S.W.2d 22, 1944 Ky. LEXIS 595 (Ky. 1944).

There was no constitutional incompatibility between appellee's two positions of elected magistrate and a police officer for the city of Winchester; he was not a state officer, nor did he hold two municipal offices, and his dual employment did not violate Ky. Const. § 165. Clark Cty. Atty. v. Thompson, 617 S.W.3d 427, 2021 Ky. App. LEXIS 2 (Ky. Ct. App. 2021).

4. State Officer.

Member of board of bar commissioners is not a state officer, and may also serve as Commonwealth's Attorney. Talbott v.

Park, 256 Ky. 534, 76 S.W.2d 600, 1934 Ky. LEXIS 440 (Ky. 1934).

Constitutional and statutory provisions relating to incompatibility of certain offices do not prohibit the simultaneous holding of two (2) state offices or employments unless the duties thereof conflict. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937).

The members of the board of commissioners of the state bar are not officers within the meaning of this section. Dreidel v. Louisville, 268 Ky. 659, 105 S.W.2d 807, 1937 Ky. LEXIS 510 (Ky. 1937).

A city alcoholic beverage administrator is not an officer of the state. Chandler v. Louisville, 277 Ky. 79, 125 S.W.2d 1026, 1939 Ky. LEXIS 624 (Ky. 1939).

5. Municipal Officer.

Under a statute providing for commission form of government of cities, commissioners of cities of the second class are municipal officers within the provisions of this section that no person shall at the same time fill two (2) municipal offices either in the same or different municipalities. Commonwealth ex rel. Steller v. Livingston, 171 Ky. 52, 186 S.W. 916, 1916 Ky. LEXIS 298 (Ky. 1916).

Superintendent and members of board of children's home are city and county employees, not state officers; therefore, they could not be designated as superintendent of schools and board of education of independent school district established at the home, since to do so would violate this section. Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490, 1947 Ky. LEXIS 825 (Ky. 1947).

Holding membership on the electric plant board is not filling a municipal office within the meaning of this section. Kereiakes v. Graham, 458 S.W.2d 162, 1970 Ky. LEXIS 164 (Ky. 1970).

6. Incompatible Offices.

The offices of postmaster and school trustee are, under the law, incompatible, and both cannot be held at the same time by the same person. Johnson v. Sanders, 131 Ky. 537, 115 S.W. 772, 1909 Ky. LEXIS 54 (Ky. 1909).

The office of school trustee, a state office, and the office of city councilman or town trustee, which are municipal offices, are incompatible. Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311, 1931 Ky. LEXIS 847 (Ky. 1931).

Where a school district trustee subsequently qualified as and assumed the duties of a councilman, he thereby vacated his office as trustee. Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311, 1931 Ky. LEXIS 847 (Ky. 1931).

The office of special tax collector to which outgoing sheriff is designated for collection of unpaid taxes is incompatible with office of county judge, and outgoing sheriff cannot hold both at the same time. Barkley v. Stockdell, 252 Ky. 1, 66 S.W.2d 43, 1933 Ky. LEXIS 997 (Ky. 1933).

Membership on a county board of education was incompatible with the office of county election commissioner, and a school board member who had accepted the office of county election commissioner vacated his membership on the board by the acceptance of the latter office. Adams v. Commonwealth, 268 S.W.2d 930, 1954 Ky. LEXIS 931 (Ky. 1954).

A deputy circuit clerk is clearly a "deputy (state) officer" and is, thus, precluded from simultaneously serving as an officer of a city. Court of Justice v. Oney, 34 S.W.3d 814, 2000 Ky. App. LEXIS 96 (Ky. Ct. App. 2000).

7. — Legislative Approval.

Although under this section the offices of state senator and deputy sheriff are incompatible, the court was without power to take action with respect to such incompatibility where the senate, after being presented with this question, adopted a resolution recognizing the man holding such offices as a duly qualified senator. Raney v. Stovall, 361 S.W.2d 518, 1962 Ky. LEXIS 246 (Ky. 1962).

8. — Effect of Officer's Actions.

Even if acceptance of office as member of general assembly, by a person holding the office of special judge, vacated the latter office on the ground of incompatibility, defendant in civil suit against whom judgment was rendered by special judge could not complain where special judge was qualified and eligible at the time he began the trial, and no objection was raised by defendant until after judgment had been rendered. O'Mara v. Mt. Vernon, 299 Ky. 401, 185 S.W.2d 675, 1945 Ky. LEXIS 436 (Ky. 1945).

9. Compatible Offices.

This section does not prevent a person from at once holding the offices of city attorney and court commissioner. Goodloe v. Fox, 96 Ky. 627, 29 S.W. 433, 16 Ky. L. Rptr. 653, 1895 Ky. LEXIS 120 (Ky. 1895).

The office of special commissioner named in KRS 25.170 (repealed), is not incompatible with that of county judge pro tem. Vogt v. Beauchamp, 153 Ky. 64, 154 S.W. 393, 1913 Ky. LEXIS 771 (Ky. 1913).

Where a city commissioner of a city of the fourth class, which was not required to have a city engineer but might employ one, accepted employment by the city as an engineer but did not qualify as city engineer and was treated as an employee in this capacity and not as a city officer, he did not thereby vacate his office as commissioner. Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122, 1917 Ky. LEXIS 306 (Ky. 1917).

Membership in judicial council, created by statute, is not incompatible with the duties of Circuit Judges and judges of Court of Appeals. Coleman v. Hurst, 226 Ky. 501, 11 S.W.2d 133, 1928 Ky. LEXIS 121 (Ky. 1928).

A member of the General Assembly was not disqualified by virtue of this office from accepting a contract position to teach school executed with the trustees of a common graded school district. Board of Trustees v. Renfroe, 259 Ky. 644, 83 S.W.2d 27, 1935 Ky. LEXIS 370 (Ky. 1935).

By accepting city employment, a deputy constable does not thereby vacate his office and arrests by him remain legal. Walling v. Commonwealth, 260 Ky. 178, 84 S.W.2d 10, 1935 Ky. LEXIS 425 (Ky. 1935).

Judges or justices required to act as clerks of their own courts do not hold two (2) offices within the meaning of this section. Young v. Grauman, 278 Ky. 197, 128 S.W.2d 549, 1939 Ky. LEXIS 394 (Ky. 1939).

The offices of sheriff and special tax collector are compatible. Nichols v. Land, 288 Ky. 693, 157 S.W.2d 303, 1941 Ky. LEXIS 192 (Ky. 1941).

The office of special Circuit Judge is not incompatible with the office of member of the General Assembly. O'Mara v. Mt. Vernon, 299 Ky. 401, 185 S.W.2d 675, 1945 Ky. LEXIS 436 (Ky. 1945).

Police judge of third-class city did not accept incompatible position so as to vacate his office on acceptance of employment as attorney for fifth-class city. Glasgow v. Burchett, 419 S.W.2d 544, 1967 Ky. LEXIS 158 (Ky. 1967).

There is no prohibition against a member of the board of commissioners being the fifth member of the electric plant board. Kereiakes v. Graham, 458 S.W.2d 162, 1970 Ky. LEXIS 164 (Ky. 1970).

10. Valid Statutes.

A statute authorizing regular Circuit Court Judges to sit as special judges does not violate this section. James v. Cammack, 139 Ky. 223, 129 S.W. 582, 1910 Ky. LEXIS 26 (Ky. 1910).

KRS 70.150 to 70.170 do not violate the provisions of this section. Milliken v. Harrod, 275 Ky. 597, 122 S.W.2d 148, 1938 Ky. LEXIS 471 (Ky. 1938).

Provisions of act that required the approval of proposed surface drainage project by city and county legislative bodies of metropolitan sewer district was not unconstitutional under

this section on ground that it had effect of permitting city and county officers to act as officers of sewer district in violation of prohibition of this section against one person holding offices in two (2) different municipalities, for city and county governing bodies only had power to determine whether a particular project should be undertaken and, once it was undertaken, district had sole authority to carry it out. Curtis v. Louisville & Jefferson County Metropolitan Sewer Dist., 311 S.W.2d 378, 1958 Ky. LEXIS 185 (Ky. 1958).

11. Invalid Statutes.

Acts 1948, ch. 180 amendment to KRS 76.060, charging the city attorney of a first-class city with the duty of handling all legal matters pertaining to the metropolitan sewer district, if established, of his particular county was unconstitutional because it was in contravention of this section. Rash v. Louisville & Jefferson County Metropolitan Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, 1949 Ky. LEXIS 670 (Ky. 1949).

12. Hospital Board Member.

A member of the hospital board was not a city or county officer or employee thereof within the meanings of KRS 61.080, KRS 160.180(1)(d), or this section of the Kentucky Constitution. Commonwealth ex rel. Hancock v. Bowling, 562 S.W.2d 310, 1978 Ky. LEXIS 323 (Ky. 1978).

Cited:

Kirkpatrick v. Brownfield, 97 Ky. 558, 31 S.W. 137, 17 Ky. L. Rptr. 376, 1895 Ky. LEXIS 222 (Ky. 1895); Keating v. Covington, 35 S.W. 1026, 18 Ky. L. Rptr. 245 (1896); Covington v. District of Highlands, 113 Ky. 612, 68 S.W. 669, 24 Ky. L. Rptr. 433, 1902 Ky. LEXIS 89 (Ky. 1902); Lowry v. Lexington, 113 Ky. 763, 68 S.W. 1109, 24 Ky. L. Rptr. 516, 1902 Ky. LEXIS 107 (Ky. 1902); Morris v. Randall, 129 Ky. 720, 112 S.W. 856, 1908 Ky. LEXIS 214 (Ky. 1908); Kerr v. Louisville, 271 Ky. 335, 111 S.W.2d 1046, 1937 Ky. LEXIS 241 (Ky. 1937); Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938); Bard v. Board of Drainage Comm'rs, 274 Ky. 491, 118 S.W.2d 1013, 1938 Ky. LEXIS 292 (Ky. 1938); Kennedy v. Cook, 285 Ky. 9, 146 S.W.2d 56, 1940 Ky. LEXIS 594 (Ky. 1940); Somerset v. Caylor, 241 S.W.2d 990, 1951 Ky. LEXIS 1033 (Ky. 1951); Lemon v. Fiscal Court of Casey County, 291 S.W.2d 572, 1956 Ky. LEXIS 396 (Ky. 1956); Hancock v. Queenan, 294 S.W.2d 92, 1956 Ky. LEXIS 117 (Ky. 1956); Commonwealth ex rel. Breckinridge v. Winstead, 430 S.W.2d 647, 1968 Ky. LEXIS 407 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

The position of probation and parole officer in the State Department of Welfare must be considered a state office or deputy state office which would make it incompatible with the office of mayor, which is a municipal office. OAG 60-57.

There are no statutory or constitutional prohibitions against a person holding a county office and state employment at the same time, but they may be incompatible under the common law. OAG 60-106.

There is no constitutional or statutory incompatibility in a person's holding two (2) county offices. OAG 60-337.

Although there is no statutory or constitutional prohibition against a person holding a municipal office and state employment at the same time, there is the possibility that there may be a common-law incompatibility where it is physically impossible to perform the duties of both positions with care and ability. OAG 60-443.

The fact that the two (2) offices are incompatible would not prevent the present sheriff from becoming a candidate for state representative. OAG 60-455.

The offices of sheriff and state representative are incompatible. OAG 60-455.

Membership on the McLean County board of education is not incompatible with the position of teacher of vocational agriculture in Muhlenberg County. OAG 60-901.

Although the positions of county director of pupil personnel and city director of pupil personnel are not incompatible as such, they are incompatible in fact because KRS 159.140(1) requires that a director of pupil personnel must devote his entire time to his duties, which he could not do if he held such positions. OAG 60-1027.

This section does not prohibit the concurrent holding of the positions of Commonwealth Attorney and membership on a social service advisory committee. OAG 60-1060.

There would be no violation of this section where city officeholders are made ex officio members of a city commission by statute. OAG 60-1228.

Since a magistrate is a county officer and a teacher is a state employee, there is not constitutional, statutory, common-law or functional incompatibility between the two (2) offices. OAG 60-1245.

Membership on a board of education is incompatible with the office of magistrate. OAG 61-212.

There is no statutory or constitutional incompatibility between the position of teacher and the office of county commissioner, but there may be a common-law incompatibility. OAG 61-292.

There is no incompatibility between the office of magistrate and driving a school bus for the county board of education under this section or KRS 61.080(1), but there may be a common-law incompatibility. OAG 61-390.

The offices of treasurer of the school board and city clerk are incompatible. OAG 61-823.

The secretary and treasurer of the city board of education and the treasurer of the county board of education were disqualified from serving on the electric plant board. OAG 61-846.

A member of a board of education vacates his office on said board of education when he qualifies and assumes the office of deputy sheriff. OAG 61-942.

There is no constitutional or statutory provision which would prohibit a person from serving as a public officer in the state of Ohio and occupying the position of magistrate in this state, since this section and KRS 61.080 apply only to the holding of two (2) incompatible offices in this state. OAG 61-948.

The law prohibits a person from being a state representative and at the same time a deputy sheriff of a county. OAG 61-1001.

One would be prohibited from serving on the county board of health and on the county board of education at the same time, since the two (2) offices are incompatible. OAG 62-617.

Serving at the same time in the office of magistrate and as a member of the board of supervisors would be detrimental to the public interest in that the board of supervisors executes a quasi-judicial function in the review of protested tax assessments. OAG 62-636.

There is no statutory or constitutional incompatibility in membership on a city-county board of health and membership on the city board of alderman. OAG 62-684.

There is no constitutional or statutory prohibition against persons holding the office of county attorney and county treasurer and at the same time serving as a member of the county building commission. OAG 62-1169.

A common-law incompatibility would exist between the office of county treasurer and the office of county auditor. OAG 63-32.

It is legal for a soil conservation district to employ a person as an aide although such person was also a member of the fiscal court which levied a tax for the benefit of the district. OAG 63-87.

The office of magistrate and membership on the county registration and purgation board are incompatible. OAG 63-130.

There is no constitutional or statutory incompatibility between serving as the civil defense director of a county and being a city councilman at the same time. OAG 63-273.

The police judge of a city could not be appointed to a state office or a deputy state office without creating an incompatible situation under this section and KRS 61.080, since no person can hold a city office and a state office at the same time. OAG 63-625.

The provisions of this section and KRS 61.080 do not prohibit a person from holding a city office and state employment at the same time providing there is no common-law incompatibility. OAG 63-625.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself would be valid until the school board member resigned or was removed from office. OAG 65-211.

A member of the school board who files for nomination for the office of sheriff disqualifies himself from serving on the school board. OAG 65-211.

One city could not contract with another city for the furnishing of police services, since it would involve the policemen holding incompatible offices in the two (2) cities. OAG 65-718.

The offices of county judge and master commissioner do not present incompatibility of office. OAG 65-816.

The offices of constable and city policeman are incompatible. OAG 65-833.

A constitutional incompatibility would exist between the position of chief of police and that of chief of the fire department. OAG 66-10.

There is no incompatibility between holding the office of magistrate and at the same time serving as county Democratic chairman. OAG 66-11.

There is no constitutional or statutory incompatibility between membership on the county fiscal court and membership on the county board of health. OAG 66-87.

Although no statutory or constitutional incompatibility exists, the office of county commissioner and employment in the county road department would be incompatible under the common law. OAG 66-110.

The fiscal court could appoint, as the county dog warden, a deputy sheriff who is presently serving in this capacity without there existing an incompatible situation. OAG 66-398.

No constitutional or statutory incompatibility exists between membership on the school board and membership on the municipal housing commission. OAG 66-673.

The offices of deputy sheriff, county election commissioner, and jury commissioner are not incompatible under the terms of this section and KRS 61.080, but there is a possibility of common-law incompatibility between the offices of deputy sheriff and jury commissioner. OAG 66-741.

The office of treasurer of the county board of education and the office or employment of county finance officer are incompatible. OAG 66-754.

A county treasurer cannot be appointed deputy county tax commissioner and serve in both capacities without creating an incompatible situation. OAG 66-759.

A county treasurer may not simultaneously serve also as school (county) treasurer of the board of education. OAG 67-5.

There is no constitutional or statutory incompatibility in the holding of the office of county judge and commissioner of a water district at the same time, although there would be a common-law incompatibility. OAG 67-68.

The position of housing inspector of a city is incompatible with the office of state representative. OAG 67-81.

Employment as director of pupil personnel for a district board of education is not incompatible with the position of member on the board of trustees of a public library district. OAG 67-83.

The office of trustee of the library board and at the same time being a member of city council creates an incompatible situation. OAG 67-104.

There is no incompatibility for a member of a city council to serve as campaign manager for a candidate for state office. OAG 67-121.

The holding of the position of public schoolteacher and the position of member of the board of county commissioners, at the same time, is not constitutionally nor statutorily incompatible. OAG 67-163.

There is no incompatibility in the holding of the offices of member of the board of education of an independent school district and stenographic reporter for a judicial district. OAG 67-177.

The offices of member of a city independent board of education and member of the county library board are incompatible. OAG 67-186.

The offices of member of the county board of education and member of the county library board of trustees are incompatible. OAG 67-186.

To be a member of a library district board and a member of a city library board at the same time creates an incompatible situation. OAG 67-458.

The office of city council member and radio operator for the city police department at the same time creates an incompatible situation. OAG 67-469.

The office of city attorney and that of state senator are incompatible. OAG 67-517.

A person may hold the office of Circuit Court clerk and at the same time hold the office of probation and parole officer. OAG 67-542.

No incompatibility exists where the Commonwealth Attorney is also the master commissioner of a Circuit Court. OAG 67-542.

A city commissioner may, at the same time, be appointed and hold the office of supervisory head of the Department of Public Safety (now Justice Cabinet), but may not hold the office of commissioner of Public Safety (now Secretary of Justice). OAG 67-554.

To serve in the office of a city commissioner and at the same time to be a member of the auxiliary police force creates an incompatible situation. OAG 67-554.

Membership on the board of regents of a state university is a state office and the commissioner of the Department of Banking and Securities (now Department of Financial Institutions) also is a state office. OAG 67-557.

There is no prohibition against a person being a member of the county board of education and at the same time holding a position with the Commonwealth. OAG 68-21.

A member of the council on public higher education must resign his position at the time he becomes a member of the Louisville board of aldermen. OAG 68-22.

The position of assistant commissioner of insurance and that of city councilman are compatible. OAG 68-30.

A night watchman with the state may hold the office of justice of the peace. OAG 68-33.

The office of Commonwealth's Attorney and that of referee of the Workmen's Compensation Board are not incompatible. OAG 68-56.

Although there is no constitutional or statutory incompatibility between the office of county judge and county treasurer, there is incompatibility in fact or under common law between the two (2) offices, since the office of county treasurer is subordinate to the office of county judge. OAG 68-80.

There is no statutory or constitutional incompatibility against a person holding the position of secretary to the superintendent of the district board of education and at the same time holding the position of secretary-bookkeeper for the head start program of that school district. OAG 68-200.

The office of county school board member is incompatible with employment as county road supervisor. OAG 68-210.

Because of the incompatibility involved, the employment and compensation of an assistant Commonwealth's Attorney

in connection with his furnishing legal advice in criminal matters to the city would not be legal. OAG 68-290.

A county attorney could be employed to represent a city within the county in annexation proceedings so long as he was not hired as city attorney on a full-time basis. OAG 68-400.

A person who is the Commonwealth's Attorney may at the same time be employed on a part-time basis by the Board of Veterinary Examiners. OAG 68-447.

There is no statutory or constitutional incompatibility between the position of member of the board of trustees of a public library district and the position of head officer of a state university community college. OAG 68-568.

A schoolteacher may at the same time legally serve as an election officer. OAG 68-601.

There is no constitutional or statutory prohibition against a schoolteacher holding the office of magistrate, but a common-law incompatibility would exist. OAG 68-607.

A vacancy on a county purgation board may be filled by appointing an employee of the Commonwealth, since the membership on the county purgation board constitutes a state office. OAG 69-11.

Membership on a municipal housing commission is a state office and, as such, thee would be no constitutional or statutory incompatibility involved in also holding at the same time membership on the commission on higher education. OAG 69-15.

The office of county clerk is incompatible with membership on the commission on higher education. OAG 69-15.

While membership on the council on public higher education, established pursuant to KRS 164.010, would constitute the holding of a state office, membership on a consolidated planning and zoning commission is neither a city, county nor a state office as contemplated by either this section or KRS 61.080, so that no constitutional or statutory incompatibility exists that would prohibit a person from holding both offices at the same time. OAG 69-19.

If a state employee was under the merit system, he would be prohibited from becoming a candidate for any paid political office, but no such restriction would pertain to a nonmerit system employee. OAG 69-89.

An employee of the school system may seek and hold the office of county commissioner. OAG 69-94.

There are no constitutional or statutory provisions that make the position of highway employee and the position of member on the county registration and purgation board incompatible. OAG 69-136.

A member of a state university faculty and staff may at the same time hold the office of county commissioner. OAG 69-147.

A schoolteacher may, at the same time, hold the office of property valuation administrator. OAG 69-158.

The auditor of public accounts may, at the same time, be a stockholder or director in private businesses and charitable organizations. OAG 69-164.

There is no incompatibility between the office of state auditor and membership on the local air board. OAG 69-164.

An employee of a county road department may, at the same time, hold the office of county constable. OAG 69-186.

Since the office of hearing officer or examiner for the Workers' Compensation Board is a state office and the office of county judge pro tem is a county office, they are incompatible one with the other. OAG 69-364.

A person serving a city municipal water and sewer commission as their attorney for the past four years pursuant to a contract based on a monthly retainer may at the same time serve as county attorney. OAG 69-420.

The holding of the office of county judge and the holding of the office of property valuation administrator at the same time would present a statutory and constitutional incompatibility. OAG 69-432.

There is no incompatibility to prevent a schoolteacher or principal from serving on the county commission. OAG 69-448.

The holding of the offices of county attorney and member of the Kentucky zoning commission at the same time would present a constitutional and statutory incompatibility. OAG 69-454.

There is no constitutional or statutory provision prohibiting a member of the housing commission from being employed on a part-time basis by the commission. OAG 69-483.

There is no constitutional or statutory provision that prohibits a teacher in the public schools from running for the nomination of city commissioner and serving as such if elected. OAG 69-485.

A department head at a state university not only may become a candidate for the office of city commissioner but also may serve as such. OAG 69-486.

A member of the fiscal court may, at the same time, serve as master commissioner. OAG 69-491.

A schoolteacher or principal of a school may at the same time serve on the city commission. OAG 69-519.

This section does not prohibit the same person from holding more than one state office or form of employment at the same time unless the two (2) are incompatible in fact. OAG 69-536.

An incompatibility would exist if an individual was the county treasurer and at the same time was a member of the county purgation board. OAG 69-556.

A member of the volunteer fire department may at the same time be a member of the city council. OAG 69-558.

The office of county chief of police and that of county election commissioner are not incompatible. OAG 69-565.

As between the office of county judge and the position of school district transportation officer, there is no incompatibility. OAG 69-601.

A field supervisor for the welfare department may at the same time be an election officer. OAG 69-608.

A member of the police department in a city of the second class could neither become a candidate for membership on the local school board nor hold such office and retain his position on the city police force. OAG 69-634.

A member of the State Legislature may represent the municipal water company in legal matters when the occasion arises because he would be considered an independent contractor. OAG 69-653.

An individual may hold the position of special prosecutor in a city of the fifth class and at the same time hold the office of police judge in another city. OAG 69-685.

A magistrate may at the same time be employed by the county board of education as a school bus driver. OAG 70-2.

A county treasurer may at the same time hold the office of cashier of the food stamp program for such county. OAG 70-10.

The director of pupil personnel for a county board of education may at the same time serve as deputy coroner of that same county. OAG 70-31.

One holding the position of fire chief or fireman of a volunteer fire department may at the same time hold the office of mayor in that same city. OAG 70-32.

A radio dispatcher for the police department not possessing the powers of a police officer, such as making arrests and serving warrants, may at the same time hold the office of pro tem judge of the police court. OAG 70-53.

A city elementary school principal may at the same time hold the office of city councilman in a city of the fourth class. OAG 70-183.

A member of the county planning and zoning commission may at the same time serve as police court judge pro tem of a city. OAG 70-186.

Nothing statutorily nor constitutionally prohibits a member of the municipal housing commission from serving at the same time on the State Board of Elections. OAG 70-315.

No incompatibility would exist were a person to serve as coroner and election officer at the same time. OAG 70-325.

A member of the county registration and purgation board is a state officer and consequently a county employee is prohib-

ited by the provisions of this section from serving as a member of purgation board. OAG 70-326.

An individual can legally serve on the city-county youth commission and at the same time run for and hold membership on the local school board. OAG 70-391.

The position of secretary-treasurer of the Louisville sinking fund, a municipal office, and membership of the Kentucky authority for educational television, a state office, are incompatible. OAG 70-409.

The position of dog warden and county patrolman are county offices and there would be no constitutional or statutory provision that would prohibit a person from holding both offices at the same time. OAG 70-431.

Any county official, except a member of the fiscal court, may be appointed to the joint riverport authority and no statutory or constitutional incompatibility would exist. OAG 70-432.

A member of the municipal housing commission can, at the same time, serve as a member of the local school board. OAG 70-444.

A school board member could not be hired by the county judge to operate, manage or drive a county ambulance. OAG 70-478.

No constitutional or statutory incompatibility exists between holding the offices of both dog warden and county constable. OAG 70-492.

A person can become a candidate for school board membership and at the same time continue to serve on the city commission. OAG 70-558.

Accepting a commission as a Kentucky colonel while holding a state or local office would not create an incompatible situation. OAG 70-607.

No incompatibility would exist if a notary public were to hold another public office. OAG 70-607.

A person may not serve on a county board of health and on the board of education at the same time without forfeiting the first office he held. OAG 70-632.

The positions of police judge and policeman would be incompatible. OAG 70-652.

An individual may not at the same time hold the office of school board member and hold employment with a city. OAG 70-663.

There is no constitutional or statutory provision that would prohibit a member of the county board of education from being appointed as a director or member of a water district. OAG 70-723.

Membership on a joint recreational commission established pursuant to KRS 97.035 would constitute neither a city nor county office but would be a hybrid office not contemplated by either this section or KRS 61.080. OAG 70-731.

There would be no constitutional or statutory provision that would prohibit one from serving as city attorney and at the same time serving on a joint recreational commission. OAG 70-731.

There appears to be no constitutional or statutory incompatibility nor any conflict with merit system law in the holding of the office of board member in an independent school district and a position of employment with the Department of Corrections (now Corrections Cabinet). OAG 70-811.

There is no statutory or constitutional incompatibility between being a member of the city council and holding a position with the state as a car inspector. OAG 71-56.

There is no statutory or constitutional incompatibility between being a school principal and serving on the city council. OAG 71-56.

There is no statutory or constitutional incompatibility between serving as mayor of a city and holding a position as county road foreman with the State Department of Highways. OAG 71-56.

Although a fifth-class and a sixth-class city could not hire the same policemen, under the interlocal cooperation act they could form a joint system of police protection. OAG 71-85.

There is no constitutional or statutory incompatibility between holding a position of schoolteacher and holding the office of police judge at the same time. OAG 71-108.

The offices of city treasurer and county soil and water conservation district supervisor under subsection (2) of KRS 262.200 are not incompatible. OAG 71-230.

No person can serve as a policeman for two (2) different cities at the same time without creating an incompatible situation. OAG 71-236.

There is no statutory prohibition against a person serving as county judge and at the same time being employed by the county board of education and the county clerk's office. OAG 71-247.

There would be no incompatibility between a principal and director of pupil personnel, which is a form of state employment, serving on a municipal civil service commission. OAG 71-305.

There would be no constitutional or statutory incompatibility to prevent a city policewoman from being hired by the county fiscal court to search female prisoners. OAG 71-306.

A city clerk-treasurer could not be appointed to serve as police judge pro tem in the absence of the regular police judge because it would constitute holding two (2) municipal offices. OAG 71-343.

There is no constitutional or statutory objection to an employee of the city water and sewer department also serving as a part-time police officer for the city. OAG 71-343.

Although there is no statutory or constitutional incompatibility between serving as police court judge and in the appointed position of railroad policeman, a common-law incompatibility may exist. OAG 71-427.

No constitutional or statutory incompatibility exists between the positions of the paying public office of city commissioner and a paying professorship at Western Kentucky University. OAG 71-443.

There is no constitutional or statutory conflict to prevent a state representative, as a major stockholder or an agent for a corporation which runs a rest home, to operate that rest home and accept indigent patients under contract from the county fiscal court. OAG 71-463.

This section does not prohibit the mayor of a city from being a member of a city-county hospital board. OAG 72-18.

There is no violation of this section where the mayor of a city is also an employee of the Commonwealth of Kentucky. OAG 72-350.

There is no violation of this section where a county jailer also serves as the county dog warden. OAG 72-351.

Persons who serve as members of the fish and wildlife resources commission may not also serve in any state, county, city, town, municipal, or federal office. OAG 72-354.

There is no violation of this section where a city policeman is employed in his off-duty hours as a special local peace officer. OAG 72-391.

This section would not prevent a deputy sheriff or a deputy county clerk from serving as an election officer. OAG 72-403.

There is no incompatibility between the office of city councilman and employment by the housing commission. OAG 72-467.

This section would not prohibit the appointment of a member of the board of levee commissioners to the Hickman-Fulton County Riverport Authority as both entities constitute an independent body politic and corporate entity. OAG 72-518.

There would be no incompatibility if a member of the municipal housing authority were appointed housing inspector by the urban renewal agency. OAG 72-589.

A person could not at the same time serve on the city's park and recreation board and be a member of the local board of education. OAG 72-618.

There is no violation of this section where a member of a city board of aldermen is a part-time paid faculty member of the University of Louisville. OAG 72-654.

A member of the city council could not serve at the same time as a member of the board of electrical control. OAG 72-690.

A city attorney may not also serve as a hearing officer for the Workers' Compensation Board. OAG 72-698.

A member of the fiscal court may be appointed to serve on a joint city-county planning commission. OAG 72-704.

A county property valuation administrator may not act as tax assessor for a city within the county in which he was elected. OAG 72-736.

A person may hold the office of mayor while at the same time holding a job under a federally financed school program. OAG 72-796.

A position with the state game and fish commission would be incompatible with a position on a city civil service commission. OAG 72-808.

The position of city judge pro tem is incompatible with membership on a city civil service commission. OAG 72-808.

The positions of county coroner and membership on the Kentucky State Board of Chiropractic Examiners are incompatible. OAG 72-839.

Although a school board employee is a state employee, he is not under the merit system as established by KRS chapter 18 (repealed), and neither this section nor KRS 61.080, which define incompatible offices, forbid a school board employee from serving as a city councilman. OAG 73-144.

There is no constitutional provision under this section or statutory provision under KRS 61.080 prohibiting a person from holding a county office and county employment at the same time and any possible common law conflict of interest where the person could not perform the duties of both offices at the same time with care and ability would be a question of fact for the courts to decide. OAG 73-166.

There is no apparent common law conflict when a magistrate drives a school bus and, as driving a school bus is state employment, and a magistrate is a county officer, there is no constitutional or statutory conflict. OAG 73-212.

A member of the fish and wildlife commission holds a state office, and may not hold the office of deputy sheriff at the same time. OAG 73-224.

If a superintendent of parks has been made a state park ranger as authorized by KRS 148.056, he would become a minor state officer, and would thus be ineligible to continue with the office of deputy sheriff. OAG 73-224.

This section of the Constitution and KRS 61.080 prohibit a person from holding two (2) municipal offices at the same time, but not a municipal office and city employment, and therefore anyone can serve a city as a judge while also being employed in a nonelective capacity for which a salary is paid by the same city. OAG 73-256.

As an auxiliary policeman is a municipal officer and a judge pro tem of the city police court is also a municipal officer, and this section and KRS 61.080 prohibit a person from holding two (2) municipal offices at the same time, a person who is an auxiliary police officer could not serve as judge pro tem of the police court at the same time. OAG 73-274.

A policeman of a city of the fifth class, who is on a monthly salary, could continue to hold his position until he assumes the office of sheriff insofar as KRS 61.080 and this section are concerned. OAG 73-346.

There is no constitutional or statutory provision prohibiting a person from holding a city office and state employment at the same time. OAG 73-440.

A Commonwealth detective would be considered a state officer, and such office is not compatible with position of auxiliary or reserve policeman of a city. OAG 73-468.

Although this section and KRS 61.080 prohibit a person from holding two (2) municipal offices at the same time, the term municipal office must be distinguished from municipal employment and where a chief of police of a city is also employed as manager of the city's sanitation and street department, two (2) municipal offices are not involved (affirming OAG 38-504 and OAG 71-343). OAG 73-556.

It would appear that a common law incompatibility would exist if a person were to serve as magistrate and at the same time serve as assistant doorkeeper during the legislative session, because the office of magistrate requires that he be accessible at all times to those who need warrants issued and who desire to bring civil suits in the magisterial district which he serves. OAG 73-661.

Where a county and a city through a joint operation create a garbage and refuse disposal district and the board of directors is composed of four (4) members of which one is the mayor of the city and another is a member of the city council, there is no incompatibility as to these two (2) board members because the two (2) municipal officers are not county officers in the strict sense. OAG 73-667.

While both KRS 61.080 and this section prohibit a person from holding two (2) municipal offices at the same time, there would be no incompatibility if a member of the town council served as a member of the board of trustees of a fire prevention district, since the fire prevention district is not equivalent to a municipality but is merely a separate taxing district under KRS 75.040. OAG 73-711.

As the office of county attorney is a county office under the Constitution and the office of master commissioner has been held to be an office of the court and therefore neither a state nor county office, there would be no statutory or constitutional incompatibility were a person to serve in both capacities. OAG 73-783.

An incompatibility exists where a person is a member of the General Assembly and also holds the office of city attorney. OAG 73-851.

A person serving in the house of representatives is a member of the General Assembly and a state officer and since the office of city attorney is a city office, an incompatibility would exist. OAG 73-851.

The office of vice-chairman of the State Athletic Commission, a state office, is incompatible with the position of assistant director of buildings and maintenance for Jefferson County which is a county office. OAG 74-4.

The office of state parole officer and the office of part-time alcoholic beverage control agent for the city of Louisville on Sunday are incompatible, one being a state office, the other being a municipal office. OAG 74-24.

A member of the city council may serve concurrently as the city alcoholic beverage commissioner if such duties are assigned by the city council to one of the council members, as provided by KRS 241.160, but if the office of alcoholic beverage commissioner is created by ordinance, the office is a municipal office and this section and KRS 61.080 prohibit a person from holding two (2) municipal offices at the same time. OAG 74-82.

While a member of the county board of elections and a county judge pro tem are both county officers, there is no provision that would prevent a person from holding both of these offices at the same time, KRS 61.080 setting out the county offices that may not be held at the same time. OAG 74-91.

As it appears from KRS 179.020 and 179.060 that the county engineer is not a county officer and neither this section nor KRS 61.080 prohibit a person from holding a form of county employment and a city office or city employment at the same time, there is no incompatibility nor conflict of interest with respect to the city hiring as city engineer the person who is presently serving as county engineer. OAG 74-92.

If a library was created under KRS 173.310 or KRS 173.450, it would come within the term "other municipality" of this section, a member of the board of trustees would be a municipal officer, and, under KRS 61.260, there would be a conflict of interest if a law firm accepted employment from the library board where a member of the law firm was a member of the library board of trustees when the contract was made and

such member might receive benefit as a result of the contract. OAG 74-95.

Although KRS 26.270 (repealed) provided that the city legislative body of a city of the sixth class shall provide by ordinance who shall act in the place of the police judge, the city legislative body cannot designate a councilman to act in the place of the police judge since both a city councilman and a city police judge are municipal officers and both KRS 61.080(4) and this section of the Constitution state that no person shall, at the same time, fill two (2) municipal offices, either in the same or different municipalities. OAG 74-124.

Although this section of the Constitution and KRS 61.080 state that no person shall at the same time fill two (2) municipal offices, either in the same or different municipalities, there are no legal prohibitions against one person holding the position of police chief and the position of city manager at the same time since a police chief is a city officer and according to KRS 89.560 (repealed) a city manager is an employee of the city rather than a city officer. OAG 74-125.

Where a man was a city fireman and served the county as a member of a volunteer fire department, disassociated from the city or county, no incompatibilities arose under this section by his holding the office of constable of the county. OAG 74-240.

An off-duty fireman employed to act as an auxiliary policeman to control traffic and a public works street sweeper employee employed as an auxiliary policeman to issue parking tickets to cars unlawfully blocking his path are simply holding a position of employment and an office at the same time which is not incompatible under this section or KRS 61.080(4). OAG 74-543.

A member of a town board of trustees can be legally assigned the duties of the office of alcoholic beverage control administrator under authority of KRS 241.160 as the board member would not be holding another municipal office in violation of this section and KRS 61.080. OAG 74-576.

Neither the sheriff nor one of his deputies may serve as the nonsalaried county police chief as the police chief should only be answerable to the county court and while KRS 61.080 and this section do not prohibit such appointments, a practical incompatibility could arise in the serving in two (2) capacities. OAG 74-581.

An unclassified employee of a state university is eligible to run for and serve on a county school board as there is no general prohibition against holding a state office and state employment at the same time. OAG 74-646.

The treasurer of a county school board is considered a state officer and may not at the same time serve as commissioner of a municipal public utility which office in all probability constitutes a municipal office and, even if not, constitutes municipal employment. OAG 74-707.

Although no constitutional or statutory conflict of interest or incompatibility exists between the office of county commissioner and that of administrative head of a department of county government, since the latter office would be under the supervision of the county commissioners and since the two (2) positions possibly could not be performed at the same time with the requisite care and ability there would appear to exist a common law incompatibility. OAG 74-737.

A conflict of interest or incompatibility between offices comes into existence at the time the second office is assumed, not when the holder of the first office becomes a candidate for the second. OAG 74-737.

No incompatibility exists between the positions of public school teacher and employee of the state racing commission where neither the days nor hours of work required by both conflict. OAG 74-792.

An urban renewal agency established pursuant to KRS 99.360 is not a state, city or county agency in the sense referred to in this section and KRS 61.080 relating to compatible offices. OAG 74-879.

The office of an auxiliary police officer of a third-class city created under KRS 95.445 is incompatible with the office of deputy sheriff, a county office, and a conservation officer, a state office under KRS 150.090. OAG 74-909.

The office of master commissioner is not an office within the meaning of this section or KRS 61.080 and is not, therefore, incompatible with the office of county attorney unless a common law incompatibility arises. OAG 75-57.

Since a city-county airport board is an independent corporate entity, not a city or county agency, membership on such board is not an office contemplated by this section or KRS 61.080 and is not incompatible with the office of Commonwealth's Attorney. OAG 75-72.

A person may not be a school board member and hold a position on the planning and zoning commission at the same time under this section and KRS 160.180, but until he either resigns or is ousted by the judgment of the court, he is a de facto officer in both agencies and his actions as such are valid. OAG 75-123.

This section does not prohibit a city prosecutor from serving on a county park board at the same time although KRS 61.080(3) would so prohibit. OAG 75-138.

A member of the Louisville police department may not hold a position as a city trustee in a 6th class city while serving as a police officer. OAG 75-246.

Since the office of master commissioner is an office of the court, it is not incompatible with the office of magistrate under this section or KRS 61.080, although a common law conflict might arise if the duties of both offices could not be performed by the same incumbent with care and ability. OAG 75-255.

Although the offices of common councilman in a city of the third class and Circuit Court clerk are incompatible in view of KRS 61.080, there is no constitutional or statutory provision which would prohibit a council member from becoming a candidate for circuit clerk since the incompatibility would not exist, in view of KRS 61.090, until the council member assumes the office of circuit clerk. OAG 75-292.

No statutory or constitutional conflict of interest or incompatibility exists where a member of the county board of education serves at the same time on the Cumberland River Mental Health-Mental Retardation Board, Inc., a private nonprofit corporation. OAG 75-337.

A person appointed director of pupil personnel, a state office created by KRS 159.080, could not at the same time serve as magistrate or justice of the peace, a county office, as the two (2) are incompatible under this section and KRS 61.080. OAG 75-414.

Since service on the planning and zoning commission by an officer of a political party would not constitute a contract or involve a pecuniary interest, no conflict of interest would exist under KRS 100.133 and as the position of county chairman of either political party is not a constitutional or statutory office, there would be no incompatibility pursuant to this section and KRS 61.080. OAG 75-436.

As the position of magistrate is a county office and a property valuation administrator is a state officer, there would be no conflict. OAG 75-526.

A city councilman appointed as chief of police pursuant to KRS 95.720 (repealed) is holding two (2) incompatible offices under this section and KRS 61.080, but where the councilman is merely appointed as police commissioner to oversee the police department there is no incompatibility. OAG 75-564.

Since the offices of employee of the state highway commission and election officer or member of the board of elections are not incompatible under this section or KRS 61.080 and since the State Merit System Act has no provision prohibiting a state employee from serving in either capacity, an employee of the highway commission may legally do so. OAG 75-565.

Under this section and KRS 61.080 the office of city fire chief is not incompatible with employment by the greater Cincinnati's Airport fire department. OAG 75-568.

Serving as a member of the environmental quality commission at the same time as being employed for compensation by an interlocal planning and development agency is not a situation of incompatible offices. OAG 75-674.

Since the position of chief deputy commissioner of the Department of Insurance is a state office pursuant to KRS 304.2-060 and 304.2-090, and being a member of a public library district board constitutes holding a municipal office, the offices are incompatible under this section and KRS 61.080. OAG 75-696.

Since the office of master commissioner does not constitute a state, city or county office, but merely an office of the court, no incompatibility would exist between the office of school board member and the position of master commissioner for the Circuit Court. OAG 75-700 and 75-715.

Although the office of school board member and that of master commissioner of the Circuit Court are compatible offices, there could exist a common law conflict. OAG 75-715.

Since the position of superintendent of city waterworks is merely a form of employment and not a municipal office, it is not incompatible with the office of police judge pro tem. OAG 76-34.

The offices of city clerk and tax assessor, both municipal offices, may not be filled by one person at the same time. OAG 76-90.

The positions of deputy sheriff and that of a precinct judge are not incompatible insofar as KRS 61.080 and this section are concerned as a deputy sheriff is a county officer and election officers would appear to be local or county officers. OAG 76-91.

A person may, at the same time, hold the municipal office of judge pro tem and a position of municipal employment as a management planning administrator provided that the two (2) positions can be performed with care and ability. OAG 76-134.

A person is not prohibited from being a member of the county police merit board and, at the same time, a member of the county board of tax supervisors, if the situation does not involve a common-law incompatibility. OAG 76-195.

Since the position of electric plant superintendent is nothing more than a form of employment, a person could serve at the same time as city manager and as plant superintendent of the electric plant board. OAG 76-211.

Since there is no prohibition against a person holding two (2) positions of municipal employment at the same time, or a municipal office and municipal employment, a person could serve as the administrative officer of a city planning commission and at the same time serve as city manager of the city. OAG 76-212.

Although there would be no constitutional or statutory provision prohibiting a person from holding the office of magistrate, a county office, and at the same time serving on the county school board staff, which would constitute a form of State employment, there could be a common-law incompatibility since a magistrate must be accessible at all times to persons desiring to serve warrants and to those desiring to bring civil actions. OAG 76-216.

There is no statutory or constitutional incompatibility or conflict of interest between membership on a county school board and employment as a full-time mental health worker for a nonprofit corporation which administers a community mental health program. OAG 76-227.

Since a city-county air board is a separate political entity from the creating agency, a member of the city council could be appointed to the air board by the mayor. OAG 76-257.

There is no constitutional or statutory incompatibility between the positions of hearing officer for the Workers' Compensation Board, special commissioner for the Circuit Court, or assistant public defender for the quarterly court. OAG 76-281.

An attorney's part-time prosecutorial position with the Commonwealth Attorney's office would not be incompatible with the attorney's connection with the State as an independent contractor under a personal service contract. OAG 76-334.

In a sixth class city, the fact that the police judge is the father of the deputy marshal, who presents evidence in the city police court against an alleged violator of a city ordinance or State law, would not create a conflict of interest. OAG 76-345.

There is no constitutional or statutory incompatibility between the position of secretary of the county police merit board and a position as a data processing contract accountant in the county clerk's office. OAG 76-346.

A person cannot serve as chairman of the State Athletic Commission, a state office, and at the same time enter into a personal service contract for management services with the county court clerk since the person under such contract would in reality be serving as a deputy county clerk and thus would be holding a county office. OAG 76-352.

The mayor of the city of Glasgow can at the same time legally serve as principal of the local school. OAG 76-402.

There is no statutory, constitutional or common-law incompatibility in a person serving as a deputy county coroner and as an emergency medical technician. OAG 76-429.

Since a member of the board of supervisors of a conservation district is a local, subdivisional officer and may receive per diem and expenses, a state officer could not hold such a position although a state employee other than an officer could hold such a position without violating this section. OAG 76-430.

A person cannot serve as a member of the school board and at the same time hold the position of city manager of a city without violating KRS 61.080 and this section since these sections prohibit a state officer from holding a municipal office or employment. OAG 76-433.

A person who holds the position of director of the city's recreation program could not continue to serve as such and at the same time serve as a member of the local board of education. OAG 76-434.

Since the Economic Development Council is an agency of the city, county and chamber of commerce and the administrator serves all three entities, the position of assistant administrator is of a so-called hybrid nature, that is, neither a city nor county position as contemplated in this section, KRS 61.080 and KRS 160.180(1)(d) and therefore no incompatibility would exist between the position of assistant administrator of the Economic Development Council and membership on a county school board. OAG 76-495.

While under Const., § 113 a county judge or justice of the peace could be appointed as a trial commissioner of the district court under certain circumstances, this section and KRS 61.080 would prohibit a county judge or justice of the peace, as county officers, from being at the same time a trial commissioner of a district court. OAG 76-497.

Inasmuch as the position of maintenance supervisor for a local board of education is a form of state employment, a person would not be prohibited from holding that position and also serving as a member of the county commission. OAG 76-533.

A man may serve on both the Urban Renewal and Community Development Agency of Elsmere and the Kenton County and Municipal Planning and Zoning Commission and there would exist no incompatible situation under this section and KRS 61.080 since the individual in question would not be holding two (2) municipal offices or a municipal and a county office at the same time. OAG 76-562.

Since there is nothing under the terms of this section and KRS 61.080 to prohibit a person from holding a state office and state employment at the same time, a person could hold the office of Commonwealth's Attorney, a state office, and a teaching position at a state university, a form of state employment, at the same time. OAG 76-563.

There is no statutory or constitutional provision that would prohibit a person from serving both as a member of the fiscal court and as a deputy coroner appointed pursuant to KRS 72.040 (repealed). OAG 76-642.

An employee of an area development district would not be prohibited from becoming a candidate for and holding a county or city office and at the same time continuing his employment with the district. OAG 76-662.

A person could not serve as the county coroner and as a member of the State Board of Funeral Directors and Embalmers at the same time. OAG 76-669.

Membership on a county school board and the position of county director of civil defense are incompatible. OAG 76-687.

A member of the city council of a fifth class city could at the same time serve in the nonpaying position of police surgeon. OAG 76-689.

There would be no incompatibility between the position of staff attorney for a nonprofit legal aid corporation and that of state representative. OAG 76-737.

There is no provision under this section or KRS 61.080 relating to incompatible offices that would prohibit a person from holding a position on a county board of education, which is a form of state employment, and serving on the fiscal court, which is a county office, nor is there any prohibition against a person serving as a member of a county board of education and as mayor of a fourth class city. OAG 77-8, 1977 Ky. AG LEXIS 768.

An individual who is a member of an independent school board cannot at the same time serve as a member of a county board of health as these positions are incompatible. OAG 77-39, 1977 Ky. AG LEXIS 726.

A member of the Board of Optometric Examiners who is running for the office of county commissioner could continue to serve on the Board up until he assumed the office of county commissioner without violating the prohibition against a state officer's holding a county office at the same time. OAG 77-79, 1977 Ky. AG LEXIS 707.

An assistant county attorney may, generally, represent the Special Fund as a contract attorney in proceedings before the Workers' Compensation Board. OAG 77-113, 1977 Ky. AG LEXIS 678.

A person who is the mayor of a fifth class city cannot at the same time hold the position of superintendent of county schools since the position of mayor is a municipal office and the position of superintendent is a state office and the fact that the mayor may not receive a salary is of no consequence in determining incompatibility. OAG 77-107, 1977 Ky. AG LEXIS 683.

Where an assistant county attorney, who is required to defend the interests of the county before the Workers' Compensation Board, is under contract with the Department of Labor (now Labor Cabinet) as a Special Fund attorney but could refuse any assignment to represent the interests of the Department (Cabinet) in workers' compensation hearings, there would be no constitutional or common-law incompatibility because, while the assistant county attorney is an officer of a county, he is not a state officer or a deputy state officer but rather, since he is under contract with the State, an independent contractor performing services for the State. OAG 77-113, 1977 Ky. AG LEXIS 678.

The position of assistant superintendent of schools, a state office, and the office of magistrate, a county office, are incompatible. OAG 77-129, 1977 Ky. AG LEXIS 655.

The principal of an elementary school, a state employee, can become a candidate for the office of magistrate and if elected continue to retain his position as principal unless there would be some common-law conflict of interest where the individual could not perform the duties of both positions at the same time with care and ability or unless there is some local regulation promulgated by the county board of education prohibiting school employees from becoming candidates for public office without resigning or taking leave of absence. OAG 77-146, 1977 Ky. AG LEXIS 641.

It would not be an incompatible situation for the husband of the county treasurer to be a candidate for the office of property valuation administrator. OAG 77-162, 1977 Ky. AG LEXIS 616.

An employee of a state university would not be prohibited from becoming a candidate for the office of county magistrate. OAG 77-181, 1977 Ky. AG LEXIS 591.

There is no statutory incompatibility in an individual holding the office of mayor of a third class city, a municipal office, while retaining a faculty position at a regional university, a form of state employment. OAG 77-204, 1977 Ky. AG LEXIS 570.

Where a person was chairman of Urban Renewal and a member of the board of directors of the Housing Project, the fact that he held the positions mentioned would in no way affect his right to become a candidate for a public office in the primary and general election, but if elected to the city council, he would become disqualified from serving as a member of the housing commission pursuant to KRS 80.040 or on the urban renewal agency, if it is operated by the city, since KRS 61.080 and this section prohibit a person from holding two (2) municipal offices at the same time, although if the urban renewal agency was created as an independent agency under KRS Chapter 99 no incompatibility would exist. OAG 77-244, 1977 Ky. AG LEXIS 545.

Members of county boards of education are state officers and at the same time the position of state ABC officer is one authorized pursuant to KRS 241.090 and such representatives have full police powers which may or may not place their position in the category of a state officer; and although subsection (1)(d) of KRS 160.180 prohibits a school board member from holding and discharging the duties of any local office or agency under the city or county of his residence, it would not prohibit a school board member from holding employment or an appointive office with the State. OAG 77-245, 1977 Ky. AG LEXIS 582.

This section and KRS 61.080 do not prohibit a person from holding two (2) state offices or employments at the same time. OAG 77-245, 1977 Ky. AG LEXIS 582.

Neither KRS 61.080 nor this section prevent a person from, at the same time, being a member of the board of an air pollution control district and a member of the board of a sewer construction district, neither of which is a state, city or county agency, and if the person involved is able to perform the functions of both positions with care and ability and with impartiality and honesty, no common-law incompatibility would exist. OAG 77-249, 1977 Ky. AG LEXIS 520.

A university safety and security officer appointed and holding his position pursuant to KRS 164.950 to 164.980 is a state officer and as a state officer he is precluded by this section and KRS 61.080(1) from serving, at the same time, as either a city officer or a county officer. OAG 77-521, 1977 Ky. AG LEXIS 249.

For the purposes of the conflict of interest provision, the office of county attorney, while involving both state and county functions, is a county office. OAG 77-779, 1977 Ky. AG LEXIS 1.

The office of magistrate and state employee are not incompatible under this section. OAG 78-2, 1978 Ky. AG LEXIS 724.

Membership on an area development board and a municipal housing commission is not incompatible in as much as both agencies are hybrid political entities and not a county or subdivision of a county, city, or town. OAG 78-47, 1978 Ky. AG LEXIS 654.

Although this section and KRS 61.080 do not prohibit a person's holding two (2) county offices at the same time, there could be a common-law incompatibility between them if it would be physically impossible to perform all duties of both

offices with care and ability and with impartiality and honesty. OAG 78-59, 1978 Ky. AG LEXIS 676.

The mayor of a fourth-class city could not serve at the same time as a member of the city's utility commission. OAG 78-111, 1978 Ky. AG LEXIS 616.

A riverport authority is an independent governmental agency which is not a state, county or city agency contemplated under this section. OAG 78-125, 1978 Ky. AG LEXIS 632.

Since the riverport authority is an independent agency from that of the city, no incompatibility or conflict of interest would exist where a city commissioner served as a port manager. OAG 78-125, 1978 Ky. AG LEXIS 632.

Nothing in this section prevents a person from serving at the same time as a county building inspector and a member of a county planning and zoning commission. OAG 78-137, 1978 Ky. AG LEXIS 601.

There is no statutory or constitutional incompatibility between the office of county attorney-prosecutor and membership on a municipal housing commission. OAG 78-291, 1978 Ky. AG LEXIS 446.

Assuming that hospital board members of a county hospital controlled by the fiscal court qualify as county officers, there is nothing in the Constitution and in the statutes that would prohibit the county attorney from holding the two (2) county offices at the same time. OAG 78-324, 1978 Ky. AG LEXIS 416.

A person could not hold the office of deputy sheriff and membership on the city council at the same time since these two (2) offices are incompatible, one with the other, under this section and KRS 61.080. OAG 78-361, 1978 Ky. AG LEXIS 388.

If a postmaster is one of the fourth class, there would be no incompatibility between that position and membership on a city council, but if it is a federal office, there would be a prohibition under § 237 of the Kentucky Constitution which holds, in effect, that no person can serve at the same time as a federal officer and a State or local officer. OAG 78-361, 1978 Ky. AG LEXIS 388.

Police officers are officers of the governmental entity in which they serve but under an interlocal agreement, for example, police officers involved in a cooperative undertaking between a city and a county or two (2) cities can avoid the prohibitions in KRS 61.080 and this section against being, at the same time, a county officer and a city officer or an officer in two (2) different cities. OAG 78-364, 1978 Ky. AG LEXIS 359.

An incompatibility situation would exist where a named individual served at the same time on the environmental quality commission and as mayor of the City of Hazard. OAG 78-377, 1978 Ky. AG LEXIS 362.

The holding of the two (2) State officer positions of superintendent of schools and member of a local school board does not by itself present a statutory or constitutional incompatibility, under KRS 61.080 and this section. OAG 78-413, 1978 Ky. AG LEXIS 351.

Appointment of a legislator to membership on a tourist board would not constitute a violation of this section of the Constitution or KRS 61.080. OAG 78-475.

There is no statutory incompatibility of offices between the jobs of county road supervisor and deputy county judge/executive. OAG 78-581, 1978 Ky. AG LEXIS 266.

There is no statutory incompatibility between the offices of assistant commissioners of the Kentucky High School Athletic Association and a county board of education. OAG 78-583, 1978 Ky. AG LEXIS 239.

Since the transit authority of River City is neither a state, city or county entity, no incompatible situation would develop within the meaning of KRS 61.080 and this section were an officer of the Jefferson County Police Department (a county officer), or for that matter the Louisville Police Department (a city officer) employed part-time by TARC for the purposes indicated. OAG 78-618, 1978 Ky. AG LEXIS 221.

This section and KRS 61.080 prohibit a State officer (county school board member) from holding a county office (deputy sheriff) at the same time since they are incompatible, one with the other. OAG 78-622, 1978 Ky. AG LEXIS 230.

While nothing in the law prevents an incompatibility between the office of assistant city administrator and candidate for school board, both this section and KRS 61.080 prohibit one from holding a city position and at the same time serving as a school board member, which is a State office. OAG 78-631, 1978 Ky. AG LEXIS 195.

Neither this section nor KRS 61.080 would prohibit the county attorney from also being deputy county judge/executive; however, since the county attorney is the legal advisor for the county and the fiscal court, this would constitute a common-law incompatibility, and in such situation the county attorney could not honestly, impartially and objectively carry out both jobs. OAG 78-642, 1978 Ky. AG LEXIS 189.

If one is not an employee of a county school board but serves, for example, as an employee of the State Department of Education, there would be no constitutional or statutory conflict under this section and KRS 61.080 since a person can hold two (2) State positions at the same time, whether they be in the form of an office or employment. OAG 78-645, 1978 Ky. AG LEXIS 185.

One may serve as a member of the Bowling Green Board of Education of the Bowling Green Independent School District while at the same time being employed as an administrator of the Bowling Green-Warren County Health Department pursuant to appointment by the joint city-county board of health which is, in turn, approved by the Kentucky Department of Human Resources (now Cabinet for Human Resources), since the joint city-county health department would be considered a hybrid agency not contemplated by the Constitution or statute relating to incompatible offices, namely this section and KRS 61.080. OAG 78-646, 1978 Ky. AG LEXIS 186.

The holding of the post of county judge/executive and the post of water board commissioner would not involve a constitutional or statutory incompatibility, since the water district is a separate political subdivision. OAG 78-651, 1978 Ky. AG LEXIS 190.

A member of the city council cannot serve at the same time as an auxiliary policeman at the annual salary of $1.00, because no person can hold at the same time two (2) municipal offices as this is prohibited under this section and KRS 61.080, since a member of the city council is a municipal officer and a member of the auxiliary police force having the same powers as a regular policeman is also a municipal officer, and compensation is not a factor in determining whether or not the two (2) offices are incompatible, one with the other. OAG 78-675, 1978 Ky. AG LEXIS 160.

There is nothing under this section or KRS 61.080 that would prohibit an employee of the University of Kentucky Extension Specialist Department, Poultry Division, from holding a State office at the same time (such as the school board position), and this would be true even if the employee was under the State merit system in view of KRS 18.310(4) (now see KRS 18A.140). OAG 78-706, 1978 Ky. AG LEXIS 133.

This section and KRS 61.080 prohibit a person from holding a state office and a municipal office at the same time which means that the position of Commonwealth detective would be incompatible with that of city policeman. OAG 78-708, 1978 Ky. AG LEXIS 135.

The office of mayor and that of membership in the General Assembly are of course incompatible under this section and KRS 61.080, but the incompatibility does not occur until the person assumes the second office, in which case he vacates the first office pursuant to KRS 61.090. OAG 78-711, 1978 Ky. AG LEXIS 128.

A person could hold office on the county board of education and at the same time serve as State conservation officer. OAG 78-773, 1978 Ky. AG LEXIS 67.

One may hold both the office of railroad commissioner and the position of trial assistant to the district judge of Floyd County since both are State offices. OAG 78-825, 1978 Ky. AG LEXIS 3.

A person holding the position of membership on the Marshall County Board of Education cannot at the same time serve as city treasurer of Calvert City. OAG 79-1, 1979 Ky. AG LEXIS 627.

Neither this section nor KRS 61.080 prohibit an employee of a city from becoming a candidate for another public office and this would be equally applicable to the employees of the City of Louisville unless said employees are under the city's civil service program pursuant to KRS 90.220 which prohibits any person in the classified service in cities of the first class from becoming a candidate for public office. OAG 79-2, 1979 Ky. AG LEXIS 628.

This section and KRS 61.080 prohibit a State officer from holding a municipal office at the same time, therefore, no one can hold the office of city attorney and serve as a member of an independent school board at the same time since the two (2) positions are incompatible one with the other. OAG 79-44, 1979 Ky. AG LEXIS 583.

There would be no incompatibility under this section of the Constitution and KRS 61.080 if a full-time employee of the housing authority of a city served as a campaign manager for a candidate for governor, as these statutes relate to incompatible offices, and the position of campaign manager is not an office under either section. OAG 79-53, 1979 Ky. AG LEXIS 563.

A person could legally hold the office of county judge/executive and at the same time enter into a personal service contract with the state to provide legal services to the Kentucky Public Service Commission. OAG 79-86, 1979 Ky. AG LEXIS 538.

While a person may hold a municipal office and employment with the city at the same time without violating KRS 61.080 and this section, where the office of councilman and a municipal employment are involved KRS 61.270 and the common-law rule would create a conflict of interest. OAG 79-143, 1979 Ky. AG LEXIS 487.

There is no conflict between the positions of superintendent of county schools and a supervisor of a county conservation district. OAG 79-149, 1979 Ky. AG LEXIS 488.

The position of policeman is a municipal office. OAG 79-225, 1979 Ky. AG LEXIS 411.

Though a police officer could become a candidate for city council, he could not, if elected, serve as a member of city commission and as a police officer as these two (2) positions are incompatible under this section and KRS 61.080. OAG 79-225, 1979 Ky. AG LEXIS 411.

The fact that one desires to become a candidate for another elective office creates no incompatibility until he assumes the second office which is incompatible with the first. OAG 79-248, 1979 Ky. AG LEXIS 380.

Since a county coroner is a county office, while a local coordinator of county disaster and emergency services is a county employee, there is no constitutional or statutory incompatibility. OAG 79-319, 1979 Ky. AG LEXIS 313.

Since a school board member is a state officer, and since a county emergency director is a county employee, this section and KRS 61.080 expressly prohibit one person from holding such office and employment at the same time. OAG 79-319, 1979 Ky. AG LEXIS 313.

There is no conflict of interest if a county commissioner were appointed as a deputy county court clerk for the purpose of helping the clerk process the 1979 tax appeals. OAG 79-398, 1979 Ky. AG LEXIS 223.

This section and KRS 61.080 do not prohibit the holding of two (2) county offices at the same time. OAG 79-398, 1979 Ky. AG LEXIS 223.

A state employee, such as an employee of the state Department of Transportation (now Transportation Cabinet) or Department of Highways can legally serve as a district commissioner for the State Department of Fish and Wildlife insofar as any questions concerning incompatibility under this section and KRS 61.080. OAG 79-438, 1979 Ky. AG LEXIS 199.

Neither this section nor KRS 61.080 prohibit a person from holding state employment in multiple positions. OAG 79-438, 1979 Ky. AG LEXIS 199.

The position of county court clerk is a county office under the Constitution, particularly § 99, and a school teacher, part-time or otherwise, is a state employee. OAG 79-459, 1979 Ky. AG LEXIS 175.

There is no constitutional nor statutory prohibition which would inhibit a local board from hiring a county clerk as a substitute teacher. OAG 79-459, 1979 Ky. AG LEXIS 175.

This section and KRS 61.080 prohibit a state officer from holding a county office at the same time; however, there is no prohibition against a state employee holding a county office except where such person is under the state merit system and cannot run for such office, which prohibition would not be applicable with respect to school teachers since they do not come under the state system. OAG 79-459, 1979 Ky. AG LEXIS 175.

Although neither KRS 61.080 nor this section would prevent a state representative from also serving on a local city-county human rights commission, the separation of powers doctrine under Const., §§ 27 and 28 prevent a person serving in one branch of government from exercising powers in another. OAG 79-483, 1979 Ky. AG LEXIS 161.

It is not incompatible for a full-time county employee to also serve as a trustee of a sixth-class city located in that county. OAG 79-493, 1979 Ky. AG LEXIS 131.

There is nothing in this section or KRS 61.080 which would create an incompatibility between the jobs of deputy sheriff and part-time school bus driver. OAG 79-537, 1979 Ky. AG LEXIS 97.

There is no constitutional or statutory incompatibility for an elected official, such as a member of the city council, to hold at the same time an office in a privately incorporated association, such as the N.A.A.C.P. OAG 79-603, 1979 Ky. AG LEXIS 40.

Since the office of director of an emergency ambulance service district is neither a county nor city office, nothing in this section nor in KRS 61.080 would prevent a city or county officer from lawfully serving on that board. OAG 79-607, 1979 Ky. AG LEXIS 28.

There is no incompatibility, under either this section, KRS 61.080 or the common law, between the state offices of secretary of energy and chairman of the Board of Trustees of the University of Kentucky. OAG 79-624, 1979 Ky. AG LEXIS 15.

Nothing in this section or KRS 61.080 would prohibit an employee of a Commonwealth Attorney's office from also being a member of a state university's board of regents. OAG 79-645, 1979 Ky. AG LEXIS 7.

Since the offices of city clerk and city treasurer are separate and distinct city offices, no person can, at the same time, hold either of these offices and another city office, such as that of city councilman, in view of this section and KRS 61.080. OAG 80-20, 1980 Ky. AG LEXIS 622.

Inasmuch as the executive director had no authority to change regulations, to administer any program or to change any program, but instead the work consisted of being a research person and coordinator of the activities of the task force group, there was no incompatibility between the position as executive director of the governor's task force on welfare reform and a position as a member of a county urban council. OAG 80-60, 1980 Ky. AG LEXIS 580.

A person cannot hold the office of city clerk and city treasurer at the same time in a city of the sixth class. OAG 80-73, 1980 Ky. AG LEXIS 576.

This section and KRS 61.080 do not prohibit a person from holding a municipal office, such as city clerk-treasurer, and at the same time municipal employment, such as the position of police dispatcher. OAG 80-82, 1980 Ky. AG LEXIS 554.

Since membership on the city board of adjustment constitutes a municipal office and membership on the local board of appeals under the Kentucky Building Code also constitutes a municipal office, the two (2) are incompatible, one with the other, and no person can hold both at the same time. OAG 80-91, 1980 Ky. AG LEXIS 550.

The office of city school board member and that of county comptroller are incompatible. OAG 80-92, 1980 Ky. AG LEXIS 562.

The office of commissioner of the Department of Public Information is not incompatible with a position on the Kentucky Heritage Commission or the Kentucky Historic Preservation Review Board. OAG 80-96, 1980 Ky. AG LEXIS 542.

This section and KRS 61.080 prohibit a state officer or deputy state officer from holding a county office; however, there is no provision prohibiting a state employee, such as a school principal, who is not under the state merit system from becoming a candidate for a county office, such as a county magistrate, and serving as such at the same time he holds his state position. OAG 80-131, 1980 Ky. AG LEXIS 514.

Although neither this section nor KRS 61.080 prohibits a person from holding the positions of city councilman and civil defense director at the same time, there may be a common-law conflict of interest depending on who appoints the civil defense director pursuant to KRS 39.415; if the city legislative body appoints the civil defense director, then a conflict of interest would exist since the councilman in question would be directly involved in his own appointment; on the other hand, if the mayor is authorized to make the appointment, then no such conflict would appear to exist. OAG 80-141.

No conflict of interest would exist under this section or KRS 61.080 if a county deputy jailer were permitted to join the county auxiliary police force. OAG 80-222, 1980 Ky. AG LEXIS 431.

An individual holding the office of magistrate can at the same time serve on the county board of elections, since no constitutional or statutory provisions prohibit a person from holding two (2) county offices at the same time and KRS 117.035 specifically permits a person who holds another county office to serve on the county board of elections. OAG 80-263, 1980 Ky. AG LEXIS 383.

Since the position of trial commissioner is a state office and membership on the county election board is a county office, an individual would be prohibited from holding both positions at the same time by this section and KRS 61.080. OAG 80-266, 1980 Ky. AG LEXIS 375.

Assuming no factual circumstances that would give rise to a common-law conflict of interest, a member of a county fiscal court while serving in office may also be employed full time or part time as an instructor at the University of Louisville, or any other state institution of higher learning. OAG 80-277, 1980 Ky. AG LEXIS 363.

A member of the Kentucky General Assembly can at the same time serve as a presidential elector since the Constitution does not prohibit a person from holding two (2) state offices at the same time, unless there exists a common-law incompatibility. OAG 80-291, 1980 Ky. AG LEXIS 372.

A county attorney is a county constitutional officer, pursuant to Const., § 99, and, therefore, an assistant county attorney is a statutory county officer for the purpose of considering the general question of incompatibility of offices; since the office of assistant county attorney involves only one office, a county constitutional office, no incompatibility exists even though the county attorney has been given state duties as a prosecutor (KRS 15.725(2)) and county duties as an adviser to fiscal court (KRS 69.210). OAG 80-341, 1980 Ky. AG LEXIS 312.

Insofar as constitutional and statutory provisions governing incompatible offices are concerned, there is no restriction preventing a pretrial release officer, presumably appointed by the administrative office of the courts under RCr 4.06, from becoming a candidate for a political office and there is no statutory restriction preventing the release officer from calling attention to his position during the campaign. OAG 80-360.

There is no incompatibility in law or fact in holding at the same time the positions of Commonwealth Attorney and membership on the Eastern Kentucky University board of regents. OAG 80-402, 1980 Ky. AG LEXIS 254.

There is no constitutional or statutory provision prohibiting an individual from holding a real estate license and the office of county judge/executive at the same time, although a common-law incompatibility might exist. OAG 80-478, 1980 Ky. AG LEXIS 206.

An individual serving on the Crime Victims Compensation Board and as a member of the Board of Claims is a nonmerit state employee, and would not be prohibited from continuing to hold the two (2) state positions while at the same time serving as a paid coordinator with a presidential campaign. OAG 80-488, 1980 Ky. AG LEXIS 160.

There is no incompatibility between serving as an employee of the Department of Human Resources (now Cabinet for Human Resources) and as a school board member since both positions are with the state, one being a form of state employment and the other (school board) a state office. OAG 80-505, 1980 Ky. AG LEXIS 130.

Since the position of property valuation administrator is a state office, if and when an employee of the county ambulance service assumed the office of property valuation administrator, he must resign from his position with the county. OAG 80-523, 1980 Ky. AG LEXIS 144.

There would be no constitutional or statutory restriction on a Circuit Court clerk serving as an instructor in one of the state's driver improvement programs. OAG 80-548, 1980 Ky. AG LEXIS 122.

A person may not, at the same time, serve as clerk of the District Court and an auxiliary police officer for a city of the fourth class. OAG 80-552, 1980 Ky. AG LEXIS 101.

An employee of a county ambulance service, which is comprised of two (2) counties, could run for the elective office of coroner while still employed. OAG 80-563, 1980 Ky. AG LEXIS 89.

The board of trustees of a county library district could be subject to a taxpayer's suit, but to successfully maintain an action the taxpayer would have to show standing to bring such a suit, as well as special or peculiar injury. OAG 80-570, 1980 Ky. AG LEXIS 99.

A deputy state fire marshal (paid a monthly salary) may not also serve as a county police officer at night. OAG 80-576, 1980 Ky. AG LEXIS 80.

Since a deputy Circuit Court clerk is a state officer and a county treasurer is a county officer, the same person cannot, at the same time, fill both offices as they are incompatible with each other. OAG 80-608, 1980 Ky. AG LEXIS 53.

Where sixth class city sought to appoint the chief of police as city treasurer and as director of the city water department, the same person would be prohibited from holding two (2) municipal offices at the same time under KRS 61.080 and this section; however, the city under the appropriate ordinance could assign the duty of collecting city taxes to the chief of police and make it part of his overall responsibility. OAG 81-8, 1981 Ky. AG LEXIS 419.

A county school teacher can be elected to the office of magistrate without violating this section and KRS 61.080 since a person may hold both state employment such as a school teacher and at the same time hold a county office such as magistrate. OAG 81-13, 1981 Ky. AG LEXIS 403.

An Assistant Commonwealth Attorney may accept a night teaching position with a community college without creating a

conflict of interest since this section and KRS 61.080 do not prohibit a person from holding a form of state employment and a state office at the same time. OAG 81-17, 1981 Ky. AG LEXIS 413.

A dispatcher with the city police department may run for and, if elected, serve as a city council member without violating the provisions of KRS 61.080 and this section. OAG 81-91, 1981 Ky. AG LEXIS 338.

A master commissioner may also be appointed trial commissioner since there is no statutory prohibition under KRS 61.080 or constitutional prohibition under this section and neither position is subordinate to the other since the master commissioner serves in the Circuit Court and the district commissioner serves in the district court. OAG 81-108, 1981 Ky. AG LEXIS 323.

An assistant Commonwealth's Attorney may be employed by a city under a personal service contract since the attorney would be considered an independent contractor; thus, there would not be a conflict under this section and KRS 61.080 between holding state office and municipal office simultaneously. OAG 81-114, 1981 Ky. AG LEXIS 317.

The deputy circuit clerk, who is a state officer under KRS 30A.010, may be appointed concurrently as a trial commissioner of the county district court, who is also a state officer under KRS 24A.100, since neither this section nor KRS 61.080, both of which treat the subject of incompatible offices, prohibits a person from holding two (2) state offices at the same time. OAG 81-124, 1981 Ky. AG LEXIS 304.

Where the executive director of a community development agency, which was not created as an independent agency under KRS 99.350, is elected to the office of mayor of the same city, there is no statutory or constitutional conflict pursuant to this section or KRS 61.080 since a person can theoretically hold a municipal office and employment at the same time; however, the mayor could not continue to hold the executive director's position without creating a common-law incompatibility or conflict of interest since he is presumed to possess the power under KRS 83A.130 to not only hire, but also fire, the executive director. OAG 81-179, 1981 Ky. AG LEXIS 281.

Where an attorney is on retainer for a municipal water and sewer commission and runs for the position of Commonwealth's Attorney, he could hold both positions without violating KRS 61.080 and this section since the retainer position is held as an independent contractor rather than as a city officer or city employee. OAG 81-214, 1981 Ky. AG LEXIS 211.

A director of county parks and recreation board which is a joint city-county board created by KRS 97.035 can also be elected to the city council, since the joint board is a hybrid whose members are neither city nor county officers and thus there would be no violation of KRS 61.080 or this section which prohibit a person from holding two (2) municipal offices or a municipal and a county office at the same time. OAG 81-240, 1981 Ky. AG LEXIS 198.

Under Kentucky law a city policeman is considered to be a municipal officer and thus a city cannot employ as a part-time police officer a person who is presently serving as a police officer in another city without creating an incompatibility prohibited by subsection (4) of KRS 61.080 and this section. OAG 81-307, 1981 Ky. AG LEXIS 131.

The employment of a county attorney as attorney for the county board of education does not violate KRS 61.080 and this section since employment as the school board attorney would be that of an independent contractor rather than an employee, and since such employment would, at most, be a form of state employment rather than constituting a state office. OAG 81-308, 1981 Ky. AG LEXIS 148.

A person who is the master commissioner of the county Circuit Court can lawfully be appointed to serve as a member of the water commission, since the office of master commissioner is, under KRS 31A.010, merely a position filled by and under the jurisdiction of the Circuit Court, rather than a state, county or city office; thus, no incompatibility exists under KRS 61.080 and this section between the two (2) positions. OAG 81-313, 1981 Ky. AG LEXIS 124.

An employee of a city or county can act as a court commissioner appointed to appraise real estate pursuant to KRS 416.580 and receive compensation therefor, since the court commissioner position is an office of the court at most and thus not a state, county or municipal office; the holding of both positions does not violate KRS 61.080 or this section. OAG 81-368, 1981 Ky. AG LEXIS 60.

The appointment by a Circuit Court Judge of a city comptroller to the position of court commissioner to appraise real estate pursuant to KRS 416.580 would at most constitute appointment to an office of the court which is not a state, county or municipal office; accordingly, the holding of both offices would violate neither KRS 61.080 nor this section. OAG 81-368, 1981 Ky. AG LEXIS 60.

An ordinance which created the office of city alcoholic control administrator in a fourth-class city and vested the powers and duties of the administrator in the mayor was in violation of KRS 241.160, which provides that such office may either be created or its duties assigned to an existing office, and also violated subsection (3) of KRS 61.080 and this section which prohibit any person from filling two (2) municipal offices at the same time; however, the city council could amend or revise the ordinance to state that the duties of the administrator should be assigned to the office of the mayor, thereby avoiding the creation of a separate municipal office. OAG 81-390, 1981 Ky. AG LEXIS 75.

This section and KRS 61.080 do not prohibit a county judge/executive from appointing a firefighter from one fire department to serve on the board of trustees of a fire protection district which does not include that department, since city and county firefighters are considered employees of their employing entity rather than governmental officers, and trustees of a fire protection district are district officers rather than state, county or city officers. OAG 81-427, 1981 Ky. AG LEXIS 7.

The position of master commissioner for the Circuit Court is not a municipal, state or county office within the meaning of this section or KRS 61.080; accordingly, a city councilman in a fourth-class city can simultaneously serve as a master commissioner. OAG 82-7, 1982 Ky. AG LEXIS 629.

A local industrial development authority would constitute an independent political subdivision or hybrid state-corporate agency under subsection (2) of KRS 152.830; accordingly, an assistant Commonwealth's Attorney may simultaneously hold membership in a local industrial development authority without violating this section and KRS 61.080. OAG 82-11, 1982 Ky. AG LEXIS 627.

Since a metropolitan sewer district is a hybrid agency not contemplated by this section or KRS 61.080, a property valuation administrator can also serve as a member of the board of a sewer district without violating such provisions. OAG 82-81, 1982 Ky. AG LEXIS 553.

This section and KRS 61.080 do not apply to a situation where a county attorney enters into a contractual agreement to act for a city which has not created an "office" embracing the city attorney. OAG 82-150, 1982 Ky. AG LEXIS 488.

The executive director of the Kentucky Higher Education Authority must be considered a state employee within the meaning of this section and KRS 61.080; the same would be true with respect to his serving as Executive Director to the Kentucky Higher Education Student Loan Corporation pursuant to KRS 164A.050(7). OAG 82-282, 1982 Ky. AG LEXIS 356.

An unpaid city council member who is also employed by the Kentucky Higher Education Assistance Authority as Executive Director, and by virtue of his position as Executive Director of the Kentucky Higher Education Assistance Authority, is also the Executive Director of the Kentucky Higher Education Student Loan Corporation, is holding a municipal

office and state employment, concerning which there is no constitutional or statutory objection. OAG 82-282, 1982 Ky. AG LEXIS 356.

A member of the Board of Trustees of a fire protection district established pursuant to KRS Ch. 75 would not, for purposes of KRS 61.080 and this section, be considered a state, city or county officer and there is no statutory or constitutional prohibition against a person serving at the same time as a county police officer and as a member of the Board of Trustees of such a fire protection district. OAG 82-304, 1982 Ky. AG LEXIS 344.

There is no constitutional or statutory objection to a state employee holding, at the same time, a municipal office. OAG 82-318, 1982 Ky. AG LEXIS 323.

There would be no legal objection to the appointment of a state employee serving in the Department for Human Resources (now Cabinet for Human Resources), Child Welfare section, to the Electric Plant Board of a city. OAG 82-318, 1982 Ky. AG LEXIS 323.

The office of city councilman and that of deputy circuit clerk are incompatible and no one can hold both positions at the same time without violating this section and KRS 61.080. OAG 82-351, 1982 Ky. AG LEXIS 298.

Although one of the commissioners is required to be appointed mayor pro tem pursuant to KRS 83A.140(4), he can only serve as such in the place of the mayor when the mayor is unable to attend to the duties of the office, and as a consequence he cannot serve as mayor pro tem when a vacancy has occurred. Thus, when a member of the commission is appointed to fill the office of mayor, he automatically vacates his position on the commission, as no person can hold two (2) municipal offices at the same time under this section and KRS 61.080. OAG 82-397, 1982 Ky. AG LEXIS 244.

Fire protection district trustees and officers are not state, city or county officers for purposes of KRS 61.080 and this section, but would be considered district officers; not only are there no statutory or constitutional prohibitions against a fire district fire chief serving at the same time as a member of the fire district's board of trustees, but, KRS 75.031(1)(a) requires that two (2) members of the board be elected by the members of the volunteer firefighters of the district and be members thereof. The General Assembly obviously intended that the interests of the firefighters be represented on the board since two (2) board members must be members of the district's fire department. OAG 82-409, 1982 Ky. AG LEXIS 224.

The fire chief of a fire protection district organized pursuant to KRS Ch. 75 is not prevented by statutory or constitutional provisions from serving at the same time as one (1) of the two (2) required members of the fire department on the fire district's board of trustees. On those particular occasions where a conflict does occur, the fire chief should remove himself from the proceedings rather than merely abstaining or passing on the matter. OAG 82-409, 1982 Ky. AG LEXIS 224.

Since the terms of KRS 154.650 to 154.700 clearly indicate that members of the enterprise zone authority possess the five (5) basic elements required in order to establish their position as a public office and a state office, the Governor cannot appoint county and city officers to the authority without violating KRS 61.080 and this section; therefore, the Kentucky Municipal League and the Kentucky Association of Counties in nominating potential appointees for the authority must submit the names of persons who do not hold a city or county office. OAG 82-429.

Due to the fact that the urban county government is a hybrid form of government not contemplated by KRS 61.080 or this section, the officers of such government cannot be considered either county or city officers, and, as a consequence, there would exist no constitutional or statutory incompatibility where an officer or employee of such government was appointed to the enterprise zone authority pursuant to KRS 154.675. OAG 82-482, 1982 Ky. AG LEXIS 153.

If a city has either established a position of legal advisor as a form of city employment or created the office of city attorney, no one could hold at the same time the state office of trial commissioner and the office of city attorney or city employment without violating KRS 61.080 and this section. However, if an attorney is employed on a personal service contract basis, he would be considered an independent contractor and there would be no constitutional or statutory objection to his serving as trial commissioner of the district court. OAG 82-502, 1982 Ky. AG LEXIS 146.

Since members of the water district commission are neither state, county or city officers, no incompatibility would exist where a person serves as a member of the commission and at the same time serves on the city council. Of course where any business develops between the water district and the city concerning which a vote must be taken, the councilman in question should refrain from participating or voting on the matter as this would be against public policy. OAG 82-635, 1982 Ky. AG LEXIS 21.

No conflict of interest or incompatibility existed where an auxiliary police officer of a city was at the same time a full-time Instructor-Coordinator of the Department of Training at Eastern Kentucky University; an auxiliary police officer of a city has the same powers as a regular police officer and is, therefore, considered a municipal officer while the position of Instructor-Coordinator for a department at Eastern Kentucky University would at most be considered a form of state employment. Neither this section nor KRS 61.080 prohibits a state employee from holding a municipal office. OAG 83-29, 1983 Ky. AG LEXIS 468.

While there is nothing in Kentucky law which would prevent a full time county employee from seeking the office of railroad commissioner, this section and KRS 61.080 and 61.090 would clearly prohibit a county employee from holding both his county position and the office of railroad commissioner simultaneously; it would, therefore, be necessary for him to resign the county position in order to assume the office of railroad commissioner if he is elected. OAG 83-66, 1983 Ky. AG LEXIS 430.

The mayor of a city could legally serve as financial secretary to the planning and zoning commission, whether it be strictly a city commission or a joint city-county commission. OAG 83-72, 1983 Ky. AG LEXIS 424.

The position of financial secretary to a zoning and planning commission would not constitute a municipal office since there is no statutory authority for creating such position as an office under KRS Chapter 100 which governs planning and zoning; consequently, neither this section nor KRS 61.080 prohibits a municipal officer from holding municipal employment and serving as financial secretary at the same time and receiving compensation from both sources. OAG 83-72, 1983 Ky. AG LEXIS 424.

If a municipal utility commission is simply an agency of the city, the city attorney should probably represent both the city and the commission since the utility is an agency of the city; if it is an independent agency, he could at the same time be employed under a personal service contract which would make him an independent contractor. In neither event would the question of his holding two (2) municipal offices at the same time be involved. OAG 83-119, 1983 Ky. AG LEXIS 378.

An employee of a county department of correction does not possess peace officer powers. Therefore, there would be no constitutional or statutory objection to his holding the office of chief of police of a city at the same time, since he would be a county employee. OAG 83-291, 1983 Ky. AG LEXIS 206.

Since a private, nonprofit corporation is not a public agency, no statutory or constitutional incompatibility would exist if a member of a city council and a member of the board of directors of an urban renewal agency also served on the board of directors of a nonprofit corporation established to operate a

community center in the same city. OAG 83-317, 1983 Ky. AG LEXIS 180.

Membership on a school board constitutes a state office. OAG 83-318, 1983 Ky. AG LEXIS 179.

Membership on a county fair board does not constitute a public office, in the sense of its being established by or pursuant to a specific statute or the Constitution, which would involve KRS 61.080 and this section. OAG 83-318, 1983 Ky. AG LEXIS 179.

A member of the board of education can at the same time serve as a member of a county fair board. OAG 83-318, 1983 Ky. AG LEXIS 179.

Neither this section nor KRS 61.080, dealing with incompatible offices prohibits a person, who holds a particular office that may or may not be incompatible with the one he seeks, from becoming a candidate for public office; it is only when the person is elected and holds an office that is incompatible with one to which he is elected that this section and KRS 61.080 are affected. OAG 84-101, 1984 Ky. AG LEXIS 285.

Where a city which had a volunteer fire department had not established the position of fire chief as an office, the position of fire chief could only be considered as a form of employment; accordingly, there was no constitutional or statutory conflict involved when the county magistrate was appointed as fire chief of the city. OAG 84-150, 1984 Ky. AG LEXIS 238.

Since an airport board is a joint board, it is a hybrid agency authorized by statute between the cities and county; thus, a municipal officer could be appointed to such board without violating the prohibition against a municipal officer holding any other municipal, county or state office at the same time, contained in KRS 61.080 and this section, provided the appointment is made jointly by the mayor of the other city and the county judge/executive, and the appointee is not present during the voting. OAG 84-384, modifying OAG 74-755.

This section and KRS 61.080 do not prohibit a person from holding a state office and state employment at the same time unless the duties involved are incompatible; thus, the position of a member of the local board of education would not be incompatible with a position as an instructor at the Hazard Area Vocational School since the local board would have no control over the appointment of the instructor. OAG 85-23, 1985 Ky. AG LEXIS 129.

From the standpoint of the incompatible offices provisions of this section of the Kentucky Constitution and KRS 61.080, state officers are not prohibited from holding positions on the boards of directors of the Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation when those officers are holding positions specifically authorized by KRS 198A.030(3) and KRS 164A.050(3), because where a statute provides for the appointment of specifically designated public officers to hold another public office, these public officers hold their second public office in an "ex officio" capacity, which eliminates the possibility of a constitutional or statutory incompatibility. OAG 91-208, 1991 Ky. AG LEXIS 208.

The position of trustee of the Kentucky Retirement Systems Board is a "State Office" and, therefore, Section 165 of the Kentucky Constitution and KRS 61.080 apply in determining the qualifications of potential board members. OAG 00-7, 2000 Ky. AG LEXIS 212.

While it would be incompatible for a county attorney to hold, at the same time (either through election or appointment) the office of Commonwealth's Attorney, it is not a conflict under this section or under KRS 61.080 for the county attorney, on a temporary basis, to assume the duties of the Commonwealth's Attorney for an interim period until another person can be either appointed or elected to fill the office. OAG 92-162, 1992 Ky. AG LEXIS 277.

A mayor of a city of the third class is not prohibited by KRS 76.030, KRS 61.080 or this section from serving on the board of the Louisville and Jefferson County Metropolitan Sewer District. OAG 93-43, 1993 Ky. AG LEXIS 96.

Since a state motor vehicle enforcement officer is a state officer and a special deputy sheriff is a county officer and since subsection (1) of KRS 61.080 bans one from serving at the same time as a state officer and as an officer of any county, selected motor vehicle enforcement officers may not be appointed as special deputy sheriffs. OAG 93-61, 1993 Ky. AG LEXIS 162.

A person employed by an entity, such as the Louisville Waterfront Development Corporation which was established jointly by a city, a county and the state, while a public officer or employee, would not for purposes of the incompatible offices provisions be considered a state, county, or city officer or employee; thus the incompatible offices provisions would not preclude a person from serving concurrently as a member of the Kentucky General Assembly and as an officer or employee of the Louisville Waterfront Development Corporation. OAG 95-24, 1995 Ky. AG LEXIS 60.

An urban county is a county with an urban county form of government, such that officers of an urban county are county officers for purposes of Ky. Const. § 165 and KRS 61.080. Therefore, a member of the Lexington-Fayette Urban County Council may not also serve as a division director within the Cabinet for Health and Family Services. OAG 2004-10, 2004 Ky. AG LEXIS 11.

The position of executive director of the Office of the Ombudsman of the Cabinet for Health and Family Services is a "state office," and one who holds that position is a "state officer," such that one cannot hold that position and lawfully remain a member of the Lexington-Fayette Urban County Council. OAG 2006-02, 2006 Ky. AG LEXIS 2.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Incompatible offices, Const., §§ 44, 237; KRS 61.080.

REVENUE AND TAXATION

Section
169. Fiscal year.
170. Property exempt from taxation — Cities may exempt factories for five years.
172A. Assessment of farm land according to value for farm purposes.
179. Political subdivision not to become stockholder in corporation, or appropriate money or lend credit to any person, except for roads or State Capitol.
180. Act or ordinance levying any tax must specify purpose, for which alone money may be used.

§ 169. Fiscal year.

The fiscal year shall commence on the first day of July in each year, unless otherwise provided by law.

NOTES TO DECISIONS

Cited:
Board of Education v. Nelson, 109 Ky. 203, 22 Ky. L. Rptr. 680, 58 S.W. 700, 1900 Ky. LEXIS 195 (Ky. 1900); Hager v. Citizens' Nat'l Bank, 127 Ky. 192, 32 Ky. L. Rptr. 95, 105 S.W. 403, 1907 Ky. LEXIS 130 (Ky. 1907); Hager v. American Nat'l Bank, 159 F. 396, 1908 U.S. App. LEXIS 4075 (6th Cir. 1908); Ross v. First Nat'l Bank, 213 Ky. 453, 281 S.W. 517, 1926 Ky. LEXIS 536 (Ky. 1926).

OPINIONS OF ATTORNEY GENERAL.

Under this section and KRS 92.020 (repealed) implementing same, no city other than that of the first class is required

under present law to change its fiscal year from a calendar year to that of July 1 through June 30. OAG 80-380, 1980 Ky. AG LEXIS 280.

A local city housing authority which is an independent agency could maintain a fiscal year ending March 31, as required by the federal government, despite the requirements of this section and KRS 92.020 (repealed), since the agency is independent and not an agency of the city. OAG 81-324, 1981 Ky. AG LEXIS 113.

A water and sewer system, organized by a city pursuant to KRS 96.350 and operating on a fiscal year basis ending April 30, must change its fiscal year to one provided for in KRS 92.020 (repealed), pursuant to the city's authority to do so under this section, since an entity created under KRS 96.350 is not an independent agency and thus is subject to the restrictions of KRS 92.020 (repealed). OAG 81-324, 1981 Ky. AG LEXIS 113.

The exclusionary effect of the language in this section, "unless otherwise provided by law," embraces not only a statute providing a calendar year basis, but also a statute specifying in particularity some beginning date of a fiscal year other than July 1. OAG 85-65, 1985 Ky. AG LEXIS 85.

The fiscal year of counties is governed by this section, except where provided otherwise by statute. OAG 85-65, 1985 Ky. AG LEXIS 85.

Section 68.060 specifically adopts this section by providing that the fiscal year of each county shall begin on July 1, and end on June 30 next following. OAG 85-65, 1985 Ky. AG LEXIS 85.

School boards and cities are covered by this section, except where otherwise provided by statute. OAG 85-65, 1985 Ky. AG LEXIS 85.

The fiscal year provisions of this section apply to fire protection districts created and organized under KRS Ch. 75, unless otherwise provided by statutory law. OAG 85-65, 1985 Ky. AG LEXIS 85.

By enactment of KRS 75.255 in 1974 the General Assembly abandoned the statutory alternative of a calendar year for fire protection districts, while leaving intact the prior provision of KRS 75.031(2) relating to a "fiscal year basis." Thus by this legislation a fire protection district is permitted to use only a fiscal year basis. And since KRS Ch. 75 does not specify some beginning date other than July 1, of each year, the July 1 beginning date mentioned specifically in this section governs such fire protection districts. OAG 85-65, 1985 Ky. AG LEXIS 85.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Fiscal year for counties, KRS 68.060.

Fiscal year for highway purposes, KRS 176.260.

Fiscal year for school districts, KRS 160.450.

§ 170. Property exempt from taxation — Cities may exempt factories for five years.

There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system either within or without the Commonwealth of Kentucky, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location. Notwithstanding the provisions of Sections 3, 172, and 174 of this Constitution to the contrary, the General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property.

History.

Amendment, proposed Acts 1954, ch. 111, § 1, ratified November, 1955; amendment, proposed Acts 1970, ch. 186, § 1, ratified November, 1971; amendment, proposed Acts 1974, ch. 105, § 1, ratified November, 1975; amendment, proposed Acts 1980, ch. 113, § 1, ratified November, 1981; amendment, proposed Acts 1990, ch. 151, § 1, ratified November, 1990; amendment, proposed Acts 1998, ch. 227, § 1, ratified November, 1998.

Compiler's Notes.

The General Assembly in 1998 (Acts 1998, ch. 227, § 1) proposed an amendment to this section of the Constitution, which amendment was ratified by the voters at the regular election in November, 1998. Prior to the amendment, the section read: "There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an

agency of the United States government or by the railroad retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

The General Assembly in 1990 (Acts 1990, ch. 151, § 1) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election in November, 1990. Prior to the amendment this section read:

"§ 170. Property exempt from taxation — Cities may exempt factories for five years

There shall be exempted from taxation public property used for public purposes; places actually used for for religious worship, with the grounds attached thereto and used and appurtenant to the house of worship, not exceeding one-half acre in cities or towns, and not exceeding two acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding one-half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto: household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

An amendment to this section was also proposed by the 1990 General Assembly (Acts 1990, ch. 150, § 3), was submitted to the voters for ratification or rejection at the regular election in November, 1990, and was defeated.

The General Assembly in 1980 (Acts 1980, ch. 113, § 1) proposed an amendment to this section of the Constitution, which amendment was ratified by the voters at the regular election in November, 1981. Prior to the amendment, the section read: "**§ 170. Property exempt from taxation — Cities may exempt factories for five years. —** There shall be exempt from taxation public property used for public purposes; places actually used for religious worship, with the grounds attached thereto and used and appurtenant to the house of worship, not exceeding one half acre in cities or towns, and not exceeding two acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding one half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The general assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

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1. Construction.

The provisions of this section and Const., § 172 are mandatory; therefore, a city council has no power to remit or compromise taxes due the city. Shuck v. Lebanon, 68 S.W. 843, 24 Ky. L. Rptr. 451, 1902 Ky. LEXIS 319 (Ky. Ct. App. 1902).

Tax exemption privileges may not be extended beyond the clear import of the provisions of this section. Trintiy Temple Charities, Inc. v. Louisville, 300 Ky. 172, 188 S.W.2d 91, 1945 Ky. LEXIS 505 (Ky. 1945).

The exemption for property used for religious purposes under this section is to be strictly construed. Ashland v. Calvary Protestant Episcopal Church, 278 S.W.2d 708, 1955 Ky. LEXIS 483 (Ky. 1955).

2. Application.

The provision of this section and a statute that public property used for public purposes shall be exempt from taxation refers only to general ad valorem or property taxes and not to special assessments for street improvements. Mt. Sterling v. Montgomery County, 152 Ky. 637, 153 S.W. 952, 1913 Ky. LEXIS 702 (Ky. 1913).

This section does not apply where the Legislature has declined to give the state jurisdiction over intangible property of a nonresident beneficiary. Henderson v. Barrett's Ex'r, 152 Ky. 648, 153 S.W. 992, 1913 Ky. LEXIS 718 (Ky. 1913).

Tobacco held by the French government for sale under its governmental monopoly for all tobacco sales in territory under its jurisdiction is not subject to Commonwealth taxation and such taxation would be a clear interference with the sovereignty of France as recognized by the United States and the Commonwealth. French Republic v. Board of Sup'rs, 200 Ky. 18, 252 S.W. 124, 1923 Ky. LEXIS 13 (Ky. 1923).

The exemptions of this section do not apply to foreign institutions owning property within the state but conducting their charitable or educational activities wholly outside the state. Lloyd Library & Museum v. Chipman, 232 Ky. 191, 22 S.W.2d 597, 1929 Ky. LEXIS 420 (Ky. 1929). See Layman Foundation v. Louisville, 232 Ky. 259, 22 S.W.2d 622, 1929 Ky. LEXIS 436 (Ky. 1929).

This section applies to ad valorem taxes and has no application to license, franchise, occupation, or excise taxes levied under proper authority. Louisville v. Cromwell, 233 Ky. 828, 27 S.W.2d 377, 1930 Ky. LEXIS 663 (Ky. 1930).

The state income tax law is not a property tax and therefore is not governed by the provisions of this section nor by Const., §§ 171 and 172. Reynolds Metal Co. v. Martin, 269 Ky. 378, 107 S.W.2d 251, 1937 Ky. LEXIS 604 (Ky. 1937).

The exemption of public property used for public purposes exempts such property from ad valorem taxation only. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

This section only applies to ad valorem taxes. Thomas v. Elizabethtown, 403 S.W.2d 269, 1965 Ky. LEXIS 8 (Ky. 1965). See Commonwealth ex rel. Luckett v. Elizabethtown, 435 S.W.2d 78, 1968 Ky. LEXIS 199 (Ky. 1968), overruled in part, Commonwealth v. Interstate Gas Supply, Inc., 554 S.W.3d 831, 2018 Ky. LEXIS 140 (Ky. 2018).

3. Effect on Prior Law.

Acts of the Legislature exempting property from taxation adopted prior to the adoption of the constitution were repealed by this section. Newport v. Masonic Temple Ass'n, 103 Ky. 592, 45 S.W. 881, 20 Ky. L. Rptr. 266, 1898 Ky. LEXIS 23 (Ky. 1898). See Campbell County v. Newport & C. Bridge Co., 112 Ky. 659, 66 S.W. 526, 23 Ky. L. Rptr. 2056, 1902 Ky. LEXIS 208 (Ky. 1902).

Prior statute exempting farm property from municipal taxation was invalidated by this section. Brown v. Dover, 274 Ky. 692, 120 S.W.2d 225, 1938 Ky. LEXIS 330 (Ky. 1938).

4. Crops.

Tobacco grown in one calendar year and in the hands of the producer may be assessed at any assessing date during the following year. Burley Tobacco Growers' Co-op. Asso. v. Carrollton, 208 Ky. 270, 270 S.W. 749, 1925 Ky. LEXIS 268 (Ky. 1925).

Under this section the word "grown" is used in the sense of the word "raised." Burley Tobacco Growers' Co-op. Asso. v. Carrollton, 208 Ky. 270, 270 S.W. 749, 1925 Ky. LEXIS 268 (Ky. 1925).

5. Household Goods.

Though this section exempts from taxation personal property property of a person with a family "not exceeding $250 in value," nothing is exempt from levy and sale for such taxes as the owner does in fact owe. Reams v. McHargue, 111 Ky. 163, 63 S.W. 437, 23 Ky. L. Rptr. 540, 1901 Ky. LEXIS 184 (Ky. 1901), aff'd, 71 S.W. 526, 24 Ky. L. Rptr. 1385 (1903) (decision prior to 1955 amendment).

The question of household exemptions may not be raised in an action regarding taxable property and a sheriff's settlements of tax collections. Livingston County v. Dunn, 244 Ky. 460, 51 S.W.2d 450, 1932 Ky. LEXIS 453 (Ky. 1932).

The word "place," which appears in other exemptions of this section, is not used in connection with the educational and charitable institutions which are exempted and cannot be used to limit the two (2) constitutional exemptions. Department of Revenue v. Louisville Children's Theater, Inc., 565 S.W.2d 643, 1978 Ky. App. LEXIS 513 (Ky. Ct. App. 1978).

6. Homesteads.

The dollar value principle applies to the $6500 limit of the homestead exemption and therefore the 1974 amendment to

subsection (2) (c) of KRS 132.810 which provides that the $6500 exemption would be construed in terms of the purchasing power of the dollar in 1972 is valid. Lester v. Ft. Thomas, 531 S.W.2d 490, 1975 Ky. LEXIS 35 (Ky. 1975).

7. Manufacturing.

Exemption from taxation may be given to manufacturing establishments for a period of five (5) years from their establishment but it does not apply to those who are already established in the city. Middlesboro v. New South Brewing & Ice. Co., 108 Ky. 351, 56 S.W. 427, 21 Ky. L. Rptr. 1782, 1900 Ky. LEXIS 46 (Ky. 1900).

A manufacturer claiming an exemption under this section must allege that his business was a new business in the city and the failure to so allege is not cured by the allegation that a statement as to this fact had been filed with the city assessor. Louisville Car Wheel & R. Supply Co. v. Louisville, 146 Ky. 573, 142 S.W. 1043, 1912 Ky. LEXIS 102 (Ky. 1912).

One engaged in generating electricity for distribution and sale is engaged in manufacturing within the provisions of this section and a statute authorizing municipalities to exempt manufacturing establishments from taxation. Kentucky Electric Co. v. Buechel, 146 Ky. 660, 143 S.W. 58, 1912 Ky. LEXIS 142 (Ky. 1912).

The promotion of new and expanded industrial development, by providing tax benefits, is a fixed policy of the Commonwealth. Department of Revenue v. Spalding Laundry & Dry Cleaning Co., 436 S.W.2d 522, 1968 Ky. LEXIS 184 (Ky. 1968).

8. — Exempt.

A new corporation composed in part of the stockholders of the original corporation, which took over the business of an insolvent company and purchased its establishment, was not entitled to exemption under an ordinance exempting manufacturing establishments from taxation for five (5) years. Victor Cotton Oil Co. v. Louisville, 149 Ky. 149, 148 S.W. 10, 1912 Ky. LEXIS 592 (Ky. 1912).

Where a manufacturer purchased a foundry site and entered upon a new manufacturing enterprise of a different kind, the continued manufacture of some articles made by the old company did not stop exemption from taxation as a new enterprise. Voght Bros. Mach. Co. v. Sea, 181 Ky. 327, 204 S.W. 76, 1918 Ky. LEXIS 509 (Ky. 1918).

9. — Not Exempt.

Where a corporation merely buys out and continues in the same city, though increasing the capacity of, the business of manufacturing establishments, which are going concerns and have no purpose of abandoning their business, there is no location therein of a new business, so as to entitle it to exemption from taxation under an ordinance passed pursuant to a statute and this section. Continental Tobacco Co. v. Louisville, 123 Ky. 173, 94 S.W. 11, 29 Ky. L. Rptr. 616, 1906 Ky. LEXIS 129 (Ky. 1906).

A corporation which is created by the consolidation of three (3) corporations and which continues the business in the same city by means of a larger plant and greater capital is not entitled to exemption from taxation under an ordinance passed pursuant to a statute authorized by this section of the constitution. Jones Bros. v. Louisville, 142 Ky. 759, 135 S.W. 301, 1911 Ky. LEXIS 299 (Ky. 1911).

A railroad company which had for many years maintained its shops in the city and erected new buildings on land part of which it had purchased prior to the passage of an ordinance exempting property of manufacturers from taxation and installed new machinery but continued substantially the same work was not entitled to exemption. Louisville & N. R. Co. v. Louisville, 143 Ky. 258, 136 S.W. 611, 1911 Ky. LEXIS 391 (Ky. 1911).

A corporation organized as a wholesale business to take over a largely retail bakery business was not entitled to exemption from municipal taxation as a new manufacturing establishment where the corporation was in effect controlled, owned and operated by the proprietor of the former business. Louisville v. New York Baking Co., 151 Ky. 758, 152 S.W. 980, 1913 Ky. LEXIS 587 (Ky. 1913). See B. F. McCormick Lumber Co. v. Winchester, 155 Ky. 494, 159 S.W. 997, 1913 Ky. LEXIS 285 (Ky. 1913).

Where a company established a box factory in the city wherein wooden boxes were manufactured and thereafter added a plant manufacturing paper boxes, this last plant was not a new business entitling it to tax exemption. Mengel Box Co. v. Sea, 167 Ky. 193, 180 S.W. 347, 1915 Ky. LEXIS 828 (Ky. 1915) (Ky. 1915).

A mere expansion of a manufacturing business from a very small to a very large business does not exempt the property from taxation. Louisville v. Louisville Tin & Stove Co., 170 Ky. 557, 186 S.W. 124, 1916 Ky. LEXIS 65 (Ky. 1916).

10. — Corporate Stock.

An effort to exempt the stock of a corporation from taxation would be invalid. Commonwealth ex rel. Hopkins v. Fidelity Trust Co., 147 Ky. 77, 143 S.W. 1037, 1912 Ky. LEXIS 216 (Ky. 1912).

11. Public Property.

This section authorizes the exemption from taxation of property owned by a city necessary to the exercise of governmental duties, but not property held and used by a city for mere money making purposes, or for the comfort of its citizens. Board of Councilmen v. Commonwealth, 82 S.W. 1008, 26 Ky. L. Rptr. 957, 1904 Ky. LEXIS 406 (Ky. Ct. App. 1904).

Where nonnegotiable bonds, acquired by a city as part of the consideration for the sale of gas plant, are held by the city solely for the purpose of devoting the income to paying the expenses of lighting the streets, they are used for public purposes. Board of Councilmen v. Commonwealth, 94 S.W. 648, 29 Ky. L. Rptr. 699, 1906 Ky. LEXIS 323 (Ky. Ct. App. 1906).

Property of a municipality acquired and necessary to the discharge of strictly local municipal purposes is held for a public purpose and is exempt from taxation. Board of Councilmen v. White, 224 Ky. 570, 6 S.W.2d 699, 1928 Ky. LEXIS 639 (Ky. 1928).

In order to be exempt from taxation, property must be owned by all the citizens of a state or community. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943).

The fact that property is devoted to public purposes does not exempt it from taxation unless it is also publicly owned, and mere use for public purposes does not clothe property with public ownership. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943).

12. — Exempt.

The property of a city used in connection with its fire department, and also public parks of the city, are exempt from state taxation. Owensboro v. Commonwealth, 105 Ky. 344, 49 S.W. 320, 20 Ky. L. Rptr. 1281, 1899 Ky. LEXIS 236 (Ky. 1899).

A waterworks system owned and operated by a city is of a governmental and public nature and is exempt from taxation as public property used for a public purpose and the fact that water rents are paid by the inhabitants using the water does not alter the public character of the waterworks system nor make it subject to taxation. Commonwealth v. Covington, 128 Ky. 36, 107 S.W. 231, 32 Ky. L. Rptr. 837, 1908 Ky. LEXIS 28 (Ky. 1908). See City of Covington v. District of Highlands, 110 S.W. 338, 33 Ky. L. Rptr. 323 (1908); Ryan v. Louisville, 133 Ky. 714, 118 S.W. 992, 1909 Ky. LEXIS 226 (Ky. 1909); District of Highlands v. Covington, 164 Ky. 815, 176 S.W. 192, 1915 Ky. LEXIS 446 (Ky. 1915).

A sinking fund created to liquidate the bonded debt incurred by a city in the purchase of a waterworks system is but so much taxes collected to liquidate a debt, incurred for a public purpose, notwithstanding it is invested in interest-bearing stocks and bonds, and is exempt from taxation as public property used for a public purpose. Commonwealth ex rel. Albritton v. Sinking Fund Comm'rs of Lebanon Waterworks Co., 130 Ky. 61, 112 S.W. 1128 (Ky. 1908).

Where the rents received by a city for its wharf property leased to various persons are turned into the sinking fund for payment of interest and principal of the bonded indebtedness after policing, lighting, and repairing the property, the property is used for public purposes and is exempt from taxation. Commonwealth v. Louisville, 133 Ky. 845, 119 S.W. 161, 1909 Ky. LEXIS 232 (Ky. 1909).

Under this section the city hall of the city of Louisville is exempt from taxation. Schwalk's Adm'r v. Louisville, 135 Ky. 570, 122 S.W. 860, 1909 Ky. LEXIS 322 (Ky. 1909).

The marketplace and stalls therein owned and maintained by a city where gardeners and meat venders may display their goods for sale under regulations prescribed by the city at a rental charge for their use for the payment of the expense of maintenance are exempt from taxation as public property used for public purposes. Paducah v. Commonwealth, 136 Ky. 232, 124 S.W. 286, 1910 Ky. LEXIS 473 (Ky. 1910).

Property and bonds of municipal housing commissions are exempt from taxation. Webster v. Frankfort Housing Com., 293 Ky. 114, 168 S.W.2d 344, 1943 Ky. LEXIS 559 (Ky. 1943).

Fourth-class city was exempt from the payment of use taxes on automobiles purchased by the city for municipal use. Thomas v. Elizabethtown, 403 S.W.2d 269, 1965 Ky. LEXIS 8 (Ky. 1965).

The Kentucky bar center building located in Frankfort, Kentucky, is public property and therefore exempt from the levy of ad valorem taxes. Travis v. Landrum, 607 S.W.2d 124, 1980 Ky. App. LEXIS 373 (Ky. Ct. App. 1980).

The fact that the Commonwealth of Kentucky is not a named grantee in the deed to the state bar center building does not prevent the property from being public property and does not deprive the property of a tax exempt status. Travis v. Landrum, 607 S.W.2d 124, 1980 Ky. App. LEXIS 373 (Ky. Ct. App. 1980).

13. — Not Exempt.

Under this section a municipal waterworks constructed and maintained by the city is not exempt from taxation, as such a utility is used for the profit and convenience of the city residents and not for purely public purposes, as such public purposes means purely governmental purposes. Covington v. Kentucky, 173 U.S. 231, 19 S. Ct. 383, 43 L. Ed. 679, 1899 U.S. LEXIS 1434 (U.S. 1899).

Though a municipality has acquired all the shares of stock of a water company, the property of the water company is not thereby converted into public property used for public purposes, and thereby exempt from taxation. Bell v. Louisville, 106 S.W. 862, 32 Ky. L. Rptr. 699 (1908).

Property of a rural electric cooperative corporation is not public property and cannot be exempted from taxation, since the public generally are not ipso facto members of such a corporation. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943).

Property purchased by the city at a commissioner's sale to satisfy tax and improvement liens and held solely for resale is subject to state, county, and school taxes. Paducah v. Commonwealth, 297 Ky. 107, 178 S.W.2d 982, 1944 Ky. LEXIS 674 (Ky. 1944).

14. Places of Worship.

In contrast to the broad and liberal terms of exemption granted by this section to educational and charitable institutions, the exemptions granted to religious organizations are narrow and strictly construed. Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 1945 Ky. LEXIS 565 (Ky. 1945).

There is no inherent immunity from taxation in favor of the church; immunity must come from an express waiver of the sovereign. Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 1945 Ky. LEXIS 565 (Ky. 1945).

It is proper to give a strict interpretation of what is owned by a religious or educational institution for the purpose of determining question of exemption from taxation. Broadway & Fourth Ave. Realty Co. v. Louisville, 303 Ky. 202, 197 S.W.2d 238, 1946 Ky. LEXIS 814 (Ky. 1946).

While a portion of a church's property containing houses rented to tenants was not "owned and occupied by" the church and, thus, was not exempt from tax assessment under Ky. Const. § 170, the remaining acreage outside the two houses was occupied by the church and was exempt as the evidence showed the church's periodic use of the property for recreational and meditation purposes. Freeman v. St. Andrew Orthodox Church, Inc., 294 S.W.3d 425, 2009 Ky. LEXIS 92 (Ky. 2009).

15. — Exempt.

A Y.M.C.A. organized to endeavor to bring young men under moral and religious influences, and holding meetings every Sunday afternoon in a building owned by the association, actually uses its building for religious worship within the meaning of this section, and it is exempt from taxation. Commonwealth v. YMCA, 116 Ky. 711, 76 S.W. 522, 25 Ky. L. Rptr. 940, 1903 Ky. LEXIS 233 (Ky. 1903).

A portion of a lot on which a church is built which is practically unoccupied, but is appurtenant to the church, and used with it by the congregation, is exempt from taxation. City of Louisville v. Werne, 80 S.W. 224, 25 Ky. L. Rptr. 2196 (1904).

Moneys intended to be devoted to acquiring a place of religious worship, as well as the place itself, are exempt from taxation. Commonwealth v. First Christian Church, 169 Ky. 410, 183 S.W. 943, 1916 Ky. LEXIS 703 (Ky.), modified, 171 Ky. 62, 186 S.W. 880, 1916 Ky. LEXIS 289 (Ky. 1916).

A building owned by a church diocese the entire rent from which is used solely for denominational school purposes is exempt from taxation so long as the income is so used. Church of The Good Shepherd v. Commonwealth, 180 Ky. 465, 202 S.W. 894, 1918 Ky. LEXIS 85 (Ky. 1918).

As amended in 1990, Ky. Const. § 170 broadened the class of properties which could be held by a religious institution and not be subject to an ad valorem tax. Because there was no evidence that a church intended to use its property for investment purposes or to construct anything other than a church, it was entitled to a tax exemption. St. Andrew Orthodox Church, Inc. v. Thompson, 2007 Ky. App. LEXIS 260 (Ky. Ct. App. Aug. 10, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 523 (Ky. Ct. App. Aug. 10, 2007).

16. —Not Exempt.

A trust fund devoted to the propagation of the principles of primitive Christianity, as taught by the Christian Church, by means of the employment of an evangelist and otherwise, is not exempt from taxation on the ground that it is church property. Commonwealth v. Thomas, 119 Ky. 208, 83 S.W. 572, 26 Ky. L. Rptr. 1128, 1904 Ky. LEXIS 160 (Ky. 1904).

Where a lot belonging to a religious organization and adjoining its church property was occupied by a building rented out for store and dwelling purposes, it was not exempt from taxation as property used for religious worship. Calvary Baptist Church v. Milliken, 148 Ky. 580, 147 S.W. 12, 1912 Ky. LEXIS 486 (Ky. 1912).

An office building owned by a board of education of a church conference and used in part for offices for the owner, the rent from the remainder being employed in the partial support of a

college maintained by the conference in another city, is exempt from taxation. Commonwealth v. Board of Education, 166 Ky. 610, 179 S.W. 596, 1915 Ky. LEXIS 745 (Ky. 1915).

Where one entered into a contract to purchase the property of a church congregation, paying about one third (⅓) of the consideration in cash and agreeing to pay the remainder on demand, and the congregation retained a lien on the property, possession of which it was to retain until its new building was completed, the contract was valuable property subject to taxation and not exempt therefrom under this section. Commonwealth v. First Christian Church, 169 Ky. 410, 183 S.W. 943, 1916 Ky. LEXIS 703 (Ky.), modified, 171 Ky. 62, 186 S.W. 880, 1916 Ky. LEXIS 289 (Ky. 1916).

Use and not ownership is the controlling factor in determining whether property is used for religious worship and a building adjoining church property, used in part for religious activities but in part rented to a business, is not exempt from taxation. Ashland v. Calvary Protestant Episcopal Church, 278 S.W.2d 708, 1955 Ky. LEXIS 483 (Ky. 1955).

Colorado nonprofit corporation that functioned as a church extension fund to generate revenue and provide financing to affiliated churches did not qualify as an "institution of religion" under K.Y. Const. § 170, because it was not itself a church and was not controlled by a church; this was true even though it was exempt from federal income tax as an "integrated auxiliary" of a church. When a nonprofit corporation's board structure allows it to appoint the majority of its directors independently of its member churches, it cannot be considered an agency or under the control of any religious body for purposes of qualifying for a tax exemption under § 170. Dunn v. Solomon Found., 723 S.W.3d 711, 2025 Ky. LEXIS 211 (Ky. 2025).

17. Parsonages.

A church parsonage which is not occupied by the minister but is rented to another is not exempt, though erected on the church lot, and though the rent is paid to the minister. Broadway Christian Church v. Com. & Trustees Broadway Christian Church, 112 Ky. 448, 66 S.W. 32, 23 Ky. L. Rptr. 1695, 1902 Ky. LEXIS 184 (Ky. Ct. App. 1902).

In order for a parsonage to be exempt from taxation, it must be owned by a religious society as well as occupied by a minister. Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 1945 Ky. LEXIS 565 (Ky. 1945).

Residence occupied by an ordained minister, unaffiliated with any organized church, and owned by a religious corporation of which the minister was the principal owner, does not qualify for tax exemption under this section. Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 1945 Ky. LEXIS 565 (Ky. 1945).

18. Places of Burial.

Funds of a cemetery company derived from sale of lots are not exempt from taxation. Commonwealth v. Lexington Cemetery Co., 114 Ky. 165, 70 S.W. 280, 24 Ky. L. Rptr. 924, 1902 Ky. LEXIS 139 (Ky. 1902).

The cemetery of a city expending the money realized from the sale of unsold lots and the income from rentals in maintaining the cemetery is exempt from taxation. Paducah v. Commonwealth, 136 Ky. 232, 124 S.W. 286, 1910 Ky. LEXIS 473 (Ky. 1910).

Where the Legislature created a cemetery company as a body politic, authorized its maintenance and development by specified financial means, retained the power to alter or modify the legal structure of the company and authorized the levy of taxes to maintain the company should the other financial arrangements fail, the funds of the company were public property used for a public purpose within the meaning of this section. Cave Hill Cemetery Co. v. Scent, 352 S.W.2d 61, 1961 Ky. LEXIS 187 (Ky. 1961).

19. Public Libraries.

The exemption of public libraries is not limited only to libraries owned and maintained by a governmental unit in light of the fact that such governmentally owned libraries would in any case be exempt as public property used for public purposes. Louisville v. Filson Club, 295 S.W.2d 340, 1956 Ky. LEXIS 159 (Ky. 1956).

Where a nonprofit membership corporation, not incorporated for the purpose of maintaining a library as such, was functioning primarily as a public library, and its membership activities and benefits were minor in comparison therewith, its property was exempt from taxation. Louisville v. Filson Club, 295 S.W.2d 340, 1956 Ky. LEXIS 159 (Ky. 1956).

20. Public Charities.

A masonic lodge which provides for its members and their families, or the widows and orphans of those who are dead, is a private charity and not exempt from municipal taxation. Newport v. Masonic Temple Ass'n, 108 Ky. 333, 56 S.W. 405, 21 Ky. L. Rptr. 1785, 1900 Ky. LEXIS 41 (Ky. 1900). But see Widows' & Orphans' Home v. Commonwealth, 126 Ky. 386, 103 S.W. 354, 31 Ky. L. Rptr. 775, 1907 Ky. LEXIS 49 (Ky. 1907).

A trust fund devoted to the propagation of the principles of primitive Christianity, as taught by the Christian Church, is not a "purely public charity," within the meaning of this section exempting such charities from taxation. Commonwealth v. Thomas, 119 Ky. 208, 83 S.W. 572, 26 Ky. L. Rptr. 1128, 1904 Ky. LEXIS 160 (Ky. 1904).

The property used as an infirmary or hospital, as an adjunct to a medical school, any gain resulting from the operation of the medical school going to the owners of the property, is not exempt from taxation, though considerable charity work is performed in the treatment of patients and dispensing medicines. Wathen v. City of Louisville, 85 S.W. 1195, 27 Ky. L. Rptr. 635, 1905 Ky. LEXIS 261 (Ky. Ct. App. 1905).

A fraternal organization which owned a building and rented the rooms for lodge and religious purposes was not a purely public charity even though it did engage in some charity work. Vogt v. Louisville, 173 Ky. 119, 190 S.W. 695, 1917 Ky. LEXIS 427 (Ky. 1917). See Merrick Lodge, I. O. O. F. v. Lexington, 175 Ky. 275, 194 S.W. 92, 1917 Ky. LEXIS 295 (Ky. 1917).

A church is not a purely public charity under this section. Sage's Ex'rs v. Commonwealth, 196 Ky. 257, 244 S.W. 779, 1922 Ky. LEXIS 518 (Ky. Ct. App. 1922).

The Benevolent Association of Elks is not an institution of purely public charity within the meaning of this section. Benevolent Ass'n of Elks v. Wintersmith, 204 Ky. 20, 263 S.W. 670, 1924 Ky. LEXIS 393 (Ky. 1924).

In the exemption granted in this section to purely public charities, the word "purely" is definitive of the word "charity" and does not instead modify the word "public." Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

Property of organization claiming right to tax exemption could not have been used for charitable purposes unless charity was actually dispensed there, or unless it provided necessary quarters for an organization whose prime aims and functions were of an actively charitable nature. Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

The burden of proof rests upon organization claiming tax exemption as an institution of purely public charity to establish clearly its right to an exemption from payment of taxes. Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

The property of an American Legion post, which contributes a portion of its income incidentally to charity, is not tax exempt as the property of a purely public charity. Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

To warrant an exemption from payment of taxes, institution must itself be a charity, income from its property must be used to further its charitable purpose, and property must be employed for purely charitable purpose. Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

When framers of constitution wrote that an institution of purely public charity was exempt from taxation, they had in mind an institution that dispenses concrete, practical, objective charity, characterized by things actually done for relief of the unfortunate and alleviation of suffering. Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

For property to be exempt from ad valorem taxation the property does not have to be employed directly in charitable work, for it is sufficient that the ultimate effect of the use of the property is to accomplish the charitable purposes of the institution. Commonwealth ex rel. Luckett v. Grand Lodge of Kentucky & M., 459 S.W.2d 601, 1970 Ky. LEXIS 139 (Ky. 1970).

To qualify as a charity for purposes of tax exemption an organization may promote activities which reasonably better the condition of mankind and need not confine its activities solely to those which fulfill the basic human needs for food, clothing and shelter. Banahan v. Presbyterian Housing Corp., 553 S.W.2d 48, 1977 Ky. LEXIS 471 (Ky. 1977).

Although, as a general principle, provisions granting tax exemptions must be strictly construed, charity has been construed under this section to include activities which reasonably better the condition of mankind and is broader than relief to the needy poor. Department of Revenue v. Central Medical Laboratory, Inc., 555 S.W.2d 632, 1977 Ky. App. LEXIS 800 (Ky. Ct. App. 1977).

Charity is not just providing necessaries for the poor or unfortunate, but rather it may consist of any activities which will reasonably better the living conditions of mankind generally and a charity need not lessen the burden of government to be tax exempt. Department of Revenue v. Louisville Children's Theater, Inc., 565 S.W.2d 643, 1978 Ky. App. LEXIS 513 (Ky. Ct. App. 1978).

The public charities exemption is designed to apply to real property taxes and does not constitute a carte blanche exemption of taxation. Children's Psychiatric Hosp., Inc. v. Revenue Cabinet, 989 S.W.2d 583, 1999 Ky. LEXIS 43 (Ky. 1999).

21. — Fees on Charitable Gaming.

KRS 238.570(1), imposing a regulatory fee on receipts from charitable gaming, does not violate Ky. Const., § 226(2)(f), which provides that money raised by charitable gaming be expended only for charitable purposes; nor does it violate this section, which provides that charitable institutions shall be exempt from tax, or Ky. Const., § 171, which provides that taxes shall be uniform on all property in the state. Commonwealth v. Louisville Atlantis Community/Adapt, 971 S.W.2d 810, 1997 Ky. App. LEXIS 86 (Ky. Ct. App. 1997).

22. — Sales Tax.

Although a municipal housing commission is an institution of purely public charity, it is not exempt from the imposition of the state sales tax on utilities purchased by the commission, as such a tax is in fact imposed on the seller. Marcum v. Louisville Municipal Housing Com., 374 S.W.2d 865, 1963 Ky. LEXIS 182 (Ky. 1963), limited, Thomas v. Elizabethtown, 403 S.W.2d 269, 1965 Ky. LEXIS 8 (Ky. 1965).

Where all of the income of a children's theater was derived primarily from public and private donations and devoted to charitable endeavors and the salaries of the staff were an expense of the charity, such theater was exempt from sales taxation as a public charity and as an educational institution. Department of Revenue v. Louisville Children's Theater, Inc., 565 S.W.2d 643, 1978 Ky. App. LEXIS 513 (Ky. Ct. App. 1978).

23. — Use Tax.

A municipal housing commission, as an institution of purely public charity, is exempt from the payment of a use tax on utilities it purchases. Marcum v. Louisville Municipal Housing Com., 374 S.W.2d 865, 1963 Ky. LEXIS 182 (Ky. 1963), limited, Thomas v. Elizabethtown, 403 S.W.2d 269, 1965 Ky. LEXIS 8 (Ky. 1965).

24. — Exempt.

Under this section the Kentucky Female Orphan School, a corporation which provides for the care and education of female orphan children, is an institution of purely public charity and is exempt from taxation, for though some paying pupils may also be received, the amount received therefrom is devoted solely to the maintenance of the school, and, in view of the long settled legislative policy of the state, the word "institution," as used in this section, must be construed to include the corporation and all of its property, wherever situated, and in whatever form its investments may be found. Trustees of Kentucky Female Orphan School v. Louisville, 100 Ky. 470, 36 S.W. 921, 19 Ky. L. Rptr. 1091, 19 Ky. L. Rptr. 1916, 1896 Ky. LEXIS 130 (Ky. 1896).

A sectarian school where preference is given to the admission of members of a particular religious faith is nonetheless a charitable institution, and its property is exempt from taxation. Louisville v. Southern Baptist Theological Seminary, 100 Ky. 506, 36 S.W. 995, 19 Ky. L. Rptr. 1100, 1896 Ky. LEXIS 132 (Ky. 1896). See Louisville v. Nazareth Literary & Benevolent Inst., 19 Ky. L. Rptr. 1102 (1897).

Trust funds bequeathed to be invested and the income used solely for the education of poor children are exempt from taxation. Commonwealth v. Gray's Trustee, 115 Ky. 665, 74 S.W. 702, 25 Ky. L. Rptr. 52, 1903 Ky. LEXIS 144 (Ky. 1903).

Where a will directed the executors to establish a trust to continue five (5) years from the death of the testator, and during that time to sell certain real estate for the benefit of the trust fund, and at the expiration of such five (5) years to terminate the trust by paying the funds to a specified orphans' home, which was a nontaxable charitable institution, the real estate so held by the trustees during such five (5) years was not subject to taxation. Norton's Ex'rs v. Louisville, 118 Ky. 836, 82 S.W. 621, 26 Ky. L. Rptr. 846, 1904 Ky. LEXIS 123 (Ky. 1904).

A corporation whose sole object is to provide a suitable home for the destitute widows and orphans of deceased members of a certain secret society is an institution of purely public charity, and its property is exempt from taxation. Widows' & Orphans' Home v. Commonwealth, 126 Ky. 386, 103 S.W. 354, 31 Ky. L. Rptr. 775, 1907 Ky. LEXIS 49 (Ky. 1907).

The fact that a fund bequeathed to a trustee for the purpose of founding a home for old and destitute women is withheld by the trustee and executor from the board of managers of the home pending a contest of the will does not remove it from the exemption provided for in this section. Commonwealth v. Parr's Ex'r, 167 Ky. 46, 179 S.W. 1048, 1915 Ky. LEXIS 791 (Ky. 1915).

A hospital incorporated by trustees as a charitable corporation, having no capital stock and holding property for the maintenance of a hospital without pecuniary profit, and having funds invested, the income of which is used solely in meeting its necessary expenses, is an institution of purely public charity whose invested fund is exempt from taxation. Mason County v. Hayswood Hospital of Maysville, 167 Ky. 17, 179 S.W. 1050, 1915 Ky. LEXIS 792 (Ky. 1915).

A Y.M.C.A. operating a restaurant in its building, containing sleeping rooms, for the accommodation of members and others who may apply is exempt from payment of restaurant license tax required by a statute. Corbin YMCA v. Commonwealth, 181 Ky. 384, 205 S.W. 388, 1918 Ky. LEXIS 533 (Ky. 1918).

A corporation whose purpose was the securing of funds for the benefit of retired members, their widows and infant children who were affiliated with certain religious denominations is a public charity exempt from taxation. Preachers' Aid Soc. v. Jacobs, 235 Ky. 790, 32 S.W.2d 343, 1930 Ky. LEXIS 467 (Ky. 1930).

A nonstock, nonprofit corporation which was established to acquire and use funds to provide a home for the destitute widows and orphans of deceased members of the Methodist Episcopal Church and any others who might be placed in the corporation's charge was a purely public charity and therefore exempt from taxation. Gray v. Methodist Episcopal Church, etc., 272 Ky. 646, 114 S.W.2d 1141, 1938 Ky. LEXIS 180 (Ky. 1938).

A building used as the headquarters for various affairs of a lodge whose basic objective was charity was exempt from ad valorem taxation even though the building was not used directly in the lodge's various charitable activities. Commonwealth ex rel. Luckett v. Grand Lodge of Kentucky & M., 459 S.W.2d 601, 1970 Ky. LEXIS 139 (Ky. 1970).

Where all purposes of foundation were charitable in nature, the fact that all of its stated purposes had not been carried out and that its stated purposes were not charities which fulfill basic human needs did not deprive it of tax exempt status. Commonwealth, Dep't of Revenue ex rel. Luckett v. Isaac W. Bernheim Foundation, Inc., 505 S.W.2d 762, 1974 Ky. LEXIS 796 (Ky. 1974).

Two (2) nonprofit corporations, whose purposes include, among other things, the provision of housing to low and moderate income families of elderly or handicapped persons, are exempt from ad valorem taxation as institutions of purely public charity. Banahan v. Presbyterian Housing Corp., 553 S.W.2d 48, 1977 Ky. LEXIS 471 (Ky. 1977).

Where a nonprofit laboratory testing facility performed services for three (3) nonprofit hospitals which would otherwise have been required to perform such services themselves or contract to have them performed, the facility was a public charity as contemplated by this section and was exempt from sales and use taxes. Department of Revenue v. Central Medical Laboratory, Inc., 555 S.W.2d 632, 1977 Ky. App. LEXIS 800 (Ky. Ct. App. 1977).

25. — Not Exempt.

The property of the Kentucky Chautauqua Assembly is not exempt from taxation. Bosworth v. Kentucky Chautauqua Assembly, 112 Ky. 115, 65 S.W. 602, 23 Ky. L. Rptr. 1393, 1901 Ky. LEXIS 308 (Ky. 1901).

No exemption will be allowed for property in which a public charity has a remainder interest which is contingent on the life tenant, a 20-year-old girl, dying without issue or her issue dying before reaching majority. Moorman's Ex'r v. Board of Sup'rs, 192 Ky. 242, 232 S.W. 379, 1921 Ky. LEXIS 21 (Ky. 1921).

A contract purporting to lease certain real estate of a charitable organization for a period of 20 years, which provided for a $10,000 down payment and for monthly rentals gradually decreasing over the term, gave the lessee title at the end of the term and an option to purchase at any time during the term for a specified sum less rentals already paid, gave the lessee the right to demolish and remove a large church building on the premises, and the right to assign his interest in the lease, and provided for a commission to the real estate agent who handled the deal, was a contract of sale and not a lease, so the real estate was subject to taxation. Trintiy Temple Charities, Inc. v. Louisville, 300 Ky. 172, 188 S.W.2d 91, 1945 Ky. LEXIS 505 (Ky. 1945).

Appellee organization's real property was not tax exempt under Ky. Const. § 170, where the evidence did not establish that appellee was a purely public charity or that its property was employed for a purely charitable purpose. Hancock v. Prestonsburg Indus. Corp., 365 S.W.3d 199, 2012 Ky. LEXIS 35 (Ky. 2012).

26. Educational Institutions.

A pharmacy college operated by a corporation where there were no stockholders, which charged nominal tuition fees and rented some of its property, the income from which was used for college purposes, was declared to be an institution of education within the meaning of this section. Louisville College of Pharmacy v. Louisville, 82 S.W. 610, 26 Ky. L. Rptr. 825, 1904 Ky. LEXIS 334 (Ky. Ct. App. 1904).

Tax exemption is not confined to the buildings and grounds on which an educational or charitable organization is conducted but applies to all property without regard to its location or the form of the investment, where the income therefrom is devoted exclusively to educational purposes. Louisville v. Presbyterian Orphans Home Soc., 299 Ky. 566, 186 S.W.2d 194, 1945 Ky. LEXIS 469 (Ky. 1945).

Gymnastic association was not an educational institution, and therefore its property was not exempt from taxation. German Gymnastic Ass'n v. Louisville, 306 Ky. 810, 209 S.W.2d 75, 1948 Ky. LEXIS 637 (Ky. 1948).

Bare legal title to, accompanied by a future equity in the income and benefits from property held by an educational institution, where control over the property and all present benefits of ownership remain with the previous owners who are private individuals, is not sufficient ownership by the educational institution to constitute property within the meaning of this section and thus exempt the property from taxation. Arcadia Realty Foundation, Inc. v. Hoenig, 336 S.W.2d 571, 1959 Ky. LEXIS 32 (Ky. 1959).

27. — Exempt.

Where buildings are erected by a church for use as dormitories, in connection with a school where women and girls are taught at a nominal tuition if they are able to pay, and if not are given their education, and the expenses of conducting the institution exceed the income, and the deficit is contributed by charitable people, the buildings are exempt from taxation. Morgan v. Presbyterian Church of United States, 101 S.W. 338, 31 Ky. L. Rptr. 38 (1907).

In the provision exempting property of educational institutions not used or employed for private gain, the words "private gain" have reference only to the gain of the person, corporation, or stockholders owning the property, and hence college property is not rendered liable for taxation because the trustees leased it to a person who maintained a school therein for a profit, the rentals derived by the trustees being wholly applied to the cause of education. Commonwealth v. Trustees of Hamilton College, 125 Ky. 329, 101 S.W. 405, 30 Ky. L. Rptr. 1338, 1907 Ky. LEXIS 303 (Ky. 1907).

A laundry, waterworks system, printing department, cooperative store, and hotel of an educational institution were exempt from taxation. Commonwealth by Ferriell v. Berea College, 149 Ky. 95, 147 S.W. 929, 1912 Ky. LEXIS 578 (Ky. 1912).

The exemption of the University of Kentucky bookstore from the sales tax by the department of revenue is not arbitrary or resulting in a proscribed discrimination. Kennedy Book Store, Inc. v. Dep't of Revenue, 450 S.W.2d 524, 1970 Ky. LEXIS 453 (Ky.), cert. denied, 400 U.S. 824, 91 S. Ct. 46, 27 L. Ed. 2d 52, 1970 U.S. LEXIS 921 (U.S. 1970).

Where a wholesale textbook dealer sold exclusively to local boards of education under contract, the dealer was exempt from sales tax liability regardless of whether its personnel assisted in the sale of the books to students and teachers by the boards. Department of Revenue v. Kentucky Textbooks, Inc., 555 S.W.2d 573, 1977 Ky. LEXIS 508 (Ky. 1977).

28. — Not Exempt.

A board of education is not exempt under this section from the payment of a state gasoline tax. Board of Education v.

Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

Where stock in three (3) private corporations which built and held title to FHA-sponsored public housing projects was transferred to a college which reincorporated them as educational trust institutions and received only bare title to the property thereof and was under no obligation to pay for the property the income from which was vested in the original owners for the payment of the debt owing to them, the transaction resembled a gift in future rather than a bona fide sale and the property; owned by the corporations and purportedly transferred to the college was not exempt from ad valorem taxes. Arcadia Realty Foundation, Inc. v. Hoenig, 336 S.W.2d 571, 1959 Ky. LEXIS 32 (Ky. 1959).

29. Special Assessments.

Special assessments for public improvements are not taxes within the meaning of this section and the statutes implementing it. Logan v. Louisville, 283 Ky. 518, 142 S.W.2d 161, 1940 Ky. LEXIS 379 (Ky. 1940).

30. License Fees.

The exemption for public charities does not apply to license fees and taxes exacted for regulatory purposes. Gray v. Methodist Episcopal Church, etc., 272 Ky. 646, 114 S.W.2d 1141, 1938 Ky. LEXIS 180 (Ky. 1938).

License fees for motor vehicles are not primarily taxes for revenue purposes and, therefore, a church as a purely public charity is not exempt from the payment of such fees. Reeves v. Kentucky Utilities Co., 291 Ky. 226, 163 S.W.2d 482, 1942 Ky. LEXIS 211 (Ky. 1942).

31. Use Tax.

The use tax levied by KRS 139.310 is an excise tax, the incidence of which is so similar to that of an ad valorem tax as to render its enforcement against cities unconstitutional. Commonwealth ex rel. Luckett v. Elizabethtown, 435 S.W.2d 78, 1968 Ky. LEXIS 199 (Ky. 1968), overruled in part, Commonwealth v. Interstate Gas Supply, Inc., 554 S.W.3d 831, 2018 Ky. LEXIS 140 (Ky. 2018).

32. School Tax.

A school tax is not municipal taxation within the meaning of this section and an exemption of a manufacturing plant from municipal taxation does not entitle it to exemption from a school tax although such tax had not been collected for a long period. Louisville v. Board of Education, 154 Ky. 316, 157 S.W. 379, 1913 Ky. LEXIS 66 (Ky. 1913).

The Louisville Water Co., owned and operated for public use by the city, was exempt from taxation for school tax purposes. Board of Education v. Louisville Water Co., 555 S.W.2d 587, 1977 Ky. App. LEXIS 789 (Ky. Ct. App. 1977).

33. Gross Receipts Tax.

Sales by municipalities and by educational and charitable institutions are not exempt from gross receipts taxes. Covington v. State Tax Com., 257 Ky. 84, 77 S.W.2d 386, 1934 Ky. LEXIS 519 (Ky. 1934).

Sales to educational and charitable and to state institutions are exempt from gross receipts taxes. Covington v. State Tax Com., 257 Ky. 84, 77 S.W.2d 386, 1934 Ky. LEXIS 519 (Ky. 1934).

Sales to municipalities are subject to gross receipts taxes except where the purchases are exclusively for use by purely educational or charitable institutions of the municipality. Covington v. State Tax Com., 257 Ky. 84, 77 S.W.2d 386, 1934 Ky. LEXIS 519 (Ky. 1934).

34. Multiple Ownership.

Although land owned by a charitable organization and leased to a corporation is exempt from taxes, the corporation is liable for taxes on the improvements when it has constructed the buildings and has the use and control of them for a term of 50 years. Louisville Garage Corp. v. Louisville, 303 Ky. 553, 198 S.W.2d 40, 1946 Ky. LEXIS 873 (Ky. 1946).

In view of the speculative nature thereof and the necessity of strictly construing transactions involving tax exemption, there can be no apportionment of values for tax exemption purposes under this section in the absence of a valid contractual fixing of values as between respective owners of interest in the property. Arcadia Realty Foundation, Inc. v. Hoenig, 336 S.W.2d 571, 1959 Ky. LEXIS 32 (Ky. 1959).

35. Determination of Exemption.

Exemption from taxation as a purely public charity is determined by the use to which the property is put, not the nature of its ownership as such. Benevolent Ass'n of Elks v. Wintersmith, 204 Ky. 20, 263 S.W. 670, 1924 Ky. LEXIS 393 (Ky. 1924). See Trustees of Widows' & Orphans' Fund v. Blount, 222 Ky. 717, 2 S.W.2d 394, 1928 Ky. LEXIS 242 (Ky. 1928).

The date as of which the lien for taxes for a particular year attaches is controlling as concerns the allowance of an exemption from the taxes of that year. Jefferson Post, A. L. Dep't v. Louisville, 280 S.W.2d 706, 1955 Ky. LEXIS 189 (Ky. 1955).

Language used in articles of incorporation with regard to the purposes of a corporation is not determinative of the question of whether or not such corporation is entitled to an exemption. Louisville v. Filson Club, 295 S.W.2d 340, 1956 Ky. LEXIS 159 (Ky. 1956).

The primary use made of property, not the declared objects of the owner, determine whether it is exempt from taxation. Iroquois Post No. 229, etc. v. Louisville, 309 S.W.2d 353, 1958 Ky. LEXIS 353 (Ky. 1958).

Corporation was exempt from paying ad valorem taxes on a tract under Ky. Const. § 170 because it was a purely charitable organization and the acquisition was to develop the tract so as to promote job creation and job preservation; the tract was not public property used for public purposes because the corporation owned the tract in fee simple. Hancock v. Ky. Bd. of Tax Appeals & Prestonsburg Indus. Corp., 2010 Ky. App. LEXIS 86 (Ky. Ct. App. 2010), rev'd, 365 S.W.3d 199, 2012 Ky. LEXIS 35 (Ky. 2012).

Unpublished decision: Property owned by a non-profit entity and occupied by another institution of religion was exempt from property tax, as the property did not need to be owned and occupied by a single institution of religion; as the property was owned by one institution of religion and occupied by another institution of religion, the property was owned and occupied by "institutions of religion" and therefore entitled to the tax exemption. Dunn v. Solomon Found., 2023 Ky. App. LEXIS 29 (Ky. Ct. App. 2023), rev'd, 723 S.W.3d 711, 2025 Ky. LEXIS 211 (Ky. 2025).

36. — Res Judicata.

Decision of court in 1904, that gymnastic association was exempt from taxation, was not res adjudicata as to its liability for taxes in subsequent years. German Gymnastic Ass'n v. Louisville, 306 Ky. 810, 209 S.W.2d 75, 1948 Ky. LEXIS 637 (Ky. 1948).

37. — Declaratory Judgment.

The question of whether property is exempt from taxation under this section may be determined in a declaratory judgment action. Iroquois Post, A. L. v. Louisville, 279 S.W.2d 13, 1955 Ky. LEXIS 502 (Ky. 1955).

38. Recovery of Payments.

An executor who voluntarily paid taxes on land held by him in trust for charitable purposes for several years could not subsequently recover such tax payments. Nettleton's Ex'r v. Louisville, 191 Ky. 581, 230 S.W. 957, 1921 Ky. LEXIS 347 (Ky. 1921).

39. Commissions on Exempt Property.

A tax assessor is not entitled to a commission on the value of property exempt from taxation. Powers v. Osbon, 118 Ky. 810, 82 S.W. 419, 26 Ky. L. Rptr. 744, 1904 Ky. LEXIS 105 (Ky. 1904).

County tax commissioners may not be given their statutory commission on the value of personal property exempt under this section. Oates v. Simpson, 295 Ky. 433, 174 S.W.2d 505, 1943 Ky. LEXIS 234 (Ky. 1943).

40. Invalid Exemptions.

A contract wherein a city agreed to pay any taxes levied against a light company which had agreed to furnish electric lights to the city was invalid. Bd. of Councilmen v. Capital Gas & Elec. Light Co., 96 S.W. 870, 29 Ky. L. Rptr. 1114, 1906 Ky. LEXIS 283 (Ky. Ct. App. 1906).

After a fire had destroyed some of the buildings of a tanning establishment and the city council passed an ordinance exempting it from taxation for five (5) years if it would rebuild, the ordinance was invalid. Elam v. Salisbury, 180 Ky. 142, 202 S.W. 56, 1918 Ky. LEXIS 26 (Ky. 1918).

A deed by which a railroad gave property to a city is invalid under this section where it was intended that the street along such property was to be constructed and maintained by the city and that the railroad should be exempt from assessment for such construction and improvements. Chesapeake & O. R. Co. v. Morehead, 223 Ky. 698, 4 S.W.2d 726, 1928 Ky. LEXIS 434 (Ky. 1928).

A contract between a city and a railway company allowing the company to provide electric railway service and providing that it should pay a license fee in lieu of all other taxes excepting ad valorem taxes on its real estate and personal property and special taxes on its real estate was invalid. South C. & C. S. R. Co. v. Henkel & Sullivan, 228 Ky. 271, 14 S.W.2d 1068, 1929 Ky. LEXIS 531 (Ky. 1929).

A contract by a city transferring a bridge option to a private company, the bridge to be returned to the city as a free bridge after amortization of its cost and to be exempt from taxation while held by the private company, is invalid. Covington v. Reynolds, 240 Ky. 86, 41 S.W.2d 664, 1931 Ky. LEXIS 348 (Ky. 1931).

41. Valid Statutes.

Legislation providing for assessments against land owned by the state for public improvement is not unconstitutional under this section. Hager v. Gast, 119 Ky. 502, 84 S.W. 556, 27 Ky. L. Rptr. 129, 1905 Ky. LEXIS 25 (Ky. 1905).

Since the construction of bridges across navigable streams serves a public purpose, a statute authorizing such construction may constitutionally exempt the bonds issued therefor from state and municipal taxation. Klein v. City of Louisville, 224 Ky. 624, 6 S.W.2d 1104, 1928 Ky. LEXIS 663 (Ky. 1928). See Estes v. State Highway Com., 235 Ky. 86, 29 S.W.2d 583, 1930 Ky. LEXIS 292 (Ky. 1930).

A statute exempting transfers of property for charitable purpose from inheritance tax is constitutional. Commonwealth v. Nelson's Adm'x, 235 Ky. 731, 32 S.W.2d 19, 1930 Ky. LEXIS 436 (Ky. 1930).

The General Assembly may constitutionally exempt from taxation bonds issued by state educational institutions for building construction. J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936).

Statutory provisions that revenue bonds to be issued by unemployment compensation commission to defray construction costs of office building shall be exempt from taxation does not violate this section and Const., § 171, since bonds are to be issued by an instrumentality of the state and may be considered bonds of the state specifically exempt under Const., § 171. Meagher v. Commonwealth, 305 Ky. 289, 203 S.W.2d 35, 1947 Ky. LEXIS 784 (Ky. 1947).

The provision of KRS 40.160 exempting veterans' bonus payments from all taxation by the Commonwealth, its political subdivisions and taxing districts was intended by the General Assembly to exempt them from state income taxes and kindred municipal taxes and is not in violation of this section of the constitution governing exemption of property from ad valorem taxation. Watkins v. State Property & Bldgs. Com., 342 S.W.2d 511, 1960 Ky. LEXIS 94 (Ky. 1960).

42. Invalid Statutes.

If KRS 132.220 were construed to mean that the owner of a chattel, or any interest in real property, if of value, was to be exempted from the payment of taxes regardless of whether the owner of the freehold estate pays the taxes on the whole estate, this construction would bring the statute within the prohibitions of this section. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

General Assembly may not constitutionally exempt real estate from a state ad valorem tax. Martin v. High Splint Coal Co., 268 Ky. 11, 103 S.W.2d 711, 1937 Ky. LEXIS 421 (Ky. 1937).

43. Sewer User Charges.

Sewer user charges of a county government for the construction and maintenance of public sanitary sewers were not taxes and the County Board of Education had no constitutional exemption from the payment of such charges by virtue of this section. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

44. Nonprofit Group.

45. — Not Exempt.

It was error to adjudge individuals' leasehold interests in airport property to be used for building and maintaining an airplane hangar exempt from taxation because no profit was earned in connection with such property. No exemption is provided for exempt property held by nonprofit natural persons, associations or partnerships. Pike County Bd. of Assessment Appeals & Revenue Cabinet v. Friend, 932 S.W.2d 378, 1996 Ky. App. LEXIS 110 (Ky. Ct. App. 1996).

46. Occupancy.

Real property owned by a charity, but exclusively occupied by several residents, was not entitled to the charitable exemption in the Kentucky Constitution because the residences were not occupied by tax-exempt entities; the residents' respective possessory interests were subject to ad valorem taxation. However, the fair market value of each resident's respective possessory interest was improperly assessed; the fair market value was obtained by subtracting the fair market value of the particular unit with the resident's leasehold from the fair market value of the unit without the leasehold. Grand Lodge of Ky. Free & Accepted Masons v. City of Taylor Mill, 2017 Ky. App. LEXIS 28 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 949 (Ky. Ct. App. Feb. 10, 2017).

Cited:

Pence v. Frankfort, 101 Ky. 534, 19 Ky. L. Rptr. 721, 41 S.W. 1011, 1897 Ky. LEXIS 224 (Ky. 1897); Board of Councilmen v. Scott, 101 Ky. 615, 19 Ky. L. Rptr. 1068, 42 S.W. 104, 1897 Ky. LEXIS 228 (Ky. 1897); Louisville & N. R. Co. v. Barboursville, 105 Ky. 174, 20 Ky. L. Rptr. 1105, 48 S.W. 985, 1898 Ky. LEXIS 251 (Ky. 1899); Dayton v. Bellevue Water & Fuel Gaslight Co., 119 Ky. 714, 24 Ky. L. Rptr. 194, 68 S.W. 142, 1902 Ky. LEXIS 176 (Ky. 1902); Brown-Foreman Co. v. Commonwealth, 125 Ky. 402, 30 Ky. L. Rptr. 793, 101 S.W. 321, 1907 Ky. LEXIS 285 (Ky. 1907); Commonwealth v. Wathen, 126 Ky. 573, 31 Ky. L. Rptr. 980, 104 S.W. 364, 1907 Ky. LEXIS 76 (Ky. 1907);

Ramsey v. County Board of Education, 159 Ky. 827, 169 S.W. 521, 1914 Ky. LEXIS 893 (Ky. 1914); Walsh v. Asher, 163 Ky. 377, 173 S.W. 808, 1915 Ky. LEXIS 231 (Ky. 1915); North Vernon Lumber Co. v. Louisville, 163 Ky. 467, 173 S.W. 1120, 1915 Ky. LEXIS 243 (Ky. 1915); Browder v. Henderson, 182 Ky. 771, 207 S.W. 479, 1919 Ky. LEXIS 408 (Ky. 1919); Bonar v. Southgate, 215 Ky. 133, 284 S.W. 1019, 1926 Ky. LEXIS 678 (Ky. 1926); Harlan v. Blair, 251 Ky. 51, 64 S.W.2d 434, 1933 Ky. LEXIS 804 (Ky. 1933); Louisa v. Bromley, 251 Ky. 723, 65 S.W.2d 975, 1933 Ky. LEXIS 939 (Ky. 1933); Jones v. Paducah, 283 Ky. 628, 142 S.W.2d 365, 1940 Ky. LEXIS 386 (Ky. 1940); Commonwealth ex rel. Reeves v. Sutcliffe, 287 Ky. 809, 155 S.W.2d 243, 1941 Ky. LEXIS 648 (Ky. 1941); Reeves v. Louisville Gas & Electric Co., 290 Ky. 25, 160 S.W.2d 391, 1942 Ky. LEXIS 362 (Ky. 1942); Cincinnati v. Commonwealth, 292 Ky. 597, 167 S.W.2d 709, 1942 Ky. LEXIS 147 (Ky. 1942); Commonwealth v. Sun Life Assurance Co., 294 Ky. 19, 170 S.W.2d 890, 1943 Ky. LEXIS 376 (Ky. 1943); Dodge v. Jefferson County Board of Education, 298 Ky. 1, 181 S.W.2d 406, 1944 Ky. LEXIS 815 (Ky. 1944); Lexington Cemetery Co. v. Commonwealth, 297 Ky. 851, 181 S.W.2d 699, 1944 Ky. LEXIS 839 (Ky. 1944); Kesselring v. Bonnycastle Club, Inc., 299 Ky. 585, 186 S.W.2d 402, 1945 Ky. LEXIS 471 (Ky. 1945); George v. Bernheim Distilling Co., 300 Ky. 179, 188 S.W.2d 321, 1945 Ky. LEXIS 519 (Ky. 1945); Faulconer v. Danville, 313 Ky. 468, 232 S.W.2d 80, 1950 Ky. LEXIS 901 (Ky. 1950); Roland v. Catholic Archdiocese of Louisville, 301 S.W.2d 574, 1957 Ky. LEXIS 482 (Ky. 1957); Louisville v. Christian Business Women's Club, Inc., 306 S.W.2d 274, 1957 Ky. LEXIS 32 (Ky. 1957); Draughn v. Martin, 350 S.W.2d 161, 1961 Ky. LEXIS 88 (Ky. 1961); Meyers v. Arcadia Realty Foundation, Inc., 367 S.W.2d 836, 1963 Ky. LEXIS 30 (Ky. 1963); Lester v. Ft. Thomas, 531 S.W.2d 490, 1975 Ky. LEXIS 35 (Ky. 1975); Ex parte Auditor of Public Accounts, 609 S.W.2d 682, 1980 Ky. LEXIS 274 (Ky. 1980); Porter v. Hospital Corp. of America, 696 S.W.2d 793, 1985 Ky. App. LEXIS 647 (Ky. Ct. App. 1985); Gillis v. Yount, 748 S.W.2d 357, 1988 Ky. LEXIS 13 (Ky. 1988); St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997).

OPINIONS OF ATTORNEY GENERAL.

A tract of land of unstated size, owned by a church organization, upon which buildings were located described as follows: one building used as a dining hall and kitchen and for classes and instruction, one building used for dormitory purposes and classes and another structure described as an outdoor tabernacle, has a partial exemption from taxation confined to not to exceed two (2) acres and to whatever buildings might qualify as a "house of worship." The outdoor tabernacle would possibly be the required "house of worship." OAG 60-297.

The organization known as the Henry Clay Memorial Foundation does not constitute an institution of education within the meaning of this section because it gives no systematic instruction by methods common to schools and therefore sales by it of post cards, color slides, commemorative plates and admission fees to the shrine are subject to the sales tax of the Commonwealth. OAG 60-816.

The sale of Christian Science reading materials through reading rooms operated at the expense of the church is not exempt from the sales tax of the Commonwealth. OAG 60-979.

If a taxpayer owns a trailer which he uses as a home and has household furnishings which are not affixed to the trailer, such furnishings would be exempt from ad valorem taxes. OAG 60-1052.

A sanitation district treatment plant located within a city within the district is not subject to the ad valorem real estate taxes of the city. OAG 60-1128.

The religious exemption of this section is confined primarily to exempting from taxes the church premises themselves and the living quarters of the pastor when such are owned by the church, and sales of tangible personal property to a church when such property is to be used within the normal function of the religious organization are not exempt from sales and use tax. OAG 61-201.

The sales and use tax of the Commonwealth is applicable to purchases made by a church. OAG 61-204.

There is no constitutional basis for an exemption from city, county, or state taxes in regard to an automobile owned by a church. OAG 61-985.

The exemption from sales tax to a charitable organization is limited to an organization whose function is purely charitable within the meaning of this section and the cases decided thereunder. OAG 61-1097.

There is no exemption to a church under the sales tax. OAG 61-1097.

A city ordinance which exempted from city taxes all property owned by volunteer firemen was void for going beyond the exemptions allowed in the constitution. OAG 62-81.

By virtue of the exemption from taxation granted to institutions of education by this section, county public schools would not be subject to the license tax permitted by KRS 137.115 on the sale of soft drinks or ice cream from the school cafeteria if the income derived from such sales is devoted exclusively to educational purposes. OAG 62-743.

A board of education is not exempt under this section from paying sewer service fees or tolls. OAG 62-1086.

A nonprofit corporation organized to promote, advance and develop a city industrially and with the power to buy, sell or deal in real estate did not qualify for exemption from ad valorem property taxation. OAG 62-1172.

The ownership and operation of a cemetery corporation by a lodge not purely charitable in nature destroys and prohibits any tax status of such cemetery within the provisions of this section. OAG 63-55.

A volunteer fire department is not an agency of the Commonwealth so as to exempt its property from taxation. OAG 63-412.

Where a private company was given a 99-year lease on property owned by an American Legion post with a possible reverter to the county, the property was subject to ad valorem taxation. OAG 63-505.

So long as a lot owned by a religious society is vacant and does not contain a building used for religious worship, the property is subject to municipal taxes. OAG 63-667.

Where a church maintains residences for more than one minister, the church must pay municipal ad valorem tax on all such residences except one. OAG 63-702.

Meals sold as a part of the Shriners' fund raising activities to the general public are subject to the Commonwealth's three percent (3%) sales tax. OAG 63-1100.

The Shriners' organization is not a charitable institution within the meaning of this section. OAG 63-1100.

Since the tax exemption benefiting religious organizations is generally limited to ad valorem property taxes on places actually used for religious purposes not exceeding two (2) acres, a church campsite would be subject to ad valorem property taxes. OAG 64-1.

Where a city made a lease of a building to a business and in the lease the city proposed to obtain the maximum tax advantage for the business, the commissioners of the city could exempt the property of the business from city taxes for a period not to exceed five (5) years. OAG 65-58.

A city has authority to exempt a manufacturing establishment for at least five (5) years from city taxes only as an inducement to its location within the city, but no exemption is permitted from city school taxes. OAG 65-171.

Property in a city owned by religious organizations not actually used for religious purposes is subject to ad valorem property taxation by the city. OAG 65-613.

Any legislation that would give a $30.00 to $50.00 tax credit to be applied to the property tax bill of any person over 65 years of age is an attempt to do indirectly that which the courts have held cannot be done and would be unconstitutional and void. OAG 65-639.

Where income from property owned by a religious society was used exclusively for the support of a parochial school it operated, the property would not be subject to ad valorem property taxation by the city. OAG 65-765.

Where a church rented part of its property to another church to be used as a place of religious worship, the property was not subject to ad valorem taxation. OAG 65-825.

A county fiscal court has no authority to exempt the property of a private firm or manufacturing concern from county, state, school or health taxes as an inducement to industrial development without acquiring title to such property. OAG 67-205.

The cultivation of land in the Ballard County waterfowl refuge for the purpose of providing feed for waterfowl that make their home in the refuge and for building up a geese flock which can be hunted by all of the citizens of the Commonwealth is a proper part of the maintenance of the refuge as a public facility and does not detract from the exempt status of the land under this section. OAG 67-261.

A city ordinance granting a rebate of tax money to a developer for his street paving costs would violate the Constitution. OAG 67-454.

Residential property owned by a church from which it derives income is not exempt from taxation. OAG 67-470.

Property owned by a church which lies 100 feet from the church property and exceeds one-half acre is not exempt from ad valorem property taxation. OAG 68-113.

Where the Commonwealth or its agency or instrumentality is the grantor in a deed offered for recordation, such conveyance is subject to the real estate transfer tax. OAG 68-284.

Where real estate is sold to a church with the stipulation that it shall be occupied rent free by the sellers during their lifetimes, it is not exempt from ad valorem property taxation. OAG 69-95.

The property of the Boy Scouts of America is tax exempt as a charity under this section. OAG 69-526.

A county humane society was an institution of public charity and as such was entitled to exemption from the motor vehicle usage tax on its animal ambulance. OAG 69-535.

A county humane society was an institution of public charity and was entitled to an exemption from sales and use taxes on purchases by it of tangible personal property used in the operation of the society. OAG 69-535.

If a city purchased tangible personal property in the state to which the use tax applied, the city would be exempt. OAG 70-775.

An automobile owned by a church to transport children to a music education program was not exempt from the motor vehicle usage tax. OAG 71-233.

A city may increase its general fund tax rate to offset a revenue loss occasioned by property being exempted from property tax by the homestead exemption amendment to this section. OAG 71-537.

The homestead amendment to this section will affect the tax base of fourth-class cities as well as the tax base of counties. OAG 71-537.

As long as income from property owned by a city and county board of education is used solely for the furtherance of the education process in such city and county, the property is exempt from ad valorem property taxes by the city. OAG 72-44.

This section does not exempt a city from the payment of the state tax on gasoline. OAG 72-92.

Despite the homestead amendment to this section, which became effective January 1, 1972, property owned in the city of Catlettsburg both below the flood crest of 1937 and that located above the flood crest would be liable for special assessments for a floodwall bond levy, a flood control system bond levy, and a floodwall operation and maintenance levy. OAG 72-179.

Since the amendment of this section created the homestead tax exemption with no procedural conditions and created no authorization for legislative implementation, the amendment is self-executing and the General Assembly has no authority to establish deadlines relating to the application for or assertion of the right to the exemption. OAG 72-726.

There is no provision, in the absence of specific statutory authorization, to exempt from or refund gasoline taxes to charitable organizations such as Appalachian Regional Hospitals, Inc. OAG 72-745.

A parcel of real estate adjacent to a cemetery and occupied by the cemetery caretaker would be exempt from ad valorem property taxation. OAG 72-798.

If the income derived from a bookstore and a grill operated by Eastern Kentucky University is devoted to the furtherance of the educational process, such businesses are exempt from the city of Richmond net profits tax. OAG 73-20.

So long as a dwelling is used as a single unit family residence, the owner would be entitled to the exemption set out in this section, even though the structure was classified as a duplex. OAG 73-320.

There is no authority in the constitution, either directly or implied, to increase the $6,500 exemption provided for the assessed value of homesteads owned by persons 65 years of age or older and the only method by which such exemption could be increased would be by amending the constitution. OAG 73-371.

Since neither the constitution nor statutes give the fiscal court any power either expressly or by implication to exempt property from taxes, but only the power to levy taxes, the fiscal court has no authority to exempt tangible personal property from ad valorem property taxes. OAG 73-397.

The Actors' Theatre of Louisville, which was organized and incorporated as a nonprofit group for solely charitable and educational activities, none of the income from which and none of the expenditures by which inures to the private benefit of any individual or organization, qualifies under this section for exemption from the ad valorem tax as an institution of purely public charity and/or education. OAG 73-517.

The incidental renting of rooms in a residence that otherwise qualifies for the homestead exemptions does not, under this section and KRS 132.810, violate the single unit restriction. OAG 73-550.

A special school building tax is of general benefit to the whole community and is not the type of special benefit contemplated in the homestead amendment and, therefore, cannot be levied on property in the school district entitled to the homestead exemption except on the value in excess of $6,500. OAG 73-733.

If a city homeowner was sixty-five (65) years of age prior to the September 1972 assessment date, the city should have permitted him to file a homestead exemption application for exemption from 1973 city ad valorem property tax and the city legislative body should authorize a refund to the taxpayer who asserts a proper and qualified application for the exemption. OAG 73-780.

City had no authority to exempt a medical clinic which was built in connection with a low rent project for the elderly, since the only allowable exemption is for manufacturing establishments for a period up to five (5) years. OAG 74-126.

A county hospital qualifies as a public charity under this section and thus would be exempt from taxation. OAG 74-420.

Where a hospital is a charitable institution not operated for profit, and it receives income from the rental of a medical building which income it uses for the operation of the hospital, the rental property is exempt from ad valorem property tax so long as it is owned and operated by the hospital. OAG 74-496.

The reimbursement by a city of a private corporation constructing a private hospital for the construction of a portion of sewer line to the hospital along public right of way, in the form of property tax credits to the corporation until completed would be in violation of Const., §§ 171 and 174 requiring uniform and equal tax levies according to classification, Const., § 3 prohibiting exclusive grants except for public service and this section as it is not enumerated as exempt under such section. OAG 74-616.

The sale by a memorial foundation, an integral part of a religious society, of a residence to a minister in the form of a contract for deed, with monthly payments to be made by the minister over a period of years, is subject to ad valorem tax. OAG 74-635.

The Planned Parenthood Center, Inc. of Louisville, which maintains a family planning library and conducts classes about family planning, is entitled to an exemption from ad valorem property taxes as an institution of education and as a public library. OAG 74-791.

Life tenant of single unit residential property, who is 65 years of age and who maintains the property as a personal residence, is an "owner" of the property and may apply for the homestead exemption. OAG 75-110.

Although KRS 82.085 provides authority to levy ad valorem taxes at different rates depending upon the governmental services rendered, it nowhere provides for no city taxation at all and if the 4th class city were to levy no city ad valorem tax in newly annexed territory, such inaction would be in violation of this section. OAG 75-111.

A health services program for the people of the county, even though there is a charge for those persons who can afford to pay, would be a public charity and the vehicles, mobile home, apartment house building and mobile clinic owned and operated by the health service are exempt from ad valorem property taxation. OAG 75-148.

The 65 year old or older owner-occupant of a mobile home, which is a single unit residence, placed on a rented lot is entitled to the homestead exemption if the mobile home qualifies as real property by resting on a permanent fixed foundation and having the wheels or mobile parts removed. OAG 75-264.

A dialysis clinic performing medical services to patients with chronic renal failure, some of whom are paying for such service, some of whom are served without charge and some of whom are paying only a portion of the cost, is entitled to an exemption from ad valorem property taxes as an institution of purely public charity. OAG 75-266.

The charges for sewer services to a board of education are not an ad valorem tax from which boards of education are exempt but are like tolls or rentals so that a board of education is neither exempt from paying the sewer charges nor entitled to a refund for charges previously paid. OAG 75-598.

A sales tax on water and sewer charges is not similar to an ad valorem tax such as to render it unenforceable against local school districts under this section. OAG 76-5.

Though a $6500 maximum homestead exemption was in the proposed amendment to this section when it was placed on the 1975 ballot, the current exemption is $7700 instead of $6500 as a result of application of the rubber dollar principle, but the exemption cannot be more than the owner's interest in the property. OAG 76-45.

Any person 65 years of age or older is entitled to the $7700 exemption for 1976 upon application to the property valuation administrator without the necessity of having a deed prepared showing that person's interest in the property. OAG 76-95.

A "big brothers" corporation is an institution of purely public charity and would be entitled to exemption from ad valorem property taxation under this section. OAG 77-411, 1977 Ky. AG LEXIS 362.

Where a lease of a plot of land is for 99 years and is transferable, the person 65 years of age or older who leases the ground and builds a home upon it is entitled to the homestead exemption. OAG 77-624, 1977 Ky. AG LEXIS 162.

Equipment leased by a hospital from an out-of-state lessor is subject to ad valorem property tax since the property is not owned by the hospital but is merely leased. OAG 77-641, 1977 Ky. AG LEXIS 148.

If the property currently used for parking purposes by a church group is in excess of the applicable acre limitation, any excess is not exempt from taxation under the laws of this Commonwealth as long as it is not used also for worship services or as a parsonage. OAG 78-180, 1978 Ky. AG LEXIS 538.

Until such time as the court sees fit to expand its charitable definition to include motor vehicles owned by religious nonprofit cemetery organizations from the motor vehicle usage tax, such vehicles are subject to the tax. OAG 78-579, 1978 Ky. AG LEXIS 267.

Should the National Society of the Sons of the American Revolution exercise its purchase option and locate its national headquarters in Kentucky, its property will be exempt from ad valorem taxes since the aims and objectives of SAR place it precisely within the language of this section, which exempts institutions of purely public charities and public libraries. OAG 78-688, 1978 Ky. AG LEXIS 139.

Under KRS 132.190, all real and personal property within this state is subject to taxation, unless exempted by the Constitution and while household goods of a person used in his home are exempt from taxation, under this section, the personal property of the taxpayer used in his business or profession is not exempt, which means a lawyer would have to list for taxes the personal tangible property in his law office, which could include law library, bookcases, typewriters, filing cabinets and other items of equipment used in that office. OAG 79-140, 1979 Ky. AG LEXIS 481.

Where a convent building is being used as a place of residence for nuns who teach in a local parish school and also as a parsonage or place of residence for the priests who service the church, it would appear that the building is exempt from ad valorem property taxes both under the educational and religious exemption provisions of this section. OAG 79-596, 1979 Ky. AG LEXIS 51.

Since the homestead exemption under this section applies to all contiguous real property, where a property owner owns a 20-acre tract, the amount of the homestead exemption should be applied against the value of the total 20-acre tract, even though the property owner only uses one acre for a house and garden and the remaining 19 acres are hill land. OAG 80-170, 1980 Ky. AG LEXIS 486.

A person who is otherwise entitled to the homestead exemption granted by this section cannot be denied the exemption merely because he holds equitable title. OAG 80-179, 1980 Ky. AG LEXIS 492.

Where a county operates a rock quarry, the county is a "taxpayer" under the provisions of KRS Chapter 143A since it severs and processes rocks, and although the exemption provision of KRS 143A.030 does not apply to rock used on county and state roads, this section does exempt the county from the tax as it relates to the rock so used; however, the county is not exempt from the tax as relates to county rock sold to private individuals for purely private purposes. OAG 80-340, 1980 Ky. AG LEXIS 293.

The Louisville Orchestra, Inc., is, under this section, a "purely public charity," and is thus exempt from the sales tax on admissions. OAG 80-598, 1980 Ky. AG LEXIS 168.

Where a church-owned hospital owns an office building on an adjacent property which it rented to hospital staff doctors, the income from the office rental is exempt from taxation under this section if the income derived from office rentals is used in the operation of the hospital and there is no private profit inuring to any individual. OAG 81-150, 1981 Ky. AG LEXIS 289.

Where an individual donates an undivided one-fourth (¼) interest in certain unimproved real estate to a religious organization, and the organization will not enter into any agreement with the donor restricting its rights as a cotenant to its proportionate share of any income from the property, for the proceeds of its sale, or restricting its rights as cotenant to sue for a partition of its interest, such interest in the land would be exempt from ad valorem taxation under this section, since the organization will hold full legal rights commensurate with its ownership so that it will be the actual owner, and since the organization, as an umbrella type organization which supports a number of charitable, educational and religious organizations, including organizations which are not the same denomination as the donee, qualifies as a purely public charity sufficient to exempt it from taxation under this section. OAG 81-231, 1981 Ky. AG LEXIS 203.

Where the development finance authority acquires 50 percent ownership in certain real property for a one-year period, an exemption from ad valorem property taxation limited to the extent of the authority's ownership and for the duration of its ownership is available under this section since KRS 154.005 specifically states that the purposes of the authority are public purposes. OAG 81-270, 1981 Ky. AG LEXIS 164.

A theological seminary is not exempt by virtue of this section from the payment of a real estate transfer tax required by KRS 142.050 since the real estate transfer tax is a tax on the privilege of transferring title to real property and thus in the nature of a license tax, so that this section, which applies only to ad valorem taxes, does not apply to exempt the seminary. OAG 81-276, 1981 Ky. AG LEXIS 168.

Although the General Assembly may authorize incorporated cities or towns to exempt manufacturing establishments from municipal taxation, for a period not exceeding five (5) years pursuant to this section, as an inducement to locating in the community, the city may not exempt the manufacturing establishment from school or other taxes. OAG 81-326, 1981 Ky. AG LEXIS 114.

The Louisville Bar Association is not exempt from the state sales tax since subdivision (1) of KRS 139.470 exempts from the tax only those gross receipts which the state is prohibited from taxing under the Constitution, and the Bar Association qualifies as neither an institution of purely public charity nor an institution of education under this section. OAG 81-330, 1981 Ky. AG LEXIS 126.

An individual who is 65 years old or older or totally disabled who owns and resides in a building but leases the land upon which the building rests is entitled to the homestead exemption regardless of the length of the lease; furthermore, an owner of land who does not own the building cannot qualify for the exemption since the exemption applies only to permanent residences. OAG 81-422. (OAG 76-2 withdrawn).

If a homeowner otherwise qualifies for the homestead exemption, he should receive the full exemption even if he owns the property for less than a year since the intent of this section is that a qualified person pay ad valorem taxes on his home on the value above $6,500; the length of ownership in any taxable year is immaterial to this formula. OAG 81-429; overruled by OAG 85-108 to the extent it failed to recognize the controlling nature of the assessment date.

If the homeowner, who is otherwise qualified for the tax exemption provided in this section, sells his residence on July 1, and purchases another, he would be entitled to the exemption on both homes, in the amount of 50 percent of the ad valorem tax on each house over and above the value of $6,500 each. OAG 81-429; overruled by OAG 85-108 to the extent it failed to recognize the controlling nature of the assessment date.

When a house is transferred the taxes are divided between the buyer and seller, prorated to that part of the year each owned the house and the qualified exemptee will pay his share of the yearly tax based upon the percent of the year he owned the house; his portion of the tax will be based upon the value above $6,500 as adjusted for inflation. OAG 81-429; overruled by OAG 85-108 to the extent it failed to recognize the controlling nature of the assessment date.

A Department of Revenue (now Revenue Cabinet) memorandum dated December, 1981, which takes the administrative position that any qualified person who files for the exemption provided in the 1981 amendment to this section by the end of 1981 is due an appropriate reduction in 1981 ad valorem taxes, is the "proper authorization" required by subsection (5) of KRS 134.590 to allow the sheriff to refund the taxes due to a qualified disabled person for 1981 ad valorem taxes collected and in his possession. OAG 82-12, 1982 Ky. AG LEXIS 631.

The amendment to this section, approved by the voters in November, 1981, which extends the homestead exemption from ad valorem taxes, applicable to homeowners of age 65 or over, to homeowners who are classified as totally disabled under a program authorized or administered by any agency of the United States government, is effective for the entire tax year of 1981, provided the homeowner can qualify as a continuously totally disabled person for the 12 months of 1981; since the explicit language of the amendment put the qualification on an annual and full 12-month basis, there is no problem concerning retroactivity. OAG 82-12, 1982 Ky. AG LEXIS 631.

It is not necessary for a legislative enactment to establish the homestead exemption from ad valorem taxation since this section is self-executing; however, in order to claim the exemption, the owner of the qualified property must present his qualifications to the appropriate taxing authority and comply with the procedures contained in this section and KRS 132.810. OAG 82-21, 1981 Ky. AG LEXIS 25.

With the exception of the property described in KRS 92.300(1), a city of the sixth class has no alternative but to assess all property located within its jurisdictional limits which is not specifically exempted from local ad valorem taxation by the Constitution or by statute; a city ordinance attempting to exempt any other property will be void. OAG 82-21, 1981 Ky. AG LEXIS 25.

A county public library is not exempt from the payment of a city franchise tax imposed on Kentucky utilities and which is, in turn, passed on to the utility's customers in the affected area. OAG 82-34, 1982 Ky. AG LEXIS 607.

The 1981 amendment to this section applies to the ad valorem tax of a fifth-class city, since it is not limited in its application to the state or county, but applies to all taxing districts; moreover, since the amendment was approved at the 1981 general election, which, under Const., § 256, is the final step in amending the Constitution, the amendment is effective in 1981. OAG 82-49, 1982 Ky. AG LEXIS 593.

The Lexington Ballet Company is exempt from paying sales or use tax on its purchases and is exempt from collecting sales tax on its admission tickets since it is an institution of purely public charity under this section. OAG 82-133, 1982 Ky. AG LEXIS 509.

This section does not exempt religious institutions from the utility gross receipts license tax. OAG 82-190, 1982 Ky. AG LEXIS 483.

Institutions of purely public charity are exempt from payment of the real estate transfer charges levied by KRS 142.050 pursuant to this section. OAG 82-484, 1982 Ky. AG LEXIS 155.

This section is applicable to all taxes, not merely ad valorem taxes. OAG 82-533, 1982 Ky. AG LEXIS 112.

Since the tax authorized by KRS 92.285 (repealed) is a tax on the insurance company, this section is not violated when the insurance company passes on the tax to a church by adding it to the premium on insurance sold to the church. OAG 82-533, 1982 Ky. AG LEXIS 112.

The fiscal court may impose an auto sticker tax under its police power as found in subsection (3)(t) of KRS 67.083; however, the proceeds cannot exceed the amount of revenue necessary to fund the administrative cost of the regulatory power. OAG 82-601 as modified by OAG 87-19, 1987 Ky. AG LEXIS 67.

While the courts have, in certain cases, allowed the use of the property to be a factor in determining whether property is exempt, that consideration has been limited to only two (2) categories of exemptions: (1) "places actually used for religious worship" and (2) "institutions of purely public charity"; this consideration has not been used in reference to the exemption for "public property used for public purposes" and because exemptions are not favored in the law, it cannot be expanded to include this situation. OAG 83-14, 1983 Ky. AG LEXIS 483.

For property to qualify for the exemption for "public property used for public purposes," it must be owned by a public body. Therefore, a county could not exempt from property taxes a piece of property which was privately owned but was used by a city. OAG 83-14, 1983 Ky. AG LEXIS 483.

The Paducah/McCracken County Association for Retarded Citizens, Inc., organized solely to develop and operate residential and other services for the mentally handicapped, is an institution of purely public charity and, as such, is exempt from property tax. OAG 83-137, 1983 Ky. AG LEXIS 360.

Where certain property was condemned by the state as a total taking pursuant to court order, where the transportation cabinet took possession soon thereafter, but the property was not deeded to the state until several years later because of a continuing dispute over the amount of compensation to be paid, and where between the time of the cabinet's taking possession and the date of the deed to the state, ad valorem property taxes were assessed against the publicly listed title holder, tax liens representing the back taxes assessed during the years of dispute were extinguished after legal title passed to the state. OAG 83-155, 1983 Ky. AG LEXIS 340.

Since title to any property acquired by a city plant board shall vest in the city for the use and benefit of the electric and water system, the plant board is exempt from taxation pursuant to this section as public property used for public purposes. OAG 83-345, modifying OAG 83-160 to the extent such opinion assumes that the plant board is liable for taxes.

As concerns a city license tax on insurance premiums, political subdivisions and special districts would not be exempt under this section. OAG 84-5, 1984 Ky. AG LEXIS 381.

Nonprofit institutions of purely public charity and education, where a city license tax on insurance premiums is designed for revenue, would be exempt from the city tax under this section, as an institutional exemption. OAG 84-5, 1984 Ky. AG LEXIS 381.

As relates to nonprofit institutions of purely public charity and education, since the insurance premium surcharge tax is designed to raise revenue, this section exempts such institutions from this tax. OAG 84-5, 1984 Ky. AG LEXIS 381.

Governmental units such as the state government and political subdivisions, and special districts, are not exempt from the state surcharge or tax levied on insurance premiums pursuant to KRS 136.392; the exemption of this section, as relates to governmental units, involves only ad valorem taxes. OAG 84-5, 1984 Ky. AG LEXIS 381.

A city can legally require a church to pay a reasonable license fee in order to sell products for church-related activities, and such license can be imposed on a daily basis, particularly where the sale is essentially on a day by day basis. OAG 84-29, 1984 Ky. AG LEXIS 357.

Where property owned by a hospital, which was a nonprofit corporation, was leased to a clinic, which was a for-profit corporation, then if the building on the property was owned by the clinic, it must be placed on the tax roll and the leasehold interest must also be placed on the tax roll. OAG 84-35, 1984 Ky. AG LEXIS 351.

From Kentucky case law the following standards for determining charities exempt under this section emerge: (1) the corporation or institution must itself be a charity and the income from its property must be used to further its charitable purpose; (2) the property must be employed for a purely charitable purpose; (3) a profit corporation or institution is not a public charity; and (4) the charity must be extended only to the Commonwealth of Kentucky and its people. OAG 84-169, 1984 Ky. AG LEXIS 219.

Nonprofit institutions of purely public charity and education are exempt from a city license tax on insurance premiums under this section, as an institutional exemption, provided that the tax is designed for revenue; however, the charitable institution is not exempt from payment of a city license tax when it is enacted under the police power or when it is enacted for police or regulatory purposes. Thus, the line of demarcation as to the application or nonapplication of the city license tax to nonprofit and charitable institutions is drawn around the concept of the license tax being either a revenue measure or a police measure. OAG 84-201, 1984 Ky. AG LEXIS 178.

The property of religious institutions is not intrinsically or inherently exempt from taxation; the exemption is limited to places of worship and parsonages, and the exemption from taxation is to be strictly and narrowly construed. Also, the exemption seems to be directed solely at real property. OAG 84-254, 1984 Ky. AG LEXIS 132.

The county judge/executive has no authority to exonerate the tax bills on church-owned vehicles. OAG 84-254, 1984 Ky. AG LEXIS 132.

Mere use of a church-owned vehicle by an educational institution does not exempt that property from taxation; the educational institution must own the property in order for the property to enjoy the benefit of the educational institution's exemption from taxation. OAG 84-254, 1984 Ky. AG LEXIS 132.

Whether property qualifies for the homestead exemption is determined as of January 1 each year. If one who is qualified for the homestead exemption owns the property as of that date, the property will receive the benefit of the exemption. If the property is owned as of the assessment date by one not qualified to receive the exemption, it will not receive the exemption for that year even though it may be acquired during the course of the year by one who is entitled to the exemption. OAG 85-108, OAG 81-429 modified.

Where the purpose of the corporation was to hold title to all real and personal property for the church and to make expenditures at the direction of the General Assembly, the corporation was entitled to the exemption as an institution of purely public charity, as charity was more than an incidental portion of its program. OAG 87-81, 1987 Ky. AG LEXIS 5.

The current exemption contained in the 1990 amendment to this section applies to all tangible personal property, all intangible personal property, and all real property owned and occupied by institutions of religion and is obviously permissive in its treatment of the subject; therefore, a proper interpretation should reject the imposition of conditions such as a requirement that the property be used for religious purposes, or that the property be occupied exclusively by the institution of religion, or that the institution of religion be in current rather than future occupation, because the voters did not intend to impose such conditions and the section must be construed in a general and nonrestricting sense in order that the plainly manifested purpose of those who created the amendment may be carried out. OAG 91-216, 1991 Ky. AG LEXIS 215.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Exemption of factories by cities, KRS 91.260, 92.300.

Exempt property to be listed with county tax commissioner, KRS 132.220 (5).

Property not to be exempted by General Assembly, Const., § 3.

Property subject to taxation, KRS 132.190 to 132.210.

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Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

Snyder and Irland, The Separation of Governmental Powers Under the Constitution of Kentucky: A Legal and Historical Analysis of L.R.C. v. Brown, 73 Ky. L.J. 165 (1984-85).

§ 172A. Assessment of farm land according to value for farm purposes.

Notwithstanding contrary provisions of Sections 171, 172, or 174 of this Constitution —

The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land according to the land's value for agricultural or horticultural use. The General Assembly may provide that any change in land use from agricultural or horticultural to another use shall require the levy of an additional tax not to exceed the additional amount that would have been owing had the land been assessed under Section 172 of this Constitution for the current year and the two next preceding years.

The General Assembly may provide for reasonable differences in the rate of ad valorem taxation within different areas of the same taxing districts on that class of property which includes the surface of the land. Those differences shall relate directly to differences between non-revenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district.

History.

Proposed by Acts 1968, ch. 103, ratified November, 1969.

NOTES TO DECISIONS

Analysis

1. Application.
2. Construction.
3. Territorial Scope of Tax.
4. Tax Rates.
5. Uniformity of Assessment.
6. Compliance with Statutes.
7. Property Value.
8. Ad Valorem.
9. Inheritance Taxes.

1. Application.

Since this section specifically contemplates different rates of taxation when the land affected is given an "urban character" by the different governmental services which are furnished, and since there are no words or phrases which restrict the application of the section to farm land, it can be concluded that this section applies to urban land as well as agricultural land. Louisville v. Fiscal Court of Jefferson County, 623 S.W.2d 219, 1981 Ky. LEXIS 282 (Ky. 1981).

2. Construction.

This section and §§ 171 and 172 of the Constitution are to be interpreted together. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

3. Territorial Scope of Tax.

A plan for merger of city and county government which divides the county into three (3) taxing districts and authorizes ad valorem taxation at different rates in each district commensurate with government services provided in each district does not violate this section of the Constitution. Holsclaw v. Stephens, 507 S.W.2d 462, 1973 Ky. LEXIS 3 (Ky. 1973).

4. Tax Rates.

Under this section and KRS 82.085, a differential in tax rates between service districts in an urban-county is legitimate insofar as it applies to real estate but is unconstitutional and void as applied to personal property and severed mineral interests. Jacobs v. Lexington-Fayette Urban County Government, 560 S.W.2d 10, 1977 Ky. LEXIS 564 (Ky. 1977).

Although this section and KRS 82.085 permit "variable" tax rates, there is an inherent danger in unrestricted differences in such rates; this section should not be viewed as permitting a taxing authority to cease providing or to agree not to provide governmental services in selective areas where it has customarily provided them and, by reason thereof, to create a different tax rate, since such a scheme would open the doorway for individuals or groups to barter with the taxing authority for a favorable tax rate for their particular property, with the result that the more prominent and influential citizens may fare better than others. Louisville v. Fiscal Court of Jefferson County, 623 S.W.2d 219, 1981 Ky. LEXIS 282 (Ky. 1981).

Where a city and an adjoining area that was to be annexed entered into a pretrial agreement whereby the adjoining area agreed to be annexed in return for the city's agreement to place the annexed area in a special taxing and service district, with a reduced ad valorem real estate tax rate over a number of years, but where the record was silent as to the availability of city services to the area, where there was no basis set out in the agreement for the difference in services authorized or not authorized and where there was no factual basis set forth in the agreement for the tax rates agreed upon, the agreement was invalid, since the difference in tax rates cannot be shown to be "reasonable" where no factual basis is set out for the agreed upon rates. Louisville v. Fiscal Court of Jefferson County, 623 S.W.2d 219, 1981 Ky. LEXIS 282 (Ky. 1981).

5. Uniformity of Assessment.

Where the proof indicated only that 12 similar farms in the general area of taxpayers' farm were assessed on an average of about 61 percent of their fair cash value of 1974, the assessments ranging from approximately 39 percent to 71 percent of fair cash value, and where there were certainly more than 12 "similar" farms in that county, no showing was made of a uniform or systematic proportionate assessment of the farm land in the particular district in which taxpayers' farm was

located. Walters v. Kentucky Board of Tax Appeals, 569 S.W.2d 170, 1977 Ky. App. LEXIS 926 (Ky. Ct. App. 1977).

Although property valuation administrators throughout the state do not need to use the same method of arriving at an assessment, whatever method is used must result in a uniform standard of assessment whether the property is agricultural or residential since Const., § 174 says that all property shall be taxed in proportion to its value. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

Method used by property valuation administrator which resulted in farm property being assigned a value based on general averages rather than an individual and specific value related to the agricultural purpose for which it was used was constitutionally unsound since the method even though it was the same method used for all agricultural land in the county, failed to value the property on the basis of uniform standards and did not result in an effective tax which was equally burdensome on all farm taxpayers. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

Section 172 of the Constitution is subject to the same requirements of uniformity as this section because both are constitutional provisions for assessing property. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

There is a violation of constitutional rights if the effective tax rate is not uniform and thereby results in an unequal tax burden; any method of assessment which fails to follow the constitutional directions and accordingly does not produce an assessed value based on agricultural use of each individual parcel, violates the Constitution. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

The burden on the Department of Revenue (now Revenue Cabinet) is simply to assure that all property in this state is assessed fairly, according to its value; if this is done, the tax burden will be equally shared. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

Where assessments of agricultural land for one year were unconstitutional, the correct remedy was the use of the previous year's assessments for the subject property for the later tax year; the property valuation administrator was not entitled to belatedly assess the subject property for the later year's taxes since KRS 132.220(1) clearly states that property shall be evaluated as of January 1. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

The use of mathematical formula to arrive at a result may be proper as long as the procedure adopted does not produce an unfair or unequal valuation. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

KRS 132.010(9), (10) and 132.450(2)(a) do not violate the Constitution of Kentucky; dwelling houses are to be assessed at fair cash value, and the income and acreage standards to qualify for "agricultural land" or "horticultural land" are not unreasonable. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

Subdivision (4)(c) of KRS 140.300 did not violate Const., §§ 2, 171, and this section because each class is taxed equally. Revenue Cabinet Commonwealth v. Estate of Marshall, 746 S.W.2d 408, 1988 Ky. App. LEXIS 39 (Ky. Ct. App. 1988).

6. Compliance with Statutes.

Even accepting that the agricultural or horticultural value of their farm was less than its fair market value, where the record did not indicate that taxpayers complied with the requirements of KRS 132.450(2)(a) by filing the necessary application for agricultural or horticultural valuation with the administrator on or before April 1, the Board of Tax Appeals correctly concluded that there was no showing of the filing of a timely application for agricultural valuation. Walters v. Kentucky Board of Tax Appeals, 569 S.W.2d 170, 1977 Ky. App. LEXIS 926 (Ky. Ct. App. 1977).

7. Property Value.

The income-producing capacity of land is not the only factor to be considered in establishing the value of the property. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

8. Ad Valorem.

The term "ad valorem" literally means "according to the worth," and is used in taxation to designate an assessment of taxes against property at a certain rate upon its value. Revenue Cabinet v. Estate of Field, 864 S.W.2d 930, 1993 Ky. App. LEXIS 147 (Ky. Ct. App. 1993).

9. Inheritance Taxes.

Court of Appeals reversed a Circuit Court judgment which held that the portion of KRS 140.310(1) which limits entitlement to an agricultural assessment to "qualified persons" is invalid because it conflicts with this section. Ad valorem taxes are clearly distinguishable from inheritance taxes: the former are direct taxes on property based upon the value of the property, while the latter are taxes imposed not on property, but upon the privilege or right of succession thereto. Because the case involved an inheritance, or exise tax, this section, which limits the applicability of Const., §§ 171, 172 and 174 and which deals exclusively with ad valorem taxes, did not apply. Revenue Cabinet v. Estate of Field, 864 S.W.2d 930, 1993 Ky. App. LEXIS 147 (Ky. Ct. App. 1993).

Cited:

Legislative Research Com. by Prather v. Brown, 664 S.W.2d 907, 1984 Ky. LEXIS 300 (Ky. 1984); Barrett v. Reynolds, 817 S.W.2d 439, 1991 Ky. LEXIS 146 (Ky. 1991).

OPINIONS OF ATTORNEY GENERAL.

If a 4th class city were to levy no city ad valorem tax in newly annexed territory, such inaction would violate this section. OAG 75-111.

A county conservation district, which assists individual landowners with the development and implementation of a resource conservation plan for a unit of land, is required to allow Department of Revenue (now Revenue Cabinet) representatives access, on a confidential basis, to individual resource conservation plans upon request. OAG 76-272.

It would appear from an examination of the constitutional provisions (Ky. Const., § 172A) and the implementing statute (KRS 67.650) that where the voters in the district created are not receiving the services provided by the county government they may petition the fiscal court to reduce such rate but there is no provision for the fiscal court to act in accordance with such petition and it could very well ignore the petition and continue to levy the rate in effect. OAG 78-580, 1978 Ky. AG LEXIS 260.

Where subsection (2)(b) of KRS 132.450 provides for an exclusion for land under "a zoning classification other than for agricultural or horticultural purposes," such language is constitutionally consistent with this section, since such zoning classification is a change in the use of property as provided for under this section. OAG 81-58, 1981 Ky. AG LEXIS 362.

RESEARCH REFERENCES AND PRACTICE AIDS

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Kentucky Law Survey, Whiteside and Buechel, Kentucky Taxation, 65 Ky. L.J. 425 (1976-77).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

§ 179. Political subdivision not to become stockholder in corporation, or appropriate money or lend credit to any person, except for roads or State Capitol.

The General Assembly shall not authorize any county or subdivision thereof, city, town or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate

money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided, If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer.

NOTES TO DECISIONS

Analysis

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1. Purpose.

The purpose behind Const., § 177 and this section was to prevent local and state tax revenues from being diverted from proper governmental use. Louisville Municipal Housing Com. v. Public Housing Administration, 261 S.W.2d 286, 1953 Ky. LEXIS 997 (Ky. 1953).

This section is intended to prevent the investment of public funds in private enterprises and to forestall local and state tax revenues from being diverted from proper governmental use. Louisville Bd. of Ins. Agents v. Jefferson County Bd. of Education, 309 S.W.2d 40, 1957 Ky. LEXIS 145 (Ky. 1957).

2. Construction.

This section makes the same restrictions against a municipality's donating its money or loaning its credit that Const., § 177 does concerning the state. Hager v. Kentucky Children's Home Soc., 119 Ky. 235, 83 S.W. 605, 26 Ky. L. Rptr. 1133, 1904 Ky. LEXIS 166 (Ky. 1904).

This section does not prohibit a municipality from participating with another municipality in a function it is permitted or required to perform by itself and by which its inhabitants will reap a commensurate benefit. Johnson v. Louisville, 261 S.W.2d 429, 1953 Ky. LEXIS 1014 (Ky. 1953).

Although Section 3 and this section of the Kentucky Constitution could prohibit an outright gift or lending of credit, these sections do not prevent all public incentives when offered in furtherance of a valid public service, such as economic development efforts. Dannheiser v. City of Henderson, 4 S.W.3d 542, 1999 Ky. LEXIS 114 (Ky. 1999).

3. Application.

The restriction of this section against obtaining or appropriating money for any corporation, association or individual applies to donations to projects from which no benefit will be received by the city or in which it may not independently engage. Valla v. Preston Street Road Water Dist., 395 S.W.2d 772, 1965 Ky. LEXIS 164 (Ky. 1965).

4. Incorporated District.

A city municipal housing commission which was organized under an enabling act of the General Assembly and operated by personnel of the city so as to participate in the federal housing program was not an incorporated district within the meaning of this section. Louisville Municipal Housing Com. v. Public Housing Administration, 261 S.W.2d 286, 1953 Ky. LEXIS 997 (Ky. 1953).

A municipal housing commission is not an incorporated district within the meaning of this section and may constitutionally inure its housing projects in a mutual fire insurance company. Louisville Municipal Housing Com. v. Public Housing Administration, 261 S.W.2d 286, 1953 Ky. LEXIS 997 (Ky. 1953).

5. Road Construction.

This section does not prohibit the General Assembly from authorizing a county to purchase a turnpike road from a corporation. Maysville & L. Turnpike Road Co. v. Wiggins, 104 Ky. 540, 47 S.W. 434, 20 Ky. L. Rptr. 724, 1898 Ky. LEXIS 189 (Ky. 1898).

The Legislature may authorize a county to donate its funds to aid in the construction of roads within its borders. Lawrence County v. Lawrence Fiscal Court, 191 Ky. 45, 229 S.W. 139, 1921 Ky. LEXIS 284 (Ky. 1921).

Under this section and KRS 177.030, donation of a traffic light by a county constitutes a donation in aid of the construction or maintenance of roads. Grauman v. Department of Highways, 286 Ky. 850, 151 S.W.2d 1061, 1941 Ky. LEXIS 337 (Ky. 1941).

Counties may donate money to the state for the purpose of constructing roads. Clay County v. Kentucky Dep't of Highways, 294 Ky. 638, 172 S.W.2d 436, 1943 Ky. LEXIS 500 (Ky. 1943).

Where county offered to lend proceeds of road bond issue to state for construction of primary road through county, but state declined to accept loan on ground that it would create an unconstitutional state debt, whereupon the fiscal court entered an order appropriating the money to the department of highways, the transaction constituted a donation to the state which the county could not recover. Clay County v. Kentucky Dep't of Highways, 294 Ky. 638, 172 S.W.2d 436, 1943 Ky. LEXIS 500 (Ky. 1943).

6. Industrial Property.

Financing proposal under which one city issued industrial bonds so as to permit such city to purchase factory site within corporate limits of nearby city (KRS 103.200 to 103.285) did not violate constitutional prohibition against city lending its credit to corporations, associations, or individuals. Norvell v. Danville, 355 S.W.2d 689, 1962 Ky. LEXIS 84 (Ky. 1962).

Where the city and the county both deposited with the chamber of commerce one half of the price of industrial property with instructions to acquire the property, and title to one-half interest was taken in the name of the county and title to the other half was taken in the name of the chamber but subsequently conveyed to the city, there was no violation of this section. Ezelle v. Paducah, 441 S.W.2d 162, 1969 Ky. LEXIS 307 (Ky. 1969).

The development of an industrial park by a city was not a prohibited lending of credit since the city was not loaning or giving a private company any form of credit, was not signing a note on behalf of the company guaranteeing repayment of any amount due, and was not issuing bonds with the debt service to be paid from future appropriations in city budgets; rather, the city bought and paid for land and was selling it without any involvement concerning the method of financing by the purchaser. Dannheiser v. City of Henderson, 4 S.W.3d 542, 1999 Ky. LEXIS 114 (Ky. 1999).

The sale of municipal property to private companies was for a proper public purpose where the city's sole purpose was to develop a corporate park so as to foster economic development by attempting to retain existing industry as well as to attract new industry to its local community; further, in order to show

such public purpose, the city was not required to prove by clear and convincing evidence that unemployment was a widespread problem in the vicinity and, instead, only needed to prove that the development had a reasonable or sufficient relationship to the purpose of economic growth. Dannheiser v. City of Henderson, 4 S.W.3d 542, 1999 Ky. LEXIS 114 (Ky. 1999).

7. — Leased to Corporations.

City's issuance of bonds for construction of industrial building to be leased to private corporation did not contravene this section as it was specifically provided that the bonds should be payable only from the revenue derived from the building and would not constitute an indebtedness of the city. Faulconer v. Danville, 313 Ky. 468, 232 S.W.2d 80, 1950 Ky. LEXIS 901 (Ky. 1950).

A lease of a proposed industrial building constructed by city's indebtedness would not be a loaning of the city's credit to a private corporation in violation of this section. Dyche v. London, 288 S.W.2d 648, 1956 Ky. LEXIS 271 (Ky. 1956).

Where city proposed to issue revenue bonds for acquisition of site and construction of plant to lease under authority of KRS 103.200 to 103.280, and entered into contract with company to lease such plant, which contract contained option to purchase from the city, such option to purchase was not the lending of city's credit in violation of this section. Bennett v. Mayfield, 323 S.W.2d 573, 1959 Ky. LEXIS 331 (Ky. 1959).

The issuance of revenue bonds to finance a public project, such as an industrial building to be rented to private industry, does not constitute a lending of credit of the city in violation of this section. Miller v. Owensboro, 343 S.W.2d 398, 1961 Ky. LEXIS 421 (Ky. 1961).

A plan by which a city was to pay, in stages, for the construction of an industrial plant to be leased to a private corporation and where the payments were to be made solely from revenue bonds does not constitute an unlawful lending of credit in violation of this section. Gregory v. Lewisport, 369 S.W.2d 133, 1963 Ky. LEXIS 70 (Ky. 1963).

The issuance of revenue bonds to finance a public project, even if the project was to be rented, did not constitute a lending of credit in violation of this section. Baird v. Adairville, 426 S.W.2d 124, 1968 Ky. LEXIS 636 (Ky. 1968).

8. Public Libraries.

A public library is not a private corporation but is a public corporation which does not originate in contract, and is merely a governmental institution; hence, an act authorizing a municipality to appropriate money for a public library corporation does not violate the provisions of this section. Lambert v. Board of Trustees, 151 Ky. 725, 152 S.W. 802, 1913 Ky. LEXIS 562 (Ky. 1913).

9. Public Utilities.

Plan pursuant to which city desiring to acquire city water system was to purchase all of stock in private corporation which owned system, following which corporation would be dissolved, did not violate this section. Cawood v. Coleman, 294 Ky. 858, 172 S.W.2d 548, 1943 Ky. LEXIS 515 (Ky. 1943).

Where primary purpose of new city generating station was to provide adequate facilities to meet present and anticipated energy needs, contract to sell surplus energy from station to private utility did not violate this section. Miller v. Owensboro, 343 S.W.2d 398, 1961 Ky. LEXIS 421 (Ky. 1961).

An agreement in which one city agreed to construct and operate a sewage treatment plant and to build a trunk line to collect sewage from a second city for which the second city would pay a monthly sum over a 20-year period did not constitute a binding of credit by the second city, nor did the second city become a stockholder in the first city's corporate affairs. Russell v. Flatwoods, 394 S.W.2d 900, 1965 Ky. LEXIS 218 (Ky. 1965).

A plan under which a city would construct two (2) new power facilities for future use and sell the excess power until it was needed for municipal use did not violate Const., § 164 or this section. Wilson v. Henderson, 461 S.W.2d 90, 1970 Ky. LEXIS 610 (Ky. 1970).

10. Recreational Facilities.

An agreement between a city and a private foundation to erect and operate a city zoo does not constitute an appropriation of city funds for the benefit of a private corporation. O'Bryan v. Louisville, 382 S.W.2d 386, 1964 Ky. LEXIS 341 (Ky. 1964).

An agreement by a city to lease recreational facilities from a county board of education is not in contravention of this section as long as there is a good faith transaction as opposed to a gift disguised as an arm's-length contract. Sawyer v. Jefferson County Fiscal Court, 392 S.W.2d 83, 1965 Ky. LEXIS 275 (Ky. 1965).

11. Health Services.

Since the city-county board of health was but a means of carrying out a proper and necessary governmental function for the city and county and city reaped the same benefits from the activities of the board as it formerly reaped from activities of city board of health, the constitutional authority of the city to expend proceeds of bonds issued by city for improvement of buildings and equipment of board owned and operated hospital was as clear as its authority to contribute to the board from its general tax levy and the issuance of such bonds was not a loan of credit by the city to another corporation in violation of this section. Kesselring v. Louisville, 257 S.W.2d 596, 1953 Ky. LEXIS 800 (Ky. 1953).

The evidence did not compel a finding that a county's lease of a county hospital and grounds was for such a grossly inadequate consideration to the county as to violate this section by constituting a gift of public property to a private corporation. Porter v. Hospital Corp. of America, 696 S.W.2d 793, 1985 Ky. App. LEXIS 647 (Ky. Ct. App. 1985).

12. Correctional Facilities.

This section does not prohibit a city authorized by its charter to erect and maintain a house of correction and a house of refuge from making an appropriation to secure the location near the city of a state house of reform to which it may send its youthful offenders. Board of Trustees v. Lexington, 112 Ky. 171, 65 S.W. 350, 23 Ky. L. Rptr. 1470, 1901 Ky. LEXIS 295 (Ky. 1901).

A statute providing that in all counties having a town not larger than the fourth class and containing a population greater than the county seat and situated over 17 miles therefrom, the circuit court shall be held alternately in each town, the expense of furnishing a jail and courtroom in the larger town to be borne by it, does not violate this section. Johnson v. Fulton, 121 Ky. 594, 89 S.W. 672, 28 Ky. L. Rptr. 569, 1905 Ky. LEXIS 243 (Ky. 1905).

13. Railroad Construction.

A vote taken in a county after the constitution was adopted, favoring a subscription by the county in aid of a railroad, did not authorize the county to make such a subscription, though the vote and subscription were provided for by law passed prior to the adoption of the constitution. Whitney v. Kentucky M. R. Co., 110 Ky. 955, 63 S.W. 24, 23 Ky. L. Rptr. 472, 1901 Ky. LEXIS 161 (Ky. 1901).

Ordinance requiring city to give assent to issuance of securities by street railway company did not make city guarantor of such securities, or pledge credit of city to railway. Poggel v. Louisville R. Co., 225 Ky. 784, 10 S.W.2d 305, 1928 Ky. LEXIS 886 (Ky. 1928).

14. Teacher Salaries and Pensions.

This section does not prohibit the operation of a municipal teachers' pension system under an enabling act. Board of

Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

An appropriation of funds by a city, to supplement salaries of teachers in independent school district, the boundaries of which coincide with those of the city, violates this section. Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946).

15. Assumption of School Debts.

An assumption by the city of Louisville of a bonded indebtedness of the Louisville independent school district would be the equivalent of lending credit in violation of this section as to the city taxpayers who live outside the boundaries of the school district. Board of Education v. Louisville, 258 S.W.2d 707, 1953 Ky. LEXIS 877 (Ky. 1953).

16. Bank Loans.

This section does ot invalidate financing plan, whereby banks agreed to advance money to pay condemnation award on acquisition by city and county air board of additional land to extend airfield and obtain lien thereon, without formally obliging board, county or city to repay said money or levy tax for board's benefit. Miles v. Lee, 284 Ky. 39, 143 S.W.2d 843, 1940 Ky. LEXIS 436 (Ky. 1940).

17. Use of Public Property for Private Purpose.

Abutting property owner did not have right of private railway access over property reacquired by city under operation of law; reasonable right of access did not encompass grant of private right of railway access as to do so would be in contravention of the right enjoyed by all other members of the public or other abutting property owners and would constitute use of public property for a private purpose prohibited by this section and Const., §§ 2, 13, and 242. City of Louisville v. Louisville Scrap Material Co., 932 S.W.2d 352, 1996 Ky. LEXIS 62 (Ky. 1996).

Cited:

Covington v. District of Highlands, 113 Ky. 612, 24 Ky. L. Rptr. 433, 68 S.W. 669, 1902 Ky. LEXIS 89 (Ky. 1902); Morris v. Randall, 129 Ky. 720, 112 S.W. 856, 1908 Ky. LEXIS 214 (Ky. 1908); Webster v. Frankfort Housing Com., 293 Ky. 114, 168 S.W.2d 344, 1943 Ky. LEXIS 559 (Ky. 1943); Louisville v. Board of Education, 302 Ky. 647, 195 S.W.2d 291, 1946 Ky. LEXIS 725 (Ky. 1946); Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490, 1947 Ky. LEXIS 825 (Ky. 1947); E.M. Bailey Distributing Co. v. Conagra, Inc., 676 S.W.2d 770, 1984 Ky. LEXIS 235 (Ky. 1984).

OPINIONS OF ATTORNEY GENERAL.

A sheriff may not deduct from excess fees the cost of interest on money borrowed by him when said borrowed funds are for the operation of his office nor may a fiscal court pay deputies' salaries and office expenses of a sheriff where such amounts are to be repaid to the fiscal court by the sheriff when fees are available because of the provisions of this section. OAG 61-632.

A city would not violate this section by continuing to insure property it had purchased with a mutual insurance company, because becoming a member of a mutual insurance company does not make the insured a stockholder within the fair import of the constitutional prohibition. OAG 61-836.

The board of trustees of a city could not legally appropriate money to pay for the electric power and repairs necessary to keep a memorial cross lighted that was a memorial to a private individual. OAG 62-615.

The city of Marion cannot legally appropriate money from its general fund for the support of the Crittenden recreational center, a nonstock, nonprofit corporation. OAG 62-634.

If implemented in a school district, the young historians program can be regarded as educational in purpose within the meaning of the constitution. OAG 63-214.

A county fiscal court cannot advance funds to pay the operating expenses of the sheriff's office during the slack period when his current fees are not enough to meet the current expenses of his office. OAG 63-848.

Where the residents of a city voted in favor of a general obligation bond for an industrial park development and a site was purchased, under the implementing ordinance the city could lease or sell the industrial park property to a nonprofit industrial foundation but it could not donate municipal property to such an organization. OAG 68-181.

A city would not be legally authorized to make a donation to the building fund of the local YMCA, a private nonprofit organization over which the city has no control. OAG 68-533.

Where not all of the residents of three cities included in an independent school district lived inside the school district and one city had its own tax assessor while two (2) other cities where assessed by the county assessor, the proper tax levying authority for the district was the county fiscal court and the election expense should be borne by the fiscal court. OAG 69-2.

Although a city or county could not contribute public funds to a group of private citizens for a beautification project, the city and county could establish either separate committees or a joint committee pursuant to KRS ch. 65, composed of citizens and appropriate funds thereto, to be utilized for beautifying the metropolitan area. OAG 69-415.

Under this section a municipality or a municipal water commission would be prohibited from donating money to an industrial council created as a nonprofit corporation for the purpose of encouraging new industries in the municipality. OAG 69-520.

In view of this section, a city cannot legally appropriate funds to assist a women's civic club to construct an amphitheater on land owned by the board of education, a separate public entity. The city could, however, build the amphitheater as a public project, or jointly establish a recreational system with the school district pursuant to KRS 97.010 which could include the amphitheater or, pursuant to the same statute, the city could lease land from the school board to establish a recreational center. OAG 70-514.

It is doubtful that the city of Berea could contribute money to Berea College to make up the cost difference where the college was installing additional equipment to furnish water to the city under a franchise. OAG 70-679.

County fiscal court could pass a resolution granting a corporation organized under KRS 273.160 (repealed in 1968) the sum of $15,000 toward the construction of a rescue squad building to house the corporation whose primary purpose is to render aid to persons in distress, since the building would involve a public purpose under § 171 of the Kentucky Constitution, would not involve a lending of credit, and would not be an appropriation prohibited by § 171, but merely a method of carrying out a clear public purpose. OAG 73-334.

This section should be read together with § 171 with the idea that the proscription against county appropriations to a corporation is not absolute, but is merely to be read as definite where the public purpose required by § 171 is not shown. OAG 73-334.

An agreement by a board of education to lease unused portions of a television facility owned by it to a private corporation was lawful with the exception of a provision that a part of the consideration for the lease would be an option to purchase up to 10% of the stock of the private corporation, which provision was illegal and void under §§ 177, 179, 184 and 186 of the Kentucky Constitution. OAG 73-418.

Donations by a sixth-class city to organizations which aided in a tornado disaster are improper. OAG 74-437.

Although a fiscal court is prohibited by this section from loaning county funds to deputy sheriffs to permit them to

purchase cars for use in the performance of their official duties, it may, under the authority of KRS 67.080 and 67.083, purchase such automobiles, as a properly budgeted item, the county retaining title to the cars and leasing them to the sheriff at an equitable monthly rental payable from the fees of his office. OAG 74-735.

The council of a city of the fourth class cannot legally appropriate money from its general fund to support a private, nonstock, nonprofit corporation in providing a supervised recreational program for the youth of the area and a meeting place for senior citizens of the community. OAG 75-366.

The appropriation of funds by municipalities for private purposes, such as face-lifting of private houses was within the constitutional prohibition under this section. OAG 75-156.

A city cannot use tax money to pay for subscriptions to a newspaper for the residents of a city where the newspaper is independent and is in no way associated with the city government. OAG 76-397.

For a school district to hold a vendor's lien on the sale of surplus school property would be a prohibited extension of its credit to the purchaser. OAG 77-771, 1977 Ky. AG LEXIS 30.

This section did not apply to appropriation to the State Department of Transportation (now Transportation Cabinet) for purposes of administering the railroad rehabilitation program. OAG 78-103, 1978 Ky. AG LEXIS 634.

A donation from a fiscal court to a volunteer fire department would in all probability be declared invalid under this section. OAG 78-122, 1978 Ky. AG LEXIS 606.

The fiscal court of a county containing a city of the third class may not legally appropriate money to a private nonprofit corporation not engaged in charitable and welfare work pursuant to KRS 204.200 (now repealed) insofar as in absence of specific statutory authorization to do so, such an appropriation of public funds is precluded by the Kentucky Constitution. OAG 78-158, 1978 Ky. AG LEXIS 585.

Generally, a city cannot appropriate public funds to nonprofit organizations in absence of legislative authorization when it has no control of such organizations and no connection with them. OAG 78-205, 1978 Ky. AG LEXIS 564.

The granting of a franchise for no monetary or valuable consideration would at least indirectly constitute a violation of this section of the Constitution, since the county is giving away monetarily what a fair franchise fee would be. OAG 78-208, 1978 Ky. AG LEXIS 535.

The purpose of this constitutional provision was to prevent the investment or contribution of public funds in private enterprises and to thereby forestall local tax revenues from being diverted from normal governmental channels. OAG 78-208, 1978 Ky. AG LEXIS 535.

The repeal of KRS 102.060 removed the authority for the appropriation of city funds, through the chamber of commerce for the purpose of industrial development, and that the tax moneys may not be applied for such purposes; furthermore, should the cities volunteer their tax moneys for such purposes, the action would be illegal under this section. OAG 78-313, 1978 Ky. AG LEXIS 441.

The city can only appropriate money for a public municipal purpose over which it has control, which would eliminate an appropriation to pay part of the funeral costs of an employee of the city. OAG 79-59, 1979 Ky. AG LEXIS 606.

A city cannot appropriate public funds to nonprofit corporations or to associations or individuals in absence of legislative authorization when it has no control of such organizations and no direct connection with them; furthermore, all appropriations of public money by municipalities must be for a public and corporate purpose rather than for private uses. OAG 79-67, 1979 Ky. AG LEXIS 571.

Since this section forbids municipal corporations from contributing to private corporations, a city may not contribute to a charitable hospital owned and operated by a private religious group. OAG 79-135, 1979 Ky. AG LEXIS 486.

This section of the Constitution applies to municipal donations or gifts to a corporation and would have no application with respect to the city's right to lease or sell municipal property. OAG 79-141, 1979 Ky. AG LEXIS 476.

The constitutional prohibition against lending credit of the state or of counties seeks to prevent transactions that might result in future liabilities against the general resources of the state or county. OAG 79-166, 1979 Ky. AG LEXIS 444.

A city may not make a grant to an incorporated religious nonprofit social welfare agency to assist that organization in operating a give-away program at its thrift store in that city, since this section prohibits the General Assembly from authorizing a city to appropriate money for any corporation, association or individuals. OAG 81-193, 1981 Ky. AG LEXIS 241.

Although a fire protection district, under KRS 75.040, has the authority through its board of trustees to levy a tax upon the property in its district in connection with the establishment, maintenance and operation of its fire department, there is no authority permitting a fiscal court to simply donate funds to a fire protection district, and such a donation would probably violate this section since it prohibits the General Assembly from authorizing a county to lend its credit or appropriate money to any corporation, association or individual. OAG 81-247, 1981 Ky. AG LEXIS 187.

Although a county receiving moneys from the Economic Assistance Fund established under KRS 42.450 would appear to have statutory authorization to make expenditures from the fund to such nonprofit organizations as little league baseball pursuant to the language of subsection (2) of KRS 42.455 and KRS 67.083(3)(f) which allow expenditures for "recreation," such an appropriation would violate the prohibition of this section against appropriations for corporations since the baseball program is not a county operation or function and is not under the basic operative control or management of the fiscal court. OAG 81-381, 1981 Ky. AG LEXIS 51.

A city could not purchase insurance coverage with itself as the named insured and a private railroad corporation as an additional insured in order to cover tort actions arising out of railroad accidents occurring on property leased by the railroad to the city, since such coverage would violate the prohibition contained in this section against a city appropriating public money for the benefit of a private corporation. OAG 81-418, 1981 Ky. AG LEXIS 22.

Where a city leased a parking lot from a railroad company, the city could not legally increase its lease payments to the railroad by the amount needed for the company to purchase its own insurance naming the city as an additional insured, for even though a city can provide for its own protection through the provisions of KRS 82.082, it is prohibited by this section from appropriating public money for the benefit of a private corporation. OAG 81-418, 1981 Ky. AG LEXIS 22.

Where a railroad company leased a parking lot next to its tracks to a city, the city could not legally expend funds for insurance coverage naming the company as insured to cover any liability which the company might incur as a result of claims against it for personal injury, death or property damage involving persons and property located on the leased property as a result of railroad accidents, since this section prohibits a city from appropriating public money for the benefit of a private corporation. OAG 81-418, 1981 Ky. AG LEXIS 22.

There is no authority in either KRS 67.080 or KRS 67.083 which authorizes a fiscal court to expend public funds to pay the electrical inspection fees for individual county residents; in addition, this section prohibits any county from appropriating money for any individual. OAG 82-30, 1982 Ky. AG LEXIS 604.

There was no constitutional problem where the county fiscal court advanced $500 to the clerk's office for use in making change with the clerk being a bailee for the money and the

money being returnable to the county on demand. OAG 82-107, 1982 Ky. AG LEXIS 527.

Where a community action corporation is organized and functioning pursuant to KRS 273.410 to 273.455 (now KRS 273.410 to 273.453), and has been designated, pursuant to an ordinance or resolution of the fiscal court, as an agent of the county under KRS 273.435 for the implementation of various statutorily authorized public welfare projects, the fiscal court may appropriate public funds to such community action corporation in connection with the carrying out of such projects. OAG 82-238, 1982 Ky. AG LEXIS 418.

While a city cannot legally donate or contribute public funds to a private corporation over which it has no control, with certain exceptions where the State Legislature has specifically authorized such donations, the city could contract with a nonprofit organization to render paramedic services to its citizens the same as it is specifically authorized to do with respect to contracting for emergency ambulance service pursuant to KRS 65.710, 65.720. The city could also provide for paramedic service in conjunction with the operation of its own emergency ambulance service on behalf of the citizens of the city. OAG 82-366, 1982 Ky. AG LEXIS 271.

This section restricts a municipal corporation from making donations to projects for which no benefit will be received by the city or in which it may not independently engage. OAG 82-410, 1982 Ky. AG LEXIS 225.

A fiscal court could sell a hospital physical plant, which was not needed by the county, to a nonprofit corporation for at least its fair market value; a sale of surplus land for fair market value would satisfy §§ 3, 171 and this section, as relates to prohibited gifts of county money. OAG 83-37, 1983 Ky. AG LEXIS 459.

The purpose of this section was to prevent the investment of public funds in private enterprises and to thereby forestall local tax revenues from being diverted from normal governmental channels; thus, this section would prohibit a county's use of its tax resources or other resources to fund a hospital physical plant by selling the plant to a nonprofit corporation, which ran the hospital, for no consideration. OAG 83-37, 1983 Ky. AG LEXIS 459.

While a city may not give municipal park property or use of it to an independent agency for the purpose of constructing and operating a public swimming pool, nor donate municipal funds to the nonprofit corporation, basic responsibility for the operation and maintenance of the pool may be contracted for by the city with the independent agency whereby the agency would agree to purchase liability insurance covering the activities at the pool and further would agree to hold the city harmless regarding the use of the pool. OAG 83-399, 1983 Ky. AG LEXIS 98.

There is no statutory authority for a fiscal court to appropriate money to and on behalf of a nonprofit corporation which is not associated with and not under the control of county government for the construction of a water distribution system in the county; such an appropriation is prohibited by this section. If the county constructed such a water distribution system it could not simply give the system away to a nonprofit water association corporation but would have to receive fair market value for a transfer of ownership. OAG 83-410, 1983 Ky. AG LEXIS 88.

A city could not donate real property to a private, not-for-profit hospital corporation for construction of a hospital nor could it sell the property to the hospital corporation for less than fair market value; a city cannot donate its property whether it be in the form of real estate or an appropriation of public funds to any private corporation as this would be in direct violation of this section. The city, of course, may sell its property no longer needed for public purpose pursuant to the terms of KRS 82.081 and 82.082 in any manner that it desires; however, such property should be sold either for its fair cash value based on an independent appraisal, by auction or through the bidding method. OAG 84-74, 1984 Ky. AG LEXIS 316.

Any attempt by a city to grant a private, hospital corporation relief from the payment of water and sewer charges or to construct free of charge drainage or pipeline facilities, or grant it other credits or free services mentioned, would be in violation of this section and against public policy. OAG 84-74, 1984 Ky. AG LEXIS 316.

Since county revenue bonds issued in conformity with applicable statutory sections involve no county governmental debt obligation, no lending of credit, and no use of tax revenues, this section (prohibiting a county's lending of credit) is not violated. OAG 84-92, 1984 Ky. AG LEXIS 294.

Since the three authorized methods found under KRS 99.350 are exclusive, a city must follow one of these methods if it wishes to operate under KRS Ch. 99, thus a city cannot legally enter into any agreement with a private nonprofit association and appropriate funds thereto, as well as other facilities and services, for the purpose of operating a community development program authorized by KRS Ch. 99. OAG 84-247, 1984 Ky. AG LEXIS 144.

Pursuant to KRS 273.441 and KRS 273.410(2), any of the counties which have in legal effect designated a corporation as a community action agency may, subject to available funds and proper budgeting procedure under KRS Chapter 68, contribute, through the corporation, county funds for any of the purposes described specifically in KRS 273.441 and KRS 273.410(2), with the assumption that such county grants are made by way of an agreement between the county and the corporation that such county money will be spent for a designated purpose or purposes, as expressly provided in KRS 273.441 and 273.410(2), the corporation subsequently reporting to the county government the precise nature and amount of the final expenditure. This is no violation of this section of the Constitution. For a county may select a nonprofit corporation as an instrumentality in carrying out a public purpose. OAG 85-117, 1985 Ky. AG LEXIS 40.

Subdivision (3)(g) of KRS 67.083 states that counties may provide memorials; since this is a public purpose which the county may engage in, the fiscal court may donate money to a private institution for this purpose if it so chooses. OAG 86-23, 1986 Ky. AG LEXIS 64.

Although there is legal precedent for a county to acquire the stock of a private corporation in order to dissolve it, there is no authority for a county's long term holding of the preferred stock of a private corporation. OAG 92-139, 1992 Ky. AG LEXIS 216.

Although the county's acceptance of preferred stock in a private corporation, in place of a debt owed the county by the corporation, might ultimately result in a salutary effect on unemployment, such public purpose, carried out by a county, and not under a specific statutory framework, is not allowed by this section. OAG 92-139, 1992 Ky. AG LEXIS 216.

Constitution §§ 26, 157, 158, 162, and this section do not impose a general ban upon a county agreeing to joint and several liability with other counties or political entities; furthermore, these constitutional sections do not prohibit payment of obligations incurred in a prior year, from moneys of a subsequent year. OAG 93-54, 1993 Ky. AG LEXIS 288.

This section which prohibits counties from owning stock in a corporation, also prohibits counties from forming a trust that owns stock in a corporation. OAG 94-1, 1994 Ky. AG LEXIS 236.

Action of two (2) counties in executing an interlocal cooperation act in which they created a trust which issued tax-exempt bonds and used the proceeds to acquire all the stock of a corporation was prohibited by this section since the trust's authority is no greater than that of either county, and since the counties cannot own stock in a corporation, neither can the trust. OAG 94-1, 1994 Ky. AG LEXIS 236.

Appropriations by local governments to nonprofit organizations, which are earmarked and used for a public purpose, are a lawful use of public funds and are consistent with this section of the Kentucky Constitution. OAG 99-5, 1999 Ky. AG LEXIS 249.

McCracken County Fiscal Court has the authority under Kentucky law to offer a grant of a short term loan to a start-up business if done for a legitimate public purpose. OAG 2008-06, 2008 Ky. AG LEXIS 6.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Tobergte, The Impact of Kentucky's Present Constitution Upon Business Growth & Development, Volume 51, No. 3, Summer 1987 Ky. Bench & B. 21.

§ 180. Act or ordinance levying any tax must specify purpose, for which alone money may be used.

Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

Compiler's Notes.

The General Assembly in 1996 proposed (Acts 1996, ch. 98, § 1) the amendment of this section. The amendment was ratified by the voters at the regular election in November 1996. Prior to the amendment the section read:

"§ 180. Act or ordinance levying any tax must specify purpose, for which alone money may be used.

The General Assembly may authorize the counties, cities or towns to levy a poll tax not exceeding one dollar and fifty cents per head. Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose."

The 1990 General Assembly, by Acts 1990, ch. 150, § 5, proposed that the Constitution be amended by repealing this section. This amendment was submitted to the voters for ratification or rejection at the regular election in November, 1990, and was defeated.

NOTES TO DECISIONS

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Cross-References

See notes to Const., § 184 under "8. Expenditures of Fundsâ and â 9. â Valid:â Grayson County Board of Educ. v. Boone, 452 S.W.2d 371, 1970 Ky. LEXIS 348 (Ky. Ct. App. 1970).

1. Construction.

The provisions of this section are mandatory. Commonwealth v. United States Fidelity & Guaranty Co., 121 Ky. 409, 89 S.W. 251, 28 Ky. L. Rptr. 362, 1905 Ky. LEXIS 220 (Ky. 1905).

This section does not limit the revenues of a year to the payment of liabilities incurred during that year, but only requires that revenues levied for a particular purpose, as for road purposes, be used for that purpose, either in the year levied or some other year. Lawrence County v. Lawrence Fiscal Court, 130 Ky. 587, 113 S.W. 824, 1908 Ky. LEXIS 302 (Ky. 1908).

This section and sections 184 and 186 of the Kentucky Constitution, when read together, prohibit the diversion of common school funds for purposes other than the maintenance of the public schools of the Commonwealth. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

2. Application.

The limitations imposed by this section have no application to the poll tax voted for school purposes under authority of a valid election. Christopher v. Robinson, 164 Ky. 262, 175 S.W. 387, 1915 Ky. LEXIS 368 (Ky. 1915).

This section has no application to poll taxes levied for school purposes. Fiscal Court of Monroe County v. Board of Education, 294 Ky. 758, 172 S.W.2d 624, 1943 Ky. LEXIS 534 (Ky. 1943).

3. Poll Taxes.

The provision of this section that the General Assembly may authorize the counties, cities, or towns to levy a poll tax not exceeding $1.50 per head does not preclude the levy of the tax by both a county and a town. Short v. Bartlett, 114 Ky. 143, 70 S.W. 283, 24 Ky. L. Rptr. 932, 1902 Ky. LEXIS 140 (Ky. 1902).

This section refers to poll taxes imposed for purposes other than the maintenance of common schools, and the maximum poll tax for general county purposes does not prevent a similar tax for school purposes, and under the Constitution the legislature may levy whatever taxes, ad valorem or capitation, necessary to provide an efficient system of common schools. McIntire v. Powell, 137 Ky. 477, 125 S.W. 1087, 1910 Ky. LEXIS 590 (Ky. 1910).

4. License Fees.

In view of Const., § 181 as to license fees, an act providing for license taxes on compounded and rectified distilled spirits is not unconstitutional for failure to specify the purpose for which the tax is levied. Brown-Foreman Co. v. Commonwealth, 125 Ky. 402, 101 S.W. 321, 30 Ky. L. Rptr. 793, 1907 Ky. LEXIS 285 (Ky. 1907), aff'd, 217 U.S. 563, 30 S. Ct. 578, 54 L. Ed. 883, 1910 U.S. LEXIS 1984 (U.S. 1910).

A license fee is not a tax within the meaning of this section, and an ordinance imposing a license fee need not specify its purposes, except where required by specific statute. Pure Milk

Producers & Distributors Ass'ns v. Morton, 276 Ky. 736, 125 S.W.2d 216, 1939 Ky. LEXIS 575 (Ky. 1939).

5. Levy on Special District.

Under this section when only a special district is liable for the tax, the levy should be so made as to indicate the territory on which it is levied. Carpenter v. Central Covington, 119 Ky. 785, 81 S.W. 919, 26 Ky. L. Rptr. 430, 1904 Ky. LEXIS 130 (Ky. 1904).

6. Unattainable Purpose.

Bond proceeds, when the purpose of the issue has become impossible of attainment, may be used to retire the issue. Fiscal Court of Estill County v. Debt Com. of Kentucky, 286 Ky. 114, 149 S.W.2d 735, 1941 Ky. LEXIS 209 (Ky. 1941).

7. Funds.

8. — Separation.

Under this section a city was obligated to keep separate a fund levied to pay a bond issue from the fund levied for general purposes and neither of the funds should be devoted to another purpose or mixed with the other fund. Wilson v. Covington, 220 Ky. 795, 295 S.W. 1069, 1927 Ky. LEXIS 637 (Ky. 1927).

The city council should make separate tax levies for general expenses and for each bond issue before and since the adoption of the Constitution, keeping the moneys separate, and using them only for designated purposes. Frank v. Fuss, 235 Ky. 143, 29 S.W.2d 603, 1930 Ky. LEXIS 300 (Ky. 1930).

Annual interest and proportionate parts of the principal of a bond issue whose purpose is the funding of a floating debt must be paid from the regular, general and current revenues and the fiscal court must provide for these obligations out of the revenues by a special allocation of the levy and keep them as special inviolate funds under this section, Const., § 159 and KRS 68.100. Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

Annual diversion of $19 million in coal severance tax receipts from the Workers' Compensation Benefit Reserve Fund (BRF) to the general fund did not violate Ky. Const. § 180 because the act levying the tax, KRS 143.090(4), did not, itself, dedicate coal severance tax revenue to the BRF or the Kentucky Workers' Compensation Funding Commission. Beshear v. Haydon Bridge Co., 304 S.W.3d 682, 2010 Ky. LEXIS 8 (Ky. 2010).

9. — General.

State taxes levied for general fund are available for appropriation for any proper state purpose, including payment of park bonds. Walton v. Carter, 337 S.W.2d 674, 1960 Ky. LEXIS 363 (Ky. 1960).

10. Surplus Funds.

The surplus remaining after the object of a tax levy has been accomplished must be treated as a part of the general funds of the county, and available for general county purposes. Field v. Stroube, 103 Ky. 114, 44 S.W. 363, 19 Ky. L. Rptr. 1751, 1898 Ky. LEXIS 32 (Ky. 1898). See Whaley v. Commonwealth, 110 Ky. 154, 61 S.W. 35, 23 Ky. L. Rptr. 1292, 1901 Ky. LEXIS 73 (Ky. 1901).

Where a city collected a greater sum for school purposes than requested by the board of education but within the limitation of the rate of assessment fixed in the statute, amount collected belonged to the school district. Board of Education v. Newport, 174 Ky. 28, 191 S.W. 871, 1917 Ky. LEXIS 153 (Ky. 1917).

When school bond issue raises more funds than are needed, the application of the excess to the payment of the bonds and interest is not a diversion prohibited by this section. Ashland v. Board of Education, 286 Ky. 69, 149 S.W.2d 728, 1941 Ky. LEXIS 206 (Ky. 1941).

When fiscal court accepts proposed budget and levies a tax for general fund purposes in accordance with the budget, the requirement of this section that resolution passed by any county levying a tax must specify distinctly the purpose for which the tax is levied, is satisfied and when the purpose for which a tax was levied has been accomplished the surplus may be transferred to the general fund and be used for any purpose for which a tax might have been levied. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

Surplus remaining after the purpose of a tax levy has been accomplished is treated as part of the general fund of the county and becomes available for general county use notwithstanding this section. Fannin v. Davis, 385 S.W.2d 321, 1964 Ky. LEXIS 158 (Ky. 1964), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

City's sanitation assessment was not properly designated a "user fee," but to the extent it was a fee/assessment for a local governmental service the excess revenues generated could be deemed taxes; when the annual sanitation assessment ordinances were passed and the monies collected it was clear that excess funds would be generated, and thus, even if the assessment was a service fee, the predictable excess regularly devoted to the city's general expenditures was properly viewed as a tax. Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

Resident properly stated a cause of action on behalf of a city to recover the surplus sanitation revenue that was not devoted to trash collection and recycling because Ky. Rev. Stat. §§ 92.330 and 92.340 prohibited the use of the sanitation tax revenue for other non-sanitation purposes; the city council was avoiding the increasingly unpopular action of raising taxes and instead running the city in some part on the fully-expected excess sanitation revenue. Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

11. — Educational.

A tax levied and collected by a city for school purposes cannot be appropriated by act of the legislature to maintain a public library which is open to the pupils of the common schools only as a part of the general public, and which is not under the control of the board of education or the schools. Board of Education v. Board of Trustees, 113 Ky. 234, 68 S.W. 10, 24 Ky. L. Rptr. 98, 1902 Ky. LEXIS 45 (Ky. 1902).

The use of funds collected for educational purposes, common school purposes, and the common school for the maintenance of a recreation plan did not violate this section, as recreational training is a part of the educational function. Dodge v. Jefferson County Board of Education, 298 Ky. 1, 181 S.W.2d 406, 1944 Ky. LEXIS 815 (Ky. 1944).

A board of education cannot be required to pay an assessment to help build a floodwall because payment would be in violation of this section and Const., § 184. Board of Education v. Spencer County, Levee, Flood Control & Drainage Dist., 313 Ky. 8, 230 S.W.2d 81, 1950 Ky. LEXIS 797 (Ky. 1950).

This section and Const., § 184 must be read together in determining how school funds shall be spent, and the test to be applied in each instance is what constitutes an educational purpose within the meaning of Const., § 184, rather than whether an activity might be beneficial to education. Board of Education v. Spencer County, Levee, Flood Control & Drainage Dist., 313 Ky. 8, 230 S.W.2d 81, 1950 Ky. LEXIS 797 (Ky. 1950).

Revenues from bonds issued and from a special fund created for school buildings may not be used to repair a school stadium. Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953).

12. Levy.

13. — Valid.

A city ordinance providing that all moneys received from licenses shall be paid to the treasurer, placed to the credit of the general revenue fund of the city, and used in defraying current and incidental expenses, except a certain proportion to be paid to the treasurer of the board of education for the use of the public schools of the city, sufficiently complies with this section. Burch v. Owensboro, 36 S.W. 12, 18 Ky. L. Rptr. 284 (1896).

An ordinance imposing a license fee on persons engaging in a trade, adopted under Const., § 181 and a statute, does not levy a tax within the meaning of this section, and the ordinance is not invalid because it does not specify the purpose for which the license fee is imposed. Shugars v. Hamilton, 122 Ky. 606, 92 S.W. 564, 29 Ky. L. Rptr. 127, 1906 Ky. LEXIS 80 (Ky. 1906). See Brown-Foreman Co. v. Commonwealth, 125 Ky. 402, 101 S.W. 321, 30 Ky. L. Rptr. 793, 1907 Ky. LEXIS 285 (Ky. 1907), aff'd, 217 U.S. 563, 30 S. Ct. 578, 54 L. Ed. 883, 1910 U.S. LEXIS 1984 (U.S. 1910).

An ordinance of a town levying a property tax for municipal purposes and a poll tax for said purposes sufficiently specifies the purposes for which the taxes are levied. Mt. Pleasant v. Eversole, 96 S.W. 478, 29 Ky. L. Rptr. 830 (1906).

If the purposes of a tax are found in the act levying it, this section is satisfied, though the purposes are stated in different parts of the act. Tyson v. Board of Trustees, 139 Ky. 256, 129 S.W. 820, 1910 Ky. LEXIS 29 (Ky. 1910).

A levy by a county fiscal court, reciting that it is made to defray current expenses, such as salaries, specifies distinctly the purpose for which the levy is made. Hillman Land & Iron Co. v. Commonwealth, 148 Ky. 331, 146 S.W. 776, 1912 Ky. LEXIS 453 (Ky. 1912) (Ky. 1912).

The resolution of commissioners of a courthouse district, levying a tax for the purpose of paying the debts and interest of the said district maturing in the year 1911, specifies distinctly the purpose for which the tax is levied, being used in the sense of current expenses incurred during the year in maintaining the courthouse. Streine v. Comm'rs of Campbell Courthouse Dist., 149 Ky. 641, 149 S.W. 928, 1912 Ky. LEXIS 672 (Ky. 1912).

An ordinance imposing a license fee to be paid into the general revenue funds of said city specifies the purpose of the levy sufficiently, since all revenue collected by a city is primarily for the purpose of paying its general expenses, and constitutes the general fund whether or not such a fund is specifically set up by ordinance. Tandy & Fairleigh Tobacco Co. v. Hopkinsville, 174 Ky. 189, 192 S.W. 46, 1917 Ky. LEXIS 183 (Ky. 1917).

Where a license tax ordinance specified purpose for which tax was levied, an amendment was not invalid because of failure to state such purpose. Williams v. Bowling Green, 254 Ky. 11, 70 S.W.2d 967, 1934 Ky. LEXIS 12 (Ky. 1934).

An ordinance levying a tax and providing ".... that said license fees are hereby fixed, established, imposed and levied for the purpose of and to be paid into the general revenue funds of said city" sufficiently specified the purpose for which the taxes were levied. Planters Bank & Trust Co. v. Hopkinsville, 289 Ky. 451, 159 S.W.2d 25, 1942 Ky. LEXIS 584 (Ky. 1942).

Tax statute containing a sufficient specification of purpose at time it was enacted was not invalidated by subsequent omission of such provision upon revision. Commonwealth ex rel. Scent v. Smith, 353 S.W.2d 557, 1962 Ky. LEXIS 24 (Ky. 1962).

14. — Invalid.

An order of a city council levying a tax is void unless it distinctly specifies the purpose for which the tax is levied. Somerset v. Somerset Banking Co., 109 Ky. 549, 60 S.W. 5, 22 Ky. L. Rptr. 1129, 1900 Ky. LEXIS 239 (Ky. 1900).

A resolution of the trustees of a school district declaring that a property tax of 50 cents on each $100 worth of taxable property should be levied was void as it omitted to state the purpose of the tax. Morrell Refrigerator Car Co. v. Commonwealth, 128 Ky. 447, 108 S.W. 926, 32 Ky. L. Rptr. 1383, 32 Ky. L. Rptr. 1389, 1908 Ky. LEXIS 86 (Ky. 1908). See United States Fidelity & Guaranty Co. v. Board of Education, 118 Ky. 355, 80 S.W. 1191, 26 Ky. L. Rptr. 246, 1904 Ky. LEXIS 56 (Ky. 1904); Chesapeake, O. & S.W.R.R. v. Commonwealth, 129 Ky. 318, 111 S.W. 334, 33 Ky. L. Rptr. 882, 1908 Ky. LEXIS 131 (1908).

The levy of a tax, void for failure to specify the purposes of the tax, on being amended in this particular, takes effect as of the date when the original levy would have taken effect had it been valid. Commonwealth Use Keown v. Chesapeake, O. & S. R. Co., 141 Ky. 633, 133 S.W. 559, 1911 Ky. LEXIS 56 (Ky.), modified, Commonwealth use of Ohio County, v. Chesapeake, O. & S. W. R. Co., 143 Ky. 472, 136 S.W. 895, 1911 Ky. LEXIS 434 (Ky. 1911).

Where an ordinance does not specify the purposes for which a tax will be levied, the ordinance is in violation of this section and, therefore, void. Morton v. Fullerton, 229 Ky. 76, 16 S.W.2d 797, 1929 Ky. LEXIS 707 (Ky. 1929). See Trustees of Eddyville Common Graded School Dist. v. Cash's Adm'r, 245 Ky. 764, 54 S.W.2d 336, 1932 Ky. LEXIS 682 (Ky. 1932).

A fiscal court order levying a tax which fails to specify the purpose for which the tax is levied is void under this section. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934).

15. Expenditures.

16. — Valid.

Where a tax was levied for the purpose of paying off the existing indebtedness of the county, and to defray current and necessary expenses of the same, the appropriation of a portion thereof for road and bridge purposes was not a use of the money for purposes other than for which it was collected. Poole v. Slayton, 128 Ky. 514, 108 S.W. 903, 33 Ky. L. Rptr. 373, 1908 Ky. LEXIS 82 (Ky. 1908).

Where county defaulted on road and bridge bonds, and plan was worked out to refund issued by exchanging bonds for a new issue bearing a lower rate of interest, county had authority to agree to pay, out of road and bridge sinking fund, reasonable compensation to agent who perfected plan, the costs of publishing call notices, and service charges to an agency for handling interest and principal payments. Governor v. Wolfe County, 291 Ky. 267, 163 S.W.2d 485, 1942 Ky. LEXIS 213 (Ky. 1942).

Identical resolutions of the fiscal court and county school board issued prior to an election ordered under KRS 160.477 to permit the electorate to vote on a proposed special school building tax levy, which resolutions informed the voters the levy was to be used for a school building adequate for the pupils in the locality in grades one through 12, did not amount to a contract to conduct a high school in the new building and a subsequent decision, resulting from a school consolidation plan, to use the new building for a grade school was within the school board's powers and did not constitute a diversion of tax revenues from the purpose for which they were collected. Ewing v. Peak, 266 S.W.2d 300, 1954 Ky. LEXIS 793 (Ky. 1954).

The applicability of this section and Ky. Const., Sections 184 and 186 to the issue of whether a sewer user charge can be paid from school funds must be determined by a reasonable interpretation of whether the service or commodity provided is necessary for the maintenance of the public schools and is exclusively for the benefit of the public schools. Sewer user charges imposed upon a county board of education bear a

reasonable and rational relationship to the value of the services provided and therefore are exclusively for the benefit of and necessary for the maintenance of the public schools. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

17. — Invalid.

Claims against a county allowed by the fiscal court for one year cannot be paid out of the levy for a subsequent year as that would be devoting the taxes to a purpose for which they were not levied. Cooper v. Wait, 106 Ky. 628, 51 S.W. 161, 21 Ky. L. Rptr. 229, 1899 Ky. LEXIS 83 (Ky. 1899).

Where funds were specified for use in construction of an adequate sewer system, such funds cannot be used to compensate for injuries due to alleged negligence of one of the contractors hired to construct the sewer system. T. B. Jones & Co. v. Ferro Concrete Const. Co., 154 Ky. 47, 156 S.W. 1060, 1913 Ky. LEXIS 25 (Ky. 1913).

After levy was made by appropriate ordinance for sinking fund, and tax was collected and deposited to credit of sinking fund, the city was thereafter without right to divert, by resolution or otherwise, the fund thus appropriated. Newport v. McLane, 256 Ky. 803, 77 S.W.2d 27, 1934 Ky. LEXIS 491 (Ky. 1934), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

Purchase of county funding bonds with funds from the county sinking fund, where county was unable to sell such bonds in the open market, was unlawful as a diversion of tax revenues levied and collected for one purpose to another. Hays v. Isaacs, 275 Ky. 26, 120 S.W.2d 737, 1938 Ky. LEXIS 359 (Ky. 1938).

When money, which should have been allocated to various funds for which it was levied and apportioned, was used for other purposes, there was a clear violation of this section. Newport v. Rawlings, 289 Ky. 203, 158 S.W.2d 12, 1941 Ky. LEXIS 25 (Ky. 1941), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

Proceeds from the sale of bonds which were issued to establish and maintain a city-owned light and power plant could not be diverted to payment of the city's general indebtedness. Daily v. Smith's Adm'x, 297 Ky. 689, 180 S.W.2d 861, 1944 Ky. LEXIS 783 (Ky. 1944), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

Since the purpose of KRS 178.210 is to improve and construct rather than to repair and maintain, the expenditure of funds realized from the collection of a special tax levy repair or maintenance of county roads or bridges was illegal in violation of this section and KRS 68.110. Thompson v. Bracken County, 294 S.W.2d 943, 1956 Ky. LEXIS 153 (Ky. 1956).

18. Statutes.

19. — Valid.

A statute requiring that guards appointed to protect property against mobs shall be paid out of the county treasury and levy of that year means that they are to be paid out of the general fund, and a designation of this fund, in an order of the fiscal court levying the tax, as the general claim fund is sufficiently specific. Cahill v. Perrine, 105 Ky. 531, 49 S.W. 344, 1899 Ky. LEXIS 241 (Ky. 1899).

KRS 91.430 does not violate this section. Board of Education v. Sea, 167 Ky. 772, 181 S.W. 670, 1916 Ky. LEXIS 492 (Ky. 1916).

An act involving a school tax levy was valid under this section where the budget section showed every item of school expense for the year as well as the total amount needed to be raised for school purposes by the tax levy. Fiscal Court of Jefferson County v. Jefferson County Board of Education, 196 Ky. 212, 244 S.W. 764, 1922 Ky. LEXIS 511 (Ky. 1922).

An act requiring that the proceeds of a school tax levy should bear the costs of the collection of this levy does not violate this section or Const., § 184. Ross v. Board of Education, 196 Ky. 366, 244 S.W. 793, 1922 Ky. LEXIS 520 (Ky. 1922).

KRS 441.220 to 441.300 (repealed) does not violate this section, as an attempted appropriation by the state of county funds levied and collected for specific county purposes. Connors v. Jefferson County Fiscal Court, 277 Ky. 23, 125 S.W.2d 206, 1938 Ky. LEXIS 564 (Ky. 1938).

KRS 158.115 authorizing county to use general funds to supplement school transportation system, including the furnishing of transportation to private, sectarian and parochial schools, does not violate this section. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

Statute authorizing a school board to impose occupational license fees but only after electoral approval is not unconstitutional on the ground that the use of school tax funds to defray the expenses of the election amounts to a diversion of tax revenue from the purpose for which it was collected. Sims v. Board of Education, 290 S.W.2d 491, 1956 Ky. LEXIS 329 (Ky. 1956).

Statute authorizing payment of bonds issued to match federal highway funds from license, excise taxes and fees from the sale and use of motor vehicles and fuels does not violate this section. Dalton v. State Property & Bldgs. Com., 304 S.W.2d 342, 1957 Ky. LEXIS 276 (Ky. 1957).

Statute providing for submission to voters of question of issuing general obligation bonds for developing and improving state parks and for constructing and improving highways, bridges and tunnels under federal cost participation program did not, by pledging ad valorem tax revenues to payment of park bonds, amount to a diversion of taxes from purposes for which they were levied, since such act in effect made provision for new levy replacing old levy, with new purposes, and did not purport to dispose of funds from old levy, while this section is concerned only with expenditure of funds that have been received from tax levy previously made. Walton v. Carter, 337 S.W.2d 674, 1960 Ky. LEXIS 363 (Ky. 1960).

KRS 341.145 providing a scheme for increasing unemployment benefits does not violate this section, for increasing benefits does not constitute a changing of the purpose of the funds levied for unemployment compensation benefits. Commonwealth v. Associated Industries of Kentucky, 370 S.W.2d 584, 1963 Ky. LEXIS 76 (Ky. 1963).

20. — Invalid.

A statute which appropriates for library purposes a part of the net amount raised for school purposes is invalid. Lambert v. Board of Trustees, 151 Ky. 725, 152 S.W. 802, 1913 Ky. LEXIS 562 (Ky. 1913).

Contributions of railroad workers paid pursuant to the unemployment compensation law and credited thereunder to the pooled account were taxes validly levied under this section for the sole purpose of paying unemployment compensation benefits, and the legislature could not transfer this fund to a federal fund in an effort to obtain benefits of a federal statute which removed railroad workers from operation of state statute. Unemployment Compensation Com. v. Savage, 283 Ky. 301, 140 S.W.2d 1073, 1940 Ky. LEXIS 322 (Ky. 1940).

An act providing for disposition of contributions of railroad workers to unemployment compensation fund violated this section, since it provided for a diversion of funds from the uses for which they were raised. Kentucky Color & Chemical Co. v. Barnes, 290 Ky. 681, 162 S.W.2d 531, 1942 Ky. LEXIS 477 (Ky. 1942).

The additional three percent (3%) fee allowed a sheriff for the collection of school taxes by KRS 160.500 violates this section and Const., § 184 as a diversion of tax revenues from the purpose for which levied. Dickson v. Jefferson County

Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

A former provision of KRS 134.310 permitting excess of sheriff's commission for collecting school taxes over and above costs of such collection to be applied to the general expenses of the sheriff's office authorizes a diversion of school tax revenues to nonschool purposes and is unconstitutional. Board of Education v. Greenhill, 291 S.W.2d 36, 1956 Ky. LEXIS 366 (Ky. 1956).

21. Collection Expenses.

Under this section a tax collector's commission may not be paid out of taxes collected for school purposes. Winchester v. Board of Education, 182 Ky. 313, 206 S.W. 492, 1918 Ky. LEXIS 366 (Ky. 1918).

This section is not violated when a reasonable charge is made against a local school tax for its collection. Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

Retention by sheriff of four percent (4%) of school tax collected was unconstitutional diversion of school funds where evidence indicated one percent (1%) was sufficient to cover cost of collecting school tax and the extra three percent (3%) was to be used by sheriff for general expenses of his office. Board of Education v. Wagers, 239 S.W.2d 48, 1951 Ky. LEXIS 836 (Ky. 1951).

A sheriff's fee for collecting school taxes must not exceed the cost of such collection. Barren County Board of Education v. Edmunds, 252 S.W.2d 882, 1952 Ky. LEXIS 1036 (Ky. 1952).

Although it may have been that the General Assembly's intent was to create a flat four percent (4%) commission for the county clerks for collecting the taxes, such interpretation would bring subsection (3) of KRS 134.805 into conflict with this section and Const., § 184; therefore, a county clerk may not receive a fee for collecting the school tax which is in excess of his or her actual cost of collection, not exceeding four percent (4%). Benson v. Board of Education, 748 S.W.2d 156, 1988 Ky. App. LEXIS 11 (Ky. Ct. App. 1988).

The only exception to the constitutional limitations of this section and Const., § 184 prohibiting the use of school funds for anything other than school purposes is the payment by the school board of the reasonable and actual costs of collecting the taxes. Benson v. Board of Education, 748 S.W.2d 156, 1988 Ky. App. LEXIS 11 (Ky. Ct. App. 1988).

22. Liability for Improper Expenditures.

City commissioners who, pursuant to resolution, diverted money from sinking fund to general fund, are civilly liable with their sureties to city for amount diverted, and neither expediency nor emergency created by their own actions could be invoked to avert their liability. Newport v. McLane, 256 Ky. 803, 77 S.W.2d 27, 1934 Ky. LEXIS 491 (Ky. 1934), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

Where taxes are expended for another purpose than that for which levied, those officials responsible for such expenditure are jointly and severally liable for the money so expended. Bernard v. McFarland, 267 Ky. 210, 101 S.W.2d 913, 1937 Ky. LEXIS 292 (Ky. 1937).

The fact that a board of education had been enjoined, in suit by taxpayers, from further collection of original tax for bonds was no defense where board had misapplied from sinking fund more than enough to pay the bonds. Board of Education v. Highland Cemetery, 292 Ky. 374, 166 S.W.2d 854, 1942 Ky. LEXIS 99 (Ky. 1942).

23. — Setoff.

In a suit by library board to recover fines and costs of a police court which were by statute designated for library use, the city could not claim a setoff for $3,000 raised by a special tax levy for library use in view of the fact that under this section such $3,000 could not have been used for any purpose other than that of use by the library. Owensboro v. Board of Trustees, 210 Ky. 482, 276 S.W. 143, 1925 Ky. LEXIS 714 (Ky. 1925).

Taxes may not be offset by a debt owed by the taxing power to the taxpayer. Irvine v. Wallace, 254 Ky. 564, 71 S.W.2d 974, 1934 Ky. LEXIS 91 (Ky. 1934).

24. — Repayment of Funds.

Where a city collected taxes paid in compromise, part of which money was for the public school tax, the city could not withhold the tax from the school system as under this section the city had no power to use such tax money for any other purpose. Cynthiana v. Board of Education, 52 S.W. 969, 21 Ky. L. Rptr. 731, 1899 Ky. LEXIS 340 (Ky. Ct. App. 1899).

Money paid by a city to a library pursuant to a statute which was found to be in violation of this section may be recovered by the board of education to which the money should properly have been paid. Board of Trustees v. Board of Education, 75 S.W. 225, 25 Ky. L. Rptr. 341 (1903).

Where school subdistrict used, for general school purposes, the proceeds of a tax levied to pay bonds, which proceeds would have been sufficient to pay bonds in full, bondholders were entitled to judgment requiring school board to pay bonds out of board's general fund, and to levy a tax to pay the balance of the bonds if the amount in the general fund was not sufficient to pay the bonds in full. Board of Education v. Highland Cemetery, 292 Ky. 374, 166 S.W.2d 854, 1942 Ky. LEXIS 99 (Ky. 1942).

Cited:

McDonald v. Louisville, 113 Ky. 425, 68 S.W. 413, 24 Ky. L. Rptr. 271, 1902 Ky. LEXIS 64 (Ky. 1902); Covington v. District of Highlands, 113 Ky. 612, 68 S.W. 669, 24 Ky. L. Rptr. 433, 1902 Ky. LEXIS 89 (Ky. 1902); Commonwealth v. Citizens' Nat'l Bank, 117 Ky. 946, 80 S.W. 158, 25 Ky. L. Rptr. 2100, 1904 Ky. LEXIS 265 (Ky. 1904); Louisville v. Button, 118 Ky. 732, 82 S.W. 293, 26 Ky. L. Rptr. 606, 1904 Ky. LEXIS 92 (Ky. 1904); George Schuster & Co. v. Louisville, 124 Ky. 189, 89 S.W. 689, 28 Ky. L. Rptr. 588, 1905 Ky. LEXIS 165 (Ky. 1905); Morris v. Randall, 129 Ky. 720, 112 S.W. 856, 1908 Ky. LEXIS 214 (Ky. 1908); Western & Southern Life Ins. Co. v. Commonwealth, 133 Ky. 292, 117 S.W. 376, 1909 Ky. LEXIS 168 (Ky. 1909); Louisville v. Becker, 139 Ky. 17, 129 S.W. 311, 1910 Ky. LEXIS 4 (Ky. 1910); Louisville v. Belknap Hardware & Mfg. Co., 145 Ky. 266, 140 S.W. 185, 1911 Ky. LEXIS 823 (Ky. 1911); Southern Bitulithic Co. v. Detreville, 156 Ky. 513, 161 S.W. 560, 1913 Ky. LEXIS 483 (Ky. 1913); Falls City Const. Co. v. Fiscal Court of Wolfe County, 160 Ky. 623, 170 S.W. 26, 1914 Ky. LEXIS 524 (Ky. 1914); Clay v. Dixie Fire Ins. Co., 168 Ky. 315, 181 S.W. 1123, 1916 Ky. LEXIS 543 (Ky. 1916); Bird v. Asher, 170 Ky. 726, 186 S.W. 663, 1916 Ky. LEXIS 129 (Ky. 1916); McCrocklin v. Nelson County Fiscal Court, 174 Ky. 308, 192 S.W. 494, 1917 Ky. LEXIS 197 (Ky. 1917); Barker v. Crum, 177 Ky. 637, 198 S.W. 211, 1917 Ky. LEXIS 665 (Ky. 1917) (Ky. 1917); Commonwealth v. Silcox, 209 Ky. 32, 272 S.W. 40, 1925 Ky. LEXIS 418 (Ky. 1925); Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932); Breathitt County v. Cockrell, 250 Ky. 743, 63 S.W.2d 920, 1933 Ky. LEXIS 764 (Ky. 1933); Fiscal Court of Scott County v. Davidson, 259 Ky. 498, 82 S.W.2d 801, 1935 Ky. LEXIS 350 (Ky. 1935); Superior Coal & Builders' Supply Co. v. Board of Education, 260 Ky. 84, 83 S.W.2d 875, 1935 Ky. LEXIS 412 (Ky. 1935); Wheeler v. Hopkinsville, 269 Ky. 289, 106 S.W.2d 1016, 1937 Ky. LEXIS 594 (Ky. 1937); Rose v. Knox County Fiscal Court, 279 Ky. 611, 131 S.W.2d 498, 1939 Ky. LEXIS 319 (Ky. 1939); Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940); Meagher v. Commonwealth, 305 Ky. 289, 203 S.W.2d 35, 1947 Ky. LEXIS 784 (Ky. 1947); Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490, 1947 Ky. LEXIS 825 (Ky. 1947); Rash v. Louisville & Jefferson County

Metropolitan Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, 1949 Ky. LEXIS 670 (Ky. 1949); Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983).

OPINIONS OF ATTORNEY GENERAL.

The lending of school property, such as chairs, tables and projectors to various organizations for banquets and similarly related meetings constitutes an indirect, if not direct, use of school property and school funds for other than school purposes and is expressly prohibited by the Constitution. OAG 60-1032.

A board of education may enter into a contract with the county library whereby the library will provide and circulate books to designated schools within the county school district without violating the provisions of this section and Const., § 184. OAG 61-506.

A county board of education may not donate school funds to a town public library which is open to the public as well as school students, because such an appropriation or donation would constitute an expenditure of school funds for other than educational purposes; however, a board of education could enter into a contract with a town public library whereby the latter would agree to furnish books and services to the county school children in return for a certain sum. This would not violate this section and Const., § 184 because the school money expended would be for the direct benefit of only the school children in their district and, therefore, would not include the public generally. OAG 61-879.

A municipality may not erect a water tank on school premises without the consent of the board of education and the payment of fair compensation for the use of school property. OAG 63-1060.

A board of education may not provide and maintain an automobile for the personal use of a school superintendent. OAG 64-130.

A board of education may provide and maintain an automobile for the benefit of the school superintendent while discharging the duties attendant to his office. OAG 64-130.

An independent school district and a city may not cooperate to jointly construct, pay for and own an auditorium-gymnasium on school property, which would be used by the schools for educational purposes and by the city for various public functions. OAG 64-475.

An independent school district can construct an auditorium-gymnasium and, after its completion, use the money which the city wishes to contribute as rent for the times when the building could be leased to the city. OAG 64-475.

An organization may use school buses of an independent school district to transport children to a function if the buses are not being used for school purposes, if reasonable and adequate compensation is paid for their use, if adequate collision insurance is purchased by the organization, and if it will carry liability insurance sufficient to cover the liability of any and all persons who may be concerned, including the members of the local boards of education. OAG 64-630.

A school board has legal authority to purchase liability insurance to cover the liability for sick-leave payments imposed by KRS 161.155. OAG 64-841.

It is legal for a board of education to execute a contract with a local health department to provide preventive medical services. OAG 65-293.

Commingling of state and federal funds by a school would result in their becoming subject to the provisions of both state and federal laws governing their expenditure. OAG 65-625.

A school board may lawfully purchase fire and extended coverage insurance in the form of a package policy even though the premium is not specifically allocable to individual coverages if it does not exceed the rate regularly charged for fire and extended coverage insurance, as approved by the Kentucky department of insurance for such risks. OAG 66-36.

A restriction contained in a declaration of restrictions affecting a 10.44-acre tract proposed as a school site that would require the owner of the tract to pay an assessment that could be used for maintenance of other property in the subdivision would preclude the purchase of the tract as a school site since the payment of the assessment would violate this section and Const., § 184. OAG 67-413.

Tax receipts derived under KRS 132.160 may be used for road construction and reconstruction purposes. OAG 68-233.

Public schoolteachers may not, as a part of the duties for which they are compensated by boards of education, be assigned to teach in a private or sectarian school since the effect of such assignment would be to the primary benefit of the private or sectarian school as opposed to a primary benefit to its students or to the common schools and would offend this section and Const., § 184 which restrict school funds to public school purposes and would also offend Const., § 189 which prohibits the use by sectarian schools of funds levied for educational purposes. OAG 68-423.

Expenditures of school funds to provide turnabouts for school buses on private property adjacent to bridges that have been condemned would offend this section and Const., § 184 and would not be a proper school board expenditure. OAG 68-473.

An arrangement whereby a high school constructs a swimming pool on school property to be used by the students during school hours but which would be in the exclusive control of the school booster organization after school hours, which organization would sell pool memberships to the general public with the net proceeds to be paid to the board of education, would be proscribed by this section and Const., § 184. OAG 69-121.

A school board could not grant an easement across school property to the metropolitan sewer district since the easement would not constitute an educational purpose. OAG 69-127.

KRS 262.745 and this section would not permit the expenditure of a Commonwealth watershed conservancy district's tax moneys for the acquisition of Tennessee lands for the purpose of building a floodwater retarding structure in Tennessee. OAG 69-204.

A lease of school property permitting the construction of a swimming pool on the leased premises would not violate this section or Const., § 184 if the consideration received by the school district would be sufficient to compensate for the lease. OAG 69-290.

Under this section and Const., § 184, the funds of the school board may not properly be expended to pay a portion of the salary of policewomen to patrol intersections on the city streets during school rush hours since this activity involves a service for the general public welfare rather than one which is designed to accomplish an educational purpose. OAG 69-488.

The members of families of employees and/or the dependents of employees may, within the discretion of the board, participate in the various types of group coverage provided the extra cost of the family coverage or dependent coverage is paid by the employee. OAG 70-336.

If in the year that sufficient revenue was derived from a special tax to finally retire all bonds and interest a surplus was created, such surplus could be appropriated by the county for general purposes without being prohibited by this section. OAG 70-671.

Once the levying of a special tax has accumulated enough revenue to retire all bonds and pay all interest due, and even though there may be a surplus at that point, the levying of the special tax should cease. OAG 70-671.

While general tax dollars provided by the state may be used to pay a portion of the costs incurred in operating special education classes for exceptional children, a local board of education is precluded from spending school funds for such purpose even though such an operation is a most laudable and commendable one. OAG 72-86.

A school board may not make a contribution to a park commission which is seeking to accumulate a fund in order to secure matching federal funds for development of a community recreation park. Section 186 of the Constitution prohibits the use of school funds for other than school purposes. This section provides that no tax levied and collected for one purpose shall be used for another. It is therefore unconstitutional for a school board to contribute money for other purposes. OAG 72-95.

Any fee collected by a sheriff in excess of the cost of collecting school funds would constitute a diversion of school funds for other than school purposes in violation of this section and section 184 of the Constitution. OAG 72-277.

Under this section and § 184 of the Constitution it would be invalid for a school board to convey title to its property to a city except for fair market value or to lease the property for less than its fair rental value. OAG 72-376.

Under this section and § 184 of the Constitution a school board may lease unused property provided that the consideration paid by the lessee is the fair rental value of the property. OAG 72-397.

It is proper for a school district to require students to pay the cost of their meals, but if a school district sees fit to do so, it may use school funds to subsidize the school lunch program with the result that the pupils will be paying a price which is less than the cost of supplying their meals. OAG 73-754.

The announcement over a school speaker system or the distribution of notices to children on school property of meetings of an organization of parents to promote a constitutional amendment which would forbid busing of school pupils for the purpose of achieving racial balance in the public schools constitutes an illegal use of school property and improperly interjects political questions into the operation of the public school. OAG 74-118.

Public school teachers may not, as a part of the duties for which compensated by boards of education, be assigned, to teach in a private or sectarian school. OAG 74-331. (Modifying OAG 68-150, OAG 68-585.)

Proposed public relations plan to have administrators of the school system join various service organizations of the community would not be a proper expenditure of school funds and would be unconstitutional under this section and Const., § 184. OAG 74-873.

A school district may not spend funds for street construction and improvement on nonschool property. OAG 75-108.

Once funding bonds have been paid off, the levy must be discontinued. OAG 75-162.

A county fiscal court ordinance enacting a license tax for the stated purpose of defraying the general expenses of the county government, although somewhat generalized, is technically in compliance with this section and KRS 68.100. OAG 75-385.

Public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Although the services of school crossing guards are a benefit to school children, the guards do not serve an "educational purpose," and thus school board funds may not be expended to pay the salaries of individuals who patrol intersections on city streets. OAG 76-239.

A county sheriff's fee for collecting school taxes must represent the reasonable cost of collection, as long as the rate does not exceed 4 percent, and the sheriff must document his reasonable costs of collection. OAG 76-251.

The expenses of opening schools to serve as voting places on a presidential election day, as provided by subsection (2) of KRS 117.065, when the schools are mandated to be closed by KRS 2.190 would be so small and incidental as not to be proscribed by Kentucky Constitution, §§ 180, 184, 186. OAG 76-592. Withdrawing OAG 42-363.

The circumstances surrounding the use of schools as voting places, as provided for in subsection (2) of KRS 117.065, may be structured so that there does not exist any unwarranted and impermissible expenditures of public common school money for election purposes. OAG 76-614.

The transfer by a county board of health to a county hospital of a blanket appropriation of a sum of the tax district fund would involve an illegal and unconstitutional transfer of such tax funds, since such blanket appropriation to a hospital, county, city or private, is not permissible under KRS Chapter 212 and this section. OAG 76-753.

Once the sheriff's total fee for collecting school taxes is properly computed the constitutional test of diversion is met since the constitutional diversion occurs no sooner than the reasonable cost of collection is exceeded, regardless of how much the excess is. OAG 78-146, 1978 Ky. AG LEXIS 703.

The payment to the urban county government of 25% for the school tax collection fee paid to the sheriff does not constitute an unlawful diversion of school money. OAG 78-146, 1978 Ky. AG LEXIS 703.

The total cost of collecting school taxes (prior to the 75% and 25% distribution at State level) is strictly constitutional as being an expenditure for school purposes. OAG 78-146, 1978 Ky. AG LEXIS 703.

The use of county funds, personnel or equipment to improve or maintain private drives or lanes is illegal and unconstitutional. OAG 79-343, 1979 Ky. AG LEXIS 277.

An ordinance providing that an occupational tax levied and collected shall be paid into the general revenue funds of the county would be sufficient compliance with this section. OAG 79-374, 1979 Ky. AG LEXIS 275.

The use of city street equipment and material for paving private driveways purchased with public funds is illegal and unconstitutional, and the fact that the private citizens whose driveways are paved will repay the city for the material used is of no consequence as the question hinges on the initial use of such equipment and material purchased with public municipal funds. OAG 79-509, 1979 Ky. AG LEXIS 137.

The expense allowance provided the county judge/executive in KRS 67.722 may be constitutionally funded from the county road fund, since such "administration of the local county road program" relates directly to the "cost of administration" of the county road program, as the terms "cost of administration" and "public highways" are used in Const., § 230 and as envisioned in KRS 68.100, and this section; under the same reasoning, if it can be reasonably determined as to what percentage of his work schedule the county judge/executive is engaged in administrative work relating to the county road program of construction, maintenance, and repair, that percentage factor may be applied to his salary to determine that precise part of his salary which may be funded out of the county road fund. OAG 80-377, 1980 Ky. AG LEXIS 296.

If school district money in any respect and in any amount is used to transport nonpublic school children the Constitution would be violated. OAG 82-392, 1982 Ky. AG LEXIS 250.

It is not appropriate for the Board of Education to provide transportation for parochial pupils from their homes to the nearest public school, where they do not live within a reasonable walking distance to such school, and for the Board of Education to be reimbursed by either the fiscal court and/or the local parochial school system for the additional cost (if any) to the school system since reimbursement is required to be on a "per capita" basis. OAG 82-392, 1982 Ky. AG LEXIS 250.

It is not constitutionally permissible for the Board of Education to provide transportation for parochial school pupils from their homes to the nearest public schools so long as they do not live within a reasonable walking distance to such school, where transportation from public schools to parochial schools would then be provided either by the fiscal court or the

local parochial school system. OAG 82-392, 1982 Ky. AG LEXIS 250.

Where nonpublic school children are transported on public school buses, irrespective of their point of departure, the local school district must be reimbursed on a per capita basis to avoid constitutional violation. The Court of Appeals has sanctioned only the per capita methodology for use in determining the additional transportation costs in transporting such children. OAG 82-392, 1982 Ky. AG LEXIS 250.

KRS 158.115 was the authorizing statute for a contract requiring a fiscal court to reimburse a school district on a straight per capita basis for nonpublic school students who rode public school buses and, absent full reimbursement by the fiscal court to the school board, the expenditure of public school moneys for transporting nonpublic school children would create a constitutional violation under this section as well as other provisions. Therefore, failure by the school board to enforce the contract with the fiscal court would be tantamount to willful neglect of duty and could lead to removal from office. OAG 82-405, 1982 Ky. AG LEXIS 227.

To the extent that a particular county tax ordinance or resolution spells out with particularity that all or a certain portion of the tax must go for county road purposes, any expenditure of that tax money, "earmarked" for county road purposes, to pay for the expense allowance provided for justices of the peace in KRS 64.530, would be in violation of KRS 68.100 and this section. OAG 82-466, 1982 Ky. AG LEXIS 170.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., § 184 and this section require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228, 1983 Ky. AG LEXIS 269.

A proposal by the fiscal court to pay a sum equal to 150 percent of the purported "actual cost" of transporting "all" the school children in a school district may not be legally tolerated, since it appears that a purported "actual increase cost" figure for the cost of transporting the nonpublic school children may not be constitutionally determined. OAG 83-294.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under this section and Const., §§ 184 and 186; therefore, under this section and Const., §§ 184 and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85, 1991 Ky. AG LEXIS 85.

It is still the opinion of the Attorney General's office that OAG 79-107 represents the law of Kentucky and the interpretation of this section and Ky. Const., § 184, and that the expenditure of school funds for school guard crossings is prohibited constitutionally. OAG 92-6, 1992 Ky. AG LEXIS 6.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of this section and Ky. Const., §§ 184 and 186; the act also falls within the parameters of KRS 160.160 as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63, 1992 Ky. AG LEXIS 63.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of KRS 178.290. OAG 93-63, 1993 Ky. AG LEXIS 298.

KRS 158.6455 permits a local school council or principal to use school reward money to pay teacher bonuses, and these bonuses are permissible under the Kentucky Constitution because they are "for school purposes." OAG 00-2, 2000 Ky. AG LEXIS 1.

A county board of education can constitutionally pay a privilege fee for connecting to a public sewer system. A privilege fee to fund construction of a sewer system is a "public school purpose" if it bears a rational relationship to the value of the services provided to the public schools. A fee based on usage and acreage meets this standard because it is proportional to the services provided. OAG 2009-01, 2009 Ky. AG LEXIS 219.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

City poll taxes, KRS 92.280.

County poll taxes, KRS 68.090.

Exemptions from poll tax, KRS 142.020.

Purpose of tax, specification and use for, KRS 68.100, 92.330.

Surplus in special fund may be used for a similar purpose, KRS 68.120.

EDUCATION

Section

183. General Assembly to provide for school system.
184. Common school fund — What constitutes — Use — Vote on tax for education other than in common schools.
185. Interest on school fund — Investment.
186. Distribution and use of school fund.
187. Race or color not to affect distribution of school fund.
188. Refund of federal direct tax part of school fund — Irredeemable bond.
189. School money not to be used for church, sectarian, or denominational school.

§ 183. General Assembly to provide for school system.

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.

Compiler's Notes.

The following amendment was proposed by the 1986 General Assembly (Acts 1986, ch. 36, § 4), was submitted to the voters for ratification or rejection at the regular election in November, 1986 and was defeated:

§ 183. Common schools to be provided for — State board of education — Superintendent of public instruction.

The general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state. There shall be a state board of education which shall consist of thirteen (13) members whose duties and qualifications shall be prescribed by statute. The governor shall appoint one (1) board member from each of the seven (7) supreme court districts and six (6) members at large to begin their respective terms on July 1, 1987. Individual appointments shall be subject to confirmation by majority vote of the senate during the first regular, special or organizational session of the general assembly subsequent to the appointment. Appointments not confirmed shall be void and the

governor shall make an additional appointment to serve the remainder of the particular term, subject to confirmation by the senate. Of the original thirteen (13) appointments, three (3) shall be for six (6) year terms, two (2) for five (5) year terms, two (2) for four (4) year terms, two (2) for three (3) year terms, two (2) for two (2) year terms, and two (2) for one (1) year terms, at the designation of the governor. Thereafter, at the expiration of each term, a member of the state board of education shall be appointed for a six (6) year term. Board members shall be eligible to serve no more than two (2) consecutive terms. The state board of education shall appoint a superintendent of public instruction, who shall act as executive officer for the board and perform such duties and possess such qualifications as may be provided by the board or by statute. The superintendent shall serve pursuant to an employment contract which may be executed in a maximum term of five (5) years. An individual may, at the pleasure of the board, serve consecutive contractual periods of employment as superintendent. The superintendent of public instruction shall serve at such salary and allowances as may be fixed by the board and may be removed for cause to be prescribed by law.

Sections 5 and 6 of Acts 1986, ch. 36 read:

"Section 5. It is further proposed as a part of this amendment that the superintendent of public instruction serving in office at the time of the ratification of this amendment, shall continue in office until his elective term shall expire with the first appointed superintendent to take office at the expiration of the elected superintendent's term."

"Section 6. It is further provided as a part of this amendment and as a schedule of transitional provisions for the purposes of this amendment, any other provision of the Constitution of Kentucky to the contrary notwithstanding, that:

1. The first appointments of the members of the State Board of Education shall be confirmed by the Senate in the 1987 organizational session of the General Assembly.

2. The State Board of Education that takes office in July, 1987 shall appoint an acting Superintendent of Public Instruction to take office the first Monday in January, 1988.

3. The terms of board members serving in office on June 30, 1987 shall expire on that date.

4. All statutes relating to the State Board of Education or the Superintendent of Public Instruction in force on the first Monday in January, 1988, as then constituted, not inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly. The provisions of all statutes which are inconsistent with this amendment shall cease on the first Monday in January, 1988."

An amendment was proposed by the 1972 General Assembly (Acts 1972, ch. 129, § 1), was submitted to the voters for ratification or rejection at the regular election in November, 1973 and was defeated.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Power of Legislature.
3. State Control.
4. Common Schools.
5. — Constitutionality of School System.
6. Normal Schools.
7. Institutional Schools.
8. Uniform Education.
9. School Districts.
10. Boards of Education.
11. School Elections.
12. School Taxes.
13. Assessments for Public Improvements.
14. Teacher Requirements.
15. Teacher Retirement.
16. Valid Statutes.
17. Prior Statutes.
18. Efficient System.
19. Funding.

1. Construction.

This section makes it mandatory upon the general assembly to provide an efficient common school system. Board of Education v. McChesney, 235 Ky. 692, 32 S.W.2d 26, 1930 Ky. LEXIS 441 (Ky. 1930). See Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931).

This section is as broad as it is possible to frame an authority to the Legislature to deal with the common schools in any way it should desire. Louisville v. Board of Education, 302 Ky. 647, 195 S.W.2d 291, 1946 Ky. LEXIS 725 (Ky. 1946).

Although this section permits the General Assembly to provide, by appropriate legislation, for an efficient system of common schools, such legislation is not appropriate if it contravenes another constitutional provision of equal dignity. Board of Education v. Board of Education, 472 S.W.2d 496, 1971 Ky. LEXIS 200 (Ky. 1971).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

Several conclusions readily appear from a reading of this section. First, it is the obligation, the sole obligation, of the General Assembly to provide for a system of common schools in Kentucky. The obligation to so provide is clear and unequivocal and is, in effect, a constitutional mandate. Next, the school system must be provided throughout the entire state, with no area (or its children) being omitted. The creation, implementation and maintenance of the school system must be achieved by appropriate legislation. Finally, the system must be an efficient one. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

2. Power of Legislature.

What the system of education referred to in this section is, or is to be, is left wholly to the discretion of the General Assembly. Prowse v. Board of Education, 134 Ky. 365, 120 S.W. 307, 1909 Ky. LEXIS 383 (Ky. 1909). See Elliott v. Garner, 140 Ky. 157, 130 S.W. 997, 1910 Ky. LEXIS 201 (Ky. 1910); Madison County Board of Education v. Smith, 250 Ky. 495, 63 S.W.2d 620, 1933 Ky. LEXIS 738 (Ky. 1933); Commonwealth v. Griffen, 268 Ky. 830, 105 S.W.2d 1063, 1937 Ky. LEXIS 536 (Ky. 1937).

Cities of the fifth and sixth classes, in the absence of legislative authority, do not have the power under this section to organize by ordinance city school districts independent of the county districts. Allen v. Elkhorn Coal Corp., 208 Ky. 108, 270 S.W. 743, 1925 Ky. LEXIS 223 (Ky. 1925).

The determination of whether legislation providing for the common school system is "appropriate" is a legislative func-

tion. Board of Education v. Board of Education, 458 S.W.2d 6, 1970 Ky. LEXIS 160 (Ky. 1970).

The sole responsibility for providing the system of common schools is that of our General Assembly. The General Assembly must not only establish the system, but it must monitor it on a continuing basis so that it will always be maintained in a constitutional manner. The General Assembly must carefully supervise it, so that there is no waste, no duplication, no mismanagement, at any level. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

This section requires the General Assembly to establish a system of common schools that provides an equal opportunity for children to have an adequate education. In no way does this constitutional requirement act as a limitation on the General Assembly's power to create local school entities and to grant to those entities the authority to supplement the state system. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

3. State Control.

Public education has always been regarded as a matter of state concern, and the state does not relinquish its control and management of the school system by allowing or requiring the different localities to supplement the state's appropriation of funds by local taxation. Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411, 1909 Ky. LEXIS 399 (Ky. 1909). See Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931).

Every common school in the state, whether located in a city or a rural district, is a state institution, protected, controlled, and regulated by the state, and the fact that the state has appointed agencies such as fiscal courts, school trustees, and municipal bodies to aid it in the collection of taxes for the maintenance of these schools does not deprive them of their state character. Louisville v. Board of Education, 154 Ky. 316, 157 S.W. 379, 1913 Ky. LEXIS 66 (Ky. 1913). See Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842, 1919 Ky. LEXIS 218 (Ky. 1919); Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609, 1925 Ky. LEXIS 1120 (Ky. 1925); Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931).

A provision in a deed of property to a city school board that such property be held for the exclusive use of white male students is void as an unconstitutional attempt to cede away governmental powers by the school board. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

4. Common Schools.

City schools, including high schools, are part of the state's common school system. Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411, 1909 Ky. LEXIS 399 (Ky. 1909). See Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609, 1925 Ky. LEXIS 1120 (Ky. 1925).

Graded schools are common schools. Jeffries v. Board of Trustees, 135 Ky. 488, 122 S.W. 813, 1909 Ky. LEXIS 312 (Ky. 1909).

Although county schools and graded common schools are part of common school system, application to graded common school system of laws clearly intended to be applicable only to county schools is not warranted. Sugg v. Board of Trustees, 255 Ky. 356, 74 S.W.2d 198, 1934 Ky. LEXIS 236 (Ky. 1934).

Common schools are public or free schools maintained by the state at public expense, as distinguished from private, parochial or sectarian schools. Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942).

This section places a duty on the General Assembly to establish an efficient common school system free from political influence. KRS 161.164 and 161.990 were enacted by the General Assembly in an effort to comply with this directive. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

5. — Constitutionality of School System.

The Kentucky Supreme Court ruled that Kentucky's entire system of common schools was unconstitutional. That decision applied to the entire sweep of the system—all its parts and parcels; it applied to the statutes creating, implementing and financing the system and to all regulations, etc., pertaining thereto; it covered the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program; and it covered school construction and maintenance, teacher certification—the whole gamut of the common school system in Kentucky. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

6. Normal Schools.

The state normal schools constitute a part of the common school system of the state, and the object of the Legislature in establishing them was to more fully effect the provisions of this section. James v. State University, 131 Ky. 156, 114 S.W. 767, 1908 Ky. LEXIS 118 (Ky. 1908).

In the absence of statutory authority the board of regents of a state normal school could not sell property of the school which held it as an agency of the state. Board of Regents v. Engle, 224 Ky. 184, 5 S.W.2d 1062, 1928 Ky. LEXIS 566 (Ky. 1928).

7. Institutional Schools.

State aid to institutional schools such as Louisville and Jefferson County children's home is not within the scope of this section to Const., § 186. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).

8. Uniform Education.

This section does not require a school district to provide a level of public education exceeding that prescribed by the state board of education as authorized by statute. Major v. Cayce, 98 Ky. 357, 33 S.W. 93, 17 Ky. L. Rptr. 967, 1895 Ky. LEXIS 66 (Ky. 1895).

City revenue from tax on corporations must be apportioned between white and colored schools, for to do otherwise would violate this section. Trustees of Graded Free Colored Common Schools v. Trustees of Graded Free White Common Schools, 180 Ky. 574, 203 S.W. 520, 1918 Ky. LEXIS 114 (Ky. 1918).

Operation of two high schools in western part of county and none in eastern part without providing equal and uniform educational opportunities for those in the eastern half is clearly arbitrary, discriminatory, and in violation of this section and KRS 158.010. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

Uniformity does not require equal classification but it does demand that there shall be substantially uniform system and equal school facilities without discrimination as between different sections of a district or county. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

9. School Districts.

School districts created in accordance with this section are creatures of the Legislature and Legislature has power to alter them or even do away with them entirely. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949). See Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

Though a school district possesses some of the attributes of a municipal corporation for some legal purposes, and though a school district is regarded as a political subdivision for some legal considerations, a school district is, nevertheless, an agency of the state subject to the will of the Legislature and existing for one public purpose only — to locally administer

the common schools within a particular area subject to the paramount interest of the state. Board of Education v. Board of Education, 458 S.W.2d 6, 1970 Ky. LEXIS 160 (Ky. 1970).

10. Boards of Education.

General Assembly may require that members of county board of education have an eighth grade education. Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353, 1938 Ky. LEXIS 207 (Ky. 1938).

It is the local boards which hold the substantial decision-making authority in regard to the local concerns for which they are established; although the state does establish guiding rules and policies for the efficient administration of the public schools, being a steward of state education policy does not make the school district an alter ego of the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990).

11. School Elections.

All elections affecting schools are exclusively under the control of the General Assembly, and are not included in the franchise and election articles of the Constitution. Hoskins v. Ramsey, 197 Ky. 465, 247 S.W. 371, 1923 Ky. LEXIS 663 (Ky. 1923).

Under this section the Legislature has the power to regulate school district elections by virtue of which the corrupt practices act applies to such elections. Ridings v. Jones, 213 Ky. 810, 281 S.W. 999, 1926 Ky. LEXIS 626 (Ky. 1926).

Statute providing for election by secret ballot of a board of education of each county, was in implementation of this section. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

12. School Taxes.

The Legislature is empowered to levy whatever taxes, either ad valorem or capitation, which are necessary to provide an efficient system of common schools throughout the state. McIntire v. Powell, 137 Ky. 477, 125 S.W. 1087, 1910 Ky. LEXIS 590 (Ky. 1910).

Since the imposition of a poll or capitation tax for school purposes is authorized by the Constitution, it is the absolute duty of the fiscal court to levy such a tax, within the statutory limit, at the request of the board of education. Fiscal Court of Logan County v. Board of Education, 138 Ky. 98, 127 S.W. 527, 1910 Ky. LEXIS 44 (Ky. 1910).

This section does not authorize Legislature to ignore limitation on indebtedness of two per cent of taxable property. Booth v. Board of Education, 229 Ky. 719, 17 S.W.2d 1013, 1929 Ky. LEXIS 833 (Ky. 1929).

All taxes imposed for common school purposes are state taxes, although the fund raised by any particular common school tax may be designed to be devoted exclusively to schools located in the territory affected by the tax. Paducah-Illinois R. Co. v. Graham, 46 F.2d 806, 1931 U.S. Dist. LEXIS 1138 (D. Ky. 1931).

Providing funds by taxation for common schools, and providing for their organization and administration, are inherently legislative in character, and by this section expressly allocated to the legislative department. Paducah-Illinois R. Co. v. Graham, 46 F.2d 806, 1931 U.S. Dist. LEXIS 1138 (D. Ky. 1931).

13. Assessments for Public Improvements.

In view of this section public school property belonging to a city school board may not be subjected to the payment of an assessment for the original construction of a street. Louisville v. Leatherman, 99 Ky. 213, 35 S.W. 625, 18 Ky. L. Rptr. 124, 1896 Ky. LEXIS 75 (Ky. 1896).

The Legislature may not authorize a school district to issue bonds for or assume any obligation to pay for abutting municipal street improvements. Wilson v. Board of Education, 226 Ky. 476, 11 S.W.2d 143, 1928 Ky. LEXIS 124 (Ky. 1928).

14. Teacher Requirements.

The requirement of a county board of education, exercised under statutory authority, that teachers employed by it have higher educational requirements than are required for a teacher's license does not violate constitutional or statutory requirements of a uniform school system. Daviess County Board of Education v. Vanover, 219 Ky. 565, 293 S.W. 1063, 1927 Ky. LEXIS 379 (Ky. 1927).

15. Teacher Retirement.

A board of education regulation compelling retirement of teachers at age 65 was not unconstitutional. Belcher v. Gish, 555 S.W.2d 264, 1977 Ky. LEXIS 505 (Ky. 1977).

16. Valid Statutes.

Under this section, that part of the school law authorizing the conversion of a part of a common school district into a graded school district without the consent of a majority of all the patrons of the common school district is constitutional. Elliott v. Garner, 140 Ky. 157, 130 S.W. 997, 1910 Ky. LEXIS 201 (Ky. 1910).

KRS 160.045 does not violate Const., §§ 2, 19, 52, or this section. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

KRS 160.486 is valid and does not contravene the expressed will of the people contained in this Constitution. Board of Education v. Board of Education, 458 S.W.2d 6, 1970 Ky. LEXIS 160 (Ky. 1970).

Since the school based council is an authoritative body within the local school district, and the restriction in subdivision (2)(a) of KRS 160.345 prohibiting school district employees or their spouses from serving as parent members on the school based councils directly addresses the appearance of nepotism within that body and is clearly related to the goals of the Legislature to eradicate nepotism within the school districts of the Commonwealth, they are not unconstitutional as a violation of the equal protection clause of the Fourteenth Amendment. Department of Educ. v. Risner, 913 S.W.2d 327, 1996 Ky. LEXIS 2 (Ky. 1996).

Governor of Kentucky properly issued an executive order, which made several temporary changes to various state education boards, because the boards fell within the ambit of the Governor's statutory authority to temporarily reorganize boards outside of the legislative session. The Governor's power did not violate the education provision of the Kentucky Constitution because the Kentucky Legislature apparently believed the grant of interim power to the Governor promoted Kentucky's system of common schools. Commonwealth ex rel. Beshear v. Bevin, 575 S.W.3d 673, 2019 Ky. LEXIS 214 (Ky. 2019).

17. Prior Statutes.

Special acts concerning school districts in towns and cities were repealed by the subsequent general law relating to common schools, to the extent that they were inconsistent therewith. Hickman College v. Colored Common School Dist., 111 Ky. 944, 65 S.W. 20, 23 Ky. L. Rptr. 1271, 1901 Ky. LEXIS 278 (Ky. Ct. App. 1901).

18. Efficient System.

A school system does not cease to be efficient, and thus violate this section, because of court ordered busing for desegregation since at the very least "efficient" refers to a system which exists and operates and it must operate in a constitutional manner. Carroll v. Department of Health, Education & Welfare, 410 F. Supp. 234, 1976 U.S. Dist. LEXIS 16031 (W.D. Ky. 1976), aff'd, Carroll v. Board of Education, 561 F.2d 1, 1977 U.S. App. LEXIS 11870 (6th Cir. Ky. 1977).

The essential, and minimal, characteristics of an "efficient" system of common schools, may be summarized as follows: 1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General

Assembly. 2) Common schools shall be free to all. 3) Common schools shall be available to all Kentucky children. 4) Common schools shall be substantially uniform throughout the state. 5) Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances. 6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence. 7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education. 8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education. 9) An adequate education is one which has as its goal the development of the seven (7) capacities recited previously. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

The Supreme Court considered foreign cases, along with constitutional debates, Kentucky precedents and the opinion of experts in formulating the definition of "efficient" as it appears in this section. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

19. Funding.

The present school funding statutes permit local Boards of Education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables boards of education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding, according to the mandate of this section; and that is all that Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

House Bill 9's charter schools violated this section and Sections 184 and 186 because they allowed enrollment caps and lottery admissions (preventing universal access); operated exempt from local school district regulation; and lacked direct accountability to the General Assembly, making them constitutionally impermissible recipients of public education funds. Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

Cited:

Davenport v. Cloverport, 72 F. 689, 1896 U.S. Dist. LEXIS 143 (D. Ky. 1896); Berkley v. Board of Education, 58 S.W. 506, 22 Ky. L. Rptr. 638, 1900 Ky. LEXIS 300 (Ky. Ct. App. 1900); Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136, 23 Ky. L. Rptr. 1356, 1901 Ky. LEXIS 286 (Ky. 1901); Marsee v. Hager, 125 Ky. 445, 101 S.W. 882, 31 Ky. L. Rptr. 79, 1907 Ky. LEXIS 304 (Ky. 1907); James v. State University, 131 Ky. 156, 114 S.W. 767, 1908 Ky. LEXIS 118 (Ky. 1908); Prowse v. Board of Education, 134 Ky. 365, 120 S.W. 307, 1909 Ky. LEXIS 383 (Ky. 1909); Ex parte Newport, 141 Ky. 329, 132 S.W. 580, 1910 Ky. LEXIS 462 (Ky. 1910); Mt. Sterling v. Montgomery County, 152 Ky. 637, 153 S.W. 952, 1913 Ky. LEXIS 702 (Ky. 1913); Larue v. Redmon, 168 Ky. 487, 182 S.W. 622, 1916 Ky. LEXIS 583 (Ky. 1916); Gilbert v. Greene, 185 Ky. 817, 216 S.W. 105, 1919 Ky. LEXIS 380 (Ky. 1919); Schultz v. Ohio County, 226 Ky. 633, 11 S.W.2d 702, 1928 Ky. LEXIS 149 (Ky. 1928); Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932); Board of Education v. Simmons, 245 Ky. 493, 53 S.W.2d 940, 1932 Ky. LEXIS 625 (Ky. 1932); Dean v. Board of Education, 247 Ky. 553, 57 S.W.2d 477, 1933 Ky. LEXIS 419 (Ky. 1933); Board of Education v. Talbott, 261 Ky. 66, 86 S.W.2d 1059, 1935 Ky. LEXIS 592 (Ky. 1935); Wirth v. Board of Education, 262 Ky. 291, 90 S.W.2d 62, 1935 Ky. LEXIS 787 (Ky. 1935); Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941); Gill v. Board of Education, 288 Ky. 790, 156 S.W.2d 844, 1941 Ky. LEXIS 142 (Ky. 1941); Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751, 1941 Ky. LEXIS 21 (Ky. 1941); Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946); Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490, 1947 Ky. LEXIS 825 (Ky. 1947); Board of Education v. Spencer County, Levee, Flood Control & Drainage Dist., 313 Ky. 8, 230 S.W.2d 81, 1950 Ky. LEXIS 797 (Ky. 1950); Wooley v. Spalding, 365 S.W.2d 323, 1962 Ky. LEXIS 294 (Ky. 1962); International Brotherhood of Firemen & Oilers v. Board of Education, 393 S.W.2d 793, 1965 Ky. LEXIS 245 (Ky. 1965); Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971); Carroll v. Board of Education, 561 F.2d 1, 1977 U.S. App. LEXIS 11870 (6th Cir. Ky. 1977); Chapman v. Gorman, 839 S.W.2d 232, 1992 Ky. LEXIS 124 (Ky. 1992).

OPINIONS OF ATTORNEY GENERAL.

The summer school sessions operated by the Louisville and Jefferson County school systems on a tuition basis are not extensions of the regular school term and, consequently, are not in violation of the constitutional or statutory provisions which require a uniform system of common schools to be maintained in the state. OAG 60-1053.

Following the tax rollback, the executive department of state government had the authority and duty to provide supplemental payments to certain schools under the minimum foundation program as would insure the orderly continuation of the common schools program and as would prevent the regression of the program. OAG 70-474.

Although there is a wide disparity of per pupil financial support for education, in view of the recent United States Supreme Court case, San Antonio Independent School District v. Rodriguez, the only way our present system of common schools could be declared unconstitutional as violating this section would be to hold that it is not an "efficient system" and, if there is a better way of school financing, it is not up to the courts but the educators and Legislature to find it. OAG 73-273.

There is no constitutional or legislative requirement that the cost of education to public school pupils must be free and a board of education may require that pupils be charged a reasonable fee for school supplies. OAG 75-619.

A local school board regulation requiring its certified employees to reside in the board district would seem to work against efficiency in operating schools and procurement of teacher personnel so as to violate this section. OAG 82-59, 1982 Ky. AG LEXIS 574.

The purchase of satellite receiving equipment for nonpublic schools through an appropriation by the General Assembly would appear to be educational in purpose and, therefore, would appear to be a constitutionally prohibited expenditure. OAG 89-41, 1989 Ky. AG LEXIS 41.

It is not unconstitutional for the Legislature to require reorganization of the Department of Education, in the course of developing an efficient system of common schools in compliance with this section. OAG 91-66, 1991 Ky. AG LEXIS 68.

Based on the language of this section of the Kentucky Constitution, and on case law interpreting this section, the General Assembly has authorization to create the Office of Education Accountability. OAG 91-222, 1991 Ky. AG LEXIS 229.

The discovery powers set forth in KRS 7.410(2)(d) are broad; however, they relate to the ability of the arm of the Legislature to study the implementation of the Reform Act, and to insure that the General Assembly is successful in creating an "efficient system of common schools," as mandated by this section of the Kentucky Constitution. OAG 91-222, 1991 Ky. AG LEXIS 229.

A school board may not require principals to be residents of the school district. OAG 01-7, 2001 Ky. AG LEXIS 10.

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§ 184. Common school fund — What constitutes — Use — Vote on tax for education other than in common schools.

The bond of the Commonwealth issued in favor of the Board of Education for the sum of one million three hundred and twenty-seven thousand dollars shall constitute one bond of the Commonwealth in favor of the Board of Education, and this bond and the seventy-three thousand five hundred dollars of the stock in the Bank of Kentucky, held by the Board of Education, and its proceeds, shall be held inviolate for the purpose of sustaining the system of common schools. The interest and dividends of said fund, together with any sum which may be produced by taxation or otherwise for purposes of common school education, shall be appropriated to the common schools, and to no other purpose. No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to the legal voters, and the majority of the votes cast at said election shall be in favor of such taxation: Provided, The tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Construction.
3. Application.
4. Common School System.
5. Common School Fund.
6. School Taxes.
7. — Collection Fees.
8. Expenditure of Funds.
9. — Valid.
10. —Invalid.
11. Assessment for Public Improvements.
12. University of Kentucky.
13. Normal Schools.
14. Institutional Schools.
15. Valid Statutes.
16. Invalid Statutes.
17. Sewer User Charges.

1. Purpose.
It was the intent of this section to prohibit the collection of any taxes to any extent for educational purposes other than in common schools, without a majority vote of the people. Brown v. Board of Education, 108 Ky. 783, 57 S.W. 612, 22 Ky. L. Rptr. 483, 1900 Ky. LEXIS 102 (Ky. 1900).

2. Construction.
This section is a restriction upon legislative power, not upon municipal indebtedness. Brown v. Board of Education, 108 Ky. 783, 57 S.W. 612, 22 Ky. L. Rptr. 483, 1900 Ky. LEXIS 102 (Ky. 1900).
This section leaves to the law-making body the determination of what is an efficient educational system, and to that body wide discretion in choosing the method of supplying an efficient system. Dodge v. Jefferson County Board of Education, 298 Ky. 1, 181 S.W.2d 406, 1944 Ky. LEXIS 815 (Ky. 1944).
This section and sections 180 and 186 of the Kentucky Constitution, when read together, prohibit the diversion of common school funds for purposes other than the maintenance of the public schools of the Commonwealth. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

3. Application.
The prohibitions of this section apply to local political units as well as to the General Assembly. Pollitt v. Lewis, 269 Ky. 680, 108 S.W.2d 671, 1937 Ky. LEXIS 659 (Ky. 1937).

4. Common School System.
In order for there to be a common school there must be a common school district. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).
Neither the statements of the Court of Appeals nor the pronouncements of the legislature can make an institution a part of the common school system contrary to the mandate of the Constitution. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).

5. Common School Fund.
The income to which the common school fund was entitled was not confined to those sources of revenue provided in a certain statute, but might be supplemented from other sources such as inheritance taxes. Gilbert v. Greene, 185 Ky. 817, 216 S.W. 105, 1919 Ky. LEXIS 380 (Ky. 1919).
Money appropriated for schools immediately becomes part of school fund, although appropriated after tax is levied or collected. Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932).
Under this section, the school fund was entitled to the surplus in the county livestock fund, despite the repeal of statute providing for payment of the surplus to the school

fund. Board of Education v. Tierney, 280 S.W.2d 201, 1955 Ky. LEXIS 148 (Ky. 1955).

6. School Taxes.

Under this section, a city could not avoid paying over to the school board the whole amount of taxes collected, on the ground that it went into the sinking fund. Louisville v. Louisville School Board, 32 S.W. 406, 17 Ky. L. Rptr. 697 (1895).

In view of Const., § 180 and this section, where a city collected a greater sum for school purposes than requested by board of education but within limitation of rate of assessment fixed in statute, the total amount collected belonged to the board of education. Board of Education v. Newport, 174 Ky. 28, 191 S.W. 871, 1917 Ky. LEXIS 153 (Ky. 1917).

Where a city collects taxes for school purposes without insisting upon levy being reduced by amount of unreported resources of board of education, it cannot subsequently so insist and may not withhold from the school board any portion of the tax levied for school purposes. Board of Education v. Newport, 174 Ky. 28, 191 S.W. 871, 1917 Ky. LEXIS 153 (Ky. 1917).

A tax levied for the benefit of common schools is a state tax, although it may be levied and collected by municipal county or district agencies. Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842, 1919 Ky. LEXIS 218 (Ky. 1919). See Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609, 1925 Ky. LEXIS 1120 (Ky. 1925).

Legislature may provide for efficient school system by directly levying tax which is sufficient when proceeds are distributed pro rata or by raising limit of local school tax rates. Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932).

Continued collection of seven cents special tax voted in 1937 for a junior college program was not in violation of this section, although the junior college was to be operated by a state university under contract with the school board and the tax would be paid over to a nonprofit corporation created by the school board as its own agency, the school board having option to withdraw from the program of operation of the junior college. Montague v. Board of Education, 402 S.W.2d 94, 1966 Ky. LEXIS 355 (Ky. 1966).

7. — Collection Fees.

Using a portion of a tax collected for purposes of common school education to bear the costs of its collection, does not violate Const., § 180 or this section. Ross v. Board of Education, 196 Ky. 366, 244 S.W. 793, 1922 Ky. LEXIS 520 (Ky. 1922).

No violence is done to constitutional provisions prohibiting diversion of taxes or school funds when a reasonable charge is made against a local school tax for its collection. Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

The additional three percent (3%) fee allowed the sheriff of Jefferson County for the collection of school taxes by KRS 160.500 violates this section and Const., § 180. Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

A sheriff may not retain for the general expenses of his office from school tax funds any fee in an amount greater than that incurred as an expense of collecting such school tax funds despite statutory authority for a larger fee and the court is required to limit his fee upon such showing. Board of Education v. Wagers, 239 S.W.2d 48, 1951 Ky. LEXIS 836 (Ky. 1951). See Barren County Board of Education v. Edmunds, 252 S.W.2d 882, 1952 Ky. LEXIS 1036 (Ky. 1952); Board of Education v. Greenhill, 291 S.W.2d 36, 1956 Ky. LEXIS 366 (Ky. 1956).

The trial court must fix the fee of the sheriff for collecting board of education tax levy at a figure commensurate with the services rendered since a flat percentage fee violates Const., § 180 and this section in those cases where the reasonable cost of collection is less than amount which would be paid the sheriff by the application of the flat percentage to the total amount of taxes collected. Barren County Board of Education v. Edmunds, 252 S.W.2d 882, 1952 Ky. LEXIS 1036 (Ky. 1952).

Although it may have been that the General Assembly's intent was to create a flat four percent (4%) commission for the county clerks for collecting the taxes, such interpretation would bring subsection (3) of KRS 134.805 into conflict with Const., § 180 and this section; therefore, a county clerk may not receive a fee for collecting the school tax which is in excess of his or her actual cost of collection, not exceeding four percent (4%). Benson v. Board of Education, 748 S.W.2d 156, 1988 Ky. App. LEXIS 11 (Ky. Ct. App. 1988).

The only exception to the constitutional limitations of Const., § 180 and this section prohibiting the use of school funds for anything other than school purposes is the payment by the school board of the reasonable and actual costs of collecting the taxes. Benson v. Board of Education, 748 S.W.2d 156, 1988 Ky. App. LEXIS 11 (Ky. Ct. App. 1988).

The allocation of the costs of collection of school taxes based on a percentage of revenue collected does not violate this section; such collection costs in no way diminish the constitutional command that school taxes must be appropriated to the common schools and no other purpose. These basic principles were not changed by the adoption of the Kentucky Education Reform Act of 1990. Board of Educ. v. Williams, 930 S.W.2d 399, 1996 Ky. LEXIS 94 (Ky. 1996).

8. Expenditure of Funds.

City school board's appropriation for purposes not expressly named in statute must reasonably relate to proper school activities or interests. Board of Education v. Simmons, 245 Ky. 493, 53 S.W.2d 940, 1932 Ky. LEXIS 625 (Ky. 1932).

Discretion vested in boards of education to expend school moneys, is subject to constitutional restriction that such expenditures must be for purposes of common school education. Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940).

The determination of proper purposes of common school education is subject to wide and varied opinion and, unless an expenditure is extreme or clearly not for a proper educational purpose, the determination of such purpose is within the discretion of the General Assembly. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

If the taxes are paid, the sum so collected shall not be devoted to any other purpose than school purposes. Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

This section must be read together with Const., § 180 in determining how school funds must be spent, and the test to be applied in each instances is, what constitutes an educational purpose rather than whether an activity might merely be beneficial to education. Board of Education v. Spencer County, Levee, Flood Control & Drainage Dist., 313 Ky. 8, 230 S.W.2d 81, 1950 Ky. LEXIS 797 (Ky. 1950).

School funds may not be diverted from school purposes. Grayson County Board of Education v. Boone, 452 S.W.2d 371, 1970 Ky. LEXIS 348 (Ky. 1970).

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Common-

wealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

9. — Valid.

City and county boards of education may expend reasonable amounts from public school fund to pay membership dues in Kentucky school board association, since maintenance of that association for purposes specified in its Constitution is beneficial to public education in Kentucky. Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940).

Payment of gasoline tax by boards of education does not violate this section. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

The carrying of liability insurance on school buses is an expense incident to a rational program of school transportation, and the requirement of KRS 160.310 that such insurance be carried does not violate this section. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

Where no accurate time accounting could be made for school tax collection by the sheriff and his employees but the four percent (4%) he retained was not excessive, there was no diversion of school funds in the retention of the four percent (4%). Grayson County Board of Education v. Boone, 452 S.W.2d 371, 1970 Ky. LEXIS 348 (Ky. 1970).

A county fiscal court's resolution which provided approximately 65 percent of the total cost of transporting non-public elementary school students was not unconstitutional where (1) funds were not paid directly to any private or parochial school and were, instead, paid to the individual local board of education operated transportation system of contracted bus and vehicle companies, (2) the benefit provided by the resolution went directly toward the safety and welfare of elementary age school children and not into the accounts of non-public schools, and (3) the resolution did not establish a tuition ceiling as a requisite to eligibility for the transportation subsidy. Neal v. Fiscal Court, 986 S.W.2d 907, 1999 Ky. LEXIS 24 (Ky. 1999).

10. —Invalid.

The appropriation of any part of a school fund or of the taxes which have been devoted to the purposes of the common school system, to the payment either of general taxation for support of the state government, or of special assessments to pay the cost of street improvements, would be an appropriation thereof to another purpose than that of the school system, forbidden by this section. Louisville v. Leatherman, 99 Ky. 213, 35 S.W. 625, 18 Ky. L. Rptr. 124, 1896 Ky. LEXIS 75 (Ky. 1896). See Kentucky Institution for Education of Blind v. Louisville, 123 Ky. 767, 97 S.W. 402, 30 Ky. L. Rptr. 136, 1906 Ky. LEXIS 213 (Ky. 1906).

A tax levied and collected by a city for school purposes cannot be appropriated by act of legislature to maintain public library open to pupils of common schools only as a part of general public, and not under control of board of education for common schools. Board of Education v. Board of Trustees, 113 Ky. 234, 68 S.W. 10, 24 Ky. L. Rptr. 98, 1902 Ky. LEXIS 45 (Ky. 1902).

State board of education could not purchase free textbooks for schools, where none of state's school fund had been appropriated for that purpose and general fund had been exhausted. State Board of Education v. Kenney, 230 Ky. 287, 18 S.W.2d 1114, 1929 Ky. LEXIS 71 (Ky. 1929).

The Tax Increment Act, KRS 99.750 to 99.770 (repealed), which permits various taxing districts to release increments expected to be derived by such districts as a result of the undertaking of a renewal or redevelopment project by an urban renewal community agency or authority to be used as a special fund for bond payment is invalid as it violates this section, for money collected for the purposes of education in the common school system cannot be spent for any other purpose. Miller v. Covington Development Auth., 539 S.W.2d 1, 1976 Ky. LEXIS 40 (Ky. 1976).

If the exclusive purpose of KRS 171.215, which provides that the state must supply textbooks to students in nonpublic schools, is to pay the expenses of children in private schools, Const., § 3 has been directly violated; conversely, if the textbooks also aid in the functioning of the private schools themselves, Const., §§ 171, 186, 189 and this section have been violated. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

KRS 171.215, which provides that the department of libraries (now department for libraries and archives) must supply textbooks without cost to pupils attending nonpublic schools, is unconstitutional in that it directs the expenditure of public funds for educational purposes through nonpublic schools. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

Grants made by fiscal court from county tax revenue by direct payment to certain specified privately-owned schools designated as transportation subsidies violated this section which provides that money cannot be expended for education other than in common schools without a vote of the public, because public money is being expended for the benefit of the private institution rather than providing specifically for the health and safety of all the children. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

House Bill 9's charter schools violated this section and Sections 183 and 186 because they allowed enrollment caps and lottery admissions (preventing universal access); operated exempt from local school district regulation; and lacked direct accountability to the General Assembly, making them constitutionally impermissible recipients of public education funds. Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

11. Assessment for Public Improvements.

Board of education could not be required to pay assessment by county flood and drainage district to build a flood wall notwithstanding board and children in its district would benefit thereby since such expenditure would be for other than educational purposes. Board of Education v. Spencer County, Levee, Flood Control & Drainage Dist., 313 Ky. 8, 230 S.W.2d 81, 1950 Ky. LEXIS 797 (Ky. 1950).

Even if the money paid by the state as the apportionment of a special improvement benefit assessment against school property is considered money appropriated in aid of education, it is within the legislative discretion to specify the purpose of its use. Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

KRS 107.010 to 107.220 providing for the financing of public improvement projects by annual assessments on the basis of the assessed values of the benefited properties, does not, by providing that public school properties shall be assessed and that levies against it should be paid from the state treasury out of moneys not otherwise appropriated, violate this section. Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

12. University of Kentucky.

This section does not prohibit a subsequent, new, statutory appropriation for the support of the Agricultural and Mechanical College. Agricultural & Mechanical College v. Hager, 121

Ky. 1, 87 S.W. 1125, 27 Ky. L. Rptr. 1178, 1905 Ky. LEXIS 171 (Ky. 1905).

Neither the change of the name of the Agricultural & Mechanical College of Kentucky to State University, nor transfer of normal work proper to state normal schools, destroyed its identity as a public corporation and state institution as respects the matter of appropriation therefor. James v. State University, 131 Ky. 156, 114 S.W. 767, 1908 Ky. LEXIS 118 (Ky. 1908). See Agricultural & Mechanical College v. Hager, 121 Ky. 1, 87 S.W. 1125, 27 Ky. L. Rptr. 1178, 1905 Ky. LEXIS 171 (Ky. 1905); Marsee v. Hager, 125 Ky. 445, 101 S.W. 882, 31 Ky. L. Rptr. 79, 1907 Ky. LEXIS 304 (Ky. 1907).

The State University and the state normal schools are among the educational institutions for which, under this section, the legislature may make appropriations without submitting the matter to a vote of the people. James v. State University, 131 Ky. 156, 114 S.W. 767, 1908 Ky. LEXIS 118 (Ky. 1908). See Agricultural & Mechanical College v. Hager, 121 Ky. 1, 87 S.W. 1125, 27 Ky. L. Rptr. 1178, 1905 Ky. LEXIS 171 (Ky. 1905); Marsee v. Hager, 125 Ky. 445, 101 S.W. 882, 31 Ky. L. Rptr. 79, 1907 Ky. LEXIS 304 (Ky. 1907).

This section has no application to a statute providing that counties may send a number of pupils free of tuition to the State University. Barker v. Crum, 177 Ky. 637, 198 S.W. 211, 1917 Ky. LEXIS 665 (Ky. 1917) (Ky. 1917).

13. Normal Schools.

Statute establishing a system of state normal schools and appropriating money therefor was not in violation of this section. Marsee v. Hager, 125 Ky. 445, 101 S.W. 882, 31 Ky. L. Rptr. 79, 1907 Ky. LEXIS 304 (Ky. 1907).

14. Institutional Schools.

This section and Const., § 185 do not empower the commissioners of the sinking fund of the Commonwealth to provide funds for reconstruction of building of Industrial College for Colored People destroyed by fire or to authorize the trustees to reconstruct the building at state expense. Rhoads v. Fields, 219 Ky. 303, 292 S.W. 809, 1927 Ky. LEXIS 321 (Ky. 1927).

15. Valid Statutes.

Statute providing that the expenses of the Department of Education, of whatever character, be paid from the common school fund, is not repugnant to this section. Superintendent of Public Instruction v. Auditor of Public Accounts, 97 Ky. 180, 30 S.W. 404, 17 Ky. L. Rptr. 46, 1895 Ky. LEXIS 169 (Ky. 1895).

Under this section statute authorizing discounts for prompt payment of taxes including school taxes is not invalid as allowing sums produced by taxation for common schools to be appropriated to other purposes. Board of Education v. Sea, 167 Ky. 772, 181 S.W. 670, 1916 Ky. LEXIS 492 (Ky. 1916).

Law providing for an increase of the tax for operating expenses of common schools was valid. Larue v. Redmon, 168 Ky. 487, 182 S.W. 622, 1916 Ky. LEXIS 583 (Ky. 1916).

An act providing for payment of interest on warrants to be issued by the auditor for teachers' salaries did not violate this section. Adams v. Greene, 182 Ky. 504, 206 S.W. 759, 1918 Ky. LEXIS 387 (Ky. 1918).

KRS 212.260 authorizing county health officers to visit schools and inspect premises does not limit or substitute for school board's power to appropriate school funds under the Constitution. Board of Education v. Simmons, 245 Ky. 493, 53 S.W.2d 940, 1932 Ky. LEXIS 625 (Ky. 1932).

Statute authorizing a board of education to impose occupational license fees after electoral approval does not violate this section by providing that the necessary expenses of the required election be paid from school funds. Sims v. Board of Education, 290 S.W.2d 491, 1956 Ky. LEXIS 329 (Ky. 1956).

Former statute that authorized public aid to private institutions for the education of exceptional children did not violate this section since it was not the intention of the delegates in adopting this section and Const., § 186 to deny forever the possibility of special educational assistance to those who by no choice of their own are unsuited to the standard programs and facilities of the common school system, the act in question being primarily a welfare rather than an educational measure and the fact that it takes the form of education being immaterial. Butler v. United Cerebral Palsy, Inc., 352 S.W.2d 203, 1961 Ky. LEXIS 200 (Ky. 1961).

16. Invalid Statutes.

Legislative act providing for furnishing free transportation to pupils attending private schools violated this section, there being no merit in argument that act provided benefit for children and not for school. Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942).

Circuit court's holding that the Education Opportunity Account Act (EOA Act) was unconstitutional was proper because the EOA Act violated the proscription in Ky. Const. § 184 on the raising or collecting of sums for education other than in common schools. Commonwealth ex rel. Cameron v. Johnson, 658 S.W.3d 25, 2022 Ky. LEXIS 378 (Ky. 2022).

17. Sewer User Charges.

The applicability of this section and Ky. Const., §§ 180 and 186 to the issue of whether a sewer user charge can be paid from school funds must be determined by a reasonable interpretation of whether the service or commodity provided is necessary for the maintenance of the public schools and is exclusively for the benefit of the public schools. Sewer user charges imposed upon a county board of education bear a reasonable and rational relationship to the value of the services provided and therefore are exclusively for the benefit of and necessary for the maintenance of the public schools. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

Cited:

Bank of Cumberland v. Simpson, 77 S.W. 695, 25 Ky. L. Rptr. 1227 (1903); Commonwealth v. Southern Pac. Co., 154 Ky. 41, 156 S.W. 865, 1913 Ky. LEXIS 4 (Ky. 1913); Greene v. Gilbert, 168 Ky. 380, 182 S.W. 202, 1916 Ky. LEXIS 563 (Ky. 1916); Larue v. Redmon, 168 Ky. 487, 182 S.W. 622, 1916 Ky. LEXIS 583 (Ky. 1916); Cassady v. Oldham County, 246 Ky. 772, 246 Ky. 773, 56 S.W.2d 368, 1933 Ky. LEXIS 25 (Ky. 1933); Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953); Van Hoose v. Williams, 496 F. Supp. 947, 1980 U.S. Dist. LEXIS 15217 (E.D. Ky. 1980); Marshall v. Commonwealth, 20 S.W.3d 478, 2000 Ky. App. LEXIS 62 (Ky. Ct. App. 2000).

OPINIONS OF ATTORNEY GENERAL.

A board of education has no authority to appropriate money to a fire department, as the benefit to education in this regard would be remote and would not be an expenditure of school funds for educational purposes as required by this section. OAG 60-612.

The county board of education has authority to request the department of highways to allow a water line to be attached to the water main serving the school in order that service may be extended to a subdivision, since there would not be any additional expenditure of school funds for the extension of the water line to the new subdivision, there is no violation of this section. OAG 60-704.

If implemented in a school district the young historians program can be regarded as educational in purpose within the meaning of the Constitution. OAG 63-214.

A board of education may not provide and maintain an automobile for the personal use of a school superintendent. OAG 64-130.

A board of education may provide and maintain an automobile for the benefit of the school superintendent while discharging the duties attendant to his office. OAG 64-130.

A school board has legal authority to purchase liability insurance to cover the liability for sick-leave payments imposed by KRS 161.155. OAG 64-841.

It is legal for a board of education to execute a contract with a local health department to provide preventive medical services. OAG 65-293.

In order for a local school board to have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age the program would have to be part of the common school program. OAG 65-410.

Commingling of state and federal funds by a school would result in their becoming subject to the provisions of both state and federal laws governing their expenditure. OAG 65-625.

A school board may lawfully purchase fire and extended coverage insurance in the form of a package policy even though the premium is not specifically allocable to individual coverage if it does not exceed the rate regularly charged for fire and extended coverage insurance, as approved by the Kentucky department of insurance for such risks. OAG 66-36.

A restriction contained in a declaration of restrictions affecting a 10.44 acre tract proposed as a school site that would require the owner of the tract to pay an assessment that could be used for maintenance of other property in the subdivision would preclude the purchase of the tract as a school site since the payment of the assessment would violate this section. OAG 67-413.

The city council's requiring the board of education to make repairs in the sidewalk in front of the high school would be in direct violation of this section. OAG 68-67.

An expenditure of school funds to help defray the operating costs of the county health department would not be proper. OAG 68-143.

The payment to the city by the board of education of a tap-in fee for connecting to the sewer line would not violate this section or Const., § 186. OAG 68-283.

Expenditures of school funds to provide turnabouts for school buses on private property adjacent to bridges that have been condemned would offend this section and Const., § 180 and would not be a proper school board expenditure. OAG 68-473.

A school board could not grant an easement across school property to the metropolitan sewer district since the easement would not constitute an educational purpose. OAG 69-127.

A lease of school property permitting the construction of a swimming pool on the leased premises would not violate this section or Const., § 180 if the consideration received by the school district would be sufficient to compensate for the lease. OAG 69-290.

Under this section and Const., § 180 the funds of the school board may not properly be expended to pay a portion of the salary of policewomen to patrol intersections on the city streets during school rush hours since this activity involves a service for the general public welfare rather than one which is designed to accomplish an educational purpose. OAG 69-488.

The members of families of employees and/or the dependents of employees may, within the discretion of the board, participate in the various types of group coverage provided the extra cost of the family coverage or dependent coverage is paid by the employee. OAG 70-336.

A lease by a school board of school property at the nominal rental value of $1.00 per year merely on the basis that United Cerebral Palsy would conduct a school on the premises could not be justified per se under Const., §§ 180, 184, and 186. However, if a factual determination were made that a proposed United Cerebral Palsy school would furnish an approved program for the instruction of exceptional children and that such a program was needed by the local school board, the board could execute a lease of property for such a school for the nominal sum of $1.00 per year. OAG 70-805.

Both the value received criterion and the direct benefit criterion must be considered in applying tests to determine whether a particular expenditure is valid under the school purpose restriction. OAG 70-805.

The Kentucky statutes do not authorize the expending of bond proceeds to renovate school buildings presently existing and already acquired. OAG 71-107.

The statutory sections relating to acquisition of existing buildings in KRS chs. 58 and 162 are broad enough to include, by reasonable implication, whatever may be properly spent for the functional adaptation of purchased buildings to school purposes. OAG 71-107.

A school board cannot expend money for the construction of a community center building to be used for educational, recreational, and social community services and health purposes. OAG 71-184.

A local board of education is precluded from expending school funds to pay a portion of the costs incurred by either private or quasi-public nonschool agencies in operating special education classes for exceptional children. OAG 72-86.

An agreement by a board of education to lease unused portions of a television facility owned by it to a private corporation was lawful with the exception of a provision that a part of the consideration for the lease would be an option to purchase up to 10% of the stock of the private corporation, which provision was illegal and void under §§ 177, 179, 184, and 186 of the Constitution. OAG 73-418.

It is proper for a school district to require students to pay the cost of their meals, but if a school district sees fit to do so, it may use school funds to subsidize the school lunch program with the result that the pupils will be paying a price which is less than the cost of supplying their meals. OAG 73-754.

It would be a violation of the Constitution to pay the salary of a parochial schoolteacher from the funds of a public school district. OAG 73-799.

Since the control of air pollution is for the public benefit, the obtaining of a pollutant permit is a public school purpose and therefore payment of the fee does not violate the Constitution. OAG 74-57.

The announcement over a school speaker system or the distribution of notices to children on school property of meetings of an organization of parents to promote a constitutional amendment which would forbid busing of school pupils for the purpose of achieving racial balance in the public schools constitutes an illegal use of school property and improperly interjects political questions into the operation of the public school. OAG 74-118.

Public school teachers may not, as a part of the duties for which compensated by boards of education, be assigned, to teach in a private or sectarian school. OAG 74-331 (modifying OAG 68-150, and withdrawing OAG 68-585).

Qualified pupils in private schools which are nonsectarian and which do not teach religion are entitled to the benefits of the Title I program. OAG 74-683.

Proposed public relations plan to have administrators of the school system join various service organizations of the community would not be a proper expenditure of school funds and would be unconstitutional under this section and Const., § 180. OAG 74-873.

A public school district cannot be compelled to pay for public improvements nor can it voluntarily use school funds for such purposes. OAG 75-108 and 75-613.

Under this section and § 186 of the Const., school funds may not be expended for the construction of entrances to school property within the rights of way of state highways and the expense of such entrances must be borne by the state department of transportation (now transportation cabinet). OAG 75-362 and 75-613.

Public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Although the services of school crossing guards are a benefit to school children, the guards do not serve an "educational purpose," and thus school board funds may not be expended to pay the salary of individuals who patrol intersections on city streets. OAG 76-239.

A county sheriff's fee for collecting school taxes must represent the reasonable cost of collection, as long as the rate does not exceed 4 percent, and the sheriff must document his reasonable costs of collection. OAG 76-251.

Once approval to sell school property as surplus is given by the Superintendent of Public Instruction, there is no legal requirement that a board of education must dispose of the property by public auction or advertisement of sealed bids and the board may establish a price for the land and sell to any purchaser willing and able to meet that price if the figure represents at least the appraised fair market value of the property. OAG 76-291.

A board of education may not participate in defraying the cost of a property reappraisal that was ordered by the Circuit Court in an action by a private party against the city. OAG 77-299, 1977 Ky. AG LEXIS 488.

The expenses of opening schools to serve as voting places on a presidential election day, as provided by subsection (2) of KRS 117.065, when the schools are mandated to be closed by KRS 2.190 would be so small and incidental as not to be proscribed by Kentucky Constitution, §§ 180, 184, 186. OAG 76-592. Withdrawing OAG 42-363.

Since the requirement that schools not be opened without a custodian is a policy created by school board and not by statute, the circumstances surrounding the use of schools as voting places as provided for in subsection (2) of KRS 117.065 may be structured so that there does not exist any unwarranted and impermissible expenditures of public common school money for election purposes. OAG 76-614.

Since a water system is a necessary appendage to the school building and may relate very closely to the health and welfare of the students, a county board of education could legally spend public common school funds to construct a water line from the school property to an existing water line supply. OAG 76-654.

Once the sheriff's total fee for collecting school taxes is properly computed the constitutional test of diversion is met since the constitutional diversion occurs no sooner than the reasonable cost of collection is exceeded, regardless of how much the excess is. OAG 78-146, 1978 Ky. AG LEXIS 703.

The payment to the urban county government of 25% for the school tax collection fee paid to the sheriff does not constitute an unlawful diversion of school money. OAG 78-146, 1978 Ky. AG LEXIS 703.

The total cost of collecting school taxes (prior to the 75% and 25% distribution at State level) is strictly constitutional as being an expenditure for school purposes. OAG 78-146, 1978 Ky. AG LEXIS 703.

A city ordinance making school crossing guards, who are sworn peace officers with authority to issue citations and place and remove traffic control devices, employees of the school board rather than the city is invalid under KRS 94.360 (repealed), giving a city exclusive control over its streets, KRS 189.336, giving a city exclusive authority to place traffic control devices, and this section requiring school board funds be used only for the purpose of education. OAG 79-107, 1979 Ky. AG LEXIS 516.

The employment of school crossing guards is not an "educational purpose" for which school funds may be expended. OAG 79-107, 1979 Ky. AG LEXIS 516.

The governing body of a city of the second class has authority by ordinance to present the question to its citizens concerning whether they wish to have a seven cents special tax levy to support a community college continued or repealed. OAG 79-503.

An emergency ambulance service for school children and personnel may legally be provided by a contract made between a board of education and a private ambulance service since this is for school purposes and the expenditure would not be prohibited by this section of the Constitution. OAG 81-87, 1981 Ky. AG LEXIS 340.

The present school laws, in light of the Constitution, do not authorize or permit any state-funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., § 180 and this section require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses — including travel, lodging, and meals for school administrators or teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong, and/or lobbying activities conducted by their professional associations. OAG 83-228, 1983 Ky. AG LEXIS 269.

A proposal by the fiscal court to pay a sum equal to 150 percent of the purported "actual cost" of transporting "all" the school children in a school district may not be legally tolerated, since it appears that a purported "actual increase cost" figure for the cost of transporting the nonpublic school children may not be constitutionally determined. OAG 83-294.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown is precatory in nature and in light of this section and Const., § 186 cannot be carried out for funds involved, are foundation program funds and not just general funds appropriated for education and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314, 1984 Ky. AG LEXIS 72.

Where one or more school districts initiate a suit to enforce state equalization of school funding within the Commonwealth, interested school districts may contribute reasonable amounts of money from school funds to meet the costs of the suit, including reasonable attorney's fees; such expenditures would, however, have to be made in accordance with appropriate budget considerations. OAG 85-100, 1985 Ky. AG LEXIS 53.

By exempting school districts from the scope of application of the act, and by permitting termination by a taxing district on a year-to-year basis of a contractual arrangement with an agency, Acts 1986, ch. 13 which repealed the Tax Increment Act, KRS 99.750, and enacted KRS 99.751, 99.756, 99.761, 99.766 and 99.771, has remedied the constitutional problems

under this section and Const., § 157 that the Supreme Court in Miller v. Covington Development Authority, 539 S.W.2d 1, 1976 Ky. LEXIS 40 (Ky. 1976), found with the Tax Increment Act. OAG 86-48, 1986 Ky. AG LEXIS 37.

Any settlement of claims for taxes owed, including interest and penalties, would be a diversion of school fund moneys for a purpose other than that of the common schools. OAG 88-46, 1988 Ky. AG LEXIS 46.

Neither the school nor the tax collector can abate past due interest or penalty on local school taxes paid prior to or after filing suit for collection of the unpaid taxes, penalty, and interest. OAG 88-46, 1988 Ky. AG LEXIS 46.

The purchase of satellite receiving equipment for nonpublic schools through an appropriation by the General Assembly would appear to be educational in purpose and, therefore, would appear to be a constitutionally prohibited expenditure. OAG 89-41, 1989 Ky. AG LEXIS 41.

No existing law prohibits, outright, local districts from showing instructional TV programming with minimal commercials included so long as curricular materials are properly reviewed; if instructional TV programming, with minimal commercials included, is allowed in the public schools, then the two (2) minutes of advertising do not have to be excluded from the six (6) hour day. OAG 90-42, 1990 Ky. AG LEXIS 47.

The state board has the authority to ban any television instruction with commercial advertising if the board determines as a matter of public policy that such should not be utilized in the classroom. The board also has the authority to allow the local boards of education and school councils to decide this matter. OAG 90-42, 1990 Ky. AG LEXIS 47.

The common school fund consists of all sums produced by taxation or otherwise for common school purposes in addition to the interest and dividends of the fund. Those sums are to be spent exclusively on public education. KRS 156.665 (now repealed) provides that among the duties and responsibilities of the Council for Education Technology is the investment of all funds received by the council for the purpose of carrying out these duties and responsibilities, and accordingly, KRS 42.500 does not apply, as the authority granted to the State Investment Commission is limited by KRS 156.665 (now repealed). OAG 91-39, 1991 Ky. AG LEXIS 39.

Under KRS 168.100, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of this section and Const., §§ 171, 186, and 189. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71, 1991 Ky. AG LEXIS 72.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under this section and Const., §§ 180 and 186; therefore, under this section and Const., §§ 180 and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85, 1991 Ky. AG LEXIS 85.

It is still the opinion of the Attorney General's office that OAG 79-107 represents the law of Kentucky and the interpretation of Ky. Const., § 180 and this section, and that the expenditure of school funds for school guard crossings is prohibited constitutionally. OAG 92-6, 1992 Ky. AG LEXIS 6.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of this section and Ky. Const., §§ 180 and 186; the act also falls within the parameters of KRS 160.160 as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63, 1992 Ky. AG LEXIS 63.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of KRS 178.290. OAG 93-63, 1993 Ky. AG LEXIS 298.

KRS 158.6455 permits a local school council or principal to use school reward money to pay teacher bonuses, and these bonuses are permissible under the Kentucky Constitution because they are "for school purposes." OAG 00-2, 2000 Ky. AG LEXIS 1.

A county board of education can constitutionally pay a privilege fee for connecting to a public sewer system. A privilege fee to fund construction of a sewer system is a "public school purpose" if it bears a rational relationship to the value of the services provided to the public schools. A fee based on usage and acreage meets this standard because it is proportional to the services provided. OAG 2009-01, 2009 Ky. AG LEXIS 219.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
City universities and colleges, KRS ch. 165.

Northern Kentucky Law Review.
Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

§ 185. Interest on school fund — Investment.

The General Assembly shall make provision, by law, for the payment of the interest of said school fund, and may provide for the sale of the stock in the Bank of Kentucky; and in case of a sale of all or any part of said stock, the proceeds of sale shall be invested by the Sinking Fund Commissioners in other good interest-bearing stocks or bonds, which shall be subject to sale and reinvestment, from time to time, in like manner, and with the same restrictions, as provided with reference to the sale of the said stock in the Bank of Kentucky.

NOTES TO DECISIONS

Analysis

1. Escheated Property.
2. Industrial College.

1. Escheated Property.
This section does not prevent the legislature from allowing certain localities to make additional provision for the financing of their schools and, consequently, a statute providing that certain categories of property, in case of escheat, shall go to a school district is valid. Ky. v. Thomas' Admr, 140 Ky. 789, 131 S.W. 797, 1910 Ky. LEXIS 362 (Ky. Ct. App. 1910).

2. Industrial College.
Commissioners of the sinking fund had no authority to provide funds for reconstruction of building of Industrial College destroyed by fire, nor could they authorize trustees of college to do so at expense of state. Rhoads v. Fields, 219 Ky. 303, 292 S.W. 809, 1927 Ky. LEXIS 321 (Ky. 1927).

Cited:
Pratt v. Breckinridge, 112 Ky. 1, 23 Ky. L. Rptr. 1356, 65 S.W. 136, 1901 Ky. LEXIS 286 (Ky. 1901); Board of Education v. Talbott, 261 Ky. 66, 86 S.W.2d 1059, 1935 Ky. LEXIS 592

(Ky. 1935); Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).

§ 186. Distribution and use of school fund.

All funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school districts and its use for public school purposes.

History.

Amendment, Acts 1952, ch. 89, approved November, 1953.

Compiler's Notes.

The provision of this section providing for pro rata distribution of school funds was repealed in 1953. Cases which construed this provision are as follows: Louisville School Board v. Superintendent of Public Instruction (1897), 102 Ky. 394, 19 K.L.R. 1350, 43 S.W. 718; Louisville School Board v. McChesney (1900), 109 Ky. 9, 22 K.L.R. 506, 58 S.W. 427; Talbott v. Kentucky State Board of Education (1932), 244 Ky. 826, 52 S.W.2d 727; Board of Education v. Talbott (1935), 261 Ky. 66, 86 S.W.2d 1059; Commonwealth ex rel. Meredith v. Reeves (1941), 289 Ky. 73, 157 S.W.2d 751; Jefferson County Board of Education v. Goheen (1947), 306 Ky. 439, 207 S.W.2d 567; Hodgkin v. Kentucky Chamber of Commerce (1952), 246 S.W.2d 1014.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Application.
3. Common School Purposes.
4. —Teachers' Salaries.
5. —Expenditures.
6. — —Valid.
7. — —Invalid.
8. Distribution of Funds.
9. Sewer User Charges.
10. Escheated Property.
11. Aid for Exceptional Children.
12. Institutional Schools.

1. Construction.

This section and sections 180 and 184 of the Kentucky Constitution, when read together, prohibit the diversion of common school funds for purposes other than the maintenance of the public schools of the Commonwealth. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

2. Application.

This section applies exclusively to common school funds levied and collected by the Commonwealth in its sovereign capacity and from the state at large, it has no application to public school funds levied, collected, and raised by subdivisions of the state to supplement the state school fund for their exclusively local purposes, and the state has no right to take charge of such funds and distribute them throughout the state among the common schools. Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932). See Cassady v. Oldham County, 246 Ky. 772, 246 Ky. 773, 56 S.W.2d 368, 1933 Ky. LEXIS 25 (Ky. 1933).

3. Common School Purposes.

A tax levied for the benefit of common schools is a state tax, although it may be levied and collected by municipal county or district agencies. Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842, 1919 Ky. LEXIS 218 (Ky. 1919). See Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609, 1925 Ky. LEXIS 1120 (Ky. 1925).

The definition of the purposes of common school education is necessarily broad and, unless a particular expenditure is clearly outside the reasonable purview of educational activities, the Legislature has a right to declare it to be for such a purpose. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

The courts scrupulously protect school funds from diversion even for laudable purposes. Board of Education v. Wagers, 239 S.W.2d 48, 1951 Ky. LEXIS 836 (Ky. 1951).

School districts were created by the General Assembly and exist only as a means for the state to carry out the General Assembly's constitutional duty to provide for an efficient system of common schools throughout the state. Calvert Invest., Inc. v. Louisville & Jefferson County Metro. Sewer Dist., 805 S.W.2d 133, 1991 Ky. LEXIS 17 (Ky. 1991).

4. —Teachers' Salaries.

An act providing for payment of interest on warrants to be issued by the auditor for teachers' salaries did not violate Const., § 184. Adams v. Greene, 182 Ky. 504, 206 S.W. 759, 1918 Ky. LEXIS 387 (Ky. 1918).

Common school teachers are state employees and as such may receive salaries appropriated by the General Assembly provided by statutes authorized by the constitution and distributed to all teachers of common school within the Commonwealth on a per capita basis. Board of Education v. Talbott, 261 Ky. 66, 86 S.W.2d 1059, 1935 Ky. LEXIS 592 (Ky. 1935).

5. —Expenditures.

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

6. — —Valid.

Since the terms education, common school purpose and common school system are sufficiently broad enough to encompass recreational training, a county board of education may, under this section and Const., §§ 180 and 184, expend tax funds collected for school purposes for the financing of recreational training. Dodge v. Jefferson County Board of Education, 298 Ky. 1, 181 S.W.2d 406, 1944 Ky. LEXIS 815 (Ky. 1944).

County board of education was authorized to expend school funds to pay attorney's fees and court costs in defending two (2) cases against them for protection of corporate action and decisions of board for these actions serve a public school purpose. Hogan v. Glasscock, 324 S.W.2d 815, 1959 Ky. LEXIS 385 (Ky. 1959).

The extra cost to some school districts for busing as a result of court ordered desegregation does not violate this section since all that is required is that a common formula be used to arrive at distributions, not that distribution to each district be proportionately equal. Carroll v. Department of Health, Education & Welfare, 410 F. Supp. 234, 1976 U.S. Dist. LEXIS

16031 (W.D. Ky. 1976), aff'd, Carroll v. Board of Education, 561 F.2d 1, 1977 U.S. App. LEXIS 11870 (6th Cir. Ky. 1977).

7. — —Invalid.

School taxes received from the state by a graded common school district cannot be used to purchase a lot or erect or furnish a school building. Crabbe v. Board of Trustees, 132 Ky. 478, 116 S.W. 706, 1909 Ky. LEXIS 113 (Ky. 1909).

Contract between county board of education and sheriff fixing sheriff's fee for collecting school taxes substantially in excess of the cost of collection is invalid as an unconstitutional diversion of school funds. Hager v. McConathy, 269 S.W.2d 725, 1954 Ky. LEXIS 1017 (Ky. 1954).

If the exclusive purpose of KRS 171.215, which provides that the state must supply textbooks to students in nonpublic schools, is to pay the expenses of children in private schools, Const., § 3 has been directly violated; conversely, if the textbooks also aid in the functioning of the private schools themselves, Const., §§ 171, 184, 189 and this section have been violated. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

KRS 171.215, which provides that the department of libraries (now department for libraries and archives) must supply textbooks without cost to pupils attending nonpublic schools, is unconstitutional in that it directs the expenditure of public funds for educational purposes through nonpublic schools. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

House Bill 9's charter schools violated this section and Sections 183 and 184 because they allowed enrollment caps and lottery admissions (preventing universal access); operated exempt from local school district regulation; and lacked direct accountability to the General Assembly, making them constitutionally impermissible recipients of public education funds. Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

8. Distribution of Funds.

Under this section the distribution of school funds is now left to Legislature discretion, although prior to the constitutional amendment of 1953, deleting the previous per capita clause of this section, the Legislature was thereby limited in the method by which it could distribute funds in aid of education. Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

9. Sewer User Charges.

The applicability of this section and Ky. Const., sections 180 and 184 to the issue of whether a sewer user charge can be paid from school funds must be determined by a reasonable interpretation of whether the service or commodity provided is necessary for the maintenance of the public schools and is exclusively for the benefit of the public schools. Sewer user charges imposed upon a county board of education bear a reasonable and rational relationship to the value of the services provided and therefore are exclusively for the benefit of and necessary for the maintenance of the public schools. Board of Education v. Lexington-Fayette Urban County Government, 691 S.W.2d 218, 1985 Ky. App. LEXIS 518 (Ky. Ct. App. 1985).

10. Escheated Property.

This section does not prevent the Legislature from allowing certain localities to make additional provision for the financing of their schools and, consequently, a statute providing that certain categories of property, in case of escheat, shall go to a school district is valid. Ky. v. Thomas' Admr, 140 Ky. 789, 131 S.W. 797, 1910 Ky. LEXIS 362 (Ky. Ct. App. 1910).

11. Aid for Exceptional Children.

Former statute that authorized public aid to private institutions for the education of exceptional children did not violate this section since it was not the intention of the delegates in adopting this section and Const., § 184 to deny forever the possibility of special educational assistance to those who by no choice of their own are unsuited to the standard programs and facilities of the common school system, the act in question being primarily a welfare rather than an educational measure and the fact that it takes the form of education being immaterial. Butler v. United Cerebral Palsy, Inc., 352 S.W.2d 203, 1961 Ky. LEXIS 200 (Ky. 1961).

12. Institutional Schools.

State aid to institutional schools such as Louisville and Jefferson County children's home is not within the scope of this section and Const., §§ 183-185. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).

Uniformity does not require equal classification but it does demand that there shall be substantially uniform system and equal school facilities without discrimination as between different sections of a district or county. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

Cited:

Louisville School Board v. McChesney, 109 Ky. 9, 22 Ky. L. Rptr. 506, 58 S.W. 427, 1900 Ky. LEXIS 163 (Ky. 1900); Crosby v. Mayfield, 133 Ky. 215, 117 S.W. 316, 1909 Ky. LEXIS 161 (Ky. 1909); Commonwealth v. Southern Pac. Co., 154 Ky. 41, 156 S.W. 865, 1913 Ky. LEXIS 4 (Ky. 1913); Cassady v. Oldham County, 246 Ky. 772, 246 Ky. 773, 56 S.W.2d 368, 1933 Ky. LEXIS 25 (Ky. 1933); Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953); Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956); Van Hoose v. Williams, 496 F. Supp. 947, 1980 U.S. Dist. LEXIS 15217 (E.D. Ky. 1980).

OPINIONS OF ATTORNEY GENERAL.

A school board may not make a contribution to a park commission which is seeking to accumulate a fund in order to secure matching federal funds for development of a community recreation park. This section prohibits the use of school funds for other than school purposes. Section 180 provides that no tax levied and collected for one purpose shall be used for another. OAG 72-95.

This section would prohibit a school board from contributing funds to repair a city street which had been damaged by continued use by heavy school buses. OAG 72-514.

An agreement by a board of education to lease unused portions of a television facility owned by it to a private corporation was lawful with the exception of a provision that a part of the consideration for the lease would be an option to purchase up to 10% of the stock of the private corporation, which provision was illegal and void under §§ 177, 179, 184, and 186 of the Constitution. OAG 73-418.

It is proper for a school district to require students to pay the cost of their meals, but if a school district sees fit to do so, it may use school funds to subsidize the school lunch program with the result that the pupils will be paying a price which is less than the cost of supplying their meals. OAG 73-754.

Since the control of air pollution is for the public benefit, the obtaining of a pollutant permit is a public school purpose and payment of the fee does not violate the constitution. OAG 74-57.

Qualified pupils in private schools which are nonsectarian and which do not teach religion are entitled to the benefits of the Title I program. OAG 74-683.

Under Const. § 184 and this section, school funds may not be expended for the construction of entrances to school prop-

erty within the right of way of a state highway and the expense of such entrances must be borne by the state department of transportation (now transportation cabinet). OAG 75-362.

In view of this section and § 184 of the Const., a board of education may not be compelled to replace or repair a sidewalk abutting one of its schools, nor may it voluntarily expend funds for such purpose, as such would constitute the expenditure of school funds for a nonschool purpose. OAG 75-613.

In view of this section, Const. § 184 and KRS 67A.060, a board of education may not be compelled to, nor may it voluntarily, pay an assessment imposed under KRS 67A.780 for a sanitary sewer benefiting school property. OAG 75-613.

Public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Inasmuch as common school funds may only be paid to common school districts, a county school board may not expend public common school funds to transport students attending a nonpublic model school. OAG 76-261.

The expenses of opening schools to serve as a voting place on a presidential election day, as provided by subsection (2) of KRS 117.065, when the schools are mandated to be closed by KRS 2.190 would be so small and incidental as not to be proscribed by Kentucky Constitution, §§ 180, 184, and 186. OAG 76-592. Withdrawing OAG 42-363.

Since the requirement that schools not be opened without a custodian is a policy created by the school board and not by statute, the circumstances surrounding the use of schools as voting places as provided for in subsection (2) of KRS 117.065 may be structured so that there does not exist any unwarranted and impermissible expenditures of public common school money for election purposes. OAG 76-614.

Where four teacher-owned cars were damaged by paint blown by wind from the paint room of a senior high school's agriculture department during the painting of a tractor, the board of education would be immune from liability under the doctrine of sovereign immunity, and since using school board funds for such a purpose would be tantamount to concluding there could be such liability, such an expenditure would be unconstitutional under this section. OAG 80-49, 1980 Ky. AG LEXIS 595.

A county fiscal court may provide snow removal service to the county schools in exchange for the transporting of nonpublic school students, provided that the value of such service is fairly and accurately determined, provisions are made for the payment to the county school system of any balance due, and appropriate procurement laws are followed where applicable; the best method for handling any legitimate exchange of services as outlined would be for the county school system to pay for the service and for the county fiscal court to pay that amount back to the county school system for the transporting of nonpublic school students. OAG 80-390, 1980 Ky. AG LEXIS 277.

The present school laws, in light of the Constitution, do not authorize or permit any state-funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown is precatory in nature and in light of this section and Const., § 184 cannot be carried out for funds involved, are foundation program funds and not just general funds appropriated for education and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314, 1984 Ky. AG LEXIS 72.

Payment by a board of education for the sabbatical leave of a teacher or superintendent is constitutional so long as the teacher or superintendent agrees to extend at least two (2) years of future services to the school board. OAG 88-29, 1988 Ky. AG LEXIS 29.

No existing law prohibits, outright, local districts from showing instructional TV programming with minimal commercials included so long as curricular materials are properly reviewed; if instructional TV programming, with minimal commercials included, is allowed in the public schools, then the two (2) minutes of advertising do not have to be excluded from the six (6) hour day. OAG 90-42, 1990 Ky. AG LEXIS 47.

The state board has the authority to ban any television instruction with commercial advertising if the board determines as a matter of public policy that such should not be utilized in the classroom. The board also has the authority to allow the local boards of education and school councils to decide this matter. OAG 90-42, 1990 Ky. AG LEXIS 47.

Under KRS 168.100, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of this section and Const., §§ 171, 184 and 189. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71, 1991 Ky. AG LEXIS 72.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under this section and Const., §§ 180 and 184; therefore, under this section and Const., §§ 180 and 184, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85, 1991 Ky. AG LEXIS 85.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of this section and Ky. Const., §§ 180 and 184; the act also falls within the parameters of KRS 160.160 as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63, 1992 Ky. AG LEXIS 63.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of KRS 178.290. OAG 93-63, 1993 Ky. AG LEXIS 298.

A county board of education can constitutionally pay a privilege fee for connecting to a public sewer system. A privilege fee to fund construction of a sewer system is a "public school purpose" if it bears a rational relationship to the value of the services provided to the public schools. A fee based on usage and acreage meets this standard because it is proportional to the services provided. OAG 2009-01, 2009 Ky. AG LEXIS 219.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Wintersheimer, State Constitutional Law, 20 N. Ky. L. Rev. 591 (1993).

§ 187. Race or color not to affect distribution of school fund.

In distributing the school fund no distinction shall be made on account of race or color.

History.
Amendment, proposed by Acts 1996, ch. 98, § 2, ratified November, 1996.

Compiler's Notes.
The General Assembly in 1996 proposed (Acts 1996, ch. 98, § 2) the amendment of this section. The amendment was ratified by the voters at the regular election in November 1996. Prior to the amendment the section read: "§ **187. White and colored to share fund without distinction — Separate schools.** — In distributing the school fund no distinction shall be made on account of race or color, and separate schools for white and colored children shall be maintained."

NOTES TO DECISIONS

1. Constitutionality.
It was conceded by the state superintendent of public schools that this section was unconstitutional in light of the decision of the United States Supreme Court in the case of Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 53 Ohio Op. 326, 1954 U.S. LEXIS 2094 (U.S. 1954). See Willis v. Walker, 136 F. Supp. 177, 1955 U.S. Dist. LEXIS 2389 (D. Ky. 1955).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Comment, Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-1979).

§ 188. Refund of federal direct tax part of school fund — Irredeemable bond.

So much of any moneys as may be received by the Commonwealth from the United States under the recent act of Congress refunding the direct tax shall become a part of the school fund, and be held as provided in Section 184; but the General Assembly may authorize the use, by the Commonwealth, of moneys so received or any part thereof, in which event a bond shall be executed to the Board of Education for the amount so used, which bond shall be held on the same terms and conditions, and subject to the provisions of Section 184, concerning the bond therein referred to.

NOTES TO DECISIONS

1. District School Funds.
District school funds are separate and distinct from the common school fund of the state which prior to the 1953 amendment of Const., § 186 deleting the per capita clause therefrom, was distributed by the state to the various school districts on a per capita basis under Const., § 186 and this section. Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751, 1941 Ky. LEXIS 21 (Ky. 1941).

Cited:
Talbott v. Kentucky State Board of Education, 244 Ky. 826, 52 S.W.2d 727, 1932 Ky. LEXIS 516 (Ky. 1932); Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Irredeemable bond for University of Kentucky and Kentucky State College, KRS 164.520.

§ 189. School money not to be used for church, sectarian, or denominational school.

No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Religious Activities Prohibited.
3. Prayer in Schools.
4. Rental of Church Property.
5. Private Schools.
6. Salary Contributions.
7. Transportation to Private Schools.
8. Textbooks for Private Schools.
9. Sectarian Orphanage.
10. Valid Agreements.
11. Invalid Agreements.
12. Public funding of religious schools

1. Construction.
The constitution and statutes require that there shall be equality and that all public schools shall be nonpartisan and nonsectarian. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

2. Religious Activities Prohibited.
A board of education may be enjoined from distributing sectarian literature in a public school, from expending public school funds for religious or sectarian purposes, from keeping sectarian publications in public school libraries, and from stopping the operation of public school buses on religious holidays, not also legalized as state or national holidays, such activities being in violation of this section and applicable statutes. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

3. Prayer in Schools.
A prayer offered at the opening of a public school, imploring the aid and presence of the Heavenly Father, looking forward

to a heavenly reunion after death, and concluding in Christ's name, is not sectarian, and does not make the school a sectarian school. Hackett v. Brooksville Graded School Dist., 120 Ky. 608, 87 S.W. 792, 27 Ky. L. Rptr. 1021, 1905 Ky. LEXIS 144 (Ky. 1905).

4. Rental of Church Property.

Rental of school buildings from church by a county school board was not of itself a violation of this section. Rawlings v. Butler, 290 S.W.2d 801, 1956 Ky. LEXIS 345 (Ky. 1956).

5. Private Schools.

The term private schools in KRS 157.305 does not include schools outside the state or schools that give sectarian instruction or have any denominational requirements with respect to their teachers or pupils and this section is not violated thereby. Butler v. United Cerebral Palsy, Inc., 352 S.W.2d 203, 1961 Ky. LEXIS 200 (Ky. 1961).

6. Salary Contributions.

Where members of religious order hired by the state and paid to teach in public schools had taken vow of poverty to religious order and contributed their salaries over living expenses to such order there was no violation of this section although there would be violation if the members were but conduits through which public school funds were channeled to a religious order. Rawlings v. Butler, 290 S.W.2d 801, 1956 Ky. LEXIS 345 (Ky. 1956).

7. Transportation to Private Schools.

Statute providing free transportation to pupils attending private schools violated this section, there being no merit in argument that act provided benefit for children and not for school. Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942).

Award of 99 percent of fiscal court's transportation subsidy to educational institutions that promoted religious teachings and beliefs, while equivalent support for the public school optional program was withheld violated Const., § 5 and this section. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

A county fiscal court's resolution which provided approximately 65 percent of the total cost of transporting non-public elementary school students was not unconstitutional where (1) funds were not paid directly to any private or parochial school and were, instead, paid to the individual local board of education operated transportation system of contracted bus and vehicle companies, (2) the benefit provided by the resolution went directly toward the safety and welfare of elementary age school children and not into the accounts of non-public schools, and (3) the resolution did not establish a tuition ceiling as a requisite to eligibility for the transportation subsidy. Neal v. Fiscal Court, 986 S.W.2d 907, 1999 Ky. LEXIS 24 (Ky. 1999).

8. Textbooks for Private Schools.

If the exclusive purpose of KRS 171.215, which provides that the state must supply textbooks to students in nonpublic schools, is to pay the expenses of children in private schools, Const., § 3 has been directly violated; conversely, if the textbooks also aid in the functioning of the private schools themselves, Const., §§ 171, 184, 186 and this section have been violated. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

KRS 171.215, which provides that the department of libraries (now department for libraries and archives) must supply textbooks without cost to pupils attending nonpublic schools, is unconstitutional in that it directs the expenditure of public funds for educational purposes through nonpublic schools. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Coleman v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

9. Sectarian Orphanage.

Acceptance of inmates of Baptist Orphans' Home as students in public schools does not violate this section. Crain v. Walker, 222 Ky. 828, 2 S.W.2d 654, 1928 Ky. LEXIS 255 (Ky. 1928).

10. Valid Agreements.

Where a graded school employed two teachers from a denominational college whose services were donated to the school after a fire at the college had reduced its capacity to use these teachers, there was no invalid arrangement which would authorize the county superintendent to withhold funds from the graded school. McDonald v. Parker, 130 Ky. 501, 110 S.W. 810, 33 Ky. L. Rptr. 805, 1908 Ky. LEXIS 231 (Ky. 1908).

11. Invalid Agreements.

Contract between trustees of common school district and sectarian educational institution, whereby latter agreed to teach common school pupils and trustees agreed to keep buildings in repair out of common school funds, violated this section and Const., § 5. Williams v. Board of Trustees, 173 Ky. 708, 191 S.W. 507, 1917 Ky. LEXIS 518 (Ky. 1917) (Ky. 1917).

12. Public funding of religious schools

Pharmacy school appropriation for the university violated Ky. Const. § 189 because it was an allocation of public funds for educational purposes to a church, sectarian, or denominational school, and the university was a Baptist university that had been supported by members and churches of the Baptist faith. Univ. of the Cumberlands v. Pennybacker, 308 S.W.3d 668, 2010 Ky. LEXIS 97 (Ky. 2010).

All revenue raised or taxes levied by the Commonwealth may fairly be said to have been collected for state government purposes and one leading purpose is indisputably public education at the primary, secondary and postsecondary levels. Under these circumstances, Ky. Const. § 189 is properly read to prohibit appropriation of any public funds to religious schools. Univ. of the Cumberlands v. Pennybacker, 308 S.W.3d 668, 2010 Ky. LEXIS 97 (Ky. 2010).

Ky. Const. § 189 did not offend the First Amendment by prohibiting appropriations of public tax monies to religious schools because there is no speech forum at issue where defendants allege discrimination in the expenditure of public funds for education. Univ. of the Cumberlands v. Pennybacker, 308 S.W.3d 668, 2010 Ky. LEXIS 97 (Ky. 2010).

Cited:

Commonwealth v. Thomas, 119 Ky. 208, 83 S.W. 572, 26 Ky. L. Rptr. 1128, 1904 Ky. LEXIS 160 (Ky. 1904); Shanklin v. Boyd, 146 Ky. 460, 142 S.W. 1041, 1912 Ky. LEXIS 101 (Ky. 1912); Calvary Baptist Church v. Milliken, 148 Ky. 580, 147 S.W. 12, 1912 Ky. LEXIS 486 (Ky. 1912); Jefferson County Board of Education v. Goheen, 306 Ky. 439, 207 S.W.2d 567, 1947 Ky. LEXIS 1019 (Ky. 1947); Kentucky Bldg. Com. v. Effron, 310 Ky. 355, 220 S.W.2d 836, 1949 Ky. LEXIS 915 (Ky. 1949); Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951); Ashland v. Calvary Protestant Episcopal Church, 278 S.W.2d 708, 1955 Ky. LEXIS 483 (Ky. 1955); Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956); Van Hoose v. Williams, 496 F. Supp. 947, 1980 U.S. Dist. LEXIS 15217 (E.D. Ky. 1980).

OPINIONS OF ATTORNEY GENERAL.

A county board of education was authorized to pay the salaries of teachers at a school within the system even though the buildings of the school were owned by a religious denomination. OAG 60-1217.

Tuition to the Oneida School, a non-public institution, may not be paid by the Perry County board of education. OAG 67-348.

Public school teachers may not, as a part of the duties for which they are compensated by boards of education, be assigned to teach in a private or sectarian school since the effect of such an assignment would be to the primary benefit of the private or sectarian school as opposed to a primary benefit to its students or the common schools and would offend Const., §§ 180 and 184 which restrict school funds to public school purposes, and would offend this section which prohibits the use by sectarian schools of funds levied for educational purposes. OAG 68-423.

For the Commonwealth to grant to a private college the power to exercise eminent domain, from a public-purpose standpoint the private institution of higher learning would have to be one which accords entrance privileges to qualified applicants on an open and equal basis without discrimination as to race, national origin or religious belief. OAG 70-567.

The benefits of eminent domain could be given to certain qualifying private colleges either by providing for the exercise of the right in behalf of a particular qualifying private college through a designated state agency with related over-all responsibilities for higher education or by extending the right to certain specified classes of private colleges and private universities. OAG 70-567.

Funds appropriated by the General Assembly for the school lunch programs may be shared by parochial schools without violating this section. OAG 72-422.

As long as a public school corporation receives fair market value for the services it renders and as long as there is no entanglement of the business operation of the corporation with a parochial school, there is no legal objection to the corporation providing computer service to the parochial school. OAG 73-669.

It would be a violation of the constitution to pay the salary of a parochial schoolteacher from public school district funds. OAG 73-799.

Public school teachers may not, as a part of the duties for which compensated by boards of education, be assigned, to teach in a private or sectarian school. OAG 74-331 (modifying OAG 68-150, and withdrawing OAG 68-585).

This section has no bearing on whether a public school may agree to allow students attending parochial schools to participate on the athletic teams of the public school. OAG 74-650.

A public school may not pay the tuition of a deaf student who attends a catholic school at the parents' election after rejection of the public school's arrangement for the child to be admitted to the Kentucky school for the deaf. OAG 74-660.

Under KRS 168.100, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of this section and Const., §§ 171, 184 and 186. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71, 1991 Ky. AG LEXIS 72.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

ALR

Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils. 41 A.L.R.3d 344.

GENERAL PROVISIONS

Section
228. Oath of officers and attorneys.
237. Federal office incompatible with State office.
246. Maximum limit on compensation of public officers.

§ 228. Oath of officers and attorneys.

Members of the General Assembly and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of ..... according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Failure To Take Oath.

1. Construction.

Under this section officers must swear to uphold the Constitution of the United States as well as the Constitution of Kentucky, therefore, any decision of the United States Supreme Court construing the federal Constitution is binding on this court. Wagers v. Sizemore, 222 Ky. 306, 300 S.W. 918, 1927 Ky. LEXIS 941 (Ky. 1927). See Shaw v. Fox, 246 Ky. 342, 55 S.W.2d 11, 1932 Ky. LEXIS 761 (Ky. 1932).

2. Failure To Take Oath.

Fiscal court could not legally approve payments to a deputy jailer where there was no showing that he had qualified as such by taking the oath required by this section and Const., § 232. Taylor v. Todd, 241 Ky. 605, 44 S.W.2d 606, 1931 Ky. LEXIS 148 (Ky. 1931).

Assuming that an oath were required under this section, the failure of precinct officers to take such oath would not invalidate a primary election in that precinct. Sims v. Atwell, 556 S.W.2d 929, 1977 Ky. App. LEXIS 826 (Ky. Ct. App. 1977).

Trial court did not err in denying defendants' motion to suppress drug evidence obtained in a search of their home because the warrant was not void when signed by a trial commissioner allegedly not lawfully serving that office. Where the trial commissioner was appointed by a judge who did not reappoint the trial commissioner following his re-election but where the trial commissioner continued uninterrupted in that capacity, he remained a de facto officer with authority to issue search warrants. As such, the warrant and the search performed under the warrant's authority were valid. Gourley v. Commonwealth, 335 S.W.3d 468, 2010 Ky. App. LEXIS 251 (Ky. Ct. App. 2010).

Cited:

Roberts v. Cain, 97 Ky. 722, 31 S.W. 729, 17 Ky. L. Rptr. 459, 1895 Ky. LEXIS 233 (Ky. 1895); Taylor v. Beckham, 108 Ky. 278, 56 S.W. 177, 21 Ky. L. Rptr. 1735, 1900 Ky. LEXIS 39 (Ky. 1900); Daugherty v. Arnold, 110 Ky. 1, 60 S.W. 865, 22 Ky. L. Rptr. 1504, 1901 Ky. LEXIS 54 (Ky. 1901); Commonwealth v. Ginn & Co., 120 Ky. 83, 85 S.W. 688, 27 Ky. L. Rptr. 486, 1905 Ky. LEXIS 72 (Ky. 1905); James v. Cammack, 139 Ky. 223, 129 S.W. 582, 1910 Ky. LEXIS 26 (Ky. 1910); Cartmell v. Commercial Bank & Trust Co., 153 Ky. 798, 156 S.W. 1048, 1913 Ky. LEXIS 938 (Ky. 1913); Cincinnati, N. O. & T. P. R. Co. v. Cundiff, 166 Ky. 594, 179 S.W. 615, 1915 Ky. LEXIS 755 (Ky. 1915); Board of Education v. McChesney, 235 Ky. 692, 32 S.W.2d 26, 1930 Ky. LEXIS 441 (Ky. 1930); Oakes v. Remines, 273 Ky. 750, 117 S.W.2d 948, 1938 Ky. LEXIS 713 (Ky. 1938); Beauchamp v. Cahill, 297 Ky. 505, 180 S.W.2d 423, 1944 Ky. LEXIS 766 (Ky. 1944); Black v. Sutton, 301 Ky. 247, 191 S.W.2d 407, 1945 Ky. LEXIS 733 (Ky. 1945); Commonwealth ex rel. Breckinridge v. Marshall, 361 S.W.2d 103, 1962 Ky. LEXIS 228 (Ky. 1962); Raney v. Stovall, 361 S.W.2d 518, 1962 Ky. LEXIS 246 (Ky. 1962); D & W Auto Supply v. Department of Revenue, 602 S.W.2d 420, 1980 Ky. LEXIS 243 (Ky. 1980); Rottinghaus v. Board of Comm'rs, 603 S.W.2d 487, 1979 Ky. App. LEXIS 536 (Ky. Ct. App. 1979).

OPINIONS OF ATTORNEY GENERAL.

Where five (5) months after taking office school board members had not yet taken the statutory oath of office the board members forfeited their office for failure to qualify within a reasonable time after their election. OAG 61-485.

Where five (5) months after taking office school board members had not yet taken the statutory oath, the state board of education was required to fill the resulting vacancies pursuant to KRS 160.190. OAG 61-485.

A forest warden is required to take the oath of office set forth in this section, and no other oath is required. OAG 63-323.

A person who is elected county coroner while voluntarily employed overseas by the department of the army as a civilian embalmer and who cannot return at the proper time to take the oath and assume the office, cannot be granted four (4) or five (5) months temporary leave and then return and assume the office because failure to take oath and make bond within the prescribed time would result in the automatic vacation of the office. OAG 69-239.

Under this section a city jailer would be required to take the oath of office. OAG 72-507.

KRS 277.280 requires that railroad policemen must take the oath prescribed by this section and in view of the language "so long as they continue a citizen thereof" in this section, it seems that a railroad policeman must be a citizen of Kentucky. OAG 75-166.

Volunteer firemen who are regular members of a fire department in a volunteer fire department district should be required to take the constitutional oath, and the oath contained in KRS 75.170. OAG 79-622, 1979 Ky. AG LEXIS 23.

Where a full-time student and resident of Kentucky has already been sworn into office as the student body president and assumed student government responsibilities as the student member of a state university board of regents, there is no need for him to take the constitutional oath of office provided for in this section, since subsection (5) of KRS 164.320 only requires that appointed members take the constitutional oath, and student body president is an elective office. OAG 81-172, 1981 Ky. AG LEXIS 249.

As to the residence requirement as relates to a county policeman, it is only necessary that he reside in some Kentucky county, and he does not have to reside in the county of the appointment, but it is necessary that his commuting, if done, will not prevent the proper carrying out of his police duties as scheduled. OAG 80-68, 1980 Ky. AG LEXIS 588.

Since the members of the enterprise zone authority, KRS 154.650 to 154.700, are state officers they must execute the oath of office prescribed by this section. OAG 82-429.

The language of this section clearly requires all public officers, which would include most, if not all, members of the various state boards and commissions, to be citizens of the commonwealth of Kentucky in order for them to qualify to execute the oath required of all public officers before they can enter the duties of their respective offices. OAG 83-103, 1983 Ky. AG LEXIS 394.

This section requires an officer taking the oath of office to be a citizen or resident of Kentucky, and Const., § 234 requires all civil officers of Kentucky to reside in Kentucky; therefore, that provision of KRS 423.110(6) relating to the appointment of a special notary living in a foreign jurisdiction, is unconstitutional. However, under the principle of severability, as expressed in KRS 446.090, KRS 423.110, minus the offending language involving appointing nonresidents, is constitutional; thus the special notary, who lives in Kentucky, may, under KRS 423.110, engage in notarial acts in a foreign jurisdiction, provided that such exercise of function does not violate the public policy of or is not in basic conflict with the law of the foreign jurisdiction; the extraterritorial recognition of KRS 423.110 is only based upon the principles of comity. OAG 85-36, 1985 Ky. AG LEXIS 109.

All notary publics, residents of Kentucky, including those appointed under KRS 423.110, must take the oath mentioned in KRS 423.110 before the county judge/executive of the county in which the notary resides, and must take the oath prescribed in this section before one of the applicable officers mentioned in KRS 62.020. OAG 85-36, 1985 Ky. AG LEXIS 109.

In light of Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175, 1984 U.S. LEXIS 93, (1984), the citizenship requirement of this section is not enforcible as to the office of notary public under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Const., § 3; thus, an alien residing in a particular county in Kentucky may qualify as a notary public, provided that he satisfies the requirements of KRS 423.010 and takes the oath before the county judge/executive of his county that "he will honestly and diligently discharge the duties of his office," as required by KRS 423.010. In addition, he must take the oath of officers prescribed in this section, before any applicable officer listed in KRS 62.020, even though he is not a citizen of the United States nor Kentucky; in view of the holding in Bernal v. Fainter, the requirement of citizenship, as it applies to the oath of this section, would be, as a practical matter and in harmony with the cypres doctrine of equity, considered waived. OAG 85-37, modifying OAG 77-297, 1977 Ky. AG LEXIS 479.

The prohibition in KRS 15.740 against a Commonwealth's Attorney's representation of defendants does not apply until the prospective Commonwealth's Attorney has taken the oath of office under this section and § 232 of the Constitution; a prospective appointee has a reasonable time within which to qualify by taking the oath. OAG 85-80, 1985 Ky. AG LEXIS 69.

Since residency should not be considered a requirement to practice as a notary, the provision in this section regarding state citizenship should be deleted from the oath given to a notary; furthermore, the oath may be administered in any county. OAG 88-20, 1988 Ky. AG LEXIS 20.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Form of oath altered on pardon of person convicted of dueling, Const., § 240.

Oaths of officers, KRS 62.010 to 62.040.

Kentucky Law Journal.

Notes, An Analysis of the Question of County Jail Reform in Kentucky, 65 Ky. L.J. 130 (1976-77).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Constitutional Oath, Form 11.01.

Caldwell's Kentucky Form Book, 5th Ed., Oath of Clerks and Deputies, Form 10.03.

ALR

Validity of governmental requirement of oath of allegiance or loyalty. 18 A.L.R.2d 268.

§ 237. Federal office incompatible with State office.

No member of Congress, or person holding or exercising an office of trust or profit under the United States, or any of them, or under any foreign power, shall be eligible to hold or exercise any office of trust or profit under this Constitution, or the laws made in pursuance thereof.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Eligibility.
3. Incompatibility.
4. Military Service.
5. Rural Mail Carrier.
6. Postmaster.

1. Purpose.

The primary purpose of this constitutional provision is to prohibit a separation of allegiance from one sovereign to another, and to prevent a division of loyalty justly due the sovereign to which the officer is in the first instance duty bound. Baker v. Dixon, 295 Ky. 279, 174 S.W.2d 410, 1943 Ky. LEXIS 222 (Ky. 1943).

2. Eligibility.

This section does not require one holding a federal office to be eligible for an office under the Constitution at the time of his election but only at the time he assumes such office. Jones v. Williams, 153 Ky. 822, 156 S.W. 876, 1913 Ky. LEXIS 926 (Ky. 1913).

3. Incompatibility.

There is no incompatibility of office except as prescribed by this section and Const., § 165, or by statutes enacted pursuant thereto, or in cases involving incompatibility of duties in different positions. Coleman v. Hurst, 226 Ky. 501, 11 S.W.2d 133, 1928 Ky. LEXIS 121 (Ky. 1928).

The incompatibilities set out in this section and Const., § 165 are not exclusive, and common-law incompatibility exists when the public functions to be performed are inconsistent the one with the other and when the nature and duties of the two (2) offices are such as to render it improper from consideration of public policy for one incumbent to retain both. Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

The offices of jailer and special tax collector are not incompatible under this section or Const., § 165 but are incompatible within the spirit and intent of KRS 61.080 which makes the offices of sheriff and jailer incompatible. Nichols v. Land, 288 Ky. 693, 157 S.W.2d 303, 1941 Ky. LEXIS 192 (Ky. 1941).

The test of incompatibility is not to be measured by physical inability to personally discharge the duties of the offices, but it must be tested by the measure of consistency of the duties involved. Baker v. Dixon, 295 Ky. 279, 174 S.W.2d 410, 1943 Ky. LEXIS 222 (Ky. 1943).

4. Military Service.

A captain in the Kentucky National Guard who has been ordered into temporary federal service but will still hold and act under commission issued to him by Governor of Kentucky, and will be required to take no additional oath or make no new enlistment contract or be given no federal commission, does not forfeit his office as circuit clerk, since he does not hold two incompatible offices under this section. Kennedy v. Cook, 285 Ky. 9, 146 S.W.2d 56, 1940 Ky. LEXIS 594 (Ky. 1940), limited, Caudel v. Prewitt, 296 Ky. 848, 178 S.W.2d 22, 1944 Ky. LEXIS 595 (Ky. 1944).

Involuntary induction into the armed forces of the United States in time of emergency does not work a forfeiture of a state office held by inductee. Baker v. Dixon, 295 Ky. 279, 174 S.W.2d 410, 1943 Ky. LEXIS 222 (Ky. 1943).

One who has entered into the military service of the United States in a professional capacity would, under this section, be ineligible to hold or exercise the office of Commonwealth Attorney, but one who is involuntarily inducted is not ineligible. Baker v. Dixon, 295 Ky. 279, 174 S.W.2d 410, 1943 Ky. LEXIS 222 (Ky. 1943).

This section does not apply where a Commonwealth Attorney becomes an officer in the United States army during a time of national emergency. Caudel v. Prewitt, 296 Ky. 848, 178 S.W.2d 22, 1944 Ky. LEXIS 595 (Ky. 1944).

5. Rural Mail Carrier.

Rural mail carrier did not hold office of trust or profit under the United States within the meaning of the Constitution. Lasher v. Commonwealth, 418 S.W.2d 416, 1967 Ky. LEXIS 215 (Ky. 1967).

6. Postmaster.

The trial court properly concluded that the postmaster of a fourth-class post office was not a holder of an office of trust or profit within the meaning of this section, and therefore was eligible to serve as a member of a school board. Commonwealth ex rel. Hancock v. Clark, 506 S.W.2d 503, 1974 Ky. LEXIS 749 (Ky. 1974).

Cited:

Miller v. Robertson, 306 Ky. 653, 208 S.W.2d 977, 1948 Ky. LEXIS 631 (Ky. 1948); Rash v. Louisville & Jefferson County Metropolitan Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, 1949 Ky. LEXIS 670 (Ky. 1949); Hancock v. Queenan, 294 S.W.2d 92, 1956 Ky. LEXIS 117 (Ky. 1956); Commonwealth ex rel. Breckinridge v. Winstead, 430 S.W.2d 647, 1968 Ky. LEXIS 407 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

A fourth-class postmaster is a federal officer and a school board member is a state officer, and for one person to hold both offices at the same time is prohibited by this section. OAG 60-813.

While there is no prohibition under the Constitution or statutes against a person holding federal employment and a county office at the same time as there would be if the same person held a federal office and a county office at the same time, the federal hatch act, 5 USCS § 118(i), makes it unlawful for any person employed in the executive branch of the federal government or any agency or department thereof to take an active part in the political management or political campaigns. OAG 61-196.

A mail contractor may not serve as a member of the Kentucky House of Representatives because the two (2) offices are incompatible. OAG 61-291.

The position of substitute rural mail carrier is incompatible with the office of member of a board of education. OAG 61-785.

A person who holds a public office in another state may not at the same time serve as a magistrate in Kentucky. OAG 61-972.

A school board member would be eligible to serve where he resigned his federal office of substitute mail carrier after his election but before he qualified for office and assumed his duties as school board member. OAG 65-157.

The position of rural mail carrier is a form of federal employment rather than a federal office and a person who holds such a position is not disqualified by the provisions of this section from serving on the county board of education. OAG 68-191.

A position on the field staff of a United States senator is a federal employment and not an office of trust or profit under the United States within the meaning of this section and consequently the provisions of this section do not bar a member of the general assembly from holding such a position. OAG 69-67.

This section prohibits a person from serving as a member of a local draft board and as a city councilman at the same time. OAG 69-298.

The position of mail distribution clerk is a federal employment and not an office of trust or profit under the United States within the meaning of this section and consequently the provisions of this section do not bar a postal clerk from the office of city commissioner. OAG 69-410.

An employee of the Blue Grass army activities could, at the same time, serve as a member of the school board without violating this section. OAG 69-438.

The positions of contract rural letter carrier and magistrate are not constitutionally incompatible under this section. OAG 70-33.

Under this section the office of postmaster is incompatible with membership on a county board of education. OAG 70-137.

Since the position of Special Master, an appointive position made by the federal district court whose duties are to hear the evidence in a particular case and file a report with the Circuit Judge who then renders a decision, is neither a federal office nor a judicial office, there is no constitutional objection, either under this section or under Const., § 28, to the position being held by a member of the general assembly. OAG 70-163.

This section does not prohibit a federal employee under civil service from serving at the same time as a county employee. OAG 70-326.

Since the offices of school board member and selective service board member are both offices of trust, they are incompatible under the Constitution and cannot be held by a person at the same time. OAG 70-812.

Where a state representative won a special election to fill a vacancy in the United States congress, a vacancy automatically was created in his district when he was sworn in as a member of congress. OAG 72-3.

A member of the county board of education cannot also hold the position of postmaster. The offices are incompatible under this section. OAG 72-67.

A part-time United States deputy marshal cannot be sworn in as a police officer in a city of the second class. OAG 72-129.

Persons who serve as members of the Fish and Wildlife Resources Commission may not also serve in any state, county, city, town, municipal or federal office. OAG 72-354.

There is no prohibition against a federal employee serving as a school board member. OAG 72-665.

Despite changes in the federal postal system, a postmaster of any class of post office is still a federal officer and barred by this section from serving at the same time as a state officer. OAG 72-800.

This section does not bar the manager of a rural electric cooperative organized pursuant to KRS 279.020 to 279.220 from holding elective office, since rural electric cooperatives are Kentucky nonprofit corporations and are not a part of the federal government or of the federal rural electrification administration. OAG 73-412.

A field worker with the federally funded office of economic opportunity could properly serve, at the same time, as a member of a school board, her position with the federal government not amounting to an office of trust or profit under the United States. OAG 73-625.

At least in the case of fourth-class cities, the local postmaster may also serve as a school board member. OAG 75-661.

It would be legal for a person regularly employed by the federal government as a coal mine inspector to be elected and serve at the same time as a member of the school board. OAG 79-491, 1979 Ky. AG LEXIS 129.

This section would prohibit the postmaster of a first class post office in a city from being on the water board, since the postmaster position of a first class office would be an "office of trust", and a water board member is an office of trust under Kentucky law. OAG 80-234, 1980 Ky. AG LEXIS 412.

A member of the General Assembly may also serve as director of a member-owned rural electric cooperative which is a nonprofit corporation created pursuant to KRS chapter 279, since the cooperative is not a state administrative board or commission, and such dual employment therefor does not violate this section or KRS 6.800 which prohibits state legislators from holding any other state office or employment. OAG 81-249, 1981 Ky. AG LEXIS 175.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Incompatible offices, Const., §§ 44, 165; KRS 61.080.

§ 246. Maximum limit on compensation of public officers.

No public officer or employee except the Governor, shall receive as compensation per annum for official services, exclusive of the compensation of legally authorized deputies and assistants which shall be fixed and provided for by law, but inclusive of allowance for living expenses, if any, as may be fixed and provided for by law, any amount in excess of the following sums: Officers whose jurisdiction or duties are coextensive with the Commonwealth, the mayor of any city of the first class, and Judges and Commissioners of the Court of Appeals, Twelve Thousand Dollars ($12,000); Circuit Judges, Eight Thousand Four Hundred Dollars ($8,400); all other public officers, Seven Thousand Two Hundred Dollars ($7,200). Compensation within the limits of this amendment may be authorized by the General Assembly to be paid, but not retroactively, to public officers in office at the time of its adoption, or who are elected at the election at which this amendment is adopted. Nothing in this amendment shall permit any officer to receive, for the year 1949, any compensation in excess of the limit in force prior to the adoption of this amendment.

History.

Amendment, proposed Acts 1948, ch. 172, ratified November, 1949.

NOTES TO DECISIONS

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1. Construction.

This section is self-executing and may be enforced by the courts without any legislative authority. Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922). See Pike County v. Young, 266 Ky. 588, 99 S.W.2d 749, 1936 Ky. LEXIS 713 (Ky. 1936).

This section is clear and unequivocal, and leaves nothing to implication. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

This section is mandatory and self-executing. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

Section 3 of the Constitution and this section are harmonious. Talbott v. Thomas, 286 Ky. 786, 151 S.W.2d 1, 1941 Ky. LEXIS 277 (Ky. 1941). See Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940).

2. Application.

This section applies to compensation for public service, whether rendered in one or more positions. Coleman v. Hurst, 226 Ky. 501, 11 S.W.2d 133, 1928 Ky. LEXIS 121 (Ky. 1928).

Where the Legislature has failed to regulate the salary of a public officer as allowed by Const., § 106, the officer's compensation is $5,000 by operation of this section. Holland v. Fayette County, 240 Ky. 37, 41 S.W.2d 651, 1931 Ky. LEXIS 344 (Ky. 1931).

This limitation applies to the officer and not the office. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

This section applies to municipal officers. Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940).

In conflict between this section and Const., § 133 (repealed), governing the salaries of Circuit Judges, this section must prevail. Barker v. Barnes, 248 S.W.2d 901, 1952 Ky. LEXIS 765 (Ky. 1952).

3. Actions.

4. — Equity.

In action by taxpayer to recover sums received by jailer alleged to be in excess of constitutional compensation limit where it was alleged allowance for feeding prisoners was excessive, it was proper to overrule plaintiff's motion to transfer to equity, in the absence of showing of fraud or collusion between jailer and the fiscal court. Taylor v. Broughton, 254 Ky. 265, 71 S.W.2d 635, 1934 Ky. LEXIS 75 (Ky. 1934).

5. — Fiscal Court.

Taxpayer, in suit to recover commissions collected by sheriffs in excess of $5,000, was not entitled to recover against fiscal court for not requiring sheriffs to account under statutes, since petition at best could only be construed as alleging failure to discharge discretionary duties. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925). See Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922).

6. — Limitations.

County's claims against county attorney for moneys collected in excess of constitutional limit are barred by limitations as regards moneys collected more than five years before commencement of action. Jefferson County v. Chilton, 253 Ky. 221, 69 S.W.2d 338, 1934 Ky. LEXIS 636 (Ky. 1934).

7. — Pleadings and Proof.

A taxpayer may sue under this section on his own behalf and on behalf of other taxpayers to recover excess salary paid and need not demand that fiscal court bring such suit where facts justify assumption that fiscal court will not do so. Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922). See Pike County v. Young, 266 Ky. 588, 99 S.W.2d 749, 1936 Ky. LEXIS 713 (Ky. 1936).

In action against an officer to recover compensation which he received in excess of constitutional limitation, a disclosure of his total compensation may be obtained either by cross-examination or by interrogatories attached to the petition. Boyd County v. Boyd Fiscal Court, 247 Ky. 183, 56 S.W.2d 959, 1933 Ky. LEXIS 368 (Ky. 1933).

Suit against city manager to recover money paid in excess of constitutional limit cannot be maintained by taxpayer without showing demand on public officers to bring suit or circumstances indicating their refusal to do so. Wagner v. Wallingford, 257 Ky. 477, 78 S.W.2d 326, 1935 Ky. LEXIS 39 (Ky. 1935).

Jailer bringing suit to recover claims allowed by fiscal court had burden of proof of showing credits to which he was entitled when fiscal court answered that he already had been paid a certain sum and payment of his claims would exceed constitutional limitation. Bell Fiscal Court v. Helton, 258 Ky. 219, 79 S.W.2d 683, 1935 Ky. LEXIS 806 (Ky. 1935).

Where county court clerk received money from the county fiscal court in a specified year to which she was not entitled and used such to employ additional office help, it was incumbent upon the clerk, in an action brought by a taxpayer to recover such sum, to prove that she had had an excess of fees in an amount which was at least equal to the amount received from the fiscal court for the same specified calendar year and that she had paid this amount to the county in order to be

relieved from liability, as the clerk could not use fees received in subsequent years which exceeded the amount required to pay office expenses and clerk's compensation to make up the amount owed to the county. Ader v. Howard, 263 S.W.2d 491, 1953 Ky. LEXIS 1152 (Ky. 1953).

8. — Settlements.

Under this section and statutes, taxpayer suing to recover, on behalf of county, sheriffs' commissions for collecting taxes in excess of $5,000 per annum is not required to show that there was a person appointed by fiscal court with whom sheriffs could settle and that they had refused to do so, since clearly they could have settled with the fiscal court. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925). See Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922).

Fiscal court acting in good faith may compromise and settle an action by taxpayer against former sheriff to recover excess collected above constitutional limit in salary and fees. Shipp use of Fayette County v. Rodes, 219 Ky. 349, 293 S.W. 543, 1927 Ky. LEXIS 348 (Ky. 1927).

9. — Taxable Property.

In suit to recover from sheriffs commissions and fees in excess of $5,000, it is unnecessary for plaintiff to file a list of taxable property, since suit only sought to require sheriffs to account for moneys actually collected. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925). See Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922).

10. Amendments to Constitution.

Where proposed amendment to this section provided definite limitations to annual compensation of public officers or employees but words "or employee" did not appear in title of proposal and were not followed through in the text of the proposal, it was not necessary that they be included in the amendment question to be placed on the ballot. Smith v. Hatcher, 311 Ky. 386, 223 S.W.2d 182, 1949 Ky. LEXIS 1044 (Ky. 1949).

The 1949 amendment to this section had the effect of suspending Const., §§ 161 and 235 insofar as they affected public officials then in office or elected at the election at which the amendments were adopted; therefore, as the term is the unit to which these sections apply, commissioner elected in 1951 and commissioner elected in 1947 and re-elected in 1951 were not entitled to increase in compensation made possible by 1952 amendment to law that provided for compensation of county commissioners serving on the fiscal court. Shamburger v. Duncan, 253 S.W.2d 388, 1952 Ky. LEXIS 1090 (Ky. 1952).

The 1949 amendment to this section applies to both fee officers and salaried officers. Cheshire v. Frankfort, 272 S.W.2d 37, 1954 Ky. LEXIS 1076 (Ky. 1954).

When the 1949 amendment is considered as a whole, the intent becomes clear that the old $5,000 limit should remain in force until the General Assembly should authorize an increase within the new limits, at least with respect to officers in office at the time of adoption of the amendment or who were elected at the election at which the amendment was adopted. Cheshire v. Frankfort, 272 S.W.2d 37, 1954 Ky. LEXIS 1076 (Ky. 1954).

Judicial notice was taken of the fact that an adjustment of compensation attaching to public office through an amendment or repeal of this section was an urgent requirement because economic conditions had reduced value of compensation provided for to point that qualified men and women without independent means could not afford to serve. Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

11. City Attorneys.

A city attorney is a public officer and subject to this section. Carroll v. Fullerton, 215 Ky. 558, 286 S.W. 847, 1926 Ky. LEXIS 769 (Ky. 1926), overruled, Ward v. Southern Bell Tel. & Tel. Co., 436 S.W.2d 794, 1968 Ky. LEXIS 189 (Ky. 1968).

12. City Finance Officers.

Compensation in excess of $5,000 from the office of both director of finance of the city of Louisville and chief accountant and financial advisor of the city of Louisville municipal housing commission violates this section. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

13. City Managers.

This section applies to municipal officers. A city manager is a public officer within this section and statutory provision that city manager is not an officer is void; consequently, an ordinance fixing salary in excess of constitutional limit is unenforceable. Lexington v. Thompson, 250 Ky. 96, 61 S.W.2d 1092, 1933 Ky. LEXIS 655 (Ky. 1933).

14. Compensation.

In enacting Acts 1950, ch. 123, providing for compensation of certain public officers, the Legislature intended that both the number and the compensation of deputies should be fixed by the fiscal court before the first Monday in May of the election year, and, if not so fixed, they would be limited by KRS 64.720 to that of the preceding term. Funk v. Milliken, 317 S.W.2d 499, 1958 Ky. LEXIS 100 (Ky. 1958).

While fringe benefits are not salary or compensation within the meaning of those terms as found in Const., §§ 161, 235, and this section if the salary of a particular official were raised through the subterfuge of paying certain benefits for him not uniformly available to similarly situated officials, such benefits would constitute salary or compensation within the terms found in Const., §§ 161, 235, and this section. Caldwell County Fiscal Court v. Paris, 945 S.W.2d 952, 1997 Ky. App. LEXIS 49 (Ky. Ct. App. 1997).

The reference in the Constitution to compensation and salary mean the actual salary or fees paid to an officer. Caldwell County Fiscal Court v. Paris, 945 S.W.2d 952, 1997 Ky. App. LEXIS 49 (Ky. Ct. App. 1997).

15. — Cost of Living.

Where the law fixing the compensation of a public officer adheres to the limit set forth in the Constitution, an officer is not entitled to receive any more than that amount as a result of the increased cost of living. Meade County v. Neafus, 395 S.W.2d 573, 1965 Ky. LEXIS 149 (Ky. 1965). But see Matthews v. Allen, 360 S.W.2d 135, 1962 Ky. LEXIS 211 (Ky. 1962).

16. — Purchasing Power.

The salary provisions of this section may be interpreted and periodically applied to all constitutional officers in terms which will equate current salaries with the purchasing power of the dollar in 1949 when this section was amended and, in the instance of the judiciary, other factors may also be considered in establishing the adequate compensation directed by Const., §§ 112 and 133 (repealed). Matthews v. Allen, 360 S.W.2d 135, 1962 Ky. LEXIS 211 (Ky. 1962). But see Meade County v. Neafus, 395 S.W.2d 573, 1965 Ky. LEXIS 149 (Ky. 1965).

Where a fiscal court adjusted salaries of magistrates to a fixed $11,772 per annum, such action was not unconstitutional since this section allows salaries to be equated with the purchasing power of the dollar in 1949 and under KRS 64.527 and the "rubber dollar" theory, the current maximum salary would be approximately $18,000 and there was no showing of illegality. Hasty v. Shepherd, 620 S.W.2d 325, 1981 Ky. App. LEXIS 280 (Ky. Ct. App. 1981).

17. — Donations.

Fact that compensation is paid from donations to the city rather than from taxation is immaterial. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

18. — Excess.
Any compensation received by an officer over and above the limit prescribed herein must be for acts done outside of official duties and with which they have no affinity or connection. Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940).

19. — Expense Allowances.
There being no specific constitutional or statutory provision to the contrary, the allowance by the Legislature of expenses incurred by public officers in the discharge of their official duties is neither salary, compensation, nor an emolument of their office within the meaning of this section. Manning v. Sims, 308 Ky. 587, 213 S.W.2d 577, 1948 Ky. LEXIS 864 (Ky. 1948).

20. — Fees.
Officer is entitled to apply fees to his compensation for the year fees are paid and not for year in which they are earned. McCracken County v. Thompson's Ex'x, 268 Ky. 253, 104 S.W.2d 968, 1937 Ky. LEXIS 444 (Ky. 1937).

21. — Pensions.
Pensions to officers already paid $5,000 per annum for public or official services are prohibited by this section. Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940).

22. — Per Annum.
Per annum refers to year of service, not to year of payment. Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940).

23. — Separate Allowances.
The Legislature may provide for separate allowance of salaries to public officers for specific services but the aggregate allowance must not exceed constitutional limit. Robinson v. Elliott County Fiscal Court, 236 Ky. 63, 32 S.W.2d 554, 1930 Ky. LEXIS 680 (Ky. 1930).

24. — Source.
It is immaterial whether the compensation comes from one or several positions. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

This section relates to public funds, public moneys or moneys from public sources, whether derived from taxes, rents, fines, contracts or otherwise. Alvey v. Brigham, 286 Ky. 610, 150 S.W.2d 935, 1940 Ky. LEXIS 6 (Ky. 1940).

25. — Fringe Benefits.
Providing health insurance under a group policy covering county officials and employees does not constitute the payment of compensation or salary within the meaning of those terms as found in Const., §§ 161, 235 and this section. Caldwell County Fiscal Court v. Paris, 945 S.W.2d 952, 1997 Ky. App. LEXIS 49 (Ky. Ct. App. 1997).

26. County Attorneys.
The county and not the state is entitled to excess fees paid county attorneys, including commissions on judgments for fines and forfeitures. Commonwealth v. Coleman, 245 Ky. 673, 54 S.W.2d 42, 1932 Ky. LEXIS 662 (Ky. 1932) (as to jailers, see Breathitt County v. Cockrell, 250 Ky. 743, 63 S.W.2d 920, 1933 Ky. LEXIS 764 (Ky. 1933)).

Both salary and fees must be considered when applying this section and Const., §§ 161 and 235 to county attorneys. Dennis v. Rich, 434 S.W.2d 632, 1968 Ky. LEXIS 237 (Ky. 1968).

27. County Coroners.
County coroner is not entitled to recover statutory fees from city for year in excess of $5,000 maximum compensation, even though excess is to go to the county. Louisville v. Keaney, 267 Ky. 557, 102 S.W.2d 996, 1937 Ky. LEXIS 346 (Ky. 1937).

28. Creditors.
Under this section it is against public policy to subject the salary of a state officer to the claims of his creditors. Dickinson v. Johnson, 110 Ky. 236, 61 S.W. 267, 22 Ky. L. Rptr. 1686, 1901 Ky. LEXIS 78 (Ky. 1901).

29. Employees.
Under this section limitation on salaries of public officers did not apply to salaries of subordinate employees. Pardue v. Miller, 306 Ky. 110, 206 S.W.2d 75, 1947 Ky. LEXIS 953 (Ky. 1947). See Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

Officers, as the word is used in this section and in Const., §§ 161 and 235, should be restricted to those officers directly named and designated in the Constitution and should not include employees not so designated. Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960) (overruling prior contrary decisions).

30. Employment.
Designation of position as "employment" will not be allowed to circumvent this section. Louisville v. German, 286 Ky. 477, 150 S.W.2d 931, 1940 Ky. LEXIS 5 (Ky. 1940).

31. Fiscal Courts.
Where a county officer presents an account to the fiscal court and the court believes that the officer has or will by the account, with prior receipts, exceed the constitutional limitation on his compensation, the fiscal court may require of him a full and complete showing of such receipts from all sources and the expenses of his office before allowing the account presented. Boyd County v. Boyd Fiscal Court, 247 Ky. 183, 56 S.W.2d 959, 1933 Ky. LEXIS 368 (Ky. 1933).

Fiscal courts, except of counties having a population of 75,000 or more, may pay sheriffs' $7,200 salaries from county treasury. Harlan v. Sawyers, 290 S.W.2d 488, 1956 Ky. LEXIS 327 (Ky. 1956).

32. House of Representatives.
Chief clerk of House of Representatives is a public officer within this section. Sanders v. Talbott, 255 Ky. 50, 72 S.W.2d 758, 1934 Ky. LEXIS 185 (Ky. 1934).

33. Independent Contractors.
This section does not restrict the compensation paid to independent contractors; attorneys employed by Department of Revenue (now Revenue Cabinet) to collect back taxes under contract and consultant engineer employed by public service commission under contract which left him free of all control by the commission were independent contractors. Talbott v. Public Service Com., 291 Ky. 109, 163 S.W.2d 33, 1942 Ky. LEXIS 174 (Ky. 1942), overruled, Pardue v. Miller, 306 Ky. 110, 206 S.W.2d 75, 1947 Ky. LEXIS 953 (Ky. 1947).

34. Jailers.
Jailer's compensation is limited to $5,000 after deducting all expenses from total receipts of office from every source. Holland v. Fayette County, 240 Ky. 37, 41 S.W.2d 651, 1931 Ky. LEXIS 344 (Ky. 1931).

The jailer of a county must report to the fiscal court all moneys received from any source by virtue of his office, including fees for keeping federal prisoners, and, there being no statutory provision, his accounting should be on an annual, not a four-year basis. Holland v. Fayette County, 240 Ky. 37, 41 S.W.2d 651, 1931 Ky. LEXIS 344 (Ky. 1931).

There being no statutory provision to the contrary, county, not state, is entitled to excess of jailer's fees over salary and expenditures. Holland v. Fayette County, 240 Ky. 37, 41 S.W.2d 651, 1931 Ky. LEXIS 344 (Ky. 1931).

Failure of jailer to account annually to fiscal court, as required by law, does not preclude his filing single accounting for his entire four-year term. Taylor v. Broughton, 254 Ky. 265, 71 S.W.2d 635, 1934 Ky. LEXIS 75 (Ky. 1934).

A jailer's compensation, within the meaning of this section, is the balance of whatever he retains for his own compensation after deducting payment to others for labor and expenses required for the proper performance of the duties and functions of his office. Wilson v. Ball, 323 S.W.2d 840, 1959 Ky. LEXIS 336 (Ky. 1959). See Bell Fiscal Court v. Helton, 258 Ky. 219, 79 S.W.2d 683, 1935 Ky. LEXIS 806 (Ky. 1935); Manning v. Sims, 308 Ky. 587, 213 S.W.2d 577, 1948 Ky. LEXIS 864 (Ky. 1948).

Services performed by county jailer under his contract with the county government as director of detention, namely the fingerprinting and photographing of prisoners, were not a part of his official duties as jailer, and he was not prohibited from entering into a contract with the county government for such nonofficial duties. Buchignani v. Lexington-Fayette Urban County Government, 632 S.W.2d 465, 1982 Ky. App. LEXIS 212 (Ky. Ct. App. 1982).

35. Joint Offices.

Where more than one (1) office is held during the same year by an individual, he is entitled only to the maximum compensation permitted for the highest ranking office. Barker v. Barnes, 248 S.W.2d 901, 1952 Ky. LEXIS 765 (Ky. 1952).

The limit on the compensation of any public officer applies to the person, regardless of the number of offices he may hold. Funk v. Milliken, 317 S.W.2d 499, 1958 Ky. LEXIS 100 (Ky. 1958).

36. Joint Officers.

This section does not prevent two (2) officers who each hold office for part of year from together receiving more than the limitation. Whittenberg v. Louisville, 238 Ky. 117, 36 S.W.2d 853, 1931 Ky. LEXIS 187 (Ky. 1931).

37. Judges.

Judges of the Court of Appeals may by law be given salary raises during their terms of office under Const., §§ 112, 161, 235 and this section. Perkins v. Sims, 350 S.W.2d 715, 1961 Ky. LEXIS 131 (Ky. 1961).

38. Public Office.

To constitute a public office within the meaning of this section, thus subjecting the incumbent to the constitutional salary limitation, the office must comprise the following five indispensable elements: (1) It must be created by the Constitution or by law; (2) it must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public; (3) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the Legislature, or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior officer or body; and (5) it must have some permanency and continuity and not be only temporary or occasional. Lexington v. Thompson, 250 Ky. 96, 61 S.W.2d 1092, 1933 Ky. LEXIS 655 (Ky. 1933). See Nichols v. Marks, 308 Ky. 863, 215 S.W.2d 1000, 1948 Ky. LEXIS 1063 (Ky. 1948); Reynolds v. Board of Education, 311 Ky. 458, 224 S.W.2d 442, 1949 Ky. LEXIS 1156 (Ky. 1949).

39. Public Officers.

Where independent initiative is exercised by an officeholder in performing his official duties, he is a public officer subject to the salary limitation of this section, although his functions are subject to general control by some higher authority, such as a board of education. Reynolds v. Board of Education, 311 Ky. 458, 224 S.W.2d 442, 1949 Ky. LEXIS 1156 (Ky. 1949).

40. — Additions to Catagory.

The General Assembly did not exceed its legislative powers by impermissibly interpreting the Kentucky Constitution when it determined that sheriffs, county judges/executive, county clerks, and jailers who operate full service jails had duties coextensive with the Commonwealth and, added them to the category of public officers eligible to be compensated under this section's highest compensation level. Kentucky Sheriffs Ass'n v. Fischer, 986 S.W.2d 444, 1999 Ky. LEXIS 18 (Ky. 1999).

41. Schools.

Principals and supervisors employed by a board of education are employees, not public officers, and are not subject to constitutional salary limitation. Schranz v. Board of Education, 307 Ky. 590, 211 S.W.2d 861, 1948 Ky. LEXIS 801 (Ky. 1948).

School superintendent and assistant school superintendent for business affairs are subject to the constitutional limitation on salaries of public officers. Reynolds v. Board of Education, 311 Ky. 458, 224 S.W.2d 442, 1949 Ky. LEXIS 1156 (Ky. 1949). But see Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

A superintendent of schools is not an officer within the meaning of Const., §§ 161, 235 or this section, since the office of superintendent is a creature of statute and is not named in the Constitution. Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960). But see Reynolds v. Board of Education, 311 Ky. 458, 224 S.W.2d 442, 1949 Ky. LEXIS 1156 (Ky. 1949).

42. Sheriffs.

All amounts collected by sheriffs from whatever source, including tax collection commissions, in excess of $5,000 per annum plus the compensation paid or due sheriffs' deputies are due county and the state has no claim for excess commissions from collection of state revenue. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925). See Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922).

Although sheriffs and their sureties may not be subject to suit for recovery of allowances made to sheriffs by fiscal court, they are chargeable with the aggregate thereof and sheriffs are entitled only to $5,000 in addition to compensation of necessary deputies. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925). See Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922).

In determining if compensation of sheriffs exceeds constitutional limitation of $5,000, commission for collection of state revenues must be considered together with all other fees and commissions. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925). See Shipp v. Rodes, 196 Ky. 523, 245 S.W. 157, 1922 Ky. LEXIS 565 (Ky. 1922).

Sheriff may be required by county to account for all moneys received by him as compensation, either for collection of revenues or by way of fees for performance of duties of his office, in excess of $5,000 and a fair compensation to a reasonable number of deputies and assistants in good faith employed in his office. Commonwealth use of Scott County v. Nunnelley, 211 Ky. 409, 277 S.W. 506, 1925 Ky. LEXIS 890 (Ky. 1925).

Since the Commonwealth is not entitled to any excess of the income of a sheriff over the constitutional limit, the state auditor is not entitled to know the total income from a sheriff's office under the authority of this section. Davis v. Walker, 212 Ky. 379, 279 S.W. 654, 1926 Ky. LEXIS 150 (Ky. 1926).

Outgoing sheriff, paid annual salary of $5,000 in one (1) year, was not entitled to compensation for his services in collecting taxes in following year in view of statutory provi-

sions that income of outgoing sheriff arising from commissions for collection of taxes should be treated as part of income for preceding year. Petty v. Talbott, 256 Ky. 688, 76 S.W.2d 940, 1934 Ky. LEXIS 475 (Ky. 1934).

Sheriff paid only by fees out of which come his personal compensation, office expense and deputy hire must account to the fiscal court of the county only for that part of his personal compensation which exceeds the constitutional limit. Weber v. True, 304 Ky. 681, 202 S.W.2d 174, 1947 Ky. LEXIS 704 (Ky. 1947).

43. Statutes.

44. — Administrative Officers.

Law providing that the salary of a public officer shall be fixed by an administrative authority does not violate this section; it is not necessary for the Legislature to fix the amount of the salary of every public officer. Johnson v. Commonwealth, 291 Ky. 829, 165 S.W.2d 820, 1942 Ky. LEXIS 329 (Ky. 1942).

45. — Commonwealth Attorneys.

The maximum salary of $26,000 for Commonwealth Attorneys as set by KRS 64.510(2) (repealed) does not violate this section as some duties of such attorneys, pursuant to KRS 69.013, are coextensive with the Commonwealth and they are thus entitled to the $12,000 maximum of this section adjusted to reflect the change in purchasing power of the dollar since 1949 when this section was passed. Commonwealth ex rel. Hancock v. Davis, 521 S.W.2d 823, 1975 Ky. LEXIS 162 (Ky. 1975).

46. — Constables and Justices.

Law limiting constables and justices in certain counties to salaries less than $5,000 is constitutional, since the Constitution allows similar officers in other counties to receive salary of $5,000. Shaw v. Fox, 246 Ky. 342, 55 S.W.2d 11, 1932 Ky. LEXIS 761 (Ky. 1932).

47. — Fee Officers.

Action of a city council approving a fee officer's monthly settlements during calendar year, as a cumulative result of which he was able to retain more than $5,000 for the year, did not constitute specific action by the council increasing his compensation. Cheshire v. Frankfort, 272 S.W.2d 37, 1954 Ky. LEXIS 1076 (Ky. 1954).

48. — Jailers.

To permit the jailers, under a law fixing their salary at not to exceed 75 per cent of the fees collected by them respectively and paid into the treasury, to appropriate in such case all the fees and compensation received for services rendered would evade this section of Constitution. Stone v. Pflanz, 99 Ky. 647, 36 S.W. 1128, 18 Ky. L. Rptr. 489, 1896 Ky. LEXIS 123 (Ky. 1896). See Winston v. Stone, 102 Ky. 423, 43 S.W. 397, 19 Ky. L. Rptr. 1483, 1897 Ky. LEXIS 95 (Ky. 1897), overruled, Vaughn v. Knopf, 895 S.W.2d 566, 1995 Ky. LEXIS 49 (Ky. 1995).

49. — Judges.

Law providing that a stipend of $5,000 per annum be paid Court of Appeals justices after their retirement was unconstitutional under this section and Const., § 3. Talbott v. Thomas, 286 Ky. 786, 151 S.W.2d 1, 1941 Ky. LEXIS 277 (Ky. 1941).

KRS 64.500 (repealed) applied only to regular judges and not to special judges whose compensation was provided for and limited by KRS 23.290 (repealed), and county fiscal court could not legally pay out of the county treasury additional compensation to a special judge appointed to serve during illness of regular judge of the Circuit Court. Duncan v. Jefferson County Fiscal Court, 262 S.W.2d 674, 1953 Ky. LEXIS 1113 (Ky. 1953).

KRS 26.650 to 26.665 (repealed) are not unconstitutional under this section, since the highest amount that can be paid a police judge is $4,800 and, when amount of pension of $2,400 provided by law is added to it, judge's entire compensation does not exceed $7,200. Maybury v. Coyne, 312 S.W.2d 455, 1958 Ky. LEXIS 225 (Ky. 1958).

Former law regarding expenses of Circuit Judges was broadly enough entitled to cover provision authorizing counties to compensate Circuit Judges annually for official expenses, and payments thereunder by a fiscal court did not violate this or other sections of the Constitution. Tierney v. Van Arsdale, 332 S.W.2d 546, 1960 Ky. LEXIS 158 (Ky. 1960).

50. — Schools.

Presumption obtained that Legislature fixed Superintendent of Public Instruction's salary at $4,000 with no intention to leave in effect a provision of law for payment of an additional $1,500 for performance of duties of special inspector and examiner of schools, in view of this section. Bell v. Talbott, 252 Ky. 721, 68 S.W.2d 36, 1934 Ky. LEXIS 848 (Ky. 1934).

51. Universities.

The limitations of this section do not apply to a professor of the University of Kentucky. Pardue v. Miller, 306 Ky. 110, 206 S.W.2d 75, 1947 Ky. LEXIS 953 (Ky. 1947).

Cited:

Winston v. Stone, 102 Ky. 423, 19 Ky. L. Rptr. 1483, 43 S.W. 397, 1897 Ky. LEXIS 95 (Ky. 1897); Stone v. Pryor, 103 Ky. 645, 20 Ky. L. Rptr. 312, 45 S.W. 1053, 1898 Ky. LEXIS 112 (Ky. 1898); McHenry v. Winston, 105 Ky. 307, 49 S.W. 971, 1899 Ky. LEXIS 284 (Ky. 1899); Sibert v. Garrett, 197 Ky. 17, 246 S.W. 455, 1922 Ky. LEXIS 639 (Ky. 1922); Adams v. Slavin, 225 Ky. 135, 7 S.W.2d 836, 1928 Ky. LEXIS 711 (Ky. 1928); Jefferson County ex rel. Coleman v. Chilton, 236 Ky. 614, 33 S.W.2d 601, 1930 Ky. LEXIS 789 (Ky. 1930); Kluemper v. Zimmer, 240 Ky. 225, 41 S.W.2d 1111, 1931 Ky. LEXIS 370 (Ky. 1931); Taylor v. Gaines, 254 Ky. 602, 72 S.W.2d 16, 1934 Ky. LEXIS 121 (Ky. 1934); Hubbard v. Ledford, 258 Ky. 704, 81 S.W.2d 569, 1935 Ky. LEXIS 231 (Ky. 1935); Herold v. Talbott, 261 Ky. 634, 88 S.W.2d 303, 1935 Ky. LEXIS 703 (Ky. 1935); Overstreet v. Boyle County Fiscal Court, 264 Ky. 761, 95 S.W.2d 584, 1936 Ky. LEXIS 395 (Ky. 1936); Commonwealth v. Bartholomew, 265 Ky. 703, 97 S.W.2d 591, 1936 Ky. LEXIS 563 (Ky. 1936); Pike County v. Young, 266 Ky. 588, 99 S.W.2d 749, 1936 Ky. LEXIS 713 (Ky. 1936); Shannon v. Combs, 273 Ky. 514, 117 S.W.2d 219, 1938 Ky. LEXIS 680 (Ky. 1938); Milliken v. Harrod, 275 Ky. 597, 122 S.W.2d 148, 1938 Ky. LEXIS 471 (Ky. 1938); Land v. Lewis, 299 Ky. 866, 186 S.W.2d 803, 1945 Ky. LEXIS 496, 159 A.L.R. 601 (Ky. 1945); Howard v. Saylor, 305 Ky. 504, 204 S.W.2d 815, 1947 Ky. LEXIS 852 (Ky. 1947); Farnsley v. Henderson, 240 S.W.2d 82, 1951 Ky. LEXIS 951 (Ky. 1951); Shamburger v. Commonwealth, 240 S.W.2d 636, 1951 Ky. LEXIS 1014 (Ky. 1951); Perry County v. Combs, 293 S.W.2d 571, 1956 Ky. LEXIS 75 (Ky. 1956); Greenup County v. Millis, 303 S.W.2d 898, 1957 Ky. LEXIS 272 (Ky. 1957); Ferguson v. Redding, 304 S.W.2d 927, 1957 Ky. LEXIS 291 (Ky. 1957); Wright v. Oates, 314 S.W.2d 952, 1958 Ky. LEXIS 324 (Ky. 1958); Veith v. Louisville, 355 S.W.2d 295, 1962 Ky. LEXIS 64 (Ky. 1962); Commonwealth v. Howard, 379 S.W.2d 475, 1964 Ky. LEXIS 247 (Ky. 1964); Fannin v. Davis, 385 S.W.2d 321, 1964 Ky. LEXIS 158 (Ky. 1964); Ayotte v. Danville, 411 S.W.2d 929, 1967 Ky. LEXIS 494 (Ky. 1967); Sarakatsannis v. Baker, 488 S.W.2d 683, 1972 Ky. LEXIS 48 (Ky. 1972); Holsclaw v. Stephens, 507 S.W.2d 462, 1973 Ky. LEXIS 3 (Ky. 1973); Brown v. Hartlage, 456 U.S. 45, 102 S. Ct. 1523, 71 L. Ed. 2d 732, 1982 U.S. LEXIS 92 (1982); Wiggins v. Stuart, 671 S.W.2d 262, 1984 Ky. App. LEXIS 513 (Ky. Ct. App. 1984).

OPINIONS OF ATTORNEY GENERAL.

The hospital administrator of the Allen County War Memo-

rial Hospital is a county officer or employee, since he administers the affairs of the county-owned hospital. In either case this section limits the salary he may be paid. OAG 60-134.

The Governor is privileged, without reference to this section, to raise the salary of the commissioner of mental health to any amount which, in his opinion, is reasonably commensurate with the services rendered. OAG 61-594.

There is no limitation on the maximum compensation that a city may allow its city manager, regardless of whether he be classified as an officer or as an employee. OAG 61-1061.

Fees collected from independent school district, drainage board and other municipalities within counties are to be included with other official fees in fixing the limitation on salary of sheriff. OAG 62-56.

A county hospital administrator may receive an annual salary in excess of $7,200. OAG 62-258.

KRS 69.265 (repealed) was constitutional, since it dealt only with payment of expenses and did not constitute a change of salary during term or an increase of compensation to a point above the $7,200 maximum. OAG 63-34.

Increased compensation on the dollar-equation formula does not apply to public officers other than Circuit Judges. OAG 64-62.

The increase in compensation authorized by Acts 1964, ch. 109, for those constitutional officers designated in KRS 64.345 above the constitutional maximum is valid and constitutional. OAG 64-540.

The increase in compensation authorized by Acts 1964, ch. 109, for those constitutional officers designated in KRS 64.345 could not be granted during the officers' present terms without violating Const., § 161. OAG 64-540.

Pursuant to Acts 1964, ch. 109, deputies, assistants and other employees of the county are no longer limited insofar as compensation is concerned or any change therein during their tenure except when so restricted by law. OAG 64-554.

KRS 64.720 specifically authorizes a fiscal court to pay the constable a salary out of the county treasury not to exceed $7,200 pursuant to this section. OAG 65-71.

The county attorney's maximum income cannot rise above $7,200 in the absence of implementing legislative action. OAG 65-542, 65-618.

Under KRS 64.535, the Circuit Court clerks and county court clerks of the Commonwealth are entitled to a maximum compensation of up to $9,600 beginning with the year 1964, conditioned upon the availability of fees of those offices for that purpose. OAG 65-543.

Where a sheriff resigned one (1) month before the end of his term and a new sheriff was appointed to fill out the term, the new sheriff was entitled to retain the excess fees collected in that month not to exceed $9,600. OAG 66-170.

The fiscal court, in its sound discretion, can establish the compensation or salary of the trial commissioner, and such discretion is not subject to the constitutional limitations of this section because a trial commissioner is not an officer. OAG 67-356.

A city which has the home rule statutes has the authority to increase the compensation of elective officers during their term under the "rubber dollar" theory. OAG 68-572.

A deputy county court clerk can be paid by the county for work performed in connection with the sheriff's and treasurer's settlements if properly authorized by the fiscal court, although such compensation is in addition to the salary for duties performed in the county court clerk's office, and monetary restrictions of this section would not apply to the deputy, since a deputy county court clerk is not designated as such in the Constitution. OAG 70-65.

The fiscal court could implement a salary adjustment in the salary of the county judge subject to the maximum compensation of KRS 64.535 but it could not be retroactive. OAG 70-592.

A county clerk, in making his annual settlements with the county, must include in his income, as part of the receipts of his office, the salary paid to him for serving as clerk of the juvenile session of the county court which is a public and official service. OAG 71-147.

Where the clerk of the county court is being paid an additional salary as clerk of the juvenile court, that compensation must be added to all other compensation received for his public service in arriving at his maximum compensation under this section. OAG 71-147.

This section does not apply to county clerk deputies since they are not named in the Constitution. OAG 72-540.

This section would prohibit the secretary of state from receiving compensation for his membership on the state board of elections. OAG 72-639.

The salary limitations of this section do not apply to the office of city prosecutor. OAG 72-750.

Local legislative action to allow compensation in excess of the limit provided for local officers in this section must be preceded by an act of the General Assembly allowing such compensation above the constitutional limit but within the "rubber dollar" principle (OAG 72-680 modified to the extent of conflict). OAG 72-818.

As the office of mayor is a constitutional office under the provisions of § 160, the salary of such constitutional officers is fixed by this section at a maximum of $7,200 per annum and could only be changed by action of the Legislature. OAG 73-52.

Where the present county clerk plans to resign before November 1, 1973, and a deputy clerk will be appointed to serve out the remainder of the clerk's term ending the first Monday in January, 1974, the present clerk can retain the $12,600 he has earned which is the statutory limit and the successor clerk can retain all salary and fees earned during November and December 1973, not to exceed the statutory limit, as the compensation limitation of this section applies to the officer and not to the office so that successive holders of the same office during a single year are each held only to the salary and fees earned while they are in office, subject to the maximum. OAG 73-742.

The rubber dollar principle surmounts the constitutional inhibitions of this section, establishing a compensation level of $7,200 per year, as well as of Const., §§ 161 and 235, prohibiting a change in a constitutional officer's compensation during his term, where an adjustment is made by an express act of the General Assembly. OAG 74-314.

The fiscal court may in its discretion increase or decrease the salaries payable out of county funds of all the officers named in KRS 64.535, except justices of the peace or commissioners serving on the fiscal courts, as certified by the Kentucky Department of Commerce prior to the second Friday in February of each year, which increase or decrease is to be based on changes in the consumer price index for 1949. OAG 74-322.

Reimbursement of a county judge, by the county on order of the fiscal court, for life, health and accident insurance premiums paid by him for himself would be reimbursement of official expenses in the public interest and would not have to be calculated within the maximum authorized by KRS 64.535 as a permissible adjustment of the $7,200 per year level provided in this section. OAG 74-347.

There is no statutory or constitutional limit in the amount of compensation that a city prosecuting attorney can receive as he is not a constitutional officer. OAG 75-29.

In determining the maximum salary of the officers named in KRS 64.527, the Department of Commerce (now Commerce Cabinet) must equate the current consumer price index and the current salary ceilings with the value of the dollar as it existed in March, 1949 when this section was adopted. OAG 75-79.

Where a circuit clerk also is master commissioner his maximum salary from the fees of both offices is limited to the maximum salary allowed circuit clerks. OAG 75-626.

The "rubber dollar" theory would not be applicable to a city utility commission whose members are not constitutionally named officers. OAG 76-44.

Since members of a city water and sewer commission are appointed and not elected officers, there would be no legal objection to the city council increasing the compensation of the utility board members by amending the ordinance which established the commission. OAG 76-44.

The maximum compensation of circuit clerks is established by the Constitution and may not be exceeded regardless of the number of sources of public compensation. OAG 76-169.

Although the legislative intent was to include the justices of the peace under the general annual maximum compensation formula which computes a salary level by applying the change in the consumer price index to the 1949 base of $7,200, the fiscal courts, in voting on salaries for justices of the peace, should consider the justices' work schedules. OAG 76-220.

Where the fiscal court had not exhausted its salary fixing authority, the fiscal court, in its sound discretion, could enter an order adjusting the salary of an incumbent county judge upward to the maximum compensation provided for in this section. OAG 76-228.

The salaries of justices of the peace and other constitutional officers mentioned in KRS 64.527 can be raised during their term of office, since the salaries are merely being adjusted in purchasing power. OAG 76-252.

Until the Legislature acts to raise the compensation of the office of mayor of a fourth class city, the maximum salary for that office would be $7,200. OAG 76-320.

If the Legislature enacts legislation giving the circuit clerks duties coextensive with the Commonwealth, that would qualify the circuit clerks under the $12,000 monetary level. OAG 76-523.

The compensation limits set forth in this section of the Constitution are based on the purchasing power of the 1949 dollar and are therefore adjustable to its fluctuations, but a court could set aside such salaries if the evidence in a taxpayers' suit would show that the time spent by the magistrates on county business is such that payment of such salaries would be arbitrary under § 2 of the Constitution. OAG 78-426, 1978 Ky. AG LEXIS 300.

Under the rubber dollar theory the fiscal court at any time, in implementing KRS 64.527, can adjust the salaries of the justices of the peace upward, subject to the maximum rubber dollar amount payable. OAG 78-426, 1978 Ky. AG LEXIS 300.

This section of the Constitution and KRS 64.640 have no application to personal service contracts, and KRS 18.140 (now KRS 18A.115), as amended in 1978, expressly exempts persons employed in a professional or scientific capacity from the classified service. OAG 78-692, 1978 Ky. AG LEXIS 142.

To get constitutional officer's compensation in proper perspective, one must consider two (2) levels of compensation restriction: (1) the overall constitutional maximum based upon the adjustment of the dollar in terms of change in the consumer price index formula enunciated by the appellate court as applied to the monetary base levels set out in this section of the Constitution; and (2) the statutory maximum compensation which, of course, must not exceed the constitutional maximum. OAG 78-840, 1978 Ky. AG LEXIS 16.

For purposes of audit, under KRS 43.070, and for the purpose of determining the sheriff's aggregate rubber dollar income under this section, payments made by the Army Corps of Engineers to county sheriffs under contracts to provide law enforcement to designated civil works water resource projects are to financially assist the sheriffs to step up law enforcement activities in such projects during peak visitation periods, are impressed with a public fee character, accrue to the office, and count toward the aggregate rubber dollar limit for that year. OAG 79-454, 1979 Ky. AG LEXIS 150.

A $5.00 fee for accepting bail bonds after normal office hours does not belong to the jailer, personally, but must be included in the fees of his office. OAG 80-9, 1980 Ky. AG LEXIS 636.

For 1980, the maximum compensation permissible for constitutional officers who are in the $7,200 limit category under this section would be $23,184. OAG 80-74, 1980 Ky. AG LEXIS 556.

In terms of an advancing consumer price index, the year 1949 must necessarily be used as the base year in applying the salary adjustment formula for constitutional officers. OAG 80-74, 1980 Ky. AG LEXIS 556.

The $7,200 category applies to the county judge/executives, county clerks, sheriffs, justices of the peace, county commissioners, coroners, and jailers. OAG 80-74, 1980 Ky. AG LEXIS 556.

The $12,000 category mentioned in this section applies to the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and Clerk of the Supreme Court and to Commonwealth's Attorneys and County Attorneys. OAG 80-74, 1980 Ky. AG LEXIS 556.

Following the 1980 adjustment, the maximum compensation permissible for constitutional officers who are in the $12,000 limit category mentioned in this section would be $38,640. OAG 80-74, 1980 Ky. AG LEXIS 556.

Since the compensation for mayors of cities of the third class has not been legislated upon by the General Assembly, the incumbent is not entitled to a cost of living raise during his term and the maximum compensation that he can receive is $7,200. OAG 80-79, 1980 Ky. AG LEXIS 552.

Where a county jailer is also acting as a police dispatcher for the county sheriff's office, for which latter work he receives $2,500 per year, that amount for dispatcher is to be applied to his statutory limitation of $23,184 for 1980, since the rubber dollar maximum applies annually to the same person for "public services," whether such services are rendered in one position or more than one. OAG 80-269, 1980 Ky. AG LEXIS 378.

Where a fiscal court fixed the salary of the county attorney at $150 per month, commencing January 1, 1978, and after he took office in January, 1978, the fiscal court entered an order raising his salary to $600 per month thereby increasing his annual salary from $1,800 per year to $7,200 per year, there was no prohibited change in his compensation, as is prohibited by Const., § 161, since his compensation was merely adjusted to reflect the change in purchasing power of the dollar as reflected in the consumer price index. OAG 80-424, 1980 Ky. AG LEXIS 248.

A jailer who was receiving the maximum annual salary rate could not contract out services to the local government for payment since, if he was getting additional money from urban county government as compensation for any statutory duties, such extra money would violate this section and KRS 64.527, and the extra money was recoverable to the public treasury. OAG 80-525, 1980 Ky. AG LEXIS 117.

The constitutional restriction on salaries of officers relates strictly to public funds or public moneys. OAG 80-525, 1980 Ky. AG LEXIS 117.

The $7,200 monetary level of this section applies to county judges/executive, county clerks, sheriffs, justices of the peace, county commissioners, coroners and jailers, pursuant to KRS 64.527; the implementation of the indexed principle will depend upon the fiscal court setting salaries payable out of the county treasury and operation of the fee system for fee officers and, thus, the fee officer can apply fees earned by himself or herself, without any action on the part of fiscal court, up to the maximum payable for the particular year under the indexed system. OAG 82-80; 83-38; 84-54.

A county attorney's compensation as prosecutor and as civil attorney for the county must be added together to apply the rule of constitutional limitation of salary in this section. OAG 82-159, 1982 Ky. AG LEXIS 486.

While the maximum salary, as set forth in this section and indexed under the consumer price index concept, must apply

to the same person for public services, regardless of whether such services are rendered in one position or more than one, the circuit clerk can accept a salary as law librarian, provided that the regular clerk's salary and the library salary in the aggregate do not exceed the rubber dollar maximum for the particular year. OAG 82-177, 1982 Ky. AG LEXIS 468.

Any "salary" paid to a jailer under KRS 67.130 in 1979 and 1980 must be considered in the total "statutory" compensation permitted the jailer for those years under the rubber dollar compensation. OAG 82-333, 1982 Ky. AG LEXIS 307.

Where a jailer was paid a salary for janitorial work in the courthouse, the "salary" would be an unconstitutional addition to his regular jailer's compensation, provided that regular jailer compensation was at the maximum rubber dollar amount permitted by KRS 64.527 and this section. OAG 82-333, 1982 Ky. AG LEXIS 307.

The rubber dollar cases reflect the constitutional principle that the dollar, as relates to constitutional officer compensation as outlined by maximum level in this section, is subject to purchasing power adjustment in terms of the evolving Consumer Price Index. The cases also make it clear that the actual application of the rubber dollar concept requires specific statutory implementation by the General Assembly. OAG 82-348, 1982 Ky. AG LEXIS 290.

Where magistrates' salaries on the first Monday in May in 1981 (election year) were set at $10,000 per magistrate, the fiscal court could authorize a salary to each magistrate, not to exceed $28,387 for the calendar year of 1982. However, since the magistrates on fiscal court have no executive duties, they should only be paid in terms of the work week they put in for the county. OAG 82-348, 1982 Ky. AG LEXIS 290.

The compensation which the county attorney could receive for performing his or her prosecutorial function in 1988 was $34,861. OAG 88-10, 1988 Ky. AG LEXIS 10.

The Governor's salary for 1988 was $68,364. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts and Clerk of the Supreme Court of this Commonwealth was $58,101. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation possible for the county attorney for 1988 was $58,101. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation possible for county judge/executives, justices of the peace, county commissioners, county clerks, sheriffs, jailers and coroners, mayors (except in cities of the first class), and city legislative body members in 1988 was $34,861. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation possible for full-time and part-time Commonwealth's Attorneys for 1988 was $58,101. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation possible for the mayor in a first class city in 1988 was $58,101. OAG 88-10, 1988 Ky. AG LEXIS 10.

If a city's legislative body chooses to make "rubber dollar" adjustments, it may do so at any time following publication of that year's "rubber dollar" changes. OAG 90-2, 1990 Ky. AG LEXIS 2.

The members of the Board of Aldermen for the City of Louisville may adjust their salaries by any percentage up to the maximum as calculated for that particular year. OAG 90-2, 1990 Ky. AG LEXIS 2.

Computations of the maximum annual compensation of state, county, and city constitutional officers are required to be annually computed by the second Friday in February using the "rubber dollar" theory adopted by the court in Matthews v. Allen, 360 S.W.2d 135, 1962 Ky. LEXIS 211 (Ky. 1962) and Commonwealth v. Hesch, 395 S.W.2d 362, 1965 Ky. LEXIS 141 (Ky. 1965). OAG 90-17, 1990 Ky. AG LEXIS 17.

In relation to the compensation of a County Attorney for his or her prosecutorial duties current compensation for such duties is to be computed based upon the $7200 maximum established by this section resulting in maximum allowable compensation for prosecutorial duties in 1991 of $40,427. OAG 91-29, 1991 Ky. AG LEXIS 29.

In relation to the state prosecutorial duties of the County Attorney under KRS 15.725(2), such officer is to be compensated as provided in KRS 15.765, under a CPI formula using 1949 as the base year, in accordance with this section which provides for compensation of not more than $12,000 per annum and the Department of Local Government accurately computed the maximum annual compensation for the County Attorney as $67,378. OAG 91-29, 1991 Ky. AG LEXIS 29.

Where the Department of Local Government's computations in adjusting salaries of constitutional officers in relation to changes in the Consumer Price Index were based upon the court-established formula application of this section which sets forth maximum compensation levels for state and local governmental constitutional officers, the computations were accurate. OAG 91-29, 1991 Ky. AG LEXIS 29.

Because they are for services beyond the official services required of a county attorney, payments to county attorneys or their employees, from funds of Title IV-D of the United States Social Security Act, as reimbursement for salary costs pursuant to federal law, are not subject to this section. OAG 92-161, 1992 Ky. AG LEXIS 276.

Payments authorized under specific federal legislation, on a reimbursement basis, for salary costs of local officials associated with specific compliance with a contract with a state agency consistent with federal law, are payments for other than official services, and thus are not limited by this section. OAG 92-161, 1992 Ky. AG LEXIS 276.

For an opinion verifying the accuracy of computations to be used in adjusting salaries of constitutional officers in relation to changes in the Consumer Price Index, see OAG 93-21, 1993 Ky. AG LEXIS 33.

For the adjustments to salaries of constitutional officers in relation to changes in the Consumer Price Index salary adjustment computations and therefore, the maximum annual compensation allowable by law for such positions in 1994 see OAG 94-7, 1994 Ky. AG LEXIS 302.

While the Governor may issue executive orders pursuant to the powers granted in Const., §§ 76 to 81 or specifically delegated by the General Assembly, no known grant of power to the Governor authorizes him to declare public policy in contravention of policy established by the General Assembly; therefore, since KRS 64.527 makes a plain expression of public policy declaring that county clerks are subject to salary maximum applicable to "all other public officers" rather than the salary maximum applicable to "officers whose jurisdiction or duties are coextensive with the Commonwealth", executive order that declared that county clerks are officials whose duties are coextensive with the Commonwealth for the purposes of constitutional salary computations was of no effect. OAG 96-32, 1996 Ky. AG LEXIS 365.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Compensation not to be changed during term, Const., §§ 161, 235.

Compensation of governor, KRS 64.480.

Compensation of public officers, generally, KRS 64.480 to 64.740.

Deductions for neglect of duty, Const., § 235; KRS 61.120 to 61.150.

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Howerton, Kentucky's Constitution: An Antique in Need of Repair, volume 51, No. 4, Fall 1987 Ky. Bench & B. 34.

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TITLE I

SOVEREIGNTY AND JURISDICTION OF THE COMMONWEALTH

Chapter
2. Citizenship, Emblems, Holidays, and Time.

CHAPTER 2

CITIZENSHIP, EMBLEMS, HOLIDAYS, AND TIME

Section
2.040. United States flag to be displayed on public buildings and schools — To be supplied schools.
2.050. Printing or lettering on United States flag, or use for advertising purposes — Exception.
2.060. United States flag not to be used for advertisement.
2.110. Public holidays.
2.120. Flag Day.
2.190. Presidential election day.
2.230. Native American Indian Month.
2.245. Retired Teachers' Week.
2.990. Penalty.

2.040. United States flag to be displayed on public buildings and schools — To be supplied schools.

(1) The flag of the United States shall be displayed on the main administration buildings of every public institution, and, during school days, either from the flagstaff or, in inclement weather, within the school building of every schoolhouse.

(2) The flag, with staff or flagpole, shall be provided for every schoolhouse.

(3) All official flags of the United States purchased by a public institution shall be manufactured in the United States.

History.

2089i-1, 2089i-2: amend. Acts 2009, ch. 4, § 2, effective June 25, 2009.

2.050. Printing or lettering on United States flag, or use for advertising purposes — Exception.

(1) Printing or lettering of any kind on the flag of the United States, or the use of the flag for advertising purposes in any manner, is prohibited.

(2) Nothing in this section or in KRS 2.060 shall prohibit a newspaper from publishing a picture of the flag of the United States next to the obituary of a deceased active member or honorably discharged veteran of the United States military service.

History.

2089i-3, 2089i-4: amend. Acts 1990, ch. 64, § 1, effective July 13, 1990.

2.060. United States flag not to be used for advertisement.

No person shall in any manner, for exhibition or display, place or cause to be placed upon, or expose or cause to be exposed to public view any flag, standard, colors or ensign of the United States upon which has been placed, or to which is attached, appended, affixed or annexed, any word, figure, mark, picture, design or drawing, or advertisement of any nature; nor shall any person manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article of merchandise, or a receptacle for merchandise or thing for carrying or transporting merchandise upon which has been placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article on which so placed.

History.

2089i-5: amend. Acts 1974, ch. 406, § 296, effective January 1, 1975.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Flag desecration, Penal Code, KRS 525.110.

2.110. Public holidays.

(1) The first day of January (New Year's Day), the third Monday of January (Birthday of Martin Luther King, Jr.), the nineteenth day of January (Robert E. Lee Day), the thirtieth day of January (Franklin D. Roosevelt Day), the twelfth day of February (Lincoln's Birthday), the third Monday in February (Washington's Birthday), the last Monday in May (Memorial Day), the third day of June (Confederate Memorial Day, and Jefferson Davis Day), the fourth day of July (Independence Day), the first Monday in September (Labor Day), the second Monday in October (Columbus Day), the eleventh day of November (Veterans Day), the twenty-fifth day of December (Christmas Day) of each year, and all days appointed by the President of the United States or by the Governor as days of thanksgiving, are holidays, on which all the public offices of this Commonwealth may be closed.

(2) No person shall be compelled to labor on the first Monday in September (Labor Day) by any person.

History.

2089b to 2089g, 2089j: amend. Acts 1946, ch. 5, § 1; 1948, ch. 73, § 1; 1958, ch. 73; 1970, ch. 50, § 1; 1974, ch. 14, § 1; 1974, ch. 176, § 1; 1978, ch. 24, § 1, effective June 17, 1978; 1984, ch. 88, § 1, effective January 1, 1986; 1992, ch. 77, § 17, effective July 14, 1992.

NOTES TO DECISIONS

Analysis

1. Service of Summons and Other Papers.
2. Time for Perfecting Appeal.
3. Deposition.
4. Business Transactions.
5. Qualification of School Trustees.

1. Service of Summons and Other Papers.

Service of a summons, subpoena, notice, order of arrest, or injunction on July 4 is valid when the officer believes, or the affidavit of the plaintiff or some other person is made to the effect that affiant believes, that service cannot be made after that holiday. Paul v. Bruce & Co., 72 Ky. 317, 1872 Ky. LEXIS 53 (Ky. 1872).

2. Time for Perfecting Appeal.

If the last of the three (3) days allowed for an appeal to the Circuit Court falls on Columbus Day, the appeal period is extended for one day, and the appeal may be filed on the third juridical day, even though it is not the third calendar day. Black v. National Bank of Kentucky, 226 Ky. 152, 10 S.W.2d 629, 1928 Ky. LEXIS 45 (Ky. 1928).

If the last of the ten (10) days allowed for an appeal to the Court of Appeals in a primary election recount proceedings falls on Labor Day, the appeal period is not extended, and appeal may not be filed the following day. Hudnall v. Fleenor, 300 Ky. 497, 189 S.W.2d 724, 1945 Ky. LEXIS 585 (Ky. 1945).

Employee's petition seeking review of the denial of his application for disability retirement was properly denied as untimely because, pursuant to KRS 13B.140(1), the time period for filing the petition was 30 days, and, contrary to the employee's claim, Columbus Day, the final day of the period, was not a legal holiday for time computation purposes. Wilkins v. Ky. Ret. Sys. Bd. of Trs., 2007 Ky. App. LEXIS 366 (Ky. Ct. App. 2007), rev'd, 276 S.W.3d 812, 2009 Ky. LEXIS 13 (Ky. 2009).

A retiree's appeal was not untimely on the ground that although the deadline for filing the appeal fell on a legal holiday under KRS 2.110(1), the Circuit Court remained open on that day; the retiree was entitled to the extra day to file since Columbus Day was a legal holiday pursuant to KRS 2.110, and the word "may" in KRS 2.110(1) referred to and allowed, but did not mandate, all public offices to be closed on the listed holidays; the decision whether to close its offices on the holidays listed in KRS 2.110(1) was up to the Court of Justice, like any other public office, but its decision did not affect the day's status as a legal holiday. Wilkins v. Ky. Ret. Sys. Bd. of Trs., 276 S.W.3d 812, 2009 Ky. LEXIS 13 (Ky. 2009).

3. Deposition.

A deposition taken on Lincoln's Birthday is admissible in evidence, if both parties had an opportunity to participate in the taking of the deposition. Field v. Collins, 263 Ky. 474, 92 S.W.2d 793, 1936 Ky. LEXIS 207 (Ky. 1936).

4. Business Transactions.

Business transactions on Thanksgiving Day, not otherwise unlawful, are valid; except as to commercial paper, it is not to be treated as the Sabbath. National Mut. Ben. Ass'n v. Miller, 85 Ky. 88, 2 S.W. 900, 8 Ky. L. Rptr. 731, 1887 Ky. LEXIS 25 (Ky. 1887).

5. Qualification of School Trustees.

Where statute required school trustees to meet and qualify on first Monday in January after their election, qualification by trustees on Tuesday, January 2, because Monday, January 1, was holiday, was sufficient compliance. Jewett v. Matteson, 148 Ky. 820, 147 S.W. 924, 1912 Ky. LEXIS 551 (Ky. 1912).

Cited in:

Louisville & Jefferson County Planning & Zoning Com. v. Ogden, 307 Ky. 362, 210 S.W.2d 771, 1948 Ky. LEXIS 714 (Ky. 1948); Strickland v. Commonwealth, 329 S.W.2d 379, 1959 Ky. LEXIS 163 (Ky. 1959); Gish v. Brown, 338 S.W.2d 383, 1960 Ky. LEXIS 378 (Ky. 1960).

OPINIONS OF ATTORNEY GENERAL.

When the 31st of December falls on Sunday and the following day on which county officers are to take office for the ensuing term is a legal holiday, the county officers may be sworn in and execute bond when required on or before the first Monday in January, a legal holiday. OAG 61-886.

Where a city ordinance stated that the city's first occupational license tax year began September 1, 1968, it actually began on September 3, 1968, since September 1 fell on a Sunday and September 2 was Labor Day, a legal holiday. OAG 69-263.

A bank that has elected under KRS 287.195 (now repealed) to close on a day other than Saturday each week may, under KRS 287.197 (now repealed), if it remains open on February 12th (Lincoln's Birthday), close on its normal closing day, but these sections do not apply to a six-day workweek bank and, in accordance with subsection (2) of this section, in order to protect the legitimacy of its transactions as to officers and employes, if it remains open on February 12th, must close on the Saturday following February 12th. OAG 73-141.

Where the Governor created two holidays applicable to public offices as well as banks and trust companies, on December 24 and December 31, pursuant to his authority under subsection (1) of this section, he could not make the holidays optional under subsection (2) because the two subsections are mutually exclusive as applied to banks and trust companies. OAG 73-848.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bank holidays, KRS 286.3-193.

Process, issuance on holiday, KRS 454.125.

School holidays, KRS 156.160.

Sunday, act directed to be done on, to be done on next day, KRS 446.030.

Sunday work and business prohibited, KRS 436.160.

2.120. Flag Day.

The fourteenth day of June of each year is "Flag Day."

History.

2089i.

2.190. Presidential election day.

The Tuesday after the first Monday in November in Presidential election years shall be a state holiday on which all state offices, all schools and all state universities and colleges shall be closed. Any employee who is required to work on said state holiday shall receive compensatory pay or time off.

History.

Enact. Acts 1972, ch. 188, § 71, effective December 1, 1972; 1992, ch. 77, § 18, effective July 14, 1992.

2.230. Native American Indian Month.

(1) The month of November of each year shall be observed in Kentucky as "Native American Indian Month" and during this month schools, clubs, and civic and religious organizations are encouraged to recognize

the contributions of Native American Indians with suitable ceremony and fellowship designed to promote greater understanding and brotherhood between Native American Indians and the non-Native American Indian people of the Commonwealth of Kentucky.

(2) The Governor shall, prior to the first day of November of each year, issue a proclamation inviting and urging the people of the Commonwealth to observe Native American Indian Month with suitable ceremony and fellowship.

(3) The Kentucky Department of Education, Kentucky Heritage Council, and the Native American Heritage Commission established in KRS 171.820 shall, within the limits of funds available for this purpose, make information available to all people of this Commonwealth regarding Native American Indian Month and the observance thereof.

History.
Enact. Acts 1998, ch. 352, § 1, effective July 15, 1998; 2004, ch. 49, § 3, effective July 13, 2004.

2.245. Retired Teachers' Week.

The fourth week of May of each year is designated as Retired Teachers' Week. The Governor may annually issue a proclamation designating the fourth week of May as Retired Teachers' Week and calling upon public schools and citizens of the state to observe the occasion and honor the retired teachers of the state.

History.
Enact. Acts 1986, ch. 35, § 1, effective July 15, 1986.

2.990. Penalty.

Any person violating any of the provisions of KRS 2.060 shall be fined not more than one hundred dollars ($100) or imprisoned for not more than thirty (30) days, or both.

History.
2089i-5.

TITLE II

LEGISLATIVE BRANCH

Chapter
7. Legislative Research Commission.

CHAPTER 7

LEGISLATIVE RESEARCH COMMISSION

Office of Education Accountability.

Section
7.410. Office of Education Accountability — Deputy director of LRC to administer — Duties of office — Relations with other entities — Annual research agenda — Confidentiality of testimony, work products, and records.
7.420. Gathering information.

OFFICE OF EDUCATION ACCOUNTABILITY

7.410. Office of Education Accountability — Deputy director of LRC to administer — Duties of office — Relations with other entities — Annual research agenda — Confidentiality of testimony, work products, and records.

(1) It is the intent of the General Assembly to provide an efficient system of common schools which shall be operated without waste, duplication, mismanagement, and political influence. The system of schools shall have the goal of providing all students with at least the seven (7) capacities referred to in KRS 158.645.

(2)(a) An Office of Education Accountability is hereby created and shall be under the direction of the Legislative Research Commission and shall be advised and monitored by the Education Assessment and Accountability Review Subcommittee.

(b) The Office of Education Accountability shall be administered by a deputy director appointed by the Legislative Research Commission upon recommendation of the director of the Legislative Research Commission. The deputy director shall have the qualifications set by the Commission. The salary of the deputy director shall be set by the Commission. The Commission shall have exclusive jurisdiction over the employment of personnel necessary to carry out the provisions of this section. The deputy director shall be subject to the direction of and report to the director of the Legislative Research Commission.

(c) The Office of Education Accountability shall have the following duties and responsibilities:

1. Monitor the elementary and secondary public education system, including actions taken and reports issued by the Kentucky Board of Education, the Education Professional Standards Board, the commissioner of education, the Department of Education, and local school districts. Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, the monitoring of the elementary and secondary public education system shall also include periodic reviews of local district and school-based decision making policies relating to the recruitment, interviewing, selection, evaluation, termination, or promotion of personnel. The office shall report any district or school when evidence demonstrates a pattern of exclusionary personnel practices relating to race or sex to the Kentucky Department of Education, which shall then independently investigate facts raised in or associated with the report. The results of the investigation conducted by the department shall be forwarded to the Kentucky Board of Education which shall conduct an investigative hearing on the matter.

2. Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, review the elementary and secondary public education finance system. The review shall include an analysis of the level of equity achieved

by the funding system and whether adequate funds are available to all school districts and an analysis of the weights of various education program components developed by the Department of Education. The review may also include recommendations for the base per pupil funding for the Support Education Excellence in Kentucky Program and a statewide salary schedule, and studies of other finance issues identified by the Education Assessment and Accountability Review Subcommittee.

3. Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, verify the accuracy of reports of school, district, and state performance by conducting, requesting, or upon approval of the Legislative Research Commission, contracting for periodic program and fiscal audits. Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, the Office of Education Accountability shall monitor and verify the accuracy of reports of the Department of Education and the Kentucky Board of Education, including but not limited to the annual fiscal conditions of grants, categorical programs, and other educational initiatives set forth by the General Assembly.

4. Investigate allegations of wrongdoing of any person or agency, including but not limited to waste, duplication, mismanagement, political influence, and illegal activity at the state, regional, or school district level; make appropriate referrals to other agencies with jurisdiction over those allegations; and make recommendations for legislative action to the Education Assessment and Accountability Review Subcommittee. Upon acceptance by the subcommittee, recommendations for legislative action shall be forwarded to the Legislative Research Commission. The Office of Education Accountability shall submit to the subcommittee, for each of its regular meetings, a report that summarizes investigative activity initiated pursuant to this subparagraph. The subcommittee may consider each report as it determines and in its discretion. Each report, and the consideration thereof by the subcommittee, shall be exempt from the open records and open meetings requirements contained in KRS Chapter 61.

5. Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, conduct studies, analyze, verify, and validate the state assessment program through other external indicators of academic progress including but not limited to American College Test scores, Scholastic Assessment Test scores, National Assessment of Educational Progress scores, Preliminary Scholastic Assessment Test scores, Advanced Placement Program participation, standardized test scores, college remediation rates, retention and attendance rates, dropout rates, and additional available data on the efficiency of the system of schools and whether progress is being made toward attaining the goal of providing students with the seven (7) capacities as required by KRS 158.645.

6. Make periodic reports to the Education Assessment and Accountability Review Subcommittee as directed by the subcommittee. Upon acceptance by the subcommittee, the reports shall be forwarded to the Legislative Research Commission.

7. Make periodic reports to the Legislative Research Commission as may be directed by the Commission.

8. Prepare an annual report, which shall consist of a summary of the status and results of the current year annual research agenda provided in paragraph (d) of this subsection, a summary of completed investigative activity conducted pursuant to subparagraph 4. of this paragraph, and other items of significance as determined by the Education Assessment and Accountability Review Subcommittee. The annual report shall be submitted to the Education Assessment and Accountability Review Subcommittee. Upon acceptance by the subcommittee, the annual report shall be submitted to the Governor, the Legislative Research Commission, and the Kentucky Board of Education.

(d) On or before December 1 of each calendar year, the Education Assessment and Accountability Review Subcommittee shall adopt the annual research agenda for the Office of Education Accountability. The annual research agenda may include studies, research, and investigations considered to be significant by the Education Assessment and Accountability Review Subcommittee. Staff of the Office of Education Accountability shall prepare a suggested list of study and research topics related to elementary and secondary public education for consideration by the Education Assessment and Accountability Review Subcommittee in the development of the annual research agenda. An adopted annual research agenda shall be amended to include any studies mandated by the next succeeding General Assembly for completion by the Office of Education Accountability.

(e) The Office of Education Accountability shall have access to all public records and information on oath as provided in KRS 7.110. The office shall also have access to otherwise confidential records, meetings, and hearings regarding local school district personnel matters. However, the office shall not disclose any information contained in or derived from the records, meetings, and hearings that would enable the discovery of the specific identification of any individual who is the focus or subject of the personnel matter.

(f) In compliance with KRS 48.800, 48.950, and 48.955, the Finance and Administration Cabinet and the Governor's Office for Policy and Management shall provide to the Office of Education Accountability access to all information and records, other than preliminary work papers, relating to allotment of funds, whether by usual allotment or by other means, to the Department of Education, local school districts, and to other recipients of funds for educational purposes.

(g) Any state agency receiving a complaint or information which, if accurate, may identify a viola-

tion of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall notify the office of the complaint or information.

(h) The Office of Education Accountability may contract for services as approved by the Legislative Research Commission pursuant to KRS 7.090(8).

(3) The provisions of KRS 61.878 or any other statute, including Acts of the 1992 Regular Session of the General Assembly to the contrary notwithstanding, the testimony of investigators, work products, and records of the Office of Education Accountability relating to duties and responsibilities under subsection (2) of this section shall be privileged and confidential during the course of an ongoing investigation or until authorized, released, or otherwise made public by the Office of Education Accountability and shall not be subject to discovery, disclosure, or production upon the order or subpoena of a court or other agency with subpoena power.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 92, effective July 13, 1990; 1990, ch. 518, § 10, effective July 13, 1990; 1992, ch. 270, § 1, effective April 7, 1992; 1994, ch. 296, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 437, § 1, effective July 14, 2000; 2002, ch. 143, § 1, effective July 15, 2002; 2006, ch. 170, § 1, effective July 12, 2006; 2014, ch. 75, § 10, effective July 15, 2014.

Legislative Research Commission Notes.

(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter (296), Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

NOTES TO DECISIONS

Cited in:

Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995); Behanan v. Cobb, 2007 Ky. App. LEXIS 37 (Ky. Ct. App. 2007).

OPINIONS OF ATTORNEY GENERAL.

If there is school board opposition to school based decision making (SBDM) the SBDM council could seek assistance from the Office of Education Accountability and if they cannot assist the council, then legal action should be considered to force the school board to comply with the statute; however, that should not be necessary once the statute contains protections within it. OAG 91-24, 1991 Ky. AG LEXIS 24.

Based on the language of Ky. Const., § 183 and on case law interpreting this section, the General Assembly has authorization to create the Office of Education Accountability. OAG 91-222, 1991 Ky. AG LEXIS 229.

Superintendents and boards are subject to investigation by legislative agencies, but those agencies, in this case the Office of Education Accountability, may not take enforcement action against them. OAG 91-222, 1991 Ky. AG LEXIS 229.

The activities of the Office of Education Accountability do not violate the separation of powers set forth in Ky. Const., §§ 27 and 28. OAG 91-222, 1991 Ky. AG LEXIS 229.

The authority under which superintendents and boards must respond to questions raised in the course of investigation by the Office of Education Accountability is found in this section and KRS 6.905 et seq. OAG 91-222, 1991 Ky. AG LEXIS 229.

The discovery powers set forth in subsection (2)(d) (now (2)(e)) of this section are broad; however, they relate to the ability of the arm of the legislature to study the implementation of the Reform Act, and to insure that the General Assembly is successful in creating an "efficient system of common schools," as mandated by Ky. Const., § 183. OAG 91-222, 1991 Ky. AG LEXIS 229.

While the Office of Education Accountability does not have the right to perform the executive functions of regulating and supervising administration of the day to day operations of school districts, the office may study and monitor the implementation of the Kentucky Education Reform Act. OAG 91-222, 1991 Ky. AG LEXIS 229.

Subsection (3) vests virtually unfettered discretion in the Office of Education Accountability to withhold records relating to its duties and responsibilities while an investigation is pending, and after it has concluded; the urgency and importance of this provision is further underscored by the fact that in 1992, the General Assembly elected to make it retroactive to July 13, 1990, and to include an emergency clause making it effective upon passage by the Governor; thus, a teacher's request to have full access to records pertaining to a complaint filed against her was properly denied. OAG 98-ORD-149, 1998 Ky. AG LEXIS 90.

The Office of Education Accountability properly denied a request for access to intra-office memorandum and the identity of an informant, which related to the requester's attempt to hack into or invade the agency's computer system. OAG 99-ORD-96, 1999 Ky. AG LEXIS 103.

The Office of Education Accountability cannot prosecute a case to have an executive branch employee disciplined or removed for violation of subsection (9)(a). OAG 02-4, 2002 Ky. AG LEXIS 1.

7.420. Gathering information.

As a part of any investigation, study, monitoring, or evaluation pursuant to KRS 7.410, the Office of Education Accountability shall attempt to gather all relevant information before reaching conclusions or making public any findings. This shall include providing an opportunity for the subject school district, agency, or individual to provide responsive information.

History.

Enact. Acts 1996, ch. 362, § 3, effective July 15, 1996.

TITLE III

EXECUTIVE BRANCH

Chapter
12. Administrative Organization.
13A. Administrative Regulations.
13B. Administrative Hearings.
15. Department of Law.
15A. Justice and Public Safety Cabinet.
16. State Police.
17. Public Safety.
18A. State Personnel.

CHAPTER 12

ADMINISTRATIVE ORGANIZATION

Section

12.245. Administrative bodies to issue occupational license, permit, or certificate to members of the United States military, Reserves, or National Guard, veterans, and spouses of members and veterans holding similar license, permit, or certificate from other jurisdictions.

Wellness and Physical Activity.

12.550. Governor's Council on Wellness and Physical Activity — Membership — Powers and duties — Reports.

12.245. Administrative bodies to issue occupational license, permit, or certificate to members of the United States military, Reserves, or National Guard, veterans, and spouses of members and veterans holding similar license, permit, or certificate from other jurisdictions.

(1) An administrative body that issues a license, permit, certificate, or other document required to operate within a business, profession, or other occupation in the Commonwealth shall issue within thirty (30) days of receipt of a completed application a license, permit, certificate, or other document to a member of the United States military, Reserves, or National Guard, or to his or her spouse, or to a veteran or the spouse of a veteran, who is seeking a license, permit, certificate, or other document and currently holds or recently held equivalent documentation issued by another state, the District of Columbia, or any possession or territory of the United States unless:

(a) The license, permit, certificate, or other document issued by another state, the District of Columbia, or any possession or territory of the United States has been expired for more than two (2) years;

(b) The license, permit, certificate, or other documentation is not in good standing;

(c) The holder of the license, permit, certificate, or other document has had the license, permit, certificate, or other document suspended for disciplinary reasons; or

(d) The board can show substantive evidence of significant statutory deficiency in the training, education, or experience of the United States military service member, Reserves or National Guard member, veteran, or spouse, which could cause a health or safety risk to the public.

(2) The United States military service member, Reserves or National Guard member, veteran, or spouse shall submit:

(a) Proof of issuance of a valid license, permit, certificate, or other document issued by another state, the District of Columbia, or any possession or territory of the United States that is active or has been expired for less than two (2) years;

(b) Proof that the valid license, permit, certificate, or other document issued by another state, the District of Columbia, or any possession or territory of the United States is in good standing or was upon the date of expiration; and

(c)1. His or her DD-214 form or other proof of active or prior military service with an honorable discharge, discharge under honorable conditions, or a general discharge under honorable conditions; or

2. Military orders documenting his or her transfer to a military assignment in Kentucky.

(3) A United States military service member, Reserves or National Guard member, veteran, or spouse who holds a license, permit, certificate, or other document issued by another state, the District of Columbia, or any possession or territory of the United States who applies for a license, permit, certificate, or other document pursuant to subsection (1) of this section and is denied shall have the right to appeal the decision in accordance with KRS Chapter 13B.

(4) A United States military service member, Reserves or National Guard member, veteran, or spouse who holds a license in multiple jurisdictions through an interstate licensure compact, with respect to services that he or she provides within the jurisdiction of the interstate licensure compact, shall be subject to the requirements of the compact or applicable statutes and not this section.

History.

2018 ch. 58, § 1, effective July 14, 2018; 2019 ch. 113, § 1, effective June 27, 2019; 2024 ch. 137, § 1, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Reciprocity requirements for applicants licensed or certified in another state.,201 KAR 36:072E.

WELLNESS AND PHYSICAL ACTIVITY

12.550. Governor's Council on Wellness and Physical Activity — Membership — Powers and duties — Reports.

(1) The Governor's Council on Wellness and Physical Activity is hereby established and authorized to operate the Governor's Wellness and Physical Activity Program, Inc. for the purpose of establishing and implementing a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth. The Governor's Council on Wellness and Physical Activity shall be attached to the Department for Public Health for administrative purposes.

(a) The ex officio members of the Governor's Council on Wellness and Physical Activity shall be as follows:

1. The Governor or the Governor's designee from the executive cabinet;

2. The secretary of the Cabinet for Health and Family Services or designee;

3. The secretary of the Personnel Cabinet or designee;

4. The secretary of the Education and Labor Cabinet;

5. The Senate co-chair of the Interim Joint Committee on Health Services of the General Assembly; and

6. The House co-chair of the Interim Joint Committee on Health Services of the General Assembly.

(b) In addition to the ex officio members, the Governor shall appoint five (5) council members to serve three (3) year terms on the Governor's Council on Wellness and Physical Activity. Members appointed by the Governor may be reappointed by the Governor to serve successive terms. In making appointments, the Governor shall attempt to include individuals from different geographic regions of the Commonwealth of Kentucky. The Governor shall make appointments to fill vacancies as they occur. Each appointment after the initial appointment shall be for a three (3) year term unless the appointment is to fill the unexpired portion of a term.

(c) The Governor or, if so designated by the Governor, the chairman of the council shall have the authority to hire, fire, and manage all personnel of the Governor's Wellness and Physical Activity Program, Inc., including the executive director.

(d) The council shall administer funds appropriated or gifts, donations, or funds received from any source. The council may expend funds in its discretion to carry out the intent of KRS 12.020, 12.023, and 12.550.

(e) The council shall closely coordinate with the Department for Public Health to establish policies and procedures.

(f) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council.

(g) The council shall make recommendations to the Governor and secretary of the Cabinet for Health and Family Services.

(h) The council shall meet quarterly or more often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.

(i) Members of the council shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the council, subject to Finance and Administration Cabinet administrative regulations.

(j) The council may establish working groups as necessary.

(k) The council shall establish the Governor's Wellness and Physical Activity Program, Inc. pursuant to the requirements in KRS 12.020, 12.023, and 12.550.

(2) Funds appropriated for purposes of the program shall not lapse at the end of the fiscal year.

(3)(a) The Governor's Wellness and Physical Activity Program, Inc. shall follow standard accounting practices and shall submit the following financial reports to the Office of the Governor, the Finance and Administration Cabinet, and the Legislative Research Commission:

1. Quarterly reports of expenditures of state funds, submitted on or before the thirtieth day after the end of each quarter in the corporation's fiscal year;

2. Annual reports of receipts and expenditures for the Governor's Wellness and Physical Activity Program, Inc., submitted on or before the sixtieth day after the end of the fiscal year of the corporation; and

3. The report of an annual financial audit conducted by an independent auditor, submitted on or before September 1 of each year.

(b) The Governor's Wellness and Physical Activity Program, Inc. shall file quarterly reports with the Office of the Governor and the Legislative Research Commission. The report shall include a detail of the operations of the program for the preceding year. The report shall include information concerning the participant demographics, number of incentives distributed, and program outcomes according to such measures of success as the board may adopt.

History.

Enact. Acts 2006, ch. 172, § 1, effective July 12, 2006; 2009, ch. 11, § 5, effective June 25, 2009; 2012, ch. 158, § 2, effective July 12, 2012; 2022 ch. 236, § 10, effective July 1, 2022; 2023 ch. 25, § 1, effective June 29, 2023.

CHAPTER 13A

ADMINISTRATIVE REGULATIONS

Section

13A.010. Definitions for chapter.
13A.012. Inclusion of osteopaths within references to physicians in administrative regulations. [Repealed.]
13A.015. Notice of intent to promulgate an administrative regulation — Public hearing. [Repealed.]
13A.016. KRS 13A.015 inapplicable to administrative regulation promulgated only for drafting or format requirements. [Repealed.]
13A.017. Consideration of comments from public hearing — Post-hearing filings or notification. [Repealed.]
13A.020. Administrative Regulation Review Subcommittee — Membership — Meetings — Vote required to act. [Effective until January 1, 2027].
13A.020. Administrative Regulation Review Subcommittee — Membership — Terms — Vacancies — Meetings — Vote required to act. [Effective January 1, 2027].
13A.030. Duties of subcommittee.
13A.032. Effect of finding of deficiency. [Repealed.]
13A.040. Administrative regulations compiler — Duties.
13A.050. Kentucky Administrative Regulations Service — Administrative Register of Kentucky — Publication dates — Certificate of compiler — Fees.
13A.060. Exclusive publication by Legislative Research Commission — Copies available to members of General Assembly.
13A.070. Administrative regulations promulgated by Commission — Assistance to administrative bodies.
13A.075. Legislative Research Commission may promulgate regulations. [Repealed].
13A.080. Inclusion in Administrative Register of notice of review process and procedures for public comment. [Repealed.]
13A.090. Rebuttable presumption of correctness of content of administrative regulations — Judicial notice.

Section
13A.100. Matters which shall be prescribed by administrative regulation.
13A.110. Prescription of forms and tables.
13A.120. Promulgation of administrative regulations — Prohibitions concerning promulgations.
13A.125. Restrictions on filing subsequent proposed administrative regulation with same number and title.
13A.130. Matters prohibited as subject of internal policy, memorandum, or other form of action.
13A.140. Administrative regulations presumed valid — Promulgating administrative body to bear burden of proof in court challenge. [Repealed].
13A.150. Specified time for filing.
13A.160. Notice of hearing to compiler when hearing is required before filing of administrative regulations — Publication. [Repealed.]
13A.170. Methods of promulgating administrative regulations.
13A.180. Ordinary administrative regulation defined.
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13A.200. Administrative regulation in contemplation of a statute — Procedure.
13A.210. Tiering of administrative regulations.
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13A.220. Compliance with KRS 13A.222 and 13A.224 required — Filing with compiler — Format.
13A.221. Division of subject matter of administrative regulation.
13A.222. Drafting rules.
13A.224. General requirements for incorporation by reference.
13A.2245. Incorporation of code or uniform standard by reference.
13A.2251. Information required in administrative regulation when incorporating material by reference.
13A.2255. Amendment of material previously incorporated by reference.
13A.2261. Federal statutes and regulations not to be incorporated by reference.
13A.2264. Incorporation by reference of federal regulation — Prohibitions. [Repealed.]
13A.2267. Certain federal regulations prohibited from incorporation — Procedure for submission of federal regulations. [Repealed.]
13A.230. Other material to be filed with and e-mailed to compiler.
13A.240. Regulatory impact analysis.
13A.245. Agencies to prepare a federal mandate analysis comparing proposed state regulatory standards to federal standards — Relationship between state administrative regulation and federal law or regulation governing a subject matter.
13A.250. Consideration of costs to local and state government and to regulated entities — Fiscal note.
13A.255. Notice of ordinary administrative regulation proposing to establish or increase fees.
13A.270. Public hearing and comments — Notice — Communication by email regarding administrative regulations — When notification of regulations compiler required — Effect of failure to timely notify regulations compiler.
13A.280. Statement of consideration — Amendment — Format — Information required — Publication.
13A.290. Review by Administrative Regulation Review Subcommittee — Review by legislative committee.
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13A.300. Request by promulgating administrative body to defer consideration of administrative regulation — Consideration of deferred administrative regulation — Informational review of deferred administrative regulation — Limitation on number of deferrals — Failure of representative of administrative body to appear before legislative committee.
13A.310. Repeal or permissive withdrawal of administrative regulation.
13A.3102. Expiration of administrative regulations.
13A.3104. Certification process for avoiding expiration of administrative regulations — When regulations expire.
13A.312. Actions required when authority over a subject matter is transferred to another administrative body or name of administrative body is changed — Return of administrative regulations to previous form if General Assembly does not confirm or codify executive order.
13A.315. Expiration and withdrawal of administrative regulation prior to review by legislative committee — Effect of noncompliance with chapter — Withdrawal of deficient administrative regulation upon Governor's notification.
13A.320. Amendment of administrative regulation during meeting of legislative committee or public meeting — Format.
13A.330. Notification of finding of deficiency — Governor's determination after finding of deficiency.
13A.331. Adoption and effective date of ordinary administrative regulation that has been referred to a legislative committee.
13A.333. Expiration of deficient regulations. [Repealed.]
13A.335. Reasons administrative regulation found deficient shall not be considered deficient — Notice.
13A.336. Annual report on administrative regulations found deficient — Contents.
13A.337. Legislative finding — Certain administrative regulations void — Prohibition against promulgating substantially similar regulations — Judicial review.
13A.338. Legislative finding — Certain administrative regulations void — Prohibition against promulgating substantially similar regulations within specified time.
13A.339. Unenforceability of certain administrative regulations that became effective notwithstanding finding of deficiency.
13A.350. Application of chapter.

13A.010. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;

(2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing

administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, and the amendment or repeal of an existing administrative regulation, but does not include:

(a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;

(b) Declaratory rulings;

(c) Intradepartmental memoranda not in conflict with KRS 13A.130;

(d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or

(e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;

(3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;

(4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;

(5) "Commission" means the Legislative Research Commission;

(6) "Effective" means an administrative regulation that has completed the legislative committee review established by KRS 13A.290, 13A.330, and 13A.331;

(7) "Federal mandate" means any federal constitutional, legislative, or executive law or order that requires or permits any administrative body to engage in regulatory activities that impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;

(8) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;

(9) "Filed" or "promulgated" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;

(10) "Full review" means that a filed administrative regulation is on an agenda for:

(a) The subcommittee as the last step required by this chapter prior to assignment in accordance with KRS 13A.290(6);

(b) A legislative committee as the last step required by this chapter for an ordinary administrative regulation before becoming effective upon adjournment in accordance with KRS 13A.331(1) and (2); or

(c) A legislative committee as an emergency administrative regulation being reviewed after assignment in accordance with KRS 13A.290(6) and (7);

(11) "Last effective date" means the latter of:

(a) The most recent date an ordinary administrative regulation became effective, without including the date a technical amendment was made pursuant to KRS 13A.040(10), 13A.2255(2), or 13A.312; or

(b) The date a certification letter was filed with the regulations compiler for that administrative regulation pursuant to KRS 13A.3104(4), if the letter stated that the administrative regulation shall remain in effect without amendment;

(12) "Legislative committee" means an interim joint committee, a House or Senate standing committee, a statutory committee, or a subcommittee of the Legislative Research Commission;

(13) "Local government" means and includes a city, county, urban-county, charter county, consolidated local government, special district, or a quasi-governmental body authorized by the Kentucky Revised Statutes or a local ordinance;

(14) "Major economic impact" means the combined implementation and compliance costs of an administrative regulation are at least five hundred thousand dollars ($500,000) over any two (2) year period;

(15) "Proposed administrative regulation" means an administrative regulation that:

(a) Has been filed by an administrative body; and

(b) Has not become effective or been withdrawn;

(16) "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;

(17) "Signature" means the application of letters or numbers that signify the intent to sign, are uniquely linked to the signer, and are:

(a) Produced by manual or handwritten means;

(b) An image of the manual or handwritten signature produced under paragraph (a) of this subsection; or

(c) Produced by using a digital signature scheme or electronic confirmation method that allows for verification of authenticity;

(18) "Small business" means a business entity, including its affiliates, that:

(a) Is independently owned and operated; and

(b)1. Employs fewer than one hundred fifty (150) full-time employees or their equivalent; or

2. Has gross annual sales of less than six million dollars ($6,000,000);

(19) "Statement of consideration" means the document required by KRS 13A.280 in which the administrative body summarizes the comments received, its responses to those comments, and the action taken, if any, as a result of those comments and responses;

(20) "Subcommittee" means the Administrative Regulation Review Subcommittee of the Legislative Research Commission;

(21) "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities; and

(22) "Written comments" means comments submitted to the administrative body's contact person identified pursuant to KRS 13A.220(6)(d) via hand delivery, United States mail, email, or facsimile and may include but is not limited to comments submitted internally from within the promulgating administrative body or from another administrative body.

History.

Enact. Acts 1984, ch. 417, § 1, effective April 13, 1984; 1986, ch. 89, § 5, effective July 15, 1986; 1990, ch. 516, § 13, effective July 13, 1990; 1994, ch. 410, § 1, effective July 15, 1994; 1996, ch. 180, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 30, effective May 30, 1997; 1998, ch. 38, § 9, effective July 15, 1998; 2000, ch. 288, § 2, effective July 14, 2000; 2000, ch. 406, § 2, effective July 14, 2000; 2004, ch. 165, § 2, effective July 13, 2004; 2005, ch. 100, § 1, effective June 20, 2005; 2012, ch. 138, § 1, effective July 12, 2012; 2016 ch. 82, § 1, effective July 15, 2016; 2017 ch. 77, § 1, effective June 29, 2017; 2021 ch. 7, § 1, effective February 2, 2021; 2022 ch. 207, § 1, effective April 14, 2022; 2025 ch. 2, § 1, effective February 25, 2025; 2025 ch. 101, § 1, effective March 31, 2025; 2025 ch. 88, § 1, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2, 88, and 101, which do not appear to be in conflict and have been codified together.

(3/31/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 101, which do not appear to be in conflict and have been codified together.

(4/14/2022). This statute was amended by 2022 Ky. Acts ch. 207, sec. 1. Under Section 5 of that Act, the Act shall be known and may be cited as the Kentucky REINS Act, or the Kentucky Regulations from the Executive in Need of Scrutiny Act.

NOTES TO DECISIONS

1. Lethal Injection.

Kentucky Department of Corrections was required by Kentucky law to promulgate a regulation as to all portions of the lethal injection protocol, KRS 431.220, as the "private rights" of those individuals being executed by the Commonwealth were invariably affected by the manner in which the lethal injection was administered; the Department was not prohibited from adopting regulations to implement the death penalty through lethal injection simply because KRS 431.220 contained no express reference to the adoption of regulations. Bowling v. Ky. Dep't of Corr., 301 S.W.3d 478, 2009 Ky. LEXIS 291 (Ky. 2009), writ denied, 336 S.W.3d 98, 2011 Ky. LEXIS 31 (Ky. 2011).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Agriculture, Department of, appeal from order revoking or suspending license of frozen food locker plant, KRS 221.040.

Airport zoning regulations, enforcement of, KRS 183.873.

Alcoholic beverage administrator, city or county, appeal from to state board, KRS 241.150, 241.200.

Alcoholic Beverage Control Board:

Appeal from, KRS 243.560, 243.590.

Hearings on appeal to, KRS 243.550.

Apprenticeship agreements, appeal from order of executive director of Office of Workforce Standards, KRS 343.070.

Apprenticeship agreements, appeal from order of supervisor to commissioner of Department of Workforce Standards, KRS 343.070.

Board of Boiler and Pressure Vessel Rules, KRS 236.020.

Board of chiropractic examiners, appeal from KRS 312.160.

Board of Claims for damage claims, enforcement and review of decisions of, KRS 44.130, 44.140.

Board of equalization, cities of fifth or sixth class, appeal from, KRS 92.530.

Board of equalization, cities of first class, appeal from, KRS 91.400.

Board of equalization, cities of second class, appeal from, KRS 92.440.

Board of tax supervisors, cities of third class, appeal from, to city council and to courts, KRS 92.480.

Consumer loan companies, denial or revocation of license, appeal from executive director of financial institutions, KRS 286.4-500.

County board of elections, appeals from, KRS 116.135.

Drivers' licenses, denial, suspension or revocation of by Transportation Cabinet, appeal from, KRS 186.580.

Embalmers and Funeral Directors, state Board of, appeal from KRS 316.155.

Engineers, professional, state board of registration for, hearing procedure, KRS 322.190.

Escheated property, appeal by claimant from decision of commissioner of revenue, KRS 393.160.

Extension, director of, KRS 164.625.

Finance and Administration Cabinet, enforcement of orders, KRS 45.142.

Gasoline dealer's license, appeal from revocation by Kentucky Board of Tax Appeals, KRS 138.340.

Grade crossings, overhead and underpass structures, appeal by railroad from order of Department of Highways concerning, KRS 177.190, 177.200.

Hairdressers and cosmetologists, Kentucky board of, appeal from, KRS 317A.070.

Health, board of for Louisville and Jefferson County, enforcement of orders of, KRS 212.600.

Insurance, department of, appeals from executive director's orders or actions, KRS 304.2-370.

Insurance rates of surety or casualty companies, hearings upon disapproval of filings, KRS 304.13-071.

Judicial review of board of tax appeals, KRS 131.370.

Labor, secretary of, enforcement of subpoenas issued by, KRS 336.060.

Labor, commissioner of, rule as to wages, appeal from, KRS 337.310.

Librarians, state board for certification of, appeal from, KRS 171.300.

Livestock sanitary division, appeal from order denying or revoking permit for hatchery or dealer in chicks or eggs, KRS 257.440.

Medicine, revocation of license to practice, appeal from order of state board of health, KRS 311.595.

Mine, closed by department of natural resources, petition to reopen, KRS 352.430.

Motorists' financial responsibility law, court review of orders under, KRS 187.300.

Interstate water sanitation control commissions, enforcement of orders, KRS 224.18-715.

Oil wells, appeal from department of natural resources, KRS 351.040.

Podiatrist's license, appeal, KRS 311.490.

Police and firefighter's, cities of fourth and fifth class, dismissal or suspension, appeal from city legislative body, KRS 95.766.

Police and firefighter's, cities of second and third class, dismissal or suspension, appeal from city legislative body, KRS 95.460.

Police and firefighter's pension fund, trustees of cities of third class, regulations not subject to review, KRS 95.540.

Psychologists, board of examiners of, appeal from revocation or suspension of license by, KRS 319.092.

Public assistance, appeal to appeal board from decision of hearing officer delay in action on or amount of assistance, KRS 205.231.

Public Service Commission:

Appeal from, KRS 278.410 to 278.450.

Enforcement of, KRS 278.390.

Real estate commission, state, appeal from, KRS 324.200.

Revenue, department of, equalization of assessments by, appeal from, KRS 133.150 to 133.170.

Revenue, department of, rulings and findings:

Appeal from to Kentucky board of tax appeals, KRS 131.110.
Enforcement of, KRS 131.990.
Revenue, department of, valuation of omitted property by, appeal from, KRS 132.320.
Road and bridge contracts, eligibility to bid upon, appeal from Department of Highways, KRS 176.170.
Securities, division of, appeal from, KRS 292.490.
Soil conservation board of adjustment, appeal from orders of, KRS 262.520.
Soil conservation district board of supervisors, enforcement of land use regulations, KRS 262.430, 262.440, 262.450.
State aid for specific counties, 725 KAR 2:040.
State Board of Accountancy, appeal from, KRS 325.360; enforcement of orders of, KRS 325.400.
Toll bridges and ferries, intrastate; appeal from order of Department of Highways, KRS 280.110.
Unemployment Insurance Commission:
Appeal from, KRS 341.450, 341.460.
Appeal to from referee, KRS 341.200.
Enforcement of orders, KRS 341.200.
Veterinary examiners, state board of, appeal from, KRS 321.360.
Workers' Compensation Board:
Appeal from, KRS 342.281 to 342.300.
Enforcement of orders, KRS 342.305.
Zoning:
Appeal from board of adjustment, KRS 100.347.
Appeal to board of adjustment, KRS 100.261.
Board of adjustment, KRS 100.217.
Comprehensive plan, KRS 100.183, 100.187, 100.191 to 100.197.
Planning commissions, KRS 100.133, 100.137.
Objectives, KRS 100.193.
Planning units, KRS 100.113 to 100.123.
Regulations, KRS 100.203, 100.207.

Kentucky Bench & Bar.
Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13A.012. Inclusion of osteopaths within references to physicians in administrative regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 2000, ch. 413, § 2, effective July 14, 2000) was repealed by Act 2005, ch. 100, § 24, effective June 20, 2005.

13A.015. Notice of intent to promulgate an administrative regulation — Public hearing. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1994, ch. 410, § 3, effective July 15, 1994; 1996, ch. 180, § 2, effective July 15, 1996; 1998, ch. 38, § 1, effective July 15, 1998; 2000, ch. 288, § 1, effective July 14, 2000; 2000, ch. 406, § 23, effective July 14, 2000) was repealed by Acts 2003, ch. 89, § 21, effective June 24, 2003.

13A.016. KRS 13A.015 inapplicable to administrative regulation promulgated only for drafting or format requirements. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1994, ch. 410, § 2, effective July 15, 1994) was repealed by Acts 2003, ch. 89, § 21, effective June 24, 2003.

13A.017. Consideration of comments from public hearing — Post-hearing filings or notification. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1994, ch. 410, § 4, effective July 15, 1994; 1996, ch. 180, § 3, effective July 15, 1996; 1998, ch. 38, § 2, effective July 15, 1998; 2000, ch. 406, § 3, effective July 14, 2000) was repealed by Acts 2003, ch. 89, § 21, effective June 24, 2003.

13A.020. Administrative Regulation Review Subcommittee — Membership — Meetings — Vote required to act. [Effective until January 1, 2027]

(1) There is hereby created a permanent subcommittee of the Legislative Research Commission to be known as the Administrative Regulation Review Subcommittee. The subcommittee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. The members of the subcommittee shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the same appointing authority who made the original appointment.

(2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be rescheduled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for subcommittee meeting agendas and presiding at subcommittee meetings. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(3).

(3) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) A majority of the entire membership of the Administrative Regulation Review Subcommittee shall constitute a quorum, and all actions of the subcommittee shall be by vote of a majority of its entire membership.

History.
Enact. Acts 1984, ch. 417, § 2, effective April 13, 1984; 2003, ch. 185, § 3, effective March 31, 2003; 2016 ch. 82, § 2, effective July 15, 2016.

13A.020. Administrative Regulation Review Subcommittee — Membership — Terms — Vacancies — Meetings — Vote required to act. [Effective January 1, 2027]

(1)(a) There is hereby created a permanent subcommittee of the Legislative Research Commission to be

known as the Administrative Regulation Review Subcommittee.

(b) The subcommittee shall be composed of eight (8) members appointed in January of each odd-numbered year as follows: three (3) members of the Senate appointed by the President; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. The members of the subcommittee shall serve for terms of two (2) years, and the President of the Senate and Speaker of the House of Representatives shall each appoint one (1) member of the subcommittee from their chamber to serve as co-chair.

(c) Any vacancy that may occur in the membership of the subcommittee shall be filled within thirty (30) days of the occurrence, in the same manner as the original appointment, and for the balance of the vacated member's term.

(2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be rescheduled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for subcommittee meeting agendas and presiding at subcommittee meetings. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(3).

(3) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) A majority of the entire membership of the Administrative Regulation Review Subcommittee shall constitute a quorum, and all actions of the subcommittee shall be by vote of a majority of its entire membership.

History.

Enact. Acts 1984, ch. 417, § 2, effective April 13, 1984; 2003, ch. 185, § 3, effective March 31, 2003; 2016 ch. 82, § 2, effective July 15, 2016; 2025 ch. 35, § 6, effective January 1, 2027.

13A.030. Duties of subcommittee.

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon effective administrative regulations pursuant to subsections (2), (3), and (4) of this section or administrative regulations filed with the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a determination:

(a) That an effective administrative regulation or an administrative regulation filed with the Commission is deficient because it:

1. Is wrongfully promulgated;

2. Appears to be in conflict with an existing statute;

3. Appears to have no statutory authority for its promulgation;

4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;

5. Fails to use tiering when tiering is applicable;

6. Is in excess of the administrative body's authority;

7. Appears to impose an unreasonable burden on government or small business, or both;

8. Is filed as an emergency administrative regulation without adequate justification of the emergency nature of the situation as described in KRS 13A.190(1);

9. Has not been noticed in conformance with the requirements of KRS 13A.270(3);

10. Does not provide an adequate cost analysis pursuant to KRS 13A.250;

11. Violates KRS 13A.105;

12. Was the subject of the subcommittee's instruction to an administrative body to appear under subsection (4) of this section and the administrative body failed to:

a. Appear;

b. Make a good-faith effort to answer subcommittee questions; or

c. Provide any information or data required by the subcommittee; or

13. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute; or

(c) That an administrative regulation should be amended or repealed.

(3) The subcommittee may conduct an informational review of an effective administrative regulation or an administrative regulation filed with the Commission if requested by a member of the subcommittee.

(4)(a) The subcommittee may require any administrative body to appear before it to answer questions or submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to:

1. Appear before the subcommittee;

2. Make a good-faith effort to answer subcommittee questions;

3. Provide any information or data required by the subcommittee; or

4. Perform any combination of subparagraphs 1., 2., and 3. of this paragraph required by the subcommittee.

(b) Either co-chair of the subcommittee may require action by an administrative body under paragraph (a) of this subsection on behalf of the subcommittee.

(5) At least five (5) calendar days before an informational review of an ordinary administrative regulation, the subcommittee shall notify the affected administrative body.

History.
Enact. Acts 1984, ch. 417, § 3, effective April 13, 1984; 1986, ch. 89, § 6, effective July 15, 1986; 1994, ch. 410, § 5, effective July 15, 1994; 1998, ch. 598, § 7, effective April 14, 1998; 2000, ch. 406, § 4, effective July 14, 2000; 2004, ch. 165, § 3, effective July 13, 2004; 2021 ch. 7, § 2, effective February 2, 2021; 2022 ch. 207, § 4, effective April 14, 2022; 2025 ch. 2, § 2, effective February 25, 2025; 2025 ch. 88, § 18, effective June 27, 2025; 2025 ch. 101, § 2, effective March 31, 2025.

Legislative Research Commission Notes.
(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2, 88, and 101, which do not appear to be in conflict and have been codified together.
(3/31/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 101, which do not appear to be in conflict and have been codified together.
(4/14/2022). This statute was amended by 2022 Ky. Acts ch. 207, sec. 4. Under Section 5 of that Act, the Act shall be known and may be cited as the Kentucky REINS Act, or the Kentucky Regulations from the Executive in Need of Scrutiny Act.

NOTES TO DECISIONS

Cited in:
Cameron v. Beshear, 628 S.W.3d 61, 2021 Ky. LEXIS 240 (Ky. 2021).

13A.032. Effect of finding of deficiency. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 71, § 7, effective July 15, 1988; 1990, ch. 516, § 14, effective July 13, 1990; 2000, ch. 406, § 5, effective July 14, 2000) was repealed by Acts 2003, ch. 185, § 12, effective March 31, 2003.

13A.040. Administrative regulations compiler — Duties.

The director of the Legislative Research Commission shall appoint an administrative regulations compiler who shall:

(1) Receive administrative regulations, and other documents required to be filed by the provisions of this chapter, tendered for filing;

(2) Stamp administrative regulations tendered for filing with the time and date of receipt;

(3) Provide administrative and support services to the subcommittee;

(4) Maintain a file of administrative regulations and other documents required to be filed by this chapter, for public inspection, with suitable indexes;

(5) Maintain a file of ineffective administrative regulations;

(6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;

(7) Prepare the Kentucky Administrative Regulations Service;

(8) Upon request, certify copies of administrative regulations and other documents that have been filed with the regulations compiler;

(9) Correct errors that do not change the substance of an administrative regulation, including but not limited to typographical errors, errors in format, and grammatical errors;

(10)(a) Change the following items in an administrative regulation in response to a specific written request for a technical amendment submitted by the administrative body if the regulations compiler determines that the requested changes do not affect the scope or substance of the administrative regulation and the changes are provided in accordance with KRS 13A.312(3):

1. The administrative body's identifying information, including address, phone number, fax number, website address, and email address;

2. Typographical errors, errors in format, and grammatical errors;

3. Citations to statutes or other administrative regulations if a format change within that statute or administrative regulation has changed the numbering or lettering of parts; or

4. Other changes in accordance with KRS 13A.312; and

(b) Notify the administrative body within thirty (30) business days of receipt of a technical amendment letter the status of the request, including:

1. Any requested changes that are accepted as technical amendments; and

2. Any requested changes that are not accepted as technical amendments;

(11) Refuse to accept for filing administrative regulations, and other documents required to be filed by this chapter, that do not conform to the drafting, formatting, or filing requirements established by the provisions of KRS 13A.105, 13A.190(5) to (11), 13A.220, 13A.222(1), (2), and (3), 13A.230, 13A.280, 13A.312, and 13A.320, and notify the administrative body in writing of the reasons for refusing to accept an administrative regulation for filing;

(12) Maintain a list of all administrative regulation numbers and the corresponding last effective date, based on the information included in the history line of each administrative regulation; and

(13) Perform other duties required by the Commission or by a legislative committee.

History.
Enact. Acts 1984, ch. 417, § 4, effective April 13, 1984; 1988, ch. 425, § 4, effective July 15, 1988; 1990, ch. 516, § 15, effective July 13, 1990; 1994, ch. 410, § 6, effective July 15, 1994; 1996, ch. 180, § 4, effective July 15, 1996; 1998, ch. 38, § 3, effective July 15, 1998; 2005, ch. 100, § 2, effective June 20, 2005; 2012, ch. 138, § 2, effective July 12, 2012; 2016 ch. 82, § 3, effective July 15, 2016; 2017 ch. 77, § 2, effective June 29, 2017; 2019 ch. 192, § 3, effective June 27, 2019; 2021 ch. 7, § 3, effective February 2, 2021; 2021 ch. 125, § 2, effective June 29, 2021; 2025 ch. 88, § 2, effective June 27, 2025; 2025 ch. 101, § 3, effective March 31, 2025.

Legislative Research Commission Notes.
(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 88 and 101, which do not appear to be in conflict and have been codified together.

13A.050. Kentucky Administrative Regulations Service — Administrative Register of Kentucky — Publication dates — Certificate of compiler — Fees.

(1) The Legislative Research Commission shall compile, publish, and distribute the administrative regulations filed by administrative bodies. This compilation shall be known as the Kentucky Administrative Regulations Service. The Legislative Research Commission shall maintain the official version of the administrative regulations in an electronic database that shall be made available to the public as provided by KRS 7.500.

(2)(a) There is hereby created a publication known as "Administrative Register of Kentucky" or "Administrative Register" to be published on a monthly basis by the Legislative Research Commission for the purpose of giving notice of administrative regulations filed in accordance with this chapter.

(b) Every administrative regulation forwarded to the Legislative Research Commission shall have its complete text published in the Administrative Register along with the accompanying statements required by KRS 13A.190, 13A.210, 13A.2251(1), 13A.240, 13A.245, 13A.250, and 13A.270.

(c) Within five (5) workdays of the publication of an administrative regulation in the Administrative Register, an administrative body shall:

1. Review the text and accompanying statements of the administrative regulation; and

2. Notify the regulations compiler in writing or by e-mail of errors.

(3) The Administrative Register shall be published the first day of each month and shall include all administrative regulations received by the Legislative Research Commission by 12 noon, eastern time, on the fifteenth day of the preceding month. When the fifteenth day falls on a Saturday, Sunday, or holiday, the deadline is the workday that immediately precedes the Saturday, Sunday, or holiday.

(4) The compiler shall cause to be prepared a certificate to the effect that the text of the administrative regulations as published in this service is correct. One (1) copy of the Kentucky Administrative Regulations Service with the original certificate therein shall be provided to the Office of the Secretary of State.

(5) The Commission shall prescribe reasonable fees for subscription to the Kentucky Administrative Regulations Service and the Administrative Register. All fees paid to the Commission for these publications shall be placed in the State Treasury to the credit of a revolving trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this section.

(6) Copies of administrative regulations or other items required to be filed by this chapter shall be made available to any interested party upon request to the Legislative Research Commission. The Commission may prescribe reasonable fees for duplication services and all fees paid to the Commission for duplication services shall be placed in the State Treasury to the credit of a revolving trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this subsection.

History.

Enact. Acts 1984, ch. 417, § 5, effective April 13, 1984; 1994, ch. 410, § 7, effective July 15, 1994; 1996, ch. 180, § 5, effective July 15, 1996; 2003, ch. 89, § 5, effective June 24, 2003; 2005, ch. 100, § 3, effective June 20, 2005; 2012, ch. 138, § 3, effective July 12, 2012; 2016 ch. 82, § 4, effective July 15, 2016.

13A.060. Exclusive publication by Legislative Research Commission — Copies available to members of General Assembly.

(1) No administrative body other than the Legislative Research Commission shall publish administrative regulations unless permission is granted by the Legislative Research Commission and the administrative regulations are enclosed in a booklet or binder on which the words "informational copy" are clearly stamped or printed.

(2) Copies of the Administrative Register and the Kentucky Administrative Regulations Service shall be provided to a member of the General Assembly only upon the request of the member.

History.

Enact. Acts 1984, ch. 417, § 6, effective April 13, 1984.

13A.070. Administrative regulations promulgated by Commission — Assistance to administrative bodies.

(1) The Commission may promulgate administrative regulations governing the manner and form in which administrative regulations shall be prepared, to the end that all administrative regulations shall be prepared in a uniform manner.

(2) The Commission shall furnish advice and assistance to all administrative bodies in the preparation of their administrative regulations, and in revising, codifying, and editing existing or new administrative regulations.

(3) An administrative regulation promulgated by the Commission shall be signed by the President of the Senate and the Speaker of the House of Representatives.

History.

Enact. Acts 1984, ch. 417, § 7, effective April 13, 1984; 2000, ch. 406, § 6, effective July 14, 2000; 2016 ch. 82, § 5, effective July 15, 2016.

13A.075. Legislative Research Commission may promulgate regulations. [Repealed]

History.

Enact. Acts 1990, ch. 516, § 3, effective July 13, 1990; repealed by 2016 ch. 82, § 36, effective July 15, 2016.

13A.080. Inclusion in Administrative Register of notice of review process and procedures for public comment. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1984, ch. 417, § 8, effective April 13, 1984; 1994, ch. 410, § 8, effective July 15, 1994; 2003, ch. 89, § 6, effective June 24, 2003) was repealed by Acts 2012, ch. 138, § 16, effective July 12, 2012.

13A.090. Rebuttable presumption of correctness of content of administrative regulations — Judicial notice.

(1) The Commission's authenticated file stamp upon an administrative regulation or publication of an administrative regulation in the Kentucky Administrative Regulations Service or other publication shall raise a rebuttable presumption that the contents of the administrative regulation are correct.

(2) The courts shall take judicial notice of any administrative regulation duly filed under the provisions of this chapter after the administrative regulation has been adopted.

History.

Enact. Acts 1984, ch. 417, § 9, effective April 13, 1984.

NOTES TO DECISIONS

1. Judicial Notice.

Where an administrative regulation of the Department of Public Safety requiring a life preserver to be furnished recited that it was promulgated pursuant to the authority of former KRS 325.320 which concerned itself with partnerships in the public accountant profession, the court would not be required, under former law providing for judicial notice, to take judicial notice of any administrative regulation not filed under the provisions of former law. (Decided under prior law) Christian Appalachian Project, Inc. v. Berry, 487 S.W.2d 951, 1972 Ky. LEXIS 102 (Ky. 1972).

Parole eligibility statistics are not a proper subject for judicial notice, are not admissible mitigating evidence, and do not negate the Commonwealth's evidence; therefore, the trial court did not err in finding that "the introduction of specific figures and numbers opens the door to evidence that the statute was not set up for." Abbott v. Commonwealth, 822 S.W.2d 417, 1992 Ky. LEXIS 1 (Ky. 1992).

13A.100. Matters which shall be prescribed by administrative regulation.

Subject to limitations in applicable statutes, including KRS 13A.105 and 197.020(5), any administrative body that is empowered to promulgate administrative regulations shall, by administrative regulation, prescribe, consistent with applicable statutes:

(1) Each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public;

(2) The process for application for license, benefits available or other matters for which an application would be appropriate unless the process is prescribed by a statute;

(3) Fees, except for those exempted in paragraphs (a) to (j) of this subsection, to be charged by the administrative body if the fees are authorized by law and are not set by statute:

(a) State park room rates;

(b) Prices for food in restaurants at state facilities;

(c) Prices for goods at gift shops at state facilities;

(d) Prices for groceries and other items sold at state facilities;

(e) Prices charged for state publications;

(f) Prices charged for rides and amusement activities at state facilities;

(g) Admission fees to athletic and entertainment events at state facilities;

(h) Charges for swimming, skiing, horseback riding, and similar recreational activities at state facilities;

(i) Charges for boat and equipment rentals for recreational purposes at state facilities; and

(j) Admission fees charged for seminars and educational courses by state administrative bodies;

(4) The procedures to be utilized by the administrative body in the conduct of hearings by or for the administrative body unless the procedures are prescribed by a statute; and

(5) The disciplinary procedures within the jurisdiction of the administrative body unless the procedures are prescribed by statute.

History.

Enact. Acts 1984, ch. 417, § 10, effective April 13, 1984; 1990, ch. 516, § 16, effective July 13, 1990; 2016 ch. 82, § 6, effective July 15, 2016; 2025 ch. 101, § 4, effective March 31, 2025; 2026 ch. 181, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

Acts 1984, ch. 419, effective July 13, 1984, provides:

"Section 1. It is the intent of the General Assembly that the amendment of Section 10 by the Free Conference Committee report to 1984 HB 334 applies only to fees which are governmental in nature charged by state agencies and not to fees and charges which are proprietary in nature.

Section 2. This resolution may be used by a court as an aid in the construction of 1984 HB 334."

NOTES TO DECISIONS

Analysis

1. Extent of Power to Adopt Regulations.
2. Unconstitutional Regulations.
3. Changing of Statutory Requirement Prohibited.
4. Statutory Preemption.
5. Statutory Effect.
6. Reasonable Relation to Authorized Purpose.
7. Class Action Testing Validity of Regulation.
8. Invalid Regulations.
9. Rules of Board of Claims.
10. Explanatory Regulations.
11. State of Emergency.

1. Extent of Power to Adopt Regulations.

Administrative regulations which have been duly adopted and properly filed have the full effect of law; however, the power of an agency to adopt such regulations is limited to a direct implementation of administration of the functions and duties assigned to the administrative body by statute or executive order. (Decided under prior law) Kentucky Asso. of Chiropractors, Inc. v. Jefferson County Medical Soc., 549 S.W.2d 817, 1977 Ky. LEXIS 414 (Ky. 1977).

Kentucky Department of Corrections was required by Kentucky law to promulgate a regulation as to all portions of the lethal injection protocol, KRS 431.220, as the "private rights" of those individuals being executed by the Commonwealth were invariably affected by the manner in which the lethal injection was administered; the Department was not prohibited from adopting regulations to implement the death penalty through lethal injection simply because KRS 431.220 con-

tained no express reference to the adoption of regulations. Bowling v. Ky. Dep't of Corr., 301 S.W.3d 478, 2009 Ky. LEXIS 291 (Ky. 2009), writ denied, 336 S.W.3d 98, 2011 Ky. LEXIS 31 (Ky. 2011).

Kentucky Public Service Commission (Commission) was entitled to a writ of prohibition as to a trial court hearing an interlocutory appeal of the Commission's order denying real parties in interest intervention in a rate-making case because (1) the parties had no such right, as the parties could only request intervention, (2) whether to grant intervention was solely within the Commission's discretion, (3) ordering the Commission to grant intervention interfered with the Commission's proceedings, exceeded the court's jurisdiction, and did not meet the collateral order rule, (4) the rule of civil procedure on intervention did not apply, as the Commission's regulation controlled, and (5) the court had no Declaratory Judgment Act jurisdiction, so the court's orders were void ab initio. PSC of Ky. v. Shepherd, 667 S.W.3d 15, 2019 Ky. App. LEXIS 31 (Ky. Ct. App. 2019), rev'd, 2020 Ky. Unpub. LEXIS 37 (Ky. May 28, 2020).

2. Unconstitutional Regulations.

Administrative regulation of the board of chiropractic examiners permitting chiropractors to utilize the services of persons authorized by law to perform analysis of patients by use of radiographs, blood analysis or other methods of examination is an attempt to grant authority which had previously been withheld and goes beyond the powers granted the board and the statutory definition of chiropractic, and, as such, is legislative in nature and in violation of the state Constitution. (Decided under prior law) Kentucky Asso. of Chiropractors, Inc. v. Jefferson County Medical Soc., 549 S.W.2d 817, 1977 Ky. LEXIS 414 (Ky. 1977).

3. Changing of Statutory Requirement Prohibited.

The Alcoholic Beverage Control Board cannot by the promulgation of a rule add to or take from requirement of statute it is administering. (Decided under prior law) Portwood v. Falls City Brewing Co., 318 S.W.2d 535, 1958 Ky. LEXIS 140 (Ky. 1958).

4. Statutory Preemption.

Since Alcoholic Beverage Control Board cannot by promulgating a rule add to or take away from a statute it is administering, a regulation prohibiting a licensee in cities of the first and second classes to advertise brand name of a particular beverage upon signs outside of the premises was invalid as it is in conflict with former KRS 244.530. (Decided under prior law) Portwood v. Falls City Brewing Co., 318 S.W.2d 535, 1958 Ky. LEXIS 140 (Ky. 1958).

Alcoholic Beverage Control Board could not adopt regulation prohibiting certain activities on the part of brewers and beer distributors where legislature had enacted statutes prohibiting similar activities on the part of distillers, rectifiers, vintners and retail licensees but had enacted nothing regarding brewers and beer distributors concerning such activities. (Decided under prior law) Oertel Brewing Co. v. Portwood, 320 S.W.2d 317, 1959 Ky. LEXIS 234 (Ky. 1959).

5. Statutory Effect.

Administrative regulations properly adopted and filed have the same effect as statutes or ordinances enacted directly by the legislative body from which the administrative agency derives its authority. (Decided under prior law) Rietze v. Williams, 458 S.W.2d 613, 1970 Ky. LEXIS 179 (Ky. 1970), overruled in part, Ctr. College v. Trzop, 127 S.W.3d 562, 2003 Ky. LEXIS 263 (Ky. 2003), overruled in part, Dutton v. McFarland, 199 S.W.3d 771, 2006 Ky. App. LEXIS 82 (Ky. Ct. App. 2006).

6. Reasonable Relation to Authorized Purpose.

The purpose of regulations issued under the authority of former law was limited to the implementation of the administration of the functions assigned to the agency issuing such regulations and, under former law and § 28 of the Kentucky Constitution, it was beyond the power of the Industrial Safety Board, in promulgating safety standards for the construction industry, to change the settled law of Kentucky by a regulation making the owner of premises liable to an employee of an independent contractor for injuries suffered while working on the premises and equally liable with the contractor for the enforcement of safety standards, since such regulation exceeded the permissible bounds of administrative implementation. (Decided under prior law) Courtney v. Island Creek Coal Co., 474 F.2d 468, 1973 U.S. App. LEXIS 11381 (6th Cir. Ky. 1973).

As a general rule administrative agencies are vested with a great deal of discretion in exercising their authority; however, rules and regulations must be reasonably adapted to carry out purpose for which they were authorized to be made. (Decided under prior law) Portwood v. Falls City Brewing Co., 318 S.W.2d 535, 1958 Ky. LEXIS 140 (Ky. 1958).

The Alcoholic Beverage Control Board regulation prohibiting the use of illuminated advertisement by retail liquor establishment where the illumination is an integral part of the sign was held to be invalid since the illumination of the sign bears little relation to the policing of the sale of malt beverages, for by the time member of public sees sign he has already entered the retail premises assumedly for the purpose of buying beer. (Decided under prior law) Portwood v. Falls City Brewing Co., 318 S.W.2d 535, 1958 Ky. LEXIS 140 (Ky. 1958).

7. Class Action Testing Validity of Regulation.

Domestic brewers who furnished dispenser with signs and licensed retail beer dispenser who displayed signs were proper parties to class action to test validity of certain regulations of the alcoholic beverages by retail licensees regarding display of signs. (Decided under prior law) Portwood v. Falls City Brewing Co., 318 S.W.2d 535, 1958 Ky. LEXIS 140 (Ky. 1958).

8. Invalid Regulations.

Where it was evident from the record that the sole basis for denial of caretaker benefits was section 4909 of the operation manual of the Bureau of Social Insurance and not a weighing of the need of and resources available to the claimant's mother including resources available from the claimant, and where section 4909 was not promulgated as required by former KRS 13.085 et seq., it had no effect and therefore could not be used as an independent basis for denying benefits. (Decided under prior law) Vincent v. Conn, 593 S.W.2d 99, 1979 Ky. App. LEXIS 503 (Ky. Ct. App. 1979).

9. Rules of Board of Claims.

The Board of Claims is to prescribe its rules of administrative practice in the form of regulations, but the rules must be promulgated in accordance with law. (Decided under prior law) Department for Human Resources v. Redmon, 599 S.W.2d 474, 1980 Ky. App. LEXIS 322 (Ky. Ct. App. 1980).

10. Explanatory Regulations.

KRS 61.590(3), limiting the time allowed to change a payment option, was not vague or ambiguous; because KRS 61.590(3) was plainly written, an explanatory administrative regulation was unnecessary. A trial court's judgment affirming a determination that a retiree was not permitted to change his retirement payment option was proper because there was no evidence that the retirement systems was negligent or that information provided to retiree was erroneous. Lawson v. Ky. Ret. Sys., 2007 Ky. App. LEXIS 200 (Ky. Ct. App. July 6, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 507 (Ky. Ct. App. July 6, 2007).

11. State of Emergency.

Ky. Rev. Stat. Ann. ch. 13A does not Limit the Governor's authority to act Under the Constitution and Ky. Rev. Stat.

Ann. ch. 39A in the event of an emergency. Beshear v. Acree, 615 S.W.3d 780, 2020 Ky. LEXIS 405 (Ky. 2020).

Cited in:
GTE v. Revenue Cabinet, 889 S.W.2d 788, 1994 Ky. LEXIS 148 (Ky. 1994); Lawson v. Ky. Ret. Sys., 291 S.W.3d 679, 2009 Ky. LEXIS 82 (Ky. 2009).

OPINIONS OF ATTORNEY GENERAL.

Under KRS 61.840, the Personnel Board is not required to permit television coverage when it is hearing an appeal under KRS 18A.095 as a quasi-judicial body, but may do so if it adopts administrative regulations so permitting and stating restrictions and procedures for such coverage, pursuant to this section. OAG 84-371, 1984 Ky. AG LEXIS 14.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Adult Literacy Program fund, 784 KAR 1:010.
Borrower eligibility, 11 KAR 3:015.
Distribution of publications, 11 KAR 4:060.
Dual enrollment under consortium agreement, 11 KAR 5:110.
Eligible program, 11 KAR 3:025.
KTG student eligibility requirements, 11 KAR 5:033.
Leveraging Educational Assistance Partnership Program and Special Leveraging Educational Assistance Partnership Program eligibility, 11 KAR 5:036.
Maximum loan amounts, 11 KAR 3:035.
Notification of award, 11 KAR 5:150.
Obtaining and repaying a loan, 11 KAR 3:055.
Permissible charges by lenders to borrowers, 11 KAR 3:045.
Records and reports, 11 KAR 5:180.
Refund and repayment policy, 11 KAR 5:170.
State Adult Literacy Program plan, 784 KAR 1:020.

13A.110. Prescription of forms and tables.

Except as provided in KRS 131.131, and subject to limitations in applicable statutes, any administrative body that is empowered to promulgate administrative regulations may, consistent with applicable statutes, prescribe forms and tables for use by the administrative body and for the public in dealing with the administrative body unless the content of such form is prescribed by a statute. Forms that are required to be submitted by a regulated entity shall be included in an administrative regulation. Forms and tables that meet the requirements of KRS 13A.2245 may be incorporated by reference.

History.
Enact. Acts 1984, ch. 417, § 11, effective April 13, 1984; 1990, ch. 516, § 17, effective July 13, 1990; 2016 ch. 82, § 7, effective July 15, 2016.

13A.120. Promulgation of administrative regulations — Prohibitions concerning promulgations.

(1)(a) An administrative body may promulgate administrative regulations to implement a statute only when the act of the General Assembly creating or amending the statute specifically authorizes the promulgation of administrative regulations or administrative regulations are required by federal law, in which case administrative regulations shall be no more stringent than the federal law or regulations.

(b) An administrative body that promulgates an administrative regulation required by federal law or federal regulation shall comply with the provisions of this chapter.

(2) An administrative body shall not promulgate administrative regulations:

(a) When a statute prohibits the administrative body from promulgating administrative regulations;

(b) When the administrative body is not authorized by statute to promulgate administrative regulations;

(c) When a statute prohibits the administrative body from regulation of that particular matter;

(d) When the administrative body is not authorized by statute to regulate that particular matter;

(e) When a statute prescribes the same or similar procedure for the matter regulated;

(f) When a statute sets forth a comprehensive scheme of regulation of the particular matter;

(g) On any matter that is not clearly within the jurisdiction of the administrative body;

(h) On any matter that is beyond the statutory authorization of the administrative body to promulgate administrative regulations or that is not clearly authorized by statute; and

(i) That modify or vitiate a statute or its intent.

(3) If a statute requires an administrative body or official to submit an administrative regulation to an official or administrative body for review or approval prior to filing the administrative regulation with the commission, the administrative body or official shall not file the administrative regulation without first having obtained the review or approval.

(4) Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.

(5) No administrative body, other than the Court of Justice, shall issue rules.

(6) No administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required or authorized by law.

History.
Enact. Acts 1984, ch. 417, § 12, effective April 13, 1984; 1986, ch. 499, § 8, effective July 15, 1986; 1990, ch. 516, § 18, effective July 13, 1990; 1994, ch. 410, § 9, effective July 15, 1994; 1996, ch. 180, § 6, effective July 15, 1996; 2016 ch. 82, § 8, effective July 15, 2016.

NOTES TO DECISIONS

Analysis

1. Parallel Federal Act.
2. Statute Regulating Same Matter.
3. Regulations Required.
4. Regulations Not Required.

1. Parallel Federal Act.
Where a federal act and its regulations provide for a procedure by which an accused strip miner is given a formal hearing, with a full record, rights of examination, cross-examination, subpoenas, etc., and where from this full hearing there is an appeal to an administrative law judge and ultimately to the federal court system, by not providing a similar proceeding, the parallel Kentucky regulations are more strin-

gent than the federal law and regulations, in violation of subsection (1) of this section, thus making former 405 KAR 7:090(4), which provided for a formal hearing only upon prepayment of assessed penalties, null, void and unenforceable. Franklin v. Natural Resources & Environmental Protection Cabinet, 799 S.W.2d 1, 1990 Ky. LEXIS 75 (Ky. 1990).

2. Statute Regulating Same Matter.

KRS Chapter 281A did not set forth a comprehensive scheme of regulating the same matter which was being regulated by an administrative agency in violation of this section, as the administrative regulation was more detailed, comprehensive and pertinent regarding school bus drivers than was the statute, which dealt with commercial driver's licenses. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

Judgment of the trial court affirming the Secretary of the Commonwealth of Kentucky, Energy and Environment Cabinet's (Cabinet) imposition of restrictive conditions on all future mining in the area was reversed where 405 KAR 24:030 § 8(3) was contrary to law, KRS 350.610, and more stringent than the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C.S. § 1201 et seq., thereby rendering it null, void and unenforceable; the Cabinet refused to make a finding of unsuitability yet imposed restrictive conditions consistent with an unsuitability determination. Laurel Mt. Res., LLC v. Commonwealth, 360 S.W.3d 791, 2012 Ky. App. LEXIS 34 (Ky. Ct. App. 2012).

Physician's discipline based on the suspension of the physician's license in another state was improper because the regulation applied by the Kentucky Board of Medical Licensure (KBML) invalidly exceeded the KBML's statutory authority, as the regulation required the KBML to impose the same discipline as that imposed by another state, while the statute granted the KBML discretion to determine the appropriate sanction. Uradu v. Ky. Bd. of Med. Licensure, 2019 Ky. App. LEXIS 24 (Ky. Ct. App. 2019), review denied, ordered not published, 2019 Ky. LEXIS 275 (Ky. Aug. 21, 2019).

3. Regulations Required.

Kentucky Department of Corrections was required by Kentucky law to promulgate a regulation as to all portions of the lethal injection protocol, KRS 431.220, as the "private rights" of those individuals being executed by the Commonwealth were invariably affected by the manner in which the lethal injection was administered; the Department was not prohibited from adopting regulations to implement the death penalty through lethal injection simply because KRS 431.220 contained no express reference to the adoption of regulations. Bowling v. Ky. Dep't of Corr., 301 S.W.3d 478, 2009 Ky. LEXIS 291 (Ky. 2009), writ denied, 336 S.W.3d 98, 2011 Ky. LEXIS 31 (Ky. 2011).

4. Regulations Not Required.

KRS 13A.120(2)(d) and 17.175(6) did not require the Department of Juvenile Justice to promulgate any administrative regulations to include procedures for collection of DNA samples and the usage and integrity of the DNA database system. Instead, the Secretary of Justice was required to notify the Kentucky Reviser of Statutes of the date on which statutory sections were implemented under former KRS 17.177(3) (now repealed). Petitioner F v. Brown, 2008 Ky. App. LEXIS 42 (Ky. Ct. App. Feb. 22, 2008, sub. op., 2008 Ky. App. Unpub. LEXIS 532 (Ky. Ct. App. Feb. 22, 2008).

OPINIONS OF ATTORNEY GENERAL.

Neither the personnel commissioner nor the personnel board has authority to promulgate a regulation concerning nepotism. Likewise, in the absence of specific statutory authority given to a specific individual agency, such agency could not promulgate such a regulation nor adopt a policy regulating the subject under the prohibition of this section and KRS 13A.130. OAG 88-15, 1988 Ky. AG LEXIS 15.

The definition in 201 KAR 23:130(1) (now (2)), which limited the interpretation of philanthropic and nonprofit field service offices to only those agencies which operate on a national or regional basis, went beyond the statutory authority granted to the Board of Examiners of Social Work by the General Assembly. OAG 88-56, 1988 Ky. AG LEXIS 56.

To the extent that former 903 KAR 5:130 Section 2(5)(b) may be interpreted or applied to modify the time for securing judicial relief in the circuit court pursuant to KRS 341.450 then the regulation is null, void, and unenforceable. OAG 90-84, 1990 Ky. AG LEXIS 84.

While certain statutes exist that set residency or voting eligibility requirements for law enforcement officers, none exists for conservation officers, and without statutory authority, the Department of Fish and Wildlife Resources may not impose a residency requirement by policy. OAG 91-172, 1991 Ky. AG LEXIS 172.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Perkins, Petroleum Storage Regulation in Kentucky, 22 N. Ky. L. Rev. 59 (1995).

Elliot, Kentucky's Environmental Self-Audit Privilege: State Protection Or Increased Federal Scrutiny?, 23 N. Ky. L. Rev. 1 (1995).

13A.125. Restrictions on filing subsequent proposed administrative regulation with same number and title.

Prior to the effective date of a proposed administrative regulation, an administrative body shall not file a subsequent proposed administrative regulation with the same number or title unless:

(1) The proposed administrative regulation already filed is withdrawn in accordance with KRS 13A.310; and

(2) A subsequent proposed administrative regulation is filed in accordance with KRS 13A.220.

History.

Enact. Acts 1990, ch. 516, § 2, effective July 13, 1990; 2003, ch. 89, § 7, effective June 24, 2003; 2016 ch. 82, § 9, effective July 15, 2016.

13A.130. Matters prohibited as subject of internal policy, memorandum, or other form of action.

(1) An administrative body shall not by internal policy, memorandum, or other form of action:

(a) Modify a statute or administrative regulation;

(b) Expand upon or limit a statute or administrative regulation; or

(c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky, or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.

(2) Any administrative body memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.

(3) This section shall not be construed to prohibit an administrative body issuing an opinion or administrative decision that is authorized by statute.

History.
Enact. Acts 1984, ch. 417, § 13, effective April 13, 1984; 2016 ch. 82, § 10, effective July 15, 2016.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Construction With Other Law.
3. Reliance on Established Practice.
4. Internal Policy Void.
5. Parole.

1. Purpose.
This was simply a statute designed to enable the board to establish rules of procedure, not to publish regulations; therefore, minimum standards of practice adopted internally were not authorized by statute and could not be used as a basis to suspend surveyor. Kerr v. Kentucky State Bd. of Registration for Professional Engineers & Land Surveyors, 797 S.W.2d 714, 1990 Ky. App. LEXIS 155 (Ky. Ct. App. 1990).

A warden's memorandum to staff and inmates clarifying that canteen receipts for perishable items were to be retained for 60 days in order to avoid confiscation thereof was a reasonable "housekeeping" measure that did not alter the policies collected under 501 KAR 6:020, did not violate KRS 13A.130, and complied with both statutory and administrative law; the memorandum was reasonably related to penological objectives of minimizing hoarding, bartering, and gambling and was within the Department of Corrections authority pursuant to KRS 196.030(1)(a). Vestal v. Motley, 2007 Ky. App. LEXIS 286 (Ky. Ct. App. Aug. 17, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 161 (Ky. Ct. App. Aug. 17, 2007).

2. Construction With Other Law.
The Transportation Cabinet's Form TC94-30 regarding parental consent, made to further enforcement of KRS 159.051, and issued by memorandum, is not impermissible legislating in violation of KRS 13A.130. Codell v. D.F., 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

3. Reliance on Established Practice.
Although this section prohibits an administrative body from modifying an administrative regulation by internal policy or another form of action, where the owner of a retail package liquor license had placed strong reliance on the ABC Board's interpretation of its own regulation, and had followed the established ABC Board practice of filing dormancy extension requests to keep his license in dormant status, it would be unfair and unjust to overrule the ABC Board's decision and rule that the owner had no license to transfer. Hagan v. Farris, 807 S.W.2d 488, 1991 Ky. LEXIS 37 (Ky. 1991).

Even though Kentucky did not recognize promises made by administrative agencies under KRS 13A.130, the Environmental Protection Agency (EPA) was entitled to rely on a commitment letter issued by the state cabinet because the focus was not on the state regulation itself pertaining to antidegradation rules but rather the process that the EPA used to approve the regulations. The EPA used the letter as an interpretation of the cabinet to help its understanding in conducting its approval process, which was not an arbitrary and capricious action. Ky. Waterways Alliance v. Johnson, 426 F. Supp. 2d 612, 2006 U.S. Dist. LEXIS 15689 (W.D. Ky. 2006), aff'd in part and rev'd in part, 540 F.3d 466, 2008 FED App. 333P, 2008 U.S. App. LEXIS 18802 (6th Cir. Ky. 2008).

4. Internal Policy Void.
Kentucky Department of Housing, Buildings and Construction's (DHBC) internal policy was null and void because the DHBC's internal policy was to effectively presume that no one applying for a master plumber's license had any kind of criminal conviction, the DHBC ignored the requirement that the DHBC first make a determination that the convicted felon had been successfully rehabilitated, and an administrative agency could not have by its own internal policy or other form of action limited the effect of a statute. Fisher v. Commonwealth, 403 S.W.3d 69, 2013 Ky. App. LEXIS 88 (Ky. Ct. App. 2013).

5. Parole.
Kentucky Parole Board acted within its authority and within the bounds of its discretionary powers when it denied defendant's request for parole and ordered him to serve out the remainder of his sentence, as the Board's actions did not violate the Separation of Powers under Ky. Const. §§ 27 and 28 because the power to grant parole was a purely executive function pursuant to KRS 13A.130. Simmons v. Commonwealth, 232 S.W.3d 531, 2007 Ky. App. LEXIS 292 (Ky. Ct. App. 2007).

Cited in:
Commonwealth Educ. & Humanities Cabinet Dep't of Educ. v. Gobert, 979 S.W.2d 922, 1998 Ky. App. LEXIS 121 (Ky. Ct. App. 1998); Commonwealth v. EPI Corp., 2006 Ky. App. LEXIS 114 (Ky. Ct. App. 2006); Commonwealth v. Sierra Club, 2008 Ky. App. LEXIS 312 (Ky. Ct. App. 2008); Commonwealth v. McDonald, 304 S.W.3d 62, 2009 Ky. App. LEXIS 50 (Ky. Ct. App. 2009); Ky. Ret. Sys. v. W. Ky. Univ., 640 S.W.3d 62, 2021 Ky. App. LEXIS 93 (Ky. Ct. App. 2021).

OPINIONS OF ATTORNEY GENERAL.

Neither the personnel commissioner nor the personnel board has authority to promulgate a regulation concerning nepotism. Likewise, in the absence of specific statutory authority given to a specific individual agency, such agency could not promulgate such a regulation nor adopt a policy regulating the subject under the prohibition of KRS 13A.120 and this section. OAG 88-15, 1988 Ky. AG LEXIS 15.

13A.140. Administrative regulations presumed valid — Promulgating administrative body to bear burden of proof in court challenge. [Repealed]

History.
Enact. Acts 1984, ch. 417, § 14, effective April 13, 1984; repealed by 2016 ch. 82, § 36, effective July 15, 2016.

13A.150. Specified time for filing.

(1) When any section of this chapter requires that an action be taken at a specified date with regard to filing of items to the Commission and the section does not specify a time deadline, they shall be filed on or before 12 noon, eastern time, on the specified date.

(2) When any section of this chapter requires that an action be taken at a specified date and the specified date falls on a Saturday, Sunday, or holiday, the action shall be taken on or before 12 noon, eastern time, on the working day immediately preceding the Saturday, Sunday, or holiday unless the statute specifies a different deadline.

(3) When any section of this chapter requires that a meeting be held on or before a specified date and the specified date falls on a Saturday, Sunday, or holiday, the meeting shall be held on or before close of business on the working day immediately following the Saturday, Sunday, or holiday.

History.
Enact. Acts 1984, ch. 417, § 15, effective April 13, 1984; 1988, ch. 425, § 5, effective July 15, 1988; 1990, ch. 516, § 19, effective July 13, 1990; 2005, ch. 100, § 4, effective June 20, 2005.

13A.160. Notice of hearing to compiler when hearing is required before filing of administrative regulations — Publication. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 417, § 16, effective April 13, 1984) was repealed by Acts 2012, ch. 138, § 16, effective July 12, 2012.

13A.170. Methods of promulgating administrative regulations.

Three (3) methods of promulgating administrative regulations are authorized:

(1) An ordinary administrative regulation;

(2) An emergency administrative regulation; and

(3) An administrative regulation in contemplation of a statute.

History.
Enact. Acts 1984, ch. 417, § 17, effective April 13, 1984.

13A.180. Ordinary administrative regulation defined.

An ordinary administrative regulation is one that is promulgated in the normal manner by an administrative body and that does not require that it be placed in effect immediately.

History.
Enact. Acts 1984, ch. 417, § 18, effective April 13, 1984; 2016 ch. 82, § 11, effective July 15, 2016.

13A.190. Emergency administrative regulations.

(1) An emergency administrative regulation is an administrative regulation that:

(a) An administrative body can clearly demonstrate, through documentary evidence submitted with the filing of the emergency administrative regulation, must be placed into effect immediately in order to:

1. Meet an imminent threat to public health, safety, welfare, or the environment;

2. Prevent an imminent loss of federal or state funds;

3. Meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law; or

4. Comply with an executive order issued under KRS Chapter 39A; and

(b)1. Is temporary in nature and will expire as provided in this section; or

2. Is temporary in nature and will be replaced by an ordinary administrative regulation as provided in this section. For the purposes of this section, "imminent" means within two hundred seventy (270) days of the filing of the emergency administrative regulation.

(2) An agency's finding of an emergency pursuant to this section shall not be based on the agency's failure to timely process and file administrative regulations through the ordinary administrative regulation process.

(3) An emergency administrative regulation:

(a) Shall become effective and shall be considered as adopted upon filing;

(b) Shall be published in the Administrative Register in accordance with the publication deadline established in KRS 13A.050(3);

(c) Shall be subject to the public comment provisions established in KRS 13A.270 and 13A.280;

(d)1. May be reviewed at a subsequent meeting of a legislative committee after the filing of the emergency administrative regulation; and

2. May, by a vote of the majority of the legislative committee's membership as established by KRS 13A.020(4) and 13A.290(9), be found to be deficient, and the deficiency shall be reported to the Governor pursuant to KRS 13A.330(2); and

(e) May be amended:

1. By the promulgating administrative body after receiving public comments as established in KRS 13A.280. The amended after comments version shall:

a. Become effective upon filing; and

b. Not require a statement of emergency; or

2. At a legislative committee meeting as established in KRS 13A.320. The amendment shall be approved as established by KRS 13A.020(4) or KRS 13A.290(9). The amended version shall become effective upon adjournment of the meeting following the procedures established in KRS 13A.020(4) or 13A.331(1) and (2).

(4)(a) Except as provided by paragraph (b) of this subsection, emergency administrative regulations shall expire two hundred seventy (270) days after the date of filing or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.

(b) If an administrative body extends the time for filing a statement of consideration for an ordinary administrative regulation as provided by KRS 13A.280(2)(b), an emergency administrative regulation shall remain in effect for two hundred seventy (270) days after the date of filing plus the number of days extended under the provisions of KRS 13A.280(2)(b) or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.

(c) Filing an emergency amended after comments administrative regulation shall not affect the expiration of an emergency regulation as established in paragraphs (a) and (b) of this subsection.

(5) Except as established in subsection (6) of this section, an emergency administrative regulation with the same number or title or governing the same subject matter shall not be filed for a period of two hundred seventy (270) days after it has been initially filed.

(6) If an emergency administrative regulation with the same number or title or governing the same subject matter as an emergency administrative regulation filed within the previous two hundred seventy (270) days is

filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency administrative regulation. The detailed explanation shall be included in the statement of emergency required by subsection (7) of this section.

(7) Each emergency administrative regulation shall contain a statement of:

(a) The nature of the emergency;

(b) The reasons why an ordinary administrative regulation is not sufficient;

(c) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;

(d) If the emergency administrative regulation will be replaced by an ordinary administrative regulation, the following statement: "The ordinary administrative regulation (is or is not) identical to this emergency administrative regulation.";

(e) If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the reasons therefor; and

(f) If applicable, the explanation required by subsection (6) of this section.

(8)(a) An administrative body shall attach the:

1. Statement of emergency required by subsection (7) of this section to the front of the original and each copy of a proposed emergency administrative regulation;

2. Public hearing and public comment period information required by KRS 13A.270(2), regulatory impact analysis, tiering statement, federal mandate comparison, fiscal note, summary of material incorporated by reference if applicable, and other forms or documents required by the provisions of this chapter to the back of the emergency administrative regulation; and

3. Documentary evidence submitted justifying the finding of an emergency in accordance with subsection (1) of this section to the back of the emergency regulation if it is:

a. No more than ten (10) pages in length; and

b. Typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches, and single-sided.

Larger volumes of documentary evidence shall be filed in a separate binder, on a CD-ROM or DVD disc, or in a different electronic format approved by the regulations compiler.

(b) An administrative body shall file with the regulations compiler:

1. The original and four (4) copies of the emergency administrative regulation; and

2. At the same time as, or prior to, filing the paper version, an electronic version of the emergency administrative regulation and the attachments required by paragraph (a) of this subsection saved as a single document for each emergency administrative regulation in an electronic format approved by the regulations compiler.

(c)1. Each original emergency administrative regulation shall be single-sided and stapled in the top left corner.

2. One (1) of the copies shall be single-sided and unstapled.

3. The other three (3) copies shall be stapled in the top left corner and may be double-sided.

4. The original and the four (4) copies of each emergency administrative regulation shall be grouped together.

(9) The statement of emergency shall have a two (2) inch top margin. The number of the emergency administrative regulation shall be typed directly below the heading "Statement of Emergency." The number of the emergency administrative regulation shall be the same number as the ordinary administrative regulation followed by an "E."

(10) Each executive department emergency administrative regulation shall be signed by the head of the administrative body and countersigned by the Governor prior to filing with the Commission. These signatures shall be on the statement of emergency attached to the front of the emergency administrative regulation.

(11) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that it will replace.

(12) If an ordinary administrative regulation that was filed to replace an emergency administrative regulation:

(a) Is withdrawn:

1. The emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn; and

2. The administrative body shall inform the regulations compiler of the reasons for withdrawal in writing; or

(b) Expires, the emergency administrative regulation shall expire on the date the ordinary administrative regulation expires pursuant to KRS 13A.315(1).

(13)(a) If an emergency administrative regulation that was intended to be replaced by an ordinary administrative regulation is withdrawn, the emergency administrative regulation shall expire on the date it is withdrawn.

(b) If an emergency administrative regulation has been withdrawn, the ordinary administrative regulation that was filed with it shall not expire unless the administrative body informs the regulations compiler that the ordinary administrative regulation is also withdrawn.

(c) If an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(14) The administrative regulations compiler shall notify all legislative committees of the number, title, and subject matter of all emergency administrative regulations and shall forward any additional information filed about the emergency administrative regulation requested by a legislative committee.

History.

Enact. Acts 1984, ch. 417, § 19, effective April 13, 1984; 1988, ch. 71, § 1, effective July 15, 1988; 1988, ch. 425, § 6, effective July 15, 1988; 1990, ch. 516, § 20, effective July 13, 1990; 1994, ch. 410, § 10, effective July 15, 1994; 1996, ch. 180, § 7,

effective July 15, 1996; 2000, ch. 406, § 7, effective July 14, 2000; 2003, ch. 89, § 8, effective June 24, 2003; 2005, ch. 100, § 5, effective June 20, 2005; 2016 ch. 82, § 12, effective July 15, 2016; 2021 ch. 7, § 4, effective February 2, 2021; 2025 ch. 88, § 3, effective June 27, 2025.

13A.200. Administrative regulation in contemplation of a statute — Procedure.

An administrative regulation in contemplation of a statute provides a means whereby an administrative body may promulgate and file an administrative regulation following the enactment of a statute authorizing or directing its promulgation by the General Assembly and its approval by the Governor or its becoming law without signature but before the effective date subject to the following:

(1) The administrative regulation may be filed any time after signature by the Governor or upon the act becoming law without the Governor's signature but prior to the act's effective date;

(2) The administrative regulation may be reviewed, hearings held, and all other steps taken with regard thereto, except for adoption, prior to the effective date of the statute that authorized or directed its issuance;

(3) All dates and other procedures that apply to an ordinary administrative regulation shall apply to an administrative regulation in contemplation of a statute; and

(4) An administrative regulation in contemplation of a statute shall in all other respects be considered as an ordinary administrative regulation.

History.

Enact. Acts 1984, ch. 417, § 20, effective April 13, 1984; 1994, ch. 410, § 11, effective July 15, 1994; 2016 ch. 82, § 13, effective July 15, 2016.

13A.210. Tiering of administrative regulations.

(1) When promulgating administrative regulations and reviewing existing ones, administrative bodies shall, whenever possible, tier their administrative regulations to reduce disproportionate impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. The tiers, however, shall be based upon reasonable criteria and uniformly applied to an entire class. Administrative bodies shall use any number of tiers that will solve most efficiently and effectively the problem the administrative regulation addresses. A written statement shall be submitted to the Legislative Research Commission explaining why tiering was or was not used.

(2) Administrative bodies may use, but shall not be limited to, the following methods of tiering administrative regulations:

(a) Reduce or modify substantive regulatory requirements;

(b) Eliminate some requirements entirely;

(c) Simplify and reduce reporting and recordkeeping requirements;

(d) Provide exemptions from reporting and recordkeeping requirements;

(e) Reduce the frequency of inspections;

(f) Provide exemptions from inspections and other compliance activities;

(g) Delay compliance timetables;

(h) Reduce, modify, or waive fines or other penalties for noncompliance; and

(i) Address and alleviate special problems of individuals and small businesses in complying with an administrative regulation.

(3) When tiering regulatory requirements, administrative bodies may use, but shall not be limited to, size and nonsize variables. Size variables include number of citizens, number of employees, level of operating revenues, level of assets, and market shares. Nonsize variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations, and level of federal funding.

(4) When modifying tiers, administrative bodies shall monitor, but shall not be limited to, the following variables:

(a) Changing demographic characteristics;

(b) Changes in the composition of the workforce;

(c) Changes in the inflation rate requiring revisions of dollar-denominated tiers;

(d) Changes in market concentration and segmentation;

(e) Advances in technology; and

(f) Changes in legislation.

History.

Enact. Acts 1984, ch. 417, § 21, effective April 13, 1984; 1990, ch. 516, § 21, effective July 13, 1990; 2003, ch. 89, § 9, effective June 24, 2003; 2004, ch. 165, § 4, effective July 13, 2004.

13A.215. Use of administrative regulation management application — Paper-based filing requirements — Notification to the regulations compiler.

(1) An administrative body may use an administrative regulation management application developed and maintained by the Legislative Research Commission, if available, to satisfy the following requirements of this chapter:

(a) Paper-based filing requirements; and

(b) Notifications to the regulations compiler.

(2) If the filing and notification requirements of this chapter are not available in the administrative regulation management application, the administrative body shall use the paper-based process established by this chapter.

(3) Paper-based shall include any procedure in this chapter that requires an administrative body to file or submit a hard copy to the compiler.

History.

2021 ch. 125, § 1, effective June 29, 2021.

13A.220. Compliance with KRS 13A.222 and 13A.224 required — Filing with compiler — Format.

All administrative regulations shall comply with the provisions of KRS 13A.222 and 13A.224.

(1)(a) An administrative body shall file with the regulations compiler:

1. The original and four (4) copies of an administrative regulation; and

2. At the same time as, or prior to, filing the paper version, an electronic version of the administrative regulation and required attachments saved as a single document for each administrative regulation in an electronic format approved by the regulations compiler.

(b) If there are differences between the paper copy and the electronic version of an administrative regulation filed with the regulations compiler, the electronic version shall be the controlling version.

(2)(a) Each original administrative regulation shall be single-sided and stapled in the top left corner.

(b) One (1) of the copies shall be single-sided and unstapled.

(c) The other three (3) copies shall be stapled in the top left corner and may be double-sided.

(d) The original and the four (4) copies of each administrative regulation shall be grouped together.

(3) An amendment to an administrative regulation shall not be made on a copy of the administrative regulation reproduced from the Kentucky Administrative Regulations Service or the Administrative Register. It shall be a typed original in the format specified in subsection (4) of this section.

(4) The format of an administrative regulation shall be as follows:

(a) An administrative regulation shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches and shall be double-spaced through the last line of the body of the administrative regulation. The first page shall have a two (2) inch top margin. The administrative regulation shall be typed in a twelve (12) point font approved by the regulations compiler. The lines on each page shall be numbered, with each page starting with line number one (1). Pages of an administrative regulation and documents attached to the administrative regulation shall be numbered sequentially. Page numbers shall be centered in the bottom margin of each page. Copies of the administrative regulation may be mechanically reproduced;

(b) The regulations compiler shall place a stamp indicating the date and time of receipt of the administrative regulation in the two (2) inch margin on the first page;

(c) The cabinet, department, and division of the administrative body shall be listed on separate double-spaced lines two (2) inches from the top in the upper left hand corner of the first page. This shall be followed on the next double-spaced line by "(New Administrative Regulation)," "(Amendment)," "(Amended After Comments)," "(Repealer)," "(New Emergency Administrative Regulation)," "(Emergency Amendment)," "(Emergency Amended After Comments)," or "(Emergency Repealer)," whichever is applicable;

(d) The notation shall be followed by the number and title of the administrative regulation on the next double-spaced line. The promulgating administrative body shall contact the regulations compiler prior to filing to obtain an administrative regulation number for a new administrative regulation;

(e) On the next double-spaced line following the number and title of an administrative regulation, after the words "RELATES TO:," the administrative body shall list all statutes and other enactments, including any branch budget bills or executive orders, to which the administrative regulation relates or which shall be affected by the administrative regulation. After the words "STATUTORY AUTHORITY:" the administrative body shall list the specific statutes and other enactments, where applicable, authorizing the promulgation of the administrative regulation. Federal statutes and regulations shall be cited in the "RELATES TO:" and "STATUTORY AUTHORITY:" sections as provided by KRS 13A.222(4)(n) and (o); and

(f) Following the citations provided for in paragraph (e) of this subsection, and following the words "NECESSITY, FUNCTION, AND CONFORMITY:" the administrative body shall include a brief statement setting forth the necessity for promulgating the administrative regulation, a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b).

(5) The numbering within the body of an administrative regulation shall be the responsibility of the promulgating body, subject to the authority of the regulations compiler to divide or renumber an administrative regulation. The following format shall be used by the administrative body in the numbering of each administrative regulation. Each section shall begin with the word "Section" followed by an Arabic number, and titles of sections shall be initially capitalized. Subsections shall be designated by an Arabic number in parentheses. Paragraphs shall be designated by lower case letters of the alphabet in parentheses (e.g., (a), (b), (c), etc.). Subparagraphs shall be designated by an Arabic number followed by a period (e.g., 1., 2., etc.). Clauses shall be designated by lower case letters of the alphabet followed by a period (e.g., a., b., c., etc.). Subclauses shall be designated by lower case Roman numerals in parentheses (e.g., (i), (ii), (iii), etc.). A section shall not be divided into subsections, paragraphs, subparagraphs, clauses, or subclauses if there is only one (1) item in that level of division.

(6) After the complete text of an administrative regulation, on the following page, the administrative body shall include the following information:

(a) If a statute requires an administrative body or official to submit an administrative regulation to an official or administrative body for review or approval prior to filing the administrative regulation with the Commission, a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the signature of such official or head; and the date on which such review or approval occurred;

(b) The authorizing signature of the administrative body promulgating the administrative regulation, and the date on which the administrative body approved the promulgation;

(c) Information relating to public hearings and the public comment period required by KRS 13A.270; and

(d) The name, position, mailing address, telephone number, email address, and facsimile number of the contact person of the administrative body. The contact person shall be the person authorized by the head of an administrative body to:

1. Receive information relating to issues raised by the public or by a legislative committee prior to a public meeting of the legislative committee;

2. Negotiate changes in language with a legislative committee in order to resolve such issues; and

3. Answer questions relating to the administrative regulation.

(7) The format for signatures required by subsection (6)(a) and (b) of this section shall be as follows:

(a) The signature shall be placed on a signature line; and

(b) The name and title of the person signing shall be typed immediately beneath the signature line.

(8) Within five (5) working days of filing an administrative regulation, an administrative body shall prominently display on its website:

(a) A notice that an administrative regulation has been filed with the Commission;

(b) A summary of the administrative regulation including:

1. The number of the administrative regulation;

2. The title of the administrative regulation; and

3. A brief explanation of the administrative regulation if new or the changes made if it is an existing administrative regulation;

(c) Information on how to access the administrative regulation on the Commission's website; and

(d) The dates of the public comment period and the place, time, and date of the scheduled public hearing as well as the manner in which interested parties shall submit:

1. Notification of attending the public hearing; and

2. Written comments.

(9)(a) A letter of request, notification, or withdrawal required to be filed with the regulations compiler pursuant to this chapter may be filed electronically if the letter:

1. Is on the administrative body's official letterhead; and

2. Contains the signature of a representative of that administrative body.

(b) Paragraph (a) of this subsection shall not apply to the letters required by KRS 13A.320(2)(b) for amendments at a legislative committee meeting.

History.

Enact. Acts 1984, ch. 417, § 22, effective April 13, 1984; 1988, ch. 425, § 7, effective July 15, 1988; 1990, ch. 516, § 22, effective July 13, 1990; 1994, ch. 387, § 13, effective July 15, 1994; 1994, ch. 410, § 12, effective July 15, 1994; 1996, ch. 180, § 8, effective July 15, 1996; 1996, ch. 330, § 1, effective July 15, 1996; 1998, ch. 38, § 4, effective July 15, 1998; 2000, ch. 406, § 8, effective July 14, 2000; 2003, ch. 89, § 10, effective June 24, 2003; 2005, ch. 100, § 6, effective June 20, 2005; 2012, ch. 138, § 4, effective July 12, 2012; 2016 ch. 82, § 14, effective July 15, 2016; 2021 ch. 7, § 5, effective February 2, 2021; 2025 ch. 88, § 4, effective June 27, 2025; 2025 ch. 101, § 5, effective March 31, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 88 and 101, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

1. Filing of Regulation.

Where Alcoholic Beverage Control Board entered order on December 27th increasing number of retail package liquor licenses for Franklin County by one and at the same time granted applicant a retail package liquor license, such license was void as the order increasing the number of licenses did not become effective until the original and two copies of the order were filed in the Secretary of State's office which filing was not done until January 7th. (Decided under prior law) Shearer v. Dailey, 312 Ky. 226, 226 S.W.2d 955, 1950 Ky. LEXIS 624 (Ky. 1950).

13A.221. Division of subject matter of administrative regulation.

(1) An administrative body shall divide the general subject matter of administrative regulations it promulgates into topics. A separate administrative regulation shall be promulgated for each topic.

(2) An administrative body shall not incorporate all material relating to a general subject matter in one (1) administrative regulation. Material incorporated by reference shall be incorporated by reference in the administrative regulation governing the specific topic to which the material relates.

(3) When an administrative regulation is promulgated, the administrative body shall review the administrative regulation, whether it is new or amended, in its entirety for compliance with the requirements of KRS Chapter 13A and current law governing the subject matter of the administrative regulation.

History.

Enact. Acts 1990, ch. 516, § 12, effective July 13, 1990; 2000, ch. 406, § 9, effective July 14, 2000; 2016 ch. 82, § 15, effective July 15, 2016.

13A.222. Drafting rules.

(1) In a new administrative regulation, there shall be no underlining or bracketing.

(2) In an amendment to an administrative regulation, the new words shall precede the deleted words. The administrative body shall:

(a) Underline all new words; and

(b) Place the deleted words in brackets and strike through these words.

(3)(a) An administrative regulation shall not be amended by reference to a section only. An amendment shall contain the full text of the existing ad-

ministrative regulation being amended. All changes made to the text of the existing administrative regulation shall be marked as required by subsection (2) of this section.

(b) A section of an administrative regulation shall not be reserved for future use.

(4) In drafting administrative regulations, the administrative body shall comply with the following requirements:

(a) The administrative body shall use plain and unambiguous words that are easily understood by laymen. The administrative body shall avoid ambiguous, indefinite, or superfluous words and phrases;

(b) A duty, obligation, or prohibition shall be expressed by "shall" or "shall not." "Should," "could," or "must" shall not be used. The future tense shall not be expressed by the word "shall." A discretionary power shall be expressed by "may";

(c) The words "said," "aforesaid," "hereinabove," "hereinafter," "beforementioned," "whatsoever," or similar words of reference or emphasis shall not be used. Where an article may be used, the administrative body shall not use the word "such." It shall not use the expression "and/or" and shall not separate alternatives with a slash. It shall not use contractions. When a number of items are all mandatory, the word "and" shall be used. When all of a number of items are not mandatory, the word "or" shall be used;

(d) Certain words are defined in the Kentucky Revised Statutes. Where applicable, these definitions shall be used. Definitions appearing in the Kentucky Revised Statutes shall not be duplicated in a proposed administrative regulation. A reference shall be made to the chapters and sections of the Kentucky Revised Statutes in which the definitions appear. The format for this reference shall be: "("Defined term") is defined by KRS (specific citation).";

(e)1. If definitions are used, they shall be placed in alphabetical order in the first section of an administrative regulation or in a separate administrative regulation.

2.a. If definitions are placed in the first section of an administrative regulation, the definitions shall govern only the terms in that administrative regulation.

b. The section shall be titled "Definition." or "Definitions."

c. A definition shall not be included in a definitions section if the defined term is not used in that administrative regulation or the material incorporated by reference in that administrative regulation.

3.a. If definitions are placed in a separate administrative regulation, that administrative regulation shall be the first administrative regulation of the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply.

b. The title of the administrative regulation shall contain the number of the chapter of the Kentucky Administrative Regulations Service to which the definitions apply and shall be in the format: "Definitions for (title number) KAR Chapter (chapter number)."

c. A definition shall not be included in a definitions administrative regulation if the defined term is not used in an administrative regulation in that specific chapter or the material incorporated by reference in an administrative regulation in that chapter.

4. In the text of an administrative regulation, the word defined in the definitions section, rather than the definition, shall be used.

5. Definitions shall be used only:

a. When a word is used in a sense other than its dictionary meaning, or is used in the sense of one of several dictionary meanings;

b. To avoid repetition of a phrase; or

c. To limit or extend the provisions of an administrative regulation.

6. Definitions shall not establish requirements or standards;

(f) If a word has the same meaning as a phrase, the word shall be used;

(g) The present tense and the indicative mood shall be used. Conditions precedent shall be stated in the perfect tense if their happening is required to be completed;

(h) The same arrangement and form of expression shall be used throughout an administrative regulation, unless the meaning requires variations;

(i) If" or "except" shall be used rather than "provided that" or "provided, however." "If" shall be used to express conditions, rather than the words "when" or "where";

(j) A word importing the masculine gender may extend to females. A word importing the singular number may extend to several persons or things;

(k) Any reference in an administrative regulation to "medical doctor," "M.D.," or "physician" shall be deemed to include a doctor of osteopathy or D.O., unless either of those terms is specifically excluded;

(*l*) An administrative body shall use the phrases specified in this subsection:

Do Not Use:	Use:
And/or	"and" for a conjunctive "or" for a disjunctive
Any and all	either word
As provided in this administrative regulation	——
And the same hereby is	is
Either directly or indirectly	——
Except where otherwise provided	State specific exemption.
Final and conclusive	final
Full force and effect	force or effect
In the event that; In case	if
Including but not limited to	State the specific items to be included.
Is authorized; Is empowered	may
Is defined and shall be construed to mean	means
Is hereby required to	shall
It shall be lawful	may
Latin words	Do not use unless medical or scientific terminology. However, "et seq." may be used for citations.
Null and void and of no effect	void

Order and direct	either word
Provision of law	law
Until such time as	until
Whenever	if;

(m)1. Unless the authority for an administrative regulation is an appropriation provision that is not codified in the Kentucky Revised Statutes, the specific chapter and section number of the Kentucky Revised Statutes authorizing the promulgation of an administrative regulation shall be cited.

2.a. If an act has not been codified in the Kentucky Revised Statutes at the time an administrative regulation is promulgated, or if the authority is any branch budget bill, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), sec. (section number)." When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation in writing. Upon receipt of the written notice, the regulations compiler shall correct the citation.

b. For acts of extraordinary sessions, the citation shall be as follows: "(year) (Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)." If there is more than one (1) extraordinary session of the General Assembly in the year, the citation shall specify the specific extraordinary session, as follows: "(year) (2d Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)."

3. When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing. Upon receipt of the written notice, the regulations compiler shall correct the citation.

4. If the statutory authority is an appropriation act, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), Part (part and subpart numbers)."

5. If the authority is an executive order, the citation shall be as follows: "EO (year executive order issued)-(number of executive order);

(n) If the statutory authority is a federal statute, the citation shall be the:

1. United States Code (U.S.C.), if it has been codified; or

2. Public Law (Pub. L.) and official session laws, if it has not been codified;

(o)1. If the statutory authority is a federal regulation codified in the Code of Federal Regulations, the citation shall include the title, part, and section number, as follows: "(title number) C.F.R. (part and section number)."

2.a. If the statutory authority is a federal regulation that has not been codified in the Code of Federal Regulations, the citation shall be to the Federal Register, as follows: "(volume number) Fed. Reg. (page number) (effective date of the federal regulation) (section of Code of Federal Regulations in which it will be codified)."

b. When the federal regulation is codified, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.

3.a. If the statutory authority is a federal regulation that has been amended, and the amendment is not reflected in the current issue date of the volume of the Code of Federal Regulations in which the federal regulation is codified, the citation shall be to the Federal Register as follows: "(federal regulation that has been amended), (volume number) Fed. Reg. (page number) (effective date of the amendment)."

b. When the amendment is codified in the appropriate volume of the Code of Federal Regulations, the citation shall be amended to read as provided by subparagraph 1. of this paragraph;

(p) Citations of items in the "RELATES TO" paragraph of an administrative regulation shall comply with paragraphs (m), (n), and (o) of this subsection; and

(q) An administrative regulation may cite the popular name of a federal or state law if the first usage of the popular name in that administrative regulation is accompanied by the citation required by this subsection.

History.

Enact. Acts 1988, ch. 425, §§ 1, 2, effective July 15, 1988; 1990, ch. 516, § 23, effective July 13, 1990; 1994, ch. 387, § 14, effective July 15, 1994; 1994, ch. 410, § 13, effective July 15, 1994; 1996, ch. 180, § 9, effective July 15, 1996; 2000, ch. 406, § 10, effective July 14, 2000; 2005, ch. 100, § 7, effective June 20, 2005; 2011, ch. 73, § 1, effective June 8, 2011; 2012, ch. 138, § 5, effective July 12, 2012; 2016 ch. 82, § 16, effective July 15, 2016.

NOTES TO DECISIONS

Cited in:

AK Steel Corp. v. Commonwealth, 87 S.W.3d 15, 2002 Ky. App. LEXIS 1921 (Ky. Ct. App. 2002).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions, 11 KAR 3:001.

13A.224. General requirements for incorporation by reference.

No material shall be incorporated by reference unless:

(1) The material incorporated by reference relates only to the specific subject matter governed by an administrative regulation;

(2) The material has been reviewed in detail by the administrative body;

(3) No state statute or federal law prescribes the same or similar procedure, or sets forth a comprehensive scheme of regulation of the subject matter; and

(4) Its incorporation is necessary in order to:

(a) Implement, interpret, or prescribe law or policy authorized or required by statute; or

(b) Establish or describe the organization, procedure, or practice requirements authorized or required by statute.

History.

Enact. Acts 1988, ch. 425, § 3, effective July 15, 1988; 1990,

ch. 516, § 24, effective July 13, 1990; 2016 ch. 82, § 17, effective July 15, 2016.

13A.2245. Incorporation of code or uniform standard by reference.

(1) An administrative body may incorporate by reference a code or uniform standard if a federal or state statute:

(a) Requires or authorizes an administrative body to implement, or a regulated entity to comply with, the provisions of that code or uniform standard; and

(b) Does not set forth the code or uniform standard, or a comprehensive scheme of regulation.

(2) If a code or uniform standard is changed by the administrative body, the administrative body shall:

(a) Clearly state the provisions in the body of the administrative regulation that are different than those included in the code or uniform standard; and

(b) File with the regulations compiler a:

1. Copy of the code or uniform standard;

2. Summary listing the pages upon which changes have been made; and

3. Detailed summary of the changes and their effect.

The summaries shall be attached to the back of the proposed administrative regulation.

(3) If a federal regulation requires an administrative body to adopt, develop, or implement material of a scientific or technical nature that does not lend itself to the format requirements of KRS Chapter 13A, the administrative body may incorporate the material by reference in an administrative regulation as provided by KRS 13A.2251 and 13A.2255.

History.

Enact. Acts 1990, ch. 516, § 6, effective July 13, 1990; 2000, ch. 406, § 11, effective July 14, 2000; 2005, ch. 100, § 8, effective June 20, 2005; 2012, ch. 138, § 6, effective July 12, 2012.

13A.2251. Information required in administrative regulation when incorporating material by reference.

(1) An administrative body shall incorporate material by reference in the last section of an administrative regulation. This section shall include:

(a) The title of the material incorporated by reference placed in quotation marks, followed by the edition date of the material;

(b) Information on how the material may be obtained; and

(c) A statement that the material is available for public inspection and copying, subject to copyright law, at the main, regional, or branch offices of the administrative body, and the address and office hours of each. Following the required statement, the administrative body shall include information that states the administrative body's website address or telephone number or that provides contact information for other sources that may have the material available to the public.

(2) The section incorporating material by reference shall be titled "Incorporation by Reference".

(a) If only one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "(name and edition date of material incorporated) is incorporated by reference."

(b) If more than one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "The following material is incorporated by reference: (a) (name and edition date of first item incorporated); and (b) (name and edition date of second item incorporated)."

(c) The second subsection of the section incorporating material by reference shall include the following statement: "This material may be inspected, copied, or obtained, subject to applicable copyright law, at (name of administrative body, full address), Monday through Friday, (state the regular office hours)."

(3) A summary of the incorporated material shall be attached to an administrative regulation that incorporates material by reference. This summary shall include:

(a) The name and edition date of each item incorporated by reference;

(b) An explanation of each item and its intended use; and

(c) The total number of pages incorporated by reference.

(4)(a) One (1) copy of the material incorporated by reference shall be filed with the regulations compiler when the administrative regulation is filed, and:

1. For material incorporated by reference that was developed by the promulgating administrative body:

a. The material incorporated by reference shall be prominently displayed on the administrative body's website; and

b. The Uniform Resource Locator (URL) of the address where the material may be directly viewed on the agency's website shall be included in the body of the administrative regulation; or

2. For material incorporated by reference that is subject to a valid copyright owned by a third party not controlled by the promulgating administrative body, the material shall be referenced by providing sufficient information to assist in locating the material from the third party, including the ISBN if available.

(b) Material incorporated by reference shall be placed in a binder, attached to the back of the administrative regulation, filed on a CD-ROM or DVD, or filed in a different electronic format approved by the regulations compiler.

1. If the material is placed in a binder, the administrative body shall indicate, on the front binder cover and on the first page of the material incorporated by reference, the:

a. Number of the administrative regulation to which the material incorporated by reference pertains;

b. Date on which it is filed; and

c. Citation of each item that is included in the binder.

2. The material incorporated by reference may be attached to the back of the administrative regulation if it is:

a. No more than ten (10) pages in length; and

b. Typewritten on white paper, size eight and one-half (8 1/2) by eleven (11) inches, and single-sided.

3. The material incorporated by reference may be filed on a CD-ROM or DVD disc if the material is saved in Adobe Portable Document Format (PDF). The administrative body shall indicate on the disc and the disc's storage case the:

a. Number of the administrative regulation to which the material incorporated by reference pertains;

b. Date on which it is filed; and

c. Citation of each item that is included on the disc.

(c) If the same material is incorporated by reference in more than one (1) administrative regulation, an administrative body may file one (1) copy of the material in a binder, on a CD-ROM or DVD disc, or in a different electronic format approved by the regulations compiler. The numbers of the administrative regulations in which the material is incorporated by reference shall be indicated with the other information as required by paragraph (b) of this subsection.

History.

Enact. Acts 1990, ch. 516, § 7, effective July 13, 1990; 1994, ch. 410, § 14, effective July 15, 1994; 1996, ch. 180, § 10, effective July 15, 1996; 1998, ch. 38, § 5, effective July 15, 1998; 2000, ch. 406, § 12, effective July 14, 2000; 2005, ch. 100, § 9, effective June 20, 2005; 2016 ch. 82, § 18, effective July 15, 2016; 2021 ch. 7, § 6, effective February 2, 2021; 2025 ch. 88, § 5, effective June 27, 2025.

13A.2255. Amendment of material previously incorporated by reference.

(1) When an administrative body amends material that had been previously incorporated by reference, the amendment shall be accomplished by submission of:

(a) An amendment to the administrative regulation with a new edition date for the material incorporated by reference. The amendment shall be filed in accordance with:

1. KRS 13A.220 to initiate a change in an existing administrative regulation;

2. KRS 13A.280 to amend a proposed administrative regulation as a result of the hearing or written comments received; or

3. KRS 13A.320 to amend a proposed administrative regulation at a legislative committee meeting;

(b) An entire new document in which the amendments have been made but are not reflected in the manner specified in KRS 13A.222(2), and:

1. If the new document has been developed by the promulgating administrative body, the entire document shall be displayed prominently on the administrative body's website and the Uniform Resource Locator (URL) of the address where the material may be directly viewed on the agency's website shall be included in the body of the administrative regulation; or

2. If any materials incorporated by reference are subject to a valid copyright owned by a third party not controlled by the promulgating administrative body, the material shall be referenced by providing sufficient information to assist in locating the material from the third party, including the ISBN if available;

(c) A summary of the amended material. This summary shall:

1. Include the name and edition date of each item incorporated by reference, an explanation of each item's changes and their effect, and the total number of pages incorporated by reference; and

2. Be attached to the back of the administrative regulation or, if part of an amendment pursuant to KRS 13A.320, to the amendment submitted for the legislative committee meeting; and

(d) The page or pages of any document developed by the promulgating administrative body in which changes have been made, with the changes accomplished in the manner specified in KRS 13A.222(2). Notwithstanding KRS 13A.040(6), the regulations compiler shall not be required to keep these marked copies once the administrative regulation has been adopted or withdrawn.

(2)(a) If the changes to the material incorporated by reference are technical in nature and authorized by KRS 13A.040(10) or 13A.312, the administrative body may submit to the regulations compiler a copy of the revised material incorporated by reference and a detailed letter explaining what changes are made and the reason for the changes.

(b) If the regulations compiler determines that the requested change does not affect the substance of the material incorporated by reference and that the change is authorized by KRS 13A.040(10) or 13A.312, the edition date stated in the administrative regulation shall be changed to match the edition date on the revised material and the history line of that administrative regulation shall note that a technical amendment was made.

(c) If the requested change affects the substance of the material incorporated by reference or is not authorized by KRS 13A.040(10) or 13A.312, the administrative body shall comply with subsection (1) of this section.

History.

Enact. Acts 1990, ch. 516, § 8, effective July 13, 1990; 1994, ch. 410, § 15, effective July 15, 1994; 2000, ch. 406, § 13, effective July 14, 2000; 2005, ch. 100, § 10, effective June 20, 2005; 2012, ch. 138, § 7, effective July 12, 2012; 2016 ch. 82, § 19, effective July 15, 2016; 2021 ch. 7, § 7, effective February 2, 2021; 2025 ch. 88, § 6, effective June 27, 2025.

13A.2261. Federal statutes and regulations not to be incorporated by reference.

Federal statutes and regulations shall not be incorporated by reference. If applicable, they shall be cited in the "RELATES TO" and "STATUTORY AUTHORITY" references in a proposed administrative regulation.

History.

Enact. Acts 1990, ch. 516, § 9, effective July 13, 1990; 2005, ch. 100, § 11, effective June 20, 2005.

13A.2264. Incorporation by reference of federal regulation — Prohibitions. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1990, ch. 516, § 10, effective July 13, 1990; 1998, ch. 38, § 11, effective July 15, 1998) was repealed by Act 2005, ch. 100, § 24, effective June 20, 2005.

13A.2267. Certain federal regulations prohibited from incorporation — Procedure for submission of federal regulations. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1990, ch. 516, § 11, effective July 13, 1990; 1998, ch. 38, § 12, effective July 15, 1998) was repealed by Act 2005, ch. 100, § 24, effective June 20, 2005.

13A.230. Other material to be filed with and e-mailed to compiler.

(1) The administrative body shall attach the following forms to the back of the original and each copy of an administrative regulation:

(a) Regulatory impact analysis as required by KRS 13A.240;

(b) Tiering statement as required by KRS 13A.210;

(c) Fiscal note as required by KRS 13A.250;

(d) Federal mandate comparison, if applicable, as required by KRS 13A.245; and

(e) The summaries provided for in KRS 13A.2245, 13A.2251, or 13A.2255, if applicable.

(2) The forms required by subsection (1) of this section shall be obtained from the regulations compiler.

(3) The electronic version of an administrative regulation and the attachments required by subsection (1) of this section shall be sent by e-mail to the regulations compiler in a single document at the same time as, or prior to, filing the paper version in accordance with KRS 13A.190, 13A.220, or 13A.280 in an electronic format approved by the regulations compiler.

History.

Enact. Acts 1984, ch. 417, § 23, effective April 13, 1984; 1986, ch. 89, § 7, effective July 15, 1986; 1988, ch. 425, § 8, effective July 15, 1988; 1990, ch. 516, § 25, effective July 13, 1990; 1994, ch. 410, § 16, effective July 15, 1994; 2003, ch. 89, § 11, effective June 24, 2003; 2005, ch. 100, § 12, effective June 20, 2005; 2012, ch. 138, § 8, effective July 12, 2012; 2016 ch. 82, § 20, effective July 15, 2016.

13A.240. Regulatory impact analysis.

(1) Every administrative body shall prepare and submit to the Legislative Research Commission an original and four (4) duplicate copies of a regulatory impact analysis for every administrative regulation when it is filed with the Commission. The regulatory impact analysis shall include the following information:

(a) The number of the administrative regulation;

(b) The name, email address, and telephone number of the contact person of the administrative body identified pursuant to KRS 13A.220(6)(d), and, if applicable, the name, email address, and telephone number of an alternate person to be contacted with specific questions about the regulatory impact analysis;

(c) A brief narrative summary of:

1. What the administrative regulation does;

2. The necessity of the administrative regulation;

3. How the administrative regulation conforms to the content of the authorizing statutes; and

4. How the administrative regulation currently assists or will assist in the effective administration of the statutes;

(d) If this is an amendment to an existing administrative regulation, a brief narrative summary of:

1. How the amendment will change the existing administrative regulation;

2. The necessity of the amendment to the administrative regulation;

3. How the amendment conforms to the content of the authorizing statutes; and

4. How the amendment to the administrative regulation will assist in the effective administration of the statutes;

(e) At least three (3) subject index headings reflecting the content of the administrative regulation selected from a list provided by the regulations compiler;

(f) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation;

(g) An analysis of how the entities referenced in paragraph (f) of this subsection will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation. The analysis shall include but not be limited to:

1. A detailed explanation of the actions the entities referenced in paragraph (f) of this subsection will be required to undertake in order to comply with the proposed administrative regulation;

2. An estimate of the costs imposed on entities referenced in paragraph (f) of this subsection in order to comply with the proposed administrative regulation; and

3. The benefits that may accrue to the entities referenced in paragraph (f) of this subsection as a result of compliance;

(h) An estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis;

(i) Whether the administrative regulation or amendment implements legislation from the previous five (5) years, and if so:

1. The bill number and year; or

2. The Kentucky Acts chapter and year;

(j) The source of the funding to be used for the implementation and enforcement of the administrative regulation or amendment;

(k) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation;

(*l*) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees; and

(m) The tiering statement required by KRS 13A.210.

(2) The Legislative Research Commission shall review all regulatory impact analyses submitted by all administrative bodies, and may require any administrative body to submit background data upon which the information required by subsection (1) of this section is based, and an explanation of how the data was gathered.

History.

Enact. Acts 1984, ch. 417, § 24, effective April 13, 1984; 1994, ch. 410, § 17, effective July 15, 1994; 2000, ch. 406, § 14, effective July 14, 2000; 2005, ch. 100, § 13, effective June 20, 2005; 2006, ch. 166, § 1, effective July 12, 2006; 2016 ch. 82, § 21, effective July 15, 2016; 2025 ch. 88, § 7, effective June 27, 2025.

13A.245. Agencies to prepare a federal mandate analysis comparing proposed state regulatory standards to federal standards — Relationship between state administrative regulation and federal law or regulation governing a subject matter.

(1)(a) When promulgating administrative regulations and amending existing administrative regulations in response to a federal mandate, an administrative body shall compare its proposed compliance standards with any minimum or uniform standards suggested or contained in the federal mandate.

(b) Such a comparison shall include, in detail, a written determination by the administrative body on whether the proposed state administrative regulation will impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate.

(c) If the administrative body determines that the proposed state administrative regulation imposes additional requirements or responsibilities on the regulated entities than is required by the federal mandate, the administrative body shall include in its comparison analysis a written statement justifying the imposition of stricter standards, requirements, or responsibilities.

(2)(a) Except as provided by paragraph (b) of this subsection, an administrative regulation shall conform to a federal law or regulation governing a subject matter if an administrative body is:

1. Not required by federal law or regulation to promulgate an administrative regulation to comply with a federal law or regulation governing the subject matter; and

2. Required or authorized by state law to promulgate an administrative regulation governing the subject matter.

(b) If the administrative regulation is more stringent than or otherwise differs from the federal law or regulation governing the subject matter, the administrative body shall state in detail in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph of the administrative regulation the manner in which it is more stringent than or otherwise differs from the federal law or regulation, and the reasons therefor.

History.

Enact. Acts 1986, ch. 89, § 8, effective July 15, 1986; 1996, ch. 330, § 2, effective July 15, 1996.

13A.250. Consideration of costs to local and state government and to regulated entities — Fiscal note.

(1) An administrative body that promulgates an administrative regulation shall consider the cost that the administrative regulation may cause state or local government and regulated entities to incur.

(2)(a) A two (2) part cost analysis shall be completed for each administrative regulation.

(b) The first part of the cost analysis shall include the projected cost or cost savings to the Commonwealth of Kentucky and each of its affected agencies, and the projected cost or cost savings to affected local governments, including cities, counties, fire departments, and school districts.

(c) The second part of the cost analysis shall include the projected cost or cost savings to the regulated entities affected by the administrative regulation.

(d) Agencies or entities affected by the administrative regulation may submit comments in accordance with KRS 13A.270(1) to the promulgating administrative body or to a legislative committee reviewing the administrative regulation.

(3) Each administrative body that promulgates an administrative regulation shall prepare and submit with the administrative regulation a fiscal note. The fiscal note shall state:

(a) The number of the administrative regulation;

(b) The name, email address, and telephone number of the contact person of the administrative body identified pursuant to KRS 13A.220(6)(d), and, if applicable, the name, email address, and telephone number of an alternate person to be contacted with specific questions about the fiscal note;

(c) Each unit, part, or division of state or local government the administrative regulation will affect;

(d) Whether the administrative regulation was expressly authorized by an act of the General Assembly, and if so, identification of the act;

(e) In detail, the aspect or service of state or local government to which the administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation;

(f) The estimated effect of the administrative regulation on the expenditures and revenues of a state or local government agency or regulated entity for the first full year the administrative regulation will be in effect and any subsequent year the administrative regulation will be in effect. The administrative body shall provide a narrative to explain the fiscal impact of the administrative regulation and the methodology and resources it used to determine the fiscal impact; and

(g)1. The conclusion of the promulgating administrative body as to whether the administrative regulation will have a major economic impact on state and local government and regulated entities

for the first full year the administrative regulation will be in effect and for subsequent years if different; and

2. An explanation of the methodology and resources used by the administrative body to reach this conclusion.

(4) If an administrative body files an amendment to an administrative regulation pursuant to KRS 13A.320(3) for a legislative committee meeting, the administrative body shall:

(a) Consider the cost of the amendment as established in subsection (2) of this section; and

(b) Prepare and submit a fiscal note as established in subsection (3) of this section.

(5) Any administrative body may request the advice and assistance of the Commission in the preparation of the fiscal note.

History.

Enact. Acts 1984, ch. 417, § 25, effective April 13, 1984; 1994, ch. 410, § 18, effective July 15, 1994; 2003, ch. 89, § 12, effective June 24, 2003; 2006, ch. 166, § 2, effective July 12, 2006; 2006, ch. 197, § 1, effective July 12, 2006; 2012, ch. 138, § 9, effective July 12, 2012; 2016 ch. 82, § 22, effective July 15, 2016; 2021 ch. 7, § 8, effective February 2, 2021; 2022 ch. 207, § 2, effective April 14, 2022; 2023 ch. 122, § 11, effective March 15, 2024; 2025 ch. 88, § 8, effective June 27, 2025; 2025 ch. 101, § 6, effective March 31, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 88 and 101. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 101, which was last enacted by the General Assembly, prevails under KRS 446.250.

(4/14/2022). This statute was amended by 2022 Ky. Acts ch. 207, sec. 2. Under Section 5 of that Act, the Act shall be known and may be cited as the Kentucky REINS Act, or the Kentucky Regulations from the Executive in Need of Scrutiny Act.

13A.255. Notice of ordinary administrative regulation proposing to establish or increase fees.

(1)(a) Within five (5) working days of filing an emergency or ordinary administrative regulation that would establish or increase fees, except those fees exempted by KRS 13A.100(3), an administrative body shall mail or email a notice containing the information required by subsection (2) of this section, to each state association, organization, or other body representing a person or entity affected by the administrative regulation.

(b) If an emergency administrative regulation is filed with an identical ordinary administrative regulation, the administrative body may include both administrative regulations in the same notice.

(2) The notice shall include the following information:

(a) The name of the administrative body that filed the administrative regulation;

(b) A statement that the administrative body has promulgated an administrative regulation that establishes or increases fees;

(c) A summary of the administrative regulation that includes:

1. The amount of each fee being established;

2. The amount of any increases to any fees previously established; and

3. The necessity for the establishment or increase in the fees;

(d) A statement that a person or entity may contact the administrative body for additional information;

(e) The time, date, and place of the scheduled public hearing;

(f) The deadline for submitting written comments as established in KRS 13A.270(1)(c); and

(g) The name, mailing address, email address, and telephone number of the contact person for the administrative body identified pursuant to KRS 13A.220(6)(d).

History.

Enact. Acts 2000, ch. 406, § 1, effective July 14, 2000; 2005, ch. 100, § 14, effective June 20, 2005; 2012, ch. 138, § 10, effective July 12, 2012; 2016 ch. 82, § 23, effective July 15, 2016; 2025 ch. 88, § 9, effective June 27, 2025.

13A.270. Public hearing and comments — Notice — Communication by email regarding administrative regulations — When notification of regulations compiler required — Effect of failure to timely notify regulations compiler.

(1)(a) In addition to the public comment period required by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (7) of this section, hold a hearing, open to the public, on the administrative regulation.

(b) The public hearing for an:

1. Ordinary administrative regulation shall not be held before the twenty-first day or after the last workday of the month following the month in which the administrative regulation is published in the Administrative Register; or

2. Emergency administrative regulation shall not be held before the twenty-first day or after the last workday of the month in which the administrative regulation is published in the Administrative Register.

Nothing in this paragraph shall preclude the administrative body from holding additional public hearings in addition to the hearing mandated in subparagraph 1. or 2. of this paragraph.

(c) The administrative body shall accept written comments regarding the administrative regulation during the comment period. The comment period shall begin on the date the administrative regulation is filed with the regulations compiler and:

1. For an ordinary administrative regulation, shall run until 11:59 p.m. on the last day of the calendar month following the month in which the administrative regulation was published in the Administrative Register; or

2. For an emergency administrative regulation, shall run until 11:59 p.m. on the last day of the calendar month in which the administrative regulation is published in the Administrative Register.

(2) Each administrative regulation shall state:

(a) The place, time, and date of the scheduled public hearing;

(b) The manner in which interested persons shall submit their:

1. Notification of attending the public hearing; and

2. Written comments;

(c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing;

(d) The deadline for submitting written comments regarding the administrative regulation in accordance with subsection (1)(c) of this section; and

(e) The name, position, mailing address, email address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.

(3)(a) A person who wishes to be notified that an administrative body has filed an administrative regulation shall:

1. Contact the administrative body by telephone or written letter to request that the administrative body send the information required by paragraph (d) or (e) of this subsection to the person; or

2. Complete an electronic registration form located on a centralized state government website developed and maintained by the Commonwealth Office of Technology pursuant to subsection (13) of this section.

(b) A registration submitted pursuant to paragraph (a) of this subsection shall:

1. Indicate whether the person wishes to receive notification regarding:

a. All administrative regulations promulgated by an administrative body; or

b. Each administrative regulation that relates to a specified subject area. The subject areas shall be provided by the administrative bodies and shall be listed on the centralized state government website in alphabetical order;

2. Include a request for the person to provide an email address in order to receive regulatory information electronically;

3. Be valid for a period of four (4) years from the date the registration is submitted, or until the person submits a written request to be removed from the notification list, whichever occurs first; and

4. Be transmitted to the promulgating administrative body, if the registration was made through the centralized state government website.The collected email addresses shall be used solely for the purposes of this subsection and shall not be sold, transferred, or otherwise made available to third parties, other than the promulgating administrative body.

(c) An administrative body that promulgates administrative regulations shall:

1. Request that the Commonwealth Office of Technology add it to the centralized state government website if the administrative body is not already included;

2. Maintain a list of registrations transmitted to the body pursuant to paragraph (b)4. of this subsection;

3. Establish a method to transfer the registrations if there are personnel changes or other disruptions; and

4. Communicate updates to subject areas and contact persons to the Commonwealth Office of Technology as needed.

(d) A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), shall be emailed by the administrative body:

1. To every person who has:

a. Registered pursuant to paragraph (a) of this subsection; and

b. Provided an email address as part of the registration request;

2. Within five (5) working days after the date the administrative regulation is filed with the Commission; and

3. With a request from the administrative body that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation.

(e) Within five (5) working days after the date the administrative regulation is filed with the Commission, the administrative body shall mail the following information to every person who has registered pursuant to paragraph (a) of this subsection but did not provide an email address:

1. A cover letter from the administrative body requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation;

2. A copy of the regulatory impact analysis required by KRS 13A.240 completed in detail sufficient to put the individual on notice as to the specific contents of the administrative regulation, including all proposed amendments to the administrative regulation; and

3. A statement that a copy of the administrative regulation may be obtained from the Commission's website, which can be accessed on-line through public libraries or any computer with internet access. The Commission's website address shall be included in the statement.

(4)(a) If small business may be impacted by an administrative regulation, the administrative body shall email a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), to the chief executive officer of the Commission on Small Business Innovation and Advocacy within five (5) working days after the date the administrative regulation is filed with the Commission.

(b) The email shall include a request from the administrative body that the Commission on Small Business Innovation and Advocacy review the administrative regulation in accordance with KRS 11.202(1)(e) and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report shall be filed with the regulations compiler.

(c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to the Commission on Small Business Innovation and Advocacy, unless its chief executive officer requested a copy pursuant to KRS 13A.280(8).

(5)(a) If a local government may be impacted by an administrative regulation, the administrative body shall send, by email if the local government has an email address, a copy of the administrative regulation as filed and all attachments required by KRS 13A.230(1) to each impacted local government in the state within five (5) working days after the date the administrative regulation is filed with the Commission. If the local government does not have an email address, the material shall not be sent.

(b) The email shall include a request from the administrative body that the local government review the administrative regulation in the same manner as would the Commission on Small Business Innovation and Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report or comments shall be filed with the regulations compiler.

(c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to a local government, unless its contact person requested a copy pursuant to KRS 13A.280(8).

(6) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.

(7) The administrative body shall immediately notify the regulations compiler by letter if:

(a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; and

(b) No written comments have been received by the close of the last day of the public comment period.

(8)(a)1. Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by letter that the public hearing shall be held.

2. If the public hearing is held but no comments are received during the hearing, the administrative body shall notify the regulations compiler by letter that the public hearing was held and that no comments were received.

(b) Upon receipt of written comments, the administrative body shall notify the regulations compiler by letter that written comments have been received.

(9)(a) If the notifications required by subsections (7) and (8) of this section are not received by the regulations compiler by close of business on the second workday of the calendar month following the end of the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(b) A filed administrative regulation that is deferred under this subsection due to failure to timely notify the regulations compiler may still be placed on the subcommittee's agenda for informational review pursuant to KRS 13A.030(3) or (4).

(c) If a filed administrative regulation is placed on the agenda pursuant to paragraph (b) of this subsection, the full review of the filed administrative regulation shall still be deferred in accordance with this subsection.

(10) The notifications required by subsections (7) and (8) of this section shall be made by letter. The letter may be sent by email if the administrative body uses an electronic signature and letterhead for the emailed document.

(11) Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (6) of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.

(12) Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

(13) The centralized state government website that provides for the notification of the filing of administrative regulations and amendments to existing administrative regulations shall provide:

(a) The electronic registration notification form required by subsection (3)(a) of this section;

(b) Up-to-date contact information and subject areas for promulgating administrative bodies; and

(c) A form or contact information for an administrative body to:

1. Request to be added to the website if not already included; and

2. Add or change its subject areas and contact persons published on the website.

History.

Enact. Acts 1984, ch. 417, § 27, effective April 13, 1984; 1988, ch. 425; § 9, effective July 15, 1988; 1994, ch. 410, § 19, effective July 15, 1994; 1996, ch. 180, § 11, effective July 15, 1996; 2003, ch. 89, § 13, effective June 24, 2003; 2004, ch. 165, § 5, effective July 13, 2004; 2005, ch. 100, § 15, effective June 20, 2005; 2006, ch. 166, § 3, effective July 12, 2006; 2012, ch. 138, § 11, effective July 12, 2012; 2016 ch. 82, § 24, effective July 15, 2016; 2021 ch. 7, § 9, effective February 2, 2021; 2021 ch. 185, § 98, effective June 29, 2021; 2025 ch. 2, § 3, effective February 25, 2025; 2025 ch. 88, § 10, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 88. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 88, which was last enacted by the General Assembly, prevails under KRS 446.250.

(6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory

references to agencies and officers whose names have been changed in the 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

(7/13/2004). In subsection (1)(a) of this statute, a reference to "subsection (5) of this section" has been changed to read "subsection (7) of this section." When the statute was amended in 2004 Ky. Acts ch. 165, sec. 5, the subsections were renumbered, but the reference to subsection (5) was not changed to conform. The Reviser of Statutes has made the conforming change under the authority of KRS 7.136.

13A.280. Statement of consideration — Amendment — Format — Information required — Publication.

(1) Following the last day of the comment period, the administrative body shall give consideration to all comments received at the public hearing and all written comments received during the comment period, including:

(a) Any report filed by the Commission on Small Business Innovation and Advocacy in accordance with KRS 11.202(1)(e) and 13A.270(4), or by a local government in accordance with KRS 11.202(1)(e) and 13A.270(5); and

(b) Any comments regarding the administrative regulation's major economic impact as submitted by agencies, local governments, or regulated entities.

(2)(a) Except as provided in paragraph (b) of this subsection, the administrative body shall file with the Commission on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period the statement of consideration relating to the administrative regulation and, if applicable, the amended after comments version.

(b) If the administrative body has received a significant number of public comments:

1. It may extend the time for filing the statement of consideration for an ordinary administrative regulation and, if applicable, the amended after comments version by notifying the regulations compiler in writing on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period; and

2. The administrative body shall file the statement of consideration for an ordinary administrative regulation and, if applicable, the amended after comments version, with the Commission on or before 12 noon, eastern time, no later than the fifteenth day of the second calendar month following the end of the public comment period.

(3)(a) If the administrative regulation is amended as a result of the hearing or written comments received, the administrative body shall file the items specified in this paragraph with the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section:

1. The original and four (4) copies of the administrative regulation indicating any amendments resulting from comments received at the public hearing and during the comment period. The amendments shall be indicated in:

a. The original wording for an ordinary administrative regulation;

b. The original wording for an emergency administrative regulation; or

c. The wording of an emergency administrative regulation as amended, for an emergency administrative regulation that was amended at a legislative committee meeting pursuant to KRS 13A.190(3);

2. The original and four (4) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and

3. The regulatory impact analysis, tiering statement, federal mandate comparison if applicable, and fiscal note. These documents shall reflect changes resulting from amendments made after the public hearing.

(b)1. Each original amended after comments version, the statement of consideration, and the attachments required by paragraph (a)3. of this subsection shall be single-sided and stapled in the top left corner.

2. One (1) of the copies shall be single-sided and unstapled.

3. The other three (3) copies shall be stapled in the top left corner and may be double-sided.

(c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the amended after comments version, the statement of consideration, and the required attachments saved as a single document for each amended after comments administrative regulation in an electronic format approved by the regulations compiler.

(d) Within five (5) working days after filing an amended after comments version, an administrative body shall:

1. Prominently display on its website:

a. A notice that an amended after comments version has been filed with the Commission;

b. A summary of the amended after comments version, including:

i. The number of the administrative regulation;

ii. The title of the administrative regulation; and

iii. A brief explanation of the changes made; and

c. Information on how to access the amended after comments version on the Commission's website; and

2. Email the amended after comments version and statement of consideration as filed, and all attachments required by paragraph (a)3. of this subsection, to every person who has registered pursuant to KRS 13A.270(3)(a)2. and provided an email address as part of the registration request.

(e) Material incorporated by reference that is amended after comments shall be filed, and if applicable, displayed in the manner required by KRS 13A.2255.

(4)(a)1. If the administrative regulation is not amended as a result of the public hearing, or

written comments received, the administrative body shall file the original and four (4) copies of the statement of consideration with the regulations compiler by 12 noon, eastern time, on the deadline established in subsection (2) of this section.

2. Each original statement of consideration shall be single-sided and stapled in the top left corner.

3. One (1) of the copies shall be single-sided and unstapled.

4. The other three (3) copies shall be stapled in the top left corner and may be double-sided.

(b) If the statement of consideration covers multiple administrative regulations that were not amended as a result of the public hearing or written comments received, the administrative body shall file with the regulations compiler:

1. The original and four (4) copies of the statement of consideration as required by paragraph (a) of this subsection; and

2. Two (2) additional unstapled, single-sided copies of the statement of consideration for each additional administrative regulation included in the group of administrative regulations.

(c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the statement of consideration saved as a single document for each statement of consideration in an electronic format approved by the regulations compiler.

(5)(a) If comments are received either at the public hearing or during the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee following the month in which the statement of consideration is due.

(b) A filed administrative regulation that is deferred under this subsection due to receipt of public comments may still be placed on the subcommittee's agenda for informational review pursuant to KRS 13A.030(3) or (4).

(c) If a filed administrative regulation is placed on the agenda pursuant to paragraph (b) of this subsection, the full review of the filed administrative regulation shall still be deferred in accordance with this subsection.

(6) The format for the statement of consideration shall be as follows:

(a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;

(b) The first page of the statement of consideration shall have a two (2) inch top margin;

(c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and comment period and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Comments," "Emergency Not Amended After Comments," "Amended After Comments," or "Emergency Amended After Comments," whichever is applicable;

(d) If a hearing has been held or written comments received, the heading is to be followed by:

1. A statement setting out the date, time and place of the hearing, if the hearing was held;

2. A list of those persons who attended the hearing or who submitted comments and the organization, agency, or other entity represented, if applicable; and

3. The name and title of the representative of the promulgating administrative body;

(e)1. Following the general information, the promulgating administrative body shall summarize the comments received at the public hearing and during the comment period and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:

a. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and

b. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body.

2. If administrative regulations were considered as a group and a comment relates to one (1) or more of the administrative regulations, the summary of the comment and response shall specify each administrative regulation to which it applies;

(f)1. Following the summary of the comments and responses, the promulgating administrative body shall summarize the statement of consideration and the action taken by the administrative body as a result of comments received at the public hearing and during the comment period.

2. If administrative regulations were considered as a group, a separate summary and action taken shall be provided for each administrative regulation; and

(g) Emergency administrative regulations shall be in a separate statement of consideration from ordinary administrative regulations.

(7) If the administrative regulation is amended pursuant to subsection (3) of this section, the full text of the administrative regulation shall be published in the Administrative Register. The changes made to the administrative regulation shall be typed in bold and made in the format prescribed by KRS 13A.222(2). The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.

(8) If requested, copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments or who specifically request a copy from the administrative body.

History.

Enact. Acts 1984, ch. 417, § 28, effective April 13, 1984; 1988, ch. 425, § 10, effective July 15, 1988; 1990, ch. 516, § 26, effective July 13, 1990; 1994, ch. 410, § 20, effective July 15,

1994; 1996, ch. 180, § 12, effective July 15, 1996; 1998, ch. 38, § 6, effective July 15, 1998; 2000, ch. 406, § 15, effective July 14, 2000; 2003, ch. 89, § 14, effective June 24, 2003; 2004, ch. 165, § 6, effective July 13, 2004; 2005, ch. 100, § 16, effective June 20, 2005; 2012, ch. 138, § 12, effective July 12, 2012; 2016 ch. 82, § 25, effective July 15, 2016; 2019 ch. 192, § 6, effective June 27, 2019; 2021 ch. 7, § 10, effective February 2, 2021; 2021 ch. 185, § 99, effective June 29, 2021; 2022 ch. 207, § 3, effective July 14, 2022; 2025 ch. 2, § 4, effective February 25, 2025; 2025 ch. 88, § 11, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 88. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 88, which was last enacted by the General Assembly, prevails under KRS 446.250.

(4/14/2022). This statute was amended by 2022 Ky. Acts ch. 207, sec. 3. Under Section 5 of that Act, the Act shall be known and may be cited as the Kentucky REINS Act, or the Kentucky Regulations from the Executive in Need of Scrutiny Act.

OPINIONS OF ATTORNEY GENERAL.

The Environmental Quality Commission could amend a regulation at an Administrative Review Subcommittee meeting without filing a revised statement of consideration and publishing such changes pursuant to this section where the amendments were subsequently published in the administrative register; the changes in the regulation complied with KRS 13A.320 and were properly amended. OAG 87-6, 1987 Ky. AG LEXIS 78.

13A.290. Review by Administrative Regulation Review Subcommittee — Review by legislative committee.

(1)(a) Except as provided by KRS 158.6471 and 158.6472, the Administrative Regulation Review Subcommittee shall meet monthly to review administrative regulations prior to close of business on the fifteenth day of the calendar month.

(b) The agenda shall:

1. Include each administrative regulation that completed the public comment process;

2. Include each administrative regulation for which a statement of consideration was received on or before 12 noon, eastern time, on the fifteenth day of the prior calendar month;

3. Include each effective administrative regulation or administrative regulation filed with the Commission that the subcommittee has decided to review pursuant to KRS 13A.030(3);

4. Include each administrative regulation required to be on the agenda pursuant to KRS 13A.030(4);

5. Include each administrative regulation that was deferred from the prior month's meeting of the subcommittee; and

6. Not include an administrative regulation that is deferred, withdrawn, expired, or automatically taken off the agenda under the provisions of this chapter, unless it is being reviewed pursuant to KRS 13A.030(3) or (4).

(c) Review of an administrative regulation shall include the entire administrative regulation and all attachments filed with the administrative regulation. The review of amendments to existing administrative regulations shall not be limited to only the changes proposed by the promulgating administrative body.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.

(4)(a) A representative of the administrative body for an administrative regulation on the agenda shall be present to explain the administrative regulation and to answer questions thereon.

(b) If a representative of an administrative body with authority to amend, defer, and answer questions about a filed ordinary or emergency administrative regulation that is on the agenda for full review fails to appear before the subcommittee, the subcommittee may:

1. Defer the administrative regulation to the next regularly scheduled meeting of the subcommittee; and

2. Make a determination pursuant to KRS 13A.030(2), (3), and (4) or 13A.190(3).

(c) If a representative of an administrative body with authority to defer and answer questions about an administrative regulation that was placed on the agenda for informational review pursuant to KRS 13A.030(3) or (4) fails to appear before the subcommittee, the subcommittee may:

1. Defer the informational review of the administrative regulation to the next regularly scheduled meeting of the subcommittee; and

2. Make a determination pursuant to KRS 13A.030(2), (3), and (4) or 13A.190(3).

(5) Following the meeting and before the next regularly scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.

(6)(a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, on the first Wednesday of the following month, or if the first Wednesday is a legal holiday, the next workday of the month:

1. Assign a filed administrative regulation to a legislative committee with subject matter jurisdiction if the administrative regulation was on the agenda for full review pursuant to subsection (1)(b)1., 2., or 5. of this section; and

2. Not assign a filed administrative regulation to a legislative committee with subject matter jurisdiction if the administrative regulation was solely on the agenda for informational review pursuant to KRS 13A.030(3) or (4).

(b) Upon notification of the assignment by the Commission, the legislative committee to which the administrative regulation is assigned shall notify the regulations compiler:

1. Of the date, time, and place of the meeting at which it will consider the administrative regulation; or

2. That it will not meet to consider the administrative regulation.

(7)(a) Within ninety (90) days of the assignment, the legislative committee may hold a public meeting during which the administrative regulation shall be reviewed.

(b) If the ninetieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday.

(c)1. If the administrative regulation is assigned to an interim joint committee and a session of the General Assembly begins during the review period, the assignment shall transfer to the Senate and House standing committees with subject matter jurisdiction.

2. If the administrative regulation is assigned to Senate and House standing committees and a session of the General Assembly adjourns sine die during the review period, the assignment shall transfer to the interim joint committee with subject matter jurisdiction.

3. An administrative regulation may be transferred more than one (1) time under this paragraph. A transfer shall not extend the review period established by this subsection.

(d) Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) Except as provided in subsection (9) of this section, a legislative committee shall be empowered to make the same determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee, including all powers and restrictions relating to informational reviews conducted under KRS 13A.030(3) or (4).

(9)(a) This subsection shall apply to ordinary and emergency administrative regulations filed with the Commission and reviewed pursuant to subsection (7) of this section.

(b) A majority of the entire membership of the legislative committee shall constitute a quorum for purposes of reviewing administrative regulations.

(c) In order to amend an administrative regulation pursuant to KRS 13A.320, defer an administrative regulation pursuant to KRS 13A.300, or find an administrative regulation deficient pursuant to KRS 13A.030(2), (3), or (4) or 13A.190(3), the motion to amend, defer, or find deficient shall be approved by a majority of the entire membership of the legislative committee. Additionally, during a session of the General Assembly, standing committees of the Senate and House of Representatives shall agree in order to amend an administrative regulation, defer an administrative regulation, or find an administrative regulation deficient by:

1. Meeting separately; or

2. Meeting jointly. If the standing committees meet jointly, it shall require a majority vote of Senate members voting and a majority of House members voting, as well as the majority vote of the entire membership of the standing committees meeting jointly, in order to take action on the administrative regulation.

(10)(a) The quorum requirements of subsection (9)(b) of this section shall apply to an effective or filed administrative regulation that is under informational review by a legislative committee pursuant to subsection (8) of this section and KRS 13A.030(3) or (4).

(b) A motion to defer the informational review of an administrative regulation or find the administrative regulation deficient shall be approved by:

1. A majority of the entire membership of the Administrative Regulation Review Subcommittee; or

2. A legislative committee in accordance with subsection (9)(c) of this section.

(11)(a) Upon adjournment of the meeting at which a legislative committee has considered an administrative regulation pursuant to subsection (7) or (10) of this section, the legislative committee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly scheduled meeting of the Commission, the legislative committee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The legislative committee's findings shall be published in the Administrative Register.

History.

Enact. Acts 1984, ch. 417, § 29, effective April 13, 1984; 1988, ch. 71, § 2, effective July 15, 1988; 1988, ch. 425, § 11, effective July 15, 1988; 1990, ch. 516, § 27, effective July 13, 1990; 1994, ch. 410, § 21, effective July 15, 1994; 1996, ch. 180, § 13, effective July 15, 1996; 1998, ch. 598, § 8, effective April 14, 1998; 2000, ch. 406, § 16, effective July 14, 2000; 2003, ch. 89, § 15, effective June 24, 2003; 2005, ch. 100, § 17, effective June 20, 2005; 2016 ch. 82, § 26, effective July 15, 2016; 2019 ch. 192, § 7, effective June 27, 2019; 2021 ch. 7, § 11, effective February 2, 2021; 2025 ch. 2, § 5, effective February 25, 2025; 2025 ch. 88, § 12, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 88. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 88, which was last enacted by the General Assembly, prevails under KRS 446.250.

13A.300. Request by promulgating administrative body to defer consideration of administrative regulation — Consideration of deferred administrative regulation — Informational review of deferred administrative regulation — Limitation on number of deferrals — Failure of representative of administrative body to appear before legislative committee.

(1) The administrative body that promulgated an administrative regulation may request that consideration of the administrative regulation be deferred by a legislative committee.

(2) The deferral of an administrative regulation scheduled for full review by the Administrative Regulation Review Subcommittee pursuant to KRS 13A.290(1)(b)1., 2., or 5. shall be governed by KRS 13A.020(4) and the following:

(a) A request for deferral of an ordinary administrative regulation filed with the Commission shall be automatically granted if:

1. The administrative body submits a written letter to the regulations compiler; and

2. The letter is received by 12 noon, eastern time, at least five (5) calendar days prior to the subcommittee meeting;

(b) A request for deferral of an emergency administrative regulation may be granted if:

1. The administrative body submits a written letter to the regulations compiler;

2. The letter is received prior to the subcommittee meeting; and

3. Approved by the co-chairs of the Administrative Regulation Review Subcommittee;

(c) A request for deferral may be granted at the discretion of the subcommittee if the request is made by the administrative body orally at a meeting of the subcommittee;

(d) The subcommittee may request that consideration of an administrative regulation be deferred by the promulgating administrative body. Upon receipt of the request, the promulgating administrative body may agree to defer consideration of the administrative regulation;

(e) Except as provided in paragraph (g) of this subsection, an administrative regulation that has been deferred for full review shall be placed on the agenda of the next scheduled meeting of the subcommittee. The subcommittee shall consider the administrative regulation as if it had met all other requirements of filing. Repromulgation shall not be required in those cases;

(f)1. A filed administrative regulation deferred under this subsection may still be placed on the agenda pursuant to KRS 13A.030(3) or (4) for informational review.

2. If a filed administrative regulation is placed on the agenda pursuant to subparagraph 1. of this paragraph, the full review of the filed administrative regulation shall still be deferred in accordance with this subsection; and

(g) An administrative regulation shall not be deferred under this subsection more than twelve (12) times.

(3) The deferral of an informational review for an administrative regulation scheduled by the Administrative Regulation Review Subcommittee pursuant to KRS 13A.290(1)(b)3. or 4. shall be governed by KRS 13A.020(4) and the following:

(a) A request to defer an informational review for an administrative regulation that was placed on the subcommittee's agenda may be granted if:

1. The administrative body submits a written letter to the regulations compiler;

2. The letter is received prior to the subcommittee meeting; and

3. Approved by the co-chairs of the Administrative Regulation Review Subcommittee;

(b) A request for deferral may be granted at the discretion of the subcommittee if the request is made by the administrative body orally at a meeting of the subcommittee; and

(c) An informational review for an administrative regulation that is deferred may be placed on the agenda of the next scheduled meeting of the subcommittee.

(4)(a) The deferral of a filed ordinary or emergency administrative regulation assigned to a second legislative committee or committees for full review pursuant to KRS 13A.290(6) and (7) shall be governed by this subsection and the voting requirements of KRS 13A.290(9).

(b) A request for deferral may be granted if:

1. The administrative body submits a written letter to the regulations compiler;

2. The letter is received:

a. Prior to the legislative committee meeting for an emergency administrative regulation; or

b. By 12 noon, eastern time, at least five (5) calendar days prior to the legislative committee meeting for an ordinary administrative regulation; and

3. Approved by the presiding chair or chairs.

(c) A request for deferral may be granted at the discretion of the second legislative committee if the request is made by the administrative body orally at a meeting of the legislative committee.

(d)1. At a meeting of a legislative committee, the legislative committee may request that consideration of an administrative regulation be deferred by the administrative body. Upon receipt of the request, the administrative body may agree to defer consideration of the administrative regulation.

2. An administrative regulation that is deferred for full review may be placed on a subsequent agenda of the legislative committee or committees within the review period.

3. Except as provided by subparagraph 4. of this paragraph, if a filed ordinary administrative regulation that has been deferred for full review is not placed on a subsequent agenda within the review period, the administrative regulation shall take effect at the expiration of the review period.

4.a. If requested by the administrative body, an administrative regulation may be deferred beyond the review period for an additional ninety (90) days if the deferral is requested and approved as established by paragraphs (b) and (c) of this subsection.

b. If a filed ordinary administrative regulation that has been deferred is not placed on a subsequent agenda within the additional ninety (90) days, the administrative regulation shall take effect at the expiration of the additional ninety (90) days.

(e)1. A filed administrative regulation deferred under this subsection may still be placed on the agenda for informational review pursuant to KRS 13A.030(3) or (4) and 13A.290(8).

2. If a filed administrative regulation is placed on the agenda pursuant to subparagraph 1. of this paragraph, the full review of the filed administrative regulation may be scheduled by the legislative committee at a subsequent meeting during the ninety (90) day review period.

(5)(a) The deferral of an informational review for an administrative regulation scheduled by a second legislative committee pursuant to KRS 13A.030(3) or (4) and 13A.290(8) shall be governed by this subsection and the voting requirements of KRS 13A.290(9).

(b) A request to defer an informational review for an administrative regulation that was placed on the legislative committee's agenda may be granted if:

1. The administrative body submits a written letter to the regulations compiler;

2. The letter is received prior to the legislative committee meeting; and

3. Approved by the presiding chair or chairs.

(c) A request for deferral of an informational review for an administrative regulation may be granted at the discretion of the legislative committee if the request is made by the administrative body orally at a meeting of the legislative committee.

(d) An informational review for an administrative regulation that is deferred may be placed on a subsequent agenda of the legislative committee.

(6) Except as provided by KRS 13A.290(4), if a representative of an administrative body with authority to amend, defer, and answer questions about a filed ordinary or emergency administrative regulation that is on the agenda for full review fails to appear before a legislative committee, the legislative committee in conformance with KRS 13A.290(9) may:

(a) Defer the administrative regulation to a subsequent meeting of the legislative committee within the review period; and

(b) Make a determination pursuant to KRS 13A.030(2), (3), and (4) or 13A.190(3).

(7) If a representative of an administrative body with authority to defer and answer questions about an administrative regulation that was placed on the agenda for informational review pursuant to KRS 13A.030(3) or (4) and 13A.290(8) fails to appear before the legislative committee, the legislative committee in conformance with KRS 13A.290(9) may:

(a) Defer the informational review for the administrative regulation to a subsequent meeting of the legislative committee; and

(b) Make a determination pursuant to KRS 13A.030(2), (3), and (4) or 13A.190(3).

(8) An administrative regulation found deficient by a legislative committee may be deferred in accordance with KRS 13A.020(4) and 13A.290 and this section.

History.

Enact. Acts 1984, ch. 417, § 30, effective April 13, 1984; 1988, ch. 71, § 3, effective March 16, 1988; 1988, ch. 425, § 13, effective July 15, 1988; 1990, ch. 516, § 28, effective July 13, 1990; 1994, ch. 410, § 22, effective July 15, 1994; 1996, ch. 180, § 14, effective July 15, 1996; 2000, ch. 406, § 17, effective July 14, 2000; 2003, ch. 89, § 16, effective June 24, 2003; 2005, ch. 100, § 18, effective June 20, 2005; 2012, ch. 138, § 13, effective July 12, 2012; 2016 ch. 82, § 27, effective July 15, 2016; 2019 ch. 192, § 8, effective June 27, 2019; 2021 ch. 7, § 12, effective February 2, 2021; 2025 ch. 2, § 6, effective February 25, 2025; 2025 ch. 88, § 13, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 88. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 88, which was last enacted by the General Assembly, prevails under KRS 446.250.

(2/2/2021). In codification, a correction has been made to subsection (5)(b) of this statute. 2021 Senate Bill 2, Section 12, which amended this statute, contained a reference in subsection (5)(b) to "Section 4(2) of this Act," which would have been codified as "KRS 13A.190(2)." However, it is clear from the context and from consultation with the drafter that the reference was intended to read "Section 4(3) of this Act," which would be codified as "KRS 13A.190(3)." Under the authority of KRS 7.136, the Reviser of Statutes has corrected this reference.

(6/27/2019). Under the authority of KRS 7.136(1), the Reviser of Statutes has modified the internal numbering of this statute from the way it appeared in 2019 Ky. Acts ch. 192, sec. 8.

(7/15/2016). During codification of 2016 Ky. Acts ch. 82, sec. 27, the Reviser of Statutes corrected a manifest clerical or typographical error in references in subsection (3)(c) and (d) of this statute to "subsection (6)(b)1." and "subsection (6)(b)2.", respectively, of Section 26 of that Act, which was KRS 13A.290. The correct references should have been to "subsection (6)(a)1." and "subsection (6)(a)2.", respectively, of KRS 13A.290 and are reflected that way in this statute.

13A.310. Repeal or permissive withdrawal of administrative regulation.

(1) Except as provided in KRS 13A.3102 and 13A.3104, an ordinary administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.

(2) Except as provided in KRS 13A.3102 and 13A.3104, an ordinary administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.

(3)(a) An ordinary administrative regulation shall be repealed only by the promulgation of an administrative regulation that:

1. Is titled "Repeal of (state number of administrative regulation to be repealed)";

2. Contains the reasons for repeal in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph;

3. Includes in the body of the administrative regulation, a citation to the number and title of the administrative regulation or regulations being repealed; and

4. Meets the filing and formatting requirements of KRS 13A.220.

(b)1. Except as provided in subparagraph 2. of this paragraph, on the effective date of an administrative regulation that repeals an administrative regulation, determined in accordance with KRS 13A.330 or 13A.331, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.

2. If the repealing administrative regulation specifies an effective date that is after the administrative regulation would become effective pursuant to KRS 13A.330 or 13A.331, the specified effective date shall be considered the effective date of the repealing administrative regulation. On the specified effective date, the regulations compiler shall delete the repealed administrative regulation

and the repealing administrative regulation from the Kentucky Administrative Regulations Service.

(c) An administrative body may repeal more than one (1) administrative regulation in an administrative regulation promulgated pursuant to paragraph (a) of this subsection if the administrative regulations being repealed are contained in the same chapter of the Kentucky Administrative Regulations Service.

(4)(a) An ordinary administrative regulation may be withdrawn by the promulgating administrative body at any time prior to its adoption.

(b) An ordinary administrative regulation that has been found deficient may be withdrawn by the promulgating administrative body or by the Governor at any time prior to its adoption.

(c) Once an ordinary administrative regulation is withdrawn, it shall not be reinstated, except by repromulgation as a totally new matter.

(5)(a) An emergency administrative regulation may be withdrawn by the promulgating administrative body at any time prior to its expiration.

(b) An emergency administrative regulation that has been found deficient may be withdrawn by the promulgating administrative body or by the Governor at any time prior to its expiration.

(6) If an administrative regulation is withdrawn, the administrative body or the Governor shall inform the regulations compiler of the reasons for withdrawal in writing.

History.

Enact. Acts 1984, ch. 417, § 31, effective April 13, 1984; 1988, ch. 71, § 4, effective July 15, 1988; 1990, ch. 516, § 29, effective July 13, 1990; 1994, ch. 410, § 23, effective July 15, 1994; 1996, ch. 180, § 15, effective July 15, 1996; 1998, ch. 38, § 7, effective July 15, 1998; 2000, ch. 406, § 18, effective July 14, 2000; 2005, ch. 100, § 19, effective June 20, 2005; 2016 ch. 82, § 28, effective July 15, 2016; 2017 ch. 77, § 3, effective June 29, 2017; 2019 ch. 192, § 9, effective June 27, 2019; 2021 ch. 7, § 13, effective February 2, 2021.

13A.3102. Expiration of administrative regulations.

(1) An ordinary administrative regulation with a last effective date on or after March 1, 2013, shall expire seven (7) years after its last effective date, except as provided by the certification process in KRS 13A.3104.

(2) An ordinary administrative regulation with a last effective date before March 1, 2013, shall expire on March 1, 2020, except as provided by the certification process in KRS 13A.3104.

(3) For all administrative regulations that expire under this section or KRS 13A.3104, the regulations compiler shall:

(a) Delete them from the Kentucky Administrative Regulations Service;

(b) Add them to the list of ineffective administrative regulations; and

(c) Beginning on September 1, 2020, and at least once every six (6) months thereafter, publish a list of administrative regulations that have expired since the most recent previous list was published under this paragraph.

(4) Within three (3) months of June 27, 2019, and at least once every six (6) months thereafter, the regulations compiler shall publish a list of existing administrative regulations and their corresponding last effective dates.

History.

2017 ch. 77, § 4, effective June 29, 2017; 2019 ch. 192, § 10, effective June 27, 2019.

13A.3104. Certification process for avoiding expiration of administrative regulations — When regulations expire.

(1) If an administrative body does not want an administrative regulation to expire under KRS 13A.3102, the administrative body shall, in the twelve (12) months prior to the expiration date:

(a) Review the administrative regulation in its entirety for compliance with current law governing the subject matter of the administrative regulation;

(b) File a certification letter with the regulations compiler stating whether the administrative regulation:

1. Shall be amended because it is not in compliance with current governing law or otherwise needs amendment;

2. Shall remain in effect without amendment because it is in compliance with current governing law; or

3. Is in need of amendment and a proposed amendment has already been filed; and

(c) Not be required to consider KRS Chapter 13A drafting and formatting requirements as part of its review.

(2) The certification letter shall be on the administrative body's official letterhead, in the format prescribed by the regulations compiler, and include the following information:

(a) The name of the administrative body;

(b) The number of the administrative regulation;

(c) The title of the administrative regulation;

(d) The statement required by subsection (1)(b) of this section;

(e) A brief statement in support of the decision; and

(f) The authorizing signature of the administrative body.

(3)(a) If the certification letter was filed pursuant to subsection (1)(b)1. of this section, stating that the administrative regulation shall be amended, the administrative body shall file an amendment to the administrative regulation in accordance with KRS Chapter 13A within eighteen (18) months of the date the certification letter was filed.

(b) If the amendment was filed in accordance with paragraph (a) of this subsection:

1. The administrative regulation shall not expire if the amendment is continuing through the administrative regulations process; or

2. The administrative regulation shall expire on the date the amendment is withdrawn or otherwise ceases going through the administrative regulations process.

(c) Once the amendment is effective, the regulations compiler shall update the last effective date for

that administrative regulation to reflect the amendment's effective date.

(d) If the amendment was not filed in accordance with paragraph (a) of this subsection, the administrative regulation shall expire at the end of the eighteen (18) month period.

(4) If the certification letter was filed pursuant to subsection (1)(b)2. of this section, stating that the administrative regulation shall remain in effect without amendment, the regulations compiler shall:

(a) Update the administrative regulation's history line to state that a certification letter was received; and

(b) Change the last effective date of the administrative regulation to the date the certification letter was received.

(5)(a) If the certification letter was filed pursuant to subsection (1)(b)3. of this section, stating that a proposed amendment has already been filed:

1. The administrative regulation shall not expire if the amendment is continuing through the administrative regulations process; or

2. The administrative regulation shall expire on the date the amendment is withdrawn or otherwise ceases going through the administrative regulations process.

(b) Once the amendment is effective, the regulations compiler shall update the last effective date for that administrative regulation to reflect the amendment's effective date.

(6) If filed by the deadline established in KRS 13A.050(3), the regulations compiler shall publish in the Administrative Register of Kentucky each certification letter received:

(a) In summary format; or

(b) In its entirety.

History.

2017 ch. 77, § 5, effective June 29, 2017; 2019 ch. 192, § 11, effective June 27, 2019; 2021 ch. 125, § 3, effective June 29, 2021.

13A.312. Actions required when authority over a subject matter is transferred to another administrative body or name of administrative body is changed — Return of administrative regulations to previous form if General Assembly does not confirm or codify executive order.

(1) If authority over a subject matter is transferred to another administrative body or if the name of an administrative body is changed by statute or by executive order during the interim between regular sessions of the General Assembly, the administrative regulations of that administrative body in effect on the effective date of the statutory change or the executive order shall remain in effect as they exist until the administrative body that has been granted authority over the subject matter amends or repeals the administrative regulations pursuant to KRS Chapter 13A.

(2) After receipt of a written request, submitted pursuant to subsection (3) of this section, to make changes to an administrative regulation pursuant to the statutory change or executive order, the regulations compiler shall alter the administrative regulations referenced in subsection (1) of this section to:

(a) Change the name of the administrative body pursuant to the provisions of the statute or executive order; and

(b) Make any other technical changes necessary to carry out the provisions of the statute or executive order if the changes do not affect the scope or substance of the administrative regulation.

(3)(a) The administrative body that has been granted statutory authority over the subject matter shall provide to the regulations compiler in writing and in an electronic format approved by the regulations compiler:

1. A listing of the administrative regulations that require any changes; and

2. The specific names, terms, or other information to be changed, marked in the complete text of the existing administrative regulation in the format prescribed by KRS 13A.222(2).

(b) If there are differences between the paper copy and the electronic version, the electronic version shall be the controlling version.

(4) The administrative body that has been granted statutory authority over the subject matter shall submit new forms to replace forms previously incorporated by reference in an administrative regulation if the only changes on the form are the name and mailing address of the administrative body. If there are additional changes to a form incorporated by reference, the administrative body shall promulgate an amendment to the existing administrative regulation and make the changes to the material incorporated by reference in accordance with KRS 13A.2255.

(5) If an administrative body is abolished by statute or executive order and the authority over its subject matter is not transferred to another administrative body, the Governor, or the secretary of the cabinet to which the administrative body was attached, shall promulgate an administrative regulation to repeal the existing administrative regulations that were promulgated by the abolished administrative body. The repeal shall be accomplished as provided by KRS 13A.310.

(6) If an executive order transfers authority over a subject matter to another administrative body or changes the name of an administrative body during the interim between regular sessions of the General Assembly, and the General Assembly does not codify or confirm the executive order during the next regular session, any and all administrative regulations promulgated to implement the unconfirmed executive order shall be returned to their previous form by the administrative body using the promulgation procedures established by KRS Chapter 13A, including but not limited to:

(a) Withdrawal of a proposed administrative regulation;

(b) Amendment or repeal of an existing administrative regulation;

(c) Promulgation of a new administrative regulation; or

(d) Submission of technical changes in the manner established by subsections (3) and (4) of this section.

History.

Enact. Acts 1996, ch. 180, § 20, effective July 15, 1996; 2004,

ch. 141, § 4, effective July 13, 2004; 2016 ch. 82, § 29, effective July 15, 2016; 2021 ch. 7, § 14, effective February 2, 2021; 2025 ch. 88, § 14, effective June 27, 2025.

13A.315. Expiration and withdrawal of administrative regulation prior to review by legislative committee — Effect of noncompliance with chapter — Withdrawal of deficient administrative regulation upon Governor's notification.

(1) An administrative regulation shall expire and shall not be reviewed by a legislative committee if:

(a) It has not been reviewed or approved by the official or administrative body with authority to review or approve, or it does not have a certification required by KRS 13A.105(3);

(b) The statement of consideration and, if applicable, the amended after comments version are not filed on or before a deadline specified by this chapter;

(c) The administrative body:

1. Has failed to comply with the provisions of this chapter governing the filing of administrative regulations, the public hearing and public comment period, or the statement of consideration; or

2. Has failed to comply with KRS 13A.105; or

(d) The administrative regulation is deferred pursuant to KRS 13A.300(2) more than twelve (12) times.

(2)(a) An administrative regulation that has been found deficient by a legislative committee shall be withdrawn immediately if, pursuant to KRS 13A.330, the Governor has determined that it shall be withdrawn.

(b) The Governor shall notify the regulations compiler in writing that he or she has determined that the administrative regulation found deficient shall be withdrawn.

(c) The written withdrawal of an administrative regulation governed by the provisions of this subsection shall be made in a letter to the regulations compiler in the following format: "Pursuant to KRS 13A.330, I have determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The administrative regulation, (administrative regulation number and title), is hereby withdrawn."

(d) An administrative regulation governed by the provisions of this subsection shall be considered withdrawn upon receipt by the regulations compiler of the written withdrawal.

History.

Enact. Acts 1990, ch. 516, § 1, effective July 13, 1990; 1994, ch. 410, § 24, effective July 15, 1994; 1998, ch. 350, § 1, effective July 15, 1998; 2000, ch. 406, § 24, effective July 14, 2000; 2005, ch. 100, § 20, effective June 20, 2005; 2012, ch. 138, § 14, effective July 12, 2012; 2016 ch. 82, § 30, effective July 15, 2016; 2019 ch. 192, § 12, effective June 27, 2019; 2021 ch. 7, § 15, effective February 2, 2021; 2025 ch. 88, § 15, effective June 27, 2025; 2025 ch. 101, § 7, effective March 31, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 88 and 101, which do not appear to be in conflict and have been codified together.

13A.320. Amendment of administrative regulation during meeting of legislative committee or public meeting — Format.

(1)(a) An administrative body may amend a filed ordinary or emergency administrative regulation at a legislative committee meeting with the consent of the legislative committee. A legislative committee may amend a filed ordinary or emergency administrative regulation at a legislative committee meeting with the consent of the administrative body.

(b) An administrative regulation shall not be amended at a public meeting of a legislative committee unless the amendment concerns an issue that was related to the administrative regulation filed with the Legislative Research Commission and was:

1. Considered at the public hearing;

2. Raised pursuant to a comment received by the administrative body at the public hearing or during the public comment period pursuant to KRS 13A.280(1); or

3. Raised during the legislative committee meeting.

(c) Nothing in this chapter shall be construed to require the administrative regulation's resubmission or refiling or other action. The administrative regulation may be adopted as amended.

(d) Following approval of an amendment to an administrative regulation at a legislative committee meeting, the administrative regulation as amended shall be published in the Administrative Register, unless all amendments to the administrative regulation that were made at the meeting of the legislative committee:

1. Relate only to the formatting and drafting requirements of KRS 13A.220(5) and 13A.222(4)(b), (c), (i), (j), and (l); and

2. Do not alter the intent, meaning, conditions, standards, or other requirements of the administrative regulation.

(e) If the amendments to an administrative regulation made at a meeting of a legislative committee meet the exception requirements of paragraph (d) of this subsection, the regulations compiler shall publish a notice in the Administrative Register that the administrative regulation was amended at a legislative committee meeting only to comply with the formatting and drafting requirements of this chapter.

(2) If an administrative body intends to amend an administrative regulation at a meeting of a legislative committee, the following requirements shall be met:

(a) An amendment offered by the administrative body prior to a legislative committee meeting shall be approved by the head of the administrative body;

(b) The amendment shall be contained in a letter to the legislative committee. The letter shall:

1. Identify the administrative body;

2. State the number and title of the administrative regulation;

3. Be dated; and

4. Be filed with the regulations compiler; and

(c) The amendment shall be made in one (1) of the following formats:

1.a. On separate lines, the amendment shall be identified by the number of the:

i. Page;

ii. Section, subsection, paragraph, subparagraph, clause, or subclause, as appropriate; and

iii. Line.

b. If a word or phrase, whether or not underlined, is to be deleted, the amendment shall identify the word or phrase to be deleted and state that it is to be deleted. If a word or phrase is to be replaced by another word or phrase, the amendment shall specify the word or phrase that is to be deleted and shall specify the word or phrase that is to be inserted in lieu thereof.

c. If new language is to be inserted, the amendment shall state that it is to be inserted, and the new language shall be underlined.

d. If the amendment consists of no more than four (4) words, the words shall be placed between quotation marks. If the amendment consists of more than four (4) words, the amendment shall be indented and not placed between quotation marks.

e. If a section, subsection, paragraph, subparagraph, clause, or subclause is to be deleted in its entirety, the amendment shall identify it and state that it is deleted in its entirety, whether or not it contains underlined or bracketed language; or

2.a. By substituting the complete text of the administrative regulation, with the proposed changes made to the administrative regulation typed in bold, italicized, and in the format prescribed by KRS 13A.222(2).

b.i. If the amendment is initiated by the administrative body, the administrative body shall submit at the same time as, or prior to, filing the paper version, an electronic version of the amendment in a format approved by the regulations compiler.

ii. If there are differences between the paper copy and the electronic version of the amendment, the electronic version shall be the controlling version.

(3) If the amendment is initiated by the administrative body, the amendment shall be:

(a) Filed at least three (3) working days prior to the meeting of the legislative committee;

(b) Filed with an updated fiscal note as established by KRS 13A.250(4);

(c) Filed with a summary of the amendment and an explanation of its intent; and

(d) Emailed as soon as practicable to every person who has registered pursuant to KRS 13A.270(3)(a)2. and provided an email address as part of the registration request.

(4) An amendment to an administrative regulation may be made orally at a legislative committee meeting if the requirements of subsection (1)(a) of this section are met.

(5) Except for an amendment made orally pursuant to subsection (4) of this section:

(a) For a meeting of the Administrative Regulation Review Subcommittee, an administrative body shall submit fifteen (15) copies of an amendment to an administrative regulation to the regulations compiler prior to the Administrative Regulation Review Subcommittee meeting at which the amendment will be considered and, if applicable, in accordance with the deadline established in subsection (3)(a) of this section; or

(b) For a meeting of a legislative committee other than the Administrative Regulation Review Subcommittee, an administrative body shall contact the regulations compiler prior to the legislative committee meeting at which the amendment will be considered to find out the number of copies needed for that specific legislative committee. The original amendment and the specified number of copies shall be submitted to the regulations compiler prior to the legislative committee meeting at which the amendment will be considered and, if applicable, in accordance with the deadline established in subsection (3)(a) of this section.

History.

Enact. Acts 1984, ch. 417, § 32, effective April 13, 1984; 1988, ch. 71, § 5, effective July 15, 1988; 1988, ch. 425, § 12, effective July 15, 1988; 1990, ch. 516, § 30, effective July 13, 1990; 1994, ch. 410, § 25, effective July 15, 1994; 1996, ch. 180, § 16, effective July 15, 1996; 1998, ch. 38, § 10, effective July 15, 1998; 2003, ch. 89, § 17, effective June 24, 2003; 2005, ch. 100, § 21, effective June 20, 2005; 2012, ch. 138, § 15, effective July 12, 2012; 2016 ch. 82, § 31, effective July 15, 2016; 2021 ch. 7, § 16, effective February 2, 2021; 2025 ch. 88, § 16, effective June 27, 2025.

OPINIONS OF ATTORNEY GENERAL.

The Environmental Quality Commission could amend a regulation at an Administrative Review Subcommittee meeting without filing a revised statement of consideration and publishing such changes pursuant to KRS 13A.280 where the amendments were subsequently published in the administrative register; the changes in the regulation complied with this section and were properly amended. OAG 87-6, 1987 Ky. AG LEXIS 78.

13A.330. Notification of finding of deficiency — Governor's determination after finding of deficiency.

(1)(a) If a filed ordinary administrative regulation has been found deficient, the legislative committee shall transmit to the Governor and the regulations compiler:

1. A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and

2. A request that the Governor determine whether the administrative regulation shall:

a. Be withdrawn;

b. Be amended at a legislative committee meeting pursuant to KRS 13A.320 to conform to the finding of deficiency; or

c. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.

(b) The Governor shall transmit his or her determination to the Commission and the regulations compiler.

(c) A filed ordinary administrative regulation that has been found deficient shall be considered as adopted and become effective after:

1.a. The review period established in this chapter has been completed; and

b. The regulations compiler has received the Governor's determination that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or

2. The legislative committee that found the filed administrative regulation deficient subsequently determines that it is not deficient in accordance with KRS 13A.335, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.

(2)(a) If an emergency administrative regulation has been found deficient, the legislative committee finding it deficient shall transmit to the Governor and the regulations compiler:

1. A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and

2. A request that the Governor determine whether the emergency administrative regulation shall:

a. Be withdrawn;

b. Be amended at a legislative committee meeting pursuant to KRS 13A.320 to conform to the finding of deficiency; or

c. Remain effective as established in KRS 13A.190(4) notwithstanding the finding of deficiency.

(b) The Governor shall transmit his or her determination to the Commission and the regulations compiler.

(c) The legislative committee that found the emergency administrative regulation deficient may subsequently determine that it is not deficient in accordance with KRS 13A.335.

(3) If an effective ordinary administrative regulation has been found deficient by a legislative committee, the legislative committee shall transmit to the Governor a copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate.

History.

Enact. Acts 1984, ch. 417, § 33, effective April 13, 1984; 1988, ch. 71, § 6, effective July 15, 1988; 1990, ch. 516, § 31, effective July 13, 1990; 1994, ch. 410, § 26, effective July 15, 1994; 1996, ch. 180, § 17, effective July 15, 1996; 1996, ch. 269, § 1, effective July 15, 1996; 1998, ch. 38, § 8, effective July 15, 1998; 1998, ch. 350, § 2, effective July 15, 1998; 2000, ch. 406, § 19, effective July 14, 2000; 2005, ch. 100, § 22, effective June 20, 2005; 2019 ch. 192, § 13, effective June 27, 2019; 2021 ch. 7, § 17, effective February 2, 2021.

NOTES TO DECISIONS

Cited in:

Cameron v. Beshear, 628 S.W.3d 61, 2021 Ky. LEXIS 240 (Ky. 2021).

13A.331. Adoption and effective date of ordinary administrative regulation that has been referred to a legislative committee.

A filed ordinary administrative regulation that has not been deferred or found deficient and has been referred by the Commission to a legislative committee shall be considered as adopted and shall become effective:

(1) Upon adjournment of a meeting of a legislative committee other than the subcommittee if:

(a) The administrative regulation was on the meeting agenda; and

(b) A quorum was present;

(2) Upon adjournment of a meeting of a House or Senate standing committee if:

(a) The administrative regulation was on its meeting agenda;

(b) A quorum was present; and

(c) The administrative regulation has previously been on a meeting agenda of the other standing committee when a quorum was present; or

(3) At the expiration of the review period established in KRS 13A.290(7), if within the review period a legislative committee has failed to meet or failed to place a filed administrative regulation on a meeting agenda.

History.

Enact. Acts 2000, ch. 406, § 22, effective July 14, 2000; 2019 ch. 192, § 14, effective June 27, 2019; 2021 ch. 7, § 18, effective February 2, 2021.

13A.333. Expiration of deficient regulations. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1990, ch. 516, § 4, effective July 13, 1990; 1996, ch. 180, § 18, effective July 15, 1996; 2000, ch. 406, § 20, effective July 14, 2000) was repealed by Acts 2003, ch. 185, § 12, effective March 31, 2003.

13A.335. Reasons administrative regulation found deficient shall not be considered deficient — Notice.

(1)(a) A filed administrative regulation found deficient by a legislative committee shall not be considered deficient if:

1. A subsequent amendment of that administrative regulation is filed with the Commission by the administrative body;

2. The legislative committee that found the administrative regulation deficient approves a motion that the subsequent amendment corrects the deficiency; and

3. The administrative regulation is not found deficient by any other legislative committee that reviews the administrative regulation under the provisions of KRS Chapter 13A.

(b) A filed administrative regulation found deficient by the Administrative Regulation Review Subcommittee shall not be considered deficient if:

1. The administrative regulation is amended to correct the deficiency at a meeting of a legislative committee;

2. A legislative committee does not determine that the administrative regulation is deficient for any other reason; and

3. The Administrative Regulation Review Subcommittee approves a motion that the deficiency has been corrected and that the administrative regulation should not be considered deficient.

(c) A filed administrative regulation found deficient by a legislative committee shall not be considered deficient if the legislative committee:

1. Reconsiders the administrative regulation and its finding of deficiency; and

2. Approves a motion that the administrative regulation is not deficient.

(d) If an amendment to an effective administrative regulation is going through the KRS Chapter 13A promulgation process and is found deficient by a legislative committee, the administrative regulation shall not be considered deficient if the:

1. Administrative regulation was found deficient due to the amendment;

2. Promulgating administrative body has withdrawn the proposed amendment of the existing administrative regulation; and

3. Regulations compiler has not received the Governor's determination pursuant to KRS 13A.330.

(2) If an effective administrative regulation is found deficient by a legislative committee, the administrative regulation shall not be considered deficient if the legislative committee:

(a) Reconsiders the administrative regulation and its finding of deficiency; and

(b) Approves a motion that the administrative regulation is not deficient.

(3)(a) If an administrative regulation has been found deficient by a legislative committee, the regulations compiler shall add the following notice to the administrative regulation: "This administrative regulation was found deficient by the [name of legislative committee] on [date]." This notice shall be the last section of the administrative regulation.

(b) If an administrative regulation has been found deficient by a legislative committee, subsequent amendments of that administrative regulation filed with the Commission shall contain the notice provided in paragraph (a) of this subsection.

(c) If an administrative regulation that has been found deficient by a legislative committee has subsequently been determined not to be deficient under the provisions of this section, the regulations compiler shall delete the notice required by paragraph (a) of this subsection.

History.

Enact. Acts 1990, ch. 516, § 5, effective July 13, 1990; 1996, ch. 180, § 19, effective July 15, 1996; 1998, ch. 350, § 3, effective July 15, 1998; 2000, ch. 406, § 21, effective July 14, 2000; 2005, ch. 100, § 23, effective June 20, 2005; 2019 ch. 192, § 15, effective June 27, 2019; 2021 ch. 7, § 19, effective February 2, 2021; 2025 ch. 2, § 7, effective February 25, 2025; 2025 ch. 88, § 17, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 2 and 88, which do not appear to be in conflict and have been codified together.

13A.336. Annual report on administrative regulations found deficient — Contents.

(1)(a) After the last regularly scheduled meeting of the Administrative Regulation Review Subcommittee in a calendar year, but by the thirty-first day of December of that calendar year, the staff of the Administrative Regulation Review Subcommittee shall submit a report to the co-chairs of that subcommittee regarding administrative regulations that were found deficient by any legislative committee of the Commission during that calendar year.

(b) The report in paragraph (a) of this subsection shall contain:

1. Effective administrative regulations that were found deficient; and

2. Administrative regulations filed with the Commission that were found deficient.

(2) The report shall not contain any administrative regulation that was found deficient and:

(a) Has been withdrawn; or

(b) Is no longer considered deficient under KRS 13A.335.

(3) The report shall contain at least the following information for each administrative regulation in the report:

(a) Administrative regulation number and title;

(b) Name of the promulgating agency;

(c) Date of deficiency determination;

(d) Name of the legislative committee that made the deficiency determination;

(e) Effective date, if it is in effect;

(f) The finding of deficiency and any other findings, recommendations, or comments sent to the Governor; and

(g) If applicable under KRS 13A.330, the Governor's determination regarding the deficiency, if received by the Commission.

(4) The first page of the report required by subsection (1) of this section shall contain the following text, in fourteen (14) point font or larger:

"To ratify the deficiency findings listed in this report, a co-chair or other legislator may request that Legislative Research Commission staff prepare a bill:

(a) Declaring that one (1) or more administrative regulations listed in the report shall be void; or

(b) Amending the relevant subject matter statutes in conformity with the findings of deficiency."

History.

2019 ch. 192, § 1, effective June 27, 2019; 2021 ch. 7, § 20, effective February 2, 2021.

13A.337. Legislative finding — Certain administrative regulations void — Prohibition against promulgating substantially similar regulations — Judicial review.

(1) The General Assembly finds that certain administrative regulations, as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient on or after July 15, 1988, and either expired prior to or upon adjournment of the 2001

General Assembly, or were scheduled to expire upon adjournment of the 2002 Regular Session of the General Assembly, under the provisions of KRS Chapter 13A as existing before the issuance of the Opinion and Order of the Franklin Circuit Court in Patton v. Sherman et al., Civil Action No. 01-CI-00660, entered January 11, 2002.

(2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulations identified in subsection (1) of this section shall be null, void, and unenforceable, as follows:

(a) Those administrative regulations identified in subsection (1) of this section which expired prior to or upon adjournment of the 2001 Regular Session of the General Assembly under the provisions of KRS Chapter 13A existing before the issuance of the court order referenced in subsection (1) of this section shall be null, void, and unenforceable as of their recorded date of expiration, according to the records of the Legislative Research Commission. Administrative bodies and regulated persons and entities have relied on the assumption that these administrative regulations have previously expired; therefore, this subsection shall have the retroactive effect necessary to implement its provisions; and

(b) Those administrative regulations identified in subsection (1) of this section due to expire upon adjournment of the 2002 Regular Session of the General Assembly, under the provisions of KRS Chapter 13A existing before the issuance of the court order referenced in subsection (1) of this section, shall be null, void, and unenforceable on March 27, 2002.

(3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, an administrative body shall be prohibited from promulgating an administrative regulation that is identical to or substantially the same as any administrative regulation identified in subsection (1) of this section for a period beginning on January 11, 2002, and concluding upon adjournment of the 2003 Regular Session of the General Assembly. This subsection shall have the retroactive effect necessary to implement its provisions.

(4) The Legislative Research Commission may file an action in the Franklin Circuit Court for judicial review to determine if any administrative regulation is lawfully promulgated in accordance with the laws and Constitution of the Commonwealth of Kentucky.

History.

Enact. Acts 2002, ch. 76, § 1, effective March 27, 2002.

13A.338. Legislative finding — Certain administrative regulations void — Prohibition against promulgating substantially similar regulations within specified time.

(1) The General Assembly finds that certain administrative regulations as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient but became effective notwithstanding the finding of deficiency, pursuant to KRS 13A.330, on or after March 27, 2002, and before March 16, 2004.

(2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, each administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of March 16, 2004.

(3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, any of the administrative regulations referenced in subsection (1) of this section for a period beginning on March 16, 2004, and concluding on June 1, 2005.

(4) A list of the administrative regulations referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.

History.

Enact. Acts 2004, ch. 11, § 1, effective March 16, 2004; 2021 ch. 7, § 21, effective February 2, 2021.

13A.339. Unenforceability of certain administrative regulations that became effective notwithstanding finding of deficiency.

(1) The General Assembly finds that certain administrative regulations as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient but became effective notwithstanding the finding of deficiency, pursuant to KRS 13A.330, on or after April 15, 2020, and before January 5, 2021, and were found deficient pursuant to KRS 13A.336 including:

(a) 803 KAR 2:180, Labor Cabinet, Department of Workplace Standards, Recordkeeping, reporting, statistics;

(b) 921 KAR 3:025, Cabinet for Health and Family Services, Department for Community Based Services, Technical requirements; and

(c) 921 KAR 3:025E, Cabinet for Health and Family Services, Department for Community Based Services, Technical requirements, emergency.

(2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, each administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of June 29, 2021.

(3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, any of the administrative regulations referenced in subsection (1) of this section for a period beginning on March 30, 2021, and concluding on June 1, 2022.

(4) A list of the administrative regulations referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.

History.
2021 ch. 165, § 1, effective June 29, 2021.

13A.350. Application of chapter.

(1) The provisions of this chapter shall apply to all grants of authority to promulgate administrative regulations and no administrative regulation shall be promulgated or adopted unless in conformity with the provisions of this chapter.

(2) The provisions of this chapter shall apply to all other acts passed by the 1984 Session of the General Assembly.

(3) Any grant of authority for an administrative body to promulgate rules or standards is repealed, unless authorized by this chapter.

(4) Any grant of authority for an administrative body to promulgate administrative regulations which is in conflict with the provisions of this chapter shall be repealed to the extent that it conflicts with the provisions of this chapter, regardless of whether the grant of authority is broader than that contained in this chapter.

(5) Any existing statute and any act passed by the 1984 Session of the General Assembly which is in conflict with the provisions of this chapter is repealed to the extent of the conflict.

History.
Enact. Acts 1984, ch. 417, § 35, effective April 13, 1984.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Endangered species of fish and wildlife, 301 KAR 3:061.

CHAPTER 13B
ADMINISTRATIVE HEARINGS

Section
13B.005. Short title for KRS 13B.005 to 13B.170.
13B.010. Definitions for chapter.
13B.020. Application of chapter — Exemptions.
13B.030. Powers of agency head — Hearing officers.
13B.040. Qualifications of hearing officer.
13B.050. Notice of administrative hearing.
13B.060. Petition for intervention.
13B.070. Prehearing conference — Mediation and informal settlement procedures.
13B.080. Conduct of hearing.
13B.090. Findings of fact — Evidence — Recording of hearing — Burdens of proof.
13B.100. Prohibited communications.
13B.110. Recommended order.
13B.120. Final order.
13B.125. Emergency action — Hearing — Appeal.
13B.130. Official record of hearing.
13B.140. Judicial review of final order.
13B.150. Conduct of judicial review.
13B.160. Judicial appeal.
13B.170. Administrative regulations.

13B.005. Short title for KRS 13B.005 to 13B.170.

KRS 13B.005 to 13B.170 shall be named the Albert Jones Act of 1994.

History.
Enact. Acts 1994, ch. 382, § 21, effective July 15, 1994.

NOTES TO DECISIONS

Analysis

1. Discretion.
2. Hospital Disciplinary Proceedings.

1. Discretion.

Hearing officer pursuant to KRS 13B.005 et seq. had considerable discretion in admitting and excluding evidence, and, thus, a reviewing court would only reverse the hearing officers evidentiary rulings for an abuse of discretion. In a case involving the tenured teacher's termination of employment for having sexual contact with two students, the hearing officer was authorized to deny the tenured teacher's request to exclude evidence that the tenured teacher had been acquitted of criminal charges involving one of the students, as that evidence was both irrelevant and was excludable under KRE. 403 as potentially confusing to the administrative tribunal because the criminal trial had a different burden of proof than the administrative proceeding. Drummond v. Todd County Bd. of Educ., 349 S.W.3d 316, 2011 Ky. App. LEXIS 155 (Ky. Ct. App. 2011).

2. Hospital Disciplinary Proceedings.

In a case where a physician alleged that his administrative due process rights had been violated in relation to the termination of staff privileges, a hospital did not expressly or implicitly function as a state agency; therefore, the hospital's internal disciplinary proceedings were not subject to the requirements of this chapter. Sara v. St. Joseph Healthcare Sys., 480 S.W.3d 286, 2015 Ky. App. LEXIS 176 (Ky. Ct. App. 2015).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Administrative hearing procedures for determination of residency status, 13 KAR 2:070.
Appeal procedures, 782 KAR 1:040.
Charter school appeal process, 701 KAR 8:030.
Determination of residency status for admission and tuition assessment purposes, 13 KAR 2:045.
Kentucky Business Enterprises, 782 KAR 1:010.

Kentucky Bench & Bar.
Mooney, 13B Administrative Hearings — New Kid on the Block, Vol. 68, No. 2, Mar. 2004, Ky. Bench & Bar 13.
Dolan, Medicaid Administrative Hearings: Understanding Medicaid, Community Services and the Hearing Process, Vol. 68, No. 2, Mar. 2004, Ky. Bench & Bar 27.

13B.010. Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Administrative agency" or "agency" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity in the executive branch of state government authorized by law to conduct administrative hearings;

(2) "Administrative hearing" or "hearing" means any type of formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges, or immunities of a named person;

(3) "Agency head" means the individual or collegial body in an agency that is responsible for entry of a final order;

(4) "Final order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by an agency head, whether affirmative, negative, injunctive, declaratory, agreed, or imperative in form;

(5) "Hearing officer" means the individual, duly qualified and employed pursuant to this chapter, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head;

(6) "Office" means the Office of Administrative Hearings in the Department of Law created pursuant to KRS 15.111;

(7) "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;

(b) Any other person who is duly granted intervention in an administrative hearing; and

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing; and

(8) "Recommended order" means the whole or part of a preliminary hearing report to an agency head for the disposition of an administrative hearing.

History.

Enact. Acts 1994, ch. 382, § 1, effective July 15, 1996; 1996, ch. 318, § 1, effective July 15, 1996; 2024 ch. 112, § 3, effective April 5, 2024.

Legislative Research Commission Notes.

(7/1/2025). KRS 15.111 was amended by 2025 Ky. Acts ch. 59, sec. 2, to move the Office of Administrative Hearings from the Office of the Attorney General to the Department of Law. Under the authority of KRS 7.136(2), a reference to "the Office of Administrative Hearings in the Office of the Attorney General created pursuant to KRS 15.111" in subsection (6) of this statute has been changed in codification to "the Office of the Administrative Hearings in the Department of Law created pursuant to KRS 15.111."

(4/5/2024). Under the authority of KRS 7.136, the reviser of statutes has renumbered the subsections in this statute during codification to place the terms in alphabetical order. The words in the text were not changed.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. "Final Order."

1. Applicability.

Even if the provisions of KRS 13B.140(1) and 13B.010(1) were applicable to the actions of a county board of education, the board waived any jurisdictional defect by not objecting until after the Circuit Court and the Court of Appeals decided the issues regarding a student's expulsion pursuant to KRS 158.150. M.K.J. v. Bourbon County Bd. of Educ., 2008 Ky. App. LEXIS 286 (Ky. Ct. App. 2008).

In a case where a physician alleged that his administrative due process rights had been violated in relation to the termination of staff privileges, a hospital did not expressly or implicitly function as a state agency; therefore, the hospital's internal disciplinary proceedings were not subject to the requirements of this chapter. Sara v. St. Joseph Healthcare Sys., 480 S.W.3d 286, 2015 Ky. App. LEXIS 176 (Ky. Ct. App. 2015).

2. "Final Order."

Where the Kentucky Alcoholic Beverage Control Board made a legal determination that it lacked jurisdiction to hear a liquor store owner's appeal of a city administrator's issuance of a liquor license to an applicant and dismissed the appeal, although no evidentiary hearing was held, the Board's order was a final order for purposes of KRS 13B.010(6). Bev. Warehouse, Inc. v. Commonwealth, 382 S.W.3d 34, 2011 Ky. App. LEXIS 211 (Ky. Ct. App. 2011).

Horse-racing stewards' decision to disqualify a horse was not a final order of an agency, and thus, it was not subject to judicial review because the process that the stewards undertook to make their decision was not an "administrative hearing," as that term was used in the statutory definition of "final order of an agency," and the stewards' call was not a "final order" as it was not "made effective by an agency head," as was necessary to issue a final administrative order. West v. Ky. Horse Racing Comm'n, 972 F.3d 881, 2020 FED App. 284P, 2020 U.S. App. LEXIS 27522 (6th Cir. Ky. 2020).

Assistant principal was not entitled to judicial review of the State Evaluation Appeals Panel's final decision to demote him because no statute or administrative regulation permitted judicial review. Hardin v. Jefferson Cnty. Bd. of Educ., 673 S.W.3d 437, 2023 Ky. App. LEXIS 57 (Ky. Ct. App. 2023).

Cited in:

Commonwealth v. Handi-Van, Inc., 358 S.W.3d 504, 2012 Ky. App. LEXIS 13 (Ky. Ct. App. 2012).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

13B.020. Application of chapter — Exemptions.

(1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.

(2) The provisions of this chapter shall not apply to:

(a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;

(b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;

(c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;

(d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;

(e) Administrative hearings conducted by the legislative and judicial branches of state government;

(f) Administrative hearings conducted by any city, county, urban-county, charter county, or special dis-

trict contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;

(g) Informal hearings which are part of a multi-level hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;

(h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;

(i) Administrative hearings exempted pursuant to subsection (3) of this section;

(j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and

(k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.

(3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:

(a) Finance and Administration Cabinet

1. Higher Education Assistance Authority

a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410

b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33

2. Department of Revenue

a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440

b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205

(b) Cabinet for Health and Family Services

1. Office of the Inspector General

a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B

b. Licensure revocation hearings conducted under authority of KRS Chapter 216B

2. Department for Community Based Services

a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630

3. Department for Medicaid Services

a. Administrative appeal hearings following an external independent third-party review of a Medicaid managed care organization's final decision that denies, in whole or in part, a health care service to an enrollee or a claim for reimbursement to the provider for a health care service rendered by the provider to an enrollee of the Medicaid managed care organization, conducted under authority of KRS 205.646

(c) Justice and Public Safety Cabinet

1. Department of Kentucky State Police

a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16

2. Department of Corrections

a. Parole Board hearings conducted under authority of KRS Chapter 439

b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197

c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197

3. Department of Juvenile Justice

a. Supervised placement revocation hearings conducted under KRS Chapter 635

(d) Energy and Environment Cabinet

1. Department for Natural Resources

a. Surface mining hearings conducted under authority of KRS Chapter 350

b. Oil and gas hearings conducted under the authority of KRS Chapter 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720

c. Explosives and blasting hearings conducted under the authority of KRS 351.315 to 351.375

2. Department for Environmental Protection

a. Wild River hearings conducted under authority of KRS Chapter 146

b. Water resources hearings conducted under authority of KRS Chapter 151

c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223

d. Environmental protection hearings conducted under authority of KRS Chapter 224

e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224

3. Public Service Commission

a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279

(e) Education and Labor Cabinet

1. Kentucky Occupational Safety and Health Review Commission

a. Occupational safety and health hearings conducted under authority of KRS Chapter 338

2. Unemployment insurance hearings conducted under authority of KRS Chapter 341

3. Disability determination hearings conducted under authority of 20 C.F.R. pt. 404

(f) Public Protection Cabinet

1. Board of Claims

a. Liability hearings conducted under authority of KRS 49.020(5) and 49.040 to 49.180

(g) State universities and colleges

1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164

2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164

3. Campus residency hearings conducted under authority of KRS Chapter 164

4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99

5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311

(h) Department of Workers' Claims

1. Workers' compensation hearings conducted under authority of KRS Chapter 342.

(4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:

(a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;

(b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or

(c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.

(5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

(6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

(7) The provisions of KRS 13B.030(2)(b) shall not apply to administrative hearings held under KRS 11A.100 or 18A.095.

History.

Enact. Acts 1994, ch. 382, § 2, effective July 15, 1996; 1996, ch. 318, § 2, effective July 15, 1996; 1998, ch. 426, § 63, effective July 15, 1998; 1998, ch. 538, § 12, effective April 13, 1998; 2000, ch. 14, § 2, effective July 14, 2000; 2005, ch. 99, § 13, effective June 20, 2005; 2005, ch. 123, § 8, effective June 20, 2005; 2006, ch. 211, § 8, effective July 12, 2006; 2007, ch. 85, § 13, effective June 26, 2007; 2009, ch. 11, § 6, effective June 25, 2009; 2010, ch. 24, § 12, effective July 15, 2010; 2012, ch. 158, § 3, effective July 12, 2012; 2016 ch. 55, § 2, effective April 8, 2016; 2017 ch. 74, § 54, effective June 29, 2017; 2018 ch. 72, § 1, effective July 14, 2018; 2018 ch. 85, § 1, effective July 14, 2018; 2018 ch. 94, § 1; 2018 ch. 188, § 2, effective July 14, 2018; 2019 ch. 90, § 2, effective June 27, 2019; 2021 ch. 185, § 7, effective June 29, 2021; 2022 ch. 236, § 11, effective July 1, 2022; 2023 ch. 124, § 2, effective July 1, 2024; 2024 ch. 107, § 1, effective July 15, 2024; 2026 ch. 61, § 12, effective April 9, 2026.

Legislative Research Commission Notes.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 426 and 538. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 538, which was a nonrevisory Act, prevails under KRS 7.136(3).

NOTES TO DECISIONS

Analysis

1. Interpretation.
2. Application.
3. Fact-finding investigation exception.

1. Interpretation.

KRS 13B.020 contemplates a possible legal impasse by providing that KRS ch. 13B supersedes all other relevant statutes unless exempted. KRS 281.640 enjoys no such exemption, and, therefore, its provision must yield to KRS 13B.030, which allows a Kentucky Office of the Attorney General hearing officer to preside over a hearing from the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation. Commonwealth v. Handi-Van, Inc., 358 S.W.3d 504, 2012 Ky. App. LEXIS 13 (Ky. Ct. App. 2012).

2. Application.

In a case where a physician alleged that his administrative due process rights had been violated in relation to the termination of staff privileges, a hospital did not expressly or implicitly function as a state agency; therefore, the hospital's internal disciplinary proceedings were not subject to the requirements of this chapter. Sara v. St. Joseph Healthcare Sys., 480 S.W.3d 286, 2015 Ky. App. LEXIS 176 (Ky. Ct. App. 2015).

Clearly, the State Evaluation Appeals Panel (SEAP) is a review panel possessing very limited statutorily defined functions, and no provision exists for a hearing officer, the presentation or cross-examination of witnesses or any of the traditional hallmarks of an administrative hearing. The SEAP merely reviews the actions of the LEAP to determine compliance with an approved evaluation plan and thereby provide accountability and encouragement for local districts to implement appropriate evaluation plans. The SEAP is not empowered to reinstate a teacher to a prior position or provide any other remedy apart from setting aside a defective evaluation. Therefore, the SEAP does not conduct administrative hearings and actions of the SEAP do not come within the purview of Ky. Rev. Stat. Ann. ch. 13B. Geron v. Jefferson Cty. Bd. of Educ., 2018 Ky. App. LEXIS 232 (Ky. Ct. App. 2018).

Circuit court properly affirmed the Kentucky Board of Claims' award of damages to the claimant for loss of earning capacity due to an injury he received while interning for a state university because the Board did not err in relying upon the hand-written note from the claimant's treating physician to support a finding of permanent injury as Ky. Rev. Stat. Ann. § 13B.090(1) did not apply to proceedings before the Board, and substantial evidence supported the Board's finding of permanent injury and that the claimant's injury permanently diminished his early capacity. The circuit court properly reduced the award by the amount of his medical bills that were discharged. Findley v. Western Ky. Univ., 690 S.W.3d 170, 2024 Ky. App. LEXIS 34 (Ky. Ct. App. 2024).

3. Fact-finding investigation exception.

Circuit court properly upheld the Kentucky State Police Commissioner's transfer of a trooper from injured to limited duty status because the Commissioner was expressly authorized to do so based on "medical reports" and the Commissioner's decision was not subject to the due process requirements mentioned in the statute at issue inasmuch as it fell squarely within the fact-finding investigation exception. Wasson v. Ky. State Police, 542 S.W.3d 300, 2018 Ky. App. LEXIS 77 (Ky. Ct. App. 2018).

Cited in:

Kipling v. City of White Plains, 80 S.W.3d 776, 2001 Ky. App. LEXIS 1167 (Ky. Ct. App. 2001); Geupel Constr. Co. v. Commonwealth Transp. Cabinet, 136 S.W.3d 43, 2003 Ky. App. LEXIS 39 (Ky. Ct. App. 2003).

Abul-Ela v. Ky. Bd. of Med. Licensure, 217 S.W.3d 246, 2006 Ky. App. LEXIS 361 (Ky. Ct. App. 2006).

NOTES TO UNPUBLISHED DECISIONS

1. Application.

Unpublished decision: Prisoner disciplinary proceedings are exempt from the statutory scheme, but logic dictates that the concept apply in a similar fashion to prison disciplinary matters, for if ever there is a circumstance upon which the burden to create and maintain the record should fall upon the agency, it is this. Lawless v. Conover, 2016 Ky. App. Unpub. LEXIS 885 (Ky. Ct. App. 2016), rev'd, superseded, 540 S.W.3d 766, 2017 Ky. LEXIS 451 (Ky. 2017).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

13B.030. Powers of agency head — Hearing officers.

(1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

(2)(a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:

1. Employ hearing officers;

2. Contract with another agency for hearing officers; or

3. Contract with private attorneys through personal service contract.

(b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:

1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.

2. The expenses to be paid to the Attorney General's Office shall be calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.

(3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and the employing agency, with the advice of the office, may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.

(4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The office shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Required training shall not exceed eighteen (18) classroom hours for initial training and six (6) classroom hours per year for continuing training. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the office as meeting minimum standards.

History.

Enact. Acts 1994, ch. 382, § 3, effective July 15, 1996; 1996, ch. 318, § 3, effective July 15, 1996; 1998, ch. 154, § 4, effective July 15, 1998; 2024 ch. 112, § 4, effective April 5, 2024.

NOTES TO DECISIONS

Analysis

1. Proper Hearing Officer.
2. Recusal not Warranted.
3. Bias.

1. Proper Hearing Officer.

KRS 13B.020 contemplates a possible legal impasse by providing that KRS ch. 13B supersedes all other relevant statutes unless exempted. KRS 281.640 enjoys no such exemption, and, therefore, its provision must yield to KRS 13B.030, which allows a Kentucky Office of the Attorney General hearing officer to preside over a hearing from the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation. Commonwealth v. Handi-Van, Inc., 358 S.W.3d 504, 2012 Ky. App. LEXIS 13 (Ky. Ct. App. 2012).

2. Recusal not Warranted.

Physician's argument that a hearing officer should have recused himself from a revocation proceeding was rejected where the hearing officer had not participated in any of the proceedings or investigations prior to overseeing the administrative hearing, the physician had not articulated how the hearing officer was biased against him, the hearing officer had not pecuniary interest in the proceeding's outcome, and the statutory scheme did not require the hearing officer to have a medical background or medical training in order to qualify as a hearing officer. Moses v. Ky. Bd. of Med. Licensure, 2016 Ky. App. LEXIS 13 (Ky. Ct. App. Feb. 12, 2016), review denied, ordered not published, 2016 Ky. LEXIS 474 (Ky. Sept. 15, 2016).

3. Bias.

There was no evidence of a hearing officer's existing bias because there was no evidence placed in the record by the employee that the hearing officer's former employment prejudiced her in favor of the county board of education; nor did the teacher allege that the hearing officer failed to receive the proper training. Alvey v. Davis, 583 S.W.3d 20, 2019 Ky. App. LEXIS 127 (Ky. Ct. App. 2019).

Cited in:

Herndon v. Herndon, 139 S.W.3d 822, 2004 Ky. LEXIS 88 (Ky. 2004).

OPINIONS OF ATTORNEY GENERAL.

State Board of Registration for Professional Engineers and Land Surveyors does not have authority under KRS 322.200 to delegate to a hearing officer the authority to conduct hearings. The statutory authority to delegate the power to preside over a hearing to a hearing officer set forth in KRS 13B.030(1) will take effect in 1996. After the effective date of Chapter 13B, the Board will have the authority to delegate the power to preside over disciplinary hearings to a hearing officer. OAG 94-68, 1994 Ky. AG LEXIS 300.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

Northern Kentucky Law Review.

Administrative Adjudication in Kentucky: Ethics and Unauthorized Practice Considerations, 29 N. Ky. L. Rev. 359 (2002).

Administrative Adjudication in Kentucky: Ethics and Unauthorized Practice Considerations, 29 N. Ky. L. Rev. 359 (2002).

13B.040. Qualifications of hearing officer.

(1) A person who has served as an investigator or prosecutor in an administrative hearing or in its preadjudicative stage shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be construed as preventing a person who has participated as a hearing officer in a determination of probable cause or other equivalent preliminary determination from serving as a hearing officer in the same proceeding.

(2)(a) A hearing officer, agency head, or member of an agency head who is serving as a hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. A request for the disqualification of a hearing officer shall be answered by the agency head within sixty (60) days of its filing. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Requests for disqualification of a hearing officer shall be determined by the agency head. Requests for disqualification of a hearing officer who is a member of the agency head shall be determined by the majority of the remaining members of the agency head.

(b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;
2. Participating in an ex parte communication which would prejudice the proceedings;
3. Having a pecuniary interest in the outcome of the proceeding; or
4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

History.

Enact. Acts 1994, ch. 382, § 4, effective July 15, 1996; 1996, ch. 318, § 4, effective July 15, 1996; 1998, ch. 279, § 1, effective July 15, 1998.

NOTES TO DECISIONS

Analysis

1. Recusal not Warranted.
2. Bias.

1. Recusal not Warranted.

Physician's argument that a hearing officer should have recused himself from a revocation proceeding was rejected where the hearing officer had not participated in any of the proceedings or investigations prior to overseeing the administrative hearing, the physician had not articulated how the hearing officer was biased against him, the hearing officer had not pecuniary interest in the proceeding's outcome, and the statutory scheme did not require the hearing officer to have a medical background or medical training in order to qualify as a hearing officer. Moses v. Ky. Bd. of Med. Licensure, 2016 Ky. App. LEXIS 13 (Ky. Ct. App. Feb. 12, 2016), review denied, ordered not published, 2016 Ky. LEXIS 474 (Ky. Sept. 15, 2016).

2. Bias.

There was no evidence of a hearing officer's existing bias because there was no evidence placed in the record by the employee that the hearing officer's former employment prejudiced her in favor of the county board of education; none of the reasons for and procedure for disqualification of a hearing officer could be found. Alvey v. Davis, 583 S.W.3d 20, 2019 Ky. App. LEXIS 127 (Ky. Ct. App. 2019).

Cited in:
Louisville/Jefferson County Metro Gov't v. TDC Group, LLC, 283 S.W.3d 657, 2009 Ky. LEXIS 28 (Ky. 2009).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.

Northern Kentucky Law Review.
Administrative Adjudication in Kentucky: Ethics and Unauthorized Practice Considerations, 29 N. Ky. L. Rev. 359 (2002).
Administrative Adjudication in Kentucky: Ethics and Unauthorized Practice Considerations, 29 N. Ky. L. Rev. 359 (2002).

13B.050. Notice of administrative hearing.

(1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing, unless otherwise required by federal law. An agency shall make reasonable effort to schedule a hearing on a date that is convenient to the parties involved.

(2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service, with the exception of notices of Personnel Board hearings and all board orders which may be served by first-class mail. Service by certified mail shall be complete upon the date on which the agency receives the return receipt or the returned notice.

(3) The notice required by this section shall be in plain language and shall include:

(a) A statement of the date, time, place, and nature of the hearing;

(b) The name, official title, and mailing address of the hearing officer;

(c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;

(d) A statement of the factual basis for the agency action along with a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(e) A reference to the specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in the hearing;

(f) A statement advising the person of his right to legal counsel;

(g) A statement of the parties' right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and

(h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

(4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief statement of the agency's reasons and any administrative review available to the petitioner.

(5) Subsections (1), (2), and (3) of this section shall not apply to notices issued under KRS 11A.080(4)(b) when a party fails to file an answer or otherwise fails to participate.

History.
Enact. Acts 1994, ch. 382, § 5, effective July 15, 1996; 1996, ch. 318, § 5, effective July 15, 1996; 1998, ch. 425, § 1, effective July 15, 1998; 2018 ch. 188, § 3, effective July 14, 2018.

NOTES TO DECISIONS

1. Substantial Evidence.
Energy and environment cabinet secretary's finding that farmers were the individuals with primary responsibility for farms' day to-day operations was supported by substantial evidence; as there was much factual dispute and evidence presented, the trial court had to determine if the decision of the Energy and environment cabinet secretary was supported by substantial evidence, the trial court issued an opinion that was contrary to this standard, and the court disagreed with the trial court's holding in this regard. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

As substantial evidence supported the energy and environment cabinet secretary's finding that farmers were the individuals with primary responsibility for farms' day-today operations, reversal would have only been proper if the secretary incorrectly applied the law to the facts, but the court did not find that to be the case; the trial court imposed its own interpretation of the law instead of deferring to the cabinet's interpretation, the secretary's interpretation was reasonable and entitled to deference, and reversal of the trial court's decision was proper. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Mere fact that the legislature declined to adopt administrative regulations imposing per se integrator liability cannot in and of itself be interpreted to mean that an individual who is primarily responsible, as that term is defined by Kentucky law, cannot be required to sign as a co-permittee, if in fact such a finding is supported by substantial evidence. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Permits issues to farmers were no-discharge permits, and the energy and environment cabinet secretary's ruling on the issue was supported by substantial evidence and otherwise proper; the trial court found that permits ran afoul of KRS 224.10-100(5), (19), but the court could not agree with the trial court's finding that the statutes at issue required permit conditions that related to pathogens, and as the cabinet decided not to exercise its special condition authority, the court found no reason to disturb this. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Energy and environment cabinet's special condition authority was properly exercised and the secretary's decision was supported by substantial evidence, as experts were consulted, setbacks that were established were rationally related to the permit operations, and the setbacks were made according to the best professional judgment of the cabinet. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Trial court substituted its own preferred interpretation over that of the energy and environment cabinet secretary, even though the agency's interpretation was both reasonable and supported by substantial evidence; the court reversed. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

5. Deference.
Commonwealth of Kentucky, Energy and Environment Cabinet is required to impose a special permit condition only when, in the Cabinet's best professional judgment, a special permit condition was "necessary" to implement 401 Ky. Admin. Regs. 63:020, and the Cabinet's authority in this regard is highly discretionary, and, thus, entitled to great deference. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

8. Arbitrary review.
Court believes the authority of the Commonwealth of Kentucky, Energy and Environment Cabinet to exercise its special condition authority to be almost entirely discretionary and, thus, not appropriately disturbed absent an action on the part of the Cabinet that is clearly arbitrary, and that was not the case here. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.
Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.060. Petition for intervention.

(1) The hearing officer shall grant a petition for intervention if:

(a) The petitioner has a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) The hearing officer may grant intervention after consideration of the following factors and a determination that intervention is in the interests of justice:

(a) The nature of the issues;

(b) The adequacy of representation of the petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's ability to implement its statutory mandate.

(3) Unless otherwise required by federal law, a petition for intervention shall be filed and copies mailed to all parties named in the notice of the hearing, at least fourteen (14) days before the hearing. The parties to the hearing shall have seven (7) days within which to file any response they may have to the petition to intervene. If a petitioner qualifies for intervention under subsection (2) of this section, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer, at least three (3) days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

History.
Enact. Acts 1994, ch. 382, § 6, effective July 15, 1996; 1996, ch. 318, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.

13B.070. Prehearing conference — Mediation and informal settlement procedures.

(1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to explore jurisdictional matters, mediation and settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.

(2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.

(3) Except to the extent precluded by another provision of law, mediation or informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies that employ informal settlement procedures shall establish by administrative regulation the specific procedures to be used. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures when the right to an administrative hearing is conferred.

History.
Enact. Acts 1994, ch. 382, § 7, effective July 15, 1996; 1996, ch. 318, § 7, effective July 15, 1996; 1998, ch. 261, § 1, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.
Student appeals process, 11 KAR 4:030.

13B.080. Conduct of hearing.

(1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing

officer shall regulate the hearing in conformity with the prehearing order.

(2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders. The original of all filings shall be mailed to the agency, and copies of any filed item shall be served on all parties and the hearing officer by mail or any other means permitted by law or prescribed by agency administrative regulation. The agency shall when it is received stamp the time and date upon a document.

(3) The hearing officer may issue subpoenas and discovery orders when requested by a party or on his own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.

(4) To the extent necessary for the full disclosure of all relevant facts and issues, the hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limited grant of intervention or a prehearing order.

(5) Any party to an administrative hearing may participate in person or be represented by counsel. In informal proceedings, a party may be represented by other professionals if appropriate and if permitted by the agency by administrative regulation.

(6) If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in KRS 13B.110.

(7) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.

(8) An administrative hearing shall be open to the public unless specifically closed pursuant to a provision of law. If an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed, public access shall be satisfied by giving the public an opportunity, at reasonable times, to hear or inspect the agency's record.

History.

Enact. Acts 1994, ch. 382, § 8, effective July 15, 1996; 1996, ch. 318, § 8, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Discretion of Court.
2. Discretion of Hearing Officer.

1. Discretion of Court.

Teacher's motion to reconsider denial of his request to reverse the administrative order of his termination was denied because KRS 13B.080 allowed state court judges to limit nature and scope of administrative hearings and KRS 13B.150 allowed a reviewing court to reverse a final order in part and remand for further proceedings. Furthermore, CR 60.02 did not apply to administrative proceedings. Dixon v. Clem, 419 F. Supp. 2d 947, 2006 U.S. Dist. LEXIS 10890 (E.D. Ky. 2006).

2. Discretion of Hearing Officer.

Parties in an administrative hearing regarding the termination of tenured teacher's employment for having sexual contact with two students did not have an unlimited right to present evidence, but, under KRS 13B.080, had the right to present evidence to the extent necessary to fully disclose all relevant facts and issues, subject to the discretion of the hearing officer. The tenured teacher under that standard was permitted to present the tenured teacher's case and was not permitted certain requested telephonic testimony, as the Board that was opposing the tenured teacher did not agree to such testimony and, under KRS 13B.080(7) both parties had to agree for such evidence to be presented. Drummond v. Todd County Bd. of Educ., 349 S.W.3d 316, 2011 Ky. App. LEXIS 155 (Ky. Ct. App. 2011).

Cited in:

Geupel Constr. Co. v. Commonwealth Transp. Cabinet, 136 S.W.3d 43, 2003 Ky. App. LEXIS 39 (Ky. Ct. App. 2003).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.090. Findings of fact — Evidence — Recording of hearing — Burdens of proof.

(1) In an administrative hearing, findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.

(2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. The hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

(3) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a list of all witnesses every other party expects to call at the hearing, and the available documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations, or conclusions of the agency staff, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the agency. Conditions for examining and copying agency records, fees to be charged, and other matters pertaining to access to these records shall be governed by KRS 61.870 to 61.884. To the extent required by due process, the hearing officer may order the inspection of any records excluded from the application of KRS 61.870 to 61.884 under KRS 61.878 that relate to an act, transaction, or event that is a subject of the hearing, and may order their inclusion in the record under seal.

(4) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(5) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(6) The agency shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the agency, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs. The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884.

(7) In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. The agency has the burden to show the propriety of a penalty imposed or the removal of a benefit previously granted. The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of evidence in the record, except when a higher standard of proof is required by law. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.

History.

Enact. Acts 1994, ch. 382, § 9, effective July 15, 1996; 1996, ch. 318, § 9, effective July 15, 1996; 2018 ch. 188, § 4, effective July 14, 2018.

NOTES TO DECISIONS

Analysis

1. In General.
2. Burden of Proof.
3. Procedure.

1. In General.

Consideration of three chapters from a medical textbook offered by the Kentucky Retirement System was proper as: (1) the disability claimant had ample opportunity to submit rebuttal evidence prior to the closing of the file, (2) KRS 13B.090(2) permitted the submission of evidence in written form, and (3) KRS 13B.090(1) permitted the admission of hearsay evidence. McManus v. Ky. Ret. Sys., 124 S.W.3d 454, 2003 Ky. App. LEXIS 339 (Ky. Ct. App. 2003).

Hearing officer did not improperly assign a disability claimant a burden to prove that the causation of his disability was other than his pre-existing diabetes as KRS 61.665 did not allocate the burden of proof, but specified that hearings were to be conducted in accordance with KRS ch. 13B, which in KRS 13B.090 placed the burden of proof on the claimant. McManus v. Ky. Ret. Sys., 124 S.W.3d 454, 2003 Ky. App. LEXIS 339 (Ky. Ct. App. 2003).

Hearing officer improperly delegated his authority when he adopted almost verbatim the proposed findings of fact and conclusions of law of the Kentucky Cabinet of Health and Family Services in a Medicaid recoupment appeal. Although the hearing officer was not subject to CR 52.01, the same basic principle applied that it was inappropriate for an administrative hearing officers to delegate such an important part of his authority to a party in a matter before him. Commonwealth v. EPI Corp., 2006 Ky. App. LEXIS 114 (Ky. Ct. App. 2006), aff'd, 2008 Ky. Unpub. LEXIS 33 (Ky. Dec. 18, 2008).

Where the Kentucky Retirement System denied a county employee's application for disability retirement benefits, reversal was warranted because it was unclear from the record when the statements of the government's physicians were submitted and if the employee was given the statutory right to inspect and respond to them. Claxon v. Ky. Ret. Sys., 2008 Ky. App. LEXIS 25 (Ky. Ct. App. 2008), vacated, 2009 Ky. LEXIS 172 (Ky. June 17, 2009).

Circuit court properly affirmed the Kentucky Board of Claims' award of damages to the claimant for loss of earning capacity due to an injury he received while interning for a state university because the Board did not err in relying upon the hand-written note from the claimant's treating physician to support a finding of permanent injury as Ky. Rev. Stat. Ann. § 13B.090(1) did not apply to proceedings before the Board, and substantial evidence supported the Board's finding of permanent injury and that the claimant's injury permanently diminished his early capacity. The circuit court properly reduced the award by the amount of his medical bills that were discharged. Findley v. Western Ky. Univ., 690 S.W.3d 170, 2024 Ky. App. LEXIS 34 (Ky. Ct. App. 2024).

2. Burden of Proof.

810 KAR 1:018, § 3(3)(a) creates a presumption a trainer has to rebut, and does not change the burden of proof in 810 KAR 1:018, § 3(3), or even KRS 13B.090(7); the trainer responsibility rule was valid, and where the trainer did not show that he was not negligent and that he exercised a high degree of care in safeguarding a horse from tampering, his suspension was proper even though it was the owner who placed a banned drug in the horse's feed, and not the trainer, who had no knowledge of the owner's actions. Deaton v. Ky. Horse Racing Auth., 172 S.W.3d 803, 2004 Ky. App. LEXIS 348 (Ky. Ct. App. 2004).

Fire district chiefs had the burden of proving that they were entitled to time-and-a-half overtime pay pursuant to KRS 337.285 because proof that a claimant was an employee was

part of their prima facie case for entitlement to overtime pay, not an affirmative defense for which the city employer bore the burden of proof. City of Louisville, Div. of Fire v. Fire Serv. Managers Ass'n by & Through Kaelin, 212 S.W.3d 89, 2006 Ky. LEXIS 296 (Ky. 2006).

Trial court had to determine whether the combined effects of the employee's impairments rendered him unable to return to his former position or like positions, and the appellate court found that KRS 61.600(3)(d) referred to medically and psychiatrically diagnosable maladies only; a claimant bore the burden to come forward with some evidence that his condition did not preexist his service with the Commonwealth, and upon such a threshold showing, the burden of going forward shifted back to the Kentucky Retirement Systems, and smoking could not be considered a preexisting condition. West v. Ky. Ret. Sys., 2010 Ky. App. LEXIS 97 (Ky. Ct. App. 2010).

Under KRS 61.600, a claimant bears the burden to come forward with some evidence that his condition did not preexist his service with the Commonwealth, and, upon such a threshold showing, the burden of going forward shifts back to the retirement systems. While the ultimate burden of persuasion is not moved from the party upon which it was originally cast (the claimant), the systems must come forward with some evidence in rebuttal where a claimant makes a threshold showing that his or her condition was not preexisting, and, while the fact-finder is free to accept or reject any evidence it chooses, it is not free to reject uncontested evidence; therefore, the fact-finder was not free to reject the unrebutted testimony of a doctor relating to the fact that it was highly unlikely that an employee had experienced chronic obstructive pulmonary disease on the year of his re-employment, despite his smoking. West v. Ky. Ret. Sys., 2011 Ky. App. LEXIS 125 (Ky. Ct. App. 2011), sub. op., 2011 Ky. App. Unpub. LEXIS 1002 (Ky. Ct. App. July 15, 2011).

Under KRS 13B.090(7), a claimant bore the burden of proof in demonstrating that she was entitled to disability retirement benefits. Ky. Ret. Sys. v. Lowe, 343 S.W.3d 642, 2011 Ky. App. LEXIS 162 (Ky. Ct. App. 2011).

Employee had to satisfy his burden of proving that his COPD did not pre-exist his membership in the Kentucky Retirement Systems, KRS 13B.090, 61.600, and the hearing officer's conclusion that the employee's COPD was a preexisting condition was reasonable; the hearing officer did not consider the combined effect of the employee's impairments and addressed all medical records presented. Ky. Ret. Sys. v. West, 413 S.W.3d 578, 2013 Ky. LEXIS 374 (Ky. 2013).

Circuit court properly affirmed the Kentucky Retirement Systems' Board of Trustees' denial of a former employee's application for disability retirement benefits because the employee's argument on appeal impermissibly shifted her burden of proof to the Board, the persuasive effect of the evidence submitted by the employee was undermined by a doctor's independent psychological examination of the employee, which suggested that she might be feigning or malingering her symptoms, and there was a lack of objective medical evidence to support that any of her conditions were disabling. Bartrum v. Ky. Ret. Sys., 2017 Ky. App. LEXIS 17 (Ky. Ct. App. Jan. 20, 2017, sub. op., 2017 Ky. App. Unpub. LEXIS 956 (Ky. Ct. App. Jan. 20, 2017).

Cabinet had the burden to show it was entitled to recoupment as the language of 907 Ky. Admin. Regs. 1:671, § 9(14), and Ky. Rev. Stat. Ann. § 13B.090(7) was clear and unambiguous, and subject to only one reasonable interpretation, i.e., that the agency had the burden of proof to recover benefits paid, even when subject to an audit. Commonwealth v. Loving Care, Inc., 590 S.W.3d 824, 2019 Ky. App. LEXIS 202 (Ky. Ct. App. 2019).

Department for Community Based Services, Cabinet for Health and Family Services failed to prove its allegation of neglect by appellee by showing that it was more likely than not that appellee failed to provide a child adequate supervision necessary for the child's well-being in the afterschool program as the only evidence presented by the Cabinet that the boys touched each other sexually was unreliable and inconsistent hearsay; and no witness testified that the touching was ever reported to appellee. Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

Circuit court erred ruling that the Kentucky Retirement Systems bore the burden of proof, as it had to be borne by the county sheriff's office, the employer; the assessment of actuarial costs to the sheriff's office was not properly characterized as a penalty because the assessment was not a punishment for any wrong, breach, violation of law, or some other general infringement. Ky. Ret. Sys. v. Jefferson Cty. Sheriff's Office, 630 S.W.3d 610, 2021 Ky. LEXIS 157 (Ky. 2021).

Burden of proof was properly assigned to a city because the Kentucky Retirement Systems's assessment was not a penalty, and the city was not deprived of a benefit previously granted by the Retirement Systems; assigning the burden of proof to the city made practical sense because it was in the best position to gather evidence pertaining to an employee or a purported promotion. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

In a negligence case involving a state agency's alleged failure to cite timber loggers and hold them accountable for damages to the claimant's property, the circuit court erred because it effectively and erroneously shifted the burden of proof to the agency instead of the claimant, as required by this statute. Commonwealth v. Shrader, 658 S.W.3d 475, 2022 Ky. App. LEXIS 86 (Ky. Ct. App. 2022).

Cabinet for Health and Family Services failed to prove by a preponderance of the evidence that the mother created or allowed to be created a risk of physical injury to her child(ren) by other than accidental means because the Cabinet presented no evidence that the ingestion of medication by one of the children was anything other than an accident as the Cabinet did not show the mother knew the medication was within reach, that the uncle was incapable of watching the children briefly, or that the mother was inattentive to the children's needs. S.H. v. Cabinet for Health, 717 S.W.3d 749, 2025 Ky. App. LEXIS 51 (Ky. Ct. App. 2025).

3. Procedure.

A trial court could not make a determination that equitable estoppel applied while reviewing the Board's decision about whether the retiree's benefits were properly reduced. The hearing officer had to make such a finding in the first instance, pursuant to KRS 13B.090(1) and KRS 13B.110(1), which the Board was then to review pursuant to KRS 13B.120(2) and (3), followed by the trial court's review and, then, review by the appellate court under KRS 13B.150(2). Bd. of Trs. v. Grant, 257 S.W.3d 591, 2008 Ky. App. LEXIS 194 (Ky. Ct. App. 2008).

Court of appeals erred in affirming the denial of disability retirement benefits because the hearing officer's original recommendation correctly found the post-employment medical proof, alone, established the employee's disabling Hereditary Hemorrhagic Telangiectasia remained asymptomatic and reasonably undiscoverable; the employee's affidavit and testimony, along with a reasoned reading of his medical records, was sufficient to allow the hearing officer to make an informed determination. Elder v. Ky. Ret. Sys., 617 S.W.3d 310, 2020 Ky. LEXIS 291 (Ky. 2020).

Cited in:

Ky. Pub. Pensions Auth. v. Swint, 714 S.W.3d 398, 2025 Ky. App. LEXIS 35 (Ky. Ct. App. 2025); ; Knipper v. Governor's Off., 718 S.W.3d 59, 2025 Ky. App. LEXIS 53 (Ky. Ct. App. 2025); .

OPINIONS OF ATTORNEY GENERAL.

Data maintained under the Kentucky All Schedules Prescription Electronic Reporting ("KASPER") system cannot be

informally disclosed by the Board of Medical Licensure to a licensee under investigation or charged with misconduct, nor provided through formal discovery, nor introduced into evidence in a Board of Medical Licensure hearing, without a court order. OAG 2005-07, 2005 Ky. AG LEXIS 6.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.
Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.100. Prohibited communications.

(1) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the proceeding is pending.

(2) The prohibition stated in subsection (1) shall not apply to:

(a) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(b) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(3) If an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and he shall place in the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

History.
Enact. Acts 1994, ch. 382, § 10, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.

13B.110. Recommended order.

(1) Except when a shorter time period is provided by law, the hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement advising parties fully of their exception and appeal rights.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the agency head, the hearing officer shall show good cause to the agency head, in writing, and based upon substantial proof, that an extension of time is needed.

(3) If the agency head, after a showing of good cause, grants the hearing officer an extension of time:

(a) The extension shall not exceed thirty (30) days from the date the extension was granted;

(b) The statement granting the extension shall be included in the record of the hearing; and

(c) Notice of the extension shall be sent to all parties.

(4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

(5) The provisions of this section shall not apply in an administrative hearing where the hearing officer conducts the hearing in the presence of the agency head who renders a decision without the recommendation of the hearing officer.

History.
Enact. Acts 1994, ch. 382, § 11, effective July 15, 1996; 1996, ch. 318, § 10, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Service of Notice.
2. Exhaustion of Remedies.
3. Timeliness of Order.
4. Timeliness of Exceptions.
5. Requirements.

1. Service of Notice.
Service of notice upon a party's counsel complies with the mandate of subsection (4) of this section. Flint v. Executive Branch Ethics Comm'n, 981 S.W.2d 132, 1998 Ky. App. LEXIS 131 (Ky. Ct. App. 1998).

2. Exhaustion of Remedies.
The filing of exceptions under a Chapter 13B administrative proceeding is not a prerequisite to obtaining administrative review of a hearing officer's recommended order. When a party fails to file exceptions, the issues the party can raise on judicial review under KRS 13B.140 are limited to those findings and conclusions contained in the agency head's final order that differ from those contained in the hearing officer's recommended order. Rapier v. Philpot, 130 S.W.3d 560, 2004 Ky. LEXIS 3 (Ky. 2004).

3. Timeliness of Order.
Hearing officer clearly failed to comply with the timeliness requirement of KRS 13B.110(3) when he took more than eight months to render a recommended order after the submission for decision of a Medicaid recoupment appeal. Commonwealth v. EPI Corp., 2006 Ky. App. LEXIS 114 (Ky. Ct. App. 2006), aff'd, 2008 Ky. Unpub. LEXIS 33 (Ky. Dec. 18, 2008).

4. Timeliness of Exceptions.
The language contained in KRS 13B.110(4) is unequivocal and requires that exceptions be filed within fifteen (15) days from the date the recommended order is mailed. The substantial compliance doctrine under CR 73.02 is not applicable to extend the time, nor is CR 6.05 applicable to agency proceedings. Commonwealth v. Copper Care, Inc., 2008 Ky. App. LEXIS 136 (Ky. Ct. App. 2008).

A trial court could not make a determination that equitable estoppel applied while reviewing the Board's decision about whether the retiree's benefits were properly reduced. The hearing officer had to make such a finding in the first instance, pursuant to KRS 13B.090(1) and KRS 13B110(1), which the Board was then to review pursuant to KRS 13B.120(2) and (3),

followed by the trial court's review and, then, review by the appellate court under KRS 13B.150(2). Bd. of Trs. v. Grant, 257 S.W.3d 591, 2008 Ky. App. LEXIS 194 (Ky. Ct. App. 2008).

5. Requirements.

Hearing officer erred in failing to recommend a specific penalty for the physician where the legislative history indicated that Ky. Rev. Stat. Ann. § 13B.110(1) required the inclusion of a recommended penalty. Strauss v. Ky. Bd. of Med. Licensure, 2017 Ky. App. LEXIS 175 (Ky. Ct. App. 2017), rev'd, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018).

Ky. Rev. Stat. Ann. § 13B.110(1) allows a hearing officer to recommend a penalty but it does not require him or her to do so. Ky. Bd. of Med. Licensure v. Strauss, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018), cert. denied, 586 U.S. 1236, 139 S. Ct. 1354, 203 L. Ed. 2d 590, 2019 U.S. LEXIS 1747 (U.S. 2019).

Subsection (4) allows parties disagreeing with a hearing officer's recommendation to file written exceptions, which would direct the Kentucky Parole Board's attention to any perceived inadequacies in the administrative law judge's findings; the procedures utilized by the Board must ensure that the Board apprises itself of the full facts and issues in the matter before rendering its final decision, which can be accomplished through a parolee's ability to file exceptions to the Board. Hodge v. Ky. Parole Bd., 2026 Ky. LEXIS 16 (Ky. 2026).

Cited in:

Ky. Pub. Pensions Auth. v. Swint, 714 S.W.3d 398, 2025 Ky. App. LEXIS 35 (Ky. Ct. App. 2025); .

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.120. Final order.

(1) In making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

(2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

(4) Except as otherwise required by federal law, the agency head shall render a final order in an administrative hearing within ninety (90) days after:

(a) The receipt of the official record of the hearing in which there was no hearing officer submitting a recommended order under KRS 13B.110; or

(b) The hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

(5) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record in the same manner as provided in KRS 13B.050.

(6) This section shall not apply to disposition pursuant to KRS 13B.070(3).

(7) If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as a recommended order and the second agency functions as though it were reviewing a recommended order in accordance with this section.

History.

Enact. Acts 1994, ch. 382, § 12, effective July 15, 1996; 1996, ch. 318, § 11, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Exhaustion of Remedies.
2. Procedure.
3. Notice of Rights.
4. Construction.

1. Exhaustion of Remedies.

The filing of exceptions under a Chapter 13B administrative proceeding is not a prerequisite to obtaining administrative review of a hearing officer's recommended order. When a party fails to file exceptions, the issues the party can raise on judicial review under KRS 13B.140 are limited to those findings and conclusions contained in the agency head's final order that differ from those contained in the hearing officer's recommended order. Rapier v. Philpot, 130 S.W.3d 560, 2004 Ky. LEXIS 3 (Ky. 2004).

2. Procedure.

A trial court could not make a determination that equitable estoppel applied while reviewing the Board's decision about whether the retiree's benefits were properly reduced. The hearing officer had to make such a finding in the first instance, pursuant to KRS 13B.090(1) and KRS 13B110(1), which the Board was then to review pursuant to KRS 13B.120(2) and (3), followed by the trial court's review and, then, review by the appellate court under KRS 13B.150(2). Bd. of Trs. v. Grant, 257 S.W.3d 591, 2008 Ky. App. LEXIS 194 (Ky. Ct. App. 2008).

Circuit court properly set aside a final order by the secretary of the Cabinet for Health and Family Service because the Cabinet acted in excess of its statutory authority by freezing a mental health provider's reimbursement rates for seven years without reference to its actual costs and failed to set forth sufficient findings to explain the deviation from the hearing officer's recommended findings concerning the amount which the provider was owed. Commonwealth v. RiverValley Behavioral Health, 465 S.W.3d 460, 2014 Ky. App. LEXIS 148 (Ky. Ct. App. 2014).

Under Ky. Rev. Stat. Ann. § 13B.120, the Kentucky Board of Medical Licensure is to consider the record, including the hearing officer's recommended order, any witness or expert testimony, exceptions filed by the parties, and the original grievances initiating the investigation, and determine whether substantial evidence supports revoking a physician's medical license. Moses v. Ky. Bd. of Med. Licensure, 2016 Ky. App. LEXIS 13 (Ky. Ct. App. Feb. 12, 2016), review denied, ordered not published, 2016 Ky. LEXIS 474 (Ky. Sept. 15, 2016).

Physician's argument that the Kentucky Board of Medical Licensure did not consider the record in revoking his license

was rejected where he had not articulated how any evidence in the record contradicted the hearing officer's findings or the evidence presented at the administrative hearing. Moses v. Ky. Bd. of Med. Licensure, 2016 Ky. App. LEXIS 13 (Ky. Ct. App. Feb. 12, 2016), review denied, ordered not published, 2016 Ky. LEXIS 474 (Ky. Sept. 15, 2016).

Kentucky Board of Medical Licensure violated Ky. Rev. Stat. Ann. § 13B.120(1) in imposing a probationary period on a physician where the statute required the Board to review, at a minimum, the hearing officer's recommended order, the exceptions filed by the parties, and the evidence relied on by the hearing officer, and the Board had failed to review or consider the record before making its final order. Strauss v. Ky. Bd. of Med. Licensure, 2017 Ky. App. LEXIS 175 (Ky. Ct. App. 2017), rev'd, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018).

Ky. Rev. Stat. Ann. § 13B.120(1) requires the Kentucky Board of Medical Licensure to consider the record, including the recommended order and exceptions, but it does not require the Board to review the proceedings in their entirety before issuing a final order. Ky. Bd. of Med. Licensure v. Strauss, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018), cert. denied, 586 U.S. 1236, 139 S. Ct. 1354, 203 L. Ed. 2d 590, 2019 U.S. LEXIS 1747 (U.S. 2019).

Plain reading of the statute simply does not support the proposition that the Kentucky Board of Medical Licensure must review the entire hearing and exhibits. Instead, it requires the Board to think carefully and to take into account the record including the recommended order and the exceptions, leaving to the Board the discretion as to what other parts of the record, if any, need to be examined. Ky. Bd. of Med. Licensure v. Strauss, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018), cert. denied, 586 U.S. 1236, 139 S. Ct. 1354, 203 L. Ed. 2d 590, 2019 U.S. LEXIS 1747 (U.S. 2019).

3. Notice of Rights.

Reversal was required where intermediate court's decision rested on premise that the agency's final order failed to advise claimant of his right to file exceptions. Neither logic nor the applicable statute, KRS 13B.120(3), required the final order to advise parties to a recommended order of their right to file exceptions. Furthermore, the hearing officer's recommended order in the case fully complied with the requirements of KRS 13B.110(1).Rapier v. Philpot, 130 S.W.3d 560, 2004 Ky. LEXIS 3 (Ky. 2004).

4. Construction.

Plain meaning of Ky. Rev. Stat. Ann. § 13B.120(1) indicates that the legislature intended for the Kentucky Board of Medical Licensure to consider the record, including the hearing officer's recommended order; any testimony presented by witnesses or experts, as well as the exceptions filed by the parties and the original grievances which initiated the investigation; and make a determination as to whether substantial evidence supports revoking a physician's medical license. Strauss v. Ky. Bd. of Med. Licensure, 2017 Ky. App. LEXIS 175 (Ky. Ct. App. 2017), rev'd, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018).

Ky. Rev. Stat. Ann. § 13B.120(1) requires the Kentucky Board of Medical Licensure to review, at a minimum, the hearing officer's recommended order, the exceptions filed by the parties, and the evidence relied on by the hearing officer. Strauss v. Ky. Bd. of Med. Licensure, 2017 Ky. App. LEXIS 175 (Ky. Ct. App. 2017), rev'd, 558 S.W.3d 443, 2018 Ky. LEXIS 273 (Ky. 2018).

Cited in:

Herndon v. Herndon, 139 S.W.3d 822, 2004 Ky. LEXIS 88 (Ky. 2004); N. Ky. Mental Health-Mental Retardation Reg'l Bd. v. Commonwealth, 538 S.W.3d 298, 2017 Ky. App. LEXIS 54 (Ky. Ct. App. 2017).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.125. Emergency action — Hearing — Appeal.

(1) An agency may take emergency action affecting the legal rights, duties, privileges or immunities of named persons without a hearing only if duly authorized by statute to so act. If an agency takes emergency action, the agency shall conduct an emergency hearing in accordance with the provisions of this section.

(2) An agency head or an official of an agency duly authorized by law to summarily act in emergency situations may issue an emergency order to stop, prevent, or avoid an immediate danger to the public health, safety, or welfare. The emergency order shall contain findings of fact and conclusions of law upon which the agency bases the emergency order. The agency shall give notice of the emergency order to all affected parties as is practicable under the circumstances, and notice shall be served in the same manner as provided in KRS 13B.050(2). The emergency order is effective when received by the affected party or his representative.

(3) Any person required to comply with an emergency order issued under subsection (2) of this section may request an emergency hearing to determine the propriety of the order. The agency shall conduct an emergency hearing within ten (10) working days of the request for hearing. The agency shall give all affected parties reasonable notice of the hearing and to the extent practicable shall conduct the hearing in conformity with this chapter. The hearing on the emergency order may be conducted by a hearing officer qualified in accordance with KRS 13B.040. Within five (5) working days of completion of the hearing, the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare.

(4) The decision rendered under subsection (3) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140.

History.

Enact. Acts 1996, ch. 318, § 12, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.130. Official record of hearing.

In each administrative hearing, an agency shall keep

an official record of the proceedings which shall consist of:

(1) All notices, pleadings, motions, and intermediate rulings;

(2) Any prehearing orders;

(3) Evidence received and considered;

(4) A statement of matters officially noticed;

(5) Proffers of proof and objections and rulings thereon;

(6) Proposed findings, requested orders, and exemptions;

(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;

(8) All requests by the hearing officer for an extension of time, and the response of the agency head;

(9) Ex parte communications placed upon the record by the hearing officer; and

(10) A recording or transcript of the proceedings.

History.

Enact. Acts 1994, ch. 382, § 13, effective July 15, 1996.

NOTES TO DECISIONS

Cited in:

Commonwealth Ex Rel. Office of Fin. Insts. v. Home Fed. Savs. & Loan Ass'n, — S.W.3d —, 2008 Ky. App. LEXIS 343 (Ky. Ct. App. 2008).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Durant, Procedural Due Process Past Due, Vol. 61, No. 1, Winter 1997, Ky. Bench & Bar 6.

13B.140. Judicial review of final order.

(1) Except as provided in KRS 452.005, all final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

(3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record. If the court requests a transcript of proceedings that have not been transcribed, the cost of the transcription shall be paid by the party initiating the appeal, unless otherwise agreed to by all parties.

(4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

History.

Enact. Acts 1994, ch. 382, § 14, effective July 15, 1996; 1996, ch. 318, § 13, effective July 15, 1996; 2021 ch. 2, § 2, effective February 2, 2021.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Exhaustion of Remedies.
3. Petition Requirements.
4. Venue.
5. Timely Filing.
6. Administrative Record.

1. Applicability.

While procedurally the right to appellate review pursuant to KRS 13B.140 of a non-licensee who had been aggrieved by the imposition of administrative fines is plausible, it is more likely that the Legislature confined the right to appellate review to those situations pertaining to the refusal, revocation, or suspension of licenses simply because it did not envision persons not licensed, not applicants for licenses, or aggrieved by the issuance or non-issuance of licenses, to be within the scope of the Alcoholic Beverage Control Board's jurisdictional reach. Ky. Licensed Bev. Ass'n v. Louisville-Jefferson County Metro Gov't, 127 S.W.3d 647, 2004 Ky. LEXIS 39 (Ky. 2004).

Policy of the Supreme Court of Kentucky was not to contest the propriety of legislation in the area of governance of the Kentucky Administrative Office of the Courts (AOC) to which the court could have acceded through a wholesome comity; pursuant to KRS 13B.140, an appeal of an AOC personnel action was properly filed in the Circuit Court. Jones v. Commonwealth, 171 S.W.3d 53, 2005 Ky. LEXIS 233 (Ky. 2005).

Circuit Court erred in granting summary judgment against a golf cart manufacturer and a taxpayer on standing grounds, as the manufacturer, as a disappointed bid contractor, had standing to challenge the State of Kentucky Finance and Administration Cabinet's decision awarding a government contract to a competitive bidder on the grounds that it was arbitrary and capricious; further, the taxpayer had standing to challenge a bid contract award where there was proof of arbitrariness or capriciousness, and under the general rule that taxpayers had standing to sue where they have suffered a distinct injury. Yamaha Motor Mfg. Corp. of Am. v. Commonwealth, 2005 Ky. App. LEXIS 239 (Ky. Ct. App. 2005), aff'd, 237 S.W.3d 203, 2007 Ky. LEXIS 203 (Ky. 2007).

Since KRS 103.195 et seq., creating the Kentucky Private Activity Bond Allocation Committee, does not provide either for administrative review or for an appeal from Committee rulings, the general administrative appeal statute, KRS 13B.140, governs, and that statute imposes a 30-day limitations period for appeals to a court from final administrative rulings. Bear Creek Capital, LLC v. Toebben, Ltd., 2007 Ky. App. LEXIS 135 (Ky. Ct. App. 2007), sub. op., 2007 Ky. App. Unpub. LEXIS 309 (Ky. Ct. App. May 4, 2007).

Even if the provisions of KRS 13B.140(1) and 13B.010(1) were applicable to the actions of a county board of education, the board waived any jurisdictional defect by not objecting until after the Circuit Court and the Court of Appeals decided the issues regarding a student's expulsion pursuant to KRS 158.150. M.K.J. v. Bourbon County Bd. of Educ., 2008 Ky. App. LEXIS 286 (Ky. Ct. App. 2008).

While a circuit court lacked jurisdiction to review the authority of the Chief Justice of the Supreme Court of Kentucky to perform certain administrative actions, it had jurisdiction to review Administrative Office of the Courts personnel actions, whether ordered by the Chief Justice directly or by delegation, to the extent permitted by KRS 13B.140. Travis v. Admin. Office of the Courts, 2011 Ky. App. LEXIS 163 (Ky. Ct. App. Sept. 23, 2011), review denied, ordered not published, 2012 Ky. LEXIS 428 (Ky. May 16, 2012).

2. Exhaustion of Remedies.

Because the former deputy liquidator did not exhaust the administrative remedies, the trial court lacked jurisdiction to grant summary judgment. Exec. Branch Ethics Comm'n v. Stephens, 92 S.W.3d 69, 2002 Ky. LEXIS 200 (Ky. 2002).

Corporation appealing from unfavorable ruling in the Kentucky Board of Tax Appeals complied with the requirements of KRS 13B.140(1) by naming the board in its petition and serving the board with a copy of its petition when the corporation appealed to the Circuit Court. Revenue Cabinet v. LWD, Inc., 2002 Ky. App. LEXIS 503 (Ky. Ct. App. Mar. 15, 2002), aff'd, 136 S.W.3d 472, 2004 Ky. LEXIS 145 (Ky. 2004).

Retiree's declaratory judgment action was dismissed because the highest court held that the retiree was required by KRS 61.645 to exhaust KRS ch. 13B administrative remedies before she could appeal a final order of the Kentucky Employees Retirement Systems based upon the constitutionality of 105 KAR 1:210 that a hearing officer had held was to be applied or based upon her argument that § 1:210 as it was going to be applied was in conflict with KRS 61.665(2)(e). Ky. Ret. Sys. v. Lewis, 163 S.W.3d 1, 2005 Ky. LEXIS 85 (Ky. 2005), modified, 2005 Ky. LEXIS 190 (Ky. June 16, 2005).

Because it was apparent that a party was challenging the facial constitutionality of a regulation, the party's failure to exhaust administrative remedies did not bar it from seeking judicial review. St. Luke Hosps., Inc. v. Commonwealth, 254 S.W.3d 830, 2008 Ky. App. LEXIS 146 (Ky. Ct. App. 2008).

Although the adult citizen sought a declaration pursuant to KRS 418.040 that the statutes and regulations allowing the adult citizen to be investigated based an unidentified hotline caller's claim that the adult citizen had sexually abused a minor were unconstitutional, and assertions that the statutes and regulations were unconstitutional could avoid the normal KRS 13B.140(2) exhaustion-of-administrative remedies requirement, that did not mean the adult citizen's contention was ripe for review. Indeed, the state supreme court found that in its discretion pursuant to KRS 418.065 it could find that review of the trial and appellate court's judgment finding the statutes and regulations were constitutional were not ripe for review and order further proceedings, as the administrative proceedings had not even been concluded. W.B. v. Commonwealth, 388 S.W.3d 108, 2012 Ky. LEXIS 200 (Ky. 2012).

3. Petition Requirements.

Trial court properly denied the Kentucky Revenue Cabinet's motion to dismiss the corporations' appeal of the Kentucky Board of Tax Appeals' denial of an occasional sale exemption to their leasing activities, for the alleged failure to name an indispensable party; the corporations' petition of appeal named the Board twice, and included the Board's address, which strictly complied with KRS 13B.140(1), and a copy of the petition was served on the Board. LWD Equip., Inc. v. Revenue Cabinet, 136 S.W.3d 472, 2004 Ky. LEXIS 145 (Ky. 2004).

The Full Faith and Credit Doctrine of 28 USCS § 1738 precluded plaintiff's Title VII claims against the Cabinet for Health and Family Services based on the doctrine of res judicata because plaintiff had previously raised the same issues against the Cabinet in state court and the claims were dismissed based on her failure to comply with the time requirements of KRS 13B.140. Njoku v. Kentucky, 2007 U.S. Dist. LEXIS 30215 (E.D. Ky. 2007).

Trial court did not err in dismissing the agency review on the grounds that the applicant who filed an appeal of the Cabinet's hiring decision to the personnel board was not served with process as required by KRS 13B.140(1), and the trial court did not find that the applicant's counsel waived personal service on the applicant's behalf; the trial court did not make any findings on the issue of waiver of service of process but limited its findings to the applicant's personal service and omitted address. Transp. Cabinet v. Caudill, 278 S.W.3d 643, 2009 Ky. App. LEXIS 32 (Ky. Ct. App. 2009), limited, Almcare v. Commonwealth, 2020 Ky. App. Unpub. LEXIS 776 (Ky. Ct. App. Dec. 4, 2020).

Trial court did not err in dismissing the review of the agency's appeal on the grounds that the applicant who filed an appeal of the Cabinet's hiring decision was not served with process as required by KRS 13B.140(1); the applicant did not take affirmative steps to subject himself to the trial court's jurisdiction; the notice of affidavit and affidavit were filed by the applicant's counsel and indicated that he did not waive or accept service on the applicant's behalf. Transp. Cabinet v. Caudill, 278 S.W.3d 643, 2009 Ky. App. LEXIS 32 (Ky. Ct. App. 2009), limited, Almcare v. Commonwealth, 2020 Ky. App. Unpub. LEXIS 776 (Ky. Ct. App. Dec. 4, 2020).

Although the failure to list an address of a party of record on a petition was not necessarily fatal, because the applicant who challenged the Kentucky Transportation Cabinet's appointment of a private sector employee as superintendent with the Cabinet was never personally served, even after the error was discovered, the failure to serve the applicant the petition was fatal to the appeal. Transp. Cabinet v. Caudill, 278 S.W.3d 643, 2009 Ky. App. LEXIS 32 (Ky. Ct. App. 2009), limited, Almcare v. Commonwealth, 2020 Ky. App. Unpub. LEXIS 776 (Ky. Ct. App. Dec. 4, 2020).

Even though the statute does not mention summonses, the summons requirement set forth in the civil rules is not inconsistent with the statutory procedures and is required to commence an action in the circuit court. Ky. Horse Racing Comm'n v. Motion, 592 S.W.3d 739, 2019 Ky. App. LEXIS 49 (Ky. Ct. App. 2019).

4. Venue.

County where one of an operator's long-term care facilities was located was the proper venue in an appeal by the Kentucky Cabinet for Health and Family Services from a judgment against it in a Medicaid recoupment proceeding because the Cabinet's enabling statutes did not contain a statement regarding venue and because, absent compelling or unusual circumstances, a court is duty bound to hear cases within its vested jurisdiction. Commonwealth v. EPI Corp., 2006 Ky. App. LEXIS 114 (Ky. Ct. App. 2006), aff'd, 2008 Ky. Unpub. LEXIS 33 (Ky. Dec. 18, 2008).

5. Timely Filing.

A retiree's appeal was not untimely on the ground that although the deadline for filing the appeal fell on a legal

holiday under KRS 2.110(1), the Circuit Court remained open on that day; the retiree was entitled to the extra day to file since Columbus Day was a legal holiday pursuant to KRS 2.110. When the deadline for filing a legal document falls on a "legal holiday" as designated by KRS 2.110, but the courthouse remains open that day, the petitioner receives an extra day to file, even though the courthouse remains open on a legal holiday. Wilkins v. Ky. Ret. Sys. Bd. of Trs., 276 S.W.3d 812, 2009 Ky. LEXIS 13 (Ky. 2009).

Circuit court had jurisdiction to hear an appeal by a horse trainer and owner (the appellees) because they filed their petition for appeal before the 30-day deadline and, even though they did not serve a summons on the Attorney General, they commenced the action in good faith, there was no evidence of deceit, and when the Kentucky Horse Racing Commission moved to dismiss the appeal, the appellees corrected the error within 14 days. Ky. Horse Racing Comm'n v. Motion, 2018 Ky. App. LEXIS 314 (Ky. Ct. App. 2018).

Circuit court correctly allowed a case to proceed because the case was commenced in good faith since a trainer and an owner gave copies of their appeal to the Attorney General and to agents of the Kentucky Horse Racing Commission within the 30-day timeframe and had summonses issued; they intended to properly commence the action and believed a summons was not necessary, and that belief was reasonable based on the wording of the statute and the lack of published case law on the issue. Ky. Horse Racing Comm'n v. Motion, 592 S.W.3d 739, 2019 Ky. App. LEXIS 49 (Ky. Ct. App. 2019).

Order dismissing a student's petition challenging the failure to designate him as a student with a disability was upheld because it was untimely and none of the three reasons for the late filing justified proceeding to the merits of the petition. J.M. v. Oldham County Bd. of Educ., 647 S.W.3d 279, 2022 Ky. App. LEXIS 57 (Ky. Ct. App. 2022).

6. Administrative Record.

The personnel board's failure to send the original or a copy of the administrative record to the trial court did not necessitate the reversal of the trial court's order; because the Board's failure to send the complete administrative record to the trial court did not prejudice the Cabinet's case, the error was harmless. Transp. Cabinet v. Caudill, 278 S.W.3d 643, 2009 Ky. App. LEXIS 32 (Ky. Ct. App. 2009), limited, Almcare v. Commonwealth, 2020 Ky. App. Unpub. LEXIS 776 (Ky. Ct. App. Dec. 4, 2020).

Cited in:

Frito-Lay v. United States EEOC, 964 F. Supp. 236, 1997 U.S. Dist. LEXIS 6754 (W.D. Ky. 1997); Geupel Constr. Co. v. Commonwealth Transp. Cabinet, 136 S.W.3d 43, 2003 Ky. App. LEXIS 39 (Ky. Ct. App. 2003); Herndon v. Herndon, 139 S.W.3d 822, 2004 Ky. LEXIS 88 (Ky. 2004); Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456, 2004 Ky. LEXIS 92 (Ky. 2004); Behanan v. Cobb, 2007 Ky. App. LEXIS 37 (Ky. Ct. App. 2007); Perkins v. Cabinet for Health & Family Servs., — S.W.3d —, 2007 Ky. App. LEXIS 192 (Ky. Ct. App. 2007); Gallien v. Ky. Bd. of Med. Licensure, 336 S.W.3d 924, 2011 Ky. App. LEXIS 54 (Ky. Ct. App. 2011); Knipper v. Governor's Off., 718 S.W.3d 59, 2025 Ky. App. LEXIS 53 (Ky. Ct. App. 2025); ; Barrett v. Admin. Off. of the Cts., 719 S.W.3d 467, 2025 Ky. App. LEXIS 59 (Ky. Ct. App. 2025); .

NOTES TO UNPUBLISHED DECISIONS

1. Petition Requirements.

Unpublished decision: Circuit Court erred in denying the Cabinet for Health and Family Services' motion to dismiss a Medicaid enrollee's appeal for lack of standing because the enrollee's authorized agents also proceeded on behalf of a hospital, the exhibits attached to the petition provided enough information to comply with the statutory requirements, and the Cabinet's sovereign immunity was waived by the Medical Service Provider Agreement between the Cabinet and the managed care organization and the statute for contract actions against the Commonwealth. Commonwealth v. Sexton, 2016 Ky. App. LEXIS 151 (Ky. Ct. App. Sept. 2, 2016, sub. op., 2016 Ky. App. Unpub. LEXIS 888 (Ky. Ct. App. Sept. 2, 2016).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Kentucky Bench & Bar.

Overstreet, Preclusive Effect of Administrative Agency Determinations in Subsequent Court Proceedings, Vol. 68, No. 2, Mar. 2004, Ky. Bench & Bar 19.

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Tapp and Tincher, Of Innocents and Offenders: A Survey of Children's Law in Kentucky, 30 N. Ky. L. Rev. 131 (2003).

13B.150. Conduct of judicial review.

(1) Except as provided in KRS 452.005, review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs. Challenges to the constitutionality of a final order shall be reviewed in accordance with KRS 452.005.

(2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Without support of substantial evidence on the whole record;

(d) Arbitrary, capricious, or characterized by abuse of discretion;

(e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;

(f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or

(g) Deficient as otherwise provided by law.

(3) The court shall apply de novo review of the agency's final order on questions of law. An agency's interpretation of a statute or administrative regulation shall not be entitled to deference from a reviewing court.

History.

Enact. Acts 1994, ch. 382, § 15, effective July 15, 1996; 2021 ch. 2, § 3, effective February 2, 2021; 2025 ch. 112, § 3, effective June 27, 2025.

NOTES TO DECISIONS

Analysis

1. Substantial Evidence.
2. Review Proper.

3. Procedure.
4. Credibility Determinations.
5. Deference.
6. Arbitrary Review.
7. Fraud.

1. Substantial Evidence.

Kentucky Horse Racing Authority (KHRA) did not act arbitrarily in denying an applicant's request for a horse racing license where: (1) the proposed track could have a detrimental impact on Kentucky Off-Track Betting System sites, (2) an ad hoc committee of the KHRA found that four tracks had failed, one was in financial trouble, and one project had been approved but was never completed, and (3) while the applicant presented corporate disclosure forms that included supporting data and expert analysis concerning the costs and feasibility of the project, those who spoke in opposition to the application were not required to submit like evidence. S. Bluegrass Racing,LLC. v. Ky. Horse Racing Auth., 136 S.W.3d 49, 2004 Ky. App. LEXIS 141 (Ky. Ct. App. 2004).

Determination rendered by the Kentucky Retirement System that an employee's purchase of non-qualified service time had to be based on the full actuarial cost as determined by the system was correct; but, it both factually and legally erred in basing the purchase cost upon a full-time annual salary when the employee was employed as a permanent part-time, and not a full-time, employee. Ky. Ret. Sys. v. Heavrin, 172 S.W.3d 808, 2005 Ky. App. LEXIS 24 (Ky. Ct. App. 2005).

Because there was no evidence that a church intended to use its property for investment purposes or to construct anything other than a church, a Kentucky Board of Tax Appeals order denying tax exempt status to a portion of the property was without substantial evidence on the whole record. St. Andrew Orthodox Church, Inc. v. Thompson, 2007 Ky. App. LEXIS 260 (Ky. Ct. App. Aug. 10, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 523 (Ky. Ct. App. Aug. 10, 2007).

Substantial evidence supported the determination of the Kentucky Board of Tax Appeals that parts and supplies provided by a taxpayer to customers under maintenance agreements for office equipment constituted a retail sale pursuant to KRS 139.100 (now repealed) and KRS 139.120(1) (now repealed), such that sales tax was to be charged to the customers under KRS 139.200 rather than having a use tax charged to the taxpayer under former KRS 139.190. Fin. & Admin. Cabinet v. Duplicator Sales & Serv., 2007 Ky. App. LEXIS 287 (Ky. Ct. App. Aug. 17, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 478 (Ky. Ct. App. Aug. 17, 2007).

The Kentucky Alcoholic Beverage Control Board did not abuse its discretion in granting a retail drink license to a business by interpreting former KRS 241.075 as meaning that the required measurement under the statute must be via the shortest route of ordinary pedestrian travel that was both lawful and safe. Louisville/Jefferson County Metro Gov't v. TDC Group, LLC, 283 S.W.3d 657, 2009 Ky. LEXIS 28 (Ky. 2009).

Energy and environment cabinet secretary's finding that farmers were the individuals with primary responsibility for farms' day-to-day operations was supported by substantial evidence; as there was much factual dispute and evidence presented, the trial court had to determine if the decision of the Energy and environment cabinet secretary was supported by substantial evidence, the trial court issued an opinion that was contrary to this standard, and the court disagreed with the trial court's holding in this regard. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

As substantial evidence supported the energy and environment cabinet secretary's finding that farmers were the individuals with primary responsibility for farms' day-to-day operations, reversal would have only been proper if the secretary incorrectly applied the law to the facts, but the court did not find that to be the case; the trial court imposed its own interpretation of the law instead of deferring to the cabinet's interpretation, the secretary's interpretation was reasonable and entitled to deference, and reversal of the trial court's decision was proper. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Mere fact that the legislature declined to adopt administrative regulations imposing per se integrator liability cannot in and of itself be interpreted to mean that an individual who is primarily responsible, as that term is defined by Kentucky law, cannot be required to sign as a co-permittee, if in fact such a finding is supported by substantial evidence. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Permits issues to farmers were no-discharge permits, and the energy and environment cabinet secretary's ruling on the issue was supported by substantial evidence and otherwise proper; the trial court found that permits ran afoul of KRS 224.10-100(5), (19), but the court could not agree with the trial court's finding that the statutes at issue required permit conditions that related to pathogens, and as the cabinet decided not to exercise its special condition authority, the court found no reason to disturb this. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Energy and environment cabinet's special condition authority was properly exercised and the secretary's decision was supported by substantial evidence, as experts were consulted, setbacks that were established were rationally related to the permit operations, and the setbacks were made according to the best professional judgment of the cabinet. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Trial court substituted its own preferred interpretation over that of the energy and environment cabinet secretary, even though the agency's interpretation was both reasonable and supported by substantial evidence; the court reversed. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Court applied the standards of review, including substantial evidence under KRS 13B.150(2), to the issues raised by the parties. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Finding that appellants were the ones with primary responsibility for farm day-to-day operations was supported by substantial evidence, and the secretary's interpretation of the regulation was reasonable and required to be afforded deference; as the trial court imposed its own interpretation of the law instead of deferring to the cabinet's interpretation, reversal of the trial court was appropriate. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

As there was much factual dispute and much evidence presented, it was the trial court's duty to determine if the secretary's opinion was supported by substantial evidence, and the court disagreed with the finding that another farm had primary responsibility. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Mere fact that the legislature declined to adopt administrative regulations imposing per se integrator liability cannot in and of itself be interpreted to mean that an individual who is primarily responsible, as that term is defined by Kentucky law, cannot be required to sign as a co-permittee, if in fact such a finding is supported by substantial evidence. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Permits were no-discharge permits, and thus a discharge could not be assumed, the secretary's rulings was supported by substantial evidence, and the court found no reason to disturb the decision of the Kentucky Energy and Environment Cabinet Division of Water not to exercise its special condition authority. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct.

App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Special condition authority of the Kentucky Energy and Environment Cabinet Division of Water is entirely discretionary, that authority was properly exercised in this case, and the secretary's decision was supported by substantial evidence, as experts were consulted, and the setbacks established were rationally related to permit operations. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Substantial evidence supported the Kentucky Retirement Systems Board of Trustee's decision denying the former employee's application for disability benefits because two physicians, a vocational consultant, and an exercise physiologist provided credible and convincing evidence that the employee was capable of performing medium-duty work, and the employee's proof and his physicians' evidence was not so compelling that no reasonable person could fail to be persuaded by it. Ky. Ret. Sys. v. Ashcraft, 559 S.W.3d 812, 2018 Ky. LEXIS 442 (Ky. 2018).

Even in those cases where the applicant has failed to meet his or her burden of proof, a reviewing court should first consider whether substantial evidence supports the Kentucky Retirement Systems' Board of Trustee's decision; if there is not substantial evidence, reversal is appropriate. If there is substantial evidence, the court must further consider whether the applicant's proof was so compelling that no reasonable person could have failed to be persuaded. Ky. Ret. Sys. v. Ashcraft, 559 S.W.3d 812, 2018 Ky. LEXIS 442 (Ky. 2018).

Cabinet for Health and Family Services failed to prove by a preponderance of the evidence that the mother created or allowed to be created a risk of physical injury to her child(ren) by other than accidental means because the Cabinet presented no evidence that the ingestion of medication by one of the children was anything other than an accident as the Cabinet did not show the mother knew the medication was within reach, that the uncle was incapable of watching the children briefly, or that the mother was inattentive to the children's needs. S.H. v. Cabinet for Health, 717 S.W.3d 749, 2025 Ky. App. LEXIS 51 (Ky. Ct. App. 2025).

Kentucky Claims Commission, Board of Tax Appeals erred in upholding the assessment of the taxpayer's property by the county property valuation administrator (PVA) because the Board conflated the parties' burdens and misapplied the presumption of validity as to the PVA's assessment as the PVA's continued use of 2008 values of the then-brand-new building for 2020 assessments over a decade later was improper, and the Board's rejection of the taxpayer's evidence of comparable sale values and uncritical adoption of the PVA's evidence of hypothetical leased values without any adjustments was not based upon competent or substantial evidence. Lowe's Home Ctrs., L.L.C. v. Arnold, 2025 Ky. App. LEXIS 68 (Ky. Ct. App. 2025).

Unpublished decision: Circuit court applied an incorrect adequate proof standard rather than a preponderance of the objective medical evidence standard when reviewing and reversing the administrative denial of an application for disability retirement benefits and improperly reweighed the evidence. Further, the substantial, objective medical evidence supported the administrative finding that the applicant was not totally incapacitated to continue in a hazardous position. Ky. Pub. Pensions Auth. v. Swint, 714 S.W.3d 398, 2025 Ky. App. LEXIS 35 (Ky. Ct. App. 2025).

2. Review Proper.

Kentucky Horse Racing Authority (KHRA) disqualifed a harness horse as the winner of two (2) races due to the presence of flunixin in its urine. The Circuit Court properly affirmed this decision because (1) the KHRA's finding was not arbitrary and capricious, as it was supported by substantial evidence; (2) it was unnecessary to establish a perfect chain of custody and the evidence showed there was no tampering with the urine samples; (3) the "trainer responsibility rule" (811 KAR 1:090) was constitutional; (4) there was no double jeopardy violation, since the action was civil in nature; (5) 811 KAR 1:090, § 4(1), which outlawed flunixin for harness horses but not thoroughbreds, did not violate equal protection principles. Allen v. Ky. Horse Racing Auth., 136 S.W.3d 54, 2004 Ky. App. LEXIS 138 (Ky. Ct. App. 2004).

Psychologist had no support for his contention that the court erred by failing to conduct a jury trial in regard to the psychologist's challenge of his license suspension as a judicial review of an administrative proceeding did not involve the fact finding function which was an inherent function of an initial administrative or trial court proceeding. Maggard v. Commonwealth, 2005 Ky. App. LEXIS 245 (Ky. Ct. App. 2005), aff'd in part and rev'd in part, 282 S.W.3d 301, 2008 Ky. LEXIS 237 (Ky. 2008).

Teacher's motion to reconsider denial of his request to reverse the administrative order of his termination was denied because KRS 13B.080 allowed state court judges to limit nature and scope of administrative hearings and KRS 13B.150 allowed a reviewing court to reverse a final order in part and remand for further proceedings. Furthermore, CR 60.02 did not apply to administrative proceedings. Dixon v. Clem, 419 F. Supp. 2d 947, 2006 U.S. Dist. LEXIS 10890 (E.D. Ky. 2006).

Circuit Court acted within its appropriate role as a reviewing court in reversing in part the decision of the Kentucky Board of Tax Appeals (KBTA) as the Circuit Court placed a different interpretation on the constitutional provision at issue, which was permitted under KRS 13B.150(2)(a). Additionally, the trial court held that the KBTA's decision was without support of substantial evidence on the whole record, which was permitted under § 13B.150(2)(c). Freeman v. St. Andrew Orthodox Church, Inc., 294 S.W.3d 425, 2009 Ky. LEXIS 92 (Ky. 2009).

3. Procedure.

While a psychologist was not entitled to a jury trial on his claims of fraud and misconduct by the Kentucky State Board of Examiners of Psychology under KRS 13B.150(1) in proceedings that resulted in the suspension of his license, he was entitled to discovery on those claims as the particularity requirement in CR 9.02 did not apply on judicial review of an administrative action. Maggard v. Commonwealth, 282 S.W.3d 301, 2008 Ky. LEXIS 237 (Ky. 2008).

A trial court could not make a determination that equitable estoppel applied while reviewing the Board's decision about whether the retiree's benefits were properly reduced. The hearing officer had to make such a finding in the first instance, pursuant to KRS 13B.090(1) and KRS 13B.110(1), which the Board was then to review pursuant to KRS 13B.120(2) and (3), followed by the trial court's review and, then, review by the appellate court under KRS 13B.150(2). Bd. of Trs. v. Grant, 257 S.W.3d 591, 2008 Ky. App. LEXIS 194 (Ky. Ct. App. 2008).

Kentucky Court of Appeals erred in determining that the opinions of treating physicians were entitled to more weight than the opinions of non-examining physicians; pursuant to KRS 13B.150(2), the Court of Appeals was without authority to adopt and apply the treating physician rule in an administrative hearing regarding disability retirement benefits. Ky. Ret. Sys. v. Bowens, 281 S.W.3d 776, 2009 Ky. LEXIS 49 (Ky. 2009).

Under the McManus standard, a court cannot substitute its judgment on those contested issues of fact but if the appealing party has not met his burden of proof with the fact-finder, the court can properly, indeed must, consider whether that party's proof was so compelling that no reasonable person could have failed to be persuaded. If this high standard is met, so is this section which allows for reversal when a final order is arbitrary, capricious, or characterized by an abuse of discretion.

Ky. Ret. Sys. v. Ashcraft, 559 S.W.3d 812, 2018 Ky. LEXIS 442 (Ky. 2018).

4. Credibility Determinations.

The Circuit Court erred in holding that the possible drug use and psychological history of the complainant, who alleged sexual misconduct against the doctor, created a substantial question as to her credibility and erred in disregarding, under KRS 13B.150(2), the hearing officer's credibility determination. The mere fact that a complainant may have been using prescription medication at the time of the incident did not amount to a substantial possibility of the doctor winning on the merits, as required under Kentucky law. Norsworthy v. Ky. Bd. of Med. Licensure, 330 S.W.3d 58, 2009 Ky. LEXIS 94 (Ky. 2009).

5. Deference.

Commonwealth of Kentucky, Energy and Environment Cabinet is required to impose a special permit condition only when, in the Cabinet's best professional judgment, a special permit condition was "necessary" to implement 401 Ky. Admin. Regs. 63:020, and the Cabinet's authority in this regard is highly discretionary, and, thus, entitled to great deference. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Authority of Kentucky Energy and Environment Cabinet Division of Water to impose special permit conditions is highly discretionary and, thus, entitled to great deference. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Circuit court had to exercise its authority to review the Tribunal's order and to reject it if, among other things, its decision was in violation of constitutional or statutory provisions, KRS 13B.150(2)(a), including an improper application of the statutory term "conduct unbecoming a teacher;" an additional adjudicative hearing was not appropriate or necessary as there was nothing for the Tribunal to adjudicate. Bd. of Educ. v. Hurley-Richards, 396 S.W.3d 879, 2013 Ky. LEXIS 88 (Ky. 2013).

McManus standard to review the denial of a disability retirement application met statutory standards because (1) the standard first decided if substantial evidence supported the denial, and, if so, whether the applicant's evidence was so compelling that no reasonable person could fail to be persuaded, and (2) it was inappropriate to re-apply the preponderance standard on judicial review, given the deference to which an administrative determination was entitled. Bradley v. Ky. Ret. Sys., 567 S.W.3d 114, 2018 Ky. LEXIS 446 (Ky. 2018).

6. Arbitrary Review.

Court believes the authority of the Commonwealth of Kentucky, Energy and Environment Cabinet to exercise its special condition authority to be almost entirely discretionary and, thus, not appropriately disturbed absent an action on the part of the Cabinet that is clearly arbitrary, and that was not the case here. Commonwealth v. Sharp, 2012 Ky. App. LEXIS 189 (Ky. Ct. App. 2012).

Court believes the authority of the Kentucky Energy and Environment Cabinet Division of Water to exercise its special condition authority under 401 KAR 5:005 to be almost entirely discretionary and, thus, not appropriately disturbed absent an action on the part of the Cabinet that is clearly arbitrary, and that was not the case here. Adams v. Sharp, 2012 Ky. App. LEXIS 190 (Ky. Ct. App. 2012), sub. op., 2012 Ky. App. Unpub. LEXIS 1058 (Ky. Ct. App. May 25, 2012).

Circuit court's order affirming the start date for the claimant's Medicaid benefits was reversed where the Cabinet for Health and Family Services conceded that it failed to acknowledge her appeal in writing, the claimant had no opportunity to file a brief or submit new and additional proof, and thus, a reversal was warranted under Ky. Rev. Stat. Ann. § 13B.150(2)(a). Marcum v. Cabinet for Health & Family Servs., 496 S.W.3d 480, 2016 Ky. App. LEXIS 123 (Ky. Ct. App. 2016).

7. Fraud.

This section does not create an express or overwhelmingly implied waiver of sovereign immunity for fraud claims, nor does it allow a party to separately recover damages for fraud. Therefore, in an action relating to Medicaid reimbursement, this section allowed a hospital to present evidence of extrinsic fraud as part of its statutory appeal from a final order from the Kentucky Cabinet for Health and Family Services, but the hospital could not have asserted an independent claim for damages arising out of that alleged fraud. Commonwealth v. Samaritan Alliance, LLC, 439 S.W.3d 757, 2014 Ky. App. LEXIS 27 (Ky. Ct. App. 2014).

Applied in:

City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Cited in:

GTE South, Inc. v. Commonwealth, 2004 Ky. App. LEXIS 86 (Ky. Ct. App. 2004); LWD Equip., Inc. v. Revenue Cabinet, 136 S.W.3d 472, 2004 Ky. LEXIS 145 (Ky. 2004); Revenue Cabinet v. Babcock & Wilcox Co., 203 S.W.3d 149, 2005 Ky. App. LEXIS 258 (Ky. Ct. App. 2005); Astro, Inc. v. Envtl. & Pub. Prot. Cabinet, 2007 Ky. App. LEXIS 175 (Ky. Ct. App. 2007); Monumental Life Ins. Co. v. Dep't of Revenue, 294 S.W.3d 10, 2008 Ky. App. LEXIS 207 (Ky. Ct. App. 2008); West v. Ky. Ret. Sys., 2010 Ky. App. LEXIS 97 (Ky. Ct. App. 2010); West v. Ky. Ret. Sys., 2011 Ky. App. LEXIS 125 (Ky. Ct. App. 2011); Estate of McVey v. Dep't of Revenue, Fin. & Admin. Cabinet, 2013 Ky. App. LEXIS 171 (Ky. Ct. App. 2013); Dep't of Revenue, Fin. & Admin. Cabinet v. Shinin' B Trailer Sales, LLC, 2015 Ky. App. LEXIS 131 (Sept. 4, 2015); Ky. Ret. Sys. v. Stephens, 2015 Ky. App. LEXIS 144 (Oct. 9, 2015); Mike v. Dep't of Educ., 529 S.W.3d 781, 2017 Ky. App. LEXIS 44 (Ky. Ct. App. 2017); N. Ky. Mental Health-Mental Retardation Reg'l Bd. v. Commonwealth, 538 S.W.3d 298, 2017 Ky. App. LEXIS 54 (Ky. Ct. App. 2017); Lexington-Fayette Urban County Human Rights Comm'n v. Hands on Originals, 592 S.W.3d 291, 2019 Ky. LEXIS 431 (Ky. 2019).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

13B.160. Judicial appeal.

Any aggrieved party may appeal any final judgment of the Circuit Court under this chapter to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.

History.

Enact. Acts 1994, ch. 382, § 16, effective July 15, 1996.

NOTES TO DECISIONS

1. Tax Appeals.

Any decision rendered pursuant to KRS 131.370(1) is subject to direct review by the Court of Appeals under KRS 13B.160. GTE South, Inc. v. Commonwealth, 2004 Ky. App. LEXIS 86 (Ky. Ct. App. 2004), rev'd, 238 S.W.3d 655, 2007 Ky. LEXIS 160 (Ky. 2007) (on other grounds).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

13B.170. Administrative regulations.

(1) An agency shall have authority to promulgate administrative regulations that are necessary to carry out the provisions of this chapter.

(2) Nothing in this chapter shall be construed to prohibit an agency from enacting administrative hearing procedures by administrative regulations which are supplemental to the provisions of this chapter.

History.

Enact. Acts 1994, ch. 382, § 17, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeal procedures, 782 KAR 1:040.

Charter school appeal process, 701 KAR 8:030.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Set off of authority claims, 11 KAR 4:050.

Student appeals process, 11 KAR 4:030.

CHAPTER 15

DEPARTMENT OF LAW

Functions; Assistance by Other Agencies.

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15.396. Effect if agency knowingly employs or appoints persons who fail to meet requirements of KRS 15.380 to 15.404.
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15.400. Effect of KRS 15.380 to 15.404 on officers employed before or after December 1, 1998 — Exception to Open Records Act.
15.402. Additional requirements by employing agency.
15.404. Basic training and in-service training for peace officers and constables.
15.405. Conditional offer of employment as peace officer pending receipt of certification status and employment records.
15.406. Council to provide certification status information to out-of-state law enforcement agency upon request.

FUNCTIONS; ASSISTANCE BY OTHER AGENCIES

15.257. Requirements for distribution of explanatory materials — Open Records and Open Meetings laws — Retention and management of public records.

(1) The Office of the Attorney General shall, within ninety (90) days of June 20, 2005, and thereafter, within ninety (90) days of the effective date of any legislation amending the provisions of the Open Meetings Act or the Open Records Act, distribute to all county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, presidents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b) or 164.001, and attorneys of public school districts and public postsecondary education institutions throughout Kentucky written information prepared by the Office of the Attorney General that explains the procedural and substantive provisions of the Open Meetings Act, KRS 61.805 to 61.850, and the Open Records Act, KRS 61.870 to 61.884, together with the information required by KRS 171.223 to be prepared by the Department for Libraries and Archives concerning proper retention and management of public records. This distribution may be by electronic means.

(2) All superintendents of public school districts and the presidents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b) or 164.001 shall be responsible for designating and submitting the names and addresses of the attorneys to whom this information shall be disseminated to the Office of the Attorney General.

History.

Enact. Acts 2005, ch. 45, § 1, effective June 20, 2005; 2008, ch. 113, § 1, effective July 15, 2008; 2026 ch. 171, § 5, effective July 15, 2026.

OFFICER CERTIFICATION AND TRAINING

15.380. Officers required to be certified — Officers permitted to be certified — Exemptions.

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid

or unpaid, shall be certified by the council if all minimum standards set forth in KRS 15.380 to 15.404 have been met:

(a) Department of Kentucky State Police officers, but for the commissioner of the Department of Kentucky State Police;

(b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university police officers appointed pursuant to KRS 164.950;

(e) School resource officers as defined in KRS 158.441 and employed or appointed under KRS 158.4414;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control investigators appointed under KRS 241.090;

(h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040; and

(i) Fire investigators appointed or employed under KRS 95A.100 or 227.220.

(2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Personnel Cabinet for job specifications.

(3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council if all minimum standards set forth in KRS 15.380 to 15.404 have been met:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school resource officers as defined in KRS 158.441 and who shall be certified under subsection (1)(e) of this section;

(g) Private security officers;

(h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080;

(i) Investigators employed by the Office of Charitable Gaming in accordance with KRS 238.510; and

(j) Commonwealth detectives employed under KRS 69.110 and county detectives employed under KRS 69.360.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables;

(d) Jailers;

(e) Kentucky Horse Racing and Gaming Corporation security officers employed under KRS 230.240; and

(f) Commissioner of the State Police.

(6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

(7) Local alcoholic beverage control investigators appointed under KRS Chapter 241 on or after April 1, 2019, shall be certified by the council if all minimum standards set forth in KRS 15.380 to 15.404 have been met. Local alcoholic beverage control investigators appointed under KRS Chapter 241 before April 1, 2019, may be certified by the council if all minimum standards set forth in KRS 15.380 to 15.404 have been met.

History.

Enact. Acts 1998, ch. 606, § 99, effective December 1, 1998; 2000, ch. 374, § 18, effective July 14, 2000; 2000, ch. 447, § 7, effective July 14, 2000; 2000, ch. 480, § 3, effective July 14, 2000; 2002, ch. 132, § 1, effective July 15, 2002; 2004, ch. 172, § 2, effective July 13, 2004; 2004, ch. 191, § 53, effective April 22, 2004; 2007, ch. 54, § 7, effective June 26, 2007; 2007, ch. 76, § 4, effective June 26, 2007; 2007, ch. 85, § 20, effective June 26, 2007; 2010, ch. 24, § 16, effective July 15, 2010; 2013, ch. 22, § 10, effective June 25, 2013; 2017 ch. 62, § 114, effective June 29, 2017; 2018 ch. 128, § 3, effective January 1, 2019; 2019 ch. 5, § 8, effective March 11, 2019; 2019 ch. 97, § 1, effective June 27, 2019; 2019 ch. 149, § 2, effective June 27, 2019; 2023 ch. 170, § 2, effective June 29, 2023; 2024 ch. 171, § 35, effective July 1, 2024; 2024 ch. 171, § 36, effective July 1, 2025.

Legislative Research Commission Notes.

(7/1/2025). This statute was amended by 2024 Ky. Acts ch. 171, secs. 35 and 36, which do not appear to be in conflict and have been codified together.

(6/26/2007). The amendment to this section in 2007 Ky. Acts ch. 76, sec. 4, effective June 26, 2007, is retroactive to July 1, 2004. See 2007 Ky. Acts ch. 76, sec. 5.

(6/26/2007). This section was amended by 2007 Ky. Acts chs. 54, 76, and 85. There is no conflict with Acts ch. 85. Where Acts chs. 54 and 76 are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 76, which was last enacted by the General Assembly, prevails under KRS 446.250.

NOTES TO DECISIONS

1. Due Process.

Statutory scheme regarding the certification of a law enforcement officer and revocation of that certification, under KRS 15.380 et seq., when the officer's employment was terminated for certain reasons, clearly envisioned that an officer would obtain his due process rights regarding his certification through the employment termination process. Pangallo v. Ky. Law Enforcement Council, 106 S.W.3d 474, 2003 Ky. App. LEXIS 102 (Ky. Ct. App. 2003).

OPINIONS OF ATTORNEY GENERAL.

A county detective employed by a county that does not contain a consolidated local government does not have arrest powers; may, but is not required to be, sworn in and wear a badge; and, if an off-duty police officer, retains arrest powers consistent with the law. OAG 13-008, 2013 Ky. AG LEXIS 126.

15.382. Minimum qualifications for certification.

A person certified after December 1, 1998, under KRS 15.380 to 15.404 or qualified under the requirements set forth in KRS 15.440(1)(d)6. shall, at the time of becoming certified, meet the following minimum qualifications:

(1) Be a citizen of the United States;

(2) Be at least twenty-one (21) years of age;

(3)(a) Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or

(b) Possess a High School Equivalency Diploma;

(4) Possess a valid license to operate a motor vehicle;

(5) Be fingerprinted for a criminal background check;

(6) Not have been convicted of any felony; a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct; or have had any offense listed under this subsection expunged;

(7) Not be prohibited by federal or state law from possessing a firearm;

(8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

(9) Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;

(10) Have passed a medical examination as defined by the council by administrative regulation and provided by a licensed physician, physician assistant, or advanced practice registered nurse to determine if he or she can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;

(11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.310 to 15.510;

(12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.310 to 15.510;

(13) Have been interviewed by the employing agency;

(14) Not have had certification as a peace officer permanently revoked in another state;

(15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological suitability screening, appropriate to the agency's job task analysis. All agencies shall certify psychological suitability screening results to the council, which shall accept them as complying with KRS 15.310 to 15.510;

(16)(a) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his or her suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility test of the employing agency. All agencies shall certify physical agility test results to the council, which shall accept them as demonstrating compliance with KRS 15.310 to 15.510.

(b) Notwithstanding paragraph (a) of this subsection, a person shall not be required to pass a physical agility test if the person can provide certified documentation that at the time of his or her application to the employing agency, the person:

1. Is currently employed, or has been separated from service for less than three (3) months, as a certified law enforcement officer in another state;

2. Is currently in good standing, or separated from service in good standing, with the other state or law enforcement agency where he or she is certified;

3. Has been continuously employed as a law enforcement officer in the state where he or she is certified for at least ten (10) years prior to his or her application; and

4. Has passed a physical agility test as a condition of employment with the law enforcement agency in the other state where he or she is certified; and

(17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his or her suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.310 to 15.510.

History.

Enact. Acts 1998, ch. 606, § 100, effective December 1, 1998; 2000, ch. 480, § 4, effective July 14, 2000; 2002, ch. 132, § 2, effective July 15, 2002; 2007, ch. 139, § 3, effective June 26, 2007; 2016 ch. 5, § 1, effective March 18, 2016; 2016 ch. 87, § 1, effective July 15, 2016; 2017 ch. 63, § 3, effective June 29,

2017; 2018 ch. 128, § 12, effective January 1, 2019; 2021 ch. 73, § 6, effective June 29, 2021; 2022 ch. 232, § 1, effective July 14, 2022; 2023 ch. 170, § 3, effective June 29, 2023; 2025 ch. 53, § 1, effective June 27, 2025.

NOTES TO DECISIONS

1. National Guard.

Discharge from the National Guard under other than honorable circumstances would prevent someone from becoming certified as a law enforcement officer, KRS 15.382(9), but the same discharge received by a certified officer did not affect that officer's certification as long as he remained employed. Pangallo v. Ky. Law Enforcement Council, 106 S.W.3d 474, 2003 Ky. App. LEXIS 102 (Ky. Ct. App. 2003).

Cited in

Ky. Constables Ass'n v. Ky. Dep't of Corr. Crim. Just. Training (DOCJT), 723 S.W.3d 812, 2025 Ky. App. LEXIS 32 (Ky. Ct. App. 2025); .

OPINIONS OF ATTORNEY GENERAL.

A city police department did not violate the Open Records Act in denying a request to inspect all documentation and records related to the requester's application for the position of police recruit since KRS 15.400(3) prohibits disclosure of specifically described information obtained in the application/certification process to peace officers, unsuccessful applicants who wished to become peace officers, and third parties; the prohibition is, by its own terms, mandatory, and extends not only to background investigations, but also to psychological examinations and polygraph examinations administered pursuant to KRS 15.400(2) and this section. OAG 00-ORD-118, 2000 Ky. AG LEXIS 115.

An applicant for certification as a police officer who has a diploma from a private high school that is not certified by the Kentucky Department of Education may still be certified if that private high school complies with all applicable private secondary school provisions. An agency must either follow its precedents or provide a reasoned analysis for its departure from them. A police agency is liable under KRS § 15.396 for employing a police officer whose certification is subsequently revoked only from the time that the police agency becomes aware that the officer's certification has been revoked. OAG 2015-06, 2015 Ky. AG LEXIS 19.

15.383. Marksmanship qualification for certified peace officers.

(1) In order to maintain his or her certification as a peace officer, each certified peace officer shall annually meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140. Each law enforcement agency or other employing agency whose officers are required to meet the requirements of this subsection shall retain a record of each of its officers having met the annual marksmanship qualification. These records shall be made available upon request to the Kentucky Law Enforcement Council and to the Justice and Public Safety Cabinet in order to carry out its responsibilities under KRS 15.330 and 15.450.

(2) Any law enforcement or other agency employing a certified peace officer may require the certified peace officer to meet a marksmanship qualification requirement which is in excess of that specified in KRS 237.140. Failure of a certified peace officer to meet the increased marksmanship qualification requirement specified by his or her employing or appointing agency shall not affect the certification of the officer, but may subject the officer to discipline by the agency, including suspension or dismissal of the officer from the agency.

History.

Enact. Acts 2005, ch. 182, § 14, effective March 31, 2005; 2006, ch. 240, § 1, effective July 12, 2006; 2018 ch. 128, § 4, effective January 1, 2019.

15.384. Cost of council administered tests — Waiver.

(1) The council shall administer the physical agility, polygraph, psychological, and drug screen tests at cost for those agencies requesting council-administered tests. Agencies may petition the council for waiver of the costs of these tests upon a showing of undue financial hardship.

(2) An agency may, at its own expense, administer its own physical agility, polygraph, psychological, medical, and drug screen tests, as well as additional tests.

History.

Enact. Acts 1998, ch. 606, § 101, effective December 1, 1998.

15.386. Certification categories — Required courses — Status of certification.

The following certification categories shall exist:

(1) "Precertification status" means that the officer is currently employed or appointed by an agency and:

(a) Meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those peace officers covered by KRS 15.400. Upon the council's verification that the minimum qualifications have been met and approval from the employing agency, the officer shall have full peace officer powers as authorized under the statute under which he or she was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his or her enforcement powers shall automatically terminate, unless that officer is actively enrolled and participating in a basic training course or, after having begun a basic training course, is on an approved extension of time due to injury or extenuating circumstances; or

(b) Does not meet the minimum qualifications set forth in KRS 15.382 because the officer has yet to attain twenty-one (21) years of age. This precertification status is for the purpose of attending a basic training course only;

(2) "Certification status" means that:

(a) Unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he or she was appointed or employed; or

(b) For those officers that were employed at twenty (20) years of age and were precertified for the purpose of attending a basic training course, upon the council's verification that all minimum qualifications have been met, successful comple-

tion of a basic training course, and approval from the employing agency, the officer shall have full peace officer powers as authorized by the statute under which he or she was appointed or employed;
(3)(a) "Inactive status" means that unless the certification is in revoked status:

1. The person has been separated on or after December 1, 1998, from the agency by which he or she was employed or appointed and has no peace officer powers; or

2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

(b) The person may remain on inactive status.A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he or she meets the requirements of KRS 15.400(1) or (2) or has successfully completed a basic training course approved and recognized by the council, has not committed an act for which his or her certified status may be revoked pursuant to KRS 15.391, and successfully completes in-service training as prescribed by the council, as follows:

1. If a person has been on inactive status for less than one (1) year, and the person was not in training deficiency status at the time of separation, he or she shall have no additional training requirements;

2. . If the person has been on inactive status for a period of at least one (1) year but less than three (3) years, and the person was not in training deficiency status at the time of separation, he or she shall complete:

a. The twenty-four (24) hour legal update Penal Code course;

b. The sixteen (16) hour legal update constitutional procedure course; and

c. The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; or

3. If the person has been on inactive status for a period of three (3) years or more, or the person was in training deficiency status at the time of separation, he or she shall complete:

a. The twenty-four (24) hour legal update Penal Code course;

b. The sixteen (16) hour legal update constitutional procedure course;

c. The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; and

d. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

i. Basic officer skills;

ii. Orientation for new police chiefs; or

iii. Mandatory duties of the sheriff.

(c) A person returning from inactive to active certification after June 26, 2007, under KRS 15.380 to 15.404, shall meet the following minimum qualifications:

1. Be a citizen of the United States;

2. Possess a valid license to operate a motor vehicle;

3. Be fingerprinted for a criminal background check;

4. Not have been convicted of any felony; a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct; or have had any offense listed under this subparagraph expunged;

5. Not be prohibited by federal or state law from possessing a firearm;

6. Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

7. Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;

8. Have been interviewed by the employing agency; and

9. Not have had certification as a peace officer permanently revoked in another state;

(4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's enforcement powers shall automatically terminate, and he or she shall not exercise peace officer powers in the Commonwealth until he or she has corrected the in-service training deficiency;

(5) "Revoked status" means that the officer has no enforcement powers and his or her certification has been revoked by the Kentucky Law Enforcement Council under KRS 15.391; and

(6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status.

The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

History.

Enact. Acts 1998, ch. 606, § 102, effective December 1, 1998; 2000, ch. 480, § 6, effective July 14, 2000; 2002, ch. 132, § 3, effective July 15, 2002; 2007, ch. 76, § 2, effective June 26, 2007; 2007, ch. 139, § 4, effective June 26, 2007; 2019 ch. 55, § 2, effective June 27, 2019; 2019 ch. 95, § 2, effective June 27, 2019; 2021 ch. 73, § 7, effective June 29, 2021; 2022 ch. 232, § 2, effective July 14, 2022; 2023 ch. 103, § 4, effective June 29, 2023; 2023 ch. 170, § 4, effective June 29, 2023.

Legislative Research Commission Notes.

(6/29/2023). This statute was amended by 2023 Ky. Acts chs. 103 and 170, which do not appear to be in conflict and have been codified together.

(6/27/2019). Under the authority of KRS 7.136(1), the Reviser of Statutes has changed the internal numbering of this statute to correct a manifest clerical or typographical error.

(6/26/2007). The amendment to this section in 2007 Ky. Acts ch. 76, sec. 2, effective June 26, 2007, is retroactive to July 1, 2004. See 2007 Ky. Acts ch. 76, sec. 5.

NOTES TO DECISIONS

1. Revocation.

When a police officer allegedly falsified information to maintain his law enforcement certification, but was allowed to resign from his employment for "personal reasons," the law enforcement council responsible for certifying police officers could not revoke the officer's certification based on the alleged falsification of information without giving the officer minimal due process rights to challenge the falsification allegation. Pangallo v. Ky. Law Enforcement Council, 106 S.W.3d 474, 2003 Ky. App. LEXIS 102 (Ky. Ct. App. 2003).

KRS 15.386(4) (now (5)) did not authorize the revocation of a police officer's certification merely for a resignation for personal reasons. Pangallo v. Ky. Law Enforcement Council, 106 S.W.3d 474, 2003 Ky. App. LEXIS 102 (Ky. Ct. App. 2003).

Cited in

Ky. Constables Ass'n v. Ky. Dep't of Corr. Crim. Just. Training (DOCJT), 723 S.W.3d 812, 2025 Ky. App. LEXIS 32 (Ky. Ct. App. 2025); .

15.388. Report on certification status for newly employed peace officer or court security officer — Training of person in precertification status — Issuance or denial — Right of appeal — Transfer.

(1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of KRS 15.382 for peace officers or KRS 15.3971 for court security officers.

(2) If the person is certified, the council shall continue certified status.

(3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.

(4) If the person is not certified and not on inactive status, but has successfully completed an applicable basic training course or received a basic training credit under KRS 15.440(1)(d)6. approved and recognized by the council, the council shall designate the person as being in certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.

(5) If the person is not certified and not on inactive status, and has not successfully completed an applicable basic training course approved and recognized by the council, the council shall designate the person as being in precertification status.

(6) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.

(7) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under KRS 15.380 to 15.404.

(8) If the certified peace officer has successfully completed the basic training required by KRS 15.404 and transfers from a peace officer or court security officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

(9) If the certified court security officer has successfully completed the basic training required by KRS 15.3975 and transfers from a court security officer position from a current employer to a court security officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

(10) A certified court security officer who has met the requirements of KRS 15.3971 shall not transfer from a court security officer position to a peace officer position unless the certified court security officer meets all the requirements of a certified peace officer under KRS 15.382 and 15.404(1). If the certified court security officer has met the minimum qualifications of KRS 15.382, successfully completed the basic training required for certified peace officers under KRS 15.404(1), and transfers from a court security officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

History.

Enact. Acts 1998, ch. 606, § 103, effective December 1, 1998; 2000, ch. 480, § 7, effective July 14, 2000; 2002, ch. 132, § 4, effective July 15, 2002; 2007, ch. 54, § 8, effective June 26, 2007; 2021 ch. 73, § 8, effective June 29, 2021.

15.390. Appeal upon denial of precertification.

Any person who is aggrieved by a determination by the employing agency or by the council that he fails to meet the requirements for precertification status may:

(1) If the determination was made by the employing agency, appeal the decision in the same manner as other employment appeals within the agency, if an appeals procedure has been established by the employing agency; or

(2) If the determination was made by the council, appeal the decision to the local Circuit Court having jurisdiction over the employing agency.

History.

Enact. Acts 1998, ch. 606, § 104, effective December 1, 1998.

15.391. Revocation of peace officer certification — Appeal — Hearing — Mandatory reporting — Subpoenas — Administrative regulations.

(1) As used in this section:

(a) "Agency" means any law enforcement agency, or other unit of government listed in KRS 15.380, that employs a certified peace officer;

(b) "Final order" has the same meaning as in KRS 13B.010 and shall be specific to whether the Kentucky Law Enforcement Council has met the require-

ments under this section to revoke an individual's peace officer certification;

(c) "General employment policy" means a rule, regulation, policy, or procedure commonly applicable to the general workforce or civilian employees that is not unique to law enforcement activities or the exercise of peace officer authority, regardless of whether the rule, regulation, policy, or procedure exists or appears in a manual or handbook that is solely applicable to a law enforcement department or agency within the unit of government employing the officer;

(d) "Investigating agency" means an agency that investigates the use of force, a criminal act, or an administrative violation by peace officers, including but not limited to the employing agency;

(e) "Professional malfeasance" means engaging in an act in one's professional capacity as a peace officer that violates a federal, state, or local law or regulation, or any act that involves the following:

1. The unjustified use of excessive or deadly force, as determined by an investigating agency;

2. Any intentional action by a peace officer that interferes with or alters the fair administration of justice, including but not limited to tampering with evidence, giving of false testimony, or the intentional disclosure of confidential information in a manner that compromises the integrity of an official investigation; or

3. Engaging in a sexual relationship with an individual the peace officer knows or should have known is a victim, witness, defendant, or informant in an ongoing criminal investigation in which the peace officer is directly involved;

(f) "Professional nonfeasance" means a failure to perform one's professional duty as a peace officer through omission or inaction that violates a federal, state, or local law or regulation, or any failure to act that involves the following:

1. The failure to intervene when it is safe and practical to do so in any circumstance where it is clear and apparent to the peace officer that another peace officer is engaging in the use of unlawful and unjustified excessive or deadly force; or

2. The intentional failure to disclose exculpatory or impeachment evidence that the peace officer knew or should have known to be materially favorable to an accused for the purpose of altering the fair administration of justice; and

(g) "Regulation" means:

1. A federal or state administrative regulation adopted by a federal or state executive branch; and

2. A local rule, regulation, policy, or procedure adopted by ordinance, order, or resolution, or other official action by an agency. However, "regulation" does not mean a general employment policy.

(2)(a) The certification of a peace officer shall be deemed automatically revoked by the council by operation of the law for one (1) or more of the following:

1. Certification that was the result of an administrative error;

2. Plea of guilty to, conviction of, or entering of an Alford plea to:

a. Any state or federal felony;

b. A misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or

a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct;

c. Any criminal offense committed in another state that would constitute a felony if committed in this state; or

d. Any criminal offense committed in another state that would, if committed in this state, constitute a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct;

3. Prohibition by federal or state law from possessing a firearm;

4. Receipt of a dishonorable discharge or bad conduct discharge from any branch of the Armed Forces of the United States; or

5. Willful falsification of information to obtain or maintain certification.

(b)1. A peace officer whose certification is revoked pursuant to paragraph (a) of this subsection may file an appeal at any time with the council. If an appeal is filed, the council shall conduct an administrative hearing pursuant to KRS Chapter 13B to consider the reinstatement of the peace officer's certification if the revocation was made in error or the condition requiring revocation was removed or remedied.

2. The council may impose any reasonable condition upon the reinstatement of the certification it may deem warranted under the facts of the appeal.

3. Notwithstanding any other provision of law, the council may subpoena or request a court to subpoena records that are necessary to provide evidence that will permit the council to evaluate the conditions of separation. Any confidential, active investigation, or medical information received by the council under this subparagraph shall retain its confidential character.

4. The reversal or any other type of invalidation of a conviction by an appellate court shall constitute the removal or remedy of a condition requiring revocation. However, an expungement of an offense shall not be considered a removal or remedy that constitutes grounds for the reinstatement of the peace officer's certification under this paragraph.

5. A final order issued by the council denying reinstatement of certification may be appealed pursuant to the provisions of KRS 13B.140.

(3)(a) The certification of a peace officer may be revoked by the council for one (1) or more of the following:

1. Termination of the peace officer for failure to meet or maintain training requirements, unless the certification is in inactive status. As used in this subparagraph, "inactive status" has the same meaning as in KRS 15.386;

2. Termination of the peace officer for professional malfeasance or professional nonfeasance by his or her agency;

3. Termination of the peace officer following the plea of guilty to, conviction of, or entering of an Alford plea to any misdemeanor offense, in this state or out of it, that involves:

a. Dishonesty;

b. Fraud;

c. Deceit;

d. Misrepresentation;

e. Physical violence;

f. Sexual abuse; or

g. Crimes against a minor or a family or household member;

4. Receipt of general discharge under other than honorable conditions from any branch of the Armed Forces of the United States that results in the termination of the peace officer from his or her agency; or

5. Resignation or retirement of the peace officer while he or she is under criminal investigation or administrative investigation for professional malfeasance or professional nonfeasance that, in the judgment of the agency that employed the peace officer, would have likely resulted in the termination of that peace officer had the facts leading to the investigation been substantiated prior to his or her resignation or retirement.

(b) The council shall review reports of events described in paragraph (a) of this subsection to determine whether the event warrants the initiation of proceedings by the council to revoke a peace officer's certification. If the council determines to initiate proceedings to revoke a peace officer's certification under this subsection, the administrative hearing shall be conducted pursuant to KRS Chapter 13B. A final order by the council revoking certification may be appealed pursuant to the provisions of KRS 13B.140.

(c) Notwithstanding any other provision of law, the council may subpoena or request a court to subpoena records that are necessary to provide evidence that will permit the council to evaluate the conditions of separation. Any confidential, active investigation, or medical information received by the council under this paragraph shall retain its confidential character.

(4)(a) An agency:

1. That has knowledge of a peace officer in its employment who meets any of the revocation conditions outlined in subsection (2) of this section shall report that condition to the council within fifteen (15) days of gaining knowledge;

2. That terminated a peace officer for any of the revocation conditions outlined in subsection (3)(a)1., 2., 3., or 4. of this section shall report that condition to the council within fifteen (15) days of the termination; and

3. That would have likely terminated a peace officer for the revocation condition outlined in subsection (3)(a)5. of this section shall report that condition to the council within fifteen (15) days of the peace officer's resignation or retirement. If an agency reports pursuant to this subparagraph, the agency shall notify the peace officer that a report has been made.

(b) If an agency fails to make a report required by this subsection, the council may suspend the agency from participation in the Kentucky Law Enforcement Foundation Program fund. However, the time that an agency may be suspended by the council under this paragraph shall not exceed five (5) years.

(5) The council may promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

History.

Enact. Acts 2007, ch. 139, § 1, effective June 26, 2007; 2019 ch. 95, § 1, effective June 27, 2019; 2021 ch. 73, § 1, effective June 29, 2021; 2022 ch. 232, § 3, effective July 14, 2022; 2023 ch. 170, § 5, effective June 29, 2023.

15.392. Report on separation from service — Placement of certification on inactive status — Lapse or retirement of certification — Action by council.

(1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency or his designee shall file with the council a summary report that provides the relevant information about the person's separation from service.

(2) If the person separated from service has successfully completed basic training at a school certified or recognized by the council or has received a basic training credit under KRS 15.440(1)(d)6., the council shall place the certification on inactive status. Placement of certification on inactive status shall not prevent the council from subsequently instituting an action to revoke an officer's certification in appropriate cases in accordance with KRS 15.391.

(3) If the person has been separated from service or has not successfully completed basic training at a school certified or recognized by the council and fails to meet the requirements of KRS 15.400(1) or (2), the certification shall lapse.

(4) If the person has been separated due to death, the certification shall be retired.

History.

Enact. Acts 1998, ch. 606, § 105, effective December 1, 1998; 2002, ch. 132, § 5, effective July 15, 2002; 2007, ch. 76, § 3, effective June 26, 2007; 2007, ch. 139, § 5, effective June 26, 2007; 2021 ch. 73, §§ 2, 9, effective June 29, 2021.

Legislative Research Commission Notes.

(6/29/2021). This statute was amended by 2021 Ky. Acts ch. 73, secs. 2 and 9, which do not appear to be in conflict and have been codified together.

(6/26/2007). The amendment to this section in 2007 Ky. Acts ch. 76, sec. 3, effective June 26, 2007, is retroactive to July 1, 2004. See 2007 Ky. Acts ch. 76, sec. 5.

(6/26/2007). This section was amended by 2007 Ky. Acts chs. 76 and 139. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 139, which was last enacted by the General Assembly, prevails under KRS 446.250.

15.394. Declaratory judgment action if agency job task analysis deemed invalid.

(1) If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file

a declaratory action in Franklin Circuit Court to declare the job task analysis invalid.

(2) Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.

History.

Enact. Acts 1998, ch. 606, § 106, effective December 1, 1998.

15.396. Effect if agency knowingly employs or appoints persons who fail to meet requirements of KRS 15.380 to 15.404.

(1) An agency may be required to pay for all training received by a person from the Department of Criminal Justice Training or any other facility approved by the Kentucky Law Enforcement Council if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in KRS 15.380 and if that person fails to achieve certified status as required by KRS 15.380 to 15.404.

(2) The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in KRS 15.380 and if that person:

(a) Fails to meet those minimum qualifications set forth in KRS 15.402;

(b) Fails to achieve certified status as required by KRS 15.380 to 15.404; or

(c) Fails to maintain the minimum training requirements set forth in KRS 15.404.

(3) An agency that is in violation of subsection (1) or (2) of this section may be relieved of the associated penalty upon:

(a) Termination of the officer who is the source of the violation; or

(b) Correction of the officer's deficiency.

History.

Enact. Acts 1998, ch. 606, § 107, effective December 1, 1998; 2000, ch. 480, § 8, effective July 14, 2000; 2002, ch. 132, § 6, effective July 15, 2002.

OPINIONS OF ATTORNEY GENERAL.

An applicant for certification as a police officer who has a diploma from a private high school that is not certified by the Kentucky Department of Education may still be certified if that private high school complies with all applicable private secondary school provisions. An agency must either follow its precedents or provide a reasoned analysis for its departure from them. A police agency is liable under KRS § 15.396 for employing a police officer whose certification is subsequently revoked only from the time that the police agency becomes aware that the officer's certification has been revoked. OAG 2015-06, 2015 Ky. AG LEXIS 19.

15.3971. Court security officers — Minimum qualifications — Exceptions.

(1) A person certified as a court security officer after June 26, 2007, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:

(a) Be a citizen of the United States;

(b) Be at least twenty-one (21) years of age;

(c)1. Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or

2. Possess a high school diploma or a High School Equivalency Diploma;

(d) Possess a valid license to operate a motor vehicle;

(e) Be fingerprinted for a criminal background check;

(f) Not have been convicted of any felony; a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct; or have had any offense listed under this paragraph expunged;

(g) Not be prohibited by federal or state law from possessing a firearm;

(h) Have received and read the Kentucky Law Enforcement Officers Code of Ethics, as established by the council;

(i) Have not received a dishonorable discharge, a bad conduct discharge, or general discharge under other than honorable conditions if he or she served in any branch of the Armed Forces of the United States;

(j) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.380 to 15.404;

(k) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a court security officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.380 to 15.404;

(*l*) Have been interviewed by the employing agency;

(m) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform court security officer duties; and

(n) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his or her suitability to perform court security officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment

as a court security officer to the council, which shall accept them as complying with KRS 15.380 to 15.404.

(2) A court security officer employed on or before June 26, 2007, shall comply with the requirements of subsection (1) of this section within six (6) months of June 26, 2007.

(3) A peace officer who has previously attended law enforcement basic training and met the certification requirements of KRS 15.380 and 15.382 shall not be required to meet the requirements of this section to be appointed a court security officer, but shall meet the requirements of KRS 15.386(3).

History.

Enact. Acts 2007, ch. 54, § 1, effective June 26, 2007; 2016 ch. 5, § 2, effective March 18, 2016; 2017 ch. 63, § 4, effective June 29, 2017; 2023 ch. 170, § 6, effective June 29, 2023.

15.3973. Revocation of court security officer certification.

The certification of a court security officer may, after a hearing held in conformity with KRS Chapter 13B, be revoked by the council for one (1) or more of the bases for revocation described under KRS 15.391.

History.

Enact. Acts 2007, ch. 54, § 2, effective June 26, 2007; 2023 ch. 170, § 7, effective June 29, 2023.

15.3975. Training requirements for employment — Biennial in-service training — Extension — Loss of status upon failure to complete training — Regaining certification.

(1) A court security officer employed or appointed after June 26, 2007, shall satisfy the basic training requirements for employment if he or she successfully completes law enforcement training developed and approved by the Kentucky Law Enforcement Council and the Administrative Office of the Courts of at least eighty (80) hours.

(2) A court security officer employed or appointed after June 26, 2007, shall successfully complete forty (40) hours of biennial in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, and that is appropriate to the officer's responsibilities.

(3) In the event of extenuating circumstances beyond the control of a certified court security officer that prevent the officer from completing the basic or in-service training within the time specified in subsections (1) and (2) of this section, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days in which to complete the training.

(4) Any court security officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her court security powers and his or her precertification status shall lapse. Any court security officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her court security powers and his or her certification status shall be changed to training deficiency status. When a court security officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the court security officer and his or her agency.

(5) A certified court security officer who has lost his or her court security powers due solely to his or her failure to meet the in-service training requirements of this section may regain his or her certification status and court security powers upon successful completion of the training deficiency.

History.

Enact. Acts 2007, ch. 54, § 3, effective June 26, 2007.

15.3977. Certification categories for court security officers.

The following certification categories shall exist for certified court security officers:

(1) "Precertification status" means that the court security officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.3971, but has not successfully completed the training course provided in KRS 15.3975(1). Upon the council's verification that the minimum qualifications have been met, the officer shall have court security officer powers as authorized under the statute under which he or she was appointed or employed. If an officer fails to successfully complete the training course provided in KRS 15.3975(1) within one (1) year of employment, his or her court security powers shall automatically terminate;

(2) "Certification status" means that unless the certification is in revoked status or inactive status, the certified court security officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have court security officer powers as authorized under the statute under which he or she was appointed or employed;

(3)(a) "Inactive status" means that unless the certification is in revoked status:

1. The person has been separated on or after June 26, 2007, from the agency by which he or she was employed or appointed and has no peace officer or court security officer powers; or

2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

(b) The person may remain on inactive status. A person who is on inactive status and who returns to a court security officer position shall have certification status restored if he or she has successfully completed the training course under KRS 15.3975(1), has not committed an act for which his or her certified status may be revoked pursuant to KRS 15.3973, and successfully completes an in-service training course as prescribed in an administrative regulation promulgated by the Kentucky Law Enforcement Council.

(c) A person returning from inactive to active certification as a court security officer after June 26, 2007, under KRS 15.380 to 15.404 shall meet the following minimum qualifications:

1. Be a citizen of the United States;

2. Possess a valid license to operate a motor vehicle;

3. Be fingerprinted for a criminal background check;

4. Not have been convicted of any felony; a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct; or have had any offense listed under this subparagraph expunged;

5. Not be prohibited by federal or state law from possessing a firearm;

6. Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

7. Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;

8. Have been interviewed by the employing agency; and

9. Not have had certification as a peace officer permanently revoked in another state;

(4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the certified court security officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's court security powers shall automatically terminate, and he or she shall not exercise court security officer powers in the Commonwealth until he or she has corrected the in-service training deficiency;

(5) "Revoked status" means that the court security officer has no court security powers and his or her certification has been revoked by the Kentucky Law Enforcement Council for any one (1) of the bases for revocation described under KRS 15.391; and

(6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status as a court security officer. The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified court security officer.

History.

Enact. Acts 2007, ch. 54, § 4, effective June 26, 2007; 2023 ch. 170, § 8, effective June 29, 2023.

15.3979. Court security officer not considered hazardous duty position — Ineligibility for Kentucky Law Enforcement Foundation Program fund.

Except for persons currently employed in a hazardous duty position and who remain in that hazardous duty position while performing certified court security officer functions, the position of certified court security officer shall not be considered as a hazardous duty position within the meaning of KRS 61.592 and shall not be eligible to participate in the Kentucky Law Enforcement Foundation Program Fund unless the officer meets the requirements of KRS 15.382, 15.404, and 15.440.

History.

Enact. Acts 2007, ch. 54, § 5, effective June 26, 2007.

15.398. Statutory provisions not superseded by KRS 15.380 to 15.404.

The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to KRS 15.380 to 15.404 shall not be superseded by the provisions of KRS 15.380 to 15.404, and in all instances the provisions of all statutes specified below shall prevail:

(1) KRS Chapter 16, relating to Department of Kentucky State Police Officers;

(2) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;

(3) KRS Chapter 78, relating to county police;

(4) KRS Chapters 15 and 95, except for KRS 95.955, relating to city and urban-county police;

(5) KRS Chapter 183, relating to airport safety and security officers;

(6) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;

(7) KRS Chapter 18A, relating to all state peace officers;

(8) KRS 241.090, relating to Department of Alcoholic Beverage Control investigators;

(9) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and

(10) Any other statutes affecting peace officers not specifically cited herein.

History.

Enact. Acts 1998, ch. 606, § 108, effective December 1, 1998; 2002, ch. 132, § 7, effective July 15, 2002; 2007, ch. 85, § 21, effective June 26, 2007; 2010, ch. 24, § 17, effective July 15, 2010; 2017 ch. 62, § 115, effective June 29, 2017.

Legislative Research Commission Notes.

(7/15/2002). The Reviser of Statutes has renumbered the subsections of this statute under the authority of KRS 7.136(1)(a).

15.400. Effect of KRS 15.380 to 15.404 on officers employed before or after December 1, 1998 — Exception to Open Records Act.

(1) The effective date of KRS 15.380 to 15.404 shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of KRS 15.380 to 15.404 and shall be granted certified status as long as they:

(a) Remain in continuous employment of the agency by which they were employed as of December 1, 1998, and are employed within three hundred sixty-five (365) days by another law enforcement agency subject to the provisions of KRS 15.380 to 15.404;

(b) Retired from employment with certified status on or after July 1, 2008, and are reemployed no later

than one hundred (100) days from March 15, 2011, by a law enforcement agency subject to KRS 15.380 to 15.404; or

(c) Have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(1)(d) when seeking employment with another law enforcement agency.

(2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in KRS 15.380 to 15.404 or comply with the requirements set forth in KRS 15.440(1)(d)6. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.

(3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, Social Security number, background investigation, medical examination, psychological examination, and polygraph examination conducted for any person seeking certification pursuant to KRS 15.380 to 15.404 shall not be subject to disclosure.

History.

Enact. Acts 1998, ch. 606, § 109, effective December 1, 1998; 2002, ch. 132, § 8, effective July 15, 2002; 2002, ch. 137, § 2, effective July 15, 2002; 2007, ch. 76, § 1, effective June 26, 2007; 2011, ch. 25, § 1, effective March 15, 2011; 2021 ch. 73, § 10, effective June 29, 2021; 2023 ch. 171, § 1, effective April 4, 2023.

Legislative Research Commission Notes.

(6/26/2007). The amendment to this section in 2007 Ky. Acts ch. 76, sec. 1, effective June 26, 2007, is retroactive to July 1, 2004. See 2007 Ky. Acts ch. 76, sec. 5.

OPINIONS OF ATTORNEY GENERAL.

A city police department did not violate the Open Records Act in denying a request to inspect all documentation and records related to the requester's application for the position of police recruit since subsection (3) prohibits disclosure of specifically described information obtained in the application/certification process to peace officers, unsuccessful applicants who wished to become peace officers, and third parties; the prohibition is, by its own terms, mandatory, and extends not only to background investigations, but also to psychological examinations and polygraph examinations administered pursuant to subsection (2) and KRS 15.382. OAG 00-ORD-118, 2000 Ky. AG LEXIS 115.

Because the confidentiality provision codified at KRS 15.400(3) does not extend by its express terms to pre-December 1, 1998, psychological examination records, and because the requester was employed in 1992, KRS 15.400(3) does not apply to psychological records in the City's custody that relate to the requester. The requester is entitled to inspect and receive copies of her psychological records under authority of KRS 61.878(3). OAG 03-ORD-43, 2003 Ky. AG LEXIS 187.

15.402. Additional requirements by employing agency.

No provisions of KRS 15.380 to 15.404 shall preclude an appointing or employing agency from having requirements that are in excess of or in addition to any requirements specified by KRS 15.380 to 15.404 or an administrative regulation promulgated under KRS 15.380 to 15.404.

History.

Enact. Acts 1998, ch. 606, § 110, effective December 1, 1998; 2002, ch. 132, § 9, effective July 15, 2002.

15.404. Basic training and in-service training for peace officers and constables.

(1)(a) Any peace officers employed or appointed after December 1, 1998, who have not successfully completed basic training at a school certified or recognized by the Kentucky Law Enforcement Council, shall within one (1) year of their appointment or employment, successfully complete a basic training course, as established by KRS 15.440, at a school certified or recognized by the Kentucky Law Enforcement Council or receive a basic training credit approved by the Kentucky Law Enforcement Council under KRS 15.440(1)(d)6.

(b) In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing basic training within one (1) year, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training.

(c) Any peace officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her precertification status shall lapse. Further, the peace officer shall be prohibited from serving as a peace officer for a period of one (1) year from the date that his or her precertification lapses.

(2)(a) All peace officers with active certification status shall successfully complete forty (40) hours of annual in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, that is appropriate to the officer's rank and responsibility and the size and location of his department.

(b) In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the in-service training within one (1) year, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training. If the officer is unable to complete the in-service training due to injury or illness that prevents him or her from working as a peace officer, the one hundred eighty (180) day extension shall begin on the date that the officer returns to work.

(c) Any peace officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her certification status shall be changed to training deficiency status.

(d) When a peace officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the peace officer and his or her agency.

(e) The requirements of this subsection shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces.

(f) This waiver shall be retroactive for peace officers from the date of September 11, 2001.

(3) An officer who has lost his or her law enforcement powers due solely to his or her failure to meet the in-service training requirements of this section may regain his or her certification status and law enforcement powers upon successful completion of the training deficiency.

(4)(a) Any constable who is elected may apply for admission to a basic training course, as established by KRS 15.440, at a school certified or recognized by the Kentucky Law Enforcement Council. The constable shall meet all precertification requirements established pursuant to KRS 15.382 for attendance. The constable shall bear all costs associated with precertification. The constable shall bear all costs associated with completion of the basic training course, except the costs of basic training at a course established pursuant to KRS 15.340.

(b) The basic training course shall accept the constable for basic training so long as:

1. The constable meets the precertification requirements; and

2. The basic training course has the training capacity to instruct the constable.

History.

Enact. Acts 2000, ch. 480, § 5, effective July 14, 2000; 2002, ch. 132, § 10, effective July 15, 2002; 2007, ch. 139, § 6, effective June 26, 2007; 2016 ch. 112, § 1, effective July 15, 2016; 2021 ch. 73, § 11, effective June 29, 2021; 2022 ch. 90, § 26, effective January 1, 2023.

15.405. Conditional offer of employment as peace officer pending receipt of certification status and employment records.

(1) As used in this section, "agency" means any law enforcement agency, or other unit of government listed in KRS 15.380, that employs a certified peace officer.

(2) Subject to subsection (5) of this section, any agency may make a conditional offer of employment to a candidate pending its receipt and evaluation of a response to its request for information from:

(a) The council regarding the certification status of any candidate, including if the council has:

1. Received any notification under KRS 15.391(4) related to the candidate;

2. Initiated hearing procedures under KRS 15.391 against the candidate; or

3. Started investigating whether to initiate hearing procedures for the revocation of the certification of the candidate under KRS 15.391; or

(b) Any agency that previously employed the candidate for any information the agency is required to provide under subsection (3) of this section.

(3) Any agency that receives an inquiry under subsection (2) of this section from another agency regarding a candidate for a peace officer position who was formerly employed by the agency shall provide the following documentation to the hiring agency:

(a) A complete copy of the peace officer's personnel file;

(b) Any documentation related to the arrest or prosecution of the peace officer that the agency maintained;

(c) Any documentation related to a completed internal administrative investigation of the peace officer; and

(d) Any documentation related to an incomplete internal administrative investigation of the peace officer that was not completed because of the officer's resignation or retirement while the investigation was pending.

(4) The council and any agency that receives a request for information shall provide it to the requesting hiring agency no later than fourteen (14) days following the receipt of the request.

(5) The hiring agency that elects to make a conditional offer of employment subject to its receipt and evaluation of information pursuant to this section shall require the candidate to complete a waiver and release of liability authorizing the hiring agency to request the information from all prior agencies, which may include employing agencies outside of the Commonwealth.

(6) The council, any agency, and the employees and officers of the council or any agency shall be immune from any civil liability for disclosing information pursuant to the provisions of this section and from any civil liability for the consequences of such a disclosure unless the information disclosed was knowingly false or deliberately misleading, was rendered with malicious purpose, or was in violation of any civil right of the former employee.

History.

2021 ch. 73, § 3, effective June 29, 2021.

15.406. Council to provide certification status information to out-of-state law enforcement agency upon request.

If requested by an out-of-state law enforcement agency, the council shall provide the following information regarding the certification status of any candidate for employment, including if the council has:

(1) Received any notification under KRS 15.391(4) related to the candidate;

(2) Initiated hearing procedures under KRS 15.391 against the candidate; or

(3) Started investigating whether to initiate hearing procedures for the revocation of the certification of the candidate under KRS 15.391.

History.

2021 ch. 73, § 4, effective June 29, 2021.

CHAPTER 15A

JUSTICE AND PUBLIC SAFETY CABINET

Section

15A.065. Department of Juvenile Justice — Powers and duties — Advisory board.
15A.0651. Access to juvenile facility records — When permitted — Appeal of denial.
15A.067. Division of Program Services — Access to educational records — Screening and education of incarcerated youth — Information on educational status and need.

15A.065. Department of Juvenile Justice — Powers and duties — Advisory board.

(1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:

(a) Prevention of juvenile crime;

(b) Identification of juveniles at risk of becoming status or public offenders and development of early intervention strategies for these children, and, except for adjudicated youth, participation in prevention programs shall be voluntary;

(c) Providing educational information to law enforcement, prosecution, victims, defense attorneys, the courts, the educational community, and the public concerning juvenile crime, its prevention, detection, trial, punishment, and rehabilitation;

(d) The operation of or contracting for the operation of postadjudication treatment facilities and services for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;

(e) The operation or contracting for the operation, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;

(f) Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;

(g) Conducting research and comparative experiments to find the most effective means of:

1. Preventing delinquent behavior;

2. Identifying predelinquent youth;

3. Preventing predelinquent youth from becoming delinquent;

4. Assessing the needs of predelinquent and delinquent youth;

5. Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;

6. Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and

(h) Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.

(2) The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.

(3) The Department of Juvenile Justice may contract for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments. The department shall, after consultation with the Finance and Administration Cabinet, promulgate administrative regulations to govern at least the following aspects of this subsection:

(a) Bidding process; and

(b) Emergency acquisition process.

(4) The Department of Juvenile Justice shall develop programs to:

(a) Ensure that youth in state-operated or contracted residential treatment programs have access to an ombudsman to whom they may report program problems or concerns;

(b) Review all treatment programs, state-operated or contracted, for their quality and effectiveness; and

(c) Provide mental health services to committed youth according to their needs.

(5)(a) The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall serve as the advisory group under the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, as amended, and which shall provide a formulation of and recommendations for meeting the requirements of this section not less than annually to the Governor, the Justice and Public Safety Cabinet, the Department of Juvenile Justice, the Cabinet for Health and Family Services, the Interim Joint Committees on Judiciary and on Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and the Appropriations and Revenue Committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils. The advisory board shall meet not less than quarterly.

(b) The advisory board shall be chaired by a private citizen member appointed by the Governor and shall serve a term of two (2) years and thereafter be elected by the board. The members of the board shall be appointed to staggered terms and thereafter to four (4) year terms. The membership of the advisory board shall consist of no fewer than fifteen (15) persons and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice. A majority of the members shall not be full-time employees of any federal, state, or local government, and at least one-fifth (1/5) of the members shall be under the age of twenty-four (24) years at the time of appointment. On July 15, 2002, any pre-existing appointment of a member to the Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee shall be terminated unless that member has been re-appointed subsequent to January 1, 2002, in which case that member's appointment shall continue without interruption. The membership of the board shall include the following:

1. Three (3) current or former participants in the juvenile justice system;
2. An employee of the Department of Juvenile Justice;
3. An employee of the Cabinet for Health and Family Services;
4. A person operating alternative detention programs;
5. An employee of the Department of Education;
6. An employee of the Department of Public Advocacy;
7. An employee of the Administrative Office of the Courts;
8. A representative from a private nonprofit organization with an interest in youth services;
9. A representative from a local juvenile delinquency prevention council;
10. A member of the Circuit Judges Association;
11. A member of the District Judges Association;
12. A member of the County Attorneys Association;
13. A member of the County Judge/Executives Association;
14. A person from the business community not associated with any other group listed in this paragraph;
15. A parent not associated with any other group listed in this paragraph;
16. A youth advocate not associated with any other group listed in this paragraph;
17. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
18. A local school district special education administrator not associated with any other group listed in this paragraph;
19. A peace officer not associated with any other group listed in this paragraph; and
20. A college or university professor specializing in law, criminology, corrections, psychology, or similar discipline with an interest in juvenile corrections programs.

(c) Failure of any member to attend three (3) meetings within a calendar year shall be deemed a resignation from the board. The board chair shall notify the Governor of any vacancy and submit recommendations for appointment.

(6) The Department of Juvenile Justice shall, in cooperation with the Department of Public Advocacy, develop a program of legal services for juveniles committed to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility, who have legal claims related to the conditions of their confinement involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact. The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection:

(a) Facility access;
(b) Scheduling; and
(c) Access to residents" records.

(7) The Department of Juvenile Justice may, if space is available and conditioned upon the department's ability to regain that space as needed, contract with another state or federal agency to provide services to youth of that agency.

History.

Enact. Acts 1996, ch. 358, § 1, effective July 15, 1996; 1998, ch. 426, § 70, effective July 15, 1998; 1998, ch. 538, § 4, effective April 13, 1998; 2002, ch. 59, § 2, effective July 15, 2002; 2002, ch. 263, § 1, effective July 15, 2002; 2004, ch. 160, § 1, effective July 13, 2004; 2005, ch. 99, § 85, effective June 20, 2005; 2007, ch. 85, § 44, effective March 23, 2007; 2017 ch. 167, § 3, effective June 29, 2017.

Compiler's Notes.

The Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, referred to in subsection (5)(a), is compiled generally at 42 USCS §§ 5601 et seq.

Legislative Research Commission Notes.

(6/26/2007). 2007 Ky. Acts ch. 85, relating to the creation and organization of the Justice and Public Safety Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

(7/15/2002). This section was amended by 2002 Ky. Acts chs. 59 and 263. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 263, which was last enacted by the General Assembly, prevails under KRS 446.250.

15A.0651. Access to juvenile facility records — When permitted — Appeal of denial.

(1) As used in this section, "juvenile facility" means any facility wherein a juvenile or other person under the authority of the Department of Juvenile Justice is confined.

(2) KRS 61.870 to 61.884 to the contrary notwithstanding, a person shall not have access to a record if its disclosure is deemed by the commissioner of the Department of Juvenile Justice or his or her designee to constitute a threat to the security of the juvenile, the juvenile facility, or any other person.

(3) KRS 61.870 to 61.884 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any person confined in a juvenile facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record that contains a specific reference to the individual making the request.

(4) KRS 61.870 to 61.884 to the contrary notwithstanding, if a person confined in a juvenile facility wishes to challenge a denial of a request to inspect a public record, he or she shall mail or otherwise send the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.

(5) KRS 61.870 to 61.884 to the contrary notwithstanding, all records relating to juvenile detention containing information expunged pursuant to law shall not be open to the public.

(6) KRS 61.870 to 61.884 to the contrary notwithstanding, upon receipt of a request for a record, the department shall respond to the request within five (5) days after receipt of the request, excepting Saturdays,

Sundays, and legal holidays, and shall state whether the record may be inspected or may not be inspected, or that the record is unavailable and when the record is expected to be available.

(7) Nothing in this section shall authorize the department to deny any attorney representing a juvenile access to any record to which the attorney or the juvenile would otherwise be entitled.

History.

Enact. Acts 2010, ch. 74, § 1, effective July 15, 2010.

15A.067. Division of Program Services — Access to educational records — Screening and education of incarcerated youth — Information on educational status and need.

(1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky and juvenile detention facilities operated by the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent or adjudicated delinquent.

(2)(a) There is established within the department a Division of Program Services that shall be responsible for ensuring the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to youth ordered by the court to remain in the juvenile detention facility.

(b) Any other statutes to the contrary notwithstanding, the department shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.

(c) The Division of Program Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:

1. For students identified before incarceration as having an educational disability, the Division of Program Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.

2. For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include but not be limited to seeking the juvenile's educational record.

3. For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.

(d) The department shall be responsible for providing, in its contracts with non-state-operated juvenile detention facilities, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.

(e) The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Program Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.

(f)1. Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.

2. Within five (5) days after the juvenile is released, the Division of Program Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.

(g) The department shall, after consultation with the Department of Education, promulgate an administrative regulation for the effective implementation of this section.

History.

Enact. Acts 1996, ch. 358, § 64, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 606, § 3, effective July 15, 1998; 2000, ch. 8, § 1, effective July 14, 2000; 2000, ch. 534, § 3, effective July 14, 2000; 2001, ch. 64, § 2, effective June 21, 2001; 2002, ch. 257, § 1, effective July 15, 2002; 2014, ch. 132, § 7, effective July 15, 2014.

CHAPTER 16
STATE POLICE

Department of Kentucky State Police.

Section
16.128. The Department of Kentucky State Police is encouraged to receive training on issues pertaining to school and student safety, to meet with local superintendents, and to collaborate with local school districts on policies and procedures for communicating any instances of trauma-exposed students.

DEPARTMENT OF KENTUCKY STATE POLICE

16.128. The Department of Kentucky State Police is encouraged to receive training on issues pertaining to school and student safety, to meet with local superintendents, and to collaborate with local school districts on policies and procedures for communicating any instances of trauma-exposed students.

(1) The Department of Kentucky State Police is encouraged to receive training on issues pertaining to school and student safety and shall be invited to meet annually with local superintendents to discuss emergency response plans and emergency response concerns.

(2) The Department of Kentucky State Police is encouraged to collaborate with local school districts on policies and procedures for communicating to the school district any instances of trauma-exposed students.

History.
2019 ch. 5, § 19, effective March 11, 2019; 2020 ch. 5, § 5, effective February 21, 2020.

CHAPTER 17

PUBLIC SAFETY

Criminal Records and Statistics.

Section
17.125. Agency sharing of records maintained on juvenile in facility, program, or informal adjustment — Confidentiality — Provision of records — Exception — Violation.

Missing Child Information Center.

17.470. Notification by Department of Kentucky State Police of missing and recovered children.

Sex Offender Registration.

17.545. Registrant prohibited from residing or being present in certain areas — Violations — Exception.

Penalties.

17.990. Penalties.

CRIMINAL RECORDS AND STATISTICS

17.125. Agency sharing of records maintained on juvenile in facility, program, or informal adjustment — Confidentiality — Provision of records — Exception — Violation.

(1) The following agencies are parts of Kentucky's juvenile justice system and shall, subject to restrictions imposed by state or federal law, disclose and share with each other all information they maintain on a juvenile in a facility or program or informal adjustment authorized by law:

(a) All sheriff's offices, police departments, and any other law enforcement agency;

(b) All Commonwealth's attorneys and county attorneys;

(c) The Attorney General;

(d) All jails and juvenile detention facilities, public and private;

(e) All courts and clerks of courts;

(f) The Administrative Office of the Courts;

(g) All departments within the Justice and Public Safety Cabinet;

(h) All departments within the Cabinet for Health and Family Services; and

(i) All RISE teams as defined in KRS 600.020.

(2) Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality disclosure, redisclosure, and access restrictions imposed by federal or state law.

(3) Once a:

(a) Complaint is filed with a court-designated worker alleging that a child has committed a status offense or public offense; or

(b) Child participates in a SOAR Program as defined in KRS 600.020 offered at the child's school;

all public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records specifically requested in writing, and pertaining to that child, to any of the agencies listed in subsection (1) of this section. Pursuant to the authority granted to the Commonwealth under the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, when this section refers to the release of educational records, the purpose of the release shall be limited to providing the juvenile justice system with the ability to effectively serve, prior to adjudication, the needs of the student whose records are sought. The authorities to which the data are released shall certify that any educational records obtained pursuant to this section shall only be released to persons authorized by statute and shall not be released to any other person without the written consent of the parent of the child. The request, certification, and a record of the release shall be maintained in the student's file.

(4) Any request for records, the provision of records, the sharing of records, the disclosure of records, or the redisclosure of records shall be done for official purposes only, on a bona fide need to know basis, and only in connection with a legitimate investigation, prosecution, treatment program, or educational program.

(5) Information and records relating to pending litigation in Circuit Court, District Court, or a federal court and information and records relating to an ongoing investigation are not subject to disclosure or sharing under this section.

(6) Obtaining or attempting to obtain a record relating to a minor or by sharing or attempting to share a record relating to a minor with an unauthorized person is a violation of this section.

History.
Enact. Acts 1998, ch. 606, § 10, effective July 15, 1998; 2005, ch. 99, § 14, effective June 20, 2005; 2007, ch. 85, § 78, effective June 26, 2007; 2014, ch. 132, § 54, effective July 15, 2014; 2026 ch. 69, § 8, effective July 15, 2026.

MISSING CHILD INFORMATION CENTER

17.470. Notification by Department of Kentucky State Police of missing and recovered children.

(1) Upon receipt of a report of a missing child who was born in the Commonwealth, the Department of Kentucky State Police shall notify within forty-eight (48) hours the state registrar of vital statistics for the Commonwealth of the disappearance of such child and shall provide to the state registrar identifying information about the missing child. Upon learning of the recovery of a missing child, the Department of Kentucky State Police shall notify the state registrar.

(2) The Department of Kentucky State Police shall provide the commissioner of education with a list of the names of all missing children and children who have been recovered along with, if available, the last known school of enrollment. The commissioner of education

shall provide the information to schools as required in KRS 156.495.

History.

Enact. Acts 1986, ch. 72, § 1, effective July 15, 1986; 1992, ch. 27, § 2, effective March 2, 1992; 2003, ch. 39, § 1, effective June 24, 2003; 2007, ch. 85, § 98, effective June 26, 2007.

SEX OFFENDER REGISTRATION

17.545. Registrant prohibited from residing or being present in certain areas — Violations — Exception.

(1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line to the nearest property line of the registrant's place of residence.

(2)(a) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on, loiter within one thousand (1,000) feet of, or work in or operate any mobile business within one thousand (1,000) feet of the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned or leased playground, licensed day care facility, publicly owned or leased swimming pool, or splash pad as defined in KRS 211.205, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned or leased playground, publicly owned or leased swimming pool, or splash pad, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500.

(b) As used in this subsection:

1. "Local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers;

2. "Loiter" includes remaining in or about the clearly defined grounds of a location described in paragraph (a) of this subsection, while not having any reason or relationship involving custody of or responsibility for a minor or any other specific legitimate reason for being there; and

3. "Mobile business" means any business that operates from a motor vehicle or wheeled cart that can be operated, pushed, or pulled on a sidewalk, street, or highway where food, goods, or services are prepared, processed, or sold or dispensed to the public.

(c) The measurement in paragraph (a) of this subsection shall be taken in a straight line from the nearest property line.

(3) For purposes of this section:

(a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and

(b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.

(4)(a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.

(b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.

(c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.

(5) Any person who violates subsection (1) or (4) of this section shall be guilty of:

(a) A Class A misdemeanor for a first offense; and

(b) A Class D felony for the second and each subsequent offense.

(6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.

(7) The prohibition against a registrant:

(a) Residing within one thousand (1,000) feet of a publicly leased playground as outlined in subsection (1) of this section; or

(b) Being on the grounds of a publicly leased playground as outlined in subsection (2) of this section;

shall not operate retroactively.

(8) The prohibition against a registrant loitering or working in or operating any mobile business within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, licensed day care facility, publicly owned or leased swimming pool, or splash pad as defined in KRS 211.205 shall not operate retroactively.

(9) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

History.

Repealed, reenact. and amend., Acts 2006, ch. 182, § 3, effective July 12, 2006; 2009, ch. 38, § 2, effective June 25, 2009; 2017 ch. 76, § 1, effective June 29, 2017; 2018 ch. 181, § 1, effective July 14, 2018; 2020 ch. 23, § 1, effective July 15, 2020; 2023 ch. 109, § 1, effective June 29, 2023.

Compiler's Notes.

This section was formerly compiled as KRS 17.495.

Legislative Research Commission Notes.

(6/25/2009). A reference in subsection (5) of this statute to "subsection (3) of this section" has been changed in codification

to "subsection (4) of this section" to accurately reflect the renumbering of subsections of this statute in 2009 Ky. Acts ch. 38, sec 2.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Applicability.
3. Constitutionality.

1. Purpose.

KRS 17.495 (now KRS 17.545) is not codified within the Kentucky Sexual Offender Registration Act (Act), KRS 17.500 et seq.; however, KRS 17.495 (now KRS 17.545) directly references the Act, was implemented in conjunction with the 2000 amendments to the Act, and is clearly intended to operate in coordination with, and to advance the objectives of, the Act. Thorpe v. Commonwealth, 2003 Ky. App. Unpub. LEXIS 1016 (Ky. Ct. App. 2003).

2. Applicability.

Requiring defendant to register as a sex offender for a term of 10 years was not an *ex post facto* application of the Kentucky Sexual Offender Registration Act (Act), KRS 17.500 et seq., although registration was not required for second-degree sexual abuse under the 1994 version of the statute in effect at the time of his offenses; this section is not an *ex post facto* law because it applies only to those on probation and parole, imposes no conditions that could not have been imposed on such persons before its enactment, does not extend a defendant's time behind bars, and is reasonably related to nonpunitive goals. Thorpe v. Commonwealth, 2003 Ky. App. Unpub. LEXIS 1016 (Ky. Ct. App. 2003).

Although the General Assembly did not intend KRS 17.545 to be punitive, the residency restrictions were so punitive as to negate any intention to deem them civil; therefore, the statute may not be applied to defendant, who committed his crime prior to the effective date, as to do so violated U.S. Const. art. I, § 10 and Ky. Const. § 19(1). Commonwealth v. Baker, 295 S.W.3d 437, 2009 Ky. LEXIS 233 (Ky. 2009), cert. denied, 559 U.S. 992, 130 S. Ct. 1738, 176 L. Ed. 2d 213, 2010 U.S. LEXIS 2267 (U.S. 2010).

Circuit court did not err in imposing statutory residency restrictions on defendant upon his conviction for kidnapping as kidnapping was explicitly included in KRS 17.500(3)(a)(1) in the definition of a "criminal offense against a victim who is a minor," if the victim was under the age of eighteen, and defendant was clearly a "registrant" subject to lifetime registration pursuant to KRS 17.520(2)(a)(1) and 17.545. Ladriere v. Commonwealth, 329 S.W.3d 278, 2010 Ky. LEXIS 259 (Ky. 2010).

3. Constitutionality.

Order dismissing appellant's complaint and petition for declaratory judgment challenging the constitutionality of the "anti-grandfather clause" of Kentucky's Sex Offender Registry residence restrictions was proper because "residence" was not vague, the clause was not a bill of attainder, the residency provisions were not arbitrary and did not violate due process, the clause was not an ex post facto law, and the impact on appellant's property because of the residency restrictions was not a taking. Doe v. Dean, 699 S.W.3d 185, 2024 Ky. App. LEXIS 85 (Ky. Ct. App. 2024).

OPINIONS OF ATTORNEY GENERAL.

While applying KRS §17.545(2) retroactively implicates and necessitates an analysis of the ex post facto clauses of the United States and Kentucky Constitutions, the relevant portion of the statute is not punitive and therefore does not violate the ex post facto clauses. OAG 2015-03.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Sterrett, The Case for Kentucky Sex Offenders: Residency Restrictions and Their Constitutional Validity, 96 Ky. L.J. 119 (2007).

Northern Kentucky Law Review.

2008 Criminal Law Issue: Note: Kentucky's Statutory Collateral Consequences Arising From Felony Convictions: A Practitioner's Guide, 35 N. Ky. L. Rev. 413 (2008).

PENALTIES

17.990. Penalties.

(1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500).

(2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five hundred dollars ($500), or both.

(3) Any person who violates KRS 17.545(2) shall be guilty of a Class A misdemeanor.

History.

Repealed, reenact. and amend. Acts 1988, ch. 345, § 5, effective July 15, 1988; 1998, ch. 426, § 76, effective July 15, 1998; 2000, ch. 308, § 26, effective July 14, 2000; 2005, ch. 99, § 94, effective June 20, 2005; 2009, ch. 38, § 3, effective June 25, 2009; 2017 ch. 135, § 7, effective March 27, 2017.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 116, § 6, effective June 16, 1960; 1970, ch. 227, § 5; 1978, ch. 384, § 5, effective June 17, 1978; 1980, ch. 188, § 8, effective July 15, 1980; 1986, ch. 475, § 3, effective July 15, 1986) was repealed, reenacted and amended by Acts 1988, ch. 345, § 5, effective July 15, 1988.

OPINIONS OF ATTORNEY GENERAL.

Those provisions of 1986, ch. 475 (KRS 17.165 and this section) relating to the State Board of Education and local boards of education and their employees are unconstitutional under Ky. Const., § 51; therefore, references to the State Board of Education and any local board of education of either an independent or county school district in KRS 17.165, subdivision (3)(b) (former language) of this section, and the reference to any board of education in former subdivision (3)(c) of this section are void. OAG 86-70, 1986 Ky. AG LEXIS 14.

CHAPTER 18A
STATE PERSONNEL

Section

18A.010. General purpose of KRS 18A.005 to 18A.200 — Total number of employees limited.
18A.196. Definitions for KRS 18A.197.
18A.197. Sick-leave sharing program.

Life Insurance.

Section
18A.205. Life insurance for public employees and certain retirees — Definitions.
18A.210. Payment of premiums.
18A.215. Provisions authorized.

Health Coverage.

18A.225. Health care insurance coverage — Requirements of prospective carriers — Analysis of carrier coverage data — Agency's termination of participation — Provision of amount of employer contribution — Lapse of excess flexible spending account funds — Advisory Committee of State Health Insurance Subscribers — No abortion coverage — Appeal of formulary change — Retiree's participation — Mail-order drug option coverage — Nondiscrimination against pharmacy in geographic coverage area — Hearing aid coverage for minors — Coverage for diagnosis and treatment of autism spectrum disorders — Amino acid-based elemental formula coverage — Access to certain services in contiguous counties — Study of bid variation — Regional rating bid scenario — Optometric coverage — Standards for provider participation — Special enrollment period for pregnancy. [Effective until January 1, 2027].
18A.225. Health care insurance coverage — Requirements of prospective carriers — Analysis of carrier coverage data — Agency's termination of participation — Provision of amount of employer contribution — Lapse of excess flexible spending account funds — Advisory Committee of State Health Insurance Subscribers — No abortion coverage — Appeal of formulary change — Retiree's participation — Mail-order drug option coverage — Nondiscrimination against pharmacy in geographic coverage area — Hearing aid coverage for minors — Coverage for diagnosis and treatment of autism spectrum disorders — Amino acid-based elemental formula coverage — Access to certain services in contiguous counties — Study of bid variation — Regional rating bid scenario — Optometric coverage — Standards for provider participation — Special enrollment period for pregnancy. [Effective January 1, 2027].
18A.2256. TRICARE supplement insurance for public employees.
18A.226. Group Health Insurance Board — Members — Duties.
18A.227. Flexible benefits plan for employees and retirees.
18A.2286. Continuation coverage for member retired for disability.

State Employee Workers' Compensation.

18A.375. State employee workers' compensation fund.

18A.010. General purpose of KRS 18A.005 to 18A.200 — Total number of employees limited.

(1) The general purpose of KRS 18A.005 to 18A.200 is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the recruitment, examination, appointment, promotion, transfer, lay-off, removal, discipline, and welfare of its classified employees and other incidents of state employment. All appointments and promotions to positions in the state classified service shall be made solely on the basis of merit and fitness, to be ascertained by competitive examination, except as hereinafter specified. The General Assembly finds that this chapter is necessary in order to improve the morale and motivation of state employees and to gain the maximum utilization of human resources in order to provide better service to the citizens of this Commonwealth.

(2) The total number of permanent full-time personnel employed in agencies of the executive branch shall not exceed thirty-three thousand (33,000).

(3) The provisions of subsection (2) of this section do not apply to teachers, career guidance coaches and counselors, or school administrators employed in state-operated area technology centers, or employees of the General Assembly, the Legislative Research Commission, the Kentucky Higher Education Assistance Authority, the Kentucky Higher Education Student Loan Corporation, or the Court of Justice.

(4) As used in this section, "career guidance coach" has the same meaning as in KRS 158.810.

History.

Enact. 1982, ch. 381, § 8, effective July 15, 1982; repealed, reenact. and amend. 1982, ch. 448, § 2, effective July 15, 1982; 1996, ch. 350, § 4, effective July 15, 1996; 2012, ch. 150, § 8, effective April 19, 2012.

Compiler's Notes.

Subsection (1) of this section was formerly compiled as KRS 18.120 and was repealed, reenacted and amended as this section by Acts 1982, ch. 448, § 2.

Subsections (2) and (3) of this section were enacted by Acts 1982, ch. 381, § 8.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included an amendment to this statute, shall be known as the "Career Pathways Act of 2012."

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, G, 1, (2) at 2085.

NOTES TO DECISIONS

1. Merit System.

Pursuant to KRS 18A.075, the State Personnel Board has the duty to investigate whether a position is properly or improperly excluded from the classified service, in order to protect the integrity of the merit system, and the board has a duty to act to enforce the provisions of KRS 18A.005 to 18A.200, where it believes that the unlawful use of unclassified positions infringes on the principles of the merit system. State Personnel Bd. v. Greenwell, 795 S.W.2d 381, 1990 Ky. LEXIS 77 (Ky. 1990).

Cited in:

Commonwealth Office of the Jefferson County Clerk v. Gordon, 892 S.W.2d 565, 1994 Ky. LEXIS 144 (Ky. 1994).

OPINIONS OF ATTORNEY GENERAL.

The Fayette Urban County Government Human Rights Commission is fully authorized to handle complaints against the state or its agencies concerning civil rights violations in Fayette County even though the complaining employee is a

merit employee of the state or its agencies. OAG 83-482, 1983 Ky. AG LEXIS 12.

18A.196. Definitions for KRS 18A.197.

As used in KRS 18A.197 unless the context requires otherwise:

(1) "Employee" means any employee of the Commonwealth of Kentucky who is entitled to accrue sick leave and for whom accurate leave records are maintained; and

(2) "State agency" or "agency" means any agency of the executive, legislative or judicial branch of the state government.

History.

Enact. Acts 1990, ch. 483, § 1, effective July 13, 1990.

2024-2026 Budget Reference.

See State/Executive Branch Budget, 2024 Ky. Acts ch. 175, Pt. I, C, 2, (1) at 1832.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Sick leave sharing procedures for certified and equivalent service, 780 KAR 3:075.

Sick leave sharing procedures for unclassified service, 780 KAR 6:065.

18A.197. Sick-leave sharing program.

(1) The Commonwealth of Kentucky sick leave sharing program is created. An employee who has accrued a sick leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his or her sick leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his or her sick leave balance to less than seventy-five (75) hours.

(2) An appointing authority, with the approval of the secretary of personnel, may permit an employee of the agency to receive leave under this section if:

(a) The employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician or advanced practice registered nurse;

(c) The employee has exhausted his or her accumulated sick leave, annual leave, and compensatory leave balances; and

(d) The employee has complied with administrative regulations governing the use of sick leave.

(3) The appointing authority, with the approval of the secretary of personnel, shall determine the amount of leave, if any, which an employee within his or her agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.

(4) Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the secretary of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.

(5) While an employee is on leave transferred under this section, he or she shall be deemed a state employee and shall receive the same treatment with respect to salary, wages and employee benefits.

(6) All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.

(7) Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.

(9) The secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.

History.

Enact. Acts 1990, ch. 483, § 2, effective July 13, 1990; 1998, ch. 154, § 42, effective July 15, 1998; 2000, ch. 97, § 3, effective July 14, 2000; 2010, ch. 85, § 68, effective July 15, 2010.

2024-2026 Budget Reference.

See State/Executive Branch Budget, 2024 Ky. Acts ch. 175, Pt. I, C, 2, (1) at 1832.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Sick leave sharing procedures for certified and equivalent service, 780 KAR 3:075.

Sick leave sharing procedures for unclassified service, 780 KAR 6:065.

LIFE INSURANCE

18A.205. Life insurance for public employees and certain retirees — Definitions.

(1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary, may procure from one (1) or more life insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all or any class or classes of public employees. The policy or policies shall be approved by the commissioner of insurance and may contain such provisions as the

commissioner of insurance approves whether or not otherwise permitted by the insurance laws. It is intended that life insurance may be made available for public employees, except that the procuring is permissive.

(2)(a) As used in KRS 18A.205 to 18A.215, "public employee" shall mean a person who:

1. Is regularly employed by a public employer; and

2. Is also:

a. A contributing member of any one (1) of the state-administered retirement systems;

b. A retiree of a state-administered retirement system who is employed in a regular full-time position for purposes of retirement coverage, but who is not eligible to contribute to one (1) of the systems administered by Kentucky Retirement Systems or County Employees Retirement System pursuant to KRS 61.637(17) or 78.5540(4);

c. An individual participating in an optional retirement plan authorized by KRS 161.567; or

d. An individual eligible to participate in a retirement plan established by an employer who ceases participating in the Kentucky Employees Retirement System pursuant to KRS 61.522 whose employees participated in the life insurance plans administered by the Personnel Cabinet prior to the employer's effective cessation date in the Kentucky Employees Retirement System.

(b) Notwithstanding the definition of "public employee" in this subsection, any federally funded time-limited employee may receive insurance coverage.

(3) As used in this section and KRS 18A.210, "public employer" shall mean the following employers, if the employer has opted to participate in the state-sponsored group life insurance program:

(a) Any department, office, board, agency, commission, authority, or branch of state government;

(b) A public postsecondary educational institution;

(c) Any department, office, board, agency, commission, authority, or branch of a city, urban-county, charter county, county, unified local government, or consolidated local government; or

(d) Any certified or classified employee or elected member of a local board of education.

(4) As used in KRS 18A.205 to 18A.225, "premiums" shall mean premiums to be paid on any type of insurance authorized under KRS 18A.205 to 18A.225.

History.

Repealed, reenact. and amend. 1982, ch. 448, § 41, effective July 15, 1982; 1984, ch. 23, § 6, effective July 13, 1984; 1998, ch. 154, § 44, effective July 15, 1998; 2010, ch. 24, § 26, effective July 15, 2010; 2011, ch. 52, § 1, effective June 8, 2011; 2018 ch. 80, § 1, effective July 14, 2018; 2019 (1st Ex. Sess.), ch. 1, § 4, effective July 14, 2019; 2020 ch. 79, § 14, effective April 1, 2021; 2021 ch. 102, § 39, effective April 1, 2021.

Compiler's Notes.

This section was formerly compiled as KRS 18.410 and was repealed, reenacted and amended as this section by Acts 1982, ch. 448, § 41.

NOTES TO DECISIONS

1. Competitive Bid.

The executive branch of government through its administrative departments has the right to procure a group policy of life insurance upon state employees without complying with KRS 45.360 (now repealed) by advertising for competitive bids. (Decided under prior law) Commonwealth ex rel. Breckingridge v. Nunn, 452 S.W.2d 381, 1970 Ky. LEXIS 352 (Ky. 1970).

OPINIONS OF ATTORNEY GENERAL.

If a master commissioner is not a contributing member of the state retirement system, he does not qualify for state group health insurance and does not qualify for state life insurance. OAG 85-26, 1985 Ky. AG LEXIS 126.

18A.210. Payment of premiums.

The premiums may be paid by the policyholder:

(1) Wholly from funds contributed by the insured public employee, by payroll deduction or otherwise;

(2) Wholly from funds contributed by the public employer; or

(3) Partly from each.

No payment of premium by the public employer shall constitute compensation to an insured public employee for the purposes of any statute fixing or limiting the compensation of such an employee; any premium or other expense incurred by the public employer shall be considered a proper cost of administration.

History.

Enact. Acts 1962, ch. 225, § 2; repealed and reenact., Acts 1982, ch. 448, § 42, effective July 15, 1982; 2018 ch. 80, § 2, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 18.420 and was repealed and reenacted as this section by Acts 1982, ch. 448, § 42.

18A.215. Provisions authorized.

The policy or policies may also provide accidental death and dismemberment insurance and may contain such provisions with respect to the class or classes of public employees covered, amounts of insurance for designated classes or groups of public employees, terms of eligibility, continuation of insurance after retirement, and such other provisions as the commissioner of insurance may approve.

History.

Enact. Acts 1962, ch. 225, § 3; repealed and reenact., Acts 1982, ch. 448, § 43, effective July 15, 1982; 2010, ch. 24, § 27, effective July 15, 2010; 2018 ch. 80, § 3, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 18.430 and was repealed and reenacted as this section by Acts 1982, ch. 448, § 43.

HEALTH COVERAGE

18A.225. Health care insurance coverage — Requirements of prospective carriers — Analysis of carrier coverage data — Agency's termination of participation — Provision of amount of employer contribution — Lapse of excess flexible spending account funds — Advisory Committee of State Health Insurance Subscribers — No abortion coverage — Appeal of formulary change — Retiree's participation — Mail-order drug option coverage — Nondiscrimination against pharmacy in geographic coverage area — Hearing aid coverage for minors — Coverage for diagnosis and treatment of autism spectrum disorders — Amino acid-based elemental formula coverage — Access to certain services in contiguous counties — Study of bid variation — Regional rating bid scenario — Optometric coverage — Standards for provider participation — Special enrollment period for pregnancy. [Effective until January 1, 2027]

(1)(a) The term "employee" for purposes of this section means:

1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the statesponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567; or is eligible to participate in a retirement plan established by an employer who ceases participating in the Kentucky Employees Retirement System pursuant to KRS 61.522 whose employees participated in the health insurance plans administered by the Personnel Cabinet prior to the employer's effective cessation date in the Kentucky Employees Retirement System;

2. Any certified or classified employee of a local board of education or a public charter school as defined in KRS 160.1590;

3. Any elected member of a local board of education;

4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(2)(b)3. and 78.5536(2)(b)3., unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and

5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;

(b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;

(c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and

(d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.

(2)(a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of

KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.

(b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions the commissioner of insurance approves, whether or not otherwise permitted by the insurance laws.

(c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (20) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program and as otherwise provided in KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.

(d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.

(e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.

(f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.

(g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.

(h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.

(3) The premiums may be paid by the policyholder:

(a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;

(b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or

(c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.

(4) If an employee moves his or her place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he or she has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.

(5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.

(6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.

(7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he or she has

been determined to be eligible for federal Social Security disability benefits.

(8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.

(9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or the secretary's designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.

(10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.

(11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Department of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.

(12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.

(13)(a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.

(b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.

(c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.

(14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars ($1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.

(15) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for the diagnosis and treatment of autism spectrum disorders consistent with KRS 304.17A-142.

(16) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining amino acid-based elemental formula pursuant to KRS 304.17A-258.

(17) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

(18) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

(19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.

(20) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:

(a) The regional rating bid scenario shall not include a request for bid on a statewide option;

(b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as

the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;

(c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;

(d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and

(e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.

(21) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.

(22) Any fully insured health benefit plan or self-insured plan issued or renewed to public employees pursuant to this section shall comply with:

(a) KRS 304.12-237;
(b) KRS 304.17A-270 and 304.17A-525;
(c) KRS 304.17A-600 to 304.17A-633;
(d) KRS 205.593;
(e) KRS 304.17A-700 to 304.17A-730;
(f) KRS 304.14-135;
(g) KRS 304.17A-580 and 304.17A-641;
(h) KRS 304.99-123;
(i) KRS 304.17A-138;
(j) KRS 304.17A-148;
(k) KRS 304.17A-163 and 304.17A-1631;
(*l*) KRS 304.17A-265;
(m) KRS 304.17A-261;
(n) KRS 304.17A-262;
(o) KRS 304.17A-145;
(p) KRS 304.17A-129;
(q) KRS 304.17A-133;
(r) KRS 304.17A-264; and
(s) Administrative regulations promulgated pursuant to statutes listed in this subsection.

(23)(a) Any fully insured health benefit plan or self-insured plan issued or renewed to public employees pursuant to this section shall provide a special enrollment period to pregnant women who are eligible for coverage in accordance with the requirements set forth in KRS 304.17-182.

(b) The Department of Employee Insurance shall, at or before the time a public employee is initially offered the opportunity to enroll in the plan or coverage, provide the employee a notice of the special enrollment rights under this subsection.

History.

Enact. Acts 1976 (1st Extra. Sess.), ch. 35, § 2; 1980, ch. 132, § 6, effective July 15, 1980; repealed and reenact. 1982, ch. 448, § 45, effective July 15, 1982; 1984, ch. 23, § 1, effective July 13, 1984; 1986, ch. 178, § 1, effective July 15, 1986; 1990, ch. 348, § 3, effective July 13, 1990; 1990, ch. 489, § 8, effective July 13, 1990; 1992, ch. 92, § 3, effective July 14, 1992; 1992, ch. 219, § 1, effective July 14, 1992; 1992, ch. 235, § 1, effective July 14, 1992; 1994, ch. 350, § 1, effective July 15, 1994; 1994, ch. 512, Part 14, § 94, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1996, ch. 371, § 60, effective July 15, 1996; 1998, ch. 82, § 4, effective July 15, 1998; 1998, ch. 154, § 45, effective July 15, 1998; 1998, ch. 515, § 1, effective July 1, 1998; 2000, ch. 438, § 2, effective April 21, 2000; 2001, ch. 70, § 3, effective March 15, 2001; 2002, ch. 67, § 1, effective July 15, 2002; 2002, ch. 106, § 2, effective July 15, 2002; 2002, ch. 275, § 34, effective July 1, 2002; 2002, ch. 345, § 1, effective July 15, 2002; 2002, ch. 351, § 17, effective July 15, 2002; 2002, ch. 352, §§ 1, 4, effective July 15, 2002; 2003, ch. 12, § 1, effective June 24, 2003; 2003, ch. 129, § 1, effective March 18, 2003; 2006, ch. 164, § 1, effective July 12, 2006; 2007, ch. 88, § 3, effective June 26, 2007; 2010, ch. 24, § 28, effective July 15, 2010; 2010, ch. 150, § 19, effective January 1, 2011; 2016 ch. 10, § 4, effective April 1, 2016; 2018 ch. 170, § 3, effective April 13, 2018; 2018 ch. 187, § 7, effective July 1, 2019; 2019 (1st Ex. Sess.), ch. 1, § 3, July 24, 2019; 2020 ch. 79, § 15, effective April 1, 2021; 2021 ch. 30, § 5, effective June 29, 2021; 2021 ch. 75, § 2, effective January 1, 2022; 2022 ch. 19, § 12, effective January 1, 2023; 2022 ch. 216, § 26, effective April 14, 2022; 2022 ch. 213, § 13, effective July 14, 2022; 2023 ch. 30, § 5, effective January 1, 2025; 2024 ch. 69, § 6, effective January 1, 2025; 2024 ch. 75, § 4, effective January 1, 2025; 2024 ch. 97, § 7, effective January 1, 2025; 2024 ch. 207, § 6, effective January 1, 2025.

Compiler's Notes

This section was formerly compiled as KRS 18.470 (Enact. Acts 1976 (Ex. Sess.), ch. 35, § 2; 1980, ch. 132, § 6, effective July 15, 1980; 1982, ch. 223, § 1, effective July 15, 1982) and was repealed and reenacted as this section by Acts 1982, ch. 448, § 45.

Legislative Research Commission Notes.

(1/1/2027). This statute was amended by 2026 Ky. Acts chs. 26, 51, and 101, which do not appear to be in conflict and have been codified together.

(1/1/2027). 2026 Ky. Acts ch. 26, sec. 3, provides that the amendments to this statute in that Act apply to health benefit plans issued or renewed on or after January 1, 2027.

(1/1/2027). 2026 Ky. Acts ch. 51, sec. 4, provides that the amendments to this statute in that Act apply to health benefit plans issued or renewed on or after January 1, 2027.

(1/1/2027). 2026 Ky. Acts ch. 101, sec. 10, provides that the amendments to this statute in that Act apply to health plans issued or renewed on or after January 1, 2027.

(1/1/2025). 2024 Ky. Acts ch. 207, sec. 16, provides that the amendments to this statute in that Act shall apply to plans issued or renewed on or after January 1, 2025.

(1/1/2025). 2024 Ky. Acts ch. 97, sec. 9, provides that the amendments to this statute in that Act shall apply to policies, plans, certificates, and contracts issued or renewed on or after January 1, 2025.

(1/1/2025). 2024 Ky. Acts ch. 75, sec. 5, provides that the amendments to this statute in that Act shall apply to health benefit plans issued or renewed on or after January 1, 2025.

(1/1/2025). 2024 Ky. Acts ch. 69, sec. 7, provides that this statute shall apply to policies, certificates, plans, and contracts issued or renewed on or after January 1, 2025.

(1/1/2025). 2023 Ky. Acts ch. 30, sec. 7, provides that the amendments to this statute in that Act shall apply to policies,

certificates, plans, and contracts issued or renewed on or after January 1, 2025.

(6/29/2023). This statute was amended by 2023 Ky. Acts ch. 86, sec. 6. Section 8 of that Act provides that the Act applies to health insurance policies in effect on or after June 29, 2023, and to health insurance policies issued, delivered, or renewed on or after June 29, 2023.

(7/1/2019). This statute was amended by 2018 Ky. Acts chs. 170, sec. 3 and ch. 187, sec. 7. However, 2018 Ky. Acts ch. 207, secs. 158 and 159 provided that, notwithstanding any statutory language to the contrary, no part of the amendments to this statute in 2018 Ky. Acts ch. 170, sec. 3 are to be codified.

(4/1/2016). 2016 Ky. Acts ch. 10, sec. 5 provided that that Act may be cited as Noah's Law. This statute was amended in Section 4 of that Act.

(10/19/2004). 2004 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 2, provides, "Notwithstanding KRS 18A.225, 45A.022, 45A.080, 45A.085, 45A.090, 45A.225 to 45A.290, or any other provision of KRS Chapter 45A to the contrary, retroactive to August 12, 2004, the Finance and Administration Cabinet shall implement the provisions of this Act by amending the previously negotiated contracts for public employee health insurance. The secretary of the Finance and Administration Cabinet shall provide an actuarial certification that the self-insured contract amounts are actuarially sound. Any contracts entered into or modified pursuant to this section shall be forwarded to the Legislative Research Commission."

(7/15/2002). This section was amended by 2002 Ky. Acts chs. 67, 106, 275, 345, 351, and 352. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between Acts ch. 275, sec. 34, and ch. 352, sec. 1, Acts ch. 352, which was last enacted by the General Assembly, prevails under KRS 446.250.

NOTES TO DECISIONS

1. Minimum Insurance Standards.

Where the class members were recipients of a state retirement allowance and had a stake in the controversy over what group health insurance must be offered, they had standing to sue the Board of Trustees of the Kentucky Retirement Systems; because genuine issues of material fact existed as to whether the benefits provided for the time period covered by the complaint comported with the minimum requirements set forth in KRS 18A.225(2)(a), the Board was not entitled to summary judgment. Kurtsinger v. Bd. of Trs. of Ky. Ret. Sys., 2004 Ky. App. LEXIS 261 (Ky. Ct. App. 2004).

Cited in:

HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc., 697 S.W.2d 946, 1985 Ky. LEXIS 241 (Ky. 1985); Pendleton Bros. Vending, Inc. v. Commonwealth Finance & Admin. Cabinet, 758 S.W.2d 24, 1988 Ky. LEXIS 46 (Ky. 1988).

OPINIONS OF ATTORNEY GENERAL.

If a master commissioner is not a contributing member of the state retirement system, he does not qualify for state group health insurance and does not qualify for state life insurance. OAG 85-26, 1985 Ky. AG LEXIS 126.

Any modifications or amendments to a competitively bid contract must be made by the Executive Branch pursuant to KRS Chapter 45A, unless such requirements are superseded by suspension of the procurement statutes by the General Assembly or declaration of a state of emergency by the Governor. Termination of a contract for convenience has as its central purpose the avoidance of payment of future anticipated profits by the Commonwealth. Termination of a contract for cause may be appropriate where a contract fails to meet the minimum standards imposed by statute. OAG 2004-09, 2004 Ky. AG LEXIS 10.

A person participating in the state health insurance program as a retiree cannot receive an additional employer contribution toward other benefits in a "cafeteria plan" as a result of subsequent employment by a public entity participating in the state health insurance plan. OAG 2006-03, 2006 Ky. AG LEXIS 3.

18A.225. Health care insurance coverage — Requirements of prospective carriers — Analysis of carrier coverage data — Agency's termination of participation — Provision of amount of employer contribution — Lapse of excess flexible spending account funds — Advisory Committee of State Health Insurance Subscribers — No abortion coverage — Appeal of formulary change — Retiree's participation — Mail-order drug option coverage — Nondiscrimination against pharmacy in geographic coverage area — Hearing aid coverage for minors — Coverage for diagnosis and treatment of autism spectrum disorders — Amino acid-based elemental formula coverage — Access to certain services in contiguous counties — Study of bid variation — Regional rating bid scenario — Optometric coverage — Standards for provider participation — Special enrollment period for pregnancy. [Effective January 1, 2027]

(1)(a) The term "employee" for purposes of this section means:

1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567; or is eligible to participate in a retirement plan established by an employer who ceases participating in the Kentucky Employees Retirement System pursuant to KRS 61.522 whose employees participated in the health insurance plans administered by the Personnel Cabinet prior to the employer's effective cessation date in the Kentucky Employees Retirement System;

2. Any certified or classified employee of a local board of education or a public charter school as defined in KRS 160.1590;

3. Any elected member of a local board of education;

4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(2)(b)3. and 78.5536(2)(b)3., unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and

5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;

(b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;

(c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and

(d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.

(2)(a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.

(b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions the commissioner of insurance approves, whether or not otherwise permitted by the insurance laws.

(c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (20) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program and as otherwise provided in KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.

(d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.

(e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.

(f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribu-

tion for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.

(g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.

(h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.

(3) The premiums may be paid by the policyholder:

(a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;

(b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or

(c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.

(4) If an employee moves his or her place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he or she has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.

(5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.

(6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.

(7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits.

(8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.

(9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or the secretary's designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.

(10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.

(11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Department of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.

(12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.

(13)(a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance

drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.

(b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.

(c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.

(14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of two thousand five hundred dollars ($2,500) every thirty-six (36) months pursuant to KRS 304.17A-132.

(15) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for the diagnosis and treatment of autism spectrum disorders consistent with KRS 304.17A-142.

(16) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining amino acid-based elemental formula pursuant to KRS 304.17A-258.

(17) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

(18) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

(19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.

(20) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:

(a) The regional rating bid scenario shall not include a request for bid on a statewide option;

(b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;

(c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;

(d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and

(e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.

(21) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.

(22) Any fully insured health benefit plan or self-insured plan issued or renewed to public employees pursuant to this section shall comply with:

(a) KRS 304.12-237;
(b) KRS 304.17A-270 and 304.17A-525;
(c) KRS 304.17A-600 to 304.17A-633;
(d) KRS 205.593;
(e) KRS 304.17A-700 to 304.17A-730;
(f) KRS 304.14-135;
(g) KRS 304.17A-580 and 304.17A-641;
(h) KRS 304.99-123;
(i) KRS 304.17A-138;
(j) KRS 304.17A-148;
(k) KRS 304.17A-163 and 304.17A-1631;
(*l*) KRS 304.17A-265;
(m) KRS 304.17A-261;
(n) KRS 304.17A-262;
(o) KRS 304.17A-145;
(p) KRS 304.17A-129;
(q) KRS 304.17A-133;
(r) KRS 304.17A-264;
(s) KRS 304.17A-128;
(t) KRS 304.17A-655 to 304.17A-659; and
(u) Administrative regulations promulgated pursuant to statutes listed in this subsection.

(23)(a) Any fully insured health benefit plan or self-insured plan issued or renewed to public employees pursuant to this section shall provide a special enrollment period to pregnant women who are eligible for coverage in accordance with the requirements set forth in KRS 304.17-182.

(b) The Department of Employee Insurance shall, at or before the time a public employee is initially offered the opportunity to enroll in the plan or coverage, provide the employee a notice of the special enrollment rights under this subsection.

History.

Enact. Acts 1976 (1st Extra. Sess.), ch. 35, § 2; 1980, ch. 132, § 6, effective July 15, 1980; repealed and reenact. 1982, ch. 448, § 45, effective July 15, 1982; 1984, ch. 23, § 1, effective July 13, 1984; 1986, ch. 178, § 1, effective July 15, 1986; 1990, ch. 348, § 3, effective July 13, 1990; 1990, ch. 489, § 8, effective July 13, 1990; 1992, ch. 92, § 3, effective July 14, 1992; 1992, ch. 219, § 1, effective July 14, 1992; 1992, ch. 235, § 1, effective July 14, 1992; 1994, ch. 350, § 1, effective July 15, 1994; 1994, ch. 512, Part 14, § 94, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1996, ch. 371, § 60, effective July 15, 1996; 1998, ch. 82, § 4, effective July 15, 1998; 1998, ch. 154, § 45, effective July 15, 1998; 1998, ch. 515, § 1, effective July 1, 1998; 2000, ch. 438, § 2, effective April 21, 2000; 2001, ch. 70, § 3, effective March 15, 2001; 2002, ch. 67, § 1, effective July 15, 2002; 2002, ch. 106, § 2, effective July 15, 2002; 2002, ch. 275, § 34, effective July 1, 2002; 2002, ch. 345, § 1, effective July 15, 2002; 2002, ch. 351, § 17, effective July 15, 2002; 2002, ch. 352, §§ 1, 4, effective July 15, 2002; 2003, ch. 12, § 1, effective June 24, 2003; 2003, ch. 129, § 1, effective March 18, 2003; 2006, ch. 164, § 1, effective July 12, 2006; 2007, ch. 88, § 3, effective June 26, 2007; 2010, ch. 24, § 28, effective July 15, 2010; 2010, ch. 150, § 19, effective January 1, 2011; 2016 ch. 10, § 4, effective April 1, 2016; 2018 ch. 170, § 3, effective April 13, 2018; 2018 ch. 187, § 7, effective July 1, 2019; 2019 (1st Ex. Sess.), ch. 1, § 3, July 24, 2019; 2020 ch. 79, § 15, effective April 1, 2021; 2021 ch. 30, § 5, effective June 29, 2021; 2021 ch. 75, § 2, effective January 1, 2022; 2022 ch. 19, § 12, effective January 1, 2023; 2022 ch. 216, § 26, effective April 14, 2022; 2022 ch. 213, § 13, effective July 14, 2022; 2023 ch. 30, § 5, effective January 1, 2025; 2026 ch. 26, § 2, effective January 1, 2027; 2026 ch. 51, § 3, effective January 1, 2027; 2026 ch. 101, § 9, effective January 1, 2027.

18A.2256. TRICARE supplement insurance for public employees.

(1) The provisions of this section shall take effect to the extent that they are not preempted by 10 U.S.C. sec. 1097c, other federal law, or federal regulation.

(2) As used in this section:

(a) "TRICARE" means the Department of Defense health care program for active duty and retired uniformed service members and their families; and

(b) "Employee" has the same meaning as in KRS 18A.225.

(3) Beginning with plan year 2009, the Personnel Cabinet, Department of Employee Insurance, shall select and contract with one (1) or more providers to offer a group TRICARE supplement product to eligible employees who are eligible TRICARE beneficiaries.

(4) The Commonwealth of Kentucky shall pay the cost of individual TRICARE supplement insurance to cover the employee, not to exceed the cost of the lowest-priced individual plan offered to public employees. The employee shall pay the cost of coverage for his or her spouse and dependent children.

(5) Those employees eligible for TRICARE insurance who elect the Commonwealth of Kentucky-sponsored TRICARE supplement insurance shall not be eligible for other coverage offered through the Public Employee Health Insurance Program. Those employees eligible for TRICARE insurance who choose not to elect the Commonwealth of Kentucky-sponsored TRICARE supplement insurance shall continue to be eligible for the coverage offered through the Public Employee Health Insurance Program.

(6) The secretary of the Personnel Cabinet may promulgate administrative regulations to carry out the provisions of this section.

History.

Enact. Acts 2007, ch. 123, § 1, effective June 26, 2007; 2012, ch. 10, § 4, effective July 12, 2012.

18A.226. Group Health Insurance Board — Members — Duties.

(1) To provide quality, affordable health insurance coverage so that the Commonwealth can attract and retain able and dedicated public employees, and to facilitate the need for comprehensive and efficient planning, implementation, and administration of a state employee health insurance program in order to meet this goal, the Kentucky Group Health Insurance Board is created. The board shall be attached to the Personnel Cabinet for administrative purposes only. The board shall consist of thirteen (13) members as follows:

(a) The secretary of the Finance and Administration Cabinet;

(b) The secretary of the Personnel Cabinet;

(c) The state budget director;

(d) The commissioner of education;

(e) The chair of the Advisory Committee of State Health Insurance Subscribers;

(f) The commissioner of insurance, ex officio;

(g) The Auditor of Public Accounts, ex officio;

(h) The Director of the Administrative Office of the Courts, or his designee;

(i) One (1) retired state employee appointed by the Kentucky Retirement Systems, who shall serve an initial term of one (1) year;

(j) One (1) retired teacher appointed by the Teachers' Retirement System, who shall serve an initial term of two (2) years;

(k) One (1) active teacher appointed by the organization with the largest number of teacher members on payroll deduction, who shall serve an initial term of one (1) year;

(*l*) One (1) active state employee appointed by the organization with the largest number of state employee members on payroll deduction, who shall serve an initial term of two (2) years; and

(m) One (1) active classified education support employee appointed by the organization with the largest number of classified education support employee members on payroll deduction, who shall serve an initial term of one (1) year.

As each appointed member's term expires, the vacancy created shall be filled by the appointing authority for that position for a term of two (2) years. An appointment to fill an unexpired term of an appointed member shall be made by the designated appointing authority for the remainder of the term. Appointed terms shall begin effective October 1.

(2) The members of the board shall elect from among its members a chair and a vice chair.

(3) Regular meetings of the board shall be held at least once every month at a place, day, and time determined by the board. Special meetings of the board shall be held when needed as determined by the chair. If seven (7) or more members of the board request in writing that the chair call a special meeting, the chair shall call a special meeting. The meetings shall operate in accordance with the provisions of the Open Meetings Law under KRS 61.805 to 61.850.

(4) Members of the board shall receive reimbursement for necessary expenses for attendance at official board meetings or public hearings.

(5) The Kentucky Group Health Insurance Board shall:

(a) Engage in analyses and research to identify the factors and parameters that affect the state group health insurance program;

(b) Develop and transmit, by October 1 of each year beginning October 1, 2001, to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, policy recommendations regarding benefit options and management of the state group health insurance program; and

(c) Provide in the first report, due by October 1, 2001, the following:

1. Analysis and discussion of methods used by all other states to provide health insurance benefits to their state group; and

2. Analysis and discussion of the cost, enrollment, claims, and utilization data for calendar year 2000 on the Kentucky state group; and

3. Recommendations including but not limited to appropriate structures for the state contribution rate which shall include recommendations on increasing the state contribution to provide support for dependent coverage, possible methods to mitigate adverse selection, competitive plan designs by type and benefit options, the feasibility of a state self-insurance plan, and strategies for evaluating third-party administrators and vendors.

History.

Enact. Acts 2000, ch. 438, § 1, effective April 21, 2000; 2002, ch. 158, § 1, effective July 15, 2002; 2010, ch. 24, § 29, effective July 15, 2010.

18A.227. Flexible benefits plan for employees and retirees.

(1) For purposes of this section, the following definitions shall apply:

(a) "Cafeteria plan" shall mean a flexible benefits plan which meets the requirements of Section 125 of the Federal Internal Revenue Code;

(b) "Employee" shall mean a person, including an elected public official, who is regularly employed by any department, board, agency, or branch of state government, and who is a contributing member to any one (1) of the retirement systems administered by the state;

(c) "Cabinet" shall mean the Personnel Cabinet;

(d) "Change in family status" shall have the same meaning as used in Section 125 of the Internal Revenue Code and regulations promulgated thereunder; and

(e) "Salary reduction contribution" means all employer contributions that are excludable from gross income under the Internal Revenue Code.

(2) As part of the employee benefits provided to state employees under this chapter, the cabinet may develop and make available to eligible employees a flexible benefits plan which meets the requirements for treatment as a cafeteria plan under Section 125 of the Internal Revenue Code. The plan shall be in writing and shall be available on an equal basis to all eligible employees within each county.

(3) Options available under the plan may include, but are not limited to:

(a) Health insurance coverage;

(b) Managed health care coverage;

(c) Catastrophic illness coverage;

(d) Dental insurance;

(e) Term life insurance-accidental, death, or dismemberment;

(f) Vision insurance;

(g) Long term disability insurance;

(h) Long term medical care; and

(i) Any other benefits which may be offered under the provisions of the Internal Revenue Code and which the cabinet determines to be in the best interests of state employees.

(4) Any employee who desires to participate in options offered under the plan, may direct that any options elected shall be funded through payroll deduction. Once an option is chosen, it shall not be changed until the end of the period for which election is made unless the employee experiences a change in family status, other change of status, or special enrollment rights under the Federal Health Insurance Portability and Accountability Act of 1996 which necessitates a revision of his benefit election.

(5) Any employee contributions required toward the purchase of the selected options shall be made by a salary reduction contribution, to the extent the benefits would be considered to be tax-free under Chapter 1 of the Internal Revenue Code, and by after-tax salary deduction where the elected option is not tax-free.

History.

Enact. Acts 1990, ch. 395, § 1, effective July 13, 1990; 1994, ch. 350, § 2, effective July 15, 1994; 1998, ch. 154, § 46, effective July 15, 1998; 2000, ch. 438, § 6, effective April 21, 2000; 2002, ch. 352, § 2, effective July 15, 2002.

Compiler's Notes.

Section 125 of the Internal Revenue Code, referred to in (1) and (2), may be found as 26 USCS § 125.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), referred to in (4), is Public Law 104-191 and may be found as various sections in Titles 26, 29 and 42 of the United States Code.

Chapter 1 of the Internal Revenue Code, referred to in (5), may be found as 26 USCS § 1 et seq.

18A.2286. Continuation coverage for member retired for disability.

If the hospital and medical insurance coverage provided under KRS 161.675 contains any limitation for pre-existing conditions, a member of the Teachers' Retirement System who retires for disability under KRS 161.661 shall be offered the right to continue

coverage under the self-funded plan until any such limitation has expired. The terms and conditions for continuation of group policies under KRS 304.18-110 shall apply to the continuation coverage offered under this section. Nothing in KRS 304.18-110 shall be construed to prevent the operation of this section.

History.
Enact. Acts 1990, ch. 348, § 2, effective July 13, 1990.

STATE EMPLOYEE WORKERS' COMPENSATION

18A.375. State employee workers' compensation fund.

(1) There is hereby established a state employee workers' compensation fund which shall be administered by the Personnel Cabinet's Office of Employee Relations. The purpose of this fund shall be to self-insure workers' compensation benefits for state employees.

(2) All moneys contributed by participants of the fund, or derived from federal funds, shall be credited to and constitute a part of the state employee workers' compensation fund.

(3) The State Treasurer, with the approval of the Finance and Administration Cabinet, may invest the state employee benefit workers' compensation fund. Any income derived from these investments, or dividends, shall be credited to and become a part of the general fund. Any moneys remaining in the fund after all claims, premiums or subscription charges, and other expenses have been paid, shall be retained in the fund. All moneys remaining in the state employee workers' compensation fund on July 1, or deposited thereafter, shall be deemed a trust and agency account and shall not lapse, but shall be continuously appropriated only for the purposes specified in KRS 18A.375 to 18A.385.

History.
Enact. Acts 1990, ch. 490, § 2, effective July 13, 1990; 1994, ch. 116, § 2, effective July 15, 1994; 1998, ch. 154, § 52, effective July 15, 1998; 2012, ch. 10, § 6, effective July 12, 2012.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Unclassified service administrative regulation, 780 KAR 6:005.

TITLE IV

JUDICIAL BRANCH

Chapter
27A. Judicial Support Agencies and Personnel.

CHAPTER 27A

JUDICIAL SUPPORT AGENCIES AND PERSONNEL

Section
27A.095. Standard power of attorney regarding medical treatment and school-related decisions for a minor.

27A.095. Standard power of attorney regarding medical treatment and school-related decisions for a minor.

(1) As used in this section, "medical treatment" means any medical, chiropractic, optometric, or dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, pharmacy services, immunizations recommended by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, well-child care, and blood testing, except that "medical treatment" shall not include HIV/AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law.

(2) The Administrative Office of the Courts shall develop a standard power of attorney for the limited purpose of establishing authority to consent to medical treatment for a minor and to make school-related decisions for a minor.

(3) The standard power of attorney developed under subsection (2) of this section shall be available through the Cabinet for Health and Family Services and the office of the circuit clerk where the informal caregiver resides.

History.
Enact. Acts 2006, ch. 198, § 2, effective July 12, 2006.

TITLE V

MILITARY AFFAIRS

Chapter
36. Department of Military Affairs.
38. National Guard.

CHAPTER 36

DEPARTMENT OF MILITARY AFFAIRS

Military Burial Honor Guards.

Section
36.390. Legislative findings on military burial honors — Authority to promulgate administrative regulations.
36.392. Military burial honor guard trust fund.

Section
36.394. Duties of Department of Military Affairs and Department of Veterans' Affairs relating to burial honors.
36.396. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Inclusion in instructional program.

MILITARY BURIAL HONOR GUARDS

36.390. Legislative findings on military burial honors — Authority to promulgate administrative regulations.

(1) The Commonwealth of Kentucky recognizes the need to provide for honorable burials for Kentuckians who have served their state and nation in the Armed Forces. Historically these burial services have been conducted by the active military units in Kentucky, the Kentucky National Guard, the military reserves, and the veterans' service organizations. However, increasing death rates, declining military resources, and an aging membership of veterans' service organizations present the need for new initiatives in support of military burial honors.

(2) To correct this situation, and recognizing the immediate need, the Department of Military Affairs shall oversee a Military Burial Honor Guard Program, in coordination with the Department of Veterans' Affairs, on behalf of the Commonwealth of Kentucky.

(3) The Department of Military Affairs, in consultation with and as a supplement to the Department of Defense, active United States military commands in Kentucky, the Department of Veterans' Affairs, the military reserves, and veterans service organizations, shall implement and administer the provisions of KRS 36.390 to 36.396 through the promulgation of administrative regulations. These regulations shall be in accordance with the provisions of KRS Chapter 13A and shall comply with and supplement the Department of Defense and the Armed Services' guidance.

History.
Enact. Acts 2000, ch. 378, § 1, effective July 1, 2000.

36.392. Military burial honor guard trust fund.

(1) There is established and created in the State Treasury a fund entitled the "Miliary Burial Honor Guard Trust Fund" to provide funds to offset the costs of the Military Burial Honor Guard Program. The fund may receive state appropriations, gifts, grants, federal funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the Adjutant General or his representative. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Military Burial Honor Guard Program.

(2) The fund shall be used to support the costs, beyond federal reimbursements, that the Department of Military Affairs and the Department of Veterans' Affairs incur and deem necessary in providing and supporting the personnel and activities of KRS 36.390 to 36.396.

History.
Enact. Acts 2000, ch. 378, § 2, effective July 1, 2000.

36.394. Duties of Department of Military Affairs and Department of Veterans' Affairs relating to burial honors.

(1) The Department of Military Affairs shall promulgate administrative regulations to implement the Military Burial Honor Guard Program.

(2) The Department of Military Affairs shall coordinate military burial honors for those who are determined to be eligible by federal and state regulations.

(3) The Department of Veterans' Affairs shall coordinate the Military Burial Honor Guard Program with veterans' service organizations, Kentucky veterans and their dependents, and the United States Department of Veterans Affairs in support of the Department of Military Affairs.

History.
Enact. Acts 2000, ch. 378, § 3, effective July 1, 2000.

36.396. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Inclusion in instructional program.

(1) Recognizing the participation of secondary school students in the Military Burial Honor Guard Program, excused absences may be granted by local school boards to students of secondary school JROTC programs or other students who participate in the Military Burial Honor Guard Program. This includes time spent training, traveling, and participating in the Military Burial Honor Guard Program.

(2) Local school boards may also adopt a policy to allow students to participate in the Military Burial Honor Guard Program as a part of the instructional program.

History.
Enact. Acts 2000, ch. 378, § 4, effective July 1, 2000.

CHAPTER 38
NATIONAL GUARD

Section
38.470. Student's credit when called into active service.
38.510. Rights, benefits, and protections upon call to active duty.

38.470. Student's credit when called into active service.

If the Kentucky National Guard or Kentucky active militia is called into state active duty by the Governor or into federal active duty by the President of the United States for any purpose, requiring the service of members who are students in any institution of learning in the state, no teacher, professor, principal, or president of the institution shall discriminate against

the student by reason of his absence, but shall credit him with all academic work accomplished to the date of his absence. Students shall be given reasonable time to make up work missed as a result of a call to state or federal active duty.

History.
2711a-238: amend. Acts 1954, ch. 98, § 25; 1974, ch. 108, § 17; 1992, ch. 307, § 8, effective April 9, 1992; 2006, ch. 19, § § 1, effective July 12, 2006.

38.510. Rights, benefits, and protections upon call to active duty.

Any right, benefit, or protection that may accrue to a member of the Kentucky National Guard under the Federal Servicemembers Civil Relief Act, 50 U.S.C. secs. 501 et seq., as a result of a call to federal active duty service under Title 10 of the United States Code shall be extended to a member of the Kentucky National Guard called to active duty service under Title 32 of the United States Code, or to state active duty by the Governor of the Commonwealth of Kentucky, if the active duty orders are for a period of thirty (30) days or more.

History.
Enact. Acts 2002, ch. 321, § 1, effective July 15, 2002; 2008, ch. 53, § 1, effective July 15, 2008.

NOTES TO DECISIONS

1. Stay.
Pursuant to the Servicemembers Civil Relief Act, which applied to members of the Kentucky National Guard, a trial court was prohibited from conducting a hearing on a motion to temporarily modify primary residential custody of a son while his father was deployed to Afghanistan with the Air Force National Guard because the father complied with the requirements for a stay. The injury in the case was real and irreparable because the son was being relocated during the school year to a distant state, and the father was unable to appear and oppose the mother's motion while serving his country. Wood v. Woeste, 461 S.W.3d 778, 2015 Ky. App. LEXIS 60 (Ky. Ct. App. 2015).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Legal Issues for Today's Citizen Soldier: A Practitioner's Primer on the Servicemembers Civil Relief Act (SCRA), Vol. 69, No. 6, Nov. 2005, Ky. Bench & Bar 9.

TITLE VI

FINANCIAL ADMINISTRATION

Chapter
41. Department of the Treasury.
42. Finance and Administration Cabinet.
43. Auditor of Public Accounts.
45. Budget and Financial Administration.
45A. Kentucky Model Procurement Code.
49. Office of Claims and Appeals.

CHAPTER 41

DEPARTMENT OF THE TREASURY

Section
41.240. Pledge of collateral required of state depositories — Qualifications for a reduced pledge — Eligible securities and other obligations.
41.410. Commonwealth Council on Developmental Disabilities — Members — Executive director — Duties.

Kentucky Financial Empowerment Commission.

41.460. Powers and duties of commission and board — Executive director.

41.240. Pledge of collateral required of state depositories — Qualifications for a reduced pledge — Eligible securities and other obligations.

(1)(a) Before any bank shall be named as a state depository to receive public funds, it shall either pledge or provide to the State Treasurer collateral having an aggregate current face value or current quoted market value at least equal to the deposits as of the last business day of each quarter in which funds are so deposited or provide to the State Treasurer a surety bond or surety bonds in favor of the State Treasurer in an amount at least equal to the deposits, as of the last business day of each quarter in which funds are deposited; provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be so collateralized. The president or an executive officer of each state depository shall submit to the Treasurer and the State Investment Commission a statement subscribed and sworn to by the president or executive officer showing:

1. The face value or current quoted market value of the securities or other obligations pledged as collateral; and

2. The value of surety bonds provided as of the time such surety bonds are provided as collateral.

The aggregate valuation of all pledged or provided collateral shall be reported to the State Treasurer and State Investment Commission by the state depository within ten (10) days of the close of each quarter after the date of deposit. Such value with respect to pledged collateral other than surety bonds shall be as of the end of the quarter or the preceding business day and, as to surety bonds, the market values shall be obtained from a reputable bond-pricing service. The State Treasurer and Governor may from time to time call for additional collateral to adequately secure the deposits as aggregate face or current market values may require, if the value of collateral is not compliant with state law as of the report date.

(b) No deposit of state funds shall collectively exceed at any time the state depository's sum of capital, reserves, undivided profits and surplus or ten percent (10%) of the total deposits of the state depository, whichever is less. For purposes of this subsection only, the value of the state deposit will be

determined as of the end of the last business day of each quarter that funds are deposited.

(2)(a) As an alternative to subsection (1)(a) of this section, a state depository insured by the Federal Deposit Insurance Corporation may either pledge to the State Treasurer, as collateral, securities or other obligations having an aggregate face value or a current quoted market value or provide to the State Treasurer a surety bond or surety bonds in an amount equal to eighty percent (80%) of the value of the state deposit including demand and time accounts, if the state depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature. The value of the state deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

(b) Valuation of all pledged or provided collateral shall be reported to the State Treasurer and the State Investment Commission within ten (10) days of the close of each quarter after the date of deposit.

(c) State depositories designated as qualified for reduced pledging shall be so recorded in the executive journal.

(d) The State Investment Commission shall determine eligibility for the reduced pledging option based on totally objective and quantifiable measures of financial intermediary performance. The information for such eligibility shall be obtained from publicly available documents. The State Investment Commission shall promulgate the particular criteria of eligibility by regulations issued pursuant to KRS Chapter 13A.

(3) State depositories which do not qualify or do not choose to qualify under subsection (1) or (2) of this section shall not receive state deposits in excess of amounts that are insured by an instrumentality of the United States.

(4) Only the following securities and other obligations may be accepted by the State Treasurer as collateral under this section:

(a) Bonds, notes, letters of credit, or other obligations of or issued or guaranteed by the United States, or those for which the credit of the United States is pledged for the payment of the principal and interest thereof, and any bonds, notes, debentures, letters of credit, or any other obligations issued or guaranteed by any federal governmental agency or instrumentality, presently or in the future established by an Act of Congress, as amended or supplemented from time to time, including, without limitation, the United States government corporations listed in KRS 66.480(1)(c);

(b) Obligations of the Commonwealth of Kentucky including revenue bonds issued by its statutory authorities, commissions, or agencies;

(c) Revenue bonds issued by educational institutions of the Commonwealth of Kentucky as authorized by KRS 162.340 to 162.380;

(d) Obligations of any city of the Commonwealth of Kentucky, or any county, for the payment of principal and interest on which the full faith and credit of the issuing body is pledged;

(e) School improvement bonds issued in accordance with the authority granted under KRS 162.080 to 162.100;

(f) School building revenue bonds issued in accordance with the authority granted under KRS 162.120 to 162.300, provided that the issuance of such bonds is approved by the Kentucky Board of Education;

(g) Surety bonds issued by sureties rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(h) Letters of credit issued by federal home loan banks; and

(i) Real property owned by the bank.

History.

4693: amend. Acts 1952, ch. 221; 1972, ch. 118, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 382, § 3, effective July 15, 1982; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 554, § 1, effective July 15, 1998; 2001, ch. 112, § 3, effective June 21, 2001; 2014, ch. 92, § 24, effective January 1, 2015; 2021 ch. 155, § 12, effective June 29, 2021.

Legislative Research Commission Note.

(10/5/90). Pursuant to KRS 7.136(1), KRS Chapter 13A has been substituted for the prior reference to KRS Chapter 13 in this statute. The sections in KRS Chapter 13 were repealed by 1984 Ky. Acts ch. 417, § 36 and KRS Chapter 13A was created in that same chapter of the 1984 Ky. Acts.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Securities Pledged.
3. Insolvency of Depository.

1. Purpose.

This section is for the protection of the state, and where a bond to protect state deposits is renewed the obligors on the first bond are not relieved from liability. State Nat'l Bank v. Commonwealth, 129 Ky. 637, 112 S.W. 678, 1908 Ky. LEXIS 202 (Ky. 1908).

2. Securities Pledged.

Where by charter or statute a bank must secure a deposit of public funds, the security given by the bank must be such as it can obtain by personal indorsement, or in some other way that does not involve the pledging of assets. Commercial Banking & Trust Co. v. Citizens' Trust & Guaranty Co., 153 Ky. 566, 156 S.W. 160, 1913 Ky. LEXIS 901 (Ky. 1913).

3. Insolvency of Depository.

Commonwealth is not entitled to a right of preference in distribution of the assets of an insolvent bank because the funds were public funds. Denny v. Thompson, 236 Ky. 714, 33 S.W.2d 670, 1930 Ky. LEXIS 819 (Ky. 1930).

OPINIONS OF ATTORNEY GENERAL.

Applicable Kentucky administrative regulations could be amended to lawfully provide that obligations of a Federal Farm Credit Bank, the Federal National Mortgage Association and the Federal Home Loan Bank could be used as collateral as security for the depository bond mentioned in KRS 160.570, since subdivision (a) of this section permits as collateral obligations or securities issued or guaranteed by any

federal governmental agency. OAG 85-3, 1985 Ky. AG LEXIS 149.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Conditions of bond of public depository, recovery on, KRS 62.060 to 62.080.

Federal housing act securities eligible as collateral to secure deposits of public funds, KRS 386.040, 386.050.

State not liable for safe custody of deposits of insurance securities, KRS 304.8-080.

41.410. Commonwealth Council on Developmental Disabilities — Members — Executive director — Duties.

(1) The Commonwealth Council on Developmental Disabilities is created within the Department of the Treasury.

(2) The Commonwealth Council on Developmental Disabilities is established to comply with the requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and any subsequent amendment to that act.

(3)(a) The members of the Commonwealth Council on Developmental Disabilities shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of twenty-six (26) members.

(b) Ten (10) members shall be representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973 as amended; the state agency that administers funds provided under the Individuals with Disabilities Education Act (IDEA); the state agency that administers funds provided under the Older Americans Act of 1965 as amended; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in the Commonwealth; and the protection and advocacy system established under Public Law 101-496. These members shall represent the following:

1. Office of Vocational Rehabilitation;
2. Division of Blind Services within the Office of Vocational Rehabilitation;
3. Department of Education;
4. Department for Aging and Independent Living;
5. Department for Medicaid Services;
6. Department of Public Advocacy, Protection and Advocacy Division;
7. University-affiliated programs;
8. Local and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities;
9. Department for Behavioral Health, Developmental and Intellectual Disabilities; and
10. Department for Public Health, Division of Maternal and Child Health.

(c) At least sixty percent (60%) of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 as amended and who are not employees of a state agency that receives funds or provides services under this section. Of these members, five (5) members shall be persons with developmental disabilities, and five (5) members shall be parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. Six (6) members shall be a combination of individuals in these two (2) groups, and at least one (1) of these members shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability or an individual with a developmental disability who resides in an institution or who previously resided in an institution.

(d) Members not representing principal state agencies shall be appointed for a term of three (3) years. Members shall serve no more than two (2) consecutive three (3) year terms. Members shall serve until their successors are appointed or until they are removed for cause.

(e) The council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The Department of the Treasury shall provide personnel adequate to ensure that the council has the capacity to fulfill its responsibilities. The council shall be headed by an executive director. If the executive director position becomes vacant, the council shall be responsible for the recruitment and hiring of a new executive director.

(4) The Commonwealth Council on Developmental Disabilities shall:

(a) Develop and implement the state plan as required by Part B of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as amended, with a goal of development of a coordinated consumer and family centered focus and direction, including the specification of priority services required by that plan;

(b) Monitor, review, and evaluate, not less often than annually, the implementation and effectiveness of the state plan in meeting the plan's objectives;

(c) To the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities;

(d) Submit to the Department of the Treasury and the Secretary of the United States Department of Health and Human Services any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the Department of the Treasury finds necessary to verify the reports;

(e) Serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that promote systematic change and capacity building;

(f) Examine, not less than once every five (5) years, the provision of and need for federal and state priority areas to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families; and

(g) Prepare, approve, and implement a budget that includes amounts paid to the state under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as amended, to fund all programs, projects, and activities under that Act.

History.

Enact. Acts 1998, ch. 426, § 14, effective July 15, 1998; 2000, ch. 20, § 1, effective July 14, 2000; 2002, ch. 59, § 1, effective July 15, 2002; 2005, ch. 99, § 156, effective June 20, 2005; 2005, ch. 138, § 3, effective June 20, 2005; 2006, ch. 211, § 118, effective July 12, 2006; 2007, ch. 24, § 5, effective June 26, 2007; 2012, ch. 146, § 22, effective July 12, 2012; 2012, ch. 158, § 17, effective July 12, 2012; Repealed and reenact., 2018, ch. 95 § 1, effective July 14, 2018; 2019 ch. 125, § 1, effective June 27, 2019; 2019 ch. 146, § 4, effective June 27, 2019; 2021 ch. 26, § 3, effective June 29, 2021.

Compiler's Notes.

KRS 41.410 was originally compiled as KRS 194A.135.

The Rehabilitation Act of 1973, referred to in subsection (3), is compiled as 29 USCS § 701 et seq. The Individuals with Disabilities Education Act (IDEA), referred to in subsection (3), is compiled as 20 USCS § 1400 et seq. The Older Americans Act of 1965, referred to in subsection (3), is compiled as 42 USCS § 3001 et seq. Title XIX of the Social Security Act, referred to in subsection (3), is compiled as 42 USCS § 1396 et seq. The protection and advocacy system established under Public Law 101-496, referred to in subsection (3), is compiled as 42 USCS § 6042. The Developmental Disabilities Act of 1984, referred to in subsections (3)(b) and (4), is compiled as 42 USCS § 6000 et seq.

Legislative Research Commission Notes.

(6/29/2021). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of the text in subsection (3) of this statute during codification. The words in the text were not changed.

KENTUCKY FINANCIAL EMPOWERMENT COMMISSION

41.460. Powers and duties of commission and board — Executive director.

(1) All powers and duties conferred upon the commission in this chapter shall be exercised by the board, including but not limited to the following:

(a) To adopt bylaws and operate according to its bylaws;

(b) To enter into agreements, contracts, or other documents with any:

1. Federal, state, or local agency; or

2. Person, corporation, association, partnership, or other organization or entity;

necessary to accomplish the purposes set forth in KRS 41.450 to 41.465;

(c)1. To develop and implement a plan toward increasing financial empowerment for all Kentuckians, specifically the following target groups:

a. State government personnel;

b. Kentuckians with disabilities;

c. Kentuckians below the poverty threshold as defined by federal guidelines;

d. K-12 students in Kentucky;

e. Military veterans and personnel who claim residence in Kentucky; and

f. Kentuckians who are retired or at retirement age.

2. Any curriculum shall be developed by local schools under direction provided by the Kentucky Board of Education related to financial literacy guidelines as promulgated in administrative regulations under KRS 158.1411;

(d) To monitor, review, and evaluate, not less often than annually, the implementation and effectiveness of the commission's objectives;

(e) To accept for inclusion in the fund appropriations, grants, revenue sharing, devises, gifts, bequests, donations, federal grants, and any other aid from any source whatsoever and to agree to, and to comply with, conditions incident thereto;

(f) To incorporate a nonprofit organization pursuant to KRS Chapter 273 which qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, for the purposes of receiving tax-deductible gifts, donations, and bequests; and

(g)1. To employ a full-time executive director, who shall hold office at the pleasure of the board, and any employees necessary to fulfill the duties of the commission.

2. The executive director may be terminated by a vote of seven (7) members of the board.

3. The executive director shall:

a. Act under the direction of the board;

b. Hire necessary staff to assist in performing the duties of the commission;

c. Carry out the policy and program directives of the commission;

d. Be responsible for the day-to-day operations of the commission;

e. Establish appropriate organizational structures and personnel policies;

f. Prepare annual reports on the commission's activities;

g. Prepare budgets; and

h. Perform all other duties as directed by the commission or assigned by law.

4. The executive director and any employees of the commission shall not participate as members of the Kentucky Retirement Systems.

(2) Nothing in this section shall be construed to require the Kentucky Department of Education or any particular school district to utilize any resource or provider that enters into a contractual relationship with the commission.

History.

2019 ch. 155, § 3, effective June 27, 2019.

CHAPTER 42

FINANCE AND ADMINISTRATION CABINET

Section

42.024. Office of Material and Procurement Services.

Section
42.0651. Duties of Division of State Risk and Insurance Services — Assistance from other agencies — Risk management program.

Local Government Economic Assistance Program.

42.4592. Allocation of remaining moneys in local government economic development fund.

Investment Commission.

42.500. State Investment Commission — Powers.

Display of Historic Artifacts, Monuments, Symbols, and Texts.

42.705. Legislative findings and declarations — Display of historic religious and nonreligious artifacts, monuments, symbols, and texts in public buildings and on public property owned by the Commonwealth.

Information Technology.

42.746. Statewide planning and mapping system for public buildings.

42.024. Office of Material and Procurement Services.

The Office of Material and Procurement Services within the Office of the Controller shall be responsible for the performance of the cabinet's purchasing functions under KRS Chapters 45 and 45A, except those purchasing functions related to the acquisition of interests in real property, and contractual and construction services which are related to and required in connection with the construction, renovation, and repair of state-owned buildings. The Office of Material and Procurement Services shall be responsible for the control of all state-purchased personal property.

History.

Enact. Acts 1978, ch. 155, § 50, effective June 17, 1978; 1982, ch. 393, § 23, effective July 15, 1982; 1984, ch. 111, § 33, effective July 13, 1984; 1990, ch. 386, § 1, effective July 13, 1990; 1994, ch. 216, § 6, effective July 15, 1994; 1994, ch. 508, § 10, effective July 15, 1994; 2000, ch. 5, § 3, effective July 14, 2000; 2005, ch. 85, § 12, effective June 20, 2005.

Legislative Research Commission Note.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 216 and 508. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 508, which was last enacted by the General Assembly, prevails under KRS 446.250.

42.0651. Duties of Division of State Risk and Insurance Services — Assistance from other agencies — Risk management program.

(1) The Division of State Risk and Insurance Services shall:

(a) Oversee and assist the management of the Commonwealth's property and casualty insurance fund established in KRS Chapter 56;

(b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the Commonwealth's property and casualty insurance fund;

(c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees;

(d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;

(e) Develop financing techniques for risk protection;

(f) Provide insurance for all state-owned and state-operated facilities and vehicles; and

(g) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the division to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.

(2) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Office of Employee Relations and Department of Employee Insurance within the Personnel Cabinet. These agencies shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the Division of State Risk and Insurance Services.

(3) All cabinets, departments, boards, commissions, and other state agencies shall provide to the Division of State Risk and Insurance Services the technical advice and other assistance the Division of State Risk and Insurance Services or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the division as described in this section.

(4)(a) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management program for the executive branch of state government.

(b) Any administrative regulations promulgated by the secretary shall be administered by the Division of State Risk and Insurance Services.

History.

Enact. Acts 1990, ch. 377, § 1, effective July 13, 1990; amend. and redesig. Acts 1994, ch. 116, § 3, effective July 15, 1994; 1994, ch. 216, § 4, effective July 15, 1994; 1998, ch. 82, § 12, effective July 15, 1998; 1998, ch. 154, § 62, effective July 15, 1998; 2001, ch. 164, § 3, effective June 21, 2001; repealed, reenact. and amend., Acts 2005, ch. 85, § 14, effective June 20, 2005; 2010, ch. 24, § 32, effective July 15, 2010; repealed, reenact. and amend, Acts 2012, ch. 69, § 2, effective July 12, 2012; 2012, ch. 10, § 7, effective July 12, 2012; 2025 ch. 136, § 12, effective March 31, 2025.

Compiler's Notes.

This section was formerly compiled as KRS 42.0245.

Legislative Research Commission Note.

(7/12/2012). This statute was amended by 2012 Ky. Acts ch. 10 and repealed, reenacted, and amended by 2012 Ky. Acts ch.

69, which do not appear to be in conflict and have been codified together.

(7/15/94). This statute was formerly codified as KRS 42.0192 and was renumbered by the Reviser of Statutes pursuant to KRS 7.136(1)(a) because of changes made by 1994 Ky. Acts ch. 216, sec. 4.

LOCAL GOVERNMENT ECONOMIC ASSISTANCE PROGRAM

42.4592. Allocation of remaining moneys in local government economic development fund.

(1) Moneys remaining in the local government economic development fund following the transfer of moneys to the local government economic assistance fund provided for in KRS 42.4585 shall be allocated as follows:

(a) Thirty-three and one-third percent (33-1/3%) shall be allocated to each coal producing county on the basis of the ratio of total coal severed in the current and preceding four (4) years in each respective county to the total coal severed statewide in the current and four (4) preceding years;

(b) Thirty-three and one-third percent (33-1/3%) shall be allocated quarterly to each coal-producing county on the basis of the following factors, which shall be computed for the current and four (4) preceding years, and which shall be equally weighted:

1. Percentage of employment in mining in relation to total employment in the respective county;

2. Percentage of earnings from mining in relation to total earnings in the respective county; and

3. Surplus labor rate; and

(c) Thirty-three and one-third percent (33-1/3%) shall be reserved for expenditure for industrial development projects benefiting two (2) or more coal-producing counties. For purposes of this paragraph, "coal-producing county" shall mean a county which has produced coal in the current or any one of the four (4) preceding years.

(2)(a) For purposes of paragraph (b) of subsection (1) of this section, "percentage of employment in mining" and "percentage of earnings from mining" shall be provided by the Department of Workforce Development in the Education and Labor Cabinet, and "surplus labor rate" shall be the rate published for the latest available five (5) year period by the Department of Workforce Development as provided in paragraph (b) of this subsection.

(b)1. Each year the Department of Workforce Development shall estimate surplus labor for each county and for the Commonwealth and shall annually publish an estimate of the surplus labor rate for each county and the Commonwealth.

2. The estimate of surplus labor for each county and for the Commonwealth shall be made using the best practical method available at the time the estimates are made. In determining the method to be adopted, the Department of Workforce Development may consult with knowledgeable individuals, including but not limited to the Office of the United States Bureau of Labor Statistics, state and national researchers, state and local officials, and staff of the Legislative Research Commission. The description of the method used to estimate surplus labor shall be reported in each annual publication provided for in subparagraph 1. of this paragraph.

3. For purposes of this section, "surplus labor" means the total number of residents who can be classified as unemployed or as discouraged workers, and "surplus labor rate" means the percentage of the potential civilian labor force which is surplus labor.

(3) The funds allocated under the provisions of paragraphs (a) and (b) of subsection (1) of this section shall retain their identity with respect to the county to which they are attributable, and a separate accounting of available moneys within the fund shall be maintained for the respective counties. Accounting for funds allocated under the provisions of this section shall be by the Department for Local Government.

History.

Enact. Acts 1992, ch. 107, § 7, effective July 1, 1992; 1994, ch. 224, § 16, effective July 15, 1994; 1996, ch. 271, § 4, effective July 15, 1996; 1998, ch. 69, § 11, effective July 15, 1998; 2006, ch. 211, § 10, effective July 12, 2006; 2007, ch. 47, § 20, effective June 26, 2007; 2009, ch. 11, § 8, effective June 25, 2009; 2010, ch. 117, § 26, effective July 15, 2010; 2013, ch. 49, § 1, effective June 25, 2013; 2016 ch. 110, § 3, effective July 1, 2016; 2019 ch. 146, § 5, effective June 27, 2019; 2022 ch. 236, § 17, effective July 1, 2022.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 10, (3) at 2054.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 11, (1) at 2055.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 11, (2) at 2055.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 11, (3) at 2055.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 11, (4) at 2055.

INVESTMENT COMMISSION

42.500. State Investment Commission — Powers.

(1) There shall be a State Investment Commission composed of:

(a) The State Treasurer who shall be chairman;

(b) The secretary of the Finance and Administration Cabinet;

(c) The state controller; and

(d) Two (2) persons appointed by the Governor.

(2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.

(3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.

(4) The State Treasurer and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over

his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:

(a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and

(b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.

(5) Any designation of an alternate may, at the appointing member's direction:

(a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;

(b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or

(c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.

(6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.

(7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.

(8) The provisions of KRS 61.070 shall not apply to members of the commission.

(9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:

(a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:

1. United States Treasury;
2. Export-Import Bank of the United States;
3. Farmers Home Administration;
4. Government National Mortgage Corporation; and
5. Merchant Marine bonds;

(b) Obligations of any corporation of the United States government or government-sponsored enterprise, including but not limited to:

1. Federal Home Loan Mortgage Corporation;
2. Federal Farm Credit Banks:
   a. Bank for Cooperatives;
   b. Federal Intermediate Credit Banks; and
   c. Federal Land Banks;
3. Federal Home Loan Banks;
4. Federal National Mortgage Association; and
5. Tennessee Valley Authority obligations;

(c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized statistical rating organization or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;

(d) Bankers acceptances for banks rated in the highest short-term category by a nationally recognized statistical rating organization;

(e) Commercial paper rated in the highest short-term category by a nationally recognized statistical rating organization;

(f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest long-term categories by a nationally recognized statistical rating organization;

(g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest long-term categories by a nationally recognized statistical rating organization;

(h) Asset-backed securities rated in the highest category by a nationally recognized statistical rating organization;

(i) Shares of mutual funds, each of which shall have the following characteristics:

1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;
2. The management company of the investment company shall have been in operation for at least five (5) years;
3. The mutual fund shall be rated in the highest category by a nationally recognized statistical rating organization;
4. All of the securities in the mutual fund shall be eligible investments pursuant to this section; and

(j) State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty-five million dollars ($25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to KRS 132.220(5), the Department of Revenue shall offset the loss suffered by the Finance and Administration Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.

(10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:

(a) The long and short term goals of any investment;

(b) The specification of moneys to be invested;

(c) The amount of funds which may be invested per instrument;

(d) The qualifications of instruments; and

(e) The acceptable maturity of investments.

(11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.

(12)(a) Income earned from investments made pursuant to this section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of imprest cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed.

(b) Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account.

(c) If there is a revenue shortfall, as defined in KRS 48.010, of five percent (5%) or less, the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues.

(d) If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the enacted estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.

(13) The authority granted by this section to the State Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.

(14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.

(15) Each member of the State Investment Commission shall post bond for his or her acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

History.

Repealed, reenacted and amended Acts 1982, ch. 382, § 6, effective July 15, 1982; 1982, ch. 300, § 5, effective July 15, 1982; 1982, ch. 450, § 58, effective July 1, 1983; 1984, ch. 324, § 60, effective July 13, 1984; 1986, ch. 408, § 1, effective July 15, 1986; 1988, ch. 368, § 2, effective July 15, 1988; 1990, ch. 277, § 1, effective July 13, 1990; 1990, ch. 291, § 1, effective July 13, 1990; 1990, ch. 294, § 1, effective July 13, 1990; 1996, ch. 101, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 4, § 36, effective May 30, 1997; 1998, ch. 209, § 19, effective March 30, 1998; 2005, ch. 85, § 54, effective June 20, 2005; 2009, ch. 78, § 28, effective June 25, 2009; 2013, ch. 60, § 1, effective June 25, 2013; 2021 ch. 159, § 1, effective June 29, 2021.

Compiler's Notes.

This section was formerly compiled as KRS 41.380 (Acts 1952, ch. 86; 1954, ch. 245, § 1, effective June 17, 1954; 1980, ch. 295, § 11, effective July 15, 1980; 1980, ch. 347, § 1, effective January 1, 1982) and was repealed, reenacted and amended as this section by Acts 1982, ch. 382, § 6.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998."

NOTES TO DECISIONS

1. Constitutionality.

The power to appoint members of boards and agencies within the executive department of government is an essentially executive power which cannot be exercised by any member of the legislative department; accordingly, the former provisions in this section by which the Speaker of the House of Representatives and the President Pro Tem of the Senate were authorized to make appointments to the State Investment Commission were an invalid unconstitutional incursion by the General Assembly, or its designees, into the separation of powers doctrine. Legislative Research Com. by Prather v. Brown, 664 S.W.2d 907, 1984 Ky. LEXIS 300 (Ky. 1984) (Decision prior to 1984 amendment).

OPINIONS OF ATTORNEY GENERAL.

Interest earned on investments of funds for the tobacco research-trust fund must accrue to the credit of the general expenditure fund. OAG 70-495.

The investment authority rests with the state investment commission. OAG 70-495.

Since this section requires that interest accruing on any state funds be placed in the general fund of the State Treasury, the interest on the area development fund could not be paid to the area development districts. OAG 77-481, 1977 Ky. AG LEXIS 284.

The State Investment Commission may, under the implied authority of this section, upon the establishment of a basic policy (voted on by a majority of the commission) to be applied under the specific major categories of investment permitted in the statute, have the legal authority to delegate the day-to-day

administration of investments to a qualified committee or employee of state government, and by such a policy under the statute, the commission would not thereby be delegating its basic power of discretion or judgment, since by the established policy it would be specifically retaining its discretionary authority. OAG 78-542.

Interest on funds deposited on behalf of the department of fish and wildlife resources should be credited on a pro rata basis to the game and fish fund to be used to carry out the purposes of KRS Chapter 150 as directed by KRS 150.150. OAG 78-761, 1978 Ky. AG LEXIS 72.

Under subsection (3), now subsection (10), of this section interest earned from investment of coal severance economic aid fund grant money shall accrue to the credit of the state's general expenditure fund. OAG 79-630.

Interest earned from investments of excess cash involving any fund of the state, and not excepted by subsection (4) of this section accrues to the credit of the general fund, except in the cases of the use of road fund and the game and fish fund; accordingly, the State Investment Commission may invest "excess cash" in the Transportation Fund, the Capital Construction Fund, the Agency Receipt Fund, the Trust and Revolving Fund, the Special Deposit Trust Fund, the Bond Redemption and Interest Fund, and the Bond Turnpike Authority Fund, in the form of term repurchase agreements. OAG 82-29, 1982 Ky. AG LEXIS 603.

The State Investment Commission has the authority under KRS 41.380(2)(see now KRS 42.500) and KRS 386.020(1)(*l*) to invest "excess cash" in term repurchase agreements involving United States Treasury Bills since such agreements, in reality, involve the state's purchase of United States Treasury Bills from a financial institution with an agreement that the financial institution will repurchase the Treasury Bills at some definite future date, not to exceed one year from date of investment. OAG 82-29, 1982 Ky. AG LEXIS 603.

Purchases under subsection (2) of KRS 41.380 (now subsection (8) of this section) may include "repurchase agreements," involving United States Treasury Bills which would involve the state's purchase of the United States Treasury Bills from a financial institution with an agreement that the financial institution would repurchase the Treasury Bills at some definite, future date, not to exceed one year from date of investment; however, such investments must be carefully tailored to meet precisely normal payment schedules of state obligations. OAG 82-209, 1982 Ky. AG LEXIS 423.

Since proposed "reverse repurchase agreements," by which the state would sell an investment that it held (such as Treasury Bills) for a specified number of days with the condition that the state repurchase the security at the end of that time, contemplated the use of "excess" funds (in excess of that amount required to meet current state expenditures under normal payment schedules) within the time limits of KRS 41.380(2) (now subsection (8) of this section), such agreements would be valid and permissible on the part of the State Investment Commission. OAG 82-209, 1982 Ky. AG LEXIS 423.

The authority to engage in "reverse repurchase agreements" is implicit in the express power of investment. OAG 82-209, 1982 Ky. AG LEXIS 423.

The obvious purpose of KRS 386.020 and 41.380 (now this section) is to derive the maximum possible under marketing conditions from the investment of state money. OAG 82-209, 1982 Ky. AG LEXIS 423.

Though the term "reverse repurchase agreement" is not found in that total terminology in the statutes, the language of KRS 41.380 (now this section) and 386.020(1)(*l*) is broad enough to cover this temporary sale of the securities, since the temporary sale does not negate the basic "investment" posture of the Commission in holding the securities involved in this procedure. OAG 82-209, 1982 Ky. AG LEXIS 423.

This section may be interpreted to allow the State Investment Commission to invest in mutual funds that invest solely in U.S. government securities, including securities subject to repurchase agreements. OAG 90-20, 1990 Ky. AG LEXIS 20.

In view of the fact that the Council for Education Technology has the duty to invest funds appropriated for education technology, the State Investment Commission would not have authority under this section to invest those same funds. OAG 91-39, 1991 Ky. AG LEXIS 39.

The Office of Financial Management and Economic Analysis' (OFMEA) lending of the Workers' Compensation Funding Commission's securities constitutes a violation of KRS 342.1227 based on the statutory authority for OFMEA to invest funds in repurchase agreements combined with the separate accounting and full collateralization of the Commission funds. OAG 93-13, 1993 Ky. AG LEXIS 25.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Housing obligations, investment of public funds in, KRS 386.030 to 386.050.

Unemployment compensation administration fund and contingent fund, investment of, KRS 341.296.

DISPLAY OF HISTORIC ARTIFACTS, MONUMENTS, SYMBOLS, AND TEXTS

42.705. Legislative findings and declarations — Display of historic religious and nonreligious artifacts, monuments, symbols, and texts in public buildings and on public property owned by the Commonwealth.

The General Assembly hereby finds and declares as follows:

(1) The Commonwealth's public buildings and their surrounding grounds provide Kentucky's citizens and others a place at which they may conduct public business, visit and interact with government officials, and learn about the Commonwealth's history and government;

(2) The Commonwealth's public buildings and public properties are themselves important symbols of Kentucky's history;

(3) Whether it be former battlegrounds, Native American sites, parks, recreation areas, historic government sites, homes of famous Kentuckians, or any other site of interest, without historic artifacts, monuments, symbols, and texts on the properties and in the buildings, most persons would not even know of the significance of the site or building;

(4) Kentucky is justly proud of its history, as the past is the prologue to how we live today, how our government functions, and what things we hold to be important to us;

(5) It is not in Kentucky's best interest to hide its heritage or traditions, or the beliefs or deeply held opinions of its citizens;

(6) It is in Kentucky's best interest that its public buildings and public properties reflect the Commonwealth's rich history by exhibiting items of significance to Kentucky's civic and cultural development;

(7) The display of historic artifacts, monuments, symbols, and texts in and on the grounds of Kentucky's public buildings and public properties promotes its citizens' awareness of their common history and an appreciation of the persons and events contributing to that history;

(8) The free exercise of religion, as well as the right to have no religion, is a right guaranteed by the Constitution of the United States and the Constitution of Kentucky;

(9) The right of the people to express themselves is enshrined in the freedom of speech guaranteed by the Constitution of the United States and the Constitution of Kentucky;

(10) While the authors of the Constitution of the United States and the Constitution of Kentucky were guaranteeing the free exercise of religion and prohibiting the establishment of a state-sponsored religion, these same authors and the public officials of that date publicly and regularly proclaimed a belief in a supreme being, prayed openly, and placed religious-based statements and symbols in and on their public buildings and properties, and that tradition has continued unbroken to this day;

(11) The free exercise of religion, in all of its myriad expressions, is a significant component of Kentucky's historical heritage and may be acknowledged as such;

(12) Historic artifacts, monuments, symbols, and texts, including but not limited to religious materials, may be displayed in Kentucky's public schools, within the framework of applicable legal precedents, if they are displayed in connection with a course of study that is academic, balanced, objective, and not devotional in nature, and that neither favors nor disfavors religion generally or any particular religious belief; and

(13) Historic artifacts, monuments, symbols, and texts, including but not limited to religious materials, may be displayed in Kentucky's public buildings and on Kentucky's public properties if they are displayed in a:

(a) Balanced, objective, and not solely religious manner;

(b) Manner that neither favors nor disfavors religion generally;

(c) Manner that neither favors nor disfavors any religious belief; and

(d) Manner which promotes the display of Kentucky's historic, cultural, political, and general heritage and achievements.

History.

Enact. Acts 2006, ch. 34, § 1, effective March 24, 2006.

INFORMATION TECHNOLOGY

42.746. Statewide planning and mapping system for public buildings.

(1) To the extent funds are made available, the Commonwealth Office of Technology shall establish a statewide planning and mapping system for public buildings in this state for use by response agencies who are called to respond to an act of terrorism or an emergency.

(2) The statewide planning and mapping system for public buildings shall include:

(a) Floor plans, fire protection information, building evacuation plans, utility information, known hazards, and information on how to contact emergency personnel;

(b) The manner by which the information required by paragraph (a) of this subsection shall be transferred to the system from state agencies and the local political subdivisions who participate in the system;

(c) Standards for the software that shall be used by state agencies and local political subdivisions that participate in the system;

(d) Conditions for use of the system by response agencies;

(e) Guidelines for:

1. The accessibility and confidentiality of information contained within the system; and

2. The incorporation, in connection with the use of the system, of the items described in subsection (3)(b) of this section;

(f) In accordance with information obtained by the Kentucky Office of Homeland Security, a priority for the distribution of any money that may be available for state agencies and political subdivisions to participate in the system; and

(g) Guidelines recommended by the Division of Emergency Management for the training of persons employed by the response agencies concerning the use of the system.

(3) To the extent money is available, state agencies and political subdivisions shall:

(a) Participate in the statewide planning and mapping system; and

(b) Incorporate into their use of the system, without limitation:

1. Evacuation routes and strategies for evacuation;

2. Alarms and other signals or means of notification;

3. Plans for remaining inside a building, room, structure, or other location during an emergency when egress may be impossible or when egress may present a more substantial risk than remaining inside; and

4. Training and strategies for prevention in connection with attacks involving violence.

If a state agency or political subdivision uses its own planning and mapping system before the Commonwealth Office of Technology establishes a statewide planning and mapping system, the state agency or political subdivision may continue to use its system unless money is made available for the state agency or political subdivision to update or modify its system as necessary for inclusion in the statewide system.

(4) The Commonwealth Office of Technology:

(a) Shall pursue any money that may be available from the federal government for the development and operation of a statewide planning and mapping system for public buildings, and for the distribution of grants to state agencies and political subdivisions that participate in the system; and

(b) May accept gifts, grants, and contributions for the development and operation of a statewide planning and mapping system, and for the distribution of grants to the state agencies and political subdivisions that participate in the system.

(5) Each state agency and political subdivision that participates in the system shall, on or before July 1, 2007, and on or before July 1 of each year thereafter, submit to the Commonwealth Office of Technology a progress report setting forth, in accordance with regulations promulgated by the Commonwealth Office of Technology, the experience of the agency or political subdivision with respect to its participation in the system. The Commonwealth Office of Technology shall receive and process the progress reports, and provide a summarized overview of the system to the Legislative Research Commission on or before October 1, 2007, and on or before October 1 of each year thereafter.

History.

Enact. Acts 2006, ch. 223, § 1, effective July 12, 2006; repealed and reenact., Acts 2009, ch. 12, § 15, effective June 25, 2009.

Compiler's Notes.

This section was formerly compiled as KRS 11.520.

Legislative Research Commission Note.

(7/12/2006). 2006 Ky. Acts ch. 193, sec. 14, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in the Act, as it confirms reorganization within the executive branch and establishes the Kentucky Office of Homeland Security. Such a correction has been made in this section.

CHAPTER 43

AUDITOR OF PUBLIC ACCOUNTS

Section

43.073. Annual audit of school district entity by Auditor or private accountant — Expenses — Review of private audit by Auditor.

43.073. Annual audit of school district entity by Auditor or private accountant — Expenses — Review of private audit by Auditor.

(1) The Auditor of Public Accounts shall be responsible for an annual audit of the funds contained in each school district cooperative, school district consortium, school district corporation, and any other entity formed by school districts in an agreement made pursuant to KRS 65.210 to 65.300, with the cost of the audit to be borne by the audited entity.

(2) A school district cooperative, school district consortium, school district corporation, or other entity formed by school districts in an agreement made pursuant to KRS 65.210 to 65.300 may employ a certified public accountant to audit the books, accounts, and papers of the cooperative, consortium, corporation, or other entity in lieu of the audit required by subsection (1) of this section, if the Auditor of Public Accounts declines in writing to assume responsibility for performing the audit or fails to respond in writing within thirty (30) days of receiving the cooperative's, consortium's, corporation's, or other entity's written notice of its intent to employ a certified public accountant to conduct the audit. The cooperative, consortium, corporation, or other entity shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to assume responsibility for performing the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit.

(3)(a) Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts either declining to assume responsibility of performing the audit or failing to respond within thirty (30) days of receipt of a written request for an audit shall specify the following:

1. That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts for review;

2. That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers before and after the release of the audit; and

3. That after review of the certified public accountant's work papers, if discrepancies are found, the Auditor of Public Accounts shall notify the audited entity of the discrepancies. If the certified public accountant does not correct these discrepancies prior to the release of the audit, the Auditor of Public Accounts may conduct its own audit to verify the findings of the certified public accountant's report.

(b) If an audit verifying the findings of the certified public accountant's report is conducted by the Auditor of Public Accounts, the total audit expense incurred by the audited entity shall be an allowable expenditure and shall be paid by the audited entity to the Auditor of Public Accounts. If the audit conducted by the Auditor of Public Accounts discloses discrepancies in the audit by the certified public accountant, the findings of the Auditor of Public Accounts shall be deemed official for all purposes.

History.

Enact. Acts 2000, ch. 491, § 1, effective July 14, 2000.

CHAPTER 45

BUDGET AND FINANCIAL ADMINISTRATION

Section

45.031. Federal funds — State clearinghouse function.

Collection of Debts Owed the Commonwealth.

45.301. General administrative functions of Finance and Administration Cabinet.

Capital Projects and Bonds.

45.812. Listing of costs relating to issuance of general obligation bonds, revenue bonds, or notes authorized by appropriation of General Assembly or by or on behalf of any Kentucky school district.

45.031. Federal funds — State clearinghouse function.

(1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the Department for Local Government in accordance with the existing A-95 procedures.

(2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:

(a) The amount and source of state funds needed for matching purposes;

(b) The length of time the matching funds shall be required;

(c) The growth of the program;

(d) How the program will be evaluated;

(e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and

(f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.

(3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by KRS 48.500(3).

(4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.

(5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved as provided by this section, or in regard to which the statement or reports required by this section were not filed.

(6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

History.

Enact. Acts 1982, ch. 450, § 49, effective July 1, 1983; 1994, ch. 508, § 14, effective July 15, 1994; 1998, ch. 69, § 16, effective July 15, 1998; 2007, ch. 47, § 27, effective June 26, 2007; 2010, ch. 117, § 33, effective July 15, 2010; 2011, ch. 73, § 5, effective June 8, 2011.

COLLECTION OF DEBTS OWED THE COMMONWEALTH

45.301. General administrative functions of Finance and Administration Cabinet.

(1) The Finance and Administration Cabinet shall have and exercise all administrative functions of the Commonwealth, except as otherwise provided by law, in relation to:

(a) Developing financial policies and plans for consideration by the Governor as the basis for his budget recommendations to the General Assembly, and preparing the detailed documents in accordance with the financial plans of the Governor for presentation to the General Assembly.

(b) Coordinating and supervising the fiscal affairs and fiscal procedures of the Commonwealth to insure the carrying out of the definite financial policies and plans approved by the General Assembly.

(c) Accounting, including budgetary accounting and accounting control.

(d) Fiscal reporting.

(e) Supervision of preauditing of expenditures and current auditing of receipts and receivables.

(f) Supervision of purchasing and storekeeping and control of property and stores.

(g) Supervision of all receivables of the Commonwealth.

(h) Maintaining and operating public buildings, except those provided for the exclusive use of any one (1) agency.

(i) Auditing the accounts of the Treasurer and the Auditor of Public Accounts, as contemplated by Section 53 of the Constitution.

(j) Coordination and supervision of data processing, computers, and government information systems.

(2) The Finance and Administration Cabinet shall be primarily responsible for maintaining management control over the activities of the several budget units of the executive branch. To perform this function, the Finance and Administration Cabinet shall:

(a) Keep in continuous touch with the operations, plans and needs of the budget units, and with the sources and amounts of revenue and other receipts of the Commonwealth.

(b) Appraise the quantity and quality of services rendered by each budget unit of the executive branch and the needs for such services and for any new services.

(c) Examine and recommend work programs and periodic allotments to the several budget units of the executive branch, and changes therein as provided by KRS 48.620.

(d) Develop plans for improvements and economies in organization and operation of the budget units of the executive branch, and install such plans as are approved or directed by the Governor or the General Assembly.

(e) Devise and prescribe the forms of operations reports to be required periodically from each budget unit of the executive branch and require such budget units to make such reports.

(f) Examine and comment on all statements and reports on the financial condition, estimated future financial condition and operation of state government and its budget units.

(g) Receive and deal with all requests for information as to financial conditions and operations of the Commonwealth.

(h) Prepare such unit costs and cost statistics as are required from time to time.

(i) Advise and assist the Governor, the Chief Justice, the General Assembly, the appropriations committees of the General Assembly and the Legislative Research Commission, upon request, in any matters relating to the functions of the Finance and Administration Cabinet.

(j) Keep a summary of the financial transactions of all budget units.

History.

Enact. Acts 1982, ch. 450, § 31, effective July 1, 1983.

NOTES TO DECISIONS

Analysis

1. Authorized Claim.
2. Secretary.
3. Executive Mansion Tour.

1. Authorized Claim.

The Department of Finance (now Finance and Administration Cabinet) had no authority to disapprove a claim specifically authorized by legislative resolution. Pennington v. Shannon, 270 Ky. 142, 109 S.W.2d 389, 1937 Ky. LEXIS 37 (Ky. 1937) (decided under prior law).

2. Secretary.

The duties of the Commissioner of Finance (now Secretary of the Finance and Administration Cabinet) that involved expenditure of public money embraced more than that of an accounting officer and he had some discretion in passing on the propriety and justification of proposed expenditures. However, he was entitled to rely upon a requisition for a proposed expenditure made by a department head, as a representation that the expenditure was proper and legitimate, and he was not liable for approving such a requisition if the purpose was within the scope of the appropriation for the department and was within the unexpended balance to the credit of the department. On the other hand, he might have disapproved the requisition if in his judgment the proposed expenditure was not legitimate or proper, or was excessive. Reeves v. Talbott, 289 Ky. 581, 159 S.W.2d 51, 1941 Ky. LEXIS 37 (Ky. 1941) (decided under prior law).

3. Executive Mansion Tour.

The authority of the Cabinet to issue permits to nonprofit organizations to conduct fund-raising tours of the executive mansion's private quarters is implicitly vested in the Cabinet via KRS Chapters 42, 45, and 56, and in specific terms, KRS 56.463(4)(a). Commonwealth ex rel. Beshear v. Brown, 672 S.W.2d 675, 1984 Ky. App. LEXIS 602 (Ky. Ct. App. 1984).

When the Governor and the Finance and Administration Cabinet agree that the private quarters of the executive mansion be opened to fund-raising tours for the general public conducted by a nonprofit organization and a permit is issued to such effect, their actions are within the statutory grant of authority of KRS 11.020 and KRS Chapters 42, 45, and 56. Commonwealth ex rel. Beshear v. Brown, 672 S.W.2d 675, 1984 Ky. App. LEXIS 602 (Ky. Ct. App. 1984).

OPINIONS OF ATTORNEY GENERAL.

KRS Chapters 45 and 45A concern public funds of the commonwealth such that these provisions are not applicable to the private funds and contributions covered in KRS 41.290. OAG 82-520, 1982 Ky. AG LEXIS 140.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Assessment and tax forms and blanks, Finance and Administration Cabinet to furnish on requisition of Revenue Cabinet, KRS 131.140.

Bonds of political subdivision, duties of Finance and Administration Cabinet, KRS 66.310.

Bonds of state employees, Secretary of the Finance and Administration Cabinet to fix amount of, KRS 62.170, 62.190.

Finance and Administration Cabinet, warrant for withdrawal of money from treasury, KRS 41.110.

Flood control payments by federal government to counties, receipt and disbursement of, KRS 104.190.

Investments of state fire and tornado insurance fund, Finance and Administration Cabinet to approve, KRS 56.140.

Life insurance for state employees, KRS 18A.205 to 18A.220.

Monthly settlement of accounts with treasurer, KRS 41.310.

State fair appropriations, Finance and Administration Cabinet to supervise expenditure of, KRS 247.170.

Treasury, statement of condition, Governor may require of Finance and Administration Cabinet, KRS 41.320.

Unemployment insurance fund, powers of Finance and Administration Cabinet as to, KRS 341.490 to 341.520.

Warrants on state treasury, duties as to issuance of, KRS 41.120 to 41.160, 41.170.

Equipment inventory and insurance, 780 KAR 7:060.

CAPITAL PROJECTS AND BONDS

45.812. Listing of costs relating to issuance of general obligation bonds, revenue bonds, or notes authorized by appropriation of General Assembly or by or on behalf of any Kentucky school district.

(1)(a) Prior to the issuance of the general obligation bonds, revenue bonds, or notes authorized by an appropriation of the General Assembly, or by or on behalf of any Kentucky school district, the agency, corporation, or school district authorized to issue the bonds or notes shall furnish to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue, and make available to the public, a listing of all costs associated, either directly or indirectly, with the issuance of the general obligation bonds, revenue bonds, or notes.

(b) The costs shall be itemized as to amount and name of payee, and shall include fees or commissions paid to, or anticipated to be paid to, issuers, underwriters, placement agents and advisors, financial advisors, remarketing agents, credit enhancers, trustees, accountants, and the counsel of all these

persons, bond counsel, and special tax counsel, and shall include the economic benefits received or anticipated to be received by any other persons from any source in return for services performed relating to the issuance of the bonds or notes.

(c) Changes in amounts or names of payees or recipients, or additions of amounts or names of payees or recipients, to the listing furnished and made available pursuant to this subsection, shall be furnished to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue and made available to the public within three (3) days following the change.

(2) The costs required to be furnished under the provisions of subsection (1) of this section shall not include the payment of wages or expenses to full-time, permanent employees of the Commonwealth of Kentucky.

History.

Enact. Acts 1992, ch. 295, § 1, effective July 14, 1992; 2025 ch. 117, § 35, effective March 27, 2025.

CHAPTER 45A

KENTUCKY MODEL PROCUREMENT CODE

Kentucky Model Procurement Code.

Section
45A.300. Cooperative purchasing.
45A.335. Definitions for terms used in KRS 45A.330 to 45A.340.
45A.340. Conflicts of interest of public officers and employees.

Local Public Agency Procurement.

45A.343. Local public agency may adopt provisions of KRS 45A.345 to 45A.460 — Effect of adoption — Contracts required to mandate revealing of violations of and compliance with specified KRS chapters — Effect of nondisclosure or noncompliance.
45A.345. Definitions for KRS 45A.343 to 45A.460.
45A.351. Declaration of public policy on preservation of Commonwealth's natural resources through energy efficiency.
45A.352. Guaranteed energy savings contracts involving local public agencies.
45A.353. Extension of guaranteed energy savings contract — Documentation of savings — Lease-purchase agreements — Exemption from debt limitations.
45A.355. Determinations — Finality.
45A.360. Administrative regulations.
45A.365. Competitive sealed bidding.
45A.370. Competitive negotiation.
45A.375. Negotiations after competitive sealed bidding when all bids exceed available funds — Action when no bids received.
45A.380. Noncompetitive negotiation.
45A.385. Small purchases by local public agencies.
45A.390. Cancellation.
45A.395. Determination of responsibility — Right of nondisclosure.
45A.400. Prequalification of bidders and offerors.
45A.405. Cost or pricing data.
45A.410. Inspection of contractor's place of business — Audit of records.
45A.415. Specifications — Items considered equal may be furnished — Proprietary products.
45A.420. Cooperative purchasing — Price agreements with Commonwealth — Use of established pricing method — School districts.
45A.425. Surplus or excess property.
45A.430. Bid bonds.
45A.435. Contract performance and payment bonds.
45A.440. Bond forms, filings, and copies.
45A.445. Definitions for terms used in KRS 45A.445 to 45A.460.
45A.450. Statement of public policy.
45A.455. Conflict of interest — Gratuities and kickbacks — Use of confidential information.
45A.460. Recovery of value of anything transferred or received in breach of ethical standards.

Preference for Department of Corrections and Agencies of Persons with Severe Disabilities.

45A.465. Definitions for KRS 45A.470.
45A.470. Preference to be given by governmental bodies and political subdivisions in purchasing commodities or services — List of commodities and services — Price range — Negotiation for identical products and services.

Miscellaneous Procurement Provisions.

45A.480. Compliance with workers' compensation insurance and unemployment insurance laws required — Foreign entity to obtain certificate of authority — Penalty.
45A.485. Certain contracts required to mandate revealing of violations of and compliance with specified KRS chapters — Effect of nondisclosure or noncompliance.
45A.487. Definitions for KRS 45A.487 and 45A.488.
45A.488. Restrictions on requirements relating to labor organizations in bid specifications and other contract documents — Grants, tax abatements, and tax credits — Exemption for threat to public health or safety.
45A.489. Price contracts for procurement of school bus accessory equipment — List to be maintained by cabinet — Access of list to school districts.

Preference for Resident Bidders.

45A.490. Definitions for KRS 45A.490 to 45A.494.
45A.492. Legislative declarations.
45A.494. Reciprocal preference to be given by governmental bodies to resident bidders — List of states — Administrative regulations.

Recycled Material Content Products.

45A.540. Purchase of materials with minimum recycled material content through central stores.

Miscellaneous Procurement Provisions.

45A.605. Finance and Administration Cabinet's authority to enter into contracts for "information highway" for state agencies — Mandatory use — Exceptions — Status as a state agency price contract — Access to contract by certain nonprofit schools, nonprofit organizations, and economic development entities.
45A.607. Required contract provision restricting contractor from participating in certain boycott actions — Exceptions — Administrative regulations.
45A.620. Preference to high-calcium foods and beverages in purchasing for school meals.

Section
45A.625. Implementation of procurement strategy for greater use of alternative fuel motor vehicles — Reports.

Penalties.

45A.990. Penalties.

KENTUCKY MODEL PROCUREMENT CODE

45A.300. Cooperative purchasing.

(1) Any public purchasing unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, or construction with any other public purchasing unit or foreign purchasing activity, in accordance with an agreement entered into between the participants. This cooperative purchasing may include but is not limited to joint contracts between public purchasing units and access by local public purchasing units to open-ended state public purchasing unit contracts.

(2) Nothing in this code shall limit any public purchasing unit from selling to, acquiring from, or using any property belonging to another public purchasing unit or foreign purchasing activity independent of the requirements of KRS 45A.070 to 45A.180.

(3) Nothing in this code shall limit or restrict any public purchasing unit from entering into an agreement, independent of the requirements of KRS 45A.045(6) and KRS 45A.070 to 45A.165, with any other public purchasing unit or foreign purchasing activity for the cooperative use of supplies or services.

(4) Any public purchasing unit may enter into an agreement for the joint or common use of warehousing facilities or the lease or common use of capital equipment or facilities with any other public purchasing unit or a foreign purchasing activity subject to the terms as may be agreed upon between the parties.

(5) Nothing in this code shall limit or restrict the ability of local school districts to acquire supplies outside of the public purchasing agreements when the supplies and equipment meeting the same specifications as the contract items are available at a lower price elsewhere and the purchase does not exceed two thousand five hundred dollars ($2,500).

(6) Nothing in this code shall limit any public purchasing unit from receiving notice of or accepting a price reduction on supplies or equipment when the supplies or equipment are being offered by the vendor with whom a price agreement has been made; the supplies or equipment are being offered in accordance with all terms and conditions that are specified in the price agreement, except those relating to price; and the price reduction is offered to all of the participants in the price agreement. Public purchasing units may accept special price reductions under this subsection even if the reduced price requires the purchase of a specified quantity of units different from the quantity stated in the original price agreement. Price reductions under this subsection shall not be considered to permanently alter the price of the supplies or equipment under the price agreement with the Commonwealth, except where the price reductions are to be made permanent under the express terms of the price agreement and where the purchasing agency which solicited the price agreement determines that the enforcement of those terms serves the best interest of the Commonwealth.

(7) The Finance and Administration Cabinet shall not exclude the Department of Fish and Wildlife Resources from, or interfere with the department's participation in, any contracts available to multiple state agencies for the procurement of goods or services, including but not limited to interfering with the department's electronic access to the statewide accounting system in any way.

History.

Enact. Acts 1978, ch. 110, § 60, effective January 1, 1980; 1990, ch. 496, § 28, effective July 13, 1990; 1996, ch. 89, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 4, § 31, effective May 30, 1997; 2003, ch. 98, § 21, effective June 24, 2003; 2023 ch. 139, § 4, effective March 29, 2023; 2026 ch. 134, § 132, effective July 15, 2026.

Legislative Research Commission Notes.

(3/29/2023). 2023 Ky. Acts ch. 139, sec. 22, provides, "The requirements of this Act shall apply to all procurements and acquisitions of interests in real property undertaken by, or for the benefit of, the Department of Fish and Wildlife Resources, including procurements and acquisitions of interests in real property that commenced prior to the effective date of this Act [March 29, 2023]."

OPINIONS OF ATTORNEY GENERAL.

Based on the provisions of the Model Procurement Code, the Bureau (now Department) for the Blind may proceed with its plans for the bureau of rehabilitation services (BRS) to purchase short-term evaluation and adjustment services from the Bureau (now Department) for the Blind for disabled individuals eligible under the BRS program, even though such individuals may not be blind or visually impaired. OAG 82-293, 1982 Ky. AG LEXIS 332.

The intent of the General Assembly was to provide for the maximum cooperation between state agencies in order to facilitate the achievement of the purposes for which these agencies were created. OAG 82-293, 1982 Ky. AG LEXIS 332.

45A.335. Definitions for terms used in KRS 45A.330 to 45A.340.

As used in KRS 45A.330 to 45A.340 except as may be otherwise indicated by the context:

(1) "Agency" means any of the departments of the state government, and any division, board, bureau, commission or other instrumentality within such department and any independent state authority, commission, instrumentality or agency, but it does not include a school district or other political subdivision nor an authority, commission, instrumentality or agency created pursuant to compact or agreement between or among the state of Kentucky and another state or states;

(2) "Officer or employee" means a member of the boards of trustees, or regents of a state university, except faculty and student members, and a person holding an office, position or employment in an agency, but it does not include other persons who serve without salary and it does not include members or employees of school boards or district boards of

education or faculty or staff of state institutions of higher learning or, as used in KRS 45A.340(5), citizen members of boards, commissions or independent state authorities who may receive per diem allowances for attendance at meetings of the boards, commissions or authorities on which they serve;

(3) "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered, but it does not include the salary or other payment provided by law or appropriation for services rendered in a public office, position or employment.

History.

Repealed and reenacted Acts 1978, ch. 110, § 67, effective January 1, 1979; 1978, ch. 392, § 2, effective June 17, 1978; 1980, ch. 250, § 7, effective April 9, 1980; 1982, ch. 282, § 3, effective April 2, 1982.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 181, § 2; 1970, ch. 163, § 1) was formerly compiled as KRS 61.094 and was repealed and reenacted as this section by Acts 1978, ch. 110, § 67, effective January 1, 1979.

Legislative Research Commission Note.

Pursuant to 1982 Acts Ch. 282, Section 5, this section became effective on April 2, 1982. However, the reason stated therein for the emergency pertains only to Section 3 of the Act and therefore may not be in compliance with Ky. Const., § 55, which requires a reason for the emergency.

OPINIONS OF ATTORNEY GENERAL.

Since the Governor is defined as a department of state government, he is covered under the terms of KRS 61.092 to 61.096 (now KRS 45A.330 to 45A.340) OAG 60-242.

Although KRS 45A.340 prohibits a member of the General Assembly from being a state employee, this section excludes employees of school boards or district boards of education as officers or employees of the state, so a schoolteacher may serve in the State Legislature. OAG 73-99.

The emergency clause of Acts 1982, ch. 282 related solely to § 3 of the act which amended this section to exclude members of state boards and commissions from the term "officer or employee," as used in the conflict of interest statute, KRS 45A.340(5); it not only did not relate to the other sections of the bill, which were separable, but it gave no reason to justify that an emergency existed with respect to these sections. In view of the fact that Ky. Const., § 55 requires an act to express in plain language what the emergency is in order for it to be effective only § 3 became effective on April 2, 1982, upon the passage of the act and approval of the Governor, and the remaining sections of the act became effective as ordinary legislation on July 15, 1982. OAG 82-308, 1982 Ky. AG LEXIS 335.

An employee of a local board of health is not an employee of a state agency as that term is used in KRS 45A.340. OAG 82-338, 1982 Ky. AG LEXIS 287.

Faculty or staff of the state universities are not to be included within the definition of "officer or employee" in subdivision (2) of this section and are likewise excluded from the prohibitions set out in KRS 45A.340 deemed to create conflicts of interest for public officers and employees. Accordingly, no conflict of interest was created where a University of Kentucky faculty member was also a shareholder and director of an architectural firm which occasionally contracted with the University. OAG 82-406, 1982 Ky. AG LEXIS 238.

KRS 446.120, concerning statutory construction, requires the reading of the word "to" in this section to mean in effect "through" so that this section actually defines terms used in KRS 45A.330 through 45A.340. OAG 82-406, 1982 Ky. AG LEXIS 238.

An "officer or employee" as defined in this section and as used in KRS 45A.340 does not include an attorney under a personal service contract to the Motor Vehicle Commission. OAG 84-174, 1984 Ky. AG LEXIS 210.

The full or part owner of a livestock market cannot legally appoint himself or herself as the official market veterinarian for his or her own livestock market. OAG 87-47, 1987 Ky. AG LEXIS 38.

45A.340. Conflicts of interest of public officers and employees.

(1) No officer or employee of the General Assembly, or officer or employee of an agency as defined in KRS 45A.335, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services to be rendered, either by himself or another, in negotiations with the state or an agency for the purchase by the state or an agency of an interest in real property. This section shall not apply to appearances before any court, except that negotiations shall be prohibited as aforesaid at any time.

(2) No officer or employee of an agency or member of a state board or commission, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust, or corporation, in any contract for the performance of any work in the making or letting or administration of which such officer or employee may be called upon to act or vote. No such officer or employee may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer or employee may be called upon to act or vote. Nor may any such officer or employee take, solicit, or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. For the purposes of this section the holding of less than five percent (5%) of the stock of a corporation is not considered an interest.

(3) No officer or employee of the General Assembly or officer or employee of any agency shall, for compensation, appear before an agency as an expert witness.

(4) No officer or employee of the General Assembly, or officer or employee of any agency, shall act as officer or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any corporation, company, association, or firm in which he or his spouse has any interest greater than five percent (5%) of the total value thereof.

(5) No officer or employee of an agency or appointee shall knowingly himself or by his partners or through any corporation which he controls or in which he owns or controls more than ten percent (10%) of the stock, or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale, or purchase of the value of twenty-five dollars ($25) or more, made, entered into, awarded or granted by any agency, unless said contract, agreement, sale or purchase:

(a) Was made or let after public notice and competitive bidding; or

(b) Results from the sale of a craft item to a state park if the employee is an interim state park employee designated as a craftsperson under KRS 148.257.

(6) No officer, employee, or appointee of an agency, including persons who serve without salary or other payment for their services, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself or another, in any cause, proceeding, application, or other matter which is before said agency or before the department of state government in which said agency functions.

(7) No member of a board of trustees or regents shall have an interest in any contract with a state university unless such contract shall have been subjected to competitive bidding in compliance with KRS Chapter 45A, unless such trustee or regent shall have been the lowest bidder and unless such trustee or regent shall have first notified in writing the remaining members of the board, and to the newspaper having the largest circulation in the county in which the state university is located, of his intention to bid on such contract.

(8) No officer, employee, or appointee of an agency, including persons who serve without salary or other payment for their services, may participate in the procurement of a contract under this chapter that relates to his or her prior employment until at least one (1) year has passed since his or her termination with that employer.

History.

Amend. and reenacted Acts 1978, ch. 110, § 68, effective January 1, 1979; 1990, ch. 496, § 29, effective July 13, 1990; 2006, ch. 68, § 2, effective July 12, 2006; 2022 ch. 150, § 4, effective July 14, 2022.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 181, §§ 3 to 9; 1974, ch. 261, § 2; 1976, ch. 206, § 29; 1976, ch. 262, § 17) was formerly compiled as KRS 61.096 and was amended and reenacted as this section by Acts 1978, ch. 110, § 68, effective January 1, 1979.

Legislative Research Commission Note.

(7/14/92). The text of subsection (7) of this statute was enacted by 1978 Ky. Acts ch. 392, sec. 2, as subsection (4) of the former KRS 61.094, which was reenacted as KRS 45A.335 by 1978 Ky. Acts ch. 110, sec. 67. In codifying the amendment to KRS 45A.335 in 1982 Ky. Acts ch. 282, sec. 3, the Revisor of Statutes acting under KRS 7.136(1) renumbered the former KRS 45A.335(4) as KRS 45A.340(7).

OPINIONS OF ATTORNEY GENERAL.

The Lieutenant Governor, by virtue of his membership on the Legislative Research Commission, is included under KRS 61.092 to 61.096 (now KRS 45A.330 to 45A.340). OAG 60-242.

The officers and employees of the Governor's department would be included under the terms of KRS 61.092 to 61.096 (now KRS 45A.330 to 45A.340). OAG 60-242.

Membership in the house of representatives and on the Education Commission would be incompatible by reason of the fact that service on the Education Commission would constitute an appointment to an office in a state agency for which compensation is provided. OAG 60-539.

There was no conflict of interests where a state employee presented a bill for acting as a court reporter and taking and transcribing hearings for the sole use of her department when such work was done outside of the employee's salaried hours. OAG 61-845.

There was no conflict of interest where an officer of a corporation submitting a competitive bid for a state contract was also a state employee in another department. OAG 63-1027.

This statute clearly prohibits a member of the General Assembly from accepting any appointment as an officer or employee of the Kentucky Real Estate Commission. In addition, the two positions would be incompatible under Ky. Const., §§ 27 and 28 to the effect that no person exercising duties under one of the departments of government shall at the same time exercise a power properly belonging to either of the others. OAG 68-43.

A prohibited conflict of interest exists where the State Department of Libraries (now Department for Libraries and Archives) employs a female librarian who is charged by the Department with the selection of children's books whose husband is a book publisher's representative. OAG 68-444.

There is no conflict of interest where a member on the Council on Public Higher Education (now Council on Higher Education) is an owner of a company selling printing, office supplies and furniture to several of the state's higher educational institutions but, should a matter of business be introduced for consideration by the council which involves directly or indirectly the financial interest of such company, the owner-member should as a matter of record declare such interest, refrain from deliberations and discussions designed to influence the voting, and abstain from voting. OAG 69-46.

A state representative may legally sell land to a county without violating this statute which relates to the state or its agencies. OAG 69-48.

There appears to be no violation of KRS 61.096 (now this section) for the Commissioner of the Department of Public Information, as a private person, to engage in the real estate business and to operate a public relations agency, so long as he refrains from dealing in any way with a state agency through the referred to business interests. OAG 69-444.

It is a violation of the terms of this statute for a person to serve as chairman of the Kentucky Public Service Commission while he is a partner in a certified public accounting partnership that performs an annual audit of a state university and/or the Kentucky state auditor's office. OAG 70-55.

Members of the State Board of Examiners and registration of architects are officers of a state agency and are, as a consequence, subject to the provisions of this statute. OAG 70-128.

The conflict of interests provisions did not apply to a situation where a grant was made to the state theater by way of a personal service contract where one of the members of the Arts Commission was involved in the theater but did not vote, since the contract was essentially a grant. OAG 70-480.

There was no conflict of interests where a member of the board of regents of a state university, serving without compensation, was awarded a contract with another unrelated state agency. OAG 70-693.

The offices of assistant Commonwealth attorney and state representative are incompatible. OAG 71-24.

A candidate for state office who is a coowner or substantial stockholder in a firm doing business with or contracted to the commonwealth for the construction of highways could not take office without violating the Conflict of Interest Act. OAG 71-68.

Where the Lieutenant Governor, while serving as a member of the turnpike authority of Kentucky by requirement, voted in favor of a turnpike project and his family business subsequently received the fee for selling the performance bond to cover the lowest bidder, the Lieutenant Governor did not

violate subsection (6) or (7) (now subsections (5) and (6)) of this section. OAG 71-224.

Under subsection (6) (now subsection (5)) of this section, part-time parole officer for the State Department of Corrections (now Corrections Cabinet) could not contract with the Kentucky Department of Highways as a title examiner, since such an arrangement would constitute a conflict of interest. OAG 72-144.

An attorney who is a member of a law firm representing clients in matters before the Kentucky Board of Tax Appeals and the Department of Revenue (now Revenue Cabinet) could not be a member of the Board. OAG 72-188.

A faculty member of the University of Louisville may not serve at the same time as a member of the state legislature. OAG 72-442.

A person who is a full or part-time teacher at the university could become a candidate for the office of state representative but could not serve as a member of the state Legislature and continue his position with the university. OAG 72-827.

A member of the General Assembly may not at the same time hold a teaching job at a college which is part of the University of Kentucky community college system. OAG 73-8.

As community mental health boards are eligible for membership in the Kentucky employees' retirement system under KRS 61.510, board members and employees are state officers and employees for all purposes; therefore an officer or employee of the board could not at the same time serve as a member of the State Legislature but such prohibitions would not affect the officer's or employee's right to become a candidate for the State Legislature. OAG 73-94.

A contracting company whose president has been elected a state representative is prohibited from contracting with the state or any of its agencies only if the contract was not let by competitive bidding but such prohibition does not apply to contracts awarded as a result of competitive bidding. OAG 73-760.

Any contract entered into by an appointee or a member of a regional health board and/or board of health whereby he obtains any profits from the connected service center is prohibited by subsection (6) of this section unless approved under KRS 45.360 (now repealed) by the Executive Department for Finance and Administration (now Finance and Administration Cabinet). OAG 74-700.

There is no impropriety in paying a per diem to three state employees for their attendance at meetings of the board for licensing hearing aid dealers as there is no constitutional or statutory incompatibility between the occupations of these people and their board membership as the per diem represents a payment for work or duties not job associated and, as most of the meetings fall on Saturdays, they fall without the normal work week and are truly additional hours of service given by the members to the Commonwealth. OAG 75-39.

In the absence of a per se violation of the conflict of interests provisions under this section, there is no conflict of interests where a railroad commissioner continues to sell fuel products to a common carrier after taking office on the Railroad Commission, but the question of whether the opportunity for self-interest is more than a mere remote possibility is ultimately for the courts to decide. OAG 75-702.

There is no conflict of interests where a railroad commissioner continues to supply gasoline to the State Highway Department after taking office on the Railroad Commission, if the contract with the highway department is let on a competitive bid basis. OAG 75-702.

The employment by the office of judicial planning of a member of the Kentucky Crime Commission, an agency which approves a portion of its funding, does not represent either a statutory or common-law conflict of interest provided that the employee disqualifies himself from any situations where one position interferes or is subject to the supervision of the other. OAG 76-132.

A member of the General Assembly who is a co-sponsor of a proposed apartment development would not be precluded from seeking a construction loan for such development from the Kentucky Housing Corporation since the 1976 amendment by § 17 of Chapter 262 removed the reference to "member of the legislature" from subsection (5) (formerly subsection (6)) of KRS 61.096 (now this section) and since the situation involves a loan application with a political subdivision of the Commonwealth and is not covered in KRS Chapter 45 dealing with state contracts. OAG 76-437.

This section was amended twice in 1976 by Chapter 206 approved by the Governor on March 29, 1976 and by Chapter 262 approved by the governor on March 30, 1976 and since where two acts passed at the same session are repugnant to each other and cannot be executed without one offending the other the last one enacted is the later expression of the legislative will and must prevail; therefore Chapter 262, § 17 as it amends KRS 61.096 (amended and reenacted as this section by Acts 1978, ch. 110, § 68, effective January 1, 1979) prevails. OAG 76-437.

There would be no conflict of interest where a doctor who was the director of a Kentucky state biological laboratory established and operated a private biological supply business as long as the business was completely separate from his duties with the state and no business was transacted with the state. OAG 76-486.

Inasmuch as this section requires that an employee actually carry out an act that is incompatible with his employment responsibilities in order to be in a conflict of interest situation, the mere fact that property leased by a reclamation inspector to a coal company is located in the county in which he inspects an assigned number of coal companies does not show a violation. OAG 76-680.

There is nothing under the state conflict of interest act, particularly this section or KRS 61.190 (now repealed) that would prohibit a person who is chairman of the State Personnel Board from accepting a federal grant pursuant to an application made to to the Kentucky heritage commission for a historical grant to restore certain property located in a historical zone. OAG 77-41, 1977 Ky. AG LEXIS 736.

Membership on the Occupational Safety and Health Review Commission would not prohibit the proprietor of a consulting engineering firm from executing contracts with any other state agency. OAG 77-620, 1977 Ky. AG LEXIS 160.

No conflict of interest exists in the simultaneous holding of membership on the Real Estate Commission and acting as principal officer of an independent commercial real estate school, provided no contractual interest exists between either the member or the school and the Commission. OAG 79-218, 1979 Ky. AG LEXIS 399.

Nothing in the Constitution or laws of the Commonwealth prevents a contract between a state agency and a corporation whose vice-president is a member of the General Assembly where the legislator neither owns nor controls the corporation nor more than five percent of its stock. OAG 79-421, 1979 Ky. AG LEXIS 208.

An Eastern Kentucky University professor who holds a consultant's license from the Kentucky Department of Insurance, is a member of the Kentucky Insurance Regulatory Board and is a chairholder for insurance studies at Eastern Kentucky University may enter into a personal service contract with the Department of Insurance to revise study manuals for use by applicants for insurance agents' licenses. OAG 80-5, 1980 Ky. AG LEXIS 630.

Former KRS 45A.335(4) (now subsection (7) of this section) is applicable only to contracts executed during the board member's tenure and no conflict of interest exists where the contracts were executed prior to the board member becoming a member of the board of trustees or regents. OAG 80-379, 1980 Ky. AG LEXIS 273.

An employee of a local board of health is not an employee of a state agency as that term is used in this section. OAG 82-338, 1982 Ky. AG LEXIS 287.

Faculty or staff of the state universities are not to be included within the definition of "officer or employee" in KRS 45A.335(2) and are likewise excluded from the prohibitions set out in this section deemed to create conflicts of interest for public officers and employees. Accordingly, no conflict of interest was created where a University of Kentucky faculty member was also a shareholder and director of an architectural firm which occasionally contracted with the University. OAG 82-406, 1982 Ky. AG LEXIS 238.

KRS 446.120, concerning statutory construction, requires the reading of the word "to" in KRS 45A.335 to mean in effect "through" so that KRS 45A.335 actually defines terms used in KRS 45A.330 through 45A.340. OAG 82-406, 1982 Ky. AG LEXIS 238.

This section was not applicable where an official of the Division of Licensing and Regulation of the Cabinet for Human Resources was married to an administrator of an intermediate care facility since this section only applies to matters of procurement and the division is not involved in the awarding of any type of contract to an intermediate care facility. OAG 83-33, 1983 Ky. AG LEXIS 464.

The State Personnel Board could select an assistant Commonwealth attorney to serve as general counsel and hearing officer for the Board without first seeking competitive bidding for the professional services; further, such employment would not involve the attorney in a conflict of interest nor incompatibility of offices. OAG 83-138, 1983 Ky. AG LEXIS 359.

An "officer or employee" as defined in KRS 45A.335 and as used in this section does not include an attorney under a personal service contract to the Motor Vehicle Commission. OAG 84-174, 1984 Ky. AG LEXIS 210.

There is no statutory conflict of interest for an attorney under a personal service contract to the Motor Vehicle Commission to also represent an automobile dealers trade association. OAG 84-174, 1984 Ky. AG LEXIS 210.

The full or part owner of a livestock market cannot legally appoint himself or herself as the official market veterinarian for his or her own livestock market. OAG 87-47, 1987 Ky. AG LEXIS 38.

If the governor owned a controlling interest in a bookstore, any possible sales or agreements by the bookstore to or with any commonwealth agency would have to be on a competitive bidding basis as required by subsection (5) of this section and KRS 45A.080. OAG 87-65, 1987 Ky. AG LEXIS 19.

Subsection (2) of this section would prohibit the governor and chairman of the Property and Buildings Commission from being interested in the making or administration of a contract for the management of the parking structure as to which he may be called upon to act or vote. OAG 87-65, 1987 Ky. AG LEXIS 19.

The Governor's interest in the administration of the management agreement for the conference center in the hotel and his positions as chairman of the authority and chairman of the Property and Buildings Commission would make a violation of subsection (2) of this section unavoidable. OAG 87-65, 1987 Ky. AG LEXIS 19.

This section, Ky. Const., § 173, KRS 61.190 (now repealed), and the common law rules that apply to conflicts of interest are applicable to anyone holding the office of Governor. OAG 87-65, 1987 Ky. AG LEXIS 19.

Where the Governor owned a controlling interest in a hotel and the state was the primary user of the hotel, the use of the facilities by commonwealth employees and agencies would exceed $25 each and would not involve competitive bidding; therefore, these transactions would involve an illegal conflict of interest in violation of subsection (5) of this section and KRS 45A.080. OAG 87-65, 1987 Ky. AG LEXIS 19.

The Kentucky High School Athletic Association may purchase property from an entity in which the governor is a general partner, without violating this section. OAG 90-27, 1990 Ky. AG LEXIS 25.

Attorney General opined that no statutory conflict of interest exists under this section and KRS 160.180 between the positions of member of the State Board for Elementary and Secondary Education and executive director of the Lincoln Foundation; but it was not possible for the Attorney General to provide a general ruling as to whether a potential conflict of interest may exist at common law. OAG 91-226, 1991 Ky. AG LEXIS 223.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Abuse of public office, Penal Code, KRS 522.010 et seq.
Receiving unlawful compensation, KRS 521.040.
Soliciting unlawful compensation, KRS 521.030.

LOCAL PUBLIC AGENCY PROCUREMENT

45A.343. Local public agency may adopt provisions of KRS 45A.345 to 45A.460 — Effect of adoption — Contracts required to mandate revealing of violations of and compliance with specified KRS chapters — Effect of nondisclosure or noncompliance.

(1) Any local public agency may adopt the provisions of KRS 45A.345 to 45A.460. No other statutes governing purchasing shall apply to a local public agency upon adoption of these provisions.

(2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor and all subcontractors performing work under the contract to:

(a) Reveal any final determination of a violation by the contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and

(b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.

(3) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's:

(a) Cancellation of the contract; and

(b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.

(4) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's disqualification of the subcontractor from eligibility for future contracts for a period of two (2) years.

History.
Enact. Acts 1980, ch. 250, § 9, effective April 9, 1980; 1994, ch. 491, § 2, effective July 15, 1994; 1998, ch. 520, § 2, effective July 15, 1998.

NOTES TO DECISIONS

1. Applicability.
The Kentucky Model Procurement Code (MPC), KRS 45A.010 to 45A.990, was not applicable to a county riverport authority where neither the county, nor the authority, had adopted the provisions of the MPC as required by this section. E.M. Bailey Distributing Co. v. Conagra, Inc., 676 S.W.2d 770, 1984 Ky. LEXIS 235 (Ky. 1984).

Where a city and its utility commission never adopted Kentucky's Model Procurement Code (KMPC), but the commission entered into a grant agreement providing that it would construct a new water tank consistent with the KMPC, the language of the grant agreement did not bring the project within the scope of the KMPC, and a rejected contractor with the lowest bid lacked standing to assert a violation of the KMPC because it was not a party to the grant agreement. Laurel Constr. Co. v. Paintsville Util. Comm'n, 336 S.W.3d 903, 2010 Ky. App. LEXIS 40 (Ky. Ct. App. 2010).

OPINIONS OF ATTORNEY GENERAL.

Where the General Assembly in the 1980 session enacted Senate Bill 163 (ch. 250), which created this section and made the Model Procurement Code coverage optional for local public agencies, and at the same session they amended KRS 45A.350 (now repealed) by Senate Bill 368 (ch. 293), which section states that the Model Procurement Code mandatorily applies to all local public agencies, Senate Bill 163 is controlling because it deals minutely with specific and detailed legislation regarding public procurement, as contrasted with the general and broad brush policy expressed in Senate Bill 368 about prison-made goods, and because Senate Bill 163 contained an emergency clause, and Senate Bill 368 did not. It is presumed that the General Assembly intended the act with the emergency clause to prevail; thus the adoption of the Model Procurement Code by any local public agency is optional. OAG 80-279 (opinion prior to repeal of KRS 45A.350 in 1984).

A volunteer fire protection district, established under KRS Chapter 75, is a "local public agency," as defined in KRS 45A.345(9), since it is a "special district" and a "political subdivision", thus the volunteer fire department district would come under the Model Procurement Code (KRS 45A.345 to 45A.460), provided that the district so chooses to come under the code. OAG 80-301, 1980 Ky. AG LEXIS 347.

Acts 1982, ch. 282, which amended KRS 45A.080, 45A.100, 45A.335, had no effect upon fiscal courts which had adopted KRS 45A.345 through 45A.460. OAG 82-324, 1982 Ky. AG LEXIS 314.

Any fiscal court adopting KRS 45A.345 through 45A.460 may, under KRS 45A.385, effect purchases not exceeding $5,000 (now $7,500) without formal bidding procedures, while those fiscal courts, under current law, which have not adopted such sections, are governed by KRS 424.260. OAG 82-324, 1982 Ky. AG LEXIS 314.

Where a riverport authority, created pursuant to KRS 65.510 et seq., has chosen to not adopt provisions of the Model Procurement Code under this section, such riverport authority automatically comes under the mandatory terms of the bidding statute, KRS 424.260. OAG 84-297 (modifying OAG 80-71).

KRS 45A.420(2) allows a public agency to contract, without bidding, with a vendor who is on the current state contract list but is offering the agency a price lower than on the state price list, provided the local agency has adopted the provisions of KRS 45A.345 through 45A.460 as authorized under this section. OAG 90-75, 1990 Ky. AG LEXIS 75.

The Model Procurement Code did not apply to a mayor's development contract with a company where the metro council had previously taken action to declare the project that was the subject of the contract as a "signature project" under former KRS 65.7075 [repealed, reenacted and amended as KRS 154.30-050] and identified the company with which the mayor contracted as the developer of the project. The Metro Council effectively placed the Development Agreement outside the scope of the Model Procurement Code. OAG 09-007, 2009 Ky. AG LEXIS 10.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bidding procedures, 702 KAR 3:135.

45A.345. Definitions for KRS 45A.343 to 45A.460.

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

(1) "Aggregate amount" means the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.

(2) "Capital cost avoidance" means moneys expended by a local public agency to pay for an energy conservation measure identified as a permanent equipment replacement and whose cost has been discounted by any additional energy and operation savings generated from other energy conservation measures identified in the guaranteed energy savings contract, except that for school districts capital cost avoidance shall also mean moneys expended by the district from one (1) or more of the following sources:

(a) General fund;

(b) Capital outlay allotment under KRS 157.420; and

(c) State and local funds from the Facilities Support Program of Kentucky under KRS 157.440.

(3) "Chief executive officer" means the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.

(4) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(5) "Contract" means all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.

(6) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.

(7) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:

(a) Is regularly maintained by the manufacturer or vendor of an item; and

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

(8) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.

(9) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.

(10) "The legislative body or governing board" means a council, commission, or other legislative body of a city, consolidated local government, or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.

(11) "Local public agency" means a city, county, urban-county, consolidated local government, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.

(12) "May" means permissive. However, the words "no person may . . .." mean that no person is required, authorized, or permitted to do the act prescribed.

(13) "Negotiation" means contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.

(14) "Noncompetitive negotiation" means informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.

(15) "Objective measurable criteria" means sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and appearance, may be established when appropriate.

(16) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.

(17) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(18) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.

(19) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(20) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

(21) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour, and taking place at a previously scheduled time and Internet location, during which multiple bidders, anonymous to each other, submit revised, lower bids to provide the solicited good or leased space.

(22) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.

(23) "Shall" means imperative.

(24) "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(25) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(26) "Supplies" means all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.

(27) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:

(a) Insulation of the building structure or systems within the building;

(b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(c) Automated or computerized energy control systems;

(d) Heating, ventilating, or air conditioning system modifications or replacements;

(e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(f) Energy recovery systems;

(g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(h) Energy, water, or wastewater conservation measures that provide long-term operating cost reductions or billable revenue increases;

(i) Any life safety measures that provide long-term operating cost reductions;

(j) Water and wastewater conservation measures, including plumbing fixtures and infrastructure;

(k) Equipment upgrades that improve the accuracy of billable revenue generating systems; or

(*l*) Automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.

(28) "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy, water, and wastewater conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the cost of the design, installation, and maintenance of energy, water, and wastewater conservation measures.

(29) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy, water, and wastewater conservation measures and is determined to be qualified by the local public agency. The qualified provider shall be responsible for and shall provide the local public agency with the following information regarding guaranteed energy, water, and wastewater savings contracts:

(a) Project design and specifications;

(b) Construction management;

(c) Construction;

(d) Commissioning;

(e) On-going services as required;

(f) Measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts; and

(g) Annual reconciliation statements as provided in KRS 45A.352(8).

History.

Enact. Acts 1978, ch. 110, § 70, effective January 1, 1980; 1980, ch. 250, § 8, effective April 9, 1980; 1994, ch. 491, § 3, effective July 15, 1994; 1996, ch. 203, § 2, effective July 15, 1996; 1998, ch. 120, § 12, effective July 15, 1998; 1998, ch. 375, § 2, effective July 15, 1998; 2002, ch. 346, § 12, effective July 15, 2002; 2005, ch. 163, § 1, effective June 20, 2005; 2010, ch. 63, § 6, effective July 15, 2010.

NOTES TO DECISIONS

Analysis

1. "May" Defined.
2. Construction.

1. "May" Defined.

KRS 45A.425 does not make it mandatory that the agency follow the other sections of Chapter 45A in disposing or selling of its property, since it provides that it "may" sell in accordance with the code and, by virtue of subdivision (10) of this section, "may" means permissive. Ohio River Conversions, Inc. v. Owensboro, 663 S.W.2d 759, 1984 Ky. App. LEXIS 444 (Ky. Ct. App. 1984).

2. Construction.

Ky. Rev. Stat. Ann. § 45A.240(1) gives a definition of Commonwealth applicable to Ky. Rev. Stat. Ann. § 45A.245(1), and Ky. Rev. Stat. Ann. § 45A.345(11) gives a definition of local public agency explicitly not applicable to § 45A.245(1); the former statute defines the Commonwealth in as broad a manner as possible, as all departments and agencies of the state, for purposes of waiver of governmental immunity, the latter statute defines local public agency specifically, and there is no conflict. Bd. of Educ. of Paris v. Earlywine, 719 S.W.3d 1, 2025 Ky. LEXIS 13 (Ky. 2025).

OPINIONS OF ATTORNEY GENERAL.

A city electric plant board, operating under KRS 96.550 to 96.900, is a board or agency of that city, itself a subdivision of the state. OAG 79-618, 1979 Ky. AG LEXIS 24.

The definition of "local public agency" in subsection (9) of this section clearly includes any agency of a city and its boards or commissions. OAG 79-618, 1979 Ky. AG LEXIS 24.

The electric plant board of the city of Paducah, operating under KRS 96.550 to 96.900, is required to abide by the terms of the Kentucky Model Procurement Code. OAG 79-618. But see OAG 80-279, 1980 Ky. AG LEXIS 351.

A fire protection district is a special district within the definition of a local public agency in subdivision (9) of this section; therefore, the model procurement code, KRS 45A.345 to 45A.460, applies to fire protection districts. OAG 79-647; 80-12. But see OAG 80-279, 1980 Ky. AG LEXIS 351.

The Kentucky Model Procurement Code is sufficiently flexible to permit the designation of more than one specific individual as a procurement or purchasing agent or officer. OAG 80-21, 1980 Ky. AG LEXIS 621.

The Kentucky Model Procurement Act, which became effective for local public agencies as of January 1, 1980, applies to the purchasing procedures of a municipally owned electric distribution system operating under the Little TVA Act. OAG 80-63. But see OAG 80-279, 1980 Ky. AG LEXIS 351.

As of January 1, 1980, riverport authorities must look to the applicable provisions of the Kentucky Model Procurement Code in connection with their procurement programs. OAG 80-71, 1980 Ky. AG LEXIS 568.

The term "authority," as used in this section, includes a riverport authority. OAG 80-71, 1980 Ky. AG LEXIS 568.

The Model Procurement Code, KRS Chapter 45A, does not govern any transaction unless there will be an expenditure of a local public agency's funds for either services, supplies or construction; where no school funds, either general account or activity account, are expended in the purchasing of graduation rings, graduation invitations or caps and gowns, the provisions of the Model Procurement Code have no application. OAG 80-108, 1980 Ky. AG LEXIS 533.

A local air board is a local public agency as defined in subsection (9) of this section, subject to those sections of the Kentucky Model Procurement Code dealing with procurement by a local public agency, KRS 45A.345 to 45A.460; if the air board is the lessor, the code does not have to be applied but if the air board is the lessee, the code does apply and must be utilized. OAG 80-117. But see OAG 80-279, 1980 Ky. AG LEXIS 351.

Under the literal language of subsection (9) of this section, a county hospital commission is a local public agency, since it is a commission and subunit of a political subdivision, i.e., of a county. OAG 80-128, 1980 Ky. AG LEXIS 517.

Where a city has established a separate independent agency to administer the Urban Renewal Act pursuant to KRS 99.350, that urban renewal agency would constitute a "local public agency" as defined in subsection (9) of this section and, therefore, the agency would have to follow the requirements of the Model Procurement Code. OAG 80-169, 1980 Ky. AG LEXIS 484.

The enumerated county constitutional officers listed as subunits of a county in subsection (8) (now subsection (9)) of this section must generally integrate their procurement contracts with the fiscal court's procurement program. OAG 80-180, 1980 Ky. AG LEXIS 461.

A volunteer fire protection district, established under KRS Chapter 75, is a "local public agency," as defined in subsection (9) of this section since it is a "special district" and a "political subdivision", thus the volunteer fire department district would come under the Model Procurement Code (KRS 45A.345 to 45A.460), provided that the district so chooses to come under the code. OAG 80-301, 1980 Ky. AG LEXIS 347.

A county metropolitan server district may, whether operating under KRS 424.260, the bidding statute, or this section, the model procurement code, adopt a "Buy American" clause, which requires a contractor or supplier to furnish only goods manufactured in America, as a standard procurement policy, included in all purchasing contracts and bid specifications. OAG 81-34, 1981 Ky. AG LEXIS 408.

Where a fiscal court has specifically adopted the Kentucky Model Procurement Code under KRS 45A.350 (now repealed) it must under subdivision (23) of this section purchase insurance under a competitive bidding system, even though KRS 424.260 excepts professional services such as insurance from competitive bidding. OAG 81-109, 1981 Ky. AG LEXIS 327.

A statutory requirement of advertisement for bids is "jurisdictional," and a fiscal court is without power to enter into a contract without such advertisement, where the purchase requires bidding. Further, a party deals with a public agency at its peril if it contracts with one and fails to inquire into the power of the agency to execute it. OAG 82-125, 1982 Ky. AG LEXIS 515.

The matter of letting out for bids the gasoline and oil needed for the county road department is left to the good business judgment of the fiscal court in terms of the period of consumption, price fluctuations, availability of the commodity for a definite period, etc. However, a fiscal court should not deliberately buy the needed commodities in "dribbles and dabs" merely to circumvent advertised bidding. OAG 82-125, 1982 Ky. AG LEXIS 515.

The number of months' supply of any needed commodity which must be considered for bidding purposes is a matter, because of its nature, that must be left to the sound administrative discretion of the fiscal court. OAG 82-125, 1982 Ky. AG LEXIS 515.

The three important benefits of the bidding process are: (a) an offering to the public, (b) an opportunity for competition and (c) a basis for an exact comparison of bids. OAG 82-125, 1982 Ky. AG LEXIS 515.

Where a county is under KRS 45A.345 to 45A.460, KRS 45A.365, relating to the major policy of competitive sealed bidding, would apply to purchase of its gasoline, petroleum, and other supplies used by the county road department, except as otherwise provided by KRS 45A.370 to 45A.385. OAG 82-125, 1982 Ky. AG LEXIS 515.

If a school district has chosen to operate under the Model Procurement Code, competitive bidding for general liability insurance on buildings and vehicles, etc., is required absent a legitimate, written determination by the local public agency to the contrary; this conclusion is based on the fact that in subdivision (23) of this section, the term "supplies" is defined to include insurance, and that KRS 45A.380(10) authorizes an exemption from competitive bidding by written determination if the "contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance," an exemption which does not include general liability insurance. OAG 82-170, 1982 Ky. AG LEXIS 478.

There is no conflict between KRS 424.260 and the Model Procurement Code, KRS Ch. 45A, concerning the necessity of school boards taking competitive bids for general liability insurance, since local school districts, as local public agencies, have a choice as to whether to operate with respect to their procurement needs under either the local Model Procurement Code or KRS 424.260. OAG 82-170, 1982 Ky. AG LEXIS 478.

Acts 1982, ch. 282, which amended KRS 45A.080, 45A.100 and 45A.335, had no effect upon fiscal courts which had adopted KRS 45A.345 through 45A.460. OAG 82-324, 1982 Ky. AG LEXIS 314.

Any fiscal court adopting KRS 45A.345 through 45A.460 may, under KRS 45A.385, effect purchases not exceeding $5,000 (now $7,500) without formal bidding procedures, while those fiscal courts, under current law, which have not adopted such sections, are governed by KRS 424.260. OAG 82-324, 1982 Ky. AG LEXIS 314.

The county sheriff is not required to follow the purchasing procedures of the urban county government and may or may not adopt KRS 45A.345 through 45A.460 of the Model Procurement Code. OAG 83-249, 1983 Ky. AG LEXIS 248.

Should a fee officer have to purchase items of equipment or personal property that are not consumable but will have a reasonable life span, such as motor vehicles, the title would be taken in the name of the county and the purchases would be subject to the county's handling of the purchases and applicable provisions relating to bidding law under KRS 424.260 or KRS Chapter 45A (where the fiscal court has adopted the provisions of KRS 45A.345 through 45A.460). Where the county clerk or sheriff has adopted KRS 45A.345 through 45A.460, such officer could handle the purchase under the applicable bidding law in KRS Chapter 45A, but only with the approval of the fiscal court; and the title to the nonconsumable property or property of any reasonable life span would be in the name of the county. OAG 83-448, 1983 Ky. AG LEXIS 49.

Even though a riverport authority is created jointly by a city and county, the created authority is still a body politic and corporate, it is still a special district and, thus, the district, i.e., the riverport authority, is subject to the bidding principle under KRS 424.260, or the Model Procurement Code if adopted by the authority. OAG 84-196, 1984 Ky. AG LEXIS 193.

The bidding statute, KRS 424.260, applies to a riverport authority created pursuant to KRS 65.510 et seq., unless the authority has specifically adopted the Model Procurement Code (KRS 45A.345 to 45A.460), in which latter case the

Model Procurement Code, with its bidding requirements, applies to the riverport authority. OAG 84-196, 1984 Ky. AG LEXIS 193.

A fire protection district is a local public agency under subsection (9) of this section. OAG 85-65, 1985 Ky. AG LEXIS 85.

KRS 45A.420(2) allows a public agency to contract, without bidding, with a vendor who is on the current state contract list but is offering the agency a price lower than on the state price list, provided the local agency has adopted the provisions of this section through KRS 45A.460 as authorized under KRS 45A.343. OAG 90-75, 1990 Ky. AG LEXIS 75.

The Model Procurement Code allows local public agencies to be flexible in order to take advantage of discounts or cost savings available by means of noncompetitive negotiations if competitive negotiations would not yield greater savings in a given circumstance. OAG 90-75, 1990 Ky. AG LEXIS 75.

The requirements of KRS 45A.380 concerning "noncompetitive negotiation," as that term is defined by subdivision (12) of this section, allow a local public agency to enter into contracts by noncompetitive negotiations and without bidding, if it simply makes a written determination that competitive negotiation is not feasible and the contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency. OAG 90-75, 1990 Ky. AG LEXIS 75.

The term "negotiating" used in KRS 45A.420(2) was intended to be the same term of art as defined by subdivision (11) of this section. OAG 90-75, 1990 Ky. AG LEXIS 75.

The Model Procurement Code did not apply to a mayor's development contract with a company where the metro council had previously taken action to declare the project that was the subject of the contract as a "signature project" under former KRS 65.7075 [repealed, reenacted and amended as KRS 154.30-050] and identified the company with which the mayor contracted as the developer of the project. The Metro Council effectively placed the Development Agreement outside the scope of the Model Procurement Code. OAG 09-007, 2009 Ky. AG LEXIS 10.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

45A.351. Declaration of public policy on preservation of Commonwealth's natural resources through energy efficiency.

Recognizing the need in the Commonwealth to preserve to the greatest extent possible natural resources within the Commonwealth which produce energy for the citizens, businesses, schools, and governments within the Commonwealth, it shall be the policy of the Commonwealth to preserve these natural resources by maximizing the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned by local public agencies and to encourage local public agencies to incorporate cost-effective energy efficiency measures into their buildings.

History.

Enact. Acts 1996, ch. 203, § 1, effective July 15, 1996.

45A.352. Guaranteed energy savings contracts involving local public agencies.

(1) A local public agency may enter into a guaranteed energy savings contract for innovative solutions for energy conservation measures. The local public agency shall submit a request for proposals. The request for proposals for competitive procurement of guaranteed energy savings contracts shall include the following:

(a) The name and address of the governmental unit;

(b) The name, address, title, and phone number of a contact person;

(c) Notice indicating that the local public agency is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract;

(d) The following evaluation criteria for assessing the proposals:

1. Construction management capabilities;

2. Technical approach to facilities included;

3. Financial attributes, as defined by total cost of contract and guaranteed savings and provider's financial strength demonstrating ability to fulfill the guarantee term; and

4. Provider's capability, personnel, track record, and demonstrated ability to accomplish the contract;

(e) The date, time, and place where proposals must be received;

(f) Any other stipulations and clarifications the local public agency may require; and

(g) An overview prepared by the local public agency stating goals or objectives specific to facility needs to be considered by the qualified providers who are responding to the request. Detailed scope of construction is not required.

(2) Respondents to the request for proposal shall provide the following:

(a) A detailed list of the proposed energy conservation measures and the guaranteed savings which shall be supported with calculations. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol." If due to existing data limitations or the nonconformance of specific project characteristics, none of the methods listed in either the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol" is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one (1) of the two (2);

(b) The estimated cost of the proposed energy conservation measures including engineering, construction, commissioning, measurement and verification, annual reconciliation statements, and required on-going services; and

(c) Proposed method and costs of financing.

(3) The value for total cost of the contract minus the calculated savings from the energy conservation measures listed in the qualified provider's proposal, shall be within fifteen percent (15%) of the value for the total

cost of the contract minus the calculated savings after the final contract has been negotiated. If the difference between the proposed and the final contract is not within fifteen percent (15%) and the local public agency and the qualified provider are unable to renegotiate the final contract to reconcile the difference between the proposed and final contract values, then the local public agency may:

(a) Stop negotiations with the current qualified provider; and

(b) Select an alternate provider.

(4) The local public agency may, as a component of the request for proposal, solicit and negotiate additional maintenance services for the affected proposed energy conservation measures. Additional services shall be subject to budget appropriations on an annual basis and may be discontinued at any time over the guarantee period with no negative impact to the guaranteed savings contract.

(5) The local public agency shall utilize the request for proposal process to enter into a guaranteed energy savings contract. The local public agency may, at its discretion, utilize a request for qualifications, provided that the local public agency solicits qualification statements from multiple potentially qualified providers. The local public agency shall use the qualification statements to select no fewer than two (2) providers and each provider shall then be subject to the request-for-proposal requirement provided in subsections (1) to (4) of this section.

(6) The local public agency shall select the provider best qualified to meet its needs. The local public agency shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the name of the parties to the proposed contract, and the purpose of the contract. The public notice shall be made at least ten (10) days prior to the meeting. After reviewing the proposals, a local public agency may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs plus capital cost avoidance within the term of the contract from the date of installation, if the recommendations in the proposal are followed.

(7) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings plus capital cost avoidance will meet or exceed the costs of the energy conservation measures within the term of the contract. The qualified provider shall, on an annual basis, reimburse the local public agency for any shortfall in guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the local public agency for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed the term of the contract.

(8) The qualified provider shall provide the local public agency with an annual reconciliation statement. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a twelve (12) month term commencing from the time that the energy conservation measures became fully operational. The qualified provider shall pay the local public agency any short fall in the guaranteed energy and operation savings within thirty (30) days after the total year savings have been determined. If there is a surplus in the actual guaranteed energy and operational savings in a given year, that surplus savings may be carried forward and applied against any possible savings shortfall in the following guarantee year, except that the surplus carried forward is limited to a period not to exceed one (1) year. If the qualified provider pays the local public agency for a short fall in energy or operational savings incurred during a given guarantee year and there is a surplus in energy or operational savings in future guarantee years, the qualified provider shall bill the local public agency for an amount not to exceed the amount of the short fall in the given guarantee year.

(9) The use of capital cost avoidance shall be subject to the following restrictions:

(a) The amount expended shall not exceed fifty percent (50%) of the project cost; and

(b) Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:

1. Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;

2. Replacement of heating, ventilating, or air conditioning major components or systems;

3. New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and

4. Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.

(10) The commissioner of education shall review, and approve or disapprove projects from local school districts relating to energy conservation measures under a guaranteed energy savings contract, on the basis of the following guidelines:

(a) The project design's compliance with technical, health, and safety standards as required by administrative regulation;

(b) The availability of general funds, capital outlay allotments under KRS 157.420 or local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects that will use capital cost avoidance;

(c) The appropriate use of capital outlay allotments under KRS 157.420, local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects using capital cost avoidance, based on the project's compliance with the district's approved facility plan;

(d) The funding capability of the school district; and

(e) The financing mechanism and proper financing documentation.

(11) The request for proposal as provided in subsections (1) to (4) of this section shall be deemed to satisfy the requirements set out in KRS 162.070, and shall not be subject to an award determination based on the lowest competitive bid or a separate bidding process for each energy conservation measure listed in the proposal.

(12) A guaranteed energy savings contract that does not involve construction or the installation of physical improvements shall not require the approval of the commissioner of education and shall not be subject to other requirements of this section.

History.

Enact. Acts 1996, ch. 203, § 3, effective July 15, 1996; 1998, ch. 375, § 3, effective July 15, 1998; 2007, ch. 122, § 3, effective June 26, 2007.

Legislative Research Commission Note.

(6/26/2007). A manifest clerical or typographical error in this section has been corrected by the Reviser of Statutes under the authority of KRS 7.136.

45A.353. Extension of guaranteed energy savings contract — Documentation of savings — Lease-purchase agreements — Exemption from debt limitations.

(1) Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The local public agency shall include in its annual budget and appropriations act, for each subsequent fiscal year, any accounts payable under guaranteed energy savings contracts during the fiscal year.

(2) The local public agency shall document the operational and energy cost savings and capital cost avoidance specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy and operational savings are less than projected under the guaranteed savings contract, the qualified provider shall pay the difference as provided for in KRS 45A.352.

(3) Notwithstanding any other provisions of law to the contrary, a local public agency may finance the installation of energy conservation measures for its buildings through a lease-purchase agreement, bonds, or whichever brings the most economic value to the local public agency, subject to the local public agency's compliance with all other laws regarding approval of plans for additions, alterations, or renovations of its buildings.

(4) The component which is guaranteed as energy savings and as operational savings shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in KRS 45A.345, shall be limited to current or future debt limitations.

History.

Enact. Acts 1996, ch. 203, § 4, effective July 15, 1996; 1998, ch. 375, § 4, effective July 15, 1998.

45A.355. Determinations — Finality.

(1) Every determination required by this code shall be in writing and based upon written findings of the public official making the determination. These determinations and written findings shall be retained in the official contract file.

(2) The determinations required by KRS 45A.345 to 45A.460 shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

History.

Enact. Acts 1978, ch. 110, § 72, effective January 1, 1980.

45A.360. Administrative regulations.

(1) A local public agency may adopt regulations, not inconsistent with KRS 45A.345 to 45A.460, governing the following:

(a) Conditions and procedures for delegations of purchasing authority;

(b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;

(c) Modification and termination of contracts;

(d) Conditions and procedures for the purchase of perishables and items for resale;

(e) Conditions, including emergencies, and procedures under which purchases may be made by means other than competitive sealed bids;

(f) Rejection of bids, consideration of alternate bids, and waiver of informalities in offers;

(g) Confidentiality of technical data and trade secrets information submitted by actual and prospective bidders or offerors;

(h) Partial, progressive, and multiple awards;

(i) Supervision of store rooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of government-owned property;

(j) Definitions and classes of contractual services and procedures for acquiring them;

(k) Procedures for the verification and auditing of local public agency procurement records;

(*l*) Annual reports from those vested with purchasing authority as may be deemed advisable in order to insure that the requirements of this chapter are complied with; and

(m) Such other regulations as may be deemed advisable to carry out the purposes of KRS 45A.345 to 45A.460 or otherwise fulfill the local public agency's procurement responsibilities.

(2) All local public agency ordinances and regulations pertaining to procurement, whether promulgated under KRS 45A.345 to 45A.460 or otherwise, shall be maintained by the local public agency and shall be available to the public upon request at a cost not to exceed the cost of reproduction.

(3) Local school districts may adopt policies, not inconsistent with KRS 45A.345 to 45A.460, governing the conditions and procedures under which purchases of supplies may be made elsewhere. These policies shall include a provision that supplies purchased under this section shall meet any applicable contract specifications and not exceed two thousand five hundred dollars ($2,500).

History.

Enact. Acts 1978, ch. 110, § 73, effective January 1, 1980;

1980, ch. 250, § 10, effective April 9, 1980; 1996, ch. 89, § 2, effective July 15, 1996.

OPINIONS OF ATTORNEY GENERAL.

A local public agency is not required to maintain a list of prequalified responsible prospective bidders. OAG 80-21, 1980 Ky. AG LEXIS 621.

If action is taken pursuant to subdivision (1)(k) of this section, it must be done by the local public agency pursuant to regulations enacted by that particular agency. OAG 80-21, 1980 Ky. AG LEXIS 621.

If a local board of education adopts the provisions of the Model Procurement Code applicable to the state and also adopts a regulation similar to that which has been promulgated by the Department of Finance (now Finance and Administration Cabinet) relating to noncompetitive negotiations, then items for resale such as caps and gowns and graduation invitations may be handled through noncompetitive negotiation. OAG 80-108, 1980 Ky. AG LEXIS 533.

A county hospital commission may adopt regulations and establish small purchase procedures pursuant to KRS 45A.385, but, since the fiscal court cannot delegate its overall fiscal control of the county hospital, such regulations and procedures would be subject to fiscal court approval. OAG 80-128, 1980 Ky. AG LEXIS 517.

Since a county hospital commission is not an autonomous unit of government and is subject to the direct and overall fiscal and financial supervision of the fiscal court, proper regulations and small purchase procedures adopted by fiscal court for the general county operations could be made applicable to the county hospital, and in that way duplication of effort could be avoided and the county would be on a unified system. OAG 80-128, 1980 Ky. AG LEXIS 517.

45A.365. Competitive sealed bidding.

(1) All contracts or purchases shall be awarded by competitive sealed bidding, which may include the use of a reverse auction, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).

(2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids. The invitation for bids shall include the reciprocal preference for resident bidders described in KRS 45A.494.

(3) Adequate public notice of the invitation for bids and any reverse auction shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction at least seven (7) days before the date set for the opening of the bids and any reverse auction. Nothing in this section shall prohibit additional notice, posting, or publication, nor shall additional notification, posting, or publication extend the required notice period. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.

(4) The bids shall be opened publicly or entered through a reverse auction at the time and place designated in the invitation for bids. Each written or reverse auction bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

(5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after the application of any reciprocal preference for resident bidders required by KRS 45A.494.

(6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

History.

Enact. Acts 1978, ch. 110, § 74, effective January 1, 1980; 1998, ch. 120, § 13, effective July 15, 1998; 2000, ch. 510, § 2, effective July 14, 2000; 2010, ch. 63, § 7, effective July 15, 2010; 2010, ch. 162, § 12, effective July 15, 2010; 2013, ch. 44, § 2, effective June 25, 2013.

NOTES TO DECISIONS

Analysis

1. Low Bid.
2. Unsuccessful Bidder.

1. Low Bid.

City properly exercised its discretion for the benefit of its citizens by accepting a lower bid for purchase of city-owned boat dock in order to insure the retention of the facility in the city for the use of its boating residents. Ohio River Conversions, Inc. v. Owensboro, 663 S.W.2d 759, 1984 Ky. App. LEXIS 444 (Ky. Ct. App. 1984).

2. Unsuccessful Bidder.

An unsuccessful bidder, who was neither a resident nor a taxpayer of city, had no standing to request the judicial award of contract or seek damages from the municipality. Ohio River Conversions, Inc. v. Owensboro, 663 S.W.2d 759, 1984 Ky. App. LEXIS 444 (Ky. Ct. App. 1984).

Cited:

OPINIONS OF ATTORNEY GENERAL.

Where an original price contract on printing equipment and supplies to be used by the state was established with a company after invitations to bid were sent out, and then that contract was converted into a lease-purchase agreement without further bidding, the lease-purchase agreement was not validly executed since the original bidders were not given an opportunity to bid on the conversion conditions, and the piggybacking of another company's equipment, by the contracting supplier, into and onto the lease-purchase agreement was illegal. OAG 80-189, 1980 Ky. AG LEXIS 435.

A county fiscal court, which plans to renovate a building to be used as the county court facility, may not restrict and apply the invitations to bid only to general contractors with home offices in that county, since the Model Procurement Code applies to fiscal courts and there is nothing in the applicable sections of KRS Chapter 45A that would support such a restriction. OAG 80-215, 1980 Ky. AG LEXIS 443.

The whole thrust of the Model Procurement Code is to encourage and insist that local public agencies purchase services and supplies, which include personal property, only after competitive sealed bidding unless good reason is shown

why competitive sealed bidding is inappropriate, and where through no fault of the city, the low bidder to whom the contract was awarded after the bids had been opened soon thereafter gave notice of their inability to perform at all under the contract due to the bankruptcy of the manufacturer of the buses relied on by the successful bidder, the circumstances of this situation warranted the accepting of the second low bid. OAG 80-559, 1980 Ky. AG LEXIS 97.

If the fiscal court reasonably determines that competition in property insurance is actually competitive in an area, then the entire insurance package should be let out under this section which provides for competitive sealed bidding. OAG 81-109, 1981 Ky. AG LEXIS 327.

A statutory requirement of advertisement for bids is "jurisdictional," and a fiscal court is without power to enter into a contract without such advertisement, where the purchase requires bidding. Further, a party deals with a public agency at its peril if it contracts with one and fails to inquire into the power of the agency to execute it. OAG 82-125, 1982 Ky. AG LEXIS 515.

The matter of letting out for bids the gasoline and oil needed for the county road department is left to the good business judgment of the fiscal court in terms of the period of consumption, price fluctuations, availability of the commodity for a definite period, etc. However, a fiscal court should not deliberately buy the needed commodities in "dribbles and dabs" merely to circumvent advertised bidding. OAG 82-125, 1982 Ky. AG LEXIS 515.

The three important benefits of the bidding process are: (a) an offering to the public, (b) an opportunity for competition and (c) a basis for an exact comparison of bids. OAG 82-125, 1982 Ky. AG LEXIS 515.

Where a county is operating under KRS 45A.345 to 45A.460, this section, relating to the major policy of competitive sealed bidding, would apply to purchase of its gasoline, petroleum, and other supplies used by the county road department, except as otherwise provided by KRS 45A.370 to 45A.385. OAG 82-125, 1982 Ky. AG LEXIS 515.

For a city soliciting insurance proposals to limit its list of bidders to those insurance agencies having major offices within the boundaries of the city limits would violate the purpose and intent of requiring competitive bidding under the Model Procurement Code or, for that matter, any other statute that requires competitive bidding. OAG 82-337, 1982 Ky. AG LEXIS 275.

The purpose of requiring bids is to invite competition and guard against favoritism, extravagance, fraud and corruption and to secure the best possible work at the least price that is prescribed. OAG 82-337, 1982 Ky. AG LEXIS 275.

Where competitive bids are required, all persons desiring to bid must be afforded the opportunity to do so. OAG 82-337, 1982 Ky. AG LEXIS 275.

Should two newspapers in a county come up with an identical figure for circulation in their published statements of ownership, then the fiscal court could request the two newspapers to submit affidavits as to the circulation; in the event the affidavits contain identical figures of circulation, the courts would be asked to resolve the question of which newspaper has the largest circulation. OAG 83-247, 1983 Ky. AG LEXIS 250.

A fiscal court resolution requiring that tiles and tires be purchased from the cheapest places in the county is in restrictive conflict with KRS 424.260 and subsection (5) of this section and is invalid. OAG 83-258, 1983 Ky. AG LEXIS 239.

No county fee officer can engage in a bidding contract of purchase of supplies or equipment, i.e., binding on the county, where the money for the purchase is to come directly out of the county treasury; the fiscal court is the authority in contracting for county supplies or equipment, payable out of the county treasury. OAG 83-448, 1983 Ky. AG LEXIS 49.

Where a city commission authorized private companies to bid for a contract to provide fire protection for the city and replace the present city fire department, as documentary material retained by a public agency, the bid invitation, correspondence pertaining to the bids, and the bids themselves were public records subject to the Open Records Law. Unless exempted by the provisions of KRS 61.878, these records are open to public inspection once the bids are publicly opened. OAG 84-284, 1984 Ky. AG LEXIS 92.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

45A.370. Competitive negotiation.

(1) A local public agency may contract or purchase through competitive negotiation, which may include a reverse auction, upon a written finding that:

(a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or

(b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or

(c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.

(2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation, including the reciprocal preference for resident bidders required by KRS 45A.494, and the relative importance of each factor, and the procedures to be followed if a reverse auction is used in the procurement.

(3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where such prices are fixed by law, regulation, or reverse auction, except that consideration shall be given to competitive terms and conditions; or

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.

(4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price after application of the reciprocal preference for resident bidders required by KRS 45A.494 submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.

(5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals and the reciprocal preference for resident bidders required by KRS 45A.494.

History.

Enact. Acts 1978, ch. 110, § 75, effective January 1, 1980; 1998, ch. 120, § 14, effective July 15, 1998; 2010, ch. 63, § 8, effective July 15, 2010; 2010, ch. 162, § 13, effective July 15, 2010.

Legislative Research Commission Note.

(7/15/2010). This section was amended by 2010 Ky. Acts chs. 63 and 162, which do not appear to be in conflict and have been codified together.

OPINIONS OF ATTORNEY GENERAL.

Where a small town water company cannot accurately predict the amount of chemicals it will need, has limited storage space to store chemicals that deteriorate somewhat in storage and that are somewhat unstable in nature, and has a history of purchasing chemicals in small quantities, indicating that such a practice was not just recently instituted to avoid the requirements of the Model Procurement Code, each purchase of these types of chemicals is a legally and factually separate transaction which, if under $2,500, is not subject to the bidding requirements of the Model Procurement Code and may be handled as a small purchase if small purchase procedures have been adopted pursuant to KRS 45A.385. OAG 80-125, 1980 Ky. AG LEXIS 528.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

45A.375. Negotiations after competitive sealed bidding when all bids exceed available funds — Action when no bids received.

(1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency determines in writing:

(a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and

(b) The best interest of the local public agency will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.

(2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency to be the lowest responsive and responsible bidders to the competitive sealed bid invitation after application of the reciprocal preference for resident bidders required in KRS 45A.494. Such competitive negotiations shall be conducted under the following restrictions:

(a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and

(b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror after application of the reciprocal preference for resident bidders required in KRS 45A.494. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that award is to be made without discussions except as herein provided.

(3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.

(4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

History.

Enact. Acts 1978, ch. 110, § 76, effective January 1, 1980; 1980, ch. 250, § 11, effective April 9, 1980; 2010, ch. 162, § 14, effective July 15, 2010.

45A.380. Noncompetitive negotiation.

A local public agency may contract or purchase

through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency that:

(1) An emergency exists which will cause public harm as a result of the delay in competitive procedures;

(2) There is a single source within a reasonable geographical area of the product or service to be procured;

(3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services;

(4) The contract is for the purchase of perishable foods, such as meat, fish, poultry, egg products, fresh vegetables, and fresh fruits;

(5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;

(6) The contract is for proprietary items for resale;

(7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;

(8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;

(9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;

(10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance;

(11) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency;

(12) The contract is with a private real estate developer and contains a requirement:

(a) That the developer increase the size or otherwise improve the collection capacity of the sanitary sewer or storm water pipe serving the affected private real estate development; and

(b) That the local public agency pay only the proportional cost of increasing the size, or otherwise improving the collection capacity, of the sanitary sewer or storm water pipe over the original collection capacity; or

(13) The contract is for the purchase of used vehicles or used equipment and the purchase price does not exceed seventy-five percent (75%) of the manufacturer's suggested retail price for the model year for a vehicle or date of manufacture for equipment for the same or similar vehicles or equipment.

History.

Enact. Acts 1978, ch. 110, § 77, effective January 1, 1980; 1980, ch. 250, § 12, effective April 9, 1980; 2017 ch. 151, § 1, effective June 29, 2017; 2022 ch. 150, § 1, effective July 14, 2022; 2026 ch. 90, § 3, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

The position of constructing manager over a construction project does not constitute professional services exemption from competitive bidding under subsection (1)(c) (now subdivision (3)) of this section. OAG 79-501, 1979 Ky. AG LEXIS 145.

Where a small town water company cannot accurately predict the amount of chemicals it will need, has limited storage space to store chemicals that deteriorate somewhat in storage and that are somewhat unstable in nature, and has a history of purchasing chemicals in small quantities, indicating that such a practice was not just recently instituted to avoid the requirements of the Model Procurement Code, each purchase of these types of chemicals is a legally and factually separate transaction which, if under $2,500, is not subject to the bidding requirements of the Model Procurement Code and may be handled as a small purchase if small purchase procedures have been adopted pursuant to KRS 45A.385. OAG 80-125, 1980 Ky. AG LEXIS 528.

Computer billing services may be procured by a county clerk for preparing tax bills by applying the noncompetitive negotiation provisions of subdivision (1) of this section, if the county clerk makes a written determination that competition is not feasible, and that an emergency exists which will cause public harm as a result of the delay in competitive procedures, and the fiscal court enters an order confirming the county clerk's written determinations. OAG 80-299, 1980 Ky. AG LEXIS 346.

If a county has adopted the Model Procurement Code, the fiscal court may procure a private accounting or C.P.A. firm to audit the county's funds (involving county budget and treasury) by way of noncompetitive negotiation. OAG 80-624, 1980 Ky. AG LEXIS 43.

If the fiscal court reasonably determines that competition in property insurance is not feasible, then the fiscal court may procure the property insurance by noncompetitive negotiation under this section. OAG 81-109, 1981 Ky. AG LEXIS 327.

Where a county fiscal court advertised for sealed bids for treated bridge lumber, but received only one nonresponsive bid, and the fiscal court then entered an order authorizing the county to purchase such lumber by noncompetitive negotiations, but no written determination was made that competition was not feasible or that any one of the other conditions described in this section was prevalent, there was nothing to indicate an emergency existed or that there was only a single source for bridge lumber and posts and none of the other conditions set out in subsections (1) through (11) of this section would seem to be even remotely applicable, the situation relative to the bridge lumber and posts was not subject to being handled by noncompetitive negotiation. OAG 82-65, 1982 Ky. AG LEXIS 569.

If a school district has chosen to operate under the Model Procurement Code, competitive bidding for general liability insurance on buildings and vehicles, etc., is required absent a legitimate, written determination by the local public agency to the contrary; this conclusion is based on the fact that in KRS 45A.345(23) the term "supplies" is defined to include insurance and that subdivision (10) of this section authorizes an exemption from competitive bidding by written determination if the "contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance," an exemption which does not include general liability insurance. OAG 82-170, 1982 Ky. AG LEXIS 478.

Insofar as the Model Procurement Code is concerned, this section specifically lists those contracts that are professional in nature and excepted from competitive bidding, and the

exception does not include insurance contracts with the exception of those contracts for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance and unemployment insurance. OAG 82-337, 1982 Ky. AG LEXIS 275.

Under KRS 424.260 a cafeteria plan of insurance coverage for school teachers need not be bid; under the Model Procurement Code the contract may be noncompetitively negotiated. OAG 83-151, 1983 Ky. AG LEXIS 346.

The Model Procurement Code allows local public agencies to be flexible in order to take advantage of discounts or cost savings available by means of noncompetitive negotiations if competitive negotiations would not yield greater savings in a given circumstance. OAG 90-75, 1990 Ky. AG LEXIS 75.

The requirements of this section concerning "noncompetitive negotiation," as that term is defined by KRS 45A.345(12), allows a local public agency to enter into contracts by noncompetitive negotiations and without bidding, if it simply makes a written determination that competitive negotiation is not feasible and the contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency. OAG 90-75, 1990 Ky. AG LEXIS 75.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

45A.385. Small purchases by local public agencies.

(1) The local public agency may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed fifty thousand dollars ($50,000) if small purchase procedures are in writing and available to the public.

(2) Beginning in calendar year 2030, the small purchase maximum amount set out in subsection (1) of this section shall be increased by ten thousand dollars ($10,000) every five (5) years effective on January 1 of each year. The Finance and Administration Cabinet shall, through a technical advice memorandum or other official means of communication, announce the small purchase maximum amount in effect for the current year, and shall also prominently post that information on its website.

History.

Enact. Acts 1978, ch. 110, § 78, effective January 1, 1980; 1980, ch. 250, § 13, effective April 9, 1980; 1984, ch. 6, § 2, effective July 13, 1984; 1990, ch. 95, § 2, effective July 13, 1990; 2002, ch. 192, § 1, effective July 15, 2002; 2019 ch. 79, § 1, effective June 27, 2019; 2023 ch. 152, § 1, effective June 29, 2023; 2026 ch. 39, § 1, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

This section and KRS 424.260 as amended in 1978 are pari materia and both are to be given effect by construing the $2,500 limitation to be an oversight by the Legislature that it was increasing the limitation of KRS 424.260 to $5,000 (since amended to $20,000). OAG 78-357, 1978 Ky. AG LEXIS 402.

The provisions of this section must govern over KRS 424.260, as amended since the procurement code is a detailed, comprehensive and specific kind of legislation as contrasted with the short, skeletal and general legal notices law, KRS 424.260. OAG 79-429; OAG 79-447, 1979 Ky. AG LEXIS 172.

The provision in KRS 80.130, requiring bids for the construction of a low-cost housing project exceeding $2,000, has, in effect, been repealed by the provisions of this section relating to small purchases. OAG 80-21, 1980 Ky. AG LEXIS 621.

There is no prohibition against any particular vendor entering into one or more small purchase contracts with a local public agency, assuming that all statutory requirements are satisfied, including the provision that the items and services normally supplied as a unit are not artificially divided just for the purpose of utilizing the small purchase procedures. OAG 80-21, 1980 Ky. AG LEXIS 621.

Where a small town water company cannot accurately predict the amount of chemicals it will need, has limited storage space to store chemicals that deteriorate somewhat in storage and that are somewhat unstable in nature, and has a history of purchasing chemicals in small quantities, indicating that such a practice was not just recently instituted to avoid the requirements of the Model Procurement Code, each purchase of these types of chemicals is a legally and factually separate transaction which, if under $2,500 (now $20,000), is not subject to the bidding requirements of the Model Procurement Code and may be handled as a small purchase if small purchase procedures have been adopted pursuant to this section. OAG 80-125, 1980 Ky. AG LEXIS 528.

A county hospital commission may adopt regulations pursuant to KRS 45A.360, and establish small purchase procedures pursuant to this section, but, since the fiscal court cannot delegate its overall fiscal control of the county hospital, such regulations and procedures would be subject to fiscal court approval. OAG 80-128, 1980 Ky. AG LEXIS 517.

Since a county hospital commission is not an autonomous unit of government and is subject to the direct and overall fiscal and financial supervision of the fiscal court, proper regulations and small purchase procedures adopted by fiscal court for the general county operations could be made applicable to the county hospital, and in that way duplication of effort could be avoided and the county would be on a unified system. OAG 80-128, 1980 Ky. AG LEXIS 517.

Any fiscal court adopting KRS 45A.345 through 45A.460 may, under this section, effect purchases not exceeding $5,000 (now $20,000) without formal bidding procedures, while those fiscal courts, under current law, which have not adopted such sections, are governed by KRS 424.260. OAG 82-324, 1982 Ky. AG LEXIS 314.

If the reconstructing or paving of separate county road segments could involve unified specifications and work performance of such nature that bids on the total number of projects as a total package could be obtained, the total work should be let under advertisement for bids, pursuant to KRS 424.260 or KRS Ch. 45A, whichever is applicable to the county; however, if the fiscal court determines upon investigation that lump sum bids upon the total projects cannot be obtained from the road construction trade, then the various road segments should be treated as legally and factually separate and bidding would be necessary for any of the projects if they exceed for a single project the sum of $5,000 (if the Model Procurement Code applies in the county) or exceeds $7,500 (now $20,000) (if KRS 424.260 applies in the county). OAG 83-316, 1983 Ky. AG LEXIS 181.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

45A.390. Cancellation.

An invitation for bid, a request for proposal or other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined in writing that such action is in the best interest of the local public agency.

History.

Enact. Acts 1978, ch. 110, § 79, effective January 1, 1980.

45A.395. Determination of responsibility — Right of nondisclosure.

(1) A written determination of responsibility of a bidder or offeror shall be made, based on a reasonable inquiry conducted by the local public agency. The unreasonable failure of a bidder or offeror to promptly supply information upon request may be grounds for a determination of nonresponsibility of such bidder or offeror.

(2) A written determination of responsibility of a bidder or offeror shall not be made until the bidder or offeror provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the bidder or offeror will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

(3) Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the local public agency without prior written consent of the bidder or offeror.

History.

Enact. Acts 1978, ch. 110, § 80, effective January 1, 1980; 1992, ch. 288, § 19, effective July 14, 1992.

45A.400. Prequalification of bidders and offerors.

Suppliers may be prequalified as responsible prospective contractors for particular types of supplies, services, and construction. No supplier shall be prequalified as a responsible prospective contractor until the supplier provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include, but shall not be limited to, such prequalified prospective contractors. Prequalification shall not foreclose a written determination:

(1) Between the time of bid opening or receipt of offers in the making of an award that a prequalified prospective contractor is not responsible; or

(2) That a prospective contractor who is not prequalified at the time of bid opening or receipt of offers is responsible.

History.

Enact. Acts 1978, ch. 110, § 81, effective January 1, 1980; 1992, ch. 288, § 20, effective July 14, 1992.

45A.405. Cost or pricing data.

(1) A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(a) Pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars ($50,000), or such lesser amount as may be prescribed by the local public agency; or

(b) Pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars ($25,000), or such lesser amount as may be prescribed by the local public agency.

(2) Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the local public agency, including profit or fee, shall be adjusted to exclude any significant sums by which the local public agency finds that such price was increased because the contractor-furnished cost or pricing data which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

(3) The requirement of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where it is determined in writing that the requirements of this section may be waived, and the reasons for such waiver are enumerated in the determination.

History.

Enact. Acts 1978, ch. 110, § 82, effective January 1, 1980.

45A.410. Inspection of contractor's place of business — Audit of records.

(1) The local public agency may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded by the local public agency.

(2) The local public agency may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.405, at any time until the period of record retention as set forth in subsection (3) of this section shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted under KRS 45A.420, and such books and records shall be maintained by the contractor or subcontractor for the period specified in subsection (3) of this section.

(3) The local public agency shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subparagraph shall not limit the

right to audit as set forth in subsection (2) of this section. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract.

History.
Enact. Acts 1978, ch. 110, § 83, effective January 1, 1980.

45A.415. Specifications — Items considered equal may be furnished — Proprietary products.

(1) The local public agency shall use specifications which assure the maximum practicable competition to meet the agency's needs.

(2) Local public agencies shall ensure that every invitation for bids or request for proposals provides that an item equal to that named or described in the specifications may be furnished. The specifications may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards. An item shall be considered equal to the item named or described if, in the opinion of the owner and the design professional responsible for the specifications:

(a) It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;

(b) It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and

(c) It conforms substantially to the detailed requirements for the item in the specifications.

(3) A specification which describes a product which is proprietary to one (1) company may be used only when no other kind of specification is reasonably available to describe requirements.

History.
Enact. Acts 1978, ch. 110, § 84, effective January 1, 1980; 2008, ch. 47, § 3, effective July 15, 2008.

45A.420. Cooperative purchasing — Price agreements with Commonwealth — Use of established pricing method — School districts.

(1) Any local public agency may enter into an agreement for cooperative purchasing with any other local public agency. When the contracting local public agency contracts for supplies, services or construction pursuant to KRS 45A.365, 45A.370, 45A.375, or 45A.380, all other parties to the agreement shall be deemed to have complied with the provisions of those sections.

(2) Nothing in KRS 45A.345 to 45A.990 shall deprive a local public agency from negotiating with vendors for supplies where such supplies are the subject of a price agreement with the Commonwealth of Kentucky provided, however, that no contract executed under this section would authorize a price higher than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies.

(3) For agreements that do not establish a fixed unit price, a local public agency may make purchases using an established discount, quote, formula, or other pricing method as established by the Commonwealth in the agreement. A local public agency shall retain records documenting its compliance with the procedures required in the applicable agreement.

(4) Nothing in KRS 45A.345 to 45A.990 shall deprive a local school district from acquiring supplies outside of price agreements with the Commonwealth of Kentucky if the supplies meet the same specifications as the contract items and the supplies are purchased at a lower price than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies and the purchase does not exceed two thousand five hundred dollars ($2,500).

History.
Enact. Acts 1978, ch. 110, § 85, effective January 1, 1980; 1980, ch. 250, § 14, effective April 9, 1980; 1996, ch. 89, § 3, effective July 15, 1996; 2026 ch. 39, § 2, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

A plain reading of subsection (2) of this section shows that the General Assembly intended for this section to be an exception to the usual bidding requirements. OAG 90-75, 1990 Ky. AG LEXIS 75.

Construing subsection (2) of this section as an exception to the usual bidding requirements is not contrary to the underlying policies of the code. OAG 90-75, 1990 Ky. AG LEXIS 75.

It is likely that the General Assembly intended to give local public agencies the same right to negotiate contracts with vendors offering supplies on the state price agreement list that it previously gave to the Finance and Administration Cabinet when negotiating with vendors offering goods on the general service administration price agreement list. OAG 90-75, 1990 Ky. AG LEXIS 75.

Subsection (2) of this section allows a public agency to contract, without bidding, with a vendor who is on the current state contract list but is offering the agency a price lower than on the state price list, provided the local agency has adopted the provisions of KRS 45A.345 through 45A.460 as authorized under KRS 45A.343. OAG 90-75, 1990 Ky. AG LEXIS 75.

The Model Procurement Code allows local public agencies to be flexible in order to take advantage of discounts or cost savings available by means of noncompetitive negotiations if competitive negotiations would not yield greater savings in a given circumstance. OAG 90-75, 1990 Ky. AG LEXIS 75.

The plain language of this section supports the view that a local public agency may, without bidding, negotiate with a vendor willing to offer that agency a contract on specific supplies which are the subject of a state price agreement, at a lower cost than on the list. OAG 90-75, 1990 Ky. AG LEXIS 75.

The term "negotiating" used in subsection (2) of this section was intended to be the same term of art as defined by KRS 45A.345(11). OAG 90-75, 1990 Ky. AG LEXIS 75.

45A.425. Surplus or excess property.

(1) A local public agency may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.

(2) A written determination as to need of suitability of any personal property of the local public agency shall be made; and such determination shall fully describe the personal property; its intended use at the time of

acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.

(3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.

(4) In the event that a local public agency receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the local public agency. In such instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the local public agency.

(5) A local board of education may dispose of its surplus technology in accordance with KRS 160.335.

(6) As an alternative procedure to that set out in this section, a county may dispose of personal property pursuant to KRS 67.0802.

(7) Notwithstanding subsections (1) to (4) of this section, a city, urban-county government, or consolidated local government that has adopted KRS 45A.345 to 45A.460 may dispose of surplus property using the procedures in KRS 82.083.

History.

Enact. Acts 1978, ch. 110, § 86, effective January 1, 1980; 1984, ch. 199, § 1, effective July 13, 1984; 2008, ch. 14, § 2, effective July 15, 2008; 2019 ch. 69, § 2, effective March 25, 2019; 2019 ch. 59, § 1, effective June 27, 2019.

Legislative Research Commission Notes.

(6/27/2019). This statute was amended by 2019 Ky. Acts chs. 59 and 69, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

1. Sale of Property.

2. —Procedure.

This section does not make it mandatory that the agency follow the other sections of Chapter 45A in disposing or selling of its property, since it provides that it "may" sell in accordance with the code and, by virtue of KRS 45A.345(10), "may" means permissive. Ohio River Conversions, Inc. v. Owensboro, 663 S.W.2d 759, 1984 Ky. App. LEXIS 444 (Ky. Ct. App. 1984).

Cited in:

45A.430. Bid bonds.

(1) Bidder security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the local public agency to exceed one hundred thousand dollars ($100,000). Bidder's security shall be a bond provided by a surety company authorized to do business in this Commonwealth, or the equivalent in cash, in a form satisfactory to the local public agency. Nothing herein prevents the requirement of such bonds on construction contracts under one hundred thousand dollars ($100,000) when the circumstances warrant.

(2) Bidder's security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(3) When the invitation for bids requires that bidder security be provided, noncompliance requires that the bid be rejected, provided, however, that the local public agency may set forth by regulation exceptions to this requirement in the event of substantial compliance.

(4) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided that, if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be had against the bidder or the bidder's security.

History.

Enact. Acts 1978, ch. 110, § 87, effective January 1, 1980; 2019 ch. 79, § 2, effective June 27, 2019.

NOTES TO DECISIONS

1. Waiver of Irregularity.

Where a regulation promulgated by a metropolitan sewer district (MSD) under subsection (3) of this section provided that the MSD could waive any informality or irregularity in bids, and at the bid opening it was discovered that the lowest bidder had submitted a bid bond for five percent, instead of the ten percent amount which the MSD had required in its invitation for bids, the MSD properly and with authority waived the bid bond discrepancy especially in light of the fact that the lowest bidder immediately rectified the mistake by providing a ten percent bid bond. Shannon H. Holloway Constr. Co. v. Louisville & Jefferson County Metropolitan Sewer Dist., 674 S.W.2d 523, 1983 Ky. App. LEXIS 403 (Ky. Ct. App. 1983).

45A.435. Contract performance and payment bonds.

(1) When a construction contract is awarded in an amount in excess of one hundred thousand dollars ($100,000), the following bonds shall be furnished to the local public agency, and shall become binding on the parties upon the award of the contract:

(a) A performance bond satisfactory to the local public agency executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency, in an amount equal to one hundred percent (100%) of the contract price as it may be increased; and

(b) A payment bond satisfactory to the local public agency, executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency, for the protection of all persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.

(2) Nothing in this section shall be construed to limit the authority of the local public agency to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (1) of this section, including, but not limited to, bonds for the payment of taxes and unemployment insurance premiums.

History.
Enact. Acts 1978, ch. 110, § 88, effective January 1, 1980; 2019 ch. 79, § 3, effective June 27, 2019.

RESEARCH REFERENCES AND PRACTICE AIDS

Cited:
Acuity, A Mutual Ins. Co. v. Planters Bank, Inc., 362 F. Supp. 2d 885, 2005 U.S. Dist. LEXIS 5293 (Ky. 2005).

45A.440. Bond forms, filings, and copies.

(1) The local public agency may promulgate by regulation the form of the bonds required by KRS 45A.430 and 45A.435, or it may adopt the form established by the state under KRS 45A.180 to 45A.200.

(2) The local public agency shall furnish a certified copy of a bond to any person who requests such and pays the reasonable fee for that copy. The copy shall be prima facie evidence of the contents, execution, and delivery of the original.

History.
Enact. Acts 1978, ch. 110, § 89, effective January 1, 1980; 1992, ch. 55, § 10, effective July 14, 1992.

45A.445. Definitions for terms used in KRS 45A.445 to 45A.460.

As used in KRS 45A.445 to 45A.460, unless the context indicates otherwise:

(1) "Conspicuously" shall mean written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

(2) "Confidential information" shall mean any information which is available to an employee only because of his status as an employee of the local public agency and is not a matter of public knowledge or available to the public on request.

(3) "Debarment" shall mean the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the local public agency for a specified period of time.

(4) "Financial interest" shall mean:

(a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has, within the past three (3) years, received or is presently or in the future entitled to receive more than one thousand dollars ($1,000) per year, or its equivalent; or

(b) Ownership of more than a ten percent (10%) interest in any business; or

(c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(5) "Gratuity" shall mean a payment, loan, subscription, advance, deposit of money, services, or anything of more than fifty dollars ($50) value, present or promised, unless consideration of substantially equal or greater value is received.

(6) "Immediate family" shall mean a spouse, children, grandchildren, parents, grandparents, brothers and sisters, and such other relatives as designated by the local public agency.

(7) "Official responsibility" shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct local public agency actions.

(8) "Suspension" shall mean the disqualification of any person to receive invitations for bids or requests for proposals, or to be awarded a contract by a local public agency for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue.

History.
Enact. Acts 1978, ch. 110, § 90, effective January 1, 1980; 1980, ch. 250, § 15, effective April 9, 1980.

45A.450. Statement of public policy.

(1) Public employment is a public trust.

(2) It is the policy and purpose of KRS 45A.345 to 45A.460 to promote and balance the object of protecting government integrity and of facilitating the recruitment and retention of personnel needed by local public agencies by prescribing essential restrictions against conflict of interest without creating unnecessary barriers to public service and by facilitating development of fair and competitive access to local public agency purchasing by responsible contractors.

(3) Employees must discharge their duties and responsibilities fairly and impartially. They should also maintain a standard of conduct that will inspire public confidence in the integrity of the government of all local public agencies.

History.
Enact. Acts 1978, ch. 110, § 91, effective January 1, 1980.

NOTES TO DECISIONS

1. Operation of Business on Public Property.
A county jailer who operated a commissary within the detention center, the existence of which contributed both to the security of the detention center and to the benefit of the county as a whole in terms of its cost effectiveness, and who received an amount of profit from the commissary which was neither unreasonable nor excessive, nevertheless violated Ky. Const., § 173, as the commissary was operated by a public employe on public property, and the trial court acted correctly in ruling that the jailer was prohibited from operating such commissary for profit, but erred in awarding a monetary judgment against him, as he relied on the advice of his own counsel, the county attorney, the Attorney General of Kentucky, as well as the advice and acquiescence of the county government officials, to his detriment, so that such officials were estopped from seeking any monetary damages from him. Buchignani v. Lexington-Fayette Urban County Government, 632 S.W.2d 465, 1982 Ky. App. LEXIS 212 (Ky. Ct. App. 1982).

45A.455. Conflict of interest — Gratuities and kickbacks — Use of confidential information.

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

History.

Enact. Acts 1978, ch. 110, § 92, effective January 1, 1980; 1980, ch. 250, § 16, effective April 9, 1980.

OPINIONS OF ATTORNEY GENERAL.

Subsection (1) of this section prohibits involvement in the procurement function by a school employee relative to any item sold to the school by a supply firm with which an immediate family member is involved, presently or prospectively, but this prohibition only acts to restrain the particular employee, not the entire school district employing him; thus, if the employee is not so involved, the district is free to purchase from such a firm. OAG 80-32, 1980 Ky. AG LEXIS 607.

Subsection (1) of this section prohibits a fire department member's fencing firm from contracting with the city, since he is an employee of the city, regardless of the fact that the contract may be awarded on a bid basis. OAG 80-133, 1980 Ky. AG LEXIS 519.

This section had no application in 1980 to a rock sale to a county, which took place in 1976, by the father of an individual who became the county attorney in 1978, where the county attorney had no direct or indirect financial interest in that transaction within the three years prior to the effective date, January 1, 1980, of this conflict of interest statute. OAG 80-176, 1980 Ky. AG LEXIS 476.

The chairperson of the city board of trustees would have to refrain from participating and voting on the granting of a rental contract for the use of a recreational room in a municipal building entered into with the daughter or sister of the chairperson, because such action would be considered as against public policy; also, the chairperson could not participate directly or indirectly in the granting of such a contract by the city involving a member of his immediate family in view of this section pertaining to the Model Procurement Act. OAG 80-198, 1980 Ky. AG LEXIS 465.

It is an impermissible conflict of interest and against public policy for a trustee of a sixth-class city to participate as a member of the board in the awarding of the city's insurance contract to his son, an insurance agent, even though his son is the only insurance agent in the city and despite the fact that the contract was awarded at the same rate as earlier contracts had been awarded before the trustee took office. OAG 80-293, 1980 Ky. AG LEXIS 348.

Public policy dictates that the deputy county judge/executive must avoid participating, directly or indirectly, in any proceeding involving a county contract with her spouse. OAG 80-296, 1980 Ky. AG LEXIS 395.

The Model Procurement Code would not prohibit an assistant school principal from submitting a competitive bid to the school board for services as a professional auctioneer. OAG 80-605, 1980 Ky. AG LEXIS 57.

Where county police officer also owned a cleaning business which was a Kentucky corporation, there would be no statutory conflict of interest involved if the corporation were to submit a sealed bid on the cleaning of county and city buildings, assuming that the county fiscal court had adopted KRS 45A.345 through 45A.460 and that the county police officer had no procurement authority for the county. OAG 83-28, 1983 Ky. AG LEXIS 469.

Since a city fireman lacks procurement authority, he or a member of his immediate family could contract with the city without violating this section. OAG 83-96, 1983 Ky. AG LEXIS 401.

Where husband was a city fireman and wife was sole owner of a small printing shop, which had been doing printing business for the city, there was no legal objection, based on conflict of interest statutes, to the wife continuing to contract with the city for printing services. OAG 83-96, 1983 Ky. AG LEXIS 401.

45A.460. Recovery of value of anything transferred or received in breach of ethical standards.

(1) The value of anything transferred or received in breach of the ethical standards of KRS 45A.345 to 45A.990 or regulations or rules issued thereunder by an employee or a nonemployee may be recovered from both the employee and the nonemployee.

(2) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the local public agency and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kick-

backs. Recovery from one (1) offending party shall not preclude recovery against other offending parties.

History.
Enact. Acts 1978, ch. 110, § 93, effective January 1, 1980.

PREFERENCE FOR DEPARTMENT OF CORRECTIONS AND AGENCIES OF PERSONS WITH SEVERE DISABILITIES

45A.465. Definitions for KRS 45A.470.

As used in KRS 45A.470, the words:

(1) "Other individuals with severe disabilities" means an individual or class of individuals with a disability, other than blindness, that constitutes an obstacle to new or continued normal employment.

(2) "Products" means programs, books, tapes, records, processes, packaging, modification, supplies, food, clothing, materials, commodities, equipment of all kinds, and any other article of commerce originally manufactured or assembled or purchased for resale by a qualified nonprofit agency.

(3) "Qualified nonprofit agency for individuals with severe disabilities" means an organization that:

(a) Is organized and operated in the interest of individuals with severe disabilities; and

(b) Complies with any applicable occupational health and safety law of the United States and the Commonwealth; and

(c) In the manufacture or provision of products or services listed or purchased under KRS 45A.470, during the fiscal year employs individuals with severe disabilities for not less than seventy-five percent (75%) of the man hours of direct labor required for the manufacture or provision of the products or services; and

(d) Is registered and in good standing as a nonprofit organization with the Secretary of State.

(4) "Services" means contractual services; rental services of all kinds; professional, technical, or artistic services; and other personal performance of work by officers, employees, or beneficiaries of a nonprofit agency.

(5) "State agency" means those spending agencies subject to the state purchasing requirements of this code and any regulations promulgated pursuant thereto.

History.
Enact. Acts 1982, ch. 170, § 1, effective July 15, 1982; 1990, ch. 496, § 30, effective July 13, 1990; 1994, ch. 405, § 9, effective July 15, 1994.

NOTES TO DECISIONS

Cited:

OPINIONS OF ATTORNEY GENERAL.

Entities which are nonprofit agencies for the severely handicapped would need to be approved by the purchasing division as meeting the definition of subdivisions (3)(a) to (3)(d) of this section; they can then bid on contracts seeking products or services such entities produce. If their bids fall anywhere in the current price range and meet the necessary specifications and such entities can produce sufficient amounts of products needed, the purchasing division should choose such products, even if they are not the lowest bid price. OAG 84-134, 1984 Ky. AG LEXIS 248.

45A.470. Preference to be given by governmental bodies and political subdivisions in purchasing commodities or services — List of commodities and services — Price range — Negotiation for identical products and services.

(1) Notwithstanding any provision of this chapter to the contrary, all governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to any products produced by Kentucky Industries for the Blind, Incorporated, or any other nonprofit corporation that furthers the purposes of KRS Chapter 163, and agencies of individuals with severe disabilities as described in KRS 45A.465.

(2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.

(3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.

(4) The Office of Vocational Rehabilitation within the Education and Labor Cabinet and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.

(5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

History.
Enact. Acts 1982, ch. 170, § 2, effective July 15, 1982; 1986, ch. 331, § 13, effective July 15, 1986; 1992, ch. 211, § 10, effective July 14, 1992; 1994, ch. 126, § 4, effective July 15, 1994; 1994, ch. 209, § 8, effective July 15, 1994; 1994, ch. 405, § 10, effective July 15, 1994; 1998, ch. 393, § 1, effective July 15, 1998; 2006, ch. 211, § 11, effective April 21, 2006; 2009, ch. 11, § 10, effective June 25, 2009; 2010, ch. 162, § 24, effective July 15, 2010; 2019 ch. 146, § 6, effective June 27, 2019; 2022 ch. 236, § 19, effective July 1, 2022.

NOTES TO DECISIONS

1. Applicability.

Even if the KRS 45A.470(5) negotiation requirement is applicable to competitive sealed bids, the Cabinet correctly concluded that negotiations were not required because the losing bidder failed to offer the service at a price comparable to that offered by the winning bidder, and summary judgment for the Cabinet and the winning bidder in the corporation's case challenging the contract award was correct. Cmty. Servs. Project, Inc. v. BAWAC Cleaning Servs., 226 S.W.3d 852, 2007 Ky. App. LEXIS 162 (Ky. Ct. App. 2007).

OPINIONS OF ATTORNEY GENERAL.

In order to ascertain the legislative intent behind this section ordinary meanings should be applied to the terms "preference" and "price range." OAG 83-44, 1983 Ky. AG LEXIS 452.

The word "preference" in subsection (1) of this section means that Kentucky must give second chance to the Kentucky Industries for the Blind and other agencies for the handicapped, as designated in Acts 1982, ch. 170, to sell their products if the products made by the Department of Corrections (now Corrections Cabinet), Division of Prison Industries do not fall within the stated price ranges mentioned in subsection (3) of this section; in subsection (3), the term "price range" means the level of cost of services and products on today's open market. OAG 83-44, 1983 Ky. AG LEXIS 452.

Entities which are nonprofit agencies for the severely handicapped would need to be approved by the purchasing division as meeting the definition of KRS 45A.465(3)(a) to (3)(d); they can then bid on contracts seeking products or services such entities produce. If their bids fall anywhere in the current price range and meet the necessary specifications and such entities can produce sufficient amounts of products needed, the purchasing division should choose such products, even if they are not the lowest bid price. OAG 84-134, 1984 Ky. AG LEXIS 248.

Products of the Prison Industries and Bureau for the Blind (now Department for the Blind) can be purchased by state agencies without bidding where their prices fall within the current price range of other producers. OAG 84-134, 1984 Ky. AG LEXIS 248.

MISCELLANEOUS PROCUREMENT PROVISIONS

45A.480. Compliance with workers' compensation insurance and unemployment insurance laws required — Foreign entity to obtain certificate of authority — Penalty.

(1)(a) No state contract for building, construction, reconstruction, renovation, demolition, or maintenance, or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person assures, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

(b) An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity unless that foreign entity, on the records of the Secretary of State, holds a certificate of authority or a statement of foreign qualification.

(2) Any person who fails to comply with the requirements of subsection (1) of this section during the term of the state contract, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars ($4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.

(3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

History.

Enact. Acts 1990, ch. 174, § 2, effective July 13, 1990; 2011, ch. 80, § 2, effective June 8, 2011; 2012, ch. 81, § 86, effective July 12, 2012.

NOTES TO DECISIONS

Cited:

45A.485. Certain contracts required to mandate revealing of violations of and compliance with specified KRS chapters — Effect of nondisclosure or noncompliance.

(1) Any state contract awarded under KRS Chapter 45A, 175, 176, 177, or 180 after July 15, 1994, shall require the contractor and all subcontractors performing work under the contract to:

(a) Reveal any final determination of a violation by their respective company within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and

(b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.

(2) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's:

(a) Cancellation of the contract; and

(b) Disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

(3) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's disqualification of the subcontractor from eligibility for future state contracts for a period of two (2) years.

History.

Enact. Acts 1994, ch. 491, § 1, effective July 15, 1994; 1998, ch. 520, § 1, effective July 15, 1998.

45A.487. Definitions for KRS 45A.487 and 45A.488.

(1) "Public agency" as used in KRS 45A.487 and 45A.488 has the same meaning as KRS 61.870.

(2) "Public works" as used in KRS 45A.487 and 45A.488 means all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities," as defined in KRS 197.500, constructed under contract with any public agency.

History.

2019 ch. 38, § 1, effective June 27, 2019.

45A.488. Restrictions on requirements relating to labor organizations in bid specifications and other contract documents — Grants, tax abatements, and tax credits — Exemption for threat to public health or safety.

(1) A public agency awarding a contract for a public works project shall not in the bid specifications, project agreements, or other contract documents:

(a) Require or give preference to a bidder, offeror, or contractor in any contractor tier to enter into or adhere to an agreement with a labor organization relating to the public works contract or any other public works project; or

(b) Prohibit a bidder, offeror, or contractor in any contractor tier from entering into or adhering to an agreement with a labor organization relating to the public works project or any other public works project.

(2) A public agency shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that a person awarded the grant, tax abatement, or tax credit include a term described in subsection (1) of this section in a contract document for any public works project that is the subject of the grant, tax abatement, or tax credit.

(3) This section does not do any of the following:

(a) Prohibit a public agency from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, or contractor in any contractor tier who is party to an agreement with a labor organization if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit;

(b) Prohibit a contractor in any contractor tier from voluntarily entering into or complying with an agreement entered into with a labor union in regard to a contract with a public agency or funded in whole or in part from a grant, tax abatement, or tax credit from a public agency;

(c) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. secs. 151 et seq.; or

(d) Interfere with labor relations of parties that are not regulated under the National Labor Relations Act, 29 U.S.C. secs. 151 et seq.

(4) A public agency may exempt a particular project, contract in any contractor tier, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of this section if the public agency finds, after public notice and hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this subsection may not be based on the possibility or presence of a labor dispute concerning:

(a) The use of contractors at any contractor tier who are not signatories to, or otherwise do not adhere to, agreements with one (1) or more labor organizations; or

(b) Employees on the project who are not members of, or affiliated with, a labor organization.

History.

2019 ch. 38, § 2, effective June 27, 2019.

45A.489. Price contracts for procurement of school bus accessory equipment — List to be maintained by cabinet — Access of list to school districts.

The Finance and Administration Cabinet shall compile and maintain a list detailing the price contracts for the procurement of school bus accessory equipment and supplies and replacement equipment that meet the standards and specifications adopted by the Kentucky Department of Education under KRS 156.153. The cabinet shall provide districts with access to the list.

History.

2024 ch. 26, § 2, effective July 15, 2024.

PREFERENCE FOR RESIDENT BIDDERS

45A.490. Definitions for KRS 45A.490 to 45A.494.

As used in KRS 45A.490 to 45A.494:

(1) "Contract" means any agreement of a governmental body, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and

(2) "Governmental body" has the same meaning as in KRS 45A.030.

History.

Enact. Acts 2010, ch. 162, § 1, effective July 15, 2010; 2023 ch. 63, § 1, effective June 29, 2023.

45A.492. Legislative declarations.

The General Assembly declares:

(1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by its governmental bodies; and

(2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

History.

Enact. Acts 2010, ch. 162, § 2, effective July 15, 2010; 2023 ch. 63, § 2, effective June 29, 2023.

45A.494. Reciprocal preference to be given by governmental bodies to resident bidders — List of states — Administrative regulations.

(1) Prior to a contract being awarded to the lowest

responsible and responsive bidder on a contract by a governmental body, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

(2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

(a) Is authorized to transact business in the Commonwealth; and

(b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.

(3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.

(4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(5) This section shall apply to all contracts funded or controlled in whole or in part by a governmental body.

(6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by governmental bodies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any governmental body soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

History.

Enact. Acts 2010, ch. 162, § 3, effective July 15, 2010; 2023 ch. 63, § 3, effective June 29, 2023.

RECYCLED MATERIAL CONTENT PRODUCTS

45A.540. Purchase of materials with minimum recycled material content through central stores.

Every county, city, school district, and special district may purchase goods, supplies, equipment, material, and printing which meet the procurement standards for minimum recycled material content through the central stores branch of the Division of Material and Procurement Services in the Finance and Administration Cabinet. Counties, cities, school districts, and special districts which purchase goods, supplies, equipment, material, and printing which meet the procurement standards established pursuant to KRS 45A.520 for minimum recycled material content shall receive a fifty percent (50%) reduction in any administrative fee the central purchasing agency is authorized to charge.

History.

Enact. Acts 1990, ch. 367, § 9, effective July 13, 1990; 1991 (1st Ex. Sess.), ch. 12, § 57, effective February 26, 1991; 2000, ch. 5, § 8, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Cox, What May States Do About Out-of-State Waste in Light of Recent Supreme Court Decisions Applying the Dormant Commerce Clause? Kentucky As Case Study in the Waste Wars, 83 Ky. L.J. 551 (1994-95).

MISCELLANEOUS PROCUREMENT PROVISIONS

45A.605. Finance and Administration Cabinet's authority to enter into contracts for "information highway" for state agencies — Mandatory use — Exceptions — Status as a state agency price contract — Access to contract by certain nonprofit schools, nonprofit organizations, and economic development entities.

(1) As used in this section:

(a) "Information highway" means a communication network for voice, data, and video communications technologies; and

(b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.

(2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector. These opportunities shall include but not be limited to the implementation of transactions and activities associated with the provision of telehealth by licensed health-care providers as provided in KRS Chapters 205, 211, 304.17A, 310, 311, 312, 313, 314, 314A, 315, 319, 319A, 320, 327, 334A, and 335.

(3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.

(4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown.

(5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations" mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.

(6) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which any entity that has been approved for economic development incentives under programs approved and administered by the Kentucky Economic Development Finance Authority may have access and use on the same terms as agencies of the Commonwealth of Kentucky.

(7) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which nonprofit organizations whose exclusive purpose is the delivery of services related to education, economic development, or cultural arts and humanities, may have access and use on the same terms as agencies of the Commonwealth of Kentucky. For the purposes of this section, "nonprofit organizations" means those organizations which have been granted tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code or those existing education based entities whose purpose is the delivery of services to state school systems, their employees, or their governing organizations and which have been granted tax-exempt status under Section 501(c)(6) of the United States Internal Revenue Code.

History.

Enact. Acts 1994, ch. 439, § 1, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 4, § 35, effective May 30, 1997; 2000, ch. 362, § 1, effective July 14, 2000; 2000, ch. 376, § 1, effective July 14, 2000; 2005, ch. 30, § 6, effective March 8, 2005; 2017 ch. 80, § 4, effective June 29, 2017.

Compiler's Notes.

Section 501(c)(3) and (6) of the United States Internal Revenue Code, referred to in (7), are codified as 26 USCS § 501(c)(3) and (6).

45A.607. Required contract provision restricting contractor from participating in certain boycott actions — Exceptions — Administrative regulations.

(1) As used in this section:

(a) "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with:

1. A jurisdiction with which Kentucky can enjoy open trade; or

2. A person or entity doing business with a jurisdiction with which Kentucky can enjoy open trade; but

"boycott" does not mean an action taken for bona fide business or economic reasons or that is specifically required by federal or state law; and

(b) "Jurisdiction with which Kentucky can enjoy open trade" means:

1. Any World Trade Organization member; and

2. Any jurisdiction with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.

(2) A governmental body shall not enter into a contract under this chapter with a contractor unless the contract includes a representation by the contractor that the contractor is not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade. This subsection shall not apply to a:

(a) Contract with a value of less than one hundred thousand dollars ($100,000); or

(b) Contractor who:

1. Is an individual; or

2. Employs five (5) or fewer employees.

(3) A governmental body may terminate a contract with a contractor for:

(a) A false representation made under subsection (2) of this section; or

(b) Engaging in a boycott at the time of entering into the contract or during the duration of the contract.

(4) A request for proposal, invitation to bid, or other document issued by a governmental body with the intent of soliciting responses for the potential award of a contract shall include notice of the requirements under this section.

(5) The secretary shall promulgate administrative regulations under KRS Chapter 13A for the administration of this section.

History.

2019 ch. 58, § 1, effective March 25, 2019.

45A.620. Preference to high-calcium foods and beverages in purchasing for school meals.

(1) This section shall apply to any contract entered into by an agency or a business that contracts with a local school board, local school district, or other agency to provide food or meal services.

(2) In addition to any requirements established by the United States Department of Agriculture under the National School Lunch Program, the School Breakfast Program, or other federally supported food service programs, an agency or business that provides food or meal services under contract with a local school board, local school district, or other agency shall give preference in purchasing contracts to high-calcium foods or beverages.

(3) For the purposes of this section, the term "high-calcium foods or beverages" means foods or beverages

that contain a higher level of calcium and that are equal to or lower in price than other products of the same type and quality.

(4) Notwithstanding subsection (2) of this section, if the director of a program operated by an agency or business offering food or meal services on behalf of a local school board, local school district, or other agency determines that a high-calcium food or beverage would interfere with the proper treatment and care of an individual receiving services from the program, then the purchasing agent for that institution or business shall not be required to purchase a high-calcium food or beverage for that individual.

(5) A purchasing agent who has entered into a contract with a supplier to purchase food or beverages before July 1, 2002, is not required to purchase high-calcium foods or beverages if purchasing those products would change the terms of the contract.

History.

Enact. Acts 2002, ch. 168, § 1, effective July 15, 2002.

45A.625. Implementation of procurement strategy for greater use of alternative fuel motor vehicles — Reports.

(1) The Finance and Administration Cabinet shall implement a strategy to:

(a) Replace at least fifty percent (50%) of the state-owned passenger vehicles and light-duty trucks managed by the Office of Fleet Management as of January 1,2026, with:

1. New qualified hybrid motor vehicles as defined in 26 U.S.C. sec. 30B;

2. New advanced lean burn technology motor vehicles as defined in 26 U.S.C. sec. 30B;

3. New qualified fuel cell motor vehicles as defined in 26 U.S.C. sec. 30B; or

4. New qualified alternative fuel motor vehicles as defined in 26 U.S.C. sec. 30B; and

(b) Increase the use of ethanol, cellulosic ethanol, biodiesel, and other alternative transportation fuels as defined in KRS 152.715 to levels that are commensurate with the increase in vehicles managed by the Office of Fleet Management that are capable of utilizing those alternative transportation fuels.

(2) On or before December 1, 2024, and every December 1 thereafter, the cabinet shall report to the Legislative Research Commission on its progress in:

(a) Transitioning to motor vehicles as outlined in subsection (1) of this section, including a life-cycle cost comparison, and a projected timetable to replace motor vehicles in the state motor pool as provided in subsection (1) of this section; and

(b) Increasing the use of ethanol, cellulosic ethanol, biodiesel, and alternative transportation fuels, including the targeted amount and the dates by which these targets shall be achieved.

History.

Enact. Acts 2007 (2nd Ex. Sess.), ch. 1, § 34, effective August 30, 2007; repealed, reenact., and amend., Acts 2013, ch. 116, § 8, effective June 25, 2013; 2022 ch. 51, § 5, effective July 14, 2022; 2023 ch. 82, § 1, effective June 29, 2023.

PENALTIES

45A.990. Penalties.

(1) Any violation of KRS 45A.045 shall be deemed a Class D felony.

(2) Any person who violates any of the provisions of KRS 45A.325 shall be guilty of a Class D felony. Any firm, corporation, or association which violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars ($10,000) nor more than twenty thousand dollars ($20,000).

(3) Any person who violates any provisions of KRS 45A.330 to 45A.340 shall be guilty of a Class B misdemeanor, and in addition he shall be adjudged to have forfeited any statutory office or employment which he may hold.

(4) Any willful violation of KRS 45A.690 to 45A.725 shall be a Class A misdemeanor.

(5) Any person who willfully violates this code shall be guilty of a Class A misdemeanor.

(6) Any employee or any official of the Commonwealth of Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for, or to, or from, any person, partnership, firm, or corporation, offering, bidding for, or in open market seeking to make sales to the Commonwealth of Kentucky, shall be deemed guilty of a Class C felony.

(7) Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money or any other thing of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, to any employee or to any official of the Commonwealth, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a Class C felony.

(8) Criminal penalties for violations of the laws which are in existence on January 1, 1980, shall not be impaired.

(9) This section shall not apply to any officer or employee of a political subdivision, including a school district, nor to the procurement activities of any such political subdivision unless such political subdivision has elected to operate under KRS 45A.345 through 45A.460.

History.

Enact. Acts 1978, ch. 110, §§ 69, 94; 1980, ch. 40, § 3, effective March 12, 1980; 1980, ch. 250, § 17, effective April 9, 1980; 1990, ch. 496, § 22, effective July 13, 1990; 1992, ch. 463, § 7, effective July 14, 1992.

CHAPTER 49

OFFICE OF CLAIMS AND APPEALS

Subchapter
Investigations, Hearings, and Compensation for Negligent Acts.

Section
49.040. Exclusive jurisdiction of Board of Claims — Limitation on damage awards — Hearing officers — Official records — Agreed judgment or dismissal if settlement reached.

History.
2017 ch. 74, § 1, effective June 29, 2017.

INVESTIGATIONS, HEARINGS, AND COMPENSATION FOR NEGLIGENT ACTS

49.040. Exclusive jurisdiction of Board of Claims — Limitation on damage awards — Hearing officers — Official records — Agreed judgment or dismissal if settlement reached.

(1) Regardless of any provision of law to the contrary, the jurisdiction of the Board of Claims is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed two hundred fifty thousand dollars ($250,000), exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed four hundred thousand dollars ($400,000), to be equitably divided among the claimants, but in no case may any claimant individually receive more than two hundred fifty thousand dollars ($250,000).

(2) Hearing officers, upon the direction of the board, the board chair, or the executive director of the Office of Claims and Appeals shall conduct hearings and otherwise supervise the presentation of evidence and perform any other duties assigned to them by the board, the board chair, or the executive director of the Office of Claims and Appeals, except that such hearing officers shall not render final decisions, orders, or awards. However, such hearing officers may, in receiving evidence on behalf of the board, make such rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

(3) The board shall maintain the official record of the claim, including evidence entered into the record at a hearing on the claim, and the final action taken on each claim. All records of proceedings shall be public records.

(4) Upon recommendation to the board by the attorney for the Commonwealth, its cabinet, department, bureau, agency, or employee thereof, that a settlement has been reached between the parties to the claim, and upon approval by the board that the settlement is reasonable for all parties concerned, an agreed judgment or dismissal may be entered accordingly, even without a party's admission to liability.

History.
Enact. Acts 1946, ch. 189, §§ 1, 3, par. 1; 1950, ch. 50, § 1; 1956 (1st Ex. Sess.), ch. 7, Art. XIII, § 1; 1958, ch. 52, § 1; 1960, ch. 25, § 1; 1972, ch. 234, § 1; 1976, ch. 326, § 2; 1978, ch. 15, § 1, effective June 17, 1978; 1986, ch. 279, § 1, effective July 15, 1986; 1986, ch. 499, § 3, effective July 15, 1986; 2000, ch. 304, § 4, effective July 14, 2000; renumbered from § 44.070 by 2017 ch. 74, § 4, effective June 29, 2017; 2021 ch. 185, § 15, effective June 29, 2021.

NOTES TO DECISIONS

1. Jurisdiction.
Employee's asbestos-related workers' compensation claim against a board of education did not fall within the exclusive jurisdiction of the Board of Claims because the employee's request for a workers' compensation remedy required no showing of negligence and in no way constituted a claim for damages against the Commonwealth under this section. Letcher Cnty. Bd. of Educ. v. Hall, 671 S.W.3d 374, 2023 Ky. LEXIS 164 (Ky. 2023).

TITLE VII

PUBLIC PROPERTY AND PUBLIC PRINTING

Chapter
56. State Lands and Buildings.
57. Public Printing and Distribution of Public Documents.
58. Acquisition and Development of Public Projects Through Revenue Bonds.

CHAPTER 56

STATE LANDS AND BUILDINGS

General Provisions.

Section
56.030. State, when made grantee or lessee of land.

Property and Buildings Commission.

56.440. Definitions for chapter.
56.450. State Property and Buildings Commission — Issuance of revenue bonds.
56.467. Commission to assist school financing.
56.495. Kentucky university and college projects.
56.513. Interim financing — Revenue bond anticipation notes — Loan agreements — Tax status.
56.520. Revenue bonds — Investment of proceeds of authorized bonds.
56.550. Applicability of KRS 56.440 to 56.540 to certain projects.

GENERAL PROVISIONS

56.030. State, when made grantee or lessee of land.

(1) Except as provided in KRS 177.060, 177.070 and 183.120, the Commonwealth shall be named as the grantee of any land given or devised to the state, or partly or wholly paid for out of state funds, and of any land or interest in land conveyed to it or for its use or for the use of any of its agencies or officers.

(2) Except as provided in KRS 183.120, the Commonwealth shall be named as the lessee in all leases for governmental purposes or for the use of the state.

History.
2337a-2, 2337a-6.

NOTES TO DECISIONS

Analysis

1. Suit for Sale of Land.
2. Tax Exempt Status.

1. Suit for Sale of Land.

By virtue of this section, an action against the State Park Commission (now Department of Parks), by a person owning a tract jointly with it, for a sale of the tract and division of the proceeds, was an action against the state and could not be maintained. However, an action for damages could be maintained, the state having waived its immunity in such cases. Kentucky State Park Com. v. Wilder, 256 Ky. 313, 76 S.W.2d 4, 1934 Ky. LEXIS 401 (Ky. 1934).

2. Tax Exempt Status.

The fact that the Commonwealth of Kentucky is not a named grantee in the deed to the state bar center building does not prevent the property from being public property and does not deprive the property of a tax exempt status. Travis v. Landrum, 607 S.W.2d 124, 1980 Ky. App. LEXIS 373 (Ky. Ct. App. 1980).

The Kentucky Bar Center building located in Frankfort, Kentucky, is public property and therefore exempt from the levy of ad valorem taxes. Travis v. Landrum, 607 S.W.2d 124, 1980 Ky. App. LEXIS 373 (Ky. Ct. App. 1980).

Cited:

Ex parte Auditor of Public Accounts, 609 S.W.2d 682, 1980 Ky. LEXIS 274 (Ky. 1980).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Airports, acquisition of land for is not governed by this section, KRS 183.771.

Purchase of real estate by state, who to authorize, KRS 45A.045.

Purchase price must be set out in deed, KRS 45.450.

School property, how title taken, KRS 160.160, 162.010, 162.020.

Title to real estate, how taken when revenue bonds are issued, KRS 56.510.

PROPERTY AND BUILDINGS COMMISSION

56.440. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the State Property and Buildings Commission;

(2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;

(3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);

(4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;

(5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs, and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;

(6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;

(7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and

activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;

(8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;

(9) "Cabinet" means the Finance and Administration Cabinet;

(10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;

(11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight;

(12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure;

(13) "Meeting" means all gatherings of every kind, including video teleconferences;

(14) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment;

(15) "Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation;

(16) "Branch budget" shall have the same meaning as in KRS 48.010;

(17) "Reverse auction" shall have the same meaning as in KRS 45A.070;

(18) "Headquarters" means the principal office where the principal executives of the entity are located and from which other personnel, branches, affiliates, offices, or entities are controlled;

(19) "Nonretail service and technology project" means and includes the acquisition of any real estate and the construction, acquisition, equipping, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of that real estate for conveyance to or lease to nonretail service and technology entities to be used for call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, or other similar activities; and

(20) "Nonretail service and technology entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates operate call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, and research and development facilities, or conduct other similar activities.

History.

Enact. Acts 1949 (Ex. Sess.), ch. 11, § 1; 1956 (Ex. Sess.), ch. 7, Art. XVI, § 1; 1962, ch. 15, § 1; 1964, ch. 7, § 1; 1966, ch. 255, § 58; 1968, ch. 199, § 1; 1970, ch. 204, § 8; 1976, ch. 205, § 1, effective October 1, 1976; 1982, ch. 447, § 10, effective January 1, 1984; 1986, ch. 350, § 2, effective April 8, 1986; 1986, ch. 357, § 1, effective July 15, 1986; 1988, ch. 395, § 1, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 284, effective July 13, 1990; 1994, ch. 387, § 25, effective July 15, 1994; 1998, ch. 120, § 22, effective July 15, 1998; 2009, ch. 78, § 35, effective June 25, 2009; 2010, ch. 63, § 9, effective July 15, 2010; 2018 ch. 199, § 1, effective July 14, 2018.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.

1. Constitutionality.

The State Property and Buildings Commission was not acting arbitrarily or without rules to govern it where the State Property and Buildings Commission Act was comprehensive and complete regarding the power and authority of the commission to issue and sell revenue bonds and the commission was definitely circumscribed in the manner and procedure with respect thereto. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

2. Construction.

Since an act may have a single general subject expressed in the title and may contain many provisions providing they are not inconsistent with or foreign to the subject, the State Property and Buildings Commission Act (KRS 56.440 to 56.550) does not contain inconsistencies in violation of Ky. Const., § 51 requiring the subject of the act to be expressed in its title and not to relate to more than one subject. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

KRS 56.440 to 56.550, setting up the State Property and Buildings Commission provides an adequate standard by which the commission is to govern its actions in determining the necessity for the construction of buildings for the use and occupancy of the Commonwealth, its departments and agencies, and for the issuance of revenue bonds to construct same and the act on its face is not invalid although possibly far-reaching. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Educational television, KRS Ch. 168.

Kentucky Bench & Bar.

Tobergte, The Impact of Kentucky's Present Constitution Upon Business Growth & Development, Volume 51, No. 3, Summer 1987 Ky. Bench & B. 21.

Kentucky Law Journal.

Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Northern Kentucky Law Review.

Note, Facing the Economic Challenges of the Eighties — the Kentucky Constitution and Hayes v. The State Property and Buildings Commission of Kentucky, 15 N. Ky. L. Rev. 645 (1988).

56.450. State Property and Buildings Commission — Issuance of revenue bonds.

(1) There is recognized, as an independent agency of the state within the meaning of KRS Chapter 12, and as a constituted authority of the Commonwealth of Kentucky, a state and a sovereign entity within the meaning of regulations of the United States Department of the Treasury, Internal Revenue Service, a State Property and Buildings Commission composed of the Governor, who shall be chairman thereof, the Lieutenant Governor who shall be vice chairman of the commission, the Attorney General, the secretary of the Cabinet for Economic Development, the executive director of the Office of the Controller, the state budget director, and the secretary of the Finance and Administration Cabinet, or their alternates as authorized in subsection (5) of this section.

(2) No member of the commission shall receive any salary, fee, or other remuneration for his services as a member of the commission, but each member shall be entitled to be reimbursed for his ordinary traveling expenses, including meals and lodging, incurred in the performance of his duties.

(3) The commission shall constitute a public body corporate with perpetual succession and power in its name to contract and be contracted with, sue and be sued, adopt bylaws, have and use a corporate seal, and exercise all of the powers granted to private corporations generally in KRS Chapter 271B, except as that chapter may be inconsistent with KRS 56.440 to 56.550.

(4) Subject to the provisions of KRS 56.550, but notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, all revenue bonds issued by state agencies, except as provided in this chapter (but not including bonds issued directly by and in the name of the Commonwealth of Kentucky under authorization of the executive cabinet), shall be issued under the provisions of this chapter. As an additional and alternative method for the issuance of revenue bonds under the provisions of this chapter, upon application of any state agency and approval by the commission, the commission acting for and on behalf of said state agency may issue revenue bonds in its own name, in accordance with the terms and provisions of KRS Chapter 58, secured by and payable solely from all or any part of the revenues of the state agency as may be specified and provided in the approved application. Any covenants and undertakings of the state agency in the approved application with regard to the production of revenues and the use, application, or disposition thereof may be enforced by the holders of any of the revenue bonds or by any trustee for such bondholders. The issuance of any revenue bonds for the state or any of its agencies by or on behalf of the Kentucky Economic Development Finance Authority and the issuance of any revenue bonds for economic development projects authorized by Acts 1980, Ch. 109, shall require the prior approval of the State Property and Buildings Commission. In issuing bonds under its own name, or in approving issuance of bonds by other state agencies, the commission shall be deemed to be acting for the state government of the Commonwealth of Kentucky as one (1) unit within the meaning of the regulations of the United States Department of the Treasury, Internal Revenue Service, and it shall be limited to the issuance of bonds to accomplish the public purposes of that unit.

(5)(a) Each member of the commission may designate, by an instrument in writing over his signature and filed with the secretary as a public record of the commission, an alternate with full authority to attend in the absence of the appointing member for any reason, any properly convened meeting of the commission and to participate in the consideration of, and voting upon, business and transactions of the commission. Any designation of an alternate may, in the discretion of the appointing member, be limited upon the face of the appointing instrument, to be effective only for a designated meeting or only for specified business; or the same may be shown on the face of the appointing instrument to be on a continuing basis (but in no case for a period of more than four (4) years), whenever the appointing member is unable to attend, but always subject to revocation by the appointing member in an instrument of like formality, similarly filed with the secretary as a public record of the commission. Any party transacting business with the commission, or materially affected thereby, shall be entitled to accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time of designation, the scope thereof, and if of a continuing nature, whether the same has been revoked, and when; and the joint certificate shall be made and delivered to any such party within a reasonable time after written request is made therefor with acceptable identification of the business or transaction referred, and of the requesting party's interest therein. Each alternate shall be a person on the staff of the appointing member, or in the employ of his agency or department of the government of the Commonwealth, as the case may be.

(b) Any four (4) members of the commission, or their alternates authorized under paragraph (a) of this subsection, shall constitute a quorum and shall by majority vote be authorized to transact any and all business of the commission.

(c) The State Property and Buildings Commission is reconstituted as of October 1, 1976, with the powers herein provided.

History.

Enact. Acts 1949 (Ex. Sess.), ch. 11, § 2; 1960, ch. 63, Art. XIII; 1962, ch. 15, § 2; 1964, ch. 7, § 2; 1972, ch. 274, § 144; 1974, ch. 74, Art. II, § 9(2); 1976, ch. 205, § 2, effective October 1, 1976; 1980, ch. 141, § 2, effective July 15, 1980; 1980, ch. 295, § 16, effective July 15, 1980; 1982, ch. 396, § 7, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 118, effective July 13, 1990; 1992, ch. 105, § 58, effective March 30, 1992; 1996, ch.

101, § 2, effective July 15, 1996; 2005, ch. 85, § 79, effective June 20, 2005; 2009, ch. 12, § 30, effective June 25, 2009.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Revenue Bonds.

1. Applicability.

Acts 1960, ch. 128 (now repealed) relating to acquisition and use of voting machines and the method of financing them which act was enrolled March 15, 1960 and signed by the governor March 25, 1960 and which declared an emergency took effect immediately and was an authorized exception to this section (Acts 1960, ch. 68, Art. XIII) which was enrolled March 17, 1960 and signed by the Governor on the same day effective July 1, 1960 since there is not such a conflict between the two that effect cannot be given to both and which would sanction repeal. State Property & Bldg. Com. v. Hays, 346 S.W.2d 3, 1961 Ky. LEXIS 277 (Ky. 1961).

2. Revenue Bonds.

It is not within the court's jurisdiction to determine if sufficient funds are available to complete a building as this is a matter for the State Property and Buildings Commission and the purchasers of the revenue bonds. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

It is not within the court's jurisdiction to declare that a proposed plan will produce sufficient funds to retire revenue bonds issued under this section at their respective maturities and to pay interest coupons attached as this is a matter for the purchasers of the bonds to consider before they bid for the purchase of the bonds. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

It is not within the province of the court to determine whether or not bonds can be fully executed and tendered within a given time. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

The State Property and Buildings Commission may issue revenue bonds for the construction of a building project and the improvement of real estate owned by the Commonwealth. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

OPINIONS OF ATTORNEY GENERAL.

In a business meeting the chairman of the commission may second a motion of another member. OAG 69-83.

Under KRS 58.050 and 56.872(2) the costs of issuing bonds, inclusive of bond discount, capitalized interest, and a debt service reserve, are in fact and as a matter of law proper "costs of issuance" of such bonds, to be added to the authorized level of a revenue bond financed project (which construction project costs are delineated in capital construction sections of the biennial appropriations and budget report) in arriving at the authorized financing of such project. The power to include such financing costs in the total bond package is an implied power of the State Property and Buildings Commission in issuing revenue bonds under subsection (4) of this section; this implied power is clearly and inevitably necessary in order that the commission may carry out its express power of issuing revenue bonds. OAG 82-583, 1982 Ky. AG LEXIS 61.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Montague III, The Office of Attorney General in Kentucky, 49 Ky. L.J. 194 (1960); Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

56.467. Commission to assist school financing.

The commission shall exercise the powers prescribed by KRS 162.520, 162.540, 162.550, 162.580, 162.590, 162.600, and 162.620 for the purpose of assisting boards of education of any county or independent school district in financing public school building projects and undertakings.

History.

Enact. Acts 1964, ch. 7, § 7; 1966, ch. 255, § 60; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 285, effective July 13, 1990.

56.495. Kentucky university and college projects.

The boards of regents of the respective state universities and the Kentucky Community and Technical College System and the board of trustees of the University of Kentucky may issue, under the provisions of KRS 162.340 to 162.380, consolidated educational building revenue bonds or housing bonds, provided that prior to seeking the final approval required by KRS 56.491, the board of the state university or the Kentucky Community and Technical College System shall submit to the commission, through the cabinet, a request for approval of the project before any financial commitment of any sort may be made in connection therewith, including employment of architects, engineers, fiscal agents, or attorneys. The request shall include a general description of the project and its need, use, location, approximate size, and such other information as the cabinet may require. After approval by the commission, the cabinet shall appoint fiscal agents, bond counsel, and architects and engineers as may be required to make plans and specifications or financial arrangements for the project.

History.

Enact. Acts 1964, ch. 7, § 5; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 286, effective July 13, 1990; 1997 (1st Ex. Sess.), ch. 1, § 36, effective May 30, 1997.

56.513. Interim financing — Revenue bond anticipation notes — Loan agreements — Tax status.

(1) When the State Property and Buildings Commission makes a determination, in accordance with the provisions of this chapter, that one (1) or more building projects or industrial development projects will be financed by the issuance of revenue bonds, then in anticipation of such financing the commission may borrow money to provide interim financing therefor and issue in evidence thereof its revenue bond anticipation notes, bearing interest at a rate or rates not exceeding the maximum rate permitted for the issuance of such bonds. Such interim financing may be entered into for the commission's own projects, for those of the University of Kentucky and the state colleges or universities or for any other agency of the Commonwealth where approval by the commission is required regarding the issuance of revenue bonds of such an agency. In instances where the revenue bonds involved are to be issued by other agencies, such

agencies, with the prior approval of the commission, may borrow money in the same manner and for the same purpose and issue in evidence thereof their own revenue bond anticipation notes, according to rules and regulations promulgated by the commission.

(2) The commission shall solicit proposals for such interim financing from at least three (3) responsible lenders, and shall select in its discretion the best of such proposals consistent with sound financial practices. A selection may be made even though less than three (3) proposals are received. The term of any such revenue bond anticipation note shall not exceed five (5) years; and the same may be renewed, if necessary.

(3) Each revenue bond anticipation note may include prepayment provisions which will allow the commission or other borrowing agency to prepay the loan after giving reasonable notice to the lender; shall identify the revenue bond issue from the proceeds of which the note or notes and any interest thereon are to be paid; and shall include a statement that the note is being issued in anticipation of the identified revenue bond issue, and that neither the note, nor the interest thereon, shall constitute or evidence an indebtedness of the Commonwealth of Kentucky. Each such note and the interest thereon (to any extent not previously paid from other sources) shall be paid from the proceeds of the identified revenue bond issue, when such proceeds have been received and are available.

(4) Instead of borrowing money and issuing revenue bond anticipation notes in the full amount necessary for construction contract purposes, the commission (or such agencies with the prior approval of the commission and according to its rules and regulations), may enter into loan agreements with one (1) or more lenders (determined by the commission to be responsible) according to the terms of which it may be agreed:

(a) That the lender will continuously make available to the borrowing agency a stated maximum amount of money for a stated period of time;

(b) That the borrowing agency may demand and obtain cash advances against such commitment from time to time upon reasonable and agreed notice, and upon issuing in evidence of each advance a bond anticipation note which will bear an agreed rate of interest, not exceeding the maximum rate permitted for the issuance of the proposed bonds; and

(c) That in consideration of the making of such loan agreement the borrowing agency will pay to the lender or lenders a commitment fee determined by the commission to be reasonable according to financial conditions existing at the time the loan agreement is made.

Such loan agreements may be recorded as receivables upon the books of account of the commission, the secretary of the Finance and Administration Cabinet, or other borrowing agency, and construction contracts may be awarded against the same to the amount of money which the lender contractually agrees to make available to the borrowing agency, the same as in the case of loan agreements made with departments or agencies of the United States government.

(5) Each revenue bond anticipation note issued according to this section, and the receipt of interest thereon, shall be exempt from all taxation by the Commonwealth and all of its subdivisions, municipalities, and taxing authorities; and this may be stated as a representation in the text of each such revenue bond anticipation note.

(6) The State Property and Building Commission and other state agencies authorized to issue revenue bond anticipation notes under the terms of this section may, as an alternative and if authorized to do so by the governing body of such commission or agency, adopt the procedures for interim financing established for counties, cities, and other municipal corporations, or their agencies, by KRS 58.150.

History.

Enact. Acts 1966, ch. 137, § 1; 1968, ch. 110, § 1; 1970, ch. 152, § 1; 1986, ch. 350, § 4, effective April 8, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 287, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Note, Facing the Economic Challenges of the Eighties — the Kentucky Constitution and Hayes v. The State Property and Buildings Commission of Kentucky, 15 N. Ky. L. Rev. 645 (1988).

56.520. Revenue bonds — Investment of proceeds of authorized bonds.

(1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following purposes:

(a) To acquire real estate for state governmental use;

(b) To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;

(c) To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.

(2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of this chapter, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.

(3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or the secretary's representative at a designated place, day, and hour, all of which shall be indicated in the notice made relative thereto.

(4) If the commission issues and sells bonds for a building project as authorized by this chapter, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in

connection with the building project, and it may so obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.

(5) The commission may invest proceeds from the sale of its revenue or other authorized bonds in financial instruments and investments as provided in KRS 42.500 for the State Investment Commission.

History.

Enact. Acts 1949 (Ex. Sess.), ch. 11, § 9; 1956, ch. 90; 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 10; 1962, ch. 15, § 3; 1968, ch. 110, § 2; 1968, ch. 152, § 22; 1976, ch. 205, § 4, effective October 1, 1976; 1988, ch. 395, § 3, effective July 15, 1988; 1990, ch. 277, § 2, effective July 13, 1990; 1990, ch. 291, § 3, effective July 13, 1990; 1990, ch. 476, Pt. V, § 288, effective July 13, 1990; 1998, ch. 120, § 26, effective July 15, 1998; 1998, ch. 207, § 1, effective July 15, 1998; 1998, ch. 554, § 2, effective July 15, 1998.

Legislative Research Commission Note.

(7/13/90). The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. Because there is a conflict between these two amending Acts, the amending Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 120, 207, and 554 which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Exemption from Taxation.

1. Constitutionality.

Where bondholders may look only to such funds as may be derived from rentals or operation of a building and under the proposal there is no created tax burden or obligation of the state to appropriate or pay the indebtedness or to be looked to as security, the bonds issued by State Property and Buildings Commission to erect capitol annex office building do not constitute an indebtedness of the state within any constitutional provision or inhibition. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

2. Exemption from Taxation.

Revenue bonds and the coupons attached thereto issued by the State Property and Buildings Commission payable only from rentals collected for the occupancy of state capitol annex office building are exempt from all state, county, school and municipal taxes, including state income tax. Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85, 1950 Ky. LEXIS 902 (Ky. 1950).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Issuance of revenue bonds for public projects, KRS 58.020.

Issuance of revenue bonds for state fair improvements, KRS 247.180.

Kentucky Law Journal.

Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

56.550. Applicability of KRS 56.440 to 56.540 to certain projects.

(1) Nothing in KRS 56.440 to 56.540 shall be construed to apply to the construction of roads or bridges or the acquisition of rights-of-way or real estate in connection therewith now under the jurisdiction of the Department of Highways or the Turnpike Authority of Kentucky, or for any other expenditure made from the state road fund or by said turnpike authority.

(2) Except as provided by KRS 56.467, 162.520 to 162.620, nothing in KRS 56.440 to 56.540 shall be construed to apply to school districts, or to affect the rights, powers, and duties of the governing authorities of such districts; provided, however, that the acquisition of sites, and the acquisition, purchase, construction, leasing, and operation of television or related facilities as an aid to education or as an aid to any other proper public function, shall be deemed to be matters of statewide jurisdiction and interest, and any or all of such activities on the part of the commission shall not be deemed to constitute encroachment upon the authority of any school district.

History.

Enact. Acts 1949 (1st Extra. Sess.), ch. 11, § 12; 1962, ch. 15, § 4; 1964, ch. 7, § 10; 1970, ch. 204, § 9; 1974, ch. 74, Art. IV, § 20(1); 1986, ch. 350, § 5, effective April 8, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 289, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Educational television, KRS Ch. 168.

CHAPTER 57

PUBLIC PRINTING AND DISTRIBUTION OF PUBLIC DOCUMENTS

Section

57.370. State-owned books to be marked for identification.
57.375. Agency preparing documents to be identified — State expense noted when.

57.370. State-owned books to be marked for identification.

When deemed by the Finance and Administration Cabinet to be desirable or necessary, consistent with all relevant factors concerning acquisition and use, all public books of the state shall be designated as public property by placing on the title page, "Property of the State of Kentucky," and the binder shall press those words on the cover. The words, "Property of the Commonwealth of Kentucky," may also be used for such purpose. Each officer who is charged with possession of books acquired under this chapter shall write or otherwise designate in or on each book the name of the office to which it belongs, if such books are to be retained permanently by such officer or his agency.

History.

2427: amend. Acts 1966, ch. 129, § 1.

57.375. Agency preparing documents to be identified — State expense noted when.

All public documents printed under this chapter shall indicate the office of the unit preparing the

document; in addition, any document distributed without charge shall indicate that the cost of printing was paid from state funds.

History.
Enact. Acts 1966, ch. 129, § 2.

OPINIONS OF ATTORNEY GENERAL.

The discretion given to the director of purchases under this section relates exclusively to public books and the "property of" requirement applies automatically to all documents where the cost of printing is paid from state funds and where they are distributed without charge. OAG 66-641.

The word "distributed" does not apply to documents where the distribution is required by law. OAG 66-641.

Travel folders, highway maps and other documents which are voluntarily distributed to members of the public should contain the required statement. OAG 66-641.

Local governments and agencies engaged in a tourist promotion program and receiving state matching funds from the Department of Public Information under its cooperative advertising program need not indicate on their printed promotional materials that printing costs have been paid in whole or in part from state funds. OAG 77-25, 1977 Ky. AG LEXIS 763.

CHAPTER 58

ACQUISITION AND DEVELOPMENT OF PUBLIC PROJECTS THROUGH REVENUE BONDS

Section
58.150. Revenue bond anticipation notes.
58.155. Grant anticipation notes.

Interest Rates on Public Bonds.

58.410. Definitions for KRS 58.410 to 58.440.
58.420. Public policy as to bond interest rates.
58.430. Removal of interest rate limits.
58.440. Refinancing at higher rate than that of original issue.

Energy Conservation Improvements.

58.600. Definitions for KRS 58.600 to 58.610.
58.605. Energy conservation revenue bonds for energy conservation measures — Procedure.
58.610. Issuance by school districts, county and city government, or special district — Special procedure.
58.615. [Repealed.]

58.150. Revenue bond anticipation notes.

(1) When the governing body of any county, city, or other municipal corporation, or agency thereof, shall make a determination that, in accordance with the provisions of any section of the statutes authorizing it to issue revenue bonds, assessment bonds, or mortgage bonds to finance any project, it will finance a project by the issuance of bonds, then in anticipation of financing, the governing body may provide for the interim financing of a project by the sale and issuance of revenue bond, assessment bond, or mortgage bond anticipation notes, as the case may be, bearing interest at a rate or rates not exceeding the maximum rate permitted for the issuance of the bonds so anticipated, and payable within a specified period of time only from the proceeds of the bonds, when issued, or from the revenues or income of the project as may be available prior to or at maturity of the notes; provided that the initial term of the notes shall not be in excess of five (5) years from the date of issuance. The term "revenue bond" means bonds, notes, or other obligations for the payment of money issued by the state, any county, municipality, or other public district or authority except a school district, or any corporation or other corporate body acting as an instrumentality of the unit, and payable from a special fund into which some or all of the revenues of a public project have been or will be paid. "Assessment bond" means bonds, notes, or other obligations for the payment of money issued by any one (1) or more of the same issuing authorities payable from a special fund into which assessments levied on properties for benefits conferred have been or will be paid in accordance with law. "Mortgage bond" means revenue bonds which are secured by a mortgage deed of trust. A school district shall not be excluded from these definitions if it is authorized by the Kentucky Board of Education, by general or special authorization, to proceed under the authority of this section or KRS 56.513 through the agency of the appropriate city or county.

(2) The notes authorized herein shall be sold in the same manner as the bonds in anticipation of which they are issued.

(3) Each bond anticipation note may include prepayment provisions which will allow the issuing authority to prepay the note after giving reasonable notice to the holder; shall identify the bond issue from the proceeds of which the note or notes and any interest thereon are to be paid; and shall include a statement that the note is being issued in anticipation of the identified bond issue, and that neither the note, nor the interest, shall constitute or evidence an indebtedness of the issuing authority. Each note and the interest, to the extent not previously paid from other sources, shall be paid from the proceeds of the identified bond issue, when the proceeds have been received and are available; provided, however, that payment from the revenues of the project, for the financing of which the bonds will eventually be issued, shall be permitted, and provision shall be made for payment of that portion of the principal of any note issue which represents the principal of the proposed bonds scheduled to mature on or prior to the maturity of the notes.

(4) The notes authorized herein may be issued in a principal amount sufficient to include all interest due on the notes at or prior to maturity, if the notes shall be issued for a term of three (3) years or less, and the notes may be sold at a discount representing the interest due to the purchaser during the term.

(5) When, prior to the maturity of any notes issued under the authority of this section or KRS 56.513, the governing body of the issuing authority shall make a determination that by reason of construction delays, changes in plans, uncertainties in the bond market, or other causes justifying delay in the final offering of the bond issue, the bond issue should not immediately be offered, renewal notes may be issued subject to the same limitations contained in this section or KRS 56.513 relative to the original issue of notes, and the proceeds of the sale of the renewal notes shall be

applied to the payment of the principal of the notes originally issued, or any prior issue of renewal notes, or to the payment of interest due or to become due on the notes or renewal notes; provided, however, that the interest, including discount, if any, payable from the proceeds of notes or renewal notes shall not exceed an amount equal to three (3) years' interest from the date of the original notes at the rate per annum established for the original notes.

(6) Counties, cities, and other municipal corporations, or agencies, in the discretion of the governing body in each case, may, as an alternative to this section and for interim financing purposes, solicit proposals, issue bond anticipation notes, and make commitment agreements in the same manner as provided for the State Property and Buildings Commission by KRS 56.513; provided, however, that in the case of notes issued on behalf of a school district, general or special approval of the Kentucky Board of Education shall be required in substitution for the approval of the State Property and Buildings Commission; and provided further, that the approval of the State Property and Buildings Commission will not be required for any issue of a county, city, or other municipal corporation, or any agency, and references to the commission shall be interpreted to be references to the governing body of the issuing authority.

(7) Nothing herein shall be deemed to invalidate any bond anticipation notes sold or issued under general statutes prior to the adoption of this section and KRS 56.513.

(8) Each bond anticipation note issued according to this section or KRS 56.513, and the receipt of interest on the note, shall be exempt from all taxation by the Commonwealth and all of its subdivisions, municipalities, and taxing authorities; and this may be stated as a representation in the text of each bond anticipation note.

History.

Enact. Acts 1970, ch. 152, § 2; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 290, effective July 13, 1990; 1996, ch. 274, § 62, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2021 ch. 152, § 3, effective June 29, 2021.

NOTES TO DECISIONS

Cited:

Hardin Memorial Hospital, Inc. v. Land, 645 S.W.2d 711, 1983 Ky. App. LEXIS 277 (Ky. Ct. App. 1983).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bond issue approval, 702 KAR 3:020.

Restructuring revenue bond issues, 702 KAR 3:260.

58.155. Grant anticipation notes.

(1) In the case of any public work or public project, in connection with which the Commonwealth of Kentucky, or any department, agency or bureau thereof, or any political subdivision or governmental unit of the Commonwealth of Kentucky ("governmental agency") has applied for and received federal grants-in-aid or is entitled as a matter of law to receipt of federal grants-in-aid which may be applied for the purpose of providing a portion of or all of the funds required for construction and installation of any such public work or public project, such governmental agency may authorize and issue grant anticipation notes payable from grant proceeds when received, and any other assets which may be lawfully pledged by any such governmental agency and which are so pledged.

(2) Any grant anticipation notes issued pursuant to authority of this section shall be scheduled to mature at such time or times, not to exceed three (3) years from the date of issuance thereof, and shall bear such rate or rates of interest as the governing body of the governmental agency shall determine. Grant anticipation notes may be sold at public sale or pursuant to private, negotiated sale at the election of the governing body of the governmental agency issuing any such grant anticipation notes. Interest on any such grant anticipation notes may be capitalized in grant anticipation note issues for periods not exceeding three (3) years.

(3) Grant anticipation notes issued pursuant to the authority of this section shall be payable as to principal and interest, if interest is capitalized, from the federal grants in anticipation of which the grant anticipation notes are authorized and issued, and any governmental agency is authorized and empowered to pledge such grant proceeds when received, either as sole security for the repayment of grant anticipation notes, or together with any other assets and revenues of such governmental agency which may be lawfully pledged for such repayment.

(4) Grant anticipation notes issued pursuant to the authority of this section are hereby declared to be issued for public, governmental purposes and the interest derived thereon shall be exempt from taxation by the Commonwealth and by all political subdivisions of the Commonwealth. Grant anticipation notes shall also be exempt from ad valorem taxation by the Commonwealth or any political subdivision thereof.

History.

Enact. Acts 1980, ch. 273, § 1, effective April 9, 1980.

INTEREST RATES ON PUBLIC BONDS

58.410. Definitions for KRS 58.410 to 58.440.

(1) As used in KRS 58.410 to 58.440, unless the context otherwise requires:

(a) "Public body" means the Commonwealth, its political subdivisions, its municipalities, its school and other taxing districts, its nontaxing public bodies and institutions, and any and all agencies and instrumentalities thereof, whether such agencies or instrumentalities be now existing or hereafter created and established under and pursuant to specific statutory authority, or whether such agencies or instrumentalities be now existing or hereafter organized, established, and caused to exist as nonprofit corporations under applicable general laws, having performance as such agencies or instrumentalities as their sole corporate purposes;

(b) "Public obligation" means bonds, notes, warrants, or other obligations of any public body;

(c) "Rate of interest" means both the coupon or stated interest rate applicable to any public obligation, and the effective interest rate or interest cost percentage, computed upon the basis of the coupon or stated interest rate or rates and the price actually to be received by the issuing public body; provided, however, KRS 58.410 to 58.440 is not intended, and shall not be construed, to amend, alter, or repeal any existing law requiring that certain public obligations be sold at not less than the face amount thereof.

(2) KRS 58.410 to 58.440 does not relate to or affect borrowing by any person or corporation except such as are within the definition of "public body" as set forth in this section.

History.
Enact. Acts 1970, ch. 24, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 291, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

A county or group of counties operating under an interlocal agreement and issuing revenue bonds which are "public obligations" under subsection (1)(b) to this section would be subject to the interest rate provisions of KRS 58.430 which repealed the provisions of subsection (3) of KRS 65.270 upon its enactment. OAG 81-346, 1981 Ky. AG LEXIS 89.

58.420. Public policy as to bond interest rates.

It is hereby determined and declared to be the public policy of the Commonwealth that interest rates payable by public bodies upon public obligations be such as to be competitive with those rates which are permitted by other states, in order that necessary public projects may be financed and may be undertaken in the interest of the public health, safety, and general welfare.

History.
Enact. Acts 1970, ch. 24, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 292, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Chapters 103 and 58 separately, and when considered in pari materia, provide for variable interest rate bonds. OAG 85-103, 1985 Ky. AG LEXIS 48.

58.430. Removal of interest rate limits.

From and after March 9, 1970, notwithstanding any other acts or laws of other import which may presently prevail, wherever the same may be found in the Kentucky Revised Statutes as of such date, it shall be lawful for public bodies to establish, agree, and bind themselves to pay interest upon their public obligations at any rate or rates which may be determined upon by the governing bodies of the respective public bodies which are the issuers thereof; but subject, nevertheless, to such approvals as may now or hereafter be applicable thereto according to law.

History.
Enact. Acts 1970, ch. 24, § 3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 293, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

This section, by its express language, repealed the interest ceiling provisions of KRS 178.170. OAG 71-493.

This section does not implicitly repeal or in any way modify the maximum interest rate a school district may pay on money borrowed in anticipation of taxes. OAG 80-571, 1980 Ky. AG LEXIS 87.

A county or group of counties operating under an interlocal agreement and issuing revenue bonds which are "public obligations" under subsection (1)(b) of KRS 58.410 would be subject to the interest rate provisions of this section which repealed the provisions of subsection (3) of KRS 65.270 upon its enactment. OAG 81-346, 1981 Ky. AG LEXIS 89.

Since KRS 96A.120(3) provides that a mass transit authority may use the procedures set forth in KRS 58.010 to 58.170, subject to any interest rate limitations which may be applicable thereto as provided by law, and since, as between KRS 58.170 and 96A.120, the specific governs over the general, anticipatory notes issued by transit authority fall within the provisions of this section and are not subject to the interest limitations of KRS 58.170. OAG 83-152, 1983 Ky. AG LEXIS 344.

KRS 103.200 and 103.220 in no explicit language establish pollution projects as the sole category of projects subject to a variable rate of interest and the pertinent statutes amended by Acts 1984, Ch. 122 in no way prohibit the application of the variable rate to projects other than pollution control projects; they merely emphasize pollution control projects, but not to the detriment of other kinds of projects falling within the broad range of KRS 103.200 to 103.285. Moreover, this section is a specific statute dealing only with interest rates on public bonds and is so flexibly worded as to support variable rate structures in the issuance of public bonds and even if the sections in KRS Ch. 103 amended by Acts 1984, Ch. 122 (KRS 103.200, 103.210, 103.2101, 103.220 — 103.240, 103.280) were to be said to be in some conflict with the provisions of this section, the specific statute, this section, should control over the provisions of KRS Ch. 103. OAG 84-257, 1984 Ky. AG LEXIS 129.

By its express language, this section repealed the maximum rate found in KRS 220.390, 220.400 and KRS 220.370; the purpose of this section was to permit public bodies to meet prevailing interest rate competition. OAG 84-360, 1984 Ky. AG LEXIS 24.

Under KRS 103.200(2), variable rate bonds do not apply only to pollution control facilities bonds; thus, the Kentucky Development Finance Authority may lawfully issue variable rate bonds with Put and Remarketing features in a proposed Internal Revenue Bond issue for the financing of the construction and equipping of airport facilities, under KRS 103.200 to 103.285, as amended by Chapter 122, 1984, Session, and this section. OAG 84-377, 1984 Ky. AG LEXIS 12.

This section, as a specific statute on public bond interest rates, clearly authorizes the insurers of the bonds to bind themselves to pay interest at "any rate or rates which may be determined by the governing body" issuing the bonds; the term "at any rate or rates," as used in this section, is sufficiently broad to encompass variable rates arrived at under agreement. OAG 85-103, 1985 Ky. AG LEXIS 48.

Chapters 103 and 58 separately, and when considered in pari materia, provide for variable interest rate bonds. OAG 85-103, 1985 Ky. AG LEXIS 48.

58.440. Refinancing at higher rate than that of original issue.

If any public body shall determine:

(1) That financing of a public project may be accomplished to the best advantage in the public interest only by combining the same with refinancing of previously issued and outstanding public obligations at a rate or rates of interest higher than the rate or rates otherwise applicable thereto;

(2) That refinancing of a public project at a higher interest rate or rates is necessary in order to prevent or anticipate default in payment of interest or principal of public obligations with regard thereto; or

(3) That any combination of the circumstances described in subsection (1) or (2) of this section exists;

then such refinancing is recognized to be lawful; provided, however, that prior to any such refinancing at a higher rate or rates of interest, the issuing public body shall make and spread at large upon its public records its determination that such action is necessary or desirable in the public interest, and its reasons therefor.

History.

Enact. Acts 1970, ch. 24, § 4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 294, effective July 13, 1990.

ENERGY CONSERVATION IMPROVEMENTS

58.600. Definitions for KRS 58.600 to 58.610.

As used in KRS 58.600 to 58.610, unless the context requires otherwise:

(1) "Energy conservation revenue bonds" or "bonds" means securities issued by a local public agency in accordance with the provisions of KRS 58.600 to 58.610 to pay for energy conservation measures under guaranteed energy savings contracts;

(2) "Energy conservation measure" means a facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:

(a) Insulation of building structure or systems within buildings;

(b) Storm windows or doors, caulking or weatherstripping, multiple pane windows or doors, heat absorbing or heat reflective glazing for windows and doors, additional glazing, reductions in glass area or other window and door systems modifications that reduce energy consumption;

(c) Automated or computerized energy control systems;

(d) Heating, ventilating, or air conditioning system modifications or replacements;

(e) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;

(f) Energy recovery systems;

(g) Cogeneration systems that produce steam or forms of energy such as heat as well as electricity for use primarily within a building or complex of buildings;

(h) Energy conservation measures that provide long-term operating cost reductions; or

(i) Any life safety measures that provide long-term operating cost reductions;

(3) "Local public agency" means a city, county, charter county, urban-county, school district, special district, or an agency formed by a combination of these agencies under KRS Chapter 79;

(4) "Capital cost avoidance" has the same definition as in KRS 45A.345; and

(5) "Guaranteed energy savings contract" has the same definition as in KRS 45A.345.

History.

Enact. Acts 1996, ch. 213, § 1, effective July 15, 1996; 1998, ch. 375, § 6, effective July 15, 1998; 2010, ch. 63, § 13, effective July 15, 2010.

Legislative Research Commission Note.

(7/12/2006). In subsection (5) of this statute, the Reviser of Statutes has changed a reference to "KRS 45A.345(26)" to read "KRS 45A.345(27)," in order to correct an error resulting from the renumbering of subsections in 1998 Ky. Acts ch. 120, sec. 12, and ch. 375, sec. 2. See KRS 7.136(1)(e) and (h).

58.605. Energy conservation revenue bonds for energy conservation measures — Procedure.

(1) Subject to the reporting and approval requirements in KRS 45A.352, 45A.353, and 58.610, any local public agency may issue energy conservation revenue bonds to pay for the cost of energy conservation measures under guaranteed energy savings contracts for the purpose of reducing the cost of energy to buildings owned or operated by the local public agency by making energy-saving improvements to these buildings.

(2) A local public agency, or an agency acting on its behalf, may issue energy conservation revenue bonds to finance the energy conservation measures under guaranteed energy savings contracts, with the following limitations:

(a) Any energy conservation measure, financed through bonds, shall comply with the provisions set forth in KRS 45A.345, 45A.352, and 45A.353;

(b) The term of the bonds shall run coterminous with the term of guaranteed energy savings contract;

(c) A local public agency shall not enter into a guaranteed energy savings contract where the total cost of the energy conservation measures exceeds the cost of the energy savings plus the operational costs plus the capital cost avoidance that is estimated for the term of the guaranteed energy savings contract commencing from the date of the energy conservation measure's installation; and

(d) The use of capital cost avoidance shall be subject to the following restrictions:

1. The amount expended shall not exceed fifty percent (50%) of the project cost; and

2. Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:

a. Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;

b. Replacement of heating, ventilating, or air conditioning major components or systems;

c. New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been deter-

mined to be obsolete and incapable of achieving IES standards; and

d. Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.

(3) Energy conservation revenue bonds shall be issued in accordance with the provisions of KRS 58.010 to 58.140 and shall be sold at a competitive sale preceded by adequate public notice and shall bear interest at an interest rate or rates determined by the local public agency at the time of the sale.

History.

Enact. Acts 1996, ch. 213, § 2, effective July 15, 1996; 1998, ch. 120, § 31, effective July 15, 1998; 1998, ch. 375, § 7, effective July 15, 1998.

Legislative Research Commission Note.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 120 and 375 which do not appear to be in conflict and have been codified together.

58.610. Issuance by school districts, county and city government, or special district — Special procedure.

(1) Energy conservation revenue bonds authorized under KRS 58.600 to 58.610 issued by or on behalf of a school district shall be approved or disapproved by the chief state school officer based on consideration of the following criteria:

(a) Funding capability of the school;

(b) The availability of general fund, capital outlay allotment under KRS 157.420, or state and local funds from the Facility Support Program of Kentucky under KRS 157.440, that are to be contributed by the school district as capital cost avoidance; and

(c) Proper bond documentation.

(2) Guaranteed energy savings and guaranteed operational savings of a guaranteed energy savings contract shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in KRS 58.600, shall not be exempt from current or future debt limitations.

(3) No energy conservation revenue bonds authorized under KRS 58.600 to 58.610 shall be issued by or on behalf of a county, urban-county government, charter county government, city, or special district without the prior approval of the state local debt officer, except that this approval shall not be required if the principal amount of energy conservation revenue bonds is less than five hundred thousand dollars ($500,000).

(4) Any issuance of energy conservation revenue bonds shall be reported to the state local debt officer.

History.

Enact. Acts 1996, ch. 213, § 3, effective July 15, 1996; 1998, ch. 375, § 8, effective July 15, 1998.

58.615. Authority for administrative regulations. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1996, ch. 213, § 4, effective July 15, 1996) was repealed by Acts 1998, ch. 375, § 11, effective July 15, 1998.

Legislative Research Commission Note.

(7/15/98). Under KRS 446.260, the repeal of this section in 1998 Ky. Acts ch. 375 prevails over its amendment in 1998 Ky. Acts ch. 69.

TITLE VIII

OFFICES AND OFFICERS

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61. General Provisions as to Offices and Officers — Social Security for Public Employees — Employees Retirement System.
62. Oaths and Bonds.
63. Resignations, Removals, and Vacancies.
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CHAPTER 61

GENERAL PROVISIONS AS TO OFFICES AND OFFICERS — SOCIAL SECURITY FOR PUBLIC EMPLOYEES — EMPLOYEES RETIREMENT SYSTEM

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61.991. Penalties.

GENERAL PROVISIONS

61.020. Commissions, which officers required to have.

The following officers shall have commissions issued to them by the Governor: Secretary of State, Auditor of Public Accounts, Treasurer, Commissioner of Agriculture, Superintendent of Public Instruction, Justices of the Supreme Court, clerk of the Supreme Court, Judges of the Court of Appeals, clerk of the Court of Appeals, railroad commissioners, Judges of the Circuit Courts, District Judges, county judges/executive, Commonwealth's attorneys, justices of the peace, and all the officers of the militia of rank and grade higher than and including the rank and grade of captain.

History.

3758: amend. Acts 1966, ch. 255, § 63; 1976, ch. 62, § 55; 1976 (Ex. Sess.), ch. 14, § 18, effective January 2, 1978; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Commission.
3. — Issuance.
4. — — Refusal.
5. — — Enforcement.
6. Contest over Office.

1. Construction.

Provision of this section that police judges shall be commissioned by the Governor did not give the Governor power to fill vacancies in the office or repeal statute providing that vacancies in any city office shall be filled by the city council. Dillon v. Stubbs, 267 Ky. 17, 100 S.W.2d 823, 1937 Ky. LEXIS 266 (Ky. 1937).

The mere fact that under this section the Governor issues commissions to police judges does not of itself vest in him exclusive power of appointment to fill vacancies and appointing power for office of police judge of city of the second class rested in the mayor and not the Governor even though the city had a city manager, and not a councilmanic, form of government. Heringer v. Rolf, 287 S.W.2d 149, 1956 Ky. LEXIS 442 (Ky. 1956).

2. Commission.

Appointment of police judge of a sixth-class city by the council, when that authority was vested in the Governor, gave him no right to a commission. Willson v. Hahn, 131 Ky. 439, 115 S.W. 231, 1909 Ky. LEXIS 31 (Ky. 1909).

An appointee to fill a vacancy may be commissioned by the Governor although appointed by another officer or agency. Frost v. Johnston, 262 Ky. 592, 90 S.W.2d 1045, 1936 Ky. LEXIS 82 (Ky. 1936).

3. — Issuance.

It is the duty of the Governor to issue a commission to a police judge of a city of the fourth class properly appointed or elected. Traynor v. Beckham, 116 Ky. 13, 74 S.W. 1105, 1903 Ky. LEXIS 167 (Ky. Ct. App. 1903); Jarvis v. Stanley, 176 Ky. 630, 197 S.W. 183, 1917 Ky. LEXIS 94 (Ky. 1917).

4. — — Refusal.

Possession of commission is not prerequisite to action to recover office, where officer required to issue same has refused to do so. Toney v. Harris, 85 Ky. 453, 3 S.W. 614, 9 Ky. L. Rptr. 36, 1887 Ky. LEXIS 62 (Ky. 1887).

Governor may refuse to commission person presenting certificate of election only when election has been held void in a contest proceeding. McCreary v. Williams, 153 Ky. 49, 154 S.W. 417, 1913 Ky. LEXIS 779 (Ky. 1913).

5. — — Enforcement.

A justice of the peace appointed and commissioned by the Governor may by mandamus enforce his right to execute bond and qualify. Daugherty v. Arnold, 110 Ky. 1, 60 S.W. 865, 22 Ky. L. Rptr. 1504, 1901 Ky. LEXIS 54 (Ky. 1901).

Issuance of a commission is a ministerial act enforceable against the Governor by mandamus. Traynor v. Beckham, 116 Ky. 13, 74 S.W. 1105, 1903 Ky. LEXIS 167 (Ky. Ct. App. 1903). See McCreary v. Williams, 153 Ky. 49, 154 S.W. 417, 1913 Ky. LEXIS 779 (Ky. 1913); Jarvis v. Stanley, 176 Ky. 630, 197 S.W. 183, 1917 Ky. LEXIS 94 (Ky. 1917).

6. Contest over Office.

In contest over office, plaintiff may sue although not holding a commission. Mullins v. Jones, 290 Ky. 796, 162 S.W.2d 761, 1942 Ky. LEXIS 488 (Ky. 1942).

Cited:

Love v. Duncan, 256 S.W.2d 498, 1953 Ky. LEXIS 741 (Ky. 1953).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Board of Embalmers and Funeral Directors, certificate of appointment, KRS 316.180.

Board of Registration for Professional Engineers, certificate of appointment, KRS 322.250.

County judge/executive, commission to be issued to, Const., § 140.

Creation of office for longer than term prohibited, Const., § 23.

Fee not to be charged for affixing state seal to commission, KRS 14.090.

Justices of the peace, commission to be issued to, Const., § 142.

Railroad policemen, commission of, KRS 277.270.

61.080. Incompatible offices.

(1) No person shall, at the same time, be a state officer, a deputy state officer, or a member of the General Assembly, and an officer of any county, city, consolidated local government, or other municipality, or an employee thereof.

(2) The offices of justice of the peace, county judge/executive, surveyor, sheriff, deputy sheriff, coroner, constable, jailer, and clerk or deputy clerk of a court, shall be incompatible, the one (1) with any of the others. The office of county judge/executive and county school superintendent are incompatible.

(3) No person shall, at the same time, fill a county office and a municipal office. Notwithstanding the fact that consolidated local governments have both municipal and county powers, persons who hold the office of mayor or legislative council member of a consolidated local government shall not thereby be deemed to hold both a county office and a municipal office. Officers of consolidated local governments shall not, at the same time, fill any other county or municipal office.

(4) No person shall, at the same time, fill two (2) municipal offices, either in the same or different municipalities.

(5) No person shall, at the same time, fill any two (2) appointed offices of special purpose governmental entities, as defined in KRS 65A.010, that each have the authority to levy taxes.

(6) No person shall, at the same time, fill any state office and an appointed office of a special purpose governmental entity that has the authority to levy taxes, unless a state statute specifically requires a person holding a state office to serve in an appointed office of a special purpose governmental entity that has the authority to levy taxes.

(7) The following offices shall be incompatible with any other public office:

(a) Member of the Public Service Commission of Kentucky;

(b) Member of the Workers' Compensation Board;

(c) Commissioner of the fiscal court in counties containing a city of the first class;

(d) County indexer;

(e) Member of the legislative body of cities of the first class;

(f) Mayor and member of the legislative council of a consolidated local government; and

(g) Mayor and member of the legislative body in cities of the home rule class.

(8) No office in the Kentucky active militia shall be incompatible with any civil office in the Commonwealth, either state, county, district, or city.

(9) Service as a volunteer firefighter in a volunteer fire department district or fire protection district formed pursuant to KRS Chapter 65, 75, 95, or 273 shall not be incompatible with any civil office in the Commonwealth, whether state, county, district, or city.

History.

912, 1851b-8, 2711a-145o, 2768, 3043, 3107, 3484, 3746, 3952-4, 4921: impl. am. Acts 1942, ch. 4, § 13; 1978, ch. 379, § 56, effective April 1, 1979; 2002, ch. 346, § 13, effective July 15, 2002; 2007, ch. 26, § 1, effective June 26, 2007; 2014, ch. 33, § 1, effective July 15, 2014; 2014, ch. 92, § 26, effective January 1, 2015.

Legislative Research Commission Note.

(1/1/2015). This statute was amended by 2014 Ky. Acts chs. 33 and 92, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

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1. Construction.

Subsections (1) to (4) of this section do not list all instances of incompatibility. Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

This section is the construction placed by the General Assembly on Ky. Const., § 165. O'Mara v. Mt. Vernon, 299 Ky. 401, 185 S.W.2d 675, 1945 Ky. LEXIS 436 (Ky. 1945).

2. Determination.

Power in incumbent of one office to appoint and remove the incumbent of the other creates incompatibility. Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122, 1917 Ky. LEXIS 306 (Ky. 1917); Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

Offices are incompatible when it is physically impossible to perform all the duties of both offices with care and ability, and when their relation induces a presumption that they cannot be executed with impartiality and honesty. Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122, 1917 Ky. LEXIS 306 (Ky. 1917).

There is no incompatibility of office except as prescribed by the Constitution or laws enacted pursuant thereto, or in cases where there is incompatibility of duties in the different positions. Coleman v. Hurst, 226 Ky. 501, 11 S.W.2d 133, 1928 Ky. LEXIS 121 (Ky. 1928); Talbott v. Park, 256 Ky. 534, 76 S.W.2d 600, 1934 Ky. LEXIS 440 (Ky. 1934).

The Constitution does not prohibit the same person holding more than one state office, unless the two (2) are incompatible in fact. Coleman v. Hurst, 226 Ky. 501, 11 S.W.2d 133, 1928 Ky. LEXIS 121 (Ky. 1928); Talbott v. Park, 256 Ky. 534, 76 S.W.2d 600, 1934 Ky. LEXIS 440 (Ky. 1934); Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937).

Aside from any specific constitutional or statutory prohibitions, incompatibility depends on the character and relation of the offices and not on the matter of physical inability to discharge the duties of both of them. The question is whether one office is subordinated to the other, or the performance of one interferes with the performance of the duties of the other, or whether the functions of the two (2) are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest. Barkley v. Stockdell, 252 Ky. 1, 66 S.W.2d 43, 1933 Ky. LEXIS 997 (Ky. 1933); Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937).

Incompatibility exists when the duties of the offices are inconsistent, and where the nature and duties of same are such as to render it improper from consideration of public policy for one incumbent to retain both. Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

An important test of incompatibility is whether one office is subordinate to, or subject to supervision by, the other, or where contrariety or antagonism would result by the discharge by one person of the duties of both offices. Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

Appellee's dual status as a magistrate and police officer did not violate the statute; there could not be a violation of the statute since appellee was not a municipal officer, and the county attorney had not shown a sufficient nexus between appellee the police officer and appellee the magistrate for the court to find the positions to be irredeemably incompatible. Clark Cty. Atty. v. Thompson, 617 S.W.3d 427, 2021 Ky. App. LEXIS 2 (Ky. Ct. App. 2021).

3. State Offices with County and Municipal Offices.

A master commissioner is not a state officer or deputy state officer. Goodloe v. Fox, 96 Ky. 627, 29 S.W. 433, 16 Ky. L. Rptr. 653, 1895 Ky. LEXIS 120 (Ky. 1895).

Member of board of bar commissioners is not a state officer and is not ineligible to act as Commonwealth's Attorney. Talbott v. Park, 256 Ky. 534, 76 S.W.2d 600, 1934 Ky. LEXIS 440 (Ky. 1934).

The members of the board of commissioners of the state bar are not officers within the meaning of Ky. Const., § 165, this section and KRS 61.090 since the board acts merely in an administrative capacity and as an agency of the Court of Appeals, clothed, under its rules, with power to make investigations and return to the Court of Appeals its findings.

Dreidel v. Louisville, 268 Ky. 659, 105 S.W.2d 807, 1937 Ky. LEXIS 510 (Ky. 1937).

The office of special circuit judge is not incompatible with the office of member of the General Assembly. O'Mara v. Mt. Vernon, 299 Ky. 401, 185 S.W.2d 675, 1945 Ky. LEXIS 436 (Ky. 1945).

Even if acceptance of office as member of General Assembly, by a person holding the office of special circuit judge, vacated the latter office on the ground of incompatibility, defendant in civil suit against whom judgment was rendered by special judge could not complain where special judge was qualified and eligible at the time he began the trial, and no objection was raised by defendant until after judgment had been rendered. O'Mara v. Mt. Vernon, 299 Ky. 401, 185 S.W.2d 675, 1945 Ky. LEXIS 436 (Ky. 1945).

Under a permissible construction of the terms of Ky. Const., § 165, this section and KRS 61.090, the office of Senator and deputy sheriff are incompatible and the acceptance of the second office vacates the first but where, being faced with the question, the Senate adopted a resolution recognizing the deputy sheriff as a duly qualified Senator the adoption did not constitute such a clear violation of the Constitution that the courts should rectify the error and the deputy sheriff is entitled to the compensation and allowances withheld by the state treasurer but the judiciary must assume the Senate in good faith will not knowingly permit violations of other constitutional provisions. Raney v. Stovall, 361 S.W.2d 518, 1962 Ky. LEXIS 246 (Ky. 1962).

4. Two County Offices.

Offices of special tax collector and county judge (now county judge/executive) are incompatible. Barkley v. Stockdell, 252 Ky. 1, 66 S.W.2d 43, 1933 Ky. LEXIS 997 (Ky. 1933).

Offices of special tax collector and jailer are incompatible. Nichols v. Land, 288 Ky. 693, 157 S.W.2d 303, 1941 Ky. LEXIS 192 (Ky. 1941).

Offices of special tax collector and sheriff are not incompatible. Nichols v. Land, 288 Ky. 693, 157 S.W.2d 303, 1941 Ky. LEXIS 192 (Ky. 1941). See Barkley v. Stockdell, 252 Ky. 1, 66 S.W.2d 43, 1933 Ky. LEXIS 997 (Ky. 1933).

There is no constitutional or statutory incompatibility under this section unless the office of member of the county board of election commissioners is in law a local office as distinguished from a state office and it is unnecessary to pass on this question where it is clear that the office of county school board member and county election commissioner are functionally incompatible in that occupancy of both offices by the same person is detrimental to the public interest. Adams v. Commonwealth, 268 S.W.2d 930, 1954 Ky. LEXIS 931 (Ky. 1954).

There is no incompatibility in the offices of regular and special judge insofar as it concerns the incompatibility of duties or the character and relationship of offices or as being in conflict with Ky. Const., §§ 165 or 237 or with this section. Hancock v. Queenan, 294 S.W.2d 92, 1956 Ky. LEXIS 117 (Ky. 1956).

5. County Offices with Municipal Offices.

Offices of city tax collector and deputy sheriff are incompatible. Keating v. Covington, 35 S.W. 1026, 18 Ky. L. Rptr. 245 (1896).

Offices of city councilman and member of county board of health are incompatible. Vickers v. Sory, 102 S.W. 272, 31 Ky. L. Rptr. 277 (1907).

That a constable is also a city employee does not violate this section. Walling v. Commonwealth, 260 Ky. 178, 84 S.W.2d 10, 1935 Ky. LEXIS 425 (Ky. 1935).

A member of county board of health who became a city trustee did not automatically forfeit and vacate her board membership, and, at the very least, she was a de facto member and was entitled to perform her duties while in possession of the office. Trimble County Fiscal Court v. Trimble County Bd. of Health, 587 S.W.2d 276, 1979 Ky. App. LEXIS 469 (Ky. Ct. App. 1979).

A deputy circuit clerk is clearly a "deputy (state) officer" and is, thus, precluded from simultaneously serving as an officer of a city. Court of Justice v. Oney, 34 S.W.3d 814, 2000 Ky. App. LEXIS 96 (Ky. Ct. App. 2000).

6. Two Municipal Offices.

Offices of clerk and assessor in the same city are incompatible. Blades v. Falmouth, 124 Ky. 259, 98 S.W. 1017, 30 Ky. L. Rptr. 420, 1907 Ky. LEXIS 179 (Ky. 1907).

Offices of school trustee and postmaster are incompatible. Johnson v. Sanders, 131 Ky. 537, 115 S.W. 772, 1909 Ky. LEXIS 54 (Ky. 1909).

Offices of city councilman and city treasurer in the same city are incompatible. Taylor v. Johnson, 148 Ky. 649, 147 S.W. 375, 1912 Ky. LEXIS 506 (Ky. 1912).

Offices of city commissioner in one city and statutory city engineer in another city are incompatible. Commonwealth ex rel. Steller v. Livingston, 171 Ky. 52, 186 S.W. 916, 1916 Ky. LEXIS 298 (Ky. 1916).

Whether office of city commissioner and employment as civil engineer in another city are incompatible in question of fact. Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122, 1917 Ky. LEXIS 306 (Ky. 1917).

7. School Offices and Employees.

Offices of school trustee and school teacher are incompatible. Ferguson v. True, 66 Ky. 255, 1867 Ky. LEXIS 179 (Ky. 1867).

School officials are state officers. Hoskins v. Ramsey, 197 Ky. 465, 247 S.W. 371, 1923 Ky. LEXIS 663 (Ky. 1923); Commonwealth v. Louisville Nat'l Bank, 220 Ky. 89, 294 S.W. 815, 1927 Ky. LEXIS 478 (Ky. 1927); Fidelity & Deposit Co. v. Christian County Board of Education, 228 Ky. 362, 15 S.W.2d 287, 1929 Ky. LEXIS 572 (Ky. 1929); Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931); Tipton v. Commonwealth, 238 Ky. 111, 36 S.W.2d 855, 1931 Ky. LEXIS 188 (Ky. 1931); Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311, 1931 Ky. LEXIS 847 (Ky. 1931); Board of Education v. Trustees of Buena Vista School, 256 Ky. 432, 76 S.W.2d 267, 1934 Ky. LEXIS 428 (Ky. 1934); Board of Trustees v. Renfroe, 259 Ky. 644, 83 S.W.2d 27, 1935 Ky. LEXIS 370 (Ky. 1935); Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937).

Offices of graded school board member and city trustee are incompatible. Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311, 1931 Ky. LEXIS 847 (Ky. 1931).

Office of school board member is not incompatible with position of highway maintenance supervisor. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937).

The offices of assistant county school superintendent and teacher or principal of a county school in the same county are incompatible. Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

Where same person was appointed county superintendent of schools in two (2) counties, he could, before commencement of terms, resign one appointment; incompatibility of appointments would not be ground for rescinding either appointment before commencement of term. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

Kentucky Revised Statute 164.130 (now repealed) as enacted by the Legislature permitted the Governor to make appointments to the Board of Trustees of the University of Kentucky. There was no limitation in that statute which prohibited the Governor from being a board member or from appointing himself; the Legislature made no exception to the qualified persons whom the Governor could appoint to the at large seats on the Board of Trustees. It would seem apparent that the General Assembly did not intend any such exception

to be applicable to the Governor because the Legislature had enacted other statutes to prohibit certain office holders from holding a second office. Commonwealth v. Wilkinson, 828 S.W.2d 610, 1992 Ky. LEXIS 111 (Ky. 1992), overruled in part, Commonwealth ex rel. Conway v. Thompson, 300 S.W.3d 152, 2009 Ky. LEXIS 290 (Ky. 2009).

8. Hospital Board Membership.

A member of the hospital board was not a city or county officer or employee thereof within the meanings of this section, KRS 160.180(1)(d) (now (2)(f)), or Ky. Const., § 165. Commonwealth ex rel. Hancock v. Bowling, 562 S.W.2d 310, 1978 Ky. LEXIS 323 (Ky. 1978).

9. Withdrawal of Nomination Required.

Once a candidate has filed papers seeking nomination for public office, that candidate cannot then file papers seeking nomination or election to an incompatible office unless the candidate has first withdrawn his nomination in accordance with KRS 118.212. Klein v. Doll, 777 S.W.2d 602, 1989 Ky. App. LEXIS 164 (Ky. Ct. App. 1989).

Cited:

Bard v. Board of Drainage Comm'rs, 274 Ky. 491, 118 S.W.2d 1013, 1938 Ky. LEXIS 292 (Ky. 1938); Young v. Grauman, 278 Ky. 197, 128 S.W.2d 549, 1939 Ky. LEXIS 394 (Ky. 1939); Somerset v. Caylor, 241 S.W.2d 990, 1951 Ky. LEXIS 1033 (Ky. 1951).

OPINIONS OF ATTORNEY GENERAL.

The position of probation and parole officer in the State Department of Welfare must be considered a state office or deputy state office which would make it incompatible with the office of mayor, which is a municipal office. OAG 60-57.

There are no statutory or constitutional prohibitions against a person holding a county office and state employment at the same time, but they may be incompatible under the common law. OAG 60-106.

There is no constitutional or statutory incompatibility in a person's holding two (2) county offices. OAG 60-337.

Although there is no statutory or constitutional prohibition against a person holding a municipal office and state employment at the same time, there is the possibility that there may be a common law incompatibility where it is physically impossible to perform the duties of both positions with care and ability. OAG 60-443.

The offices of sheriff and state representative are incompatible. OAG 60-455.

The fact that the two (2) offices are incompatible would not prevent the present sheriff from becoming a candidate for state representative. OAG 60-455.

Membership on the McLean County board of education is not incompatible with the position of teacher of vocational agriculture in Muhlenberg County. OAG 60-901.

Although the positions of county director of pupil personnel and city director of pupil personnel are not incompatible as such, they are incompatible in fact because KRS 159.140(1) requires that a director of pupil personnel must devote his entire time to his duties which he could not do in two (2) such positions. OAG 60-1027.

There is no statutory or constitutional incompatibility between the position of teacher and the office of county commissioner, but there may be a common law incompatibility. OAG 61-292.

There is no incompatibility between the office of magistrate and driving a school bus for the county board of education under Ky. Const., § 165 or this section, but there may be a common law incompatibility. OAG 61-390.

The offices of mayor and police judge in a city of the fifth class cannot be combined. OAG 61-455.

One person cannot hold two (2) elected offices in a city of the fifth class. OAG 61-455.

Holding the offices of deputy sheriff and deputy county court clerk at the same time is specifically prohibited. OAG 61-533.

The offices of treasurer of the school board and city clerk are incompatible. OAG 61-823.

There was no conflict of interests where a state employee presented a bill for acting as a court reporter and taking and transcribing hearings for the sole use of her department when such work was done outside of the employee's salaried hours. OAG 61-845.

The secretary and treasurer of the city board of education and the treasurer of the county board of education were disqualified from serving on the electric plant board. OAG 61-846.

There is no constitutional or statutory provision which would prohibit a person from serving as a public officer in the state of Ohio and occupying the position of magistrate in this state since Ky. Const., § 165 and this section apply only to the holding of two (2) incompatible offices in this state. OAG 61-948.

The law prohibits a person from being a state representative and at the same time a deputy sheriff of a county. OAG 61-1001.

Since a deputy jailer stands in the same position as the jailer insofar as his powers and duties are concerned, the incompatibility between the office of justice of the peace and jailer would likewise apply to the deputy jailer. OAG 62-21.

One would be prohibited from serving on the county board of health and on the county board of education at the same time since the two (2) offices are incompatible. OAG 62-617.

Serving in the office of magistrate and as a member of the board of supervisors at the same time would be detrimental to the public interest, in that the board of supervisors executes a quasi judicial function in the review of protested tax assessments. OAG 62-636.

There is no statutory or constitutional incompatibility in membership on a city-county board of health and membership on the city board of aldermen. OAG 62-684.

There is no constitutional nor statutory prohibition against persons holding the office of county attorney and county treasurer and at the same time serving as a member of the county building commission. OAG 62-1169.

A common law incompatibility would exist between the office of county treasurer and the office of county auditor. OAG 63-32.

It is legal for a soil conservation district to employ a person as an aide although such person was also a member of the fiscal court which levied a tax for the benefit of the district. OAG 63-87.

The office of magistrate and membership on the county registration and purgation board are incompatible. OAG 63-130.

There is no constitutional or statutory incompatibility between serving as the civil defense director of a county and being a city councilman at the same time. OAG 63-273.

The police judge of a city could not be appointed to a state office or a deputy state office without creating an incompatible situation under Ky. Const., § 165 and this section since no person can hold a city office and a state office at the same time. OAG 63-625.

The provisions of Ky. Const., § 165 and this section do not prohibit a person from holding a city office and state employment at the same time providing there is no common law incompatibility. OAG 63-625.

The mayor of a fifth class city cannot legally also be a member of the board of water commissioners, receiving a salary for each position. OAG 64-795.

The office of magistrate and full-time employment as manager of the muncipal utilities commission of the city, a municipal office, are incompatible offices. OAG 65-50.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself, would be valid until the school board member resigned or was removed from office. OAG 65-211.

A member of the school board who files for nomination for the office of sheriff disqualifies himself from serving on the school board. OAG 65-211.

One city could not contract with another city for the furnishing of police services since it would involve the policemen holding incompatible offices in the two (2) cities. OAG 65-718.

The offices of county judge (now county judge/executive) and master commissioner do not present incompatibility of office. OAG 65-816.

The offices of constable and city policeman are incompatible. OAG 65-833.

A constitutional incompatibility would exist between the position of chief of police and that of chief of the fire department. OAG 66-10.

There is no incompatibility between holding the office of magistrate and at the same time serving as county democratic chairman. OAG 66-11.

There is no constitutional or statutory incompatibility between membership on the county fiscal court and membership on the county board of health. OAG 66-87.

Although no statutory or constitutional incompatibility exists, the office of county commissioner and employment in the county road department would be incompatible under the common law. OAG 66-110.

The fiscal court could appoint, as the county dog warden, a deputy sheriff who is presently serving in this capacity without there existing an incompatible situation. OAG 66-398.

No constitutional or statutory incompatibility exists between membership on the school board and membership on the municipal housing commission. OAG 66-673.

The offices of deputy sheriff, county election commissioner, and jury commissioner are not incompatible under the terms of Ky. Const., § 165 and this section, but there is a possibility of common law incompatibility between the offices of deputy sheriff and jury commissioner. OAG 66-741.

The office of treasurer of the county board of education and the office or employment of county finance officer are incompatible. OAG 66-754.

A county treasurer cannot be appointed deputy property valuation administrator and serve in both capacities without creating an incompatible situation. OAG 66-759.

A county treasurer may not serve simultaneously as county school treasurer. OAG 67-5.

There is no constitutional nor statutory incompatibility in the holding of the office of county judge (now county judge/executive) and commissioner of a water district at the same time although there would be a common law incompatibility. OAG 67-68.

The position of housing inspector of a city is incompatible with the office of state representative. OAG 67-81.

Employment as director of pupil personnel for a district board of education is not incompatible with the position of member on the board of trustees of a public library district. OAG 67-83.

Holding the office of trustee of the library board and at the same time being a member of the city council creates an incompatible situation. OAG 67-104.

There is no incompatibility for a member of a city council to serve as campaign manager for a candidate for state office. OAG 67-121.

The holding of the position of public schoolteacher and the position of member of the board of city commissioners, at the same time, is not constitutionally nor statutorily incompatible. OAG 67-163.

There is no incompatibility in the holding of the offices of member of the board of education of an independent school district and stenographic reporter for a judicial district. OAG 67-177.

The offices of member of a city independent board of education and member of the county library board are incompatible. OAG 67-186.

The offices of member of the county board of education and member of the county library board of trustees are incompatible. OAG 67-186.

If a city employs a county attorney on a special part-time basis to advise it in certain civil matters, no incompatibility exists. OAG 67-245.

If a city attempted to employ the county attorney to advise it in all legal matters pertaining to the business of the city, the county attorney would become in fact the city attorney, which in turn would create an incompatible situation. OAG 67-245.

To be a member of a library district board and a member of a city library board at the same time creates an incompatible situation. OAG 67-458.

Holding the office of city council member and radio operator for the city police department at the same time creates an incompatible situation. OAG 67-469.

The office of city attorney and that of state senator are incompatible. OAG 67-517.

A person may hold the office of Circuit Court Clerk and at the same time be a probation and parole officer. OAG 67-542.

No incompatibility exists where the Commonwealth's Attorney is also the master commissioner of a Circuit Court. OAG 67-542.

A city commissioner may be appointed and hold the office of supervisory head of the Department of Public Safety (now the Department of Justice) while he is a city commissioner, but he may not hold the office of Commissioner of Public Safety (now Secretary of Justice). OAG 67-554.

To serve in the office of city commissioner and at the same time to be a member of the auxiliary police force creates an incompatible situation. OAG 67-554.

Membership on the board of regents of a state university is a state office and the Commissioner of the Department of Banking and Securities (now Department of Financial Institutions) is also a state office. OAG 67-557.

An incompatible situation exists where a constable of a county holds, at the same time, the position of auxiliary police officer. OAG 68-12.

There is no prohibition against a person being a member of the county board of education and at the same time holding a position with the Commonwealth. OAG 68-21.

A member of the Council on Public Higher Education (now Council on Higher Education) must resign his position at the time he becomes a member of the Louisville board of aldermen. OAG 68-22.

The position of assistant commissioner of insurance and that of city councilman are compatible. OAG 68-30.

A night watchman with the state may hold the office of justice of the peace. OAG 68-33.

The office of Commonwealth's Attorney and that of referee of the Workmen's (now Workers') Compensation Board are not incompatible. OAG 68-56.

Since the position of county policeman is a county office and the position of city councilman is a city office, an incompatibility would exist if an individual would hold both offices at the same time. OAG 68-72.

Although there is no constitutional or statutory incompatibility between the office of county judge (now county judge/executive) and county treasurer, there is incompatibility in fact or under common law between the two (2) offices since the office of county treasurer is subordinated to the office of county judge (now county judge/executive). OAG 68-80.

A city councilman cannot serve at the same time as an auxiliary deputy sheriff without vacating his position on the city council pursuant to KRS 61.090. OAG 68-195.

An incompatible situation exists if a member of a volunteer police department also served, at the same time, as a deputy sheriff. OAG 68-197.

An incompatible situation would exist if a member of a city police department were deputized and sworn in as a sheriff's deputy. OAG 68-197.

There is no statutory or constitutional incompatibility against a person holding the position of secretary to the superintendent of the district board of education and at the same time holding the position of secretary-bookkeeper for the head start program of that school district. OAG 68-200.

The office of county school board member is incompatible with employment as county road supervisor. OAG 68-210.

If water, gas and sewer commission members are also members of the city council, an incompatible situation is created. If the members of the utility commission are mere employees, there is no incompatibility. OAG 68-228.

Because of the incompatibility involved, the employment and compensation of an assistant Commonwealth's Attorney in connection with his furnishing legal advice in criminal matters to the city would not be legal. OAG 68-290.

A city attorney cannot be appointed at the same time an assistant county attorney since the latter would constitute a county office. OAG 68-309.

A county attorney could be employed to represent a city within the county in annexation proceedings so long as he was not hired as city attorney on a full-time basis. OAG 68-400.

Since the office of county treasurer is a county office and the position of a police judge of a city of the sixth class is a municipal office, the two (2) offices are incompatible and no individual can hold both offices at the same time without violating the provisions of this section. OAG 68-403.

A person who is the Commonwealth's Attorney may at the same time be employed on a part-time basis by the board of veterinary examiners. OAG 68-447.

The office of chairman of the board of trustees of a sixth class city is incompatible with the office of police judge. OAG 68-453.

If a member of a city council is appointed or elected to the office of sheriff, constable, coroner, jailer, marshal or policeman, or appointed as a deputy in such office, an incompatible situation is created. OAG 68-550.

There is no statutory or constitutional incompatibility between the position of member of the board of trustees of a public library district and the position of head officer of a state university community college. OAG 68-568.

The position of executive director or assistant executive director of a municipal housing commission is state employment and there is no incompatibility between these positions and the office of school board member. OAG 68-599.

A school teacher may legally serve at the same time as an election officer. OAG 68-601.

There is no constitutional nor statutory prohibition against a school teacher holding the office of magistrate but a common law incompatibility would exist. OAG 68-607.

A vacancy on a county purgation board may be filled by appointing an employee of the Commonwealth, since the membership on the county purgation board constitutes a state office. OAG 69-11.

The office of county clerk is incompatible with membership on the Commission on Higher Education. OAG 69-15.

Membership on a municipal housing commission is a state office, and, as such, there would be no constitutional nor statutory incompatibility involved in also holding at the same time membership on the Commission on Higher Education. OAG 69-15.

While membership on the Council on Public Higher Education (now Council on Higher Education), established pursuant to KRS 164.010 (now repealed), would constitute the holding of a state office, membership on a consolidated planning and zoning commission is neither a city, county nor a state office as contemplated by either Ky. Const., § 165 or this section, so that no constitutional or statutory incompatibility exists that would prohibit a person from holding both offices at the same time. OAG 69-19.

If a state employee was under the merit system he would be prohibited from becoming a candidate for any paid political office, but no such restriction would pertain to a nonmerit system employee. OAG 69-89.

An employee of the school system may seek and hold the office of county commissioner. OAG 69-94.

There are no constitutional nor statutory provisions that make the position of highway employee and the position of member on the county registration and purgation board incompatible. OAG 69-136.

A member of a state university faculty and staff may hold at the same time the office of county commissioner. OAG 69-147.

A school teacher may hold at the same time the office of property valuation administrator. OAG 69-158.

Neither a policeman nor a town marshal can serve at the same time as a deputy sheriff. OAG 69-162.

The auditor of public accounts may be at the same time a stockholder or director in private businesses and charitable organizations. OAG 69-164.

There is no incompatibility between the office of state auditor and membership on the local air board. OAG 69-164.

An employee of a county road department may hold at the same time the office of county constable. OAG 69-186.

Since the office of master commissioner is an office of the court and therefore, neither a state nor county office, there is no incompatibility between this office and that of Circuit Court Clerk. OAG 69-221.

A city policeman cannot serve at the same time as a deputy sheriff. OAG 69-303.

The office of mayor and that of city commissioner are incompatible. OAG 69-358.

Since the office of hearing officer or examiner for the Workmen's (now Workers') Compensation Board is a state office and the office of county judge (now county judge/executive) pro tem is a county office, they are incompatible, one with the other. OAG 69-364.

A person serving a city municipal water and sewer commission as their attorney for the past four years pursuant to a contract based on a monthly retainer may serve at the same time as county attorney. OAG 69-420.

The holding of the office of county judge (now county judge/executive) and the holding of the office of property valuation administrator at the same time would present a statutory and constitutional incompatibility. OAG 69-432.

There is no provision under the Kentucky statutes or Constitution prohibiting a school teacher or principal from serving on a city commission. OAG 69-448.

The holding of the offices of county attorney and member of the Kentucky Zoning Commission at the same time would present a constitutional and statutory incompatibility. OAG 69-454.

There is no constitutional or statutory provision prohibiting a member of the housing commission from being employed on a part-time basis by the commission. OAG 69-483.

There is no constitutional or statutory provision that prohibits a teacher in the public schools from running for the nomination of city commissioner and serving as such if elected. OAG 69-485.

A department head at a state university not only may become a candidate for the office of city commissioner but also may serve as such. OAG 69-486.

A member of the fiscal court may, at the same time, serve as master commissioner. OAG 69-491.

A school teacher or principal of a school may serve at the same time on the city commission. OAG 69-519.

A conservation officer is a state officer and cannot be at the same time a deputy sheriff. OAG 69-545.

An incompatibility would exist if an individual was the county treasurer and at the same time was a member of the county purgation board. OAG 69-556.

A member of the volunteer fire department may be at the same time a member of the city council. OAG 69-558.

The office of county chief of police and that of county election commissioner are not incompatible. OAG 69-565.

As between the office of county judge (now county judge/executive) and the position of school district transportation officer, there is no incompatibility. OAG 69-601.

A field supervisor for the welfare department may be at the same time an election officer. OAG 69-608.

A member of the police department in a city of the second class could neither become a candidate for membership on the local school board nor hold such office and retain his position on the city police force. OAG 69-634.

A member of the city council may at the same time hold the office of master commissioner or deputy commissioner of the Circuit Court. OAG 69-637.

A member of the state Legislature may represent the municipal water company in legal matters when the occasion arises because he would be considered an independent contractor. OAG 69-653.

A county constable may legally lease and operate the county poor farm. OAG 69-671.

An individual may hold the position of special prosecutor in a city of the fifth class and at the same time hold the office of police judge in another city. OAG 69-685.

A person could hold the position of public health nurse and at the same time serve as deputy jailer in an adjoining county without creating an incompatible situation. OAG 69-694.

A magistrate may be employed as a school bus driver by the county board of education while he is serving as magistrate. OAG 70-2.

A county treasurer may hold at the same time the office of cashier of the food stamp program for such county. OAG 70-10.

The office of city attorney is a city office and the office of trial commissioner is a county office, hence there is an incompatibility. OAG 70-27.

The director of pupil personnel for a county board of education may serve at the same time as deputy coroner of that same county. OAG 70-31.

The mayor of a city may serve as fire chief or as fireman of a volunteer fire department even though the city has a contract with the volunteer fire department for fire protection under KRS 75.050. OAG 70-32.

A radio dispatcher for the police department not possessing the powers of a police officer, such as making arrests, serving warrants, etc., may hold at the same time the office of pro tem judge of the police court. OAG 70-53.

No person can serve at the same time as a county officer and a municipal officer. OAG 70-143.

A city elementary school principal may at the same time hold the office of city councilman in a city of the fourth class. OAG 70-183.

A member of the county planning and zoning commission may at the same time, serve as police court judge pro tem of a city. OAG 70-186.

Since the deputy jailer and jailer have the same powers and duties, the offices of constable and deputy jailer are incompatible. OAG 70-256.

A member of the city council may not serve at the same time as city tax assessor. OAG 70-311.

Nothing statutorily nor constitutionally prohibits a member of the municipal housing commission from serving at the same time on the state board of elections. OAG 70-315.

No incompatibility would exist were a person to serve as coroner and election officer at the same time. OAG 70-325.

An individual can legally serve on the city-county youth commission and at the same time run for and hold membership on the local school board. OAG 70-391.

The position of secretary-treasurer of the Louisville sinking fund, a municipal office, and membership of the Kentucky Authority for Educational Television, a state office, are incompatible. OAG 70-409.

The position of dog warden and county patrolman are county offices and there would be no constitutional or statutory provision that would prohibit a person from holding both offices at the same time. OAG 70-431.

Any county official, except a member of the fiscal court, may be appointed to the joint riverport authority and no statutory nor constitutional incompatibility would exist. OAG 70-432.

A member of the municipal housing commission can serve at the same time as a member of the local school board. OAG 70-444.

A justice of the peace cannot be appointed county judge (now county judge/executive) pro tem. OAG 70-446.

There is no constitutional or statutory prohibition against a highway employee as a night watchman serving as a deputy sheriff. OAG 70-457.

A school board member could not be hired by the county judge (now county judge/executive) to operate, manage or drive a county ambulance. OAG 70-478.

No constitutional or statutory incompatibility exists between holding the offices of both dog warden and county constable. OAG 70-492.

There is no statutory or constitutional incompatibility in a fiscal court employing the sheriff and/or his deputies to operate a county ambulance but there may be a common-law or practical incompatibility. OAG 70-544.

A person can become a candidate for school board membership and at the same time continue to serve on the city commission. OAG 70-558.

An elected constable of a county could not legally accept and hold a position as police officer for a city. OAG 70-583.

Accepting a commission as a Kentucky colonel while holding a state or local office would not create an incompatible situation. OAG 70-607.

No incompatibility would exist if a notary public were to hold another public office. OAG 70-607.

A member of the fiscal court cannot also serve as county judge (now county judge/executive) pro tem. OAG 70-621.

A person would be prohibited from serving on a county board of health and on the board of education at the same time without forfeiting the first office he held. OAG 70-632.

If a police commission was established by ordinance wherein the commissioners were established as minor officers of the city, incompatibility would exist if members of the city council were appointed to the police commission. OAG 70-642.

No incompatibility would exist where a person served on both the city council and the police commission if the police commission was simply established by resolution as an advisory body only and without specific powers. OAG 70-642.

The positions of police judge and policeman would be incompatible. OAG 70-652.

An individual may not at the same time hold the office of school board member and hold employment with a city. OAG 70-663.

There is no constitutional or statutory provision that would prohibit a member of the county board of education from being appointed as a director or member of a water district. OAG 70-723.

Membership on a joint recreational commission established pursuant to KRS 97.035 would constitute neither a city nor county office but would be a hybrid office not contemplated by either Ky. Const., § 165 or this section. OAG 70-731.

There would be no constitutional or statutory provision that would prohibit one from serving as city attorney and at the same time serving on a joint recreational commission. OAG 70-731.

A member of the board of trustees of a sixth-class city could not serve as deputy marshal of the city at the same time. OAG 70-804.

There appears to be no constitutional or statutory incompatibility nor any conflict with merit system law in the holding of the office of board member in an independent school district and a position of employment with the Department of Corrections. OAG 70-811.

A city may not employ a part-time deputy from another city to serve as such on a part-time basis because this section prohibits a person from holding two (2) municipal offices at the same time. OAG 71-12.

A deputy marshal serving as such in two (2) different cities would be in violation of the statute. OAG 71-12.

There is no statutory or constitutional incompatibility between being a member of the city council and holding a position with the state as a car inspector. OAG 71-56.

There is no statutory or constitutional incompatibility between being a school principal and serving on the city council. OAG 71-56.

There is no statutory or constitutional incompatibility between serving as mayor of a city and holding a position as county road foreman with the state Department of Highways. OAG 71-56.

There is no constitutional or statutory incompatibility in a deputy sheriff being at the same time an employee of the state highway department. OAG 71-65.

Although a fifth-class city and a sixth-class city could not hire the same policemen, under the Interlocal Cooperation Act, they could form a joint system of police protection. OAG 71-85.

There is no constitutional or statutory incompatibility between holding a position of schoolteacher and holding the office of police judge at the same time. OAG 71-108.

Where a city policeman is appointed a deputy sheriff, an incompatibility would exist under this section and under KRS 61.090 he vacated his office as city policeman; however, if he refused to vacate his office as policeman, a proceeding in court might be necessary to oust him. OAG 71-153.

The offices of city treasurer and county soil and water conservation district supervisor under KRS 262.200(2) are not incompatible. OAG 71-230.

No person can serve as a policeman for two (2) different cities at the same time without creating an incompatible situation. OAG 71-236.

There is no statutory prohibition against a person serving as county judge (now county judge/executive) and at the same time being employed by the county board of education and the county clerk's office. OAG 71-247.

There would be no incompatibility between a principal and director of pupil personnel, which is a form of state employment, serving on a municipal civil service commission. OAG 71-305.

There would be no constitutional or statutory incompatibility to prevent a city policewoman from being hired by the county fiscal court to search female prisoners. OAG 71-306.

A city clerk-treasurer could not be appointed to serve as police judge pro tem in the absence of the regular police judge because it would constitute holding two (2) municipal offices. OAG 71-343.

There is no constitutional or statutory objection to an employee of the city water and sewer department also serving as a part-time police officer for the city. OAG 71-343.

Although there is no statutory or constitutional incompatibility between serving as police court judge and in the appointed position of railroad policeman, a common-law incompatibility may exist. OAG 71-427.

No constitutional or statutory incompatibility exists between the positions of the paying public office of city commissioner and a paying professorship at Western Kentucky University. OAG 71-443.

A person could not serve as a member of the city council and also serve as a member of the city parks commission. OAG 71-462.

For libraries created pursuant to KRS 173.300 to 173.410, membership on the library board would be incompatible with membership on the city council. OAG 71-462.

There would be no incompatibility between serving as city councilman and membership on the county riverport authority. OAG 71-462.

There is no constitutional or statutory conflict to prevent a state representative, as a major stockholder or an agent for a corporation in which he is a stockholder in a rest home, to operate that rest home and accept indigent patients under contract from the county fiscal court. OAG 71-463.

If a volunteer fire department is a municipal fire department governed by KRS Ch. 95, the fire chief would be prohibited from also serving as a member of the city council. OAG 71-488.

The position of city councilman of a city of the fourth class and the position of police chief of a city of the fifth class are incompatible under the statute. OAG 71-502.

This section does not prohibit the mayor from being a member of a city-county hospital board. OAG 72-18.

There would be an incompatibility under this section if the city solicitor of Newport was appointed city attorney of Highland Heights pursuant to KRS 69.580 (now repealed). OAG 72-61.

The offices of mayor of a fourth-class city and deputy sheriff of the county containing the said fourth-class city are incompatible under this section. OAG 72-105.

If the position of superintendent of a state park is considered a state office then a person holding such office may not also be a deputy sheriff, however, if this position is regarded only as a form of state employment, then a person may hold both this position and that of deputy sheriff at the same time. OAG 72-259.

If, in part, the position of state park ranger is a state office there is a conflict in a person holding such office and also holding the office of city policeman and in such case KRS 61.090 would provide that a person holding both offices would vacate his first office as city policeman by acceptance of the position as a ranger. OAG 72-276.

There is no incompatibility under this section in appointing a special local peace officer as a deputy sheriff. OAG 72-315.

This section would not prohibit a special police officer appointed under KRS 61.360 from also simultaneously holding a municipal office of town marshal in a city of the fourth class. OAG 72-321.

There is no violation of this section where the mayor is also an employee of the Commonwealth of Kentucky. OAG 72-350.

There is no violation of this section where a county jailer also serves as the county dog warden. OAG 72-351.

A policeman, who is considered a municipal officer, may not at the same time hold the position of constable. OAG 72-364.

Where a mayor also operates the water and sewer system for the city he may not hold both offices if the management of the sewer system is a minor city office but he may hold both offices if his management position is merely a form of employment. OAG 72-364.

There is no violation of this section where a city policeman is employed in his off duty hours as a special local peace officer. OAG 72-391.

Under this section a city jailer may not fill in as a city policeman. OAG 72-399.

This section would not prevent a deputy sheriff or deputy county clerk from serving as an election officer. OAG 72-403.

City councilman could not serve as city police judge when the regular police judge cannot attend court. OAG 72-414.

There is no incompatibility between the office of city councilman and employee of the housing commission. OAG 72-467.

This section would not prohibit the appointment of a member of the board of levee commissioners to the Hickman-Fulton county riverport authority, as both entities constitute independent bodies politic and corporate entities. OAG 72-518.

This section would prohibit the appointment of a member of the city council to the city playground and recreation board. OAG 72-528.

There would be no incompatibility if a member of the municipal housing authority were appointed housing inspector by the urban renewal agency. OAG 72-589.

A person could not at the same time serve on the city's park and recreation board and be a member of the local board of education. OAG 72-618.

This section would not apply to a situation where a county attorney has made a contract with a city to advise the city on matters of a civil nature on a month to month basis. OAG 72-634.

There is no violation of this section where a member of a city board of aldermen is a part-time paid faculty member of the University of Louisville. OAG 72-654.

A school board member may serve on an agricultural stabilization conservation committee. OAG 72-683.

A member of a city council could not serve at the same time as a member of the board of electrical control. OAG 72-690.

An employee of the office of the auditor of public accounts may serve as a member of an independent school board. OAG 72-692.

A city attorney may not also serve as a hearing officer for the Workmen's (now Workers') Compensation Board. OAG 72-698.

A member of the fiscal court may be appointed to serve on a joint city-county planning commission simultaneously. OAG 72-704.

A county property valuation administrator may not act as city tax assessor within the county in which the administrator has been elected. OAG 72-736.

A mayor may not at the same time hold a part-time position as a juvenile probation officer. OAG 72-761.

A person may hold the office of mayor while holding a job under a federally financed school program. OAG 72-796.

A position on the state game and fish commission would be incompatible with a position on a city civil service commission. OAG 72-808.

The position of city judge pro tem is incompatible with membership on a city civil service commission. OAG 72-808.

The position of county coroner and that of membership of the Kentucky State Board of Chiropractic Examiners would be incompatible. OAG 72-839.

An assistant county attorney may not serve at the same time as a judge pro tem in the city police court in the same county. OAG 73-29.

There is no conflict where a person serves at the same time as county juvenile court judge and attorney for a public school board of education within the same county. OAG 73-35.

Although a school board employee is a state employee, he is not one under the merit system as established by KRS Chapter 18 (now repealed) and neither this section nor Ky. Const., § 165, which define incompatible officers, forbids a school board employee from serving as a city councilman. OAG 73-144.

There is no constitutional provision under Ky. Const., § 165, or statutory provision prohibiting a person from holding a county office and county employment at the same time and any possible common-law conflict of interest where the person could not perform the duties of both offices at the same time with care and ability would be a question of fact for the courts to decide. OAG 73-166.

There is no apparent common-law conflict when a magistrate drives a school bus as driving a school bus is state employment and a magistrate is a county officer; thus there is no constitutional or statutory conflict. OAG 73-212.

A member of the Fish and Wildlife Commission holds a state office, and may not hold the office of deputy sheriff at the same time. OAG 73-224.

If a superintendent of parks has been made a state park ranger as authorized by KRS 148.056, he would become a minor state officer, and would thus be ineligible to continue with the office of deputy sheriff. OAG 73-224.

If an election officer is a county officer and if he holds municipal office while serving as an election officer, the two (2) positions are incompatible. OAG 73-256.

Although Ky. Const., § 165 and this section prohibit a person from holding two (2) municipal offices at the same time, so that holding a municipal office and city employment is permissible, anyone can serve as city judge while being employed in a nonelective capacity for which a salary is paid by the same city. OAG 73-256.

A fifth-class city policeman on a monthly salary could continue to hold his position until he assumes the office of sheriff insofar as this section and Ky. Const., § 165, are concerned. OAG 73-346.

No constitutional or statutory provision prohibits a person from holding a city office and state employment at the same time. OAG 73-440.

Auxiliary police officer of city could not at the same time hold the position of county juvenile officer. OAG 73-468.

Commonwealth detective would be considered a state officer, and such office is not compatible with position of auxiliary or reserve policeman of a city. OAG 73-468.

The mayor of a fifth-class city is a municipal officer and may not at the same time hold a position of county judge (now county judge/executive) pro tem or be a member of the county board of health. OAG 73-548.

Although a city alderman clearly holds a municipal office, this section does not preclude his appointment for compensation as a county road viewer under KRS 178.070, his appointment as a commissioner in a condemnation action under KRS 416.020 (repealed), or his employment to appraise real estate or to act as an agent for the county in acquiring land for a public project, since none of these employments amounts to filing a county office nor do they comprise the holding of public office as defined in Howard v. Saylor, 305 Ky. 504, 204 S.W.2d 815, 1947 Ky. LEXIS 852 (1947). OAG 73-555.

Although this section and Ky. Const., § 165 prohibit a person from holding two (2) municipal offices at the same time, the term municipal office must be distinguished from municipal employment and where a chief of police of a city is also employed as manager of the city's sanitation and street department, two (2) municipal offices are not involved (affirming OAG 38-504 and OAG 71-343). OAG 73-556.

A common-law incompatibility would exist if a person were to serve as magistrate and at the same time serve as assistant doorkeeper during the legislative session, because the office of magistrate requires that he be accessible at all times to those who need warrants issued and who desire to bring civil suits in the magisterial district which he serves. OAG 73-661.

Where a county and a city through a joint operation create a garbage and refuse disposal district, the board of directors composed of four members of which one is a mayor of the city and another is a member of the city council there is no incompatibility as to these two (2) board members because the two (2) municipal officers are not county officers in the strict sense. OAG 73-667.

While both Ky. Const., § 165, and this section prohibit a person from holding two (2) municipal offices at the same time, there would be no incompatibility if a member of the town council served as a member of the board of trustees of a fire prevention district since the latter is not equivalent to a municipality but is merely a separate taxing district under KRS 75.040. OAG 73-711.

As the office of county attorney is a county office under the Constitution and the office of master commissioner has been held to be an office of the court and therefore neither a state nor county office, there would be no statutory or constitutional incompatibility were a person to serve in both capacities. OAG 73-783.

Sheriff is a county office under the Constitution and under KRS 70.540, counties are authorized to establish a county police department, the personnel of which would be considered county officers and, while there would be no incompatibility under this section, it is doubtful that the sheriff could at the same time serve as chief of the county police department and perform the duties of both offices with care and ability. OAG 73-783.

A town marshal is a city peace officer and a deputy sheriff is a county officer therefore one person could not serve in these offices at the same time. OAG 73-795.

A deputy county coroner may not serve simultaneously as a city commissioner of a fourth-class city operating under the commission form of government. OAG 73-807.

As there is no prohibition against a person holding a municipal office and at the same time serving as an employee of the city or performing services as an independent contractor, a prosecuting attorney could contract with the city to perform those legal services normally assigned to the city attorney until a qualified attorney could be appointed to that position. OAG 73-815.

The offices of constable and deputy sheriff are incompatible so that a person elected constable could not legally hold the office of deputy sheriff at the same time. OAG 73-834.

As this section prohibits a person from holding the office of deputy sheriff and constable at the same time, it is illegal for a sheriff-elect to hire the incumbent sheriff who has been elected a constable, also Ky. Const., § 99, specifically prohibits an outgoing sheriff from being a deputy sheriff for the succeeding term. OAG 73-836.

As no person can fill two (2) municipal offices, either in the same or different municipalities, individual would be prohibited from membership on the board of trustees of a sixth-class city while acting as city attorney of a fifth-class city but where a city had no attorney qualified to be appointed city attorney, such individual could contract as special counsel to perform the duties of the city attorney in which case he would be considered either an employee of the city or an independent contractor and not an officer of the city so there would be no incompatibility. OAG 73-838.

Incompatibility exists where a person is a member of the General Assembly and also holds the office of city attorney. OAG 73-851.

Person assuming the office of county attorney may not simultaneously hold the office of city attorney, but may furnish legal services to the city on a contract basis. OAG 73-852.

While it is possible for a sixth-class city to employ the county attorney on a contract basis, there may exist a question of legal ethics which should be resolved by the Kentucky Bar Association where there is another attorney living in the county. OAG 73-852.

As members of the state athletic commission are state officers and the position of assistant director of buildings and maintenance for Jefferson County constitutes a form of county employment and as a person is prohibited from holding a state office and county employment at the same time, these positions are incompatible. OAG 74-4.

Positions as state parole officer and part-time alcoholic beverage control agent for the city of Louisville on Sunday are incompatible, one being a state office, the other being a municipal office. OAG 74-24.

As the position of sanitarian for the county health department is county employment, there is no conflict in holding this job and the position of county deputy sheriff simultaneously. OAG 74-46.

City council member may serve concurrently as the city alcoholic beverage commissioner if such duties are assigned by the city council to one of the council members as provided by KRS 241.160, but if the office is created by ordinance the office is a municipal office and this section and Ky. Const., § 165, prohibit a person from filling two (2) municipal offices at the same time. OAG 74-82.

While county election board member and county judge (now county judge/executive) pro tem are both county officers, there is no provision that would prevent a person from holding both of these offices at the same time as section sets out the county offices that can't be held simultaneously. OAG 74-91.

As it appears from KRS 179.020 and KRS 179.060 that the county engineer is not a county officer and neither this section nor Ky. Const., § 165, prohibit a person from holding a form of county employment and a city office, there is no incompatibility nor conflict of interest with the city hiring as city engineer the person presently serving as county engineer. OAG 74-92.

Although KRS 26.270 (repealed) provides that the legislative body of a sixth-class city shall provide by ordinance who shall act in the place of the police judge, the legislative body cannot designate a councilman to act in the place of the police judge since both a city councilman and a city police judge are municipal officers and both subsection (4) of this section and Ky. Const., § 165 state that no person, shall at the same time, fill two (2) municipal offices, either in the same or different municipalities. OAG 74-124.

Although Ky. Const., § 165 and this section state that no person shall at the same time fill two (2) municipal offices, either in the same or different municipalities, there are no legal prohibitions against holding the position of police chief and the position of city manager at the same time since a police chief is a city officer and according to KRS 89.560 (now repealed) a city manager is an employee of the city rather than a city officer. OAG 74-125.

There is no violation where one man is employed by the Lexington police department and serves part-time as a deputy sheriff for Clark County since the new form of local government embracing Lexington and Fayette County was not contemplated within the terms of this statute. OAG 74-207.

Where a man was a city fireman and a member of a county volunteer fire department, no incompatibilities arose under this section by holding the office of county constable. OAG 74-240.

Where councilman was assigned duties of city alcoholic beverage control administrator pursuant to KRS 241.160, such assignment did not result in the councilman occupying two (2) offices in violation of this section, since no new city office had been created. OAG 74-292.

An attorney-client agreement between a senator and a city, acting through its mayor, is not in violation of this section or Ky. Const., §§ 27, 28 and 165, since the senator would not be an officer or employee of the city but merely an independent contractor in an attorney-client relationship. OAG 74-315.

Under this section no incompatibility exists between the office of State Railroad Commissioner and membership on the state board of ethics; but, if an election is required to be held for the unexpired term of the railroad commissioner pursuant to Ky. Const., § 152, an appointee to the board of ethics, in view of KRS 61.070, would have to resign his position on the board if he became a candidate in the election. OAG 74-377.

Since director of pupil personnel of a county school district is a state office and county judge (now county judge/executive) pro tem is a county office, the two (2) offices are incompatible. OAG 74-382.

A city marshal of one city cannot be employed as a part time deputy marshal, police officer, or patrolman of another city without creating an incompatible situation and thereby vacating the former office unless it is through an interlocal agreement pursuant to KRS 65.210 to 65.300. OAG 74-537.

An off-duty fireman employed to act as an auxiliary policeman to control traffic and a public works street sweeper employee employed as an auxiliary policeman to issue parking tickets to cars unlawfully blocking his path are simply holding a position of employment and an office at the same time which

is not incompatible under Ky. Const., § 165 or subsection (4) of this section. OAG 74-543.

A member of a town board of trustees can be legally assigned the duties of the office of alcoholic beverage control administrator under authority of KRS 241.160 as the board member would not be holding another municipal office in violation of Ky. Const., § 165 and this section. OAG 74-576.

Neither the sheriff nor any of his deputies may serve as the nonsalaried county police chief as the police chief should only be answerable to the county court and while this section and Ky. Const., § 165 do not prohibit such appointments, a practical incompatibility could arise in the serving in the two (2) capacities. OAG 74-581.

Members of a city council of a city of the fourth class cannot serve on park boards created pursuant to KRS 97.550 without violating subsection (5)(g) of this section. OAG 74-608.

The office of magistrate on a county fiscal court is not incompatible under this section or KRS 61.220 with a position as employee of a hospital being operated as a county hospital under KRS 216.040 (repealed), but it may be incompatible under the common-law rule of Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122, 1917 Ky. LEXIS 306 (1917). OAG 74-609.

An unclassified employee of a state university is eligible to run for and serve on a county school board as there is no general prohibition against holding a state office and state employment at the same time and Ky. Const., § 165 and this section deal only with holding incompatible offices not the holding of a state office and state employment simultaneously. OAG 74-646.

The treasurer of a county school board is considered a state officer and may not at the same time serve as commissioner of a municipal public utility, which office in all probability constitutes a municipal office and, even if not, constitutes municipal employment. OAG 74-707.

Although no constitutional or statutory conflict of interest or incompatibility exists between the offices of county commissioner and that of administrative head of a department of county government, since the latter office would be under the supervision of the county commissioners and since the two (2) positions possibly could not be performed at the same time with the requisite care and ability there would appear to exist a common-law incompatibility. OAG 74-737.

A conflict of interest or incompatibility between offices comes into existence at the time the second office is assumed, not when the holder of the first office becomes a candidate for the second. OAG 74-737.

A school guard made a member of the county police force is a county officer and could not be made a member of the city police department. OAG 74-738.

As this section and Ky. Const., § 165 prohibits a person from holding a state office and a county office or city office at the same time, the office of an auxiliary police officer of a city of the third class, created under KRS 95.445 is incompatible with the office of deputy sheriff, a county office, and a conservation officer, a state officer under KRS 150.090. OAG 74-909.

As this section prohibits the holding of a county office and a city or municipal office at the same time, the acceptance of a city council office by a deputy sheriff creates an incompatibility which, though not automatic, shall operate to vacate the first office held and the city council may, pursuant to a hearing and good cause, remove the deputy sheriff from office by a vote of three-fourths of its members. OAG 74-917.

The office of master commissioner is not an office within the meaning of this section or Ky. Const., § 165 and is not, therefore, incompatible with the office of county attorney unless a common-law incompatibility arises where the duties of both offices cannot be performed by the same incumbent with care and ability, which would involve a question of fact only the courts can decide. OAG 75-57.

Since a city-county airport board is an independent corporate entity, neither a city nor county agency, membership on such board is not an office contemplated by this section or Ky. Const., § 165 and is not incompatible with the office of Commonwealth's Attorney. OAG 75-72.

City prosecutor may not serve on county park board as this violates the prohibition against filling a county office and a city office at the same time. OAG 75-138.

A member of the Louisville police department may not hold a position as a city trustee of a city of the sixth class since this section prohibits the holding of two (2) municipal offices at the same time. OAG 75-246.

Since the office of master commissioner is not a state, county or city office but an office of the court, it is not incompatible with the office of magistrate under this section or Ky. Const., § 165, although a common-law conflict might arise if the duties of both offices could not be performed by the same incumbent with care and ability. OAG 75-255.

There is no incompatibility between the offices of county judge (now county judge/executive) pro tem and clerk of the quarterly court. OAG 75-263.

Although the offices of common councilman in a city of the third class and Circuit Court Clerk are incompatible in view of this section, there is no constitutional or statutory provision which would prohibit a council member from becoming a candidate for circuit clerk since the incompatibility would not exist, in view of KRS 61.090, until the council member assumes the office of circuit clerk. OAG 75-292.

Since the office of deputy jailer is a county office under KRS 71.060, although an appointive rather than an elective office, it is incompatible with the office of member of the common council of a city of the third class. OAG 75-292.

No statutory or constitutional conflict of interest or incompatibility exists by virtue of the fact that a member of the county board of education serves at the same time on the Cumberland River Mental Health-Mental Retardation Board, Inc., a private nonprofit corporation. OAG 75-337.

A person appointed director of pupil personnel, a state office created by KRS 159.080, could not at the same time serve as magistrate or justice of the peace, a county office, as the two (2) are incompatible under this section and Ky. Const., § 165. OAG 75-414.

Since service on the planning and zoning commission by an officer of a political party would not constitute or involve a pecuniary interest, no conflict of interest would exist under KRS 100.133 and as the position of county chairman of either political party is not a constitutional or statutory office, there would be no incompatibility between said position and service on the zoning and planning commission created pursuant to Ky. Const., § 165 and this section. OAG 75-436.

There is no statutory or constitutional incompatibility or conflict where a person is a state employee and holds a county office at the same time and therefore, one may hold the position as magistrate while still an employee of the state property valuation administrator's office and any question of common-law incompatibility must be decided by the courts. OAG 75-526.

A city councilman appointed as chief of police pursuant to KRS 95.720 (now repealed) is holding two (2) incompatible offices under this section and Ky. Const., § 165 but where the councilman is merely appointed as police commissioner to oversee the police department there is incompatibility. OAG 75-564.

Since the offices of employee of the state highway commission and election officer or member of the board of elections are not incompatible under this section or Ky. Const., § 165 and since the State Merit System Act has no provision prohibiting a state employee from serving in either capacity an employee of the highway commission may legally do so. OAG 75-565.

Under Ky. Const., § 165 and this section the office of city fire chief is not incompatible with employment by the greater Cincinnati airport fire department. OAG 75-568.

Serving as a member of the environmental quality commission while at the same time being employed by an interlocal planning and development agency does not violate this section. OAG 75-674.

As the position of chief deputy commissioner of the Department of Insurance is a state office pursuant to KRS 304.2-060 and 304.2-090, and being a member of a public library district board constitutes holding a municipal office, the offices are incompatible under Ky. Const., § 165 and this section. OAG 75-696.

The position of master commissioner is a public office within the meaning of subsection (5)(g), but is not a state, county or city office under this section. OAG 75-700.

Since the position of district health office is not a county nor a state office, there is no statute prohibiting the district health officer from being at the same time the county coroner, provided that he can carry on and perform his duties as district health officer as required by KRS 212.900. OAG 75-703.

Although there is no statutory incompatibility between the position of district health officer and the office of county coroner, there may be common-law incompatibility if the health officer could not execute both positions with care, ability, impartiality, and honesty. OAG 75-703.

Although the office of school board member and that of master commissioner of the Circuit Court are constitutionally and statutorily compatible offices, there could exist common-law conflict where the duties of both offices cannot be performed at the same time with care and ability. OAG 75-715.

Since the office of master commissioner does not constitute a state, city or county office, but merely an office of the court, no incompatibility would exist between the office of school board member and the position of master commissioner for the Circuit Court. OAG 75-715.

If a city of the third class, pursuant to KRS 92.150 (now repealed), has by ordinance consolidated the offices of tax collector and city clerk into one office the holder of that office could probably perform the duties of the tax collector utilizing the personnel of the consolidated offices. OAG 75-723.

A duly elected constable cannot serve as a salaried police officer in a city of the sixth class since this section prohibits the holding of a county office (constable) and a municipal office (police officer) at the same time. OAG 75-781.

This section does not prohibit the holding of two (2) county offices at the same time and thus, one person may hold both the office of Circuit Court Clerk and commissioner of the city-county recreational, tourist and convention commission since both are county offices. OAG 76-3.

The offices of county treasurer and fiscal program coordinator for the county are not incompatible as this section does not prohibit the holding of two (2) county offices at the same time. OAG 76-8.

This section would not prohibit a mayor from also acting as city planner if the latter office is a form of city employment, rather than a municipal office. OAG 76-16.

As the position of superintendent of city waterworks is merely a form of employment and not a municipal office, it is not incompatible with the office of police judge pro tem. OAG 76-34.

The position of deputy sheriff and that of a precinct judge are not incompatible insofar as this section and Ky. Const., § 165 are concerned as a deputy sheriff is a county officer and election officers would appear to be local or county officers. OAG 76-91.

A person may, at the same time, hold the municipal office of judge pro tem and a position of municipal employment as a management planning administrator provided that the two (2) positions can be performed with care and ability. OAG 76-134.

A person is not prohibited from being a member of the county police merit board and, at the same time, a member of the county board of tax supervisors, if the situation does not involve a common-law incompatibility. OAG 76-195.

Since the position of electric plant superintendent is nothing more than a form of employment, a person could serve at the same time as city manager and as plant superintendent of the electric plant board. OAG 76-211.

There is no prohibition against a person holding two (2) positions of municipal employment at the same time, or a municipal office and municipal employment, thus a person could serve as the administrative officer of a city planning commission and at the same time serve as city manager of the city. OAG 76-212.

Although there would be no constitutional or statutory provision prohibiting a person from holding the office of magistrate, a county office, and at the same time serving on the county school board staff, which would constitute a form of state employment, there could be a common-law incompatibility since a magistrate must be accessible at all times to persons desiring to serve warrants and to those desiring to bring civil actions. OAG 76-216.

There is no statutory or constitutional incompatibility or conflict of interest between membership on a county school board and employment as a full time mental health worker for a nonprofit corporation which administers a community mental health program. OAG 76-227.

Since a city-county air board is a separate political entity from the creating agency, a member of the city council could be appointed to the air board by the mayor. OAG 76-257.

There is no constitutional nor statutory incompatibility between the positions of hearing officer for the workmen's compensation board, special commissioner for the Circuit Court, or assistant public defender (now public advocate) for the quarterly court. OAG 76-281.

In a sixth-class city the fact that the police judge is the father of the deputy marshal, who presents evidence in the city police court against an alleged violator of a city ordinance or state law, would not create a conflict of interest. OAG 76-345.

There is no constitutional or statutory incompatibility between the position of secretary of the county police merit board and a position as a data processing contract accountant in the county clerk's office. OAG 76-346.

A person cannot serve as chairman of the state athletic commission, a state office, and at the same time enter into a personal service contract for management services with the county court clerk since in reality the person under such contract would be serving as a deputy county clerk and thus be holding a county office. OAG 76-352.

The mayor of the city of Glasgow can at the same time legally serve as principal of the local school. OAG 76-402.

There is no statutory, constitutional or common-law incompatibility in a person serving as a deputy county coroner and an emergency medical technician. OAG 76-429.

A member of the board of supervisors of a conservation district is a local, subdivisional officer and may potentially receive per diem and expenses for serving as such and a state officer could not hold the supervisor's position because of the prohibition of subsection (1) of this section and Ky. Const., § 165, but were he not a state officer but a state employee the dual positions would not violate these sections; however, since a member of the board of supervisors receives a per diem it constitutes a paid public officer and a person serving as both a member of the board of supervisors and as a state officer or employee would be in violation of KRS 18.310(4) (now repealed). OAG 76-430.

A person cannot serve as a member of the school board and at the same time hold a position of city manager of a city without violating this section and Ky. Const., § 165 since these sections prohibit a state officer from holding a municipal office or employment at the same time. OAG 76-433.

A person who holds the position of director of the city's recreation program could not continue to serve as such and the same time serve as a member of the local board of education. OAG 76-434.

Since the economic development council is an agency of the city, county and chamber of commerce and the administrator serves at the same time the city, county and chamber of commerce, the position of assistant administrator is of a so called hybrid nature, that is neither a city or county position as contemplated in Ky. Const., § 165, this section and KRS 160.180(1)(d) (now (2)(f)) and therefore no incompatibility would exist between the position of assistant administrator of the economic development council and membership on a county school board. OAG 76-495.

While under Ky. Const., § 113 a county judge (now county judge/executive) or justice of the peace could be appointed as a trial commissioner of the District Court if: (1) the county is one having no resident district judge (2) they are residents of such county (3) it is shown that there is no resident attorney who is available, Ky. Const., § 165 and this section would prohibit a county judge (now county judge/executive) and justice of the peace, as county officers, from being at the same time a trial commissioner of a District Court. OAG 76-497.

Inasmuch as the position of maintenance supervisor for a local board of education is a form of state employment, a person would not be prohibited from holding that position and also serving as a member of the county commission. OAG 76-533.

A man may serve on both the urban renewal and community development agency of Elsemere and the Kenton County and municipal planning and zoning commission since there would exist no incompatible situation under Ky. Const., § 165 and this section since the individual in question would not be holding two (2) municipal offices or a municipal and a county office at the same time. OAG 76-562.

Since there is nothing under the terms of Ky. Const., § 165 and this section to prohibit a person from holding a state office and state employment at the same time, a person could hold the office of Commonwealth's Attorney, a state office, and a teaching position at a state university, a form of state employment, at the same time. OAG 76-563.

A person cannot, at the same time, hold the offices of mayor and police chief without violating subsection (4) of this section and Ky. Const., § 165, since both offices are city offices and the fact that the mayor would not receive additional compensation for serving as the head of the police department is not determinative as to whether such position is a city office and there is no authority whereby the mayor of a fifth-class city may exercise the same powers as city police officers. OAG 76-570.

There is no statutory or constitutional provision that would prohibit a person from serving as a member of the fiscal court and at the same time as deputy coroner, appointed pursuant to KRS 72.040 (repealed). OAG 76-642.

An employee of an area development district would not be prohibited from becoming a candidate for and holding a county or city office and at the same time continuing his employment with the district. OAG 76-662.

A person could not serve as the county coroner and as a member of the state board of funeral directors and embalmers at the same time. OAG 76-669.

Membership on a county school board and the position of county director of civil defense are incompatible. OAG 76-687.

A member of the city council of a fifth-class city could at the same time serve in the nonpaying position of police surgeon. OAG 76-689.

There would be no incompatibility between the position of staff attorney for a nonprofit legal aid corporation and that of state representative. OAG 76-737.

There is no provision under Ky. Const., § 165 or this section relating to incompatible offices that would prohibit a person from holding a position on a county board of education which is a form of state employment and serving on the fiscal court which is a county office, nor is there any prohibition to a person serving as a member of a county board of education and as mayor of a fourth class city. OAG 77-8, 1977 Ky. AG LEXIS 768.

An individual who is a member of an independent school board could not at the same time serve as member of a county board of health as these positions are incompatible. OAG 77-39, 1977 Ky. AG LEXIS 726.

A member of the board of optometric examiners who is running for the office of county commissioner could continue to serve on the board up until he assumed the office of county commissioner without violating the prohibition against a state officer's holding a county office at the same time. OAG 77-79, 1977 Ky. AG LEXIS 707.

A person who is the mayor of a fifth-class city cannot at the same time hold the position of superintendent of county schools since position of mayor is a municipal office and the position of superintendent is a state office and the fact that the mayor may not receive a salary is of no consequence in determining incompatibility. OAG 77-107, 1977 Ky. AG LEXIS 683.

An assistant county attorney may, generally, represent the special fund as a contract attorney in proceedings before the Workmen's (now Workers') Compensation Board. OAG 77-113, 1977 Ky. AG LEXIS 678.

Where an assistant county attorney who is required to defend the interests of the county before the Workmen's (now Workers') Compensation Board is under contract with the Department of Labor as a special fund attorney and under such contract he would be assigned to represent the interests of the Department of Workmen's (now Workers') Compensation hearings and he could refuse such assignments, there would be no constitutional or common-law incom- patibility, because while the assistant county attorney is an officer of a county, he is not a state officer or a deputy state officer, since he is under contract with the state, and thus is in fact an independent contractor performing services for the state. OAG 77-113, 1977 Ky. AG LEXIS 678.

The principal of an elementary school, a state employee, can become a candidate for the office of magistrate and if elected continue to retain his position as principal unless there would be some common-law conflict of interest where the individual could not perform the duties of both positions at the same time with care and ability or unless there is some local regulation promulgated by the county board of education prohibiting school employees from becoming candidates for public office without resigning or taking leave of absence. OAG 77-146, 1977 Ky. AG LEXIS 641.

It would not be an incompatible situation for the husband of the county treasurer to be a candidate for the office of property valuation administrator. OAG 77-162, 1977 Ky. AG LEXIS 616.

A state employee under the merit system would not be prohibited from serving in an appointive position as a deputy in the office of county clerk. OAG 77-163, 1977 Ky. AG LEXIS 617.

Since a university professor is not a state officer or a deputy state officer, there would be no incompatibility if a city councilman became a law professor at a state university. OAG 77-174, 1977 Ky. AG LEXIS 614.

There is no statutory incompatibility in an individual holding the office of mayor of a third-class city, a municipal office, while retaining a faculty position at a regional university, a form of state employment. OAG 77-204, 1977 Ky. AG LEXIS 570.

If a person who was chairman of urban renewal and a member of the board of directors of the housing project were to be elected to city council regardless of whether or not an incompatibility or conflict of interest would exist, if the person

in question were elected to city council, the fact that he holds the positions mentioned would in no way affect his right to become a candidate for a public office in the primary and general election and any incompatibility that might exist would not occur until he assumed the office of city council; however, if elected he would become disqualified from serving as a member of the housing commission pursuant to KRS 80.040 and also on the urban renewal agency, if it is operated by the city, since it would constitute a municipal office and this section and Ky. Const., § 165 prohibit a person from holding two (2) municipal offices at the same time; but if the urban renewal agency was created as an independent agency under KRS Chapter 99 no incompatibility would exist. OAG 77-244, 1977 Ky. AG LEXIS 545.

Members of county board of education are state officers and at the same time the position of state ABC officer is one authorized pursuant to KRS 241.090 and such representatives have full police powers which may or may not place their position in the category of a state officer; and although subsection (1)(d) (now (2)(f)) of KRS 160.180 prohibits a school board member from holding and discharging the duties of any local office or agency under the city or county of his residence, it would not prohibit a school board member from holding employment or an appointive office with the state and of course a board member could not become a candidate for any public office, local or state; however, Ky. Const., § 165 and this section do not prohibit a person from holding two (2) state offices or employment at the same time. OAG 77-245, 1977 Ky. AG LEXIS 582.

Neither this section nor Ky. Const., § 165 prevent a person from, at the same time, being a member of the board of an air pollution control district and a member of the board of a sewer construction district, neither of which is a state, city or county agency, and if the person involved is able to perform the functions of both positions with care and ability and with impartiality and honesty, no common-law incompatibility would exist. OAG 77-249, 1977 Ky. AG LEXIS 520.

There is no statutory or constitutional prohibition against a member of the General Assembly serving, at the same time, as a commissioner of a sewer construction district and if the person involved can perform in both capacities with care and ability and with impartiality and honesty, no common-law incompatibility would be involved in either. OAG 77-249, 1977 Ky. AG LEXIS 520.

No incompatibility would exist where the city clerk is appointed to the position of zoning administrator for the city, if the latter position does not constitute a municipal office. OAG 77-369, 1977 Ky. AG LEXIS 414.

There would be no incompatibility or conflict of interest where the staff attorney for the board of ethics of the General Assembly serves, at the same time, as a county attorney. OAG 77-402, 1977 Ky. AG LEXIS 372.

A university safety and security officer appointed and holding his position pursuant to KRS 164.950 to 164.980 is a state officer and as a state officer he is precluded by Ky. Const., § 165 and subsection (1) of this section from serving, at the same time, as either a city officer or a county officer. OAG 77-521, 1977 Ky. AG LEXIS 249.

No incompatibility would exist where a member of the Legislature is involved in part-time advisory work under a personal service contract with a city or a county. OAG 77-536, 1977 Ky. AG LEXIS 251.

Since a member of a board created to administer a city's recreational facilities is a municipal officer, a city councilman could not be appointed to serve on that recreational board. OAG 77-539, 1977 Ky. AG LEXIS 253.

A member of the Legislature or his law firm would not be prohibited from contracting with a city for legal services OAG 77-589, 1977 Ky. AG LEXIS 191.

There is no constitutional or statutory restriction which would prohibit an employee of a city sewer department from serving as county magistrate. OAG 77-639, 1977 Ky. AG LEXIS 146.

Where a city is operating an urban renewal and community development agency, a member of the county board of elections could not serve on the urban renewal agency. OAG 77-650, 1977 Ky. AG LEXIS 132.

A member of a city council would be prohibited from serving as a deputy sheriff for the county. OAG 77-661, 1977 Ky. AG LEXIS 116.

A person employed as assistant director of a city's department of personnel and employee relations would not be prohibited from contracting with a county to write an affirmative action plan for divisions of the county government. OAG 77-672, 1977 Ky. AG LEXIS 108.

There would be no incompatibility between the office of city attorney and the position of hearing officer for the wage and hour section of the Department of Labor (now Labor Cabinet). OAG 77-680, 1977 Ky. AG LEXIS 103.

A person could not hold the position of fire chief of a fifth-class city and at the same time hold the office of city councilman. OAG 77-682, 1977 Ky. AG LEXIS 97.

Although justices of the peace no longer have judicial functions, a person would be prohibited from being a justice of the peace and a deputy sheriff at the same time. OAG 77-686, 1977 Ky. AG LEXIS 94.

Membership on the board of trustees of a city's public library would be incompatible with membership on the local school board. OAG 77-697, 1977 Ky. AG LEXIS 76.

Since this section does not prohibit a person from holding a county office and municipal employment at the same time, a person who holds the position of captain of a city fire department could be employed as a part-time deputy sheriff. OAG 77-698, 1977 Ky. AG LEXIS 77.

Inasmuch as a person is prohibited from holding two (2) municipal offices at the same time, a member of the board of trustees of a sixth-class city could not be appointed to the office of city treasurer. OAG 77-710, 1977 Ky. AG LEXIS 65.

Inasmuch as a membership in an educational association does not constitute a state, county or city office, a person could retain his membership in such an association while serving on a local school board. OAG 77-712, 1977 Ky. AG LEXIS 71.

An individual appointed trial commissioner could not at the same time serve as city attorney for a city of the fourth class. OAG 77-744, 1977 Ky. AG LEXIS 38.

The zoning administrator does not fill a municipal office such as would be incompatible with a county office. OAG 77-765, 1977 Ky. AG LEXIS 23.

For the purposes of the conflict of interest provision, the office of county attorney, while involving both state and county functions, is a county office. OAG 77-779, 1977 Ky. AG LEXIS 1.

The office of magistrate and state employee are not incompatible under this section. OAG 78-2, 1978 Ky. AG LEXIS 724.

Under the terms of this section, an individual cannot serve as both county judge/executive pro tem and as a member of the city civil service commission as the two (2) offices would be incompatible. OAG 78-44, 1978 Ky. AG LEXIS 685.

Membership on an area development board and a municipal housing commission is not incompatible inasmuch as both agencies are hybrid political entities and are not a county or subdivision of a county, city, or town. OAG 78-47, 1978 Ky. AG LEXIS 654.

Since the position of fire chief in a fourth class city is a form of municipal employment rather than a municipal office, there is no statutory prohibition against a person holding the office of county jailer and, at the same time, holding the position of city fire chief; however, there may be a common-law incompatibility. OAG 78-86, 1978 Ky. AG LEXIS 647.

The county sheriff cannot at the same time serve as a city police officer as those two (2) offices are incompatible. OAG 78-107, 1978 Ky. AG LEXIS 614.

The mayor of a fourth-class city could not serve at the same time as a member of the city's utility commission. OAG 78-111, 1978 Ky. AG LEXIS 616.

A riverport authority is an independent governmental agency which is not a state, county or city agency contemplated under this section. OAG 78-125, 1978 Ky. AG LEXIS 632.

Since a riverport authority is an independent agency from that of the city, no incompatibility or conflict of interest would exist where a city commissioner served as a port manager. OAG 78-125, 1978 Ky. AG LEXIS 632.

Nothing in this section prevents a person from serving at the same time as a county building inspector and a member of a county planning and zoning commission. OAG 78-137, 1978 Ky. AG LEXIS 601.

A member of the city council who is a municipal officer could not hold the position of assistant county attorney which would be considered a county office in the same category as the county attorney. OAG 78-236, 1978 Ky. AG LEXIS 487.

There is no statutory or constitutional incompatibility between the office of county attorney-prosecutor and membership on a municipal housing commission. OAG 78-291, 1978 Ky. AG LEXIS 446.

Assuming that hospital board members of a county hospital controlled by the fiscal court qualify as county officers, there is nothing in the Constitution and in the statutes that would prohibit the county attorney from holding the two (2) county offices at the same time. OAG 78-324, 1978 Ky. AG LEXIS 416.

An elected county official, except a commissioner of the fiscal court of a county containing a first-class city, may serve on the board of a library formed under KRS 173.450 to 173.650 or 173.710 to 173.800. OAG 78-331, 1978 Ky. AG LEXIS 417.

A person could not hold the office of deputy sheriff and membership on the city council at the same time since these two (2) offices are incompatible, under Ky. Const., § 165 and this section. OAG 78-361, 1978 Ky. AG LEXIS 388.

If a postmaster is one of the fourth class, there would be no incompatibility between that position and membership on a city council, but if it is a federal office, there would be a prohibition under Ky. Const., § 237 holding, in effect, that no person can serve at the same time as a federal officer and a state or local officer. OAG 78-361, 1978 Ky. AG LEXIS 388.

Police officers are officers of the governmental entity in which they serve but under an interlocal agreement, for example, police officers involved in a cooperative undertaking between a city and a county or two (2) cities can avoid the prohibitions in this section and Ky. Const., § 165 against a person being, at the same time, a county officer and a city officer or an officer in two (2) different cities. OAG 78-364, 1978 Ky. AG LEXIS 359.

An incompatibility situation would exist where a named individual at the same time serves on the environmental quality commission and as mayor of the City of Hazard. OAG 78-377, 1978 Ky. AG LEXIS 362.

The holding of the positions of superintendent of schools and members of a local school board does not by itself present a statutory or constitutional incompatibility, under this section and Ky. Const., § 165. OAG 78-413, 1978 Ky. AG LEXIS 351.

The holding of the legislative membership on a tourist board would not constitute a violation of Ky. Const., § 165 or this section. OAG 78-475.

Subsection (3) of this section prohibits an ex-sheriff from being a deputy sheriff and a deputy marshal of a city and the member of the fiscal court could be potentially liable in connection with civil rights actions filed against the ex-sheriff resulting from his unlawful occupancy of the county office of deputy sheriff and the city office of deputy marshal; therefore the fiscal court should take positive action by appropriate resolution, disavowing any recognition of the ex-sheriff as a deputy sheriff of the county and specifically prohibiting the ex-sheriff's use of county vehicles and assistance of county employees, and provide that the funding of the ex-sheriff's position as a deputy out of the sheriff's fees or out of the county treasury should stop immediately. OAG 78-558.

There is no statutory incompatibility of offices between the jobs of county road supervisor and deputy county judge/executive. OAG 78-581, 1978 Ky. AG LEXIS 266.

Since the transit authority of River City is neither a state, city or county entity, no incompatible situation would develop within the meaning of this section and Ky. Const., § 165 where an officer of the Jefferson County police department (a county officer), or for that matter the Louisville police department (a city officer), was employed part-time by TARC. OAG 78-618, 1978 Ky. AG LEXIS 221.

Section 165 of the Constitution and this section prohibit a state officer (county school board member) from holding a county office (deputy sheriff) at the same time since they are incompatible. OAG 78-622, 1978 Ky. AG LEXIS 230.

While nothing in the law prevents an incompatibility between the office of assistant city administrator and candidate for school board, both Ky. Const., § 165, and this section prohibit one from holding a city position and at the same time serving as a school board member, which is a state office. OAG 78-631, 1978 Ky. AG LEXIS 195.

Neither the Constitution, § 165, nor this section would prohibit the county attorney from also being deputy county judge/executive, since the county attorney is the legal advisor for the county and the fiscal court, this would constitute a common-law incompatibility, and in such situation the county attorney could not honestly, impartially and objectively carry out both jobs. OAG 78-642, 1978 Ky. AG LEXIS 189.

If one is not an employee of a county school board but serves, for example, as an employee of the State Department of Education, there would be no constitutional or statutory conflict under Ky. Const., § 165 and this section since a person can hold two (2) state positions at the same time, whether they be in the form of an office or employment. OAG 78-645, 1978 Ky. AG LEXIS 185.

One may serve as a member of the Bowling Green board of education of the Bowling Green independent school district while at the same time being employed as an administrator of the Bowling Green-Warren County health department pursuant to appointment by the joint city-county board of health which is, in turn, approved by the Kentucky Department of Human Resources (now Cabinet for Human Resources), since the joint city-county health department would be considered a hybrid agency not contemplated by the Constitution or statute relating to incompatible offices, namely Ky. Const., § 165 and this section. OAG 78-646, 1978 Ky. AG LEXIS 186.

A member of the city council cannot serve at the same time as an auxiliary policeman at the annual salary of one dollar, because no person can hold at the same time two (2) municipal offices as this is prohibited under Ky. Const., § 165 and this section, since a member of the city council is a municipal officer and a member of the auxiliary police force having the same powers as a regular policeman is also a municipal officer, and compensation is not a factor in determining whether or not the two (2) offices are incompatible. OAG 78-675, 1978 Ky. AG LEXIS 160.

There is nothing under Ky. Const., § 165 or this section that would prohibit an employee of the University of Kentucky extension specialist department, poultry division, from holding a state office at the same time (such as the school board position), and this would be true even if the employee was under the state merit system in view of KRS 18.310(4) (now repealed). OAG 78-706, 1978 Ky. AG LEXIS 133.

Section 165 of the Constitution and this section prohibit a person from holding a state office and municipal office at the same time which means that the position of commonwealth detective would be incompatible with that of city policeman. OAG 78-708, 1978 Ky. AG LEXIS 135.

The office of mayor and that of membership in the General Assembly are of course incompatible under Ky. Const., § 165 and this section, but the incompatibility does not occur until the person assumes the second office, in which case he vacates the first office pursuant to KRS 61.090. OAG 78-711, 1978 Ky. AG LEXIS 128.

A person could hold office on the county board of education and at the same time serve as state conservation officer. OAG 78-773, 1978 Ky. AG LEXIS 67.

One may hold both the office of railroad commissioner and the position of trial assistant to the district judge of Floyd County since both are state offices. OAG 78-825, 1978 Ky. AG LEXIS 3.

A person holding the position of membership on the Marshall County board of education cannot at the same time serve as city treasurer of Calvert City. OAG 79-1, 1979 Ky. AG LEXIS 627.

Neither Ky. Const., § 165 nor this section prohibit an employee of a city from becoming a candidate for another public office and this would be equally applicable to the employees of the City of Louisville unless said employees are under the city's civil service program pursuant to KRS 90.220 which prohibits any person in the classified service in cities of the first class from becoming a candidate for public office. OAG 79-2, 1979 Ky. AG LEXIS 628.

Where one is made a deputy sheriff without the proper legislative action authorizing such a position, such action is purely illusory and, despite the clear prohibition of this section, the person could also hold the office of deputy county judge/executive. OAG 79-17, 1979 Ky. AG LEXIS 609.

Section 165 of the Constitution and this section prohibit a state officer from holding a municipal office at the same time; therefore, no one can hold the office of city attorney and serve as a member of an independent school board at the same time since the two (2) positions are incompatible. OAG 79-44, 1979 Ky. AG LEXIS 583.

The position of campaign manager is not an office under either Ky. Const., § 165 or this section. OAG 79-53, 1979 Ky. AG LEXIS 563.

A person could legally hold the office of county judge/executive and at the same time enter into a personal service contract with the state to provide legal services to the Kentucky Public Service Commission. OAG 79-86, 1979 Ky. AG LEXIS 538.

While a person may hold a municipal office and employment with the city at the same time without violating this section and § 165 of the Constitution, where the office of councilman and a municipal employment are involved KRS 61.270 and the common-law rule would create a conflict of interest. OAG 79-143, 1979 Ky. AG LEXIS 487.

There is no conflict between the positions of superintendent of county schools and a supervisor of a county conservation district. OAG 79-149, 1979 Ky. AG LEXIS 488.

The position of policeman is a municipal office. OAG 79-225, 1979 Ky. AG LEXIS 411.

Though a police officer could become a candidate for city council, he could not, if elected, serve as a member of a city commission and as a police officer as these two (2) positions are incompatible under Ky. Const., § 165 and this section. OAG 79-225, 1979 Ky. AG LEXIS 411.

The fact that one desires to become a candidate for another elective office creates no incompatibility until he assumes the second office which is incompatible with the first. OAG 79-248, 1979 Ky. AG LEXIS 380.

The position of county health administrator would constitute merely a form of county employment and no statutory incompatibility would exist between it and the position of city commissioner. OAG 79-300, 1979 Ky. AG LEXIS 334.

Since a county coroner is a county officer, while a local coordinator of county disaster and emergency services is a county employee, there is no constitutional or statutory incompatibility. OAG 79-319, 1979 Ky. AG LEXIS 313.

Since a school board member is a state officer, and since a county emergency director is a county employee, Ky. Const., § 165 and this section expressly prohibit one person from holding such office and employment at the same time. OAG 79-319, 1979 Ky. AG LEXIS 313.

Section 165 of the Constitution and this section do not prohibit the holding of two (2) county offices at the same time. OAG 79-398, 1979 Ky. AG LEXIS 223.

There is no conflict of interest if a county commissioner were appointed as a deputy county court clerk for the purpose of helping the clerk process the 1979 tax appeals. OAG 79-398, 1979 Ky. AG LEXIS 223.

This section does prohibit a commissioner of fiscal court in counties containing a city of the first class from holding any other public office. OAG 79-398, 1979 Ky. AG LEXIS 223.

A state employee, such as an employee of the State Department of Transportation (now Transportation Cabinet) or Bureau of Highways (now Department of Highways), can legally serve as a district commissioner for the State Department of Fish and Wildlife Resources insofar as any questions concerning incompatibility under Ky. Const., § 165 and this section. OAG 79-438, 1979 Ky. AG LEXIS 199.

Neither Ky. Const., § 165 nor this section prohibit a person from holding state employment in multiple positions. OAG 79-438, 1979 Ky. AG LEXIS 199.

Since a member of the county board of elections is a county officer and membership on the city council constitutes a municipal office, this section clearly prohibits a person from holding both at the same time. OAG 79-443, 1979 Ky. AG LEXIS 190.

Section 165 of the Constitution and this section prohibit a state officer from holding a county office at the same time; however, there is no prohibition against a state employee holding a county office except where such person is under the state merit system and cannot run for such office which would not be applicable with respect to school teachers since they do not come under the state system. OAG 79-459, 1979 Ky. AG LEXIS 175.

The position of county court clerk is a county office under the Constitution, particularly Ky. Const., § 99, and a school teacher, part-time or otherwise, is a state employee. OAG 79-459, 1979 Ky. AG LEXIS 175.

There is no constitutional nor statutory prohibition which would prohibit a local board from hiring a county clerk as a substitute teacher. OAG 79-459, 1979 Ky. AG LEXIS 175.

Although neither this section nor Ky. Const., § 165 would prevent a state representative from also serving on a local city-county human rights commission, the separation of powers doctrine under Ky. Const., §§ 27 and 28 prevent a person serving in one branch of government from exercising powers in another. OAG 79-483, 1979 Ky. AG LEXIS 161.

It is not incompatible for a full-time county employee to also serve as a trustee of a sixth-class city located in that county. OAG 79-493, 1979 Ky. AG LEXIS 131.

There is nothing in Ky. Const., § 165 or this section which would create an incompatibility between the jobs of deputy sheriff and part-time school bus driver. OAG 79-537, 1979 Ky. AG LEXIS 97.

There is no constitutional or statutory incompatibility for an elected official, such as a member of the city council, to hold at the same time an office in a privately incorporated association, such as the N.A.A.C.P. OAG 79-603, 1979 Ky. AG LEXIS 40.

Since the office of director of an emergency ambulance service district is neither a county nor city office, nothing in Ky. Const., § 165 nor in this section would prevent a city or county officer from lawfully serving on that board. OAG 79-607, 1979 Ky. AG LEXIS 28.

There is no incompatibility either under Ky. Const., § 165 or this section between the office of coroner and a member of the

board of directors of an emergency ambulance service district. OAG 79-610, 1979 Ky. AG LEXIS 30.

There is no incompatibility, under either Ky. Const., § 165, this section or the common law, between the state offices of secretary of energy and chairman of the board of trustees of the University of Kentucky. OAG 79-624, 1979 Ky. AG LEXIS 15.

Nothing in Ky. Const., § 165 or this section would prohibit an employee of a Commonwealth's Attorney's office from also being a member of a state university's board of regents. OAG 79-645, 1979 Ky. AG LEXIS 7.

Since the offices of city clerk and city treasurer are separate and distinct city offices, no person can, at the same time, hold either of these offices and another city office, such as that of city councilman, in view of Ky. Const., § 165 and this section. OAG 80-20, 1980 Ky. AG LEXIS 622.

Section 165 of the Constitution and this section do not prohibit a person from holding a municipal office, such as city clerk-treasurer, and at the same time municipal employment, such as the position of police dispatcher. OAG 80-82, 1980 Ky. AG LEXIS 554.

Since membership on the city board of adjustment constitutes a municipal office and membership on the local board of appeals under the Kentucky Building Code also constitutes a municipal office, the two (2) are incompatible, one with the other, and no person can hold both at the same time. OAG 80-91, 1980 Ky. AG LEXIS 550.

The office of city school board member and that of county comptroller are incompatible. OAG 80-92, 1980 Ky. AG LEXIS 562.

The office of commissioner of the Department of Public Information is not incompatible with a position on the Kentucky Heritage Commission or the Kentucky Historic Preservation Review Board. OAG 80-96, 1980 Ky. AG LEXIS 542.

Inasmuch as the executive director had no authority to change regulations, to administer any programs or to change any programs, but instead the work consisted of being a research person and coordinator of the activities of the task force group, there was no incompatibility between the position as executive director of the Governor's task force on welfare reform and a position as a member of a county urban council. OAG 80-60, 1980 Ky. AG LEXIS 580.

A person cannot hold the office of city clerk and city treasurer at the same time in a city of the sixth class. OAG 80-73, 1980 Ky. AG LEXIS 576.

A city clerk can run for the office of magistrate but if elected the clerk cannot continue to hold the office of city clerk, because the office of city clerk is a municipal office and the office of magistrate is a county office and this section prohibits a person from holding a municipal and a county office at the same time. OAG 80-104, 1980 Ky. AG LEXIS 538.

Constitution, § 165 and this section prohibit a state officer or deputy state officer from holding a county office; however, there is no provision prohibiting a state employee, such as a school principal, who is not under the state merit system from becoming a candidate for a county office, such as a county magistrate, and serving as such at the same time he holds his state position. OAG 80-131, 1980 Ky. AG LEXIS 514.

Although neither Ky. Const., § 165 nor this section prohibits a person from holding the positions of city councilman and civil defense director at the same time, there may be a common-law conflict of interest depending on who appoints the civil defense director pursuant to KRS 39.415; if the city legislative body appoints the civil defense director, then a conflict of interest would exist since the councilman in question would be directly involved in his own appointment; on the other hand, if the mayor is authorized to make the appointment, then no such conflict would appear to exist. OAG 80-141.

Since the position of city councilman is a city office and that of deputy sheriff is a county office, these positions are incompatible under this section which prohibits a person from holding a city and county office at the same time. OAG 80-141.

No conflict of interest would exist under Ky. Const., § 165 or this section if a county deputy jailer were permitted to join the county auxiliary police force. OAG 80-222, 1980 Ky. AG LEXIS 431.

An individual holding the office of magistrate can at the same time serve on the county board of elections, since no constitutional or statutory provisions prohibit a person from holding two (2) county offices at the same time and KRS 117.035 specifically permits a person who holds another county office to serve on the county board of elections. OAG 80-263, 1980 Ky. AG LEXIS 383.

Since the position of trial commissioner is a state office and membership on the county election board is a county office, an individual would be prohibited from holding both positions at the same time. OAG 80-266, 1980 Ky. AG LEXIS 375.

Assuming no factual circumstances that would give rise to a common-law conflict of interest, a member of a county fiscal court while serving in office may also be employed, full-time or part-time, as an instructor at the University of Louisville, or any other state institution of higher learning. OAG 80-277, 1980 Ky. AG LEXIS 363.

A member of the Kentucky General Assembly can at the same time serve as a presidential elector since the Constitution does not prohibit a person from holding two (2) state offices at the same time, unless there exists a common-law incompatibility. OAG 80-291, 1980 Ky. AG LEXIS 372.

A county attorney is a county constitutional officer, pursuant to Ky. Const., § 99, and, therefore, an assistant county attorney is a statutory county officer for the purpose of considering the general question of incompatibility of offices; since the office of assistant county attorney involves only one office, a county constitutional office, no incompatibility exists even though the county attorney has been given state duties as a prosecutor (KRS 15.725(2)) and county duties as an adviser to fiscal court (KRS 69.210). OAG 80-341, 1980 Ky. AG LEXIS 312.

Insofar as constitutional and statutory provisions governing incompatible offices are concerned, there is no restriction preventing a pretrial release officer, presumably appointed by the administrative office of the courts under RCr 4.06, from becoming a candidate for a political office and there is no statutory restriction preventing the release officer from calling attention to his position during the campaign. OAG 80-360.

There is no incompatibility in law or fact in holding at the same time the positions of Commonwealth's Attorney and membership on the Eastern Kentucky University board of regents. OAG 80-402, 1980 Ky. AG LEXIS 254.

There is no constitutional or statutory provision prohibiting an individual from holding a real estate license and the office of county judge/executive at the same time, although a common-law incompatibility might exist. OAG 80-478, 1980 Ky. AG LEXIS 206.

An individual serving on the Crime Victims Compensation Board and as a member of the Board of Claims is a nonmerit state employee, and would not be prohibited from continuing to hold the two (2) state positions while at the same time serving as a paid coordinator with a presidential campaign. OAG 80-488, 1980 Ky. AG LEXIS 160.

There is no incompatibility between serving as an employee of the Department of Human Resources and as a school board member since both positions are with the state, one being a form of state employment and the other (school board) a state office. OAG 80-505, 1980 Ky. AG LEXIS 130.

Since the position of property valuation administrator is a state office, if and when an employee of the county ambulance service assumed the office of property valuation administrator, he must resign from his position with the county. OAG 80-523, 1980 Ky. AG LEXIS 144.

There would be no constitutional or statutory restriction on a Circuit Court Clerk serving as an instructor in one of the state's driver improvement programs. OAG 80-548, 1980 Ky. AG LEXIS 122.

A person may not, at the same time, serve as clerk of the District Court and an auxiliary police officer for a city of the fourth class. OAG 80-552, 1980 Ky. AG LEXIS 101.

An employee of a county ambulance service, which is comprised of two (2) counties, could run for the elective office of coroner while still employed. OAG 80-563, 1980 Ky. AG LEXIS 89.

A deputy state fire marshal (paid a monthly salary) may not also serve as a county police officer at night. OAG 80-576, 1980 Ky. AG LEXIS 80.

Since a deputy Circuit Court Clerk is a state officer and a county treasurer is a county officer, the same person cannot, at the same time, fill both offices as they are incompatible with each other. OAG 80-608, 1980 Ky. AG LEXIS 53.

Where sixth class city sought to appoint the chief of police as city treasurer and as director of the city water department, the same person would be prohibited from holding two (2) municipal offices at the same time under this section and Ky. Const., § 165; however, the city under the appropriate ordinance could assign the duty of collecting city taxes to the chief of police and make it part of his overall responsibility. OAG 81-8, 1981 Ky. AG LEXIS 419.

A county school teacher can be elected to the office of magistrate without violating Ky. Const., § 165 and this section since a person may hold both state employment such as a school teacher and at the same time hold a county office such as magistrate. OAG 81-13, 1981 Ky. AG LEXIS 403.

An assistant Commonwealth's Attorney may accept a night teaching position with a community college without creating a conflict of interest since Ky. Const., § 165 and this section do not prohibit a person from holding a form of state employment and a state office at the same time. OAG 81-17, 1981 Ky. AG LEXIS 413.

A dispatcher with the city police department may run for and, if elected, serve as a city council member without violating the provisions of this section and Ky. Const., § 165. OAG 81-91, 1981 Ky. AG LEXIS 338.

A master commissioner may also be appointed trial commissioner since there is no statutory prohibition under this section or constitutional prohibition under Ky. Const., § 165, and neither position is subordinate to the other since the master commissioner serves in the Circuit Court and the district commissioner serves in the District Court. OAG 81-108, 1981 Ky. AG LEXIS 323.

An assistant Commonwealth's Attorney may be employed by a city under a personal service contract since the attorney would be considered an independent contractor; thus, there would not be a conflict under Ky. Const., § 165, and this section between holding state office and municipal office simultaneously. OAG 81-114, 1981 Ky. AG LEXIS 317.

The positions of deputy circuit clerk, a state officer under KRS 30A.010, and trial commissioner of the county District Court, a state officer under KRS 24A.100, since neither Ky. Const., § 165, nor this section, both of which treat the subject of incompatible offices, prohibits a person from holding two (2) state offices at the same time; however, they may be incompatible under the doctrine of practical or common law. OAG 81-124, 1981 Ky. AG LEXIS 304.

Where the executive director of a community development agency, which was not created as an independent agency under KRS 99.350, is elected to the office of mayor of the same city, there is no constitutional or statutory conflict pursuant to Ky. Const., § 165, or this section since a person can theoretically hold a municipal office and employment at the same time; however, the mayor could not continue to hold the executive director's position without creating a common law incompatibility or conflict of interest since he is presumed to possess the power under KRS 83A.130 to not only hire, but also fire, the executive director. OAG 81-179, 1981 Ky. AG LEXIS 281.

Where an attorney is on retainer for a municipal water and sewer commission and runs for the position of Commonwealth's Attorney, he could hold both positions without violating this section and Ky. Const., § 165, since the retainer position is held as an independent contractor rather than as a city officer or city employee. OAG 81-214, 1981 Ky. AG LEXIS 211.

A director of county parks and recreation board, which is a joint city-county board created by KRS 97.035, can also be elected to the city council, since the joint board is a hybrid whose members are neither city nor county officers and thus, there would be no violation of this section or Ky. Const., § 165, which prohibit a person from holding two (2) municipal offices or a municipal and a county office at the same time. OAG 81-240, 1981 Ky. AG LEXIS 198.

Under Kentucky law a city policeman is considered to be a municipal officer and thus a city cannot employ as a part-time police officer a person who is presently serving as a police officer in another city without creating an incompatibility prohibited by subsection (4) of this section and Ky. Const., § 165. OAG 81-307, 1981 Ky. AG LEXIS 131.

The employment of a county attorney as attorney for the county board of education does not violate this section and Ky. Const., § 165, since employment as the school board attorney would be that of an independent contractor rather than an employee, and since such employment would at most be a form of state employment rather than constituting a state office. OAG 81-308, 1981 Ky. AG LEXIS 148.

A person who is the master commissioner of the county Circuit Court can lawfully be appointed to serve as a member of the water commission, since the office of master commissioner is, under KRS 31A.010, merely a position filled by and under the jurisdiction of, the Circuit Court, rather than a state, county or city office; thus, no incompatibility exists under this section and Ky. Const., § 165, between the two (2) positions. OAG 81-313, 1981 Ky. AG LEXIS 124.

An employee of a city or county can act as a court commissioner appointed to appraise real estate pursuant to KRS 416.580 and receive compensation therefor, since the court commissioner position is an office of the court at most and thus not a state, county or municipal office; the holding of both positions does not violate this section or Ky. Const., § 165. OAG 81-368, 1981 Ky. AG LEXIS 60.

The appointment by a Circuit Court Judge of a city comptroller to the position of court commissioner to appraise real estate pursuant to KRS 416.580 would at most constitute appointment to an office of the court which is not a state, county or municipal office; accordingly, the holding of both offices would violate neither this section nor Ky. Const., § 165. OAG 81-368, 1981 Ky. AG LEXIS 60.

An ordinance which created the office of city alcoholic control administrator in a fourth class city and vested the powers and duties of the administrator in the mayor was in violation of KRS 241.160, which provides that such office may either be created or its duties assigned to an existing office, and also violated subsection (3) of this section and Ky. Const., § 165 which prohibit any person from filling two (2) municipal offices at the same time; however, the city council could amend or revise the ordinance to state that the duties of the administrator should be assigned to the office of the mayor, thereby avoiding the creation of a separate municipal office. OAG 81-390, 1981 Ky. AG LEXIS 75.

Constitution, § 165 and this section do not prohibit a county judge/executive from appointing a firefighter from one fire department to serve on the board of trustees of a fire protection district which does not include that department, since city and county firefighters are considered employees of their employing entity rather than governmental officers, and trust-

ees of a fire protection district are district officers rather than state, county or city officers. OAG 81-427, 1981 Ky. AG LEXIS 7.

The position of master commissioner for the Circuit Court is not a municipal, state or county office within the meaning of Ky. Const., § 165 or KRS 61.080; accordingly, a city councilman in a fourth-class city can simultaneously serve as a master commissioner. OAG 82-7, 1982 Ky. AG LEXIS 629.

A local industrial development authority would constitute an independent political subdivision or hybrid state-corporate agency under subsection (2) of KRS 154.50-316; accordingly, an assistant Commonwealth's Attorney may simultaneously hold membership in a local industrial development authority without violating Ky. Const., § 165 and this section. OAG 82-11, 1982 Ky. AG LEXIS 627.

Since a metropolitan sewer district is a hybrid agency not contemplated by Ky. Const., § 165 or this section, a property valuation administrator can also serve as a member of the board of a sewer district without violating such provisions. OAG 82-81, 1982 Ky. AG LEXIS 553.

Since the positions of county director of disaster emergency services and a fire fighter for a city located within the county are mere forms of employment, an individual can legally hold both positions without creating an incompatible situation, so long as he can perform the duties of both positions with care and ability, thereby avoiding a possible common-law conflict, which is a question of fact that only the courts can determine. OAG 82-127, 1982 Ky. AG LEXIS 511.

Constitution, § 165 and this section, involving holding two (2) offices at the same time, do not apply to a situation where a county attorney enters into a contractual agreement to act for a city which has not created an "office" embracing the city attorney. OAG 82-150, 1982 Ky. AG LEXIS 488.

An unpaid city council member who is also employed by the Kentucky Higher Education Assistance Authority as executive director, and by virtue of his position as executive director of the Kentucky Higher Education Assistance Authority, is also the executive director of the Kentucky Higher Education Student Loan Corporation, is holding a municipal office and state employment, concerning which there is no constitutional or statutory objection. OAG 82-282, 1982 Ky. AG LEXIS 356.

The executive director of the Kentucky Higher Education Authority must be considered a state employee within the meaning of Ky. Const., § 165 and this section; the same would be true with respect to his serving as executive director to the Kentucky Higher Education Student Loan Corporation pursuant to KRS 164A.050(7). OAG 82-282, 1982 Ky. AG LEXIS 356.

There is no statutory or constitutional prohibition against a person serving at the same time as a county police officer and as a member of the board of trustees of a fire protection district organized under KRS Ch. 75. OAG 82-304, 1982 Ky. AG LEXIS 344.

There would be no legal objection to the appointment of a state employee serving in the Department (now Cabinet) for Human Resources, child welfare section, to the electric plant board of a city. OAG 82-318, 1982 Ky. AG LEXIS 323.

The office of city councilman and that of deputy circuit clerk are incompatible and no one can hold both positions at the same time without violating Ky. Const., § 165 and this section. OAG 82-351, 1982 Ky. AG LEXIS 298.

Although one of the city commissioners is required to be appointed mayor pro tem pursuant to KRS 83A.140(4), he can only serve as such and in the place of the mayor when the mayor is unable to attend to the duties of the office, and as a consequence he cannot serve as mayor pro tem when a vacancy has occurred. Thus, when a member of the commission is appointed to fill the office of mayor, he automatically vacates his position on the commission, as no person can hold two (2) municipal offices at the same time under Ky. Const., § 165 and this section. OAG 82-397, 1982 Ky. AG LEXIS 244.

Fire protection district trustees and officers are not state, city or county officers for purposes of this section and Ky. Const., § 165, but would be considered district officers; not only are there no statutory or constitutional prohibitions against a fire district fire chief serving at the same time as a member of the fire district's board of trustees, but, KRS 75.031(1)(a) requires that two (2) members of the board be elected by the members of the volunteer fire fighters of the district and be members thereof. The General Assembly obviously intended that the interests of the fire fighters be represented on the board since two (2) board members must be members of the district's fire department. OAG 82-409, 1982 Ky. AG LEXIS 224.

The fire chief of a fire protection district organized pursuant to KRS Ch. 75 is not prevented by statutory or constitutional provisions from serving at the same time as one of the two (2) required members of the fire department on the fire district's board of trustees. On those particular occasions where a conflict does occur, the fire chief should remove himself from the proceedings rather than merely abstaining or passing on the matter. OAG 82-409, 1982 Ky. AG LEXIS 224.

Since the terms of KRS 154.45-001 to 154.45-100 clearly indicate that members of the Enterprize Zone Authority possess the five basic elements required in order to establish their position as a public office and a state office, the Governor cannot appoint county and city officers to the Authority without violating Ky. Const., § 165 and this section; therefore the Kentucky Municipal League and the Kentucky Association of Counties must submit the names of persons who do not hold a city or county office. OAG 82-429.

There is no legal impediment in connection with the appointment of the secretary of a county judge/executive as deputy county judge/executive. OAG 82-438, 1982 Ky. AG LEXIS 201.

Being a jailer and a school bus driver at the same time involves no statutory incompatibility. However, it is possible that such dual roles will, in a particular county, present a common law incompatibility in that the jailer may not be able to execute both functions in the manner required by law. OAG 82-452, 1982 Ky. AG LEXIS 183.

Since employment as a school bus driver is not an office, this section has no application in determining whether or not the office of jailer and the employment as a regular high school bus driver are incompatible. OAG 82-452, 1982 Ky. AG LEXIS 183.

Due to the fact that the urban county government is a hybrid form of government not contemplated by Ky. Const., § 165 or this section, the officers of such government cannot be considered either county or city officers, and, as a consequence, there would exist no constitutional or statutory incompatibility where an officer or employee of such government was appointed to the enterprise zone authority. OAG 82-482, 1982 Ky. AG LEXIS 153.

If a city has either established a position of legal advisor as a form of city employment or created the office of city attorney, no one could, at the same time, serve in state office of trial commissioner and serve in the office of city attorney or as a city employee without violating Ky. Const., § 165 and this section. However, if an attorney is employed on a personal service contract basis, he would be considered an independent contractor and there would be no constitutional or statutory objection to his serving as trial commissioner of the District Court. OAG 82-502, 1982 Ky. AG LEXIS 146.

Since members of the water district commission are neither state, county or city officers, no incompatibility would exist where a person serves as a member of the commission and at the same time serves on the city council; of course where any business develops between the water district and the city concerning which a vote must be taken, the councilman in question should refrain from participating or voting on the matter as this would be against public policy. OAG 82-635, 1982 Ky. AG LEXIS 21.

No conflict of interest or incompatibility existed where an auxiliary police officer of a city was at the same time a full-time instructor-coordinator of the Department of Training at Eastern Kentucky University; an auxiliary police officer of a city has the same powers as a regular police officer and is, therefore, considered a municipal officer while the position of instructor-coordinator for a department at Eastern Kentucky University would at most be considered a form of state employment. Neither Ky. Const., § 165 nor this section prohibits a state employee from holding a municipal office. OAG 83-29, 1983 Ky. AG LEXIS 468.

There is no statute prohibiting a night deputy in a jail from serving both as a deputy and radio dispatcher. OAG 83-34, 1983 Ky. AG LEXIS 463.

While there is nothing in Kentucky law which would prevent a full-time county employee from seeking the office of railroad commissioner, Ky. Const., § 165 and this section and KRS 61.090 would clearly prohibit a county employee from holding both his county position and the office of railroad commissioner simultaneously; it would, therefore, be necessary for the employee to resign the county position in order to assume the office of railroad commissioner if he is elected. OAG 83-66, 1983 Ky. AG LEXIS 430.

The position of financial secretary to a zoning and planning commission would not constitute a municipal office since there is no statutory authority for creating such position as an office under KRS Chapter 100 which governs planning and zoning; consequently, neither Ky. Const., § 165 nor this section prohibits a municipal officer from holding municipal employment and serving as financial secretary at the same time and receiving compensation from both sources. OAG 83-72, 1983 Ky. AG LEXIS 424.

The mayor of a city could legally serve as financial secretary to the planning and zoning commission whether it was strictly a city commission or a joint city-county commission. OAG 83-72, 1983 Ky. AG LEXIS 424.

There was no statutory conflict of interest where a member of the county fiscal court served as a director on the board of a nonprofit corporation with which the county had a contractual arrangement for the contribution of county funds for the operation of a park system, except that KRS 61.220 prohibits members of fiscal court from being interested in claims against the county. OAG 83-98, 1983 Ky. AG LEXIS 399.

If a municipal utility commission is simply an agency of the city, the city attorney should probably represent both the city and the commission since the utility commission is an agency of the city; if the commission is an independent agency, the attorney could be employed by the commission under a personal service contract which would make him an independent contractor. In neither event would the question of his holding two (2) municipal offices at the same time be involved. OAG 83-119, 1983 Ky. AG LEXIS 378.

If a member of county fiscal court should apply for and receive a job as a full-time merit system employee, he would be required to resign as a member of the fiscal court since a county employee serves under the management authority of the fiscal court and since KRS 61.220 prohibits a member of fiscal court from being interested, directly or indirectly, in a claim against the county treasury (except for his own salary as a member of fiscal court) and as a county employee, he would have a direct claim against the county treasury. OAG 83-252, 1983 Ky. AG LEXIS 245.

An employee of a county department of correction does not possess peace officer powers; therefore, there would be no constitutional or statutory objection to his holding the office of chief of police of a city at the same time since he would be a county employee. OAG 83-291, 1983 Ky. AG LEXIS 206.

Since a private, nonprofit corporation is not a public agency, no statutory or constitutional incompatibility would exist if a member of a city council and a member of the board of directors of an urban renewal agency also served on the board of directors of a nonprofit corporation established to operate a community center in the same city. OAG 83-317, 1983 Ky. AG LEXIS 180.

Membership on a school board constitutes a state office. OAG 83-318, 1983 Ky. AG LEXIS 179.

Membership on a county fair board does not constitute a public office, in the sense of being established by or pursuant to a specific statute or the Constitution, which would involve this section or Ky. Const., § 165. OAG 83-318, 1983 Ky. AG LEXIS 179.

A member of the board of education can at the same time serve as a member of a county fair board. OAG 83-318, 1983 Ky. AG LEXIS 179.

There is no statutory or constitutional conflict of interest involved where an elected magistrate serves as a special deputy. OAG 83-448, 1983 Ky. AG LEXIS 49.

A city council member could serve as a paid county employee other than an officer, provided there was no practical or common-law incompatibility; the mere payment for the work performed as an "employee" is not significant in this context. OAG 83-466, 1983 Ky. AG LEXIS 34.

A city council member is prohibited by subsection (3) of this section from serving at the same time as a deputy jailer. OAG 83-466, 1983 Ky. AG LEXIS 34.

The offices of city attorney and county attorney are incompatible under the terms of subsection (3) of this section; accordingly, where a city had in fact created the office of city attorney pursuant to the terms of KRS 83A.080(1), and assuming that the individual appointed thereafter to the position of city attorney was in fact the present county attorney, he could continue to legally serve as city attorney but would vacate his position as county attorney under the terms of KRS 61.090. OAG 83-495, 1983 Ky. AG LEXIS 2.

The office of deputy coroner and that of city councilman are incompatible under the terms of this section, because a deputy coroner is a county officer with the same powers as those possessed by the coroner which includes peace officer powers. OAG 84-23, 1984 Ky. AG LEXIS 363.

Where a regular deputy jailer continued to hold her office as a deputy jailer after accepting the office of city councilman, she became a usurper of the office of deputy jailer and the salary paid to her as deputy jailer out of the county treasury should be returned to the county from the beginning date of usurpation to the present. Thus, if she refuses to return the money the county can sue in Circuit Court to recover the compensation paid out of the county treasury while she has been a usurper; the parties defendant should include the usurper, the jailer, and the county treasurer, provided the proof shows that the jailer and county treasurer issued salary checks to the usurper after knowing that she was a usurper, a mere de facto officer. OAG 84-25, 1984 Ky. AG LEXIS 361.

There was no conflict of interest or incompatibility of offices where the fiscal court magistrates served on the board of directors of a county solid waste corporation which was a nonprofit corporation run under authority of the fiscal court. OAG 84-42, 1984 Ky. AG LEXIS 344.

There is no incompatibility under this section where the county judge/executive serves on county boards, especially since this section does not prohibit holding at the same time two (2) county offices. OAG 84-46, 1984 Ky. AG LEXIS 340.

Neither Ky. Const., § 165 nor this section dealing with incompatible offices prohibits a person, who holds a particular office that may or may not be incompatible with the one he seeks, from becoming a candidate for public office; it is only when the person is elected and holds an office that is incompatible with one to which he is elected that Ky. Const., § 165 and this section are affected. OAG 84-101, 1984 Ky. AG LEXIS 285.

Where a city which had a volunteer fire department had not established the position of fire chief as an office, the position of fire chief could only be considered as a form of employment;

accordingly, there was no constitutional or statutory conflict involved when the county magistrate was appointed as fire chief of the city. OAG 84-150, 1984 Ky. AG LEXIS 238.

While this section does not prohibit the holding of two (2) county offices at the same time, subsection (2) of this section explicitly provides in part that the offices of deputy sheriff and constable are incompatible. OAG 84-171, modifying OAG 84-31, 1984 Ky. AG LEXIS 355.

There is no statutory prohibition that would prevent an employee of a county hospital district, established pursuant to KRS 216.310 and related statutes, from becoming a candidate for the General Assembly. OAG 84-204, 1984 Ky. AG LEXIS 181.

The county judge/executive's secretary may also hold positions as finance officer or, deputy county judge/executive as well as secretary without violating any statutes; however, the triple function would be subject to the common-law rule which prohibits holding more than one office where the other office and the additional work will not permit the proper performance of all the jobs. OAG 84-253, 1984 Ky. AG LEXIS 135.

Since an airport board is a joint board, it is a hybrid agency authorized by statute between the cities and county; thus, a municipal officer could be appointed to such board without violating the prohibition against a municipal officer holding any other municipal, county or state office at the same time, as contained in this section and Ky. Const., § 165, provided the appointment is made jointly by the mayor of the other city and the county judge/executive, and the appointee is not present during the voting. OAG 84-384, modifying OAG 74-755.

Section 165 of the Constitution and this section do not prohibit a person from holding a state office and state employment at the same time unless the duties are incompatible; thus, the position of member of local board of education would not be incompatible with a position as an instructor at the Hazard Area Vocational School since the local board would have no control over the appointment of the instructor. OAG 85-23, 1985 Ky. AG LEXIS 129.

A person is not prohibited by subsection (2) of this section from holding at the same time the offices of county coroner and deputy jailer. OAG 85-149, 1985 Ky. AG LEXIS 1.

A constable may also serve as part-time deputy jailer. OAG 91-84, 1991 Ky. AG LEXIS 84.

As no statutory incompatibility is established as between the office of deputy jailer, and another county office, it follows that there is no incompatibility under subsection (2) of this section as between the office of constable and that of deputy jailer, assuming that there is no overlapping of governmentally established working hours or pay. OAG 91-84, 1991 Ky. AG LEXIS 84.

Fiscal court not prohibited from hiring, as a county employee, one also holding the office of constable, to assist in transporting or guarding prisoners as long as there is no statutory incompatibility between the two (2) positions. OAG 91-175, 1991 Ky. AG LEXIS 175.

One who holds the office of constable cannot simultaneously be employed as either a deputy jailer or deputy sheriff. OAG 91-175, 1991 Ky. AG LEXIS 175.

The office of deputy sheriff is incompatible with that of constable. OAG 91-181, 1991 Ky. AG LEXIS 181.

Subject to a constable's employment being within the scope of approval of the fiscal court pursuant to KRS 64.530, a proper mechanism for a sheriff's employment of a constable to assist in patrolling the county could be established. OAG 91-181, 1991 Ky. AG LEXIS 181.

From the standpoint of the incompatible offices provisions of Ky. Const., § 165 and this section, state officers are not prohibited from holding positions on the boards of directors of the Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation when those officers are holding positions specifically authorized by KRS 198A.030(3) and KRS 164A.050(3), because where a statute provides for the appointment of specifically designated public officers to hold another public office, these public officers hold their second public office in an "ex officio" capacity, which eliminates the possibility of a constitutional or statutory incompatibility. OAG 91-208, 1991 Ky. AG LEXIS 208.

There is neither statutory nor constitutional incompatibility between the office of deputy sheriff and that of deputy coroner. However, the office of deputy sheriff appears to be incompatible under common law with the office of deputy coroner. Employing a deputy sheriff also as a deputy coroner potentially compromises the independence of a coroner's inquiry in a death case. OAG 92-116, 1992 Ky. AG LEXIS 116.

While it would be incompatible for a county attorney to hold, at the same time (either through election or appointment) the office of Commonwealth's Attorney, it is not a conflict under Ky. Const., § 165 or under this section for the county attorney, on a temporary basis, to assume the duties of the Commonwealth's Attorney for an interim period until another person can be either appointed or elected to fill the office. OAG 92-162, 1992 Ky. AG LEXIS 277.

A mayor of a city of the third class is not prohibited by KRS 76.030, this section or Ky. Const., § 165 from serving on the board of the Louisville and Jefferson County Metropolitan Sewer District. OAG 93-43, 1993 Ky. AG LEXIS 96.

Since a state motor vehicle enforcement officer is a state officer and a special deputy sheriff is a county officer and since subsection (1) of KRS 61.080 bans one from serving at the same time as a state officer and as an officer of any county, selected motor vehicle enforcement officers may not be appointed as special deputy sheriffs. OAG 93-61, 1993 Ky. AG LEXIS 162.

A county jail guard (deputy jailer), absent a proper local rule, is not banned from candidacy for office of constable while holding the office of deputy jailer, and a deputy jailer (county jail guard) may also serve as a constable while holding the office of deputy jailer. OAG 93-66, 1993 Ky. AG LEXIS 301.

Since this section makes two (2) specific deputy positions, but not that of deputy jailer, incompatible with the office of constable, the offices of constable and county jail guard are not incompatable and one could serve as a constable and a county jail guard; however, a constable must not be, on one hand, the arresting officer as constable, and on the other, the booking deputy jailer, of one he has arrested, as conflicting concerns would be present. OAG 93-66, 1993 Ky. AG LEXIS 301.

While the office of constable and deputy jailer (county jail guard) are not incompatible, a county jail guard could not lawfully use time for which he or she is being paid as a jail guard, or the resources of the jail, to conduct his or her political campaign as such would involve direction of public resources for other than public purposes in violation of Ky. Const., § 171, and would presumably involve official misconduct. OAG 93-66, 1993 Ky. AG LEXIS 301.

A person employed by an entity, such as the Louisville Waterfront Development Corporation, established jointly by a city, a county and the state, while a public officer or employee, would not for purposes of the incompatible offices provisions be considered a state, county, or city officer or employee; thus, the imcompatible offices provisions would not preclude a person from serving concurrently as a member of the Kentucky General Assembly and as an officer or employee of the Louisville Waterfront Development Corporation. OAG 95-24, 1995 Ky. AG LEXIS 182.

The position of trustee of the Kentucky Retirement Systems Board is a "State Office" and, therefore, Section 165 of the Kentucky Constitution and KRS 61.080 apply in determining the qualifications of potential board members. OAG 00-7, 2000 Ky. AG LEXIS 212.

An urban county is a county with an urban county form of government, such that officers of an urban county are county officers for purposes of Section 165 of the Constitution of Kentucky and KRS 61.080. Therefore, a member of the Lex-

ington-Fayette Urban County Council may not also serve as a division director within the Cabinet for Health and Family Services. OAG 2004-10, 2004 Ky. AG LEXIS 11.

A state position which is carried out under direct supervision, and which does not exercise a delegated portion of the sovereign power of government, is a position of state "employment" rather than a state "office." Therefore, the particular Division Director II position in the Cabinet for Health Services (now Health and Family Services) should be classified as one of state "employment," rather than as a state "office," for purposes of KRS 61.080(1). OAG 2004-12, 2004 Ky. AG LEXIS 13.

The position of executive director of the Office of the Ombudsman of the Cabinet for Health and Family Services is a "state office," and one who holds that position is a "state officer," such that one cannot hold that position and lawfully remain a member of the Lexington-Fayette Urban County Council. OAG 2006-02, 2006 Ky. AG LEXIS 2.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Adjutant general's office not incompatible with commission in national guard, KRS 36.030.

County or regional housing member, KRS 80.440.

Extension board members, except county judge/executive, KRS 164.660.

Incompatible offices, Ky. Const., §§ 165, 237.

Militia, officer in may hold civil office, Ky. Const., § 165.

Notary public may hold other office, Ky. Const., § 165.

Regents for state colleges may hold other public office, KRS 164.321.

Representative, state, Ky. Const., §§ 44, 165.

Restrictions on the right of certain officers to hold other offices:

Artificial gas commission members, KRS 96.545.

Board for municipal electric plant, KRS 96.740.

Cities of the first class:

Building commissioners, KRS 98.060.

Civil service board members, KRS 90.120.

Waterworks, member of board of, KRS 96.240.

Cities of the second class:

Bridge commissioner, KRS 181.600.

Cities of the third class:

Electric and water plant board members, KRS 96.172.

Generally, Ky. Const., § 165.

Recreational commissioners, KRS 97.120.

Senator, state, Ky. Const., §§ 44, 165.

Soil and water resources division, director of, KRS 146.100.

Trustees of University of Kentucky may hold other public office, KRS 164.150.

ALR

Incompatibility, under common-law doctrine, of office of state legislator and position or post in local political subdivision. 89 A.L.R.2d 632.

61.330. Chief state school officer to deliver effects to successor — Penalty.

Upon retiring from office the chief state school officer shall deliver to his successor all books, papers, and effects belonging to the office, and on failure to do so he shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), which shall be recovered by indictment in the Franklin Circuit Court.

History.

4384-33: amend. Acts 1990, ch. 476, Pt. IV, § 119, effective July 13, 1990.

61.371. Definitions for KRS 61.371 to 61.377.

As used in KRS 61.371 to 61.377, unless the context otherwise requires:

(1) "Board" means the personnel board established by KRS Chapter 18A;

(2) "Employer" means the officer, employee, board, commission, or agency authorized by law to make appointments to a position in public service;

(3) "Military duty" means training and service performed by an inductee, enlistee, or reservist or any entrant into a temporary component of the armed forces of the United States, and time spent in reporting for and returning from such training and service, or if a rejection occurs, from the place of reporting therefor. "Military duty" shall not include voluntary active duty for training of an individual as a reservist in the Armed Forces of the United States;

(4) "Position" means an office or employment in the public service, excluding an office filled by popular election;

(5) "Public employee" means a person appointed to a position in public service for which he or she is compensated on a full-time basis, excluding elected officers;

(6) "Public service" means employment by the Commonwealth of Kentucky, or by any county, city, or political subdivision or by any department, board, agency, or commission thereof; and

(7) "Seniority" means the increase in compensation, status, and responsibility resulting from promotion or step progression within a class of a classified service or promotion or increase in compensation, status, and responsibility in the unclassified service.

History.

Enact. Acts 1966, ch. 32, § 1; 2023 ch. 35, § 13, effective June 29, 2023.

Legislative Research Commission Notes.

(6/29/2023). Under the authority of KRS 7.136(1), the Reviser of Statutes has changed the internal numbering of this statute to place the definitions in alphabetical order. The words in the statute were not changed.

NOTES TO DECISIONS

Cited:

Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

The definitions employed in this section must be construed to include boards of education. OAG 70-709.

The position of teacher for a county board of education comes within the definition of this section. OAG 70-709.

The seniority provision of this section translated into teacher seniority means seniority in the rate of salary. OAG 70-709.

Public employee who is reinstated without loss of seniority after military leave is not entitled to the change in classification that he would have been eligible for after the completion of a year of responsible accounting experience had that year not been interrupted by military service as the one year period of experience must be fulfilled prior to being eligible for classification and a period of employment for increment and promotion purposes within a particular class is not equivalent

to a period of employment for purposes of experience required for classification. OAG 73-592.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Legal Issues for Today's Citizen Soldier: Kentucky's Added Reemployment Protections for the State Employee/Citizen Soldier, Vol. 69, No. 6, Nov. 2005, Ky. Bench & Bar 12.

61.373. Restoration of public employee to position after military duty — Right to leave of absence — Appeals.

(1) Any public employee who leaves a position after June 16, 1966, voluntarily or involuntarily, in order to perform military duty, and who is relieved or discharged from such duty under conditions other than dishonorable, and who has not been absent from public employment due to military duty in time of war or national or state emergency for a period of time longer than the duration of the war or national or state emergency plus six (6) months or in time of peace for a period of time not longer than six (6) years, and makes application for reemployment within ninety (90) days after he or she is relieved from military duty or from hospitalization or treatment continuing after discharge for a period of not more than one (1) year:

(a) If still physically qualified to perform the duties of his or her position, shall be restored to such position if it exists and is not held by a person with greater seniority, otherwise to a position of like seniority, status, and pay;

(b) If not qualified to perform the duties of his or her position by reason of disability sustained during such service, the public employee shall be placed in another position, the duties of which he or she is qualified to perform and which will provide him or her like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances of his or her case.

(2)(a) Officers and employees of this state, or any department or agency thereof, shall be granted a leave of absence by their employers for the period required to perform active duty or training in the National Guard or any reserve component of the Armed Forces of the United States.

(b) Upon the officer's or employee's release from a period of active duty or training, except as provided in KRS 61.394, he or she shall be permitted to return to his or her former position of employment or a position with equivalent seniority, status, pay, and any other rights or benefits that would have been bestowed if he or she had not been absent.

(c) An officer or employee who is not permitted to return to his or her former position may appeal the dismissal in accordance with KRS Chapter 18A.

(3) In the case of any person who is entitled to be restored to a position in accordance with KRS 61.371 to 61.377, if the personnel board finds that the department or agency with which such person was employed immediately prior to his or her military duty:

(a) Is no longer in existence and its functions have not been transferred to any other agency; or

(b) For any reason it is not feasible for such person to be restored to employment by the department or agency, the board shall determine whether or not there is a position in any other department or agency of the same public employer for which the person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the board determines that there is such a position, the person shall be restored to the position by the department or agency in which the position exists.

History.

Enact. Acts 1966, ch. 32, § 2; 2010, ch. 153, § 13, effective April 13, 2010; 2023 ch. 35, § 14, effective June 29, 2023.

NOTES TO DECISIONS

1. Teacher.

Where the plaintiff was employed as a teacher in this commonwealth at the time he was inducted into military service, he was entitled to service credit for his military service, even though he was not reemployed by the same school system. Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

The state is under no compulsion to re-employ a veteran, who was a seasonal employee employable from season to season at the mere option of the state, because such seasonal employee is not entitled to restoration. OAG 69-550.

A teacher returning to employment with a board of education after being discharged from military service is entitled to those increments which normally would have accrued if employment with the board had not been interrupted by military service. OAG 70-709.

The principles applicable to reinstatement of veterans in employment by the central branch of state government are equally applicable to employment with a board of education. OAG 70-709.

When a teacher is relieved from military service and makes proper application to be reemployed, the school district is required to promptly reinstate said teacher with all the rights and benefits provided by statute in KRS 61.371 to 61.379 even though the day of his return is after the school year has begun. OAG 74-258.

61.375. Restored employee discharged only for cause for year — Seniority.

Any person who is restored to a position in accordance with KRS 61.371 to 61.377 shall not be discharged from his or her position without cause within one (1) year after his or her restoration, and shall, without limiting other rights conferred by this or other sections, be considered as having been on furlough or leave of absence during his or her period of military duty. He or she shall be restored without loss of seniority, including, upon promotion or other advancement following completion of any period of employment required therefor, a seniority date in the advance position which will place him or her ahead of all persons previously junior to him or her who advanced to the position during his or her absence in the Armed Forces.

History.

Enact. Acts 1966, ch. 32, § 3; 2023 ch. 35, § 15, effective June 29, 2023.

OPINIONS OF ATTORNEY GENERAL.

Years spent in military service are not to be considered toward the four-year requirement for tenure status. OAG 76-316.

61.377. Leaves of absence to permit induction in military service.

Any employee who holds a position in the public service shall be granted a leave of absence for the purpose of being inducted or otherwise entering military duty. If not accepted for such duty, the employee shall be reinstated in his position without loss of seniority or status, or reduction in his rate of pay. During the period the employee shall for all purposes be considered to have rendered service and to have been compensated therefor at his regular rate of pay.

History.
Enact. Acts 1966, ch. 32, § 4.

OPINIONS OF ATTORNEY GENERAL.

This section authorizes the Department of Military Affairs to grant military leave of absence to an employee ordered to active federal military service with his consent to act as state director of selective service; and such employee would then be a member of the armed forces of the United States on "leave of absence from service" within the meaning of KRS 61.555(1). OAG 67-136.

61.379. Rules and regulations — Appeals from failure to restore or discharge — Procedure. [Repealed]

History.
Enact. Acts 1966, ch. 32, § 5; repealed by 2023 ch. 35, § 16, effective June 29, 2023.

61.392. Cabinets to report to Legislative Research Commission on number of full-time employees and full-time equivalents working under contract.

(1) Within fifteen (15) days after April 5, 2010, and on a quarterly basis thereafter, the secretary of the Personnel Cabinet shall report to the Legislative Research Commission the number of employees in each program cabinet and department of the executive branch of state government. The report shall include the number of all full-time classified and unclassified employees employed pursuant to KRS Chapters 16, 18A, and 151B, listed by cabinet and department.

(2) Within fifteen (15) days after April 5, 2010, and on a quarterly basis thereafter, the secretary of the Finance and Administration Cabinet shall report to the Legislative Research Commission the number of individuals working on a full-time equivalent and recurring basis, listed by contract or agreement and cabinet.

(3) As used in this section, "recurring basis" means continuous employment for a period of not less than ninety (90) days.

History.
Enact. Acts 2010, ch. 55, § 1, effective April 5, 2010.

61.394. State employees' leave of absence — Pay — Unused military leave.

(1) All officers and employees of this state, or of any department or agency thereof who are members of the National Guard or of any reserve component of the Armed Forces of the United States, or of the reserve corps of the United States Public Health Service, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits to which they are entitled, while:

(a) In the performance of duty or training in the service of a state or of the United States under competent orders as specified in this section;

(b) Physically disabled as a result of an injury, illness, or disease incurred or aggravated in the line of duty while performing active-duty or inactive-duty training; or

(c) Entitled to incapacitation pay pursuant to 37 U.S.C. sec. 204.

Leave pursuant to paragraphs (b) and (c) of this subsection shall not exceed six (6) months unless approved by the employee's appointing authority.

(2) In any one (1) federal fiscal year, officers or employees, while on military leave, shall, upon request, be paid their salaries or compensations for a period or periods not exceeding twenty-one (21) calendar days. Any unused military leave in a federal fiscal year shall be carried over to the next year. Any unused military leave shall expire two (2) years after it has accrued.

History.
Enact. Acts 1962, ch. 51, § 1; 1994, ch. 434, § 1, effective July 15, 1994; 2002, ch. 95, § 2, effective July 15, 2002; 2006, ch. 194, § 2, effective July 12, 2006; 2018 ch. 82, § 3, effective July 14, 2018; 2022 ch. 44, § 1, effective July 14, 2022.

OPINIONS OF ATTORNEY GENERAL.

This section is controlling in the computation of salaries and/or compensation which may be paid during periods of military leave. OAG 67-448.

This section is the latest pronouncement of the legislature and its provisions limiting and delineating how leave shall be computed should prevail where they conflict with KRS 38.250(2) in paying all officers and employees of the state who are members of the national guard or any reserve component of the armed forces of the United States while they are on active duty. OAG 73-48; 76-358.

The expenditure of public funds by local governments to pay employees their salaries while those employees who are members of the National Guard and reserve components of the armed forces of the United States are on annual military leave, does not violate state constitutional provisions concerning the expenditure of public funds. OAG 82-305, 1982 Ky. AG LEXIS 330.

When KRS 61.396 is read in conjunction with this section, local governments are now required to grant two (2) work weeks of paid military leave to employees who are members of the Kentucky National Guard or any reserve component of the armed forces of the United States. OAG 82-305, 1982 Ky. AG LEXIS 330.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
National guard, KRS Ch. 38.

Kentucky Bench & Bar.
Legal Issues for Today's Citizen Soldier: Kentucky's Added Reemployment Protections for the State Employee/Citizen Soldier, Vol. 69, No. 6, Nov. 2005, Ky. Bench & Bar 12.

ALR

Constitutionality of statute providing for payment to public officers or employees who enter the military service of the United States or their dependents. 145 A.L.R. 1156.

Military service, induction or voluntary enlistment for as creating vacancy in public office or employment. 143 A.L.R. 1470; 147 A.L.R. 1427; 148 A.L.R. 1400; 150 A.L.R. 1447; 151 A.L.R. 1462; 152 A.L.R. 1459; 154 A.L.R. 1456; 156 A.L.R. 1457; 157 A.L.R. 1456.

Public officers or employees in civil service, constitutionality, construction and application of statutes concerning status and rights of, while performing military or naval duty. 134 A.L.R. 919.

61.395. Leave time for state employee who is disaster services volunteer — Short title.

(1) As used in this section:

(a) "Disaster" means disasters designated at level III and above in the American National Red Cross Regulations and Procedures; and

(b) "State agency" means all departments, offices, commissions, boards, institutions, and political and corporate bodies of the state, including the offices of the clerk of the Supreme Court, clerks of the appellate courts, the several courts of the state, and the legislature, its committees, or commissions.

(2) An employee of a state agency who is a certified disaster services volunteer of the American Red Cross may be granted leave from work with pay for not to exceed thirty (30) work days in any twelve (12) month period to participate in specialized disaster relief services for the American Red Cross for the services of that employee and upon the approval of that employee's agency, without loss of seniority, pay, vacation time, sick time, compensatory time, or earned overtime accumulation. The agency shall compensate an employee granted leave under this section at the regular rate of pay for those regular work hours during which the employee is absent from work.

(3) This section may be cited as the Disaster Services Volunteer Leave Act.

History.

Enact. Acts 2002, ch. 95, § 1, effective July 15, 2002.

61.396. Employees of political subdivisions eligible.

All officers and employees of counties, municipalities, school districts or other political subdivisions of the state who are members of the National Guard or of any reserve component of the Armed Forces of the United States, including the United States Public Health Service, shall be granted annual military leave by their respective employers as provided in KRS 61.394.

History.

Enact. Acts 1962, ch. 51, § 2; 1978, ch. 38, § 2, effective June 17, 1978.

OPINIONS OF ATTORNEY GENERAL.

A local school board has the authority to either grant or deny military leave with pay to its employees. OAG 75-685.

School boards have the option of granting military leave with pay to teachers and such option permits the crediting against such pay the money earned by the teacher for military duty. OAG 76-358.

Between KRS 38.250(2), KRS 61.394, and this section, the latter two (2) statutes are the latest pronouncement of the legislature and where they conflict with the earlier statute (KRS 38.250) they should prevail; therefore KRS 61.394 is controlling in the computation of salaries and/or compensation which may be paid during periods of military leave. OAG 76-358.

The Kentucky General Assembly intended to require the payment of annual military leave by municipalities in the same manner that state employers were required to pay for such leave. OAG 79-625, 1979 Ky. AG LEXIS 16.

The expenditure of public funds by local governments to pay employees their salaries while those employees who are members of the National Guard and reserve components of the armed forces of the United States are on annual military leave, does not violate state constitutional provisions concerning the expenditure of public funds. OAG 82-305, 1982 Ky. AG LEXIS 330.

The title of Acts 1978, ch. 38, "An act relating to the Kentucky National Guard," which act in part amended this section, was sufficient to comply with the requirements of Const., § 51 as the provisions of the act were all reasonably embraced within the title's general subject matter. OAG 82-305, 1982 Ky. AG LEXIS 330.

When this section is read in conjunction with KRS 61.394, local governments are now required to grant two (2) work weeks of paid military leave to employees who are members of the Kentucky National Guard or any reserve component of the armed forces of the United States. OAG 82-305, 1982 Ky. AG LEXIS 330.

SOCIAL SECURITY FOR PUBLIC EMPLOYEES

61.410. Declaration of policy.

(1) It is declared to be the policy of the General Assembly to extend the federal old-age, survivors, disability, and hospital insurance coverage to all public employees regardless of whether the employees are occupying positions which are covered by a retirement system; but no employee occupying a position to which KRS 161.220 to 161.710 are applicable shall be held to fall within the class of persons sought to be affected by this statement of policy except for employees of the state universities and public junior colleges.

(2) It is also the policy of the General Assembly that the protection afforded public employees by membership in a retirement system or by the right to receive periodic benefits under a retirement system will not be impaired as a result of any agreement made between the Commonwealth and the commissioner pursuant to KRS 61.410 to 61.500.

(3) The General Assembly ratifies the extension of federal old-age, survivors, disability, and hospital insurance coverage to public employees in positions covered by a retirement system prior to June 14, 1962, if the procedures specified by former KRS 61.430(6) were substantially followed.

History.

Enact. Acts 1951 (Ex. Sess.), ch. 3, § 1; 1956, ch. 32, § 1; 1962, ch. 12, § 1; 1968, ch. 152, § 26; 1998, ch. 436, § 1, effective July 15, 1998.

OPINIONS OF ATTORNEY GENERAL.

The contribution to be paid by the county as the employer

should be based upon the actual net compensation of the county official (which would include official fees and salary) subject to the maximum base amount prescribed under the federal social security law. OAG 69-34.

Under this section, participation in the social security program is mandatory for all public employees of the Commonwealth except those employees occupying positions to which the provisions of KRS 161.220 to 161.710 are applicable, and consequently, the executive secretary, assistant executive secretary, senior accountant and administrative officer of the teachers' retirement system are neither subject to, nor eligible for, participation in the social security program. OAG 69-355.

If additional teaching activity falls within the category of being in fact a part of the regularly approved program of the public school district or the vocational school for which certification or a professional level of training is required as a condition of employment, then teachers' retirement applies and the teacher would not be eligible for social security participation. OAG 69-430.

The Gateway Area Development District, Inc. is not a "political subdivision" within the meaning of KRS 61.410 to 61.500 and must report wages and pay taxes for social security purposes directly to the United States Internal Revenue Service. OAG 70-226.

A person who contributed to social security for certain service can also contribute to teachers' retirement if he should have been included. OAG 71-254.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Internal accounting, 702 KAR 3:130.

61.420. Definitions for KRS 61.410 to 61.500.

For the purpose of KRS 61.410 to 61.500:

(1) "Wages" means all remuneration for employment as defined in subsection (2) of this section, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of the remuneration which, even if it were for "employment" within the meaning of Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;

(2) "Employment" means any service performed by an employee in the employ of the Commonwealth, a political subdivision, or an interstate instrumentality, for those employers, except (a) service of an emergency nature, (b) service which in the absence of an agreement entered into under KRS 61.410 to 61.500 would constitute "employment" as defined in the Social Security Act, or (c) service which under the Social Security Act may not be included in any agreement between the Commonwealth and the commissioner entered into under KRS 61.410 to 61.500; except that service, the compensation for which is on a fee basis, may be excluded in any plan approved under KRS 61.410 to 61.500, and provided also, that service in any class or classes of positions, the exclusion of which is permitted under the Social Security Act, may be excluded in any plan approved under KRS 61.460;

(3) "Employee" means any person in the service of the Commonwealth, a political subdivision, or an interstate instrumentality of which the Commonwealth is a principal and shall include all persons designated officers including those which are elected and those which are appointed;

(4) "State agency" means the Division of Local Government Services, Office of the Controller, which agency shall be subject to the authority of the secretary of finance and administration;

(5) "Political subdivision," in addition to counties, municipal corporations, and school districts, includes instrumentalities of the Commonwealth, of one (1) or more of its political subdivisions, or of the Commonwealth and one (1) or more of its political subdivisions, and any other governmental unit thereof;

(6) "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," including regulations and requirements issued pursuant thereto, as that act has been and may from time to time be amended;

(7) "Federal Insurance Contributions Act" means subchapters A, B, and C of Chapter 21 of the Federal Internal Revenue Code and all amendments thereto;

(8) "Commissioner" means the Commissioner of Social Security and includes any individual to whom the commissioner may delegate any of the commissioner's functions under the Social Security Act; and, with respect to any transactions regarding insurance coverage occurring prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator may have delegated any of the administrator's functions under the Social Security Act; and, with respect to any transactions regarding insurance coverage occurring from April 11, 1953, to March 30, 1995, includes the Secretary of Health and Human Services and any individual to whom the secretary may have delegated any of the secretary's functions under the Social Security Act;

(9) "Insurance coverage" means coverage by the old-age, survivors, disability, and hospital insurance provisions of the Social Security Act.

History.

Enact. Acts 1951 (Ex. Sess.), ch. 3, § 2; 1956, ch. 32, § 2; 1958, ch. 135, § 1; 1962, ch. 12, § 2; 1974, ch. 74, Art. VI, § 35(4); 1980, ch. 275, § 1, effective July 15, 1980; 1982, ch. 393, § 37, effective July 15, 1982; 1994, ch. 508, § 15, effective July 15, 1994; 1998, ch. 436, § 2, effective July 15, 1998; 2005, ch. 85, § 87, effective June 20, 2005.

Compiler's Notes.

The Social Security Act, referred to herein, is compiled as 42 USCS § 301 et seq. Section 218 of that act is compiled as 42 USCS § 418. The Federal Insurance Contributions Act is compiled as 26 USCS §§ 3101 to 3126.

NOTES TO DECISIONS

1. Political Subdivision.

A county school district is a political subdivision of the state, the members of which are state officers and an indictment drawn under KRS 434.240 (now repealed) for submitting a false claim to county board of education charged a public offense. Runyon v. Commonwealth, 393 S.W.2d 877, 1965 Ky. LEXIS 248 (Ky. 1965), cert. denied, 384 U.S. 906, 86 S. Ct. 1341, 16 L. Ed. 2d 359, 1966 U.S. LEXIS 1852 (U.S. 1966).

Cited:

International Brotherhood of Firemen & Oilers v. Board of Education, 393 S.W.2d 793, 1965 Ky. LEXIS 245 (Ky. 1965).

OPINIONS OF ATTORNEY GENERAL.

A special tax collector selected by an independent school district pursuant to KRS 160.500(2) is an officer of the school district and an employee of the school district under the definition of that term in the social security act and enabling legislation enacted by the Kentucky General Assembly. OAG 67-95.

The Gateway Area Development District, Inc. is not a "political subdivision" within the meaning of KRS 61.410 to 61.500 and must report wages and pay taxes for social security purposes directly to the United States Internal Revenue Service. OAG 70-226.

Mental health-mental retardation boards, when considered in light of KRS 210.380 clearly are instrumentalities of the Commonwealth and therefore a political subdivision for the purposes of this section. OAG 73-203.

Where a city and county establish an ambulance board, such board is merely an arm or instrumentality of the city and county and is a political subdivision, as defined in subsection (5), for social security coverage purposes. OAG 73-790.

The state active duty pay of national guard units ordered into active state service in connection with tornadic storms is excluded by subsection (2) from social security coverage and not subject to the FICA tax. OAG 74-278.

Only specifically isolated expenses which are actual reimbursements for actual official expenses may be deducted from the subject state expense allowances money in the case of the county judge (now county judge/executive), county attorney and county sheriff, in determining the wage amount for social security purposes and the remainder of such allowance would constitute wages up to the maximum compensation base of $13,200 per year for 1974 or $14,100 for 1975. OAG 75-48 (modifying OAG 71-266 and 66-416).

Based upon the literal wording of this section and the fact that the subject corporation was created solely for the eight county governments, the Jackson Purchase Local Officials Organization, Inc., is an instrumentality of the eight (8) county governments and thus the corporation is a "political subdivision" for social security purposes and this construction promotes the centralized administration of the social security program applied to such public employees, otherwise the administration would have to be broken into eight (8) different county units. OAG 75-497.

Where the ordinance making the city attorney position elective was repealed and the office became appointive, the city attorney would no longer be excluded from social security coverage. OAG 76-740.

Since a county and city are clearly political subdivisions as provided by subsection (5) of this section, if they, pursuant to KRS 79.110 to 79.180 or KRS 65.210 to 65.300, agree to provide for the joint operation of a city-county ambulance service and create a board to govern the program, that board or entity could be an arm or instrumentality of the city and county and, therefore, a "political subdivision" for social security purposes. OAG 79-104, 1979 Ky. AG LEXIS 534.

Until such time that this section is amended by the General Assembly, the city of Louisville has no authority under KRS 83.520 to provide for any treatment of sick leave benefits in any other way than that which is set out in KRS 61.410 to 61.500. OAG 79-267, 1979 Ky. AG LEXIS 372.

Since East Kentucky Utilities Inc. was performing the function of an instrumentality of Floyd County in providing utility services to the county, using the county's own plant, its employees were covered for social security purposes through Floyd County. OAG 79-583, 1979 Ky. AG LEXIS 42.

Where a city of Louisville ordinance stated a sick leave policy for its employees, where the amounts appropriated for sick pay payments were budgeted and accounted for separately, where the worksheets for each agency showed a separate account for sick leave from which payments for sick leave were deducted as paid, and where the amount of sick leave paid was separately stated on the employee's paycheck stub, the method of providing for sick leave to employees of the city was sufficiently definite to constitute a "plan or scheme" under 42 USCS § 409(b) and 26 USCS § 3121(a)(2), and, therefore, the sick leave payments would be excluded from wages for determining the amount deducted as social security contributions. OAG 80-220, 1980 Ky. AG LEXIS 452.

Although the articles of incorporation of an entity purported to show that the apparent purpose of the corporation was to perform governmental activity, specifically to assist those political subdivisions of the state of Kentucky located in Campbell County in performing their municipal functions, the articles did not fully comply with KRS 65.250 and there was no indication that it had complied with KRS 65.260; therefore, since the entity had no formal statutory authority that would make it an instrumentality of a political subdivision as defined in subsection (5) of this section for social security purposes, social security should be paid by the entity directly to the social security administration as any other nonprofit corporation would do. OAG 80-348, 1980 Ky. AG LEXIS 307.

Acts 1980, Ch. 275, accomplishes a statutory change which authorizes sick leave with pay as an exclusion to the term wages for determining an employee's wages from which social security payments are to be deducted; however, the mere passage of the amendatory language per se does not permit the deduction of sick pay from being considered as wages without some additional administrative acts, including making the needed changes in an employer's personnel rules dealing with sick leave, and getting the federal social security administration's approval of the new plan. OAG 80-366, 1980 Ky. AG LEXIS 377.

A county hospital district is a political subdivision of Kentucky pursuant to this section and KRS 216.320 so that its employees are "employees" under subsection (3) of this section and thus subject to the jurisdiction of the state agency for social security. OAG 81-196, 1981 Ky. AG LEXIS 233.

Where a city passes an ordinance creating a personal service contract with an attorney to advise the city in legal matters, the attorney is an independent contractor rather than a nonelected city officer appointed under KRS 83A.080 or an employee under subsection (3) of this section thus, he would not be subject to social security as a result of his contract. OAG 81-225, 1981 Ky. AG LEXIS 208.

The Boone County Planning Commission is a separate political subdivision consisting of members representative of other political subdivisions in a cooperative, joint effort to provide consolidated planning and zoning activities for the various political subdivisions which make up the entity. Therefore, the Commission is a separate political subdivision for purposes of the definition of a political subdivision found in subdivision (5) of this section governing social security for public employees and is not part of Boone County which is governed by Boone County Fiscal Court. OAG 82-278, 1982 Ky. AG LEXIS 361.

The Office of Social Security is an office to handle public employees' social security matters; the definition of office in subsection (7) of KRS 12.010 applies to the office for social security. OAG 82-593, 1982 Ky. AG LEXIS 51.

Where the membership of a local officials' organization was composed of the county judge/executive of each of the participating counties, the mayors of the largest incorporated city within each county (voting members) and other mayors of smaller communities (nonvoting members) and where the organization's purpose was to operate an emergency medical service for eight counties and certain other services to benefit the local units of government, such unit was a governmental subdivision or instrumentality of such a subdivision. OAG 83-227, 1983 Ky. AG LEXIS 270.

Where a training center created by a local officials' organization was separated from such organization and was incor-

porated as a nonprofit corporation, where its membership was not exclusively composed of governmental officials and where the center could not carry on propaganda, influence legislation, or engage in any political campaign, the training center as it had evolved was no longer an instrumentality of a subdivision or other governmental unit, but was an independent, nonprofit corporation operated for charitable, educational, and scientific purposes and was no longer subject to the State Office of Social Security. OAG 83-227, 1983 Ky. AG LEXIS 270.

RESEARCH REFERENCES AND PRACTICE AIDS

ALR

Judicial questions regarding federal social security act or state legislation adopted to set up "state plan" contemplated by it. 100 A.L.R. 697; 106 A.L.R. 243; 108 A.L.R. 613; 109 A.L.R. 1346; 118 A.L.R. 1220; 121 A.L.R. 1002.

61.430. Federal-state agreement.

Consistent with the terms and conditions of KRS 61.410 to 61.500, the state agency, with the approval of the Governor, is hereby authorized to enter into an agreement with the commissioner for the purpose of extending insurance coverage to employees with respect to services specified in the agreement which constitute employment as defined in KRS 61.420. An agreement entered into under this section may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration and other appropriate provisions as the state agency and commissioner shall agree upon. Any agreement, subject to the provisions of the Social Security Act, shall provide in effect that:

(1) Insurance coverage shall be provided for employees whose services are described in the agreement, and their dependents and survivors on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) The state shall pay to the Secretary of the Treasury, at times prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes imposed by sections 3101 and 3111 of the Federal Insurance Contributions Act if the services covered by the agreement constitute employment within the meaning of that act;

(3) Insurance coverage will be afforded with respect to services performed after an effective date specified in the agreement or modification thereof; except that the effective date shall not be earlier than January 1, 1955, in the case of an agreement or modification made between January 1, 1955, and January 1, 1958; or earlier than January 1, 1956, in the case of an agreement or modification made at any time in the years 1958 or 1959; or earlier than the first day of the year in which the agreement or modification was made, in the case of an agreement or modification made at any time between January 1, 1960, and July 1, 1962; or earlier than the first day of the fifth year preceding the year in which the agreement or modification is made, in the case of an agreement or modification made at any time after July 1, 1962;

(4) Insurance coverage shall be afforded with respect to all services constituting employment; except that in order for insurance coverage to be afforded with respect to services performed in the employ of a political subdivision of the state there must be in existence in regard to those services a plan which meets the requirements of KRS 61.460;

(5) Subject to the provisions of KRS 61.435, insurance coverage shall be afforded with respect to all services in positions covered by a retirement system; except that no agreement shall be effective to afford insurance coverage to any services performed in positions to which KRS 161.220 to 161.710 are applicable except for services performed in positions in a state university or public junior college.

History.

Enact. Acts 1951 (Ex. Sess.), ch. 3, § 3; 1952, ch. 29; 1956, ch. 32, § 3; 1956, ch. 166, § 1; 1958, ch. 135, § 2; 1962, ch. 12, § 3; 1998, ch. 436, § 3, effective July 15, 1998.

Compiler's Notes.

Title II of the Social Security Act, the Federal Insurance Contributions Act and § 218 (d)(3) of the Social Security Act referred to in this section are compiled as 42 USCS § 409 et seq., 26 USCS §§ 3101 to 3126, and 42 USCS § 418 (d)(3) respectively.

OPINIONS OF ATTORNEY GENERAL.

Under existing federal and state legislation, the members of the faculty of Murray State University may not be withdrawn as a separate group from social security coverage. In view of their status as state employees who are covered under the original 1951 agreement by virtue of a modification thereto, their coverage may be terminated only through termination of the 1951 agreement between the state and the secretary of health, education and welfare. OAG 68-450.

When professional staff members of the division of disability determination were a part of the department of education they were allowed to participate in the teacher retirement system and were exempt from participation in the federal social security program but when this division was transferred to the department of human resources, professional staff members had the option of retaining their membership in the teachers' retirement system or joining the state employees' retirement system but participation in the federal social security program is mandatory. OAG 73-767.

Circuit Court appointed reporters and secretaries are state employees for the purposes of the state Social Security Act. OAG 75-615.

61.440. Interstate instrumentalities.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, to the extent that this Commonwealth may confer authority, (1) to enter into an agreement with the commissioner whereby the benefits of the federal old-age, survivors, disability, and hospital insurance system shall be extended to employees of the instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under subsection (1) of KRS 61.450 if they were covered by an agreement made pursuant to KRS 61.430, and (3) to make payments to the Secretary of the Treasury in accordance with the agreement, including payments from its own funds, and otherwise to comply with the agreement. The agreement shall, to the extent practicable, be consistent with the terms and provisions of

KRS 61.430, and all other terms and provisions, of KRS 61.410 to 61.500.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 4; 1998, ch. 436, § 5, effective July 15, 1998.

61.450. Contributions by state employees.

(1) Every employee of the state whose services are covered by an agreement entered into under KRS 61.430 shall be required to pay for the period of coverage, into the contribution fund established by KRS 61.470, contributions, with respect to wages received for each calendar year at the rate established by the Federal Insurance Contributions Act, as amended, and the Social Security Act, as amended. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service after March 14, 1951.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any wages, proper adjustment, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 5; 1958, ch. 135, § 3; 1960, ch. 85, § 1; 1962, ch. 12, § 5.

Compiler's Notes.
The Social Security Act, referred to herein, is compiled as 42 USCS § 301 et seq. The Federal Insurance Contributions Act is compiled as 26 USCS §§ 3101 to 3126.

61.460. Plans for coverage of employees of political subdivisions.

(1) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending insurance coverage to employees of the political subdivision; except that no plan shall provide insurance coverage to an employee occupying a position to which KRS 161.220 to 161.710 are applicable except for employees of the state universities and public junior colleges. Each plan and any amendments thereof shall be approved by the state agency if it finds that the plan, or the plan as amended, is in conformity with requirements as are provided in administrative regulations of the state agency, except that no plan shall be approved unless:

(a) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under KRS 61.430;

(b) It provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that those sources will be adequate for that purpose;

(d) It provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration thereof; and

(e) It provides that the political subdivision will make reports, in the form and containing the information, as the state agency may from time to time require, and will comply with any provisions the state agency or the commissioner may from time to time find necessary to assure the correctness and verification of the reports.

(2) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1) of this section without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(3)(a) Each political subdivision for which a plan has been approved under this section is authorized to and shall pay into the contribution fund, with respect to contributions due for wages paid prior to 1987, at the time or times as the state agency may by administrative regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under KRS 61.430; and, furthermore, in anticipation of the due date of any payments of contributions required by this paragraph, is authorized to and shall make any advancements the state agency, by administrative regulation or contract, may require.

(b) Each political subdivision is authorized to and shall make the payments as are determined by the state agency to be necessary for the purpose of defraying the expenses incurred by the state agency in administering KRS 61.410 to 61.500 for the benefit of those employees covered under any plan approved under subsection (1) of this section, but in no event shall such amount be greater than five percent (5%) of the contributions required under paragraph (a) of this subsection. The payments shall be made into the State Treasury and shall be credited to a separate trust and agency fund to be used by the state agency solely for the purpose stated in this paragraph.

(c) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after the effective date of KRS 61.410 to 61.500, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to wages received for each calendar year, at the rate established by the Federal Insurance Contributions Act, as amended, and the Social Security Act, as amended. Contributions so collected for wages paid prior to 1987 shall be paid into the contribution fund in partial discharge of the liability of the political subdivision under paragraph (a) of this subsection. Failure to deduct the contribution shall not relieve the employer of liability therefor.

(4) Delinquent payments due under paragraph (a) of subsection (3) of this section, with interest at the rate prescribed by Section 218 (j) of the Social Security Act,

may be recovered by action in the Franklin Circuit Court against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department or agency of the state.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 6; 1958, ch. 135, § 4; 1960, ch. 85, § 2; 1962, ch. 12, § 6; 1980, ch. 275, § 2, effective July 15, 1980; 1982, ch. 393, § 38, effective July 15, 1982; 1998, ch. 436, § 6, effective July 15, 1998.

Compiler's Notes.
The Social Security Act, referred to herein, is compiled as 42 USCS § 301 et seq. Section 218 of that act is compiled as 42 USCS § 418. The Federal Insurance Contributions Act is compiled as 26 USCS § 3101 et seq.

OPINIONS OF ATTORNEY GENERAL.

Where the wife of a jailer has never been appointed as a deputy or a matron under KRS 71.060 and the county has never fixed any compensation for her as a jailer deputy, as matron, or county employee, the social security contributions must be paid by the jailer, the actual employer, and not by the county. OAG 69-7.

Employees of emergency medical service district corporations which are "instrumentalities" of political subdivisions must be covered under the plan for social security coverage if such a plan for employee coverage has been submitted by the political subdivisions. OAG 77-372, 1977 Ky. AG LEXIS 490.

Acts 1980, ch. 275, accomplishes a statutory change which authorizes sick leave with pay as an exclusion to the term wages for determining an employee's wages from which social security payments are to be deducted; however, the mere passage of the amendatory language per se does not permit the deduction of sick pay from being considered as wages without some additional administrative acts, including making the needed changes in an employer's personnel rules dealing with sick leave, and getting the Federal Social Security Administration's approval of the new plan. OAG 80-366, 1980 Ky. AG LEXIS 377.

Fees received by the volunteer firemen for fire runs they actually make are to be considered as reimbursement for expenses, rather than salary or wages from the fire district, and are not subject of F.I.C.A. withholding and matching requirements. OAG 80-635, 1980 Ky. AG LEXIS 32.

For the purpose of obtaining employee fringe benefits, the county is responsible for paying on behalf of jail personnel, as county employees, social security payments (KRS Ch. 61), workers' compensation premiums (KRS Ch. 342), unemployment insurance premiums (KRS Ch. 341) and medical insurance coverage (KRS Ch. 67). OAG 82-346, 1982 Ky. AG LEXIS 289.

61.470. Contribution fund and contingent liability fund.

(1) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited therein:

(a) All contributions, interest, and penalties under KRS 61.450 and 61.460;

(b) All moneys appropriated or otherwise contributed thereto;

(c) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;

(d) Interest earned upon any moneys in the fund, and

(e) All sums recovered from the bond of the custodian or otherwise for losses sustained by the fund, and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of KRS 61.410 to 61.500, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of KRS 61.410 to 61.500.

(2) The contribution fund shall be a trust and agency fund which shall not lapse and shall be held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purposes of KRS 61.410 to 61.500. Withdrawals from such fund shall be made for, and solely for:

(a) Payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under KRS 61.430;

(b) Payment of refunds provided for in subsection (3) of KRS 61.450;

(c) Refunds of overpayments, not otherwise adjustable, made by a political subdivision; and

(d) For payment of administrative costs for the administration of KRS 61.410 to 61.500 to the extent of the interest earned on investments of the contribution fund.

(3) From the contribution fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts at such time or times as may be directed by the state agency in accordance with any agreement entered into under KRS 61.430.

(4) At the end of each fiscal year, the state agency shall make an estimate of the necessary operating costs of the state agency for the next fiscal year, including a contingent liability fund. After approval of this amount needed for necessary costs and contingent liability fund by the secretary of finance and administration, the realized investment earnings of the contribution fund available at the end of any fiscal year shall be reduced to this approved amount, and any excess is hereby authorized for transfer to the credit of the general fund.

(5) The Treasurer of the state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of KRS 61.410 to 61.500 and the directions of the state agency, and shall pay all warrants drawn upon the fund in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 7; 1966, ch. 133, § 1; 1982, ch. 393, § 39, effective July 15, 1982.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, F, 2, (2) at 2082.

61.480. State contributions authorized.

Authorization is hereby granted to all offices, departments, boards, commissions, institutions, and all other

agencies of the state government of the Commonwealth of Kentucky to make payments to the contribution fund out of moneys, not required by law or contract to be expended for other purposes, in any revolving, trust or agency fund, or out of appropriations for recurring expenses heretofore or hereafter made by the General Assembly from the general expenditure fund or special funds.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 8.

61.490. Rules and regulations.

The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of KRS 61.410 to 61.500, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under KRS 61.410 to 61.500.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 10.

61.500. Retroactive effect of KRS 61.410 to 61.500.

The provisions of KRS 61.410 to 61.500 shall be retrospective to January 1, 1951, and any agreement entered into pursuant to it may be made with retroactive effect to January 1, 1951, or any date thereafter.

History.
Enact. Acts 1951 (Ex. Sess.), ch. 3, § 12.

Legislative Research Commission Note.
(11/15/90). Pursuant to KRS 7.136(1), the prior reference to KRS 195.100 contained in this section has been removed, that statute having been repealed by 1974 Acts Ch. 74, Art. VI, § 108.

KENTUCKY EMPLOYEES RETIREMENT SYSTEM

61.535. Cessation of membership — Conditions — Forfeiture of retirement benefits.

(1) The membership of any person in the system shall cease:

(a) Upon withdrawal of his accumulated account balance at or any time after termination of employment, regardless of length of service;

(b) Upon disability retirement;

(c) Upon service retirement;

(d) Upon death;

(e) For persons hired prior to August 1, 2000, upon termination of employment with prejudice; or

(f) For persons hired on or after August 1, 2000, upon conviction of a felony relating to the person's employment as provided in subsection (3) of this section.

(2) For purposes of KRS 61.510 to 61.705 and 16.505 to 16.652, termination of employment with prejudice shall mean termination as the result of conviction of the member in a court of competent jurisdiction of embezzlement or larceny of public funds or property or malfeasance in office, or the forcing of a member to make restitution for any funds or property criminally taken by said member at the time of termination of employment.

(3) Notwithstanding any provision of law to the contrary, an employee hired on or after August 1, 2000, who participates in one (1) of the retirement systems administered by the Kentucky Retirement Systems and who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefit shall be forfeited. The employer shall notify the retirement system when an employee is convicted under the provisions of this subsection.

History.
Enact. Acts 1956, ch. 110, § 6; 1960, ch. 165, part II, § 4; 1962, ch. 58, § 4; 1972, ch. 116, § 25; 1976, ch. 321, § 40; 1988, ch. 349, § 11, effective July 15, 1988; 2000, ch. 273, § 1, effective July 14, 2000; 2013, ch. 120, § 46, effective July 1, 2013; 2020 ch. 79, § 21, effective April 1, 2021.

NOTES TO DECISIONS

Cited:
Roland v. Kentucky Retirement Sys., 52 S.W.3d 579, 2000 Ky. App. LEXIS 46 (Ky. Ct. App. 2000).

OPINIONS OF ATTORNEY GENERAL.

A resigned state employee cannot receive service credit in the Kentucky Employees Retirement System for the time he spent as a county employee. OAG 61-695.

A person retired pursuant to this section who has been reemployed by the state on a full time basis and who is presently participating in the retirement system pursuant to KRS 61.637 may purchase military service credit under KRS 61.555 providing that the reemployed retired member meets the requisites of KRS 61.559 and such military service credit is to be applied to the formula set out in KRS 61.637 in recomputing the employee's retirement benefits at the time of the termination of his reemployment. OAG 74-373.

61.552. Credit for service — Purchases and grants.

(1) Called to Active Duty Military Service. An employee of an employer participating in the system who is called to active military duty in the Armed Forces of the United States shall be credited in accordance with 38 U.S.C. sec. 4318 with service credit, creditable compensation, and in the case of employees participating in the hybrid cash balance plan, employee contributions, employer credits, and interest credits, for a period of active military duty of up to six (6) years, provided:

(a) The employee was called to active military duty in the Armed Forces of the United States:

1. After the employee's membership date in the system and provided the employee was on leave of absence from the employer and did not withdraw his or her accumulated account balance; or

2. Prior to the employee's membership date in the system and the date the employee terminated employment with his or her employer;

(b) The employee entered active military service within three (3) months of his or her last day of paid employment;

(c) The employee's discharge military service was terminated in a manner other than as described in 38 U.S.C. sec. 4304;

(d) The employee returns to work with an employer participating in the system within two (2) years after completion of the period of active military duty, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge; and

(e) For an employee whose membership date is on or after January 1, 2014, who is participating in the hybrid cash balance plan under KRS 16.583, 61.597, 78.5512, or 78.5516, the employee pays the employee contributions on the credited compensation as provided under KRS 16.543, 61.543, and 78.615.

For periods of active military duty that meet the requirements of this subsection, the employer shall pay the employer contributions payable under KRS 61.565, 61.702, 78.5536, and 78.635.

(2)(a) Omitted Service. Any person who is entitled to service credit for employment which was not reported by the employer in accordance with KRS 16.543, 61.543, or 78.615 may obtain credit for the service subject to the provisions of this subsection.

(b) Provided the person pays for the omitted service within six (6) months of notification by the system, the cost of the service shall be equal to the employee contributions that would have been paid if the person had been correctly reported in accordance with KRS 16.543, 61.543, or 78.615.

(c) Any employee participating in one (1) of the state-administered retirement systems entitled to service credit under paragraph (a) of this subsection who has not repaid the employee contributions due within six (6) months of notification by the system may purchase the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (b) of this subsection.

(d) Omitted service purchased under this subsection shall:

1. Be considered service credited under KRS 16.543(1), 61.543(1), or 78.615(1) for purposes of determining eligibility for retirement benefits under KRS 78.510 to 78.852; and

2. Not be credited to the member's account until the employer contributions due and any interest or penalties on the delinquent employer contributions for the period of omitted service are received by the system.

(e) Employees who begin participating on or after January 1, 2014, in the hybrid cash balance plan provided by KRS 16.583 or 61.597 or 78.5512 or 78.5516 shall, upon payment of the employee and employer contributions due under this subsection, have their accumulated account balance increased by the employee contributions, employer pay credits, and interest credits that would have been credited to their member's account if the contributions had been paid on time.

(f) Contributions payable by the employer under this subsection for omitted service shall be considered delinquent from the date the employee should have been reported and received service credit in accordance with KRS 16.543, 61.543, and 78.615.

(3)(a) Recontribution of a Refund. Any employee participating in one (1) of the state-administered retirement systems who has been refunded his or her accumulated account balance under the provisions of KRS 61.625, thereby losing service credit in the system, may regain the credit by paying to the system the amount or amounts refunded by the system with interest at a rate determined by the board. Service purchased under this subsection on or after January 1, 2014, shall not be used to determine the member's membership date in the systems.

(b) Recontribution of a refund purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least six (6) months of service credit in a state-administered retirement system, excluding the service purchased under this subsection. If the member does not accrue at least six (6) months of service credit in a state-administered retirement system, excluding service purchased under this subsection, then the payment plus interest as provided in KRS 16.560, 61.575, or 78.640 shall be refunded upon retirement, death, or written request following termination of employment. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582, 61.600, 61.621, 78.5522, or 78.5524.

(4)(a) Summer Months. Any employee participating in one (1) of the state- administered retirement systems who is or has been employed by a school board or community action agency participating in the County Employees Retirement System or a state-operated school under KRS Chapter 167 or an institution of higher learning participating in the Kentucky Employees Retirement System, who receives service credit for less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit, except the amount purchased for any specific year shall not exceed three (3) months.

(b) The cost of the summer months service credit shall be determined by the formula established by subsection (10) of this section and may be purchased by the employee, or the employer on behalf of the employee, or the cost may be paid by both the employer and employee in which case the employer and employee shall each pay fifty percent (50%) of the cost. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the system.

(c) If the employee has purchased service credit under this subsection based on months reported by the employer for the fiscal year, and an audit of the employee's account reduces the number of months of service credit for which the employee is eligible to no fewer than nine (9) months, the employee shall retain credit for the months purchased unless the employee is ineligible for any service in the fiscal year. The employee shall be eligible to purchase the

additional months under this subsection to total one (1) year.

(d) This subsection shall not apply to members who began participating in the County Employees Retirement System on or after January 1, 2014.

(5) Vested Service Purchases. Any employee who began participating in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, who is vested may purchase service credit for:

(a) Past service. "Past service" means periods of employment:

1. Between July 1, 1956, in the case of the Kentucky Employees Retirement System, or July 1, 1958, in the case of the County Employees Retirement System, and the effective date of participation by the employer; or

2. With a public agency that did not participate in the Kentucky Employees Retirement System but would have been eligible to participate under KRS 61.520 or a political subdivision that did not participate in the County Employees Retirement System but would have been eligible to participate under KRS 78.530, provided the public agency or political subdivision has merged with or been taken over by a participating employer;

(b) State university service, provided the university does not participate in a state- administered retirement system and the university service being purchased was in a nonteaching position that did not participate in a defined benefit retirement program;

(c)1. Up to ten (10) years of out-of-state service. "Out-of-state" means service credited to a state or local government-administered public defined benefit plan in another state that is not a defined benefit plan for teachers.

2. Up to ten (10) years of out-of-state hazardous service. "Out-of-state hazardous service" means service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592 or 78.5520, as applicable. The employee may purchase out-of-state hazardous service under this subparagraph provided the employee is vested to receive benefits from the State Police Retirement System or hazardous duty benefits from the Kentucky Employees Retirement System or the County Employees Retirement System. The employee must purchase out-of-state service or out-of-state hazardous service in the system in which he or she is vested based solely upon the service in that system;

(d) Active military duty, which means periods of active military duty in the Armed Forces of the United States, provided:

1. The employee's military service was terminated in a manner other than as described in 38 U.S.C. sec. 4304; and

2. The service has not been credited as free military service under subsection (1) of this section;

(e) National Guard service. An employee may purchase one (1) month of service for each six (6) months of service in the National Guard or the military reserves of the United States. The service shall be treated as service earned prior to participation in the system;

(f) Federal service. "Federal service" means service with the United States government, that is not service in the Armed Forces;

(g) Seasonal, emergency, interim, probationary, or temporary employment or part-time employment as provided by KRS 61.510(21) or 78.510(21) averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member may purchase credit for only those months he or she receives creditable compensation for one hundred (100) hours of work;

(h) Part-time employment in a noncertified position at a school board prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed to purchase credit only for those months he or she receives creditable compensation for eighty (80) hours of work;

(i) Any period of:

1. Authorized maternity leave without pay or sick leave without pay;

2. Unpaid leave authorized under the federal Family and Medical Leave Act;

3. Approved educational leave; and

4. Agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the board receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor;

(j) Non-participating employer service, which means periods of employment with the following types of agencies provided the agency does not participate in a state-administered retirement system:

1. A regional community services program for mental health organized and operated under the provisions of KRS 210.370 to 210.480;

2. A community action agency created under KRS 273.405 to 273.453. The service provided by this subparagraph shall be purchased in the County Employees Retirement System;

3. An area development district created pursuant to KRS 147A.050; or

4. A business development corporation created pursuant to KRS 155.001 to 155.230, provided the system receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor;

(k) Urban-county government service, which means employment in an urban- county government position that would qualify for hazardous duty coverage under KRS 61.592 or 78.5520. The provisions of this paragraph shall only be applicable to vested members participating in the State Police Retire-

ment System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System;

(*l*) Periods of service as assistants to officers and employees of the General Assembly for persons who were unable to acquire service under KRS 61.510(20) for service performed after January 1, 1960;

(m) Service as a volunteer in the Kentucky Peace Corps, created by KRS 154.1- 720; and

(n) Employment with a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year. The service provided by this paragraph shall be purchased in the Kentucky Employees Retirement System.

(6) Non-qualified service. Provided the employee's membership date in the system is prior to July 15, 2002, and provided the employee has total service in all state-administered retirement systems of at least one hundred eighty (180) months of service credit, the employee may purchase a combined maximum total of five (5) years of service credit, known as non-qualified service, which is not otherwise purchasable under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852. The service purchased under this paragraph shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 16.560, 61.575, or 78.640, as applicable, shall be refunded.

(7) For purposes of service purchased under subsections (2) to (6) of this section:

(a) Except for subsection (6) of this section, the service must qualify as regular full-time as provided by KRS 61.510 and 78.510;

(b) No service credit may be purchased for periods already credited to the system or another public defined benefit retirement fund, including non-qualified service purchased in another state-administered retirement system;

(c) Except as provided by paragraph (a)2.a. of subsection (9) of this section, the employee payment for service purchases shall not be picked up, as described in KRS 16.545(4), 61.560(4), or 78.610(4), by the employer;

(d) Except for service purchased under subsection (2) or (3) of this section, service purchases made pursuant to this section may be purchased by the entire amount of service available or by increments. Service purchases made pursuant to subsections (2) and (3) of this section shall only be purchased by the entire amount of service available; and

(e) Service purchases as provided by subsections (5)(b), (d) to (f), and (j)1. and (6) of this section may be purchased in any system in which the member has service credit.

(8)(a) Employer purchase of past service. Any employer participating in the system may purchase service credit, between July 1, 1956, in the case of the Kentucky Employees Retirement System, or July 1, 1958, in the case of the County Employees Retirement System, and the participation date of the employer, for present employees of the county or department who have elected coverage under KRS 61.525(2) or 78.540(1), provided the employee began participating in the system prior to January 1, 2014.

(b) A Kentucky Employees Retirement System employer shall pay the cost of the service credit within the fiscal year the election is made to purchase the service credit. A County Employees Retirement System employer may purchase the service, with interest at the rate actuarially assumed by the board, over a period not to exceed ten (10) years.

(c) If an employer elects to purchase service under the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (5)(a) of this section shall have his or her payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640.

(d) Any payments made by an employer under this subsection shall be deposited to the retirement allowance account of the system and these funds shall not be considered accumulated contributions of the individual members.

(9)(a) An employee participating in the system may purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 for which he or she is eligible to purchase, or as otherwise required by 38 U.S.C. ch. 43, by:

1. Making a lump-sum payment on a before-tax basis as provided in subparagraph 3. of this paragraph, or on an after-tax basis if the employee is purchasing service credit under subsection (1) or (3) of this section, service available pursuant to 38 U.S.C. ch. 43 not otherwise provided for in this section, or grandfathered service as defined in paragraph (b) of this subsection;

2. Entering into an agreement to purchase service credit through an installment purchase of service agreement with the systems as provided by paragraph (c) of this subsection:

a. On a before-tax basis in which the service is purchased pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2); or

b. On an after-tax basis if the employee is purchasing service credit under subsection (1) or (3) of this section, service available pursuant to 38 U.S.C. ch. 43 not otherwise provided for in this section, or grandfathered service as defined in paragraph (b) of this subsection; or

3. Transferring funds to the system through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder, or through a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. secs. 402(c) and 408(d)(3). The system shall accept the

transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder.

(b) For purposes of this subsection, "grandfathered service" means service purchases for which a member, whose membership date in the system is prior to July 1, 1999, is eligible to purchase under KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, that were available for all members of the system to purchase on August 5, 1997.

(c)1. For service purchased under a before-tax or after-tax installment purchase of service agreement as provided by paragraph (a)2. of this subsection, the cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal, except that interest compounded annually at the actuarial rate in effect at the time the member elects to make the purchase shall be added for the period that the installments are to be made.

2. Multiple service purchases may be combined under a single installment agreement, except that no employee may make more than one (1) installment purchase at the same time.

3. For after-tax installment purchase of service agreements, the employee may elect to stop the installment payments by notifying the system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal or a portion of the remaining principal.

4. Before-tax installment purchase of service agreements shall be irrevocable, and the employee shall not be able to stop installment payments or to pay off the remaining balance of the purchase of service agreement, except upon termination of employment or death.

5. One (1) year of installment payments shall be made for each one thousand dollars ($1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.

6. The employee shall pay the installments by payroll deduction for after- tax purchase of service agreements, and the employer shall pick up installments for before-tax purchase of service agreements. Upon notification by the system, the employer shall report the installment payments monthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee contributions on the forms or by the computer format specified by the board.

7. The system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

8. If the employee utilizing an installment purchase of service agreement dies, retires, does not continue employment in a position required to participate in the system, or elects to stop an after-tax installment purchase of service agreement, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal or a portion of the remaining principal of the installment purchase of service agreement by lump sum, subject to the restrictions of paragraph

(a)1. of this subsection, or by transfer of funds under paragraph (a)3. of this subsection, except that payment by the member shall be filed with the system prior to the member's effective retirement date. If the member or beneficiary does not pay the remaining cost, the system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased, except as provided by subsection (6) of this section.

9. If the employer does not report installment payments on an employee for sixty (60) days for an after-tax installment purchase of service agreement, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased.

10. Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.

11. If payments have ceased under subparagraph 8. or 9. of this paragraph and the member later becomes a participating employee in the County Employees Retirement System, Kentucky Employees Retirement System, or State Police Retirement System, the employee may complete the adjusted original installment purchase by lump sum or installment payments, subject to the restrictions of this subsection. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with subsection (10) of this section.

(d) Member payments, including interest, properly received pursuant to this subsection, shall be deposited to the member's account and considered as accumulated contributions of the individual member.

(10)(a) The cost of purchasing service credit under any provision of this section, except as provided by subsections (1) to (3) of this section, shall be determined by multiplying the higher of the employee's current rate of pay, final rate of pay, or final compensation as of the end of the month in which the purchase is made times the actuarial factor times the number of years of service being purchased. The actuarial factor used to determine the cost of purchasing service credit shall assume the earliest date the member may retire without a reduction in benefits and the cost-of-living adjustments provided to members upon retirement.

(b) Service purchased on or after August 1, 2004, under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, except for service purchased under subsections (1) to (3) of this section or service purchased as described by paragraph (d) of this subsection, shall not be used to determine eligibility for or the amount of the monthly insurance contribution under KRS 61.702 or 78.5536.

(c) For a member whose membership date is on or after August 1, 2004, service purchased under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, except for service purchased under subsections (1) to (3) of this section or service purchased as described by paragraph (d) of this subsection:

1. Shall not be used to determine eligibility for a retirement allowance under disability retirement, early retirement, normal retirement, or upon death of the member under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852; and

2. Shall only be used to determine the amount of the retirement allowance of a member who is eligible for a retirement allowance under disability, early retirement, normal retirement, or upon death of the member under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, based on service earned as a participating employee.

(d) Paragraphs (b) and (c) of this subsection shall not apply to a member who was bound by an educational contract as a conditional employee to the state of Kentucky prior to December 31, 2003, regardless of membership date in the system. Educational leave, seasonal service, or any other qualified service purchased by a member with this classification under this section shall be used to determine eligibility for benefits, membership dates, and the amount of benefit for:

1. A retirement allowance under disability retirement, early retirement, normal retirement, or death under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852; and

2. The monthly insurance contribution under KRS 61.702 or 78.5536.

History.

Repealed and reenacted by 2021 ch. 102, § 52, effective April 1, 2021; 2022 ch. 165, § 5, effective July 14, 2022; 2024 ch. 55, § 8, effective July 15, 2024.

Legislative Research Commission Notes.

(6/29/2021). 2021 Ky. Acts ch. 96, sec. 15 provides, "Notwithstanding the provisions of 2017 Ky. Acts ch. 32 to the contrary, the implementation date of the amendments in subsection (28) of Section 9 of 2017 Ky. Acts ch. 32 [KRS 61.552] by the Kentucky Retirement Systems shall be December 1, 2019."

(4/1/2021). In codification, a correction has been made to subsection (2)(e) of this statute. Section 52 of 2021 Ky. Acts ch. 102, which amended this statute, contains a reference to "KRS 16.597," a number that does not correspond to any existing section of the Kentucky Revised Statutes. It is clear from the context that the reference was intended to read "KRS 61.597." Under the authority of KRS 7.136, the Reviser of Statutes has corrected this manifest clerical or technical error.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

61.5525. Method for determining purchase of service credit — Exceptions. [Repealed]

History.

Enact. Acts 2001, ch. 7, § 6, effective June 21, 2001; 2002, ch. 52, § 24, effective July 15, 2002; 2004, ch. 33, § 2, effective July 13, 2004; 2008 (1st Ex. Sess.), ch. 1, § 13, effective June 27, 2008; 2017 ch. 32, § 10, effective June 29, 2017; repealed by 2021 ch. 102, § 85, effective April 1, 2021.

61.595. Annual retirement allowance — Limitations.

(1) Effective July 1, 1990, upon retirement at normal retirement date or subsequent thereto, a Kentucky Employees Retirement System member may receive an annual retirement allowance, payable monthly during his or her lifetime, which shall consist of an amount equal to one and ninety-seven hundredths percent (1.97%) of final compensation multiplied by the number of years of service credit, except that:

(a) Effective February 1, 1999, a member of the Kentucky Employees Retirement System who was participating in one (1) of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his or her lifetime, which shall consist of an amount equal to two percent (2%) of final compensation multiplied by the number of years of service credit. Any Kentucky Employees Retirement System member whose effective date of retirement is between February 1, 1999, and January 31, 2009, and who has at least twenty (20) years of service credit in one (1) of the state-administered retirement systems and who was participating in one (1) of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his or her lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit. Notwithstanding the provisions of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance account;

(b) The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of January 6, 1978, shall not be less than two hundred forty dollars ($240) multiplied by the number of years of service as a member of the General Assembly;

(c) For a member of the Kentucky Employees Retirement System who begins participating on or after September 1, 2008, the annual retirement allowance upon retirement shall be equal to:

1.a. One and one-tenth percent (1.1%) of final compensation for each year of service if the

member has earned ten (10) or less years of service at retirement;

b. One and three-tenths percent (1.3%) of final compensation for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;

c. One and one-half percent (1.5%) of final compensation for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or

d. One and three-quarters percent (1.75%) of final compensation for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and

2. Two percent (2.0%) of final compensation for each year of service earned in excess of thirty (30) years of service at retirement;

(d) The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;

(e) Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 Regular Session are eligible for an increased retirement allowance of two hundred forty dollars ($240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his or her beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving a retirement allowance, he or she may reapply and his or her retirement allowance shall be recomputed in accordance with this paragraph, and he or she shall thereafter be paid in accordance with the option selected by him or her at the time of the reapplication; and

(f) The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars ($512).

(2)(a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his or her lifetime which shall be determined in the same manner as for retirement at his or her normal retirement date with years of service and final compensation being determined as of the date of his or her actual retirement, but the amount of the retirement allowance so determined shall be reduced at an amount determined by the board's actuary to reflect the earlier commencement of benefits.

(b) A member of the Kentucky Employees Retirement System who begins participating before September 1, 2008, who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who begins participating before September 1, 2008, who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority, may count the vested service toward attaining the necessary years of service credit as provided in KRS 61.559(2)(c) and (d) to qualify for a retirement allowance. The credit from a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority shall not be used toward the minimum fifteen (15) years of current service required by KRS 61.559(2)(c) and (d) or to calculate his or her retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).

(c) A member of the Kentucky Employees Retirement System who begins participating on or after September 1, 2008, may retire with no reduction in benefits if the member is fifty-seven (57) years of age or older and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for an unreduced retirement allowance under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system.

(3) Subsections (1) and (2) of this section shall not apply to members who begin participating in the system on or after January 1, 2014. Members who begin participating in the system on or after January 1, 2014, shall receive the retirement benefits prescribed by KRS 61.597.

History.

Enact. Acts 1956, ch. 110, § 18; 1960, ch. 165, part II, § 7; 1962, ch. 58, § 10; 1964, ch. 86, § 4; 1966, ch. 35, § 8; 1968, ch. 26, § 1; 1972, ch. 116, § 36; 1974, ch. 24, § 2; 1976, ch. 224, § 1; 1976, ch. 321, § 22; 1978, ch. 121, § 1, effective June 17, 1978; 1984, ch. 228, § 2, effective July 13, 1984; 1986, ch. 90, § 15, effective July 15, 1986; 1986, ch. 293, § 1, effective July 15, 1986; 1988, ch. 349, § 43, effective July 15, 1988; 1988, ch. 351, § 1, effective July 15, 1988; 1988, ch. 364, § 2, effective July 15, 1988; 1990, ch. 221, § 1, effective July 13, 1990; 1990, ch. 342, § 1, effective July 13, 1990; 1990, ch. 517, § 1, effective July 1, 1990; 1992, ch. 240, § 29, effective July 14, 1992; 1994, ch. 502, § 3, effective April 13, 1994; 1998, ch. 123, § 1, effective July 15, 1998; 1998, ch. 184, § 1, effective July 15, 1998; 2002, ch. 52, § 8, effective July 15, 2002; 2004, ch. 33, § 3, effective July 13, 2004; 2004, ch. 36, § 14, effective July 13, 2004; 2008 (1st Ex. Sess.), ch. 1, § 18, effective June 27, 2008; 2013, ch. 120, § 58, effective July 1, 2013; 2018 ch. 107, § 27, effective July 14, 2018; 2021 ch. 102, § 58, effective April 1, 2021.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

Section 42 of Acts 1976, ch. 321 provides: "This Act shall not be construed as repealing any of the provisions of 1976 House Bill 142 [ch. 224 amending KRS 61.595 by adding provisions relating to members of general assembly] but shall be held and construed as ancillary and supplementary thereto."

NOTES TO DECISIONS

1. Construction with Other Laws.

Commonwealth's retirement statutes, KRS 16.582, 16.576, 16.577 and 61.595, which together calculated retirement eligibility based on age and years of service, were not facially discriminatory, as a matter of law, under the federal Age Discrimination in Employment Act, 29 USCS § 621 et seq., because the fact that a combination of service years and age was used to compute retirement eligibility was itself an actuarial reality and not proof of age discrimination. EEOC v. Jefferson County Sheriff's Office, 2003 U.S. Dist. LEXIS 18998 (W.D. Ky. 2003), aff'd, 424 F.3d 467, 2005 FED App. 0397P, 2005 U.S. App. LEXIS 20053 (6th Cir. Ky. 2005), rev'd, 467 F.3d 571, 2006 FED App. 0405P, 2006 U.S. App. LEXIS 26981 (6th Cir. Ky. 2006).

OPINIONS OF ATTORNEY GENERAL.

The term "employment covered by the Kentucky employees' retirement system" in KRS 161.607 embraces the term "service" as defined in KRS 61.510 and as referred to in this section so an employee of the Kentucky Department of Agriculture for the three years immediately preceding July 1, 1956, when there was no Kentucky Employees' Retirement System in existence, would still be entitled to purchase credit in the Teachers' Retirement System for the three (3) years in question pursuant to the option contained in KRS 161.607. OAG 73-749.

A person who has been granted disability retirement is no longer a "member" of the retirement system and therefore is not eligible to seek or receive retirement benefits under this section. OAG 77-319, 1977 Ky. AG LEXIS 455.

RESEARCH REFERENCES AND PRACTICE AIDS

ALR

Validity of legislation providing for additional retirement allowances for public employees previously retired. 27 A.L.R.2d 1442.

61.5955. Election by member participating in KERS, CERS, or SPRS on or after September 1, 2008, but before January 1, 2014 — Participation in hybrid cash balance plan — Private letter ruling — Administrative regulations — Restriction.

Notwithstanding any provision of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 to the contrary:

(1) Subject to the provisions of this section, any member who began participating in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System on or after September 1, 2008, but prior to January 1, 2014, may in lieu of the benefits he or she is currently eligible to receive from the systems, elect to receive the benefits and rights provided to members who began participating in the systems on or after January 1, 2014, including participating in the hybrid cash balance plan created pursuant to KRS 61.597 or 78.5512 for members in nonhazardous duty positions or pursuant to KRS 16.583 or 78.5516 for members in hazardous duty positions, as applicable;

(2) The election provided by this section shall be made in writing and on a form prescribed by the Kentucky Public Pensions Authority and shall apply to all service or accounts in the Kentucky Retirement Systems or the County Employees Retirement System;

(3) For each member who makes an election provided by this section:

(a) Any service credit the member has accrued prior to January 1, 2014, shall be considered as service credit earned on or after January 1, 2014, for purposes of determining benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;

(b) On the member's effective election date, the value of the member's accumulated contributions, less any interest, shall be deposited into the member's hybrid cash balance account as provided by KRS 16.583, 61.597, 78.5512, or 78.5516, as applicable, and considered part of the member's accumulated account balance;

(c) On the member's effective election date, an employer pay credit as provided by KRS 16.583, 61.597, 78.5512, or 78.5516, as applicable, shall be added to the member's accumulated account balance for each month the member contributed to the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System prior to his or her effective election date; and

(d) Interest credits as provided by KRS 16.583, 61.597, 78.5512, or 78.5516, as applicable, shall only be applied for periods occurring on or after the member's effective election date;

(4) Before accepting an election provided by this section, the Kentucky Public Pensions Authority shall provide the member with information detailing the potential results of the member's election;

(5) An election made pursuant to this section shall be irrevocable;

(6)(a) A member of the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System shall not be eligible to make an election prescribed by this section until the Kentucky Retirement Systems receives a favorable private letter ruling from the Internal Revenue Service regarding this section.

(b) If the Internal Revenue Service denies the request for a private letter ruling as provided by paragraph (a) of this subsection, this section shall be void.

(c) The Kentucky Public Pensions Authority may promulgate administrative regulations under KRS Chapter 13A in order to carry out this section; and

(7) This section shall not apply to retirees who were reemployed on or after September 1, 2008, and who are not eligible to participate in the systems during reemployment.

History.

Enact. Acts 2017, ch. 125, § 6, effective March 27, 2017; 2018 ch. 107, § 38, effective July 14, 2018; repealed and reenacted by 2021 ch. 102, § 44, effective April 1, 2021.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

61.5956. Optional 401(a) money purchase plan for new nonhazardous members who begin participating in KERS or CERS on or after January 1, 2019. [Repealed]

History.

2018 ch. 107, § 12, effective July 14, 2018; repealed by 2021 ch. 102, § 85, effective April 1, 2021.

61.597. Hybrid cash balance plan for certain members of Kentucky Employees Retirement System in nonhazardous duty positions — Member contributions and employer pay credits — Interest credits — Termination of employment — Options upon retirement.

(1) A member of the Kentucky Employees Retirement System who is participating in a nonhazardous position, whose participation in the systems begins on or after January 1, 2014, and those members making an election pursuant to KRS 61.5955, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under KRS 61.559 and 61.595. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the Kentucky Employees Retirement System.

(2) The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:

(a) Contributions made by the member as provided by KRS 16.505 to 16.652 and 61.510 to 61.705, except for employee contributions prescribed by KRS 61.702(3)(b);

(b) An employer pay credit of four percent (4%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and

(c) Interest credits added annually to the member's accumulated account balance as provided by this section.

(3)(a) Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 61.675.

(b) Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.

(4)(a) On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan or the County Employees Retirement System during the fiscal year.

(b) If the member contributed to the hybrid cash balance plan or the County Employees Retirement System during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:

1. Four percent (4%); plus

2. Seventy-five percent (75%) of the system's geometric average investment return in excess of the four percent (4%) rate of return.

(c) If the member did not contribute to the hybrid cash balance plan or the County Employees Retirement System during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to four percent (4%).

(d) For purposes of this subsection, "system's geometric average net investment return":

1. Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and

2. Shall be expressed as a percentage and based upon the system in which the member has an account.

(e) No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.

(5)(a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.

(b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.

(6) A member participating in the hybrid cash balance plan provided by this section may retire:

(a) At his or her normal retirement date, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system; or

(b) If the member is at least age fifty-seven (57) and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for retirement under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system.

(7) A member eligible to retire under subsection (6) of this section may elect to:

(a) Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the retirement systems in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;

(b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or

(c) Take a refund of his or her account balance as provided by KRS 61.625.

(8) The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System prior to January 1, 2014, except for those members who make an election pursuant to KRS 61.5955.

History.

Enact. Acts 2013, ch. 120, § 9, effective July 1, 2013; 2017 ch. 125, § 7, effective March 27, 2017; 2018 ch. 107, § 19, effective July 14, 2018; 2021 ch. 102, § 59, effective April 1, 2021.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

61.598. Limitations and exclusions on increases in creditable compensation in last five years of service for employees retiring on or after January 1, 2018 — Exceptions — Employer to pay actuarial costs resulting from certain increases in creditable compensation — Inquiries from employers — Hearing and appeal — Reporting of exemptions — Inapplicability to hybrid cash balance and money purchase plan participants.

(1) As used in this section, "bona fide promotion or career advancement":

(a) Means:

1. A professional advancement in substantially the same line of work held by the employee in the four (4) years immediately prior to the final five (5) fiscal years preceding retirement or a change in employment position based on the training, skills, education, or expertise of the employee that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member; or

2.a. An increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer.

b. Subdivision a. of this subparagraph shall be retroactive to apply to any member whose effective retirement date occurred on or after July 1, 2021; and

(b) Does not include any circumstance where an elected official participating in the Kentucky Employees Retirement System or the County Employees Retirement System takes a position of employment with a different employer participating in any of the state-administered retirement systems.

(2)(a) For employees retiring from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System on or after January 1, 2018, the systems shall, for each of the retiring employee's last five (5) fiscal years of employment, identify any fiscal year in which the creditable compensation increased at a rate of ten percent (10%) or more annually over the immediately preceding fiscal year's creditable compensation. The employee's creditable compensation in the fiscal year immediately prior to the employee's last five (5) fiscal years of employment shall be utilized to compare the initial fiscal year in the five (5) fiscal year period.

(b) Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in creditable compensation for a fiscal year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the employee's creditable compensation from the immediately preceding fiscal year shall not be included in the creditable compensation used to calculate the retiring employee's monthly retirement allowance. If the creditable compensation for a specific fiscal year identified under paragraph (a) of this subsection as exceeding the ten percent (10%) increase limitation is not used to calculate the retiring employee's monthly retirement allowance, then no reduction in creditable compensation shall occur for that fiscal year.

(c) If the creditable compensation of the retiring employee is reduced as provided by paragraph (b) of this subsection, the retirement systems:

1. Shall refund the employee contributions and interest attributable to the reduction in creditable compensation; and

2. Shall not refund the employer contributions paid but shall utilize those funds to pay down the unfunded liability of the pension fund in which the retiring employee participated.

(3)(a) In order to ensure the prospective application of the limitations on increases in creditable compensation contained in subsection (2) of this section, only the creditable compensation earned by the retiring

employee on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Creditable compensation earned by the retiring employee prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.

(b) If the reductions in creditable compensation during a retiring member's entire last five (5) years of employment results in a reduction in his or her monthly retirement allowance of less than twenty-five dollars ($25) per month or an actuarially equivalent value under the various payment options, then no reduction in creditable compensation or retirement allowances shall occur under subsection (2) of this section.

(4) Subsection (2) of this section shall not apply to:

(a) A bona fide promotion or career advancement as defined by subsection (1) of this section;

(b) A lump-sum payment for compensatory time paid to an employee upon termination of employment;

(c) A lump-sum payment made pursuant to an alternate sick leave program under KRS 78.616(5) that is paid to an employee upon termination of employment;

(d) Increases in creditable compensation in a fiscal year over the immediately preceding fiscal year, where in the immediately preceding fiscal year the employer reported the employee as being on leave without pay for any reason, including but not limited to sick leave without pay, maternity leave, leave authorized under the Family Medical Leave Act, and any period of time where the employee received workers' compensation benefit payments that were not reported to the plan as creditable compensation;

(e) Increases in creditable compensation directly attributable to an employee's receipt of compensation for:

1. Overtime hours worked while serving as a participating employee under any state or federal grant, grant pass-through, or similar program that requires overtime as a condition or necessity of the employer's receipt of the grant; or

2. The first one hundred (100) hours of mandatory overtime hours that the employee is individually required to work by the employer during a fiscal year. This subparagraph shall not be construed to apply to overtime hours voluntarily worked by the employee or in situations in which the employee has the option to elect out of participation in overtime hours. Any mandatory overtime hours exempt under this subparagraph shall be in addition to any overtime hours otherwise exempt under the provisions of this subsection; and

(f) Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime performed during and as a result of a state of emergency declared by:

1. The President of the United States or the Governor of the Commonwealth of Kentucky; or

2. A local government in which the Governor authorizes mobilization of the Kentucky National Guard pursuant to KRS 38.030 and 39A.950 during such time as the National Guard is mobilized.

(5)(a) For employees retiring on or after January 1, 2014, but prior to July 1, 2017, the last participating employer shall be required to pay for any additional actuarial costs resulting from annual increases in an employee's creditable compensation greater than ten percent (10%) over the employee's last five (5) fiscal years of employment that are not the direct result of a bona fide promotion or career advancement. The cost shall be determined by the retirement systems.

(b) Lump-sum payments for compensatory time paid to an employee upon termination of employment shall be exempt from this subsection.

(c) The Authority shall be required to answer inquiries from participating employers regarding this subsection. Upon request of the employer prior to the employee's change of position or hiring, the systems shall make a determination that is binding to the systems as to whether or not a change of position or hiring constitutes a bona fide promotion or career advancement.

(d) For any additional actuarial costs charged to the employer under this subsection, the systems shall allow the employer to pay the costs without interest over a period of one (1) year from the date of receipt of the employer's final invoice.

(6) The Authority shall determine whether increases in creditable compensation during the last five (5) fiscal years of employment prior to retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.

(7) Any employer who disagrees with a determination made by the system in accordance with this section regarding whether an increase in compensation constitutes a bona fide promotion or career advancement for purposes of subsection (5) of this section may request a hearing and appeal the decision in accordance with KRS 61.645(16) or 78.782(16).

(8) For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky Retirement Systems and the County Employees Retirement System shall provide a means for employers to separately report the specific exceptions provided in subsection (4) of this section within the reporting system utilized by the employers for making employer reports under KRS 16.645, 61.675, and 78.545. The Kentucky Retirement Systems and the County Employees Retirement System shall continually provide communication, instructions, training, and educational opportunities for employers regarding how to appropriately report exemptions established by subsection (4) of this section.

(9) This section shall not apply to employees participating in the hybrid cash balance plan as provided by KRS 16.583, 61.597, 78.5512, and 78.5516.

History.

Enact. Acts 2013, ch. 120, § 10, effective July 1, 2013; 2017 ch. 125, § 3, effective March 27, 2017; 2018 ch. 107, § 85, effective July 14, 2018; 2021 ch. 102, § 60, effective April 1, 2021; 2021 ch. 96, § 6, effective June 29, 2021; 2022 ch. 100, § 1, effective April 8, 2022; 2025 ch. 76, § 1, effective June 27, 2025; 2026 ch. 189, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

(4/8/2022). 2022 Ky. Acts ch. 100, sec. 2 provides, "The amendments to subsection (4)(f) of Section 1 of this Act [this

statute] shall be retroactive to May 28, 2020, and shall for purposes of local government emergencies issued on or after May 28, 2020, but prior to October 5, 2020, apply to any overtime worked from May 28, 2020, through May 11, 2021, regardless of whether or not the National Guard was mobilized for the entire period. The Kentucky Public Pensions Authority shall adjust the benefits of members, retirees, and recipients accordingly."

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Burden of Proof.
3. Construction.
4. Bona Fide Promotion or Career Advancement.
5. Due Process.

1. Constitutionality.

Statute is not arbitrary on its face or as applied because it affects all employers similarly and only under specified circumstances, and it is reasonably designed to rehabilitate and preserve the pension system; the statute is meant to be a bloat-limiting balancing measure and is written to serve that purpose, and it authorizes the Kentucky Retirement Systems to pass regulations and take prescribed actions to assess increased actuarial costs attributable to employee compensation increases. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Statute is not unconstitutional as an ex post facto law, because, although the statute operates retroactively, the assessment is not a punishment for a criminal act, and ex post facto laws apply only to criminal or penal matters, not generally to civil or private matters; the assessment is a civil assessment incurred for non-criminal actions. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Assessment of actuarial costs against a city following the retirement of one of its employees did not violate the prohibition against ex post facto laws because the assessment was a civil assessment incurred for non-criminal actions; the assessment was to redistribute actuarial costs according to statute, not to punish the city for a lawful employment decision. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

There was no violation of the Contracts Clause when the Kentucky Retirement Systems assessed actuarial costs against a city following the retirement of one of its employees because the relationship between the city and the Retirement Systems was one purely of statute, not contract; the relationship between the city and the employee, the rights and obligations owed between them, was left completely unaffected. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

2. Burden of Proof.

Kentucky Retirement Systems correctly placed the burden on the county sheriff's office, the employer, because the statute did not impose a penalty, and the assessment was clearly not a revocation of a benefit grant; an assessment under Ky. Rev. Stat. Ann. § 67.598(3) is not punitive because employers are not prohibited or bound by law not to increase employee compensation, but they may do so at their discretion, and even up to a 10 percent increase, there is no effect at all on the employer. Jefferson Cty. Sheriff's Office v. Ky. Ret. Sys., 626 S.W.3d 554, 2021 Ky. LEXIS 146 (Ky. 2021).

Burden of proof was properly assigned to a city because the Kentucky Retirement Systems's assessment was not a penalty, and the city was not deprived of a benefit previously granted by the Retirement Systems; assigning the burden of proof to the city made practical sense because it was in the best position to gather evidence pertaining to an employee or a purported promotion. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

3. Construction.

Statute directs the Kentucky Retirement Systems to apply the statute retroactively in some circumstances, that is, to calculate creditable compensation and assess costs for compensation paid before the statute took effect on July 1, 2013; as a matter of statutory construction, the statute properly applies retroactively according to its plain language. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Five-year lookback pertaining to assessments against employers, effective in some form since its original enactment in 2013, demonstrates the intent of the General Assembly to apply the statute retroactively; the lookback is inherently and clearly retrospective and, therefore, is intended to apply accordingly. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

While the 2017 amendment clearly abrogated any retrospective interpretation as to the calculation of a retiring employee's benefits, the General Assembly evinced a completely different intention for subsection (5)(a) by leaving alone, thereby practically reiterating, the five-year lookback applied to any employer of an employee retiring after January 1, 2014, only adding "January 1, 2017" as the other end of the currently applicable time frame; the statute properly applies retroactively. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Statute is simply a mechanism of shifting the costs of an employment decision to the employer under predetermined formulae, and like a tax, it is not assessed to punish unlawful behavior or wrongdoing; increasing an employee's pay is not forbidden, disallowed, or otherwise unlawful, nor is it deemed wrong, and the assessment is simply the price the General Assembly placed on employer-participants in a state pension system who bear a primary responsibility of financially supporting the system. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Statute is not overbroad because the decision to raise an employee's compensation is not constitutionally protected, like speech, religion, or interstate travel, and the statute 61.598 reasonably "regulates" that behavior for a legitimate reason; even if the assessment amounts to a regulation of protected conduct, this conduct is not prohibited by the statute or otherwise impinged. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Finding that the Board of Trustees erred when it determined that appellee must pay the actuarial costs associated with a greater than ten percent increase in the salary of one of appellee's former employees for one of the last five years of her employment was proper because the pay increase was not an abuse and there was no sham involved. It would be inconsistent for the employee's legislatively mandated pay increase to be considered pension spiking just because she left appellee well before she retired, when those same pay increases for persons who did not leave appellee during that timeframe could not be subject to the pension spiking statute. Ky. Ret. Sys. v. Dep't of Pub. Advocacy, 675 S.W.3d 505, 2023 Ky. App. LEXIS 35 (Ky. Ct. App. 2023).

4. Bona Fide Promotion or Career Advancement.

City did not provide that an employee experienced a bona fide promotion because the employee's two roles were different

lines of work, and his actual service to the city did not fundamentally change; "bona fide promotion or career advancement" pertains to a change in type, quality, or tier of an employee's responsibility, not a change in the quantity of work performed. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Kentucky Retirement System did not err in disregarding the extent of a city employee's overtime pay in determining that he did not experience a bona fide promotion because the employee's pay increase from both overtime and increased retirement benefits was not a result of a bona fide promotion or career advancement; although his official job duties as a city employee of the local police department were augmented in the most diaphanous sense, it was not on account of a true promotion. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

Statute does not require consideration of overtime pay in determining the existence or authenticity of a promotion; overtime pay generally is not in and of itself evidence of a bona fide promotion, and overtime compensation is, just as the term describes, compensation for fulfilling essentially the same job duties in a given role but in a number of hours exceeding, "over," the standard expected time working a job in a given period, typically about 40 hours a week. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

5. Due Process.

City was afforded and enjoyed adequate procedural due process because it was first allowed to object to the initial notice of assessment to initiate reconsideration, then it was able to appeal the unfavorable determination to the Board of Trustees of the Kentucky Retirement Systems for review, and it had been afforded three levels of judicial review; the city was given ample opportunity to put on evidence that an employee's raises were the result of a bona fide promotion. City of Villa Hills v. Ky. Ret. Sys., 628 S.W.3d 94, 2021 Ky. LEXIS 301 (Ky. 2021).

61.599. Calculation of retirement allowance for members of Kentucky Employees Retirement System.

(1) The annual retirement allowance for a member of the Kentucky Employees Retirement System shall not exceed the maximum benefit as set forth in the Internal Revenue Code.

(2)(a) The retirement allowance for a member of the Kentucky Employees Retirement System shall be calculated by using the member's known creditable compensation prior to his or her last month's employment and an estimate of his or her creditable compensation during the last month he or she was employed. Based upon this calculation, the State Treasurer shall be requested to issue the initial retirement payment.

(b) A new calculation shall be made when the official report has been received of the member's creditable compensation during his or her last month's employment. However, the retirement allowance determined in accordance with paragraph (a) of this subsection shall be the official retirement allowance unless the new calculation derives an amount which is two dollars ($2) greater or less than the amount of the initial retirement payment. If the member or beneficiary chose an actuarial equivalent refund payment option, the amount of estimated retirement allowance shall be the official retirement allowance unless the new calculation produces an amount which is one hundred dollars ($100) greater or less than the amount of the initial retirement payment.

History.

Enact. Acts 2013, ch. 120, § 11, effective July 1, 2013.

61.5991. Quasi-governmental employers participating in KERS — Required reports — Audits — Legislative intent regarding future appropriations to subsidize retirement costs — Non-core services independent contractor.

Except as otherwise provided by this section, the following shall apply to nonhazardous employers in the Kentucky Employees Retirement System, who contributed to the system in fiscal year 2019-2020 except in the case of county attorneys, who are local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, county attorneys, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, or any other agency that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522:

(1)(a) Each employer, except for county attorneys, shall report to the Authority for each fiscal year occurring on or after July 1, 2021, the following persons for which no employer contributions were paid by the employer to the system during the fiscal year for services provided to the employer:

1. Except as provided by paragraph (b)3. of this subsection, persons employed as an independent contractor, a leased employee, or via any other employment arrangement as determined by the Authority, who if employed directly by the employer would qualify as a regular full-time employee in accordance with KRS 61.510(21); and

2. Persons employed directly by the employer who meet the definition of a regular full-time employee in accordance with KRS 61.510(21), who are not being reported to the system in accordance with KRS 61.675.

(b) The reporting required by this paragraph shall:

1. Be reported in a format, detail, and frequency as determined solely by the Authority;

2. Except as provided by subparagraph 3. of this paragraph, include persons providing services to the employer as an independent contractor, a leased employee, or via any other employment arrangement as determined by the Authority, and those services have historically been provided or are currently being provided by employees eligible to participate in the system through the employer; and

3. Exclude:

a. Contracts for professional services that have not historically been provided by employees of the employer;

b. Any contracts entered into prior to January 1, 2021, with a person or company to provide services as an independent contractor,

a leased employee, or other employment arrangement as determined by the Authority, but only for the duration of the original contract, excluding any renewal periods, and only for those services and persons included in the original contract, except as provided in subdivision c. of this subparagraph; and

c. Contracts providing services through a non-core services independent contractor as defined in subsection (9) of this section, regardless of whether or not the contract was initiated before January 1, 2021, or on or after January 1, 2021.

(c) In any case of doubt, the Authority shall determine whether data should be reported on a specific person providing services to the employer and the Authority may by promulgation of administrative regulation provide guidance on which persons should be included for reporting purposes;

(2)(a) Notwithstanding any other provision of statute to the contrary, the Authority shall:

1. Have full power, including any authority under KRS 61.685, to audit an employer who is subject to the provisions of this section to ensure compliance and accuracy of the data required to be reported by the employer in accordance with this section; and

2. Perform audits on a percentage of employers who are subject to the reporting requirements of this subsection, as determined by the board, for the purpose of ensuring that all eligible employees are being reported and contributions are being paid in accordance with KRS 61.510 to 61.705. The system shall have full power and authority, including any authority and power granted under KRS 61.675 and 61.685, to accomplish the audits required by this subparagraph. An audit time frame and schedule shall be adopted by the board, made available to impacted employers, and reported to the Public Pension Oversight Board.

(b) If the Authority determines an employer has knowingly falsified data required to be reported under this section:

1. The Authority shall indicate in the annual report submitted in accordance with subsection (3) of this section that the employer has knowingly falsified data and shall include a brief summary of the reasons for the Authority's determination;

2. The employer shall no longer be eligible to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system; and

3. The employer shall be required to pay back to the state any appropriations or subsidies provided in the biennial executive branch budget that were used to directly assist the employer in paying employer contributions to the system on or after July 1, 2021.

(c) If an employer fails to submit the information required by this section or does not comply with requests from the Authority regarding this subsection and subsection (1) of this section to verify or audit the employer's information:

1. The Authority shall indicate in the annual report submitted in accordance with subsection (3) of this section that the employer is noncompliant with the Authority's requests and shall include a brief summary of the reasons for the Authority's determination; and

2. The employer may lose eligibility to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system, except that if an employer does not comply with requests from the Authority pursuant to an audit conducted in accordance with paragraph (a)2. of this subsection the employer shall lose eligibility to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system until such time as the employer complies with the audit;

(3) The Authority shall within sixty (60) days following the close of each fiscal year occurring on or after July 1, 2021, determine and report the following to the state budget director's office and the Legislative Research Commission for each employer subject to this section, except for county attorneys:

(a) The number of regular full-time employees of the employer who were reported to the system during the prior fiscal year for which contributions were reported in accordance with KRS 61.675;

(b) The number of persons providing services to the employer under subsection (1) of this section during the prior fiscal year who were not reported to the system and for which no contributions were reported;

(c) A percentage computed by dividing the number of employees reported in paragraph (a) of this subsection by the combined sum of the number of employees and persons reported in paragraphs (a) and (b) of this subsection and multiplying by one hundred (100); and

(d) The information required by subsection (2) of this section for any employer who has been determined by the Authority to have knowingly falsified data or is noncompliant in submitting the data required by this section to the Authority;

(4) It is the intent of the General Assembly in fiscal years occurring on or after July 1, 2021, to provide appropriations for county attorneys for retirement costs in the Kentucky Employees Retirement System that is equal to the difference between the dollar value of actual contributions paid by the employer in fiscal year 2019-2020 to the system and the dollar value of contributions projected to be paid by the employer to the system in fiscal year 2021-2022;

(5) For fiscal year 2021-2022, it is the intent of the General Assembly to provide a subsidy towards the retirement costs of employers covered by this section, except for county attorneys who are provided a subsidy by subsection (4) of this section, that is equal to the difference between the dollar value of actual contributions paid by the employer to the system in fiscal year 2019-2020 and the dollar value of contributions projected to be paid by the employer to the system in fiscal year 2021-2022;

(6) It is the intent of the General Assembly that for fiscal years occurring on or after July 1, 2022:

(a) To provide a subsidy towards the retirement costs of each employer subject to this section, except for county attorneys who are provided a subsidy by subsection (4) of this section, who has made efforts to increase or maintain the number of employees reported to the system. Specifically, it is the intent of the General Assembly to provide subsidies only to those employers who have a percentage of employees reported to the system as specified by subsection (3)(c) of this section, equal to or greater than:

1. Sixty percent (60%) for any subsidies provided in fiscal years occurring on or after July 1, 2022, to June 30, 2024; and

2. Eighty percent (80%) for any subsidies provided in fiscal years occurring on or after July 1, 2024.

Eligibility for a subsidy provided in each fiscal year of the budget shall be based upon the most recent percentage of employees reported by the Authority;

(b) For those employers eligible for a subsidy under paragraph (a) of this subsection, to provide a subsidy that is equal to the dollar value of the subsidy provided to the employer in fiscal year 2021-2022 multiplied by the following percentage:

1. For local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and any other employer subject to this section that has taxing or fee authority:

a. Ninety percent (90%) in fiscal year 2022-2023;

b. Eighty percent (80%) in fiscal year 2023-2024;

c. Seventy percent (70%) in fiscal year 2024-2025;

d. Sixty percent (60%) in fiscal year 2025-2026; and

e. Fifty percent (50%) in fiscal years occurring on or after July 1, 2026; and

2. For any other employer who does not have taxing or fee authority:

a. Ninety percent (90%) in fiscal years 2022-2024; and

b. Seventy-five percent (75%) in fiscal years occurring on or after July 1, 2024; and

(c) The subsidy provided by this subsection shall be adjusted to reflect the assignment of liabilities based upon the appeal process in KRS 61.565(1)(d)5.;

(7) The Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs are, notwithstanding the provisions of subsections (1) to (6) of this section, exempt from the reporting requirements and from receiving a subsidy to assist in paying employer contribution rates;

(8) The provisions of this section shall not obligate the General Assembly to provide any specific level of subsidy to assist in paying employer contributions of any employer covered by this section, and employers shall be responsible for any and all future retirement contributions payable by the employer regardless of the actual amount of subsidy included in future executive branch budgets; and

(9) For purposes of this section, "non-core services independent contractor" means a company or business that is not owned or controlled, in whole or in part, by an employer participating in the system, whose business is not limited to providing services to one (1) or more employers participating in the system, but instead also provides services to the general public or other public agencies not participating in the system, which are limited to facilities services, grounds services, custodial services, bookstore services, dining services, construction services, trade or maintenance services, health services for university students and employees of the employer, information technology services, public relation services, photography services, design services, safety services at universities, hospitality services, entertainment production services, mail services, printing and copier services, sports arena and stadium management, farrier services, assistive services at universities such as interpreters or sign language services, or delivery services.

History.

2021 ch. 83, § 7, effective March 23, 2021; 2022 ch. 192, § 1, effective April 12, 2022.

Legislative Research Commission Notes.

(4/12/2022). 2022 Ky. Acts ch. 192, sec. 4, provides that the amendments made to this statute in that Act are retroactive to July 1, 2021.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 19, b, (2) at 2059.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, J, 4, (1) at 2101.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 3, (1) at 2105.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 5, (1) at 2105.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 6, (1) at 2106.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 10, (1) at 2108.

61.691. Increase of benefits.

(1) Effective August 1, 1996, to July 1, 2008, a recipient of a retirement allowance under KRS 16.505 to 16.652 and 61.510 to 61.705 shall have his or her retirement allowance increased on July 1 of each year by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the federal Bureau of Labor Statistics, not to exceed five percent (5%). In determining the annual employer contribution rate, only the cost of increases granted as of the most recent valuation date shall be recognized. The benefits

of this subsection as provided on August 1, 1996, to July 1, 2008, shall not be considered as benefits protected by the inviolable contract provisions of KRS 16.652 and 61.692. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.

(2)(a) Effective July 1, 2009, and on July 1 of each year thereafter, a recipient of a retirement allowance under KRS 16.505 to 16.652 and 61.510 to 61.705 shall have his or her retirement allowance increased by one and one-half percent (1.5%), if:

1. The funding level of the system is greater than one hundred percent (100%) and subsequent legislation authorizes the use of any surplus actuarial assets to provide an increase in retirement allowances described by this subsection for the system which has the surplus actuarial assets; or

2. The General Assembly appropriates sufficient funds or directs payment of funds to fully prefund the increase described by this subsection in the year the increase is provided.

(b) The board of trustees of the Kentucky Retirement Systems shall, at least thirty (30) days prior to the beginning of regular sessions of the General Assembly held in even-numbered years, advise the General Assembly of the following:

1. Which systems have a funding level greater than one hundred percent (100%) and can support an increase in recipients' retirement allowances as provided by paragraph (a) of this subsection over the next budget biennium without reducing the funding level of the system below one hundred percent (100%); and

2. If no surplus actuarial assets are available, the level of funds needed to fully prefund an increase for system recipients over the next budget biennium if a one and one-half percent (1.5%) increase is provided annually over the biennium.

(c) For purposes of this subsection, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation.

(d) The full increase described by this subsection shall only be provided if the recipient has been receiving a benefit for at least twelve (12) months prior to the effective date of the increase. If the recipient has been receiving a benefit for less than twelve (12) months prior to the effective date of the increase provided by this subsection, the increase shall be reduced on a pro rata basis for each month the recipient has not been receiving benefits in the twelve (12) months preceding the effective date of the increase.

(e) In determining the annual employer contribution rate, only the cost of increases granted as of the most recent valuation date shall be recognized.

(f) The benefits of this subsection as provided on July 1, 2009, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 16.652 and 61.692. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if, in its judgment, the welfare of the Commonwealth so demands.

(3) A reemployed retired member whose payments are suspended as provided under KRS 61.637 shall be eligible for an increase in his or her suspended retirement allowance as provided under this section, computed as if he or she were receiving the retirement allowance at the time the increase under this section is effective.

(4) In addition to the increase to a recipient's retirement allowance as provided by subsection (2) of this section, the General Assembly may, by subsequent legislation, provide supplemental increases to a recipient's retirement allowance to help adjust for actual changes in the recipient's cost of living if the General Assembly appropriates sufficient funds to fully prefund the benefit in the year the increase is provided.

History.

Enact. Acts 1972, ch. 116, § 59; 1976, ch. 321, § 31; 1978, ch. 311, § 19, effective June 17, 1978; 1978, ch. 384, § 554, effective June 17, 1978; 1980, ch. 186, § 16, effective July 15, 1980; 1982, ch. 423, § 12, effective July 15, 1982; 1984, ch. 232, § 9, effective July 13, 1984; 1986, ch. 293, § 2, effective July 15, 1986; 1988, ch. 349, § 28, effective July 15, 1988; 1990, ch. 489, § 3, effective July 13, 1990; 1990, ch. 517, § 2, effective July 1, 1990; 1992, ch. 240, § 49, effective July 14, 1992; 1994, ch. 105, § 1, effective July 1, 1994; 1994, ch. 502, § 1, effective April 13, 1994; 1994, ch. 406, § 6, effective June 30, 1996; 1996, ch. 320, § 1, effective July 15, 1996; 2008 (1st Ex. Sess.), ch. 1, § 23, effective June 27, 2008; 2013, ch. 120, § 69, effective July 1, 2013; 2021 ch. 102, § 72, effective April 1, 2021.

Compiler's Notes.

Section 42 of Acts 1976, ch. 321 provided: "This Act shall not be construed as repealing any of the provisions of 1976 House Bill 142 [ch. 224 amending KRS 61.595 by adding provisions relating to members of general assembly] but shall be held and construed as ancillary and supplementary thereto."

Section 13 of Acts 1994, ch. 406 provided that: "The amendment of KRS 61.691 in Section 6 of this Act shall take effect on June 30, 1996."

Legislative Research Commission Note.

(7/1/2013). This statute was amended by Section 69 of 2013 Ky. Acts ch. 120. Section 81 of that Act reads, "Notwithstanding any other provision of this Act to the contrary, the amendments in Sections 16, 25, and 69 of this Act shall in no way nullify the provisions of 2012 Ky. Acts ch. 19, Part I, 1.(4), 2012 Ky. Acts ch. 68, Part I, 2.(2), or 2012 Ky. Acts ch. 144, Part IV, 10., which suspended the cost-of-living adjustment that would have been provided to retirees and beneficiaries of the Legislative Retirement Plan, the Judicial Retirement Plan, the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System on July 1, 2012, and July 1, 2013."

(7/15/94). This section was amended by 1994 Ky. Acts chs. 105, 406, and 502. The amendments of this section by 1994 Ky. Acts chs. 105 and 502 are in conflict. Under KRS 446.250, Acts ch. 502 as the last enactment prevails.

61.702. Group hospital and medical insurance plan — Inclusion in Kentucky Employees Health Plan — Employee and employer contributions — Minimum service requirements — Members with service in other retirement systems — Exemption from premium tax — Administrative regulation.

(1) For purposes of this section:

(a) "Hospital and medical insurance plan" may include, at the board's discretion, any one (1) or more of the following:

1. Any hospital and medical expense policy or certificate, provider-sponsored integrated health delivery network, self-insured medical plan, health maintenance organization contract, or other health benefit plan;

2. Any health savings account as permitted by 26 U.S.C. sec. 223 or health reimbursement arrangement or a similar account as may be permitted by 26 U.S.C. sec. 105 or 106. Such arrangement or account, at the board's discretion, may reimburse any medical expense permissible under 26 U.S.C. sec. 213; or

3. A medical insurance reimbursement program established by the board through the promulgation of administrative regulation under which members purchase individual health insurance coverage through a health insurance exchange established under 42 U.S.C. sec. 18031 or 18041;

(b) "Monthly contribution rate" is the amount determined by the board based upon the requirements of subsection (4)(a) to (d) of this section, except that for members who began participating in the system on or after July 1, 2003, the term shall mean the amount determined in subsection (4)(e) of this section; and

(c) "Months of service" means the total months of combined service used to determine benefits under the system, except service added to determine disability benefits or service otherwise prohibited from being used to determine retiree health benefits under KRS 16.505 to 16.652 or 61.510 to 61.705 shall not be counted as "months of service." For current and former employees of the Council on Postsecondary Education who were employed prior to January 1, 1993, and who earn at least fifteen (15) years of service credit in the Kentucky Employees Retirement System, "months of service" shall also include vested service in another retirement system other than the Kentucky Teachers' Retirement System sponsored by the Council on Postsecondary Education.

(2)(a)1. The board of trustees of the system shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan coverage for:

a. Present and future recipients of a retirement allowance from the Kentucky Employees Retirement System and the State Police Retirement System; and

b. The spouse and each qualified dependent of a recipient who is a former member or the beneficiary, provided the spouse and dependent meet the requirements to participate in the hospital and medical insurance plans established, contracted, or authorized by the system.

2. Any recipient who chooses coverage under a hospital and medical insurance plan shall pay, by payroll deduction from the retirement allowance, electronic funds transfer, or by another method, the difference between the premium cost of the hospital and medical insurance plan coverage selected and the monthly contribution rate to which he or she would be entitled under this section.

(b)1. For present and future recipients of a retirement allowance from the system who are not eligible for Medicare and for those recipients described in subparagraph 3.b. of this paragraph, the board may authorize these participants to be included in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287 and shall provide benefits for recipients in the plan equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status. Notwithstanding the provisions of any other statute except subparagraph 3.b. of this paragraph, system recipients shall be included in the same class as current state employees for purposes of determining medical insurance policies and premiums in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287.

2. Regardless of age, if a recipient or the spouse or dependent child of a recipient who elects coverage becomes eligible for Medicare, he or she shall participate in the plans offered by the systems for Medicare eligible recipients. Individuals participating in the Medicare eligible plans may be required to obtain and pay for Medicare Part A and Part B coverage, in order to participate in the Medicare eligible plans offered by the system.

3. The system shall continue to provide the same hospital and medical insurance plan coverage for recipients and qualifying dependents after the age of sixty-five (65) as before the age of sixty-five (65), if:

a. The recipient is not eligible for Medicare coverage; or

b. The recipient would otherwise be eligible for Medicare coverage but is subject to the Medicare Secondary Payer Act under 42 U.S.C. sec. 1395y(b) and has been reemployed by a participating agency which offers the recipient a hospital and medical insurance benefit or by a participating agency which is prevented from offering or which does not offer a hospital and medical benefit to the recipient as a condition of reemployment under KRS 70.293, 95.022, or 164.952. Individuals who are eligible, pursuant to this subdivision, to be included in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287 may be rated as a separate class from other eligible employees and retirees for the purpose of determining medical insurance premiums.

(c) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (6) of this section.

(d) Notwithstanding anything in KRS Chapter 16 or 61 to the contrary, the board of trustees, in its discretion, may take necessary steps to ensure compliance with 42 U.S.C. sec. 300bb-1 et seq.

(3)(a) Each employer participating in the Kentucky Employees Retirement System or the State Police Retirement System as provided in KRS 16.505 to

16.652 or 61.510 to 61.705 shall contribute to the insurance trust fund established under KRS 61.701 the amount necessary to provide the monthly contribution rate as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate determined under KRS 61.565.

(b)1. Each employer described in paragraph (a) of this subsection shall deduct from the creditable compensation of each member whose membership date begins on or after September 1, 2008, an amount equal to one percent (1%) of the member's creditable compensation. The deducted amounts shall, at the discretion of the board, be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. Notwithstanding the provisions of this paragraph, a transfer of assets between the accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510 and 61.515, and the insurance trust fund established under KRS 61.701 shall not be allowed.

2. The employer shall file the contributions as provided by subparagraph 1. of this paragraph at the retirement office in accordance with KRS 61.675. Any interest or penalties paid on any delinquent contributions shall be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. Notwithstanding any minimum compensation requirements provided by law, the deductions provided by this paragraph shall be made, and the compensation of the member shall be reduced accordingly.

3. Each employer shall submit payroll reports, contributions lists, and other data as may be required by administrative regulation promulgated by the board of trustees pursuant to KRS Chapter 13A.

4. Every member shall be deemed to consent and agree to the deductions made pursuant to this paragraph, and the payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 16.505 to 16.652 or 61.510 to 61.705. No member may elect whether to participate in, or choose the contribution amount to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. The member shall have no option to receive the contribution required by this paragraph directly instead of having the contribution paid to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. No member may receive a rebate or refund of contributions. If a member establishes a membership date prior to September 1, 2008, pursuant to KRS 61.552(2) or (3), then this paragraph shall not apply to the member and all contributions previously deducted in accordance with this paragraph shall be refunded to the member without interest. The contribution made pursuant to this paragraph shall not act as a reduction or offset to any other contribution required of a member or recipient under KRS 16.505 to 16.652 or 61.510 to 61.705.

5. The board of trustees, at its discretion, may direct that the contributions required by this paragraph be accounted for within accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701, through the use of separate accounts.

(4)(a) The premium required to provide hospital and medical insurance plan coverage under this section shall be paid wholly or partly from funds contributed by:

1. The recipient of a retirement allowance, by payroll deduction from his or her retirement allowance, or by other method;

2. The insurance trust fund established under KRS 61.701 or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515;

3. Another state-administered retirement system, including the County Employees Retirement System, under a reciprocal arrangement, except that any portion of the premium paid from the funds specified by subparagraph 2. of this paragraph under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in the systems administered by the Kentucky Retirement Systems. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the insurance trust fund established under KRS 61.701 or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515 shall pay the balance; or

4. A combination of the fund sources described by subparagraphs 1. to 3. of this paragraph.

Group rates under the hospital and medical insurance plan shall be made available to the spouse, each dependent child, and each disabled child, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the hospital and medical insurance for the spouse, each dependent child, and each disabled child, or beneficiary is paid by payroll deduction from the retirement allowance, electronic funds transfer, or by another method. For purposes of this subsection only, a child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits or meets the dependent disability standard established by the Department of Employee Insurance in the Personnel Cabinet.

(b) For a member who began participating in the system prior to July 1, 2003, the monthly contribu-

tion rate shall be paid by the system from the funds specified under paragraph (a)2. of this subsection and shall be equal to a percentage of the single premium to cover the retired member as follows:

1. One hundred percent (100%) of the monthly premium for single coverage shall be paid for a retired member who had two hundred forty (240) months of service or more upon retirement or for a retired member who when he or she was an employee became disabled as a direct result of an act in line of duty as defined in KRS 16.505 or as a result of a duty-related injury as defined in KRS 61.621;

2. Seventy-five percent (75%) of the monthly premium for single coverage shall be paid for a retired member who had less than two hundred forty (240) months of service but at least one hundred eighty (180) months of service upon retirement, provided such retired member agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method;

3. Fifty percent (50%) of the monthly premium for single coverage shall be paid for a retired member who had less than one hundred eighty (180) months of service but had at least one hundred twenty (120) months of service upon retirement, provided such retired member agrees to pay the remaining fifty percent (50%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method; or

4. Twenty-five percent (25%) of the monthly premium for single coverage shall be paid for a retired member who had less than one hundred twenty (120) months of service but had at least forty-eight (48) months of service upon retirement, provided such retired member agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method.

(c) Notwithstanding paragraph (b) of this subsection, for a member participating in the system prior to July 1, 2003, who:

1. Dies as a direct result of an act in line of duty as defined in KRS 16.505 or dies as a result of a duty-related injury as defined in KRS 61.621, the monthly premium shall be paid for his or her spouse so long as the spouse remains eligible for a monthly retirement benefit;

2. Becomes totally and permanently disabled as defined in KRS 16.582 as a direct result of an act in line of duty as defined in KRS 16.505 or becomes disabled as a result of a duty-related injury as defined in KRS 61.621 and is eligible for the benefits provided by KRS 61.621(5)(a), the monthly premium shall be paid for his or her spouse so long as the member and the spouse individually remain eligible for a monthly retirement benefit; and

3. Dies as a direct result of an act in line of duty as defined in KRS 16.505, dies as a result of a duty-related injury as defined in KRS 61.621, becomes totally and permanently disabled as defined in KRS 16.582 as a direct result of an act in line of duty as defined in KRS 16.505, or becomes disabled as a result of a duty-related injury as defined in KRS 61.621 and is eligible for the benefits provided by KRS 61.621(5)(a), the monthly premium shall be paid for each dependent child as defined in KRS 16.505, so long as the member remains eligible for a monthly retirement benefit, unless deceased, and each dependent child individually remains eligible under KRS 16.505.

(d)1. For a member who began participating in the system prior to July 1, 2003, who was determined to be in a hazardous position in the Kentucky Employees Retirement System or in a position in the State Police Retirement System, or who is receiving a retirement allowance based on General Assembly service, the funds specified under paragraph (a)2. of this subsection shall also pay a percentage of the monthly contribution rate sufficient to fund the premium costs for hospital and medical insurance coverage for the spouse and for each dependent child of a recipient.

2. The percentage of the monthly contribution rate paid for the spouse and each dependent child of a recipient who was in a hazardous position or who is receiving a retirement allowance based on General Assembly service in accordance with subparagraph 1. of this paragraph shall be based solely on the member's service in a hazardous position using the formula in paragraph (b) of this subsection.

(e) For members who begin participating in the system on or after July 1, 2003:

1. Participation in the insurance benefits provided under this section shall not be allowed until the member has earned at least one hundred twenty (120) months of service in the state-administered retirement systems, except that for members who begin participating in the system on or after September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the member has earned at least one hundred eighty (180) months of service credited under KRS 16.543(1) or 61.543(1), or another state-administered retirement system.

2. A member who meets the minimum service requirements as provided by subparagraph 1. of this paragraph shall upon retirement be eligible for the following monthly contribution rate to be paid on his or her behalf, or on behalf of the spouse or dependent of a member with service in a hazardous position, from the funds specified under paragraph (a)2. of this subsection:

a. For members with service in a nonhazardous position, a monthly insurance contribution of ten dollars ($10) for each year of service as a participating employee in a nonhazardous position;

b. For members with service in a hazardous position or who participate in the State Police Retirement System, a monthly insurance contribution of fifteen dollars ($15) for each year of service as a participating employee in a hazardous position or the State Police Retirement System; and

c. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars ($10) for each year of service the member attained as a participating employee in a hazardous position.

3. The minimum service requirement to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a member who receives a satisfactory determination of a hazardous disability that is a direct result of an act in line of duty as defined in KRS 16.505, and the member shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in a hazardous position.

4. The minimum service required to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a member who is disabled as a result of a duty-related injury as defined in KRS 61.621 and is eligible for the benefits provided by KRS 61.621(5)(b), and the member shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in a nonhazardous position.

5. Notwithstanding the provisions of this paragraph, the minimum service requirement to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a member who dies as a direct result of an act in line of duty as defined in KRS 16.505, who becomes totally and permanently disabled as defined in KRS 16.582 as a direct result of an act in line of duty as defined in KRS 16.505, who dies as a result of a duty-related injury as defined in KRS 61.621, or who becomes disabled as a result of a duty-related injury as defined in KRS 61.621 and is eligible for the benefits provided by KRS 61.621(5)(a), and the premium for the member, the member's spouse, and for each dependent child as defined in KRS 16.505 shall be paid in full by the systems so long as the member, member's spouse, or dependent child individually remains eligible for a monthly retirement benefit.

6. Except as provided by subparagraph 5. of this paragraph, the monthly insurance contribution amount shall be increased:

a. On July 1 of each year by one and one-half percent (1.5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary but shall not apply to any increase in the contribution attributable to the increase specified by subdivision b. of this subparagraph; and

b. On January 1 of each year by five dollars ($5) for members who have accrued an additional full year of service as a participating employee beyond the career threshold, subject to the following restrictions:

i. The additional insurance contribution provided by this subdivision shall only be applied to the monthly contribution amounts provided under subparagraph 2.a. and b. of this paragraph;

ii. The additional insurance contribution provided by this subdivision shall only be payable towards the health plans offered by the system to retirees who are not eligible for Medicare or for reimbursements provided to retirees not eligible for Medicare pursuant to subsection (6)(a)2. of this section; and

iii. In order for the annual increase to occur as provided by this subdivision, the funding level of retiree health benefits for the system in which the employee is receiving the additional insurance contribution shall be at least ninety percent (90%) as of the most recent actuarial valuation and be projected by the actuary to remain ninety percent (90%) for the year in which the increase is provided.

7. The benefits of this paragraph provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 16.652 or 61.692. The General Assembly reserves the right to suspend or reduce the benefits conferred in this paragraph if in its judgment the welfare of the Commonwealth so demands.

8. An employee whose membership date is on or after September 1, 2008, who retires and is reemployed in a regular full-time position required to participate in the system or the County Employees Retirement System shall not be eligible for health insurance coverage or benefits provided by this section and shall take coverage with his or her employing agency during the period of reemployment in a regular full-time position.

9. For purposes of this paragraph:

a. "Career threshold" for a member with service in a nonhazardous position means twenty-seven (27) years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system and for a member with service in a hazardous position means the service requirements specified by KRS 16.577(2) or (3) or 16.583(6)(b), as applicable; and

b. "Funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the annual actuarial valuation.

(f) For members with service in another state-administered retirement system who select hospital and medical insurance plan coverage through the system:

1. The system shall compute the member's combined service, including service credit in another state-administered retirement system, and calculate the portion of the member's premium monthly contribution rate to be paid by the funds specified under paragraph (a)2. of this subsection according to the criteria established in paragraphs (a) to (e) of this subsection. Each state-administered retirement system shall pay annually to the insurance trust fund established under KRS 61.701 the por-

tion of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance plan which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his or her total combined service and in conjunction with the reciprocal agreement established between the system and the other state-administered retirement systems. The amounts paid by the other state-administered retirement plans and by the Kentucky Retirement Systems from funds specified under paragraph (a)2. of this subsection shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees;

2. A member may not elect coverage for hospital and medical benefits through more than one (1) of the state-administered retirement systems; and

3. A state-administered retirement system shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.

(5) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the funds described by subsection (4)(a)2. of this section shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

(6)(a) The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance plan premiums of recipients of a retirement allowance who:

1. Are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status; or

2. Are eligible for retiree health subsidies as provided by subsection (4)(e) of this section, except for those recipients eligible for full premium subsidies under subsection (4)(e)5. of this section. The reimbursement program as provided by this subparagraph shall be available to the recipient regardless of the hospital and medical insurance plans offered by the systems.

(b) An eligible recipient shall file proof of payment for hospital and medical insurance plan coverage with the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly contribution rate determined under subsection (4) of this section.

(c) For purposes of recipients described by paragraph (a)1. of this subsection, the plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.

History.

Repealed and reenacted by 2021 ch. 102, § 73, effective April 1, 2021; 2022 ch. 216, § 16, effective April 14, 2022; 2022 ch. 152, § 2, effective July 14, 2022; 2024 ch. 55, § 17, effective July 15, 2024; 2026 ch. 73, § 5, effective July 15, 2026; 2026 ch. 73, § 5, effective July 15, 2026.

Legislative Research Commission Notes.

(7/14/2022). 2022 Ky. Acts ch. 152, sec. 4, provides that the amendments made to subsection (6) of this statute shall be applicable for retiree health plans offered to recipients on or after January 1, 2023.

(4/1/2021). This statute was repealed and reenacted with all new language in 2021 Ky. Acts ch. 102, sec. 73 and amended in 2021 Ky. Acts ch. 106, sec. 4. The repeal and reenactment prevails over the amendment under KRS 446.260.

(4/13/2018). This statute was amended in 2018 Ky. Acts ch. 151, sec. 6. Section 8 of that Act reads as follows:

"Notwithstanding KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 161.220 to 161.716, or any provision of Sections 1 to 7 of this Act to the contrary, the Kentucky Retirement Systems shall provide the following benefit adjustments to surviving spouses and dependent children of those members who died prior to the effective date of this Act [April 13, 2018] and whose death was determined by the systems to be a direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act [KRS 16.505] or whose death resulted from a duty-related injury as defined in Section 5 of this Act [KRS 61.621]:

(1) In the month following the effective date of this Act [April 13, 2018], the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death, shall have his or her monthly benefit increased to the amount specified by Section 2 or 5 of this Act [this statute or KRS 61.621], as applicable, except that the amount shall not be increased above a level that exceeds 100 percent of the member's monthly average pay when combined with any dependent child payments from the systems;

(2) In the month following the effective date of this Act [April 13, 2018], any dependent child who is receiving a monthly benefit due to a member's death shall have his or her monthly benefit increased to the amount specified by Section 2 or 5 of this Act [this statute or KRS 61.621], as applicable, if the member was not married at the time of death;

(3) In the month following the effective date of this Act [April 13, 2018], a surviving spouse who was married to the deceased member at the time of death but who was ineligible for monthly benefits payable to the surviving spouse under KRS 16.601 as codified prior to the effective date of this Act [April 13, 2018], shall receive the monthly benefit payable to the surviving spouse in Section 2 of this Act [this statute], provided the member's death occurred on or after January 1, 2017; and

(4) In the month following the effective date of this Act [April 13, 2018], any surviving spouse and any dependent child of a deceased member who is receiving a monthly benefit shall be eligible for the health benefits specified by Section 6 of this Act [KRS 61.702].

The provisions of this section shall only be construed to provide benefit adjustments to surviving spouses and dependent children of those members who died prior to the effective date of this Act [April 13, 2018] and only in situations where the member's death was determined by the systems to be the direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act [KRS 16.505] or resulted from a duty-related injury as defined in Section 5 of this Act [KRS 61.621]."

(6/27/2008). 2008 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 43, provides "Notwithstanding any provision of KRS 61.565 or 61.702 to the contrary, the employer contribution rates for the County Employees Retirement Systems (sic) from July 1, 2008, through June 30, 2009, shall be 13.5 percent, consisting of 7.76 percent for pension and 5.74 percent for insurance, for nonhazardous duty employees; and 29.5 percent, consisting of

15.04 percent for pension and 14.46 percent for insurance, for hazardous duty employees."

(6/27/2008). The Reviser of Statutes has altered the numbering of subsection (3)(b) of this statute under the authority of KRS 7.136(1)(c).

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. IV, 5 at 2165.

61.703. Collection of benefit less than $1,000 by surviving relative.

(1) Upon the death of a member, retiree, or recipient who has an existing account or other benefit in a retirement system administered by the Kentucky Retirement Systems that totals no more than one thousand dollars ($1,000), the surviving spouse, or if none, a surviving child, or if none, a surviving parent, or if none, a surviving brother or sister, may without formal administration of the estate collect the account subject to the provisions of this section.

(2) The surviving spouse, child, parent, or brother or sister who makes demand for the deceased member, retiree, or recipient account shall file with the retirement office an affidavit stating that he or she is entitled to payment of the account. The affidavit shall conform to the requirements of the administrative regulation promulgated by the board.

(3) After having paid the account to the surviving spouse, child, parent, or brother or sister, the retirement system shall be discharged and held harmless to the same extent as if conducting business with a personal representative. The retirement system shall not be required to inquire into the truth or veracity of any statement made in the affidavit. In the event any person or entity establishes a superior right to the account, the surviving spouse, child, parent, or brother or sister, and not the retirement system or the Kentucky Public Pensions Authority, shall be answerable and accountable to any appointed personal representative for the estate.

History.

Enact. Acts 2002, ch. 52, § 17, effective July 15, 2002; 2022 ch. 216, § 17, effective April 14, 2022.

61.705. Death benefit — Designation of beneficiary — Debt owed at death — Assignment of benefit.

(1)(a) Upon the death of a retired member of the Kentucky Employees Retirement System or State Police Retirement System who was receiving a monthly retirement allowance based on a minimum of forty-eight (48) months of service or whose retirement allowance based on a minimum of forty-eight (48) months was suspended in accordance with KRS 61.637, a death benefit for the beneficiary of five thousand dollars ($5,000) shall be paid.

(b) If the retired member had more than one (1) account in the Kentucky Employees Retirement System or State Police Retirement System, or was eligible for a benefit under KRS 78.5538 from the County Employees Retirement System, the systems shall pay only one (1) five thousand dollar ($5,000) death benefit to the named beneficiary. Each system's cost shall be prorated between the systems based upon the level of service credit in each system.

(c) Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to receive the death benefit.

(2)(a) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, a person, the retired member's estate, a trust or trustee, or a licensed funeral home, as the beneficiary of the death benefit provided by this section or KRS 78.5538. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1) but only one (1) designation shall be available to a retired member who has service in both the County Employees Retirement System and the Kentucky Retirement Systems.

(b) If the beneficiary designated under this section is a person and that person dies prior to the member, or if the beneficiary was the retired member's spouse and they were divorced on the date of the retired member's death, then the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation.

(c) If a licensed funeral home is designated as beneficiary and the licensed funeral home cannot be reasonably identified or located by Kentucky Retirement Systems at the time of the retired member's death, then the retired member's estate shall become the beneficiary of the death benefit.

(3) The five thousand dollar ($5,000) death benefit paid to the designated beneficiary shall not be subject to garnishment as an asset of the retired member's estate, except if:

(a) At the time of the retired member's death, a debt to the Kentucky Retirement Systems remains on his or her account, the balance owed shall be deducted from the five thousand dollar ($5,000) death benefit;

(b) After the death of the retired member, an overpayment of benefits occurs, the balance owed for the overpayment may be deducted from the five thousand dollar ($5,000) death benefit; or

(c) At the time of the retired member's death, the designated beneficiary is the retired member's estate.

(4) Upon the death of a retired member, the death benefit provided pursuant to this section may be assigned by the designated beneficiary to a bank or licensed funeral home.

History.

Enact. Acts 1980, ch. 186, § 18, effective July 15, 1980; 1982, ch. 423, § 14, effective July 15, 1982; 1988, ch. 349, § 30, effective July 15, 1988; 1998, ch. 123, § 2, effective July 15, 1998; 2000, ch. 385, § 29, effective July 14, 2000; 2002, ch. 52, § 16, effective July 15, 2002; 2009, ch. 77, § 23, effective June 25, 2009; 2011, ch. 68, § 1, effective June 8, 2011; 2018 ch. 107, § 31, effective July 14, 2018; 2021 ch. 102, § 74, effective April 1, 2021; 2024 ch. 55, § 18, effective July 15, 2024.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch.

107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

UNFUNDED LIABILITY TRUST FUND

61.706. Kentucky Retirement Systems unfunded liability trust fund.

(1) The Kentucky Retirement Systems unfunded liability trust fund is created and shall be administered by the Finance and Administration Cabinet.

(2)(a) The trust fund shall consist of:

1. Contributions, gifts, and donations;

2. Any moneys designated by the General Assembly for deposit into the fund; and

3. Any other proceeds from grants, appropriations, or other moneys made available for the purposes of the trust fund.

(b) Any donor may designate to which system within the Kentucky Retirement Systems the donation shall benefit, including:

1. The Kentucky Employees Retirement System nonhazardous fund;

2. The Kentucky Employees Retirement System hazardous fund;

3. The County Employees Retirement System nonhazardous fund;

4. The County Employees Retirement System hazardous fund; or

5. The State Police Retirement System.

(c) Checks submitted for donations shall be made payable to the Kentucky State Treasurer.

(3) Moneys in the trust fund:

(a) Shall be disbursed quarterly to the Kentucky Retirement Systems;

(b) Shall be used to eliminate any unfunded liability and supplement the investible assets of the Kentucky Retirement Systems; and

(c) Are hereby appropriated for the purposes set forth in paragraph (b) of this subsection.

(4) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes provided by subsection (3) of this section.

(5) Interest earned on any moneys in the trust fund shall accrue to the trust fund.

(6)(a) The Finance and Administration Cabinet shall separately account for each contribution, gift, or donation made to the trust fund and shall publish on its Web site a listing of each contribution, gift, or donation made and a cumulative total of the value of all contributions, gifts, or donations, including the cumulative total, since the creation of the fund, for each donor or association of donors or entities, other than those wishing to remain anonymous.

(b) Information listed on the Web site related to each contribution may include all information set out in this paragraph, as reported by the donor:

1. The name of donor;

2. The location of the donor by county, if the donor is located in Kentucky, or by state, if the donor is located outside Kentucky; and

3. The title or position of the donor, or the association of the donor with any other entity.

(c) Anonymous donations shall be accepted without requiring any of the information provided in paragraph (b) of this subsection.

(7) The Finance and Administration Cabinet may work in conjunction with management consultants and others willing to give of their time and talents to create a strategic plan to encourage individuals, foundations, associations, corporations, and other entities to make donations to the fund.

History.

Enact. Acts 2013, ch. 119, § 22, effective June 25, 2013.

OPEN MEETINGS OF PUBLIC AGENCIES

61.800. Legislative statement of policy.

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

History.

Enact. Acts 1992, ch. 162, § 1, effective July 14, 1992.

NOTES TO DECISIONS

1. Coverage.

While the coverage of the Open Meetings Act, KRS 61.800, was broad enough to include a police captain's termination hearing, the police captain did not follow the procedures in KRS 61.846 and 61.848, and so was not entitled to relief. Howard v. City of Independence, 199 S.W.3d 741, 2005 Ky. App. LEXIS 230 (Ky. Ct. App. 2005), abrogated in part, Pearce v. Univ. of Louisville, 2011 Ky. App. Unpub. LEXIS 998 (Ky. Ct. App. Nov. 18, 2011).

School board ran afoul of the Kentucky Open Meetings Act, KRS 61.800 et. seq., when it negotiated the terms of a resignation and personal services contract with a superintendent for consulting services behind closed doors. Carter v. Smith, 2010 Ky. App. LEXIS 66 (Ky. Ct. App. Apr. 2, 2010), op. withdrawn, sub. op., 2010 Ky. App. LEXIS 117 (Ky. Ct. App. June 25, 2010).

County Board of Education's negotiation of a consulting contract with a superintendent as an independent contractor during a closed session violated the Kentucky Open Meetings Act, KRS 61.800 et seq. Carter v. Smith, 2010 Ky. App. LEXIS 117 (Ky. Ct. App. June 25, 2010), aff'd in part and rev'd in part, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

County Board of Education violated Kentucky's Open Meetings Act, KRS 61.800- 61.850, by discussing in a closed session the resignation of the superintendent of schools and his appointment as a consultant to the school district. Neither the litigation exception in KRS 61.810(l)(c) nor the personnel exception in KRS 61.810(l)(f) applied; there was only a remote possibility of litigation, and the enumerated personnel topics did not include either an employee's resignation or a contractor's hiring. Carter v. Smith, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

City did not violate the Open Meetings Act, KRS 61.800 et seq., when it conducted settlement negotiations privately with the property owners regarding a zoning matter where the settlement agreement itself was voted on in an open meeting. Although the residents claimed that the private settlement

negotiations violated that law, an exception in the Open Meetings Act, KRS 61.810(1)(c), allowed discussion regarding proposed or pending litigation to be conducted privately so long as the final settlement agreement itself was voted on in an open meeting. Cunningham v. Whalen, 373 S.W.3d 438, 2012 Ky. LEXIS 109 (Ky. 2012), cert. denied, 568 U.S. 1158, 133 S. Ct. 1245, 185 L. Ed. 2d 179, 2013 U.S. LEXIS 1105 (U.S. 2013).

Litigation exception to open public meetings was not applicable to the school board's decision directing legal counsel to pursue a challenge to the petition to recall the board's nickel tax because it was a "final action" of the board to authorize litigation. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

Action of the school board at a closed meeting could not be ratified at the open public meeting because no vote was taken during an open session and because consensus was not established. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

General Assembly declared that all citizens have a direct interest in public agencies' compliance with the requirements of the Open Meetings Act, and the particularized injury arises from the agency's violation of the Act itself, not specifically from the action taken; the rights accorded under the Act are not merely procedural but also grant the public at large a direct interest in its enforcement, and in other words, the violation of the Act itself constitutes the direct and personal injury. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

Trial court erred by dismissing a complaint for lack of standing because the Open Meetings Act permitted an association to recover attorney fees and costs, and the availability of the remedy met the redressability requirement for constitutional standing; because actions taken in violation of the Act were not void ab initio, third parties not involved in the allegedly unlawful conduct could be entitled to rely on the validity of the agreement executed by the county fiscal court and public board. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

Cited in:

Bd. of Comm'rs of Danville v. Advocate Communs., 527 S.W.3d 803, 2017 Ky. LEXIS 501 (Ky. 2017); Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025); 2025 Ky. App. LEXIS 109; 2025 LX 569646 (December 5, 2025).

OPINIONS OF ATTORNEY GENERAL.

The interview and discussion portion of a parole release hearing with the prisoner are meetings open to the public, but the deliberations for decisions of the parole board may be conducted in closed sessions. The hearings conducted pursuant to subsection (5) of KRS 439.340 may be closed pursuant to a closure request by the persons having a right to appear at such hearings for reasons of personal security. OAG 92-146.

The litigation exception of subdivision (1)(c) of KRS 61.810, like other exceptions to the basic policy of open and public meetings, must be narrowly construed; it cannot be invoked when the agency does nothing more than monitor cases which have not been filed against or on behalf of the public agency attempting to utilize the exception. OAG 93-OMD-119, 1993 Ky. AG LEXIS 194.

When university board of regents was considering an appointment or several appointments to a presidential search committee the appointees were not employees of the university or the board but were persons filling positions on an entity created by the board and their temporary existence would end when their task was complete; the board was not appointing, at that time, a university employee, the university president and thus the board incorrectly relied on KRS 61.810(1)(f) to close an otherwise public meeting to discuss the appointment of persons to the search committee. OAG 97-OMD-80.

Public agency violated the Open Meetings Act when it invoked the exceptions set forth in KRS 61.810(1)(f) and gave as its reasons the intent to discuss individual personnel matters or specific employee matters. Since the only personnel matters which can be discussed in a closed session pertain to the possible appointment, discipline, or dismissal of personnel of that particular agency, the public agency should have indicated which of those particular authorized exceptions it was utilizing and why the session was being closed (which frequently involves privacy considerations). OAG 97-OMD-110, 1997 Ky. AG LEXIS 45.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

2012 Kentucky Survey Issue: Article: Candid Kentucky: The Commonwealth's Devotion to an Open Government, 39 N. Ky. L. Rev. 45 (2012).

61.805. Definitions for KRS 61.805 to 61.850.

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

(1) "Meeting" means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting;

(2) "Public agency" means:

(a) Every state or local government board, commission, and authority;

(b) Every state or local legislative board, commission, and committee;

(c) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(d) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;

(f) Any entity when the majority of its governing body is appointed by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a "public agency," a state or local officer, or any combination thereof;

(g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and

(h) Any interagency body of two (2) or more public agencies where each "public agency" is de-

fined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection;

(3) "Action taken" means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body;

(4) "Member" means a member of the governing body of the public agency and does not include employees or licensees of the agency;

(5) "Time" means the time of day, stated in both eastern standard time and central standard time; and

(6) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

History.

Enact. Acts 1974, ch. 377, § 1; 1992, ch. 162, § 2, effective July 14, 1992; 1994, ch. 245, § 1, effective July 15, 1994; 2026 ch. 198, § 39, effective April 27, 2026.

NOTES TO DECISIONS

Analysis

1. Legislative Intent.
2. Executive Sessions.
3. Injunctive Relief.
4. Violations.
5. Local Ordinances and Resolutions.
6. University Foundations.
7. Public Agency.
8. Meeting.
9. Action Taken.

1. Legislative Intent.

Clearly, the intent of the legislature in enacting the Open Meetings Act was to ensure that the people of the Commonwealth are given advance notice of meetings conducted by public agencies. E.W. Scripps Co. v. Maysville, 790 S.W.2d 450, 1990 Ky. App. LEXIS 71 (Ky. Ct. App. 1990).

2. Executive Sessions.

Public bodies may discuss proposed or pending litigation with their counsel in executive session. Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co., 554 S.W.2d 72, 1977 Ky. LEXIS 480 (Ky. 1977).

3. Injunctive Relief.

Injunction directing members of fiscal court to obey the Kentucky Open Meetings Act was both overbroad and vague and, thus, erroneously granted. Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co., 554 S.W.2d 72, 1977 Ky. LEXIS 480 (Ky. 1977).

Injunction was proper under KRS 61.848 — even without a showing that petitioners had no adequate remedy at law — when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to KRS 61.815, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921, 1997 Ky. LEXIS 145 (Ky. 1997).

Action of the school board at a closed meeting could not be ratified at the open public meeting because no vote was taken during an open session and because consensus was not established. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

4. Violations.

Closed meetings of the fiscal court which were held at a luncheon at a boat club and thereafter on a boat to discuss the continuing effort of the county police to have the fraternal order of police recognized as their bargaining agent, the operation of the park and recreation department and the Belle of Louisville, and the potential acquisition of an island were illegal under the Kentucky Open Meetings Law. Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co., 554 S.W.2d 72, 1977 Ky. LEXIS 480 (Ky. 1977).

Closed meeting of fiscal court with county attorney to discuss draft of a proposed county ordinance prepared by the county attorney which would permit electioneering near the polls was illegal under the Kentucky Open Meetings Law; however, discussion at meeting of the implied threat of legal action by organized political group was not illegal. Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co., 554 S.W.2d 72, 1977 Ky. LEXIS 480 (Ky. 1977).

Telephone votes of fiscal court which promoted and set the salary of a county employee and which approved the lease by the county of real estate for use of the social services department are void under the Kentucky Open Meetings Law. Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co., 554 S.W.2d 72, 1977 Ky. LEXIS 480 (Ky. 1977).

Fiscal court considering zoning plan violated the Open Meetings Act when it improperly considered the record of a previous zoning request; therefore, the proceedings were sufficiently prejudicial to void the action of the fiscal court. Ridenour v. Jessamine County Fiscal Court, 842 S.W.2d 532, 1992 Ky. App. LEXIS 202 (Ky. Ct. App. 1992).

Adoption of a dress code by a middle school did not violate the Kentucky Open Meetings Act, KRS 61.805 et seq.; the council minutes stated that a second reading of the dress code was conducted and the minutes recorded the action taken, which was all that was required under KRS 61.835. Further, adoption of the dress code by "consensus" was an "action taken" within the meaning of KRS 61.805(3). Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 2005 FED App. 0058P, 2005 U.S. App. LEXIS 1969 (6th Cir. Ky. 2005).

No substantial violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred when the board of a non-profit corporation established as a joint city/county effort for industrial development took final action and each of the board's members voted regarding an employee's employment contract in open session. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

5. Local Ordinances and Resolutions.

"Resolution" as used in this section refers to an action of a municipal legislative body such as the resolutions referred to in KRS 83.090(3) (now repealed), KRS 84.100(2), (3) (now repealed), KRS 85.110(3) (now repealed); it is not intended to include resolutions of another public agency but refers to local ordinances and resolutions used interchangeably. Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees, 596 S.W.2d 374, 1979 Ky. App. LEXIS 524 (Ky. Ct. App. 1979).

6. University Foundations.

As long as the bylaws of the University of Louisville Foundation, Inc. provide for a membership of a quorum of the Board of Trustees of the University of Louisville, meetings of the University of Louisville Foundation, Inc. are subject to the Open Meetings Law. Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees, 596 S.W.2d 374, 1979 Ky. App. LEXIS 524 (Ky. Ct. App. 1979).

7. Public Agency.

The State Board of Accountancy is not a quasi-judicial body excluded from the definition of "public agency" found in this section, since otherwise any administrative agency which occasionally held hearings on certain matters could exempt itself from the open meetings statutes and, moreover, there would be no need for the exception to the open meeting requirement found in KRS 61.810(6) (now (1)(f)), because any agency which held any disciplinary hearings would be quasi-judicial; accordingly, the board violated the open meeting laws by conducting its final deliberations on the question of whether to censure an accountant in a closed session. Stinson v. State Bd. of Accountancy, 625 S.W.2d 589, 1981 Ky. App. LEXIS 304 (Ky. Ct. App. 1981).

A public agency is any agency which is created by statute, executive order, local ordinance or resolution or other legislative act, or any committee, ad hoc committee, subagency or advisory body of said public agency. Lexington Herald-Leader Co. v. University of Kentucky Presidential Search Committee, 732 S.W.2d 884, 1987 Ky. LEXIS 227 (Ky. 1987).

The Board of Trustees of the University of Kentucky was created by statute, so that the Presidential Search Committee, which was created by formal action of the Board of Trustees, was a public agency and therefore subject to the provisions of this section. Lexington Herald-Leader Co. v. University of Kentucky Presidential Search Committee, 732 S.W.2d 884, 1987 Ky. LEXIS 227 (Ky. 1987).

8. Meeting.

For a meeting to take place within the meaning of the Open Meetings Act, public business must be discussed or action must be taken by the agency. Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 1998 Ky. LEXIS 140 (Ky. 1998).

Kentucky Open Meetings Act, KRS 61.805 et seq., does not impose upon government agencies the requirement to conduct business only in the most convenient locations at the most convenient times. Knox County v. Hammons, 129 S.W.3d 839, 2004 Ky. LEXIS 74 (Ky. 2004).

While the coverage of the Open Meetings Act, KRS 61.800, was broad enough to include a police captain's termination hearing, the police captain did not follow the procedures in KRS 61.846 and 61.848, and so was not entitled to relief. Howard v. City of Independence, 199 S.W.3d 741, 2005 Ky. App. LEXIS 230 (Ky. Ct. App. 2005), abrogated in part, Pearce v. Univ. of Louisville, 2011 Ky. App. Unpub. LEXIS 998 (Ky. Ct. App. Nov. 18, 2011).

Action of the school board at a closed meeting could not be ratified at the open public meeting because no vote was taken during an open session and because consensus was not established. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

Litigation exception to open public meetings was not applicable to the school board's decision directing legal counsel to pursue a challenge to the petition to recall the board's nickel tax because it was a "final action" of the board to authorize litigation. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

9. Action Taken.

Vote was not rendered unnecessary at the school board meeting under KRS 61.805 because it was not possible to determine if a consensus or collective decision was made. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

Court of appeals properly found that the exception to open meetings related to the acquisition of real property did not apply because a board of commissioners went into closed session to discuss its intention to bid on real property offered for sale pursuant to an absolute auction, an auction without reserve; the board's post-auction approvals, while public, were window-dressing because the city was already compelled to complete the purchase or answer a complaint for specific performance. Bd. of Comm'rs of Danville v. Advocate Communs., 527 S.W.3d 803, 2017 Ky. LEXIS 501 (Ky. 2017).

Cited:

Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977); Bell v. Board of Education, 557 S.W.2d 433, 1977 Ky. App. LEXIS 836 (Ky. Ct. App. 1977); Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978); Frankfort Pub. Co. v. Kentucky State University Foundation, Inc., 834 S.W.2d 681, 1992 Ky. LEXIS 103 (Ky. 1992).

OPINIONS OF ATTORNEY GENERAL.

The board of Kentucky Occupational Safety and Health Review Commission is not a "public agency" but a quasi-judicial body and is not subject to the open meeting provisions of this section. OAG 74-318.

Licensing boards are not exempted from this section by the parenthetical phrase "(other than judicial or quasi-judicial bodies)" even though the boards hold hearings as they are primarily administrative bodies. OAG 74-497.

The State Board of Registration for Professional Engineers and Land Surveyors was established by the Governor and performs a governmental function, and therefore it is a "public agency." OAG 74-497.

The Personnel Board created by KRS 18.160 (now repealed) is exempt from the Open Meeting Law as it is primarily a quasi-judicial body and not a "public agency" within the definition in subsection (2) of this section. OAG 74-605.

An in-office meeting of school staff and employees is not covered by KRS 61.805 to 61.991 and, while the school board is an administrative body created by statute and is covered by the Open Meetings Law, this does not mean that the board may not attend a school staff meeting in the role of guests or observers as long as the meeting does not in any way become a board meeting. OAG 75-125.

The meetings of the citizens advisory subcommittee on legislative compensation should be open to the public under KRS 61.805 to 61.991 as the Legislative Research Commission and the interim committees that operate under its auspices are not to be considered a part of the General Assembly and not entitled to any exemption from the Open Meetings Law. OAG 75-142.

The fiscal court is a public agency and any private session it holds is illegal unless the meeting comes within the exceptions to the open meetings provision in KRS 61.810. OAG 75-280.

A community mental health board established by a non-profit corporation is not a public agency and thus the meetings of an organization operated by said board, such as comprehensive care centers, are not subject to KRS 61.805 to 61.850. OAG 75-402.

Community mental health boards organized pursuant to KRS 210.380 to govern the management of regional mental health programs are public agencies and the meetings of any organizations which are operated by said boards, such as comprehensive care centers, are subject to the Open Meetings Law. OAG 75-402.

A private or voluntary association is not a "public agency" and since the citizen's advisory committee was not created pursuant to any statute, ordinance or executive order it does not come under the jurisdiction of the open meetings law and, if the membership votes to do so, the association may legally exclude the news media from its meetings. OAG 75-501.

A coroner may, in his discretion, close inquest proceedings to the public as an inquest is a quasi-judicial function and thus not a public agency. OAG 76-37.

The practice of a school board in scheduling a meeting at a given time and then all the members showing up forty-five

(45) minutes early and holding a little private session in the back room of which meeting the press is neither notified, nor admitted to is contrary to the spirit and the letter of the Open Meetings Law for which a person attending such meeting could be punished as provided in KRS 61.991. OAG 76-378.

Since KRS 61.870(1) contains a different definition of a public agency than this section, in that it includes "any other body which is created by state or local authority in any branch of government or which derives at least twenty-five percent (25%) of its funds from state or local authority" some organizations which are not under the purview of the Open Meetings Law may be under the purview of the Open Records Law. OAG 76-648.

A special district created when a group of public agencies combine together to carry out a special purpose is required to comply with the Open Meetings Law and the Open Records Law. OAG 76-663.

A decision by the city council of a fourth class city to authorize the mayor to request a grant of funds for the city could not be made by a poll of the members over the telephone, instead the action should be in the form of an ordinance or a resolution. OAG 77-302, 1977 Ky. AG LEXIS 483.

A hospital district created under KRS 216.310 to 216.360 is a public agency within the meaning of the Open Meetings Law, although the meetings of a board of a hospital district shall, of course, be allowed the subject matter exemptions in KRS 61.810. OAG 78-138, 1978 Ky. AG LEXIS 589.

There is nothing in the Open Meetings Law which proscribes divulging information about a closed meeting but if an agency has a provision in its bylaws or has adopted a rule to that effect, a person violating a bylaw or rule would be guilty of official misconduct in the first degree under KRS 522.020(1)(c) providing he divulged information with the intent to obtain or confer a benefit or to injure another person. OAG 78-182, 1978 Ky. AG LEXIS 544.

As a policymaking board of an institution of education and as a subagency of a public agency created pursuant to statute, the regular and special meetings of the board of control of the Kentucky High School Athletic Association are subject to the requirements of the Open Meetings Law. OAG 78-191, 1978 Ky. AG LEXIS 588.

Although the Kentucky Dental Association is assigned certain prerogatives by statute, it is a private professional association and not a public agency as defined by this section and, accordingly, is not subject to the Open Meetings Law. OAG 78-203, 1978 Ky. AG LEXIS 513.

The Harrison County Water Association, Inc., is a nonprofit, nonstock private corporation and as such it would not be subject to the Open Meetings Law, KRS 61.805 to 61.850; however, a water district organized under the provisions of KRS Chapter 74 is subject to the provisions of both the Open Meetings and Open Records laws since a water district organized under KRS 74.012 is not a private nonprofit corporation and is therefore a public agency. OAG 78-395, 1978 Ky. AG LEXIS 364.

All gatherings of a public agency, wherever held, and whether regular or special and whether formally convened or casual gatherings held in anticipation of or in conjunction with a regular or special meeting, where a quorum is present and any public business is discussed, are subject to all of the provisions of the Open Meetings Law, KRS 61.805 to 61.850 and 61.991. OAG 78-411, 1978 Ky. AG LEXIS 328.

The city-county planning and zoning commission, in voting at a meeting, has no authority to vote by secret ballot; since it is an open meeting, it must be conducted strictly out in the open in order that the public will know precisely how each member of that agency votes on public matters. OAG 78-488.

A committee created by formal action of a public agency is subject to the Open Meetings Law to the same extent that the agency itself is, and school boards are public agencies under the law, and therefore the committee formed by the school board is subject to the open meetings requirements. OAG 78-496.

One of the exceptions to the open meeting requirements is collective bargaining negotiations between public employers and their employees or their representatives, but where the board of education has not committed itself to recognize and bargain with the teacher's committee, the meetings cannot be called bargaining negotiations, and therefore they do not come under the exception to the Open Meetings Law. OAG 78-496.

A committee appointed by the superintendent of schools at the discretion of the board of education is a public agency within the meaning of the Open Meetings Law. OAG 78-571, 1978 Ky. AG LEXIS 270.

A committee appointed by the superintendent of schools on his own initiative, and without any formal direction of the board of education, would not constitute a public agency. OAG 78-571, 1978 Ky. AG LEXIS 270.

A public agency cannot conduct its business by telephone in lieu of an open meeting, moreover the deciding of policy matters by memorandum alone and simple acquiescence by the agency members could not be condoned but it cannot be said that the Frankfort electric and water plant board has committed any violation of the Open Meetings Law simply because its meetings are short. OAG 78-710, 1978 Ky. AG LEXIS 127.

The screening committee for a president of Western Kentucky University is not a public agency subject to the Kentucky Open Meetings Law, KRS 61.805 to 61.850. OAG 78-776, 1978 Ky. AG LEXIS 65.

All meetings of the Beaver-Elkhorn water district commission are required to be open to the public. OAG 78-787, 1978 Ky. AG LEXIS 61.

The joint planning commission of Jessamine County-City of Wilmore improperly went into a closed session after its regular meeting for the purpose of adopting procedures for zoning map amendment, adoption of procedures for major subdivision plat applications, and approval of the expenditure of funds for preparation of the community's comprehensive plan, thus violating the Open Meetings Law. OAG 78-804, 1978 Ky. AG LEXIS 32.

A conference telephone call is a gathering or meeting within the statutory definition. OAG 78-808, 1978 Ky. AG LEXIS 35.

Where a county judge/executive made application for a housing and urban development grant and appointed a committee to hold hearings and make plans for it, the committee so appointed is a public agency within the meaning of this section and KRS 61.850. OAG 79-7, 1979 Ky. AG LEXIS 622.

Where three (3) women not hired as firemen for a city of the third class filed a complaint of sex discrimination with the city human rights commission, a conference, held under KRS 344.200, designed to achieve conciliation, need not be meeting open to the public under KRS 61.805 to 61.850. OAG 79-412, 1979 Ky. AG LEXIS 219.

A port authority is clearly a "public agency" as defined in this section. OAG 79-512.

A rural electric cooperative corporation is not a public agency within the definition of the Open Meetings Law (KRS 61.805 to 61.850). OAG 79-560, 1979 Ky. AG LEXIS 80.

The borrowing of money from the federal REA does not constitute a rural electric cooperative corporation as a public agency under either the Open Meetings Law (KRS 61.805 to 61.850) or the Open Records Law (KRS 61.870 to 61.882). OAG 79-560, 1979 Ky. AG LEXIS 80.

The Open Meetings Law makes no mention of the source of funds in the definition of a public agency. OAG 79-560, 1979 Ky. AG LEXIS 80.

The term "special purpose district boards" in subdivision (2) of this section covers boards which are created by statute but are not designated as corporations such as boards of water districts, sewer districts, public road districts, hospital dis-

tricts, library districts, etc. OAG 79-560, 1979 Ky. AG LEXIS 80.

The meeting of four (4) councilmen, constituting a quorum of the six-man council, at which they discussed and decided how they would vote on a matter subsequently brought before the council at a regular meeting, constituted a public meeting open to the public and requiring public notice and specific notification in compliance with the Open Meetings Act. OAG 80-81, 1980 Ky. AG LEXIS 558.

A private nonprofit corporation is not subject to the Open Meetings Law under the definition of a "public agency" in subsection (2) of this section; a private corporation does not have the power to levy taxes, and even though it makes a contract with a tax levying authority to provide fire protection, it is not a public agency. OAG 80-292, 1980 Ky. AG LEXIS 341.

If a county school board's affirmative action advisory committee was created by formal action of the county board of education, then the committee is a public agency which is required to conduct its meetings according to the Open Meetings Law, KRS 61.805 to 61.850. OAG 80-398, 1980 Ky. AG LEXIS 252.

Telephone conversations among members of a port authority board prior to one of its regularly scheduled meetings did not violate the Open Meetings Law because the board accepted the resignation of the executive director and appointed an interim director in formal action at the regularly scheduled meeting; regardless, the accepting of a resignation and the appointment of an interim director were personnel matters which are exempt from the Open Meetings requirement by KRS 61.810(6) (now (1)(f)). OAG 80-426, 1980 Ky. AG LEXIS 285.

The board of trustees of the policemen's and fire fighters' pension fund in a city of the second class constitutes a "public agency," and the meetings of such a "public agency" are open to the public at all times unless the particular meeting in question comes within the exceptions to the "Open Meetings" Law. OAG 80-569, 1980 Ky. AG LEXIS 86.

Where newspaper reporter sought records of unrestricted expenditures of the University of Louisville Foundation, Inc. for certain years, it was improper for university custodian of records to deny inspection of records on the basis of a judicial determination that the foundation was not a public agency under this section and the Open Meetings Law since the request for the records and the response thereto was not made by or to the foundation but by the university which is a public agency under KRS 61.870 and the Open Records Law. OAG 81-2, 1981 Ky. AG LEXIS 423.

A nonprofit water corporation organized under KRS Chapter 273 which is not a water district and which has no rights and liabilities of a water district in its articles of incorporation is not a "public agency" pursuant to subsection (2) of this section and thus the attendance policies for who will be allowed to attend corporation meetings are governed by the corporation's bylaws rather than the Open Meetings Law. OAG 81-238, 1981 Ky. AG LEXIS 206.

The meetings of a county hospital board of a nonprofit corporation which operates the hospital are not subject to the Open Meetings Law, since a nonprofit corporation is not a public agency as defined in this section, even though the fiscal court is designated by the articles of incorporation to appoint the members of the board of directors. OAG 81-266, 1981 Ky. AG LEXIS 173.

A county hospital foundation, incorporated as a nonprofit corporation is not, as a nonprofit, nonstock private corporation, a "public agency" as defined in subsection (2) of this section and, therefore, is not covered by the Open Meetings Law. OAG 81-296, 1981 Ky. AG LEXIS 128.

A county public hospital corporation which is formed as a nonprofit, nonstock corporation pursuant to KRS Chapter 273 is not a public agency which is subject to the Open Meetings Law (KRS 61.805 to 61.850). OAG 82-1, 1982 Ky. AG LEXIS 624.

A task force formed by a city commission to study problems in the city's community development department is a "public agency" as defined in subsection (2) of this section and subject to the Open Meetings Law since it was created by formal action of the commission. OAG 82-56, 1982 Ky. AG LEXIS 583.

A county fiscal court work session dealing with the preparation of the county budget and attended by a quorum of the fiscal court is an open meeting as defined in KRS 61.805 and 61.810. OAG 82-91, 1982 Ky. AG LEXIS 558.

A fire protection district or department existing pursuant to KRS Ch. 75 is a "type of municipal corporation," and is a public agency within the meaning of the "Open Meetings Act" and, thus, meetings of the board of trustees are open meetings and the board may only hold closed meetings or executive sessions under specifically enumerated conditions; however, even when an exception to the open meetings provision arises, such exceptions are permissive rather than mandatory and the board of trustees is not required to hold a closed session. OAG 82-182, 1982 Ky. AG LEXIS 460.

An appointment of a city councilman's family member to a nonelective office must be approved by the council at a regular or special meeting that is required to be open to the public under the Open Meetings Act; such person cannot be legally hired at a closed meeting. OAG 82-184, 1982 Ky. AG LEXIS 446.

Implementation of anticipated budget cuts in the Title I program was a general personnel matter which should not have been discussed in secret as long as the county board of education was discussing which positions to eliminate, if the issue was, for example, whether to eliminate social workers or music teachers or science teachers; on the other hand, if a decision had been reached to eliminate two (2) out of four (4) social worker positions and the question became which two (2) of the four (4) persons holding those positions would be dismissed, it then being necessary for the board to discuss qualifications and personalities, the board would have been justified in going into closed session for the purpose of that discussion. OAG 82-300, 1982 Ky. AG LEXIS 348.

Advisory committees are not public agencies under the Open Meetings Law. OAG 82-331, 1982 Ky. AG LEXIS 319.

Committees which are created by legislative act of the city council are public agencies and are required to hold open meetings subject to the provisions of KRS 61.810. OAG 82-331, 1982 Ky. AG LEXIS 319.

A board of levee commissioners is a public agency as defined in this section. OAG 82-412, 1982 Ky. AG LEXIS 241.

When the personnel board is deciding a case involving the complaint of an applicant or an employee it is performing a quasi-judicial function and after the evidence is received in open session it may go into closed session to deliberate its decision. OAG 83-20, 1983 Ky. AG LEXIS 476.

Since the Special Commission on Youth Residential Facilities was created by executive order of the Secretary of the Cabinet for Human Resources, the Commission is a public agency which must comply with the Open Meetings Law. OAG 83-127, 1983 Ky. AG LEXIS 370.

An exclusively quasi-judicial board or commission does not have to comply with the Open Meetings Law but must comply with the procedures which pertain to courts; where court hearings are open to the public, quasi-judicial hearings must be open to the public and, where court deliberations are conducted in closed session, quasi-judicial hearings may be conducted in closed session. OAG 83-259, 1983 Ky. AG LEXIS 238.

When an administrative board which sometimes performs a quasi-judicial function is conducting a fact finding hearing, upon notice to the parties, wherein it will make a decision according to its discretion, it is performing a quasi-judicial function and the hearing must be open to the public as is

required of courts. After the evidence has been received and arguments heard the commission can retire into closed session to deliberate and reach a decision. OAG 83-259, 1983 Ky. AG LEXIS 238.

The Kentucky Occupational Safety and Health Review Commission (KOSHRC) is an exclusively quasi-judicial body and is not subject to the Open Meetings Law; its hearings must be open to the public when it is receiving evidence but after a hearing it may deliberate in private as a jury would. OAG 83-259, 1983 Ky. AG LEXIS 238.

The Kentucky Human Rights Commission and Health Certificate of Need and Licensure Board have both administrative and quasi-judicial functions; they must comply with either the Kentucky Open Meetings Law or court procedures depending on which function it is performing. OAG 83-259, 1983 Ky. AG LEXIS 238.

When a public agency, such as a city council, after giving notice to the parties, is conducting a fact-finding hearing which will affect the substantial rights of an individual and will render a decision based on its discretion, the agency is performing a quasi-judicial function. Hearings held by a city council regarding rezoning proposals are open to the public, as mandated in rezoning amendments by KRS 100.211; however, once arguments are heard and evidence received, the city council can then retire into closed session to deliberate and reach a decision. OAG 83-446, 1983 Ky. AG LEXIS 46.

The Fayette County Board of Education is a public agency subject to the Open Meetings Law pursuant to subdivision (2) of this section. OAG 83-455, 1983 Ky. AG LEXIS 42.

Where a land use regulation ordinance proposed an informal meeting between land developers and owners of adjacent property regarding site approval for land development projects, where it would be up to the assembled land developers and property owners to make any decisions or compromises and where no members of the county planning commission or the fiscal court were required or expected to attend, the meeting in the proposed ordinance was not subject to the Open Meetings Law as long as a quorum of either public agency was not present. OAG 84-45, 1984 Ky. AG LEXIS 341.

A county hospital board was a "public agency," as defined in subdivision (2) of this section; however, where a closed meeting of such board involved a substantial discussion of the suspension of a county hospital employee, such discussions brought it under the personnel discussion exception to open meetings stated in KRS 61.810(6) (now (1)(f)). OAG 84-46, 1984 Ky. AG LEXIS 340.

Where newspapers were prohibited from covering a closed hospital board meeting, but county judge/executive, who served on the board, also controlled one (1) newspaper, there was no impropriety on part of county judge/executive since his newspaper carried no mention of the discussions of the closed meeting. OAG 84-46, 1984 Ky. AG LEXIS 340.

Where city council was comprised of twelve (12) members, seven (7) members of the council constituted a quorum; consequently, where private meetings in the mayor's office were attended by six (6) and four (4) members, respectively, the absence of a quorum of council members in the mayor's office at each meeting rendered the Open Meetings Law inapplicable. OAG 84-49, 1984 Ky. AG LEXIS 337.

The city council of a third-class city is a public agency pursuant to subdivision (2) of this section and is thus subject to the Open Meetings Law; however, the Open Meetings Law only applies when a quorum of the public agency meets to discuss public business. OAG 84-49, 1984 Ky. AG LEXIS 337.

A planning and zoning commission was acting as a quasi-judicial body when it went into closed session to discuss and reach a decision following a public hearing on rezoning, held pursuant to KRS 100.211(1); accordingly, as a quasi-judicial body, the commission was not subject to and therefore did not violate the Open Meetings Law. OAG 84-162, 1984 Ky. AG LEXIS 225.

Private, nonprofit, nonstock corporations are not public agencies and are therefore not subject to the Open Meetings Law; thus, a nonprofit, nonstock corporation formed under KRS Ch. 273 for the purpose of local approval of loans for small businesses is not subject to the Open Meetings Law. OAG 84-186, 1984 Ky. AG LEXIS 199.

A nonprofit corporation which was formed pursuant to KRS Ch. 273 for the purpose of community development through making loans to small businesses, and which received no funds from state or local authority was not a public agency and thus was not subject to the Open Records or the Open Meetings laws. OAG 84-237, 1984 Ky. AG LEXIS 148.

A closed session meeting held by a city council following one (1) of its regular meetings, for the announced purpose of discussing burglary charges against certain resident teenagers, as well as discussing the public belief that these and other teenagers had been conducting cult rituals in the city, was an improper meeting since the topic of discussion did not fit any of the enumerated exceptions to the Open Meetings Law. OAG 84-317, 1984 Ky. AG LEXIS 69.

Advisory committee appointed by the superintendent of a county board of education, on his own initiative and without any formal direction by the board, was subject to the Open Meetings Act since committee was created by executive order; to the extent it conflicts with this opinion, OAG 78-571 is hereby modified. OAG 89-25, 1989 Ky. AG LEXIS 25.

The Judicial Retirement and Removal Commission was not required to disclose the minutes of a meeting because it is clearly not a "public agency" within the meaning of subsection (2) of this section and was therefore not bound by KRS 61.835. OAG 91-45, 1991 Ky. AG LEXIS 45.

Regardless of the label attached to the body, it is, in fact, subject to the Open Meetings Act if it is a public agency within the meaning of subsection (2) of this section, and the business it conducts does not fall within the parameters of one (1) of the narrowly defined exceptions contained in KRS 61.810. OAG 91-54, 1991 Ky. AG LEXIS 54.

The Formulary Subcommittee of the Advisory Council for Medical Assistance, a public agency, may not properly conduct closed meetings immediately before their regular public meetings to discuss and vote on the approval of drugs for the Medicaid Formulary. OAG 92-4, 1992 Ky. AG LEXIS 4.

The planning and zoning commission is legally obligated to notify the newspaper of any and all special meetings of the commission. OAG 92-OMD-1203, 1992 Ky. AG LEXIS 208.

Where in the purchase of the recycling equipment the mayor and the executive department of the city were proceeding pursuant to authority conferred upon them by budget ordinance in the form of an appropriation by the city council and no meeting was held as none was required at the time, the provisions of the Open Meetings Act were not applicable. The mayor by authorizing phone calls to be made to council members concerning the recycling equipment, as the head of the executive branch of government, was merely advising and updating the legislative branch on the proceedings undertaken pursuant to the budget appropriation. OAG 92-OMD-1688, 1992 Ky. AG LEXIS 294.

City's response to complaint that meeting of city commissioners violated the Open Meetings Act with no citations or explanations, merely concluding that no meeting was held in violation of the Open Meetings Act and that if any violation occurred "it was purely accidental and unintentional" was completely unacceptable as a response or solution to a complaint alleging a violation of the Open Meetings Act. OAG 92-OMD-1840, 1992 Ky. AG LEXIS 296.

A city council is a "public agency" for purposes of the Open Meetings Act. OAG 93-OMD-49, 1993 Ky. AG LEXIS 79.

A committee appointed by the mayor would be a "public agency" under the Open Meetings Act pursuant to either subdivisions (2)(e), (2)(f) or (2)(g) of this section. OAG 93-OMD-49, 1993 Ky. AG LEXIS 79.

A public agency cannot go into a closed session to discuss personnel matters generally. The only personnel matters which can be discussed in a closed session by a public agency are those which might lead to the appointment, discipline or dismissal of personnel of that particular agency. Therefore, a committee created by the mayor violated the Open Meetings Act when it went into a closed session to discuss personnel matters other than those which might lead to the appointment, discipline or dismissal of municipal personnel. OAG 93-OMD-49, 1993 Ky. AG LEXIS 79.

City council violated the Open Meetings Act when it went into a closed session to discuss personnel matters other than those which might lead to the appointment, discipline or dismissal of municipal personnel. OAG 93-OMD-49, 1993 Ky. AG LEXIS 79.

The University Senate, faculties of colleges, and faculties of departments are committees subject to the open meetings law. OAG 94-25, 1994 Ky. AG LEXIS 42.

Where city council at a public meeting made a choice as to what particular architect it had selected, that decision constituted "action taken" pursuant to subsection (3) of this section and the public, including the media, was entitled to know at that specific point in time the nature of the action taken which in this situation would involve the name of the architect selected. OAG 94-OMD-127, 1994 Ky. AG LEXIS 207.

Open meetings law is intended to provide public access to meetings of decision-making bodies, and is not intended to provide public access to the day-to-day administrative work of a public agency. OAG 95-OMD-71, 1995 Ky. AG LEXIS 46.

The President's Cabinet and the President's Leadership Team, established, created, and controlled by the university president, do not fall within the meaning of "public agencies" as defined in KRS 61.805(2); consequently, these groups do not have to record minutes of their meetings or meet other requirements of the Open Meetings Act. OAG 95-OMD-71, 1995 Ky. AG LEXIS 46.

A meeting of a group of public officials, officers, and employees from various governmental entities where none of those entities is represented by a quorum and where the group does not exist pursuant to statute, ordinance, order, resolution, or any act of any public agency does not constitute a meeting of a public agency governed by the terms and provisions of the Open Meetings Act. OAG 96-OMD-174, 1996 Ky. AG LEXIS 47.

On the basis of the evidence made available at this time, a nonprofit corporation providing mental health services to the community is not a public agency pursuant to subsection (2) of this section of the Open Meetings Act and thus not subject to the constraints on closed sessions of public meetings set forth in the Open Meetings Act. OAG 96-OMD-180, 1996 Ky. AG LEXIS 44.

The Workers' Compensation Advisory Council, which serves in an advisory capacity and makes recommendations to the Governor and the General Assembly on all matters relating to workers' compensation, is obviously a "public agency" for purposes of the applicability of the Open Meetings Act. 96-OMD-261.

The Housing Appeals Committee of Eastern Kentucky University is a public agency subject to the terms and provisions of the Open Meetings Act and its meetings are open to the public unless it can invoke an exception to open and public meetings; pursuant to KRS 61.810(1)(k) and 20 USCS, § 1232g, it may properly go into closed session to discuss student housing appeals. OAG 97-OMD-139, 1997 Ky. AG LEXIS 68.

While the Housing Appeals Committee of Eastern Kentucky University, a public agency, may properly go into closed session to discuss student housing appeals pursuant to KRS 61.810(1)(k) and is required to do so under 20 USCS, § 1232g, an eligible student, that is a student who is eighteen (18) or is attending an institution of postsecondary education, may waive his privacy rights under the Federal Educational Rights and Privacy Act by written consent, thus permitting public discussion of his housing appeal; however, if such appeal raises housing issues or evidence concerning other students, the Housing Committee would be bound by 20 USCS, § 1232g(b)(1) and thus required to conduct the hearing in closed session. OAG 97-OMD-139, 1997 Ky. AG LEXIS 68.

The Financial Aid Professional Judgment Committee is a public agency because its members act as a unit, authority has been officially delegated to it, specific matters are entrusted to it, and its responsibility is to consider, investigate, take action on, or report to a higher authority; it is therefore subject to the Open Meetings Act. OAG 98-OMD-142, 1998 Ky. AG LEXIS 120.

The Finance and Budget Committee of the Franklin County Fiscal Court is a public agency as defined in subsection (2)(g), and such conclusion is not altered by the fact that the committee does not have authority to take action. OAG 99-OMD-77, 1999 Ky. AG LEXIS 47.

A complaint that the outcome of a meeting was "greased," "rigged," or "rubber stamped" was not cognizable under the Open Meetings Act insofar as it does not state a violation of the provisions of KRS 61.805 to 61.850. OAG 99-OMD-183, 1999 Ky. AG LEXIS 185.

A county schools local facility planning committee was a public agency within the meaning of the statute. OAG 99-OMD-196, 1999 Ky. AG LEXIS 187.

The Telecommunications Board of Northern Kentucky was a public agency formed under the Interlocal Cooperation Act by Kenton and Boone counties, and cities located therein, and, therefore, was a public agency pursuant to subsection (2)(g). OAG 00-OMD-96, 2000 Ky. AG LEXIS 114.

A city council did not violate the Open Meetings Act by conducting a meeting, meetings, or series of less than quorum meetings for the purpose of discussing public business outside of the requirements of the Act and authoring a letter that was distributed to the media regarding their decision where the evidentiary record was insufficient to support the allegation that a meeting or meetings occurred and, even if the evidentiary record supported this allegation, the record did not support the claim that a single meeting was conducted where a quorum was present, or that a series of less than quorum meetings was conducted where the members attending one (1) or more of the meetings collectively constituted at least a quorum. OAG 00-OMD-2.

The evidence was insufficient to support a claim that a county industrial development authority committed specific violations at meetings pertaining to certain real property, where the complainant alleged only that the meetings were improperly held sessions of the authority. OAG 00-OMD-109, 2000 Ky. AG LEXIS 117.

A meeting of seven (7) Kentucky Department of Education employees, four (4) contractor representatives, and one (1) employee of the Office of Education Accountability did not constitute a meeting of a public agency within the statute. OAG 00-OMD-141, 2000 Ky. AG LEXIS 149.

The Kentucky Bourbon Festival, Inc., a private non-profit corporation formed for the purpose of "directing the celebration and annual promotion of all facets of the Bourbon Industry," is not a public agency as defined in KRS 61.805(2), and is not bound by the requirements of the Open Meetings Act. OAG 01-OMD-34, 2001 Ky. AG LEXIS 279.

The Board of Directors of the Assistance Center Fund, Inc. does not meet the criteria of KRS 61.805(2)(f) in that only four of the eight Directors are appointed by a public agency. Four appointed directors would not constitute a majority of the governing body. Thus, the Assistance Center Fund, Inc. is not a "public agency" under KRS 61.805(2)(f) or any other of the subsections of KRS 61.805(2). OAG 02-OMD-87, 2002 Ky. AG LEXIS 30.

An absent member cannot be counted as part of a quorum, and, by logical extension, an absent member cannot vote although he or she may be constructively present by audio connection. The statute only permits video teleconferencing. OAG 02-OMD-206, 2002 Ky. AG LEXIS 20.

Where five (5) of the six (6) newly sworn council members participated in a meeting at the mayor's office in which the mayor distributed a memorandum of city business, even though the mayor's comments were succinct, unilateral, and not delivered for the purpose of inviting discussion or debate, and that there was no action taken, there was nevertheless a meeting which was not properly noticed pursuant to the Act. OAG 03-OMD-22, 2003 Ky. AG LEXIS 95.

The Kuttawa Relocation Foundation, Inc., formed as a private non-profit corporation "to aid in the plans of the city of Kuttawa for relocations which were made necessary by the construction of Barkley Dam and the formation of Lake Barkley," is not a public agency as defined in KRS 61.805(2), and is not bound by the requirements of the Open Meetings Act. OAG 03-OMD-37, 2003 Ky. AG LEXIS 29.

A violation of the Open Meetings Act occurred when a quorum of the members of the SBDM met in the office between the 4:30 work session and the 5:30 special meeting for the purpose of discussing potential applicants for employment, notwithstanding the fact that those in attendance made no collective decision or promise to make a positive or negative decision or took an actual vote. OAG 03-OMD-192, 2003 Ky. AG LEXIS 272.

A private, non-profit corporation may be a public agency for purposes of the Open Records Act, though it is not a public agency for purposes of the Open Meetings Act; this dichotomy arises from the differences in the definition of "public agency" found in each of the Acts. The definition of "public agency" which appears at KRS 61.805(2) does not include "any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds." OAG 04-OMD-02, 2004 Ky. AG LEXIS 38.

The Case Review Committee of the Kentucky Board of Pharmacy is a public agency for purposes of the Open Meetings Act; the Kentucky Board of Pharmacy is a public agency within the meaning of KRS 61.805(2)(a), and any committee established, created, and controlled by it is a public agency pursuant to KRS 61.805(2)(g). OAG 04-OMD-148, 2004 Ky. AG LEXIS 177.

The faculty of the Lincoln County High School is not a public agency for open meetings purposes, and the faculty did not violate the Open Meetings Act by failing to provide notice of its February 25 meeting. OAG 04-OMD-230, 2004 Ky. AG LEXIS 282.

Since the Master Plan Review Committee was established, created, and controlled by the City Council, the Committee is a public agency as defined at KRS 61.805(2)(g), and meetings of the committee are required to conform to the requirements of the Open Meetings Act. This conclusion is not altered by the fact that the committee is not empowered to take action but instead operates in an advisory capacity. By its express language KRS 61.805(2)(g) applies to advisory committees established, created, and controlled by a public agency. OAG 05-OMD-117, 2005 Ky. AG LEXIS 72.

A committee formed by the City Council consisting of members of the council and the public to review a zoning ordinance, consider possible amendments and present to the City Council a proposed text amendment at the next regular meeting, was "established, created and controlled" by the City, a public agency; thus, the committee is a public agency pursuant to KRS 61.805(2)(g). It does not matter that there is not a quorum of council members on the committee. OAG 06-OMD-068, 2006 Ky. AG LEXIS 268.

Insofar as the Reorganization Subcommittee, standing alone, constitutes a public agency for purposes of the Open Meetings Act, the total composition of the Subcommittee itself, rather than the total composition of the District Board, is used in determining whether a quorum of the Subcommittee was present. If a quorum of the Subcommittee comes together to discuss public business, a meeting occurs. Such meetings must be open to the public unless one of the exceptions codified at KRS 61.810(1) is properly invoked. This conclusion is not altered by the fact that the Subcommittee does not have authority to take action. OAG 06-OMD-211, 2006 Ky. AG LEXIS 46.

When viewed in conjunction, KRS 61.805(2)(e) and the mandatory language of KRS 311A.055 remove any doubt as to whether the Board is properly characterized as a public agency in this context. Insofar as the Review Board, standing alone, constitutes a public agency for purposes of the Open Meetings Act, the attorney general considers the total composition of the Board itself, rather than the total composition of the KBEMS, in determining whether a quorum of the Board was present on the date in question. OAG 06-OMD-262, 2006 Ky. AG LEXIS 11.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Comments, Access to Public Documents in Kentucky, 64 Ky. L.J. 165 (1975-76).

Northern Kentucky Law Review.

Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

61.810. Exceptions to open meetings.

(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:

(a) Deliberations for decisions of the Kentucky Parole Board;

(b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;

(c) Discussions of proposed or pending litigation against or on behalf of the public agency;

(d) Grand and petit jury sessions;

(e) Collective bargaining negotiations between public employers and their employees or their representatives;

(f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;

(g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;

(h) State and local cabinet meetings and executive cabinet meetings;

(i) Committees of the General Assembly other than standing committees;

(j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;

(k) Meetings which federal or state law specifically require to be conducted in privacy;

(*l*) Meetings which the Constitution provides shall be held in secret;

(m) That portion of a meeting devoted to a discussion of a specific public record exempted from disclosure under KRS 61.878(1)(m). However, that portion of any public agency meeting shall not be closed to a member of the Kentucky General Assembly; and

(n) Meetings of any selection committee, evaluation committee, or other similar group established under KRS Chapter 45A or 56 or other state or local law, to select a successful bidder for award of a state or local contract.

(2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

History.

Enact. Acts 1974, ch. 377, § 2; 1992, ch. 162, § 3, effective July 14, 1992; 2005, ch. 93, § 1, effective March 16, 2005; 2018 ch. 176, § 4, effective July 14, 2018; 2022 ch. 37, § 1, effective July 14, 2022.

Legislative Research Commission Notes.

(3/16/2005). The Office of the Kentucky Attorney General requested that amendments in 2005 Ky. Acts ch. 93, sec. 1, to the arrangement of the paragraphs of subsection (1) of this section be changed. The change was requested "in the interest of preventing confusion to the public and public agencies" and was made by the Statute Reviser under the authority of KRS 7.136.

NOTES TO DECISIONS

Analysis

1. Acquisition or Sale of Property.
2. Proposed or Pending Litigation.
3. Collective Bargaining Negotiations.
4. Discipline Hearings.
5. Personnel Matters.
6. University Foundations.
7. Absence of a Quorum.
8. Evidence of Meeting.
9. Consequences of Failure to Comply.
10. Standing.

1. Acquisition or Sale of Property.

Notice given in open meeting preparatory to closed session that the closed meeting would be held to discuss "property and negotiations" was not sufficient compliance with the requirement of notice of subsection (1) of KRS 61.815 for the term "property" fails to reveal whether it is real or personal, for purchase or for sale or whether publicity would affect its value. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

In order to fully comply with subsection (2) of this section and KRS 61.815(1) notice of the county board of education of the business intended to be discussed in a closed session should contain information that the board of education intends to conduct an executive session for the purpose of discussing the sale or acquisition of real property and that the reason for privacy is due to the fact that publicity at the deliberation stage might be likely to affect the value instead of merely saying that the business to be discussed was "property and negotiations." Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

Court of appeals properly found that the exception to open meetings related to the acquisition of real property did not apply because a board of commissioners went into closed session to discuss its intention to bid on real property offered for sale pursuant to an absolute auction, an auction without reserve; the board's post-auction approvals, while public, were window-dressing because the city was already compelled to complete the purchase or answer a complaint for specific performance. Bd. of Comm'rs of Danville v. Advocate Communs., 527 S.W.3d 803, 2017 Ky. LEXIS 501 (Ky. 2017).

2. Proposed or Pending Litigation.

There is no requirement in the Open Meetings Law that the county board of education and its governing body give notice of an executive session in order to confer with their attorneys concerning proposed or pending litigation, for this matter is expressly excluded by the terms of this section and moreover involves the attorney-client relationship. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

Where a planning commission explained it was going into closed session, the minutes reflected the discussion concerning litigation, motions to authorize the litigation were made in open meetings, and there was no record of anyone requesting to address the commission or voice concern about the commission's actions, there was no evidence that the owners were prejudiced by a planning commission's failure to state a specific provision of KRS 61.810(1)(c), 61.815(1) when it went into closed session. Chandler v. Bullitt County Joint Planning Comm'n, 125 S.W.3d 851, 2002 Ky. App. LEXIS 2358 (Ky. Ct. App. 2002).

Exception to the mootness doctrine for cases that were capable of repetition, yet evading review was not applied on appeal when a county government's declaratory judgment action against a newspaper asking for closed council meetings under the litigation exception to the Open Meetings Act was dismissed as moot because the county government did not show that a similarly-situated party would be subject to the same action again. Lexington-Fayette Urban County Gov't v. Lexhl, L.P., 315 S.W.3d 331, 2009 Ky. App. LEXIS 218 (Ky. Ct. App. 2009).

City did not violate the Open Meetings Act, KRS 61.800 et seq., when it conducted settlement negotiations privately with the property owners regarding a zoning matter where the settlement agreement itself was voted on in an open meeting. Although the residents claimed that the private settlement negotiations violated that law, an exception in the Open Meetings Act, KRS 61.810(1)(c), allowed discussion regarding proposed or pending litigation to be conducted privately so long as the final settlement agreement itself was voted on in an open meeting. Cunningham v. Whalen, 373 S.W.3d 438, 2012 Ky. LEXIS 109 (Ky. 2012), cert. denied, 568 U.S. 1158, 133 S. Ct. 1245, 185 L. Ed. 2d 179, 2013 U.S. LEXIS 1105 (U.S. 2013).

Litigation exception to open public meetings was not applicable to the school board's decision directing legal counsel to pursue a challenge to the petition to recall the board's nickel tax because it was a "final action" of the board to authorize litigation. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

3. Collective Bargaining Negotiations.

Whenever a public agency is formulating its demands or position preparatory to collective bargaining negotiations, either by way of deliberation or instructions to its advocates, such type of sessions are within the purview of subsection (5) (now (e)) of this section and thus such meetings of a public agency may be in closed session. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

A report by an associate superintendent on the status of a proposed contract between the county board of education and two (2) teachers' associations and a recommendation to the board that negotiations should take place did not come under the exception of subsection (5) (now (e)) of this section so as to permit such discussion to take place in a closed meeting. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

The collective bargaining negotiations referred to in subsection (5) (now (e)) of this section means the settling of disputes by negotiation between employer and the representatives of the employees and does not embrace reports or status briefings on the labor negotiations. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

4. Discipline Hearings.

The hearing and the board's decision based on the evidence are separate phases of the termination proceeding, and the school board's power to reach its decision in closed session is preserved by this section despite the requirement of KRS 161.790 that the hearing be public. Bell v. Board of Education, 557 S.W.2d 433, 1977 Ky. App. LEXIS 836 (Ky. Ct. App. 1977); Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978).

A discussion by a county board of education concerning the termination of the expenditure of funds on an educational television station operated by the county board of education and the attendant potential dismissal of all the employees of such station dealt only with a general personnel matter and therefore did not come under the exemption of subsection (6) (now (f)) of this section as an exemption to the requirement of the Open Meetings Law that all meetings be public meetings. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

Nothing in subdivision (6) (now (f)) of this section permits a public agency to condition an employee's right to a public hearing upon written or timely notice. Reed v. Richmond, 582 S.W.2d 651, 1979 Ky. App. LEXIS 417 (Ky. Ct. App. 1979).

Where disciplinary action was brought against the chief of police and eight officers, pursuant to KRS 95.450, at a session closed to the public despite the accuseds' request for an open hearing pursuant to subsection (6) (now (f)) of this section, and with neither a motion for a closed meeting nor announcement of it at an open meeting, in violation of KRS 61.815, the action taken must be voided and a new hearing held. Reed v. Richmond, 582 S.W.2d 651, 1979 Ky. App. LEXIS 417 (Ky. Ct. App. 1979).

The vote of the board of education to demote a school principal need not be held in public. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

The State Board of Accountancy is not a quasi-judicial body excluded from the definition of "public agency" found in KRS 61.805, since otherwise any administrative agency which occasionally held hearings on certain matters could exempt itself from the open meetings statutes and, moreover, there would be no need for the exception to the open meeting requirement found in subsection (6) (now (f)) of this section, because any agency which held any disciplinary hearings would be quasi-judicial; accordingly, the Board violated the open meeting laws by conducting its final deliberations on the question of whether to censure an accountant in a closed session. Stinson v. State Bd. of Accountancy, 625 S.W.2d 589, 1981 Ky. App. LEXIS 304 (Ky. Ct. App. 1981).

While the coverage of the Open Meetings Act, KRS 61.800, was broad enough to include a police captain's termination hearing, the police captain did not follow the procedures in KRS 61.846 and 61.848, and so was not entitled to relief. Howard v. City of Independence, 199 S.W.3d 741, 2005 Ky. App. LEXIS 230 (Ky. Ct. App. 2005), abrogated in part, Pearce v. Univ. of Louisville, 2011 Ky. App. Unpub. LEXIS 998 (Ky. Ct. App. Nov. 18, 2011).

5. Personnel Matters.

Where a university board of trustees, during its July 18, 1977, meeting, closed said meeting to consider the election of one (1) of two (2) individual members to the position of chairman of the board of trustees, the meeting was a properly closed session. Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees, 596 S.W.2d 374, 1979 Ky. App. LEXIS 524 (Ky. Ct. App. 1979).

The Presidential Search Committee created by the Board of Trustees of the University of Kentucky was not excepted from declaring public meetings when discussing the appointment of a president. Lexington Herald-Leader Co. v. University of Kentucky Presidential Search Committee, 732 S.W.2d 884, 1987 Ky. LEXIS 227 (Ky. 1987).

Although a quorum of the commissioners may have discussed the issue among themselves at a gathering other than a regular meeting, the trial court specifically found that no secret meetings were held in violation of the Open Meetings Act, where the entire matter concerning the salaries was publicly aired in the press and broadcast media, and there was testimony at trial that the police officers, themselves and through counsel, engaged in discussions with the commissioners regarding the reduction of their salaries. Beckham v. Bowling Green, 743 S.W.2d 858, 1987 Ky. App. LEXIS 603 (Ky. Ct. App. 1987).

Injunction was proper under KRS 61.848 — even without a showing that petitioners had no adequate remedy at law — when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to KRS 61.815, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921, 1997 Ky. LEXIS 145 (Ky. 1997).

County Board of Education violated Kentucky's Open Meetings Act, KRS 61.800- 61.850, by discussing in a closed session the resignation of the superintendent of schools and his appointment as a consultant to the school district. Neither the litigation exception in KRS 61.810(l)(c) nor the personnel exception in KRS 61.810(l)(f) applied; there was only a remote possibility of litigation, and the enumerated personnel topics did not include either an employee's resignation or a contractor's hiring. Carter v. Smith, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

No violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred when the board of a non-profit corporation established as a joint city/county effort for industrial development discussed in closed session whether to renew an employee's contract to work as an employee of the corporation. Bradshaw v. Cap. Cmty. Eco-

nomic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

6. University Foundations.

As long as the bylaws of the University of Louisville Foundation, Inc. provide for a membership of a quorum of the Board of Trustees of the University of Louisville, meetings of the University of Louisville Foundation, Inc. are subject to the Open Meetings Law. Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees, 596 S.W.2d 374, 1979 Ky. App. LEXIS 524 (Ky. Ct. App. 1979).

7. Absence of a Quorum.

In the absence of a quorum of board of adjustment members, the Open Meetings Act was not applicable to the private review of a taped public meeting by a committee of two (2) board members, an administrative employee, and legal counsel for the purpose of preparing amended findings pursuant to Circuit Court order. Bourbon County Bd. of Adjustment v. Currans, 873 S.W.2d 836, 1994 Ky. App. LEXIS 36 (Ky. Ct. App. 1994).

8. Evidence of Meeting.

The mere fact that a quorum of members of a public agency are in the same place at the same time, without more, is not sufficient to sustain a claim of a violation of the Open Meetings Act. Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 1998 Ky. LEXIS 140 (Ky. 1998).

9. Consequences of Failure to Comply.

Because a closed session in a meeting of a county board of education was not justified by any of the statutory exceptions in KRS 61.810, substantial compliance could not be found under KRS 61.848. There cannot be substantial compliance when an agency entirely fails to comply with the law by entering a closed session to which none of the exceptions apply. Carter v. Smith, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

Trial court properly exercised it authority to void the action of the school board directing legal counsel to pursue litigation because the board did not substantially comply with the Open Meetings Act. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

10. Standing.

General Assembly declared that all citizens have a direct interest in public agencies' compliance with the requirements of the Open Meetings Act, and the particularized injury arises from the agency's violation of the Act itself, not specifically from the action taken; the rights accorded under the Act are not merely procedural but also grant the public at large a direct interest in its enforcement, and in other words, the violation of the Act itself constitutes the direct and personal injury. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

Trial court erred by dismissing a complaint for lack of standing because the Open Meetings Act permitted an association to recover attorney fees and costs, and the availability of the remedy met the redressability requirement for constitutional standing; because actions taken in violation of the Act were not void ab initio, third parties not involved in the allegedly unlawful conduct could be entitled to rely on the validity of the agreement executed by the county fiscal court and public board. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

Cited:

Louisville v. Courier-Journal & Louisville Times Co., 637 S.W.2d 658, 1982 Ky. App. LEXIS 232 (Ky. Ct. App. 1982); Frankfort Pub. Co. v. Kentucky State University Foundation, Inc., 834 S.W.2d 681, 1992 Ky. LEXIS 103 (Ky. 1992); Brownsboro Rd. Area Def., Inc. v. McClure, — S.W.3d —, 2004 Ky. App. LEXIS 77 (Ky. Ct. App. 2004).

OPINIONS OF ATTORNEY GENERAL.

The open meeting requirement applies to "work sessions" held by a board of education preceding a regular or special meeting. OAG 74-370.

A meeting to discuss and decide whether to negotiate with teacher's association on a collective bargaining agreement does not fit under the exception stated in subsection (5) (now (e)) of this section and thus should be a meeting open to the public. OAG 74-441.

A licensing board's meetings must be open to the public when considering an application for a license, but meetings may be closed to the public when considering complaints against a licensee unless the licensee demands a public hearing. OAG 74-497.

If a representative of an industrial prospect is present at a meeting of the Kentucky Industrial Development Finance Authority to discuss a proposed project, that portion of the meeting in which the project is discussed by the board and the industrial prospect may be legally closed to the public under subsection (7) (now (g)) of this section. OAG 74-523 (opinion prior to 1992 amendment).

Not all meetings of the Kentucky Industrial Development Finance Authority are exempt from the provision of the Open Meetings Law but only such meetings as precisely fit one or more of the exceptions. OAG 74-523.

"Public agency" does not include a chamber of commerce under the generally accepted definition of that kind of organization and, whether organized under KRS Chs. 102 or 273, the organization is not subject to the open meetings law. OAG 74-566.

Whether or not meetings of a student government association are open to the news media and the public may be decided by the organization which created the association or by the by-laws adopted by the association since it is a private association not covered by the Open Meetings Law. OAG 74-639.

Meetings of the State Fair Board to consider sealed preliminary hotel proposals submitted in response to the Board's invitation would be exempt under subsection (2) (now (b)) of this section but when final bids are opened the bidders and the public are entitled to know what they contain and to witness the deliberations of the Board as to which bid is to be accepted. OAG 74-665.

A complaint to the city council by a private citizen is not an exception to the Open Meetings Law and thus the city council should have either heard the complaint in a public hearing or requested that said complaint be put in writing and placed on the agenda for a future meeting rather than hearing said complaint in a closed session since the city council is a public agency and therefore subject to the requirements of KRS 61.805 to 61.850. OAG 75-3.

School board members may attend an in-office meeting of school staff and employees as guests or observers and the requirements of this section for an open meeting do not apply as long as the meeting in no way becomes a school board meeting. OAG 75-125.

The entire school board or any part thereof may participate in a professional negotiation session since this subject matter is expressly exempted from the open meetings requirement. OAG 75-125.

Neither the citizens advisory subcommitte on legislative compensation nor the subject matter of its investigation falls within the exemptions of this section and therefore the meetings of the subcommittee should be open to the public. OAG 75-142.

The citizens' advisory subcommittee on legislative compensation, an interim committee of the General Assembly, is a public agency. OAG 75-142.

The fiscal court is a public agency as defined in KRS 61.805 and any private session it holds is illegal unless the meeting comes within the exceptions to the open meetings provision in this section. OAG 75-280.

At a county board of education's special meeting, the discussion in closed session concerning the adoption of a regulation pertaining to payment of per diem allowances to board members was not within any exception to the requirement of open public meetings. OAG 75-299.

Where the procedure followed by members of a county board of education in discussing a regulation pertaining to a per diem allowance violated the requirement of open public meetings, the decision of the board would remain in effect in the absence of a court judgment declaring the action valid. OAG 75-299.

Meetings of the city board of commissioners dealing with the granting of individual salary increases to city employees must be open to the public since the subject matter of the meeting does not come within an exception to either this section or KRS 61.815. OAG 75-340.

An employee being given a hearing by a city civil service board under KRS 90.360 or 95.450 may compel the exclusion from the hearing of all persons except the board members, himself, legal counsel, a stenographer and witnesses while testifying. OAG 75-354.

In view of this section, hearings by a city civil service board under KRS 90.360 or 95.450 need not be open to the public. OAG 75-354.

A meeting of a board of education to discuss the rehiring of a high school coach must be open to the public if the coach so requests but he is not entitled to take any part in the meeting, be represented by counsel, produce witnesses or make any argument before the board. OAG 75-369.

The discussion by the board of education as to the employment, discipline or promotion of an individual employee may be held in a closed meeting while the discussion of general personnel policies should be conducted in an open meeting. OAG 75-506.

A meeting of a city council to suspend a policeman may be held in secret and the policeman is not entitled to a hearing before removal for cause but may not be removed without cause. OAG 75-564.

A properly called special meeting may be conducted in closed session if the subject matter to be discussed falls within one (1) of the exceptions to open meetings provided in this section and if the motion for closed session is made and carried by a majority vote in open public session as provided in KRS 61.815. OAG 75-709.

The discussion and election of a new school board member, by the school board, upon resignation of one (1) of the board members should be in an open meeting. OAG 76-4.

Since the collective bargaining negotiations exception provided for in subsection (5) (now (e)) of this section applies only when a governmental agency is negotiating with an authorized union or association representing the employees when the terms of a contract are being discussed, a meeting of a board of commissioners in an executive session to discuss recommendations regarding salaries of police officers and a list of grievances between city employees and the city manager where no contractual relationship between the city or employees existed and where the city had not recognized any union or association of city employees such meeting did not come within the exception provided for in subsection (5) (now (e)) of this section. OAG 76-456.

Since public agency discussions concerning litigation are expressly exempted from the requirements of the Open Meetings Law under subsection (3) (now (c)) of this section, the prohibition of subsection (3) (now (c)) of KRS 61.815 does not apply to those discussions. OAG 76-643.

Since a county school board's consideration of the reappointment of the superintendent does not come under the exception provided by this section, documents presented at a board meeting by the superintendent in support of his candidacy for reappointment should be made available for public inspection. OAG 77-69, 1977 Ky. AG LEXIS 718.

Since it is not necessary that any discussion occur or any action be taken to bring a meeting under the open meetings requirement, a meeting of the county fiscal court for the sole purpose of receiving a briefing by staff members of the county planning commission should be open to the public. OAG 77-171, 1977 Ky. AG LEXIS 625.

The consideration by a board of education of the appointment of a superintendent may be conducted in a closed meeting, where such consideration includes personal interviews with candidates, but the final action of voting on whether to employ and appoint a particular candidate should take place in an open session. OAG 77-392, 1977 Ky. AG LEXIS 409.

Inasmuch as threats or intimidation are not included in the exceptions to the open meetings requirement, a board of zoning adjustment could not meet in closed session because of threatening phone calls. OAG 77-464, 1977 Ky. AG LEXIS 319.

A joint meeting of a city commission and the county magistrates to discuss setting ambulance service rates should be held in open session. OAG 77-529, 1977 Ky. AG LEXIS 291.

Any person who a board of education believes can contribute information or advice on the subject matter under discussion may be invited into a closed executive session but he should remain only so long as is necessary to make his contribution to the discussion. OAG 77-560, 1977 Ky. AG LEXIS 255.

Since a condemnation suit is litigation and therefore a proper subject for a closed session, a county board of education could go into executive session to discuss the acquisition of a tract of land. OAG 77-577, 1977 Ky. AG LEXIS 205.

As long as no final action is taken, a public agency may meet in closed session to discuss the appointment of employees. OAG 77-758, 1977 Ky. AG LEXIS 40.

It is permissible for a public agency to hold a closed meeting on the subject of personnel matters; however, this does not include the election of officers. OAG 78-176, 1978 Ky. AG LEXIS 542.

The legislative intent of the exception to the closed meeting requirement of the statute is to assure the agency's right to keep its litigation strategy confidential when necessary. OAG 78-227, 1978 Ky. AG LEXIS 497.

The procedure for closed sessions does not have to be followed when the subject of the meeting is pending litigation against or on behalf of a public agency and it does not make any difference what the subject of the litigation is. OAG 78-227, 1978 Ky. AG LEXIS 497.

The open meetings exception of subsection (5) (now (e)) of this section has been broadened by judicial interpretation in the case of Jefferson County Bd. of Educ. v. Courier Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. App. 1955) to allow a public agency which is formulating its demands or position preparatory to collective bargaining negotiations either by way of deliberations or instructions to its advocate to be held in closed session. OAG 78-371, 1978 Ky. AG LEXIS 531.

The reasons for which a closed session may be held by a public agency are set forth in this section and do not include the negotiation of a franchise or any such matter as the rate to be charged for TV cable service. OAG 78-469.

When a quorum of the river development commission attends a meeting which is convened by an authority or association other than the commission, such a meeting is not a meeting of a quorum of the commission within the meaning of this section, rather it is only when the commission itself by the

direction of the chairman or some of its members convenes the meeting that the Open Meetings Law comes into play. OAG 78-634, 1978 Ky. AG LEXIS 196.

A student is entitled to an orderly hearing, either closed or open, as the student desires, at which he must be given full opportunity to give his or her side of the story before the board and to produce either oral testimony or written affidavits of witnesses in his or her behalf, and the opportunity should be given to cross-examine witnesses. OAG 78-673, 1978 Ky. AG LEXIS 163.

Discussion regarding suspension of a local superintendent may be held in closed session by the state board. OAG 79-394, 1979 Ky. AG LEXIS 228.

The term "individual employee," as it appears in subdivision (6) (now (f)) of this section does not apply to the procurement of professional services of a corporation or other private business entity. OAG 79-512.

"Financial problems" are not a legal subject of a closed session. OAG 79-516, 1979 Ky. AG LEXIS 111.

If a school board discovers that, either deliberately or inadvertently, it has dealt with a matter in closed session which is not authorized under the law, it should take corrective action by acting on the same matter again in an open meeting to demonstrate its good faith in complying with the Open Meetings Law before the matter is adjudicated. OAG 79-516, 1979 Ky. AG LEXIS 111.

If a school board proposes to go into closed session to discuss "a personnel problem," a motion should be made and passed in open session to go into closed session to discuss a personnel problem involving a particular employee or employees; it is not necessary to name the employee or employees to be discussed. OAG 79-516, 1979 Ky. AG LEXIS 111.

Subdivision (6) (now (f)) of this section allows a closed session for discussions or hearings which might lead to the appointment, discipline or dismissal of an individual employee, but not to discussions of general personnel questions involving all employees or a group of employees and does not apply to the business of fixing salaries or the financial matters before the school board. OAG 79-516, 1979 Ky. AG LEXIS 111.

The meeting of four (4) councilmen, constituting a quorum of the six-man council, at which they discussed and decided how they would vote on a matter subsequently brought before the council at a regular meeting, constituted a public meeting open to the public and requiring public notice and specific notification in compliance with the Open Meetings Act. OAG 80-81, 1980 Ky. AG LEXIS 558.

Where a county board of education was considering applicants for the office of superintendent of schools and had been conducting interviews with applicants in closed session, there was no violation of the Open Meetings Law in the proposal of the board to have a select committee sit with it in closed session and take an active part in the interviews and discussions. OAG 80-247, 1980 Ky. AG LEXIS 403.

Telephone conversations among members of a port authority board prior to one of its regularly scheduled meetings did not violate the Open Meetings Law because the board accepted the resignation of the executive director and appointed an interim director in formal action at the regularly scheduled meeting; regardless, the accepting of a resignation and the appointment of an interim director were personnel matters which are exempt from the Open Meetings requirement by paragraph (6) (now (f)) of this section. OAG 80-426, 1980 Ky. AG LEXIS 285.

Confidentiality per se is not the purpose of paragraphs (2) (now (b)) and (7) (now (g)) of this section but, rather, confidentiality is only permissible when the public interest will be directly affected financially. OAG 80-530, 1980 Ky. AG LEXIS 129.

The exception provided by paragraph (7) (now (g)) of this section applies only in a case where a representative of an industrial prospect is present at a meeting with the governing body of a public agency; the meeting must be between the public agency and the industrial prospect. OAG 80-530, 1980 Ky. AG LEXIS 129.

Where an agency is discussing whether it will buy or sell a specific piece of property and the discussion, if made public, would affect the purchase or sale price of that property or other property to be bought or sold on the same project, the agency may discuss the matter in a closed session. OAG 80-530, 1980 Ky. AG LEXIS 129.

An urban county airport board is a public agency and all of its papers are public records under KRS 61.870. OAG 80-586, 1980 Ky. AG LEXIS 74.

Paragraph (6) (now (f)) of this section which provides an exception to the Open Meetings Law allowing hearings on personnel matters to be held in closed session, has no pertinency as to whether documents concerning the dismissal of five (5) employees should be made available for public inspection; in denying inspection of a public record a public agency must rely on one (1) of the exceptions provided in the Open Records Law, KRS 61.878(1). OAG 80-586, 1980 Ky. AG LEXIS 74.

Where a disciplinary hearing about a particular student in a public school is held, the hearing is exempt from the formalities of going into a closed session under subdivision (6) (now (f)) of this section or the necessity of taking final action in an open session according to the procedure set forth in KRS 61.815. OAG 81-135, 1981 Ky. AG LEXIS 298.

A board of education cannot meet in closed session to discuss either the acquisition or transfer of real estate resulting from one school district ceasing to exist and transferring its assets and liabilities to another district, since no public property is being bought or sold, and the merger will not affect the value of the property being transferred to the surviving school district; thus the exemption under subdivision (2) (now (b)) of this section would not apply. OAG 81-136.

A board of education cannot meet in closed session to discuss items related to a merger with another board of education since the merger of school districts is not one (1) of the five (5) subject matter exemptions under this section. OAG 81-136.

A board of education cannot meet in closed session to discuss personnel issues created by a move for the consolidation of two (2) school districts when those issues relate to a group of employees affected by a disagreement surrounding the terms of a merger, since subdivision (6) (now (b)) of this section cannot be interpreted to permit discussion of general personnel matters in secret. OAG 81-136.

When a closed session of a school board is held as authorized by this section, minutes of the closed session should be made, but the board, in its discretion, may require the minutes to be sealed and withheld from public inspection and such minutes will not be part of the regular minutes of the meeting required by subsection (2) of KRS 160.270. OAG 81-235, 1981 Ky. AG LEXIS 205.

A county hospital, as a public agency, is not permitted by any exception to this section to discuss the annual audit of its books in a closed session, unless the audit revealed a mishandling of funds leading in turn to a discussion of personnel matters involving named personnel, which would come under subdivision (6) (now (f)) of this section. OAG 81-343, 1981 Ky. AG LEXIS 91.

A city commission hearing held to evaluate the city manager's performance for the past two (2) years can properly be held in closed session pursuant to subsection (6) (now (f)) of this section since the discussions held might lead to some personnel action. OAG 81-413, 1981 Ky. AG LEXIS 21.

A closed session can be held on a personnel matter without formal charges being made against the person who is the subject of the session and such a discussion can be either preliminary to deciding whether to reject the idea of disciplinary dismissal action or preliminary to a decision to make

formal charges and hold another hearing. OAG 81-413, 1981 Ky. AG LEXIS 21.

A county fiscal court work session dealing with the preparation of the county budget and attended by a quorum of the fiscal court is an open meeting as defined in KRS 61.805 and this section. OAG 82-91, 1982 Ky. AG LEXIS 558.

The Open Meetings Law permits the holding of a meeting by telephone conference call by the State Board of Education on the subject of the expulsion of a student of one of the schools of which the State Board has the direct oversight in disciplinary matters and the news media should be notified, at least twenty-four (24) hours in advance, that the meeting by conference telephone is to be held on disciplinary matters and will be closed to the public; however, this opinion is confined to the following circumstances: (1) the State Board of Education meets regularly only every two (2) months and the membership of the Board may reside anywhere within the boundaries of the commonwealth; (2) by regulation there has been established an appeal procedure utilizing hearing officers to review disciplinary cases where expulsion may be ordered; (3) the hearing officer shall hear proof, oral arguments and/or may request written briefs and shall make findings of fact, conclusions of law and recommendations to the State Board, and the State Board is required to make a final determination of the case within thirty (30) days; (4) before the appeal procedure is begun the student has been provided a due process hearing at the local level; (5) the role of the State Board of Education on expulsion appeals is to review the record made up under the presiding of the hearing officer and to approve or disapprove the hearing officer's recommendation. OAG 82-179, 1982 Ky. AG LEXIS 459.

The State Board of Education may meet in closed session to act on a recommendation of a hearing officer on the expulsion of a student without any preliminary action in an open meeting and may take final action on the matter in a closed session. OAG 82-179, 1982 Ky. AG LEXIS 459.

Implementation of anticipated budget cuts in the Title I program was a general personnel matter which should not have been discussed in secret as long as the county board of education was discussing which positions to eliminate, if the issue was, for example, whether to eliminate social workers or music teachers or science teachers; on the other hand, if a decision had been reached to eliminate two (2) out of four (4) social worker positions and the question became which two (2) of the four (4) persons holding those positions would be dismissed, it then being necessary for the board to discuss qualifications and personalities, the board would have been justified in going into closed session for the purpose of that discussion. OAG 82-300, 1982 Ky. AG LEXIS 348.

Advisory committees are not public agencies under the Open Meetings Law. OAG 82-331, 1982 Ky. AG LEXIS 319.

Committees which are created by legislative act of the city council are public agencies and are required to hold open meetings subject to the provisions of this section. OAG 82-331, 1982 Ky. AG LEXIS 319.

A meeting between two (2) school districts to discuss the matter of a mutual contract agreement, whereby students residing within the boundaries of one district could attend school in the other district, concerned the placement of over 400 students which would affect the employment and assignment of professional personnel in the two (2) school districts; this issue was a general personnel matter which did not involve the reputation of individual persons and therefore did not come within the exemption of subsection (6) (now (f)) of this section and, thus, such meeting could not be held in secret. OAG 82-566, 1982 Ky. AG LEXIS 76.

Except when the Personnel Board is deliberating a decision on a particular case involving an individual, or discussing a matter which is exempt under this section, its meetings are required to be open to the public under the provisions of KRS 18A.070(3). OAG 83-20, 1983 Ky. AG LEXIS 476.

The Personnel Board may go into closed session at the time of its deliberation on recommended orders submitted by hearing officers and/or board members, or to deliberate after it has received evidence in an open hearing, by following the procedure set forth in KRS 61.815. The Personnel Board is authorized to conduct such closed sessions for the purpose of deliberation under subdivision (6) (now (f)) of this section; however, no final action by vote may be taken on such matter in the closed session. OAG 83-20, 1983 Ky. AG LEXIS 476.

It was permissible for the fiscal court to allow the members of the board of directors of a nursing home to attend a closed session to discuss the possible sale of the nursing home; on the other hand, it was not proper to allow the representatives of some prospective buyers of the property to attend the closed session since there could well be other prospective buyers and the consideration of the sale of public property should not be limited to negotiations with a limited number of prospective purchasers. OAG 83-61, 1983 Ky. AG LEXIS 434.

While the presence and the input of the representatives of the prospective buyers of nursing home may have influenced the decision of the fiscal court not to sell the property and may have been in the public interest, the Open Meetings Law does not permit this type of closed negotiations to decide whether the property is surplus to public purpose and whether it should be sold or retained in the public interest. OAG 83-61, 1983 Ky. AG LEXIS 434.

A newspaper reporter has the same standing as any other citizen and a reporter cannot be barred from a meeting unless all other nonparticipants in the meeting are also barred. OAG 83-102, 1983 Ky. AG LEXIS 395.

Under this section, whenever a quorum of the members of any public agency meet and discuss any public business the meeting is a public meeting as defined in the Open Meetings Law; thus, where the entire county board of education called itself a "committee" and added several other people to the "committee" before conducting a private session with representatives of the county education association, the school board was required to comply with the Open Meetings Law. OAG 83-102, 1983 Ky. AG LEXIS 395.

Where a proposed meeting between the Special Commission on Youth Residential Facilities and employees of the Department for Social Services would involve discussions with employees as to their job performance and the performance of their colleagues, where reputations would be involved and where this type of investigation might lead to the disciplining or dismissal of employees, it could be held in closed session. OAG 83-127, 1983 Ky. AG LEXIS 370.

An electric and water plant board's stated proposal to discuss "personnel matters" at a closed session was a sufficient notice and reason given under KRS 61.815(1). OAG 83-377, 1983 Ky. AG LEXIS 126.

The discussion of a salary increase by an electric and water plant board for its general manager in closed session was violative of the Open Meetings Law. OAG 83-377, 1983 Ky. AG LEXIS 126.

Before going into closed session notice must be given by the board of education in a regular open meeting of the general nature of the business to be discussed in the closed session and a motion must be made and carried by majority vote to go into closed session. It is sufficient if the notice and motion to go into closed session simply states that the purpose of the session is to discuss personnel matters affecting certain individuals; the names of the individuals do not have to be stated in the notice and motion. OAG 83-379, 1983 Ky. AG LEXIS 116.

Discussion by a city board of aldermen of "an ordinance ratifying and approving the collective bargaining agreement between the city and the fraternal order of police" would not be exempt from the open meetings requirement; the topic indicates that the dispute had been settled and the collective bargaining negotiations completed. Since the meeting was held to discuss ratification and approval of the agreement

instead of negotiations between employers and employees, it was not exempt from open meetings under subdivision (5) (now (e)) of this section. OAG 83-389, 1983 Ky. AG LEXIS 107.

A metropolitan sewer district (MSD) cannot discuss in closed session whether to accept the resignation of an individual MSD official. Subdivision (6) (now (f)) of this section provides for closed session only to discuss appointment, discipline, or dismissal of an individual in order to protect his reputation; any other personnel matters are prohibited as subjects for closed meetings pursuant to subdivision (6) (now (f)) as they constitute discussion of general personnel matters in secret. OAG 83-415, modifying OAG 80-246, 1980 Ky. AG LEXIS 402.

When a public agency, such as a city council, after giving notice to the parties, is conducting a fact-finding hearing which will affect the substantial rights of an individual and will render a decision based on its discretion, the agency is performing a quasi-judicial function. Hearings held by a city council regarding rezoning proposals are open to the public, as mandated in rezoning amendments by KRS 100.211; however, once arguments are heard and evidence received, the city council can then retire into closed session to deliberate and reach a decision. OAG 83-446, 1983 Ky. AG LEXIS 46.

The board is only required to announce the general nature of the business to be discussed in the closed session; no particular candidate need be named in the announcement of a closed session to discuss appointment of a new superintendent, as that would subvert the intent of subdivision (6) (now (f)) of this section. OAG 83-455, 1983 Ky. AG LEXIS 42.

Discussion by county board of education about selection inquiries and qualification suggestions concerning appointment of a new superintendent of schools was not exempted from open session by subdivision (6) (now (f)) of this section since no individual was involved to whom reputational damage might occur; accordingly, board acted improperly in discussing such matters in closed session and subsequently taking action, in open session, to direct inquiries and suggestions concerning the appointment to a certain person. OAG 83-455, 1983 Ky. AG LEXIS 42.

Where a school board heard evidence in an open meeting regarding the proposed expulsion of a student and then properly went into closed session pursuant to subdivision (6) (now (f)) of this section in order to deliberate, the school superintendent's presence at the closed session was improper where the superintendent had represented the school board in a quasi-attorney role throughout the open session. OAG 83-488, 1983 Ky. AG LEXIS 9.

Although subdivision (6) (now (f)) of this section allows closed sessions to discuss appointment, discipline, or dismissal of an individual employee it is designed to protect the reputation of individual persons and should not be interpreted to permit discussion of general personnel matters in secret; in other words, discussion in closed session is specifically limited to discussions pertaining to the appointment, discipline, or dismissal of a specific individual. Accordingly, the Morehead State University Board of Regents erred when they went into closed session and merely discussed the selection process for a new president rather than specific individual candidates. OAG 83-489, 1983 Ky. AG LEXIS 10.

Where a land use regulation ordinance proposed an informal meeting between land developers and owners of adjacent property regarding site approval for land development projects, where it would be up to the assembled land developers and property owners to make any decisions or compromises and where no members of the county planning commission or the fiscal court were required or expected to attend, the meeting in the proposed ordinance was not subject to the Open Meetings Law as long as a quorum of either public agency was not present. OAG 84-45, 1984 Ky. AG LEXIS 341.

A county hospital board was a "public agency," as defined in KRS 61.805(2); however, where a closed meeting of such board involved a substantial discussion of the suspension of a county hospital employee, such discussions brought it under the personnel discussion exception to open meetings stated in subdivision (6) (now (f)) of this section. OAG 84-46, 1984 Ky. AG LEXIS 340.

Where newspapers were prohibited from covering a closed hospital board meeting, but county judge/executive, who served on the board, also controlled one newspaper, there was no impropriety on part of county judge/executive since his newspaper carried no mention of the discussions of the closed meeting. OAG 84-46, 1984 Ky. AG LEXIS 340.

The city council of a third-class city is a public agency pursuant to KRS 61.805(2) and is thus subject to the Open Meetings Law; however, the Open Meetings Law only applies when a quorum of the public agency meets to discuss public business. OAG 84-49, 1984 Ky. AG LEXIS 337.

Where city council was comprised of twelve members, seven members of the council constituted a quorum; consequently, where private meetings in the mayor's office were attended by six (6) and four (4) members, respectively, the absence of a quorum of council members in the mayor's office at each meeting rendered the Open Meetings Law inapplicable. OAG 84-49, 1984 Ky. AG LEXIS 337.

Where one of the magistrates of fiscal court filed a suit against county to prevent the performance of contract with hospital corporation, the fiscal court could meet in closed session to discuss various pertinent aspects of the hospital contract and the pending litigation and the magistrate who brought the suit against the county could be excluded from the closed session while the contract and the suit were subjects of discussion and action. OAG 84-234, 1984 Ky. AG LEXIS 152.

Where a cable authority announced at an open meeting that it was going into closed session to discuss possible litigation brought against the authority by a cable service company over the regulation of cable rates, the nature of the closed session was proper and the notice of the session was sufficient; also, the authority properly limited discussion during the closed session to the topic of litigation with the cable company. OAG 84-240, 1984 Ky. AG LEXIS 137.

City council improperly closed meeting after the affected individuals requested that the meeting remain open; the council, pursuant to subsection (6) (now (f)) of this section should have honored that request. OAG 84-302, 1984 Ky. AG LEXIS 84.

A closed session meeting held by a city council following one (1) of its regular meetings, for the announced purpose of discussing burglary charges against certain resident teenagers, as well as discussing the public belief that these and other teenagers had been conducting cult rituals in the city, was an improper meeting since the topic of discussion did not fit any of the enumerated exceptions to the Open Meetings Law. OAG 84-317, 1984 Ky. AG LEXIS 69.

Advisory committee appointed by the superintendent of a county board of education, on his own initiative and without any formal direction by the board, was subject to the Open Meetings Act since committee was created by executive order; to the extent it conflicts with the opinion, OAG 78-571 is hereby modified. OAG 89-25, 1989 Ky. AG LEXIS 25.

The Buckley Amendment cannot be invoked to close an otherwise public meeting of a public agency, as that amendment is concerned with the release of the "educational records" of students and not with the holding of meetings of public agencies; in addition, the Buckley Amendment cannot be invoked to prohibit comment on or discussion of facts about a student learned independently of his school records; however, the Buckley Amendment can be invoked by the University of Louisville to prohibit the release of material, the source of which is a student's educational records. OAG 90-125, 1990 Ky. AG LEXIS 136.

Where meetings have not involved the appointment of specific persons by the University of Louisville or the disci-

pline or dismissal of specific persons employed by or working or studying at the University, the assertion of subsection (6) (now (f)) of this section as the ground for closing a public meeting of a university committee is inapplicable and invalid. OAG 90-125, 1990 Ky. AG LEXIS 136.

Mere speculation about the possibility of litigation at some point in the future does not trigger the exception codified in subdivision (3) of this section. OAG 91-141, 1991 Ky. AG LEXIS 129.

In absence of a contract between the parties, discussions between the school board and a prospective school superintendent, involving his specific salary and the length of his contract, were subject to the exceptions to open meetings. OAG 91-144, 1991 Ky. AG LEXIS 144.

Since three (3) members of the Parole Board constitute a quorum concerning parole hearings (KRS 439.320(4)) any hearing conducted under KRS 439.340(2) by three (3) or more members of the Parole Board would be a public meeting of a public body and open to the public. Two (2) members of the Parole Board do not constitute a quorum and thus prior to the 1992 amendments to the Open Meetings Act, such a hearing would not be a public meeting of a public agency. However, the Open Meetings Act as amended in 1992, in KRS 61.810(2), deals with "less than quorum meetings." KRS 61.810(2) would prohibit the Parole Board from adopting a procedure whereby it utilizes two-person panels to conduct hearings and to prohibit public accessibility when panels of three (3) or more Parole Board members conducting the same kinds of hearings would be clearly open meetings open to the public. Thus, if the Parole Board utilizes two-person panels to conduct the hearings required by KRS 439.340(2) such hearings are open to the public. OAG 92-146.

The interview and discussion portion of a parole release hearing with the prisoner are meetings open to the public, but the deliberations for decisions of the parole board may be conducted in closed sessions. The hearings conducted pursuant to subsection (5) of KRS 439.340 may be closed pursuant to a closure request by the persons having a right to appear at such hearings for reasons of personal security. OAG 92-146.

University's board of regents did not forfeit its right to invoke the legitimate exceptions to the Open Records Act just because it violated the Open Meetings Law. The records reviewed by the board relative to the proposed budget which occurred during an improperly closed meeting, and all other records of a preliminary character, still enjoyed the protection of KRS 61.878(1)(i), independent of the Open Meetings issue, until final action was taken by the Board. OAG 92-ORD-1346.

A university's board of regents denial of a request for access to certain records which were generated in the course of a closed session conducted by the board of regents in its regular meeting was improper. The board of regents violated this section to the extent that its closed discussions focused on classes of, as opposed to specific, individuals. However, only those records which reflected discussions of classes of individuals were subject to inspection. OAG 92-ORD-1346.

City properly invoked the provisions of subsection (1)(c) of this section when it met in a closed session to discuss matters pertaining to ongoing litigation and person bringing objection to the closed session presented no evidence in this regard to contradict assertions that only matters pertaining to the litigation were discussed; moreover since the city council properly invoked the litigation exception and met in a closed session to discuss specific litigation involving the city, the city was not legally obligated to reveal what transpired at that closed session relative to its strategy, tactics, possible settlement and other matters pertaining to that particular case. OAG 92-OMD-1728, 1992 Ky. AG LEXIS 292.

Where unidentified person invited into the executive session at some point after city council had concluded its discussion relative to litigation involving the city was a paving contractor and the city was invoking the litigation exception to the Open Meetings Act in this matter because either the paving contractor or his attorney or both of them had threatened the city with litigation over work done by the paving contractor for the city, the city properly invoked the litigation exception because the threat of a lawsuit by the company against the city in such situation was more than a "remote" possibility of litigation involving the city. OAG 92-OMD-1728, 1992 Ky. AG LEXIS 292.

Where three (3) physicians met with hospital board during a closed session to discuss "an agreement" with the physicians and there was no evidence that the board was considering the physicians as possible employees of the public hospital subsection (1)(f) of this section would not authorize a public agency to conduct a closed session with persons not being considered for employment with the agency or to discuss the general subject of "an agreement" with those persons and since the services being rendered or to be rendered by a public hospital are a matter of public interest, subsection (1)(g) of this section would not justify the closing of the meeting relative to the matters concerning business opportunities. OAG 92-OMD-1735, 1992 Ky. AG LEXIS 295.

Where a draft of an ordinance was being prepared for discussion at an open and public meeting and the person preparing the draft merely sought comments and suggestions from the individual fiscal court members relative to the terms and provisions of that ordinance, there was no violation of the Open Meetings Act. OAG 93-OMD-20, 1993 Ky. AG LEXIS 41.

A public agency cannot go into a closed session to discuss personnel matters generally. The only personnel matters which can be discussed in a closed session by a public agency are those which might lead to the appointment, discipline or dismissal of personnel of that particular agency. Therefore, a committee created by the mayor violated the Open Meetings Act when it went into a closed session to discuss personnel matters other than those which might lead to the appointment, discipline or dismissal of municipal personnel. OAG 93-OMD-49, 1993 Ky. AG LEXIS 79.

City council violated the Open Meetings Act when it went into a closed session to discuss personnel matters other than those which might lead to the appointment, discipline or dismissal of municipal personnel. OAG 93-OMD-49, 1993 Ky. AG LEXIS 79.

The Board of Commissioners of hospital did not violate the Open Meetings Act when the Board went into a closed session to deliberate the proposed sale of the hospital building and the property on which it is located as the Board was of the opinion that publicity would likely affect the value of the property to be sold. OAG 93-OMD-56, 1993 Ky. AG LEXIS 99.

A meeting of House Members who had gathered for the purpose of obtaining information about the Governor's health care reform proposal was not a public meeting under the Open Meetings Act where a quorum was not present. OAG 93-OMD-63, 1993 Ky. AG LEXIS 106.

In order to utilize the exception in subsection (2) of this section it must be shown that the public agency is meeting with less than a quorum over a series of meetings to avoid the application of the provisions relating to open and public meetings. OAG 93-OMD-63, 1993 Ky. AG LEXIS 106.

The litigation exception of subdivision (1)(c) of this section, like other exceptions to the basic policy of open and public meetings, must be narrowly construed; it cannot be invoked when the agency does nothing more than monitor cases which have not been filed against or on behalf of the public agency attempting to utilize the exception. OAG 93-OMD-119, 1993 Ky. AG LEXIS 194.

Generally the discussion of cases in which a public agency is not a party or defendant must be conducted in open and public sessions; when a public agency has become a party plaintiff or defendant in a lawsuit, when a public agency has been threatened with litigation, or when the chance of litigation involving that agency is more than a remote possibility, the

agency can then legally and properly invoke the exception set forth in subdivision (1)(c) of this section and can at that time discuss in closed session such matters as strategy, tactics, possible settlement and other matters pertaining to that case or that anticipated or probable case. OAG 93-OMD-119, 1993 Ky. AG LEXIS 194.

A public agency cannot invoke subdivision (1)(c) of this section to discuss, generally, in closed sessions, cases which have not been filed against or on behalf of that particular public agency; to the extent that such agency went into closed session merely to discuss litigation to which it was not a party, it was in violation of the Open Meetings Law but to the extent the session involved discussion of threatened litigation, the closed session was proper. OAG 93-OMD-119, 1993 Ky. AG LEXIS 194.

The House Democratic Caucus, an entity established by the Legislative Research Commission, does not qualify as a committee of the General Assembly; therefore, it is subject to the provisions of the Open Meetings Act. OAG 94-OMD-23, 1994 Ky. AG LEXIS 34.

Where negotiations and discussion with an employee of county planning and zoning commission did not involve the possible appointment, discipline, or dismissal of that person, the negotiations and discussions should not have taken place in a closed session — the exception in subdivision (1)(f) of this section was not applicable. OAG 94-OMD-63, 1994 Ky. AG LEXIS 178.

County planning and zoning commission properly went into a closed session pursuant to subdivision (1)(f) of this section to consider possible disciplinary charges against a commission employee. OAG 94-OMD-63, 1994 Ky. AG LEXIS 178.

Where the agenda for the special meeting listed as the only item a matter pertaining to a change or an addition to contracts, the city's committee violated the Open Meetings Act when it went into a closed session during that special meeting to discuss matters involving litigation. OAG 94-OMD-78, 1994 Ky. AG LEXIS 59.

City did not violate the Open Meetings Act merely because everyone at a particular board of aldermen meeting could not be admitted into the meeting room where the meeting was held in a facility which normally could accommodate all those desiring to attend and where the city offered to allow the overflow crowd to view the meeting from another room by television. OAG 94-ORD-87.

County board of education violated the Open Meetings Act when it went into a closed session to discuss the possibility of creating a new position with the school system. OAG 94-OMD-103, 1994 Ky. AG LEXIS 88.

Fiscal court violated the provisions of the Open Meetings Act when its members met individually or in small groups in a series of meetings with the county's industrial recruiter and persons from a private corporation relative to the possible location of that corporation in the county. While subdivision (1)(g) of this section could not be invoked to justify such meetings, that such subdivision could probably have been utilized at a properly called regular or special meeting of the fiscal court as a body to discuss the issue of a specific corporate entity locating in the county. OAG 94-OMD-106, 1994 Ky. AG LEXIS 89.

Municipal utility officials violated the Open Meetings Act as they improperly invoked the litigation exception to close a meeting to discuss cancellation of a contract. The fact that the company whose contract was to be terminated might file a bankruptcy petition in response to the contract cancellation did not justify the invoking of subdivision (1)(c) of this section. OAG 94-OMD-110, 1994 Ky. AG LEXIS 91.

"Industrial prospects" exception to open and public meetings under former subsection (7) of this section was repealed by the 1992 amendments to the Open Meetings Act (1992 Acts, ch. 162, HB 16) and replaced by subdivision (1)(g) of this section. Under the new provision a meeting between a city and a representative of a business entity or a meeting of the city commission pertaining to a specific proposal could only be closed if an open and public discussion would jeopardize, among other things, the locating of the business in the area. OAG 94-OMD-119, 1994 Ky. AG LEXIS 201.

Where business has already publicly announced at a ceremony attended by the Governor and other officials that it is locating in the area, city could not invoke subdivision (1)(g) of this section to close a meeting pertaining to discusssions concerning that firm locating in the area. OAG 94-OMD-119, 1994 Ky. AG LEXIS 201.

A city may properly invoke subdivison (1)(f) of this section to go into a closed or executive session to discuss the possible dismissal of a particular employee. That specific section does not require that the affected employee be given notice of the discussion or an opportunity to attend that discussion. However, city was required to announce in the open and public portion of its meeting that it was invoking the provisions of subdivision (1)(f) of this section to go into a closed session to discuss the possible termination of a particular municipal employee. OAG 94-OMD-122, 1994 Ky. AG LEXIS 96.

Where city council at a public meeting made a choice as to what particular architect it had selected, that decision constituted "action taken" pursuant to KRS 61.805(3) and the public, including the media, was entitled to know at that specific point in time the nature of the action taken which in this situation would involve the name of the architect selected. OAG 94-OMD-127, 1994 Ky. AG LEXIS 207.

If a public agency is to utilize the exception set forth in subsection (1)(b) of this section, it must be involved in the sale or acquisition of real estate and any publicity relative to the matter would likely affect the value of the property to be sold or acquired, thus justifying a closed proceeding. OAG 95-OMD-57, 1995 Ky. AG LEXIS 44.

At the time of the closed council meeting, the purpose of which was to discuss the city's obligations and liabilities relative to certain property and to discuss a Memorandum of Understanding executed between the urban county government and the Commonwealth involving that property, there was no indication that the urban county government was a party to litigation concerning the property involved, had been threatened by the Commonwealth with a law suit, or that litigation involving the urban county government and the specific property involved was more than a remote possibility; thus, the urban county government was precluded from relying upon subsections (1)(b) and (c) of this section's litigation exception, to close an otherwise public meeting. OAG 95-OMD-57, 1995 Ky. AG LEXIS 44.

Where the stated purpose of a Revenue Commission meeting was to discuss the matter of whether or not a Revenue Commission employee would be retained, this subject matter was a proper subject for a closed session under KRS 61.810(1)(f); however, the closed session had to be limited to whether or not the Revenue Commission employee would be terminated, and matters such as the development or selection of a search procedure to fill the position were not proper subjects for a closed session, regardless of whether or not the Revenue Commission had complied with KRS 61.815(1)(d), by publicly announcing the matters to be discussed during the closed session. OAG 95-OMD-93, 1995 Ky. AG LEXIS 56.

The Open Meetings Act gives a municipal employee the right to an open and public hearing if the hearing has been scheduled by the municipal authorities concerning a termination proceeding and dismissal, but the Open Meetings Act does not require notice and a hearing if the city merely announces that it is going into a closed session to discuss the possible dismissal of a particular employee. OAG 95-OMD-93, 1995 Ky. AG LEXIS 56.

A quorum of the members of a public agency may attend a professional or social event, such as a convention, without

violating the Open Meetings Act. OAG 95-OMD-136, 1995 Ky. AG LEXIS 80.

Attendance by a quorum of the members of the urban county council at a convention or conference organized by someone other than the council does not in and of itself constitute a meeting of the council within the meaning of this section. Council members attending such a convention or meeting are not authorized to take action affecting their city nor are they permitted to discuss matters directly affecting their city. OAG 95-OMD-136, 1995 Ky. AG LEXIS 80.

Where a complaint was filed as to the legality of the Workers' Compensation Advisory Council adjourning into private caucuses meeting separately as business and labor interests, there could not be a definitive finding made by the Office of the Attorney General because the evidence was insufficient as to whether there was contemplated a "series of less than quorum meetings" or whether the purpose of these less than quorum gatherings was to avoid the requirements of the Open Meetings Act. If there were a series of less than quorum meetings and if those meetings were conducted for the purpose of avoiding the requirements of the Open Meetings Act, the Open Meetings Act would be violated. OAG 96-OMD-261, 1996 Ky. AG LEXIS 89.

When university board of regents was considering an appointment or several appointments to a presidential search committee the appointees were not employees of the university or the board but were persons filling positions on an entity created by the board and their temporary existence would end when their task was complete; the board was not appointing, at that time, a university employee, the university president and thus the board incorrectly relied on subsection (1)(f) of this section to close an otherwise public meeting to discuss the appointment of persons to the search committee. OAG 97-OMD-80.

Public agency violated the Open Meetings Act when it invoked the exceptions set forth in subsection (1)(f) of this section and gave as its reasons the intent to discuss individual personnel matters or specific employee matters. Since the only personnel matters which can be discussed in a closed session pertain to the possible appointment, discipline, or dismissal of personnel of that particular agency, the public agency should have indicated which of those particular authorized exceptions it was utilizing and why the session was being closed (which frequently involves privacy considerations). OAG 97-OMD-110, 1997 Ky. AG LEXIS 45.

Mayor and city council violated Open Meetings Act, specifically subsection (1)(f) of this section, when stated reason for going into open session was 'discussion of personnel'; since the only personnel matters which can be discussed in a closed session pertain to the possible appointment, discipline, or dismissal of personnel of that particular agency, the public agency should have indicated which of those particular exceptions it was utilizing and why the session was being closed. OAG 97-OMD-124, 1997 Ky. AG LEXIS 149.

A public agency's authority to go into closed session relative to personnel matters is severely restricted. General personnel matters cannot be discussed in a closed session; the only personnel matters which can be discussed in a closed session by a public agency are those which might lead to the appointment, discipline, or dismissal of personnel of that particular agency. OAG 97-OMD-124, 1997 Ky. AG LEXIS 149.

The Housing Appeals Committee of Eastern Kentucky University is a public agency subject to the terms and provisions of the Open Meetings Act and its meetings are open to the public unless it can invoke an exception to open and public meetings; pursuant to subsection (1)(k) of this section and 20 USCS, § 1232g, it may properly go into closed session to discuss student housing appeals. OAG 97-OMD-139, 1997 Ky. AG LEXIS 68.

While the Housing Appeals Committee of Eastern Kentucky University, a public agency, may properly go into closed session to discuss student housing appeals pursuant to subsection (1)(k) of this section and is required to do so under 20 USCS, § 1232g, an eligible student, that is a student who is 18 or is attending an institution of postsecondary education, may waive his privacy rights under the Federal Educational Rights and Privacy Act by written consent, thus permitting public discussion of his housing appeal; however, if such appeal raises housing issues or evidence concerning other students, the Housing Committee would be bound by 20 USCS, § 1232g(b)(1) and thus required to conduct the hearing in closed session. OAG 97-OMD-139, 1997 Ky. AG LEXIS 68.

In general, meetings of a quorum of the members of the Financial Aid Committee at which public business is discussed or at which action is taken must be open to the public at all times; however, the committee is authorized to go into closed session to discuss student financial aid appeals pursuant to subsection (1)(k) and 20 USCS § 1232, which restricts discussion of personally identifiable information in education records in a public meeting without a parent or eligible student's prior written consent. OAG 98-OMD-142, 1998 Ky. AG LEXIS 120.

A county regional airport board properly conducted an executive session to discuss proposed or pending litigation where, prior to the meeting, the board had received written notice from a group of pilots demanding reconsideration of parts of the fueling policy adopted by the board and giving notice of areas of the policy which would be contested in the absence of action on the issue. OAG 99-OMD-6, 1999 Ky. AG LEXIS 10.

An agency complies with the requirements of KRS 61.815(1)(a) and KRS 61.810(1)(f) by announcing, in open session, that pursuant to KRS 61.810(1)(f) it is going into closed session to discuss either the appointment, the discipline, or the dismissal of an employee or employees of the agency, indicating which of these particular actions is contemplated; however, the agency is not required to identify, by name, the employee or employees who will be discussed, nor is it restricted to a discussion of one individual employee at a time. OAG 99-OMD-49, 1999 Ky. AG LEXIS 45.

A planning and zoning task force violated the Open Meetings Act when it went into closed session to discuss personnel issues as the task force had no authority with regard to personnel issues. OAG 99-OMD-94, 1999 Ky. AG LEXIS 87.

Although it did not comply with the procedural requirements of the Open Meetings Act in responding to a complaint concerning a closed session, and although it initially relied on the wrong exceptions, a city council subsequently justified its actions on the basis of subsection (1)(g) where the closed session pertained to a sale and leaseback of real property. OAG 99-OMD-104, 1999 Ky. AG LEXIS 141.

A county school system violated the Open Meetings Act when it failed to give notice of a meeting of its local facility planning committee. OAG 99-OMD-117, 1999 Ky. AG LEXIS 142.

A closed session of a planning and zoning commission with regard to a controversial conditional use permit was not justified by the pending litigation exception, notwithstanding a statement that "this matter has been in litigation and inevitably will end up in litigation again." OAG 99-OMD-146, 1999 Ky. AG LEXIS 143.

A county fiscal court violated the Open Meetings Act when it went into closed session at a regular meeting in order to discuss the payment of an employee's claim for reimbursement of expenses as such did not constitute a personnel matter. OAG 99-OMD-221, 1999 Ky. AG LEXIS 214.

A county fiscal court violated the statute when a judge conducted a series of separate meetings with other individual members of the court to discuss newly received information regarding a jail site, even if no collective decision was reached through these meetings, as it was apparent that the matters discussed in the meetings influenced the court's ultimate

decision in some manner and were, therefore, the public's business. OAG 00-OMD-63, 2000 Ky. AG LEXIS 5.

A city commission properly relied on subsection (1)(b) in conducting a closed session discussion of issues relating to the purchase of a building. OAG 00-OMD-64, 2000 Ky. AG LEXIS 6.

A county fiscal court violated the Open Meetings Act at a special meeting when it went into closed session to discuss personnel matters where the court's discussion in closed session apparently consisted of recommendations relating to a new job description and the hiring of a part-time employee, rather than the qualifications of an individual applicant, and the pros and cons of hiring him or her. OAG 00-OMD-86, 2000 Ky. AG LEXIS 106.

To the extent that a closed session discussion of a city commission went beyond a discussion of the personnel discipline issue, it was not authorized under subsection (1)(f) and constituted a violation of the Open Meetings Act. OAG 00-OMD-113, 2000 Ky. AG LEXIS 118.

A city council violated the Open Meetings Act when a quorum of its members conducted an informal discussion prior to a regular meeting while waiting for the courtroom in which the regular meeting was to be held to become available. OAG 00-OMD-114, 2000 Ky. AG LEXIS 119.

A city council properly relied on subsection (1)(b) in conducting a closed session discussion of issues relating to the purchase of the real estate that were likely to affect its value, and insufficient evidence existed to support the allegation that action was taken in the course of the closed session discussion. OAG 00-OMD-146, 2000 Ky. AG LEXIS 148.

A city council did not violate the statute when a quorum of the members met at a local restaurant following a regular meeting where those present stated under oath that they did not discuss public business. OAG 00-OMD-147, 2000 Ky. AG LEXIS 157.

A county fiscal court violated the Open Meetings Act by failing to establish that discussions in an executive session were authorized under the "pending litigation" exception and by failing to offer sufficient justification for the admission of a single media representative and the exclusion of all others, as well as the general public. OAG 00-OMD-219, 2000 Ky. AG LEXIS 220.

An inquiry by a board of ethics charged with enforcement of the code into allegations of code violations may be conducted in closed session if authorized under one of the exceptions to the general rule of openness for the public good under KRS 61.810(l)(f); such a closed session must conform in all particulars with the requirements of KRS 61.815(l)(a) through (d), including the requirement that no final action may be taken during the closed session. OAG 01-OMD-18, 2001 Ky. AG LEXIS 254.

Since a meeting takes place within the meaning of the Open Meetings Act if a quorum is present and public business is discussed or action is taken, the January 15 meeting of five (5) of the members of the fiscal court and the county judge to discuss the progress of renovations on the old post office building constituted a violation KRS 61.810(1) inasmuch as it was conducted without proper notice to the public. OAG 01-OMD-30, 2001 Ky. AG LEXIS 150.

A lawsuit need not be pending by or against a public agency before it can properly rely on KRS 61.810(1)(c) so long as there have been "direct suggestions of litigation conditioned on the occurrence or nonoccurrence of a specific event." Since it appears that the Planning Commission will be named as a party in the pending legal action, and/or will initiate legal action against the developer, if settlement is not reached, KRS 61.810(1)(c) authorized the closed session, and specific and complete notification of the topic to be discussed was given in open session. OAG 01-OMD-41, 2001 Ky. AG LEXIS 255.

The Hopkins County Fiscal Court violated the Open Meetings Act when it went into closed session pursuant to KRS 61.810(1)(b) and (g) at its February 14, 2001, special meeting "to discuss cost estimates for remodeling the old Post Office building" with an architect; the fiscal court's reliance on the cited exceptions was misplaced. OAG 01-OMD-45, 2001 Ky. AG LEXIS 280.

The Taylor County Fiscal Court violated the Open Meetings Act by engaging in whispered discussions of the public's business at its May 15 public meeting. Because a quorum of the members were present, and public business was being discussed, the meeting was required to the "open to the public at all times . . .," and not interrupted by whispered discussions to which the public was effectively denied access. OAG 01-OMD-110, 2001 Ky. AG LEXIS 31.

Because the Meade County Fiscal Court is not named as a party defendant in the tort action against a deputy sheriff, it is therefore not entitled to invoke KRS 61.810(1)(c) for the purpose of conducting a closed session discussion of the case, regardless of whether that discussion focuses on appellate procedures, reasons for the verdict against the deputy sheriff, or avoidance of future liability. OAG 01-OMD-130, 2001 Ky. AG LEXIS 151.

The Martin County Fiscal Court violated the Open Meetings Act at its August 9, 2001, special meeting when it went into executive session to discuss the issue of seeking legal advice regarding a suit filed against it, since, although litigation has been initiated against the fiscal court, the closed session discussion was not "of proposed or pending litigation," but of the need to hire legal counsel, and that even if the topic discussed fell within the parameters of KRS 61.810(1)(c), the presence of persons who were not members of the public agency in the closed session was inconsistent with the fiscal court's invocation of the exemption. OAG 01-OMD-152, 2001 Ky. AG LEXIS 32.

Where the nonmenber (the State Manager) was invited into the closed session "to provide his perspective on pending litigation especially the case on which authority to settle was granted," since it was the State Manager who gathered all evidence available to the school district in defense of that civil action, and the State Manager who had the right pursuant to statute and written agreement with the school district to exercise veto power over actions of the board of education, his presence in the Floyd County Board of Education's closed session was justified. OAG 01-OMD-181, 2001 Ky. AG LEXIS 152.

KRS 61.810(1)(g) applies to meetings between a public agency and a representative of a business entity, or a meeting of the agency to discuss a specific proposal, but in either case, only if open discussion could jeopardize the siting, retention, expansion, or upgrading of the business. Since neither of the conditions for invocation of this exemption were met when the Governor's Council of Economic Advisors retired to executive session to discuss the "potential plans" of the companies they represent based on current economic conditions, the Council's reliance on KRS 61.810(1)(g) was misplaced, and it violated the Open Meetings Act when it went into closed session at its November 6 meeting. OAG 01-OMD-227, 2001 Ky. AG LEXIS 165.

Although the applicants for the vacant instructor positions were already under contract with the Board of Education for their normal teaching jobs, the vacant positions were separate from the positions they held, no offer of employment had been made to any of the applicants to fill the vacant positions, and no contracts had been executed relative to the vacant positions. The closed session discussion therefore focused not on securing the employees continued employment by renegotiating the terms and conditions of their existing contracts, but on the comparative qualifications of the competing applicants for the purpose of selecting the best qualified to fill the vacant positions. This is, and has long been, recognized as an appropriate subject for closed session discussion under KS 61.810(1)(f). OAG 02-OMD-21, 2002 Ky. AG LEXIS 265.

Where the Commission took the occasion of the closed session to permit the employee the opportunity to address the Commission members on the topic of her termination, if the employee had already been terminated by unilateral action of the Mayor under the authority vested in him by city ordinance, the closed session discussion could not have led to her dismissal, as required by KRS 61.810(1)(f), and was therefore improper. OAG 02-OMD-153, 2002 Ky. AG LEXIS 239.

Since KRS 61.810(2) prohibits all less than quorum meetings where the members attending one or more of the meetings collectively constitute at least a quorum, and not just those which culminate in a collective decision, the series of less than quorum discussions between the Mayor and the Commission members was a discussion of public business, a discussion of the various alternatives to a given issue about which the Commission had the option to take action, and not merely an update from the Mayor. OAG 02-OMD-153, 2002 Ky. AG LEXIS 239.

To the extent that the purchase of the real property could not be consummated until the offer on the table was approved by the council, acquisition of the property was prospective, or in the future, when the council conducted its May 16 closed session, pursuant to KRS 61.810(1)(b), to deliberate its various options. OAG 02-OMD-166, 2002 Ky. AG LEXIS 36.

Although the board could discuss the value assigned to particular properties in closed session under KRS 61.810(1)(b), with respect to the 48%-28% formula, however, the board adopted a general policy relating to all PDR participants and the public is completely in the dark as to why the policy was adopted. To the extent that the Board's closed session discussions focused on the formula, as opposed to the formula applied to a particular property, it was improper. OAG 02-ORD-86, 2002 Ky. AG LEXIS 233.

Because the record is devoid of evidence that publicity was likely to affect the value of the ten (10) acres of real property owned by the Authority that are adjacent to the industrial park, and because confidentiality is only permissible when the public interest will be directly affected financially, the Authority's reliance on KRS 61.810(1)(b) in holding a closed session was misplaced. OAG 03-OMD-47, 2003 Ky. AG LEXIS 13.

Since the primary focus of the meeting was which, if any, of the three (3) alternate proposals submitted by CHP to "change the member relationship between CHP and ODCH, or have either CHP or ODCH acquire the member interest of the other," was most attractive, the dismissal of an individual employee was not the focus of the closed session discussion but was instead an unavoidable consequence which would flow from selection of two (2) of the three (3) proposals, and the employee's reputational interest was implicated, if at all, only indirectly. Therefore, ODCH's liberal construction of KRS 61.810(1)(f) in this context is not supported by the language of the exception. OAG 03-OMD-89, 2003 Ky. AG LEXIS 270.

Standing alone, a single telephone conversation between two members of a public agency cannot constitute a violation of the Open Meetings Act. Where, however, that telephonic meeting follows an earlier less than quorum meeting of the members of a public agency, and the members attending one or more of the meetings collectively constitute at least a quorum, that series of less than quorum meetings constitutes a violation of KRS 61.810(2) if the meetings are held for the purpose of avoiding the requirements of KRS 61.810(1). OAG 03-OMD-92, 2003 Ky. AG LEXIS 106.

Because discussions relating to the propriety of posting a position constitute general personnel matters, and because the Board had no authority to resolve that question, or questions relating to relieving an employee of extra duties, and because relieving an employee of extra duties cannot be equated with "discipline or dismissal," the Board's reliance on KRS 61.810(1)(f) was misplaced. OAG 03-OMD-148, 2003 Ky. AG LEXIS 271.

The Commission violated KRS 61.810(1) in that access to the meeting was temporarily blocked, albeit unintentionally, when the doors to the building were locked while the meeting was in session. OAG 03-OMD-169, 2003 Ky. AG LEXIS 182.

The private discussion between an attorney and a quorum of the members of the Spencer County Board of Education, during which he instructed the board members on the formal and procedural requirements of a hearing designed to provide due process to an individual whose employment status was at issue, constituted a violation of KRS 61.810(1). OAG 03-OMD-178, 2003 Ky. AG LEXIS 199.

The record supports the City's position that it was warranted in conducting a closed session to engage in mediation discussion of the possible settlement of the then pending litigation and thus, the mediation discussion fell squarely within the parameters of KRS 61.810(1)(c). OAG 03-OMD-234, 2003 Ky. AG LEXIS 218.

The protection afforded by KRS 61.810(1)(c) is broad enough to extend to closed session briefings by agency counsel on the strengths and weaknesses of a case, actual or threatened, based on legal precedent and in light of the status of current litigation. The fact that the actual or threatened litigation relates to an ordinance does not deprive the agency of the right to shield its litigation strategy from public scrutiny. OAG 04-OMD-39, 2004 Ky. AG LEXIS 254.

The record is devoid of evidence that a quorum of the members of the Smaller Learning Communities Committee met in advance of the scheduled meeting in contravention of KRS 61.810(1). Although public business, namely the freshman transition strategy, was discussed by four members of the twenty-four member committee, and a proposal formulated, no final decisions or commitments were made prior to consideration of the proposal by the full committee at its regularly scheduled meeting. OAG 04-OMD-73, 2004 Ky. AG LEXIS 255.

The record on appeal does not support the city's position that public discussion is likely to affect the value of the specific piece of property because the city already executed an option on the property and the price of that property has been agreed upon and will culminate in a sale, or no sale, based on studies which are underway. Moreover, the language of KRS 61.810(1)(b) does not support the city's position relative to the purchase or condemnation of another property; these alternate sites do not qualify as "a specific piece of property" within the meaning of KRS 61.810(1)(b). OAG 04-OMD-127, 2004 Ky. AG LEXIS 39.

Citation to the specific exception authorizing the closed session is not simply "the best practice," so that the failure to do so is a mere "technical" violation, but it is instead a statutory requirement along with the requirement that the agency describe the general nature of the business to be discussed. OAG 04-OMD-179, 2004 Ky. AG LEXIS 281.

Because the Judge-Executive was not bringing a discipline issue to the court regarding the director, nor does the evidence of record indicate that the Fiscal Court was engaged in a discussion regarding the performance evaluation process as applied to the director which might have led to the discipline or dismissal of the director as authorized by KRS 61.810(1)(f), the Fiscal Court expanded the scope of the personnel exception and improperly concealed matters otherwise appropriate to the view of the public. OAG 04-OMD-225, 2004 Ky. AG LEXIS 261.

KRS 61.810(1)(j) permits the Board of Medical Licensure to go into closed session to consider and deliberate a grievance against a physician, including the Governor. Such a closed session must conform in all particulars with the requirements of KRS 61.815(1)(a) through (d), including the requirement that no final action may be taken during the closed session. OAG 05-OMD-17, 2005 Ky. AG LEXIS 141.

The Mayor's telephonic discussions with individual City Council members cannot be properly characterized as "infor-

mational," "educational," or "advisory." By voting on the loan guarantee issue at a regular meeting, the City Council exercised its option to take action on that issue, which, perforce, must be characterized as public business. The series of less than quorum private discussions which preceded the vote therefore fell within the zone of conduct prohibited by KRS 61.810(2). OAG 05-OMD-26, 2005 Ky. AG LEXIS 140.

Because publicity "would be likely to affect" the value of the specific piece or pieces of property to be acquired or sold, and there is not sufficient evidence to support the allegation that a vote on the purchase proposal submitted by the Public Health Board was the sole purpose for conducting the closed session, the Fiscal Court properly relied upon KRS 61.810(1)(b). OAG 05-OMD-32, 2005 Ky. AG LEXIS 71.

Discussions concerning the course of action to take with the entire fire department do not qualify under the exception KRS 61.810(1)(f) because they do not constitute discussions which might lead to the appointment, discipline, or dismissal of an individual employee. Instead, such discussions relate to general personnel matters, and KRS 61.810(1)(f) expressly prohibits discussion of general personnel matters in secret. ccordingly, the City violated the Open Meetings Act in going into closed session to discuss the fire department. OAG 05-OMD-82, 2005 Ky. AG LEXIS 33.

By its express terms, KRS 61.810(1)(f) authorizes discussions or hearings "which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student." Based on the common and approved meaning of the term removal, removal is the functional equivalent of dismissal among those specific topics encompassed by the literal language of KRS 61.810(1)(f). Because the individual qualifies as a "member" of the Student Government Association, whose removal or "dismissal" was being contemplated, the SGA properly relied upon KRS 61.810(1)(f) in holding the closed session. OAG 05-OMD-86, 2005 Ky. AG LEXIS 145.

Because the mere fact that a quorum of members of a public agency are in the same place at the same time, without more, is not sufficient to sustain a claim of a violation of the Act, there is no violation when the members lingered after properly adjourning the meeting to engage in small talk and private conversations. OAG 05-OMD-96, 2005 Ky. AG LEXIS 139.

Under a strict construction of the exemption and in light of its underlying policy, KRS 61.810(1)(g) does not authorize closed session discussions relating to the selection of a consultant to provide consulting services to a public agency. OAG 05-OMD-148, 2005 Ky. AG LEXIS 127.

Unless the Personnel Board is deliberating a decision on a particular case involving an individual, within the meaning of KRS 61.810(1)(j), or discussing a matter which is otherwise exempt under one or more of the twelve remaining exceptions, its meetings are required to be open to the public under the provisions of KRS 18A.070(23) and the Open Meetings Act. OAG 05-OMD-159, 2005 Ky. AG LEXIS 165.

The Governor's Office of Agricultural Policy did not violate the Open Meetings Act by conducting unpublicized roundtable discussions across the state with members of county agricultural development councils and county extension agents to discuss the operations and future of the Agricultural Development Fund. Although the matters discussed during these discussions were clearly of public interest, since a quorum of the members of GOAP or its governing body was not present at any of the discussions, KRS 61.810(1) did not require that the discussions be open to the public. OAG 05-OMD-164, 2005 Ky. AG LEXIS 73.

Although employment status was tangentially related to the subject of the closed session discussion, the primary focus of the discussion was the hiring of a bookkeeping service. The elimination of the employee's position was the unavoidable consequence that proceeded from the hiring of a bookkeeping service. Inasmuch as there is no exception in the existing Open Meetings Act for discussions relating to the hiring of a bookkeeping service, or, for that matter, the elimination of a current position, the Board's reliance on KRS 61.810(1)(f) was misplaced. OAG 06-OMD-257, 2006 Ky. AG LEXIS 302.

The Preliminary Inquiry Board violated the Open Meetings Act in relying upon KRS 61.810(1)(f) to conduct the closed session to discuss discipline of a licensee since this exception does not encompass licensees. Additionally, although the Board was operating as a "quasi-judicial" body engaged in deliberations regarding "individual adjudications," the presence of "the person involved, his representatives," and/or an individual "not a member of the agency's governing body or staff" rendered KRS 61.810(1)(j) inapplicable. OAG 06-OMD-262, 2006 Ky. AG LEXIS 11.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

Bales and Hamilton, Jr., Workplace Investigations in Kentucky, 27 N. Ky. L. Rev. 201 (2000).

2012 Kentucky Survey Issue: Article: Candid Kentucky: The Commonwealth's Devotion to an Open Government, 39 N. Ky. L. Rev. 45 (2012).

61.815. Requirements for conducting closed sessions.

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;

(b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;

(c) No final action may be taken at a closed session; and

(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

(2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), (l), and (m) of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

History.

Enact. Acts 1974, ch. 377, § 3; 1992, ch. 162, § 4, effective July 14, 1992; 2005, ch. 93, § 2, effective March 16, 2005.

NOTES TO DECISIONS

Analysis

1. Notice.
2. Action Void.
3. Final Actions.
4. Action Voidable.
5. Personnel Matters.

1. Notice.

This section instructs that notice of a closed session must come prior to every such session in the regular open meeting and must supply the general nature of the business to be

considered and the reason for the secrecy. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

In order to fully comply with KRS 61.810(2) and subsection (1) of this section notice of the county board of education of the business intended to be discussed in a closed session should contain information that the board of education intends to conduct an executive session for the purpose of discussing the sale or acquisition of real property and that the reason for privacy is due to the fact that publicity at the deliberation stage might be likely to affect the value instead of merely saying that the business to be discussed was "property and negotiations." Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

Notice given in open meeting preparatory to closed session that the closed meeting would be held to discuss "property and negotiations" was not sufficient compliance with the requirement of notice of subsection (1) of this section for the term "property" fails to reveal whether it is real or personal, for purchase or for sale or whether publicity would affect its value. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977).

Injunction was proper under KRS 61.848 — even without a showing that petitioners had no adequate remedy at law — when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to this section, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921, 1997 Ky. LEXIS 145 (Ky. 1997).

2. Action Void.

Where disciplinary action was brought against the chief of police and eight officers, pursuant to KRS 95.450, at a session closed to the public despite the accuseds' request for an open hearing pursuant to subsection (6) (now (1)(f)) of KRS 61.810, and with neither a motion for a closed meeting nor announcement of it at an open meeting, in violation of this section, the action taken must be voided and a new hearing held. Reed v. Richmond, 582 S.W.2d 651, 1979 Ky. App. LEXIS 417 (Ky. Ct. App. 1979).

Trial court properly exercised it authority to void the action of the school board directing legal counsel to pursue litigation because the board did not substantially comply with the Open Meetings Act. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

3. Final Actions.

By conducting its final deliberations in a closed session without substantial compliance with this section, the State Board of Accountancy rendered its action in censuring an accountant voidable under KRS 61.830 (now repealed); however, since the accountant raised no objection and demonstrated no prejudice as a result of the Board's action, the action was not void. Stinson v. State Bd. of Accountancy, 625 S.W.2d 589, 1981 Ky. App. LEXIS 304 (Ky. Ct. App. 1981).

Where a planning commission explained it was going into closed session, the minutes reflected the discussion concerning litigation, motions to authorize the litigation were made in open meetings, and there was no record of anyone requesting to address the commission or voice concern about the commission's actions, there was no evidence that the owners were prejudiced by a planning commission's failure to state a specific provision of KRS 61.810(1)(c), 61.815(1) when it went into closed session. Chandler v. Bullitt County Joint Planning Comm'n, 125 S.W.3d 851, 2002 Ky. App. LEXIS 2358 (Ky. Ct. App. 2002).

Litigation exception to open public meetings was not applicable to the school board's decision directing legal counsel to pursue a challenge to the petition to recall the board's nickel tax because it was a "final action" of the board to authorize litigation. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

4. Action Voidable.

Pursuant to KRS 61.848, a consulting contract that had been improperly approved following a closed session in a meeting of a county board of education, the attempted ratification of which was an action taken without substantial compliance with KRS 61.815, was voidable by the circuit court. As such, the contractor could retain amounts already paid for services under the contract but was not entitled to any additional payments. Carter v. Smith, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

5. Personnel Matters.

No substantial violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred when the board of a non-profit corporation established as a joint city/county effort for industrial development took final action and each of the board's members voted regarding an employee's employment contract in open session. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

No substantial violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred when the board of a non-profit corporation established as a joint city/county effort for industrial development described the topic of the board's closed session during the open session of the board's special meeting when there was discussion about the renewal of an employee's contract. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

Cited:

Lexington Herald-Leader Co. v. University of Kentucky Presidential Search Committee, 732 S.W.2d 884, 1987 Ky. LEXIS 227 (Ky. 1987).

OPINIONS OF ATTORNEY GENERAL.

Meetings of the city board of commissioners dealing with the granting of individual salary increases to city employees must be open to the public since the subject matter of the meeting does not come within an exception of either this section or KRS 61.810. OAG 75-340.

In view of this section, closed hearings of a city civil service board under KRS 90.360 or 95.450 require no public notice. OAG 75-354.

A properly called special meeting may be conducted in closed session if the subject matter to be discussed falls within one of the exceptions to open meetings provided in KRS 61.810 and if the motion for closed session is made and carried by a majority vote in open public session. OAG 75-709.

Since public agency discussions concerning litigation are expressly exempted from the requirements of the Open Meetings Law under subsection (3) (now (1)(c)) of KRS 61.810, the prohibition of subsection (3) (now (1)(c)) of this section does not apply to those discussions. OAG 76-643.

A county school board may go into closed session for the purpose of interviewing candidates it is considering to fill a vacancy on the school board. OAG 77-674, 1977 Ky. AG LEXIS 113.

Where the purpose of a school board meeting in a discussion or hearing which might lead to the disciplining of a student, the board is not required to give notice in a regular meeting, or

to make a motion in open session to conduct a closed session, or to take final action in an open session. OAG 77-674, 1977 Ky. AG LEXIS 113.

Conditions precedent to conducting a valid closed session are: notice of a closed session given at a regular open meeting, majority vote to hold the closed session, no final action taken at the closed session, and subject matter limited to that announced at the public session. OAG 77-758, 1977 Ky. AG LEXIS 40.

The minutes of the closed session should be made available to the public as soon as practicable and when the revelation of the minutes will not defeat the purpose for the holding of the closed session. OAG 78-227, 1978 Ky. AG LEXIS 497.

The procedure for closed sessions does not have to be followed when the subject of the meeting is pending litigation against or on behalf of a public agency and it does not make any difference what the subject of the litigation is. OAG 78-227, 1978 Ky. AG LEXIS 497.

It is sufficient under subsection (1) of this section for a governing body going into a closed session to state that the reason for the closed session is "litigation." OAG 80-248, 1980 Ky. AG LEXIS 410.

The general rule to be followed is that in every case where an agency goes into closed session because of a subject matter exemption, except in the case involving the disciplining of a student, the procedures of this section must be observed. OAG 80-248, 1980 Ky. AG LEXIS 410.

The legislative intent of this section is that agencies, per se, which are exempt from complying with the Open Meetings Law, such as the Parole Board, juries, the Governor's cabinet, committees of the general assembly and other agencies exempted by statute or by the Constitution do not have to go through the formalities set forth in this section, and that agencies which are not exempt per se but which go in closed session to deal with an excepted subject matter must observe those formalities. OAG 80-248, 1980 Ky. AG LEXIS 410.

Where a disciplinary hearing about a particular student in a public school is held, the hearing is exempt from the formalities of going into a closed session under subdivision (6) (now (1)(f)) of KRS 61.810 or the necessity of taking final action in an open session according to the procedure set forth in this section. OAG 81-135, 1981 Ky. AG LEXIS 298.

The minutes of the State Board of Education must be recorded and open to public inspection pursuant to KRS 61.835, but they need show only the formal action taken and the votes cast by the members; the minutes of a closed session should show that the statutory formality of this section was observed before going into a closed session and should indicate the general subject of the closed session but they need not show information which would defeat the purpose of holding a closed session on the authorized subject matter. OAG 81-387, 1981 Ky. AG LEXIS 59.

Where a city commission wishes to hold a closed session to discuss an employee's performance, all that is required is that the motion to go into closed session should state that the purpose of the closed session will be to discuss a personnel matter involving a particular employee; if any negative action is taken against the employee in the closed session without giving him the option of an open hearing, he will be entitled to an open hearing later if he so desires. OAG 81-413, 1981 Ky. AG LEXIS 21.

A task force formed by a city commission to study the problems of the city's community development department could not exclude the press from its meetings without first observing the formalities of this section. OAG 82-56, 1982 Ky. AG LEXIS 583.

The Open Meetings Law permits the holding of a meeting by telephone conference call by the State Board of Education on the subject of the expulsion of a student of one (1) of the schools of which the State Board has the direct oversight in disciplinary matters and the news media should be notified, at least 24 hours in advance, that the meeting by conference telephone is to be held on disciplinary matters and will be closed to the public; however, this opinion is confined to the following circumstances: (1) the State Board of Education meets regularly only every two months and the membership of the Board may reside anywhere within the boundaries of the commonwealth; (2) by regulation there has been established an appeal procedure utilizing hearing officers to review disciplinary cases where expulsion may be ordered; (3) the hearing officer shall hear proof, oral arguments and/or may request written briefs and shall make findings of fact, conclusions of law and recommendations to the State Board, and the State Board is required to make a final determination of the case within thirty (30) days; (4) before the appeal procedure is begun the student has been provided a due process hearing at the local level; (5) the role of the State Board of Education on expulsion appeals is to review the record made up under the presiding of the hearing officer and to approve or disapprove the hearing officer's recommendation. OAG 82-179, 1982 Ky. AG LEXIS 459.

The State Board of Education may meet in closed session to act on a recommendation of a hearing officer on the expulsion of a student without any preliminary action in an open meeting and may take final action on the matter in a closed session. OAG 82-179, 1982 Ky. AG LEXIS 459.

An agency holding a properly conducted closed session may take a straw vote by secret ballot for the purpose of reaching a general consensus among the members, as the purpose of a closed session is to allow free discussion by the members and there are no statutory restrictions on how the discussion may be conducted. But if final action is finally taken, it must be taken in open session (with certain exceptions) and the vote of each member, or his abstention, must be recorded in the minues. OAG 82-341, 1982 Ky. AG LEXIS 294.

The Personnel Board may go into closed session at the time of its deliberation on recommended orders submitted by hearing officers and/or board members, or to deliberate after it has received evidence in an open hearing, by following the procedure set forth in this section. The Personnel Board is authorized to conduct such closed sessions for the purpose of deliberation under KRS 61.810(6) (now (1)(f)) which exempts from the open meetings requirement discussion or hearings which might lead to the appointment, discipline or dismissal of an individual employee; however, no final action by vote may be taken on such matter in the closed session. OAG 83-20, 1983 Ky. AG LEXIS 476.

It was proper for the fiscal court to decide in its closed session not to sell certain property but, in order to be in technical compliance with the Open Meetings Law, it should have taken a vote on the question in an open session after the closed session since the action was "final action." OAG 83-61, 1983 Ky. AG LEXIS 434.

Under KRS 61.810, whenever a quorum of the members of any public agency meet and discuss any public business, the meeting is a public meeting is defined in the Open Meetings Law, KRS 61.805 to 61.850; thus, where the entire county board of education called itself a "committee" and added several other people to the "committee" before conducting a private session with representatives of the county education association, the school board was required to comply with the Open Meetings Law. OAG 83-102, 1983 Ky. AG LEXIS 395.

A newspaper reporter has the same standing as any other citizen and a reporter cannot be barred from a meeting unless all other nonparticipants in the meeting are also barred. OAG 83-102, 1983 Ky. AG LEXIS 395.

The minutes of a public agency should show that the Open Meetings Law was complied with when a closed session was held. OAG 83-102, 1983 Ky. AG LEXIS 395.

If an electric and water plant board granted a salary increase to its general manager and a utility right-of-way at a closed meeting, those actions were violative of the Open

Meetings Law as they constitute final board action; any final action must be passed in open meeting after the closed session. OAG 83-377, 1983 Ky. AG LEXIS 126.

Where an electric and water plant board called for a closed session in order to discuss "personnel matters," it was improper for the board to discuss a utility right-of-way at the closed session. OAG 83-377, 1983 Ky. AG LEXIS 126.

An electric and water plant board's stated proposal to discuss "personnel matters" at a closed session was a sufficient notice and reason given under subdivision (1) of this section. OAG 83-377, 1983 Ky. AG LEXIS 126.

Before going into closed session notice must be given by the board of education in a regular open meeting of the general nature of the business to be discussed in the closed session and a motion must be made and carried by majority vote to go into closed session. It is sufficient if the notice and motion to go into closed session simply states that the purpose of the session is to discuss personnel matters affecting certain individuals; the names of the individuals do not have to be stated in the notice and motion. OAG 83-379, 1983 Ky. AG LEXIS 116.

Where a cable authority announced at an open meeting that it was going into closed session to discuss possible litigation brought against the authority by a cable service company over the regulation of cable rates, the nature of the closed session was proper and the notice of the session was sufficient; also, the authority properly limited discussion during the closed session to the topic of litigation with the cable company. OAG 84-240, 1984 Ky. AG LEXIS 137.

Where the agenda for the special meeting listed as the only item a matter pertaining to a change or an addition to contracts, the city's committee violated the Open Meetings Act when it went into a closed session during that special meeting to discuss matters involving litigation. OAG 94-OMD-78, 1994 Ky. AG LEXIS 59.

A city may properly invoke KRS 61.810(1)(f) to go into a closed or executive session to discuss the possible dismissal of a particular employee. That specific statute does not require that the affected employee be given notice of the discussion or an opportunity to attend that discussion. However, city was required to announce in the open and public portion of its meeting that it was invoking the provisions of KRS 61.810(1)(f) to go into a closed session to discuss the possible termination of a particular municipal employee. OAG 94-OMD-122, 1994 Ky. AG LEXIS 96.

Subdivision (1)(c) of this section specifically states that no final action may be taken in a closed session; thus, city commission, after discussing the matter of the termination of municipal employee in a closed session, was required to go back into an open and public session and at that time make its decision to terminate the employment of municipal employee. OAG 94-OMD-122, 1994 Ky. AG LEXIS 96.

Where the open and public session of a county's board of education meeting began in the school library, the open and public session should have resumed in the school library following a tour of the school, and the gathering of board members in the home economics classroom, where the closed meeting was to be held later, was in violation of this section, which as applied, would require the board members to have returned to the designated site for the open and public meeting, to have made a motion for a closed session and vote, before adjourning to the site of the closed or executive session of the otherwise public meeting. OAG 95-OMD-92, 1995 Ky. AG LEXIS 58.

When the notice, motion, and vote relative to a closed session of a county's board of education meeting were given, made and taken at a site which did not constitute the forum for the open and public board meeting, the members of the board of education violated the Open Meetings Act. OAG 95-OMD-92, 1995 Ky. AG LEXIS 58.

Where the stated purpose of a Revenue Commission meeting was to discuss the matter of whether or not a Revenue Commission employee would be retained, this subject matter was a proper subject for a closed session under KRS 61.810(1)(f); however, the closed session had to be limited to whether or not the Revenue Commission employee would be terminated, and matters such as the development or selection of a search procedure to fill the position were not proper subjects for a closed session, regardless of whether or not the Revenue Commission had complied with subdivision (1)(d) of this section, by publicly announcing the matters to be discussed during the closed session. OAG 95-OMD-93, 1995 Ky. AG LEXIS 56.

If the agenda incorporated into the written notice of a special meeting, held by the board of regents of university, listed only one substantive item for discussion, then discussion of any other substantive matter, whether discussed in an open or closed session is a violation of the Open Meetings Act. OAG 95-OMD-149, 1995 Ky. AG LEXIS 79.

While a public agency may meet in a closed session to discuss proposed or pending litigation, including topics such as litigation tactics and strategy, a final decision as to whether to litigate a particular situation cannot be made in closed session. If the Board of Directors of the Kentucky Employers' Mutual Insurance Authority decided in a closed session to file suit in regard to a specific situation, such decision was made in violation of the Open Meetings Act. OAG 97-OMD-96, 1997 Ky. AG LEXIS 32.

Public agency violated the Open Meetings Act when it invoked the exceptions set forth in KRS 61.810(1)(f) and gave as its reasons the intent to discuss individual personnel matters or specific employee matters. Since the only personnel matters which can be discussed in a closed session pertain to the possible appointment, discipline, or dismissal of personnel of that particular agency, the public agency should have indicated which of those particular authorized exceptions it was utilizing and why the session was being closed (which frequently involves privacy considerations). OAG 97-OMD-110, 1997 Ky. AG LEXIS 45.

A public agency's authority to go into closed session relative to personnel matters is severely restricted. General personnel matters cannot be discussed in a closed session; the only personnel matters which can be discussed in a closed session by a public agency are those which might lead to the appointment, discipline, or dismissal of personnel of that particular agency. OAG 97-OMD-124, 1997 Ky. AG LEXIS 149.

Mayor and city council violated Open Meetings Act, specifically KRS 61.810(1)(f), when stated reason for going into open session was "discussion of personnel"; since the only personnel matters which can be discussed in a closed session pertain to the possible appointment, discipline, or dismissal of personnel of that particular agency, the public agency should have indicated which of those particular exceptions it was utilizing and why the session was being closed. OAG 97-OMD-124, 1997 Ky. AG LEXIS 149.

An agency complies with the requirements of subsection (1)(a) and KRS 61.810(1)(f) by announcing, in open session, that pursuant to KRS 61.810(1)(f) it is going into closed session to discuss either the appointment, the discipline, or the dismissal of an employee or employees of the agency, indicating which of these particular actions is contemplated; however, the agency is not required to identify, by name, the employee or employees who will be discussed, nor is it restricted to a discussion of one (1) individual employee at a time. OAG 99-OMD-49, 1999 Ky. AG LEXIS 45.

A planning and zoning commission violated the Open Meetings Act when it went into closed session as there was no motion made and carried in open session and the specific exception which authorized the closed session was not stated. OAG 99-OMD-146, 1999 Ky. AG LEXIS 143.

The Open Meetings Act contemplates more than agency recitation of language of the exception authorizing the closed

session, but less than a detailed description of the matter to be discussed. OAG 00-OMD-64, 2000 Ky. AG LEXIS 6.

Because it was incumbent on the Floyd County Board of Education to provide more than a single word descriptor, such as "litigation, property, and personnel," of the reason for, and general nature of the business to be discussed in, its closed session, to the extent that the Board failed to strictly comply with the requirements for conducting a closed session, it violated the Open Meetings Act. OAG 01-OMD-181, 2001 Ky. AG LEXIS 152.

KRS 61.810(1)(g) applies to meetings between a public agency and a representative of a business entity, or a meeting of the agency to discuss a specific proposal, but in either case, only if open discussion could jeopardize the siting, retention, expansion, or upgrading of the business. Since neither of the conditions for invocation of this exemption were met when the Governor's Council of Economic Advisors retired to executive session to discuss the "potential plans" of the companies they represent based on current economic conditions, the Council's reliance on KRS 61.810(1)(g) was misplaced, and it violated the Open Meetings Act when it went into closed session at its November 6 meeting. OAG 01-OMD-227, 2001 Ky. AG LEXIS 165.

KRS 61.815(1)(c) specifically states that no final action may be taken in closed session. Thus, the Board, after discussing the matter of termination of the employee in closed session, would have been required to go back into open and public session and, at that time, vote to take final agency action on the question of the termination. OAG 02-OMD-126, 2002 Ky. AG LEXIS 34.

Violations arising under KRS 61.815(1)(d) typically occur when the agency directly or indirectly acknowledges discussion of matters tangential to the matter publicly announced in open session. In this instance, no description of the general nature of the business to be discussed in closed session was given in open session, and thus the ensuing closed session discussion contravened KRS 61.815(1)(d). OAG 03-OMD-47, 2003 Ky. AG LEXIS 13.

The Meade County Solid Waste and Recycling Board's discussions in closed session of matters not publicly announced prior to convening that closed session constituted a violation of the Open Meetings Act regardless of who initiated them and whether or not strict compliance with the law was administratively inefficient. OAG 03-OMD-170, 2003 Ky. AG LEXIS 183.

Where the Hopkins County Fiscal Court did not identify the general nature of the business to be discussed in its October 2 closed session and made only vague reference to "litigation" as the reason for the closed session, this is not enough. The fiscal court must not only identify the exception but must also describe the business to be discussed in closed session with sufficient specificity to enable the public to assess the propriety of its action. OAG 03-OMD-221, 2003 Ky. AG LEXIS 184.

The City Commission did not violate either KRS 61.823(3) or KRS 61.815(1)(a) in electing to discuss the personnel matter, originally scheduled to be discussed in closed session, in an open session. OAG 04-OMD-199, 2004 Ky. AG LEXIS 178.

The legislative intent on KRS 61.815(2) is that agencies, per se, which are exempt from complying with the Open Meetings Law, such as the Parole Board, juries, the Governor's cabinet, committees of the General Assembly and other agencies exempted by statute or by the Constitution do not have to go through the formalities set forth in KRS 61.815; and agencies which are not exempt per se but which go in closed session to deal with an excepted subject matter must observe those formalities. The Kentucky Board of Medical Licensure is not exempt, per se, from complying with the Open Meetings Act, and therefore it is required to comply with the requirements for conducting a closed session codified at KRS 61.815(1). OAG 05-OMD-17, 2005 Ky. AG LEXIS 141.

61.820. Schedule of regular meetings to be made available.

(1) All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public. In considering locations for public meetings, the agency shall evaluate space requirements, seating capacity, and acoustics.

(2) All public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

History.

Enact. Acts 1974, ch. 377, § 4; 1992, ch. 162, § 5, effective July 14, 1992; 2013, ch. 124, § 10, effective June 25, 2013.

NOTES TO DECISIONS

1. No Violation Found.

County did not violate the Kentucky Open Meetings Act, specifically KRS 61.820 and KRS 61.840, in passing a county occupational tax ordinance at a meeting held in the county courthouse during a festival held on the courthouse square, even though the date and location of the meeting might not have been the most convenient time and location to hold the meeting; the fact that a large number of citizens attended the meeting proved that the time and location were not inconvenient, and there was nothing to indicate that persons wishing to attend or participate in the meeting were effectively prevented from doing so. Knox County v. Hammons, 129 S.W.3d 839, 2004 Ky. LEXIS 74 (Ky. 2004).

Cited in:

Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025); 2025 Ky. App. LEXIS 109; 2025 LX 569646 (December 5, 2025).

OPINIONS OF ATTORNEY GENERAL.

The county fiscal court is a public agency and any committees which it has created by ordinance or resolution are also public agencies within the meaning of the law and should comply with the Open Meetings Law. OAG 75-508.

There is no provision in the Open Records Law that an agency must announce the agenda of matters to be discussed in a regular or special meeting. OAG 78-499.

This section does not require a newspaper to advertise the time and place of regular meetings of a levee board. OAG 82-412, 1982 Ky. AG LEXIS 241.

The statutes do not prescribe any particular method of publicizing the schedule of regular meetings of a levee board. The board may use such method of publicity as it sees fit including paid announcements in the newspaper or a news item in the local newspaper concerning the meeting. OAG 82-412, 1982 Ky. AG LEXIS 241.

The city council of a fourth-class city may enact an ordinance providing that regular meetings shall be held at different locations, specifically identified, within the city on stated dates and at specified times. OAG 83-208, 1983 Ky. AG LEXIS 289.

When the city deviated from its regular meeting schedule and rescheduled that regular meeting, any rescheduled meeting became a special meeting even if it eventually ended up being rescheduled again on the original regular meeting date. The meeting was a special meeting which required the city to follow the requirements of KRS 61.823 including those per-

taining to notice and posting. Failure to follow these provisions constituted a violation of the Open Meetings Act. OAG 92-OMD-1473.

While this section provides in part that meetings of public agencies shall be held at specified times and places which are convenient to the public, there is no provision in the Open Meetings Act prohibiting meetings after a certain hour and while a late night council meeting conducted past midnight may be inconvenient to the public in many instances, other than the adjournment of the meeting, where late night activity consisted of a closed session pertaining to two (2) items of litigation involving the city, the city did not violate the Open Meetings Act. OAG 92-OMD-1728, 1992 Ky. AG LEXIS 292.

Fiscal court meetings which normally began at 9:00 a.m. were not at an inconvenient time for the public. OAG 93-OMD-20, 1993 Ky. AG LEXIS 41.

Since council meeting held August 10 was an adjourned meeting and as an adjourned meeting was a continuation of the regular meeting of August 9 as opposed to a special meeting with the various notice and posting requirements, as a meeting pursuant to an adjournment of a regular meeting such meeting was itself a regular meeting and any business which could have been transacted at the regular meeting could have been transacted at the adjourned meeting. OAG 93-OMD-123, 1993 Ky. AG LEXIS 198.

County Fiscal Court violated the Open Meetings Act where the "Notice" of the magistrates did not conform to the provisions of this section, concerning notice of regular meetings, or the provisions of KRS 61.823, pertaining to notice of special meetings. OAG 94-OMD-50, 1994 Ky. AG LEXIS 20.

Because no agenda is required for a regular meeting under KRS 61.820, public agencies are not bound by any limitation relative to the discussion of, or actions on, matters with which they are entrusted in the course of those meetings. The description of items to be discussed or acted upon in the non-mandatory agenda for a regular meeting need not be sufficiently specific to insure fair notice to the public. OAG 01-OMD-181, 2001 Ky. AG LEXIS 152.

Unless the work session is a regularly scheduled meeting, within the meaning of KRS 61.820, it must be treated as a special meeting and is subject to all the notice requirements appertaining thereto. OAG 02-OMD-11, 2002 Ky. AG LEXIS 29.

Neither KRS 164.340, nor the provision in the Board of Regent's bylaws relating to quarterly meetings in regular session, is sufficient in content to be a schedule of regular meetings. Because the November 2 meeting was not a regular meeting within the meaning of KRS 61.820, it was a special meeting. OAG 02-OMD-22, 2002 Ky. AG LEXIS 218.

KRS 61.820 requires city commissions, and other local government agencies such as county fiscal courts, to conduct their meetings within the jurisdictional limits of the governmental units they serve. Anything, that tends to inhibit the public's ability to freely attend local government agency meetings, including distance, is destructive of the rights granted to the public, and the duties imposed on public agencies, by the Open Meetings Act. OAG 02-OMD-78, 2002 Ky. AG LEXIS 219.

The thirty minute delay in convening the February 17 regular meeting of the council was occasioned by the parent-teacher conferences conducted earlier in the evening and an apparent desire to insure that all interested parties could attend the meeting in its entirety; there is no error for a half hour delay in starting time when such a delay could easily result from other unforeseen circumstances such as inclement weather. To hold otherwise would be tantamount to elevating form over substance, resulting in the unnecessary cancellation of properly "noticed" regular meetings. OAG 04-OMD-56, 2004 Ky. AG LEXIS 89.

Although the location at which the City held its August meeting was clearly not the most convenient, the location was also not inconvenient as evidenced by the large turnout. The meeting was announced to the public, and there is nothing on the record to indicate that persons wishing to attend or participate in the proceeding were effectively prevented from doing so. Accordingly, no violation of KRS 61.820 or KRS 61.840 occurred at the meeting. OAG 04-OMD-145, 2004 Ky. AG LEXIS 41.

The City Council did not violate the Open Meetings Act in changing its meeting location of the special meeting due to unforeseen exigency, such as a scheduling conflict, as long as the change could not otherwise be avoided and the Council took the reasonable measures described to notify the public of the change. OAG 05-OMD-11, 2005 Ky. AG LEXIS 70.

City did not violate the Open Meetings Act merely because everyone at a particular board of aldermen meeting could not be admitted into the meeting room where the meeting was held in a facility which normally could accommodate all those desiring to attend and where the city offered to allow the overflow crowd to view the meeting from another room by television. OAG 94-ORD-87.

Although the county judge/executive has the unilateral authority to fix the dates of commencement of the regular terms of the fiscal court, no statute expressly provides the unilateral authority to designate the beginning time of regular meetings of the fiscal court; however, if the fiscal court properly passes a resolution providing, for example, that the regular term meetings of the fiscal court shall begin at 7:30 p.m., there being no statute to the contrary, it would be the duty of the county judge/executive to ensure the execution of such resolution. OAG 95-26, 1995 Ky. AG LEXIS 184.

The county board of education's response to party complaining that at meeting some people could not hear, that the meeting site was inadequate and that people were forced to stand in the hallway and outside in the winter cold, violated the Open Meetings Act in that its written answer to the complaining party did not address the specific issues of accessibility to the meeting, noise in the meeting room, persons outside the meeting room in the hallway, and persons outside the building on a winter night; in addition, the response did not cite a section of the Open Meetings Act in support of the public agency's position and it did not provide a brief explanation of how that particular statutory provision applied to the situation involving the public agency. OAG 97-OMD-28, 1997 Ky. AG LEXIS 6.

Board of education violated the Open Meetings Act because even if the board met in a facility that would accomodate the number of persons normally expected to attend such meetings, where there was an overflow of attendees the board of education should have made a good faith effort to handle the overflow crowd so that persons in the hallway and outside the building could have observed the public proceedings. OAG 97-OMD-28, 1997 Ky. AG LEXIS 6.

When the school board moved the meeting site of the board meeting which began in the school board office from the office to the school library, the latter location became the designated site from which all remaining proceedings and actions relative to the meeting should have been conducted and in the absence of any compelling reason to do so, the school board was not justified in moving the meeting to yet another location as such action is inconvenient to the public. OAG 97-OMD-84.

The failure of a park board to establish a regular schedule of meetings did not constitute a violation of the statute. OAG 99-OMD-166, 1999 Ky. AG LEXIS 183.

The statute does not require that a fiscal court hold its meetings at the county seat or other county government centers and, therefore, a fiscal court may hold a meeting at a state park. OAG 99-OMD-213, 1999 Ky. AG LEXIS 191.

A county fiscal court appeared to have violated either this section or KRS 61.823 in connection with meetings of the jail commission where it did not appear that the commission adopted a schedule of regular meetings and made that sched-

ule available to the public, thus obviating the need for special meeting notice pursuant to KRS 61.823, or whether the meeting was a special meeting and proper notice was given in full compliance with KRS 61.823. OAG 00-OMD-63, 2000 Ky. AG LEXIS 5.

61.823. Special meetings — Emergency meetings.

(1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.

(2) The presiding officer or a majority of the members of the public agency may call a special meeting.

(3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.

(4)(a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new written request is filed.

(b) A public agency may satisfy the requirements of paragraph (a) of this subsection by transmitting the written notice by electronic mail to public agency members and media organizations that have filed a written request with the public agency indicating their preference to receive electronic mail notification in lieu of notice by personal delivery, facsimile machine, or mail. The written request shall include the electronic mail address or addresses of the agency member or media organization.

(c) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

(5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

History.

Enact. Acts 1992, ch. 162, § 6, effective July 14, 1992; 2008, ch. 20, § 1, effective July 15, 2008.

NOTES TO DECISIONS

Analysis

1. Change of Meeting Date.
2. Notice.
3. Order of Censure.
4. Standing.

1. Change of Meeting Date.

Where school board changed monthly meeting date in open meeting, where press release had been issued, where newspaper article appeared, and where citizens appeared at the meeting, there was no positive showing that the board had decided any matters regarding closing the school in closed session. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779, 1992 Ky. App. LEXIS 182 (Ky. Ct. App. 1992).

2. Notice.

A newspaper was entitled, upon request, to receive notice of special commission meetings called by a city which was located within the 12-county region in which the newspaper was distributed; the newspaper was ruled a local newspaper with general circulation because of its limited distribution region and because it gathered and reported economic, educational, sports, human interest, government and court news at the local level. E.W. Scripps Co. v. Maysville, 790 S.W.2d 450, 1990 Ky. App. LEXIS 71 (Ky. Ct. App. 1990) (decided under prior law).

To be entitled to notice of special meetings, a newspaper must show that it serves a limited geographical area and that its coverage of news in a particular city or county is regular and intensive. E.W. Scripps Co. v. Maysville, 790 S.W.2d 450, 1990 Ky. App. LEXIS 71 (Ky. Ct. App. 1990) (decided under prior law).

No substantial violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred when the board of a non-profit corporation established as a joint city/county effort for industrial development provided the public at least 24 hours' notice when the board scheduled a special meeting to address whether to renew the employment contract of an employee. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

No substantial violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred because, although nothing of record indicated where in the fiscal court building a nonprofit corporation that was established as a joint city/county effort for industrial development placed a notice of a special meeting, an employee by email received actual notice of the special meeting in which the decision whether to renew the employee's contract was made days before the meeting occurred. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

No substantial violation of the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., occurred when the board of a non-profit corporation established as a joint city/county effort for industrial development described the topic of the board's closed session in the agenda for the board's special meeting when the agenda merely stated that the public body would go into closed session to discuss a personnel matter on a specific person. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

3. Order of Censure.

By conducting its final deliberations in a closed session without substantial compliance with KRS 61.815, the State

Board of Accountancy rendered its action in censuring an accountant voidable under former law making action of public agency void for noncompliance with the requirements of these statutes; however, since the accountant raised no objection and demonstrated no prejudice as a result of the Board's action, the action was not void. Stinson v. State Bd. of Accountancy, 625 S.W.2d 589, 1981 Ky. App. LEXIS 304 (Ky. Ct. App. 1981) (decided under prior law).

4. Standing.

Former members of a public board had constitutional standing to raise violations of the Open Meetings Act with respect to a county fiscal court's action in removing them and the subsequent action by the board approving a lease termination agreement because they clearly alleged distinct and palpable injuries caused by the actions of the fiscal court and the board for which they would be entitled to a remedy under the Act; any action taken by the fiscal court in violation of the Act was voidable. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

OPINIONS OF ATTORNEY GENERAL.

When the city deviated from its regular meeting schedule and rescheduled that regular meeting, any rescheduled meeting became a special meeting even if it eventually ended up being rescheduled again on the original regular meeting date. The meeting was a special meeting which required the city to follow the requirements of this section including those pertaining to notice and posting. Failure to follow these provisions constituted a violation of the Open Meetings Act. OAG 92-OMD-1473.

Since council meeting held August 10 was an adjourned meeting and as an adjourned meeting was a continuation of the regular meeting of August 9 as opposed to a special meeting with the various notice and posting requirements, as a meeting pursuant to an adjournment of a regular meeting such meeting was itself a regular meeting and any business which could have been transacted at the regular meeting could have been transacted at the adjourned meeting. OAG 93-OMD-123, 1993 Ky. AG LEXIS 198.

County Fiscal Court violated the Open Meetings Act where the "Notice" of the magistrates did not conform to the provisions of KRS 61.820, concerning notice of regular meetings, or the provisions of this section, pertaining to notice of special meetings. OAG 94-OMD-50, 1994 Ky. AG LEXIS 20.

Where the agenda for the special meeting listed as the only item a matter pertaining to a change or an addition to contracts, the city's committee violated the Open Meetings Act when it went into a closed session during that special meeting to discuss matters involving litigation. OAG 94-OMD-78, 1994 Ky. AG LEXIS 59.

If the agenda incorporated into the written notice of a special meeting, held by the board of regents of university, listed only one substantive item for discussion, then discussion of any other substantive matter, whether discussed in an open or closed session is a violation of the Open Meetings Act. OAG 95-OMD-149, 1995 Ky. AG LEXIS 79.

While the school board violated the Open Meetings Act by its failure to file a written response to the complaint within the statutorily mandated time frame, its decision to not renew the superintendent's contract was not a violation of the Open Meetings Act as that action was within the agenda of activities set forth in the notice for that special meeting which stated that "The purpose of the meeting will be to discuss renewal/or action of the superintendent's contract." OAG 97-OMD-43.

Where city clerks have certified or, in the case of the May 9, 1996 meeting, would certify that notices of the special meetings were timely faxed to the newspaper of record and there was no evidence that the newspaper was not timely notified of the special meetings, the city has complied with the requirements of subdivision (4)(a) of this section as the record indicates that notices of special meetings were timely faxed to the newspaper which had filed a written request with the city to be notified of special meetings. OAG 97-OMD-49.

Where city's fax machine did not provide printed proof of times and dates faxes containing notices or special meetings were sent to newspapers, city did not violate the provisions of the Open Records Act when it failed to furnish copies of documents which it did not have or which did not exist. OAG 97-OMD-49.

County Board of Education and Superintendent of County Schools violated the Open Meetings Act, specifically subsection (4)(a) of this section, by their failure to notify in writing all board members of the special meetings of the school board at least twenty-four (24) hours prior to the commencement of those meetings even though the Board and the Superintendent had complied with the requirements of KRS 160.270(1). OAG 97-OMD-90, 1997 Ky. AG LEXIS 33.

The failure of a city park board to fail to give notice and record minutes constituted violations of KRS 61.823 and 61.835, respectively. OAG 99-OMD-166, 1999 Ky. AG LEXIS 183.

Notices of meetings were insufficient where they did not contain an agenda of the items to be discussed at the meetings, in addition to the date, time, and place of the meetings, and where there was no evidence that the notices were posted in a conspicuous place in the building where the meetings took place or in a conspicuous place in the building which housed the headquarters of the agency. OAG 99-OMD-184, 1999 Ky. AG LEXIS 186.

The statute does not require the term "public" to appear in a notice of a meeting. OAG 99-OMD-184, 1999 Ky. AG LEXIS 186.

There was no violation of the statute where a local facility planning committee provided correct information to a newspaper regarding the date, time, and place of a meeting, but the newspaper printed incorrect information; further, the agenda advertised for the meeting was adequate. OAG 99-OMD-203, 1999 Ky. AG LEXIS 190.

Newspaper articles about the timeline and meeting agendas of a committee do not serve as a substitute for strict compliance with the statute, since the notice must still contain the date, time, and place of the special meeting and the agenda; however, publication of the timeline for the committee's meetings and their agendas in the local newspaper and a posting of the same in the building where the special meetings took place and in the building which housed its headquarters constituted a substantial compliance with the notification requirements, and any noncompliance was mitigated by the committee's efforts to furnish additional information to the media and the public. OAG 99-OMD-203, 1999 Ky. AG LEXIS 190.

Notice of special meetings of a county fiscal court was deficient where the notice only stated the date, time, and place of an initial meeting, but did not state the date, time, or place of subsequent work sessions/meetings or the topic to be discussed at those meetings. OAG 99-OMD-213, 1999 Ky. AG LEXIS 191.

A county fiscal court appeared to have violated either KRS 61.820 or this section in connection with meetings of the jail commission where it did not appear that the commission adopted a schedule of regular meetings and made that schedule available to the public, thus obviating the need for special meeting notice pursuant to this section, or whether the meeting was a special meeting and proper notice was given in full compliance with this section. OAG 00-OMD-63, 2000 Ky. AG LEXIS 5.

A streetscape committee did not fully comply with the statute in notifying the public of a meeting where the record was devoid of evidence that the committee complied with subsection (4)(b) by posting notice of the meeting in a con-

spicuous place in the building where the special meeting was held and in the building which houses the headquarters of the committee at least fourteen (14) hours before the meeting. OAG 00-OMD-65, 2000 Ky. AG LEXIS 7.

A community college board of directors erred in characterizing a meeting as an emergency meeting and in failing to identify the subject to be discussed in the notice of that meeting; however, because the board complied with the requirements for conducting a special meeting, with the exception of identifying the matter to be discussed, and because the record was devoid of evidence that the complainant newspaper submitted a request for written notification of special meetings of the board, the only violation of the Open Meetings Act consisted of the deficiency in the content of the notice otherwise delivered and posted in a timely manner. OAG 00-OMD-80, 2000 Ky. AG LEXIS 73.

A telecommunications board violated the statute with regard to a series of special meetings that preceded a special meeting of the board of directors at which an executive director was appointed where proper written notice was not delivered or posted as required by the statute. OAG 00-OMD-96, 2000 Ky. AG LEXIS 114.

A city commission complied in all particulars with the requirements of the statute prior to, and in the course of, a special meeting where a majority of the commission members called the meeting, written notice was prepared consisting of the date, time, and place of the special meeting and the agenda, written notice was faxed to the media in excess of twenty-four (24) hours before the meeting, the notice was posted on the public bulletin board at city hall on the same morning, and the mayor did not dispute that a copy of the notice was placed on her desk twenty-four (24) hours before the meeting. OAG 00-OMD-142, 2000 Ky. AG LEXIS 147.

The record contained insufficient evidence to support the contention that the a county board of education rescheduled a regular 4:00 p.m. meeting when it issued an agenda which mistakenly stated that the meeting would begin at 6:00 p.m., thus triggering the posting and notice requirements of the statute. OAG 99-OMD-153, 1999 Ky. AG LEXIS 223.

A city commission did not violate the statute as the items discussed, and acted upon at a special meeting were limited to items listed on the agenda, with one (1) exception not complained of. OAG 00-OMD-154, 2000 Ky. AG LEXIS 159.

The Kentucky Access Subcommittee of the Department of Insurance's Health Insurance Advisory Committee violated the Open Meetings Act by failing to comply with the statute prior to a special meeting; the record was devoid of proof that the subcommittee delivered the required written notice of the meeting or that the subcommittee posted written notice, at least twenty-four (24) hours before the special meeting, in a conspicuous place in the building where the meeting took place, and in the building that housed its headquarters. OAG 00-OMD-227, 2000 Ky. AG LEXIS 221.

The Cumberland High School Site Based Council violated the Open Meetings Act by failing to comply with the notice requirements set forth in KRS 61.823 prior to its June 2, June 18, and June 25, 2001, special meetings by failing to include an agenda in the written notices of special meetings directed to the media organizations which had requested notification. OAG 01-OMD-135, 2001 Ky. AG LEXIS 66.

The Nominating Committee's failure to strictly comply with the notice requirements codified at KRS 61.823 constituted a violation. While there is nothing wrong with the Board of Commission's public announcement of the upcoming Nominating Committee meeting at its January and February regular meetings, inclusion of the meeting on the Hospital's March 2001 calendar of events, and reference to the meeting date in correspondence directed to various officials, these steps should have been taken in addition to, rather than in lieu of, the requirements found at KRS 61.823(2), (3), and (4). OAG 01-OMD-141, 2001 Ky. AG LEXIS 215.

The discussion that occurred at the close of the June 19 special meeting of the Child Support Guidelines Review Commission exceeded the scope of any of the items listed on the agenda for that meeting, and was therefore improper. KRS 61.823(3) does not contain an exception for educational discussions, or discussion of items previously discussed. The fact that no formal action was taken as a consequence of the discussion does not alter that conclusion. OAG 01-OMD-154, 2001 Ky. AG LEXIS 216.

KRS 61.823(3) does not prohibit revision of regular meeting agendas, since no agenda is required for a regular meeting, and discussions at regular meetings are not restricted to items listed on the agenda. Nor can the statute be read so narrowly as to prohibit a public agency from revising the order of the agenda items to be discussed at a special meeting. KRS 61.823(3) does not place such severe restrictions on agency action, and revision of the order of agenda items is permissible. OAG 01-OMD-154, 2001 Ky. AG LEXIS 216.

While notice that was calculated to be delivered closer in time to the date of the meeting, but not less than twenty-four (24) hours before it, might have been preferred, the June 26 notice of the July 24 meeting was not deficient. OAG 01-OMD-154, 2001 Ky. AG LEXIS 216.

The Paintsville City Council violated the Open Meetings Act at its September 18, 2001, special meeting by including agenda items on its notice of special meeting that included "discussion of old business," "discussion of new business," "open to floor," and "open to counsel." The express purpose of the Open Meetings Act to maximize notice of public meetings and actions mandate special meetings agendas that give fair notice of the particular topics to be discussed or acted upon. OAG 01-OMD-175, 2001 Ky. AG LEXIS 217.

There was not a sufficient basis for declaring that an emergency existed; the perceived necessity of enacting an ordinance to facilitate a new negotiating posture, under these circumstances, cannot be equated to "a serious, unexpected situation or occurrence that demands immediate action," especially in view of the fact that the proposed ordinance had apparently been under consideration for several months; organized opposition cannot generally be equated to "civil unrest" unless it is accompanied by acts of lawlessness that necessitate an immediate official response; finally, discussions pertaining to the renewal of an option to purchase real property and the payment of bills, as well as a consultant's report and litigation concerning a separate and unrelated ordinance, were tangential to the alleged emergency for which the meeting was called. OAG 02-OMD-91, 2002 Ky. AG LEXIS 110.

The language of the statute directing agency action is exact. It requires the public agency to deliver written notice, consisting of the date, time, and place of the meeting and the agenda, to members of the public agency, and media organizations that have requested notification, at least 24 hours before the meeting is to occur. The statute makes no distinction between the written notice delivered to agency members and the media and the written notice posted in the named locations. Failure to include an agenda in the posted notice clearly constitutes less than strict compliance with the law. OAG 02-OMD-121, 2002 Ky. AG LEXIS 33.

Because there was not a quorum present at the April 1 meeting, the decision to adjourn and reconvene had not legal efect. The rescheduled April 15 meeting was not a recessed meeting, an adjourned meeting, or a continued meeting. Instead, it was a special meeting subject to the notice and agenda requirements codified at KRS 61.823. OAG 02-OMD-127, 2002 Ky. AG LEXIS 221.

Since the circumstances prevented the council from conducting its meeting per its regular meeting schedule, and because it rescheduled the regular meeting to a later date, the council was obligated to treat the meeting as a special meeting. Further, because discussions and action at a special

meeting must be limited to items listed on the agenda in the notice that it is obligated to provide pursuant to KRS 61.823(3), the council's refusal to permit comments and questions from the members of the public attending the September 4, special meeting cannot be said to have violated the Open Meetings Act inasmuch as the Act itself does not endow the public with the right to participate by comment. OAG 02-OMD-181, 2002 Ky. AG LEXIS 222.

If the December 6 meeting was a regular meeting and a motion was made to recess or adjourn the meeting to December 13, and a quorum of the Board voted to do so, then the December 13 meeting would constitute an "adjourned meeting." An "adjourned meeting" should be treated as a special meeting so far as giving notice to the media is concerned. OAG 03-OMD-21, 2003 Ky. AG LEXIS 198.

The work session of the School Site Based Decision Making Council was a special meeting for purposes of open meetings analysis, and the apparent omission of an agenda for the meeting and the location of the meeting violated KRS 61.823(3). OAG 03-OMD-192, 2003 Ky. AG LEXIS 272.

The SBDM satisfied the requirement of sufficient specificity when it employed the phrase "Student Dress Code" to describe the topic to be discussed. OAG 03-OMD-192, 2003 Ky. AG LEXIS 272.

The Danville Board of Ethics violated KRS 61.823(3) and (4)(a) by failing to personally deliver, fax, or mail the members of the Board written notice of the June 23 meeting. Such notice as was communicated by telephone or email did not satisfy the strict legal requirements codified in that statute, and should have been utilized in addition to, rather than in lieu of, the statutorily required methods of communication. OAG 03-OMD-197, 2003 Ky. AG LEXIS 164.

The Kentucky General Assembly has not particularized a place on which notice of special meetings must be posted, and, absent proof of an attempt to conceal such notices, discretion rests with the public agency to determine what constitutes a conspicuous place. A bulletin board that is accessible to the public is "conspicuous," notwithstanding the fact that more conspicuous places may be available or the fact that it may not be conspicuous to the public for the full twenty-four (24) hours preceding the special meeting. OAG 03-OMD-250, 2003 Ky. AG LEXIS 273.

Because the Open Meetings Act does not recognize the validity of oral notification, delivered in person or by telephone, the Council violated KRS 61.823(3) and KRS 61.823(4)(a), requiring written notice of special meetings to be delivered personally, by fax, or by mail. Oral notice may be utilized in addition to, but not in lieu of, the statutorily required methods of communication. OAG 04-OMD-184, 2004 Ky. AG LEXIS 260.

Since written notice was posted only eight hours before the scheduled meeting time, the belated posting did not constitute strict, or even substantial, compliance with the explicit requirements of the Open Meetings Act. Also, the availability of the written agenda for the special meeting on the posted meeting notice did not satisfy the requirement that the Council provide written notice, including the date, time, and place of the meeting, and the agenda for the special meeting to the Council members at least twenty-four hours before the meeting. OAG 04-OMD-184, 2004 Ky. AG LEXIS 260.

The fact that the City has no regular office open to the public during regular business hours and holds its regular meetings in another building may complicate compliance with the Open Meetings Act. However, a proper posting of the notice of the special meeting would have required that it be posted at the home of the city clerk, where its records are kept, and in the room in the house where the special meeting was to be held. OAG 04-OMD-194, 2004 Ky. AG LEXIS 42.

The City Commission did not violate either KRS 61.823(3) or KRS 61.815(1)(a) in electing to discuss the personnel matter, originally scheduled to be discussed in closed session, in an open session. OAG 04-OMD-199, 2004 Ky. AG LEXIS 178.

Since the Advisory Team has not established a schedule of regular meetings as required of all public agencies, and committees and subcommittees thereof, by KRS 61.820, the March 14 meeting was therefore a special meeting for which KRS 61.823 notice was required. OAG 05-OMD-114, 2005 Ky. AG LEXIS 126.

The City Council violated the Open Meetings Act in failing to include the date with the time, place, and agenda in the notice of the special meetings posted on the front door of City Hall, and discussing matters outside the scope of the item listed on the agenda in the posted notice. OAG 05-OMD-138, 2005 Ky. AG LEXIS 265.

The meeting of the County Fiscal Court on June 29, 2006, was an emergency meeting, notwithstanding the fact that the emergency resulted from its own failure to enact a budget ordinance before the expiration of the fiscal year. Whatever the circumstances that accounted for the delay, the Fiscal Court presented adequate proof of an imminent emergency that would result from its failure to enact a budget ordinance, specifically, the cessation of all vital services to the citizens of the County. OAG 06-OMD-156, 2006 Ky. AG LEXIS 45.

61.826. Video teleconferencing of meetings.

(1) A public agency may conduct any meeting through video teleconference.

(2) Notice of a video teleconference meeting shall:

(a) Comply with the requirements of KRS 61.820 or 61.823 as appropriate;

(b) Clearly state that the meeting will be a video teleconference;

(c) Provide specific information on how any member of the public or media organization may view the meeting electronically; and

(d) In any case where the public agency has elected to provide a physical location, or in any circumstance where two (2) or more members of the public agency are attending a video teleconference meeting from the same physical location, precisely identify a primary physical location of the video teleconference where all members can be seen and heard and the public may attend in accordance with KRS 61.840.

(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations. Members of the public agency who participate in a video teleconference shall remain visible on camera at all times that business is being discussed.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

(5) If a regular meeting is changed to a video conference, the meeting shall remain a regular meeting if the meeting occurs on the same date and time as originally scheduled and the public agency follows the provisions of KRS 61.823(4) to provide a notice that meets the requirements of subsection (2)(b) to (d) of this section.

History.

Enact. Acts 1994, ch. 245, § 2, effective July 15, 1994; 2018 ch. 200, § 2, effective April 26, 2018; 2022 ch. 37, § 2, effective July 14, 2022.

61.835. Minutes to be recorded — Open to public.

The minutes of action taken at every meeting of any

such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

History.
Enact. Acts 1974, ch. 377, § 7.

NOTES TO DECISIONS

1. Compliance.
Adoption of a dress code by a middle school did not violate the Kentucky Open Meetings Act, KRS 61.805 et seq.; the council minutes stated that a second reading of the dress code was conducted and the minutes recorded the action taken, which was all that was required under KRS 61.835. Further, adoption of the dress code by "consensus" was an "action taken" within the meaning of KRS 61.805(3). Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 2005 FED App. 0058P, 2005 U.S. App. LEXIS 1969 (6th Cir. Ky. 2005).

OPINIONS OF ATTORNEY GENERAL.

A public agency which has a board and board meetings speaks through its minutes as to actions taken and the minutes of the public agency should be made available to the public as soon as they are finally approved by the board and such approval should be no later than the next meeting of the board. OAG 80-421, 1980 Ky. AG LEXIS 229.

The minimum statutory requirement for minutes are a record of formal motions made in a meeting and the vote of the members on the motion; anything more than such a record is a matter of parliamentary procedure and the discretion of the public body. OAG 81-387, 1981 Ky. AG LEXIS 59.

The minutes of the State Board of Education must be recorded and open to public inspection pursuant to this section, but they need show only the formal action taken and the votes cast by the members; the minutes of a closed session should show that the statutory formality of KRS 61.815 was observed before going into a closed session and should indicate the general subject of the closed session but they need not show information which would defeat the purpose of holding a closed session on the authorized subject matter. OAG 81-387, 1981 Ky. AG LEXIS 59.

An agency holding a properly conducted closed session may take a straw vote by secret ballot for the purpose of reaching a general consensus among the members, as the purpose of a closed session is to allow free discussion by the members and there are no statutory restrictions on how the discussion may be conducted. But if final action is finally taken, it must be taken in open session (with certain exceptions) and the vote of each member, or his abstention, must be recorded in the minutes. OAG 82-341, 1982 Ky. AG LEXIS 294.

When final action is taken by a public agency in open session the vote cannot be by secret ballot and it must be recorded in the minutes how each member voted. OAG 82-341, 1982 Ky. AG LEXIS 294.

This section does not require that the levee board commissioner who made a motion, the commissioner who seconded the motion and the names of each commissioner voting for and against the motion be specified. It is required, however, that the minutes show how each member voted or if he abstained; if the vote was unanimous it is sufficient to so state in the minutes. OAG 82-412, 1982 Ky. AG LEXIS 241.

Both the Open Meetings Statute, KRS 61.805 to 61.850, and the Open Records Statute, KRS 61.870 to 61.884, mandate public access to the minutes of a public body. Since the Open Meetings Statute allows closed or executive sessions on the discussion of five (5) subjects listed in KRS 61.810, the minutes of an agency may omit matters decided in such discussions; otherwise, no final action is to be taken in a closed session and action taken in an open session after a closed session should be recorded in the minutes and made available to the public. OAG 83-139, 1983 Ky. AG LEXIS 358.

The names, positions, and addresses of all the persons who were on the disciplinary board which found for student's suspension were open to student's inspection under this section; however, the selection and appointment documents were exempt as "preliminary recommendations" under KRS 61.878. OAG 83-332, 1983 Ky. AG LEXIS 165.

This section provides that a city is required to accurately record the minutes of all of its meetings and make such records available for public inspection; if a city does not do this, then it has violated the provisions of this section and the Open Records Act since the council minutes are public records under subsection (2) of KRS 61.870. OAG 86-20, 1986 Ky. AG LEXIS 67.

Minutes of a properly conducted executive or closed session of a meeting of a public agency need not be made available for public inspection or even recorded to the extent that so doing would defeat the purpose of conducting the closed session. OAG 87-16, 1987 Ky. AG LEXIS 69.

Tape recordings of board of education meetings were public records within the meaning of KRS 61.870(2), although inspection thereof could be denied on the ground that the recordings were preliminary drafts regarding preparation of the official minutes, as inspection of preliminary drafts may be denied pursuant to KRS 61.878(1)(g). OAG 89-93, 1989 Ky. AG LEXIS 93.

The Judicial Retirement and Removal Commission is a quasi-judicial body expressly exempted from the provisions of the Open Meetings Act and is not bound by this section, which requires disclosure of the minutes of meetings held by public agencies. OAG 91-45, 1991 Ky. AG LEXIS 45.

The Judicial Retirement and Removal Commission was not required to disclose the minutes of a meeting because it is clearly not a "public agency" within the meaning of KRS 61.805(2), and was therefore not bound by this section. OAG 91-45, 1991 Ky. AG LEXIS 45.

The Board of Adjustments, a public body, cannot vote by secret ballot and the minutes of the meetings must indicate how each member voted on each issue before the Board. OAG 91-196, 1991 Ky. AG LEXIS 197.

The Madison County Fiscal Court, through its subcommittee, violated both the Open Meetings and Open Records Act by failing to record its minutes and make them available to the public. OAG 92-32, 1992 Ky. AG LEXIS 32.

After a request for certain public records under the Open Records Act, the custodian of such records need only advise the requester that his or her request will be honored and either append the records or notify the requester that they are available for immediate inspection per subdivision (3)(a) or (b) of KRS 61.872; failure of the custodian to state that the requested records exist or that the records provided are those requested does not constitute a violation of the statute. OAG 94-ORD-15, 1994 Ky. AG LEXIS 13.

The Open Records Act does not require the custodian of records to state that meeting minutes which were released to the requester per his request were created under the mandate of this section. OAG 94-ORD-15, 1994 Ky. AG LEXIS 13.

A public agency would not be violating the Open Meetings Act if it failed to keep minutes concerning a properly conducted and legally authorized closed session to the extent that doing so would defeat the purpose of conducting the closed session and no final action was taken at that closed session. OAG 94-OMD-110, 1994 Ky. AG LEXIS 91.

A copy of minutes from an improperly closed meeting should be made available for public inspection pursuant to this section. OAG 95-OMD-57, 1995 Ky. AG LEXIS 44.

The President's Cabinet and the President's Leadership Team, established, created, and controlled by the university president, do not fall within the meaning of "public agencies" as defined in KRS 61.805(2); consequently, these groups do not have to record minutes of their meetings or meet other requirements of the Open Meetings Act. OAG 95-OMD-71, 1995 Ky. AG LEXIS 46.

The failure of a city park board to fail to give notice and record minutes constituted violations of KRS 61.823 and this section, respectively. OAG 99-OMD-166, 1999 Ky. AG LEXIS 183.

The statute does not require that records reflecting final action taken be appended to the minutes. OAG 99-OMD-183, 1999 Ky. AG LEXIS 185.

A telecommunications board violated the statute with regard to a series of special meetings that preceded a special meeting of the board of directors at which an executive director was appointed where minutes of the meetings were not recorded. OAG 00-OMD-96, 2000 Ky. AG LEXIS 114.

Notwithstanding the fact that the ballots used by the members of the Nominating Committee would have been made available for inspection, upon request, at the Committee's March 14 meeting, the method used for conducting the vote for the Board of Commissioners candidates can only be described as a secret ballot. To the extent that the public was unable to ascertain how each member of the Committee voted on each candidate, either by observing the vote, or by reviewing the minutes of the meeting reflecting the vote, the Nominating Committee failed to comply with the requirements of KRS 61.835. OAG 01-OMD-141, 2001 Ky. AG LEXIS 215.

The City Council did not violate the Open Meetings Act in refusing to amend its minutes to reflect the discussion relating to the city police car which occurred at its November 4 regular meeting. Although it is within the discretion of any public agency, including the Council, to record discussions occurring in the course of its meetings, it is not required to do so; the minutes of a public meeting need show only the formal actions taken and the votes cast by the members. OAG 03-OMD-06, 2003 Ky. AG LEXIS 156.

The Board did not violate the Open Records Act in failing to provide a copy of the minutes of its regular December 6th meeting and the December 13th recessed or adjourned meeting on the basis that they had not been approved and adopted as the official minutes of the Board, since the approval would not occur until the next regularly scheduled meeting in March. OAG 03-ORD-33, 2003 Ky. AG LEXIS 51.

Because KRS 61.835 requires public agency's to maintain "an accurate record of votes and actions taken" at every meeting, the agency may not direct the modification of the draft minutes to show something other than what had actually occurred at the previous meeting. Since the modifications to the minutes approved by the City Commission change the minutes to show something other than what actually occurred at the previous meeting, those modifications violate KRS 61.835. OAG 04-OMD-179, 2004 Ky. AG LEXIS 281.

With reference to ad-hoc committees whose functions are entirely advisory, the minutes must be maintained even if those minutes only reflect that the meeting was convened, the minutes of the last meeting approved, and the meeting was adjourned. OAG 04-OMD-182, 2004 Ky. AG LEXIS 189.

If at the meeting in question nothing was decided or acted upon or voted upon the minutes could, under KRS 61.835, consist of nothing more than a record of the actions which opened and adjourned the meeting. This material would be subject to public inspection. While some agencies may by their own regulations require more thorough minutes, the Open Meetings Act requires only what is set forth in KRS 61.835 relative to the minutes. OAG 04-OMD-182, 2004 Ky. AG LEXIS 189.

Because the corporation does not fall within the parameters of KRS 61.805(2)(a) through (h), defining the term "public agency" for purposes of open meetings analysis, the corporation was not governed by the Open Meetings Act, Thus, the corporation has no obligation under the Open Meetings Act to create, or otherwise afford the public access to, minutes of its meetings, and the corporation properly denied the open records request for its minutes. OAG 04-ORD-12, 2004 Ky. AG LEXIS 191.

An industrial development corporation erred in redacting portions of the minutes from regular public meetings provided to requester regardless of whether the material would otherwise be removed from application of the Open Records Act pursuant to one or more of the exemptions in KRS 61.878(1) or could have properly been discussed during a closed session. OAG 05-ORD-209, 2005 Ky. AG LEXIS 162.

Because inclusion of "clarification" in the minutes of the County Fiscal Court's meeting did not result in inaccuracies in the records of votes and actions taken at the meeting, within the meaning of KRS 61.835, no violation of the Open Meetings Act can be imputed to the Fiscal Court. Nevertheless, such practice compromises the value of minutes as record evidence, undermining the public's faith in the verity thereof, and should be avoided. OAG 06-OMD-103, 2006 Ky. AG LEXIS 300.

61.840. Conditions for attendance.

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

History.

Enact. Acts 1974, ch. 377, § 8; 2013, ch. 124, § 11, effective June 25, 2013.

NOTES TO DECISIONS

Analysis

1. No Violation Found.
2. Violation Found.
3. Voiding Decisions.

1. No Violation Found.

County did not violate the Kentucky Open Meetings Act, specifically KRS 61.820 and KRS 61.840, in passing a county occupational tax ordinance at a meeting held in the county courthouse during a festival held on the courthouse square, even though the date and location of the meeting might not have been the most convenient time and location to hold the meeting; the fact that a large number of citizens attended the meeting proved that the time and location were not inconvenient, and there was nothing to indicate that persons wishing to attend or participate in the meeting were effectively prevented from doing so. Knox County v. Hammons, 129 S.W.3d 839, 2004 Ky. LEXIS 74 (Ky. 2004).

2. Violation Found.

County Board of Education violated Kentucky's Open Meetings Act at four school board meetings by requiring that all in-person attendees wear a mask or other facial covering because it was not an appropriate condition to maintain order. Campbell Cnty.Bd. of Educ. v. Moellman, 2023 Ky. App. LEXIS

67 (Ky. Ct. App. Aug. 25, 2023), review denied, ordered not published, 2024 Ky. LEXIS 46 (Ky. Feb. 7, 2024).

3. Voiding Decisions.

Where County Board of Education violated Kentucky's Open Meetings Act at four school board meetings by requiring that all in-person attendees wear a mask or other facial covering, circuit court's action voiding the school board's decisions at the four meetings was erroneous because Ky. Rev. Stat. Ann. § 61.848(5) did not authorize a court to void actions taken in public meetings which violated Ky. Rev. Stat. Ann. § 61.840, the statute the Board was found to have violated. Campbell Cnty.Bd. of Educ. v. Moellman, 2023 Ky. App. LEXIS 67 (Ky. Ct. App. Aug. 25, 2023), review denied, ordered not published, 2024 Ky. LEXIS 46 (Ky. Feb. 7, 2024).

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The requirement that the fiscal court make only those provisions necessary to keep order at its meetings applies to the attendance of the public and does not affect the court's ability to establish rules regulating the handling of county's business and the presentation of new business. OAG 76-128.

A public body may prohibit news photographs during a public meeting only where such prohibition is required to maintain order. OAG 77-755, 1977 Ky. AG LEXIS 22.

The Open Meetings Law applies to fiscal courts under the definition of "public agency" as set out in KRS 61.805. OAG 77-755, 1977 Ky. AG LEXIS 22.

Since a coroner's inquest is a criminal investigatory proceeding and in nature a quasi-judicial proceeding, the Open Meetings Law and the provisions for the attendance and operation of the news media have no application. OAG 78-28, 1978 Ky. AG LEXIS 693.

If a woman, who attended a fiscal court meeting and took photographs, was from one of the news media, the fiscal court was required to permit her to take photographs of the fiscal court; however, where there was nothing in connection with the attire or equipment of the woman that suggested her connection with the news media, she should have identified herself as representing one of the news media in order to take advantage of her right to engage in news media coverage, including taking photographs. OAG 80-156, 1980 Ky. AG LEXIS 481.

Where the fiscal court can visually note the connection of an observer with the news media by way of some obviously identifying insignia, or other device, or equipment, identification on the part of the news media representative is not necessary for the representative to assert his or her right to engage in coverage of the meeting, and the representative may photograph the proceedings even though they tend to be somewhat disruptive of the meeting. OAG 80-156, 1980 Ky. AG LEXIS 481.

If the room in the post office where a levee board meeting was held was large enough to accommodate the members of the public who wanted to attend and was accessible to the public, it was a suitable meeting place. OAG 82-412, 1982 Ky. AG LEXIS 241.

Under this section, the Personnel Board is not required to permit television coverage when it is hearing an appeal under KRS 18A.095 as a quasi-judicial body, but may do so if it adopts administrative regulations so permitting and stating restrictions and procedures for such coverage, pursuant to KRS 13A.100. OAG 84-371, 1984 Ky. AG LEXIS 14.

This section is compatible with Supreme Court holdings on the First Amendment. OAG 85-74, 1985 Ky. AG LEXIS 77.

Under this section, the fiscal court must permit news media coverage, including recording and broadcasting, use of television and other cameras and tape recording, subject only to the condition that order must be maintained. OAG 85-74, 1985 Ky. AG LEXIS 77.

Persons not connected with the media must have permission of the fiscal court in order to photograph or tape court proceedings. OAG 85-74, 1985 Ky. AG LEXIS 77.

With limited exceptions as provided for open meetings of public agencies, a local school board may prohibit nonstudents from entering upon school property, irrespective of the nature of activities which at the time are being conducted upon the property. OAG 90-11, 1990 Ky. AG LEXIS 11.

As a general rule a public meeting of a public body is either open to everyone under the Open Meetings Act or it is closed to everyone under a statutorily recognized exception to the Open Meetings Act; there is no principle of selective admission set forth in the Act. OAG 92-146.

A regulation, rule, or policy of a public body which uniformly prohibits the tape recording of a public meeting is arbitrary, capricious, restrictive, and unreasonable, and a person should be permitted to tape record a public meeting so long as that person and his or her taping equipment do not interfere with the orderly conduct of the public meeting. To the extent that OAG 85-74 conflicts with the decision and principles set forth in this decision, the earlier opinion is modified. OAG 96-ORD-143.

The county board of education's response to party complaining that at meeting some people could not hear, that the meeting site was inadequate and that people were forced to stand in the hallway and stand outside in the winter cold, violated the Open Meetings Act in that its written answer to the complaining party did not address the specific issues of accessibility to the meeting, noise in the meeting room, persons outside the meeting room in the hallway, and persons outside the building on a winter night; in addition, the response did not cite a section of the Open Meetings Act in support of the public agency's position and it did not provide a brief explanation of how that particular statutory provision applied to the situation involving the public agency. OAG 97-OMD-28, 1997 Ky. AG LEXIS 6.

Board of education violated the Open Meetings Act because even if the board met in a facility that would accomodate the number of persons normally expected to attend such meetings, where there was an overflow of attendees, the board of education should have made a good faith effort to handle the overflow crowd so that persons in the hallway and outside the building could have observed the public proceedings. OAG 97-OMD-28, 1997 Ky. AG LEXIS 6.

When the school board moved the meeting site of the board meeting which began in the school board office from the office to the school library, the latter location became the designated site from which all remaining proceedings and actions relative to the meeting should have been conducted and in the absence of any compelling reason to do so, the school board was not justified in moving the meeting to yet another location as such action is inconvenient to the public. OAG 97-OMD-84.

A city's practice of asking its residents to identify themselves in order to receive preferential seating at a city council meeting impermissibly places a condition upon attendance other than that required for maintenance of order; moreover, a person's place of residence is, in itself a personal identifier, and the city's practice contravenes this section by impermissibly requiring attendees to provide identifying information. OAG 98-OMD-44, 1998 Ky. AG LEXIS 9.

A county school system violated the Open Meetings Act when it reconvened a meeting in a high school library after a break from the public hearing held in the high school auditorium. OAG 99-OMD-117, 1999 Ky. AG LEXIS 142.

A county schools local facility planning committee violated the Open Meetings Act when it denied requests that committee members use microphones so that persons attending its meetings could hear the committee's discussion. OAG 99-OMD-196, 1999 Ky. AG LEXIS 187.

A county fiscal court violated the statute where it placed a sign-in sheet at the entrance to the fiscal court's meeting room,

accompanied by a posted notice advising attendees to sign in before entering, and security men enforced the requirement, notwithstanding that the court asserted that no one was denied admittance for refusing to sign in and that the sheets were placed at the entrance for the purpose of determining how many people were present, where they lived, and their sentiments. OAG 00-OMD-63, 2000 Ky. AG LEXIS 5.

The Kentucky Board of Emergency Medical Services did not violate KRS 61.840 by conducting its January 4, 2001, meeting in the Public Health Auditorium of the Human Resources Building, a secure state facility at which visitor registration is required; the Board did not instruct the security officers attached to the Human Resources Building to require identification as a condition of attendance at the meeting. OAG 01-OMD-23, 2001 Ky. AG LEXIS 214.

A regulation, rule, or policy of a public body which uniformly prohibits the tape recording of a public meeting is arbitrary, capricious, restrictive, and unreasonable, and a person should be permitted to tape record a public meeting so long as that person and his or her taping equipment do not interfere with the orderly conduct of the public meeting. OAG 01-OMD-166, 2001 Ky. AG LEXIS 281.

The School Board effectively denied the request to record the May 26 meeting while it "studies all issues surrounding the issue of televising and videotaping its meetings." The Open Meetings Act invests all members of the public with the right to tape that meeting and future meetings unless his, or their, individual conduct poses a threat to the maintenance of order; there is no legal basis for the Board's proposal to adopt "procedures to ensure that the recording of its meetings will be done in a manner so as not to significantly interfere with the conduct of" its business. Instead, the Board must permit the media and the public to record its meetings, and may impose restrictions or prohibitions only where individual circumstances warrant. OAG 04-OMD-102, 2004 Ky. AG LEXIS 257.

Although the location at which the City held its August meeting was clearly not the most convenient, the location was also not inconvenient as evidenced by the large turnout. The meeting was announced to the public, and there is nothing on the record to indicate that persons wishing to attend or participate in the proceeding were effectively prevented from doing so. Accordingly, no violation of KRS 61.820 or KRS 61.840 occurred at the meeting. OAG 04-OMD-145, 2004 Ky. AG LEXIS 41.

The Fiscal Court's guidelines for the meeting, published in the local paper, clearly evidenced the agency's intention that there would be a sign-up sheet at the door for all individuals attending the meeting and people would be required to give their name and address, a violation of KRS 61.840 and the Open Meetings Act. However, the Fiscal Court's violation was mitigated by the fact that compliance with such a guideline was neither required nor made a condition for attendance at the meeting. OAG 04-OMD-227, 2004 Ky. AG LEXIS 43.

Since it appears that the City Council does not condition attendance on signing the sign-in sheet that is passed around during the meetings, and because the Open Meetings Act does not prohibit inclusion of the names of attendees in the minutes of its meetings, and because attendees can "opt out" of inclusion in the minutes by refusing to identify themselves, the City Council's conduct does not constitute a violation of the Act. OAG 05-OMD-200, 2005 Ky. AG LEXIS 74.

61.846. Enforcement by administrative procedure — Appeal.

(1) If a person enforces KRS 61.805 to 61.850 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. The person shall submit a written complaint to the presiding officer of the public agency suspected of the violation of KRS 61.805 to 61.850. The complaint shall state the circumstances which constitute an alleged violation of KRS 61.805 to 61.850 and shall state what the public agency should do to remedy the alleged violation. The public agency shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision. If the public agency makes efforts to remedy the alleged violation pursuant to the complaint, efforts to remedy the alleged violation shall not be admissible as evidence of wrongdoing in an administrative or judicial proceeding. An agency's response denying, in whole or in part, the complaint's requirements for remedying the alleged violation shall include a statement of the specific statute or statutes supporting the public agency's denial and a brief explanation of how the statute or statutes apply. The response shall be issued by the presiding officer, or under his authority, and shall constitute final agency action.

(2) If a complaining party wishes the Attorney General to review a public agency's denial, the complaining party shall forward to the Attorney General a copy of the written complaint and a copy of the written denial within sixty (60) days from receipt by that party of the written denial. If the public agency refuses to provide a written denial, a complaining party shall provide a copy of the written complaint within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency. The Attorney General shall review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holidays, a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850. In arriving at the decision, the Attorney General may request additional documentation from the agency. On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who filed the complaint.

(3)(a) If a public agency agrees to remedy an alleged violation pursuant to subsection (1) of this section, and the person who submitted the written complaint pursuant to subsection (1) of this section believes that the agency's efforts in this regard are inadequate, the person may complain to the Attorney General.

(b) The person shall provide to the Attorney General:

1. The complaint submitted to the public agency;

2. The public agency's response; and

3. A written statement of how the public agency has failed to remedy the alleged violation.

(c) The adjudicatory process set forth in subsection (2) of this section shall govern as if the public agency had denied the original complaint.

(4)(a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.848.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision, as to

whether the agency violated the provisions of KRS 61.805 to 61.850, shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred.

(5) A public agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding enforcement of KRS 61.805 to 61.850.

History.

Enact. Acts 1992, ch. 162, § 7, effective July 14, 1992.

NOTES TO DECISIONS

1. Application.

Where court found that closed meeting of county board of education had violated the open meetings of public agencies law and declared all action taken at the meeting void and enjoined the board from holding future closed sessions on certain topics discussed at the meeting, the court remained within the authority supplied it by former law regarding enforcement of law concerning open meetings in granting such relief and as long as the board and its members made a good faith effort to obey they would not be cited for contempt. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977) (decided under prior law).

While the coverage of the Open Meetings Act, KRS 61.800, was broad enough to include a police captain's termination hearing, the police captain did not follow the procedures in KRS 61.846 and 61.848, and so was not entitled to relief. Howard v. City of Independence, 199 S.W.3d 741, 2005 Ky. App. LEXIS 230 (Ky. Ct. App. 2005), abrogated in part, Pearce v. Univ. of Louisville, 2011 Ky. App. Unpub. LEXIS 998 (Ky. Ct. App. Nov. 18, 2011).

In this Open Records Act action, the order was reversed in part because the circuit court lacked subject matter jurisdiction to conclude the university violated the Open Meetings Act where neither party invoked the circuit court's jurisdiction to enforce provisions. Univ. of Ky. v. Hatemi, 636 S.W.3d 857, 2021 Ky. App. LEXIS 114 (Ky. Ct. App. 2021).

OPINIONS OF ATTORNEY GENERAL.

When the city deviated from its regular meeting schedule and rescheduled that regular meeting, any rescheduled meeting became a special meeting even if it eventually ended up being rescheduled again on the original regular meeting date. The meeting was a special meeting which required the city to follow the requirements of KRS 61.823 including those pertaining to notice and posting. Failure to follow these provisions constituted a violation of the Open Meetings Act. OAG 92-OMD-1473.

No matter how many requests or complaints a city may receive under the Open Meetings Act relative to the events of a certain date, each one must be responded to in the manner required by subsection (1) of this section and the fact that the city has previously responded to other complaints about the events does not lessen or eliminate the city's duties and responsibilities. OAG 92-OMD-1840, 1992 Ky. AG LEXIS 296.

City's response to complaint that meeting of city commissioners violated the Open Meetings Act with no citations or explanations, merely concluding that no meeting was held in violation of the Open Meetings Act and that if any violation occurred "it was purely accidental and unintentional" was completely unacceptable as a response or solution to a complaint alleging a violation of the Open Meetings Act. OAG 92-OMD-1840, 1992 Ky. AG LEXIS 296.

A person cannot seek relief from Attorney General's Office under this section when the same and additional questions under the Kentucky Open Meetings Act are currently pending before a circuit court under KRS 61.848. OAG 93-OMD-81, 1993 Ky. AG LEXIS 135.

Where the school board, at an open and public meeting, voted to employ a certain law firm as of the date of that meeting, the school board did not violate the Open Meetings Act even though prior to such meeting the chairman and one member of the board hired such firm and paid for their services with their personal funds; nothing in the Open Meetings Act prohibits public officials from securing legal representation and advice with their personal funds outside the scope of a public meeting. OAG 94-OMD-83, 1994 Ky. AG LEXIS 222.

As a public agency subject to the terms and provisions of the Open Meetings Act, the Workers' Compensation Advisory Council violated subsection (1) of this section by failing to furnish a timely written response to the person filing a complaint as to the legality of the Council adjourning into private caucuses meeting separately as business and labor interests. OAG 96-OMD-261, 1996 Ky. AG LEXIS 89.

Had the complaint as to the legality of the Workers' Compensation Advisory Council adjourning into private caucuses meeting separately as business and labor interests been an appeal under the Open Records Act (KRS 61.870 to KRS 61.884), which imposes the burden of proof in sustaining a denial of a request upon the public agency, KRS 61.880(2)(c), the matter could have been conclusively resolved in favor of the complaining party, however, because the Open Meetings Act contains no such provision relative to the public agency's burden of proof, it could not be decided that the public agency failed to meet its burden of proof and no definitive finding could be made. OAG 96-OMD-261, 1996 Ky. AG LEXIS 89.

Where a complaint was filed as to the legality of the Workers' Compensation Advisory Council adjourning into private caucuses meeting separately as business and labor interests, there could not be a definitive finding made by the Office of the Attorney General because the evidence was insufficient as to whether there was contemplated a "series of less than quorum meetings" or whether the purpose of these less than quorum gatherings was to avoid the requirements of the Open Meetings Act. If there were a series of less than quorum meetings and if those meetings were conducted for the purpose of avoiding the requirements of the Open Meetings Act, the Open Meetings Act would be violated. OAG 96-OMD-261, 1996 Ky. AG LEXIS 89.

The county board of education's response to party complaining that some at meeting some people could not hear, that the meeting site was inadequate and people were forced to stand in the hallway and outside in the winter cold, violated the Open Meetings Act in that its written answer to the complaining party did not address the specific issues of accessibility to the meeting, noise in the meeting room, persons outside the meeting room in the hallway, and persons outside the building on a winter night; in addition, the response did not cite a section of the Open Meetings Act in support of the public agency's position and it did not provide a brief explanation of how that particular statutory provision applied to the situation involving the public agency. OAG 97-OMD-28, 1997 Ky. AG LEXIS 6.

While the school board violated the Open Meetings Act by its failure to file a written response to the complaint within the statutorily mandated time frame, its decision to not renew the superintendent's contract was not a violation of the Open Meetings Act as that action was within the agenda of activities set forth in the notice for that special meeting which stated that "The purpose of the meeting will be to discuss renewal/or action of the superintendent's contract." OAG 97-OMD-43.

The function of the Attorney General's Office relative to the handling of an appeal under the Open Meetings Act is to issue

a written decision stating whether the public agency violated the Act. The Attorney General cannot void actions taken or impose penalties for violations of the Act; only the Circuit Court can do that. OAG 97-OMD-90, 1997 Ky. AG LEXIS 33.

A city commission violated subsection (1), requiring an agency response to an open meetings complaint in writing and within three (3) business days, by failing to respond to complaint; a letter directed to the Attorney General following initiation of an open meetings appeal does not satisfy the statutory requirement. OAG 99-OMD-49, 1999 Ky. AG LEXIS 45.

A city council's failure to respond in writing and within three (3) business days to a complaint constituted a procedural violation of the statute. OAG 99-OMD-104, 1999 Ky. AG LEXIS 141.

A planning and zoning commission's failure to respond in writing, and within three (3) days, to a complaint, constituted a violation of the statute. OAG 99-OMD-146, 1999 Ky. AG LEXIS 143.

The failure of a county fiscal court to respond to an open meeting complaint within three (3) business days constituted a violation of the statute. OAG 99-OMD-213, 1999 Ky. AG LEXIS 191.

A county fiscal court's response to a combined meetings complaint and records request was procedurally deficient insofar as it was not issued within three (3) business days, it failed to cite a statutory basis for the fiscal court's position, and it failed to contain a brief supporting explanation. OAG 99-OMD-221, 1999 Ky. AG LEXIS 214.

A streetscape committee violated the statute by failing to respond in writing, and within three (3) business days, to an open meetings complaint. OAG 00-OMD-65, 2000 Ky. AG LEXIS 7.

The Attorney General is not authorized by the statute to declare actions taken at an improperly held meeting to be null and void. OAG 00-OMD-109, 2000 Ky. AG LEXIS 117.

A city commission's failure to respond in writing to a complaint pertaining to a special meeting constituted a violation of the statute. OAG 00-OMD-142, 2000 Ky. AG LEXIS 147.

A complaint pertaining to a meeting of a city council failed to substantially conform to the requirements of subsection (1) where the complaint was not addressed to the mayor and did not propose a remedy. OAG 00-OMD-156, 2000 Ky. AG LEXIS 174.

Since KRS 61.846(2) assigns to the Attorney General the role of dispute mediator in an open meetings appeal, and since the statute directs the Attorney General to review appeals without reference to the identity of the requester or to the agency issuing the denial, and since it does not provide for the appointment of an "independent authority" under circumstances which might appear to compromise his impartiality, or indeed, under any circumstances, the Attorney General will endeavor to research the law thoroughly and to apply that law to the facts presented without favoritism or bias. OAG 01-OMD-154, 2001 Ky. AG LEXIS 216.

By its express terms, KRS 61.846(2) forecloses Attorney General review of an open meetings appeal that is not initiated within sixty (60) days of the date of receipt of the agency's denial of an open meetings complaint or within sixty (60) days of the date the complaint was submitted if the agency refuses to provide a written denial. Accordingly, the appeal is time barred. OAG 03-OMD-53, 2003 Ky. AG LEXIS 217.

Where the complaint was placed in the mail on November 22, a Saturday, and presumably reached the Mayor on Monday or Tuesday of the following week, and where the City's offices were no doubt closed on Thursday and Friday, November 27 and 28, for the Thanksgiving holiday, and this appeal was initiated on the following Tuesday, December 2, no more than three (3) business days after his complaint reached the Mayor, the appeal was therefore premature, and the Council did not violate KRS 61.846(1). OAG 03-OMD-250, 2003 Ky. AG LEXIS 273.

61.848. Enforcement by judicial action — De novo determination in appeal of Attorney General's decision — Voidability of action not substantially complying — Awards in willful violation actions.

(1) The Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred shall have jurisdiction to enforce the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not have to exhaust his remedies under KRS 61.846 before filing suit in a Circuit Court. However, he shall file suit within sixty (60) days from his receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or, if the public agency refuses to provide a written denial, within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de novo.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any rule, resolution, regulation, ordinance, or other formal action of a public agency without substantial compliance with the requirements of KRS 61.810, 61.815, 61.820, and KRS 61.823 shall be voidable by a court of competent jurisdiction.

(6) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.805 to 61.850, where the violation is found to be willful, may be awarded costs, including reasonable attorneys' fees, incurred in connection with the legal action. In addition, it shall be within the discretion of the court to award the person an amount not to exceed one hundred dollars ($100) for each instance in which the court finds a violation. Attorneys' fees, costs, and awards under this subsection shall be paid by the agency responsible for the violation.

History.

Enact. Acts 1992, ch. 162, § 8, effective July 14, 1992.

NOTES TO DECISIONS

Analysis

1. Application.
2. Order of Censure.
3. Substantial Compliance.
4. Voiding Decisions.

1. Application.

Where court found that closed meeting of county board of education had violated the open meetings of public agencies

law and declared all action taken at the meeting void and enjoined the board from holding future closed sessions on certain topics discussed at the meeting, the court remained within the authority supplied it by this section in granting such relief and as long as the board and its members made a good faith effort to obey they would not be cited for contempt. Jefferson County Board of Education v. Courier-Journal, 551 S.W.2d 25, 1977 Ky. App. LEXIS 693 (Ky. Ct. App. 1977) (decided under prior law).

Injunction was proper under this section — even without a showing that petitioners had no adequate remedy at law — when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to KRS 61.815, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921, 1997 Ky. LEXIS 145 (Ky. 1997).

While the coverage of the Open Meetings Act, KRS 61.800, was broad enough to include a police captain's termination hearing, the police captain did not follow the procedures in KRS 61.846 and 61.848, and so was not entitled to relief. Howard v. City of Independence, 199 S.W.3d 741, 2005 Ky. App. LEXIS 230 (Ky. Ct. App. 2005), abrogated in part, Pearce v. Univ. of Louisville, 2011 Ky. App. Unpub. LEXIS 998 (Ky. Ct. App. Nov. 18, 2011).

Pursuant to KRS 61.848, a consulting contract that had been improperly approved following a closed session in a meeting of a county board of education, the attempted ratification of which was an action taken without substantial compliance with KRS 61.815, was voidable by the circuit court. As such, the contractor could retain amounts already paid for services under the contract but was not entitled to any additional payments. Carter v. Smith, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

Trial court properly exercised it authority to void the action of the school board directing legal counsel to pursue litigation because the board did not substantially comply with the Open Meetings Act. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

While a board of commissioners violated the Open Meetings Act, the court of appeals erred in assessing fees and costs against it because the violation was not willful; the violation stemmed more from the board's effort to avoid the publicity adversely affecting the value of the property and its misconception of the law applicable to bidding at public auction without reserve, than from a willful attempt to violate the Act. Bd. of Comm'rs of Danville v. Advocate Communs., 527 S.W.3d 803, 2017 Ky. LEXIS 501 (Ky. 2017).

Former members of a public board had constitutional standing to raise violations of the Open Meetings Act with respect to a county fiscal court's action in removing them and the subsequent action by the board approving a lease termination agreement because they clearly alleged distinct and palpable injuries caused by the actions of the fiscal court and the board for which they would be entitled to a remedy under the Act; any action taken by the fiscal court in violation of the Act was voidable. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

General Assembly declared that all citizens have a direct interest in public agencies' compliance with the requirements of the Open Meetings Act, and the particularized injury arises from the agency's violation of the Act itself, not specifically from the action taken; the rights accorded under the Act are not merely procedural but also grant the public at large a direct interest in its enforcement, and in other words, the violation of the Act itself constitutes the direct and personal injury. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

Trial court erred by dismissing a complaint for lack of standing because the Open Meetings Act permitted an association to recover attorney fees and costs, and the availability of the remedy met the redressability requirement for constitutional standing; because actions taken in violation of the Act were not void ab initio, third parties not involved in the allegedly unlawful conduct could be entitled to rely on the validity of the agreement executed by the county fiscal court and public board. Lincoln Trail Grain Growers Ass'n v. Meade Cty. Fiscal Court, 632 S.W.3d 766, 2021 Ky. App. LEXIS 89 (Ky. Ct. App. 2021).

In this Open Records Act action, the order was reversed in part because the circuit court lacked subject matter jurisdiction to conclude the university violated the Open Meetings Act where neither party invoked the circuit court's jurisdiction to enforce provisions. Univ. of Ky. v. Hatemi, 636 S.W.3d 857, 2021 Ky. App. LEXIS 114 (Ky. Ct. App. 2021).

2. Order of Censure.

By conducting its final deliberations in a closed session without substantial compliance with KRS 61.815, the State Board of Accountancy rendered its action in censuring an accountant voidable under this section; however, since the accountant raised no objection and demonstrated no prejudice as a result of the Board's action, the action was not void. Stinson v. State Bd. of Accountancy, 625 S.W.2d 589, 1981 Ky. App. LEXIS 304 (Ky. Ct. App. 1981) (decided under prior law).

3. Substantial Compliance.

Because a closed session in a meeting of a county board of education was not justified by any of the statutory exceptions in KRS 61.810, substantial compliance could not be found under KRS 61.848. There cannot be substantial compliance when an agency entirely fails to comply with the law by entering a closed session to which none of the exceptions apply. Carter v. Smith, 366 S.W.3d 414, 2012 Ky. LEXIS 66 (Ky. 2012).

4. Voiding Decisions.

Where County Board of Education violated Kentucky's Open Meetings Act at four school board meetings by requiring that all in-person attendees wear a mask or other facial covering, circuit court's action voiding the school board's decisions at the four meetings was erroneous because Ky. Rev. Stat. Ann. § 61.848(5) did not authorize a court to void actions taken in public meetings which violated Ky. Rev. Stat. Ann. § 61.840, the statute the Board was found to have violated. Campbell Cnty.Bd. of Educ. v. Moellman, 2023 Ky. App. LEXIS 67 (Ky. Ct. App. Aug. 25, 2023), review denied, ordered not published, 2024 Ky. LEXIS 46 (Ky. Feb. 7, 2024).

Even if an employer, which was a non-profit corporation established as a joint city/county effort for industrial development, violated the Kentucky Open Meetings Act, Ky. Rev. Stat. Ann. § 61.805 et seq., during a meeting in which the employer decided not to renew an employee's employment contract, the violations would not have voided automatically the employer's written notice to the employee of non-renewal of the employee's contract, especially as the employee failed to demonstrate prejudice. Bradshaw v. Cap. Cmty. Economic/ Indus. Dev. Auth., 727 S.W.3d 684, 2025 Ky. App. LEXIS 109 (Ky. Ct. App. 2025).

OPINIONS OF ATTORNEY GENERAL.

A person cannot seek relief from Attorney General's Office under KRS 61.846 when the same and additional questions under the Kentucky Open Meetings Act are currently pending before a circuit court under this section. OAG 93-OMD-81, 1993 Ky. AG LEXIS 135.

The function of the Attorney General's Office relative to the handling of an appeal under the Open Meetings Act is to issue a written decision stating whether the public agency violated the Act. The Attorney General cannot void actions taken or impose penalties for violations of the Act; only the Circuit Court can do that. 97-OMD-90.

61.850. Construction.

KRS 61.805 to 61.850 shall not be construed as repealing any of the laws of the Commonwealth relating to meetings but shall be held and construed as ancillary and supplemental thereto.

History.

Enact. Acts 1974, ch. 377, § 11.

OPEN RECORDS

61.870. Definitions for KRS 61.870 to 61.884.

As used in KRS 61.870 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

(a) Every state or local government officer;

(b) Every state or local government department, division, bureau, board, commission, and authority;

(c) Every state or local legislative board, commission, committee, and officer;

(d) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(e) Every state or local court or judicial agency;

(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(g) Any body created by state or local authority in any branch of government;

(h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;

(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;

(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and

(k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3)(a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4)(a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;

2. Use of a public record by a radio or television station in its news or other informational programs; or

3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

(6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards;

(8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device;

(9) "Booking photograph and photographic record of inmate" means a photograph or image of an

individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099; and

(10) "Resident of the Commonwealth" means:

(a) An individual residing in the Commonwealth;

(b) A domestic business entity with a location in the Commonwealth;

(c) A foreign business entity registered with the Secretary of State;

(d) An individual that is employed and works at a location or locations within the Commonwealth;

(e) An individual or business entity that owns real property within the Commonwealth;

(f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or

(g) A news-gathering organization as defined in KRS 189.635(9)(b)1.a. to e.

History.

Enact. Acts 1976, ch. 273, § 1; 1986, ch. 150, § 2, effective July 15, 1986; 1992, ch. 163, § 2, effective July 14, 1992; 1994, ch. 262, § 2, effective July 15, 1994; 2012, ch. 26, § 1, effective July 12, 2012; 2016 ch. 101, § 2, effective July 15, 2016; 2021 ch. 160, § 1, effective June 29, 2021; 2024 ch. 23, § 2, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Public Records.
4. Prosecutorial File.
5. Public Agency.
6. — Agent.
7. Private Corporation.
8. Attorney-Client Privilege.
9. Defamation.
10. Harm.
Cited in:

1. Constitutionality.

Pre-amendment version of Ky. Rev. Stat. Ann. § 61.870(1)(h) was constitutional as it was sufficiently definite that a common man of ordinary intelligence could read and subscribe meaning to it. Pike Cnty. Fiscal Court v. Util. Mgmt. Grp., LLC, 2015 Ky. App. LEXIS 88 (Ky. Ct. App. June 12, 2015, sub. op., 2015 Ky. App. Unpub. LEXIS 880 (Ky. Ct. App. June 12, 2015).

Former Ky. Rev. Stat. Ann. § 61.870(1(h) was not unconstitutional for being vague because the statute was not void-as-unintelligible, as (1) the people the statute affected could understand the statute, and (2) courts could deduce the legislature's will, as undefined terms found to render the statute unintelligible were commonly defined. Util. Mgmt. Grp., LLC v. Pike Cty. Fiscal Court, 531 S.W.3d 3, 2017 Ky. LEXIS 441 (Ky. 2017).

Kentucky's Open Records Act's commercial-purpose fee statute was constitutional as applied to the requestor because the commercial/non-commercial purpose distinction did not discriminate based on the content of requestor's speech but distinguished based on whether the user expected a profit, and the fact that certain commercial requestors such as newspapers and radio stations were exempted did not render the distinction arbitrary as the state has a legitimate interest in ensuring the press and parties to litigation could obtain records at a reasonable fee. Zillow, Inc. v. Miller, 126 F.4th 445, 2025 FED App. 10P, 2025 U.S. App. LEXIS 1041 (6th Cir. Ky. 2025).

2. Public Records.

Text messages related to Kentucky Department of Fish and Wildlife Resources Commission business and stored on personal cell phones of its members were public records generally subject to disclosure under the Open Records Act. Ky. Open Gov't Coal. v. Ky. Dep't of Fish & Wildlife Res. Comm'n, 2023 Ky. App. LEXIS 91 (Ky. Ct. App. 2023), rev'd in part, aff'd, 733 S.W.3d 377, 2026 Ky. LEXIS 32 (Ky. 2026).

Due process does not require an appellate court to lay out for inspection by the appellant, even in a capital case, all of the information in its hands from which it may seek perspective and guidance in reviewing the propriety of his sentence. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

The custody and control of the records generated by the courts in the course of their work are inseparable from the judicial function itself, and are not subject to statutory regulation. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

The materials compiled for purposes of reviewing death sentences will be open to the public and, perforce, to all who may be interested, as soon as the Supreme Court has the occasion and opportunity to examine and consider them, and until then they are in the same category as any other source of knowledge or information, apart from the record of proceedings relating to an individual appellant, from which the members of the court may properly seek assistance or inspiration in the formulation of their judgments. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

State university's response to inquiry by collegiate athletic association into rules violation was not exempt from disclosure under Open Records Act exemption for public records. It is clear that the university is a "public agency" and the entire response submitted by the university to the National Collegiate Athletic Association (NCAA) constitutes a public record. Where the university spent over $400,000.00 for the response and the public has a legitimate interest in its contents, the response is not exempt. Furthermore, the contents of the response are a matter of public interest and release would not constitute a clearly unwarranted invasion of personal privacy. University of Kentucky v. Courier-Journal & Louisville Times Co., 830 S.W.2d 373, 1992 Ky. LEXIS 55 (Ky. 1992).

Any common law regarding access to records maintained by public agencies was codified and preempted by the General Assembly's passage of the Open Records Act. University of Kentucky v. Courier-Journal & Louisville Times Co., 830 S.W.2d 373, 1992 Ky. LEXIS 55 (Ky. 1992).

Medical records of patients in public hospital were not related to the functioning of the hospital, the activities carried on by the hospital, its programs or its operations and, as such, were not public records under this section. Hardin County v. Valentine, 894 S.W.2d 151, 1995 Ky. App. LEXIS 48 (Ky. Ct. App. 1995).

KRS 61.878 exempts Governor's daily appointment ledgers from media inspection and summary judgment denying their availability to newspaper under the Open Records Act was appropriate. Courier-Journal v. Jones, 895 S.W.2d 6, 1995 Ky. App. LEXIS 58 (Ky. Ct. App. 1995).

Family Educational Rights and Privacy Act (FERPA) did not bar a university from releasing to a newspaper all records sought under the Open Records Act because, while FERPA barred release of unredacted education records contained in a Title IX investigation file, not all the records sought were education records directly relating to a student. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App.

2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Cast paper ballots fit the definition of a public record as papers prepared, owned, used, and retained by a public agency. Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025).

Because volunteer Kentucky Department of Fish and Wildlife Resources Commission members lacked individual authority to bind the Commission, used personal devices because no government alternatives were provided, and could only act collectively with a quorum, their private emails and texts were not public records subject to disclosure because the individual members did not constitute "public agencies" under the statute. Ky. Dep't of Fish & Wildlife Resources Commission v. Ky. Open Gov't Coal., Inc., 733 S.W.3d 377, 2026 Ky. LEXIS 32 (Ky. 2026).

4. Prosecutorial File.

The Open Records Act neither intends nor provides that a convicted criminal should have complete access to the prosecutorial file once his conviction has been affirmed on direct appeal. Skaggs v. Redford, 844 S.W.2d 389, 1992 Ky. LEXIS 164 (Ky. 1992), overruled in part, City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

5. Public Agency.

The Kentucky State University Foundation is a "public agency" as defined in this section and therefore subject to the Open Records law. An interpretation of this section which does not include the Foundation as a public agency is clearly inconsistent with the natural and harmonious reading of this section considering the overall purpose of the Kentucky Open Records law. The obvious purpose of the Open Records law is to make available for public inspection all records in the custody of public agencies by whatever label they have at the moment. The phrase "or agency thereof" in subsection (1) prior to the 1992 amendment is applicable to all units of government listed before it in the same subsection. It is the clear intent of the law to make public the records of all units of government by whatever title for public inspection. Frankfort Pub. Co. v. Kentucky State University Foundation, Inc., 834 S.W.2d 681, 1992 Ky. LEXIS 103 (Ky. 1992) (decision prior to 1992 amendment).

The role of the Commissioner of the Department of Insurance as "rehabilitator" is legally separate from his official role as the regulator of the state's insurance department, and although he is appointed by and responsible to the court, the commissioner is not a "governing body" as contemplated in subsection (1)(i) of this section nor does he qualify as a "public agency" as described in subsection (1)(a) of this section. Kentucky Cent. Life Ins. Co. by & Through Stephens v. Park Broadcasting, 913 S.W.2d 330, 1996 Ky. App. LEXIS 6 (Ky. Ct. App. 1996).

The Kentucky State Penitentiary, and other Kentucky facilities, are required to comply with open records requests. Blair v. Hendricks, 30 S.W.3d 802, 2000 Ky. App. LEXIS 69 (Ky. Ct. App. 2000), overruled in part, Lang v. Sapp, 71 S.W.3d 133, 2002 Ky. App. LEXIS 452 (Ky. Ct. App. 2002).

As the status of a public university's foundation as a public entity under KRS 61.870 had not been clearly established, it was reasonable for donors to the foundation who requested anonymity to expect their request to be honored. Therefore, a newspaper was properly denied access to donor identities and the amounts of their donations under Kentucky's Open Records Act. Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

Future donors to the University of Lousiville Foundation are on notice that their gifts are being made to a public institution and, therefore, are subject to disclosure under KRS 61.871 regardless of any requests for anonymity. Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

Names of donors to a public university's foundation who had not requested anonymity were subject to the disclosure requirement of KRS 61.871, as the foundation was a public entity under KRS 61.870, and the donors had no reasonable expectation of privacy. Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

Circuit court properly found that the operator of a hospital was a public agency and within the scope of Kentucky's Open Records Act because a majority of the operator's board of directors were appointed by a university, itself a public agency. Univ. Med. Ctr., Inc. v. ACLU of Ky., Inc., 467 S.W.3d 790, 2014 Ky. App. LEXIS 159 (Ky. Ct. App. 2014).

Unpublished decision: Appellant was public agency under the provision because it was created and controlled by a public agency and every contractual obligation it undertook was for the benefit of the public agency. Ky. State Univ. Found., Inc. v. Frankfort Newsmedia, LLC, 694 S.W.3d 394, 2024 Ky. App. LEXIS 22 (Ky. Ct. App. 2024).

6. — Agent.

By virtue of county attorney's election to participate in program relating to state's goal of reducing welfare roles by collecting child support payments for welfare recipients, attorney acted as an agent of the Cabinet for Human Resources with respect to administration of the program, and to that extent, attorney was subject to the Open Records Act which governed disclosure of documents related to the program. Edmondson v. Alig, 926 S.W.2d 856, 1996 Ky. App. LEXIS 124 (Ky. Ct. App. 1996).

7. Private Corporation.

The confidential audited financial reports of privately owned, corporate marina operators were exempt from disclosure under KRS 61.878(1)(c)(1). The Legislative Program Review and Investigation Committee could not obtain nor disclose such records under the Open Records Act, but could obtain access to them for its use in evaluation pursuant to KRS 6.910 without disclosure to the public. Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks, 906 S.W.2d 318, 1995 Ky. LEXIS 62 (Ky. 1995).

Private company was subject to the former Open Records Act because (1) the company could be a "body" under Ky. Rev. Stat. Ann. § 61.870(1)(h), and (2) the company derived virtually all the company's income from a water district and city. Util. Mgmt. Grp., LLC v. Pike Cty. Fiscal Court, 531 S.W.3d 3, 2017 Ky. LEXIS 441 (Ky. 2017).

Amendment to Ky. Rev. Stat. Ann. § 61.870(1(h) which exempted a private company from the Open Records Act was not retroactive because (1) no authority showed the amendment simply clarified existing law, (2) the amendment was not remedial, and (3) a fiscal court's right to inspect the company's records vested when the fiscal court requested the records before the amendment was enacted. Util. Mgmt. Grp., LLC v. Pike Cty. Fiscal Court, 531 S.W.3d 3, 2017 Ky. LEXIS 441 (Ky. 2017).

8. Attorney-Client Privilege.

Public records protected by the attorney-client privilege are ordinarily excludable from the disclosure requirements of the Open Records Act. Hahn v. Univ. of Louisville, 80 S.W.3d 771, 2001 Ky. App. LEXIS 84 (Ky. Ct. App. 2001).

The Governor's administration was properly ordered to release service description statements on attorney billing records reflecting the general nature of legal services rendered by nongovernmental lawyers retained in connection with an investigation of hiring practices. Such statements were not protected by the attorney-client privilege of KRE 503, and the trial court's solution of allowing the administration to submit descriptions it believed to be privileged for *in camera* review balanced the administration's interest in the confidentiality of

privileged materials and the public interest in disclosure. Commonwealth v. Scorsone, 2008 Ky. App. LEXIS 18 (Ky. Ct. App.), op. withdrawn, sub. op., 251 S.W.3d 328, 2008 Ky. App. LEXIS 40 (Ky. Ct. App. 2008).

Blanket redaction of descriptions of particular services rendered by nongovernment lawyers to various agencies in the governor's administration was improper under the Open Records Act, KRS 61.870 to 61.884, as the attorney-client privilege under KRE 503 did not apply to every communication between an attorney and a client. Commonwealth v. Scorsone, 251 S.W.3d 328, 2008 Ky. App. LEXIS 40 (Ky. Ct. App. 2008).

9. Defamation.

Kentucky Lottery Corporation did not have absolute privilege with respect to a termination memo in a defamation claim by discharged employees. The employees' alleged more than the simple disclosure of documents prepared in the regular course of business and placed in their personnel files; they presented evidence that their supervisors maliciously created defamatory memoranda so that they would be subject to an open records disclosure, and concealed the existence of the documents to impede the employees' ability to invoke an exemption to the Open Records Act, KRS 61.870 et. seq. Hill v. Ky. Lottery Corp., 2010 Ky. LEXIS 82 (Ky., sub. op., 327 S.W.3d 412, 2010 Ky. LEXIS 317 (Ky. 2010), modified, 2010 Ky. LEXIS 318 (Ky. Dec. 16, 2010).

Absolute privilege does not extend so far as to cloak with immunity one who, with a malicious purpose and under no legal compulsion to do so, creates defamatory material with the expectation that it would be published. Therefore, in a defamation case, a former employer was unable to argue that it was absolutely privileged because it was required to release a termination memorandum under the Kentucky Open Records Act. Hill v. Ky. Lottery Corp., 327 S.W.3d 412, 2010 Ky. LEXIS 317 (Ky. 2010).

10. Harm.

Nothing in the Kentucky Open Records Act conditions an individual's right to obtain public records on his purpose in seeking those records; further, the propriety of assessing a penalty against non-compliant officials does not depend on whether harm befell the person who is denied records under KRS 61.882(5). Therefore, the fact that an inmate might not have been harmed by the failure to disclose jail records was irrelevant. Eplion v. Burchett, 354 S.W.3d 598, 2011 Ky. App. LEXIS 215 (Ky. Ct. App. 2011).

Cited in:

Kentucky State Bd. of Medical Licensure v. Courier-Journal & Louisville Times Co., 663 S.W.2d 953, 1983 Ky. App. LEXIS 327 (Ky. Ct. App. 1983); Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co., 826 S.W.2d 324, 1992 Ky. LEXIS 35 (Ky. 1992).

NOTES TO UNPUBLISHED DECISIONS

1. Public Agency.

Unpublished decision: Under the pre-amendment version of Ky. Rev. Stat. Ann. § 61.870(1)(h), the management group, which provided management and operational services for the county public waterworks district and other services for a local city, and received funds from state and local authorities, qualified as a public agency. Pike Cnty. Fiscal Court v. Util. Mgmt. Grp., LLC, 2015 Ky. App. Unpub. LEXIS 880 (Ky. Ct. App. 2015), aff'd, 531 S.W.3d 3, 2017 Ky. LEXIS 441 (Ky. 2017).

OPINIONS OF ATTORNEY GENERAL.

Work papers prepared by members of the state auditor's staff in pursuing their statutory duties are "public records" which are open to public inspection, and such work papers become public records as they are prepared, formulated, or used by staff members. OAG 76-204.

The Kentucky Open Records Act, KRS 61.870 to 61.884, applies to county court clerks and circuit court clerks. OAG 76-243.

Comprehensive care centers are public agencies and thus all records of comprehensive care centers are public records subject to public inspection unless the nature of the record makes them confidential under the provisions of the statutes. OAG 76-420.

A request to police department for records pertaining to the criminal history of a certain person which pertained only to the records of criminal prosecutions which had as of the day of the request been completed or in which a determination not to prosecute was made and did not pertain to information gathered for use in respective law enforcement action not yet instituted should have been honored under the Criminal History Records Act, KRS 17.110 to 17.157 and the Open Records Act, KRS 61.870 to 61.884. OAG 76-424.

Unless a particular record of the police court is covered by a particular exception set forth in KRS 61.870 to 61.884 the record is subject to public inspection by any person without the necessity of showing a reason for the inspection. OAG 76-443.

There is nothing in KRS Chapter 315 or the Open Records Law (KRS 61.870 to 61.884) prohibiting the release of scores on examinations administered by the Kentucky Board of Pharmacy to applicants for a pharmacist license under KRS 315.050 to colleges of pharmacy or other institutions or agencies. OAG 76-573.

Since subsection (1) of this section contains a different definition of a public agency than KRS 61.805, in that it includes "any other body which is created by state or local authority in any branch of government or which derives at least 25% of its funds from state or local authority" some organizations which are not under the purview of the Open Meetings Law may be under the purview of the Open Records Law. OAG 76-648.

Since the River Region Mental Health-Mental Retardation Board, Inc. receives more than 25% of its funds from state or local authority the books and records of the corporation may be inspected by the public as well as by members of the corporation. OAG 76-648.

The naming of persons to the post of honorary deputy sheriffs is not an official function of the sheriff's office but is a personal activity and therefore is not subject to the strictures of the open records act. OAG 76-655.

A special district created when a group of public agencies combine together to carry out a special purpose is required to comply with the Open Meetings Law and the Open Records Law. OAG 76-663.

If a citizen requests to see the appointing documents for five (5) employees of the school board or even for twenty-five (25) employees there is no reason he should not be allowed access to the records and requests by school board that when specific individuals are involved in the requests they should be asked for on a one (1) individual at a time basis was not justified. OAG 76-756.

The State Board of Medical Licensure is a public agency and thus the official actions of the Board including disciplinary action are subject to public disclosure to any citizen. OAG 77-55, 1977 Ky. AG LEXIS 729.

The "police blotter" or police "incident report" is not exempt from public inspection; if a police department feels it necessary to withhold certain items from public inspection in order to protect a police officer or an informant, it may do so under KRS 17.150 but the burden is upon the custodian to justify the refusal of inspection with specificity, otherwise records of police departments showing complaints received from citizens in other incidences occurring in its daily operation are open to public inspection. OAG 77-102, 1977 Ky. AG LEXIS 681.

A water district is a public agency and has no general exemption from provisions of the Open Records Law. OAG 77-291, 1977 Ky. AG LEXIS 492.

The minutes of a board of zoning adjustment are public records and thus are open to public inspection. OAG 77-464, 1977 Ky. AG LEXIS 319.

A computer tape containing information extracted from corporation files maintained by the Secretary of State is a public record, and upon proper request an applicant would be entitled to a duplicate copy of the tape. OAG 77-480, 1977 Ky. AG LEXIS 315.

It is not lawful to permanently remove the official seals from land warrants; however, in order to make the land warrants suitable for lamination, such seals may be removed so long as they are replaced so that the warrant is restored to its original condition with the exception of the intervening sheet of plastic laminate, for to hold that the removal and replacement constitutes an unlawful alteration of a public record under KRS 519.060(1)(b) would render such restoration impossible; moreover since a literal reading of subsection (1)(b) of KRS 519.060 would defeat the legislative policy of preserving these warrants it cannot stand to prevent temporary removal of these seals and their subsequent replacement. OAG 77-516, 1977 Ky. AG LEXIS 263.

After an inquest verdict and testimony have been filed in the circuit clerk's office pursuant to KRS 72.060 (now repealed), such record at that point becomes a public record and is subject to the Open Records Law. OAG 78-28, 1978 Ky. AG LEXIS 693.

If a nonprofit corporation derives at least twenty-five percent (25%) of its funds from state or local authority, the corporation is subject to the Open Records Law and all of its records are subject to public inspection unless they are exempted under KRS 61.878. OAG 78-32, 1978 Ky. AG LEXIS 694.

The records pertaining to the salary, expense allowances and employee benefits of the employees of the University of Kentucky are public records subject to public inspection. OAG 78-179, 1978 Ky. AG LEXIS 607.

Under the Kentucky Open Records Law, a public agency is not required to create a document which does not already exist but is required to allow inspection of all its records unless the records are exempted by their nature under KRS 61.878. OAG 78-231, 1978 Ky. AG LEXIS 502.

Although Const., § 14 requires that the courts be open and although the courts are included within the definition of public agency of subsection (1) of this section, any papers produced by judges or staff attorneys during the internal deliberative process of the appellate courts are of such a preliminary nature that they come within the exception of subsection (1)(g) and (h) of KRS 61.878. OAG 78-262, 1978 Ky. AG LEXIS 461.

Under the Open Records Law, the Tracy Land Service may have access to and the use of the records in the office of the property valuation administrator of Graves County, for the purpose of securing the necessary information to take oil and gas leases from the mineral owners in Graves County, including: the name and address of the landowners in the county; the legal description of the property, the number of acres it contains, and the book and page of the deed whereby the property was acquired; and, the use of the maps in order to locate the property and to determine the ownership of the land bordering it on all sides. OAG 78-473; as modified by OAG 78-549.

Only the tax rolls of the office of the property valuation administration are required to be open to inspection; maps and other papers designated as working papers are preliminary drafts and notes and exempt from the mandatory provisions of the Open Records Act. OAG 78-549 modifies 78-473.

An agency does not have to supply by mail copies of records in response to a blanket request; the right to have copies of records is ancillary to the right of inspection, and if a citizen wants to make a fishing expedition through public records he must do it himself. OAG 78-728, 1978 Ky. AG LEXIS 116.

The fact that the Housing Authority of Newport is created by statute is conclusive of the fact that it is a public agency subject to the provisions of the Kentucky Open Records Law, KRS 61.870 to 61.884. OAG 78-728, 1978 Ky. AG LEXIS 116.

The public should be allowed access to the business license records of the Lexington-Fayette urban county government insofar as the records reveal only which individuals and businesses are licensed. OAG 78-809, 1978 Ky. AG LEXIS 36.

KRS 43.090, in providing that audit and investigative reports are public documents, in effect amends subsection (2) of this section which defines "public records," since KRS 43.090, as amended in 1978, is later legislation (KRS 61.870 was enacted in 1976) and constitutes specific legislation as contrasted with general. OAG 78-816, 1978 Ky. AG LEXIS 19.

The records of a local community action agency as to locations of work performed, identity of all employees and their time and amount of work, and all records with regard to winterization/weatherization program and materials, are properly open to inspection. OAG 78-828, 1978 Ky. AG LEXIS 7.

Cruiser repair vouchers, bills, receipts, cancelled checks and/or other records for said work, including parts and accessories purchased for the cars the sheriff's office operates, and gasoline purchase records are all public records within the meaning of the Kentucky Open Records Law, KRS 61.870 to 61.884. OAG 79-27, 1979 Ky. AG LEXIS 601.

Records showing those who passed the hairdressing instructor's examination and were issued an instructor's license would not be exempt from inspection. OAG 79-58, 1979 Ky. AG LEXIS 567.

The minutes of the board of hairdressers and cosmetologists and vouchers for compensating members of the board are subject to public inspection. OAG 79-58, 1979 Ky. AG LEXIS 567.

Where the requested information was described as all public records pertaining to the listing of duly registered voters in each and every county and precinct within the Commonwealth of Kentucky, the request was specific and the tapes and discs requested were public records. OAG 79-77, 1979 Ky. AG LEXIS 537.

A national bank is not a public agency within the meaning of the Kentucky Open Records Law, nor is a state bank. OAG 79-325, 1979 Ky. AG LEXIS 310.

The Open Records Law does not provide any mandate against the opening for inspection of any public records even records which may be exempt from the requirements of being open for inspection. OAG 79-326, 1979 Ky. AG LEXIS 311.

The Somerset Community College, an agency under the control of the board of trustees of the University of Kentucky, is a public agency within the definition of the Kentucky Open Records Law. OAG 79-348, 1979 Ky. AG LEXIS 289.

KRS 68.360 provides for a monthly statement of the county treasurer to be filed with the county judge/executive and the fiscal court, showing the balance of county funds available for governmental expenditure, and for the county judge/executive's filing similar quarterly reports as to status of county funds, showing receipts and expenditures of county funds, which records are public records, as defined in this section, and are subject to inspection by any person under the conditions of KRS 61.872. OAG 79-374, 1979 Ky. AG LEXIS 275.

While "incident reports" should be open to public inspection, there is no requirement that a police department prepare a special report for the news media unless it sees fit to do so voluntarily. OAG 79-387, 1979 Ky. AG LEXIS 241.

A notation "Do Not Publish" on a public record would have no effect on the right to inspect, copy and publish the information in the record. OAG 79-413, 1979 Ky. AG LEXIS 220.

Records of marriage, divorce and transfer of property are not protected by any right of privacy, but adoption records are

made confidential by statute, KRS 199.570, and kept sealed by the court; there are no administrative records kept by a county clerk which are exempt from public inspection. OAG 79-413, 1979 Ky. AG LEXIS 220.

Where a request was made for inspection of correspondence between the United States Attorney General and an alderman, which correspondence had not been authorized by action of the board of aldermen nor dealt with public functions, activities, programs or operations, the documents were not "public records" within the meaning of subsection (2) of this section, since the alderman's letters would be only private correspondence in the absence of such board approval. OAG 79-496, 1979 Ky. AG LEXIS 134.

It is not necessary for an agency to make a list of items from its records if such a list does not already exist. OAG 79-547, 1979 Ky. AG LEXIS 93.

The purpose of the Open Records Law is not to provide information but to provide access to public records which are not exempt by law. OAG 79-547, 1979 Ky. AG LEXIS 93.

The borrowing of money from the federal REA does not constitute a rural electric cooperative corporation as a public agency under either the Open Meetings Law (KRS 61.805 to 61.850) or the Open Records Law (KRS 61.870 to 61.882). OAG 79-560, 1979 Ky. AG LEXIS 80.

A county jailer is a "public agency" within KRS 61.870 to 61.884. OAG 79-575, 1979 Ky. AG LEXIS 65.

Checks, check stubs and financial records of a county jail, jail logs and records for reimbursement for prisoner care and feeding, jail logs retained showing dates prisoners were arrested and released, and records of jail income and expenses are "public records" under KRS 61.870 to 61.884. OAG 79-575, 1979 Ky. AG LEXIS 65.

A local human rights commission is a public agency operating under the authority of the laws of the Commonwealth of Kentucky. OAG 79-608, 1979 Ky. AG LEXIS 66.

An urban county division of police comes within the meaning of "public agency" as defined in subsection (1) of this section. OAG 79-608, 1979 Ky. AG LEXIS 66.

The internal affairs division of the department of safety of the city of Louisville is a public agency within the meaning of the Kentucky Open Records Law (KRS 61.870 to 61.884). OAG 80-43, 1980 Ky. AG LEXIS 585.

The Kentucky Housing Corporation is a "public agency" as defined in this section and is subject to the provisions of the Open Records Law. OAG 80-207, 1980 Ky. AG LEXIS 453.

The Lexington-Fayette urban county housing authority is a public agency subject to the Open Records Law, KRS 61.870 to 61.884, and its housing assistance payments contracts and its property inspection reports are public records which are not exempt from public inspection and should be made available for inspection by the requester. OAG 80-288, 1980 Ky. AG LEXIS 352.

Where a member of an electric plant board has requested to inspect numerous plant board records covering a five-year period and that certain lists be compiled for him, it will be sufficient under the Open Records Law for the board to allow the requester access to the records he wants to inspect if they exist and the board does not have to prepare lists which are not already in existence. OAG 80-308, 1980 Ky. AG LEXIS 381.

The public is not entitled mandatorily to access to the home addresses of voluntary members of an organization such as the action league for physically handicapped adults (ALPHA), even though ALPHA received more than 25 percent of its funding from a state or local authority and is, therefore, a public agency under the Open Records Law. OAG 80-432, 1980 Ky. AG LEXIS 238.

Bank statements, cancelled checks and check stubs are public records when they pertain to the funds of a public agency, and under the Open Records Law they should be made available to any person who requests to inspect them; however, the bank's records are not public records and are therefore not subject to the Open Records Law. OAG 80-454, 1980 Ky. AG LEXIS 244.

The account books of the CETA program, any record of bills paid, payroll, check stubs or cancelled checks, and all other records which show funds received and disbursed are public records and if the demand is refused by the custodian, the requester can file suit in the circuit court under the Open Records Law. OAG 80-454, 1980 Ky. AG LEXIS 244.

Where one public agency has investigated the financial transactions and procedures of another public agency through the use of subpoena, thereafter recommending certain changes and improvements in financial procedures, a request to inspect records of the investigated agency should be made to the chief administrative officer or the designated official custodian of the records for the investigated agency, and such records need not be made available by the investigating agency; however, the investigating agency should make available for inspection any records generated during its investigation where a determination not to prosecute has been made. OAG 80-462, 1980 Ky. AG LEXIS 191.

The Kentucky Open Records Law is the same as the Freedom of Information Act in that the provisions requiring the disclosure are mandatory and the exceptions are discretionary. OAG 80-519, 1980 Ky. AG LEXIS 166.

An urban county airport board is a public agency and all of its papers are public records. OAG 80-586, 1980 Ky. AG LEXIS 74.

KRS 61.810(6) (now (1)(f)), which provides an exception to the Open Meetings Law allowing hearings on personnel matters to be held in closed session, has no pertinency as to whether documents concerning the dismissal of five employees should be made available for public inspection; in denying inspection of a public record a public agency must rely on one (1) of the exceptions provided in the Open Records Law, KRS 61.878(1). OAG 80-586, 1980 Ky. AG LEXIS 74.

A county housing agency is a public agency under the Open Records Law and it should make its records available for inspection by any person who makes a request to inspect records. OAG 80-597, 1980 Ky. AG LEXIS 68.

A volunteer fire association organized under KRS 273.161 to 273.273 as a nonstock, nonprofit corporation that derives its funds mainly from contracts with municipalities without bidding and without any competition involved, which makes the use of its funds a matter of public stewardship, is a public agency under the Open Records Law and its records are subject to public inspection under the Open Records Law. OAG 80-633, 1980 Ky. AG LEXIS 29.

Under the Open Records Law all persons have the same standing to inspect public records and, when making the request to inspect records, they do not have to state any reason or purpose for making the inspection. OAG 80-641, 1980 Ky. AG LEXIS 8.

Where newspaper reporter sought records of unrestricted expenditures of the University of Louisville Foundation, Inc. for certain years, it was improper for university custodian of records to deny inspection of records on the basis of a judicial determination that the foundation was not a public agency under KRS 61.805 and the Open Meetings Law since the request for the records and the response thereto was not made by or to the foundation but by the university which is a public agency under the Open Records Law. OAG 81-2, 1981 Ky. AG LEXIS 423.

Where letter response to person requesting inspection of housing agency records stated that agency would respond once request had been cleared with United States Department of Housing and Urban Development Area Council but cited no state or federal statute authorizing the denial or delay of inspection and where request did not on its face suggest any exemption from inspection under KRS 61.878, there was

improper denial or delay of inspection under the Open Records Law. OAG 81-4, 1981 Ky. AG LEXIS 417.

Where applicant sought, for a reasonable fee, for the Department of Labor (now Labor Cabinet) to furnish microfiche records of state claims for industrial injury from 1974 through 1980 and an alphabetical computer printout of the same information and the same dates, the sale of complete or selected data by the agency is not restricted by the Open Records Law from such sale, if found to be in the public interest, nor is such sale mandated by the Open Records Law. OAG 81-52, 1981 Ky. AG LEXIS 383.

The county judge/executive must disclose the time, date and location of the regular meeting of the county health board under the Open Records Act and must notify the requester of any special meetings which are called under KRS 61.825 (now repealed). OAG 81-120, 1981 Ky. AG LEXIS 300.

Where a public agency has not adopted its own rules and regulations with respect to the storage of agency records, the uniform regulations adopted by the Department of Finance (now Finance and Administration Cabinet) would apply to determine where such records can be kept; thus, in the absence of agency regulations, the records of the board of physical therapy may be kept in the home of the executive director of the board when the residence is designated as the official office of the agency and the responsibility for the keeping of the records is placed on the executive director as the official custodian, with no further precautions necessary; moreover, the listing of the home address in the state directory and city telephone directory serves as sufficient notice as to where the records may be found and inspected under the Open Records Law. OAG 81-269, 1981 Ky. AG LEXIS 159.

It was a violation of the Open Records Law when a custodian of records did not either send the requester the records he requested, tell him where and when he could inspect the requested records or give him a written response denying the record with an explanation based on a statutory exception. OAG 81-288, 1981 Ky. AG LEXIS 149.

A letter of transmittal which was presented to a university board chairman prior to charges being preferred against a university president or faculty member is an official document which is required by subsection (3) of KRS 164.360 and, therefore, is a public record which should be made available for public inspection under the Open Records Law. OAG 81-291, 1981 Ky. AG LEXIS 132.

City records which will disclose the names of employers who are delinquent in paying occupational taxes are open to public inspection, since a city is a public agency and is subject to the provisions of the Open Records Law, and, even though KRS 131.190 prohibits the disclosure of information from tax records "insofar as the information may have to do with the affairs of the person's business", it does not prohibit the disclosure of the fact that a person is delinquent in paying his taxes, for although tax records cannot be made totally available for public inspection because of the restrictions of KRS 131.190, non-exempt information can and must be made available under KRS 61.878(3). OAG 81-309, 1981 Ky. AG LEXIS 122.

The Department (now Cabinet) for Human Resources properly denied the inspection of all statistical compilations or raw data which it had in its custody concerning the number of children allegedly dependent, neglected or abused who were in the Department's custody between 1978 and 1981, and other related information, since the Open Records Law only requires an agency to release documents for which a list or compilation has been made, but if no list exists, the agency cannot be required to make one. OAG 81-333, 1981 Ky. AG LEXIS 100.

An application form provided by a city to open records requesters, which required that the requester state under oath that he is a Kentucky citizen, that he give his home address and telephone number, that he state the reason for his request and that the form be given under oath and certified by a notary public, was defective in that "any person" can inspect public records under KRS 61.872, so that access is not limited to Kentucky citizens; a requester does not need to give any personal information or his reason for the request under KRS 61.870 to 61.884, and the application need not be given under oath or notarized. OAG 81-345, 1981 Ky. AG LEXIS 92.

An individual may inspect the records of the Department of Fish and Wildlife Resources in order to compile a list of licensed trappers, since the records of the Department are opened to inspection by subsection (2) of KRS 150.190 and trapper's licenses are not made confidential by any statute. OAG 81-362.

The records of a coal producers association, which was a nonprofit corporation and received no grants or funds from state or local governments, were not subject to inspection under the Open Records Law. OAG 81-377, 1981 Ky. AG LEXIS 52.

The registrar of vital statistics cannot refuse a request to inspect all death certificates and death verification certificates in the possession or control of a county health department based upon the confidentiality of vital records provision in KRS 213.200 (now repealed), since that section can only be interpreted as preventing the Department (now Cabinet) for Human Resources from requiring a physician to disclose to the Department confidential communications between the physician and his patient, but does not authorize the registrar to withhold vital statistic records from public inspection. OAG 81-400, 1981 Ky. AG LEXIS 39.

Both a proposed budget and the final approved budget of a fiscal court are public records under this section and are open to inspection by the public under KRS 61.872. OAG 82-91, 1982 Ky. AG LEXIS 558.

When any one (1) of the local officers named in KRS 197.170 receives formal notice from the superintendent of the penitentiary that a named convict has been released to reside in his jurisdiction, the formal notice is a public record which any person has a right to inspect under the Open Records Law. The local officer is not required to make any publication of the fact that he has received notice of a prisoner's release and, therefore, any person desiring such information will have to make an inquiry from time to time and request to inspect any notices which the local officer has received. OAG 82-115, 1982 Ky. AG LEXIS 525.

All libraries may refuse to disclose for public inspection their circulation records. As far as the Open Records Law is concerned, they may also make the records open if they so choose; however, the privacy rights which are inherent in a democratic society should constrain all libraries to keep their circulation lists confidential. OAG 82-149, 1982 Ky. AG LEXIS 487.

No person can demand as a matter of right to inspect the circulation records of any type of library — school, public, academic or special — under the Open Records Law. OAG 82-149, 1982 Ky. AG LEXIS 487.

Clinical income derived from the services of physicians on the University of Kentucky's faculty in its College of Medicine, which is collected by the University and remitted monthly to the Kentucky Medical Services Foundation, Inc. (KMSF), under an agreement between the University and KMSF whereby KMSF reimburses the University for expenses and disburses clinical income to faculty physicians on the basis of their services, does not at any time become public money so as to constitute funding by state or local authority. OAG 82-216, 1982 Ky. AG LEXIS 399.

The Kentucky Medical Services Foundation, Inc. is a nonprofit corporation organized under KRS Ch. 273, which receives no state or local funding, and therefore is not a public agency under the Open Records Law. OAG 82-216, 1982 Ky. AG LEXIS 399.

Payroll vouchers are public records under subdivision (2) of this section, containing a mixture of exempted and nonexempted information under KRS 61.878(1). OAG 82-233, 1982 Ky. AG LEXIS 401.

A public agency is not required to create a record which does not already exist. OAG 82-234, 1982 Ky. AG LEXIS 404.

For suggestions as to how the registrar of vital statistics could meet mass requests for inspections or copies of birth certificates, see OAG 82-234, 1982 Ky. AG LEXIS 404.

The purpose for which a person seeks access to a public record is not relevant to the Open Records Law, and a public agency has no right to inquire as to the purpose for the inspection and copying of the record. Any inspection request form which requires the statement of the purpose of inspection is contrary to the law. OAG 82-234, 1982 Ky. AG LEXIS 404.

Because, as of January 15, 1982, the Kentucky Department of Energy's (now Energy Cabinet) previous operational and funding relationship with the Kentucky Export Resources Authority was terminated, there was no basis upon which to conclude that the authority, subsequent to that time, was receiving any funding from state or local authorities. Therefore, unless that situation should change, the authority would no longer be a public agency whose records were subject to disclosure after January 15, 1982. OAG 82-277. Withdrawing OAG 82-27, 1982 Ky. AG LEXIS 599.

Since the Kentucky Export Resources Authority, Inc. was run by Kentucky Department of Energy (now Energy Cabinet) personnel, and the operating expenses of the corporation were primarily paid for with Kentucky Department of Energy funds, from the date the authority was incorporated (March 3, 1981) until January 15, 1982 when the authority became self-sufficient and its personnel were removed from the payroll of the Kentucky Department of Energy, the Authority was a public agency as defined in subdivision (1) of this section from March 3, 1981, until January 15, 1982, and a request made during that period for access to records of the authority was improperly denied. OAG 82-277. Withdrawing OAG 82-27, 1982 Ky. AG LEXIS 599.

A member of the city council is entitled to inspect and make copies of any public records of the city located in the clerk's office during normal office hours and at other times in emergencies. OAG 82-311, 1982 Ky. AG LEXIS 321.

The city clerk is responsible for the safekeeping of the city records and is entitled, not only to a key to wherever the records are stored, but it is his or her responsibility that they remain in safekeeping as the Open Records Act (KRS 61.870 to 61.882) provides, subject to inspection as the act provides. OAG 82-311, 1982 Ky. AG LEXIS 321.

The records of a city located in the clerk's office are public records under this section. OAG 82-311, 1982 Ky. AG LEXIS 321.

It is not the legislative intent of the Open Records Law to inhibit the free communication between a public employee and his superior by mandating that every preliminary memorandum will eventually become public. OAG 82-339, 1982 Ky. AG LEXIS 308.

Information about the confiscation of inmate property would generally be exempt from mandatory public disclosure because the privacy rights of the inmates involved outweigh the need for the public to be informed. OAG 82-395, 1982 Ky. AG LEXIS 258.

The general terms "a deed" or "a will," "recently recorded," standing alone, constitute public records as defined in subdivision (2). OAG 83-42, 1983 Ky. AG LEXIS 454.

Accident reports made by law enforcement officers are not confidential and are open records under the Open Records Law. OAG 83-53, 1983 Ky. AG LEXIS 443.

The public generally was entitled to inspect correspondence between two (2) public agencies, the Medical Center of the University of Kentucky and the Kentucky Board of Medical Licensure. OAG 83-60, 1983 Ky. AG LEXIS 435.

Minutes of open meetings are open to public inspection; minutes of closed meetings may be withheld from public inspection. OAG 83-60, 1983 Ky. AG LEXIS 435.

District health departments are public agencies as defined in subsection (1) of this section. OAG 83-235, 1983 Ky. AG LEXIS 261.

Generally, when an agency makes an official inspection of one (1) of its licensees and objectively grades the performance or conditions existing on the premises of the licensee, the report and grade is open to public inspection; on the other hand, a report by an agency employee to his superior expressing opinions and making recommendations of policy may be exempted from mandatory public disclosure by KRS 61.878(1)(h). OAG 83-235, 1983 Ky. AG LEXIS 261.

The fact that a health department report was involved in a class-action lawsuit did not necessarily mean that it was exempt from mandatory public inspection unless the judge issued an order to that effect. OAG 83-235, 1983 Ky. AG LEXIS 261.

A health department report relating to an outbreak of hepatitis in a certain country club was a "public record." OAG 83-235, 1983 Ky. AG LEXIS 261.

School activity funds are under the control, and are the responsibility, of the principal and the principal is the official custodian of the records; any person is entitled to inspect the business records concerning such funds, but any items in the records which are made confidential by the Family Educational Rights and Privacy Act of 1974 or any state law may be deleted from the records before they are made available for public inspection. OAG 83-248, 1983 Ky. AG LEXIS 249.

The State Board of Accountancy is a public agency pursuant to subsection (1) of this section. OAG 83-308, 1983 Ky. AG LEXIS 189.

The Department of Corrections (now Corrections Cabinet) is a public agency as defined by subdivision (1) of this section; therefore the records prepared, owned, used, or in possession of the Department of Corrections are public records pursuant to subdivision (2) of this section and are open to public inspection unless exempted under KRS 61.878. OAG 83-313; 83-337.

As a public agency pursuant to subdivision (1) of this section, the documentary materials prepared by the Kentucky Department of Labor (now Labor Cabinet) are public records under subdivision (2) of this section and are open to public inspection unless exempted under KRS 61.878. OAG 83-326, 1983 Ky. AG LEXIS 171.

Audit reports are exempt from public inspection when there is a possibility of prospective law enforcement action or administrative adjudication; after the law enforcement action or administrative adjudication is complete or a decision is made to take no action, the final audit is open to public inspection. OAG 83-326, 1983 Ky. AG LEXIS 171.

Requested documents concerning change of control of several banks were federal documents filed with the Department of Banking and Securities (now Department of Financial Institutions) by federal regulatory agencies and, therefore, the Department of Banking and Securities was just the casual possessor, not the official custodian, of these documents which were still possessed by the federal agencies; the "official custodian" is the proper official to make decisions on policy concerning the release of records and, accordingly, the Department acted properly in denying request for such records and notifying requester of the official custodians with whom he could file a Freedom of Information Act request. OAG 83-342, 1983 Ky. AG LEXIS 160.

A county ambulance service was a public agency pursuant to subsection (1) of this section since it was created and budgeted by the county fiscal court; therefore, the records prepared by the ambulance service were public records pursuant to subsection (2) of this section and open to public inspection unless exempted. OAG 83-344, 1983 Ky. AG LEXIS 142.

A decision rendered by referee for unemployment compensation division was a public record under subdivision (2) of this section, and thus open to public inspection unless exempted by KRS 61.878; since the referee's decision was evidence of a final action by the agency, the exemptions of KRS 61.878 did not apply. OAG 83-352, 1983 Ky. AG LEXIS 150.

Where report was requested by the county judge/executive in order to investigate alleged misuse of county road equipment by an elected magistrate, KRS 61.878(1)(h) would apply to exempt the document from public inspection since the report was not indicative of any final action taken by the fiscal court and as such was preliminary; at most, the report could merely be preliminary memoranda gathered by the county attorney in his investigation. OAG 83-469, 1983 Ky. AG LEXIS 28.

Since a report concerning investigation of alleged misuse of county equipment, which was made at the request of the county judge/executive, was documentary material in the possession of a public agency, it was a "public record" under subdivision (2) of this section and open to public inspection unless exempted pursuant to KRS 61.878(1). OAG 83-469, 1983 Ky. AG LEXIS 28.

A fiscal court is a "public agency" pursuant to subdivision (1) of this section and subject to the Open Records Law. OAG 83-469, 1983 Ky. AG LEXIS 28.

Absentee ballots and applications are public records open to public inspection while in the custody of the circuit clerk; however, pursuant to KRS 30A.080(3) restricting the removal of public records from the circuit clerk's office, removal may only be gained by court order. OAG 83-476, 1983 Ky. AG LEXIS 20.

Absentee ballots and applications which were in the custody of the circuit clerk pending an election contest suit were "public records" in the possession of a "public agency" pursuant to KRS 61.870 and open to public inspection while in the clerk's custody. OAG 83-476, 1983 Ky. AG LEXIS 20.

Photographs belonging to defendant which were in custody of police officer were subject to the Open Records Law as they fell under the definition of a "public record" in subdivision (2) of this section. OAG 84-178, 1984 Ky. AG LEXIS 206.

A city budget is a public record under this section and is thus open to public inspection; current budgets are required to be published pursuant to KRS 424.240. Previous budgets and current budgets are both open to public inspection, as previous budgets have lost any "preliminary" quality by being closed and current budgets are "working" budgets indicative of final action; for the same reasons, the budget ordinances of the city would also be open to inspection. OAG 84-217, 1984 Ky. AG LEXIS 168.

A nonprofit corporation which was formed pursuant to KRS Ch. 273 for the purpose of community development through making loans to small businesses, and which received no funds from state or local authority was not a public agency and thus was not subject to the Open Records or the Open Meetings laws. OAG 84-237, 1984 Ky. AG LEXIS 148.

The coroner's records are public records, as defined in subsections (1) and (2) of this section. OAG 84-246, 1984 Ky. AG LEXIS 143.

A city-county human rights commission created under KRS 344.310 is a "public agency" as that term is defined in subsection (1) of this section. OAG 84-376, 1984 Ky. AG LEXIS 11.

A request to inspect public records under the Open Records Law was properly denied to the extent that the request related to documents of the Kentucky Educational Foundation, Inc., as the Foundation is not a public agency and does not appear to derive at least 25% of its funds from state or local authority; however, the request to inspect public records was improperly denied to the extent that the request related to records of the State Department of Education concerning the actual contributions, expenditures and services rendered by the Department to the Kentucky Educational Foundation, Inc. OAG 84-382, 1984 Ky. AG LEXIS 2.

The signature log of employees and visitors eating meals in the Kentucky State Penitentiary facilities, which the Corrections Cabinet's policies and procedures document requires each institution to maintain, is a public record, and furthermore, the list of meal tickets sold is a public record, as the Cabinet's policies and procedures document requires employees and visitors to purchase a meal ticket for each meal eaten in the Cabinet facilities. Thus, the denial of a request to inspect the list of meal tickets was improper and in violation of the Open Records Act. OAG 85-89, 1985 Ky. AG LEXIS 62.

Since a school district is a public agency under the Open Records Law and the certificates required by KRS 161.020 are public records as defined in Subsection (2) of this section, denial of a request to inspect the certificates required by KRS 161.020 to be filed with the Board of Education was improper under the Open Records Law, except that information, if any, on the certificates of a personal nature, such as social security numbers, home addresses and telephone numbers, need not be released. OAG 85-109, 1985 Ky. AG LEXIS 42.

A requesting party cannot be required to state or verify why he needs to inspect and copy public records. OAG 85-120, 1985 Ky. AG LEXIS 32.

The Kentucky Open Records Act does not require that a requesting party state the reason for his request to inspect or copy public records. OAG 85-120, 1985 Ky. AG LEXIS 32.

The Personnel Board improperly denied the request, made under the Open Records Act, to the Board to inspect and copy the hearing tapes of a hearing conducted by the Board, to the extent that the request was made after the hearing tapes had been submitted to the Board pursuant to its regulations and while those tapes were in the possession of or retained by the Board. OAG 86-15, 1986 Ky. AG LEXIS 72.

KRS 61.835 provides that a city is required to accurately record the minutes of all of its meetings and make such records available for public inspection; if a city does not do this, then it has violated the provisions of KRS 61.835 and the provisions of the Open Records Act since the council minutes are public records under subsection (2) of this section. OAG 86-20, 1986 Ky. AG LEXIS 67.

The public agency's actions in not making public records available for public inspection on the grounds that the documents could not be found and that the request for other records was vague and imprecise were proper responses and actions under the terms and provisions of the Open Records Act. OAG 86-65, 1986 Ky. AG LEXIS 22.

The school system improperly denied the applicant-teacher's request for a copy of that portion of a tape containing the applicant-teacher's answers to questions propounded by the school system, the questions having been asked as part of the school system's teacher selection process. OAG 87-56, 1987 Ky. AG LEXIS 28.

The tapes of the hearing concerning a teacher contract termination proceeding conducted pursuant to KRS 161.790 were available for public inspection under the Open Records Law even though the tapes were in the possession of the reporter-transcriber rather than the Board of Education, as the teacher requested a public hearing and the matter had not reached the courts. OAG 87-62, 1987 Ky. AG LEXIS 23.

While there is no specific provision in the Open Records Act requiring that information pertaining to ambulance reports be kept confidential, there is a provision that a public agency need not permit the inspection of documents if to do so would involve the unwarranted invasion of a person's privacy. OAG 88-42, 1988 Ky. AG LEXIS 42.

A university's copy of a letter from the National Collegiate Athletic Association (NCAA) addressed to counsel representing the University's assistant coach was a public record subject to public inspection unless one of the exceptions to

public inspections could be properly invoked. OAG 88-47, 1988 Ky. AG LEXIS 47.

Where the private college did not receive any grants or loans from the Higher Education Assistance Authority, there was no evidence that the college was a "public agency" within the meaning of subdivision (1) of KRS 61.870, and the college properly denied the request to inspect its records and documents as it was not subject to the terms and provisions of the Open Records Act. OAG 88-61, 1988 Ky. AG LEXIS 61.

A water works company of which a city is the sole shareholder is a public agency within the meaning of subdivision (1) of this section. OAG 88-72, 1988 Ky. AG LEXIS 72.

If records, though regarding private donations and disbursements, are in the possession of or retained by a state agency, they are, in general, subject to inspection; the open records statutes, however, do not require state personnel to identify private entities that might have records regarding private donations and expenditures from such donations; thus, to the extent agencies have allowed inspection of (or provided) records that they had possession of or retained, and truthfully indicated that they do not have certain records sought by the requests, they have substantially complied with the open records statutes. OAG 89-7, 1989 Ky. AG LEXIS 6.

A public agency is not required to disseminate, to the public, records which a court has placed under a seal of confidentiality when the person requesting such records was not a party to the litigation. OAG 89-22, 1989 Ky. AG LEXIS 22.

Kentucky's Open Records laws do not empower the attorney general's office to order creation of records, nor do those laws require agencies to create records, e.g., resumes, written recollections, etc. OAG 89-32, 1989 Ky. AG LEXIS 32.

Where there was a request (and a supplement thereto) for certain records, and the agency promptly responded to the request(s), indicating in substance that records sought by the request(s) did not exist, this office must accept as truthful, absent clear evidence to the contrary, an agency's response that records of the type requested do not exist. OAG 89-32, 1989 Ky. AG LEXIS 32.

Records related to an official trust account, such as one maintained for receipt of bail bonds, are clearly related to functions — operation of the bonding program — funded by state or local authority. Checks drawn on a publicly owned account do not take on a private character because they were used for a private purpose. Records of the account, including checks drawn thereon, are public records within the meaning of subdivision (2) of this section. OAG 89-35, 1989 Ky. AG LEXIS 35.

A county property valuation administrator failed to act consistently with the provisions of KRS 61.870 to 61.884 in failing to respond in writing to a verbal request for access to records, and in responding to a written request by forwarding it to another agency. OAG 89-40, 1989 Ky. AG LEXIS 40.

A request to provide addresses of individuals for whom the requestor had names and social security numbers was a request for research to be performed, rather than for inspection of reasonably identified public records. Open records provisions do not require public agencies to carry out research or compile information to conform to a given request. OAG 89-45, 1989 Ky. AG LEXIS 44.

Because it derives at least 25 percent of its funds from local authority, West Lincoln County Emergency Medical Services, Inc., a nonprofit corporation, is subject to provisions of Kentucky's Open Records Laws. OAG 89-46, 1989 Ky. AG LEXIS 49.

A bond instrument, or copy thereof, in the hands of the clerk, and any entries or recordations in such regard, e.g., in an "order book," or "miscellaneous bonds" book, are recognized as being subject to public inspection. No exception set forth in Open Records provisions would support a denial of inspection of records of this type. No court order for inspection is required. OAG 89-47, 1989 Ky. AG LEXIS 45.

The Elizabethtown Airport Board is a public agency subject to Open Records provisions. OAG 89-53, 1989 Ky. AG LEXIS 53.

The Pike County Correctional Facilities Corporation is an instrumentality of the fiscal court, and thus is a public agency subject to Open Records provisions within the meaning of subdivision (1) of this section. OAG 89-55, 1989 Ky. AG LEXIS 55.

Records held by a private entity are beyond the reach of Open Records provisions. OAG 89-55, 1989 Ky. AG LEXIS 55.

The purpose of the Open Records Law is not to provide information but to provide access to public records not exempted from inspection by law. OAG 89-61, 1989 Ky. AG LEXIS 61.

Open Records provisions do not empower the Attorney General to order an agency to provide information or prepare records that contain information that perhaps should appear on records sought. OAG 89-66, 1989 Ky. AG LEXIS 66.

The Property Valuation Administrator, and the office thereof, is a public agency within the meaning of subdivision (1) of this section, and is thus subject to Open Records provisions. OAG 89-66, 1989 Ky. AG LEXIS 66.

The Kentucky State University Foundation, Inc., is a recognized fund-raising instrumentality of Kentucky State University, and is thus an "agency thereof," within the meaning of subdivision (1) of this section. OAG 89-92, 1989 Ky. AG LEXIS 92.

Tape recordings of board of education meetings were public records within the meaning of this section, although inspection thereof could be denied on the ground that the recordings were preliminary drafts regarding preparation of the official minutes, as inspection of preliminary drafts may be denied pursuant to KRS 61.878(1)(g). OAG 89-93, 1989 Ky. AG LEXIS 93.

As court records are outside the purview of Open Records provisions, the Circuit Court clerk did not act other than consistently with Open Records provisions refusing to furnish copies of certain court records to a penitentiary inmate who requested the same. OAG 90-4, 1990 Ky. AG LEXIS 4.

Where city manager's response on behalf of city to request to inspect all documents relating to settlement of legal action against city addressed only records in the possession of the city manager, and not the city as an agency, the response was not consistent with Open Records provisions, and in particular, KRS 61.880(1). OAG 90-36, 1990 Ky. AG LEXIS 36.

Because an ambulance service received over 25% of its funds from "local authority," it was a public agency for purposes of the Open Records Act and must comply with act's requirements. OAG 90-59, 1990 Ky. AG LEXIS 59.

The request for information to indicate when the Commonwealth's Attorney's office first became involved in a particular case was a request for information and not a request for documents as contemplated under the Open Records Act. OAG 90-77, 1990 Ky. AG LEXIS 77.

Local law enforcement agencies are required to make available for public inspection the arrest records of all persons, and police departments are required to maintain daily logs of arrests made by police officers and to make them available for public inspection; no provision in the Domestic Violence and Abuse Act makes arrest records and incident reports confidential. OAG 91-12, 1991 Ky. AG LEXIS 12.

While reporters are entitled to inspect the arrest records and incident reports, the public agency is not required to compile the material in a list form nor is it required to make available the material on diskettes or tapes if it already does not exist in that format; basically, what the public gets is what the agency has and in the format in which the agency has it. OAG 91-12, 1991 Ky. AG LEXIS 12.

A public agency cannot provide records which have been reviewed by public officials and returned to the private individuals; such records would have to be obtained from the

individuals involved because obviously a public agency cannot furnish access to documents for which the public agency no longer has custody. OAG 91-15, 1991 Ky. AG LEXIS 15.

Records maintained by individuals related to the financial operations of the city's golf courses that pertain to concession monies collected, for which the city gets no percentage, are not open records, but records of monies received by the city for green fees are records open for inspection. OAG 91-15, 1991 Ky. AG LEXIS 15.

Where an Alderman requested that some or all of the five city golf professionals permit inspection of certain financial records and there was no indication that this request was authorized by a majority of the Board of Aldermen while in session, the records which these golf professionals voluntarily provided to the Alderman in his individual capacity does not constitute "use" of records by the City of Louisville; even if the Alderman were acting in his official capacity on behalf of the Board of Aldermen, the financial records voluntarily produced for review by an individual and then returned to that individual are not converted into "public records." OAG 91-15, 1991 Ky. AG LEXIS 15.

Under the Kentucky Open Records Act, a public agency is not required to create a document which does not already exist, so where an agency refuses to disclose a written settlement agreement not yet prepared, there is no violation of the Kentucky Open Records Act yet. OAG 91-20, 1991 Ky. AG LEXIS 20.

Both microfiche copies and index books of the Kentucky Register of Births & Deaths are public records under subsection (2) of this section and are available for public inspection under KRS 61.872(1) and 213.131(2) and (3); and since the Register has been available for public inspection for many years, the new legislation somewhat limiting public access to vital records, does not in any way make confidential records which have been open to the public for such a lengthy period of time. OAG 91-25, 1991 Ky. AG LEXIS 25.

If a state employee makes an unlawful disclosure of confidential birth records, for the Cabinet of Human Resources to be liable for such disclosure the aggrieved party would have to prove that the Commonwealth or its agent was negligent. OAG 91-25, 1991 Ky. AG LEXIS 25.

The fact that sets of the Register of Births and Deaths are presently available for public inspection would not violate any Kentucky statutes, simply because at the time the Register was published the information contained in the Register was not confidential, and the Cabinet of Human Resources had no affirmative duty to restrict public access to the information. OAG 91-25, 1991 Ky. AG LEXIS 25.

The most recent index book of Births and Deaths published by the Cabinet bears the date of 1969, and under the authority of KRS 44.110, an alleged injury resulting from the release of birth records would have occurred at the moment the record was released for public inspection and under the applicable statute of limitations for negligence cases against the Commonwealth or its agents, an action for damages cannot be brought if more than two years has elapsed from the date of the alleged negligent act; therefore, the Cabinet is not liable for divulging information that has been available for public inspection for at least twenty-one (21) years. OAG 91-25, 1991 Ky. AG LEXIS 25.

The custody and control of records maintained by the Judicial Retirement and Removal Commission, including those containing the names of the members of the commission who heard requestor's complaints, is vested in the Supreme Court. Accordingly, if a requestor is aggrieved by the denial of a record generated by the court, or an agency of the court, he must take his appeal to the Chief Justice. OAG 91-45, 1991 Ky. AG LEXIS 45.

The Judicial Retirement and Removal Commission is a quasi-judicial body expressly exempted from the provisions of the Open Meetings Act and is not bound by KRS 61.835, which requires disclosure of the minutes of meetings held by public agencies. OAG 91-45, 1991 Ky. AG LEXIS 45.

The Open Records Act does not apply generally to records generated by the Judicial Retirement and Removal Commission inasmuch as the commission is an agency of the Court of Justice, created under authority of the Kentucky Constitution and Supreme Court Rule; records of the court and agencies of the court enjoy a special status and are placed under the exclusive jurisdiction of the Court of Justice pursuant to KRS 26A.200 and KRS 26A.220. OAG 91-45, 1991 Ky. AG LEXIS 45.

Inasmuch as the Kentucky Bar Association and the Board of Bar Examiners are creatures of the court and the constitution, and not statutory creatures, they are not subject to the Open Records Act, and cannot be considered "public agencies" within the meaning of the act; if a requesting party is aggrieved by denial of a record maintained by the court, or an agency of the court, they must take their appeal to the Chief Justice. OAG 91-47, 1991 Ky. AG LEXIS 47.

The Kentucky Bar Association is not a "public agency" within the meaning of the Open Records Act. OAG 91-47, 1991 Ky. AG LEXIS 47.

Although marina management services is a private corporation, and not a "public agency" within the meaning of subsection (1) of this section, its records are "public records" within the meaning of subsection (2) of this section to the extent that they are transmitted to, and retained by, the Department of Parks, and since under subsection (2) of this section the term "public record" includes records that are prepared, owned, used, in the possession of or retained by a public agency if records of private entities or agents are in the possession of or retained by a state agency, they are, in general, subject to inspection. If the records are not retained by a public agency, on the other hand, they are private records and are therefore beyond the reach of the Open Records Act. OAG 91-72, 1991 Ky. AG LEXIS 73.

While an agency must release public records stored on a database, subject to the exceptions codified at KRS 61.878(1)(a) through (j), if requested for a noncommercial purpose, it may, in its discretion, withhold the same records if requested for a commercial purpose. OAG 91-116, 1991 Ky. AG LEXIS 116.

Clearly, the Open Records Act in no way supersedes a protective order entered by a court of competent jurisdiction when a public agency is properly before that court as a party to the litigation. Indeed, the entry of a protective order removes a document within its terms from the application of the Act; that order is not less valid because it was entered into by agreement of the parties. OAG 91-121, 1991 Ky. AG LEXIS 122.

Where county airport board entered into agreement with Delta to build a terminal and issued special facilities revenue bonds to finance the project, records of the project manager hired by Delta were excluded from the application of this section. OAG 91-184, 1991 Ky. AG LEXIS 184.

Tax maps, mapping cards, and property assessment cards are "public records," within the meaning of subsection (2) of this section and should be made available for review; however, certain information contained in these documents may be exempt pursuant to KRS 61.878(1)(a). OAG 92-30, 1992 Ky. AG LEXIS 30.

Kentucky Revised Statutes 61.870, et seq., contemplates the appointment of an official custodian of records to whom all requests are directed for proper disposition; it is imperative that every employee of the Kentucky State Penitentiary acknowledge the authority of the offender records specialist in handling these requests. OAG 92-31, 1992 Ky. AG LEXIS 31.

Where the Western Kentucky Corrections Complex Grievance Coordinator's response to an open records request by an inmate did not constitute final agency action, inasmuch as it was not issued by the official custodian or under her authority,

the inmate's appeal was not ripe for review by the Attorney General. OAG 92-51, 1992 Ky. AG LEXIS 51.

The Interfraternity and Panhellenic Councils at Eastern Kentucky University may be deemed "public agencies" for purposes of the Open Records Act, only if they derive at least 25% of their funds from state or local authority; the term "funds" refers to a sum or sums of money and while it is true that the Interfraternity and Panhellenic Councils derive an appreciable benefit from the University this benefit cannot be quantified, or otherwise translated into a monetary figure; therefore the Interfraternity and Panhellenic Councils are not public agencies within the meaning of KRS 61.870, et seq. and are not public agencies within the meaning of, or subject to, the Open Meetings Law. OAG 92-62, 1992 Ky. AG LEXIS 62.

Where records are kept on file in the City Clerk's office under the terms of lease agreements, and are possessed and retained by that public agency, they must be considered public records for the purposes of the Open Records Act. OAG 92-66, 1992 Ky. AG LEXIS 66.

The definition of "public record" clearly embraces a taped interview between an inmate and a prison officer. OAG 92-109, 1992 Ky. AG LEXIS 95.

A tape recording of a public meeting falls within the definition of a "public record" and must also be treated as a public record if the tape is prepared, owned, used, or in the possession of a public agency, and is made at the direction of the agency. OAG 92-111, 1992 Ky. AG LEXIS 111.

Minutes of a meeting of a public agency are public records within the meaning of this section. OAG 92-111, 1992 Ky. AG LEXIS 111.

Medicare and Medicaid funds do not constitute "state or local authority funds" in determining whether a body receives 25% or more of its funds from public coffers as provided in subdivision (1)(h) of this section in determining if a body is a public agency. OAG 93-ORD-90, 1993 Ky. AG LEXIS 149.

University Diagnostic Imaging Associates, P.S.C., was not a "public agency" within the meaning of subsection (1) of this section, and was therefore not subject to the Open Records Law. OAG 93-ORD-90, 1993 Ky. AG LEXIS 149.

Since the Kentucky association of counties derives at least 25% of its funds expended by it in the Commonwealth from state or local authority funds, it is a "public agency" for purposes of the Open Records Act and is subject to KRS 61.872(5), relating to timely access to public records, as well as the other provisions of the Act. OAG 93-ORD-96, 1993 Ky. AG LEXIS 155.

By the express terms of subsection (3) of KRS 341.281 and subdivision (1)(k) of this section the KACo Unemployment Insurance Fund is a public agency, and is therefore subject to the Open Records Act. OAG 93-65, 1993 Ky. AG LEXIS 300.

The KACo Reinsurance Trust Program (KRT) is an interagency body of two (2) or more public agencies within the meaning of sudivision (1)(k) of this section and is therefore subject to the Open Records Act. OAG 93-65, 1993 Ky. AG LEXIS 300.

The Commissioner of Insurance acting as a rehabilitator of an insurance company is a public agency within the meaning of this section and documents which disclose the names of corporations or individuals who submitted bids for insurance company under KRS 304.33-010 et seq. are public records of a public agency and are not excluded from public inspection under subdivision (1)(h) of KRS 61.878 and thus are subject to disclosure. OAG 93-ORD-113, 1993 Ky. AG LEXIS 188.

Since records of the court are not governed by the Open Records Act and as a jury list is a court record, jury lists are not subject to inspection under the Open Records Act. OAG 93-ORD-122, 1993 Ky. AG LEXIS 197.

Records which were properly destroyed and therefore no longer available cannot be the subject of inspection under the Open Records Act. OAG 93-ORD-122, 1993 Ky. AG LEXIS 197.

Third party administrators of programs operating under the Kentucky Association of Counties (KACo) umbrella, Governmental Services, Inc., KACo Administrative Services, Inc., and Kentucky Risk Insurance Services, Inc., were "public agencies" as defined in subsection (1) of this section since each satisfied the 25% public funding threshold. Selective Mangagement Services, Inc., and Multi-Benefits Systems, Inc., could not be characterized as "public agencies" since neither derived 25% or more of its funds from state or local authority funds. OAG 93-78, 1993 Ky. AG LEXIS 205.

Records which are prepared, owned, used, in the possession of or retained by the Commissioner of Insurance must be treated as "public records" as defined in subsection (2) of this section. OAG 93-ORD-139, 1993 Ky. AG LEXIS 221.

Since the general counsel of Department of Insurance represents the Commissioner of Insurance as rehabilitator and outside attorneys appointed by the court also represent the Commissioner as the rehabilitator, each represents the same client, and confidential communications between them made for the purpose of facilitating the rendition of professional legal services are protected from disclosure by attorney client privilege; therefore, the Department of Insurance properly denied request of newspaper reporter for correspondence between general counsel of Department and outside counsel since the documents requested were protected from disclosure by the attorney client privilege of KRE Rule 503 and were therefore exempt from public inspection under subdivision (1)(k) of KRS 61.878. OAG 93-ORD-139, 1993 Ky. AG LEXIS 221.

Since the Open Records Act does not regulate management practices of keeping public records and since the Attorney General's decisions are limited to whether a requested document is in the possession of a public agency and whether such document is subject to public inspection, the request that university, in not identifying one person as the official custodian in charge of enforcing proper records keeping practices, be charged with violating the Open Records Act, as well as the request for provision of a copy of the contract of the person thought to be the official custodian of the university's records, were denied. OAG 94-ORD-8, 1994 Ky. AG LEXIS 5.

The Governmental Services Corporation (GSC) is a public agency for purposes of the Open Records Act. (Affirming OAG 93-78). OAG 94-ORD-13, 1994 Ky. AG LEXIS 15.

Subdivision (1) (h) of this section does not require that in order to be characterized as a public agency, for Open Records purposes, an entity be both created by state or local authority, and receive at least 25% of its funds from that state or local authority. OAG 94-ORD-13, 1994 Ky. AG LEXIS 15.

The terms "public agency" and "state or local authority" as used in this section are synonymous. OAG 94-ORD-13, 1994 Ky. AG LEXIS 15.

Since the Workers' Compensation Board is a public agency as defined in subdivision (1) (b) of this section, KACo-KLC, which owes its existence to the Board and the Board continues to regulate or control it, is also a public agency within the meaning of subdivision (1) (j) of this section. OAG 94-ORD-13, 1994 Ky. AG LEXIS 15.

Documents reflecting the identities of corporations and/or individuals who submitted bids for insurance company being rehabilitated or its subsidiaries are public records subject to disclosure under the Open Records Act. OAG 94-ORD-102, 1994 Ky. AG LEXIS 78.

Records containing contents of bids submitted for purchase of insurance company being rehabilitated are public records, within the meaning of subsection (2) of this section, for the same reasons that documents revealing the identities of bidders are public records; specifically, the bids are used in the possession of or retained by a public agency, the Commissioner of the Department of Insurance, in his role as Rehabilitator, and in the discharge of his duties, relative to the bidding process. OAG 94-ORD-102, 1994 Ky. AG LEXIS 78.

Examination reports of insurance company undergoing rehabilitation were public records, within the meaning of subsection (2) of this section, insofar as they were prepared, owned, used, in the possession of or retained by a public agency. Moreover, those portions of the examination report showing the insurer's current financial condition are subject to inspection under the Open Records Act. OAG 94-ORD-102, 1994 Ky. AG LEXIS 78.

Appraisals conducted on behalf of the Department of Insurance relative to its examination of an insurance company undergoing rehabilitation are public records within the meaning of subsection (2) of this section because they are prepared, owned, used, in the possession of or retained by a public agency. Although such appraisals are clearly a part of the examination report, and subject to the confidentiality provision found at KRS 304.2-270, the appraisals, like the comparative financial statements which supplement the Statement of Financial Condition, relate to the insurer's current financial condition, and must be disclosed. OAG 94-ORD-102, 1994 Ky. AG LEXIS 78.

Handwritten notes taken by a public employee in the discharge of his public duties may properly be treated as public records. While in most instances, such notes would be excluded from public inspection by operation of KRS 61.878(1)(h), KRS 61.878(3) mandates the release of "any record including preliminary and other supporting documentation" to a public employee, including a university employee, upon request, as long as those records "relate to him." OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

County board of education did not violate the provisions of the Open Records Act by failing to afford access to teacher evaluations of cheerleading tryouts where those records had "disappeared," insofar as county board could not make available records which have disappeared or otherwise do not exist. OAG 94-ORD-142, 1994 Ky. AG LEXIS 105.

Commercial use of public records is consistent with the spirit of the Open Records Act. OAG 95-ORD-12.

Where an employee of the Lottery Corporation denied an open records request with only a vague reference to "certain proprietary information" and without any further explanation of how the exceptions of KRS 61.880(1) applied to the withheld information, the Lottery Corporation failed to meet its statutory burden of proof. OAG 95-ORD-27.

Where the University's official custodian of records failed to cite any of the "exceptions" to the general rule, found at KRS 61.872(4), (5), and (6), the University was obligated to physically retrieve and make available for inspection and for copying those specifically identified requested public records that were housed in a separate location. OAG 95-ORD-52, 1995 Ky. AG LEXIS 43.

Where a private investigator, who was retained by a driver involved in an accident to locate the other driver involved in the collision, requested copies of motor vehicle registration records and records reflecting insurance coverage, the Transportation Cabinet did not violate the Open Records Act by partially denying the private investigator's commercial request since the strong privacy interest outweighed the nominal public interest which would be served by disclosing the owner's address, birthdate and social security number. OAG 95-ORD-151, 1995 Ky. AG LEXIS 82.

The Jefferson County Department of Animal Control did not violate the provisions of the Open Records Act by denying attorney's request for animal licensure records, where the records were to be used for mail solicitation, a commercial purpose, and not for the purpose of exposing public agency to public scrutiny, which is fundamental to the Act, and where disclosure of the information contained in these records would constitute a clearly unwarranted invasion of personal privacy. OAG 95-ORD-153, 1995 Ky. AG LEXIS 81.

Records of transcripts, tapes and completed interview questionnaires generated by a study of the Revenue Commission that were not prepared, owned, used, or in possession of the City of Louisville could not be characterized as public records for purposes of the Open Records Act; thus, the City's denial of a request for access to these records on the grounds that they were not public records was consistent with the Open Records Act. OAG 95-ORD-156, 1995 Ky. AG LEXIS 87.

County public schools system properly relied upon KRS 61.878(1)(a) in denying newspaper reporter's request for information as to each individual employee's race and gender. Providing the requester with alternative information, through a computer printout, as to the specific number of employees at each location which included personnel totals by race and sex broken down by schools, salaried employees and hourly employees met the principal purpose of the Open Records Act. This alternative information allowed the citizen to monitor the functioning and operations of the public agency and to be informed as to what their government was doing. OAG 96-ORD-232, 1996 Ky. AG LEXIS 85.

The Legislative Research Commission (LRC) violated the Open Records Act in denying newspaper access to a search warrant issued by a federal court and executed by a federal agency relating to an LRC employee and travels of state legislators. The search warrant was a "public record" for purposes of Kentucky's Open Records Act and it has never been held that a public agency can rely on an exemption under the federal Freedom of Information Act, the federal Privacy Act, or a federal regulation applicable to the United States Department of Justice as an exception under KRS 61.878(1)(k). 96-ORD-244.

City police division did not have to respond to newspaper's request to obtain copies of all traffic accident reports within the jurisdiction on a weekly basis. Although traffic accident reports prepared by law enforcement officers pursuant to KRS 189.635 are not confidential and are open records, the right to inspect public records attaches only after those records have been "prepared, owned, used, in the possession of or retained by a public agency." No such right attaches for records which have not yet come into existence. The Open Records Act governs access to existing public records, not to prospective requests. City can require newspaper to submit a new application each time copies of records are requested and city need only honor requests for existing records. OAG 97-ORD-18.

Kentucky Employers' Mutual Insurance Authority is a public agency, as that term is defined in subdivisions (1)(b), (f), and (i) of this section, and its records must be made available to the public unless excluded from inspection by one or more of the exceptions codified at KRS 61.878(1)(a) through (l). OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Kentucky Employers' Mutual Insurance Authority is a public agency, as defined in KRS subdivisions (1)(b), (f), and (i) of this section, and its records are public records, as defined in subsection (2) and its operational records, including its personnel handbook, documents reflecting hotel and car rental reservations, leases, contracts for public relations or advertising services, financial audits, travel agency invoices, and contracts and billing records for its attorneys do not qualify for exemption under KRS 61.878(1)(a) and these records must be released; however, with respect to employee personnel files, records unrelated to public employment which are found in those files are excluded from public inspection by KRS 61.878(1)(a) and because both exempt and nonexempt records are commingled in those files, it is incumbent on requester to specifically identify the personnel records he wishes to inspect. OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

The obvious purpose of the 1992 amendment to KRS 61.878(3) was to broaden the scope of the provision to insure that all public employees, not just state employees governed by KRS Chapter 18A, enjoyed an equal right of access to records relating to them. An interpretation of this provision which does not include former public employees is clearly inconsistent with the natural and harmonious reading of this

section considering the overall purpose of the Open Records Act. 97-ORD-87.

As a precondition to inspection, a requesting party must identify with "reasonable particularity" those documents he wishes to review; where inmate requested "all copies" of records in specified classes, his complaint that he received and was charged for records he did not request was unfounded; the proper alternative would be for him to review the records and indicate the exact ones desired. OAG 98-ORD-88, 1998 Ky. AG LEXIS 12.

The General Assembly did not exclude itself from the Open Records Act, but made the Act binding upon itself by defining the term public agency to include "any body created by state or local authority in any branch of government"; the General Assembly is created by the legislative branch of the government, and as there is no reasonable basis for excluding it from the definition of a public agency, its records are subject to public inspection unless otherwise exempt pursuant to KRS 61.878(1)(a) though (l). OAG 98-ORD-92, 1998 Ky. AG LEXIS 208.

The policy of a county 911 center to defer requests for audiotapes of telephone calls to the responding agency was improper as the 911 center was itself a public agency and, therefore, it was required itself to respond to such requests; however, the 911 center could consult with the responding agency before replying to such a request. OAG 99-ORD-10, 1999 Ky. AG LEXIS 28.

It is incumbent on all public agencies to designate an employee to fill the role of official custodian and to adopt and post rules and regulations identifying that employee as official custodian so that open records requests can be directed to him for processing and final agency action; if he does not have custody or control of the public record requested, he must notify the requester and furnish the name and location of the official custodian of those records. OAG 99-ORD-30, 1999 Ky. AG LEXIS 39.

The denial by a training center of an open records request for a copy of Kentucky statutes and a case from the Supreme Court Reporter, both of which were available in the institution's law library, was not a violation of the Open Records Act as such items were not "public records" subject to the act. OAG 99-ORD-35, 1999 Ky. AG LEXIS 34.

A privately owned corporation which had the contract to administer the vehicle emission testing program in a county failed to establish what percentage of the funds it expended in the Commonwealth were derived from the county testing program and, thus, failed to substantiate that it was not a "public agency" as defined in subsection (1)(h) and exempt from application of the Open Records Act. OAG 99-ORD-41, 1999 Ky. AG LEXIS 49.

Even if a privately owned corporation which had the contract to administer the vehicle emission testing program in a county was a "public agency" as defined in subsection (1)(h), the salaries of its highest ranking directors were not subject to disclosure as such information was not directly related to the vehicle testing service which the corporation performed in the county. OAG 99-ORD-41, 1999 Ky. AG LEXIS 49.

The Kentucky Correctional Psychiatric Center properly denied a request for a copy of the court ordered evaluation of the requester to determine his competency to stand trial where the court which ordered the evaluation directed that a copy of the report be given to the Commonwealth's Attorney and to the requester's defense counsel, but did not specify that the requester be given a copy of the report; although the evaluation was a "public record" within the meaning of subsection (2), because it was a record which was prepared and retained by a public agency, the court's order removed it from the application of the act. OAG 99-ORD-109, 1999 Ky. AG LEXIS 150.

Audio recordings and handwritten notes of private investigators hired by the Kentucky Board of Psychology did not constitute public records where those recordings and notes were not in the possession of the board nor relied upon by the board in its final actions against the psychologists under investigation. OAG 99-ORD-156, 1999 Ky. AG LEXIS 227.

The statutes and Supreme Court Reporter case law in an inmate law library are publications or library reference materials rather than records which reflect the daily functioning, programs, and operations of the correctional facility or the Department of Corrections and, therefore, are not public records subject to the provisions of the Open Records Act. OAG 99-ORD-181, 1999 Ky. AG LEXIS 170.

The Finance and Administration Cabinet did not violate the Open Records Act in partially denying a reporter's request to inspect invoices or correspondence received by the cabinet related to the renovation and landscaping of the home of the Kentucky State University President and all bids received by the cabinet regarding the renovation project as the disputed records, namely records reflecting the cost of individual items, including but not limited to subcontractor invoices, were not prepared, owned, used, in the possession of, or retained by the cabinet. OAG 99-ORD-202, 1999 Ky. AG LEXIS 197.

A volunteer fire and rescue department was not a public agency within the meaning of the statute and, therefore, its records were not subject to public inspection as it received little or no funds from state or local governments. OAG 99-ORD-208, 1999 Ky. AG LEXIS 202.

Three (3) corporations were not public agencies within the meaning of the statute where none of the corporations derived at least 25% of the funds expended by it in the state from state or local funds. OAG 99-ORD-216, 1999 Ky. AG LEXIS 209.

An agreement reached between a school district and a former employee was a public record, notwithstanding the "limited" role that the school district played in negotiating the terms of the agreement, as there was no doubt that it was a party to the agreement and that the agreement was owned, used, in the possession of or retained by the school district. OAG 00-ORD-5, 2000 Ky. AG LEXIS 52.

A county public defender corporation was a public agency for purposes of the statute, notwithstanding that it was a private corporation, as it received more than 25 percent of its funds from state or local authority. OAG 00-ORD-6, 2000 Ky. AG LEXIS 63.

The question of whether a corporation is a public or private corporation for purposes of a NLRB proceeding is not relevant to the issue of whether the organization is a public agency subject to the application of the Open Records Act. OAG 00-ORD-6, 2000 Ky. AG LEXIS 63.

An eighty-four (84) page document prepared by a consultant for a university board of regents, which evaluated the president of the university, was a public record within the meaning of the statute as it was owned, used, and in the possession of a public agency. OAG 00-ORD-46, 2000 Ky. AG LEXIS 48.

An agency may properly require all records requests to be routed through its official custodian to ensure the timely and orderly processing of open records requests. OAG 00-ORD-73, 2000 Ky. AG LEXIS 83.

The Ephraim McDowell Regional Medical Center is not a public agency for purposes of the Open Records Act as the center is a private nonprofit corporation and Medicare and Medicaid funds do not constitute "state or local funds" in determining whether an entity receives 25% or more of its funds from public coffers. OAG 00-ORD-91, 2000 Ky. AG LEXIS 97.

A volunteer fire department was a public agency for open records purposes because it received 25 percent or more of its funds from state or local authority funds. OAG 00-ORD-93, 2000 Ky. AG LEXIS 99.

The state penitentiary did not violate the Open Records Act when it denied a request by an inmate for a lateral view x-ray of his wrist based on the nonavailability of the record. OAG 00-ORD-120, 2000 Ky. AG LEXIS 128.

The Transportation Cabinet did not violate the Open Records Act by denying a request for information pertaining to vehicles and officers assigned to enforcement details in a particular county where the Division of Motor Vehicle Enforcement did not maintain such records. OAG 00-ORD-121, 2000 Ky. AG LEXIS 129.

A police department did not violate the Open Records Act by denying a request for a "dash cam videotape" of a particular pursuit where the videotape no longer existed. OAG 00-ORD-122, 2000 Ky. AG LEXIS 130.

A correctional complex properly denied an inmate's request for records pertaining to information gathered from the records of an inmate and through direct questioning prior to his release and provided to Kentucky State Police as it constituted a request for research to be performed, rather than a request for inspection of reasonably identified public records, and as the records did not pertain to the inmate. OAG 00-ORD-130, 2000 Ky. AG LEXIS 138.

The Department of Corrections properly denied a request by an inmate for any information or document regarding whether he fell under specified bills as such was a request for information, rather than a specifically identified record. OAG 00-ORD-131, 2000 Ky. AG LEXIS 139.

The Department of Local Government properly denied a request for identified e-mails where the e-mails had been deleted by the user and backups had already been deleted. OAG 00-ORD-132, 2000 Ky. AG LEXIS 140.

The Office of the Attorney General did not violate the Open Records Act in responding to a request for information relating to "eavesdropping guidelines" as such request was, in reality, a request for research as opposed to a request for precisely described public records. OAG 00-ORD-176, 2000 Ky. AG LEXIS 183.

Computerized criminal record data maintained by the Department of Corrections was a public record, notwithstanding the contention of the department that such data was not related to its functions, activities, programs, or operations. OAG 00-ORD-206, 2000 Ky. AG LEXIS 180.

A city was required to disclose records relating to the settlement of a lawsuit against the city, notwithstanding its contention that it did not have any such records and that the records were in the possession of its insurance carrier, as the insurance carrier held the settlement agreement at the instance of and as custodian on the city's behalf. OAG 00-ORD-207, 2000 Ky. AG LEXIS 209.

Once in the possession of the Department of Military Affairs, the investigative report generated by Criminal Investigations Division of the United States Department of Defense becomes a public record for purposes of the Open Records Act, notwithstanding the fact that it originated in a federal agency. OAG 01-ORD-59, 2001 Ky. AG LEXIS 44.

Because teacher council member election records are scheduled public records for purposes of records retention and management, the school's inability to produce these records for inspection and copying because it does not maintain them constituted a subversion of the intent of both the Open Records Act and the State Archive and Records Act. OAG 01-ORD-94, 2001 Ky. AG LEXIS 188.

Experian, NCAC, a national consumer credit bureau and credit reporting service that provides individuals with copies of their personal credit reports, is a private corporation that does not fall within the definition of "public agency," as defined by KRS 61.870(1), and, thus, is not subject to the provisions of the Open Records Act. OAG 01-ORD-134, 2001 Ky. AG LEXIS 195.

Since the city clerk purchased the audiotape with her own money, and was not directed by the city to tape the meeting, the audiotape is not a public record within the meaning of KRS 61.870(2). OAG 01-ORD-167, 2001 Ky. AG LEXIS 202.

The Office of United States Marshals Service, as a federal agency, is not subject to the provisions of the Kentucky Open Records Act. OAG 02-ORD-43, 2002 Ky. AG LEXIS 227.

A request submitted by an individual acting on behalf of a political candidate, whether paid or unpaid, cannot be characterized as a request submitted for a commercial purpose. OAG 02-ORD-89, 2002 Ky. AG LEXIS 105.

The Open Records Act does not require the Department to obtain itemized billing records from its cell phone provider listing the individual calls. OAG 02-ORD-164, 2002 Ky. AG LEXIS 140.

Records pertaining to honorary deputy sheriffs are public records insofar as they are "prepared, owned, used, in the possession of or retained by a public agency" and notwithstanding the fact that the honorary post does not owe its existence to statute or regulation. Although honorary deputies possess no actual authority, the apparent authority that the title arguably carries, and the privileges that might be procured by virtue of the title, make their identities a matter of legitimate public concern. Accordingly, OAG 76-655 is overruled. OAG 02-ORD-175, 2002 Ky. AG LEXIS 168.

Appointment of a special deputy under either KRS 70.045(1) or (2) is clearly an official function of the sheriff's office and one in which the public has a legitimate interest. Accordingly, the Sheriff's reliance on OAG 76-655 as the basis for denying access to records containing information relating to past and present special deputies is misplaced. Although the Sheriff may withhold certain personal information relating to the special deputies, including home addresses and social security numbers, records containing the information sought are public records within the meaning of KRS 61.870(2). OAG 02-ORD-175, 2002 Ky. AG LEXIS 168.

Since a newspaper's use of a public record is specifically excluded from the definition of "commercial purpose," it cannot be required to state whether or not its request is for such purpose. Accordingly, requiring such a statement before processing the newspaper's open records request constitutes a violation of the Open Records Act. OAG 02-ORD-198, 2002 Ky. AG LEXIS 144.

Seven Counties Services, Inc., although it is organized as a private nonprofit corporation as provided for in KRS 210.370, is not the same as a private healthcare facility, but is instead a facility operating under the comprehensive scheme of legislation embodied in KRS Chapter 210. The monies it derives from the Cabinet do not represent claims payment or fees for services that can properly be analogized to Medicaid or Medicare claims submitted by private healthcare providers; because it derives more than twenty-five percent (25%) of the funds it expends in the Commonwealth from state or local authority funds, Seven Counties is a public agency within the meaning of KRS 61.870(1)(h). OAG 02-ORD-222, 2002 Ky. AG LEXIS 156.

The Master Commissioner of McCreary County, a quasi-judicial officer who serves at the pleasure of the judge or judges of the circuit court pursuant to KRS 31A.010(3) and CR 53.01, is not bound by the provisions of the Open Records Act and therefore did not violate the Act in failing to respond to requests for financial records of the Commissioner's office. OAG 02-ORD-235, 2002 Ky. AG LEXIS 274.

Electronic mail generated by public agency officials or employees is a public record as defined in KRS 61.870(2), and is therefore subject to the Open Records Act. it is for the records custodian, and not the email account holder, to locate and retrieve these records and to make the determination as to which are exempt and which must be disclosed. OAG 03-ORD-05, 2003 Ky. AG LEXIS 97.

The records of telephones whose numbers are listed on public registers as the contact numbers of the Office of the County Attorney and presumably are the phones upon which the public agency conducts its public business, would be of sufficient public character to constitute "public records," even though the cost of the phones and their usage are paid for with private funds, to the extent that they record the operation and functioning of the public agency and, thus, would be subject to

the Open Records Act. OAG 03-ORD-19, 2003 Ky. AG LEXIS 129.

An audio tape of a public meeting falls squarely within the parameters of KRS 61.870(2) and must be treated as a public record if the tape is prepared, owned, used, or in the possession of the public agency, and is made at the direction of the agency; the audio tape may not properly be treated as a preliminary document, but should be made available to the public upon request. OAG 03-ORD-173, 2003 Ky. AG LEXIS 74.

A councilman for the City is a local government officer. Records generated and maintained by or for him in the discharge of his public function are public records for purposes of the Open Records Act, notwithstanding the fact that they remain in his custody and control. Such records are subject to inspection upon request unless otherwise exempt. OAG 03-ORD-196, 2003 Ky. AG LEXIS 146.

By the express terms of KRS 248.480(2), and without restriction, the Kentucky Tobacco Settlement Trust Corporation is deemed a public agency for open records and open meetings purposes. Neither KRS 248.480(2) nor KRS 61.870(1)(f) exclude from public inspection records of the Corporation that are "not related to functions, activities, programs, or operations funded by state or local authority." The latter phrase applies only to records owned or maintained by or for a body referred to in subsection (1)(h) of KRS 61.870; the Corporation does not fall within the parameters of KRS 61.870(1)(h). OAG 03-ORD-214, 2003 Ky. AG LEXIS 120.

A private, non-profit corporation may be a public agency for purposes of the Open Records Act, though it is not a public agency for purposes of the Open Meetings Act; this dichotomy arises from the differences in the definition of "public agency" found in each of the Acts. The definition of "public agency" which appears at KRS 61.805(2) does not include "any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds." OAG 04-OMD-02, 2004 Ky. AG LEXIS 38.

Records generated by the corporation in 2001 that relate to functions, activities, programs, or operations funded by the infusion of $960,000 from the state through the city are accessible to the public under the Open Records Act. If the remaining state funds channeled to the corporation through the city represent at least 25% of its total funds in any subsequent year, records generated by the corporation that relate to functions, activities, programs, or operations funded by those remaining funds and in those years are also accessible under the Open Records Act. OAG 04-ORD-12, 2004 Ky. AG LEXIS 191.

If the Kentucky Animal Care and Control Association membership comprises for most part all or most of the tax-supported animal control programs in each county throughout Kentucky, KACCA could qualify as a "public agency," subject to the operation of the Open Records Act. OAG 04-ORD-19, 2004 Ky. AG LEXIS 73.

The Administrative Office of the Courts is not bound by the provisions of the Open Records Act. The AOC is part and parcel of the judicial department of the state and inseparable from the office of the Chief Justice itself; records generated by and for the AOC are indisputably records of the Court. It is for the Court to determine which policies evinced by the Open Records Law present interferences with the orderly conduct of its business, and which policies it will accept as a matter of comity. OAG 04-ORD-37, 2004 Ky. AG LEXIS 194.

The purpose for which Clark Publishing Communications obtained the requested records, namely to incorporate them into a professional development seminar for which participants will be assessed a registration fee, and from which Clark expects "a profit either through commission, salary, or fee," clearly constitutes a "commercial purpose" within the meaning of KRS 61.870(4)(a). OAG 04-ORD-54, 2004 Ky. AG LEXIS 149.

Kentucky Baptist Homes for Children, Inc., although it is organized as a private nonprofit corporation as provided for in KRS 199.640, is a facility operating under a plan and budget approved by the Cabinet and the comprehensive scheme of legislation. Because KBHC derives at least 25% of the funds it expends in the Commonwealth from state or local authority funds, approximately 56%, it is a public agency within the meaning of KRS 61.870(1)(h) and, therefore, is subject to the provisions of the Open Records Act. OAG 04-ORD-111, 2004 Ky. AG LEXIS 125.

The United States Drug Enforcement Administration is a federal agency; thus the DEA is not a public agency within the meaning of KRS 61.870(1) and is not governed by the Open Records Act. OAG 04-ORD-140, 2004 Ky. AG LEXIS 141.

Pursuant to KRS 61.870(1)(a) and (2), the City Mayor is himself a public agency, and records which he prepares, owns, uses, possesses, or retains, including copies of the speech he gave at a City Council meeting, are public records for open records purposes. His status cannot be equated to that of a private citizen in this factual context. OAG 04-ORD-216, 2004 Ky. AG LEXIS 35.

Because the Court Clerk is not bound by the provisions of the Open Records Act insofar as "records in the hands of the clerk are records of the court," regardless of whether the requested records directly relate to a specific court action, the Clerk did not violate the Act in his disposition of the request for the specified records relating to the Clerk's bond. OAG 04-ORD-219, 2004 Ky. AG LEXIS 57.

As evidenced in its Articles of Incorporation, the Ballard County Economics and Industrial Development Board, Inc. was established in 1982 by a group of concerned citizens. Although incorporated as a non-profit organization, the Board does not owe its existence to the legislative act of a governmental body and therefore does not fall within the parameters of KRS 61.870(1)(b), (f), (g), and (j). Further, the Industrial Development Board does not fall within the parameters of KRS 61.870(1)(i). OAG 04-ORD-222, 2004 Ky. AG LEXIS 113.

Although the Kentucky High School Athletic Association was originally created as a private, voluntary, unincorporated association, it assumed a public character as a policy making board of an institution of education when, pursuant to KRS 156.070(2) and 702 KAR 7:065 Section 1, it was designated by the Kentucky Board of Education as the agency responsible for managing interscholastic athletics in the schools. Accordingly, the KHSAA is a public agency for purposes of the Open Records Act. OAG 04-ORD-244, 2004 Ky. AG LEXIS 83.

Court Appointed Special Advocate (CASA) is not a "public agency" within the meaning of KRS 61.870(1), and is therefore not bound by the provisions of the Open Records Act. In addition, CASA officials and volunteers must keep confidential all information contained in records of the type requested except in conferring with or reports to the court pursuant to KRS 620.505(8), incorporated into the Open Records Act by virtue of KRS 61.878(1)(l). OAG 05-ORD-004, 2005 Ky. AG LEXIS 148.

Where the Fiscal Court did not adequately explain why portions of invoices sent by a law firm representing the Court had amounts charged redacted, unless it could substantiate a proper basis for withholding the amounts charged, the redacted amounts should have been made available for the requester's inspection. OAG 05-ORD-29, 2005 Ky. AG LEXIS 128.

The Kentucky Correctional Psychiatric Center properly denied the request of an individual for a copy of his court ordered evaluation conducted for the purpose of determining his competency to stand trial because, under KRS 26A.200, the requested report is a "court record" under the exclusive jurisdiction of the court. OAG 05-ORD-56, 2005 Ky. AG LEXIS 204.

The American Farrier's Association, Inc., does not receive twenty-five (25) or more percent funding from any state or local authority to qualify as a "public agency," pursuant to KRS 61.870(1)(h). OAG 05-ORD-124, 2005 Ky. AG LEXIS 275.

A private corporation created to provide the community with a collaborative apolitical environment for discussion and project development is a public agency within the meaning of KRS 61.870(1), and it therefore violated the Open Records Act in denying requests to inspect its financial and operational records. OAG 05-ORD-156, 2005 Ky. AG LEXIS 159.

City did not violate the Open Records Act in denying a request for letters directed to local businesses by the city attorney because he sent the correspondence as a private citizen rather than in his official capacity and, therefore, the records do not fall within the definition of "Public record." codified at KRS 61.870(2) OAG 05-ORD-183, 2005 Ky. AG LEXIS 92.

The Center for Women and Families, Inc. is not a public agency within the meaning of KRS 61.870(1). OAG 05-ORD-187, 2005 Ky. AG LEXIS 282.

Because a volunteer fire department is a public agency pursuant to KRS 61.870(1)(h) and records relating to training received by the firefighters like those requested fall within the parameters of KRS 61.870(2), the department violated the Open Records Act in denying a request for such records. OAG 05-ORD-203, 2005 Ky. AG LEXIS 255.

Baptist Hospital East is not a "public agency" within the meaning of KRS 61.870(1). OAG 05-ORD-228, 2005 Ky. AG LEXIS 288.

The Correctional Psychiatric Center properly denied an individual's request for a copy of his court ordered evaluation conducted for the purpose of determining his competency to stand trial because the requested report is a "court record," and the Circuit Court has limited its distribution. OAG 05-ORD-257, 2005 Ky. AG LEXIS 305.

Because an oral and maxillofacial surgery association is not a public agency it was not subject to the provisions of the Open Records Act and documents requested from it did not qualify as public records; however, the requester was entitled to receive one free copy of his medical record pursuant to KRS 422.317(1). OAG 06-ORD-006, 2006 Ky. AG LEXIS 92.

The Open Records Act did not apply to an attorney appointed to represent the requester for sentencing purposes only because, as a private attorney, he did not fall within the definition of "public agency," nor could requested records properly be characterized as "public records." OAG 06-ORD-011, 2006 Ky. AG LEXIS 15.

Police department did not violate the Open Records Act in failing to produce a recording of a "traffic stop" that may or may not still have existed since the recording did not fall within the definition of a public record in KRS 61.870(2). OAG 06-ORD-039, 2006 Ky. AG LEXIS 26.

As a private attorney, the respondent does not fall within the definition of "public agency" codified at KRS 61.870(1); nor can the requested records properly be characterized as "public records" subject to inspection pursuant to KRS 61.870(2) since the records are not "prepared, owned, used, in the possession of or retained by a public agency." OAG 2006-ORD-011, 2006 Ky. AG LEXIS 15.

The Kentucky State Law Library is not bound by the provisions of the Open Records Act, and therefore cannot be said to have violated the Act in failing to respond to an open records request. OAG 2006-ORD-038, 2006 Ky. AG LEXIS 25.

Since the officer was not ordered or directed to make any tape recording of the traffice stop and was not provided any equipment to make any tape recordings, any such tape is the private property of the officer and the recording does not fall into the definition of a public record. Since the recording is not a public record, not a part of the case report for the traffic stop, and is the personal property of an individual, the police department is unable to provide the requester with a copy. OAG 2006-ORD-039, 2006 Ky. AG LEXIS 26.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Business Enterprises, 782 KAR 1:010.

Recording and reproducing public records, 725 KAR 1:020.

Kentucky Bench & Bar.

McClelland, A Never-ending struggle between competing policies: The Kentucky Open Records Act, Vol. 61, No. 4, Fall 1997, Ky. Bench & Bar 25.

Fleischaker, Klimkina & McCauley, The Kentucky Open Records Law: A Retrospective Analysis, Vol. 76, No. 4, July 2012, Ky. Bench & Bar 13.

Kentucky Law Journal.

Note, Judicial v. Legislative Power in Kentucky: A "Comity" of Errors, 71 Ky. L.J. 829 (1982-83).

Out of the Sunshine and into the Shadows: Six Years of Misinterpretation of the Personal Privacy Exemption of the Kentucky Open Records Act, 71 Ky. L.J. 853 (1982-83).

Northern Kentucky Law Review.

Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

Bales and Hamilton, Jr., Workplace Investigations in Kentucky, 27 N. Ky. L. Rev. 201 (2000).

2012 Kentucky Survey Issue: Article: Candid Kentucky: The Commonwealth's Devotion to an Open Government, 39 N. Ky. L. Rev. 45 (2012).

61.871. Policy of KRS 61.870 to 61.884 — Strict construction of exceptions of KRS 61.878.

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

History.

Enact. Acts 1992, ch. 163, § 1, effective July 14, 1992.

NOTES TO DECISIONS

Analysis

1. Standing.
2. Civil Lawsuits.
3. Records of Donors.
4. Construction.

1. Standing.

Resident had standing to sue under Kentucky's Open Records Act (KORA), KRS 61.871, 61.872, and the trial court erred when it dismissed the resident's case for lack of standing; KORA granted the resident standing to sue for damages to which a person requesting public records may be entitled pursuant to that act. Taylor v. Barlow, 378 S.W.3d 322, 2012 Ky. App. LEXIS 170 (Ky. Ct. App. 2012).

Commonwealth of Kentucky, Cabinet for Health and Family Services' (Cabinet) failure to disclose the requested records constituted a "willful" violation of the Open Records Act, KRS 61.871; the Cabinet failed to make particularized analysis and instead relied on an all-encompassing policy of nondisclosure

despite the purpose of the Act and despite the acknowledged applicability of KRS 620.050(12)(a) under these circumstances, and the circuit court concluded that these denials were made in "bad faith." Commonwealth v. Lexington H-L Servs., 382 S.W.3d 875, 2012 Ky. App. LEXIS 216 (Ky. Ct. App. 2012).

2. Civil Lawsuits.

An agreement which represents the final settlement of a civil lawsuit whereby a governmental entity pays public funds to compensate for an injury it inflicted is a public record and is open to inspection by any person as provided in subsection (1) of KRS 61.872 and the government is without any basis upon which to claim a right of privacy and unless such documents are excluded from disclosure by one (1) or more provisions of the Open Records Act, they must be produced. Lexington-Fayette Urban County Gov't v. Lexington Herald-Leader Co., 941 S.W.2d 469, 1997 Ky. LEXIS 38 (Ky. 1997).

3. Records of Donors.

Names of donors to a public university's foundation who had not requested anonymity were subject to the disclosure requirement of KRS 61.871, as the foundation was a public entity under KRS 61.870, and the donors had no reasonable expectation of privacy. Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

4. Construction.

General Assembly did not intend to mandate an iron rule of non-disclosure whenever an exemption contained in the Kentucky Open Records Act applies because such a rule would run counter to the principle, fundamental in the law, that rights, even fundamental rights, may be waived, and the Act's express policy, is the free and open examination of public records. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

Family Educational Rights and Privacy Act (FERPA) did not bar a university from releasing to a newspaper all records sought under the Open Records Act because, while FERPA barred release of unredacted education records contained in a Title IX investigation file, not all the records sought were education records directly relating to a student. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Cited in:

Department of Corrections v. Courier-Journal & Louisville Times, 914 S.W.2d 349, 1996 Ky. App. LEXIS 10 (Ky. Ct. App. 1996); Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997); Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008); Cincinnati Enquirer v. City of Fort Thomas, — S.W.3d —, 2011 Ky. App. LEXIS 202 (Ky. Ct. App. 2011); Parish v. Petter, 608 S.W.3d 638, 2020 Ky. App. LEXIS 100 (Ky. Ct. App. 2020); Univ. of Ky. v. Kernel Press, Inc., 620 S.W.3d 43, 2021 Ky. LEXIS 126 (Ky. 2021); Courier-Journal, Inc. v. Shively Police Dep't, 2022 Ky. App. LEXIS 99 (Ky. Ct. App. 2022); Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025); .

NOTES TO UNPUBLISHED DECISIONS

1. Final Rulings of Department of Revenue.

Unpublished decision: Department of Revenue was required to produce for inspection redacted copies of its final rulings because the production of the material a tax attorney and tax analysts sought was required by the Open Records Act; the Department's final rulings contained information related to its reasoning and analysis with respect to its task in administration of the tax laws, and that information could be made available without jeopardizing taxpayers' privacy interests under the Taxpayers' Bill of Rights. Fin. & Admin. Cabinet v. Sommer, 2017 Ky. App. LEXIS 9 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 624 (Ky. Ct. App. Jan. 13, 2017).

OPINIONS OF ATTORNEY GENERAL.

KRS 154A.040(1)(c) was enacted in response to a concern that the integrity of the lottery might be compromised by disclosure of information bearing on the games, and not by its concern for the safety of the Lottery Corporation's retailers; therefore, the Lottery Corporation improperly denied a request for records containing cash sales by retailers. OAG 93-ORD-44, 1993 Ky. AG LEXIS 74.

The purpose and intent of the Open Record Act is to permit the free and open examination of public records; however, this right of access is not absolute and as a precondition to inspection, a requesting party must identify the records with sufficient clarity to enable the agency to locate and make them available; if the requester cannot describe the documents he wishes to inspect with specificity, there is is no requirement that the public agency conduct a search for such documents. OAG 94-ORD-12, 1994 Ky. AG LEXIS 16.

Even though request for public record was far from a model of clarity it was not so ambiguous that it precluded custodian from determining the identity of the item sought, thus where custodian did not analyze the request for the record sought but merely informed requester that it did not exist, he violated Open Records Act. OAG 94-ORD-12, 1994 Ky. AG LEXIS 16.

The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop a coherent scheme for the organized maintenance of records at identified maintenance locations. OAG 94-ORD-121, 1994 Ky. AG LEXIS 95.

The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop an adequate program for ensuring records management through agency oversight of employee records handling practices. OAG 94-ORD-121, 1994 Ky. AG LEXIS 95.

For purposes of submitting an open records request, or appealing to the Attorney General, "person" may extend to an unincorporated association. OAG 95-ORD-9, 1995 Ky. AG LEXIS 2.

Where appellant had requested access to a specific type contractual document during a the tenure of a particular president of the Lottery Corporation, the request was specific enough to permit the custodian to determine what records it encompassed necessitating an obligatory search, as opposed to nonobligatory research. OAG 95-ORD-27.

The Open Records Act does not require an agency to conduct an exhaustive exhumation of records or to embark on an unproductive fishing expedition when the likelihood of finding records that fall within the outermost limits of the zone of relevancy is slight. It is, however, incumbent on an agency to make a good faith effort to conduct a search using methods which can reasonably be expected to produce the records requested. OAG 95-ORD-96, 1995 Ky. AG LEXIS 65.

Although subsection (3) of KRS 61.878 does not contain a specific reference to former employees, its expansive wording, coupled with the state of legislative intent underlying the Open Records Act, codified at this section, that free and open examination of public records is in the public interest, and the rule of statutory construction, codified at KRS 446.080(1), that all statutes are to be interpreted with a view to promote their objects and carry out the intent of the Legislature, compels the result that such subsection applies to former employees. OAG 97-ORD-87, 1997 Ky. AG LEXIS 35.

The Open Records Act exhibits a general bias towards disclosure, and the exceptions to public inspection codified at

KRS 61.878(1)(a) though (j) should be given no broader application than is necessary to effecuate their purposes. OAG 97-ORD-168, 1997 Ky. AG LEXIS 73.

The courts and judicial agencies are not bound by the provisions of the Open Records Act except to the extent that those provisions are not in conflict with the court's rules and regulations governing access to its own records, and are accepted as a matter of comity. All records which are made by or generated for or received by any other court, agency, or officer responsible to the Court, are the property of the Court and are subject to the control of the Supreme Court. Court records are therefore given a special status, and placed under the exclusive jurisdiction of the court. OAG 98-ORD-6, 1998 Ky. AG LEXIS 65.

The General Assembly did not exclude itself from the Open Records Act, but made the Act binding upon itself by defining the term public agency to include "any body created by state or local authority in any branch of government"; the General Assembly is created the legislative branch of the government, and there is no reasonable basis for excluding it from the definition of a public agency; thus it is a "public" agency for purposes of the Open Records Act. OAG 98-ORD-92, 1998 Ky. AG LEXIS 208.

The General Assembly did not exclude itself from the Open Records Act, but made the Act binding upon itself by defining the term public agency to include "any body created by state or local authority in any branch of government"; the General Assembly is created by the legislative branch of the government, and as there is no reasonable basis for excluding it from the definition of a public agency, its records are subject to public inspection unless otherwise exempt pursuant to KRS 61.878(1)(a) though (l). OAG 98-ORD-92, 1998 Ky. AG LEXIS 208.

Public agencies are not required by the act to gather and supply information independent of that which is set forth in public records; the public has a right to inspect public documents and to obtain whatever information is contained in them, but the primary impact of the act is to make records available for inspection and copying and not to require the gathering and supplying of information. OAG 99-ORD-17, 1999 Ky. AG LEXIS 21.

The Transportation Cabinet was not required to answer a series of questions relating to construction, accidents, and the volume of traffic on various roads as public agencies are not required by the Open Records Act to gather and supply information independent of that which is set forth in public records, and such conclusion was not altered by the fact that past administrations have furnished the same information to other individuals since the Open Records Act does not prohibit a public agency from voluntarily providing information in response to a request for same, it simply does not require the agency to do so. OAG 99-ORD-71, 1999 Ky. AG LEXIS 77.

The preprinted form developed by the agency, requiring the requester to indicate whether he is a representative of the news media or the reasons for his request and requiring a requester to verify his identity by producing a driver's license or other form of identification, creates a potential chilling effect on submission of open records requests that is inconsistent with the basic policy of the Open Records Act codified at KRS 61.871. OAG 03-ORD-86, 2003 Ky. AG LEXIS 181.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Business Enterprises, 782 KAR 1:010.

Kentucky Bench & Bar.

McClelland, A Never-ending struggle between competing policies: The Kentucky Open Records Act, Vol. 61, No. 4, Fall 1997, Ky. Bench & Bar 25.

Fleischaker, Klimkina & McCauley, The Kentucky Open Records Law: A Retrospective Analysis, Vol. 76, No. 4, July 2012, Ky. Bench & Bar 13.

Northern Kentucky Law Review.

2012 Kentucky Survey Issue: Article: Candid Kentucky: The Commonwealth's Devotion to an Open Government, 39 N. Ky. L. Rev. 45 (2012).

61.8715. Legislative findings.

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 42.720 to 42.742, 45.253, 171.420, 186A.040, and 186A.285, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

History.

Enact. Acts 1994, ch. 262, § 1, effective July 15, 1994; 2000, ch. 506, § 17, effective July 14, 2000; 2000, ch. 536, § 17, effective July 14, 2000; 2005, ch. 99, § 16, effective June 20, 2005; 2009, ch. 12, § 32, effective June 25, 2009; 2020 ch. 36, § 5, effective July 15, 2020.

NOTES TO DECISIONS

Cited:

Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008).

OPINIONS OF ATTORNEY GENERAL.

In enacting KRS 61.8715 the General Assembly recognized that the intent of the Open Records Act, to provide full access to public records was essentially related to, and would be promoted by, efficient records management. This, of course, is the intent and purpose of the State Archives and Records Act. Subversion of the intent of the Archives and Records Act thus constitutes subversion of the intent of the Open Records Act. If a public agency fails to discharge its statutorily mandated duty to establish effective controls over the creation, maintenance, and use of records, and to make known to all of its officials and employees that no records are to be destroyed except in accordance with the law, the agency subverts the intent of the Open Records Act by frustrating full access to public records. OAG 94-ORD-121, 1994 Ky. AG LEXIS 95.

Since July 15, 1994, when the amendments to the Open Records Act took effect, there is a higher standard of review relative to denials based on the nonexistence, or the destruction, of the requested records. In order to satisfy its statutory burden of proof, a public agency must, at a minimum, document what efforts were made to locate the missing records. Because the agency failed to provide even a minimal explanation for the loss of the requested records, the agency failed to adequately manage its records. OAG 94-ORD-141, 1994 Ky. AG LEXIS 123.

The Attorney General is not empowered to order an agency to create records, or to declare its failure to do so a subversion of the intent of the Open Records Act. 95-ORD-48.

The Open Records Act does not require an agency to conduct an exhaustive exhumation of records or to embark on an unproductive fishing expedition when the likelihood of finding records that fall within the outermost limits of the zone of relevancy is slight. It is, however, incumbent on an agency to make a good faith effort to conduct a search using methods which can reasonably be expected to produce the records requested. OAG 95-ORD-96, 1995 Ky. AG LEXIS 65.

In the role as a dispute mediator in an open records appeal, the Attorney General is not authorized to conduct an investigation into the nonexistence of records the public agency declares do not exist and although there are occasions when under the mandate of this section, a records management issue is referred to the Department for Libraries and Archives for further inquiry. OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Where an agency denies a request for disclosure of records based on the nonexistence of the requested records, the agency must, at a minimum, offer some explanation for the nonexistence of the records. OAG 99-ORD-22, 1999 Ky. AG LEXIS 16.

The University of Kentucky violated, or otherwise subverted the intent of, the Open Records Act in the disposition of a journalist's request for a copy of "the fax submitted by scholarship player to the UK Athletics Department regarding his decision to make himself available for the NBA draft." Because the fax was in the nature of official correspondence terminating the player's financial relationship with the University, and therefore should have been permanently retained, significant records management issues were raised that are appropriate for review by the Department for Libraries and Archives. OAG 05-ORD-141, 2005 Ky. AG LEXIS 229.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Business Enterprises, 782 KAR 1:010.

61.872. Right of Kentucky residents to inspect public records — Written application — Limitation.

(1) All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No resident of the Commonwealth shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2)(a) Any resident of the Commonwealth shall have the right to inspect public records. The official custodian may require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected. The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).

(b) The written application shall be:

1. Hand delivered;
2. Mailed;
3. Sent via facsimile; or
4. Sent via e-mail to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations adopted pursuant to KRS 61.876.

(c) A public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under KRS 61.876(4).

(3) A resident of the Commonwealth may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he or she precisely describes the public records which are readily available within the public agency. If the resident of the Commonwealth requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

History.

Enact. Acts 1976, ch. 273, § 2; 1992, ch. 163, § 3, effective July 14, 1992; 1994, ch. 262, § 3, effective July 15, 1994; 2019 ch. 64, § 1, effective June 27, 2019; 2021 ch. 160, § 2, effective June 29, 2021.

Legislative Research Commission Notes.

(6/29/2021). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of the text in subsection (2) of this statute during codification. The words in the text were not changed.

NOTES TO DECISIONS

Analysis

1. Standing.
2. Purpose.
3. Legislative Intent.
4. Invasion of Privacy.
5. Civil Lawsuit.
6. Description of Records.
7. Unreasonable Burden.
8. Explanation Required.

1. Standing.

Resident had standing to sue under Kentucky's Open Records Act (KORA), KRS 61.871, 61.872, and the trial court erred when it dismissed the resident's case for lack of standing; KORA granted the resident standing to sue for damages to which a person requesting public records may be entitled pursuant to that act. Taylor v. Barlow, 378 S.W.3d 322, 2012 Ky. App. LEXIS 170 (Ky. Ct. App. 2012).

2. Purpose.

The Legislature in adopting the open records law clearly intended to grant any member of the public as much right to access to information as the next; the only relevant public interest in disclosure to be considered is the extent to which disclosure would serve the principle purpose of the Open Records Act. Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994).

Public has an interest in the investigatory methods used by its public agencies and to know that a publicly funded university has complied with all federal and state laws, including of the United States Education Amendments of 1972; an investigation into a professor's sexual abuse of a student is of public interest, not because of the identity of the victim or the details, but because of the interest in seeing universities in compliance with Title IX and allegations dealt with appropriately. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Family Educational Rights and Privacy Act (FERPA) did not bar a university from releasing to a newspaper all records sought under the Open Records Act because, while FERPA barred release of unredacted education records contained in a Title IX investigation file, not all the records sought were education records directly relating to a student. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

3. Legislative Intent.

In construing the term "party" in KRS 61.878(1), the appellate court attached significance to the Legislature's word choice, which was "party" not "person" and interpreted this to mean that a newspaper seeking to inspect records of a prison inmate was not a "party" in the litigation involving the inmate, thus KRS 61.878(1) was inapplicable, and the documents requested were open for inspection pursuant to this section. Department of Corrections v. Courier-Journal & Louisville Times, 914 S.W.2d 349, 1996 Ky. App. LEXIS 10 (Ky. Ct. App. 1996).

General Assembly did not intend to mandate an iron rule of non-disclosure whenever an exemption contained in the Kentucky Open Records Act applies because such a rule would run counter to the principle, fundamental in the law, that rights, even fundamental rights, may be waived, and the Act's express policy, is the free and open examination of public records. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

Kentucky takes the view that the Family Educational Rights and Privacy Act (FERPA) prohibits disclosure of education records under the Kentucky Open Records Act; Kentucky has adopted its own version of FERPA, applicable to elementary and secondary schools indicating the General Assembly has determined that education records are not subject to the Open Records Act. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

4. Invasion of Privacy.

File of complaints by psychologist's clients alleging sexual misconduct was a public record containing information "of a very personal nature," disclosure of which would have constituted a serious invasion of personal privacy. Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co., 826 S.W.2d 324, 1992 Ky. LEXIS 35 (Ky. 1992).

In determining whether a request for certain public records constitute a clearly unwarranted invasion of person privacy under KRS 61.878(1)(a), the court must first determine whether the subject information is of a "personal nature" and if it finds it is a must then determine whether public disclosure "would constitute a clearly unwarranted invasion of personal privacy." This latter determination entails a "comparative weighing of antagonistic interests" in which the privacy interest in nondisclosure is balanced against the general rule of inspection and its underlying policy of openness for the public good. Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994).

Unredacted copies of final settlement agreements which showed payments made by government in connection with lawsuits against the police department were not covered by the privacy exception contained in subdivision (1)(a) of KRS 61.878 even though two or three of the agreements contained confidentiality clauses whereby settlement recipients and their attorneys agreed not to disclose the terms of the agreements. Lexington-Fayette Urban County Gov't v. Lexington Herald-Leader Co., 941 S.W.2d 469, 1997 Ky. LEXIS 38 (Ky. 1997).

Conciliation agreement between the city and the employee was a settlement involving the payment of public funds, which remained a public record, and to the extent that the conciliation agreement contained personal information including the employee's salary and accommodations, the disclosure of that information was not an unwarranted invasion of her privacy such that it would have been highly offensive to the reasonable person. Therefore, because the conciliation agreement was a public record under KRS 61.870 et seq., the office manager did not intrude into the employee's right of seclusion by possessing a public record, and thus, the employee's claim against the office manager for unreasonable intrusion upon the seclusion of another based on her alleged possession of her conciliation agreement failed as a matter of law. Washington v. City of Georgetown, 2009 U.S. Dist. LEXIS 16394 (E.D. Ky. 2009).

5. Civil Lawsuit.

An agreement which represents the final settlement of a civil lawsuit whereby a governmental entity pays public funds to compensate for an injury it inflicted is a public record and is open to inspection by any person as provided in subsection (1) of this section and the government is without any basis upon which to claim a right of privacy and unless such documents are excluded from disclosure by one or more provisions of the Open Records Act, they must be produced. Lexington-Fayette Urban County Gov't v. Lexington Herald-Leader Co., 941 S.W.2d 469, 1997 Ky. LEXIS 38 (Ky. 1997).

Bid protestor was entitled to seek judicial review of the award of the contract for statewide genetic testing services for the 2004 fiscal year, which was made to another vendor, even though the contract had expired as a protestor has standing to seek judicial review as such a matter presents a case and controversy despite the contract ending. However, judgment in favor of the various Commonwealth of Kentucky agencies and the winning bid maker was upheld on appeal, because the substance of the protestor's complaint alleged alternative interpretation of the bid terms, which was a discretion afforded to the Commonwealth as a contracting officer in a negotiated procurement, and the protestor provided no valid reason, such as fraud, in challenging the award to the winning bid maker. Lab. Corp. of Am. Holdings v. Rudolph, 184 S.W.3d 68, 2005 Ky. App. LEXIS 169 (Ky. Ct. App. 2005).

Former medical resident student did not established that a university's initial decision to withhold records from her was

done willfully, particularly when there was evidence that university officials were not aware that the other documents existed, and once they learned of the other records, they produced them to the student; also the student could not recover attorney's fees and other expenses after filing a lawsuit to obtain the documents. Shyamashree Sinha v. Univ. of Ky., 284 S.W.3d 159, 2008 Ky. App. LEXIS 375 (Ky. Ct. App. 2008).

Where a school district employee settled her lawsuit against one school district for sexual harassment by a district official and a second lawsuit against another district for allegedly wrongfully failing to hire her, the lower courts erred in denying a newspaper's request for access to the settlement agreements under the Kentucky Open Records Act, KRS 61.870 to 61.884, because the settlement of litigation between a government agency and one of its employees and a private citizen and a governmental entity were matters of legitimate public concern that the public is entitled to scrutinize. A confidentiality clause in such agreements was not entitled to protection. Cent. Ky. News-Journal v. George, 306 S.W.3d 41, 2010 Ky. LEXIS 72 (Ky. 2010).

Although the former employees alleged that the general manager's production of the disciplinary action forms in response to a record request was actionable because, at least as to two employees, the forms contained untrue statements about the employees acting dishonestly when they examined confidential information on the employer's computer system without permission following one of the employee's discharge, the general manager's decisions to discharge the employees were not conditional and did not need the board of directors' approval; the general manager had the authority to terminate employees, and the terminations represented his final action. That the discharges could potentially have been set aside by the board during the grievance hearing did not transform the disciplinary action forms into preliminary drafts, notes, or correspondence. Burgess v. Paducah Area Transit Auth., 387 Fed. Appx. 538, 2010 FED App. 0421N, 2010 U.S. App. LEXIS 14384 (6th Cir. Ky. 2010).

6. Description of Records.

Nothing in KRS 61.872(2) contains any sort of particularity requirement. Rather, KRS 61.872(2) only requires that one seeking to inspect public records may be required to submit a written application describing the records to be inspected. The General Assembly chose only to require the record to be described; it did not add any modifiers like "particularly" described. Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008).

7. Unreasonable Burden.

Winnowing process required of the Department of Corrections by the General Assembly under KRS 197.025 did not rise to the level of an unreasonable burden under KRS 61.872(6), especially in light of the fact that the General Assembly had already mandated that all public agencies had to separate materials exempted from disclosure in a document from materials that were subject to disclosure. The obvious fact that complying with an open records request would have consumed both time and manpower was, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden. Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008).

Although the task of determining what materials were properly subject to an inmate's open records request was tedious and time-consuming work, complying with the request did not automatically constitute an unreasonable burden. Regardless of the specificity of the open records request, the Department of Corrections personnel were still obligated to sift through any requested materials in order to determine which documents (or portions of a document) had to be redacted or excised by reasons of privacy or for institutional safety under KRS 197.025. Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008).

Kentucky State Police violated the Open Records Act, Ky. Rev. Stat. Ann. § 61.870 et seq., by failing to produce its entire Uniform Citation File database when requested by a reporter where the time and manpower required to separate exempt material, standing alone, was not sufficiently clear and convincing evidence to show an unreasonable burden under Ky. Rev. Stat. Ann. § 61.872(6). Moreover, the undisputed evidence noted that the necessary categorical extractions could be performed for $15,000, and electronically separating exempt material was not equivalent to creating a new record given the mandate in Ky. Rev. Stat. Ann. § 61.878(4). Commonwealth v. Courier Journal, 601 S.W.3d 501, 2020 Ky. App. LEXIS 42 (Ky. Ct. App. 2020).

8. Explanation Required.

Once it has been determined that records requested under the Kentucky Open Records Act no longer exist, the responsible agency is required to provide the requester with a written explanation for the records' nonexistence. Therefore, an inmate was entitled to relief under the Act based upon a request for certain jail records, even though the records allegedly no longer existed. Eplion v. Burchett, 354 S.W.3d 598, 2011 Ky. App. LEXIS 215 (Ky. Ct. App. 2011).

Cited:

Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks, 906 S.W.2d 318, 1995 Ky. LEXIS 62 (Ky. 1995); Cincinnati Enquirer v. City of Fort Thomas, — S.W.3d —, 2011 Ky. App. LEXIS 202 (Ky. Ct. App. 2011); Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025); .

NOTES TO UNPUBLISHED DECISIONS

1. Final Rulings of Department of Revenue.

Unpublished decision: Department of Revenue was required to produce for inspection redacted copies of its final rulings because the production of the material a tax attorney and tax analysts sought was required by the Open Records Act; the Department's final rulings contained information related to its reasoning and analysis with respect to its task in administration of the tax laws, and that information could be made available without jeopardizing taxpayers' privacy interests under the Taxpayers' Bill of Rights. Fin. & Admin. Cabinet v. Sommer, 2017 Ky. App. LEXIS 9 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 624 (Ky. Ct. App. Jan. 13, 2017).

OPINIONS OF ATTORNEY GENERAL.

Copies of documentation pertaining to the purchase of federal excess and surplus property obtained by a county civil defense agency would constitute "public records" and should be open to inspection by a newspaper. OAG 76-235.

Blanket requests for information on a particular subject without specifying certain documents need not be honored for state employees may not be requested to make compilations of records, but the public has a right to inspect compilations which have been made in the course of business unless the subject matter is confidential by law. OAG 76-375.

The Open Records Act does not charge state agencies with the duty to provide records upon a request made by mail. OAG 76-375.

The right to have copies of records is an ancillary to the right of inspection and does not stand by itself; if a person has not inspected the records he desires to copy and cannot describe them with specificity, there is no requirement that copies of any records must be delivered to him; a citizen may make a fishing expedition through public records on his own time and under the restriction and safeguards of the public

agency, but a willingness to pay for copies of records is not sufficient to put the state agency under obligation to furnish broad categories of records. OAG 76-375.

A person does not have a right to require a list to be made from public records if the list described does not already exist; if the list exists and is not otherwise confidential by law, a person may inspect a list and obtain a copy of it; a person desiring that list be made or that he have copies of broad categories of information must expend his own time in digging out the information unless it has already been compiled. OAG 76-375.

A county fiscal court could not deny a bidder access to inspection of a bid submitted by another office supply company upon an advertised invitation for bids. OAG 76-528.

Jury lists drawn from the drum by the judge are to be kept secret until the list is delivered to the sheriff and after that time the clerk is required to allow public inspection of the list and to provide a copy to any citizen requesting one for which the clerk may charge a reasonable fee. OAG 76-591.

Repeated requests to inspect the records of a public agency do not amount to harassment so as to justify an official custodian's refusal to permit inspection. OAG 77-151, 1977 Ky. AG LEXIS 607.

Under this section a person does not have to be a resident of any particular place to qualify for inspection of public records; therefore a school office could not withhold records from the inspection of a requestor who is not a resident of the school district. OAG 77-151, 1977 Ky. AG LEXIS 607.

There is no statutory requirement that an agenda be prepared for regular meetings of the school board but if an agenda is prepared it is a public record; an agenda is required for a special meeting of the school board and it is also a "public record"; such agendas are "public records" pursuant to this section and open for inspection by any person during the regular office hours of the public agency. OAG 77-221, 1977 Ky. AG LEXIS 547.

The public has the right to all the information regarding the settlement of a civil suit by the city. OAG 78-35, 1978 Ky. AG LEXIS 718.

The Kentucky Open Records Statute does not require that a requester must state the reason for his request to inspect or copy public records, and an executive order was in error in requiring a statement of a reason before allowing copying of a record. OAG 78-231, 1978 Ky. AG LEXIS 502.

Since a filed library district petition requires fiscal court to check its validity on its face, it does not become a full-blown public record, for purposes of the Open Records Law, until after fiscal court has determined its validity. OAG 79-265, 1979 Ky. AG LEXIS 355.

While a library district petition is needed by the clerk and his staff to check the validity of the signatures, etc., for fiscal court, the custodian may reasonably delay inspection of the record and the making of copies until after the verification process has been concluded. OAG 79-265, 1979 Ky. AG LEXIS 355.

KRS 68.360 provides for a monthly statement of the county treasurer to be filed with the county judge/executive and the fiscal court, showing the balance of county funds available for governmental expenditure, and for the county judge/executive's filing similar quarterly reports as to status of county funds, showing receipts and expenditures of county funds, which records are public records, as defined in KRS 61.870, and are subject to inspection by any person under the conditions of this section. OAG 79-374, 1979 Ky. AG LEXIS 275.

An inmate of a county detention center has the right to inspect public records the same as any other person. OAG 79-546, 1979 Ky. AG LEXIS 92.

There is nothing wrong with making a request for inspection of public documents by mail, but the response of the agency need only be that the records will be made available for inspection at certain times and places. OAG 79-547, 1979 Ky. AG LEXIS 93.

The press has only such right of access to public records as the general public has. OAG 79-582, 1979 Ky. AG LEXIS 48.

The Kentucky Housing Authority should make a proper response to an attorney's request to inspect a July, 1979, audit of a corporation by agency accountants, and if there is no lawful reason for denying inspection of the audit record, the agency should comply with the request for the record by making it available; if the record is not in the possession of the agency but is in the possession of the agency's accountant, the agency should obtain a copy of the record and make it available, and a claim of confidentiality between the accountants and the corporation cannot be used to defeat the inspection of the record which is otherwise not exempt by law. OAG 80-207, 1980 Ky. AG LEXIS 453.

A request to inspect any standard contract or printed contract form used by a county's schools during the years 1978, 1979 or 1980, for the purchase of instructional materials was specific enough and should have been complied with. OAG 80-289, 1980 Ky. AG LEXIS 353.

Where a member of an electric plant board has requested to inspect numerous plant board records covering a five-year period and that certain lists be compiled for him, it will be sufficient under the Open Records Law for the board to allow the requester access to the records he wants to inspect if they exist and the board does not have to prepare lists which are not already in existence. OAG 80-308, 1980 Ky. AG LEXIS 381.

Where a requester sought to inspect the records of all moneys collected by a county from fees charged the public for the use of the county's copying machines for personal copies, the county clerk's response that the records would be made available for inspection five (5) weeks later did not comply with the Open Records Law, especially subsection (4) of this section, since the clerk gave no explanation for the five-weeks delay. OAG 80-367, 1980 Ky. AG LEXIS 272.

The Department (now Cabinet) for Human Resources must honor requests for information regarding payment to specific identifiable providers of health care through the Kentucky Medical Assistance Program since such records come under the mandatory inspection requirements of the Open Records Law. OAG 80-519, 1980 Ky. AG LEXIS 166.

Response to request to inspect certain public records of the city that the requesters would be allowed to review records one day a month and to examine two month's worth of records at a time placed an unreasonable and illegal restriction upon the right of the requesters to inspect the records and constituted a subversion of the intent of the Open Records Law and the requesters are entitled to inspect all of the described records immediately and continuously until the inspection is completed to their satisfaction. OAG 80-641, 1980 Ky. AG LEXIS 8.

Where a newspaper sought all records of agreed orders levying fines against coal companies for certain periods, all records relating to collection of such fines, and all records relating to forfeiture of bonds by coal companies for the same period, and the state environmental agency granted access to some of the records but denied access to all closed files located in a storage warehouse as placing an unreasonable burden on the agency pursuant to subsection (5) of this section, the agency's denial of access to the warehouse documents was improper, since the newspaper merely requested the right to inspect those documents at suitable facilities rather than requesting state employees to compile or copy the documents, which was not an unreasonable burden and since it was not evident that the newspaper was maliciously harassing and disrupting the operation of the agency. OAG 81-198, 1981 Ky. AG LEXIS 228.

An application form provided by a city to open records to requesters, which required that the requester state under

oath that he is a Kentucky citizen, that he give his home address and telephone number, that he state the reason for his request and that the form be given under oath and certified by a notary public, was defective in that "any person" can inspect public records under this section, so that access is not limited to Kentucky citizens; a requester does not need to give any personal information or his reason for the request under KRS 61.870 to 61.884, and the application need not be given under oath or notarized. OAG 81-345, 1981 Ky. AG LEXIS 92.

County government records of occupational taxes should be open to public inspection, for the public has a right to know in addition to the name of the business licensed, the dates of applications and issuances of business licenses and; all the other information about a license issued by the government which is not expressly made confidential by statute. OAG 82-2, 1981 Ky. AG LEXIS 1.

The date of application and effective period of a county business license is not such information as reveals the affairs of a person's business contrary to subsection (1) of KRS 131.190; however, before making such information available to the public the division of tax collection should either delete confidential matter from the licenses prior to public inspection or provide the requested information in lieu of allowing personal inspection. OAG 82-2, 1981 Ky. AG LEXIS 1.

Both a proposed budget and the final approved budget of a fiscal court are public records under KRS 61.870 and are open to inspection by the public under this section. OAG 82-91, 1982 Ky. AG LEXIS 558.

A member of the city council is entitled to inspect and make copies of any public records of the city located in the clerk's office during normal office hours and at other times in emergencies. OAG 82-311, 1982 Ky. AG LEXIS 321.

If record is made available to one (1) member of the public for one (1) purpose, it must be made available to the public generally for any purpose. OAG 82-394, 1982 Ky. AG LEXIS 259.

The Kentucky Board of Nursing should make available to the public, including RN Magazine, the names and addresses of all licensed nurses as contained in the records of the Board without regard to the purpose for which the records are requested. OAG 82-394, 1982 Ky. AG LEXIS 259.

The Open Records Law requires that all public agencies, state and local, shall allow inspection and copying of public records in their custody, with the exception of certain types of documents named in KRS 61.878, without regard to the person who is making the request or the purpose for which the person wants to inspect the records; an agency cannot adopt a policy allowing inspection and copying of records for certain purposes and denying it for other purposes. It is the content of the record itself which makes it either mandatorily accessible to public inspection and copying or exempt from the mandatory requirement. OAG 82-394, 1982 Ky. AG LEXIS 259.

The purpose of licensing professions, such as nursing, is to protect the public, and the public is entitled to know who the licensees are. The public is also entitled to know the address of each licensee and if the only address which the board has for a licensee is a home address, the privacy exemption will not apply to that licensee. OAG 82-394, 1982 Ky. AG LEXIS 259.

The Open Records Law provides that any person can inspect the original record and cannot be required only to purchase a copy of the original record. OAG 82-396, 1982 Ky. AG LEXIS 251.

Under subsection (2) of this section it is not permissible to limit inspection of the dispatch log of a county dispatch service to one (1) day a week, and any person requesting to inspect the log should be permitted to do so during the regular office hours of the courthouse; since the dispatch service operates twenty-four (24) hours a day, seven (7) days a week, the inspection of the log can be limited to the regular office hours of the courthouse rather than to allow inspection of the log at any time the dispatcher is on the job. OAG 82-396, 1982 Ky. AG LEXIS 251.

The mayor of a fourth class city may not legally withhold the results of polygraph tests administered to personnel employed by the city police department when a city councilman wants to examine the data. OAG 83-518.

The only records from the investigation files of internal affairs of a police department which may be inspected by the public are those which reveal the disciplining of an officer by the chief and the reason for the action taken. OAG 82-547, 1982 Ky. AG LEXIS 91.

The requester is entitled to inspect the records of a named police officer to the extent of the final disciplinary action taken by the chief and the complaint which prompted this action; however, whether the requester is entitled to inspect all such records in the police chief's office of every police officer who has been the subject of disciplinary action depends on a factual determination by the chief, supported by substantial proof, of whether making the limited records available places an unreasonable burden on his office. OAG 82-547, 1982 Ky. AG LEXIS 91.

The Open Records Law does not contemplate that a public agency shall send requested records to a person who has not inspected them. OAG 82-629, 1982 Ky. AG LEXIS 15.

Records related to a criminal prosecution are public records and, if prosecution has been completed, they are open to public inspection. OAG 82-629, 1982 Ky. AG LEXIS 15.

Although a prison inmate has the same right to inspect public records as any other person, it is not incumbent upon a public agency to provide records to inmates who are unable to go to the office where the records are kept because of their legal confinement. OAG 82-629, 1982 Ky. AG LEXIS 15.

Attorney for Cabinet for Human Resources did not sufficiently comply with the spirit and the letter of the Open Records Law in responding to request for records by suggesting that requester direct his request to the Director of the Division of Unemployment Insurance; as an employee, agent and attorney for the Division, he should have directed the request to the proper person, i.e., the Director of the Division as official custodian, or to whomever the Director had designated to be the custodian of records. OAG 83-23, 1983 Ky. AG LEXIS 492.

Where proper request for records was made to attorney in Office of Counsel of Cabinet for Human Resources and attorney stated that he did not have records and instructed requester to make another request to Director of Division of Unemployment Insurance, such Division did not act in accordance with KRS 61.870 to 61.884 in its failure to allow inspection or make a proper response to such request to inspect records after three (3) months from the date of the initial request. OAG 83-23, 1983 Ky. AG LEXIS 492.

The Open Records Law does not require that a requester state the reason for his request to inspect or copy public records. OAG 83-42, 1983 Ky. AG LEXIS 454.

The Open Records Act does not require the county clerks of Kentucky to provide copies of public records upon a request made by mail. OAG 83-42, 1983 Ky. AG LEXIS 454.

Where the requesters of copies of records had not inspected any of the records, and had not described any specific records, custodian of records was under no duty to furnish the copies requested; the right to have copies of records is ancillary to the right of inspection and does not stand by itself. OAG 83-42, 1983 Ky. AG LEXIS 454.

Public agencies should accommodate requesters whenever they can within the bounds of the efficient operation of their office. Whenever only one (1) item is requested, or a few precisely described items which are readily available within the office, and no special search is required, it will be more convenient both to the agency and to the requester to answer the request through the mail; to require the requester to appear in person at the office of the agency in such a case

would not be more convenient to either party and would only inhibit the intended purpose of the Open Records Law. OAG 83-204, 1983 Ky. AG LEXIS 293.

The provisions of KRS 61.872, 61.874 and 61.876, when taken together, require that public agencies have a policy of allowing inspection of public records, of protecting the records, of preventing excessive disruption of the agency's functions, of providing copies upon request, of providing efficient and timely action in response to applications for inspection and of charging a reasonable fee based on the actual cost of making copies not including the cost of staff required; these three (3) sections allow public agencies a certain amount of leeway as to handling requests for records by mail and mailing copies to requesters who have not personally inspected the records and selected the items which they want copied. OAG 83-204, 1983 Ky. AG LEXIS 293.

Requested documents concerning change of control of several banks were federal documents filed with the Department of Banking and Securities (now Department of Financial Institutions) by federal regulatory agencies and therefore, the Department of Banking and Securities was just the casual possessor, not the official custodian, of these documents which were still possessed by the federal agencies; the "official custodian" is the proper official to make decisions on policy concerning the release of records and, accordingly, the Department acted properly in denying request for such records and notifying requester of the official custodians with whom he could file a Freedom of Information Act request. OAG 83-342, 1983 Ky. AG LEXIS 160.

The Department of Transportation's (now Transportation Cabinet) denial of a request to inspect "all" records in the Kentucky Department of Transportation, Division of Right of Way, District 5, was proper under Open Records Law; the request did not have to be honored as it lacked specificity and it would have placed an unreasonable burden on the agency to separate exempted material from the nonexempted material before inspection. OAG 83-386, 1983 Ky. AG LEXIS 112.

Final disciplinary actions taken by the state's licensing boards or agencies against licensed professionals are public information since the public, upon request, has a right to know the final action taken by a state board or agency. OAG 84-55, 1984 Ky. AG LEXIS 331.

Requested records pertaining to annual copying costs and fees should be made available for public inspection, and any person inspecting the records and requesting a copy should be sold that copy. OAG 84-91, 1984 Ky. AG LEXIS 295.

A city could compile a list of occupational licensees in its discretion, or allow requestor to make his own list; the city could also separate exempted from nonexempted matter before allowing requestor access to the records. OAG 84-93, 1984 Ky. AG LEXIS 293.

A request to inspect city occupational license records was not a "blanket" request where requestor specified certain information from a specific document. OAG 84-93, 1984 Ky. AG LEXIS 293.

The requestor is not required under the Open Records Law to have a legitimate or public purpose for inspection. OAG 84-93, 1984 Ky. AG LEXIS 293.

The court clerk's denial of inspection of court records for the previous five (5) years pertaining to traffic violations for driving under the influence was improper, even though there were approximately 10,000 such cases, since the requests were not repetitious and the requestor was willing to inspect a few at a time. OAG 84-278, 1984 Ky. AG LEXIS 113.

Since subsection (2) of this section and KRS 61.880 provide that an agency must respond to a request for inspection of records within three (3) days timely access to records would thus be any time less than three (3) days from agency receipt of the request. OAG 84-300, 1984 Ky. AG LEXIS 86.

The denial of a request to inspect the complete institutional file of an inmate was proper, as requests to inspect personnel files must specify the particular documents within such files to be inspected. OAG 85-88, 1985 Ky. AG LEXIS 61.

A response denying the right to inspect public records was legally insufficient when it did not state what exception to the right to inspect was relied upon and how the exception applied to the records withheld. OAG 85-89, 1985 Ky. AG LEXIS 62.

There is no provision in the Open Records Act which requires that a person give a reason as to why he wants to inspect public records and that he state what he intends to do with information acquired as a result of inspecting public records. OAG 86-36, 1986 Ky. AG LEXIS 52.

The public agency's denial of the request for documents pertaining to adjustments for telephone and travel expenses was proper to the extent that the public agency declined to prepare and furnish lists which were at the time not in existence; however, the public agency was in violation of the Open Records Act to the extent that its response stated or implied that the requesting party would not be afforded the opportunity of examining otherwise nonexempt material of the public agency to attempt to secure the particular records and documents with which he was concerned. OAG 86-51, 1986 Ky. AG LEXIS 36.

The Department of Insurance's denial of the request for records pertaining to complaint files concerning claims' settlement practices was proper to the extent that the Department declined to prepare and furnish a list of data which at the time did not exist; however, the Department violated the Open Records Act to the extent that its response stated that the requesting party would not be afforded the opportunity of examining otherwise nonexempt material to attempt to secure the data with which he is concerned. OAG 86-52, 1986 Ky. AG LEXIS 34.

The public agency's actions in not making public records available for public inspection on the grounds that the documents could not be found and that the request for other records was vague and imprecise were proper responses and actions under the terms and provisions of the Open Records Act. OAG 86-65, 1986 Ky. AG LEXIS 22.

The response of the public agency to the request to inspect documents that some of the requested documents did not exist was sufficient and proper; however, the public agency's attempt to restrict the requesting party's inspection of those records which did exist to one-half hour a week was an unreasonable and illegal restriction on the right to inspect public records, and such records were to be made available for inspection immediately. OAG 87-54, 1987 Ky. AG LEXIS 33.

The public agency's written response to the requesting party's request to inspect public documents was legally sufficient pursuant to this section and KRS 61.880 of the Open Records Act and afforded the requesting party a reasonable opportunity to inspect the records and materials requested to obtain the desired information. OAG 88-8, 1988 Ky. AG LEXIS 8.

It is not incumbent upon a public agency to provide documents to inmates who are unable to go to the office where the records are kept because of their confinement. OAG 88-44, 1988 Ky. AG LEXIS 44.

Where records accumulating or compiling the information sought did not exist, and a substantial research and compilation effort would be required to attempt to provide the data requested, a request for information on the number of state police officers assigned to executive security duty, and the hours of overtime accumulated by those officers, within specific time periods, could be properly denied. OAG 88-79, 1988 Ky. AG LEXIS 80.

If records, though regarding private donations and disbursements, are in the possession of or retained by a state agency, they are, in general, subject to inspection; the open records statutes, however, do not require state personnel to identify private entities that might have records regarding private donations and expenditures from such donations;

thus, to the extent agencies have allowed inspection of (or provided) records that they had possession of or retained, and truthfully indicated that they do not have certain records sought by the requests, they have substantially complied with the open records statutes. OAG 89-7, 1989 Ky. AG LEXIS 6.

A request to inspect all records pertaining to two specifically named state troopers is too broad and too general to require a production of documents for inspection. OAG 89-8, 1989 Ky. AG LEXIS 7.

Denial of a request to view police radio transmission logs based upon subsection (5) of this section, regarding an unreasonable burden in producing voluminous records, is not substantiated where the records sought are of an identified, limited class, typically maintained by month or year, so that they may be made readily available by providing appropriate binders or boxes. OAG 89-20, 1989 Ky. AG LEXIS 20.

One does not have a right under Open Records provisions to require that a particular list be made. OAG 89-61, 1989 Ky. AG LEXIS 61.

If particular records sought don't exist, the individual seeking those records may be entitled to access to records that would enable him to determine the information he wanted; but he must describe, with reasonable particularity, the nature of those records. OAG 89-61, 1989 Ky. AG LEXIS 61.

City governments and employees are servants of the people, but they are servants of all the people, not just those who may make extreme and unreasonable demands on their time, and one desiring that lists be made, or that broad categories of information be provided, must expend their own time digging the information out unless it has already been compiled. OAG 89-61, 1989 Ky. AG LEXIS 61.

Compliance with KRS 132.530, which in part, requires a Property Valuation Administrator to make additions to each column of the tax rolls so that accuracy of calculations may be verified, is a matter not addressed by Open Records provisions. OAG 89-66, 1989 Ky. AG LEXIS 66.

Where a letter expressly requested permission to inspect all accident reports prepared for a period of four (4) weeks prior to the date of inspection, and where the letter identified without any ambiguity which accident reports were sought, the letter sufficiently described the records to be inspected. OAG 89-76, 1989 Ky. AG LEXIS 76.

A police department is not required to review voluminous numbers of accident reports and make selected copies of them for an individual, as that individual may be shown where the reports are filed and review the reports himself. OAG 89-76, 1989 Ky. AG LEXIS 76.

A person requesting to inspect public records does not have to state any reason as to why he wants to see those records and he does not have to show or establish any particular interest in the subject matter of those records; thus, the purpose of the requesting party in wanting to see the records in question has no bearing on whether the public agency should grant or deny his request. OAG 89-79, 1989 Ky. AG LEXIS 79.

A public agency cannot deny a request to inspect records because information from those documents may or will be used in some future legal action, although, if a legal action is in process when the request to inspect records is made, the public agency may be able to invoke the exception to inspection set forth in KRS 61.878(1)(f), otherwise, a decision not to make records available for inspection because of the possibility or even the probability of a legal action at some future time is a violation of the Open Records Act. OAG 89-79, 1989 Ky. AG LEXIS 79.

Where a public agency asserts that the number, detail and nature of requests for documents placed an unreasonable burden on the agency, or were intended to disrupt certain of its essential functions, the burden is on that agency to demonstrate, by more than merely referring to fifteen (15) such requests, that those requests either place an unreasonable burden on the agency or that they are intended to disrupt other essential functions of the agency. OAG 89-79, 1989 Ky. AG LEXIS 79.

While city workers do not have to compile or explain records, they must make a good faith effort to make available for inspection, records related to fiscal assets, receipts, and expenditures of the city, where there is a reasonable description of records sought. OAG 89-81, 1989 Ky. AG LEXIS 81.

Open Records provisions were not intended to serve as a comprehensive audit tool, or as a means of commanding compilation and production of specific information; Open Records provisions are intended to provide for inspection of reasonably described records held by public agencies. OAG 89-81, 1989 Ky. AG LEXIS 81.

Open Records provisions do not provide for, and agency workers are not required to provide under them, instruction in understanding of the meaning or import of information shown upon records produced. OAG 89-81, 1989 Ky. AG LEXIS 81.

Although the Cabinet for Human Resources properly declined to provide information which was not consistent with its method of filing and maintaining records, the Cabinet must give the person making the request a reasonable opportunity to inspect nonexempt records pertaining to designated facilities to enable him to attempt to obtain the information he has requested. OAG 89-84, 1989 Ky. AG LEXIS 84.

Agencies should have uniform policies regarding inspection of their records; if one person, in the absence of a court order, is allowed to inspect a record, all should be allowed to inspect. OAG 89-86, 1989 Ky. AG LEXIS 86.

Denial by the Department of Insurance, of inspection of some 800 records contained among seventy-seven (77) files, was proper as being unduly burdensome, where the difficulty of separating confidential from nonconfidential material was exacerbated by the substantial volume of records involved. OAG 89-88, 1989 Ky. AG LEXIS 88.

There may be no general denial of inspection of personnel records; in particular, inspection of employment applications and resumes, and records of educational qualifications — meaning educational levels obtained — insofar as reasonably related to qualification for public employment, must be permitted, where, under the facts of a given request to inspect, such review does not constitute an unwarranted invasion of personal privacy; information to be maintained as confidential may be masked or separated from information to be released, and employee evaluations, involving opinions, are not subject to inspection. OAG 89-90, 1989 Ky. AG LEXIS 90.

Under Open Records provisions there may not be a general or blanket denial of inspection of records contained in the personnel file of a public employee, or of a resume of application for employment, and to the extent that OAG 84-19 and OAG 87-77 uphold a general denial of inspection of the resume of a public employee, and OAG 79-275 upholds general denial of information on an employment application, they are overruled. OAG 89-90, 1989 Ky. AG LEXIS 90.

When the media attempts to carry out an evaluation regarding the quality of schools throughout the state, there is no unwarranted invasion of personal privacy in examining relevant prior work experience and educational qualifications of employees or former employees, and the same view applies to educational qualifications or levels attained by public employees. OAG 89-90, 1989 Ky. AG LEXIS 90.

A schoolteacher's college transcript is not subject to inspection, where a school board has denied inspection pursuant to KRS 61.878(1)(a). OAG 89-90, 1989 Ky. AG LEXIS 90.

The Kentucky State University Foundation, Inc., is a recognized fund-raising instrumentality of Kentucky State University, and is thus an "agency thereof," within the meaning of KRS 61.870(1). OAG 89-92, 1989 Ky. AG LEXIS 92.

A state university acted consistently with Open Records provisions in denying inspection of records where the majority of the several hundred records sought contained "education records," as defined, and effectively made confidential by, the

federal Buckley Amendment, such that virtually all of the records requested would require redaction or masking to remove information personally identifiable to a student; an unreasonable burden in view of the scope of the request(s), if the records were to be made available for inspection without jeopardizing federal aid. OAG 90-24, 1990 Ky. AG LEXIS 32.

A state university failed to act consistently with Open Records provisions in denying a request to inspect five (5) particular public safety dispatcher log cards, where the request for those specified items was particular, and narrow in scope, thus making redaction or masking of confidential information feasible without placing an unreasonable burden upon the agency. OAG 90-24, 1990 Ky. AG LEXIS 32.

Requests not to inspect public records, but for copies of records that had not been inspected were not proper requests under subsection (2) of this section. OAG 90-35, 1990 Ky. AG LEXIS 35.

City's actions were not consistent with Open Records provisions where, in contravention of subsection (1) of this section, it denied a requester the use of a film read-printer and a cassette tape player, thereby failing to provide suitable facilities for inspection of its records. Additionally, the city failed to act consistent with Open Records provisions where, in contravention of KRS 61.874(2), it established a twenty-five cents ($.25) per page fee for copies of records, when such fee was not based upon the actual cost, exclusive of personnel expenses, for making copies. OAG 90-50, 1990 Ky. AG LEXIS 50.

Where a request was made for portions of taped conversations between a police department hostage negotiation team and an individual who allegedly held his family hostage for several hours until he apparently killed his estranged wife and himself, and where these were all conversations in which the alleged perpetrator was a participant, since excepted information could properly be omitted from those portions of the tape, the remaining nonexcepted information had to be produced since the information requested was not so voluminous so as to constitute an unreasonable burden. OAG 90-56, 1990 Ky. AG LEXIS 56.

The Open Records Act makes no provision for a public agency to refuse to give an applicant access to public records just because the applicant already has obtained the requested information elsewhere. OAG 90-71, 1990 Ky. AG LEXIS 71.

Where a governmental board does have custody or control over some public records that contain certain requested information, according to the requirements of the Open Records Act, the board should have given the person making the request either: (1) access to the records, or (2) a statement of the specific exceptions authorizing the withholding of the records. OAG 90-71, 1990 Ky. AG LEXIS 71.

There is no specific exception in the Open Records Act that authorizes a public agency to withhold public records from an applicant because access to the records may be obtained from another public agency, even if the requested records might more appropriately or more easily be obtained from that other public agency. OAG 90-71, 1990 Ky. AG LEXIS 71.

The request for information to indicate when the Commonwealth's Attorney's office first became involved in a particular case was a request for information and not a request for documents as contemplated under the Open Records Act. OAG 90-77, 1990 Ky. AG LEXIS 77.

To the extent the request asked questions such as: How much money was spent for certain items? How many Owensboro-Daviess County Hospital vendors or HCA vendors are from the hospital's service area? What is the current status of the ODCH case reserve fund? or What banks does ODCH have accounts with?, the request was one for information as distinguished from a request to inspect reasonably identified records. OAG 90-100, 1990 Ky. AG LEXIS 98.

Although the requesting party has not been supplied with the information in the format he desires as he has not been furnished with an up-to-date computerized listing of the appointments to the various boards and commissions by the Governor, he is only entitled to such a computerized listing when such a list is actually in existence or when it is part of a database. OAG 90-101, 1990 Ky. AG LEXIS 97.

Determining when an application places an unreasonable burden upon an agency to produce voluminous public records is at best difficult; each request for inspection of public records must be assessed based upon the facts in that particular situation. OAG 90-112, 1990 Ky. AG LEXIS 145.

Responses denying inspection of public records should include reference to a specific statutory exception authorizing the withholding of the record. OAG 90-112, 1990 Ky. AG LEXIS 145.

The Office of The Attorney General has rarely, if ever, upheld an agency denial based solely upon subsection (5) of this section. OAG 90-112, 1990 Ky. AG LEXIS 145.

Where the records sought for inspection were precisely described as all "automobile accident reports prepared by the Kentucky State Police Department, London Post,… for a period of four (4) weeks prior to the date of inspection period.", there was no ambiguity in this request, and it did not constitute a blanket request for information; it was a request to inspect specific records during a specific and limited period of time. OAG 90-112, 1990 Ky. AG LEXIS 145.

Although water district has not complied with various procedural requirements set forth in KRS 61.880(1) and subsection (4) of this section relative to the handling and disposition of requests to inspect documents, the water district's refusal to permit the inspection of polygraph test results is justified under the Open Records Act as such documents may be excluded from public inspection pursuant to KRS 61.878(1)(a). OAG 90-144, 1990 Ky. AG LEXIS 163.

If an agency elects to rely upon the additional exemption set forth in subsection (5) of this section for denial of access, the agency must sustain its burden by "clear and convincing evidence," and a more detailed explanation may be warranted. OAG 91-4, 1991 Ky. AG LEXIS 4.

If a public agency intends to rely upon subsection (5) of this section, indicating that producing records places an unreasonable burden upon the agency or that the requester intends to disrupt other essential agency functions, the refusal of the agency to produce documents for these reasons must be sustained by clear and convincing evidence, and where the requesting party has described the various categories of documents to which she seeks access with sufficient specificity to require the public agency to respond in a good faith manner to those requests by categories pursuant to KRS 61.880(1), documents withheld from inspection or unavailable should be identified and the specific reasons for withholding any documents should be stated in writing; a blanket denial of the request for access to documents was improper. OAG 91-7, 1991 Ky. AG LEXIS 7.

There is no specific exception in the Open Records Act that authorizes a public agency to withhold public records from an applicant because access to the records may be obtained from another public agency, even if the requested records might more appropriately or more easily be obtained from that other public agency. OAG 91-21, 1991 Ky. AG LEXIS 21.

Both microfiche copies and index books of the Kentucky Register of Births & Deaths are public records under KRS 61.870(2) and are available for public inspection under subsection (1) of this section and KRS 213.131(2) and (3); and since the Register has been available for public inspection for many years, the new legislation somewhat limiting public access to vital records, does not in any way make confidential records which have been open to the public for such a lengthy period of time. OAG 91-25, 1991 Ky. AG LEXIS 25.

If a state employee makes an unlawful disclosure of confidential birth records for the Cabinet of Human Resources to be liable for such disclosure the aggrieved party would have to

prove that the Commonwealth or its agent was negligent. OAG 91-25, 1991 Ky. AG LEXIS 25.

The fact that sets of the Register of Births and Deaths are presently available for public inspection would not violate any Kentucky statutes simply because, at the time the Register was published, the information contained in the Register was not confidential and the Cabinet of Human Resources had no affirmative duty to restrict public access of the information. OAG 91-25, 1991 Ky. AG LEXIS 25.

The most recent index book of Births and Deaths published by the Cabinet bears the date of 1969, and under the authority of KRS 44.110, an alleged injury resulting from the release of birth records would have occurred at the moment the record was released for public inspection, and under the applicable statute of limitations for negligence cases against the Commonwealth or its agents, an action for damages cannot be brought if more than two years has elapsed from the date of the alleged negligent act; therefore, the Cabinet was not liable for divulging information that has been available for public inspection for at least twenty-one (21) years. OAG 91-25, 1991 Ky. AG LEXIS 25.

Rarely has an agency denial based exclusively upon the statutory exemption of subsection (5) of this section been upheld, however, the instant open record request and appeal, along with prior requests represented a flagrant abuse of the Open Records Law, and have produced an intolerable burden upon an agency to satisfy an unreasonable open records request, clearly disrupting essential functions of the agency. OAG 91-42, 1991 Ky. AG LEXIS 42.

The official custodian of public records may require written application describing the records to be inspected. This written application may be submitted either in person or by mail and any suggestion contained in OAG 76-375 which is contrary is hereby overruled. OAG 91-42, 1991 Ky. AG LEXIS 42.

A Water District is a public agency, created under authority of Chapter 74, and is therefore subject to the Open Records Act. Accordingly, its records are open for inspection by any person, unless those records are exempt under of the statutorily authorized exceptions. OAG 91-48, 1991 Ky. AG LEXIS 48.

Where university treated four (4) separate requests for inspection of certain documents as one request, its response was improper for while it may well have wished to expedite this matter by issuing a single response, it nevertheless erred in failing to address the four (4) requests in four (4) separate responses. OAG 91-111, 1991 Ky. AG LEXIS 111.

Subsection (4) of this section does not authorize an agency to withhold records not in active use, not in storage and otherwise available until those records which are not available can be located. OAG 91-111, 1991 Ky. AG LEXIS 111.

Statement advising requester that he would be furnished access to requested records "no later than 8:00 a.m., May 17, 1991" was clearly intended to conform to subsection (4) of this section. OAG 91-111, 1991 Ky. AG LEXIS 111.

Coroner's office erred in failing to advise attorney that the taped interviews with his client were in the possession of the Kentucky State Police. OAG 91-147, 1991 Ky. AG LEXIS 147.

If an agency invokes subsection (5) of this section to authorize nondisclosure of the requested records, then it bears the burden of establishing, by clear and convincing evidence, that the request places an unreasonable burden in producing voluminous public records. OAG 91-168, 1991 Ky. AG LEXIS 168.

The city failed to sustain its burden of proving, by clear and convincing evidence, that the application placed an unreasonable burden on it to produce voluminous records where the letter of denial did not describe with any degree of specificity the volume of records implicated by the request, the difficulty in accessing the records, or the problems associated with redacting exempt materials from those records. OAG 91-168, 1991 Ky. AG LEXIS 168.

Denial of inspection of case files involving four (4) criminal defendants on the grounds that these case files could not be located and therefore were not available for inspection from the Kentucky State Police, was consistent with the open records law and fully complied with the provisions of subsection (3). OAG 91-173, 1991 Ky. AG LEXIS 173.

A delay of one hundred twenty-eight (128) days before access to records is allowed suggests an improper disregard for the purpose and intent of the Open Records Law. OAG 91-200, 1991 Ky. AG LEXIS 200.

This section does not specify the mode or method by which a written request must be made and it is intended to circumvent disputes relative to the identity of the records requested, and not to create additional obstacles to the release of those records; therefore, a fax transmission satisfies this purpose. OAG 92-13, 1992 Ky. AG LEXIS 13.

Request for access to annual compliance reports prepared since January 1, 1980 by the Justice Cabinet under the Juvenile Justice and Protective Delinquency Act could be satisfied by production of eleven (11) or twelve (12) documents, and redaction of exempt materials should not constitute an undue burden; therefore, the cabinet should make these documents available for inspection. OAG 92-16, 1992 Ky. AG LEXIS 16.

Request for "All grant applications, proposals, responses and budgets by, for or from the Commonwealth of Kentucky under the Juvenile Justice and Delinquency Prevention Act" was properly denied pursuant to subsection (5) of this section and KRS 61.878(5). OAG 92-16, 1992 Ky. AG LEXIS 16.

Where requests were not limited to a particular subject, but instead all records of a particular character were requested, e.g., correspondence and memoranda of communication, relating to the Juvenile Justice and Delinquency Prevention Act for the period since January 1, 1984, given the vast number of documents which fell within the parameters of the request and the difficulties which would have attended any attempt to separate exempt from nonexempt materials, reliance on subsection (5) of this section in denial of the request was proper. OAG 92-16, 1992 Ky. AG LEXIS 16.

The privileges codified at KRS 421.215 (now repealed) and KRS 319.111 (now repealed) are incorporated into the Open Records Act by operation of this provision, and those privileges do not expire after death; records generated in the course of psychiatric treatment, and protected by these privileges, are exempt from inspection, though they come into the hands of the coroner for the purpose of enforcing KRS 72.410, et seq; his use of the records must be confined to those purposes, and their distribution prohibited accordingly. OAG 92-24, 1992 Ky. AG LEXIS 24.

A determination of what is a "reasonable time" for inspection turns on the particular facts presented, i.e., the breadth of the request and the number of documents it encompasses, as well as the difficulty of separating exempt and nonexempt materials. Public agencies must work, in a spirit of cooperation, with individuals who request to inspect their records to insure that those individuals are afforded timely access to the records they wish to inspect. OAG 92-35, 1992 Ky. AG LEXIS 48.

Inmate mistakenly asserted that he must be afforded access to nonconfidential documents before he identified those documents; accordingly, the Attorney General opined that inmate must identify the specific documents that he wishes to inspect. OAG 92-56, 1992 Ky. AG LEXIS 56.

Inmate's request for a list of prison canteen items and their cost was properly denied where no such list existed. OAG 92-64, 1992 Ky. AG LEXIS 64.

The Kentucky State Penitentiary (KSP) should comply with KRS 61.880 by issuing responses within three (3) working days; if an open records request is misdirected, places an unreasonable burden on the KSP office, or the requested records are not immediately available, KSP's response should

conform to subdivisions (3), (4) or (5) of this section. OAG 92-64, 1992 Ky. AG LEXIS 64.

Numerous, often duplicative, requests place an unreasonable burden on the agency. Where several categories of documents over a four (4) year period are requested, such production once entails some inconvenience to the agency but to produce them three (3) and four (4) times requires a level of "patience and long-suffering" that the Legislature could not have intended. OAG 92-91, 1992 Ky. AG LEXIS 102.

The burden is on the public agency to demonstrate, by clear and convincing evidence, that the request either place an unreasonable burden on the agency or that they are intended to disrupt other essential functions of the agency. Mere invocation of the statute is not sufficient to meet this burden of proof. OAG 92-91, 1992 Ky. AG LEXIS 102.

Subdivision (3) of this section stipulates that if the person to whom the application is directed does not have the custody of the public records requested, he or she should notify the applicant, and furnish the name and address of the custodian of the records. OAG 92-94, 1992 Ky. AG LEXIS 98.

A prison inmate has the same right to inspect public records as any other person. The identity of the requester is therefor irrelevant. Under existing law, an agency need not provide copies of records to inmates who are unable to go to the office where the records are kept because of their legal confinement, although it may elect to do so. After July 14, 1992, however, an agency will be required to supply copies of records if the applicant resides outside the county in which the records are located, the applicant precisely describes the records, and the records are readily available within the public agency, upon receipt of a reasonable fee for making copies. OAG 92-94, 1992 Ky. AG LEXIS 98.

Where agency denied request to make records available on the ground that such request placed an unreasonable burden on the office of a county hospital such denial consisted of little more than an invocation of the statute; the fact that the records were stored off-site was a relevant consideration only insofar as it related to their immediate availability since subdivision (4) of this section provides that if a public record is in active use, in storage or not otherwise available, the custodian should immediately notify the applicant and designate a place, time, and date for inspection not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause for further delay is given and arrangements are made for inspection at the earliest possible date and did not relieve county hospital of its duty to furnish access to nonexempt public records. OAG 92-102, 1992 Ky. AG LEXIS 103.

Twenty-one (21) days did not constitute an inordinate delay in the release of public records, where the initial open records request was submitted on May 18, 1992, and the requestee responded on May 20, 1992, advising the requester that the requested records must be retrieved and forwarded to requestee's office to determine if the statutes permit release and that the earliest possible date that the records could be made available would be July 1, 1992, and in fact, the investigation was completed, and the records copied and forwarded to requestee within nineteen (19) work days and the requester was afforded access to the documents within twenty-one (21) work days of his initial request. OAG 92-117, 1992 Ky. AG LEXIS 117.

"Timely access" to public records has been defined as "any time less than three (3) days from agency receipt of the request." OAG 92-117, 1992 Ky. AG LEXIS 117.

The Open Records Act does not prescribe a reasonable time within which a requester must be afforded access to public records. However, subdivision (4) of this section normally requires an agency to notify the requester and designate an inspection date not to exceed three (3) days from agency receipt of the request. A determination of what is a "reasonable time" for inspection turns on the particular facts presented, i.e., the breadth of the request and the number of documents it encompasses, as well as the difficulty of retrieving those documents. Public agencies must work, in a spirit of cooperation, with individuals who request to inspect their records to insure that those individuals are afforded timely access to the records they wish to inspect. OAG 92-117, 1992 Ky. AG LEXIS 117.

A request can be made in person, by mail, or by fax transmission. An agency is not relieved of its duty of responding to an open records request simply because the applicant's request was not hand delivered. OAG 92-123. (Opinion prior to 1992 amendment.)

OAG 90-24 is overruled; records of a campus law enforcement unit maintained by the unit for the purpose of law enforcement are no longer subject to the federal law, but are instead governed by the Kentucky Open Records Law. OAG 93-3, 1993 Ky. AG LEXIS 324.

City Manager's abusive conduct created a hostile atmosphere which rendered the facilities provided by the city unsuitable for inspection. OAG 93-ORD-39, 1993 Ky. AG LEXIS 59.

While a requester cannot expect an agency to provide facilities offering the enforced silence of a library, he may certainly expect that those facilities will afford him adequate opportunity to inspect the records without interruption, and without harassment. OAG 93-ORD-39, 1993 Ky. AG LEXIS 59.

Any notification of a delay in affording access to records in excess of three (3) days must be accompanied by a detailed explanation of the cause and a statement of the earliest date, time, and place on which they will be available for inspection; therefore, the Department for Social Services erred in postponing notification until it could decide "how to best handle a request for records." OAG 93-ORD-43, 1993 Ky. AG LEXIS 73.

An agency may not elect to release copies of records in any format it chooses without regard to the requesting party's ability to access those records. OAG 93-ORD-46, 1993 Ky. AG LEXIS 76.

High school site based decision making council subverted the intent of the Open Records Law short of denial of inspection by releasing records to a requester in a format, a computer disk, to which he had no means of gaining access. OAG 93-ORD-46, 1993 Ky. AG LEXIS 76.

While the school superintendent was not the presiding officer of the school board, against whom a complaint was made, failure to direct the letter to the presiding officer is a mere technicality which will not prohibit the invoking of the Open Meetings Act. OAG 93-OMD-61, 1993 Ky. AG LEXIS 104.

Since the Kentucky Association of Counties derives at least 25% of its funds expended by it in the Commonwealth from state or local authority funds, it is a "public agency" for purposes of the Open Records Act and is subject to the provisions of subsection (5) of this section, relating to timely access to public records, as well as the other provisions of the Act. OAG 93-ORD-96, 1993 Ky. AG LEXIS 155.

After a request for certain public records under the Open Records Act, the custodian of such records need only advise the requester that his or her request will be honored and either append the records or notify the requester that they are available for immediate inspection per subdivision (3)(a) or (b) of this section; failure of the custodian to state that the requested records exist or that the records provided are those requested does not constitute a violation of the Act. OAG 94-ORD-15, 1994 Ky. AG LEXIS 13.

A public agency cannot demand or require more in regard to a request to inspect public records more than is required by subsection (2) of this section. OAG 94-ORD-101, 1994 Ky. AG LEXIS 80.

A public agency may require, if it desires to do so, that a request or application for copies of records be in writing. If a written request or application is required, the statute is

satisfied if the written application, whether or not submitted on the public agency's form, contains the following: 1. applicant's signature, 2. applicant's name printed legibly, and 3. description of records to be inspected. OAG 94-ORD-101, 1994 Ky. AG LEXIS 80.

While a public agency may require a written application for copies of records, as opposed to an oral request, there is nothing in this section which authorizes a public agency to reject a request simply because the requestor did not use the specific form devised by the public agency. A particular form may be desired or suggested by a public agency but failure to use that form cannot be the basis for rejecting a request to inspect records. OAG 94-ORD-101, 1994 Ky. AG LEXIS 80.

If a person cannot describe the documents he seeks to inspect with sufficient specificity there is no requirement that the public agency conduct a search for such material. OAG 95-ORD-2, 1995 Ky. AG LEXIS 4.

Objecting to a party's request to inspect open records kept by the Revenue Cabinet, the Cabinet claimed that the files requested were not readily accessible, that they would have to be manually retrieved and examined which would be "time consuming, unduly burdensome, and disruptive of the essential functions of the Cabinet" especially since the Cabinet's Legal Services Division already maintained a heavy case load; however, the facts presented by the Cabinet were found to be insufficient to satisfy the Cabinet's burden of establishing, by clear and convincing evidence, that the party's request imposed an unreasonable burden upon the agency. OAG 95-ORD-2, 1995 Ky. AG LEXIS 4.

By requesting only the "circuit court agreed judgments" which required payments to the State in excess of ten thousand dollars ($10,000) that were contained in closed files from January, 1993 through September, 1994, the requesting party who sought to inspect open records kept by the Revenue Cabinet satisfied the precondition to inspection, which requires the documents to be of a limited class and the requesting party to be able to identify with reasonable particularity the documents he seeks to inspect. OAG 95-ORD-2, 1995 Ky. AG LEXIS 4.

If an agency then invokes subsection (6) of this section to authorize nondisclosure of the requested records, it bears the burden of establishing, by clear and convincing evidence, that the request places an unreasonable burden on it. OAG 95-ORD-2, 1995 Ky. AG LEXIS 4.

A request for nonexempt public records which are maintained in a hard copy format, or electronically stored, must be honored regardless of whether the requester's purpose is commercial or noncommercial. OAG 95-ORD-12.

Where the Lottery Corporation agreed to release information requested but stated that because of the breadth of the request, the information would not be available within the three (3) days required by statute and where the Lottery did not indicate how many documents were implicated by the request or the difficulties it faced in retrieving them, the Lottery improperly delayed access to records since their response failed to contain a sufficiently detailed explanation of the cause for delay as required by this section. OAG 95-ORD-27.

Where appellant had failed to identify a specific record or records which he wished to inspect, but instead made a "standing request" to inspect records electronically stored with the county clerk's office, his request was not proper under law. OAG 95-ORD-43, 1995 Ky. AG LEXIS 28.

Where the University's official custodian of records failed to cite any of the "exceptions" to the general rule, found in subsections (4), (5) and (6), the University was obligated to physically retrieve and make available for inspection and for copying the specifically identified requested public records that were housed in a separate location. OAG 95-ORD-52, 1995 Ky. AG LEXIS 43.

The Department may discharge its duty under the Open Records Act by simply opening its records to a person so requesting and allowing him to expend his own time and efforts extracting the information in which he has an interest. Although such person may wish to assert his ancillary right to obtain copies of those records once he has inspected them, providing copies of five thousand (5000) documents is, in and of itself, unreasonably burdensome. OAG 96-ORD-155, 1996 Ky. AG LEXIS 39.

If the requested records are in active use, in storage, or not otherwise immediately available, the agency should refer to subsection (5) of this section to determine its obligations under the Act. OAG 96-ORD-135, 1996 Ky. AG LEXIS 34.

The language at the foot of a facsimile cover sheet warning against "unauthorized dissemination or copying," which is standard prescriptive language appearing on facsimile cover sheets, does not relieve a public agency of its duties under the Open Records Act, or otherwise abrogate, abridge, or nullify the Act. The language is aimed at notifying unintended recipients of the facsimile transmission that the records contained therein may be confidential, and should be returned to the sender. It does not constitute an independent basis for denying access to public records. OAG 96-ORD-267, 1996 Ky. AG LEXIS 90.

Where response from the Transportation Cabinet, Division of Driver Licensing to a request to inspect various records relating to a client's licensing process initially required payment to a rehabilitation center for $40.00 for an "in-car driver evaluation" performed at the center, later modified to a cost of $1.00 per page for the report, the Cabinet violated the reasonable fee provision of the Open Records Act, KRS 61.874(3). The courts and the Office of the Attorney General have determined that a charge of ten cents ($0.10) per page is reasonable for a standard 8-½ inches x 11 inches paper copy. It should also be noted that under KRS 422.317(1), if the Cabinet had not retained a copy or if the requesting party had not proceeded under the Open Records Act, KRS 422.317(1) may have required a release of the records without charge. OAG 96-ORD-267, 1996 Ky. AG LEXIS 90.

Response of county board of education to request to inspect records containing the results of drug tests administered to school bus drivers that although records were available, counsel was reviewing the matter and a decision would be rendered in ten days was procedurally deficient as a public agency cannot postpone or delay the statutory deadline of KRS 61.880(1). Although the burden on the agency to respond in three (3) working days is an onerous one, the only exceptions to this general rule are found at subsection (4) of this section and did not apply. OAG 97-ORD-2, 1997 Ky. AG LEXIS 4.

City police division did not have to respond to newspaper's request to obtain copies of all traffic accident reports within the jurisdiction on a weekly basis. Although traffic accident reports prepared by law enforcement officers pursuant to KRS 189.635 are not confidential and are open records, the right to inspect public records attaches only after those records have been "prepared, owned, used, in the possession of or retained by a public agency." No such right attaches for records which have not yet come into existence. The Open Records Act governs access to existing public records, not to prospective requests. City can require newspaper to submit a new application each time copies of records are requested and city need only honor requests for existing records. OAG 97-ORD-18.

Where requester who lived in one county and records were located in another county he satisfied the first requirement of subdivision (3)(b) of this section. OAG 97-ORD-46, 1997 Ky. AG LEXIS 127.

A requester satisfies the second requirement of subdivision (3)(b) of this section of precisely describing the records, if he describes in definite, specific, and unequivocal terms the records he wishes to access by mail. OAG 97-ORD-46, 1997 Ky. AG LEXIS 127.

Where request for records mirrored the language of KRS 337.522, although it covered a broad range of records, the request described, in definite, specific, and unequivocal terms, categories of documents which requestor wished to access by receipt of copies through the mail, he satisfied the requirement of subdivision (3)(b) of this section insofar as precisely describing the categories of records he wished to access. OAG 97-ORD-46, 1997 Ky. AG LEXIS 127.

Agency's response to request that if request were responded to fully it would be too voluminous and would pose a financial and personnel hardship on the Division of Employment Standards Apprenticeship and Training was not sufficient to establish that the requested records are not readily available within the public agency, for the agency did not indicate the number of records implicated by the request, the locations at which they might be stored, or the difficulty in accessing those records. OAG 97-ORD-46, 1997 Ky. AG LEXIS 127.

Upon request for records relating to recruitment and hiring in the Division of Police, the Civil Service Board improperly relied on KRS 61.878(1) to extend its response time to thirty days, under Fed. R. Civ. P. 34(b), and it was instead bound to conform to the procedural requirements of the Open Records Act, and in particular that it respond to the request within three (3) days, and its failure to do so constituted a violation of the Open Records Act. OAG 97-ORD-98, 1997 Ky. AG LEXIS 31.

Where requester of copies of various records relating to recruitment and hiring in Division of Police was engaged in federal litigation with city and Civil Service Board on issues relating to his eligibility as a police recruit and he was represented by an attorney, Board could not refuse to directly communicate with requester regarding his records request and instead communicate with his attorney relying on SCR 3.130, Rule 4.2, since there was no impediment to direct communication between the Board, the Board's attorney and the requester relative to his open records request. OAG 97-ORD-98, 1997 Ky. AG LEXIS 31.

Cabinet for Health Service properly relied on subsection (6) of this section and 61.878(1)(a), (k) and (l) and various confidentiality provisions found in both state (KRS 209.140, 210.235, 214.420, 214.625 and 620.050) and federal law, in denying request for inspection of all nursing facility licensure inspection reports for a two (2) year period where the Cabinet sustained the burden of showing that such request was an unreasonable burden on the Cabinet in describing with specificity the actual volumes of records implicated by the request and where the exemptions to disclosure provided by the state and federal law were mandatory and the difficulty of separation of confidential from releasable informmation constituted an unreasonable burden. OAG 97-ORD-88, 1997 Ky. AG LEXIS 34.

University could not and was not required to furnish former employee records that did not exist; however, the university was obligated to furnish former employee records that had been furnished to the EEOC and KCHR upon prepayment of reasonable copying charges as a public agency cannot withhold public records from an applicant simply because they may be obtained from another source. OAG 97-ORD-87, 1997 Ky. AG LEXIS 35.

Request for documents "pertaining to any sexual harassment complaints" implicating more than 2000 documents, did not place an unreasonable burden upon state agency where the agency offered no proof relative to the difficulty in accessing the records or the problems associated with redacting exempt information from the records, assuming that the records contain exempt information. OAG 98-ORD-45, 1998 Ky. AG LEXIS 7.

A request to examine phone records specifically identified by two telephone lines and eight telephone numbers belonging to known individuals or entities did not place an unreasonable burden upon the agency; it is therefore incumbent upon the agency to review and disclose the specific records; if no records exist which satisfy the request, or if any of the entries requested is properly excludable, the agency must cite the exception authorizing nondisclosure and briefly explain how it applies. OAG 98-ORD-92, 1998 Ky. AG LEXIS 208.

The Open Records Act does not require that an inmate who has been placed in disciplinary segregation be furnished with an escort so that he may exercise his right of on-site inspection, or that the records custodian bring the records to him. He may conduct an on-site inspection, subject to the facility's governing open records policies, after he is released from disciplinary segregation, or he may access the records by receipt of copies when there are sufficient funds in his inmate account to pay for those copies. Until that time, he must accept the necessary consequences of his confinement. OAG 98-ORD-157, 1998 Ky. AG LEXIS 212.

The Cabinet for Public Protection and Regulation of the Office of Petroleum Storage Tank Environmental Assurance Fund met its burden to establish that compliance with a request to inspect all claim forms containing a request for reimbursement of costs associated with four (4) types of work done and related documentation would place an undue burden on it since requiring the agency to search through 7,724 claim form files, in order to segregate them by categories of type of work, a format by which the agency did not retain its records, would constitute such a burden. OAG 99-ORD-1, 1999 Ky. AG LEXIS 9.

Requests for tax records did not become unduly burdensome on the basis that the requester made four (4) requests in a three and one half (3½) week period. OAG 99-ORD-4, 1999 Ky. AG LEXIS 6.

Public agencies must demonstrate, by clear and convincing evidence, that a requester's applications to inspect public records have become unreasonably burdensome. OAG 99-ORD-4, 1999 Ky. AG LEXIS 6.

An inmate's request to inspect his "entire medical file" was not too general and, therefore, the correctional institution's denial of the request was improper. OAG 99-ORD-7, 1999 Ky. AG LEXIS 4.

A response by the Kentucky State Police to a request for information regarding the investigation of allegations that involved any activity involving the requester and two (2) other specified persons was proper where the police responded in writing that they had no such records and that the matter was investigated by a specified local police department. OAG 99-ORD-9, 1999 Ky. AG LEXIS 2.

A city properly denied a request to inspect all records relating to the enforcement by the city of all its ordinances, municipal orders, executive orders, and resolutions put into effect by the city council during a certain period as such request did not identify with reasonable particularity any records he wished to review. OAG 99-ORD-12, 1999 Ky. AG LEXIS 26.

A request by an employee of the Kentucky Revenue Cabinet for "all documents, in whatever form, that contain [the requester's] name or relate to [her], including preliminary and other supporting documentation, from January 1, 1995, to the present" was impermissibly burdensome as the records to which access was requested were not identified with "reasonable particularity," were not of an identified, limited class, and could have numbered in the thousands. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

KRS 61.878(3) vests public agency employees with a right of access to otherwise exempt public records which relate to them; however, it does not relieve public agency employees of the duty to describe those records with sufficient specificity to permit the agency from which the records are sought to identify, locate, and retrieve the records and does not impose an additional duty on the agency to conduct an exhaustive exhumation of records or embark on an unproductive fishing

expedition in order to satisfy a nonspecific request. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

Public agencies are not required by the act to gather and supply information independent of that which is set forth in public records; the public has a right to inspect public documents and to obtain whatever information is contained in them, but the primary impact of the act is to make records available for inspection and copying and not to require the gathering and supplying of information. OAG 99-ORD-17, 1999 Ky. AG LEXIS 21.

A county board of education did not violate the statute where the requester sought to inspect voluminous records, many of which were not immediately accessible, and the board arranged for the requester to inspect the documents over a two (2) day period beginning 20 days after the statutory deadline for inspection. OAG 99-ORD-26, 1999 Ky. AG LEXIS 43.

This section and KRS 61.874 contain no provision for waiver of the prepayment requirement for inmates; thus, it is entirely proper for a correctional facility to require prepayment and to enforce its standard policy relative to assessment of charges to inmate accounts, despite the delays this may entail. OAG 99-ORD-30, 1999 Ky. AG LEXIS 39.

It is incumbent on all public agencies to designate an employee to fill the role of official custodian and to adopt and post rules and regulations identifying that employee as official custodian so that open records requests can be directed to him for processing and final agency action; if he does not have custody or control of the public record requested, he must notify the requester and furnish the name and location of the official custodian of those records. OAG 99-ORD-30, 1999 Ky. AG LEXIS 39.

Because the requested records were not immediately available for inspection, it was incumbent on the agency to provide a detailed explanation of the cause of the delay and to designate the place, time, and earliest date on which the records could be reviewed. OAG 99-ORD-32, 1999 Ky. AG LEXIS 37.

The Transportation Cabinet afforded timely access to the records identified in a request where the cabinet received the request on January 22, the requestor was notified that the records would be available for inspection on February 2, and the requester exercised his right of inspection on February 3; the cabinet exceeded the three (3) day statutory deadline by only four (4) days and, given the breadth of his request and the number of documents it encompassed, as well as the apparent difficulty in accessing and retrieving those records, this was not an unreasonable delay. OAG 99-ORD-32, 1999 Ky. AG LEXIS 37.

Where the requester sought information from a board of education which was contained in numerous records, the board properly afforded the requester an opportunity to examine the records and to compile the information herself. OAG 99-ORD-33, 1999 Ky. AG LEXIS 36.

The State Treasurer properly denied a request for copies of all unclaimed property reports filed by banks with the Treasury Department for a specified year as the reports contained information of a personal or confidential nature the disclosure of which would have constituted an unwarranted invasion of the owner's personal privacy and would have required unduly burdensome redaction in order to comply with the request. OAG 99-ORD-34, 1999 Ky. AG LEXIS 35.

A board of education unreasonably postponed the requester's right of access to public records where the board extended the deadline for inspection of an abbreviated list of records for an additional 27 days, noting that eight (8) of these days were weekends and that its offices would be officially closed on three (3) other days during the 27 day period. OAG 99-ORD-44, 1999 Ky. AG LEXIS 52.

A board of education could not restrict the requester's right of on-site access to three (3) hours on a single day, notwithstanding that the board elected to assign an employee and a law enforcement officer to monitor the requester's inspection of the records, where the board acknowledged that no restraining order was issued against the requester to prevent him from entering the board's offices. OAG 99-ORD-44, 1999 Ky. AG LEXIS 52.

A response by a county attorney to a request for records was sufficient where the response informed the requester that the county attorney was not the keeper of the records and furnished the requester with the name of the custodian of the records. OAG 99-ORD-46, 1999 Ky. AG LEXIS 54.

If a request is made by mail, the official custodian must mail copies of the requested copies upon receipt of all fees and the cost of mailing; there is nothing in the statute which authorizes a public agency to reject a request simply because the requester did not use the specific form devised by the agency. OAG 99-ORD-46, 1999 Ky. AG LEXIS 54.

The Revenue Cabinet did not establish by clear and convincing evidence that disclosure of the Kentucky Revenue Cabinet Protest and Appeals Guidelines, which could be characterized as a general summary of revenue statutes, regulations, and policies and the uniform operating standards and procedures to be followed by cabinet employees to ensure fair and consistent handling of taxpayer protests and appeals, would undermine the agency's ability to administer the tax laws, thus requiring constant revision of the document. OAG 99-ORD-51, 1999 Ky. AG LEXIS 57.

A requester who both lives and works in the same county where the public records are located may be required to inspect the records prior to receiving copies; but a requester who lives or works in a county other than the county where the public records are located may demand that the agency provide him with copies of records, without inspecting those records, if he precisely describes the records and they are readily available within the agency. OAG 99-ORD-63, 1999 Ky. AG LEXIS 69.

A requester satisfies the second requirement of subsection (3)(b) if he describes in definite, specific, and unequivocal terms the records he wishes to access by mail. OAG 99-ORD-63, 1999 Ky. AG LEXIS 69.

A request for records did not describe the records sought with reasonable particularity where the requester sought copies of various coal leases, but only identified those leases as leases in which a named person(s) was a party to the lease, without naming the other parties to the leases, the dates the leases were entered into, or the places the leases were entered into. OAG 99-ORD-63, 1999 Ky. AG LEXIS 69.

A request for records was not vague where, in response to a prior request, the requester received two pages which contained printing at the top indicating that they were part of a 14-page fax, and the requester then sought copies of the other 12 pages of that fax. OAG 99-ORD-65, 1999 Ky. AG LEXIS 71.

A request for records to be supplied by mail was sufficiently precise where the language used by the requester to describe the records was the agency's own language which it had used in a previous denial of another open records request; while such language might be characterized as indefinite, nonspecific, and equivocal if taken out of context, it was sufficiently precise when it appeared in its original context. OAG 99-ORD-66, 1999 Ky. AG LEXIS 72.

A county fiscal court violated the Open Records Act in denying a request that copies of various records relating to animal control in the county be mailed to the requester where the court did not argue that the requested records were excluded from public inspection by one or more of the exceptions codified at KRS 61.878(1) and did not argue that the requested records were not precisely described or not readily available with the agency and, instead, incorrectly asserted that it was not required to examine the records, sort through them, copy the records, and mail them to the requester. OAG 99-ORD-67, 1999 Ky. AG LEXIS 73.

The Department of Workers Claims did not violate the Open Records Act in a request for certain data from the department's coverage/compliance database as the department did not maintain the requested information in the format proposed by the requester and special programming would have been required to fulfill the request. OAG 99-ORD-68, 1999 Ky. AG LEXIS 74.

A request for records was sufficiently precise, as required by subsection (3)(b), as the description, although not precise as to date and other identifying information, was sufficiently specific and of an identified, limited class to enable the use of a search method reasonably expected to produce the records. OAG 99-ORD-70, 1999 Ky. AG LEXIS 76.

A request for any and all records which contain a name, a term, or a phrase is not a properly framed open records request, and it generally need not be honored; such a request places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records. OAG 99-ORD-70, 1999 Ky. AG LEXIS 76.

The Transportation Cabinet was not required to answer a series of questions relating to construction, accidents, and the volume of traffic on various roads as public agencies are not required by the Open Records Act to gather and supply information independent of that which is set forth in public records, and such conclusion was not altered by the fact that past administrations have furnished the same information to other individuals since the Open Records Act does not prohibit a public agency from voluntarily providing information in response to a request for same, it simply does not require the agency to do so. OAG 99-ORD-71, 1999 Ky. AG LEXIS 77.

The Kentucky State Penitentiary properly denied an inmate's request for a copy of all grievances he had filed against the medical department at the penitentiary since grievances were not filed under inmate names but by year and the grievance numbers, and it would have been unduly burdensome to manually retrieve the requested records from among 4,000 to 5,000 records. OAG 99-ORD-79, 1999 Ky. AG LEXIS 84.

The Office of Education Accountability (OEA) properly denied a request for records pertaining to its director's computer pursuant to subsection (6) based on information received by the OEA from a credible source that the requester intended to attempt to hack into the hard drive of the computer after receiving the records. OAG 99-ORD-96, 1999 Ky. AG LEXIS 103.

An agency is not required to satisfy an identical request a second time in the absence of some justification for resubmitting that request. OAG 99-ORD-107, 1999 Ky. AG LEXIS 148.

Where an agency did not describe with any degree of specificity the volume of records implicated by a request for records, the difficulty in assessing the records, or other problems associated with redacting exempt materials from those records, the agency's response was substantively deficient because the agency failed to meet its burden of establishing by clear and convincing evidence that producing the requested records would place an unreasonable burden on it, justifying a denial of the request. OAG 99-ORD-180, 1999 Ky. AG LEXIS 169.

Because the requester lived in the county in which the requested records were located, she could be required to view the requested records at the offices of the agency before obtaining copies. OAG 99-ORD-180, 1999 Ky. AG LEXIS 169.

A correctional facility's offer to provide an inmate in segregation with copies of a requested document upon prepayment of the appropriate copying fee or to reapply for the opportunity to inspect once he was released from segregation was consistent with the Open Records Act. OAG 99-ORD-181, 1999 Ky. AG LEXIS 170.

An agency complied with the statute when it responded to a request for records by informing the requester that it did not have the requested record, advised the requester of the name and location of the official custodian of the requested record, and forwarded the request accordingly. OAG 99-ORD-200, 1999 Ky. AG LEXIS 195.

In connection with a request for copies of any and all minutes of a city that mentioned the requester during a specified period of time, the city was not obligated to mail copies upon request inasmuch as the requester worked in the county where the records were maintained and he failed to precisely describe the records he wished to access by receipt of copies. OAG 99-ORD-210, 1999 Ky. AG LEXIS 204.

The temporary absence of a dog warden did not render unavailable financial information, expenditures, and other public records of a county fiscal court relative to the providing of animal control services. OAG 99-ORD-222, 1999 Ky. AG LEXIS 218.

A county fiscal court erred in postponing action on a request for ten (10) days without explanation and without reference to subsection (5) and in characterizing the request as so nonspecific as to preclude the fiscal court from determining what records were requested. OAG 99-ORD-225, 1999 Ky. AG LEXIS 221.

A request for records could not be denied on the basis of subsection (6) since mere invocation of the subsection did not sustain the agency's burden and the agency did not describe, with any degree of specificity, the volume of records implicated by the request, the difficulty in accessing the records, or the problems associated with redacting exempt material from these records. OAG 99-ORD-225, 1999 Ky. AG LEXIS 221.

Although the statute clearly authorizes a public agency to adopt a uniform policy requiring that requests for records be submitted in writing, it does not authorize a policy of selective enforcement. OAG 00-ORD-1, 2000 Ky. AG LEXIS 8.

A request for "Any and all records of the person(s) who made the decision to place [the requester] … on agency directed sick leave" and, thereafter, to suspend her was properly denied since the request was a blanket request for information and failed to identify the records sought or the names of the persons whose records were being sought with sufficient specificity to enable the agency to identify, locate, and retrieve the records. OAG 00-ORD-7, 2000 Ky. AG LEXIS 69.

A county fiscal court did not violate the Open Records Act by affording the requester access to printouts of the records which were responsive to his request rather than permitting him to inspect the "original documents" which were stored in its computer database; however, the court could not recover its actual costs for reproduction where copies were not requested. OAG 00-ORD-8, 2000 Ky. AG LEXIS 72.

A county fiscal court violated the statute when it required that requests for records be submitted by means of first class mail, as opposed to hand delivery or facsimile. OAG 00-ORD-8, 2000 Ky. AG LEXIS 72.

An agency failed to establish that the requester's multiple requests for records had become unduly burdensome or intentionally disruptive where the record demonstrated a total of only thirty (30) requests in twenty (20) months. OAG 00-ORD-72, 2000 Ky. AG LEXIS 84.

An agency may properly require all records requests to be routed through its official custodian to ensure the timely and orderly processing of open records requests. OAG 00-ORD-73, 2000 Ky. AG LEXIS 83.

The policy of a county fiscal court that it would not allow on-site inspection of public records and instead only provide copies of the requested records through the mail constituted a violation of the Open Records Act since such a policy denied a requester of her statutory right to an on-site inspection and might subject a requester to payment for unwanted records which she may not have selected had the opportunity for on-site inspection been provided. OAG 00-ORD-74, 2000 Ky. AG LEXIS 82.

It is properly within the discretion of an agency and its official custodian of records to determine whether a requester

may remove original records from the offices of the agency to be copied or whether she could use her own equipment and materials to copy the records. OAG 00-ORD-74, 2000 Ky. AG LEXIS 82.

An out-of-county requester failed to precisely describe the records that he wished to have copied and mailed to him where he described the general nature of the records he was seeking, i.e., records relating to granting of easements for connecting to sewer lines during a specified period and the relevant activities of the city's legal counsel and fees associated with the granting of the easements, but failed to describe the precise records he was seeking. OAG 00-ORD-79, 2000 Ky. AG LEXIS 78.

Although an agency timely responded to an initial open records request, the response was procedurally deficient to the extent that it failed to inform the requester as to the earliest date the requested records would be available for inspection; telling the requester that she would be advised "as soon as we learn" was not definite enough to meet the requirements of subsection (5). OAG 00-ORD-88, 2000 Ky. AG LEXIS 175.

A county fiscal court properly responded to a request for records where the request was addressed to the "Chief Administrative Officer of [the] County Fiscal Court c/o … County Judge-Executive" and the court responded by informing the requester that he should send his request to the official records custodian at a specified address. OAG 00-ORD-94, 2000 Ky. AG LEXIS 100.

While the requester's refusal to observe established open records procedures was indicative of a lack of good faith, the record did not contain sufficient evidence to support the claim that the requests were intended to disrupt the agency's essential functions. OAG 00-ORD-94, 2000 Ky. AG LEXIS 100.

The requestor did not precisely describe the records sought and the records were not readily available and, therefore, she was not entitled to have copies of the records mailed to her, notwithstanding that her residence was outside the county in which the records were located, since her request was an "open ended any-and-all-records-that-relate-type of request" and the records were maintained by several different county entities. OAG 00-ORD-75, 2000 Ky. AG LEXIS 176.

The Department of Local Government properly denied broadly worded requests for internal communications containing specified words and phrases as such requests imposed an unreasonable burden on the department in producing public records. OAG 00-ORD-132, 2000 Ky. AG LEXIS 140.

A city improperly relied on the statute when it denied a request to inspect the computerized city check registry, notwithstanding the assertion that it would be too difficult to separate confidential from nonconfidential materials because of the substantial volume of records involved; the city's assertion that there were 800 records in 27 files and that more than 300 lines required redaction did not constitute clear and convincing evidence of an undue burden. OAG 00-ORD-133, 2000 Ky. AG LEXIS 150.

A response to a request for records properly noted that the records were in the custody of a different public official and provided the address for that official. OAG 99-ORD-154, 1999 Ky. AG LEXIS 225.

It was incumbent on a board of education to adopt a uniform policy relative to release of board packets for upcoming meetings. OAG 99-ORD-155, 1999 Ky. AG LEXIS 226.

A board of education was not obligated to honor a standing request for access to board packets for upcoming meetings. OAG 99-ORD-155, 1999 Ky. AG LEXIS 226.

The Department of Corrections failed to establish clear and convincing evidence of an unreasonable burden in producing complaints brought against the Kentucky Department of Corrections or any of its divisions or against the Kentucky Parole Board during the past two (2) years that involved the issue of drug testing by Kentucky probation and/or parole officers. OAG 00-ORD-180, 2000 Ky. AG LEXIS 184.

A city's delay of three (3) months in providing requested records constituted a procedural violation of the Open Records Act. OAG 00-ORD-184, 2000 Ky. AG LEXIS 188.

A city failed to establish that a request for records pertaining to a wastewater treatment facility placed an unreasonable burden on the city and was intended to disrupt essential functions where the request was for an identified, limited class of records for a discrete period of time and the only support for the city's contention was that the city clerk expended five (5) hours in redacting information for which exemption was claimed and that the requester continued to inquire into the status of his request after an informal agreement on an extension of the three (3) day deadline for agency response. OAG 00-ORD-188, 2000 Ky. AG LEXIS 192.

A requester was not entitled to have records mailed to him since he lived in the county in which the requested records were located. OAG 00-ORD-205, 2000 Ky. AG LEXIS 208.

The Labor Cabinet failed to produce clear and convincing evidence that disclosure of certain information pertaining to work-related fatalities over a multi-year period would have placed an unreasonable burden on the cabinet where the cabinet did not describe with any degree of specificity the volume of records implicated in the request or the difficulty in accessing the requested documents and the denial consisted of little more than a recitation that the 47 files at issue were large and that it would take two (2) weeks of full time work to retrieve and review the files. OAG 00-ORD-210, 2000 Ky. AG LEXIS 214.

A county fiscal court properly required the requester to inspect the records at issue before furnishing him with copies, as he lived an worked in the county in which the records were located, even though this might require that he use at least a portion of a vacation or personal day to briefly inspect, and then receive copies of the records. OAG 00-ORD-211, 2000 Ky. AG LEXIS 215.

A settlement agreement between a party litigant and a school district, sealed or unsealed, is a public record and cannot be withheld from public disclosure, unless the document is properly excluded from disclosure by one or more of the applicable exceptions of KRS 61.878(1) of the Open Records Act or other applicable law; if the settlement agreement is sealed by order of a court, the question of whether the document is subject to public inspection must be raised in the judicial system, and the burden of showing that the record is exempt from disclosure falls upon the public agency or the affected party. OAG 01-6, 2001 Ky. AG LEXIS 9.

Where requester sought records relating to the asbestos inspection and maintenance at local high school, the response of the school was in substantial compliance with the Open Records Act when the principal of the school notified the requester that he had not been able to find the requested records, and, in the alternative, he provided the requester with the address and telephone number of the architectural firm that drew up the requested records. OAG 01-ORD-2, 2001 Ky. AG LEXIS 218.

KRS 61.872(2) does not authorize public agencies to inquire into a requester's motives in seeking access to public records, or to consider those motives in determining whether the records should be released. The police department therefore erred in inquiring into and denying the request on the basis of the requester's "invalid" reasons for requesting these reports. OAG 01-ORD-8, 2001 Ky. AG LEXIS 33.

If an agency invokes KRS 61.872(6) as a basis for the nondisclosure of requested records, it bears the burden of establishing, by clear and convincing evidence, that the request places an unreasonable burden on it. This burden is not sustained by the bare allegation that the request is unreasonably burdensome. OAG 01-ORD-8, 2001 Ky. AG LEXIS 33.

Where police department proposed that requester inspect the requested documents in person rather than being provided copies, if the requester both resides and works in the county,

there is no error in the department's position, notwithstanding the fact that the requester may be required to use his personal or vacation time to conduct an on-site inspection. If the requester works outside the county, the department is in error in refusing to furnish him with copies of records that are precisely described and readily available within the agency. OAG 01-ORD-8, 2001 Ky. AG LEXIS 33.

KRS 61.872(5) envisions designation of the place, time, and earliest date certain, not a projected or speculative date, when the records will be available for inspection. The response in this instance was deficient in failing to state the place, time, and earliest date certain on which the records would be available. OAG 01-ORD-38, 2001 Ky. AG LEXIS 166.

Since KRS 61.872(3)(b) and KRS 61.874(1) contain no provision for waiver of the prepayment requirement for inmates, it was entirely proper for the correctional facility to require prepayment and to enforce its prepayment policy relative to assessment of charges to inmate accounts. OAG 01-ORD-44, 2001 Ky. AG LEXIS 124.

The Department of Corrections did not violate the Open Records Act in denying an inmate's request to inspect records maintained in its central office in Frankfort since the inmate was restricted from on-site inspection by virtue of his incarceration and properly required prepayment for copies of nonexempt records from that facility. OAG 01-ORD-44, 2001 Ky. AG LEXIS 124.

The fact that the requester wished to obtain a copy of the specific and individual policy, as opposed to the entire policy handbook, did not transform his request for a document into a request for information. The fact that he could not identify the desired policy by page and section number did not render his request imprecise or nonspecific. The request was a properly framed request for an individual policy or policies pertaining to the subject, and the school district was statutorily obligated to furnish him with copies of the policy or policies, as opposed to the entire handbook, or unequivocally advise him that no responsive policy exists. OAG 01-ORD-51, 2001 Ky. AG LEXIS 140.

The fire districts must honor a request for copies of precisely described public records that are readily available within the districts' offices if the requester resides, or has his principal place of business, outside Campbell County, and if the requester pre-pays a reasonable copying charge not to exceed ten cents ($0.10) per page, plus postage. If the requester both resides and works in Campbell County, the districts may properly require on-site inspection as a precondition to furnishing him with copies, but may also accommodate the request "within the bounds of the efficient operation of" the districts by mailing him copies. OAG 01-ORD-75, 2001 Ky. AG LEXIS 258.

Although the records descriptions are certainly nonspecific when viewed in the abstract, it is not any and all "notes" generated by the districts that the requester wishes to access, but "notes" generated by the districts in relation to the April 9, 2000 fire on the NKU campus. The requests satisfy the standard insofar as they are definite, specific, and unequivocal as to category (i.e., notes, fire marshal reports, logs) and incident (i.e., the April 9, 2000, fire at the NKU campus). OAG 01-ORD-75, 2001 Ky. AG LEXIS 258.

The record does not suggest that the custodian of records made "a good faith effort to conduct a search using methods which could reasonably be expected to produce the requested records," but instead relied upon his limited knowledge of available records. The methodology employed did not constitute an adequate search. The custodian's exclusive reliance on his own knowledge of existing responsive records, and failure to document a good faith effort to identify and locate the requested records using methods that could reasonably be expected to produce the records, did not satisfy the agency's statutorily imposed burden of proof in sustaining its action. OAG 01-ORD-81, 2001 Ky. AG LEXIS 225.

Whatever the status of the ballots when the parents cast their votes at the PTA election, once they were conveyed to the school they became public records because they were "in the possession of or retained by a public agency." The record before us does not support the school's position that it lacked custody or control of the parent election records. Nothing in KRS 160.345(2)(b)1. addresses the disposition of open records requests for records generated in the course of a PTA election or in any way vests exclusive custody and control of parent election records in the PTA. OAG 01-ORD-94, 2001 Ky. AG LEXIS 188.

Because the requester affirmed that his principal place of business is outside the county, and the police department failed to produce any persuasive proof to the contrary, the department is required to mail the requester copies of the records identified in his request upon receipt of all fees and the cost of mailing. OAG 01-ORD-162, 2001 Ky. AG LEXIS 201.

Since the requester failed to describe the records he wished to access by receipt of copies through the mail in definite, specific, and unequivocal terms, and therefore failed to satisfy the requirements of KRS 61.872(3)(b), even though he resides and works outside of the county, the county may require him to conduct an on-site inspection of the records prior to furnishing him with copies of the records. OAG 01-ORD-185, 2001 Ky. AG LEXIS 205.

While the county went beyond its duties and obligations in creating a record containing the responsive information, and is to be commended for its attempt to accommodate the request, the requirements of the statute are not fully discharged until existing documents substantiating that information are disclosed. Acknowledging that the county's efforts in this matter were meritorious, the county must retrieve the records from which the information was extracted, calculate its actual costs at a rate of ten cents ($0.10) per page for copies, plus postage, notify the requester of the costs, and mail copies of those records to him upon receipt of this amount. OAG 01-ORD-195, 2001 Ky. AG LEXIS 173.

Although the out-of-county request, notwithstanding the fact that it covers a broad range of records, satisfies the second requirement of KRS 61.872(3)(b) insofar as the requester's attorneys precisely describe the records to which access is sought, the record supports the agency's claim that the requested documents are not "readily available within the public agency" and the agency properly refused to copy and mail the requested documents. OAG 01-ORD-225, 2001 Ky. AG LEXIS 164.

An "outside the county" requester that elects to access public records through the mail rather than to make an on-site inspection bears a greater burden in describing the records he is asking the agency to locate, copy, and mail to him. OAG 02-ORD-26, 2002 Ky. AG LEXIS 44.

Although the agency's original response to the request failed to satisfy the requirements of KRS 61.872(5), relative to detailed notification to the requester of the cause for delay beyond three business days and the earliest date for inspection, the agency explained the problems associated with retrieving the records in its supplemental response. Given the broad parameters of the request, the difficulties in locating and retrieving responsive records, and the necessity of reviewing them for purposes of redacting private information pursuant to KRS 61.878(1)(a) and 61.878(4) prior to disclosure, the fourteen (14) day extension of the deadline for inspection was not unreasonable. OAG 02-ORD-62, 2002 Ky. AG LEXIS 232.

The information the requester was required to submit in the "Request for Reproduction of PVA Public Records," relating to his specific purpose in requesting the records, and including the "Non-Commercial Applicant's Certified Statement," exceeded the permissible limits of KRS 61.872 and KRS 61.874(4)(b). Further, a request submitted by an individual acting on behalf of a political candidate, whether paid or unpaid, cannot be characterized as a request submitted for a

commercial purpose. OAG 02-ORD-89, 2002 Ky. AG LEXIS 105.

Where the school system employed mandatory language, instructing the requester to call or write to set an appointment to view and/or copy the records, notwithstanding the school system's earlier assertion that it would permit access to nonexempt public records during regular business hours of the school board office, this response required the requester to make an appointment. In so doing, the school system improperly restricted the hours of access to public records and thereby violated KRS 61.872(3)(a). OAG 02-ORD-114, 2002 Ky. AG LEXIS 56.

Where the records custodian directed her inquiry to the first, and most obvious source, of data relating to student athletes, it would not have been overly burdensome for her search to extend beyond the athletic directors to the assistant directors, or other personnel in the athletic departments or the schools' administrations, who could reasonably be expected to maintain records relating to the student athletes. The fact that a responsive database was located in one of the high schools on the third and final inquiry only after the appeal was initiated, suggests the inadequacy of the earlier searches. OAG 02-ORD-120, 2002 Ky. AG LEXIS 124.

Since the requester failed to describe the records she wishes to access by receipt of copies through the mail in definite, specific, and unequivocal terms, she failed to satisfy the requirements of KRS 61.872(3)(b). Because the records were not precisely described, they cannot be characterized as records that are readily available within the offices of the public agencies. This being the case, the agencies may require her to conduct an on-site inspection of the records prior to furnishing her with copies of the records. Having extended an offer to to conduct an on-site inspection, the agencies fully discharged their duties under the Open Records Act. OAG 02-ORD-129, 2002 Ky. AG LEXIS 73.

Given the broad parameters of the request and the difficulties in locating and retrieving responsive records, an extension of the deadline for inspection of just under one (1) month was not unreasonable, especially in view of its ongoing production of records within that time period. OAG 02-ORD-142, 2002 Ky. AG LEXIS 74.

The Kentucky Community and Technical College System is a public agency, and any documentation, regardless of physical form or characteristics, which is prepared, owned, used, in the possession of or retained by a public agency is a public record pursuant to KRS 61.870(2). Records that are generated by or for KCTCS officials or employees who serve on their President's Cabinet or teams, or that are directed to KCTCS officials or employees, are public records and subject to the mandatory disclosure requirements of the Open Records Act unless otherwise exempt pursuant to KRS 61.878(1)(a) through (l). OAG 02-ORD-142, 2002 Ky. AG LEXIS 74.

The department apparently directed its inquiry to the first, and most obvious, source of responsive records, its computer. Since that computer having been infected by a virus, and the records stored therein having been rendered irretrievable, the department made no effort to extend its search beyond the obvious. In the absence of any verifiable statement that the only existing copies of the requested records were maintained on the department's computer, the department did not conduct a search using methods which could reasonably be expected to produce the records requested. OAG 02-ORD-149, 2002 Ky. AG LEXIS 149.

The record supports the estimated one month delay, where the requester requested copies of all preliminary and final development plans submitted to the planning commission for Houston Creek Drive and Bourbon Hills Drive, "including, but not limited to, plans for Houston Creek Villas, Bourbon Hills and Houston Creek Townhomes," and the minutes of meetings at which any of these plans was discussed, for a twenty-two (22) year period. OAG 02-ORD-158, 2002 Ky. AG LEXIS 165.

The request for any and all files or documents that relate to the requester is overbroad, and a search for all responsive records that cover a six (6) year period would impose an unreasonable burden on the agency. OAG 02-ORD-161, 2002 Ky. AG LEXIS 209.

Where, among other things, the request covers records maintained over a period of twenty-two (22) years, the agency does not maintain a compendium of the requested information, the Cabinet licenses and certifies over 300 nursing facilities in this state, the Cabinet maintains all records by facility/fiscal year, and the Cabinet does not maintain decisions on the rate, by appeal, by decisions on appeal, or by issue, the Cabinet properly denied the request as overbroad pursuant to KRS 61.872(6). OAG 02-ORD-196, 2002 Ky. AG LEXIS 68.

The medium in which the Kentucky State Police has elected to store the record should not operate as a bar to public inspection if the record is otherwise nonexempt. The agency cannot, for example, factor the ten (10) hours that it claims was required to restore the corrupted agency file into its calculations. Restoration of a corrupted agency file is an agency records management issue and not an open records issue. OAG 02-ORD-204, 2002 Ky. AG LEXIS 194.

The Child Support Division was not obligated to conduct legal research in order to locate records that contain the procedures and criteria, and proof of procedures, as requested, since the Division did not maintain a separate procedures manual. OAG 02-ORD-213, 2002 Ky. AG LEXIS 195.

The Jail's initial response did not conform to the specific requirements set forth at KRS 61.872(5). Although the Jail indicated that the records would be available for inspection some thirty (30) days later, its response did not contain a detailed explanation of the cause of the delay. OAG 02-ORD-217, 2002 Ky. AG LEXIS 145.

The broadly worded request, coupled with the requester's past pattern of conduct and his conviction for harassing communications related to activities aimed at causing annoyance and harm to past and present city employees and serving no purpose of legitimate communication, support the City's position that his October 2 request was intended to disrupt the city's essential functions. The city properly denied of the request on the basis of KRS 61.872(6). OAG 02-ORD-230, 2002 Ky. AG LEXIS 158.

While the Department's entire database may contain more or less information than the requester seeks, it clearly contains information that is responsive to her request and the Department is obligated to afford her access to it after redacting individual Medicaid recipient information and other information made confidential by federal enactment. Redaction of the latter information from an existing database is not equivalent to nonobligatory creation of a new record. OAG 03-ORD-04, 2003 Ky. AG LEXIS 16.

Campaigning for reelection, or discharging duties associated with private employment, do not provide a sufficient legal basis for temporarily suspending the legal obligations imposed on a public agency by KRS 61.880(1). Invocation of, and reliance upon, KRS 61.872(5) should occur on rare occasions and only when the circumstances are such as to clearly warrant extension of the standard three day deadline for agency response and release of records. OAG 03-ORD-05, 2003 Ky. AG LEXIS 97.

A request for access to a personnel file requires no greater degree of specificity than any other open records requests, and that the agency must therefore "determine what is and is not subject to Open Records." Pursuant to KRS 61.878(4), the agency must disclose the nonexcepted records and identify, in writing, any responsive records withheld, cite the statute(s) authorizing the withholding, and briefly explain how the statute applies to the record withheld. OAG 03-ORD-12, 2003 Ky. AG LEXIS 165.

Where the revised request was e-mailed to the head of the agency at his home via a private and unpublished e-mail account, since the request was not sent or delivered to the office of the public agency, but to a private e-mail address, it was not delivered in accordance with the requirements of KRS 61.872(2) and, thus, the failure to respond did not constitute a violation of the Open Records Act. OAG 03-ORD-19, 2003 Ky. AG LEXIS 129.

KRS 61.872(2) provides that a public agency may require that open records requests be in writing, but the Open Records Act does nor mandate it. So long as an agency meets the minimum requirements of the Act in timely responding to an open records request, it cannot be said to be in violation of the Act. OAG 03-ORD-24, 2003 Ky. AG LEXIS 130.

The Board did not violate the Open Records Act in failing to provide a copy of the minutes of its regular December 6th meeting and the December 13th recessed or adjourned meeting on the basis that they had not been approved and adopted as the official minutes of the Board, since the approval would not occur until the next regularly scheduled meeting in March. OAG 03-ORD-33, 2003 Ky. AG LEXIS 51.

It is entirely proper for the City to require prepayment of a reasonable copying charge that does not exceed the actual cost of duplication, not including staff costs, and to enforce a standard policy relative to assessment of those charges. Moreover, KRS 61.872 and KRS 61.874 contain no provision for the waiver of such fees for any party. OAG 03-ORD-57, 2003 Ky. AG LEXIS 137.

The City's response to the request was deficient insofar as it failed to provide a detailed explanation for its inability to produce the records requested within three business days as required by KRS 61.872(5). "An extremely heavy workload" does not constitute a legitimate basis for postponing a requester's right of access, or even minimally constitute a "detailed explanation." OAG 03-ORD-83, 2003 Ky. AG LEXIS 61.

Where the City indicated that responsive records would be available for inspection on a certain date between the hours of 12:00 p.m. and 4:00 p.m., this represents an unreasonable restriction on the right of inspection in contravention of KRS 61.872(3)(a); an individual has a right to inspect public records during the regular office hours of the public agency and any attempt by a public agency to limit the period of time within which a requester may inspect public records places an unreasonable and illegal restriction upon the requester's right of access. OAG 03-ORD-83, 2003 Ky. AG LEXIS 61.

The preprinted form developed by the agency, requiring the requester to indicate whether he is a representative of the news media or the reasons for his request and requiring a requester to verify his identity by producing a driver's license or other form of identification, creates a potential chilling effect on submission of open records requests that is inconsistent with the basic policy of the Open Records Act codified at KRS 61.871. OAG 03-ORD-86, 2003 Ky. AG LEXIS 181.

Western Kentucky Correctional Complex (WKCC) did not properly respond to an inmate's open records requests for "all" records from his inmate file. The request were sufficiently specific to require the WKCC to respond to the request, since the request was limited to a specific class of documents. In addition, WKCC was obligated to identify and withhold those documents for which statutory protection exists from the requested inmate file and to provide him with a written explanation including citation to the statute authorizing nondisclosure. OAG 03-ORD-117, 2003 Ky. AG LEXIS 24.

Thirty (30) Open Records requests in a period of approximately eighteen (18) months is not *per se* burdensome under the Open Records Act. OAG 03-ORD-157, 2003 Ky. AG LEXIS 262.

If the City refused to provide copies of the requested records because the requester did not sign the agency's official request form, its actions were contrary to the requirements of the Open Records Act; if the request that the requester faxed to the City contained his signature and his name was printed legibly and described the records to be inspected, that would have met the minimum requirements for inspection. There is no requirement in the Act that requires a requester to acknowledge receipt of the copies he receives prior to receiving the copies. OAG 03-ORD-183, 2003 Ky. AG LEXIS 116.

Although it is incumbent on the Fiscal Court to ascertain whether records exist that are responsive to the request, to promptly advise the requester of its findings, and to release to him all existing records identified in his request, it is not, however, incumbent on the Fiscal Court to certify the appropriate records in such manner that they may be introduced as evidence in a Court of Law. Such a requirement does not exist in the Open Records Act. OAG 03-ORD-207, 2003 Ky. AG LEXIS 78.

Where the City described, in detail, the problems associated with retrieving and duplicating the nearly 6,000 pages implicated by the request, provided a date on which the copies would be available, and the City extended an offer to the requester to conduct an onsite inspection of the requested records during regular business hours in the intervening period, the four (4) week delay in reproducing the voluminous and widely dispersed records was not inordinate, and the City's explanation for the delay was adequate for purposes of KRS 61.872(5). OAG 03-ORD-248, 2003 Ky. AG LEXIS 127.

Where the requester requested a broad range of financial and operational records of the City for periods of time as great as 23 years, and did not request a specific record or records, but categories of records such as invoices, check registers, documentation for income received, grant papers, and complaints or summons, such a description is not "clear" or "very specific." OAG 03-ORD-248, 2003 Ky. AG LEXIS 127.

The City is entirely correct in the view that its employees have no express obligation to assist the requester should he elect to conduct an onsite inspection of nonexempt public records. Public agency employees are not required to provide instruction in understanding the meaning or impact of information which appears upon records produced. Instead, they are required to make available for inspection, during normal office hours, the record requested and thereafter permit the requester to make a fishing expedition through public records on his own time and under the restrictions and safeguards of the public agency. OAG 03-ORD-248, 2003 Ky. AG LEXIS 127.

Where the Cabinet indicated that because the division's records were not indexed in a manner in which the requested information could be retrieved, the request would require that 1,485 over-time case files be pulled and reviewed manually to determine which files might meet the request, and once the relevant files had been pulled, they would have to be sanitized by separating exempt for nonexempt materials which would disrupt the Division of Employment Standards for several weeks, the Cabinet met its burden of establishing that compliance with the request would place an unreasonable burden on the agency. OAG 03-ORD-254, 2003 Ky. AG LEXIS 152.

Given the requester's confinement at EKCC, he is foreclosed from exercising the right to on-site inspection of the requested record codified at KRS 61.872(3)(a). Instead, he must "precisely describe" the record "which he wishes to access by mail." The inability to satisfy this threshold requirement relieves the County Clerk of the duty to conduct a search for a responsive record which may or may not exist, but that is clearly not readily available within the public agency. OAG 04-ORD-11, 2004 Ky. AG LEXIS 63.

Because the corporation does not fall within the parameters of KRS 61.805(2)(a) through (h), defining the term "public agency" for purposes of open meetings analysis, the corporation was not governed by the Open Meetings Act, Thus, the corporation has no obligation under the Open Meetings Act to create, or otherwise afford the public access to, minutes of its meetings, and the corporation properly denied the open re-

cords request for its minutes. OAG 04-ORD-12, 2004 Ky. AG LEXIS 191.

Unless the inmate can explain the necessity of reproducing the same records which either already have been provided or have been inspected by him at a prior facility, such as loss or destruction of the records, there is no reason why the agency must satisfy the same request a second time. OAG 04-ORD-18, 2004 Ky. AG LEXIS 192.

Since the agency does not indicate the locations at which the requested records might be stored or otherwise elaborate as to the difficulty in accessing those records, although the request may very well involve "thousands of documents," such a "voluminous" request is not necessarily unreasonably burdensome. In the absence of any evidence to support the bare allegation that granting the request places an unreasonable burden the agency, the requested records are readily available within the agency. OAG 04-ORD-28, 2004 Ky. AG LEXIS 65.

Although some of the records requested may be privileged or contain exempt information, the fact that the agency will have to separate confidential documents from nonconfidential documents cannot serve as a basis for denying a request under KRS 61.872(6). OAG 04-ORD-28, 2004 Ky. AG LEXIS 65.

While the interest implicated may not rise to the level of public security and administrative order, it could not have been the Legislature's goal to require disclosure of football practice video tapes of state supported educational institutions. Open records requests for such tapes may properly be denied under KRS 61.872(6) as unreasonably burdensome because their disclosure will necessitate an immediate revision of the subject team's strategy, tactics, and plays. Thus, the Open Records Act authorizes nondisclosure of the requested records. OAG 04-ORD-58, 2004 Ky. AG LEXIS 166.

The city's four plus week extension of the deadline for inspection was unreasonable where the city belatedly acknowledged that it could produce records containing the information sought but stated that the process of counting the pages, sending an invoice, and removing protected information would "take an uncertain period of time." Clearly, this response did not satisfy the second requirement in KRS 61.872(5) because it did not indicate the place, time, and earliest date on which the records would be available for inspection. OAG 04-ORD-63, 2004 Ky. AG LEXIS 198.

The City failed to satisfy its statutory burden of proof in denying the request for access to the minutes and records of the Cemetery Caretaker Committee on the basis of KRS 61.872(6). The requester has not requested that copies of these records be mailed to him, but has only asked that he be afforded an opportunity to inspect records of a single city committee for a period of slightly more than two (2) years, and the the city has adduced no proof of a single request of unreasonable scope or multiple requests collectively constituting an unreasonable demand. OAG 04-ORD-66, 2004 Ky. AG LEXIS 48.

The faculty meeting agendas for the high school faculty meetings and the schedule of regular faculty meetings for the academic year, if they exist, are clearly public records for which no statutory exemption is, or in all likelihood, can be invoked. Although they are generated by and/or for a group to which the Open Meetings Act has been determined not to extend, they are records that are prepared, owned, used, and, at some juncture, in the possession of a public agency, namely, Lincoln County High School. OAG 04-ORD-98, 2004 Ky. AG LEXIS 136.

The City's sending the requested records by certified mail and charging the requester for that cost is excessive and unnecessarily adds to the cost to the public for access to public records. While there may be circumstances on occasion for sending public records by certified mail, the extra cost in doing so must be absorbed by the public agency. Regular mail delivery is sufficient under the Act. OAG 04-ORD-100, 2004 Ky. AG LEXIS 245.

Since the hospital was not obliged to honor the first two (2) requests submitted, since it may recover a substantial portion of its costs pursuant to KRS 61.874(3), since the uses to which public records are put have no bearing on the validity of the requests that produce them, and since the records are of a discrete, limited class that have traditionally been treated as nonexempt public records, the record on appeal contains insufficient empirical evidence to support a claim under KRS 61.872(6). The record on appeal requester submitted three requests in a two (2) month period, but does not reflect the personnel hours expended or estimated costs incurred in fulfilling those requests. For this reason, the hospital's reliance on KRS 61.872(6) was misplaced. OAG 04-ORD-113, 2004 Ky. AG LEXIS 247.

Since the records requested are of an identified, but by no means limited, class, and based on the sheer volume of records implicated by the request, coupled with the difficulties associated with separating excepted and nonexcepted materials, invocation of KRS 61.872(6) is warranted in this case. There are some 20,000 files are at issue, and each file contains attorney work product and privileged material, as well as property appraisals which may be protected by KRS 61.878(1)(f), even if the case is closed, if adjoining properties have not been acquired. OAG 04-ORD-117, 2004 Ky. AG LEXIS 126.

Regardless of where records pertaining to drainage matters are located, they were prepared, owned, and used at the instance of the city and are therefore essentially the city's documents. Although the private attorney holds them as custodian on the city's behalf it is their nature and purpose that is determinative of their status as public records. There is no support for the proposition that the city has no control over its own records, wherever they are reposed, and they are public records as defined at KRS 61.870(2). OAG 04-ORD-123, 2004 Ky. AG LEXIS 237.

Because these records are city records, it is reasonable to require their production on city premises. Since the City of Windy Hills maintains a city hall wherein the records can be inspected, the records consist of a single file which can easily be transported the seven (7) miles from the private attorney's downtown office to the Windy Hills City Hall, it is incumbent on the city to produce the requested records in suitable facilities located in its city hall. OAG 04-ORD-123, 2004 Ky. AG LEXIS 237.

Given the relatively narrow parameters of the request, by time frame as well as subject, a delay of over one month was unwarranted, particularly in light of the fact that the city offered no written explanation for that delay. OAG 04-ORD-138, 2004 Ky. AG LEXIS 127.

A public agency has no authority to ignore a misdirected request pursuant to KRS 61.872(4). The fact that the City Clerk is the official custodian of public records maintained by the City did not relieve the Police Chief or the Mayor of their statutory obligation to promptly so notify the requester, in writing, and to furnish the name and location of the official custodian of the agency's public records. OAG 04-ORD-216, 2004 Ky. AG LEXIS 35.

The school district violated KRS 61.880(1) in failing to respond to the request because the requester did not comply with a Board of Education policy requiring the submission of an open records request on a preprinted form developed by the Board. The October 25 request conformed, in all particulars, with the requirements found at KRS 61.872(2). It was therefore incumbent on the school district to respond in writing, and within three business days, to that request. OAG 04-ORD-242, 2004 Ky. AG LEXIS 278.

Insofar as the record did not contain clear and convincing evidence that an individual requesting all records pertaining to complaints against city employees intended to disrupt other essential functions performed by the city, or that honoring his request would otherwise be "unreasonably burdensome," the

city did not satisfy its burden of proof relative to KRS 61.872(6). To the extent that the request was duplicative, an issue which could not be resolved on the existing record, the city was not statutorily obligated to honor the request absent some explicit justification for reproducing identical records. OAG 05-ORD-21, 2005 Ky. AG LEXIS 249.

Where in a jailer's initial denial of a request for grievances and in his supplemental response to notification of receipt of the open records appeal, he did not, for example, indicate how long he had held office, the number of grievances implicated by the request, the difficulties in accessing those grievances, or the problems otherwise associated with production, the jailer did not meet the requirements of KRS 61.872(6). OAG 05-ORD-24, 2005 Ky. AG LEXIS 167.

Where, in response to a question as to how many court actions for the collection of delinquent taxes were filed by his office, a county attorney affirmatively advised that such a record was not maintained and explained that the Circuit Court kept records of cases filed and might have records containing the information being sought, this response was consistent with the requirement of KRS 61.872(4). OAG 05-ORD-45, 2005 Ky. AG LEXIS 270.

A request for any and all records of a particular type, or which contain a specific name, term, or phrase, is not a properly framed open records request, and generally need not be honored; accordingly, a police department did not violate the Open Records Act in denying a request for "any and all complaints pertaining to any officer within the department" on this basis. OAG 05-ORD-57, 2005 Ky. AG LEXIS 180.

Although an agency expressed the good faith belief that requests for financial and operational records were unreasonably burdensome and intended to disrupt its essential function, the record did not contain clear and convincing evidence supporting that belief; the submission of two (2) requests per month or the allocation of staff resources of less than 10 hours per month was not indicative of an unreasonable burden or an intent to disrupt. OAG 05-ORD-67, 2005 Ky. AG LEXIS 206.

An individual's overly broad and blanket in character request for previously requested and provided records, coupled with his pattern of conduct in previous open records requests of requesting voluminous documents and, after being provided access to those records, he either did not inspect the records or inspected only a small portion of them, reflected an attempt to unduly burden the agency and disrupt its essential functions. Therefore, denial of his request on the basis of KRS 61.872(6) was affirmed. OAG 05-ORD-121, 2005 Ky. AG LEXIS 170.

Office of Charitable Gaming improperly relied on KRS 61.872(6) in denying a request for renewal applications submitted by charitable organizations and resulting appeals and temporary license issuance on the basis the request was submitted for the purpose of disrupting its essential functions or is otherwise unreasonably burdensome. The requester's right to inquire was not forfeited by the fact that he had signed an agreement not to engage in charitable gaming activities. OAG 05-ORD-152, 2005 Ky. AG LEXIS 114.

The Kentucky State Police violated the Open Records Act in denying a request to inspect lab reports on the basis of KRS 61.872(6) because, although the inspection may take some time, it was not established by clear and convincing evidence that granting the request would be unreasonably burdensome. OAG 05-ORD-172, 2005 Ky. AG LEXIS 187.

A county Judge-Executive violated the Open Records Act in denying, on the basis of KRS 61.872(6), a request to inspect documents pertaining to all money received from state and federal programs by the county during a two (2) year period. OAG 05-ORD-240, 2005 Ky. AG LEXIS 263.

Having affirmatively indicated to the requester in writing that no videotape matching the description provided existed, albeit belatedly, and offered a credible explanation as to why no such record existed, a police department complied with the Open Records Act. OAG 06-ORD-012, 2006 Ky. AG LEXIS 304.

Applying the search standard articulated in 95-ORD-96 to the electronic email at issue, the Transportation Cabinet did not conduct a search using methods that could reasonably be expected to produce the requested record. The Cabinet's search was confined to an individual's personal folders; the Cabinet does not indicate that its search extended beyond these files to other folders. Because the individual might have saved the message in, for example, an archive file, a message file, a text file, or an html file, it was incumbent on the Cabinet to expand its search to any such file which could reasonably have been expected to produce the responsive record using broader criteria (words, topics) for that search. Moreover, because email is easily propagated, it was incumbent on the Cabinet to search the mail server to determine if the message was forwarded to Cabinet employees or officials, as well as the "inboxes" of employees or officials who might reasonably have been expected to receive it. OAG 2006-ORD-022, 2006 Ky. AG LEXIS 93.

Because a city failed to adduce clear and convincing evidence that honoring a request would place an unreasonable burden on the city, or that the requester's repeated requests were intended to disrupt its essential functions, the city violated the Open Records Act in denying the request on the basis of KRS 61.872(6). OAG 06-ORD-028, 2006 Ky. AG LEXIS 214.

Police department complied with Open Records Act by providing requester with a copy of requested dispatch calls and affirmatively advising that it did not have records relating to the requested vehicle inventory and registration information and providing him with the name and location of the custodian of those records. OAG 06-ORD-029, 2006 Ky. AG LEXIS 52.

County Clerk fully discharged her duties under the Open Records Act by providing on-site access to the requester, or his representative, to inspect and copy requested records and she did not violate Act in denying request for copies of the records in an electronic format, when records were not maintained in such format. OAG 06-ORD-041, 2006 Ky. AG LEXIS 211.

Because the disputed email may properly be characterized as general correspondence, and the retention period for general correspondence is "no longer than two years," the record does not support the inference that the disputed email was prematurely, or otherwise improperly, destroyed. In the absence of proof that the requested email was prematurely or improperly deleted, the Transportation Cabinet was not obligated to conduct a search utilizing specialized data recovery processes over and above those search methods regularly employed. OAG 2006-ORD-022, 2006 Ky. AG LEXIS 93.

The requests were specific as to the type of record sought, namely, policies and procedures, as well as subject, namely, the unitary tax reporting procedure. As long as the custodian can identify what documents the applicants wish to see, KRS 61.872(2) is satisfied. OAG 2006-ORD-032, 2006 Ky. AG LEXIS 53.

Furnishing a requester with a website address and/or directing him/her to the local public library where the requested records are also available is not a substitute for complying with the mandatory terms of KRS 61.872(1)-(3). OAG 2006-ORD-036, 2006 Ky. AG LEXIS 292.

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61.874. Abstracts, memoranda, copies — Agency may prescribe fee — Use of nonexempt public records for commercial purposes — Online access.

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2)(a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8½ inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4)(a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

History.

Enact. Acts 1976, ch. 273, § 3; 1992, ch. 163, § 4, effective July 14, 1992; 1994, ch. 262, § 4, effective July 15, 1994.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Reasonable Fee.
3. In Camera Inspection.

1. Constitutionality.

Because attorneys' and chiropractors' constitutional challenge to KRS 189.635 failed, thus generally keeping state

police accident reports confidential from them, their simultaneous constitutional challenge to KRS 61.874 over the amount they were being charged for copies of those reports was moot since they were no longer entitled to receive them at all. Amelkin v. McClure, 330 F.3d 822, 2003 FED App. 0168P, 2003 U.S. App. LEXIS 10832 (6th Cir. Ky.), cert. denied, 540 U.S. 1050, 124 S. Ct. 827, 157 L. Ed. 2d 699, 2003 U.S. LEXIS 8627 (U.S. 2003).

2. Reasonable Fee.

A Kentucky State Reformatory inmate's complaint against the warden and other reformatory officials for failure to furnish his financial records was properly dismissed, where the record showed that he was offered his records upon payment of the ten cents ($0.10) per page copying fee, and there was no genuine issue to be resolved. Friend v. Rees, 696 S.W.2d 325, 1985 Ky. App. LEXIS 656 (Ky. Ct. App. 1985).

A Kentucky State Reformatory inmate is entitled to copies of his records by complying with the reasonable charge of reproduction. Friend v. Rees, 696 S.W.2d 325, 1985 Ky. App. LEXIS 656 (Ky. Ct. App. 1985).

Newspaper reporter was not responsible for the expense under Ky. Rev. Stat. Ann. § 61.874(3) as redaction was not the equivalent of a change in format, and § 61.878(4) did not specify that costs were to be borne by the requestor. Commonwealth v. Courier Journal, 601 S.W.3d 501, 2020 Ky. App. LEXIS 42 (Ky. Ct. App. 2020).

3. In Camera Inspection.

Where a teacher's open records request to view videotape recordings of her own classroom was denied on grounds this would violate the Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g, and the Kentucky Family Educational Rights and Privacy Act (KFERPA), KRS 160.700 et seq., the Circuit Court properly denied her request to view the tapes in camera since this would have rendered the entire controversy void. Medley v. Bd. of Educ., 168 S.W.3d 398, 2004 Ky. App. LEXIS 305 (Ky. Ct. App. 2004).

OPINIONS OF ATTORNEY GENERAL.

A person does not have a right to require a list to be made from public records if the list described does not already exist; if the list exists and is not otherwise confidential by law, a person may inspect a list and obtain a copy of it; a person desiring that list be made or that he have copies of broad categories of information must expend his own time in digging out the information unless it has already been compiled. OAG 76-375.

Blanket requests for information on a particular subject without specifying certain documents need not be honored for state employees may not be requested to make compilations of records, but the public has a right to inspect compilations which have been made in the course of business unless the subject matter is confidential by law. OAG 76-375.

The Open Records Act does not charge state agencies with the duty to provide records upon a request made by mail. OAG 76-375.

The right to have copies of records is an ancillary to the right of inspection it does not stand by itself ; if a person has not inspected the records he desires to copy and cannot describe them with specificity, there is no requirement that copies of any records must be delivered to him; a citizen may make a fishing expedition to public records on his own time and under the restriction and safeguards of the public agency, but a willingness to pay for copies of records is not sufficient to put the state agency under obligation to furnish broad categories of records. OAG 76-375.

If the Real Estate Commission prepares a list of applicants for the real estate examination in special form for the purpose of selling to real estate schools and others, it may charge for the staff required to prepare the list, but if a record is already in existence the fee can only be for the copying expense not including staff costs. OAG 78-132, 1978 Ky. AG LEXIS 591.

It is within the discretion of the custodian of public records to require a person inspecting and copying records of a county judge/executive to leave a copy of all such copies with the custodian of public records as a precondition of inspecting those records. OAG 78-399, 1978 Ky. AG LEXIS 336.

A clerk is not responsible in any way to any person who may be misled if a certified copy of an order of appointment is given to an administrator named in the copy who uses it to show his appointment, when actually the estate has been settled: the clerk has no duty to inform the public of the active or inactive status of each estate. OAG 79-136, 1979 Ky. AG LEXIS 493.

The clerk is not responsible for determining whether an estate has been settled before making certified copies of court orders showing appointment of administrators, executors, etc., in connection with the administration and settlement of estates. OAG 79-136, 1979 Ky. AG LEXIS 493.

Since a filed library district petition requires fiscal court to check its validity on its face, it does not become a full-blown public record, for purposes of the Open Records Law, until after fiscal court has determined its validity. OAG 79-265, 1979 Ky. AG LEXIS 355.

While a library district petition is needed by the clerk and his staff to check the validity of the signatures, etc., for fiscal court, the custodian may reasonably delay inspection of the record and the making of copies until after the verification process has been concluded. OAG 79-265, 1979 Ky. AG LEXIS 355.

It is not incumbent upon a public agency to provide records to inmates who are unable to go to the office where the records are kept because of their legal confinement. OAG 79-546, 1979 Ky. AG LEXIS 92.

All oral history records which have been taped and which have not been restricted by an agreement with the interviewee are open to both public inspection and copying regardless of whether the Kentucky Historical Society has obtained and has on file a signed release, and this rule applies whether the request for inspection is made by a researcher or any other person. OAG 79-648.

There is no distinction in the Open Records Law which would allow researchers access to records only for the purpose of auditing without allowing the obtaining of a copy. OAG 79-648.

Since the cost of staff time required in making copies of public records is excluded from the fee which may be charged for such copies, a charge of $1.00 a page for a copy of a public record is an unreasonable fee. OAG 80-421, 1980 Ky. AG LEXIS 229.

Where a requester seeks photocopies of all official minutes of any special or regular school board meetings held in a certain county in 1981 and photocopies of all regular or special meetings held in the future, it is discretionary, as to the past meetings, whether the agency should first require the requester to inspect the records before ordering copies or to provide copies of the complete records for a reasonable fee without first inspecting them, and, as to the future meetings, there is no right of the requester to request copies of future meetings, since the right to copies is ancillary to the right to inspect under subsection (1) of this section. OAG 81-212, 1981 Ky. AG LEXIS 222.

The registrar of vital statistics improperly denied a request from a newspaper reporter to inspect all death certificates and death verification certificates in the possession or control of a county health department where the registrar based such denial upon the requirement of KRS 213.190 (now repealed) that the applicant have a direct, tangible and legitimate interest in the record; the right to obtain a certified copy under KRS 213.190 (now repealed) is different from the right to inspect and obtain copies provided in this section and no

special standing need be shown under the latter statute. OAG 81-400, 1981 Ky. AG LEXIS 39.

Fifty cents ($0.50) per page was not a reasonable fee for copying a record. OAG 82-396, 1982 Ky. AG LEXIS 251.

The Open Records Law provides that any person can inspect the original record and cannot be required only to purchase a copy of the original record. OAG 82-396, 1982 Ky. AG LEXIS 251.

A comprehensive care center does not have to comply with a request for a copy of records by the person who is the subject of the records and who is a minor or who has been legally adjudged incompetent, but if the person is a competent adult he is entitled to have a copy of the records. The center may charge him a reasonable fee per page for a copy of the record which shall not exceed the actual cost thereof not including the cost of staff required. OAG 82-414, 1982 Ky. AG LEXIS 234.

The Open Records Law does not contemplate that a public agency shall send requested records to a person who has not inspected them. OAG 82-629, 1982 Ky. AG LEXIS 15.

A sheriff's office is not required to send a copy of records which have not been inspected by the requester even though the requester is an inmate who is not able to personally inspect the records because of legal confinement. OAG 82-629, 1982 Ky. AG LEXIS 15.

The Open Records Act does not require the county clerks of Kentucky to provide copies of public records upon a request made by mail. OAG 83-42, 1983 Ky. AG LEXIS 454.

Where the requesters of copies of records had not inspected any of the records, and had not described any specific records, custodian of records was under no duty to furnish the copies requested; the right to have copies of records is ancillary to the right of inspection and does not stand by itself. OAG 83-42, 1983 Ky. AG LEXIS 454.

Subsection (2) of this section is a residual and general statute and applies where there is no other applicable and specific fee statute; KRS 64.012 will apply where the language on that schedule is appropriate and applicable to the particular clerk's record. OAG 83-42, 1983 Ky. AG LEXIS 454.

The fee charged for a copy of a will, a land purchase contract, and assignment of a land purchase contract would be governed by subsection (2) of this section, the general law, while the fee for copies of a deed of trust, a deed and a real estate mortgage would be governed by KRS 64.012. OAG 83-42, 1983 Ky. AG LEXIS 454.

Under subsection (2) of this section, the cost computation cannot include the officer personnel cost; it can only relate to the cost in terms of the copier machine, paper and allied supplies. OAG 83-42, 1983 Ky. AG LEXIS 454.

The provisions of KRS 61.872, 61.874 and 61.876, when taken together, require that public agencies have a policy of allowing inspection of public records, of protecting the records, of preventing excessive disruption of the agency's functions, of providing copies upon request, of providing efficient and timely action in response to applications for inspection and of charging a reasonable fee based on the actual cost of making copies not including the cost of staff required; these three (3) sections allow public agencies a certain amount of leeway as to handling requests for records by mail and mailing copies to requesters who have not personally inspected the records and selected the items which they want copied. OAG 83-204, 1983 Ky. AG LEXIS 293.

Public agencies should accommodate requesters whenever they can within the bounds of the efficient operation of their office. Whenever only one (1) item is requested, or a few precisely described items which are readily available within the office, and no special search is required, it will be more convenient both to the agency and to the requester to answer the request through the mail; to require the requester to appear in person at the office of the agency in such a case would not be more convenient to either party and would only inhibit the intended purpose of the Open Records Law. OAG 83-204, 1983 Ky. AG LEXIS 293.

The stated policy of the Finance and Administration Cabinet not to furnish copies of bids requested by mail was in accordance with the Open Records Law. OAG 83-204, 1983 Ky. AG LEXIS 293.

The "reasonable fee" provision of subsection (2) of this section applies only when there is no other applicable fee statute; KRS 64.012, pertaining to fees of county clerks, therefore governs over subsection (2) of this section in case of a conflict. OAG 84-91, 1984 Ky. AG LEXIS 295.

Requested records pertaining to annual copying costs and fees should be made available for public inspection, and any person inspecting the records and requesting a copy should be sold that copy; however, there is no requirement that the agency send copies of records until the requestor makes his inspection. OAG 84-91, 1984 Ky. AG LEXIS 295.

As long as full access is provided and the records are protected from damage and disorganization, there is no statutory prohibition against the agency waiving a fee for certain requestors. OAG 84-300, 1984 Ky. AG LEXIS 86.

The North Central Comprehensive Care Center, Inc. is a public agency subject to the Open Records Law since its revenue consists of substantially in excess of 25 percent funding from state grants and contracts for services and the five dollars ($5) fee for copies of the initial one (1) to five (5) pages of its records is unreasonable and inconsistent with the actual cost mandate of subsection (2) of this section. OAG 84-300, 1984 Ky. AG LEXIS 86.

Fee of public agency of $5.00 per page for copies of the initial one (1) to five (5) pages is unreasonable. OAG 84-300, 1984 Ky. AG LEXIS 86.

While the public agency should have responded in writing pursuant to subsection (1) of KRS 61.880, to the requesting party's letter pertaining to the request for copies of documents, the public agency was not mandatorily required to send copies of records to a requesting party by mail when the requesting party had not first inspected those records and then selected the items he wanted copied, particularly when numerous records and documents were involved. OAG 86-24, 1986 Ky. AG LEXIS 63.

While a public agency should accommodate mail requests when possible, particularly when only a few precisely described documents are requested, a public agency is not legally required to honor mail requests for copies of documents when numerous records and documents are involved; thus, the urban county government acted within the provisions of the Open Records Act when it afforded the requesting party (or her representative) the opportunity to inspect the documents in question at an office of the urban county government and declined to send copies of the documents prior to inspection, particularly where numerous records and documents were involved. OAG 86-80, 1986 Ky. AG LEXIS 6.

The response of the public agency to the request to inspect documents that some of the requested documents did not exist was sufficient and proper; however, the public agency's attempt to restrict the requesting party's inspection of those records which did exist to one-half hour a week was an unreasonable and illegal restriction on the right to inspect public records, and such records were to be made available for inspection immediately. OAG 87-54, 1987 Ky. AG LEXIS 33.

If the county clerk's office could not demonstrate that the fee list set forth in KRS 64.012 was applicable to the documents requested by the newspaper reporter, then subsection (2) of this section applied relative to the costs that a public agency could charge for copies of documents. OAG 87-80, 1987 Ky. AG LEXIS 4.

The public agency was not bound by the provisions of subsection (2) of this section, pertaining to costs levied for copies of existing public records, as the material requested by the requesting party involved a list which did not exist when

the request was made, and the public agency could therefore charge what it cost to prepare, program, and reproduce a list containing the material in question. OAG 88-19, 1988 Ky. AG LEXIS 19.

It is not incumbent upon a public agency to provide documents to inmates who are unable to go to the office where the records are kept because of their confinement. OAG 88-44, 1988 Ky. AG LEXIS 44.

While the school system may refuse to disclose the home addresses of students, it may not withhold the names of students attending the school. A list of names should be furnished, if currently available, or the school system should prepare such a list, or let the requesting party prepare his or her own list from school system records. OAG 88-50, 1988 Ky. AG LEXIS 50.

The public agency is not mandatorily required to send copies of records by mail to a requesting party when that person has not first inspected those records and then selected the items he or she wants copied, particularly when numerous records and documents are apparently involved. OAG 88-60, 1988 Ky. AG LEXIS 60.

The Department of Insurance is bound by the provisions of subsection (2) of this section in calculating the fees it charges for copies of documents where such costs are not specifically covered by other statutory enactments; fees charged in excess of the actual costs are in violation of the Open Records Act, and the public agency should recalculate the fees imposed to conform to the statutory requirements. OAG 88-74, 1988 Ky. AG LEXIS 74.

If the county clerk cannot demonstrate that the records involved are included under the provisions of KRS 64.012, then the amount to be charged for copies of the records is governed by subsection (2) of this section; unless the county clerk can demonstrate that it actually costs fifty cents ($0.50) per page to provide copies of documents, considering the applicable factors set forth in KRS 61.874(2), he should recalculate the fees imposed to conform to the statutory requirements. OAG 89-9, 1989 Ky. AG LEXIS 8.

Upon inspection, copying of the minutes of special meetings of a County School Board must be permitted; a reasonable fee, not exceeding the cost thereof, can be imposed for the copies. OAG 89-27, 1989 Ky. AG LEXIS 27.

One having inspected records is entitled to be furnished copies of them upon payment of a reasonable fee. Such fee shall not exceed the actual cost of copying, and may not include the cost of staff required. OAG 89-43, 1989 Ky. AG LEXIS 47.

An agency is not required, under Open Records provisions, to provide copies upon request, except after records have been inspected. OAG 89-53, 1989 Ky. AG LEXIS 53.

One who inspects public records shall have the right, upon inspection, to obtain copies of records inspected. OAG 89-66, 1989 Ky. AG LEXIS 66.

Copies of records need not be provided except upon inspection, and copies of records that have not been inspected do not have to be furnished by mail or by fax transmission. OAG 89-96, 1989 Ky. AG LEXIS 96.

The right to copies of public records is ancillary to inspection. OAG 90-8, 1990 Ky. AG LEXIS 8.

A county property valuation administrator did not act other than consistently with Open Records provisions in declining to provide copies of records that had not been inspected. OAG 90-31, 1990 Ky. AG LEXIS 29.

There is no requirement in the Open Records provisions that a public agency furnish copies of records that have not been inspected, and the opportunity to have copies of public records is ancillary to inspection. OAG 90-31, 1990 Ky. AG LEXIS 29.

Requiring inspection prior to furnishing copies is an important part of Open Records provisions, as requiring inspection prior to making copies aids in preventing frivolous requests, and may prevent controversy regarding whether the proper records were copied. OAG 90-31, 1990 Ky. AG LEXIS 29.

The opportunity to have copies of public records is ancillary to their inspection. OAG 90-35, 1990 Ky. AG LEXIS 35.

City's actions were not consistent with Open Records provisions where, in contravention of KRS 61.872(1), it denied a requester the use of a film read-printer and a cassette tape player, thereby failing to provide suitable facilities for inspection of its records. Additionally, the city failed to act consistent with Open Records provisions where, in contravention of subsection (2) of this section, it established a $.25 per page fee for copies of records, when such fee was not based upon the actual cost, exclusive of personnel expenses, for making copies. OAG 90-50, 1990 Ky. AG LEXIS 50.

The provision of subsection (2) of this section means that the fee charged for copies should be based on the actual expense to the agency, excluding the cost of staff. The fee is thus limited to the cost of maintaining copying equipment by purchase or rental, and the supplies involved. OAG 91-98, 1991 Ky. AG LEXIS 98.

If public agency from whom copies of records are requested cannot demonstrate that the cost of a copy is covered by another specific statutory enactment, the provisions of subsection (2) of this section govern. Any fee charged in excess of the actual cost violates the Open Records Act. OAG 91-98, 1991 Ky. AG LEXIS 98.

Since the University of Kentucky Medical Center is clearly a public agency, it is therefore subject to the Open Records Act and the demand of $153 reproduction fee by the Medical Center was inconsistent with subsection (2) of this section. OAG 91-98, 1991 Ky. AG LEXIS 98.

The right to obtain copies is ancillary to the right of inspection and does not stand by itself. OAG 91-159, 1991 Ky. AG LEXIS 159.

The record requested, a trial transcript, is clearly a court record, and is therefore not subject to the reasonable fee provision found in subsection (2) of this section. OAG 91-193, 1991 Ky. AG LEXIS 194.

Attorney General opined that Custodian of Records' actions, in denying inmate's request for a copy of his transfer authorization form pursuant to KRS 61.880 because inmate's account had no money to cover the reproduction costs, were entirely consistent with the Open Records Act because a public agency is authorized to prescribe reasonable fees for making copies of public records pursuant to KRS 61.876(1)(c) and subsection (2) of this section. OAG 91-210, 1991 Ky. AG LEXIS 210.

If the county clerk's office cannot demonstrate that the records requested by a citizens group are among those identified in KRS 64.012, and governed by that statute, the amount which may be charged for copies is governed by subsection (2) of this section; unless the county clerk's office can then demonstrate that the cost to the county clerk's office for providing copies is indeed 50¢ per page, based on the factors set forth in subsection (2) of this section, the county clerk's office should recalculate the fees imposed to conform to the statutory requirements. OAG 92-79, 1992 Ky. AG LEXIS 86.

A prison inmate has the same right to inspect public records as any other person. The identity of the requester is therefor irrelevant. Under existing law, an agency need not provide copies of records to inmates who are unable to go to the office where the records are kept because of their legal confinement, although it may elect to do so. After July 14, 1992, however, an agency will be required to supply copies of records if the applicant resides outside the county in which the records are located, the applicant precisely describes the records, and the records are readily available within the public agency, upon receipt of a reasonable fee for making copies. OAG 92-94, 1992 Ky. AG LEXIS 98.

A $100 "production cost" fee assessed by the Lottery Corporation was excessive and violative of subsection (2) of this

section where a request for information was not made under the Public Access to Governmental Databases Act, and where the Lottery Corporation was not authorized to unilaterally treat it as a request under that Act without discussion and a meeting of the minds. OAG 93-ORD-44, 1993 Ky. AG LEXIS 74.

In imposing copying charges upon the general public, county clerk may lawfully charge only the specific amount provided by statute, where applicable, and otherwise, only a reasonable fee not exceeding the actual cost of such copies, not including the cost of staff required to furnish copies. OAG 94-38, 1994 Ky. AG LEXIS 267.

Since a police report does not appear to fall within the parameter of a separate fee statute, subsection (2) of this section governs, and any fee charged in excess of the Department's actual cost is a violation of the Open Record's Act. OAG 94-ORD-77, 1994 Ky. AG LEXIS 56.

A sign on the wall of police department stating that requestors will be charged $5.00 for copies, absent independent statutory authority, did not justify the department's charges for copies; therefore, the police department must recalculate the fee it imposes for copies to conform to the requirements of subsection (2) of this section and should also remove the sign which appears on its walls, and replace it with a revised notice which conforms to subsection (2) of this section and KRS 61.876. OAG 94-ORD-77, 1994 Ky. AG LEXIS 56.

The refusal of the State Police to waive the copying charge of case file requested by newspaper reporter was proper since the statutes contain no provision for waiver of such fees and the media has only such right of access to public records as the general public has. OAG 94-ORD-90, 1994 Ky. AG LEXIS 66.

The Department of Personnel may not read an additional requirement, such as entering into a contract, into the law by attempting to compel the Kentucky Association of State Employees (KASE), who had requested a copy of the Department's database, to enter into a contract permitting use of the database for a stated noncommercial purpose, and thus frustrate access to the records on the grounds that KASE lacks the capacity to contract. OAG 95-ORD-9, 1995 Ky. AG LEXIS 2.

Subsection (5) of this section, which provides severe penalties for persons who misrepresent the purpose for which the records they request will be used, applies in the event that the information requested is used, secondarily, for a commercial purpose, if a noncommercial purpose was given by the requester. OAG 95-ORD-9, 1995 Ky. AG LEXIS 2.

A public agency can no longer flatly deny a request for electronically stored records on the grounds that the intended use of the records is a commercial one, or otherwise treat electronically stored records any differently than it treats records in a hard copy format; if the nonexempt records exist in both standard electronic and standard hard copy format, and the requester complies with the requirements of subsection (4) of this section, the agency must permit inspection of and copying of the records in the format designated by the requester. OAG 95-ORD-12.

Nothing in the Open Records Act statutes permits an agency to restrict a person to whom records have been released from reproducing those records or sharing them with others; accordingly a county board of education cannot restrain a recipient from reproducing the records with which she has been furnished. OAG 95-ORD-77, 1995 Ky. AG LEXIS 49.

Although a public agency is not required to create a document that does not already exist in order to satisfy a request, the agency may, of course, elect to do so, and recover its staff costs; however, the mere deletion of exempt information from an existing database does not result in the creation of an entirely new record for which a public agency could recover costs. OAG 95-ORD-82, 1995 Ky. AG LEXIS 52.

Considering that KRS 61.878(4) mandates redaction of excepted material when it is commingled with nonexcepted material and that the reasonable fee provision found in subsection (3) of this section specifically excludes the staff cost required, it is clear that the General Assembly intended that public agencies bear the cost of redaction. OAG 95-ORD-82, 1995 Ky. AG LEXIS 52.

The deletion of juvenile law enforcement records, per KRS 610.320(3) and KRS 61.878, from an existing database of arrest records is not equivalent to the production of a record in a specially tailored or nonstandardized format within the meaning of subsection (3) of this section; thus, the Division of Police is required to discharge this duty under KRS 61.878(4), provide the requested records, and bear the cost of redaction. OAG 95-ORD-82, 1995 Ky. AG LEXIS 52.

The Department may discharge its duty under the Open Records Act by simply opening its records to a person so requesting and allowing him to expend his own time and efforts extracting the information in which he has an interest. Although such person may wish to assert his ancillary right to obtain copies of those records once he has inspected them, providing copies of 5000 documents is, in and of itself, unreasonably burdensome. OAG 96-ORD-155, 1996 Ky. AG LEXIS 39.

This section authorizes public agencies to prescribe a reasonable fee for making copies of nonexempt public records requested for noncommercial purposes which shall not exceed the the actual cost of reproduction. These statutes contain no provision for the waiver of such fees for copies made for public officials under an open records request. In general, all persons have the same standing to inspect and receive copies of public records, and are subject to the same obligations for receipt thereof. Accordingly, a board member may be charged a reasonable fee for copies made pursuant to an open records request. OAG 96-ORD-110, 1996 Ky. AG LEXIS 27.

The Department of Medical Services improperly relied on the OAG 1994 amendments to the Open Records Act in adopting a policy which distinguishes between commercial and noncommercial use of public records. Any open records policy which impedes access to nonexempt public records by more than three (3) working days violates provisions of the Act. OAG 96-ORD-168, 1996 Ky. AG LEXIS 42.

To the extent that the Department for Medicaid Services' records policy incorporates the 1994 amendments to the Open Records Act, it is constitutionally infirm. The Department cannot require applicants to submit a certified statement of commercial or noncommercial use, nor can they assess higher copying charges for records requested for commercial use. OAG 96-ORD-168, 1996 Ky. AG LEXIS 42.

The burden on the public agency to respond in three (3) working days is, not infrequently, an onerous one. Nevertheless, the only exceptions to this general rule are found at KRS 61.872(4) and (5). Unless the person to whom the request is directed does not have custody and control of the records, or the records are in active use, in storage, or are not otherwise available, the agency is required to notify the requester of its decision within three (3) working days, and to provide the requester with timely access to the requested records. OAG 96-ORD-168, 1996 Ky. AG LEXIS 42.

Where response from the Transportation Cabinet, Division of Driver Licensing to a request to inspect various records relating to a client's licensing process initially required payment to a rehabilitation center for forty dollars ($40.00) for an "in-car driver evaluation" performed at the center, later modified to a cost of one dollar ($1.00) per page for the report, the Cabinet violated the reasonable fee provision of the Open Records Act, subsection (3) of this section. The courts and the Office of the Attorney General have determined that a charge of ten cents ($0.10) per page is reasonable for a standard 8-½ inches x 11 inches paper copy. It should also be noted that under KRS 422.317(1), if the Cabinet had not retained a copy or if the requesting party had not proceeded under the Open Records Act, KRS 422.317(1) may have required a release of

the records without charge. OAG 96-ORD-267, 1996 Ky. AG LEXIS 90.

University could not and was not required to furnish former employee records that did not exist; however, the university was obligated to furnish former employee records that had been furnished to the EEOC and KCHR upon prepayment of reasonable copying charges as a public agency cannot withhold public records from an applicant simply because they may be obtained from another source. OAG 97-ORD-87, 1997 Ky. AG LEXIS 35.

The fee charged for copies is limited to the proportionate cost of maintaining copying equipment by purchase or rental and the supplies involved; providing copies of nonexempt public records is not a "sale" of records; it is a compliance with the legislative mandate to make public records open and available for inspection and at a reasonable cost; there is therefore no provision in the Open Records Act that authorizes an agency to charge a sales tax on copies of public records provided to an open records request. OAG 98-ORD-88, 1998 Ky. AG LEXIS 12.

KRS 61.872 and this section contain no provision for waiver of the prepayment requirement for inmates; thus, it is entirely proper for a correctional facility to require prepayment and to enforce its standard policy relative to assessment of charges to inmate accounts, despite the delays this may entail. OAG 99-ORD-30, 1999 Ky. AG LEXIS 39.

A county clerk did not violate the Open Records Act in imposing a one dollar and fifty cents ($1.50) charge for certified copies of official bonds executed by public officials which he furnished in response to an open records request as KRS 64.012 authorized a charge of two dollars ($2.00). OAG 99-ORD-56, 1999 Ky. AG LEXIS 62.

The Department of Workers Claims did not violate the Open Records Act in a request for certain data from the department's coverage/compliance database as the department did not maintain the requested information in the format proposed by the requester and special programming would have been required to fulfill the request. OAG 99-ORD-68, 1999 Ky. AG LEXIS 74.

An agency cannot impose a standard $2.00 fee for copies of reports generated in response to open records requests unless the fee reflects its actual costs, excluding staff costs, or unless there is an independent statutory basis for the fee. OAG 99-ORD-74, 1999 Ky. AG LEXIS 80.

An agency subverted the intent of the Open Records Act, short of denial of inspection, by requiring a requester to pay sales tax for copies of public records in addition to the reasonable fee contemplated by subsection (3) as the provision of records under the act is not a sale of the records. OAG 99-ORD-102, 1999 Ky. AG LEXIS 144.

A university's fifteen cents ($0.15) per page copying fee for open records requests was excessive where the university charged its faculty and students five to eight cents ($0.05 to ($0.10) per copy, while charging those not associated with the university ten cents ($0.10) to use the coin operated machines on campus, and fifteen cents ($0.15) for copies made pursuant to an open records request; the university explained that the graduated rate schedule served to cross-subsidize the discount rate given to its faculty and students, but the Open Records Act does not authorize such a fee arrangement for reproducing copies of public records and, instead, the fee charge must be based upon the agency's actual cost for reproducing records per page, based on the cost of media and mechanical processing. OAG 99-ORD-186, 1999 Ky. AG LEXIS 173.

Although subsection (4)(b) does not, by its express terms, require a requester to disclose her purpose if it is a noncommercial one, such a requirement is implicit; thus, an inquiry by an agency as to whether a request was for a commercial or noncommercial purpose was proper, and a response that an agency would hold in abeyance further response until the requested information was provided was also proper. OAG 99-ORD-222, 1999 Ky. AG LEXIS 218.

As a county failed to establish that its actual cost of reproducing records for copies of public records was twenty-five cents ($0.25) per copy, such a charge was an excessive copying fee. OAG 99-ORD-222, 1999 Ky. AG LEXIS 218.

A Fifteen dollar ($15) fee charged for a copy of a 36″ by 42″ map was excessive to the extent that such fee was not based on the agency's actual cost of making the copy of the map. OAG 00-ORD-74, 2000 Ky. AG LEXIS 82.

Twenty-five cents ($0.25) per copy is an excessive charge for copies of public records. OAG 99-ORD-154, 1999 Ky. AG LEXIS 225.

A correctional institution failed to establish that its actual cost for reproducing a copy of an audio tape was four dollars ($4) and, therefore, it was required to recalculate its copying fee to conform to the requirements of subsection (3) and to charge the inmate accordingly. OAG 99-ORD-159, 1999 Ky. AG LEXIS 230.

To the extent that fifty cents ($0.50) per page copying fee which a fiscal court imposed exceeded its actual costs, the fee was clearly excessive and subverted the intent of the Open Records Act. OAG 99-ORD-163, 1999 Ky. AG LEXIS 233.

The statute is residual and general and applies where there is no other applicable fee statute; if a county clerk furnishes copies of records specifically identified in the Uniform Fee List, which is found at KRS 64.012, the fees charged for copies may be based on that list, but if the clerk furnishes copies of records not identified in the list, he may charge a reasonable fee that does not exceed the actual cost of reproduction, and excluding staff costs. OAG 00-ORD-110, 2000 Ky. AG LEXIS 121.

A charge of one hundred dollars ($100) to serve as a down payment against the anticipated cost of the programming that would be necessary to generate requested data was proper. OAG 00-ORD-165, 2000 Ky. AG LEXIS 160.

A charge by a city for copies of records of twenty-five cents ($0.25) per page was improper where the city failed to establish that its actual cost for reproducing records was twenty-five cents ($0.25) per page, based on the cost of media and mechanical processing. OAG 00-ORD-184, 2000 Ky. AG LEXIS 188.

Because the requester requested information in a specially tailored format, the agencies properly exercised their discretion under KRS 61.874(3) to require payment of its actual costs, as well as its costs for the programming, if the requester elected to proceed under the Open Records Act. The agencies did not violate the provisions of KRS 61.870 through KRS 61.884 by underestimating the actual cost of the programmning. OAG 01-ORD-19, 2001 Ky. AG LEXIS 29.

The city's policy of charging fifty cents ($0.50) per page is not a reasonable copying charge within the meaning of KRS 61.874(3). If a public agency charges more than ten cents ($0.10) per page, it has the burden of establishing that this is not an excessive fee. An agency can only assess a reasonable copying charge for public records not to exceed its actual costs, excluding staff time required. OAG 01-ORD-42, 2001 Ky. AG LEXIS 147.

KRS 61.874(3) directs that the fee charged for copies should be based on the agency's actual expense, not including staff costs. Accordingly, the school system cannot charge for staff time in reproducing a copy of the minutes. Such a charge is not authorized under KRS 61.874(3). The requester should make arrangements to inspect the requested minutes and should only be charged the school system's actual costs of copying the records, which the Superintendent's response indicates is ten cents ($0.10) per page. OAG 01-ORD-43, 2001 Ky. AG LEXIS 148.

Since KRS 61.872(3)(b) and KRS 61.874(1) contain no provision for waiver of the prepayment requirement for inmates, it was entirely proper for the correctional facility to require

prepayment and to enforce its prepayment policy relative to assessment of charges to inmate accounts. OAG 01-ORD-44, 2001 Ky. AG LEXIS 124.

The copying charges of 25 cents per page imposed by the Community Program Center of the Telecommunications Board of Northern Kentucky violated the reasonable fee provision codified at KRS 61.874(3). OAG 01-ORD-50, 2001 Ky. AG LEXIS 223.

Since the General Assembly did not designate a standard format for videotapes, the concept of "standard format" has no place in a discussion of anything other than electronic or hard copy records maintained in the media described, and therefore the agency can only provide a copy of a videotape in the format that the agency maintains the record. OAG 01-ORD-50, 2001 Ky. AG LEXIS 223.

Unless an agency can establish that its actual cost for reproducing records is fifty cents ($0.50) per page, based on the cost of media and mechanical processing as defined in KRS 61.870(7) and (8), the charge is excessive and subverts the intent of the Open Records Act. If the county clerk charges fifty cents ($0.50) per page for records not covered by the Uniform Fee List, it must either substantiate the charge or recalculate its copying fee to conform to the requirements of KRS 61.874(3) and charge for copies of public records accordingly. OAG 01-ORD-91, 2001 Ky. AG LEXIS 227.

Unless the Division of Police can demonstrate that the actual cost it incurs in duplicating a recording of 911 calls and radio transmissions, based on media and mechanical processing costs, but excluding staff cost, is equal to $27.00, it must recalculate its copying charge for audiotapes to conform to the criteria set forth at KRS 61.874(3). The Division may not impose any additional fees for "research time" or time spent in examining the requested information for purposes of determining whether or not any matters contained therein were confidential. OAG 01-ORD-114, 2001 Ky. AG LEXIS 190.

The twenty cents ($0.20) per page copying fee imposed by the city is excessive, and KRS 61.874(3) requires it to adjust its copying fee to reflect its actual costs (four cents ($0.04) per page) or no more than ten cents ($0.10) per page. The city may not seek to defray the costs it incurs for providing free copies of records stored in other physical media (such as cassettes and disks) by assessing higher copying charges for records reproduced in hard copy format. OAG 01-ORD-136, 2001 Ky. AG LEXIS 51.

Although they are not required to do so, public agencies may agree to extract electronically stored information to conform to the parameters of an open records request and in so doing, incur "actual costs" in addition to media and mechanical processing costs. Such charges would constitute an actual cost to the agency that could properly be passed along to the requester. The fifty dollar ($50) per hour charge which the department seeks to impose is consistent with KRS 61.874(3) only if it reflects actual costs incurred, and can be substantiated. OAG 01-ORD-158, 2001 Ky. AG LEXIS 160.

A copying charge of $279.90, $208.00 of which is based on an hourly labor charge, is unreasonable and must be reduced to ten cents ($0.10) per page, excluding labor costs, unless the county can substantiate actual costs in excess of this amount. OAG 01-ORD-193, 2001 Ky. AG LEXIS 234.

The fact that the Treasury can, at additional programming costs, extract the unclaimed property information the requester seeks does not mean that it must. Public agencies are not required to extract electronically stored information to conform to the parameters of an open records request, but may do so at their discretion. The Treasury has properly exercised its discretion in the negative. OAG 02-ORD-48, 2002 Ky. AG LEXIS 24.

The information the requester was required to submit in the "Request for Reproduction of PVA Public Records," relating to his specific purpose in requesting the records, and including the "Non-Commercial Applicant's Certified Statement," exceeded the permissible limits of KRS 61.872 and KRS 61.874(4)(b). Further, a request submitted by an individual acting on behalf of a political candidate, whether paid or unpaid, cannot be characterized as a request submitted for a commercial purpose. OAG 02-ORD-89, 2002 Ky. AG LEXIS 105.

Since no evidence has been submitted to substantiate that the Board's actual costs for reproducing copies of its public records is 25 cents per page, the 25 cents per page charge is an excessive copying fee. Unless the Board can demonstrate that its actual cost for reproducing records, excluding staff costs, is greater than ten cents ($0.10) per page, it must recalculate its copying fee to conform to the requirements of KRS 61.874. OAG 02-ORD-198, 2002 Ky. AG LEXIS 144.

Kentucky State Reformatory is required by KRS 61.874(1) to supply the inmate with copies of the record he had already been permitted to inspect. OAG 02-ORD-210, 2002 Ky. AG LEXIS 155.

Since no evidence has been submitted to substantiate that the Jail's actual costs for reproducing copies of its public records, not including staff costs, is 15 cents per page, the 15 cents per page charge is an excessive copying fee. Unless the Jail can demonstrate that its actual cost for reproducing records, excluding staff costs, is greater than ten cents ($0.10) per page, it must recalculate its copying fee to conform to the requirements of KRS 61.874. OAG 02-ORD-217, 2002 Ky. AG LEXIS 145.

Although the county clerk substantiated a copying fee of 15 cents per page and may impose a fee in this amount, the better practice is to impose a fee of 10 cents per page inasmuch as this fee strikes a reasonable balance between the agency's right to recover its actual costs, excluding staff costs, and the public's right of access to copies of records at a nonprohibitive charge. OAG 02-ORD-218, 2002 Ky. AG LEXIS 177.

While the Department's entire database may contain more or less information than the requester seeks, it clearly contains information that is responsive to her request and the Department is obligated to afford her access to it after redacting individual Medicaid recipient information and other information made confidential by federal enactment. Redaction of the latter information from an existing database is not equivalent to nonobligatory creation of a new record. OAG 03-ORD-04, 2003 Ky. AG LEXIS 16.

The Property Valuation Office's charge for records requested for a commercial purpose were reasonable. The Revenue Cabinet indicated that the amount charged was $32.00, an amount calculated by reference to the PVA Open Records Commercial Fee Guidelines issued by the Cabinet in accordance with the Open Records Act and KRS 133.047. OAG 03-ORD-25, 2003 Ky. AG LEXIS 7.

It is not appropriate for the department to compel the requester to pay the additional cost of mailing the records by certified/return-receipt mail. The Open Records Act does not require the agency to use this method of mailing, and the agency does so at its own election. There is no support in the Act for the proposition that the cost of access to public records by mail can properly be driven up by the use of certified mail and the consequent imposition of additional postage costs, however valid the agency's reasons may be for electing to use certified mail. OAG 03-ORD-50, 2003 Ky. AG LEXIS 103.

It is entirely proper for the City to require prepayment of a reasonable copying charge that does not exceed the actual cost of duplication, not including staff costs, and to enforce a standard policy relative to assessment of those charges. Moreover, KRS 61.872 and KRS 61.874 contain no provision for the waiver of such fees for any party. OAG 03-ORD-57, 2003 Ky. AG LEXIS 137.

Discharge of the duties imposed by KRS 61.870 et seq. is required by law and is as much a legal obligation of a public agency as the provision of services to the public. If the Clerk is to act as the City's official custodian of records, she must

accord her duties as such the same status as her other duties during regular business hours, including the duty to make copies at a cost not to exceed the actual cost of reproduction, but not including the cost of staff required. This is not a courtesy extended to the public by a public agency, but a legal duty imposed on the agency. OAG 03-ORD-83, 2003 Ky. AG LEXIS 61.

There is no error in the policies and procedure of the Luther Luckett Correctional Complex and the Department that require that copies of records requested pursuant to an open records request be paid for by check or money order and not by cash. OAG 03-ORD-174, 2003 Ky. AG LEXIS 144.

Under the Open Records Act, a correctional facility may properly require prepayment for copies of public records that are requested by inmates. OAG 03-ORD-189, 2003 Ky. AG LEXIS 265.

The agency may, as a matter of discretion, tailor its database to conform to the parameters of the request, and if it does so recover staff costs as well as actual cost incurred. If, however, it exercises its discretion not to tailor its database to satisfy the request, it must produce a copy of that database in standard format, as defined at KRS 61.874(2)(b), and assess a copying charge equivalent to its actual costs, including medium and mechanical processing costs, but not including staff costs or the costs associated with redaction of statutorily protected fields of information. OAG 03-ORD-214, 2003 Ky. AG LEXIS 120.

By enacting KRS 237.110(8), the General Assembly expressly restricted disclosure of the public records requested to "hard copy form only." Since KRS 61.878(1)(l) exempts from disclosure public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, the Kentucky State Police properly denied the request to produce the requested list of names of concealed permit holders in electronic format. OAG 03-ORD-222, 2003 Ky. AG LEXIS 80.

Although the city may properly require the requester to prepay reasonable copying and postage charges as a condition to mailing him copies of these audit reports, it cannot impose a flat charge of ten dollars ($10) unless it can substantiate that this charge reflects the actual cost of reproduction, including the costs of the media and any mechanical processing costs incurred, but not including the cost of staff required. OAG 03-ORD-224, 2003 Ky. AG LEXIS 122.

KRS 61.874(4)(a) expressly authorizes public agencies to recover the cost of staff required to produce a copy of a public record, and, in this respect, markedly differs from KRS 61.874(3), expressly excluding "the cost of staff required." The statute fully supports imposition of an hourly rate for staff time expended in the assignment and research of an open records request, as well as the retrieval, redaction, and reproduction of responsive records, and ultimate review and disposition of that request. OAG 04-ORD-54, 2004 Ky. AG LEXIS 149.

Because the City failed to substantiate that its $.25 per square foot copying charge reflects the City's actual costs, the $2.50 copying charge imposed for the blueprints was excessive, and the City must, pursuant to KRS 61.874(3), recalculate its copying fee to reflect its actual costs of approximately $.80 per square foot or approximately $.50 per sheet ($.80 per square foot by 6 square feet as opposed to $.25 per square foot by 6 square feet). To this, the City may add the $.97 per sheet commercial scanning charge for a total cost of no more than $1.50 per copy. OAG 04-ORD-217, 2004 Ky. AG LEXIS 128.

Although an agency may properly exercise its discretion either affirmatively or negatively in deciding whether to provide online access to electronic records, having exercised that option affirmatively relative to one (1) or more requesters, it must exercise the option affirmatively as to all requesters who are willing and able to abide by the terms and conditions of online access established by the agency. OAG 05-ORD-25, 2005 Ky. AG LEXIS 142.

Unless a city can substantiate that its actual costs exceed ten cents ($0.10) per page, it must recalculate its copying fee to conform to the requirements found at KRS 61.874(3); there is no support in existing legal authority for the fifty cents ($0.50) per page copying fee that the city currently imposes. OAG 05-ORD-70, 2005 Ky. AG LEXIS 296.

A letter prepared by a public agency employee, an attorney, to opposing counsel in a civil action is clearly a public record, notwithstanding the fact that it is maintained in an attorney case file originating from the representation of a public employee in their individual capacity. OAG 05-ORD-72, 2005 Ky. AG LEXIS 207.

The Personnel Cabinet subverted the intent of the Open Records Act, short of denial of inspection, by requiring a requester to pay programming costs of $210 for production of payroll records for the Office of Security Coordination. OAG 05-ORD-116, 2005 Ky. AG LEXIS 84.

Where requested records have been retrieved and produced for inspection and the requester has identified and separated into "stacks" the records she wishes to have copied, the "burden" thereafter associated with production of copies of the records is one that agencies are statutorily required to shoulder per KRS 61.874(1). It is not incumbent on the requester to identify specific records for copying. OAG 05-ORD-201, 2005 Ky. AG LEXIS 284.

County Clerk fully discharged her duties under the Open Records Act by providing on-site access to the requester, or his representative, to inspect and copy requested records and she did not violate Act in denying request for copies of the records in an electronic format, when records were not maintained in such format. OAG 06-ORD-041, 2006 Ky. AG LEXIS 211.

KRS 61.874(6) authorizes public agencies to make online access available at their discretion and to require a party wishing to access records by electronic means to enter into a contract. The agency must retain the corollary right to terminate the contract if the party is found to have violated its terms. Indeed, KRS 61.8745 establishes a damages section for persons who violate, inter alia, KRS 61.874(6). OAG 2006-ORD-041, 2006 Ky. AG LEXIS 211.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Kentucky Business Enterprises, 782 KAR 1:010.

Kentucky Bench & Bar.
McClelland, A Never-ending struggle between competing policies: The Kentucky Open Records Act, Vol. 61, No. 4, Fall 1997, Ky. Bench & Bar 25.

Northern Kentucky Law Review.
Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

61.8745. Damages recoverable by public agency for person's misuse of public records.

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;

(2) Costs and reasonable attorney's fees; and

(3) Any other penalty established by law.

History.
Enact. Acts 1994, ch. 262, § 7, effective July 15, 1994.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Kentucky Business Enterprises, 782 KAR 1:010.

61.8746. Commercial use of booking photographs or official inmate photographs prohibited — Conditions — Right of action — Damages.

(1) A person shall not utilize a booking photograph or a photograph of an inmate taken pursuant to KRS 196.099 originally obtained from a public agency for a commercial purpose if:

(a) The photograph will be placed in a publication or posted on a Web site; and

(b) Removal of the photograph from the publication or Web site requires the payment of a fee or other consideration.

(2) Any person who has requested the removal of a booking photograph or photo taken pursuant to KRS 196.099 of himself or herself:

(a) Which was subsequently placed in a publication or posted on a Web site; and

(b) Whose removal requires the payment of a fee or other consideration;

shall have a right of action in Circuit Court by injunction or other appropriate order and may also recover costs and reasonable attorney's fees.

(3) At the court's discretion, any person found to have violated this section in an action brought under subsection (2) of this section, may be liable for damages for each separate violation, in an amount not less than:

(a) One hundred ($100) dollars a day for the first thirty (30) days;

(b) Two hundred and fifty ($250) dollars a day for the subsequent thirty (30) days; and

(c) Five hundred ($500) dollars a day for each day thereafter.

If a violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation.

History.
2016 ch. 101, § 1, effective July 15, 2016.

61.876. Agency to adopt rules and regulations — Standardized form to request public records.

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to ensure efficient and timely action in response to application for inspection, and such rules and regulations shall include but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;

(b) The title, mailing address, and e-mail address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display in a prominent location accessible to the public, including on its Web site:

(a) A copy of its rules and regulations pertaining to public records;

(b) The mailing address, e-mail address, and phone number of the official custodian of the records or his or her designee to which all requests for public records shall be made; and

(c) The form developed by the Attorney General under subsection (4) of this section that may be used to request public records.

(3) The Finance and Administration Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A, pertaining to public records, for all state administrative agencies, except for the Legislative Research Commission and the Administrative Office of the Courts, each of which may promulgate administrative regulations for their respective agencies, pertaining to public records.

(4) The Attorney General shall promulgate by administrative regulation under KRS Chapter 13A a standardized form that may be used to request public records from a public agency. The form shall not allow any request for information other than the following:

(a) The name of the requesting party;

(b) The mailing or e-mail address of the requesting party, if copies of records are requested;

(c) Whether the request is for a commercial purpose;

(d) A description of the documents requested;

(e) A statement that the person making the request:

1. Is a resident of the Commonwealth under KRS 61.870(10); and

2. The statement includes the manner in which the requester is a resident of the Commonwealth under KRS 61.870(10)(a) to (f); and

(f) The signature of the requesting party.

(5) The Attorney General shall make the form readily available to the public, including on the Attorney General's Web site. The form shall be accepted by every public agency for any request for public records made on or after June 29, 2021.

History.
Enact. Acts 1976, ch. 273, § 4; 2021 ch. 160, § 3, effective June 29, 2021.

NOTES TO DECISIONS

1. Application to Courts.
Some details of the Open Records Law present interferences inconsistent with the orderly conduct of court business, to wit, the requirement that courts adopt and post rules and regulations, that they conform to the procedure set forth in KRS 61.880, and that as to the accessibility of their records they adhere to the list of exceptions stated in KRS 61.878, and such requirements will not be accepted. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

OPINIONS OF ATTORNEY GENERAL.

This section was intended for agencies whose primary function was not the keeping of records and who therefor need to adopt rules and regulations and the Circuit Court Clerk is not required to adopt regulations pertaining to records under this section. OAG 76-431.

This section is so detailed that an agency needs only to adopt rules as to its principal office, its regular office hours, its official custodian, fees to be charged, and the procedures to be followed in requesting public records. OAG 78-340, 1978 Ky. AG LEXIS 399.

This section mandates that each public agency shall adopt rules pertaining to access to public records and failure to do so constitutes a technical violation of the statute, but there is no penalty provided for failure to adopt and post regulations. OAG 78-340, 1978 Ky. AG LEXIS 399.

Where a public agency has not adopted its own rules and regulations with respect to the storage of agency records, the uniform regulations adopted by the Department of Finance (now Finance and Administration Cabinet) would apply to determine where such records can be kept; thus, in the absence of agency regulations, the records of the board of physical therapy may be kept in the home of the executive director of the board when the residence is designated as the official office of the agency and the responsibility for the keeping of the records is placed on the executive director as the official custodian, with no further precautions necessary; moreover, the listing of the home address in the state directory and city telephone directory serves as sufficient notice as to where the records may be found and inspected under the Open Records Law. OAG 81-269, 1981 Ky. AG LEXIS 159.

The provisions of KRS 61.872, 61.874 and 61.876, when taken together, require that public agencies have a policy of allowing inspection of public records, of protecting the records, of preventing excessive disruption of the agency's functions, of providing copies upon request, of providing efficient and timely action in response to applications for inspection and of charging a reasonable fee based on the actual cost of making copies not including the cost of staff required; these three (3) sections allow public agencies a certain amount of leeway as to handling requests for records by mail and mailing copies to requesters who have not personally inspected the records and selected the items which they want copied. OAG 83-204, 1983 Ky. AG LEXIS 293.

Public agencies should accommodate requesters whenever they can within the bounds of the efficient operation of their office. Whenever only one (1) item is requested, or a few precisely described items which are readily available within the office, and no special search is required, it will be more convenient both to the agency and to the requester to answer the request through the mail; to require the requester to appear in person at the office of the agency in such a case would not be more convenient to either party and would only inhibit the intended purpose of the Open Records Law. OAG 83-204, 1983 Ky. AG LEXIS 293.

If a public agency's rules and regulations do not conform to KRS 61.870 to 61.884 as required by this section, the rules and regulations promulgated by the Finance and Administration Cabinet then apply to that public agency until the agency brings its existing rules and regulations into conformance with the Open Records Act. OAG 84-300, 1984 Ky. AG LEXIS 86.

Attorney General opined that Custodian of Records' actions, in denying inmate's request for a copy of his transfer authorization form pursuant to KRS 61.880 because inmate's account had no money to cover the reproduction costs, were entirely consistent with the Open Records Act because a public agency is authorized to prescribe reasonable fees for making copies of public records pursuant to subsection (1)(c) of this section and KRS 61.874(2). OAG 91-210, 1991 Ky. AG LEXIS 210.

City manager's abusive conduct created a hostile atmosphere which rendered the facilities provided by the city unsuitable for inspection. OAG 93-ORD-39, 1993 Ky. AG LEXIS 59.

While a requester cannot expect an agency to provide facilities offering the enforced silence of a library, he may certainly expect that those facilities will afford him adequate opportunity to inspect the records without interruption, and without harassment. OAG 93-ORD-39, 1993 Ky. AG LEXIS 59.

While there is certainly an essential relationship between KRS Chapter 61, the Open Records Act, and KRS Chapter 171, state archives and records, insofar as effective records management facilitates efficient governmental operation and public accountability, this section requires each public agency to adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 which are aimed at insuring that each agency will educate the public on its particular policies and practices relative to open records; the records retention and disposal schedule envisioned by KRS Chapter 171 does not correspond to the rules and regulations for public agencies mandated by this section, nor are agencies required to formulate these rules and regulations under the direction of the Department for Libraries and Archives. OAG 94-ORD-12, 1994 Ky. AG LEXIS 16.

Since a police report does not appear to fall within the parameter of a separate fee statute, subsection (2) of this section governs, and any fee charged in excess of the Department's actual cost is a violation of the Open Record's Act. OAG 94-ORD-77, 1994 Ky. AG LEXIS 56.

A sign on the wall of police department stating that requestors will be charged $5.00 for copies, absent independent statutory authority, did not justify the department's charges for copies; therefore, the police department must recalculate the fee it imposes for copies to conform to the requirements of KRS 61.874(2) of this section and should also remove the sign which appears on its walls, and replace it with a revised notice which conforms to KRS 61.874(2) and this section. OAG 94-ORD-77, 1994 Ky. AG LEXIS 56.

Although the county clerk is required by KRS 61.878(4) to make all nonexempt portions of public records available for inspection or copying, the clerk is not required to designate an employee to assist the requesting party in inspecting nonexempt records stored in electronic or hardcopy format. OAG 95-ORD-43, 1995 Ky. AG LEXIS 28.

A county board of education did not violate the statute where the requester sought to inspect voluminous records, many of which were not immediately accessible, and the board arranged for the requester to inspect the documents over a two (2) day period beginning 20 days after the statutory deadline for inspection. OAG 99-ORD-26, 1999 Ky. AG LEXIS 43.

It is incumbent on all public agencies to designate an employee to fill the role of official custodian and to adopt and post rules and regulations identifying that employee as official custodian so that open records requests can be directed to him for processing and final agency action; if he does not have custody or control of the public record requested, he must notify the requester and furnish the name and location of the official custodian of those records. OAG 99-ORD-30, 1999 Ky. AG LEXIS 39.

A board of education could not restrict the requester's right of on-site access to three (3) hours on a single day, notwithstanding that the board elected to assign an employee and a law enforcement officer to monitor the requester's inspection of the records, where the board acknowledged that no restraining order was issued against the requester to prevent him from entering the board's offices. OAG 99-ORD-44, 1999 Ky. AG LEXIS 52.

Where a request for records was submitted to the director of a corrections education center at a correctional complex, a

position created by a memorandum of agreement between the Department of Corrections and the Kentucky Community Technical College System (KCTCS), the director's response that the requester that he should submit his request to KCTCS's official records custodian did not constitute an intentional subversion of the Open Records Act. OAG 00-ORD-12, 2000 Ky. AG LEXIS 11.

An agency may properly require all records requests to be routed through its official custodian to ensure the timely and orderly processing of open records requests. OAG 00-ORD-73, 2000 Ky. AG LEXIS 83.

The Board's policy of destruction of open records requests, which apparently the Board considers to be general correspondence, would not be inconsistent with Records Retention Schedule, Series No. M0002, which states that general correspondence may be retained no longer than two (2) years. OAG 03-ORD-24, 2003 Ky. AG LEXIS 130.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Business Enterprises, 782 KAR 1:010.

Northern Kentucky Law Review.

2012 Kentucky Survey Issue: Article: Candid Kentucky: The Commonwealth's Devotion to an Open Government, 39 N. Ky. L. Rev. 45 (2012).

61.878. Certain public records exempted from inspection except on order of court — Restriction of state employees to inspect personnel files prohibited.

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c)1. Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for or the administration of a loan or grant;

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information could pose an articulable risk of harm to the agency or its investigation by revealing the identity of informants or witnesses not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation or state law;

(*l*) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190;

(m)1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

2. As used in this paragraph, "terrorist act" means a criminal act intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;

b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law;

(o) Records of a procurement process under KRS Chapter 45A or 56. This exemption shall not apply after:

1. A contract is awarded; or

2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited;

(p) Client and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31;

(q) Except as provided in KRS 61.168, photographs or videos that depict the death, killing, rape, or sexual assault of a person. However, such photographs or videos shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, or a mutually agreed upon location, at the request of;

1.a. Any victim depicted in the photographs or videos, his or her immediate family, or legal representative;

b. Any involved insurance company or its representative; or

c. The legal representative of any involved party;

2. Any state agency or political subdivision investigating official misconduct; or

3. A legal representative for a person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident. The person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident or their immediate family shall not be permitted to have access to the photographs or videos;

(r) Records confidentially maintained by a law enforcement agency in accordance with a wellness program, including an early intervention system, as described in KRS 15.409; and

(s) Communications of a purely personal nature unrelated to any governmental function.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him or her. The records shall include but not be limited to work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

(6) When material is made available pursuant to a request under subsection (1)(q) of this section, the public agency shall not be required to make a copy of the recording except as provided in KRS 61.169, and the requesting parties shall not be limited in the number of times they may view the material.

History.

Enact. Acts 1976, ch. 273, § 5; 1986, ch. 494, § 24, effective July 15, 1986; 1992, ch. 163, § 5, effective July 14, 1992; 1994, ch. 262, § 5, effective July 15, 1994; 1994, ch. 450, § 34, effective July 15, 1994; 2005, ch. 45, § 6, effective March 16, 2005; 2005, ch. 93, § 3, effective March 16, 2005; 2013, ch. 32, § 3, effective June 25, 2013; 2018 ch. 176, § 5, effective July 14, 2018; 2019 ch. 151, § 1, effective June 27, 2019; 2021 ch. 78, § 1, effective March 23, 2021; 2021 ch. 160, § 4, effective June 29, 2021; 2023 ch. 168, § 2, effective June 29, 2023; 2025 ch. 97, § 1, effective June 27, 2025.

Compiler's Notes.

Section 38 of Acts 1994, ch. 450 provides that: "It is the intent of the General Assembly that the amendment to Section 34 of this Act shall be retroactive to July 15, 1992."

Legislative Research Commission Notes.

(6/20/2005). The Office of the Kentucky Attorney General requested that amendments in 2005 Ky. Acts ch. 45, sec. 6, and ch. 93, sec. 3, to the arrangement of the paragraphs of subsection (1) of this section be changed. The change was requested "in the interest of preventing confusion to the public and public agencies" and was made by the Statute Reviser under the authority of KRS 7.136.

2012-2014 Budget Reference.

See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, M, 9, (2) at 1142.

NOTES TO DECISIONS

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1. Construction.

Notwithstanding that KRS 61.884 allows any person to have access to any public record relating to him or in which he is mentioned by name, a citizen was not entitled to a copy of a tape recording of a 911 call reporting that the citizen had threatened to kill his own wife and other members of his family, as the disclosure of such recording would have constituted a clearly unwarranted invasion of personal privacy of the 911 caller in violation of this section. Bowling v. Brandenburg, 37 S.W.3d 785, 2000 Ky. App. LEXIS 22 (Ky. Ct. App. 2000).

Fact that a complaint against a police officer was considered at a closed hearing, as required by a legislative enactment, did not mean that the complaint which gave rise to the hearing was exempt from public disclosure under KRS 61.878(1)(l). Palmer v. Driggers, 60 S.W.3d 591, 2001 Ky. App. LEXIS 1165 (Ky. Ct. App. 2001).

While the interests reckoned on the privacy side of the balance generally do not dissipate, and in some instances even grow stronger, with the passage of time, it is no less true that the public's interest in knowing what the government is up to includes a strong historical interest in knowing what the government was up to; the passage of time, therefore, while a factor relevant to the balancing of interests required by the privacy exemption, will seldom be dispositive in-and-of itself. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

University violated the Open Records Act because the university did not (1) show a specific exemption applied to a particular record, (2) redact personally identifying information, or (3) show records were exempt through a proper index, and (4) refused to let the Attorney General review redacted records. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

2. Legislative Intent.

To infer that subdivision (1)(a) of this section may be invoked only where the subject information is already protected under a different paragraph would require a reading of the statute which is, to say the least, esoteric — and which, incidentally, would render subdivision (1)(a) a nullity. A plain reading of subdivision (1)(a) reveals an unequivocal legislative intention that certain records, albeit they are "public," are not subject to inspection, because disclosure would constitute a

clearly unwarranted invasion of personal privacy. Judging by order, if nothing more, one might say that subdivision (1)(a) is the foremost exception to the disclosure rule. Certainly it is an independently viable exception, not subordinate to any other, and not restricted to preliminary materials or non-final matters. Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co., 826 S.W.2d 324, 1992 Ky. LEXIS 35 (Ky. 1992).

Since corporation sought investment tax credits through Kentucky Industry Revitalization Authority (KIRA) which was established by and administered through KRS Chapter 154 and the information submitted by corporation to KIRA was done in conjunction with said application for the tax credits and since by amending the Open Records Act, specifically KRS 61.878 (1)(c)(2)(b), to include documents submitted pursuant to KRS Chapter 154, it is evident that the Legislature sought to protect those companies which participate in the revitalization and development of industry in Kentucky, such documents were exempt from disclosure. Hoy v. Kentucky Indus. Revitalization Auth., 907 S.W.2d 766, 1995 Ky. LEXIS 125 (Ky. 1995).

The Legislature in adopting the open records law clearly intended to grant any member of the public as much right to access to information as the next; the only relevant public interest in disclosure to be considered is the extent to which disclosure would serve the principle purpose of the Open Records Act. Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994).

In construing the term "party" in subsection (1) of this section, the appellate court attached significance to the Legislature's word choice, which was "party" not "person" and interpreted this to mean that a newspaper seeking to inspect records of a prison inmate was not a "party" in the litigation involving the inmate; thus, this section was inapplicable, and the documents requested were open for inspection pursuant to KRS 61.872. Department of Corrections v. Courier-Journal & Louisville Times, 914 S.W.2d 349, 1996 Ky. App. LEXIS 10 (Ky. Ct. App. 1996).

General Assembly did not intend to mandate an iron rule of non-disclosure whenever an exemption contained in the Kentucky Open Records Act applies because such a rule would run counter to the principle, fundamental in the law, that rights, even fundamental rights, may be waived, and the Act's express policy, is the free and open examination of public records. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

3. Attorney-Client Privilege.

The Governor's administration was properly ordered to release service description statements on attorney billing records reflecting the general nature of legal services rendered by nongovernmental lawyers retained in connection with an investigation of hiring practices. Such statements were not protected by the attorney-client privilege of KRE 503, and the trial court's solution of allowing the administration to submit descriptions it believed to be privileged for *in camera* review balanced the administration's interest in the confidentiality of privileged materials and the public interest in disclosure. Commonwealth v. Scorsone, 2008 Ky. App. LEXIS 18 (Ky. Ct. App.), op. withdrawn, sub. op., 251 S.W.3d 328, 2008 Ky. App. LEXIS 40 (Ky. Ct. App. 2008).

Blanket redaction of descriptions of particular services rendered by nongovernment lawyers to various agencies in the Governor's administration was improper under the Open Records Act, KRS 61.870 to 61.884, as the attorney-client privilege under KRE 503 did not apply to every communication between an attorney and a client. Commonwealth v. Scorsone, 251 S.W.3d 328, 2008 Ky. App. LEXIS 40 (Ky. Ct. App. 2008).

4. Application to Courts.

If subsection (2) of this section means materials and data in the process of being accumulated, or which already have been accumulated, to the end that the court may select from it such portions as it deems pertinent for comparison with the facts of a case or cases to be reviewed by it, then a compliance with the statute would interfere with the court's work. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

Some details of the Open Records Act present interferences inconsistent with the orderly conduct of court business, to wit, the requirement that courts adopt and post rules and regulations, that they conform to the procedure set forth in KRS 61.880, and that as to the accessibility of their records they adhere to the list of exceptions stated in this section, and such requirements will not be accepted. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

5. Standard for Nondisclosure.

In light of the clear recognition of an individual's right of privacy in Kentucky, the question of whether, absent a court order, information should be withheld from disclosure pursuant to subdivision (1)(a) of this section, is subject to a test of balancing the interests of the parties as well as those of the public, measured by the standard of a reasonable man. Board of Education v. Lexington-Fayette Urban County Human Rights Com., 625 S.W.2d 109, 1981 Ky. App. LEXIS 302 (Ky. Ct. App. 1981).

Where county attorney did not attempt to establish that disclosure of records relating to child support payments requested by attorney representing father of minor child would constitute a clearly unwarranted invasion of personal privacy, and where county attorney did not reference relevant state or federal law barring disclosure or explain its application to the disputed records, county attorney's response failed to conform to KRS 61.880(2)(c) and KRS 61.882(3). Edmondson v. Alig, 926 S.W.2d 856, 1996 Ky. App. LEXIS 124 (Ky. Ct. App. 1996).

This section provides the proper standard for determining whether records may be excluded from disclosure in administrative hearings, such as those provided for under the Health Care Acts of 1994: "if a document is confidential or proprietary, and that disclosure to competitors would give them substantially more than a trivial unfair advantage, the document should be protected from disclosure to those who are not parties to the proceeding." Southeastern United Medigroup v. Hughes, 952 S.W.2d 195, 1997 Ky. LEXIS 90 (Ky. 1997), overruled in part, Hoskins v. Maricle, 150 S.W.3d 1, 2004 Ky. LEXIS 196 (Ky. 2004).

Records that a fired program coordinator requested from an urban county government were privileged as information obtained during an investigation conducted by a law firm that was acting as the urban government's attorney; therefore, the information was not discoverable. Meriwether v. Lexington-Fayette Urban County Gov't, 2002 Ky. App. LEXIS 1 (Ky. Ct. App. 2002).

Department of Correction's argument regarding the unreasonable burden of complying with open records requests of inmates as a whole class of people missed the mark because the unreasonable burden language in KRS 61.872(6) focused on a singular "application," not a group of applications from an entire class of applicants. Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008).

Because the Circuit Court never determined whether certain requested materials were subject to one of the fourteen exclusions listed in KRS 61.878(1), the matter had to be remanded to the Circuit Court to make a determination as to whether the materials an attorney requested were specifically excluded under one or more of the fourteen listed exclusions. Wyrick v. Dep't of Revenue, 2008 Ky. App. LEXIS 169 (Ky. Ct. App. 2008), aff'd, 323 S.W.3d 710, 2010 Ky. LEXIS 260 (Ky. 2010).

Since the privacy interests in not being identified by personal information was almost always substantial and the public interest in disclosure rarely so, the city's categorical redaction of such information was a reasonable application of KRS 61.878(1)(a). Ky. New Era v. City of Hopkinsville, 415 S.W.3d 76, 2013 Ky. LEXIS 644 (Ky. 2013).

Kentucky State Police violated the Open Records Act, Ky. Rev. Stat. Ann. § 61.870 et seq., by failing to produce its entire Uniform Citation File database when requested by a reporter where the time and manpower required to separate exempt material, standing alone, was not sufficiently clear and convincing evidence to show an unreasonable burden under Ky. Rev. Stat. Ann. § 61.872(6). Moreover, the undisputed evidence noted that the necessary categorical extractions could be performed for $15,000, and electronically separating exempt material was not equivalent to creating a new record given the mandate in Ky. Rev. Stat. Ann. § 61.878(4). Commonwealth v. Courier Journal, 601 S.W.3d 501, 2020 Ky. App. LEXIS 42 (Ky. Ct. App. 2020).

6. Personnel Files.

There is no unqualified right for one governmental entity to examine the total personnel files of another governmental entity; accordingly, where the Human Rights Commission sought all personnel records of complainant and three (3) other school security officers in an employment promotion sex discrimination case, the Board of Education need only disclose such information as remains after it "sanitizes" the records, pursuant to subsection (3) of this section, to remove material not germane to the action. Board of Education v. Lexington-Fayette Urban County Human Rights Com., 625 S.W.2d 109, 1981 Ky. App. LEXIS 302 (Ky. Ct. App. 1981).

In a case where a newspaper sought disclosure, pursuant to the Open Records Act, KRS 61.870 et seq., of performance evaluations of an employee who was convicted of theft arising from his employment with an agency, redaction of the records to remove truly personal information was the best solution. Cape Publ'ns v. City of Louisville, 191 S.W.3d 10, 2006 Ky. App. LEXIS 101 (Ky. Ct. App. 2006).

Appellant was not entitled to inspect the personnel file of the prosecuting attorney in appellant's criminal case under the Kentucky Open Records Act because disclosure amounted to a clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a) and served no public purpose. Valentine v. Pers. Cabinet, 322 S.W.3d 505, 2010 Ky. App. LEXIS 139 (Ky. Ct. App. 2010).

7. Investigative Reports.

Although KRS 17.150(5) provides for common remedies by establishing that "[t]he provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section," such provision does not automatically equate investigative reports relating to prosecutions (governed by KRS 17.150(2)) with those compiled for administrative adjudications (governed by subdivision (1)(f) of this section); these remain separate matters. Louisville v. Courier-Journal & Louisville Times Co., 637 S.W.2d 658, 1982 Ky. App. LEXIS 232 (Ky. Ct. App. 1982).

The investigative files of the internal affairs unit of a city police department were exempt from public inspection as preliminary under subsections (1)(g) and (h) of this section; this exemption did not extend to the complaints against a police officer which initially spawned the investigations. The public upon request had a right to know what complaints had been made and the final action taken by the chief thereupon. Louisville v. Courier-Journal & Louisville Times Co., 637 S.W.2d 658, 1982 Ky. App. LEXIS 232 (Ky. Ct. App. 1982).

County's redaction of a suspect's identity from a disclosed police investigation file was proper under circumstances in which the suspect was not charged with or arrested for the alleged rape investigated; although a newspaper maintained that the public had a legitimate interest in monitoring police conduct and in ensuring that the investigation was handled properly, the newspaper had been provided some 900 pages of documents concerning the investigation, and had never established or even maintained that these documents were insufficient to fully investigate the police conduct, and failed to show how disclosure of the suspect's identity would have furthered such an interest under the facts of this case. The suspect's intrinsic personal privacy interest outweighed the nebulously asserted public interest, and the KRS 61.878(1)(a) personal privacy exemption applied. Lexington H-L Servs. v. Lexington-Fayette Urban County Gov't, 297 S.W.3d 579, 2009 Ky. App. LEXIS 51 (Ky. Ct. App. 2009).

Proffer given to the Kentucky Office of the Attorney General relating to a company's business practices was not exempt from disclosure under KRS 61.878(1)(h) because there was no showing that the disclosure would have harmed the agency. Lawson v. Office of the Atty., 2012 Ky. App. LEXIS 44 (Ky. Ct. App. 2012), aff'd, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

Circuit court properly affirmed an Attorney General's opinion on an Open Records Act request that the audit documents at issue were subject to disclosure because the preliminary-records exception did not apply where a university took its final action based upon the information revealed during the audits, the audits were not prepared or conducted under the direction of counsel or intended to be disclosed only to counsel for the purposes of preparing legal advice, and the audit documents were not subject to the work-product doctrine since they were prepared in the course of the university's normal business oversight of a clinic's operation, and only remotely in anticipation of potential litigation. Univ. of Ky. v. Lexington H-L Servs., 579 S.W.3d 858, 2018 Ky. App. LEXIS 238 (Ky. Ct. App. 2018).

Circuit court made an erroneous factual conclusion that all the records in the investigation file were covered by the Family Educational Rights and Privacy Act (FERPA) because although the university was prohibited from releasing for the Attorney General's in camera review education records with unredacted personally identifying information, not all the records requested were education records, and FERPA did not prohibit their release. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Although the Family Educational Rights and Privacy Act precluded a university from releasing to a student newspaper unredacted education records contained in a Title IX of the United States Education Amendments of 1972 investigation file, the circuit court's finding that all the requested records were exempt from disclosure was not supported by substantial evidence because some records were not directly related to any student, such as a camera manual, University policies, and scheduling notes. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

8. Preliminary Materials.

Once final disciplinary action is taken by the Board of Medical Licensure, any complaint, report, memorandum, or letter made part of the record in such action is not within the exceptions to the Open Records Act found in subdivisions (1)(g) and (1)(h) of this section and must therefore be made available to the public. Kentucky State Bd. of Medical Licensure v. Courier-Journal & Louisville Times Co., 663 S.W.2d 953, 1983 Ky. App. LEXIS 327 (Ky. Ct. App. 1983).

Those documents defined in subdivisions (1)(g) and (1)(h) of this section which become a part of the records adopted by the Board of Medical Licensure as the basis of its final action, become releasable as public records under subdivision (1)(f), unless exempted by other provisions of KRS 61.870 through

61.884. Kentucky State Bd. of Medical Licensure v. Courier-Journal & Louisville Times Co., 663 S.W.2d 953, 1983 Ky. App. LEXIS 327 (Ky. Ct. App. 1983).

The attempt by the Board of Medical Licensure to categorize complaints against physicians as formal public complaints and private individual complaints has no bearing on whether such complaints must be released under the Open Records Act. Inasmuch as final actions stem from the complaints, they must be incorporated as part of the final determination and are therefore not exempt under subdivisions (1)(g) or (1)(h) of this section. Kentucky State Bd. of Medical Licensure v. Courier-Journal & Louisville Times Co., 663 S.W.2d 953, 1983 Ky. App. LEXIS 327 (Ky. Ct. App. 1983).

Subsections (h) and (i) of this section exempt Governor's daily appointment ledgers as within the exception for preliminary materials from media inspection and that, as such, summary judgment denying their availability to newspaper under the Open Records Act was appropriate. Courier-Journal v. Jones, 895 S.W.2d 6, 1995 Ky. App. LEXIS 58 (Ky. Ct. App. 1995).

Fact that a police officer resigned before the conclusion of his termination hearing did not render the complaint which gave rise to the termination hearing "preliminary materials," which were not subject to public disclosure under the Kentucky Open Records Act, KRS 61.878. Palmer v. Driggers, 60 S.W.3d 591, 2001 Ky. App. LEXIS 1165 (Ky. Ct. App. 2001).

Since emails between a city mayor and the city council members were preliminary discussions concerning what course of action to take with respect to a financial controversy regarding a local convention center, they were within the exemption from disclosure of the Open Records Act pursuant to KRS 61.878(1), and a city and the mayor were not liable for willfully withholding records under KRS 61.882(5). Baker v. Jones, 199 S.W.3d 749, 2006 Ky. App. LEXIS 12 (Ky. Ct. App. 2006).

Where a university appealed a circuit's denial of its motion for summary judgment, the university had not violated the Open Records Act; the circuit court and the Officer of the Attorney General incorrectly determined that the four e-mails at issue lost the preliminary status afforded to them by KRS 61.878(1)(i) and (j) because the e-mails were incorporated into a final agency action, a meeting, and thus had to be disclosed. There had been no final agency action. Univ. of Louisville v. Sharp, 416 S.W.3d 313, 2013 Ky. App. LEXIS 161 (Ky. Ct. App. 2013).

Circuit court did not err finding that the analysis of internal affairs (IA) documents under the Kentucky Open Records Act did not end once the documents had been classified under the preliminary exception of Ky. Rev. Stat. Ann. § 61.878(i) and (j) as the files did not maintain an indefinite preliminary status. However, that same statutory authority provided the state police with a limited authority to withhold portions of the IA file concerning any disciplinary recommendations or opinions not relied upon by the Commissioner in his final decision. Commonwealth v. Trageser, 600 S.W.3d 749, 2020 Ky. App. LEXIS 52 (Ky. Ct. App. 2020).

9. Presentence Investigation Report.

A criminal defendant is not entitled to a copy of his or her presentence investigation report both at the presentence and post-conviction stages. Commonwealth v. Bush, 740 S.W.2d 943, 1987 Ky. LEXIS 264 (Ky. 1987).

To conform with the "fair opportunity" afforded a defendant by subsection (4) of KRS 532.050, a defendant is entitled to being advised by the prison official who has custody of the presentence investigation report of the factual contents and conclusions therein and to a reasonable time to controvert factual information contained therein, but in order to protect the sources of confidential information, matters of opinion and comments of a personal and nonfactual nature shall not be revealed, and a defendant is not entitled to a copy of the report. Commonwealth v. Bush, 740 S.W.2d 943, 1987 Ky. LEXIS 264 (Ky. 1987).

10. Invasion of Privacy.

File of complaints by psychologist's clients alleging sexual misconduct was a public record containing information "of a very personal nature," disclosure of which would have constituted a serious invasion of personal privacy. Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co., 826 S.W.2d 324, 1992 Ky. LEXIS 35 (Ky. 1992).

Because the privacy interests of injured employees in personal details, such as home address, telephone number, and social security numbers, appearing on the S.F.1 forms required to be filed with Department of Worker's Claims pursuant to Workers' Compensation Act substantially outweigh the negligible Open Records Act related public interest in disclosure, such disclosure would constitute a "clearly unwarranted invasion of personal privacy" under subsection (1)(a) of this section. Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994).

In determining whether a request for certain public records constitute a clearly unwarranted invasion of person privacy under KRS 61.878(1)(a), the court must first determine whether the subject information is of a "personal nature" and if it finds it is a must then determine whether public disclosure "would constitute a clearly unwarranted invasion of personal privacy." This latter determination entails a "comparative weighing of antagonistic interests" in which the privacy interest in nondisclosure is balanced against the general rule of inspection and its underlying policy of openness for the public good. Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994).

Unredacted copies of final settlement agreements which showed payments made by government in connection with lawsuits against the police department were not covered by the privacy exception contained in subdivision (1)(a) of this section even though two (2) or three (3) of the agreements contained confidentiality clauses whereby settlement recipients and their attorneys agreed not to disclose the terms of the agreements. Lexington-Fayette Urban County Gov't v. Lexington Herald-Leader Co., 941 S.W.2d 469, 1997 Ky. LEXIS 38 (Ky. 1997).

The trial court did not err by finding that individual property owners' privacy interests outweighed the negligible public interest in releasing individualized valuation information regarding unclaimed property and that disclosure of such information as requested by the appellant would constitute a clearly unwarranted invasion of personal privacy. Hines v. Commonwealth, 41 S.W.3d 872, 2001 Ky. App. LEXIS 39 (Ky. Ct. App. 2001).

Complaint against police officer, charging specific acts of misconduct while on duty, presented a matter of unique public interest; while the allegations were of a personal nature, their disclosure would not constitute a clearly unwarranted invasion of the officer's privacy and, therefore, be exempt from public disclosure under KRS 61.878(1)(a). Palmer v. Driggers, 60 S.W.3d 591, 2001 Ky. App. LEXIS 1165 (Ky. Ct. App. 2001).

As the status of a public university's foundation as a public entity under KRS 61.870 had not been clearly established, it was reasonable for donors to the foundation who requested anonymity to expect their request to be honored. Therefore, a newspaper was properly denied access to donor identities and the amounts of their donations under Kentucky's Open Records Act. Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

Future donors to the University of Lousiville Foundation are on notice that their gifts are being made to a public institution and, therefore, are subject to disclosure under KRS 61.871 regardless of any requests for anonymity. Cape Pub'ns,

Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

Names of donors to a public university's foundation who had not requested anonymity were subject to the disclosure requirement of KRS 61.871, as the foundation was a public entity under KRS 61.870, and the donors had no reasonable expectation of privacy. Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 2008 Ky. LEXIS 176 (Ky. 2008).

Proffer given to the Kentucky Office of the Attorney General relating to a company's business practices was not exempt from disclosure under KRS 61.878(1)(a) because disclosure did not amount to a clearly unwarranted invasion of privacy; the proffer was not inherently personal. Moreover, there was a diminished expectation of privacy in the information that was given since it was known that it could have been used in future civil or criminal litigation. Lawson v. Office of the Atty., 2012 Ky. App. LEXIS 44 (Ky. Ct. App. 2012), aff'd, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

Lower courts properly found that the witnesses, victims, and uncharged suspects referred to in the police department's arrest and incident reports, adults and juveniles alike, had privacy interests in addresses, phone numbers, social security numbers, and driver's license numbers that implicated KRS 61.878(1)(a) given that citizens had more than a de minimus interest in the confidentiality of such information. Ky. New Era v. City of Hopkinsville, 415 S.W.3d 76, 2013 Ky. LEXIS 644 (Ky. 2013).

Newspaper's unsupported speculation that the victims, witnesses, and uncharged suspects referred to in the police department's arrest and incident reports may have shed light on police misconduct did not outweigh those citizens' substantial privacy interests. Ky. New Era v. City of Hopkinsville, 415 S.W.3d 76, 2013 Ky. LEXIS 644 (Ky. 2013).

Ky. Rev. Stat. Ann. § 61.878(1)(a) did not permit the withholding of the entire internal affairs files, but disclosure of information that was personal in nature, such as social security numbers, was prohibited and constituted an unwarranted invasion of privacy. Commonwealth v. Trageser, 600 S.W.3d 749, 2020 Ky. App. LEXIS 52 (Ky. Ct. App. 2020).

Personal privacy exemption was an improper basis to categorically withhold the entirety of the police department's dashcam and bodycam video from a police chase that resulted in a fatal car crash because the newspaper had made it clear that it was not seeking images of the deceased victims and the department made no meaningful attempt to explain how the remaining portions of the requested footage were exempt from disclosure. Shively Police Dep't v. Courier J., Inc., 701 S.W.3d 430, 2024 Ky. LEXIS 296 (Ky. 2024).

Despite being public records, cast ballots were excepted from inspection because the constitutionally enshrined secrecy of the ballot outweighed any public interest in allowing inspection of cast ballots, especially as other election records were already available for public inspection. Allowing inspection of cast ballots would have constituted an unwarranted invasion of personal privacy by increasing the risk, however small, of ascertaining individual voters' votes through reverse engineering. Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025).

11. Standardized Tests.

Open Records Act did not authorize court to order standardized examination to be available for viewing by parents; the discretion given to courts under that act is not unbridled, and in the case of an examination, the individual's interest must be balanced against the interest of the state in protecting the integrity of the examination. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771, 1999 U.S. LEXIS 599 (U.S. 1999).

12. Nonexempt Information.

State university's response to inquiry by collegiate athletic association into rules violation was not exempt from disclosure under Open Records Act exemption for public records. It is clear that the university is a "public agency" and the entire response submitted by the university to the National Collegiate Athletic Association (NCAA) constitutes a public record. Where the university spent over $400,000.00 for the response and the public has a legitimate interest in its contents, the response is not exempt. Furthermore, the contents of the response are a matter of public interest and release would not constitute a clearly unwarranted invasion of personal privacy. University of Kentucky v. Courier-Journal & Louisville Times Co., 830 S.W.2d 373, 1992 Ky. LEXIS 55 (Ky. 1992).

Litigation exception found in Open Records Act did not apply to disclosure of the specifics of settlement agreements made between local police department and litigants suing department, since such settlements were merely negotiated by counsel and not in closed meetings. Lexington-Fayette Urban County Gov't v. Lexington Herald-Leader Co., 941 S.W.2d 469, 1997 Ky. LEXIS 38 (Ky. 1997).

13. Prosecutorial File.

The Open Records Act neither intends nor provides that a convicted criminal should have complete access to the prosecutorial file once his conviction has been affirmed on direct appeal. Skaggs v. Redford, 844 S.W.2d 389, 1992 Ky. LEXIS 164 (Ky. 1992), overruled in part, City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

General Assembly mandated the non-disclosure of exempt records, a mandate the person or entity whose interest the exemption protects may seek to enforce in the circuit court; disclosure of an exempt record is not precluded if the intended beneficiaries waive their right to non-disclosure, and the statutory mandate that prosecutorial files be and remain totally exempt accords the prosecutor an unlimited discretion to deny disclosure, but it does not preclude him or her from allowing it. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

It was proper to refuse to enjoin the Attorney General from disclosing a statement an owner gave because the breach of Transportation Cabinet contracting regulations and the Attorney General's response remained matters of sufficient public interest to warrant an invasion of the owner's limited interest in keeping his account under wraps; the possibility of a limited amount of purely personal information does not justify the blanket non-disclosure of a record with substantial public import. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

14. — Ongoing Enforcement Action.

The defense of a prospective habeas corpus proceedings was part of the "law enforcement action" in the defendant's case; therefore, the records in the Commonwealth's Attorney's prosecution file fall within the provisions of subdivision (1)(g) of this section, as public records exempted until after enforcement action is completed. Skaggs v. Redford, 844 S.W.2d 389, 1992 Ky. LEXIS 164 (Ky. 1992), overruled in part, City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

15. Standing to Contest Agency Decision.

A party affected by the decision of a public agency to release records pursuant to the Kentucky Open Records Act had standing to contest the agency decision in court where the disclosure of information in the public record would constitute a clearly unwarranted invasion of personal privacy. Beckham v. Board of Educ., 873 S.W.2d 575, 1994 Ky. LEXIS 22 (Ky. 1994).

16. Private Corporation.

17. — Financial Information.

The confidential audited financial reports of privately owned, corporate marina operators were exempt from disclo-

sure under KRS 61.878(1)(c)1. The Legislative Program Review and Investigation Committee could not obtain nor disclose such records under the Open Records Act, but could obtain access to them for its use in evaluation pursuant to KRS 6.910 without disclosure to the public. Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks, 906 S.W.2d 318, 1995 Ky. LEXIS 62 (Ky. 1995).

Because the Supreme Court is guided by the principle that under general rules of statutory construction it may not interpret a statute at variance with its stated language, the stated language of subdivision (1)(c)2.b. of this section seems quite clear: an entity seeking tax credits pursuant to KRS Chapter 154 need not disclose confidential information submitted in applying for such credits. Hoy v. Kentucky Indus. Revitalization Auth., 907 S.W.2d 766, 1995 Ky. LEXIS 125 (Ky. 1995).

Since corporation sought investment tax credits through Kentucky Industry Revitalization Authority (KIRA) which was established by and administered through KRS Chapter 154 and the information submitted by corporation to KIRA was done in conjunction with said application for the tax credits and since by amending the Open Records Act, specifically KRS 61.878(1)(C)2.b., to include documents submitted pursuant to KRS Chapter 154, it is evident that the Legislature sought to protect those companies which participate in the revitalization and development of industry in Kentucky, such documents were exempt from disclosure. Hoy v. Kentucky Indus. Revitalization Auth., 907 S.W.2d 766, 1995 Ky. LEXIS 125 (Ky. 1995).

The financial information required to be submitted by corporation in its application to Kentucky Industrial Revitalization Authority (KIRA) that detailed the company's business and revitalization project and included such information as a financial history of the corporation, a projected cost of the project, the specific amount and timing of capital investment, copies of financial statements and a detailed description of the company's productivity, efficiency and financial stability concerning the inner workings of the corporation is "generally recognized as confidential or proprietary" and falls within the wording of KRS 61.878(1)(c)2.b. Hoy v. Kentucky Indus. Revitalization Auth., 907 S.W.2d 766, 1995 Ky. LEXIS 125 (Ky. 1995).

18. Civil Litigation.

The statute does not exempt or exclude all records from the open records disclosure in favor of discovery in litigation or anticipated litigation cases, but limits the release of records specifically listed in subsection (1) to those records which parties can obtain through a court order; the gist of this wording is not to terminate a person's right to use an open records request during litigation, but to limit a court on an open records request on excluded records to those records that could be authorized through a court order on a request for discovery under the Rules of Civil Procedure governing pretrial discovery. Ky. Lottery Corp. v. Stewart, 41 S.W.3d 860, 2001 Ky. App. LEXIS 18 (Ky. Ct. App. 2001).

Trial court properly granted summary judgment in favor of a doctor as to a patient's medical negligence claim because she could not compel involuntary testimony from an expert working for the Board of Medical Licensure even if it amounted to his preliminary recommendations, and preliminary memoranda in which his opinions were expressed for use by the Board. Pringle v. South, 659 S.W.3d 774, 2020 Ky. App. LEXIS 56 (Ky. Ct. App. 2020).

19. Statistical Information.

A county school system was required to release statistical information relating to student disciplinary hearings without redacting the particular school and offense that appeared on those records, while redacting all information that would reveal any personal characteristics of the student, including name or age, or information that would reasonably lead to identification of the student. Hardin County Schs v. Foster, 40 S.W.3d 865, 2001 Ky. LEXIS 45 (Ky. 2001).

20. Public Agency Employees.

KRS 61.878(1), specifically directing that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery, overrides the provisions of KRS 61.878(3), dealing with the rights of a public agency employee, including a university employee, to inspect and to copy any record that relates to him. Hahn v. Univ. of Louisville, 80 S.W.3d 771, 2001 Ky. App. LEXIS 84 (Ky. Ct. App. 2001).

Where a school district employee settled her lawsuit against one school district for sexual harassment by a district official and a second lawsuit against another district for allegedly wrongfully failing to hire her, the lower courts erred in denying a newspaper's request for access to the settlement agreements under the Kentucky Open Records Act, KRS 61.870 to 61.884, because the settlement of litigation between a government agency and one of its employees and a private citizen and a governmental entity were matters of legitimate public concern that the public is entitled to scrutinize. A confidentiality clause in such agreements was not entitled to protection. Cent. Ky. News-Journal v. George, 306 S.W.3d 41, 2010 Ky. LEXIS 72 (Ky. 2010).

21. Illustrative Cases.

Substantial evidence did not support a Circuit Court's finding that, under the Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232*g*, and the Kentucky Family Educational Rights and Privacy Act (FERPA), KRS 160.700 et seq., a teacher had no legitimate educational interest in viewing videotape recordings of her own classroom. The case was remanded for a hearing to determine whether her request under the Kentucky Open Records Act, KRS 61.870 et seq., was made pursuant to a legitimate educational interest as defined by FERPA and KFERPA. Medley v. Bd. of Educ., 168 S.W.3d 398, 2004 Ky. App. LEXIS 305 (Ky. Ct. App. 2004).

District Court vacated the denial of a transit authority's motion for summary judgment on two employees' defamation claims because the Kentucky Open Records Act required release of the documents at issue; because the employees were not required to grieve their terminations, the disciplinary actions taken by their manager could have been the final action and, therefore, KRS 61.878 did not exempt the records from the requirements of the Act. Because the Act applied, the transit authority was required by law to release the documents. Burgess v. Paducah Area Transit Auth., 2006 U.S. Dist. LEXIS 54136 (W.D. Ky. 2006).

Disclosure of records arguably containing information of a private nature about a former state cabinet official and lobbyist was required by the Kentucky Open Records Act because the public's interest in inspection greatly outweighed any privacy interest that may have existed; thus, the privacy interest exception in KRS 61.878(1)(a) was inapplicable. Doe v. Conway, 357 S.W.3d 505, 2010 Ky. App. LEXIS 221 (Ky. Ct. App. 2010).

Although the former employees alleged that the general manager's production of the disciplinary action forms in response to a record request was actionable because, at least as to two employees, the forms contained untrue statements about the employees acting dishonestly when they examined confidential information on the employer's computer system without permission following one of the employee's discharge, the general manager's decisions to discharge the employees were not conditional and did not need the board of directors' approval; the general manager had the authority to terminate employees, and the terminations represented his final action.

That the discharges could potentially have been set aside by the board during the grievance hearing did not transform the disciplinary action forms into preliminary drafts, notes, or correspondence. Burgess v. Paducah Area Transit Auth., 387 Fed. Appx. 538, 2010 FED App. 0421N, 2010 U.S. App. LEXIS 14384 (6th Cir. Ky. 2010).

Prosecution against a manslaughter victim's wife was incomplete and any law enforcement records exempt under KRS 61.878(1)(h) were not yet subject to disclosure. The wife had three years, from the date of the final judgment, to file a motion to vacate, set aside, or correct her sentence under RCr P. 11.42. Cincinnati Enquirer v. City of Fort Thomas, 2011 Ky. App. LEXIS 202 (Ky. Ct. App. 2011).

Because records that identified registered payers of utility license tax easily could be redacted to comply with privacy requirements and a state website did not provide an alternative remedy, the records were not exempt from open records disclosure after redaction; moreover, the evidence supported a finding that the documents requested were maintained. Dep't of Revenue v. Eifler, 436 S.W.3d 530, 2013 Ky. App. LEXIS 140 (Ky. Ct. App. 2013).

When a newspaper sought a police department's entire file in a murder case, the file was not categorically exempt due to the potential that the defendant in the murder case would collaterally attack the defendant's conviction, due to the file's relation to a prospective law enforcement action, because, inter alia, the exemption in KRS 61.878(1)(h) was properly invoked only when a record's release, due to the record's content, posed more than a hypothetical risk of harm. City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

When a newspaper sought a police department's entire file in a murder case, the file was not categorically exempt due to the potential that the defendant in the murder case would collaterally attack the defendant's conviction, due to the file's relation to a prospective law enforcement action, because, inter alia, a city made no attempt to identify potentially exempt material in the file. City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

When a newspaper sought a police department's entire file in a murder case, the file was not categorically exempt due to the potential that the defendant in the murder case would collaterally attack the defendant's conviction, due to the file's relation to a prospective law enforcement action, because, inter alia, Skaggs v. Redford, exempting a prosecutor's litigation file from disclosure, did not apply to the police department's file. City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

Law enforcement exemption in KRS 61.878(1)(h) is appropriately invoked only when an agency can articulate a factual basis for applying the exemption when, because of a record's content, the record's release poses a concrete risk of harm to the agency in a prospective action, which must be something more than a hypothetical or speculative concern. City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

University had yet to fulfill its statutory responsibilities under the Kentucky Open Records Act because it had not separated the exempt from the nonexempt records, redacted any personally identifying information or provided sufficient proof that the records were exempt under the Open Records Act through a proper index. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Family Educational Rights and Privacy Act (FERPA) did not bar a university from releasing to a newspaper all records sought under the Open Records Act because, while FERPA barred release of unredacted education records contained in a Title IX investigation file, not all the records sought were education records directly relating to a student. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Company's interest in relocating was extensively publicized, and this publicity amounted to a public disclosure of the company's interest in relocating within the Commonwealth, such that the exception to disclosure under Ky. Rev. Stat. Ann. § 61.878(1)(d) did not apply. Louisville/Jefferson Cty. Metro Gov't v. Courier-Journal, Inc., 605 S.W.3d 72, 2019 Ky. App. LEXIS 147 (Ky. Ct. App. 2019).

Business's proposal lost its status as preliminary and therefore the exemption in Ky. Rev. Stat. Ann. § 61.878(1)(i), (j) did not apply; the proposal was merely an offer submitted in response to the company's request, and the proposal remained subject to additional negotiation and approval by other agencies. However, once the company excluded the business from its list of finalists, the proposal was no longer subject to change, and thus the final action occurred at that point. Louisville/Jefferson Cty. Metro Gov't v. Courier-Journal, Inc., 605 S.W.3d 72, 2019 Ky. App. LEXIS 147 (Ky. Ct. App. 2019).

In this action involving the failure of the Shively Police Department (SPD) to make disclosures pursuant to the Open Records Act (the ORA) on the basis that it would cause harm to an ongoing criminal investigation, dashcam and bodycam footage of the pursuit and accident could not be withheld in full because they contained footage of the fatal accident and the privacy exemption was not nearly so broad under the circumstances as to prohibit all disclosure of the footage made of the chase and collisions. Courier-Journal, Inc. v. Shively Police Dep't, 2022 Ky. App. LEXIS 99 (Ky. Ct. App. 2022), aff'd in part, 701 S.W.3d 430, 2024 Ky. LEXIS 296 (Ky. 2024).

Police department failed to prove its denial of the newspaper's open records request for records pertaining to a police chase that resulted in a fatal car crash was justified pursuant to the law enforcement exemption because the police department failed to provide even a minimum degree of factual justification for its reliance on the exemption, it failed to meaningfully differentiate between the kinds of records the newspaper had requested, and failed to address how risks associated with their release might vary by record. Shively Police Dep't v. Courier J., Inc., 701 S.W.3d 430, 2024 Ky. LEXIS 296 (Ky. 2024).

22. Standing To Invoke Exemption.

Owner of a company did not have standing to invoke the exemption contained in subsection (1)(h), because he was not among the class of persons that exemption was intended to protect; the exemption is addressed to county and Commonwealth attorneys, not private citizens, and is intended to shield prosecutors from disclosures potentially harmful to their informants or their prosecutions and from the cost, inconvenience, and disruption that compliance would visit upon their offices. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

Standing to assert the exemptions of the Kentucky Open Records Act is limited to those persons or entities the particular exemption was meant to protect; the privacy exemption was clearly intended to protect individuals from unwarranted disclosures of personal information lodged, for whatever reason, in the government's files. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

Cited:

Ky. Rest. Concepts, Inc. v. City of Louisville, 209 F. Supp. 2d 672, 2002 U.S. Dist. LEXIS 11011 (W.D. Ky. 2002); Iola Capital v. Pub. Serv. Com. of Ky., 659 S.W.3d 563, 2022 Ky. App. LEXIS 69 (Ky. Ct. App. 2022); Courier-Journal, Inc. v. Shively Police Dep't, 2022 Ky. App. LEXIS 99 (Ky. Ct. App. 2022).

NOTES TO UNPUBLISHED DECISIONS

1. Illustrative Cases.

Unpublished decision: Department of Revenue was required to produce for inspection redacted copies of its final rulings

because the production of the material a tax attorney and tax analysts sought was required by the Open Records Act; the Department's final rulings contained information related to its reasoning and analysis with respect to its task in administration of the tax laws, and that information could be made available without jeopardizing taxpayers' privacy interests under the Taxpayers' Bill of Rights. Fin. & Admin. Cabinet v. Sommer, 2017 Ky. App. LEXIS 9 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 624 (Ky. Ct. App. Jan. 13, 2017).

OPINIONS OF ATTORNEY GENERAL.

Appraisals of real estate to be purchased with public funds are not required to be made available to the news media. OAG 76-223.

In order to prevent misuse of the files of the Kentucky Heritage Commission which contain detailed information about historic buildings and sites by "pot hunters" who are trying to locate archeological sites which they can dig and loot which will destroy such sites for scientific study and by thieves and vandals who may utilize the files on privately owned historical buildings as a shopping list, the Commission is legally authorized to adopt regulations which will prevent public inspection of specific portions of its files under subsections (1)(a), (g) and (h) of this section. OAG 76-367.

Since interviews given to the Oral History Commission are made under agreement between the commission and the interviewee that the tapes will be handled in a certain manner including refusing access to the public for a certain number of years, such tape record is preliminary in nature and will not be a final public record until such time as provided in the agreement and is therefore under the exception provided for in subsection (1)(g) of this section. OAG 76-419.

Records of comprehensive care centers which directly or indirectly identity a patient or former patient are confidential and exempt from public inspection. OAG 76-420.

Divorce suit records do not come within the exception provided for by subsection (1)(a) of this section or any other exception provided for in this section. OAG 76-431.

All the records of the police department are subject to public inspection unless they are specifically exempted by a statute and there is no statute which exempts police accident reports from public inspection. OAG 76-478.

The law exempts data on the accounts of individual members of the Kentucky Retirement System from the Open Records Act and, therefore, information about a member's account is confidential and need not be subject to public inspection without a court order. OAG 76-479.

An agency need report the denial of an inspection of a public record only when the requester demands more information from the public record than the agency is willing to reveal. OAG 76-488.

There is no practical or legal reason why an agency should send a copy of its response to a request for personnel information to the Attorney General unless the correspondence states that the inspection of a public record is being denied because of a specific exemption in this section. OAG 76-488.

The classes of records kept by a county judge/executive, county clerk or circuit county clerk which are made confidential by statute and exempt from public inspection under the Open Records Act, KRS 61.870 to 61.884 are records pertaining to adoption made confidential by KRS 199.570(1), records pertaining to a juvenile which have been ordered expunged by the juvenile court judge as provided by KRS 208.275 (now repealed) and records of the juvenile court disclosing disposition of a juvenile's case; all other records kept in the courthouse are subject to public inspection under the Open Records Law. OAG 76-493, modified by OAG 77-26, 1977 Ky. AG LEXIS 771.

Since police arrest records do not contain information of a personal nature a city police department cannot withhold inspection of a client's arrest record from an attorney. OAG 76-511.

A listing of names and addresses of horse owners preparatory to a census of the state horse industry would be exempt from public disclosure, but any completed list would not be provided any exemption. OAG 76-512.

The detailed line item proposed budget for the Jefferson County School System for the fiscal year 1976-1977, call the "budget book," should be open to public inspection and the public should have access to the revisions made therein since the official nature of the budget book removes it from the classification of a preliminary draft or a preliminary recommendation and thus it does not come within the exemptions of subsections (1)(g) and (h) of this section. OAG 76-551.

The names of persons transported by a county ambulance service may be kept confidential as an exception to the Open Records Law under subsection (1)(a) of this section. OAG 76-568.

A document containing a list of restrictions which a city was considering as a precondition to the rezoning of certain property was exempt under the provisions of the Open Records Law, KRS 61.870 to 61.884, under the exemptions provided by subsection (1)(g) and (h) of this section since such document is a preliminary draft or recommendation coming into existence in the course of business of a public agency. OAG 76-584.

A prospective employer, except the Kentucky Department of Personnel, may not be given a copy of the records pertaining to a prospective employee from the files of the centralized criminal history system since subsection (4) of KRS 17.150 provides that such records are not subject to public inspection. OAG 76-604, modified by OAG 77-28, 1977 Ky. AG LEXIS 772.

A prospective employer may not be given a copy of the records pertaining to a prospective employee from the files of the centralized criminal history system since subsection (4) of KRS 17.150 provides that such records are not subject to public inspection; however, since the Open Records Law mandates the sharing of information among departments of state government when the exchange is serving a legitimate governmental need and since the Criminal History Act incorporates the provisions of the Open Records Law, a criminal history check on prospective state employees should be provided at the request of the Department of Personnel. OAG 76-604, modified by OAG 77-28, 1977 Ky. AG LEXIS 772.

Since the city audit request contained information which, if prematurely released, would have impeded effective law enforcement because it revealed the possibility that violations of statutory and/or regulatory provisions of the law may have been or were being committed in the operation of the agency the immediate release of such audit would be denied under subsection (1)(f) of this section. OAG 76-633.

Inspection of the record pertaining to a complaint filed against a person involving an alleged zoning violation was improperly withheld from public inspection under the exception set forth in subsection (1)(f) of this section regarding identity of informants since no such informant was involved in the matter for the mere fact that a person who voluntarily informs of a violation of the law does not make him an informer and since zoning violations are prevailing conditions which can be proven by objective evidence. OAG 76-650.

Where some of the land which must be acquired for a flood control project has not yet been acquired by negotiation or condemnation, the appraisals on all of the property to be acquired for the project are exempt from inspection until all of the property has been acquired. OAG 76-656, affirmed by OAG 85-79, 1985 Ky. AG LEXIS 72.

The report of an investigation of a metropolitan department of corrections by a field investigator for the county human relations commission would be exempt from public inspection where the document contained the investigator's opinions which were derived from interviews with various individuals

and which were directed toward the formulation of policy. OAG 76-692.

Although the public is entitled to know the name, position, work station and salary of a state employee, the social security number and the home address of the employee are confidential and thus exempt from public disclosure. OAG 76-717.

Disclosure of the disposition of a juvenile's case may not be made to the public. OAG 77-26, 1977 Ky. AG LEXIS 771.

Property record cards on which taxpayers list all their real and personal property and which are filed in the property valuation administrator's office would constitute public records containing information of a personal nature, the public disclosure of which would be an unwarranted invasion of personal privacy. OAG 77-99, 1977 Ky. AG LEXIS 695.

Under the exemption to open inspection provided by this section, a state university could properly refuse the request of an instructor to inspect her annual evaluations. OAG 77-394, 1977 Ky. AG LEXIS 395.

There is no authority under this secton for a county health department to deny access to restaurant inspection records or to attempt to place restrictions on their use. OAG 77-585, 1977 Ky. AG LEXIS 206.

Detailed reports by hotels and motels of their occupancy and gross revenues which are filed with the county department of finance are confidential and therefore would be exempt from open inspection. OAG 77-586, 1977 Ky. AG LEXIS 202.

A statement made to the police concerning alleged incidents of sexual abuse at an institutional home would be exempt from public inspection as long as an investigation is in process and the decision on enforcement is pending. OAG 77-633, 1977 Ky. AG LEXIS 159.

The salaries of city employees would not be exempt from public disclosure under the provision protecting information of a personal nature. OAG 77-723, 1977 Ky. AG LEXIS 91.

Under this section a person would be entitled to inspect documents of a regional planning and development agency concerning the agency's current budget, staff job descriptions and salaries of all employees. OAG 77-726, 1977 Ky. AG LEXIS 138.

Preliminary memoranda in which opinions were expressed were exempted under subdivision (1)(h) of this section. OAG 78-133, 1978 Ky. AG LEXIS 610.

The exception provided for "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" applies only to matters entirely unrelated to the performance of public employment. OAG 78-133, 1978 Ky. AG LEXIS 610.

The matter of disciplining a state employee does not come within the exception of personal privacy nor does KRS 16.140 allow the commissioner the authority to keep a disciplinary charge confidential if the employee admits the truthfulness of the charge. OAG 78-133, 1978 Ky. AG LEXIS 610.

Public records pertaining to the position and salary of public employees, such as city and county employees, are not exempted from inspection. OAG 78-231, 1978 Ky. AG LEXIS 502.

Although Const., § 14 requires that the courts be open and although the courts are included within the definition of public agency of subsection (1) of KRS 61.870 any papers produced by judges or staff attorneys during the internal deliberative process of the appellate courts are of such a preliminary nature that they come with the exception of subsections (1)(g) and (h) of this section. OAG 78-262, 1978 Ky. AG LEXIS 461.

Records and information gathered under subsection (6) of KRS 532.075 are the work product of a staff attorney of the court and are specifically designed and intended to aid the court in reviewing death penalty cases and because of their nature they are preliminary drafts, notes, preliminary recommendations and preliminary memoranda in which opinions are expressed or policies formulated or recommended and as such are exempt under subsections (1)(g) and (h) of this section of the Open Records Law. OAG 78-262, 1978 Ky. AG LEXIS 461.

A document titled "Requirements for Kindergarten" and a letter dated January 24, 1978, to Mr. Charles Akins, county superintendent of schools from James B. Graham, superintendent of public instruction, are not exempt from public inspection under subsection (1) of this section since the letter is official correspondence which does not affect in any way the privacy rights of any individual and both documents should be made available for inspection by any member of the public. OAG 78-370, 1978 Ky. AG LEXIS 380.

A review of the authority of the state human rights commission indicates that the burden rests upon that agency to substantiate its request for information by showing that the information requested is relevant to the complaint under consideration. OAG 78-382, 1978 Ky. AG LEXIS 348.

Test scores of individuals applying for jobs within the classified service are matters of a personal nature within the contemplation of subsection (a) of this section and are, therefore, exempt from the application of the State Public Records Act. OAG 78-382, 1978 Ky. AG LEXIS 348.

This section requires an order of a court of competent jurisdiction, and only upon a showing by the commission that the information requested was, in fact, "relevant to the complaint." OAG 78-382, 1978 Ky. AG LEXIS 348.

The complaint and all other papers in a case before the Kentucky Occupational Health and Safety Review Commission are public records and subject to public inspection unless the Commission finds that the premature release of information in the papers would harm the agency in the performance of its administrative adjudication, which finding should be supported by sufficient reasons and denial of inspection of a case file should state its reasons in writing to the requester and send a copy of its answer to the Attorney General as directed by KRS 61.880. OAG 78-400, 1978 Ky. AG LEXIS 337.

Examination papers and test scores from colleges and universities are exempt from public inspection under subsection (1)(a) of this section. OAG 78-468, 1978 Ky. AG LEXIS 277.

The Kentucky Board of Nursing must adopt its own policy as to the releasing or not releasing of home addresses of licensed nurses, but the names of licensed nurses and their work addresses cannot be withheld from the public. OAG 78-497.

A psychological evaluation of an inmate of the state reformatory, made for use in consideration of parole, may readily be authorized from the inmate under subsection (1)(h) of this section. OAG 78-513.

The appointment calendar of the mayor of city is exempt from public inspection under subsections (1)(a) and (1)(g) of this section. OAG 78-626, 1978 Ky. AG LEXIS 204.

Reports of criminal investigations are properly exempted from public disclosure under the provisions of KRS 17.150(2) and subsections (1)(f) to (h) of this section. OAG 78-639, 1978 Ky. AG LEXIS 188.

Records concerning delinquent rent would appear to us to be confidential. OAG 78-728, 1978 Ky. AG LEXIS 116.

The names and salaries of public officials and employees are not exempted from public inspection. OAG 78-728, 1978 Ky. AG LEXIS 116.

A report of the equal opportunity office at the University of Kentucky is exempt under subsection (1)(h) of this section: "preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended"; since the office has no power to make a binding ruling and only investigates complaints and makes a recommendation to the university administration, its reports are only preliminary recommendations. OAG 78-738, 1978 Ky. AG LEXIS 105.

A report of a performance review made by an ad hoc committee reviewing faculty performance rating is exempt

under subsection (1)(h) of this section. OAG 78-738, 1978 Ky. AG LEXIS 105.

Although KRS 43.090 makes audits "public documents," under subsection (1)(f) of this section, these would not be available for public inspection, if they were to be the basis for a criminal prosecution, until after the criminal action were resolved. OAG 78-816, 1978 Ky. AG LEXIS 19.

Workpapers for "nonroutine investigations" under KRS 43.050(2)(f) and (3) are exempt from public inspection under subsections (1)(g) and (h) of this section. OAG 78-816, 1978 Ky. AG LEXIS 19.

Payroll lists of employees of the board of education are open to public inspection, and the fact that social security numbers are included on such lists does not exempt the information since social security numbers are not automatically exempt under this section without a specific agency policy declaring them private and confidential. OAG 78-837, 1978 Ky. AG LEXIS 39.

Records showing the results of examinations and the reasons for the results are also exempt under subsection (1)(h) of this section. OAG 79-58, 1979 Ky. AG LEXIS 567.

The applications to take the examination for hairdressing instructor's license are exempt from public inspection under subsection (1)(g) of this section which exempts correspondence with private individuals. OAG 79-58, 1979 Ky. AG LEXIS 567.

The results of the hairdressing instructor's examinations are exempt under subsection (1)(a) of this section because such information is of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. OAG 79-58, 1979 Ky. AG LEXIS 567.

Any information required for the obtaining of a permit would be a public record which would be subject to inspection. OAG 79-69, 1979 Ky. AG LEXIS 551.

Where the response to a survey was voluntary, the survey forms, which were filled out and returned to the Department (now Cabinet) for Natural Resources and Environmental Protection by handlers of hazardous waste, are exempt from the requirements of the Open Records Law. OAG 79-69, 1979 Ky. AG LEXIS 551.

Documents made by an oral interview board, pertaining to the promotional process for assistant chief of police, would be exempt from inspection, even by the candidates for the position, under subdivision (1)(a) of this section, as an invasion of privacy of the members of the board which created the documents, and subdivision (1)(h) of this section, which exempts inspection of preliminary documents; and since they are, therefore, not public documents there is no prohibition against destroying such papers. OAG 79-128, 1979 Ky. AG LEXIS 497.

Scores on a bar examination and information pertaining to multi-state scoring averages and minimum cut-off scores are not exempt from discovery under subsection (1)(e) of this section, but, under subsection (1)(j) and KRS 26A.200 and 26A.220, such records are restricted since the board of bar examiners is a court agency and, as such, not subject to statutory regulation. OAG 79-174, 1979 Ky. AG LEXIS 455.

Pursuant to subsection (4) of this section, it is permissible for a city to supply the Department of Human Resources (now Cabinet for Human Resources) with the social security numbers of its employees for a cross-check with the social security numbers of people receiving financial assistance from the Department to discover possible violations of statutes or regulations. OAG 79-193, 1979 Ky. AG LEXIS 448.

Administrative regulation 200 KAR 1:020 is merely a rewrite of this section. OAG 79-275, 1979 Ky. AG LEXIS 403.

The custodian of the records of a public agency may allow inspection of all the records in his custody regardless of whether the records may be exempt by their nature under the provisions of this section unless the records come under the exemptions provided by subdivision (1)(i) or (1)(j) of this section. OAG 79-275, 1979 Ky. AG LEXIS 403.

The licensing of occupations and professions is in the public interest and the public is entitled to inspect records pertaining to licensing, but a licensing board can exercise its discretion as to whether to release all of the information in its files or to withhold some of the information under one of the exemptions in this section. OAG 79-275, 1979 Ky. AG LEXIS 403.

The purpose for the inspection of public records and how the information obtained from public records will be used is not material under the Open Records Law. OAG 79-275, 1979 Ky. AG LEXIS 403.

When subsection (1) of this section says "the following public records are excluded … and shall be subject to inspection only upon order of a court …," the legislative intent was permissive and not mandatory; the exemptions are convenient shields which public officials may use when they desire to do so, not restraints to keep them from opening up any records in their custody. OAG 79-275, 1979 Ky. AG LEXIS 403.

Records, complaints, investigative reports and actions of the Kentucky Registry of Election Finance in the matter of a complaint of campaign finance law violations, at least prior to trial or a decision not to prosecute, are exempt from disclosure under the provisions of subsections (1)(g) and (1)(h) of this section, whether or not the provisions of KRS 121.140 prevent disclosure because the Registry itself had not yet taken final action. OAG 79-316, 1979 Ky. AG LEXIS 296.

Proposals and counterproposals submitted in the negotiating process by a school board and an organization representing teacher employees of the board are not required to be open to public inspection because of the exemptions provided by subsections (1)(g) and (1)(h) of this section. OAG 79-326, 1979 Ky. AG LEXIS 311.

Written notes, shorthand notes or tape recordings made in a meeting of an administrative board for the purpose of preparing the minutes are only preliminary records and may, therefore, be withheld from public inspection. OAG 79-333, 1979 Ky. AG LEXIS 298.

The city of Louisville correctly rejected inspection of collective bargaining proposals presented to it by two (2) employees' unions under subdivisions (1)(g) and (1)(h) of this section as such proposals were preliminary drafts; these subdivisions are not aimed exclusively at intra-office memoranda. OAG 79-347, 1979 Ky. AG LEXIS 290.

Under subdivision (1)(j) of this section, collective bargaining proposals between a city and its employee union were exempt from disclosure since they were made an exception to public disclosure under KRS 61.810(5) (now (1)(e)). OAG 79-347, 1979 Ky. AG LEXIS 290.

To open the results of an anonymous evaluation of teachers by students to public inspection would be an unwarranted invasion of personal privacy exempted by subsection (1)(a) of this section. OAG 79-348, 1979 Ky. AG LEXIS 289.

Applications for benefits under the community development block grant program are not exempt from public inspection under the Open Records Law because they infringe on personal privacy. OAG 79-388, 1979 Ky. AG LEXIS 242.

Due to the preliminary recommendations and preliminary memoranda which are included in the auditor's narrative report of the severance tax audit of a coal company, the Department of Revenue (now Revenue Cabinet) may properly withhold the narrative report from public inspection under subsection (1)(h) of this section. OAG 79-444, 1979 Ky. AG LEXIS 193.

A person is not entitled to see all intra-office records pertaining to him since some records may be withheld because they are exempt under subsection (1)(h) of this section. OAG 79-469, 1979 Ky. AG LEXIS 182.

Any final action of a personnel committee which is adopted by an agency, including the fixing of salaries, should be made available to the public. OAG 79-469, 1979 Ky. AG LEXIS 182.

Intra-office memoranda containing preliminary recommendations and expressions of opinion or which have to do with

the formulation of policies may be withheld from public inspection. OAG 79-469, 1979 Ky. AG LEXIS 182.

The salary of the public employee is not a protected item of information under the privacy exemption. OAG 79-469, 1979 Ky. AG LEXIS 182.

A request for "all information" in the possession of the auditor of public accounts, including sworn affidavits, relative to overpayments to bus drivers, was properly withheld from inspection under subsections (1)(g) and (1)(h) of this section. OAG 79-470, 1979 Ky. AG LEXIS 171.

A county human rights commission comes within the scope of subsection (4) of this section. OAG 79-475, 1979 Ky. AG LEXIS 184.

The Open Records Act does not exempt personnel files from inspection and analysis by agencies charged with investigation and resolution of charges of discrimination. OAG 79-475, 1979 Ky. AG LEXIS 184.

A detention center, jail or prison is fully authorized to forbid disclosure of documents which set forth procedure involving the security of the facility. OAG 79-546, 1979 Ky. AG LEXIS 92.

Policy and procedure manuals and other intra-office memoranda of a detention facility are exempt from the requirement of public inspection by subsection (1)(h) of this section. OAG 79-546, 1979 Ky. AG LEXIS 92.

Centralized criminal records are not subject to public inspection but criminal records in local units of governments are subject to public inspection with the exception of records of cases which have not been completed or the disclosure of which might harm the agency by revealing the identity of informants not otherwise known. OAG 79-582, 1979 Ky. AG LEXIS 48.

A request for inspection of police records by a local human rights commission conducting an investigation of alleged disparity in employment practices is a legitimate government function within the meaning of subsection (4) of this section. OAG 79-608, 1979 Ky. AG LEXIS 66.

The exceptions of the Open Records Act as set out in subsection (1) of this section do not prohibit a local human rights commission from inspecting the public records of a division of police. OAG 79-608, 1979 Ky. AG LEXIS 66.

Under the Open Records Law the purpose of the inspection of a public record is not material to any of the exemptions provided in this section. OAG 79-648.

Memoranda reports of an internal affairs division investigator from the Louisville Department of Safety to the chief of police containing written complaints against a police officer, and statements by witnesses and the officer, together with the investigator's recommendation, are preliminary in nature and exempt from public inspection under subsections (1)(g) and (1)(h) of this section; but if the chief takes affirmative action to discipline the officer, the action taken and the cause of the action become a public record open to inspection. OAG 80-43, 1980 Ky. AG LEXIS 585.

A police department cannot adopt a policy of withholding the names of victims of crime, including the crime of rape. OAG 80-54, 1980 Ky. AG LEXIS 613.

Evaluation documents resulting from official evaluation of an officer's performance as a state trooper contain material of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy; furthermore the mere evaluation of a state policeman's performance is a matter of opinion and, standing alone, does not constitute any action on the part of the Kentucky State Police. OAG 80-58, 1980 Ky. AG LEXIS 578.

A title insurance company was not entitled to reproduce by microfilm, computer tape, or any other reproduction device copies of tax records to be sold to private business interests engaged in the searching and reporting of real estate titles and where the facts indicated that such company's intended use of tax records and maps was for a business purpose, the request to copy such records was properly denied. OAG 80-88, 1980 Ky. AG LEXIS 549.

The sheriff's department must allow public inspection of any records pertaining to the reporting of a crime except records which might disclose information which would endanger the life of the police officer or an informant as exempted by KRS 17.150. OAG 80-144, 1980 Ky. AG LEXIS 505.

The release of the scores by name of persons who took the State Nursing Board test to the school they graduated from is not prohibited since Kentucky has no privacy act and the federal privacy act has no application to state agencies; this does not mean, however, that a state agency cannot adopt a policy of withholding examination results to protect the privacy of the applicants who took the examination. OAG 80-158, 1980 Ky. AG LEXIS 512.

Any member of the public may inspect an accident report made by a police officer concerning a fatal one-car accident, including the results of a blood alcohol test conducted on the deceased, since there is no provision in the Open Records Law exempting such a report. OAG 80-210, 1980 Ky. AG LEXIS 434.

Intra-office memoranda between school officials or between a teacher's advisory group and the superintendent, in which preliminary opinions are expressed concerning a certain reading program, are exempt from mandatory disclosure under subsections (1)(g) and (h) of this section. OAG 80-289, 1980 Ky. AG LEXIS 353.

The records identifying recipients of loans or grants under housing rehabilitation programs administered by the Jefferson County community development agency are not exempt from public inspection by any of the exemptions provided in this section. OAG 80-310, 1980 Ky. AG LEXIS 336.

There is no statute making bids which have been opened on a public project exempt from the Open Records Law requirement; on the contrary, even without the Open Records Law, under KRS 45A.080(4) bidding documents are open to public inspection after the bids have been opened. OAG 80-327, 1980 Ky. AG LEXIS 320.

A city council member has the same right to inspect the records of the city's electric plant board as does a member of the plant board or any other member of the general public, except that a member of the city council and a member of the plant board are not subject to the exemptions listed in this section, and a member of either body can inspect the records of the electric plant board but neither can require that lists of records be made for him which are not already in existence. OAG 80-369, 1980 Ky. AG LEXIS 295.

The public is not entitled mandatorily to access to the home addresses of voluntary members of an organization such as the Action League for Physically Handicapped Adults (ALPHA), even though ALPHA received more than twenty-five percent (25%) of its funding from a state or local authority and is, therefore, a public agency under the Open Records Law. OAG 80-432, 1980 Ky. AG LEXIS 238.

If the identity of the chief executive officer of a proposed bank is material to the Department of Banking (now Department of Financial Institutions) in passing on an application to organize a bank, it is also material to any persons having standing to protest the application; therefore if the Commissioner of Banking elicits the identity of the executive officers from the applicants and has that information on file in a public record, it should be made available for public inspection. OAG 80-444, 1980 Ky. AG LEXIS 205.

A petition for a local option election is a public record and may be inspected by any person and the petition may be published in a newspaper or in any other manner, including the names of the persons who signed the petition; unless a person purported to have signed a petition has had the court declare that his name was placed on the petition without the person's authority and should therefore be removed, the person has no legal recourse if his name is made public as a

signer of the petition and there is no liability for the disclosure of the petition and the names thereon. OAG 80-450, 1980 Ky. AG LEXIS 199.

Bank statements, cancelled checks and check stubs are public records when they pertain to the funds of a public agency, and under the Open Records Law they should be made available to any person who requests to inspect them; however, the bank's records are not public records and are therefore not subject to the Open Records Law. OAG 80-454, 1980 Ky. AG LEXIS 244.

Under the Buckley Amendment to the federal Family Educational Rights and Privacy Act (Section 513 of Pub. Law 93-380 as amended by Section 2 of Pub. Law 93-568), the records of students pertaining to residency classification are exempt from public inspection under this section because disclosure of the records is prohibited by federal law unless the student who is the subject of the records gives his authorization that they be disclosed to a particular person or persons. OAG 80-471 (modifying OAG 80-352).

Since there is nothing in KRS Chapter 315, the law regulating pharmacists, or in the Kentucky Open Records Law, KRS 61.870 to 61.884, prohibiting the Board of Pharmacy from making available for public inspection the file of a licensee, the Board should make the entire file of a licensee available for inspection. OAG 80-474, 1980 Ky. AG LEXIS 203.

Intra-office memoranda in which various employees of the Division of Water Resources reported findings of their inspection and expressed opinions and made recommendations concerning a construction permit were exempt from the mandatory requirement of public inspection by subsection (1)(h) of this section. OAG 80-504, 1980 Ky. AG LEXIS 143.

Records of the Kentucky Retirement System and the Teacher's Retirement System which listed employees' length of service, total employee contributions and total employer contributions were exempt from the mandatory requirement of public inspection by subsection (1)(j) of this section which exempts from mandatory public inspection public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly since the records in question were made confidential by KRS 61.661 which requires that members' accounts be confidential. OAG 80-506, 1980 Ky. AG LEXIS 133.

The Department (now Cabinet) for Human Resources must honor requests for information regarding payment to specific identifiable providers of health care through the Kentucky Medical Assistance Program since such records come under the mandatory inspection requirements of the Open Records Law. OAG 80-519, 1980 Ky. AG LEXIS 166.

The exception provided by subsection (1)(a) of this section pertaining to personal privacy is discretionary and not mandatory. OAG 80-519, 1980 Ky. AG LEXIS 166.

An urban county airport board is a public agency and all of its papers are public records under KRS 61.870. OAG 80-586, 1980 Ky. AG LEXIS 74.

KRS 61.810(6) (now (1)(f)), which provides an exception to the Open Meetings Law allowing hearings on personnel matters to be held in closed session, has no pertinency as to whether documents concerning the dismissal of five (5) employees should be made available for public inspection; in denying inspection of a public record a public agency must rely on one of the exceptions provided in the Open Records Law. OAG 80-586, 1980 Ky. AG LEXIS 74.

Reports of building inspections are public records which are open to public inspection by any person under the Open Records Law. OAG 80-596, 1980 Ky. AG LEXIS 62.

Where letter response to person requesting inspection of housing agency records stated that agency would respond once request had been cleared with United States Department of Housing and Urban Development Area Council, but cited no state or federal statute authorizing the denial or delay of inspection, and where request did not on its face suggest any exemption from inspection under this section, there was improper denial or delay of inspection under the Open Records Law. OAG 81-4, 1981 Ky. AG LEXIS 417.

Where county attorney instituted "cold check" program whereby merchants submitted cold checks which payors have failed to pay within ten days of notice by merchants, county attorney advised payors by letter of possible criminal sanctions if payment was not made within ten days and prosecuted those who did not pay during the second ten-day period, county attorney may in his discretion compile and release to all merchants or keep confidential, a list of those payors who are prosecuted and a list of those payors who are warned by the county attorney but not prosecuted, since the exceptions to the mandatory disclosure requirement of the Open Records Law which might apply under subsections (1)(a) and (1)(g) of this section are permissive rather than mandatory and there is no state or federal statute which would require such records to be kept confidential. OAG 81-25, 1981 Ky. AG LEXIS 427.

The public disclosure by the state ABC Board of the names of applicants for beer distributorships is not barred by the Open Records Law since the names of corporations are involved and such disclosure would not constitute a clearly unwarranted invasion of personal privacy under subsection (1)(a) of this section. OAG 81-51, 1981 Ky. AG LEXIS 366.

Where public disclosure through the Open Records Act is sought for the names of applicants for beer distributorship licenses, there is no exemption for such names under subsection (1)(b) of this section since the state ABC Board is not authorized to have a policy which does not allow the inspection of applications prior to their approval or denial, in light of the statutory requirement of KRS 243.360 that every applicant publish notice of his intention, including the name of the corporation and the location of the proposed licensed premises. OAG 81-51, 1981 Ky. AG LEXIS 366.

An inmate of a penal institution has the right to inspect the institution's records of a state employee's job assignment, work station and salary under the Open Records Law since these items are not considered confidential and there is no exemption from disclosure under this section. OAG 81-98, 1981 Ky. AG LEXIS 334.

A request for inspection of a complaint concerning housing code violations was improperly denied, even where the city was willing to disclose the complaint after deleting the names of the complaining witnesses, since there is no exemption under this section which would apply to such a record. OAG 81-127, 1981 Ky. AG LEXIS 297.

Nondisclosure of all examinations of a bank from 1969 to 1976 by the Department of Banking and Securities (now Department of Financial Institutions) was proper due to subsection (1)(j) of this section since that subsection prohibits disclosure of information made confidential by the General Assembly, which in this case would be bank examination reports pursuant to KRS 287.470 and 287.500 (now repealed). OAG 81-140, 1981 Ky. AG LEXIS 294.

Where an attorney sought coroners' reports and the complete investigatory files on certain named individuals who had died in a particular county within the prior four (4) years, under the Open Records Law, such records were not exempt from disclosure under subsection (1)(a) of this section, since a deceased person has no personal privacy rights such as those protected by this subsection, and the personal privacy rights of living individuals do not reach to matters concerning deceased relatives. OAG 81-149, 1981 Ky. AG LEXIS 290.

The custodian of the registration and circulation records of a public library is not required to make such records available for public inspection under the Open Records Law since subsection (1)(a) of this section prohibits disclosure which would constitute a clearly unwarranted invasion of personal privacy, and an individual's privacy rights as to what he borrows from a public library, such as books, motion pictures, periodicals or any other matter is overwhelming and there is

no countervailing public interest to be considered; however, since Kentucky has no privacy statute, the exceptions to mandatory disclosure of public records is permissive and no law is violated if they are not observed by the custodian. OAG 81-159, 1981 Ky. AG LEXIS 273.

Where a person who believes himself to be under surveillance makes a request under the Open Records Law as to whether he is under surveillance, whether his phone was tapped, and whether there was a court order on record, the police department could properly exclude any records of police surveillance from the requirement of mandatory disclosure under subsection (1)(f) of this section, which prevents disclosure of information which will be used in a prospective law enforcement action; under subsection (1)(g) of this section, which excludes preliminary drafts, notes and correspondence with private individuals; under subsection (1)(h), which excludes preliminary memoranda which express opinions or policies; and under subsection (1)(j), which excludes public information which the general assembly has made confidential, with subsection (1)(j) applying because subsection (2) of KRS 17.150 excludes certain information contained in intelligence and investigative reports maintained by criminal justice agencies; further, there is no need for the police to respond to make any indication of whether any such records in fact exist. OAG 81-161, 1981 Ky. AG LEXIS 271.

The Department of Insurance must make "closed claim reports," dealing with fully adjudicated and settled medical malpractice claims against health care providers, available to the board of medical licensure, since subsection (4) of this section allows the sharing of information between public agencies when the exchange serves a legitimate governmental need or is necessary to perform a legitimate government function. OAG 81-165, 1981 Ky. AG LEXIS 258.

Where a requester sought all records pertaining to monitoring tests done in Louisville sewers since a particular date, the sewer district improperly denied the records based upon the exceptions from disclosure contained in subsections (1)(g) to (i) of this section, since such tests were statistical data rather than the preliminary notes or memoranda exempted by subsections (1)(g) and (h) and since the sewer district did not cite any federal law or regulation which would exempt statistical data under subsection (1)(i). OAG 81-208, 1981 Ky. AG LEXIS 225.

The cost estimates which a community development department rehabilitation counselor figures for individual loans to prospective applicants before loan approval is made are exempt from the mandatory requirement of public inspection, since such papers are preliminary drafts, notes and memoranda in which opinions are expressed in the form of cost estimates and thus are exempt under subsections (1)(g) and (h) of this section. OAG 81-239, 1981 Ky. AG LEXIS 197.

Where a requester seeks laboratory work sheets dealing with industrial waste in a sewer district, such information was statistical data as the result of scientific measurements and tests rather than preliminary data in the sense used in the exemptions provided in subsections (1)(g) and (h) of this section; thus, the information is not exempt from disclosure, even though the wastewater constituents of a particular private industry would be useful information for the industry's competitors to have, since the information was gathered by sewer district employees rather than voluntarily supplied by the industry. OAG 81-246, 1981 Ky. AG LEXIS 188.

Where information sought by a requester was compiled in connection with a lawsuit and thus would be privileged as lawyer-client work product, the information can properly be withheld from public inspection by subsection (1)(j) of this section since it would be subject to the discovery rules created by the courts. OAG 81-246, 1981 Ky. AG LEXIS 188.

The incident response reports which are filed by metropolitan sewer district investigators after investigating incidents complained about by a member of the public or an employee of the sewer district, and which contain recommendations on whether to institute further enforcement actions, are intraoffice memoranda and are preliminary memoranda in which opinions are expressed or policies formulated or recommended and are exempt from the mandatory requirement of public inspection by subsection (1)(h) of this section. OAG 81-258, 1981 Ky. AG LEXIS 219.

A Department of Justice report evaluating the bureau of corrections was not exempt from mandatory disclosure under subsection (1)(f) of this section, even though the report pointed out some deficiency in the management and operation of the Bureau of Corrections (now Corrections Cabinet), since it cited no individual as being responsible for any breach of law and made no recommendation of any criminal investigation or prosecution. OAG 81-267, 1981 Ky. AG LEXIS 167.

Where a requester sought a document titled "Report to the President of the University of Kentucky Summarizing the Findings of the Site Visit to Evaluate the Research Activities of the Tobacco and Health Research Program and Research Institute" which reported on impressions gained after interviewing various persons connected with the institute, gave opinions as to features and persons who are worthy of blame and praise and made recommendations as to how the research program can be improved, the official records custodian of the University is entitled to withhold the document from public inspection under subsection (1)(h) of this section, as a preliminary memorandum in which opinions are expressed or policies are formulated or recommended. OAG 81-285, 1981 Ky. AG LEXIS 155.

Records held by the city finance director which show the total amount of the city payroll tax received by the city from a medical center are not exempt from public disclosure since the total amount of payroll tax paid by an employer is not exempt under KRS 131.190, as records of individual employee payroll tax would be, so that records of total payroll tax would not be exempt under subsection (1)(j) of this section, and similarly, the fact that such records are made confidential by a city ordinance would not prevent disclosure under subsection (1) of this section. OAG 81-286, 1981 Ky. AG LEXIS 144.

A report made to a state university by an accounting firm concerning charges made against a university official is a public record, not exempt by this section and should therefore be made available for public inspection. OAG 81-291, 1981 Ky. AG LEXIS 132.

Documents which consist of business records of a state university, including purchase requisitions, bills, purchase orders and a purchase contract, and which were used by the university attorney in preparing charges to be brought before the university board, were public records and not exempt from disclosure under this section. OAG 81-291, 1981 Ky. AG LEXIS 132.

The records of a law firm hired to investigate charges brought against a state university official are not public records, but rather are the work product of the attorneys of that firm, and, since such work product is confidential under a rule promulgated pursuant to KRS 447.154, they are exempt from disclosure by subsection (1)(j) of this section as records made confidential by enactment of the general assembly. OAG 81-291, 1981 Ky. AG LEXIS 132.

A community development department cannot deny the inspection of public records which disclose the names, addresses, and phone numbers of individuals on the waiting list for various loans from the department since subsection (1)(a) of this section does not warrant concealing this information, because an individual who applies for a loan of public money cannot expect the fact of his application to be kept private. OAG 81-305, 1981 Ky. AG LEXIS 145.

City records which will disclose the names of employers who are delinquent in paying occupational taxes are open to public inspection, since a city is a public agency and is subject to the provisions of the Open Records Law and, even though KRS

131.190 prohibits the disclosure of information from tax records "insofar as the information may have to do with the affairs of the person's business", it does not prohibit the disclosure of the fact that a person is delinquent in paying his taxes, for although tax records cannot be made totally available because of the restrictions of KRS 131.190, non-exempt information can and must be made available under subsection (3) of this section. OAG 81-309, 1981 Ky. AG LEXIS 122.

When a public record contains information of an excepted and non-excepted nature, the public agency can provide access to the non-excepted material either by (1) providing a copy of the record with the excepted material blotted out or deleted, or (2) by providing a list which it has created stating the non-excepted information as derived from the records in its files. OAG 81-309, 1981 Ky. AG LEXIS 122.

The custodian of municipal records may not respond to a request made under the Open Records Law by placing an "x" by the typed statement: "The records requested are exempted by law from mandatory disclosure" on a form letter since a form letter does not meet the specific statement requirement of KRS 61.880 and because the custodian did not cite any specific exemption in this section which would apply to the material requested. OAG 81-345, 1981 Ky. AG LEXIS 92.

The resignation letters of three (3) city policemen would not be exempted from disclosure by subsection (1)(a) of this section, since it only applies to matters which have absolutely no connection with public business or employment. OAG 81-345, 1981 Ky. AG LEXIS 92.

Police departments, which are required to maintain daily logs of arrests pursuant to KRS 17.150, must make all such records, except for intelligence and investigative reports during pre-prosecution periods, available for public inspection. OAG 81-379, 1981 Ky. AG LEXIS 57.

Since police arrest records are not exempted by the Open Records Law, no official has the authority to withhold the records from public inspection and a mayor could not bar reporters from access to logs of arrest or from publishing information therein; since a Mayor is not the custodian of the police records he has no jurisdiction over such records in any event. OAG 81-379, 1981 Ky. AG LEXIS 57.

Records which disclose the names of persons who are inmates of the county jail are not exempt from public disclosure under the personal privacy exemption of subsection (1)(a) of this section since it is contrary to the principles of personal liberty for persons to be secretly held in jail and the embarrassment caused to them or to members of their family is of secondary importance; moreover, the strict construction rule contained in subsection (4) of KRS 61.882 requires disclosure regardless of inconvenience or embarrassment caused to anyone. OAG 81-395, 1981 Ky. AG LEXIS 40.

It was improper for the registrar of vital statistics to deny a request to inspect all death certificates and death verification certificates in the possession or control of a county health department based upon the privacy exemption under subsection (1)(a) of this section; the exemption pertains only to "personal privacy", and that term applies only to the living. OAG 81-400, 1981 Ky. AG LEXIS 39.

Information concerning battered children which is received by the Bureau (now Department) of Social Services is statutorily restricted and confidential under subsection (9) to KRS 199.335 (now repealed); accordingly, it would be exempt from disclosure to a newspaper by subdivision (1)(j) of this section. OAG 82-39, 1982 Ky. AG LEXIS 611.

Nothing in subdivision (1)(f) of this section would justify making an entire police log secret from the public; if any item in the log on a particular date is withheld from public disclosure because revealing the item would be harmful to law enforcement, the custodian has the burden of showing that the item is being properly withheld for that reason. OAG 82-70, 1982 Ky. AG LEXIS 570.

The log of a county dispatch service is not exempt from disclosure under this section, although the dispatch service may adopt a policy of not disclosing the names of ambulance transportees. OAG 82-70, 1982 Ky. AG LEXIS 570.

A custodian of records is not exposed to any penalty if he allows inspections of records which could be withheld from inspection under one of the exceptions in subsection (1) of this section since the Open Records Law does not prohibit inspection of records which are exempt from the mandatory disclosure requirement and the exceptions are only permissive. OAG 82-70, 1982 Ky. AG LEXIS 570.

The proceedings of the morbidity and mortality committee of the department of surgery at a university hospital are made confidential by KRS 311.377; accordingly, the university custodian of records properly denied inspection of records of those proceedings pursuant to subdivision (1)(j) of this section. OAG 82-99, 1982 Ky. AG LEXIS 546.

All libraries may refuse to disclose for public inspection their circulation records. As far as the Open Records Law is concerned, they may also make the records open if they so choose; however, the privacy rights which are inherent in a democratic society should constrain all libraries to keep their circulation lists confidential. OAG 82-149, 1982 Ky. AG LEXIS 487.

No person can demand as a matter of right to inspect the circulation records of any type of library — school, public, academic or special — under the Open Records Law. OAG 82-149, 1982 Ky. AG LEXIS 487.

Generally, the contracts, vouchers, and other business records of a public agency are open to public inspection under the Kentucky Open Records Law. OAG 82-169, 1982 Ky. AG LEXIS 466.

The contract or contracts between a county board of education, which was involved in litigation, and its attorneys should be made available for public inspection; although such a contract might not be discoverable under court rules, contracts of public agencies must be openly made and available for inspection by the public and knowledge of the terms of such contracts would not hinder the agency in the prosecution of its law suits. OAG 82-169, 1982 Ky. AG LEXIS 466.

Where a county board of education was involved in litigation, the records of payments made to attorneys, bills and statements submitted to the board by its attorneys, and unprivileged communications between the board and its attorneys need not be made available for public inspection except by order of a court of competent jurisdiction and the Jefferson County board of education acted properly in denying inspection of said records. OAG 82-169, 1982 Ky. AG LEXIS 466.

Whether the litigation is civil or criminal, as long as it involves a public agency seeking to enforce the law in the public interest, subdivision (1)(f) of this section exempts from mandatory public inspection any records which will reveal information which will hinder the agency in prosecuting the litigation; once the litigation is completed, or otherwise terminated, the record should be made available for public inspection unless otherwise exempted by law. OAG 82-169, 1982 Ky. AG LEXIS 466.

A transcript of an informal hearing where testimony of witnesses was heard was not of a confidential meeting or conversation between employees and Department of Labor (now Labor Cabinet) compliance officers, but was rather an informal meeting between employees and management officials, was not considered to be confidential, and did not fall within any of the exceptions to the Open Records Law. OAG 82-192, 1982 Ky. AG LEXIS 448.

It is not sufficient to cite an administrative regulation as a reason for denying the inspection of a record because a public agency does not have the authority to make records confidential by regulation; the exception relied on to preclude inspec-

tion must be one of the exceptions provided in subsection (1) of this section. OAG 82-192, 1982 Ky. AG LEXIS 448.

The term "question privately" in KRS 338.101, which authorizes the Commissioner (now Secretary) of Labor to inspect working places, makes any statement taken from an employee, or other person authorized to be questioned by the statute, confidential, and, as such, it is exempted from mandatory public disclosure by subdivision (1)(j) of this section; accordingly, the Department of Labor (now Labor Cabinet) properly denied inspection of the statements of witnesses, taken in private interviews, concerning a fatal injury of a worker. OAG 82-192, 1982 Ky. AG LEXIS 448.

University officials properly withheld inspection of the personnel file of the requester, which included letters of evaluation by faculty members, because the university is entitled to protect the privacy of the faculty members who wrote the letters of evaluation and because the letters contained preliminary recommendations and preliminary memoranda in which opinions were expressed; such faculty letters were exempt from inspection under subdivisions (1)(a) and (1)(h) of this section. OAG 82-204, 1982 Ky. AG LEXIS 420.

Where a state university committee filed a letter with a dean concerning the promotion and tenure of a certain professor and the letter contained the advice and recommendation of the committee, the letter was exempt from the mandatory requirement of public inspection and could be withheld from the professor's inspection under either subdivision (1)(a) or (1)(h) of this section. OAG 82-211, 1982 Ky. AG LEXIS 412.

Ideas and operating techniques that have been devised by firms or individuals, and which are not required to be disclosed by KRS 367.805, come under the exemptions provided by subdivision (1)(b) of this section. OAG 82-215, 1982 Ky. AG LEXIS 416.

Since a public agency is required to make records available for inspection without regard to the purpose for which the requester wants to see the record, an agency should have a definite policy as to when it will invoke one or more of the exemptions in this section. In other words, the exemption should be invoked according to the nature of the record and not according to the person who is requesting the inspection or the stated or suspected purpose of the inspection. OAG 82-233, 1982 Ky. AG LEXIS 401.

The exemptions in the Open Records Law, set forth in this section, are inoperative as to records containing the information required under KRS 367.805(1). Any additional information gathered by the Division of Consumer Protection, however, in the course of the registration procedures of KRS 367.801 et seq. may be exempt from mandatory disclosure if it is covered by one (1) of the exemptions in this section. OAG 82-215, 1982 Ky. AG LEXIS 416.

On a payroll voucher, the name of the person being paid and the gross pay to that person is not exempt from public disclosure. However, other information on the voucher, such as withholding for taxes, insurance, retirement, credit union, bonds, charitable contributions and annuities are items which come under the exemptions provided by subdivision (1)(a) of this section. OAG 82-233, 1982 Ky. AG LEXIS 401.

The exemptions from mandatory disclosure provided by this section are permissive and no law is violated when exempted material is made accessible to the public. A public agency, however, has the right, as a matter of policy, to refuse access to exempted material and may separate exempted material from the nonexempted. OAG 82-233, 1982 Ky. AG LEXIS 401.

A person's name is personal but it is the least private thing about him; and therefore, the name of a person should not be deleted from a public record unless there is some special reason provided by statute or court order (i.e., adoption records). OAG 82-234, 1982 Ky. AG LEXIS 404.

On a birth certificate, the mother's mailing address is private and may be blotted out, as may items dealing with complications of pregnancy and concurrent illness or conditions affecting the pregnancy. OAG 82-234, 1982 Ky. AG LEXIS 404.

The blotting out of some information on a form such as a certificate of live birth is permissible under subsection (3) of this section; however, information on a public form which is not exempted by a specific statute or by one of the exemptions provided by this section cannot be blotted out before the record is made available for inspection. OAG 82-234, 1982 Ky. AG LEXIS 404.

The full name of the mother, the father and the child cannot be deleted from a birth certificate before inspection. OAG 82-234, 1982 Ky. AG LEXIS 404.

The purpose for which a person seeks access to a public record is not relevant to the Open Records Law, and a public agency has no right to inquire as to the purpose for the inspection and copying of the record. Any inspection request form which requires the statement of the purpose of inspection is contrary to the law. OAG 82-234, 1982 Ky. AG LEXIS 404.

Complaints made to the Kentucky state Board of Medical Licensure by individual members of the public and by other doctors may be withheld from public inspection as correspondence with private individuals under subdivision (1)(g) of this section. OAG 82-263, 1982 Ky. AG LEXIS 382.

Documents containing complaints made to the Kentucky state Board of Medical Licensure from other state agencies, such as the Department (now Cabinet) for Human Resources, come under the exception of subdivision (1)(h) of this section; although exception (1)(h) is usually interpreted as applying to intra-office memoranda, in a proper case it can also be applied to inter-office communications of a preliminary nature and which only suggest or request that an investigation be made by the receiving office. OAG 82-263, 1982 Ky. AG LEXIS 382.

The Board of Medical Licensure may decline to allow access to documents connected with a complaint received by the Board, which documents were never used in a formal complaint against a licensee. OAG 82-263, 1982 Ky. AG LEXIS 382.

A request for records of the proceedings of a hospital committee of the University of Kentucky's Medical Center relating to "a nineteen-year-old girl who had her colon removed in an operation at the University of Kentucky Medical Center, and which after the removal of the colon it was revealed that the colon was normal in all respects" did not describe the records sufficiently for the custodian to be required to produce them. OAG 82-269, 1982 Ky. AG LEXIS 357.

The right of privacy involved in hospital records belongs to the patient, not to the medical center; if the patient consents to disclosure of the records of the case, inspection must be allowed except as to records which are made confidential by KRS 311.377(2). OAG 82-269, 1982 Ky. AG LEXIS 357.

Deferred compensation deductions from the pay checks of public employees are information of a personal nature where the public disclosure thereof would constitute clearly an unwarranted invasion of personal privacy and as such they come under the exemption in subdivision (1)(a) of this section. The Treasury Department can adopt a policy of withholding such information from all requesters. OAG 82-275, 1982 Ky. AG LEXIS 365.

Exemptions to the mandatory open records requirement provided by subdivision (1) of this section are permissive and not mandatory. A public agency can adopt a policy of not allowing inspection of exempt records but no law is violated if the exemption is ignored and the records are released. OAG 82-275, 1982 Ky. AG LEXIS 365.

If an agency withholds from inspection records which are exempt from mandatory disclosure, it should do so by a consistent policy and should treat all requests the same regardless of who the requester may be. OAG 82-275, 1982 Ky. AG LEXIS 365.

No law is violated if the Treasury Department releases information concerning deferred compensation deductions

and it is not the concern of the Treasurer whether the records are requested by someone wanting to compete with the Kentucky Employes Deferred Compensation System or for some other purpose. The Treasurer should have the same policy on making the information available regardless of who makes the request. OAG 82-275, 1982 Ky. AG LEXIS 365.

The records of graduate council decisions pertaining to individual students are confidential by law; there is no exception for statistical information in KRS 164.283, and this specific statute takes precedence over the general statute, the Open Records Law. Therefore, the custodian of records of Eastern Kentucky University properly denied access to the minutes of the graduate council and the graduate appeals committee, even though the request was for statistical information which would not have been exempt under subsection (2) of this section provided that it existed in compiled form. OAG 82-279, 1982 Ky. AG LEXIS 366.

Under the Open Records Law, KRS 61.870 to 61.884, a public record is either open to public inspection by any person or it may be withheld from inspection by every member of the public under one of the exceptions listed in subsection (1) of this section. This often means that the Open Records Law cannot be used in lieu of discovery procedures provided by the court rules of civil procedure. OAG 82-280, 1982 Ky. AG LEXIS 362.

A request for records compiled by security officers of the county board of education in connection with the investigation of criminal charges involving the requesting attorney's client, which records might be used in a prospective law enforcement action or administrative adjudication before the board of education, was properly denied under subdivision (1)(f) of this section. The inspection of the described records could only be mandatorily required by a requester by order of a court until such time as the enforcement action was completed or a decision was made to take no action. OAG 82-280, 1982 Ky. AG LEXIS 362.

An opinion of the legal staff of the Department of Revenue (now Revenue Cabinet) as to the validity of two (2) permits of the Department's sales and use tax division was in-house memorandum from legal counsel to a client, namely, the department of revenue, and being an intra-office memorandum in which opinions were expressed and recommendations made it was exempt from the mandatory requirement of public disclosure by subdivision (1)(h) of this section. OAG 82-295, 1982 Ky. AG LEXIS 325.

Records which are the work product of an attorney in the course of advising a client are not discoverable under CR 26.02(3) and are therefore exempt from public disclosure under KRS 447.154 and subdivision (1)(j) of this section. OAG 82-295, 1982 Ky. AG LEXIS 325.

A report made by a state detective to his superior officer, regarding an investigation of an airplane landing, was in the nature of an intra-office memorandum, a preliminary memorandum in which opinions were expressed along with a report of actions taken during an investigation of an incident, and was not mandatorily required to be made available for public inspection. OAG 82-339, 1982 Ky. AG LEXIS 308.

Records which are preliminary in nature when they are created do not lose their exempt status after final action is taken based upon the preliminary recommendations; they continue to be preliminary records. This is all the more true if the preliminary memorandum expresses opinions and recommendations of the writer. OAG 82-339, 1982 Ky. AG LEXIS 308.

The report of the annual audit of a city is not exempt from mandatory public inspection by subdivision (1)(g) of this section or any other exception in the statute. An audit report made under the provisions of KRS 91A.040 is a public record and should be made available for public inspection. OAG 82-340, 1982 Ky. AG LEXIS 309.

A person does not have any privacy interest in local police records pertaining to him. OAG 82-388, 1982 Ky. AG LEXIS 246.

Inspection of requested records containing identifiable descriptions and notations of arrest, detentions, indictments, information or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release and/or all other information a local police department may have compiled on a named individual could not be denied on the grounds of "personal privacy." OAG 82-388, 1982 Ky. AG LEXIS 246.

Local law enforcement agencies are required to make available for public inspection arrest records of any person, subject to the exceptions stated in KRS 17.150(2). OAG 82-388, 1982 Ky. AG LEXIS 246.

If a record is made available to one member of the public for one purpose, it must be made available to the public generally for any purpose. OAG 82-394, 1982 Ky. AG LEXIS 259.

The Kentucky Board of Nursing should make available to the public, including RN Magazine, the names and addresses of all licensed nurses as contained in the records of the Board without regard for the purpose for which the records are requested. OAG 82-394, 1982 Ky. AG LEXIS 259.

The Open Records Law requires that all public agencies, state and local, shall allow inspection and copying the public records in their custody, with the exception of certain types of documents named in this section, without regard to the person who is making the request or the purpose for which the person wants to inspect the records; an agency cannot adopt a policy allowing inspection and copying of records for certain purposes and denying it for other purposes. It is the content of the record itself which makes it either mandatorily accessible to public inspection and copying or exempt from the mandatory requirement. OAG 82-394, 1982 Ky. AG LEXIS 259.

The purpose of licensing professions, such as nursing, is to protect the public, and the public is entitled to know who the licensees are. The public is also entitled to know the address of each licensee and if the only address which the board has for a licensee is a home address, the privacy exemption will not apply to that licensee. OAG 82-394, 1982 Ky. AG LEXIS 259.

Information about the confiscation of inmate property would generally be exempt from mandatory public disclosure because the privacy rights of the inmates involved outweigh the need for the public to be informed. OAG 82-395, 1982 Ky. AG LEXIS 258.

A deceased person has no right of privacy under subdivision (1)(a) of this section and police records pertaining to a decedent cannot be withheld from public inspection on that basis. Moreover, a requester is entitled to inspect the original records and is not required to submit specific questions regarding a deceased person. OAG 82-413, 1982 Ky. AG LEXIS 242.

Records which are preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended are exempt under subdivision (1)(h) of this section and do not lose their exempt status with the passage of time. However, records showing police action such as warrants, arrest records and investigations of complaints which do not contain opinions of the officer are not exempt from public inspection. OAG 82-413, 1982 Ky. AG LEXIS 242.

Some records pertaining to a deceased person may be withheld from public inspection under one of the exceptions provided in subsection (1) of this section other than subdivision (1)(a) of this section. However, it is the duty of the custodian to sort out the exempt material and allow the requester to inspect the remaining records. OAG 82-413, 1982 Ky. AG LEXIS 242.

Departmental reports to the Commissioner of Personnel are exempt from the mandatory requirement of public inspection under subdivision (1)(g) of this section since the documents in

the report are clearly intra-office memoranda in which opinions are expressed or policies formulated or recommended to the Secretary of the Cabinet for Human Resources by commissioners of departments under the Human Resources Cabinet and the fact that they are transmitted to the Department of Personnel as part of the departmental report does not remove their exempt status. OAG 82-431, 1982 Ky. AG LEXIS 217.

Letters from individual employees to the Commissioner of Personnel are exempt from public inspection under subdivision (1)(g) of this section since they are correspondence with private individuals. OAG 82-431, 1982 Ky. AG LEXIS 217.

A city cannot by ordinance make records confidential or exempt from public inspection unless the particular records come under one of the exemptions from mandatory public inspection provided in this section. OAG 82-435, 1982 Ky. AG LEXIS 218.

One of the purposes of the Open Records Law is to allow any member of the public to personally check on the operation of the government by inspecting the original records of public agencies or by purchasing copies thereof, and the question whether taxes are being paid by all persons who are legally obligated to pay them is a legitimate interest of the public which any person has a right to check; accordingly, the confidentiality provisions of an ordinance which imposed an annual license for the privilege of doing business in the city contravened the Open Records Law since every licensee in the city was required to pay a $25 minimum license fee and the public disclosure of who had paid the fee revealed no private detail concerning a taxpayer's business. OAG 82-435, 1982 Ky. AG LEXIS 218.

A development potential analysis of certain property was exempted from the requirement of mandatory public inspection by subdivision (1)(h) of this section. The document was almost entirely opinion and recommendations and, while it was probably a final report of the corporation employed by the county to analyze the potential of such property, it was preliminary in that the county, if it chose to do so, could have other analyses made for its considerations. OAG 82-450, 1982 Ky. AG LEXIS 206.

Since subdivision (1)(d) of this section expressly mentions appraisals and feasibility estimates and evaluations relative to the acquisition of property, a development potential analysis of certain property could not be held exempt from public inspection under that subdivision. OAG 82-450, 1982 Ky. AG LEXIS 206.

A coroner's autopsy report is exempt from the requirement of mandatory public disclosure by subdivision (1)(f). OAG 82-458, 1982 Ky. AG LEXIS 185.

While a coroner's verdict filed with the circuit court clerk is open to public inspection, objects and reports, such as autopsy reports, are to be retained by the coroner and the prosecuting authority and are not required to be made open to public inspection until prosecution is completed or a decision not to prosecute has been made. OAG 82-458, 1982 Ky. AG LEXIS 185.

If a request is made to inspect personnel action laying off, hiring or rehiring faculty and staff of a university during a reasonable period, the request should be granted either by allowing inspection of records after private matters have been deleted or by preparing a list of nonexempt information; the name, position, salary and period of employment of each person subject to personnel action during a reasonable specified period is nonexempt information. OAG 82-506, 1982 Ky. AG LEXIS 178.

Where a newspaper reporter requested information as to the age and address of present and former university employees, she was asking for information of a personal nature which was made exempt from mandatory public disclosure by subdivision (1)(a) of this section and the university was correct in relying on that statutory provision in denying the request. The university's offer to provide statistical data and nonexempt information on named individual employees, which presumedly would inform the requester of the name, position, work station and salary, satisfied the requirements of the law. OAG 82-506, 1982 Ky. AG LEXIS 178.

Where a request was made to inspect "lists or records that would designate laid-off faculty members as tenured or nontenured" such contract status was a public matter and the university should comply with the request. OAG 82-506, 1982 Ky. AG LEXIS 178.

Since the address of a person licensed to practice a profession is not a matter of personal privacy which may be withheld from public disclosure under subsection (1)(a) of this section or any other exemption provided in the Open Records Law (KRS 61.870 to 61.884), the Kentucky Board of Nursing must make available to the public the home address of each nurse licensed by the Board. If a licensee furnishes the Board a business address or a post office box number, it would be sufficient to give that address to the public instead of the home address; the crucial factors are identification and general location of the licensee and these factors override any privacy interest the licensee may have in his private life. OAG 82-524, 1982 Ky. AG LEXIS 127.

Where requested records consisted of a summary of opinion expressed to Kentucky officers during interviews of law enforcement officials in Ohio, who were largely relying on opinions expressed to them by other persons, and constituted a three- or four-tier summary of unsubstantiated opinions as to persons involved in criminal activity, including deceased as well as other persons still living in Ohio and other states, and where such summary expressed suspicions of officers and referred to criminal investigations still being conducted, such communication was doubtless made with the understanding of confidentiality, the breach of which could have an adverse effect on the ongoing law enforcement investigations, and such records were exempt from the mandatory requirement of public disclosure under subsection (1)(f) of this section. OAG 82-532, 1982 Ky. AG LEXIS 108.

In denying a request for records which contained the names, addresses, and social security numbers of those individuals who had an unsatisfied obligation to support minors residing within the commonwealth of Kentucky whose custodial parent or guardian presently, or who had at times in the past, received benefits under the state and federal program entitled Aid to Families with Dependent Children, the Cabinet for Human Resources acted consistently with the provisions of the Open Records Law, KRS 61.870 to 61.884; these records have been made confidential by the General Assembly by KRS 205.730 which is a part of the Child Support Recovery Act, KRS 205.710 to 205.800. OAG 82-539; 82-641.

Although subsection (4) of this section does not use mandatory language, the clear legislative intent is that governmental agencies shall cooperate with one another and that one agency should assist another in carrying out its governmental functions. OAG 82-548, 1982 Ky. AG LEXIS 98.

The State Board of Physical Therapy is entitled to inspect the employment record of one of its licensees who was formerly employed by the University of Kentucky Medical Center in order to consider the licensee's fitness to maintain a license to practice physical therapy, since that is a governmental function of the licensing board. OAG 82-548, 1982 Ky. AG LEXIS 98.

Where the cause of death is an accident or where no criminal prosecution is pending or being considered, blood and urine test results made as a result of coroner's investigation are not exempt from public inspection. OAG 82-590, 1982 Ky. AG LEXIS 48.

Coroner's records showing the results of blood and urine tests made on six (6) named individuals killed in automobile accident could not be withheld from public inspection on ground of personal privacy since the records pertained to persons who were deceased and such right of privacy termi-

nated at the time of their death. OAG 82-590, 1982 Ky. AG LEXIS 48.

Where records concerning investigation of police department concerning allegations of drug abuse were requested, but request made no reference to any specific complaint, and report to the city officials made no specific recommendation of disciplinary action against any officer, none of the requested records were mandatorily required to be made public, but fell within the exemptions of subdivisions (1)(g) and (h) of this section. OAG 82-630, 1982 Ky. AG LEXIS 16.

Request to inspect records pertaining to the identity of employers who had been granted "common paymaster status" was properly denied under subdivision (1)(j) of this section since there were currently no common paymaster accounts and since the identity of employers in the unemployment compensation program is made confidential by KRS 341.190(3). OAG 83-1, 1983 Ky. AG LEXIS 496.

Inspection of witness statements made by employees to a compliance officer of the Department of Labor (now Labor Cabinet) concerning a fatality at a construction company was properly denied under the Open Records Law. OAG 83-5, 1983 Ky. AG LEXIS 491.

Where there is a concurrent state and federal jurisdiction to prosecute for a crime, state and federal authorities have a mutual interest in the investigation made by either jurisdiction; the fact that state authorities have decided not to prosecute does not mean that their investigative records must be made available for public inspection if the joint investigation is still open and there is the possibility of federal prosecution. OAG 83-39, 1983 Ky. AG LEXIS 457.

Where the premature release of the state's investigative file concerning bid rigging on state highway construction contracts might interfere with prosecution by the federal authorities, the exceptions provided in subdivision (1)(f) of this section applied and inspection of the records was properly denied. OAG 83-39, 1983 Ky. AG LEXIS 457.

Request to inspect files compiled in connection with an administrative investigation by the Internal Affairs Division of the Bureau (now Department) of State Police regarding the conduct of persons involved in and the propriety of closing a bid rigging investigation was properly denied under subdivisions (1)(g) and (h) of this section. OAG 83-39, 1983 Ky. AG LEXIS 457.

The exemption provided by subdivision (1)(f) of this section cannot be telescoped out in every case as long as an appeal is pending and once an agency has taken final action the exemption ceases unless a special reason is shown why release of the records to inspection would harm the agency in a prospective law enforcement action or administrative adjudication; the burden is on an agency to show special reason for withholding records after final action has been taken. OAG 83-41, 1983 Ky. AG LEXIS 455.

If the investigative files concerning an officer dismissed by final action of agency head contain reports from individuals expressing opinions or recommending policies that material continues to be exempt as preliminary unless the agency head incorporates the reports into his final order. OAG 83-41, 1983 Ky. AG LEXIS 455.

Where individual had been dismissed as a police officer, the records showing the complaint against him and the final determination of the chief of police should be made available for public inspection; if the formal final determination of the chief of police incorporated by reference any investigative reports, such reports should also be made available for public inspection. OAG 83-41, 1983 Ky. AG LEXIS 455.

Where employee of Office of Public Advocacy stated that request to inspect investigative report was made on behalf of mother of one of the alleged victims of child abuse at institution and did not state that the request for the records was made for a governmental purpose, the Bureau (now Department) for Social Services was not required, under subsection (4), to make the investigative report available to the Office for Public Advocacy which avowedly was making the request on the behalf of an interested individual. OAG 83-48, 1983 Ky. AG LEXIS 448.

Request to inspect and copy cost reports filed with the Department of Revenue (now Revenue Cabinet) by group self-insureds was properly denied since KRS 131.190(1) makes confidential all tax records and reports to the Department of Revenue concerning taxes and that specific statute dealing with the subject prevails over any provisions of the Kentucky Open Records Law; moreover, the open records statute, in subdivision (1)(j) of this section, also expressly exempts public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly. OAG 83-78, 1983 Ky. AG LEXIS 419.

Letter from company attorney to a riverport authority was plainly correspondence between a private individual and the authority rather than correspondence between two public officials on official business; the writer of the letter could make it public if he desired to do so, but the riverport authority had the permissive right to withhold the letter from public inspection under subdivision (1)(g) of this section. OAG 83-79, 1983 Ky. AG LEXIS 418.

It is implied in this section and its companion statute, KRS 17.150, that the investigative files which are to be open to public inspection are those pertaining to a named suspect after that suspect has been prosecuted or a decision has been made not to prosecute him; in a case where no suspect has been determined and active investigation has ceased because the investigators can find no other trails to follow, the case has become inactive but is not closed. To hold otherwise would be to open up to public inspection all of the police investigative files where the investigation has become fruitless and indefinitely suspended. OAG 83-123, 1983 Ky. AG LEXIS 374.

Statements of witnesses to a fatal construction accident, which were taken in private interviews by officials from the Department of Labor (now Labor Cabinet), were exempted from mandatory public disclosure by subdivision (1)(j); the mere fact that two (2) pages of a four-page statement by one (1) of the witnesses were mistakenly included in papers released to an attorney, did not estop the Department of Labor (now Labor Cabinet) from refusing to release the other two (2) pages of the statement. OAG 83-140, 1983 Ky. AG LEXIS 357.

Intraoffice memoranda from employees of the Corrections Cabinet in which they expressed opinions and made recommendations as to possible alternate sites for a medium security prison were exempt from mandatory public inspection under subdivision (1)(h) of this section. OAG 83-143, 1983 Ky. AG LEXIS 354.

Where a technical report done for the Natural Resources and Environmental Protection Cabinet consisted mainly of reports of test results and studies made by experts, the statistical and scientific data contained in the report were final records of a public agency and should have been made available for public inspection notwithstanding the fact that the document was an in-house draft of the Cabinet, that it was stamped as a "preliminary draft," and that it would not be finalized until after the Environmental Protection Agency commented upon the report. OAG 83-163, 1983 Ky. AG LEXIS 332.

Preliminary drafts of a county budget are not required to be available for public inspection; they are in the nature of intraoffice memoranda, preliminary, tentative and merely expressions of recommendations which may or may not be incorporated into the final document. OAG 83-166, 1983 Ky. AG LEXIS 329.

A request for the names and addresses of all taxpayers who had protested assessment of sales tax, resulting from audit or otherwise, by the sales and use tax section of the Revenue Cabinet was a request for a list which did not exist, and the

request was properly denied since an agency is not required to prepare a list which is not already in existence; the subject request could also be denied under subdivision (1)(g) of this section which exempts from mandatory public disclosure "correspondence with private individuals." OAG 83-167, 1983 Ky. AG LEXIS 328.

Transcripts of depositions taken in a civil action brought against the Cabinet for Human Resources are not subject to the Open Records Law and, since there is no court rule requiring one party to a lawsuit to furnish a copy of a deposition in the suit to another party, the plaintiff could only obtain a copy of the depositions from the stenographer who reported the depositions upon the payment of the required fee. OAG 83-194, 1983 Ky. AG LEXIS 303.

The personal privacy exemption does not apply to police records. OAG 83-212, 1983 Ky. AG LEXIS 285.

Since the record disclosing the name of a person arrested or incarcerated is open to public inspection and copying, his photograph is also open to public inspection and copying and the personal privacy exemption does not apply. OAG 83-212, 1983 Ky. AG LEXIS 285.

If no photograph of arrestee is taken at the time of booking because the police already have a sufficiently up-to-date photograph of the arrestee, that photograph should be made available for public inspection and copying. OAG 83-212, 1983 Ky. AG LEXIS 285.

When a coroner's inquest finds that a death resulted from a crime being committed and a criminal prosecution arises, all evidentiary material should be turned over by the coroner to the prosecuting authority as provided by KRS 72.020(2) and such material may be withheld from public inspection pending the completion of the prosecution under subdivision (1)(f) of this section; but where the cause of death is an accident or where no criminal prosecution is pending or being considered, blood and urine test results are not exempt from public inspection. OAG 83-223, 1983 Ky. AG LEXIS 274.

Generally, when an agency makes an official inspection of one of its licensees and objectively grades the performance or conditions existing on the premises of the licensee, the report and grade is open to public inspection; on the other hand, a report by an agency employee to his superior expressing opinions and making recommendations of policy may be exempt from mandatory public disclosure under subdivision (1)(h). OAG 83-235, 1983 Ky. AG LEXIS 261.

The fact that a health department report was involved in a class-action lawsuit did not necessarily mean that it was exempt from mandatory public inspection unless the judge issued an order to that effect. OAG 83-235, 1983 Ky. AG LEXIS 261.

Company's technical proposal and oral presentation booklet, submitted in response to request of state agency for proposals for automated certification and issuance of food stamp program, contained material which could be classified as trade secrets, unpatented, secret commercially valuable plans, appliances, formulae, or processes and as such came under the trade secrets exception of subdivision (1)(b) of this section; since the request designated the proposal as a unit it could be rejected as a unit. The agency request for proposal, which was open to the public, supplied sufficient information about the food stamp program to satisfy the needs of the public in a general fashion. OAG 83-256; 83-302.

The Revenue Cabinet could not deny request for information regarding the motor vehicle tax account of deceased county clerk under either subdivision (1)(g) or (h) of this section or KRS 131.190(1) since the permissive exceptions provided by subdivision (1)(g) and (h) have no application to reports required to be filed by local officers with a state cabinet or department, and since KRS 131.190(1) provides a cloak of confidentiality for taxpayers, not for public officials, and applies only to living taxpayers who are still in business and not to deceased persons. OAG 83-257, 1983 Ky. AG LEXIS 240.

The denial of public inspection of a reference, in state police investigation file, to three (3) persons unconnected with the police investigation was proper, pursuant to subdivision (1)(a) of this section, as protection against an unwarranted invasion of personal privacy and, pursuant to KRS 17.150(2)(b), because disclosure of such information would not promote a wholesome public interest. OAG 83-260, 1983 Ky. AG LEXIS 237.

Denial of public inspection of the polygraph test of a named person which was a part of the investigative file of state police was proper under KRS 17.150(2)(b) and subdivision (1)(a) of this section. OAG 83-260, 1983 Ky. AG LEXIS 237.

The Revenue Cabinet properly denied request to inspect all correspondence sent or received regarding the feasibility of an unmined minerals tax because they consisted entirely of intraoffice memoranda which were preliminary in nature and which contained expressions of opinion, recommendations and proposals from subordinate state employees to their superiors and thus they were exempt from mandatory public disclosure by subdivisions (1)(g) and (h) of this section; such records were not made confidential by KRS 131.190(1) because they made no mention of any individual taxpayer or information concerning any taxpayer's business. Since the records could be withheld from public inspection by the permissive exemptions of subdivisions (1)(g), (h), the Revenue Cabinet had the option of either allowing inspection of the records or keeping them confidential, provided that it treated all requests to inspect the records according to the same policy. OAG 83-263, 1983 Ky. AG LEXIS 234.

A letter written by a person in his capacity as city attorney, concerning a statement made by a county police officer questioning the eligibility of the present city chief of police to hold that position, was exempt from public inspection under subdivision (1)(h) of this section as a preliminary memorandum in which an opinion was expressed. OAG 83-272, 1983 Ky. AG LEXIS 225.

The incident reports and daily log sheets maintained at certain social services facilities and evaluative memoranda derived from inspections of those facilities are exempt from public inspection as a protection against an unwarranted invasion of the privacy rights of the residents of those facilities; the evaluative memoranda are also exempt as preliminary memoranda in which opinions are expressed. OAG 83-286, 1983 Ky. AG LEXIS 211.

The quarterly reports of the Kentucky Society of CPAs' Ethics Committee, made to the State Board of Accountancy for their Quality Review Program, are exempt from public inspection under subdivisions (1)(a), (g) and (h) of this section; such reports would contain names of practitioners or firms found to be substandard, which information is personal in nature and protected by the privacy exemption, and also would contain preliminary information and recommendations protected from disclosure by this section. OAG 83-308, 1983 Ky. AG LEXIS 189.

The Corrections Cabinet is a public agency as defined by KRS 61.870(1); therefore the records prepared, owned, used, or in possession of the Corrections Cabinet are public records pursuant to KRS 61.870(2) and open to public inspection unless exempted under this section. OAG 83-313; 83-337.

Deputy Warden of Operations for the Kentucky Corrections Cabinet at the Kentucky State Reformatory properly refused request to inspect purchase orders or recommendations to purchase motors for the exhaust system in the geriatrics unit as such records were exempt under subdivision (1)(h) of this section. OAG 83-313, 1983 Ky. AG LEXIS 184.

As a public agency pursuant to KRS 61.870(1), the documentary materials prepared by the Kentucky Department of Labor (now Labor Cabinet) are public records under KRS 61.870(2) and open to public inspection unless exempted under this section. OAG 83-326, 1983 Ky. AG LEXIS 171.

Audit reports are exempt from public inspection when there is a possibility of prospective law enforcement action or administrative adjudication; after the law enforcement action or administrative adjudication is complete or a decision is made to take no action, the final audit is open to public inspection. OAG 83-326, 1983 Ky. AG LEXIS 171.

The audit reports and supporting documents concerning the demand for back pay prepared by the Department of Labor (now Labor Cabinet) in an audit of a city were exempt from public inspection until prospective law enforcement action or administrative adjudication occurred, or a decision was made to take no action. OAG 83-326, 1983 Ky. AG LEXIS 171.

Insofar as the Department of Labor's (now Labor Cabinet) audit report had been presented to the city being audited, subdivision (1)(h) of this section was not applicable since this document would constitute a final and complete report upon presentation and would no longer be considered preliminary; supporting documents that did not constitute part of the final report would, on the other hand, be exempt as preliminary drafts or notes, under subdivision (1)(g) of this section, and as preliminary recommendations and memoranda containing opinions under subdivision (1)(h) of this section. Therefore, although documents constituting the final audit report would be open to public inspection after prospective law enforcement action or administrative adjudication was complete or a decision was made to take no action, preliminary documents not constituting the final audit report but which were used in preparation of it would never be open to public inspection. OAG 83-326, 1983 Ky. AG LEXIS 171.

Personnel records fall under the exception of subdivision (1)(a) of this section to mandatory disclosure. OAG 83-329, 1983 Ky. AG LEXIS 168.

The exemptions in the Open Records Law provided in subsection (1) of this section are permissive, not mandatory and, since Kentucky has no privacy law, a records' custodian has the authority to release exempted records unless there is some statute which makes the records confidential; there is no such statute pertaining to personnel records and, therefore, a school superintendent would have the authority to make teacher personnel records available to the public unless the school district had a policy of keeping the records confidential. In such case, every person requesting to inspect the records should be treated alike. OAG 83-329, 1983 Ky. AG LEXIS 168.

Under the Kentucky Open Records Law and under Kentucky case law a school superintendent had the legal right to refuse to send the personnel files of other teachers to the EEOC on the grounds that to do so would violate their personal privacy. OAG 83-329, 1983 Ky. AG LEXIS 168.

Documents pertaining to student's suspension were open to inspection by him, except documents which contained preliminary drafts, notes, correspondence with private individuals or preliminary recommendations and memoranda in which opinions were expressed or policies formulated or recommended, which could be properly exempted from his inspection; any complaints against him were also open to his inspection as were any written decisions by the disciplinary board. OAG 83-332, 1983 Ky. AG LEXIS 165.

The names, positions, and addresses of all the persons who were on the disciplinary board which found for student's suspension were open to student's inspection under KRS 61.835; however, the selection and appointment documents were exempt as "preliminary recommendations." OAG 83-332, 1983 Ky. AG LEXIS 165.

Since compliance officer's worknotes, compiled during occupational safety and health investigation, may contain his hand-drawn diagrams of the worksite or work operations, plus his observations, opinions, and possibly preliminary drafts of citations which may or may not be finally issued, the worknotes are exempted from public inspection by subdivision (1)(h) of this section as preliminary memoranda in which opinions and recommendations are expressed. OAG 83-335, 1983 Ky. AG LEXIS 162.

Since occupational health and safety compliance officer's worknotes may contain notations of conversations with employees and employers, and since KRS 338.101, which authorizes the compliance officer to inspect the workplace and talk privately with employers and employees, makes any statement taken from an employee or employer confidential and therefore exempt from public inspection by virtue of subdivision (1)(j) of this section, such worknotes are exempt from inspection. OAG 83-335, 1983 Ky. AG LEXIS 162.

Compliance officer's worknotes compiled in the ordinary course of an occupational safety and health investigation of an employer worksite, which may contain preliminary handwritten drafts of possible citations and correspondence with private individuals which are not intended to give notice of final action are preliminary and do not evidence a final action; therefore, the exemption under subdivision (1)(g) of this section applies. OAG 83-335, 1983 Ky. AG LEXIS 162.

An order from the warden to the staff of the reformatory directing the staff to lock down the geriatrics unit from 4 p.m. to 6 p.m. was an "intra-agency" memorandum and was exempt from public inspection pursuant to subdivision (1)(h) of this section. OAG 83-337, 1983 Ky. AG LEXIS 157.

The back side of the Uniform Offense Report used by a city police department, which usually contained supplementary notes taken by the investigating officer, was exempted from public inspection (except upon court order) under the Open Records Law pursuant to subdivisions (1)(f), (g) and (h) of this section, because such supplementary notes were compiled during an investigation, because their disclosure might inhibit the officer's investigation, because they were inherently preliminary and because they contained the officer's recommendations and opinions. OAG 83-338, 1983 Ky. AG LEXIS 156.

The reports kept by a county ambulance service of ambulance runs, including the name, address and age of person transported, where the person was picked up and transported, and the nature of the run were exempted from public inspection as a protection against an unwarranted invasion of personal privacy under subdivision (1)(a) of this section. OAG 83-344, 1983 Ky. AG LEXIS 142.

A decision rendered by referee for unemployment compensation division was a public record under KRS 61.870(2), and thus open to public inspection unless exempted by this section; since the referee's decision was evidence of a final action by the agency, the exemptions of this section did not apply. OAG 83-352, 1983 Ky. AG LEXIS 150.

Reports and documents involving a criminal prosecution and conviction are subject to discovery by the accused pursuant to Kentucky's Criminal Rules of Procedure and will be available to the public, unless otherwise properly exempted, once the appealed criminal conviction has been affirmed by the court of last resort to which the conviction is taken. OAG 83-356, 1983 Ky. AG LEXIS 132.

A letter written to the head of a university's art department by the university's president on behalf of the board of regents containing charges against the department head was exempt from inspection under subdivision (1)(a) of this section as a protection against an invasion of personal privacy of the department head, and under subdivision (1)(g) of this section as correspondence with a private individual which was not intended to give notice of a final agency action. OAG 83-358, 1983 Ky. AG LEXIS 134.

Where police incident reports and police internal affairs reports concerning the shooting of an individual are still active files, they are not open to public inspection until prospective law-enforcement action or administrative adjudication is complete or a decision is made to take no action. OAG 83-366, 1983 Ky. AG LEXIS 128.

Police internal affairs reports are exempt from public inspection as preliminary memoranda; only internal affairs

reports which indicate the final action taken and the underlying complaint are open to public inspection. OAG 83-366, 1983 Ky. AG LEXIS 128.

The class and grade statistical data of the Comprehensive Tests of Basic Skills, a standardized test administered to 3rd, 5th, 7th, and 10th grade students, as compiled by the Jefferson County Public Schools and released to each individual school, are open to public inspection under the Open Records Law, as long as the class and grade reports are not descriptive of any readily identifiable person. OAG 83-371, 1983 Ky. AG LEXIS 121.

Letters written by a private individual to the Governor's office pertaining to proposed legislation concerning outdoor (billboard) advertising were properly exempted from public inspection. OAG 83-385, 1983 Ky. AG LEXIS 111.

The Department of Transportation's (now Transportation Cabinet) denial of a request to inspect "all" records in the Kentucky Department of Transportation, Division of Right of Way, District 5, was proper under Open Records Law; the request did not have to be honored as it lacked specificity and it would have placed an unreasonable burden on the agency to separate exempted material from the nonexempted material before inspection. OAG 83-386, 1983 Ky. AG LEXIS 112.

Final orders of the Unemployment Insurance Commission, which are cited by the Commission as precedent in subsequent decisions, should be open to public inspection as evidence of a final agency action; accordingly, the Commission acted improperly when, based on KRS 341.190, it denied an inspection request, since KRS 341.190 mandates confidentiality only for communications from the employer or worker to the Commission, and does not address communications from the Commission to the employer or worker. OAG 83-405, 1983 Ky. AG LEXIS 91.

Where one university student seeks the release of a tape or transcript of a student disciplinary hearing in which several other students were also involved, only those parts of the tape or transcript which relate to the student requesting access are available to him, since the other students have the right under subdivision (1)(a) of this section to nondisclosure of private information. OAG 83-427, 1983 Ky. AG LEXIS 70.

A student involved in student disciplinary proceedings at a university can be exempted from inspecting the records of the hearing (1) if public disclosure constitutes a clearly unwarranted invasion of another's privacy (such as another student); (2) if the records contain preliminary drafts, notes, correspondence with private individuals (other than a notice of final action); (3) if the records contain preliminary recommendations or memoranda which express opinions or policies; (4) and if disclosure is prohibited by federal law or regulation or by the Kentucky General Assembly. OAG 83-427, 1983 Ky. AG LEXIS 70.

Where report was requested by the county judge/executive in order to investigate alleged misuse of county road equipment by an elected magistrate, subdivision (1)(h) of this section would apply to exempt the document from public inspection since the report was not indicative of any final action taken by the fiscal court and as such was preliminary; at most, the report could merely be preliminary memoranda gathered by the county attorney in his investigation. OAG 83-469, 1983 Ky. AG LEXIS 28.

Since a report concerning investigation of alleged misuse of county equipment, which was made at the request of the county judge/executive, was documentary material in the possession of a public agency, it was a "public record" under KRS 61.870(2) and open to public inspection unless exempted pursuant to subsection (1) of this section. OAG 83-469, 1983 Ky. AG LEXIS 28.

Resumes of the fire chief, assistant fire chiefs, and city manager are personnel records and, as such, contain personal information, disclosure of which would constitute a clearly unwarranted invasion of personal privacy; accordingly, the city manager properly denied public inspection of such resumes. OAG 84-19, 1984 Ky. AG LEXIS 367.

The reports of two (2) fires prepared by a fire chief following his investigations were validly withheld from the public pursuant to KRS 227.370 and subdivision (1)(h) of this section. OAG 84-19, 1984 Ky. AG LEXIS 367.

A licensing agency must make available the work addresses of licensees. OAG 84-51, 1984 Ky. AG LEXIS 335.

Home addresses of licensees are excluded from inspection under the privacy exemption; however, the home address of the licensee is available under the Open Records Law if no work address is listed. OAG 84-51, 1984 Ky. AG LEXIS 335.

Social security numbers and home addresses of Kentucky State Racing Commission licensees are excluded from public inspection under the privacy exemption of subdivision (1)(a) of this section; however, a licensee's home address must be made available in the absence of a work address, since the purpose of the license is to protect the public. OAG 84-51, 1984 Ky. AG LEXIS 335.

Social security numbers are exempted from public disclosure under the Open Records Law. OAG 84-51, 1984 Ky. AG LEXIS 335.

The requested inspection of a deceased veteran's military records was properly denied, where the federal Privacy Act of 1974 (5 USCS § 552) allowed such inspection only by the next of kin, and the requestor admitted that she was never married to the veteran even though she and the veteran had a son who purportedly took the veteran's name. OAG 84-84, 1984 Ky. AG LEXIS 302.

Records in the file on a proposed lease of property were not open for public inspection if they fell within the exemptions of subdivision (1)(d) of this section (evaluations made by or for a public agency relative to acquisition of property) or subdivisions (1)(g) and (h) (preliminary memoranda) but the bid advertisements and Department of Insurance request for more space were open to inspection; if the file contained exempted and nonexempted material, the nonexempted material must be separated out and made available for public inspection. OAG 84-90, 1984 Ky. AG LEXIS 296.

A requestor should be allowed to inspect city occupational licenses to obtain business names and addresses and was also entitled to access to the dates of license application and issuance, as well as to the identity of businesses delinquent in paying occupational taxes. OAG 84-93, 1984 Ky. AG LEXIS 293.

The public is not entitled to know information about a license which is made expressly confidential and, therefore, records disclosed to a city in order to obtain an occupational license or collect a license fee, such as social security numbers and federal identification numbers, would be confidential and exempt from public access; information which reveals the affairs of the business, such as profits, taxes, deductions, and salaries, would also be exempted. OAG 84-93, 1984 Ky. AG LEXIS 293.

An occupational license is a temporary grant of special privilege by the local government and, consequently, public access to the information contained in the license, such as business name and address, is not an unwarranted invasion of personal privacy. OAG 84-93, 1984 Ky. AG LEXIS 293.

A city could compile a list of occupational licensees in its discretion, or allow requestor to make his own list; the city could also separate exempted from nonexempted matter before allowing requestor access to the records. OAG 84-93, 1984 Ky. AG LEXIS 293.

The application for an industrial revenue bond is not available for public inspection since subdivision (1)(c) of this section exempts public records pertaining to a prospective business or industry location where no previous public disclosure has been made of the business' or industry's interest in relocating or expanding in the commonwealth and since subdivision (1)(b) exempts from public inspection all records

confidentially disclosed in conjunction with an application for a loan; although the county assumes no financial risks on the bonds, they are the issuing authority and review the bond applications as if they were loan applications. OAG 84-98, 1984 Ky. AG LEXIS 288.

Notification of approval or denial of an industrial revenue bond by the county Office of Economic Development is evidence of a final agency action and is therefore open to public inspection. OAG 84-98, 1984 Ky. AG LEXIS 288.

The amount of an industrial revenue bond issue being sought is exempt from public inspection under subdivisions (1)(b) and (c) of this section. OAG 84-98, 1984 Ky. AG LEXIS 288.

The intended use of an industrial revenue bond issue is open to public inspection if contained in correspondence which gives final action of the county Office of Economic Development; otherwise it is exempt as preliminary memoranda. OAG 84-98, 1984 Ky. AG LEXIS 288.

The decision by the fiscal court, Office of Economic Development and other county officials on whether to approve an industrial revenue bond issue is open to public inspection if it represents final agency action; otherwise, it is exempted as containing preliminary recommendations, opinions, and policies. OAG 84-98, 1984 Ky. AG LEXIS 288.

The reason for the decision on whether to approve an industrial revenue bond issue is open to public inspection if contained in correspondence indicating final agency action; it is otherwise exempt under subdivisions (1)(g) and (h) of this section as preliminary memoranda. OAG 84-98, 1984 Ky. AG LEXIS 288.

County recommendations concerning industrial revenue bonds are exempt from public inspection as preliminary recommendations or preliminary memoranda in which opinions are expressed or policies recommended, unless contained or incorporated into correspondence indicating final action. OAG 84-98, 1984 Ky. AG LEXIS 288.

Correspondence between the county and an industrial revenue bond applicant regarding the application is exempt from public inspection as preliminary unless contained or incorporated into correspondence indicating final action. OAG 84-98, 1984 Ky. AG LEXIS 288.

Correspondence between county agencies regarding an industrial revenue bond application is exempt from public inspection as preliminary unless contained or incorporated into correspondence indicating final action. OAG 84-98, 1984 Ky. AG LEXIS 288.

Due to the permissive nature of the exemptions of subsection (1) of this section, as well as the custom of release of licensee social security numbers by the Kentucky State Racing Commission (KSRC) to the Horsemen's Benevolent and Protective Association (HBPA), which has gone uncontested until recently, KSRC should continue to release the social security numbers of its licensees to HBPA; additionally, KSRC must release the social security numbers to Kentucky Racing Health and Welfare Fund (KRHWF) due to subsection (4) which provides for the exchange of public records between public agencies for a legitimate government function. OAG 84-115, 1984 Ky. AG LEXIS 271.

The personal privacy protection of subdivision (1)(a) of this section does not logically extend to time spent in public service which is compensated by public funds, and for which the public employee is accountable; accordingly, the time sheets for two (2) public employees were improperly withheld from inspection. OAG 84-161, 1984 Ky. AG LEXIS 224.

Although the exemptions of subsection (1) of this section are permissive and not mandatory, neither the statute, Attorney General opinions, or case law indicate that the exemptions may be waived by allowing inspection and then invoking an exemption. OAG 84-163, 1984 Ky. AG LEXIS 226.

The denial of inspection of two (2) requested letters was proper under subdivision (1)(h) of this section where the letters constituted intra-agency preliminary memoranda in which opinions were expressed. OAG 84-163, 1984 Ky. AG LEXIS 226.

Where police investigative file involving a charge of "terroristic threatening" was still open, such file was properly exempted from public inspection under subdivision (1)(f) of this section. OAG 84-178, 1984 Ky. AG LEXIS 206.

A city budget is a public record under KRS 61.870 and is thus open to public inspection; current budgets are required to be published pursuant to KRS 424.240. Previous budgets and current budgets are both open to public inspection, as previous budgets have lost any "preliminary" quality by being closed and current budgets are "working" budgets indicative of final action; for the same reasons, the budget ordinances of the city would also be open to inspection. OAG 84-217, 1984 Ky. AG LEXIS 168.

An agreement pursuant to KRS 65.210, the Interlocal Cooperation Act, is open to public inspection as it constitutes final action by the city; copies of such agreements must be filed with the county clerk of the county which is party to the agreement before the agreement becomes operative. OAG 84-217, 1984 Ky. AG LEXIS 168.

Compliance officer's worknotes compiled during an occupational safety and health investigation are exempt from public inspection under subdivisions (1)(g) and (h) of this section, since the worknotes are strictly preliminary in nature. OAG 84-218, 1984 Ky. AG LEXIS 169.

An Occupational Safety and Health or Accident (OSHA) compliance officer's worknotes are strictly preliminary in nature and are exempt from public inspection; consequently, compliance officer's worknotes in regard to the Labor Cabinet's occupational safety and health investigation file on an accident at a municipal wastewater treatment plant were exempt from public inspection under subdivisions (1)(g) and (h) of this section. OAG 84-224, 1984 Ky. AG LEXIS 157.

Request to inspect audit report concerning unpaid overtime compensation of former city employee was premature and the Labor Cabinet properly withheld the records in reliance on subdivisions (1)(f) and (g) of this section where employee's claim was still under administrative investigation and the audit report requested was preliminary. OAG 84-225, 1984 Ky. AG LEXIS 158.

A proposal by private industry to sell private property to the Corrections Cabinet for the purpose of converting the property into a prison was exempt from inspection, under subdivision (1)(d) of this section, where although a recommendation had been made to the Governor, no decision had been made concerning the proposal. OAG 84-226, 1984 Ky. AG LEXIS 159.

Witness statements that were referred to during grand jury testimony on official misconduct were preliminary documents in police investigative files that were exempt from inspection under subdivisions (1)(g) and (h) of this section, even after the charges were dropped; the preliminary status of the statements exempted them from inspection even by a person who was mentioned in the statements since KRS 61.884 is subject to the KRS 61.878 exemptions. OAG 84-249, 1984 Ky. AG LEXIS 146.

The release of records maintained by the Bureau for Manpower Services is subject to the United States Employment Service policies; thus, since a federal regulation allows public disclosure only for general information concerning employment opportunities, levels, and trends, the records subject to disclosure cannot include information identifying individual applicants, employers, or employing establishments. OAG 84-273, 1984 Ky. AG LEXIS 108.

The compliance officer's worknotes and the two (2) employee statements made during an investigation of an accident are exempt from public inspection as "preliminary" under subdivisions (1)(g) and (1)(h) of this section. OAG 84-275, 1984 Ky. AG LEXIS 110.

Where a city commission authorized private companies to bid for a contract to provide fire protection for the city and replace the present city fire department, as documentary material retained by a public agency, the bid invitation, correspondence pertaining to the bids, and the bids themselves were public records subject to the Open Records Law. Unless exempted by the provisions of this section, these records are open to public inspection once the bids are publicly opened. OAG 84-284, 1984 Ky. AG LEXIS 92.

Inspection of the presentence investigation report (PSI) remains closed except to the court, Parole Board, or Corrections Cabinet pursuant to subdivision (1)(j) of this section and KRS 439.510 although these agencies may order otherwise. Interpretation of KRS 532.050(4) indicates that there is a question as to whether the PSI itself should be released for inspection even to the defendant or his counsel. Statutory language only requires the court to advise of factual contents and conclusions; it does not require inspection. OAG 84-285, 1984 Ky. AG LEXIS 93.

The tape recordings of employee interviews taken during the investigation of internal criminal allegations against an assistant fire marshal are clearly preliminary to any final action taken by the Division of Fire or Department of Law; they are therefore exempt from public inspection (except upon court order) under subdivisions (1)(g) and (1)(h) of this section. OAG 84-298, 1984 Ky. AG LEXIS 87.

A citizen's complaint to a city's housing department, which spawned an inspection of the property complained about and a final order of the department to board up the property, should be open to public inspection, even though the final action taken by the department was not based on the complaint but on an inspection of the property by the department; however, the identity of the complainant is exempt from public disclosure pursuant to subdivision (1)(a) of this section. OAG 84-315, 1984 Ky. AG LEXIS 67.

Financial disclosure forms which are filled out and given to a mayor's advisory committee on ethics constitute public records which are open to public inspection due to the inapplicability of the exemptions in this section. OAG 84-320, 1984 Ky. AG LEXIS 66.

An occupational safety and health compliance officer's worknotes are exempt from public inspection pursuant to subdivisions (1)(g) and (1)(h) of this section. The compliance officer's worknotes are not intended to give notice of final action as they merely report possible violations and contain the officer's observations and opinions; the worknotes are therefore preliminary in nature. OAG 84-321, 1984 Ky. AG LEXIS 64.

The completed report to city on plans for the future economic development of the city constituted preliminary memoranda in which opinions were expressed and policies formulated and recommended and was therefore exempt from public inspection pursuant to subdivision (1)(h) of this section. OAG 84-337, 1984 Ky. AG LEXIS 49.

A request to inspect any and all internal interoffice memoranda was properly denied under the Open Records Law. OAG 84-342, 1984 Ky. AG LEXIS 44.

The appointment calendars of persons in public agencies are exempt from public inspection under the provisions of subdivisions (1)(a), (1)(g), and (1)(h) of this section. OAG 84-342, 1984 Ky. AG LEXIS 44.

Disclosure of employee interview statements, included in records involving Labor Cabinet report relative to incident involving death of employee made under KRS 338.101(1)(a), were confidential and exempt from mandatory disclosure under subdivision (1)(j) of this section. OAG 84-345, 1984 Ky. AG LEXIS 42.

Where worknotes are compiled in the ordinary course of an investigation of an employer worksite, and contain preliminary handwritten drafts of possible citations and correspondence with private persons which are not intended to give notice of final action, the material is preliminary and the exemption set forth in subdivision (1)(g) of this section applies; furthermore, work papers and intra-office memoranda are exempt from public inspection under subdivision (1)(h) of this section. Thus, worknotes containing the compliance officer's hand-drawn diagrams of the worksite or work operations and his observations, opinions and preliminary drafts of possible citations were exempt from public inspection by subdivision (1)(h) of this section. OAG 84-361, 84-365.

The term "question privately," in KRS 338.101(1)(a) makes any statement taken from an employee confidential and therefore exempt from mandatory public disclosure by subdivision (1)(j) of this section. OAG 84-365, 85-58.

Where a proceeding has been instituted under KRS 344.200 and has resulted in a dismissal of the complaint or the entering of a conciliation agreement, only the order of dismissal or the terms of the conciliation agreement are subject to public inspection. OAG 84-376, 1984 Ky. AG LEXIS 11.

Where a proceeding has been instituted under KRS 344.210 and a hearing has been held, the hearing transcript, all evidence introduced at the hearing and the subsequent decision of the commission are subject to public inspection under the Open Records Law. OAG 84-376, 1984 Ky. AG LEXIS 11.

KRS 131.190(1) makes tax records confidential only insofar as the information may have to do with the person's business; information such as the names of businesses licensed, the dates of the applications and the dates of the effectiveness of licenses are not such information as will reveal the affairs of a person's business, and access to such information is not an unwarranted invasion of personal privacy under subdivision (1)(a) of this section. OAG 85-1, 1985 Ky. AG LEXIS 147.

Unless a proceeding has been instituted under KRS Ch. 344, all information obtained by the county human rights commission remains privileged and the commission must refuse to disclose such information without the person's consent, unless ordered to do so by a court of competent jurisdiction. If a proceeding has been instituted, what is available for public inspection is dependent upon the level at which the proceeding has progressed. OAG 85-5, 1985 Ky. AG LEXIS 146.

Court records are given a special status and placed under the exclusive jurisdiction of the Court of Justice pursuant to KRS 26A.200 and KRS 26A.220; these statutes apply to all records of agencies of the court, and the Board of Bar Examiners is an agency of the court, as it is created and supervised by the Supreme Court. If a court or an agency of the court denies access to a record, the requesting party should take his appeal to the Chief Justice. Thus, denial of a request to inspect documents pertaining to the Kentucky bar examination under this section was proper. OAG 85-9, 1985 Ky. AG LEXIS 139.

Records which are the work product of an attorney in the course of advising a client are not discoverable under the Kentucky Rules of Civil Procedure and are therefore exempt from public disclosure under KRS 447.154 and subdivision (1)(j) of this section. OAG 85-20, 1985 Ky. AG LEXIS 131.

Where occupational safety and health compliance officer's worknotes are compiled in the ordinary course of an investigation of an employer worksite, and contain preliminary handwritten drafts of possible citations and correspondence with private persons which are not intended to give notice of final action, the material is preliminary and the exemption set forth in subsection (1)(g) of this section applies. OAG 85-58, 1985 Ky. AG LEXIS 93.

Work papers and intra-office memoranda are exempt from public inspection under subdivision (1)(h) of this section. Thus, worknotes containing occupational safety and health compliance officer's hand-drawn diagrams of the worksite or work operations and his observations, opinions and preliminary drafts of possible citations are exempt from public inspection. OAG 85-58, 1985 Ky. AG LEXIS 93.

Even if a settlement has been reached relative to Occupational Safety and Health Administration charges, material which was excluded from public inspection pursuant to sub-

divisions (1)(g), (h) and (j) of this section and KRS 338.101(1)(a) may still be excluded in the absence of a court order to the contrary, as the status of this material as preliminary matters and confidential interviews will not change regardless of what happens relative to any charges which might have been filed. OAG 85-58, 1985 Ky. AG LEXIS 93.

Written instructions relative to employee conduct are not intra-office memoranda and preliminary recommendations excluded from the application of the Open Records Law pursuant to subdivision (1)(h) of this section. OAG 85-59, 1985 Ky. AG LEXIS 92.

Denial of a request to inspect a document prepared by police chief concerning his investigation into an application for a municipal adult entertainment license, the document having been prepared at the city council's request in connection with its review of the application, was proper under the Open Records Act pursuant to subdivisions (1)(g) and (h) of this section so long as the requested document neither indicated final municipal action nor involved a preliminary report incorporated into a final municipal report. OAG 85-63, 1985 Ky. AG LEXIS 88.

Denial of request to inspect records involved with an ongoing competitive negotiation process is correct under KRS 45A.085(6) and subdivision (1)(j) of this section. However, the public agency is required to make available for public inspection those records associated with the competitive negotiation process, which are not otherwise precluded from inspection, at the final conclusion of the process, i.e., the final rejection of all proposals or the acceptance of a proposal and the awarding of a contract. OAG 85-68, 1985 Ky. AG LEXIS 83.

While KRS 61.884 provides that any person shall have access to any public record relating to him or in which he is mentioned by name, that section is subject to the provisions and exemptions set forth in this section. OAG 85-69, 1985 Ky. AG LEXIS 82.

Under the Open Records Law, a patrolman against whom a complaint was filed was entitled to inspect the final report of the police chief concerning the disposition of the complaint, the complaint which led to the investigation and the report, and the investigatory report arising out of the complaint, if the report was incorporated into the final report. OAG 85-77, 1985 Ky. AG LEXIS 74.

Denial of request to inspect records relating to the acquisition of property for a right-of-way project, including relocation assistance payments made relative thereto, is valid pursuant to subdivision (1)(d) of this section until such time as all of the property involved in the project has been acquired. OAG 85-79, 1985 Ky. AG LEXIS 72.

Where only about one-half (½) of the necessary tracts had been acquired for a project for which right-of-way records pertaining to acquisition and relocation assistance payments and the summary basis therefore were requested, denial of the request to inspect such records was proper under subdivision (1)(d) of this section until such time as all of the property involved in the project had been acquired. OAG 85-79, modifying OAG 83-298 to the extent of any conflict, and affirming OAG 76-656.

The denial of a request to inspect a portion of a tape recording involving a firefighter's disciplinary hearing before the Civil Service Board was proper, where the release of that particular testimony would constitute a clearly unwarranted invasion of the firefighter's personal privacy. OAG 85-83, 1985 Ky. AG LEXIS 68.

Contracts of employment involving a public agency are public records and should be made available for public inspection. OAG 85-85, 1985 Ky. AG LEXIS 67.

The denial of a request to inspect the complete institutional file of an inmate was proper, as requests to inspect personnel files must specify the particular documents within such files to be inspected. OAG 85-88, 1985 Ky. AG LEXIS 61.

A response denying the right to inspect public records was legally insufficient, when it did not state what exception to the right to inspect was relied upon and how the exception applied to the records withheld. OAG 85-89, 1985 Ky. AG LEXIS 62.

The denial of a request to inspect the letter of a disciplinary recommendation from a school principal to the Board of Education was proper, because even excising the names of those involved would not be sufficient to protect their privacy, and furthermore, because the letter was a preliminary recommendation expressing an opinion or recommending a policy. OAG 85-90, 1985 Ky. AG LEXIS 63.

Contracts, retainer agreements and other documents pertaining to a public agency and its attorneys are subject to public inspection; records of payments from a public agency to its attorneys, other than as contained in regular income and accounting records, are also subject to public inspection. OAG 85-91, 1985 Ky. AG LEXIS 60.

Worknotes containing a compliance officer's hand-drawn diagrams of the worksite or work operations and his observations, opinions and preliminary drafts of possible violations, are exempt from public inspection by subdivision (1)(h) of this section. OAG 85-92, 1985 Ky. AG LEXIS 59.

A denial of a request to inspect an investigative case file of the state police relative to an explosion was proper under subdivision (1)(f) of this section, where the investigation was still pending, the file pertained to an active case, and a determination had not been made as to whether or not legal or administrative action would be taken. OAG 85-93, 1985 Ky. AG LEXIS 58.

A listing of budgeted employment positions, the amount budgeted for each position, and the identity of the person employed in each position, is a public record subject to public inspection. OAG 85-94, 1985 Ky. AG LEXIS 57.

A denial of a request to inspect the statement of a police officer made in connection with a complaint filed against the police officer by the requesting party was proper under the Open Records Law, where the officer's statement was a preliminary record in the internal investigative files of the police department, and was excluded from those records subject to public inspection by subdivisions (1)(g) and (1)(h) of this section unless it was incorporated into any notice of final action by the police department. OAG 85-95, 1985 Ky. AG LEXIS 54.

Denial of a request to inspect the reports of the Natural Resources and Environmental Protection Cabinet's field inspector relative to her inspection of a landfill operation, containing the inspector's observations and opinions, was proper under subdivisions (1)(g) and (1)(h) of this section, as such reports are intraoffice memoranda containing preliminary drafts, notes and personal observations. Such material is only subject to public inspection (in the absence of a court order) if it constitutes notice of a final action of the public agency or is incorporated into the public agency's final report or final decision on the matter. OAG 85-104, 1985 Ky. AG LEXIS 47.

Copies of the proceedings in certain indictments that have not been transcribed and made part of the official record on appeal, copies of all motions in certain cases that have not been transcribed and made part of the official record on appeal, copies of the "in chambers" proceedings in said cases that were recorded but not made part of the official record on appeal, and copies of any and all proceedings in said cases that were recorded but not transcribed and made part of the official record on appeal are court records, and therefore are not subject to the terms and provisions of the Open Records Act. OAG 85-105, 1985 Ky. AG LEXIS 46.

Denial by police chief of request to inspect a police officer's notes and reports was proper under subdivisions (1)(g) and (1)(h) of this section, as such documents are preliminary documents containing the person's notes and observations. Such material is only subject to public inspection (in the

absence of a court order) if it constitutes notice of final action of the public agency or is incorporated into the public agency's final report or final decision on the matter. Furthermore, denial of requests to inspect all reports and materials and all relevant materials was proper, as blanket requests for information on a particular subject, without specification of what documents are desired, need not be honored. OAG 85-107, 1985 Ky. AG LEXIS 44.

Since a school district is a public agency under the Open Records Law, and the certificates required by KRS 161.020 are public records as defined in KRS 61.870(2), denial of a request to inspect the certificates required by KRS 161.020 to be filed with the Board of Education was improper under the Open Records Law, except that information, if any, on the certificates of a personal nature, such as social security numbers, home addresses and telephone numbers, need not be released. OAG 85-109, 1985 Ky. AG LEXIS 42.

Denial of a request to inspect the investigative case files of the State Police was proper under the Open Records Act where the files pertained to matters which were still considered active and pending cases by state and/or federal authorities. OAG 85-118, 1985 Ky. AG LEXIS 33.

The inspection by the public of a bidding corporation's financial statement, even if it was not submitted pursuant to KRS 45A.110, would constitute an invasion of privacy under subdivision (1)(a) of this section to the extent that the statement relates to the bidding corporation's personal financial data. OAG 85-119, 1985 Ky. AG LEXIS 31.

Denial by the Finance and Administration Cabinet of a request to inspect the financial statement submitted by a private corporation relative to a request for bids by a state agency was proper under the Open Records Act whether or not the document was submitted pursuant to the requirements of a state statute. OAG 85-119, 1985 Ky. AG LEXIS 31.

The Labor Cabinet acted in conformity with the Open Records Law in denying access to records in an occupational safety and health investigative file consisting of a compliance officer's worknotes and six (6) employee interview statements relating to an inspection site. OAG 85-123; 85-127.

Denial of a request to inspect records in the file of the Labor Cabinet's investigative officer consisting of that officer's worknotes relating to the death of a crane operator was proper under the Open Records Act, as such material, in the absence of a court order to the contrary, is exempt from public inspection. OAG 85-125, 1985 Ky. AG LEXIS 25.

Denial by the Department of Education of a request to inspect documents described as investigatory documents, memoranda, notes and preliminary recommendations regarding an investigation of a county school system and its superintendent was proper but only until such time as the Department completed its enforcement action or made a decision to take no such action, at which time the complaints minus the complainants' names would have to be made available for public inspection. OAG 85-126, 1985 Ky. AG LEXIS 24.

Where an occupational safety and health compliance officer's worknotes are compiled in the ordinary course of an investigation of an employer worksite and contain preliminary handwritten drafts of possible citations and correspondence with private persons which are not intended to give notice of final action, the material is preliminary and the exemption set forth in subdivision (1)(g) of this section applies. OAG 85-128; 85-129.

Work papers and intraoffice memoranda are exempt from public inspection under subdivision (1)(h) of this section. OAG 85-128; 85-129.

Worknotes containing an occupational safety and health compliance officer's handdrawn diagrams of the worksite or work operations and his observations, opinions and preliminary drafts of possible citations are exempt from public inspection by subdivision (1)(h) of this section. OAG 85-128; 85-129.

Denial of a request to inspect and copy records in a police investigative file, consisting of interviews with a person's co-workers where those co-workers expressed their personal opinions on a variety of matters, was proper, as such material is properly excluded from public inspection pursuant to subdivisions (1)(a), (g) and (h) of this section. OAG 85-135, 1985 Ky. AG LEXIS 17.

Public inspection of the charges and complaints which spawned an investigation relative to a fire district's fire chief should have been permitted where the fire district's board of trustees had concluded its investigation of the matter and made a determination concerning those charges and complaints. The identities of the complainants need not be released and those charges and complaints relating to persons against whom the board had not finalized its actions and determinations need not be made available for public inspection. OAG 85-136, 1985 Ky. AG LEXIS 14.

A letter of resignation of a public employee, such as a fire district assistant fire chief, is not excluded from public inspection by subdivision (1)(a) of this section. OAG 85-136, 1985 Ky. AG LEXIS 14.

The minutes of a properly conducted executive or closed session of a meeting of a public agency need not be made available for public inspection if to do so would defeat the purpose of having conducted a closed session. OAG 85-136, 1985 Ky. AG LEXIS 14.

Records in the occupational safety and health investigative file consisting of the compliance officer's worknotes were exempt from public inspection under subdivisions (1)(g) and (h) of this section, as such material constituted preliminary drafts, notes, recommendations and memoranda. OAG 85-137, 1985 Ky. AG LEXIS 13.

Denial of the request to inspect a report of the management evaluation of the Kentucky State Police's auto theft section, prepared by the State Police inspection and evaluations section, for submission to the Commissioner of the State Police for such final action or decision as he deemed appropriate, was proper under subdivisions (1)(g) and (h) of this section, so long as the report in question neither indicated final action by the State Police nor involved a preliminary report incorporated into a final report by the State Police. OAG 85-138, 1985 Ky. AG LEXIS 12.

Denial of the request to inspect records of a former student, now deceased, including that student's application for admission and scholastic transcripts, where no parental consent had been obtained, was proper under the Open Records Act, subdivisions (1)(i) and (j) of this section and subsection (2) of KRS 164.283, pertaining to the confidentiality of such records. OAG 85-140, 1985 Ky. AG LEXIS 10.

Subdivision (1)(a) of this section is not limited to the prevention of inspection by the employer of the interview statements of his own employees; it precludes the public inspection of any employee interview statement obtained under the provisions of KRS 338.101. OAG 85-142, 1985 Ky. AG LEXIS 8.

Worknotes containing the compliance officer's handdrawn diagrams of the worksite or work operations and his observations, opinions and preliminary drafts of possible citations in the occupational safety and health investigative file were exempt from public inspection by subdivision (1)(h) of this section. OAG 85-142; 85-146.

This section states that the public records or information, the disclosure of which is prohibited or restricted or otherwise made confidential by an enactment of the General Assembly, are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction. OAG 85-142; 85-146.

The term "question privately" in subdivision (1)(a) of KRS 338.101 makes any statement taken from an employee confidential and, therefore, exempt from mandatory public disclo-

sure by subdivision (1)(j) of this section. OAG 85-142; 85-146; 86-3.

Denial of the request to inspect the complaints and other documents pertaining to those complaints involving a former licensed psychologist under the jurisdiction of the Board of Examiners of Psychologists can be upheld, since the Board never took any final action relative to those complaints as the person submitted his resignation from practice and tendered his license to practice before any final action could be taken concerning the complaints. OAG 85-147, 1985 Ky. AG LEXIS 3.

Where the document in question constituted correspondence with a private individual and was not correspondence intended to give notice of final action of a public agency, denial of the request to inspect the document in question was proper pursuant to subdivision (1)(g) of this section. OAG 85-148, 1985 Ky. AG LEXIS 2.

The public agency's denial of the request to inspect materials relative to the components and uses of a compound called TF-1, matters which have been designated as trade secrets under the public agency's rules and regulations, was proper pursuant to subdivisions (1)(b), (c) and (j) of this section and KRS 224.035 (renumbered as KRS 224.10-210). OAG 86-1, 1986 Ky. AG LEXIS 86.

The school system's denial of the request to inspect the actual examination administered by the school to the requesting party's child, which examination will be given again by the school system, was proper pursuant to subdivisions (1)(e) and (i) of this section. OAG 86-2, 1986 Ky. AG LEXIS 84.

The Labor Cabinet's denial of the request to furnish the names of the employees from whom the Labor Cabinet obtained statements pursuant to subdivision (1)(a) of KRS 338.101 was proper under subdivision (1)(j) of this section and subdivision (1)(a) of KRS 338.101. OAG 86-3, 1986 Ky. AG LEXIS 85.

Denial of the request to inspect the reports pertaining to the alleged child abuse of an individual's children was proper under subdivision (1)(j) of this section and subsection (9) of KRS 199.335 (now repealed), as the individual did not meet the requirements as to the persons or agencies with whom such reports may be shared. OAG 86-4, 1986 Ky. AG LEXIS 83.

Denial of the request to inspect memoranda from an inspector to his supervisor concerning the closing of a landfill operation was proper under subdivisions (1)(g) and (h) of this section, as the documents constituted intraoffice memoranda containing preliminary notes and personal observations and did not represent notice of a final action or decision of the public agency. OAG 86-5, 1986 Ky. AG LEXIS 82.

The records requested of the Revenue Cabinet, the names and addresses of coal companies which paid severance taxes in 1985, were not information having to do with the affairs of the coal companies' business and thus were not privileged information under KRS 131.190 and subdivision (1)(j) of this section. OAG 86-11, 1986 Ky. AG LEXIS 76.

Denial of the request to inspect the compliance officer's worknotes and the three (3) employee interview statements in the occupational safety and health investigative file was proper under the Open Records Law pursuant to subdivisions (1)(g), (h), and (j) of this section, and KRS 338.101(1)(a). OAG 86-14, 1986 Ky. AG LEXIS 75.

The school system acted in conformity with the Open Records Law in not providing copies of teacher evaluations because if the former teacher's personnel file contained no evaluations of her performance as a teacher, a request to inspect evaluations was moot, and if the personnel file did contain such evaluations, the denial of the request to inspect those evaluations was supported by the exception to public inspection set forth in subdivision (1)(a) of this section. OAG 86-15, 1986 Ky. AG LEXIS 72.

The public agency's denial of the request to inspect the memorandum of the officer conducting a background review or investigation of the applicant for the public agency, which contained the investigating officer's opinions and recommendations as well as the opinions and evaluations of the people he interviewed, was proper as such material may be excluded from public inspection pursuant to subdivisions (1)(a), (g) and (h) of this section. OAG 86-19, 1986 Ky. AG LEXIS 68.

It would be an improper use of the privacy exemption of the Open Records Act to allow a public agency to refuse to release telephone numbers called by personnel of a public agency on public telephones merely by invoking the privacy exemption without any supporting explanation or reasons as to how the release of such telephone numbers will adversely affect the persons, group or businesses to whom the numbers belong. OAG 86-21, 1986 Ky. AG LEXIS 66.

The public agency's denial of the request to inspect and copy records pertaining to a professional standards internal affairs investigation of a former state trooper, consisting of preliminary drafts and notes, preliminary memoranda and reports containing the opinions, recommendations and observations of the investigating officers, a polygraph test and a report of the person administering the polygraph examination, was proper under the Open Records Act as such reports and documents may be excluded from public inspection pursuant to subdivisions (1)(a), (g) and (h) of this section. OAG 86-22, 1986 Ky. AG LEXIS 65.

A public agency could adopt a policy involving records and documents pertaining to fire and ambulance runs whereby it prohibits, under subdivision (1)(a) of this section, public inspection of material relative to the names and addresses of victims, names and addresses of reporting parties and descriptions of personal losses, injuries and illnesses of persons receiving the fire and ambulance services. Furthermore, it would be permissible under subdivision (1)(h) of this section to preclude the public inspection of memoranda and reports concerning fire and ambulance runs if they are preliminary intra-office documents containing opinions or recommendations. OAG 86-25, 1986 Ky. AG LEXIS 61.

The public agency's denial of the request to inspect and copy those documents consisting of 29 pages of notes, intra-office memoranda and investigative reports, setting forth the opinions, observations and recommendations of various agency personnel, which did not represent the agency's final decision on the disciplinary matter involving the agency's former employee, was proper under the Open Records Act as such documents were excluded from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 86-26, 1986 Ky. AG LEXIS 62.

The denial of inspection of the records in the occupational safety and health investigative files consisting of the compliance officer's worknotes and the five (5) employee interview statements was proper under the Open Records Law pursuant to subdivisions (1)(g), (h) and (j) of this section and subdivision (1)(a) of KRS 338.101. OAG 86-27, 1986 Ky. AG LEXIS 60.

The public agency's denial of the request to provide the natural parents or their representative with the names and address of the foster parents with whom the natural parents' child had been placed is not a violation of the Open Records Act and can be justified under the privacy exemption to public inspection set forth in subdivision (1)(a) of this section. OAG 86-28, 1986 Ky. AG LEXIS 59.

The public agency improperly denied the request to inspect and obtain copies of photographs of an accident which revealed a corpse, as the public agency cannot invoke the privacy exemption to public inspection to impose a uniform ban on all requests for photographs revealing corpses, since, generally, privacy is a personal right which dies with the deceased person. OAG 86-31, 1986 Ky. AG LEXIS 56.

Neither KRS 224.035 (renumbered as KRS 224.10-210) nor 33 USCS § 1318(b) remove the limitations to public inspec-

tion set forth in subsection (1) of this section. OAG 86-32, 1986 Ky. AG LEXIS 55.

The Natural Resources and Environmental Protection Cabinet's denial of the request to inspect those documents consisting of preliminary notes (whether handwritten or typed), preliminary drafts of letters, reports and other documents, preliminary memoranda, including intra-office memoranda, and other documents not representing final action of the Cabinet, was proper as such materials may be excluded from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 86-32, 1986 Ky. AG LEXIS 55.

Denial of inspection of the compliance officer's worknotes and the employee interview statement was proper under the Open Records Law pursuant to subdivisions (1)(g), (h), and (j) of KRS 61.878 and subdivision (1)(a) of KRS 338.101. OAG 86-37, 1986 Ky. AG LEXIS 50.

The city's denial of the request to inspect and copy those records of the city relative to salary figures of police department personnel for the fiscal years in question was improper and in violation of the Open Records Law. OAG 86-38, 1986 Ky. AG LEXIS 49.

The public agency's denial of the request to inspect and copy the police department's operations manual is supported by the provisions of subdivision (1)(h) of this section as it is an intra-agency document setting forth policies and recommendations affecting the security and safety of the police officers, the public and the city. OAG 86-38, 1986 Ky. AG LEXIS 49.

The public agency's denial of the request to inspect records consisting of actual polygraph test results and the operator's report of his conclusions relative to those tests was proper under the Open Records Law as such documents and reports may be excluded from public inspection pursuant to subdivisions (1)(a) and (h) of this section. OAG 86-39, 1986 Ky. AG LEXIS 48.

The enactment of regulations by the Natural Resources and Environmental Protection Cabinet is a required part of the procedure pursuant to KRS 224.035 (renumbered as KRS 224.10-210) involving the designation of material as a trade secret; therefore, the Cabinet's withholding of records from public inspection as trade secrets was improper where the Cabinet did not enact administrative regulations. OAG 86-41, 1986 Ky. AG LEXIS 46.

Orders of the Treasurer, which are not the actual bills received by the school system but documents prepared by the treasurer primarily for internal use relative to the school board's bill approval process, retain a preliminary characterization which would permit the school system to refuse public inspection of them, until such time as the school board formally considers such orders and adopts and incorporates as its course of action and final decision the terms, conditions and recommendations contained in those orders. OAG 86-42, 1986 Ky. AG LEXIS 44.

A document which constitutes the complaints which initially spawned the Personnel Board's investigation regarding an employee's complaints may not be excluded from public inspection. OAG 86-46, 1986 Ky. AG LEXIS 40.

Where, in her case before Personnel Board, an employee alleged sexual discrimination, records consisting of the memorandum from the Executive Director to the Investigating Officer, letters to the Investigating Officer from the employee, notes and memoranda from persons in the employee's office, and the investigating officer's report were excluded from public inspection under subdivisions (1)(g) and (h) of this section. OAG 86-46, 1986 Ky. AG LEXIS 40.

The State Police's denial of the request to inspect its one investigative file relative to a double homicide for which two (2) persons were charged was proper as one of those charged was appealing his conviction and material pertaining to the other was not severable from material pertaining to the appeal. OAG 86-47, 1986 Ky. AG LEXIS 41.

The confidentiality of records, correspondence and reports of investigation pertaining to actual or claimed violations of the Insurance Code or prosecution or disciplinary action is not absolute but limited to that period of time during which the matter involving such documents is being investigated, prosecuted or adjudicated administratively; once the matter has been concluded relative to the agent or company involved, such records are subject to public inspection unless exempted by some other specific provision of the Insurance Code or the Open Records Act. OAG 86-52, 1986 Ky. AG LEXIS 34.

The State Police had the authority to withhold from public inspection pursuant to subdivision (1)(h) of this section a document in the nature of an intraoffice memorandum, from employees to a supervisor setting forth their opinions of a fellow employee, when that memorandum has neither "spawned" an investigation nor served as the basis for any kind of personnel action involving the employee mentioned in the memorandum. OAG 86-53, 1986 Ky. AG LEXIS 35.

The school superintendent's temporary withholding from public inspection of the "Administrative Memorandum" was proper pursuant to subdivision (1)(h) of this section, so long as he furnished upon request material relative to the monthly financial report, as such a memorandum was not an agenda but a preliminary intrasystem memorandum containing the superintendent's proposals and recommendations relative to items to be considered at meetings of the Board of Education. OAG 86-54, 1986 Ky. AG LEXIS 31.

The school superintendent's denial of the request to inspect teacher attendance records for a particular time period was improper under the Open Records Act as such documents are not protected by the privacy exemption under subdivision (1)(a) of this section because the teachers, as public employees, are only entitled to compensation for services rendered and the attendance sheets verify that they were present and on the job during any particular time period. OAG 86-55, 1986 Ky. AG LEXIS 32.

The Cabinet for Human Resources acted within the provisions of the Open Records Act when it denied the request to inspect and copy records pertaining to the unemployment insurance claims of two (2) individuals as such records are excluded from public inspection pursuant to subsection (3) of KRS 341.190 and subdivision (1)(j) of this section. OAG 86-56, 1986 Ky. AG LEXIS 33.

The Labor Cabinet's refusal to permit the requesting party to inspect and copy two (2) employee interview statements obtained in connection with an occupational safety and health investigation of a fatal accident at a work site was proper under subdivision (1)(a) of KRS 338.101 and subdivision (1)(j) of this section. OAG 86-57, 1986 Ky. AG LEXIS 30.

The Department for Environmental Protection acted properly in partially denying the request to inspect and copy various public records because those records consisted of intra office memoranda and reports of a preliminary nature containing notes and correspondence not indicating final agency action and setting forth the opinions, recommendations and observations of various personnel of the division, department and cabinet, since those kinds of documents are excluded from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 86-58, 1986 Ky. AG LEXIS 29.

Denial of the request to inspect and copy an investigative file of the State Police relative to a particular person was proper under subdivision (1)(f) of this section as the matter pertained to an active case (a matter under investigation or in litigation). OAG 86-59, 1986 Ky. AG LEXIS 27.

The public agency's denial of the request to inspect and copy public documents pertaining to a complaint and the subsequent investigation of that complaint which consisted of names, addresses and telephone numbers of persons contacted and other material of a preliminary nature was proper as such records were excluded from public inspection by a public

agency under the authority of subdivisions (1)(a), (g) and (h) of this section. OAG 86-60, 1986 Ky. AG LEXIS 28.

A public agency may adopt a records and documents policy pertaining to the names of persons involved in a summer youth employment program for low income persons whereby it prohibits the release of the names of program applicants and participants under the authority of subdivision (1)(a) of this section. OAG 86-62, 1986 Ky. AG LEXIS 25.

The public agency's denial of the requests to inspect and copy monthly and annual reports submitted to the central state government from one of its agencies in the field and the requests to inspect various management reviews of the field agency, was proper under subdivisions (1)(g) and (h) of this section on the basis that the requested documents were preliminary, so long as the documents in question neither indicated final agency action nor involved the incorporation of a preliminary report into a final report of the agency, bureau or cabinet. OAG 86-64, 1986 Ky. AG LEXIS 23.

The University of Louisville's refusal to release the names of the donors and potential donors on whose behalf the University expended money in connection with University fund raising efforts was within the privacy exception to public inspection set forth in subdivision (1)(a) of this section, particularly since the University had already released the actual amounts of money spent in such situations. OAG 86-76, 1986 Ky. AG LEXIS 11.

Denial of the request to inspect records in the custody of the coroner pertaining to the results in blood alcohol tests performed on three (3) deceased persons was proper as the investigation of the accident in question had not been completed and a determination had not yet been made as to whether legal action would be taken; once the investigation was completed and legal action was completed or a decision was made to take no legal action, the documents in question would be subject to public inspection unless exempted by another statutorily recognized exception to public inspection. OAG 86-77, 1986 Ky. AG LEXIS 10.

Denial of the request to inspect and copy the report pertaining to an internal affairs investigation conducted by the state police was proper under the Open Records Act as such a document could be excluded from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 86-78, 1986 Ky. AG LEXIS 9.

A public employee's medical records may be excluded from public inspection pursuant to subdivision (1)(a) of this section. OAG 86-80, 1986 Ky. AG LEXIS 6.

It is within the discretion of the police to decide whether a case is active, inactive or finally closed, but when a demand for inspection of records is refused the burden is on the police to justify the refusal of the inspection with specificity; therefore, where the missing person's file had been maintained as an open case (active or inactive as opposed to closed) for almost eight years, the public agency's mere reference to subdivision (1)(f) of this section and KRS 17.150, with no additional explanation, did not meet the burden of proof imposed by law relative to a denial of inspection. OAG 86-80, 1986 Ky. AG LEXIS 6.

The right to inspect public records under KRS 61.884 would not apply if the records consist of the materials set forth in subdivision (1)(f) of this section. OAG 86-81, 1986 Ky. AG LEXIS 7.

Denial of the request to inspect the state police investigative report concerning the loss by fire of a house was proper as the investigation of the fire had not yet been completed and a determination had not yet been made as to whether legal action would be taken. OAG 86-81, 1986 Ky. AG LEXIS 7.

The public agency properly denied the request to inspect and copy the written confession of a juvenile pursuant to the provisions of subdivision (1)(j) of this section and KRS 208.340 (now repealed) as such a document was not available for public scrutiny. OAG 86-85, 1986 Ky. AG LEXIS 1.

The public agency's denial of the request to inspect and copy documents consisting of weekly status reports from one state police officer to other officials of the state police summarizing what this particular section had done during a particular week, was proper under the Open Records Act as such documents may be excluded from public inspection as preliminary intra office memoranda under subdivisions (1)(g) and (h) of this section. OAG 87-1, 1987 Ky. AG LEXIS 84.

Denial of the request to inspect the state police investigative report was proper where legal action in the form of a trial was tentatively scheduled; however, once the matter was litigated, the documents would be subject to public inspection unless exempted by another statutorily recognized exception to public inspection. OAG 87-2, 1987 Ky. AG LEXIS 83.

Where the documents submitted as a bid to the city were not timely filed and not considered on the merits by the city, the documents were properly considered as correspondence with private individuals and excluded from public inspection pursuant to subdivision (1)(g) of this section. OAG 87-4, 1987 Ky. AG LEXIS 81.

Denial of the request to inspect and copy the compliance officer's worknotes and the employee interview statements was proper under the Open Records Law pursuant to subdivisions (1)(g), (h) and (j) of this section and subdivision (1)(a) of KRS 338.101. OAG 87-9, 1987 Ky. AG LEXIS 75.

Where the documents in the custody of the state police consisted of several intra-office memoranda of a preliminary nature, and the matter was an ongoing investigation and not a closed or completed case, the public agency's decision to deny the request was supported by the provisions of subdivisions (1)(f), (g) and (h) of this section. OAG 87-10, 1987 Ky. AG LEXIS 76.

Denial of the request to inspect the state police investigative report was proper as the investigation of the fatal accident had not yet been completed and a determination had not yet been made as to whether legal action would be taken. OAG 87-15, 1987 Ky. AG LEXIS 70.

The city could deny a request to inspect records involved with an ongoing competitive negotiation process pursuant to subdivisions (1)(g) and (h) of this section; however, the city was required to make available for public inspection those records associated with the competitive negotiation process, which were not otherwise precluded from inspection, at the conclusion of the competitive negotiation process. OAG 87-21, 1987 Ky. AG LEXIS 64.

Denial of the request to inspect and copy documents pertaining to an investigation of a teacher, consisting of preliminary recommendations and preliminary memoranda in which opinions were expressed, was proper as such documents did not set forth the final decision of the Board of Education and the Superintendent relative to the teacher in question. OAG 87-23, 1987 Ky. AG LEXIS 62.

A note or memorandum pertaining to a telephone call between agency personnel and a public official, containing personal opinions and observations and which was not indicative of the Parole Board's final decision concerning a particular parole consideration case, was a preliminary intra-office memorandum which was excluded from public inspection pursuant to subdivision (1)(h) of this section. OAG 87-24, 1987 Ky. AG LEXIS 60.

Access to records in the occupational safety and health investigative file consisting of the compliance of officer's preliminary worknotes was properly denied pursuant to subdivision (1)(h) of this section. OAG 87-25, 1987 Ky. AG LEXIS 61.

Denial of the request to inspect and copy documents in the agency's investigative file was proper under subdivision (1)(f) of this section, as the agency was engaged in an active and ongoing investigation, and the agency had not yet issued its tentative findings of fact which would officially conclude the investigation. OAG 87-26, 1987 Ky. AG LEXIS 59.

Documents which constitute work product of an attorney and come within the attorney-client relationship may be excluded from public inspection; thus, correspondence between the legal divisions of a state and federal agency pertaining to an ongoing investigation of the state agency need not be made available for public inspection by the state agency, and correspondence between two (2) agencies pertaining to an investigation of a state agency need not be released by the state agency when it consists of preliminary documents containing the observations, opinions, and comments of various personnel of the two (2) agencies. OAG 87-28, 1987 Ky. AG LEXIS 57.

Partial denial of the request to inspect and copy documents in the agency's investigative file was proper under subdivision (1)(f) of this section, as the matter under investigation was to be assigned for a hearing by the Review Commission, and thus the administrative proceedings had not been completed. OAG 87-29, 1987 Ky. AG LEXIS 56.

The public agency improperly denied the request to inspect and obtain copies of photographs of a particular police officer; the public agency could not invoke the invasion of personal privacy exemption to public inspection to impose a uniform ban on all requests for photographs of police officers taken in connection with their official positions and functions. OAG 87-31, 1987 Ky. AG LEXIS 54.

The city properly responded to a request for copies of all complaints filed against a particular police officer, when it made available for public inspection only copies of the documents setting forth the city's final action relative to the disciplinary case pertaining to the policeman and a copy of the letter of complaint which initially spawned the investigation involving that officer. OAG 87-32, 1987 Ky. AG LEXIS 55.

Denial of the request to inspect certain records in the custody of the state police was proper as the investigations pertaining to the death and the fire had not yet been completed, and a determination had not yet been made as to whether legal action would be taken; once the investigation was completed, and legal action had been completed or a decision had been made to take no legal action, the documents would be subject to public inspection unless exempted by another statutorily recognized exception to public inspection. OAG 87-35, 1987 Ky. AG LEXIS 52.

The State Penitentiary acted properly in denying the inmate's request to inspect conflict sheets or special notice forms in his institutional file, as such documents, which did not represent final agency action, which contained opinions of various persons from various sources, and which might have affected the security of the institution and the safety of the inmates and staff, were withheld from public inspection pursuant to subdivisions (1)(a), (g) and (h) of this section. OAG 87-36, 1987 Ky. AG LEXIS 48.

A county government may adopt a policy whereby it refuses to disclose the home addresses of governmental employees; therefore, the county government acted within the provisions of the Open Records Act when it denied the request to furnish the home addresses of its employees to the requesting party. OAG 87-37, 1987 Ky. AG LEXIS 49.

The State Labor Cabinet acted in conformity with the Open Records Act in denying access to those records contained in its Division of Employment Standards and Mediation investigative file consisting of the investigator's worknotes. OAG 87-43, 1987 Ky. AG LEXIS 41.

The county board of education acted within the provisions of the Open Records Act when it refused to furnish the requesting party a copy of that portion of a tape recording of its meeting involving an executive or closed session, as such a tape recording constitutes a preliminary draft and preliminary notes of such a proceeding. OAG 87-44, 1987 Ky. AG LEXIS 42.

The Division of Unemployment Insurance acted within the provisions of the Open Records Act in denying the request to inspect records pertaining to claims filed under the provisions of KRS Chapter 341 and material collected and compiled pursuant to the agency's statutorily imposed duties, as such information is excluded from public inspection pursuant to subsection (3) of KRS 341.190 and subdivision (1)(j) of this section. OAG 87-49, 1987 Ky. AG LEXIS 36.

The Labor Cabinet improperly denied the request to inspect documents submitted by the commonwealth employee and her attorney to the extent that the request pertained to preliminary handwritten notes concerning the employee which were prepared by her supervisor or boss and to the extent that the intra-office memoranda contained in the employee's file pertained or related to that particular employee. OAG 87-50, 1987 Ky. AG LEXIS 35.

Where the party requested copies of various documents concerning a proceeding with which he was involved, the documents were court records and, therefore, not subject to the terms and provisions of the Open Records Act. OAG 87-53, 1987 Ky. AG LEXIS 31.

Denial of the request to inspect the Commercial and Industrial Property Record Card was supported by the provisions of subdivisions (1)(g) and (h) of this section and KRS 133.045, as such a document was a preliminary working paper pertaining to the tax rolls as finally prepared by the Property Valuation Administrator. OAG 87-55, 1987 Ky. AG LEXIS 34.

The school system improperly denied the applicant-teacher's request for a copy of that portion of a tape containing the applicant-teacher's answers to questions propounded by the school system, the questions having been asked as part of the school system's teacher selection process. OAG 87-56, 1987 Ky. AG LEXIS 28.

The county improperly denied the request to inspect county records relative to occupational license fees or taxes to obtain the names of the contractors or construction companies that are paying the county occupational tax; the county may compile the list containing such information or allow the requesting party to prepare his or her own list, with the excepted material separated from the nonexcepted material before he or she examines the records. OAG 87-57, 1987 Ky. AG LEXIS 29.

The public agency acted properly in denying the request to inspect and copy documents pertaining to the obtaining of a permit to install a sewage disposal system, as such documents were not indicative of the agency's final decision as to whether a permit would issue and were merely preliminary documents which constituted part of the process to obtain a permit at some future time. OAG 87-58, 1987 Ky. AG LEXIS 27.

The public agency acted within the provisions of the Open Records Act when it refused to furnish a computerized listing of data to the requesting party, as the list was in the process of being prepared, and the computerized data system had not yet been completely prepared and installed. OAG 87-59, 1987 Ky. AG LEXIS 25.

The tapes of the hearing concerning a teacher contract termination proceeding conducted pursuant to KRS 161.790 were available for public inspection under the Open Records Law, even though the tapes were in the possession of the reporter-transcriber rather than the Board of Education, as the teacher requested a public hearing and the matter had not reached the courts. OAG 87-62, 1987 Ky. AG LEXIS 23.

If disciplinary reports involve disciplinary proceedings against a police officer, then the public is entitled to know the final action or decision of the city relative to those proceedings and is entitled to see the complaint which led to the initiation of such proceedings; however, if the disciplinary reports merely involve evaluations of the officer pursuant to which no action has been taken or opinions of others relative to his or her performance, such reports may be withheld from public inspection. OAG 87-64, 1987 Ky. AG LEXIS 21.

If the departmental memoranda concerning a police office constituted preliminary intraoffice communications setting

forth opinions, observations, and recommendations of various departmental personnel, and they did not represent the department's final decision or determination on any matter, then they could be withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 87-64, 1987 Ky. AG LEXIS 21.

Denial of the request to inspect records in the custody of the state police was proper whereas the investigations pertaining to the deaths had not yet been completed, and a determination had not yet been made as to whether legal action would be taken; however, once the investigations were completed and legal action was completed or a decision was made to take no legal action, the documents would be subject to public inspection unless excluded by another statutorily recognized exception to public inspection. OAG 87-66, 1987 Ky. AG LEXIS 20.

If the state university is a recipient of federal funds, it must conform to the provisions of the Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment) to retain its eligibility for those funds and, therefore, the denial by the university of requests for all material involving and pertaining to students' "education records" was proper and was supported by subdivision (1)(i) of this section and 20 USCS § 1232. OAG 87-67, 1987 Ky. AG LEXIS 18.

Denial of the request to inspect and copy the occupational safety and health compliance officer's worknotes and the twelve (12) employee interview statements was proper under subdivisions (1)(g), (h), and (j) of this section and subdivision (1)(a) of KRS 338.101; furthermore, a public agency is not mandatorily required to furnish copies of records to a requesting party by mail when the requesting party has not first inspected those records and then selected the items he or she wants copied, particularly when numerous or lengthy records and documents are involved. OAG 87-68, 1987 Ky. AG LEXIS 17.

The State Police's refusal to furnish information and records pertaining to disbursements by the state Police Fund, which identify the officer on whose behalf the expenditure was made and the law firm or attorney who received a particular payment, was supported by the privacy exception to public inspection set forth in subdivision (1)(a) of this section since the Legal Fund consisted of voluntary contributions by police personnel of their personal funds. OAG 87-70, 1987 Ky. AG LEXIS 15.

The Open Records Act and the confidentiality provisions relative to adoption proceedings supported the decision of the Department for Social Services not to release the names of any persons appearing in adoption records, but the Open Records Act also requires the disclosure of statistical information not descriptive of any readily identifiable person, and such data relative to adoption and adoption proceedings should be made available by the public agency. OAG 87-71, 1987 Ky. AG LEXIS 14.

On the basis of subdivision (1)(j) of this section and KRS 210.235, and in the absence of a court order authorizing inspection, the State Correctional Psychiatric Center properly denied the newspaper's request under the Open Records Act for copies of documents of a state mental facility pertaining to the types of tests given to patients and personnel administering and supervising such tests. OAG 87-75, 1987 Ky. AG LEXIS 10.

A proper request for information pertaining to only the salaries of officers and employees of a public agency should be honored as that information is available in same format and within the range of material in which the public has a legitimate interest. OAG 87-76, 1987 Ky. AG LEXIS 8.

The school system's refusal to release for public inspection the resume of one of its employees was supported by the exception to public inspection set forth in subdivision (1)(a) of this section relating to protection against an unwarranted invasion of personal privacy. OAG 87-77, 1987 Ky. AG LEXIS 9.

Denial of inspection of the compliance officer's work notes and the two (2) employee interview statements was proper under subdivisions (1)(g), (h), and (j) of this section and subdivision (1)(a) of KRS 338.101. OAG 87-79, 1987 Ky. AG LEXIS 7.

The Department for Social Services acted properly when it refused to make available for inspection to the alleged perpetrator of child abuse the names of informants and those portions of the statements of a judge and an informant wherein those parties set forth personal opinions, observations, and recommendations not related to the child abuse investigation and the findings resulting from that investigation. OAG 87-82, 1987 Ky. AG LEXIS 3.

The State Police's refusal to respond to a request for information, as opposed to a request to inspect and copy a specifically described document, was not a violation of the Open Records Act, while its refusal to furnish documents concerning preliminary data pertaining to a toxicology analysis report was supported by exceptions to public inspection dealing with preliminary drafts, notes, correspondence, recommendations and memoranda in which opinions are expressed, and refusal to furnish records pertaining to an employee's training, education, and experience was supported by the exception to public inspection protecting against an unwarranted invasion of personal privacy. OAG 87-84, 1987 Ky. AG LEXIS 1.

The Department for Administration's decision not to release those documents consisting of consolidated financial statements, project narratives and summary experience charts, personnel resumes, the work plan, and pricing schedules was justified by the exceptions to public inspection set forth in subdivisions (1)(a) and (b) of this section. OAG 88-1, 1988 Ky. AG LEXIS 1.

A public agency cannot invoke the privacy exemption to public inspection to impose a general ban on all public records and documents pertaining to a deceased person since privacy is generally a personal right which dies with the deceased person. OAG 88-2, 1988 Ky. AG LEXIS 2.

The public agency's refusal to furnish records and documents to the requesting party relative to an investigation of an alleged instance of child abuse and neglect was supported by the provisions of subdivision (1)(j) of this section and subsection (4) of KRS 620.050. OAG 88-4, 1988 Ky. AG LEXIS 4.

The Labor Cabinet's denial of the request to inspect the compliance officer's work notes and the three (3) employee interview statements was justified under the Open Records Law pursuant to subdivisions (1)(g), (h), and (j) of this section and subdivision (1)(a) of KRS 338.101. OAG 88-9, 1988 Ky. AG LEXIS 9.

The Property Valuation Administrator's response to the Open Records request of the city, denying access to assessment records covering much of the property in the city, was proper and supported by the provisions of subdivision (1)(j) of this section and KRS 132.285. OAG 88-11, 1988 Ky. AG LEXIS 11.

Denial of the request to inspect the property tax rolls was proper under subdivision (1)(j) of this section and subsection (2) of KRS 133.047 if the information obtained from the inspection was to be used for commercial or business purposes; however, the request could not be denied solely because it was not made during the specific time period set forth in subsection (1) of KRS 133.045. OAG 88-12, 1988 Ky. AG LEXIS 12.

The public agency's response to a request for materials pertaining to payroll and financial data concerning the officers and employees of a school district was sufficient and proper as the public agency furnished the requesting party with a list containing the annual salaries and hourly wage figures of those officers and employees. OAG 88-13, 1988 Ky. AG LEXIS 13.

The Corrections Cabinet, Department of Community Services and Facilities, properly denied, pursuant to subdivision

(1)(j) of this section and KRS 439.510, the request to inspect documents prepared and submitted by a parole officer. OAG 88-14, 1988 Ky. AG LEXIS 14.

The decision of the state board of elections to deny the request for copies of precinct lists and mailing labels in connection with mailing the letter in question was supported by the provisions of subsection (1)(j) of this section and subdivision (3)(h) of KRS 117.025. OAG 88-16, 1988 Ky. AG LEXIS 16.

The refusal of the State Police to make available copies of documents setting forth the names of persons not connected with a police investigation was supported by the exceptions to public inspection set forth in subdivision (1)(a) of this section and subdivision (2)(b) of KRS 17.150. OAG 88-18, 1988 Ky. AG LEXIS 18.

Although the city and sewer commission's initial response to the requesting party should have followed the requirements of KRS 61.880(1) and a copy of the letter of denial should have been sent to the attorney general pursuant to KRS 61.880(2), denial of the request to inspect the draft audit prepared by the Environmental Protection Agency and sent to the city was supported by the exceptions to inspection set forth in KRS 61.878(1)(g), (h) and (i) as the item in question was a preliminary document containing opinions and observations. OAG 88-24, 1988 Ky. AG LEXIS 24.

The privacy exception to public inspection does not apply to the final disciplinary action taken against a public employee, and the final action taken by a public agency against a public employee is a matter of public record. OAG 88-25, 1988 Ky. AG LEXIS 25.

The State Police's denial of the request to inspect the photographs of the automobile accident justified pursuant to KRS 61.878(1)(f) and (j) and KRS 17.150(2) as the investigation pertaining to the accident had not yet been completed and a determination had not yet been made as to whether legal action would be taken. OAG 88-27, 1988 Ky. AG LEXIS 27.

Denial of the request to inspect the records contained in a case file involving matters which were currently being litigated was proper until the litigation had been completed; at which time the documents in question would be subject to public inspection unless excluded by other statutorily recognized exceptions to public inspection. OAG 88-31, 1988 Ky. AG LEXIS 31.

A tape recording made during a meeting by the public agency to assist in the preparation of the official minutes could be excluded from public inspection as a preliminary document. OAG 88-32, 1988 Ky. AG LEXIS 32.

Documents which constitute the work product of an attorney and those which come within the attorney-client relationship may be excluded from public inspection. OAG 88-32, 1988 Ky. AG LEXIS 32.

The public agency properly excluded from public inspection those records and documents consisting of preliminary materials which set forth opinions, observations, and recommendations of various board members and which did not represent the public agency's final decision. OAG 88-32, 1988 Ky. AG LEXIS 32.

Where an administrative proceeding had not yet been concluded, and the tentative settlement had not yet been approved, the Labor Cabinet could withhold all documents and records pertaining to the investigation which was the subject of that administrative proceeding. OAG 88-36, 1988 Ky. AG LEXIS 36.

Worknotes containing a compliance officer's hand-drawn diagrams of the worksite or work operations and his observations, opinions, and preliminary drafts of possible citations can be exempt from public inspection; therefore, the public agency's denial of a request to inspect the compliance officer's worknotes in connection with an occupational safety and health investigation was supported by those exceptions to public inspection set forth in this section. OAG 88-36, 1988 Ky. AG LEXIS 36.

Denial of the request to inspect documents consisting of information, written statements, recordings, reports, and summaries of information pertaining to an investigation by school authorities of an incident involving students on school property was supported by exceptions to public inspection set forth in subdivisions (1)(g), (h) and (i) of this section and the federal Family Education and Privacy Rights Act. OAG 88-38, 1988 Ky. AG LEXIS 38.

Since the federal Family Educational and Privacy Rights Act sets forth provisions relative to the prohibition against the release of records pertaining to students in the absence of written consent of the parent or an appropriate court order, such records may be excluded from public inspection under subsection (1)(e) of this section. OAG 88-38, 1988 Ky. AG LEXIS 38.

The city's policy, relative to reports of ambulance runs by the public ambulance service, whereby it prohibited, pursuant to subdivision (1)(a) of this section, public inspection of records relating to particular persons transported and specific facts pertaining to those persons and their injuries, was justified. OAG 88-42, 1988 Ky. AG LEXIS 42.

While there is no specific provision in the Open Records Act requiring that information pertaining to ambulance reports be kept confidential, there is a provision that a public agency need not permit the inspection of documents if to do so would involve the unwarranted invasion of a person's privacy. OAG 88-42, 1988 Ky. AG LEXIS 42.

A settlement agreement of an action against a public agency was subject to inspection, because a settlement had been reached, and there was no pending litigation; the privacy exception was not applicable because public funds were expended to settle the complaint, and the document itself was not within the attorney-client privilege. OAG 88-43, 1988 Ky. AG LEXIS 43.

Generally, the business records of a private firm are not subject to public inspection. OAG 88-44, 1988 Ky. AG LEXIS 44.

The public agency's denial of a request to inspect documents which were not in its possession and which constituted records of a private organization was justified; furthermore, the public agency's refusal to furnish documents which had not been inspected at the normal depository for such materials was justified even though the requesting party was an inmate who was not able to inspect the records because of his confinement. OAG 88-44, 1988 Ky. AG LEXIS 44.

A university's copy of a letter from the National Collegiate Athletic Association (NCAA) addressed to counsel representing the university's assistant coach was a public record subject to public inspection, and the exceptions to inspection were not applicable because the document in question was not correspondence between the university and a private party, and it was not a document prepared by anyone connected with the university. OAG 88-47, 1988 Ky. AG LEXIS 47.

While the school system may refuse to disclose the home addresses of students, it may not withhold the names of students attending the school. A list of names should be furnished, if currently available, or the school system should prepare such a list or let the requesting party prepare his or her own list from school system records. OAG 88-50, 1988 Ky. AG LEXIS 50.

A personnel folder of a public employee, by its very nature, contains a mixture of documents which are subject to inspection and which may be excluded from public inspection; rather than a "shotgun" approach or engaging in a sort of fishing expedition, a request to inspect personnel documents should be specific as to the kinds of records and documents which are the subject of the request to inspect. OAG 88-53, 1988 Ky. AG LEXIS 53.

A letter from the vice chancellor of a university to a member of the athletic department staff, which contained his preliminary impressions, observations, and opinions about various aspects of the operation of the basketball camp, did not represent the university's final decision or determination relative to the matter and could properly be withheld from public inspection. OAG 88-57, 1988 Ky. AG LEXIS 57.

A local police department may withhold from public inspection those copies of the uniform citations which require court disposition until such time as the legal proceedings involving those citations have been concluded or resolved. OAG 88-58 (supplemented by OAG 88-64).

Drafts generated in connection with the preparation by private persons and firms of the remedial investigation/feasibility study which was in progress, but incomplete, for the purpose of determining certain environmental problems and possible remedies, could be withheld from public inspection. OAG 88-60, 1988 Ky. AG LEXIS 60.

The public agency properly requested the person seeking to inspect records to furnish additional information in order that specific records might be located. OAG 88-60, 1988 Ky. AG LEXIS 60.

Where the private college did not receive any grants or loans from the Higher Education Assistance Authority, there was no evidence that the college was a "public agency" within the meaning of subdivision (1) of KRS 61.870, and the college properly denied the request to inspect its records and documents as it was not subject to the terms and provisions of the Open Records Act. OAG 88-61, 1988 Ky. AG LEXIS 61.

Where no explanation was given as to why disclosure would constitute an invasion of privacy, the exceptions to public inspection set forth in subdivisions (1)(a) and (c) of this section were not applicable, and the public agencies incorrectly withheld from public inspection the list of names of persons who stayed at various hotels at state expense, in connection with the 1988 Kentucky Derby activities, and the list of names of persons who attended pre and post Kentucky Derby parties at the Governor's Mansion. OAG 88-62, 1988 Ky. AG LEXIS 62.

The State Police properly withheld from public inspection the arrest records of a particular person which were part of the state police's centralized criminal history records and which had been collected and compiled from materials supplied by local criminal justice agencies. OAG 88-63, 1988 Ky. AG LEXIS 63.

"Blanket" requests to law enforcement agencies on a "standing" basis are with few exceptions an abuse of the Open Records Act. OAG 88-64 (supplementing OAG 88-58).

The use of subsection (2) of KRS 17.150 by a law enforcement agency in denying public access to a uniform citation is a practice to be avoided. OAG 88-64 (supplementing OAG 88-58).

Work notes containing the compliance officer's hand-drawn diagrams of the worksite or work operations and his observations, opinions, and preliminary drafts of possible citations from an occupational safety and health investigation were exempt from public inspection. OAG 88-67, 1988 Ky. AG LEXIS 67.

The Division of Unemployment Insurance improperly denied a request to inspect records pertaining to the names of specific persons who had filed claims for benefits under the provisions of the unemployment insurance program. OAG 88-68, 1988 Ky. AG LEXIS 68.

Equal Employment Opportunity Commission regulations do not prohibit that agency from disclosing information to the parties involved; thus, subdivision (1)(c)(2) of this section would not apply to permit the Human Rights Commission to deny disclosure of its investigative file. OAG 88-69, 1988 Ky. AG LEXIS 69.

Where a decision had been made by the Human Rights Commission to proceed to an administrative hearing, the exemption of subdivision (1)(f) (now (1)(h)) of this section, even if applicable to the Commission's investigative file relating to an age discrimination allegation, would end. OAG 88-69, 1988 Ky. AG LEXIS 69.

Inspection of a report of the board of ethics of the General Assembly, on the basis of which the board had voted to file a formal complaint against a representative, could be properly denied pursuant to subdivision (1)(j) (now (1)(l)) of this section and subdivision (9) of KRS 6.820 (now repealed), until such time as the report was disclosed at a public hearing, or divulged by the board upon a finding of good cause for releasing it. OAG 88-80, 1988 Ky. AG LEXIS 79.

Since the actual complaint the board of ethics of the General Assembly voted to file against a representative had not yet been completed, its incomplete form would be termed a preliminary draft, and was thus excluded from inspection except as provided in subsection (1) of this section. OAG 88-80, 1988 Ky. AG LEXIS 79.

Where the secretary of the Cabinet for Economic Development prepared lists of persons he recommended for appointment to the Depressed Counties Economic Development Authority which he subsequently forwarded to the Governor's Office, the names on these lists were merely his recommendations and involved his personal opinions, and such documents were thus of a preliminary nature and, as an internal memorandum from a subordinate to a supervisor, expressed recommendations and opinions; therefore, the exceptions of subdivisions (1)(g) and (h) (now (1)(i) and (j)) of this section supported the denial of the request to inspect such documents. OAG 88-85, 1988 Ky. AG LEXIS 85.

The Labor Cabinet's denial of the request to inspect four (4) employee interview statements, in an occupational safety and health file regarding an investigation of two (2) deaths, was justified pursuant to subdivision (1)(j) of this section of the Open Records Act and subdivision (1)(a) of KRS 338.101. OAG 89-10, 1989 Ky. AG LEXIS 9.

"Records … compiled in the process of detecting and investigating statutory or regulatory violations" as used in subdivision (1)(f) (now (1)(h)) of this section means those actively, specifically, intentionally, and directly compiled, as an integral part of a specific detection or investigation process; such phraseology does not encompass electronic recordings of general radio traffic or a police agency, not made uniquely in a specific detection or investigation process, which were "segregated" in connection with an investigation. OAG 89-11, 1989 Ky. AG LEXIS 11.

Exemption from public inspection set forth in subdivision (1)(f) (now (1)(h)) of this section applies until the administrative or judicial action has been completed or until it has been decided to take no such action; however, documents are subject to public inspection upon completion of the administrative or judicial action or the making of the decision not to take such action unless the documents may be exempted from inspection pursuant to another statutorily recognized exception to inspection. OAG 89-13, 1989 Ky. AG LEXIS 13.

If a "commendation" represents a final action by a university, then such a document should be made available for inspection; if a "commendation" is a preliminary action or part of an evaluative process or a recommendation made and passed along the chain of command, then it may be excluded from public inspection. OAG 89-17, 1989 Ky. AG LEXIS 17.

It is reasonable to assume that applications, resumes and vitae contain information of a personal nature, similar to an employee's personnel file; the custodian of such requested documents could sanitize them of all information of a personal nature. OAG 89-17, 1989 Ky. AG LEXIS 17.

The language of subdivision (1)(f) of this section speaks to particular records, not to an entire class of records, such as police dispatch logs. OAG 89-20, 1989 Ky. AG LEXIS 20.

Denial of a request to view police radio transmission logs based upon KRS 61.872(5), regarding an unreasonable burden in producing voluminous records, is not substantiated where

the records sought are of an identified, limited class, typically maintained by month or year, so that they may be made readily available by providing appropriate binders or boxes. OAG 89-20, 1989 Ky. AG LEXIS 20.

A preliminary internal memorandum setting forth the opinions, observations and recommendations of a specific employee of the Corrections Cabinet did not represent a final investigative report of the Penitentiary or of the Corrections Cabinet nor did it represent any final action or decision of either of them as to the handling of the matter which had not been presented to the Board of Claims for investigation and disposition; as a preliminary document, the report could be withheld from public inspection. OAG 89-24, 1989 Ky. AG LEXIS 24.

Copies of documents, which were sent to the Department of Workers' Claims by the Kentucky Associated General Contractors Self-Insurers' Fund as required by KRS 342.350 and 803 KAR 25:025 which included a copy of a certified audit that was filed by the Associated General Contractors Self-Insurers' Fund and other pertinent financial information filed by the self-insurers' fund, were not exempt from inspection pursuant to subdivision (1)(b) of this section; this information should have been available for public inspection in order that the potential insureds could have satisfied themselves about the financial stability and reliability of the insurance company. OAG 89-26, 1989 Ky. AG LEXIS 26.

Inspection of Visa charges must be permitted as they do not fall within any of the exceptions set forth in this section; a portion of the Visa Card account number could be masked to prevent improper use of the card number. OAG 89-27, 1989 Ky. AG LEXIS 27.

Bids, quotations, or proposals, submitted by or in the name of business firms, not private individuals, in soliciting state business cannot be considered as "correspondence with private individuals," within the meaning of subdivision (1)(g) (now (1)(i)) of this section; inspection of these records, when requested after selection of a vendor, must be permitted. OAG 89-31, 1989 Ky. AG LEXIS 31.

A report by the Environmental Protection Agency specifically termed a "draft report" was clearly a preliminary draft and did not lose that character by having been submitted to a state agency for review and comments. OAG 89-34, 1989 Ky. AG LEXIS 34.

Checks drawn upon a public account, and indicating disbursement of an amount of money therefrom, cannot be said to be public records "containing information of a personal nature," such that their public disclosure would constitute an "unwarranted invasion of personal privacy," so that denial of inspection could be properly based upon subdivision (1)(a) of this section; a check drawn upon a public account simply does not contain information of a personal nature. OAG 89-35, 1989 Ky. AG LEXIS 35.

Homeowners not having given releases, the possibility of litigation, or the lack of completion of work, are not reasons within the statutory exceptions set forth in this section, for denying inspection of public records regarding improvement of private property with federal grant moneys. OAG 89-36, 1989 Ky. AG LEXIS 36.

Write-up orders and inspectors' reports regarding building improvements funded with federal funds, are either orders for work to be done or statements of objective observations concerning work that has been done. Such orders or reports are not "preliminary recommendations or preliminary memoranda" within the meaning of subdivision (1)(h) (now (1)(j)) of this section. Accordingly, inspection of such documents may not be denied on such ground. OAG 89-36, 1989 Ky. AG LEXIS 36.

Subdivision (1)(a) of this section is a proper basis for denial of inspection of records pertaining to student disciplinary proceedings. OAG 89-38, 1989 Ky. AG LEXIS 38.

Internal notes of government personnel who inspected certain real property in regard to pollution from substances at that location were recorded opinions, observations and recommendations of government personnel. Consequently, inspection of them was properly denied pursuant to subdivision (1)(h) of this section. OAG 89-39, 1989 Ky. AG LEXIS 39.

The records exempted from public inspection by subdivision (1)(d) of this section are so exempted until "… all of the property has been acquired …" through completed condemnation proceedings or completed negotiations and purchase, with final consideration having been determined and deeds of conveyance having been delivered; such records are of course subject to inspection upon order of a court of competent jurisdiction. OAG 89-42, 1989 Ky. AG LEXIS 42.

End prices submitted to a public agency for major elements of a procurement are not trade secrets. Accordingly, bids or proposals containing such information must be made available for inspection when all bids have been rejected or a contract has been awarded. OAG 89-43, 1989 Ky. AG LEXIS 47.

For reasons expressed in OAG 89-43, records concerning end prices bid for certain major facets of a public procurement cannot be considered trade secrets. Accordingly, inspection of records containing such information must be permitted once all bids have been rejected or a contract has been awarded. OAG 89-44, 1989 Ky. AG LEXIS 46.

A request that addresses be provided to correspond with names and social security numbers presented by requester is not one properly founded upon Open Records provisions. In any event, the Revenue Cabinet had no compiled record corresponding to the request, and is banned by KRS 131.190 from divulging address information from tax returns, from which information conforming to request would have to have been extracted, thus its denial of address information was proper. OAG 89-45, 1989 Ky. AG LEXIS 44.

Blanket denial of inspection of property assessment and property record cards may not be properly based upon subdivisions (1)(a) and (1)(b) of this section; they must be made available for inspection following masking of confidential information contained thereon. OAG 89-50, 1989 Ky. AG LEXIS 50.

Property assessment and property record cards are not records confidentially disclosed to an agency; they are cards upon which property valuation administrators and their deputies record factual information concerning location, ownership, description, and valuation of property. OAG 89-50, 1989 Ky. AG LEXIS 50.

Even if the two (2) conditions contained in subdivision (1)(a) of this section are present, if a record contains some information that meets those conditions, and other information that does not, subsection (4) of this section requires, regarding material not excepted from inspection under this section, that the public agency shall separate the excepted material and make the nonexcepted material available for examination. OAG 89-50, 1989 Ky. AG LEXIS 50.

Information regarding the location of real property, its description, ownership history through time, and valuation history, as well as information concerning the description and valuation of tangible personal property such as vehicles, watercraft, and mobile homes, are the principal types of information recorded upon property assessment and property record cards, and such information, in being factual information about property, rather than a person, is not of a personal nature; however, information concerning stock holdings, and intangibles, and their valuation apart from the gross intangible assessment, may be deemed an unwarranted invasion of personal privacy, to be disclosed only upon order of the court. OAG 89-50, 1989 Ky. AG LEXIS 50.

The tax rolls, pursuant to KRS 133.047(1), are an open public record for five (5) years, and if information is subject to routine public scrutiny under one statute, that same informa-

tion, in general, cannot be properly termed confidential pursuant to subdivision (1)(a) of this section. OAG 89-50, 1989 Ky. AG LEXIS 50.

"Affairs of any person" and "affairs of the person's business," as used in KRS 131.190(1), refer to matters associated with a person that are recognized as being private, and not subject to routine public perusal; stock holdings and other intangibles, and business inventories fall in the category of information regarding the "affairs of a person or their business," and such information, in accordance with KRS 131.190(1) and subdivision (1)(j), may not be divulged by a property valuation administrator or employee thereof. OAG 89-50, 1989 Ky. AG LEXIS 50.

Information properly excepted from inspection pursuant to this section, or KRS 131.190, that is contained on property assessment and property record cards, must be separated from nonexcepted information, as by masking. OAG 89-50, 1989 Ky. AG LEXIS 50.

Where a person makes, to the Kentucky Labor Cabinet, a complaint that resulted in an OSHA inspection, as opposed to an employee making a statement in response to questioning during an OSHA inspection, KRS 338.101(1)(a) and subdivision (1)(j) of this section do not properly apply in support of a denial of the target employer's request for information concerning the source of the complaint. OAG 89-52, 1989 Ky. AG LEXIS 52.

Where the Labor Cabinet has determined to take no further action with regard to a particular complaint, the public record concerning that matter may be opened for inspection, although, pursuant to subdivision (1)(a) of this section, unless there exists a court order to the contrary, the source of the complaint is exempt from public inspection. OAG 89-52, 1989 Ky. AG LEXIS 52.

The presence of litigation should not operate to prevent inspection of public records, since separate statutory grounds for inspection have been provided by the General Assembly; no exceptions to the general rules regarding inspection are provided for denying inspection of public records on the ground that litigation is either contemplated or in process. OAG 89-53, 1989 Ky. AG LEXIS 53.

Open Records provisions are not a substitute for requests under discovery procedures associated with civil actions as, where records may subsequently be offered as evidence in court, problems in establishing their integrity may be more difficult for those obtained under Open Records provisions, as compared with records obtained under discovery procedures. OAG 89-53, 1989 Ky. AG LEXIS 53.

A compliance officer's preliminary worknotes are exempt from release by subdivisions (1)(g) and (h) of this section. OAG 89-64, 1989 Ky. AG LEXIS 64.

An employee interview statement is exempt from release by KRS 338.101(1) and subdivision (1)(j) of this section. OAG 89-64, 1989 Ky. AG LEXIS 64.

Open Records provisions should not be used as a substitute for discovery under Civil Rules where litigation is involved. OAG 89-65, 1989 Ky. AG LEXIS 65.

Police dispatch logs are subject to inspection without a court order, however, in some instances, particular entries could be properly denied pursuant to subdivision (1)(f) of this section. OAG 89-68, 1989 Ky. AG LEXIS 68.

If a letter from the Director of the Division of Air Quality for the Natural Resources and Environmental Protection Cabinet is truly preliminary, then even though it is contained within agency records, it is excluded under this section. OAG 89-69, 1989 Ky. AG LEXIS 69.

Where the Natural Resources and Environmental Protection Cabinet did adopt what was originally a preliminary legal memorandum as part of its final action, the legal memorandum was not preliminary as meant by subdivisions (1)(g) and (1)(h) of this section, and was therefore open for inspection. OAG 89-69, 1989 Ky. AG LEXIS 69.

If an informant chooses to accompany an inspector on an inspection made pursuant to informant's information, the informant's identity is no longer protected, but is not required to be disclosed. OAG 89-73, 1989 Ky. AG LEXIS 73.

Although under subdivision (1)(f) of this section, the identity of informants not otherwise known are disclosable after an enforcement action is completed or a decision is made to take no action, this subdivision of this section does not apply to the question of disclosing the identity of an informant who has requested confidentiality for two (2) reasons; first, the concern of this subdivision is with disclosure of information that would harm the agency, its thrust being not to guard the informant, but the agency; second, this subdivision speaks only of informants not otherwise known and this is a less select group than those who take the affirmative step of requesting confidentiality. OAG 89-73, 1989 Ky. AG LEXIS 73.

The Natural Resources and Environmental Protection Cabinet may refuse to disclose any citizens' complaints only until it decides that no action will be taken, or until the action it takes is completed, and only if an earlier disclosure would harm the agency in either of the two (2) ways set forth in subdivision (1)(f) of this section. OAG 89-73, 1989 Ky. AG LEXIS 73.

The terms and provisions of the Open Records Act were violated where a city refused to make available for public inspection those complaints which spawned investigations or resulted in hearings involving the named chief of the fire department. OAG 89-74, 1989 Ky. AG LEXIS 74.

"Subject enterprise" as it is used in subdivision (1)(b) of this section refers to motor carriers seeking to be granted a license or certificate to do business in Kentucky; it does not refer to third parties such as insurance companies which may provide insurance coverage for motor carriers. OAG 89-75, 1989 Ky. AG LEXIS 75.

Uniform police traffic accident reports prepared by law enforcement officers pursuant to KRS 189.635 are not confidential and are open records under the Open Records Law. OAG 89-76, 1989 Ky. AG LEXIS 76.

Social security numbers are exempt from public inspection under the provisions of subdivision (1)(a) of this section. OAG 89-76, 1989 Ky. AG LEXIS 76.

The names of parties and witnesses regarding an automobile accident are not excluded from public inspection and the fact that some information contained in police accident reports may be exempted from public inspection does not relieve the public agency of providing the other information which is not exempted from public inspection. OAG 89-76, 1989 Ky. AG LEXIS 76.

The task of separating excepted material from nonexcepted material on voluminous numbers of police accident reports is admittedly burdensome, however, the decision to do so rests within the sound discretion of the public agency because the exemptions contained within subsection (1) of this section are permissive, not mandatory; therefore, a police department may make available all information contained on uniform police traffic accident reports or may expunge that information which is exempt from inspection, but may not deny inspection of the entire report. OAG 89-76, 1989 Ky. AG LEXIS 76.

A policy whereby a police department only provides copies of individual police reports to attorneys who advise that they represent one of the parties involved or a witness to the accident and who can identify the report by name of party and date or approximate date, or to individuals who are involved in an accident or witnesses thereto reflects a practice of providing public records to certain persons and denying the same records to other persons; this policy is in violation of the Open Records Law as the exemptions of subsection (1) of this section may be invoked according to the nature of the record, but not according to the person who is requesting the inspection or the stated or suspected purpose of the inspection. OAG 89-76, 1989 Ky. AG LEXIS 76.

While information derived from the property tax rolls may not be used for commercial or business purposes unrelated to property valuation or assessment, such ban does not apply to information obtained from other types of records of the Property Valuation Administrator's Office. OAG 89-77, 1989 Ky. AG LEXIS 77.

Requests for information, as distinguished from records, and requests that particular methods of inquiry into public records be provided, are outside the scope of Open Records provisions. OAG 89-77, 1989 Ky. AG LEXIS 77.

Where a property valuation administrator denied inspection of the tax rolls because the request involved the perceived use of information obtained or to be obtained from such rolls for commercial purposes, in contravention of KRS 133.047(2), the proper course was to make such denial in writing, citing subdivision (1)(j) of this section, and KRS 133.047(2); a brief explanation of how subdivision (1)(j) of this section applied to denying inspection of the tax rolls should have been set forth in the written denial, and a copy of the denial should have been promptly forwarded to the Office of the Attorney General. OAG 89-77, 1989 Ky. AG LEXIS 77.

A public agency cannot deny a request to inspect records because information from those documents may or will be used in some future legal action, although, if a legal action is in process when the request to inspect records is made, the public agency may be able to invoke the exception to inspection set forth in subdivision (1)(f) of this section; otherwise, a decision not to make records available for inspection because of the possibility or even the probability of a legal action at some future time is a violation of the Open Records Act. OAG 89-79, 1989 Ky. AG LEXIS 79.

Where a public agency invoked the exception found in subdivision (1)(f) of this section until its administrative or adjudicative process was completed, such basis was a proper one while enforcement action was still under consideration and final action had not been taken. OAG 89-80, 1989 Ky. AG LEXIS 80.

While city workers do not have to compile or explain records, they must make a good faith effort to make available for inspection, records related to fiscal assets, receipts, and expenditures, of the city, where there is a reasonable description of records sought. OAG 89-81, 1989 Ky. AG LEXIS 81.

Open Records provisions were not intended to serve as a comprehensive audit tool, or as a means of commanding compilation and production of specific information; Open Records provisions are intended to provide for inspection of reasonably described records held by public agencies. OAG 89-81, 1989 Ky. AG LEXIS 81.

Open Records provisions do not provide for, and agency workers are not required to provide under them, instruction in understanding the meaning or import of information shown upon records produced. OAG 89-81, 1989 Ky. AG LEXIS 81.

An attorney, under the facts of this case, was considered a "private individual" within the meaning of subdivision (1)(g) of this section. OAG 89-86, 1989 Ky. AG LEXIS 86.

The fact that individuals regarding whom records were sought had been the subject of wide publicity, and the fact that there had been substantial public concern regarding the events giving rise to the records sought, did not overwhelm subdivision (1)(g) of this section. OAG 89-86, 1989 Ky. AG LEXIS 86.

Agencies should have uniform policies regarding inspection of their records; if one person, in the absence of a court order, is allowed to inspect a record, all should be allowed to inspect. OAG 89-86, 1989 Ky. AG LEXIS 86.

Subdivision (1)(f) of this section supersedes the more ambiguous language in subdivisions (1)(a), (g), and (h) with regard to law enforcement actions. OAG 89-87, 1989 Ky. AG LEXIS 87.

Subdivisions (1)(g) and (h) of this section have not been generally interpreted as being explicitly concerned with law enforcement actions, because of the existence of a quite explicit section on this point, namely subdivision (1)(f). OAG 89-87, 1989 Ky. AG LEXIS 87.

There may be no general denial of inspection of personnel records; in particular, inspection of employment applications and resumes, and records of educational qualifications — meaning educational levels obtained — insofar as reasonably related to qualification for public employment, must be permitted, where, under the facts of a given request to inspect, such review does not constitute an unwarranted invasion of personal privacy; information to be maintained as confidential may be masked or separated from information to be released, and employee evaluations, involving opinions, are not subject to inspection. OAG 89-90, 1989 Ky. AG LEXIS 90.

Under Open Records provisions there may not be a general or blanket denial of inspection of records contained in the personnel file of a public employee, or of a resume of application for employment, and to the extent that OAG 84-19 and OAG 87-77 uphold a general denial of inspection of the resume of a public employee, and OAG 79-275 upholds general denial of information on an employment application, they are overruled. OAG 89-90, 1989 Ky. AG LEXIS 90.

When the media attempts to carry out an evaluation regarding the quality of schools throughout the state, there is no unwarranted invasion of personal privacy in examining relevant prior work experience and educational qualifications of employees or former employees, and the same view applies to educational qualifications or levels attained by public employees. OAG 89-90, 1989 Ky. AG LEXIS 90.

A schoolteacher's college transcript is not subject to inspection, where a school board has denied inspection pursuant to subdivision (1)(a) of this section. OAG 89-90, 1989 Ky. AG LEXIS 90.

Tape recordings of board of education meetings were public records within the meaning of KRS 61.870(2), although inspection thereof could be denied on the ground that the recordings were preliminary drafts regarding preparation of the official minutes, as inspection of preliminary drafts may be denied pursuant to subdivision (1)(g) of this section. OAG 89-93, 1989 Ky. AG LEXIS 93.

The City of Louisville failed to act consistent with Open Records provisions in making a blanket denial of a request to inspect a "performance appraisal" and related documents regarding the Louisville Police Chief, by (1) failing to provide a brief explanation of how statutory exceptions (to the general rule that inspection of public records is permitted) applied to records withheld from inspection, (2) by denying inspection of a record on the ground it was a "preliminary draft" when it was not of such character, and (3) by denying inspection of records on the ground they constituted "preliminary recommendations," when there was no indication they were other than final unto themselves, and no subsequent product was generated that the records could be considered preliminary to. OAG 90-1, 1990 Ky. AG LEXIS 1.

A contractor to a governmental entity must accept certain necessary consequences of involvement in public affairs. Such a contractor loses any character of a "private individual" as such phrase is used in subdivision (1) (g) of this section, that the contractor might be said to have, in connection with correspondence regarding administration or issues associated with administration of a governmental or public contract. OAG 90-7, 1990 Ky. AG LEXIS 7.

Letter which, although signed by an individual human being, was a letter of a corporate contractor under a public contract involving administration of that contract could not be properly characterized as "correspondence with a private individual" within the meaning of subdivision (1) (g) of this section. OAG 90-7, 1990 Ky. AG LEXIS 7.

Blanket denial by the division of waste management of inspection of a computer printout which contained some information subject to public inspection, and some which could

be properly withheld as "notes," was not consistent with Open Records provisions. Pursuant to subsection (4) of this section, if a public record contains some material which is excepted from inspection pursuant to this section, and some material which is not, the public agency is to separate the excepted material, and make nonexcepted material available for inspection. OAG 90-10, 1990 Ky. AG LEXIS 10.

The cabinet for human resources failed to act consistent with Open Records provisions, by not explaining, in its initial response supplying copies of records, the "blanking out" of names of complainants and certain interviewees, upon copies of forms regarding complaints about possibly unlicensed day care facilities. Such deletion (blanking out) was nonetheless supported by subdivision (1) (a) of this section, which permits an agency to withhold from inspection, records of a personal nature, where disclosure thereof would constitute an unwarranted invasion of personal privacy. OAG 90-12, 1990 Ky. AG LEXIS 12.

Where the return of survey forms completed by businesses affected by the Standiford field expansion plan at the request of the City of Louisville economic development office was purely voluntary, the information contained therein fell with the exemptions provided by subdivisions (1) (a) and (1) (g) of this section. OAG 90-13, 1990 Ky. AG LEXIS 13.

The word "person" within the meaning of subdivision (1) (a) of this section includes all of the definitions provided by KRS 446.010(26), which includes "bodies politic and corporate, societies, communities, the public generally, individuals, partnerships and joint stock companies." OAG 90-13, 1990 Ky. AG LEXIS 13.

Exemptions involving information of a personal nature, contents of real estate appraisals or preliminary drafts, and notes or correspondence with private individuals, were not applicable to request that city permit access to documents containing the names of all property owners who had received offers for their property from the City of Louisville and Jefferson County in connection with the airport expansion project. OAG 90-15, 1990 Ky. AG LEXIS 15.

In denying inspection of a particular record the agency shall advise the requesting party of the particular exception to public inspection it is relying upon and how it applies to the specific document and information being withheld. OAG 90-15, 1990 Ky. AG LEXIS 15.

Inspection of an investigating officer's memorandum, expressing as it does the investigating officer's opinion regarding the matter involved, and in view of its preliminary character, may be properly denied pursuant to subdivision (1)(h) of this section. A denial on such basis should be accompanied by a brief explanation of how the specific exception cited applies to the particular record withheld from inspection. OAG 90-16, 1990 Ky. AG LEXIS 16.

Requester should be allowed to inspect, should he wish to do so, materials he apparently furnished to the State Police in connection with an inquiry into allegations made by the requester and published in a letter to the editor, even though he may already have copies of such material, unless inspection of particular records is denied pursuant to a specific exception from among those set forth in this section, and the application of such exception is properly explained in keeping with subsection (1) of this section. Moreover, inspection of photographs contained in the file should be permitted, unless inspection is denied pursuant to a specific exception and the application of such exception is properly explained. OAG 90-16, 1990 Ky. AG LEXIS 16.

Where a request was for information, rather than to inspect records, and thus did not technically conform to Open Records provisions, the proper response was for the recipient of such request to promptly respond in writing, explaining that while Open Records provisions did not require a public agency to compile information, records that might yield the information sought would be made available for inspection during normal office hours; furthermore, parts of records withheld, such as the home address of an employee, or a social security number, should have been explained in a manner consistent with KRS 61.880. OAG 90-19, 1990 Ky. AG LEXIS 19.

Records disclosing salaries of public employees are subject to inspection by the public, however, since such records may contain personal information within the meaning of subdivision (1)(a) of this section (e.g., home address, social security number, etc.); such information may be masked or covered. OAG 90-19, 1990 Ky. AG LEXIS 19.

Salary and travel expense information is subject to public scrutiny; while the county clerk is not required to compile information, records that might reveal information sought, where reasonably identified, must be made available for inspection, subject to exceptions set forth in this section. OAG 90-19, 1990 Ky. AG LEXIS 19.

A state university acted consistent with Open Records provisions in denying inspection of records where the majority of the several hundred records sought contained "education records," as defined, and effectively made confidential by, the federal Buckley Amendment, such that virtually all of the records requested would require redaction or masking to remove information personally identifiable to a student; an unreasonable burden in view of the scope of the request(s), if the records were to be made available for inspection without jeopardizing federal aid. OAG 90-24, 1990 Ky. AG LEXIS 32.

A state university failed to act consistently with Open Records provisions in denying a request to inspect five (5) particular public safety dispatcher log cards, where the request for those specified items was particular, and narrow in scope, thus making redaction or masking of confidential information feasible without placing an unreasonable burden upon the agency. OAG 90-24, 1990 Ky. AG LEXIS 32.

Police dispatch cards are subject to public inspection where such dispatch logs are of a general jurisdiction police agency or sheriff's office; this does not apply, however, to logs generated by a university law enforcement unit subject to Buckley Amendment provisions. OAG 90-24, 1990 Ky. AG LEXIS 32.

In denying part of a request to inspect public records, a public agency failed to act consistently with Open Records provisions by not citing a proper statutory basis for its denial, and in failing to briefly explain how a statutory provision it did cite, applied to a record that appeared to be withheld from inspection. OAG 90-26, 1990 Ky. AG LEXIS 24.

The Department of Education was not required to compile a listing to conform to a given request to inspect public records. OAG 90-26, 1990 Ky. AG LEXIS 24.

A response to a request to inspect public records should accurately cite a particular exception from among those in this section, if it denies, or partially denies such a request; additionally, a brief explanation should be given, as called for by KRS 61.880(1), regarding how a given exception cited as a basis for denial of inspection applies to a record withheld from inspection. OAG 90-26, 1990 Ky. AG LEXIS 24.

If a record of which inspection is sought does not exist, the agency should specifically so indicate. OAG 90-26, 1990 Ky. AG LEXIS 24.

A county board of education failed to act consistently with Open Records provisions by failing to make a written response stating the specific basis for its denial of inspection of records reflecting exact beginning and ending salary payments to a teacher, and in refusing to allow inspection of such records. OAG 90-30, 1990 Ky. AG LEXIS 28.

Amounts paid from public coffers are perhaps uniquely of public concern and the public is entitled to inspect records documenting exact amounts paid from public monies, to include amounts paid for items, or for salaries, etc.; specific sums paid in salary from public monies to a teacher in the public schools fall within such purview, and are subject to inspection by the public and by the media, as disclosure of such payments does not constitute an unwarranted invasion

of personal privacy within the meaning of subdivision (1)(a) of this section. OAG 90-30, 1990 Ky. AG LEXIS 28.

The Kentucky Parole Board acted consistently with Open Records provisions in denying, as privileged pursuant to statute, a parole officer's "Special Report." OAG 90-32, 1990 Ky. AG LEXIS 30.

A governmental record regarding employee time and attendance, in relation to which public moneys are expended, cannot be considered as being entirely of a personal nature, the disclosure of which would constitute an unwarranted invasion of personal privacy; a time and attendance record (e.g., work schedule, time card, sick leave claim, etc.) operates as a bill or claim for public moneys, therefore such records cannot be properly treated, as a whole, as being information of a personal nature, disclosure of which would constitute an unwarranted invasion of personal privacy within the meaning of subsection (1)(a) of this section. OAG 90-34, 1990 Ky. AG LEXIS 34.

An employee's work schedule, time card, or sick leave record, associated with normal recordation of times worked or to be worked, cannot be said to be "compiled in the course of detecting or investigating statutory violations," within the meaning of subsection (1)(f) of this section; at the most, such records, in the case of a police officer, would be termed as being compiled collaterally to investigatory assignments and in any event, any information contained upon such records that would harm the agency by revelation of informants, or by premature release in relation to a prospective law enforcement action or administrative adjudication, may be masked, and a copy of the records showing the officer's scheduled or actual time and attendance, and any sick leave claimed, may be provided. OAG 90-34, 1990 Ky. AG LEXIS 34.

Evaluation recommendations which involve observations about state employees' performance of governmental work, given their specific character, are not information of a personal nature within the meaning of subsection (1)(a) of this section and where the evaluation recommendations of the successful applicant for a position have been released, there is no basis for withholding such recommendations regarding the unsuccessful applicants; the evaluation recommendations were no more personal in nature in relation to the unsuccessful applicants, than they were in relation to the successful applicant. OAG 90-35, 1990 Ky. AG LEXIS 35.

Since inspection of evaluation recommendations regarding a successful applicant for a position were not denied as preliminary recommendations, there was no appropriate basis for denying inspection of such recommendations regarding the unsuccessful applicants on the ground that such recommendations were of a personal nature, especially where the counsel of an unsuccessful candidate was requesting such information. OAG 90-35, 1990 Ky. AG LEXIS 35.

Where letters of the Transportation Cabinet denying access to certain public records did not state a basis of denial pursuant to one or more of the exceptions set forth in this section, and did not provide an accompanying brief explanation of how such exceptions applied to the records withheld from inspection, the Transportation Cabinet failed to act consistently with KRS 61.870 to 61.884. OAG 90-35, 1990 Ky. AG LEXIS 35.

In response to request to inspect all documents relating to settlement of legal action against city, if the city has a record or records setting forth moneys paid on behalf of the city in settling the suit in question, such record should be promptly made available for inspection; this view applies to any record of such nature in the possession of the attorney for the city, that would be considered a record of the city, though held by counsel; if the city has records regarding settlement of the suit in question, other than one setting forth the amount of moneys paid on behalf of the city in settling the suit in question, the city should, in a written response, itemize which records it has and if it denies inspection of any of such "other" records, it should state a specific basis for denial based upon the exceptions set forth in this section; if it has no record setting forth the amount of the settlement paid or payable, it should specifically so state, vis-a-vis the city government as a whole, and not just in relation to a record in the possession of the city manager. OAG 90-36, 1990 Ky. AG LEXIS 36.

Records in the possession of city's insurance company concerning settlement of legal action against city are not reachable under Open Records provisions. OAG 90-36, 1990 Ky. AG LEXIS 36.

Where a request was made for portions of taped conversations between a police department hostage negotiation team and an individual who allegedly held his family hostage for several hours until he apparently killed his estranged wife and himself, and where these were all conversations in which the alleged perpetrator was a participant, since excepted information could properly be omitted from those portions of the tape, the remaining nonexcepted information had to be produced since the information requested was not so voluminous so as to constitute an unreasonable burden. OAG 90-56, 1990 Ky. AG LEXIS 56.

A document setting forth preliminary information concerning certain air samples, which did not represent a final investigative report or study, and which did not represent a final action, decision or determination on the matter, was a preliminary document which may be withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 90-57, 1990 Ky. AG LEXIS 57.

State agency properly handled request to inspect public documents even though the agency did not furnish requested copies of certain test results because no such documents existed when the request was received and the agency's response was made; and the agency properly utilized its discretion to withhold from public inspection a copy of a preliminary draft or study. OAG 90-57, 1990 Ky. AG LEXIS 57.

A decision to take disciplinary action or not to take disciplinary action against a public employee for actions related to that employee's job performance is a matter about which the public has a right to know and a request for records regarding same does not constitute a clearly unwarranted invasion of personal privacy of that public employee. OAG 90-58, 1990 Ky. AG LEXIS 58.

An intra-office memorandum from an employee of a municipal division to another employee of the division in which oral allegations by a citizen against a division employee were reported and which included an expression of an opinion as to the implication of the citizen's oral allegations was exempt from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 90-58, 1990 Ky. AG LEXIS 58.

The members of the University of Kentucky Alumni Association are neither state employees nor state licensees; they much more closely resemble members of a voluntary organization receiving at least twenty-five percent (25%) of its funding from state or local funds, and although the home addresses of those members are not required to be divulged by subdivision (1)(a) of this section, their work addresses do not fall under the exemptive language of this section. OAG 90-60, 1990 Ky. AG LEXIS 60.

Where a University of Kentucky Alumni Association member's work address and home address are one and the same, the address should be deemed the member's home address for the purposes of this section. OAG 90-60, 1990 Ky. AG LEXIS 60.

A juvenile court's orders appointing specific attorneys as juveniles' guardians ad litem and orders authorizing their payment in specific cases are confidential juvenile court records and as such are excluded from public view, although, a public agency's records that a specific attorney was paid a sum certain out of public funds for his or her service in a specific court as a guardian ad litem are not; if the agency's records include the names of the juveniles involved, making release of

such information an invasion of the juveniles' privacy, those names may be removed from the records before allowing access thereto. OAG 90-62, 1990 Ky. AG LEXIS 62.

Cabinet records of a disbursement to an individual for discharging the duty of guardian ad litem in juvenile court are not juvenile court records as envisioned by KRS 610.340(1); rather, they are public records of a public expenditure made by a public agency to a person in consideration of a public service which was performed under the auspices of the juvenile court. OAG 90-62, 1990 Ky. AG LEXIS 62.

Investigative files, reports and other documents maintained by criminal justice agencies are not subject to public inspection until after the prosecution is completed or the investigation has been concluded and a determination has been made not to prosecute. OAG 90-64, 1990 Ky. AG LEXIS 64.

If various documents, including memoranda of meetings and telephone conversations, constitute preliminary intraoffice communication setting forth opinions, observations and recommendations of various agency personnel, and they do not represent the agency's final decision or determination on any matter, then they may be withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 90-66, 1990 Ky. AG LEXIS 66.

Responses that certain requested items do not exist or cannot be located are proper responses when they represent the true state of events. OAG 90-66, 1990 Ky. AG LEXIS 66.

Where the State Police had been asked by the FBI to withhold certain documents pending completion of the FBI's investigation into the same matter, the State Police acted in accordance with the open records law in denying inspection of these documents. OAG 90-67, 1990 Ky. AG LEXIS 67.

Salaries of public employees are not exempt from disclosure under the Open Records Act. OAG 90-71, 1990 Ky. AG LEXIS 71.

There is no specific exception in the Open Records Act that authorizes a public agency to withhold public records from an applicant because access to the records may be obtained from another public agency, even if the requested records might more appropriately or more easily be obtained from that other public agency. OAG 90-71, 1990 Ky. AG LEXIS 71.

Where a governmental board does have custody or control over public records that contain certain requested information, according to the requirements of the Open Records Act, the board should have given the person making the request either: (1) access to the records; or (2) a statement of the specific exceptions authorizing the withholding of the records. OAG 90-71, 1990 Ky. AG LEXIS 71.

Where an agency's denial of a permit was not a final decision, but rather was a draft tentatively denying the application, such denial was a preliminary step in the decision-making process and release of the requested information would have been premature; thus, the open records request with regard to testimony relied upon by the agency was properly denied pursuant to subdivision (1)(f) of this section. OAG 90-72, 1990 Ky. AG LEXIS 72.

A request for "notes, copies of all correspondence and taped conversations … in negotiating the plea bargain" was properly denied because those items are preliminary drafts, notes and memoranda. OAG 90-77, 1990 Ky. AG LEXIS 77.

In the interest of protecting the employee's right of privacy it is proper for the public agency to require written permission from the employee before anyone else, including her attorney, examines her entire personnel file. OAG 90-83, 1990 Ky. AG LEXIS 83.

The public agency is not required to search for material which the requesting party cannot describe with some degree of clarity. OAG 90-83, 1990 Ky. AG LEXIS 83.

Because subdivision (1)(f) of this section withdraws any exemption from such records "after enforcement is completed or a decision is made to take no action," not all records compiled in the process of law enforcement are exempt, and even those that are exempt may subsequently lose that protected status. OAG 90-89, 1990 Ky. AG LEXIS 89.

Since these interview transcripts are the property of the FBI and as this federal government agency requests that the documents not be disseminated, the state police was correct in denying release of these documents. OAG 90-90, 1990 Ky. AG LEXIS 90.

A letter or document written by an elected public official such as a sentencing judge or prosecuting attorney which contains an opinion as to whether the Parole Board should or should not grant a parole hearing is exempt from inspection unless incorporated into, or made a part of, the Parole Board's final decision on the matter. OAG 90-97, 1990 Ky. AG LEXIS 101.

Documents are exempt from inspection pursuant to subdivision (1)(f) even though the agency in possession of the documents is not the agency involved in a prospective law enforcement action or administrative adjudication. OAG 90-97, 1990 Ky. AG LEXIS 101.

The word "preliminary" as used in subdivision (1)(h) obviously refers to recommendations made by a person prior to a final decision or action being made by a state agency; it does not matter whether the recommendation is the first, second or last recommendation if the state agency has not yet taken final action. OAG 90-97, 1990 Ky. AG LEXIS 101.

Subdivision (1)(j) of this section and KRS 17.150 (2) exempt from open records disclosure the files of law enforcement agencies which have not been closed. OAG 90-104, 1990 Ky. AG LEXIS 94.

Drafts of agreed orders are not notices of final action of a public agency; only the final agreed order actually signed and agreed to by the parties is correspondence giving notice of final action of a public agency. OAG 90-107, 1990 Ky. AG LEXIS 149.

There is no allowance in the Open Records Act for nondisclosure of documents pertaining to subjects of "litigation pending"; thus, denial of a request for this reason is facially defective. OAG 90-110, 1990 Ky. AG LEXIS 147.

Where information requested was compiled by agency during its investigation of claimants' claims for unemployment insurance benefits, as a product of that investigation it clearly constituted records preliminary to agency's final decision on the claims, and was excepted from the disclosure requirements of the Open Records Act pursuant to the exceptions found at subdivisions (1)(g) and (h) of this section. OAG 90-111, 1990 Ky. AG LEXIS 146.

An agency may not justify its refusal to permit inspection solely on the grounds that the agency has elected to adopt a policy of separating exempt and non-exempt material from public records. OAG 90-112, 1990 Ky. AG LEXIS 145.

Responses denying inspection of public records should include reference to a specific statutory exception authorizing the withholding of the record. OAG 90-112, 1990 Ky. AG LEXIS 145.

Applications and resumes from unsuccessful applicants for state jobs are exempt from inspection or copying under the Open Records Law pursuant to subdivisions (1)(a) and (1)(g) of this section. OAG 90-113, 1990 Ky. AG LEXIS 144.

To the extent that public records request sought access to copies of all applications for the position of Director—Facility Construction received by Jefferson County Public Schools on or after April 17, 1989, such documents are private rather than public records, as defined by subdivisions (1)(a) and (1)(g) of this section; these documents are exempted from release since they contain information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. OAG 90-113, 1990 Ky. AG LEXIS 144.

Although allowing inspection of a subpoena delivered to the office of the State Veterinarian by the Federal Bureau of Investigation would not be as intrusive and harmful as

allowing inspection of the documents requested in the subpoena, such inspection still could harm the investigation by prematurely indicating the documents, materials, or issues that are being reviewed and scrutinized by the federal government; once, however, the investigation is concluded, inspection of the subpoena should be permitted. OAG 90-116, 1990 Ky. AG LEXIS 141.

The Department of Agriculture, Division of Animal Health, is a law enforcement agency and the request for any subpoena delivered to the office of the state veterinarian by the Federal Bureau of Investigation is a record of the Department that was compiled by the Department in the process of detecting and investigating statutory or regulatory violations. The fact that the subpoena was served on the Department by the federal government does not change the fact that the subpoena was one of the documents compiled by the Department in this process. Moreover, the fact that the compilation of documents may not have begun until the subpoena was received by the Department does not change the fact that the Department did compile such documents, including the subpoena. OAG 90-116, 1990 Ky. AG LEXIS 141.

It is simply not feasible to protect the complainant's identity if a copy of an audio recording of her voice on a 911 telephone call is released; disclosure of the complainant's identity by providing a copy of the tape for use on a television show would be an unwarranted invasion of personal privacy, even if the caller's name and address are deleted, and it is not outweighed by the public's right to governmental information. Release of the complainant's identity would effectively chill many 911 telephone calls. OAG 90-117, 1990 Ky. AG LEXIS 140.

Public records which have been inadvertently released for inspection by non-custodial persons with access to public records does not prohibit an agency from subsequently denying inspection or copying of the same record by the official custodian. OAG 90-117, 1990 Ky. AG LEXIS 140.

County Board of Education did not act consistent with the provisions of this act in denying attorney's request to inspect a letter from police chief in which the chief expressed his concern to school superintendent as to misgivings regarding a promoter engaged to arrange a fund raising event to be staged at a school facility; even though there was a police investigation concerning the promoter, the letter was not a record of the police, and thus, the board's reliance on subdivision (1)(f) of this section to withhold the letter was not justified, nor would the board be justified in withholding the letter based on subdivision (1)(g). OAG 90-140, 1990 Ky. AG LEXIS 158.

A letter verifying an electrician's qualifications to sit for a licensure examination was not viewed as having been made with an expectation of privacy, nor as correspondence with a private individual. OAG 90-142, 1990 Ky. AG LEXIS 159.

All information obtained by a licensing agency about a potential licensee should not necessarily be available for inspection. Some data, such as test scores or confidential letters of recommendation, may remain private. However, the public's interest in verifying that licensees meet educational or work experience requirements outweighs the minimal privacy interests of a licensee in the name and address of his former employer. OAG 90-142, 1990 Ky. AG LEXIS 159.

As to request to inspect all documentation that was given on electrical code enforcement officer's job application for obtaining his job as such, masking the information other than the names and addresses of former employers was justified; a government employer may block out such personal information as the employee's home address, social security number, phone number and the like. OAG 90-142, 1990 Ky. AG LEXIS 159.

The need for disclosure is particularly strong where the records are from a licensing body, established to protect the public, the public also has a substantial interest in seeing that a government agency enforces its statutes and ordinances in an evenhanded manner. OAG 90-142, 1990 Ky. AG LEXIS 159.

Urban County Government's reliance on subdivision (1)(a) of this section to deny a request to inspect documents containing the name and address of an electrical licensee's former employer, under whom the licensee served his apprenticeship, was not justified under the circumstances of the facts presented, where the licensee was required to work under a licensed contractor a certain number of years in order to be eligible to take a qualifying licensure examination, as the public's right to this information outweighs the licensee's and licensee's former employer's right to privacy; neither may the government agency exclude the document, in reliance on subdivision (1)(g), as information contained in correspondence from private individuals, where the agency relied on the information in permitting an applicant to take the licensure exam. OAG 90-142, 1990 Ky. AG LEXIS 159.

Where a local government establishes minimum qualifications that a person must achieve before he is eligible to take a licensure examination, the public should be provided access to enough information to verify that these qualifications have been met; the public should not be required to simply take the government's word that minimum qualifications were satisfied in a given case. OAG 90-142, 1990 Ky. AG LEXIS 159.

Writings from private citizens to government agencies are not considered correspondence from private citizens where an agency is expected to rely on the correspondence to take some action, such as take a disciplinary action against a licensee, or enter into a government contract based on bids; in each instance disclosure is mandatory upon request, after the final governmental action, and verification of an applicant's qualifications to take a licensure examination as following this same rule. OAG 90-142, 1990 Ky. AG LEXIS 159.

The Kentucky State Police acted consistent with the Open Records Act and KRS 17.150(2), when it denied a request to inspect death investigative reports in its custody which were part of an active, ongoing investigation, notwithstanding that the investigation was almost one and one-half (1½) years old at the time of the request. OAG 90-143, 1990 Ky. AG LEXIS 161.

It is within the sound discretion of the law enforcement agency to decide when a case is active, merely inactive, or finally closed. OAG 90-143, 1990 Ky. AG LEXIS 161.

Although water district has not complied with various procedural requirements set forth in KRS 61.880(1) and KRS 61.872(4) relative to the handling and disposition of requests to inspect documents, the water district's refusal to permit the inspection of polygraph test results is justified under the Open Records Act as such documents may be excluded from public inspection pursuant to subdivision (1)(a) of this section. OAG 90-144, 1990 Ky. AG LEXIS 163.

Open and active investigative files of the Kentucky State Police are exempt from inspection, and this includes medical or autopsy reports. OAG 91-6, 1991 Ky. AG LEXIS 6.

A Kentucky State Police case file is not open for inspection while the investigation is ongoing and, therefore, where prosecution has not been completed the records sought from the State Police file for inspection may be and were properly excluded. OAG 91-8, 1991 Ky. AG LEXIS 8.

A Letter of Intent issued by a city to an industrial entity considering locating in the city, was not final agency action because the "incentive package" was subject to negotiation and change until such time as final agreement was reached among the parties and, therefore, the Letter of Intent was a preliminary document that may be withheld from inspection pursuant to subsections (1)(g) and (h) of this section. OAG 91-21, 1991 Ky. AG LEXIS 21.

A presentation prepared as part of preliminary negotiations does not reflect final agency action and therefore is exempt from disclosure as a preliminary record, pursuant to subsection (1)(h) of this section. OAG 91-21, 1991 Ky. AG LEXIS 21.

School district improperly denied the request of the Department of Public Advocacy for access to material pertaining to

the internal investigation conducted by school authorities relative to a disciplinary proceeding involving a student, for the provisions of subsection (5) of this section require such a disclosure to a public agency in the performance of its legitimate governmental functions. OAG 91-22, 1991 Ky. AG LEXIS 22.

A report from the Commissioner to the Governor concerning the Commissioner's opinion on the Union Underwear-Jamestown Pipeline issue is a preliminary memoranda and records of this nature are not required to be made available for public inspection under the Open Records Act. OAG 91-23, 1991 Ky. AG LEXIS 23.

Where an attorney requested a case record of a child for whom her clients had been foster parents, the Cabinet for Human Resources acted consistently with the open records law by denying inspection of a case record pursuant to subdivision (1)(j) of this section. OAG 91-30, 1991 Ky. AG LEXIS 30.

Guidelines of the Metropolitan Sewer District (MSD) for acquiring sewer treatment plants are exempt from open records treatment pursuant to subsection (1)(d) of this section as it contains real estate appraisals, engineering or feasibility estimates and evaluations made for MSD relative to the acquisition of small sewer systems, but once the acquisition of all of the sewer systems is complete, then this information would cease to become exempt under the Open Records Law. OAG 91-31, 1991 Ky. AG LEXIS 31.

The Metropolitan Sewer District Guidelines for the purchase of small sewer systems is a preliminary memoranda reflecting opinions and policies and is exempt from open records pursuant to subsection (1)(h) of this section. OAG 91-31, 1991 Ky. AG LEXIS 31.

Cabinet for Human Resources acted consistently with the Open Records Laws to the extent that it withheld from inspection the names of informants which spawned its investigation pursuant to subdivisions (1)(a) and (j) of this section and KRS 620.050(5)(a), and to the extent that it denied inspection of the verbal complaint or oral allegations made by an individual to an employee of the cabinet. However, the cabinet acted inconsistently with the Open Records Law to the extent that it denied inspection of the written complaint which initially spawned the investigation, although, the names of informants contained within the written complaint may properly be withheld. OAG 91-33, 1991 Ky. AG LEXIS 33.

The substantial privacy interests of suspects investigated but not charged with criminal activity by the Medicaid Fraud Division of the Attorney General's office outweighs the public's right of access to the closed files. OAG 91-35, 1991 Ky. AG LEXIS 35.

Although OAG 89-87 held that subdivision (1)(f) of this section supersedes the more ambiguous language in subdivisions (1)(a), (g), and (h) of this section, OAG 89-87 does not accurately state the law and should be overruled. OAG 91-35, 1991 Ky. AG LEXIS 35.

An agency relying on the exemptions under KRS 17.150(2)(b) and subdivision (1)(a) of this section has a duty to provide for inspection of that part of its records that are nonexempt and justify that part which it has excluded with specificity, briefly explaining how the exception applies to those parts of the record withheld. OAG 91-35, 1991 Ky. AG LEXIS 35.

A public employee reprimanded after an investigation of alleged misconduct may have a cognizable personal privacy interest in records pertaining to a privately issued reprimand, because such a reprimand is intended for a particular class of persons. However, the employee's privacy interest is outweighed by the public's interest in being informed about the conduct of public employees when that conduct is job related; the public has a right to know about the employee's misconduct and any resulting disciplinary action taken against the employee. OAG 91-41, 1991 Ky. AG LEXIS 41.

The privacy interest of disciplined public employees is outweighed by the public's right to be informed about the job related conduct of the employees. OAG 91-41, 1991 Ky. AG LEXIS 41.

Subdivision (1)(b) of this section does not authorize nondisclosure of "Form Es" filed by motor carriers with the Transportation Cabinet. OAG 91-44, 1991 Ky. AG LEXIS 44.

The Open Records Act does not apply generally to records generated by the Judicial Retirement and Removal Commission inasmuch as the commission is an agency of the Court of Justice, created under authority of the Kentucky Constitution and Supreme Court Rule; records of the court and agencies of the court enjoy a special status and are placed under the exclusive jurisdiction of the Court of Justice pursuant to KRS 26A.200 and KRS 26A.220. OAG 91-45, 1991 Ky. AG LEXIS 45.

The Kentucky Bar Association is an agency of the court created and supervised by it and court records are given a special status under KRS 26A.200 and 26A.220, and are exclusively governed by the Court of Justice. OAG 91-47, 1991 Ky. AG LEXIS 47.

A water district is a public agency, created under authority of KRS Chapter 74, and is therefore subject to the Open Records Act. Accordingly, its records are open for inspection by any person, unless those records are exempt under one of the statutorily authorized exceptions. OAG 91-48, 1991 Ky. AG LEXIS 48.

Inspection of letters of reference written on behalf of an applicant who became commissioner of a water district may be denied under the exception that has been carved out of the Open Records Act for correspondence with private individuals. Such letters are not correspondence between two (2) public officials on official business within the contemplation of the act, and are therefore exempt. OAG 91-48, 1991 Ky. AG LEXIS 48.

The public is entitled to know the name, position, work station and salary of a public employee however, a public employee is entitled to privacy in his personal life and off-duty activities, and this right to privacy extends to the public employee's home address, social security number and marital status. OAG 91-48, 1991 Ky. AG LEXIS 48.

The public's interest in inspecting the resume of a water district chairman to assess his qualifications to serve, outweighs his right of privacy about such matters since one does not typically work or attend school in secret. However, information of a personal nature contained in the resume, such as home address, phone number, social security number and marital status should be separated and withheld. OAG 91-48, 1991 Ky. AG LEXIS 48.

Written notes, shorthand notes or tape recordings made during a meeting solely to assist the agency's clerk in preparing the official minutes are preliminary records and may be withheld from public inspection. OAG 91-49, 1991 Ky. AG LEXIS 49.

A copy of an accident report, masking any exempted information such as social security numbers, should be made available to the requester. OAG 91-50, 1991 Ky. AG LEXIS 50.

Case files in the possession of the State Police are not open to inspection while the case is active. OAG 91-50, 1991 Ky. AG LEXIS 50.

Upon completion of the prosecution or after a decision not to prosecute is made, a State Police file will be subject to public inspection unless the documents contained in it are exempt under another exception to the Open Records Act. OAG 91-50, 1991 Ky. AG LEXIS 50.

Records which are the work product of an attorney in the course of advising a client are not discoverable under CR 26.02(3); such records are therefore exempt from public inspection under KRS 447.154, which provides in part that no act of the General Assembly shall be construed to limit the

right of the Court of Justice to promulgate rules, and subdivision (1)(j) of this section. OAG 91-53, 1991 Ky. AG LEXIS 53.

Records which are privileged under the rules of discovery are exempt from mandatory disclosure under subdivision (1)(j) of this section. OAG 91-53, 1991 Ky. AG LEXIS 53.

Although it receives federal funding and supervision for many of its myriad activities, the Cabinet for Human Resources is a state, and not a federal, agency. Its records are subject to the Kentucky Open Records Act. The Federal Freedom of Information Act has no force as to state records, only the records of federal agencies. OAG 91-56, 1991 Ky. AG LEXIS 56.

It is not permissible to cite an exemption under the Federal Freedom of Information Act (FOIA), 5 USCS § 552, or a regulation citing a FOIA exemption, as the federal law or regulation prohibiting disclosure of public records under subdivision (1)(i) of this section. OAG 91-56, 1991 Ky. AG LEXIS 56.

Where individual requesting records concerning his arrest and subsequent investigation, had indicated that he intends to seek post-conviction relief, his conviction was not final, and the documents pertaining to his arrest, and the investigation of his case, were available through the discovery provisions of the Rules of Criminal Procedure, prior to trial. They will again be available to him, and the public generally, unless otherwise properly exempt, once his conviction has been affirmed by the court of last resort to which it is taken. OAG 91-57, 1991 Ky. AG LEXIS 57.

If a document is exempt under subdivision (1)(a) of this section, it does not lose this status after the agency takes final action. OAG 91-62, 1991 Ky. AG LEXIS 62.

Inspection of employee evaluations may be denied under subdivision (1)(a) of this section; the privacy interests protected are as much those of the evaluator as those of the person being evaluated inasmuch as the evaluator generally makes his evaluation with the understanding that it will be kept confidential. OAG 91-62, 1991 Ky. AG LEXIS 62.

Riverport Authority violated the Open Records Act in denying request for access to invoices of company as they were not trade secrets referred to in subsection (1)(b) of this section; however, authority was correct in withholding the worksheets used by the company in calculating the figures contained in the invoices inasmuch as these were preliminary documents exempt from inspection under subsections (1)(g) and (h) of this section. OAG 91-70, 1991 Ky. AG LEXIS 71.

Annual audits of state dock and state park are not a secret commercially valuable plan or formula but are public documents and are therefore subject to the public inspection unless there is a possibility of prospective law enforcement action or administrative adjudication; audits that fall into the latter category are exempt under subdivision (1)(f) of this section. OAG 91-72, 1991 Ky. AG LEXIS 73.

Although marina management services is a private corporation, and not a "public agency" within the meaning of KRS 61.870(1), its records are "public records" within the meaning of KRS 61.870(2) to the extent that they are transmitted to, and retained by, the Department of Parks, and since under KRS 61.870(2) the term "public record" includes records that are prepared, owned, used, in the possession of or retained by a public agency if records of private entities or agents are in the possession of or retained by a state agency, they are, in general, subject to inspection. If the records are not retained by a public agency, on the other hand, they are private records and are therefore beyond the reach of the Open Records Act. OAG 91-72, 1991 Ky. AG LEXIS 73.

Since the Department of Parks receives a percentage of the licensee's monthly gross income and requires that it submit an annual audit a portion of the licensee's receipts become public money, and because its required year-end audit remains in the possession of the department, that audit is a public record and therefore is subject to inspection under the Open Records Act. OAG 91-72, 1991 Ky. AG LEXIS 73.

Where with respect to request for financial data although department improperly relied on subdivision (1)(b) of this section in refusing to release the information, the request was not sufficiently definite to permit it to formulate a response for while the purpose and intent of the Open Records Act is to permit the free and open examination of public records, the right of access is not absolute; as a precondition to inspection, a requesting party must identify with "reasonable particularity" those documents which he wishes to review. OAG 91-72, 1991 Ky. AG LEXIS 73.

The Hardin County Schools may refuse to release its recommendations on salary increases under subdivision (1)(h) of this section. The requested documents fit squarely within this exception, and if upon final action of the school board, these recommendations are adopted, they will become public records and must be made available for inspection. OAG 91-78, 1991 Ky. AG LEXIS 78.

Although the public is entitled to know the name, position, work station, and salary of a public employee, that employee is entitled to privacy in his personal life and off-duty activities. OAG 91-81, 1991 Ky. AG LEXIS 81.

An agency cannot be penalized for releasing exempted documents, such as social security numbers, but it may invoke an exception if it wishes to maintain a uniform policy with regard to records that are exempt under the Open Records Law, such as home addresses. OAG 91-81, 1991 Ky. AG LEXIS 81.

Pursuant to subdivision (1)(d) of this section, when the necessary acquisitions for a project are within a relatively compact area and the limits of the project are reasonably drawn, it is the legislative intent that the appraisals on the property should not be made available for inspection until such time as all of the parcels of land owned by various owners have been acquired. OAG 91-83, 1991 Ky. AG LEXIS 83.

Preliminary interoffice and intraoffice memoranda or notes setting forth opinions, observations and recommendations, as well as investigative reports that do not represent the agencies' final action may be withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section. Any such documents that are incorporated into final agency action, however, are public records and must be released. OAG 91-90, 1991 Ky. AG LEXIS 90.

Where university president adopted the recommendations of the Grievance Committee in concluding that no violations of personnel policy had occurred, and thereafter attempted to conciliate faculty member by requiring the Director to explain those policies to her but did not order that any remedial action be taken, nor did he offer any other explanation for her decision, or reject the findings and recommendations of the Committee, although the president failed to employ any legal "terms of art" in incorporating these findings, it is clear that she adopted the Committee's report, and that the report thereafter lost its preliminary status and was not exempt under subdivision (1)(h) of this section. OAG 91-90, 1991 Ky. AG LEXIS 90.

Where defendant in criminal case indicated that he intended to seek post-conviction relief, his conviction was not final; therefore tape recordings of his statements to the police were available through the discovery provisions of the Rules of Criminal Procedure, prior to trial and will again be available to him, and the public generally, unless otherwise properly exempt, once his conviction has been affirmed by the court of last resort to which it is taken, thus denial of defendant's request for access to tape recordings was proper under subdivision (1)(f) of this section. OAG 91-91, 1991 Ky. AG LEXIS 91.

If a criminal case is on appeal, records pertaining to the case are exempt from disclosure under subdivision (1)(f) of this section and a criminal conviction is not final until it has been

upheld by the last appellate court to which the conviction can be taken. OAG 91-91, 1991 Ky. AG LEXIS 91.

State police properly denied request to inspect state police file of murder investigation where victim's husband had entered a plea of guilty, for until a plea of guilty has been formally accepted and incorporated in a final judgment or order, a defendant is free to seek to withdraw his plea, and the court is free to accept or reject it and the State Police may therefore properly treat this case as active since the defendant has not been sentenced and the "enforcement action" is not "complete." OAG 91-92, 1991 Ky. AG LEXIS 92.

Where person requesting documents regarding detention of student at a school and the report and findings of an investigation conducted by the Department for Social Services did not demonstrate that he fell under any of the statutorily recognized classifications of KRS 620.050 or this section or that his particular situation warrants the release of the requested material his request was properly denied. OAG 91-93, 1991 Ky. AG LEXIS 93.

Whenever the personal privacy exemption is raised by an agency to justify withholding public records the preliminary question which must be addressed is whether the interest in nondisclosure is a type of privacy the exemption was intended to protect; if the preliminary question is answered in the affirmative, then the privacy interest of the individual must be balanced against the right of the public to be informed about the conduct and affairs of state government and its officers and employees. OAG 91-94, 1991 Ky. AG LEXIS 94.

The Kentucky Personnel Board was not justified in redacting from the records the names of the employees who testified in open hearings before releasing the records to the newspaper requesting the records under subdivision (1)(a) of this section for when individuals voluntarily testify in an open hearing, whether in court, or before an administrative tribunal, they do not have a reasonable expectation of privacy concerning their testimony or their identities. OAG 91-94, 1991 Ky. AG LEXIS 94.

The exemptions of subdivisions (1)(g) and (h) of this section are intended to protect the integrity of an agency's internal decision-making process by encouraging the free exchange of opinions and ideas. If the requested records reflect final agency action, on the other hand, they are not exempt. OAG 91-97, 1991 Ky. AG LEXIS 97.

Once an offered leasing rate, service and concession package has been accepted or rejected by a lessee of the Kentucky Fair and Exposition Center or the Commonwealth Convention Center, the matter is final and inspection of documents relating thereto is proper. OAG 91-97, 1991 Ky. AG LEXIS 97.

Regarding material pertaining to public bids only those records generated in the competitive negotiation process, while it is ongoing, are exempt. Once those negotiations are concluded, either by the award of a contract to one bidder or the rejection of all bids, the public agency must make the records available for public inspection. OAG 91-99, 1991 Ky. AG LEXIS 99.

Correspondence between corporation that has been awarded a public contract as a result of public bids and a public agency cannot be considered correspondence with a private individual insofar as it was exchanged by a public agency and a corporation under public contract, and involved issues pertaining to that contract. All correspondence exchanged prior to the award of the contract which relates to bids, quotations or proposals is a public record. All correspondence exchanged after the award of the contract, is also public record. OAG 91-99, 1991 Ky. AG LEXIS 99.

Reports on the investigation of fires are exempt from mandatory disclosure under subdivision (1)(j) of this section since reports of investigations of fire losses conducted by a fire department may, in the discretion of the chief of the fire department, be withheld from the public. OAG 91-100, 1991 Ky. AG LEXIS 100.

Denial of request for access to lists of fire and building code violations prepared by the chief, or his designee, and the city inspector, was improper as KRS 227.370 does not vest the chief with discretion to withhold information pertaining to violations noted in his inspection and thus subdivision (1)(j) of this section is inapplicable; moreover inspection reports are not "preliminary" within the meaning of subdivision (1)(h) of this section. OAG 91-100, 1991 Ky. AG LEXIS 100.

Where the letter of reprimand issued by public school to an individual who was the subject of investigation which enumerated the charges against him and advised him of the action taken against him and did not refer to, or incorporate any portion of, a report compiled in the course of the investigation, the documents which comprise the report were preliminary to the final decision and were properly withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 91-102, 1991 Ky. AG LEXIS 102.

To successfully raise the exception of subdivision (1)(b) of this section, an agency must establish that the requested records: (1) were confidentially disclosed to it; (2) in conjunction with an application for a loan; and (3) that release of the records would permit an unfair advantage to competitors of the subject enterprise. OAG 91-105, 1991 Ky. AG LEXIS 105.

Since financial information relating to capital investments and employment figures for businesses located in an enterprise zone has been disseminated to the public in the past, since by the rule of strict constructions the requirement that the records be disclosed in conjunction with an application for a loan was not satisfied and since it was not established that businesses seeking certification will be placed at a competitive disadvantage by disclosure of the information, denial of request to inspect the documents under subdivision (1)(b) of this section was improper. OAG 91-105, 1991 Ky. AG LEXIS 105.

Public's interest in monitoring the activities of Enterprise Zone Authority to determine if the businesses certified for the zones qualify for the benefits received by virtue of their investments and the number of jobs they claim to create, outweighs those businesses' interest in maintaining the confidentiality of information relating to capital investments and employment figures for businesses located in enterprise zones, therefore, to the extent that the requested information does not relate to the businesses' personal financial data, but merely reflects their compliance with the requirements for certification of KRS 154.655(5) (renumbered as KRS 154.45-010) such information should properly be disclosed under subdivision (1)(a) of this section. OAG 91-105, 1991 Ky. AG LEXIS 105.

While it is undoubtedly true that communications between joint clients are fully protected in litigation between the clients and a third party, documents which pursuant to KRS 61.880(2) demonstrated that they pertained to more general zoning and land use questions and, although they contained communications between attorney and client, they were not made in confidence, within the meaning of former KRS 421.210(4), since they were circulated to other public agencies and thus did not fall under the exemption of subdivision (1)(j) of this section; however, such documents being preliminary interoffice or intraoffice memoranda or notes setting forth opinions, observations and recommendations, were properly withheld pursuant to subdivisions (1)(g) and (h) of this section, and were properly shared with other public agencies pursuant to subsection (5) of this section. OAG 91-108, 1991 Ky. AG LEXIS 108.

An agency cannot withhold every document which relates to a particular matter under subdivision (1)(j) of this section and the attorney-client privilege simply because it is represented by an attorney in that matter; however, it is the attorney who is best able to make a ready determination of what papers come under the attorney-client privilege. OAG 91-108, 1991 Ky. AG LEXIS 108.

Those specific documents which are actually generated in the course of the attorney-client relationship, and therefore fall squarely within the privilege, or are the work product of an attorney, may be withheld from public inspection pursuant to Kentucky Rules of Civil Procedure, CR 26.02(1) and (3), KRS 447.154 and subdivision (1)(j) of this section. OAG 91-108, 1991 Ky. AG LEXIS 108.

Tapes of investigative proceedings involving university and client of attorney requesting tapes were, for purposes of the Open Records Act, public records since the hearing at which the tapes were made was conducted by a public agency and involved an employee of a public agency, the tapes were not made solely to assist the university in preparing minutes of the hearing and thus subdivisions (1)(g) and (h) of this section were inapplicable; the tapes were used as the basis for report of university's counsel to the president, upon which final disciplinary action was taken, thus to the extent that they were adopted into this final action, they lost whatever preliminary status they may have enjoyed as internal investigative materials; therefore the university improperly denied attorney's request for access to the tapes of the investigative proceeding of which his client was the subject as it was clear that the tapes were not exempt from disclosure pursuant to subdivision (1)(j) of this section, and the attorney-client work product doctrine. OAG 91-109, 1991 Ky. AG LEXIS 109.

While an agency must release public records stored on a database, subject to the exceptions codified as subdivisions (1)(a) to (l) of this section, if requested for a noncommercial purpose, it may, in its discretion, withhold the same records if requested for a commercial purpose. Purpose is relevant, however, only for requests to copy databases and geographic information systems; however, the purpose for which a person seeks access to public records, as defined by KRS 61.870(2), is irrelevant. OAG 91-116, 1991 Ky. AG LEXIS 116.

Release of any final documents pertaining to the Transportation Cabinet's original decision to build a proposed road will not permit an unfair negotiating advantage to landowners implicated by that decision. OAG 91-117, 1991 Ky. AG LEXIS 117.

Clearly, the Open Records Act in no way supersedes a protective order entered by a court of competent jurisdiction when a public agency is properly before that court as a party to the litigation. Indeed, the entry of a protective order removes a document within its terms from the application of the Act; that order is not less valid because it was entered into by agreement of the parties. OAG 91-121, 1991 Ky. AG LEXIS 122.

Reports and documents involving a criminal prosecution are subject to discovery by the accused pursuant to the Kentucky Criminal Rules of Procedure, and will be available under the Open Records Act, if at all, only after the prosecution is concluded. OAG 91-124, 1991 Ky. AG LEXIS 124.

Much of this language of subsection (3) of this section has relevance only to KRS Chapter 18A personnel policies and procedures. It is entirely foreign to university personnel policy. This suggests that the General Assembly intended to limit the scope of subsection (3) of this section to state personnel governed by KRS Chapter 18A. OAG 91-128, 1991 Ky. AG LEXIS 142.

Clearly, the Personnel Department of state government has no authority to regulate university personnel matters, and any changes wrought in the laws pertaining to state employees governed by KRS Chapter 18A have no bearing on university employees. Accordingly, KRS 18A.020 and, to the extent that it merely cross references the latter provision, subsection (3) of this section are inapplicable to university personnel policies and procedures. OAG 91-128, 1991 Ky. AG LEXIS 142.

The 1986 amendments, of KRS 18A.020 and subsection (3) of this section, do not preclude the university from properly withholding records under subdivisions (1)(a) to (l) of this section when a request is made by a university employee for records pertaining to him. OAG 91-128, 1991 Ky. AG LEXIS 142.

An agency cannot require a requesting party to state his purpose in making a request, nor can it, as a matter of policy, allow inspection and copying of records for certain purposes and deny it for other purposes. It is the content of the record itself which makes it either mandatorily accessible to public inspection and copying or exempt from the mandatory requirement. OAG 91-129, 1991 Ky. AG LEXIS 132.

The privacy exemption may not be used to deny inspection of a public agency's denial letter to an open records request. OAG 91-130, 1991 Ky. AG LEXIS 130.

Unless the law enforcement action, out of which arrest records are generated, has not been concluded, or another of the exceptions codified in KRS 17.150(2) or subdivision (1)(f) of this section applies to the records, the local police department must make them available for public inspection. OAG 91-131, 1991 Ky. AG LEXIS 139.

Records disclosing the names of persons arrested or incarcerated, and photographs taken at the time of the booking, are open to public inspection. OAG 91-131, 1991 Ky. AG LEXIS 139.

The general rule of nondisclosure for investigative reports prior to the conclusion of criminal prosecution or a decision not to prosecute does not contain an exception for individuals who are themselves the victims of the crime which spawned the investigation. OAG 91-132, 1991 Ky. AG LEXIS 143.

Salary recommendations are exempt from inspection under subdivision (1)(h) of this section until such time as they are acted upon and adopted by a governing board, OAG 79-469, OAG 91-78, and although the party requesting the documents is an employee of the University of Kentucky, and is therefore an employee of the state, he is not entitled to inspect and copy any record that relates to him pursuant to subsection (3) of this section. OAG 91-133, 1991 Ky. AG LEXIS 135.

As a matter of policy "conflict sheets" are not released to inmates unless the requester's name appears at the top of the page, indicating that it was he who reported the "conflict." OAG 91-136, 1991 Ky. AG LEXIS 138.

A public agency cannot furnish access to documents which it does not have, and it is not the Attorney General's duty to investigate in order to locate documents which the requesting party maintains exist, but which the public agency states do not exist. OAG 91-138, 1991 Ky. AG LEXIS 128.

A coroner's autopsy report is exempt from the requirement of mandatory public disclosure by operation of subsection (1)(f) of this section. OAG 91-147, 1991 Ky. AG LEXIS 147.

The coroner may keep intelligence and investigative reports confidential until such time as the prosecution is completed or a determination not to prosecute has been made, but once the coroner's verdict is filed with the circuit court clerk at the close of the coroner's inquest, the verdict is a public record and may be examined by the public. OAG 91-147, 1991 Ky. AG LEXIS 147.

The coroner's autopsy report is not an open record under subsection (1)(f) of this section but voluntarily releasing portions of the report to attorney was consistent with the Open Records Act. OAG 91-147, 1991 Ky. AG LEXIS 147.

Although preliminary records are generally exempt under the Open Records Act, their preliminary status is lost to the extent that they are used in an agency's response and are thus adopted as part of its final action. OAG 91-154, 1991 Ky. AG LEXIS 154.

As a member of the supervisory staff of the Department for Adult and Technical Education, employee was subject to the personnel policies of that Department, and not governed by KRS Chapter 18A; accordingly, subsection (3) of this section was not applicable to his open records request. OAG 91-154, 1991 Ky. AG LEXIS 154.

Inter- and intra-office memoranda, setting forth the opinions, observations and recommendations of agency personnel,

which do not represent the agency's final decision on the matter, may be excluded from public inspection pursuant to subsections (1)(g) and (h) of this section. OAG 91-154, 1991 Ky. AG LEXIS 154.

A public employee is entitled to privacy in his personal life and off-duty activities which extends to the public employee's home address, social security number, and marital status. OAG 91-155, 1991 Ky. AG LEXIS 155.

Interest in inspecting the resumes of individuals who have been raised to a new pay grade outweighs those individuals' right of privacy in such matters since one does not typically work [or attend school] in secret, but information of a personal nature contained in the resume or employment application, such as home address, phone number, social security number, and marital status should, however, be separated and withheld in accordance with subsection (4) of this section. OAG 91-155, 1991 Ky. AG LEXIS 155.

Resumes and employment applications are subject to inspection. OAG 91-155, 1991 Ky. AG LEXIS 155.

The public is entitled to know the name, position, work station and salary of a public employee. OAG 91-155, 1991 Ky. AG LEXIS 155.

There must be a case by case analysis of the privacy interest in nondisclosure, rather than a per se approach. OAG 91-155, 1991 Ky. AG LEXIS 155.

Cabinet properly denied inspection of the appraisal of one parcel of land acquired for bypass where proceedings involving several other properties had not been finalized. OAG 91-159, 1991 Ky. AG LEXIS 159.

Complaints which initially spawn an investigation may not be excluded from inspection because the public has a right to know what complaints have been made and the final action taken, but the complainant's identity is exempt from public inspection, except upon court order, pursuant to subsection (1)(a) of this section. OAG 91-160, 1991 Ky. AG LEXIS 160.

County Health Department must release the complaint which spawned the investigation; however, the Department may adopt a policy of withholding the names of the complainants and this information should be masked so as not to disclose his or her identity pursuant to subsections (1)(a) and (4) of this section. OAG 91-160, 1991 Ky. AG LEXIS 160.

There are occasions when a complainant has a reduced expectation of privacy, as, for example, where the individual has testified in an open hearing, and therefore these individuals do not have a cognizable personal privacy interest in keeping their identities confidential. OAG 91-160, 1991 Ky. AG LEXIS 160.

A university may properly withhold performance evaluations under authority of subsection (1)(h) of this section, which authorizes nondisclosure of preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended. OAG 91-161, 1991 Ky. AG LEXIS 162.

Although a writing was generated in the course of the annual review of the university president, that writing did not represent a "final report" as it was not prepared on official letterhead, nor did it bear the signature of the chairman or any member of the board. OAG 91-161, 1991 Ky. AG LEXIS 162.

If the disputed document, pertaining to university president's evaluation, describing his overall performance, was considered "final," it nevertheless would fall squarely within the parameters of subsection (1)(h) of this section. OAG 91-161, 1991 Ky. AG LEXIS 162.

Case files involving still open investigations were exempt from inspection and copying pursuant to subsection (1)(j) of this section and KRS 17.150. OAG 91-173, 1991 Ky. AG LEXIS 173.

Attendance sheets verify that employees were present and on the job during any particular time period, and are not protected by the privacy exemption. OAG 91-176, 1991 Ky. AG LEXIS 176.

The employment applications of school system employees, and other records of educational qualifications requested were subject to inspection; information of a personal nature contained in these documents, such as home address, phone number, social security number and marital status, should be separated and redacted in accordance with subsection (4) of this section. OAG 91-176, 1991 Ky. AG LEXIS 176.

School was required to release to a parent a copy of the internal investigative report prepared by employees of the public school following an incident involving her son at a middle school. OAG 91-177, 1991 Ky. AG LEXIS 177.

A public employee's medical records may be excluded from inspection pursuant to subsection (1)(a) of this section. OAG 91-185, 1991 Ky. AG LEXIS 185.

Any preliminary documents, such as predecisional memoranda and investigative reports, are exempt pursuant to subsections (1)(g) and (h) of this section. OAG 91-185, 1991 Ky. AG LEXIS 185.

Government acted consistently with the Open Records Act in releasing the nonexempt portions of the workers' compensation claim file, including copies of bills submitted by chiropractor's office and the final decision of the Workers' Compensation Board. OAG 91-185, 1991 Ky. AG LEXIS 185.

Records which are privileged under the rules of discovery, such as attorney work product, are exempt from mandatory disclosure under subsection (1)(j) of this section. OAG 91-185, 1991 Ky. AG LEXIS 185.

Court records are exempt from the mandatory disclosure provisions of the Open Records Act and the reasonable fee provision of KRS 61.874(2). OAG 91-193, 1991 Ky. AG LEXIS 194.

Criminal defendants were not entitled to release of their presentence investigation report, but KRS 532.050(4) was amended in 1990, and precludes waiver of the presentence investigation report as well as requiring a court to provide defendant's counsel with a copy of the report, excluding the sources of confidential information. OAG 91-194, 1991 Ky. AG LEXIS 195.

A memorandum to the County Board of Education concerning the preferment of charges against a teacher, and a letter to the Office of Legal Services of the Kentucky Department of Education advising that agency of the commencement of disciplinary action were properly withheld under subsection (1)(h) of this section. OAG 91-198, 1991 Ky. AG LEXIS 207.

A report written under KRS 161.120(2)(a) and (b) does not represent final agency action, but is more closely analogous to an internal affairs report and is exempt under this section. OAG 91-198, 1991 Ky. AG LEXIS 207.

Disciplinary action taken against teacher, and the charges from which that action stemmed, were related to the performance of his public duties, and therefore the records were not shielded from disclosure by subsection (1)(a) of this section. OAG 91-198, 1991 Ky. AG LEXIS 207.

Teacher's letter of resignation and the board minutes adopting same were properly released. OAG 91-198, 1991 Ky. AG LEXIS 207.

Records disclosing place of employment and educational qualifications can not properly be withheld from public inspection. OAG 91-202, 1991 Ky. AG LEXIS 205.

The Board of Nursing may adopt a policy of withholding information pertaining to the age, gender, and race of its licensees. OAG 91-202, 1991 Ky. AG LEXIS 205.

The name and address of a person licensed to practice a profession is not a matter of personal privacy. OAG 91-202, 1991 Ky. AG LEXIS 205.

The names of licensed nurses and their work addresses cannot be withheld from the public and, in the event that the only address furnished is the home address of the licensee,

should be made available to the public. OAG 91-202, 1991 Ky. AG LEXIS 205.

As long as an agency acts consistently in responding to requests for like documents, it need not state that its actions are based on an express policy. OAG 91-203, 1991 Ky. AG LEXIS 202.

The requesting party must reasonably identify the records contained in a personnel file which he wishes to inspect to enable the custodian of the file to determine if the records are exempt under subsection (1)(a) of this section, the privacy exemption to the Open Records Law. OAG 91-203, 1991 Ky. AG LEXIS 202.

A document generated in the course of a criminal investigation and prosecution may continue to be characterized as exempt after enforcement action is contemplated; therefore, county attorney properly relied on subsection (1)(g) of this section to authorize the continued nondisclosure of preliminary documents and attorney work product. OAG 91-214, 1991 Ky. AG LEXIS 230.

An individual has a substantial privacy interest in his home address and telephone number and this interest becomes particularly compelling when the individual whose address and phone number are sought has been the subject of repeated incidents of harassing contact and calls; therefore, there was no substantial "public interest" in the disclosure of the telephone bills under the facts presented, pursuant to subsection (1)(a) of this section. OAG 91-214, 1991 Ky. AG LEXIS 230.

Records which are generated by an attorney for the Commonwealth, or his staff, in prosecuting a criminal action are clearly work product and as such, the records fall squarely within the parameters of the subsection (1)(j) exemption, and may be withheld from inspection. OAG 92-214.

While it is certainly true that a number of the exceptions to the Open Records Act lose their exempt status upon the occurrence of a specific event, this has never been the rule with respect to attorney work product. OAG 91-214, 1991 Ky. AG LEXIS 230.

Written communications from an attorney setting forth legal analysis, investigative reports, and witness interviews retain their exempt status unless they are somehow adopted into final agency action; such documents must be made available for inspection if, and only if, they are, or have been, so adopted. OAG 91-214, 1991 Ky. AG LEXIS 230.

Correspondence between the Kentucky Heritage Council and the owner of the property, in which the terms and conditions of the easement were informally discussed, fell squarely within the parameters of the exception of subsection (1)(g) for correspondence with private individuals and accordingly, the council properly withheld these records. OAG 91-229, 1991 Ky. AG LEXIS 226.

The Kentucky Heritage Council properly refused to release preliminary documents consisting of drafts of the instrument creating a conservation easement because they were excludable under subsection (1)(g) of this section. OAG 91-229, 1991 Ky. AG LEXIS 226.

Kentucky Revised Statutes 209.140 and subsection (1)(j) of this section operate in tandem in authorizing the Department of Social Services to withhold information compiled in the course of an investigation of adult abuse except to persons who are suspected of committing abuse, neglect, or exploitation. OAG 91-230, 1991 Ky. AG LEXIS 227.

A public agency cannot furnish access to documents which it does not have and it is not the office of the Attorney General's duty to investigate in order to locate documents which the requesting party believes exist, but which the public agency states do not exist. OAG 92-5, 1992 Ky. AG LEXIS 5.

The city erred in failing to release the memorandum written by doctor, authorizing paramedic's reinstatement, and the memorandum prepared by a second doctor, also dated the same day, adopting the first doctor's recommendation, as the latter document represented final action of a public agency relative to a personnel decision, and the former document represented the recommendation upon which that decision was based; while all post demotion memoranda are not subject to disclosure, the documents in this case cannot properly be characterized as preliminary in nature, and must be released. OAG 92-5, 1992 Ky. AG LEXIS 5.

The city erred in failing to release the memorandum written by a doctor which reflected his decision to withdraw employee's privilege to practice as a paramedic, because the city adopted the doctor's memorandum as the basis of its final action, and the document lost its preliminary characterization to that extent. OAG 92-5, 1992 Ky. AG LEXIS 5.

The Office of Attorney General is not empowered to rule on the propriety of nonrelease of a paramedic's testing results, absent a formal request and denial. OAG 92-5, 1992 Ky. AG LEXIS 5.

City must release the monthly statements prepared by the city's attorneys which reflect the general nature of the legal services rendered to city; but should those invoices disclose substantive matters protected by the attorney client privilege, which are exempt under subsection (1)(j) of this section, the exempt material should be separated from the nonexempt materials, and the nonexempt materials released for public inspection. OAG 92-14, 1992 Ky. AG LEXIS 14.

Request for access to annual compliance reports prepared since January 1, 1980 by the Justice Cabinet under the Juvenile Justice and Protective Delinquency Act could be satisfied by production of 11 or 12 documents, and redaction of exempt materials should not constitute an undue burden; therefore, the cabinet should make these documents available for inspection. OAG 92-16, 1992 Ky. AG LEXIS 16.

Request for "All grant applications, proposals, responses and budgets by, for or from the Commonwealth of Kentucky under the Juvenile Justice and Delinquency Prevention Act" was properly denied pursuant to KRS 61.872(5) and subsection (5) of this section. OAG 92-16, 1992 Ky. AG LEXIS 16.

Where requests were not limited to a particular subject, but instead all records of a particular character were requested, e.g., correspondence and memoranda of communication, relating to the Juvenile Justice and Delinquency Prevention Act for the period since January 1, 1984, given the vast number of documents which fell within the parameters of the request and the difficulties which would have attended any attempt to separate exempt from nonexempt materials, reliance on KRS 61.872(5) in denial of the request was proper. OAG 92-16, 1992 Ky. AG LEXIS 16.

Editor of paper properly requested inspection of documents in possession of sheriff's department which were the records reflecting actual monetary settlement between sheriff's department and insurance company; records reflecting settlements of civil suits by public agencies are subject to full public disclosure. OAG 92-17, 1992 Ky. AG LEXIS 17.

City erroneously withheld the disciplinary charges leveled against former police officer and the documents evidencing the outcome or resolution of charges; a confidentiality clause in a settlement agreement between the city and the officer did not bar release of such documents. OAG 92-34, 1992 Ky. AG LEXIS 34.

A letter relating to the building level portion of an audit of the school district fiscal activity written to the superintendent by the public accountant is a public record subject to inspection. It is not exempt as "correspondence with private individuals." A contractor to a governmental entity loses any character of "private individual" in connection with correspondence regarding administration or issues associated with administration of a governmental or public contract. OAG 92-44, 1992 Ky. AG LEXIS 41.

Once an investigation has been completed and the prosecution concluded, or a decision not to prosecute has been made the records will be subject to inspection unless exempt under

another recognized exception. OAG 92-46, 1992 Ky. AG LEXIS 43.

A police incident report is not part of the investigative file, as such incident reports are public records because there is no provision in the Open Records Act exempting them. OAG 92-46, 1992 Ky. AG LEXIS 43.

Case files in the possession of a law enforcement agency are not open to inspection while the case is active. OAG 92-46, 1992 Ky. AG LEXIS 43.

The Kentucky Revised Statutes proved for such nondisclosure of intelligence and investigative reports maintained by criminal justice agencies prior to the completion of the prosecution or the decision not to prosecute at KRS 17.150(2). That same provision, at subsection (2)(d), exempts such records if inspection would disclose information to be used in a prospective law enforcement action. OAG 92-46, 1992 Ky. AG LEXIS 43.

Investigative files of law enforcement agencies are not open to inspection while the case is pending. OAG 92-46, 1992 Ky. AG LEXIS 43.

KRS 620.050(4) clearly requires that the Cabinet for Human Resources and the Department for Social Services withhold from all persons information acquired as a result of an investigation conducted pursuant to KRS 620.050, unless the requesting party can demonstrate that he or she satisfies one of the requirements set forth in KRS 620.050(4)(a) to (f). OAG 92-53, 1992 Ky. AG LEXIS 53.

The requesting party did not demonstrate that he fell under any of the statutorily recognized classifications of KRS 620.050(4) or that his particular situation warranted the release of the requested material; although the requesting party was the noncustodial parent, the allegations of dependency, neglect, or abuse were not substantiated. OAG 92-54, 1992 Ky. AG LEXIS 54.

The Cabinet for Workforce Development was directed to release the employment application and resumes of the named employees of a state vocational-technical school, after separating or otherwise masking any information of a personal nature which appeared on those documents, including the employees' home addresses, social security numbers, and medical information; if the employees' teaching certificates were contained in the file, they too should have been released. OAG 92-59, 1992 Ky. AG LEXIS 59.

Although one section of the contract, lease, and option agreement between the City and the Public Hospital corporation required that a copy of the annual audit and supporting documents be filed in the office of the city clerk, those documents were, by the express terms of the agreement, released by the Hospital for the limited purpose of allowing inspection by, or on behalf of, holders of outstanding bonds or coupons; the agency established that the requested records: (1) were confidentially disclosed to it; (2) for one of the four (4) purposes delineated in subdivision (1)(b) of this section, e.g., regulation of a commercial enterprise; and (3) that release of the records would permit an unfair advantage to competitors of the subject enterprise; therefore, the release of the requested records was properly denied. OAG 92-66, 1992 Ky. AG LEXIS 66.

A public agency may adopt a policy of confidentiality relative to ambulance run reports to the extent that they contain personal information the disclosure of which would constitute a clearly unwarranted invasion of privacy; this includes, but is not limited to, the name, address, and age of the person being transported, as well as the nature of his or her illness or injury. However, information of a general nature, such as the number of runs made, the destination of the runs, whether an individual or individuals were transported to a hospital or treatment facility, and if so, where they were taken does not fall within the parameters of the privacy exemption. OAG 92-75, 1992 Ky. AG LEXIS 75.

A city may elect to release all of the information contained in an ambulance run report, since the exceptions to the Open Records Act are discretionary; in the alternative, the City may release a sanitized version of its ambulance run reports or prepare a summary of those reports containing only general information and continue to withhold information of a personal nature which appears in the reports. OAG 92-75, 1992 Ky. AG LEXIS 75.

The training and examination rating scale, used in reviewing candidates for certain positions can be characterized as an inactive examination, and therefore falls squarely within the parameters of the exception to Open Records codified in subdivision (1)(e) of this section. OAG 92-80, 1992 Ky. AG LEXIS 83.

Where private investigator originally asked for copies of all documents in the possession of the Kentucky State Police which related to suspended state trooper, request was properly denied because blanket requests for information on a subject without specifying certain documents need not be honored. OAG 92-85, 1992 Ky. AG LEXIS 81.

It is the policy of the Kentucky State Police (KSP) to withhold reports of background investigations on job applicants conducted by KSP; the Attorney General's office opined that these reports contain information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and are exempt from public inspection pursuant to subdivision (1)(a) of this section; moreover, background investigation reports may be withheld under authority of subdivisions (1)(g) and (1)(h) of this section. OAG 92-85, 1992 Ky. AG LEXIS 81.

State police custodian of records' response to private investigator's open records request was substantively correct; custodian advised private investigator that custodian had provided private investigator with all of the pages of a suspended state trooper's employment application, but had deleted specific personal information pursuant to subdivision (1)(a) of this section "which provides for exclusion because of the unwarranted invasion of personal privacy." OAG 92-85, 1992 Ky. AG LEXIS 81.

State police custodian of records' response to private investigator's request for all documentation regarding the reasons for suspension of former state trooper contained in Personnel Orders was consistent with the Open Records Act; police internal affairs reports are exempt from public inspection as preliminary memoranda; only internal affairs reports which indicate the final action taken and the underlying complaint are open to public inspection. OAG 92-85, 1992 Ky. AG LEXIS 81.

Occupational safety and health compliance officer's work note which are compiled in the ordinary course of an investigation of an employer work site, and which contain preliminary handwritten drafts of possible citations and correspondence with private persons which are not intended to give notice of final action, are exempt from public disclosure pursuant to subdivision (1)(g) of this section. OAG 92-90, 1992 Ky. AG LEXIS 107.

Work papers and intraoffice memoranda are exempt from public inspection under subdivision (1)(h) of this section. OAG 92-90, 1992 Ky. AG LEXIS 107.

Work notes containing a compliance officer's observations, opinions and preliminary drafts of possible citations may be withheld pursuant to subdivisions (1)(g) of this section. OAG 92-90, 1992 Ky. AG LEXIS 107.

Information about attorney fees is privileged only if its disclosure would reveal confidential communications between the attorney and client. OAG 92-92, 1992 Ky. AG LEXIS 94.

Billing sheets or time tickets "which indicate the nature of documents prepared, issues researched or matters discussed could reveal the substance of confidential discussions between attorney and client." OAG 92-92, 1992 Ky. AG LEXIS 94.

If the requester desires access to a governmental database for a noncommercial purpose, an agency must make it available, subject to the exceptions codified in this section. On those occasions when the request requires the creation of a "nonstandardized unique, custom-made record[]," an agency may assess a fee which "shall not exceed the reasonable cost of computer and personnel time and printing cost needed to produce such products." OAG 92-99, 1992 Ky. AG LEXIS 96.

Court records are outside the scope of the Open Records Act. OAG 92-100, 1992 Ky. AG LEXIS 97.

Subdivision (1)(a) of this section, the privacy exemption, is not applicable to public employee time sheets inasmuch as the protection against an unwarranted invasion of personal privacy does not extend to time spent in public service for which the public employee is compensated by public funds. OAG 92-102, 1992 Ky. AG LEXIS 103.

Witness statements are exempt from public inspection pursuant to subdivisions (1)(g) and (1)(h) of this section. OAG 92-103, 1992 Ky. AG LEXIS 108.

Correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency, is exempt from public inspection pursuant to subdivision (1)(g) of this section. OAG 92-106, 1992 Ky. AG LEXIS 92.

Where an incident was being investigated by the Kentucky State Penitentiary, the records generated in the course of the investigation were considered property withheld until enforcement action was completed or a decision was made to take no action. OAG 92-109, 1992 Ky. AG LEXIS 95.

The time sheets of a specific individual for a stated period constitute a discrete category of documents. These time sheets are not information or research services simply because employees must expend time and effort in locating and retrieving these documents. OAG 92-102, 1992 Ky. AG LEXIS 103.

Where credit cards that bear the state university logo are privately owned, are the financial responsibility of the individual whose name appears on them, and no university funds are expended to discharge the debts incurred by the card holders or in payment of the annual fee, they are exempt under subsection (1)(a) of this section, even though printouts of charges of such credit cards must be considered a public record within the meaning of subsection (2) of KRS 61.870, since such printouts contain information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. OAG 92-110, 1992 Ky. AG LEXIS 110.

Inspection of credit card charges must be permitted when the charges are incurred by a public agency and involve the expenditure of public funds. OAG 92-110, 1992 Ky. AG LEXIS 110.

If an agency elects to make a tape recording of its public meetings, and that tape is owned, used, or in its possession, it may not properly be treated as a preliminary document, but should be made available to the public upon request. OAG 92-111, 1992 Ky. AG LEXIS 111.

Access to office procedure manual should be made available, where employee was subject to those procedures during the course of employment, and was presumably aware of it. OAG 92-112, 1992 Ky. AG LEXIS 112.

Preliminary inter-office and intra-office memoranda or notes setting forth opinions, observations and recommendations, as well as correspondence with private individuals, may be withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section, unless such documents are incorporated into, or give notice of, final agency action. OAG 92-112, 1992 Ky. AG LEXIS 112.

Prior to entry of a protective order, the Open Records Act operates independently of the rules of discovery, and may compel release of nonexempt documents and an agency may assert other grounds for nondisclosure in its response, or, upon issuance of an Attorney General's opinion requiring disclosure, initiate action in the appropriate circuit court to enjoin release of those documents where a protective order was entered before the Attorney General undertook his review of this matter the requested records are not subject to disclosure. OAG 92-119, 1992 Ky. AG LEXIS 119.

The Open Records Act in no way supersedes a protective order entered by a court of competent jurisdiction when a public agency is properly before the court as a party to the litigation. Indeed, the entry of a protective order removes a document within its terms from the application of the Open Records Act. OAG 92-119, 1992 Ky. AG LEXIS 119.

There is no unwarranted invasion of personal privacy in examining relevant prior work experience and educational qualifications of employees or former employees. Education qualifications, meaning education levels obtained, reported upon applications for employment and resumes submitted by those who are hired are subject to inspection but city may, of course, separate or otherwise mask any information of a personal nature which appears on those documents, including, but not limited to, the employee's home address, social security number, and medical information, pursuant to subsection (4) of this section. OAG 92-121, 1992 Ky. AG LEXIS 121.

The pre-parole progress report is prepared by the inmate's caseworker, and represents a summary of his progress. It contains the caseworker's opinions in such areas as staff interaction, psychological and psychiatric condition, medical condition, and work performance and may also include an inmate's formal psychological evaluation. The pre-parole progress report is a preliminary document containing opinions, observations, and recommendations and is purely advisory and is one of several documents submitted to the Parole Board for its consideration. Unless it is incorporated into the Parole Board's final decision, it is exempt from public inspection pursuant to subdivision (1)(h) of this section. OAG 92-125, 1992 Ky. AG LEXIS 125.

Subsection (1)(h) of this section has been interpreted to authorize nondisclosure of preliminary reports and memoranda containing the opinions, observations, and recommendations of personnel within a public agency. Those reports and memoranda that are strictly advisory, and that are submitted for review and consideration by the agency relative to a final decision, but which are not incorporated into the final decision, are exempt from public inspection. OAG 92-125, 1992 Ky. AG LEXIS 125.

Public records which have been placed under a court ordered seal of confidentiality may not be disseminated to the public. The reasoning is that if any agency is a party to the litigation, and the requested documents come within the purview of the protective order, the agency and its employees may be in contempt of court and subject to other civil liability if they release the documents in question. OAG 92-126, 1992 Ky. AG LEXIS 126.

Disclosure of communications for purpose of receiving third-party payment for professional services does not waive any privilege with respect to such communications. This provision is applicable to insurance companies and governmental entities. OAG 92-ORD-1024, 1992 Ky. AG LEXIS 212.

Disclosure of privileged communications for the purpose of receiving third-party payment for professional services does not constitute a waiver of the privilege. OAG 92-ORD-1024, 1992 Ky. AG LEXIS 212.

A report or other communication made by an insured to his liability insurance company, concerning an event which may give rise to a claim against him and which is covered by the policy, is a privileged communication, as if it were between an attorney and client. Therefore, a party to any subsequent litigation may not discover the content of those communications. OAG 92-ORD-1024, 1992 Ky. AG LEXIS 212.

Documents generated in the course of meetings at which city employees, and attorneys were present, including notes, statements, transcripts of meetings, work product, recordings

of meetings, photographs of meetings, and evidence of meetings, are exempt from inspection pursuant to subdivisions (1)(h) and (1)(g) of this section. 92-ORD-1024.

KRS 61.878(1)(g) and (h) have been interpreted to authorize nondisclosure of preliminary reports, worknotes, and memoranda containing the opinions, observations, advice, and recommendations of personnel within an agency, as well as outside of an agency. These subsections are intended to insure the integrity of the decision making process by protecting all pre-decisional documents. 92-ORD-1024.

Balance sheets, financial statements, profit and loss statements, audits and other records held by the commission concerning the financial condition of a county steeplechase association and its owners, wherein there is a 100% beneficial owner of the track, is subject to the Act and must release the records. Although it was revealed that the records were confidentially disclosed in conjunction with regulation of the steeplechase association and its license to do business, it was not shown that the association would be competitively disadvantaged by disclosure of the information. 92-ORD-1020.

To successfully raise the exception codified in subdivision (1)(b) of this section, an agency must establish that the requested records: (1) were confidentially disclosed to it; (2) in conjunction with an application for a loan, the regulation of commercial enterprise, or the grant or review of a license to do business; and (3) that release of the records would permit an unfair advantage to competitors. 92-ORD-1020.

Members of board of education may only inspect the nonexempt records contained in the personnel files of certified and classified employees. Since the board of education no longer plays any role in personnel actions, it does not enjoy any greater right of access to the files by virtue of subsection (5) of this section. The board's right to inspect the personnel files of certified and classified employees of the school system is therefore the same as the right of inspection enjoyed by any citizen under this section. OAG 92-141, 1992 Ky. AG LEXIS 218.

The superintendent of a county's public school improperly invoked this section to authorize nondisclosure of his performance evaluation. The public's interest in reviewing those portions of the evaluation which have a direct bearing on his management of the school system, and the progress of the school system generally is superior to the reduced expectation of privacy in that document which the superintendent of public schools might have. Only those portions which contain personal information, the release of which would serve no legitimate public interest, are exempt from public inspection. OAG 92-ORD-1145, 1992 Ky. AG LEXIS 220.

The Real Estate Commission violated this section in denying access to application for a real estate broker's license. Although the Real Estate Commission would be justified in masking information of a personal nature, such as the licensee's home address, social security number, phone number, and the like, it could not withhold information relating to the applicant's educational qualifications and prior work experience. Moreover while an individual does not have a privacy interest in arrest records, and the public is entitled to inspect this portion of the application, information bearing on an individual's personal finances implicates privacy concerns which are superior to the public's right of access to this information, and can, accordingly be withheld. OAG 92-ORD-1238, 1992 Ky. AG LEXIS 221.

University's board of regents did not forfeit its right to invoke the legitimate exceptions to the Open Records Act just because it violated the Open Meetings Law. The records reviewed by the board relative to the proposed budget which occurred during an improperly closed meeting, and all other records of a preliminary character, still enjoyed the protection of subsection (1) (i) of this section, independent of the Open Meetings issue, until final action was taken by the Board. OAG 92-ORD-1346.

University's board of regents denial of a request for access to certain records which were generated in the course of a closed session conducted by the board of regents in its regular meeting was improper. The board of regents violated this section to the extent that its closed discussions focused on classes of, as opposed to specific, individuals. However, only those records which reflected discussions of classes of individuals were subject to inspection. OAG 92-ORD-1346.

University violated the Open Records Act in denying a third party's request under this section where the documents which gave rise to this appeal consisted of a one paragraph letter from a newspaper reporter to university counsel in which the newspaper requested copies of the evaluation report and supporting documents regarding the university board of trustees' evaluation of the university president, and a two (2) paragraph response on university letterhead in which the official custodian of records, denied the request. Nothing in this correspondence could be deemed to touch on the intimate or personal features of the newspaper reporter's life and the university asserted no other privacy interest which might be implicated by release of the documents. OAG 92-ORD-1440.

School which received federal funds was prohibited by operation of subsection (1)(j) of this section from releasing education record to person who was interested in the record in order to ascertain if he was listed on the record as the father of the child since a federal law, the Buckley Amendment, bars the release of an education record, such as an enrollment application to a third person, without the prior written consent of a parent, for while such person believed he was the father of the named child, paternity had apparently never been established and such person must be treated as a third person, for purposes of the Buckley Amendment, until such time as paternity has been established, and the child's education records should not be released to him without the child's mother's written consent. OAG 92-ORD-1640, 1992 Ky. AG LEXIS 293.

OAG 90-24 is overruled; records of a campus law enforcement unit maintained by the unit for the purpose of law enforcement are no longer subject to the federal law, but are instead governed by the Kentucky Open Records Act. OAG 93-3, 1993 Ky. AG LEXIS 324.

Legislators may release to the public information supplied to them by the Kentucky Lottery Corporation pertaining to the corporation's accounts receivable. OAG 93-19, 1993 Ky. AG LEXIS 31.

Western Kentucky University properly denied a request for portions of student evaluations of instructors in the Physics and Astronomy Department for the past five (5) years which "were used in determining whether a professor received any particular benefit or detriment," or "which have a direct bearing on the management and functions of the department." OAG 93-ORD-17, 1993 Ky. AG LEXIS 38.

Subdivisions (1)(j) and (1)(k) of this section authorize nondisclosure of records made confidential by federal or state law and are not overridden by subsection (3) of this section. OAG 93-ORD-19, 1993 Ky. AG LEXIS 39.

Subsection (3) of this section overrides any of the exemptions to public inspection set forth in subdivisions (1)(a)-(i) of this section, with the exception of examinations and documents relating to ongoing criminal or administrative investigations even when they are requested by the public agency employee and relate to him, when an open records request is submitted by a public agency employee or university employee. OAG 93-ORD-19, 1993 Ky. AG LEXIS 39.

Where disputed records were prepared in the course of an interview with a university employee, and related to his complaint filed with the Affirmative Action Office, those records fell squarely within the parameters of subsection (3) of this section and should have been released by the university. OAG 93-ORD-19, 1993 Ky. AG LEXIS 39.

The question of the propriety of an agency's invocation of subdivision (1)(a) of this section to authorize nondisclosure of a police incident report, or a portion thereof, must be reviewed on a case by case basis; the decision in each such case must be made by a comparative weighing of the antagonistic interests that exist in the specific situation. OAG 93-ORD-21, 1993 Ky. AG LEXIS 42.

University violated the Open Records Act in redacting portions of a police incident report pursuant to subdivision (1)(a) of this section on records requested by a newspaper where release of the redacted portions of the report did not constitute a clearly unwarranted invasion of an individual's privacy since the public's interest in disclosure was superior to his privacy interest. OAG 93-ORD-21, 1993 Ky. AG LEXIS 42.

The Governor's schedule is a preliminary document which does not represent final agency action. OAG 93-ORD-25, 1993 Ky. AG LEXIS 46.

Where the Governor's daily schedule was a mixture of family, social and public events, as it was impossible to schedule his public events without keeping track of his private schedule, subdivision (1)(h) of this section authorized nondisclosure of the entire record. OAG 93-ORD-25, 1993 Ky. AG LEXIS 46.

Although as a rule of general application subdivision (3) of this section mandates release of otherwise exempt records to a public agency employee, where the employee is under investigation and the documents relate to that investigation the request can properly be denied. OAG 93-ORD-37, 1993 Ky. AG LEXIS 58.

Subdivision (1)(k) of this section and KRS 610.320(3) and 620.050(4) are aimed at protecting juveniles, and not adults who are criminally prosecuted for victimizing juveniles. OAG 93-ORD-42, 1993 Ky. AG LEXIS 72.

The Kentucky State Police improperly relied on subdivisions (1)(a) and (1)(k) of this section, and KRS 610.320(3) and 620.050(4), in denying a request to inspect the files generated in the course of its investigation into a candidate for county sheriff who was charged with sodomy, sexual abuse and unlawful transaction with a minor. Although the privacy interests of the juveniles whose names appeared in those records were superior to the public's interest in disclosure of their identities, that interest could be protected by redaction of the juveniles' names and personally identifiable information. The candidate's privacy interests, however, were outweighed by the public's interest in assessing his fitness to serve as county sheriff, and the public's interest in evaluating the performance of the Kentucky State Police in investigating the case. OAG 93-ORD-42, 1993 Ky. AG LEXIS 72.

Mere invocation of a statutory exception to the release of records and reference to prior opinions, without an adequate explanation of how the exception applies or the opinions are relevant, does not satisfy the burden of proof imposed on the agency under KRS 61.880(2) and KRS 61.882(3). OAG 93-ORD-43, 1993 Ky. AG LEXIS 73.

The Department of Insurance failed to meet its burden of proof in sustaining its denial of a request for correspondence with the National Association of Insurance Commissioners, other states' departments of insurance, and Kentucky Central Life Insurance Company, and memos, reports, or analyses of Kentucky Central's financial condition where the Department failed to describe the nature of the documents withheld, and to state how the statutory exception relied upon applied to the documents withheld from inspection. OAG 93-ORD-67, 1993 Ky. AG LEXIS 115.

The Department of Insurance properly advised a requester that no minutes or reports were generated during its meetings with Kentucky Central Life Insurance Company officials, and that therefore that portion of his request could not be satisfied; the department met its burden of proof relative to its invocation of subdivision (1)(h) of this section to support nondisclosure of any notes taken at these meetings. OAG 93-ORD-67, 1993 Ky. AG LEXIS 115.

Although a document was not "predecisional" in chronological terms, where it was submitted by the site protection manager, who was apparently unaware that a final decision had been reached, to the Executive Director of the Kentucky Heritage Council in anticipation of a final decision as a "preliminary memorand[um] in which opinions are expressed or policies formulated or recommended," it fell squarely within the parameters of subdivision (1)(i) of this section, and could properly be withheld from public inspection. OAG 93-ORD-82, 1993 Ky. AG LEXIS 136.

The Kentucky Industrial Revitalization Authority must release those portions of General Electric's (GE) application and report which have a direct bearing on GE's eligibility for the authority's tax incentive program, specifically, its need for the economic revitalization program, the projected amount and timing of capital investment of GE in the economic revitalization project, and the projected number of employees to be retained and to be hired in the future; KIRA may, however, withhold those portions of the application and report that contain information which reveals GE's private financial affairs may be withheld. OAG 93-ORD-85, 1993 Ky. AG LEXIS 142.

Where the requested records were created in the normal course of business for purposes not related to the prospect of a grand jury proceeding and even though the records had been subpoenaed for use in a grand jury investigation, this fact, standing alone, did not insulate the documents from the mandatory disclosure provisions of the Open Records Act. OAG 93-ORD-91, 1993 Ky. AG LEXIS 234.

Since the policy of disclosure is purposed to subserve the public interest, not to satisfy the public's curiosity, there is no blanket or per se applicability of subdivision (1)(a) of this section to a given category of records; in each case a decision must be made by a comparative weighing of the antagonistic interests that exist in the specific situation. OAG 93-ORD-102, 1993 Ky. AG LEXIS 167.

When the privacy interest of the individual does not clearly outweigh the public's interest, the balance must be tipped in favor of disclosure; therefore, since neither the public's interest in disclosure of the visitors log of a county detention center nor the individual's interest in nondisclosure is manifestly superior, in view of the statutes general basis favoring disclosure and in absence of any direct evidence that release of the log would constitute a clearly unwarranted invasion of personal privacy, such log should be released under authority of subdivision (1)(a) of this section. OAG 93-ORD-102, 1993 Ky. AG LEXIS 167.

The Commissioner of Insurance acting as a rehabilitator of an insurance company is a public agency within the meaning of subsection (1) of KRS 61.870 and documents which disclose the names of corporations or individuals who submitted bids for insurance company under KRS 304.33-010 et seq. are public records of a public agency and are not excluded from public inspection under subdivision (1)(h) of KRS 61.878 and thus are subject to disclosure. OAG 93-ORD-113, 1993 Ky. AG LEXIS 188.

Department of Personnel improperly denied request for computer printout of the salaries of all paralegals and legal secretaries employed by state agencies, their places of employment, and their classifications, if it maintains a database containing such information; it must release such information in electronic or hard copy format, but may redact any nonpublic information also contained in the database such as social security numbers or home addresses. OAG 93-ORD-118, 1993 Ky. AG LEXIS 193.

Where requester of graphs which were generated during polygraph examination was the subject of the examination the privacy exception of subdivision (1)(a) of this section was not implicated and neither was subdivision (1)(i) of this section

since the graphs, absent any analysis or commentary, cannot be characterized as "preliminary memoranda in which opinions are expressed or policies formulated or recommended." OAG 93-ORD-124, 1993 Ky. AG LEXIS 199.

Videotape made as requester underwent polygraph examination cannot be characterized a preliminary memorandum in which opinions are expressed or policies formulated or recommended and therefore release of such videotape could not be denied on exemption of subdivision (1)(i) of this section. OAG 93-ORD-124, 1993 Ky. AG LEXIS 199.

Department of Personnel improperly denied request for computer printout of the salaries of all paralegals and legal secretaries employed by state agencies, their places of employment, and their classifications, if it maintains a database containing such information; it must release such information in electronic or hard copy format, but may redact any nonpublic information also contained in the database such as social security numbers or home addresses. OAG 93-ORD-118, 1993 Ky. AG LEXIS 193.

The Department for Social Services improperly denied the Kentucky Board of Nursing's Credentials Consultant's request for a report prepared by the Department in the course of its investigation into suspected adult abuse pursuant to KRS 209.140, which is incorporated into the Open Records Act by operation of subdivision (1)(k) of this section. OAG 93-ORD-131, 1993 Ky. AG LEXIS 212.

The Department of Social Services improperly denied the Kentucky Board of Nursing's request for medical records referenced in a report prepared by the Department in the course of an investigation into suspected child abuse pursuant to KRS 620.050(4), which is incorporated into the Open Records Act by operation of subdivision (1)(k) of this section. OAG 93-ORD-132, 1993 Ky. AG LEXIS 213.

The Kentucky State Police properly denied defendant's request for a videotape made at the time of her arrest for alcohol intoxication where the videotape contained footage of defendant's companion, who was charged with DUI, and where the State Police did not have the option of segregating that portion of the tape showing defendant at the time of her arrest. OAG 93-ORD-133, 1993 Ky. AG LEXIS 214.

Since the general counsel of Department of Insurance represents the Commissioner of Insurance as rehabilitator and outside attorneys appointed by the court also represent the Commissioner as the rehabilitator, each represents the same client, and confidential communications between them made for the purpose of facilitating the rendition of professional legal services are protected from disclosure by attorney client privilege; therefore, the Department properly denied request of newspaper reporter for correspondence between general counsel of Department and outside counsel since the documents requested are protected from disclosure by the attorney client privilege of KRE Rule 503 and are therefore exempt from public inspection under subdivision (1) (k) of this section. OAG 93-ORD-139, 1993 Ky. AG LEXIS 221.

Subdivision (1) (k) of this section and KRS 7.510 operate in tandem to preclude the release of the Kentucky Administrative Regulations to anyone other than agencies of the Commonwealth and its political subdivisions; therefore, request for copy of an Administrative Regulation promulgated by the Kentucky State Board for Elementary and Secondary Education stored on diskette by publishing company was properly denied. OAG 93-ORD-142, 1993 Ky. AG LEXIS 224.

School district properly denied request of attorney representing the board of education of one (1) county for records of second school district in second county under authority of Family Educational Rights and Privacy Act of 1974 (FERPA) which is incorporated into the Open Records Act by operation of subdivision (1)(j) of this section although educational officials in the second county may release education records to state and local educational officials in connection with the audit and evaluation of a federally or state supported program pursuant to 20 USCS § 1232g (b) (5), they are not required to do so. OAG 94-ORD-17, 1994 Ky. AG LEXIS 136.

The 1992 amendment to subsection (1) of this section applies only to parties to litigation, and Department of Corrections improperly relied on such exception in denying request for public records to persons who were not parties in civil litigation; further stay of discovery which did not suggest that the materials pertaining to the litigation had been sealed or placed under protective order did not prevent release of such records. OAG 94-ORD-19, 1994 Ky. AG LEXIS 8.

The Department of Corrections improperly denied a request for correspondence between itself and U.S. Corrections Corporation, a private provider, concerning institutional parole officers. OAG 94-ORD-27, 1994 Ky. AG LEXIS 33.

The Department of Corrections properly denied a request for records relating to canteen operations at the Lee and Marion Adjustment Centers pursuant to subsection (1)(k) of this section, which incorporates the prohibition on release of financial records maintained by the private provider found at KRS 197.510(7). OAG 94-ORD-27, 1994 Ky. AG LEXIS 33.

City Commission violated the Open Records Act in withholding the names, addresses, and telephone numbers of callers whose comments directed at requester of information were generated during the course of City Commission's televised meetings. OAG 94-ORD-45, 1994 Ky. AG LEXIS 36.

Since the shroud of secrecy mandated by KRS 620.050(4) is "not intended to protect the identities of adults and employees of a public agency charged with violations of the criminal laws," but is instead intended to protect the affected families, and in particular, the affected children, the Cabinet for Human Resources could not persuasively argue that it was bound by the confidentiality provision found at KRS 620.050(4) in witholding unsubstantiated complaints of abuse against its employees, and, at the same time, that it was free to release most, if not all, of the remaining records it compiled in its investigation of alleged employee misconduct. OAG 94-ORD-76 (overruling OAG 88-4 where inconsistent).

Assertion that KRS 11A.080(2) precluded the release of the second page of a subpeona issued by the Auditor's office because the Auditor's services, enlisted by the Executive Branch Ethics Commission, failed where the Auditor was acting independently at the time the subpeona was issued. OAG 94-ORD-81, 1994 Ky. AG LEXIS 65.

Attempt by auditor's office to justify its refusal to release second page of subpeona, which contained the names of state employees, who were the recipients of gifts as well as entertainment expenses from firms who had been awarded state contracts, on the grounds that Auditor's records could possibly be used in a future investigation by the Attorney General was too speculative to warrant invocation of the exception contained in subsection (1)(g) of this section. OAG 94-ORD-81, 1994 Ky. AG LEXIS 65.

Request for inspection of the contents of real estate appraisal relative to the sale of city property, although improperly denied under subdivision (1)(f) of this section, could properly be denied under subdivision (1)(j) of this section where such document was almost entirely opinion and recommendations and while it was a final report of the company employed by the city to appraise the subject property, it was preliminary until the property is finally purchased. OAG 94-ORD-85, 1994 Ky. AG LEXIS 72.

Where state board in refusing a request for copies of employee responses to job salary and classification plan not only failed to adequately explain how the exception of subdivision (1)(a) of this section applied, but it failed to cite the exception, the board did not meet its burden of proof and must immediately release the requested records. OAG 94-ORD-89, 1994 Ky. AG LEXIS 75.

Where state board took final action on its job classification and pay compensation plan on May 10, and where it solicited employee response on May 27, such employee responses were

not "preliminary" documents within the meaning of subdivision (1)(j) of this section. OAG 94-ORD-89, 1994 Ky. AG LEXIS 75.

Portions of Synthetic Gypsum Sales and Purchase Agreement between municipal utility and gypsum company which were deemed confidential and proprietary by gypsum company, and thereafter redacted from the agreement by municipal utility before it was released, were properly withheld pursuant to subdivision (1)(l) of this section and KRS 365.880 et seq., where the information was derived from independent research and a thorough evaluation of utility's scrubber system which yielded a commercially valuable, and hitherto unknown, formula for using synthetic gypsum by-product. OAG 94-ORD-97, 1994 Ky. AG LEXIS 83.

Documents reflecting the identities of corporations and/or individuals who submitted bids for insurance company being rehabilitated or its subsidiaries are public records subject to disclosure under the Open Records Act. OAG 94-ORD-102, 1994 Ky. AG LEXIS 78.

Records containing contents of bids submitted for purchase of insurance company being rehabilitated are public records, within the meaning of KRS 61.870(2), for the same reasons that documents revealing the identities of bidders are public records; specifically, the bids are used in the possession of or retained by a public agency, the Commissioner of the Department of Insurance, in his role as Rehabilitator, and in the discharge of his duties, relative to the bidding process. OAG 94-ORD-102, 1994 Ky. AG LEXIS 78.

Documents which were submitted to University Administrator by the Office of Legal Counsel relative to the University's meeting policy and which were the basis for Administrator's memorandum to requester of documents, were not shielded by the attorney-client privilege. OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

Handwritten notes taken by a public employee in the discharge of his public duties may properly be treated as public records. While in most instances, such notes would be excluded from public inspection by operation of subdivision (1)(h) of this section, subsection (3) of this section mandates the release of "any record including preliminary and other supporting documentation" to a public employee, including a university employee, upon request, as long as those records "relate to him." OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

Request for each document used as a reference for University's faculty handbook section on conducting meetings, and each document used as a reference for the section on access to and destruction of records was improperly denied as a "request for a list of reference sources"; in light of the preface appearing in the handbook, the University could not legitimately claim that the request was too nonspecific. OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

Request for formal merit evaluation forms containing the final merit evaluation ratings for two (2) faculty members for each year they were employed by the University was properly denied based on subdivisions (1)(a), (1)(h), and (1)(i) of this section. OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

University improperly denied release of unredacted copies of letter of resignation submitted by a number of University employees, but University was permitted to redact those portions of one resignation letter which pertain to employee's merit evaluation and student evaluations. OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

University improperly redacted portions of the Chancellor's letter to the Dean of the College of Agriculture notifying the Dean that the recommendation to promote a faculty member to the rank of full professor was not approved. OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

University must release the departmental recommendation that a faculty member be placed on a terminal contract but the University may redact those portions of the recommendation which contain personal opinions not adopted by the Dean. OAG 94-ORD-108, 1994 Ky. AG LEXIS 90.

Transportation Cabinet violated the Open Records Act in denying a request for certain information in the rail highway grade crossing database based on 23 USCS, § 409. OAG 94-ORD-124, 1994 Ky. AG LEXIS 97.

Where faculty committee appointed by the dean to evaluate faculty member had no independent authority to determine what final action would be taken relative to faculty member's continuing service as chairman of department, and where the dean did not memorialize his decision to retain faculty member as department chair nor did he incorporate the committee's evaluation or adopt it as his final action, request for release of performance evaluation was properly denied by the university as a predecisional document. OAG 94-ORD-132, 1994 Ky. AG LEXIS 102.

A policy of blanket exclusion relative to the names and identifying information of persons requesting fire service is inconsistent with the Open Records Act. To be exempt from inspection, particulars regarding given notations on the log must be articulated in terms of the requirement of the statute. OAG 94-ORD-133, 1994 Ky. AG LEXIS 103.

County dispatch center may not adopt a policy of blanket exclusion relative to entries on the daily dispatch logs, but must articulate its reasons for withholding a particular entry. OAG 94-ORD-133, 1994 Ky. AG LEXIS 103.

The protection provided by KRS 610.320(3), which is incorporated into the Open Records Act by operation of subsection (1) of this section, is not expressly, or by implication, limited to living juveniles nor does it exclude from its coverage situations where the juvenile has died; thus, the Urban County Government properly denied a reporter's request to inspect documents and records regarding the suicides of two (2) juveniles. OAG 95-ORD-7, 1995 Ky. AG LEXIS 5.

Pursuant to subsection (4) of this section, if a public record contains both excepted and nonexcepted material, a public agency s obligated to separate the material and make the nonexcepted material available for examination. OAG 95-ORD-12.

The work product doctrine protects from discovery, and access under the Open Records Act, materials prepared or collected by an attorney in the course of preparation for litigation; however, travel expense records are not in the nature of attorney work product since they cannot be characterized as mental impressions, conclusions, opinions, or legal theories of an attorney concerning that litigation. OAG 95-ORD-18, 1995 Ky. AG LEXIS 128.

Travel expense records do not, in general, disclose communications by the client or attorney in relation to the specific matter for which the attorney was retained, and where there has been little or no effort to insure confidentiality in the handling of the records, or to protect the information contained therein from general disclosure, the assertion of attorney/client privilege fails to protect such records from public inspection. OAG 95-ORD-18, 1995 Ky. AG LEXIS 128.

Where the Lottery Corporation denied an open records request to inspect portions of a survey apparently commissioned by the Lottery Corporation without any explanation of the nature of the record withheld, how it could be characterized as "preliminary" and how the exceptions of KRS 61.880(1) applied to the withheld information, the Lottery Corporation failed to meet its statutory burden of proof to sustain the denial. OAG 95-ORD-27.

A bare allegation that the records withheld are proprietary is not sufficient under the law. OAG 95-ORD-27.

Generally, records of the county clerk are public records, and while portions of these records may properly be excluded from inspection by operation of one or more of the exceptions to public disclosure codified at KRS 61.878(1)(a), the county clerk must make all nonexempt portions of these records available for inspection and copying, regardless of whether they are

maintained in electronic or hardcopy format. OAG 95-ORD-43, 1995 Ky. AG LEXIS 28.

Although the county clerk is required by subsection (4) of this section to make all nonexempt portions of public records available for inspection or copying, the clerk is not required to designate an employee to assist the requesting party in inspecting nonexempt records stored in electronic or hardcopy format. OAG 95-ORD-43, 1995 Ky. AG LEXIS 28.

Even if the requested information contained in the public records was exempt from disclosure under this section, the recipient of the records could release it to others without violating the Open Records Act. OAG 95-ORD-77, 1995 Ky. AG LEXIS 49.

The type of storage system in which an agency has chosen to maintain its records, whether by hard copy or electronic database, does not diminish its duties under the Open Records Act, nor does it relieve the agency of the costs attendant to this duty. OAG 95-ORD-82, 1995 Ky. AG LEXIS 52.

Considering that subsection (4) of this section mandates redaction of excepted material when it is commingled with nonexcepted material and that the reasonable fee provision found at KRS 61.874(3) specifically excludes the staff cost required, it is clear that the General Assembly intended that public agencies bear the cost of redaction. OAG 95-ORD-82, 1995 Ky. AG LEXIS 52.

The deletion of juvenile law enforcement records, per KRS 610.320(3) and KRS 61.878(1), from an existing database of arrest records is not equivalent to the production of a record in a specially tailored or nonstandardized format within the meaning of KRS 61.874(3); thus, the Division of Police is required to discharge this duty under subsection (4) of this section, provide the requested records, and bear the cost of redaction. OAG 95-ORD-82, 1995 Ky. AG LEXIS 52.

The absence of statutory language making background investigation reports confidential, coupled with the express language in KRS 61.884 and in subsection (3) of this section mandating that any person shall have access to any public record relating to him, supports the conclusion that the Kentucky State Police acted improperly in denying a request from an applicant of the State Police cadet trooper class to review the background investigation reports. OAG 95-ORD-84, 1995 Ky. AG LEXIS 53.

Where a private investigator, who was retained by a driver involved in an accident to locate the other driver involved in the collision, requested copies of motor vehicle registration records and records reflecting insurance coverage, the Transportation Cabinet did not violate the Open Records Act by partially denying the private investigator's commercial request since the strong privacy interest outweighed the nominal public interest which would be served by disclosing the owner's address, birthdate and social security number. OAG 95-ORD-151, 1995 Ky. AG LEXIS 82.

If the nature of the request for records is unrelated to the furtherance of the citizens' right to monitor public agency action, which is the fundamental purpose of the Open Records Act, then the countervailing interests, such as the cognizable privacy interest of a vehicle owner in the nondisclosure of her home address and social security number, must prevail. OAG 95-ORD-151, 1995 Ky. AG LEXIS 82.

The Jefferson County Department of Animal Control did not violate the provisions of the Open Records Act by denying attorney's request for animal licensure records, where the records were to be used for mail solicitation, a commercial purpose, and not for the purpose of exposing public agency to public scrutiny, which is fundamental to the Act, and where disclosure of the information contained in these records would constitute a clearly unwarranted invasion of personal privacy. OAG 95-ORD-153, 1995 Ky. AG LEXIS 81.

A member of a school board is entitled to documents of the school system which relate to a legitimate governmental purpose and the board member's public function. If the request is for records which fall outside this area, then the board member's right of inspection would be the same as that of any other citizen under the Open Records Act. OAG 96-ORD-110, 1996 Ky. AG LEXIS 27.

If a board member makes a request for copies of records under the Open Records Act, then he or she may be charged a reasonable fee for copies of the public records. OAG 96-ORD-110, 1996 Ky. AG LEXIS 27.

The Lexington Fayette Urban County Division of Policy properly relied on subsection (1)(a) of this section in denying the Lexington Herald-Leader's request for an unedited copy of an incident report relating to the shooting of a juvenile. A policy of blanket nondisclosure relative to the names of juvenile victims of crimes, along with personally identifiable information, is not endorsed, although depending on the nature and circumstances of the crime, the juvenile's privacy interest may be superior to the public's interest in disclosure. OAG 96-ORD-115, 1996 Ky. AG LEXIS 28.

Kentucky Regional Planning and Development Agency improperly withheld unit price calculation worksheets, provider staffing matrix, and other documents included in the sealed bid packages for the social services projects identified in ElderServe's request. OAG 96-ORD-135, 1996 Ky. AG LEXIS 34.

The language of KRS 61.880(2)(a) clearly indicates that the Attorney General's role in adjudicating open records disputes is narrowly circumscribed. He is only authorized to review a public agency's denial of a request to inspect a public record per KRS 61.880(2)(a), or a complaint that the intent of the Act is being subverted by an agency short of denial of inspection per KRS 61.880(4). The Attorney General does not have authority to entertain a third party claim that disclosure of public records would constitute a clearly unwarranted invasion of personal privacy, or is inconsistent with any of the other exemptions codified at subsections (1)(a) to (l) of this section. OAG 96-ORD-148, 1996 Ky. AG LEXIS 37.

Rate filings are not excluded from the mandatory disclosure provisions of the Open Records Act by operation of subsection (1)(i) of this section, relating to preliminary drafts, notes, and correspondence with private individuals. Although these filings are predecisional, until approved or disapproved by the Department of Insurance, and thus might otherwise be treated as exempt per subsection (1)(i) of this section, KRS 304.2-150(3)(a)(1) categorically states that rate and form filings and information filed in support thereof shall be open. Whatever the merits of its arguments under KRS 61.872 to 61.884, the Department is bound by the mandatory disclosure provisions of its own statutes. OAG 96-ORD-155, 1996 Ky. AG LEXIS 39.

A municipal utility was within its rights in refusing to disclose sewer bills for certain customers. Specific customer billing information is private information which does not fall under the domain of the open records law. Such information can be used to infer a particular life style of a residential customer and may suggest the competitive position of commercial and industrial customers. OAG 96-ORD-176, 1996 Ky. AG LEXIS 46.

A city is foreclosed from adopting a policy of blanket nondisclosure of police officer's identities pursuant to subsection (1)(a) of this section. Consistent with past open records decisions dealing with public employee discipline, and the significant interest in public oversight of employee discipline, the city should exercise even greater restraint in withholding the identities of the officers against whom complaints are made, and only upon the strongest possible showing that disclosure would constitute a clearly unwarranted invasion of personal privacy. OAG 96-ORD-177, 1996 Ky. AG LEXIS 45.

City of Louisville violated provisions of the Open Records Act in denying the Commission on Human Rights access to records containing notations of telephone complaints against police officers which were neither signed nor verified. As to the

class of open records requesters generally, the city's reliance on subsections (1)(i) and (j) of this section was misplaced, and its reliance on subsection (1)(a) of this section to authorize blanket nondisclosure of the identities of complainants and officers did not find support in recent caselaw. With respect to the Commission specifically, although subsection (5) of this section is intended to promote agency sharing of records, it is not a mandatory stricture, and the city was not obligated to release otherwise exempt information which appeared on the telephone complaints to it. OAG 96-ORD-177, 1996 Ky. AG LEXIS 45.

In the absence of a particularized showing that an individual complainant's identity was properly withheld, as for example where the complainant requests anonymity or could reasonably expect confidentiality, the city cannot withhold this information. Stated alternatively, if particular entries are properly excludable pursuant to subsection (1)(a) of this section, the city may withhold those entries by providing particularized justification for denial. OAG 96-ORD-177, 1996 Ky. AG LEXIS 45.

Subsection (5) of this section notwithstanding, the City of Louisville could properly withhold particular entries appearing on the records provided it demonstrated that the public's interest in disclosure was outweighed by the individual's privacy interest. The city was not permitted, with respect to the Commission, or the public generally, to adopt a policy of blanket nondisclosure relative to such entries. OAG 96-ORD-177, 1996 Ky. AG LEXIS 45.

There is no unqualified right for one entity to examine the records of another in their entirety and without restrictions. To the extent that prior decisions hint at such an "unqualified right" of access, those decisions are hereby modified. Although public agency sharing of records and information is a laudable goal, each agency must retain a reasonable measure of discretion to decline the invitation to share its records. OAG 96-ORD-177, 1996 Ky. AG LEXIS 45.

Although an "in-car evaluation" performed by a rehabilitation center pursuant to licensing process of attorney's client may be excluded from the public generally, pursuant to subsection (1)(a) of this section, as a record the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the report was not exempt as to the requester here, an attorney representing the individual who is its subject. OAG 96-ORD-267, 1996 Ky. AG LEXIS 90.

County public schools system properly relied upon subsection (1)(a) of this section in denying newspaper reporter's request for information as to each individual employee's race and gender. Providing the requester with alternative information, through a computer printout, as to the specific number of employees at each location which included personnel totals by race and sex broken down by schools, salaried employees and hourly employees met the principal purpose of the Open Records Act. This alternative information allowed the citizen to monitor the functioning and operations of the public agency and to be informed as to what their government was doing. OAG 96-ORD-232, 1996 Ky. AG LEXIS 85.

Denial of request of newspaper writer for copies of or access to County Urban Government's Division of Revenue records containing information on delinquent sewer user taxes, landfill user fees, or other Urban County Government fees and taxes for twenty individuals who were Urban County Government council members or candidates for that office was inconsistent with the Open Records Act. The disclosure of the requested records does not constitute a clearly unwarranted invasion of personal privacy exempted from disclosure under subsection (1)(a) of this section and the records should be made available for the reporter's inspection. The public interest to monitor who has failed to meet their legal obligations or has been given preferential treatment outweighed any privacy interests involved. OAG 97-ORD-9, 1997 Ky. AG LEXIS 3.

Subsection (1)(k) of this section operated in tandem with federal drug testing statutes and regulations to prohibit the disclosure of the results of drug tests administered to school bus drivers in the county school system. Although only the results of the tests were requested and not the identities of the individuals tested, such disclosure still would have violated federal law by identifying individuals tested since one could infer that persons discharged contemporaneously with the drug testing process tested positive. OAG 97-ORD-2, 1997 Ky. AG LEXIS 4.

Subsection (5) of this section notwithstanding, the City of Louisville could properly withhold particular entries appearing on the records provided it demonstrated that the public's interest in disclosure was outweighed by the individual's privacy interest. The city was not permitted, with respect to the Commission, or the public generally, to adopt a policy of blanket nondisclosure relative to such entries. OAG 96-ORD-177, 1996 Ky. AG LEXIS 45.

The Legislative Research Commission (LRC) violated the Open Records Act in denying newspaper access to a search warrant issued by a federal court and executed by a federal agency relating to an LRC employee and travels of state legislators. The search warrant was a "public record" for purposes of Kentucky's Open Records Act and it has never been held that a public agency can rely on an exemption under the federal Freedom of Information Act, the federal Privacy Act, or a federal regulation applicable to the United States Department of Justice as an exception under subsection (1)(k) of this section. OAG 96-ORD-244, 1996 Ky. AG LEXIS 86.

The language at the foot of a facsimile cover sheet warning against "unauthorized dissemination or copying," which is standard prescriptive language appearing on facsimile cover sheets, does not relieve a public agency of its duties under the Open Records Act, or otherwise abrogate, abridge, or nullify the Act. The language is aimed at notifying unintended recipients of the facsimile transmission that the records contained therein may be confidential, and should be returned to the sender. It does not constitute an independent basis for denying access to public records. OAG 96-ORD-267, 1996 Ky. AG LEXIS 90.

Kentucky Employers' Mutual Insurance Authority is a public agency, as that term is defined at KRS 61.870(1)(b),(f), and (i), and its records must be made available to the public unless excluded from inspection by one or more of the exceptions codified at KRS 61.878(1)(a) to (l). OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Kentucky Employers' Mutual Insurance Authority is a public agency, as defined in KRS 61.870(1)(b), (f), and (i), and its records are public records, as defined in subsection (2) of this section and its operational records, including its personnel handbook, documents reflecting hotel and car rental reservations, leases, contracts for public relations or advertising services, financial audits, travel agency invoices, and contracts and billing records for its attorneys do not qualify for exemption under subdivision (1)(a) of this section and these records must be released; however, with respect to employee personnel files, records unrelated to public employment which are found in those files are excluded from public inspection by subdivision (1)(a) of this section and because both exempt and nonexempt records are commingled in those files, it is incumbent on requester to specifically identify the personnel records he wishes to inspect. OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Although the attorney client privilege, codified at KRE 503, is deemed incorporated into the Act by operation of subdivision (1)(l) of this section, the privilege does not extend to contracts and billing records of attorneys working for a public agency. OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Records involving former employees of a public agency cannot be withheld under the terms of confidentiality agreements unless the public agency can demonstrate that the promises of confidentiality are consistent with one or more of

the exceptions to public inspection codified at KRS 61.878(1)(a) to (l). OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Records created by a public agency in the ordinary course of business are not excluded from public inspection by operation of subdivision (1)(c)1 of this section. OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

Attorney contract and billing records of public agency are not exempt from public inspection pursuant to subdivision (1)(l) of this section and the attorney client privilege. OAG 97-ORD-66, 1997 Ky. AG LEXIS 18.

University properly relied on subsection (1)(a) of this section to authorize nondisclosure of the amounts of outside income of members of the athletic department, but subsection (1)(a) of this section does not authorize nondisclosure of the sources of that income. OAG 97-ORD-85.

The obvious purpose of the 1992 amendment to subsection (3) of this section was to broaden the scope of the provision to insure that all public employees, not just state employees governed by KRS Chapter 18A, enjoyed an equal right of access to records relating to them. An interpretation of this provision which does not include former public employees is clearly inconsistent with the natural and harmonious reading of KRS 61.870 considering the overall purpose of the Open Records Act. OAG 97-ORD-87, 1997 Ky. AG LEXIS 35.

Former employee of university was improperly denied access to all otherwise exempt records relating to university's decision not to renew his contract and all records relating to complaints about him, except those that implicated the federal Buckley Amendment, 20 USCS § 1232g, and any records properly classified as education records within the meaning of the statute may be withheld pursuant to subsection (k) of this section. OAG 97-ORD-87, 1997 Ky. AG LEXIS 35.

Although subsection (3) of this section does not contain a specific reference to former employees, its expansive wording, coupled with the state of legislative intent underlying the Open Records Act, codified at KRS 61.871, that free and open examination of public records is in the public interest, and the rule of statutory construction, codified at KRS 446.080(1), that all statutes are to be interpreted with a view to promote their objects and carry out the intent of the legislature, compels the result that such subsection applies to former employees. OAG 97-ORD-87, 1997 Ky. AG LEXIS 35.

Cabinet for Health Service properly relied on KRS 61.872(6) and subsections (1)(a), (k) and (l) of this section and various confidentiality provisions found in both state (KRS 209.140, 210.235, 214.420, 214.625 and 620.050) and federal law, in denying request for inspection of all nursing facility licensure inspection reports for a two (2) year period where the Cabinet sustained the burden of showing that such request was an unreasonable burden on the Cabinet in describing with specificity the actual volumes of records implicated by the request and where the exemptions to disclosure provided by the state and federal law were mandatory and the difficulty of separation of confidential from releasable information constituted an unreasonable burden. OAG 97-ORD-88, 1997 Ky. AG LEXIS 34.

Upon request for various records relating to recruitment and hiring in the Division of Police the Civil Service Board improperly relied on subsection (1) of this section to extend its response time to thirty (30) days, under FRCP 34(b), and it was instead bound to conform to the procedural requirements of the Open Records Act, and in particular the requirement that it respond to the request within three (3) days, and the Board's failure to do so constituted a violation of the Open Records Act. OAG 97-ORD-98, 1997 Ky. AG LEXIS 31.

Information appearing in a grant application which does nothing more than reveal the identity of the applicant, where the applicant's identity is already known, cannot be characterized as confidential. OAG 97-ORD-132.

Subsection (4) of this section applies to all public records in which exempt and nonexempt information is commingled, including those qualifying for partial exemption under subsection (1)(c)2.a. of this section; thus since an application for a grant can, and very likely will, contain both excepted and nonexcepted material, the public agency asserting the right to withhold the excepted material is obligated to separate it and make the nonexcepted material available for examination or justify withholding with specificity. OAG 97-ORD-132.

The language of subsection (1)(c)2.a. of this section is sufficiently broad to extend to information in a grant application that discloses names of investigators, geographic target areas, types of targarted substances, and strategic plans of attack. OAG 97-ORD-132.

Subsection (1)(c)2.a. of this section does not extend to purely statistical information which is not descriptive of any readily identifiable person. OAG 97-ORD-132.

In request for copies of grant application submitted by county drug task force only those portions of the applications which contain excepted material under subsection (1)(c)2.a. of this section may be withheld and to the extent that those portions of the applications contain information which is also recognized as confidential, they may be properly withheld and pursuant to subsection (4) of this section, the Justice Cabinet Division of Grants Management must separate the excepted material and make the nonexcepted material available for examination. OAG 97-ORD-132.

502 KAR 45:065 Section (5) which mandates absolute confidentiality as to investigations conducted by the State Police to determine an applicant's suitability for employment, modifies and vitiates the terms of KRS 16.040 which directs disclosure of the contents of the investigation, with the narrow exception of the identities of witnesses and informants, specifically referencing the Open Records Act, and since 502 KAR 45:065 Section (5) and KRS 16.040 cannot be reconciled, the statute controls. OAG 97-ORD-136, 1997 Ky. AG LEXIS 290.

While portions of the investigation of State Police, as to applicant's suitability for employment as a police officer may be withheld by the State Police on grounds of personal nature, the State Police must state in what way the information is personal for without a brief explanation of how the exemption applies the propriety of the invocation of subsection (1)(a) of this section cannot be determined. OAG 97-ORD-136, 1997 Ky. AG LEXIS 290.

Investigation by State Police, in its entirety, as to applicant's suitability for employment as a police officer was not exempt per subsection (1)(i) of this section as a predecisional document not incorporated into final agency actions, since while portions of the investigation may be characterized as preliminary, the entire record consitituting the background check is not preliminary as it is used to determine applicant's suitability for employment and is adopted by the State Police as the basis of its final decision to make an offer of employment. OAG 97-ORD-136, 1997 Ky. AG LEXIS 290.

The purpose for which subsections (1)(i) and (j) were enacted, namely to protect the integrity of the agency's internal decision-making process by encouraging the free exchange of opinions and ideas, is not served by the nondisclosure of an Internal Affairs report which is the basis for the final action taken; this rule extends to use of force inquiries. OAG 97-ORD-168, 1997 Ky. AG LEXIS 73.

A correctional complex's denial of an inmate's request for his FBI rap sheet was procedurally deficient under KRS 61.880(1) when it merely stated that the facility was "not the official custodian of that record" without citing the specific exception authorizing nondisclosure; however, the inmate's response was properly denied under subsection (1)(k) of this section, and 28 USCS § 534. OAG 97-ORD-178, 1997 Ky. AG LEXIS 180.

A list of lost and unclaimed property that is continuously updated and maintained by the Department of the Treasury pursuant to KRS 393.110 and that was displayed at the Kentucky State Fair cannot then be considered a 'preliminary'

draft; furthermore the fact that the list is disclosed does not constitute a guarantee of the accuracy of the information. OAG 97-ORD-183, 1997 Ky. AG LEXIS 185.

The most effective vehicle to locate owners of unclaimed property is to place the record in the public domain, thus enabling ordinary claimants as well as commercial finders the opportunity to freely and openly examine it; a list of lost and abandoned property maintained by the Department of the Treasury in compliance with KRS 393.311 should therefore be disclosed. OAG 97-ORD-183, 1997 Ky. AG LEXIS 185.

A list of lost and abandoned property reported to the Treasury Department and posted at Kentucky State Fair cannot be characterized as a preliminary draft, note, or correspondence to qualify as an exemption to inspection under subsection (1)(i); nor is it a preliminary recommendation or memorandum in which opinions are expressed as noted in subsection (1)(j); therefore disclosure of the list was proper. OAG 97-ORD-183, 1997 Ky. AG LEXIS 185.

Although the Transportation Cabinet's denial of a reporter's request for the contents of the "entire statewide database of driver licenses" was procedurally deficient in that it did not cite to KRS 61.878(1)(k), the federal Drivers' Privacy Protection Act, 18 U.S.C § 2721, bars the release of this information, and the request was properly denied. OAG 98-ORD-1, 1998 Ky. AG LEXIS 2.

A settlement agreement involving the payment of city funds is a matter with which the public has a substantial concern, and the desire of the plaintiff in that suit to keep secret the amount of money he received can be afforded little weight; the clear presumption is that such agreements must be made available for public inspection. OAG 98-ORD-24, 1998 Ky. AG LEXIS 5.

A confidentiality clause in a settlement agreement reached by the parties to litigation cannot in and of itself create an inherent right to privacy superior to and exempt from the statutory mandate for disclosure contained in the Open Records Act; however, a confidentiality clause may require the government to notify an affected party so that the party may act immediately to assert the privacy claims in court. OAG 98-ORD-24, 1998 Ky. AG LEXIS 5.

Although allegations of sexual misbehavior are largely personal, there is no impenetrable barrier to disclosure of records relating to such allegations; this is not to say that individual notations appearing on those records may not be withheld, but in general, where the allegations arise in the context of a public employee's performance of his or her employment, the public interest in regulation outweighs the employee's privacy interest, and the government cannot adopt of policy of blanket nondisclosure with regard to a complaint of sexual harassment. OAG 98-ORD-45, 1998 Ky. AG LEXIS 7.

The privacy interest of public employees who have been disciplined for or exonerated of charges of misconduct in the course of their employment is outweighed by the public interest in monitoring agency action; disclosure of such records is not, in general, prohibited by this section as a clearly unwarranted invasion of personal privacy. OAG 98-ORD-45, 1998 Ky. AG LEXIS 7.

Executive Order 92-1059, excluding complaints of sexual harassment from the Open Records Act, has not been enacted into law; whatever binding effect this Order may have on state agencies generally, it does not operate as a statutory enactment restricting confidential records relating to complaints of sexual harassment in state government, which are therefore not excluded from public inspection. OAG 98-ORD-45, 1998 Ky. AG LEXIS 7.

Although there are undoubtedly occasions where there is a legitimate need by a public agency to keep telephone numbers it has called confidential, the Legislative Research Commission cannot adopt a policy of blanket nondisclosure of records reflecting telephone calls from designated state telephone numbers. OAG 98-ORD-92, 1998 Ky. AG LEXIS 208.

Subsection (1)(l) prohibits the disclosure of information which has been made confidential by the General Assembly; thus a teacher's request for full access to records relating to a complaint filed against her was properly denied, as release of this information is prohibited by KRS 7.410(3). OAG 98-ORD-149, 1998 Ky. AG LEXIS 90.

Although subsections (1)(i) and (1)(j) have generally been construed to authorize the nondisclosure of preliminary notes used in formulating a formal recommendation, but not incorporated into final agency action, such notes must be disclosed pursuant to subsection (3) if they are requested by a public agency employee and relate to him. OAG 99-ORD-3, 1999 Ky. AG LEXIS 7.

Subsection (1)(h) justified the denial of a request for all 911 tape recorded conversations related to a specific fatal automobile accident as it contained information the premature disclosure of which could harm a prospective law enforcement action. OAG 99-ORD-11, 1999 Ky. AG LEXIS 27.

A county sheriff erred in withholding a uniform traffic accident report of a fatal accident in its entirety, since only those portions of the report which were investigative in nature and were to be used in a prospective law enforcement action against one of the drivers could properly be withheld, and the remainder of the report had to be disclosed; thus, the sheriff could redact, or mask, the text under the "accident description" portion of the report, the estimated travel speed of the vehicle, the results of blood alcohol test performed on the driver, and the diagram of the accident scene, but he was required to release an otherwise unredacted copy of the accident report. OAG 99-ORD-11, 1999 Ky. AG LEXIS 27.

A city properly denied a request to inspect records showing the age of all persons that worked for the city during a certain period as the privacy interest of a public employee in the nondisclosure of his or her age is superior to the public's interest in disclosure where the requester sought such information only because he thought that knowing the age of particular employees might inform the public as to what the city was doing under a particular circumstance. OAG 99-ORD-12, 1999 Ky. AG LEXIS 26.

The Transportation Cabinet properly relied on subsection (1)(j) in partially denying a request for documents pertaining to defective concrete used for the reconstruction of an interstate highway where the disputed documents consisted of a proposal submitted by the cabinet to a contractor relating to the problems with the highway and the contractor's counterproposal since a review of the documents did not confirm the existence of a "plan" submitted by the company as the proposal and counterproposal were still on the negotiating table and no final resolution of the dispute had been reached. OAG 99-ORD-13, 1999 Ky. AG LEXIS 25.

Subsection (3) vests public agency employees with a right of access to otherwise exempt public records which relate to them; however, it does not relieve public agency employees of the duty to describe those records with sufficient specificity to permit the agency from which the records are sought to identify, locate, and retrieve the records and does not impose an additional duty on the agency to conduct an exhaustive exhumation of records or embark on an unproductive fishing expedition in order to satisfy a nonspecific request. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

The Kentucky Revenue Cabinet properly denied a request by an employee for disclosure of documents pertaining to the requester's EEO complaint against the cabinet. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

The Kentucky Revenue Cabinet properly denied a request by an employee for disclosure of applications for employment, employee evaluations, and unsuccessful nominees for distinguished service awards; however, the employee was entitled to disclosure of distinguished service award letters of justification and other supporting documents relating to employees

upon whom such awards were conferred. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

The Kentucky Revenue Cabinet acted within its authority in releasing employee P-1s after redacting personal information such as home address, home telephone number, and social security numbers. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

The Kentucky Revenue Cabinet properly withheld attorney assignment lists, but improperly redacted entries on attorney time sheets inasmuch as those entries contained only general descriptions of services performed rather than substantive legal matters. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

The Labor Cabinet properly denied a request by an attorney, on behalf of a city, for a copy of a complaint filed with the cabinet initiating a prevailing wage inspection of the city, as, pursuant to KRS 337.345, the cabinet was prohibited from releasing the complaint and any information identifying employees contacted by the cabinet in its investigation concerning the workplace violation. OAG 99-ORD-15, 1999 Ky. AG LEXIS 23.

The Kentucky Commission on Human Rights did not violate the Open Records Act in denying a request to inspect all records submitted by an American Legion Post to substantiate the fact that it employed less than eight (8) people and was, therefore, not subject to the commission's jurisdiction as the records which were requested contained information obtained by the commission pursuant to its authority to conduct investigations of complaints and inspect documents which are relevant to those complaints and, therefore, the commission was prohibited from making the information public without the consent of the American Legion Post except as reasonably necessary to the conduct of proceedings under KRS Chapter 344. OAG 99-ORD-20, 1999 Ky. AG LEXIS 18.

Subsection (3) does not apply to allow an inmate in a correctional institution to obtain all records pertaining to him or her. OAG 99-ORD-23, 1999 Ky. AG LEXIS 15.

The Kentucky State Penitentiary properly relied on subsection (1)(j) in denying a request by an inmate for a copy of all pre-parole progress reports submitted to the parole board by his caseworker as such a report is purely advisory and is not subject to disclosure unless it is incorporated into the parole board's final decision. OAG 99-ORD-23, 1999 Ky. AG LEXIS 15.

A requestor was entitled to know the names of students enrolled in a future farmers program during a specified period if the county school system had designated this information as directory information; if the school system had not done so, such information, along with all other records generally characterized as education records, was properly withheld. OAG 99-ORD-26, 1999 Ky. AG LEXIS 43.

A policy of blanket nondisclosure of police department records pertaining to a specified individual based on the policy that the privacy rights of victims of crime outweigh the public's interest in disclosure violates the Open Records Act; in the absence of proof that disclosure of such records will have an adverse impact on the victim, disclosure is required. OAG 99-ORD-27, 1999 Ky. AG LEXIS 44.

Subsections (1)(i) and (1)(j) do not authorize a city to withhold records of criminal victimization as such reports cannot be characterized as preliminary recommendations or preliminary memoranda in which opinions are expressed. OAG 99-ORD-27, 1999 Ky. AG LEXIS 44.

Subsection (1)(i) does not authorize nondisclosure of records of criminal victimization as "correspondence with a private individual." OAG 99-ORD-27, 1999 Ky. AG LEXIS 44.

A police department did not establish that the public's interest in release of police records pertaining to domestic disturbances involving a specified individual was outweighed by the individual's privacy interest. OAG 99-ORD-28, 1999 Ky. AG LEXIS 41.

Subsection (1)(h) did not justify the denial by a police department of a request for records pertaining to domestic disturbances involving a specified individual where the police department indicated that no arrests had been made and made no contention that there was an ongoing investigation or that information in the police report was to be used in a prospective enforcement action. OAG 99-ORD-28, 1999 Ky. AG LEXIS 41.

Subsections (1)(i) and (1)(j) do not authorize a police department to withhold police report records of complaints received from citizens or records they maintained or were compiled incident to or occurring in the agency's daily operation. OAG 99-ORD-28, 1999 Ky. AG LEXIS 41.

A police department properly denied a request for access to two (2) incident reports involving juvenile victims of crimes where the incidents at issue involved, in one case, sexual contact by forcible compulsion of a 10 year old child by her 13 year-old cousin and, in the other case, sexual contact of a 13 year-old male and a 10 year-old female by a 15 year-old male playmate. OAG 99-ORD-29, 1999 Ky. AG LEXIS 40.

KRS 610.320(3) prohibits disclosure of juvenile law enforcement records, but does not apply when the law enforcement records relate to a juvenile victim of crime; nevertheless, portions of those law enforcement records revealing the identity of the victim may be withheld under authority of subsection (1)(a) when, because of the nature and circumstances of the crime perpetrated against the juvenile, his privacy interests outweigh the public's interest in disclosure. OAG 99-ORD-29, 1999 Ky. AG LEXIS 40.

Where the requester sought information from a board of education which was contained in numerous records, the board properly afforded the requester an opportunity to examine the records and to compile the information herself. OAG 99-ORD-33, 1999 Ky. AG LEXIS 36.

The State Treasurer properly denied a request for copies of all unclaimed property reports filed by banks with the Treasury Department for a specified year as the reports contained information of a personal or confidential nature the disclosure of which would have constituted an unwarranted invasion of the owner's personal privacy and would have required unduly burdensome redaction in order to comply with the request. OAG 99-ORD-34, 1999 Ky. AG LEXIS 35.

The Department of the Treasury properly denied a request for access to either its computer database or a hard copy of property reported abandoned in a specified year as disclosure would not advance an open records related public interest. OAG 99-ORD-37, 1999 Ky. AG LEXIS 32.

While a city acknowledged that unofficial, unexecuted drafts of current and past ordinances, resolutions, municipal orders, and executive orders were stored in the computers of third party attorneys, state agencies, and other local agencies by whom they were authored and that such unexecuted drafts might, in some cases, mirror the ordinance, resolution, or order that was adopted, they did not represent final action of the legislative body because they were not adopted and executed and, therefore, they retained their preliminary characterization and qualified for exclusion from public inspection under subsection (1)(i), regardless of where they were reposited, as preliminary drafts. OAG 99-ORD-38, 1999 Ky. AG LEXIS 31.

Where the office of academic affairs of Western Kentucky University issued a reprimand to the director of its Glasgow Extended Campus after an investigation and review of a complaint of sexual harassment by the Equal Opportunity Office, the university improperly withheld the letter of reprimand and the complaint of sexual harassment from which it stemmed, notwithstanding the fact that the university characterized the reprimand as an internal disciplinary procedure; the university could take reasonable steps to protect the identity of the complainant by masking her name and any personally identifiable information which appeared in the complaint, investigative report, and reprimand along with the names of other complainants and witnesses, but the privacy

interests of the director were not entitled to the same consideration as he violated the public trust by engaging in improper conduct in the performance of his official duties. OAG 99-ORD-39, 1999 Ky. AG LEXIS 30.

The Western Kentucky University was required to disclose the letter of resignation submitted by the director of its Glasgow Extended Campus after an investigation and review of a complaint of sexual harassment by the Equal Opportunity Office. OAG 99-ORD-39, 1999 Ky. AG LEXIS 30.

The Western Kentucky University was required to disclose the minutes of the open portion of a meeting of a sexual harassment grievance appeal committee pertaining to a complaint against the director of its Glasgow Extended Campus. OAG 99-ORD-39, 1999 Ky. AG LEXIS 30.

The Western Kentucky University was required to disclose records documenting the disbursement of public funds to the director of its Glasgow Extended Campus after an investigation and review of a complaint of sexual harassment by the Equal Opportunity Office, notwithstanding a confidentiality agreement relative to the amount and character of the consideration paid. OAG 99-ORD-39, 1999 Ky. AG LEXIS 30.

With respect to correspondence between the Western Kentucky University and the director of its Glasgow Extended Campus in which the director was asked to resign or threatened with termination or a change in status or duties, because the director resigned before such threats could be carried out, such correspondence could be withheld pursuant to subsection (1)(j). OAG 99-ORD-39, 1999 Ky. AG LEXIS 30.

Evaluations of city employees for a specified period were not subject to disclosure as they were excluded from public inspection by operation of subsections (1)(a), (1)(i), and (1)(j). OAG 99-ORD-42, 1999 Ky. AG LEXIS 50.

Although memoranda containing recommendations that were never adopted and forms that were never approved may properly be characterized as preliminary documents within the meaning of subsections (1)(i) and (1)(j), it is incumbent on the agency to determine if responsive records exist and, if they do not, to specifically so indicate; it is not enough to advise the requester that "if any documents exist," they are exempt. OAG 99-ORD-42, 1999 Ky. AG LEXIS 50.

A correctional institution properly denied an inmate's request for his own psychological and psychiatric records pursuant to KRS 197.025(1). OAG 99-ORD-47, 1999 Ky. AG LEXIS 55.

Subsection (1)(e) did not allow the Revenue Cabinet to deny a request for a copy of the Kentucky Revenue Cabinet Protest and Appeals Guidelines, which could be characterized as a general summary of revenue statutes, regulations, and policies and the uniform operating standards and procedures to be followed by cabinet employees to ensure fair and consistent handling of taxpayer protests and appeals. OAG 99-ORD-51, 1999 Ky. AG LEXIS 57.

A Commonwealth's Attorney did not violate the Open Records Act in denying a request for all records in his custody relating to a specific indictment. OAG 99-ORD-53, 1999 Ky. AG LEXIS 59.

A request for materials generated during the investigation of a complaint against a supervisor of the Department of Corrections was properly denied as preliminary interoffice and intraoffice memoranda or notes setting forth opinions, observations, and recommendations, as well as investigative reports that do not represent the agency's final action may be withheld from public inspection and as no final agency action occurred because the investigation was preempted by the supervisor's retirement before the investigation was completed. OAG 99-ORD-55, 1999 Ky. AG LEXIS 61.

A request for access to a special report to the parole board by a parole officer was properly denied as the report was prepared by a probation and parole officer in the discharge of his official duties and, therefore, the record was exempt from disclosure under KRS 439.510. OAG 99-ORD-55, 1999 Ky. AG LEXIS 61.

A sheriff's department properly denied a request for copies of all documents related to the department's internal investigation of a complaint filed by the requesters against one of the department's deputies as the records were preliminary in nature, contained investigative notes, witness statements, and observations, and were neither incorporated into nor made a part of the final agency action. OAG 99-ORD-56, 1999 Ky. AG LEXIS 62.

The Kentucky State Penitentiary properly denied an employee's open records request for a copy of his polygraph results on the ground that the polygraph test pertained to an ongoing internal administrative investigation, and the fact that the requester was an employee of the State Penitentiary did not require a contrary result. OAG 99-ORD-60, 1999 Ky. AG LEXIS 66.

The Cabinet for Families and Children, Department for Community Based Services, properly denied a request for copies of records generated in the course of an investigation conducted by the department of the former wife of the requester as she was a client of the cabinet and, therefore, was entitled to confidentiality. OAG 99-ORD-61, 1999 Ky. AG LEXIS 67.

The Kentucky State Penitentiary properly denied an open records request for a copy of an employee's polygraph results as the record was part of an ongoing investigation of both Internal Affairs and the Kentucky State Police and, thus, was exempt from disclosure. OAG 99-ORD-62, 1999 Ky. AG LEXIS 68.

Subsection (1) does not prohibit access by a party litigant to nonprivileged, nonexempt public records in the custody of a public agency against which the litigant had brought suit or by which he had been sued; only if the records to which the party litigant requests access are both exempt and nondiscoverable does the subsection (1) authorize nondisclosure. OAG 99-ORD-64, 1999 Ky. AG LEXIS 70.

A Workforce Development Accident Report was not exempt from disclosure under subsection (1)(a) and was subject to disclosure, with personal information redacted, as disclosure would provide information as to how a public agency handles its workplace injuries and safety of its employees. OAG 99-ORD-65, 1999 Ky. AG LEXIS 71.

Medical records submitted to a public agency indicating that the health of a public employee, injured in the workplace, was such that she was authorized by attending physicians to return to work were not exempt from disclosure under subsection (1)(a). OAG 99-ORD-65, 1999 Ky. AG LEXIS 71.

Subsections (1)(a) and (1)(j) did not justify the refusal of a correctional facility to disclose copies of previous grievances filed with the facility against sick abuse and copies of previous grievances filed for denial of off days or shift change due to time and attendance; such grievances were synonymous with complaints and were subject to disclosure after the redaction of certain information pursuant to those subsections. OAG 99-ORD-72, 1999 Ky. AG LEXIS 78.

Subsection (1)(a) did not justify a correctional facility's provision of a call-in log with the "reason" column deleted; although the facility asserted that the basis for the blanket redaction was that the column contained medical information and information of a personal nature, routine call-in log reasons, such as sick, cold, doctor's appointment, late arrival, etc., would not be information in which an employee would normally have an expectation of privacy. OAG 99-ORD-72, 1999 Ky. AG LEXIS 78.

The time and attendance records of the security staff of a correctional facility, in relation to which public monies are expended, could not be considered as being entirely of a personal nature, the disclosure of which would constitute an unwarranted invasion of personal privacy, under subsection (1)(a); such records were subject to disclosure after the redac-

tion of confidential information, such as social security numbers and home addresses. OAG 99-ORD-72, 1999 Ky. AG LEXIS 78.

With the exception of the redaction of a grievant's security number and the reference to employee evaluation ratings he received for employee conduct, a correctional facility improperly redacted information contained in a grievance file since the commissioner, in reviewing the grievance, referenced the responses to his grievance at the various supervisory levels and incorporated them as a basis for his final determination. OAG 99-ORD-72, 1999 Ky. AG LEXIS 78.

A correctional facility was required to release information regarding sick leave and use under an open records request, notwithstanding its contention that such disclosure would nullify the aegis provided by the Americans with Disabilities Act for the same information. OAG 99-ORD-72, 1999 Ky. AG LEXIS 78.

Response cards submitted by parents of children enrolled at a middle school to the county public schools, reflecting the decision to transfer their children from the school, qualified for protection as education records under both federal and state acts and, therefore, were exempt from disclosure under subsections (1)(k) and (1)(l). OAG 99-ORD-73, 1999 Ky. AG LEXIS 79.

Response cards submitted by parents of children enrolled at a middle school to the county public schools, reflecting the decision to transfer their children from the school, were exempt from disclosure under subsection (1)(a). OAG 99-ORD-73, 1999 Ky. AG LEXIS 79.

The Kentucky State Police did not violate the Open Records Act in denying requests for copies of the investigative files relating to the deaths of two (2) individuals, which requests were submitted on behalf of a life insurance company, where investigations into those deaths were still active. OAG 99-ORD-74, 1999 Ky. AG LEXIS 80.

The burden of proving that the records withheld qualify for exclusion under subsections (1)(c)1. or (1)(c)2. rests with the public agency; thus, where the agency did little more than recite the language of the exception, without explaining how it applied to the disputed records, the agency failed to establish that the exception applied. OAG 99-ORD-81, 1999 Ky. AG LEXIS 86.

Subsection (1)(h) did not support a police department's refusal to release CrimeCom reports, which were compilations of city-wide crime statistics and reviews of those statistics in analyzing prospective and past enforcement actions; however, the department could withhold those portions of the reports which related to formulated strategies aimed at crime reduction in targeted areas of the city, if the information contained therein could be used to circumvent or violate the law thus necessitating an immediate revision of policy. OAG 99-ORD-83, 1999 Ky. AG LEXIS 91.

A city violated the Open Records Act in denying a request for copies of all applications for building permits and the building permits issued for specified years, notwithstanding the assertion that the building permits contained information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, since any privacy interest at issue was outweighed by the public's interest in disclosure as inspection of the records would clearly advance the public's interest in insuring that the city is properly executing its statutory function with regard to building permits; however, the home addresses and telephone numbers of applicants could be redacted to protect their privacy. OAG 99-ORD-87, 1999 Ky. AG LEXIS 95.

Subsection (1)(c)1. is only applicable where disclosure would permit an unfair commercial advantage to competitors of the entity that disclosed the records, namely the applicant for the building permit, and not the architect whose building plans accompany the application; the exemption's protection simply does not extend to the records of an architect employed by the applicant or acting for the applicant in an agency capacity. OAG 99-ORD-88, 1999 Ky. AG LEXIS 96.

Neither subsection (1)(c)1. nor (1)(c)2. permit a city to deny a request for copies of building plans filed with the city for a particular piece of property. OAG 99-ORD-88, 1999 Ky. AG LEXIS 96.

If building plans have been copyrighted, the protection of the federal law, incorporated into the Open Records Act by operation of subsection (1)(k), extends to those plans and they may properly be withheld. OAG 99-ORD-88, 1999 Ky. AG LEXIS 96.

Based on the fact that the requested records were the subject matter of a discovery dispute currently pending before the Kentucky Unemployment Insurance Commission, and the conclusion that the factual circumstances surrounding the appeal supported the Kentucky Lottery Corporation's position that the open records request was submitted on behalf of a party to that litigation, the Attorney General declined to render a decision on the issue. OAG 99-ORD-92, 1999 Ky. AG LEXIS 100.

The Kentucky State Police properly denied a request for a copy of a taped interview of a witness conducted by the State Police as the cases in which the interview was used were still active pending exhaustion of the appeals process. OAG 99-ORD-93, 1999 Ky. AG LEXIS 101.

The Office of Education Accountability properly denied a request for access to an intra-office memorandum and the identity of an informant, which related to the requester's attempt to hack into or invade the agency's computer system. OAG 99-ORD-96, 1999 Ky. AG LEXIS 103.

A city did not violate the Open Records Act in denying a request for records relating to a municipal utilities company and the break-up of the company as the relevant documents consisted of preliminary drafts, notes, and correspondence with private individuals. OAG 99-ORD-98, 1999 Ky. AG LEXIS 105.

Subsections (1)(c)1. and (1)(c)2. did not permit the blanket denial of a request for a copy of community block grant application, although the portion of the application which contained sensitive financial information, generally recognized as confidential or proprietary, could be redacted. OAG 99-ORD-99, 1999 Ky. AG LEXIS 106.

The Kentucky State Penitentiary properly denied a request for records containing the names and home addresses of all penitentiary employees and the penitentiary's master menu as such records did not pertain to the inmate himself. OAG 99-ORD-102, 1999 Ky. AG LEXIS 144.

A requester was entitled to inspect a copy of an intra-office memorandum which described a verbal complaint made against an employee of the Department of Corrections and a copy of his letter of resignation since, otherwise, there would be no way for the public to evaluate a complaint made against a public employee in a matter related to his job performance and a matter about which the public has a right to know, and more importantly, no way for the public to effectively monitor public agency action and ensure that the agency is appropriately investigating and acting upon allegations of employee misconduct. OAG 99-ORD-105, 1999 Ky. AG LEXIS 146.

In responding to a request for various records and information pertaining to a police officer, a county government properly redacted the officer's social security number and the grade he received on his certification exam, both of which appeared on his radar certification training records, as disclosure of this information would have constituted a clearly unwarranted invasion of the officer's personal privacy. OAG 99-ORD-113, 1999 Ky. AG LEXIS 154.

The Department of Corrections did not violate the Open Records Act in denying an inmate's requests for copies of his pre-parole progress reports since the reports, which were not incorporated into the final decision of the parole board, were

preliminary documents exempt from disclosure under subsection (1)(j). OAG 99-ORD-114, 1999 Ky. AG LEXIS 155.

The Department of Corrections did not violate the Open Records Act in denying an inmate's requests for copies of his pre-parole progress reports as the reports were prepared by institutional parole officers and, therefore, qualified for exclusion under KRS 439.150, incorporated into the Open Records Act by operation of KRS 61.878(1)(l). OAG 99-ORD-114, 1999 Ky. AG LEXIS 155.

A school district improperly refused to release a copy of a letter of suspension of a former principal of an elementary school and the principal's letter of resignation, notwithstanding that no final action was ever taken against the principal because of her resignation, since, otherwise, there would be no way for the public to evaluate a complaint made against a public employee in a matter related to her job performance and a matter about which the public has a right to know, and more importantly, no way for the public to effectively monitor public agency action, and insure that the agency is appropriately investigating and acting upon allegations of employee misconduct. OAG 99-ORD-116, 1999 Ky. AG LEXIS 157.

Audio recordings and hand-written notes of investigators hired by the Kentucky Board of Psychology in connection with the investigation of certain psychologists were exempt from disclosure under subsections (1)(i) and (j). OAG 99-ORD-156, 1999 Ky. AG LEXIS 227.

A county board of education properly denied a request for records of corporal punishment conducted in the school system as the release of the information would have constituted an invasion of personal privacy of the students involved. OAG 99-ORD-160, 1999 Ky. AG LEXIS 231.

A county police department improperly relied on subsection (1)(h) in denying a request for various records relating to the radar unit used by a police officer when he issued a speeding citation. OAG 99-ORD-162, 1999 Ky. AG LEXIS 232.

Subsection (1)(h) does not permit the blanket nondisclosure of criminal investigative files of law enforcement agencies until a defendant has served out his sentence or been executed; law enforcement agencies are authorized to withhold investigative records upon a clear showing that further judicial proceedings remain a significant prospect. OAG 99-ORD-170, 1999 Ky. AG LEXIS 238.

A criminal investigative file in the custody of a police department does not become part of the prosecution file and thus enjoy permanent protection from public inspection. OAG 99-ORD-170, 1999 Ky. AG LEXIS 238.

A correctional facility properly denied an inmate's request for copies of walk logs showing inmates on restricted privileges and for receipts for how much the penitentiary spent on cassette tapes for court call records since the inmate's name did not appear on the requested records and he was not entitled to records of other inmates or records that did not pertain to him. OAG 99-ORD-188, 1999 Ky. AG LEXIS 175.

Unless a county department of solid waste could make a particularized showing that individual complainants' identities were properly withheld, as for example where the complainant requested anonymity or expressed specific fear of retaliation by the individual against whom the complaint was lodged, its reliance on subsection (1)(a) to support its partial denial of a request to inspect all complaints and documents about the requester's property was misplaced. OAG 99-ORD-193, 1999 Ky. AG LEXIS 180.

The Labor Cabinet properly relied on subsection (1)(h) in denying a request for copies of records from the cabinet's occupational safety and health investigative file regarding a specified construction company because the investigation was ongoing. OAG 99-ORD-195, 1999 Ky. AG LEXIS 182.

The Cabinet for Families and Children properly relied on KRS 61.878(1)(a), in addition to KRS 194B.060 and KRS 620.050(4), which are incorporated into the Open Records Act by operation of KRS 61.878(1)(l), in denying a request for a copy of the Children's Protective Services Report relating to two (2) children identified in the request and their mother. OAG 99-ORD-197, 1999 Ky. AG LEXIS 192.

The Workers' Compensation Funding Commission's withholding of portions of requests for proposals to provide investment performance analysis and consulting services to the commission under subsection (1)(c)1., was proper as the commission established that the withheld portions were confidential and proprietary matters; the information included the precise formulae or processes which the companies would employ to provide the services the commission sought, including: proprietary ranking systems, policies and software; individual personnel data and bios; company customers and references; fee mechanisms; company research profiles; and proprietary scorecard ratings on two (2) of the commission's current money managers. OAG 99-ORD-201, 1999 Ky. AG LEXIS 196.

Records generated by a polygraph examiner in the course of administering a polygraph examination may properly be withheld pursuant to subsection (1)(j). OAG 99-ORD-204, 1999 Ky. AG LEXIS 198.

The actual polygraph test of a person, as well as the examiner's notes and report, may be withheld from public inspection pursuant to subsection (1)(a), the privacy exception to the Open Records Act. OAG 99-ORD-204, 1999 Ky. AG LEXIS 198.

A correctional facility properly denied the open records request of an inmate at the institution for copies of records which pertained to his request for a transfer to another correctional facility and to his protective custody hearing since the documents at issue remained preliminary documents and were, therefore, exempt under subsection (1)(j). OAG 99-ORD-205, 1999 Ky. AG LEXIS 199.

With one exception, the Department of Insurance properly partially denied a request for records relating to an inquiry that was conducted concerning a forgery complaint against an employee of the department; the withheld documents, with one exception, were preliminary drafts or notes and, therefore, were exempt from disclosure under subsections (1)(i) and (1)(l). OAG 99-ORD-206, 1999 Ky. AG LEXIS 200.

A city clerk improperly denied a request for an application for entertainment permit, notwithstanding the assertion that the application was preliminary in nature and had not been the subject of official action by the city. OAG 99-ORD-207, 1999 Ky. AG LEXIS 201.

The Kentucky Judicial Form Retirement System violated the Open Records Act when it denied a request for records indicating the actual retirement pay of a specific retired judge, with the exception of those records reflecting transfer or service from the Kentucky Employment Retirement System, total service, the statutory monthly pension, and the "bottom line" retirement pension. OAG 99-ORD-209, 1999 Ky. AG LEXIS 203.

An agency may not withhold attorney billing records with regard to litigation involving the agency while the litigation is pending. OAG 99-ORD-212, 1999 Ky. AG LEXIS 207.

The Transportation Cabinet did not properly rely on subsection (1)(f) in denying a request for a copy of a map of a proposed highway that was publicly displayed at a public meeting regarding the highway since a map is not the functional equivalent of the contents of a real estate appraisal or an engineering or feasibility estimate or evaluation. OAG 99-ORD-215, 1999 Ky. AG LEXIS 208.

The Transportation Cabinet did not properly rely on subsection (1)(j) in denying a request for copies of public comments regarding a proposed highway. OAG 99-ORD-215, 1999 Ky. AG LEXIS 208.

A correctional facility did not violate the Open Records Act in denying an inmate's request for his presentence investigation report since such report was confidential under KRS 439.510. OAG 99-ORD-216, 1999 Ky. AG LEXIS 209.

A county school system did not violate the Open Records Act in denying a request to inspect a videotape recording of an incident involving the requester's son that occurred on a county school bus; the videotape qualified for exclusion from public inspection under KRS 61.878(1)(k) and (1)(l) which incorporate the Family Educational Rights and Privacy Act and its state counterpart into the Open Records Act as it contained information on more than one student and such information was inextricably intermingled and therefore nonsegregable, and, therefore, the school system could not disclose the videotape in such a way as to meaningfully honor the rights of the requester to inspect the tape without violating the corresponding rights of the other students and their parents in nondisclosure of the tape to third parties. OAG 99-ORD-217, 1999 Ky. AG LEXIS 215.

A planning commission could not deny a request by a newspaper editor for a copy of a report regarding a commissioner prepared for the planning commission by a county ethics board on the basis of subsection (1)(a) since the public interest in disclosure of the ethics board's opinion outweighed any privacy interests that the commissioner may have had in his personal finances. OAG 99-ORD-219, 1999 Ky. AG LEXIS 217.

A planning commission could not deny a request by a newspaper editor for a copy of a report regarding a commissioner prepared for the planning commission by a county ethics board on the basis of subsection (1)(k) since that subsection applies only to records the disclosure of which is prohibited by federal law or federal regulation. OAG 99-ORD-219, 1999 Ky. AG LEXIS 217.

A planning commission could not deny a request by a newspaper editor for a copy of a report regarding a commissioner prepared for the planning commission by a county ethics board on the basis of subsection (1)(l) as there is not state statute authorizing confidential advisory code of ethics opinions. OAG 99-ORD-219, 1999 Ky. AG LEXIS 217.

With regard to a request for copies of applications for 2000 racing licenses and 2000 racing dates for all Kentucky racetracks, the applications did not qualify for exclusion under subsection (1)(i), but portions of the applications could be withheld under subsection (1)(c)2.d. upon a showing that those portions were confidentially disclosed to the Kentucky Racing Commission, were generally recognized as confidential or proprietary, and were compiled and maintained for the grant or review of a license to do business. OAG 99-ORD-220, 1999 Ky. AG LEXIS 213.

A county human relations commission did not violate the Open Records Act by denying a request for access to the contents of the file relating to the requester's housing discrimination case since the requested records contained information obtained by the county human relations commission pursuant to its authority under KRS 344.250 to conduct investigations of complaints and, therefore, the commission was prohibited from making the information public except as reasonably necessary to the conduct of proceedings under KRS Chapter 344. OAG 99-ORD-224, 1999 Ky. AG LEXIS 220.

A correctional facility's partial denial and redaction of an inmate's polygraph results was consistent with the statute since, although the polygraph exam was part of a disciplinary action against the inmate, the examiner's test and opinion as to the truth and veracity of the inmate's answers were not relied on, incorporated into, or made a part of the warden's decision in the disciplinary action and, therefore, the record retained its preliminary character. OAG 00-ORD-3, 2000 Ky. AG LEXIS 30.

Subsection (1)(a) did not justify a school district's denial of access to a settlement agreement with a former employee since a review of the settlement agreement revealed little if anything which would cause the former employee such serious personal embarrassment or humiliation that it would overcome the presumption of openness; although brief references to the incident giving rise to her termination appeared in the agreement, these details no doubt came to light in the jury trial which resulted in her acquittal, appeared in the court record, and received media coverage, and the former employee's desire to keep secret the amount of money she received, or the terms of the settlement, could be accorded little weight. OAG 00-ORD-5, 2000 Ky. AG LEXIS 52.

A school district's denial of access to a settlement agreement with a former employee could not be justified by subsection (1)(l), operating in tandem with KRS 161.790(5), since the latter statute does not shield from disclosure a settlement agreement entered into by a teacher and a school district. OAG 00-ORD-5, 2000 Ky. AG LEXIS 52.

There is no impediment to the use of the Open Records Act to secure nonexempt records despite the presence of litigation between the requester and the agency. OAG 00-ORD-6, 2000 Ky. AG LEXIS 63.

A county public defender corporation improperly denied access to its fiscal budget on the ground that the record contained information which involved and related to the employees of the corporation, who were not public employees, and that disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy; to the extent those employees' salaries were publicly funded, the public had a legitimate interest in records pertaining to their employment, such as their position descriptions, salaries, resumes (reflecting prior work experience, educational qualifications, and information regarding ability to discharge the responsibilities of employment), and disciplinary actions stemming from job-related misconduct, although matters of a purely personal nature, such as home addresses, social security numbers, medical records, marital status, etc., could be withheld, as disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. OAG 00-ORD-6, 2000 Ky. AG LEXIS 63.

Where the requester was biologically related to, and professionally associated with, the plaintiff in a federal lawsuit to which his records request directly related, subsection (1) applied to him as a person attempting to obtain information for a litigant outside the rules of discovery as it defied logic to suggest that his interest in the records was that of a disinterested third party or purely academic. OAG 00-ORD-10, 2000 Ky. AG LEXIS 9.

A city did not meet its statutory burden of proof in sustaining its denial of a request on the basis of subsection (1)(i), (j), or (l) as the city did not adequately explain how the cited exceptions applied to the records withheld. OAG 00-ORD-10, 2000 Ky. AG LEXIS 9.

The Kentucky High School Athletic Association properly relied upon subsection (1)(j) in denying a request for "Top 25" and "Scratch" lists since the lists were preliminary recommendations in which opinions were expressed; the very act of a coach in electing to rank or scratch a game official constituted the expression of an opinion by the coach, and the ultimate decision-making authority rested with the assigning secretary who relied on the lists as an aid in assigning game officials. OAG 00-ORD-29, 2000 Ky. AG LEXIS 29.

The Kentucky High School Athletic Association properly relied upon subsection (1)(a) in denying a request for "Top 25" and "Scratch" lists since disclosure of such records would constitute a clearly unwarranted invasion of personal privacy in the absence of a superior public interest in inspection of the records; in the evaluative records at issue, officials' performances were rated as high, moderate, or low, and in some instances the officials were entirely disallowed, or scratched, as unacceptable, and given the passions that competitive sports ignite, and the largely subjective nature of the duties the officials performed, the records warranted even greater protection than a typical evaluation. OAG 00-ORD-29, 2000 Ky. AG LEXIS 29.

An agency which provided substance abuse treatment services at a halfway house properly denied a request for a letter and other records prepared by the probation and parole officer pertaining to the requester's husband pursuant to KRS 439.510 and subsection (1)(l) since these statutes operated in tandem to exclude from inspection all information obtained in the discharge of official duty by any probation or parole officer. OAG 00-ORD-45, 2000 Ky. AG LEXIS 47.

A request for inter-office notes was properly denied as the notes constituted preliminary notes and memoranda and were not incorporated into a final action of the agency. OAG 00-ORD-62, 2000 Ky. AG LEXIS 66.

A request for employee records was properly denied pursuant to subsection (1)(a) as the files requested no doubt contained a mixture of exempt and nonexempt records and the requester failed to specify the particular documents within such files to be inspected. OAG 00-ORD-62, 2000 Ky. AG LEXIS 66.

A request for the Kentucky State Police's investigative file in a specified matter was properly denied on the basis that the investigation was still open and ongoing. OAG 00-ORD-70, 2000 Ky. AG LEXIS 86.

A school system properly denied a request for documentation collected and/or generated by the school system that was forwarded to a Commonwealth's Attorney regarding a former transportation department supervisor since the Commonwealth's Attorney and/or the Kentucky State Police were still in the process of investigating the matter. OAG 00-ORD-78, 2000 Ky. AG LEXIS 79.

The Office of the Attorney General's Medicaid Fraud & Abuse Control Division properly denied access to records relating to the Division's investigation into alleged improprieties in the Cabinet for Health Services' Office of the Inspector General and Division of Licensing and Regulation pursuant to subsection (1)(h) since (1) the Medicaid Fraud & Abuse Control Division of the Attorney General's Office is a law enforcement agency, (2) the disputed documents were compiled in the process of detecting and investigating statutory or regulatory violations, and (3) disclosure of the records would have revealed the identity of witnesses/informants and would have been a premature release of information to be used in a potential prospective law enforcement action(s). OAG 00-ORD-81, 2000 Ky. AG LEXIS 77.

A correctional facility properly denied an inmate's request for, inter alia, records pertaining to disciplinary actions against employees of the facility as such records did not pertain to the inmate. OAG 00-ORD-83, 2000 Ky. AG LEXIS 75.

A written statement requested by an attorney on behalf of his client, who was a public agency employee, related to an ongoing investigation relating to the employee conducted by the agency and, therefore, his request was properly denied. OAG 00-ORD-84, 2000 Ky. AG LEXIS 74.

An agency properly denied an attorney's request for a copy of a client behavioral plan of a client of the agency, who was involved in an incident with the attorney's client, on the basis of subsection (1)(l) and KRS 210.235 since the attorney did not satisfy the requirement of the latter statute that he fall within an excepted category of the statute authorizing disclosure of the records and did not obtain a court order. OAG 00-ORD-84, 2000 Ky. AG LEXIS 74.

Subsections (1)(k) and (1)(l), when read in tandem with 28 USCS § 534 and KRS 439.510, respectively, prohibited the disclosure of the requester's rap sheet, the record which contains the requester's entire criminal record, and a presentence investigation report, which contained the rap sheet and which was prepared by the probation and parole officer as part of his official duties. OAG 00-ORD-85, 2000 Ky. AG LEXIS 92.

An agency could properly redact the names and social security numbers of students that appeared in documents to be released to the requester under authority of 20 USCS § 1232g and subsection (1)(a). OAG 00-ORD-88, 2000 Ky. AG LEXIS 175.

A city properly withheld disclosure of an internal memorandum summarizing an internal review by the division of police of the division of fire and rescue under authority of subsections (1)(i) and (1)(j) since the document was preliminary in nature, in that it was a summarization of the former police chief's opinion as to what had transpired during two (2) events involving a patient and was neither incorporated into nor made a part of final agency action. OAG 00-ORD-89, 2000 Ky. AG LEXIS 95.

A county government properly relied on subsection (1)(a) in partially denying a request to inspect all employment applications of all employees of a division and all employment applications for the three (3) top-ranked persons for a recent open mail-clerk position; the county government released the records but redacted employee home addresses, home telephone numbers, dates of birth, work references, salaries at previous places of employment, drivers' license numbers, social security numbers, test scores, and oral interview ratings. OAG 00-ORD-90, 2000 Ky. AG LEXIS 96.

An industrial authority properly denied a request for all correspondence between persons representing the industrial authority and either the state or any agency of the United States government concerning loans, grants, or public monies for the development of an industrial park as the authority was in the process of applying for grants and monies and, therefore, the records constituted preliminary records. OAG 00-ORD-95, 2000 Ky. AG LEXIS 101.

A state university improperly relied on subsection (1) as a basis for a blanket denial of a request by an attorney for various records pertaining to a university employee who was involved in litigation with a client of the attorney. OAG 00-ORD-97, 2000 Ky. AG LEXIS 89.

Subsection (1)(a) did not permit a state university to withhold disclosure of various records pertaining to a university employee, including her telephone records, time sheets, job descriptions, records reflecting disciplinary actions against her, and any personal files in her office computer; however, the subsection did permit withholding of portions of the employee's personnel file that contained such purely personal information as social security number, home address, and home telephone number, as well as her performance evaluation. OAG 00-ORD-97, 2000 Ky. AG LEXIS 89.

Correspondence from or to a contractor under a public contract on issues relating to the administration of that contract cannot be properly characterized as correspondence with a private individual, and such correspondence becomes an open record upon issuance; disclosure is not contingent upon the occurrence of final agency action. OAG 00-ORD-98, 2000 Ky. AG LEXIS 90.

Records which are the work product of an attorney in the course of litigation or advising a client are not discoverable under CR 26.02 and are therefore exempt under KRS 447.154 and subsection (1)(l). OAG 00-ORD-99, 2000 Ky. AG LEXIS 104.

A city properly denied a request for records reflecting the amount of funds that the city area government self insurance trust reserved or recorded as a liability with respect to certain litigation since disclosure of the records would have revealed the mental impressions, thoughts, and conclusions of the attorneys in evaluating and estimating the value of the legal claim and thus was be nondiscoverable and exempt from disclosure. OAG 00-ORD-99, 2000 Ky. AG LEXIS 104.

A city improperly relied on the privacy exception in issuing a blanket denial of a request for specific personnel records, consisting of written complaints, records documenting final resolution of those complaints (including a decision to take no action), and any investigative documents incorporated into the final action on those complaints. OAG 00-ORD-104, 2000 Ky. AG LEXIS 110.

A city police department properly denied a request for records where the requested records were related to and were part of an ongoing enforcement action. OAG 00-ORD-105, 2000 Ky. AG LEXIS 111.

A drug strike force did not violate the Open Records Act in its responses to requests of a reporter to inspect agency records relating to its investigation of complaints filed against the executive director of the drug strike force, alleging sexual harassment and hostile work environment, since there was no written complaint, there were no written evaluations of the executive director, and no final action was taken because the executive director resigned his position. OAG 00-ORD-107, 2000 Ky. AG LEXIS 113.

A city properly relied on the attorney-client privilege and work product doctrine to support nondisclosure of documents responsive to an attorney's request for records that directly related to anticipated litigation involving his clent's injuries and the termination of his workers' compensation benefits, and which satisfied each of the requirements of KRE 503 or could be characterized as "the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative" of the city concerning the anticipated litigation. OAG 00-ORD-111, 2000 Ky. AG LEXIS 122.

A correctional complex and the Department of Corrections properly relied upon subsection (1)(c)(1) in denying an open records request for a copy of a contract between a corporation and correctional complex related to prison industry coupons as the contract included language regarding formulas or processes and codes that the corporation required the correctional complex to utilize to fulfill the processing of the coupons and special offers and the release of such information would have permitted competitors to access practices and information that could then have been pirated for their own use to the detriment of the corporation. OAG 00-ORD-112, 2000 Ky. AG LEXIS 123.

A Commonwealth's Attorney properly denied a request for a copy of the transcript of testimony of the grand jury hearings regarding two (2) specified indictments and a copy of each indictment as such records were exempt from public release by statute. OAG 00-ORD-116, 2000 Ky. AG LEXIS 125.

A city violated the Open Records Act in regard to a request for access to portions of its business license database when it withheld five (5) entries pertaining to each business licensed and appearing in the database on the basis of a promise of confidentiality, but without reference to one (1) or more of the exceptions codified in the statute. OAG 00-ORD-117, 2000 Ky. AG LEXIS 126.

A city police department did not violate the Open Records Act in denying a request to inspect all documentation and records related to the requester's application for the position of police recruit since KRS 15.400(3) prohibits disclosure of specifically described information obtained in the application/certification process to peace officers, unsuccessful applicants who wished to become peace officers, and third parties, and the prohibition is, by its own terms, mandatory, and extends not only to background investigations, but also to psychological examinations and polygraph examinations administered pursuant to KRS 15.400(2) and KRS 15.382. OAG 00-ORD-118, 2000 Ky. AG LEXIS 115.

A county public school system violated the Open Records Act in partially denying a request for records relating to traditional school enrollment policies and residency requirements; the school system's reliance on KRS 160.705 et seq. and 20 USCS § 1232g, incorporated into the Open Records Act by operation of subsections (1)(k) and (1)(l), was misplaced. OAG 00-ORD-119, 2000 Ky. AG LEXIS 127.

The Transportation Cabinet properly denied a request by an attorney for records pertaining to requests by the attorney's client for additional compensation under a contract for painting a bridge as such records pertained to preliminary decisions on those requests. OAG 00-ORD-125, 2000 Ky. AG LEXIS 133.

A county board of education properly partially denied a request for information and records pertaining to a high school principal when it furnished redacted copies of his job application and teacher certification, but refused to furnish a copy of his college transcript. OAG 00-ORD-126, 2000 Ky. AG LEXIS 134.

The Department of Local Government properly denied a request for a note pertaining to a particular telephone conversation by a department employee pursuant to subsection (1)(i). OAG 00-ORD-132, 2000 Ky. AG LEXIS 140.

An adjustment center properly denied an inmate's request for his visitors list with all of his children's social security numbers, as social security numbers constitute confidential information. OAG 00-ORD-135, 2000 Ky. AG LEXIS 152.

The Department of Insurance properly denied a request for records concerning the department's 1999 on-site review of 14 managed care plans as part of its patient protection review process as the disclosure of such records was prohibited by KRS 304.2-270. OAG 00-ORD-136, 2000 Ky. AG LEXIS 153.

Subsection (1)(a) does not authorize the nondisclosure of records reflecting the educational background of an employee of a county attorney's office, in view of the public's interest in insuring that public agencies discharge their duty to hire individuals who qualify by virtue of education and experience for the positions they hold. OAG 00-ORD-137, 2000 Ky. AG LEXIS 154.

The county attorney was required to disclose records pertaining to complaints against an employee of the county attorney and upon which final action had been taken, including the decision to take no action. OAG 00-ORD-137, 2000 Ky. AG LEXIS 154.

A sanitation district properly denied a request for a report prepared by a consultant and submitted to the district on possible rate increases as such report was a document containing preliminary recommendations. OAG 00-ORD-139, 2000 Ky. AG LEXIS 156.

A county fiscal court properly denied a request for an advance copy of the draft county fiscal year budget as such draft budget was exempt from disclosure under subsections (1)(i) and (j). OAG 00-ORD-140, 2000 Ky. AG LEXIS 146.

The state police properly denied a request for information about the alleged theft of city water by a car wash owner as KRS 17.150(2) provides for the nondisclosure of intelligence and investigative reports maintained by criminal justice agencies prior to the completion of the prosecution or a decision not to prosecute. OAG 00-ORD-145, 2000 Ky. AG LEXIS 143.

A county school system was not required to disclose bus run reports, including the names of the students assigned to each stop and the times at which the students are picked up and dropped off, the list of students that purchased parking permits at the high school, or attendance reports for each homeroom as such records were exempt from disclosure under subsections (1)(k) and (l) and the federal Family Educational Rights and Privacy Act and its state counterpart. OAG 00-ORD-148, 2000 Ky. AG LEXIS 142.

Once a person is permitted to inspect a document without redactions, he is entitled to receive unredacted copies and the public agency can no longer invoke the privacy exception. OAG 00-ORD-150, 2000 Ky. AG LEXIS 172.

A county division of community corrections did not violate the Open Records Act when it denied a request by an inmate for various records, including names of various persons on floors of a detention center, on the ground that such records did not specifically relate to the inmate. OAG 00-ORD-153, 2000 Ky. AG LEXIS 169.

A county school system was not required to disclose attendance reports at a high school as such records were exempt from disclosure under KRS 61.878 and the federal Family Educational Rights and Privacy Act and its state counterpart. OAG 00-ORD-155, 2000 Ky. AG LEXIS 168.

A school district properly denied a request for various student records, as it had not taken steps to designate any information contained in its student records as directory information; however, disclosure of a "fourth day count" reflecting total enrollment in the district was required as such count contained only raw data and was devoid of any personally identifiable information. OAG 00-ORD-158, 2000 Ky. AG LEXIS 158.

The Education Professional Standards Board improperly relied on subsection (1)(i) in denying a request for a copy of a report prepared by a board investigator into allegations against the requester of misconduct as he was entitled under subsection (3) to inspect and to copy any record including preliminary and other supporting documentation that related to him. OAG 00-ORD-159, 2000 Ky. AG LEXIS 166.

Numerous records in an investigative file pertaining to a murder-suicide were not protected from disclosure under subsection (1)(a), including various written statements, diagrams, and reports, but other records were protected from disclosure under that subsection, including photographs of the crime scene, a recorded statements, and 911 transmissions. OAG 00-ORD-162, 2000 Ky. AG LEXIS 163.

A county school system properly denied a records request by a reporter for copies of termination letters and all documents related to disciplinary action on charges filed by the school superintendent against two (2) teachers as such documents were preliminary correspondence other than correspondence which was intended to give notice of final action of a public agency and preliminary recommendations. OAG 00-ORD-164, 2000 Ky. AG LEXIS 161.

The Kentucky Labor Cabinet properly partially denied a request for a copy of the entire investigative file pertaining to a complaint against a particular company as the file contained preliminary recommendations and preliminary memoranda in which opinions were expressed or policies formulated or recommended. OAG 00-ORD-168, 2000 Ky. AG LEXIS 179.

A development district improperly relied on subsections (1)(i) and (j) in denying a request for documents pertaining to an individual's resignation from the Department of Energy and employment by a consulting company. OAG 00-ORD-168, 2000 Ky. AG LEXIS 179.

While performance evaluations of public employees are excluded from disclosure by subsection (1)(a), in those exceptional cases where the employee who is evaluated is ultimately responsible for the management of the agency he serves, and his evaluation is not protected from disclosure by that subsection, the evaluation must be disclosed if it forms the basis of final agency action in relation to the employee. OAG 00-ORD-177, 2000 Ky. AG LEXIS 177.

A city properly relied on subsection (1)(j) in initially denying a request for a copy of the summary evaluation of the city manager for the past year as conducted by the city commission; however, the protections afforded by that exemption were forfeited when the city adopted the summary evaluation as the basis for awarding him a pay increase. OAG 00-ORD-177, 2000 Ky. AG LEXIS 177.

The Department of Corrections improperly relied on subsection (1)(j) in redacting information pertaining to good time credit from an inmate's resident record card before disclosing that card to him, notwithstanding the assertion that such credit was a preliminary determination because the inmate was required to complete a sex offender treatment program before any good time credit could be applied to reduce his sentence. OAG 00-ORD-178, 2000 Ky. AG LEXIS 182.

A city was required to disclose charges brought against a police officer in a specified personnel hearing, notwithstanding the assertion that the city council determined that the officer was not guilty of the charges and that disclosure of the charges would constitute a clearly unwarranted invasion of personal privacy. OAG 00-ORD-181, 2000 Ky. AG LEXIS 185.

A county jailer properly denied a request for various records pertaining to the jail, including names and other information about jail employees and inmates housed in a certain dormitory, as such information did not specifically pertain to the inmate requesting the records and disclosure would have constituted a threat to their security as well as to the security of their families. OAG 00-ORD-182, 2000 Ky. AG LEXIS 186.

With regard to a request for records pertaining to a city wastewater treatment facility, the city failed to establish that disclosure of the individual hauler who dumped a particular site would afford the requester an unfair commercial advantage. OAG 00-ORD-188, 2000 Ky. AG LEXIS 192.

With regard to a request for records pertaining to a city wastewater treatment facility, the city was not required to disclose the names and home addresses of individual customers whose septic tanks were pumped as the disclosure of such information would have constituted a clearly unwarranted invasion of personal privacy. OAG 00-ORD-188, 2000 Ky. AG LEXIS 192.

A training center did not violate KRS 61.884 by not releasing a copy of an inmate's entire prison file either to the inmate or his attorney of record as some portions of the file were exempt from disclosure under various exemptions of KRS 61.878. OAG 00-ORD-190, 2000 Ky. AG LEXIS 194.

A university properly denied a request for a copy of a study done by a consultant concerning classified employees as the final study had not yet been submitted and the university had only received preliminary data reports, notwithstanding that the study had been discussed in open forums. OAG 00-ORD-195, 2000 Ky. AG LEXIS 199.

A county corrections department was required to disclose a videotape of an incident involving the requester's son that occurred in the basement of the Hall of Justice one night, notwithstanding that the Federal Bureau of Investigation had initiated an official investigation to determine whether there had been a civil rights violation, as there was no evidence that the FBI had asked the corrections department to withhold the videotape pending resolution of its investigation. OAG 00-ORD-196, 2000 Ky. AG LEXIS 200.

A public library properly denied a request for a copy of a report produced by a consultant as the report had not yet been adopted and constituted a draft report, containing errors and inaccuracies noted by one or more reviewers, and subject to revision, on a broad range of library related subjects. OAG 00-ORD-197, 2000 Ky. AG LEXIS 201.

A county sheriff's department erred in issuing a blanket denial of a request for bills for cellular telephones carried by sheriff's department staff; however, if the billing records contained the phone numbers of informants, victims of crime, and alleged criminal defendants, those entries could be redacted on such basis. OAG 00-ORD-198, 2000 Ky. AG LEXIS 202.

A county sheriff's department erred in issuing a blanket denial of a request for bills for cellular telephones carried by sheriff's department staff; however, if the billing records contained the phone numbers of informants, victims of crime, and alleged criminal defendants, those entries could be redacted on such basis. OAG 00-ORD-199, 2000 Ky. AG LEXIS 203.

A public water works was required to disclose records of the salaries earned by its employees, although it could redact personal information, such as home addresses, social security numbers, and materials setting forth information as to amounts withheld from pay checks such as taxes, insurance, retirement, and savings. OAG 00-ORD-203, 2000 Ky. AG LEXIS 206.

An inmate was not entitled to disclosure of raw data from psychological tests that were contained in his sexual offense treatment program file; access to those records was properly denied to prevent the dissemination of the test and data to other inmates prior to their taking the examination and

because the inmate was not qualified to utilize or interpret the information. OAG 00-ORD-204, 2000 Ky. AG LEXIS 207.

Computerized criminal record data maintained by the Department of Corrections could not be withheld on the basis of subsection (1)(a), notwithstanding the assertion that personal, identifying entries, such as date of birth, were protected from disclosure because inspection of those entries did not advance an open records related public purpose, as an inmate has a reduced expectation of privacy in information relating to him and there was a superior public interest in monitoring the conduct of the Department of Corrections in discharging its statutory duties. OAG 00-ORD-206, 2000 Ky. AG LEXIS 180.

A state reformatory properly denied a request by an inmate for a copy of the questions used in his polygraph test and the results, as the investigation involving the inmate was still ongoing at the time of the request. OAG 00-ORD-208, 2000 Ky. AG LEXIS 210.

The Commission on Human Rights properly partially denied a request for copies of the complaint, response, conciliation agreement, and any other materials related to a particular case where the withheld materials contained highly personal and confidential information concerning individuals, including but not limited to names, social security numbers, phone numbers, and addresses and also contained notes, correspondence with private individuals, and preliminary recommendations, and memoranda containing opinions formulated and recommendations made concerning the complaint and investigation. OAG 00-ORD-209, 2000 Ky. AG LEXIS 211.

A county public school system properly denied a request for all complaints concerning the admission policies or procedures or administration of those policies applicable to a particular school as such records were exempt from disclosure under subsection (1)(k) and (l), incorporating the federal Family Educational Rights and Privacy Act and the Kentucky Family Education Rights and Privacy Act (KRS 160.705 et seq.). OAG 00-ORD-213, 2000 Ky. AG LEXIS 217.

Although neither KRS 197.025 nor KRS 197.400 et seq. invests a participant in the sexual offender treatment program with an unfettered right of access to all records in his treatment file, neither statute establishes an absolute bar to his access. As in all matters pertaining to records access, it is incumbent on the agencies to identify all records in the file that were withheld, and to articulate a basis for denying him access to them in terms of the requirements of the Open Records Act. If no legally defensible basis exists for denying the offender access to the other records in his file, these agencies are obligated to disclose them to him. OAG 00-ORD-221.

The records at issue in this decision, school district P.A.-2' s disclosing student transportation codes, fall within the expansive definition of an education record under state and federal law, and may not be disclosed absent parental consent. OAG 01-ORD-3, 2001 Ky. AG LEXIS 67.

The Henderson Circuit Court Clerk is not bound by the provisions of the Kentucky Open Records Act, and therefore did not violate the Act in the disposition of a requester's request for a copy of grand jury records relating to the Commonwealth of Kentucky's criminal action against the requester. OAG 01-ORD-6, 2001 Ky. AG LEXIS 26.

If the defendant did not waive his PSI, and was advised of its contents at sentencing pursuant to KRS 532.050(6), is he foreclosed from being advised of its contents under a open records request because KRS 439.510 makes the report confidential. While the agencies are not required to furnish him with a copy of the report in either case, if he waived his PSI at sentencing, he is entitled to be advised by the prison official who has custody of it of the factual contents and conclusions therein. OAG 01-ORD-13, 2001 Ky. AG LEXIS 121.

The description of the Daily Inspection Reports indicates that they contain both objective report of physical facts and subjective expressions of opinion. The information constituting a report of objective facts that are neither preliminary in nature or reflect a subjective expression of opinion would not be exempt from disclosure under KRS 61.878(1)(i) and (j). However, information in the Daily Inspection Reports, such as opinions as to the quality of the work inspected, recommendations as to the appropriateness of pay requests, or opinions regarding work progress or problems, that reflects a subjective opinion or recommendation of the inspector which does not constitute final agency action, may be withheld from disclosure under KRS 61.878(1)(i) and (j). OAG 01-ORD-17, 2001 Ky. AG LEXIS 35.

Review of the real estate purchase agreement reveals that none of these requested preliminary documents were incorporated into or made a part of that document. Accordingly, the Board properly withheld disclosure of the documents under authority of KRS 61.878(1)(i) and (j). Unless the records withheld by the Board were incorporated into final action of that agency, the agreement, they do not forfeit their preliminary characterization and need not be released. OAG 01-ORD-22, 2001 Ky. AG LEXIS 123.

Cabinet for Health Services did not violate the Open Records Act in denying access to a statement of deficiencies concerning a health care facility since KRS 61.878, in tandem with 42 CFR 488.325(d), directs that a statement of deficiency must be disclosed within 14 calendar days after it is made available to the facility. Under these authorities, CHS could deny access to the statement of deficiencies for a period of up to 14 days after receipt of the document by the health care facility. OAG 01-ORD-32, 2001 Ky. AG LEXIS 154.

Although at this point the work of Professional Standards Board is final as to its own role in investigating the shooting by the police officer, the work of others in determining final disciplinary action is yet to be done. Until final administrative action is taken, or a decision is made to take no action, the requested records are protected by KRS 61.878(1)(i) and (j). If the records are adopted as part of that final action, they will forfeit their preliminary characterization. If not adopted, they will retain their preliminary character. The fact that these exempt public records have been transmitted to the Commonwealth's Attorney and coroner in the furtherance of their respective duties does not alter the conclusion. OAG 01-ORD-47, 2001 Ky. AG LEXIS 25.

Since the two-page Memorandum sought by the requester was prepared by a probation and parole officer in the discharge of his official duties, the record, pursuant KRS 439.510, would be exempt from disclosure and could properly be denied under KRS 61.878(1)(*l*). Accordingly, the adjustment center's denial of the request was correct and in accord with provisions of the Open Records Act. OAG 01-ORD-52, 2001 Ky. AG LEXIS 149.

KRS 61.878(1)(l), operating in tandem with KRE 503, may authorize partial nondisclosure of the attorney billing records, but it is incumbent on the agency to describe, in at least general terms, the nature of the information redacted and the statutory basis therefore. There is no authority for its eleventh hour defense of the partial denial (redactions) of the billing records on the basis of KRS 61.878(1)(a), the personal privacy exception, unless the redacted information consisted of social security numbers or federal identification numbers. The agency's response to the request was procedurally and substantively deficient. OAG 01-ORD-56, 2001 Ky. AG LEXIS 41.

The public's interest in what businesses are taxed, where they are located, and whether they are delinquent in paying their taxes (but not the amount of taxes owed or any other information that reveals the affairs of their businesses), is superior to any privacy interest asserted. The City and the Tourist & Convention Commission improperly withheld records containing "the names and locations of businesses that are delinquent on the payment of their food/restaurant taxes"

notwithstanding the city ordinance that deemed those records confidential. OAG 01-ORD-63, 2001 Ky. AG LEXIS 125.

The Cabinet for Health Services' reliance on KRS 61.878(1)(h) fails under each part of the three-part test: (1) the Cabinet has not asserted that it is acting as a law enforcement agency or an agency involved in administrative adjudication in the matter of the Medicaid payments; (2) the Cabinet has not identified for the record an agency with concurrent jurisdiction in this matter that has requested that the disputed documents be withheld until after enforcement action is taken or a decision is made to take no action; and (3) the Cabinet has not established that the disputed documents were compiled in the process of detecting and investigating statutory or regulatory violations. OAG 01-ORD-67, 2001 Ky. AG LEXIS 144.

Although the Cabinet for Health Services "has been put on notice" and "advised through appropriate channels" that a federal grand jury has been empanelled to examine Medicare payments to a doctor and related issues, its records of Medicaid payments for work performed by the doctor have not been subpoenaed. They are records created in the normal course of business for purposes not related to the prospect of a grand jury proceeding, which the Cabinet has an affirmative obligation to release. Physical evidence, such as a document, does not become secret merely because it has been presented to a grand jury, if it was created for purposes other than the grand jury investigation and its disclosure does not reveal matters occurring before the grand jury. OAG 01-ORD-67, 2001 Ky. AG LEXIS 144.

Ambulance reports and emergency and EMS records must be withheld from an open records request unless a written release is first obtained, pursuant to the confidentiality provision of former KRS 216B.410 (now see KRS 311A.190). OAG 01-ORD-75, 2001 Ky. AG LEXIS 258.

KRS 61.878(1) does not prohibit access by a party litigant to nonprivileged, nonexempt public records in the custody of a public agency against which the litigant had brought suit or by which he had been sued. Only if the records to which the party litigant requests access are both exempt and nondiscoverable does KRS 61.878(1) authorize nondisclosure. OAG 01-ORD-75, 2001 Ky. AG LEXIS 258.

The fiscal court erred in not releasing the real estate appraisal. A purchase contract has been executed for the acquisition of a single parcel of property. Negotiations between these parties have been concluded, and the purposes for which the exception codified at KRS 61.878(1)(f) was enacted have been satisfied. It is the Fiscal Court's interest in avoiding unfair negotiations in the acquisition of real property that underlies the exception, and this interest cannot be compromised where only one parcel of property is being acquired, and the terms and conditions of the purchase have been contractually settled. OAG 01-ORD-81, 2001 Ky. AG LEXIS 225.

Because the chief of police did not adopt the investigative report as the basis for the final disciplinary action of the police officer in the internal investigation, the investigative file retained its preliminary characterization under KRS 61.878(1)(i) and (j) and was properly not disclosed. OAG 01-ORD-83, 2001 Ky. AG LEXIS 8.

When an agency relies upon the protections afforded by KRS 61.878(1)(i) and (j) as its basis for denying access to internal investigative reports/files, the ultimate decision maker should affirm that he or she did not adopt the report as the basis of the final action, and to explain on what basis he or she, in fact, determined what final action was appropriate. It is not enough to simply invoke the exceptions to shield the investigative report from disclosure without offering an explanation of what was done and why. OAG 01-ORD-83, 2001 Ky. AG LEXIS 8.

Although a public agency cannot indefinitely postpone access to investigative records by labeling an investigation open, three years is not an unreasonable time to investigate and prosecute a case. Having established that the disputed records consist of investigative reports maintained by a criminal justice agency, and that prosecution has not been completed, the Kentucky State Police did not abuse its discretion in invoking KRS 17.150(2) to shield those records from disclosure. OAG 01-ORD-85, 2001 Ky. AG LEXIS 114.

The exclusion under KRS 61.878(1)(c)1. is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage. It is, in general, inapplicable to records generated by or for a public agency itself. The exemptions protection simply does not extend to the agency's own records, such as minutes of the agency's public meetings. OAG 01-ORD-87, 2001 Ky. AG LEXIS 76.

The financial projections report prepared by a sister agency on behalf of the Franklin Electric Plant Board falls squarely within the parameters of KRS 61.878(1)(j). The report contains broad opinion and conjecture based on an analysis of projected data, formulates policy, and makes recommendations relative to the expansion of services. The report enjoys the protection of KRS 61.878(1)(j) until such time as a final decision is made on this issue, including a decision not to expand services. When the Board finally acts, or decides not to act, the report will forfeit its preliminary characterization to the extent that it is adopted as part of that final action. OAG 01-ORD-87, 2001 Ky. AG LEXIS 76.

Since the in-house memoranda was prepared by the agency's attorney in order to provide her client, the agency, with advice on the legal matters related to the complaint and relevant statutes, and the agency has attempted to insure the legal analysis contained in the legal opinion was shielded from disclosure, the agency properly denied access to these in-house documents pursuant to KRS 61.878(1)(l), operating in tandem with KRE 503. Although a number of the exceptions to the Open Records Act are forfeited upon the occurrence of a specific event, this has never been the rule with respect to attorney work product and documents shielded by the attorney-client privilege. OAG 01-ORD-92, 2001 Ky. AG LEXIS 47.

The documents that the agency required Humana to produce represent basic business dealings of Humana with private third parties and business decisions made by Humana regarding contracting, internal policies and procedures, how it is organized, and payment to third parties. They are records of a private corporation generally recognized as confidential or proprietary and constitute the inner workings of the company, the release of which would unfairly advantage competitors. Thus, the agency properly withheld disclosure of the documents under authority of KRS 61.878(1)(c)1. OAG 01-ORD-92, 2001 Ky. AG LEXIS 47.

Since the records in question come within the purview of the Circuit Court's protective orders, the agencies, as required to do so by the Protective Orders entered by the Jefferson Circuit Court, properly denied the open records request for agency records that were the subject matter of the orders staying discovery in the two pending cases. To permit otherwise would allow a party to litigation to use the Open Records Act to do an end run around the Circuit Court's protective orders. OAG 01-ORD-95, 2001 Ky. AG LEXIS 247.

The parole officer's "contemporaneous handwritten notes" and any other records the agency may have "relating to this matter" fall squarely within the parameters of the privilege established at KRS 439.510, incorporated into the Open Records Act by operation of KRS 61.878(1)(*l*). This privilege does not terminate upon revocation of an individual's parole, and cannot be waived by the parolee. OAG 01-ORD-97, 2001 Ky. AG LEXIS 189.

The Treasury properly withheld disclosure of information that would allow the requester to determine the amount of an unclaimed property owner's individual account, disclosure of which would constitute a "clearly unwarranted invasion of

personal privacy" under KRS 61.878(1)(a). OAG 01-ORD-102, 2001 Ky. AG LEXIS 113.

Since the record in question is a letter from the Commissioner of the Cabinet putting a public employee on notice that he is being placed on special leave with pay, pending further investigation of allegation(s) of misconduct, it was a preliminary record compiled in the process of investigating alleged employee misconduct and was exempt from disclosure under authority of KRS 61.878(1)(i) and (j). Accordingly, the Cabinet properly denied access to the document. OAG 01-ORD-103, 2001 Ky. AG LEXIS 127.

Since the record in question is a letter from the Commissioner of the Cabinet putting a public employee on notice that he is being placed on special leave with pay, pending further investigation of allegation(s) of misconduct, the letter is not correspondence with a private individual, and the Cabinet improperly relied upon the "correspondence with a private individual" clause of KRS 61.878(1)(i) as authority for denying access to the letter. OAG 01-ORD-103, 2001 Ky. AG LEXIS 127.

The disputed record does not qualify for exclusion under KRS 61.878(1)(i). The record is not a draft, it does not represent a tentative version, sketch, or outline of a formal and final written product, nor is it a note. Although the Cabinet argues that it was created by the State Highway Engineer as a mere aid to memory, it cannot be persuasively argued that it consists of nothing more than random notations, or written or shorthand notes created as a basis for a fuller statement. OAG 01-ORD-104, 2001 Ky. AG LEXIS 241.

Since the "custodian" of the disputed records is CTS, a company under contract with the Kentucky Transportation Cabinet, and CTS cannot be characterized as a public agency for purposes of the Open Records Act, the disputed records themselves are not public records, because, at the time of the request, they were not "prepared, owned, used, in the possession of or retained by a public agency." The Cabinet properly denied access to these documents under authority of KRS 61.878(1)(i) and (j). OAG 01-ORD-105, 2001 Ky. AG LEXIS 283.

Since the agency's records custodian affirmatively acted to permit the requesters unfettered access to the records identified in the request, and only after inspection was permitted did the agency undertake to examine the records disclosed to determine if any of them qualified for exclusion, the agency is estopped from denying the requesters copies of these records, notwithstanding their arguably exempt status. OAG 01-ORD-113, 2001 Ky. AG LEXIS 167.

KRS 61.878(5) is not a mandatory provision, requiring public agencies to exchange otherwise exempt information, but is instead a matter of agency discretion. Northern Kentucky University may properly share exempt information with its Department of Public Safety, under the provision of KRS 61.878(5), without waiving its right to invoke the exception as to all other requesters, and without violating the principal of uniformity in disclosure policies. OAG 01-ORD-119, 2001 Ky. AG LEXIS 243.

Because the records of the accident involving the police officer were not "actively, specifically, intentionally, and directly compiled as an integral part of a specific detection or investigation process" but rather were made in the usual course of police business, and because the professed harm that would flow from premature disclosure consists of little more than a bare claim, KRS 61.878(1)(h) does not authorize nondisclosure of these records. Nor do KRS 61.878(1)(i) and (j). OAG 01-ORD-122, 2001 Ky. AG LEXIS 193.

While preliminary findings and recommendations cannot be said to reflect, in themselves, the agency's final decision, when the final decision mirrors those findings and recommendations, albeit in an abbreviated form, it must logically be inferred that they were adopted as the basis of that decision, particularly when there is no persuasive proof in the record to overcome this inference. Therefore, those records should be disclosed. OAG 01-ORD-123, 2001 Ky. AG LEXIS 284.

Kentucky State Police improperly relied on KRS 61.878(1)(a) in partially denying the request. As a former public agency employee, the requester is entitled "to inspect and to copy any record including preliminary and other supporting documentation that relates to him" under KRS 61.878(3). If, in fact, social security numbers appear in the background investigation report, KSP may properly redact them insofar as they represent "the keys to the information kingdom" and are of a uniquely sensitive nature, but KRS 61.878(3) mandates disclosure of the remainder of the report. OAG 01-ORD-126, 2001 Ky. AG LEXIS 158.

The police department may rely on KRS 189.635(5) as the basis for denying any request for accident reports not submitted by the parties to the accident, the parents or guardians of a minor who is party to the accident, the insurers of any party who is the subject of the report, the attorneys of the parties, and news gathering organizations "solely for the purpose of publishing or broadcasting the news." This specific confidentiality provision overrides the general rule of openness mandated by the Open Records Act. OAG 01-ORD-127, 2001 Ky. AG LEXIS 77.

The Fiscal Court judge discharged his duty to disclose nonexempt information relating to emergency medical services runs in Henry County for a three (3) month period by compiling that information from the ambulance run reports in a "recap sheet" that did not violate either KRS 61.878(1)(a) or former KRS 216B.410 (now see KRS 311.190). OAG 01-ORD-137, 2001 Ky. AG LEXIS 130.

The Kentucky Board of Examination and Registration of Architects did not violate the Open Records Act in denying the request for a copy of the private reprimand; if a licensee receives a private reprimand, it is private and confidential and may be properly withheld from disclosure under authority of KRS 323.120(1) and KRS 61.878(1)(l). OAG 01-ORD-139, 2001 Ky. AG LEXIS 245.

Only the identifying information furnished by the horse farm owners on the Livestock Disease Diagnostic Center intake form, and mirrored in the necropsy report, qualifies as a record "confidentially disclosed to an agency." The non-identifying portion of the necropsy report that is generated by the Center, and the non-identifying "History " portion of the intake form, that provides the basis for the "Pathologist's Case Summary" cannot be so characterized insofar as they are created by, rather than confidentially disclosed to, the Center. OAG 01-ORD-143, 2001 Ky. AG LEXIS 119.

Because the campus safety incident report was created by the law enforcement unit of community college for a law enforcement purpose and was not created exclusively for a non-law enforcement purpose, such as a disciplinary action, the campus safety incident report and accompanying statements do not constitute education records within the meaning of 20 U.S.C. § 1232g(a)(4)(A), and partial redaction of those records was therefore not authorized by 34 C.F.R. 99.12. OAG 01-ORD-174, 2001 Ky. AG LEXIS 161.

Since the community college established a cognizable privacy interest on the part of one of the "victims" and the witness whose name appears on the campus safety incident report, that interest must prevail unless the public's interest in disclosure outweighs it pursuant to KRS 61.878(1)(a). OAG 01-ORD-174, 2001 Ky. AG LEXIS 161.

Since the Circuit Court has enter an order prohibiting the father's access to his children's educational records, the school properly denied him access to those records under authority of KRS 61.878(1)(k), 20 U.S.C. § 1232g, and 34 C.F.R. 99.4. OAG 01-ORD-178, 2001 Ky. AG LEXIS 120.

Where the requester sought a copy of a subpoena issued by the FBI to the agency, since the agency had concurrent enforcement jurisdiction, the description of the harm by the agency in releasing the subpoena establishes, as a minimum,

that premature disclosure of the subpoena could possibly compromise the investigation by tipping off a possible witness or target. Thus, the agency properly denied access to the subpoena under KRS 61.878(1)(h). However, if this potential of harm no longer exists, particularly in view of the time since it was served on the agency in early August, 2001, the document should be made available for inspection. OAG 01-ORD-217, 2001 Ky. AG LEXIS 271.

The e-mails in dispute could properly be characterized as correspondence with private individuals "under conditions in which the candor of the correspondents depends on assurances of confidentiality." In addition, these e-mail transmissions would arguably constitute "preliminary recommendations in which opinions are expressed or policies formulated" within the meaning of KRS 61.878(1)(j). If, of course, the opinions expressed or policies formulated in the exchange are ultimately adopted as part of the city's final action relative to relocation of the cellular tower, they will forfeit their preliminary characterization. OAG 01-ORD-222, 2001 Ky. AG LEXIS 133.

The record supports the City's position that the maps generated by Cingular were confidentially disclosed to the Mayor, are generally recognized as confidential or proprietary, and that their disclosure would permit an unfair commercial advantage to competitors of the entity that disclosed them. OAG 01-ORD-222, 2001 Ky. AG LEXIS 133.

Because 23 U.S.C. § 409 does not bar the disclosure of the information relating to highway skid numbers for purposes unrelated to litigation, the Transportation Cabinet improperly denied the open records request under authority of 23 U.S.C. § 409 and KRS 61.878(1)(k). OAG 01-ORD-244, 2001 Ky. AG LEXIS 278.

Because the agency's reliance upon KRS 61.878(1)(a) was not legally sufficient where the person was deceased, and because KRS 61.880(2) places the burden of proof in sustaining a denial of a request to inspect public records on the public agency, the school district had the burden of establishing that the former teachers involved in the request are still alive. Although the Open Records Act does not set out a time limit as to when restrictions on public records are no longer confidential, an actuarially reasonableness standard should be followed in making a determination as to whether a former employee is still living. OAG 01-ORD-245, 2001 Ky. AG LEXIS 62.

The school district improperly denied access to the names of individuals submitting letters of reference in the personnel files of the former teachers. The district must disclose the names of the persons who submitted letters of reference, but may withhold the contents of the letters under KRS 61.878(1)(i). It is, of course, within the agency's discretion to release copies of the entire letters of reference, KRS 61.878(1)(i) notwithstanding. OAG 01-ORD-245, 2001 Ky. AG LEXIS 62.

A former employee's personnel action against the agency cannot be characterized as administrative investigations undertaken by the agency, and the language of KRS 61.878(3) therefore does not operate as a prohibition on disclosure of the records to the employee. OAG 01-ORD-246, 2001 Ky. AG LEXIS 23.

The attorney client privilege applies only where, among other things, the attorney involved is functioning as an attorney, and not as a supervisor; documents leading up to disciplinary action cannot be lumped into a generic work-product privilege, for they are documents of ordinary business even if prepared in the shadow of litigation. OAG 01-ORD-246, 2001 Ky. AG LEXIS 23.

Since the 911 Center indicated that the 911 recording and its contents could not be reasonably segregated, the voice could be identifiable, the caller's residence could be ascertained from information discussed in the tape, and the caller(s) did not give a name in an apparent effort to remain anonymous, the agency provided specific justification to support a determination that protection of the caller(s) privacy interests clearly outweighed the public's right to know how the public agencies were performing their duties. OAG 02-ORD-05, 2002 Ky. AG LEXIS 224.

The airport agency has established that the regulation relied upon, 14 C.F.R. 191.3(b), mandates nondisclosure of airport police officers' names, annual salaries, resumes, and applications, along with records reflecting disciplinary actions against the officers. Further, the agency has established that the cited federal statutes and regulations, specifically, 14 C.F.R. 191.7(h), 14 C.F.R. 191.3, and 14 C.F.R. 107.101, preclude public access to incident reports generated by airport police officers. OAG 02-ORD-12, 2002 Ky. AG LEXIS 41.

Although the witness statements are varied and contradictory, it is apparent that the police chief credited the statements of some witnesses over the statements of others leading him to adopt findings of fact consistent with those statements. Accordingly, the Division of Police improperly withheld the entire investigative summary and all transcripts of witness statements on the basis of KRS 61.878(1)(i) and (j). OAG 02-ORD-18, 2002 Ky. AG LEXIS 113.

The Division of Police improperly relied on KRS 61.878(1)(a) in partially denying news-gathering requesters access to those portions of accident reports containing information of a personal nature. Because KRS 189.635(6) places no restriction on the information in the accident reports that must be disclosed to news-gathering organizations, limiting only the use to which the information may be put, these organizations are entitled to the same right of access as the parties identified in KRS 189.635(5). OAG 02-ORD-19, 2002 Ky. AG LEXIS 43.

The City of Louisville Division of Police may properly rely on KRS 61.878(1)(a) in withholding information identifying the victims of sexual offenses from incident reports requested by open records applicants. The Division of Police may redact the names and addresses of the victims of sexual offenses, the location of the offenses if the offenses occurred in the victim's homes, and the complainants' signatures if the complainant and victim are one and the same. OAG 02-ORD-36, 2002 Ky. AG LEXIS 117.

A finding of no probable cause is not a "final determination" such as one reached at the conclusion of a full-blown adjudicatory hearing conducted under KRS 11A.100(3). It is, instead, an option available to the Commission if, in the course of a preliminary investigation, it determines that the complaint does not allege facts sufficient to constitute a violation of KRS Chapter 11A. Records pertaining to such preliminary investigative findings, including minutes of executive sessions of the Commission, are expressly excluded from public inspection by operation of KRS 11A.080(2). OAG 02-ORD-44, 2002 Ky. AG LEXIS 120.

As a public agency employee, the requester would normally be entitled to inspect and copy any record including preliminary and other supporting documentation that relates to him at the conclusion of any criminal or administrative investigations by an agency. However, the specific confidentiality provision codified at KRS 11A.080(2) overrides KRS 61.878(3), and the requester has no greater right of access to the Commission's confidential records than the public generally. OAG 02-ORD-44, 2002 Ky. AG LEXIS 120.

Since the case notes of the parolee's visits with his parole officer were prepared as a result of the officer's official duties, these records, pursuant to KRS 439.510, would be exempt from disclosure and may be properly denied under an Open Records Request pursuant to KRS 61.878(1)(*l*). OAG 02-ORD-51, 2002 Ky. AG LEXIS 47.

The memorandum in question is an internal communication in which the police chief expresses various opinions and makes recommendations concerning the department. There is no evidence that it has been adopted as the basis of any action on the part of the City, and the City steadfastly maintains that

it is preliminary in nature. Thus, the memorandum is shielded from disclosure by KRS 61.878(1)(j) unless or until it is adopted into final agency action. OAG 02-ORD-52, 2002 Ky. AG LEXIS 48.

KRS 61.878(1)(i), relative to correspondence with a private individual, is reserved for that narrow category of public records that reflects letters exchanged by private citizens and public agencies or officials under conditions in which the candor of the correspondents depends on assurances of confidentiality. Since the police chief is not a private citizen, KRS 61.878(1)(i) does not extend to the memorandum he submitted to the city's mayor and commissioner. OAG 02-ORD-52, 2002 Ky. AG LEXIS 48.

Disclosure of a copy of the list that shows the eligible voters and the record of those eligible voters who cast votes within each of the units whose votes have been counted would allow the employees and the public to validate the election process and to determine that the chosen representative was properly elected by a majority of the eligible employees voting. This public interest outweighs the employee's privacy interest in whether or not he or she voted in the election. OAG 02-ORD-55, 2002 Ky. AG LEXIS 103.

Any records from a school counselor which identify or lead to the identification of a student or a student's parent are privileged and confidential. Hence, these records are exempt from disclosure under the Open Records law. OAG 02-ORD-61, 2002 Ky. AG LEXIS 123.

All records of a school counselor which have been requested and which are not privileged or confidential, for example, statistical information, a photograph of a public building, or documents concerning funding, which do not identify students, should be disclosed. Likewise, photographs of people attending public events or meetings should be disclosed. OAG 02-ORD-61, 2002 Ky. AG LEXIS 123.

Photographs of students performing school work are considered confidential as education records and may be excluded from public inspection if the school system has not taken appropriate steps to designate them as directory information. Photographs of students working with a school counselor or in counseling would be privileged and confidential. OAG 02-ORD-61, 2002 Ky. AG LEXIS 123.

Disclosure of records relating to complaints of misconduct leveled against public employees or officials by other public employees or officials does not constitute a clearly unwarranted invasion of personal privacy, even if the allegations of misconduct are of a personal nature. Instead, they are records in which the public "has a legitimate interest." OAG 02-ORD-75, 2002 Ky. AG LEXIS 131.

Given the expansive language of KRS 344.250(6), the fact that the person seeking access to a record or records obtained by the Commission in discharging its duties under KRS Chapter 344 is the person who originally filed the complaint does not alter the analysis or compel a different result: the records are confidential and may not be disclosed. The fact that federal courts have interpreted similar provisions of the federal EEOC act differently likewise doesn't matter since the state law is not preempted. OAG 02-ORD-76, 2002 Ky. AG LEXIS 18.

Although KRS 61.884 provides that a person is entitled to inspect records concerning himself, the exemptions contained in KRS 61.878 take priority over KRS 61.884. By its own language, KRS 61.884 is subject to the provisions of KRS 61.878, and KRS 61.878(1)(h) exempts records of law enforcement agencies or agencies involved in administrative adjudication from public disclosure where the records identify informants or would harm an agency by their premature release. OAG 02-ORD-77, 2002 Ky. AG LEXIS 54.

Inspection of the lead poisoning reports in the custody of the county board of health serves the public interest by revealing whether the board is discharging its duties relative to the prevention, screening, diagnosis, and treatment of lead poisoning. Whatever the privacy interests of the individuals suspected or found to have lead poisoning, those interests are clearly outweighed by the public's interest in disclosure which is statutorily recognized at KRS 211.902(2). OAG 02-ORD-80, 2002 Ky. AG LEXIS 251.

Applications for the purchase of conservation easements through the Purchase of Development Rights Program do not qualify for exclusion from public inspection as correspondence with private individuals pursuant to KRS 61.878(1)(i), but instead become open records upon submission to the Board. OAG 02-ORD-86, 2002 Ky. AG LEXIS 233.

An arbitration proceeding is generally private and materials presented and opinions expressed before the arbitrator are confidential. These proceedings and materials presented are exempt from disclosure under KRS 61.878(1)(i) and (j), until the arbitrator has made a final determination. OAG 02-ORD-95, 2002 Ky. AG LEXIS 109.

Final audit reports are public documents and are therefore subject to public inspection unless there is a possibility of prospective law enforcement action or administrative adjudication. Audits that fall into the latter category are only exempted from public inspection under KRS 61.878(1)(h) until the enforcement action or administrative adjudication is concluded or a decision is made to take no action. OAG 02-ORD-97, 2002 Ky. AG LEXIS 253.

Random notations made by individuals present at a meeting setting forth opinions, observations, and recommendations which are not adopted as part of final agency action may properly be withheld from public inspection pursuant to KRS 61.878(1)(i) and (j). OAG 02-ORD-99, 2002 Ky. AG LEXIS 254.

Although a police incident report in the hands of the generating law enforcement agency is a record customarily made available to the public upon request, the same record in the hands of the county or Commonwealth's Attorney charged with prosecuting the criminal conduct alleged is permanently shielded from disclosure by KRS 61.878(1)(h). OAG 02-ORD-112, 2002 Ky. AG LEXIS 107.

RFP proposals or portions thereof, that contain confidential or proprietary information, the disclosure of which would permit an unfair advantage to competitors, may properly qualify for exclusion under KRS 61.878(1)(c)1. The bidding companies are in the best position to assess the confidential and proprietary nature of the information submitted in response to the RFP process and whether its release would permit an unfair commercial advantage to their competitors; their arguments clearly demonstrate that the withheld information and records fall within those types of records which qualify for exemption. OAG 02-ORD-125, 2002 Ky. AG LEXIS 258.

Because videotapes of students in a school classroom are educational records, and because all educational records are exempt from disclosure under the Open Records Act, and since the exemptions for the Open Records Act apply based on the records rather than the status of the requester, the school district properly denied the request of a teacher for access to videotapes made of her own classroom pursuant to KRS 61.878(1)(k) and (l). OAG 02-ORD-132, 2002 Ky. AG LEXIS 160.

Under the authority of KRS 61.878(1)(i) and (j), the department properly denied an inmate's requests for a copy of any letters submitted to the Parole Board relative to the inmate's prospects of parole, as the department's supplemental response indicated that none of the requested records were adopted as part of the Parole Board's decisions concerning him. OAG 02-ORD-138, 2002 Ky. AG LEXIS 261.

The County Judge/Executive improperly withheld from disclosure a former county employee's job application, complaints filed against her, records documenting final action on these complaints, including the decision to take no action, and records reflecting her termination or final employment status. OAG 02-ORD-140, 2002 Ky. AG LEXIS 162.

With regard to the minutes of the committee meetings for which the University issued a blanket denial on the basis that "the meetings of these bodies are conducted in closed session," this is not a legally sufficient basis for withholding the minutes of meetings which might also reflect the call to order, the presence of a quorum, the names of the members present, and to which nonexempt records might be appended, such as complaints directed to the Grievance Committee. Such entries in the minutes, and records appended to the minutes, do not automatically qualify for exclusion from public inspection. OAG 02-ORD-142, 2002 Ky. AG LEXIS 74.

KRS 189.635(5), in tandem with KRS 61.878(1)(l), requires that a public agency deny a request for copies of accident reports not submitted by parties to the accident, the parents or guardians of a minor who is party to the accident, the insurers of any party who is the subject of the report, the attorneys of the parties, and news gathering organizations "solely for the purpose of publishing or broadcasting the news." This specific confidentiality provision overrides the general rule of openness mandated by the Open Records Act. OAG 02-ORD-155, 2002 Ky. AG LEXIS 150.

An occupational safety and health compliance officer's worknotes generated in the course of an investigation of a work site, and containing preliminary drafts of possible citations, along with the compliance officer's observations and opinions, may properly be withheld under authority of KRS 61.878(1)(i) and (j). OAG 02-ORD-157, 2002 Ky. AG LEXIS 152.

Employee interview statements that were obtained by a compliance officer under authority of KRS 338.101(1)(a), and that are located in the investigative file, are excluded from the mandatory disclosure provisions of the Open Records Act by operation of KRS 61.878(1)(l). OAG 02-ORD-157, 2002 Ky. AG LEXIS 152.

Pursuant to KRS 337.345, in tandem with KRS 61.878(1)(l), the Cabinet is prohibited from releasing the complaint, the name of the complainant, and any information identifying employees contacted by the Cabinet in its investigation, and information secured from inspection of the records, or from the transcriptions thereof, or from inspection of the employer's concerning the violation. OAG 02-ORD-157, 2002 Ky. AG LEXIS 152.

Only those records that were generated by counsel for the Fair Board in the course of defending the complaint the requester filed against the Board with the Kentucky Labor Cabinet, including records generated by counsel relative to her open records requests, and for which adequate measures were taken to insure confidentiality, qualify for exclusion under the privileges. The protection afforded by these privileges extends to records prepared by the Labor Cabinet but attached to privileged attorney-client communications, or records prepared by counsel but directed to the Labor Cabinet, rather than the Fair Board. OAG 02-ORD-161, 2002 Ky. AG LEXIS 209.

The police officer's broad right of access to records relating to him under KRS 61.878(3) must yield to the exclusionary language found in the last sentence of that provision because the record he seeks is an examination related to employment, even though it is an examination for promotion. OAG 02-ORD-168, 2002 Ky. AG LEXIS 192.

The Kentucky Teachers Retirement System members' privacy interest in the nondisclosure of their names and addresses is superior to the nonexistent public interest in disclosure; therefore, the KTRS properly withheld this information pursuant to KRS 61.878(1)(a). Moreover, in addition to KRS 61.878(1)(a), KRS 161.585, in tandem with KRS 61.878(1)(l), require the KTRS to maintain the confidentiality of the KTRS members' names and addresses. OAG 02-ORD-183, 2002 Ky. AG LEXIS 125.

The audio recordings of the witness interviews were made as a method of keeping a more accurate record of the investigation and represented an aid to the memories of both the school investigators and the superintendent. Thus, the audio tapes are in the nature of a tool used in hammering out official action rather than the official action itself, and the School District properly denied the request for the audio tape recordings under authority of KRS 61.878(1)(i). OAG 02-ORD-193, 2002 Ky. AG LEXIS 82.

No matter what the stage or status of the proceedings, the County and Commonwealth's Attorney may invoke the exception set forth in KRS 61.878(1)(h) relative to such activities and endeavors and withhold those materials from public inspection. Even though no full-blown criminal investigation or prosecution was commenced, the disputed record qualifies for exclusion under the cited exception. OAG 02-ORD-194, 2002 Ky. AG LEXIS 173.

Although the County Attorney may have exercised his discretion to release similar documents on earlier occasions, because the exceptions "are a shield and not a shackle," the County Attorney was by no means estopped from exercising his discretion to withhold the disputed record in the instant appeal. OAG 02-ORD-194, 2002 Ky. AG LEXIS 173.

Applying KRS 61.878(5), even if records are exempt from inspection by the general public generally, they should be made available by one agency to another for legitimate governmental purposes. However, KRS 61.878(5) is not a mandatory provision, requiring public agencies to exchange otherwise exempt information, but is instead a matter of agency discretion. OAG 02-ORD-195, 2002 Ky. AG LEXIS 80.

Although the director of Metro Parks could not be characterized as a rank and file public employee, she was not "the individual who was ultimately responsible for the management of the agency she serves," since ultimate authority for the management of the city resides in the mayor, and of the county in the county judge/executive. Thus, the city properly denied the request for copies of her performance evaluations. OAG 02-ORD-197, 2002 Ky. AG LEXIS 211.

As the only individual terminated in the wake of the scandal, the Metro Parks employee did not expressly or impliedly waive his privacy interest in his personnel evaluations by the course of conduct the employee elected to pursue, or the statements he made in interviews with the media. OAG 02-ORD-197, 2002 Ky. AG LEXIS 211.

Records in investigative files remain preliminary unless they are adopted as part of final agency action. Since there was no document reflecting final agency action, the investigative files remain preliminary in nature and are exempt from disclosure, under KRS 61.878(1)(i) and (j). OAG 02-ORD-199, 2002 Ky. AG LEXIS 174.

The Kentucky State Police digital radio run tapes are the functional equivalent of "electronic recordings of general radio traffic of a police agency," which were deemed nonexempt in OAG 89-11 in the absence of a specific showing that they were compiled as an integral part of a specific detection or investigative process, or that the law enforcement agency would be harmed by premature disclosure. OAG 02-ORD-204, 2002 Ky. AG LEXIS 194.

Financial records, such as personal income taxes, audit records, lists of equipment and existing values, and business related tax returns, are records of a private corporation generally recognized as confidential or proprietary and constitute the "inner workings" of the company, the release of which could unfairly advantage competitors. Accordingly the Cabinet properly withheld disclosure of the financial records under authority of KRS 61.878(1)(c). OAG 02-ORD-209, 2002 Ky. AG LEXIS 69.

Although the Kentucky State Police is a law enforcement agency, the disputed records, identifying officers currently assigned to the Executive Security detail, are not records "compiled in the process of detecting and investigating statutory or regulatory violations" and are therefore not exempt from disclosure. OAG 02-ORD-211, 2002 Ky. AG LEXIS 270.

Since the FBI requested that the Grand Jury subpoenas not be disclosed, the agencies properly denied the requests under authority of KRS 61.878(1)(h), even though the document in question was not prepared by the agencies in their normal course of business, but were Federal Grand Jury subpoenas compiled by the FBI in pursuing its ongoing investigation. To allow the requester access to a record indirectly which would not be available directly from the FBI negates the statutory exemption set forth in KRS 61.878(1)(h). OAG 02-ORD-215, 2002 Ky. AG LEXIS 63.

Since Federal Rule of Criminal Procedure 6(e), in tandem with KRS 61.878(1)(k), mandate nondisclosure of the federal grand jury subpoenas, the agency properly denied the request for inspection. OAG 02-ORD-220, 2002 Ky. AG LEXIS 271.

A private donor's desire for anonymity often outweighs the public's interest in disclosure; although the amount of pledges, contributions, or donations to the parks board must be disclosed, the names and addresses of the private donors could properly be withheld under authority of KRS 61.878(1)(a). OAG 02-ORD-221, 2002 Ky. AG LEXIS 196.

Although the complainants' privacy interest in their names, addresses, course of medical treatment, prescriptions, and other such sensitive information that is personally identifiable or otherwise relates to their diagnosis and treatment, warrants protection under KRS 61.878(1)(a), this protection does not extend to the treating doctor, the nature of the complaints made against him, and the agency's response thereto. Pursuant to KRS 61.878(4), sensitive information relating to the complainants may be redacted, but the remainder of these complaints, as well as records reflecting the agency's final disposition of these complaints, must be disclosed. OAG 02-ORD-222, 2002 Ky. AG LEXIS 156.

Since the Department is currently conducting an inquiry into the matter and exploring the remedies that might be available to it, may of the records in the Department's file consisting in large part of written and email communications between the Department, local school districts and officials, and various law enforcement agencies, and records forwarded to the Department from the local districts that relate thereto, fall squarely within the parameters of KRS 61.878(1)(i) and (j). OAG 02-ORD-224, 2002 Ky. AG LEXIS 179.

Although allegations of sexual harassment may be of a very personal nature, the privacy interests implicated do not necessarily trump the public's right to know if their public servants have filed, or are the targets of, sexual harassment complaints, and if the agency properly responded to those complaints. OAG 02-ORD-231, 2002 Ky. AG LEXIS 70.

Where the agency has decided the final payment methodology, all other projected financial data, opinions related thereto, and analyses thereof are rejected. Those preliminary emails, memoranda, charts and other documents that represent the rejected numerical calculations, financial projections, opinions, formulations, and recommendations did not forfeit their preliminary characterization and were properly withheld pursuant to KRS 61.878(1)(i) and (j). OAG 02-ORD-245, 2002 Ky. AG LEXIS 216.

A request for access to a personnel file requires no greater degree of specificity than any other open records requests, and that the agency must therefore "determine what is and is not subject to Open Records." Pursuant to KRS 61.878(4), the agency must disclose the nonexcepted records and identify, in writing, any responsive records withheld, cite the statute(s) authorizing the withholding, and briefly explain how the statute applies to the record withheld. OAG 03-ORD-12, 2003 Ky. AG LEXIS 165.

Because the surveillance tape was not actively, specifically, intentionally, and directly compiled as an integral part of a specific detection or investigation process, and because the professed harm that would flow from premature disclosure consists of little more than a bare claim, KRS 61.878(1)(h) does not authorize nondisclosure of these records. Accordingly, the City improperly withheld disclosure of the requested surveillance tape. OAG 03-ORD-17, 2003 Ky. AG LEXIS 179.

Because the requester is a public agency employee, and because the investigative report of her complaint against the doctor relates, in part, to her, she is entitled to inspect and receive a copy of those portions of the report relating to her complaint and interview by virtue of KRS 61.878(3), even though the report did not lose its preliminary nature. OAG 03-ORD-30, 2003 Ky. AG LEXIS 101.

The County Clerk's reliance on KRS 61.878(1)(a) as the basis for denying access to the voter assistance forms identified in the request was, with the exception of the protection it extends to social security numbers appearing on those forms, misplaced. The County Clerk should copy the voter assistance forms to which the requester requested access and permit him to inspect those copies after redacting the social security numbers appearing thereon. OAG 03-ORD-34, 2003 Ky. AG LEXIS 132.

The communications at issue were made in the application of or in the course of diagnosis and treatment in the Sexual Offender Treatment Program consisting of factual admissions relating to the offense for which the defendant was convicted in October 1989 that he made to employees of the Department assigned to the SOTP. These communications therefore fall squarely within the parameters of the privilege contained in KRS 197.440 and access under the Open Records Act was properly denied. OAG 03-ORD-39, 2003 Ky. AG LEXIS 206.

The Justice Cabinet did not meet its statutory burden of proof in sustaining the blanket denial of the request. The Cabinet did not identify the documents, or groups of documents, withheld or adequately explain how KRS 61.878(1)(h) or (j) apply to those records. Although the Cabinet may withhold those records which qualify for exclusion under the exemptions, it is obligated to disclose any other nonexempt records and to identify in general terms the records withheld and articulate the reasons for withholding those remaining responsive records in terms of the requirements of the exemptions. OAG 03-ORD-42, 2003 Ky. AG LEXIS 133.

Because the confidentiality provision codified at KRS 15.400(3) does not extend by its express terms to pre-December 1, 1998, psychological examination records, and because the requester was employed in 1992, KRS 15.400(3) does not apply to psychological records in the City's custody that relate to the requester. The requester is entitled to inspect and receive copies of her psychological records under authority of KRS 61.878(3). OAG 03-ORD-43, 2003 Ky. AG LEXIS 187.

The agency improperly relied on KRS 61.878(1)(a), in denying the request to inspect records relating to his son. Where the requester is a student's parent and the records requested relate to that student, generally no privacy interests can reasonably be asserted. OAG 03-ORD-45, 2003 Ky. AG LEXIS 188.

The video recording of the basketball game falls within the definition of an education record for purposes of both FERPA and KFERPA: it contains information directly related to particular students and is maintained by the educational agency or institution; the video was part of the communications course work or extra-curricular activity of the school; and the student commentator in the recording was readily identifiable by his voice and the tape served as the basis by the school in disciplining the student for his communications activity. Thus, the School District properly denied the request on the basis that release of an education record containing personally identifiable information of a student is prohibited by FERPA and KFERPA, incorporated into the Open Records Act by operation KRS 61.878(1)(k) and (l). OAG 03-ORD-49, 2003 Ky. AG LEXIS 135.

KRS 61.878(4) applies to all public records in which exempt and nonexempt information is commingled, including those qualifying for partial exemption under KRS 61.878(1)(c)1. Because records submitted by private entities to the Riverport

may contain both excepted and nonexcepted material, the public agency asserting the right to withhold the excepted material is obligated to separate it and make the nonexcepted material available for examination at the time the request is tendered. OAG 03-ORD-64, 2003 Ky. AG LEXIS 200.

The redaction of exempt information from an existing record or database does not create a new record. OAG 03-ORD-64, 2003 Ky. AG LEXIS 200.

The Open Records Act does not allow public records to be exempt from disclosure by contract. Accordingly, the Riverport's argument that it could withhold certain information in the contracts under a confidentiality agreement alone is misplaced. If they are exempt from disclosure, it must be under the authority of a statutorily recognized exemption, such as KRS 61.878(1)(c)1., or other applicable exception set forth in KRS 61.878(1). OAG 03-ORD-65, 2003 Ky. AG LEXIS 22.

Because the investigation into the teacher's conduct is not ongoing, because she is a public agency employee within the meaning of KRS 61.878(3), and because the disputed record, in its entirety, relates to her, she is entitled to inspect and copy that record in its entirety. However, the County Public Schools may redact student and parent names from the disputed document on the basis of the Family Educational Rights and Privacy Act, 20 USCS § 1232g, and its state counterpart, KRS 160.700, et seq., which restrict access to student education records absent parental consent. OAG 03-ORD-68, 2003 Ky. AG LEXIS 256.

Although the requester has established that she has "relative placement" of at least one of her grandchildren, she has not established that she is the children's custodial parent or legal guardian within the meaning of KRS 620.050(5)(b) or that she otherwise falls within one of the remaining statutorily recognized classifications. A letter prepared by a social worker does not invest her with the status of custodial parent or legal guardian. Nor has she produced a court order directing disclosure of the disputed records to her. Insofar as none of the criteria found in KRS 620.050(5) are satisfied, the requester is not entitled to receive a copy of those records pursuant to KRS 61.878(1)(l). OAG 03-ORD-70, 2003 Ky. AG LEXIS 6.

Employee interview statements that were obtained by a compliance officer under authority of KRS 338.101(1)(a), and that are located in the investigative file, are excluded from the mandatory disclosure provisions of the Open Records Act by operation of KRS 61.878(1)(l). OAG 03-ORD-72, 2003 Ky. AG LEXIS 108.

Both records at issue constitute an "education record," maintained by the school as part of a student's educational activity and disciplinary record. One was an e-mail from the principal of the school to the superintendent of the County Schools and the other was a Student Behavior Referral form, containing both the teacher's and the principal's reports on the incident and identifying the student. They both describe the details of the incident involving the student. OAG 03-ORD-78, 2003 Ky. AG LEXIS 60.

Because KRS 229.121 expressly prohibits the issuance of a license to participate in any professional boxing or wrestling match or exhibition to persons under eighteen years of age, the Athletic Commission improperly redacted the date of birth in the record. Access to this item of information enables the public to verify that the Commission is uniformly enforcing the minimum requirements for licensure, thereby advancing the public's right to know. Acknowledging that an individual's date of birth is personal information, disclosure of the information does not constitute a clearly unwarranted invasion of personal privacy because the public's interest in regulation is, in this case, superior to the privacy rights of the applicant for licensure. OAG 03-ORD-80, 2003 Ky. AG LEXIS 222.

The Athletic Commission has "effectively promoted the public interest in regulation" by disclosing the portions of the participant's application, and the Commission properly redacted her height and weight. The public's interest in insuring that the Commission properly monitors the height and weight of licensed wrestlers, which is *de minimum* at best, is inferior to the wrestler's privacy interest in his or her height and weight. OAG 03-ORD-80, 2003 Ky. AG LEXIS 222.

Eastern Kentucky University's reliance on KRS 61.878(1)(a) in denying a request for copies of the letter of application for the position of president and all supplementary materials submitted with the application, including a resume or curriculum vitae, and letters of recommendation, was misplaced since the specific candidate publicly confirmed that he was an applicant for the position of president at EKU; EKU was foreclosed from invoking the exception in support of its denial of the request. OAG 03-ORD-84, 2003 Ky. AG LEXIS 203.

The language of KRS 205.796 and KRS 403.211(11) is clear on its face: they proscribe disclosure of any information received or transmitted in cases administered by the Cabinet, notwithstanding the fact that some of that information is accessible through court records, unless the requester can demonstrate that he or she otherwise qualifies for access to the records under KRS 205.175 or another provision of KRS Chapter 205. The Cabinet is strictly prohibited by the language of these provisions from disclosing the information in an Open Records request. OAG 03-ORD-90, 2003 Ky. AG LEXIS 62.

Since the requester is an employee of the Board of Education and that the document at issue relates to her allegations made to the Superintendent, the record, although preliminary to and not adopted as part of the Superintendent's final determination, relates to the requester and the application of KRS 61.878(3). This mandatory stricture overrides any otherwise applicable exemption, including KRS 61.878(1)(i) and (j), to compel disclosure. Accordingly, the agency should therefore make immediate arrangements for the requester to review the record. OAG 03-ORD-118, 2003 Ky. AG LEXIS 172.

Release of the records containing the information requested relating to the pull-tab games would affect the security and integrity of the games by enabling the requester to "decode" and obtain unfair advantage in playing those games. Accordingly, the KLC properly relied upon KRS 154A.040(1)(c), in tandem with KRS 61.878(1)(l), in denying the requests. OAG 03-ORD-119, 2003 Ky. AG LEXIS 225.

The list of County students awaiting enrollment in the school is a record that consists of harmless directory information which does not implicate student and family privacy interests, and which is similar, if not identical, to information the Board previously disclosed in response to another open records request. Under these circumstances, the board's invocation of 20 USCS § 1232g and KRS 160.700, et seq., is legally unsupportable. OAG 03-ORD-120, 2003 Ky. AG LEXIS 66.

Despite the status as the attorney representing a defendant in the appeal of his criminal conviction, the requester stands in the same shoes as any other open records requester under KRS Chapter 61, and KRS 17.175(4) bars her access to "records produced from the samples" collected for DNA testing, including her client's DNA profile record and report, the technician's handwritten notes relating thereto, control sample report, and record and report in the Casework and Convicted Offender Indexes. OAG 03-ORD-126, 2003 Ky. AG LEXIS 208.

Since the disputed records are not records confidentially disclosed to the Authority or required by the Authority to be disclosed to it, within the meaning of KRS 61.878(1)(c)1., but are instead records generated by the Authority and thus the Authority's own records to which the protection afforded by KRS 61.878(1)(c)1. does not extend, the Authority improperly relied on KRS 61.878(1)(c)1. in denying the open records request to review the contracts, notwithstanding that the contracts contain confidentiality provisions. OAG 03-ORD-129, 2003 Ky. AG LEXIS 189.

The Board must disclose the national and state criminal history background checks, required by KRS 160.380 as a condition of employment, that are located in the personnel file. Given the compelling public interest in confirming that school employees charged with the supervision and education of our students are of good character, the absence of any statutory restriction on access, and the failure of the Board to articulate a specifically protected privacy interest relative to these records, their disclosure does not constitute a clearly unwarranted invasion of personal privacy within the meaning of KRS 61.878(1)(a). OAG 03-ORD-141, 2003 Ky. AG LEXIS 209.

Because the School District has not implemented the statutory mechanism for designating any information directly relating to its students as directory information, the School District properly denied the request. OAG 03-ORD-146, 2003 Ky. AG LEXIS 70.

The public's interest in monitoring how the Crime Victims Compensation Board discharges its duty to hear and determine all matters relating to claims for compensation does not outweigh the victim's privacy interest in avoiding the disclosure of the details of a traumatic rape incident; because CVCB has promoted the public's right to know how it resolved this particular claim by disclosure of its entire file with the exception of specific graphic and detailed reports, disclosure of those documents would do little to further the citizens' right to know what CVCB is doing and would not in any real way subject agency action to public scrutiny. OAG 03-ORD-153, 2003 Ky. AG LEXIS 261.

Under the express terms of KRS 209.140, the Cabinet must withhold all information acquired as a result of an investigation conducted pursuant to that chapter unless the requester can demonstrate that he or she falls within one of the excepted categories codified at KRS 209.140. Neither an executrix or a representative of the alleged abused or neglected or exploited person fall within an excepted category set forth in KRS 209.140. Thus, the Cabinet properly denied the request. OAG 03-ORD-194, 2003 Ky. AG LEXIS 145.

Cabinet for Health and Family Services violated the Open Records Act in denying administratrix's request for a copy of investigative report prepared by the Cabinet following the death of the administratrix's mother in a nursing home; OAG 03-ORD-194 overruled. OAG 06-ORD-048, 2006 Ky. AG LEXIS 56.

The records in dispute are not maintained by KSU's law enforcement unit, and therefore do not qualify as records of a law enforcement unit within the meaning of the exceptions in 20 USC § 1232g(a)(4)(B)(ii) and 34 CFR § 99.8(b)(1)(i), (ii), and (iii). This is true notwithstanding the fact that some of those records were originally created by KSU's law enforcement unit for, arguably, a law enforcement purpose. When KSU's law enforcement unit provided copies to the University for disciplinary proceedings, those copies became "education records" subject to the nondisclosure provisions of FERPA. OAG 03-ORD-201, 2003 Ky. AG LEXIS 176.

Because the agency sharing provision codified at KRS 61.878(5) is a matter of agency discretion, the Fiscal Court and dispatch center properly elected to treat the request from the County investigator as it would treat any other requester under the Open Records Act in according him the same treatment as the public generally. Though his request may have been submitted in the furtherance of a legitimate governmental need, the agencies did not violate the Open Records Act in according him the same treatment as the public generally. OAG 03-ORD-211, 2003 Ky. AG LEXIS 266.

Since statutory bases may exist for denying access to individual 911 calls made to a dispatch center, including KRS 61.878(1)(a) and KRS 61.878(1)(h), and in the light of the demonstrated difficulties associated with reviewing over 17,000 hours of audio tapes to insure adequate protection of the privacy and law enforcement interests implicated as well as the technological impediments the agencies describe, the agencies properly denied the request on the basis of KRS 61.872(6). OAG 03-ORD-211, 2003 Ky. AG LEXIS 266.

By enacting KRS 237.110(8), the General Assembly expressly restricted disclosure of the public records requested to "hard copy form only." Since KRS 61.878(1)(l) exempts from disclosure public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, the Kentucky State Police properly denied the request to produce the requested list of names of concealed permit holders in electronic format. OAG 03-ORD-222, 2003 Ky. AG LEXIS 80.

The Detention Center failed to meet its burden in establishing that the requested records were exempt under KRS 61.878(1)(h), and thus, improperly denied access to the records. The agency failed to establish that (1) the requested dispatcher's log relating to the identified radio transmissions was compiled as an integral part of a specific investigation, and (2) failed to establish that premature disclosure of the radio transmissions would "harm" the ongoing law enforcement action. OAG 03-ORD-226, 2003 Ky. AG LEXIS 83.

In denying the requester's access to a KASPER report, the Cabinet for Health Services acted pursuant to KRS 218A.202(6), outlining who and what may have access to KASPER reports and under what circumstances access is to be given, and in accordance with KRS 218A.202(8), which states, "The data and any report obtained therefrom shall not be a public record." The requester, as an individual, does not fit within the limited numbers of people who can receive KASPER reports, and the General Assembly has specifically exempted records of the KASPER program from access under the Kentucky Open Records Act. OAG 03-ORD-227, 2003 Ky. AG LEXIS 148.

The Department for the Blind, working in tandem with the two companies, have established that the information in the RFP Proposal was of such a character that disclosure would permit an unfair commercial advantage to competitors of the Department for the Blind and the two companies, and could be properly be withheld from disclosure under KRS 61.878(1)(c)1. OAG 03-ORD-235, 2003 Ky. AG LEXIS 124.

Where the description of legal services in the billing statements contained privileged attorney-client communications and the mental impressions of legal counsel, the agency properly exercised its prerogative to redact information from its attorney billing records that would disclose substantive matters protected by the attorney-client privilege (SCR 3.130(1.6)) and the attorney work product doctrine (CR 26.02(3) and KRE 503), in tandem with KRS 61.878(1)(l). OAG 03-ORD-237, 2003 Ky. AG LEXIS 269.

An agency may not withhold release of attorney billing statements until the pending litigation is ended; attorney billing records are privileged only if their disclosure would reveal confidential communications between the attorney and client and should be available for inspection, subject to possible redactions, even during the existence of pending litigation. OAG 03-ORD-237, 2003 Ky. AG LEXIS 269.

Because the email communication was generated by the Mayor's special counsel for the purpose of providing legal services to "representatives of the client," consisting of the executive director and director of project development for the agency, and members of the Mayor's staff, and since it contained advice on the legal ramification of the inquiry which prompted it, the communication satisfied the first and second parts of the three part test found in KRE 503. The Metro Government properly denied this portion of the open records request. OAG 03-ORD-243, 2003 Ky. AG LEXIS 150.

Based on the decision of the Court of Appeals in *Hines v. Commonwealth, Department of Treasury,* 41 S.W.3d 872, 2001 Ky. App. LEXIS 39 (Ky. Ct. App. 2001), and the fact that an open records related public purpose supports disclosure of the names of licensees appearing in the report required by former KRS 258.185(1), the portion of the former KRS 258.185 report

that identifies the person to whom the animal license was issued must be disclosed. OAG 03-ORD-247, 2003 Ky. AG LEXIS 27.

Although a master list containing the tax payment information requested does not exist, since "logs" containing the amount of payments that have been received exist, no credible argument can be made that such logs do not constitute public records subject to inspection absent an applicable exemption. OAG 04-ORD-10, 2004 Ky. AG LEXIS 156.

Murray State University properly relied on KRS 61.878(1)(i) and (j) in denying the request for records relating to the settlement of *Minger v. Murray State University* that have been, and are being, created in the inchoate period leading up to the execution of the final settlement agreement. OAG 04-ORD-30, 2004 Ky. AG LEXIS 161.

Although the question of whether an invasion of privacy is "clearly unwarranted" is intrinsically situational, and can only be determined within a specific context, the privacy interests of public employees against whom complaints have been leveled or allegations made, and the final agency action relative to those complaints or allegations, are outweighed by the public interest in monitoring agency action. OAG 04-ORD-31, 2004 Ky. AG LEXIS 162.

Conference records containing the information required to be kept by KRS 133.120(1) and other information of a confidential nature that is information about property that constitutes the "affairs of any person" and "affairs of a person's business," as set forth in KRS 131.190(1) and is not of general recordation or routine observation may properly be withheld from disclosure under KRS 131.190(1) and KRS 61.878(1)(*l*). However, information contained in the records that is either publicly recorded in records recognized as being subject to routine public scrutiny, or that may be relatively readily observed from a public street, should be made available for inspection. OAG 04-ORD-38, 2004 Ky. AG LEXIS 195.

The University of Louisville properly relied on KRS 61.878(1)(l), incorporating 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act, and KRS 61.878(1)(a) in denying the request for access to the raw data of doctorate student handwritten survey responses. A determination of what constitutes personally identifiable information in an education record, making a student's identity easily traceable, is a matter of University discretion. OAG 04-ORD-52, 2004 Ky. AG LEXIS 186.

While the University may invoke the exemption in KRS 61.878(1)(a) on behalf of the Coach as a basis for denying the public access to records in its custody relating to the Coach, such as his medical records or records containing personal information such as his home address or social security number, records reflecting the discharge of his official duties, namely coaching the University's football team as reflected in the video tapes of practice, do not qualify for exclusion under KRS 61.878(1)(a). OAG 04-ORD-58, 2004 Ky. AG LEXIS 166.

A recording of student athletes engaged in football practice does not qualify as an education record under FERPA. Because the content of practice tapes is the functional equivalent of the content of game tapes that are regularly broadcast to the public, the University's position with respect to the former is a somewhat perilous, and legally unsupportable, one. OAG 04-ORD-58, 2004 Ky. AG LEXIS 166.

Because any identifying information relating to concealed deadly weapon license holders other than a list naming all CCDW license holders (in hard copy format only) is exempt from disclosure pursuant to KRS 237.110(8), incorporated into the Open Records Act by operation of KRS 61.878(1)(l), the State Police properly relied upon KRS 237.110(8) in denying the request. OAG 04-ORD-60, 2004 Ky. AG LEXIS 216.

The Jefferson County Public Schools cannot properly relied on KRS 61.878(1)(a) in denying requests for billing records from July 2002 to June 2003 for a cell phone issued by JCPS to the Moore Traditional Middle School Principal on the grounds that the billing records would indicate personal telephone calls that have privacy implications. OAG 04-ORD-65, 2004 Ky. AG LEXIS 168.

The city properly relied on KRS 61.878(1)(a) in denying the requester access to "records, lists and financial reports having to do with who asked whom for donations and an accounting of the contributors to the cemetery fund," but only to the extent that those records identify the contributors/donors by name or other personally identifiable information. OAG 04-ORD-66, 2004 Ky. AG LEXIS 48.

The records of the Cabinet for Economic Development relating to the proposals, financial incentives, and negotiations with the relocating corporation are preliminary in nature and were properly withheld under KRS 61.878(1)(i) and (j), as no final agency action was taken. The proposals and incentives offered remain preliminary and inchoate as they were never accepted and no final agreement reached. OAG 04-ORD-81, 2004 Ky. AG LEXIS 94.

The Transportation Cabinet's reliance on KRS 61.878(1)(i) and (j) was misplaced insofar as the requested records formed the basis of the report prepared by Cultural Resource Analysis, Inc., which concluded that the eastern bypass corridor was unsuitable due to the existence of an unavoidable historic site, and that report prompted the FHWA and Transportation Cabinet to remove from consideration early in the design process the eastern bypass corridor alternative in the published Administrative Action Environmental Assessment. OAG 04-ORD-83, 2004 Ky. AG LEXIS 95.

The Transportation Cabinet improperly relied on KRS 61.878(1)(k), authorizing the withholding of "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation," because it failed to cite any applicable federal law or regulation prohibiting disclosure, relying instead on a FHWA Administrative Memorandum, dated September 25, 1985, and directed to Regional Federal Highway Administrators. OAG 04-ORD-83, 2004 Ky. AG LEXIS 95.

Police incident reports, as opposed to investigative files, are not, generally, exempt from public inspection. The Department of Parks' policy relative to nondisclosure of incident reports involving "ongoing and open law enforcement or agency administrative adjudications" conflicts with this well-established line of authority. OAG 04-ORD-104, 2004 Ky. AG LEXIS 32.

Since much of the information the incident report contains has already been made known to the public through news accounts, the Cabinet cannot make an adequate showing that it, or the Kentucky State Police, would be harmed by premature release of the report. However, because page 2 of the report and the second written statement identify witnesses, and contain information that might be used in a prospective law enforcement action, we affirm the Cabinet's denial of access to this portion of the report. OAG 04-ORD-104, 2004 Ky. AG LEXIS 32.

Privacy interest of public employees who have been disciplined for charges of misconduct or exonerated of such charges in the course of their employment is outweighed by the public interest in monitoring agency action. If inherently sensitive records such as sexual harassment complaints must be disclosed, it stands to reason that "actions" against named public employees as well as "leaves and suspensions" are also subject to disclosure. OAG 04-ORD-105, 2004 Ky. AG LEXIS 33.

The Kentucky Commerce Cabinet violated the Kentucky Open Records Act in denying the request for "hard copies of the final presentations" made by advertising agencies in response to a Request for Proposal issued by the Cabinet for an advertising/research agency to consolidate services across cabinet lines and develop a "brand" for the Commonwealth; the requested records do not constitute preliminary drafts, notes, or correspondence with private individuals pursuant to KRS 61.878(1)(i). OAG 04-ORD-125, 2004 Ky. AG LEXIS 102.

The term "intelligence and investigative reports" in KRS 17.150 is broad enough to extend to forensic test result reports. The forensic test result reports may properly be withheld in an Open Records Act request so long as the possibility of further judicial proceedings in this case remains a significant prospect. OAG 04-ORD-129, 2004 Ky. AG LEXIS 104.

Since there is still a pending appellate proceeding with respect to the criminal matter, the open records request for forensic test results is within the scope of KRS 61.878(1)(l) and KRS 17.150(2), as well as KRS 61.878(1)(h), and records and reports generated in the course of the investigation, including the forensic test result reports, remain exempt from disclosure until the appellate proceeding is completed and so long as the possibility of further judicial proceedings in this case remains a significant prospect. OAG 04-ORD-129, 2004 Ky. AG LEXIS 104.

Because the Covington Police Department is not a "covered entity" for purposes of Health Insurance Portability and Accountability Act analysis, records generated by police officers do not contain "protected health information," and such records are therefore not governed by HIPAA's Privacy Rule. OAG 04-ORD-143, 2004 Ky. AG LEXIS 109.

Disclosure of personal information beyond the identities of the crime victim or "involved persons", in this instance addresses and dates of birth, only minimally serves the purposes of the Open Records Act since disclosure of the identity of the victim and "involved persons" is sufficient to allow public scrutiny of the actions of the police department. Consequently, these personal details which are "generally accepted by society" as carrying an expectation of privacy outweigh the minimal public interest in disclosure. OAG 04-ORD-143, 2004 Ky. AG LEXIS 109.

Where Kentucky Retirement System's proof demonstrates that the law firm has been retained by the Board of Trustees to provide legal and business advice, and that the disputed report was generated within the course and scope of that employment, relating directly to the subject matter upon which professional advice was sought, and since the confidentiality of the report has been maintained from its creation to the present, and that its contents have only been shared with the Board during a closed session of that body, KRS properly withheld the report under authority of KRS 61.878(1)(l) and KRE 503. OAG 04-ORD-149, 2004 Ky. AG LEXIS 110.

Whatever the rationale underlying KRS 61.878(1)(h) may be, the protection it affords to records compiled and maintained by county attorneys and Commonwealth's Attorneys pertaining to criminal investigations or criminal litigation is absolute regardless of whether enforcement action is completed or a decision is made to take no action. OAG 04-ORD-153, 2004 Ky. AG LEXIS 188.

The Division of Public Safety, operating as a Public Safety Answering Point for the purpose of receiving 911 calls and dispatching public safety services as appropriate, is not foreclosed from releasing recordings of 911 calls under the narrow prohibition on disclosure of Automatic Location Identification information codified at KRS 65.752(4). Further, KRS 61.878(1)(a) may only be properly invoked where the facts of a specific case warrant invocation, and not as a matter of policy; the facts in this case do not support the denial of the request. OAG 04-ORD-161, 2004 Ky. AG LEXIS 285.

The Kentucky State Police adopted the investigative file at issue as the basis of its final action following the inquiry into the actions of the trooper on the night in question as evidenced by the notations located at the conclusion of the memorandum containing the findings and conclusions of the investigating officer and the express language of the captain's memorandum. Accordingly, the file's preliminary characterization was lost, as was its exempt status. OAG 04-ORD-162, 2004 Ky. AG LEXIS 170.

The Correctional Complex properly relied upon KRS 197.025(1) in its denial of the request for copies of the entry/exit logs, the daily rosters for the security staff, the duty rosters, and the time and attendance records for the security staff. Disclosure of the documents would pose a threat to the security of the institution because disclosure of these records could enable a requester to determine (1) when posts filled by these individuals were either unmanned or in a state of change; and (2) when these individuals may be found in close proximity to the institution for purposes of harassment. OAG 04-ORD-180, 2004 Ky. AG LEXIS 153.

The Cabinet erred in adopting a policy of blanket exclusion relative to the responsive e-mails and any unidentified responsive records on the basis of the attorney-client privilege. The Cabinet has provided only a bare assertion in support of its claim that unidentified responsive records, including e-mails, constitute privileged attorney-client communications, and has not identified the records or groups of records withheld or adequately explained how the privilege applies to those records as required by KRS 61.880(1) and KRE 503. OAG 04-ORD-187, 2004 Ky. AG LEXIS 206.

The notes of the individual committee members which formed the basis of the Cabinet's final action are subject to inspection. The Cabinet must provide the requester with copies of any existing notes which are responsive to the request, even though the content of those notes has been revealed indirectly with the disclosure of the group RFP score sheets. However, the Cabinet properly withheld any existing notes which were not adopted as a basis for the Cabinet's final action. OAG 04-ORD-187, 2004 Ky. AG LEXIS 206.

The incident reports are matters of public interest and are public records and the university police has a statutory duty to release them for public inspection in full and without redactions absent a particularized showing of a heightened privacy interest in the individual report predicated not on the expressed wishes of the complainant, but on specific factors. Absent that particularized showing, the public has a legitimate interest in the incident reports and disclosure of the information they contain transgresses only minimally upon the privacy of the individuals who are the subjects of those reports. OAG 04-ORD-188, 2004 Ky. AG LEXIS 173.

A petition signed by individuals who support the sale of the city owned property, does not qualifies as correspondence with a private individual. It is a public declaration of support to which these individuals affixed their signatures. It therefore cannot be characterized as "letters exchanged by private citizens and public agencies or officials under conditions in which the candor of the correspondents depends on assurance of confidentiality," but is in the nature of a communication upon which the commission is expected to rely in taking action relative to the sale of the property. OAG 04-ORD-192, 2004 Ky. AG LEXIS 207.

The University presents no evidence that donations made to it by BellSouth have been conditioned upon nondisclosure of records identifying the donor or the amount donated, or any other evidence that would support a claim that the corporation's privacy interests outweigh the public's interest in monitoring the University's receipt of corporate donations and in gauging the extent to which these donations are tied to the exercise of corporate influence. The University has adduced no proof, beyond a bare allegation, that the protections afforded by KRS 61.878(1)(a) should be extended to BellSouth as a corporate donor. OAG 04-ORD-197, 2004 Ky. AG LEXIS 208.

KRS 197.025(2) necessarily applies to Corrections Corporation of America. Although the statute does not specifically provide that private providers such as CCA and facilities under its jurisdiction are not required to comply with such requests, to hold otherwise would yield the absurd result that inmates housed at private correctional facilities under the jurisdiction of CCA or other private providers would be able to access records which inmates housed at state facilities under

the jurisdiction of the Department of Corrections are unable to access. OAG 04-ORD-205, 2004 Ky. AG LEXIS 229.

Because the City has not yet acquired all of the properties to be acquired in each project and is in the process of negotiations or is in litigation involving the City's various downtown redevelopment projects, the records and information pertaining to the acquisitions and relocation assistance payments of each uncompleted City project are exempt from disclosure and may properly be withheld under authority of KRS 61.878(1)(f) until a particular project is completed. OAG 04-ORD-207, 2004 Ky. AG LEXIS 176.

The University has not met its burden of establishing that the e-mail inquiry from a reporter of the *Kentucky Kernel* constituted "correspondence with private individuals"; this e-mail does not qualify for exclusion from disclosure under KRS 61.878(1)(i). Accordingly, unless the University can establish that all or any part of the e-mail qualifies for exclusion under another applicable exception in KRS 61.878(1), it must be made available for inspection. OAG 04-ORD-226, 2004 Ky. AG LEXIS 82.

Where the underlying criminal case remains open at the request of the Commonwealth's Attorney because the defendants have indicated that they are actively considering an RCr 11.42 motion based on ineffective assistance of counsel, the case is within the scope of KRS 61.878(1)(l) and KRS 17.150(2), as well as KRS 61.878(1)(h) as construed in *Skaggs v. Redford,* and audio and video taped interviews with the participants in the criminal act remain exempt from an open records request until prosecution is completed. OAG 04-ORD-234, 2004 Ky. AG LEXIS 36.

Although personal notes taken at a meeting might qualify for exclusion from inspection by the public generally, pursuant to KRS 61.878(1)(i) and possibly (1)(a), such notes do not qualify for exclusion from inspection by the individual public employee who is the subject of those notes. Because they relate to the employee the notes must be released to her if they exist in the assistant superintendent's files or elsewhere within the school system. The school system must extend its search beyond the personnel file and produce for her inspection any responsive records that search yields regardless of their "preliminary" or "private" character. OAG 04-ORD-242, 2004 Ky. AG LEXIS 278.

Since the Athletic Directors of the public schools are public employees, not private citizens, correspondence between them and the Kentucky High School Athletic Association relating to their positions as athletic directors would not be exempt from disclosure under KRS 61.878(1)(i). OAG 04-ORD-244, 2004 Ky. AG LEXIS 83.

The implied confidentiality of polygraph examinations and materials related thereto, found in 502 KAR 20:020 Section 4(2), coupled with the unreliability of the examinations and the previously recognized privacy interest in the examinations, support the Department's denial of the request, notwithstanding the fact that the requester is apparently the mother of the juvenile who was the subject of the sexual abuse investigation of which this polygraph examination was a part. OAG 04-ORD-245, 2004 Ky. AG LEXIS 37.

Where an inmate receives a disciplinary report for unauthorized use of drugs, and receives a copy of the internal chain of custody form for collection of the urine sample and the laboratory chain of custody forms, to the extent the back pages of original urinalysis chain of custody documentation contains information that is not addressed to or does not specifically refer to an inmate, the Department of Corrections is authorized to except those pages from disclosure to inmates under KRS 61.878(1)(*l*) and KRS 197.025(2). OAG 04-ORD-248, 2004 Ky. AG LEXIS 116.

The agency erred in characterizing employee timesheets, resumes, applications for employment, complaints, reprimands, disciplinary records, salary histories, letters of resignation, and termination letters as non-public records. Any and all portions of such records relating to an individual's public employment are open records, and must be made available for inspection by the public upon request. OAG 04-ORD-251, 2004 Ky. AG LEXIS 132.

Under the express terms of KRS 342.229(1), the Department must withhold all records that personally identify an individual alleging a work related injury or occupational disease unless the requester can satisfy the commissioner of his interest in the records and the right to inspect them. Since the evidence does not indicate that the requester has presented to and satisfied the Commissioner of his interest in the records and his right to inspect them, the Department properly withheld access to the records under authority of KRS 61.878(1)(l) and KRS 342.229(1). OAG 04-ORD-252, 2004 Ky. AG LEXIS 279.

Documents tendered as part of competitive sealed bidding become open public records at the time the bids are opened, even if the bids are rejected. Public disclosure of bid documents associated with a competitive sealed bid cannot be delayed until the contracting public agency determined whether to move to competitive negotiation, and if a determination is made to proceed into competitive negotiation, the original bid documents cannot be considered part of the negotiation process and remain closed until a contract is awarded or negotiations are cancelled. OAG 05-ORD-001, 2005 Ky. AG LEXIS 147.

Portions of the Uniform Offense Report may be withheld where specific harm is shown, but blanket nondisclosure of page two of the report is impermissible. The police department may redact those portions of page two of the report that are categorized under the headings "Synopsis," "Modus Operandi," "Accused," "Suspects," "Witnesses," "Evidence and How Marked," "Evidence Disposition," and "Attachments," but only if disclosure of those entries would reveal the identities of informants not otherwise known, or compromise the investigation or prosecution of a case, and only after it advises the requester, in writing, that the request is partially denied on the basis of KRS 61.878(1)(h) and/or KRS 17.150. OAG 05-ORD-003, 2005 Ky. AG LEXIS 266.

Court Appointed Special Advocate (CASA) is not a "public agency" within the meaning of KRS 61.870(1), and is therefore not bound by the provisions of the Open Records Act. In addition, CASA officials and volunteers must keep confidential all information contained in records of the type requested except in conferring with or reports to the court pursuant to KRS 620.505(8), incorporated into the Open Records Act by virtue of KRS 61.878(1)(l). OAG 05-ORD-004, 2005 Ky. AG LEXIS 148.

Because an itinerary is functionally equivalent to the ledgers, calendars, and/or schedules adjudged exempt in *Courier-Journal v. Jones,* Ky. App., 895 S.W.2d 6, 1995 Ky. App. LEXIS 58 (1995), the Office of the Governor did not violate the Open Records Act in denying the request for the travel itineraries for the Governor's trade mission to Europe. OAG 05-ORD-018, 2005 Ky. AG LEXIS 150.

County jailer's statement that requested grievances "would contain information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" failed to adequately substantiate the privacy interests of inmates filing grievances, and did not meet the requirements of KRS 61.878(1)(a). OAG 05-ORD-24, 2005 Ky. AG LEXIS 167.

An internal memorandum from a subordinate to a superior containing a frank discussion regarding the fleet services and the utilization of both new and old operational processes in the operation and maintenance of the mobile fleet of a city police department included opinions expressed, and recommendations and criticisms made about agency practices and it could be properly withheld from disclosure under KRS 61.878(1)(j). OAG 05-ORD-27, 2005 Ky. AG LEXIS 144.

In regard to a request for records relating to the removal of selected political signs from the dedicated right-of-way by a county public works department, the negligible privacy interest implicated by disclosure of the complainant's name was clearly inferior to the public's interest in ascertaining whether possible political pressures affected the agency's performance of its public duties; the offense to personal privacy which would result from disclosure of the name was outweighed by the benefit to the public, and the "clearly unwarranted" language in KRS 61.878(1)(a) tipped the scales in favor of disclosure. OAG 05-ORD-30, 2005 Ky. AG LEXIS 250.

The Department of Corrections may properly withhold the requested personnel record of a deputy warden on the basis of KRS 197.025(1) assuming it satisfies its burden of proof by establishing that disclosure would constitute a threat to the security of any inmate, the staff of the institution, or any other person, and promptly notifies the requester in writing of its decision. OAG 05-ORD-34, 2005 Ky. AG LEXIS 130.

To the extent an offer to purchase made to a property owner whose property has been the subject of condemnation actions contains information that would reflect the amount or contents of a real estate appraisal, that information could clearly be withheld from disclosure under authority of KRS 61.878(1)(f). However, other information in the offer, that would inform the public of what is being done in regards to a project and that does not disclose to the public the appraised values or the contents of the appraisal or the terms and conditions of a particular offer, would be subject to disclosure. OAG 05-ORD-43, 2005 Ky. AG LEXIS 269.

Request for copies of documents, correspondence and responses related to the Kentucky High School Athletic Association's survey of non-public high schools was properly denied because the requested records were preliminary in nature, and were properly characterized as drafts which had not been adopted as a basis for final action. OAG 05-ORD-48, 2005 Ky. AG LEXIS 232.

The Office of the Inspector General and Adult Protective Services Branch of the Cabinet for Health and Family Services did not violate the Kentucky Open Records Act in denying identical requests submitted by an attorney on behalf of a hospital for copies of complaints made related to the treatment of a deceased patient while admitted at the hospital. The Cabinet, a hybrid entity under the Health Insurance Portability and Accountability Act of 1996, fully complied with state and federal law in responding to the requests. The OIG properly denied the attorney's request on the basis of 45 CFR § 164.512(c) in conjunction with KRS 61.878(1)(a), (k) and (*l*), and KRS 194A.060(1). In addition, the APS properly conditioned release of the requested APS records upon completion of the Cabinet's HIPAA compliant form or receipt of a court order in accordance with 45 CFR § 164.512(c) and § 164.508(6)(c)(1). OAG 05-ORD-54, 2005 Ky. AG LEXIS 179.

One year is not an unreasonable time to investigate and/or prosecute a case and, having established that the disputed records consisted of investigative records maintained by a criminal justice agency, the Kentucky State Police did not abuse its discretion in invoking KRS 17.150(2) and KRS 61.878(1)(h) to shield those records from disclosure. OAG 05-ORD-58, 2004 Ky. AG LEXIS 166.

Detention center violated the Open Records Act in failing to treat an inmate's requests for a copy of his MRI results and a copy of what a neurosurgeon prescribed for treatment as open records requests and in refusing to produce the requested records until after the inmate is released based on its security policies and procedures restricting inmate possession of paper products for fire safety reasons. OAG 05-ORD-60, 2005 Ky. AG LEXIS 222.

Lexington Fayette Urban County Government violated the Kentucky Open Records Act in denying the requester access to cancelled checks which are currently maintained by a private agency at the instance of and as custodian on behalf of the LFUCG. OAG 05-ORD-65, 2005 Ky. AG LEXIS 294.

A letter prepared by a public agency employee, an attorney, to opposing counsel in a civil action does not qualify for exclusion as correspondence with a private individual. OAG 05-ORD-72, 2005 Ky. AG LEXIS 207.

The Justice and Public Safety Cabinet properly relied on KRS 61.878(1)(a) in denying that portion of a request for information on an autopsy relating to autopsy photographs. OAG 05-ORD-75, 2005 Ky. AG LEXIS 208.

An inmate request for his "entire" or "complete" inmate file is sufficiently specific and the inmate cannot be required to provide a more specific description. OAG 05-ORD-76, 2005 Ky. AG LEXIS 233.

Because a police department could not establish that requested copies of radio or telephonic transmissions received, sent, or otherwise made on a particular date were "actively, specifically, intentionally, and directly compiled, as an integral part of a specific detection or investigation process," the department failed to satisfy its burden of proof relative to KRS 61.878(1)(h). OAG 05-ORD-78, 2005 Ky. AG LEXIS 234.

Hazard Independent Schools violated the Open Records Act in denying Perry County School District's request for a list of students and their addresses on the basis of KRS 61.878(1)(a) and 20 USCS § 1232g, but properly denied Perry County's request for "information regarding tuition paid by students" on these bases. OAG 05-ORD-81, 2005 Ky. AG LEXIS 175.

A mug shot of a federal prisoner incarcerated in the county jail is a public record within the meaning of KRS 61.870(2) and because the record is not shielded from public inspection by any of the exceptions to the Open Records Act, including KRS 61.878(1)(a) and (k), it must be disclosed. OAG 05-ORD-94, 2005 Ky. AG LEXIS 226.

Police records, are not included among those to which the General Assembly expressly afforded protection by virtue of KRS 61.878(1)(h), OAG 05-ORD-95, 2005 Ky. AG LEXIS 212.

A company that does not receive at least twenty-five percent (25%) of its funding from state or local authority funds, is not a public agency within the meaning of KRS 61.870(1) and therefore it did not violate the Open Records Act in denying an inmate's request for records relating to his urinalysis. OAG 05-ORD-97, 2005 Ky. AG LEXIS 272.

The Personnel Cabinet did not violate the Open Records Act in denying an open records request for the town of residence of a former manager of a state park. OAG 05-ORD-100, 2005 Ky. AG LEXIS 153.

A correctional facility did not violate the Open Records Act in its denial of an inmate's request to inspect his psychological file—mainly the psychological evaluation. OAG 05-ORD-101, 2005 Ky. AG LEXIS 227.

The Kentucky State Police properly invoked KRS 61.878(1)(h), and KRS 17.150(2), incorporated into the Open Records Act by operation of KRS 61.878(1)(l), albeit implicitly, in denying access to the requested investigatory records. OAG 05-ORD-103, 2005 Ky. AG LEXIS 239.

The University of Louisville properly relied on KRS 61.878(1)(a) in withholding the names of private donors to the athletic department but not the amounts donated, and it did not meet its burden of proving personal privacy interests in corporate donations of sufficient weight to overcome the public's interest in disclosure of the identities of two corporate donors that requested anonymity. OAG 05-ORD-104, 2005 Ky. AG LEXIS 107.

The University of Louisville did not violate the Open Records Act in denying access by the Pick-A-Prof company to a "mailing list for the incoming freshman and transfer students" on the basis of KRS 61.878(1)(a). OAG 05-ORD-111, 2005 Ky. AG LEXIS 273.

The Commission on Human Rights violated the Open Records Act in partially denying a request for copies of "notes, incident reports or related documents from any witnesses or

other parties" concerning a particular incident; because the requester is a "public agency employee," the records relate to him, and the subject investigation is apparently not ongoing, he is entitled to copies of the records still at issue by virtue of KRS 61.878(3), regardless of whether those records are preliminary and would otherwise be exempt. OAG 05-ORD-118, 2005 Ky. AG LEXIS 38.

The State Police properly relied on KRS 61.878(1)(m)1.c., d., and e. in denying a reporter's request for records documenting the number of sworn State Police personnel assigned for security and related duties for the landing and departure of Vice President Dick Cheney at Louisville International Airport. OAG 05-ORD-119, 2005 Ky. AG LEXIS 251.

Disclosure of requested public records relating to the airport expansion program andy relocation program operated by the Louisville International Airport was properly denied because 49 C.F.R. Part 24.9(b) constitutes a federal law prohibiting disclosure of the records, and the information contained therein, within the meaning of KRS 61.878(1)(k). OAG 05-ORD-128, 2005 Ky. AG LEXIS 157.

The Motor Vehicle Enforcement Division of the Justice and Public Safety Cabinet violated the Open Records Act in denying a request for "names, addresses and violation information of all CDL class A drivers that have had out of service violations"; the requester is entitled to a copy of the entire database containing the requested information in standard format, and, in the event the Cabinet elects to redact protected information of a personal nature per KRS 61.878(1)(a), it, rather than the requester, must bear the cost of redaction pursuant to KRS 61.878(4). OAG 05-ORD-129, 2005 Ky. AG LEXIS 39.

The Kentucky Transportation Cabinet did not violate the Open Records Act in denying a request, on behalf of an attorney's client, for copies of records reflecting any action taken by the Medical Review Board during a meeting at which it recommended that the client be allowed to take the "one (1) Final Road Test"; the Cabinet merely complied with The Driver's Privacy Protection Act, incorporated into the Open Records Act by operation of KRS 61.878(1)(k), in requiring the attorney to verify his status; any less would constitute a violation of 18 USCS § 2721(b)(13). OAG 05-ORD-131, 2005 Ky. AG LEXIS 40.

Lee Adjustment Center properly denied a request to inspect the records regarding the firing of an officer on the basis of KRS 197.025(1) or, in the alternative, KRS 197.025(2), both of which are incorporated into the Open Records Act by operation of KRS 61.878(1)(*l*). OAG 05-ORD-143, 2005 Ky. AG LEXIS 172.

The Environmental and Public Protection Cabinet, Department of Labor, did not violate the Open Records Act in denying requests for inspection reports, documents, photographs, and/or videos pertaining to inspections at a manufacturing facility and properly redacted information identifying employees pursuant to KRS 338.101(1)(a), incorporated into the Open Records Act by operation of KRS 61.878(1)(l). Further, because the file relating to another inspection contains records that were compiled in the process of detecting statutory or regulatory violations which contain information, the premature disclosure of which could jeopardize a prospective administrative adjudication, the Department properly denied a request as to those records on the basis of KRS 61.878(1)(h). OAG 05-ORD-168, 2005 Ky. AG LEXIS 231.

The Kentucky Personnel Cabinet did not meet its burden of establishing that disclosure of the level of access of each person in state government with CICS privileges would result in a "reasonable likelihood of threatening the public safety by exposing a vulnerability" in protecting against a terrorist act, and thus, violated the Open Records Act in denying access to those records under KRS 61.878(1)(m)1.f. OAG 05-ORD-175, 2005 Ky. AG LEXIS 174.

County board of education properly relied upon KRS 61.878(1)(a) in redacting identifying information of the complainants, potential witnesses, and uninvolved individuals from records provided to the requester relating to investigations into the alleged misconduct of the school superintendent. OAG 05-ORD-177, 2005 Ky. AG LEXIS 48.

Louisville Metro Planning and Design Services improperly relied on KRS 61.878(1)(d), (i), and (j) in denying a request for public records "which pertain to any preapplication for a zoning change or a conditional use permit or to any preapplication or concept plan for a major subdivision and which are related to any property in Louisville and Jefferson County, Kentucky. OAG 05-ORD-179, 2005 Ky. AG LEXIS 299.

To the extent that the contents of a letter sent to elected congressional officials from a county judge/executive regarding the county sheriff's office domestic violence unit related to the sheriff, his office, and his employees, he and his employees were entitled to inspect and obtain a copy of it. The mandatory stricture found at KRS 61.878(3) overrides any otherwise applicable exception, including KRS 61.878(1)(j), to compel disclosure of the letter and supporting documentation. OAG 05-ORD-181, 2005 Ky. AG LEXIS 188.

The Office of the Governor improperly relied on executive privilege and KRS 61.878(1)(a), (i), and (j) in partially denying a journalist's request for copies of emails sent to and from a particular state government email address because the Office of the Governor failed to meet its burden of proof. OAG 05-ORD-185, 2005 Ky. AG LEXIS 93.

The Education Cabinet properly relied on KRS 341.190 and KRS 151B.280(3), incorporated into the Open Records Act by operation of KRS 61.878(1)(l), in denying a request to inspect and copy decisions of the Unemployment Insurance Commission that relate to the issue of who is considered to be a employer for purposes of having to pay state unemployment insurance tax. OAG 83-405 is overruled on the basis of subsequent amendments to the law. OAG 05-ORD-186, 2005 Ky. AG LEXIS 160.

An industrial development corporation erred in redacting portions of the minutes from regular public meetings provided to requester regardless of whether the material would otherwise be removed from application of the Open Records Act pursuant to one or more of the exemptions in KRS 61.878(1) or could have properly been discussed during a closed session. OAG 05-ORD-209, 2005 Ky. AG LEXIS 162.

An email retained in the Office of the Governor that was a communication from one official to another seeking confirmation that an existing policy was being properly implemented did not qualify for exemption from disclosure under KRS 61.878(1)(j) since it was devoid of any subjective expressions of opinion, recommendation or policy formulations. OAG 05-ORD-210, 2005 Ky. AG LEXIS 55.

The Environmental Public Protection Cabinet, Division of Employment Standards, did not properly rely on KRS 61.878(1)(h) in denying a request for a copy of the documentation provided bycompanies against which the requester filed his prevailing wage complaint. OAG 05-ORD-215, 2005 Ky. AG LEXIS 56.

Under the authority of KRS 61.878(1)(l), in tandem with KRS 311.377, Child Watch Children's Advocacy Center, Inc., as a specialized children's service clinic, properly denied a request for peer review records and records developed by it in providing its services. OAG 05-ORD-220, 2005 Ky. AG LEXIS 287.

The Kentucky State Police violated the Kentucky Open Records Act in denying the request of an applicant for employment for copies of all paperwork prepared in his prospective hiring because KRS 61.878(3) expressly applies to applicants for public employment such as the requester, and overrides the other exemptions codified at KRS 61.878(1). OAG 05-ORD-226, 2005 Ky. AG LEXIS 58.

The Kentucky State Police did not violate the Open Records Act in denying a request for all reports, tests, and documentation relating to a criminal case sought by the requester for his appeal motion. OAG 05-ORD-246, 2005 Ky. AG LEXIS 62.

The Finance and Administration Cabinet must disclose the type of information it maintains on state employees, but not infrastructure records that are reasonably likely to expose a vulnerability through the disclosure of the location, configuration, or security of a critical infrastructure technology system. OAG 05-ORD-250, 2005 Ky. AG LEXIS 65.

The Kentucky State Police erred in relying on KRS 61.878(1)(h), KRS 61.878(1)(m)1.c., and KRS 61.878(1)(l), incorporating KRS 16.060 into the Open Records Act, to support nondisclosure of the names of the members of the Governor's Executive Security Detail appearing on fuel receipts. OAG 05-ORD-255, 2005 Ky. AG LEXIS 30.

Housing authority was obliged to honor a request for access to "the official file contents of a hearing held within the last 30 days involving a HUD resident." OAG 05-ORD-258, 2005 Ky. AG LEXIS 219.

The Division of Probation and Parole did not violate the Open Records Act in denying an inmate's request for copies of certain casebook narratives on the basis of KRS 439.510 and KRS 61.878(1)(*l*). OAG 05-ORD-265, 2005 Ky. AG LEXIS 307.

A police department violated the Kentucky Open Records Act in partially denying the request of an individual for copies of his arrest report and documents relating to him or another person with whom he was arrested. OAG 05-ORD-273, 2005 Ky. AG LEXIS 292.

An attorney's requests for all records relating to the University of Kentucky's investigation of his client, a former football coach, for NCAA violations conducted over a particular period of time were specific and narrow enough for the university to identify and locate responsive records. OAG 05-ORD-274, 2005 Ky. AG LEXIS 199.

County schools did not violate the Open Records Act in denying newspaper reporter's request to inspect the "job performance evaluation, including any written recommendations for improvement" of a middle school principal. OAG 06-ORD-001, 2006 Ky. AG LEXIS 81.

Because no final action has yet been taken, a city properly denied access to a draft report by a task force addressing potential staffing changes within the fire department of the city. OAG 06-ORD-003, 2006 Ky. AG LEXIS 322.

By requesting to inspect "any and all" written or electronic communications between named individuals "and all others" regarding the requester or her employment status on or after a certain date, the requester failed to describe the records sought with "sufficient clarity" so as to enable her former employer to identify and locate all responsive records. OAG 06-ORD-004, 2006 Ky. AG LEXIS 48.

Transit authority violated the Open Records Act in denying a request for the names of bus drivers involved in "preventable" accidents. OAG 06-ORD-006, 2006 Ky. AG LEXIS 92.

University employee was is entitled to inspect any record including preliminary and other supporting documentation that related to her, even if not contained in her personnel file. OAG 06-ORD-014, 2006 Ky. AG LEXIS 50.

A university employee is entitled to copies of records that relate to her by virtue of KRS 61.878(3), regardless of whether those records are preliminary and would otherwise be exempt under KRS 61.878(1)(i). To the extent the university denied the requester access to any records which relate to her that were not in her personnel file, on the basis of KRS 61.878(1)(i), it violated the Open Records Act. OAG 2006-ORD-014, 2006 Ky. AG LEXIS 50.

State police did not violate the Open Records Act in denying a request for documentation of "all money transactions for drug buys" in the requester's case and "all audio recording's, statement's, and reports of any kind when it comes to [him]" because these investigative records were part of an ongoing criminal case in which the requester's underlying federal criminal conviction was not final. OAG 06-ORD-017, 2006 Ky. AG LEXIS 18.

City properly relied KRS 61.978(1)(i) and (j) in partial denial of a request for interagency email communications concerning certain property as well as calendars reflecting dates of meetings at which the property was discussed. OAG 06-ORD-021, 2006 Ky. AG LEXIS 305.

Request for an accident report involving a city truck was proper under the Open Records Act; however, the requested record was excluded from public inspection by operation of KRS 189.635(5). OAG 06-ORD-024, 2006 Ky. AG LEXIS 203.

In responding to the request of an inmate for copies of "all statements/occurrence reports made by any medical department employees" regarding his confinement in segregation, a correctional institution properly relied upon KRS 197.025(1) in redacting the name of a medical staff member who provided a statement that was incorporated into a report concerning the incident. OAG 06-ORD-026, 2006 Ky. AG LEXIS 237.

Kentucky Historical Society improperly denied access to records that disclose the names of its members. However, the agency properly withheld access to the members' home address, email address, and telephone number. OAG 06-ORD-031, 2006 Ky. AG LEXIS 23.

Where the open records request requested contracts, memorandums of agreement or understanding, or similar documents reflecting the Department's participation in the Joint Audit Program of the Multistate Tax Commission, it is highly unlikely that a contract or memorandum of agreement would contain sufficient detail to divulge information pertaining to the tax schedules, returns, reports or the affairs of a person's business, in violation of the confidentiality provisions of KRS Chapter 131. OAG 2006-ORD-032, 2006 Ky. AG LEXIS 53.

Police department did not meet its burden in establishing that requested radio transmissions and incident report were exempt under KRS 61.878(1)(h), and thus, improperly denied access to the records. OAG 06-ORD-035, 2006 Ky. AG LEXIS 204.

The Police Department did not meet its burden in establishing that the requested radio transmissions and incident report were exempt under KRS 61.878(1)(h), and thus, improperly denied access to the records. The agency failed to establish that (1) the requested records were compiled as an integral part of a specific investigation and (2) failed to establish that premature disclosure of these records would harm the ongoing law enforcement action. OAG 2006-ORD-035, 2006 Ky. AG LEXIS 204.

Although a county board of education violated KRS 61.880(1) in failing to cite the applicable statutory exception and briefly explain how the exception applied to the records of policies relating to the reemployment of substitute teachers and the employment of retired teachers, the board properly redacted the contact information of substitute teachers. OAG 06-ORD-036, 2006 Ky. AG LEXIS 292.

Kentucky State Law Library is not bound by the provisions of the Open Records Act. OAG 06-ORD-038, 2006 Ky. AG LEXIS 25.

Police department properly denied the request of a newspaper reporter for a copy of a complaint against an officer filed with the department as the investigation was still ongoing and no final action on the complaint had been taken. OAG 06-ORD-043, 2006 Ky. AG LEXIS 54.

Police department did not violate Open Records Act in the disposition of request for offense/incident reports, in light of its modified reporting procedure; however, the department must respond to any resubmitted or subsequent requests for offense/incident reports and related investigative records. A policy of blanket nondisclosure of investigative records is impermissible. OAG 06-ORD-044.

Resolution of this issue turns on the proper interpretation of the phrase "applicable law" appearing in 45 CFR

164.502(g)(4). KRS 209.140 does not vest an executor, administrator, or any other person with authority to act on behalf of a deceased individual or the individual's estate, but is instead a confidentiality provision the terms of which are engrafted upon the Open Records law by operation of KRS 61.878(1)(*l*). It is KRS Chapter 395 that grants authority to act on behalf of a deceased individual or of the individual's estate, and that law, operating in tandem with 45 CFR 164.502(g)(4), requires the Cabinet to accord the requester, as her mother's personal representative, the same treatment it would have accorded her mother. As the mother would have been entitled to a copy of the report per KRS 209.140(5), so the requester is entitled to a copy. To the extent that OAG 2003-ORD-194 is inconsistent with this view, it is hereby overruled. OAG 2006-ORD-048, 2006 Ky. AG LEXIS 56.

State police properly relied upon KRS 61.878(1)(h) and KRS 17.150(2) in denying a request for copies of all records relating to a particular case since the subject investigation was properly characterized as "open" so long as there was a possibility of further judicial proceedings in the case. OAG 06-ORD-051, 2006 Ky. AG LEXIS 57.

Division of police's reliance on KRS 61.878(1)(a) to support nondisclosure of identity of suspect in a criminal case that was cleared by exception was misplaced; to the extent that the OAG 91-35 was construed to authorize nondisclosure of the suspect's identity in all criminal cases that are cleared by exception, that decision is modified. OAG 06-ORD-052, 2006 Ky. AG LEXIS 31.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired, 735 KAR 1:010.

Kentucky Business Enterprises, 782 KAR 1:010.

Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment, 735 KAR 1:020.

Transfer of public records, 725 KAR 1:025.

Kentucky Bench & Bar.

Crawford, A Clearly Unwarranted Invasion Preserving the Balance Between Informational Privacy and Public Access to Agency Records, Vol. 57, No. 4, Fall 1993, Ky. Bench & Bar 33.

Fleischaker, Klimkina & McCauley, The Kentucky Open Records Law: A Retrospective Analysis, Vol. 76, No. 4, July 2012, Ky. Bench & Bar 13.

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Out of the Sunshine and into the Shadows: Six Years of Misinterpretation of the Personal Privacy Exemption of the Kentucky Open Records Act, 71 Ky. L.J. 853 (1982-83).

Notes, Open Debate Over Closed Doors: The Effect of the New Developmental Disabilities Regulations on Protection and Advocacy Programs, 85 Ky. L.J. 955 (1996-97).

61.880. Denial of inspection — Role of Attorney General.

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he or she shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his or her authority, and it shall constitute final agency action.

(2)(a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his or her decision, he or she shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved, but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he or she have any duty to defend his or her decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial

of inspection, including but not limited to the imposition of excessive fees, delay past the five (5) day period described in subsection (1) of this section, excessive extensions of time, or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5)(a) A party shall have thirty (30) days from the day that the Attorney General renders his or her decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

History.

Enact. Acts 1976, ch. 273, § 6; 1992, ch. 163, § 6, effective July 14, 1992; 1994, ch. 262, § 6, effective July 15, 1994; 2021 ch. 160, § 5, effective June 29, 2021.

NOTES TO DECISIONS

Analysis

1. Application to Courts.
2. Disclosure.
3. —Exceptions.
4. —Records That No Longer Exist.
5. Time Limitations.
6. Judicial Review.
7. Attorney General.
8. Noncompliance.
18. Civil Litigation.

1. Application to Courts.

Some details of the Open Records Law present interferences inconsistent with the orderly conduct of court business, to wit, the requirement that courts adopt and post rules and regulations, that they conform to the procedure set forth in KRS 61.880, and that as to the accessibility of their records they adhere to the list of exceptions stated in KRS 61.878, and such requirements will not be accepted. Ex parte Farley, 570 S.W.2d 617, 1978 Ky. LEXIS 390 (Ky. 1978).

2. Disclosure.

3. —Exceptions.

Circuit court made an erroneous factual conclusion that all the records in the investigation file were covered by the Family Educational Rights and Privacy Act (FERPA) because although the university was prohibited from releasing for the Attorney General's in camera review education records with unredacted personally identifying information, not all the records requested were education records, and FERPA did not prohibit their release. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

Where county attorney did not attempt to establish that disclosure of records relating to child support payments requested by attorney representing father of minor child would constitute a clearly unwarranted invasion of personal privacy, and where county attorney did not reference relevant state or federal law barring disclosure or explain its application to the disputed records, county attorney's response failed to conform to subsection (2)(c) of this section and KRS 61.882(3). Edmondson v. Alig, 926 S.W.2d 856, 1996 Ky. App. LEXIS 124 (Ky. Ct. App. 1996).

4. —Records That No Longer Exist.

Once it has been determined that records requested under the Kentucky Open Records Act no longer exist, the responsible agency is required to provide the requester with a written explanation for the records' nonexistence. Therefore, an inmate was entitled to relief under the Act based upon a request for certain jail records, even though the records allegedly no longer existed. Eplion v. Burchett, 354 S.W.3d 598, 2011 Ky. App. LEXIS 215 (Ky. Ct. App. 2011).

5. Time Limitations.

Because the Open Records Act, did not contain a timeframe for challenging an agency's denial to the Attorney General, an attorney's appeal to the Attorney General would have been timely whenever she chose to file it. Wyrick v. Dep't of Revenue, 2008 Ky. App. LEXIS 169 (Ky. Ct. App. 2008), aff'd, 323 S.W.3d 710, 2010 Ky. LEXIS 260 (Ky. 2010).

Lawsuit should not have been filed against an attorney for the Kentucky Education and Workforce Development Cabinet based on an allegation that there was a failure to respond in 3 days because the Kentucky General Assembly intended suits based on violations of the Kentucky Open Records Act, including the time provisions at issue here, to be brought against the state agencies themselves and not against the individuals employed by those agencies. Taylor v. Maxson, 483 S.W.3d 852, 2016 Ky. App. LEXIS 15 (Ky. Ct. App. 2016).

6. Judicial Review.

Although the Department of Revenue (DOR) probably should have raised its defense before the Attorney General, the DOR sufficiently preserved this issue when it included the defense as an aggregate reason for denying an attorney's request for certain documents. Wyrick v. Dep't of Revenue, 2008 Ky. App. LEXIS 169 (Ky. Ct. App. 2008), aff'd, 323 S.W.3d 710, 2010 Ky. LEXIS 260 (Ky. 2010).

Summary judgment finding an Open Records Act (ORA) violation was proper against the Cabinet for Health and Family Services (Cabinet) because the Cabinet's failure to give the Attorney General enough information to answer a request to review the Cabinet's denial caused the Attorney General to find the Cabinet violated the ORA, which the Cabinet did not timely appeal, under Ky. Rev. Stat. Ann. § 61.880(5)(a), giving the finding the force and effect of law, under Ky. Rev. Stat. Ann. § 61.880(5)(b). Cabinet v. Todd Cnty. Std., 488 S.W.3d 1, 2015 Ky. App. LEXIS 171 (Ky. Ct. App. 2015).

Trial court had jurisdiction to review the decision of the Kentucky Legislative Research Commission (LRC) regarding a newspaper's request for legislative records because (1) the court's statutory jurisdiction was not limited to records requests or cases where the LRC issued no decision in 30 days, and (2) the Open Records Act's statutory judicial review right was incorporated into the governing statute. Harilson v. Shepherd, 585 S.W.3d 748, 2019 Ky. LEXIS 380 (Ky. 2019).

In this Open Records Act action, the order was reversed in part because the circuit court lacked subject matter jurisdiction to conclude the university violated the Open Meetings Act where neither party invoked the circuit court's jurisdiction to enforce provisions. Univ. of Ky. v. Hatemi, 636 S.W.3d 857, 2021 Ky. App. LEXIS 114 (Ky. Ct. App. 2021).

7. Attorney General.

In a case under the Kentucky Open Records Act, because the alleged misstatements that an attorney for the Kentucky Education and Workforce Development Cabinet made that allegedly caused emotional distress were part of an adjudicatory process before the Kentucky Attorney General, the statements were entitled to absolute judicial immunity. Taylor v.

Maxson, 483 S.W.3d 852, 2016 Ky. App. LEXIS 15 (Ky. Ct. App. 2016).

General Assembly certainly intended for the Attorney General (AG) to save the court and the requesters time and costs by designating the AG as the "watchdog" in open records cases; it conferred upon the AG the duty to adjudicate open records dispute and, to do so, gave the AG the ability to substantiate an agency's claims that records are exempt through an in camera review of the records requested. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

8. Noncompliance.

University violated the Kentucky Open Records Act because it refused to allow the Attorney General (AG) to review redacted records requested by the student newspaper; the refusal made the AG's review of the matter impossible, leaving the AG with no alternative but to decide that the university had release the records to the newspaper. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

University violated the Open Records Act because the university did not (1) show a specific exemption applied to a particular record, (2) redact personally identifying information, or (3) show records were exempt through a proper index, and (4) refused to let the Attorney General review redacted records. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

18. Civil Litigation.

Public agency's response to a subpoena should be independent and separate from its response to an open records request. The reason for objecting to a subpoena should be based on the rules of discovery and not based on the Kentucky Open Records Act, Ky. Rev. Stat. Ann. § 61.870 et seq., and, consequently, records exempt from disclosure through the Act may still be discoverable in a civil case and the discovery limited by the Kentucky Rules of Civil Procedure governing pretrial discovery. Parish v. Petter, 608 S.W.3d 638, 2020 Ky. App. LEXIS 100 (Ky. Ct. App. 2020).

Cited in:

Louisville v. Courier-Journal & Louisville Times Co., 637 S.W.2d 658, 1982 Ky. App. LEXIS 232 (Ky. Ct. App. 1982); Frankfort Pub. Co. v. Kentucky State University Foundation, Inc., 834 S.W.2d 681, 1992 Ky. LEXIS 103 (Ky. 1992); Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994); Blair v. Hendricks, 30 S.W.3d 802, 2000 Ky. App. LEXIS 69 (Ky. Ct. App. 2000); Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008); Lexington H-l Servs. v. Lexington-Fayette Urban County Gov't, 297 S.W.3d 579, 2009 Ky. App. LEXIS 51 (Ky. Ct. App. 2009); Parish v. Petter, 608 S.W.3d 638, 2020 Ky. App. LEXIS 100 (Ky. Ct. App. 2020); Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025); ; Cobb v. Robey, 2026 Ky. App. LEXIS 2 (Ky. Ct. App. 2026); 2026 LX 79541 (January 2, 2026).

OPINIONS OF ATTORNEY GENERAL.

Guest registration records at a state resort lodge are of a personal nature and should not be open to public inspection regardless of the intention of the person making the inspection. OAG 76-469.

An agency need report the denial of an inspection of a public record when the requester demands more information from the public record than the agency is willing to reveal. OAG 76-488.

There is no practical or legal reason why an agency should send a copy of its response to the attorney general to a request for personnel information unless the correspondence states that the inspection of a public record is being denied because of a specific exemption in KRS 61.878. OAG 76-488.

The Public Health and Safety Department of the City of Louisville properly withheld documents requested by journalists where they related to a closed session on a disciplinary matter and, as such, were exempted from the requirements of the Open Records Statute under KRS 61.878 (1)(j) and KRS 61.810(6) (now (1)(f)). OAG 78-11, 1978 Ky. AG LEXIS 728.

Where the response to a survey was voluntary, the survey forms, which were filled out and returned to the Department (now Cabinet) for Natural Resources and Environmental Protection by handlers of hazardous waste, are exempt from the requirements of the Open Records Law. OAG 79-69, 1979 Ky. AG LEXIS 551.

Records of court agencies, such as the board of bar examiners, are placed under the exclusive control of the Court of Justice, and if such an agency denies access to a record, appeal lies to the chief justice and not the Attorney General. OAG 79-174, 1979 Ky. AG LEXIS 455.

It is not for the Attorney General to tell the custodians of records what documents they may not release, but to tell them what documents they must not release. OAG 79-275, 1979 Ky. AG LEXIS 403.

Where a former school district employee sought examination of all records of all teachers and administrators on extended employment in the years 1973-1980, the number of days or weeks worked beyond the 185-day school year, the amounts paid each for extended employment and records of length of administrators contracts, a mere showing of the minute books was insufficient. OAG 79-380, 1979 Ky. AG LEXIS 250.

The school board of an independent school district is entitled to physically inspect the invoices, vouchers and other records which have been created by operation of the school district business and the written contract concerning the employment of the superintendent. OAG 79-390, 1979 Ky. AG LEXIS 239.

Tax records which are made confidential by KRS 131.190(1) are not within the purview of the Attorney General's appeal authority. OAG 79-444, 1979 Ky. AG LEXIS 193.

The appeal authority of the Attorney General under this section pertains only to public records which the public at large is entitled to inspect, not to records which are properly excluded from inspection by any member of the public. OAG 79-444, 1979 Ky. AG LEXIS 193.

Evaluation documents resulting from official evaluation of an officer's performance as a state trooper contain material of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy; furthermore, the mere evaluation of a state policeman's performance is a matter of opinion and, standing alone, does not constitute any action on the part of the Kentucky State Police. OAG 80-58, 1980 Ky. AG LEXIS 578.

The Attorney General is prevented by the administrative regulations pertaining to the Department of Law, 40 KAR 1:020 § 4, from rendering an opinion regarding the denial of inspection of a public record in response to questions involving matters being litigated or questions submitted in contemplation of litigation. OAG 80-278, 1980 Ky. AG LEXIS 367.

When a person requests to see bills received, bills paid, warrants requesting checks be issued for payment of bills, and cancelled checks for office equipment and supplies used by a county, it is not a sufficient answer under the Open Records Law for the county clerk to merely refer the requester to the minutes of the county fiscal court. OAG 80-367, 1980 Ky. AG LEXIS 272.

An urban county airport board is a public agency and all of its papers are public records under KRS 61.870. OAG 80-586, 1980 Ky. AG LEXIS 74.

KRS 61.810(6) (now (1)(f)), which provides an exception to the Open Meetings Law allowing hearings on personnel matters to be held in closed session, has no pertinency as to whether documents concerning the dismissal of five employees should be made available for public inspection; in denying inspection of a public record a public agency must rely on one of the exceptions provided in the Open Records Law, KRS 61.878(1). OAG 80-586, 1980 Ky. AG LEXIS 74.

Reports of building inspections are public records which are open to public inspection by any person under the Open Records Law. OAG 80-596, 1980 Ky. AG LEXIS 62.

A county housing agency is a public agency under the Open Records Law and it should make its records available for inspection by any person who makes a request to inspect records. OAG 80-597, 1980 Ky. AG LEXIS 68.

The custodian of municipal records may not respond to a request made under the Open Records Law by placing an "x" by the typed statement: "The records requested are exempted by law from mandatory disclosure" on a form letter since a form letter does not meet the specific statement requirement of this section and because the custodian did not cite any specific exemption in KRS 61.878 which would apply to the material requested. OAG 81-345, 1981 Ky. AG LEXIS 92.

A city mayor violated the Open Records Law in failing to respond to a request for copies of certain documents concerning the city sewage treatment plant by either making the records available for inspection or giving the requester a written response stating when the records would be available for inspection or stating that inspection was being denied. OAG 81-374, 1981 Ky. AG LEXIS 53.

It is not sufficient to cite an administrative regulation as a reason for denying the inspection of a record because a public agency does not have the authority to make records confidential by regulation; the exception relied on to preclude inspection must be one of the exceptions provided in KRS 61.878(1). OAG 82-192, 1982 Ky. AG LEXIS 448.

The term "question privately" in KRS 338.101, which authorizes the Commissioner of Labor to inspect working places, makes any statement taken from an employee, or other person authorized to be questioned by the statute, confidential, and, as such, it is exempted from mandatory public disclosure by KRS 61.878(1)(j); accordingly, the department of labor properly denied inspection of the statements of witnesses, taken in private interviews, concerning a fatal injury of a worker. OAG 82-192, 1982 Ky. AG LEXIS 448.

A mayor failed to comply with the Open Records Law by making no response to individual's request to inspect and copy public records in his custody. OAG 82-342, 1982 Ky. AG LEXIS 295.

Inspection of requested records containing identifiable descriptions and notations of arrest, detentions, indictments, information or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release and/or all other information a local police department may have compiled on a named individual could not be denied on the grounds of "personal privacy." OAG 82-388, 1982 Ky. AG LEXIS 246.

Local law enforcement agencies are required to make available for public inspection arrest records of any person, subject to the exceptions stated in KRS 17.150(2). OAG 82-388, 1982 Ky. AG LEXIS 246.

Attorney for Cabinet for Human Resources did not sufficiently comply with the spirit and the letter of the Open Records Law in responding to request for records by suggesting that requester direct his request to the Director of the Division of Unemployment Insurance; as an employee, agent and attorney for the Division, he should have directed the request to the proper person, i.e., the Director of the Division as official custodian, or to whomever the Director had designated to be the custodian of records. OAG 83-23, 1983 Ky. AG LEXIS 492.

Where proper request for records was made to attorney in Office of Counsel of Cabinet for Human Resources and attorney stated that he did not have records and instructed requester to make another request to Director of Division of Unemployment Insurance, such Division did not act in accordance with KRS 61.870 to 61.884 in its failure to allow inspection or make a proper response to such request to inspect records after three (3) months from the date of the initial request. OAG 83-23, 1983 Ky. AG LEXIS 492.

County sheriff did not act in accordance with the Open Records Law by failing to make a written response to a written request for a copy of an accident report; he should have either mailed requester a copy of the report in the self-addressed stamped envelope she furnished or written her that the report would be made available for her inspection in his office. OAG 83-53, 1983 Ky. AG LEXIS 443.

Where a county school superintendent verbally denied a written request to inspect certain educational records pertaining to teacher assignments, the superintendent did not act in accordance with the Open Records Law, in that he failed to make a written reply to the request and he failed to give a statement of reasons explaining his denial. OAG 83-144, 1983 Ky. AG LEXIS 353.

School principal did not act in accordance with the Open Records Law when he did not either make the requested records available for public inspection or give the requester a reason why the records, or a part of them, would be kept confidential. OAG 83-248, 1983 Ky. AG LEXIS 249.

A response denying inspection of a referee decision on the basis that the requester did not represent either party and that KRS 61.870 did not authorize release of such information, did not follow the mandate of this section and was therefore inadequate to deny the request. OAG 83-352, 1983 Ky. AG LEXIS 150.

The denial of inspection by the Secretary of the Cabinet for Human Resources of final reports stemming from investigations of complaints made about incidents or care at any of the state mental institutions, the complaints spawning final reports, and the investigatory material incorporated into the final reports was improper. OAG 83-425, 1983 Ky. AG LEXIS 74.

The requestor was entitled to a copy of the docket sheet showing the exact date of entry of the judgment of conviction in a certain criminal action, upon payment of the cost of the copy. OAG 84-144, 1984 Ky. AG LEXIS 242.

Since subsection (2) of KRS 61.872 and this section provide that an agency must respond to a request for inspection of records within three (3) days, timely access to records would thus be any time less than three (3) days from agency receipt of the request. OAG 84-300, 1984 Ky. AG LEXIS 86.

Since this section does not provide office of Attorney General with enforcement power it cannot require agency to refund unreasonable fees; any action for recovery of fees must be made to the Circuit Court. OAG 84-300, 1984 Ky. AG LEXIS 86.

A city-county human rights commission cannot rely upon local ordinances and resolutions to deny a request to inspect public records, if such records are open to public inspection under the Open Records Law. OAG 84-376, 1984 Ky. AG LEXIS 11.

Under subsection (1) of this section, the public agency is mandatorily required to notify the requesting party of its decision in writing within three (3) days. The notice should advise the requesting party that the records in question will be made available for inspection or should set forth specific reasons why the records cannot be inspected. OAG 85-71, 1985 Ky. AG LEXIS 80.

It is a failure to comply with the Open Records Law, specifically subsection (1) of this section, when no written response is made within the specified period to a request to

inspect public records in the custody of a public agency. OAG 85-71, 1985 Ky. AG LEXIS 80.

The denial of a request to inspect a portion of a tape recording involving a firefighter's disciplinary hearing before the Civil Service Board was proper, where the release of that particular testimony would constitute a clearly unwarranted invasion of the firefighter's personal privacy. OAG 85-83, 1985 Ky. AG LEXIS 68.

Contracts of employment involving a public agency are public records and should be made available for public inspection. OAG 85-85, 1985 Ky. AG LEXIS 67.

When a public records dispute is taken to court, the burden of proof is on the public agency to sustain its action. Thus, a public agency should make every attempt to comply with the letter and spirit of the Open Records Act. Every legitimate request, not covered by a statutory exemption, should be complied with as quickly and courteously as possible; the availability of the records should be subject to no more restrictions than are necessary to protect the records and to avoid unduly disrupting the agency's operations. OAG 85-85, 1985 Ky. AG LEXIS 67.

The denial of a request to inspect the complete institutional file of an inmate was proper, as requests to inspect personnel files must specify the particular documents within such files to be inspected. OAG 85-88, 1985 Ky. AG LEXIS 61.

The signature log of employees and visitors eating meals in the Kentucky State Penitentiary facilities, which the corrections Cabinet's policies and procedures document requires each institution to maintain, is a public record, and furthermore, the list of meal tickets sold is a public record, as the Cabinet's policies and procedures document requires employees and visitors to purchase a meal ticket for each meal eaten in the Cabinet facilities. Thus, denial of a request to inspect the list of meal tickets was improper and in violation of the Open Records Act. OAG 85-89, 1985 Ky. AG LEXIS 62.

The denial of a request to inspect the letter of a disciplinary recommendation from a school principal to the Board of Education was proper, because even excising the names of those involved would not be sufficient to protect their privacy, and furthermore, because the letter was a preliminary recommendation expressing an opinion or recommending a policy. OAG 85-90, 1985 Ky. AG LEXIS 63.

Failure of county school superintendent to state in writing reasons for refusing to permit requesting party to inspect documents and to send a copy of the letter of denial to the Attorney General's office were violations of the Open Records Law. OAG 85-109, 1985 Ky. AG LEXIS 42.

A state penitentiary records clerk violated the provisions of the Open Records Act because she failed to respond to a request to inspect within three (3) working days, she failed to state the specific exception to the Open Records Act relied upon in refusing to permit inspection, she failed to send a copy of her written response denying inspection to the Attorney General, and she required the requesting party to state or verify why he needed to inspect and copy public records. OAG 85-120, 1985 Ky. AG LEXIS 32.

When itemized lists of receipts and expenses of a city are requested, the custodian of the municipal records should immediately advise in writing whether such lists are available; if such itemized records exist, the custodian should either make them available for public inspection or explain what specific exception to public inspection he is relying upon in denying the request to inspect. OAG 86-20, 1986 Ky. AG LEXIS 67.

Where the letter by the representative of the public agency was sent within the three-day time period but that letter did not state that a portion of the material would be deleted, and the material that was ultimately provided was not furnished within the time frame set forth in the letter and no adequate written response was subsequently provided relative to the delay in providing the documents requested, the public agency did not follow the requirements of subsection (1) of this section. OAG 86-21, 1986 Ky. AG LEXIS 66.

The Office of the Attorney General does not have the duty or the authority to perform investigations of public agencies to attempt to locate documents which the requesting party maintains exist but which the public agency states do not exist. OAG 86-35, 1986 Ky. AG LEXIS 51.

Subsection (4) of this section pertains to a situation where a person feels that the intent of the Open Records Act is being subverted short of denial of inspection by such acts as the imposition of excessive fees and the misdirection of the request. OAG 86-35, 1986 Ky. AG LEXIS 51.

The public agency should make the information requested available by either communicating it to the requesting party or permitting him to inspect those records which will reveal that information or the public agency should advise in writing the requesting party of the particular exception to public inspection it is relying upon and how it applies to the specific information and document being withheld in this situation. OAG 86-36, 1986 Ky. AG LEXIS 52.

The public agency's blanket denial of the requested documents was insufficient under the Open Records Act as the public agency should have advised if the documents existed and where inspection was denied each document not made available should be listed and the public agency should state how the exception to public inspection relied upon applied to the particular document withheld from inspection. OAG 86-38, 1986 Ky. AG LEXIS 49.

The county clerk and the property valuation administrator did not act in accordance with the requirements of the Open Records Law, specifically subsection (1) of this section, where they did not make the requested records available for inspection nor advise the requesting party in writing within the statutorily mandated time period of a specific reason why the records could not be inspected. OAG 86-75, 1986 Ky. AG LEXIS 12.

The sheriff's denial of the request to make available documents setting forth his salary and the salaries of his staff members (deputy sheriffs) for the fiscal year in question was improper and in violation of the Open Records Law. OAG 86-75, 1986 Ky. AG LEXIS 12.

It is within the discretion of the police to decide whether a case is active, inactive or finally closed, but when a demand for inspection of records is refused the burden is on the police to justify the refusal of the inspection with specificity; therefore, where the missing person's file had been maintained as an open case (active or inactive as opposed to closed) for almost eight years, the public agency's mere reference to subdivision (1)(f) of KRS 61.878 and 17.150, with no additional explanation, did not meet the burden of proof imposed by law relative to a denial of inspection. OAG 86-80, 1986 Ky. AG LEXIS 6.

The superintendent of the county schools did not comply with subsection (1) of this section since he did not respond in writing and he neither advised the requesting party that the records requested were available for inspection nor did he advise the requesting party the specific exception to public inspection he was relying upon in support of his decision to deny public inspection. OAG 86-86, 1986 Ky. AG LEXIS 2.

The mayor and the city violated the Open Records Act, specifically subsection (1) of this section, by their refusal to respond in writing to the request to inspect public records. OAG 87-60, 1987 Ky. AG LEXIS 26.

The city and the city attorney violated subsection (1) of this section by their insufficient response to the requesting party's original letter and by their failure to respond at all to his three (3) subsequent letters; they should have immediately advised the requesting party in writing whether he might inspect the records in question, and if they denied the request, they had to set forth the statutorily authorized exceptions to public inspection upon which they were relying. OAG 87-83, 1987 Ky. AG LEXIS 2.

The response of the public agency to the request to inspect public documents that the requested documents were not in the public agency's possession was sufficient and proper; a public agency obviously cannot furnish records for viewing and copying which it does not have at the time of the request. OAG 88-5, 1988 Ky. AG LEXIS 5.

The public agency's response to an individual's request to inspect and copy various documents was inadequate, where the body of the undated letter in its entirety stated: "All other documents requested are closed under KRS 61.876(3)"; therefore, the public agency had to prepare a proper written response to the original request, specifically stating those records, if any, which were withheld from inspection and the particular statutory exception to public inspection relied upon and how it applied to the record which was withheld. OAG 88-6, 1988 Ky. AG LEXIS 6.

The public agency's written response to the requesting party's request to inspect public documents was legally sufficient pursuant to KRS 61.872 and this section and afforded the requesting party a reasonable opportunity to inspect the records and materials requested to obtain the desired information. OAG 88-8, 1988 Ky. AG LEXIS 8.

The public agency violated subsection (1) of this section by its refusal to respond in writing to the request to inspect public records. OAG 88-22, 1988 Ky. AG LEXIS 22.

Although the city and sewer commission's initial response to the requesting party should have followed the requirements of KRS 61.880(1) and a copy of the letter of denial should have been sent to the attorney general pursuant to KRS 61.880(2), denial of the request to inspect the draft audit prepared by the Environmental Protection Agency and sent to the city was supported by the exceptions to inspection set forth in KRS 61.878(1)(g), (h) and (i) as the item in question was a preliminary document containing opinions and observations. OAG 88-24, 1988 Ky. AG LEXIS 24.

A public agency cannot furnish access to documents which it does not have, and a request for documents which a public agency does not have is moot. OAG 88-44, 1988 Ky. AG LEXIS 44.

An agency cannot avoid the requirements of the Open Records Act by placing or maintaining public records with third parties. OAG 88-48, 1988 Ky. AG LEXIS 48.

The decision of the public agency to refuse to make available for public inspection copies of depositions taken by a private attorney under the authority of the Federal Rules of Civil Procedure was not a violation of the Open Records Act as the matter was governed by the terms and provisions of those federal rules and the interpretation of those rules by the federal courts. OAG 88-48, 1988 Ky. AG LEXIS 48.

Although the public agency's denial of the request to inspect a document consisting of an opinion of the General Counsel to the Parole Board should have conformed to the requirements of subsection (1) of this section, the denial of the request could be justified under the concepts of the attorney-client privilege. OAG 88-49, 1988 Ky. AG LEXIS 49.

A partial denial of a request to inspect documents did not conform with the requirements of this section, where there was no identification as to what specific documents were being withheld and why. OAG 88-53, 1988 Ky. AG LEXIS 53.

Public agency from whom records were requested for inspection should respond in writing to the requesting party within three (3) days of the receipt of the request received through the mail, and if the records cannot be obtained promptly, the requesting party should be notified at once of that development. OAG 88-54, 1988 Ky. AG LEXIS 54.

Since subsection (1) of this section uses the phrase "upon any request" there generally is no distinction made between a written or oral request, a request made in person, or a request mailed in to the public agency; the three-day period in which the public agency must respond in writing begins when the agency receives the request regardless of the method used to communicate that request. OAG 88-54, 1988 Ky. AG LEXIS 54.

The General Assembly has vested the circuit courts with authority overriding that of the Attorney General in determining open records questions; it would be improper for the Attorney General to attempt to substantively determine an open records question when the same question is before a Circuit Court. OAG 88-78, 1988 Ky. AG LEXIS 81.

Mere citation to certain basic statutory sections of the Open Records Act does not comply with the requirements of subsection (1) of this section. OAG 89-12, 1989 Ky. AG LEXIS 12.

A county property valuation administrator failed to act consistently with the provisions of KRS 61.870 to 61.884 in failing to respond in writing to a verbal request for access to records, and in responding to a written request by forwarding it to another agency. OAG 89-40, 1989 Ky. AG LEXIS 40.

An agency failed to act consistent with provisions of KRS 61.870 to 61.884 if it failed to respond in accordance with this section to a request to inspect public records. OAG 89-59, 1989 Ky. AG LEXIS 59.

Where the Department for Employment Services in responding to a request to inspect records indicated that information sought was not subject to Open Records Law, and was contained in a document accessible to all staff, such a response is not a determination in keeping with the terms of this section. OAG 89-60, 1989 Ky. AG LEXIS 60.

City acted consistently with Open Records provisions where it promptly responded in writing to request for broad categories of documents concerning generally described subjects, by indicating it would make records available for inspection that appeared to conform to the request, by indicating it did not have certain lists requested, and by directing the requestor to other agencies where records concerning subjects listed by requestor might be located. OAG 89-61, 1989 Ky. AG LEXIS 61.

Pendency of litigation does not suspend application of independent statutory requirement that response be made to one who requests to inspect records held by a public agency. OAG 89-65, 1989 Ky. AG LEXIS 65.

If a county agency allowed inspection of the entire tax roll of the county, the fact that certain information called for by statute or other provision, was not contained upon such roll, did not constitute denial of inspection of the roll. OAG 89-66, 1989 Ky. AG LEXIS 66.

While an agency is not required to provide copies of records that have not been inspected, where an agency indicated it would provide them, but did not do so, the effect was to deny inspection and, accordingly, the agency did not act consistent with the provisions of KRS 61.870 to 61.874. OAG 89-70, 1989 Ky. AG LEXIS 70.

While information derived from the property tax rolls may not be used for commercial or business purposes unrelated to property valuation or assessment, such ban does not apply to information obtained from other types of records of the Property Valuation Administrator's Office. OAG 89-77, 1989 Ky. AG LEXIS 77.

Requests for information, as distinguished from records, and requests that particular methods of inquiry into public records be provided, are outside the scope of Open Records provisions. OAG 89-77, 1989 Ky. AG LEXIS 77.

Open Records provisions do not require either the property valuation administrator, or the county clerk, to provide access to records by specific indexing methods. OAG 89-77, 1989 Ky. AG LEXIS 77.

There is no statutory authority to postpone or delay the agency's written response to a request to inspect certain documents, and there is no duty or obligation on the Attorney General's office to advise an agency as to how to handle a request to inspect documents which it has actually received; once the agency receives a request to inspect documents it is

required to respond pursuant to the provisions of subsection (1) of this section. OAG 89-79, 1989 Ky. AG LEXIS 79.

Referring to requestor to a response to a prior request does not meet the response requirements of this section. OAG 89-81, 1989 Ky. AG LEXIS 81.

Public agencies, pursuant to this section, must respond separately and specifically to each request to inspect public records. OAG 89-81, 1989 Ky. AG LEXIS 81.

Although the Cabinet for Human Resources properly declined to provide information which is not consistent with its method of filing and maintaining records, the Cabinet must give the person making the request a reasonable opportunity to inspect nonexempt records pertaining to designated facilities to enable him to attempt to obtain the information he has requested. OAG 89-84, 1989 Ky. AG LEXIS 84.

The City of Louisville failed to act consistent with Open Records provisions in making a blanket denial of a request to inspect a "performance appraisal" and related documents regarding the Louisville Police Chief, by (1) failing to provide a brief explanation of how statutory exceptions (to the general rule that inspection of public records is permitted) applied to records withheld from inspection, (2) by denying inspection of a record on the ground it was a "preliminary draft" when it was not of such character, and (3) by denying inspection of records on the ground they constituted "preliminary recommendations," when there was no indication they were other than final unto themselves, and no subsequent product was generated that the records could be considered preliminary to. OAG 90-1, 1990 Ky. AG LEXIS 1.

Kentucky's Open Records provisions establish a requirement of a written response where there is a denial of a request to inspect public records. There is no statutory requirement under Open Records provisions that a written or other response be made to a request for copies of records that have not been inspected. OAG 90-8, 1990 Ky. AG LEXIS 8.

The cabinet for human resources failed to act consistently with Open Records provisions, by not explaining, in its initial response supplying copies of records, the "blanking out" of names of complainants and certain interviewees, upon copies of forms regarding complaints about possibly unlicensed day care facilities. Such deletion (blanking out) was nonetheless supported by KRS 61.878(1)(a), which permits an agency to withhold from inspection, records of a personal nature, where disclosure thereof would constitute an unwarranted invasion of personal privacy. OAG 90-12, 1990 Ky. AG LEXIS 12.

The masking of names constitutes a partial denial of inspection. As such, the masking of names should be explained in terms of a specific exception to the general rule allowing inspection. OAG 90-12, 1990 Ky. AG LEXIS 12.

Although request was for "information" rather than to inspect "records" with regard to salary figures and travel expense information concerning deputy county clerks, the county clerk failed to act consistently with Open Records provisions by failing to respond in writing, as required by KRS 61.880, to a request styled as under Open Records Law. OAG 90-19, 1990 Ky. AG LEXIS 19.

Where a request was for information, rather than to inspect records, and thus did not technically conform to Open Records provisions, the proper response was for the recipient of such request to promptly respond in writing, explaining that while Open Records provisions did not require a public agency to compile information, records that might yield the information sought would be made available for inspection during normal office hours; furthermore, parts of records withheld, such as the home address of an employee, or a social security number, should have been explained in a manner consistent with KRS 61.880. OAG 90-19, 1990 Ky. AG LEXIS 19.

A public agency, in denying part of a request to inspect public records, failed to act consistently with Open Records provisions by not citing a proper statutory basis for its denial, and in failing to briefly explain how a statutory provision it did cite, applied to a record that appeared to be withheld from inspection. OAG 90-26, 1990 Ky. AG LEXIS 24.

A response to a request to inspect public records should accurately cite a particular exception from among those in KRS 61.878, if it denies or partially denies such a request; additionally, a brief explanation should be given, as called for by KRS 61.880(1), regarding how a given exception cited as a basis for denial of inspection applies to a record withheld from inspection. OAG 90-26, 1990 Ky. AG LEXIS 24.

If a record of which inspection is sought does not exist, the agency should specifically so indicate. OAG 90-26, 1990 Ky. AG LEXIS 24.

A county board of education failed to act consistently with Open Records provisions by failing to make a written response stating the specific basis for its denial of inspection of records reflecting exact beginning and ending salary payments to a teacher, and in refusing to allow inspection of such records. OAG 90-30, 1990 Ky. AG LEXIS 28.

City failed to act consistently with KRS 61.870 to 61.884 by failing to provide a brief explanation of how exceptions cited as a basis for denying inspection of public records, applied to such records, and by making a blanket denial of inspection of employee time and attendance records, upon grounds, do not apply, at least comprehensively, to records withheld from inspection. OAG 90-34, 1990 Ky. AG LEXIS 34.

In response to request to inspect all documents relating to settlement of legal action against city, if the city has a record or records setting forth moneys paid on behalf of the city in settling the suit in question, such record should be promptly made available for inspection; this view applies to any record of such nature in the possession of the attorney for the city, that would be considered a record of the city, though held by counsel; if the city has records regarding settlement of the suit in question, other than one setting forth the amount of moneys paid on behalf of the city in settling the suit in question, the city should, in a written response, itemize which records it has and if it denies inspection of any of such "other" records, it should state a specific basis for denial based upon the exceptions set forth in KRS 61.878; if it has no record setting forth the amount of the settlement paid or payable, it should specifically so state, vis-a-vis the city government as a whole, and not just in relation to a record in the possession of the city manager. OAG 90-36, 1990 Ky. AG LEXIS 36.

Where city manager's response on behalf of city to request to inspect all documents relating to settlement of legal action against city addressed only records in the possession of the city manager, and not the city as an agency, the response was not consistent with KRS 61.870 to 61.884, and in particular, KRS 61.880(1). OAG 90-36, 1990 Ky. AG LEXIS 36.

The Open Records Act makes no provision for a public agency to refuse to give an applicant access to public records just because the applicant already has obtained the requested information elsewhere. OAG 90-71, 1990 Ky. AG LEXIS 71.

There is no specific exception in the Open Records Act that authorizes a public agency to withhold public records from an applicant because access to the records may be obtained from another public agency, even if the requested records might more appropriately or more easily be obtained from that other public agency. OAG 90-71, 1990 Ky. AG LEXIS 71.

Where a governmental board does have custody or control over public records that contain certain requested information, according to the requirements of the Open Records Act, the board should have given the person making the request either: (1) access to the records; or (2) a statement of the specific exceptions authorizing the withholding of the records. OAG 90-71, 1990 Ky. AG LEXIS 71.

No matter how the public agency views the merits of the request it must respond in writing and in a timely and proper manner. OAG 90-79, 1990 Ky. AG LEXIS 79.

While the requesting party's letters never referred to the Open Records Act or made requests to inspect records under

that law, the public agency should have assumed that the Act has been invoked and respond accordingly. OAG 90-79, 1990 Ky. AG LEXIS 79.

A denial of a request relying on rules of the Administrative Office of the courts is not responsive under this section because it did not set forth a specific statutory exception listed in KRS 61.878(1). OAG 90-99, 1990 Ky. AG LEXIS 99.

Responses denying inspection of public records should include reference to a specific statutory exception authorizing the withholding of the record. OAG 90-112, 1990 Ky. AG LEXIS 145.

Where agency's response did not cite a specific statutory provision as a basis for denying inspection of records, in this respect, response was not consistent, or in compliance, with subsection (1) of this section. OAG 90-112, 1990 Ky. AG LEXIS 145.

A public agency cannot furnish access to documents which it does not have, and a request for documents which a public agency does not have is moot and the agency should specifically inform one seeking such documents that these documents did not exist. OAG 90-131, 1990 Ky. AG LEXIS 130.

Although water district has not complied with various procedural requirements set forth in subsection (1) of this section and KRS 61.872(4) relative to the handling and disposition of requests to inspect documents, the water district's refusal to permit the inspection of polygraph test results is justified under the Open Records Act as such documents may be excluded from public inspection pursuant to KRS 61.878(1)(a). OAG 90-144, 1990 Ky. AG LEXIS 163.

The burden of proof in sustaining the denial of access to a governmental database or geographic information system, on appeal, rests with the agency. OAG 91-4, 1991 Ky. AG LEXIS 4.

Open and active investigative files of the Kentucky State Police are exempt from inspection as well as medical or autopsy reports. OAG 91-6, 1991 Ky. AG LEXIS 6.

If a public agency intends to rely upon KRS 61.872(5), that producing records places an unreasonable burden upon the agency or that the requester intends to disrupt other essential agency functions, the refusal of the agency to produce documents for these reasons must be sustained by clear and convincing evidence, and where the requesting party has described the various categories of documents to which she seeks access with sufficient specificity to require the public agency to respond in a good faith manner to those requests by categories pursuant to subsection (1) of this section, documents withheld from inspection or unavailable should be identified and the specific reasons for withholding any documents should be stated in writing. OAG 91-7, 1991 Ky. AG LEXIS 7.

A public agency's response to an individual requesting to inspect certain documents is insufficient under the Open Records Act if it fails to advise the requesting party whether the documents exist. OAG 91-101, 1991 Ky. AG LEXIS 101.

Where university treated four separate requests for inspection of certain documents as one request, its response was improper for while it may well have wished to expedite this matter by issuing a single response, it nevertheless erred in failing to address the four requests in four separate responses. OAG 91-111, 1991 Ky. AG LEXIS 111.

In a request for inspection of certain documents where only some of the documents were readily available while others were in storage and would have to be located, those documents which were immediately accessible should have been made available for inspection, or a proper denial pursuant to subsection (1) of this section should have been issued; all documents could not be withheld until such time as those less accessible documents had been retrieved from storage. OAG 91-111, 1991 Ky. AG LEXIS 111.

Although response to request was improper, under the Open Records Act, to the extent that cabinet did not reply within three (3) working days, the cabinet properly advised requester that her request could not be satisfied inasmuch as no such record existed and thus appeal from denial was treated as moot. OAG 91-112, 1991 Ky. AG LEXIS 112.

In a request for records where the public agency initially denied inspection of certain public records, but subsequently reversed its position and made the public records open for inspection and copying by the requester, the issue of whether the initial agency response properly relied upon particular exemptions in denying inspection, is mooted by the subsequent release of the public records. OAG 91-140, 1991 Ky. AG LEXIS 141.

Denial of the request to inspect a number of documents in the possession of the public schools was deficient in that it did not cite a specific statutory exemption authorizing nondisclosure, as required by subsection (1) of this section, nor was a copy of the letter of denial forwarded to Attorney General's office, as required by subsection (2) of this section. OAG 91-176, 1991 Ky. AG LEXIS 176.

Cabinet for Human Resources' response to request was deficient, under the Open Records Act, to the extent that it did not reply in writing within three (3) working days. OAG 91-178, 1991 Ky. AG LEXIS 178.

Attorney General opined that Custodian of Records' actions, in denying inmate's request for a copy of his transfer authorization form pursuant to this section, because inmate's account had no money to cover the reproduction costs, were entirely consistent with the Open Records Act, because a public agency is authorized to prescribe reasonable fees for making copies of public records pursuant to KRS 61.876(1)(c) and 61.874(2). OAG 91-210, 1991 Ky. AG LEXIS 210.

The Open Records Act regulates access to public records, and not records management; therefore, the response that the requested records are no longer in the possession of the public agency was sufficient and proper under the Open Records Act. OAG 91-220, 1991 Ky. AG LEXIS 218.

When confronted with a request to inspect public records, an agency must address two (2) questions: Whether it has the documents requested, and if it does, whether the documents are subject to public inspection; under the facts presented, the requested records were not available because they had been returned to the holder of a permit issued by the Natural Resources and Environmental Protection Cabinet, when a revised permit, which did not require the same information, was issued. OAG 91-220, 1991 Ky. AG LEXIS 218.

A public agency cannot furnish access to documents which it does not have and it is not the office of the Attorney General's duty to investigate in order to locate documents which the requesting party believes exist, but which the public agency states do not exist. OAG 92-5, 1992 Ky. AG LEXIS 5.

The Board of Medical Licensure properly denied the open records request of a criminal defendant seeking access to psychiatric evaluations performed on a doctor, pursuant to criminal charges pending against that doctor, because that doctor had earlier evaluated criminal defendant and the criminal charges against doctor raised questions concerning doctor's earlier objectivity; in balancing the privacy interest of the doctor against the public's interest in proper adjudication of criminal proceedings, the benefit which would inure to the public by virtue of the released records did not outweigh the doctor's privacy interest. OAG 92-10, 1992 Ky. AG LEXIS 10.

This statute directs the Attorney General to review open records appeals without reference to the identity of the requester or to the agency issuing the denial; it does not provide for the appointment of an "independent authority" under circumstances which might appear to compromise the Attorney General's impartiality, or indeed, under any circumstances. OAG 92-10, 1992 Ky. AG LEXIS 10.

City must release the monthly statements prepared by the city's attorneys which reflect the general nature of the legal services rendered to city, but should those invoices disclose

substantive matters protected by the attorney client privilege, and exempt under KRS 61.878(1)(j), the exempt material should be separated from the nonexempt materials, and the nonexempt materials released for public inspection. OAG 92-14, 1992 Ky. AG LEXIS 14.

Subsection (2) of this section requires that a copy of the written response denying inspection be forwarded immediately to the Office of the Attorney General. OAG 92-34, 1992 Ky. AG LEXIS 34.

Where the Western Kentucky Corrections Complex Grievance Coordinator's response to an open records request by an inmate did not constitute final agency action, inasmuch as it was not issued by the official custodian or under her authority, the inmate's appeal was not ripe for review by the Attorney General. OAG 92-51, 1992 Ky. AG LEXIS 51.

KRS 620.050(5)(a) clearly requires that the Cabinet for Human Resources and the Department for Social Services withhold from all persons information acquired as a result of an investigation conducted pursuant to KRS 620.050(5)(a) to (f). OAG 92-53, 1992 Ky. AG LEXIS 53.

The requesting party did not demonstrate that he fell under any of the statutorily recognized classifications of KRS 620.050(5)(a) or that his particular situation warranted the release of the requested material; although the requesting party was the noncustodial parent, the allegations of dependency, neglect, or abuse were not substantiated. OAG 92-54, 1992 Ky. AG LEXIS 54.

Inmate mistakenly asserted that he must be afforded access to nonconfidential documents before he identified those documents; accordingly, the Attorney General opined that inmate must identify the specific documents that he wishes to inspect. OAG 92-56, 1992 Ky. AG LEXIS 56.

The Cabinet for Workforce Development was directed to release the employment applications and resumes of the named employees of a state vocational-technical school, after separating or otherwise masking any information of a personal nature which appeared on those documents, including the employees' home addresses, social security numbers, and medical information; if the employees' teaching certificates were contained in the file, they too should have been released. OAG 92-59, 1992 Ky. AG LEXIS 59.

The Interfraternity and Panhellenic Councils at Eastern Kentucky University may be deemed "public agencies" for purposes of the Open Records Act, only if they derive at least 25% of their funds from state or local authority; the term "funds" refers to a sum or sums of money, and while it is true that the Interfraternity and Panhellenic Councils derive an appreciable benefit from the University this benefit cannot be quantified, or otherwise translated into a monetary figure; therefore the Interfraternity and Panhellenic Councils are not public agencies within the meaning of KRS 61.870, et seq. and are not public agencies within the meaning of, or subject to, the Open Meetings Law. OAG 92-62, 1992 Ky. AG LEXIS 62.

Nothing in this section permits an agency to postpone or delay its written response pending review by agency counsel, such as the Correction Cabinet's General Counsel; upon receipt of a request to inspect documents, an agency is required to respond within three (3) working days, although there are limited exceptions to this general rule. OAG 92-64, 1992 Ky. AG LEXIS 64.

Inmate's request for a list of prison canteen items and their cost was properly denied where no such list existed. OAG 92-64, 1992 Ky. AG LEXIS 64.

The Kentucky State Penitentiary (KSP) should comply with this section by issuing responses within three (3) working days; if an open records request is misdirected, places an unreasonable burden on the KSP office, or the requested records are not immediately available, KSP's response should conform to KRS 61.872(3), (4), or (5). OAG 92-64, 1992 Ky. AG LEXIS 64.

Although one section of the contract, lease, and option agreement between the City and the Public Hospital corporation required that a copy of the annual audit and supporting documents be filed in the office of the city clerk, those documents were, by the express terms of the agreement, released by the Hospital for the limited purpose of allowing inspection by, or on behalf of, holders of outstanding bonds or coupons; the agency established that the requested records: (1) were confidentially disclosed to it; (2) for one of the four purposes delineated in KRS 61.878(1)(b), e.g., regulation of a commercial enterprise; and (3) that release of the records would permit an unfair advantage to competitors of the subject enterprise; therefore, the release of the requested records was properly denied. OAG 92-66, 1992 Ky. AG LEXIS 66.

The training and examination rating scale, used in reviewing candidates for certain positions can be characterized as an inactive examination, and therefore falls squarely within the parameters of the exception to Open Records codified at KRS 61.878(1)(e). OAG 92-80, 1992 Ky. AG LEXIS 83.

Where private investigator originally asked for copies of all documents in the possession of the Kentucky State Police which related to suspended state trooper, request was properly denied because blanket requests for information on a subject without specifying certain documents need not be honored. OAG 92-85, 1992 Ky. AG LEXIS 81.

It is the policy of the Kentucky State Police (KSP) to withhold reports of background investigations on job applicants conducted by KSP; the Attorney General's office opined that these reports contain information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and are exempt from public inspection pursuant to KRS 61.878(1)(a); moreover, background investigation reports may be withheld under authority of KRS 61.878(1)(g) and (h). OAG 92-85, 1992 Ky. AG LEXIS 81.

State police custodian of records' response to private investigator's open records request was substantively correct; custodian advised private investigator that custodian had provided private investigator with all of the pages of a suspended state trooper's employment application, but had deleted specific personal information pursuant to KRS 61.878(1)(a) "which provides for exclusion because of the unwarranted invasion of personal privacy." OAG 92-85, 1992 Ky. AG LEXIS 81.

State police custodian of records' response to private investigator's request for all documentation regarding the reasons for suspension of former state trooper contained in Personnel Orders was consistent with the Open Records Act; police internal affairs reports are exempt from public inspection as preliminary memoranda; only internal affairs reports which indicate the final action taken and the underlying complaint are open to public inspection. OAG 92-85, 1992 Ky. AG LEXIS 81.

Response to request for records was procedurally deficient insofar as it was not issued within three (3) working days. Some 28 working days elapsed between the date of the request and the date of the response. Allowing for delays in the mail, the response was nevertheless untimely; however, since the college acknowledged its obligation under the Open Records Law to release all documents pertaining to the contractual relationship between college and company although the response was procedurally deficient, it was substantially correct. OAG 92-120, 1992 Ky. AG LEXIS 120.

Since it is imprudent to entrust the weighty responsibility of responding to open records requests to individuals who may have little or no knowledge of the Act, if a request is made for a record which is not housed in the custodian's office, it should be transmitted to, and reviewed by, the custodian for a determination of the propriety of release. At a minimum, the custodian should review any denial of an open records request

to insure that it conforms to the referenced provisions. OAG 92-120, 1992 Ky. AG LEXIS 120.

"Timely access" to public records has been defined as "any time less than three (3) days from agency receipt of the request," therefore, response to request was procedurally deficient insofar as it was not issued within three (3) working days, in fact well over a year has elapsed since the initial request, and some four months has elapsed since the latest request; a delay in excess of one year is clearly unreasonable under the Open Records Act. OAG 92-121, 1992 Ky. AG LEXIS 121.

Subsection (1) of this section requires an agency which elects to withhold documents to cite a specific exception authorizing nondisclosure and provide a brief explanation of how that exception applies and thus a statement by the person to whom the request was made that the requested documents were exempt from disclosure because they were absolutely irrelevant to the case was not legally sufficient grounds for exclusion and failure to cite an exception while withholding records was improper under the Open Records Law, and denial of that portion of the request was inconsistent with the law. OAG 92-121, 1992 Ky. AG LEXIS 121.

Mere invocation of an exception and reference to prior opinions, without an adequate explanation of how the exception applies or the opinions are relevant, does not satisfy the burden of proof imposed on the agency under subsection (2) of this section and KRS 61.882(3). OAG 92-ORD-1020, 1992 Ky. AG LEXIS 210.

Any notification of a delay in affording access to records in excess of three (3) days must be accompanied by a detailed explanation of the cause and a statement of the earliest date, time, and place on which they will be available for inspection; therefore, the Department for Social Services erred in postponing notification until it could decide "how to best handle a request for records." OAG 93-ORD-43, 1993 Ky. AG LEXIS 73.

Mere invocation of a statutory exception to the release of records and reference to prior opinions, without an adequate explanation of how the exception applies or the opinions are relevant, does not satisfy the burden of proof imposed on the agency under subsection (2) of this section and KRS 61.882(3). OAG 93-ORD-43, 1993 Ky. AG LEXIS 73.

Although the Attorney General may be called on to intervene in the recovery of records when it comes to the attention of the Department for Library and Archives that those records are threatened with unlawful removal, defacing, alteration, or destruction pursuant to KRS 171.530, he is not empowered to issue a legally enforceable decision relative to those acts; his decisions under the Open Records Act are limited to the question of whether the agency violated the provisions of KRS 61.870 to 61.884. OAG 94-ORD-12, 1994 Ky. AG LEXIS 16.

After a request for certain public records under the Open Records Act, the custodian of such records need only advise the requester that his or her request will be honored and either append the records or notify the requester that they are available for immediate inspection per subdivision (3)(a) or (b) of KRS 61.872; failure of the custodian to state that the requested records exist or that the records provided are those requested does not constitute a violation of the Act. OAG 94-ORD-15, 1994 Ky. AG LEXIS 13.

Even though there was some question as to whether request to secure copies of documents was signed, city was under a legal obligation to respond to the request within the stautorily mandated time frame even if the response was merely to advise the requestor that the request did not meet statutory requirements. Every request for documents submitted to a public agency should be responded to within the required time frame no matter what decision is made or what reason is advanced in response to the request. OAG 94-ORD-101, 1994 Ky. AG LEXIS 80.

A bare allegation that the records withheld are proprietary is not sufficient under the law. OAG 95-ORD-27.

Where the Lottery Corporation denied an open records request to inspect portions of a survey apparently commissioned by the Lottery Corporation without any explanation of the nature of the record withheld, how it could be characterized as "preliminary" and how the exceptions of this section applied to the withheld information, the Lottery Corporation failed to meet its statutory burden of proof to sustain the denial. OAG 95-ORD-27.

Where the county clerk failed to issue a written response to an open records request and failed to cite the specific exception authorizing his decision to deny the requesting party's access to electronically stored records, the clerk failed to follow the required procedural guidelines set forth in subsection (1) of this section. OAG 95-ORD-43, 1995 Ky. AG LEXIS 28.

With regards to the extent that an agency failed to cite a specific exception authorizing nondisclosure in its original response, and failed to briefly explain how the exception cited applied to the records withheld in its second response, it violated the procedural requirements of the Open Records Act. OAG 96-ORD-135, 1996 Ky. AG LEXIS 34.

The language of subsection (2)(a) of this section clearly indicates that the Attorney General's role in adjudicating open records disputes is narrowly circumscribed. He is only authorized to review a public agency's denial of a request to inspect a public record or a complaint that the intent of the Act is being subverted by an agency short of denial of inspection per subsection (4) of this section. The Attorney General does not have authority to entertain a third party claim that disclosure of public records would constitute a clearly unwarranted invasion of personal privacy, or is inconsistent with any of the other exemptions codified at KRS 61.878(1)(a) to (l). OAG 96-ORD-148, 1996 Ky. AG LEXIS 37.

Had the complaint as to the legality of the Workers' Compensation Advisory Council adjourning into private caucuses meeting separately as business and labor interests been an appeal under the Open Records Act (KRS 61.870 to 61.884), which imposes the burden of proof in sustaining a denial of a request upon the public agency, subsection (2)(c) of this section, the matter could have been conclusively resolved in favor of the complaining party, however, because the Open Meetings Act contains no such provision relative to the public agency's burden of proof, it could not be decided that the public agency failed to meet its burden of proof and no definitive finding could be made. OAG 96-OMD-261, 1996 Ky. AG LEXIS 89.

Response of county board of education to request to inspect records containing the results of drug tests administered to school bus drivers that although records were available, counsel was reviewing the matter and a decision would be rendered in ten days was procedurally deficient as a public agency cannot postpone or delay the statutory deadline of subsection (1) of this section. Although the burden on the agency to respond in three (3) working days is an onerous one, the only exceptions to this general rule are found at 61.872(4) and did not apply here. OAG 97-ORD-2, 1997 Ky. AG LEXIS 4.

A correctional complex's denial of an inmate's request for his FBI rap sheet was procedurally deficient when it merely stated that the facility was "not the official custodian of that record" without citing the specific exception authorizing nondisclosure; however, the inmate's response was properly denied under KRS 61.878(1)(k) and 28 USCS § 534. OAG 97-ORD-178, 1997 Ky. AG LEXIS 180.

A confidentiality clause inserted in a settlement agreement may require the government to notify a party if there is a request for a copy of the agreement; however, the government is required to proceed under subsection (1) and provide a a written response to the request for information within three (3) business days; while this gives the agency scant time to notify the affected party and affords the affected party only a narrow window of opportunity to commence litigation, the

existing law permits no deviation from this rule. OAG 98-ORD-24, 1998 Ky. AG LEXIS 5.

Because the General Assembly is a body created by the Constitution of this state in the legislative branch of government as defined in KRS 61.870(1)(g), and as there is no reasonable basis for excluding it from the definition of a public agency, its records are subject to public inspection and there is no impediment to the Office of the Attorney General discharging its statutorily mandated duty under this section. OAG 98-ORD-92, 1998 Ky. AG LEXIS 208.

A county fiscal court's response to a combined meetings complaint and records request was procedurally deficient insofar as it was not issued within three (3) business days, it failed to cite a statutory basis for the fiscal court's position, and it failed to contain a brief supporting explanation. OAG 99-OMD-221, 1999 Ky. AG LEXIS 214.

The failure of a sheriff's department to timely respond, in writing, to a request was a procedural violation of the requirements of subsection (1); further, the procedural requirements are not mere formalities, but are an essential part of the prompt and orderly processing of an open records request. OAG 99-ORD-8, 1999 Ky. AG LEXIS 3.

The policy of a county 911 center to defer requests for audiotapes of telephone calls to the responding agency was improper as the 911 center was itself a public agency and, therefore, it was required itself to respond to such requests; however, the 911 center could consult with the responding agency before replying to such a request. OAG 99-ORD-10, 1999 Ky. AG LEXIS 28.

A response to an open records request that the agency is researching its files to determine if responsive records exist, and will respond "as soon as it has completed its review" is procedurally deficient. OAG 99-ORD-13, 1999 Ky. AG LEXIS 25.

The Kentucky Revenue Cabinet violated subsection (1) by failing to afford timely access to nonexempt records identified in a request. OAG 99-ORD-14, 1999 Ky. AG LEXIS 24.

A city violated subsection (1) by failing to respond in writing, and within three (3) business days, to a request; the city initially failed to respond at all and only responded after the requester initiated an appeal. OAG 99-ORD-22, 1999 Ky. AG LEXIS 16.

Although a county board of education issued a timely written response to a request, the board violated the procedural requirements of the statute as it failed to cite the specific open records exceptions authorizing its partial denial of the request. OAG 99-ORD-26, 1999 Ky. AG LEXIS 43.

To the extent that a police department failed to respond to a request, it violated the statute, and the fact that the requester did not use the standard open records application when he made his request did not alter this conclusion. OAG 99-ORD-29, 1999 Ky. AG LEXIS 40.

A training center violated subsection (1) by failing to respond in writing to a request for records. OAG 99-ORD-31, 1999 Ky. AG LEXIS 38.

The burden of proof in sustaining public agency action in the event of an appeal to the Attorney General, or to the Circuit Court, is on the agency. OAG 99-ORD-36, 1999 Ky. AG LEXIS 33.

A city's response to a request under the act was deficient where it articulated a basis for denying access to the requested records, but did not cite the relevant exception supporting nondisclosure. OAG 99-ORD-38, 1999 Ky. AG LEXIS 31.

A fee of ten cents ($ .10) per copy was not excessive and was consistent with the standard of reasonableness, notwithstanding that the two commercial photocopy companies charged a lower fee for copies. OAG 99-ORD-40, 1999 Ky. AG LEXIS 48.

Although memoranda containing recommendations that were never adopted and forms that were never approved may properly be characterized as preliminary documents within the meaning of subsections (1)(i) and (1)(j), it is incumbent on the agency to determine if responsive records exist and, if they do not, to specifically so indicate; it is not enough to advise the requester that "if any documents exist," they are exempt. OAG 99-ORD-42, 1999 Ky. AG LEXIS 50.

A public agency's response is deficient under the Open Records Act if it fails to advise the requesting party whether specific records identified in his or her request exist. OAG 99-ORD-43, 1999 Ky. AG LEXIS 51.

A board of education unreasonably postponed the requester's right of access to public records where the board extended the deadline for inspection of an abbreviated list of records for an additional 27 days, noting that eight (8) of these days were weekends and that its offices would be officially closed on three (3) other days during the 27 day period. OAG 99-ORD-44, 1999 Ky. AG LEXIS 52.

There was no violation of the statute where an inmate in a correctional institution submitted to the Governor a request for copies of records relating to conditions at the institution, the Governor's office conducted a search of its files and determined that there were no responsive records in its custody, and the request was forwarded to the Department of Corrections to conduct an additional search and to respond on behalf of the Governor. OAG 99-ORD-45, 1999 Ky. AG LEXIS 53.

The failure of two (2) agencies to provide a written response to a request for records under the Open Records Act within three (3) business days was a violation of the statute. OAG 99-ORD-46, 1999 Ky. AG LEXIS 54.

A school district properly discharged its duties under the Open Records Act by agreeing to permit the requester to inspect the nonexempt portions of records containing the information she sought during its regular business hours where the requested information was not inclusively contained in any one comprehensive document. OAG 99-ORD-48, 1999 Ky. AG LEXIS 56.

A sheriff's department's responses were procedurally flawed in failing to cite a statute as the basis for the denial of a request and in failing to contain a brief explanation of how the relevant exception applied to the records withheld. OAG 99-ORD-56, 1999 Ky. AG LEXIS 62.

Responses to requests for records were deficient where they failed to cite the provision of the Open Records Act upon which the requests were denied and failed to briefly explain how such provison applied to the records withheld. OAG 99-ORD-63, 1999 Ky. AG LEXIS 69.

To the extent that a response to a request for records consisted of little more than a bare reference to the exception upon which it relied, without a supporting explanation of how the exception applied to the records withheld, it was deficient. OAG 99-ORD-73, 1999 Ky. AG LEXIS 79.

To the extent that a county central dispatch failed to respond to a request in a proper and timely fashion and conditioned his right of inspection on obtaining a subpoena, it violated the Open Records Act. OAG 99-ORD-95, 1999 Ky. AG LEXIS 102.

A volunteer fire protection district was obligated to discharge its duties under the statute by releasing all nonexempt records which were responsive to a request or by denying access to them on the basis of one or more of the statutory exceptions, notwithstanding that the requested records were available elsewhere. OAG 99-ORD-101, 1999 Ky. AG LEXIS 89.

To the extent that a fire protection district's response to an April 23 request, although apparently authored within the statutory three (3) day period of limitation, was not served on the requester until May 4, that response violated subsection (1); the fact that the mayor of the city wished to discuss the request at the next meeting of the city commission did not toll the statutory deadline or relieve the district of its duty under the law. OAG 99-ORD-101, 1999 Ky. AG LEXIS 89.

KRS 197.025(7) controls over subsection (1) and allows a penitentiary five (5) days to respond to an open records request. OAG 99-ORD-102, 1999 Ky. AG LEXIS 144.

Although an agency cannot, of course, provide access to a record that does not exist, an agency is nevertheless required to notify the requester in writing, and within three (3) business days, that no record exists that is responsive to the request. OAG 99-ORD-108, 1999 Ky. AG LEXIS 149.

A response to a request for records which stated that the agency was not required to accept blanket or voluminous requests was procedurally deficient in that it failed to cite a specific statutory exception which authorized the withholding of the requested records and a brief explanation as to how the exception applies to the records withheld. OAG 99-ORD-180, 1999 Ky. AG LEXIS 169.

The response by a correctional facility to an inmate's request for records was procedurally deficient in failing to cite the statutory exception authorizing the nondisclosure of the requested records. OAG 99-ORD-188, 1999 Ky. AG LEXIS 175.

A state university violated the statute where it failed to respond to a request for records until after receiving notice that an appeal would be filed. OAG 99-ORD-190, 1999 Ky. AG LEXIS 177.

Public agencies failed to provide the requester with timely access to the record he requested in violation of the statute where (1) the request was submitted on August 5, (2) a response was issued on August 18 informing the requester that the record was maintained by another agency and that the request was being forwarded to that agency, (3) as of the date of his letter of appeal, September 21, the requester indicated that he had not been provided with a copy of the record, and (4) the record was released on October 6. OAG 99-ORD-194, 1999 Ky. AG LEXIS 181.

A city violated the statute where it did not respond to a request for records until after the notice of appeal was filed. OAG 99-ORD-198, 1999 Ky. AG LEXIS 193.

An agency violated the statute where it received a request for records on October 8, but failed to respond until October 18. OAG 99-ORD-200, 1999 Ky. AG LEXIS 195.

A city violated the statute where it failed to respond to a request for records in writing. OAG 99-ORD-210, 1999 Ky. AG LEXIS 204.

A county fiscal court erred in postponing action on a request for 10 days without explanation and without reference to KRS 61.872(5) and in characterizing the request as so nonspecific as to preclude the fiscal court from determining what records were requested. OAG 99-ORD-225, 1999 Ky. AG LEXIS 221.

A county fiscal court violated the statute when it failed to respond to a request for records and, therefore, was required to make immediate arrangements for the requester to inspect the records identified in her requests or, alternatively, to appeal the decision to the appropriate Circuit Court. OAG 00-ORD-1, 2000 Ky. AG LEXIS 8.

A county fiscal court violated the statute in failing to respond to a request for copies of records reflecting the county's total expenditures for its animal control program in a specific fiscal year. OAG 00-ORD-44, 2000 Ky. AG LEXIS 46.

An agency violated the statute where its original response to a request for records was issued four (4) business days after the submission of the request and, more importantly, neither that response nor the supplemental response issued shortly thereafter included a statement of the specific exception authorizing the withholding of the records and a brief explanation of how the exception applied to the records withheld. OAG 00-ORD-62, 2000 Ky. AG LEXIS 66.

An agency may properly require all records requests to be routed through its official custodian to ensure the timely and orderly processing of open records requests. OAG 00-ORD-73, 2000 Ky. AG LEXIS 83.

Nothing in the statute permits an agency to postpone or delay the three (3) day statutory deadline for responding to a request for records while the agency attempts to locate the records or to formulate its response, notwithstanding that the burden on the public agency to respond in three (3) working days is, not infrequently, an onerous one. OAG 00-ORD-74, 2000 Ky. AG LEXIS 82.

To the extent that an agency failed to respond to a request in writing, and within three (3) business days, it violated the statute. OAG 00-ORD-76, 2000 Ky. AG LEXIS 81.

An agency was not relieved of its duties under the Open Records Act with regard to a request for records which arose out of a year-end evaluation dispute by virtue of its decision to upgrade the requester's evaluation or by virtue of any informal, oral communications concerning the request. OAG 00-ORD-77, 2000 Ky. AG LEXIS 80.

The Kentucky State University violated the statute by failing to comply with the procedural guidelines for agency response set forth at subsection (1) and by failing to advise the requester in writing, and in clear and direct terms, that no records existed that were responsive to his request. OAG 00-ORD-82, 2000 Ky. AG LEXIS 76.

Although the presence of litigation and simultaneously filed open records and discovery requests may engender staff confusion, neither relieves a correctional facility of its duties under subsection (1) when read in conjunction with KRS 197.025(7). OAG 00-ORD-83, 2000 Ky. AG LEXIS 75.

A volunteer fire department violated the Open Records Act by refusing to accept service of an open records request and to respond, in writing, to that request within three (3) business days. OAG 00-ORD-93, 2000 Ky. AG LEXIS 99.

An agency violated the statute where it timely responded within three (3) days, but advised that because the requester had requested a substantial amount of information, it would take some time to compile the requested records and that it would respond within 30 days. OAG 00-ORD-95, 2000 Ky. AG LEXIS 101.

Where an agency failed to cite the exception upon which it relied in withholding access to requested records, the agency's response was procedurally deficient. OAG 00-ORD-101, 2000 Ky. AG LEXIS 105.

A city violated the statute in failing to respond to a request for records in writing, and within three (3) business days, in failing to cite the specific exception authorizing the withholding of each of the records that she requested, and in failing to briefly explain how the exception applies to each of the records withheld. OAG 00-ORD-104, 2000 Ky. AG LEXIS 110.

A city failed to afford timely access to requested records where (1) the records were not disclosed until 22 days after the request was made, and (2) the requested records were of an identified, limited class that could be readily accessed through an existing database. OAG 00-ORD-117, 2000 Ky. AG LEXIS 126.

A school council violated the statute by failing to respond in writing, and within three (3) business days, to a request. OAG 00-ORD-123, 2000 Ky. AG LEXIS 131.

A city violated the statute where it responded to a request within three (3) days, but the response only intimated that the request would be honored in time and did not contain a detailed explanation of the cause of the delay or state the earliest date on which the records would be available. OAG 00-ORD-188, 2000 Ky. AG LEXIS 192.

A tri-county animal control center violated the statute where it failed to respond to a request for records and also failed to respond to a notice of appeal with regard to the request. OAG 00-ORD-212, 2000 Ky. AG LEXIS 216.

"Excessive" requests and "invalid reasons" do not constitute legally supportable bases for denying access to public records. The written response must include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. OAG 01-ORD-8, 2001 Ky. AG LEXIS 33.

The public's interest in what businesses are taxed, where they are located, and whether they are delinquent in paying their taxes (but not the amount of taxes owed or any other information that reveals the affairs of their businesses), is superior to any privacy interest asserted. The City and the Tourist & Convention Commission improperly withheld records containing "the names and locations of businesses that are delinquent on the payment of their food/restaurant taxes" notwithstanding the city ordinance that deemed those records confidential. OAG 01-ORD-63, 2001 Ky. AG LEXIS 125.

As a city police chief did not adopt an internal affairs report as the basis of final disciplinary action taken against an officer, the city properly denied a request for an investigative file of a complaint against the officer, including records in the file that were created as an integral part of the investigative process, as opposed to records in the file that were created collaterally to the investigation and later placed in the file. OAG 01-ORD-83, 2001 Ky. AG LEXIS 8.

Since public agencies are statutorily assigned the burden of proof in substantiating their actions pursuant to KRS 61.880(2)(c), a record that is devoid of citation to the relevant legal authority and a particular and detailed explanation of how that authority applies is inadequate to meet this burden. When an issue cannot be resolved on the record, the Attorney General will require the agency to substantiate its denial. OAG 01-ORD-83, 2001 Ky. AG LEXIS 8.

When an agency relies upon the protections afforded by KRS 61.878(1)(i) and (j) as its basis for denying access to internal investigative reports/files, the ultimate decision maker should affirm that he or she did not adopt the report as the basis of the final action, and to explain on what basis he or she, in fact, determined what final action was appropriate. It is not enough to simply invoke the exceptions to shield the investigative report from disclosure without offering an explanation of what was done and why. OAG 01-ORD-83, 2001 Ky. AG LEXIS 8.

Days that a school is closed for spring vacation cannot be characterized as legal holidays, and therefore do not toll an agency's response time in responding to an open records request. Days on which students, faculty, and staff are not present for any reason other than Saturdays, Sundays, and legal holidays must therefore be calculated into the three-day response time. OAG 01-ORD-94, 2001 Ky. AG LEXIS 188.

If the audiotape of the agency's board meeting was purchased with agency funds and made at the agency's direction, then it was a public record subject to disclosure. Furthermore, It was not incumbent on the requester to produce legal authority as a condition to inspection of the tape. The burden of proof in an open records appeal rests with the public agency, and the agency failed to meet this burden relative to the record withheld. OAG 01-ORD-96, 2001 Ky. AG LEXIS 156.

The delay of some ten (10) to thirteen (13) business days in providing the requester with copies of the records because the record custodian was on vacation constituted a subversion of the intent of the Act within the meaning of KRS 61.880(4). OAG 01-ORD-140, 2001 Ky. AG LEXIS 197.

An ongoing, or standing, open records request is not proper under the Open Records Act and the City therefore did not violate the Act by placing redacted copies of incident reports "at a front desk for anyone to pick up" without providing a written explanation for those redactions. OAG 02-ORD-36, 2002 Ky. AG LEXIS 117.

Although the Open Records Law, and in particular KRS 61.880, contains no statute of limitations for initiating open records appeals, KRS 197.025(3) requires inmates confined in penal facilities to initiate an appeal of "any denial of an open record" with the Attorney General within twenty (20) days. OAG 02-ORD-54, 2002 Ky. AG LEXIS 17.

It was incumbent on the school district to respond, in writing, to the requester's July 11, 2002 request on or before July 16 and to provide her with the evidence and attachments relating to her September 21, 2001 formal complaint which the District sent to the Kentucky Department of Education. The District appears to have treated as responsive to this particular request, inter alia, correspondence generated in the period from February through July 2002, minutes, agendas, and data from ARC meetings conducted in January, February, and May, 2002, a complaint the requester filed in February 2002, and emails generated after February 14, 2002. OAG 02-ORD-150, 2002 Ky. AG LEXIS 75.

Campaigning for reelection, or discharging duties associated with private employment, do not provide a sufficient legal basis for temporarily suspending the legal obligations imposed on a public agency by KRS 61.880(1). Invocation of, and reliance upon, KRS 61.872(5) should occur on rare occasions and only when the circumstances are such as to clearly warrant extension of the standard three day deadline for agency response and release of records. OAG 03-ORD-05, 2003 Ky. AG LEXIS 97.

Electronic mail generated by public agency officials or employees is a public record as defined in KRS 61.870(2), and is therefore subject to the Open Records Act. it is for the records custodian, and not the email account holder, to locate and retrieve these records and to make the determination as to which are exempt and which must be disclosed. OAG 03-ORD-05, 2003 Ky. AG LEXIS 97.

The Cabinet erred in adopting a policy of blanket exclusion relative to the responsive e-mails and any unidentified responsive records on the basis of the attorney-client privilege. The Cabinet has provided only a bare assertion in support of its claim that unidentified responsive records, including e-mails, constitute privileged attorney-client communications, and has not identified the records or groups of records withheld or adequately explained how the privilege applies to those records as required by KRS 61.880(1) and KRE 503. OAG 04-ORD-187, 2004 Ky. AG LEXIS 206.

Where the open records request was received by the University on Wednesday, October 6, this would be the date or day of the act after which the three-day period of time begins to run. Thus, Thursday, October 7 would be day one. Friday, October 8 would be day two. The intermediate Saturday and Sunday are excluded from the computation. Monday, October 11, the day the University advised it mailed the response, would be day three. Accordingly, the University timely mailed its response within three (3) business days after receipt of the request, as required by KRS 61.880(1). OAG 04-ORD-213, 2004 Ky. AG LEXIS 241.

Although the Medical Licensure Board apparently provided the requester with copies of some or all of the requested records during the course of related litigation, this does not relieve the Board of its duty under the Open Records Act to provide copies of any records in its possession which are responsive to the separate but related request at issue. In relying solely upon the alleged possession of the requested records as the basis for its denial, the Board therefore failed to satisfy its burden of proof. OAG 04-ORD-220, 2004 Ky. AG LEXIS 143.

The school district violated KRS 61.880(1) in failing to respond to the request because the requester did not comply with a Board of Education policy requiring the submission of an open records request on a preprinted form developed by the Board. The October 25 request conformed, in all particulars, with the requirements found at KRS 61.872(2). It was therefore incumbent on the school district to respond in writing, and within three business days, to that request. OAG 04-ORD-242, 2004 Ky. AG LEXIS 278.

In regard to a request for a copy of a tape recording of a 911 phone call, the division of police discharged its statutory duty by advising the requester that the requested record was properly destroyed pursuant to the applicable records retention schedule. OAG 05-ORD-33, 2005 Ky. AG LEXIS 129.

County board of education violated the Open Records Act when it denied a request for records relating to the removal of school superintendent on the basis that the only documents from the removal hearing that could be disclosed were the minutes and findings as previously disclosed to the press, and that all other documents were requested to remain confidential by the superintendent. OAG 05-ORD-46, 2005 Ky. AG LEXIS 132.

A city should provide a requester with access to those records in a city employee's personnel file which are not exempt from disclosure under KRS 61.878(1) or other applicable statutes. For records in the file for which statutory protection from disclosure exists, the agency should identify those documents and provide a brief written explanation including citation to the statute authorizing nondisclosure. OAG 05-ORD-73, 2005 Ky. AG LEXIS 224.

A volunteer fire department improperly denied a request for a copy of a petition; it did not matter that it was in the possession of the chairman of the board of the department and had not been presented to the rest of the board or the membership. OAG 05-ORD-106, 2005 Ky. AG LEXIS 154.

County judge-executive violated the Open Records Act in failing to provide a requester with copies of a franchis contract and all contractual agreements between the county and a sanitation company because the judge-executive was required to either affirmatively indicate that no written contracts existed, or provide the requester with copies of the actual contracts. OAG 06-ORD-020, 2006 Ky. AG LEXIS 19.

Transportation cabinet did not conduct an adequate search for email responsive to open records request; however, in the absence of proof of improper destruction of the requested email, the cabinet was not obligated to conduct a search using specialized processes for email recovery. OAG 06-ORD-022, 2006 Ky. AG LEXIS 93.

Although a county board of education violated KRS 61.880(1) in failing to cite the applicable statutory exception and briefly explain how the exception applied to the records of policies relating to the reemployment of substitute teachers and the employment of retired teachers, the board properly redacted the contact information of substitute teachers. OAG 06-ORD-036, 2006 Ky. AG LEXIS 292.

Regional jail violated the Open Records Act in failing to respond to an open records request for copies of records concerning visits made to the requester by his attorney at the jail. OAG 06-ORD-037, 2006 Ky. AG LEXIS 24.

Open records appeal is not the appropriate forum for adjudication of requester's claim of willful concealment of public records. OAG 06-ORD-042, 2006 Ky. AG LEXIS 308.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Kentucky Business Enterprises, 782 KAR 1:010.

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Fleischaker, Klimkina & McCauley, The Kentucky Open Records Law: A Retrospective Analysis, Vol. 76, No. 4, July 2012, Ky. Bench & Bar 13.

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Out of the Sunshine and into the Shadows: Six Years of Misinterpretation of the Personal Privacy Exemption of the Kentucky Open Records Act, 71 Ky. L.J. 853 (1982-83).

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Ziegler, the Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

61.882. Jurisdiction of Circuit Court in action seeking right of inspection — Burden of proof — Costs — Attorney fees.

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars ($25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

History.
Enact. Acts 1976, ch. 273, § 7; 1992, ch. 163, § 7, effective July 14, 1992.

NOTES TO DECISIONS

Analysis

1. Assessment of Costs.
2. Standing to Contest Agency Decision.
3. Response.
4. Fines.
5. In Camera Inspection.
6. Attorney Fees.
7. Access Improperly Denied.
8. Willfulness.
9. Harm.
10. Construction.
11. Against Agency.
12. Immunity.
13. Judicial Review.

1. Assessment of Costs.
Where city acted under authority of law in withholding requested police department files rather than having done so in willful violation of the law, assessment of costs and reasonable attorneys' fees in favor of appellees under subsection (5)

of the section necessarily failed. Louisville v. Courier-Journal & Louisville Times Co., 637 S.W.2d 658, 1982 Ky. App. LEXIS 232 (Ky. Ct. App. 1982).

An inmate was entitled to an award of costs where the Department of Corrections improperly denied the inmate access to records pertaining to a disciplinary proceeding against him. Blair v. Hendricks, 30 S.W.3d 802, 2000 Ky. App. LEXIS 69 (Ky. Ct. App. 2000), overruled in part, Lang v. Sapp, 71 S.W.3d 133, 2002 Ky. App. LEXIS 452 (Ky. Ct. App. 2002).

2. Standing to Contest Agency Decision.

A party affected by the decision of a public agency to release records pursuant to the Kentucky Open Records Act had standing to contest the agency decision in court where the disclosure of information in the public record would constitute a clearly unwarranted invasion of personal privacy. Beckham v. Board of Educ., 873 S.W.2d 575, 1994 Ky. LEXIS 22 (Ky. 1994).

3. Response.

Where county attorney did not attempt to establish that disclosure of records relating to child support payments requested by attorney representing father of minor child would constitute a clearly unwarranted invasion of personal privacy, and where county attorney did not reference relevant state or federal law barring disclosure or explain its application to the disputed records, county attorney's response failed to conform to KRS 61.880(2)(c) and subsection (3) of this section. Edmondson v. Alig, 926 S.W.2d 856, 1996 Ky. App. LEXIS 124 (Ky. Ct. App. 1996).

Since emails between a city mayor and the city council members were preliminary discussions concerning what course of action to take with respect to a financial controversy regarding a local convention center, they were within the exemption from disclosure of the Open Records Act pursuant to KRS 61.878(1), and a city and the mayor were not liable for willfully withholding records under KRS 61.882(5). Baker v. Jones, 199 S.W.3d 749, 2006 Ky. App. LEXIS 12 (Ky. Ct. App. 2006).

4. Fines.

An inmate was properly denied the discretionary fine provided for in the statute in connection with the Department of Correction's denial of access to records of a disciplinary proceeding against him where there was no proof that the department's actions were wilful or that the failure damaged the inmate in any way, and it appeared that the department merely made a good faith denial of records. Blair v. Hendricks, 30 S.W.3d 802, 2000 Ky. App. LEXIS 69 (Ky. Ct. App. 2000), overruled in part, Lang v. Sapp, 71 S.W.3d 133, 2002 Ky. App. LEXIS 452 (Ky. Ct. App. 2002).

Circuit court's award of attorney's fees and costs to the newspapers was affirmed where substantial evidence supported the finding of willfulness under Ky. Rev. Stat. Ann. § 61.882(5), and the circuit court properly interpreted the statute to permit an award of up to $25 per day for each particular record that an agency improperly and willfully withheld. Cabinet for Health & Family Servs. v. Courier-Journal, Inc., 493 S.W.3d 375, 2016 Ky. App. LEXIS 18 (Ky. Ct. App. 2016).

Court of Appeals of Kentucky cannot agree that the General Assembly's mere use of the word "person" in Ky. Rev. Stat. Ann. § 61.882(5) demonstrated so clear an intent that penalties be imposed on a per person basis as to show the trial court's reading unreasonable or erroneous. Cabinet for Health & Family Servs. v. Courier-Journal, Inc., 493 S.W.3d 375, 2016 Ky. App. LEXIS 18 (Ky. Ct. App. 2016).

5. *In Camera* Inspection.

Where a teacher's open records request to view videotape recordings of her own classroom was denied on grounds this would violate the Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g, and the Kentucky Family Educational Rights and Privacy Act (KFERPA), KRS 160.700 et seq., the Circuit Court properly denied her request to view the tapes in camera since this would have rendered the entire controversy void. Medley v. Bd. of Educ., 168 S.W.3d 398, 2004 Ky. App. LEXIS 305 (Ky. Ct. App. 2004).

University violated the Kentucky Open Records Act because it refused to allow the Attorney General (AG) to review redacted records requested by the student newspaper; the refusal made the AG's review of the matter impossible, leaving the AG with no alternative but to decide that the university had release the records to the newspaper. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

6. Attorney Fees.

Where a senator sought attorney billing statements prepared by nongovernmental lawyers retained by a Governor's administration in connection with an investigation of its hiring practices, it was error to award attorney fees to the senator. Because the attorney-client privilege was favored to be a valid exception to at least a portion of the records, and because the trial court's solution of allowing documents the administration believed to be privileged to be reviewed *in camera* appeared to be novel, it could not be said that the administration willfully withheld records. Commonwealth v. Scorsone, 2008 Ky. App. LEXIS 18 (Ky. Ct. App.), op. withdrawn, sub. op., 251 S.W.3d 328, 2008 Ky. App. LEXIS 40 (Ky. Ct. App. 2008).

Former medical resident student did not establish that a university's initial decision to withhold records from her was done willfully, particularly when there was evidence that university officials were not aware that the other documents existed, and once they learned of the other records, they produced them to the student; also the student could not recover the requested attorney's fees and costs. Shyamashree Sinha v. Univ. of Ky., 284 S.W.3d 159, 2008 Ky. App. LEXIS 375 (Ky. Ct. App. 2008).

Newspaper was entitled to fees, costs, and sanctions due to a city's total refusal to furnish even previously released materials. The trial court's failure to make such an award was an abuse of discretion. Cincinnati Enquirer v. City of Fort Thomas, 2011 Ky. App. LEXIS 202 (Ky. Ct. App. 2011).

Matter was remanded to the circuit court for a supplemental award of attorney's fees and costs incurred on appeal; under KRS 61.882(5), upon a showing of a willful withholding, the reporters were entitled to any fees and costs incurred with the legal action, which would include fees and costs incurred in defending the judgment on appeal. Commonwealth v. Lexington H-L Servs., 382 S.W.3d 875, 2012 Ky. App. LEXIS 216 (Ky. Ct. App. 2012).

When it was determined that a city erroneously denied a newspaper's request for a police department's entire file in a murder case, it was not an abuse of discretion to deny the newspaper's request for fees and costs because, inter alia, the city had a plausible, if erroneous, justification for denying the newspaper's request. City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

When it was determined that a city erroneously denied a newspaper's request for a police department's entire file in a murder case, it was not an abuse of discretion to deny the newspaper's request for fees and costs, even when a prosecutor had previously disclosed part of the file to a television station, because (1) the city was not required to research whether another agency had previously disclosed part of the file, (2) the part disclosed was a very small part of the records requested, (3) the newspaper did not specify this part of the file, and (4) this part of the file was disclosed before the Attorney General opined that disclosure was required. City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

Circuit court properly dismissed a city's complaint against a petitioner and awarded him attorney's fees and statutory penalties because the city and its ethics commission wrongfully withheld public records from the petitioner without a good faith basis or plausible justification, they continued in a pattern of improperly denying and delaying the petitioner's exercise of rights under the Open Records Act, and, while the commission was the entity that withheld the documents, it was merely a division of the city. City of Taylorsville Ethics Comm'n v. Trageser, 604 S.W.3d 305, 2020 Ky. App. LEXIS 73 (Ky. Ct. App. 2020).

Where the Legislative Research Commission (LRC) erred in denying an open records request regarding a complaint made by an LRC staffer against a representative, attorneys fees under statute were properly awarded. Hartz v. McClatchy Co., LLC, 643 S.W.3d 286, 2022 Ky. App. LEXIS 10 (Ky. Ct. App. 2022).

Unpublished decision: Records requestor was entitled to attorneys' fees and costs under the provision because it was a public agency and it had willfully withheld requested records. Ky. State Univ. Found., Inc. v. Frankfort Newsmedia, LLC, 694 S.W.3d 394, 2024 Ky. App. LEXIS 22 (Ky. Ct. App. 2024).

7. Access Improperly Denied.

Where a school district employee settled her lawsuit against one school district for sexual harassment by a district official and a second lawsuit against another district for allegedly wrongfully failing to hire her, the lower courts erred in denying a newspaper's request for access to the settlement agreements under the Kentucky Open Records Act, KRS 61.870 to 61.884, because the settlement of litigation between a government agency and one of its employees and a private citizen and a governmental entity were matters of legitimate public concern that the public is entitled to scrutinize. A confidentiality clause in such agreements was not entitled to protection. Cent. Ky. News-Journal v. George, 306 S.W.3d 41, 2010 Ky. LEXIS 72 (Ky. 2010).

8. Willfulness.

Whether the assessment of penalties will have any coercive effect is not a proper consideration under KRS 61.882(5); rather, the only basis upon which penalties may be awarded is a finding that the officials' noncompliance with the Kentucky Open Records Act was willful. Even though the trial court erred by making this improper consideration, a reversal was not warranted because an inmate requesting certain records waived the right to contest the error where he did not raise the issue of willfulness. Eplion v. Burchett, 354 S.W.3d 598, 2011 Ky. App. LEXIS 215 (Ky. Ct. App. 2011).

It was not clearly erroneous to award a newspaper attorney's fees, costs, and penalties for a violation of the Open Records Act by the Cabinet for Health and Family Services (Cabinet) because, by first denying the requested records existed, the Cabinet acted willfully. Cabinet v. Todd Cnty. Std., 488 S.W.3d 1, 2015 Ky. App. LEXIS 171 (Ky. Ct. App. 2015).

Circuit court properly award a newspaper penalties and attorney's fees because the Cabinet for Economic Development had no legal basis for denying the names of a private company's shareholders after the company disclosed them. Commonwealth v. Courier-Journal, Inc., 2019 Ky. App. LEXIS 90 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 633 (Ky. Ct. App. May 17, 2019).

9. Harm.

Nothing in the Kentucky Open Records Act conditions an individual's right to obtain public records on his purpose in seeking those records; further, the propriety of assessing a penalty against non-compliant officials does not depend on whether harm befell the person who is denied records under KRS 61.882(5). Therefore, the fact that an inmate might not have been harmed by the failure to disclose jail records was irrelevant. Eplion v. Burchett, 354 S.W.3d 598, 2011 Ky. App. LEXIS 215 (Ky. Ct. App. 2011).

10. Construction.

General Assembly mandated the non-disclosure of exempt records, a mandate the person or entity whose interest the exemption protects may seek to enforce in the circuit court; disclosure of an exempt record is not precluded if the intended beneficiaries waive their right to non-disclosure, and the statutory mandate that prosecutorial files be and remain totally exempt accords the prosecutor an unlimited discretion to deny disclosure, but it does not preclude him or her from allowing it. Lawson v. Office of the AG, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).

11. Against Agency.

Lawsuit should not have been filed against an attorney for the Kentucky Education and Workforce Development Cabinet based on an allegation that there was a failure to respond in 3 days because the Kentucky General Assembly intended suits based on violations of the Kentucky Open Records Act, including the time provisions at issue here, to be brought against the state agencies themselves and not against the individuals employed by those agencies. Taylor v. Maxson, 483 S.W.3d 852, 2016 Ky. App. LEXIS 15 (Ky. Ct. App. 2016).

12. Immunity.

In a case under the Kentucky Open Records Act, a claim against an attorney for the Kentucky Education and Workforce Development Cabinet in his official capacity was properly dismissed because the Commonwealth had not waived its immunity. The suit against the attorney in his official capacity was essentially a suit against the Cabinet. Taylor v. Maxson, 483 S.W.3d 852, 2016 Ky. App. LEXIS 15 (Ky. Ct. App. 2016).

13. Judicial Review.

Trial court had jurisdiction to review the decision of the Kentucky Legislative Research Commission (LRC) regarding a newspaper's request for legislative records because (1) the court's statutory jurisdiction was not limited to records requests or cases where the LRC issued no decision in 30 days, and (2) the Open Records Act's statutory judicial review right was incorporated into the governing statute. Harilson v. Shepherd, 585 S.W.3d 748, 2019 Ky. LEXIS 380 (Ky. 2019).

In this action involving the failure of the Shively Police Department (SPD) to make disclosures pursuant to the Open Records Act (the ORA) on the basis that it would cause harm to an ongoing criminal investigation, SPD must justify that withholding the records was still necessary based on the specific concerns it raised earlier. Courier-Journal, Inc. v. Shively Police Dep't, 2022 Ky. App. LEXIS 99 (Ky. Ct. App. 2022), aff'd in part, 701 S.W.3d 430, 2024 Ky. LEXIS 296 (Ky. 2024).

Cited:

Board of Education v. Lexington-Fayette Urban County Human Rights Com., 625 S.W.2d 109, 1981 Ky. App. LEXIS 302 (Ky. Ct. App. 1981); Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co., 826 S.W.2d 324, 1992 Ky. LEXIS 35 (Ky. 1992); Frankfort Pub. Co. v. Kentucky State University Foundation, Inc., 834 S.W.2d 681, 1992 Ky. LEXIS 103 (Ky. 1992); Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008); Commonwealth v. Scorsone, 251 S.W.3d 328, 2008 Ky. App. LEXIS 40 (Ky. Ct. App. 2008); Parish v. Petter, 608 S.W.3d 638, 2020 Ky. App. LEXIS 100 (Ky. Ct. App. 2020); Courier-Journal, Inc. v. Shively Police Dep't, 2022 Ky. App. LEXIS 99 (Ky. Ct. App. 2022); Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025); ; Cobb v. Robey, 2026 Ky. App. LEXIS 2 (Ky. Ct. App. 2026); 2026 LX 79541 (January 2, 2026).

OPINIONS OF ATTORNEY GENERAL.

Under this section if an agency does not comply with an Attorney General Opinion upholding a request for inspection and does not take affirmative action to have the opinion declared erroneous, the circuit court may enhance the penalties and damages if the court finds that the agency was wrong. OAG 77-511, 1977 Ky. AG LEXIS 261.

The statements made and data furnished by persons applying to be recognized as in-state residents for the purpose of tuition at a state university are not exempt from inspection under KRS 61.878(1)(a), since subsection (4) of this section indicates that the basic policy is to allow free and open examination of public records and to strictly construe exceptions to that policy, and also because the public interest in the administration of the policy on classification of students for fee assessment purposes outweighs the privacy rights of the individuals who have applied for classification as in-state residents. OAG 80-352, 1980 Ky. AG LEXIS 289.

Records which disclose the names of persons who are inmates of the county jail are not exempt from public disclosure under the personal privacy exemption of subsection (1)(a) of KRS 61.878 since it is contrary to the principles of personal liberty for persons to be secretly held in jail and the embarrassment caused to them or to members of their family is of secondary importance; moreover, the strict construction rule contained in subsection (4) of this section requires disclosure regardless of inconvenience or embarrassment caused to anyone. OAG 81-395, 1981 Ky. AG LEXIS 40.

When a public records dispute is taken to court, the burden of proof is on the public agency to sustain its action. Thus, a public agency should make every attempt to comply with the letter and spirit of the Open Records Act. Every legitimate request, not covered by a statutory exemption, should be complied with as quickly and courteously as possible; the availability of the records should be subject to no more restrictions than are necessary to protect the records and to avoid unduly disrupting the agency's operations. OAG 85-85, 1985 Ky. AG LEXIS 67.

The General Assembly has vested the circuit courts with authority overriding that of the Attorney General in determining open records questions; it would be improper for the Attorney General to attempt to substantively determine an open records question when the same question is before a circuit court. OAG 88-78, 1988 Ky. AG LEXIS 81.

Balancing the privacy interests of the parties to a settlement against the public's right of access to a written out-of-court settlement where a public agency is a party to that settlement, and measured by the standards of a reasonable man, the public's right of disclosure outweighs the privacy interests which might be identified. OAG 91-20, 1991 Ky. AG LEXIS 20.

Certainly if city funds are expended that would weigh heavily toward public disclosure in balancing the privacy interests of those involved in a suit against the city, and the public's right to know. OAG 91-20, 1991 Ky. AG LEXIS 20.

Litigants frequently document in writing the terms of settlements, and they are seldom "generated for" or "received by" the trial court, and settlement records of this nature are not court records and are therefore within the scope of the Act. OAG 91-20, 1991 Ky. AG LEXIS 20.

This Act must be strictly construed in favor of disclosure, and the parties' understanding of confidentiality will not be binding on the courts. OAG 91-20, 1991 Ky. AG LEXIS 20.

When settlement records are prepared, they will be subject to public inspection and must be made available to the requesting party unless the trial court orders that the parties keep the terms confidential, and in such an event, the requesting party remedy is to intervene in the suit, and move to reverse that order. OAG 91-20, 1991 Ky. AG LEXIS 20.

Where with respect to request for financial data although department improperly relied on KRS 61.878(1)(b) in refusing to release the information, the request was not sufficiently definite to permit it to formulate a response for while the purpose and intent of the Open Records Act is to permit the free and open examination of public records, the right of access is not absolute; as a precondition to inspection, a requesting party must identify with "reasonable particularity" those documents which he wishes to review. OAG 91-72, 1991 Ky. AG LEXIS 73.

A "standing request" for all documents compiled by the Hardin County Schools for use by the board may properly be denied on the grounds that it fails to reasonably identify the records sought. While the purpose and intent of the Open Records Act is to permit the "free and open examination of public records," the right of access is not absolute. As a pre-condition to inspection, a requesting party must identify with "reasonable particularity" those documents which he wishes to review. OAG 91-78, 1991 Ky. AG LEXIS 78.

This section does not specify the mode or method by which a written request must be made and it is intended to circumvent disputes relative to the identity of the records requested, and not to create additional obstacles to the release of those records; therefore, a fax transmission satisfies this purpose. OAG 92-13, 1992 Ky. AG LEXIS 13.

Inmate mistakenly asserted that he must be afforded access to nonconfidential documents before he identified those documents; accordingly, the Attorney General opined that inmate must identify the specific documents that he wishes to inspect. OAG 92-56, 1992 Ky. AG LEXIS 56.

Mere invocation of an exception and reference to prior opinions, without an adequate explanation of how the exception applies or the opinions are relevant, does not satisfy the burden of proof imposed on the agency under KRS 61.880(2) and subsection (3) of this section. OAG 92-ORD-1020, 1992 Ky. AG LEXIS 210.

Mere invocation of a statutory exception to the release of records and reference to prior opinions, without an adequate explanation of how the exception applies or the opinions are relevant, does not satisfy the burden of proof imposed on the agency under subsection (3) of this section and KRS 61.880(2). OAG 93-ORD-43, 1993 Ky. AG LEXIS 73.

The purpose and intent of the Open Records Act is to permit "the free and open examination of public records." 95-ORD-2.

Travel expense records do not, in general, disclose communications by the client or attorney in relation to the specific matter for which the attorney was retained, and where there has been little or no effort to insure confidentiality in the handling of the records, or to protect the information contained therein from general disclosure, the assertion of attorney/client privilege fails to protect such records from public inspection. OAG 95-ORD-18, 1995 Ky. AG LEXIS 128.

This section is not a remedy for denial of access only; it also provides standing for a party who may possess a right to have documents excluded to assert that right; however, the government must continue to comply with the procedural requirements of KRS 61.880(1) so that the aggrieved party may act in a timely manner. OAG 98-ORD-24, 1998 Ky. AG LEXIS 5.

The burden of proof in sustaining public agency action in the event of an appeal to the Attorney General, or to the Circuit Court, is on the agency. OAG 99-ORD-36, 1999 Ky. AG LEXIS 33.

Open records appeal is not the appropriate forum for adjudication of requester's claim of willful concealment of public records. OAG 06-ORD-042, 2006 Ky. AG LEXIS 308.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

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Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

61.884. Person's access to record relating to him.

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

History.
Enact. Acts 1976, ch. 273, § 8.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Construction.

1. Applicability.
Other than the exception found at KRS 197.025, the open records laws identify no class or type of persons, even prisoners, who are held to a more stringent standard when submitting open records requests. This presumption in favor of broad availability of public records is even stronger when a person, like an inmate, seeks access to public records pertaining to himself, under KRS 61.884; the Department of Corrections bears the burden to rebut the strong presumption in favor of disclosure. Commonwealth v. Chestnut, 250 S.W.3d 655, 2008 Ky. LEXIS 116 (Ky. 2008).

2. Construction.
Notwithstanding that this section allows any person to have access to any public record relating to him or in which he is mentioned by name, a citizen was not entitled to a copy of a tape recording of a 911 call reporting that the citizen had threatened to kill his own wife and other members of his family, as the disclosure of such recording would have constituted a clearly unwarranted invasion of personal privacy of the 911 caller in violation of KRS 61.878. Bowling v. Brandenburg, 37 S.W.3d 785, 2000 Ky. App. LEXIS 22 (Ky. Ct. App. 2000).

Cited:
Frankfort Pub. Co. v. Kentucky State University Foundation, Inc., 834 S.W.2d 681, 1992 Ky. LEXIS 103 (Ky. 1992).

OPINIONS OF ATTORNEY GENERAL.

Under this section a person is entitled to inspect a document in which he is mentioned unless it is exempt under the provisions of the Open Records Law. OAG 79-128, 1979 Ky. AG LEXIS 497.

University officials properly withheld inspection of the personnel file of the requester, which included letters of evaluation by faculty members, because the university was entitled to protect the privacy of the faculty members who wrote the letters of evaluation and because the letters contained preliminary recommendations and preliminary memoranda in which opinions were expressed; such faculty letters were exempt from inspection under KRS 61.878(1)(a) and (h). OAG 82-204, 1982 Ky. AG LEXIS 420.

The qualifying clause at the end of this section means that a public agency is entitled to withhold from a person a record in which he is mentioned if the record comes under one of the exemptions from mandatory public disclosure in KRS 61.878. OAG 82-211, 1982 Ky. AG LEXIS 412.

A comprehensive care center does not have to comply with a request for a copy of records by the person who is the subject of the records and who is a minor or who has been legally adjudged incompetent, but if the person is a competent adult he is entitled to have a copy of the records. The center may charge him a reasonable fee per page for a copy of the record which shall not exceed the actual cost thereof not including the cost of staff required. OAG 82-414, 1982 Ky. AG LEXIS 234.

Requester was entitled to inspect records of State Board of Medical Licensure in which he was mentioned by name and which were not made exempt under KRS 61.878(1). OAG 83-60, 1983 Ky. AG LEXIS 435.

A person who previously attended a police academy is entitled to inspect and obtain a copy of his transcript of grades received at the academy even though he did not graduate from the academy. OAG 83-108, 1983 Ky. AG LEXIS 389.

Suspended student had the right, under this section and KRS 164.283, to inspect his transcript as it related to the classes he had taken while at the University and the grades received therefor. OAG 83-332, 1983 Ky. AG LEXIS 165.

Suspended student had the right to have a tape or transcript of any part of the disciplinary hearing which pertained to him and to documents relating to other disciplinary proceedings involving him. OAG 83-332, 1983 Ky. AG LEXIS 165.

Suspended student had the right of access to copies of all documents regarding financial aid agreements between him and the University since they pertained to his financial status at the University. OAG 83-332, 1983 Ky. AG LEXIS 165.

Documents pertaining to student's suspension were open to inspection by him, except documents which contained preliminary drafts, notes, correspondence with private individuals or preliminary recommendations and memoranda in which opinions were expressed or policies formulated or recommended, which could be properly exempted from his inspection; any complaints against him were also open to his inspection as were any written decisions by the disciplinary board. OAG 83-332, 1983 Ky. AG LEXIS 165.

Witness statements that were referred to during grand jury testimony on official misconduct were preliminary documents in police investigative files that were exempt from inspection under KRS 61.878(g) and (h), even after the charges were dropped; the preliminary status of the statements exempted them from inspection even by a person who was mentioned in the statements since this section is subject to the KRS 61.878 exemptions. OAG 84-249, 1984 Ky. AG LEXIS 146.

While this section provides that any person shall have access to any public record relating to him or in which he is mentioned by name, it is subject to the provisions and exemptions set forth in KRS 61.878. OAG 85-69, 1985 Ky. AG LEXIS 82.

The denial of a request to inspect the complete institutional file of an inmate was proper, as requests to inspect personnel files must specify the particular documents within such files to be inspected. OAG 85-88, 1985 Ky. AG LEXIS 61.

The State Police had the authority to withhold from public inspection pursuant to subdivision (1)(h) of KRS 61.878 a document in the nature of an intraoffice memorandum, from employees to a supervisor setting forth their opinions of a fellow employee, when that memorandum has neither "spawned" an investigation nor served as the basis for any kind of personnel action involving the employee mentioned in the memorandum. OAG 86-53, 1986 Ky. AG LEXIS 35.

The right to inspect public records under this section would not apply if the records consist of the materials set forth in subdivision (1)(f) of KRS 61.878. OAG 86-81, 1986 Ky. AG LEXIS 7.

The Department for Social Services acted properly when it refused to make available for inspection to the alleged perpetrator of child abuse the names of informants and those portions of the statements of a judge and an informant wherein those parties set forth personal opinions, observations, and recommendations not related to the child abuse investigation and the findings resulting from that investigation. OAG 87-82, 1987 Ky. AG LEXIS 3.

A county property valuation administrator failed to act consistently with the provisions of KRS 61.870 to 61.882 and this section in failing to respond in writing to a verbal request for access to records, and in responding to a written request by forwarding it to another agency. OAG 89-40, 1989 Ky. AG LEXIS 40.

Any records which refer to defendant by name or nickname, and were properly characterized as attorney work product, may be withheld, the conclusion of criminal proceedings notwithstanding. OAG 91-214, 1991 Ky. AG LEXIS 230.

The absence of statutory language making background investigation reports confidential, coupled with the express language in this section and in KRS 61.878(3) mandating that any person shall have access to any public record relating to him, supports the conclusion that the Kentucky State Police acted improperly in denying request from an applicant of the State Police cadet trooper class to review the background investigation reports. OAG 95-ORD-84, 1995 Ky. AG LEXIS 53.

The release of records under this section is subject to the provisions of KRS 61.878. OAG 99-ORD-60, 1999 Ky. AG LEXIS 66.

A training center did not violate KRS 61.884 by not releasing a copy of an inmate's entire prison file either to the inmate or his attorney of record as some portions of the file were exempt from disclosure under various exemptions of KRS 61.878. OAG 00-ORD-190, 2000 Ky. AG LEXIS 194.

Since the case notes of the parolee's visits with his parole officer were prepared as a result of the officer's official duties, these records, pursuant to KRS 439.510, would be exempt from disclosure and may be properly denied under an Open Records Request pursuant to KRS 61.878(1)(*l*). OAG 02-ORD-51, 2002 Ky. AG LEXIS 47.

Although KRS 61.884 provides that a person is entitled to inspect records concerning himself, the exemptions contained in KRS 61.878 take priority over KRS 61.884. By its own language, KRS 61.884 is subject to the provisions of KRS 61.878, and KRS 61.878(1)(h) exempts records of law enforcement agencies or agencies involved in administrative adjudication from public disclosure where the records identify informants or would harm an agency by their premature release. OAG 02-ORD-77, 2002 Ky. AG LEXIS 54.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
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Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

SPECIAL LAW ENFORCEMENT OFFICERS

61.900. Definitions for KRS 61.902 to 61.930.

As used in KRS 61.902 to 61.930:

(1) "Commission" means a commission issued to an individual by the secretary of justice and public safety, entitling the individual to perform special law enforcement duties on public property;

(2) "Council" means the Kentucky Law Enforcement Council;

(3) "Cabinet" means the Justice and Public Safety Cabinet;

(4) "Public property" means property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public airport authorities;

(5) "Secretary" means the secretary of the Justice and Public Safety Cabinet;

(6) "Special law enforcement officer":

(a) Means one whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass;

(b) Means one whose duties include the prevention, observation, or detection of, or apprehension for, any unlawful activity on specific public property;

(c) Means one whose special duties include the control of the operation, speed, and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific public property;

(d) Means one whose duties include the answering of any intrusion alarm on specific public property;

(e) Shall include the Capitol police, the Capital Plaza police, school resource officers as defined in KRS 158.441 who are employed directly by a local board of education, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and

(f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:

1. Sheriffs, sworn deputy sheriffs, constables, sworn deputy constables, and coroners;

2. Auxiliary and reserve police appointed under KRS 95.160 or 95.445, or citation and safety officers authorized by KRS 83A.087 and 83A.088;

3. State park rangers and officers of the Division of Law Enforcement within the Department of Fish and Wildlife Resources;

4. Officers of the Transportation Cabinet responsible for law enforcement;

5. Officers of the Department of Corrections responsible for law enforcement;

6. Fire marshals and deputy fire marshals;

7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;

8. Federal peace officers;

9. Those campus security officers who are commissioned under KRS 164.950;

10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; and

11. Railroad policemen covered by KRS 277.270 and 277.280; and

(7) "Sworn public peace officer" means one who derives plenary or special law enforcement powers from, and is a full-time employee of, the federal government, the Commonwealth, or any political subdivision, agency, department, branch, or service of either, or of any municipality.

History.

Enact. Acts 1976, ch. 178, § 2, effective January 1, 1977; 1980, ch. 188, § 20, effective July 15, 1980; 1986, ch. 331, § 15, effective July 15, 1986; 1992, ch. 48, § 4, effective July 14, 1992; 1992, ch. 211, § 13, effective July 14, 1992; 1992, ch. 435, § 2, effective July 14, 1992; 1998, ch. 23, § 13, effective July 15, 1998; 2007, ch. 85, § 132, effective June 26, 2007; 2019 ch. 5, § 12, effective March 11, 2019; 2019 ch. 44, § 3, effective June 27, 2019.

Legislative Research Commission Notes.

(6/27/2019). This statute was amended by 2019 Ky. Acts chs. 5 and 44, which do not appear to be in conflict and have been codified together.

OPINIONS OF ATTORNEY GENERAL.

Airport safety and security officers have all of the powers and authority enumerated for special law enforcement officers in KRS 61.900 to KRS 61.926, in addition to those powers enumerated in KRS 183.881, since subsection (6)(e) of this section includes public airport authority security officers in its definition of "special law enforcement officer." OAG 81-396, 1981 Ky. AG LEXIS 38.

Since a water district is a unit of government (a special district), it may apply to the Secretary of the Justice Cabinet for the commissioning of a special law-enforcement officer to protect and enforce the law on the public property of the water district. OAG 84-242, 1984 Ky. AG LEXIS 139.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Special local peace officers, KRS 61.360.

61.902. Appointment of special law enforcement officers by secretary.

(1) The secretary of the Justice and Public Safety Cabinet may commission special law enforcement officers, for such time as he or she deems necessary, to protect and to enforce the law on public property.

(2) Notwithstanding subsection (1) of this section, in the case of a special law enforcement officer employed as a school resource officer, the commission shall be for four (4) years, provided the officer continues to meet all statutory and regulatory requirements.

(3) Upon application of a unit or agency of state, county, city or metropolitan government, the secretary may appoint those persons recommended by the unit or agency who satisfy the requirements of KRS 61.900 to 61.930.

History.

Enact. Acts 1976, ch. 178, § 3, effective January 1, 1977; 2007, ch. 85, § 133, effective June 26, 2007; 2020 ch. 5, § 7, effective February 21, 2020.

OPINIONS OF ATTORNEY GENERAL.

A county board of education, as a unit of the state government, would not be required to file an application to have any of its employees commissioned as special law enforcement officers, but any security guards who are not commissioned would possess no more powers than a citizen. OAG 76-676.

"Special law enforcement officers" may not be appointed pursuant to this section to guard patients being transported by ambulance from a forensic psychiatry unit to a public hospital for emergency medical treatment, since this section covers the appointment of guards for public real property, but not for public personalty, nor can guards be appointed pursuant to KRS 61.924, since that section only allows special officers to use emergency vehicles within the premises of public property or in pursuit of a person fleeing such property after committing a felony or misdemeanor. OAG 81-125, 1981 Ky. AG LEXIS 309.

61.904. Administration — Administrative regulations — Employees.

KRS 61.900 to 61.930 shall be administered by the secretary, or by any agency within the cabinet designated by the secretary and acting under his authority. The secretary shall promulgate and enforce such administrative regulations as may be reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. The secretary may appoint such employees, and delegate such duties to the same, as he or she, in his or her sound discretion, deems appropriate.

History.

Enact. Acts 1976, ch. 178, § 4, effective January 1, 1977; 2007, ch. 85, § 134, effective June 26, 2007.

61.906. Requirements for appointment.

In order to qualify for a commission as a special law enforcement officer under KRS 61.900 to 61.930, an individual must present satisfactory evidence of compliance with the following conditions and requirements:

(1) No person shall be eligible for a commission who:

(a) Has been dishonorably discharged from the Armed Forces of the United States;

(b) Has been convicted in any jurisdiction of any felony or of any crime involving moral turpitude for which he or she has not received a full pardon;

(c) Has been convicted of any other offense or offenses more than five (5) times within the previous three (3) years;

(d) Has by any court of competent jurisdiction been declared mentally disabled by reason of an intellectual disability or disease and has not been restored; or

(e) Suffers from habitual drunkenness or from narcotics addiction or dependence, or from any physical defect or deficiency which the secretary determines to materially impair the applicant's ability to perform the duties of a special law enforcement officer.

(2) Every person to be eligible for a commission shall:

(a) Have reached his or her twenty-first birthday;

(b) Provide, on forms supplied by the secretary, such information pertaining to himself as may reasonably be requested thereon, including, but not limited to his: name; age; date of birth; current address and employment; prior addresses and employment for the past ten (10) years; aliases, if any; arrest and conviction record, if any; Social Security number; fingerprints; photographs; and general physical description. The accuracy of such information shall be attested by the applicant and his or her attestation shall be notarized by one authorized to administer oaths;

(c) Be of good moral character;

(d) Provide references from two (2) reputable individuals who are not related to him or her and who have known him or her well for a period of not less than three (3) years, attesting to his or her good character;

(e) Pay the fees provided in KRS 61.908; and

(f) Provide evidence satisfactory to the secretary that he or she meets the following requirements:

1. Is a graduate of an accredited high school or of an equivalent technical or vocational training or education program satisfactory to the secretary; or holds a High School Equivalency Diploma; provided, however, that all special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976, shall be deemed to have met the requirements of this subsection;

2. Has successfully completed not fewer than eighty (80) hours of training in a program approved by the council and dealing comprehensively with the subjects of criminal law and the law of arrest, search and seizure; or has been employed as a full-time sworn public peace officer for a period of not less than one (1) year within the past five (5) years, and has never been discharged for cause from employment as a sworn public peace officer; or has been employed in a full-time capacity as a military policeman engaged in law enforcement for the United States Armed Forces for a period of not less than one (1) year within the past five (5) years; or has successfully completed a written, oral and practical examination approved by the council and dealing comprehensively with the subject matter of criminal law and the law of arrest, search and seizure; and

3. Demonstrates, in written and practical examinations approved by the council, knowledge of and proficiency in firearms safety, range firing, the moral and legal aspects of firearms use, and first aid. Provided, however, that all special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976, shall be deemed to have met the requirements of these subsections.

History.

Enact. Acts 1976, ch. 178, § 5, effective January 1, 1977; 1982, ch. 141, § 45, effective July 15, 1982; 1988, ch. 283, § 3, effective July 15, 1988; 2012, ch. 146, § 9, effective July 12, 2012; 2017 ch. 63, § 8, effective June 29, 2017; 2019 ch. 194, § 4, effective April 9, 2019.

Compiler's Notes.

This section was amended by § 48 of Acts 1980, ch. 396, which would have taken effect July 1, 1982; however, Acts 1982, ch. 141, § 146, effective July 1, 1982, repealed Acts 1980, ch. 396.

OPINIONS OF ATTORNEY GENERAL.

All special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976 were not required to meet the requirements of subdivision (2)(f)(ii) (now (2)(f)(2)). OAG 76-723.

"Special law enforcement officers" may not be appointed pursuant to KRS 61.902 to guard patients being transported by ambulance from a forensic psychiatry unit to a public hospital for emergency medical treatment, since KRS 61.902 covers the appointment of guards for public real property, but not for public personalty, nor can guards be appointed pursuant to this section, since it only allows special officers to use emergency vehicles within the premises of public property or in pursuit of a person fleeing such property after committing a felony or misdemeanor. OAG 81-125, 1981 Ky. AG LEXIS 309.

61.908. Fees.

The following fees shall be required with respect to applications, examinations, and training for commissions:

(1) With the initial application, a fee of twenty-five dollars ($25);

(2) With application for renewal, a fee of twenty-five dollars ($25);

(3) Prior to any written examination approved by the Kentucky Law Enforcement Council, a fee of fifteen dollars ($15);

(4) Prior to any practical examinations on firearms proficiency approved by the council, a fee of twenty dollars ($20); and

(5) Prior to any training program approved by the council for special law enforcement officers, a reasonable fee as determined by the secretary to cover the cost of training;

(6) All funds received by the cabinet as fees pursuant to this section shall be available for use by the secretary in administering the provisions of KRS 61.900 to 61.930, and any excess funds not expended at the end of the fiscal year shall revert to the general fund.

History.

Enact. Acts 1976, ch. 178, § 6, effective January 1, 1977.

61.910. Revocation or suspension of commission.

The secretary shall revoke or suspend the commission of any special law enforcement officer whenever he shall determine:

(1) That the commission-holder does not meet, or no longer meets, the requirements and conditions for the commission; or

(2) That the commission-holder has knowingly falsified an application or portion thereof, or has made any knowingly false or misleading statement of a

material fact to the secretary or any of his delegates, agents or officers; or

(3) That the commission-holder has violated: any provision of KRS 61.900 to 61.930; or any rule, regulations or order of the secretary; or any law of the Commonwealth or of the United States, the violation of which the secretary determines to bear a reasonable relationship to eligibility for the commission.

History.
Enact. Acts 1976, ch. 178, § 7, effective January 1, 1977.

61.912. Power of arrest.

Any duly commissioned special law enforcement officer shall, while performing law enforcement duties upon the public property he or she is hired to protect, be empowered to arrest:

(1) Persons committing, in his or her presence and upon the public property he or she is hired to protect, any misdemeanor, any traffic violation, or any other violation as defined by KRS 500.080;

(2) Provided there exists probable cause to believe a felony has been committed upon the premises he or she is hired to protect, any person whom the officer reasonably and actually believes to have committed such felony upon the public property.

History.
Enact. Acts 1976, ch. 178, § 8, effective January 1, 1977; 2022 ch. 151, § 18, effective July 14, 2022.

OPINIONS OF ATTORNEY GENERAL.

Jefferson County special law enforcement officers employed as security for the County's Hall of Justice do not have arrest powers to execute all types of warrants in the Hall of Justice; moreover, even though KRS 61.926 designates special law enforcement officers as peace officers, this does not invest them with the broad authority of what might be termed "general law enforcement officers" for that designation expressly relates only to KRS 527.020, regarding authority to carry concealed a deadly weapon on or about one's person and such designation for purposes of KRS 527.020, does not overcome or broaden the specific terms of authority set out in this section, KRS 61.914, and 61.920 giving such officers power to execute all types of warrants in the Hall of Justice. OAG 91-65, 1991 Ky. AG LEXIS 67.

61.914. Other powers.

Duly commissioned special law enforcement officers shall have the power to issue tickets for parking violations committed upon the public property in their presence and the power of peace officers under KRS 431.015 to issue citations for misdemeanors, and other violations as defined by KRS 500.080, committed in their presence upon the public property.

History.
Enact. Acts 1976, ch. 178, § 9, effective January 1, 1977; 2022 ch. 151, § 19, effective July 14, 2022.

OPINIONS OF ATTORNEY GENERAL.

Jefferson County special law enforcement officers employed as security for the County's Hall of Justice do not have arrest powers to execute all types of warrants in the Hall of Justice; moreover, even though KRS 61.926 designates special law enforcement officers as peace officers, this does not invest them with the broad authority of what might be termed "general law enforcement officers" for that designation expressly relates only to KRS 527.020, regarding authority to carry concealed a deadly weapon on or about one's person and such designation for purposes of KRS 527.020, does not overcome or broaden the specific terms of authority set out in this section, KRS 61.912 and 61.920 giving such officers power to execute all types of warrants in the Hall of Justice. OAG 91-65, 1991 Ky. AG LEXIS 67.

61.916. Use of deadly force to make an arrest.

A special law enforcement officer may, in the course of accomplishing any lawful arrest for a felony committed upon the public property as herein provided, use and apply that force which he believes is necessary to make the arrest, except that he may only use deadly force to make such an arrest if:

(1) The officer, in making the arrest, is authorized to act as a special law enforcement officer; and

(2) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; and

(3) The officer believes that the person to be arrested is likely to endanger human life unless arrested without delay.

History.
Enact. Acts 1976, ch. 178, § 10, effective January 1, 1977.

61.918. Use of force less than deadly force.

A special law enforcement officer may, in the course of accomplishing any lawful arrest for a criminal offense other than a felony committed upon the public property as herein provided, use and apply that force, less than deadly force, which he believes is necessary to make the arrest.

History.
Enact. Acts 1976, ch. 178, § 11, effective January 1, 1977.

61.920. Area of jurisdiction of special officer.

The powers and duties of special law enforcement officers shall be confined to the premises of the public property to be protected, except while in pursuit of a person fleeing from the property after committing any felony or misdemeanor, other than traffic violations, on the property. In such case the officer may pursue the person and make arrest anywhere within this state. In the course of making a lawful arrest for a felony after such pursuit, he may use and apply that force which he believes is necessary to make the arrest, except that he may only use deadly force in making such an arrest if the conditions specified in KRS 61.916 are satisfied. In the course of making a lawful arrest for a criminal offense other than a felony after such pursuit, he may use and apply that force, less than deadly force, which he believes is necessary to make the arrest.

History.
Enact. Acts 1976, ch. 178, § 12, effective January 1, 1977.

OPINIONS OF ATTORNEY GENERAL.

Jefferson County special law enforcement officers employed as security for the County's Hall of Justice do not have arrest

powers to execute all types of warrants in the Hall of Justice; moreover, even though KRS 61.926 designates special law enforcement officers as peace officers, this does not invest them with the broad authority of what might be termed "general law enforcement officers" for that designation expressly relates only to KRS 527.020, regarding authority to carry concealed a deadly weapon on or about one's person and such designation for purposes of KRS 527.020, does not overcome or broaden the specific terms of authority set out in KRS 61.912, 61.914, and this section giving such officers power to execute all types of warrants in the Hall of Justice. OAG 91-65, 1991 Ky. AG LEXIS 67.

61.922. Construction.

Nothing in KRS 61.900 to 61.930 shall be construed as being in derogation of the common law, or of any statute of the Commonwealth, pertaining to:

(1) Arrest by a private citizen; or

(2) In any civil or criminal case, the defenses of protection of self, protection of another, protection of property, prevention of a suicide or crime and any other applicable justification defense set forth in KRS Chapter 503.

History.

Enact. Acts 1976, ch. 178, § 13, effective January 1, 1977.

61.924. Use of public emergency vehicles.

Duly commissioned special law enforcement officers shall have the right to use and operate public emergency vehicles in accordance with KRS 189.910 through 189.993.

History.

Enact. Acts 1976, ch. 178, § 14, effective January 1, 1977.

61.926. Special officers designated peace officers — Authorization to carry a concealed deadly weapon.

Special law enforcement officers duly commissioned under KRS 61.900 to 61.930 shall be deemed "peace officers" within the meaning of KRS 527.020 and shall be authorized to carry a concealed deadly weapon on or about their persons when necessary for their protection in the discharge of their official duties.

History.

Enact. Acts 1976, ch. 178, § 15, effective January 1, 1977.

OPINIONS OF ATTORNEY GENERAL.

Jefferson County special law enforcement officers employed as security for the County's Hall of Justice do not have arrest powers to execute all types of warrants in the Hall of Justice; moreover, even though this section designates special law enforcement officers as peace officers, this does not invest them with the broad authority of what might be termed "general law enforcement officers" for that designation expressly relates only to KRS 527.020, regarding authority to carry concealed a deadly weapon on or about one's person and such designation for purposes of KRS 527.020, does not overcome or broaden the specific terms of authority set out in KRS 61.912, 61.914, and 61.920 giving such officers power to execute all types of warrants in the Hall of Justice. OAG 91-65, 1991 Ky. AG LEXIS 67.

61.928. Revocation of existing commissions — Issuance of new commissions. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1976, ch. 178, § 16) was repealed by Acts 1978, ch. 383, § 3, effective June 17, 1978.

61.930. Citation of act.

KRS 61.900 to 61.926 may be cited as "The Special Law Enforcement Officer Act."

History.

Enact. Acts 1976, ch. 178, § 1, effective January 1, 1977; 1980, ch. 188, § 21, effective July 15, 1980.

61.9305. Facial Recognition Technology.

(1) As used in this section:

(a) "Facial recognition technology" means the use of algorithmic comparison of images of an individual's facial features for the purposes of verification or identification, unless used for the sole purpose of authentication in order to access a secure device or secure premises;

(b) "Law enforcement agency" means any:

1. Public agency that employs a police officer as defined in KRS 15.420 or a special law enforcement officer as defined in KRS 61.900;

2. Public agency that is composed of or employs other public peace officers; and

3. Elected or appointed peace officer who is authorized to exercise powers of a peace officer as defined in KRS 446.010; and

(c) "Model facial recognition technology policy" means the model policy developed and published under this section regarding the use of facial recognition technology.

(2) A working group on facial recognition technology is hereby created and shall be attached to the Justice and Public Safety Cabinet for administrative purposes. The working group shall be chaired by the secretary of the Justice and Public Safety Cabinet or his or her designee and composed of representatives from the following organizations as nominated by the secretary and appointed by the Governor:

(a) The Kentucky Association of Chiefs of Police;

(b) The Department of Criminal Justice Training;

(c) The Kentucky League of Cities;

(d) The Kentucky Association of Counties; and

(e) The Kentucky Sheriffs' Association.

(3) On or before January 1, 2024, the working group established pursuant to subsection (2) of this section shall create and make publicly available a model policy for use by law enforcement agencies, which shall:

(a) Specify the authorized uses of facial recognition technology consistent with the law, including but not limited to:

1. How search results using facial recognition technology relate to establishing probable cause for arrests; and

2. The prohibition of using facial recognition technology to identify a person participating in constitutionally protected activities in public spaces unless there is probable cause to believe that an offense has been committed;

(b) Specify requirements for persons within a law enforcement agency that are authorized to use facial recognition technology;

(c) Require a law enforcement agency to specify a process for the agency to document instances in which facial recognition technology is used;

(d) Provide procedures for the confirmation of any initial findings generated by facial recognition technology by a secondary examiner;

(e) Specify data integrity and retention policies applicable to the data collected by the organization, including processes that address:

1. Maintenance and updating of records used;

2. A routine audit schedule to ensure compliance with the policy;

3. The length of time the organization will keep the data; and

4. The processes by which data will be deleted;

(f) Specify data security measures applicable to the law enforcement agency's use of facial recognition technology, including:

1. How data collected will be securely stored and accessed; and

2. Rules and procedures for sharing data with other entities, which ensure that those entities comply with the sharing agency's policy as part of the data-sharing agreement;

(g) Specify training procedures and processes to ensure all personnel who utilize facial recognition technology or access its data are knowledgeable about and able to ensure compliance with the policy;

(h) Specify a process that requires a law enforcement agency utilizing facial recognition technology to compare a publicly available or lawfully acquired image against a database of publicly available or lawfully acquired images;

(i) Specify a minimum accuracy standard for face matches in all demographic groups to ensure nondiscrimination against any demographic group with reference to a Face Recognition Vendor Test conducted by the National Institute of Standards and Technology;

(j) Provide a specific mechanism to produce a record of prior uses of facial recognition technology that can be used to audit and verify images and information used to make a match of a person; and

(k) Provide a process that addresses the privacy of persons by excluding, redacting, blurring, or otherwise obscuring nudity or sexual conduct involving any identifiable person.

(4) A law enforcement agency that uses facial recognition technology shall have a use policy in place prior to using the technology. A law enforcement agency shall file a full copy of its policy or any revision of its policy with the Justice and Public Safety Cabinet within thirty (30) days of the adoption or revision.

(5) This section shall not apply to a generally available consumer product that includes facial recognition technology, provided that the facial recognition technology is intended only for personal or household use. A law enforcement agency shall not use facial recognition technology under this subsection for law enforcement purposes.

History.

2022 ch. 147, § 1, effective July 14, 2022.

61.9307. Tik Tok application — Prohibition on use on state-owned networks and devices by executive and legislative branch employees and contractors — Exceptions.

(1) For the purposes of this section, "TikTok" means the social networking service owned by the Chinese company ByteDance Limited or any successor application.

(2) Except as provided in subsection (7)(b) of this section, no executive branch employee, executive branch agency, or person or entity who contracts with the Commonwealth shall download or use the TikTok application or visit the TikTok website on any:

(a) Network owned, operated, or otherwise under the control of state government; or

(b) State government-issued device, including but not limited to:

1. Cellphone;

2. Computer; or

3. Any other device capable of Internet connectivity.

(3) The Commonwealth Office of Technology shall implement controls to prevent the use of TikTok for the executive branch agencies in which it has control over the network, and on any device connected to a network, owned, operated, or otherwise under control of the Commonwealth Office of Technology.

(4) No member of the General Assembly, legislative staff, legislative agency or entity, or person or entity who contracts with the General Assembly, Legislative Research Commission, or legislative branch shall download or use the TikTok application or visit the TikTok website on any:

(a) Network owned, operated, or otherwise under the control of state government; or

(b) State government-issued device, including but not limited to:

1. Cellphone;

2. Computer; or

3. Any other device capable of Internet connectivity.

(5) The legislative branch of state government shall implement controls to prevent the use of TikTok on any device connected to any network owned, operated, or otherwise under the control of the legislative branch of state government.

(6) The judicial branch of state government may implement controls to prevent the use of TikTok on any device connected to any network owned, operated, or otherwise under the control of judicial branch of state government.

(7) This section shall not apply to any:

(a) Public postsecondary education institution operating under KRS Chapter 164; or

(b) Executive branch agency that determines that the use of TikTok is necessary for:

1. Law enforcement activities;

2. Civil investigations or civil enforcement activities; or

3. Research on security practices or security threats; so long as the agency takes appropriate steps to obtain the necessary access without endangering the agency's network, or any other net-

work owned, operated, or otherwise under the control of state government.

History.
2023 ch. 50, § 1, effective March 22, 2023.

PERSONAL INFORMATION SECURITY AND BREACH INVESTIGATIONS

61.931. Definitions for KRS 61.931 to 61.934.

As used in KRS 61.931 to 61.934:

(1) "Agency" means:

(a) The executive branch of state government of the Commonwealth of Kentucky;

(b) Every county, city, municipal corporation, urban-county government, charter county government, consolidated local government, and unified local government;

(c) Every organizational unit, department, division, branch, section, unit, office, administrative body, program cabinet, bureau, board, commission, committee, subcommittee, ad hoc committee, council, authority, public agency, instrumentality, interagency body, special purpose governmental entity, or public corporation of an entity specified in paragraph (a) or (b) of this subsection or created, established, or controlled by an entity specified in paragraph (a) or (b) of this subsection;

(d) Every public school district in the Commonwealth of Kentucky; and

(e) Every public institution of postsecondary education, including every public university in the Commonwealth of Kentucky and public college of the entire Kentucky Community and Technical College System;

(2) "Commonwealth Office of Technology" means the office established by KRS 42.724;

(3) "Encryption" means the conversion of data using technology that:

(a) Meets or exceeds the level adopted by the National Institute of Standards Technology as part of the Federal Information Processing Standards: and

(b) Renders the data indecipherable without the associated cryptographic key to decipher the data;

(4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, unified local government, or any combination of these entities, responsible for the detection of crime and the enforcement of the general criminal federal and state laws;

(5) "Nonaffiliated third party" means any person that:

(a) Has a contract or agreement with an agency; and

(b) Receives personal information from the agency pursuant to the contract or agreement;

(6) "Personal information" means an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

(a) An account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

(b) A Social Security number;

(c) A taxpayer identification number that incorporates a Social Security number;

(d) A driver's license number, state identification card number, or other individual identification number issued by any agency;

(e) A passport number or other identification number issued by the United States government; or

(f) Individually identifiable health information as defined in 45 C.F.R. sec. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g;

(7)(a) "Public record or record," as established by KRS 171.410, means all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings, and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of, or retained by a public agency.

(b) "Public record" does not include any records owned by a private person or corporation that are not related to functions, activities, programs, or operations funded by state or local authority;

(8) "Reasonable security and breach investigation procedures and practices" means data security procedures and practices developed in good faith and set forth in a written security information policy; and

(9)(a) "Security breach" means:

1. The unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of unencrypted or unredacted records or data that compromises or the agency or nonaffiliated third party reasonably believes may compromise the security, confidentiality, or integrity of personal information and result in the likelihood of harm to one (1) or more individuals; or

2. The unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of encrypted records or data containing personal information along with the confidential process or key to unencrypt the records or data that compromises or the agency or nonaffiliated third party reasonably believes may compromise the security, confidentiality, or integrity of personal information and result in the likelihood of harm to one (1) or more individuals.

(b) "Security breach" does not include the good-faith acquisition of personal information by an employee, agent, or nonaffiliated third party of the agency for the purposes of the agency if the personal information is used for a purpose related to the agency and is not subject to unauthorized disclosure.

History.
Enact. Acts 2014, ch. 74, § 1, effective January 1, 2015.

Legislative Research Commission Note.
(1/1/2015). 2014 Ky. Acts ch. 74, sec. 10 provided that "the provisions of this Act shall not impact the provisions of KRS 61.870 to 61.884." That proviso applies to this statute as created in Section 1 of that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School district data security and breach procedures., 702 KAR 1:170.

61.932. Personal information security and breach investigation procedures and practices for certain public agencies and nonaffiliated third parties.

(1)(a) An agency or nonaffiliated third party that maintains or otherwise possesses personal information, regardless of the form in which the personal information is maintained, shall implement, maintain, and update security procedures and practices, including taking any appropriate corrective action, to protect and safeguard against security breaches.

(b) Reasonable security and breach investigation procedures and practices established and implemented by organizational units of the executive branch of state government shall be in accordance with relevant enterprise policies established by the Commonwealth Office of Technology. Reasonable security and breach investigation procedures and practices established and implemented by units of government listed under KRS 61.931(1)(b) and (c) that are not organizational units of the executive branch of state government shall be in accordance with policies established by the Department for Local Government. The Department for Local Government shall consult with public entities as defined in KRS 65.310 in the development of policies establishing reasonable security and breach investigation procedures and practices for units of local government pursuant to this subsection. Reasonable security and breach investigation procedures and practices established and implemented by public school districts listed under KRS 61.931(1)(d) shall be in accordance with administrative regulations promulgated by the Kentucky Board of Education. Reasonable security and breach investigation procedures and practices established and implemented by educational entities listed under KRS 61.931(1)(e) shall be in accordance with policies established by the Council on Postsecondary Education. The Commonwealth Office of Technology shall, upon request of an agency, make available technical assistance for the establishment and implementation of reasonable security and breach investigation procedures and practices.

(c)1. If an agency is subject to any additional requirements under the Kentucky Revised Statutes or under federal law, protocols or agreements relating to the protection and privacy of personal information, the agency shall comply with these additional requirements, in addition to the requirements of KRS 61.931 to 61.934.

2. If a nonaffiliated third party is required by federal law or regulation to conduct security breach investigations or to make notifications of security breaches, or both, as a result of the nonaffiliated third party's unauthorized disclosure of one (1) or more data elements of personal information that is the same as one (1) or more of the data elements of personal information listed in KRS 61.931(6)(a) to (f), the nonaffiliated third party shall meet the requirements of KRS 61.931 to 61.934 by providing to the agency a copy of any and all reports and investigations relating to such security breach investigations or notifications that are required to be made by federal law or regulations. This subparagraph shall not apply if the security breach includes the unauthorized disclosure of data elements that are not covered by federal law or regulation but are listed in KRS 61.931(6)(a) to (f).

(2)(a) For agreements executed or amended on or after January 1, 2015, any agency that contracts with a nonaffiliated third party and that discloses personal information to the nonaffiliated third party shall require as part of that agreement that the nonaffiliated third party implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices referenced in subsection (1)(b) of this section, and that are reasonably designed to protect the personal information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

(b)1. A nonaffiliated third party that is provided access to personal information by an agency, or that collects and maintains personal information on behalf of an agency shall notify the agency in the most expedient time possible and without unreasonable delay but within seventy-two (72) hours of determination of a security breach relating to the personal information in the possession of the nonaffiliated third party. The notice to the agency shall include all information the nonaffiliated third party has with regard to the security breach at the time of notification. Agreements referenced in paragraph (a) of this subsection shall specify how the cost of the notification and investigation requirements under KRS 61.933 are to be apportioned when a security breach is suffered by the agency or nonaffiliated third party.

2. The notice required by subparagraph 1. of this paragraph may be delayed if a law enforcement agency notifies the nonaffiliated third party that notification will impede a criminal investigation or jeopardize homeland or national security. If notice is delayed pursuant to this subparagraph, notification shall be given as soon as reasonably feasible by the nonaffiliated third party to the agency with which the nonaffiliated third party is contracting. The agency shall then record the notification in writing on a form developed by the Commonwealth Office of Technology that the notification will not impede a criminal investigation and will not jeopardize homeland or national security. The Commonwealth Office of Technology shall promulgate administrative regulations under KRS 61.931 to 61.934 regarding the content of the form.

History.
Enact. Acts 2014, ch. 74, § 2, effective January 1, 2015.

Legislative Research Commission Note.
(1/1/2015). 2014 Ky. Acts ch. 74, sec. 10 provided that "the provisions of this Act shall not impact the provisions of KRS 61.870 to 61.884." That proviso applies to this statute as created in Section 1 of that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School district data security and breach procedures., 702 KAR 1:170.

61.933. Notification of personal information security breach — Investigation — Notice to affected individuals of result of investigation — Personal information not subject to requirements — Injunctive relief by Attorney General.

(1)(a) Any agency that collects, maintains, or stores personal information that determines or is notified of a security breach relating to personal information collected, maintained, or stored by the agency or by a nonaffiliated third party on behalf of the agency shall as soon as possible, but within seventy-two (72) hours of determination or notification of the security breach:

1. Notify the commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Attorney General. In addition, an agency shall notify the secretary of the Finance and Administration Cabinet or his or her designee if an agency is an organizational unit of the executive branch of state government; notify the commissioner of the Department for Local Government if the agency is a unit of government listed in KRS 61.931(1)(b) or (c) that is not an organizational unit of the executive branch of state government; notify the commissioner of the Kentucky Department of Education if the agency is a public school district listed in KRS 61.931(1)(d); and notify the president of the Council on Postsecondary Education if the agency is an educational entity listed under KRS 61.931(1)(e). Notification shall be in writing on a form developed by the Commonwealth Office of Technology. The Commonwealth Office of Technology shall promulgate administrative regulations KRS 61.931 to 61.934 regarding the contents of the form; and

2. Begin conducting a reasonable and prompt investigation in accordance with the security and breach investigation procedures and practices referenced in KRS 61.932(1)(b) to determine whether the security breach has resulted in or is likely to result in the misuse of the personal information.

(b) Upon conclusion of the agency's investigation:

1. If the agency determined that a security breach has occurred and that the misuse of personal information has occurred or is reasonably likely to occur, the agency shall:

a. Within forty-eight (48) hours of completion of the investigation, notify in writing all officers listed in paragraph (a)1. of this subsection, and the commissioner of the Department for Libraries and Archives, unless the provisions of subsection (3) of this section apply;

b. Within thirty-five (35) days of providing the notifications required by subdivision a. of this subparagraph, notify all individuals impacted by the security breach as provided in subsection (2) of this section, unless the provisions of subsection (3) of this section apply; and

c. If the number of individuals to be notified exceeds one thousand (1,000), the agency shall notify, at least seven (7) days prior to providing notice to individuals under subdivision b. of this subparagraph, the Commonwealth Office of Technology if the agency is an organizational unit of the executive branch of state government, the Department for Local Government if the agency is a unit of government listed under KRS 61.931(1)(b) or (c) that is not an organizational unit of the executive branch of state government, the Kentucky Department of Education if the agency is a public school district listed under KRS 61.931(1)(d), or the Council on Postsecondary Education if the agency is an educational entity listed under KRS 61.931(1)(e); and notify all consumer credit reporting agencies included on the list maintained by the Office of the Attorney General that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. sec. 1681a(p), of the timing, distribution, and content of the notice; or

2. If the agency determines that the misuse of personal information has not occurred and is not likely to occur, the agency is not required to give notice, but shall maintain records that reflect the basis for its decision for a retention period set by the State Archives and Records Commission as established by KRS 171.420. The agency shall notify the appropriate entities listed in paragraph (a)1. of this subsection that the misuse of personal information has not occurred.

(2)(a) The provisions of this subsection establish the requirements for providing notice to individuals under subsection (1)(b)1.b. of this section. Notice shall be provided as follows:

1. Conspicuous posting of the notice on the Web site of the agency;

2. Notification to regional or local media if the security breach is localized, and also to major statewide media if the security breach is widespread, including broadcast media, such as radio and television; and

3. Personal communication to individuals whose data has been breached using the method listed in subdivision a., b., or c. of this subparagraph that the agency believes is most likely to result in actual notification to those individuals, if the agency has the information available:

a. In writing, sent to the most recent address for the individual as reflected in the records of the agency;

b. By electronic mail, sent to the most recent electronic mail address for the individual as reflected in the records of the agency, unless the

individual has communicated to the agency in writing that they do not want email notification; or

c. By telephone, to the most recent telephone number for the individual as reflected in the records of the agency.

(b) The notice shall be clear and conspicuous, and shall include:

1. To the extent possible, a description of the categories of information that were subject to the security breach, including the elements of personal information that were or were believed to be acquired;

2. Contact information for the notifying agency, including the address, telephone number, and toll-free number if a toll-free number is maintained;

3. A description of the general acts of the agency, excluding disclosure of defenses used for the protection of information, to protect the personal information from further security breach; and

4. The toll-free numbers, addresses, and Web site addresses, along with a statement that the individual can obtain information from the following sources about steps the individual may take to avoid identity theft, for:

a. The major consumer credit reporting agencies;

b. The Federal Trade Commission; and

c. The Office of the Kentucky Attorney General.

(c) The agency providing notice pursuant to this subsection shall cooperate with any investigation conducted by the agencies notified under subsection (1)(a) of this section and with reasonable requests from the Office of Consumer Protection of the Office of the Attorney General, consumer credit reporting agencies, and recipients of the notice, to verify the authenticity of the notice.

(3)(a) The notices required by subsection (1) of this section shall not be made if, after consultation with a law enforcement agency, the agency receives a written request from a law enforcement agency for a delay in notification because the notice may impede a criminal investigation. The written request may apply to some or all of the required notifications, as specified in the written request from the law enforcement agency. Upon written notification from the law enforcement agency that the criminal investigation has been completed, or that the sending of the required notifications will no longer impede a criminal investigation, the agency shall send the notices required by subsection (1)(b)1. of this section.

(b) The notice required by subsection (1)(b)1.b. of this section may be delayed if the agency determines that measures necessary to restore the reasonable integrity of the data system cannot be implemented within the timeframe established by subsection (1)(b)1.b. of this section, and the delay is approved in writing by the Office of the Attorney General. If notice is delayed pursuant to this subsection, notice shall be made immediately after actions necessary to restore the integrity of the data system have been completed.

(4) Any waiver of the provisions of this section is contrary to public policy and shall be void and unenforceable.

(5) This section shall not apply to:

(a) Personal information that has been redacted;

(b) Personal information disclosed to a federal, state, or local government entity, including a law enforcement agency or court, or their agents, assigns, employees, or subcontractors, to investigate or conduct criminal investigations and arrests or delinquent tax assessments, or to perform any other statutory duties and responsibilities;

(c) Personal information that is publicly and lawfully made available to the general public from federal, state, or local government records;

(d) Personal information that an individual has consented to have publicly disseminated or listed; or

(e) Any document recorded in the records of either a county clerk or circuit clerk of a county, or in the records of a United States District Court.

(6) The Office of the Attorney General may bring an action in the Franklin Circuit Court against an agency or a nonaffiliated third party that is not an agency, or both, for injunctive relief, and for other legal remedies against a nonaffiliated third party that is not an agency to enforce the provisions of KRS 61.931 to 61.934. Nothing in KRS 61.931 to 61.934 shall create a private right of action.

History.

Enact. Acts 2014, ch. 74, § 3, effective January 1, 2015.

Legislative Research Commission Note.

(1/1/2015). 2014 Ky. Acts ch. 74, sec. 10 provided that "the provisions of this Act shall not impact the provisions of KRS 61.870 to 61.884." That proviso applies to this statute as created in Section 1 of that Act.

(1/1/2015). In codification, the Reviser of Statutes has corrected a manifest clerical or typographical error in subsection (1)(a)1. of this statute by changing a reference to the educational entity agencies that must notify the president of the Council on Postsecondary Education of a security breach that are listed in "subsection (1)(c) of Section 1 of this Act" (KRS 61.931) to "subsection (1)(e) of Section 1 of this Act," making the reference once codified read "KRS 61.931(1)(e)."

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School district data security and breach procedures., 702 KAR 1:170.

61.934. Personal information security and breach investigation procedures and practices for legislative and judicial branches — Personal information disposal or destruction procedures.

(1) The legislative and judicial branches of state government shall implement, maintain, and update reasonable security and breach investigation procedures and practices, including taking any appropriate corrective action, to protect and safeguard against security breaches consistent with KRS 61.931 to 61.934.

(2) The Department for Libraries and Archives shall establish procedures for the appropriate disposal or destruction of records that include personal information pursuant to the authority granted the Department for Libraries and Archives under KRS 171.450.

History.
Enact. Acts 2014, ch. 74, § 4, effective January 1, 2015.

Legislative Research Commission Note.
(1/1/2015). 2014 Ky. Acts ch. 74, sec. 10 provided that "the provisions of this Act shall not impact the provisions of KRS 61.870 to 61.884." That proviso applies to this statute as created in Section 4 of that Act.

PENALTIES

61.991. Penalties.

(1) Any person who knowingly attends a meeting of any public agency covered by KRS 61.805 to 61.850 of which he is a member, not held in accordance with the provisions of KRS 61.805 to 61.850 shall be punished by a fine of not more than one hundred dollars ($100).

(2)(a) Any official of a public agency who willfully conceals or destroys any record with the intent to violate KRS 61.870 to 61.884 shall be guilty of a Class A misdemeanor for each separate violation.

(b) Any official of a public agency who fails to produce any record after entry of final judgment directing that such records shall be produced shall be guilty of contempt.

(3) Any person who violates any of the provisions of KRS 61.900 to 61.930 shall be fined not more than two hundred fifty dollars ($250) or imprisoned not more than ninety (90) days, or both.

History.
Enact. Acts 1974, ch. 377, § 10; 1976, ch. 273, § 9; 1976, ch. 178, § 17, effective January 1, 1977.

OPINIONS OF ATTORNEY GENERAL.

The penalty provided in this section for violations of the Open Meetings Law is prosecuted in the same manner as other misdemeanors. OAG 76-4.

Before a misdemeanor is committed there must be an intent to subvert and violate the Open Records Law. OAG 79-128, 1979 Ky. AG LEXIS 497.

Responses that certain requested items do not exist or cannot be located are proper responses when they represent the true state of events. OAG 90-66, 1990 Ky. AG LEXIS 66.

Subsection (2)(a) of this section establishes a penalty for public officials who willfully conceal or destroy public records with the intent to violate the provisions of the Open Records Act, but there was no proof, in the instant appeal, that the disputed documents were concealed or destroyed for this reason. OAG 91-220, 1991 Ky. AG LEXIS 218.

The Attorney General is not authorized to render a decision on questions arising under KRS 61.991(2)(a) or KRS 519.060, or to conduct an investigation into allegations of these offenses in an open records appeal. OAG 00-ORD-150, 2000 Ky. AG LEXIS 172.

CHAPTER 62
OATHS AND BONDS

Oaths.

Section
62.010. Oath of office — When to be taken.
62.020. Persons authorized to administer official oaths — Certification and filing.

Bonds.

Section
62.050. Bonds — When to be given.
62.060. Bonds of officers, depositories and fiduciaries — Form — Conditions — Amount — Renewal.
62.070. Action and recovery on bond.
62.080. Liability for public funds placed in depository.
62.160. Bonds of state officers — Minimum sum — Increase or renewal.
62.170. Bonds of state employees — Blanket bonds — Amount — Insurance companies that may participate.
62.180. Condition of bonds of state officers — Ex officio liability.
62.190. Conditions of blanket bonds.
62.200. Corporate surety on bonds of state officers and employees — Approval as to form and legality — Filing.

OATHS

62.010. Oath of office — When to be taken.

(1) No officer shall enter upon the duties of his office until he takes the oath required of him by law.

(2) Each person elected to an office shall take the oath of office on or before the day the term of office to which he has been elected begins, except in years where the first Monday in January falls upon January 1. In years where the first Monday falls upon January 1, no penalty shall be applied to any officer that fails to take the oath of office, so long as the oath of office is taken within thirty (30) days of the first Monday of January.

(3) Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment.

History.
3753, 3755; 2007, ch. 56, § 1, effective March 21, 2007.

Legislative Research Commission Note.
(3/21/2007). 2007 Ky. Acts ch. 56, sec. 4, provides that the amendments to KRS 62.010 in 2007 Ky. Acts ch. 56, sec. 1 "shall apply retroactively to any elected officer required to take the oath of office and execute bond by the first Monday of year 2007."

NOTES TO DECISIONS

Analysis

1. Application.
2. Elected Officers.
3. Appointed Officers.
4. Officer Not Required to Execute Bond.
5. Sufficiency of Qualification.
6. Expiration of Statutory Period.
7. Assumption of Duties.
8. Removal.
9. Forfeiture.
10. Status of Officers Not Qualifying Within Prescribed Time.
11. Precinct Officers.

1. Application.
This section applies only to offices which are to be filled for the full constitutional or statutory terms. Jones v. Sizemore, 117 Ky. 810, 79 S.W. 229, 25 Ky. L. Rptr. 1957, 1904 Ky. LEXIS 248 (Ky. 1904).

This section applies only to officers required to qualify both by giving bond and taking oath. Lewin v. Ft. Mitchell, 148 Ky. 816, 147 S.W. 922, 1912 Ky. LEXIS 550 (Ky. 1912).

This section is to be read into and as a part of every act creating an office and an officer, unless the act provides otherwise. Sewell v. Bennett, 187 Ky. 626, 220 S.W. 517, 1920 Ky. LEXIS 179 (Ky. 1920).

2. Elected Officers.

One elected to fill a vacancy may qualify and begin his duties at once. Jones v. Sizemore, 117 Ky. 810, 79 S.W. 229, 25 Ky. L. Rptr. 1957, 1904 Ky. LEXIS 248 (Ky. 1904).

One elected to fill a vacancy must qualify within a reasonable time after he has received the certificate of election. Brown v. Rose, 233 Ky. 549, 26 S.W.2d 503, 1930 Ky. LEXIS 611 (Ky. 1930).

Thirty-three days following receipt of certificate of election to fill a vacancy is an unreasonable delay in qualification, and a vacancy may be declared without notice. Brown v. Rose, 233 Ky. 549, 26 S.W.2d 503, 1930 Ky. LEXIS 611 (Ky. 1930).

The oath of office is the only oath required of commissioners of second-class cities, and they are not required to take another oath before commencing hearing for removal of manager. Rawlings v. Newport, 275 Ky. 183, 121 S.W.2d 10, 1938 Ky. LEXIS 397 (Ky. 1938).

The innocent and inadvertent omission of school board members, who had taken the constitutional oath (Const., § 228) referred to in this section, to take a further oath prescribed by KRS 160.170 until five (5) months later when they discovered the omission at which time they executed the oath in writing and caused it to be filed in the records of the school board did not forfeit their office or authorize their removal particularly where the statute creating KRS 160.170 did not specifically provide any penalty for failure to take the oath. Commonwealth ex rel. Breckinridge v. Marshall, 361 S.W.2d 103, 1962 Ky. LEXIS 228 (Ky. 1962).

3. Appointed Officers.

Lapse of more than a year between date of commission of railroad policeman and time of qualification raises presumption that qualification was not within thirty days after receipt of notice of appointment. Cincinnati, N. O. & T. P. R. Co. v. Cundiff, 166 Ky. 594, 179 S.W. 615, 1915 Ky. LEXIS 755 (Ky. 1915).

4. Officer Not Required to Execute Bond.

An officer not required to execute bond may take the oath of office within a reasonable time after the day fixed for taking the oath, provided reasonable excuse exists for the delay. Lewin v. Ft. Mitchell, 148 Ky. 816, 147 S.W. 922, 1912 Ky. LEXIS 550 (Ky. 1912).

5. Sufficiency of Qualification.

Under a similar statute, it was held that when the date for qualification fell on a holiday, the qualification might take place on the following day. Jewett v. Matteson, 148 Ky. 820, 147 S.W. 924, 1912 Ky. LEXIS 551 (Ky. 1912).

Compliance with the Constitution and statutes is sufficient qualification. Oakes v. Remines, 273 Ky. 750, 117 S.W.2d 948, 1938 Ky. LEXIS 713 (Ky. 1938).

6. Expiration of Statutory Period.

A county judge (now county judge/executive) has no authority to approve bond or administer oath tendered after the statutory date. Barnett v. Hart, 112 Ky. 728, 66 S.W. 726, 23 Ky. L. Rptr. 2116, 1902 Ky. LEXIS 217 (Ky. 1902).

7. Assumption of Duties.

There is nothing in either the Constitution or statutes fixing the time when one elected or appointed to fill a vacancy must assume the duties of his office. Jones v. Sizemore, 117 Ky. 810, 79 S.W. 229, 25 Ky. L. Rptr. 1957, 1904 Ky. LEXIS 248 (Ky. 1904).

8. Removal.

Charges presenting grounds for removal are unnecessary in an action against one who makes no attempt to qualify. Chatham v. Davenport, 187 Ky. 801, 220 S.W. 1062, 1920 Ky. LEXIS 209 (Ky. 1920).

9. Forfeiture.

Issue of forfeiture of office may not be raised collaterally in suit to compel fiscal court to fix salary. Peak v. Akins, 237 Ky. 711, 36 S.W.2d 351, 1931 Ky. LEXIS 678 (Ky. 1931).

10. Status of Officers Not Qualifying Within Prescribed Time.

A person elected as marshal who fails to take the oath or give bond is neither a de jure nor a de facto officer, but is a trespasser and usurper. Creighton v. Commonwealth, 83 Ky. 142, 7 Ky. L. Rptr. 70, 1885 Ky. LEXIS 48 (Ky. Ct. App. 1885).

Officers not required to give bond who take the oath after the statutory date are de jure officers. Lewin v. Ft. Mitchell, 148 Ky. 816, 147 S.W. 922, 1912 Ky. LEXIS 550 (Ky. 1912).

An officer not qualifying within the time prescribed is not a de facto officer. Cincinnati, N. O. & T. P. R. Co. v. Cundiff, 166 Ky. 594, 179 S.W. 615, 1915 Ky. LEXIS 755 (Ky. 1915).

A person appointed as county road engineer who fails to qualify is not a de facto officer. Chatham v. Davenport, 187 Ky. 801, 220 S.W. 1062, 1920 Ky. LEXIS 209 (Ky. 1920).

11. Precinct Officers.

Assuming that an oath were required under this section, the failure of precinct officers to take such oath would not invalidate a primary election in that precinct. Sims v. Atwell, 556 S.W.2d 929, 1977 Ky. App. LEXIS 826 (Ky. Ct. App. 1977).

OPINIONS OF ATTORNEY GENERAL.

Where five (5) months after taking office school board members had not yet taken the statutory oath, the State Board of Education was required to fill the resulting vacancies pursuant to KRS 160.190. OAG 61-485.

When the 31st of December falls on Sunday and the following day on which county officers are to take office for the ensuing term is a legal holiday, the county officers may be sworn in and execute bond when required on or before the first Monday in January, a legal holiday. OAG 61-886.

It is permissible for a successful candidate for the school board to take the statutory oath of office at a school board meeting to be held the second Monday in January. OAG 65-4.

Where a person who was elected a member of the county board of education and who had received a certificate of election refused to take the oath of office, such office became vacant thirty days after the beginning of the term or thirty days after receipt by the person elected of the certificate of election, whichever event was later and the other members of the board should thereafter immediately make an appointment to fill the vacancy under the duty imposed on them by KRS 160.190. OAG 69-60.

A person who is elected county coroner while voluntarily employed overseas by the department of the army as a civilian embalmer and who cannot return at the proper time to take the oath and assume the office, cannot be granted four (4) or five (5) months temporary leave and then return and assume the office because failure to take oath and make bond within the prescribed time would result in the automatic vacation of the office. OAG 69-239.

Where a duly elected city councilman did not appear at the first regularly called council meeting to take the oath of office but took such oath in the afternoon prior to the council

meeting called for that evening, he took oath prior to the inception of his term and was qualified for office. OAG 70-61.

As the members of the fiscal court must take their oath of office on or before January 7, 1974, the present members' terms expire upon the new members' taking office so that the present fiscal court could hold a meeting in 1974 prior to January 7. OAG 73-850.

No person shall be eligible to be police judge of a city of the fifth or sixth class under KRS 26.200 (repealed) unless he is a resident and qualified voter of the city and has resided therein for a year next preceding his election or appointment and, before entering the duties of his office, must execute a bond to the commonwealth with good and sufficient sureties approved by the county judge (now county judge/executive) and must also take the oath of office as prescribed by the Constitution and required in this section. OAG 74-441.

A person may execute the oath of office within a reasonable time after the day the term of office to which he has been elected begins and still be qualified to serve. OAG 78-50, 1978 Ky. AG LEXIS 657.

Failure to execute an oath of office due to illness is a sufficient excuse for a delay and if the oath is executed within a reasonable time after the date his term of office begins, the individual would be qualified to serve despite the delay. OAG 78-75, 1978 Ky. AG LEXIS 649.

Assuming a councilman has either not executed the oath at all or did not do so within 30 days following appointment, nevertheless his acts would be valid as that of a de facto officer until he is either removed or his prosecution under the penalty section sustained by court judgment, thereby creating a forfeiture of office. OAG 78-707, 1978 Ky. AG LEXIS 134.

If an appointed councilman failed to execute the oath within 30 days, and if the oath has been executed within a reasonable time thereafter, it would be in compliance with the requirements of subsection (3) of this section and what is a reasonable time is a question for the court to decide, but if he never executed the oath of office, then he obviously would not be a legally qualified member of the city council and subject to prosecution under the penalty section which includes the forfeiture of office. OAG 78-707, 1978 Ky. AG LEXIS 134.

The oath of office may be administered anywhere, as long as the oath is administered by one who is legally authorized to do so under the terms of KRS 62.020. OAG 78-707, 1978 Ky. AG LEXIS 134.

Though subsection (2) of this section provides that each person elected to an office shall take the oath of office on or before the day the term of office begins, the courts have nevertheless held that a person may execute the oath within a reasonable time after said date and still be qualified to serve. OAG 78-707, 1978 Ky. AG LEXIS 134.

Where councilman elected in November, 1983 failed to qualify in January, 1984 and in May, 1984 council declared the office vacant, the vacancy actually occurred on January 10 or within 30 days thereafter, the time frame mentioned in Brown v. Rose, 233 Ky. 549, 26 S.W.2d 503, 1930 Ky. LEXIS 611 (1930), as being a reasonable time to qualify. The council's declaration as to the vacancy was not controlling and the Governor had the sole authority to fill the vacancy by appointment, subject to an election in November, 1984 to fill the unexpired term of one year. OAG 84-245, 1984 Ky. AG LEXIS 142.

While a Notary Public should make every effort to take the required oath of office within thirty days after receiving notice of appointment, apparently the oath of office may be taken within a reasonable time thereafter provided there is a reasonable excuse for the delay; failure to take the required oath within a reasonable time after the time period set forth in the statute would subject the Notary Public to the penalty provisions of KRS 62.990. OAG 90-139, 1990 Ky. AG LEXIS 157.

A council member who had a valid excuse, illness, for not taking the oath of office on January 1 and who took the oath two day s later on January 3, was not disqualified from holding office. A city councilmember who takes the oath of office within a reasonable time after January 1 is not disqualified from office. OAG-13-003.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Conscience of deponent, oath to be administered to accord with, Const., § 232.

Constitutional oath required of all public officers, Const., § 228.

Oaths required to be in writing or subscribed:

Active militia, members of, KRS 37.210.

Board of Registration for Professional Engineers, members of, KRS 322.230.

Commissioner of department of mines and minerals, KRS 351.051.

Mine inspectors, KRS 351.090.

Police in second-class cities, KRS 95.490.

Public service commissioners, KRS 278.060.

Railroad policemen, KRS 277.280.

Veterinary examiners, members of state board of, KRS 321.230.

Special oaths required of various officers:

Active militia, members of, KRS 37.210.

Board of education, county, members of, KRS 160.170.

Board of waterworks in first-class cities, members of, KRS 96.240.

Circuit clerks, KRS 30A.020.

County board of supervisors, KRS 133.020.

Department of Fish and Wildlife Resources, commissioner of, KRS 150.061.

Director of district board of health, KRS 220.150.

District cooperative extension boards, members of, KRS 164.650.

Elisor, KRS 70.200.

Jurors, KRS 29A.240, 29A.300.

National guard, officers of, KRS 38.070.

Police:

Fourth-class cities, in, KRS 95.760.

Fifth-class cities, in, KRS 95.760.

Sheriff, KRS 70.010.

Northern Kentucky Law Review.

Schlam, Third-Party Standing in Child Custody Disputes: Will Kentucky's New "De Facto Guardian" Provision Help?, 27 N. Ky. L. Rev. 368 (2000).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Complaint for Appointment of Receiver Without Written Agreement to Appoint Receiver, Form 157.01.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Notary Public, § 21.00.

ALR

Member of petit jury as officer within constitutional or statutory provision in relation to oath or affirmation. 118 A.L.R. 1098.

62.020. Persons authorized to administer official oaths — Certification and filing.

(1) The official oath of any officer may be administered by:

(a) Any active, retired, or senior status justice or judge of the Court of Justice or active, retired, or senior status federal judge, with Kentucky jurisdiction;

(b) Any member of the General Assembly may administer an oath statewide; or

(c) Any county judge/executive, notary public, clerk of a court, or justice of the peace, within his district or county.

(2) For those officers listed in paragraphs (a), (b), (c), (d), and (e) of this subsection, the person administering the oath shall certify in writing that the oath of office was administered and the date of its administration. The person administering the oath shall file a written certification:

(a) In the Secretary of State's office for:

1. A member of the General Assembly;

2. An officer elected from the state at large;

3. An officer elected from a district greater than one (1) county; or

4. An officer elected from a city whose boundaries extend beyond those of a single county;

(b) In the Secretary of State's office for:

1. An officer appointed cabinet secretary; or

2. An officer appointed a deputy or assistant to an elected constitutional officer and who is required by separate statute to take the oath of office;

(c) In the Governor's office for the Secretary of State and the assistant Secretary of State;

(d) In the office of the county clerk for the county from which an officer is elected to countywide office or office for a district within the county. However, the requirements of this paragraph shall not apply when the requirements of paragraph (a) of this subsection apply; and

(e) In the office of a circuit clerk for a county clerk within the jurisdiction of that circuit clerk.

History.

3754: amend. Acts 1980, ch. 184, § 1, effective July 15, 1980; 1994, ch. 454, § 1, effective July 15, 1994; 1996, ch. 164, § 1, effective July 15, 1996; 2007, ch. 56, § 3, effective March 21, 2007; 2007, ch. 132, § 3, effective June 26, 2007; 2010, ch. 128, § 1, effective July 15, 2010.

Legislative Research Commission Note.

(6/26/2007). This section was amended by 2007 Ky. Acts chs. 56 and 132. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 132, which was last enacted by the General Assembly, prevails under KRS 446.250.

(3/21/2007). 2007 Ky. Acts ch. 56, sec. 4, provides that the amendments to KRS 62.020 in 2007 Ky. Acts ch. 56, sec. 3, "shall apply retroactively to any elected officer required to take the oath of office and execute bond by the first Monday of year 2007."

NOTES TO DECISIONS

Analysis

1. In General.
2. Notaries.

1. In General.

Persons authorized to administer oaths may by direction of a trial judge swear witnesses in open court. Bush v. Commonwealth, 198 Ky. 226, 248 S.W. 522, 1923 Ky. LEXIS 411 (Ky. 1923).

2. Notaries.

Notaries public had no common law authority to administer oaths, and their authority to take oaths must be statutory. Anderson v. Commonwealth, 117 S.W. 364, 1909 Ky. LEXIS 497 (Ky. 1909).

Cited:

Owsley v. Commonwealth, 428 S.W.2d 199, 1968 Ky. LEXIS 707 (Ky. 1968).

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Under the provisions of KRS 87.130 (now repealed), the mayor of a fifth-class city can administer the oath of office to duly elected councilmen of that city. OAG 61-799.

It is the duty of the county election commission in reviewing the certifications on absentee ballots to make every effort to determine the validity of the notarizations and reject only those papers that they clearly feel are not properly notarized giving the voter the benefit where there is reasonable doubt and approving the notarization. OAG 64-814.

An attorney, as an officer of the court, would not be competent to acknowledge legal instruments without the necessity of acquiring a notary's commission or other authority. OAG 71-22.

The oath of office for members of the State Board of Registration for Professional Engineers and Land Surveyors need not be given at a duly convened meeting of the Board but may be taken anywhere in the commonwealth and administered by any officer listed in this section as empowered to administer the official oath of office, including a notary public, and said oath is not required to be attested to by the chairman or any other officer of the Board. OAG 73-189.

Justices of the peace cannot administer oaths of office, since they are no longer judges in the judicial and constitutional sense. OAG 78-57, 1978 Ky. AG LEXIS 670.

KRS 423.010 prevails over this section only to the extent that the former authorizes the county judge/executive to administer the oaths of notaries before they assume office. OAG 79-289, 1979 Ky. AG LEXIS 339.

The language "within his district or county" refers to the entire geographical territory for which the officers were elected or appointed. OAG 82-199, 1982 Ky. AG LEXIS 445.

Under the language of Const., § 99, a justice of the peace may administer the official oath of any officer within his magisterial district. OAG 82-199, (modifying OAG 78-57).

All notary publics, residents of Kentucky, including those appointed under KRS 423.110, must take the oath mentioned in KRS 423.110 before the county judge/executive of the county in which the notary resides, and must take the oath prescribed in Const., § 228 before one of the applicable officers mentioned in this section. OAG 85-36, 1985 Ky. AG LEXIS 109.

In light of Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175, 1984 U.S. LEXIS 93 (1984), the citizenship requirement of Const., § 228 is not enforceable as to the Office of notary public under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Const., § 3; thus, an alien residing in a particular county in Kentucky may qualify as a notary public, provided that he satisfies the requirements of KRS 423.010 and takes the oath before the county judge executive of his county that "he will honestly and diligently discharge the duties of his office," as required by KRS 423.010. In addition, he must take the oath of officers prescribed in Const., § 228 before any applicable officer listed in this section, even though he is not a citizen of the United States or Kentucky; in view of the holding in Bernal v. Fainter, the requirement of citizenship, as it applies to the oath of Const., § 228, would be, as a practical matter and in harmony with the cy pres doctrine of equity, considered waived. OAG 85-37, modifying OAG 77-297, 1977 Ky. AG LEXIS 479.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Justices of the Peace, § 17.00.

ALR

Formalities of administering or making oath. 51 A.L.R. 840.

BONDS

62.050. Bonds — When to be given.

(1) Except as otherwise provided by statute, no officer required by law to give bond shall enter upon the duties of his office until he gives the bond, except in years where the first Monday in January falls upon January 1. In years where the first Monday falls upon January 1, no penalty shall be applied to any officer that fails to give bond, so long as bond is given within thirty (30) days of the first Monday of January.

(2) Except as otherwise provided by statute, each person elected to an office who is required to give bond shall give the bond on or before the day the term of office to which he has been elected begins.

(3) Each person appointed to an office who is required to give bond shall give the bond within thirty (30) days after he receives notice of his appointment.

History.

3753, 3755; 1996, ch. 86, § 9, effective July 15, 1996; 2007, ch. 56, § 2, effective March 21, 2007.

Legislative Research Commission Note.

(3/21/2007). 2007 Ky. Acts ch. 56, sec. 4, provides that the amendments to KRS 62.050 in 2007 Ky. Acts ch. 56, sec. 2 "shall apply retroactively to any elected officer required to take the oath of office and execute bond by the first Monday of year 2007."

NOTES TO DECISIONS

Analysis

1. Application.
2. Failure to Qualify.
3. Tender of Bond.
4. — Sufficiency.
5. — Proof.
6. Renewal or Additional Bond.
7. Approval.

1. Application.

This section did not apply to a contractor's bond. Moss v. Rowlett, 112 Ky. 121, 65 S.W. 153, 23 Ky. L. Rptr. 1411, 1901 Ky. LEXIS 287 (Ky. 1901), overruled, Taylor v. Westerfield, 233 Ky. 619, 26 S.W.2d 557, 1930 Ky. LEXIS 640 (Ky. 1930).

This section applies to officers elected or appointed to fill a vacancy. Wheeler v. Collins, 222 Ky. 801, 2 S.W.2d 646, 1928 Ky. LEXIS 251 (Ky. 1928).

Failure of officer, who is not required to give a statutory bond, to give or renew a common-law bond is not affected by this section. National Surety Co. v. Hester's Adm'r, 241 Ky. 623, 44 S.W.2d 563, 1931 Ky. LEXIS 127 (Ky. 1931).

Kentucky Constitution, § 103, this section and KRS 62.055, which state that a county clerk before taking office shall post bond, are mandatory in nature. Elective clerks must post required bond before assuming the duties of office. Substantial compliance with these provisions is not sufficient. Bowen v. Commonwealth ex rel. Stidham, 887 S.W.2d 350, 1994 Ky. LEXIS 110 (Ky. 1994).

Kentucky Constitution, § 103, this section, and KRS 67.720 which state that a county judge-executive, before taking office shall post bond, are mandatory in nature. Elective county judge-executives must post required bond before assuming the duties of office and substantial compliance with these provisions is not sufficient. Commonwealth ex rel. Stidham v. Henson, 887 S.W.2d 353, 1994 Ky. LEXIS 111 (Ky. 1994).

2. Failure to Qualify.

On failure of a person elected to qualify, or death before qualification, his predecessor does not hold over as against one elected or appointed to fill the vacancy. Campbell v. Dotson, 111 Ky. 125, 63 S.W. 480, 23 Ky. L. Rptr. 510, 1901 Ky. LEXIS 193 (Ky. 1901); Olmstead v. Augustus, 112 Ky. 365, 65 S.W. 817, 23 Ky. L. Rptr. 1772, 1901 Ky. LEXIS 318 (Ky. Ct. App. 1901).

An appointee failing to give bond within 30 days after notice of appointment is not in legal possession of the office, and is a de facto officer only as against innocent third parties. Wheeler v. Collins, 222 Ky. 801, 2 S.W.2d 646, 1928 Ky. LEXIS 251 (Ky. 1928).

3. Tender of Bond.

4. — Sufficiency.

Tender of bond is sufficient when officials authorized to approve same refuse arbitrarily to do so. Dorian v. Paducah, 136 Ky. 373, 124 S.W. 369, 1910 Ky. LEXIS 495 (Ky. 1910).

Tender of bond is sufficient when official required to approve same causes the statutory period to expire before approval is made. Commonwealth v. Flatt, 219 Ky. 185, 292 S.W. 785, 1927 Ky. LEXIS 309 (Ky. 1927).

5. — Proof.

Proof of tender of county treasurer's bond to fiscal court must be by the records of the court. Reynolds v. Floyd County Fiscal Court, 262 Ky. 445, 90 S.W.2d 694, 1935 Ky. LEXIS 792 (Ky. 1935).

6. Renewal or Additional Bond.

The renewal or additional bond of a sheriff tendered after the statutory data may be approved by the county court. Schuff v. Pflanz, 99 Ky. 97, 35 S.W. 132, 18 Ky. L. Rptr. 25, 1896 Ky. LEXIS 59 (Ky. 1896); Renshaw v. Cook, 129 Ky. 347, 111 S.W. 377, 33 Ky. L. Rptr. 860, 33 Ky. L. Rptr. 895, 1908 Ky. LEXIS 165 (Ky. Ct. App. 1908).

7. Approval.

A county court has no authority to approve bond tendered after the statutory date. Commonwealth Yarbrough, 84 Ky. 496, 2 S.W. 68, 8 Ky. L. Rptr. 483, 1886 Ky. LEXIS 92 (Ky. 1886). See Barnett v. Hart, 112 Ky. 728, 66 S.W. 726, 23 Ky. L. Rptr. 2116, 1902 Ky. LEXIS 217 (Ky. 1902).

County judge (now county judge/executive) has authority to postpone hearing on approval of bond until after the statutory period has expired. Commonwealth v. Flatt, 219 Ky. 185, 292 S.W. 785, 1927 Ky. LEXIS 309 (Ky. 1927). See Commonwealth Yarbrough, 84 Ky. 496, 2 S.W. 68, 8 Ky. L. Rptr. 483, 1886 Ky. LEXIS 92 (Ky. 1886).

Officer required to approve bond may by his conduct waive strict compliance as to time, when such conduct misleads the qualifying officer to his prejudice. Commonwealth v. Flatt, 219 Ky. 185, 292 S.W. 785, 1927 Ky. LEXIS 309 (Ky. 1927).

When the qualifying officer is required by law to work under the direction of the approving judge, the latter's directions will not be allowed to prejudice the qualifying officer. Commonwealth v. Flatt, 219 Ky. 185, 292 S.W. 785, 1927 Ky. LEXIS 309 (Ky. 1927).

Cited:
Revenue Cabinet v. Picklesimer, 879 S.W.2d 482, 1994 Ky. LEXIS 77 (Ky. 1994).

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When the 31st of December falls on Sunday and the following day on which county officers are to take office for the ensuing term is a legal holiday, the county officers may be sworn in and execute bond when required on or before the first Monday in January, a legal holiday. OAG 61-886.

The term of an official bond is limited to the term for which the official is elected, regardless of the fact that the term of the bond fails to so state, but the term of such bond can be extended to cover succeeding terms where there exists a verbal agreement to this effect. OAG 63-49.

Where bond was not executed prior to assuming office, the officer cannot execute a new bond during the term of his office. OAG 63-49.

A person who is elected county coroner while voluntarily employed overseas by the department of the army as a civilian embalmer and who cannot return at the proper time to take the oath and assume the office, cannot be granted four or five months temporary leave and then return and assume the office because failure to take oath and make bond within the prescribed time would result in the automatic vacation of the office. OAG 69-239.

Failure of a duly elected constable to qualify and execute bond creates a vacancy for the office which may be filled by an appointment but an election will be required to fill the office at the next regular election. OAG 71-159.

When an elected constable fails to take the oath of office and execute the required bond, he may be removed from office under KRS 62.990 by action initiated by the commonwealth attorney pursuant to KRS 415.050, or the county judge/executive may declare the office vacant and fill the vacancy pursuant to KRS 63.220. OAG 80-2, 1980 Ky. AG LEXIS 632.

Once the county jailer passed the statutory deadline of subsection (2) of this section without making bond, the office became vacant; there is simply no provision of statutory law permitting the making of effective bond after the deadline. OAG 83-483, 1983 Ky. AG LEXIS 13.

The failure of the county jailer to execute bond before entering upon the duties of his office created a vacancy in that office. See Campbell v. Dotson, 111 Ky. 125, 63 S.W. 480, 1901 Ky. LEXIS 193 (1901). Subsection (2) of this section requires the elected official who must make bond to give bond on or before the day the term of office to which he has been elected begins; the statutory deadline for executing bond is mandatory and failure to give bond by the deadline vacates the office. OAG 83-483, 1983 Ky. AG LEXIS 13.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
General Assembly to provide which officers to execute bond, Const., § 224.

Officers to give bond before entering upon duties, Const., § 103.

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Principal and Surety, § 201.00.

ALR
Liability on general bond for acts covered by special bond. 140 A.L.R. 1459.

Public officer's bond as subject to forfeiture for malfeasance in office. 4 A.L.R.2d 1348.

62.060. Bonds of officers, depositories and fiduciaries — Form — Conditions — Amount — Renewal.

(1) Except as provided by KRS 395.130, the bond required by law to be executed and given by any public official, depository of public funds, or any fiduciary, and other bond required by law for the discharge or performance of any public or fiducial office, trust or employment, shall be a covenant to the Commonwealth of Kentucky from the principal and surety or sureties that the principal will faithfully discharge his duties, and there shall be no other obligation in the bond. The bond shall be limited in a definite penal sum, which shall be determined and fixed by the officer or officers whose duty it is to approve the bond. The bond of each fiduciary shall be fixed in a penal sum of not less than the estimated value of the estate which the fiduciary is in charge of. The officer or officers taking any bond mentioned in this section may, at any time when it appears to be to the interest of the obligee, increase the penal sum of the bond or require a renewal thereof with other or additional sureties.

(2) A bond or obligation taken in any form other than that required by subsection (1) shall be binding on the parties thereto according to its terms.

(3) This section shall not apply to bonds given pursuant to KRS 62.160 to 62.200.

History.
186d-1, 3751: amend. Acts 1946, ch. 27, § 6; 1972, ch. 203, § 3.

Compiler's Notes.
Section 56 of Acts 1972, ch. 203, provided: "Nothing in the Act shall be construed to effect any substantive change in the statute law of Kentucky and if any substantive change appears to be effected it shall be disregarded and the law as it existed prior to the effective date of this Act shall be given full force and effect."

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Application.
4. Sufficiency.
5. Conditions.
6. — Depository.
7. — Guardian.
8. Obligee, Naming.
9. Obligor, Naming.
10. Limitation in Bond.
11. Approval.
12. New Bond, Requirement.
13. New Bond, Increase in.
14. Notice of Default.
15. Sureties, Liability.
16. Principal, Liability.
17. Liability of Official Approving Bond.
18. Public Official Sued in Personal Capacity.

1. Constitutionality.
This section does not violate Const., § 54. Fidelity & Deposit Co. v. Commonwealth, 231 Ky. 346, 21 S.W.2d 452, 1929 Ky. LEXIS 271 (Ky. 1929).

2. Construction.

This section must be read in connection with bonds executed under it. Connelly v. American Bonding & Trust Co., 113 Ky. 903, 69 S.W. 959, 24 Ky. L. Rptr. 714, 1902 Ky. LEXIS 119 (Ky. 1902); Bankers' Surety Co. v. Newport, 162 Ky. 473, 172 S.W. 940, 1915 Ky. LEXIS 101 (Ky. 1915).

In executing an official bond, only substantial compliance with the statute is required. Growbarger v. United States Fidelity & Guaranty Co., 126 Ky. 118, 102 S.W. 873, 31 Ky. L. Rptr. 555, 1907 Ky. LEXIS 24 (Ky. 1907).

This section is merely directory as to the penal sum, and does not invalidate a bond otherwise properly executed. Hegarty v. Arkle's Guardian, 213 Ky. 15, 280 S.W. 139, 1926 Ky. LEXIS 440 (Ky. 1926); Miller v. Rockcastle County, 248 Ky. 290, 58 S.W.2d 598, 1933 Ky. LEXIS 230 (Ky. 1933); Cornett v. Duff, 282 Ky. 332, 138 S.W.2d 478, 1940 Ky. LEXIS 165 (Ky. 1940).

This section is mandatory. Rider's Ex'x v. Sherrard's Guardian, 231 Ky. 112, 21 S.W.2d 147, 1929 Ky. LEXIS 229 (Ky. Ct. App. 1929).

3. Application.

This section and KRS 67.070 do not cover contractors' bonds. Moss v. Rowlett, 112 Ky. 121, 65 S.W. 153, 23 Ky. L. Rptr. 1411, 1901 Ky. LEXIS 287 (Ky. 1901), overruled, Taylor v. Westerfield, 233 Ky. 619, 26 S.W.2d 557, 1930 Ky. LEXIS 640 (Ky. 1930).

This section and KRS 62.070 do not apply to a bond given by a deputy sheriff to the sheriff. Casey v. Fidelity & Casualty Co., 278 Ky. 426, 128 S.W.2d 939, 1939 Ky. LEXIS 449 (Ky. 1939).

4. Sufficiency.

A guardian's settlement showing a balance in excess of the amount of the bond is notice to the county judge (now county judge/executive) that the bond is insufficient. Rider's Ex'x v. Sherrard's Guardian, 231 Ky. 112, 21 S.W.2d 147, 1929 Ky. LEXIS 229 (Ky. Ct. App. 1929).

It is the duty of the county judge (now county judge/executive) to require guardians' bonds to conform to this section, and if the bond is insufficient to give notice at once to the guardian that a new bond or additional surety on the old one is required. Rider's Ex'x v. Sherrard's Guardian, 231 Ky. 112, 21 S.W.2d 147, 1929 Ky. LEXIS 229 (Ky. Ct. App. 1929).

If a bond is sufficient except as to naming of penalty, it is the duty of the approving officer to insert a proper penal sum, with the consent of the sureties, and then approve it. Cornett v. Duff, 282 Ky. 332, 138 S.W.2d 478, 1940 Ky. LEXIS 165 (Ky. 1940).

5. Conditions.

A bond is not void because it contains conditions not prescribed by statute, although the statute prescribes its conditions, unless the statute expressly provides that it shall be void on that account. Sauer v. Fidelity & Deposit Co., 192 Ky. 758, 234 S.W. 434, 1921 Ky. LEXIS 148 (Ky. 1921).

Unless the statute so provides, only those parts of the bond which are contrary to statute are void, and the rest of the conditions are enforceable. Sauer v. Fidelity & Deposit Co., 192 Ky. 758, 234 S.W. 434, 1921 Ky. LEXIS 148 (Ky. 1921).

6. — Depository.

The bond of a depository is a guarantee of the security of the funds and the assurance that they will be delivered on demand, and such bond imposes a greater responsibility than a bond conditioned upon the faithful performance of the duties of an officer. Phillips v. Board of Education, 283 Ky. 173, 140 S.W.2d 819, 1940 Ky. LEXIS 292 (Ky. 1940).

7. — Guardian.

A guardian's bond must necessarily include interest that will accrue, and any other funds that reasonably may be expected to come into the guardian's hands during the succeeding biennial period. Rider's Ex'x v. Sherrard's Guardian, 231 Ky. 112, 21 S.W.2d 147, 1929 Ky. LEXIS 229 (Ky. Ct. App. 1929).

8. Obligee, Naming.

Naming of city as obligee instead of commonwealth does not prevent recovery by individuals. Connelly v. American Bonding & Trust Co., 113 Ky. 903, 69 S.W. 959, 24 Ky. L. Rptr. 714, 1902 Ky. LEXIS 119 (Ky. 1902); Growbarger v. United States Fidelity & Guaranty Co., 126 Ky. 118, 102 S.W. 873, 31 Ky. L. Rptr. 555, 1907 Ky. LEXIS 24 (Ky. 1907).

A bond is not vitiated by being made to the commonwealth, as provided by this section, instead of to the obligee stipulated in the act providing for the bond. United States Fidelity & Guaranty Co. v. Commonwealth, 104 S.W. 1029, 31 Ky. L. Rptr. 1179 (1907).

9. Obligor, Naming.

That the obligor was styled "trustee" instead of "treasurer" did not vitiate the bond, the duties of the offices being the same. United States Fidelity & Guaranty Co. v. Commonwealth, 104 S.W. 1029, 31 Ky. L. Rptr. 1179 (1907).

10. Limitation in Bond.

Any limitation in a bond in derogation of statutory requirements is not binding. Bankers' Surety Co. v. Newport, 162 Ky. 473, 172 S.W. 940, 1915 Ky. LEXIS 101 (Ky. 1915).

Neither the principal nor the surety may complain that the obligations of the bond are less than prescribed by statute. Sauer v. Fidelity & Deposit Co., 192 Ky. 758, 234 S.W. 434, 1921 Ky. LEXIS 148 (Ky. 1921).

11. Approval.

The approval required by statute need not be evidenced by an indorsement on the bond, it being sufficient if the record shows acts raising a presumption of approval. Hall's Ex'rs v. Robinson, 291 Ky. 631, 165 S.W.2d 163, 1942 Ky. LEXIS 285 (Ky. 1942).

If a bond is required to be executed before a particular officer or to be approved by him, it must be so executed or approved else it will be considered no bond at all. Hall's Ex'rs v. Robinson, 291 Ky. 631, 165 S.W.2d 163, 1942 Ky. LEXIS 285 (Ky. 1942).

12. New Bond, Requirement.

When full or partial recovery on a bond has been had, the officer taking the bond may require a new bond. Waddle v. Wilson, 164 Ky. 228, 175 S.W. 382, 1915 Ky. LEXIS 367 (Ky. 1915).

13. New Bond, Increase in.

Where a county judge/executive rejected a proffered performance bond of $50,000 from the county sheriff, citing the fact that the revenue bonds posted were inadequate to secure the aggregate tax receipts of the county, that a recent federal case had held that the county sheriff's department was not protected by sovereign immunity in a civil rights suit against the police department, and he instead set the performance bond at $300,000, while issuing an order limiting the power of the sheriff to act within her capacity until the bond was posted, the county judge/executive acted within his statutory authority under this section which makes it mandatory for the officer whose duty it is to fix the amount of the bond to approve it also, and to increase it when it appears to be in the interest of the obligee to do so. Muncy v. Keen, 619 S.W.2d 712, 1981 Ky. App. LEXIS 270 (Ky. Ct. App. 1981).

14. Notice of Default.

Requirement of notice of default within six months, not being required by statute, is void. Bankers' Surety Co. v.

Newport, 162 Ky. 473, 172 S.W. 940, 1915 Ky. LEXIS 101 (Ky. 1915).

Heirs are under no duty to give notice to sureties on administrator's bond of defaults or mismanagement by administrator known to heirs. Kaufman v. Kaufman's Adm'r, 292 Ky. 351, 166 S.W.2d 860, 1942 Ky. LEXIS 102 (Ky. 1942).

15. Sureties, Liability.

Bond specifying no amount upheld as common-law obligation on which liability of sureties was unlimited. Hite v. Hite's Ex'r, 133 Ky. 554, 118 S.W. 357, 1909 Ky. LEXIS 203 (Ky. 1909); Miller v. Rockcastle County, 248 Ky. 290, 58 S.W.2d 598, 1933 Ky. LEXIS 230 (Ky. 1933).

It is the sufficiency of the sureties, not the solvency of the principal, that is looked to. Allen v. Jenkins, 157 Ky. 406, 163 S.W. 234, 1914 Ky. LEXIS 298 (Ky. 1914).

Statutory provisions bind the surety, though not incorporated in the bond. Rice v. Lavin, 199 Ky. 790, 251 S.W. 990, 1923 Ky. LEXIS 927 (Ky. 1923).

Sureties on jailer's bond were not liable for money received by him in excess of the amount appropriated for him by the fiscal court, where bond provided that he would faithfully discharge the duties of his office and pay over to all parties entitled thereto any funds that may come into his hands by virtue of his office, as sums paid the jailer illegally were not within the contemplation of the bond. Wolfe County v. Tolson, 283 Ky. 11, 140 S.W.2d 671, 1940 Ky. LEXIS 287 (Ky. 1940).

Whether the annual renewals of an official bond constitute merely a continuation of the original bond contract, so as to limit the total liability of the surety to the original penal sum, or whether each renewal constitutes a separate contract, so as to make the surety liable each year for a sum equal to the penal sum of the original bond, depends upon the terms and conditions stated in the bond and renewal clauses. Middlesboro v. American Surety Co., 307 Ky. 769, 211 S.W.2d 670, 1947 Ky. LEXIS 1035 (Ky. 1947).

In action by Commonwealth against sureties on bonds of clerk of county court, sureties on second bond could not be held liable for defalcations in accounts that occurred prior to execution and approval of the second bond where the second bond did not have retroactive operation. Commonwealth v. Slack, 291 S.W.2d 553, 1956 Ky. LEXIS 387 (Ky. 1956).

Surety on bond is liable for interest from date of judgment and he cannot avoid liability by asserting claim against him was not liquidated. Commonwealth v. Slack, 291 S.W.2d 553, 1956 Ky. LEXIS 387 (Ky. 1956).

Where the bond executed by the surety guaranteed the faithful performance of the administrator in carrying out his duties and further guaranteed proper distribution of any surplus money, effects and returns which might come to his hands or to anyone for him by color of his office, the surety was liable on a certificate of deposit wrongfully cashed by the administrator under color of office. Maryland Casualty Co. v. McCormack, 488 S.W.2d 347, 1972 Ky. LEXIS 42 (Ky. 1972).

Trial court erred by finding that a surety bond written by the insurance company for the city clerk created $300,000 in liability for each of the seven years the bond was in force because the city clerk was appointed to one open-ended term that lasted seven years, and under the terms of the bond it was for the penal sum of $300,000 "during the term aforesaid." The was no need for the trial court to resort to extrinsic evidence, and there was no credible evidence that the city thought it was buying $300,000 of coverage for each successive year. Ohio Cas. Ins. Co. v. City of Providence, 2014 Ky. App. LEXIS 9 (Ky. Ct. App. 2014), sub. op., 2014 Ky. App. Unpub. LEXIS 1024 (Ky. Ct. App. Jan. 10, 2014).

16. Principal, Liability.

The principal being already liable, his failure to sign the bond does not render it a common-law bond. Allen v. Jenkins, 157 Ky. 406, 163 S.W. 234, 1914 Ky. LEXIS 298 (Ky. 1914).

Public officials may not restrict their liability on official bonds by inserting conditions not authorized by statute. Bankers' Surety Co. v. Newport, 162 Ky. 473, 172 S.W. 940, 1915 Ky. LEXIS 101 (Ky. 1915).

17. Liability of Official Approving Bond.

An approving official not requiring sufficient bond is liable for interest only for a period of two years from his last delinquency. Rider's Ex'x v. Sherrard's Guardian, 231 Ky. 112, 21 S.W.2d 147, 1929 Ky. LEXIS 229 (Ky. Ct. App. 1929).

An approving official is not liable for approving an insufficient bond when that fact is not the cause of loss. United States Fidelity & Guaranty Co. v. Drinkard, 250 Ky. 695, 63 S.W.2d 916, 1933 Ky. LEXIS 761 (Ky. 1933).

An approving official is not an insurer against depreciation. United States Fidelity & Guaranty Co. v. Drinkard, 250 Ky. 695, 63 S.W.2d 916, 1933 Ky. LEXIS 761 (Ky. 1933).

Neither KRS 395.640 or this section contain provisions which make the district judge personally liable if he fails to require a new bond or additional surety on the old one or if he fails to fix the bond in a penal sum which is less than the estimated value of the estate, or if he fails to, when it appears to be in the interest of the obligee, increase the penal sum of the bond or require a renewal thereof with other or additional sureties. Vaughn v. Webb, 911 S.W.2d 273, 1995 Ky. App. LEXIS 197 (Ky. Ct. App. 1995).

18. Public Official Sued in Personal Capacity.

Since the plaintiff recovered a judgment against a police officer solely in his personal capacity and not in his official capacity, and since there was no recovery against the city by which he was employed, plaintiff could not recover against fidelity bond naming officer as principal, and binding the officer and surety to the city, as obligee, since it only insured actual losses sustained by the city. Thornsberry v. Western Surety Co., 738 F. Supp. 209, 1990 U.S. Dist. LEXIS 6717 (E.D. Ky. 1990).

Cited:

Polk v. American Casualty Co., 816 S.W.2d 178, 1991 Ky. LEXIS 141 (Ky. 1991).

OPINIONS OF ATTORNEY GENERAL.

The county judge (now county judge/executive) is the appropriate official authorized to determine and fix the penal amount of the official bonds of the county clerk, as required by KRS 28.020 (now repealed); the constables, as required by KRS 70.310; and the coroner, as required by KRS 72.010, while the circuit court clerk determines and fixes the penal sum of the official bond of the county judge (now county judge/executive). OAG 61-1095.

A public administrator must execute a bond for each separate estate for which is appointed. OAG 66-242.

When it appears to be to the interest of the Commonwealth the county judge (now county judge/executive) may, at any time, increase the penal sum of the bond of a deputy sheriff or require a renewal thereof with other or additional sureties. The county judge (now county judge/executive) has no authority to cancel a deputy sheriff's bond. OAG 67-324.

The bond executed by a railroad policeman with the railroad company as surety would have to follow the requirements of this section. OAG 71-11.

Unless the surety contract states otherwise, death does not discharge the liability of a surety and the deceased sureties' executors and administrators remain liable on the contract. OAG 74-553.

In fixing the official bonds for each county officer the county judge (now county judge/executive) should set the bond for not less than an amount reflecting the estimated aggregate

amount of money coming into the officer's hands each year during the effective period of the bond. OAG 76-224.

Inasmuch as the justice's bond was intended to cover the justice's entire range of statutory duties, a raise in the bond amount from $5,000 to $10,000 by the county judge (now county judge/executive) during the term of a justice of the peace would be legal if the county judge (now county judge/executive) reasonably concluded that the aggregate amount of money subject to the justice's control warranted the raise in bonding. OAG 76-283.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Alcoholic beverage administrator, amount of bond:

City, KRS 241.180.

County, KRS 241.130.

Guardian, persons who may not be surety for, KRS 387.070.

Guardian, removal for failure to give additional security, KRS 387.090.

Sheriff, coroner and jailer, persons who may not be sureties on bond of, KRS 70.020, 71.010, 72.010.

Treasurer of pension fund for police and firemen of fourth-class city, conditions of bond, KRS 95.778.

Utility commissioners in third-class cities, not to be surety on bond of city official, KRS 96.530.

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Charges for Removal of Officer, Form 10.10.

Caldwell's Kentucky Form Book, 5th Ed., Fiduciary Bond (AOC 825), Form 12.08.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Bonds, § 12.00

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Circuit Clerks, § 13.00.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Sheriffs and Deputy Sheriffs, § 18.00.

ALR

Approval of bond, right of sureties to take advantage of noncompliance with statutory requirement as to. 77 A.L.R. 1479.

Statutory conditions prescribed for public officer's bond as part of bond which does not in terms include them or which excludes them. 109 A.L.R. 501.

62.070. Action and recovery on bond.

Actions may be brought from time to time on any bond required by law for the discharge or performance of any public or fiducial office, trust or employment, in the name of the Commonwealth, for its benefit or for that of any person injured by a breach of the covenant or condition, at the proper costs of the party suing, against the parties jointly or severally, together with the personal representatives, heirs and devisees or distributees of such of them as may be dead. Recovery against the surety shall be limited to the amount of the penalty fixed in the bond, but recovery against the principal shall not be limited by the amount of the penalty fixed in the bond. Recovery on the bond shall not be restricted to duties or responsibilities belonging to the office, trust or employment at the date the bond is executed, but may include any duties or responsibilities thereafter imposed by law or lawfully assumed.

History.

186d-1, 3752.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Bond Coverage.
3. Recovery for Negligence.
4. Determination of Liability.
5. Accrual of Action.
6. Default, Notice of.
7. Pleadings.
8. Recovery of Interest.
9. Punitive Damages.
10. Actions Against Sheriff, Deputy Sheriff or Marshal.
11. Sureties.
12. — Liability.
13. — — Limitation.
14. — Apportionment of Judgments Against.
15. — Indemnification.
16. — Release.
17. Sovereign Immunity.

1. Construction.

The covenant or bond mentioned in this section is the one required by KRS 62.060. Moss v. Rowlett, 112 Ky. 121, 65 S.W. 153, 23 Ky. L. Rptr. 1411, 1901 Ky. LEXIS 287 (Ky. 1901), overruled, Taylor v. Westerfield, 233 Ky. 619, 26 S.W.2d 557, 1930 Ky. LEXIS 640 (Ky. 1930).

This section must be read in connection with bonds executed under it. Connelly v. American Bonding & Trust Co., 113 Ky. 903, 69 S.W. 959, 24 Ky. L. Rptr. 714, 1902 Ky. LEXIS 119 (Ky. 1902); Growbarger v. United States Fidelity & Guaranty Co., 126 Ky. 118, 102 S.W. 873, 31 Ky. L. Rptr. 555, 1907 Ky. LEXIS 24 (Ky. 1907); United States Fidelity & G. Co. v. Milstead, 109 S.W. 875, 33 Ky. L. Rptr. 186 (1908); Bankers' Surety Co. v. Newport, 162 Ky. 473, 172 S.W. 940, 1915 Ky. LEXIS 101 (Ky. 1915).

This section and KRS 62.020 and 62.080 did not repeal KRS 95.750 (now repealed) as to liability on bonds of policemen in fourth-class cities for unlawful arrest. Fidelity & Deposit Co. v. Noger, 245 Ky. 416, 53 S.W.2d 746, 1932 Ky. LEXIS 616 (Ky. 1932).

The purpose of KRS 134.200 is to authorize the sheriff to require bond of his deputies in the collection of revenues, and that bond does not come within the purview of KRS 62.060 and this section. The latter sections relate to bond obligations which are required by law for the discharge of a public office or trust. Casey v. Fidelity & Casualty Co., 278 Ky. 426, 128 S.W.2d 939, 1939 Ky. LEXIS 449 (Ky. 1939).

2. Bond Coverage.

Official bonds do not cover money which the principal had no right to receive. Dawson v. Lee, 83 Ky. 49, 6 Ky. L. Rptr. 413, 1884 Ky. LEXIS 108 (Ky. 1884); Hatcher v. Pike County, 13 Ky. L. Rptr. (Abstract) (1891); Duncan v. Smith, 15 Ky. L. Rptr. 58; Osenton's Adm'x v. Burnett, 41 S.W. 270, 19 Ky. L. Rptr. 610 (1897); Whaley v. Commonwealth, 110 Ky. 154, 61 S.W. 35, 23 Ky. L. Rptr. 1292, 1901 Ky. LEXIS 73 (Ky. 1901); American Bonding & Trust Co. v. Blount, 65 S.W. 806, 23 Ky. L. Rptr. 1632, 1901 Ky. LEXIS 536 (Ky. Ct. App. 1901); Commonwealth ex rel. Attorney Gen. v. Bacon, 111 S.W. 387, 33 Ky. L. Rptr. 935, 1908 Ky. LEXIS 337 (Ky. Ct. App. 1908); Clark v. Logan County, 138 Ky. 676, 128 S.W. 1079, 1910 Ky. LEXIS 119 (Ky. 1910); Elliott v. Commonwealth, 144 Ky. 335, 138 S.W. 300, 1911 Ky. LEXIS 626 (Ky. 1911); Equitable Sur. Co. v. Newport, 194 Ky. 363, 238 S.W. 1046, 1992 Ky. App. LEXIS 256 (Ky. Ct. App. 1992).

Bond of county road supervisor does not cover injuries resulting from road defects. Coleman v. Eaker, 111 Ky. 131, 63 S.W. 484, 23 Ky. L. Rptr. 513, 1901 Ky. LEXIS 194 (Ky. 1901).

A bond covering "duties to the City of Newport" is broad enough to cover unlawful arrest or unnecessary and illegal

punishment by the officer. Connelly v. American Bonding & Trust Co., 113 Ky. 903, 69 S.W. 959, 24 Ky. L. Rptr. 714, 1902 Ky. LEXIS 119 (Ky. 1902).

Official bonds cover improper performance of duty, and abuse of the confidence reposed in the official by law. Growbarger v. United States Fidelity & Guaranty Co., 126 Ky. 118, 102 S.W. 873, 31 Ky. L. Rptr. 555, 1907 Ky. LEXIS 24 (Ky. 1907).

Official bonds cover the present duties of the office, and also subsequently imposed duties, when not foreign to the office. Equitable Sur. Co. v. Newport, 194 Ky. 363, 238 S.W. 1046, 1992 Ky. App. LEXIS 256 (Ky. Ct. App. 1992).

Bond of policeman covers duties as motorcycle policeman. Fidelity & Casualty Co. v. Boehnlein, 202 Ky. 601, 260 S.W. 353, 1924 Ky. LEXIS 754 (Ky. 1924).

3. Recovery for Negligence.

On a bond containing the provision "and commit no trespasses against any person under the guise of said position for which he or the city may be held liable," recovery may be had for negligence. Manwaring v. Geisler, 191 Ky. 532, 230 S.W. 918, 1921 Ky. LEXIS 336 (Ky. 1921).

Bond for faithful performance of duties renders obligor liable for negligence. Fidelity & Casualty Co. v. Boehnlein, 202 Ky. 601, 260 S.W. 353, 1924 Ky. LEXIS 754 (Ky. 1924). See Manwaring v. Geisler, 191 Ky. 532, 230 S.W. 918, 1921 Ky. LEXIS 336 (Ky. 1921).

4. Determination of Liability.

Liability on an official bond is determined by its terms, even when not complying with the statute. Allen v. Jenkins, 157 Ky. 406, 163 S.W. 234, 1914 Ky. LEXIS 298 (Ky. 1914); Manwaring v. Geisler, 191 Ky. 532, 230 S.W. 918, 1921 Ky. LEXIS 336 (Ky. 1921).

5. Accrual of Action.

Action accrues against principal and surety at the same time. McGovern v. Rectanus, 139 Ky. 365, 105 S.W. 965, 32 Ky. L. Rptr. 364, 1907 Ky. LEXIS 10 (Ky. 1907).

6. Default, Notice of.

Heirs are under no duty to give notice to sureties on administrator's bond of defaults or mismanagement by administrator known to heirs. Kaufman v. Kaufman's Adm'r, 292 Ky. 351, 166 S.W.2d 860, 1942 Ky. LEXIS 102 (Ky. 1942).

7. Pleadings.

An action is properly brought in the name of the commonwealth and the party in interest. United States Fidelity & Guaranty Co. v. Commonwealth, 104 S.W. 1029, 31 Ky. L. Rptr. 1179 (1907).

The principal and surety may be sued jointly or severally. McGovern v. Rectanus, 139 Ky. 365, 105 S.W. 965, 32 Ky. L. Rptr. 364, 1907 Ky. LEXIS 10 (Ky. 1907).

Petition need not allege approval or acceptance of bond. Commonwealth use of Rosenthal v. Teel, 111 S.W. 340, 33 Ky. L. Rptr. 741 (1908).

An action in the name of the party in interest, and of the commonwealth for the use of the party in interest, is not subject to special demurrer. Commonwealth use of Rosenthal v. Teel, 111 S.W. 340, 33 Ky. L. Rptr. 741 (1908).

Petition should negate presumption of the officer's innocence of wrongdoing. Commonwealth use of Rosenthal v. Teel, 111 S.W. 340, 33 Ky. L. Rptr. 741 (1908).

Omission is pleading to fill in blank as to amount of bond is not ground for demurrer, but should be reached by motion in the trial court. The question may not be raised for the first time on appeal. Johnson v. Dodd's Adm'r, 238 Ky. 194, 37 S.W.2d 26, 1931 Ky. LEXIS 208 (Ky. 1931).

8. Recovery of Interest.

Interest is recoverable against a surety on a bond for the payment of money or damages for its nonpayment; but not in an action on the bond for damages for a tort except the interest on the judgment. Waddle v. Wilson, 164 Ky. 228, 175 S.W. 382, 1915 Ky. LEXIS 367 (Ky. 1915).

In action for an unliquidated claim on committee's bond, it was not error to allow interest only from date of judgment. Fidelity & Casualty Co. v. Downey, 284 Ky. 2, 284 Ky. 72, 143 S.W.2d 869, 1940 Ky. LEXIS 444 (Ky. 1940).

9. Punitive Damages.

Sheriff and his sureties are not liable for punitive damages for acts done by his deputies. Johnson v. Williams' Adm'r, 111 Ky. 289, 63 S.W. 759, 23 Ky. L. Rptr. 658, 1901 Ky. LEXIS 206 (Ky. 1901).

10. Actions Against Sheriff, Deputy Sheriff or Marshal.

Sheriff is liable on his bond for misconduct in office of his deputies. Johnson v. Williams' Adm'r, 111 Ky. 289, 63 S.W. 759, 23 Ky. L. Rptr. 658, 1901 Ky. LEXIS 206 (Ky. 1901).

A bond to "the town of McHenry" authorizes recovery on bond of marshal for unlawfully killing a prisoner. Growbarger v. United States Fidelity & Guaranty Co., 126 Ky. 118, 102 S.W. 873, 31 Ky. L. Rptr. 555, 1907 Ky. LEXIS 24 (Ky. 1907).

The bond of a deputy sheriff given pursuant to KRS 134.200 runs to the sheriff alone, and a person injured by the malicious acts of the deputy cannot maintain an action against the sureties on the bond. Casey v. Fidelity & Casualty Co., 278 Ky. 426, 128 S.W.2d 939, 1939 Ky. LEXIS 449 (Ky. 1939).

11. Sureties.

12. — Liability.

Surety is liable on official bond which was voluntarily renewed or continued in effect by the surety's acceptance of premium covering the period during which the officer was openly and publicly performing the duties of his office as a "de facto" officer with knowledge of the surety or under such circumstances as would have disclosed such fact to the surety by the exercise of ordinary care. Fidelity & Deposit Co. v. Combs, 176 F. Supp. 756, 1959 U.S. Dist. LEXIS 2857 (D. Ky. 1959).

Surety is not liable for punitive damages, but only for compensatory damages. Scott v. Commonwealth, 93 S.W. 668, 29 Ky. L. Rptr. 571 (1906); Growbarger v. United States Fidelity & Guaranty Co., 126 Ky. 118, 102 S.W. 873, 31 Ky. L. Rptr. 555, 1907 Ky. LEXIS 24 (Ky. 1907); United States Fidelity & G. Co. v. Milstead, 109 S.W. 875, 33 Ky. L. Rptr. 186 (1908).

Insufficiency of guardian's bond not being the cause of loss, the surety was not liable. United States Fidelity & Guaranty Co. v. Drinkard, 250 Ky. 695, 63 S.W.2d 916, 1933 Ky. LEXIS 761 (Ky. 1933).

The surety on the official bond of a public officer is not liable for the misconduct of the officer when acting in his private and not his official capacity. The bond is designed to protect the public against official, not private misconduct. Massey v. Standard Acc. Ins. Co., 280 Ky. 23, 132 S.W.2d 530, 1939 Ky. LEXIS 63 (Ky. Ct. App. 1939).

13. — — Limitation.

Sureties are liable only to the extent of the penalty named in the bond, whether in recovery by one or several actions by different plaintiffs. Waddle v. Wilson, 164 Ky. 228, 175 S.W. 382, 1915 Ky. LEXIS 367 (Ky. 1915).

The limitation of surety's liability applies to the recovery and not to the prayer of the pleading. Morton v. Sanders, 178 Ky. 836, 200 S.W. 24, 1918 Ky. LEXIS 467 (Ky. 1918).

The surety is not an insurer against depreciation. United States Fidelity & Guaranty Co. v. Drinkard, 250 Ky. 695, 63 S.W.2d 916, 1933 Ky. LEXIS 761 (Ky. 1933).

The surety is not liable beyond the sum provided in the bond. National Surety Co. v. Commonwealth, 253 Ky. 607, 69 S.W.2d 1007, 1934 Ky. LEXIS 694 (Ky. 1934).

Whether the annual renewals of an official bond constitute merely a continuation of the original bond contract, so as to limit the total liability of the surety to the original penal sum, or whether each renewal constitutes a separate contract, so as to make the surety liable each year for a sum equal to the penal sum of the original bond, depends upon the terms and conditions stated in the bond and renewal clauses. Middlesboro v. American Surety Co., 307 Ky. 769, 211 S.W.2d 670, 1947 Ky. LEXIS 1035 (Ky. 1947).

The surety on a guardian's bond cannot be charged with interest from the date of the loss of the ward's estate when that interest will result in a recovery larger than the face amount of the bond. Polk v. American Casualty Co., 816 S.W.2d 178, 1991 Ky. LEXIS 141 (Ky. 1991).

14. — Apportionment of Judgments Against.

If there be two or more judgments of equal dignity in favor of different plaintiffs against the sureties on a bond, and their total exceeds the penalty, it will be apportioned. Waddle v. Wilson, 164 Ky. 228, 175 S.W. 382, 1915 Ky. LEXIS 367 (Ky. 1915).

15. — Indemnification.

Sureties are entitled to indemnity, though the principal does not sign the bond. Allen v. Jenkins, 157 Ky. 406, 163 S.W. 234, 1914 Ky. LEXIS 298 (Ky. 1914).

16. — Release.

Sureties on an official bond are not released by the negligence of other officers. Commonwealth v. Tate, 89 Ky. 587, 13 S.W. 113, 12 Ky. L. Rptr. 1, 1890 Ky. LEXIS 29 (Ky. 1890); Wade v. Mt. Sterling, 33 S.W. 1113, 18 Ky. L. Rptr. 377 (1896).

17. Sovereign Immunity.

Fire protection district's suit against tax collection officials, including a county court clerk, a sheriff, and a county assessor or property valuation administrator, based on the officials' failure to collect personal property tax pursuant to KRS 75.015, was properly dismissed because sovereign immunity shielded the officials from liability; contrary to the district's claim, the fact that the officials posted performance bonds did not amount to a waiver of sovereign immunity. Such waiver was found only where it was established by express language or by overwhelming implications. St. Matthews Fire Prot. Dist. v. Aubrey, 304 S.W.3d 56, 2009 Ky. App. LEXIS 47 (Ky. Ct. App. 2009).

OPINIONS OF ATTORNEY GENERAL.

Although no penalty is provided for the clerks lodging a chattel mortagage without the registration receipt being produced so the lien can be noted on it, if injury results to a third party as a result of such failure, the clerk may be held liable in a civil action. OAG 62-515.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Auditor liable for acts of assistants, KRS 43.030.

Constable, motion against and recovery on bond of, KRS 70.410, 70.420.

Escape of prisoner, officers liable for, KRS 440.040.

Expenditure of tax for purpose other than for which levied, local officials liable for, KRS 68.100.

Judgments in favor of commonwealth, unpaid, liability of circuit clerk for, KRS 135.030.

Limitation of action against surety on bond given in judicial proceeding, KRS 413.220.

Limitation of action on official bond, KRS 413.090.

Master commissioner, special bond, actions that must be brought on, KRS 31A.020.

Peace officer, continuation of bond of, after removal and until reinstatement, KRS 63.160.

Official misconduct, KRS 522.010 to 522.040.

Sale bond, liability for officer taking insufficient, KRS 426.610.

Sheriff:

Liability for failure to return execution in time, KRS 426.350, 426.360.

Liability for nonpayment of money on writ of execution, KRS 426.360.

Revenue collector, bond as, KRS 134.230.

Suits on bond of sheriff may be brought in Franklin Circuit Court, KRS 135.080.

Sureties' liabilities for excess advancements to sheriffs, KRS 64.140.

Sureties' rights and liabilities when sheriff dies or vacates office, KRS 70.110.

Treasurer, county, liability for signing warrants in excess of budget funds, KRS 68.300, 68.990.

ALR

Clerk, assistant or deputy, liability on officer's bond for theft of public money by. 102 A.L.R. 179; 116 A.L.R. 1064; 71 A.L.R.2d 1140.

Clerk of court, liability on bond of, for money paid into his hands by virtue of his office. 59 A.L.R. 60.

Embezzlement statute, what constitutes public finds or public money within. 123 A.L.R. 478.

Liability of constable or his bond for defaults and misfeasances of his assistants and deputies. 1 A.L.R. 236; 102 A.L.R. 174; 116 A.L.R. 1064; 71 A.L.R.2d 1140.

Liability of public officer or his bond to public body in respect of fees or charges which he illegally or improperly collected from members of public. 99 A.L.R. 647.

Liability on bond of police or other peace officer for defamation. 13 A.L.R.2d 902.

Malfeasance in office, public officer's bond as subject to forfeiture for. 4 A.L.R.2d 1348.

Outgoing officer's failure to see that person to whom public moneys are turned over is a duly qualified successor as affecting liability on his bond. 106 A.L.R. 195.

Personal liability on bond of policemen, sheriff, or other peace officer, for negligently causing personal injury or death. 60 A.L.R.2d 873.

What period of limitation governs in an action against a public officer and the surety on his official bond. 18 A.L.R.2d 1176.

62.080. Liability for public funds placed in depository.

All persons required by law to give bonds for the discharge or performance of any public or fiducial office, trust or employment are relieved from all liability as insurers of funds that come into their hands or subject to their control after the funds are deposited in good faith in a depository or depositories in the county approved by the fiscal court, and the obligors in the bonds shall not be responsible for loss of, or delay in payment of such funds by reason of the failure or suspension of such depository.

History.

186d-1.

NOTES TO DECISIONS

Analysis

1. Designation of Depository.
2. Liability of Public Official.

3. Liability of Principal.

1. Designation of Depository.

The council of a fourth-class city may designate its depository, the legislature not having given that right to the treasurer, nor withdrawn it from the council. Stephens v. Ludlow, 159 Ky. 729, 169 S.W. 473, 1914 Ky. LEXIS 871 (Ky. 1914).

A fiscal court has no authority to designate a depository for funds of a drainage district. Taylor v. Fidelity & Casualty Co., 246 Ky. 598, 55 S.W.2d 410, 1932 Ky. LEXIS 811 (Ky. 1932).

An officer or board of a governmental division of the state has no authority by virtue of their position and independently of a statute, to designate a depository of funds of the particular agency. Taylor v. Fidelity & Casualty Co., 246 Ky. 598, 55 S.W.2d 410, 1932 Ky. LEXIS 811 (Ky. 1932).

2. Liability of Public Official.

Liability of public official for money collected and received is that of a bailee. Commonwealth v. Bodley, 31 S.W. 463, 17 Ky. L. Rptr. 561 (1895); Johnson v. Fleming, 116 Ky. 680, 50 S.W. 855, 21 Ky. L. Rptr. 4, 1899 Ky. LEXIS 5 (Ky. 1899); Commonwealth v. Fisher, 113 Ky. 491, 68 S.W. 855, 24 Ky. L. Rptr. 300, 1902 Ky. LEXIS 91 (Ky. 1902); Sweeney v. Commonwealth, 118 Ky. 912, 82 S.W. 639, 26 Ky. L. Rptr. 877, 1904 Ky. LEXIS 125 (Ky. 1904); Hill v. Flemming, 128 Ky. 201, 107 S.W. 764 (Ky. 1908); Denny v. Thompson, 236 Ky. 714, 33 S.W.2d 670, 1930 Ky. LEXIS 819 (Ky. 1930); Breckinridge County v. Gannaway, 243 Ky. 49, 47 S.W.2d 934, 1932 Ky. LEXIS 32 (Ky. 1932); Edwards v. Logan County, 244 Ky. 296, 50 S.W.2d 83, 1932 Ky. LEXIS 393 (Ky. 1932); Jordon v. Baker, 252 Ky. 40, 66 S.W.2d 84, 1933 Ky. LEXIS 1007 (Ky. 1933); Board of Education v. Hatton, 253 Ky. 828, 70 S.W.2d 923, 1934 Ky. LEXIS 746 (Ky. 1934); Commonwealth v. Polk, 256 Ky. 100, 75 S.W.2d 761, 1934 Ky. LEXIS 361 (Ky. 1934); Phillips v. Board of Education, 283 Ky. 173, 140 S.W.2d 819, 1940 Ky. LEXIS 292 (Ky. 1940).

3. Liability of Principal.

When the principal of the officer selects the depository, the principal and not the officer assumes responsibility for the solvency of the depository. Commonwealth v. Godshaw, 92 Ky. 435, 17 S.W. 737, 13 Ky. L. Rptr. 572, 1891 Ky. LEXIS 161 (Ky. 1891); Stephens v. Ludlow, 159 Ky. 729, 169 S.W. 473, 1914 Ky. LEXIS 871 (Ky. 1914); Edwards v. Logan County, 244 Ky. 296, 50 S.W.2d 83, 1932 Ky. LEXIS 393 (Ky. 1932). See Taylor v. Fidelity & Casualty Co., 246 Ky. 598, 55 S.W.2d 410, 1932 Ky. LEXIS 811 (Ky. 1932).

OPINIONS OF ATTORNEY GENERAL.

The sheriff may designate a depository subject to approval of the fiscal court and the fiscal court could not arbitrarily disapprove a depository so designated by the sheriff. OAG 70-68.

Under this section money coming into the hands of the circuit clerk's office must seemingly be deposited in a bank in the county in which the fiscal court is located. OAG 72-264.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Officer of county having population of 75,000 not liable for default of approved depository, KRS 64.365.

62.160. Bonds of state officers — Minimum sum — Increase or renewal.

(1) The state officers elected by the voters of the state at large, except the Governor and the Lieutenant Governor, the heads of departments, offices, and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Board of Tax Appeals, Board of Claims, Crime Victims Compensation Board, and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth, the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.

(2) The minimum sum of the bond for the following offices shall be as follows:

Secretary of State	$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary of education and labor	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Commissioner of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice and public safety	50,000
Secretary of corrections	25,000
Commissioner for public health services	10,000
Commissioner for natural resources	50,000
State librarian	5,000
Commissioner of alcoholic beverage control	10,000
Commissioner of financial institutions	25,000
Secretary for energy and environment	50,000
Commissioner of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for health and family services	20,000
Commissioner of environmental protection	10,000
Secretary of public protection	10,000
Secretary of tourism, arts and heritage	25,000
Commissioner for community based services	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000
Member of Fish and Wildlife Resources Commission	1,000
Member of Board of Tax Appeals	10,000
Member of Board of Claims	10,000
Member of Crime Victims Compensation Board	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

History.

Enact. Acts 1946, ch. 27, § 1; 1966, ch. 255, § 65; 1974, ch. 74, Art. VIII, A., § 1; 1978, ch. 155, § 56, effective June 17, 1978; 1978, ch. 379, § 56, effective April 1, 1979; 1980, ch. 188, § 23, effective July 15, 1980; 1992, ch. 13, § 12, effective July 14, 1992; 1992, ch. 27, § 13, effective March 2,1992; 1998, ch. 426, § 88, effective July 15, 1998; 2000, ch. 14, § 7, effective July 14, 2000; 2005, ch. 99, § 17, effective June 20, 2005; 2005, ch. 123, § 12, effective June 20, 2005; 2006, ch. 211, § 14, effective July 12, 2006; 2007, ch. 85, § 135, effective June 26, 2007; 2009, ch. 16, § 8, effective June 25, 2009; 2010, ch. 24, § 56, effective July 15, 2010; 2017 ch. 74, § 62, effective June 29, 2017; 2021 ch. 185, § 57, effective June 29, 2021; 2022 ch. 236, § 21, effective July 1, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bond of commissioner of state police, KRS 16.080.

62.170. Bonds of state employees — Blanket bonds — Amount — Insurance companies that may participate.

(1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees, or deputies of the Commonwealth of Kentucky, including all judges, clerks, and employees of the Court of Justice, including all other members of boards or commissions or employees of those boards or commissions, and including all superintendents, receivers, or employees of penal or eleemosynary institutions managed or directed by the Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, or any other department or agency of the Commonwealth of Kentucky. Nothing in this subsection shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency, or institutional basis.

(2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he or she may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.

(3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the Department of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. The bonds may be written with or without cosureties. Further, the bonds are to be a percentage of the total risks, the Department of Insurance to approve the amount of the risk written by any one (1) company.

(4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

History.

Enact. Acts 1946, ch. 27, § 2; 1956, ch. 153, § 1; 1960, ch. 101; 1974, ch. 74, Art. II, § 9(2); Art. VI, § 36; 1976 (Ex. Sess.), ch. 22, § 76; 1998, ch. 154, § 70, effective July 15, 1998; 1998, ch. 426, § 89, effective July 15, 1998; 2005, ch. 99, § 18, effective June 20, 2005; 2007, ch. 85, § 136, effective June 26, 2007; 2010, ch. 24, § 57, effective July 15, 2010.

OPINIONS OF ATTORNEY GENERAL.

The blanket bond covering circuit clerks should contain a covenant for the faithful accounting for and paying over all money and property that may come into their possession by virtue of their office and a covenant for faithful performance of duties. OAG 77-457, 1977 Ky. AG LEXIS 345.

The county clerk will not be a part of the Court of Justice as of January 2, 1978, and thereafter, thus the county clerk will not be subject to the blanket bond provision of this section. OAG 77-466, 1977 Ky. AG LEXIS 310.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Blanket and group insurance, KRS 304.18-010 to 304.18-100.

Bonds of district mine inspectors and inspectors of mine weights, KRS 351.090.

Bonds of members, officers and employees of Soil and Water Resources Commission, KRS 146.090.

Bonds of officers and civilian employees of state police, KRS 16.080.

Bonds of park custodians commissioned as peace officers, KRS 148.056.

62.180. Condition of bonds of state officers — Ex officio liability.

Each bond provided for in KRS 62.160 shall be a covenant to the Commonwealth of Kentucky that the principal will faithfully discharge his duties and will faithfully account for and pay over all money and property that may come into his possession by virtue of his office or position. Liability on the bond of any officer shall extend to any position held by him ex officio.

History.

Enact. Acts 1946, ch. 27, § 3; 1956, ch. 153, § 2, effective May 18, 1956.

62.190. Conditions of blanket bonds.

The bonds provided for by section 62.170 of the Kentucky Revised Statutes shall be covenants to the Commonwealth of Kentucky that the officers, employees or holders of positions covered by the bond will faithfully account for and pay over all money and property that may come into their possession by virtue of their office, employment or position.

History.

Enact. Acts 1946, ch. 27, § 4; 1950, ch. 23, § 1; 1956, ch. 153, § 3, effective May 18, 1956.

62.200. Corporate surety on bonds of state officers and employees — Approval as to form and legality — Filing.

(1) Each bond mentioned in KRS 62.160 to 62.190 shall be executed by a corporate surety authorized to do a surety business in Kentucky. No bond shall be accepted until it has been approved by the Attorney General as to form and legality, except the bond of the Attorney General which shall be accepted when approved in such respects by the Governor.

(2) All bonds given pursuant to KRS 62.160 to 62.190, except the bond of the Secretary of State, shall be filed in the office of the Secretary of State. The bond

of the Secretary of State shall be filed in the office of the Governor.

History.
Enact. Acts 1946, ch. 27, § 5; 1950, ch. 23, § 2.

OPINIONS OF ATTORNEY GENERAL.

Since membership on a county school board constitutes a state elective office, a person could not hold such position and at the same time continue to serve on the board of supervisors of a soil conservation district. OAG 76-227.

CHAPTER 63

RESIGNATIONS, REMOVALS, AND VACANCIES

Removals.

Section
63.080. Officers appointed by Governor may be removed without cause — Exceptions — Removal of university or KCTCS board members for cause or to comply with proportional representation requirements.

Vacancies.

63.190. Vacancies filled by the Governor.

REMOVALS

63.080. Officers appointed by Governor may be removed without cause — Exceptions — Removal of university or KCTCS board members for cause or to comply with proportional representation requirements.

(1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.

(2)(a) Except as provided in subsections (3) and (4) of this section, members of the Kentucky Board of Education; the board of trustees of the University of Kentucky; the board of trustees of the University of Louisville; and the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System shall not be removedexcept for cause.

(b) Members of the Council on Postsecondary Education shall not be removed except for cause.

(c) A member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be removed for cause as follows:

1. The Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council on Postsecondary Education that the member should be removed for cause and shall specify the conduct warranting removal;

2. The member shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the member's conduct does not warrant removal;

3. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission;

4. The Governor shall then make a determination, in writing, whether the member should be removed and shall notify the member, the applicable board, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and

5. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.

(d) For the purposes of this subsection, a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty.

(3) For a board specified in subsection (2)(a) of this section that is required by law to have proportional representation in its membership based on residence, political affiliation, gender, minority racial composition, or professional qualifications, the Governor or other appointing authority may remove any member of the board and replace him or her with another individual in order to bring the membership into compliance with the statutory proportional representation requirement for the board, provided that the Governor or other appointing authority shall:

(a) Only exercise the removal authority granted in this subsection if appointment at the end of the next expiring term of a member, or at the end of the next expiring term of members if two (2) or more members' terms expire at the same time, cannot cure the deficiency in the proportional representation requirement;

(b) Remove the fewest number of members necessary to bring the membership into compliance with the proportional representation requirement for the board;

(c) Identify the order in which the members were appointed to their current terms on the board and, beginning with the most recently appointed member who may be removed and replaced to bring the membership into compliance with the proportional representation requirement, remove the member or members according to the length of their tenure on the board, without taking into account any prior term of service on the board by the member;

(d) Provide any member proposed to be removed with the following:

1. Written notice, at least seven (7) days prior to the member's removal from the board, stating the statutory proportional representation requirement that the member does not satisfy; and

2. An opportunity during the seven (7) day notice period for the member to voluntarily resign or to provide evidence to the Governor or other appointing authority that the member does satisfy the proportional representation requirement or that another member on the board who also does not satisfy the requirement has a shorter tenure than the member proposed to be removed;

(e) Replace any removed member with only those individuals who will bring the board into compliance with the proportional representation requirement; and

(f) Appoint any new member in the same manner as provided by law for the member being removed and to fill the remainder of the removed member's unexpired term.

(4) For a board of trustees or board of regents specified in subsection (2)(a) of this section, the Governor may remove for cause all appointed members of the board and replace the entire appointed membership as follows:

(a) The Governor shall notify, in writing, the board and the Council on Postsecondary Education that the entire appointed membership of the board should be removed for cause and shall specify the conduct warranting removal;

(b) The board or its members shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the conduct of the board or of individual members does not warrant removal;

(c) Within thirty (30) days after receipt of notice from the Governor, the Council on Postsecondary Education shall review the written notice, investigate the board and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the appointed board membership should be removed, a copy of which shall also be provided to the Legislative Research Commission;

(d) The Governor shall then make a determination, in writing, whether the entire appointed board membership should be removed and shall notify the members, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and

(e) If the Governor's determination is to remove the entire appointed membership of the board, the Governor shall remove the members by executive order, and shall replace the members with new appointments according to the applicable statutes for the board of trustees or board or regents.

For the purposes of this subsection, the entire appointed membership of a board of trustees or board of regents may be removed for cause if the board is no longer functioning according to its statutory mandate as specified in the enabling statutes applicable to the board, or if the board membership's conduct as a whole constitutes malfeasance, misfeasance, incompetence, or gross neglect of duty, such that the conduct cannot be attributed to any single member or members.

History.

3750: amend. Acts 1948, ch. 25; 1966, ch. 255, § 67; 1968, ch. 152, § 28; 1990, ch. 60, § 2, effective July 13, 1990; 1990, ch. 476, Pt. II, § 37, effective July 13, 1990; 1990, ch. 504, § 5, effective July 13, 1990; 1992, ch. 10, § 16, effective July 1, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 41, effective May 30, 1997; 2017 ch. 101, § 1, effective March 21, 2017; 2021 ch. 178, § 3, effective June 29, 2021.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Nature of Removal.
3. Right to Hold Office.

1. Constitutionality.

An officer holding an appointive statutory office may be removed therefrom with or without cause, with or without trial, arbitrarily or otherwise, without violating Const., § 2. Johnson v. Laffoon, 257 Ky. 156, 77 S.W.2d 345, 1934 Ky. LEXIS 505 (Ky. 1934).

2. Nature of Removal.

The power of removal herein vested in the Governor is administrative or executive in its character, and this would be so even if hearing were required. Johnson v. Laffoon, 257 Ky. 156, 77 S.W.2d 345, 1934 Ky. LEXIS 505 (Ky. 1934).

Removal extends not only to the office to which appointed, but also to other offices held by virtue thereof. Johnson v. Laffoon, 257 Ky. 156, 77 S.W.2d 345, 1934 Ky. LEXIS 505 (Ky. 1934).

3. Right to Hold Office.

The right to hold office is not a property right except in a peculiar or qualified extent. Johnson v. Laffoon, 257 Ky. 156, 77 S.W.2d 345, 1934 Ky. LEXIS 505 (Ky. 1934).

The right to hold office is not contractual. Johnson v. Laffoon, 257 Ky. 156, 77 S.W.2d 345, 1934 Ky. LEXIS 505 (Ky. 1934).

Cited in:

Commonwealth ex rel. Beshear v. Bevin, 575 S.W.3d 673, 2019 Ky. LEXIS 214 (Ky. 2019); Commonwealth ex rel. Beshear v. Bevin, 575 S.W.3d 673, 2019 Ky. LEXIS 214 (Ky. 2019).

OPINIONS OF ATTORNEY GENERAL.

KRS 68.300 voiding any claim or appropriation in excess of budget appropriations applies to the jail budget part of the county budget. OAG 82-424, 1982 Ky. AG LEXIS 212.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Fish and Wildlife Resources Commission, members removal only for cause and after hearing, KRS 150.022.

Psychologists, Board of Examiners of, removable only for cause, KRS 319.020.

Public service commissioners, removal of, KRS 278.070.

State Board of Accountancy members may be removed only for cause, KRS 325.230.

ALR

Power to remove public officer without notice and hearing. 99 A.L.R. 341.

Removal of public officers for misconduct during previous term. 42 A.L.R.3d 691.

VACANCIES

63.190. Vacancies filled by the Governor.

In every case where there is no other provision of law for the filling of a vacancy in any office, the vacancy shall be filled by appointment by the Governor.

History.
3758.

NOTES TO DECISIONS

Analysis

1. In General.
2. Construction.
3. Purpose.
4. Application.
5. Circuit Judge.
6. Common Council.
7. Mayor Pro Tem.
8. Board of Education.
9. Justice of Peace.
10. Police Judge.
11. Boards of Trustees.
12. Unauthorized Appointments.

1. In General.
An appointee to fill a vacancy may be commissioned by the Governor, although appointed by another agency or officer. Frost v. Johnston, 262 Ky. 592, 90 S.W.2d 1045, 1936 Ky. LEXIS 82 (Ky. 1936).

2. Construction.
Legislature is authorized to provide for filling vacancies in county offices or offices in districts smaller than counties. Frost v. Johnston, 262 Ky. 592, 90 S.W.2d 1045, 1936 Ky. LEXIS 82 (Ky. 1936); Barton v. Brafford, 264 Ky. 480, 95 S.W.2d 6, 1936 Ky. LEXIS 354 (Ky. 1936), overruled, Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

Statute authorizing Governor to fill vacancies by appointment, in any office for which no provision is made by law, though construed as applying to appointive offices, does not grant Governor power in excess of that authorized by Const., § 152, in view of the provision of Const., § 160 specifically authorizing General Assembly to prescribe manner in which vacancies in both elective and appointive offices in cities of the commonwealth may be filled. Culbertson v. Moore, 302 Ky. 768, 196 S.W.2d 308, 1946 Ky. LEXIS 742 (Ky. 1946).

3. Purpose.
The law abhors vacancies, and the presumption is against a legislative intent to create or to allow a condition which may result in an executive or administrative office remaining unoccupied. Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846, 1931 Ky. LEXIS 711 (Ky. 1931).

4. Application.
This section pertains to vacancies in office not covered by Const., § 152, which deals with vacancies in elective offices. Rouse v. Johnson, 234 Ky. 473, 28 S.W.2d 745, 1930 Ky. LEXIS 220 (Ky. 1930).

5. Circuit Judge.
Vacancy in office of circuit judge is filled by the Governor. Feck v. Commonwealth, 264 Ky. 556, 95 S.W.2d 25, 1936 Ky. LEXIS 362 (Ky. 1936).

6. Common Council.
Where a commission form of government for a city of the third class was abolished by an election under KRS 89.290 (now repealed) and the incumbent officers lost such rights as they had in their offices when the certificate of election was spread upon the city records it was proper for the Governor to appoint councilmen under this section to serve as the common council and divide the city into wards from which members of the council could be elected at the next election. Payne v. Davis, 254 S.W.2d 710, 1953 Ky. LEXIS 606 (Ky. 1953).

7. Mayor Pro Tem.
Under this section the Governor had the authority to appoint mayor pro tem of second-class city upon board of commissioners' failure to do so. Culbertson v. Moore, 302 Ky. 768, 196 S.W.2d 308, 1946 Ky. LEXIS 742 (Ky. 1946).

8. Board of Education.
Vacancies in offices of board of education are to be filled by the board so long as a quorum remains, but when no quorum remains then by the Governor. Glass v. Hopkinsville, 225 Ky. 428, 9 S.W.2d 117, 1928 Ky. LEXIS 798 (Ky. 1928); Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846, 1931 Ky. LEXIS 711 (Ky. 1931).

When a board of education is without any members, the Governor may appoint the entire body. Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846, 1931 Ky. LEXIS 711 (Ky. 1931).

9. Justice of Peace.
Vacancy in office of justice of the peace is filled by the Governor. Daugherty v. Arnold, 110 Ky. 1, 60 S.W. 865, 22 Ky. L. Rptr. 1504, 1901 Ky. LEXIS 54 (Ky. 1901).

10. Police Judge.
Vacancy in office of police judge in city of fourth class is to be filled by the council. Traynor v. Beckham, 116 Ky. 13, 74 S.W. 1105, 1903 Ky. LEXIS 167 (Ky. Ct. App. 1903); Jarvis v. Stanley, 176 Ky. 630, 197 S.W. 183, 1917 Ky. LEXIS 94 (Ky. 1917); Dillon v. Stubbs, 267 Ky. 17, 100 S.W.2d 823, 1937 Ky. LEXIS 266 (Ky. 1937).

Vacancy in office of police judge in city of sixth class is to be filled by the Governor. Willson v. Hahn, 131 Ky. 439, 115 S.W. 231, 1909 Ky. LEXIS 31 (Ky. 1909).

The mere fact that under KRS 61.020 the Governor issues commissions to police judges does not of itself vest in him exclusive power of appointment to fill vacancies. Heringer v. Rolf, 287 S.W.2d 149, 1956 Ky. LEXIS 442 (Ky. 1956).

11. Boards of Trustees.
When a vacancy is to be filled by the remaining members of a board, such members as remain in office may act but if the remaining members are deadlocked, the Governor may appoint. Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846, 1931 Ky. LEXIS 711 (Ky. 1931); Middleton v. Lewis, 248 Ky. 86, 58 S.W.2d 251, 1933 Ky. LEXIS 186 (Ky. 1933); Horn v. Wells, 253 Ky. 494, 69 S.W.2d 1011, 1934 Ky. LEXIS 695 (Ky. 1934).

12. Unauthorized Appointments.
Unauthorized appointments by Governor are invalid and vest no title. Barton v. Brafford, 264 Ky. 480, 95 S.W.2d 6, 1936 Ky. LEXIS 354 (Ky. 1936), overruled, Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

Cited:
Smith v. McDermott, 313 Ky. 184, 230 S.W.2d 636, 1950 Ky. LEXIS 844 (Ky. 1950).

OPINIONS OF ATTORNEY GENERAL.

Where a vacancy occurs in the office of police judge and there is no other provision by law for filling the vacancy, the vacancy is to be filled by the Governor as provided in this

section, subject to the provisions of Const., § 152. OAG 61-231.

Where it was anticipated that the police judge would resign, the vacancy could be filled by an appointment of the city council but the appointment would only be valid until the next regular election that embraced the city. OAG 65-877.

In view of a prolonged deadlock among the remaining members of a city council concerning the filling of the vacancy in the city council and the resulting lack of a quorum which affects the city's power to function as a governmental unit, the Governor is authorized to fill the vacancy. OAG 67-19.

Where a city of the sixth class is reactivated the police judge vacancy must be filled by an appointment of the Governor under KRS 63.190. Both the police judge and the trustees who were previously appointed will serve only until the next regular election. The term of office of the police judge being four (4) years will not expire however and the vacancy in the position created by the city's activation will have to be filled at the coming election for the unexpired term. OAG 67-218.

When two or more cities elect to merge to create a new city the vacancy for police judge of the newly created city should be filled by the Governor. OAG 67-488.

Where the candidates for mayor, police judge and five (5) out of six (6) candidates for city commissioner failed to qualify for nomination, three vacancies on the four (4) man commission should be filled by the Governor pursuant to KRS 63.190. Following the Governor's commission appointments, the commission in turn should select a mayor pro tem under the provisions of KRS 89.520 (now repealed) and while one commissioner is serving in effect as mayor on a permanent basis, the remaining members must select another commissioner to complete the four (4) member board. The police judge vacancy should be filled pursuant to KRS 86.240 (now repealed) giving authority to the commission. All appointments mentioned should be held only until an election can be held pursuant to Const., § 152. OAG 69-447.

A police judge appointed by the county judge (now county judge/executive) to fill a vacancy was an invalid appointment since only the Governor can make such an appointment. OAG 70-807.

Where a magistrate died after the primary election in a year in which a statewide election was to be held, a replacement could be appointed to hold office only until the November election at which time a magistrate would be elected to take office immediately. OAG 71-257.

A vacancy created by the resignation of the police judge in a sixth-class city must be filled by the Governor pursuant to this section. OAG 72-197.

When a member of the fiscal court resigns, the Governor has the authority to fill the vacancy and there is no reason that the person who resigned can not be appointed to fill that same position. OAG 72-389.

Vacancies in the office of police judge must be filled by the Governor with a person who has resided within the city for the time prescribed and is a registered voter. OAG 73-722.

Where a magistrate resigns, the only provision for filling a vacancy in the office is by appointment by the Governor until the next regular election. OAG 73-809.

Governor is authorized to fill any vacancy created in the office of magistrate since there is no other specific provision in the statutes for filling such vacancy. OAG 73-809.

As ASC regulations provide that an elected official is not eligible to serve as a member of the county ASC committee, a magistrate elected committeeman must resign by submitting his resignation to the Governor, who has the authority to fill the vacancy, but the resignation must be received and accepted prior to the date on which the individual entered the office of county committeeman in order to be effective. OAG 74-36.

Upon the reclassification of a city of the fourth class to a city of the third class, since the city under KRS 86.030 (now repealed) formerly had only six (6) councilmen, the quorum of seven required by KRS 85.080 (now repealed) could not exist for appointment under KRS 85.310 (now repealed) (providing for filling of vacancies) of the six (6) additional members required by KRS 85.040 (now repealed) (providing for twelve (12) councilmen in third class city); thus since the Governor is the appointing power under this section and he may either fill the remaining vacancies on the council or appoint one member so as to constitute a quorum and enable the council to fill the remaining vacancies under the provisions of KRS 85.310 (now repealed). OAG 74-308.

Where a justice of the peace, whose term was to expire at the end of December, 1981, moved out of his district in July, 1980, a vacancy was thereby created on the fiscal court; the Governor fills the vacancy by appointment until the November, 1980, general election, at which time the vacancy will be filled by election for the remainder of the unexpired term. OAG 80-425, 1980 Ky. AG LEXIS 234.

Where county increased its magisterial districts from four (4) to five (5), then a vacancy would automatically exist in the fifth district which must be filled for the unexpired term in accordance with the requirements of Const., § 152 and said election would be held in the coming November election; prior to the election for the unexpired term, the Governor could fill the vacancy by appointment, pursuant to this section, which would end when the person elected in November received his certificate of election and qualified for the office. OAG 83-55, 1983 Ky. AG LEXIS 441.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Acceptance of incompatible office vacates first, KRS 61.090.

Constitutional offices, vacancies in filled by Governor, Const., § 76.

Definition of vacancy, KRS 446.010.

Elections to fill vacancies, KRS Ch. 121.

Elective offices, vacancies in, how filled, Const., § 152.

Various offices, filling of vacancies in:

Alcoholic beverage control board, KRS 241.100.

Assistant secretary of state, KRS 14.020.

Bar examiners, SCR 2.000.

Board of dentistry, KRS 313.200.

Board of education, county and city, KRS 160.190.

Board of health for Louisville and Jefferson County, KRS 212.390.

Board of nursing education and nurse registration, KRS 314.121.

Chiropractic examiners, KRS 312.025.

City officers:

Generally, Const., § 160.

Board of adjustment, KRS 100.217.

Housing authority, members, KRS 80.040.

Planning commissioners, KRS 100.157.

Recreational commissioners, KRS 97.120.

First-class cities, KRS 83.580.

Aldermen, KRS 83A.040.

Board of adjustment, KRS 100.217.

Board of equalization, KRS 91.390.

Board of health for city and county, KRS 212.390.

Civil service board, KRS 90.120.

Heads of departments, KRS 83.580.

Library trustees, KRS 173.040.

Mayor, KRS 83A.040.

Memorial commissioners, KRS 97.630.

Planning commissioners, KRS 100.157.

Waterworks board, KRS 96.240.

Second-class cities, 83A.040.

Third-class cities, KRS 83A.040.

Fourth-class and fifth-class cities, KRS 83A.040.

Civil service commission, KRS 95.763.

Sixth-class cities, KRS 83A.040.
Clerk of Court of Appeals, Const., § 122.
Constitutional officers, Const., § 76.
Elections, county board of, KRS 117.035.
Election officers, precinct, KRS 117.045.
Elective office, Const., § 152.
Embalmers and funeral directors, board of, KRS 316.170.
Fire protection district trustees, KRS 75.031.
Fish and Wildlife Resources Commission, KRS 150.022.
Governor, Const., § 84; KRS 120.205.
Housing authority, members, county and regional, KRS 80.420, 80.430.
Jailer, KRS 63.150, 71.090.
Jefferson County Children's Home, board for, KRS 201.020.
Judge of circuit court, Const., § 118.
Judicial council, KRS 27A.100.
Kentucky School for Blind, officers and employees of, KRS 167.150.
Legislative Research Commission, KRS 7.090.
Levee commissioners, KRS 266.190.
Librarians, State Board for Certification of, KRS 171.240.
Library trustees of city, county or regional library, KRS 173.340.
Lieutenant Governor, Const., § 85; KRS 120.205.
Military officers, Const., § 222.
Nominees of political parties, KRS 118.105, 118.325.
Pharmacy, Board of, KRS 315.150.
Planning commission to which capital city belongs, Governor to appoint member, KRS 100.133.
Playground and recreation board, county and city, KRS 97.030.
Podiatry, official examiners in, KRS 311.410.
Presidential electors, KRS 118.445.
Processioners of land, KRS 73.180.
Psychologists, Board of Examiners of, KRS 319.020.
Public road district board of directors, KRS 184.060.
Public service commissioners, KRS 278.050.
Railroad commissioners, Const., § 209.
Sanitation district directors, KRS 220.140.
School district superintendent, KRS 160.350.
Sheriff, KRS 63.220, 70.200, 134.220, 134.280.
Soil and Water Resources Commission, KRS 146.090.
Soil conservation, board of adjustment, KRS 262.460.
Soil conservation supervisors, KRS 262.240.
State Board of Accountancy members, KRS 325.230.
State fair board members, KRS 247.090.
State treasurer, KRS 41.050, 41.330.
Statutory administrative department heads, KRS 12.040.
Tax collector, KRS 134.280.
Teachers' retirement system, trustees of, KRS 161.270.
Veterinary Examiners, State Board of, KRS 321.230.
Water district commissioners, KRS 74.020.

CHAPTER 64

FEES AND COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES

Fee-Bills.

Section
64.410. How fee-bills made out — Provisions concerning.

Compensation of Public Officers and Employees Generally.

64.480. Compensation of elective state officers — Adjustment of salaries.
64.590. Compensation of officers and employees of political subdivisions or local governmental units or districts other than counties or cities, including school districts.
64.640. Compensation of state officers and employees generally.
64.660. Compensation of members of public boards and commissions.
64.690. Applicability of other statutes dealing with compensation — Applicability of KRS 64.368 if population decreases below 70,000.
64.710. Expense accounts and contingent funds prohibited — Exceptions.

FEE-BILLS

64.410. How fee-bills made out — Provisions concerning.

(1) The fee-bills of every officer shall be made out at length, in figures and in plain English, and signed by the officer in his official capacity.

(2) No officer shall demand or receive for his services:

(a) Any other or greater fee than is allowed by law;

(b) Any fee for services rendered when the law has not fixed a compensation therefor;

(c) Any fee for services not actually rendered.

(3) Where there are more plaintiffs or defendants than one (1) in an action and they sever in their pleadings or otherwise, so that part of them cause an officer to render separate services for him or them, for which the others ought not to be liable, the fees for such services shall be charged separately to those for whom the service is rendered.

(4) No officer in making out his fee-bill shall omit the name of any person properly chargeable therewith, or insert the name of a person not properly chargeable.

(5) Fees against a person acting in a trust capacity shall be made out against him in such capacity and he shall only be liable therefor to the extent of the trust funds in his hands liable to the payment thereof.

(6) No fee-bill shall be made out, or compensation allowed hereafter, for any ex officio services rendered by any officer.

History.
1749.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Common Law Rule Discarded.
3. Statutory Compensation.
4. — Limitation.
5. Form.
6. Service Rendered.
7. Overcharges.
8. Excess Receipts.
9. Absence of Officer.
10. Justice of Peace.
11. Collateral Attack.
12. Ex Officio Duties.

1. Construction.

Where fees were paid the sheriff on written but unsigned fee-bills and where payment of some other fees was directed by the county court without fee-bills this section was directory only and an omission to literally comply with this section did

not create liability. Fannin v. Davis, 385 S.W.2d 321, 1964 Ky. LEXIS 158 (Ky. 1964), overruled in part, Scalise v. Sewell-Scheuermann, 566 S.W.3d 539, 2018 Ky. LEXIS 451 (Ky. 2018).

2. Common Law Rule Discarded.

Common law rule that right of compensation is incidental to title to public office and not to performing functions of same, thereby entitling officer to receive emoluments under the office even though he performs no duties or services providing he does not abandon the office, was discarded upon adoption of the present constitution and the enactment of KRS 61.120 and this section. Whitworth v. Miller, 302 Ky. 24, 193 S.W.2d 470, 1946 Ky. LEXIS 592 (Ky. 1946).

3. Statutory Compensation.

An officer is not entitled to a fee for services performed for which his statutory compensation has not been fixed. Owen County v. Walker, 141 Ky. 516, 133 S.W. 236, 1911 Ky. LEXIS 43 (Ky. 1911); Graves County v. Wallace, 144 Ky. 194, 138 S.W. 306, 1911 Ky. LEXIS 630 (Ky. 1911); Elliott v. Commonwealth, 144 Ky. 335, 138 S.W. 300, 1911 Ky. LEXIS 626 (Ky. 1911); Elliott v. Commonwealth, 144 Ky. 341, 138 S.W. 303, 1911 Ky. LEXIS 627 (Ky. 1911); Woodruff v. Shea, 152 Ky. 657, 153 S.W. 1005, 1913 Ky. LEXIS 722 (Ky. 1913); Ray v. Woodruff, 168 Ky. 563, 182 S.W. 662, 1906 Ky. LEXIS 277 (Ky. 1906); Mills v. Lantrip, 170 Ky. 81, 185 S.W. 514, 1916 Ky. LEXIS 21 (Ky. 1916); Allin v. Mercer County, 174 Ky. 566, 192 S.W. 638, 1917 Ky. LEXIS 216 (Ky. 1917); Grinstead v. Carter, 181 Ky. 331, 204 S.W. 87, 1918 Ky. LEXIS 515 (Ky. 1918); Lewis v. James, 191 Ky. 769, 231 S.W. 526, 1921 Ky. LEXIS 392 (Ky. 1921); Graves County v. Roach, 197 Ky. 734, 248 S.W. 175, 1923 Ky. LEXIS 715 (Ky. 1923); Logan County v. Russell, 203 Ky. 592, 262 S.W. 953, 1924 Ky. LEXIS 958 (Ky. 1924); Dorris v. Logan County, 205 Ky. 152, 265 S.W. 512, 1924 Ky. LEXIS 70 (Ky. 1924); Nichols v. Board of Education, 232 Ky. 428, 23 S.W.2d 607, 1930 Ky. LEXIS 18 (Ky. 1930); Harlan County v. Blair, 243 Ky. 777, 49 S.W.2d 1028, 1932 Ky. LEXIS 193 (Ky. 1932); Baker v. Tedders, 244 Ky. 736, 52 S.W.2d 715, 1932 Ky. LEXIS 511 (Ky. 1932); Talbott v. Caudill, 248 Ky. 146, 58 S.W.2d 385, 1933 Ky. LEXIS 206 (Ky. 1933); Taylor v. Scoville, 252 Ky. 809, 68 S.W.2d 423, 1934 Ky. LEXIS 868 (Ky. 1934); Taylor v. Jones, 253 Ky. 285, 69 S.W.2d 372, 1934 Ky. LEXIS 648 (Ky. 1934); McNally v. Grauman, 255 Ky. 201, 73 S.W.2d 28, 1934 Ky. LEXIS 217 (Ky. 1934); Goodlett v. Anderson County, 267 Ky. 166, 101 S.W.2d 421, 1936 Ky. LEXIS 761 (Ky. 1936); Bates v. Greenup County, 282 Ky. 268, 138 S.W.2d 463, 1940 Ky. LEXIS 160 (Ky. 1940); Smothers v. Washington County Fiscal Court, 294 Ky. 35, 170 S.W.2d 867, 1943 Ky. LEXIS 366 (Ky. 1943); Wilson v. Ball, 323 S.W.2d 840, 1959 Ky. LEXIS 336 (Ky. 1959).

4. — Limitation.

No officer is entitled to demand or receive for the performance of his public duties more than is authorized by law. Webster County v. Nance, 362 S.W.2d 723, 1962 Ky. LEXIS 261 (Ky. 1962).

Where the sheriff did not provide any of the services to the District Court which would give rise to his entitlement to the fees established in subsection (7) of KRS 24A.175 and subdivision (7) of KRS 64.092, the trial court properly denied the sheriff's claim to the sums being held for such purposes by the clerk of the Circuit Court. Baskett v. Radcliff, 709 S.W.2d 463, 1986 Ky. App. LEXIS 1131 (Ky. Ct. App. 1986).

5. Form.

Fee-bills are to be made out against those to whom the services have been rendered. Howard v. Commonwealth, 231 Ky. 54, 20 S.W.2d 1011, 1929 Ky. LEXIS 204 (Ky. 1929).

6. Service Rendered.

An officer is not entitled to fee for services not actually rendered. Ray v. Woodruff, 168 Ky. 563, 182 S.W. 662, 1906 Ky. LEXIS 277 (Ky. 1906); Wright v. Morris, 212 Ky. 403, 279 S.W. 631, 1926 Ky. LEXIS 157 (Ky. 1926); Webster County v. Vaughn, 365 S.W.2d 109, 1962 Ky. LEXIS 283 (Ky. 1962).

KRS 69.530 (repealed), construed in the light of subsection (2)(c) of this section and KRS 69.520 (repealed), contemplates the payment of compensation to a prosecuting attorney of a city of the third class only for services rendered in actual prosecution of cases in the police court. Grant v. Winchester, 310 Ky. 417, 220 S.W.2d 993, 1949 Ky. LEXIS 944 (Ky. 1949).

The prosecuting attorney in a city of the third class is not entitled to receive as compensation 30% of $1.00 penalties paid for violation of parking meter regulations. Grant v. Winchester, 310 Ky. 417, 220 S.W.2d 993, 1949 Ky. LEXIS 944 (Ky. 1949).

If the county attorney, though not physically present, actually renders some service in the particular case in quarterly court or magistrate's court, by some means of communication with the court, he is entitled to the fees, and the question of whether or not the written notice has been given is not material. Funk v. Milliken, 317 S.W.2d 499, 1958 Ky. LEXIS 100 (Ky. 1958).

7. Overcharges.

Overcharges collected by officer are recoverable. Goodlett v. Anderson County, 267 Ky. 166, 101 S.W.2d 421, 1936 Ky. LEXIS 761 (Ky. 1936).

8. Excess Receipts.

All of the fees, or portions thereof, may be given to the officer performing the service for the public and if part only is allotted to the officer he is required to pay to the county the excess receipts over and above the amounts allowed for his maximum compensation and reimbursement of his expenses of office, if any. Webster County v. Nance, 362 S.W.2d 723, 1962 Ky. LEXIS 261 (Ky. 1962).

9. Absence of Officer.

In light of KRS 61.120 this section as enacted in conformity to Ky. Const., §§ 42, 97, 98, 106, 108 and 235, Commonwealth's Attorney was not entitled to receive emoluments of office while absent therefrom in army. Whitworth v. Miller, 302 Ky. 24, 193 S.W.2d 470, 1946 Ky. LEXIS 592 (Ky. 1946).

10. Justice of Peace.

Fees collected by a justice of the peace do not belong to him personally but represent the charges which the county makes for services rendered through him as an officer and constitute a fund subject to the control of the county. Webster County v. Nance, 362 S.W.2d 723, 1962 Ky. LEXIS 261 (Ky. 1962).

Where a county fiscal court could not justify paying at least $9,600 to each of its three (3) justices of the peace based upon the present absence of public services performed by them, the solution would be for the magistrates to request the General Assembly to either increase the duties of those not serving on a fiscal court, or, in the alternative for fiscal court, to be permitted to establish a salary below $9,600 in line with services actually performed. Roland v. Jefferson County Fiscal Court, 599 S.W.2d 469, 1980 Ky. App. LEXIS 320 (Ky. Ct. App. 1980).

11. Collateral Attack.

Allowance of fee for services for which statutory compensation has not been fixed is void and subject to collateral attack. Elliott v. Commonwealth, 144 Ky. 335, 138 S.W. 300, 1911 Ky. LEXIS 626 (Ky. 1911); Elliott v. Commonwealth, 144 Ky. 341, 138 S.W. 303, 1911 Ky. LEXIS 627 (Ky. 1911); Logan County v. Russell, 203 Ky. 592, 262 S.W. 953, 1924 Ky. LEXIS 958 (Ky. 1924); Dorris v. Logan County, 205 Ky. 152, 265 S.W. 512, 1924 Ky. LEXIS 70 (Ky. 1924); Taylor v. Jones, 253 Ky. 285, 69 S.W.2d 372, 1934 Ky. LEXIS 648 (Ky. 1934); Goodlett v. Anderson County, 267 Ky. 166, 101 S.W.2d 421, 1936 Ky. LEXIS 761 (Ky. 1936).

12. Ex Officio Duties.

Subsection (6) recognizes right of Legislature to impose new ex officio duties upon a public officer, without compensation. Greene v. Cohen, 181 Ky. 108, 203 S.W. 1077, 1918 Ky. LEXIS 501 (Ky. 1918); Lewis v. James, 191 Ky. 769, 231 S.W. 526, 1921 Ky. LEXIS 392 (Ky. 1921); Smothers v. Washington County Fiscal Court, 294 Ky. 35, 170 S.W.2d 867, 1943 Ky. LEXIS 366 (Ky. 1943).

Where no compensation is fixed by statute for services rendered by an officer, and where the services are ex officio, the officer is entitled to make no charge by way of fee-bill, or on account of necessarily entailed expenses. Fulton v. Shanklin, 275 Ky. 772, 122 S.W.2d 733, 1938 Ky. LEXIS 490 (Ky. 1938).

Cited:

Miller v. Robertson, 306 Ky. 653, 208 S.W.2d 977, 1948 Ky. LEXIS 631 (Ky. 1948); Polston v. King, 965 S.W.2d 143, 1998 Ky. LEXIS 34 (Ky. 1998).

OPINIONS OF ATTORNEY GENERAL.

Where the circuit clerk does not attend to the collecting of fines imposed by the county judge (now county judge/executive) but which were not reported to the circuit clerk nor make out the reports on such fines, nor forward them to the state, he is not entitled to the 5% allowed by subsection (2) of KRS 28.180 (now repealed). OAG 61-409.

Where a county judge (now county judge/executive) appointed his wife to serve as juvenile officer at a salary although she performed no services, the judge had an indirect interest in a contract or claim against the county contrary to KRS 61.220. OAG 61-527.

A magistrate or constable cannot properly charge a collection fee which is in excess of the charges permitted for the simple writing of a warrant. OAG 65-403.

A mayor, even though he had qualified as such, would not be entitled to the emoluments of the office where he had never performed any of the duties of the office. OAG 66-69.

Where the county attorney does not personally participate in the prosecution but has another attorney, not an assistant county attorney, acting in his behalf, the county attorney could not collect the statutory fees. OAG 66-382.

Fees earned by the county clerk who resigned must be paid to him instead of to his successor. OAG 67-442.

Under subsections 2(a) and 2(b) of this section, it is unlawful for a constable in Fayette County to conduct the inspection of out-of-state motor vehicles required by subsection (1) of KRS 186.235 (now repealed) and collect a fee therefor. OAG 67-496.

A chief of police is not authorized to receive additional fees or a percentage of the taxes collected for acting as tax collector. OAG 68-16.

Where, due to incapacitating illness, the regular judge was unable to return to his duties following his statutory vacation and a pro tem judge served in his place, if the regular judge continued to receive his salary during his illness his estate was liable to the county for the money except for that received for the vacation period. OAG 69-660.

Where a pro tem judge was appointed to serve during the regular judge's statutory vacation and continued to serve due to the regular judge's incapacitating illness, the fiscal court was legally responsible for paying the county judge pro tem for his services in that capacity for the period of time he served. OAG 69-660.

Where the regular police judge of a fourth-class city has been ill and unable to perform his duties for a reasonable period of time, the city would not be compelled to pay the regular judge for services not performed, especially when the regular judge has appointed a pro tem judge to take his place. OAG 72-164.

Section would prohibit a constable from collecting a fee for service of summons when the defendant could not be found and served. OAG 72-437.

County attorney may not collect a fee for processing support payments under the Uniform Support of Dependents Act. OAG 72-485.

Salaried city policemen have no authority to demand the sheriff's arresting fee and the illegal arresting fees can be recovered by the city in an action against the policemen on behalf of the person who originally paid the fees. OAG 73-197.

The arresting fee for a sheriff serving process or arresting a party in a misdemeanor case in a fifth-class city where the defendant is convicted is seven dollars ($7) but if a city policeman or a state trooper makes such an arrest, he is not entitled to an arresting fee. OAG 74-49.

Chief of police of fifth-class city, who is entitled to a salary plus arresting fees, may not claim the arresting fee where state trooper makes the arrest. OAG 74-188.

A sheriff cannot receive compensation or a fee for guarding the jury overnight and for several days and nights as there is no statute expressly authorizing such compensation. OAG 74-309.

Where the coroner retains a copy of the report of his inquest and makes copies of it for interested persons, there is no statutory basis for a coroner's fee. OAG 75-248.

Although subsequent to January 2, 1978 persons may still be elected to the office of justice of the peace and justices of the peace would retain any nonjudicial powers found in the statutes, in a county having the commissioner type of government in 1978 there are practically no authorized statutory functions for a justice of the peace and since performance of some statutory duties is necessary to entitle justices of the peace to compensation and expense allowances in 1978, payment of any compensation or expense allowance to such justices not serving on fiscal courts would raise a serious constitutional question. OAG 77-133, 1977 Ky. AG LEXIS 638.

To the extent that any salary paid to constables under KRS 64.200 would not reflect payment for services rendered, such payment would be unconstitutional and in violation of this section. OAG 77-257, 1977 Ky. AG LEXIS 536.

Where the county jail was condemned and closed and the incumbent county jailer performed only janitorial services at the courthouse but had no duties in relation to keeping prisoners since they were housed in jail facilities in surrounding counties the payment of any portion of such jailer's salary not reflecting services actually rendered would be illegal. OAG 77-523, 1977 Ky. AG LEXIS 260.

This section contemplates the use of tax money to pay public officials only for services actually rendered. OAG 78-206, 1978 Ky. AG LEXIS 530.

Where a police officer was on work-related disability for approximately one (1) year and, consequently, rendered no public service during that period since he did not work in his capacity as a city police officer, he was not entitled to paid annual leave time for that period of time. OAG 78-206, 1978 Ky. AG LEXIS 530.

The fiscal court can approve the payroll prior to the actual pay period so that the clerk can issue checks without having to wait for the next fiscal court meeting for approval as long as, at the time the checks are actually issued and delivered to the county employees, the checks relate only to services actually performed prior to the issuance and delivery of the checks to the payees. OAG 78-248, 1978 Ky. AG LEXIS 466.

Any practice of making full or partial payments on state personal service contracts in advance of the actual and full performance of the contract is unconstitutional. OAG 80-38, 1980 Ky. AG LEXIS 602.

A city employee cannot, in lieu of receiving the fringe benefit of a Blue Cross, Blue Shield hospital insurance policy paid for by the city, receive the cash value of the insurance policy as salary. OAG 80-276, 1980 Ky. AG LEXIS 362.

The county clerks have to charge one (1) uniform fee for release of real estate mortgages; it has to be precisely the fee

authorized under KRS 64.012 and the clerks cannot vary that fee. OAG 80-484, 1980 Ky. AG LEXIS 177.

A county sheriff or local police officer cannot be paid an arrest fee and transportation expenses for arresting and transporting a member of the National Guard pursuant to a "Warrant of Arrest on Military Charges." OAG 83-487, 1983 Ky. AG LEXIS 8.

Where fiscal court magistrates served on a number of boards and committees, but none of these boards or committees were official committees of the fiscal court, no part of the expense allowance provided by KRS 64.530(6) could be paid since such moneys can only be expended in consideration for public services. OAG 84-71, 1984 Ky. AG LEXIS 314.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Vanlandingham, The Fee System in Kentucky Counties, 40 Ky. L.J. 275 (1952).

COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES GENERALLY

64.480. Compensation of elective state officers — Adjustment of salaries.

(1) Effective, with respect to the offices of Governor on December 11, 1979, and Lieutenant Governor on the fifth Tuesday following the regular November election in 1975, and with respect to the other offices named in this section on the first Monday in January, 1976, the compensation of the following named officers, payable monthly out of the State Treasury, shall be the sum per annum designated for the respective offices, as follows: Governor, forty-five thousand dollars ($45,000) until December 11, 1981, then fifty thousand dollars ($50,000) until December 13, 1983, and then sixty thousand dollars ($60,000) until January 1, 1985; Lieutenant Governor, twenty-seven thousand nine hundred dollars ($27,900) per annum, plus any compensation received while acting in the place of the Governor; Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky elected in November, 1975, as clerk of the Court of Appeals, twenty-seven thousand nine hundred dollars ($27,900).

(2) In order to equate or adjust the compensation of the Lieutenant Governor, Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky with the purchasing power of the 1949 dollar, the Department for Local Government of Kentucky shall compute by the second Friday in February of every year, beginning in 1977, the maximum permissible compensation of the officials mentioned in this subsection based precisely upon the consumer price index formula approved in Matthews v. Allen, Kentucky, 360 S.W.2d 139 (1962). Thus the maximum permissible compensation effective for the entire year of 1977 and subsequent years will be the actual compensation to be paid said officials. The year of adjustment will be the particular full calendar year involved.

(3) It is the intention of the Legislature that the constitutionally permissible adjustment of salaries of these officials be framed around equating current salaries with the purchasing power of the dollar in 1949 when Section 246 of the Constitution of Kentucky was amended. Section 246 of the Constitution of Kentucky, as amended, established a monetary level of twelve thousand dollars ($12,000) per annum for said officials. The formula merely effects an adjustment of the constitutional monetary level in terms of the current consumer price index.

(4) In order to adjust the compensation of the Governor to reflect changes in the purchasing power of the dollar, the Department for Local Government shall compute by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor by multiplying sixty thousand dollars ($60,000) by the increase in the consumer price index during the period from January 1, 1984, to the beginning of the then-current calendar year. The actual compensation paid to the Governor for the entire calendar year of 1985 and subsequent years shall be the adjusted salary.

History.

Enact. Acts 1950, ch. 123, § 1; 1954, ch. 176; 1958, ch. 50; 1966, ch. 38, § 1; 1972, ch. 22, § 2; 1976, ch. 83, § 15, effective March 29, 1976; 1978, ch. 155, § 57, effective June 17, 1978; 1978, ch. 384, § 581, effective June 17, 1978; 1978, ch. 386, § 1, effective June 17, 1978; 1982, ch. 328, § 1, effective July 15, 1982; 1986, ch. 374, § 20, effective July 15, 1986; 1992, ch. 27, § 5, effective March 2, 1992; 1994, ch. 486, § 20, effective July 15, 1994; 1998, ch. 69, § 25, effective July 15, 1998; 2007, ch. 47, § 36, effective June 26, 2007; 2010, ch. 117, § 42, effective July 15, 2010.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 1, (1) at 2051.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 15, (2) at 2056.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 18, (7) at 2057.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 20, (2) at 2059.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 21, (9) at 2060.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 22, (3) at 2061.

See Judicial Branch Budget, 2026 Ky. Acts ch. 183, Pt. III, 15 at 2391.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Limit on Compensation.
3. Power of Local Bodies.
4. Increase During Term.
5. Jefferson County Commissioners.

1. Construction.

The treasurer's salary as fixed by this section was not changed by the biennial budget appropriation bills. Dishman v. Coleman, 244 Ky. 239, 50 S.W.2d 504, 1932 Ky. LEXIS 397 (Ky. 1932).

KRS 64.480 to 64.760 (KRS 64.760, now repealed) did not impliedly repeal KRS 89.250 (now repealed) relating to initia-

tive procedure in cities operating under the commission form of government. Maysville v. Kenton, 252 S.W.2d 39, 1952 Ky. LEXIS 976 (Ky. 1952), overruled, Newport v. Gugel, 342 S.W.2d 517, 1960 Ky. LEXIS 95 (Ky. 1960).

2. Limit on Compensation.

Under KRS 64.480 to 64.760 (KRS 64.760, now repealed) and the amendment to Const., § 246 compensation up to $7,200 per annum is authorized to be fixed for local officers. Funk v. Milliken, 317 S.W.2d 499, 1958 Ky. LEXIS 100 (Ky. 1958).

3. Power of Local Bodies.

KRS 64.480 to 64.760 (KRS 64.760, now repealed) gave the legislative bodies of various political subdivisions the power and duty to fix the salaries of officials who served that unit, limit the number and amount of salaries of deputies and assistants, and generally to control or define proper expenditures to be made in connection with the operation of the office. Wilson v. Ball, 323 S.W.2d 840, 1959 Ky. LEXIS 336 (Ky. 1959).

4. Increase During Term.

Nothing in KRS 64.480 to 64.760 (KRS 64.760, now repealed) is intended to authorize an increase in the compensation of any officer in office on June 30, 1950, during his term except where these sections make such an increase or where the public officer or body having authority under these sections to fix the compensation or the limits of compensation takes specific action to make such increase. Farnsley v. Henderson, 240 S.W.2d 82, 1951 Ky. LEXIS 951 (Ky. 1951).

5. Jefferson County Commissioners.

KRS 64.480 to 64.760 (KRS 64.760, now repealed) affirmatively state that no change was being made in the salaries of Jefferson County commissioners. Shamburger v. Duncan, 253 S.W.2d 388, 1952 Ky. LEXIS 1090 (Ky. 1952).

Cited:

Harlan v. Sawyers, 290 S.W.2d 488, 1956 Ky. LEXIS 327 (Ky. 1956); Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960); Veith v. Louisville, 355 S.W.2d 295, 1962 Ky. LEXIS 64 (Ky. 1962); Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437, 1986 Ky. LEXIS 262 (Ky. 1986).

OPINIONS OF ATTORNEY GENERAL.

An increase of the Lieutenant Governor's salary as provided for in the 1972 amendment to this section by Acts 1972, chapter 22, is considered a salary adjustment and not a salary change and is, therefore, not prohibited by Const., § 235 as it conforms to the consumer price index when the amendment was passed. OAG 72-567.

Following the 1980 adjustment, the maximum compensation permissible for constitutional officers who are in the $12,000 limit category mentioned in Const., § 246 would be $38,640. OAG 80-74, 1980 Ky. AG LEXIS 556.

The officers listed in subsection (2) of this section must be paid the maximum permissible under "rubber dollar." OAG 80-74, 1980 Ky. AG LEXIS 556.

Although state officials must, under this section, receive the maximum indexed compensation figure, under KRS 15.755 and 15.765, the maximum compensation of the Commonwealth's Attorneys and county attorneys is not mandated. OAG 82-80, 1982 Ky. AG LEXIS 560.

The Governor's salary for 1988 was $68,364. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of this Commonwealth was $58,101. OAG 88-10, 1988 Ky. AG LEXIS 10.

The maximum annual compensation possible for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts and Clerk of the Supreme Court of Kentucky for 1990 would be $63,462. OAG 90-17, 1990 Ky. AG LEXIS 17.

The Department of Local Government accurately computed the maximum annual compensation for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, Treasurer, Auditor of Public Accounts, and Clerk of the Supreme Court, as $67,378 for 1991. OAG 91-29, 1991 Ky. AG LEXIS 29.

The Department of Local Government is required to compute, by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor; such computation is to be made by multiplying the base compensation of sixty thousand ($60,000), by the increase in the CPI during the period from January 1, 1984, to the beginning of the then-current calendar year (here 1991), and the Department computed accurately the Governor's maximum annual compensation for 1991 as $79,255. OAG 91-29, 1991 Ky. AG LEXIS 29.

Pursuant to subsection (4) of this section, the Department of Local Government is required to compute, by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor; such computation is to be made by multiplying the base compensation of sixty thousand ($60,000), by the increase in the CPI during the period from January 1, 1984, to the beginning of the then-current calendar year. OAG 92-27, 1992 Ky. AG LEXIS 27.

For an opinion verifying the accuracy of computations to be used in adjusting salaries of constitutional officers in relation to changes in the Consumer Price Index, see OAG 93-21, 1993 Ky. AG LEXIS 33.

For the adjustments to salaries of constitutional officers in relation to changes in the Consumer Price Index salary adjustment computations and therefore, the maximum annual compensation allowable by law for such positions in 1994 see OAG 94-7, 1994 Ky. AG LEXIS 302.

For the adjustments to salaries of constitutional officers in relation to change in the Consumer Price Index salary adjustment computations and therefore, the maximum annual compensation allowable for such positions in 1995 see OAG 95-5. OAG 95-5, 1995 Ky. AG LEXIS 19.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Attorney General to be paid by salary only, Const., § 96.

Fees of Attorney General to be covered into state treasury, Const., § 93.

Fees of Treasurer to be covered into state treasury, Const., § 93.

Governor to be paid by salary only, Const., § 96.

Governor's compensation to be fixed by law, Const., § 74.

Lieutenant Governor, compensation for services as President of the Senate, and while acting as Governor, Const., § 86, KRS 6.190.

Lieutenant Governor's compensation for services as member of Legislative Research Commission, KRS 7.090.

Limit on compensation of public officers, Const., § 246.

Per diem of Lieutenant Governor as President of the Senate, KRS 6.190.

Secretary of State, compensation as member of State Board of Elections, KRS 117.015.

Superintendent of Public Instruction to be paid by salary only, Const., § 96.

Treasurer to be paid by salary only, Const., § 96.

64.590. Compensation of officers and employees of political subdivisions or local governmental units or districts other than counties or cities, including school districts.

In the case of any political subdivision or local governmental unit or district other than a county or city, having a governing body or authority composed of more than one (1) member, such governing body or authority shall fix the compensation of every officer and employee of the political subdivision, local governmental unit, or district whose compensation is payable from the funds of the political subdivision, governmental unit, or district, except that in the case of officers elected by popular vote the same limitations and restrictions shall apply as are applicable under KRS 83A.070 to the fixing of compensation of city officers elected by popular vote. Nothing in this section is intended to confer any power on any governing board or authority, with respect to the compensation of its own members, that it does not specifically possess under other statutes. This section applies to school districts, but is not intended to supersede any present provision of law relating to the fixing or payment of the compensation of teachers.

History.

Enact. Acts 1950, ch. 123, § 15; 1984, ch. 111, § 44, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 295, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Limit on compensation of public officers, Const., § 246.

64.640. Compensation of state officers and employees generally.

(1) Except as otherwise provided in subsection (2) of this section, and excepting officers elected by popular vote, employees of the General Assembly, including employees of the Legislative Research Commission, members of boards and commissions, those officers and employees of Kentucky Educational Television exempt from classified service as provided in KRS 18A.115, presidents and employees of the state universities and the state colleges, officers employed by the Department of Kentucky State Police under KRS Chapter 16, employees whose compensation is set by the Public Service Commission under KRS 278.040(4) and 278.120(1), and persons employed by the commissioner of parks on a temporary basis under KRS 148.026, the Personnel Cabinet shall prepare schedules of compensation, payable out of the State Treasury, with a minimum salary rate, and other salary rates as are deemed necessary or advisable, for the office or position of employment of every state officer and employee, including specifically the offices and positions of employment in every constitutional administrative department, statutory administrative department, independent agency, board, commission, or other unit of state government. The language of any statute empowering a board, commission, authority, or other administrative body for which the Personnel Cabinet provides personnel and payroll services, except for any board governing any of the Kentucky Retirement Systems, the County Employees Retirement System, the Kentucky Public Pensions Authority, the Kentucky Higher Education Assistance Authority, the Kentucky Authority for Educational Television, or the Council on Postsecondary Education, to establish, set, or approve the salaries of its administrative head and other employees to the contrary notwithstanding, the establishment or setting of salaries for administrative heads or other employees shall be subject to the approval of the secretary of the Personnel Cabinet. The schedules and rates shall be based upon studies of the duties and responsibilities of the offices and positions and upon a comparison with rates being paid for similar or comparable services elsewhere, and in the preparation of such schedules, the Personnel Cabinet shall ascertain and record the duties, responsibilities, and authority pertaining to the various offices and positions in the state service, and classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110, 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become effective until it has been approved by the Governor by executive order.

(2) The Governor shall set the compensation payable out of the State Treasury to each officer or position in the state service, which officer or position heads a statutory administrative department, independent agency, or other unit of state government, except for those excluded under subsection (1) of this section. Such compensation shall be based upon studies of the duties and responsibilities and classification of the positions by the Governor and upon a comparison with compensation being paid for similar or comparable services elsewhere, provided, however, such compensation shall not exceed the total taxable compensation of the Governor derived from state sources, the provisions of KRS 64.660 to the contrary notwithstanding. For the purposes of this section, the total taxable compensation of the Governor from state sources shall include the amount provided for compensation to the Governor under KRS 64.480 and any benefits or discretionary spending accounts that are imputed as taxable income for federal tax purposes.

(3) The compensation payable out of the State Treasury to officers and employees subordinate to any office or position covered by subsection (2) of this section shall not exceed the maximum rate established pursuant to subsection (2) of this section for such office or position, except with respect to physicians as provided in KRS 64.655 and employees of the Public Service Commission not otherwise exempt from the requirements of this section under KRS 278.040(4) and 278.120(1) whose compensation shall be fixed, within constitutional limits, by the Personnel Cabinet with the approval of the Governor as provided in subsection (1) of this section.

(4) Nothing in this section shall preclude the allowance of maintenance to officers and employees of the state.

History.

Enact. Acts 1950, ch. 123, § 22; 1952, ch. 98; 1954, ch. 174, § 1; 1956 (1st Ex. Sess.), ch. 7, Art. III; 1960, ch. 38; 1962, ch. 106, Art. I, § 11; 1962, ch. 184, § 1; 1962, ch. 210, § 13; 1966, ch. 38, § 2; 1966, ch. 255, § 76; 1970, ch. 160, § 1; 1972, ch. 22,

§ 1; 1976, ch. 83, § 13, effective March 29, 1976; 1978, ch. 379, § 56, effective April 1, 1979; 1980, ch. 98, § 1, effective July 15, 1980; 1980, ch. 331, § 1, effective July 15, 1980; 1982, ch. 448, § 63, effective July 15, 1982; 1998, ch. 154, § 71, effective July 15, 1998; 2000, ch. 495, § 2, effective July 14, 2000; 2000, ch. 501, § 5, effective July 14, 2000; 2016 ch. 109, § 11, effective July 15, 2016; 2016 ch. 110, § 12, effective July 15, 2016; 2020 ch. 79, § 30, effective April 1, 2021; 2026 ch. 185, § 8, effective April 15, 2026.

Legislative Research Commission Notes.

(7/15/2016). This statute was amended in 2016 Ky. Acts ch. 109, sec. 11 and ch. 110, sec. 12. 2016 Ky. Acts ch. 110, sec. 15 provided that ch. 110 takes precedence over ch. 109. Chapter 110 was also the later-passed bill. Therefore, 2016 Ky. Acts ch. 110, sec. 12 has been codified and 2016 Ky. Acts ch. 109, sec. 11 has not.

Compiler's Notes.

Section 15 of Acts 2016, ch. 110 read: "Sections 6 to 12 of this Act shall take precedence over the provisions of Sections 5 to 11 of 16 RS HB 535 [Act 109] should that bill be enacted."

OPINIONS OF ATTORNEY GENERAL.

The Governor is privileged, without reference to Const., § 246, to raise the salary of the commissioner of mental health to any amount which, in his opinion, is reasonably commensurate with the services rendered. OAG 61-594.

Subsection (3) of this section relates primarily to officers and employees subordinate to any office mentioned in subsection (2). OAG 70-195.

Salaries in excess of $7,500 per annum to officers and employees of the Crime Commission are legal provided they do not exceed $20,000 per annum. OAG 70-769.

The Crime Commission is a statutory agency within the meaning of subsection (2) of this section. OAG 70-769.

Where the commissioner of personnel indicated his approval of the worth of a salary increase for the executive secretary of the state and county retirement systems but denied it on the basis of the limitations set by this section which did not apply to the position, it was an abuse of discretion to deny the increase. OAG 71-369.

Section 246 of the Constitution and this section have no application to personal service contracts, and KRS 18.140 (now repealed), as amended in 1978, expressly exempts persons employed in a professional or scientific capacity from the classified service. OAG 78-692, 1978 Ky. AG LEXIS 142.

The statutes do not grant sole authority to Kentucky Authority for Educational Television to determine who may be exempt from KRS Chapter 18 (now Ch. 18A); at most, they exclude from the commissioner of personnel's determination of salary those positions exempted by the merit system under KRS 18.140 (now KRS 18A.115); and Kentucky educational television was not given authority to exempt other positions not so listed, nor was it given the sole right to determine the salary of nonexempted positions. OAG 80-537, 1980 Ky. AG LEXIS 190.

An annual salary increment under KRS 18A.350 to 18A.360 (KRS 18A.360, now repealed), governing employees of the executive branch, may not take an employee's salary beyond the maximum established in this section (the amount provided for compensation to the Governor). OAG 82-355, 1982 Ky. AG LEXIS 320.

Just as this section provides an upper limit for all employees with regard to their potential salary, including any 5 percent increases, KRS 161.340 must be read into KRS 18A.350 to 18A.360 (KRS 18A.360, now repealed) to provide an absolute upper salary limit for the executive secretary of the Teachers' Retirement System to be the maximum set for commissioners by subsection (2) of this section. OAG 82-355, 1982 Ky. AG LEXIS 320.

Constitutional officers are not entitled to vacation pay over and above their base salary; they may take vacations without reduction in salary and are not entitled to additional compensation, either as vacation, sick, or compensatory pay. OAG 88-7, 1988 Ky. AG LEXIS 7.

Upon review of this section, KRS 346.030, and 12.020 II 6. (k), as well as of KRS 18A.350, 18A.355, and 18A.360 (now repealed), the incumbents of the Crime Victims Compensation Board are included under the language of KRS 18A.350 which defines employee as any officer or employee of the executive branch of government; therefore, it would appear that the members of the Crime Victims Compensation Board are eligible for annual increments, although it is entirely possible that this was not the intent of the Legislature. OAG 90-25, 1990 Ky. AG LEXIS 23.

Upon review of this section KRS 346.030, 44.070 and 12.020 II 6. (k), as well as of KRS 18A.350, 18A.355, and 18A.360 (now repealed), the incumbents of the Board of Claims are included under the language of KRS 18A.350 which defines employee as any officer or employee of the executive branch of government; therefore, it would appear that the members of the Board of Claims are eligible for annual increments, although it is entirely possible that this was not the intent of the Legislature. OAG 90-25, 1990 Ky. AG LEXIS 23.

Upon review of this section, KRS 439.320(1) and (3), and 12.020 II 10. (a), as well as of KRS 18A.350, 18A.355, and 18A.360 (now repealed), the incumbents of the Parole Board are included under the language of KRS 18A.350 which defines employee as any officer or employee of the executive branch of government; therefore, it would appear that the members of the Parole Board are eligible for annual increments, although it is entirely possible that this was not the intent of the Legislature. OAG 90-25, 1990 Ky. AG LEXIS 23.

Upon review of this section and KRS 229.151, as well as of KRS 18A.350, 18A.355, and 18A.360 (now repealed), the incumbents of the Athletic Commission are included under the language of KRS 18A.350 which defines employee as any officer or employee of the executive branch of government; therefore, it would appear that the members of the Athletic Commission are eligible for annual increments, although it is entirely possible that this was not the intent of the Legislature. OAG 90-25, 1990 Ky. AG LEXIS 23.

Upon review of this section and KRS 338.071, as well as of KRS 18A.350, 18A.355, and 18A.360 (now repealed), the incumbents of the Occupational Safety Health and Review Commission are included under the language of KRS 18A.350 which defines employee as any officer or employee of the executive branch of government; therefore, it would appear that the members of the Occupational Safety Health and Review Commission are eligible for annual increments, although it is entirely possible that this was not the intent of the Legislature. OAG 90-25, 1990 Ky. AG LEXIS 23.

While assistant county attorneys are appointed with the approval of the Prosecutors Advisory Council, salaries are merely comparable with the classification and compensation plan for comparable positions maintained by the state department of personnel, pursuant to this section, not synonymous with them. OAG 91-218, 1991 Ky. AG LEXIS 216.

The Governor did not violate provision of 2003 budget bill (Part IV, Item Three of HB 269) in establishing the initial salaries of his newly appointed Cabinet Secretaries and other appointees pursuant to his authority under subsection (2) of this section. OAG 04-003, 2004 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Commissioner of mental health, salary of not limited by KRS 64.640.

Limit on compensation of public officers, Const., § 246.

Officers and employees of state universities and state colleges not subject to this section, KRS 164.225, 164.285, 164.365.

State universities and state colleges not to be included in Department of Education, KRS 164.285.

ALR

Administrative officers' or boards' power in respect of compensation of public officer under statute fixing maximum or minimum compensation, as affected by constitutional prohibition of increasing or decreasing compensation during term of office. 70 A.L.R. 1055.

64.660. Compensation of members of public boards and commissions.

Nothing in KRS 64.480 to 64.740 is intended to authorize the increase of the compensation now fixed by law for the members of any public board or commission for their services as members of the board or commission, except members of fiscal courts to the extent authorized in subsection (3) of KRS 64.530.

History.

Enact. Acts 1950, ch. 123, § 24; 1980, ch. 188, § 29, effective July 15, 1980.

Compiler's Notes.

KRS 64.490 to 64.499, 64.500 to 64.525, 64.560, 64.570, 64.580, 64.600, 64.620, 64.645, 64.650, 64.670, 64.680 and 64.700, contained in the reference to KRS 64.480 to 64.740 above, have been repealed.

64.690. Applicability of other statutes dealing with compensation — Applicability of KRS 64.368 if population decreases below 70,000.

(1) Except as provided in KRS 64.610 and in this section, KRS 64.480 to 64.740 are intended to supersede any existing statute, fixing the compensation, or authorizing any public officer or body to fix the compensation, of any public officer or employee covered by KRS 64.480 to 64.740.

(2) Any public officer or body which has authority to fix the compensation of any state officer or employee covered by KRS 64.640 shall exercise such authority, subject to the schedule and limits of compensation for the particular office or position prescribed in KRS 64.640. The secretary of the Personnel Cabinet shall have the authority to monitor and require compliance with the provisions of this section and KRS 64.640 and 64.475.

(3) KRS 64.480 to 64.740 are not intended to supersede any existing statute, with respect to the compensation of circuit clerks, county clerks, sheriffs, master commissioners, and receivers, and their deputies and assistants, in counties containing a population of seventy thousand (70,000) or more, or property valuation administrators, their deputies, and assistants, in any county.

(4) If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.

History.

Enact. Acts 1950, ch. 123, § 27; 1966, ch. 255, § 77; 1982, ch. 385, § 24, effective July 1, 1982; 1992, ch. 220, § 9, effective January 1, 1994; 2000, ch. 495, § 3, effective July 14, 2000; 2002, ch. 71, § 6, effective July 15, 2002.

Compiler's Notes.

KRS 64.490 to 64.499, 64.500 to 64.525, 64.560, 64.570, 64.580, 64.600, 64.620, 64.645, 64.650, 64.670, 64.680 and 64.700, contained in the reference to KRS 64.480 to 64.740 above, have been repealed.

OPINIONS OF ATTORNEY GENERAL.

KRS 64.530 governs the procedure for fixing the salary of a trial commissioner. OAG 67-356.

The fiscal court, in its sound discretion, can establish the compensation or salary of the trial commissioner, and such discretion is not subject to the constitutional limitations of Const., § 246 because a trial commissioner is not an officer. OAG 67-356.

64.710. Expense accounts and contingent funds prohibited — Exceptions.

No public officer or employee shall receive or be allowed or paid any lump sum expense allowance, or contingent fund for personal or official expenses, except where such allowance or fund either is expressly provided for by statute or is specifically appropriated by the General Assembly.

History.

Enact. Acts 1950, ch. 123, § 30.

NOTES TO DECISIONS

1. Lump Sum.

Any lump sum payments for office rent and telephone made to magistrate members of fiscal court after the effective date of this section are invalid. Smith v. Campbell, 286 S.W.2d 532, 1955 Ky. LEXIS 99 (Ky. 1955), overruled, Ward v. Southern Bell Tel. & Tel. Co., 436 S.W.2d 794, 1968 Ky. LEXIS 189 (Ky. 1968).

This section prohibits a lump sum, blanket allowance except where expressly provided for by statute. Funk v. Milliken, 317 S.W.2d 499, 1958 Ky. LEXIS 100 (Ky. 1958).

Payment of $50 per month for expenses, without itemization or proof of items, constitutes a blanket allowance in violation of this section. Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

Contract between commonwealth (on behalf of Department of Highways) and one of its employees in which the commonwealth in consideration of employee's transfer to new work station in the state agreed to pay him $300 as a monetary allowance in lieu of his moving expense calls for payment of a lump sum expense allowance which is specifically prohibited by this section and thus such contract is invalid. Matthews v. Ward, 350 S.W.2d 500, 1961 Ky. LEXIS 112 (Ky. 1961).

Payment by a municipal corporation to a public official of a lump sum allowance to cover his auto and travel expenses was improper as a violation of this section. McWhorter v. Richmond, 514 S.W.2d 678, 1974 Ky. LEXIS 323 (Ky. 1974).

Cited:

Glass v. Van Zant, 307 S.W.2d 175, 1957 Ky. LEXIS 72 (Ky. 1957); Burchett v. Leslie, 311 S.W.2d 551, 1957 Ky. LEXIS 10 (Ky. 1957); Hall v. Noplis, 367 S.W.2d 456, 1963 Ky. LEXIS 27 (Ky. 1963); Fleischer v. Jefferson County, 390 S.W.2d 895, 1965 Ky. LEXIS 379 (Ky. 1965).

OPINIONS OF ATTORNEY GENERAL.

A city legislative body had no authority to enact an ordinance which authorized the police judge to receive a monthly

expense allowance of $50.00 for the purpose of defraying his expenses for so-called extra official duties. OAG 62-510.

No lump sum expense allowance can be allowed the county judge (now county judge/executive). OAG 66-431.

A mayor is entitled to receive only his actual expenses incurred in a trip to Washington on behalf of the city and not entitled to receive the sum of $250 for his expenses, which would be a lump sum expense appropriation. OAG 68-118.

The fiscal court may establish a properly budgeted item for a traveling expense account for the county judge (now county judge/executive), but not as a blanket allowance. OAG 69-403.

The fiscal court has no authority to give the county judge (now county judge/executive) a lump sum expense account from any source. OAG 70-110.

A county judge's (now county judge/executive's) salary cannot be raised $100 per month by calling the $100 an expense account. OAG 70-122.

No lump sum expense account for coroners is authorized. OAG 70-482.

The legislative body of a third-class city cannot legally pass by resolution or ordinance a law providing for a stated amount of money per month to be paid to the mayor and members of such governing body, such sum representing expense accounts for these officers, and not require an accounting from such officers for the additional moneys so received. OAG 70-542.

The mayor of a third-class city cannot, in addition to his regular pay as set by statute, receive a stipulated amount of money per month for expenses and not make an accounting for such additional sums so received. OAG 70-542.

Commissioners of a water district created pursuant to KRS Ch. 74 are public officers and as such are prohibited from receiving lump sum expense allowances. OAG 70-641.

Members of the board of business schools and the board's employees should be reimbursed only for their travel and other actual expenses. OAG 70-715.

No member of the State Board of Business Schools or any employee of the Board may receive a per diem allowance. OAG 70-715.

A lump sum expense account for constables would be illegal. OAG 70-751.

Where an ordinance was properly passed granting the mayor a lump sum expense account but it was invalid under the statute, any payment pursuant thereto could possibly be recovered in a taxpayer's suit with the possible exception of actual expenses incurred during the period in which it was paid. OAG 71-55.

The county judge (now county judge/executive) is required to document his actual official expenses as they occur in order that his claims may be properly presented to the fiscal court. OAG 71-417.

A city ordinance allowing the mayor a lump sum allowance of $50 per month for automobile expenses is invalid under this section, since no statute authorizes such an allowance. OAG 72-127.

Pursuant to KRS 64.258 (now repealed), a county may establish for each of the magistrates on the fiscal court a monthly expense allowance not to exceed $100 providing county has sufficient excess funds and all of the magistrates in the county are paid equal amounts. Allowance does not constitute a salary within the meaning of KRS 64.255 (repealed), and if the necessary official expenses of a magistrate exceed the established allowance for a particular month the magistrate may be reimbursed for such excess out of the county treasury provided that such claims are properly documented. OAG 73-551.

Lump sum amount for expenses cannot be paid to a public officer without express statutory authority and unless the expenses were actually incurred and properly documented. OAG 73-597.

A blanket sum from revenue sharing money allocated to the sheriff's office is not valid since it does not conform to KRS 64.530 in providing specific sums for specific purposes, lump sum expense accounts generally being prohibited by this section. OAG 74-79.

Fiscal court could not make a blanket advance appropriation to sheriff for expenses incurred for automobiles, deputies' salaries and expenses incurred by night patrolling of county roads. OAG 74-159.

The fiscal court cannot provide for lump sum expense payments to constables. OAG 74-282.

An ordinance of the fiscal court which approves the selection of a detective by the county attorney is in conflict with this section if it provides for a lump sum expense account for the detective. OAG 74-303.

A county fiscal court order under authority of KRS 67.083, providing that the county will reimburse the county judge (now county judge/executive) for the added expenses of the extra duty involved in executing extra matters not to exceed $50.00 per week, is not a flat amount or lump sum prohibited by this section and, is legal, provided it does not duplicate state payments made under KRS 25.320(2) (repealed) to county judges (now county judges/executives) to defray or partly defray the expenses of their office. OAG 74-347.

It would be improper to pay a city attorney a flat monthly sum of $250 for office expense as he is entitled to be reimbursed only for those office expenses that are actually incurred and for which an itemized accounting has been made. OAG 74-696.

Payment of regular expense allowances to justices of the peace under the authority of KRS 64.258 (now repealed) does not violate this section. OAG 74-716.

The city prosecuting attorney as a public officer is prohibited from receiving any lump sum expense allowance for personal or official expenses except when expressly authorized by statute but is entitled to receive reimbursement for actual and necessary expenses incurred in connection with the performance of his duties. OAG 75-29.

This section would prohibit a county sheriff from providing an expense account for his deputies from the excess fees of his office. OAG 75-317.

This section prohibits the granting of a lump sum expense account to the county treasurer. OAG 75-342.

In a county where the finance system of KRS 64.345 applies, the sheriff's expenses must be paid out of the 75% account as fixed by the fiscal court no later than January 15 of each year and, as KRS 64.346 was designed to pay for expenses actually incurred and documented by the sheriff, the fiscal court has no authority to grant the sheriff a lump sum expense allowance as this section provides that no officer shall receive a lump sum expense allowance except where such allowance is expressly provided for by statute. OAG 75-484.

A city council resolution setting a fixed amount for monthly expenses to be paid each city official in combination with his monthly salary would be illegal, since the city officers are entitled only to expenses actually incurred in connection with official business, and such expenses must be itemized and documented. OAG 76-70.

Under this section no expense account system could be set up for the mayor and/or commissioners since there is no statute authorizing such. OAG 77-110, 1977 Ky. AG LEXIS 673.

The setting of an expense account cannot be considered part of the overall salary for city employees because this section specifically prohibits a city from establishing a lump sum expense account for such employees. OAG 80-276, 1980 Ky. AG LEXIS 362.

No county employee can be given an expense account each month, except where such allowance is expressly provided by statute. OAG 80-334, 1980 Ky. AG LEXIS 331.

A commissioner under the city manager form of government may not receive a monthly lump sum gasoline allowance out of the general revenues of the city in addition to his salary since

this section prohibits the payment of lump sum expenses unless the state legislature has provided otherwise, which it has not done with respect to municipal officers. OAG 81-22, 1981 Ky. AG LEXIS 402.

A county fiscal court does not have to allow an expense account for an elected constable since this section prohibits the fiscal court from providing a lump sum expense account for any officer where there is no statute or specific appropriation by the General Assembly, and there is no law requiring that a constable's office expenses be paid by the county. OAG 81-186, 1981 Ky. AG LEXIS 245.

An annual lump sum allowance of $3600 for travel expenses for a mayor was illegal since public officials and employees are entitled to travel expenses only in response to detailed evidence of the actual expenses incurred. OAG 82-168, 1982 Ky. AG LEXIS 464.

The mayor, in addition to his regular salary, cannot be granted an expense account of a certain amount of money each month, to take care of any expenses; of course, the mayor would be entitled to be reimbursed for any actual expenses incurred in the performance of his duties, such as his travel, etc. OAG 84-351, 1984 Ky. AG LEXIS 36.

This section prohibits payment of a lump sum expense allowance to officers or employees, but it does not preclude payment of actual and necessary expenses. OAG 91-192, 1991 Ky. AG LEXIS 193.

TITLE IX

COUNTIES, CITIES, AND OTHER LOCAL UNITS

Chapter
65. General Provisions Applicable to Counties, Cities, and Other Local Units.
66. Issuance of Bonds and Control of Funds.
67. County Government (Fiscal Courts and County Commissioners).
68. County Finance and County Treasurer.
70. Sheriffs, Constables, and County Police Force.
78. County Police and County Employees Retirement System.
79. Intercity, Intercounty and City-County Compacts for Purchasing and Merit Systems — Retirement and Disability Plans for Employees of Counties and Cities.
95. City Police and Fire Departments.
95A. Fire Protection Personnel.
96. Utilities in Cities.
97. Parks, Playgrounds, And Recreation.
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CHAPTER 65

GENERAL PROVISIONS APPLICABLE TO COUNTIES, CITIES, AND OTHER LOCAL UNITS

Miscellaneous General Provisions.

Section
65.130. Local governments authorized to display historic religious and nonreligious artifacts, monuments, symbols, and texts in public buildings and on public property owned by the local governments.

Special Districts.

Section
65.160. Special districts may be formed by two or more counties.
65.162. Special districts may be expanded to include additional counties.

Interlocal Cooperation Act.

65.210. Short title of KRS 65.210 to 65.300.
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65.241. Public agency must notify establishing local governments of its intent to enter into interlocal agreement — Response or nonresponse of local governments.
65.242. Change in parties to interlocal agreement.
65.243. Status and authorities of interlocal agency created by interlocal agreement — Interlocal agreement controls if more restrictive than KRS 65.210 to 65.300 — Status and authorities are cumulative — No statutory power to tax granted to interlocal agency — Interlocal agency deemed a public agency.
65.245. Cooperative interlocal agreements for the sharing of revenues. [Repealed].
65.250. Contents of agreements.
65.260. Limitations upon agreements — Approval by Attorney General or Department for Local Government — Exemptions.
65.270. Revenue bonds.
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65.290. Copies of agreement must be filed — Status of public agencies in case or controversy involving agreement between or among agencies of other state or United States.
65.300. Approval of agreement by officer or agency required.

Local Government Associations.

65.310. Definitions for KRS 65.310 to 65.314.
65.312. Applicability of Open Records Act and Open Meetings Act to governing bodies of public entity and affiliated organizations — Exceptions — Financial data to be posted on Web — Annual audit.
65.314. Adoption of procurement, personnel, and compensation policies and code of ethics.

Short-Term Borrowing Act.

65.7701. Definitions for KRS 65.7703 to 65.7721.
65.7703. Authority to borrow money in anticipation of taxes or revenues — Notes to be payable only by appropriation.
65.7705. Note maximums.
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65.7711. Notes to be secured by pledge, lien, and charge — Sinking fund or note retirement fund.
65.7713. Enforcement of pledge, lien, and charge — Payment of notes.
65.7715. Estimate of revenues available for securing notes.
65.7717. Sale — Award to be made by legislation.
65.7719. Notification of prescribed note information to state local debt officer. [Repealed.]
65.7721. Short title.

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Section
65.940. Definitions for KRS 65.942 to 65.956.
65.942. Terms and conditions of leases — Leasing for financing property purchases — Sinking fund — Time period for challenging validity of ordinance or resolution.
65.944. When approval by state local debt officer or chief state school officer is required — Technical and advisory assistance on leases.
65.946. Maximum term for leases.
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65.950. Leases as a legal and authorized investment.
65.952. Title to property subject to the lease.
65.954. Construction of KRS 65.940 to 65.956.
65.956. Short title.

MISCELLANEOUS GENERAL PROVISIONS

65.130. Local governments authorized to display historic religious and nonreligious artifacts, monuments, symbols, and texts in public buildings and on public property owned by the local governments.

Any city, county, charter county, urban-county government, consolidated local government, or special district, or any agency or instrumentality thereof, may display historic artifacts, monuments, symbols, and texts, including but not limited to religious materials, in public buildings and on public property owned by that unit of government if the display is consistent with the requirements of KRS 42.705.

History.
Enact. Acts 2006, ch. 34, § 3, effective March 24, 2006.

SPECIAL DISTRICTS

65.160. Special districts may be formed by two or more counties.

(1) Upon approval of the fiscal courts of the counties involved, two (2) or more counties may join together to form a special district to fulfill any purpose which any individual county is presently authorized to fulfill or may be authorized to fulfill in the future.

(2) The membership of the governing body of such multi-county special districts shall be apportioned among the counties in ratio to their population, with each county having at least one (1) member.

(3) Members of the governing body of multi-county special districts may be removed from office as provided by KRS 65.007.

History.
Enact. Acts 1972, ch. 31, § 1; 1980, ch. 18, § 2, effective July 15, 1980; 1980, ch. 188, § 34, effective July 15, 1980.

Compiler's Notes.
This section was formerly compiled as KRS 65.040 and was renumbered by the Reviser under authority of KRS 7.136.

Legislative Research Commission Notes.
This section was amended by two 1980 acts which do not appear to be in conflict and have been compiled together.

OPINIONS OF ATTORNEY GENERAL.

This section involves the formation of special purpose districts by two or more counties and, thus, membership on the governing board is limited to member counties because cities cannot be members of such special purpose districts. OAG 78-39, 1978 Ky. AG LEXIS 689.

A community action corporation is not a special district for purposes of KRS 65.160 to 65.162. OAG 82-196, 1982 Ky. AG LEXIS 479.

65.162. Special districts may be expanded to include additional counties.

(1) Any special district may be expanded to include additional counties within its jurisdiction for performing the function for which it was organized.

(2) Before a county may participate in a multi-county special district, the fiscal court shall determine that participation is feasible and necessary. The determination shall be made only after a duly advertised public hearing has been held by the fiscal court.

(3) When a county is added to a multi-county special district, it shall be given representation on the governing body of the district in the same manner as the other counties within the district.

(4) Members of the governing body of multi-county special districts may be removed from office as provided by KRS 65.007.

History.
Enact. Acts 1972, ch. 31, § 2; 1980, ch. 18, § 3, effective July 15, 1980; 1980, ch. 188, § 35, effective July 15, 1980.

Compiler's Notes.
This section was formerly compiled as KRS 65.050 and was renumbered by the Reviser under authority of KRS 7.136.

Legislative Research Commission Notes.
This section was amended by two 1980 acts which do not appear to be in conflict and have been compiled together.

INTERLOCAL COOPERATION ACT

65.210. Short title of KRS 65.210 to 65.300.

KRS 65.210 to 65.300 may be cited as the Interlocal Cooperation Act.

History.
Enact. Acts 1962, ch. 216, § 1.

NOTES TO DECISIONS

Analysis

1. Housing Federal Prisoners.
2. Application.

1. Housing Federal Prisoners.
Entering into an agreement to house federal prisoners pursuant to this act and KRS 441.025, is a power, not a duty, imposed upon county government. Lexington-Fayette Urban County Detention Center v. Crockett, 786 S.W.2d 869, 1990 Ky. LEXIS 16 (Ky. 1990).

2. Application.
A county's participation in a self-insurance fund does not waive its sovereign immunity from tort suits. Franklin County v. Malone, 957 S.W.2d 195, 1997 Ky. LEXIS 105 (Ky. 1997),

overruled in part, Commonwealth Bd. of Claims v. Harris, 59 S.W.3d 896, 2001 Ky. LEXIS 198 (Ky. 2001), overruled in part, Yanero v. Davis, 65 S.W.3d 510, 2001 Ky. LEXIS 203 (Ky. 2001).

OPINIONS OF ATTORNEY GENERAL.

Any agreement made pursuant to this section through KRS 65.300 must be submitted to the Attorney General for examination and approval and failure to disapprove an agreement within two (2) days of its submission shall constitute approval thereof. OAG 72-465.

This section through KRS 65.300 would allow a complete merger of a department of one governmental unit with a department of another so long as the merger is not used to avoid any existing and continuing legal functions and obligations. OAG 72-465.

The city and county could enter into a contractual agreement to administer the building and housing codes under the Interlocal Cooperation Act, which agreement must contain the information referred to in KRS 65.250 and be approved by the office of the attorney general. OAG 73-570.

When a county or counties make provision for a public defender, a county is a political subdivision but two (2) counties acting jointly do not make a single political subdivision and when the fiscal court acts legally for the county it means that the county, which is a political subdivision, is so acting and the fiscal court in such situation is an instrumentality of a political subdivision or county of a state. OAG 73-638.

A fiscal court cannot contract, under authority of KRS 64.530, with a fourth-class city located within their jurisdiction to detail a deputy sheriff to perform a majority of his duties within the city in return for the payment of his salary and expenses by the city; but, the city and county may enter into a contractual arrangement for police protection pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300. OAG 74-578.

Under the Interlocal Cooperation Act cities within a county could enter into a contract to contribute funds, equipment and employees to the county for a county program to operate a landfill and collect and dispose of garbage throughout the county. OAG 74-706.

Under this act a county and a city therein may enter into a joint city-county contract to establish a joint heritage commission. OAG 74-719.

Where a city and county created, under the Kentucky Interlocal Cooperation Act, a new joint library with its board of trustees to conduct the affairs of the existing public library, they created, by virtue of KRS 65.250, a "body corporate" and any additional creation by the board of trustees of a separate library corporation would be superfluous. OAG 75-288.

If several cities execute an interlocal cooperation agreement to purchase materials and supplies, the agent for the cities, in advertising for bids, should identify the cities which are parties to the agreement as being the real contracting parties and buyers of materials and supplies. OAG 77-498, 1977 Ky. AG LEXIS 280.

Where the Kentucky-Tennessee state line is a common boundary between two (2) cities, the cities could enter into a valid mutual aid contract relating to use of fire-fighting staff and equipment. OAG 77-632, 1977 Ky. AG LEXIS 142.

An interlocal agreement is utilized where cooperative action in the utilization of peace officers and police department members is needed by which means governmental units can take advantage of the extraterritorial police power authorized in KRS 65.255, and while in the performance of their duties, under an interlocal agreement, police officers outside their own city or county shall have the full power of arrest and all other powers they possess in their own city or county. OAG 78-364, 1978 Ky. AG LEXIS 359.

Police officers are officers of the governmental entity in which they serve but under an interlocal agreement, for example, police officers involved in a cooperative undertaking between a city and a county or two (2) cities can avoid the prohibitions in KRS 61.080 and § 165 of the Kentucky Constitution against a person being, at the same time, a county officer and a city officer or an officer in two (2) different cities. OAG 78-364, 1978 Ky. AG LEXIS 359.

The Interlocal Cooperation Act is a device whereby governmental units (including political subdivisions of the state and agencies of the state government) may jointly exercise their power on a basis of mutual advantage and thus provide services and facilities in a more efficient, economical and beneficial manner than they could individually, but only those powers which can be exercised individually can be exercised collectively. OAG 78-364, 1978 Ky. AG LEXIS 359.

Where the several units of local government within the Bluegrass Area Development District sought to upgrade police services in the area of narcotics enforcement by forwarding to BGADD their proportionate share of matching funds for a Law Enforcement Assistance Administration grant, and then have BGADD contract on their behalf with the Kentucky State Police to provide those services, there was no cooperative and joint exercise of police powers requiring utilization of procedures of the Interlocal Cooperation Act. OAG 78-364, 1978 Ky. AG LEXIS 359.

Since a city and a county, individually, may directly operate an ambulance service, they could utilize the provisions of KRS 79.110 to 79.180 or KRS 65.210 to 65.300 to agree to directly operate, jointly, an ambulance service even though KRS 65.730 has been repealed. OAG 79-104, 1979 Ky. AG LEXIS 534.

The intent underlying the Interlocal Cooperation Act is that whatever a unit of government may do alone, it may do jointly with another governmental unit. OAG 79-208, 1979 Ky. AG LEXIS 414.

Each of the local superintendents who comprise the Board of Directors of Eastern Kentucky Educational Development Corporation (EKEDC) may be held liable for the commission of an act or omission to take action regarding EKEDC matters which is a legal cause of injury to another. OAG 79-502, 1979 Ky. AG LEXIS 146.

A county, or two (2) or more counties, acting under an agreement executed pursuant to the provisions of the Interlocal Cooperation Act may issue mortgage revenue bonds to finance the redevelopment of existing housing and to purchase existing housing units so long as the purchase is only a phase or part of the overall redevelopment plan under subsection (3)(j) of KRS 67.083 which will result in the ultimate transfer of title from county government to a private purchaser or to a governmental entity specifically authorized to administer a housing program. OAG 81-346, 1981 Ky. AG LEXIS 89.

A sixth-class city may contract to furnish police protection to other sixth-class cities who are participating in agreements executed under the Interlocal Cooperation Act, KRS 65.210 to 65.300, as long as the city is able to handle police services within its own boundaries and also has the capabilities to furnish police protection services to other cities. OAG 83-363, 1983 Ky. AG LEXIS 139.

An agreement under the Interlocal Cooperation Act is a joint or cooperative undertaking between or among those governmental entities who have become parties to a formal agreement by satisfying the statutory requirements of KRS 65.210 to 65.300; the agreement is limited to public agencies and cannot be extended to include nonpublic agencies. OAG 84-200, 1984 Ky. AG LEXIS 177.

While "public agencies" may enter into agreements executed under the Interlocal Cooperation Act, KRS 65.210 to 65.300, assuming they can exercise unilaterally those functions they seek to exercise collectively, the agreements, including the benefits to be obtained therefrom, are limited to those units of

government who have satisfied the statutory requirements of KRS 65.210 to 65.300 and are actually parties to the agreements. OAG 84-200, 1984 Ky. AG LEXIS 177.

Cities and counties through the utilization of the Interlocal Cooperation Act, KRS 65.210 to 65.300, may own and operate a hot mix bituminous asphalt plant for constructing and maintaining the roads and streets for which the member public agencies are responsible. OAG 84-200, 1984 Ky. AG LEXIS 177.

An agreement pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300, is open to public inspection as it constitutes final action by the city; copies of such agreements must be filed with the county clerk of the county which is party to the agreement before the agreement becomes operative. OAG 84-217, 1984 Ky. AG LEXIS 168.

With regard to fire protection services in rural areas, and a proposal concerning the merger of three fire departments, the cities and the county seeking such merger could possibly utilize the provisions of this act to more effectively and efficiently deliver fire protection services in the areas involved. OAG 90-134, 1990 Ky. AG LEXIS 162.

Other than the requirements of KRS 304.1-120(6) a self-insurance liability pool organized under the Interlocal Cooperation Act which provides coverage to local governments is not subject to the insurance code. OAG 92-124, 1992 Ky. AG LEXIS 124.

The KACo Reinsurance Trust Program (KRT) is an interagency body of two (2) or more public agencies within the meaning of sudivision (1)(k) of KRS 61.870 and is therefore subject to the Open Records Act. OAG 93-65, 1993 Ky. AG LEXIS 300.

Since the four subsections of KRS 224.40-315 are internally inconsistent, Senate Bill No. 2, Acts 1991 (Ex. Sess.) ch. 12, did not give a local solid waste management area's governing body the authority to determine whether management facilities (which are not disposal facilities) are consistent with the local solid waste management plan. OAG 93-67, 1993 Ky. AG LEXIS 302.

The Northern Kentucky Solid Waste Management Area is a cooperative arrangement between three units of government created under KRS 65.210 — 65.300; it can incorporate and enter into contracts as a separate entity, if permitted by the interlocal agreement itself. OAG 93-67, 1993 Ky. AG LEXIS 302.

Three counties joining together pursuant to an interlocal agreement for the purpose of handling solid waste problems does not create a "special district" or a "waste management district" under KRS Chapter 109. OAG 93-67, 1993 Ky. AG LEXIS 302.

Action of two (2) counties in executing an Interlocal Cooperation Act in which they created a trust which issued tax-exempt bonds and used the proceeds to acquire all the stock of a corporation was prohibited by Const., § 170 since the trust's authority is no greater than that of either county, and since the counties cannot own stock in a corporation, neither can the trust. OAG 94-1, 1994 Ky. AG LEXIS 236.

KRS 65.150 did not authorize action of two (2) counties executing interlocal cooperation agreement action in which they created a trust which issued tax-exempt bonds and used the proceeds to acquire all the stock of a corporation which sought to be licensed as an insurance company in order to provide reinsurance to various self-insured groups of the Kentucky Association of Counties since subsection (4) of KRS 65.150 contemplates the purchase of insurance not the purchase of an insurance company and states that the insurance obtained by revenue bonds must be for participating members and not as contemplated by the agreement to entities other than the two (2) participating members. OAG 94-1, 1994 Ky. AG LEXIS 236.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

65.220. Purpose of KRS 65.210 to 65.300.

It is the purpose of KRS 65.210 to 65.300 to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History.

Enact. Acts 1962, ch. 216, § 2; 2000, ch. 464, § 2, effective July 14, 2000; 2020 ch. 98, § 1, effective July 15, 2020.

NOTES TO DECISIONS

Cited in:

N. Ky. Area Dev. Dist. v. Wilson, 612 S.W.3d 916, 2020 Ky. LEXIS 460 (Ky. 2020).

OPINIONS OF ATTORNEY GENERAL.

A city and county may enter into an agreement to combine the city and county purchasing departments under the terms of the Interlocal Cooperation Act and by so doing relieve the county of its obligation and requirement under KRS 68.160 to appoint a purchasing agent. OAG 64-400.

Jails of a second-class city and the county can be combined. OAG 67-64.

Park and recreational facilities of a second-class city and the county may be merged. OAG 67-64.

The fire departments of a second-class city and the county could be merged pursuant to the Interlocal Cooperation Act. OAG 67-64.

The police departments of a city of the second class and the county could be merged under the Interlocal Cooperation Act. OAG 67-64.

One or more cities of the fourth, fifth or sixth class would be authorized to join with the county under the Interlocal Cooperation Act to jointly establish a dog pound, appoint a dog warden and administer such a program if a written agreement was entered into by the parties and approved by the office of the attorney general. OAG 68-108.

The police departments of a city and the county could be merged under the Interlocal Cooperation Act. OAG 68-443.

Where a project was to be undertaken to relocate a highway, a railroad, and divert a river within the cut, the urban renewal and community development agency of the city could serve as the contracting agency, or project authority, to administer the project on behalf of the city, the railroad and the Department (now Bureau) of Highways. OAG 69-96.

Agreements between volunteer fire departments to send men and equipment to assist each other can legally be entered into by virtue of the Interlocal Cooperation Act. OAG 69-213.

Counties could combine in an agreement to construct, operate, or procure the operation of a juvenile detention facility, but such interlocal agreement would have to observe the provisions of KRS 208.130 (now repealed) and would be restricted to those counties of the same category as measured against KRS 208.130. OAG 70-118.

Where a combined project between counties for the construction of a juvenile detention home is entered into under KRS 65.210 to 65.300, the cost may be allocated to each

participating county on some agreed upon and equitable basis. OAG 70-118.

A consolidation of the city and county health departments could be accomplished under the Interlocal Cooperation Act. OAG 70-212.

Where a county wishes to allow city policemen to carry out police work anywhere in the county without having a member of the sheriff's department with them, an agreement between the city and county can be entered into under the Interlocal Cooperation Act. OAG 71-62.

Although a fifth-class city and a sixth-class city could not hire the same policemen, under the Interlocal Cooperation Act they could form a joint system of police protection. OAG 71-85.

Although the fiscal court can establish a direct county disposal system or garbage collection in the unincorporated area of the county, a city could enter into a joint venture with the county in those areas. OAG 71-449.

The police systems of the three (3) fifth-class cities in a county and a proposed county police system could be legally merged or consolidated. OAG 71-478.

Both the city and county can enact measures to control flooding problems which, in turn, means that they can jointly participate in such a program under the Interlocal Cooperation Act. OAG 80-93, 1980 Ky. AG LEXIS 559.

A sixth-class city may contract to furnish police protection to other sixth-class cities who are participating in agreements executed under the Interlocal Cooperation Act, KRS 65.210 to 65.300, as long as the city is able to handle police services within its own boundaries and also has the capabilities to furnish police protection services to other cities. OAG 83-363, 1983 Ky. AG LEXIS 139.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

65.230. Definitions for KRS 65.210 to 65.300.

As used in KRS 65.210 to 65.300, unless the context otherwise requires:

(1) "Interlocal agency" means a separate legal or administrative entity with a governing board that is created in an agreement entered into by public agencies pursuant to the provisions of KRS 65.210 to 65.300;

(2) "Local government" means any:

(a) City;

(b) County;

(c) Consolidated local government;

(d) Urban-county government;

(e) Charter county government; or

(f) Unified local government;

(3) "Municipal interlocal gas utility" means an interlocal agency whose membership is only composed of city governments formed for the purpose of constructing and operating a system that is capable of acquiring, distributing, transmitting, furnishing, or selling natural gas to a federal military installation, municipal utilities, and other industrial and commercial customers; and

(4) "Public agency" means:

(a) Any local government;

(b) Any political subdivision of this state or of another state;

(c) Any agency, board instrumentality, or commission created by a local government;

(d) Any taxing district as defined by KRS 65.180;

(e) Any special purpose government entity as defined in KRS 65A.010(9)(a) to (c), including those entities that are exempt from the definition of special purpose governmental entity under the provisions of KRS 65A.010(9)(d)7. to 9.;

(f) Any interlocal agency;

(g) The Commonwealth or any agency or instrumentality of the state government or of the United States, including but not limited to a state-supported institution of higher education;

(h) Any county school district or independent school district; and

(i) Any private institution of higher education entering into an agreement authorized by KRS 65.240(4) with another public agency.

History.

Enact. Acts 1962, ch. 216, § 3; 1964, ch. 114, § 1; 1982, ch. 87, § 1, effective July 15, 1982; 1988, ch. 393, § 1, effective July 15, 1988; 1994, ch. 356, § 1, effective July 15, 1994; 2000, ch. 464, § 3, effective July 14, 2000; 2003, ch. 80, § 1, effective June 24, 2003; 2020 ch. 98, § 2, effective July 15, 2020; 2026 ch. 161, § 121, effective July 15, 2026.

NOTES TO DECISIONS

Cited in:

N. Ky. Area Dev. Dist. v. Wilson, 612 S.W.3d 916, 2020 Ky. LEXIS 460 (Ky. 2020).

OPINIONS OF ATTORNEY GENERAL.

Under the Interlocal Cooperation Act Ashland and other cities in Kentucky have the authority to enter into an agreement with Huntington and other cities in West Virginia to establish and operate a metropolitan planning agency. OAG 67-193.

Kentucky area development districts created under KRS 147A.050 to 147A.120 are political subdivisions of the state and at the same time are units of local government qualifying under the intergovernmental personnel act of 1970 for the receipt of funds under certain federal programs. This opinion also affirms OAG 73-318. OAG 73-529.

A Kentucky city, which is a "public agency" as defined by this section, may, pursuant to the authority set forth in KRS 82.082, enter into a contract for sewerage services with another unit of government, including a unit located in another state, under the provisions of the Interlocal Cooperation Act, KRS 65.210 et seq., and the Kentucky city can utilize, pursuant to KRS 65.250, the existing administrative machinery of the other "public agency" which is supplying the sewerage service for a designated fee, to serve as the administrative unit for the cooperative undertaking. OAG 81-220, 1981 Ky. AG LEXIS 216.

An agreement under the Interlocal Cooperation Act is a joint or cooperative undertaking between or among those governmental entities who have become parties to a formal agreement by satisfying the statutory requirements of KRS 65.210 to 65.300; the agreement is limited to public agencies and cannot be extended to include nonpublic agencies. OAG 84-200, 1984 Ky. AG LEXIS 177.

While "public agencies" may enter into agreements executed under the Interlocal Cooperation Act, KRS 65.210 to 65.300, assuming they can exercise unilaterally those functions they seek to exercise collectively, the agreements, including the benefits to be obtained therefrom, are limited to those units of government who have satisfied the statutory requirements of

KRS 65.210 to 65.300 and are actually parties to the agreements. OAG 84-200, 1984 Ky. AG LEXIS 177.

Cities and counties through the utilization of the Interlocal Cooperation Act, KRS 65.210 to 65.300, may own and operate a hot mix bituminous asphalt plant for constructing and maintaining the roads and streets for which the member public agencies are responsible. OAG 84-200, 1984 Ky. AG LEXIS 177.

The Kentucky Association of Counties may not, on behalf of the counties, issue revenue bonds under the Interlocal Cooperation Act to partially finance the self-insurance fund since it is not a public agency. OAG 87-20, 1987 Ky. AG LEXIS 68.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

65.240. Joint exercise of power by state agencies with other public agencies — Permissible agreements among private institutions of higher education and school districts.

(1) Any powers, privileges, or authorities exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by KRS 65.210 to 65.300 upon a public agency.

(2) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300, including but not limited to for the sharing of revenues and physical assets. Appropriate action by ordinance, resolution or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any public agency may enter into agreements with another public agency or agencies pursuant to KRS 65.210 to 65.300 to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of its municipal or jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any water, sewage, wastewater, natural gas, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.

(4) A private institution of higher education and one (1) or more county school districts or independent school districts may enter into agreements under KRS 65.210 to 65.300 for the purposes of establishing and operating a program or facility, including a center for child learning and study, designed to help one (1) or more schools meet the goals set out in KRS 158.6451, or for the investment of funds if the Attorney General determines that the proposal is compatible with the United States Constitution as part of the review of the agreement provided in KRS 65.260(2), notwithstanding any other provision of the statutes restricting, qualifying or limiting their authority to do so.

History.

Enact. Acts 1962, ch. 216, § 4(1), (2); 1964, ch. 114, § 2; 1982, ch. 97, § 2, effective July 15, 1982; 1988, ch. 393, § 2, effective July 15, 1988; 2018 ch. 196, § 4, effective July 14, 2018; 2020 ch. 98, § 4, effective July 15, 2020; 2026 ch. 161, § 123, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

For the purpose of the indebtedness limitations of the constitution under Sections 157 and 158 of the Kentucky Constitution, the revenue sharing money actually made available to the city and county for the year in which the proposed new indebtedness for the buildings will be incurred, is a valid part of the two governmental units' revenue for that particular year. OAG 73-263.

In view of the explicit language of this section and KRS 65.270, the Campbell County solid waste management authority can condemn land in its own name for its governmental and contractual purposes as the pre-existing rights of eminent domain vested in the participating governments may be collectively focused and utilized. OAG 73-787.

A joint solid waste disposal authority may contract with a local garbage collector to provide garbage collection services to a city in the interlocal cooperation agreement since the agreement anticipates that the solid waste disposal program will be effectuated on a joint basis rather than a separate, city by city and unilateral basis. OAG 74-42.

A city marshal of one city can be employed as a part-time deputy marshal, police officer, or patrolman of another city through an agreement between the two cities under an Interlocal Cooperation Act containing the information required in KRS 65.150 and approved by the Attorney General. OAG 74-537.

As long as cities and counties comply with KRS 65.210 to 65.300 and meet the financial requirements of the Workmen's Compensation Board and rules and regulations thereof, there is no impediment to cities joining with other cities and/or counties to provide workmen's compensation self-insurance. OAG 78-115, 1978 Ky. AG LEXIS 628.

This section would permit a city and county to grant jointly one cable television franchise, upon advertised bid solicitation, which would service the county and city. OAG 79-208, 1979 Ky. AG LEXIS 414.

By reasonable implication the Interlocal Cooperation Act permits two major types of agreements: (1) the joint conduct by two or more governmental units of a particular function or joint operation of a particular governmental facility, and (2) the provision of governmental services on a contractual basis by one unit of government to one or more additional units. OAG 79-309, 1979 Ky. AG LEXIS 324.

The Interlocal Cooperation Act envisions that governmental units may exercise certain powers jointly, provided each unit participating in the joint activity has the statutory authority to exercise such powers separately or unilaterally, and an interlocal agreement involving even one party which does not have the requisite statutory authority would render such contract null and void. OAG 79-309, 1979 Ky. AG LEXIS 324.

Local school districts are public agencies which may take advantage of the benefits to be derived from entering into an interlocal agreement with each other. OAG 79-500, 1979 Ky. AG LEXIS 156.

What a public agency can do by itself can usually be done jointly with other public agencies under an interlocal cooperation agreement, assuming no statutory bar exists to the contrary. OAG 79-500, 1979 Ky. AG LEXIS 156.

An entity formed through the legal device of an interlocal cooperation agreement by public agencies which are sovereignly immune as a separate administrative entity, would be subject to the doctrine of sovereign immunity. OAG 79-502, 1979 Ky. AG LEXIS 146.

Pursuant to this section, and Ky. Const., §§ 163 and 164, a city and county may engage in a joint cable television franchise, but where the city already has a franchise and is bound until May 31, 1984, unless the holder of the franchise and the city and county all agree to start over and the city and county advertise for a new and joint franchise, this is not possible before that date. OAG 79-566, 1979 Ky. AG LEXIS 72.

A fourth-class city in Kentucky has the authority to operate various utility services and could, under the terms and provisions of the Interlocal Cooperation Act 65.210 et seq., execute a contract with another city to jointly operate such utility services. OAG 79-574, 1979 Ky. AG LEXIS 59.

A interlocal agreement involving one party which does not have the requisite statutory authority would render the contract null and void. OAG 79-574, 1979 Ky. AG LEXIS 59.

Concerning school and educational matters generally, a Kentucky city could not execute an interlocal agreement because cities do not have statutory authority to participate in school matters. OAG 79-574, 1979 Ky. AG LEXIS 59.

A public housing agency operating under interlocal cooperation agreement may carry out a services project, in connection with a HUD section eight existing housing program, within the boundaries of all governmental units participating in the agreement; the Interlocal Cooperation Act provides authority for the public housing agency's performing such function extraterritorially. OAG 79-617.

Since a public housing agency operating under an interlocal cooperation agreement neither owns nor operates the actual buildings rented to persons assisted by the HUD section eight existing housing rent subsidy program, the extraterritoriality involved does not conflict with the concept of housing projects "acquired and operated" by a public housing authority envisioned by KRS Chapter 80. OAG 79-617.

Although a sheriff normally has no authority to enforce city ordinances, pursuant to an interlocal cooperation agreement between a fourth-class city and a county the sheriff could be given complete jurisdiction to enforce city ordinances, as well as state law, within the municipal boundaries. OAG 80-42, 1980 Ky. AG LEXIS 599.

A city housing agency may not operate a section 8 existing housing program (42 USCS § 1437f) within the boundaries of another city. OAG 80-55, 1980 Ky. AG LEXIS 586.

Exclusive of the Interlocal Cooperation Act (KRS Chapter 147A), there is no statutory authority for the Kenton fiscal court to expend money on a railroad bridge located in Boone County a short distance from the Kenton County line which is part of a road which provides the only access to an industrial park, the commercial area of Boone County and I-75 for residents in the southern end of Kenton County; under this section, however, Boone County and Kenton County may execute an interlocal agreement wherein both counties may expend their general or road fund moneys in the reconstruction or repair of the bridge, subject, of course, to the availability of such funds in the county budgets and funds which were not previously committed to specific road and bridge projects. OAG 80-642, 1980 Ky. AG LEXIS 28.

Since cities and counties have the authority under KRS 79.080(2) to establish and operate, individually, plans for the payment of hospitalization benefits, they may, under the authority of the Interlocal Cooperation Act, KRS 65.210 to 65.300 operate such plans jointly with other cities and counties. The agreement must ultimately be approved by the attorney general. OAG 82-294, 1982 Ky. AG LEXIS 346.

Although local governments are responsible for the enforcement of the state building code within the boundaries of their jurisdictions, the department of local government may participate in the local enforcement program to the extent of providing funds for the research and planning of a program whereby various local governments will jointly conduct and operate an enforcement program. (Decision prior to 1982 enactment of KRS 147A.021.) OAG 82-312, 1982 Ky. AG LEXIS 316.

KRS 441.006 (now KRS 441.025) provides for jail agreements under the Interlocal Act, KRS 65.210 to 65.300. OAG 82-334, 1982 Ky. AG LEXIS 276.

Since a county cannot furnish county equipment and road employes to maintain or construct a city street unless such street is made a part of the county road system, the mere fact that an interlocal agreement is being entered into that does not encompass the city street's being made a part of the county road system would not convert it into a lawful project. OAG 82-418, 1982 Ky. AG LEXIS 207.

Not only may cities enact dog control ordinances but they may join together with other cities in joint or cooperative undertakings to handle such matters of common concern. OAG 82-447, 1982 Ky. AG LEXIS 195.

The county has definite and prescribed obligations under KRS Chapter 258, but they do not include the duty to accept dogs at the county pound which were picked up by municipal dog control authorities, particularly where violations of municipal ordinances are involved. While the cities and the county have the authority to enter into a joint or cooperative agreement concerning dog control and the use of the county dog pound, which could include a boarding fee for dogs delivered to the pound by city dog control officers, the cities, in the absence of an agreement with the county, cannot require the county to accept dogs picked up for violations of municipal ordinances; absent an agreement between the cities and the county relative to dog control, the cities will enforce their ordinances only and the county and all peace officers will enforce the provisions of KRS Chapter 258. OAG 82-447, 1982 Ky. AG LEXIS 195.

Where a city and county had not entered into an interlocal agreement relative to a joint cable television franchise, the unilateral solicitation of bids by the county, and the county's acceptance of a bid which included the area of the city, resulted in an illegal award of franchise. OAG 83-321, 1983 Ky. AG LEXIS 176.

While Ky. Const., §§ 163 and 164 dealing with franchises are self-operative in nature, the Interlocal Cooperation Act (KRS Chapter 147A), this section, would permit the city and county to grant jointly one cable television franchise (upon advertised bid solicitation) which would service the county and city and there is nothing in the joint action which would militate against the self-executing nature of Ky. Const., §§ 163 and 164 or against the exclusivity of separate governmental control over the streets and roads of the county and city respectively. OAG 83-321, 1983 Ky. AG LEXIS 176.

Where bridge was entirely located in one county but was used by a few residents of adjacent county, the two (2) counties could enter into an interlocal agreement wherein both counties would contribute money to the repair or reconstruction of the bridge; however, for such an agreement to be valid, it must clearly appear that both counties had a definite public interest in such project and, in addition, the county in which the bridge was located would in no manner surrender its jurisdiction over the bridge. OAG 83-340, 1983 Ky. AG LEXIS 159.

In addition to the express authorization of a contract between an airport authority and a city by which the authority undertakes emergency service involving UPS Aircraft either on UPS runways or on the UPS ramps by KRS 75.050, this section expressly permits any two (2) or more public agencies of Kentucky to contract to do jointly what each can do alone. However, in view of the formalities of this and the following sections, KRS 75.050, standing alone, is sufficient authority for the contract. OAG 85-97, 1985 Ky. AG LEXIS 56.

Pursuant to subsection (1) of this section and subsection (3) of KRS 65.150, counties may associate to self-insure. OAG 87-20, 1987 Ky. AG LEXIS 68.

All peace officers in the Commonwealth of Kentucky are authorized, if not required, to cooperate with federal officials, i.e. the DEA, in enforcing appropriate federal laws against illegal drugs and drug trafficking. Also Kentucky peace officers may, to the extent permitted by federal law, enforce federal drug laws regarding crimes that have occurred in Kentucky in whole or in part, or that otherwise affect a business or person residing in Kentucky. OAG 92-104, 1992 Ky. AG LEXIS 99.

A city may not unilaterally expend funds to maintain a waterway that is not within its boundaries. OAG 12-009, 2012 Ky AG LEXIS 110.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Owsley, The Kentucky Interlocal Cooperation Act, 51 Ky. L.J. 22 (1962).

65.241. Public agency must notify establishing local governments of its intent to enter into interlocal agreement — Response or nonresponse of local governments.

(1) A public agency as defined in KRS 65.230(3)(c) to (f) shall provide written notification to the governing body of each of its establishing local governments of its intent to enter into an interlocal agreement pursuant to the provisions of KRS 65.210 to 65.300 that includes a:

(a) Written description and purpose of the proposed agreement;

(b) Copy of the proposed agreement; and

(c) Statement that the governing body of the establishing local government may either approve or disapprove the public agency's entry into the proposed agreement by sending a written response of its approval or disapproval within thirty (30) days of the receipt of the notification from the public agency. The statement shall also note that if an establishing local government does not respond within that thirty (30) day period, the establishing local government shall be deemed to have approved the proposed entry into the agreement.

(2) In order for a public agency as defined in KRS 65.230(3)(c) to (f) to enter into an agreement pursuant to the provisions of KRS 65.210 to 65.300, each governing body of the local government establishing that public agency, if more than one (1), shall:

(a) Notify the public agency of its approval in writing within thirty (30) days of receipt of the notification as set out in subsection (1) of this section; or

(b) Make no response. If the governing body of the local government makes no response within thirty (30) days of the notification as set out in subsection (1) of this section, the nonresponse shall be deemed to be approval of the proposal.

History.

2020 ch. 98, § 3, effective July 15, 2020.

Legislative Research Commission Notes.

(7/15/2026). 2026 Ky. Acts ch. 161, sec. 121, amended KRS 65.230 to renumber the definition of "public agency" from subsection (3) to subsection (4) of that statute, but failed to make the necessary conforming amendments in subsections (1) and (2) of this section. This oversight has been corrected during codification under KRS 7.136.

65.242. Change in parties to interlocal agreement.

(1) Provided that the terms of the agreement are not being substantively changed, whenever an existing agreement that complies with the requirements of KRS 65.210 to 65.300 is amended solely to join new parties or to remove existing parties, approval of the Attorney General or the Department for Local Government under KRS 65.260 and approval of the agency or officer with jurisdiction under KRS 65.300 shall not be required for the amendment to be effective.

(2) When an agreement is amended pursuant to subsection (1) of this section, a public agency subject to the agreement or the interlocal agency created by the agreement shall not be required to file a copy of the amended agreement with the Secretary of State as set out in KRS 65.290 in order for the amended agreement to become effective.

(3) Public agencies may, by the terms of an agreement made pursuant to KRS 65.210 to 65.300, specify the manner in which parties may be added to or removed from the agreement pursuant to this section. The language may authorize the addition of new parties or the removal of existing parties with or without the requirement of action by each public agency that is a party to the existing agreement or with a requirement of action by a minimum percentage of the legislative bodies of the public agencies that are parties to the agreement.

History.

2016 ch. 92, § 1, effective July 15, 2016; 2020 ch. 98, § 5, effective July 15, 2020; 2022 ch. 76, § 1, effective July 14, 2022.

65.243. Status and authorities of interlocal agency created by interlocal agreement — Interlocal agreement controls if more restrictive than KRS 65.210 to 65.300 — Status and authorities are cumulative — No statutory power to tax granted to interlocal agency — Interlocal agency deemed a public agency.

(1) An interlocal agency created by the interlocal agreement shall constitute an agency and instrumentality of the public agencies party to the interlocal agreement for the purpose of performing the essential governmental functions and the public purposes authorized by the interlocal agreement.

(2) Unless restricted, limited, or otherwise conditioned under the terms of the interlocal agreement, an interlocal agency is authorized to exercise any powers not in conflict with local, state, or federal law or in conflict with the interlocal agreement that are necessary and convenient to accomplish the purposes for which the interlocal agency was created.

(3) To the extent that any of the provisions of the interlocal agreement are more restrictive, or limit the powers, privileges, or authority of the interlocal agency that are otherwise allowed by KRS 65.210 to 65.300, the provisions of the interlocal agreement shall control.

(4) The status and authorities of an interlocal agency granted in this section, unless limited by the interlocal agreement, is cumulative and in addition to the powers and authority of an interlocal agency that may otherwise exist and that are granted or implied under any other laws of the Commonwealth to a specific type of public body that may also function as an interlocal agency under KRS 65.210 to 65.300.

(5) Nothing in this section shall be construed to grant an interlocal agency the ability to levy a tax.

(6) An interlocal agency created by an interlocal agreement shall be deemed to be a public agency as defined in KRS 61.805 and 61.870, and as such shall be subject to KRS 61.800 to 61.850 and 61.870 to 61.884.

History.
2020 ch. 98, § 7, effective July 15, 2020.

65.245. Cooperative interlocal agreements for the sharing of revenues. [Repealed]

History.
Enact. Acts 1992, ch. 87, § 1, effective July 14, 1992; 2000, ch. 464, § 4, effective July 14, 2000; 2002, ch. 346, § 27, effective July 15, 2002; repealed by 2020 ch. 98, § 18, effective July 15, 2020.

65.250. Contents of agreements.

(1) Any agreement entered into under KRS 65.210 to 65.300 shall specify the following:

(a) The purpose and duration of the agreement;

(b) If the agreement creates an interlocal agency:

1. The organization, composition, authority, and nature of the interlocal agency, including the terms and qualifications of the members of the governing authority and their manner of appointment or selection;

2. A statement of the powers delegated to the interlocal agency or any restrictions, limitations, or conditions the contracting parties wish to place on those powers; and

3. A general statement of any responsibilities of the interlocal agency to the parties that established it;

(c) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor; said agreement for financing the joint or cooperative undertaking shall include agreements relative to the respective responsibilities of the public agencies involved for the payment of the employer's share involved in any pertinent pension plan or plans, if any, provided for by KRS 65.280;

(d) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement, including the method for disposing of property upon such partial or complete termination;

(e) If the interlocal agreement concerns the sharing of occupational or insurance premium tax revenue between a city and county, and the county that is a party to the contract is subject to the crediting provisions set forth in KRS 68.197 or 91A.080, the contract shall not be terminable without the consent of each party to the contract; and

(f) Any other necessary and proper matters.

(2) In the event that the agreement does not establish an interlocal agency to conduct the joint or cooperative undertaking, the agreement shall, in addition to paragraphs (a), (c), (d), (e), and (f) enumerated in subsection (1) of this section, contain the following:

(a) Provision for an administrator responsible for the joint or cooperative undertaking; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

History.
Enact. Acts 1962, ch. 216, § 4(3), (4); 1964, ch. 114, § 4; 1966, ch. 255, § 78; 2020 ch. 98, § 6, effective July 15, 2020; 2024 ch. 158, § 4, effective July 15, 2024.

OPINIONS OF ATTORNEY GENERAL.

Where a city and a county acting under the Interlocal Cooperation Act and with intent to take advantage of the extraterritorial police power permitted by the act enter into an agreement authorizing all members of the city police force to exercise the power of arrest and other powers that they possess, in any territory of the county outside the city limits, this does not represent a cooperative and joint exercise of police power as required by KRS 64.240 (now repealed) nor does the failure to mention the matter of financing the joint or cooperative undertaking conform with subsec. (1)(d) of this section and the failure to create a separate legal or administrative entity does not conform to subsec. (2) of said section. The agreement therefore does not comply with either the intent or the terms of the Interlocal Cooperation Act and cannot be approved by the attorney general as required by this section. OAG 69-113.

An interstate cooperative agreement could legally provide that the Tennessee watershed district would acquire such easements or flowage rights on Tennessee lands from Tennessee landowners whose lands might be flooded as a result of the construction and operation of two Kentucky dams, subject to the Tennessee district's being reimbursed, by the Kentucky district, for its expenses in acquiring, recording and transferring such rights to the Kentucky district if such agreement complied with the requirements of this section, KRS 65.260 and 65.290. OAG 69-204.

Where a city and county created, under the Kentucky Interlocal Cooperation Act, a new joint library with its board of trustees to conduct the affairs of the existing public library, they created a "body corporate" and any additional creation by the board of trustees of a separate library corporation would be superfluous. OAG 75-288.

An interlocal agreement and the steps taken to effectuate Ky. Const., §§ 163 and 164 may properly include joint advertising, joint consideration of bids, joint awarding of a cable television franchise covering city and county areas, a provision that the consideration payable to the city and county shall be a certain percentage of the gross receipts from city subscribers going to the city and a percentage of gross receipts of county subscribers going to the county respectively, and the joint control over the franchise. OAG 79-208, 1979 Ky. AG LEXIS 414.

Where either a joint or cooperative agreement is involved, the agreement may provide for either a separate legal or administrative entity to conduct the undertaking or it may utilize the existing administrative machinery of one or more of

the governmental units which are parties to the contract. OAG 79-309, 1979 Ky. AG LEXIS 324.

Although the articles of incorporation of an entity purported to show that the apparent purpose of the corporation was to perform governmental activity, specifically to assist those political subdivisions of the state of Kentucky located in Campbell County in performing their municipal functions, the articles did not fully comply with this section and there was no indication that it had complied with KRS 65.260, therefore, since the entity had no formal statutory authority that would make it an instrumentality of a political subdivision as defined in KRS 61.420(5) for social security purposes, social security should be paid by the entity directly to the social security administration as any other nonprofit corporation would do. OAG 80-348, 1980 Ky. AG LEXIS 307.

A Kentucky city, which is a "public agency" as defined by KRS 65.230, may, pursuant to the authority set forth in KRS 82.082, enter into a contract for sewerage services with another unit of government, including a unit located in another state, under the provisions of the Interlocal Cooperation Act, KRS 65.210 et seq., and the Kentucky city can utilize, pursuant to this section, the existing administrative machinery of the other "public agency" which is supplying the sewerage service for a designated fee, to serve as the administrative unit for the cooperative undertaking. OAG 81-220, 1981 Ky. AG LEXIS 216.

A city of the fifth class which entered into an interlocal agreement concerning fire protection could not pass the yearly charge on to its citizens in the absence of a statutory authorization for such special assessment. OAG 84-61, 1984 Ky. AG LEXIS 325.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Preschool education program for four (4) year old children, 704 KAR 3:410.

65.260. Limitations upon agreements — Approval by Attorney General or Department for Local Government — Exemptions.

(1) No agreement made pursuant to KRS 65.210 to 65.300 shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that to the extent of actual and timely performance thereof by an interlocal agency, that performance may be offered in satisfaction of the obligation or responsibility.

(2) Except as provided in subsections (3) and (4) of this section, every agreement made pursuant to KRS 65.210 to 65.300 shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state. The Attorney General shall approve any agreement submitted to his or her office under this subsection unless he or she finds that it does not meet the requirements set forth in KRS 65.210 to 65.300. If the agreement does not meet these requirements, the Attorney General shall detail in writing, addressed to the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. The failure of the Attorney General to disapprove an agreement submitted under this subsection within thirty (30) days of its submission shall constitute approval thereof.

(3)(a) In lieu of the requirements of subsection (2) of this section, agreements involving only local governments, an agency, board, instrumentality, or commission created exclusively by one (1) or more local governments, or any combination thereof, shall prior to and as a condition precedent to its entry into force, be submitted to the Department for Local Government. The department shall determine whether the agreement is in proper form and shall approve any agreement submitted to it under this subsection unless it finds that the agreement does not meet the requirements set out in KRS 65.210 to 65.300. If the agreement does not meet these requirements, the department shall detail, in writing, addressed to the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of KRS 65.210 to 65.300. The failure of the department to disapprove an agreement submitted under this subsection within thirty (30) days of its submission shall constitute approval thereof.

(b) The approval of an agreement by the Department for Local Government under paragraph (a) of this subsection shall be deemed final and conclusive that the agreement meets the requirements of KRS 65.210 to 65.300, and the agreement shall not thereafter be subject to challenge as to the validity of its formation.

(4) The submission of an interlocal cooperative agreement to the Attorney General or the Department for Local Government as provided in subsections (2) and (3) of this section shall not be required for any cooperative agreement which involves:

(a) Only the construction, reconstruction, or maintenance of a municipal road or bridge, provided a written agreement is approved by each of the affected governing bodies of the public agencies, or the administrative head of a public agency if there is no governing body; or

(b) Interlocal cooperative agreements between school boards and local governments.

History.

Enact. Acts 1962, ch. 216, § 4(5), (6); 1964, ch. 114, § 3; 1992, ch. 46, § 1, effective July 14, 1992; 2000, ch. 464, § 1, effective July 14, 2000; 2007, ch. 47, § 44, effective June 26, 2007; 2010, ch. 117, § 51, effective July 15, 2010; 2020 ch. 98, § 9, effective July 15, 2020.

OPINIONS OF ATTORNEY GENERAL.

Although two (2) cities have entered into an interlocal agreement, such agreement could be mutually dissolved by the cities at any time and no binding effect would result from a contract with a police authority and any contract between the Kentucky crime commission through the Kentucky law enforcement foundation fund would need to be entered into with the actual subdivisions involved. OAG 73-603.

Although the articles of incorporation of an entity purported to show that the apparent purpose of the corporation was to perform governmental activity, specifically to assist those political subdivisions of the state of Kentucky located in Campbell County in performing their municipal functions, the articles did not fully comply with KRS 65.250 and there was

no indication that it had complied with this section, therefore, since the entity had no formal statutory authority that would make it an instrumentality of a political subdivision as defined in KRS 61.420(5) for social security purposes, social security should be paid by the entity directly to the social security administration as any other nonprofit corporation would do. OAG 80-348, 1980 Ky. AG LEXIS 307.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Owsley, The Kentucky Interlocal Cooperation Act, 51 Ky. L.J. 22 (1962).

65.270. Revenue bonds.

(1) Whenever any two (2) or more public agencies, as defined in KRS 65.230, enter into an agreement for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300, any public agency acting separately or jointly with one (1) or more of any other public agencies, may acquire, construct, maintain, add to, and improve the necessary property, real and personal, which is required in order to perform the functions under the agreement, and for the purpose of defraying the costs incident to the performance of the agreement, may borrow money and issue negotiable revenue bonds.

(2) Any public agency or agencies may borrow money and issue bonds under this section pursuant to an order, resolution, or ordinance of its or their legislative or administrative body or bodies, which order, resolution, or ordinance shall set forth the terms of the agreement in full, the amount of the revenue bonds to be issued, and the maximum rate of interest. In every instance the order, resolution, or ordinance shall provide that the joint or cooperative action is being undertaken pursuant to the provisions of KRS 65.210 to 65.300.

(3) The bonds may be issued to bear interest at a rate or rates or method of determining rates as the public agency or agencies determines, payable at the times and at a place or places as the public agency or agencies determines.

(4) The bonds may provide that they or any of them may be called for redemption prior to maturity.

(5) Any public agency is empowered to accept donations or gifts to the joint or cooperative action from any source and to accept appropriations and grants to the joint or cooperative action from the federal government or its agencies and appropriations from the state or any county, city, or other political subdivision and, at the option of the public agency or agencies, to pledge any donations, gifts, or appropriations to the payment of revenue bonds issued to finance the cost of a joint or cooperative action.

(6) Bonds issued pursuant to this section shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall be valid and sufficient for all purposes the same as if he had remained in office until delivery. The bonds shall be sold in a manner and upon terms as the public agency or agencies deem best. The bonds shall be payable solely from the revenue derived from the joint or cooperative action and shall not constitute an indebtedness of the state, county, city, or political subdivision. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 65.210 to 65.300.

(7) All money received from the bonds shall be applied solely for the acquisition, construction, maintenance, improvement, or operation of the joint or cooperative action, and the necessary expense of preparing, printing, and selling the bonds, or to advance the payment of interest on the bonds during the first three (3) years following the date of the issuance of the bonds.

(8) The rents, royalties, fees, rates, and charges for the service or sale of the joint or cooperative action shall be fixed and revised from time to time so as to be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal of the bonds when due, and to provide for the operation and maintenance of the joint or cooperative action and an adequate depreciation account.

History.

Enact. Acts 1962, ch. 216, § 5; 1996, ch. 274, § 4, effective July 15, 1996; 2020 ch. 98, § 10, effective July 15, 2020.

OPINIONS OF ATTORNEY GENERAL.

Given the explicit language of this section and KRS 65.240, the Campbell County solid waste management authority can condemn land in its own name for its governmental and contractual purposes as the pre-existing rights of eminent domain vested in the participating governments may be collectively focused and utilized. OAG 73-787.

The interlocal cooperative board may act as the fiscal agent for projects funded through the department of education. OAG 74-351.

A county or group of counties operating under an interlocal agreement and issuing revenue bonds which are "public obligations" under subsection (1)(b) of KRS 58.410 would be subject to the interest rate provisions of KRS 58.430 which repealed the provisions of subsection (3) of this section upon its enactment. OAG 81-346, 1981 Ky. AG LEXIS 89.

The Kentucky Association of Counties may not, on behalf of the counties, issue revenue bonds under the Interlocal Cooperation Act to partially finance the self-insurance fund since it is not a public agency. OAG 87-20, 1987 Ky. AG LEXIS 68.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Acquisition and development of public projects by governmental units and agencies through revenue bonds, KRS ch. 58.

Facsimile signatures and seals on public securities and options as to negotiability, KRS 61.390.

65.280. Effect of civil service laws and regulations upon transferred employees.

(1) In the event that a public agency or agencies determine to transfer any of its employees to the joint or cooperative action, which employees are subject to any civil service laws or regulations, such employees shall not lose any rights or benefits which have accrued

prior to such transfer. Such employees, when transferred, to the joint or cooperative action from a public agency or agencies that are subject to any civil service laws or regulations, and who have completed probationary appointments with the public agency or agencies prior to the date of transfer, shall be considered as having satisfied all of the qualifications of the joint or cooperative action and shall be given full and regular appointments as defined in such laws or regulations as of the date they are transferred to the joint or cooperative action.

(2) In the event that the joint or cooperative action is such that its employees would be afforded civil service rights or benefits if they were employees of a county or city, such employees shall be afforded the protection of civil service laws or regulations; provided, however, that such protection is available under the laws of this state.

(3) In the event the joint or cooperative action employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the joint or cooperative action has provided a pension plan to which such employee is eligible and such employee has elected, in writing, to participate therein. Until such election, the joint or cooperative action shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the joint or cooperative action shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer and employee, unless an agreement, not adversely affecting the employee's interest, or expectancy, has been made pursuant to KRS 65.250(1)(c) for the payment of the employer's pension obligation.

History.

Enact. Acts 1962, ch. 216, §§ 6, 7; 1964, ch. 114, § 5; 1966, ch. 255, § 79; 1972, ch. 383, § 1; 2020 ch. 98, § 16, effective July 15, 2020.

OPINIONS OF ATTORNEY GENERAL.

Employees of the interlocal cooperative board who are employed for special project purposes are entitled to all of the civil service and fringe benefits enjoyed by employees of the member agency. OAG 74-351.

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

65.290. Copies of agreement must be filed — Status of public agencies in case or controversy involving agreement between or among agencies of other state or United States.

(1) Before any agreement made pursuant to KRS 65.210 to 65.300 shall become operative or have force and effect, a certified copy thereof shall be filed with the Secretary of State. After the original filing of an agreement as provided in this section, no additional filing is required for agreements amended solely for the addition or removal of parties as provided under KRS 65.242.

(2) If an agreement entered into pursuant to KRS 65.210 to 65.300 is between or among one (1) or more public agencies of this state and one (1) or more public agencies of another state or of the United States, that agreement may have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. An action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

History.

Enact. Acts 1962, ch. 216, § 8; 1964, ch. 114, § 6; 2020 ch. 98, § 11, effective July 15, 2020.

NOTES TO OPINIONS

Attorney General Opinions

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

65.300. Approval of agreement by officer or agency required.

If an agreement made pursuant to KRS 65.210 to 65.300 deals in whole or in part with the provisions of services or facilities over which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having that power of control and shall be approved or disapproved by the officer or agency as to all matters within the jurisdiction of the officer or agency in the same manner and subject to the requirements governing the action of the Attorney General pursuant to subsection (2) of KRS 65.260. The requirement of this section shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General under subsection (2) of KRS 65.260.

History.

Enact. Acts 1962, ch. 216, § 9; 2020 ch. 98, § 12, effective July 15, 2020.

NOTES TO OPINIONS

Attorney General Opinions

A city may withdraw its participation from an existing tourism commission in accordance with its "home rule" powers

under KRS § 82.082. The legislature allows for a separate tax by allowing local governments to act separately in forming tourism commissions in KRS § 91A.350(1) and (2). OAG 2015-07, 2015 Ky. AG LEXIS 42.

LOCAL GOVERNMENT ASSOCIATIONS

65.310. Definitions for KRS 65.310 to 65.314.

As used in KRS 65.310 to 65.314:

(1) "Public entity" means any organization that represents a statewide association of local governments where the majority of its governing body is composed of mayors, county judges/executive, or other local elected officials, and whose membership includes any or a combination of the following:

(a) Cities;

(b) Counties;

(c) Charter counties;

(d) Urban-counties;

(e) Consolidated local governments; and

(f) Unified local governments; and

(2) "Affiliated organization" means any incorporated or unincorporated organization staffed, managed, or administered by a public entity.

History.

Enact. Acts 2010, ch. 76, § 2, effective July 15, 2010.

65.312. Applicability of Open Records Act and Open Meetings Act to governing bodies of public entity and affiliated organizations — Exceptions — Financial data to be posted on Web — Annual audit.

The governing body of a public entity and the governing body of an affiliated organization shall:

(1) Be subject to the provisions of KRS 61.870 to 61.884, and all records of the public entity and its affiliated organizations shall be deemed open records and subject to public inspection, unless the record:

(a) Is excluded from inspection under KRS 61.878;

(b) Includes information that would provide an unfair competitive advantage to private sector competitors providing insurance coverage or financing services in the Commonwealth;

(c) Is generated by the public entity or an affiliated organization, is generally recognized as confidential or proprietary, and which, if openly disclosed, would permit an unfair commercial advantage to competitors of the public entity or an affiliated organization; or

(d) Relates to a fraudulent insurance claim investigation conducted by the public entity or an affiliated organization and does not become evidence in a criminal or civil action. This paragraph shall not be construed to affect the rights of parties in a civil or criminal action to obtain copies of the records pursuant to the rules of discovery applicable to that action;

(2) Be subject to the provisions of KRS 61.800 to 61.850, with the following exceptions:

(a) Meetings may be closed in accordance with KRS 61.810; and

(b) Proceedings to discuss insurance rates, proposed rates, or anything that relates to rates if that discussion would jeopardize the competitiveness of the public entity or an affiliated organization may be closed, as well as proceedings which would provide an unfair competitive advantage to private sector competitors of the public entity or an affiliated organization providing insurance coverage or financing services in the Commonwealth;

(3) By January 15 of each year, establish a schedule of regular meetings consistent with KRS 61.820, and conduct the regular meetings in accordance with the Open Meetings Act, KRS 61.805 to 61.850. A public entity and its affiliated organizations may conduct special or emergency meetings, as set out in KRS 61.823, over telephonic conference call, provided that the public entity or the affiliated organization otherwise adheres to the requirements of KRS 61.805 to 61.850 and provides a designated location or locations where members of the public may attend and hear the audio of each individual participating in the telephonic meeting;

(4) By January 1, 2011, provide a Web site that will allow citizens Internet access to substantial and substantive financial data about expenditures of the public entity and its affiliated organizations. Information on the Web site shall be updated at least on a monthly basis and shall provide the following information not considered confidential by state or federal law:

(a) The name of the recipient of the funds of the public entity and its affiliated organizations;

(b) The expenditure type by vendor;

(c) The amount of the expenditure;

(d) A description of the purpose of the expenditure, if available;

(e) The payment date of the expenditure;

(f) An electronic link to a database displaying the information contained in paragraphs (a) to (e) of this subsection, which information shall remain in the database for at least three (3) years after the payment date of the expenditure;

(g) The budget adopted by the governing body and its affiliated organizations; and

(h) The complete annual audit results on a continuing basis;

(5) Beginning August 1, 2010, undergo an annual audit performed by a certified public accountant or the Auditor of Public Accounts. The contract with the certified public accountant shall specify:

(a) That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts; and

(b) That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers before and after the release of the audit; and

(6) Allow the Office of the Auditor of Public Accounts to conduct, at its discretion, an examination of the public entity and its affiliated organizations.

History.

Enact. Acts 2010, ch. 76, § 3, effective July 15, 2010.

65.314. Adoption of procurement, personnel, and compensation policies and code of ethics.

By August 1, 2010, the governing body of a public entity and the governing body of any affiliated organization of the public entity shall each:

(1) Adopt a procurement policy consistent with KRS 45A.345 to 45A.460 that includes, notwithstanding KRS 45A.380(3) and (10), a transparent, competitive, selection process for licensed professional services, bond underwriting and bond counsel services, and financial and insurance products and services;

(2) Approve a detailed, equitable personnel and compensation policy;

(3) Approve contracts only in accordance with its bylaws and procurement policy;

(4) Establish an independent process to receive, analyze, investigate and resolve concerns relating to the public entity and its affiliated organizations, including alleged violations of the code of ethics required by subsection (6) of this section;

(5) Conduct training for its members relating to their legal and fiduciary responsibilities; and

(6) Adopt a code of ethics that shall include:

(a) Standards of conduct for its members and its officers and employees;

(b) Requirements for creation and annual filing of financial disclosure statements for its members and its officers and management personnel; and

(c) A policy on the employment of:

1. Individuals related to its members; and

2. Individuals related to its officers and employees.

History.

Enact. Acts 2010, ch. 76, § 4, effective July 15, 2010.

SHORT-TERM BORROWING ACT

65.7701. Definitions for KRS 65.7703 to 65.7721.

As used in KRS 65.7703 to 65.7721, unless the context otherwise requires:

(1) "Governmental agency" means any county, urban-county government, consolidated local government, city, taxing district, special district, school district, or other political subdivision of the Commonwealth or body corporate or politic or any instrumentality of the foregoing.

(2) "Governing body" means the board, council, commission, fiscal court, or other body or group that is authorized by law to act on behalf of a governmental agency.

(3) "Legislation" means an order, resolution, or ordinance of the governing body.

(4) "Notes" means notes authorized by KRS 65.7703 to 65.7721 which may be secured by taxes or revenue or taxes and revenue.

(5) "Revenue" means all funds received by a governmental agency which are not taxes, including but not limited to excises, transfers, service fees, assessments, and occupational license fees.

(6) "State local debt officer" means the officer so designated in KRS 66.045.

(7) "Taxes" means taxes properly levied upon real or personal property.

History.

Enact. Acts 1990, ch. 76, § 1, effective July 13, 1990; 1994, ch. 508, § 22, effective July 15, 1994; 2002, ch. 346, § 35, effective July 15, 2002.

65.7703. Authority to borrow money in anticipation of taxes or revenues — Notes to be payable only by appropriation.

A governmental agency shall have power and authority, by legislation duly adopted, to borrow moneys from time to time in any fiscal year in anticipation of the receipt of current taxes or revenues, or both, to evidence the obligation by notes, appropriately designated, and to authorize, issue, and sell notes in the manner, and subject to the limitations provided in KRS 65.7703 to 65.7721. Notes shall be payable only from moneys appropriated by the governing body of the governmental agency. The power to borrow from time to time shall include, but not be limited to, the power to make a single authorization and issue and sell portions of the amount of authorized notes whenever desired during the fiscal year.

History.

Enact. Acts 1990, ch. 76, § 2, effective July 13, 1990.

65.7705. Note maximums.

No governmental agency shall authorize or issue notes in any one (1) fiscal year which in the aggregate shall exceed seventy-five percent (75%) of:

(1) In the case of notes payable solely from and secured by a pledge of taxes, the amount of taxes levied and to be collected for the current fiscal year;

(2) In the case of notes payable solely from and secured by a pledge of revenues, the amount of revenues anticipated to be collected during the current fiscal year; and

(3) In the case of notes payable from and secured by a pledge of taxes and revenues, the sum of taxes and revenues anticipated to be collected during the current fiscal year.

History.

Enact. Acts 1990, ch. 76, § 3, effective July 13, 1990.

65.7707. Maturity of notes — Payment of interest.

Notes payable shall mature on a date determined by the governing body which shall be no later than the last day of the fiscal year in which the notes are issued. Interest on notes from the date thereof shall be payable at their maturity or payable in installments at earlier dates. Interest on the notes may be at a rate, rates or method of determining rates the governing body of the governmental agency unit may determine.

History.

Enact. Acts 1990, ch. 76, § 4, effective July 13, 1990.

65.7709. Time of issuance — Format.

Notes shall be dated as of a date not more than thirty (30) days after the effective date of the legislation authorizing the notes. Notes shall be issued in the

denominations, shall be subject to the rights of prior redemption, shall have the privileges of exchange and registration, shall be dated, shall be in registered or bearer form, with or without coupons, and shall be payable at the place or places, all as the governing body of the governmental agency may determine.

History.
Enact. Acts 1990, ch. 76, § 5, effective July 13, 1990.

65.7711. Notes to be secured by pledge, lien, and charge — Sinking fund or note retirement fund.

Notes issued in a single fiscal year, shall be equally and ratably secured by the pledge of, security interest in, and a lien and charge on, the taxes or revenues, or both, of the governmental agency specified in the authorizing legislation which are in the process of collection and are to be received during the period when the notes will be outstanding. The pledge, lien, and charge shall be fully perfected as against the governmental agency, all creditors, and all third parties in accordance with the terms of the legislation from and after the delivery of the notes until the notes are paid in full. The legislation may establish one (1) or more sinking funds or note retirement funds and provide for periodic or other deposits therein, and may contain such covenants or other provisions as the governmental agency shall determine. In every case, the taxes and revenues pledged shall be those taxes and revenues which are the subject of appropriation for the current fiscal year. The holders or owners of notes may be given the right to have the notes continually secured by the faith and credit of the governmental agency, and each note shall bear on its face a statement to that effect and to the effect that the right of payment on the note is limited to the taxes or revenues pledged under the legislation of the governmental agency authorizing the notes.

History.
Enact. Acts 1990, ch. 76, § 6, effective July 13, 1990.

65.7713. Enforcement of pledge, lien, and charge — Payment of notes.

The holder of the notes may enforce a pledge of, security interest in, and lien and charge on, the taxes or revenues, or both, of the governmental agency against all state and local public officials in possession of any of the taxes or revenues at any time which may be collected directly from the official upon notice by the holder for application to the payment of a note as and when due or for deposit in the applicable sinking fund or note retirement fund at the times and in the amounts specified in the note. Any state or local public official in possession of any taxes or revenues which are pledged shall make payment, against receipt therefor, directly to the holder of the notes and shall be discharged from any further liability or responsibility for taxes or revenues. If the payment is a payment in full of the notes, it shall be made against surrender of the notes to the state or local public official for delivery to the governmental agency in the case of payment in full, otherwise it shall be made against production of the notes for notation thereon of the amount of the payment.

History.
Enact. Acts 1990, ch. 76, § 7, effective July 13, 1990.

65.7715. Estimate of revenues available for securing notes.

Prior to each authorization of notes, authorized officers of the governmental agency shall make an estimate of the taxes or revenues, or both, whichever is to secure the payment of the notes, which are estimated to be received during the period when the notes will be outstanding. The estimate shall take due account of the past and anticipated collection experience of the governmental agency and of current economic conditions. The estimate shall be certified by the officer as of a date not more than thirty (30) days prior to the effective date of the legislation authorizing the notes.

History.
Enact. Acts 1990, ch. 76, § 8, effective July 13, 1990.

65.7717. Sale — Award to be made by legislation.

Notes may be sold at public, private, or invited sale as the governing body of the governmental agency may determine. Any public sale shall be advertised and conducted in the manner and subject to the conditions provided for a public sale of bonds pursuant to KRS Chapter 424. The governing body of the governmental agency shall award the notes by legislation to specified purchasers at a specified price.

History.
Enact. Acts 1990, ch. 76, § 9, effective July 13, 1990.

65.7719. Notification of prescribed note information to state local debt officer. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1990, ch. 76, § 10, effective July 13, 1990; 1994, ch. 508, § 23, effective July 15, 1994) was repealed by Acts 2008, ch. 35, § 4, effective July 15, 2008.

65.7721. Short title.

KRS 65.7701 to 65.7721 may be cited as the Short-term Borrowing Act.

History.
Enact. Acts 1990, ch. 76, § 11, effective July 13, 1990.

GOVERNMENTAL LEASING ACT

65.940. Definitions for KRS 65.942 to 65.956.

As used in KRS 65.942 to 65.956, unless the context otherwise requires:

(1) "Acquire" means to purchase, install, equip, or improve personal property or real property pursuant to KRS 65.942 to 65.956.

(2) "City" means any municipal corporation of any class incorporated in the Commonwealth.

(3) "Construct" means building reconstruction, replacement, extension, repairing, betterment, development, equipment, embellishment, or improvement.

(4) "County" means a political subdivision of the Commonwealth created and established by the laws of the Commonwealth.

(5) "Governmental agency" means any county, urban-county government, consolidated local government, city, taxing district, special district, school district, or other political subdivision of the Commonwealth or body corporate or politic or any instrumentality of the foregoing.

(6) "Governing body" means the board, council, commission, fiscal court, or other body or group that is authorized by law to acquire property for each respective governmental agency.

(7) "Lease" means a lease, lease-purchase, lease with option to purchase, installment sale agreement, or other similar agreement entered into pursuant to KRS 65.942 to 65.956.

(8) "Lease price" means the total of amounts designated as payments of principal under a lease.

(9) "Net interest cost" means the total of all interest to accrue and fall due through the last payment due date on a lease, plus any discount or minus any premium included in the lease price.

(10) "Person" means any individual, corporation, organization, government or governmental subdivision, or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(11) "Personal property" means personal property, appliances, equipment, or furnishings, or an interest therein, whether movable or fixed, deemed by the governing body of a governmental agency to be necessary, useful, or appropriate to one (1) or more purposes of the governmental agency, but shall not include real property.

(12) "Real property" means land, buildings, fixtures, and interests in real property, deemed by the governing body of the governmental agency to be necessary, useful, or appropriate to one (1) or more purposes of the governmental agency.

(13) "Revenue" means all funds received by a governmental agency which are not taxes, including but not limited to excises, transfers, service fees, assessments, and occupational license fees.

(14) "School district" means any county school district or independent school district organized and existing pursuant to the laws of the Commonwealth.

(15) "Special district" means any agency, authority, or political subdivision of the Commonwealth which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the Commonwealth except a city, county, or school district.

(16) "State local debt officer" means the officer so designated in KRS 66.045.

(17) "Taxes" means taxes properly levied upon real or personal property.

(18) "Taxing district" means any taxing district created under KRS 65.180 to 65.190.

History.

Enact. Acts 1990, ch. 81, § 1, effective July 13, 1990; 1994, ch. 508, § 24, effective July 15, 1994; 2002, ch. 346, § 36, effective July 15, 2002.

65.942. Terms and conditions of leases — Leasing for financing property purchases — Sinking fund — Time period for challenging validity of ordinance or resolution.

(1)(a) The governing body of a governmental agency may approve by ordinance, order, or resolution and may execute, perform, and make payments under a lease with any person, to acquire or construct personal property or real property for any public purpose.

(b) The lease may be on the terms and conditions that are deemed appropriate by the governing body.

(c) Leases may be payable in whole or in part from taxes and may be obligations of the governmental agency for the entire term of the lease or for a period that does not exceed one (1) year.

(d) Leases may contain an option or options to renew or extend the term and may be made payable from a pledge of all or any part of any revenues, funds, or taxes or any combination of any revenues, funds, or taxes, which are available to the governmental agency for its public purposes.

(2)(a) A governmental agency may pledge any revenues or taxes as security for payment under leases, and the leases may provide that the governmental agency may terminate its obligations under the lease at the expiration of each year during the term of the lease.

(b) A governmental agency may pledge any revenue or taxes as security for payment under a lease regardless of any right to terminate.

(c) The lease may provide for the payment of interest on the unpaid amount of the lease price at a rate, rates, or method of determining rates and may contain prepayment provisions, termination penalties, and other provisions determined by the governing body of the governmental agency.

(3)(a) Prior to entering into a lease for the financing of the purchase of any personal property or real property, a governmental agency shall comply with other provisions of law regarding the purchase of property for public purposes.

(b) The lease shall be deemed an instrument for financing and provisions of law regarding purchases of property for public use shall not apply to the lease itself.

(c) Leases may be entered into on a publicly advertised competitive basis or on a private negotiated basis without advertisement.

(4) A sinking fund prescribed by KRS 66.081 shall be established for the payment of leases which are not annually renewable and which are payable in whole or in part from taxes and lease payments under those leases shall be made from the sinking fund.

(5)(a) Any action challenging the validity or enforceability of any ordinance or resolution adopted by a governmental agency approving a lease shall be brought within thirty (30) days from the date on which notice of the adoption of the ordinance or resolution is published in accordance with KRS Chapter 424.

(b) If the action challenging the validity or enforceability of the ordinance or resolution is not

brought within the time provided by paragraph (a) of this subsection, the action shall be forever barred.

History.
Enact. Acts 1990, ch. 81, § 2, effective July 13, 1990; 1996, ch. 280, § 29, effective July 15, 1996; 2019 ch. 35, § 2, effective June 27, 2019.

65.944. When approval by state local debt officer or chief state school officer is required — Technical and advisory assistance on leases.

(1)(a) In addition to the notification required by KRS 65.117, no county, except an urban-county, shall enter into a lease if the lease price exceeds five hundred thousand dollars ($500,000) without first receiving the approval of the lease from the state local debt officer. The state local debt officer may prescribe procedures and adopt regulations for granting approval of the leases.

(b) In addition to the notification required by KRS 65.117, no school district shall enter into a lease if the lease price exceeds one hundred thousand dollars ($100,000) without first receiving the approval of the lease from the chief state school officer. The chief state school officer shall recommend administrative regulations to the State Board of Education for implementation of KRS 65.940 to 65.956.

(2) The state local debt officer may provide technical and advisory assistance regarding the entering into leases by a governmental agency whose governing body requests assistance.

History.
Enact. Acts 1990, ch. 81, § 3, effective July 13, 1990; 1992, ch. 27, § 6, effective March 2, 1992; 1994, ch. 508, § 25, effective July 15, 1994; 2008, ch. 35, § 2, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Approval for school district lease and retirement incentive annuity agreements, 702 KAR 3:300.

65.946. Maximum term for leases.

A lease for real property may have any term, including renewals, not to exceed forty (40) years. A lease for personal property may have any term, including renewals, not to exceed the useful life of the personal property financed, determined in accordance with generally accepted accounting principles.

History.
Enact. Acts 1990, ch. 81, § 4, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Approval for school district lease and retirement incentive annuity agreements, 702 KAR 3:300.

65.948. Leased property exempt from state and local taxation.

A governmental agency shall be considered the equitable owner of any personal or real property leased under KRS 65.940 to 65.956 where the property is used solely for public purposes, unless the governmental agency is vested with legal ownership pursuant to KRS 65.952. Personal or real property which is equitably or legally owned by a governmental agency shall be exempt from all taxation by the Commonwealth and any of its political subdivisions. Leases and interests therein and payments received by lessors or their assigns which are identified as interest shall be exempt from taxation by the Commonwealth and any of its political subdivisions to the same extent as bonds or notes issued by the Commonwealth and any governmental agency.

History.
Enact. Acts 1990, ch. 81, § 5, effective July 13, 1990.

65.950. Leases as a legal and authorized investment.

A lease or any interest therein entered into pursuant to KRS 65.940 to 65.956 shall be a legal and authorized investment for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees.

History.
Enact. Acts 1990, ch. 81, § 6, effective July 13, 1990.

65.952. Title to property subject to the lease.

A lease may provide that legal title to the real property or personal property subject to the lease may be vested in the governmental agency or in the person acting as lessor under the lease and may be transferred from one to the other under terms provided in the lease.

History.
Enact. Acts 1990, ch. 81, § 7, effective July 13, 1990.

65.954. Construction of KRS 65.940 to 65.956.

KRS 65.940 to 65.956 shall be authority for entering into leases and the performance of the other acts and procedures authorized by KRS 65.940 to 65.956, without reference to any other laws, or any restrictions or limitations contained therein, except as specifically provided in KRS 65.940 to 65.956. If leases are entered into under KRS 65.940 to 65.956, to the extent of any conflict or inconsistency between any provisions of KRS 65.940 to 65.956 and any provisions of any other law, the provisions of KRS 65.940 to 65.956 shall prevail and control, except that any governmental agency may use the provisions of any other law, not in conflict with the provisions of KRS 65.940 to 65.956, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by KRS 65.940 to 65.956. KRS 65.940 to 65.956 shall be liberally construed to effectuate its purpose.

History.
Enact. Acts 1990, ch. 81, § 8, effective July 13, 1990.

65.956. Short title.

KRS 65.940 to 65.956 may be cited as the Governmental Leasing Act.

History.
Enact. Acts 1990, ch. 81, § 9, effective July 13, 1990.

CHAPTER 66

ISSUANCE OF BONDS AND CONTROL OF FUNDS

Investments.

Section
66.480. Investment of public funds — Limitations — Written investment policy — Duties of state local debt officer — Investment pool — Rating agency.

INVESTMENTS

66.480. Investment of public funds — Limitations — Written investment policy — Duties of state local debt officer — Investment pool — Rating agency.

(1) The governing body of a city, county, urban-county, charter county, school district (provided that its general procedure for action is approved by the Kentucky Board of Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:

(a) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. These investments may be accomplished through repurchase agreements reached with sources including but not limited to national or state banks chartered in Kentucky;

(b) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:

1. United States Treasury;
2. Export-Import Bank of the United States;
3. Farmers Home Administration;
4. Government National Mortgage Corporation; and
5. Merchant Marine bonds;

(c) Obligations of any corporation of the United States government, including but not limited to:

1. Federal Home Loan Mortgage Corporation;
2. Federal Farm Credit Banks;
3. Bank for Cooperatives;
4. Federal Intermediate Credit Banks;
5. Federal Land Banks;
6. Federal Home Loan Banks;
7. Federal National Mortgage Association; and
8. Tennessee Valley Authority;

(d) Certificates of deposit or other interest-bearing accounts issued through a bank or savings and loan institution having a physical presence in Kentucky which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations, including surety bonds, permitted by KRS 41.240(4);

(e) Uncollateralized certificates of deposit issued by any bank or savings and loan institution having a physical presence in Kentucky rated in one (1) of the three (3) highest categories by a competent rating agency;

(f) Bankers' acceptances for banks rated in one (1) of the three (3) highest categories by a competent rating agency;

(g) Commercial paper rated in the highest category by a competent rating agency;

(h) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;

(i) Securities issued by a state or local government, or any instrumentality of agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a competent rating agency;

(j) Shares of mutual funds and exchange traded funds, each of which shall have the following characteristics:

1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;
2. The management company of the investment company shall have been in operation for at least five (5) years; and
3. All of the securities in the mutual fund shall be eligible investments pursuant to this section;

(k) Individual equity securities if the funds being invested are managed by a professional investment manager regulated by a federal regulatory agency. The individual equity securities shall be included within the Standard and Poor's 500 Index, and a single sector shall not exceed twenty-five percent (25%) of the equity allocation; and

(*l*) Individual high-quality corporate bonds that are managed by a professional investment manager that:

1. Are issued, assumed, or guaranteed by a solvent institution created and existing under the laws of the United States;
2. Have a standard maturity of no more than ten (10) years; and
3. Are rated in the three (3) highest rating categories by at least two (2) competent credit rating agencies.

(2) The investment authority provided by subsection (1) of this section shall be subject to the following limitations:

(a) The amount of money invested at any time by a local government or political subdivision in any one (1) of the categories of investments authorized by subsection (1)(e), (f), (g), (k), and (l) of this section shall not exceed twenty percent (20%) of the total amount of money invested by the local government;

(b) The amount of money invested at any one (1) time by a local government or a political subdivision in the categories of investments authorized in subsection (1)(j), (k), and (l) of this section shall not, aggregately, exceed forty percent (40%) of the total money invested unless the investment is in a mutual fund consisting solely of the investments authorized under subsection (1)(a), (b), (c), (h), or (i) of this section, or any combination thereof;

(c) No local government or political subdivision shall purchase any investment authorized by subsection (1) of this section on a margin basis or through the use of any similar leveraging technique; and

(d) At the time the investment is made, no more than five percent (5%) of the total amount of money invested by the local governments or political subdivisions shall be invested in any one (1) issuer unless:

1. The issuer is the United States government or an agency or instrumentality of the United States government, or an entity which has its obligations guaranteed by either the United States government or an entity, agency, or instrumentality of the United States government;

2. The money is invested in a certificate of deposit or other interest-bearing accounts as authorized by subsection (1)(d) and (e) of this section;

3. The money is invested in bonds or certificates of indebtedness of this state and its agencies and instrumentalities as authorized in subsection (1)(h) of this section; or

4. The money is invested in securities issued by a state or local government, or any instrumentality or agency thereof, in the United States as authorized in subsection (1)(i) of this section.

(3) The governing body of every local government or political subdivision that invests or reinvests money subject to its control or jurisdiction according to the provisions of subsection (1) of this section shall by January 1, 1995, adopt a written investment policy that shall govern the investment of funds by the local government or political subdivision. The written investment policy shall include but shall not be limited to the following:

(a) A designation of the officer or officers of the local government or political subdivision who are authorized to invest and oversee the investment of funds;

(b) A list of the permitted types of investments;

(c) Procedures designed to secure the local government's or political subdivision's financial interest in the investments;

(d) Standards for written agreements pursuant to which investments are to be made;

(e) Procedures for monitoring, control, deposit, and retention of investments and collateral;

(f) Standards for the diversification of investments, including diversification with respect to the types of investments and firms with whom the local government or political subdivision transacts business;

(g) Standards for the qualification of investment agents which transact business with the local government, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm capable and qualified to transact business with the local government or political subdivision; and

(h) Requirements for periodic reporting to the governing body on the status of invested funds.

(4) Sheriffs, county clerks, county attorneys, and jailers, who for the purposes of this section shall be known as county officials, may invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of KRS Chapter 134 and 160.510, as permitted by this section.

(5) The provisions of this section are not intended to impair the power of a county official, city, county, urban-county, charter county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

(6) The governing body or county official may delegate the investment authority provided by this section to the treasurer or other financial officer or officers charged with custody of the funds of the local government, and the officer or officers shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.

(7) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.

(8) The state local debt officer is authorized and directed to assist county officials and local governments, except school districts, in investing funds that are temporarily in excess of operating needs by:

(a) Explaining investment opportunities to county officials and local governments through publication and other appropriate means; and

(b) Providing technical assistance in investment of idle funds to county officials and local governments that request that assistance.

(9)(a) The state local debt officer may create an investment pool for local governments, except school districts, and county officials; and counties and county officials and cities may associate to create an investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local debt officer. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his or her own investigative report or audit to verify the findings of the independent certified public accountant's report.

(b) If the state local debt officer creates an investment pool, he or she shall establish an account in the

Treasury for the pool. He or she shall also establish a separate trust and agency account for the purpose of covering management costs, and he or she shall deposit management charges in this account. The state local debt officer may promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings, and assignment of charges.

(c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.

(10)(a) With the approval of the Kentucky Board of Education, local boards of education, or any of them that desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the Kentucky Board of Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his or her own investigative report or audit to verify the findings of the independent certified public accountant's report.

(b) The Kentucky Board of Education may promulgate administrative regulations governing the operation of the investment pool including but not limited to provisions on minimum allowable investments and investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.

(11) As used in this section, "competent rating agency" means a rating agency certified or approved by a national entity that engages in such a process. The certification or approval process shall include but not necessarily be limited to the following elements the subject rating agency must possess:

(a) A requirement for the rating agency to register and provide an annual updated filing;

(b) Record retention requirements;

(c) Financial reporting requirements;

(d) Policies for the prevention of misuse of material nonpublic information;

(e) Policies addressing management of conflicts of interest, including prohibited conflicts;

(f) Prohibited acts practices;

(g) Disclosure requirements;

(h) Any policies, practices, and internal controls required by the national entity; and

(i) Standards of training, experience, and competence for credit analysts.

History.

Enact. Acts 1966, ch. 205; 1982, ch. 57, § 1, effective March 9, 1982; 1986, ch. 261, § 1, effective July 1, 1986; 1988, ch. 393, § 3, effective July 15, 1988; 1990, ch. 291, § 2, effective July 13, 1990; 1990, ch. 476, Pt. V, § 298, effective July 13, 1990; 1994, ch. 275, § 1, effective July 15, 1994; 1994, ch. 508, § 39, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 554, § 3, effective July 15, 1998; 2009, ch. 10, § 58, effective January 1, 2010; 2019 ch. 11, § 1, effective June 27, 2019; 2021 ch. 152, § 2, effective June 29, 2021; 2021 ch. 155, § 22, effective June 29, 2021; 2022 ch. 178, § 2, effective July 14, 2022.

Compiler's Notes.

The Federal Investment Company Act of 1940 referred to in subdivision (1)(j)1. of this section is compiled as 15 USCS §§ 80a-1 — 80a-52.

The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

Legislative Research Commission Notes.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 275 and 508. Where these Acts are not in conflict, they have been codified together. In cases where stylistic changes made in Acts ch. 508 conflict with substantive changes in Acts ch. 275, the provisions of Acts ch. 275 have prevailed. Cf. KRS 7.123(1).

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to section 653(1) of Acts ch. 476.

NOTES TO DECISIONS

Cited in:

Marshall v. Commonwealth, 20 S.W.3d 478, 2000 Ky. App. LEXIS 62 (Ky. Ct. App. 2000).

OPINIONS OF ATTORNEY GENERAL.

The Greater Cincinnati Airport Authority, as a governmental unit, must abide by the mandates of this section and cannot accept as security for its deposits types of collateral which do not qualify under this section even though such collateral would be sufficient to secure State funds under KRS 41.240. OAG 78-481, 1978 Ky. AG LEXIS 730.

A county may invest in school revenue bonds, either city or county, pursuant to subsection (b) of this section which authorizes investments in bonds or certificates of indebtedness of this state and of its agencies and instrumentalities, for all county and municipal school boards are state agencies. OAG 79-317, 1979 Ky. AG LEXIS 317.

A county may invest in the notes or certificates of indebtedness of the Kentucky state property and building commission

board and the Kentucky Housing Corporation as these are statutorily designated state agencies. OAG. 79-317.

A county may invest its funds in those banks mentioned in the Farm Credit Act, 12 USCS § 2001 et seq., and in the Federal Home Loan Banks pursuant to the authority vested in it by this section. OAG 79-317, 1979 Ky. AG LEXIS 317.

A county may not invest in the general bonds of other counties or municipalities. OAG 79-317, 1979 Ky. AG LEXIS 317.

Investment by a county in Federal National Mortgage Association discount notes and debentures is not authorized by this section. OAG 79-317, 1979 Ky. AG LEXIS 317.

Since cities and counties unilaterally have the authority to invest their temporarily idle funds pursuant to this section in those types of securities specifically listed in this section, cities and counties could enter into an agreement under the Interlocal Cooperation Act, KRS 65.210 to 65.300, providing for a cooperative investment program; however, cities and counties cannot, either unilaterally or collectively, turn over their funds to an area development district to manage for investment purposes as such action is not permitted under this section. OAG 80-472, 1980 Ky. AG LEXIS 184.

For guidelines as to investment of money receipts of office by sheriffs, see OAG 82-244 (modifying OAG 78-491).

Under the 1982 amendment of this section, the state local finance officer is required to assist the sheriff in the investing of funds coming into his hands which are temporarily in excess of "operating needs"; that obviously does not include tax moneys collected. OAG 82-244, 1982 Ky. AG LEXIS 395.

Under subdivision (1)(d) of this section, governmental units mentioned in subsection (1) of this section may invest and reinvest their money in interest-bearing deposits in national banks. OAG 84-343, 1984 Ky. AG LEXIS 40.

A public library created pursuant to KRS 173.300 to 173.410 is not a local governmental unit nor a political subdivision within the meaning of this section. OAG 84-343, 1984 Ky. AG LEXIS 40.

A local government can invest in a mutual fund that itself invested solely in United States Government securities. OAG 88-52, 1988 Ky. AG LEXIS 52.

Based on the reasoning contained in OAG 82-29 and 88-52, this section can be interpreted to allow a county to invest its funds in mutual funds that invest solely in federal securities, including such securities subject to repurchase agreements with state banks, national banks and brokerage firms. OAG 90-28, 1990 Ky. AG LEXIS 26.

The second sentence of subdivision (1)(a) of this section should not be read as restrictive, but rather as permissive; by the use of the term "may" the provision would allow the method set forth therein but would also allow the use of other methods, such as purchase through brokerage firms. OAG 90-28, 1990 Ky. AG LEXIS 26.

Subdivision (1)(d) of this section establishes a statutory requirement that deposits of local governmental monies in specified institutions, exceeding the amount insured by an agency of the government of the United States, must be "collateralized" by a pledge of obligations, as permitted by subsection (4) of KRS 41.240, "having a current quoted market value at least equal to any uninsured deposits." OAG 94-22, 1994 Ky. AG LEXIS 250.

"Deposits," as used in this section with regard to "uninsured deposits," refers to the total value of such "deposits," which includes items that have not yet been "collected" by the institution in which a deposit has been made given check processing or clearance time. OAG 94-22, 1994 Ky. AG LEXIS 250.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Internal accounting, 702 KAR 3:130.

CHAPTER 67

COUNTY GOVERNMENT (FISCAL COURTS AND COUNTY COMMISSIONERS)

Taxation of Business.

Section

67.750. Definitions for KRS 67.750 to 67.790.
67.753. Apportionment of net profit or gross receipts of business entity to local tax district.
67.755. Quarterly estimated tax payments.
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67.760. Applicability of federal income tax law — Business entity to keep records.
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67.767. Development, adoption, use, and availability of standard forms for occupational license tax returns — Duties of Secretary of State, advisory committee, and tax districts — Administrative regulation — Opt out by tax districts with an online filing and payment system — Exemptions.
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67.778. Payment of tax not delayed — Claims for refund or credit.
67.780. Employer to withhold taxes.
67.783. Employer to report tax withheld — Liability of employer for failure to withhold or pay tax.
67.785. Personal liability of officers of business entity.
67.788. Application for refund or credit — When employee may file for refund.
67.790. Penalties — Confidentiality of information filed with tax district — Suspension of services or payments if tax district fails to comply with KRS 67.766(1) or (2).
67.791. Sharing of refund application and related information.
67.793. Tax district may levy one-time tax rate.
67.795. When KRS 67.750 to 67.790 applies.

TAXATION OF BUSINESS

67.750. Definitions for KRS 67.750 to 67.790.

As used in KRS 67.750 to 67.790, unless the context requires otherwise:

(1) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;

(2) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

(a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

(b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;

(3) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(4) "Employee" means any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee;

(5) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(6) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:

(a) Sales and excise taxes paid; and

(b) Returns and allowances;

(7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2008, as amended;

(8) "Net profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:

(a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;

(b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;

(c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

(d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and

(e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution or the Constitution and statutory laws of the United States;

(9) "Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;

(10) "Tax district" means a city, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes;

(11) "Taxable gross receipts," in case of a business entity having payroll or sales revenues both within and without a tax district, means gross receipts as defined in subsection (6) of this section, as apportioned under KRS 67.753;

(12) "Taxable gross receipts," in case of a business entity having payroll or sales revenue only in one (1) tax district, means gross receipts as defined in subsection (6) of this section;

(13) "Taxable net profit," in case of a business entity having payroll or sales revenue only in one (1) tax district, means net profit as defined in subsection (8) of this section;

(14) "Taxable net profit," in case of a business entity having payroll or sales revenue both within and without a tax district, means net profit as defined in subsection (8) of this section, as apportioned under KRS 67.753; and

(15) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

History.

Enact. Acts 2003, ch. 117, § 1, effective June 24, 2003; 2004, ch. 63, § 1, effective July 13, 2004; 2005, ch. 153, § 1, effective June 20, 2005; 2006, ch. 149, § 197, effective July 12, 2006; 2006, ch. 168, § 1, effective July 12, 2006; 2007, ch. 52, § 1, effective June 26, 2007; 2009, ch. 49, § 1, effective June 25, 2009; 2014, ch. 92, § 36, effective January 1, 2015; 2019 ch. 44, § 6, effective June 27, 2019.

Compiler's Notes.

Internal Revenue Code (IRC) § 401(a) is 26 USCS § 401(a); IRC § 401(k) is 26 USCS 401(k); IRC § 402(e) is 26 USCS § 402(e); IRC § 403(a) is 26 USCS § 403(a); IRC § 403(b) is 26 USCS § 403(b); IRC § 408 is 26 USCS § 408; IRC § 414(h) is 26 USCS § 414(h); IRC § 457 is 26 USCS § 457; IRC § 125 is 26 USCS § 125; IRC § 132 is 26 USCS § 132; IRC § 7701(a)(24) is 26 USCS § 7701(a)(24); IRC § 172 is 26 USCS § 172.

Legislative Research Commission Notes.

(6/26/2007). 2007 Ky. Acts ch. 52, sec. 3, provides that the amendments to KRS 67.750 in 2007 Ky. Acts ch. 52, sec. 1, "shall apply to tax years beginning on or after January 1, 2007."

67.753. Apportionment of net profit or gross receipts of business entity to local tax district.

(1) Except as provided in subsection (4) of this sec-

tion, net profit or gross receipts shall be apportioned as follows:

(a) For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit or gross receipts by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and

(b) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profits or gross receipts by the sales factor as set forth in subsection (3) of this section.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the tax district during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the tax district based on the time the individual's service is performed within the tax district.

(3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the tax district during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.

(a) The sale, lease, or rental of tangible personal property is in the tax district if:

1. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the tax district regardless of the f.o.b. point or other conditions of the sale; or

2. The property is shipped from an office, store, warehouse, factory, or other place of storage in the tax district and the purchaser is the United States government.

(b) Sales revenues, other than revenue from the sale, lease, or rental of tangible personal property or the lease or rental of real property, are apportioned to the tax district based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the tax district and the denominator of which is the total time spent performing that income-producing activity.

(c) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.

(4) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the tax district, the business entity may petition the tax district or the tax district may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the tax district; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit or gross receipts.

History.

Enact. Acts 2003, ch. 117, § 2, effective June 24, 2003; 2004, ch. 63, § 2, effective July 13, 2004.

67.755. Quarterly estimated tax payments.

(1) Every business entity, other than a sole proprietorship, subject to a net profits, gross receipts, or occupational license tax levied by a tax district shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth, and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars ($5,000).

(2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:

(a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;

(b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or

(c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars ($20,000).

(3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under subsection (2) of this section from the earlier of:

(a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (2) of this section; or

(b) The due date of the annual return.

A fraction of a month is counted as an entire month.

(4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the tax district or any first taxable year in which a business entity's tax liability exceeds five thousand dollars ($5,000).

(5) The provisions of this section shall not apply unless adopted by the tax district.

History.

Enact. Acts 2003, ch. 117, § 3, effective June 24, 2003; 2004, ch. 63, § 3, effective July 13, 2004.

67.758. Refund of estimated taxes.

(1) In the case where the tax computed under KRS 67.750 to 67.790 is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund shall be made upon the filing of a return.

(2)(a) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year;

(b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by KRS 67.750 to 67.790.

(3) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

History.
Enact. Acts 2003, ch. 117, § 4, effective June 24, 2003.

67.760. Applicability of federal income tax law — Business entity to keep records.

(1) For purposes of KRS 67.750 to 67.790, computations of gross income and deductions therefrom, gross receipts or sales, and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.

(2) Every business entity subject to an occupational license tax governed by the provisions of KRS 67.750 to 67.790 shall keep records, render under oath statements, make returns, and comply with rules as the tax district from time to time may prescribe. Whenever the tax district deems it necessary, the tax district may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the tax district deems sufficient to determine the tax liability of the business entity.

(3) The tax district may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

History.
Enact. Acts 2003, ch. 117, § 5, effective June 24, 2003; 2004, ch. 63, § 4, effective July 13, 2004.

67.763. Tax liability of business entity that ceases doing business in tax district.

If any business entity dissolves or withdraws from a tax district during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of net profit or gross receipts taxes or tax withheld for the period of that taxable year during which the business entity had net profit or gross receipts or tax withheld in the tax district.

History.
Enact. Acts 2003, ch. 117, § 6, effective June 24, 2003.

67.764. Construction of exceptions for disaster response businesses and employees.

(1) The exceptions contained in KRS 68.180(3)(g), 68.197(5)(d), 91.200(3)(h), and 92.300(2)(a)4. and (b)3. shall not be interpreted, construed, or otherwise relied upon in any way to establish a minimum nexus or other minimum contact requirements for the purposes of determining the liability for either a tax or fee placed upon a business or employee by a taxing jurisdiction, except as related to disaster response businesses and disaster response employees for work performed within the taxing jurisdiction during a disaster response period.

(2) As used in this section, the terms "disaster response business," "disaster response employee," and "disaster response period" shall have the same meaning as in KRS 141.010.

History.
2021 ch. 31, § 10, effective June 29, 2021.

67.765. Use of tax year and accounting methods required for federal income tax purposes.

If a business entity makes, or is required to make, a federal income tax return, the net profit or gross receipts shall be computed for the purposes of KRS 67.750 to 67.790 on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

History.
Enact. Acts 2003, ch. 117, § 7, effective June 24, 2003.

67.766. Tax district to submit occupational license tax forms, instructions, and ordinance to Secretary of State — Posting on one-stop business portal or other SOS Web site.

(1) Before November 1, 2012, each tax district that imposes an occupational license tax on net profits or gross receipts shall submit either an electronic or hard copy of its occupational license tax return form or forms; accompanying instructions; and a copy of its occupational license tax ordinance to the Secretary of State.

(2) A tax district that imposes a new occupational license tax on net profits or gross receipts or amends its ordinance after November 1, 2012, shall provide a copy of its ordinance to the Secretary of State within thirty (30) days of the adoption or amendment. The tax district may provide any additional information, interpretations, forms, or instructions it deems necessary to clarify or explain its compliance requirements for affected business entities.

(3) The Secretary of State shall include the form or forms, instructions, or the ordinances provided under this section on the one-stop business portal or another public Web site maintained by that office.

History.
Enact. Acts 2012, ch. 70, § 1, effective July 12, 2012.

67.767. Development, adoption, use, and availability of standard forms for occupational license tax returns — Duties of Secretary of State, advisory committee, and tax districts — Administrative regulation — Opt out by tax districts with an online filing and payment system — Exemptions.

(1)(a)1. The Secretary of State shall prescribe separate standard forms, through promulgation of an

administrative regulation in accordance with KRS Chapter 13A, which shall allow for:

a. A combined net profits and gross receipts occupational license taxes return or separate forms for a net profits occupational license tax return and a gross receipts occupational license tax return by all business entities; and

b. A payroll occupational license tax return, for returns of payroll taxes by all business entities.

2. For business entities to have the information necessary to ensure the proper payment of the taxes to each tax district, the Secretary shall also develop and update as necessary:

a. Instructions for business entities on the completion of the standard forms; and

b. Fillable portable document format versions of each of the standardized forms developed pursuant to subparagraph 1. of this paragraph.

(b) The Secretary shall seek advice and comments on the development, amendment, and maintenance of the forms and instructions from an advisory committee chaired by the Secretary, or his or her designee, that is composed of:

1. One (1) member of the Secretary of State's staff;

2. Two (2) members submitted by the Kentucky League of Cities;

3. Two (2) members submitted by the Kentucky Association of Counties, at least one (1) of which shall be a current elected county judge/executive;

4. Two (2) members submitted by the Kentucky Society of Certified Public Accountants;

5. One (1) member submitted by the Kentucky Association of County Treasurers and Finance Officers;

6. One (1) member submitted by the Associated General Contractors of Kentucky;

7. One (1) member submitted by the Kentucky Association of Master Contractors;

8. One (1) member submitted by the National Federation of Independent Business;

9. One (1) member submitted by the Associated Builders and Contractors of Indiana/Kentucky;

10. Two (2) members submitted by the Kentucky Occupational License Association; and

11. One (1) member submitted by the Kentucky School Boards Association.

(c) The advisory committee shall:

1. Meet at the call of the chair;

2. Convene before August 31, 2026, for the first meeting, and as necessary thereafter;

3. Develop any new forms, returns, and instructions required in this subsection before June 1, 2027; and

4. File the completed forms to the Legislative Research Committee for referral to the Interim Joint Committee on Local Government by June 24, 2027.

(d) Within fourteen (14) days after the July 2027 Interim Joint Committee on Local Government meeting, the Secretary of State shall submit a proposed administrative regulation to the Legislative Research Committee in accordance with KRS Chapter 13A, which includes the forms and electronic links required in this subsection.

(e) This subsection shall not be interpreted to require the development or adoption of a new form if the Secretary of the State determines that an existing form satisfies the requirements of paragraph (a) of this subsection.

(f) Once the standard forms are adopted or amended, the Secretary of State shall include the forms, instructions, electronic links to the fillable portable document format versions of the forms, and any updates on the one-stop business portal or another public website maintained by that office, along with information submitted to the Secretary of State pursuant to subsection (2) or (4) of this section. The forms and instructions shall be updated and maintained by the Secretary of State at no cost to the tax districts. A fee shall not be levied against the public or businesses for accessing and downloading forms, instructions, or other information maintained by the Secretary of State under this section.

(2) After the forms are adopted under subsection (1) of this section but prior to July 1, 2029, a tax district shall:

(a) Adopt the standard forms as its exclusive electronic return forms;

(b) Accept the standard forms electronically in addition to the tax district's own return form or forms; or

(c)1. Opt out from adopting or using the forms in paragraphs (a) and (b) of this subsection if it has:

a. An online filing and payment system in use on or before January 1, 2025; or

b. Entered into a binding contract for the implementation of an online filing and payment system on or before July 1, 2026.

2. If a tax district opts out under subparagraph 1. of this paragraph, in addition to providing online access to the electronic filing and payment system it uses on its own website that permits the electronic submission of forms and the electronic remittance of payments, and in order to maintain its exemption, it shall provide:

a. An electronic link to access its online filing and payment system to the Secretary of State for inclusion on the one-stop business portal or another public website maintained by that office;

b. A copy of the written order specifying that the tax district has a qualifying online filing system in use and will not accept the standard forms within thirty (30) days of its adoption; and

c. A copy of occupational license tax forms that the tax district accepts, any accompanying instructions, and any future amendments to those forms, instructions, and electronic links within thirty (30) days of any change.

(3) A tax district that accepts the standard forms for filing under subsection (2)(a) or (b) of this section shall have nine (9) months from the final approval date of an administrative regulation establishing any new or amended standard forms to comply with the provisions of those subsections.

(4) After July 1, 2029, a tax district:

(a) Shall either adopt the standard forms as its exclusive electronic return forms or accept the stan-

dard forms in addition to the tax district's own return form or forms, unless:

1. The tax district submits a written request approved by the tax district's governing body to the Secretary of State for an exemption based on documented information that:

a. Acceptance of the form will impose an undue financial hardship on the tax district; or

b. The tax district is part of an interlocal agreement that provides for a single tax collection process for multiple jurisdictions; and

2. The Secretary of State approves the request for an exemption and obtains the return forms that will be accepted by the tax district and any applicable instructions for inclusion on the one-stop business portal or another public website maintained by that office. In exercising his or her discretion to grant an exemption under this subsection, the Secretary of State may impose any reasonable terms and limitations upon the exemption;

(b) Shall provide on its official website or other means for business entities to access and download the forms, returns, instructions, and methods of acceptable electronic payment of its occupational license taxes in a way that the forms and returns may be electronically completed and submitted to the tax district by the taxpayer;

(c) Shall allow a taxpayer who files the forms or returns electronically to pay the tax due with the form or return by an automated clearinghouse electronic funds transfer directly to the tax district's designated depository account or by any other approved electronic method;

(d) May charge and collect from the taxpayer an additional electronic processing fee and any fee or surcharge to recover the actual costs incurred by the taxing district in connection with the electronic filing, processing, security, maintenance, and acceptance of electronic payments, including costs imposed by third-party vendors or financial institutions;

(e) Shall provide an electronic receipt to the taxpayer upon the successful electronic filing of the form or return and payment; and

(f) If approved by an annual application with the Secretary of State, shall not be subject to the provisions of paragraphs (b) to (f) of this subsection if the tax district:

1. Collected less than two hundred thousand dollars ($200,000) during the immediately preceding fiscal year from the combined levy of all types of occupational license taxes in the immediately preceding fiscal year; or

2. Submits reasonable evidence that the cost of compliance with this paragraph would exceed more than five percent (5%) of the taxing district's total annual budget.

(5) Upon receipt of an order pursuant to subsection (2) of this section or upon the issuance of an exemption under subsection (4) of this section, the Secretary of State shall provide notice to the Kentucky Society of Certified Public Accountants of the tax districts that have submitted a written order to opt out under subsection (2) of this section or that are granted an exemption under subsection (4) of this section.

(6) The Secretary of State shall include electronic links for the electronic downloading of forms and electronic links for the online tax filing and payment system provided to it under this section on the one-stop business portal or other website maintained by the Secretary of State within thirty (30) of receipt from the tax district.

(7) Nothing in this section or KRS 67.766 shall be interpreted to alter or preempt the requirements imposed by a tax district regarding deadlines, reporting, rates, or other legally imposed procedures regarding the imposition, administration, and collection of local occupational license taxes by a tax district. Nor shall the adoption or use of a standard forms developed under this section release the taxpayer from any liability or responsibility to the tax district for the correct payment of taxes, penalties, and any other obligations imposed by the tax district. This section and KRS 67.766 shall not be interpreted to authorize the collection of local tax revenues by the state government or any other agency of the state.

History.

Enact. Acts 2012, ch. 70, § 2, effective July 12, 2012; 2025 ch. 2, § 8, effective February 25, 2025; 2026 ch. 44, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). A reference to "subsection (2) or (3)" in subsection (1)(f) of this statute has been changed in codification to "subsection (2) or (4)" under the authority of KRS 7.136(1)(e) and (h). In 2026 Ky. Acts ch. 44, sec. 1, a new subsection (3) was inserted into this statute and subsequent subsections were renumbered, but this internal reference in the existing language was overlooked.

(7/12/2012). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of the text in subsection (1) of this statute during codification. The words in the text were not changed.

67.768. When returns to be made — Copy of federal income tax return to be submitted with return.

(1) All business entities' returns for the preceding taxable year shall be made by April 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank copies of local forms for returns shall be made available to business entities by the tax district.

(2) Every business entity shall submit a copy of its federal income tax return at the time of filing its return with the tax district. Whenever, in the opinion of the tax district, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the tax district may compel the business entity to produce for inspection a copy of all statements and schedules in support thereof. The tax district may also require copies of reports of adjustments made by the federal government.

History.

Enact. Acts 2003, ch. 117, § 8, effective June 24, 2003; 2012, ch. 70, § 3, effective July 12, 2012.

67.770. Extensions.

(1) A tax district may grant any business entity an extension of not more than six (6) months, unless a

longer extension has been granted by the Internal Revenue Service or is agreed to by the tax district and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the tax, requests the extension and pays the amount properly estimated as its tax.

(2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the tax district. A fraction of a month is counted as an entire month.

History.
Enact. Acts 2003, ch. 117, § 9, effective June 24, 2003; 2004, ch. 63, § 5, effective July 13, 2004.

67.773. Tax due when return filed — Minimum and maximum liability.

(1) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the tax district at the time prescribed for filing the tax return, determined without regard to any extension of time for filing the return.

(2) A tax district may impose minimum and maximum tax liabilities for the tax on net profits or gross receipts.

History.
Enact. Acts 2003, ch. 117, § 11, effective June 24, 2003.

67.775. Auditing of returns — Payment of additional tax — Federal audit.

(1) As used in this section and KRS 67.778, unless the context requires otherwise:

(a) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income or gross receipts as reported on the business entity's federal income tax return become final and unappealable; and

(b) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(2) As soon as practicable after each return is received, the tax district may examine and audit it. If the amount of tax computed by the tax district is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the tax district within five (5) years from the date the return was filed, except as otherwise provided in this subsection.

(a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.

(b) In the case of a return where a business entity understates net profit or gross receipts, or omits an amount properly includable in net profit or gross receipts, or both, which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of net profit or gross receipts stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

(c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the tax district receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and the tax district. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.

(4) A tax district may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (2) of this section.

History.
Enact. Acts 2003, ch. 117, § 10, effective June 24, 2003.

67.778. Payment of tax not delayed — Claims for refund or credit.

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax subject to the provisions of KRS 67.750 to 67.790.

(2) Any tax collected pursuant to the provisions of KRS 67.750 to 67.790 may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the tax district, whichever is the later, except that:

(a) In any case where the assessment period contained in KRS 67.775 has been extended by an agreement between the business entity and the tax district, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(3) Exclusive authority to refund or credit overpayments of taxes collected by a tax district is vested in that tax district.

History.
Enact. Acts 2003, ch. 117, § 12, effective June 24, 2003; 2004, ch. 63, § 6, effective July 13, 2004.

67.780. Employer to withhold taxes.

Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by a tax district. Amounts withheld shall be paid to the levying tax district in accordance with

KRS 67.783. A tax district may impose minimum and maximum tax liabilities for the tax on compensation.

History.
Enact. Acts 2003, ch. 117, § 13, effective June 24, 2003; 2004, ch. 63, § 7, effective July 13, 2004.

67.783. Employer to report tax withheld — Liability of employer for failure to withhold or pay tax.

(1) Every employer required to deduct and withhold tax under KRS 67.780 shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter make a return and report to the tax district the tax required to be withheld under KRS 67.780, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the tax district.

(2) Every employer who fails to withhold or pay to the tax district any sums required by KRS 67.750 to 67.790 to be withheld and paid shall be personally and individually liable to the tax district for any sum or sums withheld or required to be withheld in accordance with the provisions of KRS 67.780.

(3) The tax district shall have a lien upon all the property of any employer who fails to withhold or pay over to the tax district sums required to be withheld under KRS 67.780. If the employer withholds but fails to pay the amounts withheld to the tax district, the lien shall commence as of the date the amounts withheld were required to be paid to the tax district. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the tax district.

(4) Every employer required to deduct and withhold tax under KRS 67.780 shall annually on or before February 28 of each year complete and file on a form furnished or approved by the tax district a reconciliation of the tax withheld in each tax district where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information as determined by the tax district shall be submitted.

(5) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and license tax deducted by the employer from the compensation paid to the employee for payment to a tax district during the preceding calendar year.

History.
Enact. Acts 2003, ch. 117, § 14, effective June 24, 2003.

67.785. Personal liability of officers of business entity.

(1) An employer shall be liable for the payment of the tax required to be deducted and withheld under KRS 67.780.

(2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to KRS 67.780 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under KRS 67.750 to 67.790 from compensation paid to one or more employees of any business entity, and neither the corporate dissolution or withdrawal of the business entity from the tax district nor the cessation of holding any corporate office shall discharge that liability of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 67.750 to 67.790 at the time that the taxes imposed by KRS 67.750 to 67.790 become or became due.

(3) Every employee receiving compensation in a tax district subject to the tax imposed under KRS 68.180, 68.197, 91.200, or 92.281 shall be liable for the tax notwithstanding the provisions of subsections (1) and (2) of this section.

History.
Enact. Acts 2003, ch. 117, § 15, effective June 24, 2003.

67.788. Application for refund or credit — When employee may file for refund.

(1) Where there has been an overpayment of tax under KRS 67.780, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under KRS 67.780 by the employer.

(2) Unless written application for refund or credit is received by the tax district from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed.

(3) An employee who has compensation attributable to activities performed outside a tax district, based on time spent outside the tax district, whose employer has withheld and remitted the occupational license fee on the compensation attributable to activities performed outside the tax district to the tax district, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the tax district may confirm with the employer the percentage of time spent outside the tax district and the amount of compensation attributable to activities performed outside the tax district prior to approval of the refund.

History.
Enact. Acts 2003, ch. 117, § 16, effective June 24, 2003; 2004, ch. 63, § 8, effective July 13, 2004.

67.790. Penalties — Confidentiality of information filed with tax district — Suspension of services or payments if tax district fails to comply with KRS 67.766(1) or (2).

(1) A business entity subject to tax on gross receipts or net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:

(a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the tax district; or

(b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars ($25).

(2) Every employer who fails to file a return or pay the tax on or before the date prescribed under KRS 67.783 may be subject to a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars ($25).

(3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the tax district. A fraction of a month is counted as an entire month.

(4) Every tax subject to the provisions of KRS 67.750 to 67.790, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the tax district.

(5) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return, willfully makes a false return, or willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under KRS 67.750 to 67.790 of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the tax district and required to be filed with the tax district by the provisions of KRS 67.750 to 67.790, or by the rules of the tax district or by written request for information to the business entity by the tax district.

(8)(a) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to:

1. Information required in prosecutions for making false reports or returns for taxation or any other infraction of the tax laws;

2. Information that is in any way made a matter of public record;

3. Information requested for audit purposes by a taxing jurisdiction;

4. Furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return; or

5. An employee of the tax district when the employee is testifying in any court or introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws or in any action challenging a tax district tax laws.

(b) Any person who violates the provisions of paragraph (a) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars ($500) or imprisoned for not longer than six (6) months, or both.

(c) Any person who violates the provisions of paragraph (a) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one (1) year, or both.

(9) If a tax district that imposes a net profits or gross receipts occupational license tax fails to comply with the requirements of KRS 67.766(1) or (2), the Secretary of State shall inform the tax district in writing of its noncompliance. If the tax district is not in compliance within thirty (30) days following the notice from the Secretary, the Secretary shall notify all state agencies which deliver services or payments of money from the Commonwealth to the tax district of the tax district's noncompliance. Those agencies shall suspend delivery of all services or payments to a tax district which fails to comply with the requirements of KRS 67.766(1) or (2). The Secretary of State shall immediately notify those same agencies when the tax district is in compliance with the requirements of KRS 67.766(1) or (2), and those agencies shall reinstate the delivery of services or payments to the tax district.

History.

Enact. Acts 2003, ch. 117, § 17, effective June 24, 2003; 2004, ch. 63, § 9, effective July 13, 2004; 2012, ch. 70, § 4, effective July 12, 2012; 2023 ch. 29, § 1, effective June 29, 2023.

67.791. Sharing of refund application and related information.

Notwithstanding any legal restrictions or limitations to the contrary, a tax district as defined in KRS 67.750(10) may share a refund application and any related information that is submitted to it by an employee seeking a refund of any amount of tax withheld and paid by his or her employer to the tax district under KRS 67.750 to 67.795 with any other tax district that is referenced in the refund application or related information.

History.

2021 ch. 156, § 14, effective June 29, 2021.

67.793. Tax district may levy one-time tax rate.

Notwithstanding the maximum tax rates in KRS 68.180, 68.197, and 91.200, a tax district which levies a

tax on net profits may levy a tax rate that would generate approximately the same amount of revenues as the prior year plus normal revenue growth experienced by the tax district over the prior five (5) years. A tax district may invoke the provisions of this section only once.

History.
Enact. Acts 2003, ch. 117, § 23, effective June 24, 2003.

67.795. When KRS 67.750 to 67.790 applies.

The provisions of KRS 67.750 to 67.790 shall apply on and after July 15, 2008, to all tax districts that levy an occupational license fee or a tax on net profits or gross receipts, except that the provisions of KRS 67.750 to 67.790 shall not apply to the utilities gross receipts tax levied by school districts pursuant to KRS 160.613 and 160.614. A tax district may apply the provisions of KRS 67.750 to 67.790 to the levy of an occupational license fee or a tax on net profits or gross receipts, except the utilities gross receipts tax levied by school districts pursuant to KRS 160.613 and 160.614, by adoption of an ordinance prior to July 15, 2008.

History.
Enact. Acts 2003, ch. 117, § 24, effective June 24, 2003; 2004, ch. 63, § 10, effective July 13, 2004; 2005, ch. 153, § 3, effective June 20, 2005.

CHAPTER 68

COUNTY FINANCE AND COUNTY TREASURER

License Taxes.

Section
68.180. Occupational license tax in counties containing 300,000 population — Exemptions from local fees and taxes — Regulation of ministers.
68.182. Application of occupational license fees to racetrack extension.
68.185. Fiscal court's function in collection and appropriation of tax.
68.190. Credit for payment of similar city tax.
68.199. County that attains population of 30,000 — Credit against occupational license fee — Voluntary credit — New fee or increase in fee.

Penalties.

68.990. Penalties.

LICENSE TAXES

68.180. Occupational license tax in counties containing 300,000 population — Exemptions from local fees and taxes — Regulation of ministers.

(1) The fiscal court of each county having a population of three hundred thousand (300,000) or more may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.

(2) License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, shall be imposed at a percentage rate not to exceed one and one-fourth percent (1.25%) of:

(a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county; and

(b) The net profits of businesses, trades, professions, or occupations from activities conducted in the county.

(3)(a) No public service company that pays an ad valorem tax shall be required to pay a license tax.

(b)1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.

2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services or communications services.

(c) No license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association, whether state or federally chartered.

(d) No license tax shall be imposed upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training.

(e) No license tax shall be imposed upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.

(f) No license tax shall be imposed upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor, or in other cases where the county is prohibited by law from imposing a license tax.

(g)1. No license tax shall be imposed upon:

a. The profits earned; or

b. Income received for work performed;

during a disaster response period by a disaster response business or a disaster response employee.

2. As used in this paragraph, "disaster response business," "disaster response employee," and "disaster response period" have the same meaning as in KRS 141.010.

(4) The provisions and limitations of subsection (2) of this section shall not apply to license fees imposed for regulatory purposes as to form and amount, or to the license fees authorized by KRS 160.482 to 160.488.

(5) Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

History.
Enact. Acts 1960, ch. 80, § 1; 1965 (1st Ex. Sess.), ch. 2, § 23; 1976, ch. 104, § 1; 1976, ch. 301, § 2; 1990, ch. 476, Pt. IV, § 120, effective July 13, 1990; 1998, ch. 509, § 1, effective July 15, 1998; 2002, ch. 230, § 1, effective July 15, 2002; 2003, ch. 117, § 18, effective June 24, 2003; 2005, ch. 167, § 1, effective July 1, 2005; 2005, ch. 168, § 121, effective January 1, 2006; 2021 ch. 31, § 4, effective June 29, 2021.

Compiler's Notes.
Section 10 of Acts 1998, ch. 509, provided that the 1998 amendments to this section "apply to tax years beginning after December 31, 1997."

NOTES TO DECISIONS

1. Constitutionality.
KRS 68.180 to 68.195 was not special legislation prohibited by Ky. Const., §§ 59 and 60 and did not violate the uniformity provisions of Ky. Const., §§ 171 and 181. Kupper v. Fiscal Court of Jefferson County, 346 S.W.2d 766, 1961 Ky. LEXIS 337 (Ky. 1961).

Cited in:
Commissioners of Sinking Fund v. Estate of Doyle, 573 S.W.2d 932, 1978 Ky. App. LEXIS 615 (Ky. Ct. App. 1978).

OPINIONS OF ATTORNEY GENERAL.

Where, prior to January 1, 1965, the Kentucky department of agriculture did not withhold city and county occupational license taxes from employees employed in the city and county, neither the department nor Commonwealth was liable for taxes, interest or penalty for any prior period, and the city and county would have to look to the employees for any unpaid taxes. OAG 65-845.

This section is a prohibition against a county fiscal court levying certain license fees, but there is no reference to a prohibition against the levying of a license tax against savings and loans by municipalities. OAG 76-708.

In a county with a population of less than thirty thousand, a fiscal court can produce new or additional revenue other than that derived from the ordinary ad valorem tax rate by levying a license or occupational tax without a vote of the people if the county does not already have a general license or occupational tax. OAG 85-84, 1985 Ky. AG LEXIS 66.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
License taxes, KRS Ch. 137.

68.182. Application of occupational license fees to racetrack extension.

(1) Occupational license fees levied under KRS 67.083, 68.180, and 68.197 by the fiscal court of a county, consolidated local government, urban-county government, charter county government, or unified local government may apply to racetrack extensions.

(2) As used in this section:

(a) "Historical horse race" has the same meaning as in KRS 138.511; and

(b)1. "Racetrack extension" means any facility:

a. Owned, leased, or purchased by an association licensed by the Kentucky Horse Racing and Gaming Corporation under KRS 230.300;

b. That meets the definition of "track" under KRS 230.210(47)(c); and

c. Where pari-mutuel wagering on historical horse races is conducted on terminals approved by the Kentucky Horse Racing and Gaming Corporation.

2. "Racetrack extension" does not include a facility or real property used for training horses or at which live horse races are run for stakes, purses, or prizes under the jurisdiction of the Kentucky Horse Racing and Gaming Corporation.

History.
2022 ch. 124, § 1, effective July 14, 2022; 2023 ch. 147, § 20, effective June 29, 2023; 2024 ch. 171, § 39, effective July 1, 2024; 2025 ch. 124, § 34, effective July 1, 2025; 2026 ch. 184, § 41, effective July 15, 2026.

68.185. Fiscal court's function in collection and appropriation of tax.

(1) The fiscal court of each county having a population of three hundred thousand (300,000) or more may provide for the levy, assessment, and collection of the license fees authorized by KRS 68.180 and 160.482 to 160.488, provide for the issuance and enforcement of licenses, and specify the county governmental purposes to which the revenue derived from license fees authorized by KRS 68.180 shall be applied.

(2) In making the provisions described in subsection (1), and without limiting them, the fiscal court may, by resolution or order, adopt reasonable rules or regulations requiring the preparation and filing of timely, accurate, and truthful returns, accounts, and license applications which will aid in the determination of the amount of the fee.

History.
Enact. Acts 1960, ch. 80, § 2; 1964, ch. 111, § 1; 1965 (1st Ex. Sess.), ch. 2, § 24; 1990, ch. 476, Pt. IV, § 121, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Delegation of Authority.

1. Constitutionality.
KRS 68.180 to 68.195 was not special legislation prohibited by Ky. Const., §§ 59 and 60 and did not violate the uniformity provisions of Ky. Const., §§ 171 and 181. Kupper v. Fiscal Court of Jefferson County, 346 S.W.2d 766, 1961 Ky. LEXIS 337 (Ky. 1961).

2. Delegation of Authority.
The fiscal court could provide for the assessment and collection of the license fees by delegating that authority to the

Sinking Fund of the City of Louisville. Commissioners of Sinking Fund v. Estate of Doyle, 573 S.W.2d 932, 1978 Ky. App. LEXIS 615 (Ky. Ct. App. 1978).

68.190. Credit for payment of similar city tax.

Any amount paid to any city of the first class within such county as a license fee, for the same privilege and for the same period, shall be credited against the county license fee payable under subsections (1) and (2) of KRS 68.180. Any amount paid to any other city within such county as a license fee, for the same privilege and for the same period, shall be credited against the county license fee payable under subsections (1) and (2) of KRS 68.180, provided that such city, at least thirty (30) days prior to the beginning of any county fiscal year, has contracted with the fiscal court to contribute annually to the support of joint agencies of such county and one or more cities in the county, an amount which bears the same ratio to the annual appropriation made for such joint agencies by a city of the first class in the county, as the assessed valuations for county tax purposes, as determined by the property valuation administrator, of the real and tangible personal property, excluding franchises, located within the corporate limits of such other cities, respectively, bears to the same assessed valuations within a city of the first class in said county.

History.

Enact. Acts 1960, ch. 80, § 3; 1965 (1st Ex. Sess.), ch. 2, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 299, effective July 13, 1990; 2003, ch. 117, § 21, effective June 24, 2003.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 80, § 3; 1965 (1st Ex. Sess.), ch. 2, § 25) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 299, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.

KRS 68.180 to 68.195 was not special legislation prohibited by Ky. Const., §§ 59 and 60 and did not violate the uniformity provisions of Ky. Const., §§ 171 and 181. Kupper v. Fiscal Court of Jefferson County, 346 S.W.2d 766, 1961 Ky. LEXIS 337 (Ky. 1961).

68.199. County that attains population of 30,000 — Credit against occupational license fee — Voluntary credit — New fee or increase in fee.

(1) Notwithstanding the provisions of KRS 68.197(7), a county that enacts an occupational license fee under the authority of KRS 67.083 prior to attaining a population of thirty thousand (30,000) shall not be required to allow a credit against the county occupational license fee for an occupational license fee paid to a city within the county when it is determined that the population of the county exceeds thirty thousand (30,000).

(2) If prior to July 15, 2002, a county voluntarily granted a credit against the county occupational license fee under the terms of an ordinance, interlocal agreement, or other agreement with a city, the county shall not eliminate the credit after it is determined that the population of the county exceeds thirty thousand (30,000).

(3) After July 15, 2002, a county that enacts a new county occupational license fee or increases a county occupational license fee, after it is determined that the county population exceeds thirty thousand (30,000), shall be required to allow the credit against the city fee required by KRS 68.197(7) to the extent of the increase or new fee.

(4) For purposes of this section, the county population shall be determined based only on the official decennial census by the United States Bureau of the Census.

History.

Enact. Acts 2002, ch. 161, § 1, effective July 15, 2002; 2003, ch. 117, § 22, effective June 24, 2003.

PENALTIES

68.990. Penalties.

(1) Any outgoing county treasurer who fails for ten (10) days to comply with any of the provisions of KRS 68.050 shall be fined not less than fifty (50) nor more than five hundred dollars ($500).

(2) The fiscal court and each of its members who fails or refuses to comply with any of the provisions of KRS 68.080 shall be fined fifty dollars ($50) for each offense.

(3) Any county officer or member of a fiscal court who violates any of the provisions of KRS 68.110(3) shall be fined not less than one hundred ($100) nor more than five hundred dollars ($500), or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both.

(4) The fiscal court and each of its members who fails or refuses to implement a system of uniform accounts as prescribed by the state local finance officer pursuant to KRS 68.210 shall be fined one hundred dollars ($100) for each offense.

(5) Any local government official who fails to submit a financial report requested by the state local finance officer pursuant to KRS 68.210 shall, fifteen (15) days after written notice of noncompliance by the state local finance officer, be fined two hundred fifty dollars ($250) per day until compliance.

(6) Any county or state officer who knowingly violates any of the provisions of KRS 68.250(4), 68.270, 68.280, 68.310, or 68.320 shall, in addition to the specific liabilities imposed for violating any of the provisions of those sections, be guilty of a misdemeanor and, upon conviction thereof, shall have his office declared vacant, and may also be fined not more than five hundred dollars ($500) or imprisoned for not more than ninety (90) days, or both.

(7) Any county officer who willfully violates any of the provisions of KRS 68.010, 68.020(4), 68.220 to 68.260, 68.290, 68.300, or 68.360 shall be fined not less than fifty (50) nor more than two hundred dollars ($200).

(8) Any person, including a corporation, who willfully fails to prepare or file a timely return, account, or license application described in KRS 68.185, or who willfully prepares or files a false or inaccurate return,

account, or license application shall be fined not more than one hundred dollars ($100).

History.
937, 938h-58, 938q-21, 1846, 1851b-4, 1851c-11, 4281a-4: amend. Acts 1962, ch. 210, § 16; 1964, ch. 111, § 2; 1978, ch. 197, § 10, effective June 17, 1978; 1980, ch. 19, § 8, effective July 15, 1980; 1984, ch. 14, § 4, effective July 13, 1984; 1984, ch. 111, § 48, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 122, effective July 13, 1990.

NOTES TO DECISIONS

1. Defense to Criminal Prosecution.
The fact that diverted funds were used to pay valid claims would be no defense to a criminal prosecution for violating subsec. (3) of KRS 68.110. Hopkinsville v. Wheeler, 269 Ky. 291, 269 Ky. 292, 106 S.W.2d 1017, 1937 Ky. LEXIS 595, 1937 Ky. App. LEXIS 595 (Ky. 1937).

Cited in:
Ballard v. Adair County, 268 Ky. 347, 104 S.W.2d 1100, 1937 Ky. LEXIS 465 (Ky. 1937); Lyon v. Bell, 275 Ky. 69, 120 S.W.2d 752, 1938 Ky. LEXIS 366 (Ky. 1938); Fulton County Fiscal Court v. Southern Bell Tel. & Tel. Co., 285 Ky. 17, 146 S.W.2d 15, 1940 Ky. LEXIS 591 (Ky. 1940).

OPINIONS OF ATTORNEY GENERAL.

This section provides for possible sanctions against members of a fiscal court for failure to comply with the mandatory language of KRS 68.260. OAG 88-45, 1988 Ky. AG LEXIS 45.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
County officers, penalty for misfeasance, malfeasance or nelgect of duty, KRS 61.170.
Diversion of funds, liability, KRS 68.100.
Warrant in excess of budget fund, liability of treasurer countersigning, KRS 68.300.

CHAPTER 70

SHERIFFS, CONSTABLES, AND COUNTY POLICE FORCE

Sheriffs.

Section
70.062. School and student safety issues training encouraged — Collaboration between sheriffs and local school districts encouraged.

SHERIFFS

70.062. School and student safety issues training encouraged — Collaboration between sheriffs and local school districts encouraged.

(1) The sheriff in each county is encouraged to receive training on issues pertaining to school and student safety, and shall be invited to meet annually with local school superintendents to discuss emergency response plans and emergency response concerns.

(2) The sheriff in each county is encouraged to collaborate with the local school district on policies and procedures for communicating to the school district any instances of trauma-exposed students.

History.
Enact. Acts 2013, ch. 126, § 7, effective June 25, 2013 and Acts 2013, ch. 133, § 7, effective June 25, 2013; 2019 ch. 5, § 17, effective March 11, 2019; 2020 ch. 5, § 8, effective February 21, 2020.

Legislative Research Commission Notes.
(6/25/2013). This statute was created with identical text in 2013 Ky. Acts chs. 126 and 133, which were companion bills. These Acts have been codified together.

CHAPTER 78

COUNTY POLICE AND COUNTY EMPLOYEES RETIREMENT SYSTEM

County Employees Retirement System.

Section
78.606. Service credit earned upon retirement of noncertified employee — Recalculation of benefits.
78.615. Deduction of employee contributions — Service credit — Employer's report — Picked-up employee contributions.

COUNTY EMPLOYEES RETIREMENT SYSTEM

78.606. Service credit earned upon retirement of noncertified employee — Recalculation of benefits.

(1) Upon retirement, a noncertified employee shall have his service credit earned after July 1, 1998, recalculated in accordance with KRS 78.615 except that the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounding any remainder to the next whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

(2) The Kentucky Retirement Systems shall adjust the service credit for all affected members who earned service credit for the school years 1996-97 and 1997-98 by recomputing the members' service based on the rounding method provided in subsection (1) of this section.

History.
Enact. Acts 1998, ch. 246, § 1, effective July 15, 1998; 2002, ch. 52, § 19, effective July 15, 2002.

78.615. Deduction of employee contributions — Service credit — Employer's report — Picked-up employee contributions.

(1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an employer participating in the system while he or she is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 78.540 or is not eligible to participate in the system as provided by KRS

78.535. After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

(a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he or she receives creditable compensation for one hundred (100) hours of work.

(b) For noncertified employees of school boards, for service prior to July 1, 2000, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted calendar days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of calendar days worked, the rate of pay, and the hours in a work day for each employee monthly or annually. The employer shall file at the retirement office the final monthly report or the annual report for a fiscal year no later than twenty (20) days following the completion of the fiscal year. The retirement system shall impose a penalty on the employer of one thousand dollars ($1,000) if the information is not submitted by the date required with an additional two hundred and fifty dollars ($250) for each additional thirty (30) day period the information is reported late.

1. If the employee works fewer than the number of contracted calendar days, the employee shall receive service credit determined by dividing the actual number of contracted calendar days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

2. If the employee works fewer than the number of contracted calendar days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he or she worked eighty (80) or more hours.

3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.

(c) For noncertified employees of school boards, for service on and after July 1, 2000, at the close of each fiscal year, the retirement system shall add service credit to the account of each employee who made contributions to his or her account during the year. Employees shall be entitled to a full year of service credit if their total paid calendar days were not less than one hundred eighty (180) calendar days for a regular school or fiscal year. In the event an employee is paid for less than one hundred eighty (180) calendar days, the employee may purchase credit according to administrative regulations promulgated by the system. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Employees who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1. Employees who are employed and paid for less than the number of calendar days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. This credit shall be based upon the number of calendar days employed and the number of calendar days in the employee's annual employment agreement or normal employment year. Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the employee is employed during that year.

(d) Notwithstanding paragraph (c) of this subsection, a noncertified employee of a school board who retires between July 1, 2000, and August 1, 2001, may choose to have service earned between July 1, 2000, and August 1, 2001, credited as described in paragraph (b) of this subsection, if the employee or retired member notifies the retirement system within one (1) year of his or her initial retirement. The decision once made shall be irrevocable.

(2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he or she is seasonal, emergency, temporary, or part-time. No service credit shall be earned.

(3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:

(a) A member on military leave shall be entitled to service credit in accordance with KRS 61.552; and

(b) A member on approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his or her employer shall pay employer contributions in accordance with KRS 78.635. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.

(4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

History.

Enact. Acts 1972, ch. 116, § 67; 1976, ch. 321, § 34; 1978, ch. 311, § 24, effective June 17, 1978; 1982, ch. 166, § 10, effective July 15, 1982; 1982, ch. 423, § 18, effective July 15, 1982; 1986, ch. 176, § 3, effective July 15, 1986; 1990, ch. 117, § 3, effective July 13, 1990; 1990, ch. 222, § 8, effective July 13, 1990; 1992, ch. 240, § 57, effective July 14, 1992; 1994, ch. 485, § 29, effective July 15, 1994; 1996, ch. 167, § 25, effective July 15, 1996; 1998, ch. 105, § 23, effective July 15, 1998; 1998, ch. 154, § 73, effective July 15, 1998; 2000, ch. 299, § 1, effective July 14, 2000; 2001, ch. 151, § 1, effective June 21, 2001; 2002, ch.

52, § 20, effective July 15, 2002; 2015 ch. 28, § 12, effective June 24, 2015; 2017 ch. 32, § 20, effective June 29, 2017; 2020 ch. 79, § 37, effective April 1, 2021; 2021 ch. 102, § 22, effective April 1, 2021.

Compiler's Notes.

Section 10 of Acts 1990, ch. 222 provides that: "Any employee or former employee not retired who participated in more than one (1) retirement system administered by the Kentucky Retirement Systems prior to July 15, 1990, may retroactively choose to receive and shall be granted full service credit for time served in one (1) of those systems, and thereby shall relinquish service credit in the other systems for the same time period, and his contributions related to the relinquished credit shall be refunded."

OPINIONS OF ATTORNEY GENERAL.

A member of the county employees' retirement system who has entered into a deferred compensation plan must contribute to the system on the basis of his gross salary as there is no legal authority which would indicate that one's creditable compensation may be reduced by the amount a member would contribute to a deferred compensation plan. OAG 74-74.

CHAPTER 79

INTERCITY, INTERCOUNTY AND CITY-COUNTY COMPACTS FOR PURCHASING AND MERIT SYSTEMS — RETIREMENT AND DISABILITY PLANS FOR EMPLOYEES OF COUNTIES AND CITIES

Section

79.080. Retirement, disability, health maintenance organization coverage, or hospitalization benefits for employees and elected officers — Participation in state health insurance coverage program for state employees — Termination of participation — Coverage provided in County Employees Retirement System after August 1, 1988.

79.080. Retirement, disability, health maintenance organization coverage, or hospitalization benefits for employees and elected officers — Participation in state health insurance coverage program for state employees — Termination of participation — Coverage provided in County Employees Retirement System after August 1, 1988.

(1) The term "health maintenance organization" for the purposes of this section, means a health maintenance organization as defined in KRS 304.38-030, which has been issued a certificate of authority by the Department of Insurance as a health maintenance organization and which is qualified under the requirements of the United States Department of Health, Education and Welfare, except as provided in subsection (4) of this section.

(2) Cities of all classes, counties, and urban-county governments and the agencies of cities, counties, charter county, and urban-county governments are authorized to establish and operate plans for the payment of retirement, disability, health maintenance organization coverage, or hospitalization benefits to their employees and elected officers, and health maintenance organization coverage or hospitalization benefits to the immediate families of their employees and elected officers. The plan may require employees to pay a percentage of their salaries into a fund from which coverage or benefits are paid, or the city, county, charter county, urban-county government, or agency may pay out of its own funds the entire cost of the coverage or benefits. A plan may include a combination of contributions by employees and elected officers and by the city, county, charter county, urban-county government, or agency into a fund from which coverage or benefits are paid, or it may take any form desired by the city, county, charter county, urban-county government, or agency. Each city, county, charter county, urban-county government, or agency may make rules and regulations and do all other things necessary in the establishment and operation of the plan.

(3) Cities of all classes, counties, charter counties, urban-county governments, the agencies of cities, counties, charter counties, and urban-county governments, and all other political subdivisions of the state may provide disability, hospitalization, or other health or medical care coverage to their officers and employees, including their elected officers, through independent or cooperative self-insurance programs and may cooperatively purchase the coverages.

(4) Any city, county, charter county, or urban-county government which is a contributing member to any one (1) of the retirement systems administered by the state may participate in the state health insurance coverage program for state employees as defined in KRS 18A.225 to 18A.229. Should any city, county, charter county, or urban-county government opt at any time to participate in the state health insurance coverage program, it shall do so for a minimum of three (3) consecutive years. If after the three (3) year participation period, the city, county, charter county, or urban-county government chooses to terminate participation in the state health insurance coverage program, it will be excluded from further participation for a period of three (3) consecutive years. If a city, county, charter county, or urban-county government, or one (1) of its agencies, terminates participation of its active employees in the state health insurance coverage program and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the unit of government, or its agency, nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program. The three (3) year participation and exclusion cycles shall take effect each time a city, county, charter county, or urban-county government changes its participation status.

(5) Any city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons and which provides hospitalization benefits or health maintenance organization coverage to its employees and elected officers, shall annually give its employees an

option to elect either standard hospitalization benefits or membership in a qualified health maintenance organization which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside; except that if any city, county, charter county, urban-county government, or agencies of any city, county, charter county, urban-county government, or any other political subdivision of the state which does not have a qualified health maintenance organization engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the city, county, charter county, urban-county government, or agencies of the city, county, charter county, urban-county government, or any other political subdivision of the state may annually give its employees an option to elect either standard hospitalization benefits or membership in a health maintenance organization which has been issued a certificate of authority by the Department of Insurance as a health maintenance organization and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. Any premium due for health maintenance organization coverage over the amount contributed by the city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons for any other hospitalization benefit shall be paid by the employee.

(6) If an employee moves his place of residence or employment out of the service area of a health maintenance organization, under which he has elected coverage, into either the service area of another health maintenance organization or into an area of the state not within a health maintenance organization service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization into which service area he moves or is transferred or to elect standard hospitalization coverage offered by the employer.

(7) Any plan adopted shall provide that any officer or member of a paid fire or police department who has completed five (5) years or more as a member of the department, but who is unable to perform his duties by reason of heart disease or any disease of the lungs or respiratory tract, is presumed to have contracted his disease while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases, and shall be retired by the pension board under terms of the pension system of which he is a member, if the member passed an entrance physical examination and was found to be in good health as required.

(8) The term "agency" as used herein shall include boards appointed to operate waterworks, electric plants, hospitals, airports, housing projects, golf courses, parks, health departments, or any other public project.

(9) After August 1, 1988, except as permitted by KRS 65.156, no new retirement plan shall be created pursuant to this section, and cities which were covered by this section on or prior to August 1, 1988, shall participate in the County Employees Retirement System effective August 1, 1988. Any city, county, charter county, urban-county, or agency thereof which provided a retirement plan for its employees, pursuant to this section, on or prior to August 1, 1988, shall place employees hired after August 1, 1988, in the County Employees Retirement System. The city, county, charter county, urban-county, or agency thereof shall offer employees hired on or prior to August 1, 1988, membership in the County Employees Retirement System under the alternate participation plan as described in KRS 78.530(3), but such employees may elect to retain coverage under this section.

History.

Enact. Acts 1948, ch. 129, § 1; 1966, ch. 10; 1970, ch. 212, § 1; 1976 (Ex. Sess.), ch. 35, § 3; 1984, ch. 177, § 10, effective July 13, 1984; 1986, ch. 292, § 1, effective July 15, 1986; 1988, ch. 11, § 7, effective July 15, 1988; 1994, ch. 350, § 5, effective July 15, 1994; 2000, ch. 438, § 5, effective April 21, 2000; 2010, ch. 24, § 74, effective July 15, 2010; 2018 ch. 112, § 1, effective July 14, 2018.

NOTES TO DECISIONS

Cited in:

Board of Trustees v. Nuckolls, 507 S.W.2d 183, 1974 Ky. LEXIS 678 (Ky. 1974); Covington v. Tranter, 673 S.W.2d 744, 1984 Ky. App. LEXIS 527 (Ky. Ct. App. 1984).

OPINIONS OF ATTORNEY GENERAL.

The provisions of this section have no application to the police and fire departments of a second-class city. OAG 68-451.

It is not mandatory that a member of the police or fire department of a second-class city who might qualify as to disability under this section be retired. OAG 68-451.

A city could not legally enlarge the retirement, disability or hospitalization benefits it furnishes for its employees to include coverage for the members of the immediate families of such employees. OAG 69-657.

The provisions of this section have no application to those police and fire departments mandatorily required to operate under the terms of KRS 95.851 to 95.885 (KRS 95.885 renumbered as KRS 95.991). OAG 70-140.

A city of the fourth class could not take group hospital insurance and permit the mayor and city councilmen to be included in the coverage with the city paying one half of the premium. OAG 70-720.

This section would not allow premium payments for deputy county clerks as such clerks are officers rather than "employees" of the county. OAG 72-540.

A third-class city may, under the provisions of this section, pay more than fifty percent of the premiums for disability, retirement or hospitalization insurance for city policeman. OAG 72-709.

Although any city may establish and operate a retirement plan for its employees, it cannot apply to municipal officers such as the clerk-treasurer or the chief of police and members of the police department of a fifth-class city, who are required to operate under KRS Chapter 95. OAG 73-283.

County funds could be utilized to pay for Blue Cross medical insurance covering not only county employees but also county officials, including justices of the peace. OAG 73-589.

The fiscal court could take out hospital and medical care insurance covering both elected county officials and county employees. OAG 74-281.

Whether the presumption created by KRS 79.080 can be overcome by a physician is one that only the courts can decide. OAG 74-617.

If group life insurance coverage under KRS 82.040 (now repealed) or health insurance coverage under KRS 79.080

were given to municipal officers to be paid for in whole or part by the city, such contribution would not constitute extra compensation in violation of Const., § 161. OAG 75-470.

The fiscal court may pay all or any part of the insurance premiums of county employees but if county officials are included under the plan, they must pay their own premiums. See OAG 75-582 under this section for withdrawal of opinion. OAG 75-538.

The fiscal court may pay the Blue Cross-Blue Shield premiums for county officers under the county's home rule statute, KRS 67.083, and that portion of OAG 75-538 in conflict with this opinion is withdrawn. OAG 75-582.

The employees of a fire department of a city, county or urban-county government may be included with other city employees under a hospitalization plan adopted pursuant to the terms of this section. OAG 76-517.

This section does not authorize the payment of premiums out of excess fees of constitutional officers for such insurance covering deputies of constitutional fee officers, since the legislature intended to cover only county "employees" hired under the aegis of fiscal court under KRS 67.083, 67.710(7) and this section and this prevails over all conflicting opinions. OAG 78-806, 1978 Ky. AG LEXIS 34.

A city, under the existing statutory provisions, is not authorized to establish a pension program for municipal officers, and municipal officers, such as the treasurer-clerk, could only participate in a municipal employees' pension plan if those officers paid all required premiums from their own personal funds. OAG 79-20, 1979 Ky. AG LEXIS 617.

A city of the fourth class may, under the provisions of this section, pay all or any part of the cost of its employees' hospitalization plan. OAG 80-354.

A city of the fourth class may not operate a pension plan for its police officers under subsection (2) of this section but, rather, it must utilize the provisions of KRS 95.767 to 95.785 or KRS 95.520 to 95.620 or KRS 90.300 to 90.420. OAG 81-191, 1981 Ky. AG LEXIS 246.

Municipal employees of a fourth-class city could be included in a retirement plan enacted pursuant to subsection (2) of this section; however, that subsection is limited to municipal employees and a municipal officer could only participate in such retirement plan if he paid all the required amounts due from his own personal funds. OAG 81-191, 1981 Ky. AG LEXIS 246.

The terms of this section authorizing hospitalization coverage of city employees do not authorize the exclusion of a group of city employees for any reason, much less one based upon the total family income of the individual employee which is completely unrelated to his public employment duties. Such would be considered discriminatory and create an arbitrary classification in violation of Const., § 3 and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. OAG 82-247, 1982 Ky. AG LEXIS 391.

A city of the fourth class can, pursuant to this section, provide its employees with a hospitalization plan. A city cannot, however, extend the coverage of such a plan to include city officers as this section is limited to employees and the immediate families of those employees. OAG 82-294, 1982 Ky. AG LEXIS 346.

A county can pay the costs of hospitalization insurance coverage for its employees but it is for the courts to determine whether paying such costs for the immediate families of county employees is an expenditure of public money for a public purpose. OAG 82-294, 1982 Ky. AG LEXIS 346.

Since cities and counties have the authority under subsection (2) of this section to establish and operate, individually, plans for the payment of hospitalization benefits, they may, under the authority of the Interlocal Cooperation Act, KRS 65.210 to 65.300, operate such plans jointly with other cities and counties. The agreement must ultimately be approved by the attorney general. OAG 82-294, 1982 Ky. AG LEXIS 346.

While this section provides in part that a hospitalization plan may take any form desired by the city and county and necessary rules and regulations may be adopted in the establishment and operation of such a plan, there are limitations as to how and for what purposes governmental units may expend their funds. The governmental units may pay the actual costs of the hospitalization insurance plan. If the program is successful, the benefits to the employees should be reflected in terms of lower rates or expanded coverage but not in terms of cash payments to employees. OAG 82-294, 1982 Ky. AG LEXIS 346.

The statutory presumption of subsection (5) (now (7)) of this section that heart disease or respiratory disease was contracted by a member of the department while on active duty is subject to rebuttal by evidence that may be submitted by the board in conjunction with the medical examination required to be made under KRS 95.864; in other words, the burden of proof that the disease was not contracted while on active duty and as a result of strain or the inhalation of noxious fumes, poison or gas, shifts to the board. OAG 83-282, 1983 Ky. AG LEXIS 215.

A city must pay its nonelective officers in accordance with the compensation set forth by ordinance which, of course, can be changed at any time by amendment. However, such compensation that has been fixed for such office should not include the amount contributed by the city for hospitalization insurance under a group program established pursuant to this section, particularly since such payment is unauthorized in the first place. OAG 84-294, 1984 Ky. AG LEXIS 102.

There is no statutory authority which would allow a county clerk to pay the health insurance premiums on himself and his deputies without fiscal court approval. OAG 84-324, 1984 Ky. AG LEXIS 61.

In reading subsection (2) of this section and KRS 304.18-020 together, any fiscal court is authorized to establish a program whereby the county will pay for the group health insurance coverage premiums on the part of the county's employees, its elected county officials, and their deputies under proper budgeting procedure. OAG 85-13, 1985 Ky. AG LEXIS 143.

For purposes of country-wide health insurance, the General Assembly has drawn no distinction among employees, assistants, deputies, and elected officers. In this section the legislature has authorized counties to procure health insurance for "employees and elected officers." This includes deputies of elected officers. OAG 92-108, 1992 Ky. AG LEXIS 93.

Statute authorizing cities, counties, urban counties, and agencies thereof, to establish health coverage programs for employees and elected officers does not provide for a pay raise in lieu of coverage under the governmentally provided program. OAG 94-15, 1994 Ky. AG LEXIS 242.

An elected county fee official cannot offer his employees a health insurance benefits plan which provides a different level of coverage than that provided to the county fee official. OAG 94-15, 1994 Ky. AG LEXIS 242.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Civil service for city employees, KRS Chapter 90.

Disability benefits for policemen and firemen, KRS 95.290, 95.550, 95.773.

Disability, medical and hospital benefits for police and firemen of cities of third and fourth classes, KRS 95.850.

CHAPTER 95

CITY POLICE AND FIRE DEPARTMENTS

Training for Local Law Enforcement Officers.

Section
95.970. School and student safety issues training encouraged — Collaboration between city police chief and local school district encouraged.

TRAINING FOR LOCAL LAW ENFORCEMENT OFFICERS

95.970. School and student safety issues training encouraged — Collaboration between city police chief and local school district encouraged.

(1) The chief of police in each city is encouraged to receive training on issues pertaining to school and student safety and shall be invited to meet annually with local superintendents to discuss emergency response plans and emergency response concerns.

(2) The chief of police in each city is encouraged to collaborate with the local school district on policies and procedures for communicating to the school district any instances of trauma-exposed students.

History.

Enact. Acts 2013, ch. 126, § 6, effective June 25, 2013; enact. Acts 2013, ch. 133, § 6, effective June 25, 2013; 2019 ch. 5, § 18, effective March 11, 2019; 2020 ch. 5, § 9, effective February 21, 2020.

Legislative Research Commission Note.

(6/25/2013). This statute was created with identical text in 2013 Ky. Acts chs. 126 and 133, which were companion bills. These Acts have been codified together.

CHAPTER 95A

FIRE PROTECTION PERSONNEL

Professional Firefighters Foundation Program Fund.

Section
95A.265. Safety education fund — Education programs in public schools and agencies — Administrative regulations to establish funding criteria.

PROFESSIONAL FIREFIGHTERS FOUNDATION PROGRAM FUND

95A.265. Safety education fund — Education programs in public schools and agencies — Administrative regulations to establish funding criteria.

(1) There is hereby created a safety education fund to be administered by the Kentucky Fire Commission to initiate education programs in the public schools and other agencies to reduce and prevent injuries and the loss of life. The fund shall:

(a) Provide funding for a statewide "Risk Watch" program to be implemented in the public schools;

(b) Provide funding for statewide fire safety initiatives and programs including the "Learn Not to Burn" program; and

(c) Allot grants to fire departments to provide resources for public education programs.

(2) The commission shall promulgate administrative regulations to establish the criteria for providing funds to initiate injury prevention curricula and training programs throughout the state. The funding criteria shall include requirements that the recipients of funds work in cooperation with other agencies to establish the programs.

History.

Enact. Acts 2003, ch. 187, § 1, effective June 24, 2003; 2020 ch. 67, § 10, effective July 15, 2020.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 11, (2) at 2108.

CHAPTER 96

UTILITIES IN CITIES

Furnishing Water or Light to Another City or Outside Limits.

Section
96.150. Extending water supply or sanitary sewer system outside city limits — Limitation — Consideration of installation of fire hydrants on extended lines.

Miscellaneous Provisions.

96.536. City owned light, water, or gas plant may pay tax equivalent to school district.

T.V.A. Act.

96.820. Payment of sums equivalent to taxes based on book value.
96.895. Proration and distribution of payments of sums equivalent to taxes based on book value among the state, counties, cities, and school districts — Regional development agency assistance fund — Portion of TVA payment received by state to be transferred to fund for distribution to regional development agencies in fund-eligible counties — Annual report.
96.905. Regional Development Agency Assistance Program — Grants for economic development and job creation activities — Annual reports — Certification of proper use of funds.

FURNISHING WATER OR LIGHT TO ANOTHER CITY OR OUTSIDE LIMITS

96.150. Extending water supply or sanitary sewer system outside city limits — Limitation — Consideration of installation of fire hydrants on extended lines.

(1) Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and

furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus; provided, however, that the extension of a water supply or sanitary sewer system shall not enter into any territory served by an existing water supply or sanitary sewer district unless such district requests the extension of water or sewer services from a city. For these purposes the city or sanitation authority established by an interlocal agreement may condemn or otherwise acquire franchises, rights, and rights-of-way, as private corporations may do.

(2) When extending the system to any person, water district, or water association, the city may consider the installation of fire hydrants on the extended lines. The city may extend water lines which are incapable of servicing fire hydrants only if the city determines that servicing hydrants is not feasible. The determination shall include consideration of the incremental costs of adequately sized pipe and associated pumps and towers, and the benefits of real estate development, water sales, the availability of fire protection insurance, and the reduction in fire insurance premiums which may result from the installation of hydrants at specified intervals. When extending lines to a water district or water association, the determination may be made in consultation with the district or association, taking into consideration their fiscal capacity.

History.

2741a-4: amend. Acts 1962, ch. 233, § 1; 1964, ch. 31, § 1; 1974, ch. 36, § 1; 1986, ch. 34, § 1, effective July 15, 1986; 1992, ch. 122, § 1, effective July 14, 1992.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Controversies Between Utilities.
3. Annexation.

1. Construction.

Since this section expressly authorizes city water company to extend its facilities into territory within five miles of the city limits, there is no basis for a holding that the company cannot incur the expense of furnishing or installing the facilities in such territory. Louisville Water Co. v. Public Service Com., 318 S.W.2d 537, 1958 Ky. LEXIS 141 (Ky. 1958), overruled, McClellan v. Louisville Water Co., 351 S.W.2d 197, 1961 Ky. LEXIS 160 (Ky. 1961).

Ky. Rev. Stat. §§ 96.538(2) and 96.150(1) reflect an implicit intent to provide protection from municipal encroachment for water districts who have invested in infrastructure to make service available to rural customers; the statutes as amended over time indicate a legislative intent to provide some protection to water utilities when a city annexes property located within the water utilities' service area boundaries. Madison Cnty. Utils. Dist. v. City of Richmond, 2025 Ky. App. LEXIS 28 (Ky. Ct. App. 2025).

Circuit court properly dismissed appellants' action against the city arising out of the city's refusal to provide appellants with municipal water and sewer service because the city was not mandated to sell such services outside its boundary; appellants' equitable estoppel claim failed because it was not reasonable for them to assume the mayor's initial support could bind the city council, and appellants had already purchased the property before receiving the mayor's support; appellants' waiver claim failed; and the city's decision was not arbitrary as it was within its power to approve or deny sewer access, appellants were afforded procedural due process, and substantial evidence supported the decision. Kentucky Bluegrass Experience Resort v. Woodford Cnty. Bd. of Adjustments, 731 S.W.3d 13, 2025 Ky. App. LEXIS 55 (Ky. Ct. App. 2025).

2. Controversies Between Utilities.

Since a city-owned water supply system is not a utility subject to the jurisdiction of the public service commission, the commission was without jurisdiction to resolve a territorial dispute between a city and a private water company where the city undertook to extend its water supply system beyond city limits into a contiguous territory served by the private company. Georgetown v. Public Service Com., 516 S.W.2d 842, 1974 Ky. LEXIS 173 (Ky. 1974).

3. Annexation.

Where subdivision was annexed by city over a month after previously formed water district received a certificate of public convenience and necessity authorizing it to provide the subdivision with water, the city had a right to provide water in the subdivision and water district was excluded. Flemingsburg v. Public Service Com., 411 S.W.2d 920, 1966 Ky. LEXIS 28 (Ky. 1966).

County utilities district was a utility providing water service in an annexed area because it had installed the infrastructure necessary for customers on the property to receive water, which was all it could do; the district had a dominant right to continue providing water service in the area to consumers then being served and to new consumers located nearer to its facilities than to the facilities of any other utility as all those facilities were located immediately prior to annexation. Madison Cnty. Utils. Dist. v. City of Richmond, 2025 Ky. App. LEXIS 28 (Ky. Ct. App. 2025).

Cited:

Austin v. Louisa, 264 S.W.2d 662, 1954 Ky. LEXIS 684 (Ky. 1954); Foley v. Kinnett, 486 S.W.2d 705, 1972 Ky. LEXIS 118 (Ky. 1972).

OPINIONS OF ATTORNEY GENERAL.

A city has complete discretion as to whether or not extensions of water lines are made to sections outside of the city limits. OAG 60-357.

A city had the legal authority to abandon an old water line that served one nonresident customer and thus terminate this utility service. OAG 62-475.

A city of the fifth class could extend its municipal water lines beyond the corporate limits of the city where the cost of the extension was paid for by the city. OAG 71-237.

If the city of Bardstown elects to acquire and operate nonprofit corporation's water system under this section, the provisions of KRS 96.360 need not necessarily be complied with. OAG 72-20.

While the Mayfield Electric and Water System has authority to extend its water system up to 15 miles outside the corporate limits of a city and fix and regulate the prices to private consumers only the courts can determine whether the tap-on fee for residents to be serviced outside the city limits would be considered arbitrary and discriminatory (opinion prior to 1974 amendment). OAG 73-483.

Utility companies supplying water may use highway rights of way to carry water for public purposes, pursuant to KRS 416.140, but a determination must be made as to whether the potential industrial sites to be served are in territory contiguous to the city and within 15 miles of the corporate limits (opinion prior to 1974 amendment). OAG 73-748.

In the absence of any statutory authority or the existence of an emergency situation concerning the health and sanitation

of city residents, a city cannot force nonresidents to hook up to the city sewer system and to pay a sewage use charge for city sewer services the nonresidents do not use or do not want to use. OAG 74-618.

Where the city water system does not extend beyond the city limits, nonresident individuals acquire no rights against the city. OAG 74-656.

Whether or not a purchaser of a lot in a subdivision outside the city can be required by the subdivision developer who also installed the subdivision's water system, to pay a fee beyond that required by the city for water services to hook onto this private system, said additional fee representing the pro rata share of the cost of the installation of the subdivision's water system but which was not paid by prior purchasers of subdivision lots, is a private matter and the city should not become involved in a private dispute concerning a private water system. OAG 74-656.

All lot owners in a particular subdivision should be charged the same city tap fee for receiving water from the city. OAG 74-656.

A city may condemn right of way for its water system into territory contiguous to the city in the same manner as private corporations do so. OAG 74-753.

A sewer line which was built outside the city limits and later connected to the city sewer system belongs to the property owners outside the city limits and not to the city since no emergency relating to the health and sanitation of the residents of the city exists and the line is outside the city limits. OAG 75-107.

Pursuant to this section and KRS 86.110 (8) (repealed), under the broad discretion resting in a city through its council, a city has the power to condemn land in the county and outside of the city boundaries for the purpose of city water supply, even though another solution to the water problem may exist which would not involve condemnation, and such action cannot be overturned by the courts absent a showing that the council acted fraudulently, or in bad faith or grossly abused its discretion. OAG 75-151.

While the city has the authority to extend its water system beyond the city limits it is not required to do so and, since the benefactors of the proposed water system are nonresidents the city cannot force these people to hook up to the system and pay for services they do not want. OAG 75-586.

Not only may a city which has extended its water supply system outside of its boundary charge for water furnished by contract at higher rates than those charged resident customers, but the city may also require users of the extended water facility to provide their own conduit to the main line of the system or pay for the extension of the water mains. OAG 76-234.

The authority of a city, which has extended its water supply system outside its boundaries and into a territory contiguous thereto, to install necessary apparatus would include fire hydrants along the main line. OAG 76-234.

"Person," as used in this section, includes any corporation or body politic so that a city could extend its water line to a water district boundary and sell water to the district. OAG 76-234.

A city has the authority to contract with nonresidents in areas contiguous to the city in connection with the furnishing of water to those persons by the city even though these people reside within the territorial boundaries of a water district presumably organized pursuant to KRS Chapter 74. OAG 76-554.

A city water company could not extend its system into another county as such territory would not be contiguous to the city. OAG 77-188, 1977 Ky. AG LEXIS 584.

Inasmuch as the extension of lead water mains originating within a city to any territory outside the city would make such territory "contiguous" to the city regardless of the location of the actual area serviced, a city could extend its water system from the city limits to service an area in an adjoining county. OAG 77-559, 1977 Ky. AG LEXIS 246.

A city is not required to extend its water system outside of its boundaries, but, if it desires to do so, it may extend the system and pay for the extension and at the same time charge a reasonable rate for water furnished by contract at a higher rate than that charged resident customers; the users of the extended water facility outside of the city can be required to provide their own conduit to the main line of the system and pay for the extension of the water mains. OAG 78-818, 1978 Ky. AG LEXIS 23.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

City may contract with county water district to receive water, KRS 74.120.

MISCELLANEOUS PROVISIONS

96.536. City owned light, water, or gas plant may pay tax equivalent to school district.

(1) Each board of education of a public school district in which is located the property or properties of a publicly-owned light, water, or gas plant may each year be paid by the governing board of the plant from the proceeds of the sale of electrical energy, water, or gas an amount which shall not exceed that determined by multiplying the book value of the property or properties of the publicly-owned light, water, or gas plant as of the beginning of each year by the current tax rate levied for school purposes for the school district in which the property or properties may be located. "Book value," as used in this section, means the cost of tangible property plus additions, extensions, and betterments, less reasonable depreciation or retirement reserve, and "year" as herein used shall mean the twelve (12) month period ending June 30. The book value so determined shall be in accordance with standard accounting practices. No payment may be made under this section except pursuant to a resolution of the governing board of the plant, adopted by a unanimous vote of the members of the board.

(2) Amounts for any year, as provided in subsection (1) of this section, shall be paid to the board of education on or before January 1 of each year.

(3) This section shall not apply to any publicly owned electric plant that is subject to the provisions of KRS 96.820.

(4) This section shall be construed only as an enabling act and shall in no way confer upon any board of education of a public school district authority to require this money to be paid to it.

History.

Enact. Acts 1948, ch. 54; 1990, ch. 476, Pt. IV, § 123, effective July 13, 1990.

T.V.A. ACT

96.820. Payment of sums equivalent to taxes based on book value.

(1) For the purposes of this section, unless the context requires otherwise:

(a) "Taxing jurisdiction" shall mean each county, each school district, each municipality, and each other special taxing district located within the state.

(b) "State" shall mean the Commonwealth of Kentucky.

(c) "Tax equivalent" shall mean the amount in lieu of taxes computed according to this section which is required to be paid by each board to the state and to each taxing jurisdiction in which the board operates and required by subsection (11) of KRS 96.570 to be included in resale rates.

(d) "Tax year" shall mean the twelve (12) calendar-month period ending with December 31.

(e) "Current tax rate" shall mean the actual levied ad valorem property tax rate of the state and of each taxing jurisdiction which is applicable to all property of the same class as a board's property subject to taxation for the tax year involved.

(f) "Book value of property" or "book value of property owned by the board" shall mean the sum of:

1. The original cost (less reasonable depreciation or retirement reserve) of a board's electric plant in service on December 31 of the immediately preceding calendar year located within the state, used and held for use in the transmission, distribution, and generation of electric energy, and

2. The cost of the material and supplies owned by a board on December 31 of the immediately preceding calendar year. For the purpose of this definition, "electric plant in service" shall mean those items included in the "electric plant in service" account prescribed by the Federal Energy Regulatory Commission uniform system of accounts for electric utilities, and "material and supplies" shall mean those items included in the accounts grouped under the heading "material and supplies" in the said system of accounts.

(g) "Adjusted book value of property" or "adjusted book value of property owned by the board" shall mean the book value of property owned by the board excluding manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination purposes.

(h) The "adjustment factor" shall be one hundred twenty-five percent (125%) for the tax year 1970. For each tax year thereafter, it shall be the duty of the Department of Revenue to compute the adjustment factor for that tax year as follows: For each five (5) percentage points or major fraction thereof by which the adjustment ratio for electric utility property for the immediately preceding tax year exceeded or was less than one hundred sixteen percent (116%), five (5) percentage points shall be added to or subtracted from one hundred twenty-five percent (125%). For the purposes of this computation, "adjustment ratio for electric utility property" shall mean the ratio of total assessed value to total property value for all public service corporations distributing electric energy to more than fifty thousand (50,000) retail electric customers within the state. "Total assessed value" shall mean the total actual cash value assigned by the Department of Revenue for ad valorem property tax purposes to the property of such corporations located within the state (properly adjusted for property under construction). "Total property value" shall mean the sum of:

1. The depreciated original cost of the total utility plant in service of such corporations within the state, and

2. The book value of material and supplies of such corporations located within the state, both as derived from published reports of the Federal Energy Regulatory Commission, or in the absence thereof, from information provided to the Department of Revenue by such corporations.

(i) "Electric operations" shall mean all activities associated with the establishment, development, administration, and operation of any electric system and the supplying of electric energy and associated services to the public, including without limitation the generation, purchase, sale, and resale of electric energy and the purchase, use, and consumption thereof by ultimate consumers.

(2) It shall be the duty of each board, on or before April 30, to certify to the Department of Revenue the book value of property owned by the board and the adjusted book value of property owned by the board and located within the state and within each taxing jurisdiction in which the board operates. A copy of the certification shall also be sent by the board to each such taxing jurisdiction. The book value of property and adjusted book value of property shall be determined, and the books and records of the board shall be kept in accordance with standard accounting practices, and the books and records of each board shall be subject to inspection by the Department of Revenue and by representatives of the affected taxing jurisdictions and to adjustment by the Department of Revenue if found not to comply with the provisions of this section. Upon the receipt of the required certification from a board, the Department of Revenue shall make any inspection and adjustment, hereinabove authorized, as it deems necessary, and no earlier than September 1 of each year the Department of Revenue shall certify to the board and to the county clerk of each county in which the board operates the book value of property owned by the board and the adjusted book value of property owned by the board, located within each taxing jurisdiction in which the board operates and within the state. At the same time, the Department of Revenue shall certify to the board and to the county clerk the adjustment factor for the tax year. The county clerk shall promptly certify the book value of property, the adjusted book value of property, and the adjustment factor certified by the Department of Revenue, to the respective taxing jurisdiction in which the board operates.

(3)(a) Each board shall pay for each tax year, beginning with the tax year 1970, to the state and to each taxing jurisdiction in which the board operates, a tax equivalent from the revenues derived from the board's electric operations for that tax year, computed according to this subsection.

(b) The tax equivalent for each tax year payable to the state shall be the total of:

1. The book value of the property owned by the board within the state, multiplied by the adjustment factor, multiplied by the current tax rate of the state, less thirty cents ($0.30), plus

2. The state's portion of the amount payable under paragraph (d) of this subsection.

(c) The tax equivalent for each tax year payable to each taxing jurisdiction in which the board operates shall be the total of:

1. The adjusted book value of property owned by the board within the taxing jurisdiction, multiplied by the adjustment factor, multiplied by the current tax rate of the taxing jurisdiction; provided, however, for the purpose of this calculation the tax rate for school districts shall be increased by thirty cents ($0.30), plus

2. The taxing jurisdiction's portion of the amount payable under paragraph (d) of this subsection.

(d) For purposes of this subsection, "amount payable" shall mean four-tenths of one percent (0.4%) of the book value of property owned by the board located within the state. The state shall be paid the same proportion of the amount payable as the payment to the state under subparagraph 1. of paragraph (b) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Each taxing jurisdiction in which the board operates shall be paid the same proportion of the amount payable as the payment to the taxing jurisdiction under subparagraph 1. of paragraph (c) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Under the regulations the Department of Revenue may prescribe, upon the board's receipt from the state and taxing jurisdictions of notice of the amount due under subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection, the board shall compute the portion of the amount payable which is due the state and each taxing jurisdiction in which the board operates.

(e) Payment of the tax equivalent under this section for each tax year shall be made by each board to the state within thirty (30) days after receipt by the board of the certification from the Department of Revenue required by subsection (2) of this section and shall be made directly to each taxing jurisdiction in which the board operates within thirty (30) days from the date of the certifications by the county clerk required by subsection (2) of this section. The state and each taxing jurisdiction in which a board operates shall have a superior lien upon the proceeds of the sale of electric energy by that board for the amounts required by this section to be paid to it.

(4) Except as hereinafter provided, the tax equivalents computed under this section shall be in lieu of all state, municipal, county, school district, special taxing district, other taxing district, and other state and local taxes or charges on the tangible and intangible property, the income, franchises, rights, and resources of every kind and description of any municipal electric system operating under KRS 96.550 to 96.900 and on the electric operations of any board established pursuant thereto, and the tax equivalent for any tax year computed and payable under this section to the state or to any taxing jurisdiction in which any board operates shall be reduced by the aggregate amount of any tax or charge within the meaning of this sentence which is imposed by the state, or by any taxing jurisdiction in which a board operates, on the board, the electric system, or the board's electric operations. Provided, however, that if any school district in which property of a board is located has elected, or does hereafter elect, to apply the utility gross receipts license tax for schools to all utility services as provided by KRS 160.613 through KRS 160.617, or as may hereafter be provided by other statutes, the amount of such utility gross receipts license tax shall not reduce, or in any manner affect, the amount payable to any such board or boards under the provisions of this section. It is the intent and purpose of this provision to eliminate all sums received by any such board or boards by reason of the utility gross receipts license tax from any computation of the amount payable under this section to any such board or boards, irrespective of the manner in which that payment is computed, so that, in no event, shall any sum received by any school district by reason of the utility gross receipts license tax reduce, directly or indirectly, the amount payable to such district under this chapter. Provided, further, that if the state shall levy a statewide retail sales or use tax on electric power or energy, collected by retailers of the energy from the vendees or users thereof, and imposed at the same rate or rates as are generally applicable to the sale or use of personal property or services, including natural or artificial gas, fuel oil, and coal as well as electric power or energy, the retail sales or use tax shall not be deemed to be a tax or charge within the meaning of the first sentence of this subsection, and the tax equivalent payable for the tax year to the state under this section shall not be reduced on account of such retail sales or use tax.

(5)(a) Notwithstanding subsection (3) of this section, until the first tax year in which the total of:

1. The tax equivalent payable to the state, or to any taxing jurisdiction in which the board operates, computed under subsection (3) of this section, plus

2. The additional amounts permitted to be paid to the state or taxing jurisdiction without deduction under the second and third sentences of subsection (4) of this section, exceeds the minimum payment to the state or taxing jurisdiction specified in paragraph (b) of this subsection, the tax equivalent for each tax year payable to the state or taxing jurisdiction shall be an amount equal to the minimum payment computed under paragraph (b) of this subsection.

(b) For purposes of this subsection, the minimum payment to the state or to any taxing jurisdiction in which the board operates shall mean an amount equal to the total of:

1. The largest actual payment made by the board pursuant to this section to the state or to the taxing jurisdiction for any of the tax years 1964, 1965, or 1966, plus

2. The state's or taxing jurisdiction's pro rata share of an amount equal to four-tenths of one

percent (0.4%) of the increase since July 1, 1964, in the book value of property owned by the board within the state. For the purposes of this paragraph "pro rata share" shall mean the same proportion of the amount computed under this subparagraph as the largest actual payment in lieu of taxes made by the board to the state or taxing jurisdiction for the applicable tax year under subparagraph 1. of this paragraph represents of the total amount of the largest actual payments in lieu of taxes made by the board to the state and to all taxing jurisdictions in which it operated for any of the applicable tax years.

(c) The provisions of paragraph (e) of subsection (3) of this section shall apply to all payments required under this subsection.

(d) This subsection shall not be applicable for the first tax year specified in paragraph (a) of this subsection or for any tax year thereafter, except however, that tax year 1977 shall not be deemed as the "first tax year" as specified in paragraph (a) and this subsection shall continue to apply in such cases.

History.

Enact. Acts 1942, ch. 18, § 25; 1966, ch. 165, § 2; 1968, ch. 170; 1970, ch. 286, § 2; 1972, ch. 219, § 1; 1978, ch. 163, § 1, effective June 17, 1978; 1978, ch. 384, § 223, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 124, effective July 13, 1990; 2002, ch. 89, § 2, effective July 15, 2002; 2005, ch. 85, § 103, effective June 20, 2005.

NOTES TO DECISIONS

1. Amount in Lieu of Taxes.

Where a municipal electric plant paid the city an amount in lieu of taxes the amounts paid were not to be counted in computing the total revenue received from "public service companies" to determine the total revenue received in the previous year to be used as a basis for computing the property tax rollback. Southern Bell Tel. & Tel. Co. v. Hopkinsville, 443 S.W.2d 224, 1969 Ky. LEXIS 240 (Ky. 1969).

Where an action for collection in lieu of tax payments was pending at the time the parties joined in a suit for a declaratory judgment on the same issue, the suit for collection should be abated pending the outcome of the declaratory judgment action but not dismissed. Paducah v. Electric Plant Board of Paducah, 449 S.W.2d 907, 1970 Ky. LEXIS 483 (Ky. 1970).

OPINIONS OF ATTORNEY GENERAL.

Where a city purchased property of a water company, part of which was located in another city, if the city was operating the water company under the T.V.A. Act it was required to make in lieu of taxes payments on the portion of the property located in the second city. OAG 63-862.

Revenue received by school districts from electric plant boards is not ad valorem tax revenue for purposes of KRS 160.470 and a plant board does not have net assessment growth that can be included in the department of revenue's certification of net assessment growth as required in subsec. (3)(b) of KRS 160.470. OAG 66-441.

An electric plant board will make in lieu of taxes payments at the rate of 20.7 cents per $100 of the book value of its property for the year 1966. OAG 66-633.

The amount of payment in lieu of taxes due for each year under this section is determined on the statutory assessment date by multiplying the book value of the property of the electric system located in each such jurisdiction by the current tax rate, and the fact that the electric plant operates on a fiscal year basis has no bearing on when payment will be made or on the rate that will be applied. OAG 66-639.

An electric plant board may bypass the sheriff's office in the county and make in lieu of tax payments directly to the taxing district concerned. OAG 71-13.

96.895. Proration and distribution of payments of sums equivalent to taxes based on book value among the state, counties, cities, and school districts — Regional development agency assistance fund — Portion of TVA payment received by state to be transferred to fund for distribution to regional development agencies in fund-eligible counties — Annual report.

(1) As used in this section, unless the context requires otherwise:

(a) "Book value" means original cost unadjusted for depreciation as reflected in the TVA's books of account;

(b) "Fund" means the regional development agency assistance fund established in subsection (4) of this section;

(c) "Fund-eligible county" means one (1) of Adair, Allen, Ballard, Barren, Bell, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Cumberland, Edmonson, Fulton, Graves, Grayson, Harlan, Hart, Henderson, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, McCreary, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, Webster, or Whitley Counties;

(d) "Regional development agency" or "agency" means a special purpose governmental entity as defined in KRS 65A.010(9) that is designated by a fiscal court to receive a payment pursuant to this section;

(e) "TVA" means the Tennessee Valley Authority; and

(f) "TVA property" means land owned by the United States and in the custody of the TVA, together with improvements that have a fixed situs on the land, including work in progress but excluding temporary construction facilities, if these improvements either:

1. Were in existence when title to the land on which they are situated was acquired by the United States; or

2. Are allocated by the TVA or determined by it to be allocable to power. However, manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination; ash disposal systems; and coal handling facilities, including railroads, cranes and hoists, and crushing and conveying equipment, shall be excluded.

(2) Book value shall be determined, for purposes of applying this section, as of the June 30 used by the TVA in computing the annual payment to the Commonwealth that is subject to redistribution by the Commonwealth.

(3) Except for payments made directly by the TVA to counties, the total fiscal year payment received by the Commonwealth of Kentucky from the TVA, as autho-

rized by Section 13 of the Tennessee Valley Authority Act, as amended, shall be prorated thirty percent (30%) to the general fund of the Commonwealth and seventy percent (70%) among counties, cities, and school districts, as provided in subsections (6) and (7) of this section.

(4)(a) The regional development agency assistance fund is hereby established in the State Treasury.

(b) The fund shall be administered by the Department for Local Government for the purpose of providing funding to agencies that are designated to receive funding in a given fiscal year by the fiscal court of each fund-eligible county through the Regional Development Agency Assistance Program established in KRS 96.905.

(c) The fund shall only receive the moneys transferred from the general fund pursuant to subsection (5) of this section.

(d) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.

(5)(a) For fiscal years beginning on or after July 1, 2020, a portion of the total fiscal year payment received by the Commonwealth that is allocated to the general fund shall be transferred from the general fund to the regional development agency assistance fund established in subsection (4) of this section.

(b) This portion shall be equal to six million dollars ($6,000,000).

(c) Distribution of these moneys shall be made by dividing the amount in paragraph (b) of this subsection equally among each fund-eligible county.

(6) The payment to each county, city, and school district shall be determined by the proportion that the book value of TVA property in such taxing district, multiplied by the current tax rate, bears to the total of the book values of TVA property in all such taxing districts in the Commonwealth, multiplied by their respective tax rates. However, for purposes of this calculation, each public school district shall have its tax rate increased by thirty cents ($0.30).

(7)(a) As soon as practicable after the amount of payment to be made to the Commonwealth is finally determined by the TVA, the Department of Revenue shall determine the book value of TVA property in each county, city, and school district and shall prorate the payments allocated to counties, cities, and school districts under subsection (3) of this section among the distributees as provided in subsection (6) of this section.

(b) The Department of Revenue shall:

1. Certify the payment due each county, city, and school district, including the amount distributed to the county under subsection (5) of this section, to the Finance and Administration Cabinet; and

2. Notify the Department for Local Government of that certification.

(c) Upon certification by the Department of Revenue, the Finance and Administration Cabinet shall make the payment to such district.

(8) In each fiscal year, after the Department of Revenue has calculated the prorated payment amount that is due to each county, city, and school district under subsections (6) and (7) of this section, the Department for Local Government shall notify in writing the fiscal court of each fund-eligible county regarding the amount that the county, city, and school district shall receive for the fiscal year, including the amount distributed to the county under subsection (5) of this section.

(9) No amount shall be taken from the fund to pay administrative expenses by the Department for Local Government.

(10) All agencies receiving funds under this section shall provide a written report annually, no later than October 1, to the fiscal court that designated it for payment and to the Department for Local Government. The report shall describe how the funds were expended and the results of the use of funds in terms of economic development and job creation.

(11) No later than December 1 of each year, the Department for Local Government shall report to the Legislative Research Commission for referral to the Interim Joint Committee on Appropriations and Revenue the total amount of funds distributed to each agency for the fiscal year, how each agency expended the funds, and the results of the use of funds in terms of economic development and job creation.

History.

Enact. Acts 1952, ch. 61, § 1, effective June 19, 1952; 1978, ch. 163, § 2, effective March 29, 1978; 1986, ch. 27, § 1, effective February 24, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 301, effective July 13, 1990; 2005, ch. 85, § 104, effective June 20, 2005; 2018 ch. 129, § 1, effective April 10, 2018; 2019 ch. 151, § 2, effective June 27, 2019; 2021 ch. 196, § 1, effective April 7, 2021; 2026 ch. 161, § 4, effective July 15, 2026.

Compiler's Notes.

Section 13 of the Tennessee Valley Authority Act, referred to in subsections (1) and (5) of this section, is compiled as 16 USCS § 831*l*.

96.905. Regional Development Agency Assistance Program — Grants for economic development and job creation activities — Annual reports — Certification of proper use of funds.

(1) A Regional Development Agency Assistance Program is established to consist of a system of grants to agencies designated by fiscal courts of counties designated in KRS 96.895. Grants shall be administered by the Department for Local Government.

(2)(a) Grants obtained under this program shall be used for:

1. Economic development and job creation activities;

2. Acquiring federal, state, or private matching funds to the extent possible; and

3. Debt service for approved projects;

that the agency is empowered to undertake in that county.

(b) Grants obtained under this program shall not be used for:

1. Salaries;

2. Consulting fees; or
3. Operational expenses.

(3) Applications for grants from funds provided for in KRS 96.895 shall:

(a) Be made by the legislative bodies of one (1) or more counties entitled to receive money from the regional development agency assistance fund;

(b) Include any recipient agency as a co-applicant on the application; and

(c) Include a concurrence letter from each legislative body entitled to receive money.

(4) The Department for Local Government shall review and approve grant applications from counties for agencies that operate in, or serve the interest of, the county whose fiscal court designated it to receive funding. Multiple counties may also submit a joint application requesting that part of their allotted funds be directed to an agency for a project that affects the counties.

(5) By October 1 of each year, the commissioner of the Department for Local Government shall provide, in writing, to each the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section since the last report, a listing of all grants awarded, the amount of the award, the recipient agency, and the related project.

(6) The Department for Local Government shall require that any funds granted under this section include an agreement that the recipient agency shall certify that the funds were expended for the purpose intended. The department shall determine whether the certification should be an independent annual audit or an internal certification, taking into account the size of the agency and the financial burden an independent annual audit may impose on the agency. In the case of an independent annual audit, the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit or certification of compliance shall be forwarded to the Department for Local Government within eighteen (18) months after the end of the fiscal year.

History.

2018 ch. 129, § 2, effective April 10, 2018; 2021 ch. 196, § 2, effective April 7, 2021.

CHAPTER 97

PARKS, PLAYGROUNDS, AND RECREATION

Section

97.010. City and county recreation facilities.
97.020. Establishment of local recreational facilities.

97.010. City and county recreation facilities.

(1) The acquisition, development, maintenance and operation of parks, playgrounds and recreation centers, which may include but is not limited to zoos and museums, is a proper municipal purpose for all cities and counties. The legislative body of any city or the fiscal court of any county may dedicate for use as parks, playgrounds and recreation centers any lands or buildings owned or leased by the city or county and not devoted to an inconsistent public use and may acquire real property for such purpose by purchases, lease, condemnation or otherwise, at any place reasonably accessible to the inhabitants of the city or county and either within or without the boundaries of the city or the county.

(2) Any two (2) or more cities, or any city and county, may jointly establish, maintain and conduct a park and recreation system. Any school district may join with any city or county in providing and conducting public parks, playgrounds and recreation centers.

History.

3909a-1, 3909a-4: amend. Acts 1958, ch. 124, § 1; 1978, ch. 382, § 1, effective June 17, 1978.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Use of School Funds.
3. Lease of School Facilities.
4. Condemnation.
5. Sovereign Immunity.

1. Construction.

A zoo qualifies for inclusion in this section's authorization of "parks, playgrounds and recreation centers." O'Bryan v. Louisville, 382 S.W.2d 386, 1964 Ky. LEXIS 341 (Ky. 1964).

2. Use of School Funds.

While there is no explicit provision for the expenditure by the board of education of public school funds in such amount as may appear to it in the exercise of reasonable discretion necessary to further the purpose of maintenance of a joint recreation plan with the county, the power and authority granted by this section includes that which is necessarily implied as incident to the accomplishment of those things which are expressly authorized, and therefore board may appropriate funds for such project. Dodge v. Jefferson County Board of Education, 298 Ky. 1, 181 S.W.2d 406, 1944 Ky. LEXIS 815 (Ky. 1944).

Purchase by a school district, acting alone, of land in another county for the establishment of a recreation center for the joint benefit of school children and 4-H club members was an arbitrary administration of public funds and, thus illegal. Wilson v. Graves County Board of Education, 307 Ky. 203, 210 S.W.2d 350, 1948 Ky. LEXIS 704 (Ky. 1948).

3. Lease of School Facilities.

Action of fiscal court which leased school buildings and lands for recreational purposes and agreed to pay annual rental was authorized by law and not violative of constitutional provisions. Sawyer v. Jefferson County Fiscal Court, 392 S.W.2d 83, 1965 Ky. LEXIS 275 (Ky. 1965).

4. Condemnation.

Under this section cities of the sixth class have power to condemn property outside the city limits for both a water reservoir and for recreational use. Embry v. Caneyville, 397 S.W.2d 141, 1965 Ky. LEXIS 65 (Ky. 1965).

5. Sovereign Immunity.

Operating a golf course is not an "integral" function of state government; thus, a statutorily created agency so functioning as a non-profit, no capital stock corporation, formed to provide recreational facilities for the county, operated without the shield of sovereign immunity. Kenton County Pub. Parks Corp. v. Modlin, 901 S.W.2d 876, 1995 Ky. App. LEXIS 70 (Ky. Ct. App. 1995).

Cited:

Kesselring v. Bonnycastle Club, Inc., 299 Ky. 585, 186 S.W.2d 402, 1945 Ky. LEXIS 471 (Ky. 1945); Hazard v. Salyers, 311 Ky. 667, 224 S.W.2d 420, 1949 Ky. LEXIS 1149 (Ky. 1949); Owensboro v. Department of Revenue, 314 Ky. 172, 234 S.W.2d 664, 1950 Ky. LEXIS 1046 (Ky. 1950); Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953); Boone v. Cook, 365 S.W.2d 100, 1963 Ky. LEXIS 214 (Ky. 1963).

OPINIONS OF ATTORNEY GENERAL.

Membership on the playground and recreation board would disqualify the person from serving on the electric plant board. OAG 61-846.

Where the program is operated solely by the city and where there is no true joint planning or maintenance, a county may not contribute to a city park and recreation program. OAG 62-808.

A fiscal court would not be authorized to make a contribution to the chamber of commerce for the purpose of promoting a folk festival in the county. OAG 64-252.

Park and recreational facilities of a second-class city and the county may be merged. OAG 67-64.

Neither the city nor the playground and recreational board could lease the city recreational park to a local civic club if the club would be vested with the control and operation of the park. OAG 68-36.

A city is legally authorized to appropriate public funds to the recreational board to pay various employes in the operation and control of the recreation department. OAG 68-129.

An appropriation voted by the city council to grant money to lease property in an adjacent city on which to develop and operate a playground would be valid. OAG 68-398.

Where the county assigned a city a contract involving more than $1,000, the city could not enter into the contract without letting out new bids. OAG 68-479.

Where the city and county leased property for a golf course and the county advertised for and conditionally accepted a bid for the construction of the golf course, acceptance by the city of the contract and the county's interest in the lease would not convert the county's conditional acceptance into a firm contract. OAG 68-479.

A city of the fifth class had ample statutory authority to purchase property for use as a city hall building, for a playground, and to be used in a new street pattern. OAG 68-592.

In view of Const., § 179, a city cannot legally appropriate funds to assist a women's civic club to construct an amphitheater on land owned by the board of education, a separate public entity. The city could, however, build the amphitheater as a public project, or jointly establish a recreational system with the school district pursuant to this section which could include the amphitheater or, pursuant to the same statute, the city could lease land from the school board to establish a recreational center. OAG 70-514.

A proposed community center to be constructed with funds partly supplied by the federal government, the county and the school board and to be operated when complete by the board of education and superintendent of schools as agent of the fiscal court does not meet the criterion of a multi-educational program, and, in view of the projects and activities to be conducted and the mix of school and nonschool purposes projected for the proposed community center, goes far beyond the limitations established by the case law and this section and the school board cannot spend money for such purposes. OAG 71-184.

While a school board may furnish property and cooperate in many ways to provide recreational facilities and programs as an official function of the governmental unit and, while a school board has authority to sell school property for its fair market value, it would be a violation of Const., § 3 for a school board to sell school property to any person or organization for a nominal sum simply because the purchaser proposed to use the property for laudable public purposes and although KRS 45.360 does not apply to school boards, such a board and its members would be well advised to follow the procedure prescribed therein for their own protection. OAG 72-30.

A school board may not make a contribution to a park commission which is seeking to accumulate a fund in order to secure matching federal funds for development of a community recreation park as the school board would have no ownership or control over the property, this would not be the kind of cooperative enterprise envisioned in subsection (2) of this section and such action is unconstitutional under §§ 180 and 186 of the Kentucky constitution. OAG 72-95.

The joint use of school-owned property as a mini-park by both school pupils and city residents is permissible as long as title to property stays in the school board. OAG 72-376.

Where the board of education desires to lease to the city council six-tenths ($^{6}/_{10}$) of an acre of school property for the construction of tennis courts for a minimum of ten (10) years so that a federal grant may be secured but the state department of education has refused to grant approval for a lease of more than one (1) year, a board of education may lease surplus property for any duration if it receives a fair rental for said property and it may do so even if the state board of education disapproves as there is no statutory authority which requires that the state board of education give its approval to the sale or leasing of property by a school board. OAG 73-177.

The expenditure of city funds for the purpose of using and maintaining land as a sports field for boys and girls under 18 years as a recreational park would be legal because the restrictions as to the use is not inconsistent with the phrase "inhabitants of the city" appearing in this section and KRS 97.060 (repealed) and the intent is to merely restrict city parks in general to city residents. OAG 73-401.

There is no authority for the levy of a recreation tax by a county recreation commission or by the city or county on behalf of the commission or for placing such a question on any ballot to be voted upon by the voters of the city and county. OAG 74-695.

When this section, KRS 97.030, 97.035 and 97.060 are read together, it appears that the parks board, formed by a joint city-county agreement, is vested with a certain autonomy in the control and management of parks, subject to any specific delimitation by the city and county governments acting jointly, which would include the setting of the director's salary. OAG 75-46.

A city may lease land from a school board over a long term, and may install recreational facilities thereon, when those facilities will be beneficial to the school district. OAG 78-472.

A county fiscal court has the authority, pursuant to Const., § 157, to place the question of a special ad valorem tax levy for park construction and maintenance on the November general election ballot, if a contractual indebtedness in connection with the park is envisioned and such contractual indebtedness cannot be funded out of current county revenues; the requisite vote for passage is two thirds of the voters voting at such election. OAG 80-381, 1980 Ky. AG LEXIS 271.

There is no statutory authority for a fiscal court to contribute to a city park program. OAG 85-99, 1985 Ky. AG LEXIS 50.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under Const., §§ 180, 184 and 186; therefore, under Const., §§ 180, 184, and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85, 1991 Ky. AG LEXIS 85.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Acquisition and development of public projects by govern-

mental units and agencies through revenue bonds, KRS ch. 58.

Housing projects, cities may cooperate in furnishing park facilities for, KRS 80.290.

Interlocal cooperation act, KRS 65.210 to 65.300.

Issuance of bonds and control of funds, KRS ch. 66.

State and national parks, KRS ch. 148.

State planning board, functions with respect to parks, KRS 147.070, 147.100.

Kentucky Law Journal.

Lewis, Kostas, and Carnes. Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

ALR

Uses to which park property may be devoted. 18 A.L.R. 1246; 63 A.L.R. 484; 144 A.L.R. 486.

Conveyance or lease of park property, municipal power as to. 18 A.L.R. 1259; 63 A.L.R. 489; 144 A.L.R. 498.

"Public utility," park as, within constitutional or statutory provision relating to purchase, construction, or repair of public utility by municipal corporation. 9 A.L.R. 1034; 35 A.L.R. 592.

Abutting owner's right to complain of misuse of public park or violation of rights or easements appurtenant thereto. 60 A.L.R. 770.

Diversion of park property to other uses as taking or damaging neighboring property without compensation. 83 A.L.R. 1435.

Statutes relating to establishment or administration of parks as encroachment on right of local self-government. 88 A.L.R. 228.

Nursery, quarry and gravel pit, implied power of municipality to operate, for production of materials for use in connection with parks, playgrounds and other recreational purposes. 104 A.L.R. 1342.

Use of parks for religious purposes. 133 A.L.R. 1402.

Liability for injury as affected by interference by outside agency with object, other than automobile, abandoned or temporarily left in public street or park. 158 A.L.R. 880.

Liability of municipality for drowning of child on its premises. 8 A.L.R.2d 1254.

Liability of municipality owning public ball park for injuries by ball to person on nearby premises. 16 A.L.R.2d 1458.

Weeds and the like, tort liability of municipality or other governmental unit in connection with destruction of. 34 A.L.R.2d 1210.

Liability of municipality for injury to or death of child caused by burning from hot ashes, cinders, or other waste material in park. 42 A.L.R.2d 930, 947.

Maintenance of auditorium, community recreational center building, or the like by municipal corporation as governmental or proprietary function for purposes of tort liability. 47 A.L.R.2d 544.

Liability of municipality for injury or death of child caused by cut or puncture from broken glass or other sharp object. 47 A.L.R.2d 1053.

Judicial notice of matters relating to public thoroughfares and parks. 48 A.L.R.2d 1102.

Municipal operation of bathing beach or swimming pool as governmental or proprietary function, for purposes of tort liability. 55 A.L.R.2d 1434.

Power of municipal corporation to exchange its real property used for a park or public square. 60 A.L.R.2d 289.

Slide or chute, municipal liability for injury from. 69 A.L.R.2d 1067.

Sale of merchandise in public squares, municipal authorization, prohibition, or regulation of. 14 A.L.R.3d 896.

Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof. 43 A.L.R.3d 862.

Liability of business establishments, places of accommodation or recreation, and the like, for injury or damage occurring on the premises caused by the accidental starting up of parked motor vehicle. 43 A.L.R.3d 952.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities. 57 A.L.R.3d 998.

Construction of highway through park as violation of use to which park property may be devoted. 60 A.L.R.3d 581.

97.020. Establishment of local recreational facilities.

The legislative body of any city or the fiscal court of any county may establish a park, playground and recreation system and may vest the power to provide, maintain and conduct parks, playgrounds and recreation centers in a park board, board of education, playground and recreation board or other existing board. Any board so designated may maintain and equip parks, playgrounds and recreation centers and the buildings thereon, and may employ trained and qualified park superintendents, playground directors, supervisors, recreation superintendents or other officers and employees as it deems proper.

History.

3309a-2: amend. Acts 1958, ch. 124, § 2.

NOTES TO DECISIONS

Cited:

Boone v. Cook, 365 S.W.2d 100, 1963 Ky. LEXIS 214 (Ky. 1963).

OPINIONS OF ATTORNEY GENERAL.

Where property is conveyed to a city in trust for the use and benefit of the citizens as a recreation center, statutory provisions relating to the appointment of a recreation board control over provisions of the dedicatory deed which prescribe conditions as to the recreation board, since the operation and maintenance of recreation property by a municipality is a governmental function and boards to implement this function are established in the statutes. OAG 76-181.

An appointed member of the park and recreation system board may not sell equipment to the park board from his private business, with or without competitive bids, since it is assumed that he intends to make a profit and this violates public policy. OAG 81-107, 1981 Ky. AG LEXIS 329.

CHAPTER 107

MUNICIPAL IMPROVEMENTS — ALTERNATE METHODS

Section

107.140. Benefited property, what constitutes, assessment of governmental property — Procedure against state.

107.140. Benefited property, what constitutes, assessment of governmental property — Procedure against state.

(1)(a) In the case of improvements of public ways, the benefited property shall consist of all real property abutting upon both sides of the improvement project, and the cost of improving intersections shall

be included in the total costs to be assessed and apportioned, unless and to the extent the city shall appropriate, within constitutional limitations, from available funds, a definite and specified sum as a contribution thereto, or a portion of the aggregate cost, or the cost of specified portions of the improvement; provided, however, that if provisions shall be made for sidewalk improvements, as an integral part of the improvement of a "public way," as defined in subsection (3) of KRS 107.020, upon only one side of the project, the costs of the sidewalk improvement shall be ascertained and assessed separately against the property abutting upon that side only, but the governing body may provide that such assessment shall include a fair share of the over-all costs as herein defined, other than the amounts of the actual construction contracts.

(b) In the case of improvements for draining sewage, storm water, or a combination thereof, the benefited properties shall consist of all properties which are thereby afforded a means of drainage, including not only the properties which may be contiguous to the improvements, but also adjacent properties within a reasonable distance therefrom as the governing body may in the proceedings set forth.

(c) In the case of an improvement project consisting in whole or in part of a sewage treatment plant, or enlargement or substantial reconstruction of an existing sewage treatment plant, the benefited properties shall be all those properties the sewage from which is treated in such plant, including properties already provided with sewer drainage facilities as well as those properties which the improvement project will provide with such drainage facilities, but the governing body may classify properties according to the extent of benefits to be afforded to them, and may establish one (1) rate of assessment applicable to all properties participating in the benefits of the sewage treatment installations, and an additional rate of assessment applicable to properties for which the improvement project will also provide sewer drainage facilities. In relation to wastewater collection projects constructed by metropolitan sewer districts, benefited property shall consist of all property whether improved or unimproved to which the project affords a means of discharging wastewater.

(d) The governing body may, either in the proceedings initiating an improvement project, or in subsequent proceedings, recognize the necessity or desirability in the interest of the public health, safety and general welfare, that properties other than the properties originally benefited by an improvement under paragraphs (b) or (c) of this subsection, be permitted to connect to such sewer drainage and/or treatment facilities, and may make equitable provisions which may be adjustable from year to year as bonds are retired, whereby the owners of such later-connecting properties, may, by paying charges for the privilege of connecting, and/or by assuming a share of improvement assessments, or otherwise, be placed as nearly as practicable on a basis of financial equity with the owners of properties initially provided to be assessed.

(e) The governing body may, either in the proceedings initiating an improvement project, or in subsequent proceedings, recognize the necessity or desirability in the interest of the public health, safety and general welfare that residential properties within one thousand feet (1000'), measured along paved roads, of a fire hydrant in a city may be assessed on the same basis as property abutting upon a street where a fire hydrant is to be installed.

(2)(a) Benefited property owned by the city or county, or owned by the United States government or any of its agencies, if such property is subject to assessment by Act of Congress, shall be assessed annually the same as private property, and the amount of the annual assessment shall be paid by the city, county, or United States government, as the case may be. The same right of action shall lie against the county as against a private owner.

(b) Benefited property owned by the state, except property the title to which is vested in the Commonwealth for the benefit of a district board of education pursuant to KRS 162.010, shall be assessed as follows: Before assessing the state, the governing body shall serve written notice on the secretary of the Finance and Administration Cabinet setting forth specific details including the estimated total amount of any improvement assessment proposed to be levied against any state property relative to any proposed improvement project. Said written notice shall be served prior to the next even-numbered-year regular session of the General Assembly so that the amount of any specific improvement assessment may be included in the biennial executive branch budget recommendation to be submitted to the General Assembly. Payment of any assessment shall be made only from funds specifically appropriated for that assessment. If an amount sufficient to pay the total amount of any assessment has been appropriated, then the total amount shall be paid; if an amount sufficient only to pay annual assessments has been appropriated, then only the amount of the annual assessment shall be paid. The amount of the assessment shall be certified by the city treasurer to the Finance and Administration Cabinet, which shall thereupon draw a warrant upon the State Treasurer, payable to the city treasurer, and the State Treasurer shall pay the same.

(c) In the case of property the title to which is vested in the Commonwealth for the benefit of a district board of education, the amount of the annual assessment shall be paid by the city or other local governmental agency or authority which undertook the improvement project.

(3) No benefited property shall be exempt from assessment.

History.

Enact. Acts 1956, ch. 239, § 14; 1960, ch. 226, § 5; 1964, ch. 161, § 3; 1964, ch. 175, § 1; 1976 (Ex. Sess.), ch. 13, § 20; 1982, ch. 450, § 64, effective July 1, 1983; 2001, ch. 58, § 14, effective June 21, 2001; 2014, ch. 92, § 207, effective January 1, 2015; 2019 ch. 44, § 20, effective June 27, 2019.

Legislative Research Commission Note.

(1982). A technical correction has been made in this section by the Reviser of Statutes pursuant to KRS 7.136.

NOTES TO DECISIONS

1. Benefited Property.
The provision in subsection (1) "that the benefited property shall consist of all real property abutting on both sides of the project" means that the land only, and not land plus improvements, shall be the basis of the special assessment, regardless of which method of apportionment is used. Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

OPINIONS OF ATTORNEY GENERAL.

Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

The city council's requiring the board of education to make repairs in the sidewalk in front of the high school would be in direct violation of Ky. Const., § 184. OAG 68-67.

A municipal corporation can install a sanitary sewer line and assess therefor not only the abutting property owners but the owners of property not abutting, but who are contained in the drainage limit. OAG 68-104.

Eastern Kentucky University was not exempt from payment of a sewer bond assessment tax levied by the city of Richmond. OAG 70-377.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education, KRS 162.010.

ALR
Parkway occupied by street railway as assessable for street improvements. 10 A.L.R. 164.

Liability of street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder. 29 A.L.R. 679.

TITLE X
ELECTIONS

Chapter
116. Voter Registration.
117. Regulation of Elections.
118. Conduct of Elections.

CHAPTER 116
VOTER REGISTRATION

Section
116.046. Voter registration forms for public high schools, area technology centers, and private schools — Public education program.
116.200. Roster of voters eligible to vote in city and school board elections — Information to be provided to county clerk.

116.046. Voter registration forms for public high schools, area technology centers, and private schools — Public education program.

(1) The county clerk shall provide voter registration forms annually to each principal or assistant principal of every public high school, each area technology center, and private schools, and each school shall have a designated person who shall be responsible for informing students and school personnel of the availability of the registration forms and assist them in properly registering. The completed forms shall be returned to the county clerk, for official registration by the county clerk.

(2) Any person designated to assist in registration in subsection (1) of this section shall fulfill this responsibility in an impartial and fair manner and shall not recruit a registrant for any particular party.

(3) The State Board of Education shall implement annual programs of public education regarding elections, voting procedures, and election fraud, which shall include an audio-visual presentation for high school juniors and seniors. The State Board of Education, after consultation with the State Board of Elections, shall update the public education programs required by this section as relevant statutory changes occur, as different types of voting systems are used, or as more effective methods of presentation shall be developed.

History.
Enact. Acts 1988, ch. 341, §§ 5, 6, effective July 15, 1988; 1990, ch. 48, § 4, effective July 13, 1990; 2021 ch. 197, § 3, effective June 29, 2021.

116.200. Roster of voters eligible to vote in city and school board elections — Information to be provided to county clerk.

(1)(a) On or before January 1, 2011, each city clerk, except in consolidated local governments and urban-county governments, shall provide the clerk of the county or counties in which the city is located with a list of all properties within the city and a map of the city boundaries for the county clerk to maintain a roster of voters who are eligible to vote in city elections. A county clerk may accept the list of city properties in an electronic format and the city clerk may provide a copy of the city's boundary map maintained by the Kentucky Commonwealth Office of Technology, Division of Geographic Information Systems.

(b) Documentation of any change to the boundaries of a city shall be reported to the county clerk in accordance with KRS 81A.475.

(2)(a) On or before January 1, 2011, each school district board shall provide the clerk of the county in which the school district is located with maps and written descriptions of the boundaries of each school board district located in the county for the county clerk to maintain a roster of voters who are eligible to vote in school board elections.

(b) Documentation of any change to a school district's boundaries shall be reported to the county clerk within sixty (60) days of the change, or immediately if the change is within sixty (60) days of the June 1 deadline established in KRS 160.210(4)(d).

(3) Each county clerk shall code all registered voters in that county in such a manner that precinct election officers may determine the voter's eligibility to vote in city and school board elections prior to each primary

and regular election for city officers in that county, each regular election for school board members in that county, and each special election in which a ballot question is presented to the residents of a city or a school board district.

(4) Notwithstanding KRS 64.012, the county clerk shall not charge a fee to a city or school district providing any information required by subsections (1)(a) and (2)(a) of this section.

(5) Nothing in this section shall prohibit a county clerk from requesting additional information from the city, school district board, or any other reliable source to ascertain whether a registered voter resides within a city or a school district boundary.

History.

Enact. Acts 1994, ch. 394, § 1, effective July 15, 1994; 2010, ch. 10, § 1, effective July 15, 2010; 2012, ch. 69, § 13, effective July 12, 2012; 2018 ch. 78, § 8, effective July 14, 2018; 2021 ch. 41, § 3, effective June 29, 2021; 2021 ch. 81, § 8, effective June 29, 2021; 2026 ch. 175, § 2, effective April 14, 2026.

CHAPTER 117
REGULATION OF ELECTIONS

Miscellaneous Provisions.

Section
117.315. Appointment of challengers and inspectors.

Penalties.

117.995. Penalties.

MISCELLANEOUS PROVISIONS

117.315. Appointment of challengers and inspectors.

(1) Each political party is entitled to have not exceeding two (2) challengers at each precinct during the holding of the primary election. Any group of bona fide candidates, as defined in KRS 118.176, of the same political party equal to twenty-five percent (25%) of all the candidates for that party to be voted for in a county in any primary, including state, district, and all other candidates, may recommend to the county committee or governing authority of the party for the county a list of persons whom they desire to have appointed as challengers in each precinct in the county. If more than two (2) such lists are furnished, the committee or governing authority, in making appointments of challengers, shall alternate between the several lists so furnished so as to give to each list an equal amount or proportion of the appointments, but in no event shall there be appointed more than one (1) challenger for any precinct from any one (1) list. The list of challengers shall be presented to the chair or secretary of the party committee of the county on or before the third Friday in April preceding the primary, and the committee or the chairman thereof shall make the appointments, certify to same, and present a list of certified challengers to the county clerk at least twenty (20) days before the date on which the primary is held. The appointment of challengers shall be certified in all respects as challengers at regular elections, except as otherwise provided in this section. The challengers shall be registered voters of the county in which the primary is held and shall be subject to the same penalties and possess the same rights and privileges as challengers at regular elections, except that the challengers of one political party shall not be entitled to challenge persons who offer to vote for candidates of any other party in the primary. The provisions of this section shall be enforceable against the chair of the political party committees by a mandatory summary proceeding instituted in the Circuit Court. The order of the court may be reviewed by the Court of Appeals as provided for the granting or dissolving of temporary injunctions.

(2) Any school board candidate, any independent ticket or candidate for city office, any nonpartisan city candidate, or candidate for an office of the Court of Justice at the primary or regular election may designate not more than one (1) challenger to be present at and witness the holding of primaries or elections in each precinct in the county. A candidate who designates a challenger shall present the county clerk with the name of the challenger at least twenty (20) days preceding the primary or regular election. The challenger shall be entitled to stay in the room or at the door. The challenger shall be a registered voter of the county in which the primary or election is held, shall be appointed in writing by the chair of the committee, independent candidate, or candidates representing a ticket, and shall produce written appointment on demand of any election officer.

(3) The county executive committee of any political party having a ticket to elect at any regular or special election may designate not more than two (2) challengers to be present at and witness the holding of the election in each precinct in the county. The challengers shall be entitled to stay in the room or at the door. The challengers shall be registered voters of the county in which the election is held, shall be appointed in writing signed by the chair of the committee, and shall produce written appointments on demand of any election officer. The committee or chair shall present the county clerk with a list of designated challengers at least twenty (20) days preceding a regular election and at least fifteen (15) days preceding a special election.

(4) Except as provided in KRS Chapter 242, not later than the fourth Tuesday preceding an election at which constitutional amendments or other public questions are to be submitted to the vote of the people, any committee that in good faith advocates or opposes an amendment or public question may file a petition with the clerk of the county asking that the petitioners be recognized as the committee entitled to nominate challengers to serve at the election at which the constitutional amendment or public question is to be voted on. If more than one (1) committee alleging itself to advocate or oppose the same amendment file such a petition, the county board of elections shall decide, and announce by certified mail, return receipt requested, to each committee not less than the third Tuesday preceding the election, which committee is entitled to nominate the challengers. The decision shall not be final, but any aggrieved party may institute proceedings with the county judge/executive and, upon hearing, the

county judge/executive shall determine which of the committees shall be recognized as the one to select challengers at the election.

(5) The committee shall file the names of the persons nominated by it with the clerk of the county at least twenty (20) days before the primary and regular elections and not less that fifteen (15) days preceding the date of a special election. The county board of elections shall, not later than the Thursday preceding the election, certify the nominees of the committee for the respective precincts to serve as challengers at the election where any constitutional amendment or public question is to be voted upon. If more than one (1) amendment or question is to be voted upon, the county board of elections may designate, on the petition of the committee, one (1) person for each amendment and question to serve as challenger at the election.

(6) The challengers shall perform their duties in the same manner and be subject to the same privileges as other challengers at an election.

History.

Enact. Acts 1974, ch. 130, § 45, effective June 21, 1974; 1976, ch. 54, § 22, effective March 10, 1976; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 251, effective June 17, 1978; 1980, ch. 114, § 13, effective July 15, 1980; 1986, ch. 470, § 17, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 302, effective July 13, 1990; 1992, ch. 288, § 49, effective July 14, 1992; 1992, ch. 296, § 6, effective July 14, 1992; 1996, ch. 195, § 8, effective July 15, 1996; 2008, ch. 79, § 6, effective July 15, 2008; 2010, ch. 176, § 10, effective July 15, 2010.

Compiler's Notes.

This section was formerly compiled as KRS 125.210.

Legislative Research Commission Note.

(7/14/92). This section was amended by two 1992 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

NOTES TO DECISIONS

Analysis

1. Designation.
2. — By Political Group.
3. Disagreements of Challengers.
4. Unauthorized Challenger.
5. Exclusion.
6. Miscellaneous.

1. Designation.

A party executive committee may delegate to its chairman the authority to designate challengers. Commonwealth v. Miller, 98 Ky. 446, 33 S.W. 401, 17 Ky. L. Rptr. 1033, 1895 Ky. LEXIS 79 (Ky. 1895) (decided under prior law).

2. — By Political Group.

A faction of the Democratic Party, not constituting in itself an established political party, was not entitled to designate challengers. Weaver v. Toney, 107 Ky. 419, 54 S.W. 732, 21 Ky. L. Rptr. 1157, 1899 Ky. LEXIS 187 (Ky. 1899) (decided under prior law).

A political group is not entitled to designate challengers unless it is a distinct political party and has a ticket to elect. Weaver v. Toney, 107 Ky. 419, 54 S.W. 732, 21 Ky. L. Rptr. 1157, 1899 Ky. LEXIS 187 (Ky. 1899) (decided under prior law).

3. Disagreements of Challengers.

Arguments between challengers of opposing parties, involving threats of violence to each other, would not be cause for throwing out vote of precinct in absence of evidence that voters were intimidated or that an orderly election was interfered with. Land v. Land, 244 Ky. 126, 50 S.W.2d 518, 1931 Ky. LEXIS 720 (Ky. 1931) (decided under prior law).

4. Unauthorized Challenger.

Permitting unauthorized person to act as challenger would not invalidate election in absence of evidence that his presence in any way prevented a fair election or affected the result of the election. Muncy v. Duff, 194 Ky. 303, 239 S.W. 49, 1922 Ky. LEXIS 163 (Ky. 1922) (decided under prior law).

5. Exclusion.

The Circuit Court has no jurisdiction to issue a mandatory injunction compelling election officers to admit a challenger designated by a political party. Weaver v. Toney, 107 Ky. 419, 54 S.W. 732, 21 Ky. L. Rptr. 1157, 1899 Ky. LEXIS 187 (Ky. 1899) (decided under prior law).

The election officers may exclude any person who does not produce evidence of his proper appointment as a challenger. Muncy v. Duff, 194 Ky. 303, 239 S.W. 49, 1922 Ky. LEXIS 163 (Ky. 1922) (decided under prior law).

6. Miscellaneous.

In a federal prosecution of a deputy clerk for participation in a vote buying conspiracy, the jury was incorrectly told that Kentucky law prohibited the clerk from supervising in-person absentee voting; because a challenger is not an election officer, a challenger's presence did not result in equal representation of political parties, and the clerk's supervision was proper. The error was not prejudicial because the jury was correctly instructed that the clerk could not lawfully assist voters. United States v. Risner, 737 Fed. Appx. 751, 2018 FED App. 0304N, 2018 U.S. App. LEXIS 16252 (6th Cir. Ky. 2018).

OPINIONS OF ATTORNEY GENERAL.

Challengers may stay within the voting room while the vote is being polled, the election judges having no authority to eject them therefrom, and the challengers may exercise reasonable discretion in deciding where in the room they will post themselves, including withdrawing from the voting room when they feel it necessary. OAG 75-95.

In view of the fact that there is no official form for the designation of challengers and that there is no requirement that such appointments be notarized, a procedure whereby the challenger's name and precinct is designated in writing and signed by the chairman of the county party complies with this section. OAG 76-702.

Aside from the regular election officers, a person must be designated a challenger at the polls in order for such person to challenge a voter who presents himself to vote. OAG 77-645, 1977 Ky. AG LEXIS 141.

A write-in candidate who did not qualify as an independent candidate for the office of magistrate would not be entitled to designate challengers. OAG 77-654, 1977 Ky. AG LEXIS 125.

At least 25 percent of all the candidates of a particular party in the primary must combine and agree to recommend challengers in order for such challengers to be appointed, and when it speaks of all the candidates of a party, it means every candidate for every office to be voted for in the primary including state, district and local candidates. OAG 79-145, 1979 Ky. AG LEXIS 466.

There is no reason why challengers, designated in accordance with this section, could not serve as representatives to

check the vote count; the statute plainly allows candidates to appoint such representatives with the only requirement being that the representatives must be designated to the county board of elections. OAG 91-190, 1991 Ky. AG LEXIS 190.

PENALTIES

117.995. Penalties.

(1) Any person appointed to serve as an election officer but who shall knowingly and willfully fail to serve and who is not excused by the county board of elections for the reasons specified in this chapter shall be guilty of a violation and shall be ineligible to serve as an election officer for a period of five (5) years.

(2) Any county clerk or member of the county board of elections who knowingly and willfully violates any of the provisions of this chapter, including furnishing applications for absentee ballots, applications for federal provisional absentee ballots, and mail-in absentee ballots to persons other than those specified by the provisions of this chapter, and failure to type the name of the voter on the application form as required by the provisions of this chapter, shall be guilty of a Class D felony.

(3) Any officer who willfully fails to prepare or furnish ballots, federal provisional ballots, federal provisional absentee ballots, or absentee ballots or fails to allow a qualified voter to cast his or her vote using voting equipment as required of the voter by this chapter shall be guilty of a Class A misdemeanor.

(4) Any election officer who knowingly and willfully violates any of the provisions of this chapter, including failure to enforce the prohibition against electioneering established by KRS 117.235, shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(5) Any person who violates KRS 117.0861, or who signs a name other than his or her own on an application for an absentee ballot, the verification form for the ballot, an emergency absentee ballot affidavit, a voter or election official affirmation, or any person who votes an absentee ballot other than the one issued in his or her name, or any person who applies for the ballot for the use of anyone other than himself or herself or the person designated by the provisions of this chapter, or any person who makes a false statement on an application for an absentee ballot or on an emergency absentee ballot affidavit shall be guilty of a Class D felony.

(6) Any person who violates any provision of KRS 117.235 or 117.236 related to prohibited activities during absentee voting or on election day, after he or she has been duly notified of the provisions by any precinct election officer, county clerk, deputy county clerk, or other law enforcement official, shall, for each offense, be guilty of a Class A misdemeanor.

(7) Any person who knowingly and willfully prepares or assists in the preparation of an inaccurate or incomplete voter assistance form or fails to complete a voter assistance form when required shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense; however, if a voter has been permanently certified as requiring voting assistance, there shall be no offense for the failure of the voter to complete the form.

(8) The members of a county board of elections who fail to provide the training to precinct election officers required by KRS 117.187(2) shall be subject to removal by the State Board of Elections.

(9) Any local or state election official, including the Secretary of State, employees of the Secretary, and members of the State Board of Elections and their staff, who knowingly and willfully uses the voter registration roster in violation of KRS 117.025(3)(a) shall, for each offense, be guilty of a Class A misdemeanor.

(10) Any person who knowingly and willfully violates KRS 45A.657(2) or KRS 65.014(2) shall, for a first offense, be guilty of a Class D felony. For a second or subsequent offense, the person shall be guilty of a Class C felony.

History.

Enact. Acts 1974, ch. 130, § 62; 1978, ch. 71, § 4, effective June 17, 1978; 1978, ch. 224, § 2, effective June 17, 1978; 1986, ch. 287, § 11, effective July 15, 1986; 1988, ch. 341, § 34, effective July 15, 1988; 1990, ch. 48, § 34, effective July 13, 1990; 1990, ch. 476, Pt. V, § 303, effective July 13, 1990; 1992, ch. 65, § 4, effective March 19, 1992; 1994, ch. 394, § 19, effective July 15, 1994; 2008, ch. 79, § 7, effective July 15, 2008; 2019 ch. 23, § 4, effective March 19, 2019; 2020 ch. 89, § 26, effective July 15, 2020; 2021 ch. 197, § 46, effective June 29, 2021; 2022 ch. 23, § 5, effective July 14, 2022.

Legislative Research Commission Notes.

(7/14/2022). 2022 Ky. Acts ch. 23, sec. 6, provided that Act, which amended this statute, may be cited as the Stop Outside Influence Over Elections Act of 2022.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of Acts ch. 476.

OPINIONS OF ATTORNEY GENERAL.

The penalty provision of subsection (1) of this section authorizing a fine of not less than $100 nor more than $1,000, or imprisonment in the county jail for not more than one year, or both, constitutes a misdemeanor, both as to the fine and jail sentence. OAG 79-519, 1979 Ky. AG LEXIS 119.

CHAPTER 118

CONDUCT OF ELECTIONS

Section

118.025. Voting to be by secret paper ballot — General laws applicable — Time for holding elections.

Regular Elections.

118.315. Nomination for regular election by petition — Form of petition — Examination of petition — Ineligibility of Senior Status Special Judge.

118.365. Time for filing certificates and petitions of nomination — Statement-of-candidacy forms — Petitions for recall elections or elections on public questions.

118.367. Statement-of-candidacy form for independent, political organization, or political group candidate — Exceptions — Examination of forms.

118.025. Voting to be by secret paper ballot — General laws applicable — Time for holding elections.

(1) Except as otherwise provided by law, voting in all primaries and elections shall be by secret paper ballot.

(2) The general laws applying to primaries, regular elections, and special elections shall apply to primaries, regular elections, and special elections conducted with the use of voting equipment, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting system or voting equipment.

(3) A primary for the nomination of candidates to be voted for at the next regular election shall be held on the first Tuesday after the third Monday in May of each year.

(4) The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.

(5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.

(6) If the law requires that a special election be held within a period of time during which the voting equipment must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting equipment is locked.

History.

Enact. Acts 1974, ch. 130, § 98; 1982, ch. 402, § 3, effective January 1, 1984; 1984, ch. 44, § 6, effective March 2, 1984; 1986, ch. 29, § 12, effective July 15, 1986; 1990, ch. 431, § 1, effective July 13, 1990; 1992, ch. 288, § 38, effective July 14, 1992; 1992, ch. 296, § 7, effective July 14, 1992; 1994, ch. 394, § 20, effective July 15, 1994; 1996, ch. 195, § 13, effective July 15, 1996; 2000, ch. 261, § 2, effective July 14, 2000; 2002, ch. 262, § 1, effective July 15, 2002; 2008, ch. 129, § 6, effective July 15, 2008; 2020 ch. 88, § 5, effective July 15, 2020; 2021 ch. 197, § 48, effective June 29, 2021.

NOTES TO DECISIONS

Analysis

1. Secrecy.
2. Testimony as to Vote.
3. Secondary Evidence on Voting.
4. School Elections.
5. School Subdistrict Tax Elections.

1. Secrecy.

The secrecy of the ballot is the fundamental idea of all elections. Banks v. Sergent, 104 Ky. 843, 48 S.W. 149, 20 Ky. L. Rptr. 1024, 1898 Ky. LEXIS 230 (Ky. 1898) (decided under prior law).

Where election officers permitted such irregularities that secrecy of ballot was not preserved, entire vote of precinct would be disregarded. Banks v. Sergent, 104 Ky. 843, 48 S.W. 149, 20 Ky. L. Rptr. 1024, 1898 Ky. LEXIS 230 (Ky. 1898) (decided under prior law).

An essential requirement of a valid election is that the ballot shall be secret, and statutes necessary to effect that end are mandatory, but mere irregularities of election officers and voters, which do not affect the secrecy of the ballot, will not vitiate the election nor affect the validity of a vote. Marilla v. Ratterman, 209 Ky. 409, 273 S.W. 69, 1925 Ky. LEXIS 513 (Ky. 1925) (decided under prior law).

Despite being public records, cast ballots were excepted from inspection because the constitutionally enshrined secrecy of the ballot outweighed any public interest in allowing inspection of cast ballots, especially as other election records were already available for public inspection. Allowing inspection of cast ballots would have constituted an unwarranted invasion of personal privacy by increasing the risk, however small, of ascertaining individual voters' votes through reverse engineering. Crigler v. McLaughlin, 727 S.W.3d 662, 2025 Ky. App. LEXIS 31 (Ky. Ct. App. 2025).

2. Testimony as to Vote.

A voter may testify as to how he voted. Tunks v. Vincent, 106 Ky. 829, 51 S.W. 622, 21 Ky. L. Rptr. 475, 1899 Ky. LEXIS 111 (Ky. 1899) (decided under prior law).

Illegal votes cast by secret ballot may be relied on to show the general uncertainty of an election, without proving for whom they were cast. Scholl v. Bell, 125 Ky. 750, 102 S.W. 248, 31 Ky. L. Rptr. 335, 1907 Ky. LEXIS 328 (Ky. 1907) (decided under prior law).

An illegal voter may testify as to how he voted, and a legal voter may testify as to how he voted on a ballot illegally cast. A voter who has voted illegally may be compelled to testify how he voted, unless there is a criminal penalty for the particular kind of illegality involved and the voter claims immunity on the ground of self-incrimination. Vansant v. McPherson, 155 Ky. 34, 159 S.W. 630, 1913 Ky. LEXIS 190 (Ky. 1913). See Tunks v. Vincent, 106 Ky. 829, 51 S.W. 622, 21 Ky. L. Rptr. 475, 1899 Ky. LEXIS 111 (Ky. 1899); Scholl v. Bell, 125 Ky. 750, 102 S.W. 248, 31 Ky. L. Rptr. 335, 1907 Ky. LEXIS 328 (Ky. 1907); Skain v. Milward, 138 Ky. 200, 127 S.W. 773, 1910 Ky. LEXIS 61 (Ky. 1910); Heitzman v. Voiers, 155 Ky. 39, 159 S.W. 625, 1913 Ky. LEXIS 189 (Ky. 1913); Black v. Spillman, 185 Ky. 201, 215 S.W. 28, 1919 Ky. LEXIS 269 (Ky. 1919) (decided under prior law).

A voter who cast his vote after closing time may be compelled to testify for whom he voted, since there is no criminal penalty for voting after hours. Vansant v. McPherson, 155 Ky. 34, 159 S.W. 630, 1913 Ky. LEXIS 190 (Ky. 1913). See Hogg v. Caudill, 254 Ky. 409, 71 S.W.2d 1020, 1934 Ky. LEXIS 105 (Ky. 1934) (decided under prior law).

A voter in a primary election may be compelled to testify as to how he cast his vote. Runyon v. Trent, 270 Ky. 134, 109 S.W.2d 396, 1937 Ky. LEXIS 40 (Ky. 1937) (decided under prior law).

3. Secondary Evidence on Voting.

Where there was conflicting evidence as to whether a certain voter was of sound mind, the mere proof that he was a member of a certain political party would not be sufficient to establish that he voted for the candidates of that party. Edwards v. Logan, 114 Ky. 312, 70 S.W. 852, 24 Ky. L. Rptr. 1099, 25 Ky. L. Rptr. 435, 1902 Ky. LEXIS 164 (Ky. 1902), modified, 114 Ky. 331, 75 S.W. 257, 1903 Ky. LEXIS 393 (Ky. 1903) (decided under prior law).

Proof that a voter made statements after election that he had voted for a certain candidate, or for all of the candidates of a certain party, was hearsay evidence and not admissible to prove how such voter voted. Edwards v. Logan, 114 Ky. 312, 70 S.W. 852, 24 Ky. L. Rptr. 1099, 25 Ky. L. Rptr. 435, 1902 Ky. LEXIS 164 (Ky. 1902), modified, 114 Ky. 331, 75 S.W. 257, 1903 Ky. LEXIS 393 (Ky. 1903) (decided under prior law).

Evidence that a voter was a member of a certain political party was not sufficient to establish that he voted for the candidates of that party at a general election. Felts v. Edwards, 181 Ky. 287, 204 S.W. 145 (Ky. 1918). But see Tunks v. Vincent, 106 Ky. 829, 51 S.W. 622, 21 Ky. L. Rptr. 475, 1899 Ky. LEXIS 111 (Ky. 1899) (decided under prior law).

The fact that voters subpoenaed by contestant did not appear, though coupled with evidence that they were friends of contestee, was not sufficient to establish that they had voted for contestee. Alsip v. Perkins, 236 Ky. 5, 36 Ky. 5, 32 S.W.2d 565, 1930 Ky. LEXIS 684 (Ky. 1930) (decided under prior law).

4. School Elections.

School elections are exempted from the general requirement of a secret ballot by Const., § 155. Moss v. Riley, 102 Ky. 1, 43 S.W. 421, 19 Ky. L. Rptr. 993, 1897 Ky. LEXIS 104 (Ky. 1897) (decided under prior law).

5. School Subdistrict Tax Elections.

In school subdistrict tax elections, secret ballot should be used. Gill v. Board of Education, 288 Ky. 790, 156 S.W.2d 844, 1941 Ky. LEXIS 142 (Ky. 1941) (decided under prior law).

REGULAR ELECTIONS

118.315. Nomination for regular election by petition — Form of petition — Examination of petition — Ineligibility of Senior Status Special Judge.

(1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him or her, complying with the provisions of subsection (2) of this section. No person whose registration status is as a registered member of a political party shall be eligible to election as an independent, or political organization, or political group candidate, nor shall any person be eligible to election as an independent, or political organization, or political group candidate whose registration status was as a registered member of a political party on January 1 immediately preceding the regular election for which the person seeks to be a candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(6), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the home rule class, or to candidates participating in nonpartisan elections.

(2) The form of the petition shall be prescribed by the Secretary of State. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Signatures for a petition of nomination for a candidate seeking any office, excluding President of the United States in accordance with KRS 118.591(1), shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer or board of education member, two (2) petitioners; and for an officer of a division less than a county, except as provided in this subsection, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include the date he or she affixes the signature, address of residence, and date of birth. Failure of a voter to include the signature affixation date, date of birth, and address of residence shall result in the signature not being counted. A petitioner for the nomination of a candidate may be counted for every petition to which his or her signature is affixed.

(3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.

(4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(5) A judge who elected to retire as a Senior Status Special Judge in accordance with KRS 21.580 shall not become a candidate or a nominee for any elected office during the five (5) year term prescribed in KRS 21.580(1)(a)1., regardless of the number of days served by the judge acting as a Senior Status Special Judge.

History.

Enact. Acts 1974, ch. 130, § 117; 1978, ch. 318, § 7, effective June 17, 1978; 1982, ch. 394, § 26, effective July 15, 1982; 1984, ch. 185, § 17, effective July 13, 1984; 1986, ch. 287, § 14, effective July 15, 1986; 1986, ch. 470, § 27, effective July 15, 1986; 1988, ch. 17, § 11, effective July 15, 1988; 1990, ch. 48, § 45, effective July 13, 1990; 1990, ch. 166, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 304, effective July 13, 1990; 1992, ch. 296, § 11, effective July 14, 1992; 1998, ch. 2, § 5, effective July 15, 1998; 1998, ch. 243, § 2, effective April 1, 1998; 2000, ch. 275, § 2, effective July 14, 2000; 2003, ch. 53, § 1, effective June 24, 2003; 2005, ch. 71, § 8, effective June 20, 2005; 2006, ch. 187, § 1, effective July 12, 2006; 2008, ch. 79, § 13, effective July 15, 2008; 2010, ch. 123, § 2, effective July 15, 2010; 2013, ch. 66, § 5, effective June 25, 2013; 2014, ch. 92, § 213, effective January 1, 2015; 2023 ch. 74, § 6, effective June 29, 2023; 2025 ch. 125, § 19, effective June 27, 2025; 2026 ch. 175, § 14, effective April 14, 2026.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Application.
4. Minority Political Parties.
5. Sufficiency of Petition.
6. — Personal Signing Required.
7. Nominations by Nonparty Organization.
8. — Vacancy in Nomination.
9. Requirements of Petition.
10. — Registered Voters.
11. — Number of Signers.

12. — Signing More Than Once.
13. — Names Signed by Other.
14. — Presumption as to Validity.
15. — Presumption as to Signatures.
16. — Address.
17. Burden of Compliance.
18. Mistake as to Number of Candidates.
19. Conflicting Nominations.
20. Write-in Candidates.
21. Designation of Device or Title.
22. — Failure to Put on Ballot.
23. Filing in More Than One County.
24. Objection to Petition.

1. Constitutionality.

The requirement of subsection (2) of this section that a candidate's petition include a declaration that "the subscribers desire .... to vote for the candidate" violates the right to a secret ballot guaranteed by Ky. Const., § 147, since the declaration operates to discourage signers from participating in the electoral process by revealing how they would vote. Anderson v. Mills, 664 F.2d 600, 1981 U.S. App. LEXIS 15841 (6th Cir. Ky. 1981).

The requirement of subsection (2) of this section, that only those supporters of a candidate who is attempting to be placed on the general election ballot through a petition need to declare that they desire to vote for that particular candidate, imposes an unnecessary burden on voting and associational rights in violation of the equal protection clause of U.S. Const., amend. 14; there is no compelling reason for making the declaration a mandatory part of the election in light of the less burdensome alternatives, such as restrictions on primary voting, to achieve the fundamental state interest. Anderson v. Mills, 664 F.2d 600, 1981 U.S. App. LEXIS 15841 (6th Cir. Ky. 1981).

The statutory scheme whereby a candidate is required by this section to obtain 5,000 signatures in order to be placed on the general ballot, but a candidate of a political party needs only two signatures to be placed on the primary ballot under the provisions of KRS 118.125, does not violate the equal protection clause of the United States Constitution, since it reflects the Legislature's recognition of the differences between established, well-financed parties and candidates and those parties and candidates who have no elaborate political network by providing greater access to the political process than a single route to the general election ballot. Anderson v. Mills, 664 F.2d 600, 1981 U.S. App. LEXIS 15841 (6th Cir. Ky. 1981).

The 1990 amendment to this section requiring nominating petitions to be signed by registered voters of the same political party affiliation as the petitioning candidate is unconstitutional and must be severed from this statute. Libertarian Party of Kentucky v. Ehrler, 776 F. Supp. 1200, 1991 U.S. Dist. LEXIS 16002 (E.D. Ky. 1991).

The 1990 amendment to this section that a voter who signs a nominating petition must include his Social Security number in order for his signature to be counted is in violation of Section VII of the Federal Privacy Act of 1974, Public Law 93-579, Title 5 USCS § 552a, and must be severed from this statute. Libertarian Party of Kentucky v. Ehrler, 776 F. Supp. 1200, 1991 U.S. Dist. LEXIS 16002 (E.D. Ky. 1991).

The requirement in subsection (2) of this section that a nominating petition of an independent candidate or a minority party candidate for statewide office contain the signatures of 5,000 registered voters in Kentucky is constitutional. Libertarian Party of Kentucky v. Ehrler, 776 F. Supp. 1200, 1991 U.S. Dist. LEXIS 16002 (E.D. Ky. 1991).

2. Construction.

The primary election law did not repeal that part of former similar section providing for nomination by petition of candidates who do not seek to be placed upon the ballot under the emblem of a political party within the meaning of the primary election law. Eagle v. Cox, 268 Ky. 58, 103 S.W.2d 682, 1937 Ky. LEXIS 411 (Ky. 1937) (decided under prior law).

While former similar section referred to "a candidate," it was not to be construed as prohibiting several candidates for different offices from being grouped as one organization or under one name or device. Greene v. Slusher, 300 Ky. 715, 190 S.W.2d 29, 1945 Ky. LEXIS 628 (Ky. 1945).

Former similar section dealt only with nomination of independent candidates by petition and could not be used to keep the name of a candidate for justice of the peace off the primary ballot on grounds that the affidavits supporting his notification and declaration were filed by persons not qualified electors of the magisterial district involved. Brown v. Read, 311 Ky. 104, 223 S.W.2d 592, 1949 Ky. LEXIS 1074 (Ky. 1949) (decided under prior law).

Statute uses mandatory language of "shall" when requiring petitioners to date when they sign the nominating petition and "shall not" when specifying that the petition should not be signed earlier than a certain date; while the statute provides that certain missing information, including the lack of a date shall result in the signature not being counted, it does not specify the result which will follow if the petition contains a date that indicates the petitioner signed the petition prematurely. Stoecklin v. Fennell, 526 S.W.3d 104, 2017 Ky. App. LEXIS 440 (Ky. Ct. App. 2017).

Requirement in the statute that the nominating petition signatures be dated or they will not count, is not mandatory, so long as it can be established that the petition signers are eligible voters for the relevant election; if the provision that signatures be dated or they will not count is not mandatory, it is not logical to interpret the provision that voters must not sign before a certain date (which does not specify a penalty for noncompliance) as mandatory. Stoecklin v. Fennell, 526 S.W.3d 104, 2017 Ky. App. LEXIS 440 (Ky. Ct. App. 2017).

Requirement that petitioners not sign a nominating petition before a certain date is intended to ensure that voters sign the petition for the next election and will still likely be residents; where two voters sign the petition a day early, another voter signs two days early and another voter signs two weeks early, this intent was still accomplished, and the date on which the petition is signed is a mere directory requirement as to timing that does not affect the merits of the election. Stoecklin v. Fennell, 526 S.W.3d 104, 2017 Ky. App. LEXIS 440 (Ky. Ct. App. 2017).

3. Application.

Candidates for city offices in city operating under commission form of government cannot be nominated by petition. Whitney v. Skinner, 194 Ky. 804, 241 S.W. 350, 1922 Ky. LEXIS 259 (Ky. 1922) (decided under prior law).

4. Minority Political Parties.

Absent a showing of a significant modicum of support, members of a minority political party are not entitled to have their candidates placed on the November general election ballot. Libertarian Party of Kentucky v. Ehrler, 776 F. Supp. 1200, 1991 U.S. Dist. LEXIS 16002 (E.D. Ky. 1991).

5. Sufficiency of Petition.

Where petition of nomination prayed that nominee be placed upon the ballot as the nominee of a designated political party, but petition was not sufficient for that purpose, the nominee was not entitled to be placed upon the ballot as an independent. Southall v. Griffith, 100 Ky. 91, 37 S.W. 577, 18 Ky. L. Rptr. 599, 1896 Ky. LEXIS 151 (Ky. 1896).

Circuit court properly affirmed the candidate's election to the city commission because there was substantial compliance with the statute; the fact that the petition was signed early was insignificant given that the nominating petition was signed by eligible registered voters, submitted timely, other-

wise followed all statutory requirements and was not noted to have any error by the county clerk. Stoecklin v. Fennell, 526 S.W.3d 104, 2017 Ky. App. LEXIS 440 (Ky. Ct. App. 2017).

6. — Personal Signing Required.

The language of subsection (2) of this section is sufficiently explicit and unambiguous to require its literal application and precludes a voter from authorizing another to sign for him or her; names of persons authorizing their names to be affixed to independent candidate's petition for nomination but not personally signing it were invalid and candidate was disqualified. Barnard v. Stone, 933 S.W.2d 394, 1996 Ky. LEXIS 114 (Ky. 1996).

7. Nominations by Nonparty Organization.

Where independent ticket for five offices was nominated by petition, and the petition requested that the names be placed upon the ballot in one column under one device, it was the duty of the county clerk to so place them. Browning v. Lovett, 29 Ky. L. Rptr. 692 (1906) (decided under prior law).

A group of petitioners may select a party name and device, and nominate one candidate for each of several offices by one petition, in which it is requested that all of such nominees be placed on the ballot under the designated title and device. Asher v. Johnson, 192 Ky. 575, 234 S.W. 18, 1921 Ky. LEXIS 110 (Ky. 1921) (decided under prior law).

An organization of voters may nominate by petition a group of candidates, under a designated party name and device, and are entitled to have their nominees placed on the ballot under such name and device and it is not necessary that the persons signing the petition be members of the organization or party. Greene v. Slusher, 300 Ky. 715, 190 S.W.2d 29, 1945 Ky. LEXIS 628 (Ky. 1945) (decided under prior law).

It is a general rule that combinations of electors are entitled to nominate candidates by petition where they do not constitute a political party that is required by statute to make a nomination in another way. Queenan v. Mimms, 283 S.W.2d 380, 1955 Ky. LEXIS 313 (Ky. 1955) (decided under prior law).

8. — Vacancy in Nomination.

A political organization, not constituting a "party" within the meaning of former statute that defined "political party" may fill a vacancy in its nomination by filing a supplementary petition of nomination, as contemplated by former law which provided procedure whereby a vacancy created by the death, resignation or removal of a candidate could be filled, even though the organization did not cast as much as two per cent of the votes at the last preceding election. Greene v. Slusher, 300 Ky. 715, 190 S.W.2d 29, 1945 Ky. LEXIS 628 (Ky. 1945) (decided under prior law).

9. Requirements of Petition.

It was not necessary that a petition seeking to have a person placed on the ballot as the candidate of a political party allege that the party has failed to nominate by convention. When the time for filing evidences of nomination has closed, if there was only one nomination of a party on file, and that was by petition, that fact was sufficient to inform the clerk that the party had failed to nominate by convention, and to warrant him in placing on the ballot the person nominated by petition. Wilkins v. Duffy, 114 Ky. 111, 70 S.W. 668, 24 Ky. L. Rptr. 913, 24 Ky. L. Rptr. 968, 1902 Ky. LEXIS 157 (Ky. 1902) (decided under prior law).

If a petition of nomination is properly signed, and the nominee is designated as a member and candidate of a political party for a designated office, and the party title and device is designated, the clerk must place the nominee on the ballot as the candidate of such party, unless a certificate of nomination by convention is filed before the time for filing expires, or unless petition for another candidate of such party has previously been filed. Wilkins v. Duffy, 114 Ky. 111, 70 S.W. 668, 24 Ky. L. Rptr. 913, 24 Ky. L. Rptr. 968, 1902 Ky. LEXIS 157 (Ky. 1902) (decided under prior law).

The requirements that the petition state the residence of the nominee, that he is legally qualified to hold the office, and that the petitioners desire and are legally qualified to vote for the nominee, are mandatory and a petition which failed to state those facts was not sufficient to entitle nominee to be placed on ballot. Ison v. Weddle, 226 Ky. 201, 10 S.W.2d 814, 1928 Ky. LEXIS 56 (Ky. 1928), overruled in part, Bogie v. Hill, 286 Ky. 732, 151 S.W.2d 765, 1941 Ky. LEXIS 323 (Ky. 1941). See Clark v. Nash, 192 Ky. 594, 234 S.W. 1, 1921 Ky. LEXIS 102 (Ky. 1921) (decided under prior law).

In regard to nominations by petition, it is not required that petitioners or candidates be members of the party or organization described, but simply that it be stated that the nominee is legally qualified to hold the office and that the subscribers desire and are legally qualified to vote for him. Greene v. Slusher, 300 Ky. 715, 190 S.W.2d 29, 1945 Ky. LEXIS 628 (Ky. 1945) (decided under prior law).

Separate petitions are not required for each candidate where several candidates will run for different offices and the petitioners are qualified to make nominations for each, and thus a single petition may embrace the name of one candidate of an independent party group for every office to be filled. Queenan v. Mimms, 283 S.W.2d 380, 1955 Ky. LEXIS 313 (Ky. 1955) (decided under prior law).

10. — Registered Voters.

Since city was not divided into wards and each member of council was elected by the qualified voters of the entire city it followed that the nomination of candidates could have been made by qualified voters of entire city. Queenan v. Mimms, 283 S.W.2d 380, 1955 Ky. LEXIS 313 (Ky. 1955) (decided under prior law).

Signers of nominating petition must be registered voters. Hall v. Reid, 305 S.W.2d 923, 1957 Ky. LEXIS 349 (Ky. 1957) (decided under prior law).

The signer of a nominating petition filed under former similar section should have been a registered voter legally qualified to vote for the candidate. Huie v. Jones, 362 S.W.2d 287, 1962 Ky. LEXIS 255 (Ky. 1962) (decided under prior law).

11. — Number of Signers.

A city is a "division less than a county" within the meaning of a former similar section and only 20 names are required. Jones v. Wilshire, 98 Ky. 391, 33 S.W. 199, 17 Ky. L. Rptr. 989, 1895 Ky. LEXIS 73 (Ky. 1895) (decided under prior law).

If petition was signed by less than required number of electors, the nominee was not entitled to have his name placed on ballots, and votes cast for him would not be counted. Morgan v. Revis, 215 Ky. 30, 284 S.W. 111, 1926 Ky. LEXIS 646 (Ky. 1926). See Combs v. Dixon, 215 Ky. 566, 286 S.W. 797, 1926 Ky. LEXIS 767 (Ky. 1926); Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

12. — Signing More Than Once.

Where person signs same petition more than once, one of his signatures will be counted. Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

13. — Names Signed by Other.

The name of a married person may not be signed to a nominating petition by the spouse in his or her absence, and a subsequent ratification of such signing will not validate it. Morgan v. Revis, 215 Ky. 30, 284 S.W. 111, 1926 Ky. LEXIS 646 (Ky. 1926). See Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

Names signed to petition by another, without authority, direction or consent of persons whose names were signed,

could not be counted. Combs v. Dixon, 215 Ky. 566, 286 S.W. 797, 1926 Ky. LEXIS 767 (Ky. 1926) (decided under prior law).

A person's name may properly be signed to a petition by another, if it is done in his presence and by his direction, but not otherwise. Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

Signature of person written for him by another is not valid unless he can see the signature being written. Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

14. — Presumption as to Validity.

When a petition of nomination is regular on its face, the county clerk must place the name of the nominee on the ballot as requested by the petition, and he cannot question the qualifications of the persons who signed the petition. Wilkins v. Duffy, 114 Ky. 111, 70 S.W. 668, 24 Ky. L. Rptr. 913, 24 Ky. L. Rptr. 968, 1902 Ky. LEXIS 157 (Ky. 1902) (decided under prior law).

15. — Presumption as to Signatures.

There is a presumption that signatures appearing on petition were written by alleged signers and a person attacking the validity of petition has burden of showing that signatures were written by others than alleged signers, but upon his so showing the burden shifts to the proponent of the petition to show that the signatures were written in the presence and at the direction of the alleged signers. Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

16. — Address.

The provision that the address of each petitioner be stated is mandatory. Where only 78 signers of petition for county office gave their address, the petition was insufficient. Skidmore v. Hurst, 113 Ky. 694, 68 S.W. 841, 24 Ky. L. Rptr. 536, 1902 Ky. LEXIS 90 (Ky. 1902) (decided under prior law).

The requirement that the residence and post office address of each signer be designated is directory to the extent that the county clerk may exercise his discretion as to whether the designation is sufficient. Blackburn v. Welch, 138 Ky. 267, 127 S.W. 991, 1910 Ky. LEXIS 68 (Ky. 1910) (decided under prior law).

The requirement of former similar section that the residence and post office address of each petitioner be "designated" meant only that the county clerk must have been informed in some way of the residence and address, not necessarily by setting it forth in the petition. Blackburn v. Welch, 138 Ky. 267, 127 S.W. 991, 1910 Ky. LEXIS 68 (Ky. 1910) (decided under prior law).

Petition nominating candidate for city office in sixth-class city was sufficient, although address of some of signers was not designated, where county clerk knew signers and knew that they were residents of the city. Blackburn v. Welch, 138 Ky. 267, 127 S.W. 991, 1910 Ky. LEXIS 68 (Ky. 1910) (decided under prior law).

County clerk may reject petition if he knows that addresses designated in petition are not true. Blackburn v. Welch, 138 Ky. 267, 127 S.W. 991, 1910 Ky. LEXIS 68 (Ky. 1910) (decided under prior law).

Where heading of petition stated that all of undersigned petitioners were "residents and qualified voters of the first magisterial district of Jefferson County, Kentucky," it was a sufficient designation of address for signers to write only their street address after their names, without adding the city, county and state. Lorenz v. Buckrop, 251 Ky. 1, 64 S.W.2d 168, 1933 Ky. LEXIS 796 (Ky. 1933) (decided under prior law).

Where some of signers of petition of nomination for a county office did not designate their residence and post office address, and there was nothing in the petition to indicate that they were residents of county, other than statement in heading of petition that all signers were "legal voters" of county, and there was no proof that county clerk personally knew such signers to be qualified, they could not be counted in determining whether there were sufficient signatures to petition. Combs v. Dixon, 215 Ky. 566, 286 S.W. 797, 1926 Ky. LEXIS 767 (Ky. 1926) (decided under prior law).

Nominating petitions that stated petitioners' respective house numbers, street names and "Louisville, Kentucky" met the requirements of former similar section without having specifically said that the same were "the post office addresses" of the respective signers. Rudy v. Queenan, 283 S.W.2d 383, 1955 Ky. LEXIS 314 (Ky. 1955) (decided under prior law).

17. Burden of Compliance.

Person seeking to establish his right to have his name placed on ballot by virtue of petition of nomination has burden of showing that petition complies with the statute. Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926) (decided under prior law).

A good faith purpose to nominate a candidate for public office should be recognized unless "plain or manifest purpose of the law" demands a decision invalidating the petition. Carter v. Herickson, 361 S.W.2d 102, 1962 Ky. LEXIS 227 (Ky. 1962) (decided under prior law).

18. Mistake as to Number of Candidates.

Where ordinance increasing size of city council from six to 12 was never published and thus was invalid and petitioners in good faith mistakenly nominated 12 persons for 12 offices when only six (6) offices were vacant and then six of the 12 persons they sought to nominate withdrew, the fact of their error ought not to vitiate their petition and deprive electors of privilege of nominating the remainder. Queenan v. Mimms, 283 S.W.2d 380, 1955 Ky. LEXIS 313 (Ky. 1955) (decided under prior law).

19. Conflicting Nominations.

It is neither proper nor right for same petitioner or petitioners to make conflicting nominations by naming more than one candidate for each city office. Queenan v. Mimms, 283 S.W.2d 380, 1955 Ky. LEXIS 313 (Ky. 1955) (decided under prior law).

20. Write-in Candidates.

There is no authority for the contention that because the appellees had failed to secure nomination by petition under former similar section they were ineligible for election as write-in candidates. Dupin v. Sullivan, 355 S.W.2d 676, 1962 Ky. LEXIS 79 (Ky. 1962) (decided under prior law).

21. Designation of Device or Title.

Where county clerk, relying on opinion of Attorney General and acting honestly, placed names of persons nominated by petition on ballot under title and device of "Independent Party," although petitions were sufficient to entitle persons to be placed on ballot as candidates of regular party, no nomination by convention having been made, the election would not be held void notwithstanding that clerk's conduct probably affected result of election. Wilkins v. Duffy, 114 Ky. 111, 70 S.W. 668, 24 Ky. L. Rptr. 913, 24 Ky. L. Rptr. 968, 1902 Ky. LEXIS 157 (Ky. 1902) (decided under prior law).

A candidate who does not seek to have his name placed on the ballot under the device and title of a political party need not designate in his petition any device or title, in which case he will be listed on the ballot as an independent. Eversole v. Holliday, 123 Ky. 496, 96 S.W. 590, 29 Ky. L. Rptr. 927, 1906 Ky. LEXIS 168 (Ky. 1906) (decided under prior law).

A picture of the candidate is a proper "figure or device." Eversole v. Holliday, 123 Ky. 496, 96 S.W. 590, 29 Ky. L. Rptr. 927, 1906 Ky. LEXIS 168 (Ky. 1906) (decided under prior law).

22. — Failure to Put on Ballot.

Failure of clerk to place on ballot the device designated in petition of nomination would not invalidate votes cast for such

candidate. Thompson v. Yowell, 137 Ky. 766, 126 S.W. 1102, 1910 Ky. LEXIS 623 (Ky. 1910) (decided under prior law).

23. Filing in More Than One County.

In the case of a city situated in more than one county, where petitions of nomination for city offices were required to be filed with the county clerk of each county, the nomination would have been valid if the petition filed with one of the clerks was sufficient in form, although the petition filed with the other clerk was defective. Eagle v. Cox, 268 Ky. 58, 103 S.W.2d 682, 1937 Ky. LEXIS 411 (Ky. 1937) (decided under prior law).

24. Objection to Petition.

Where defeated candidate had opportunity to inspect the list of successful candidate's petitioners, before filing suit to restrain placing of the latter's name on ballot, he was estopped from questioning sufficiency of successful candidate's petition in later suit to contest election. Revis v. Duff, 275 Ky. 626, 122 S.W.2d 518, 1938 Ky. LEXIS 488 (Ky. 1938) (decided under prior law).

Cited:

Libertarian Party v. Davis, 601 F. Supp. 522, 1985 U.S. Dist. LEXIS 23566 (E.D. Ky. 1985).

OPINIONS OF ATTORNEY GENERAL.

The nominating petitions filed by candidates for the board of education of an independent school district, parts of which lie in two (2) counties, must be filed with the county clerks of each of the two (2) counties, the original copy with one county clerk and a duplicate copy with the other county clerk, not less than 55 days prior to the November election. OAG 74-647.

The statutory requirements that petitioners state that the nominee is legally qualified to hold the office and that the petitioners desire and are legally qualified to vote for the nominee are mandatory and any petition which fails to state these facts is not sufficient to establish the nominee to be placed on the ballots. OAG 74-676.

After a petition has been filed and accepted by the clerk, it is necessary for a summary action to be filed in circuit court if one wishes to prevent the candidate's name from appearing on the November ballot and the action must be filed by either an opposing candidate or a qualified voter pursuant to KRS 118.176. OAG 74-676.

School board candidates, as well as other candidates for nomination, should use the filing form prescribed by the state board pursuant to this section, copies of which are in the clerk's office. OAG 74-676.

A petition which fails to indicate the residence of the signers or that they are qualified voters of the school district is insufficient to entitle the nominee's name to be placed on the ballot. OAG 74-677.

If the clerk conditionally accepts a petition pending a determination as to its compliance with the requirements of this section, he may reject it when the petition is determined invalid; but if it was accepted unconditionally, it will be necessary for an opposing candidate or a qualified voter to bring a summary action in Circuit Court to prevent the proposed candidate's name from appearing on the ballot. OAG 74-677.

Most of the requirements of this section are basic to the validity of any petition and are mandatory. OAG 74-677.

Candidates filing as independents for election to board of trustees of cities of the sixth class are nominated by petition which must be filed with the county clerk pursuant to KRS 118.356 if they are candidates voted for by a county or by a district less than a county, but candidates for congress and the General Assembly must file with the Secretary of State. OAG 75-227.

A registered Democrat or Republican may sign the petition of a candidate desiring to run as an independent for county wide office so long as the voter meets the other qualifications of this section. OAG 75-228.

A candidate who already has filed for nomination for judicial office as both a Democrat and a Republican under KRS 118.145 (repealed) also may file for nomination under this section. OAG 75-267.

The number of candidates that may be listed on a single independent slate or ticket is limited to the number of positions to be filled. OAG 75-347.

Where the petitioners nominate a greater number of candidates than the number of offices to be filled, the petition is invalid and unacceptable to the clerk. OAG 75-347.

Where a county sheriff died on or about May 3, 1975, which was too late for candidates to file and run in the May primary for the unexpired term, the major parties were authorized to make nominations for the November election pursuant to party rules under KRS 118.115 and, at the same time, any qualified person could file a petition to become an independent candidate for the office in question at the coming November election under the authority expressed in KRS 118.375 so that any person desiring to run as an independent must file a petition on a form prescribed by the state board which is in accordance with the requirements of this section. OAG 75-401.

The only candidates who may file for office as independents after the May primary under KRS 118.365 would be those candidates seeking a city or school board office and any other independent candidates must file their petition pursuant to this section. OAG 75-441.

The requirements of this section as to the contents of a nominating petition are mandatory and if any of the required contents are omitted, the names of the nominees may not be placed on the ballot unless the petition is made complete prior to the statutory deadline and the county clerk may not supply the missing facts of his own knowledge. OAG 75-611.

Since school board candidates nominated by petition under this section may not, under KRS 160.230, be represented by any political organization, the petitioners of such candidates may not fill vacancies occurring after the deadline for filing in the manner prescribed in KRS 118.325. OAG 75-612.

Even though a person registered as an independent could not qualify to run in the May primary as a Democrat or Republican under the restrictions of KRS 116.055 and 118.125, he could nevertheless run as an independent by timely filing a petition as prescribed in this section. OAG 76-78.

Where a vacancy occurs in a magisterial district, any candidate desiring to run for the unexpired term as an independent would have to file not less than 55 days before the May primary a petition containing the names and addresses of 20 petitioners. OAG 76-179.

A person running as an independent candidate for any elective office in a regular November election may be registered as a Democrat or a Republican rather than an independent; likewise any person signing an independent petition may be registered as a member of any party or no party. OAG 76-191.

If there is sufficient address stated beside the petitioner's name to satisfy the county clerk that he is in fact a resident of the school district, the clerk should accept the nominating petition of a school board candidate as being in compliance with the requirements of this section. OAG 76-519.

Where an independent candidate's petition states that the petitioner is a candidate for magisterial district "one," there would be sufficient compliance with the requirement that a candidate indicate the office that he seeks and the district from which he is running. OAG 77-638, 1977 Ky. AG LEXIS 145.

Where one candidate filed to fill vacancy in city commission under former KRS 89.060, which was then in effect, and

second candidate subsequently filed, the names of both candidates should be listed on the general election ballot (following a drawing for position) under the heading of "city commissioner," unexpired term, since theoretically both candidates were legally nominated under two separate laws though one was no longer in effect by the time of the election. OAG 80-507, 1980 Ky. AG LEXIS 127.

A group of six (6) or fewer candidates for the office of city council may not file a single petition for the position, since group filing is not permitted under subsection (3) of KRS 83A.170, even though it is permitted for independent petitions under this section. OAG 81-54, 1981 Ky. AG LEXIS 367.

Defeated candidates in the Republican primary for statewide offices can run as an independent group for offices for which they were not defeated by filing a single petition with a minimum of 5,000 signatures and may designate a party name such as "Citizens United," together with a symbol or device to represent said independent party. OAG 83-279, 1983 Ky. AG LEXIS 218.

Where a number of candidates desire to run as an independent ticket with each candidate seeking a separate office, the number of signers required would be the same as that required of an individual candidate, which in the case of statewide offices would be 5,000 signatures of registered voters under the requirements of this section. This is based on the theory that each petitioner would have been entitled to sign the petition of each candidate had he filed individually. OAG 83-279, 1983 Ky. AG LEXIS 218.

The provisions of § 7 (5 USCS § 552a note) of the Federal Privacy Act of 1974 prohibit any local government agency from denying an individual any right or privilege provided by law because of such individual's refusal to disclose his Social Security account number, unless such disclosure requirement was in existence before January 1, 1975; therefore, since the requirement of subsection (2) of this section that the petitioner state his Social Security account number when signing a petition on behalf of an independent candidate was inserted by amendment in 1982, it must be construed as directory only. Thus being directory, the fact that the petitioner does not indicate his Social Security account number will not affect the validity of his signature in ascertaining the required number of petitioners necessary to establish the fact that the candidate has complied with the filing requirements of this section. OAG 83-437, 1983 Ky. AG LEXIS 67.

The American Party may fill the vacancy created by the death of one of its designated presidential electors by appropriate certification filed with the Secretary of State by the chairman of the party's state committee. OAG 84-170, 1984 Ky. AG LEXIS 220.

A write in candidate may only run for a school board seat in which there is a validly filed and qualified candidate on the ballot. OAG 03-001, 2003 Ky. AG LEXIS 3.

RESEARCH REFERENCES AND PRACTICE AIDS

ALR

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 A.L.R.2d 604.

Withdrawal of names from nominating petition, right of. 92 A.L.R. 1513.

Nonregistration as affecting one's qualification as signer of petition. 100 A.L.R. 1308.

Nominations by petition or otherwise than by statutory convention or primary election, constitutionality of election laws with respect to. 146 A.L.R. 668.

Validity of delegation to private persons or organizations of power to appoint or nominate to public office. 97 A.L.R.2d 361.

118.365. Time for filing certificates and petitions of nomination — Statement-of-candidacy forms — Petitions for recall elections or elections on public questions.

(1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. The certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.

(2) Petitions of nomination for candidates for city offices except as provided in KRS 83A.047, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Tuesday after the first Monday in June preceding the day fixed by law for the holding of regular elections for the offices sought.

(3) Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file the statements required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Tuesday after the first Monday in June preceding the regular election for the office sought.

(4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk.

(5) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the first Tuesday after the first Monday in June preceding the day fixed by law for the holding of regular elections for the offices sought. The filing of petitions of nomination for independent, or political organization, or political group candidates shall not be accepted by the Secretary of State or the county clerk if the candidate has not filed a statement-of-candidacy form as required by KRS 118.367.

(6) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which there is an election for President and Vice President of the United States and not later than the Friday follow-

ing the first Tuesday in September preceding the date fixed by law for the election of the electors.

(7) Petitions for recall elections or elections on public questions shall be filed as required with the county clerk not later than the second Tuesday in August preceding the day fixed by law for holding a regular election.

(8) Petitions of any kind named in this section, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which papers are permitted to be filed.

History.

Enact. Acts 1974, ch. 130, § 122; 1978, ch. 384, § 254, effective June 17, 1978; 1982, ch. 394, § 28, effective July 15, 1982; 1984, ch. 185, § 20, effective July 13, 1984; 1984, ch. 185, § 21, effective January 2, 1985; 1986, ch. 185, § 2, effective January 1, 1987; 1986, ch. 470, § 28, effective July 15, 1986; 1988, ch. 238, § 2, effective July 15, 1988; 1990, ch. 48, § 47, effective July 13, 1990; 1990, ch. 169, § 9, effective July 13, 1990; 1990, ch. 476 Pt. V, § 305, effective July 13, 1990; 1992, ch. 296, § 12, effective July 14, 1992; 1996, ch. 195, § 17, effective July 15, 1996; 1998, ch. 2, § 7, effective July 15, 1998; 2003, ch. 92, § 2, effective June 24, 2003; 2007, ch. 133, § 3, effective April 5, 2007; 2010, ch. 123, § 3, effective July 15, 2010; 2018 ch. 162, § 7, effective November 7, 2018; 2022 ch. 87, § 20, effective April 7, 2022.

NOTES TO DECISIONS

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1. In General.

It is the duty of the candidate to see that his petition or certificate of nomination is filed within the prescribed time. Daniel v. Blankenship, 177 Ky. 726, 198 S.W. 48, 1917 Ky. LEXIS 657 (Ky. 1917) (decided under prior law).

2. Constitutionality.

This section, which was amended effective July 13, 1984, and with which political party failed to comply in submitting petitions with the required number of signatures 70 days before the date of the election, is constitutional, and did not violate the political party's rights under the First, Fifth and Fourteenth Amendments to the United States Constitution. Libertarian Party v. Davis, 601 F. Supp. 522, 1985 U.S. Dist. LEXIS 23566 (E.D. Ky. 1985).

3. Application.

Former similar section applied to elections for Circuit Judge and Judge of the Court of Appeals. Asher v. Arnett, 280 Ky. 347, 132 S.W.2d 772, 1939 Ky. LEXIS 87 (Ky. 1939) (decided under prior law).

The filing deadline of 119 days prior to the primary election for the nominating petitions of independent candidates and minority party candidates, is impermissibly early and is unconstitutional. Libertarian Party of Kentucky v. Ehrler, 776 F. Supp. 1200, 1991 U.S. Dist. LEXIS 16002 (E.D. Ky. 1991) (decided under prior law).

4. Independent Presidential Candidates.

Electors for independent presidential candidates are not required to file petitions and certificates of nomination until 55 days before the general election, as required by subsection (4) of this section prior to amendment, since that subsection made no distinction between independent and major party candidates; moreover, if the Legislature had intended that subsection to apply only to major parties, it could have omitted the word "petition." Anderson v. Mills, 664 F.2d 600, 1981 U.S. App. LEXIS 15841 (6th Cir. Ky. 1981).

5. Delay in Seeking Relief.

Where political party waited 48 days after the Secretary of State had refused to allow it to file petition containing only 2,450 signatures, and waited 94 days after this section as amended and effective July 13, 1984, became law before filing suit, where it had constructive knowledge of the amendment, and where inclusion of such party's candidates would mean redesigning and reprinting the ballot face of voting machines at considerable cost, failure of such party to press its case when it should have known that an injury had occurred was fatal to its receiving any relief. Libertarian Party v. Davis, 601 F. Supp. 522, 1985 U.S. Dist. LEXIS 23566 (E.D. Ky. 1985).

6. Filing.

7. — Method.

A certificate or petition may be "filed" by delivering it to the custody of the clerk, accompanied with the communication to the clerk of the desire on the part of the candidate that it be filed. There is no requirement that the clerk indorse the date and fact of filing. Daniel v. Blankenship, 177 Ky. 726, 198 S.W. 48, 1917 Ky. LEXIS 657 (Ky. 1917). See Schnabel v. Sutton, 213 Ky. 116, 280 S.W. 488, 1926 Ky. LEXIS 463 (Ky. 1926) (decided under prior law).

If a candidate's name is printed on the ballot, although he did not file his evidence of nomination within the required time, the votes cast for him will not be counted. Justice v. Justice, 184 Ky. 130, 211 S.W. 419, 1919 Ky. LEXIS 27 (Ky. 1919). See Hewlett v. Carter, 194 Ky. 454, 239 S.W. 789, 1922 Ky. LEXIS 179 (Ky. 1922); Morgan v. Revis, 215 Ky. 30, 284 S.W. 111, 1926 Ky. LEXIS 646 (Ky. 1926); Combs v. Dixon, 215 Ky. 566, 286 S.W. 797, 1926 Ky. LEXIS 767 (Ky. 1926); Lewis v. Mosely, 215 Ky. 573, 286 S.W. 793, 1926 Ky. LEXIS 766 (Ky. 1926) (decided under prior law).

8. — Time.

There is no provision by which a person can have his name placed upon the ballot as an independent candidate to fill a vacancy, if the vacancy occurs after the time prescribed in former similar section for filing petitions of nominations has expired. Lisle v. Schooler, 288 S.W.2d 652, 1956 Ky. LEXIS 272 (Ky. 1956) (decided under prior law).

As to the timing of filing tax protest petitions, because KRS 132.017(1)(a) specifically governs the levy and assessment of property taxes, it controls over the general statute in KRS 118.365(7), concerning the conduct of elections; therefore, the trial court correctly determined that the taxpayers had 45 days in which to file their recall petition, and that the petition was valid and timely filed even though it did not specify "that portion" of the rate subject to recall. Daviess County Pub. Library Taxing Dist. v. Boswell, 185 S.W.3d 651, 2005 Ky. App. LEXIS 263 (Ky. Ct. App. 2005).

9. — Minimum Time Mandatory.

The requirement that evidences of nomination must be filed before a certain date is mandatory, and if the requirement is not met the clerk has no right to place the candidate's name on the ballot. Brodie v. Hook, 135 Ky. 87, 121 S.W. 979, 1909 Ky. LEXIS 263 (Ky. 1909). See Daniel v. Blankenship, 177 Ky. 726, 198 S.W. 48, 1917 Ky. LEXIS 657 (Ky. 1917); Justice v. Justice, 184 Ky. 130, 211 S.W. 419, 1919 Ky. LEXIS 27 (Ky. 1919); Whitney v. Skinner, 194 Ky. 804, 241 S.W. 350, 1922 Ky. LEXIS 259 (Ky. 1922); Morgan v. Revis, 215 Ky. 30, 284 S.W. 111, 1926 Ky. LEXIS 646 (Ky. 1926); Combs v. Dixon, 215 Ky. 566, 286 S.W. 797, 1926 Ky. LEXIS 767 (Ky. 1926); Lewis v. Mosely, 215 Ky. 573, 286 S.W. 793, 1926 Ky. LEXIS 766 (Ky. 1926) (decided under prior law).

10. — Exclusion of Day of Primary.

The day of primary election should be excluded from the count since law regarding time of filing for city office provided that the candidate must file his declaration not more than forty-five days before the day fixed by law for the election. Treadway v. Miller, 354 S.W.2d 500, 1962 Ky. LEXIS 43 (Ky. 1962) (decided under prior law).

11. — Failure.

Where certificate of nomination is not filed within prescribed time, nomination becomes vacant, and vacancy can be filled by party authorities, who may nominate person who had received certificate of nomination if they so desire. Ledford v. Hubbard, 219 Ky. 9, 292 S.W. 345, 1926 Ky. LEXIS 123 (Ky. 1926). See Lewis v. Mosely, 215 Ky. 573, 286 S.W. 793, 1926 Ky. LEXIS 766 (Ky. 1926) (decided under prior law).

12. Inadvertent Omission of Candidate.

Where certificate of nomination of group of candidates by party convention was filed in time, but name of candidate for one office was inadvertently omitted, a subsequent certificate correcting the omission could not be accepted where it was tendered for filing after the time for filing had expired. Brodie v. Hook, 135 Ky. 87, 121 S.W. 979, 1909 Ky. LEXIS 263 (Ky. 1909) (decided under prior law).

13. Municipal and School Elections.

In elections for municipal offices, boards of education, or school trustees, candidates may file their nominating papers with the county court clerk at any time prior to 15 days before the election. Logsdon v. Howard, 280 Ky. 342, 133 S.W.2d 60, 1939 Ky. LEXIS 116 (Ky. 1939) (decided under prior law).

14. Sufficient Compliance.

Where candidates nominated at primary election came to county clerk's office and tendered their certificates of nomination within proper time, but the clerk told them that filing would not be necessary because duplicate certificates accompanying election returns filed by election commissioners would be sufficient, there was a sufficient compliance with this section and such candidates were entitled to have their names printed on the ballots. Schnabel v. Sutton, 213 Ky. 116, 280 S.W. 488, 1926 Ky. LEXIS 463 (Ky. 1926) (decided under prior law).

Where county clerk had possession of candidate's certificate of nomination, and candidate went to clerk before time for filing had expired and asked that clerk file the certificate, but clerk said it would not be necessary to file it until 15 days before election, the candidate's request that the certificate be filed was a sufficient compliance with this section, although clerk did not mark certificate "filed" until after time for filing had expired. James v. Buster, 234 Ky. 462, 28 S.W.2d 501, 1930 Ky. LEXIS 209 (Ky. 1930) (decided under prior law).

Filing of certificate of returns with county clerk by board of election commissioners does not constitute compliance with requirement that certificate of nomination be filed. Lewis v. Mosely, 215 Ky. 573, 286 S.W. 793, 1926 Ky. LEXIS 766 (Ky. 1926) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

The nominating petitions filed by candidates for the board of education of an independent school district, parts of which lie in two (2) counties, must be filed with the county clerks of each of the two (2) counties, the original copy with one county clerk and a duplicate copy with the other county clerk, not less than 55 days prior to the November election. OAG 74-647.

The only candidates who may file for office as an independent after the May primary would be those candidates seeking a city or school board office and any other independent candidates must file their petition pursuant to the requirements of KRS 118.315. OAG 75-441.

As a vacancy in the office of county judge occurred less than 70 days before the primary, this section would control and both the Republican and Democratic parties may nominate a person of their choice pursuant to their party rules and file a statement of nomination with the county clerk not less than 55 days before the general election as provided by this section. OAG 75-525.

Where a school board member's resignation is not tendered in writing to and accepted by the board prior to 55 days before the general election, there is no vacancy and the office need not be placed on the ballot until the following election. OAG 75-635.

A candidate desiring to run as an independent for a vacancy on a city council need not file his nominating petition until 55 days before the general election pursuant to subsection (4) of this section. OAG 76-15.

Though a person registered as an independent could not qualify to run in the 1976 May primary as a Democrat or Republican under the restrictions of KRS 116.055 and 118.125, he could still run as an independent by filing a petition as prescribed in KRS 118.315 not later than March 31, 1976, as required by this section. OAG 76-78.

Even though no one filed a petition to run against the current county jailer as an independent, or sought nomination in the primary, any qualified voter could campaign for the office as a "write-in" candidate. OAG 79-462, 1979 Ky. AG LEXIS 170.

In view of the 1982 amendment to this section, any person can file as an Independent for any office to be filled for a regular or unexpired term, not less than 55 days before the regular election. accordingly, where two candidates for the vacant office of constable filed for a primary which was not held because of the erroneous assumption that the office could not be filled in the following regular election, the two party candidates in question, irrespective of their party affiliation, and any other individual, could file an independent petition containing the names of a minimum of 20 petitioners for the office, provided they filed their petition within the 55-day deadline. OAG 82-415, 1982 Ky. AG LEXIS 221.

Where a constable resigned his office in early 1984, but neither major party nominated a candidate for the office in the May 1984 primary, regardless of whether or not anyone filed as an independent for constable, Ky. Const., § 152 would require the office to be placed on the November 1984 ballot for "write-in" purposes, since the office must be filled by an election; if no one is elected, then a vacancy occurs to be filled by the county judge/executive for the remainder of the term ending in January 1986. OAG 84-244, 1984 Ky. AG LEXIS 141.

Persons filing for city council in a city of the fourth class who desire to file as an independent or for party nomination must file 90 days before the May primary election; with respect to candidates for city council in cities of the fifth class who are prohibited under KRS 118.105(4) from seeking party nomination, they may file independent petitions up until 70 days

before the general election. OAG 84-318, 1984 Ky. AG LEXIS 70.

Where a few days before the primary election the unopposed Republican candidate for Property Valuation Administrator (PVA), who was the incumbent PVA in the county, died, and where the only other person having a qualified certificate issued pursuant to KRS 132.380 qualifying him to run for PVA was the unopposed Democratic candidate, the giving of a special examination was mandatory in light of the provisions of KRS 118.105(3) and KRS 132.380, with the takers limited to registered Republicans, since the Democratic Party had a qualified nominee, and it was too late for an independent candidate to file for the office under the terms of this section. OAG 85-101, 1985 Ky. AG LEXIS 51.

The 120-day filing deadline established in this section and KRS 118.165 and 118A.060 was meant to uniformly apply to all filing deadlines, except those for municipal offices, and therefore by implication applies to candidates seeking unexpired terms under the provisions of KRS 118.115, 118.375 and 118A.100. OAG 89-5, 1989 Ky. AG LEXIS 4.

118.367. Statement-of-candidacy form for independent, political organization, or political group candidate — Exceptions — Examination of forms.

(1) An independent, or political organization, or political group candidate required to file nomination papers pursuant to KRS 118.365(5) shall be required to file a statement-of-candidacy form with the same office at which nomination papers are filed. Candidates for federal office, candidates for mayor or legislative body in cities of the home rule class participating in partisan elections, and candidates for a special election or election for an unexpired term shall not be required to file a statement-of-candidacy form. The statement-of-candidacy form shall be filed not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than April 1 preceding the day fixed by law for holding of regular elections for the offices sought. If the office in which the statement-of-candidacy form is to be filed is closed on April 1, the form may be filed on the next business day. The statement-of-candidacy form shall be filed no later than 4 p.m. local time when filed on the last day on which papers are permitted to be filed. No person shall file a statement-of-candidacy form for more than one (1) public office during an election cycle.

(2) The statement-of-candidacy form shall be prescribed by the Secretary of State. The statement-of-candidacy form shall be signed by the candidate upon filing. No charge shall be assessed for the filing of a statement-of-candidacy form. The Secretary of State and county clerks shall examine the statement-of-candidacy form of each candidate who files the form to determine if there is an error. If an error has occurred, the candidate shall be notified by certified mail within twenty-four (24) hours.

History.

Enact. Acts 2003, ch. 92, § 1, effective June 24, 2003; 2005, ch. 71, § 9, effective June 20, 2005; 2010, ch. 123, § 4, effective July 15, 2010; 2014, ch. 92, § 214, effective January 1, 2015; 2019 ch. 23, § 1, effective March 19, 2019; 2019 ch. 187, § 14, effective November 6, 2019; 2021 ch. 197, § 77, effective June 29, 2021; 2026 ch. 175, § 15, effective April 14, 2026.

Legislative Research Commission Notes.

(11/6/2019). This statute was amended by 2019 Ky. Acts chs. 23 and 187. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 23, which was last enacted by the General Assembly, prevails under KRS 446.250.

TITLE XI
REVENUE AND TAXATION

Chapter
131. Department of Revenue.
132. Levy and Assessment of Property Taxes.
133. Supervision, Equalization, and Review of Assessments.
134. Payment, Collection, and Refund of Taxes.
136. Corporation and Utility Taxes.
138. Excise Taxes.
139. Sales and Use Taxes.
141. Income Taxes.

CHAPTER 131
DEPARTMENT OF REVENUE

General Provisions.

Section
131.110. Protest of assessment by Department of Revenue — Review — Appeal.

GENERAL PROVISIONS

131.110. Protest of assessment by Department of Revenue — Review — Appeal.

(1)(a) The department shall mail to the taxpayer a notice of any tax assessed by it. The assessment shall be due and payable if not protested in writing to the department within:

1. Forty-five (45) days from the date of notice, for assessments issued prior to July 1, 2018; and
2. Sixty (60) days from the date of notice, for assessments issued on or after July 1, 2018.

(b) Claims for refund of paid assessments may be made under KRS 134.580 and denials appealed under KRS 49.220.

(c)1. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

2. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

3. The refusal of the extension may be reviewed in the same manner as a protested assessment.

(2) After a timely protest has been filed, the taxpayer may request a conference with the department. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.

(3)(a) After considering the taxpayer's protest, including any matters presented at the final confer-

ence, the department shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is a final ruling of the department, generally state the issues in controversy, the department's position thereon and set forth the procedure for prosecuting an appeal to the Board of Tax Appeals.

(b) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the department shall issue such ruling within thirty (30) days from the date the request is received by the department.

(c) If a taxpayer files a timely protest in dispute of a property tax assessment issued under KRS 136.120 to 136.180 and does not receive from the department, within one (1) year from the date on which the protest was filed:

1. A fully executed written agreement to settle the protest as authorized under KRS 131.030(3);

2. A final ruling in accordance with paragraphs (a) or (b) of this subsection; or

3. Resolution and closure of the protest;

the department shall immediately issue a final ruling that accepts the taxpayer's grounds of the protest, including the taxpayer's proposed true value as stated in the protest.

(4) After a final ruling has been issued, the taxpayer may appeal to the Board of Tax Appeals pursuant to the provisions of KRS 49.220.

History.

4114h-4, 4114h-5: amend. Acts 1946, ch. 233, § 1; 1958, ch. 69, § 1; 1964, ch. 141, § 13; 1978, ch. 233, § 32, effective June 17, 1978; 1990, ch. 120, § 1, effective July 13, 1990; 1990, ch. 423, § 9, effective July 13, 1990; 1992, ch. 361, § 4, effective July 14, 1992; 2005, ch. 85, § 112, effective June 20, 2005; 2017 ch. 74, § 64, effective June 29, 2017; 2018 ch. 171, § 106, effective April 14, 2018; 2018 ch. 207, § 106, effective April 27, 2018; 2021 ch. 185, § 59, effective June 29, 2021; 2022 ch. 212, § 50, effective July 14, 2022.

Legislative Research Commission Notes.

(7/13/90) This section was amended by two 1990 Acts (ch. 120 and ch. 423) which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly (ch. 423) prevails.

NOTES TO DECISIONS

Analysis

1. In General.
2. Assessment Void.
3. Taxes Due.
4. Notice of Assessment.
5. Petition for Review.
6. Time of Filing.
7. Hearing.
8. Remedy Exclusive.
9. Sales and Use Taxes.
10. Judicial Review.
11. Supporting Statement.
12. Mandatory Nature of Requirements.
13. Final Ruling Necessary.
14. Claim for Refund.
15. Cabinet's Authority.

1. In General.

The Revenue Cabinet is not required to consider every variable in assessing the tax value of unmined coal tracts; its consideration of mineable and merchantable acres, average clean coal seam thickness, location by county, and whether the coal was idle, permitted, or permitted and producing provided sufficient information to make a logical and reasonable estimate of the property's cash value. Prior to initiating a lawsuit, taxpayers who believe their valuations are in excess of fair cash value should exhaust the administrative remedies of formally protesting the assessment and, if necessary, appealing any final determination by the Cabinet to the Kentucky Board of Tax Appeals. Revenue Cabinet v. Gillig, 957 S.W.2d 206, 1997 Ky. LEXIS 91 (Ky. 1997).

2. Assessment Void.

Where the undisputed facts showed that taxpayer had no property within the jurisdiction of this state, and did no business therein, attempted assessment of franchise tax by Department of Revenue was void, and could be enjoined. Reeves v. Service Lines, Inc., 291 Ky. 410, 164 S.W.2d 593, 1942 Ky. LEXIS 236 (Ky. 1942).

3. Taxes Due.

Under this section taxes become due and payable on the day the assessment becomes final. Commonwealth ex rel. Luckett v. Kettenacker, 335 S.W.2d 339, 1960 Ky. LEXIS 256 (Ky. 1960).

4. Notice of Assessment.

Where in an action to collect unpaid sales taxes, the defendant corporation claimed that it had never received notice of the assessment, and the record disclosed that the commonwealth did not or could not offer any proof that the subject notice of taxes due had been mailed to, or received by, the defendant corporation, the commonwealth was not entitled to a presumption that the tax notices were properly mailed as a usual business practice; therefore, where there was no proof by the commonwealth of a regular system or scheme for mailing the tax notices, it was a question of fact as to whether the defendant received the notice of assessment, and the trial court erred when it granted summary judgment in favor of the commonwealth. Koscot Interplanetary, Inc. v. Commonwealth, 649 S.W.2d 201, 1983 Ky. LEXIS 243 (Ky. 1983).

Notice of tax assessment was properly addressed, for purposes of the presumption that a properly mailed letter is received in due course, where it was shown that the correct zip code and the incorrect one used were both used to deliver mail on the same road in the same city, and that the taxpayer received other correspondence from the department (now cabinet) with the same incorrect zip code. Zeigler Coal Co. v. Commonwealth, Dep't of Revenue, 691 S.W.2d 216, 1985 Ky. App. LEXIS 495 (Ky. Ct. App. 1985).

Department's initial, timely letter, which notified the telephone company of a sales tax assessment and of the amount of the assessed tax deficiency, was sufficient to satisfy the statute of limitations, KRS 139.620(1), and to allow collection of the tax because the letter was not required to contain all five requirements of KRS 131.081(8). Revenue Cabinet v. GTE South, Inc., 238 S.W.3d 655, 2007 Ky. LEXIS 160 (Ky. 2007).

5. Petition for Review.

The department or commissioner need not submit a petition for review to the tax commission unless the petition is filed within 15 days. Reeves v. Fries, 292 Ky. 450, 166 S.W.2d 985, 1942 Ky. LEXIS 116 (Ky. 1942) (decided under prior law).

6. Time of Filing.

Where taxpayer did not file petition for review within 15-day period, his right to relief was barred. The action of the commissioner (now secretary) of revenue in ruling on the merits of the taxpayer's complaint did not operate to waive the

statute, where the commissioner in making the ruling expressly reserved the question as to whether the complaint was timely, and finally rejected the complaint on the ground that it was not filed in time. Reeves v. Fries, 292 Ky. 450, 166 S.W.2d 985, 1942 Ky. LEXIS 116 (Ky. 1942) (decided under prior law).

7. Hearing.

The hearing by the tax commission is not an appeal, but a de novo redetermination. Reeves v. Fries, 292 Ky. 450, 166 S.W.2d 985, 1942 Ky. LEXIS 116 (Ky. 1942).

8. Remedy Exclusive.

Where the defendant failed to object to or appeal from the department's (now cabinet's) classification of income, the remedy was exclusive and the assessment became final. Koehler v. Commonwealth, 432 S.W.2d 397, 1968 Ky. LEXIS 325 (Ky. 1968).

The question of the defendant's residence was foreclosed when he neglected to pursue his statutory remedy and the issue could not be raised in an action to collect the delinquent tax. Koehler v. Commonwealth, 432 S.W.2d 397, 1968 Ky. LEXIS 325 (Ky. 1968).

9. Sales and Use Taxes.

The general provisions contained in this section do not govern appeals as to overdue sales and use taxes where the chapter concerned with the levy and collection of such taxes has provisions that are exclusive and controlling in all matters concerning the due date, penalties and interest. Kentucky Board of Tax Appeals v. Brown Hotel Co., 528 S.W.2d 715, 1975 Ky. LEXIS 83 (Ky. 1975).

10. Judicial Review.

Where religious organization failed to exhaust administrative remedies by filing protest under this section within 30 days after jeopardy assessment under KRS 131.150, there was judicial review by trial court considering separate temporary injunction issue since it determined that activities at state fair were sales not protected by constitutional privileges of the First Amendment to the United States Constitution; thus, failure to exhaust remedies was not fatal to right of judicial review. International Soc. for Krishna Consciousness, Inc. v. Commonwealth, 610 S.W.2d 910, 1980 Ky. App. LEXIS 406 (Ky. Ct. App. 1980).

Court of Appeals erred in determining that a facial constitutional issue raised by a taxpayer was one that the Kentucky Board of Tax Appeals could not decide because the case did not challenge the constitutionality of the administrative process for collecting a tax refund, there were several administrative issues that had to be resolved prior to addressing the statute's constitutionality, which necessitated formal written findings, and the deference afforded the findings would be dependent upon their sufficiency. Commonwealth v. AT&T Corp., 462 S.W.3d 399, 2015 Ky. LEXIS 1631 (Ky. 2015).

11. Supporting Statement.

Something more substantial than mere denials of tax liability is required as a "supporting statement" under this section. Eagle Machine Co. v. Commonwealth, 698 S.W.2d 528, 1985 Ky. App. LEXIS 600 (Ky. Ct. App. 1985).

The term "supporting statement" is not limited to full and complete tax returns; however, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the revenue department some basis for reconsideration. Eagle Machine Co. v. Commonwealth, 698 S.W.2d 528, 1985 Ky. App. LEXIS 600 (Ky. Ct. App. 1985).

12. Mandatory Nature of Requirements.

Regardless of the motive of the entity being assessed, this section is mandatory in nature and, therefore, a taxpayer who failed to submit the required documentation before the Revenue Cabinet issued its final order, failed to preserve his right to review of a delinquency assessed by the Revenue Cabinet for sales and use taxes. Scotty's Constr. Co. v. Commonwealth Revenue Cabinet, 779 S.W.2d 234, 1989 Ky. App. LEXIS 146 (Ky. Ct. App. 1989).

13. Final Ruling Necessary.

This statute clearly indicates that after a protest to a tax assessment has been made by a taxpayer, the Cabinet shall issue a final ruling or determination on the matter. It is only when such ruling is final—and so states—that it can be appealed to the Board of Tax Appeals. Revenue Cabinet v. Castleton, Inc., 826 S.W.2d 334, 1992 Ky. App. LEXIS 67 (Ky. Ct. App. 1992).

14. Claim for Refund.

The remedy for filing a claim for a refund of taxes pursuant to KRS 134.580 is not conditioned upon satisfaction of the procedural requirements provided in this section for filing a protest of a tax assessment. Subsection (1) of this section allows a taxpayer 30 (now 45) days within which to file such a protest. KRS 134.580(3) and 139.770(1), on the other hand, are concerned with requests for refunds of taxes already paid and provide that claims for refund must be made within four (4) years of the due date of the return or the date the money was paid into the treasury, whichever is later. Revenue Cabinet v. Castleton, Inc., 826 S.W.2d 334, 1992 Ky. App. LEXIS 67 (Ky. Ct. App. 1992).

Under KRS 134.580, an "overpayment" or "payment where no tax was due" must occur before a refund is authorized under KRS 139.770, and, thus, a taxpayer is only entitled to a refund if he has overpaid his tax liability; therefore, although the court had held that a timely notice of assessment issued by the Commonwealth of Kentucky, Revenue Cabinet was deficient under KRS 131.081(8) and KRS 131.110(1) and that its subsequent notice was barred by the statute of limitations under KRS 139.620(1), it accepted the Cabinet's alternative argument that the taxpayer was not entitled to a refund concerning the sales and use taxes it paid during a certain period because it did not "overpay" its taxes for that period, and it held that the Cabinet had the right to retain prior excess payments for that time period to the extent that they did not exceed the amount which might have been properly assessed and demanded. GTE South, Inc. v. Commonwealth, 2004 Ky. App. LEXIS 86 (Ky. Ct. App. 2004), rev'd, 238 S.W.3d 655, 2007 Ky. LEXIS 160 (Ky. 2007) (reversed on grounds that the notice of assessment was sufficient).

Company could receive a refund of its payment of an ad valorem tax assessment, where the company filed its refund claim within the statute of limitations provided by KRS 134.590, protested the denial of its claim in accordance with KRS 131.110, and exhausted the administrative remedies available. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 2010 Ky. App. Unpub. LEXIS 1008 (Ky. Ct. App. 2010), aff'd, 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

"Or other administrative remedy procedures" language at the end of KRS 134.590(2) is an acknowledgement that a protest pursuant to KRS 131.110 is not the only administrative remedy procedure that may be applicable in a refund situation. Indeed, the disjunctive use of the word "or" which joins "other administrative remedy procedures," evidences an intention that all prior references in the sentence are not to be treated as conjunctive, or in steps, but in the disjunctive, and this affords the taxpayer the option to use any one and maybe all of the administrative remedies available. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 2010 Ky. App. Unpub. LEXIS 1008 (Ky. Ct. App. 2010), aff'd, 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

No specific administrative protest procedures are required for a tax refund claim involving a classification issue, which may be brought within two years after payment; thus, by filing for a refund of tangible personal property tax and appealing

its denial before seeking judicial review, a taxpayer properly challenged the classification and tax rate applied to manufacturing machinery without going through the expedited assessment protest procedure. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

15. Cabinet's Authority.

Revenue Cabinet initiated an audit of defendant to address the failure of defendant's earlier management to maintain exemption certificates representing that sales of thoroughbred yearlings to out-of-state buyers were not subject to sales tax, according to KRS 139.531. When defendant submitted 22 exemption certificates to the Cabinet, under the language of KRS 139.531 it did not place those sales "in controversy"—absent fraud, it disposed of the controversy. The Cabinet does not have the arbitrary authority to at any time determine that a taxpayer, who in a good faith manner began the submission of evidence, has in fact supplied a quanta of evidence insufficient to perfect a protest and place a matter "in controversy", and thereupon issue an "Eagle Machine Letter", (Eagle Machine Co. v. Commonwealth, 698 S.W.2d 528, 529, 1985 Ky. App. LEXIS 600 (1985)) (1) which does not advise the taxpayer of the finality of the Cabinet's ruling; (2) which does not let the taxpayer know that no additional documentation will be accepted by the Cabinet; (3) which does not state the pertinent issues and the Cabinet's position thereon; and, perhaps most egregiously on a practical level, (4) which does not notify the taxpayer of the procedure for undertaking an appeal to the Kentucky Board of Tax Appeals—all things required of the Cabinet by KRS 131.110(3). Commonwealth, Revenue Cabinet v. Kenington Sales, Inc., 836 S.W.2d 902, 1992 Ky. App. LEXIS 129 (Ky. Ct. App. 1992).

Cited in:

Reeves v. Kentucky Utilities Co., 291 Ky. 226, 163 S.W.2d 482, 1942 Ky. LEXIS 211 (Ky. 1942); Todd County v. Bond Bros., 300 Ky. 224, 188 S.W.2d 325, 1945 Ky. LEXIS 521 (Ky. 1945); Kentucky Tax Com. v. Sandman, 300 Ky. 423, 189 S.W.2d 407, 1945 Ky. LEXIS 563, 166 A.L.R. 512 (Ky. 1945); Fields v. Reeves, 314 Ky. 163, 234 S.W.2d 661, 1950 Ky. LEXIS 1044 (Ky. 1950); Reeves v. Jefferson County, 245 S.W.2d 606, 1951 Ky. LEXIS 1263 (Ky. 1951); Fontaine v. Department of Finance, 249 S.W.2d 799, 1952 Ky. LEXIS 872 (Ky. 1952); Hahn v. Allphin, 282 S.W.2d 824, 1955 Ky. LEXIS 263 (Ky. 1955); Bobinchuck v. Levitch, 380 S.W.2d 233, 1964 Ky. LEXIS 292 (Ky. 1964); Department of Conservation v. Co-De Coal Co., 388 S.W.2d 614, 1964 Ky. LEXIS 537 (Ky. 1964); Revenue Cabinet, Commonwealth v. Plasma Alliance, Inc., 794 S.W.2d 639, 1990 Ky. App. LEXIS 60 (Ky. Ct. App. 1990); Revenue Cabinet v. Charles R. Gaba, P.S.C., 885 S.W.2d 706, 1994 Ky. App. LEXIS 122 (Ky. Ct. App. 1994).

NOTES TO UNPUBLISHED DECISIONS

1. In General.

Unpublished decision: Department of Revenue was required to produce for inspection redacted copies of its final rulings because the production of the material a tax attorney and tax analysts sought was required by the Open Records Act; the Department's final rulings contained information related to its reasoning and analysis with respect to its task in administration of the tax laws, and that information could be made available without jeopardizing taxpayers' privacy interests under the Taxpayers' Bill of Rights. Fin. & Admin. Cabinet v. Sommer, 2017 Ky. App. LEXIS 9 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 624 (Ky. Ct. App. Jan. 13, 2017).

Unpublished decision: Final rulings of the Department of Revenue must contain a general statement of the issues in controversy and the Department's position with respect to them; consequently, the substantive portions of final rulings contain a wealth of information relative to the implementation of our tax laws. Fin. & Admin. Cabinet v. Sommer, 2017 Ky. App. LEXIS 9 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 624 (Ky. Ct. App. Jan. 13, 2017).

OPINIONS OF ATTORNEY GENERAL.

Letter of electric corporation attached to payment of ad valorem taxes protesting payment and asking the sheriff to sign the letter acknowledging receipt of the protest did not constitute a valid or legal protest, since such taxes are assessed by the Revenue Cabinet and thus protests of such assessments must be made to the Revenue Cabinet; therefore, the sheriff should not sign such protest. OAG 83-202, 1983 Ky. AG LEXIS 295.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeal procedure, KRS 133.120.

Kentucky Law Journal.

Oberst, Lewis, Claims Against the State of Kentucky, 42 Ky. L.J. 65 (1953).

CHAPTER 132

LEVY AND ASSESSMENT OF PROPERTY TAXES

Section

132.010. Definitions for chapter.
132.017. Recall petition — Requirements and procedures — Reconsideration — Election — Local, state, and federal tax dollars and resources not to be used to advocate for or against public question — Second billing.
132.018. Reduction of tax rate on personal property.
132.020. State ad valorem taxes.
132.0225. Deadline for establishing final tax rate — Exemption — Procedure if increased revenue is greater than four percent.
132.023. Limits for special purpose governmental entities — Procedure for exceeding limits.
132.024. Limits for special purpose governmental entities on personal property tax rate.
132.025. Cumulative increase for 1982-83 only by taxing district — Limit — Public hearing and recall provisions not applicable.
132.027. City and urban-county government tax rate limitation — Levy exceeding compensating tax rate subject to recall vote or reconsideration.
132.030. Financial institution deposit tax.
132.096. Exemption from state and local ad valorem tax of various classes of property. [Effective until January 1, 2028].
132.096. Exemption from state and local ad valorem tax of various classes of property. [Effective January 1, 2028].
132.130. Distilled spirits in bonded warehouses to be reported by proprietor or custodian.
132.140. Assessment of distilled spirits by department — Maximum tax rate on distilled spirits in revenue bond-financed warehouse and in barrels located in bonded warehouse or premises — Failure to report.
132.150. Valuation of distilled spirits certified to county clerks — Local tax rate.

Section
132.160. Taxes on distilled spirits and spirits on which federal taxes not paid, when due — Removal of spirits — Interest.
132.190. Property subject to taxation — Situs.
132.191. Valid valuation methods — Minimum applicable appraisal standards — Property valuation of multi-unit rental housing subject to government restriction on use.
132.192. Property tax exemption reciprocity. [Repealed].
132.193. Assessment of possessory interests in tax-exempt personal property — Lessee's liability.
132.195. Assessment of possessory interest in tax-exempt real or personal property — Lessee's liability. [Effective until January 1, 2027].
132.195. Assessment of possessory interest in tax-exempt real or personal property — Exemptions — Lessee's liability. [Effective January 1, 2027].
132.200. Property subject to state tax only.
132.210. Exemption of fraternal benefit societies' funds. [Repealed].
132.220. Assessment dates — Listing — Owner — Liability — Exemptions, listing, annual review.
132.260. Rental space for parking mobile homes and recreational vehicles — Report — Right to inspect.
132.280. County tax levy to be based on state assessment — Exception for special taxing district.
132.486. Assessment system for tangible personal property — Administrative regulations — Appeals — Effect of appeal on payment of taxes.
132.487. Centralized ad valorem tax system for all motor vehicles — General and compensating tax rates — Access to records — Property valuation administrator to assess motor vehicles.
132.550. County clerk to compute amount due from each taxpayer — Compensation of clerk. [Repealed].
132.670. Mapping of property — Biennial review by Department of Revenue.
132.690. Annual revaluation of real property — Quadrennial examination of real property — Methods of examination — Emergency revaluation.
132.720. Definitions for KRS 132.260 and 132.751.
132.730. Mobile homes and recreational vehicles subject to ad valorem taxation — Exception.
132.751. Classification of certain mobile or manufactured homes and certain recreational vehicles as real property.
132.760. Exemption from ad valorem taxes for trucks, tractors, buses, and trailers used both in and outside Kentucky and subject to KRS 136.188 fee. [Repealed].
132.810. Homestead exemption — Application — Qualification.
132.815. Monthly reports from certified electrical inspectors — Use of information.
132.820. Assessment of unmined coal, oil, and gas reserves held separately from surface real property — Exceptions — Effect of appeal on payment of taxes.
132.825. Listing of property required.

Penalties.

132.990. Penalties.

132.010. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Department" means the Department of Revenue;

(2) "Taxpayer" means any person made liable by law to file a return or pay a tax;

(3) "Real property":

(a) Means all lands within this state and improvements thereon; and

(b) Includes but is not limited to mains, pipes, pipelines, and conduits that are:

1. Authorized to be installed in, upon, or under any public or private street or place; and

2. Used or to be used for or in connection with the collection, transmission, distribution, conducting, sale, or furnishing of heat, steam, water, sewage, natural or manufactured gas, or electricity to or for the public;

(4) "Personal property" means every species and character of property, tangible and intangible, other than real property;

(5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his or her actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state;

(6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent ($0.001) per one hundred dollars ($100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land;

(7) "Net assessment growth" means the difference between:

(a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year; and

(b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year;

(8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:

(a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdic-

tion; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;

(b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;

(c) The value of improvements to existing nonresidential property;

(d) The value of new residential improvements to property;

(e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;

(f) Property created by the subdivision of unimproved property, provided, that when the property is reclassified from farm to subdivision by the property valuation administrator, the value of the property as a farm shall be a deletion from that category;

(g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;

(h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that the property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and

(i) The value of improvements to real property previously under assessment moratorium. "Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year;

(9) "Agricultural land" means:

(a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;

(b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or

(c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government;

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants;

(11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land, and woodland;

(b) Degree of productivity of the soil;

(c) Risk of flooding;

(d) Improvements to and on the land that relate to the production of income;

(e) Row crop capability including allotted crops other than tobacco;

(f) Accessibility to all-weather roads and markets; and

(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income;

(12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value;

(13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including but not limited to lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto;

(14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner;

(15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property;

(16) "Manufactured home" means a structure manufactured after June 15, 1976, in accordance with the National Manufactured Housing Construction and Safety Standards Act, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assignees and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure;

(17) "Mobile home" means a structure manufactured on or before June 15, 1976, that was not required to be constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and in-

cludes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure;

(18) "Modular home" means a structure which is certified by its manufacturer as being constructed in accordance with all applicable provisions of the Kentucky Building Code and standards adopted by the local authority which has jurisdiction, transportable in one (1) or more sections, and designed to be used as a dwelling on a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein;

(19) "Prefabricated home" means a manufactured home, a mobile home, or a modular home;

(20) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home. As used in this subsection:

(a) "Travel trailer" means a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms;

(b) "Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use;

(c) "Truck camper" means a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck; and

(d) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle;

(21) "Hazardous substances" shall have the meaning provided in KRS 224.1-400;

(22) "Pollutant or contaminant" shall have the meaning provided in KRS 224.1-400;

(23) "Release" shall have the meaning as provided in either or both KRS 224.1-400 and KRS 224.60-115;

(24) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.1-400 and 224.1-405, or 224.60-135 where the Energy and Environment Cabinet has made a determination that:

(a) All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products at the property occurred prior to the property owner's acquisition of the property;

(b) The property owner has made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;

(c) The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;

(d) The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;

(e) The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and

(f) The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, through:

1. Direct or indirect familial relationship;

2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or

3. Reorganization of a business entity that was potentially liable;

(25) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property;

(26)(a) "County" means any county, consolidated local government, urban-county government, unified local government, or charter county government;

(b) "Fiscal court" means the legislative body of any county, consolidated local government, urban-county government, unified local government, or charter county government; and

(c) "County judge/executive" means the chief executive officer of any county, consolidated local government, urban-county government, unified local government, or charter county government;

(27) "Taxing district" means any entity with the authority to levy a local ad valorem tax, including special purpose governmental entities;

(28) "Special purpose governmental entity" shall have the same meaning as in KRS 65A.010, and as used in this chapter shall include only those special purpose governmental entities with the authority to levy ad valorem taxes, and that are not specifically exempt from the provisions of this chapter by another provision of the Kentucky Revised Statutes;

(29)(a) "Broadcast" means the transmission of audio, video, or other signals, through any electronic,

radio, light, or similar medium or method now in existence or later devised over the airwaves to the public in general.

(b) "Broadcast" shall not apply to operations performed by multichannel video programming service providers as defined in KRS 136.602 or any other operations that transmit audio, video, or other signals, exclusively to persons for a fee;

(30) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species;

(31) "Heavy equipment rental agreement" means the short-term rental contract under which qualified heavy equipment is rented without an operator for a period:

(a) Not to exceed three hundred sixty-five (365) days; or

(b) That is open-ended under the terms of the contract with no specified end date;

(32) "Heavy equipment rental company" means an entity that is primarily engaged in a line of business described in Code 532412 or 532310 of the North American Industry Classification System Manual in effect on January 1, 2019;

(33) "Qualified heavy equipment" means machinery and equipment, including ancillary equipment and any attachments used in conjunction with the machinery and equipment, that is:

(a) Primarily used and designed for construction, mining, forestry, or industrial purposes, including but not limited to cranes, earthmoving equipment, well-drilling machinery and equipment, lifts, material handling equipment, pumps, generators, and pollution-reducing equipment; and

(b) Held in a heavy equipment rental company's inventory for:

1. Rental under a heavy equipment rental agreement; or

2. Sale in the regular course of business;

(34) "Veteran service organization" means an organization wholly dedicated to advocating on behalf of military veterans and providing charitable programs in honor and on behalf of military veterans;

(35) "Government restriction on use" means a limitation on the use of at least fifty percent (50%) of the individual dwelling units of a multi-unit rental housing in order to receive a federal or state government incentive based on low-income renter restrictions, including the following government incentives:

(a) A tax credit under Section 42 of the Internal Revenue Code;

(b) Financing derived from exempt facility bonds for qualified residential rental projects under Section 142 of the Internal Revenue Code;

(c) A low-interest loan under Section 235 or 236 of the National Housing Act or Section 515 of the Housing Act of 1949;

(d) A rent subsidy;

(e) A guaranteed loan;

(f) A grant; or

(g) A guarantee;

(36) "Low income" means earning at or below eighty percent (80%) of the area median income as defined by the United States Department of Housing and Urban Development for the location of the multi-unit rental housing; and

(37) "Multi-unit rental housing" means residential property or project consisting of four (4) or more individual dwelling units and does not include:

(a) Assisted living facilities; or

(b) Duplexes or single-family units unless they are included as part of a larger property that is subject to government restriction on use.

History.

4020a-1, 4022, 4114h-1; Acts 1964, ch. 141, § 39; 1965 (1st Ex. Sess.), ch. 2, § 11; 1970, ch. 249, § 1; 1972, ch. 285, § 1; 1976, ch. 260, § 1; 1976, ch. 315, § 1; 1979 (Ex. Sess.), ch. 25, § 1, effective February 13, 1979; 1980, ch. 319, § 1, effective July 15, 1980; 1982, ch. 327, § 5, effective July 15, 1982; 1982, ch. 395, § 1, effective July 15, 1982; 1984, ch. 111, § 72, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 306, effective July 13, 1990; 1992, ch. 397, § 1, effective July 14, 1992; 1994, ch. 263, § 2, effective July 15, 1994; 2002, ch. 198, § 1, effective July 15, 2002; 2005, ch. 85, § 169, effective June 20, 2005; 2005, ch. 168, § 54(18), effective January 1, 2005; 2005, ch. 168, § 54(19), effective January 1, 2006; 2007, ch. 100, § 1, effective June 26, 2007; 2010, ch. 24, § 96, effective July 15, 2010; 2010, ch. 95, § 1, effective July 15, 2010; 2013, ch. 40, § 86, effective March 21, 2013; 2013, ch. 119, § 6, effective January 1, 2014; 2017 ch. 129, § 2, effective June 29, 2017; 2019 ch. 151, § 8, effective June 27, 2019; 2021 ch. 156, § 34, effective June 29, 2021; 2022 ch. 212, § 47, effective July 14, 2022; 2023 ch. 92, § 50, effective March 24, 2023; 2024 ch. 200, § 3, effective April 17, 2024; 2025 ch. 98, § 4, effective June 27, 2025.

Compiler's Notes

Former KRS 132.010 (4020a-1, 4022, 4114h-1: amend. Acts 1964, ch. 141, § 39; 1965 (1st Ex. Sess.), ch. 2, § 11; 1970, ch. 249, § 1; 1972, ch. 285, § 1; 1976, ch. 260, § 1; 1976, ch. 315, § 1; 1979 (Ex. Sess.), ch. 25, § 1, effective February 13, 1979; 1980, ch. 319, § 1, effective July 15, 1980; 1982, ch. 327, § 5, effective July 15, 1982; 1982, ch. 395, § 1, effective July 15, 1982; 1984, ch. 111, § 72, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 306, effective July 13, 1990.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 98, sec. 38, reads as follows:

"A claim for refund or credit of a tax overpayment for any taxable period made by an amended return, tax refund application, or any other method on or after the effective date of this Act [June 27, 2025], and based on the amendments to subsection (3) of Section 4 of this Act [this statute] or subsection (3) of Section 5 of this Act [KRS 136.010], shall not be recognized for any purpose."

(6/27/2025). 2025 Ky. Acts ch. 98, sec. 39, provides that the amendments to this statute and KRS 136.010 in that Act shall apply retroactively to property assessed on or after December 31, 2022.

(7/14/2022). 2022 Ky. Acts ch. 212, sec. 69, provides that the amendments made to this statute shall be apply to property assessed on or after January 1, 2023.

(1/1/2014). 2013 Ky. Acts ch. 119, sec. 26, provides that the amendments to this statute in 2013 Ky. Acts ch. 119, sec. 6, shall apply to property assessed on or after January 1, 2014.

(7/15/2010). Under the authority of KRS 7.136, the Reviser of Statutes has corrected manifest clerical or typographical errors by inserting "a" before the first occurrence of "charter county government" and "the" before "legislative body" and "chief executive officer" in subsection (23) of this section.

(6/26/2007) A manifest clerical or typographical error in subsection (21)(f)2. has been corrected by the Reviser of Statutes under the authority of KRS 7.136.

(6/20/2005). 2005 Ky. Acts ch. 168, sec. 170, provided: "Subsection (18) of Section 54 of this Act, relating to property tax changes, take[s] effect January 1, 2006. Subsection (19) of Section 54 of this Act, relating to the voluntary environmental remediation credit, takes effect January 1, 2005." Because of the order in which the subsections become effective, the Statute Reviser, under the authority of KRS 7.136, has codified subsection (18) of Section 54, relating to property tax changes, as KRS 132.010(19), and subsection (19) of Section 54, relating to the voluntary remediation credit, as KRS 132.010(18).

NOTES TO DECISIONS

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1. Constitutionality.

Subsections (9) and (10) of this section and KRS 132.450(2)(a) do not violate the Constitution of Kentucky; dwelling houses are to be assessed at fair cash value, and the income and acreage standards to qualify for "agricultural land" or "horticultural land" are not unreasonable. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984) (decided under prior law).

2. Construction.

In enacting subsection (1) of former KRS 160.477 and subsection (6) of this section in the same special session, the legislature was expressing its intention that the authorization for a levy of 50¢ should yet prevail notwithstanding the "roll-back" provisions also enacted. Mullen v. Board of Education, 440 S.W.2d 261, 1969 Ky. LEXIS 336 (Ky. 1969) (decided under prior law).

3. Property.

"Property" means everything of value that a person owns that is or may be the subject of sale or exchange or that when offered for sale will bring some price. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911) (decided under prior law).

Amounts due whiskey warehouseman for storage on whiskey against which negotiable warehouse receipts had been issued, which amounts were due when whiskey was withdrawn from warehouse, were "property" subject to taxation. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911) (decided under prior law).

Any existing, enforceable, collectible demand that one person has against another person or against property upon which it is a lien, and out of which it can be collected, is property. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911) (decided under prior law).

In determining whether a thing is "property" within the meaning of the tax laws, the test is whether the thing has a cash value in some amount, and whether a bidder could be found who would pay a cash price, no matter how small, for it. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919) (decided under prior law).

4. —Real.

Where right-of-way for oil pipeline was acquired by deed granting perpetual right, rather than by lease, the right-of-way was real property, notwithstanding that grantee had right to remove line. Cumberland Pipe Line Co. v. Lewis, 17 F.2d 167, 1926 U.S. Dist. LEXIS 1652 (D. Ky. 1926) (decided under prior law).

Pipe imbedded in ground in right-of-way, and pumping machinery set in concrete rigidly attached to ground, were real property. Cumberland Pipe Line Co. v. Lewis, 17 F.2d 167, 1926 U.S. Dist. LEXIS 1652 (D. Ky. 1926) (decided under prior law).

"Real property" does not include mineral rights which the owner of the land, by lease or otherwise, has severed from the land itself. Commonwealth by Revenue Agent v. Garrett, 202 Ky. 548, 260 S.W. 379, 1924 Ky. LEXIS 766 (Ky. 1924) (decided under prior law).

Grasses, fruits and perennial crops are considered a part of the realty. Burley Tobacco Growers' Co-op. Asso. v. Carrollton, 208 Ky. 270, 270 S.W. 749, 1925 Ky. LEXIS 268 (Ky. 1925) (decided under prior law).

The interest of the lessee in a coal mining lease is real property. Commonwealth v. Elkhorn-Piney Coal Min. Co., 241 Ky. 245, 43 S.W.2d 684, 1931 Ky. LEXIS 51 (Ky. 1931) (decided under prior law).

5. —Personal.

Annual crops are generally regarded as personalty. Burley Tobacco Growers' Co-op. Asso. v. Carrollton, 208 Ky. 270, 270 S.W. 749, 1925 Ky. LEXIS 268 (Ky. 1925) (decided under prior law).

Poles and wires of rural electric cooperative corporation located on rights of way acquired under easement agreements are personal property. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943) (decided under prior law).

Where an easement for a right-of-way across land does not subsist as an appurtenance to any interest in land owned by the person who owns the easement, and there is no dominant estate, the easement and any fixtures upon the right of way are personal property. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943) (decided under prior law).

Distilled spirits are personal property within meaning of Ky. Const., §§ 171 and 172. Reeves v. Jefferson County, 245 S.W.2d 606, 1951 Ky. LEXIS 1263 (Ky. 1951) (decided under prior law).

6. —Leased.

An oil lease giving the exclusive right of development is "property" in the hands of the lessee, even though no wells have been drilled and no oil discovered in paying quantities. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919) (decided under prior law).

Where land was leased for 99-year term, at a nominal rental, with covenant by lessor to renew for successive 99-year terms perpetually, the leasehold was taxable against the lessee, whether considered as real or personal property, and the leasehold was not such an interest as was required to be listed by the owner of the fee under KRS 132.220. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

Ordinarily, the value of the interest of the lessee in a lease of real estate is not taxable, the owner of the real estate being required to pay taxes on all interests connected with the real estate. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

Where the owner is a municipality or for some other reason is not required to pay taxes on the fee, the interest of the lessee is taxable. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

7. Resident.

Where a mental incompetent who had been a resident of Kentucky prior to being declared incompetent was sent by his committee to an asylum in another state for care and treatment, his residence for the purpose of taxation remained in Kentucky. Sumrall's Committee v. Commonwealth, 162 Ky. 658, 172 S.W. 1057, 1915 Ky. LEXIS 129 (Ky. 1915) (decided under prior law).

The fact that an individual purchased the controlling interest in a Kentucky corporation doing business in Louisville, maintained a personal checking account in a Louisville bank, and took a year's lease on an apartment in Louisville, did not constitute him a resident of Kentucky for the purpose of taxation, where the purchase of the corporation was for speculative purposes only, the banking account and apartment were used only for his convenience during trips to Louisville, and he spent the greater portion of his time in Texas, where he had a permanent dwelling and which he always claimed as his home. Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789, 1918 Ky. LEXIS 601 (Ky. 1918) (decided under prior law).

The fact that a person who was originally a resident of Tennessee bought a farm in Kentucky, improved and furnished the house on the farm and resided there a substantial portion of his time, personally managed the farm, kept a bank account in a Kentucky bank and occasionally referred to the farm as his "home," did not fix his legal residence in Kentucky, where he continued to maintain a home for his mother, brothers and sisters in Tennessee, where he kept his personal belongings, participated in church and lodge affairs in Tennessee, purchased a family cemetery lot there, and always claimed to be a resident of Tennessee. Millett's Ex'r v. Commonwealth, 184 Ky. 193, 211 S.W. 562, 1919 Ky. LEXIS 39 (Ky. 1919) (decided under prior law).

A person may have more than one actual residence but he can have but one domicile or legal residence. The place where a person is born is his legal residence until he establishes another by choice, and when a legal residence has been established by choice it continues indefinitely until he establishes a new one, which may be done by actual residence and intention. Millett's Ex'r v. Commonwealth, 184 Ky. 193, 211 S.W. 562, 1919 Ky. LEXIS 39 (Ky. 1919) (decided under prior law).

The question of residence is one of fact and intention. The fact of actual residence joined with the intention fixes legal residence. But the fact is more powerful than the intention, for intention may be inferred from the fact, whereas the fact cannot be shown by or inferred from intention. Where one's residence is shown by his conduct to be in one place, his expressed intention that it shall be in another will not control. Pettit's Ex'x v. Lexington, 193 Ky. 679, 237 S.W. 391, 1922 Ky. LEXIS 64 (Ky. 1922) (decided under prior law).

Where taxpayer maintained a permanent dwelling for himself and family in Lexington, his legal residence was there, although he owned a farm in the county where he spent part of the time each summer, reserved rooms in the farm house in leasing it, voted in the county rather than in the city, and publicly declared that his residence was in the county. Pettit's Ex'x v. Lexington, 193 Ky. 679, 237 S.W. 391, 1922 Ky. LEXIS 64 (Ky. 1922) (decided under prior law).

Where person resided part of time each year in Florida, where he paid personal property taxes and was a registered voter, and resided balance of time in Kentucky, he was not taxable as a Kentucky resident in absence of proof that during years tax was sought to be imposed he resided in Kentucky more than six months. Utz v. Wallace's Adm'x, 249 Ky. 296, 60 S.W.2d 614, 1933 Ky. LEXIS 510 (Ky. 1933) (decided under prior law).

8. —Change.

Where resident of Kentucky announced his intention to move to Texas and make his home there, and left Kentucky for that purpose a few days before the date as of which property is assessed in Kentucky, but did not reach Texas until several days after such date, he was a legal resident of Kentucky on the assessment date, his Texas residence not becoming effective until he reached that state. Boyd's Ex'r v. Commonwealth, 149 Ky. 764, 149 S.W. 1022, 1912 Ky. LEXIS 716 (Ky. 1912) (decided under prior law).

In order to change residence there must be an intention to make the change and the taking up of an actual abode at the place selected as the new domicile. Boyd's Ex'r v. Commonwealth, 149 Ky. 764, 149 S.W. 1022, 1912 Ky. LEXIS 716 (Ky. 1912) (decided under prior law).

The committee of an incompetent has no power to change the legal residence of the incompetent from one state to another, although it may change his local residence. Sumrall's Committee v. Commonwealth, 162 Ky. 658, 172 S.W. 1057, 1915 Ky. LEXIS 129 (Ky. 1915) (decided under prior law).

The fact that the purpose of a taxpayer in changing his residence is to avoid taxation does not affect the validity of the change. Covington v. Shinkle, 175 Ky. 530, 194 S.W. 766, 1917 Ky. LEXIS 351 (Ky. 1917) (decided under prior law).

9. —Declared Intention.

The declared intention of a person as to his residence will control unless his acts or conduct are inconsistent therewith. Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789, 1918 Ky. LEXIS 601 (Ky. 1918) (decided under prior law).

10. —Summer Home.

Where taxpayer owned home in city of Covington, farm in Kenton County, and summer home in Rhode Island, and divided his time between those places and Florida, it was held that his legal residence was at the farm in Kenton County, based on his repeated declarations, voting, and tax listing, although he had a business office in Covington and in one or two deeds was described as a resident of Covington. Covington v. Shinkle, 175 Ky. 530, 194 S.W. 766, 1917 Ky. LEXIS 351 (Ky. 1917) (decided under prior law).

11. Compensating Tax Rate.

Where the legislation established a maximum of 50¢ and the district had obtained a 50¢ authorization by a 1953 election, the effect of the 1965 "roll back" legislation was to reduce that authorization from 50¢ to 13.8¢ leaving the school board with an unused authorization of 36.2¢. Mullen v. Board of Education, 440 S.W.2d 261, 1969 Ky. LEXIS 336 (Ky. 1969) (decided under prior law).

The special school tax election was proper as being within the unused statutory authorization for the special tax where 13.8¢ already being levied and the 15¢ to be levied still fell short of the 50¢ statutory maximum. Mullen v. Board of Education, 440 S.W.2d 261, 1969 Ky. LEXIS 336 (Ky. 1969) (decided under prior law).

12. Roll Back.

Although the "roll back" prevented the governmental body from levying a greatly increased tax by application of an old voted rate to greatly increased assessments, the voters pos-

sessed power to impose upon themselves an additional tax, levied pursuant to current assessments so long as the rate of the combined voted taxes did not exceed the statutorily permitted limit of 50¢ per $100. Mullen v. Board of Education, 440 S.W.2d 261, 1969 Ky. LEXIS 336 (Ky. 1969) (decided under prior law).

A tax voted in 1968 after enactment of the "roll back" provision, was not subject to being "rolled back." Mullen v. Board of Education, 440 S.W.2d 261, 1969 Ky. LEXIS 336 (Ky. 1969) (decided under prior law).

The roll-back provisions of this chapter apply to tax levies to maintain public libraries. Under this chapter, a taxing district's revenue from ad valorem taxes is limited; this chapter has the effect of rolling back the tax rate to maintain a constant revenue. Taxes levied to support a library created under KRS 173.310 or KRS 173.450 would have to comply with this chapter; however, where the library is not maintained by a tax levy, but by appropriation of funds from the local government, KRS 173.310 does not mandate a levy to maintain libraries created under that section. Lexington-Fayette Urban County Government v. Hayse, 684 S.W.2d 301, 1984 Ky. App. LEXIS 586 (Ky. Ct. App. 1984) (decided under prior law).

13. Royalties.

Royalties due owner of real estate from oil lease were taxable, as against contention that the value of the royalty interest could not be separately assessed from the land itself. Commonwealth by Revenue Agent v. Garrett, 202 Ky. 548, 260 S.W. 379, 1924 Ky. LEXIS 766 (Ky. 1924) (decided under prior law).

14. Notice.

Where the new property valuation administrator had attempted to reassess, upward, property valuations, but had only sent notices to about 40 percent of the affected property owners, but where some owners had actual notice and had appealed their valuations, the proper remedy would be to allow the increase as to those owners who had notice or had actual notice and appealed, subject to the outcome of those appeals, and to void the increases as to those property owners without notice and who had not appealed their reassessments. Layson v. Brady, 576 S.W.2d 223, 1978 Ky. App. LEXIS 651 (Ky. Ct. App. 1978) (decided under prior law).

15. Agricultural Land.

Housing located on farm property occupied by a nonowner and used in income-producing activity of the farm as dwellings for tenant farmers and farm workers is not a "residential unit"; such dwellings are "income-producing improvements" and a part of the agricultural land for ad valorem assessment purposes. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984) (decided under prior law).

Cited in:

Breathitt County Board of Sup'rs v. Ware Cannel Coal Co., 297 Ky. 117, 179 S.W.2d 225, 1944 Ky. LEXIS 691 (Ky. 1944); Jefferson County Fiscal Court v. Trager, 302 Ky. 361, 194 S.W.2d 851, 1946 Ky. LEXIS 686 (Ky. 1946); Boggs v. Reep, 404 S.W.2d 24, 1966 Ky. LEXIS 286 (Ky. 1966); Fayette County Board of Education v. White, 410 S.W.2d 612, 1966 Ky. LEXIS 37 (Ky. 1966); Board of Education v. Harville, 416 S.W.2d 730, 1967 Ky. LEXIS 280 (Ky. 1967); Kelley v. Ashland, 562 S.W.2d 312, 1978 Ky. LEXIS 325 (Ky. 1978); Home Folks Mobile Homes, Inc. v. Revenue Cabinet, 700 S.W.2d 75, 1985 Ky. App. LEXIS 686 (Ky. Ct. App. 1985); Dean v. Commonwealth ex rel. Revenue Cabinet, 967 S.W.2d 594, 1998 Ky. App. LEXIS 34 (Ky. Ct. App. 1998); Campbell County Fiscal Court v. Nash, — S.W.3d —, 2008 Ky. App. LEXIS 373 (Ky. Ct. App. 2008); Dep't of Revenue, Fin. & Admin. Cabinet v. Shinin' B Trailer Sales, LLC, 2015 Ky. App. LEXIS 131 (Sept. 4, 2015).

OPINIONS OF ATTORNEY GENERAL.

A soldier stationed in Kentucky did not acquire residence in the state for purposes of taxation by reason of being stationed there until he acted affirmatively to make the state his permanent residence. OAG 61-354.

A watershed conservancy district which is comprised of parts of four (4) counties is a "taxing district" within the meaning of this section and must make a determination of one uniform standard tax rate to be applied against all of the real property within the district. OAG 66-386.

For the 1966 assessment, all of the property in the city, including merchants' inventories, is subjected to the city tax rate but the rate must be computed so that the amount of total revenue produced in 1966 will be no more than that produced in 1965 plus a ten per cent (10%) increase. OAG 67-13.

Tax rate for tangible personal property cannot be separated for rates from all other property subject to ad valorem property taxes in the city; the same rate must be applied to such property as is applied to real property in the city. OAG 67-101.

A city which did not levy a public works cumulative reserve fund in 1965 could do so in a later year by allocating or earmarking a portion of its overall compensating tax rate for that purpose. OAG 67-351.

Where a fire protection district came into existence after the roll-back provisions on tax rates and budgets, the tax rate could be computed on the current assessed value of property in the district. OAG 68-244.

Where after the rollback a library district did not have sufficient funds to operate, under KRS 173.610 a petition could be filed putting the question of an increased tax levy to a vote of the people, and if the vote was affirmative the tax could be raised to exceed the roll-back rate. OAG 68-606.

The compensating tax rate provisions of this section apply to the assessed value of automobiles in the city as it does to all other property subject to ad valorem tax. OAG 68-610.

Each year the library district tax rate must be so adjusted, assuming a change in assessment valuation, in connection with the current property assessment, that the amount of revenue produced in the particular tax year is approximately equal to that produced in 1965. OAG 69-330.

An area planning commission could not levy a tax rate which exceeded the compensating tax rate defined in KRS 132.010. OAG 69-532.

The property valuation administrator may, under the direction and supervision of the Department of Revenue, keep a record of the property of public utility corporations, but this does not constitute an assessment. OAG 71-249.

Where a city failed to include or omitted in its 1965 property assessment a class of personal property, it could not for a subsequent year assess such personal property and not include the property value in arriving at the compensating tax rate as defined in this section. OAG 71-395.

A city may increase its general fund tax rate to offset a revenue loss occasioned by property being exempted from property tax by the homestead exemption amendment to Ky. Const., § 170. OAG 71-537.

The rollback provision of subsection (6) of this section applies to a proposed five cent ($0.05) levy on property in a fourth-class city under KRS 97.590 for the purpose of purchasing and maintaining a public park in the city limits. OAG 72-193.

Under the terms of this section and KRS 132.425 (repealed), it is clear that the legislature intended to guarantee to the taxing districts and authorities a level of tax revenue approximately equal to that produced in 1971, excluding net assessment growth. OAG 72-726.

After a city has sufficient revenue in a sinking fund bonds for which a specific tax has been levied, the city would then be bound by subsection (6) of this section and KRS 132.027 with respect to the tax rate which could be applied for general

municipal purposes and it would be a violation of KRS 92.330 and 92.340 to continue to levy the specific tax and divert it to general municipal purposes. OAG 74-368.

Once funding bonds have been paid off, levy must be discontinued. OAG 75-162.

The 65-year-old or older owner-occupant of a mobile home, which is a single-unit residence, placed on a rented lot is entitled to the homestead exemption if the mobile home qualifies as real property under KRS 132.750 (now repealed) by resting on a permanent fixed foundation and having the wheels or mobile parts removed. OAG 75-264.

This section, which sets out the compensating tax rate, is locked in as of 1972, since it does not provide for a "compensating tax rate" for any year subsequent to 1972, and therefore the city may not raise its tax rate as a result of the decline in value of stored whiskey which is stored in the city. OAG 75-433.

Even though "net assessment growth," as defined in KRS 132.425 (repealed), refers only to the county or a school district, this section encompasses a taxing district and KRS 132.023 and 132.027 clearly show that KRS 132.425 (repealed) is by reference made applicable to cities so that any city which levied a poll tax in 1973 may adjust its compensating tax rate to reflect the loss in poll tax revenue. OAG 75-544.

On the basis of subsection (6) of this section, cities presumably have the authority to reduce their tax rates for the following school year and increase it in a subsequent year so long as the increased rate does not go above the compensating tax rate established in 1972. OAG 75-677.

Where a third-class city operates jointly with the county a system of parks under a city-county parks and recreation board, under KRS 97.080 (repealed) such a city may provide funds for park and recreation purposes controlled by the revenue limitations set out in KRS 132.027 and this section. OAG 76-85.

A county conservation district, which assists individual landowners with the development and implementation of a resource conservation plan for a unit of land, is required to allow Department of Revenue representatives access to individual resource conservation plans upon request on a confidential basis. OAG 76-272.

There would not be a substantial increase in revenue from real estate tax simply by increasing the assessed value of property in a city. OAG 79-90, 1979 Ky. AG LEXIS 532.

Insofar as they are used in KRS 132.023 and KRS 132.027, as amended by Acts 1979 (Ex. Sess.), ch. 25, for those governmental units operating on a calendar basis: (1) ".... a tax rate for 1979-80 ...." means that unit's tax rate for the 1980 calendar year; (2) ".... application of the maximum tax rate that could have been levied in 1978-79 ...." means the unit's compensating tax rate for the 1979 calendar year, calculated in accordance with KRS 132.010(6) as it read prior to February 13, 1979; and (3) ".... the 1978-79 assessment" means the unit's assessment as of January 1, 1979, assuming that the unit's assessment date is January 1. OAG 79-217, 1979 Ky. AG LEXIS 405.

KRS 132.023(1)(a) and (2) (now (2)(a) and (3)) makes the compensating tax rate provisions of subsection (6) of this section apply specifically to public health taxing districts. OAG 79-344, 1979 Ky. AG LEXIS 288.

This section and KRS 132.023 apply to the tax rate to be set by a county hospital board for setting a tax rate for 1979-1980 and thereafter. OAG 79-422, 1979 Ky. AG LEXIS 210.

The compensating tax rate would be computed on the rate passed by the voters of a county library district, whatever that rate may be for the previous year. OAG 79-597, 1979 Ky. AG LEXIS 58.

A special tax assessment to pay a tort judgment can be levied by a city where the city has levied its statutory maximum assessment pursuant to this chapter, under the basic principle that to hold otherwise would permit cities to take advantage of their own negligence by depriving a person who has been injured of all effective remedies. OAG 80-253, 1980 Ky. AG LEXIS 387.

Because the clear and unambiguous intent of the general assembly was to place a ceiling upon real property tax rates while specifically exempting personal property tax rates, the unavoidable conclusion is that the county fiscal court may establish two separate tax rates—one for real property and one for personal property. OAG 80-545, 1980 Ky. AG LEXIS 114.

If the city governing body proposes to impose the same tax rate for the succeeding year as the preceding year but due to increased assessments more than four percent (4%) revenue is produced in the succeeding year than had been produced in the preceding year, that portion of the tax rate which causes a breach in the four percent (4%) ceiling is subject to recall. OAG 80-558, 1980 Ky. AG LEXIS 84.

If the proposed county tax rate used to fund emergency ambulance service is more than four percent (4%) over the amount of revenue produced by the compensating tax rate, as defined in this section, a recall vote or reconsideration by the county voters, as provided in KRS 132.017, shall be advertised as directed in KRS 68.245(6)(b); however, upon a recall petition being filed, the fiscal court may cancel an election on the question of exceeding four percent (4%) over the compensating tax rate by simply reducing the tax rate so as not to exceed four percent (4%). OAG 81-344, 1981 Ky. AG LEXIS 95.

Where a court decision greatly increased a 1981 city tax assessment so that the application of 1980 tax rates would result in a tax revenue increase greater than four percent (4%) over the previous year, the city must comply with the recall vote or reconsideration provisions of KRS 132.027, since an assessment increase resulting from a court decision is not the type of increase contemplated in the definition of "net assessment growth" under subsection (7) of this section and the resulting revenue cannot, therefore, be excluded under subdivision (1)(b) of KRS 132.027. OAG 81-425 (Opinion prior to 1990 amendment).

Acts 1979 (Ex. Sess.), ch. 25, which limits a county's increase in property taxes, does not limit in effect the public health district tax which is levied by a county pursuant to either KRS 212.725 or 212.755. OAG 82-151, 1982 Ky. AG LEXIS 489.

This section and KRS 132.750 (now repealed) concerning the treatment of mobile homes as real estate do not abrogate the requirement that in order for tangible personal property to become an improvement to the land it must be attached to or built upon the soil. In the case of mobile homes, this occurs when the utilities are connected or when some other relatively permanent attachment to the land is formed. The amendments of former KRS 132.750 are intended to allow, and effectuate the purpose of allowing, similar tax treatment for similarly situated mobile homes regardless of vestigial differences between them. OAG 82-584, 1982 Ky. AG LEXIS 42.

The recall provisions of KRS 68.245(6) are only triggered when a real property tax rate exceeds, by more than four percent, the compensating tax rate as defined in KRS 132.010(6). In calculating the compensating tax rate, personal property must be included when applying a rate to "all classes of taxable property" to determine whether use of a substitute rate is required by KRS 132.010(6). OAG 10-005, 2010 Ky. AG LEXIS 131.

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Cities of fifth class, KRS 92.280, 92.290.
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Corporate property to pay same rate as individual property, Ky. Const., § 174.
Corporation and utility taxes, KRS ch. 136.
County revenue limits, procedure for increase, KRS 68.245.
County road bonds, retirement, local tax levy, KRS 178.200.
County taxes, levy of, KRS 68.090.
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Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Homestead Exemption, § 155.00.

132.017. Recall petition — Requirements and procedures — Reconsideration — Election — Local, state, and federal tax dollars and resources not to be used to advocate for or against public question — Second billing.

(1) As used in this section:

(a) "Local governmental entity" includes a county fiscal court and legislative body of a city, urban-county government, consolidated local government, charter county government, unified local government, or other taxing district; and

(b) "Next regular election" means the regular election that occurs immediately after all statutory requirements for levying a property tax rate have been met, regardless of whether the election occurs in the same or a subsequent calendar year as the levy of the property tax rate.

(2)(a)1. Except as provided in subparagraph 2. of this paragraph, the portion of a tax rate levied by an ordinance, order, resolution, or motion of a taxing district subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect forty-five (45) days after its passage if a petition is not filed to challenge the levy. If a petition is filed, the levy shall be suspended in accordance with paragraph (e) of this subsection.

2. When a tax rate is levied by a taxing district that is primarily located in a county with a population of three hundred thousand (300,000) or more inhabitants, the portion of a tax rate levied by an ordinance, order, resolution, or motion of a taxing district subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect fifty (50) days after its passage if a petition is not filed to challenge the levy. If a petition is filed, the levy shall be suspended in accordance with paragraph (e) of this subsection.

(b) During the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection, any three (3) qualified voters, who reside in the area where the tax levy will be imposed, may commence petition proceedings to protest the passage of the ordinance, order, resolution, or motion levied by a taxing district by filing an affidavit with the county clerk. The affidavit shall state:

1. The three (3) qualified voters constitute the members of the petition committee;

2. The petition committee will be responsible for circulating the petition;

3. The petition committee will file the petition in the proper form within the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection;

4. The names and addresses of the petition committee members;

5. The address to which all notices to the committee are to be sent; and

6. For petition committees filing petitions in response to a tax rate levied by a taxing district that is primarily located in a county with a population of three hundred thousand (300,000) or more inhabitants, whether or not the petition committee is willing to incur all of the expenses associated with electronic petition signatures. If the petition committee is not willing to incur all of the expenses, then electronic petition signatures shall not be allowed for the petition.

(c) Upon receipt of the affidavit, the county clerk shall immediately:

1. Notify the petition committee of all statutory requirements for the filing of a valid petition under this section;

2. Notify the petition committee that the clerk will publish a notice identifying the tax levy being challenged and providing the names and addresses of the petition committee on the home page of the clerk's website and in a newspaper of general circulation within the county, if:

a. There is a newspaper within the county in which to publish the notice; and

b. The petition committee remits an amount equal to the cost of publishing the notice in the newspaper as determined in accordance with the provisions of KRS 424.160 at the time of the filing of the affidavit.

If the petition committee elects to have the notice published, the clerk shall publish the notice within five (5) days of receipt of the affidavit; and

3. Deliver a copy of the affidavit to the taxing district levying the tax.

(d) The petition shall meet the following requirements:

1. All papers of the petition shall be substantially uniform in size and style and shall be assembled in one (1) instrument for filing;

2. Each sheet of the petition may contain the names of voters from more than one (1) voting precinct;

3. Each nonelectronic petition signature shall be executed in ink or indelible pencil;

4. Each electronic petition signature shall comply with the requirements of the Uniform Electronic Transactions Act, KRS 369.101 to 369.120;

5. Each petition signature shall be followed by the printed name, street address, birth month, and birth year of the person signing; and

6.a.i. Except for petitions filed in response to a tax rate levied by a local board of education, the petition shall be signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election.

ii. For petitions filed in response to a tax rate levied by a local board of education, the petition shall be signed by at least five thousand (5,000) registered and qualified voters residing in the affected jurisdiction or signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election, whichever is less.

b. Electronic petition signatures shall be included in determining whether the required number of petition signatures has been obtained when:

i. The expenses associated with the electronic petition signatures have been incurred in accordance with paragraph (b)6. of this subsection;

ii. The electronic petition signatures comply with the requirements of this subsection; and

iii. The petition was filed in response to a tax rate levied by a taxing district that is primarily located in a county with a population of three hundred thousand (300,000) or more inhabitants.

c. The inclusion of an invalid petition signature on a page shall not invalidate the entire page of the petition, but shall instead result in the invalid petition signature being stricken and not counted.

(e) Upon the filing of the petition with the county clerk, the ordinance, order, resolution, or motion shall be suspended from going into effect until after the election referred to in subsection (3) of this section is held, or until the petition is finally determined to be insufficient and no further action may be taken pursuant to paragraph (i) of this subsection.

(f) The county clerk shall immediately notify the presiding officer of the taxing district that the petition has been received and shall, within thirty (30) days of the receipt of the petition, make a determination of whether the petition contains enough signatures of qualified voters to place the ordinance, order, resolution, or motion before the voters.

(g) If the county clerk finds the petition to be sufficient, the clerk shall certify to the petition committee and the taxing district within the thirty (30) day period provided for in paragraph (f) of this subsection that the petition is properly presented and in compliance with the provisions of this section, and that the ordinance, order, resolution, or motion levying the tax will be placed before the voters for approval.

(h) If the county clerk finds the petition to be insufficient, the clerk shall, within the thirty (30) day period provided for in paragraph (f) of this subsection, notify, in writing, the petition committee and the taxing district levying the tax of the specific deficiencies found. Notification shall be sent by certified mail and shall be published on the home page of the clerk's website and at least one (1) time in a newspaper of general circulation within the county containing the taxing district levying the tax. If there is not a newspaper within the county in which to publish the notification, then the notification shall be posted at the courthouse door.

(i) A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court of the county in which the taxing district levying the tax is located, and shall be limited to the validity of the county clerk's determination. Any petition challenging the county clerk's final determi-

nation shall be filed within ten (10) days of the issuance of the clerk's final determination.

(j) The local governmental entity levying the tax may cause the cancellation of the election by reconsidering and amending the ordinance, order, resolution, or motion to levy a tax rate which will produce no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate from real property. The action by the local governmental entity or local board of education to cancel an election shall be valid only if taken within fifteen (15) days following the date the clerk finds the petition to be sufficient.

(3)(a) If an election is necessary under the provisions of subsection (2) of this section:

1. The local governmental entity shall cause to be submitted to the voters of the district at the next regular election, the question as to whether the property tax rate shall be levied; or

2. The local board of education shall cause to be submitted to the voters of the district in a called common school election not less than fifty (50) days nor more than sixty (60) days from the date the signatures on the petition are validated by the county clerk, or at the next regular election, at the option of the local board of education, the question as to whether the property tax rate shall be levied. The cost of a called common school election shall be borne by the school district holding the election, which shall post bond with the Circuit Court to cover all costs of the election within five (5) days after the date the clerk finds the petition to be sufficient. Any called common school election shall comply with the provisions of KRS 118.025.

(b) If an election under paragraph (a) of this subsection is held in conjunction with a regular election, the question as to whether the property tax rate shall be levied shall be submitted to the county clerk no later than the second Tuesday in August preceding the regular election.

(c) In an election held under paragraph (a) of this subsection, the question shall be framed to ask whether the voter is for the levy of the property tax rate. If a majority of the votes cast upon the question oppose its passage, the ordinance, order, resolution, or motion shall not go into effect. If a majority of the votes cast upon the question favor its passage, the ordinance, order, resolution, or motion shall become effective.

(d) If the ordinance, order, resolution, or motion fails to pass pursuant to an election held under paragraph (a) of this subsection, the property tax rate which will produce four percent (4%) more revenues from real property, exclusive of revenue from new property, than the amount of revenue produced by the compensating tax rate, shall be levied without further approval by the local governmental entity or local board of education.

(e)1. As used in this paragraph:

a. "Local" has the same meaning as in KRS 65.013; and

b. "Resources" has the same meaning as in KRS 48.025.

2. Local, state, and federal tax dollars and resources shall not be used to advocate for or against any public question that appears on the ballot.

(4) Notwithstanding any statutory provision to the contrary, if a taxing district has not established a final tax rate as of September 15, due to the recall provisions of this section, KRS 68.245, 132.023, 132.027, or 160.470, regular tax bills shall be prepared as required in KRS 133.220 for all districts having a tax rate established by that date; and a second set of bills shall be prepared and collected in the regular manner, according to the provisions of KRS Chapter 132, upon establishment of final tax rates by the remaining districts.

(5) If a second billing is necessary, the collection period shall be extended to conform with the second billing date.

(6) All costs associated with the second billing shall be paid by the taxing district requiring the second billing.

History.

Enact. Acts 1979 (Ex. Sess.), ch. 25, § 8, effective February 13, 1979; 1980, ch. 270, § 2, effective July 15, 1980; 1980, ch. 319, § 7, effective July 15, 1980; 1990, ch. 48, § 83, effective July 13, 1990; 1990, ch. 476, Pt. V, § 308, effective July 13, 1990; 1996, ch. 195, § 54, effective July 15, 1996; 2002, ch. 346, § 162, effective July 15, 2002; 2005, ch. 121, § 1, effective June 20, 2005; 2019 ch. 83, § 1, effective June 27, 2019; 2021 ch. 149, § 1, effective June 29, 2021; 2021 ch. 197, § 79, effective June 29, 2021; 2024 ch. 115, § 1, effective July 15, 2024; 2024 ch. 225, § 1, effective July 15, 2024; 2026 ch. 155, § 3, effective July 15, 2026; 2026 ch. 161, § 73, effective April 14, 2026; 2026 ch. 175, § 19, effective April 14, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 155, 161, and 175, which do not appear to be in conflict and have been codified together.

(4/14/2026). This statute was amended by 2026 Ky. Acts chs. 161 and 175, which do not appear to be in conflict and have been codified together.

(7/15/2024). This statute was amended by 2024 Ky. Acts chs. 115 and 225, which do not appear to be in conflict and have been codified together.

(6/20/2005). 2005 Ky. Acts ch. 121, § 6, provides: "The provisions of this Act shall apply to ordinances, orders, resolutions or motions passed after July 15, 2005."

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Timeliness.
2. Sufficiency of Recall Petition.

1. Timeliness.

As to the timing of filing tax protest petitions, because KRS 132.017(1)(a) specifically governs the levy and assessment of property taxes, it controls over the general statute in KRS 118.365(7), concerning the conduct of elections; therefore, the trial court correctly determined that the taxpayers had 45 days in which to file their recall petition, and that the petition was valid and timely filed even though it did not specify "that portion" of the rate subject to recall. Daviess County Pub.

Library Taxing Dist. v. Boswell, 185 S.W.3d 651, 2005 Ky. App. LEXIS 263 (Ky. Ct. App. 2005).

2. Sufficiency of Recall Petition.

Circuit court erred in granting summary judgment to a board of education and declaring that the county clerk erred in certifying a tax recall petition because "petition committee" was merely a convenient way to refer to the individuals who initiated the petition and did not deprive them of standing, although there were technical flaws, given the liberal construction afforded to statutes, the petition substantially complied with the statutory requirements, and the county clerk properly determined that because the committee did not request publication of notice, none was required. Petition Comm. v. Bd. of Educ., 509 S.W.3d 58, 2016 Ky. App. LEXIS 109 (Ky. Ct. App. 2016).

OPINIONS OF ATTORNEY GENERAL.

Insofar as they are used in KRS 132.023 and KRS 132.027, as amended by Acts 1979 (Ex. Sess.), ch. 25, for those governmental units operating on a calendar basis: (1) " .... a tax rate for 1979-80 ...." means that unit's tax rate for the 1980 calendar year; (2) " .... application of the maximum tax rate that could have been levied in 1978-79 ...." means the unit's compensating tax rate for the 1979 calendar year, calculated in accordance with subsection (6) of this section as it read prior to February 13, 1979; and (3) " .... the 1978-79 assessment" means the unit's assessment as of January 1, 1979, assuming that the unit's assessment date is January 1. OAG 79-217, 1979 Ky. AG LEXIS 405.

Under the literal language of KRS 133.220, when read together with this section, a county clerk was not required to wait until the library board established a final tax rate in order to get out the tax bills in the regular way envisioned by KRS 133.220 but should make up the tax bills, based upon the already established tax rates relating to the state, county, school and other taxing districts, and place the bills with the sheriff; in connection with the library district tax levy, which had not been established because of the recall provisions, a second set of bills must be prepared in the regular manner upon the establishment of the final tax rate by any remaining districts and all costs associated with the second billing must be paid by the taxing district or districts requiring the second billing. OAG 80-503, 1980 Ky. AG LEXIS 137.

If the proposed county tax rate used to fund emergency ambulance service is more than four percent over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010, a recall vote or reconsideration by the county voters, as provided in this section, shall be advertised as directed in subsection (6)(b) of KRS 68.245; however, upon a recall petition being filed, the fiscal court may cancel an election on the question of exceeding four percent over the compensating tax rate by simply reducing the tax rate so as not to exceed four percent. OAG 81-344, 1981 Ky. AG LEXIS 95.

Even though, due to a delay in certifying the county assessment, the advertising and hearing requirements necessary to levying a school district's tax rate would not be completed 45 days before the date of the next regular election, the school district, of its own volition, could waive the petition and place the question on the ballet. OAG 82-485, 1982 Ky. AG LEXIS 187.

If a Board of Education desires to increase the rate of tax levied pursuant to KRS 160.477 (now repealed), it must comply with the terms of KRS 160.470. This provides for hearings and in certain cases makes the setting of the rate subject to a recall vote or reconsideration as provided for in this section. OAG 83-201, 1983 Ky. AG LEXIS 296.

132.018. Reduction of tax rate on personal property.

(1) If the tax rate applicable to real property levied by a county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district is reduced as a result of reconsideration by the county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district under the provisions of KRS 132.017(2)(j), the tax rate applicable to personal property levied under the provisions of KRS 68.248(1), 132.024(1), 132.029(1), and 160.473(1) shall be reduced by the respective county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district to an amount which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property resulting from the reduced tax rate applicable to real property.

(2) If the tax rate applicable to real property levied by a county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district is reduced, under the provisions of KRS 132.017(3), as a result of a majority of votes cast in an election being opposed to such a rate, the tax rate applicable to personal property levied by the respective county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district shall be reduced, without further action by the levying body, to an amount which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property resulting from the reduced tax rate applicable to real property.

History.

Enact. Acts 1982, ch. 397, § 9, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 309, effective July 13, 1990; 2002, ch. 346, § 163, effective July 15, 2002; 2005, ch. 121, § 5, effective June 20, 2005; 2019 ch. 83, § 2, effective June 27, 2019.

Compiler's Notes.

Former KRS 132.018 (Enact. Acts 1982, ch. 397, § 9, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 309, effective July 13, 1990.

Legislative Research Commission Notes.

(6/20/2005). 2005 Ky. Acts ch. 121, § 6, provides: "The provisions of this Act shall apply to ordinances, orders, resolutions or motions passed after July 15, 2005."

(6/20/2005). The paragraph in KRS 132.017(2) that is referred to in subsection (1) of this section has been changed in codification by the Reviser of Statutes under the authority of KRS 7.136 to reflect the correct lettering of paragraphs in 2005 Ky. Acts ch. 121, § 1, subsec. (2).

132.020. State ad valorem taxes.

(1) The owner or person assessed shall pay an annual ad valorem tax for state purposes at the rate of:

(a) Thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation;

(b) Twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all motor vehicles qualifying for permanent registration as historic motor vehicles under KRS 186.043;

(c) Fifteen cents ($0.15) upon each one hundred dollars ($100) of value of all:

1. Machinery actually engaged in manufacturing;

2. Commercial radio and television equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air to an antenna, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast and equipment used to gather or transmit weather information, but excluding telephone and cellular communication towers; and

3. Tangible personal property which has been certified as a pollution control facility as defined in KRS 224.1-300. In the case of tangible personal property certified as a pollution control facility which is incorporated into a landfill facility, the tangible personal property shall be presumed to remain tangible personal property for purposes of this paragraph if the tangible personal property is being used for its intended purposes;

(d) Ten cents ($0.10) upon each one hundred dollars ($100) of value on the operating property of railroads or railway companies that operate solely within the Commonwealth;

(e) Five cents ($0.05) upon each one hundred dollars ($100) of value of goods held for sale in the regular course of business, which includes:

1. Machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement;

2. Motor vehicles:

a. Held for sale in the inventory of a licensed motor vehicle dealer, including licensed motor vehicle auction dealers, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to KRS 186A.230; or

b. That are in the possession of a licensed motor vehicle dealer, including licensed motor vehicle auction dealers, for sale, although ownership has not been transferred to the dealer;

3. Raw materials, which includes distilled spirits and distilled spirits inventory;

4. In-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business; and

5. Qualified heavy equipment;

(f) One and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all:

1. Privately owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

2. Qualifying voluntary environmental remediation property, provided the property owner has corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, and provided the cleanup was not financed through a public grant or the petroleum storage tank environmental assurance fund. This rate shall apply for a period of three (3) years following the Energy and Environment Cabinet's issuance of a No Further Action Letter or its equivalent, after which the regular tax rate shall apply;

3. Tobacco directed to be assessed for taxation;

4. Unmanufactured agricultural products;

5. Aircraft not used in the business of transporting persons or property for compensation or hire;

6. Federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; and

7. Privately owned leasehold interests in residential property described in KRS 132.195(2)(g); and

(g) Forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in KRS 132.030, 132.200, 136.300, and 136.320, providing a different tax rate for particular property.

(2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:

(a) The assessment of new property as defined in KRS 132.010(8);

(b) The assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65; and

(c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents ($0.015) pursuant to subsection (1)(f) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(3) By July 1 each year, the department shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (2) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the department shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the

department, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the department, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(4) If the tax rate set by the department as provided in subsection (2) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding:

(a) The revenue resulting from new property as defined in KRS 132.010(8);

(b) The revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65; and

(c) The revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents ($0.015) pursuant to subsection (1) of this section;

the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Office of Energy Policy for the purpose of public education of coal-related issues.

History.

4019: amend. Acts 1948, ch. 95, § 1; 1950, ch. 186; 1954, ch. 161; 1965 (1st Ex. Sess.), ch. 2, § 1; 1968, ch. 207, § 1; 1976, ch. 84, § 7, effective March 29, 1976; 1976, ch. 93, § 9, effective January 1, 1977; 1978, ch. 116, § 3, effective January 1, 1979; 1978, ch. 404, § 1, effective March 30, 1978; 1979 (Ex. Sess.), ch. 3, § 1, effective May 12, 1979; 1979 (Ex. Sess.), ch. 25, § 3, effective February 13, 1979; 1980, ch. 188, § 102, effective July 15, 1980; 1980, ch. 210, § 6, effective July 15, 1980; 1980, ch. 317, § 1, effective July 15, 1980; 1980, ch. 319, § 3, effective July 15, 1980; 1980, ch. 395, § 1, effective July 15, 1980; 1982, ch. 229, § 1, effective July 15, 1982; 1984, ch. 169, § 1, effective July 13, 1984; Acts 1985 (1st Ex. Sess.), ch. 6, part 1, § 1, effective July 29, 1985; 1986, ch. 359, § 1, effective July 15, 1986; 1986, ch. 431, § 16, effective July 15, 1986; 1986, ch. 476, § 5, effective July 15, 1986; 1990, ch. 345, § 1, effective July 13, 1990; 1990, ch. 437, § 4, effective July 13, 1990; 1990, ch. 461, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 310, effective July 13, 1990; 1992, ch. 338, § 21, effective July 14, 1992; 1994, ch. 65, § 2, effective July 15, 1994; 1994, ch. 263, § 3, effective July 15, 1994; 1994, ch. 328, § 4, effective July 15, 1994; 1996, ch. 254, § 22, effective July 15, 1996; 1998, ch. 55, § 1, effective July 15, 1998; 1998, ch. 72, § 1, effective July 15, 1998; 1998, ch. 266, § 1, effective July 15, 1998; 1998, ch. 385, § 1, effective July 15, 1998; 2000, ch. 2, § 2, effective July 14, 2000; 2000, ch. 327, § 1, effective July 14, 2000; 2002, ch. 324, § 1, effective July 15, 2002; 2002, ch. 338, § 17, effective July 15, 2002; 2005, ch. 85, § 171, effective June 20, 2005; 2005, ch. 168, § 55, effective January 1, 2006; 2006, ch. 152, § 3, effective April 5, 2006; 2007, ch. 100, § 2, effective June 26, 2007; 2010, ch. 24, § 97, effective July 15, 2010; 2013, ch. 94, § 1, effective June 25, 2013; 2013, ch. 119, § 7, effective January 1, 2014; 2016 ch. 93, § 2, effective July 15, 2016; 2018 ch. 29, § 4, effective July 14, 2018; 2019 ch. 151, § 9, effective June 27, 2019; 2020 ch. 91, § 61, effective April 15, 2020; 2023 ch. 92, § 46, effective March 24, 2023.

Compiler's Notes.

Section 4 of Acts 1994, ch. 263, provided that the 1994 amendment to this section "shall apply for the 1994 tax assessment year."

Legislative Research Commission Notes.

(4/15/2020). 2020 Ky. Acts ch. 91, sec. 79 provides that the changes made to this statute in Section 61 of that Act apply to privately owned leasehold interests in residential property assessed on or after January 1, 2021.

(6/27/2019). Section 81 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 9 of that Act apply to tangible personal property assessed on or after January 1, 2020.

(1/1/2014). 2013 Ky. Acts ch. 119, sec. 26, provides that the amendments to this statute in 2013 Ky. Acts, ch. 119, sec. 7, shall apply to property assessed on or after January 1, 2014.

(1/1/2014). 2013 Ky. Acts ch. 119, sec. 24, provides, "It is the intent of the General Assembly that the changes made in [this statute and KRS 132.200], relating to tangible personal property which has been certified as a pollution control facility, are to clarify existing provisions in the law, as follows:

"(1) That the tax rate of fifteen cents ($0.15) upon each one hundred dollars ($100) of value only applies to tangible personal property which has been certified as a pollution control facility; and

(2) That only tangible personal property certified as a pollution control facility is subject to taxation for state purposes only while being exempt from taxation in the county, city, school, or other taxing district in which it has a taxable situs."

(3/18/2005). 2005 Ky. Acts ch. 168, § 171, provides that: "Sections 55 (KRS 132.020) and 57 (KRS 132.200 of this Act, relating to property tax changes, take effect on January 1, 2006, except the changes made to paragraph (c) of subsection (1) of Section 55, relating to the voluntary environmental remediation credit, paragraph (a) of subsection (2) of Section 55, and paragraph (a) of subsection (4) of Section 55 of this Act, relating to new property and the state property assessment, and subsection (21) of Section 57 of this Act, which shall take effect on the effective date of this Act and which shall apply to tax years beginning on or after January 1, 2005."

NOTES TO DECISIONS

Analysis

1. In General.
2. Constitutionality.
3. Insurance Beneficiary.
4. Bank Deposits.
5. Federal Postal Savings Deposits.
6. Legislative Power.
7. Industrial Loan Corporations.
8. State Tax Rate.
9. Real Property.
10. Priorities.
11. Refunds.
12. Industrial Buildings.

1. In General.

Law which repealed law providing for state ad valorem taxes and enacted a new law in its place, exempting real estate from taxation, was unconstitutional because the legislature has no power to exempt property from state taxation and as a result the law remained in force as it was prior to the attempted repeal. Martin v. High Splint Coal Co., 268 Ky. 11, 103 S.W.2d 711, 1937 Ky. LEXIS 421 (Ky. 1937).

Intent of the Legislature in passing Corporate Shares Tax (KRS 132.020) and Exemptions Statutes (former KRS 136.030(1) (now repealed)) was to avoid double taxation of both a corporation and its shareholders. St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997), modified, 1997 Ky. LEXIS 45 (Ky. Apr. 24, 1997), reprinted, 942 S.W.2d 893 (Ky. 1997), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

2. Constitutionality.

It is not unconstitutional to tax deposits in out-of-state banks at 50¢ per $100 under this section, while deposits in domestic banks are taxed at only 10¢ per $100 under KRS 132.030. Madden v. Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 1940 U.S. LEXIS 956 (U.S. 1940).

Former subsection (5) of this section, creating a separate tax classification for unmined coal by treating it differently from all other interests in real estate, including other interests with similar characteristics such as oil and gas in its natural state, is a classification that is not related to a constitutionally permissible classification for the purpose of raising revenue and is therefore unconstitutional. Gillis v. Yount, 748 S.W.2d 357, 1988 Ky. LEXIS 13 (Ky. 1988).

Having declared former subsection (10) of this section unconstitutional the court properly used its discretion, and chose not to apply the general tax rate retroactively to distilled spirits but to impose the increased rate prospectively only. Yount v. Calvert, 826 S.W.2d 833, 1991 Ky. App. LEXIS 102 (Ky. Ct. App. 1991).

Subsection (10) (since repealed) of this section is repugnant to the Kentucky Constitution. It is a manifest violation of both the letter and the spirit of the law. Accordingly, the judgment of the Circuit Court declaring KRS 132.020(10) to be an unconstitutional infringement upon the Constitution and mandating that the Kentucky Revenue Cabinet tax distilled spirits at the rate provided for under the general provisions set forth in this section was proper. Yount v. Calvert, 826 S.W.2d 833, 1991 Ky. App. LEXIS 102 (Ky. Ct. App. 1991).

The corporate shares tax, KRS 132.020 and the exemption statute, former KRS 136.030(1) (now repealed), are inseparable because the striking of the exemption statute would result in the taxation not only of corporations, but their shareholders which result would be in direct contravention of the expressed intent of the General Assembly; thus both statutes are invalid as they discriminate against interstate commerce and thus violate the Commerce Clause of the United States Constitution under the reasoning of Fulton Corp. v. Faulkner, 516 U.S. 325, 116 S.Ct. 848, 133 L.Ed.2d 796, 1996 U.S. LEXIS 1379 (1996). St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997), modified, 1997 Ky. LEXIS 45 (Ky. Apr. 24, 1997), reprinted, 942 S.W.2d 893 (Ky. 1997), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

3. Insurance Beneficiary.

Where widow beneficiary had the right to withdraw the entire principal of insurance policy on deceased husband, such right was much more than a "right to receive income" under former KRS 132.215 and this section governs. Luckett v. Fergerson, 302 S.W.2d 114, 1957 Ky. LEXIS 174 (Ky. 1957).

4. Bank Deposits.

Bank deposits of a resident of Kentucky in banks outside of Kentucky are subject to the rate of 50¢ per $100 imposed by this section, and not the rate of 10¢ per $100 imposed by KRS 132.030. Madden v. Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 1940 U.S. LEXIS 956 (U.S. 1940).

5. Federal Postal Savings Deposits.

Federal postal savings deposits could not be subjected to tax imposed by this section, since to do so would result in unjust discrimination against federal instrumentality in favor of domestic banks, whose deposits are taxable at only 10¢ per $100 under KRS 132.030. In re Kentucky Fuel Gas Corp., 127 F.2d 657, 1942 U.S. App. LEXIS 3945 (6th Cir. Ky.), cert. denied, 317 U.S. 593, 63 S. Ct. 71, 87 L. Ed. 485, 1942 U.S. LEXIS 185 (U.S. 1942).

6. Legislative Power.

The Legislature has no power to substitute a license tax for an ad valorem tax. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919).

Absent the element of arbitrariness, the legislature is free to provide various classes, especially in the field of taxation. Paducah v. T.C.B., Inc., 817 S.W.2d 234, 1991 Ky. App. LEXIS 119 (Ky. Ct. App. 1991).

7. Industrial Loan Corporations.

Although the business of an industrial loan corporation resembles the operation of part of the usual business of a bank, the resemblance did not entitle it to be regarded as a bank under former KRS 136.270 (now repealed) and former KRS 136.280 (now repealed) and it was liable for payment of a tax on intangibles imposed by this section. First Industrial Plan v. Kentucky Board of Tax Appeals, 500 S.W.2d 70, 1973 Ky. LEXIS 203 (Ky. 1973).

8. State Tax Rate.

KRS 133.185, which relates to the imposition of a tax rate for a taxing district, such as a city, county or school, has no relationship to Ky. Const., § 171 which requires that the General Assembly shall provide an annual tax sufficient to defray the estimated expenses of the commonwealth; the state tax rate on all personal property, including motor vehicles, is not fixed by the processes outlined in KRS 133.185, 132.487(2), or 132.487(6) which provide for submission of a proposal, recapitulation of motor vehicles by the property valuation administrator, and certification by the Department of Revenue, but rather, the state tax rate is fixed by the General Assembly and is currently embodied in this section. There is no conflict between KRS 132.487(2) and 132.487(6) with the constitutional provision that the taxes shall be sufficient to defray the expenses of the state. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

9. Real Property.

Where a taxpayer held equitable title in real estate consisting of all incidents of ownership except legal title and the taxpayer paid ad valorem tax on the property, former KRS 134.060 (now repealed), Ky. Const., § 172 and this section did not require the taxation of the power to dispose of the property as an intangible, separate and distinct from the underlying real property. Kentucky Power Co. v. Revenue Cabinet, 705 S.W.2d 904, 1985 Ky. LEXIS 293 (Ky. 1985).

10. Priorities.

Ad valorem taxes assessed after a duly recorded mortgage do not become liens until assessed, but are given priority over mortgages. Liberty Nat'l Bank & Trust Co. v. Vanderkraats, 899 S.W.2d 511, 1995 Ky. App. LEXIS 114 (Ky. Ct. App. 1995).

11. Refunds.

Where suit challenged the constitutionality of an exemption statute (former KRS 136.030(1) (now repealed)), a corporate shares tax statute (KRS 132.020), and involved the Revenue Cabinet and such statutes were declared unconstitutional,

taxpayers were required to file for a refund for taxes paid under such statutes within two (2) years of payment of such taxes as provided in KRS 134.590(1) and (2), not two (2) years from the date of filing the lawsuit challenging the constitutionality of the statutes as provided in KRS 134.590(6). St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997), modified, 1997 Ky. LEXIS 45 (Ky. Apr. 24, 1997), reprinted, 942 S.W.2d 893 (Ky. 1997), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

12. Industrial Buildings.

It is not clear whether the exemption for an industrial building that is "owned and financed" by a tax-exempt entity (KRS 132.200(8)) (now (7)) was intended to apply after the collateral is no longer financed; therefore, the statute must be construed against the taxpayers and they are not permitted to take advantage of the exemption and the reduced state rate pursuant to this section. Owens-Illinois Labels, Inc. v. Commonwealth, 27 S.W.3d 798, 2000 Ky. App. LEXIS 48 (Ky. Ct. App. 2000).

Cited in:

Kentucky Finance Co. v. McCord, 290 S.W.2d 481, 1956 Ky. LEXIS 324 (Ky. 1956); Kentucky Dep't of Revenue v. Bomar, 486 S.W.2d 532, 1972 Ky. LEXIS 111, 59 A.L.R.3d 830 (Ky. 1972); Parrent v. Fannin, 616 S.W.2d 501, 1981 Ky. LEXIS 250 (Ky. 1981); Allphin v. Butler, 619 S.W.2d 483, 1981 Ky. LEXIS 259 (Ky. 1981); Revenue Cabinet v. Barbour, 836 S.W.2d 418, 1992 Ky. App. LEXIS 14 (Ky. Ct. App. 1992).

OPINIONS OF ATTORNEY GENERAL.

A fifth-class city must, by ordinance, levy an annual tax rate, prepare an annual budget and publish both the budget or summary thereof together with the rate in the local newspaper. OAG 70-630.

A mortgage and deed of trust secured by real estate and other tangible property is not a property interest subject to ad valorem property tax under this section nor intangible property subject to tax under subsection (1) of KRS 132.190. OAG 74-352.

Payments made, pursuant to a lease for a building constructed by a city beyond its boundaries under the provisions of KRS 103.200 et seq., are in lieu of all other taxes except those under this section, and, as such payments are not technically city revenue, the city is free to designate the local school district as beneficiary of the contract if it so desires. OAG 79-132, 1979 Ky. AG LEXIS 498.

"Money in hand," under former subsection (1) of this section, means literally what it says: money in the personal control or possession of the taxpayer. OAG 79-140, 1979 Ky. AG LEXIS 481.

The state tax rate computed by the Revenue Cabinet pursuant to former subsection (8) of this section is a single tax rate applicable to all counties and the limitation on the increase of real property tax revenues to four percent in any single year provided for by former subsections (7) and (9) of this section is a limitation in the aggregate so that, in determining whether the four percent limit has been violated, one must look at the real property tax revenues of the state as a whole. Thus, the percentage increase or decrease in real property tax revenues in any particular county as a result of the application of the state tax rate is irrelevant in determining whether the four percent rule has been violated. OAG 83-17, 1983 Ky. AG LEXIS 479.

Investments of the Kenton-Boone Cable Television Board in time deposits in an Ohio bank are subject to the intangible property tax levied by subsection (1) of this section since intangibles, like other personalty, are generally situsted at the domicile of their owner. OAG 84-296, 1984 Ky. AG LEXIS 89.

The words "actually engaged in manufacturing," as used in subsection (1) of this section and KRS 132.200(4) modify "individuals or corporations," not "machinery." OAG 90-5, 1990 Ky. AG LEXIS 5.

Machinery owned by an individual or corporation, which individual or corporation is actually engaged in manufacturing, awaiting to be installed and put into use in the manufacturing plant should be classified as manufacturing machinery at the state rate of 15¢ per $100 of assessed valuation and is exempt from local taxation. OAG 90-5, 1990 Ky. AG LEXIS 5.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Power to tax may be conferred on local authorities, Ky. Const., § 181.

State taxes shall be levied by general laws and for public purposes only, uniformity required, Ky. Const., § 171.

Surrender of power to tax, Ky. Const., § 175.

Tax rate of local taxing units, Ky. Const., § 157.

Taxes to be paid into state treasury and credited to general fund, KRS 47.010.

Journal of Mineral Law & Policy.

Comments, Constitutional Validity of the Kentucky Unmined Coal Tax: Gillis v. Yount, 4 J.M.L. & P. 159 (1988).

Kentucky Bench & Bar.

Tobergte, The Impact of Kentucky's Present Constitution Upon Business Growth & Development, Volume 51, No. 3, Summer 1987 Ky. Bench & B. 21.

Kentucky Law Journal.

Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

The Property Tax — A Withering Vine, 60 Ky. L.J. 174 (1971).

Kentucky Law Survey, Whiteside and Buechel, Kentucky Taxation, 65 Ky. L.J. 425 (1976-77).

Kentucky Law Survey, Whiteside and Harman, Kentucky Taxation, 67 Ky. L.J. 739 (1978-79).

Kentucky Law Survey, Vasek and Bradley, Kentucky Taxation, 68 Ky. L.J. 777 (1979-1980).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

132.0225. Deadline for establishing final tax rate — Exemption — Procedure if increased revenue is greater than four percent.

(1)(a) A taxing district that does not elect to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall establish a final tax rate within forty-five (45) days of the department's certification of the county's property tax roll.

(b) For boards of education, the forty-five (45) days shall begin from the date of the department's certification to the chief state school officer as required by KRS 160.470(4).

(c) A city that does not elect to have city ad valorem taxes collected by the sheriff as provided in KRS 91A.070(1) shall be exempt from the forty-five (45) day deadline.

(d) Any nonexempt taxing district that fails to meet the forty-five (45) day deadline shall be re-

quired to use the compensating tax rate for that year's property tax bills.

(2) A taxing district that elects to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall follow the provisions of KRS 132.017.

History.

Enact. Acts 1994, ch. 9, § 3, effective July 15, 1994; 2009, ch. 69, § 1, effective June 25, 2009; 2023 ch. 92, § 3, effective March 24, 2023.

Compiler's Notes.

Section 4 of Acts 1994, ch. 9, provided that this section and the 1994 amendment to KRS 132.487 "shall be effective for property assessed on or after January 1, 1995."

Legislative Research Commission Notes.

(10/21/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

NOTES TO DECISIONS

1. Applicability.

Even though KRS 132.0225 requires all taxing districts to levy their tax rates within forty-five (45) days, cities that have elected to adopt a county's assessment are empowered by KRS 132.285 to fix the time for levying their tax rates, notwithstanding any other statutory provisions to the contrary. Light v. City of Louisville, 248 S.W.3d 559, 2008 Ky. LEXIS 68 (Ky. 2008).

As the more specific language of KRS 132.285 controlled over the more general language in KRS 132.0225, a city did not violate KRS 132.0225 when it adopted its ad valorem tax rates more than 45 days after county assessments had been certified. Once the city elected to operate under KRS 132.285, the city could set its own date for levying its taxes. Light v. City of Louisville, 248 S.W.3d 559, 2008 Ky. LEXIS 68 (Ky. 2008).

132.023. Limits for special purpose governmental entities — Procedure for exceeding limits.

(1) No special purpose governmental entity shall levy a tax rate which exceeds the compensating tax rate until the taxing district has complied with the provisions of KRS 65A.110 and subsection (2) of this section.

(2)(a) A special purpose governmental entity proposing to levy a tax rate which exceeds the compensating tax rate shall submit the proposed rate as required by KRS 65A.110 and shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the same location where the governing body of the city or county where the largest number of citizens served by the special purpose governmental entity reside meets, and shall be held immediately before a regularly scheduled meeting of that governing body.

(b) The special purpose governmental entity shall advertise the hearing by causing to be published at least twice in two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches, the following:

1. The tax rate levied in the preceding year, and the revenue produced by that rate;
2. The tax rate proposed for the current year and the revenue expected to be produced by that rate;
3. The compensating tax rate and the revenue expected from it;
4. The revenue expected from new property and personal property;
5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
6. A time and place for the public hearing which shall be held not less than seven (7) days, nor more than ten (10) days, after the day that the second advertisement is published;
7. The purpose of the hearing; and
8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained therein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property in the special purpose governmental entity, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The special purpose governmental entity may set reasonable time limits for testimony.

(3)(a) That portion of a tax rate levied by an action of a special purpose governmental entity which will produce revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate shall be subject to a recall vote or reconsideration by the special purpose governmental entity, as provided for in KRS 132.017, and shall be advertised as provided in paragraph (b) of this subsection.

(b) The special purpose governmental entity shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a tax rate which will produce revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate, cause to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches the following:

1. The fact that the taxing district has adopted a rate;
2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate is subject to recall; and
3. The name, address, and telephone number of the county clerk of the county in which the special

purpose governmental entity is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 13; 1966, ch. 62, § 1; 1972, ch. 285, § 2; 1979 (Ex. Sess.), ch. 25, § 4, effective February 13, 1979; 1980, ch. 319, § 8, effective July 15, 1980; 1990, ch. 343, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 311, effective July 13, 1990; 2002, ch. 346, § 164, effective July 15, 2002; 2013, ch. 40, § 87, effective March 21, 2013; 2020 ch. 90, § 2, effective January 1, 2021.

Compiler's Notes.

Section 11 of Acts 1990, ch. 343 provided: "The provisions of this Act shall be effective for tax years with assessment dates on or after January 1, 1991."

Legislative Research Commission Notes.

(3/21/2013). Two manifest clerical or technical errors have been corrected in this statute. When the statute was amended in 2013 Ky. Acts ch. 40, sec. 87, the phrase "as defined in KRS 132.010," including the comma, was deleted twice in subsection (3)(b). Under the authority of KRS 7.136, the Reviser of Statutes has restored both of the deleted commas.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Motor Vehicles.
2. Library districts.

1. Motor Vehicles.

The language of KRS 132.487(3), governing a centralized ad valorem tax system for motor vehicles, clearly and unequivocally removes all valuations of and tax revenues from motor vehicles from the base amount used in determining the compensating tax rate and maximum possible tax rate envisioned under the provisions of this section and KRS 68.245, 132.027, and 160.470. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

2. Library districts.

Circuit courts erred in rendering summary judgments in favor of two library districts because, while the applicable statutes were facially in conflict, they were both applicable to library districts formed by petition and could be harmonized in their application, where, if revenue from ad valorem taxes was to be increased above four percent, the increase had to be approved by petition of the voters. Campbell County Library Bd. of Trs. v. Coleman, 475 S.W.3d 40, 2015 Ky. App. LEXIS 39 (Ky. Ct. App. 2015).

Cited in:

Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971); Miller v. Nunnelley, 468 S.W.2d 298, 1971 Ky. LEXIS 334 (Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

Public health taxing districts are limited to a compensating tax rate based on the actual 1965 levy and not the maximum voted for the county. OAG 66-22.

Since extension service districts have not been excepted from the compensating tax rate defined in KRS 132.010, the rate should be applied to the tax imposed by such districts. OAG 66-229.

A public health taxing district is a taxing district within the meaning of this section despite the fact that the voters had previously approved a higher rate. OAG 66-356.

A county soil conservation district board may request and the fiscal court of such county may levy a tax of two cents ($0.02) per acre, even though such tax rate is an increase from the rate levied in previous years. OAG 67-346.

Where after the roll back a library district did not have sufficient funds to operate, under KRS 173.610 a petition could be filed putting the question of an increased tax levy to a vote of the people, and if the vote was affirmative the tax could be raised to exceed the roll back rate. OAG 68-606.

Each year the library district tax rate must be so adjusted, assuming a change in assessment valuation, in connection with the current property assessment, that the amount of revenue produced in the particular tax year is approximately equal to that produced in 1965. OAG 69-330.

This section does not apply to a county library established under KRS 173.310. OAG 69-394.

An area planning commission could not levy a tax rate which exceeded the compensating tax rate defined in KRS 132.010. OAG 69-532.

In view of the fact that the present rollback statutes in effect provide a maximum revenue level, the library tax rate may be adjusted and applied against the assessment base such as to produce the maximum revenue provided by the rollback law as if the homestead exemption to § 170 of the Kentucky Constitution had never come into being. OAG 72-124.

As the 1972 amendment to this section was passed before the 1972 amendment to KRS 75.040, the provisions of the latter section as to the tax rate for fire prevention districts will prevail. OAG 72-646.

Even though "net assessment growth," as defined in KRS 132.425 (repealed), refers only to the county or a school district, KRS 132.010 encompasses a taxing district and this section and KRS 132.027 clearly show that KRS 132.425 (repealed) is by reference made applicable to cities so that any city which levied a poll tax in 1973 may adjust its compensating tax rate to reflect the loss in poll tax revenue. OAG 75-544.

Insofar as they are used in this section and KRS 132.027, as amended by Acts 1979 (Ex. Sess.), ch. 25, for those governmental units operating on a calendar basis: (1) ".... a tax rate for 1979-80 ...." means that unit's tax rate for the 1980 calendar year; (2) ".... application of the maximum tax rate that could have been levied in 1978-79 ...." means the unit's compensating tax rate for the 1979 calendar year, calculated in accordance with KRS 132.010(6) as it read prior to February 13, 1979; and (3) ".... the 1978-79 assessment" means the unit's assessment as of January 1, 1979, assuming that the unit's assessment date is January 1. OAG 79-217, 1979 Ky. AG LEXIS 405.

Hearings held pursuant to this section must be held by the board of directors of an extension district, and by a fiscal court, in the case of a county health district. OAG 79-365, 1979 Ky. AG LEXIS 267.

In the case of a county extension district the responsibility to set tax rates in compliance with the law is that of the board of directors of the district, while in the case of a county health district, it is the fiscal court's responsibility. OAG 79-365, 1979 Ky. AG LEXIS 267.

KRS 132.010 and this section apply to the tax rate to be set by a county hospital board for setting a tax rate for 1979-1980 and thereafter. OAG 79-422, 1979 Ky. AG LEXIS 210.

In determining the net assessment growth, "revenue" does not include moneys earned from interest, special fees, contributions, or any other nontaxing revenue. OAG 79-478, 1979 Ky. AG LEXIS 163.

Former subsection (4)(a) of this section applies to the first fiscal year 1979-80 and the maximum tax rate allowed is

something less than 10 cents per $100 of assessed valuation. OAG 79-478 (Opinion prior to 1990 amendment).

This section applies to fire protection districts and volunteer fire departments. OAG 79-478, 1979 Ky. AG LEXIS 163.

Acts 1979 (Ex. Sess.), ch. 25, amending this section, applies to the 1979-1980 tax rate for a county library district established pursuant to KRS 173.450 et seq. OAG 79-479, 1979 Ky. AG LEXIS 177.

An ambulance district, created under KRS 108.100, may levy a tax rate that does not exceed the rate voted on in creating the district, without being subject to the special tax limitations of this section. OAG 81-99, 1981 Ky. AG LEXIS 356.

Where an ambulance district is created pursuant to KRS 108.105, the statutory tax rate limits of this section would apply to the special district, since no voted levy is involved. OAG 81-99, 1981 Ky. AG LEXIS 356.

The amendment of subsection (4) of KRS 262.200 to limit the maximum total tax revenue from real property millage tax to $25,000 per year does not unconstitutionally impact upon this section, since the General Assembly may constitutionally levy rates which lessen taxes. OAG 81-174, 1981 Ky. AG LEXIS 267.

Acts 1979 (Ex. Sess.), ch. 25, which limits a county's increase in property taxes, does not limit in effect the public health district tax which is levied by a county pursuant to either KRS 212.725 or 212.755. OAG 82-151, 1982 Ky. AG LEXIS 489.

If there is any conflict between KRS 75.040(1) and this section, it relates to what tax rate may be set initially; there is no inconsistency between the statutes and this section applies whenever an already established rate is increased. OAG 82-323, 1982 Ky. AG LEXIS 351.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

The Property Tax — A Withering Vine, 60 Ky. L.J. 174 (1971).

Kentucky Law Survey, Vasek and Bradley, Kentucky Taxation, 68 Ky. L.J. 777 (1979-1980).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

132.024. Limits for special purpose governmental entities on personal property tax rate.

(1) If the tax rate applicable to real property levied by a special purpose governmental entity will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the special purpose governmental entity may levy a tax rate applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property.

(2) The tax rate applicable to personal property levied by a special purpose governmental entity under the provisions of subsection (1) of this section shall not be subject to the public hearing provisions of KRS 132.023(2) and to the recall provisions of KRS 132.023(3).

History.

Enact. Acts 1982, ch. 397, § 3, effective July 15, 1982; 1990, ch. 343, § 6, effective July 13, 1990; 1990, ch. 476, Pt. V, § 312, effective July 13, 1990; 2013, ch. 40, § 88, effective March 21, 2013.

Compiler's Notes.

Section 11 of Acts 1990, ch. 343 provided: "The provisions of this Act shall be effective for tax years with assessment dates on or after January 1, 1991."

Legislative Research Commission Notes.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

OPINIONS OF ATTORNEY GENERAL.

Subsection (2) of former KRS 68.249 (now repealed), limiting the increase in the county tax rate on personal property, means that the tax rate levied under KRS 68.248 on such property for 1982-83 cannot exceed the tax rate levied in 1981-82; additionally, the tax rate levied under subsection (1) of former KRS 68.249 cannot exceed the tax rate levied in 1981-82; however, the two rates collectively may exceed such rate. This determination is extended to all similar provisions of Acts 1982, ch. 397, i.e., KRS 132.024, 132.025, 132.029, 132.0291, 160.473 and 160.474. OAG 83-221 (Opinion prior to 1990 amendment to KRS 68.249 and 132.024, 132.025, 132.029, 160.473 and repeal of KRS 132.0291 and 160.474).

132.025. Cumulative increase for 1982-83 only by taxing district — Limit — Public hearing and recall provisions not applicable.

(1) In the event that the tax rate levied by an action of a taxing district, other than the state, counties, school districts, cities, and urban-county governments, for 1979-80, 1980-81, or 1981-82 produced a percentage increase in revenue from personal property less than the percentage increase in revenue from real property for the respective year, the taxing district, other than the state, counties, school districts, cities, and urban-county governments, may levy a tax rate applicable to personal property for 1982-83 only, which will produce the same cumulative percentage increase in revenue from personal property as was produced from real property in 1979-80, 1980-81 and 1981-82. Such a tax rate may be in addition to the tax rate levied under the provisions of KRS 132.024.

(2) The tax rate levied under the provision of KRS 132.024 and subsection (1) of this section shall not exceed the tax rate applicable to personal property levied by the respective taxing district, other than the state, counties, school districts, cities, and urban-county governments, in 1981-82.

(3) The tax rate applicable to personal property levied by a taxing district, other than the state, counties, school districts, cities, and urban-county governments shall not be subject to the public hearing provisions of KRS 132.023(2) and to the recall provisions of KRS 132.023(3).

History.

Enact. Acts 1982, ch. 397, § 4, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 313, effective July 13, 1990; 2020 ch. 90, § 3, effective January 1, 2021.

Compiler's Notes.

Former KRS 132.025 (Enact. Acts 1982, ch. 397, § 4, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 313, effective July 13, 1990.

Legislative Research Commission Notes.
(7/13/90) Pursuant to Section 653(2) of 1990 House Bill 940, Acts Ch. 476, the repeal and reenactment of this section in that Act prevails over its repeal in another Act (ch. 343, § 10) of the 1990 Regular Session.

OPINIONS OF ATTORNEY GENERAL.

Subsection (2) of former KRS 68.249 (now repealed), limiting the increase in the county tax rate on personal property, means that the tax rate levied under KRS 68.248 on such property for 1982-83 cannot exceed the tax rate levied in 1981-82; additionally, the tax rate levied under subsection (1) of former KRS 68.249 cannot exceed the tax rate levied in 1981-82; however, the two rates collectively may exceed such rate. This determination is extended to all similar provisions of Acts 1982, ch. 397, i.e., KRS 132.024, 132.025, 132.029, 132.0291, 160.473 and 160.474. OAG 83-221 (Opinion prior to 1990 amendment of KRS 68.249, 132.024, 132.025, 132.029, 160.473 and the repeal of KRS 132.0291 and 160.474).

132.027. City and urban-county government tax rate limitation — Levy exceeding compensating tax rate subject to recall vote or reconsideration.

(1) No city or urban-county government shall levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010 until the city or urban-county government has complied with the provisions of subsection (2) of this section.

(2)(a) Cities or urban-county governments proposing to levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district, or, in the event the taxing district has no office, or the office is not suitable for a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The city or urban-county government shall advertise the hearing by causing to be published at least twice in two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches, the following:

1. The tax rate levied in the preceding year, and the revenue produced by that rate;
2. The tax rate proposed for the current year and the revenue expected to be produced by that rate;
3. The compensating tax rate and the revenue expected from it;
4. The revenue expected from new property and personal property;
5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day the second advertisement is published;
7. The purpose of the hearing; and
8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained therein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property in the taxing district, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The taxing district may set reasonable time limits for testimony.

(3)(a) That portion of a tax rate levied by an action of a city or urban-county government which will produce revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 shall be subject to a recall vote or reconsideration by the taxing district, as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The city or urban-county government shall, within seven (7) days following adoption of an ordinance to levy a tax rate which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches the following:

1. The fact that the city or urban-county government has adopted a rate;
2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall, and
3. The name, address, and telephone number of the county clerk of the county or urban-county in which the taxing district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

History.
Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 14; 1972, ch. 285, § 3; 1974, ch. 316, § 5; 1979 (Ex. Sess.), ch. 25, § 5, effective February 13, 1979; 1980, ch. 319, § 9, effective July 15, 1980; 1990, ch. 343, § 7, effective July 13, 1990; 1990, ch. 476, Pt. V, § 314, effective July 13, 1990.

Compiler's Notes.
Section 11 of Acts 1990, ch. 343 provided: "The provisions of this Act shall be effective for tax years with assessment dates on or after January 1, 1991."

Legislative Research Commission Notes.
(7/13/90) The Act amending this section prevails over its repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.

3. Legislative Intent.
4. Motor Vehicles.

1. Constitutionality.

This section does not unconstitutionally discriminate against cities' taxation powers even though the counties are allowed "net assessment growth" while the cities are not, since no constitutional provision requires cities to be treated the same as counties as far as concerns the extent of their tax-levying powers. Ashland v. Webb, 470 S.W.2d 604, 1971 Ky. LEXIS 279 (Ky. 1971) (decision prior to 1972 amendment).

2. Application.

The limitation on indebtedness imposed by this section is not applicable to limit the rate at which taxes must necessarily be levied to pay an indebtedness incurred by authority of a vote of the people under Ky. Const., § 157. Raque v. Louisville, 402 S.W.2d 697, 1966 Ky. LEXIS 375 (Ky. 1966).

3. Legislative Intent.

The limitation on indebtedness imposed by this section was intended by the Legislature to safeguard against unintended tax burdens and not those that are specifically intended and authorized. Raque v. Louisville, 402 S.W.2d 697, 1966 Ky. LEXIS 375 (Ky. 1966).

4. Motor Vehicles.

The language of KRS 132.487(3), governing a centralized ad valorem tax system for motor vehicles, clearly and unequivocally removes all valuations of and tax revenues from motor vehicles from the base amount used in determining the compensating tax rate and maximum possible tax rate envisioned under the provisions of this section and KRS 68.245, 132.023, and 160.470. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Cited in:

Kelley v. Ashland, 562 S.W.2d 312, 1978 Ky. LEXIS 325 (Ky. 1978); Bischoff v. Newport, 733 S.W.2d 762, 1987 Ky. App. LEXIS 525 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

KRS 95.627 and 95.629 supersede and provide an exception to this section. OAG 66-562.

A city of the third class may levy a tax in excess of the compensating tax rate to the extent that it is necessary to do so in order to maintain the alternative pension plan authorized by KRS 95.621 to 95.629. OAG 66-562.

For the 1966 assessment, all of the property in the city, including merchants' inventories, is subject to the city tax rate but the rate must be computed so that the amount of total revenue produced in 1966 will be no more than that produced in 1965 plus a ten percent (10%) increase. OAG 67-13.

The general intent of the 1965 legislation establishing a "compensating tax rate" was to limit property tax revenue (and the burden of the taxpayers) to the same level in existence before 100 per cent assessments were put into effect (plus two (2) permissible percentage increases) and other revenue derived from property newly added to the tax rolls. OAG 67-40.

Tax rates for tangible personal property cannot be separated from all other property subject to ad valorem property taxes in the city; the same rate must be applied to such property as is applied to all property in the city. OAG 67-101.

A city which did not levy a public works cumulative reserve fund in 1965 could do so in a later year by allocating or earmarking a portion of its overall compensating tax rate for that purpose. OAG 67-351.

A city which was levying a public works cumulative reserve fund property tax in 1965 could continue to do so in 1966 and subsequent years at the appropriate compensating tax rate or at such other rate as the city chose provided the overall tax rate did not exceed the compensating rate applicable to the overall levy. OAG 67-351.

The fact that a town did not collect taxes in 1965 would not prevent it from collecting taxes in subsequent years using Ky. Const., § 157 to find the base rate and applying the compensating factor of this section to it. OAG 67-449.

If a city failed to increase its tax rate by ten percent (10%) increases in each of the years 1966 and 1967, it is bound by the tax rate it now has in effect. OAG 68-222.

The ten percent (10%) increases permitted by subsection (2) of this section, if not taken in the years 1966-67 and 1967-68, were waived. OAG 68-246.

The tax rate levied by a municipality for library services under subsection (1) of KRS 173.360 is subject to the compensating tax rate provisions of this section even when this section would require a lower tax levy than the minimum established in subsection (1) of KRS 173.360. OAG 68-259.

A library created under KRS 173.310 is not a separate taxing district. The library tax must be included in the city's general tax levy and the city's legislative body establishes the library tax, under the provisions of KRS 173.360, at a rate which cannot be lower than five cents, subject to the roll-back provisions of KRS 132.027. OAG 68-320.

An area planning commission could not levy a tax rate which exceeded the compensating tax rate defined in KRS 132.010. OAG 69-532.

Where libraries were established under KRS 173.310, prior to the 1965 roll-back legislation, the city or county which established such libraries must reduce its respective library tax to the applicable compensating tax rate, or restricted budget, regardless of whether that rate or revenue would be less than five cents on the 100. OAG 69-590.

A city would be barred under this section from taking any increase in its tax rate to become effective in 1971. OAG 70-576.

Initiative and referendum cannot be used to increase the tax rate in a fourth-class city with the councilmanic form of government. OAG 70-576.

A city may increase its general fund tax rate to offset a revenue loss occasioned by property being exempted from property tax by the homestead exemption amendment to Ky. Const., § 170. OAG 71-537.

The rollback provision of this section applies to a proposed five cent levy on property in a fourth-class city under KRS 97.590 for the purpose of purchasing and maintaining a public park in the city limits. OAG 72-193.

After a city has sufficient revenue in a sinking fund to retire bonds for which a specific tax has been levied, the city would then be bound by KRS 132.010 and this section with respect to the tax rate which could be applied for general municipal purposes and it would be a violation of KRS 92.330 and 92.340 to continue to levy the specific tax and divert it to general municipal purposes. OAG 74-368.

Once funding bonds have been paid off, levy must be discontinued. OAG 75-162.

A third-class city may levy a tax in excess of the compensating tax rate where such is necessary to provide support for the alternative pension plan provided for in KRS 95.621 to 95.629. OAG 75-203.

Even though "net assessment growth," as defined in KRS 132.425 (repealed), refers only to the county or a school district, KRS 132.010 encompasses a taxing district and KRS 132.023 and this section clearly show that KRS 132.425 (repealed) is by reference made applicable to cities so that any city which levied a poll tax in 1973 may adjust its compensating tax rate to reflect the loss in poll tax revenue. OAG 75-544.

Where a third-class city operates jointly with the county a system of parks under a city-county parks and recreation board, under KRS 97.080 (repealed) such a city may provide funds for park and recreation purposes controlled by the

revenue limitations set out in KRS 132.010 and this section. OAG 76-85.

A city cannot raise its tax rate by a referendum vote. OAG 77-112, 1977 Ky. AG LEXIS 675.

If the sinking fund rate is a part of the overall general fund rate, it would appear that the only thing that is being done is a shifting of a part of the sinking fund rate to the main general fund rate, and if so it could be added to the general fund rate maintaining the overall tax rate at the same level. OAG 78-797, 1978 Ky. AG LEXIS 48.

There would not be a substantial increase in revenue from real estate tax simply by increasing the assessed value of property in a city. OAG 79-90, 1979 Ky. AG LEXIS 532.

Insofar as they are used in KRS 132.023 and this section, as amended by Acts 1979 (Ex. Sess.), ch. 25, for those governmental units operating on a calendar basis: (1) ".... a tax rate for 1979-80 ...." means that unit's tax rate for the 1980 calendar year; (2) ".... application of the maximum tax rate that could have been levied in 1978-79 ...." means the unit's compensating tax rate for the 1979 calendar year, calculated in accordance with KRS 132.010(6) as it read prior to February 13, 1979; and (3) ".... the 1978-79 assessment" means the unit's assessment as of January 1, 1979, assuming that the unit's assessment date is January 1. OAG 79-217, 1979 Ky. AG LEXIS 405.

So long as the limitations imposed by this section are complied with, a city which wishes to increase the tax rate and return a portion of the increase to the taxpayers is free to do so. OAG 79-484, 1979 Ky. AG LEXIS 155.

Acts 1979 (Ex. Sess.), ch. 25 cannot be applied retroactively to taxing districts operating on a calendar basis which had prepared their budgets prior to the effective date of that act. OAG 79-486, 1979 Ky. AG LEXIS 124.

If the city governing body proposes to impose the same tax rate for the succeeding year as the preceding year but due to increased assessments more than four percent (4%) revenue is produced in the succeeding year than had been produced in the preceding year, that portion of the tax rate which causes a breach in the four percent (4%) ceiling is subject to recall. OAG 80-558, 1980 Ky. AG LEXIS 84.

If a city applied its 1980 tax rate to its 1981 assessment, which greatly increased as a result of a court decision, and if the resulting increase in tax revenues was greater than four percent (4%) over the previous year, the city must comply with the recall vote or reconsideration provisions of former subsection (4) of this section, since it appears that the general assembly intended to limit revenues from property tax when assessments have increased. OAG 81-425, 1981 Ky. AG LEXIS 20.

A city's maximum tax rate is dependent upon the amount of revenue which would have been raised if the rate of the preceding year was applied to the preceding year's assessment before it was adjusted for the homestead exemption. OAG 82-186, 1982 Ky. AG LEXIS 457.

The language of former subdivision (4)(b) of this section indicates that the assessed valuations used in computing the limitations must be determinable at the time the city ordinance levying the rate is enacted. OAG 82-186, 1982 Ky. AG LEXIS 457.

The limitations on the ad valorem tax rate which a city can levy are determined, in part, by applying the proposed rate levied by the city to the assessments certified by the Department of Revenue as provided in KRS 133.180; subsequent corrections in valuations made by the department as the result of adjustments to certain properties which were in the appeal process at the time the certification was made are not relevant in computing the limitations. OAG 82-186, 1982 Ky. AG LEXIS 457.

In a year of negative net assessment growth, the maximum rate which a city or urban-county government can levy is that rate which, when applied to its current year assessments, will produce the same amount of revenue that would have been produced in the preceding tax year if all the property taxes the city or urban-county government actually levied had been collected. In such an instance, the maximum rate as provided in former subsection (1) (deleted by amendment) of this section would be greater than the rate levied in the preceding year. OAG 82-456, 1982 Ky. AG LEXIS 220.

The Attorney General is not charged with the duty to interpret and enforce the requirements for legal notices codified in KRS Chapter 132, and in particular KRS 132.027, in an open meetings appeal. OAG 04-OMD-230, 2004 Ky. AG LEXIS 282.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Property Tax Revenue Assessment Levels and Taxing Rate: The Kentucky Rollback Law, 60 Ky. L.J. 105 (1971).

Kentucky Law Survey, Vasek and Bradley, Kentucky Taxation, 68 Ky. L.J. 777 (1979-1980).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

132.030. Financial institution deposit tax.

(1) Every person having a deposit in any financial institution, as defined in KRS 136.500, on January 1 of any year shall pay an annual tax to the state equal to one-thousandth of one percent (0.001%) upon the amount of the deposit, and no deduction shall be made for any indebtedness. The deposit tax shall be paid to the department by the financial institution with which the deposit is made, as the agent of the depositor, on or before March 1 following the date of the report provided for in KRS 132.040.

(2) No other tax shall be assessed by the state or any county, city, or other taxing district on the deposits or against the depositor on account of the deposits, except as provided in KRS 136.575.

History.

4019a-1, 4019a-2; Acts 1949 (Ex. Sess.), ch. 4, § 1; 1960, ch. 186, Art. I, § 1, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 315, effective July 13, 1990; 1996, ch. 254, § 23, effective July 15, 1996; 2005, ch. 85, § 172, effective June 20, 2005.

Compiler's Notes.

Former KRS 132.030 (4019a-1, 4019a-2: amend. Acts 1949 (Ex. Sess.), ch. 4, § 1; 1960, ch. 186, Art. I, § 1, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 315, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Out-of-State Deposits.
3. Federal Postal Savings Deposits.
4. Bank Agent.
5. Taxing Determination Upheld.

1. Constitutionality.

It is not unconstitutional to tax deposits in out-of-state banks at 50¢ per $100 under KRS 132.020, while deposits in domestic banks are taxed at 10¢ per $100. Madden v. Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 1940 U.S. LEXIS 956 (U.S. 1940).

The placing of domestic bank deposits in a separate class, and according them a more favorable rate of taxation than other intangible property, is reasonable and valid. Madden v. Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 1940 U.S. LEXIS 956 (U.S. 1940).

2. Out-of-State Deposits.

Bank deposits of a resident of Kentucky in banks outside of Kentucky are subject to the rate imposed by KRS 132.020, and not the rate imposed by this section. Madden's Ex'r v. Commonwealth, 277 Ky. 343, 126 S.W.2d 463, 1939 Ky. LEXIS 655 (Ky. 1939), aff'd, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 1940 U.S. LEXIS 956 (U.S. 1940).

3. Federal Postal Savings Deposits.

Federal postal savings deposits are not taxable under this section. In re Kentucky Fuel Gas Corp., 127 F.2d 657, 1942 U.S. App. LEXIS 3945 (6th Cir. Ky.), cert. denied, 317 U.S. 593, 63 S. Ct. 71, 87 L. Ed. 485, 1942 U.S. LEXIS 185 (U.S. 1942).

4. Bank Agent.

Since a bank deposit is in reality the property of the depositor, a bank cannot be compelled to pay taxes on its deposits except as agent for the depositors. Commonwealth v. Bank of Commerce, 118 Ky. 547, 81 S.W. 679, 26 Ky. L. Rptr. 407, 1904 Ky. LEXIS 71 (Ky. 1904).

5. Taxing Determination Upheld.

KRS 132.030, 132.200, 136.300, 136.320 are not related to public service companies or to franchise; it is clear that the general assembly considered the types of property that should be exempt from the "catch-all" rate, and it did not include franchise of a public service company-although it identified seventeen other categories of property. Dayton Power & Light Co. v. Dep't of Revenue, 405 S.W.3d 527, 2012 Ky. App. LEXIS 232 (Ky. Ct. App. 2012).

Cited in:

First Industrial Plan v. Kentucky Board of Tax Appeals, 500 S.W.2d 70, 1973 Ky. LEXIS 203 (Ky. 1973); St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bank franchise and local deposit tax, KRS 136.500 to 136.575.

Kentucky Law Journal.

Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Eifler, Kentucky Taxation of Banking Institutions (1802-1996): An Historical Overview, 90 Ky. L.J. 567 (2001-02).

132.096. Exemption from state and local ad valorem tax of various classes of property. [Effective until January 1, 2028]

The following classes of property shall be exempt from state and local ad valorem taxes, including the county, city, school, and other taxing district in which it has a taxable situs:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his or her farm operations;

(2) Livestock, ratite birds, and domestic fowl;

(3) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. secs. 81a to 81u, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;

(4) Property that is certified as an alcohol production facility as defined in KRS 247.910;

(5) Computer software, except prewritten computer software as defined in KRS 139.010;

(6) Trucks, tractors, and buses used on routes or in systems that are partly within and partly outside this state, and that are subject to the fee imposed by KRS 136.188;

(7) Semitrailers and trailers, as defined in KRS 189.010, if the semitrailers or trailers are used on a route or in a system that is partly within and partly outside this state. Semitrailers or trailers required to be registered under KRS 186.655 that are used only in this state shall be subject to the ad valorem tax imposed by KRS 132.487;

(8) All intangible personal property, except intangible personal property assessed under KRS 132.030 or KRS Chapter 136. Nothing in this subsection shall prohibit local taxation of franchises of:

(a) Corporations;

(b) Financial institutions as provided in KRS 136.575; or

(c) Domestic life insurance companies;

(9) All real and personal property owned by another state or a political subdivision of another state that is used exclusively for public purposes, if a comparable exemption is provided in that state or political subdivision for property owned by the Commonwealth of Kentucky or its political subdivisions;

(10) Every fraternal benefit society organized or licensed under Subtitle 29 of KRS Chapter 304 that is a charitable and benevolent institution, and its funds shall be exempt from all state, county, district, city, and school taxes, other than taxes on real property and office equipment; and

(11)(a) Any bridge built by an adjoining state, by the government of the United States, or by any commission created by an Act of Congress, over a boundary line stream between this state and an adjoining state, which is:

1. Not operated for profit and, if it connects with a primary highway of this state, is declared to be public property used for public purposes; and

2. Exempt from taxation unless the adjoining state, or other public body constructing the bridge, taxes similar bridges built by this Commonwealth in like manner.

(b) The issuance of bonds for the purpose of amortizing the cost of construction of the bridges, as described in paragraph (a) of this subsection, shall not affect the tax exemption granted.

History.

2023 ch. 92, § 45, effective March 24, 2023; 2026 ch. 161, § 47, effective July 15, 2026.

132.096. Exemption from state and local ad valorem tax of various classes of property. [Effective January 1, 2028]

The following classes of property shall be exempt from state and local ad valorem taxes, including the

county, city, school, and other taxing district in which it has a taxable situs:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his or her farm operations;

(2) Livestock, ratite birds, and domestic fowl;

(3) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. secs. 81a to 81u, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;

(4) Property that is certified as an alcohol production facility as defined in KRS 247.910;

(5) Computer software, except prewritten computer software as defined in KRS 139.010;

(6) Trucks, tractors, and buses used on routes or in systems that are partly within and partly outside this state, and that are subject to the fee imposed by KRS 136.188;

(7) Semitrailers and trailers, as defined in KRS 189.010, if the semitrailers or trailers are used on a route or in a system that is partly within and partly outside this state. Semitrailers or trailers required to be registered under KRS 186.655 that are used only in this state shall be subject to the ad valorem tax imposed by KRS 132.487;

(8) All intangible personal property, except intangible personal property assessed under KRS 132.030 or KRS Chapter 136. Nothing in this subsection shall prohibit local taxation of franchises of:

(a) Corporations;

(b) Financial institutions as provided in KRS 136.575; or

(c) Domestic life insurance companies;

(9) All real and personal property owned by another state or a political subdivision of another state that is used exclusively for public purposes, if a comparable exemption is provided in that state or political subdivision for property owned by the Commonwealth of Kentucky or its political subdivisions;

(10) Every fraternal benefit society organized or licensed under Subtitle 29 of KRS Chapter 304 that is a charitable and benevolent institution, and its funds shall be exempt from all state, county, district, city, and school taxes, other than taxes on real property and office equipment;

(11)(a) Any bridge built by an adjoining state, by the government of the United States, or by any commission created by an Act of Congress, over a boundary line stream between this state and an adjoining state, which is:

1. Not operated for profit and, if it connects with a primary highway of this state, is declared to be public property used for public purposes; and

2. Exempt from taxation unless the adjoining state, or other public body constructing the bridge, taxes similar bridges built by this Commonwealth in like manner.

(b) The issuance of bonds for the purpose of amortizing the cost of construction of the bridges, as described in paragraph (a) of this subsection, shall not affect the tax exemption granted; and

(12) Street-legal special purpose vehicles, as defined in KRS 186.077, that are registered under KRS 186.020.

History.

2023 ch. 92, § 45, effective March 24, 2023; 2026 ch. 161, § 47, effective July 15, 2026; 2026 ch. 135, § 39, effective January 1, 2028.

Legislative Research Commission Notes.

1/1/2028). This statute was amended by 2026 Ky. Acts chs. 135 and 161, which do not appear to be in conflict and have been codified together.

132.130. Distilled spirits in bonded warehouses to be reported by proprietor or custodian.

(1) Effective January 1, 1967, every owner, proprietor, or custodian of a bonded warehouse or of premises under the control and supervision of the United States Internal Revenue Service, in which distilled spirits are stored shall between January 1 and February 1 of each year file with the Department of Revenue a report sworn to by him showing the quantity and kind of distilled spirits in the bonded warehouse or premises as of January 1 of that year; the quantity and kind of spirits on which the federal tax has been paid or is due; what distilled spirits have been removed from the bonded warehouse or premises for transfer in bond out of this state during the preceding twelve (12) months; the county, city, and taxing district in which such distilled spirits were certified for taxation; the fair cash value of the distilled spirits estimated at a price it would bring at a fair voluntary sale; and such other facts pertaining to the distilled spirits as the department may require.

(2) On January 1, May 1, and September 1, after the federal tax has been paid or becomes due, or after any of the distilled spirits are removed from the bonded warehouse or premises for transfer in bond out of this state, every owner, proprietor, or custodian of a bonded warehouse or premises in which distilled spirits are stored upon which taxes have accrued on assessments prior to January 1, 1967, shall file with the Department of Revenue and the county clerk, in which county the distilled spirits were at the time of the assessment, a statement, sworn to by him, showing the quantity of the distilled spirits on which the federal tax has been paid or is due; what distilled spirits have been removed from the bonded warehouse or premises or transferred in bond out of this state during the preceding four (4) months; the years in which such distilled spirits were assessed for taxation; and the county, city, or taxing district in which the distilled spirits were stored at the time of the assessment. At the same time, all taxes and interest on such distilled spirits due the state, county, or other taxing district shall be paid to the officers entitled to receive them. The report required by this section shall be made whether or not any distilled spirits are stored in the bonded warehouse or premises at the time the report is due.

History.

4105; Acts 1949 (Ex. Sess.), ch. 4, § 4 ½; 1966, ch. 254, § 1; 1978, ch. 384, § 258, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 316, effective July 13, 1990; 2005, ch. 85, § 178, effective June 20, 2005.

Compiler's Notes.

Former KRS 132.130 (4105: amend. Acts 1949 (Ex. Sess.), ch. 4, § 4 ½; 1966, ch. 254, § 1; 1978, ch. 384, § 258, effective

June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 316, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. Right to Tax.
4. Nonresident.
5. Involuntary Report Filing.
6. Unconstitutional Tax.

1. Constitutionality.

KRS 132.130 to 132.180 do not violate the federal Constitution. Thompson v. Kentucky, 209 U.S. 340, 28 S. Ct. 533, 52 L. Ed. 822, 1908 U.S. LEXIS 1708 (U.S. 1908).

KRS 132.130 to 132.180 are constitutional. Jetts Bros. Distilling Co. v. Carrollton, 178 Ky. 561, 199 S.W. 37, 1917 Ky. LEXIS 758 (Ky. 1917), writ of error dismissed, 252 U.S. 1, 40 S. Ct. 255, 64 L. Ed. 421, 1920 U.S. LEXIS 1654 (U.S. 1920).

2. Application.

Law providing for assessment and taxation of distilled spirits applied to any bonded warehouse in which whiskey was stored, whether owned by a distiller or by some other person, and whether or not located on the premises of a distiller. Louisville v. Louisville Public Warehouse Co., 107 Ky. 184, 53 S.W. 291, 21 Ky. L. Rptr. 867, 1899 Ky. LEXIS 156 (Ky. 1899) (decided under prior law).

3. Right to Tax.

The fact that whiskey in bond is under the control and supervision of the federal government, and that often a substantial portion of the whiskey is owned by nonresidents does not deprive Kentucky of the right to levy ad valorem taxes on such whiskey. Thompson v. Kentucky, 209 U.S. 340, 28 S. Ct. 533, 52 L. Ed. 822, 1908 U.S. LEXIS 1708 (U.S. 1908).

4. Nonresident.

Where nonresident owner of warehouse made report under this section, and made no objection to assessment of spirits in his warehouse, he could not maintain that he was beyond jurisdiction of Kentucky and therefore not subject to personal liability for tax on spirits. Greenbaum v. Commonwealth, 147 Ky. 450, 144 S.W. 45, 1912 Ky. LEXIS 245 (Ky. 1912).

5. Involuntary Report Filing.

The fact that there is a criminal penalty for violating this section does not make the filing of a report an involuntary act to the extent that a nonresident filing a report could maintain that he had not thereby subjected his person to the taxing jurisdiction of Kentucky. Greenbaum v. Commonwealth, 147 Ky. 450, 144 S.W. 45, 1912 Ky. LEXIS 245 (Ky. 1912).

6. Unconstitutional Tax.

A law which imposed a tax of 50¢ on a gallon of whiskey withdrawn from bond in this state or transferred in bond to another state, and which was designated a "license" tax on the business of owning and storing whiskey, was in fact a property tax and therefore violated Ky, Const., § 171. Dawson v. Kentucky Distilleries & Warehouse Co., 255 U.S. 288, 41 S. Ct. 272, 65 L. Ed. 638, 1921 U.S. LEXIS 1825 (U.S. 1921) (decided under prior law). See Craig v. E. H. Taylor, Jr. & Sons, 192 Ky. 36, 232 S.W. 395, 1921 Ky. LEXIS 28 (Ky. 1921).

Cited in:

Louisville v. Martin, 284 Ky. 490, 144 S.W.2d 1034, 1940 Ky. LEXIS 505 (Ky. 1940); Schenley Distillers, Inc. v. Franklin County Board of Education, 249 S.W.2d 810, 1952 Ky. LEXIS 877 (Ky. 1952).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

License and excise taxes on distilled spirits, KRS ch. 243.

132.140. Assessment of distilled spirits by department — Maximum tax rate on distilled spirits in revenue bond-financed warehouse and in barrels located in bonded warehouse or premises — Failure to report.

(1) The department shall fix the value of the distilled spirits for the purpose of taxation, assess the same at its fair cash value, estimated at the price it would bring at a fair voluntary sale, calculate the exempt portion of the property taxes, and keep a record of the valuations and assessments. The department shall immediately notify the owner or proprietor of the bonded warehouse or premises of the amount fixed, including the portion of the property tax exemption as calculated in subsection (3) of this section.

(2)(a) For purposes of this subsection only, "revenue bond-financed warehouse" means a bonded warehouse or premises containing distilled spirits:

1. Owned by a tax-exempt governmental unit or tax-exempt statutory authority under KRS Chapter 103;

2. The costs of which are financed by one (1) or more series of industrial revenue bonds under KRS Chapter 103 issued prior to January 1, 2024; and

3. Any portion of the costs of which remains financed by those industrial revenue bonds during any portion of the calendar year.

(b) Notwithstanding subsection (3) of this section, for the taxation of distilled spirits stored or aging in barrels in a revenue bond-financed warehouse:

1. One hundred percent (100%) of the assessed value of the distilled spirits shall be subject to the applicable state and local ad valorem taxes; and

2. The state and local tax rate that may be levied on the distilled spirits shall be the state and local tax rate for tax assessments made on January 1, 2023.

(c) Distilled spirits stored or aging in barrels in a revenue bond-financed warehouse shall be exempt from state and local ad valorem taxes for tax assessments made on or after January 1, 2043.

(3) For distilled spirits stored or aging in barrels located in a bonded warehouse or premises, the portion of the assessed value that is subject to state and local ad valorem taxes shall be as follows:

(a) Ninety-six percent (96%) of the assessed value for tax assessments made on January 1, 2026;

(b) Ninety-two percent (92%) of the assessed value for tax assessments made on January 1, 2027;

(c) Eighty-eight percent (88%) of the assessed value for tax assessments made on January 1, 2028;

(d) Eighty-four percent (84%) of the assessed value for tax assessments made on January 1, 2029;

(e) Eighty percent (80%) of the assessed value for tax assessments made on January 1, 2030;

(f) Seventy-six percent (76%) of the assessed value for tax assessments made on January 1, 2031;

(g) Seventy-two percent (72%) of the assessed value for tax assessments made on January 1, 2032;

(h) Sixty-eight percent (68%) of the assessed value for tax assessments made on January 1, 2033;

(i) Sixty-one percent (61%) of the assessed value for tax assessments made on January 1, 2034;

(j) Fifty-four percent (54%) of the assessed value for tax assessments made on January 1, 2035;

(k) Forty-four percent (44%) of the assessed value for tax assessments made on January 1, 2036;

(*l*) Thirty-eight percent (38%) of the assessed value for tax assessments made on January 1, 2037;

(m) Thirty-two percent (32%) of the assessed value for tax assessments made on January 1, 2038;

(n) Twenty-four percent (24%) of the assessed value for tax assessments made on January 1, 2039;

(o) Twenty percent (20%) of the assessed value for tax assessments made on January 1, 2040;

(p) Fifteen percent (15%) of the assessed value for tax assessments made on January 1, 2041; and

(q) Eight percent (8%) of the assessed value for tax assessments made on January 1, 2042.

(4) Distilled spirits stored or aging in barrels located in a bonded warehouse or premises shall be exempt from state and local ad valorem taxes for tax assessments made on or after January 1, 2043.

(5) If any owner, proprietor, or custodian of a bonded warehouse or premises fails to make the report required by KRS 132.130, the department shall ascertain the necessary facts required to be reported. For that purpose the department shall have access to the records of the owner, proprietor, or custodian; and the assessment shall be made and taxes collected thereon, with interest and penalties, as though regularly reported.

(6) The assessment made under (1) of this section shall be reviewed according to KRS 131.110.

History.

4106, 4107, 4113; Acts 1964, ch. 141, § 33; 1966, ch. 254, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 317, effective July 13, 1990; 2005, ch. 85, § 179, effective June 20, 2005; 2023 ch. 148, § 1, effective March 31, 2023; 2025 ch. 98, § 6, effective June 27, 2025.

Compiler's Notes.

Former KRS 132.140 (4106, 4107, 4113: amend. Acts 1964, ch. 141, § 33; 1966, ch. 254, § 2) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 317, effective July 13, 1990.

legislative Research Commission Notes.

(3/31/2023). 2023 Ky. Acts ch. 148, sec. 12, reads as follows: "Any settlement agreement between the Department of Revenue and any taxpayer having distilled spirits in a bonding warehouse, which is related to the ongoing assessment or collection of tax under Section 1 of this Act [this statute], shall not be considered null and void based upon the statutory changes in this Act but may be renegotiated by the parties to the settlement agreement and the renegotiated agreement shall be promulgated in an administrative regulation following the renegotiation process."

NOTES TO DECISIONS

Analysis

1. Discretion.
2. Estoppel.

1. Discretion.

Assessment of all whiskey in warehouse at flat or blanket rate regardless of age did not show arbitrary conduct or abuse of discretion by tax commission, it being common knowledge that warehouses have whiskeys of various ages and brands and that while whiskey increases in value with age some brands are of greater value than others, and fixing of average value for spirits of different ages is most feasible method of making assessment. Louisville v. Martin, 284 Ky. 490, 144 S.W.2d 1034, 1940 Ky. LEXIS 505 (Ky. 1940).

In making assessment tax commission has broad discretion and mere error in judgment as to fair cash value would not authorize court to substitute its judgment for that of commission. Louisville v. Martin, 284 Ky. 490, 144 S.W.2d 1034, 1940 Ky. LEXIS 505 (Ky. 1940).

2. Estoppel.

Where city through its assessor made an assessment of distilled spirits and tax based on it was paid, city was not estopped thereafter from repudiating such assessment and could levy additional taxes by reason of assessment made under this section which assessment was higher and which was the only assessment the city had a legal right to use. Jetts Bros. Distilling Co. v. Carrollton, 178 Ky. 561, 199 S.W. 37, 1917 Ky. LEXIS 758 (Ky. 1917), writ of error dismissed, 252 U.S. 1, 40 S. Ct. 255, 64 L. Ed. 421, 1920 U.S. LEXIS 1654 (U.S. 1920).

Cited in:

Reeves v. Jefferson County, 245 S.W.2d 606, 1951 Ky. LEXIS 1263 (Ky. 1951); Ballard County v. Citizens State Bank, 261 S.W.2d 420, 1953 Ky. LEXIS 1011 (Ky. 1953); Commonwealth ex rel. Allphin v. Heaven Hill Distilleries, Inc., 279 S.W.2d 11, 1955 Ky. LEXIS 501 (Ky. 1955).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Review of assessment, KRS 131.110.

132.150. Valuation of distilled spirits certified to county clerks — Local tax rate.

Immediately after the valuation of the distilled spirits has been finally fixed, the department shall certify to the county clerks of the respective counties the amount liable for county, city, or district taxation, and the date when the bonded period will expire on the spirits. The report shall be filed by the county clerk in his office, and certified by him to the proper collecting officer of the county, city, or taxing district for collection. The spirits, in addition to the tax for state purposes, shall be taxed for county, school, and city purposes at the prevailing rates of taxation on tangible personal property in the respective counties, school districts, and cities in which the spirits are stored, but the combined rate of taxation for city and school purposes in cities of the first class shall not exceed one dollar and twenty-five cents ($1.25) on each one hundred dollars ($100) of assessed value of the spirits.

History.

4108; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 318, effective July 13, 1990; 2005, ch. 85, § 180, effective June 20, 2005.

Compiler's Notes.

Former KRS 132.150 (4108) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 318, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Basis of Assessment.
2. Tax Rate.
3. Collector.
4. City Taxation.
5. Estoppel.

1. Basis of Assessment.

Cities must tax on basis of assessment made by the tax commission; they cannot make their own assessment. Jetts Bros. Distilling Co. v. Carrollton, 178 Ky. 561, 199 S.W. 37, 1917 Ky. LEXIS 758 (Ky. 1917), writ of error dismissed, 252 U.S. 1, 40 S. Ct. 255, 64 L. Ed. 421, 1920 U.S. LEXIS 1654 (U.S. 1920).

2. Tax Rate.

This section clearly provides that the prevailing tax rate applied to distilled spirits for all local purposes shall not be different from that levied on all tangible personalty. National Distillers Products Corp. v. Board of Education, 256 S.W.2d 481, 1952 Ky. LEXIS 1151 (Ky. 1952).

3. Collector.

The sheriff is the collector of the tax on distilled spirits. Anderson County v. Collins, 142 Ky. 394, 134 S.W. 463, 1911 Ky. LEXIS 203 (Ky. 1911).

Taxes due city of third class on distilled spirits in bond could be collected by action brought by city attorney, city not being restricted to procedure prescribed in subsection (4) of KRS 92.780 (repealed). Kraver v. Henderson, 155 Ky. 633, 160 S.W. 257, 1913 Ky. LEXIS 331 (Ky. 1913).

4. City Taxation.

Distilled spirits in bonded warehouses are subject to city taxation. Jetts Bros. Distilling Co. v. Carrollton, 178 Ky. 561, 199 S.W. 37, 1917 Ky. LEXIS 758 (Ky. 1917), writ of error dismissed, 252 U.S. 1, 40 S. Ct. 255, 64 L. Ed. 421, 1920 U.S. LEXIS 1654 (U.S. 1920).

5. Estoppel.

Where county clerk had neglected for several years to certify valuation of distilled spirits to tax collector of city in which warehouses were located, and city therefore had never attempted to collect taxes on spirits, city had right, upon discovering clerk's omission and obtaining certification for years in question, to maintain action to recover taxes for such years, no estoppel arising from its failure to make previous demand. Kraver v. Henderson, 155 Ky. 633, 160 S.W. 257, 1913 Ky. LEXIS 331 (Ky. 1913).

Where a city, for several years, levied and collected taxes on distilled spirits under an assessment made by the city assessor, instead of the one made by the tax commission, it was not estopped from subsequently bringing action to recover the additional taxes due for such years by reason of the fact that the tax commission assessment was higher than the city assessment as tax commissioner's assessment was the only assessment the city had a legal right to use. Jetts Bros. Distilling Co. v. Carrollton, 178 Ky. 561, 199 S.W. 37, 1917 Ky. LEXIS 758 (Ky. 1917), writ of error dismissed, 252 U.S. 1, 40 S. Ct. 255, 64 L. Ed. 421, 1920 U.S. LEXIS 1654 (U.S. 1920).

Cited in:

George v. Bernheim Distilling Co., 300 Ky. 179, 188 S.W.2d 321, 1945 Ky. LEXIS 519 (Ky. 1945); Reeves v. Jefferson County, 245 S.W.2d 606, 1951 Ky. LEXIS 1263 (Ky. 1951).

132.160. Taxes on distilled spirits and spirits on which federal taxes not paid, when due — Removal of spirits — Interest.

(1)(a) Taxes on distilled spirits that shall be assessed while in a bonded warehouse or premises as of January 1, 1967, and January 1 of each year thereafter, shall become due September 15 following the assessment date and shall become delinquent on January 1. Delinquent taxes on such distilled spirits shall be subject to the same penalties as provided by law for other tangible personal property, and the collecting officer shall have all the powers and duties to collect such delinquent taxes, penalties, and interest as provided by law for other tangible personal property in such taxing jurisdiction.

(b) Taxes and interest on distilled spirits assessed while in a bonded warehouse or premises for each year prior to January 1, 1967, on which the federal tax has not been paid, shall be due on January 1, May 1, and September 1 next after the federal tax becomes due or is paid, or after the distilled spirits are removed from the bonded warehouse or premises for transfer in bond out of this state. Provided, however, the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1966, and January 1, 1965, shall be due on or before January 15, 1968; the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1964, shall be due on or before January 15, 1969; the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1963, shall become due on or before January 15, 1970; the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1962, and all prior years shall become due on or before January 15, 1971. After July 1, 1970, any owner or proprietor, or custodian of a bonded warehouse or premises may elect to pay at one (1) time all accrued ad valorem taxes and interest. Such taxes and interest paid under this subsection shall be used for capital outlay by all local taxing jurisdictions.

(2) The taxes shall not become due by reason of a mere removal of the distilled spirits from one bonded warehouse or premises to another bonded warehouse or premises within this state, but in that event the owner or proprietor from whose bonded warehouse or premises the distilled spirits are moved shall execute a bond with good and sufficient surety conditioned upon a payment of all taxes that have accrued upon the distilled spirits prior to removal from the county, city, or taxing district from which the distilled spirits are removed. The bond shall be in an amount sufficient to protect the county, city, or taxing district and shall be approved by the county judge/executive for the county, the mayor for the city, the superintendent of any school district involved, and by the person whose duty it is to collect taxes for any other taxing district. Prior to removal of any distilled spirits, the owner or proprietor from whose bonded warehouse or premises they are to be removed shall give written notice of such intention to the county, city, or taxing district, addressed to the officer thereof abovementioned and stating the quantity of distilled spirits to be moved and the name and address of the bonded warehouse or premises to which they are to be taken. After the distilled spirits are

moved, the owner or proprietor shall notify the same officers of the county, city, or taxing district of the amount of accrued taxes on the distilled spirits, together with interest on the taxes. After any distilled spirits have once been moved as provided in this section and are moved again, all taxes that have accrued thereon up to the time of the second removal shall immediately become due and payable to any county, city, or taxing district to which any taxes have accrued.

(3) The taxes on each year's assessment shall bear interest at the tax interest rate as defined in KRS 131.010(6) until paid.

History.

4110; Acts 1949 (Ex. Sess.), ch. 4, § 5; 1966, ch. 254, § 3; 1982, ch. 452, § 5, effective July 1, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 319, effective July 13, 1990.

Compiler's Notes.

Former KRS 138.160 (4110: amend. Acts 1949 (Ex. Sess.), ch. 4, § 5; 1966, ch. 254, § 3; 1982, ch. 452, § 5, effective July 1, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 319, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Lien.
2. Interest.
3. Time of Collection.
4. Destruction.

1. Lien.

The state and county have a lien on the spirits for the taxes assessed against them. Blanton v. Kentucky Distilleries & Warehouse Co., 120 F. 318, 1902 U.S. App. LEXIS 5315 (C.C.D. Ky. 1902), aff'd, 149 F. 31, 1906 U.S. App. LEXIS 4413 (6th Cir. Ky. 1906) (decided under prior law).

The state has a lien upon the real estate owned by a warehouseman at the time of assessment of taxes against spirits in his warehouse, for the amount of such taxes, but it has no lien upon a parcel of land sold by the warehouseman before the assessment date. Commonwealth v. Walker, 80 S.W. 185, 25 Ky. L. Rptr. 2122 (1904) (decided under prior law).

2. Interest.

The taxes on each year's assessment bear interest not from the date they are due, but from the date the penalty for delinquency attaches to other ad valorem taxes assessed for the same year. The warehouseman may avoid paying interest by paying the taxes before that time, without waiting until the taxes become due. Commonwealth v. Rosenfield Bros. & Co., 118 Ky. 374, 80 S.W. 1178, 25 Ky. L. Rptr. 2229, 1904 Ky. LEXIS 52 (Ky. 1904) (decided under prior law).

The fact that the state taxing authorities had for several years construed the law as not requiring the payment of interest on annual assessments of bonded whiskey, and had permitted warehousemen to withdraw whiskey on payment of the principal of the tax without interest, did not prevent the state from subsequently collecting interest from the warehousemen, notwithstanding that the warehousemen, by reason of the withdrawal of the whiskey, had lost the lien given them by KRS 132.180 and therefore might never be able to recover the interest from the owners of the whiskey. Thompson v. Kentucky, 209 U.S. 340, 28 S. Ct. 533, 52 L. Ed. 822, 1908 U.S. LEXIS 1708 (U.S. 1908) (decided under prior law).

3. Time of Collection.

Tax on distilled spirits may be collected when spirits are removed from bond or federal tax is paid, notwithstanding that purpose for which tax was levied has been accomplished prior to that time, so long as purpose had not been accomplished at time assessments were made. Wathen v. Young, 103 Ky. 36, 44 S.W. 115, 19 Ky. L. Rptr. 1678, 1898 Ky. LEXIS 25 (Ky. 1898) (decided under prior law).

4. Destruction.

Warehouseman was liable for taxes on spirits in his warehouse destroyed by fire, the destruction being treated as a removal, and his liability included the taxes due on whiskey owned by others, for which he had issued warehouse receipts, as well as whiskey owned by him. Commonwealth ex rel. Sheriff of Woodford County v. Greenbaum, 139 Ky. 138, 129 S.W. 555, 1910 Ky. LEXIS 16 (Ky.), modified, 140 Ky. 221, 130 S.W. 982, 1910 Ky. LEXIS 193 (Ky. 1910) (decided under prior law).

Cited in:

National Distillers Products Corp. v. Board of Education, 256 S.W.2d 481, 1952 Ky. LEXIS 1151 (Ky. 1952); Patterson v. Board of Educ., 269 S.W.2d 739, 1954 Ky. LEXIS 1020 (Ky. 1954); Commonwealth ex rel. Allphin v. Heaven Hill Distilleries, Inc., 279 S.W.2d 11, 1955 Ky. LEXIS 501 (Ky. 1955); Caywood v. Stivers, 430 S.W.2d 327, 1968 Ky. LEXIS 398 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

Since KRS 45.150 (repealed) states that capital outlays may be authorized to alter, reconstruct, or repair any road, the surfacing of county roads with bituminous asphalt with gravel base would constitute "capital outlay." OAG 67-410.

"Capital outlay" may include: interior reconstruction or decorating of a permanent nature (which becomes a structural part of the building) of a courthouse building, or the construction or reconstruction of a permanent nature of roads and bridges. OAG 68-91.

Tax receipts used for road construction and reconstruction purposes do not violate Ky. Const., § 180. OAG 68-233.

132.190. Property subject to taxation — Situs.

(1) All property shall be subject to taxation, unless it is exempted by the Constitution or in the case of personal property unless it is exempted by the Constitution or by statute. Twenty-five (25) domestic fowl to each family shall be exempt from taxation for any purpose.

(2) All intangible personal property of corporations organized under the laws of this state, unless it has acquired a business situs without this state, shall be considered and estimated in fixing the valuation of corporate franchises.

(3) Property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale, except: real property qualifying for an assessment moratorium shall not have its fair cash value assessment changed while under the assessment moratorium unless the assessment moratorium expires or is otherwise canceled or revoked.

(4) Nothing contained in this section shall affect the liability for franchise taxes payable by corporations organized under the laws of this state.

History.

4019a-5, 4020, 4020a-1, 4023; Acts 1948, ch. 33; 1960, ch. 186, Art. I, § 3; 1966, ch. 255, § 127; 1982, ch. 141, § 58, effective July 1, 1982; 1982, ch. 327, § 6, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 320, effective July 13, 1990; 1996, ch. 254, § 25, effective July 15,

1996; 2000, ch. 274, § 1, effective July 14, 2000; 2005, ch. 168, § 56, effective January 1, 2006; 2019 ch. 196, § 6, effective June 27, 2019.

Compiler's Notes.

Former KRS 132.190 (4019a-5, 4020, 4020a-1, 4023: amend. Acts 1948, ch. 33; 1960, ch. 186, Art. I, § 3; 1966, ch. 255, § 127; 1982, ch. 141, § 58, effective July 1, 1982; 1982, ch. 327, § 6, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 320, effective July 13, 1990.

Section 5 of Acts 2000, ch. 274, effective July 14, 2000, read: "The provisions of Section 1 of this Act [this section] shall apply for tax assessments made on or after January 1, 2000."

NOTES TO DECISIONS

Analysis

1. In General.
2. Constitutionality.
3. Legislative Power.
4. Contemporaneous Construction.
5. County Tax.
6. Property.
7. —Lease.
8. —Personal.
9. —Intangible.
10. — —Debts.
11. — —Corporate.
12. — —Royalties.
13. —Tangible.
14. —Nonresident.
15. —Taxable.
16. —Exemption.
17. —Mineral Leases.
18. —Mineral and Surface Estates.
19. —Bank Deposits.
20. —Claim in Litigation.
21. —Railroad Rolling Stock.
22. —Nonresident Business.
23. —Interstate Commerce.
24. Residence.
25. —Personal Representative.
26. —Beneficial Owner.
27. Apportioning Taxes.
28. Situs.
29. —Determination.
30. —Property at Marketing Point.
31. —Temporary.
32. —Settlement of Estate.
33. —Railroad Rolling Stock.
34. —Bank Deposits.
35. —Patent.
36. —Ocean-going Steamship.
37. —Unequal.
38. Fair Cash Value.
39. —Reduction to Percentage of Value.
40. —Private Sale.
41. Taxation by Another State.

1. In General.

The oil production license tax imposed by KRS 137.120 is not a substitute for the ad valorem tax on oil leases, and could not constitutionally be such a substitute. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919).

2. Constitutionality.

The provision of this section that the situs of intangible personalty shall be at the residence of the real or beneficial owner and not at the residence of the fiduciary or agent having custody or possession, and the provision that a resident fiduciary or agent shall not be liable for taxes on intangible personalty held by him if the real or beneficial owner is a nonresident, do not violate Ky. Const., §§ 170, 171 or 172, although the effect of such provisions is to exempt some property which the legislature could make subject to taxation. Henderson v. Barrett's Ex'r, 152 Ky. 648, 153 S.W. 992, 1913 Ky. LEXIS 718 (Ky. 1913).

The assessment of one piece of property at its fair cash value, while other property is assessed at only a percentage of its value, violates the constitutional requirement of uniformity. Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347, 1918 Ky. LEXIS 473 (Ky. 1918).

The provision of this section that intangible personalty is subject to taxation in this state if the owner resides in this state is constitutional, and such property may be taxed in this state even though it is employed in business wholly in another state and is also taxed by such other state. Bingham's Adm'r v. Commonwealth, 199 Ky. 402, 251 S.W. 936, 1923 Ky. LEXIS 907 (Ky. 1923).

Intangible personalty beneficially owned by a resident of this state may constitutionally be taxed in this state, despite the fact that the management of such property and the possession of the paper evidences of the property have been entrusted to a nonresident agent or fiduciary for employment in a business conducted wholly outside of this state, and regardless of whether the management and possession were entrusted to the nonresident agent or trustee by the present beneficial owner or by a previous owner from whom the beneficial title was obtained by the present owner. Bingham's Adm'r v. Commonwealth, 199 Ky. 402, 251 S.W. 936, 1923 Ky. LEXIS 907 (Ky. 1923).

A stockholder in a corporation may constitutionally be required to pay taxes on his stock, even though the property of the corporation, including its franchise, is also taxed. Shinkle's Estate v. Kenton County Board of Sup'rs, 216 Ky. 59, 287 S.W. 209, 1926 Ky. LEXIS 829 (Ky. 1926). See Siler v. Board of Sup'rs, 221 Ky. 100, 298 S.W. 189, 1927 Ky. LEXIS 669 (Ky. 1927).

The state cannot constitutionally levy an ad valorem tax upon the accounts and notes receivable and bank deposits of a Kentucky corporation where the intangibles in question admittedly have a business situs in other states. Standard Oil Co. v. Commonwealth, 311 S.W.2d 372, 1957 Ky. LEXIS 8 (Ky. 1957).

3. Legislative Power.

The legislative taxing power extends to all kinds of intangible property, whether consisting of privileges, franchises, contracts or obligations. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

4. Contemporaneous Construction.

Failure of assessing officers to assess a particular class of property does not amount to a contemporaneous construction that such property is not subject to taxation. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911). See Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

5. County Tax.

Definite and specific legislation is not necessary in order to permit counties to levy ad valorem tax on personalty, for counties under their general taxing power to assess personalty for taxation could apportion or allocate to themselves a part or share of the value of an item or unit of personalty and thus they could levy such tax on towboats and barges of company where boats and barges had acquired tax situs in Kentucky and in the several counties. Reeves v. Island Creek Fuel &

Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

6. Property.

Only "property" is taxable, but anything constituting property that is not exempted from taxation is taxable. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

"Property" means everything of value that a person owns that is or may be the subject of sale or exchange or that when offered for sale will bring some price. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

Amounts due whiskey warehouseman for storage on whiskey against which negotiable warehouse receipts had been issued, which amounts were due when whiskey was withdrawn from warehouse, were "property" subject to taxation. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

Every character and species of property not exempted from taxation by the constitution is subject to taxation, although it is not specifically mentioned in the schedule prepared for the guidance of the assessor and taxpayer. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919).

In determining whether a thing is "property" within the meaning of the tax laws, the test is whether the thing has a cash value in some amount, and whether a bidder could be found who would pay a cash price, no matter how small, for it. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919).

The state may tax only such property as is subject to its sovereignty, and has a taxable situs in the state. Commonwealth by Mays v. Union P. R. Co., 214 Ky. 339, 283 S.W. 119, 1926 Ky. LEXIS 337 (Ky. 1926).

7. —Lease.

Ordinarily, real property held under a lease is not taxable in the hands of the lessee. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

An oil lease giving the exclusive right of development is taxable property in the hands of the lessee, even though no wells have been drilled and no oil discovered in paying quantities. Raydure v. Board of Sup'rs, 183 Ky. 84, 209 S.W. 19, 1919 Ky. LEXIS 469 (Ky. 1919).

Oil and gas leases and the rights conferred thereby are "property" and are subject to taxation at their fair cash value, estimated at the price they would bring at a fair voluntary sale. Estill County v. Superior Oil Corp., 210 Ky. 539, 276 S.W. 527, 1925 Ky. LEXIS 724 (Ky. 1925).

8. —Personal.

All personal property of persons residing in this state is taxable here except tangible personalty located and having a taxable situs outside of this state. Commonwealth v. Bingham's Adm'r, 188 Ky. 616, 223 S.W. 999, 1920 Ky. LEXIS 331 (Ky. 1920).

The idea of permanency, with respect to personal property, seems generally to be that for such property to acquire a taxable situs it must have a more or less permanent location as distinguished from a transient or temporary one; however, permanency in the sense that it must be fixed like real property is not essential to the establishment of the taxable situs, it seems to be sufficient that when, in the ordinary course of business, property is present and being used and employed with a consistent continuity and not spasmodically and temporarily. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

9. —Intangible.

The intangible personal property of a franchise-paying corporation is subject to assessment and taxation only as it constitutes part of the value of the franchise, and not separately. Commonwealth v. Cumberland Tel. & Tel. Co., 124 Ky. 535, 99 S.W. 604, 30 Ky. L. Rptr. 723, 1907 Ky. LEXIS 208 (Ky. 1907).

The Kentucky Constitution does not prohibit the taxing of intangible personal property owned by nonresidents, where such property has a situs in this state. Higgins v. Commonwealth, 126 Ky. 211, 103 S.W. 306, 31 Ky. L. Rptr. 653, 1907 Ky. LEXIS 44 (Ky. 1907).

The location of the paper evidences of the ownership of intangible property is of no importance in determining the situs of such property for purposes of taxation. Commonwealth v. Peebles, 134 Ky. 121, 119 S.W. 774, 1909 Ky. LEXIS 364 (Ky. 1909). See Commonwealth ex rel. Auditor's Agent v. Northwestern Mut. Life Ins. Co., 107 S.W. 233, 32 Ky. L. Rptr. 796 (1908).

Interest of seller in contract for sale of mining property was taxable property, notwithstanding that deed tendered pursuant to contract had not been accepted, no purchase notes had been executed, and contract was involved in litigation, such factors only affecting the value of the contract and not its taxability. Gish v. Shaver, 140 Ky. 647, 131 S.W. 515, 1910 Ky. LEXIS 344 (Ky. 1910).

Storage accounts due for whiskey in bonded warehouses against which warehouse receipts had been issued were taxable in Kentucky, notwithstanding that warehouse owner was a foreign corporation, where warehouses and main business office of corporation were in Kentucky. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

An account, though not due or collectible on the assessing date, may be the subject of assessment and taxation. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

Any enforceable, collectible demand that one person has against another, or against property upon which it is a lien and out of which it can be collected, is taxable property. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911). See Fayette Realty & Finance Co. v. Commonwealth, 229 Ky. 556, 17 S.W.2d 722, 1929 Ky. LEXIS 810 (Ky. 1929).

Choses in action, although representing debts owed by residents of this state, are not taxable here if the owner is a nonresident, unless they have acquired a business situs here. Commonwealth v. Prudential Life Ins. Co., 149 Ky. 380, 149 S.W. 836, 1912 Ky. LEXIS 633 (Ky. 1912).

Fact that bonds are secured by a mortgage on Kentucky property and their collection must be enforced in the Kentucky courts, if suit for that purpose is necessary, does not make them subject to taxation therein if owned by a nonresident. Commonwealth v. Consolidated Casualty Co., 170 Ky. 103, 185 S.W. 508, 1916 Ky. LEXIS 18 (Ky. 1916).

Intangible personalty has a situs for the purpose of taxation at the legal residence of the owner. Millett's Ex'r v. Commonwealth, 184 Ky. 193, 211 S.W. 562, 1919 Ky. LEXIS 39 (Ky. 1919).

Where a decedent was a resident of Kentucky at the time of her death, her intangible personalty was taxable in Kentucky in the hands of her personal representative, although she died before the assessment date and the personal representative was not appointed until after that date, and the paper evidences of ownership of the property were in a New York bank.

Commonwealth v. Bingham's Adm'r, 188 Ky. 616, 223 S.W. 999, 1920 Ky. LEXIS 331 (Ky. 1920).

The fact that substantially all stock of selling corporation was owned by manufacturing corporation organized after the selling corporation does not make selling corporation a mere agent so as to subject intangible receivables transferred by selling corporation to Kentucky ad valorem taxes. Board of Tax Supervisors v. Baldwin Piano Co., 296 Ky. 673, 178 S.W.2d 212, 1944 Ky. LEXIS 613 (Ky. 1944).

If intangibles are only temporarily in this state in the agent's or fiduciary's possession and he does not use them in the owner's business in Kentucky and has no control over them except to forward the intangibles to the owner within a reasonable time or in the ordinary course of business, then such intangibles do not become an integral part of the owner's business and are not localized in Kentucky and are not taxable. Board of Tax Supervisors v. Baldwin Piano Co., 296 Ky. 673, 178 S.W.2d 212, 1944 Ky. LEXIS 613 (Ky. 1944).

Intangible personal property has its legal situs at the domicile of its owner, except where the property is so employed in business in a state other than that of the owner's domicile as to acquire a business situs therein. Commonwealth ex rel. Luckett v. Radio Corp. of America, 299 Ky. 44, 184 S.W.2d 250, 1944 Ky. LEXIS 1029 (Ky. 1944).

While a railroad company did have the power to buy and sell securities to facilitate its corporate purposes as a common carrier, the company could not maintain that it was operating an independent and separate securities business having a business situs in New York to exempt it from ad valorem taxation in Kentucky. Commonwealth ex rel. Luckett v. Louisville & N. R. Co., 479 S.W.2d 15, 1972 Ky. LEXIS 286 (Ky.), cert. denied, 409 U.S. 949, 93 S. Ct. 269, 34 L. Ed. 2d 219, 1972 U.S. LEXIS 957 (U.S. 1972).

Foreign corporation, which conducted mercantile, manufacturing operations on leased premises in this state and did not offer evidence to show that its manufacturing operations in Kentucky were not local to Kentucky and independent of its manufacturing concerns at its domicile, failed to prove that the lease did not have a business situs within this State so as to avoid taxation of its intangible personal property, including a leasehold interest. Kentucky Dep't of Revenue v. Hobart Mfg. Co., 549 S.W.2d 297, 1977 Ky. LEXIS 408 (Ky. 1977).

10. — —Debts.

Debts due to a resident of Kentucky are taxable in Kentucky, notwithstanding that the debtor is a nonresident and the debt can be enforced only in the courts of the state in which the debtor resides. Fidelity & Columbia Trust Co. v. Louisville, 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145, 1917 U.S. LEXIS 1787 (U.S. 1917).

A debt secured by a lien is taxable, but the lien itself is not taxable. A lien given merely for the purpose of indemnity against future loss is not taxable. Fayette Realty & Finance Co. v. Commonwealth, 229 Ky. 556, 17 S.W.2d 722, 1929 Ky. LEXIS 810 (Ky. 1929).

11. — —Corporate.

Intangible property of a domestic corporation is taxable for local purposes only at the place where the corporation has its principal office in the state, and not at places where it has branch offices. Covington v. Standard Oil Co., 137 Ky. 837, 127 S.W. 480, 1910 Ky. LEXIS 636 (Ky. 1910).

12. — —Royalties.

Where lessee of oil rights in land sold his interest in the lease to another, but reserved as part of the consideration the right to one-sixteenth of the oil produced from the lease, the right so reserved was taxable property. Mt. Sterling Oil & Gas Co. v. Ratliff, 127 Ky. 1, 104 S.W. 993, 31 Ky. L. Rptr. 1229, 1907 Ky. LEXIS 109 (Ky. 1907).

Royalties due owner of real estate from oil lease were taxable against him, as against contention that the value of the royalty interest could not be separately assessed from the land itself. Commonwealth by Revenue Agent v. Garrett, 202 Ky. 548, 260 S.W. 379, 1924 Ky. LEXIS 766 (Ky. 1924).

13. —Tangible.

Where tangible personal property has been exported to a foreign country, the state cannot inquire into the motives of the exporter, or levy a tax on the property on the theory that the sole purpose of the exporter was to avoid state taxation and therefore the property never lost its taxable situs in this state. Commonwealth v. Selliger, 126 Ky. 66, 98 S.W. 1040, 30 Ky. L. Rptr. 451, 1907 Ky. LEXIS 11 (Ky. 1907), rev'd, 213 U.S. 200, 29 S. Ct. 449, 53 L. Ed. 761, 1909 U.S. LEXIS 1867 (U.S. 1909) (on other grounds).

Tangible personal property permanently located outside of this state is not taxable in this state, though the owner resides in this state. Commonwealth v. Selliger, 126 Ky. 66, 98 S.W. 1040, 30 Ky. L. Rptr. 451, 1907 Ky. LEXIS 11 (Ky. 1907), rev'd, 213 U.S. 200, 29 S. Ct. 449, 53 L. Ed. 761, 1909 U.S. LEXIS 1867 (U.S. 1909) (on other grounds).

Tangible personal property having merely a temporary location at a place other than the domicile of the owner is not taxable at such place. Hill v. Caldwell, 134 Ky. 99, 119 S.W. 749, 1909 Ky. LEXIS 357 (Ky. 1909). See Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789, 1918 Ky. LEXIS 601 (Ky. 1918); John Ross & Co. v. Board of Sup'rs, 186 Ky. 589, 217 S.W. 677, 1920 Ky. LEXIS 4 (Ky. 1920); Commonwealth by Mays v. Union P. R. Co., 214 Ky. 339, 283 S.W. 119, 1926 Ky. LEXIS 337 (Ky. 1926); Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

There is a presumption that all tangible personal property in this state on the assessment date is subject to assessment at the place where it is located, and the owner seeking to avoid assessment has the burden of proving that the property was located at such place for only a temporary purpose. John Ross & Co. v. Board of Sup'rs, 186 Ky. 589, 217 S.W. 677, 1920 Ky. LEXIS 4 (Ky. 1920).

Tangible personal property that has no permanent location, or is transient, is taxable at the domicile of the owner. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

The more modern rule is that the actual situs of visible tangible personal property, and not the domicile of the owner, determines the place of taxation, and that tangible personal property may be taxed in the state where it is physically located. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

If it is determined that tangible personal property has a taxable situs within the state it is irrelevant that the property is employed in interstate transportation either by water or by land. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

14. —Nonresident.

Tobacco which was purchased by a nonresident with the intention of shipping it to England in fulfillment of contracts made to deliver it to merchants there, but which was stored in warehouses in Kentucky on the assessment date and for several months prior and subsequent thereto awaiting the obtention of shipping facilities, had a taxable situs in Kentucky. John Ross & Co. v. Board of Sup'rs, 186 Ky. 589, 217 S.W. 677, 1920 Ky. LEXIS 4 (Ky. 1920).

Property sent into a state by a nonresident to be used or employed permanently there, must bear its fair share of the burden of taxation, although no one unit of such property is ever more than temporarily located within the taxing state,

thus where the specific and individual items of property used and employed in the state are not continuously the same, but are constantly changing according to the exigencies of business, the tax should be fixed by an appraisement and valuation of the average amount of the property thus habitually used and employed. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

15. —Taxable.

Warehouse receipts for whiskey are not taxable property, since they represent only a right of access to the warehoused goods. Selliger v. Kentucky, 213 U.S. 200, 29 S. Ct. 449, 53 L. Ed. 761, 1909 U.S. LEXIS 1867 (U.S. 1909). See Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

Where a refrigerator car company leased most of its cars to railroad companies for operation in other states, but operated some cars in Kentucky, those operated in Kentucky were taxable in Kentucky. Morrell Refrigerator Car Co. v. Commonwealth, 128 Ky. 447, 108 S.W. 926, 32 Ky. L. Rptr. 1383, 32 Ky. L. Rptr. 1389, 1908 Ky. LEXIS 86 (Ky. 1908).

The shares of federal joint stock land banks are taxable. Land v. Kentucky Joint Stock Land Bank, 279 Ky. 645, 131 S.W.2d 838, 1939 Ky. LEXIS 327 (Ky. 1939).

16. —Exemption.

Trade-marks are not taxable property. Commonwealth v. Kentucky Distilleries & Warehouse Co., 132 Ky. 521, 116 S.W. 766, 1909 Ky. LEXIS 130 (Ky. 1909).

Where a foreign corporation doing business in Kentucky does not receive sufficient income from its Kentucky business to defray expenses, money sent to Kentucky to pay expenses, and placed on deposit in Kentucky banks for that purpose, is not taxable in Kentucky. Hillman Land & Iron Co. v. Commonwealth, 148 Ky. 331, 146 S.W. 776, 1912 Ky. LEXIS 453 (Ky. 1912) (Ky. 1912).

Notes given to mutual insurance company by its policyholders, which merely secured the obligation of the policyholders to pay assessments, were not taxable property in the hands of the company, the liability on such notes being contingent. Kentucky & Louisville Mut. Ins. Co. v. Commonwealth, 153 Ky. 824, 156 S.W. 897, 1913 Ky. LEXIS 934 (Ky. 1913).

The fact that a foreign insurance company had an executive office in this state, and its officers resided in this state, did not make subject to taxation in this state real estate mortgage bonds purchased by the company with funds derived from sources other than business done in this state, such bonds being kept at its home office in West Virginia. Commonwealth v. Consolidated Casualty Co., 170 Ky. 103, 185 S.W. 508, 1916 Ky. LEXIS 18 (Ky. 1916).

An unliquidated claim for damages for breach of contract is not taxable property. Commonwealth by Byars v. Travelers' Ins. Mach. Co., 181 Ky. 596, 205 S.W. 561, 1918 Ky. LEXIS 550 (Ky. 1918).

The agreement of the purchaser of mortgaged property to pay the mortgage and to indemnify the vendor against loss has no taxable value. Fayette Realty & Finance Co. v. Commonwealth, 229 Ky. 556, 17 S.W.2d 722, 1929 Ky. LEXIS 810 (Ky. 1929).

Where a corporation whose sole asset consisted of a piece of real estate mortgaged the real estate to a trustee to secure the amounts due the holders of its preferred stock, and then conveyed the real estate to a person who assumed the mortgage and agreed to pay the purchase price to the holders of the preferred stock in retirement of such stock, the deed reserving a lien to the corporation to secure it against any liability to the holders of its preferred stock which should not be paid by the purchaser of the real estate, the obligation of the purchaser to the corporation, and the lien securing such obligation, had no taxable value. Fayette Realty & Finance Co. v. Commonwealth, 229 Ky. 556, 17 S.W.2d 722, 1929 Ky. LEXIS 810 (Ky. 1929).

The fact that excursion steamers were used in coastwise traffic would not exempt them from an excise tax on their admissions, since the tax is upon the business done and is not upon navigation. Shannon v. Streckfus Steamers, Inc., 279 Ky. 649, 131 S.W.2d 833, 1939 Ky. LEXIS 326 (Ky. 1939).

The fact that excursion steamers were registered in another state would not exempt them from the ordinary rules respecting taxation of property or its use wholly within this state. Shannon v. Streckfus Steamers, Inc., 279 Ky. 649, 131 S.W.2d 833, 1939 Ky. LEXIS 326 (Ky. 1939).

17. —Mineral Leases.

Oil or gas leases are to be listed by the lessee for taxation in the county in which the leased premises are located. Mt. Sterling Oil & Gas Co. v. Ratliff, 127 Ky. 1, 104 S.W. 993, 31 Ky. L. Rptr. 1229, 1907 Ky. LEXIS 109 (Ky. 1907). See Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

Oil or gas leases, under which all property rights to the oil or gas that may be found in paying quantities on the leased premises are vested in the lessee, are taxable to the lessee. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

The interest of the lessor in a coal mining lease is subject to taxation, notwithstanding that the interest of the lessee in the lease, and the money received by the lessor in the way of royalties, are also taxed. Stepp v. Pike County Board of Sup'rs, 194 Ky. 176, 238 S.W. 408, 1922 Ky. LEXIS 132 (Ky. 1922).

The ordinary mining lease with a reserved royalty in the lessor has the effect to create distinct items of property for purposes of taxation in both the lessor and the lessee as to the minerals or mineral rights as distinguished from the ownership of the surface, and the lessor is liable not only for the taxes on the surface of his land but likewise upon the mineral rights reserved or created in him by the lease. Moss v. Board of Sup'rs, 203 Ky. 813, 263 S.W. 368, 1924 Ky. LEXIS 1021 (Ky. 1924).

18. —Mineral and Surface Estates.

The owner of land in fee is liable for taxes on both the mineral and surface estates. Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377, 1932 Ky. LEXIS 687 (Ky. 1932).

19. —Bank Deposits.

Bank accounts in a Missouri bank, representing the profits of a business conducted in Missouri, were taxable in Kentucky where the owner of the accounts was a resident of Kentucky. Fidelity & Columbia Trust Co. v. Louisville, 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145, 1917 U.S. LEXIS 1787 (U.S. 1917).

20. —Claim in Litigation.

County bond was taxable property in hands of holder, notwithstanding that its value was questionable because of pending litigation in which county was seeking to avoid payment of bond. Boyd v. Commonwealth, 149 Ky. 656, 149 S.W. 914, 1912 Ky. LEXIS 666 (Ky. 1912).

21. —Railroad Rolling Stock.

Where foreign railroad company operated daily trains in and out of Kentucky, the average number of units of its rolling stock that were in Kentucky at all times were taxable in Kentucky. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

22. —Nonresident Business.

Where a nonresident established a business in Kentucky, which was managed by agents permanently residing in Kentucky, the bank accounts and business accounts of such

business were taxable in Kentucky. Commonwealth v. R. G. Dun & Co., 126 Ky. 108, 102 S.W. 859, 31 Ky. L. Rptr. 561, 1907 Ky. LEXIS 19 (Ky. 1907).

23. —Interstate Commerce.

Property in possession of common carriers in transit in interstate commerce is not taxable, at least as against the carrier. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

The fact that property is in the possession of a common carrier does not exempt it from taxation as against the owner, if the property is not moving in interstate commerce. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

Oil in the possession of a pipeline company, and in actual transit in interstate commerce, is not taxable against the company. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

24. Residence.

Where resident of Kentucky announced his intention to move to Texas and make his home there, and left Kentucky for that purpose a few days before the date as of which property is assessed in Kentucky, but did not reach Texas until several days after such date, he was a legal resident of Kentucky on the assessment date, his Texas residence not becoming effective until he reached that state. Boyd's Ex'r v. Commonwealth, 149 Ky. 764, 149 S.W. 1022, 1912 Ky. LEXIS 716 (Ky. 1912).

The committee of an incompetent has no power to change the legal residence of the incompetent from one state to another, although it may change his local residence. Sumrall's Committee v. Commonwealth, 162 Ky. 658, 172 S.W. 1057, 1915 Ky. LEXIS 129 (Ky. 1915).

Where a mental incompetent who had been a resident of Kentucky prior to being declared incompetent was sent by his committee to an asylum in another state for care and treatment, his residence for the purpose of taxation remained in Kentucky. Sumrall's Committee v. Commonwealth, 162 Ky. 658, 172 S.W. 1057, 1915 Ky. LEXIS 129 (Ky. 1915).

The fact that an individual purchased the controlling interest in a Kentucky corporation doing business in Louisville, maintained a personal checking account in a Louisville bank, and took a year's lease on an apartment in Louisville, did not constitute him a resident of Kentucky for the purpose of taxation, where the purchase of the corporation was for a speculative purpose only, the banking account and apartment were used only for his convenience during trips to Louisville, and he spent the greater portion of his time in Texas, where he had a permanent dwelling and which he always claimed as his home. Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789, 1918 Ky. LEXIS 601 (Ky. 1918).

The fact that a person who was originally a resident of Tennessee bought a farm in Kentucky, improved and furnished the house on the farm and resided there a substantial portion of his time, personally managed the farm, kept a bank account in a Kentucky bank, and occasionally referred to the farm as his "home," did not fix his legal residence in Kentucky, where he continued to maintain a home for his mother, brothers and sisters in Tennessee, where he kept his personal belongings, participated in church and lodge affairs, purchased a family cemetery lot there, and always claimed to be a resident of Tennessee. Millett's Ex'r v. Commonwealth, 184 Ky. 193, 211 S.W. 562, 1919 Ky. LEXIS 39 (Ky. 1919).

The fact that person who moved from Kentucky to Florida registered as a voter in Florida, listed his property for taxation there, and spent around half of his time there for a number of years, was sufficient to overcome the presumption, arising from the fact that he returned to Kentucky for several months each year, that he did not intend to establish a permanent residence in Florida. Utz v. Wallace's Adm'x, 249 Ky. 296, 60 S.W.2d 614, 1933 Ky. LEXIS 510 (Ky. 1933).

25. —Personal Representative.

In the case of the personal representative of an estate, his residence for the purpose of determining the situs of intangible property of the estate is in the state in which he was appointed as personal representative and to whose courts he is accountable, regardless of his actual residence as an individual. Commonwealth v. Peebles, 134 Ky. 121, 119 S.W. 774, 1909 Ky. LEXIS 364 (Ky. 1909).

26. —Beneficial Owner.

The provision of this section that a fiduciary or agent is not liable for taxes on intangible personalty held by him if the real or beneficial owner "resides" outside of this state refers to legal residence of the real or beneficial owner. Sumrall's Committee v. Commonwealth, 162 Ky. 658, 172 S.W. 1057, 1915 Ky. LEXIS 129 (Ky. 1915).

27. Apportioning Taxes.

Where foreign railroad company operated daily trains in and out of Kentucky, the average number or units of rolling stock was taxable according to its value, and not according to a percentage based on the ratio of mileage in Kentucky to out-of-state mileage. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

If the statutes imposing the tax provided a method of apportionment that method would be exclusive, but where the statutes did not prescribe any scheme for assessment, in taxing company's towboats and barges court must look to see if the mileage basis was a fair and just method of calculating the aliquot part of company's boats and barges which had acquired a tax situs in Kentucky and several taxing districts. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

Where company conducted its operations throughout the year with relatively few interruptions and its tugs and barges moved along a route of 162 miles 94.6 percent of which was in Kentucky and thus had a taxable situs in Kentucky, to apportion the taxes against the company's boats and barges in proportion to the length of the line operated and location in each state, county and other taxing jurisdictions was logical and fair. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

28. Situs.

Cattle temporarily in pasture in a county other than that in which the owner resided were not taxable in such county. Hill v. Caldwell, 134 Ky. 99, 119 S.W. 749, 1909 Ky. LEXIS 357 (Ky. 1909).

Where resident managers and agents of foreign life insurance company collected premiums from policies issued to Kentucky residents, and placed them in Kentucky banks to the account of the company, and the money in such accounts was promptly transferred to the home office of the company by drafts drawn by the home office on the Kentucky banks, the resident managers having no authority to draw on the accounts and their expenses being paid by money forwarded from the home office, such bank accounts did not have a taxable situs in Kentucky. Commonwealth v. Prudential Life Ins. Co., 149 Ky. 380, 149 S.W. 836, 1912 Ky. LEXIS 633 (Ky. 1912).

Ordinarily intangible personal property follows the person of the owner, but its situs may be fixed elsewhere by the legislature. The legislature has the power to fix the situs of intangible property held in trust at the residence of the trustee or at the residence of the beneficial owner. Henderson v. Barrett's Ex'r, 152 Ky. 648, 153 S.W. 992, 1913 Ky. LEXIS 718 (Ky. 1913).

Real estate mortgage bonds secured by real estate located in Kentucky, purchased by a foreign insurance company with funds not accumulated from business done in Kentucky, did not have a taxable situs in Kentucky. Commonwealth v. Consolidated Casualty Co., 170 Ky. 103, 185 S.W. 508, 1916 Ky. LEXIS 18 (Ky. 1916).

The situs of tangible personal property is at the place where it has a permanent physical location, regardless of the residence of the owner. Millett's Ex'r v. Commonwealth, 184 Ky. 193, 211 S.W. 562, 1919 Ky. LEXIS 39 (Ky. 1919). See Commonwealth ex rel. Alexander v. Haggin, 99 S.W. 906, 30 Ky. L. Rptr. 788 (1907).

Intangible property, including bank accounts, held and managed in another state by a trustee residing in that state, for the benefit of a beneficiary residing in Kentucky, had a taxable situs in Kentucky. Bingham's Adm'r v. Commonwealth, 199 Ky. 402, 251 S.W. 936, 1923 Ky. LEXIS 907 (Ky. 1923).

Tobacco in the hands of a cooperative marketing association was subject to city taxation in the city in which the tobacco was warehoused. Burley Tobacco Growers' Co-op. Asso. v. Carrollton, 208 Ky. 270, 270 S.W. 749, 1925 Ky. LEXIS 268 (Ky. 1925).

Chattels transiently present in the transactions of commercial operations do not have a taxable situs within this state. Commonwealth by Mays v. Union P. R. Co., 214 Ky. 339, 283 S.W. 119, 1926 Ky. LEXIS 337 (Ky. 1926).

Oil in the possession of a pipeline company, awaiting shipment, was taxable at the domicile of the owner. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

Interest of Kentucky resident in assets of partnership engaged in operations on New York Stock Exchange was not taxable in Kentucky, where partnership accounts were carried with brokers in New York, securities traded in were carried in name of New York brokers, and trading was almost universally carried on in person by the Kentucky partner at the brokerage offices in New York, he spending more time there than in Kentucky. Commonwealth v. Madden's Ex'r, 265 Ky. 684, 97 S.W.2d 561, 1936 Ky. LEXIS 551 (Ky. 1936).

Life estate in trust created in another state for Kentucky resident who was to receive the income therefrom for life had its situs in Kentucky and said resident was required to list and pay taxes thereon. Commonwealth ex rel. Martin v. Sutcliffe, 283 Ky. 274, 140 S.W.2d 1028, 1940 Ky. LEXIS 310 (Ky. 1940).

Where boats and barges of company in carrying out business of company distributing annually approximately 500,000 tons of coal along a 162-mile route, 94.6 percent of which was within Kentucky, and the tugs and the barges, an indispensable part of the whole as designed by the company in the operation of its business, were as necessarily present in Kentucky as the loading and unloading facilities that had their situs in Ohio and West Virginia respectively, this continuity and consistency of presence in Kentucky attached such permanency as to take it out of the area of mere transiency or a sporadic and temporary presence and the parts of the whole received protection in Kentucky and thus they had acquired tax situs in Kentucky. Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky.), cert. denied, 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625, 1950 U.S. LEXIS 1535 (U.S. 1950).

Where a Kentucky resident entered into a trust agreement with a Georgia bank whereby she retained the right to control all purchases and sales which the trustee might make and to amend or revoke the trust agreement at any time, the trust did not become an integral portion of the business activity of Georgia so that it became identified with the economic structure of that state and was not exempt from taxation under the provisions of this statute. Kentucky Dep't of Revenue v. Bomar, 486 S.W.2d 532, 1972 Ky. LEXIS 111 (Ky. 1972).

29. —Determination.

The situs of intangible personal property for purposes of taxation depends altogether on legislative enactment or judicial construction. Higgins v. Commonwealth, 126 Ky. 211, 103 S.W. 306, 31 Ky. L. Rptr. 653, 1907 Ky. LEXIS 44 (Ky. 1907).

The situs of intangible personalty may be fixed by the legislature at a place other than the residence of the owner, but until the legislature chooses to exercise that power such property is taxable only at the residence of the owner. Commonwealth ex rel. Auditor's Agent v. Northwestern Mut. Life Ins. Co., 107 S.W. 233, 32 Ky. L. Rptr. 796 (1908).

The Legislature has the power to fix the taxable situs of intangible personal property, if it does not act arbitrarily in so doing. Exemption from taxation of intangible personal property owned by nonresidents did not violate Ky. Const., § 172. Commonwealth v. Sun Life Assurance Co., 294 Ky. 19, 170 S.W.2d 890, 1943 Ky. LEXIS 376 (Ky. 1943).

30. —Property at Marketing Point.

Tobacco in warehouses of a tobacco processing and marketing corporation was taxable in the city in which the warehouses were situated, unless there for only a temporary purpose, regardless of the residence of the owners of the tobacco, so long as the owners had not listed and paid taxes on the tobacco at the place of their residence. Paris v. Burley Tobacco Soc., 154 Ky. 320, 157 S.W. 705, 1913 Ky. LEXIS 78 (Ky. 1913).

31. —Temporary.

An automobile and some furniture, kept in Louisville by a resident of Texas for his comfort and convenience when temporarily sojourning in Louisville, did not have a taxable situs in Kentucky. Semple v. Commonwealth, 181 Ky. 675, 205 S.W. 789, 1918 Ky. LEXIS 601 (Ky. 1918).

Property in transit, whether it is actually moving or has come to rest temporarily within the limits of a taxing district, does not acquire a taxable situs in such district. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

32. —Settlement of Estate.

When a decedent's estate is in the hands of a personal representative for settlement and distribution, and before the estate has been or should have been settled or distributed, the personal representative should list the estate for taxation and pay taxes thereon in the state in which he qualified as personal representative, regardless of the residence of the beneficiaries of the estate and without reference to the extent of the debts or demands against the estate. Commonwealth v. Camden, 142 Ky. 365, 134 S.W. 914, 1911 Ky. LEXIS 242 (Ky. 1911).

33. —Railroad Rolling Stock.

Railroad freight cars owned by foreign railroad companies which neither owned nor operated any lines in Kentucky, but which cars were operated by other railroads in Kentucky from time to time under the customary per diem arrangement between railroads for the exchange of freight cars, did not have a taxable situs in Kentucky. Commonwealth by Mays v. Union P. R. Co., 214 Ky. 339, 283 S.W. 119, 1926 Ky. LEXIS 337 (Ky. 1926).

34. —Bank Deposits.

Bank deposits owned by nonresidents are not taxable in Kentucky unless the money represented by the deposits has a business situs in Kentucky arising from the use of the money in permanent business operations in Kentucky. Hillman Land & Iron Co. v. Commonwealth, 148 Ky. 331, 146 S.W. 776, 1912 Ky. LEXIS 453 (Ky. 1912) (Ky. 1912).

Money on deposit in a New York bank to the joint credit of a Kentucky resident and her New York agent, which agent had the power to draw on the account and used the money to make

investments for the Kentucky resident, had a taxable situs in Kentucky. Bingham's Adm'r v. Commonwealth, 199 Ky. 402, 251 S.W. 936, 1923 Ky. LEXIS 907 (Ky. 1923).

35. —Patent.

A patent right is an intangible, incorporeal right granted by the federal government and is as broad as the government's jurisdiction, but it has no situs apart from the domicile of the owner. Commonwealth ex rel. Luckett v. Radio Corp. of America, 299 Ky. 44, 184 S.W.2d 250, 1944 Ky. LEXIS 1029 (Ky. 1944).

Where Delaware corporation, holding a patent on radio tubes, entered into a contract in New York with another Delaware corporation, which had its principal office and manufacturing plant in Kentucky, under which contract the manufacturing corporation was licensed to manufacture tubes under the patent in consideration of the payment of royalties, neither the debt for royalties due under the contract, nor the patent right, acquired a business situs in Kentucky. Commonwealth ex rel. Luckett v. Radio Corp. of America, 299 Ky. 44, 184 S.W.2d 250, 1944 Ky. LEXIS 1029 (Ky. 1944).

36. —Ocean-going Steamship.

Ocean-going steamships plying between New York and Havana, New York and New Orleans, and New York and Galveston were held not to have a permanent situs at either of such places, notwithstanding that they were enrolled at the port of New York, and they were therefore taxable at the domicile of the owner in Kentucky. Southern Pacific Co. v. Kentucky, 222 U.S. 63, 32 S. Ct. 13, 56 L. Ed. 96, 1911 U.S. LEXIS 1857 (U.S. 1911).

Evidence consisting of federal census reports, reports of state board of equalization, reports of state tax commissioner (now property valuation administrator), and affidavits of individuals from different counties, was sufficient to support finding that property was being intentionally, systematically and notoriously assessed at only a percentage of its value, and to overcome presumption that assessing officers did their duty. Louisville & N. R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291, 1917 U.S. LEXIS 1661 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984).

Assessment of the franchise of a public service corporation at its full value may be enjoined if other intangible property is being uniformly assessed by local assessing officers at only a percentage of its value. Louisville & N. R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291, 1917 U.S. LEXIS 1661 (1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (1984). See Greene v. Louisville & I. R. Co., 244 U.S. 499, 37 S. Ct. 673, 61 L. Ed. 1280, 1917 U.S. LEXIS 1660 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984).

Collection of state taxes based upon an assessment at full value may be enjoined in a suit in federal court against the state assessing and collecting officers, where other property is being uniformly assessed at only a percentage of its value. Louisville & N. R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291, 1917 U.S. LEXIS 1661 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984).

Where the lease provides that a portion of the oil or gas shall be received by the lessor as royalty, the value of such portion is to be deducted in fixing the value of the lease. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

Amounts due whiskey warehouseman for storage of whiskey had an ascertainable market value, notwithstanding that amounts were not payable at time of assessment and persons owning whiskey might elect to abandon it. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

In assessing mining property for taxation the lack of a willing purchaser does not necessarily import that the property has no taxable value at that time for in such cases other factors such as net revenue, dividends, or profit that may be realized upon the operation of a going mine, its prospects of continuing such operation and the prospective length of time thereof, the material that had to be mined, and the physical condition of the property may be looked to for the purpose of fixing a correct market value for valuation. Carr's Fork Coal Co. v. Perry County Board of Supervisors, 263 Ky. 642, 93 S.W.2d 359, 1936 Ky. LEXIS 232 (Ky. 1936). See Letcher County Fiscal Court v. State Tax Com., 211 Ky. 609, 277 S.W. 988, 1925 Ky. LEXIS 933 (Ky. 1925); Board of Sup'rs v. Swift Coal & Timber Co., 238 Ky. 21, 36 S.W.2d 664, 1931 Ky. LEXIS 176 (Ky. 1931); Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377, 1932 Ky. LEXIS 687 (Ky. 1932); Atlantic States Coal Corp. v. Letcher County, 246 Ky. 549, 55 S.W.2d 408, 1932 Ky. LEXIS 810 (Ky. 1932); Kenmont Coal Co. v. Perry County Board of Sup'rs, 262 Ky. 764, 91 S.W.2d 47, 1936 Ky. LEXIS 95 (Ky. 1936).

In the case of a going plant, it is not proper to value each separate item of property constituting a part of the plant at the price it would bring if it were sold separately, and then add the separate values together. The plant should be treated as a unit, and the parts composing the unit should be assessed at the value they have as parts of the unit. Carr's Fork Coal Co. v. Perry County Board of Supervisors, 263 Ky. 642, 93 S.W.2d 359, 1936 Ky. LEXIS 232 (Ky. 1936).

Assessed valuation of property was fixed by court at 60 percent of fair cash value, where county and city had adopted that standard for assessing property, since all taxpayers must be treated alike. Prestonsburg Water Co. v. Prestonsburg Board of Sup'rs, 279 Ky. 551, 131 S.W.2d 451, 1939 Ky. LEXIS 305 (Ky. 1939), overruled, Department of Revenue ex rel. Luckett v. Allied Drum Service, Inc., 561 S.W.2d 323, 1978 Ky. LEXIS 318 (Ky. 1978).

37. —Unequal.

Taxpayer could not obtain relief from assessment of his intangible property at its full value without showing that other intangible property was being uniformly and knowingly assessed throughout the state at only a percentage of its value. It was not enough to show that tangible property, or other intangibles in the same county, was being assessed at a percentage of its value. Siler v. Board of Sup'rs, 221 Ky. 100, 298 S.W. 189, 1927 Ky. LEXIS 669 (Ky. 1927).

In order to obtain relief from an assessment of his property at its full value, the taxpayer must show that there has been an intentional assessment of other property in the same class at only a percentage of its value. Siler v. Board of Sup'rs, 221 Ky. 100, 298 S.W. 189, 1927 Ky. LEXIS 669 (Ky. 1927).

38. Fair Cash Value.

In determining the fair cash value of a manufacturing plant, such as a distillery, where it is difficult to determine the sale value because of the infrequency of sales of that kind of property, the limited number of persons who have the financial ability to become purchasers, the small number of such plants in comparison with other species of property, and the dissimilarity in size and equipment of the various plants, the assessors must take into consideration the conditions and circumstances that surround the particular case, such as the extent and location of the property, its accessibility to market, transportation facilities, cost of equipment and construction, and its adaptability for the purpose. Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347, 1918 Ky. LEXIS 473 (Ky. 1918).

The price that a piece of property would bring at a forced or involuntary sale is not to be considered as a basis for determining the fair cash value of the property, but the willingness of the owner to sell, the presence of a person desiring to buy, and the contemplation of a sale being made, must all be considered. Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347, 1918 Ky. LEXIS 473 (Ky. 1918).

Property is taxable if it has a cash value. It has value if at a fair, voluntary sale it would bring anything. Estill County v. Superior Oil Corp., 210 Ky. 539, 276 S.W. 527, 1925 Ky. LEXIS 724 (Ky. 1925).

It was error to fix value of oil leases at a percentage of the gross income from the leases for the taxing period; the only permissible basis of valuation is the price the leases would bring at a fair, voluntary sale. Estill County v. Superior Oil Corp., 210 Ky. 539, 276 S.W. 527, 1925 Ky. LEXIS 724 (Ky. 1925).

The value of property for tax purposes is its fair cash value as of the assessment date, and not what it was worth in the past or might be worth in the future. Atlantic States Coal Corp. v. Letcher County, 246 Ky. 549, 55 S.W.2d 408, 1932 Ky. LEXIS 810 (Ky. 1932).

The fact that a willing purchaser is not obtainable at the time of assessment does not import that the property has no taxable value. In such a case, the net revenue that may be realized from the operation of the property, the prospects of continued operation, its physical condition, and the value of the various components of which the property consists, may be considered in fixing the value. Carr's Fork Coal Co. v. Perry County Board of Supervisors, 263 Ky. 642, 93 S.W.2d 359, 1936 Ky. LEXIS 232 (Ky. 1936).

Amount paid for purchase of property and amount expended in improvements are not a proper criterion in fixing fair value, but are elements to be considered. Prestonsburg Water Co. v. Prestonsburg Board of Sup'rs, 279 Ky. 551, 131 S.W.2d 451, 1939 Ky. LEXIS 305 (Ky. 1939), overruled, Department of Revenue ex rel. Luckett v. Allied Drum Service, Inc., 561 S.W.2d 323, 1978 Ky. LEXIS 318 (Ky. 1978).

It is the legislative intent that all property be assessed at its fair cash value, which should be the controlling standard to which all other considerations must yield. Rogers v. Pike County Bd. of Sup'rs., 288 Ky. 742, 157 S.W.2d 346, 1941 Ky. LEXIS 199 (Ky. 1941).

The value, for taxation purposes, of a life estate paying the holder $900 a month should be determined by mortality tables and the fact that such are used to arrive at value rather than speculative opinion evidence as to the cash value such an estate estimated at the price it would bring at a fair voluntary sale does not violate the spirit or intent of this section. Evans v. Boyle County Board of Sup'rs, 296 Ky. 353, 177 S.W.2d 137, 1944 Ky. LEXIS 538 (Ky. 1944).

39. —Reduction to Percentage of Value.

Where the circuit court, on appeal from the county board of supervisors, found that the fair cash value of the property involved was a certain sum, but it was established by proof that all other property in the county was uniformly assessed at only 60 percent of its value, it was the duty of the court to fix the value of the property in question at only 60 percent of its actual value, thus affording the only practical remedy available. Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347, 1918 Ky. LEXIS 473 (Ky. 1918).

40. —Private Sale.

Where land was sold at private sale shortly before the assessment date, and there was nothing to indicate that the sale was not a fair, voluntary sale, the price paid for the land should have been considered as the fair cash value of the land for tax purposes. Westova Gas Co. v. Knott County Board of Sup'rs, 246 Ky. 334, 55 S.W.2d 21, 1932 Ky. LEXIS 764 (Ky. 1932).

41. Taxation by Another State.

The fact that property is taxed in one state does not necessarily exclude such property from taxation in another state. Fidelity & Columbia Trust Co. v. Louisville, 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145, 1917 U.S. LEXIS 1787 (U.S. 1917).

Cited in:

Planters Bank & Trust Co. v. Hopkinsville, 289 Ky. 451, 159 S.W.2d 25, 1942 Ky. LEXIS 584 (Ky. 1942); County Board of Tax Sup'rs v. Helm, 297 Ky. 803, 181 S.W.2d 452, 1944 Ky. LEXIS 832 (Ky. 1944); Atlantic C. L. R. Co. v. Commonwealth, 302 Ky. 36, 193 S.W.2d 749, 1946 Ky. LEXIS 597 (Ky. 1946); Reeves v. Island Creek Fuel & Transp. Co., 313 Ky. 400, 230 S.W.2d 924, 1950 Ky. LEXIS 859 (Ky. 1950); Kentucky Tax Com. v. Jefferson Motel, Inc., 387 S.W.2d 293, 1965 Ky. LEXIS 465 (Ky. 1965); Koehler v. Commonwealth, 432 S.W.2d 397, 1968 Ky. LEXIS 325 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

The fact that the equipment of a West Virginia contractor doing a job in Kentucky could be assessed for taxation in both states does not constitute prohibited double taxation. OAG 61-975.

Stock in a bank which is domiciled in Tennessee is an intangible and is taxable under this section irrespective of the fact that the owner may also have to pay a tax on the same stock in Tennessee. OAG 63-216.

Property held in trust for the DAR, the Glasgow Garden Club, the Glasgow Business and Professional Women's Club, and the Glasgow Matinee Music Club, is assessable under this section since the beneficial owners of the property do not qualify for an exemption as institutions of purely public charity under Ky. Const., § 170. OAG 66-122.

A mortgage and deed of trust secured by real estate and other tangible property is not a property interest subject to ad valorem property tax under subsection (2) of KRS 132.020 nor intangible property subject to tax under this section. OAG 74-352.

There is a presumption that all tangible personal property, such as motor vehicles, in the city on the assessment date is subject to assessment for taxes by the city, and the owner who seeks to avoid the assessment has the burden of proving that the property is located in the city for only a temporary purpose and was listed for taxes at some other place. OAG 74-369.

If the property currently used for parking purposes by a church group is in excess of the applicable acre limitation, any excess is not exempt from taxation under the laws of this Commonwealth as long as it is not used also for worship services or as a parsonage. OAG 78-180, 1978 Ky. AG LEXIS 538.

Under this section, all real and personal property within this state is subject to taxation, unless exempted by the Constitution and while household goods of a person used in his home are exempt from taxation, under § 170 of the Kentucky Constitution, the personal property of the taxpayer used in his business or profession is not exempt, which means a lawyer would have to list for taxes the personal tangible property in his law office, which could include law library, bookcases, typewriters, filing cabinets and other items of equipment used in that office. OAG 79-140, 1979 Ky. AG LEXIS 481.

In connection with transfer of notes secured by mortgages on single-family dwellings within this state, where neither the corporation owning and holding the notes nor the corporation proposing to purchase them was a resident of Kentucky, the secured notes would not be subject to state or local ad valorem taxation. OAG 82-264, 1982 Ky. AG LEXIS 374.

Where the property to be assessed has recently been sold and thus the assessment is being made not on the basis of an estimate but on the basis of the actual consideration recently paid, no deduction should be made for broker's commissions, financing costs or other similar items. OAG 83-13, 1983 Ky. AG LEXIS 484.

The tax assessor is not restricted to one specific method for assessing real property so long as the assessment is fair and equitable. OAG 83-13, 1983 Ky. AG LEXIS 484.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Generally, Ky. Const., §§ 3, 170.

Airport revenue bonds, KRS 183.650.

Airports, city and county, KRS 97.252.

Bonds of housing authorities, KRS 80.560.

Bonds of public road districts, KRS 184.260.

Bonds of state, counties, cities and taxing districts, Ky. Const., § 171.

Classification of property for taxation, referendum, Ky. Const., § 171.

Corporate property to pay same rate as individual property, Ky. Const., § 174.

Electric and water plant of a third-class city may pay tax equivalent, KRS 96.179.

Parks, recreational projects, memorials and federal areas, KRS 97.130, 97.160, 97.252, 97.670, 97.750.

Power to tax, general assembly may confer on local authorities, Ky. Const., § 181.

Power to tax property, surrender of, Ky. Const., § 175.

Property exempt from taxation:

School building bonds, KRS 162.190, 162.300.

Sewer district for city of first class and surrounding area, property and bonds of, KRS 76.210.

Special and local legislation regarding taxation not permitted, Ky. Const., § 59(15).

State fair board bonds, KRS 247.180.

State teachers college building bonds, KRS 162.350.

State warrants, KRS 41.200.

Teacher retirement system funds and rights, KRS 161.700.

Turnpikes, properties of and bonds for, KRS 177.510.

Uniformity of taxes on property required, Ky. Const., § 171.

Value of property for taxation, how estimated, tax to be based on value, Ky. Const., §§ 172, 174.

Kentucky Law Journal.

Combs, Taxation — Constitutionality of Ad Valorem Taxes on Annuities Arising Out of Insurance Policies in Kentucky, 34 Ky. L.J. 316 (1946).

Muehlenkamp, Remedies for Disproportionate Tax Assessment in Kentucky, 36 Ky. L.J. 401 (1948).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

132.191. Valid valuation methods — Minimum applicable appraisal standards — Property valuation of multi-unit rental housing subject to government restriction on use.

(1) The General Assembly recognizes that Section 172 of the Constitution of Kentucky requires all property, not exempted from taxation by the Constitution, to be assessed at one hundred percent (100%) of the fair cash value, estimated at the price the property would bring at a fair voluntary sale, and that it is the responsibility of the property valuation administrator to value property in accordance with the Constitution.

(2) The General Assembly further recognizes that property valuation may be determined using a variety of valid valuation methods, including but not limited to:

(a) A cost approach, which is a method of appraisal in which the estimated value of the land is combined with the current depreciated reproduction or replacement cost of improvements on the land;

(b) An income approach, which is a method of appraisal based on estimating the present value of future benefits arising from the ownership of the property;

(c) A sales comparison approach, which is a method of appraisal based on a comparison of the property with similar properties sold in the recent past;

(d) A subdivision development approach, which is a method of appraisal of raw land:

1. When subdivision and development are the highest and best use of the parcel of raw land being appraised; and

2. When all direct and indirect costs and entrepreneurial incentives are deducted from the estimated anticipated gross sales price of the finished lots, and the resultant net sales proceeds are then discounted to present value at a market-derived rate over the development and absorption period; and

(e) The approaches listed in subsection (5) of this section for multi-unit rental housing that is subject to government restriction on use.

(3) The valuation of a residential, commercial, or industrial tract development shall meet the minimum applicable appraisal standards established by:

(a) The Kentucky Department of Revenue, as stated in its Guidelines for Assessment of Vacant Lots, dated March 26, 2008; or

(b) The International Association of Assessing Officers.

(4) To be appraised using the subdivision development approach, a subdivision development shall consist of five (5) or more units. The appraisal of the development shall reflect deductions and discounts for:

(a) Holding costs, including interest and maintenance;

(b) Marketing costs, including commissions and advertising; and

(c) Entrepreneurial profit.

(5)(a) The property valuation of multi-unit rental housing that is subject to government restriction on use may be determined:

1.a. Through an annual net operating income approach to value that uses actual income and stabilized operating expenses that are based on the actual history of the property, when available, and a capitalization rate.

b. The methodology employed in the projection of income, expenses, and capitalization rate used shall be consistent with the Uniform Standards of Professional Appraisal Practice.

c. The capitalization rate shall be:

i. Based on the risks associated with multi-unit rental housing subject to government restriction on use, including diminished ownership control; income generating potential;

liquidity; the condition of the property; the class of the property; and the property's location and size;

ii. Equal to or greater than the capitalization rate used for valuing multi-unit rental housing that is not subject to government restriction on use; and

iii. In the range of fifty (50) to one hundred fifty (150) basis points above the most recent quarterly survey of the national average cap rates of multifamily properties published by realtyrates.com or a successor organization.

d. The department shall publish the capitalization rate range for the property valuation administrators to use on its website at the beginning of each year; or

2. By adjusting the unrestricted market value of the multi-unit rental housing, computed without regard to any government restriction on use applicable to the multi-unit rental housing, based on the ratio of the average annual rent of those units of the property that are subject to government restriction on use to the average annual rent of comparable multi-unit rental housing that is not subject to government restriction on use.

(b) Income tax credits received under Section 42 of the Internal Revenue Code or from any state or federal program shall not be included in the methods used under paragraph (a) of this subsection in determining the income attributable to the multi-unit rental housing or in any separate intangible assessment.

(c)1. The owner of multi-unit rental housing shall:

a. Notify the property valuation administrator if:

i. The property is subject to government restriction on use;

ii. The property is no longer subject to government restriction on use; or

iii. A foreclosure action has been brought upon the property; and

b. File with the property valuation administrator, on a form prescribed by the department, the information necessary for the multi-unit rental housing to be valued based on the methods described in paragraph (a) of this subsection.

2. The notification shall be in writing and submitted to the property valuation administrator within sixty (60) days of the date on which the applicable circumstance listed in subparagraph 1.a. i., ii., or iii. of this paragraph occurred.

3. An owner who fails to comply with this paragraph may be subject to penalties in an amount not to exceed two hundred dollars ($200) as determined by the department.

(d) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A to adopt forms, penalties, and procedures to carry out this subsection.

History.

Enact. Acts 2012, ch. 94, § 1, effective July 12, 2012; 2023 ch. 92, § 51, effective March 24, 2023.

NOTES TO DECISIONS

1. Valuation.

Kentucky Claims Commission, Board of Tax Appeals erred in upholding the assessment of the taxpayer's property by the county property valuation administrator (PVA) because the Board conflated the parties' burdens and misapplied the presumption of validity as to the PVA's assessment as the PVA's continued use of 2008 values of the then-brand-new building for 2020 assessments over a decade later was improper, and the Board's rejection of the taxpayer's evidence of comparable sale values and uncritical adoption of the PVA's evidence of hypothetical leased values without any adjustments was not based upon competent or substantial evidence. Lowe's Home Ctrs., L.L.C. v. Arnold, 2025 Ky. App. LEXIS 68 (Ky. Ct. App. 2025).

NOTES TO UNPUBLISHED DECISIONS

1. Income Generation Method.

Unpublished decision: Property Valuation Administrator did not err in its valuation of commercial real property under Ky. Const. § 172 and Ky. Rev. Stat. Ann. § 132.690 where the payments under the leasehold were indisputably benefits that arose out of the ownership of the property, and thus, it was not error to consider those payments in determining the property's fair cash value under the income generation approach of Ky. Rev. Stat. Ann. § 132.191(2)(b). Wilgreens, LLC v. O'Neill, 2016 Ky. App. Unpub. LEXIS 893 (Ky. Ct. App. 2016), review denied, ordered not published, 2017 Ky. LEXIS 101 (Ky. Mar. 15, 2017).

132.192. Property tax exemption reciprocity. [Repealed]

History.

Enact. Acts 2005, ch. 173, Pt. XXIII, § 1, effective March 20, 2005; repealed by 2023 ch. 92, § 52, effective March 24, 2023.

132.193. Assessment of possessory interests in tax-exempt personal property — Lessee's liability.

(1) Leased personal property exempt from taxation when held by a natural person, association, or corporation in connection with a business conducted for profit, shall be subject to taxation in the same amount and to the same extent as though the lessee were the owner of the property, except personal property used in vending stands operated by blind persons under the auspices of the Division of Kentucky Business Enterprise.

(2) Taxes shall be assessed to lessees of exempt personal property and collected in the same manner as taxes assessed to owners of other personal property, except that taxes due under this section shall not become a lien against the personal property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, city, urban-county government, charter county, consolidated local government, or unified local government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS Chapter 134.

History.

Enact. Acts 1988, ch. 146, § 1, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 321, effective July 13, 1990; 2006, ch. 211, § 16, effective July 12, 2006; 2009, ch. 10, § 34, effective January 1, 2010; 2019 ch. 146, § 7, effective June 27, 2019.

Compiler's Notes.
This section (Enact. Acts 1988, ch. 146, § 1, effective July 15, 1988) was also repealed by Acts 1990, ch. 415, § 2, effective July 13, 1990.

Legislative Research Commission Notes.
(7/13/90) Pursuant to Section 653(2) of 1990 House Bill 940, Acts Ch. 476, the repeal and reenactment of this section by that Act prevails over its repeal in another Act of the 1990 Regular Session.

132.195. Assessment of possessory interest in tax-exempt real or personal property — Lessee's liability. [Effective until January 1, 2027]

(1) When any real or personal property which is exempt from taxation is leased or possession is otherwise transferred to a natural person, association, partnership, or corporation in connection with a business conducted for profit, the leasehold or other interest in the property shall be subject to state and local taxation at the rate applicable to real or personal property levied by each taxing jurisdiction.

(2) Subsection (1) of this section shall not apply to interests in:

(a) Industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority under the provisions of KRS Chapter 103, the taxation of which is provided for under the provisions of KRS 132.020 and 132.200;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(c) Property of any state-supported educational institution;

(d) Vending stand locations and facilities operated by blind persons under the auspices of the Division of Kentucky Business Enterprise, regardless of whether the property is owned by the federal, state, or a local government;

(e) Property of any free public library;

(f) Property in Fayette County, Kentucky, administered by the Department of Military Affairs, Bluegrass Station Division;

(g) All privately owned leasehold interests in residential property when the residential property is owned in fee simple by a purely public charity as of July 1, 2020:

1. When the real property includes a residential property unit that is:

a. Leased by the purely public charity for a period of at least one (1) year to an individual person who is fifty-five (55) years of age or older;

b. Maintained as the individual person's permanent residence under a lease agreement that:

i. Prohibits the lessee from subleasing the unit; and

ii. Provides that the lessee's possessory interest in the unit is terminable by the lessor upon the death of the lessee, the physical or mental inability of the lessee to continue to reside in the unit, or the lessee's relocation to a nursing home or similar assisted living facility; and

c. Constructed on or before July 1, 2020, or constructed after July 1, 2020, on land that was privately owned in fee simple by the purely public charity on or before July 1, 2020;

2. If the fee simple ownership is transferred by the purely public charity after July 1, 2020, it shall be transferred to another purely public charity and the requirements established for the residential property unit in subparagraph 1. of this paragraph shall be maintained; and

3. The taxation of which is provided for under KRS 132.020 and 132.200; or

(h) All privately owned leasehold interests in residential property owned in fee simple by a purely public charity, which is exempt from ad valorem taxation under Kentucky Constitution Section 170, when the residential property unit is leased by the purely public charity to an individual person who is:

1. Receiving medical or educational supportive services from the purely public charity; and

2.a. A postsecondary educational participant;

b. A minor;

c. Sick, disabled, or impoverished; or

d. Over the age of sixty-five (65).

(3) Taxes shall be assessed to lessees of exempt real or personal property and collected in the same manner as taxes assessed to owners of other real or personal property, except that taxes due under this section shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, or urban-county government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS Chapter 134.

History.
Enact. Acts 1988, ch. 146, § 2, effective July 15, 1988; 1990, ch. 415, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 322, effective July 13, 1990; 2006, ch. 211, § 17, effective July 12, 2006; 2009, ch. 10, § 35, effective January 1, 2010; 2013, ch. 32, § 159, effective March 19, 2013; 2019 ch. 146, § 8, effective June 27, 2019; 2020 ch. 91, § 60, effective April 15, 2020.

Legislative Research Commission Notes.
(4/15/2020). 2020 Ky. Acts ch. 91, sec. 79 provides that the changes made to this statute in Section 60 of that Act apply to privately owned leasehold interests in residential property assessed on or after January 1, 2021.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

1. Nonprofit Use.

2. —No Exemption.
It was error to adjudge individuals' leasehold interests in airport property to be used for building and maintaining an airplane hangar exempt from taxation because no profit was earned in connection with such property. No exemption is provided for exempt property held by nonprofit natural persons, associations or partnerships. Pike County Bd. of Assessment Appeals & Revenue Cabinet v. Friend, 932 S.W.2d 378, 1996 Ky. App. LEXIS 110 (Ky. Ct. App. 1996).

Real property owned by a charity, but exclusively occupied by several residents, was not entitled to the charitable exemption in the Kentucky Constitution because the residences were

not occupied by tax exempt entities; the residents' respective possessory interests was subject to ad valorem taxation. However, the fair market value of each resident's respective possessory interest was improperly assessed; the fair market value was obtained by subtracting the fair market value of the particular unit with the resident's leasehold from the fair market value of the unit without the leasehold. Grand Lodge of Ky. Free & Accepted Masons v. City of Taylor Mill, 2017 Ky. App. LEXIS 28 (Ky. Ct. App. 2017), sub. op., 2017 Ky. App. Unpub. LEXIS 949 (Ky. Ct. App. Feb. 10, 2017).

OPINIONS OF ATTORNEY GENERAL.

Subsection (1) of this section attempts to levy an ad valorem tax on the fair cash value of the property against the lessee of the property and, accordingly, this section is unconstitutional and unenforceable. OAG 89-89 (opinion prior to 1990 amendment).

This section sets up an irrebutable presumption that the fair cash value of any leasehold interest will always equal the fair cash value of the fee, and this is patently unconstitutional. OAG 89-89, 1989 Ky. AG LEXIS 89.

132.195. Assessment of possessory interest in tax-exempt real or personal property — Exemptions — Lessee's liability. [Effective January 1, 2027]

(1) When any real or personal property which is exempt from taxation is leased or possession is otherwise transferred to a natural person, association, partnership, or corporation in connection with a business conducted for profit, the leasehold or other interest in the property shall be subject to state and local taxation at the rate applicable to real or personal property levied by each taxing jurisdiction.

(2) Subsection (1) of this section shall not apply to interests in:

(a) Industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority under the provisions of KRS Chapter 103, the taxation of which is provided for under the provisions of KRS 132.020 and 132.200;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(c) Property of any state-supported educational institution;

(d) Vending stand locations and facilities operated by blind persons under the auspices of the Division of Kentucky Business Enterprise, regardless of whether the property is owned by the federal, state, or a local government;

(e) Property of any free public library;

(f) Property in Fayette County, Kentucky, administered by the Department of Military Affairs, Bluegrass Station Division;

(g) All privately owned leasehold interests in residential property when the residential property is owned in fee simple by a purely public charity as of July 1, 2020:

1. When the real property includes a residential property unit that is:

a. Leased by the purely public charity for a period of at least one (1) year to an individual person who is fifty-five (55) years of age or older;

b. Maintained as the individual person's permanent residence under a lease agreement that:

i. Prohibits the lessee from subleasing the unit; and

ii. Provides that the lessee's possessory interest in the unit is terminable by the lessor upon the death of the lessee, the physical or mental inability of the lessee to continue to reside in the unit, or the lessee's relocation to a nursing home or similar assisted living facility; and

c. Constructed on or before July 1, 2020, or constructed after July 1, 2020, on land that was privately owned in fee simple by the purely public charity on or before July 1, 2020;

2. If the fee simple ownership is transferred by the purely public charity after July 1, 2020, it shall be transferred to another purely public charity and the requirements established for the residential property unit in subparagraph 1. of this paragraph shall be maintained; and

3. The taxation of which is provided for under KRS 132.020 and 132.200;

(h) All privately owned leasehold interests in residential property owned in fee simple by a purely public charity, which is exempt from ad valorem taxation under Kentucky Constitution Section 170, when the residential property unit is leased by the purely public charity to an individual person who is:

1. Receiving medical or educational supportive services from the purely public charity; and

2.a. A postsecondary educational participant;

b. A minor;

c. Sick, disabled, or impoverished; or

d. Over the age of sixty-five (65);

(i) Public-private partnership projects or property developed, acquired, or leased in accordance with KRS 45A.077 or 65.028; or

(j) Real property owned by the Kentucky Housing Corporation under KRS Chapter 198A:

1. That is acquired and leased in connection with an activity, including new construction, that would result in an increase of forty-eight (48) units or more to the stock of residential multifamily housing;

2. Subject to an extended use agreement in favor of the Kentucky Housing Corporation; and

3. The county judge/executive and the mayor of the applicable political subdivisions have provided written consent of the acquisition and lease.

(3) Taxes shall be assessed to lessees of exempt real or personal property and collected in the same manner as taxes assessed to owners of other real or personal property, except that taxes due under this section shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, or urban-county government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS Chapter 134.

History.

Enact. Acts 1988, ch. 146, § 2, effective July 15, 1988; 1990, ch. 415, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 322, effective July 13, 1990; 2006, ch. 211, § 17, effective July 12,

2006; 2009, ch. 10, § 35, effective January 1, 2010; 2013, ch. 32, § 159, effective March 19, 2013; 2019 ch. 146, § 8, effective June 27, 2019; 2020 ch. 91, § 60, effective April 15, 2020; 2026 ch. 161, § 117, effective January 1, 2027.

132.200. Property subject to state tax only.

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Capital stock of savings and loan associations;

(2) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;

(3)(a) Commercial radio and television equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air to an antenna;

(b) Equipment directly used or associated with the equipment identified in paragraph (a) of this subsection, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and

(c) Equipment used to gather or transmit weather information;

(4) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

(5) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

(6) Tangible personal property which has been certified as a pollution control facility as defined in KRS 224.1-300. In the case of tangible personal property certified as a pollution control facility which is incorporated into a landfill facility, the tangible personal property shall be presumed to remain tangible personal property for purposes of this subsection if the tangible personal property is being used for its intended purposes;

(7) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;

(8) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;

(9) All motor vehicles:

(a) Held for sale in the inventory of a licensed motor vehicle dealer, including motor vehicle auction dealers, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;

(b) That are in the possession of a licensed motor vehicle dealer, including licensed motor vehicle auction dealers, for sale, although ownership has not been transferred to the dealer; and

(c) With a salvage title held by an insurance company;

(10) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.010;

(11) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;

(12) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;

(13) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;

(14) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;

(15) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:

(a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and

(b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange;

(16) Qualifying voluntary environmental remediation property for a period of three (3) years following the Energy and Environment Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, and provided the cleanup was not financed through a public grant program of the petroleum storage tank environmental assurance fund;

(17) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:

(a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;

(b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments;

(c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation;

(18) Recreational vehicles held for sale in a retailer's inventory;

(19) A privately owned leasehold interest in residential property described in KRS 132.195(2)(g), if an exemption is approved by the county, city, school, or other taxing district in which the residential property is located; and

(20) Prefabricated homes held for sale in a manufacturer's or retailer's inventory.

History.

4019a-5, 4019a-10, 4019a-16: amend. Acts 1948, ch. 207; 1954, ch. 159, § 1; 1965 (1st Ex. Sess.), ch. 2, § 12; 1968, ch. 152, § 103; 1970, ch. 185, § 1; 1974, ch. 137, § 5, effective June 21, 1974; 1976, ch. 84, § 5, effective March 29, 1976; 1978, ch. 116, § 1, effective June 17, 1978; 1978, ch. 404, § 2, effective March 30, 1978; 1980, ch. 210, § 7, effective July 15, 1980; 1982, ch. 229, § 2, effective July 15, 1982; 1984, ch. 169, § 2, effective July 13, 1984; 1986, ch. 359, § 2, effective July 15, 1986; 1986, ch. 431, § 17, effective Ju1y 15, 1986; 1986, ch. 476, § 6, effective July 15, 1986; 1990, ch. 106, § 3, effective July 13, 1990; 1990, ch. 461, § 2, effective July 13, 1990; 1990, ch. 476, Pt. V, § 323, effective July 13, 1990; 1991 (1st Ex. Sess.), ch. 12, § 47, effective February 26, 1991; 1992, ch. 8, § 1, effective July 14, 1992; 1992, ch. 338, § 22, effective July 14, 1992; 1994, ch. 68, § 3, effective July 15, 1994; 1996, ch. 254, § 26, effective July 15, 1996; 1998, ch. 55, § 2, effective July 15, 1998; 1998, ch. 168, § 2, effective July 15, 1998; 1998, ch. 266, § 2, effective July 15, 1998; 1998, ch. 385, § 2, effective July 15, 1998; 1998, ch. 600, § 9, effective April 14, 1998; 2000, ch. 327, § 3, effective July 14, 2000; 2001, ch. 55, § 1, effective June 21, 2001; 2002, ch. 324, § 2, effective July 15, 2002; 2005, ch. 25, § 1, effective June 20, 2005; 2005, ch. 168, § 57, effective January 1, 2006; 2007, ch. 100, § 3, effective June 26, 2007; 2008, ch. 81, § 1, effective July 15, 2008; 2008, ch. 95, § 18, effective August 1, 2008; 2010, ch. 24, § 98, effective July 15, 2010; 2013, ch. 94, § 3, effective June 25, 2013; 2013, ch. 119, § 8, effective January 1, 2014; 2014, ch. 128, § 5, effective July 15, 2014; 2016 ch. 93, § 3, effective July 15, 2016; 2020 ch. 91, § 62, effective April 15, 2020; 2022 ch. 212, § 48, effective July 14, 2022; 2023 ch. 92, § 47, effective March 24, 2023.

Compiler's Notes.

Section 2 of Chapter 55 of the Acts of the 2001 Regular Session read: "This Act shall apply for property assessed on or after January 1, 2001."

Legislative Research Commission Notes.

(7/14/2022). 2022 Ky. Acts ch. 212, sec. 69, provides that the amendments made to this statute shall be apply to property assessed on or after January 1, 2023.

(4/15/2020). 2020 Ky. Acts ch. 91, sec. 79 provides that the changes made to this statute in Section 62 of that Act apply to privately owned leasehold interests in residential property assessed on or after January 1, 2021.

(7/15/2014). 2014 Ky. Acts ch. 128, sec. 8 provides that the amendments to this statute made in 2014 Ky. Acts ch. 128, sec. 5, shall apply to property assessed on or after January 1, 2015.

(1/1/2014). 2013 Ky. Acts ch. 119, sec. 26, provides that the amendments to this statute in 2013 Ky. Acts ch. 119, sec. 8, shall apply to property assessed on or after January 1, 2014.

(1/1/2014). 2013 Ky. Acts ch. 119, sec. 24, provides, "It is the intent of the General Assembly that the changes made in [this statute and KRS 132.020], relating to tangible personal property which has been certified as a pollution control facility, are to clarify existing provisions in the law, as follows:

"(1) That the tax rate of fifteen cents ($0.15) upon each one hundred dollars ($100) of value only applies to tangible personal property which has been certified as a pollution control facility; and

(2) That only tangible personal property certified as a pollution control facility is subject to taxation for state purposes only while being exempt from taxation in the county, city, school, or other taxing district in which it has a taxable situs."

(6/8/2011). The Reviser of Statutes has corrected a manifest clerical or typographical error in subsection (16) of this statute by changing the citation at the end of that subsection from "KRS 139.010" to "KRS 365.800." This error occurred during the merger of amendments to this statute in 2008 Ky. Acts ch. 81, sec. 1, and ch. 95, sec. 18.

(7/15/2008). 2008 Ky. Acts ch. 81, sec. 2, provides that the amendments to this section in 2008 Ky. Acts ch. 81, sec. 1, apply to assessments made on or after January 1, 2009.

(6/20/2005). 2005 Ky. Acts ch. 25, § 2, provides that the amendments to subsection (23) of this section shall apply for tax assessment dates on or after January 1, 2002.

(3/18/2005). 2000 Ky. Acts ch. 168, § 171, provides that: "Sections 55 (KRS 132.020) and 57 (132.200) of this Act, relating to property tax changes, take effect on January 1, 2006, except the changes made to paragraph (c) of subsection (1) of Section 55, relating to the voluntary environmental remediation credit, paragraph (a) of subsection (2) of Section 55, and paragraph (a) of subsection (4) of Section 55 of this Act, relating to new property and the state property assessment, and subsection (21) of Section 57 of this Act (subsection (22) of

this version) which shall take effect on the effective date of this Act and which shall apply to tax years beginning on or after January 1, 2005."

(6/21/2001). Under KRS 446.280, the words "or leased to" have been restored to subsection (1) of this statute after the words "owned by." The phrase was added to subsection (1) by 1986 Ky. Acts ch. 359, sec. 2, but was inavertently omitted from the drafting database. Because of this, several subsequent acts amending this statute failed to include the phrase, and it mistakenly was not included in some codifications of this statute, although it had not been deleted by legislative action using the requisite brackets and strikethrough.

(7/13/90) The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts ch. 476. The amending acts do not appear to conflict and have been compiled together.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Manufacturing.
3. —Machinery.
4. Electronic Broadcasting Equipment.
5. Unmanufactured Agricultural Products.
6. Industrial Development.
7. Raw Material.
8. Exemption.
9. —Strict Construction.
10. —Discriminatory.
11. Procedure.
12. Injunction Against Collection.
13. Taxing Determination Upheld.

1. Constitutionality.

The exemption of unmanufactured agricultural products from local taxation, when in the hands of the producers or his agent for the purpose of sale, is constitutional. Owensboro v. Dark Tobacco Growers' Ass'n, 222 Ky. 164, 300 S.W. 350, 1927 Ky. LEXIS 879 (Ky. 1927).

2. Manufacturing.

Where company gathered tobacco together by buying it from the farmer either directly or through a loose leaf warehouse and then rehandled, assorted and classified it by ordinary hand labor preparatory to its shipment to company's various manufacturing plants situated in other cities, its texture remaining the same and unchanged as when bought and where it was subjected to no treatment or process which could have been said to have changed the character of the tobacco from its original state to a new and different article it was evident that nothing was manufactured at the plant and such plant was not a manufacturing establishment within the meaning of this section and thus such tobacco was not exempt from local taxation. American Tobacco Co. v. Bowling Green, 181 Ky. 416, 205 S.W. 570, 1918 Ky. LEXIS 558 (Ky. 1918). See Henderson v. George Delker Co., 193 Ky. 248, 235 S.W. 732, 1921 Ky. LEXIS 219 (Ky. 1921); Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 1925 Ky. LEXIS 344 (Ky. 1925); Hughes & Co. v. Lexington, 211 Ky. 596, 277 S.W. 981, 1925 Ky. LEXIS 930 (Ky. 1925); Commonwealth use of Rockcastle County v. W. J. Sparks Co., 222 Ky. 606, 1 S.W.2d 1050, 1928 Ky. LEXIS 209 (Ky. 1928), limited, Colley v. Eastern Coal Corp., 470 S.W.2d 338, 1971 Ky. LEXIS 275 (Ky. 1971); Lexington v. Lexington Leader Co., 193 Ky. 107, 235 S.W. 31, 1921 Ky. LEXIS 203 (Ky. 1921).

The phrases "actually engaged in manufacturing" and "actually on hand at their plants for the purpose of manufacture" mean manufacturing at the place of taxation and not at some other place. American Tobacco Co. v. Bowling Green, 181 Ky. 416, 205 S.W. 570, 1918 Ky. LEXIS 558 (Ky. 1918). See Henderson v. George Delker Co., 193 Ky. 248, 235 S.W. 732, 1921 Ky. LEXIS 219 (Ky. 1921); Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 1925 Ky. LEXIS 344 (Ky. 1925); Hughes & Co. v. Lexington, 211 Ky. 596, 277 S.W. 981, 1925 Ky. LEXIS 930 (Ky. 1925); Commonwealth use of Rockcastle County v. W. J. Sparks Co., 222 Ky. 606, 1 S.W.2d 1050, 1928 Ky. LEXIS 209 (Ky. 1928), limited, Colley v. Eastern Coal Corp., 470 S.W.2d 338, 1971 Ky. LEXIS 275 (Ky. 1971); Lexington v. Lexington Leader Co., 193 Ky. 107, 235 S.W. 31, 1921 Ky. LEXIS 203 (Ky. 1921).

This section contemplates manufacturing at the place of taxation in order to exempt the raw material from local taxation. American Tobacco Co. v. Bowling Green, 181 Ky. 416, 205 S.W. 570, 1918 Ky. LEXIS 558 (Ky. 1918). See Henderson v. George Delker Co., 193 Ky. 248, 235 S.W. 732, 1921 Ky. LEXIS 219 (Ky. 1921); Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 1925 Ky. LEXIS 344 (Ky. 1925); Hughes & Co. v. Lexington, 211 Ky. 596, 277 S.W. 981, 1925 Ky. LEXIS 930 (Ky. 1925); Commonwealth use of Rockcastle County v. W. J. Sparks Co., 222 Ky. 606, 1 S.W.2d 1050, 1928 Ky. LEXIS 209 (Ky. 1928), limited, Colley v. Eastern Coal Corp., 470 S.W.2d 338, 1971 Ky. LEXIS 275 (Ky. 1971); Lexington v. Lexington Leader Co., 193 Ky. 107, 235 S.W. 31, 1921 Ky. LEXIS 203 (Ky. 1921).

These processes do not constitute "manufacturing": (1) redrying and stemming of tobacco, preparatory to its being manufactured into tobacco products, Gray v. R. J. Reynolds Tobacco Co., 200 Ky. 47, 252 S.W. 134, 1923 Ky. LEXIS 16 (Ky. 1923); (2) sorting, classifying, stemming and curing of tobacco, P. Lorrilard Co. v. Ross, 183 Ky. 217, 209 S.W. 39, 1919 Ky. LEXIS 475 (Ky. 1919).

It is not the means or methods employed or the number or nature of the processes resorted to, but the result accomplished, that determines whether an article is manufactured or not. P. Lorrilard Co. v. Ross, 183 Ky. 217, 209 S.W. 39, 1919 Ky. LEXIS 475 (Ky. 1919). See Lexington v. Lexington Leader Co., 193 Ky. 107, 235 S.W. 31, 1921 Ky. LEXIS 203 (Ky. 1921); Henderson v. George Delker Co., 193 Ky. 248, 235 S.W. 732, 1921 Ky. LEXIS 219 (Ky. 1921).

If raw material is converted at a factory or plant into a finished product, complete and ready for the final use for which it is intended, or so completed that in the ordinary course of business it is ready to be put upon the open market for sale to any person wishing to buy it, it has been "manufactured." Louisville & J. Zinmeister & Sons, 188 Ky. 570, 222 S.W. 958, 1920 Ky. LEXIS 324 (Ky. 1920).

"Actually" engaged in manufacturing means "really," "in fact," or "in truth." Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 1925 Ky. LEXIS 344 (Ky. 1925).

"Manufacturing" includes every kind of business whereby a different and useful article of commerce is produced by the application of labor or skill, by hand or machinery, to any kind of material. Hughes & Co. v. Lexington, 211 Ky. 596, 277 S.W. 981, 1925 Ky. LEXIS 930 (Ky. 1925).

Word "manufacture" is not susceptible of accurate, or all-embracing or all-exclusive definition, and meaning may vary according to circumstances of particular case, but one definition is "to work, as raw materials or partly wrought materials, into suitable forms for use." Burke v. Stitzel-Weller Distillery, 284 Ky. 676, 145 S.W.2d 861, 1940 Ky. LEXIS 565 (Ky. 1940).

Machinery and raw materials used by a chemical company to produce blended fertilizer came within the definition of manufacturing under Ky. Rev. Stat. Ann. § 132.200(4) where although most, if not all, of the raw materials had some separate commercial value, the fact that the raw materials were merely mixed or blended did not defeat the concept that fertilizer was manufactured or that the machinery used to produce the fertilizer was manufacturing machinery. Moreover, bulk fertilizer business required blending by special request, and thus, the fact that 80 percent of the company's

sales were in bulk was of no consequence. Gro-Green Chem. Co. v. Shelby County Bd. of Assessment Appeals, 1979 Ky. App. LEXIS 1302 (Ky. Ct. App. 1979).

Where a fertilizer plant took various chemical elements such as nitrogen, phosphate, potash, sulfur, potassium and boron and blended them in the correct proportion according to the needs of a particular customer, and where the mixture, or blend, of these fertilizing components was determined primarily by a scientific soil analysis and by the crop and yield the farmer intended to grow, the business operation fell within the definition of "manufacturing" so as to exempt machinery and materials from local taxation. Shelby County Board of Assessment Appeals v. Gro-Green Chemical Co., 602 S.W.2d 155, 1980 Ky. LEXIS 233 (Ky. 1980).

3. —Machinery.

A railroad spur track, rolling stock, teams and equipment used by a lumber company in hauling logs from its timber land to its sawmill was not machinery used in manufacturing, and was not exempt from local taxation. Dawkins Lumber Co. v. Caudill, 212 Ky. 484, 279 S.W. 617, 1926 Ky. LEXIS 179 (Ky. 1926).

The words "in course of manufacture," in subsection (4) of this section, do not qualify "machinery," and machinery used in manufacturing other products is exempt from local taxation. Kentucky & West Virginia Power Co. v. Holliday, 216 Ky. 78, 287 S.W. 212, 1926 Ky. LEXIS 832 (Ky. 1926).

Machinery used in bottling whiskey is exempt from local taxation, since whiskey is not ready for intended use until bottled. Burke v. Stitzel-Weller Distillery, 284 Ky. 676, 145 S.W.2d 861, 1940 Ky. LEXIS 565 (Ky. 1940).

The manufacturing machinery of a public utility is not subject to local taxation. Reeves v. Louisville Gas & Electric Co., 290 Ky. 25, 160 S.W.2d 391, 1942 Ky. LEXIS 362 (Ky. 1942).

An operation is "manufacturing" if the process takes something practically unsuitable for any common use and changes it so as to adapt it to such common use. Louisville v. Howard, 306 Ky. 687, 208 S.W.2d 522, 1947 Ky. LEXIS 1024 (Ky. 1947).

It was never the legislative intent to extend tax exemption of machinery beyond the machinery itself and the actual bases of such machinery. Louisville v. Howard, 306 Ky. 687, 208 S.W.2d 522, 1947 Ky. LEXIS 1024 (Ky. 1947).

If by the processing of the raw material at the plant, the material is converted into a finished product or is so completed that in the ordinary course of business of the concern it is ready to be put on the open market for sale to any person wishing to buy it, the plant which turns it out is a manufacturing establishment within the meaning of this section. Alcoa Mining Co. v. Dickerson, 242 S.W.2d 744, 1951 Ky. LEXIS 1067 (Ky. 1951).

Television tower which merely acts as a support for antenna and cable which are used for transmission purposes is not property for the process of assembling the electromagnetic waves and thus is not exempt from local taxation under subsection (4) of this section. W. A. V. E., Inc. v. Louisville, 248 S.W.2d 701, 1952 Ky. LEXIS 747 (Ky. 1952).

4. Electronic Broadcasting Equipment.

Cable caster's coaxial cable was not exempt from local ad valorem tax as equipment used to broadcast electronic signals to an antenna because, although transformers used in connection with receiving cable television signals perform a function similar to that performed by an antenna in receiving standard radio or television signals, a transformer is not an antenna within the meaning of this section. Owensboro-On-The-Air, Inc. v. Tinius, 551 S.W.2d 831, 1977 Ky. App. LEXIS 710 (Ky. Ct. App. 1977).

5. Unmanufactured Agricultural Products.

Unmanufactured agricultural products owned by a manufacturer, but not on hand at his manufacturing plant, are subject only to the rate provided by subsection (6) of this section. Gray v. R. J. Reynolds Tobacco Co., 200 Ky. 47, 252 S.W. 134, 1923 Ky. LEXIS 16 (Ky. 1923).

6. Industrial Development.

The promotion of new and expanded industrial development, by providing tax benefits, is a fixed policy of the Commonwealth. Department of Revenue v. Spalding Laundry & Dry Cleaning Co., 436 S.W.2d 522, 1968 Ky. LEXIS 184 (Ky. 1968).

7. Raw Material.

Raw material is exempt from local taxation only if it is on hand at the plant of a manufacturer for the purpose of being manufactured at that plant, and not for the purpose of being prepared for manufacture at some other plant. American Tobacco Co. v. Bowling Green, 181 Ky. 416, 205 S.W. 570, 1918 Ky. LEXIS 558 (Ky. 1918).

Raw material on hand at a factory or plant for the purpose of manufacturing is not exempt from local taxation unless the manufacture of such raw material at the plant where it is on hand is so complete that the product may be sent out from that plant and sold on the market as a finished product. P. Lorrilard Co. v. Ross, 183 Ky. 217, 209 S.W. 39, 1919 Ky. LEXIS 475 (Ky. 1919).

Rough lumber used by a manufacturer in crating his products for shipment does not constitute "raw material on hand for the purpose of manufacture," and is not exempt from local taxation. Henderson v. George Delker Co., 193 Ky. 248, 235 S.W. 732, 1921 Ky. LEXIS 219 (Ky. 1921).

"Raw material" is not necessarily crude material in its natural state, but may include a product made from the crude material and which has undergone manufacturing processes and been converted into a distinct product from which an entirely different product may be made by means of additional manufacturing processes. Henderson v. George Delker Co., 193 Ky. 248, 235 S.W. 732, 1921 Ky. LEXIS 219 (Ky. 1921).

The stemming of tobacco and getting it into shape for the purposes of manufacture does not make it a manufactured article. Gray v. R. J. Reynolds Tobacco Co., 200 Ky. 47, 252 S.W. 134, 1923 Ky. LEXIS 16 (Ky. 1923).

Products in course of manufacture are not exempt from local taxation unless they are the property of the person doing the manufacturing. Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 1925 Ky. LEXIS 344 (Ky. 1925).

Where two (2) companies engaged in the business of manufacturing railroad ties organized a third corporation to operate a plant at which the ties were creosoted and treated with preservatives, the corporation so organized constituted a separate legal entity, notwithstanding that the other two (2) companies owned all of its stock, and ties being treated by such corporation were subject to local taxation, since they were not the property of the corporation doing such manufacturing. Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 1925 Ky. LEXIS 344 (Ky. 1925).

Raw material at the plant of a manufacturer for the purpose of manufacture is exempt from local taxation, regardless of whether such material was produced in this state. Illinois C. R. Co. v. Paducah, 228 Ky. 65, 14 S.W.2d 172, 1929 Ky. LEXIS 474 (Ky. 1929).

Rough lumber at a sawmill, one-third (⅓) of which is sold without further processing and two-thirds (⅔) further processed by the company, is a finished product and no part of it is exempt from local taxation under this section as "raw material—for the purpose of manufacture." Stearns Coal & Lumber Co. v. Thomas, 295 Ky. 808, 175 S.W.2d 505, 1943 Ky. LEXIS 342 (Ky. 1943).

8. Exemption.

The property exempted from local taxation by this section is exempt from school taxes, although school taxes are ordinarily considered to be state taxes. Kentucky & West Virginia Power

Co. v. Holliday, 216 Ky. 78, 287 S.W. 212, 1926 Ky. LEXIS 832 (Ky. 1926).

Contracts of tobacco growers with cooperative marketing association made the association agent of producers for purpose of sale, and not owner of tobacco, with result that tobacco in possession of association was exempt from local taxation under subsection (6) of this section. Owensboro v. Dark Tobacco Growers' Ass'n, 222 Ky. 164, 300 S.W. 350, 1927 Ky. LEXIS 879 (Ky. 1927).

In order for machinery and products in course of manufacture, and raw material on hand for the purpose of manufacture, to be exempt from local taxation, it is not necessary that the manufactured goods be designed for barter and sale; the exemption exists even though the manufactured products are wholly used or consumed by the manufacturer himself. Illinois C. R. Co. v. Paducah, 228 Ky. 65, 14 S.W.2d 172, 1929 Ky. LEXIS 474 (Ky. 1929).

The exemption of machinery, products in course of manufacture, and raw materials on hand for the purpose of manufacture, applies even though the business of manufacturing is only incidental to the real business of the owner. Illinois C. R. Co. v. Paducah, 228 Ky. 65, 14 S.W.2d 172, 1929 Ky. LEXIS 474 (Ky. 1929).

The value of property exempted by this section from county taxation but not exempted by the Constitution could not be included in the computation of all taxable property in the county for the purpose of determining the maximum debt limit of the county under Const., § 158. Monroe County v. County Debt Com., 247 S.W.2d 507, 1952 Ky. LEXIS 708 (Ky. 1952).

Declaratory judgment to the effect that property exempted from county taxation by this section should be included in the computation of all taxable property in county for purpose of determining maximum debt limit of county under Const., § 158 was not res judicata and binding on state local finance officer and county budget commission where such action was but a ruse to deprive finance officer and commission of jurisdiction given them by KRS 66.210 (repealed) and 66.310 in approving of bond issues, where neither the finance officer nor the commission were a party to the action and where the judgment was not appealed. Monroe County v. County Debt Com., 247 S.W.2d 507, 1952 Ky. LEXIS 708 (Ky. 1952).

If machinery is not owned by a corporation actually engaged in manufacturing, it does not fall within the statutory exception. United Shoe Machinery Corp. v. McCracken County, 265 S.W.2d 929, 1953 Ky. LEXIS 1261 (Ky. Ct. App. 1953).

It is not clear whether the exemption for an industrial building that is "owned and financed" by a tax-exempt entity under subsection (8) (now (7)) was intended to apply after the collateral is no longer financed; therefore, the statute must be construed against the taxpayers and they are not permitted to take advantage of the exemption and the reduced state rate pursuant to KRS 132.020. Owens-Illinois Labels, Inc. v. Commonwealth, 27 S.W.3d 798, 2000 Ky. App. LEXIS 48 (Ky. Ct. App. 2000).

9. —Strict Construction.

Provisions granting exemptions from taxation will be strictly construed. American Tobacco Co. v. Bowling Green, 181 Ky. 416, 205 S.W. 570, 1918 Ky. LEXIS 558 (Ky. 1918).

10. —Discriminatory.

The fact that national bank shares are subject to local taxation, while other intangible property is exempt from local taxation, does not create a discrimination in violation of 12 USCS § 548. Georgetown Nat'l Bank v. McFarland, 273 U.S. 568, 47 S. Ct. 467, 71 L. Ed. 779, 1927 U.S. LEXIS 712 (U.S. 1927).

11. Procedure.

Objection that county clerk in computing household goods exemption under KRS 132.560 (repealed) made up exemption out of property exempted from local taxation by KRS 132.200 could be raised only by taxpayer, not by sheriff in annual settlement. Livingston County v. Dunn, 244 Ky. 460, 51 S.W.2d 450, 1932 Ky. LEXIS 453 (Ky. 1932).

12. Injunction Against Collection.

The collection of a local tax on property exempt from local taxation may be enjoined. Gray v. R. J. Reynolds Tobacco Co., 200 Ky. 47, 252 S.W. 134, 1923 Ky. LEXIS 16 (Ky. 1923). See Kentucky & West Virginia Power Co. v. Holliday, 216 Ky. 78, 287 S.W. 212, 1926 Ky. LEXIS 832 (Ky. 1926).

Mistake of taxpayer in listing tobacco as taxable at regular county tax rate, when in fact it was taxable only at rate allowed by subsection (6) of this section, did not prevent taxpayer from obtaining injunction against imposition of regular rate. Gray v. R. J. Reynolds Tobacco Co., 200 Ky. 47, 252 S.W. 134, 1923 Ky. LEXIS 16 (Ky. 1923).

Where a manufacturer, in ignorance of the law, listed for city taxes raw material on hand at his plant, and paid the taxes for one year and was being threatened with distraint to collect the taxes for the following year, he had the right to maintain an action to recover the taxes paid and to enjoin collection of the taxes not paid, as against contention that his sole remedy was by statutory procedure provided for correcting assessments. Covington v. Lovell & Buffington Tobacco Co., 204 Ky. 40, 263 S.W. 676, 1924 Ky. LEXIS 396 (Ky. 1924).

Where manufacturing machinery exempt from local taxation was not listed or valued separately by the tax commissioner (now property valuation administrator) or board of supervisors, but was grouped with other personal property of the taxpayer under a gross valuation, oral evidence was admissible, in an action to enjoin collection of the local tax on such machinery, to show what portion of the gross valuation applied to the machinery. Kentucky & West Virginia Power Co. v. Holliday, 216 Ky. 78, 287 S.W. 212, 1926 Ky. LEXIS 832 (Ky. 1926).

13. Taxing Determination Upheld.

KRS 132.030, 132.200, 136.300, 136.320 are not related to public service companies or to franchise; it is clear that the general assembly considered the types of property that should be exempt from the "catch-all" rate, and it did not include franchise of a public service company-although it identified seventeen other categories of property. Dayton Power & Light Co. v. Dep't of Revenue, 405 S.W.3d 527, 2012 Ky. App. LEXIS 232 (Ky. Ct. App. 2012).

Cited in:

Paducah v. Smith's Ex'r, 273 Ky. 703, 117 S.W.2d 924, 1938 Ky. LEXIS 705 (Ky. 1938); Madden's Ex'r v. Commonwealth, 277 Ky. 343, 126 S.W.2d 463, 1939 Ky. LEXIS 655 (Ky. 1939); Land v. Kentucky Joint Stock Land Bank, 279 Ky. 645, 131 S.W.2d 838, 1939 Ky. LEXIS 327 (Ky. 1939); Newport v. Pennsylvania R. Co., 287 Ky. 613, 154 S.W.2d 719, 1941 Ky. LEXIS 600 (Ky. 1941); Board of Sup'rs v. Farmers Nat'l Bank, 293 Ky. 157, 168 S.W.2d 371, 1942 Ky. LEXIS 7 (Ky. 1942); Board of Tax Supervisors v. Baldwin Piano Co., 296 Ky. 673, 178 S.W.2d 212, 1944 Ky. LEXIS 613 (Ky. 1944); Board of Sup'rs v. State Nat'l Bank, 300 Ky. 620, 189 S.W.2d 942, 1945 Ky. LEXIS 610 (Ky. 1945); Commonwealth v. Interstate Grocery Co., 283 S.W.2d 708, 1955 Ky. LEXIS 321 (Ky. 1955); Kentucky Finance Co. v. McCord, 290 S.W.2d 481, 1956 Ky. LEXIS 324 (Ky. 1956); Department of Revenue ex rel. Luckett v. Allied Drum Service, Inc., 561 S.W.2d 323, 1978 Ky. LEXIS 318 (Ky. 1978); Paducah v. T.C.B., Inc., 817 S.W.2d 234, 1991 Ky. App. LEXIS 119 (Ky. Ct. App. 1991).

OPINIONS OF ATTORNEY GENERAL.

Picture developing equipment does not come within the classification of manufacturing machinery as set out in the statute. OAG 61-134.

Where a leased automobile was garaged in the city and licensed in the county the city could assess it for property taxes although it was owned by a corporation located in another city and county. OAG 61-233.

The power of a public library district to levy a tax pursuant to KRS 173.460 is limited by the provisions of this section which except certain property from local taxation and, pursuant to subsection (7) of this section, a public library district may not levy a tax on stocks and bonds. OAG 62-1005.

Drilling rigs, tools and equipment used to drill gas wells are not manufacturing machinery within the meaning of subsection (4) of this section and are not exempt from local taxation. OAG 62-1143.

A fire protection district cannot levy any tax on unmanufactured tobacco. OAG 64-232.

Where a citizen of the county owned a boat that was licensed in the county but docked on a lake in another county, the boat would not be subject to tax in the city where the owner lived if it were satisfactorily shown that the boat was permanently located outside the city. OAG 65-18.

Where a citizen of the county owned a boat that was licensed in the county but docked on a lake in another county, if the boat had not acquired a permanent situs elsewhere, it was properly taxable in the city of the owner's domicile. OAG 65-18.

Once a beverage has been bottled and capped it is ready for market and the manufacturing process is completed, so that a "case packer," used after soft drink bottles have been capped, is not manufacturing equipment within the meaning of this section and is not exempt from local taxation. OAG 66-604.

Printing machinery used for printing a weekly religious paper and for commercial job printing is exempt from local city, county, school or other taxing district taxes and is subject only to state taxes. OAG 73-329.

Conveyors, sorters, kilns, dryers and boilers are part of the manufacturing process of transforming sorted rock into flux stone to be used in steel manufacturing and therefore are classifiable as manufacturing machinery for purposes of ad valorem property taxes. OAG 76-262.

With the exception of the property described in KRS 92.300(1), a city of the sixth class has no alternative but to assess all property located within its jurisdictional limits which is not specifically exempted from local ad valorem taxation by the Constitution or by statute; a city ordinance attempting to exempt any other property will be void. OAG 82-21, 1981 Ky. AG LEXIS 25.

Grain that is in the possession of the farmer who grew it, or in the possession of an agent of the farmer for the purpose of sale, is subject to ad valorem taxation for state purposes only. However, notwithstanding the fact that such grain is not subject to ad valorem taxation by the city or county, it must be listed with the county property valuation administrator for taxation by the state. OAG 82-496, 1982 Ky. AG LEXIS 171.

Ad valorem taxes and license taxes are the only kinds of taxes that a county may levy; thus, the attempted levy of an oil shale severance tax by a county would be unconstitutional. OAG 84-116, 1984 Ky. AG LEXIS 270.

Machinery owned by an individual or corporation, which individual or corporation is actually engaged in manufacturing, awaiting to be installed and put into use in the manufacturing plant should be classified as manufacturing machinery at the state rate of 15¢ per $100 of assessed valuation and is exempt from local taxation. OAG 90-5, 1990 Ky. AG LEXIS 5.

The words "actually engaged in manufacturing," as used in subsection (4) of this section and KRS 132.020(1) modify "individuals or corporations," not "machinery." OAG 90-5, 1990 Ky. AG LEXIS 5.

The words "in course of manufacture," as used in this section, do not qualify machinery. OAG 90-5, 1990 Ky. AG LEXIS 5.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

General Assembly may authorize cities to exempt manufacturing establishments, Ky. Const., § 170.

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Martin, Social Implications of Some Recent Kentucky Property Tax Cases, 29 Ky. L.J. 255 (1941).

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Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

Cox, What May States Do About Out-of-State Waste in Light of Recent Supreme Court Decisions Applying the Dormant Commerce Clause? Kentucky As Case Study in the Waste Wars, 83 Ky. L.J. 551 (1994-95).

132.210. Exemption of fraternal benefit societies' funds. [Repealed]

History.

681c-30; Acts 1972, ch. 203, § 7; 1982, ch. 320, § 51, effective July 15, 1982; 1988, ch. 310, § 38, effective January 1, 1989; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 324, effective July 13, 1990; repealed by 2023 ch. 92, § 52, effective March 24, 2023.

132.220. Assessment dates — Listing — Owner — Liability — Exemptions, listing, annual review.

(1)(a) All taxable property and all interests in taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year.

(b)1. It shall be the duty of the holder of the first freehold estate in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located between January 1 and March 1 in each year, except as otherwise provided by law.

2.a. It shall be the duty of all persons owning any tangible personal property taxable in this state to list or have listed the property, by the address at which it is located, with the property valuation administrator of the county of taxable situs or with the department between January 1 and May 15 in each year, except as provided by subdivision b. of this subparagraph or otherwise prescribed by law.

b. On January 1 of each year, for each address, if the sum of all of the taxable tangible personal property's fair cash values is one thousand dollars ($1,000) or less, the taxpayer shall not be required to list the property in accordance with subdivision a. of this subparagraph.

c. On January 1 of each year, for each address, if the sum of all of the taxable tangible personal property's fair cash values exceeds one thousand dollars ($1,000) and the property is not listed as required by subdivision a. of this subparagraph,

the property shall be deemed omitted property in accordance with KRS 132.290.

d. For any taxable tangible personal property that is not listed due to the one thousand dollar ($1,000) threshold established in subdivision b. of this subparagraph, the owner of the property shall maintain records of the property and its fair cash value calculation for five (5) years after the expiration of the listing period.

3. The holder of legal title, the holder of equitable title, and the claimant or bailee in possession of the property on the assessment date as provided by law shall be liable for the taxes thereon, and the property may be assessed in any of their names. But, as between them, the holder of the equitable title shall pay the taxes thereon, whether or not the property is in his or her possession at the time of payment.

4. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

(2) Any taxpayer may list his or her property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the department, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

(3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his or her employee, or employees of the department may physically inspect, or inspect using any other method approved by the department, and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

(4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

(5)(a) Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period provided for in KRS 134.546, and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated.

(b) The property valuation administrator shall keep a record of these exonerations, which shall be open under the provisions of KRS 61.870 to 61.884.

(c) If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290.

(d) Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.

(6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the department within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the department. The department shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.

(7) Each property valuation administrator, under the direction of the department, shall review annually all real property listed with him or her under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

History.

4024, 4025, 4042a-13, 4049, 4052; Acts 1942, ch. 131, §§ 7, 32; 1948, ch. 95, § 3; 1949 (Ex. Sess.), ch. 4, § 7; 1960, ch. 186, Art. I, § 5; 1962, ch. 29, § 1; 1968, ch. 189, § 1; 1982, ch. 46, § 1, effective July 15, 1982; 1984, ch. 85, § 1, effective July 13, 1984; 1986, ch. 371, § 2, effective July 15, 1986; 1986, ch. 459, § 1, effective July 15, 1986; 1986, ch. 496, § 1, effective August 1, 1986; 1988, ch. 303, § 1, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 326, effective July 13, 1990; 1992, ch. 263, § 2, effective July 14, 1992; 1994, ch. 423, § 3, effective July 15, 1994; 1996, ch. 254, § 27, effective July 15, 1996; 1998, ch. 209, § 1, effective March 30, 1998; 2000, ch. 327, § 4, effective July 14, 2000; 2005, ch. 85, § 183, effective June 20, 2005; 2005, ch. 168, § 59, effective January 1, 2006; 2009, ch. 10, § 36, effective January 1, 2010; 2012, ch. 161, § 9, effective April 23, 2012; 2017 ch. 81, § 5, effective March 21, 2017; 2019 ch. 151, § 10, effective June 27, 2019.

Compiler's Notes.

Former KRS 132.220 (4024, 4025, 4042a-13, 4049, 4052: amend. Acts 1942, ch. 131, §§ 7, 32; 1948, ch. 95, § 3; 1949 (Ex. Sess.), ch. 4, § 7; 1960, ch. 186, Art. I, § 5; 1962, ch. 29, § 1; 1968, ch. 189, § 1; 1982, ch. 46, § 1, effective July 15, 1982; 1984, ch. 85, § 1, effective July 13, 1984; 1986, ch. 371, § 2, effective July 15, 1986; 1986, ch. 459, § 1, effective July 15, 1986; 1986, ch. 496, § 1, effective August 1, 1986; 1988, ch. 303, § 1, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 326, effective July 13, 1990.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Legislative Research Commission Notes.

(6/27/2019). Section 81 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 10 of that Act apply to tangible personal property assessed on or after January 1, 2020.

NOTES TO DECISIONS

Analysis

1. Situs.
2. Owner.
3. —Doubtful Title.
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1. Situs.

Oil or gas leases are to be listed for taxation by the lessee in the county in which the leased premises are located. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

Where Kentucky tobacco growers executed marketing agreements with tobacco marketing corporation, which agreements recited that title to the tobacco was vested in the company, the fact that the company was actually intended to be only an agent or trustee of the growers would not prevent the tobacco being taxed in the city in which the warehouses of the company were located, so long as the growers did not list the tobacco themselves. Paris v. Burley Tobacco Soc., 154 Ky. 320, 157 S.W. 705, 1913 Ky. LEXIS 78 (Ky. 1913).

Tobacco in warehouses of a tobacco processing and marketing corporation was taxable in the city in which the warehouses were situated, unless there for only a temporary purpose, regardless of the residence of the owners of the tobacco, so long as the owners had not listed and paid the taxes on the tobacco at the place of their residence. Paris v. Burley Tobacco Soc., 154 Ky. 320, 157 S.W. 705, 1913 Ky. LEXIS 78 (Ky. 1913).

The taxable situs of a partnership's personal property is at the place where the partnership conducts its business, and not at the place where the partners intend the "home" of the partnership to be. Walter G. Hougland & Sons v. McCracken County Board of Sup'Rs., 306 Ky. 234, 206 S.W.2d 951, 1947 Ky. LEXIS 999 (Ky. 1947).

Boats and barges traveling Ohio River hauling company's goods solely were assessable at the domicile of the taxpayer. Ashland Oil & Refining Co. v. Department of Revenue, 256 S.W.2d 359, 1953 Ky. LEXIS 721 (Ky. 1953).

2. Owner.

The mortgagor of land, not the mortgagee, is the owner of the land, and is primarily liable for the taxes thereon. Caine v. Rich, 110 S.W. 289, 33 Ky. L. Rptr. 261, 1908 Ky. LEXIS 343 (Ky. Ct. App. 1908).

Owner of land which had been sold for taxes for previous years was required to list the land of taxation during the redemption period. Southern Holding & Sec. Corp. v. Commonwealth, 245 Ky. 602, 53 S.W.2d 974, 1932 Ky. LEXIS 638 (Ky. 1932), cert. denied, 289 U.S. 757, 53 S. Ct. 788, 77 L. Ed. 1501, 1933 U.S. LEXIS 408 (U.S. 1933).

One who owns land in fee is liable for taxes on both the mineral and surface estates. Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377, 1932 Ky. LEXIS 687 (Ky. 1932).

Assessment of real estate may be made by city against owner of life estate alone. Rains v. Lexington, 284 Ky. 609, 145 S.W.2d 516, 1940 Ky. LEXIS 541 (Ky. 1940).

The duty of owners of real estate is to list it for taxation with the tax commissioner (now property valuation administrator) and if the owner fails to list it the tax commissioner (now property valuation administrator) shall do so. Breathitt County Board of Sup'rs v. Ware Cannel Coal Co., 297 Ky. 117, 179 S.W.2d 225, 1944 Ky. LEXIS 691 (Ky. 1944).

Real property interests are not only to be listed by but also assessed in the name of the owner of the first freehold estate. Fayette County Board of Supervisors v. O'Rear, 275 S.W.2d 577, 1954 Ky. LEXIS 1252 (Ky. 1954).

The practical administration of ad valorem tax laws requires that in ordinary circumstances one person or entity be held responsible for the tax liability on each item of property. Kentucky Power Co. v. Revenue Cabinet, 705 S.W.2d 904, 1985 Ky. LEXIS 293 (Ky. 1985).

Circuit courts erred in concluding that the third-party purchasers of delinquent tax bills were eligible for refunds where it was erroneous to state that the transfer of the taxed property subject to the Commonwealth satisfied the tax liability of all of the various governmental entities, but rather the property owners remained liable for the tax under Ky. Rev. Stat. Ann. § 132.220. Fayette Cty. Clerk v. Kings Right, LLC, 536 S.W.3d 201, 2017 Ky. App. LEXIS 634 (Ky. Ct. App. 2017).

3. —Doubtful Title.

The fact that the holder of paper title to land is in doubt as to what land is covered by his title, how much acreage is involved, and the validity of his title as to other claimants, does not excuse him from listing the land for taxation. Southern Holding & Sec. Corp. v. Commonwealth, 245 Ky. 602, 53 S.W.2d 974, 1932 Ky. LEXIS 638 (Ky. 1932), cert. denied, 289 U.S. 757, 53 S. Ct. 788, 77 L. Ed. 1501, 1933 U.S. LEXIS 408 (U.S. 1933).

4. Leasehold.

Ordinarily, real property held under a lease is not taxable in the hands of the lessee. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

Oil or gas leases, under which the lessee is vested with all property rights to the oil or gas that may be found in paying quantities on the leased premises, are taxable to the lessee. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

Where the lease provides that a portion of the oil or gas shall be received by the lessor as royalty, the value of such portion is to be deducted in fixing the value of the lease. Wolfe County v. Beckett, 127 Ky. 252, 105 S.W. 447, 32 Ky. L. Rptr. 167, 1907 Ky. LEXIS 136 (Ky. 1907).

Where land was leased for 99-year term, at a nominal rental, with covenant by lessor to renew for successive 99-year

terms perpetually, the leasehold was taxable against the lessee, whether considered as real or personal property, and was not such an interest as was required to be listed by the owner of the fee under this section. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

Ordinarily, the value of the interest of the lessee in a lease of real estate is not taxable, the owner of the fee being required to pay taxes on all interests connected with the real estate. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

Where the owner is a municipality or for some other reason is not required to pay taxes on the fee, the interest of the lessee is taxable. Purcell v. Lexington, 186 Ky. 381, 216 S.W. 599, 1919 Ky. LEXIS 226 (Ky. 1919), writ of error dismissed, 253 U.S. 476, 40 S. Ct. 583, 64 L. Ed. 1021, 1920 U.S. LEXIS 1430 (U.S. 1920).

The interest of a lessor in a coal mining lease is subject to taxation, notwithstanding that the interest of the lessee in the lease, and the money received by the lessor in the way of royalties, are also taxed. Stepp v. Pike County Board of Sup'rs, 194 Ky. 176, 238 S.W. 408, 1922 Ky. LEXIS 132 (Ky. 1922).

The ordinary mining lease with the reserved royalty in the lessor has the effect to create distinct items of property for purposes of taxation in both the lessor and the lessee as to the minerals or mineral rights as distinguished from the ownership of the surface, and the lessor is liable not only for the taxes on the surface of his land but likewise upon the mineral rights reserved or created in him by the lease. Moss v. Board of Sup'rs, 203 Ky. 813, 263 S.W. 368, 1924 Ky. LEXIS 1021 (Ky. 1924).

The interest of the lessee in a coal mining lease is real property, and taxable as such. Commonwealth v. Elkhorn-Piney Coal Min. Co., 241 Ky. 245, 43 S.W.2d 684, 1931 Ky. LEXIS 51 (Ky. 1931).

Where land is leased for business purpose under a long-term lease, both the lessee and the lessor have taxable interests in the land, and the payment of a tax by one will not relieve the other. Illinois C. R. Co. v. Louisville, 249 Ky. 219, 60 S.W.2d 603, 1933 Ky. LEXIS 508 (Ky. 1933).

It was not error for the property value administrator to fail to consider the lease as having any effect upon the valuation of the freehold estate, where the taxpayer was basically both lessor and lessee. Jefferson County Property Valuation Adm'r v. Ben Schore Co., 736 S.W.2d 29, 1987 Ky. App. LEXIS 553 (Ky. Ct. App. 1987).

5. Life Tenant.

It is the duty of a life tenant of land to list the land for taxation and to pay the taxes assessed against it during his term as life tenant, but his failure to pay such taxes will not deprive the taxing authority of the right to subject the fee to the payment of the taxes, during the term of the life tenant or after his death. Bradley v. Sears, 138 Ky. 230, 127 S.W. 782, 1910 Ky. LEXIS 63 (Ky. 1910).

It is the duty of a life tenant to list and pay the taxes on the land. Anderson v. Daugherty, 169 Ky. 308, 183 S.W. 545, 1916 Ky. LEXIS 681 (Ky. 1916).

Where property is in the possession of a life tenant, it should be assessed in his name. Smith v. Young, 178 Ky. 376, 198 S.W. 1166, 1917 Ky. LEXIS 742 (Ky. 1917).

A life tenant in possession must list realty for taxation and pay taxes including those levied for street improvements. The life tenant's estate is all that can be primarily sold to satisfy taxes and is the only interest acquired by tax sale purchasers who then must list the property and pay the taxes, and purchasers are not entitled to recover from the remainderman the amount of taxes paid by them. Vaughn v. Metcalf, 274 Ky. 379, 118 S.W.2d 727, 1938 Ky. LEXIS 273 (Ky. 1938).

6. Nontaxable.

Oil pipeline company was not liable for taxes on oil stored in tanks awaiting shipment through its lines, shipment being delayed because of congestion in traffic through the lines, inability of patrons to take care of the oil at its destination, and inability of connecting lines to accept oil for ultimate delivery, the possession of the company being that of a common carrier and not a bailee, notwithstanding that the company made a demurrage charge for oil not withdrawn in 60 days. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

A common carrier is not liable for taxes on property in his possession for the purpose of shipment. Cumberland Pipe Line Co. v. Commonwealth, 258 Ky. 90, 79 S.W.2d 366, 1934 Ky. LEXIS 575 (Ky. 1934).

The power to dispose of property is an incident of ownership and not a taxable intangible; the fact that a taxpayer was required to place the property for Federal Energy Regulatory Commission accounting purposes into an account known as "other investments," did not create a taxable intangible. Kentucky Power Co. v. Revenue Cabinet, 705 S.W.2d 904, 1985 Ky. LEXIS 293 (Ky. 1985).

7. Questioning Validity.

The fact that a county tax levy ordinance is unconstitutional does not constitute grounds for enjoining the assessment of property for county taxes; the validity of the levy can be questioned only when the taxes are sought to be collected. Hillman Land & Iron Co. v. Commonwealth, 148 Ky. 331, 146 S.W. 776, 1912 Ky. LEXIS 453 (Ky. 1912) (Ky. 1912).

8. Land in Hands of Receiver.

The fact that land is in control of a receiver appointed by the federal court does not excuse the owner of the land from listing it for taxation. Southern Holding & Sec. Corp. v. Commonwealth, 245 Ky. 602, 53 S.W.2d 974, 1932 Ky. LEXIS 638 (Ky. 1932), cert. denied, 289 U.S. 757, 53 S. Ct. 788, 77 L. Ed. 1501, 1933 U.S. LEXIS 408 (U.S. 1933).

9. Royalties.

Royalties due owner of real estate from oil lease were taxable, as against contention that the value of the royalty interest could not be separately assessed from the land itself. Commonwealth by Revenue Agent v. Garrett, 202 Ky. 548, 260 S.W. 379, 1924 Ky. LEXIS 766 (Ky. 1924).

10. Double Payment.

Where line of railroad owned by one railroad company was operated by another company under an operating agreement, and the taxes on the line were assessed against and paid by the operating company, the line could not be again assessed for the same tax against the owner company, notwithstanding that the assessing authorities had erroneously deducted the value of the line from the franchise value of the operating company. Commonwealth v. Kinniconick & F. S. R. Co., 104 S.W. 290, 31 Ky. L. Rptr. 859 (1907).

11. Annexed Territory.

A city cannot assess and levy taxes against annexed property that was annexed subsequent to assessment date and thus was not a part of the city on that date. St. Matthews v. Trueheart, 274 S.W.2d 52, 1954 Ky. LEXIS 1221 (Ky. 1954).

Since liability for ad valorem taxes is related to assessment date and not to levy date or collection date no inequality resulted in not permitting city to assess, levy and collect taxes on territory that was not annexed to city until after assessment date. St. Matthews v. Trueheart, 274 S.W.2d 52, 1954 Ky. LEXIS 1221 (Ky. 1954).

12. Corporate Liability.

Where distillery corporation actually owned and operated various distilleries and bonded warehouses, the fact that the distilleries and warehouses were operated under separate individual names did not relieve the corporation of liability for taxes due on storage accounts. Commonwealth ex rel. Huntsman v. Kentucky Distilleries & Warehouse Co., 143 Ky. 314, 136 S.W. 1032, 1911 Ky. LEXIS 466 (Ky. 1911).

Cooperative marketing association was liable for taxes on agricultural products in its hands, as against contention that only shares of members of association were taxable. Burley Tobacco Growers' Co-op. Asso. v. Carrollton, 208 Ky. 270, 270 S.W. 749, 1925 Ky. LEXIS 268 (Ky. 1925).

13. Decedent's Estate.

When a decedent's estate is in the hands of a personal representative for settlement and distribution, and before the estate has been or should have been settled or distributed, the personal representative should list the estate for taxation and pay the taxes thereon, and the heirs and devisees are not required to do so. Commonwealth v. Camden, 142 Ky. 365, 134 S.W. 914, 1911 Ky. LEXIS 242 (Ky. 1911).

14. Void Sale.

Where land was assessed in the name of a person who was merely an agent for the life tenant, a sale of the land for taxes was invalid, but the purchaser had a lien on the land for the amount paid by him at the sale. Rogers v. McAlister, 151 Ky. 488, 152 S.W. 571, 1913 Ky. LEXIS 530 (Ky. 1913).

Where land owned by married woman was assessed in the name of her husband for her, sale of land for taxes was invalid as against purchaser of land from the married woman without notice of the tax lien. Wash v. Noel, 160 Ky. 847, 170 S.W. 197, 1914 Ky. LEXIS 550 (Ky. 1914).

Where land was assessed in the name of the remainderman rather than in the name of the life tenant, a sale of the land for taxes could not pass title to the life estate. Anderson v. Daugherty, 169 Ky. 308, 183 S.W. 545, 1916 Ky. LEXIS 681 (Ky. 1916).

Where person holding title bond for real estate listed it for taxation and paid taxes thereon, assessment in name of record owner of fee was void and attempted sale under such assessment was void. Mullins v. Rader, 204 Ky. 431, 264 S.W. 1058, 1924 Ky. LEXIS 478 (Ky. 1924).

Where property not owned by taxpayer was assessed in his name and taxes paid by him, and property owned by him was assessed as belonging to an "unknown owner," the sale for taxes of the property actually owned by him was void. Gasho v. Lowe, 282 Ky. 518, 139 S.W.2d 437, 1940 Ky. LEXIS 221 (Ky. 1940).

15. Date of Valuation.

Where assessments of agricultural land for one year were unconstitutional, the correct remedy was the use of the previous year's assessments for the subject property for the later tax year; the property valuation administrator was not entitled to belatedly assess the subject property for the later year's taxes since subsection (1) of this section clearly states that property shall be evaluated as of January 1. Dolan v. Land, 667 S.W.2d 684, 1984 Ky. LEXIS 211 (Ky. 1984).

16. Stocks, Notes, Bonds and Accounts.

The term "account" refers to those accounts that are similar in nature to stocks, bonds or notes; it refers to accounts created by transactions and documents separate and apart from the acquisition of an underlying asset. Kentucky Power Co. v. Revenue Cabinet, 705 S.W.2d 904, 1985 Ky. LEXIS 293 (Ky. 1985).

Cited in:

Vaughn v. Metcalf, 274 Ky. 379, 118 S.W.2d 727, 1938 Ky. LEXIS 273 (Ky. 1938); Rains v. Lexington, 284 Ky. 609, 145 S.W.2d 516, 1940 Ky. LEXIS 541 (Ky. 1940); Oates v. Simpson, 295 Ky. 433, 174 S.W.2d 505, 1943 Ky. LEXIS 234 (Ky. 1943); Gilreath v. Gregory, 314 Ky. 30, 234 S.W.2d 162, 1950 Ky. LEXIS 1010 (Ky. 1950); Kentucky Tax Com. v. Jefferson Motel, Inc., 387 S.W.2d 293, 1965 Ky. LEXIS 465 (Ky. 1965); Kling v. Northern Kentucky Area Planning Com., 654 S.W.2d 606, 1983 Ky. LEXIS 261 (Ky. 1983); Dean v. Commonwealth ex rel. Revenue Cabinet, 967 S.W.2d 594, 1998 Ky. App. LEXIS 34 (Ky. Ct. App. 1998).

OPINIONS OF ATTORNEY GENERAL.

Under this section, ad valorem taxes on tangible personal property are payable in the county and city in which the property has its "situs" on assessment date. OAG 60-1081.

The fact that the equipment of a West Virginia contractor doing a job in Kentucky could be assessed for taxation in both states does not constitute prohibited double taxation. OAG 61-975.

Under subsection (3) of this section, a mineral right or mineral lease is an interest in property which can be separately taxed if it is reduced to ownership by the holder of the lease, but where there has been no severance, or reduction to ownership, the listing of the land by the owner of the first freehold estate would carry with it the value of the entire estate, including minerals. OAG 63-775.

Where a taxpayer moved in September from a city where taxes were assessed on July 1 and due the next year to a city where taxes were assessed on January 1 of the year in which they were due, he was only liable for the tax assessed on July 1. OAG 64-234.

KRS 134.060 (repealed) concerns the tax liability only as it exists between purchaser and seller and in the event of a sale within two (2) months after the assessment date, the person in whose name the property was assessed remains responsible to the taxing authority for payment of the tax pursuant to subsection (1) of this section. OAG 64-710.

Where a citizen of the county owned a boat that was licensed in the county but docked on a lake in another county, if the boat had not acquired a permanent situs elsewhere, it was properly taxable in the city of the owner's domicile. OAG 65-18.

Where a citizen of the county owned a boat that was licensed in the county but docked on a lake in another county, the boat would not be subject to tax in the city where the owner lived if it was satisfactorily shown that the boat was permanently located outside the city. OAG 65-18.

Only in unusual circumstances, such as a 99-year lease or oil and gas leases, is there justification for treating a leasehold as a separate taxable estate. OAG 76-2.

Even though tangible personal property having merely a temporary location at a place other than the owner's domicile is not taxable at such place, there is a presumption that such property in this state on the assessment date is subject to assessment at the place where located and the burden is upon the owner to present evidence to the assessing authorities that the property is located in the county on a temporary basis and that it has been assessed and taxes paid at the place of domicile. OAG 79-230, 1979 Ky. AG LEXIS 391.

Where road equipment has only a temporary situs in a county other than the county of the owner's domicile, it would appear that the property should be listed in the owner's domiciliary county. OAG 79-230, 1979 Ky. AG LEXIS 391.

Where a taxpayer maintained office in Harlan County but owned no real estate there and lived in Bill County, the books, furnishings and fixtures of his office are taxable for ad valorem tax purposes in Harlan County, if the property is permanently located there, since this section requires that the tax be imposed in the county where the property is located. OAG 81-59, 1981 Ky. AG LEXIS 363.

Where a house is in existence and is assessed and valued in January, the owner must pay the full property tax for that year even though the house is subsequently destroyed by fire during the year, since the statute does not allow an exemption on pro rated taxation for destroyed property. OAG 81-432, 1981 Ky. AG LEXIS 15.

The personal property tax on a vehicle should be based on the date of the bill of sale since the bill of sale provides evidence of ownership under the Uniform Commercial Code. OAG 82-68, 1982 Ky. AG LEXIS 577.

The assessment date is the day, fixed by statute, when property is valued for ad valorem tax purposes; while the taxes which a city intends to collect must be referenced to its fiscal year, in actuality, they must be based on a tax liability that can accrue only from the presence of the property within the city's jurisdictional limits on the assessment date. OAG 82-186, 1982 Ky. AG LEXIS 457.

The levy date is the day when the legislative body of the city enacts an ordinance levying the tax; the General Assembly has not fixed a specific date on which a city must levy its ad valorem tax but it is essential that the assessment be made prior to the ordinance levying the tax. OAG 82-186, 1982 Ky. AG LEXIS 457.

Where a city chose to adopt the county assessment, its assessment date was January 1 preceding the city's fiscal year; the city's levy date, however, must be subsequent to the certification of the county assessments by the department of revenue (now revenue cabinet). OAG 82-186, 1982 Ky. AG LEXIS 457.

A sailboat is taxable in the county of the owner's domicile, unless it can be shown that the boat is permanently located in another county. OAG 82-274, 1982 Ky. AG LEXIS 376.

Where property owned by a hospital, which was a nonprofit corporation, was leased to a clinic, which was a for-profit corporation, then if the building on the property was owned by the clinic, it must be placed on the tax roll and the leasehold interest must also be placed on the tax roll. OAG 84-35, 1984 Ky. AG LEXIS 351.

Whether property qualifies for the homestead exemption is determined as of January 1 each year. If one who is qualified for the homestead exemption owns the property as of that date, the property will receive the benefit of the exemption. If the property is owned as of the assessment date by one not qualified to receive the exemption, it will not receive the exemption for that year, even though it may be acquired during the course of the year by one who is entitled to the exemption. OAG 85-108, modifying OAG 81-429, 1981 Ky. AG LEXIS 17.

The docks of a marina are considered land and not buildings for the purposes of KRS 132.220(3) and are subject to administrative search in the absence of the owner, unless they are sufficiently structurally analogous to buildings. OAG 12-008, 2012 Ky. AG LEXIS 95.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Assessor of first-class city may take property lists jointly with property valuation administrator, KRS 91.320.

Jeopardy assessments by Revenue Cabinet, KRS 131.150.

Kentucky Law Journal.

Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Property Tax Assessment Administration in Kentucky, 60 Ky. L.J. 141 (1971).

Weber and Olsen, Religious Property Tax Exemptions in Kentucky, 66 Ky. L.J. 651 (1977-1978).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

Bratt, Family Protection Under Kentucky's Inheritance Laws: Is the Family Really Protected? 76 Ky. L.J. 387 (1987-88).

132.260. Rental space for parking mobile homes and recreational vehicles — Report — Right to inspect.

Every person providing rental space for the parking of mobile homes and recreational vehicles shall by February 1 of each year report the name of the owner and type and size of all mobile homes and recreational vehicles not registered in this state under KRS 186.655 on his premises on the prior January 1 to the property valuation administrator of the county in which the property is located. The report shall be made in accordance with forms prescribed by the Department of Revenue and shall be signed and verified by the chief officer or person in charge of the business. The property valuation administrator may make a personal inspection and investigation of the premises on which mobile homes and recreational vehicles are located, for the purpose of identifying and assessing such property. No person in charge of such premises shall refuse to permit the inspection and investigation.

History.

4777a-1 to 4777a-3, 4777a-5; Acts 1949 (Ex. Sess.), ch. 4, § 8; 1960, ch. 186, Art. I, § 6; 1962, ch. 262, § 3; 1982, ch. 395, § 2, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 327, effective July 13, 1990; 1996, ch. 317, § 1, effective July 15, 1996; 2005, ch. 85, § 185, effective June 20, 2005.

Compiler's Notes.

Former KRS 132.260 (4777a-1 to 4777a-3, 4777a-5: amend. Acts 1949 (Ex. Sess.), ch. 4, § 8; 1960, ch. 186, Art. I, § 6; 1962, ch. 262, § 3; 1982, ch. 395, § 2, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 327, effective July 13, 1990.

NOTES TO DECISIONS

1. Public Warehouseman.

A public warehouseman is liable for the taxes on property in storage in the warehouse if the owners of the property have not listed it for taxation and paid the taxes. Commonwealth by Hopkins v. Tabbs Storage Warehouse & Freight Transfer Line, 150 Ky. 465, 150 S.W. 525, 1912 Ky. LEXIS 915 (Ky. 1912) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

A regulation adopted by a city or county legislative body which includes modular homes in the definition of "housetrailer" is invalid, since a modular home is not a housetrailer under this section. OAG 75-249.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

"Mobile home", "recreational vehicle", and "recreational vehicle park" defined, KRS 132.720.

132.280. County tax levy to be based on state assessment — Exception for special taxing district.

The assessment made for state purposes, when supervised as required by law, shall be the basis for the

levy of the ad valorem tax for county, school district, and all special taxing district purposes; except that any special taxing district established within an incorporated city under existing statutory or any independent school district whose January 1, 1975, assessment per pupil in average daily attendance would have been reduced because of the use of the assessment made for state purposes as of January 1, 1975, shall continue to use the assessment made for city purposes.

History.
1883; Acts 1976, ch. 186, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 328, effective July 13, 1990.

Compiler's Notes.
Former KRS 132.280 (1883: amend. Acts 1976, ch. 186, § 1) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 328, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Application.
2. County Assessment.

1. Application.
This section does not apply to franchise taxes assessed under KRS Chapter 136. Henderson Bridge Co. v. Commonwealth, 120 Ky. 690, 87 S.W. 1088, 27 Ky. L. Rptr. 1104, 27 Ky. L. Rptr. 1177, 1905 Ky. LEXIS 154 (Ky. 1905).

2. County Assessment.
A fiscal court has no power to provide for an assessment for county purposes alone, apart from the assessment for state purposes. Jefferson County v. Young, 120 Ky. 456, 86 S.W. 985, 27 Ky. L. Rptr. 849, 1905 Ky. LEXIS 116 (Ky. 1905).

Cited in:
St. Matthews Fire Prot. Dist. v. Aubrey, 304 S.W.3d 56, 2009 Ky. App. LEXIS 47 (Ky. Ct. App. 2009).

OPINIONS OF ATTORNEY GENERAL.

Where a board of education has had its taxes collected by a second class city that is using its city assessments, the base upon which the school tax rate will be collected for the tax year 1976 is calculated on the July 1, 1975 city assessment, and the first time the county property valuation administrator's assessment can be used as the tax base is the assessment made as of January 1, 1977 for the 1977-78 school year. OAG 76-274.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
County ad valorem tax, levy, KRS 68.090.

132.486. Assessment system for tangible personal property — Administrative regulations — Appeals — Effect of appeal on payment of taxes.

(1) The Department of Revenue shall develop and administer a centralized ad valorem assessment system for tangible personal property. This system shall be designed to provide on-line computer terminals and accessory equipment in every property valuation administrator's office in the state in order to create and maintain a centralized personal property tax roll database.

(2) Appeals of personal property assessments shall not be made to the county board of assessment appeals. Personal property taxpayers shall be served notice under the provisions of KRS 132.450(4) and shall have the protest and appeal rights granted under the provision of KRS 131.110.

(3) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in a protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

History.
Enact. Acts 1986, ch. 371, § 1, effective July 15, 1986; 1988, ch. 303, § 6, effective July 15, 1988; 1998, ch. 391, § 2, effective July 15, 1998; 2005, ch. 85, § 202, effective June 20, 2005; 2005, ch. 168, § 65, effective January 1, 2006; 2009, ch. 10, § 39, effective January 1, 2010.

Legislative Research Commission Notes.
(1/1/2006). Under 2005 Ky. Acts ch. 184, § 18, changes in the names of agencies and officers that are made in bills confirming a reorganization of the executive branch are to be codified only to the extent those changes do not conflict with other 2005 amendments. Accordingly, an amendment to this section in Acts ch. 168 prevails over a name change made in Acts ch. 85.

NOTES TO DECISIONS

1. Applicability.
No specific administrative protest procedures are required for a tax refund claim involving a classification issue, which may be brought within two years after payment; thus, by filing for a refund of tangible personal property tax and appealing its denial before seeking judicial review, a taxpayer properly challenged the classification and tax rate applied to manufacturing machinery without going through the expedited assessment protest procedure. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

Cited in:
Paducah v. T.C.B., Inc., 817 S.W.2d 234, 1991 Ky. App. LEXIS 119 (Ky. Ct. App. 1991).

132.487. Centralized ad valorem tax system for all motor vehicles — General and compensating tax rates — Access to records — Property valuation administrator to assess motor vehicles.

(1) The department shall develop and administer a centralized ad valorem tax system for all motor vehicles as defined in KRS 186.010. This system shall be designed to allow the collection of state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on each motor vehicle at the time of registration of the motor vehicle by the party charged with issuing the registration. The department shall supervise and instruct the property

valuation administrators and other officials with respect to their duties in relation to this system.

(2) Except as otherwise provided by law, the tax rate levied by the state, counties, schools, cities, and special tax districts on motor vehicles shall not exceed the rate that could have been levied on motor vehicles by the district on the January 1, 1983 assessments. All counties, schools, cities, and special taxing districts proposing to levy an ad valorem tax on motor vehicles shall submit to the department on or before October 1 of the year preceding the assessment date, the tax rate to be levied against valuations as of that assessment date. Any district that fails to timely submit the tax rate shall receive the rate in effect for the prior year.

(3) The compensating tax rate and maximum possible tax rate allowable for counties, schools, cities, and special taxing districts on property other than motor vehicles for the 1984 and subsequent tax periods shall be calculated excluding all valuations of and tax revenues from motor vehicles from the base amounts used in arriving at these general rates.

(4) The Transportation Cabinet shall provide access to all records of motor vehicle registrations to the department and the property valuation administrators as necessary to prepare and maintain a complete tax roll of motor vehicles throughout each year.

(5) The property valuation administrator shall, subject to the direction, instruction, and supervision of the department, have responsibility for assessing all motor vehicles other than those assessed under KRS Chapter 136 as part of public service companies. The department may provide standard valuation guidelines for use in valuation of motor vehicles.

(6) The property valuation administrator shall provide to the department by December 1 of each year a recapitulation of motor vehicles to be assessed as of January 1 of the next year.

(7) Procedures for protest, appeal, and correction of erroneous assessments shall be the same for motor vehicles as for other properties subject to ad valorem taxes.

History.

Enact. Acts 1982, ch. 264, § 4, effective January 1, 1984; 1984, ch. 54, § 7, effective January 1, 1985; 1994, ch. 9, § 1, effective July 15, 1994; 2005, ch. 85, § 203, effective June 20, 2005.

Legislative Research Commission Notes.

(7/15/94). The 1994 changes to this statute are "effective for property assessed on or after January 1, 1995." See 1994 Ky. Acts ch. 9, sec. 4.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Legislative Intent.
3. State Tax Rate.

1. Constitutionality.

Act 264 of 1982, governing motor vehicle taxation was not special legislation for failure to provide for a two percent (2%) discount which is granted to real property and other personal property under former KRS 134.020 since motor vehicles are a classification based upon distinctive and natural reasons, and under this act no motor vehicles are subjected to a discount within the classification; the mere fact that all taxes are not paid in a short period of time, as envisioned in former KRS 134.020, et seq., does not render the legislation unconstitutional. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Since subsection (3) of this section, which excludes motor vehicles from the calculation of the compensating and maximum possible tax rates, applies equally to all vehicles which are to be operated on the highways of the state and since there are distinctive and natural reasons inducing and supporting the classification of motor vehicles because of their mobility, rapid depreciation and frequency of transfer and because they stand virtually alone in licensing requirements, the classification of motor vehicles was valid and did not contravene Ky. Const., § 59 prohibiting special legislation. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

Since motor vehicles are a separate, distinct and reasonable classification, the mere fact that the dates of assessment and collecting vary from real property or other personalty does not offend the provisions of Ky. Const., § 59 prohibiting special legislation. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

2. Legislative Intent.

The legislative intent is clear on the face of the statute in that no tax is to be levied on the vehicles until they are registered and, if this resulted in eliminating the taxation of those that are in inventory as of the assessment date, then so be it, because the General Assembly has provided an alternative time of assessment. Paducah v. T.C.B., Inc., 817 S.W.2d 234, 1991 Ky. App. LEXIS 119 (Ky. Ct. App. 1991).

3. State Tax Rate.

KRS 133.185, which relates to the imposition of a tax rate for a taxing district, such as a city, county or school, has no relationship to Ky. Const., § 171 which requires that the General Assembly shall provide an annual tax sufficient to defray the estimated expenses of the Commonwealth; the state tax rate on all personal property, including motor vehicles, is not fixed by the processes outlined in KRS 133.185, or in subsections (2) or (6) of this section which provide for submission of a proposal, recapitulation of motor vehicles by the property valuation administrator, and certification by the Department of Revenue, but rather, the state tax rate is fixed by the General Assembly and is currently embodied in KRS 132.020. There is no conflict between subsections (2) and (6) of this section with the constitutional provision that the taxes shall be sufficient to defray the expenses of the state. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

The language of former subsection (3) of this section, governing a centralized ad valorem tax system for motor vehicles, clearly and unequivocally removes all valuations of and tax revenues from motor vehicles from the base amount used in determining the compensating tax rate and maximum possible tax rate envisioned under the provisions of KRS 68.245, 132.023, 132.027, and 160.470. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

OPINIONS OF ATTORNEY GENERAL.

The property valuation administrator (PVA) is responsible for assessing motor vehicles subject to a fire district tax, and part of the responsibility for assessing the property includes listing the property on the tax roll. OAG 84-132, 1984 Ky. AG LEXIS 255.

The county clerk, even where a vehicle has been junked, destroyed, or is rendered inoperable on the highways, is still responsible for collecting the ad valorem taxes on the vehicle where the motor vehicle did not become junked, destroyed or

rendered inoperable on the highways, until after January 1 of the tax year in question. OAG 84-309, 1984 Ky. AG LEXIS 78.

The state Department of Education is required to certify tax rates on motor vehicles for school districts pursuant to subsection (2) of this section. OAG 86-71, 1986 Ky. AG LEXIS 15.

A city is not required to pay the property valuation administrator for the use of motor vehicle assessments. OAG 88-75, 1988 Ky. AG LEXIS 75.

A city does not have to pay for motor vehicle assessments furnished by the Property Valuation Administrator under KRS 132.487. OAG 92-69, 1992 Ky. AG LEXIS 69.

The docks of a marina are considered land and not buildings for the purposes of KRS 132.220(3) and are subject to administrative search in the absence of the owner, unless they are sufficiently structurally analogous to buildings. OAG 12-008, 2012 Ky. AG LEXIS 95.

132.550. County clerk to compute amount due from each taxpayer — Compensation of clerk. [Repealed]

History.

4076a-1, 4076a-2; Acts 1952, ch. 203, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 329, effective July 13, 1990; 2005, ch. 85, § 207, effective June 20, 2005; repealed by 2020 ch. 91, § 75, effective April 15, 2020.

132.670. Mapping of property — Biennial review by Department of Revenue.

(1)(a) The Department of Revenue shall prepare detailed maps identifying every parcel of real property within each county of the state. Each county shall furnish to the department adequate facilities in the county courthouse in which to work.

(b) The Department of Revenue shall prescribe methods and specifications for the mapping of property. Pursuant to KRS 42.655, the Department of Revenue shall prescribe methods and specifications which are compatible with use by the Commonwealth Office of Technology's geographic information clearinghouse, shall whenever possible use nonlicensed data, and shall whenever possible consolidate its mapping efforts into multiagency projects to minimize redundancy and lower overall costs.

(c) Personnel authorized to assist in making property identification maps under this section may be given the same authority as a deputy property valuation administrator. Locally employed mapping project personnel shall be compensated in the same manner as deputies or assistants in the property valuation administrator's office.

(2) The Department of Revenue shall conduct a biennial review of the quality of maps and ownership records in each county. If, in the first review conducted under these provisions, the maps and records in any county fail to meet the minimum standards established by the department, the department shall assume responsibility for remapping, revision, and updating under the provisions of subsection (1) of this section. Minimum maintenance standards to be followed by each property valuation administrator shall be established by the department.

History.

Enact. Acts 1949 (Ex. Sess.), ch. 5, § 3; 1956, ch. 5; 1960, ch. 186, Art. I, § 15; 1972, ch. 364, § 1; 1974, ch. 308, § 29; 1980, ch. 261, § 1, effective July 15, 1980; 1982, ch. 388, § 3, effective July 15, 1982; 1988, ch. 418, § 5, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 330, effective July 13, 1990; 2005, ch. 85, § 217, effective June 20, 2005; 2022 ch. 229, § 8, effective July 14, 2022.

Compiler's Notes.

Former KRS 132.670 (Enact. Acts 1949 (Ex. Sess.), ch. 5, § 3; 1956, ch. 5; 1960, ch. 186, Art. I, § 15; 1972, ch. 364, § 1; 1974, ch. 308, § 29; 1980, ch. 261, § 1, effective July 15, 1980; 1982, ch. 388, § 3, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 330, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.

This section is complete and in full force and effect and not unconstitutional on ground that it was designed to take effect on affirmative action of fiscal court. Borders v. Cain, 252 S.W.2d 903, 1952 Ky. LEXIS 1042 (Ky. 1952) (decision prior to 1960 amendment).

132.690. Annual revaluation of real property — Quadrennial examination of real property — Methods of examination — Emergency revaluation.

(1)(a) Each parcel of taxable real property or interest therein subject to assessment by the property valuation administrator shall be revalued during each year of each term of office by the property valuation administrator at its fair cash value in accordance with standards and procedures prescribed by the department and shall be examined no less than once every four (4) years by the property valuation administrator.

(b) For any real property upon which any improvements have been made since the prior examination, the property valuation administrator or his or her deputy shall perform an on-site, in-person visual examination of the real property and the improvements. The examination shall be conducted in a manner approved by the department and for the purpose of gathering any necessary information related to the characteristics of the real property and the improvements for purposes of assessing their value. Any subsequent examination of the real property for purposes of assessing its value by the property valuation administrator or his or her deputy shall be performed by:

1. On-site, in-person visual examination;

2. Use of digital imaging technology as defined by the International Association of Assessing Officers Standard on Mass Appraisal of Real Property; or

3. Any other examination method approved by the department.

(c) In accordance with standards and procedures prescribed by the department, the property valuation administrator shall submit an assessment schedule to the department and shall maintain a record of the examination and revaluation for each parcel of real property which shall include the inspection dates and any other relevant information.

(2) The right of any individual to appeal the assessment on his property in any year as provided in KRS 133.120 shall in no way be affected by this section.

(3) If the property valuation administrator fails to revalue property as required by this section, the department shall have the authority to order an emergency revaluation in the same manner as provided for emergency assessments by KRS 132.660. Any property valuation administrator willfully violating the provisions of subsection (1) of this section or who refuses to comply with the directions of the department to correct the assessment shall have his compensation suspended by the department and shall be subject to removal from office as provided by KRS 132.370(4) and shall be subject to the provisions of KRS 132.620 and 61.120.

(4) Nothing in this section shall prohibit action by the department under the provisions of KRS 133.150 or 132.660 in any year in which the department determines such action to be necessary.

History.

Enact. Acts 1960, ch. 186, Art. I, § 16; 1979 (Ex. Sess.), ch. 25, § 9, effective February 13, 1979; 1980, ch. 319, § 4, effective July 15, 1980; 1988, ch. 418, § 6, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 331, effective July 13, 1990; 2005, ch. 85, § 219, effective June 20, 2005; 2017 ch. 81, § 1, effective March 21, 2017.

Compiler's Notes.

Former KRS 132.690 (Enact. Acts 1960, ch. 186, Art. I, § 16; 1979 (Ex. Sess.), ch. 25, § 9, effective February 13, 1979; 1980, ch. 319, § 4, effective July 15, 1980; 1988, ch. 418, § 6, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 331, effective July 13, 1990.

The catchline for KRS 132.690 appears here to reflect a change to the catchline by the revisor, removing "physical" after "Quadrennial".

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Suspension of Compensation.
3. Assessments Not Binding.
4. Quadrennial Plan.
5. Assessments.
6. —Annual.

1. Constitutionality.

Provisions of this section and KRS 132.450, which authorize assessments of property at "fair cash value," are not unconstitutional; the tax assessor need not be instructed as to specific valuation methods, as long as he provides assessments that are fair and equitable. Dean v. Commonwealth ex rel. Revenue Cabinet, 967 S.W.2d 594, 1998 Ky. App. LEXIS 34 (Ky. Ct. App. 1998).

2. Suspension of Compensation.

Where a majority of the state's property valuation administrators submitted recapitulations of the aggregate value of real property by class in their counties to the Department of Revenue pursuant to KRS 133.040 and upon being informed by the department that the assessments were not in compliance with the full fair market value requirements of Ky. Const., § 172, refused the department's directives, sent pursuant to subsection (1) of KRS 133.040, to raise the aggregate assessed values by minimum increases to make them satisfy the requirement of fair cash value, the department properly ordered the administrators' paychecks withheld pursuant to subsection (3) of this section until they complied; the department has an explicit mandate to order the administrators to correct valuations which are different, and this mandate is not superseded by the department's ability to assess property itself under KRS 133.150, since this is only one of several powers given the department to assure compliance with Ky. Const., § 172. Allphin v. Butler, 619 S.W.2d 483, 1981 Ky. LEXIS 259 (Ky. 1981).

3. Assessments Not Binding.

Property valuation administrators (PVA) who make ad valorem assessments are under the "direction, instruction and supervision" of the Revenue Cabinet; therefore, the PVA does not act independently of the Revenue Cabinet, and the Cabinet is not bound by his or her assessments. Revenue Cabinet Commonwealth v. Estate of Young, 748 S.W.2d 167, 1988 Ky. App. LEXIS 61 (Ky. Ct. App. 1988).

4. Quadrennial Plan.

Property Valuation Administrator's (PVA) quadrennial plan, which divided the county into four (4) sections and undertook to physically examine the properties in one (1) section each year, complied with all relevant statutory requirements, and did not violate Ky. Const., §§ 2, 171 or 172. Revenue Cabinet v. Leary, 880 S.W.2d 878, 1994 Ky. App. LEXIS 8 (Ky. Ct. App. 1994).

5. Assessments.

Property valuation administrator's (PVA) assessments of a property were reduced as the PVA had to show a material change in the value of property determined in a contested proceeding to increase the value of the property in succeeding years. Carr v. Cont'l Gen. Tire, Inc., 168 S.W.3d 411, 2004 Ky. App. LEXIS 347 (Ky. Ct. App. 2004).

If the value for taxation purposes of a parcel of real property was determined in a contested proceeding, the local taxing authority has to show a material change in the value of that property in order to justify a higher assessment in the following year. Carr v. Cont'l Gen. Tire, Inc., 2004 Ky. App. LEXIS 340 (Ky. Ct. App. Nov. 24, 2004), modified, 168 S.W.3d 411, 2004 Ky. App. LEXIS 347 (Ky. Ct. App. 2004).

Kentucky Claims Commission, Board of Tax Appeals erred in upholding the assessment of the taxpayer's property by the county property valuation administrator (PVA) because the Board conflated the parties' burdens and misapplied the presumption of validity as to the PVA's assessment as the PVA's continued use of 2008 values of the then-brand-new building for 2020 assessments over a decade later was improper, and the Board's rejection of the taxpayer's evidence of comparable sale values and uncritical adoption of the PVA's evidence of hypothetical leased values without any adjustments was not based upon competent or substantial evidence. Lowe's Home Ctrs., L.L.C. v. Arnold, 2025 Ky. App. LEXIS 68 (Ky. Ct. App. 2025).

6. —Annual.

Where the assessment of the taxpayer's property in 1999 was lowered significantly, before the valuation for succeeding years were changed from the 1999 valuation it had to be shown that property or conditions in those succeeding years had materially changed, as Ky. Const., § 172 and KRS 132.690(1) required that property be assessed annually at its fair cash value. Carr v. Cont'l Gen. Tire, Inc., 168 S.W.3d 411, 2004 Ky. App. LEXIS 347 (Ky. Ct. App. 2004).

Cited in:

Layson v. Brady, 576 S.W.2d 223, 1978 Ky. App. LEXIS 651 (Ky. Ct. App. 1978).

NOTES TO UNPUBLISHED DECISIONS

1. Assessments.

Unpublished decision: Property Valuation Administrator did not err in its valuation of commercial real property under

Ky. Const. § 172 and Ky. Rev. Stat. Ann. § 132.690 where the payments under the leasehold were indisputably benefits that arose out of the ownership of the property, and thus, it was not error to consider those payments in determining the property's fair cash value under the income generation approach of Ky. Rev. Stat. Ann. § 132.191(2)(b). Wilgreens, LLC v. O'Neill, 2016 Ky. App. Unpub. LEXIS 893 (Ky. Ct. App. 2016), review denied, ordered not published, 2017 Ky. LEXIS 101 (Ky. Mar. 15, 2017).

OPINIONS OF ATTORNEY GENERAL.

Assessments must mandatorily conform to the strict requirement of Ky. Const., § 172, that is, the standard of "fair cash value." OAG 80-500, 1980 Ky. AG LEXIS 140.

In view of the fact that the major events relating to the "assessment" process of 1980, as pertained to the property valuation administrator, that is, the PVA's making up the assessments for tax rolls for 1980, providing the inspection period, giving notices of increases, and filing the recapitulation of all property assessed on the tax rolls, had already taken place prior to the amendment to this section which required assessment of all, rather than one-half of (½) real property in county, the tax roll, as concerned such PVA, was closed for the tax year of 1980. OAG 80-500, 1980 Ky. AG LEXIS 140.

In 1980 amendment of this section, which increased the amount of real property to be evaluated yearly from one-half (½) to all of the property in the county, was not intended by the Legislature to be meshed or integrated with the 1980 tax assessment process, and the property valuation administrator could not, for the 1980 tax year, revalue the other half of the properties. OAG 80-500, 1980 Ky. AG LEXIS 140.

Entry by the Property Valuation Administrator to the interior of a home in order to value the property is authorized; if, however, the property owner is not at home or refuses entry, the PVA must resort to an administrative search warrant. OAG 83-11, 1983 Ky. AG LEXIS 486.

Since the Property Valuation Administrator is authorized to inspect property and is required to assess property, entry onto the property in order to measure it from the exterior is authorized, such entry being required to be reasonable; thus, such authorized entry does not constitute trespass. OAG 83-11, 1983 Ky. AG LEXIS 486.

The Property Valuation Administrator has authority to inspect real property in the county. OAG 83-11, 1983 Ky. AG LEXIS 486.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Kentucky Law Journal.

Kentucky Law Survey, Whiteside, Taxation, 64 Ky. L.J. 371 (1975-76).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

132.720. Definitions for KRS 132.260 and 132.751.

As used in KRS 132.260 and 132.751, unless the context otherwise requires:

(1) "Manufactured home" has the same meaning as in KRS 186.650.

(2) "Mobile home," "recreational vehicle," "mobile home park," and "recreational vehicle park" have the same meanings as in KRS 219.320.

(3) "Unit" means any single mobile home, manufactured home, or recreational vehicle.

(4) "Permanent, fixed foundation" means a foundation permanent in nature which is so constructed as to be fixed upon the surface of the land.

History.

Enact. Acts 1962, ch. 262, § 1; 1982, ch. 395, § 4, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 332, effective July 13, 1990; 1992, ch. 338, § 12, effective July 14, 1992; 2000, ch. 166, § 2, effective July 14, 2000.

Compiler's Notes.

Former KRS 132.720 (Enact. Acts 1962, ch. 262, § 1; 1982, ch. 395, § 4, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 332, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Cities have the right under their police power to levy taxes on vehicles, including housetrailers as defined in this section and the fact that certain mobile homes or trailers were located within the city prior to adoption of an ordinance taxing such vehicles would in no way prohibit or inhibit the application of said ordinance to such mobile homes and trailers. OAG 70-264.

A regulation adopted by a city or county legislative body which includes modular homes in the definition of "housetrailer" is invalid, since a modular home is not a housetrailer under this section. OAG 75-249.

132.730. Mobile homes and recreational vehicles subject to ad valorem taxation — Exception.

All mobile homes and recreational vehicles which are within this state on January 1 each year shall be subject to all ad valorem tax levies applicable to other property subject to full state and local rates, except that any mobile home and recreational vehicle not licensed in this state and not remaining within this state for a period of more than ninety (90) days in any twelve (12) month period shall not have a taxable situs in this state unless an occupant is employed in this state.

History.

Enact. Acts 1962, ch. 262, § 2; 1982, ch. 395, § 5, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 333, effective July 13, 1990; 1992, ch. 338, § 13, effective July 14, 1992.

Compiler's Notes.

Former KRS 132.730 (Enact. Acts 1962, ch. 262, § 2; 1982, ch. 395, § 5, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 333, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Mobile home and recreational vehicle park operators to keep register and furnish reports on mobile homes and recreational vehicles, KRS 132.260.

132.751. Classification of certain mobile or manufactured homes and certain recreational vehicles as real property.

(1) Mobile homes or manufactured homes not held for resale by a dealer shall be classified as real property

for the purpose of the levy and assessment of ad valorem taxes, regardless of whether or not the wheels or mobile parts have been removed and whether or not the unit rests on a permanent, fixed foundation.

(2) Recreational vehicles shall be classified as real property if the wheels or mobile parts have been removed and the unit rests on a permanent, fixed foundation.

History.

Enact. Acts 1992, ch. 338, § 11, effective July 14, 1992; 2000, ch. 166, § 3, effective July 14, 2000.

132.760. Exemption from ad valorem taxes for trucks, tractors, buses, and trailers used both in and outside Kentucky and subject to KRS 136.188 fee. [Repealed]

History.

Enact. 2006, ch. 252, Pt. XV, § 1, effective January 1, 2007; repealed by 2023 ch. 92, § 52, effective March 24, 2023.

132.810. Homestead exemption — Application — Qualification.

(1) To qualify under the homestead exemption provision of the Constitution, each person claiming the exemption shall file an application with the property valuation administrator of the county in which the applicant resides, on forms prescribed by the department. The assessed value of property on which homestead exemption is claimed shall not be increased because of valuation expressed on the application form filed with the property valuation administrator, and whenever it becomes known that the valuation of property subject to the homestead tax exemption has been increased because of valuation expressed on the application form, adjustment shall be made the following year so that the total tax paid by the taxpayer is the same as if the increase had not been made.

(2)(a) Every person filing an application for exemption under the homestead exemption provision must be sixty-five (65) years of age or older during the year for which application is made or must have been classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system either within or without the Commonwealth of Kentucky on January 1 of the year in which application is made.

(b) Every person filing an application for exemption under the homestead exemption provision must own and maintain the property for which the exemption is sought as his personal residence.

(c) Every person filing an application for exemption under the disability provision of the homestead exemption must have received disability payments pursuant to the disability and must maintain the disability classification for the entirety of the particular taxation period.

(d)1. Every person filing for the homestead exemption who is totally disabled and is less than sixty-five (65) years of age must apply for the homestead exemption on an annual basis, except as provided by subparagraph 2. of this paragraph.

2.a. A service-connected totally disabled veteran of the United States Armed Forces; or

b. A totally and permanently disabled individual found disabled under:

i. The applicable rules of the Social Security Administration;

ii. The applicable rules of the Kentucky Retirement Systems; or

iii. Any other provision of the Kentucky Revised Statutes;

shall document the disability at the time of application for the homestead exemption and shall not be required to apply for the homestead exemption on an annual basis.

(e)1. Only one (1) exemption per residential unit shall be allowed even though the resident may be sixty-five (65) years of age and also totally disabled, and regardless of the number of residents sixty-five (65) years of age or older occupying the unit.

2. The sixty-five hundred dollars ($6,500) exemption provided in Section 170 of the Constitution of Kentucky shall be construed to mean sixty-five hundred dollars ($6,500) in terms of the purchasing power of the dollar in 1972.

3. Every two (2) years thereafter, if the cost of living index of the United States Department of Labor has changed as much as one percent (1%), the maximum exemption shall be adjusted accordingly.

(f) The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.

(g) A mobile home, recreational vehicle, when classified as real property as provided for in KRS 132.751, or a manufactured house shall qualify as a residential unit for purposes of the homestead exemption provision.

(h) When title to property which is exempted, either in whole or in part, under the homestead exemption is transferred, the owner, administrator, executor, trustee, guardian, conservator, curator, or agent shall report such transfer to the property valuation administrator.

(3) Notwithstanding any statutory provisions to the contrary, the provisions of this section shall apply to the assessment and taxation of property under the homestead exemption provision for state, county, city, or special district purposes.

(4)(a) The homestead exemption for disabled persons shall terminate whenever those persons no longer meet the total disability classification at the end of the taxation period for which the homestead exemption has been granted. In no case shall the exemption be prorated for persons who maintained

the total disability classification at the end of the taxation period.

(b) Any totally disabled person granted the homestead exemption under the disability provision shall report any change in disability classification to the property valuation administrator in the county in which the homestead exemption is authorized.

(c) Any person making application and qualifying for the homestead exemption before payment of his property tax bills for the year in question shall be entitled to a full or partial exoneration, as the case may be, of the property tax due to reflect the taxable assessment after allowance for the homestead exemption.

(d) Any person making application and qualifying for the homestead exemption after property tax bills have been paid shall be entitled to a refund of the property taxes applicable to the value of the homestead exemption.

(5) In this section, "taxation period" means the period from January 1 through December 31 of the year in which application is made, unless the person maintaining the classification dies before December 31, in which case "taxation period" means the period from January 1 to the date of death.

History.

Enact. Acts 1972, ch. 285, § 4; 1974, ch. 140, § 1; ch. 314, § 1; 1976, ch. 315, § 2; 1982, ch. 42, § 1, effective July 15, 1982; ch. 141, § 60, effective July 1, 1982; ch. 395, § 7, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 335, effective July 13, 1990; 1992, ch. 338, § 14, effective July 14, 1992; 2000, ch. 149, § 1, effective July 14, 2000; 2005, ch. 85, § 220, effective June 20, 2005; 2008, ch. 4, § 1, effective July 15, 2008; 2011, ch. 22, § 2, effective June 8, 2011.

Compiler's Notes.

Former KRS 132.810 (Enact. Acts 1972, ch. 285, § 4; 1974, ch. 140, § 1; 1974, ch. 314, § 1; 1976, ch. 315, § 2; 1982, ch. 42, § 1, effective July 15, 1982; 1982, ch. 141, § 60, effective July 1, 1982; 1982, ch. 395, § 7, effective July 15, 1982.) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 335.

Section 2 of Acts 2000, ch. 149, effective July 14, 2000, read: "This Act shall apply for tax assessments made on or after January 1, 2001."

Legislative Research Commission Notes.

(6/8/2011). 2011 Ky. Acts ch. 22, sec. 2, provides that the changes made to this statute in that Act apply to property assessed on or after January 1, 2012.

1980 Ky. Acts ch. 396, sec. 65 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

NOTES TO DECISIONS

1. Amount of Exemption.

The dollar-value principle applies to the $6,500 limit of the homestead exemption; thus the 1974 amendments which provided that the $6,500 exemption would be construed in terms of the purchasing power of the dollar in 1972 were valid. Lester v. Ft. Thomas, 531 S.W.2d 490, 1975 Ky. LEXIS 35 (Ky. 1975).

OPINIONS OF ATTORNEY GENERAL.

The homestead exemption applies for state, county, city or special district purposes. OAG 72-726.

An administratively imposed deadline on applications for the homestead exemption provided for in § 170 of the Kentucky Constitution would not be valid. OAG 72-740.

The incidental renting of rooms in a residence that otherwise qualifies for the homestead exemption does not, under this section and Ky. Const., § 170, violate the single unit restriction. OAG 73-550.

If a homeowner in the city of Mayfield was 65 years of age prior to the September 1972 assessment date, the city of Mayfield should have permitted him to file a homestead exemption application for exemption from 1973 city ad valorem property tax and the city legislative body should authorize a refund to the taxpayer who asserts a proper and qualified application for the exemption. OAG 73-780.

Life tenant of single-unit residential property who is 65 years of age and who maintains the property as a personal residence is an "owner" of the property and may apply for the homestead exemption. OAG 75-110.

The 65-year-old or older owner-occupant of a mobile home, which is a single-unit residence, placed on a rented lot is entitled to the homestead exemption if the mobile home qualifies as a real property by resting on a permanent fixed foundation and having the wheels or mobile parts removed. OAG 75-264.

Since the rates charged by a municipally owned utility must be fair, reasonable, just, uniform and nondiscriminatory, a proposed lower water rate for resident users who qualify for the homestead exemption would be of doubtful legal validity. OAG 75-720.

The current amendment to Ky. Const., § 170 provides for an exemption for jointly owned property with no provisions requiring that property jointly owned must be surveyed and separate deeds be prepared showing the nature of the jointly owned interests and this section provides that such exemption applies to persons 65 years of age or older jointly owning a duplex in which they are residing, so that any person 65 years of age or older is entitled to the $7,700 exemption for the year 1976 upon application to the property valuation administrator for such exemption without the necessity of having a deed prepared showing such person's interest in the property. OAG 76-95.

A person who is otherwise entitled to the homestead exemption granted by Ky. Const., § 170 cannot be denied the exemption merely because he holds equitable title. OAG 80-179, 1980 Ky. AG LEXIS 492.

It is not necessary for a legislative enactment to establish the homestead exemption from ad valorem taxation since Ky. Const., § 170 is self-executing; however, in order to claim the exemption, the owner of the qualified property must present his qualifications to the appropriate taxing authority and comply with the procedures contained in Ky. Const., § 170 and this section. OAG 82-21, 1981 Ky. AG LEXIS 25.

The homestead exemption of this section is just that, an exemption of a portion of an assessment for qualifying taxpayers; as such, it is not part of the assessment of property subject to state tax and may not be used in computing a PVA's salary. OAG 84-35, 1984 Ky. AG LEXIS 351.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Property exempt from taxation, Ky. Const., § 170.

Kentucky Law Journal.

Kentucky Law Survey, Whiteside, Taxation, 64 Ky. L.J. 371 (1975-76).

Kentucky Law Survey, Whiteside and Buechel, Kentucky Taxation, 65 Ky. L.J. 425 (1976-77).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

132.815. Monthly reports from certified electrical inspectors — Use of information.

(1) Each electrical inspector certified under KRS 227.489 shall submit a monthly report to the Department of Revenue showing the names and addresses of all persons, firms, or corporations for which inspections were conducted for new buildings, new or relocated mobile homes, and other new or relocated structures during the preceding month. Each building, mobile home, or other structure shall be identified by county and property address, or property location in those instances where the address is insufficient to reveal the physical location of the property.

(2) The information provided shall be used for the purpose of making and maintaining accurate assessment records. The Department of Revenue shall provide to each electrical inspector the necessary forms and instructions for filing the report required under subsection (1).

History.

Enact. Acts 1992, ch. 263, § 1, effective July 14, 1992; 2005, ch. 85, § 221, effective June 20, 2005.

132.820. Assessment of unmined coal, oil, and gas reserves held separately from surface real property — Exceptions — Effect of appeal on payment of taxes.

(1) The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Department of Revenue as a distinct interest in real property, separate and apart from the surface real estate unless:

(a) The unmined coal, oil, and gas reserves, and other mineral or energy resources are owned in their entirety by the surface owner;

(b) The surface owner is neither engaged in the severance, extraction, processing, or leasing of mineral or other energy resources nor is he an affiliate of a person who engages in those activities; and

(c) The surface is being used by the surface owner primarily for the purpose of raising for sale agricultural crops, including planted and managed timberland, or livestock or poultry.

For purposes of this section, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, file a return with the department in a form as the department may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, or similar means may also be required by the department to file a return.

(3) Any property subject to assessment by the department under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be omitted property.

(4) After the valuation of unmined minerals or other energy sources has been finally fixed by the department, the department shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection.

(5) The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.

(6) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(7) The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

History.

Enact. Acts 1994, ch. 263, § 1, effective July 15, 1994; 1998, ch. 391, § 3, effective July 15, 1998; 2002, ch. 234, § 1, effective July 15, 2002; 2005, ch. 85, § 222, effective June 20, 2005; 2009, ch. 10, § 40, effective January 1, 2010.

Legislative Research Commission Notes.

(7/15/2002). The amendments made to subsection (1) of this statute in 2002 Ky. Acts ch. 234, sec. 1, "shall apply to tax assessments made on or after January 1, 2003." 2002 Ky. Acts ch. 234, sec. 3.

(7/14/2000). 2000 Ky. Acts ch. 446 (Senate Bill 323), sec. 1, purports to amend this statute, and the General Assembly version of that bill was signed by both presiding officers and by the Governor. The Journals of the House of Representatives and Senate will reflect, however, that House Floor Amendment 1 was adopted by the House on March 27, 2000, but was not transmitted to the Senate for its concurrence when the bill was returned to that body. Thus, the bill signed did not pass both chambers of the General Assembly in the same form and did not become law. Ky. Const. secs. 46 and 88; see also Mason's Manual of Legislative Procedure sec. 737, at 508-509 (1989 ed.). Because the General Assembly's own official records establish this constitutional deficiency, the provisions of 2000 Ky. Acts ch. 446 have not been codified into the Kentucky Revised Statutes. See KRS 7.131(2).

132.825. Listing of property required.

(1) It shall be the duty of all persons providing communications services or multichannel video programming services defined under KRS 136.602 owning or having any interest in tangible personal property in this state to list or have listed the property with the department between January 1 and May 15 in each

year reporting the full details, a correct description of the property and its value.

(2) The department shall have sole power to value and assess all tangible personal property of multichannel video programming service providers and communications service providers. Such property shall be valued and assessed in accordance with procedures established for locally assessed tangible property. The department shall develop forms for reporting.

(3) Providers of multichannel video programming services or communications services shall not be required to list, and the department shall not assess intangible property as defined in KRS 132.010.

(4) It is the intent of KRS 136.600 to 136.660 to relieve communications service providers and multichannel video programming service providers from the tax liability imposed under KRS 136.120 by:

(a) Requiring real, tangible, and intangible property owned by communications service providers and multichannel video programming service providers to be assessed and taxed in the same manner as real, tangible, and intangible property of all other taxpayers under KRS Chapter 132 excluding KRS 132.030; and

(b) Replacing revenues received from communications service providers and multichannel video programming service providers under KRS 136.120, attributable to the franchise portion of operating property as defined in KRS 136.115, with the levy imposed under KRS 136.616.

To the extent that any tangible or intangible property was considered a part of the franchise portion of operating property under KRS 136.115 and 136.120 for tax periods ending prior to January 1, 2006, for a communications service provider or a multichannel video programming service provider, such property shall be exempt from taxation under KRS Chapter 132 and shall not be listed, valued or assessed under this section for tax periods beginning on or after December 31, 2005.

(5) It is also the intent of KRS 136.600 to 136.660 that for communications service providers and multichannel video programming service providers the following items, to the extent these items are intangible property, shall be exempt from taxation under KRS Chapter 132 and shall not be listed, valued, or assessed by the department or local jurisdictions. The items include but shall not be limited to:

(a) Franchises;

(b) Certificates of public convenience and necessity;

(c) Licenses;

(d) Authorizations issued by the Federal Communications Commission or any state public service commission;

(e) Customer lists;

(f) Assembled labor force;

(g) Goodwill;

(h) Managerial skills;

(i) Business enterprise value;

(j) Speculative value; and

(k) Any other type of personal property that is not tangible personal property.

(6) Any person dissatisfied with or aggrieved by the finding or ruling of the department may appeal the finding or ruling in the manners provided in KRS 131.110.

(7) All persons in whose name property is assessed shall remain bound for the tax, notwithstanding that they may have sold or parted with it.

(8) The department shall allocate the assessed value of property described in subsection (1) of this section among the counties, cities, and taxing districts. The assessed value shall be allocated to the county, city, or taxing district where the property is situated.

(9) The department shall certify, unless otherwise specified, to the county clerk of each county in which any of the property assessment listed by the corporation is liable to local taxation, the amount of tangible personal property liable for county, city, or district tax.

(10) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation that the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(11) The certification of valuation shall be filed by each county clerk in the clerk's office and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district that has the value certified by the department shall pay an annual fee to the department that represents an allocation of the department's operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the department and shall apply to valuations for tax periods beginning on or after January 1, 2005.

History.

Enact. Acts 2005, ch. 168, § 119, effective January 1, 2006; 2009, ch. 10, § 41, effective January 1, 2010.

Legislative Research Commission Notes.

(1/1/2006). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

PENALTIES

132.990. Penalties.

(1) Any person who willfully fails to supply the property valuation administrator or the Department of Revenue with a complete list of his property and such facts with regard thereto as may be required or who violates any of the provisions of KRS 132.570 shall be fined not more than five hundred dollars ($500).

(2) Any property valuation administrator who willfully fails or neglects to perform any duty legally imposed upon him shall be fined not more than five hundred dollars ($500) for each offense.

(3) Any county clerk who willfully fails or neglects to perform any duty required of him by KRS 132.480 shall

be fined not more than fifty dollars ($50) for each offense.

(4) Any person who willfully falsifies application for exemption or who fails to notify the property valuation administrator of any changes in qualifying requirements under the provision of KRS 132.810 shall be fined not more than five hundred dollars ($500).

History.

1777, 1778, 4019a-10c, 4019a-11, 4029, 4037, 4039, 4042-2, 4042a-3, 4042a-11, 4042a-12, 4051, 4051a, 4066, 4076a, 4114, 4248, 4777a-4, 4777a-5: amend. Acts 1942, ch. 131, § 32; 1949 (Ex. Sess.), ch. 2, § 6; 1982, ch. 42, § 2, effective July 15, 1982; 1990, ch. 411, § 3, effective July 13, 1990; 1990, ch. 476, Pt. V, § 336, effective July 13, 1990; 2005, ch. 85, § 223, effective June 20, 2005; 2005, ch. 168, § 79, effective January 1, 2006.

Legislative Research Commission Notes.

(1/1/2006). This section was amended by 2005 Ky. Acts chs. 85 and 168, which do not appear to be in conflict and have been codified together.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Cited in:

Walker v. Dowling, 68 S.W. 135, 24 Ky. L. Rptr. 179 (1902); Commonwealth v. Louisville Gas & Electric Co., 278 Ky. 466, 128 S.W.2d 778, 1938 Ky. LEXIS 68 (Ky. 1939).

OPINIONS OF ATTORNEY GENERAL.

Where a property valuation administrator fails to attend a hearing of the board of tax appeals in Frankfort, KRS 452.540 would permit prosecution of the offense to be brought in either Franklin County or the home county of the property valuation administrator. OAG 77-366, 1977 Ky. AG LEXIS 419.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Penalties, civil and criminal, for failure to make tax report or return, or pay tax, where no specific penalty provided, KRS 131.180, 131.990.

Kentucky Law Journal.

Property Tax Assessment Administration in Kentucky, 60 Ky. L.J. 141 (1971).

CHAPTER 133

SUPERVISION, EQUALIZATION, AND REVIEW OF ASSESSMENTS

Section

133.010. Definitions for chapter.
133.070. Assessment where property is annexed by another civil division.
133.120. Appeal procedure.
133.160. Notice of assessment raised by Department of Revenue — To whom given — Contents.
133.170. Certification of equalization — Appeal by fiscal court — Exoneration from increase in value — Application — Procedure — Appeal.
133.180. Certification by department to county clerk — Certification of tax books — Effect.
133.185. Tax rate not to be fixed until assessment is certified under KRS 133.180 — Exception.
133.220. Tax bill forms — Attestation of bills — Duties of sheriff or collector — Treatment of undeliverable notices.

133.010. Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the county board of assessment appeals;

(2) "Department" means the Department of Revenue;

(3) "Taxpayer" means any person made liable by law to file a return or pay a tax;

(4) "Real property" includes all lands within this state and improvements thereon;

(5) "Personal property" includes every species and character of property, tangible and intangible, other than real property; and

(6)(a) "County" shall also mean a charter county government;

(b) "Fiscal court" shall also mean the legislative body of a charter county government; and

(c) "County judge/executive" shall also mean the chief executive officer of a charter county government.

History.

4022, 4114h-1: 1974, ch. 326, § 1; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 337, effective July 13, 1990; 2005, ch. 85, § 224, effective June 20, 2005; 2010, ch. 95, § 4, effective July 15, 2010.

Compiler's Notes.

Former KRS 133.010 (4022, 4114h-1: amend. Acts 1974, ch. 326, § 1) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 337.

Legislative Research Commission Notes.

(7/15/2010). Under the authority of KRS 7.136, the Reviser of Statutes has corrected manifest clerical or typographical errors by inserting "a" before the first occurrence of "charter county government" and "the" before "legislative body" and "chief executive officer" in subsection (6) of this section.

NOTES TO DECISIONS

Cited in:

Breathitt County Board of Sup'rs v. Ware Cannel Coal Co., 297 Ky. 117, 179 S.W.2d 225, 1944 Ky. LEXIS 691 (Ky. 1944); Jefferson County Fiscal Court v. Trager, 302 Ky. 361, 194 S.W.2d 851, 1946 Ky. LEXIS 686 (Ky. 1946).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Collection of public claims by action, KRS ch. 135.
Corporation and utility taxes, KRS ch. 136.
Department of Revenue, KRS ch. 131.
Excise taxes, KRS ch. 138.
Finance and revenue of cities of the first class, KRS ch. 91.
Finance and revenue of cities other than the first class, KRS ch. 92.
Income taxes, KRS ch. 141.
Inheritance and estate taxes, KRS ch. 140.
Levy and assessment of property tax, KRS ch. 132.

License taxes, KRS ch. 137.
Miscellaneous taxes, KRS ch. 142.
Payment, collection and refund of taxes, KRS ch. 134.

133.070. Assessment where property is annexed by another civil division.

Property in territory annexed by another civil division shall not be subject to ad valorem taxation in the annexing civil division until the assessment date next following the date of annexation.

History.
4128-1, 4128-2; Acts 1962, ch. 28 § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 338, effective July 13, 1990.

Compiler's Notes.
Former KRS 133.070 (4128-1, 4128-2: amend. Acts 1962, ch. 28) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 338, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Annexation of territory by cities, KRS ch. 81.

133.120. Appeal procedure.

(1)(a) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his or her designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045, or during an extension granted under subsection (2)(d) of this section.

(b)1. Any person receiving compensation to represent a property owner at a conference with the property valuation administrator for a real property assessment shall be:

a. An attorney;
b. A certified public accountant;
c. A tax consultant;
d. A Kentucky licensed real estate broker or sales associate;
e. An employee of the property owner;
f. A licensed or certified Kentucky real property appraiser;
g. An appraiser who possesses a temporary practice permit or reciprocal license or certification in Kentucky to perform appraisals and whose license or certification requires him or her to conform to the Uniform Standards of Professional Appraisal Practice; or
h. Any other individual possessing a professional appraisal designation recognized by the department.

2. A person representing a property owner before the property valuation administrator shall present written authorization from the property owner which sets forth his or her professional capacity and shall disclose to the property valuation administrator any personal or private interests he or she may have in the matter, including any contingency fee arrangements, except that attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.

(c) During this conference, the property valuation administrator or his or her deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property.

(d) The property valuation administrator or his or her deputy shall keep a record of each conference which shall include but not be limited to the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief account of the outcome of the conference.

(e) At the request of the taxpayer, the conference may be held by telephone.

(2)(a) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals.

(b) The taxpayer shall appeal his or her assessment by filing in person or sending a letter or other written petition to the county clerk stating the reasons for appeal, identifying the property for which the appeal is filed, and stating the taxpayer's opinion of the fair cash value of the property.

(c) The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045 or no later than the last day of an extension granted under paragraph (d) of this subsection.

(d) A property valuation administrator may make a written request to the department to extend the deadline in his or her county of jurisdiction to allow the completion of the conferences requested during the inspection period required by subsection (1)(a) of this section and to extend the filing deadline for appeals to the board of assessment appeals. If approved by the department, the deadline for the completion of the conferences requested during the inspection period and filing appeals shall be extended for a period not to exceed twenty-five (25) days from the date of the original filing deadline.

(e) The county clerk shall notify the department of all assessment appeals and of the date and times of the hearings.

(f) The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, if the recommendation is made to the board in writing specifying the individual properties recommended for review and is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or no later than the last day of an extension granted under paragraph (d) of this subsection, or upon the written recommendation of the department. If the board of assessment appeals determines that the assessment should be increased,

it shall give the taxpayer notice in the manner required by KRS 132.450(4), specifying a date when the board will hear the taxpayer, if he or she so desires, in protest of an increase.

(g) Any real property owner who has listed his or her property with the property valuation administrator at its fair cash value may ask the county board of assessment appeals to review the assessments of real properties he or she believes to be assessed at less than fair cash value, if he or she specifies in writing the individual properties for which the review is sought and factual information upon which his or her request is based, such as comparable sales or cost data and if the request is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or no later than the last day of an extension granted under paragraph (d) of this subsection.

(h) Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.

(3)(a) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value.

(b) The department may be present at the hearing and present any pertinent evidence as it pertains to the appeal.

(c) The taxpayer shall provide factual evidence to support his or her appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the department, or any member of the board, his or her appeal shall be denied.

(d) This information shall include but not be limited to the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages.

(e) The board of assessment appeals shall only hear and consider evidence which has been submitted to it in the presence of both the property valuation administrator or his or her designated deputy and the taxpayer or his or her authorized representative.

(4)(a) Any person receiving compensation to represent a property owner in an appeal before the board shall be:

1. An attorney;
2. A certified public accountant;
3. A tax consultant;
4. A Kentucky licensed real estate broker or sales associate;
5. An employee of the taxpayer;
6. A licensed or certified Kentucky real property appraiser;
7. An appraiser who possesses a temporary practice permit or reciprocal license or certification in Kentucky to perform appraisals and whose license or certification requires him or her to conform to the Uniform Standards of Professional Appraisal Practice; or
8. Any other individual possessing a professional appraisal designation recognized by the department.

(b) A person representing a property owner before the county board of assessment appeals shall present a written authorization from the property owner which sets forth his or her professional capacity and shall disclose to the county board of assessment appeals any personal or private interests he or she may have in the matter.

(5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the department.

(6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess the property and immediately give notice to the taxpayer in the manner required by KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he or she so desires, in protest of the action of the property valuation administrator.

(7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.

(8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.

(9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he or she claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010 from the date when the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the Board of Tax Appeals pursuant to KRS 49.220. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and department, may appeal the decision to the Board of Tax Appeals pursuant to KRS 49.220. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the Board of Tax Appeals.

(11) The county attorney shall represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from its decision. If the county attorney is unable to

represent the state and county, he or she or the fiscal court shall arrange for substitute representation.

(12) Taxpayers shall have the right to make audio recordings of the hearing before the county board of assessment appeals. The property valuation administrator may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of the department's recording as provided in KRS 61.874.

(13) The county board of assessment appeals shall physically inspect a property upon the request of the property owner or property valuation administrator.

History.

Enact. Acts 1942, ch. 131, § 16, 32; 1944, ch. 99; 1949 (Ex. Sess.), ch. 2, § 7; 1950, ch. 18, § 1; 1964, ch. 141, § 34; 1974, ch. 326, § 6; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 264, effective June 17, 1978; 1980, ch. 317, § 5, effective July 15, 1980; 1982, ch. 452, § 7, effective July 1, 1982; 1988, ch. 303, § 11, effective July 15, 1988; 1990, ch. 411, § 11, effective July 13, 1990; 1990, ch. 476, Pt. V, § 339, effective July 13, 1990; 1992, ch. 397, § 3, effective July 14, 1992; 1992, ch. 449, § 6, effective April 13, 1992; 1994, ch. 85, § 5, effective July 15, 1994; 2005, ch. 85, § 231, effective June 20, 2005; 2009, ch. 10, § 42, effective January 1, 2010; 2015 ch. 67, § 3, effective June 24, 2015; 2017 ch. 81, § 2, effective March 21, 2017; 2017 ch. 74, § 72, effective June 29, 2017; 2021 ch. 185, § 65, effective June 29, 2021; 2026 ch. 172, § 13, effective July 15, 2026.

Legislative Research Commission Notes.

(7/14/92). Pursuant to KRS 7.136(1), in codifying this section the Reviser of Statutes has corrected an erroneous cross-reference that resulted from the amendment process in the enactment of 1992 Ky. Acts ch. 397, sec. 3. That Act and Acts ch. 449 both amend this statute and not otherwise being in conflict have been compiled together.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

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1. In General.

On appeal from the board of supervisors, it was up to the Commonwealth to secure prompt disposal of the appeal by the courts if it so desired and the taxpayer had no duty to see that the appeal was promptly heard. Commonwealth v. Southern Pac. Co., 169 Ky. 296, 183 S.W. 925, 1916 Ky. LEXIS 697 (Ky. 1916) (decided under prior law).

Appeal to board of supervisors is only remedy available to taxpayer aggrieved by assessment made by tax commissioner (now property valuation administrator). Kentucky Heating Co. v. Louisville, 174 Ky. 142, 192 S.W. 4, 1917 Ky. LEXIS 165 (Ky. 1917), writ of error dismissed, 250 U.S. 653, 40 S. Ct. 53, 63 L. Ed. 1191, 1919 U.S. LEXIS 1804 (U.S. 1919) (decided under prior law).

When a taxpayer has appealed to the board of supervisors, and the board has taken action on the appeal, any mistake made by the tax commissioner (now property valuation administrator) in making the assessment appealed from is no longer material. Kentucky Heating Co. v. Louisville, 174 Ky. 142, 192 S.W. 4, 1917 Ky. LEXIS 165 (Ky. 1917), writ of error dismissed, 250 U.S. 653, 40 S. Ct. 53, 63 L. Ed. 1191, 1919 U.S. LEXIS 1804 (U.S. 1919).

An attested copy of the notice of increase of assessment served upon the taxpayer by the board of supervisors was not "a certified copy of the action" of the board, and an attempt to take an appeal from the board by filing such paper was ineffectual. Cain v. Magoffin County, 198 Ky. 598, 249 S.W. 766, 1923 Ky. LEXIS 501 (Ky. 1923) (decided under prior law).

A taxpayer who is aggrieved by the assessment made by the tax commissioner (now property valuation administrator) must first appeal to the board of supervisors, and then may appeal from the board to the courts. He cannot appeal directly to the courts from the tax commissioner's (now property valuation administrator's) assessment, or attack such assessment as excessive in a court action. Farmers' Nat'l Bank v. Board of Sup'rs, 225 Ky. 246, 8 S.W.2d 401, 1928 Ky. LEXIS 769 (Ky. 1928) (decided under prior law).

One taxpayer may not appeal to or from the board of supervisors on behalf of other taxpayers similarly situated or owning similar property; he may appeal only for himself. Cossar v. Klein, 227 Ky. 768, 14 S.W.2d 160, 1928 Ky. LEXIS 515 (Ky. 1928) (decided under prior law).

Pending an appeal from the board of supervisors, the county clerk has no right to make out a tax bill on the assessment appealed from. Cossar v. Klein, 227 Ky. 768, 14 S.W.2d 160, 1928 Ky. LEXIS 515 (Ky. 1928) (decided under prior law).

Where taxpayer has been notified by tax commissioner (now property valuation administrator) of increase of assessment made by latter, taxpayer's sole remedy was by appeal from board, although he had appeared before board and was unable to get definite information as to what action it had taken. Ball v. P. V. & K. Coal Co., 235 Ky. 445, 31 S.W.2d 707, 1930 Ky. LEXIS 386 (Ky. 1930) (decided under prior law).

The right of a taxpayer to appeal from the board of supervisors does not depend upon whether the board gave him notice of its action, or whether he appeared before the board, and those matters are immaterial on appeal. Letcher County v. Kentucky River Coal Corp., 250 Ky. 7, 61 S.W.2d 891, 1933 Ky. LEXIS 620 (Ky. 1933) (decided under prior law).

On appeal from the board of supervisors to the Circuit Court the matter is tried de novo; the appellee may relitigate any issue without taking a cross appeal, and the appellant need not specify what particular items of property he claims have not been assessed properly. Carr's Fork Coal Co. v. Perry County Board of Supervisors, 263 Ky. 642, 93 S.W.2d 359, 1936 Ky. LEXIS 232 (Ky. 1936) (decided under prior law).

An appeal to the Circuit Court should be tried by that court without a jury. Thomas Forman Co. v. Owsley County Board of Sup'Rs., 267 Ky. 224, 101 S.W.2d 939, 1937 Ky. LEXIS 302 (Ky. 1937) (decided under prior law).

Appeal by county attorney from quarterly court to Circuit Court, in the name of board of supervisors, was proper, where taxpayer had appealed from board to quarterly court naming board as appellees. Prestonsburg Water Co. v. Prestonsburg Board of Sup'rs, 279 Ky. 551, 131 S.W.2d 451, 1939 Ky. LEXIS

305 (Ky. 1939), overruled, Department of Revenue ex rel. Luckett v. Allied Drum Service, Inc., 561 S.W.2d 323, 1978 Ky. LEXIS 318 (Ky. 1978) (decided under prior law).

The provisions of this section mean that there shall be a de novo hearing in the quarterly and Circuit Courts as independent, graduated fact-finding tribunals, although the practice is denominated on appeal and the procedure is the same as in cases of other appeals from inferior to superior courts. Board of Supervisors v. Pinnell, 292 Ky. 364, 166 S.W.2d 882, 1942 Ky. LEXIS 108 (Ky. 1942) (decided under prior law).

This section provides that a taxpayer may appeal to the board of supervisors from an assessment made by the tax commissioner (now property valuation administrator). Breathitt County Board of Sup'rs v. Ware Cannel Coal Co., 297 Ky. 117, 179 S.W.2d 225, 1944 Ky. LEXIS 691 (Ky. 1944) (decided under prior law).

Failure of defendant county, in declaratory judgment action by taxpayers seeking to enjoin collection of county taxes on certain property claimed to be exempt from local taxation, to file a special demurrer, waived jurisdictional objection that taxpayer's sole remedy was by appeal to board of supervisors. Todd County v. Bond Bros., 300 Ky. 224, 188 S.W.2d 325, 1945 Ky. LEXIS 521 (Ky. 1945).

Where taxpayer, in listing his property for taxation, designated certain of the listed property as raw material on hand for the purpose of manufacture, subject only to state tax, but tax commissioner (now property valuation administrator) changed the classification and assessed the property for local taxes on the theory that it was manufactured, taxpayer was not required to appeal to board of supervisors as provided in this section, but could maintain declaratory judgment action in Circuit Court to enjoin collection of local taxes. Todd County v. Bond Bros., 300 Ky. 224, 188 S.W.2d 325, 1945 Ky. LEXIS 521 (Ky. 1945).

An appeal to the Circuit Court from a decision of the state tax commission (now Kentucky Board of Tax Appeals) is a trial de novo and the commission should be made a party to enable it to defend its evaluation. Cook v. Citizens State Bank, 304 S.W.2d 931, 1957 Ky. LEXIS 292 (Ky. 1957).

2. Jurisdiction.

On appeal from the board of supervisors, the courts had jurisdiction only to determine the assessability of the property and to fix the assessable value; they had no power to enter judgment for the taxes due on the assessment or require the taxpayer to pay any sum into court towards the taxes that may have been found due. Commonwealth v. Southern Pac. Co., 169 Ky. 296, 183 S.W. 925, 1916 Ky. LEXIS 697 (Ky. 1916) (decided under prior law).

Circuit Court had authority to raise assessment on particular item of property, although neither taxpayer nor taxing authorities had made any complaint as to that item. Carr's Fork Coal Co. v. Perry County Board of Supervisors, 263 Ky. 642, 93 S.W.2d 359, 1936 Ky. LEXIS 232 (Ky. 1936) (decided under prior law).

The board of supervisors, in fixing the values of property for taxation and making assessments, is an administrative body, not a "judicial tribunal," though it may also exercise quasi-judicial powers. McCracken Fiscal Court v. McFadden, 275 Ky. 819, 122 S.W.2d 761, 1938 Ky. LEXIS 499 (Ky. 1938) (decided under prior law).

The fiscal court possesses only limited jurisdiction or power and has no right to create an office not provided by statute to pay for services which the statute provides shall be performed by a public officer. Veith v. Dunlap, 308 Ky. 386, 214 S.W.2d 608, 1948 Ky. LEXIS 949 (Ky. 1948) (decided under prior law).

3. Notice.

In an action to enjoin the collection of taxes based on a raise made by the board of supervisors without proper notice, it was incumbent upon the party seeking the injunction to prove the absence of the required notice, but where such party exhibited the notice that he received, and such notice on its face did not comply with the statute, the burden then passed to the opposing party to show that proper notice was served. Ward v. Wentz, 130 Ky. 705, 113 S.W. 892, 1908 Ky. LEXIS 313 (Ky. 1908) (decided under prior law).

Where taxpayer listed in his schedule certain raw material, under a heading in the schedule provided for listing property exempt from local taxation, and the schedule was accepted as correct by the tax commissioner (now property valuation administrator), the board of supervisors could not take such property out of the exempt column and assess it for local taxation without giving notice to the taxpayer. P. Lorrilard Co. v. Ross, 183 Ky. 217, 209 S.W. 39, 1919 Ky. LEXIS 475 (Ky. 1919) (decided under prior law).

An increase of an assessment by the board of supervisors without formal notice to the taxpayer is void, unless the taxpayer has received actual notice of the increase and has appeared before the board in opposition thereto. Ward v. Wentz, 130 Ky. 705, 113 S.W. 892, 1908 Ky. LEXIS 313 (Ky. 1908) (decided under prior law). See McFarland v. Georgetown Nat'l Bank, 208 Ky. 7, 270 S.W. 995, 1925 Ky. LEXIS 201 (Ky. 1925), aff'd, 273 U.S. 568, 47 S. Ct. 467, 71 L. Ed. 779, 1927 U.S. LEXIS 712 (U.S. 1927); Kentucky Nat'l Park Ass'n v. Reed, 250 Ky. 525, 63 S.W.2d 614, 1933 Ky. LEXIS 735 (Ky. 1933); Burnside Supply Co. v. Burnside Graded Common School, 260 Ky. 482, 86 S.W.2d 160, 1935 Ky. LEXIS 502 (Ky. 1935) (decided under prior law).

Where taxpayer has been notified by tax commissioner (now property valuation administrator) of increase of assessment made by latter, board of supervisors is not required to give notice to taxpayer that it has approved such increase. Ball v. P. V. & K. Coal Co., 235 Ky. 445, 31 S.W.2d 707, 1930 Ky. LEXIS 386 (Ky. 1930) (decided under prior law).

Where owner of property was a corporation, return showing service of notice on an individual was insufficient, in the absence of anything to indicate that the individual was a process agent of the corporation. Kentucky Nat'l Park Ass'n v. Reed, 250 Ky. 525, 63 S.W.2d 614, 1933 Ky. LEXIS 735 (Ky. 1933) (decided under prior law).

Service of notice of increase of assessment on person who owned property on assessment date is sufficient, notice need not be served on an intervening purchaser of the property. Kentucky Nat'l Park Ass'n v. Reed, 250 Ky. 525, 63 S.W.2d 614, 1933 Ky. LEXIS 735 (Ky. 1933) (decided under prior law).

Where notice of increase of assessment was served on taxpayer's wife at taxpayer's place of business, and she wrote county clerk asking him to go before the board and protest against the increase, but there was no evidence that the taxpayer knew of the notice or of his wife's letter to the clerk, the increase was void. Burnside Supply Co. v. Burnside Graded Common School, 260 Ky. 482, 86 S.W.2d 160, 1935 Ky. LEXIS 502 (Ky. 1935) (decided under prior law).

Failure of tax commissioner (now property valuation administrator) to give notice to taxpayer of increase of assessment made by commissioner (now administrator) was not prejudicial where board of supervisors gave taxpayer notice that it proposed to raise assessment "in addition to the raise made by the tax commissioner," and the taxpayer appeared before the board and was heard in objection to any increase. Thomas Forman Co. v. Owsley County Board of Sup'Rs., 267 Ky. 224, 101 S.W.2d 939, 1937 Ky. LEXIS 302 (Ky. 1937) (decided under prior law).

The notice of proposed increase of assessment must be served in the manner provided for serving a summons, except that where the taxpayer is absent from the county or so conceals himself as to prevent personal service, the notice may then be served in the manner provided in the Civil Code (now Rules of Civil Procedure) for the service of notices. Burke v. Department of Revenue, 293 Ky. 281, 168 S.W.2d 997, 1943 Ky. LEXIS 607 (Ky. 1943).

The purpose of the notice required by this section is to give the taxpayer an opportunity to be heard and when he appears before the board for the purpose of contesting the raise in his assessment, there can be no need for the notice prescribed by this section since the rights of the taxpayer, which the notice was intended to protect, have been preserved. Commonwealth ex rel. Reeves v. Elkhorn & Jellico Coal Co., 313 Ky. 764, 233 S.W.2d 508, 1950 Ky. LEXIS 971 (Ky. 1950).

4. Timeliness.

Taxpayers' challenge to a real property tax assessment was dismissed because the taxpayer failed to comply with the requirement of KRS 133.120 that the taxpayer file the protest during "the current year" as specified by KRS 133.045(1). Instead, the taxpayer did not request a conference or a review of the assessment until the following year. Commonwealth v. Cromwell Louisville Assocs., 2008 Ky. App. LEXIS 250 (Ky. Ct. App. 2008), aff'd, 323 S.W.3d 1, 2010 Ky. LEXIS 230 (Ky. 2010).

5. Party to Proceedings.

The city, never being a party to the proceedings, or attempting to intervene, could not appeal. Louisville v. Christian Business Women's Club, Inc., 306 S.W.2d 274, 1957 Ky. LEXIS 32 (Ky. 1957).

"Likewise," as formerly used in subsection (1) of this section, means property owners "in addition" to any aggrieved taxpayer mentioned firstly in the statute. Kentucky Bd. of Tax Appeals v. Simpson, 691 S.W.2d 221, 1985 Ky. App. LEXIS 528 (Ky. Ct. App. 1985).

6. Exhaustion of Administrative Remedies.

Where the record did not indicate a prima facie constitutional violation due to reassessments of real property ranging from 1% to 400%, the case involved nothing but factual questions, and property owners were given sufficient time to appeal to the board of assessment appeals by filing a letter or petition protesting the increases in assessments and for the board to adjudicate the claims, the court erred in allowing the property owners to bypass the administrative remedies provided under this section and KRS 131.340 (renumbered as KRS 49.220). Parrent v. Fannin, 616 S.W.2d 501, 1981 Ky. LEXIS 250 (Ky. 1981).

7. Assessment.

Assessment of unlisted property without notice to taxpayer was void. Mt. Sterling Oil & Gas Co. v. Ratliff, 127 Ky. 1, 104 S.W. 993, 31 Ky. L. Rptr. 1229, 1907 Ky. LEXIS 109 (Ky. 1907). See Durbin v. Ohio Valley Tie Co., 151 Ky. 74, 151 S.W. 12, 1912 Ky. LEXIS 738 (Ky. 1912); Boske v. Louis Marx & Bros., 161 Ky. 460, 170 S.W. 1175, 1914 Ky. LEXIS 91 (Ky. 1914).

Where corporation had gone out of business and had been succeeded by another corporation, service of notice on former corporation of assessment of unlisted property of successor corporation was not sufficient to validate the assessment, although the notice was subsequently delivered to the successor corporation after the board of supervisors had adjourned. Durbin v. Ohio Valley Tie Co., 151 Ky. 74, 151 S.W. 12, 1912 Ky. LEXIS 738 (Ky. 1912) (decided under prior law).

Where a bank did not make the report required by law, but the cashier appeared before the board of supervisors and submitted information upon which an assessment of the stock of the bank could be made, the action of the board in assessing the stock on such information was valid. Caldwell County v. First Nat'l Bank, 151 Ky. 720, 152 S.W. 757, 1913 Ky. LEXIS 541 (Ky. 1913) (decided under prior law).

The assessment of one piece of property at its fair cash value, while other property is assessed at only a percentage of its value, violates the constitutional requirement of uniformity. Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347, 1918 Ky. LEXIS 473 (Ky. 1918) (decided under prior law).

Absolute equality between assessments is not required; a practical equality as near as may be is sufficient. Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347, 1918 Ky. LEXIS 473 (Ky. 1918) (decided under prior law).

Where board of supervisors refused to assess property listed by taxpayer under protest, such property could be assessed in an action under KRS 132.330, as against contention that sole remedy of taxing authorities was appeal from board. Commonwealth v. Bingham's Adm'r, 188 Ky. 616, 223 S.W. 999, 1920 Ky. LEXIS 331 (Ky. 1920) (decided under prior law).

Court, in action by taxpayer to enjoin collection of taxes on ground that increase of assessment by board of supervisors was void, had no power to make its own assessment, but could only enjoin collection of so much of the tax as was based on the invalid increase. Lowther v. Moore, 191 Ky. 284, 229 S.W. 705, 1921 Ky. LEXIS 291 (Ky. 1921) (decided under prior law).

In order to obtain relief from an assessment of his property at its full value, the taxpayer must show that there has been an intentional assessment of other property in the same class at only a percentage of its value. Siler v. Board of Sup'rs, 221 Ky. 100, 298 S.W. 189, 1927 Ky. LEXIS 669 (Ky. 1927) (decided under prior law).

Taxpayer could not obtain relief from assessment of his intangible property at its full value without showing that other intangible property was being uniformly and knowingly assessed throughout the state at only a percentage of its actual value. It was not enough to show that tangible property, or other intangibles in the same county, was being assessed at a percentage of its value. Siler v. Board of Sup'rs, 221 Ky. 100, 298 S.W. 189, 1927 Ky. LEXIS 669 (Ky. 1927) (decided under prior law).

The value fixed by the court, on appeal from an assessment made by the board of supervisors for a particular year, should be accepted by the board as the value of the same property in a following year, in the absence of evidence of a material change in the property or conditions affecting its value. Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377, 1932 Ky. LEXIS 687 (Ky. 1932) (decided under prior law).

8. —Full Cash Value.

A taxpayer whose property has been assessed at its fair cash value has no right under this section to compel the board of supervisors to raise the assessment of other property in the county which has been assessed at only a percentage of its fair cash value. Greene v. Louisville & I. R. Co., 244 U.S. 499, 37 S. Ct. 673, 61 L. Ed. 1280, 1917 U.S. LEXIS 1660 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984) (decided under prior law).

Evidence consisting of federal census reports, reports of state board of equalization and state tax commission (now Kentucky Board of Tax Appeals), and affidavits of individuals from different counties, was sufficient to support finding that property was being intentionally, systematically and notoriously assessed at only a percentage of its value, and to overcome presumption that assessing officers did their duty. Louisville & N. R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291, 1917 U.S. LEXIS 1661 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984) (decided under prior law).

Collection of state taxes based upon an assessment at full value may be enjoined in a suit in federal court against the state assessing and collecting officers, where other property is being uniformly assessed at only a percentage of its value. Louisville & N. R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291, 1917 U.S. LEXIS 1661 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S.

89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984) (decided under prior law).

In taking evidence as to the value of property, witnesses should have been asked their opinion as to the fair cash value of the property estimated at the price it would bring at a fair voluntary sale, but it was proper to ask other questions for the purpose of showing how the witness arrived at the value given, or to show what knowledge he has of the value. Hillman Land & Iron Co. v. Commonwealth, 148 Ky. 331, 146 S.W. 776, 1912 Ky. LEXIS 453 (Ky. 1912) (Ky. 1912) (decided under prior law).

The value placed upon the property by the taxpayer in his schedule constitutes a strong admission on the issue of value, and the presumption exists that it is a fair value. Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377, 1932 Ky. LEXIS 687 (Ky. 1932) (decided under prior law).

9. —Increase.

The fact that the resident agent of a nonresident taxpayer had actual notice of increase of assessment by board did not dispense with requirement of formal notice to taxpayer, at least where agent did not appear before board in opposition to increase. Ward v. Wentz, 130 Ky. 705, 113 S.W. 892, 1908 Ky. LEXIS 313 (Ky. 1908) (decided under prior law).

An increase of an assessment by the board of supervisors without formal notice to the taxpayer was void, unless the taxpayer had received actual notice of the increase and had appeared before the board in opposition thereto. Ward v. Wentz, 130 Ky. 705, 113 S.W. 892, 1908 Ky. LEXIS 313 (Ky. 1908) (decided under prior law).

Action of board of supervisors in increasing assessment in larger amount than proposed in notice served on taxpayer was not invalid, where taxpayer had appeared before board and been heard in opposition to increase. Castle Craig Coal Co. v. Laurel County Board of Sup'rs, 197 Ky. 292, 246 S.W. 833, 1923 Ky. LEXIS 627 (Ky. 1923) (decided under prior law).

The board is not required, before increasing an assessment, to produce evidence to support its action, or produce witnesses whom the taxpayer may cross-examine. The taxpayer may offer evidence before the board to convince them that no increase should be made, and if he fails in this he has an opportunity, by appeal, to require the introduction of evidence by the board to justify its valuation. Hyden v. Breathitt County Board of Sup'rs, 244 Ky. 505, 51 S.W.2d 441, 1932 Ky. LEXIS 448 (Ky. 1932) (decided under prior law).

10. —Reduction.

Under ordinary circumstances the board of supervisors would have no power to reduce the assessment below the value fixed by the taxpayer in his schedule. Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377, 1932 Ky. LEXIS 687 (Ky. 1932) (decided under prior law).

A taxpayer who, by mistake, lists land as containing more acreage than it actually contains is not precluded by his list, and may have the acreage reduced to the correct amount on appeal from the board of supervisors. Letcher County v. Kentucky River Coal Corp., 250 Ky. 7, 61 S.W.2d 891, 1933 Ky. LEXIS 620 (Ky. 1933) (decided under prior law).

11. —Undervalued Property.

If the state or any taxing district felt that property had been assessed at too low a value, its remedy was by appeal to or from the board of supervisors, and it could not later attempt to assess the amount of the undervaluation as omitted property. Commonwealth v. J. M. Robinson, Norton & Co., 146 Ky. 218, 142 S.W. 406, 1912 Ky. LEXIS 58 (Ky. 1912) (decided under prior law). See Commonwealth v. American Tobacco Co., 96 S.W. 466, 29 Ky. L. Rptr. 745 (1906); Caldwell County v. First Nat'l Bank, 151 Ky. 720, 152 S.W. 757, 1913 Ky. LEXIS 541 (Ky. 1913) (decided under prior law).

12. —Unlisted Property.

County board of supervisors had power to assess intangible property not listed by the taxpayer or tax commissioner (now property valuation administrator), as against contention that such property could only be assessed as provided in KRS 132.320. Commonwealth v. Bingham's Adm'r, 188 Ky. 616, 223 S.W. 999, 1920 Ky. LEXIS 331 (Ky. 1920) (decided under prior law).

13. Enjoining Collections.

Taxpayer had right to injunction restraining county from attempting to collect a tax on unmanufactured products in excess of the rate allowed by law, as against contention that his sole remedy was through application to the board of supervisors and appeal from the board. Gray v. R. J. Reynolds Tobacco Co., 200 Ky. 47, 252 S.W. 134, 1923 Ky. LEXIS 16 (Ky. 1923) (decided under prior law).

Collection of tax based on assessment of exempt property, either by itself or along with other property subject to taxation, may be enjoined in a suit by the taxpayer, he not being limited to the remedy of appeal to or from the board of supervisors. Kentucky & West Virginia Power Co. v. Holliday, 216 Ky. 78, 287 S.W. 212, 1926 Ky. LEXIS 832 (Ky. 1926) (decided under prior law). See Ryan v. Louisville, 133 Ky. 714, 118 S.W. 992, 1909 Ky. LEXIS 226 (Ky. 1909); Covington v. Lovell & Buffington Tobacco Co., 204 Ky. 40, 263 S.W. 676, 1924 Ky. LEXIS 396 (Ky. 1924).

Where action of board of supervisors in raising assessment was void because no notice of increase was served, a person who purchased the property after the assessment date could, by joining the original owner of the property as a party, maintain an action to enjoin enforcement of the tax to the extent of the increased assessment. Kentucky Nat'l Park Ass'n v. Reed, 250 Ky. 525, 63 S.W.2d 614, 1933 Ky. LEXIS 735 (Ky. 1933) (decided under prior law).

Collection of tax on assessment made or increased by board of supervisors without notice to taxpayer may be enjoined. Burnside Supply Co. v. Burnside Graded Common School, 260 Ky. 482, 86 S.W.2d 160, 1935 Ky. LEXIS 502 (Ky. 1935).

14. Exemptions.

Neither this section nor KRS 132.450 indicate a clear intention of the legislature that the statutory procedure for review of tax assessments shall be the exclusive method for determining whether property is exempt from taxation. Iroquois Post, A. L. v. Louisville, 279 S.W.2d 13, 1955 Ky. LEXIS 502 (Ky. 1955).

15. Interest.

Interest on taxes provided by this statute does not apply where the county had no lawful right to assess the property during certain years. Commonwealth v. Thomas, 298 S.W.2d 302, 1957 Ky. LEXIS 369 (Ky. 1957).

16. Taxpayer's Valuation.

Except when the taxpayer's valuation under this section is low as to impress the chancellor as being an act of bad faith, the taxpayer's valuation and the payment thereon shall be considered full and complete for discount purposes. Meyers v. Parkway Professional Center, Inc., 344 S.W.2d 389, 1961 Ky. LEXIS 224 (Ky. 1961).

The property owner was not required to provide factual evidence to support his appeal at the property valuation administrator conferencing stage of the assessment appeal; since KRS 133.120(3) related to the procedures before the board of assessment appeals (BAA), the provisions concerning the taxpayer's obligation to provide reasonable information pertaining to the value of the property only applied to the proceedings occurring in front of the BAA. Dunaway v. DLX, Inc., 113 S.W.3d 632, 2002 Ky. App. LEXIS 401 (Ky. Ct. App. 2002).

17. Burden of Proof.

A taxpayer who appeals from the board of supervisors has the burden of proving that the assessment made by the board was excessive or improper. Marion County v. Wilson, 105 Ky. 302, 49 S.W. 8, 20 Ky. L. Rptr. 1193, 1899 Ky. LEXIS 206 (Ky. 1899) (decided under prior law).

Taxpayer appealing to board of supervisors from assessment made by tax commissioner (now property valuation administrator) has burden of showing in what particulars the assessment is erroneous or excessive. Kentucky Heating Co. v. Louisville, 174 Ky. 142, 192 S.W. 4, 1917 Ky. LEXIS 165 (Ky. 1917), writ of error dismissed, 250 U.S. 653, 40 S. Ct. 53, 63 L. Ed. 1191, 1919 U.S. LEXIS 1804 (U.S. 1919) (decided under prior law).

18. Evidence.

Paper which on its face did not purport to be statement of final action of board of supervisors could not be proved to be such by oral evidence. Cain v. Magoffin County, 198 Ky. 598, 249 S.W. 766, 1923 Ky. LEXIS 501 (Ky. 1923) (decided under prior law).

19. Judgment.

Decision of court on appeal from assessment for one year is not the law of the case on an appeal from the assessment for a following year. Board of Sup'rs v. Swift Coal & Timber Co., 238 Ky. 21, 36 S.W.2d 664, 1931 Ky. LEXIS 176 (Ky. 1931) (decided under prior law).

The action of the board of supervisors is binding on the person who owned the land on the assessment date, and on subsequent purchasers, until set aside in a proper proceeding to which both owners are parties. Kentucky Nat'l Park Ass'n v. Reed, 250 Ky. 525, 63 S.W.2d 614, 1933 Ky. LEXIS 735 (Ky. 1933) (decided under prior law).

20. Penalty.

Where taxpayer appealed from board of supervisors to quarterly court, then to Circuit Court, Court of Appeals, and United States Supreme Court, and appeal was not finally disposed of until after date on which taxes for year in question became delinquent, taxpayer was liable for delinquent tax penalty imposed by law, on tax finally found to be due. Klein v. Jefferson County Board of Tax Comm'rs, 242 Ky. 328, 46 S.W.2d 480, 1932 Ky. LEXIS 270 (Ky. 1932); Klein v. Commonwealth, 271 Ky. 756, 113 S.W.2d 20, 1938 Ky. LEXIS 41 (Ky. 1938) (decided under prior law).

Where appeal of taxpayer from board of supervisors was pending in court at time taxes for year in question became delinquent, and during time sheriff was collecting taxes for such year, and when appeal was finally disposed of and tax bill issued on final assessment sheriff was unable to locate property out of which to collect the taxes, taxpayer was liable to penalty imposed by KRS 135.040 in action against him under that section. Klein v. Commonwealth, 271 Ky. 756, 113 S.W.2d 20, 1938 Ky. LEXIS 41 (Ky. 1938) (decided under prior law).

Cited in:

Thomas v. Parsley, 283 Ky. 393, 141 S.W.2d 302, 1940 Ky. LEXIS 337 (Ky. 1940); Blue Diamond Coal Co. v. Cornett, 300 Ky. 647, 189 S.W.2d 963, 1945 Ky. LEXIS 618 (Ky. 1945); Buckner v. Clay, 306 Ky. 194, 206 S.W.2d 827, 1947 Ky. LEXIS 978 (Ky. 1947); Goodwin v. Louisville, 309 Ky. 11, 215 S.W.2d 557, 1948 Ky. LEXIS 1013 (Ky. 1948); Ballard County v. Citizens State Bank, 261 S.W.2d 420, 1953 Ky. LEXIS 1011 (Ky. 1953); Fayette County Board of Supervisors v. O'Rear, 275 S.W.2d 577, 1954 Ky. LEXIS 1252 (Ky. 1954); Commonwealth ex rel. Allphin v. Heaven Hill Distilleries, Inc., 279 S.W.2d 11, 1955 Ky. LEXIS 501 (Ky. 1955); Jefferson Post, A. L. Dep't v. Louisville, 280 S.W.2d 706, 1955 Ky. LEXIS 189, 54 A.L.R.2d 992 (Ky. 1955); Pond Creek Pocahontas Co. v. Breathitt County, 290 S.W.2d 34, 1956 Ky. LEXIS 305 (Ky. 1956); Jones v. Records, 307 S.W.2d 205, 1957 Ky. LEXIS 87 (Ky. 1957); Harlan County Board of Supervisors v. Hill, 382 S.W.2d 859, 1964 Ky. LEXIS 359 (Ky. 1964); Kentucky Tax Com. v. Jefferson Motel, Inc., 387 S.W.2d 293, 1965 Ky. LEXIS 465 (Ky. 1965); Harlan County Board of Supervisors v. Black Star Land Co., 392 S.W.2d 40, 1965 Ky. LEXIS 254 (Ky. 1965); Layson v. Brady, 576 S.W.2d 223, 1978 Ky. App. LEXIS 651 (Ky. Ct. App. 1978).

OPINIONS OF ATTORNEY GENERAL.

The board of supervisors is not the proper judicial body to decide questions of exemption from ad valorem taxes. OAG 61-866.

Where the taxpayer only raised the question of exemption before the board of supervisors after a proper assessment by the tax commissioner (now property valuation administrator), no proper protest was made and the tax bill became final. OAG 61-866.

This section does not authorize the county board of supervisors to make blanket increases in the assessment of property in a county. OAG 64-378.

A member of the board of supervisors may seek a review of his own property assessment. OAG 67-217.

Where a group of taxpayers joined together in a petition to protest assessments it was not necessary that each taxpayer file a separate letter. OAG 67-217.

Requests for review of assessments by the Department of Revenue or local officials named in this section may be presented to the board any time while the board of supervisors is in session. OAG 71-220.

Although the Board of Assessment Appeals may review and change any assessment made by the property valuation administrator, the board has no authority to make a blanket review of property for equalization purposes. OAG 77-185, 1977 Ky. AG LEXIS 579.

Where the county attorney has a conflict and cannot represent the Commonwealth before the board, then the fiscal court or the county attorney pursuant to subsection (7) (now (11)) of this section should appoint a substitute attorney to do so. OAG 78-100, 1978 Ky. AG LEXIS 627.

Reduced assessments rendered by the members of the Tax Assessment Appeals Board on their own property were void where no petition for appeal was filed with the county clerk, but this did not mean that the members of the Tax Assessment Appeals Board could not have the assessments of their properties reviewed by the board, if they abided by the requirements of this chapter and if they disqualified themselves from consideration of the assessment of their own property. OAG 78-578, 1978 Ky. AG LEXIS 271.

The appeal procedure of this section, and in which the county attorney represents the state and county, involves only the legal question of what is the proper assessment; the county attorney is collecting no tax. OAG 79-453, 1979 Ky. AG LEXIS 149.

The General Assembly, in providing in subsection (7) (now (11)) of this section that the county attorney must represent the interest of the state and county in the assessment appeals, made no provisions for special compensation of the county attorney for such work. OAG 79-453, 1979 Ky. AG LEXIS 149.

A county fiscal court may proceed to fix the tax rate for the 1981 ad valorem taxes before the end of any inspection period for final recapitulations of both real and tangible personal property. OAG 80-617, 1980 Ky. AG LEXIS 37.

Where county taxpayers neither appealed the assessments of their property made by the property valuation administrator as provided in KRS 131.340 (renumbered as KRS 49.220) and this section nor attacked the constitutional or statutory authority of the public library district to levy the tax, the amount of the tax was final at the time the tax bills were mailed. No other avenues are available to the taxpayer for

disputing the factual determination of the amount owed. OAG 82-265, 1982 Ky. AG LEXIS 371.

Neither KRS 132.350 nor subsection (7) (now (11)) of this section requires the county attorney to defend the property valuation administrator in a legal action brought against him. OAG 91-231, 1991 Ky. AG LEXIS 228.

The county attorney may represent the property valuation administrator if the fiscal court determines that the county has a definite interest in defending the action and directs the county attorney to undertake representation; but without such direction from the fiscal court, the county attorney has no duty to represent the property valuation administrator. OAG 91-231, 1991 Ky. AG LEXIS 228.

Conference records containing the information required to be kept by KRS 133.120(1) and other information of a confidential nature that is information about property that constitutes the "affairs of any person" and "affairs of a person's business," as set forth in KRS 131.190(1) and is not of general recordation or routine observation may properly be withheld from disclosure under KRS 131.190(1) and KRS 61.878(1)(*l*). However, information contained in the records that is either publicly recorded in records recognized as being subject to routine public scrutiny, or that may be relatively readily observed from a public street, should be made available for inspection. OAG 04-ORD-38, 2004 Ky. AG LEXIS 195.

The following information is exempt from public inspection under KRS 131.190(1): information provided at the conference from the taxpayer or authorized representative, property owner's opinion of value, Deputy PVA comments, and property owner comments. Such information relates to one's affairs or affairs of one's business. OAG 04-ORD-38, 2004 Ky. AG LEXIS 195.

The following information is not exempt from public inspection under KRS 131.190(1): conference date/time, neighborhood/class, property address, PVA assessment, parcel ID#, property owner name, owner or representative with whom the conference is held, checklist of information reviewed at conference by Deputy PVA, date by which property owner had to file with the County Clerk, his appeal of the assessment to local board, taxpayer certification that information he submitted was true and accurate, and signature and date lines for the taxpayer or his representative and the Deputy PVA. OAG 04-ORD-38, 2004 Ky. AG LEXIS 195.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Underwood, Part-Time Prosecutors and Conflicts of Interest: A Survey and Some Proposals, 81 Ky. L.J. 1 (1993).

133.160. Notice of assessment raised by Department of Revenue — To whom given — Contents.

When it is contemplated by the Department of Revenue that it will be necessary to raise the assessed valuation of property in any county, it shall give notice of the contemplated action to the county judge/executive, the superintendent of any school district affected by such action, the mayor of any city which is affected and which has adopted the assessment, and to the taxpayers of that county through the county judge/executive, who shall post the notice sent him on the courthouse door and certify to the Department of Revenue that this has been done, and it shall fix a time and place for a hearing which may be in Frankfort or any convenient place in or nearer the county seat.

History.

4114i-16, 4114i-17; Acts 1942, ch. 131, §§ 24, 32; 1946, ch. 233, § 3; 1964, ch. 141, § 17; 1968, ch. 179, § 3; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 267, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 340, effective July 13, 1990; 2005, ch. 85, § 236, effective June 20, 2005.

Compiler's Notes.

Former KRS 133.160 (4114i-16, 4114i-17: amend. Acts 1942, ch. 131, §§ 24, 32; 1946, ch. 233, § 3; 1964, ch. 141, § 17; 1968, ch. 179, § 3; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 267, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 340, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Notice.
2. Hearing and Review.

1. Notice.

Notice to individual taxpayers was not a constitutional prerequisite to increase of aggregate county assessments. The notice the individual taxpayers receive by virtue of the statutory provisions as to the time of meeting of the state board, and the notice to the county judge (now county judge/executive) as representative of the taxpayers, was sufficient. Ray v. Armstrong, 140 Ky. 800, 131 S.W. 1039, 1910 Ky. LEXIS 382 (Ky. 1910) (decided under prior law).

Where the Department of Revenue failed to notify two (2) mayors of increased assessments affecting eight parcels of farmland within the limits of their cities, the Court of Appeals held the increased assessment for city taxes on these parcels unenforceable because of failure to give notice, but allowed the increased assessment on 743 parcels of farmland in the county to stand. Department of Revenue v. Oldham County, 415 S.W.2d 386, 1967 Ky. LEXIS 318 (Ky. 1967).

Where the new property valuation administrator had attempted to reassess property valuations upward, but had only sent notices to about 40 percent of the affected property owners, and where some owners had actual notice and had appealed their valuations, the proper remedy would be to allow the increase as to those owners who had received a notice or had actual notice and who had appealed, subject to the outcome of those appeals, and to void the increases as to those property owners who had not received notice and who had not appealed their reassessments. Layson v. Brady, 576 S.W.2d 223, 1978 Ky. App. LEXIS 651 (Ky. Ct. App. 1978).

2. Hearing and Review.

This section and KRS 133.150, 133.170 must be construed as necessarily contemplating, to avoid unconstitutional action and to accomplish the overall objective of equalization, that the individual taxpayer be afforded an opportunity for a hearing and appellate review. Fitzpatrick v. Patrick, 410 S.W.2d 143, 1966 Ky. LEXIS 31 (Ky. 1966).

Cited in:

Ballard County v. Citizens State Bank, 261 S.W.2d 420, 1953 Ky. LEXIS 1011 (Ky. 1953); Allphin v. Daviess County Fiscal Court, 273 S.W.2d 359, 1954 Ky. LEXIS 1158 (Ky. 1954); Allphin v. Butler, 619 S.W.2d 483, 1981 Ky. LEXIS 259 (Ky. 1981).

133.170. Certification of equalization — Appeal by fiscal court — Exoneration from increase in value — Application — Procedure — Appeal.

(1) When the Department of Revenue has completed its equalization of the assessment of the property in

any county, it shall certify its action to the county judge/executive, with a copy of the certification for the county clerk, to be laid before the fiscal court of the county.

(2) If the fiscal court deems it proper to ask for a review of the aggregate equalization of any class or subclass of property, it shall direct the county attorney to prosecute an appeal of the aggregate increase to the Board of Tax Appeals pursuant to KRS 49.220 within ten (10) days from the date of the certification.

(3) Within ten (10) days from the date that the department's aggregate equalization of any or all classes or subclasses of property becomes final by failure of the fiscal court to prosecute an appeal or by order of the Board of Tax Appeals pursuant to KRS 49.200 to 49.250 or the courts, the fiscal court shall cause to be published, at least one (1) time, in the newspaper having the largest circulation within the county, a public notice of the department's action.

(4) Within ten (10) days from the date of the publication of the notice required in subsection (3) of this section, any individual taxpayer whose property assessment is increased above its fair cash value by the equalization action may file with the county clerk an application for exoneration of his property assessment from the increase. The application shall be filed in duplicate and shall include the name and address of the person in whose name the property is assessed; the assessment of the property before the increase; the description and location of the property including the description shown on the tax roll; the property owner's reason for appeal; and all other pertinent facts having a bearing upon its value. The county clerk shall forward one (1) copy, of each application for exoneration to the Department of Revenue and shall exclude the amount of the equalization increase from the assessment in the preparation of the property tax bill for each property for which an application for exoneration has been filed.

(5) The county judge/executive shall reconvene the board of supervisors immediately following the close of the period for filing applications for exoneration from the increase. The board shall schedule and conduct hearings on all applications in the manner prescribed for hearing appeals by KRS 133.120; however, the board shall not have authority to reduce any assessment to an amount less than that listed for the property at the time of adjournment of the regular board session.

(6) The county clerk shall act as clerk of the reconvened board and shall keep an accurate record of the proceedings in the same manner as provided by KRS 133.125. Within five (5) days of the adjournment of the reconvened board, he or she shall notify each property owner in writing of the final action of the board with relation to the equalization increase and shall forward a copy of the proceedings certified by the chairman of the board and attested by him or her to the Department of Revenue and to the other taxing districts participating in the tax.

(7) Any taxpayer whose application has been denied, in whole or in part, may appeal to the Board of Tax Appeals as provided in KRS 49.220, and appeals thereafter may be taken to the courts as provided in KRS 49.250.

(8) The provisions of KRS 133.120(9) shall apply to the payment of taxes upon any property assessment for which an application for exoneration has been filed.

(9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall only apply to appeals growing out of equalization action by the Department of Revenue under the provisions of KRS 133.150.

History.

4118i-18; Acts 1964, ch. 141, § 18; 1968, ch. 179, § 4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 341, effective July 13, 1990; 1992, ch. 449, § 8, effective April 13, 1992; 2005, ch. 85, § 237, effective June 20, 2005; 2017 ch. 74, § 73, effective June 29, 2017; 2021 ch. 185, § 66, effective June 29, 2021.

Compiler's Notes.

Former KRS 133.170 (4118i-18: Acts 1964, ch. 141, § 18; 1968, ch. 179, § 4) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 341, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Final and Conclusive Assessment.
3. Hearing and Review.
4. Injunction.
5. Reversal.
6. Appeal.

1. Constitutionality.

The provision of this section limiting the right of appeal to the Franklin Circuit Court is not unconstitutional. Johnson v. Fordson Coal Co., 213 Ky. 445, 281 S.W. 472, 1926 Ky. LEXIS 535 (Ky. 1926), writ dismissed, Fordson Coal Co. v. Moore, 275 U.S. 494, 48 S. Ct. 82, 72 L. Ed. 391, 1927 U.S. LEXIS 310 (1927) (decision prior to 1964 amendment).

2. Final and Conclusive Assessment.

If the county does not proceed under this section for court review of the action of the tax commission, the assessment as equalized by the tax commission is final and conclusive. Fayette County v. Wells, 195 Ky. 608, 243 S.W. 4, 1922 Ky. LEXIS 367 (Ky. 1922) (decision prior to 1964 amendment).

3. Hearing and Review.

This section and KRS 133.150, 133.160 must be construed as necessarily contemplating, to avoid unconstitutional action and to accomplish the overall objective of equalization, that the individual taxpayer be afforded an opportunity for a hearing and appellate review. Fitzpatrick v. Patrick, 410 S.W.2d 143, 1966 Ky. LEXIS 31 (Ky. 1966).

4. Injunction.

Where no action was taken by the fiscal court under this section, the taxpayers of the county had no right to maintain a suit to enjoin the county clerk from issuing tax bills based on the increased assessment made by the tax commission. Farm Bureau of Calloway County v. Pool, 205 Ky. 365, 265 S.W. 809, 1924 Ky. LEXIS 109 (Ky. 1924) (decision prior to 1964 amendment).

5. Reversal.

The courts cannot reverse or correct a finding or ruling of the tax commission for an error of judgment or discretion alone. Commonwealth v. Louisville Gas & Electric Co., 278 Ky. 466, 128 S.W.2d 778, 1938 Ky. LEXIS 68 (Ky. 1938) (decision prior to 1964 amendment).

6. Appeal.

Where notice of appeal was filed within 10 days after entry of judgment but appeal was not docketed with Court of Appeals until 16 days after entry of judgment the appeal was not docketed within the time required by this section and the appeal must fail. Allphin v. Daviess County Fiscal Court, 273 S.W.2d 359, 1954 Ky. LEXIS 1158 (Ky. 1954).

Cited in:

Perry County v. Kentucky River Coal Corp., 274 Ky. 235, 118 S.W.2d 550, 1938 Ky. LEXIS 254 (Ky. 1938); McCracken Fiscal Court v. McFadden, 275 Ky. 819, 122 S.W.2d 761, 1938 Ky. LEXIS 499 (Ky. 1938); Middleton's Adm'x v. Middleton, 297 Ky. 109, 179 S.W.2d 227, 1944 Ky. LEXIS 692 (Ky. 1944); Belk-Simpson Co. v. Hill, 288 S.W.2d 369, 1956 Ky. LEXIS 262 (Ky. 1956); Allphin v. Butler, 619 S.W.2d 483, 1981 Ky. LEXIS 259 (Ky. 1981); Barrett v. Reynolds, 817 S.W.2d 439, 1991 Ky. LEXIS 146 (Ky. 1991).

OPINIONS OF ATTORNEY GENERAL.

The county fiscal court may have blanket increases reviewed by the Kentucky board of tax appeals. OAG 68-351.

The Department of Revenue has authority to apply a blanket increase to a class of property in a county where their studies have determined that the aggregate assessed value of such property is below fair cash value. OAG 68-351.

Any individual property owner whose property is increased above fair cash value by a blanket increase may petition the county clerk to have such increase passed upon by the county board of supervisors and may appeal from their decision to the board of tax appeals. OAG 68-351.

The Department of Revenue is the certifying authority with respect to county assessments and such certification shall include any equalization factor required to bring the assessment of the property in the county to fair cash value. OAG 68-352.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Martin, Social Implications of Some Recent Kentucky Property Tax Cases, 29 Ky. L.J. 255 (1941).

133.180. Certification by department to county clerk — Certification of tax books — Effect.

(1) When the department has completed its action on the assessment of property in any county, it shall immediately certify to the county clerk the assessment and the amount of taxes due. The department shall charge the amount of taxes due from the county to the sheriff of the county. When any item of property is in process of appeal and the valuation has not been finally determined, the certification of such property shall be based on the valuation claimed by the taxpayer as the true value. The county clerk shall affix the certification to the tax books and enter it of record in the order book, and it shall be the sheriff's or collector's warrant for the collection of taxes.

(2) Where provision is not otherwise made for the collection of taxes, the assessment or proportion thereof allocable to a local taxing district shall be certified to the county clerk in which the taxing district is located, for collection as provided by law.

History.

4128a-2; Acts 1949 (Ex. Sess.), ch. 2, § 9; 1960, ch. 186, Art. I, § 38; 1964, ch. 141, § 19; 1974, ch. 326, § 9; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 342, effective July 13, 1990; 2005, ch. 85, § 238, effective June 20, 2005; 2009, ch. 10, § 43, effective January 1, 2010.

Compiler's Notes.

Former KRS 133.180 (4128a-2: amend. Acts 1949 (Ex. Sess.), ch. 2, § 9; 1960, ch. 186, Art. I, § 38; 1964, ch. 141, § 19; 1974, ch. 326, § 9) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 342, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Certification Date Directory.
2. Change of Tax Rate.
3. Relation Back.
4. Error Correction.
5. Effect on Other Laws.

1. Certification Date Directory.

The former provision of this section that the amount of taxes due according to the equalization made by the tax commission shall be certified to the county clerk and charged to the sheriff not later than June 1 is merely directory, and a certification after that date will not be invalid in the absence of prejudice to the taxpayer arising from the delay. Johnson v. Fordson Coal Co., 213 Ky. 445, 281 S.W. 472, 1926 Ky. LEXIS 535 (Ky. 1926), writ of error dismissed, 275 U.S. 494, 48 S. Ct. 82, 72 L. Ed. 391, 1927 U.S. LEXIS 310 (U.S. 1927).

Former requirement of certification of assessment by department by June 20 held directory only and where assessment was certified on July 29, 1966, and no prejudice was shown it was valid. Department of Revenue v. Oldham County, 415 S.W.2d 386, 1967 Ky. LEXIS 318 (Ky. 1967).

2. Change of Tax Rate.

Where act changing local tax rate on certain property did not take effect until July 18, 1924, taxes based on assessments as of June 1, 1923, were governed by old rate, although certification of final equalization of such assessment was not made until November 1, 1924, such certification relating back to June 1, 1924 (see now KRS 133.185). Ross v. First Nat'l Bank, 213 Ky. 453, 281 S.W. 517, 1926 Ky. LEXIS 536 (Ky. 1926).

3. Relation Back.

A certification made by the tax commission under this section after June 1 (now June 20) will relate back to June 1, preserving, however, all existing review remedies. Ross v. First Nat'l Bank, 213 Ky. 453, 281 S.W. 517, 1926 Ky. LEXIS 536 (Ky. 1926).

4. Error Correction.

If, following blanket raise of assessment by state tax commission, an error is made by the county clerk in determining how the raise is to affect the deduction of exempt property, the error may be corrected under law providing for correction of errors in assessment and if not so corrected the sheriff cannot raise the question in connection with his settlement. Commonwealth use of Phillips v. Tate, 247 Ky. 516, 57 S.W.2d 491, 1933 Ky. LEXIS 425 (Ky. 1933).

5. Effect on Other Laws.

The Department of Revenue was not bound to use the figure it had certified under this section as the fair cash value of property under subsection (1) of KRS 157.380 (repealed) for purposes of the minimum foundation program. Board of Education v. Commonwealth, Dep't of Revenue, 515 S.W.2d 231, 1974 Ky. LEXIS 230 (Ky. 1974).

Cited in:

National Distillers Products Corp. v. Board of Education, 256 S.W.2d 481, 1952 Ky. LEXIS 1151 (Ky. 1952); St. Matthews v. Trueheart, 274 S.W.2d 52, 1954 Ky. LEXIS 1221 (Ky. 1954); St. Matthews Fire Prot. Dist. v. Aubrey, 304 S.W.3d 56, 2009 Ky. App. LEXIS 47 (Ky. Ct. App. 2009).

OPINIONS OF ATTORNEY GENERAL.

Under this section the state tax commission may make an assessment in July which is retroactive to the preceding January. OAG 60-790.

Where a city adopted essentially the same assessment, levy and collection dates provided for county and state taxes under which the collection of city taxes would begin in September or October, a city tax levy in June would have been made at the proper time. OAG 68-57.

The Department of Revenue is the certifying authority with respect to county assessments and such certification shall include any equalization factor required to bring the assessment of the property in the county to fair cash value. OAG 68-352.

Where the Department of Revenue certified the county assessment to the county clerk on August 21, 1980, the tax rates were fixed by such certification. OAG 80-503, 1980 Ky. AG LEXIS 137.

The limitations on the ad valorem tax rate which a city can levy are determined, in part, by applying the proposed rate levied by the city to the assessments certified by the Department of Revenue as provided in this section; subsequent corrections in valuations made by the department as the result of adjustments to certain properties which were in the appeal process at the time the certification was made are not relevant in computing the limitations. OAG 82-186, 1982 Ky. AG LEXIS 457.

133.185. Tax rate not to be fixed until assessment is certified under KRS 133.180 — Exception.

Except as provided in KRS 132.487, no tax rate for any taxing district imposing a levy upon the county assessment shall be determined before the assessment is certified by the Department of Revenue to the county clerk as provided in KRS 133.180.

History.

Enact. Acts 1942, ch. 131, §§ 26, 32; 1949 (Ex. Sess.), ch. 2, § 10; 1964, ch. 141, § 21; 1978, ch. 384, § 269, effective June 17, 1978; 1984, ch. 54, § 9, effective January 1, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 343, effective July 13, 1990; 2005, ch. 85, § 240, effective June 20, 2005.

Compiler's Notes.

Former KRS 133.185 (Enact. Acts 1942, ch. 131, §§ 26, 32; 1949 (Ex. Sess.), ch. 2, § 10; 1964, ch. 141, § 21; 1978, ch. 384, § 269, effective June 17, 1978; 1984, ch. 54, § 9, effective January 1, 1985) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 343, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Assessment Precedes Levy.
2. State Tax Rate.
3. Applicable Tax Rate.

1. Assessment Precedes Levy.

This section definitely states that the assessment must precede the levy of the tax rate. National Distillers Products Corp. v. Board of Education, 256 S.W.2d 481, 1952 Ky. LEXIS 1151 (Ky. 1952).

2. State Tax Rate.

This section, which relates to the imposition of a tax rate for a taxing district, such as a city, county or school, has no relationship to Ky. Const., § 171 which requires that the General Assembly shall provide an annual tax sufficient to defray the estimated expenses of the Commonwealth; the state tax rate on all personal property, including motor vehicles, is not fixed by the processes outlined in this section, KRS 132.487(2), or 132.487(6) which provide for submission of a proposal, recapitulation of motor vehicles by the property valuation administrator, and certification by the Department of Revenue, but rather, the state tax rate is fixed by the General Assembly and is currently embodied in KRS 132.020. There is no conflict between KRS 132.487(2) and 132.487(6) with the constitutional provision that the taxes shall be sufficient to defray the expenses of the state. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

3. Applicable Tax Rate.

Where statute changing local tax rate on certain property did not take effect until after March 1, old rate applied to taxes that became due and payable on March 1. Ross v. First Nat'l Bank, 213 Ky. 453, 281 S.W. 517, 1926 Ky. LEXIS 536 (Ky. 1926) (decided under prior law).

The tax rate that prevailed at the time the taxes for a particular year became due and payable was the rate to be applied to the taxes for such year, regardless of when the assessment was made or completed. Ross v. First Nat'l Bank, 213 Ky. 453, 281 S.W. 517, 1926 Ky. LEXIS 536 (Ky. 1926) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

Where sixth-class city generally used county property assessments as the basis for its city tax bills that were usually sent out on July 1, but the county property tax assessments were not going to be certified in time for the city to issue bills on July 1, the city had two (2) alternatives available to it: either, delay issuance of the tax bills until the county property tax assessments were certified by the Department of Revenue, or, appoint its own assessor and issue its own property assessments in accordance with former KRS 92.520. OAG 80-182, 1980 Ky. AG LEXIS 467.

Where the Department of Revenue certified the county assessment to the county clerk, pursuant to KRS 133.180, on August 21, 1980, the tax rates were fixed by such certification. OAG 80-503, 1980 Ky. AG LEXIS 137.

Where an area planning commission adopted a special fiscal year beginning on January 1, 1981, and ending on June 30, 1981, it improperly used the estimated valuation for property as of the January 1, 1981 assessment date, since it is absolutely necessary that an assessment be made before the levy can be imposed and since this section requires that the assessment be certified to the county clerk before the tax rate can be imposed; accordingly, the ad valorem tax in question must be based on the assessment made on January 1, 1980. OAG 81-355, 1981 Ky. AG LEXIS 78.

Where a city chose to adopt the county assessment, its assessment date was January 1 preceding the city's fiscal year; the city's levy date, however, must be subsequent to the certification of the county assessments by the Department of Revenue. OAG 82-186, 1982 Ky. AG LEXIS 457.

A public health taxing district cannot establish its health tax rate for a particular year until the county assessments for that year have been certified by the Revenue Cabinet as provided in KRS 133.180. The district must, however, establish its tax rate prior to the levy of the county ad valorem tax

by the county fiscal court. OAG 82-382, 1982 Ky. AG LEXIS 286.

133.220. Tax bill forms — Attestation of bills — Duties of sheriff or collector — Treatment of undeliverable notices.

(1) The department annually shall furnish to each county clerk tax bill forms designed for adequate accounting control sufficient to cover the taxable property on the rolls.

(2) After receiving the forms, the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. If the bills are bound, the cost of binding shall be paid out of the county levy. Each tax bill shall show the rate of tax upon each one hundred dollars ($100) worth of property for state, county, and school purposes; the name of the taxpayer and his or her mailing address; the number of acres of farm land and its value; the number of lots and their value; the amount and value of notes and money; the value of mixed personal property; the total amount of taxes due the state, county, school district, and any other taxing district for which the sheriff collects taxes; and shall include a statement that notifies the taxpayer that costs and fees increase substantially if the taxes become delinquent. Provision shall be made for the sheriff to have a stub, duplicate, or other proper evidence of receipt of payment of each tax bill.

(3) Tax bills prepared in accordance with the certification of the department shall be delivered to the sheriff or collector by the county clerk before September 15 of each year. The clerk shall take a receipt showing the number of tax bills and the total amount of tax due each taxing district as shown upon the tax bills. The receipt shall be signed and acknowledged by the sheriff or collector before the county clerk, filed with the county judge/executive, and recorded in the order book of the county judge/executive in the manner required by law for recording the official bond of the sheriff.

(4) Upon delivery to him or her of the tax bills, the sheriff or collector shall mail a notice to each taxpayer, showing the total amount of taxes due the state, county, school district, and any other taxing district for which the sheriff collects taxes, the date on which the taxes are due, and any discount to which the taxpayer may be entitled upon payment of the taxes prior to a designated date. The sheriff shall not mail tax notices prior to September 15.

(5) All notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses if the information to do so is available and, if property has been transferred, shall determine the new owner and the current mailing address, or the in-care-of address reflected in the deed as required by KRS 382.135. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but no later than fifteen (15) days after receipt. Uncorrected notices shall be submitted to the department by the property valuation administrator.

History.

4128a-2, 4239a, 4239h, 4239i-1, 4239ii: amend. Acts 1944, ch. 2; 1949 (Ex. Sess.), ch. 2, § 11; 1954, ch. 92; 1960, ch. 186, Art. I, § 23; 1962, ch. 29, § 4; 1964, ch. 141, § 23; 1978, ch. 384, § 270, effective June 17, 1978; 1990, ch. 27, § 3, effective July 13, 1990; 1998, ch. 209, § 2, effective March 30, 1998; 2005, ch. 85, § 242, effective June 20, 2005; 2008, ch. 143, § 2, effective August 1, 2008; 2009, ch. 10, § 44, effective January 1, 2010.

Compiler's Notes.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

NOTES TO DECISIONS

Analysis

1. Tax Bill.
2. —Delayed.
3. —Corrected.
4. Taxes Chargeable to Sheriff.
5. —Best Evidence.
6. Sheriff's Settlement.

1. Tax Bill.

2. —Delayed.

When the taxpayer has appealed from the board of supervisors with regard to the assessment of his property, no tax bill may be made out on such assessment pending the appeal, and the clerk may be enjoined from making out and delivering the tax bill to the sheriff. Cossar v. Klein, 227 Ky. 768, 14 S.W.2d 160, 1928 Ky. LEXIS 515 (Ky. 1928). See Klein v. Jefferson County Board of Tax Comm'rs, 242 Ky. 328, 46 S.W.2d 480, 1932 Ky. LEXIS 270 (Ky. 1932).

3. —Corrected.

Where county clerk, in making out tax bills, inadvertently failed to include the county taxes on the bills of a certain taxpayer, and upon the mistake being called to his attention the following year issued corrected bills, such corrected bills were valid. McFarland v. Georgetown Nat'l Bank, 208 Ky. 7, 270 S.W. 995, 1925 Ky. LEXIS 201 (Ky. 1925), aff'd, 273 U.S. 568, 47 S. Ct. 467, 71 L. Ed. 779, 1927 U.S. LEXIS 712 (U.S. 1927).

4. Taxes Chargeable to Sheriff.

The amount of taxes shown to be due by the final recapitulation of the tax commissioner's (now property valuation administrator's) books, and by the receipt for the tax bills executed by the sheriff under this section, is conclusive as to the sheriff's liability in making settlements, unless such amount has been shown to be erroneous in an action brought for the purpose of correcting the books and receipt. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931).

The sheriff's receipt for the tax bill is conclusive as to the amount with which the sheriff is chargeable in making settlements, in the absence of a showing of fraud or mistake. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931).

5. —Best Evidence.

The best evidence of the amount of taxes with which the sheriff is chargeable is the receipt for the tax bills executed by the sheriff under this section. If the receipt was never executed, or has been lost or destroyed, the next best evidence is the book containing the tax bills, the undetached bills being evidence as to uncollected taxes, and the stubs of the detached bills, to the extent they are legible, being evidence as to collected taxes. If the tax books have been lost or destroyed,

the next best evidence is the tax rolls of the tax commissioner, as finally revised by the county clerk, from which the tax bills were made out. Any expense necessary to cause a reproduction of the tax bills from the tax rolls may be charged to the sheriff. In the absence of the sheriff's receipt for the tax bills, and the complete books of tax bills and stubs, an audit report based on the intelligible portion of the tax books, together with the revised tax rolls, is competent evidence as to the sheriff's liability. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934).

6. Sheriff's Settlement.

In making settlements the sheriff is to be charged with the amount shown to be due by the clerk's books and the sheriff's receipts under KRS 133.180 and this section. Such amount is conclusive as to the sheriff's liability unless he can establish fraud, or unless there was a clerical error which has been corrected under KRS 133.110. Commonwealth use of Phillips v. Tate, 247 Ky. 516, 57 S.W.2d 491, 1933 Ky. LEXIS 425 (Ky. 1933).

Cited in:

McCracken Fiscal Court v. McFadden, 275 Ky. 819, 122 S.W.2d 761, 1938 Ky. LEXIS 499 (Ky. 1938); Whitley County Fiscal Court v. Whitley County, 283 Ky. 498, 142 S.W.2d 126, 1940 Ky. LEXIS 368 (1940); Shelton v. Smith, 284 Ky. 236, 144 S.W.2d 500, 1940 Ky. LEXIS 480 (Ky. 1940); St. Matthews Fire Prot. Dist. v. Aubrey, 304 S.W.3d 56, 2009 Ky. App. LEXIS 47 (Ky. Ct. App. 2009).

OPINIONS OF ATTORNEY GENERAL.

A city of the fourth class may by local ordinance adopt an assessment, valuation, assessment date, fiscal year, tax levy date, and due and delinquency dates of the county in which the city is situated, provided the requirements of KRS 132.285 are met. OAG 60-1243.

A city of the fourth class may, by local ordinance, adopt the assessment, valuation, assessment date, fiscal year, tax levy date, and due and delinquency dates of the county in which the city is situated, provided the requirements of KRS 132.285 are met. OAG 60-1243.

Regardless of whether or not a county budget has been made or tax levy set, the tax bills must be turned over to the sheriff by September 15 of each year. OAG 61-766.

There is not a complete tax bill until the fiscal court has made a levy and determined the rate. OAG 61-840.

Under this section it is the mandatory duty of the clerk to prepare tax bills and to facilitate the preparation thereof and he has the implied power to make reasonable expenditures to secure equipment, materials or services, including the payment of a reasonable rental to the county tax commissioner (now property valuation administrator) for the use of machinery or equipment. OAG 62-587.

Where a proper contest to a sheriff's annual settlement of his accounts for county and district taxes is made, the actual tax that is to be collected as evidenced by a proper audit (addition of the individual tax bills) of all the tax bills, is the amount that is finally charged to the sheriff (assuming that each tax bill is correctly prepared). OAG 69-346.

If a petition for dissolution is filed prior to the time the tax bills containing the first library levy are sent out, the tax must still be imposed if the library district has outstanding contractual obligations. OAG 71-210.

Where no notice was given to taxpayers of a five cent special voted building fund tax and it did not appear on the tax bills, the bills were not delinquent until notice was received of the tax due, and as a matter of equity the taxpayers should have a period of 30 days from the date of mailing the corrected notice in which they could pay such bills without the delinquency penalty. OAG 74-117.

Taxes may not be paid until the proper officer has the tax bills prepared for collection. OAG 77-753, 1977 Ky. AG LEXIS 52.

Computer billing services may be procured by a county clerk for preparing tax bills by applying the noncompetitive negotiation provisions of KRS 45A.380(1), if the county clerk makes a written determination that competition is not feasible, and that an emergency exists which will cause public harm as a result of the delay in competitive procedures, and the fiscal court enters an order confirming the county clerk's written determinations. OAG 80-299, 1980 Ky. AG LEXIS 346.

Under the literal language of this section, when read together with KRS 132.017(3), (4) and (5), a county clerk was not required to wait until the library board established a final tax rate in order to get out the tax bills in the regular way envisioned by this section but should make up the tax bills, based upon the already established tax rates relating to the state, county, school and other taxing districts, and place the bills with the sheriff; in connection with the library district tax levy, which had not been established because of the recall provisions of KRS 132.017, a second set of bills must be prepared in the regular manner upon the establishment of the final tax rate by any remaining districts and all costs associated with the second billing must be paid by the taxing district or districts requiring the second billing. OAG 80-503, 1980 Ky. AG LEXIS 137.

The county clerk should include special districts, such as ambulance service districts taxes on tax bills prepared by the county clerk. OAG 81-376, 1981 Ky. AG LEXIS 54.

The requirement under subsection (3) of this section that the county clerk deliver tax bills to the sheriff before September 15 of each year and take a receipt applies to the ambulance service district tax. OAG 81-376, 1981 Ky. AG LEXIS 54.

The sheriff is responsible for mailing the tax bills for an ambulance service district tax since subsection (4) of KRS 108.100 requires that the collection of a district tax be made in conformity with the general tax collection scheme for state and county taxes, and subsection (4) of this section includes "other levies" among the state and county taxes which the sheriff must collect. OAG 81-376, 1981 Ky. AG LEXIS 54.

The sheriff, who is responsible for collecting the ambulance service district tax under subsection (4) of this section as applied to the district tax through subsection (4) of KRS 108.100, is also responsible for the costs of postage, envelopes, and clerical personnel necessary to prepare the envelopes and accept payment of the tax but such expenses may be paid out of the excess fees of the sheriff. OAG 81-376, 1981 Ky. AG LEXIS 54.

The preparation of the tax bills is not part of the Property Valuation Administrator's (PVA) duties; this is the county clerk's province. Similarly, the PVA is not responsible for the correction of clerical errors in the tax bills; this is the county judge/executive's province. In short, the PVA's duty and authority with respect to property taxation end with the preparation of the tax rolls and the powers and duties concerning tax bills are the responsibility of others. OAG 83-200, 1983 Ky. AG LEXIS 297.

Under KRS 109.056(3) a solid waste commission cannot place the past due solid waste charges on the property tax bills of persons who refuse to pay their garbage bills, identifying the charge as a garbage charge, and have the sheriff collect the past due charges when he makes his normal yearly property tax collection since KRS 134.140 provides in part that the sheriff is collector of all state, county and district taxes and this involves only taxes in the strict legal sense, not "charges" for a governmental service and since this section deals with the county clerk's preparation of tax bills and makes no

mention of governmental charges. OAG 83-253, 1983 Ky. AG LEXIS 244.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Department of Revenue to prescribe style, layout, use and manner of keeping tax forms and records, KRS 131.130.

Informality or irregularity in making tax bills does not vitiate them, KRS 132.650.

CHAPTER 134

PAYMENT, COLLECTION, AND REFUND OF TAXES

Section

134.119. Sheriff is collector of taxes — Means of payment — Penalties — Sale of personal property — Compensation of sheriff.
134.191. Monthly reporting and payment of taxes collected by sheriff.
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134.421. Apportionment of taxes on real property when one owner does not pay taxes due.
134.452. Third-party purchaser of certificate of delinquency — Fees — Reasonable attorneys' litigation fees — Collection limitations — Notice to proper owner — Legislative findings.
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134.547. Collection of delinquent taxes and assessment of omitted property.
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Ad Valorem Taxes on Motor Vehicles and Motorboats.

134.800. County clerk to collect ad valorem taxes on motor vehicles registered by him — Acceptable means of payment.

Penalties.

134.990. Penalties.

134.119. Sheriff is collector of taxes — Means of payment — Penalties — Sale of personal property — Compensation of sheriff.

(1)(a) The sheriff shall be the collector of all state, county, county school district, and other taxing district property taxes unless the payment is directed by law to be made to some other person. The sheriff may contract to collect taxes on behalf of cities, independent school districts, or any other governmental unit with the authority to levy a property tax, if the enabling legislation authorizing imposition of the tax permits the governmental unit to contract for the performance of tax collection duties.

(b) The provisions of this chapter relating to the collection of property taxes shall apply to other property tax collectors to the extent that the governing body of the city, school district, or taxing district appointing the tax collector has not adopted alternative tax collection processes and procedures.

(2) Payment to the sheriff may be provided by any commercially acceptable means. The sheriff may limit the acceptable methods of payment to those that ensure that payment cannot be reversed or nullified due to insufficient funds.

(3)(a)1. The sheriff shall accept payment from the day on which the tax bills are mailed by the sheriff to the taxpayer as provided in KRS 133.220 and 133.230, through the day on which the sheriff files the uncollected tax claims with the county clerk pursuant to KRS 134.122. During this time period, the sheriff may accept full or partial payment for any outstanding taxes or tax claims.

2.a. Any payments received by the sheriff by mail that:

i. Are received after the day on which uncollected tax claims are filed with the county clerk pursuant to KRS 134.122; and

ii. Have a postmark that reflects a date on or before the day the uncollected tax claims are filed with the county clerk; shall be accepted and processed, and the amount due shall be the amount due immediately before the transfer of the uncollected tax claims by the sheriff to the county clerk.

b. Payments described in this subparagraph may be processed as agreed by the sheriff and county clerk.

c. Absent an agreement between the sheriff and the county clerk, the payment shall be accepted and processed by the sheriff.

d. If the sheriff accepts and processes the payment, the sheriff shall notify the county clerk, and the county clerk shall update his or her records to reflect payment of the certificate of delinquency.

e. The sheriff and the county clerk shall reconcile all transactions addressed by this subparagraph by preparation of an addendum to the original reconciliation provided by the sheriff to the county clerk at the time of transfer. The addendum shall be prepared thirty (30) days after the original transfer, and shall be filed by the county clerk in the clerk's order book.

(b) All payments received by the sheriff shall be entered immediately by the sheriff on his or her books. Partial payments shall be credited against the total amount due and shall be apportioned by the sheriff among the entities included on the tax bill in the same proportion the amount due to each bears to the amount paid.

(c) The acceptance of any payment before the taxpayer's tax liability has been finally determined shall not imply that the payment was the correct amount due and shall not preclude the assessment and collection of additional taxes due or the refund of any part of the amount paid that is in excess of the amount determined to be due.

(d) The sheriff may accept payment of any tax or tax claim from any other person on behalf of the

taxpayer. Any person making a payment on behalf of a taxpayer may, upon the written notarized request of the taxpayer, be treated as a transferee as provided in KRS 134.121.

(e) The sheriff may accept payment of any amount due on a delinquent tax claim from any of the persons described in subparagraphs 1., 2., and 3. of this paragraph without permission of the taxpayer. The person seeking to make the payment shall provide sufficient proof to the sheriff that he or she meets the requirements to pay under this paragraph. The sheriff shall be held harmless if he or she relies upon information provided and accepts payment from a person not qualified to pay under this paragraph. Any person listed in subparagraph 1., 2., or 3. of this paragraph who makes full payment, may, upon written request to the sheriff, be treated as a transferee under KRS 134.121:

1. Any person holding a legal or equitable estate in the real or personal property upon which the delinquent taxes are due, other than a person whose only interest in the property is a lien resulting from ownership of a prior year certificate of delinquency;

2. A tenant or lawful occupant of real property, or a bailee or person in possession of any personal property upon which the delinquent taxes are due; or

3. Any person having a mortgage on real property or a security interest in real or personal property upon which the delinquent taxes are due.

(4) If, upon expiration of the five percent (5%) penalty period established by KRS 134.015(2)(c), the real property tax delinquencies of a sheriff exceed fifteen percent (15%) of the amount charged to the sheriff for collection, the department may require the sheriff to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following notification from the department that such efforts shall be made, the department may assume responsibility for collecting the delinquent taxes. If the department assumes the responsibility for collecting delinquent taxes, the department shall receive the amounts that would otherwise be paid to the sheriff as fees or commissions for the collection of tax bills.

(5) In collecting delinquent taxes, the sheriff:

(a) May distrain and sell personal property owned by a delinquent taxpayer in the amount necessary to satisfy the delinquent tax claim. The sale shall be made under execution for cash. If the personal property of the delinquent taxpayer within the county is not sufficient to satisfy the delinquent tax claim, the sheriff may sell so much of the personal property as is available; and

(b) Shall retain any amounts that come into his or her possession payable to a delinquent taxpayer, other than claims allowed for attendance as a witness, and shall apply such amounts to the amount due on the delinquent tax claim.

(6)(a) As compensation for collecting property taxes the sheriff shall be paid the following amounts, regardless of whether the amounts are collected by the sheriff prior to filing the tax claims with the county clerk, or by the county clerk after the tax claims become certificates of delinquency or personal property certificates of delinquency:

1. From the Commonwealth the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the Commonwealth;

2. From counties the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the counties;

3. The sheriff shall be compensated as provided by law or as negotiated if negotiation is permitted by law, for collecting taxes on behalf of any taxing district;

4. The sheriff shall be compensated as provided in KRS 160.500 for collecting school district taxes;

5. The sheriff shall be compensated as provided in KRS 91A.070 for collecting taxes on behalf of any city; and

6. The sheriff shall be compensated as provided in KRS 75A.050 for collecting taxes on behalf of any consolidated emergency services district.

(b) The sheriff shall include the amounts he or she is entitled to under the provisions of paragraph (a) of this subsection as part of the delinquent tax claims filed with the county clerk. The amount so included shall become a part of the certificate of delinquency, and shall be paid by the person paying the certificate of delinquency rather than the taxing jurisdiction for which the taxes were collected.

(7) As additional compensation for the collection of delinquent taxes, the sheriff shall be entitled to an amount equal to ten percent (10%) of the total taxes due plus ten percent (10%) of the ten percent (10%) penalty for all delinquent taxes. This fee shall be added to the total amount due, and shall be paid by the person paying the tax claim if payment is made to the sheriff, or the certificate of delinquency or personal property certificate of delinquency if payment is made after the tax claim has been filed with the county clerk.

(8) If, in the process of collecting property taxes, the sheriff becomes aware of a new address for a taxpayer, the sheriff shall provide, on a form provided by the department, the information relating to the new address to the property valuation administrator, who shall update his or her records to reflect the new address.

History.

Enact. Acts 2009, ch. 10, § 3, effective January 1, 2010; 2010, ch. 75, § 2, effective April 7, 2010; 2021 ch. 116, § 19, effective June 29, 2021.

Legislative Research Commission Notes.

(4/7/2010). 2010 Ky. Acts ch. 75 provides that, notwithstanding any other provision of the Kentucky Revised Statutes or the effective date provisions of 2009 House Bill 262, the sheriff's fee calculation established by this statute applies to tax collections made by sheriffs in calendar year 2009.

134.191. Monthly reporting and payment of taxes collected by sheriff.

(1) The sheriff shall provide monthly reports by the tenth day of each month to the chief executive of the county, the department, and any other district for which the sheriff collects taxes. The governing body of

the county may require the sheriff to report and pay on a more frequent basis if necessary for bonding requirements; however, the sheriff shall not be required to report and pay more frequently than weekly.

(2) The report shall be broken down by governmental entity and shall include the following information for the preceding month or reporting period, if the reporting period is other than monthly:

(a) The total amount of taxes collected;

(b) The total amount of any fines, forfeitures, or other moneys collected; and

(c) The disposition of such revenue or money collected.

(3) At the time of making the report, the sheriff shall pay to the county treasurer or other officer designated by the governing body of a county, to the department, and to any other district for which the sheriff collects taxes, all funds belonging to the county, the state, or the district that were collected during the period covered by the report.

(4) Any sheriff failing to pay over taxes collected as required by law shall be subject to a penalty of one percent (1%) for each thirty (30) day period or fraction thereof that the payment is not made, plus interest at the tax interest rate provided in KRS 131.183 on such amounts. The governing body of a county, the department, or the other district for which the sheriff collects taxes, in its settlement with the sheriff, shall charge him or her with such penalties and interest.

(5) The chief executive of a county, or the commissioner of the department may grant an extension of time, not to exceed fifteen (15) days, for filing the report required by subsection (1) of this section with that entity when good cause exists. The extension shall be in writing and shall be recorded in the office of the county clerk. The extension when granted shall suspend the penalty and interest for the duration of the extension. The penalty and interest shall apply at the expiration of the extension.

History.

Enact. Acts 2009, ch. 10, § 21, effective January 1, 2010.

NOTES TO DECISIONS

Analysis

1. Application.
2. Payment.
3. —Cash.
4. —Setoff.
5. Sheriff's Liability.
6. Duty to Comply.
7. Report.
8. Penalty and Interest.
9. —Computation.
10. County Warrants.
11. Insolvent Bank.
12. Trust Fund.
13. Embezzlement.
14. Declaratory Judgment.
15. —Levy of Doubtful Legality.
16. Procedure.

1. Application.

This section does not apply to school taxes. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933). See Commonwealth use of McCreary County Board of Education v. Walker, 246 Ky. 679, 55 S.W.2d 914, 1932 Ky. LEXIS 821 (Ky. 1932) (decided under prior law).

2. Payment.

The giving of a check, by the sheriff to the treasurer, does not of itself constitute payment, unless it is expressly accepted as payment and as a discharge of the sheriff's liability. Breckinridge County v. Gannaway, 243 Ky. 49, 47 S.W.2d 934, 1932 Ky. LEXIS 32 (Ky. 1932) (decided under prior law).

The provisions of this section as to monthly payment of collections are mandatory. Fulton County v. Thompson, 265 Ky. 510, 97 S.W.2d 40, 1936 Ky. LEXIS 524 (Ky. 1936) (decided under prior law).

3. —Cash.

It is the duty of the sheriff to collect and pay over taxes in cash, and creditor of county may compel performance of this duty by mandatory injunction. Breathitt County v. Cockrell, 250 Ky. 743, 63 S.W.2d 920, 1933 Ky. LEXIS 764 (Ky. 1933) (decided under prior law). See Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

4. —Setoff.

Sheriff could not set off claims for building voting houses and for coupons on county bonds held by him against his liability for taxes collected. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

5. Sheriff's Liability.

The general rule that interest on taxes is not collectible from the taxpayer in the absence of express statute does not apply to the liability of the sheriff for interest on taxes collected and not paid over by him at the required time. Commonwealth use of McCreary County Board of Education v. Walker, 246 Ky. 679, 55 S.W.2d 914, 1932 Ky. LEXIS 821 (Ky. 1932) (decided under prior law).

The sheriff is not liable for tax money which has been lost by reason of failure of the bank in which the money was deposited, unless he was negligent in selecting the depository, or unless the failure occurred after the time when the sheriff should have paid over the money. In the case of a depository designated by the fiscal court as an official depository, the sheriff is not liable unless he had knowledge of facts which would lead him to question the soundness of the depository. Jordon v. Baker, 252 Ky. 40, 66 S.W.2d 84, 1933 Ky. LEXIS 1007 (Ky. 1933) (decided under prior law).

Where sheriff retains tax funds in his hands after the date he is required by this section to pay such funds over to the county treasurer, he becomes an insurer of such funds and is liable for them in case of failure of the bank in which they have been deposited by him. Fulton County v. Thompson, 265 Ky. 510, 97 S.W.2d 40, 1936 Ky. LEXIS 524 (Ky. 1936). See Breckinridge County v. Gannaway, 243 Ky. 49, 47 S.W.2d 934, 1932 Ky. LEXIS 32 (Ky. 1932) (decided under prior law).

6. Duty to Comply.

Statement by county judge (now county judge/executive), to sheriff, that sheriff need not pay over taxes at time required by this section, but might wait until time of meeting of fiscal court to make settlement, did not relieve sheriff of duty to comply with this section. Breckinridge County v. Gannaway, 243 Ky. 49, 47 S.W.2d 934, 1932 Ky. LEXIS 32 (Ky. 1932) (decided under prior law).

7. Report.

This section does not require the sheriff to report, at the stated intervals, whether or not he has collected any taxes, but only to report the taxes he has actually collected. Common-

wealth v. Kennon, 143 Ky. 214, 136 S.W. 198, 1911 Ky. LEXIS 367 (Ky. 1911) (decided under prior law).

8. Penalty and Interest.

If there is no county treasurer in office at the time the sheriff is required to pay over taxes collected by him, and the fiscal court has not designated some other person to receive the taxes, the sheriff cannot be charged with penalty and interest under subsection (3) of this section. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) See Pence's Adm'r v. Nelson County, 107 Ky. 66, 53 S.W. 25, 21 Ky. L. Rptr. 724, 1899 Ky. LEXIS 146 (Ky. 1899); Bates v. Knott County Court, 67 S.W. 1006, 24 Ky. L. Rptr. 73, 1902 Ky. LEXIS 361 (Ky. Ct. App. 1902) (decided under prior law).

When a sheriff has been charged with penalty and interest under subsection (3) of this section, subsequent payments by the sheriff will be first credited to the taxes and interest, then to the penalty. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) (decided under prior law).

There is no penalty upon the sheriff for failing to pay over school taxes at the time required by KRS 160.510, but the sheriff is liable for interest at the legal rate on all such taxes not paid over at the time required by that section. Commonwealth use of McCreary County Board of Education v. Walker, 246 Ky. 679, 55 S.W.2d 914, 1932 Ky. LEXIS 821 (Ky. 1932) (decided under prior law).

The sheriff is chargeable with the delinquent penalty imposed by former KRS 134.020 on all taxes collected by him after the date of delinquency, whether or not he has collected the penalty from the taxpayer, and if he fails to pay the taxes over as required by this section he is liable in addition for the penalty and interest imposed by subsection (3) of this section. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

No order of the fiscal court demanding payment of the taxes which the sheriff has collected is necessary or required to entitle the county to the six percent penalty imposed by subsection (3) of this section. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

9. —Computation.

The penalty and interest imposed by subsection (3) of this section are to be computed on the total amount which the sheriff has collected and not paid over, including delinquent penalties collected by the sheriff. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) (decided under prior law).

10. County Warrants.

Sheriff who purchased county warrants at a discount was not entitled to credit for the face amount of the warrants, or for interest on the warrants. Breathitt County v. Cockrell, 250 Ky. 743, 63 S.W.2d 920, 1933 Ky. LEXIS 764 (Ky. 1933) (decided under prior law). See Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

11. Insolvent Bank.

A sheriff who has deposited tax collections in a bank that subsequently becomes insolvent may make claim for the funds in his own name in the liquidation proceedings. Denny v. Thompson, 236 Ky. 714, 33 S.W.2d 670, 1930 Ky. LEXIS 819 (Ky. 1930) (decided under prior law).

Sheriff who has deposited tax money in a bank is not entitled to a preference over other creditors in case the bank becomes insolvent. Denny v. Thompson, 236 Ky. 714, 33 S.W.2d 670, 1930 Ky. LEXIS 819 (Ky. 1930) (decided under prior law).

Where sheriff gave county treasurer a check for $18,000, for taxes due the county, drawn on a bank in which the sheriff had that sum on deposit, and the treasurer changed the amount of the check to $10,000 and cashed it for that amount, and gave the sheriff a receipt for that amount, the sheriff could not maintain, after failure of bank causing loss of remaining $8,000, that he was entitled to credit for amount of original check, since he knew of change by treasurer and had opportunity to pay over balance before bank failed. Breathitt County Board of Education v. Cockrell, 238 Ky. 694, 38 S.W.2d 660, 1931 Ky. LEXIS 293 (Ky. 1931) (decided under prior law).

Where sheriff gave check for amount of taxes due from him, after the date when he should have paid over the taxes, and the bank on which the the check was drawn failed on the day after the check was given, the sheriff remained liable for the amount of such taxes. Breckinridge County v. Gannaway, 243 Ky. 49, 47 S.W.2d 934, 1932 Ky. LEXIS 32 (Ky. 1932) (decided under prior law).

12. Trust Fund.

The sheriff is a bailee of the taxes collected by him, and such taxes constitute a trust fund in his possession. Maryland Casualty Co. v. Walker, 257 Ky. 397, 78 S.W.2d 34, 1934 Ky. LEXIS 559 (Ky. 1934). See Denny v. Thompson, 236 Ky. 714, 33 S.W.2d 670, 1930 Ky. LEXIS 819 (Ky. 1930) (decided under prior law).

13. Embezzlement.

In prosecution of sheriff for embezzling franchise tax money, proof that sheriff had not reported franchise tax collections in his reports to the county court was admissible as tending to establish intent to embezzle. Commonwealth v. Brand, 166 Ky. 753, 179 S.W. 844, 1915 Ky. LEXIS 772 (Ky. 1915) (decided under prior law).

14. Declaratory Judgment.

15. —Levy of Doubtful Legality.

If the sheriff is in doubt as to the legality of the levy under which he has collected taxes, he should not hold the taxes in his hands, but should commence an action for a declaratory judgment and pay the money into court; otherwise he will be liable for the penalty and interest imposed by this section. Commonwealth use of McCreary County Board of Education v. Walker, 246 Ky. 679, 55 S.W.2d 914, 1932 Ky. LEXIS 821 (Ky. 1932) (decided under prior law).

16. Procedure.

Indictment of sheriff for failure to report as required by this section was fatally defective where it did not allege that the sheriff had actually collected any taxes that he failed to report. Commonwealth v. Kennon, 143 Ky. 214, 136 S.W. 198, 1911 Ky. LEXIS 367 (Ky. 1911) (decided under prior law).

134.192. Annual settlement of tax collections by sheriff.

(1) Each sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year. If any sheriff resigns, dies, or otherwise vacates his or her office, the books and records shall be made available to the department, the county, and any other district for which the sheriff collects taxes within thirty (30) days from the date that the office is vacated. The annual settlement of the sheriff shall be audited in accordance with KRS 43.070, 64.810, and 134.193.

(2)(a) The department shall conduct the settlement relating to taxes collected for the state.

(b) The sheriff shall settle his or her accounts with the county, the school district, and any other taxing district for which he or she collects taxes. On request of the governing body of the county or any other district for which the sheriff collects taxes, the department may conduct the local settlement. If no local settlement has been initiated by July 1 of any year, the department may initiate the local settlement on behalf of the county, the school district, and the taxing districts. Upon completion of the local settlement, the department may receive reasonable reimbursement for expenses incurred.

(3) In making his or her settlement with the local governments and the department, the sheriff shall be allowed credit for the uncollected tax claims properly filed with the county clerk's office as required by KRS 134.122.

(4) All tax bills on omitted property that were not turned over to the sheriff in time to be collected shall be carried over as a charge against the sheriff as part of the annual settlement.

(5) The report of the state and local settlement shall be filed in the county clerk's office and approved by the governing body of the county no later than September 1 of each year. The settlement shall show the amount of ad valorem tax collected for the county, the school district, and all taxing districts, and an itemized statement of the money disbursed to or on behalf of the county, the school district, and all taxing districts.

(6) The settlement shall be published pursuant to KRS Chapter 424.

(7) On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his or her hands attributable to amounts charged against the sheriff relating to the collection of property taxes, and shall take receipts as provided in KRS 134.160. The sheriff shall pay any additional amounts charged against him or her as a result of the settlements.

(8)(a) If the sheriff fails to remit amounts charged against him or her to the appropriate taxing district, the department may issue bills for the subsequent year and may assume all collection duties in the name of and on behalf of the cities, counties, school districts, and other taxing districts.

(b) The fees and commissions which the sheriff would have been entitled to receive from the taxing districts shall be paid to the department.

(9) No tax bills or tax books shall be delivered to the sheriff during the second or any subsequent calendar year of the sheriff's regular term until the settlement is submitted and approved by the department and the governing body of a county, and until the sheriff's bond is in place, should a bond be required by the fiscal court.

(10) If the tax records of a county are destroyed by fire, flood, tornado, or other act of nature, or are lost, stolen, or mutilated so as to require a reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he or she receives the recertified tax bills to make settlement pursuant to this section.

(11) In counties containing a population of less than seventy thousand (70,000), the sheriff shall provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year, which includes:

(a) A complete statement of all funds received by his or her office for official services, showing separately the total income received by his or her office for services rendered, exclusive of his or her commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and

(b) A complete statement of all expenditures of his or her office, including his or her salary, compensation of deputies and assistants, and reasonable expenses.

(12) At the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810. The provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.

(13) If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.

History.

Enact. Acts 2009, ch. 10, § 22, effective January 1, 2010; 2021 ch. 37, § 2, effective January 1, 2022.

NOTES TO DECISIONS

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31. Res Judicata.

1. Sheriff's Liability.

The fact that members of fiscal court, after making levy of special tax to pay bond issue, publicly expressed doubt as to legality of levy, and talked of enjoining the sheriff from collecting the tax, was not a defense to a proceeding seeking to compel the sheriff to account for the taxes he had collected under such levy. Lyons v. Breckinridge County Court, 101 Ky. 715, 42 S.W. 748, 19 Ky. L. Rptr. 951, 1897 Ky. LEXIS 240 (Ky. 1897) (decided under prior law).

The sheriff is not chargeable with the amount of uncollected taxes due on tax bills that have never been certified to him for collection. Montgomery County Court v. Chenault, 47 S.W. 457, 20 Ky. L. Rptr. 704 (1898) (decided under prior law).

Sheriff is not chargeable with taxes that have been remitted by the fiscal court, whether or not the remission was proper. Montgomery County Court v. Chenault, 47 S.W. 457, 20 Ky. L. Rptr. 704 (1898) (decided under prior law).

The sheriff is liable for the delinquent penalty imposed by former KRS 134.020 on all taxes that were collected after the date of delinquency and all taxes that he could have, but did not, collect. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) See Davis v. Commonwealth, 139 Ky. 334, 107 S.W. 306, 32 Ky. L. Rptr. 811, 1908 Ky. LEXIS 5 (Ky. 1908); Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910); Clarke v. Commonwealth, 233 Ky. 728, 26 S.W.2d 1041, 1930 Ky. LEXIS 655 (Ky. 1930); Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933); Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

In proceeding to charge sheriff with amount of taxes collected by him from taxpayers against whom he held no tax bills, auditor's report was competent evidence as to amount for which sheriff was accountable. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

Sheriff was chargeable with taxes collected by him, and not accounted for, from taxpayers whose property was not assessed, as against contention that such taxes were not legally in the hands of the sheriff. Failure of the taxing authorities to cause retrospective assessment of such property as omitted did not affect sheriff's liability. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law).

Proof that the sheriff has collected a larger amount than he has accounted for does not establish that he owes such additional amount to the taxing units, in the absence of proof that the amount for which he has accounted is less than the amount of the tax bills for which he executed receipt under KRS 133.220. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

Sheriff was chargeable with railroad franchise taxes paid to him by company before certification of assessment as provided by KRS 136.180, as against contention that sheriff had no authority to receive such taxes before certification. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933) (decided under prior law).

The sheriff is a bailee of the taxes collected by him, and such taxes constitute a trust fund in his possession. Maryland Casualty Co. v. Walker, 257 Ky. 397, 78 S.W.2d 34, 1934 Ky. LEXIS 559 (Ky. 1934) See Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934); Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Sheriff is not liable for amount collected under an unconstitutional tax. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Where omitted tax book for certain year had been lost, sheriff's liability for omitted tax collections could not be fixed by averaging the amounts of omitted tax collections for three previous years. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

2. —Fiscal Court.

Fiscal court had no authority to make agreement with sheriff to waive sheriff's liability to account for penalties on delinquent taxes in return for sheriff paying claims against county out of his own funds, in advance of tax collections, to avoid interest on such claims. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

After commencement of taxpayer's action to recover from sheriff commissions retained by him in excess of constitutional limit, fiscal court and sheriff had right to make a good faith compromise of sheriff's liability, and such compromise was a bar to further prosecution of the action. Shipp use of Fayette County v. Rodes, 219 Ky. 349, 293 S.W. 543, 1927 Ky. LEXIS 348 (Ky. 1927) (decided under prior law).

Where settlements of sheriff had been approved by county court, but fiscal court was of opinion that settlements were not correct and therefore proposed to bring an action to surcharge the settlements, a compromise settlement between the sheriff and the fiscal court, disposing of the disputed items, was not required to be approved by the county court in order to be valid and binding on the parties. Roberts v. Fiscal Court of McLean County, 244 Ky. 596, 51 S.W.2d 897, 1932 Ky. LEXIS 472 (Ky. 1932) (decided under prior law).

3. —Void Levy.

The sheriff and the surety on his bond are not liable to the county for taxes collected by the sheriff under a void levy. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

4. —Errors in Tax Bills.

If any errors were made by the county clerk in computing the tax bills, they must be corrected by application to the court before the sheriff accepts and receipts for the bills, and if not so corrected they are conclusive as to the sheriff's liability. A correction cannot be made in an action to surcharge the sheriff's settlement. Livingston County v. Dunn, 244 Ky. 460, 51 S.W.2d 450, 1932 Ky. LEXIS 453 (Ky. 1932) (decided under prior law).

5. Settlement.

Where settlements had been approved by county court, but fiscal court sought to surcharge them, compromise of disputed items with the sheriff did not violate Ky. Const., § 52. Roberts v. Fiscal Court of McLean County, 244 Ky. 596, 51 S.W.2d 897, 1932 Ky. LEXIS 472 (Ky. 1932) (decided under prior law).

Entry of order by fiscal court, approving sheriff's settlement, and subsequent filing of settlement with county court, did not obviate necessity of order or judgment of confirmation by county court. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

Since a Circuit Court has no authority to make a settlement with the sheriff in the first instance, there should be a judgment of the county court before jurisdiction of the Circuit Court is invoked. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

Where settlement had been properly made, it could not be collaterally attacked by an action at common law based merely and wholly upon alleged express promise by sheriff to pay a certain amount in addition to that found due by the settle-

ment. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

Where settlement was incomplete because it had never been confirmed by county court, action could not be maintained in Circuit Court, against sheriff, to recover at common law on alleged promise by sheriff to pay certain sum for year for which the incomplete settlement was made. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

6. —Notice.

Ordinarily the sheriff is not entitled to any notice when a settlement takes its usual course, but where a report of settlement has gone unapproved for several years the sheriff should be given notice before an order of approval is entered, so that he may have an opportunity to file exceptions. Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

Where order approving settlement was not entered until several years after the report of settlement was filed, and no notice of the order was given to the sheriff, the settlement was not binding. Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

7. —Failure to File.

County was not estopped from suing surety on sheriff's bond for accounting and settlement by fact that sheriff's purported settlements were not filed and recorded in the county court, since sheriff had equal duty to see that settlements were filed. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Where sheriff failed to comply with this section, he did not make and file a valid settlement for taxes collected and could be sued for an accounting of his taxes due the county in a direct proceeding. Thomas v. McCreary County, 239 S.W.2d 942, 1951 Ky. LEXIS 913 (Ky. 1951) (decided under prior law).

8. —Failure to Require.

Members of fiscal court are not individually liable in damages for failing to require sheriff to make settlements, or for allowing him excessive commissions in his settlements. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925) (decided under prior law).

9. —Refusal.

Where the sheriff refuses to settle, or absconds and fails to settle, an action may be brought against the surety on his bond to determine and recover the amount due from the sheriff, a settlement not being a prerequisite to action on the bond under such circumstances. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) (decided under prior law).

If the sheriff is notified of the time and place at which the commissioner proposes to make settlement, and fails or refuses to appear, the commissioner may proceed to make a settlement from the tax bills and such other information as is available, and such settlement will be valid. Gay v. Jackson County Board of Education, 205 Ky. 277, 265 S.W. 772, 1924 Ky. LEXIS 89 (Ky. 1924) (decided under prior law).

If the sheriff fails or refuses to make settlement, a suit may be instituted to compel him to do so, and in the same suit a recovery may be had from the sheriff for the amount found due from him. Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

Where fiscal court had failed and refused to make settlement with sheriff, taxpayer of county had right to bring action to determine and recover for the county the amount due from the sheriff, and a settlement made after the institution of such action could not defeat the action. Hoskins v. Helton, 252 Ky. 616, 67 S.W.2d 975, 1934 Ky. LEXIS 829 (Ky. 1934) (decided under prior law).

Where fiscal court had failed and refused to make settlement with sheriff, taxpayer had right to bring action to recover money due and he must allege facts showing that no settlement had been made. Hoskins v. Helton, 252 Ky. 616, 67 S.W.2d 975, 1934 Ky. LEXIS 829 (Ky. 1934) (decided under prior law).

10. —Publication.

The provision of this section for publication of the settlement is mandatory. Shelby County Fiscal Court v. Cosine, 174 Ky. 504, 192 S.W. 626, 1917 Ky. LEXIS 211 (Ky. 1917) (decided under prior law).

11. —Commissioner.

The commissioner appointed to settle with the sheriff has no power to allow the sheriff credit for uncollectible taxes, duplicate lists, or errors in assessments, unless the fiscal court has certified such items as allowable under former KRS 134.360. Reams v. McHargue, 111 Ky. 163, 23 Ky. L. Rptr. 540, 63 S.W. 437, 1901 Ky. LEXIS 184 (Ky. 1901), aff'd, 71 S.W. 526 (1903), aff'd sub nom. James v. Webb, 71 S.W. 526, 24 Ky. L. Rptr. 1382 (1903) (decided under prior law).

The Circuit Court has no authority to appoint a commissioner to settle with the sheriff. Rice v. Bradley, 203 Ky. 775, 263 S.W. 336, 1924 Ky. LEXIS 1007 (Ky. 1924) (decided under prior law).

The fiscal court has no authority to employ or pay the county judge (now county judge/executive) as a commissioner to settle with the sheriff, and any sum paid to the judge for such services may be recovered in an independent action. Breathitt County v. Hagins, 211 Ky. 391, 277 S.W. 469, 1925 Ky. LEXIS 885 (Ky. 1925) (decided under prior law).

If no commissioner is appointed to settle with the sheriff, the sheriff must appear before the fiscal court and there make settlement. Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

12. —Ex Parte.

Ex parte settlement made without notice to sheriff was not binding on him. Commonwealth v. Moren, 78 S.W. 432, 25 Ky. L. Rptr. 1635 (1904). (decided under prior law).

Attempted ex parte settlement of sheriff's accounts, made by commissioners appointed by fiscal court in absence of sheriff who had absconded, was not binding upon sheriff and his sureties in an action on his bond, although the settlement was entered and approved by the county court. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) (decided under prior law).

13. —Fiscal Court.

Settlement made directly with fiscal court, rather than with commissioner appointed by fiscal court, is valid if properly approved by the county court. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925) (decided under prior law).

14. —Amounts Charged Against Sheriff.

In making settlements the sheriff is to be charged with the amount shown to be due by the clerk's books and the sheriff's receipts under KRS 133.180 and 133.220. Such amount is conclusive as to the sheriff's liability unless the sheriff can establish fraud, or unless there was a clerical error which has been corrected under KRS 133.110. Livingston County v. Dunn, 244 Ky. 460, 51 S.W.2d 450, 1932 Ky. LEXIS 453 (Ky. 1932) See Commonwealth use of Phillips v. Tate, 247 Ky. 516, 57 S.W.2d 491, 1933 Ky. LEXIS 425 (Ky. 1933) (decided under prior law).

The amount with which the sheriff is chargeable, in making settlement, is the amount shown by the final recapitulation of the tax books made by the county clerk and the sheriff's

receipt for the tax bills given pursuant to KRS 133.220, plus omitted tax bills and franchise assessments separately delivered to the sheriff for collection. The tax bill stub cannot be used to contradict the recapitulation and receipt, or be used at all unless the recapitulation and receipt are not available. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

The sheriff's receipt for the tax bills, given under KRS 133.220, is conclusive as to the amount with which the sheriff is chargeable in making settlement, in the absence of a showing of fraud or mistake. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

The best evidence of the amount of taxes with which the sheriff is chargeable is the receipt for the tax bills executed by the sheriff under KRS 133.220 If the receipt was never executed, or has been lost or destroyed, the next best evidence is the book containing the tax bills, the undetached bills being evidence as to uncollected taxes, and the stubs of the detached bills, to the extent they are legible, being evidence as to collected taxes. If the tax books have been lost or destroyed, the next best evidence is the tax rolls of the tax commissioner (now property valuation administrator), as finally revised by the county clerk, from which the tax bills were made out. Any expense necessary to cause a reproduction of the tax bills from the tax rolls may be charged to the sheriff. In the absence of the sheriff's receipt for the tax bills, and the complete books of tax bills and stubs, an audit report based on the intelligible portion of the tax books, together with the revised tax rolls, is competent evidence as to the sheriff's liability. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

15. —Amounts Credited to Sheriff.

Sheriff was entitled, in settlement, to credit for office telephone expense, but not for post office box rent, bond premiums, stamps, stationery, books, automobile expense, "advertising" or "incidentals." Commonwealth use of Scott County v. Nunnelley, 211 Ky. 409, 277 S.W. 506, 1925 Ky. LEXIS 890 (Ky. 1925) (decided under prior law).

Where the state, county and taxing districts became the purchasers at a tax sale, the sheriff is entitled to credit in his settlement only for the amount of the tax claim, and not for the selling fee and percentage allowed him by former KRS 134.440, the latter items being collectible only from the taxpayer. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

16. —Overpayment.

Mistake of sheriff in paying over more money than was due could be corrected by order of fiscal court. Taylor v. Scoville, 252 Ky. 809, 68 S.W.2d 423, 1934 Ky. LEXIS 868 (Ky. 1934) (decided under prior law).

17. —Error in Raise of Assessment.

If, following blanket raise of assessment by state tax commission (now board of tax appeals), an error is made by the county clerk in determining how the raise is to affect the deduction of exempt property, the error may be corrected under KRS 133.110, but if not so corrected the sheriff cannot raise the question in connection with his settlement. Commonwealth use of Phillips v. Tate, 247 Ky. 516, 57 S.W.2d 491, 1933 Ky. LEXIS 425 (Ky. 1933) (decided under prior law).

18. —Accounts Other Than Taxes.

Where sheriff has also acted as special commissioner, he should make a separate settlement of his accounts as commissioner, and not confuse those accounts with his accounts as sheriff. Livingston County v. Dunn, 244 Ky. 460, 51 S.W.2d 450, 1932 Ky. LEXIS 453 (Ky. 1932) (decided under prior law).

19. —Approval.

A settlement that has not been approved and recorded by the county court in the manner required by this section is no settlement at all, and it may be collaterally attacked, or in an independent action may be maintained to obtain a settlement. Bates v. Knott County Court, 67 S.W. 1006, 24 Ky. L. Rptr. 73, 1902 Ky. LEXIS 361 (Ky. Ct. App. 1902) See Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905); Commonwealth use of Board of Education v. Mackey, 168 Ky. 58, 181 S.W. 621, 1916 Ky. LEXIS 498 (Ky. 1916); Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925); Commonwealth use of Scott County v. Nunnelley, 211 Ky. 409, 277 S.W. 506, 1925 Ky. LEXIS 890 (Ky. 1925); Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929); Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931); Maryland Casualty Co. v. Holt's Adm'x, 285 Ky. 66, 146 S.W.2d 940, 1940 Ky. LEXIS 602 (Ky. 1940) (decided under prior law).

Filing settlement with fiscal court does not take the place of approval by the county court. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) (decided under prior law).

20. —None Made.

Where no valid settlement has been made, it is not necessary that an action be first brought to compel the sheriff to make a settlement under the procedure prescribed by this section, before suing the sheriff for the amount due from him, but an independent action may be brought by the county to obtain a settlement and at the same time recover the amount found due. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925) See Commonwealth use of Board of Education v. Mackey, 168 Ky. 58, 181 S.W. 621, 1916 Ky. LEXIS 498 (Ky. 1916); Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929); Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

21. —Exceptions.

No one may file exceptions to the sheriff's settlement, or appeal from the judgment of the county court on the settlement, except the sheriff or county attorney. Little v. Strow, 112 Ky. 527, 66 S.W. 282, 23 Ky. L. Rptr. 1829, 1902 Ky. LEXIS 189 (Ky. 1902) (decided under prior law).

22. —Embezzlement.

In prosecution of sheriff for embezzlement, under KRS 434.020 (repealed), indictment alleging that sheriff had wrongfully converted to his own use a specified sum, representing the amount of taxes collected by him less exonerations and commission, was sufficient without alleging that there had been a settlement with the sheriff finding such amount due, or that there had been any demand or order upon the sheriff to pay over the money. Commonwealth v. Fisher, 113 Ky. 491, 68 S.W. 855, 24 Ky. L. Rptr. 300, 1902 Ky. LEXIS 91 (Ky. 1902) (decided under prior law).

23. —Conclusiveness.

A settlement cannot be opened on general allegation of fraud or mistake; the specific errors or frauds relied upon must be alleged. Lyons v. Breckinridge County Court, 101 Ky. 715, 42 S.W. 748, 19 Ky. L. Rptr. 951, 1897 Ky. LEXIS 240 (Ky. 1897) (decided under prior law).

When a settlement has been made and approved as provided in this section, it is conclusive as to all parties except that it may be attacked upon the ground of fraud or mistake in an action to surcharge the settlement. It cannot be collaterally attacked in a suit on the sheriff's bond. Pulaski County v. Watson, 106 Ky. 500, 50 S.W. 861, 21 Ky. L. Rptr. 61, 1899 Ky. LEXIS 69 (Ky. 1899) (decided under prior law). See Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky.

L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905); Green County v. Howard, 127 Ky. 379, 105 S.W. 897, 32 Ky. L. Rptr. 243, 1907 Ky. LEXIS 145 (Ky. 1907); American Surety Co. v. Bales, 228 Ky. 543, 15 S.W.2d 481, 1929 Ky. LEXIS 620 (Ky. 1929); Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929); Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

If exceptions are filed to a settlement, the settlement does not become final until the exceptions have been finally disposed of. If a settlement is confirmed without exceptions having been filed it becomes final upon the confirmation. When a settlement has become final by either of such methods, it cannot be attacked except upon the grounds of fraud and mistake, in an action to surcharge the settlement. Green County v. Howard, 127 Ky. 379, 105 S.W. 897, 32 Ky. L. Rptr. 243, 1907 Ky. LEXIS 145 (Ky. 1907) See Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

When a settlement becomes final, either by limitation or by judicial pronouncement, it is final as an entirety. But when it is opened for fraud or mistake it stands as if it had never been closed. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

When a settlement has been opened on account of a mutual mistake with respect to one item, it will be open for the correction of all other errors and frauds, although such other errors and frauds might not have been sufficient, standing alone, to justify opening the settlement in the first instance. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

Where sheriff, under mistake of law, was allowed in settlement a higher commission than that fixed by former KRS 134.290, the settlement could be opened. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

A settlement may be opened for correction when it was based upon a mutual mistake of the parties, whether of law or fact. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

The granting of a quietus to the sheriff, following a settlement, will not estop the county from opening the settlement on the ground of fraud or mistake. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law).

While a settlement for taxes may bar an independent action, not seeking to surcharge the settlement, to recover from the sheriff commissions allowed to him in the settlement in excess of the constitutional salary limit, it will not bar such an action to recover such excess compensation of the sheriff as was composed of fees for services other than tax collection. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925) (decided under prior law).

A settlement properly made may be opened up by an appeal from the county court to the Circuit Court, or by an independent action instituted to correct the settlement. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

24. —Surcharge.

A taxpayer may bring an action to surcharge the sheriff's settlement. Little v. Strow, 112 Ky. 527, 66 S.W. 282, 23 Ky. L. Rptr. 1829, 1902 Ky. LEXIS 189 (Ky. 1902) (decided under prior law).

An action to surcharge a settlement for fraud or mistake must be brought within five years after the mistake was discovered or could have been discovered by the exercise of ordinary diligence, and in any event within ten years after the date the settlement was confirmed. Green County v. Howard, 127 Ky. 379, 105 S.W. 897, 32 Ky. L. Rptr. 243, 1907 Ky. LEXIS 145 (Ky. 1907) See Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910); Blackwell v. Fidelity & Deposit Co., 163 Ky. 76, 173 S.W. 321, 1915 Ky. LEXIS 183 (Ky. 1915), overruled, American Surety Co. v. Bales, 228 Ky. 543, 15 S.W.2d 481, 1929 Ky. LEXIS 620 (Ky. 1929); Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919); Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

A demand upon the sheriff for the amount alleged to be due from him is not a condition precedent to the bringing of an action to surcharge the sheriff's settlement. Davis v. Commonwealth, 139 Ky. 334, 107 S.W. 306, 32 Ky. L. Rptr. 811, 1908 Ky. LEXIS 5 (Ky. 1908) (decided under prior law).

An action to surcharge a settlement may be brought after the settlement has been confirmed and recorded, and need not be brought before that time. Davis v. Commonwealth, 139 Ky. 334, 107 S.W. 306, 32 Ky. L. Rptr. 811, 1908 Ky. LEXIS 5 (Ky. 1908) (decided under prior law).

The failure of the county attorney to file exceptions to the report of settlement will not bar an action by the county to surcharge the settlement. Davis v. Commonwealth, 139 Ky. 334, 107 S.W. 306, 32 Ky. L. Rptr. 811, 1908 Ky. LEXIS 5 (Ky. 1908) (decided under prior law).

A settlement may be surcharged for a mistake of law as well as a mistake of fact. Davis v. Commonwealth, 139 Ky. 334, 107 S.W. 306, 32 Ky. L. Rptr. 811, 1908 Ky. LEXIS 5 (Ky. 1908) (decided under prior law).

In action to surcharge settlement, sheriff was held chargeable with interest at six percent per annum, from the end of each year, on the sum found due for that year. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

Failure to charge sheriff in settlement, with penalties collected by him on delinquent taxes could be corrected in action to surcharge settlement, where failure was result of misinterpretation of law. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

In action to surcharge sheriff's settlement, court had jurisdiction to adjudge sheriff's liability for taxes collected by sheriff from taxpayers against whom he held no tax bills, as against contention that jurisdiction was restricted to correction of settlement. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

In action to surcharge settlement for one year, improper charges or credits made in a settlement for a previous year could not be attacked. Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

In action by county board of education to surcharge sheriff's settlement, proof by the board that the sheriff had collected more money than he had accounted for, according to the tax bill stubs, did not pass the burden to the sheriff of proving by the final recapitulation of the tax books and the sheriff's receipt for the tax bills that he had accounted for all with which he was chargeable; the board had the burden of proving by such latter items that the sheriff had not accounted for the full amount with which he was chargeable. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

A taxing unit seeking to surcharge the sheriff's settlement has the burden of proving that the sheriff has collected funds belonging to the unit for which he did not account. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

In action to surcharge sheriff's settlements for all years of his term, judgment may be entered for any sum found due from the sheriff because of the allowance of an erroneous credit, without regard to which year the allowance was made. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933) (decided under

prior law). But see Steele v. Commonwealth, 233 Ky. 719, 26 S.W.2d 747, 1929 Ky. LEXIS 465 (Ky. 1929) (decided under prior law).

A settlement, although properly and validly made and approved, may be surcharged on the ground of fraud or mistake. Maryland Casualty Co. v. Holt's Adm'x, 285 Ky. 66, 146 S.W.2d 940, 1940 Ky. LEXIS 602 (Ky. 1940) (decided under prior law).

Where a settlement has been validly and properly made, it may be surcharged, but where it has not been completed in accordance with the statute, what was done may be attacked collaterally. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

25. Commissions.

In the case of a mistake of law as to the amount of commission to which the sheriff was entitled, the statute did not begin to run until the mistake was called to the attention of the fiscal court by an auditor employed to examine the county's fiscal records. Alexander v. Owen County, 136 Ky. 420, 124 S.W. 386, 1910 Ky. LEXIS 500 (Ky. 1910) (decided under prior law).

An action to recover from the sheriff excess commissions retained by him, above the constitutional limit of $5,000, which he had not accounted for in his settlement, was in effect an action to surcharge the settlement and was governed by the five-year statute of limitations on such actions. American Surety Co. v. Bales, 228 Ky. 543, 15 S.W.2d 481, 1929 Ky. LEXIS 620 (Ky. 1929) (decided under prior law).

26. County Warrants.

Where fiscal court gave sheriff credit in purported settlement for county warrants in which he was illegally trafficking and there was an overpayment on the settlement, sheriff's sureties would be allowed credit for the overpayment in later action for accounting and settlement, but such practice is condemned and fiscal court should not have accepted warrants. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Sheriff who used tax money to purchase county warrants at a discount, and tendered warrants in settlement of his accounts, was not entitled to collect interest on the warrants and was liable to the county for any profit made by him. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

27. Penalty and Interest.

The general rule that interest on taxes is not collectible from the taxpayer in the absence of express statute does not apply to the liability of the sheriff for interest on taxes collected and not paid over by him at the required time. Commonwealth use of McCreary County Board of Education v. Walker, 246 Ky. 679, 55 S.W.2d 914, 1932 Ky. LEXIS 821 (Ky. 1932) (decided under prior law).

In action by county against sheriff and sureties to collect sums found due on settlement, county could not recover penalties, since it was presumed that penalties were included in settlement. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

28. Estoppel.

The fact that fiscal court had accepted payment of sum found due from sheriff on purported settlement which was invalid because not recorded in county court in full satisfaction of sheriff's liability, did not estop county from suing surety on sheriff's bond for an accounting and settlement. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

29. Statute of Limitations.

Where mistakes relied upon as grounds for surcharging settlement were apparent from records in the office of the county clerk, the statute of limitations on the cause of action to surcharge the settlement commenced to run from the time the settlement was confirmed, and not from the time the mistakes were actually discovered, since by the exercise of ordinary diligence the county clerk's records could have been examined and the mistakes discovered at the time of settlement. Green County v. Howard, 127 Ky. 379, 105 S.W. 897, 32 Ky. L. Rptr. 243, 1907 Ky. LEXIS 145 (Ky. 1907) (decided under prior law).

Until such time as a settlement has been made according to this section, or the statute of limitations has run, a taxing district may maintain an action against the sheriff to ascertain and recover any taxes due to it from the sheriff. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

The statute of limitations does not begin to run against the right to surcharge the sheriff's settlement until the date of entry of the order of the county court approving the settlement. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law). See Green County v. Howard, 127 Ky. 379, 105 S.W. 897, 32 Ky. L. Rptr. 243, 1907 Ky. LEXIS 145 (Ky. 1907) (decided under prior law).

30. Procedure.

In action on sheriff's county levy bond, seeking to recover amount found due from sheriff on settlement, answer merely alleging that defendants had no knowledge or information on which to found a belief as to whether settlement was correct or as to what sums sheriff had collected and was accountable for, did not state a good defense. Lyons v. Breckinridge County Court, 101 Ky. 715, 42 S.W. 748, 19 Ky. L. Rptr. 951, 1897 Ky. LEXIS 240 (Ky. 1897) (decided under prior law).

Where no valid settlement has been made, it is not necessary, in an action to obtain a settlement and to recover the amount found to be due from the sheriff, to allege that a commissioner had been appointed with whom the sheriff could have made settlement. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925) (decided under prior law).

Where, in action against sheriff, the only recovery sought was with regard to taxes which the sheriff admitted to have actually collected, plaintiff was not required to produce evidence as to total amount of taxes with which sheriff had originally been charged. Shipp v. Bradley, 210 Ky. 51, 275 S.W. 1, 1925 Ky. LEXIS 627 (Ky. 1925) (decided under prior law).

An accountant was a competent witness, as to facts found by him in audit of books on which sheriff's settlement was made, although firm by which accountant was employed had made contract with county under which firm would receive 50 percent of anything recovered from sheriff. Bush v. Board of Education, 238 Ky. 297, 37 S.W.2d 849, 1931 Ky. LEXIS 230 (Ky. 1931) (decided under prior law).

County board of education, county treasurer and county itself could properly join as parties plaintiff in action to surcharge sheriff's settlement. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

In an action to surcharge the sheriff's settlement, the sheriff may not, in the absence of allegations on his part sufficient to surcharge the settlement, introduce evidence as to credits to which he is entitled other than those allowed him in the settlement or in exonerations by the fiscal court under former KRS 134.360, except that he may show payments made subsequent to the time the settlement was approved. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

In action by county against sheriff and sureties to collect sums found due on settlement, it was not necessary to allege

that fiscal court had directed county attorney or some other attorney to bring action. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Testimony that sheriff had promised to pay sum shown to be due under a proposed settlement was competent as an admission against interest in action against sheriff to recover such sum. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

County officials and taxpayers were not disqualified, by reason of interest, to testify as to conversations with deceased sheriff concerning sheriff's settlement. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

In action against sheriff based on alleged promise to pay sum shown to be due under an incomplete settlement, testimony of person appointed by fiscal court to make the settlement, that sheriff owed certain amount, was incompetent where the original documents and records were not produced. Hogg's Adm'r v. Commonwealth, 301 Ky. 557, 192 S.W.2d 487, 1946 Ky. LEXIS 519 (Ky. 1946) (decided under prior law).

31. Res Judicata.

Judgment against sheriff and surety on his bond for amount due from sheriff on settlement for taxes due on regular tax bills was not a bar to a subsequent action to recover sums due for railroad taxes collected on assessments certified pursuant to KRS 136.180, and which were collected after time of settlement. Combs v. Breathitt County, 46 S.W. 505, 20 Ky. L. Rptr. 529 (1898) (decided under prior law).

Where Circuit Court, on appeal from judgment of county court on settlement, held that sheriff was not liable for penalties on taxes not collected, and no appeal was taken from Circuit Court judgment, such judgment was final and conclusive as to year involved, but was not binding as to liability of sheriff for penalties on taxes for subsequent years. Fidelity & Deposit Co. v. Logan County, 119 Ky. 428, 84 S.W. 341, 27 Ky. L. Rptr. 66, 1905 Ky. LEXIS 15 (Ky. 1905) (decided under prior law).

134.193. Annual sheriff's tax settlement audit — Requirements.

The annual sheriff's tax settlement audit required by KRS 134.192(1) shall be one (1) audit encompassing the period September 1 to August 31 and the taxes collected on real estate, tangible personal property, unmined coal, oil and gas reserve, other mineral or energy resources, public service corporations, and any other ad valorem collections for which:

(1) The collection schedule has been completed;

(2) Delinquent tax claims have been filed with the county clerk in accordance with KRS 134.122; and

(3) Settlements have been prepared in accordance with KRS 134.192.

History.

2021 ch. 37, § 1, effective January 1, 2022.

134.230. Bond to be executed by sheriff — Liability of sheriff and sureties.

(1)(a) The sheriff shall execute a bond annually to the Commonwealth with one (1) or more sufficient sureties in the minimum sum of ten thousand dollars ($10,000), conditioned on the faithful performance of his or her duties and to pay over to the proper person and at the proper time all money collected. The bond shall be executed prior to the sheriff collecting taxes for the year in which the bond is executed. The bond shall be approved by order of the governing body of the county, and shall be filed by the governing body of the county with the county clerk and with the department.

(b) The governing body of the county may require the sheriff to enter into an additional bond, with good surety to be approved by the governing body of the county.

(2)(a) Subject to the provisions of paragraph (b) of this subsection, the sureties on all bonds executed by the sheriff pursuant to this section shall be jointly and severally liable for any default of the sheriff during the calendar year in which the bond was executed, whether the liability accrues before or after the execution of the bond.

(b) Neither the sheriff nor a surety shall be liable for any act or default of the sheriff relating to the sheriff's revenue duties unless notice of the act or default of the sheriff giving rise to a claim upon the bond has been given to the surety by the department, the chief executive of the county, the county attorney, or other person asserting the claim within ninety (90) days after discovery or at the latest within one (1) year after the end of the year within which the bond was executed.

(3)(a) Any sheriff who fails to execute a bond as required by this section shall forfeit his or her office. The vacancy shall be filled as provided in KRS 63.220.

(b) If the chief executive of the county does not appoint a sheriff as provided in KRS 63.220 within thirty (30) days, the department may appoint a tax collector to collect the moneys due the state. An appointed collector shall execute a bond within ten (10) days of being appointed, in the same manner and under the same conditions as provided in this section for a sheriff. A sheriff who forfeits his or her office under this subsection or who resigns his or her office shall not be appointed as collector under this section.

History.

4130, 4134: amend. Acts 1954, ch. 145; 1964, ch. 131, § 1; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 275, effective June 17, 1978; 1982, ch. 112, § 1, effective July 15, 1982; 1990, ch. 27, § 6, effective July 13, 1990; 1990, ch. 183, § 1, effective July 13, 1990; 1994, ch. 9, § 2, effective July 15, 1994; 2009, ch. 10, § 24, effective January 1, 2010.

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1. Construction.

The provision of subsection (1) of this section requiring sheriff to execute revenue bond "before or as of" June 1, does not mean that the sheriff might postpone execution of bond until he saw fit, but the proper interpretation would be that the bond might be executed before the first day of June but would not become effective until June 1. Clark v. Anderson, 300 Ky. 727, 190 S.W.2d 342, 1945 Ky. LEXIS 643 (Ky. 1945) (decided under prior law).

2. Bonds.

Both the official and the tax levying bonds of a sheriff executed before the enactment of this section covered his whole term and the bonds executed annually thereafter were merely additional security. Cotton v. Walton-Verona Independent Graded School Dist., 295 Ky. 478, 174 S.W.2d 712, 1943 Ky. LEXIS 262 (Ky. 1943) (decided under prior law).

3. —Agreement in Lieu of.

A sheriff or collector cannot satisfy the requirements of this section by agreeing with the department of revenue (now Revenue Cabinet) to make remittances of taxes more often than he is required to do, so that he will never have on hand more than a certain maximum balance, and giving bond in the amount of that balance. Beauchamp v. Matthews, 281 Ky. 351, 135 S.W.2d 863, 1939 Ky. LEXIS 35 (Ky. 1939) (decided under prior law).

4. —Conditions.

A bond provision that the surety would be absolved from liability if the county discovered a dishonest act or omission of the sheriff was ineffective and failed to absolve the surety from liability. National Surety Corp. v. Morgan County, 440 S.W.2d 791, 1969 Ky. LEXIS 349 (Ky. 1969) (decided under prior law).

A statutorily-required fidelity bond may not contain clauses limiting liability in derogation of the statutory requirements for the bond. National Surety Corp. v. Morgan County, 440 S.W.2d 791, 1969 Ky. LEXIS 349 (Ky. 1969) (decided under prior law).

Neither this section nor any other section in chapter 134 authorizes a "self-terminating" or "escape clause" provision in the sheriff's bond. National Surety Corp. v. Morgan County, 440 S.W.2d 791, 1969 Ky. LEXIS 349 (Ky. 1969) (decided under prior law).

5. —Liability for Tax Collections.

Liability for failing to account for tax collections is primarily under the bonds secured under this section, however, should these prove insufficient resort may be had to the general fidelity bonds executed under KRS 70.020. Maryland Casualty Co. v. Magoffin County Bd. of Education, 358 S.W.2d 353, 1961 Ky. LEXIS 450 (Ky. 1961) (decided under prior law).

6. —Failure to File.

When the sheriff failed to file bond by June 1, it was the duty of the county court to declare the office vacant and appoint a new sheriff. Clark v. Anderson, 300 Ky. 727, 190 S.W.2d 342, 1945 Ky. LEXIS 643 (Ky. 1945) (decided under prior law).

Where sheriff failed to file bond required by this section due to absence of county judge (now county judge/executive) who was required to receive it, it was sufficient compliance with this section that he tendered the bond to the county judge (now county judge/executive) upon the first day of the judge's return. Moore v. Fields, 535 S.W.2d 67, 1975 Ky. LEXIS 3 (Ky. 1975) (decided under prior law).

7. —Additional.

The county court may require a collector to give an additional bond in the same manner as the sheriff, but the judge, having approved the collector's original bond, cannot arbitrarily remove him from office on ground of insufficiency of additional bond tendered by him pursuant to notice from judge. Baker v. McIntosh, 272 Ky. 763, 115 S.W.2d 384, 1938 Ky. LEXIS 211 (Ky. 1938) (decided under prior law).

8. —Law Applicable.

A sheriff's bond is a contract between the parties thereto, and must be performed under the law in force at the time of the execution of the bond. Mt. Vernon Independent Graded School Dist. v. Clark, 281 Ky. 230, 135 S.W.2d 892, 1940 Ky. LEXIS 15 (Ky. 1940) (decided under prior law).

9. —Beneficiaries.

Subsection (3) of this section shows an intention that the bond shall be for the benefit of any taxing district, and the bonds cover county levies no less than state revenues. Maryland Casualty Co. v. Magoffin County Bd. of Education, 358 S.W.2d 353, 1961 Ky. LEXIS 450 (Ky. 1961) (decided under prior law).

10. —General Revenue.

Although sheriff's bond runs to the Commonwealth, action on the bond for liability with regard to school taxes may be brought by the board of education in its own name, and need not be brought by the Commonwealth for the use and benefit of the board. Gay v. Jackson County Board of Education, 205 Ky. 277, 265 S.W. 772, 1924 Ky. LEXIS 89 (Ky. 1924) (decided under prior law).

11. —Order Approving.

When order approving sheriff's bond was entered at the time of approval, but was not signed by the judge, it could be signed later, pursuant to KRS 25.160 (repealed), and such signing would validate the order as of the date of original entry. Leslie County v. Eversole, 222 Ky. 793, 2 S.W.2d 644, 1928 Ky. LEXIS 250 (Ky. 1928) (decided under prior law). See United States Fidelity & Guaranty Co. v. Salyer, 131 Ky. 527, 115 S.W. 767, 1909 Ky. LEXIS 53 (Ky. 1909) (decided under prior law).

12. —Execution.

The provision of subsection (1) of this section that the county judge (now county judge/executive) shall "hold court at any time the sheriff may request" to execute bond, makes it incumbent on the sheriff to request the county judge (now county judge/executive) to do this. Clark v. Anderson, 300 Ky. 727, 190 S.W.2d 342, 1945 Ky. LEXIS 643 (Ky. 1945) (decided under prior law).

13. —Premiums.

The sheriff must pay the premiums on his bonds, and cannot recover the same from the state or county, or be allowed credit therefor in his settlement. Land v. Fayette County, 269 Ky. 543, 108 S.W.2d 429, 1937 Ky. LEXIS 637 (Ky. 1937) (decided under prior law). See Commonwealth use of Scott County v. Nunnelley, 211 Ky. 409, 277 S.W. 506, 1925 Ky. LEXIS 890 (Ky. 1925) (decided under prior law). (See KRS 62.140 and 62.150).

14. —Penal Sum.

Neither the amount of the sheriff's individual net assets, nor the lien imposed on the sheriff's property by this section, nor the provision that the sheriff may be required to give additional bond, can be considered for the purpose of permitting a smaller penal sum than that required by this section. Cornett v. Duff, 282 Ky. 332, 138 S.W.2d 478, 1940 Ky. LEXIS 165 (Ky. 1940) (decided under prior law).

If the sheriff's revenue bond does not name a penal sum, but the joint net worth of the sureties is sufficient to comply with this section, the county judge (now county judge/executive) must insert a proper penal sum, with the consent of the sureties, and then approve the bond. Cornett v. Duff, 282 Ky. 332, 138 S.W.2d 478, 1940 Ky. LEXIS 165 (Ky. 1940) (decided under prior law).

15. —Quietus.

The obtaining of a quietus for the taxes of the previous year is not a condition precedent to the execution of the annual bond required by this section, and the sheriff must execute such bond at the time required by this section whether or not he has obtained the quietus. Renshaw v. Cook, 129 Ky. 347, 111 S.W. 377, 33 Ky. L. Rptr. 860, 33 Ky. L. Rptr. 895, 1908 Ky. LEXIS 165 (Ky. Ct. App. 1908) (decided under prior law).

16. Sureties.

The sheriff and the surety on his bond are not liable to the county for taxes collected by the sheriff under a void levy. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

The sureties on the sheriff's official bond, given pursuant to KRS 70.020, are not liable for revenue collections where the sheriff has executed the statutory revenue bonds. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938), distinguished in Maryland Casualty Co. v. Magoffin County Bd. of Education, 358 S.W.2d 353, 1961 Ky. LEXIS 450 (Ky. 1961) (decided under prior law).

This section does not mean that sureties on the official bond of the sheriff shall be jointly and severally liable for any default of the sheriff with the surety on the revenue bonds. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Sureties on sheriff's revenue bond would be subrogated to sheriff's claims against county for building voting houses and for coupons on county bonds held by him, but could not set off these claims against sheriff's liability for taxes collected. Fidelity & Casualty Co. v. Breathitt County, 276 Ky. 173, 123 S.W.2d 250, 1938 Ky. LEXIS 538 (Ky. 1938) (decided under prior law).

Sheriff's surety, subrogated to rights of county after paying shortage in sheriff's accounts, could enforce lien against purchaser of real property from sheriff, regardless of settlement of sheriff or quietus granted by fiscal court. Maryland Casualty Co. v. Holt's Adm'x, 285 Ky. 66, 146 S.W.2d 940, 1940 Ky. LEXIS 602 (Ky. 1940) (decided under prior law).

Liability for failing to account for tax collections is primarily under bonds executed under this section, however, in case the liability stipulated in such bonds proves insufficient to cover the aggregate default of the obligee in tax collections, resort may be had to the general fidelity bonds executed under KRS 70.020 Maryland Casualty Co. v. Magoffin County Bd. of Education, 358 S.W.2d 353, 1961 Ky. LEXIS 450 (Ky. 1961) (decided under prior law).

17. —Signatures.

It is immaterial whether the several sureties sign the bond on the same or different dates, or whether the date stated in the bond is the date on which the bond was actually signed. Gay v. Jackson County Board of Education, 205 Ky. 277, 265 S.W. 772, 1924 Ky. LEXIS 89 (Ky. 1924) (decided under prior law).

18. —Excess Fees and Commissions.

The sureties on the sheriff's bond are liable for excess commissions retained by the sheriff over and above the maximum compensation allowed him by the Constitution. American Surety Co. v. Bales, 228 Ky. 543, 15 S.W.2d 481, 1929 Ky. LEXIS 620 (Ky. 1929) (decided under prior law).

19. —Settlement Surcharged.

Where sheriff, in his settlement, has erroneously been given credit for fees and commissions not legally due him, the sureties on his bond are liable for the amount thereof found to be due in an action to surcharge the settlement, as against contention that such amount represents an ordinary debt due the county which the bond does not cover. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law).

20. —Release or Indemnity.

Where sheriff borrowed money from bank in order to make settlement for amount due from him for taxes of 1930, and executed note to bank for that amount, and then paid note out of tax money collected in 1931, surety on sheriff's bond compelled to make good sheriff's default with regard to 1931 taxes was not entitled to recover from the bank the amount paid to it, since the loan by the bank had saved the surety from being held liable for a 1930 default. Maryland Casualty Co. v. Walker, 257 Ky. 397, 78 S.W.2d 34, 1934 Ky. LEXIS 559 (Ky. 1934) (decided under prior law).

21. —Subrogation.

A surety who pays to the state, county and taxing districts the amount for which the sheriff is liable is subrogated to the lien on the sheriff's real estate. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933).

Surety who paid amount of sheriff's liability was entitled to sums on deposit in bank to credit of sheriff in his official capacity, surety's right to such sums being superior to right of bank to apply deposit to individual debt owed bank by sheriff. Golden v. Blakeman, 223 Ky. 517, 3 S.W.2d 1095, 1928 Ky. LEXIS 371 (Ky. 1928), overruled, Warfield Natural Gas Co. v. Ward, 286 Ky. 73, 149 S.W.2d 705, 1940 Ky. LEXIS 1 (Ky. 1940) (decided under prior law).

22. —Taxes.

Sureties on sheriff's bond are liable for amount of taxes collected by sheriff, and not accounted for, from taxpayers whose property was not assessed, as against contention that state and county are not entitled to such taxes. Failure of the state and county to cause retrospective assessment of such property as omitted does not affect such liability. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law) (at the time this case was decided, sheriff had duty to report omitted property; however, the law that gave sheriff this duty has been repealed).

Sureties on sheriff's bond were liable for railroad franchise taxes which had been paid to sheriff before they were due, as against contention that sheriff could not lawfully receive taxes until assessment had been certified as provided by KRS 136.180 Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933) (decided under prior law).

23. —Failure of Depository.

The sheriff is not liable on his bond for tax moneys which have been lost by reason of failure of bank in which moneys were deposited, unless he was negligent in selecting the depository, or unless the failure occurred after the time when the sheriff should have paid over the money. In case of deposits in a bank designated by the fiscal court as official depository of county funds, the sheriff is not liable unless he had knowledge of facts which would lead him to question the soundness of the

bank. Jordon v. Baker, 252 Ky. 40, 66 S.W.2d 84, 1933 Ky. LEXIS 1007 (Ky. 1933) (decided under prior law).

24. Lien.

The lien given by this section secured the sheriff's liability for taxes collected from taxpayers whose property was not assessed for taxation. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law).

There is no lien on real estate acquired by the sheriff after the expiration of his term. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law).

The lien provided in this section is not superior to the dower right. Maryland Casualty Co. v. Lewis, 276 Ky. 263, 124 S.W.2d 48, 1939 Ky. LEXIS 509 (Ky. 1939) (decided under prior law).

The lien provided in this section attaches at the time the sheriff begins to act as tax collector, insofar as property owned by him at that time is concerned, and at the time of acquisition of property subsequently acquired by him, and the lien given by KRS 135.100 is effective against the legal or equitable estate of the sheriff from the commencement of the action. Owens v. Maryland Casualty Co., 283 Ky. 162, 283 Ky. 462, 141 S.W.2d 867, 1940 Ky. LEXIS 353 (Ky. 1940) (decided under prior law).

25. —Priorities.

Bank which furnished money to pay off vendor's lien on land purchased by sheriff, and took mortgage from sheriff to secure it for amount advanced, was entitled to the same priority over the lien given by this section as the purchase-money lien had, under the doctrine of subrogation. Commonwealth ex rel. Board of Education v. Federal Land Bank, 226 Ky. 628, 11 S.W.2d 698, 1928 Ky. LEXIS 147 (Ky. 1928) (decided under prior law).

The wife of a deceased former sheriff is estopped from asserting a deed from the sheriff to her which was unrecorded until after his term expired, where the sheriff's surety is asserting a lien on the sheriff's property for his defalcation of tax funds. Maryland Casualty Co. v. Lewis, 276 Ky. 263, 124 S.W.2d 48, 1939 Ky. LEXIS 509 (Ky. 1939) (decided under prior law).

26. —Subrogation.

If, at the time the sheriff took office, certain of his real estate was subject to a contractual lien, and a person who purchased such real estate after the expiration of the sheriff's term paid off the lien, relying upon a quietus given to the sheriff, such person would be entitled to subrogation to such lien as against the lien asserted under this section for sums found due from the sheriff in an action to surcharge his settlements. American Surety Co. v. Bales, 228 Ky. 543, 15 S.W.2d 481, 1929 Ky. LEXIS 620 (Ky. 1929) (decided under prior law).

27. —Settlement and Quietus.

The granting of a quietus to the sheriff, following a settlement, does not operate to free the sheriff's real estate of the lien given by this section, and if the settlement is subsequently opened for fraud or mistake the lien may be enforced, even as against persons who purchased the real estate from the sheriff in reliance on the quietus. Mason v. Cook, 187 Ky. 260, 218 S.W. 740, 1919 Ky. LEXIS 389 (Ky. 1919) (decided under prior law).

Settlements made by sheriff and quietus granted by fiscal court do not discharge lien on his real property, as long as there is any money due from sheriff to county and period of limitation has not expired. Maryland Casualty Co. v. Holt's Adm'x, 285 Ky. 66, 146 S.W.2d 940, 1940 Ky. LEXIS 602 (Ky. 1940) (decided under prior law).

28. —Purchaser's Rights.

Persons who have purchased real estate from the sheriff are not precluded, as to the amount of the lien against such real estate, by the sheriff's settlements, and they may show that the sheriff was not liable for the sum found due by the settlement, or for any sum. American Surety Co. v. Bales, 228 Ky. 543, 15 S.W.2d 481, 1929 Ky. LEXIS 620 (Ky. 1929) (decided under prior law).

29. —Mortgage on Sheriff's Real Estate.

Mortgage on sheriff's real estate executed before he took office, but not recorded until after he took office, was inferior to lien of state, county and taxing districts. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933) (decided under prior law).

30. Sovereign Immunity.

Fire protection district's suit against tax collection officials, including a county court clerk, a sheriff, and a county assessor or property valuation administrator, based on the officials' failure to collect personal property tax pursuant to KRS 75.015, was properly dismissed because sovereign immunity shielded the officials from liability; contrary to the district's claim, the fact that the officials posted performance bonds did not amount to a waiver of sovereign immunity. Such waiver was found only where it was established by express language or by overwhelming implications. St. Matthews Fire Prot. Dist. v. Aubrey, 304 S.W.3d 56, 2009 Ky. App. LEXIS 47 (Ky. Ct. App. 2009).

Cited in:

Land v. Fayette County, 269 Ky. 543, 108 S.W.2d 429, 1937 Ky. LEXIS 637 (Ky. 1937); Cornett v. Duff, 283 Ky. 466, 141 S.W.2d 870, 1940 Ky. LEXIS 356 (Ky. 1940); Board of Aldermen v. Hunt, 284 Ky. 720, 145 S.W.2d 814, 1940 Ky. LEXIS 551 (Ky. 1940); Russell County Board of Education v. Leach, 288 Ky. 769, 157 S.W.2d 70, 1941 Ky. LEXIS 160 (Ky. 1941); Burke v. Department of Revenue, 293 Ky. 281, 168 S.W.2d 997, 1943 Ky. LEXIS 607 (Ky. 1943); Laurel County v. Lucas, 299 Ky. 237, 185 S.W.2d 259, 1945 Ky. LEXIS 407 (Ky. 1945).

OPINIONS OF ATTORNEY GENERAL.

The amount of the state revenue bond required of the sheriff at the beginning of his term could be based on the aggregate amount of taxes remaining unpaid at the first of the year. OAG 61-1086.

The bond required by this section can be paid out of the 75% fund pursuant to KRS 62.155 and 64.345. OAG 74-413.

This section creates no lien against personal property of a sheriff until such time as an action is instituted to subject such property to liability for any defalcation of the sheriff in remitting taxes. OAG 75-647.

Since the sheriff's county revenue bond must cover liability to account for all charges of taxes made against the sheriff and for all money received by him as a revenue collector, the officer fixing the bond should set it for no less than the aggregate amount of state, county, and special district tax receipts for each year the bond is in force. OAG 76-224.

Where the county judge/executive requires the sheriff to make his tax collections report more often than on the monthly basis, KRS 134.300 (now repealed) and this section, clearly require the sheriff to turn over taxes collected, after any previous report, to the appropriate taxing authority or special taxing district but in connection with usual monthly report, the sheriff is required at the time of the report to turn over taxes collected to the appropriate taxing authorities or special taxing districts. OAG 81-378, 1981 Ky. AG LEXIS 56.

The 1982 amendment of this section deleted the statutory lien provision and, consequently, there will be no statutory lien on the real property of sheriffs taking office subsequent to July 15, 1982, the date on which the amendment became effective. OAG 82-369, 1982 Ky. AG LEXIS 303.

The statutory lien provisions of former subsections (4) and (5) of this section, which subsections were deleted by the 1982 amendment to this section, remain in effect for sheriffs currently in office, as the amending act does not expressly state that its provisions are to be retroactive so as to be applicable to sheriffs who have taken office prior to its effective date. OAG 82-371, 1982 Ky. AG LEXIS 304.

Under KRS 70.040, the sheriff is liable for the acts or omissions of his deputies. Thus, the sheriff may require his deputies to execute bonds, in connection with the sheriff's tax collection function, to cover their responsibility for indemnifying the sheriff or the sheriff's office. OAG 82-460, 1982 Ky. AG LEXIS 179.

Concerning the general revenue bond of the sheriff as tax collector, pursuant to this section, there appears to be no statutory authority for the county's paying the premium. KRS 62.156, however, requires the county to pay the premium on the county levy bond treated in KRS 134.250 (now repealed). OAG 83-293, 1983 Ky. AG LEXIS 204.

A county hospital district, through its board, is responsible for paying that portion of the premium on the general revenue bond, pursuant to this section, which is practicably applicable to that portion of the bond coverage reflecting taxes collected by the sheriff for the hospital district. Also, the hospital district board has the duty of indicating to the county judge/executive the approximate amount of hospital district taxes which will be in the possession of the sheriff under the sheriff's reporting scheme for a particular tax year, in order that the general revenue bond may adequately reflect coverage embracing such hospital district taxes collected. OAG 82-609, 1982 Ky. AG LEXIS 35.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Wilson, Sale of Land for Taxes in Kentucky, 28 Ky. L.J. 105 (1940).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Sheriffs and Deputy Sheriffs, § 18.00.

134.420. Lien for taxes.

(1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for eleven (11) years following the date when the taxes become delinquent.

(2) This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes.

(3) The lien shall include all interest, penalties, fees, commissions, charges, costs, attorney fees, and other expenses as provided by this chapter that have been incurred by reason of delinquency in payment of the tax claim certificate of delinquency, personal property certificate of delinquency, or in the process of collecting any of them, and shall have priority over any other obligation or liability for which the property is liable.

(4) The lien of any city, county, or other taxing district shall be of equal rank with that of the state.

(5) When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated.

(6) Every city with a population of less than twenty thousand (20,000) based upon the most recent federal decennial census shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.

History.

4021, 4257a-7; Acts 1962, ch. 210, § 22; 1974, ch. 319, § 1; 1978, ch. 84, § 3, effective June 17, 1978; 1982, ch. 238, § 6, effective July 15, 1982; 1990, ch. 164, § 2, effective July 13, 1990; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 349, effective July 13, 1990; 1996, ch. 344, § 9, effective July 15, 1996; 1998, ch. 209, § 9, effective March 30, 1998; 2004, ch. 104, § 3, effective July 13, 2004; 2005, ch. 85, § 272, effective June 20, 2005; 2007, ch. 14, § 2, effective June 26, 2007; 2009, ch. 10, § 18, effective January 1, 2010; 2014, ch. 92, § 217, effective January 1, 2015.

Legislative Research Commission Notes.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

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7. Ad Valorem Taxes.
13. City Taxes.
14. Inheritance Taxes.
15. School Taxes.
16. Priorities.
17. Purchaser at Tax Sale.
18. Life Tenant.
19. Rentals.
20. Payment to Safeguard Security Interest.

1. Application.

This section was plainly intended to give a lien for any taxes then or thereafter provided by the statutes. In re Auto Electric Repair & Parts Co., 41 F. Supp. 3, 1941 U.S. Dist. LEXIS 2592 (D. Ky. 1941).

The provisions of this section, relating to liens for taxes generally, do not apply to unemployment compensation contributions. Louisville Title Mortg. Co. v. Commonwealth, 299 Ky. 224, 184 S.W.2d 963, 1944 Ky. LEXIS 1041 (Ky. 1944).

Delinquency certificate purchaser was entitled to an award of attorney fees on its action to redeem two (2) certificates of delinquency that it purchased regarding claims against the Kentucky corporation for delinquent taxes, as statutory authority gave it the right, as a private purchaser of the delinquent taxes, to enforce the lien that state, county, city, or taxing district would have had a right to enforce had the delinquent taxes not been purchased by the private purchase, and the lien included the right to a reasonable amount of

attorney fees. Flag Drilling Co. v. Erco, Inc., 156 S.W.3d 762, 2005 Ky. App. LEXIS 20 (Ky. Ct. App. 2005).

Since tax liens were superior to judgment liens, consistent with KRS 134.420(3), the purchaser who made a winning bid at a foreclosure sale could not use its judgment-lien credit to reduce the amount available to priority lienholders who had tax claims waiting to be paid. Rather, the priority lienholders were entitled to have the full amount of the winning bid available to pay their claims and the purchaser was entitled to recover any amount left over after the priority lienholders' claims were extinguished. United States Nat'l Bank Ass'n v. Am. Gen. Home Equity, Inc., 387 S.W.3d 345, 2012 Ky. App. LEXIS 198 (Ky. Ct. App. 2012).

2. Notice.

A person who purchased property subject to a tax lien during the five (5) year (now 11-year) period during which the lien continued was charged with notice of the lien. Carter v. Louisville, 147 Ky. 791, 145 S.W. 739, 1912 Ky. LEXIS 334 (Ky. 1912).

Under this section, any time a person fails to pay any tax, a lien immediately arises and is attached to all property owned or subsequently acquired by the taxpayer, but until notice thereof is filed, a bona fide purchaser, etc. is given priority, once notice is filed, however, the Revenue Cabinet has priority. Liberty Nat'l Bank & Trust Co. v. Vanderkraats, 899 S.W.2d 511, 1995 Ky. App. LEXIS 114 (Ky. Ct. App. 1995).

2.5. Standing.

Mortgagee had first-party standing to contest an agreed judgment between a mortgagor and a purchaser of the mortgagor's delinquent property tax liens because the mortgagee was a lienholder under KRS 426.006 and would suffer direct financial injury as the tax lien was superior under KRS 134.420(3); the amount of the tax lien was increased by the included attorney's fees under KRS 134.452, which the mortgagee contended were unreasonable. Tax Ease Lien Invs. 1 v. Commonwealth Bank & Trust, 384 S.W.3d 141, 2012 Ky. LEXIS 142 (Ky. 2012).

3. Lien.

Where the taxpayer did not own the property in question when the taxes accrued, the commission has no lien against the property for such taxes. Unemployment Compensation Com. v. Louisville Title Ins. Co., 293 Ky. 214, 168 S.W.2d 377, 1943 Ky. LEXIS 566 (Ky. 1943).

Pursuant to the language of former subsection (2) of this section a tax lien cannot arise until a person is liable to pay such tax. Commonwealth Revenue Cabinet v. Hall, 941 S.W.2d 481, 1997 Ky. App. LEXIS 5 (Ky. Ct. App. 1997).

4. —Property to Which Attached.

When there is a tax lien on assessed real property which is subject to sale by the sheriff under the provisions of the applicable statutes, so much of the lien as remains after the sale of personalty as provided in KRS 134.430 (now repealed) shall constitute a first lien against the assessed real estate, but in no event can this be construed to give the taxing authority a lien against real estate for taxes assessed against property other than the particular real estate. Midland-Guardian Co. v. McElroy, 563 S.W.2d 752, 1978 Ky. App. LEXIS 490 (Ky. Ct. App. 1978).

Blanket lien did not exist against property sold by vendor to purchaser, concerning all the unpaid taxes which vendor owed regarding certificates of tax delinquency covering other tracts of real estate vendor owned, and purchaser could not be required to pay and satisfy such liens of vendor, especially as property sold had no assessment for delinquent liens. United Cos. Lending Corp. v. Calvert, 899 S.W.2d 514, 1995 Ky. App. LEXIS 116 (Ky. Ct. App. 1995).

5. —Personalty and Realty.

Where taxpayer who owned personal property and real estate sold the personal property after the assessment date, the lien on such personal property for taxes could not be enforced until after the real estate had been exhausted. Hicks v. Kimbro, 225 Ky. 778, 10 S.W.2d 290, 1928 Ky. LEXIS 879 (Ky. 1928).

6. —Period of.

Where an action to enforce the lien for taxes is brought within the five (5) year (now 11-year) period for which the lien continues, no lis pendens notice need be filed at the commencement of the action, in order to preserve the lien as to third persons, but if the action remains on the docket without being brought to trial until after the five (5) year period has expired, a lis pendens notice must be filed. Carter v. Louisville, 147 Ky. 791, 145 S.W. 739, 1912 Ky. LEXIS 334 (Ky. 1912).

7. —Ad Valorem Taxes.

The lien for ad valorem taxes is on the property assessed. Commonwealth v. J. B. Jellico Coal Co., 227 Ky. 273, 12 S.W.2d 698, 1928 Ky. LEXIS 502 (Ky. 1928).

8. —Taxpayer's Interest.

The tax lien is a lien only against such interest as the taxpayer owns in the property, and not against the property itself. Hall v. Hall, 174 Ky. 356, 192 S.W. 76, 1917 Ky. LEXIS 189 (Ky. 1917).

Where coal mining lease was terminated by lessor on lessee becoming bankrupt, such power of termination being reserved in the lease, all property rights of the lessee ceased to exist, and there was nothing remaining against which the state could enforce a lien for taxes previously assessed against the lessee's interest in the lease. Commonwealth v. J. B. Jellico Coal Co., 227 Ky. 273, 12 S.W.2d 698, 1928 Ky. LEXIS 502 (Ky. 1928).

9. —Timber.

Tax lien extended to proceeds of sale of timber from land subject to lien. Board of Drainage Comm'rs v. Alexander, 235 Ky. 689, 32 S.W.2d 22, 1930 Ky. LEXIS 438 (Ky. 1930).

10. —Assessment in Wrong Name.

Where property is correctly described in the assessment lists, the tax constitutes a lien on the property, even though the assessment is in the name of the wrong person. Louisville v. Louisville Courier-Journal Co., 140 Ky. 664, 131 S.W. 509, 1910 Ky. LEXIS 341 (Ky. 1910).

11. —Attachment.

The lien attaches as of the assessment date, so the assessment date constitutes the lien date. Jefferson Post, A. L. Dep't v. Louisville, 280 S.W.2d 706, 1955 Ky. LEXIS 189 (Ky. 1955).

KRS 134.060 (now repealed) makes an owner of real property liable for the related property taxes and the tax is the personal debt of the person liable for payment, pursuant to KRS 134.050 (now repealed), and the lien imposed by KRS 134.420 secures the payment of taxes, as does KRS 91A.070. Radcliffe v. LPP Mortg., 2003 U.S. Dist. LEXIS 5286 (W.D. Ky. Apr. 1, 2003), aff'd, 2005 U.S. App. LEXIS 5198 (6th Cir. Ky. Mar. 30, 2005).

12. —Perfection.

The Commonwealth's lien for the 1951 tax became perfected on the day taxpayer filed his return showing he owed the state this sum. United States v. Commonwealth, 288 S.W.2d 664, 1956 Ky. LEXIS 277 (Ky. Ct. App. 1956).

7. Ad Valorem Taxes.

Trial court presiding over an action to distribute real estate property sales proceeds after the sale of a parcel of land due to unpaid ad valorem taxes should not have distributed the full

amount of the city and county's liens to them and then divided the remaining proceeds pro rata among the other parties. Liens that resulted from unpaid ad valorem taxes were not made inferior by the sale of KRS 134.128 certificates of delinquency from government entities to third-party purchasers such as the bank, especially since KRS 134.420 gave priority to liens resulting from such unpaid taxes irrespective of whether government entities or third parties held those liens. United States Bank Nat'l Ass'n v. Tax Ease Lien Invs. 1, LLC, 356 S.W.3d 770, 2011 Ky. App. LEXIS 227 (Ky. Ct. App. 2011).

13. City Taxes.

Sale of property for state and county taxes did not free such property of lien for city taxes. Allin v. Harrodsburg, 247 Ky. 360, 57 S.W.2d 45, 1933 Ky. LEXIS 406 (Ky. 1933). See Kentucky Lands Inv. Co. v. Fitch, 144 Ky. 273, 137 S.W. 1040, 1911 Ky. LEXIS 574 (Ky. 1911).

The lien imposed for taxes due a city has equal priority with the lien imposed for state taxes. Allin v. Harrodsburg, 247 Ky. 360, 57 S.W.2d 45, 1933 Ky. LEXIS 406 (Ky. 1933).

14. Inheritance Taxes.

With respect to inheritance taxes, this section is considered to apply only to property other than the property transferred. Commonwealth by Marcum v. Smith, 375 S.W.2d 386, 1964 Ky. LEXIS 411 (Ky. 1964).

15. School Taxes.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statutes make the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Education v. Ballard, 299 Ky. 370, 185 S.W.2d 538, 1945 Ky. LEXIS 426 (Ky. 1945).

16. Priorities.

Under Kentucky statutes, the lien of a judgment creditor, based on wage assignments of employees of bankrupt manufacturing corporation, is inferior to lien of city for taxes. Freeman Furniture Factories, Inc. v. Bowlds, 136 F.2d 136, 1943 U.S. App. LEXIS 2982 (6th Cir. Ky. 1943).

State's lien for taxes is inferior to federal lien for unpaid federal taxes. Kentucky, Dep't of Revenue v. United States, 383 F.2d 13, 1967 U.S. App. LEXIS 5000 (6th Cir. Ky. 1967).

In bankruptcy proceeding, landlord's lien for rent was inferior to lien of Kentucky unemployment compensation commission for contributions due from bankrupt, the latter lien being a tax lien within the meaning of the bankruptcy act. In re Auto Electric Repair & Parts Co., 41 F. Supp. 3, 1941 U.S. Dist. LEXIS 2592 (D. Ky. 1941).

Unrecorded chattel mortgage did not take precedence over tax lien. Allin v. Harrodsburg, 247 Ky. 360, 57 S.W.2d 45, 1933 Ky. LEXIS 406 (Ky. 1933).

The lien for taxes is superior to the inchoate right of dower. Maryland Casualty Co. v. Lewis, 276 Ky. 263, 124 S.W.2d 48, 1939 Ky. LEXIS 509 (Ky. 1939). See Stokes v. Commonwealth, 286 Ky. 391, 150 S.W.2d 892, 1941 Ky. LEXIS 257 (Ky. 1941); Chalk v. Chalk, 291 Ky. 702, 165 S.W.2d 534, 1942 Ky. LEXIS 310 (Ky. 1942).

The preference or priority of lien of classes of taxes other than ad valorem taxes is a question of legislative intent. It should be specially clear that such was the intent where the tax is of a special character to raise funds which do not go into the treasury for the general purposes of government. The state has power to confer priority of tax liens over other rights, but no act should be construed to do so unless the language used compels it. If the provision is in general terms, priority will not be given a retroactive effect so as to make the lien superior to liens existing at the time of enactment or to bona fide conveyances or transfers. Louisville Title Mortg. Co. v. Commonwealth, 299 Ky. 224, 184 S.W.2d 963, 1944 Ky. LEXIS 1041 (Ky. 1944).

Any taxes by a city or by a county assessed against particular real estate which was sold pursuant to foreclosure would have a priority over a recorded mortgage. Midland-Guardian Co. v. McElroy, 563 S.W.2d 752, 1978 Ky. App. LEXIS 490 (Ky. Ct. App. 1978).

Inasmuch as lienholders could have neither actual nor constructive notice of personal property taxes accruing two (2), three (3) and four (4) years after the lien, any portion of the tax bills of a city or a county on real or personal property other than the property assessed would be subject to the general principle of "first in time, first in right." Midland-Guardian Co. v. McElroy, 563 S.W.2d 752, 1978 Ky. App. LEXIS 490 (Ky. Ct. App. 1978).

Judgment lien would be given priority over Revenue Cabinet's tax lien, resulting from a jeopardy assessment pursuant to KRS 131.150, notwithstanding the priority ruled enacted in this section where the Revenue Cabinet failed to present any evidence regarding the validity or amount of its lien. Commonwealth, Revenue Cabinet v. Liberty Nat'l Bank, 858 S.W.2d 199, 1993 Ky. App. LEXIS 40 (Ky. Ct. App. 1993).

Under this section, the recording of a tax lien before the mortgage put mortgagee on notice of all prior and future assessments against the taxpayers, resulting in priority to the Revenue Cabinet for tax liens ahead of mortgagee. Liberty Nat'l Bank & Trust Co. v. Vanderkraats, 899 S.W.2d 511, 1995 Ky. App. LEXIS 114 (Ky. Ct. App. 1995).

Unpublished decision: In foreclosure actions brought by a third-party purchaser of tax liens, the trial court erred in refusing to order pro rata distribution of the sale proceeds to all parties with valid tax liens. The purchaser was entitled to exercise the priority given liens resulting from unpaid ad valorem taxes in KRS 134.420(3). Tax Ease Lien Invs. 1, LLC v. Hinkle, 2012 Ky. App. Unpub. LEXIS 1037 (Ky. Ct. App. 2012), review denied, ordered not published, 2013 Ky. LEXIS 519 (Ky. Aug. 21, 2013).

Because the legislature has exempted tax liens from being subject to the common law rule of "first in time, first in right" and instead mandated a pro rata distribution if the proceeds from the master commissioner's sale are insufficient to pay the tax liens and associated costs, the holders of certificates of delinquency were each entitled to a pro rata distribution of the proceeds of the sale of the property according to what they could establish constituted their liens in accordance with Ky. Rev. Stat. Ann. §§ 134.420(3) and 134.452. Smith v. Apex Fund Servs., 724 S.W.3d 698, 2025 Ky. LEXIS 215 (Ky. 2025).

17. Purchaser at Tax Sale.

Where land was assessed in the name of a person who was merely an agent for a life tenant, a sale of the land for taxes passed no title, but the purchaser at the sale had a lien on the land for the amount paid by him. Rogers v. McAlister, 151 Ky. 488, 152 S.W. 571, 1913 Ky. LEXIS 530 (Ky. 1913).

Where land owned by married woman was assessed in the name of her husband "for wife," sale of land for taxes was invalid as against purchaser who bought land from married woman without notice of tax lien, but purchaser at tax sale had lien for amount paid by him. Wash v. Noel, 160 Ky. 847, 170 S.W. 197, 1914 Ky. LEXIS 550 (Ky. 1914).

The tax lien is a lien on the property itself, but in case of a sale for taxes the purchaser acquires only such title as was possessed by the person in whose name the tax was assessed, plus a lien for the amount of the purchase money. Smith v. Young, 178 Ky. 376, 198 S.W. 1166, 1917 Ky. LEXIS 742 (Ky. 1917).

18. Life Tenant.

Where land is in the possession of a life tenant, it is the duty of the life tenant to pay the taxes assessed during his term, but

the lien for such taxes is against the land itself and not merely against the life estate, and if the life tenant dies without paying the taxes the land passes to the remainderman subject to the lien. Bradley v. Sears, 138 Ky. 230, 127 S.W. 782, 1910 Ky. LEXIS 63 (Ky. 1910).

Where land was assessed in name of life tenant, purchaser at tax sale acquired title only to the life estate, and a lien on the remainder interests, and he was entitled to enforce this lien against the remaindermen even though they did not bring action to recover possession of the land from him until more than five (5) years after the sale. Smith v. Young, 178 Ky. 376, 198 S.W. 1166, 1917 Ky. LEXIS 742 (Ky. 1917).

19. Rentals.

The fact that a mortgagee has the right to pay taxes on mortgaged property out of rentals pledged to secure indebtedness does not operate to extend lien of taxing authority to rentals. Anderson v. Bush, 290 Ky. 51, 160 S.W.2d 395, 1942 Ky. LEXIS 363 (Ky. 1942).

20. Payment to Safeguard Security Interest.

Although some of the proceeds from the foreclosure sale of a mortgaged property were used to extinguish the tax liability on the property thereby reducing the amount that the mortgagee would have obtained from the foreclosure sale, the mortgagee could not recover from the nonassuming grantee of the mortgagor the amount of delinquent taxes paid out of the proceeds of the sale of the mortgaged property, because although the mortgagee was aware of the risk of possible displacement of its security interest by a tax lien on the mortgaged premises, it did not safeguard its interest by actually paying the delinquent taxes on the property. Lincoln Sav. Bank v. Hayes, 671 F.2d 198, 1982 U.S. App. LEXIS 21732 (6th Cir. Ky. 1982).

Cited in:

Freeman Furniture Factories, Inc. v. Bowlds, 136 F.2d 136, 1943 U.S. App. LEXIS 2982 (6th Cir. 1943); Commonwealth v. Randolph, 277 Ky. 724, 127 S.W.2d 398, 1939 Ky. LEXIS 722 (1939); Forwood v. Louisville, 283 Ky. 208, 140 S.W.2d 1048, 1940 Ky. LEXIS 315 (Ky. 1940); Richmond v. Goodloe, 287 Ky. 379, 153 S.W.2d 921, 1941 Ky. LEXIS 558 (Ky. 1941); Commonwealth v. Anderson, 694 S.W.2d 465, 1985 Ky. App. LEXIS 491 (Ky. Ct. App. 1985); Louisville v. Miller, 697 S.W.2d 164, 1985 Ky. App. LEXIS 646 (Ky. Ct. App. 1985); Gillis v. Preston, 746 S.W.2d 77, 1987 Ky. App. LEXIS 611 (Ky. Ct. App. 1987).

NOTES TO UNPUBLISHED DECISIONS

Analysis

1. Priorities.
2. Lien.

1. Priorities.

Unpublished decision: In foreclosure actions brought by a third-party purchaser of tax liens, the trial court erred in refusing to order pro rata distribution of the sale proceeds to all parties with valid tax liens. The purchaser was entitled to exercise the priority given liens resulting from unpaid ad valorem taxes in KRS 134.420(3). Tax Ease Lien Invs. 1, LLC v. Hinkle, 2012 Ky. App. Unpub. LEXIS 1037 (Ky. Ct. App. 2012), review denied, ordered not published, 2013 Ky. LEXIS 519 (Ky. Aug. 21, 2013).

2. Lien.

Unpublished decision: Because creditor's statutory lien arose by operation of law when debtor failed to pay real estate taxes under KRS 134.420, and tax debt could be collected against debtor personally, 11 U.S.C.S. § 522(f)(2)(A) required the lien to be included in the impairment-exemption calculation, so debtor could avoid lien in its entirety. LPP Mortg., LTD v. Radcliffe, 2005 U.S. App. LEXIS 5198 (6th Cir. Ky. Mar. 30, 2005).

OPINIONS OF ATTORNEY GENERAL.

A list of delinquent taxes need only cover five (5) back years. OAG 61-133.

The state of Kentucky has a continuing lien on all moneys due from the state to any veteran for the veterans' bonus. OAG 61-445.

A city of the sixth class that has adopted the county assessment and uses the calendar year as its fiscal year could adopt an ordinance under which city real estate taxes become delinquent on November 1 and a penalty of ten percent (10%) and interest of six percent (6%) are added subsequent to that date. OAG 67-61.

After five (5) years there is a statutory bar to the collection of the city tax due, either by foreclosure on the property or a personal suit against the taxpayer himself. OAG 67-478.

Where there has been a prior recorded lien, such lien would be superior to a subsequent tax lien that might arise and of necessity must be satisfied before the tax bill is satisfied. OAG 67-478.

In light of this section, there is no necessity for filing any kind of lien with the county court clerk to evidence the lien for delinquent taxes. OAG 71-244.

Where a real estate company whose charter had expired owned a number of lots that could not be improved because of zoning laws and had no value except to the owner of an adjacent lot and which lots would not bring enough to cover court costs and delinquent taxes, the statute of limitations, if affirmatively pleaded, would bar the collection of any delinquent taxes more than five (5) years prior to the current certificates of delinquency on file in the county clerk's office but there is no authority in the statutes to waive in whole or in part certificates of delinquency which constitute valid liens against the property. OAG 73-365.

The tax lien under this section includes a lien on automobiles. OAG 74-685.

Under KRS 92.590(2), 92.650 (now repealed) and former subsection (2) of this section delinquent tax bills of third class cities are liens against the person's property located within such city and may be collected by the city as provided for in the statutes for the collection of such bills; however, there is no authority that would permit the city clerk to refuse to accept payment for current taxes unless all delinquent taxes not barred by limitations are paid in full. OAG 76-634.

A car with a personal property tax lien on it may be sold or otherwise alienated, subject to the tax lien as described in this section. OAG 78-134, 1978 Ky. AG LEXIS 592.

The tax lien, to be effective, does not require any notice of or filing of the lien with the county clerk. OAG 78-134, 1978 Ky. AG LEXIS 592.

The filing fee is to be added to the cost to the delinquent taxpayer to be paid by the taxpayer when he obtains a release of the lien. OAG 78-547.

This section uses the mandatory word "shall" for liens filed by third through sixth-class cities, and, therefore, a fourth-class city is required to file such lien. OAG 78-547.

Since delinquent taxes are a debt to the state, under KRS 44.030, a lien for taxes, under this section, which has accrued is superior to a materialman's lien, under KRS 376.230, thereafter filed and perfected. OAG 80-15, 1980 Ky. AG LEXIS 641.

The legislative intent is that a tax lien becomes perfected automatically without notice at the time the liability becomes fixed. OAG 80-15, 1980 Ky. AG LEXIS 641.

Administrative action to enforce a tax lien created by this section on soil and water conservation district taxes is the responsibility of the board of directors of the watershed

conservancy district under KRS 262.745. OAG 81-112, 1981 Ky. AG LEXIS 316.

The lien provided for in subsection (1) of this section is not in conflict with KRS 91.481 to 91.527 and that lien is of equal rank for the state, county and city; KRS 91.481 to 91.527 provide a method for the city to enforce its lien, but all other taxing districts must be made parties. OAG 82-191, 1982 Ky. AG LEXIS 453.

So much of the lien granted by subsection (1) of this section as remains after the sale of the delinquent taxpayer's personalty, as provided in KRS 134.430 (now repealed), shall constitute a first lien against the assessed real estate subject to the tax lien. OAG 82-380, 1982 Ky. AG LEXIS 282.

When KRS 134.470 (now repealed) and subsection (1) of this section are read in conjunction with the wording of KRS 134.500(1) (now repealed), it is apparent that the state, county and other taxing districts have a lien against the taxpayer's land as soon as the taxes become delinquent, and when the certificate of delinquency is issued at the sale of the tax bill by the sheriff, it becomes the evidence of the lien against the taxpayer's property. Therefore, the certificate of delinquency should be filed in the county clerk's office in the same manner as all other tax liens against property are filed in county clerk's office, immediately after the sheriff settles with the state pursuant to KRS 134.450(3) (now repealed), and the county clerk must maintain an index of all certificates of delinquency so filed. OAG 82-380, 1982 Ky. AG LEXIS 282.

The lien established under subsection (1) of this section is superior to all other liens including a prior recorded first mortgage; subsection (2) of this section creates a general tax lien which is inferior to a prior recorded mortgage or security interest. OAG 83-477, 1983 Ky. AG LEXIS 21.

A tax lien on an automobile, once perfected by the filing required under KRS 134.148(2) (now repealed) must be paid off by one who seeks to repossess and retransfer an automobile pursuant to a prior recorded security interest; the clerk is prohibited by KRS 186.193 and 186.232 from transferring title until the lien is paid and released. OAG 83-477, 1983 Ky. AG LEXIS 21.

A bona fide purchaser is one who has purchased property for value without any notice of any defects in the title of the seller; if the purchaser of the property has no notice of the city's lien and thus qualifies as a bona fide purchaser, that purchaser may defeat the city's lien against the property. OAG 84-222, 1984 Ky. AG LEXIS 164.

The owner of a certificate of delinquency is legally entitled to enforce his lien against the delinquent property at any time after three years from the date of the issuance of the certificate of delinquency up to eight (8) years from the date of the issuance of the certificate of delinquency. OAG 84-334, 1984 Ky. AG LEXIS 51.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Department of vehicle regulation may file lien notice for certain taxes, KRS 281.602.

Lien on retrospective assessment of omitted property, KRS 132.290.

Notice of lien of federal tax, filing, KRS 382.480, 382.500.

Kentucky Bench & Bar.

Baker and Baker, Title Examination in Kentucky, 48 Ky. Bench & B. 12 (1984).

Kentucky Law Journal.

Wilson, Sale of Land for Taxes in Kentucky, 28 Ky. L.J. 105 (1940).

Blair, Interests in Land Subject to Dower — In Kentucky, 39 Ky. L.J. 120 (1950).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

134.421. Apportionment of taxes on real property when one owner does not pay taxes due.

(1) When real property is owned by two (2) or more persons and had been assessed as one (1) tract, and one (1) owner does not pay his or her share of the taxes due, the taxes owed by the owner failing to pay may be paid by any other owner. Any owner who pays the amount due by another owner under this section shall have a lien on the delinquent taxpayer's portion of the real property for the amount paid and may file suit to recover the amount paid.

(2)(a) Whenever one (1) tax claim or certificate of delinquency exists on land which is divided both as to ownership and area into two (2) or more tracts, any person or persons owning any of the tracts may, upon ten (10) days' notice given to the owners of the other tracts, make application to the county attorney and to the property valuation administrator of the county for an apportionment of the assessment.

(b) The property valuation administrator of the county may make an apportionment of the amount of the encumbrance among the owners of each tract according to the value of their respective interests as shown by the proof introduced by them.

(c) Any owner of a tract for which the tax claim or certificate of delinquency was apportioned may have the encumbrance on his or her property released by paying to the sheriff his or her pro rata share of the tax claim or to the county clerk his or her pro rata share of the certificate of delinquency as ascertained by the decision of apportionment.

(d) The determination of the property valuation administrator of the county shall be final unless an appeal therefrom to the Circuit Court is prosecuted within sixty (60) days from the issuance of the decision.

History.

Enact. Acts 2009, ch. 10, § 17, effective January 1, 2010.

NOTES TO DECISIONS

1. Set-off.

Holder of legal title to parcel of land who had paid taxes on the parcel was entitled to recover, from another person who held a title bond covering a portion of the land, the amount of the tax apportionable to such portion, but recovery could not be had by way of setoff in an action on contract brought against the holder of the legal title by the holder of the title bond. Montgomery v. Montgomery, 119 Ky. 761, 78 S.W. 465, 25 Ky. L. Rptr. 1682, 1904 Ky. LEXIS 127 (Ky. 1904) (decided under prior law).

134.452. Third-party purchaser of certificate of delinquency — Fees — Reasonable attorneys' litigation fees — Collection limitations — Notice to proper owner — Legislative findings.

(1) Notwithstanding any other provisions of this chapter, a third-party purchaser of a certificate of

delinquency shall be entitled to collect only the following prelitigation fees:

(a) The amount actually paid for the certificate of delinquency;

(b) Interest as provided in KRS 134.125, calculated on the amount actually paid to the county clerk from the date the certificate of delinquency was purchased until paid; and

(c)1. Prelitigation attorneys' fees, which may include amounts incurred for collection efforts and costs related to notification, processing, research, communication, compliance, legal costs, documentation, and similar expenses, from the date the third-party purchaser purchases the certificate of delinquency from the county clerk, to the date on which the notice required by KRS 134.490(2) is mailed by the third-party purchaser.

2. The amount that may be collected by the third-party purchaser as prelitigation attorneys' fees shall be subject to the following limitations:

a.i. If the amount paid for a certificate of delinquency is between five dollars ($5) and three hundred fifty dollars ($350), actual reasonable fees incurred up to one hundred percent (100%) of the amount of the certificate of delinquency, not to exceed three hundred fifty dollars ($350);

ii. If the amount paid for a certificate of delinquency is between three hundred fifty-one dollars ($351) and seven hundred dollars ($700), actual reasonable fees incurred up to eighty percent (80%) of the amount of the certificate of delinquency, not to exceed five hundred sixty dollars ($560); and

iii. If the amount paid for a certificate of delinquency is above seven hundred one dollars ($701), actual reasonable fees incurred up to seventy percent (70%) of the amount of the certificate of delinquency, not to exceed seven hundred dollars ($700); and

b. If a third-party purchaser is the owner of more than one (1) certificate of delinquency against the same taxpayer, actual and reasonable prelitigation attorneys' fees for all certificates of delinquency against the same taxpayer shall not exceed one and one-half (1.5) times the maximum amount permitted in subdivision a. of this subparagraph for the largest tax bill owed by the taxpayer.

3. The amounts allowed by subparagraph 2. of this paragraph shall not accrue to the account of the delinquent taxpayer, nor be charged by the third-party purchaser against the delinquent taxpayer all at one (1) time unless the amount of certificate of delinquency is one hundred seventy-five dollars ($175) or less. The third-party purchaser may accrue to the account of the delinquent taxpayer, and charge the delinquent taxpayer an amount equal to the lesser of prelitigation attorney's fees incurred by the third-party purchaser since the prior notice was sent or one hundred seventy-five dollars ($175), for each notice sent to the delinquent taxpayer, provided that:

a. The total aggregate amount of prelitigation attorneys' fees that may accrue to the account of the delinquent taxpayer and be charged by the third-party purchaser against the delinquent taxpayer shall not exceed the limitations established by subparagraph 2.a. of this paragraph; and

b. Additional fees shall not accrue to the account of the delinquent taxpayer or be charged by the third-party purchaser against the delinquent taxpayer more frequently than every ninety (90) days, regardless of how many notices the third-party purchaser may send.

(2) If the delinquent taxpayer and the third-party purchaser enter into a payment agreement, the third-party purchaser may collect the installment payment processing fee authorized by KRS 134.490(5).

(3)(a) In addition to the fees established by subsections (1), (2), and (4) of this section, a third-party purchaser may collect actual, reasonable attorneys' fees and costs that arise due to the prosecution of collection remedies or the protection of a certificate of delinquency that is involved in litigation. Fees and costs permitted under this subsection include fees and costs incurred from the first day after the notice required by KRS 134.490(2) is sent through the day any litigation is finally concluded.

(b) For purposes of this subsection:

1. Actual attorneys' litigation fees up to two thousand dollars ($2,000) may be reasonable if the fees are based upon documented work performed at a rate commensurate with hourly rates customarily charged by private attorneys in that jurisdiction for similar services. A flat rate, without hours documented for work performed, may be reasonable if the flat fee is determined to be discounted from the usual and customary rates for comparable work; and

2. Any attorneys' litigation fee in excess of two thousand dollars ($2,000) shall be allowed if authorized by the court upon a finding that the third-party purchaser incurred actual attorneys' litigation fees in excess of two thousand dollars ($2,000) and that those attorneys' litigation fees were warranted based upon the complexity of the issues presented in the litigation.

(4) The third-party purchaser may collect administrative fees incurred for preparing, recording, and releasing an assignment of the certificate of delinquency in the county clerk's office, not to exceed one hundred fifteen dollars ($115).

(5) The General Assembly recognizes that third-party purchasers play an important role in the delinquent tax collection system, allowing taxing districts to receive needed funds on a timely basis. The General Assembly has carefully considered the fees and charges authorized by this section, and has determined that the amounts established are reasonable based on the costs of collection and fees and charges incurred in litigation.

(6) A certificate of delinquency owned by a third-party purchaser shall be deemed a general intangible for the purposes of Article 9 of KRS Chapter 355.

History.

Enact. Acts 2007, ch. 14, § 1, effective June 26, 2007; 2009, ch. 10, § 14, effective January 1, 2010; 2012, ch. 161, § 13, effective April 23, 2012; 2013, ch. 103, § 4, effective June 25,

2013; 2014, ch. 71, § 6, effective July 15, 2014; 2017 ch. 177, § 4, effective June 29, 2017.

Legislative Research Commission Notes.

(4/23/2012). 2012 Ky. Acts ch. 161, sec. 15, provides that this statute, as amended by 2012 Ky. Acts ch. 161, sec. 13, shall apply to certificates of delinquency purchased on or after the effective date of the Act, April 23, 2012.

(4/23/2012). The internal numbering of subsection (1)(c) of this statute has been modified by the Reviser of Statutes from the way it appeared in 2012 Ky. Acts ch. 161, sec. 13, under the authority of KRS 7.136(1). The words in the text were not changed.

NOTES TO DECISIONS

Analysis

1. Bankruptcy.
2. Standing.
3. Construction.
4. Postjudgment Interest.
5. Attorneys' Fees.
6. Lien Priorities.

1. Bankruptcy.

Debtors were denied confirmation of a Chapter 13 plan that did not provide for full payment, including interest per 11 U.S.C.S. § 511 at the rate of 12% as provided by KRS 134.452 and KRS 134.125, and including all attorneys fees sought by the creditor who was seeking to enforce a certificate of delinquency for real estate taxes, because all of the elements of the claim as prosecuted by the creditor were properly included per 11 U.S.C.S. § 502(b)(2) and 11 U.S.C.S. § 506(b) and because the legal fees were precipitated by the untenable positions taken by debtors. In re Crigler, 2011 Bankr. LEXIS 1321 (Bankr. E.D. Ky. Apr. 8, 2011).

2. Standing.

Mortgagee had first-party standing to contest an agreed judgment between a mortgagor and a purchaser of the mortgagor's delinquent property tax liens because the mortgagee was a lienholder under KRS 426.006 and would suffer direct financial injury as the tax lien was superior under KRS 134.420(3); the amount of the tax lien was increased by the included attorney's fees under KRS 134.452, which the mortgagee contended were unreasonable. Tax Ease Lien Invs. 1 v. Commonwealth Bank & Trust, 384 S.W.3d 141, 2012 Ky. LEXIS 142 (Ky. 2012).

3. Construction.

There is no indication that it was the legislature's intent to allow a third-party purchaser to essentially hold property hostage for the sole purpose of increasing the interest and charges on the lien; such is an untenable and unconscionable position, and contrary to the public policy of the Commonwealth. M.D. Wood v. Tax Ease Lien Invs. 1, LLC, 425 S.W.3d 897, 2014 Ky. App. LEXIS 36 (Ky. Ct. App. 2014).

4. Postjudgment Interest.

Trial court erred when it concluded as a matter of law that a third-party tax bill purchaser was not entitled to 12 percent statutory interest where the mandatory language of Ky. Rev. Stat. Ann. § 134.452 compelled the award of interest, accruing from the date the purchaser acquired the certificate of delinquency through the date of the trial court's order, and the statute did not permit the trial court to reduce or deny such an award. Hazel Enters., Llc v. Mitchuson, 524 S.W.3d 495, 2017 Ky. App. LEXIS 304 (Ky. Ct. App. 2017).

5. Attorneys' Fees.

Trial court did not err in refusing to award the purchaser litigation fees and costs where it was difficult, if not impossible, to discern from the purchaser's affidavit and other items in the record precisely what fees included in its initial demand it attributed to work performed as of the date of the demand. Hazel Enters., Llc v. Mitchuson, 524 S.W.3d 495, 2017 Ky. App. LEXIS 304 (Ky. Ct. App. 2017).

Circuit court properly awarded a certificate of delinquency holder interest on the certificate and attorney fees because the judgment and order of sale did not resolve the issue of interest, the costs and attorney fees could not be adjudicated at the time the final judgment and order of sale was entered, even if post-judgment interest were properly denied, the holder was entitled to simple interest on the underlying certificate of delinquency until the date of the order of distribution, and the holder was awarded fees well in excess of the $2,000 statutory limit without any finding that those fees were warranted by the complexity of the case. Ky. Tax Bill Servicing, Inc. v. Fultz, 567 S.W.3d 148, 2018 Ky. App. LEXIS 304 (Ky. Ct. App. 2018).

Property owners' did not prevail in a class suit alleging that a collector of delinquent property tax bills committed fraud by assessing fabricated an unreasonable attorney's fees and costs because the charged title report fees and costs were actual fees and the pre-litigation legal fees were necessary and reasonable. Brown v. Tax Ease Lien Servicing, Inc., 776 Fed. Appx. 291, 2019 FED App. 287N, 2019 U.S. App. LEXIS 16778 (6th Cir. Ky. 2019).

Ky. Rev. Stat. Ann. § 134.452(3) indicates an award of attorney's fees is permitted if the amount is reasonable and warranted; it does not create a presumption of reasonableness of charges for attorney's fees up to $2,000. Mid South Capital Partners, LP v. Adkins, 626 S.W.3d 688, 2020 Ky. App. LEXIS 132 (Ky. Ct. App. 2020).

It appears from the text of Ky. Rev. Stat. Ann. § 134.452(5) that its purpose is to declare that the legislature found its own calculated amounts detailed in this statute to be reasonable ceilings for recovery of attorney fees. Mid South Capital Partners, LP v. Adkins, 626 S.W.3d 688, 2020 Ky. App. LEXIS 132 (Ky. Ct. App. 2020).

Proper method for determining actual and reasonable attorney's fees pursuant to the statute is as follows: a fee should consist of the product of counsel's reasonable hours, multiplied by a reasonable hourly rate, which provides a lodestar figure, which may be adjusted to account for various factors in the litigation. Using the lodestar method, a court may consider the complexity or simplicity of a proceeding to collect or protect the certificate of delinquency, the skill required, and the fee customarily charged in the locality for similar proceedings. Mid South Capital Partners, LP v. Adkins, 626 S.W.3d 688, 2020 Ky. App. LEXIS 132 (Ky. Ct. App. 2020).

It is the trial court's role to follow the statutory language to provide a third-party purchaser of a certificate of delinquency with the means to recover and protect its tax lien, as well as to safeguard the public against possible abuses of the judicial process by not allowing excessive attorney's fees and costs to be imposed upon economically burdened citizens. Mid South Capital Partners, LP v. Adkins, 626 S.W.3d 688, 2020 Ky. App. LEXIS 132 (Ky. Ct. App. 2020).

Applying the lodestar method, the trial court did not abuse its discretion in awarding reduced attorney's fees and costs to appellant; the final judgment and order of sale was entered on appellant's dispositive motions with no answer having been filed by appellee. The trial court was hesitant to award the full amount of the claimed fees and costs when they so greatly exceeded the face value of the certificate of delinquencies at issue. Mid South Capital Partners, LP v. Adkins, 626 S.W.3d 688, 2020 Ky. App. LEXIS 132 (Ky. Ct. App. 2020).

6. Lien Priorities.

Because the legislature has exempted tax liens from being subject to the common law rule of "first in time, first in right" and instead mandated a pro rata distribution if the proceeds from the master commissioner's sale are insufficient to pay the

tax liens and associated costs, the holders of certificates of delinquency were each entitled to a pro rata distribution of the proceeds of the sale of the property according to what they could establish constituted their liens in accordance with Ky. Rev. Stat. Ann. §§ 134.420(3) and 134.452. Smith v. Apex Fund Servs., 724 S.W.3d 698, 2025 Ky. LEXIS 215 (Ky. 2025).

134.490. Actions by owner of certificate of delinquency to collect or foreclose certificate — Notice by third-party purchaser to taxpayer — Installment payment plans.

(1)(a) Within fifty (50) days after the delivery of a certificate of delinquency by the clerk to a third-party purchaser, the third-party purchaser shall send a notice to the delinquent taxpayer informing the delinquent taxpayer that the certificate of delinquency has been purchased by the third-party purchaser.

(b) The third-party purchaser shall send this notice once every six (6) months until the notice required by subsection (2) of this section is sent.

(c) The notices included in this subsection shall be sent by certified mail with proof of mailing and include the information required by subsection (3)(d) of this section. A copy of each notice shall be sent to each mortgagee who holds a mortgage on the property that is the subject of the certificate of delinquency.

(2) Anytime after the expiration of the one (1) year tolling period established by KRS 134.546, the third-party purchaser may institute an action to collect the amount due on a certificate of delinquency. At least forty-five (45) days before instituting a legal action, the third-party purchaser shall send a notice to the taxpayer and a copy of the notice to each mortgagee who holds a mortgage on the property by certified mail with proof of mailing. The notice shall:

(a) Inform the taxpayer that enforcement action will be taken;

(b) Include a statement advising the taxpayer that substantial additional administrative costs and fees associated with collection in addition to the amount due on the certificate of delinquency may be imposed and that collection actions may include foreclosure; and

(c) Include the information required by subsection (3) of this section. The notice shall be in addition to any notice sent under subsection (1) of this section.

(3)(a)1. For certificates of delinquency for all property except property described in paragraph (b) of this subsection, third-party purchasers or their designees shall obtain from the office of the property valuation administrator of the county in which the real property is located the most recent address for the property owner.

2. To obtain information from the office of the property valuation administrator, the third-party purchaser shall, at the option of the property valuation administrator, either:

a. Obtain information from an up-to-date public access list or website offered by the property valuation administrator; or

b. Submit a list of addresses, map identification numbers, or parcel numbers for which updated information is requested to the property valuation administrator, who shall update his or her records with regard to the properties for which information is requested and provide the updated information to the third-party purchaser within ten (10) days.

3. For this service, the property valuation administrator may charge a fee not to exceed two dollars ($2) for each address provided or obtained.

4. Except as provided in paragraph (b) of this subsection, the third-party purchaser shall send the notices required by subsections (1) and (2) of this section to the address provided by the property valuation administrator. Unless the provisions of subparagraph 7. of this paragraph apply, the third-party purchaser shall not be required to send a notice to any party other than the owner of record as provided by the property valuation administrator at the time the notice is sent and the mortgagee as required by subsections (1) and (2) of this section.

5. If, due to insufficient staffing, the property valuation administrator is unable to provide the requested information to the third-party purchaser within ten (10) days of submission, the property valuation administrator shall immediately notify the third-party purchaser, and the third-party purchaser may send the notices required by subsections (1) and (2) of this section to the address reflected in the public records of the property valuation administrator.

6. Any notices sent pursuant to information obtained under this paragraph that are returned as undeliverable shall be re-sent by certified mail with proof of mailing addressed to the "Occupant" at the address of the property that is the subject of the certificate of delinquency. These notices shall be sent within twenty (20) days of receipt of the returned notice.

7. If a third-party purchaser becomes aware of a more recent or more accurate address for a delinquent taxpayer that is different from the address reflected in the records of the property valuation administrator, the third-party purchaser shall send notices to the updated address in the manner required by this subsection, and shall notify the property valuation administrator of the updated address.

8. If a third-party purchaser receives an address from the property valuation administrator during an address check after a first notice is sent and returned as undeliverable, and the address is the same as was originally provided, the third-party purchaser shall send the notice addressed to "Occupant" at the address of the property that is the subject of the certificate of delinquency in the manner required by this subsection.

(b)1. For certificates of delinquency relating to unmined coal, oil or gas reserves, or any other mineral or energy resources assessed separately from the surface real property pursuant to KRS 132.820, third-party purchasers or their designees shall obtain from the department the most recent address for the property owner.

2. To obtain information about a particular property, the third-party purchaser shall submit to

the department a list of addresses, map identification numbers, parcel numbers, and any other information the department may require. The department shall:

a. Update its records with regard to the properties for which information is requested; and

b. Provide the updated information to the third-party purchaser within ten (10) business days.

3. For this service, the department may charge a fee not to exceed two dollars ($2) for each address provided.

4. The third-party purchaser shall send the notices required by subsections (1) and (2) of this section relating to unmined coal, oil or gas reserves, or any other mineral or energy resources assessed separately from the surface real property pursuant to KRS 132.820 to the address provided by the department. Unless the provisions of subparagraph 5.f. of this paragraph apply, the third-party purchaser shall not be required to send a notice to any party other than the owner of record as provided by the department at the time the notice is sent and the mortgagee as required by subsections (1) and (2) of this section.

5.a. Any notice sent pursuant to subsections (1) and (2) of this section based on information obtained pursuant to this paragraph and returned as undeliverable shall be submitted to the department within ten (10) days of receipt of the returned notice.

b. The department shall attempt to obtain an updated address for the owner of the property subject to the certificate of delinquency from the individual or entity filing the property tax return for the property.

c. The individual or entity filing the property tax return shall provide an address of the property owner upon request of the department.

d. The department shall provide any updated address information to the third-party purchaser.

e. If updated information is provided, the notices shall be re-sent by certified mail with proof of mailing to the updated address of the owner within ten (10) days of the receipt of the updated information from the department.

f. If a third-party purchaser becomes aware of a more recent or more accurate address for a delinquent taxpayer that is different from the address reflected in the records of the department, the third-party purchaser shall send notices to the updated address in the manner required by this subsection, and shall notify the department of the updated address.

(c) The third-party purchaser shall maintain complete and accurate records of all notices sent pursuant to this section.

(d) The notices required by this section shall include the following information:

1. A statement that the certificate of delinquency is a lien of record against the property for which delinquent taxes are owed;

2. A statement that the certificate bears interest at the rate provided in KRS 134.125;

3. A statement that if the certificate is not paid, it will be subject to collection as provided by law, and that collection actions may include foreclosure. The notice required by subsection (2) of this section shall also include a statement of the intent to institute legal action to collect the amount due;

4. A complete listing of the amount due, as of the date of the notice, broken down as follows:

a. The purchase price of the certificate of delinquency;

b. Interest accrued subsequent to the purchase of the certificate of delinquency; and

c. Fees imposed by the third-party purchaser;

5. If the third-party purchaser is required to register with the department as provided in KRS 134.128(3), for certificates of delinquency purchased after June 1, 2012, a statement informing the taxpayer that upon written request and the payment of a processing fee, the third-party purchaser will offer a payment plan; and

6. Information, in a format and with content as determined by the department, detailing the provisions of the law relating to third-party purchaser fees and charges.

(e) In addition, the notice shall provide the following information to the taxpayer:

1. The legal name of the third-party purchaser;

2. The third-party purchaser's physical address;

3. The third-party purchaser's mailing address for payments, if different from the physical address; and

4. The third-party purchaser's telephone number. If the information required by this paragraph changes, the third-party purchaser shall, within thirty (30) days of the change becoming effective, send a notice to each taxpayer by certified mail with proof of mailing with the corrected information. The third-party purchaser shall also update contact information included in the records of the county clerk within ten (10) days of the change becoming effective. Failure to send the original notice or any correction notices shall result in the suspension of the accrual of all interest and any fees incurred by the third-party purchaser after that date until proper notice is given as required by this subsection.

(4) If a person entitled to pay a certificate of delinquency to a third-party purchaser makes payment on the certificate of delinquency to the county clerk under the conditions described in KRS 134.127(3)(d), the payment shall constitute payment in full, and no other amounts may be collected by the third-party purchaser from the person.

(5)(a) For certificates of delinquency purchased after June 1, 2012, at the written request of a delinquent taxpayer, a third-party purchaser required to register with the department as provided in KRS 134.128(3) shall provide a monthly installment payment plan to a taxpayer.

(b) The taxpayer and third-party purchaser shall sign an agreement detailing the terms of the installment payment plan.

(c) The third-party purchaser may impose a processing fee, not to exceed eight dollars ($8) per month

to offset the administrative cost of providing the payment plan. No other fees, charges, interest, or other amounts not expressly authorized by this chapter shall be charged, assessed, or collected by the third-party purchaser.

(d) The existence of an agreement to provide a payment plan shall not impact the right of the third-party purchaser to pursue legal action if the delinquent taxpayer fails to follow the terms of the installment payment agreement.

(e) Upon default of a delinquent taxpayer:

1. The third-party purchaser shall retain all amounts paid, which shall be applied to the outstanding balance due; and

2. The third-party purchaser shall not be required to offer the delinquent taxpayer another opportunity for an installment payment plan.

(f) If a third-party purchaser who was required to offer payment plans pursuant to paragraph (a) of this subsection, subsequently does not purchase a sufficient number of certificates of delinquency to require registration with the department, the third-party purchaser shall continue to offer payment plans under the conditions established by this subsection for all delinquent taxpayers whose certificates of delinquency were purchased during a period in which the third-party purchaser was required to register with the department.

(g) A third-party purchaser who is not required to register with the department as provided in KRS 134.128(3), or who holds certificates of delinquency purchased prior to June 1, 2012, may voluntarily offer installment payment plans to delinquent taxpayers in accordance with the provisions of this subsection.

(h) The department may establish additional terms and conditions for installment payment plans in an administrative regulation.

(6) Any person to whom a third-party purchaser transfers or assigns a certificate of delinquency shall be considered a third-party purchaser under this chapter.

History.

4149b-7: amend. Acts 1990, ch. 27, § 11, effective July 13, 1990; 1994, ch. 65, § 5, effective July 15, 1994; 1998, ch. 209, § 15, effective March 30, 1998; 2007, ch. 14, § 5, effective June 26, 2007; 2009, ch. 10, § 15, effective January 1, 2010; 2010, ch. 75, § 8, effective April 7, 2010; 2012, ch. 161, § 6, effective April 23, 2012; 2022 ch. 212, § 65, effective July 14, 2022; 2026 ch. 161, § 36, effective July 15, 2026.

Compiler's Notes.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to subsection (1) of this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998" and that the remainder of the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

NOTES TO DECISIONS

Analysis

1. Right of Redemption.
2. Right to Enforce Lien.
3. Proof of Mailing.

1. Right of Redemption.

The General Assembly has stated in unambiguous language that no right of redemption shall exist unless the property is acquired at the sale by the State, county, and taxing districts and then only so long as the Commissioner of Revenue has not sold the property to another purchaser and given a deed therefor. Barnett v. Commonwealth, 566 S.W.2d 794, 1978 Ky. App. LEXIS 532 (Ky. Ct. App. 1978).

2. Right to Enforce Lien.

Delinquency certificate purchaser was entitled to an award of attorney fees on its action to redeem two (2) certificates of delinquency that it purchased regarding claims against the Kentucky corporation for delinquent taxes, as statutory authority gave it the right, as a private purchaser of the delinquent taxes, to enforce the lien that state, county, city, or taxing district would have had a right to enforce had the delinquent taxes not been purchased by the private purchase, and the lien included the right to a reasonable amount of attorney fees. Flag Drilling Co. v. Erco, Inc., 156 S.W.3d 762, 2005 Ky. App. LEXIS 20 (Ky. Ct. App. 2005).

Third-party purchaser, such as the bank, could file suit pursuant to KRS 134.546(2)(b) to enforce the lien it had for unpaid ad valorem taxes represented by the certificate of delinquency it held. Since the liens that resulted from such unpaid taxes were not rendered inferior by the sale of certificates of delinquency from government entities to the third-party purchasers and, indeed, because the private owner of the lien was given a certificate of delinquency to "stand in the shoes" of the government entity trying to impose the lien, as recognized under KRS 134.490(2)(b), priority was given to liens resulting from such taxes irrespective of whether government entities or third parties held those liens, which also meant that proceeds regarding those liens had to be disbursed equally. United States Bank Nat'l Ass'n v. Tax Ease Lien Invs. 1, LLC, 356 S.W.3d 770, 2011 Ky. App. LEXIS 227 (Ky. Ct. App. 2011).

3. Proof of Mailing.

Court of Appeals erred in affirming a circuit court's summary judgment in favor of a tax lien purchaser in its action to foreclose its lien on the subject property and to collect the amounts the property owner owed because the affidavit from the purchaser's attorney tendered in support of its summary judgment motion—stating that "he caused" the notices "to be sent by first-class mail"—was not sufficient proof of mailing since it did not offer proof of a standard office mailing procedure designed to ensure that the notices were properly addressed and mailed by first-class mail, sworn to by someone with personal knowledge of that procedure, as well as proof of compliance with that specific procedure as to the particular notice at issue. Pleasant Unions, LLC v. Ky. Tax Co., LLC, 615 S.W.3d 39, 2021 Ky. LEXIS 1 (Ky. 2021).

Cited in:

Commonwealth v. Anderson, 694 S.W.2d 465, 1985 Ky. App. LEXIS 491 (Ky. Ct. App. 1985); Flag Drilling Co. v. Erco, Inc., 156 S.W.3d 762, 2005 Ky. App. LEXIS 20 (Ky. Ct. App. 2005).

OPINIONS OF ATTORNEY GENERAL.

This disposal of certificates of delinquency over three (3) years of age and less than eight (8) years of age by a sheriff's sale where the sheriff records the certificate and tax deed and makes full settlement with the county clerk would violate this section. OAG 77-557, 1977 Ky. AG LEXIS 325.

Where there has been a foreclosure sale it is a public sale, any and all persons in the sale being permitted to bid on the property and the property therefore being awarded to the highest bidder, and if a bidder higher than the one who holds the certificate of delinquency comes forward, then after satis-

faction of the certificate of delinquency costs and all other penalties and interest the highest bidder at the sale is awarded the property. OAG 78-720.

County attorney's proposed action of collecting tax bills of high dollar value first was a reasonable classification based upon necessity in order that he not deplete his operating budget; after collecting the larger bills, however, if funds remained with which to continue to collect delinquent tax bills, he must do so. OAG 82-380, 1982 Ky. AG LEXIS 282.

If county attorney believes that a second notice sent to the delinquent taxpayer at the expiration of the redemption period may prove effective, he has the authority to prepare such a notice and mail it to the taxpayer. OAG 82-380, 1982 Ky. AG LEXIS 282.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Baker and Baker, Title Examination in Kentucky, 48 Ky. Bench & B. 12 (1984).

Kentucky Bench & Bar. Herrick, Beware! Did your Client Recently Buy Land at a Tax Sale?, Vol. 60, No. 2, Spring 1966, Ky. Bench & Bar 14.

134.547. Collection of delinquent taxes and assessment of omitted property.

(1) The department may act in the name of and in behalf of the state and in the name of and in behalf of any and all counties, school districts, and other taxing districts in the state to institute and prosecute any action or proceeding for the collection of delinquent taxes and the assessment of omitted property. If the department assumes the duties of collecting the delinquent taxes assessed under the authority of KRS Chapter 132, it shall have all the powers, rights, duties, and authority conferred generally upon the department by the Kentucky Revised Statutes, including but not limited to Chapters 131, 132, 133, 134, and 135.

(2) Nothing contained in this chapter shall prevent the department from assessing any property in accordance with the provisions of KRS 136.020, 136.030, 136.050, or 136.120 to 136.180.

(3) The department may require the use of any reports, forms, or databases necessary to administer the law in connection with the collection of delinquent taxes.

History.

4149b-12, 4257a-1, 4257a-2, 4267: amend. Acts 1968, ch. 152, § 107; 1984, ch. 405, § 3, effective July 13, 1984; 1990, ch. 27, § 7, effective July 13, 1990; 1990, ch. 411, § 7, effective July 13, 1990; 1996, ch. 254, § 28, effective July 15, 1996; 1998, ch. 209, § 8, effective March 30, 1998; 2002, ch. 346, § 171, effective July 15, 2002; 2005, ch. 85, § 267, effective June 20, 2005; amend. and renum. Acts 2009, ch. 10, § 25, effective January 1, 2010.

Compiler's Notes.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

This section was formerly compiled as KRS 134.380 and was amended and renumbered as this section effective January 1, 2010.

NOTES TO DECISIONS

Analysis

1. Revenue Commissioner.
2. Penalty.
3. Attorneys.
4. Ad Valorem Taxes.
5. Omitted Railroad Property.
6. Inheritance Tax.
7. Liquor Tax.
8. Distraint Proceedings.

1. Revenue Commissioner.

Revenue commissioner having determined that certain river barge companies were subject to franchise taxes, had power to settle in good faith unliquidated tax claims against companies for such taxes, so as to require approval of settlement by circuit court. Commonwealth ex rel. Reeves v. American Barge Line Co., 253 S.W.2d 622, 1952 Ky. LEXIS 1118 (Ky. 1952).

2. Penalty.

Subsection (1) of this section which transfers to and vests in the commissioner of revenue all powers and authority heretofore or now exercised by revenue agents, auditor's agents and other authorized agents in relation to bringing actions for recovery of delinquent state taxes, and subsection (2) of KRS 134.400 (renumbered as KRS 134.552) providing that the 20 percent penalty collected on delinquent taxes shall be paid into the state treasury and not to the particular agents instituting the action, modify subsection (1) of KRS 135.060, which authorizes a 20 percent overriding penalty on income taxes, interest and penalties recovered in a suit instituted by a field agent, accountant or attorney employed by the commissioner of revenue, so that the 20 percent penalty must be paid by all taxpayers against whom a judgment is recovered for delinquent taxes, regardless of whether the action is instituted by the commissioner of revenue or by an agent of his. Curd v. Commonwealth, 312 Ky. 457, 227 S.W.2d 1003, 1950 Ky. LEXIS 677 (Ky. 1950).

3. Attorneys.

Attorneys employed under this section are independent contractors, and are not subject to salary limitation imposed by Ky. Const., § 246. Talbott v. Public Service Com., 291 Ky. 109, 163 S.W.2d 33, 1942 Ky. LEXIS 174 (Ky. 1942), overruled, Pardue v. Miller, 306 Ky. 110, 206 S.W.2d 75, 1947 Ky. LEXIS 953 (Ky. 1947).

Staff attorneys of the Department of Revenue are departmental employes and, therefore, they are not independent contractors falling in the category of field agents, accountants and attorneys referred to in this section; it would naturally follow that the field agents, accountants and attorneys referred to in KRS 135.060(2) are the same ones mentioned in this section. Circle "C" Coal Co. v. Commonwealth, 628 S.W.2d 883, 1981 Ky. App. LEXIS 317 (Ky. Ct. App. 1981).

4. Ad Valorem Taxes.

Where sheriff had made levy for purpose of collecting ad valorem tax, and taxpayer had filed suit to enjoin levy, revenue agent had no authority to bring action to collect tax while such proceedings were pending, and where injunction suit was dismissed by court and taxpayer paid tax to sheriff, revenue agent was not entitled to collect 20 percent penalty. Commonwealth v. Louisville Water Co., 132 Ky. 305, 116 S.W. 712, 1909 Ky. LEXIS 116 (Ky. 1909).

With respect to ad valorem taxes, the Department of Revenue has no authority to maintain an action for collection until the ordinary processes provided for collection by the sheriff have been exhausted. Commonwealth v. Louisville Water Co., 132 Ky. 305, 116 S.W. 712, 1909 Ky. LEXIS 116 (Ky. 1909).

5. Omitted Railroad Property.

State tax commission (now Board of Tax Appeals) is not denied power to have omitted railroad property assessed on theory that subsection (1) of this section expressly denies that power by empowering commissioner of revenue to act in behalf

of the counties, schools, and other taxing districts while expressly excluding cities, since provision in former subsection (3) that it shall not affect authority of state tax commission (now Board of Tax Appeals) to assess railroad and certain other public service corporations refers to omitted property and collection of delinquent taxes, and embraces in power lodged in Department of Revenue or state tax commission (now Board of Tax Appeals) added or supplemental assessments as well as original assessments. Newport v. Pennsylvania R. Co., 287 Ky. 613, 154 S.W.2d 719, 1941 Ky. LEXIS 600 (Ky. 1941).

6. Inheritance Tax.

Revenue agent had authority to institute proceedings necessary to collect inheritance tax, but not until tax became delinquent under terms of inheritance tax law. Commonwealth v. Bingham's Adm'r, 187 Ky. 749, 220 S.W. 727, 1920 Ky. LEXIS 200 (Ky. 1920).

7. Liquor Tax.

The proper party to bring action for collection of liquor tax was the commissioner of revenue, not the commonwealth's attorney of the county in which criminal prosecution for violation of statute had been instituted. Kentucky ex rel. Martin v. Morris Wholesale Liquor Distributing Co., 29 F. Supp. 310, 1939 U.S. Dist. LEXIS 2306 (D. Ky. 1939).

8. Distraint Proceedings.

Distraint proceedings constitute a wholly independent collection procedure which may be followed without regard to whether an action to enforce a tax lien has been previously brought, where the proceedings are held upon due notice, in circuit court, with provision made for the taxpayer to present any defenses to the collection which he might have, as well as an opportunity to the person distrained. Commonwealth ex rel. Carpenter v. Collins & May, 593 S.W.2d 887, 1980 Ky. App. LEXIS 295 (Ky. Ct. App. 1980).

An original proceeding under Chapter 135, without the prior proceedings under this chapter, would not be unconstitutional as denying due process of law. Commonwealth ex rel. Carpenter v. Collins & May, 593 S.W.2d 887, 1980 Ky. App. LEXIS 295 (Ky. Ct. App. 1980).

Cited in:

Fayette County v. Martin, 279 Ky. 387, 130 S.W.2d 838, 1939 Ky. LEXIS 299 (Ky. 1939), overruled, St. Matthews v. Voice of St. Matthews, Inc., 519 S.W.2d 811, 1974 Ky. LEXIS 12 (Ky. 1974), overruled in part, St. Matthews v. Voice of St. Matthews, Inc., 519 S.W.2d 811, 1974 Ky. LEXIS 12 (Ky. 1974); Commonwealth ex rel. Martin v. Union Labor Temple, 279 Ky. 692, 131 S.W.2d 843, 1939 Ky. LEXIS 329 (Ky. 1939); Newport v. Pennsylvania R. Co., 287 Ky. 613, 154 S.W.2d 719, 1941 Ky. LEXIS 600 (Ky. 1941); Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751, 1941 Ky. LEXIS 21 (Ky. 1941); Commonwealth v. Interstate Grocery Co., 283 S.W.2d 708, 1955 Ky. LEXIS 321 (Ky. 1955).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Action by commissioner of revenue to collect taxes due the state, KRS 135.050.

Assessment of omitted property in action to enforce certificate of delinquency or to invalidate tax sale, KRS 134.548.

Attorneys for assessment of property and collection of taxes, employment of, KRS 12.220.

County attorney to prosecute action to assess omitted property, KRS 132.350.

Department of Revenue to prescribe forms for tax records, KRS 131.030, 131.130, 131.140.

Income taxes, assessment of excess or omitted, KRS 141.210.

Inheritance taxes, limitation on action to collect, KRS 140.160.

134.590. Refund of ad valorem taxes or taxes held unconstitutional.

(1) When the appropriate state government agency determines that a taxpayer has paid ad valorem taxes into the state treasury when no taxes were due or has paid under a statute held unconstitutional, the state government agency which administers the tax shall refund the money, or cause it to be refunded, to the person who paid the tax. The state government agency shall not authorize a refund to a person who has paid the tax due on any tract of land unless the taxpayer has paid the entire tax due the state on the land.

(2) No state government agency shall authorize a refund unless each taxpayer individually applies for a refund within two (2) years from the date the taxpayer paid the tax. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 49.220 and 131.110. No state government agency shall refund ad valorem taxes, except those held unconstitutional, unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.

(3) If a taxpayer pays city, urban-county, county, school district, consolidated local government, or special district ad valorem taxes to a city, urban-county, county, school district, consolidated local government, or special district when no taxes were due or the amount paid exceeded the amount finally determined to be due, the taxes shall be refunded to the person who paid the tax.

(4) Refunds of ad valorem taxes shall be authorized by the mayor or chief finance officer of any city, consolidated local government, or urban-county government for the city, consolidated local government, or urban-county government or for any special district for which the city, consolidated local government, or urban-county government is the levying authority, by the county judge/executive of any county for the county or special district for which the fiscal court is the levying authority, or by the chairman or finance officer of any district board of education.

(5) Upon proper authorization, the sheriff or collector shall refund the taxes from current tax collections he or she holds. If there are no such funds, the district's finance officer shall make the refunds. The sheriff or collector shall receive credit on the next collection report to the district for any refunds the sheriff or collector makes.

(6) No refund shall be made unless each taxpayer individually applies within two (2) years from the date payment was made. If the amount of taxes due is in litigation, the taxpayer shall individually apply for refund within two (2) years from the date the amount due is finally determined. Each claim or application for

a refund shall be in writing and state the specific grounds upon which it is based. No refund for ad valorem taxes, except those held unconstitutional, shall be made unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.

(7) Notwithstanding other statutory provisions, for property subject to a tax rate that is set each year based on the certified assessment, a taxing district may recover any loss of ad valorem tax revenue it suffers due to the issuance of refunds by adjusting the following tax year's tax rate.

History.

162, 163, 4114h-7: amend. Acts 1954, ch. 5, § 1; 1966, ch. 187, part I, § 2; 1980, ch. 270, § 1, effective July 15, 1980; 1990, ch. 177, § 2, effective July 13, 1990; 1992, ch. 391, § 5, effective July 14, 1992; 1996, ch. 344, § 2, effective July 15, 1996; 2002, ch. 346, § 172, effective July 15, 2002; 2005, ch. 112, § 2, effective June 20, 2005; 2017 ch. 74, § 77, effective June 29, 2017.

Compiler's Notes.

Section 11 of Acts 1996, ch. 344 read, "The provisions of this act shall apply for taxable years beginning after December 31, 1995."

NOTES TO DECISIONS

Analysis

1. Application.
2. Class Suits.
3. Interest.
4. Review or Correction of Assessment.
5. Application for Refund.
6. —Time Limitation.
7. Prospective Effect of Unconstitutionality.
8. Unconstitutional Statutes.

1. Application.

This section applies only to taxes. Excessive costs taxed by the master commissioner of Jefferson County, and paid into the treasury, cannot be recovered under this section. Commonwealth use of Bouteiller v. Ray, 275 Ky. 758, 122 S.W.2d 750, 1938 Ky. LEXIS 496 (Ky. 1938).

This section, which authorizes reimbursements for unconstitutional taxes, as opposed to overpayments, does not provide for interest; and the tax interest rate statute, KRS 131.183, applies only to overpayments. Commonwealth Revenue Cabinet v. St. Ledger, 955 S.W.2d 539, 1997 Ky. App. LEXIS 57 (Ky. Ct. App. 1997).

The statute is expressly limited to refunds for ad valorem taxes or unconstitutional taxes and is not applicable to an occupational tax which is voided because the ordinance implementing it was not properly enacted. Maximum Mach. Co. v. City of Shepherdsville, 17 S.W.3d 890, 2000 Ky. LEXIS 29 (Ky. 2000).

Statute governing method used to obtain refunds of excessive or unconstitutional ad valorem tax payments, KRS 134.590 did not confer jurisdiction over municipal ad valorem real property taxes upon the Kentucky Board of Tax Appeals, and, thus, the trial court erred in dismissing the real property owners' class action lawsuit filed in the trial court on the ground that it should have been filed with the Kentucky Board of Tax Appeal. Light v. City of Louisville, 93 S.W.3d 696, 2002 Ky. App. LEXIS 2343 (Ky. Ct. App. 2002).

Where a city's flat rate tax was a specific or per unit tax and not based on value, it was invalid and unconstitutional, and the tax could not have been deemed ad valorem by judicial action and thereby come within KRS 134.590(3); it was error for an intermediate appellate court to apply that statute in holding that a taxpayer did not have standing to establish class certification for refund purposes. City of Bromley v. Smith, 149 S.W.3d 403, 2004 Ky. LEXIS 269 (Ky. 2004).

Boards sued by the taxpayers over the Boards' compliance or lack thereof with a state statute governing increases or decreases in the tax levy neither alleged that the taxpayers lacked an adequate remedy under state law. As a result, the case that the taxpayers filed in state court that was removed to the federal trial court could be remanded back to the state trial court, not only because of the jurisdictional bar of the Tax Injunction Act, but also because the Boards did not show that the taxpayers had failed to exhaust their administrative remedies, as KRS 134.590 required. Coleman v. Campbell County Library Bd. of Trs., 901 F. Supp. 2d 925, 2012 U.S. Dist. LEXIS 140859 (E.D. Ky. 2012).

2. Class Suits.

A taxpayer may maintain a suit for a refund only for his own taxes, and may not sue on behalf of other taxpayers similarly situated. Swiss Oil Corp. v. Shanks, 208 Ky. 64, 270 S.W. 478, 1925 Ky. LEXIS 216 (Ky. 1925), cert. denied, 273 U.S. 407, 47 S. Ct. 393, 71 L. Ed. 709, 1927 U.S. LEXIS 976 (1927), aff'd, Swiss Oil Corp. v. Shanks, 273 U.S. 407, 47 S. Ct. 393, 71 L. Ed. 709, 1927 U.S. LEXIS 976 (1927). See Corbin Brick Co. v. Somerset, 280 Ky. 208, 132 S.W.2d 922, 1939 Ky. LEXIS 91 (Ky. 1939).

Kentucky's General Assembly omitted the phrase "in each case" from KRS 134.590 with the intent to change the law; the effect was to alter the statute to permit taxpayers requesting a refund for an ad valorem tax to bring the claim as a class action. City of Somerset v. Bell, 156 S.W.3d 321, 2005 Ky. App. LEXIS 3 (Ky. Ct. App. 2005).

3. Interest.

The taxpayer is not entitled to interest on the amount of taxes refunded to him. Coleman v. Reamer's Ex'r, 237 Ky. 603, 36 S.W.2d 22, 1931 Ky. LEXIS 657 (Ky. 1931).

It is a general rule that unless authorized by statute, interest is not collectible on taxes due the state, county, or subdivision thereof, nor on a refund thereof. Commonwealth ex rel. Allphin v. St. Matthews Gas & Electric Shop, Inc., 286 S.W.2d 911, 1956 Ky. LEXIS 435 (Ky. 1956).

4. Review or Correction of Assessment.

Collection of taxes under an illegal assessment may be enjoined. Negley v. Henderson Bridge Co., 107 Ky. 414, 54 S.W. 171, 21 Ky. L. Rptr. 1154, 1899 Ky. LEXIS 181 (Ky. 1899).

5. Application for Refund.

The property owners were not entitled to refunds automatically of the property taxes when the assessment was declared unconstitutional; subsection (6) of this section is not self-executing and application for refund must be made individually. Board of Education v. Taulbee, 706 S.W.2d 827, 1986 Ky. LEXIS 245 (Ky. 1986).

Although the city argued that a taxpayer's appeal from an administrative denial of an application for a refund of ad valorem tax payments that were improperly collected had to be taken to the Kentucky Board of Appeal rather than the trial court, the statutes cited in KRS 134.590(6) for that proposition all concerned property valuation administrator assessments and not the dispute that involved the real property owners, which was the dispute over the city's ad valorem tax rate. Light v. City of Louisville, 93 S.W.3d 696, 2002 Ky. App. LEXIS 2343 (Ky. Ct. App. 2002).

Although various provisions of KRS chs. 131 to 143A refer to city tax rates and revenues, those references, without more, do

not amount to the addressing of city revenue and taxation matters by an administrative arm of central state government for purposes of Kentucky Board of Tax Appeals jurisdiction; thus, an action by taxpayers seeking a refund of improperly assessed ad valorem taxes did not fall within the Board's jurisdiction. City of Somerset v. Bell, 156 S.W.3d 321, 2005 Ky. App. LEXIS 3 (Ky. Ct. App. 2005).

As taxpayers' action sought refunds of improperly assessed ad valorem taxes rather than property value administrator assessments, the administrative procedures set forth in KRS 134.590(6) were not implicated and the taxpayers exhausted their administrative remedies when they filed their requests for refunds. City of Somerset v. Bell, 156 S.W.3d 321, 2005 Ky. App. LEXIS 3 (Ky. Ct. App. 2005).

Company could receive a refund of its payment of an ad valorem tax assessment, where the company filed its refund claim within the statute of limitations provided by KRS 134.590, protested the denial of its claim in accordance with KRS 131.110, and exhausted the administrative remedies available. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 2010 Ky. App. Unpub. LEXIS 1008 (Ky. Ct. App. 2010), aff'd, 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

"Or other administrative remedy procedures" language at the end of KRS 134.590(2) is an acknowledgement that a protest pursuant to KRS 131.110 is not the only administrative remedy procedure that may be applicable in a refund situation. Indeed, the disjunctive use of the word "or" which joins "other administrative remedy procedures," evidences an intention that all prior references in the sentence are not to be treated as conjunctive, or in steps, but in the disjunctive, and this affords the taxpayer the option to use any one and maybe all of the administrative remedies available. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 2010 Ky. App. Unpub. LEXIS 1008 (Ky. Ct. App. 2010), aff'd, 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

6. —Time Limitation.

If no litigation testing the constitutionality of a tax is filed in two (2) years, the time for administrative application will expire after two (2) years elapse from the date payment was made; thus, subsequent litigation which decides constitutionality will not benefit the taxpayer individually by extending the time for applying for a refund beyond the two (2) year limit included in subsection (6) of this section. Griggs v. Dolan, 759 S.W.2d 593, 1988 Ky. LEXIS 69 (Ky. 1988).

By this statute, the General Assembly has clearly expressed a will that tax payments made under a statute later held to be unconstitutional shall be refunded, provided application for refund is made within two (2) years from the date payment was made and regardless of whether the holding of unconstitutionality is to be applied only prospectively or retroactively. Revenue Cabinet v. Gossum, 887 S.W.2d 329, 1994 Ky. LEXIS 85 (Ky. 1994), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

The right to file for a refund under this section against the Board of Education expired two (2) years after the taxes were paid because the Board of Education was not a party to the litigation which held that taxes had been assessed by an unconstitutional method and were subject to refund; however, those taxpayers, members of the class whose taxes were collected by an unconstitutional method of assessment, had two (2) years from the finality date to apply for a refund for ad valorem taxes paid to other taxing agencies named in that law suit. Griggs v. Dolan, 759 S.W.2d 593, 1988 Ky. LEXIS 69 (Ky. 1988).

The plain meaning of subsection (2) of this section makes the two (2) year period after the filing for a tax refund, not the filing of a lawsuit, the appropriate period of limitations where suit was filed challenging the constitutionality of taxation statutes. St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997), modified, 1997 Ky. LEXIS 45 (Ky. Apr. 24, 1997), reprinted, 942 S.W.2d 893 (Ky. 1997), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

Subsection (6) of this section applies only to refund claims against local taxing districts and not to refunds against the State. St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997), modified, 1997 Ky. LEXIS 45 (Ky. Apr. 24, 1997), reprinted, 942 S.W.2d 893 (Ky. 1997), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

Tax imposed on certain intangible property was an ad valorem property tax, and thus the two-year statute of limitations contained in KRS 134.590 applied to an insurance company's claim for a refund rather than the four-year statute of limitations in KRS 134.580; neither equitable recoupment nor set-off were available to the insurance company. Am. Life & Accident Ins. Co. of Ky. v. Commonwealth, 173 S.W.3d 910, 2004 Ky. App. LEXIS 299 (Ky. Ct. App. 2004).

Taxpayer's failure to comply fully with the timeliness requirements of KRS 133.120 prevented the taxpayer from seeking a tax refund of an overpayment under the provisions of KRS 134.590. Commonwealth v. Cromwell Louisville Assocs., 2008 Ky. App. LEXIS 250 (Ky. Ct. App. 2008), aff'd, 323 S.W.3d 1, 2010 Ky. LEXIS 230 (Ky. 2010).

No specific administrative protest procedures are required for a tax refund claim involving a classification issue, which may be brought within two years after payment; thus, by filing for a refund of tangible personal property tax and appealing its denial before seeking judicial review, a taxpayer properly challenged the classification and tax rate applied to manufacturing machinery without going through the expedited assessment protest procedure. Dep't of Revenue, Fin. & Admin. Cabinet v. Cox Interior, Inc., 400 S.W.3d 240, 2013 Ky. LEXIS 288 (Ky. 2013).

7. Prospective Effect of Unconstitutionality.

Where KRS 138.221 (now repealed) was declared unconstitutional effective May 31, 1988, the date upon which the New Energy Co. v. Limbach, 486 U.S. 269, 108 S. Ct. 1803, 100 L. Ed. 2d 302, 1988 U.S. LEXIS 2476 (1988) decision was rendered, taxes paid for any periods prior to that date were not paid "under a statute held unconstitutional" for purposes of this section. Revenue Cabinet, Commonwealth v. CSC Oil Co., 851 S.W.2d 497, 1993 Ky. App. LEXIS 55 (Ky. Ct. App. 1993).

8. Unconstitutional Statutes.

Where suit challenged the constitutionality of an exemption statute (former KRS 136.030(1)), a corporate shares tax statute (KRS 132.020), and involved the Revenue Cabinet and such statutes were declared unconstitutional, taxpayers were required to file for a refund for taxes paid under such statutes within two (2) years of payment of such taxes as provided in KRS 134.590(1) and (2), not two (2) years from the date of filing the lawsuit challenging the constitutionality of the statutes as provided in KRS 134.590(6). St. Ledger v. Revenue Cabinet, 942 S.W.2d 893, 1997 Ky. LEXIS 17 (Ky. 1997), modified, 1997 Ky. LEXIS 45 (Ky. Apr. 24, 1997), reprinted, 942 S.W.2d 893 (Ky. 1997), limited, Dawson v. Birenbaum, 968 S.W.2d 663, 1998 Ky. LEXIS 56 (Ky. 1998).

Cited in:

Bischoff v. Newport, 733 S.W.2d 762, 1987 Ky. App. LEXIS 525 (Ky. Ct. App. 1987); Barrett v. Reynolds, 817 S.W.2d 439, 1991 Ky. LEXIS 146 (Ky. 1991).

OPINIONS OF ATTORNEY GENERAL.

A Department of Revenue (now Revenue Cabinet) memorandum dated December 1981, which takes the administrative position that any qualified person who files for the exemption provided in the 1981 amendment to Const., § 170

by the end of 1981 is due an appropriate reduction in 1981 ad valorem taxes, is the "proper authorization" required by subsection (5) of this section to allow the sheriff to refund the taxes due to a qualified disabled person for 1981 ad valorem taxes collected and in his possession. OAG 82-12, 1982 Ky. AG LEXIS 631.

Letter of electric corporation attached to payment of ad valorem taxes protesting payment and asking the sheriff to sign the letter acknowledging receipt of the protest did not constitute a valid or legal protest, since such taxes are assessed by the Revenue Cabinet and thus protests of such assessments must be made to the Revenue Cabinet; therefore, the sheriff should not sign such protest. OAG 83-202, 1983 Ky. AG LEXIS 295.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School district tax rate formulas, 702 KAR 3:275.

Kentucky Law Journal.
Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

AD VALOREM TAXES ON MOTOR VEHICLES AND MOTORBOATS

134.800. County clerk to collect ad valorem taxes on motor vehicles registered by him — Acceptable means of payment.

The county clerk shall be collector of all state, county, city, urban-county government, school, and special taxing district ad valorem taxes on motor vehicles registered by him. The clerk may accept payment of taxes due by any commercially acceptable means including credit cards.

History.
Enact. Acts 1982, ch. 264, § 7, effective January 1, 1984; 1986, ch. 431, § 1, effective July 15, 1986; 1998, ch. 209, § 17, effective March 30, 1998.

Compiler's Notes.
Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

NOTES TO DECISIONS

1. Constitutionality.
The fact that ad valorem taxes on motor vehicles are collected by the county clerk rather than the sheriff does not render the legislation unconstitutional; as long as the taxes are uniform, within a valid classification, it is not a "local or special" act. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

OPINIONS OF ATTORNEY GENERAL.

The term "special taxing district" as used in this section does not refer to cities, but refers to such districts as library districts, ambulance districts, etc.; therefore, this section does not provide for the collection of municipal ad valorem taxes on motor vehicles. OAG 83-400, 1983 Ky. AG LEXIS 93.

While a fiscal court has the responsibility for aiding a sheriff in the payment of the sheriff's necessary expenses of his office, where the sheriff's revenues are insufficient, and where the county has available money through a properly budgeted item, the fiscal court has no authority to merely in the abstract make up a sheriff's loss of revenue occasioned by a statutory enactment such as this section providing for the collection of ad valorem taxes on motor vehicles by the county clerk. OAG 84-248, 1984 Ky. AG LEXIS 145.

The county clerk, even where a vehicle has been junked, destroyed, or is rendered inoperable on the highways, is still responsible for collecting the ad valorem taxes on the vehicle where the motor vehicle did not become junked, destroyed or rendered inoperable on the highways, until after January 1 of the tax year in question. OAG 84-309, 1984 Ky. AG LEXIS 78.

PENALTIES

134.990. Penalties.

(1) Any sheriff who fails to make his or her annual settlement available as required by KRS 134.192, or who fails to remit any amounts which are due to the taxing districts as required by law, shall be subject to indictment in his or her county of residence, and upon conviction shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000).

(2) Any sheriff who violates KRS 134.160(5) shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(3) Any sheriff who fails to maintain accurate records of ad valorem taxes collected, or who fails to collect taxes due that were collectable shall be held liable on his or her bond for the amount of the tax, penalties, interest, and costs due, plus a thirty percent (30%) penalty thereon. Action shall be brought in the Circuit Court of the county in which the tax is due, on motion of the county attorney or department on behalf of the state. All actions shall be prosecuted by the county attorney, who shall be entitled to retain the penalty recovered for services rendered if all amounts otherwise due are recovered and paid to the taxing jurisdictions entitled to receive those amounts.

(4) Any outgoing sheriff who fails for ten (10) days to comply with KRS 134.215 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and be liable on his or her bond for any default.

(5) In addition to the penalty imposed by KRS 134.191, any sheriff who fails to report as required in KRS 134.191 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(6) Any person who is required to register with the department pursuant to KRS 134.129 who fails to register shall be fined not less than ten dollars ($10) or more than five hundred dollars ($500) for each certificate of delinquency purchased while the person was not registered but should have been.

(7) Any person who willfully fails to comply with any administrative regulation promulgated under KRS 134.547(3) shall be fined not less than twenty dollars ($20) nor more than one thousand dollars ($1,000).

(8) Any county attorney who contracts with the department to collect certificates of delinquency and personal property certificates of delinquency who fails to send the notices required by KRS 134.504(4) shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) for each notice that he or she fails to send.

(9) Any sheriff who fails to keep his or her books in an intelligible manner and according to the form prescribed by the department, or to make the entries required by law, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each offense.

(10) Any third-party purchaser who attempts to circumvent the fairness of the sale process established pursuant to KRS 134.128 by involving multiple entities or individuals in the bidding process at the annual sale:

(a) Shall be guilty of a Class A misdemeanor;

(b) May have the registration required by KRS 134.129 revoked; and

(c) May be prohibited from participating in future sales of priority certificates of delinquency.

The county attorney and the Attorney General shall have concurrent jurisdiction for the investigation and prosecution of offenses under this section.

(11)(a) Any third-party purchaser who knowingly:

1. Demands costs or fees in excess of those permitted by KRS 134.452;

2. Fails to send notices as required by KRS 134.490, or to include in the notices the information required by KRS 134.490; or

3. Fails to provide revised contact information as required by KRS 134.490;

shall be subject to a fine of not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250) for the first offense, and for the second and any subsequent offenses, shall be fined not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500).

(b) As used in this subsection, "knowingly" has the same meaning as in KRS 501.020.

(12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

History.

4029, 4037, 4067, 4135, 4139, 4143, 4145, 4147, 4149b-8, 4149b-12, 4166, 4260c; Acts 1958, ch. 126, § 10; 1978, ch. 371, § 10, effective January 1, 1981; 1980, ch. 240, § 5, effective July 15, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 350, effective July 13, 1990; 1994, ch. 73, § 3, effective July 15, 1994; 1998, ch. 209, § 18, effective March 30, 1998; 2005, ch. 85, § 284, effective June 20, 2005; 2007, ch. 14, § 7, effective June 26, 2007; 2009, ch. 10, § 30, effective January 1, 2010; 2010, ch. 75, § 12, effective April 7, 2010.

Compiler's Notes.

Former KRS 134.990 (4029, 4037, 4067, 4135, 4139, 4143, 4145, 4147, 4149b-8, 4149b-12, 4166, 4260c: amend. Acts 1958, ch. 126, § 10; 1978, ch. 371, § 10, effective January 1, 1981; 1980, ch. 240, § 5, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 350, effective July 13, 1990.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

NOTES TO DECISIONS

Cited in:

Land v. Fayette County, 269 Ky. 543, 108 S.W.2d 429, 1937 Ky. LEXIS 637 (Ky. 1937).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Moreland, Criminal Jurisdiction of Kentucky Courts: A Tentative Codification, 47 Ky. L.J. 7 (1958).

CHAPTER 136

CORPORATION AND UTILITY TAXES

Section

136.050. Time of payment of corporation, property, and franchise taxes — Interest — Penalties.

Public Service Corporations.

136.120. Public service corporation property tax — Exemptions — Classification — Assessment — Certification.

136.180. Notice and certification of valuation — Effect of appeal on payment of taxes — Payment of fee by any district which has value certified by department.

Vehicles of System Operating Route Partly Within State.

136.1877. Application of section — Appeal from notice of tentative assessment — Effect of appeal on payment of taxes — Collection of state taxes — Aggregate local rate to be set annually — Distribution.

136.190. Boundary report of cities of the home rule class and taxing districts.

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136.320. Tax on taxable capital of domestic life insurance companies in lieu of other taxes — State and local rates.

Multichannel Video Programming and Communications Services Tax.

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136.648. Gross revenues and excise tax fund and state baseline and local growth fund — Creation and administration of funds.

136.650. Required participation in funds — Computation of amounts — Designated monthly hold harmless amount.

136.652. Distribution — Administrative costs — Monthly hold harmless amounts.

136.654. Determination of distributions — State baseline and local growth fund.

136.656. Distributions — County growth portion — State baseline portion.

136.658. Local Distribution Fund Oversight Committee — Creation and duties.

Penalties.

136.990. Penalties.

136.050. Time of payment of corporation, property, and franchise taxes — Interest — Penalties.

(1) Except where otherwise specially provided, all corporations required to make reports to the Depart-

ment of Revenue shall pay all taxes due the state from them into the State Treasury at the same time as natural persons are required to pay taxes, and when delinquent shall pay the same rate of interest and penalties as natural persons who are delinquent.

(2) All state taxes assessed against any corporation under the provisions of KRS 136.120 to 136.200 shall be due and payable as provided in KRS 131.110. All county, city, school, and other taxes so assessed shall be due and payable thirty (30) days after notice of the amount of the tax is given by the collecting officer. The state, county, city, school, and other taxes found to be due on any protested assessment or portion thereof shall begin to bear legal interest on the sixty-first day after the Board of Tax Appeals acknowledges receipt of a protest of any assessment or enters an order to certify the unprotested portion of any assessment until paid, except that in no event shall interest begin to accrue prior to January 1 following April 30 of the year in which the report is due. Every corporation so assessed that fails to pay its taxes when due shall be deemed delinquent, a penalty of ten percent (10%) on the amount of the tax shall attach, and thereafter the tax shall bear interest at the tax interest rate as defined in KRS 131.010(6).

History.

4086, 4091, 4103; Acts 1958, ch. 69, § 2, effective June 19, 1958; 1990, ch. 163, § 5, effective July 13, 1990; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 351, effective July 13, 1990; 1992, ch. 338, § 2, effective August 1, 1992; 2005, ch. 85, § 294, effective June 20, 2005; 2017 ch. 74, § 78, effective June 29, 2017; 2021 ch. 185, § 70, effective June 29, 2021.

Legislative Research Commission Notes.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Franchise Taxes.
2. —Misappropriation.
3. Penalty.

1. Franchise Taxes.

The sheriff may not legally collect a franchise tax until the assessment has been certified to him by the county clerk. Commonwealth v. Brand, 166 Ky. 753, 179 S.W. 844, 1915 Ky. LEXIS 772 (Ky. 1915).

2. —Misappropriation.

Sheriff who misappropriated franchise tax paid to him by railroad before certification of assessment to sheriff by county clerk could not be convicted of embezzling public funds. Commonwealth v. Brand, 166 Ky. 753, 179 S.W. 844, 1915 Ky. LEXIS 772 (Ky. 1915).

3. Penalty.

Railroad company which was willing to pay franchise tax due county, but was unwilling to pay tax due school district because it believed latter tax was void, had the right to tender to sheriff amount of county tax and sheriff had duty to accept such tender. Where such tender was made and was refused by sheriff, company was not liable for penalty and interest on amount tendered, upon subsequent payment of county and school taxes. Cincinnati, N. O. & T. P. R. Co. v. Commonwealth, 253 Ky. 24, 68 S.W.2d 774, 1934 Ky. LEXIS 605 (Ky. 1934).

Cited in:

Walker v. Commonwealth, 279 Ky. 198, 130 S.W.2d 27, 1939 Ky. LEXIS 248 (Ky. 1939); Board of Education v. Louisville & N. R. Co., 280 Ky. 650, 134 S.W.2d 219, 1939 Ky. LEXIS 184 (Ky. 1939).

OPINIONS OF ATTORNEY GENERAL.

Since this section does not prescribe any type of notice, the taxpayer must be notified when the 30-day period begins in which he can pay without penalty, and if notification is made by mail, such period would begin to run from the date of the mailing of the notice of the tax due and a record should be maintained of the date the tax notice is mailed. OAG 74-35.

Where a check from a public service company for payment of public utility tax was apparently lost in the mail and a replacement check was not tendered until more than three months after the due date, a ten percent (10%) penalty plus ten percent (10%) interest would apply to the tax bill and the sheriff would have no authority to accept only the tax due. OAG 76-236.

OAG 76-236 has application to the facts as set out in that opinion. OAG 76-353.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

When property taxes are due, KRS 134.015.

Withdrawal of privilege to do business on failure of insurer to pay taxes, KRS 304.4-040.

PUBLIC SERVICE CORPORATIONS

136.120. Public service corporation property tax — Exemptions — Classification — Assessment — Certification.

(1)(a) The following public service companies shall pay a tax on their operating property to the state, and to the extent the operating property is subject to local taxation, shall pay a local tax to the county, incorporated city, and taxing district where its operating property is located:

1. Railway companies;
2. Sleeping car companies;
3. Chair car companies;
4. Dining car companies;
5. Gas companies;
6. Water companies;
7. Bridge companies;
8. Street railway companies;
9. Interurban electric railroad companies;
10. Express companies;
11. Electric light companies;
12. Electric power companies, including wind turbine and solar generating companies;
13. Commercial air carriers;
14. Air freight carriers;
15. Pipeline companies;
16. Privately owned regulated sewer companies;
17. Railroad car line companies, which means any company, other than a railroad company, which owns, uses, furnishes, leases, rents, or operates to, from, through, in, or across this state or

any part thereof, any kind of railroad car including, but not limited to, flat, tank, refrigerator, passenger, or similar type car; and

18. Every other like company or business performing any public service.

(b) The following companies shall not be subject to the provisions of paragraph (a) of this subsection:

1. Bus line companies;

2. Regular and irregular route common carrier trucking companies;

3. Taxicab companies;

4. Providers of communications service as defined in KRS 136.602;

5. Providers of multichannel video programming services as defined in KRS 136.602; and

6. A qualified air freight forwarder as defined in KRS 141.121.

(2)(a) The property of the taxpayers shall be classified as operating property, nonoperating tangible property, and nonoperating intangible property.

(b) Nonoperating intangible property within the taxing jurisdiction of the Commonwealth shall be taxable for state purposes only at the same rate as the intangible property of other taxpayers not performing public services.

(c) Operating property and nonoperating tangible property shall be subject to state and local taxes at the same rate as the tangible property of other taxpayers not performing public services.

(3)(a) The Department of Revenue shall:

1. Have sole power to value and assess all of the property of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not the operating property, nonoperating tangible property, or nonoperating intangible property has previously been assessed by the department;

2. Allocate the assessment as provided by KRS 136.170; and

3. Certify operating property subject to local taxation and nonoperating tangible property to the counties, cities, and taxing districts as provided in KRS 136.180.

(b) All of the property assessed by the department pursuant to this section shall be assessed as of December 31 each year for the following year's taxes, and the lien on the property shall attach as of the assessment date.

(c) In the case of a taxpayer whose business is predominantly nonpublic service and the public service business in which he is engaged is merely incidental to his principal business, the department shall in the exercise of its judgment and discretion determine, from evidence which it may have or obtain, what portion of the operating property is devoted to the public service business subject to assessment by the department under this section and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities.

History.

842a-3, 4077, 4082: amend. Acts 1942, ch. 80, §§ 1, 2; 1960, ch. 186, Art. II, § 2; 1962, ch. 29, § 6; 1965 (1st Ex. Sess.), ch. 2, § 2; 1976, ch. 169, § 1; 1982, ch. 264, § 12, effective January 1, 1984; 1990, ch. 437, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 352, effective July 13, 1990; 1991 (1st Ex. Sess.), ch. 12, § 50, effective February 26, 1991; 2005, ch. 85, § 301, effective June 20, 2005; 2005, ch. 168, § 120, effective December 31, 2005; 2006, ch. 169, § 7, effective January 1, 2008; 2012, ch. 101, § 1, effective April 11, 2012; 2013, ch. 119, § 9, effective January 1, 2014; 2016 ch. 93, § 4, effective July 15, 2016.

Legislative Research Commission Notes.

(1/1/2014). 2013 Ky. Acts ch. 119, sec. 26, provides that the amendments to this statute in 2013 Ky. Acts ch. 119, sec. 9, shall apply to property assessed on or after January 1, 2014.

(12/31/2005). 2005 Ky. Acts ch. 168, § 169, provides that Section 123 of this Act, relating to unit valuation, takes effect on December 31, 2005. This reference to the effective date in Section 169 of the Act should have been to Section 120 of the Act (KRS 136.120), which relates to unit valuation, rather than to Section 123 (KRS 91.200), which relates to city license taxes. This error occurred when several sections of HB 272 were renumbered during the preparation of a House Committee Substitute and the corresponding changes to sections of the bill setting out the effective dates were not made. This change has been made by the Statute Reviser under the authority of KRS 7.136.

(7/14/2000). 2000 Ky. Acts ch. 446 (Senate Bill 323), sec. 2, purports to amend this statute, and the General Assembly version of that bill was signed by both presiding officers and by the Governor. The Journals of the House of Representatives and Senate will reflect, however, that House Floor Amendment 1 was adopted by the House on March 27, 2000, but was not transmitted to the Senate for its concurrence when the bill was returned to that body. Thus, the bill signed did not pass both chambers of the General Assembly in the same form and did not become law. Ky. Const. secs. 46 and 88; see also Mason's Manual of Legislative Procedure sec. 737, at 508-509 (1989 ed.). Because the General Assembly's own official records establish this constitutional deficiency, the provisions of 2000 Ky. Acts ch. 446 have not been codified into the Kentucky Revised Statutes. See KRS 7.131(2).

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. Construction.
4. Tangible Operating Property.
5. Local Taxation.
6. Corporations Subject to Tax.
7. —Railroad.
8. —Pipeline Company.
9. —Tank Car Company.
10. —Telephone Company.
11. Corporations Not Subject to Tax.
12. Nonprofit Corporations.
13. Holding Company.
14. Entity Liable for Tax.
15. Exemption.
16. —Other Taxes.
17. Omitted Property.
18. —Retrospective Assessment.
19. Failure to Assess.
20. Conclusiveness of Assessment.
21. Settlement.
22. Double Taxation.

23. Tax Rate.
24. Situs.
25. Transient Property.
26. Transportation Facilities.
27. Property on Ohio River.
28. State's Jurisdiction.
29. Estoppel.
30. Burden of Proof.
31. Franchise Fee.

1. Constitutionality.

This section does not provide for an unequal or undervalued assessment of intangible property in violation of Ky. Const., § 174, and the fact that such an assessment was actually made would not be grounds for holding the statute unconstitutional. Commonwealth by Anderson v. Southern Pac. Co., 150 Ky. 97, 149 S.W. 1105, 1912 Ky. LEXIS 821 (Ky. 1912), overruled, Commonwealth v. Kentucky Heating Co., 176 Ky. 35, 195 S.W. 459, 1917 Ky. LEXIS 40 (Ky. 1917); Commonwealth ex rel. Auditor's Agent v. Louisville Gas Co., 135 Ky. 324, 122 S.W. 164, 1909 Ky. LEXIS 291 (Ky. 1909).

The "franchise" tax imposed by this section is not, with respect to a foreign corporation, an unreasonable burden on interstate commerce, and it is constitutional. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

The imposition of a franchise tax on a corporation engaged in operating steamboats in interstate commerce does not deprive the corporation of its property without due process of law. Bosworth v. Evansville & Bowlint Green Packet Co., 178 Ky. 716, 199 S.W. 1059, 1918 Ky. LEXIS 450 (Ky. 1918).

The tax imposed by this section is not an unconstitutional burden on interstate commerce, even as regards a corporation whose operations in this state are almost wholly in interstate commerce. Bosworth v. Evansville & Bowlint Green Packet Co., 178 Ky. 716, 199 S.W. 1059, 1918 Ky. LEXIS 450 (Ky. 1918).

Imposition of weight and tag taxes on bus companies, in addition to franchise tax, was not unconstitutional double taxation. Blue Coach Lines, Inc. v. Lewis, 220 Ky. 116, 294 S.W. 1080, 1927 Ky. LEXIS 510 (Ky. 1927).

Tax on water transportation company under this section was tax upon right of navigation of Ohio River as that was the only connection company had with Kentucky and was unconstitutional as violating provisions of the Virginia Compact. Allphin v. Ohio River Co., 306 S.W.2d 94, 1957 Ky. LEXIS 17 (Ky. 1957).

Kentucky franchise tax may not be constitutionally applied to foreign motor carrier doing exclusively interstate business. Commercial Carriers, Inc. v. Kentucky Tax Com., 321 S.W.2d 42, 1959 Ky. LEXIS 256 (Ky. 1959).

This section is neither vague nor does it constitute an unconstitutional delegation of legislative authority to the Executive Branch. Central Ky. Cellular Tel. Co. v. Revenue Cabinet, 897 S.W.2d 601, 1995 Ky. App. LEXIS 41 (Ky. Ct. App. 1995).

This section does not violate Ky. Const., § 51; it is not necessary under that section that the title of a statute agree with the body of the statute, only that the title of the act agree with the body of the act. Cooksey Bros. Disposal Co. v. Boyd County, 973 S.W.2d 64, 1997 Ky. App. LEXIS 132 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 930, 119 S. Ct. 338, 142 L. Ed. 2d 279, 1998 U.S. LEXIS 6495 (U.S. 1998).

Although this section's classification of municipal solid waste disposal facilities that dispose of waste by landfill singles out such facilities for disparate tax treatment and is not a perfect fit to the state's objectives, such classification is reasonably related to the state's goals for solid waste management and is therefore constitutional. Cooksey Bros. Disposal Co. v. Boyd County, 973 S.W.2d 64, 1997 Ky. App. LEXIS 132 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 930, 119 S. Ct. 338, 142 L. Ed. 2d 279, 1998 U.S. LEXIS 6495 (U.S. 1998).

2. Application.

This section does not apply to ordinary commercial corporations. Commonwealth v. Walsh's Trustee, 133 Ky. 103, 117 S.W. 398, 32 Ky. L. Rptr. 460, 1909 Ky. LEXIS 172 (Ky. 1909); Standard Oil Co. v. Commonwealth, 119 Ky. 75, 82 S.W. 1020, 26 Ky. L. Rptr. 985, 1904 Ky. LEXIS 146 (Ky. 1904).

This section applies only where the corporation is incorporated in this state or is doing business in this state. Commonwealth v. Lee Line Co., 159 Ky. 476, 167 S.W. 409, 1914 Ky. LEXIS 812 (Ky. 1914).

3. Construction.

The "franchise" tax imposed by this section is nothing more than a tax upon the intangible property of the corporation engaged in a business in Kentucky. Greene v. Louisville & I. R. Co., 244 U.S. 499, 37 S. Ct. 673, 61 L. Ed. 1280, 1917 U.S. LEXIS 1660 (U.S. 1917), overruled in part, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67, 1984 U.S. LEXIS 4 (U.S. 1984); Coulter v. Weir, 127 F. 897, 1904 U.S. App. LEXIS 3842 (6th Cir. Ky. 1904); Consolidation Coal Co. v. Martin, 113 F.2d 813, 1940 U.S. App. LEXIS 3465 (6th Cir. Ky. 1940); State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933).

The franchise tax is not a license or occupation tax, or a tax on the privilege of being a corporation, or of engaging in the public service business, but is simply an ad valorem tax. Commonwealth v. Chesapeake & O. R. Co., 91 S.W. 672, 28 Ky. L. Rptr. 1110 (1906). See Commonwealth v. Walsh's Trustee, 133 Ky. 103, 117 S.W. 398, 32 Ky. L. Rptr. 460, 1909 Ky. LEXIS 172 (Ky. 1909); Commonwealth ex rel. Auditor's Agent v. Louisville Gas Co., 135 Ky. 324, 122 S.W. 164, 1909 Ky. LEXIS 291 (Ky. 1909); Cumberland Tel. & Tel. Co. v. Calhoun, 151 Ky. 241, 151 S.W. 659, 1912 Ky. LEXIS 790 (Ky. 1912); Louisville & N. R. Co. v. Henderson, 154 Ky. 575, 157 S.W. 1105, 1913 Ky. LEXIS 120 (Ky. 1913); Newport v. South C. & C. S. R. Co., 156 Ky. 403, 161 S.W. 222, 1913 Ky. LEXIS 449 (Ky. 1913); Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917); Bosworth v. Evansville & Bowlint Green Packet Co., 178 Ky. 716, 199 S.W. 1059, 1918 Ky. LEXIS 450 (Ky. 1918).

The "franchise" tax imposed by this section on a bus company is not a tax for the privilege of using the highways, but an ad valorem tax on the intangible property of the company. Blue Coach Lines, Inc. v. Lewis, 220 Ky. 116, 294 S.W. 1080, 1927 Ky. LEXIS 510 (Ky. 1927).

The "franchise" tax imposed by this section is a tax on intangible property springing from the privilege of public service, power of eminent domain, and other conceivable rights; it does not contemplate or depend upon the securing of a special license or permission from some governmental agency, usually denominated a "franchise." State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933).

The "franchise" tax imposed by this section is a tax on the intangible values inhering to business and the added value given to tangible property by use in business, it being an ad valorem tax as distinguished from an excise or privilege tax. State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933).

4. Tangible Operating Property.

In assessing the tangible property of a railroad company, all of the property used by the company in its business will be considered, for the purposes of taxation, as owned by the company, regardless of whether the company actually owns the property or merely leases it. Commonwealth v. Ingalls, 121 Ky. 194, 89 S.W. 156, 28 Ky. L. Rptr. 164, 1905 Ky. LEXIS 198 (Ky. Ct. App. 1905).

The tangible property of an operating company is taxable in its name, and not in the name of the holding company. Commonwealth v. Kinniconick & F. S. R. Co., 104 S.W. 290, 31 Ky. L. Rptr. 859 (1907).

Only such rolling stock of a refrigerator car company as is actually operated in Kentucky is taxable as tangible property in Kentucky. Morrell Refrigerator Car Co. v. Commonwealth, 128 Ky. 447, 108 S.W. 926, 32 Ky. L. Rptr. 1383, 32 Ky. L. Rptr. 1389, 1908 Ky. LEXIS 86 (Ky. 1908).

5. Local Taxation.

Local assessing authorities have no power to assess the intangible property of a franchise-paying corporation. Commonwealth ex rel. Hopkins v. Southern Pac. Co., 144 Ky. 803, 139 S.W. 929, 1911 Ky. LEXIS 711 (Ky. 1911).

Where a city, in granting to a bridge company the right to build approaches to the bridge and other appurtenances within the city, reserved the right to tax the bridge "and all appurtenances thereto," such right referred only to the tangible property of the company, so that when the bridge company sold all of its property and franchises to a railroad company the city had no contract right to continue to tax the franchise of the bridge company under this section, the bridge company having no intangible property left on which a franchise assessment could be made. Louisville & N. R. Co. v. Henderson, 154 Ky. 575, 157 S.W. 1105, 1913 Ky. LEXIS 120 (Ky. 1913).

A city may impose a license tax on a corporation, in addition to the franchise tax authorized by this section, only where the business in which the corporation is engaged is one for which the corporation is required to obtain a franchise from the city under Ky. Const., § 164, and the corporation has not obtained such franchise. Hardin County Kentucky Tel. Co. v. Elizabethtown, 227 Ky. 778, 14 S.W.2d 162, 1929 Ky. LEXIS 981 (Ky. 1929).

City had right to impose license tax on telephone company, where ordinance imposing tax expressly provided that license tax was in lieu of franchise tax. Hardin County Kentucky Tel. Co. v. Elizabethtown, 227 Ky. 778, 14 S.W.2d 162, 1929 Ky. LEXIS 981 (Ky. 1929).

Statutes relating to original assessment as unit by state tax commission of tangible and intangible property of public service corporations with apportionment of values and allocation among cities and other taxing units, together with exceptions established by such statutes, must be read in connection with charters of cities of second class, and when so read show that city has no right to sue railroads to have circuit court assess their properties and levy taxes thereon. Newport v. Pennsylvania R. Co., 287 Ky. 613, 154 S.W.2d 719, 1941 Ky. LEXIS 600 (Ky. 1941).

6. Corporations Subject to Tax.

This section establishes three classes of companies or corporations which are subject to the tax: (1) those whose business is expressly named in the section and those engaged in like or similar business; (2) those which have or exercise any special or exclusive privilege or franchise not allowed by law to natural persons; (3) those performing any public service. Consolidation Coal Co. v. Martin, 113 F.2d 813, 1940 U.S. App. LEXIS 3465 (6th Cir. Ky. 1940).

This section clearly makes the classification of enumerated companies as a separate group subject to tax without any limitation or qualification. Martin v. Producers Pipe Line Co., 113 F.2d 817, 1940 U.S. App. LEXIS 3466 (6th Cir. Ky.), cert. denied, 311 U.S. 715, 61 S. Ct. 397, 85 L. Ed. 465, 1940 U.S. LEXIS 12 (U.S. 1940).

A corporation actually engaged in a public service business is liable to franchise tax even though its engagement in such business is ultra vires. James v. Kentucky Refining Co., 132 Ky. 353, 113 S.W. 468, 1908 Ky. LEXIS 126 (Ky. 1908).

Transfer company operating within a city was not liable for franchise tax, notwithstanding its business gave it the character of a common carrier, since it exercised no privilege that was not allowed by law to natural persons. Commonwealth v. Louisville Transfer Co., 181 Ky. 305, 204 S.W. 92, 1918 Ky. LEXIS 517 (Ky. 1918), overruled, Yellow Cab Co. v. Murphy, 243 S.W.2d 42, 1951 Ky. LEXIS 1116 (Ky. 1951).

A corporation that does business in Kentucky through another corporation, which the first corporation controls and directs, may be subject to franchise tax, in addition to the franchise tax paid by the subsidiary corporation. Commonwealth ex rel. Hawkins v. Southern R. Co., 193 Ky. 474, 237 S.W. 11, 1921 Ky. LEXIS 246 (Ky. 1921).

7. —Railroad.

A foreign railroad company that files its articles and thereby becomes a Kentucky corporation is required to pay only one franchise tax, as a foreign corporation, and is not required to pay another tax as a domestic corporation. Commonwealth v. Chesapeake & O. R. Co., 120 Ky. 678, 87 S.W. 1077, 27 Ky. L. Rptr. 1084, 1905 Ky. LEXIS 149 (Ky. 1905).

A domestic corporation controlling through ownership of stock, or by lease, a system of railroads, is subject to franchise tax even though all of the lines of the railroads are outside of this state. Commonwealth by Anderson v. Southern Pac. Co., 150 Ky. 97, 149 S.W. 1105, 1912 Ky. LEXIS 821 (Ky. 1912), overruled, Commonwealth v. Kentucky Heating Co., 176 Ky. 35, 195 S.W. 459, 1917 Ky. LEXIS 40 (Ky. 1917).

A foreign railroad company operating trains into this state, and owning tangible property in this state, is subject to franchise tax even though it owns no lines of track in this state but merely leases the use of the tracks of other railroads. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

8. —Pipeline Company.

Pipeline company that operated pipeline through which it transported crude petroleum through five Kentucky counties to the Ohio River where it was loaded on company's barges and carried to refining company which purchased pipeline company's entire output was subject to taxation under this section. Martin v. Producers Pipe Line Co., 113 F.2d 817, 1940 U.S. App. LEXIS 3466 (6th Cir. Ky.), cert. denied, 311 U.S. 715, 61 S. Ct. 397, 85 L. Ed. 465, 1940 U.S. LEXIS 12 (U.S. 1940).

A company conveying gas through a pipeline and selling it to companies who resold it to consumers was performing a public service and had the power of eminent domain, and was therefore liable for franchise tax as a "pipeline company." State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933).

A pipeline company is liable for franchise tax if it performs any public service. State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933).

9. —Tank Car Company.

Oil refining company which owned its own tank cars, and paid railroad companies to move the cars over their lines, was subject to franchise tax. Stoll Oil Refining Co. v. State Tax Com., 221 Ky. 29, 296 S.W. 351, 1927 Ky. LEXIS 646 (Ky. 1927).

10. —Telephone Company.

Cellular telephone companies are telephone companies for purposes of this section. Central Ky. Cellular Tel. Co. v. Revenue Cabinet, 897 S.W.2d 601, 1995 Ky. App. LEXIS 41 (Ky. Ct. App. 1995).

11. Corporations Not Subject to Tax.

A title guaranty company is not subject to franchise tax. Hager v. Louisville Title Co., 85 S.W. 182, 27 Ky. L. Rptr. 345 (1905).

A city may not impose a license tax upon a public service corporation that pays a franchise tax, and which has obtained a franchise from the city under Ky. Const., § 164. Cumberland Tel. & Tel. Co. v. Hopkins, 121 Ky. 850, 90 S.W. 594, 28 Ky. L. Rptr. 846, 1906 Ky. LEXIS 268 (Ky. 1906).

Where the state has jurisdiction of neither the person nor the property, it is without power to tax. Commonwealth v. Lee Line Co., 159 Ky. 476, 167 S.W. 409, 1914 Ky. LEXIS 812 (Ky. 1914).

If a foreign corporation owns or uses no real property or tangible personal property in the state in connection with its interstate business, it has no franchise that may be taxed. Bosworth v. Evansville & Bowlint Green Packet Co., 178 Ky. 716, 199 S.W. 1059, 1918 Ky. LEXIS 450 (Ky. 1918).

When a corporation has paid a city franchise tax under this section, and is not engaged in such a business as requires it to obtain a franchise from the city under Ky. Const., § 164, it cannot be subjected to a license tax by the city for the privilege of doing business in the city, or for exercising in the city any agency or instrumentality indispensably necessary to the conduct of its business. American Ry. Express Co. v. Commonwealth, 187 Ky. 241, 218 S.W. 453, 1919 Ky. LEXIS 387 (Ky. 1919).

Motor truck operator who operated trucks between Tennessee and Missouri, and in so doing traveled over about 75 miles of highway in Kentucky, but who did not load or unload freight in Kentucky, or make any stops in Kentucky except to buy gasoline, was not subject to Kentucky franchise tax, since he had no property with a taxable situs in Kentucky. Reeves v. Service Lines, Inc., 291 Ky. 410, 164 S.W.2d 593, 1942 Ky. LEXIS 236 (Ky. 1942).

12. Nonprofit Corporations.

For the purpose of determining whether a rural electric cooperative corporation is actually operating on a nonprofit basis, the Department of Revenue may require it to file schedules and reports showing that it has no franchise value over and above the value of its tangible property. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943).

So long as a rural electric cooperative corporation operates on a nonprofit basis it will not have any franchise value subject to taxation over and above the value of its tangible property. Inter-County Rural Electric Co-operative Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 1943 Ky. LEXIS 446 (Ky. 1943).

13. Holding Company.

Plan pursuant to which utility company divided itself into several corporate units, consisting of operating companies supervised by a holding company, and so managed its affairs that one industrial unit, whose franchise was nontaxable, was only unit to make a profit, was not invalid as fraudulent in the absence of proof of actual fraud or concealment. Commonwealth v. Louisville Gas & Electric Co., 278 Ky. 466, 128 S.W.2d 778, 1938 Ky. LEXIS 68 (Ky. 1938).

14. Entity Liable for Tax.

Where city, prior to adoption of present constitution, sold gas plant to private corporation under contract providing that city would pay all taxes assessed on the plant, such contract obligated city to pay franchise taxes subsequently imposed by general assembly. Bd. of Councilmen v. Capital Gas & Elec. Light Co., 96 S.W. 870, 29 Ky. L. Rptr. 1114, 1906 Ky. LEXIS 283 (Ky. Ct. App. 1906).

The person to whom the license to operate the ferry was granted is the one who is liable for the franchise tax imposed by this section. Gates v. Commonwealth, 127 Ky. 395, 105 S.W. 432, 32 Ky. L. Rptr. 301, 1907 Ky. LEXIS 134 (Ky. 1907).

15. Exemption.

Department's change which raised state tax obligation of public service company (PSC) and made it subject to local taxes was upheld because general assembly did not intend for franchise of PSCs to be exempt from state and local taxes and intended for it to be taxed separately. KRS 136.115(2) directed that taxes were assessed on operating tangible property and franchise; franchise was separate and nothing in the statutes indicated that franchise was included in operating tangible property. Additionally, KRS 132.208 provides a state and local tax exemption for intangible personal property except that which is assessed under KRS ch. 136. Dayton Power & Light Co. v. Dep't of Revenue, 405 S.W.3d 527, 2012 Ky. App. LEXIS 232 (Ky. Ct. App. 2012).

16. —Other Taxes.

The fact that a corporation is required to pay a franchise tax under this section does not relieve it of paying a license or occupation tax. Greene v. National Surety Co., 186 Ky. 353, 217 S.W. 117, 1919 Ky. LEXIS 222 (Ky. 1919).

17. Omitted Property.

Where foreign corporation owned all of stock in a Kentucky corporation that was a consolidation of three former Kentucky corporations in which the foreign corporation had also owned all of the stock, and the foreign corporation for years in question had paid Kentucky taxes on its franchise and upon all of the tangible property of the Kentucky corporations (which was deducted in fixing the value of its franchise), the fact that the franchises of the Kentucky corporations had never been assessed did not constitute grounds for an action against the foreign corporation to assess the value of its holdings in the Kentucky corporations as omitted property. Commonwealth v. Chesapeake & O. R. Co., 91 S.W. 672, 28 Ky. L. Rptr. 1110 (1906).

Property which is alleged not to have been taken into consideration in fixing value of corporation's franchise cannot be assessed in an action to assess omitted property of the corporation. Commonwealth v. Chesapeake & O. R. Co., 91 S.W. 672, 28 Ky. L. Rptr. 1110 (1906).

Where corporation had made report required by law, but Board of Valuation and Assessment had not yet acted on report or made assessment, action to assess property of corporation as omitted property could not be maintained. Commonwealth by Anderson v. Louisville & N. R. Co., 142 Ky. 663, 135 S.W. 280, 1911 Ky. LEXIS 288 (Ky. 1911).

Where corporation fails to make any report under law and no assessment of its franchise is made by the Department of Revenue, the franchise may be assessed in an action to assess omitted property. Covington v. Cincinnati, C. & R. R. Co., 144 Ky. 646, 139 S.W. 854, 1911 Ky. LEXIS 702 (Ky. 1911).

Where a corporation fails to include in its report certain of its property under the heading in the report providing for the listing of that kind of property, it cannot maintain in an action against it to assess such property as omitted, that the property was included under some other heading or was assessed by the Department of Revenue on information obtained aside from the report. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

Where railroad company did not specifically report the amount or value of its rolling stock, but reported only its trackage, depots, furniture and "other property," and the value reported by the company was accepted by the Department of Revenue in fixing the franchise value, the rolling stock could be assessed as omitted property upon its later being discovered that the tangible property of the company that fell within its classification of "other property" far exceeded the value given in the report. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

On assessment of omitted property of a franchise-paying corporation, the court should ascertain how much the assessment made by the Department of Revenue should be increased on account of the addition of the value of the omitted property,

and certify the increase to the department. Louisville & N. R. Co. v. Commonwealth, 181 Ky. 193, 204 S.W. 94, 1918 Ky. LEXIS 518 (Ky. 1918).

In an action to assess alleged omitted property the state must first show the fact that the property was not reported, and its nature and value, and the corporation then has the burden of showing that notwithstanding the omission, the property was considered by the Department of Revenue in assessing the franchise, from information obtained from sources outside the report. Chesapeake & O. R. Co. v. Commonwealth, 190 Ky. 552, 228 S.W. 15, 1920 Ky. LEXIS 557 (Ky. 1920). See Louisville & N. R. Co. v. Commonwealth, 181 Ky. 193, 204 S.W. 94, 1918 Ky. LEXIS 518 (Ky. 1918).

Failure of corporation to report any item or species of property that it is called upon to report is an omission and not an undervaluation, and the omitted property may be assessed in an action brought for that purpose. Chesapeake & O. R. Co. v. Commonwealth, 190 Ky. 552, 228 S.W. 15, 1920 Ky. LEXIS 557 (Ky. 1920).

18. —Retrospective Assessment.

Second-class city may not retroactively assess property of companies covered by this section, but may call upon the Department of Revenue for relief when an omission has been made. American Refrigerator Transit Co. v. Lexington, 288 Ky. 295, 155 S.W.2d 848, 1941 Ky. LEXIS 75 (Ky. 1941).

19. Failure to Assess.

Mere failure of state assessing authorities to endeavor to assess franchise tax against a particular corporation did not amount to a contemporaneous construction that the law did not apply to such corporation. Baltimore & O. S. W. R. Co. v. Commonwealth, 177 Ky. 566, 198 S.W. 35, 1917 Ky. LEXIS 655 (Ky. 1917).

20. Conclusiveness of Assessment.

Where the Department of Revenue has substantially followed the provisions of the law in fixing the value of a franchise, and no appeal has been taken, its action is final. Commonwealth by Anderson v. Southern Pac. Co., 150 Ky. 97, 149 S.W. 1105, 1912 Ky. LEXIS 821 (Ky. 1912), overruled, Commonwealth v. Kentucky Heating Co., 176 Ky. 35, 195 S.W. 459, 1917 Ky. LEXIS 40 (Ky. 1917).

21. Settlement.

Revenue commissioner having determined that certain river barge companies were subject to franchises taxes, had power to settle in good faith unliquidated tax claims against companies for such taxes, so as to require approval of settlement by circuit court. Commonwealth ex rel. Reeves v. American Barge Line Co., 253 S.W.2d 622, 1952 Ky. LEXIS 1118 (Ky. 1952).

22. Double Taxation.

The fact that a city had levied a franchise tax on a telephone company under this section did not prevent the city from also imposing a license tax on the company, the franchise tax not being a tax for the privilege of doing business. Cumberland Tel. & Tel. Co. v. Calhoun, 151 Ky. 241, 151 S.W. 659, 1912 Ky. LEXIS 790 (Ky. 1912).

Assessment of local franchise tax under this section did not constitute double taxation when considered with the license fee authorized by KRS 68.178; the former is a tax on tangible property, the latter a fee based on gross receipts. Cooksey Bros. Disposal Co. v. Boyd County, 973 S.W.2d 64, 1997 Ky. App. LEXIS 132 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 930, 119 S. Ct. 338, 142 L. Ed. 2d 279, 1998 U.S. LEXIS 6495 (U.S. 1998).

23. Tax Rate.

The assessment of the franchise of a corporation, on its report covering the 12-month period ending on December 31 preceding the assessment, bears the tax rate, for county purposes, levied for the fiscal year that next ensues after said December 31, and not the rate for the fiscal year covering which the report was made. Gray v. Louisville, H. & S. L. R. Co., 201 Ky. 750, 258 S.W. 309, 1924 Ky. LEXIS 636 (Ky. 1924).

The ad valorem tax rate of $1.00 per $100.00 on railroad rolling stock under subdivision (4)(a) (deleted by 1990 amendment) of this section violates § 306 of the Railroad Revitalization and Regulatory Reform Act, 49 USCS § 11503; since no identifiable existing tax rate fulfills the specific standard of the Act, the trial judge did not err in developing an appropriate rate based upon the evidence before him. General American Transp. Corp. v. Kentucky, 791 F.2d 38, 1986 U.S. App. LEXIS 25150 (6th Cir. Ky. 1986) (decision prior to 1990 amendment).

24. Situs.

The fact that the business of a corporation is conducted upon the navigable waters of the United States does not prevent the imposition of a franchise tax. Bosworth v. Evansville & Bowlint Green Packet Co., 178 Ky. 716, 199 S.W. 1059, 1918 Ky. LEXIS 450 (Ky. 1918).

The franchise tax is an ad valorem property tax and to be valid the property taxed must have a situs within the taxing unit. Commercial Carriers, Inc. v. Kentucky Tax Com., 321 S.W.2d 42, 1959 Ky. LEXIS 256 (Ky. 1959).

25. Transient Property.

A fixed number of units of transient property constituting an average number of those continuously used in the state, may be the subject of ad valorem taxation even though none of the units involved are permanently located in Kentucky. Union Barge Line Corp. v. Marcum, 360 S.W.2d 130, 1962 Ky. LEXIS 209 (Ky. 1962).

26. Transportation Facilities.

A company transporting its own goods in tank cars owned by it, or in pipelines it owns and operates, is liable for a franchise tax on such transportation facilities. Texas Co. v. Commonwealth, 303 Ky. 590, 198 S.W.2d 316, 1946 Ky. LEXIS 906 (Ky. 1946).

27. Property on Ohio River.

Neither the Virginia Compact nor the Northwest Ordinance impairs the power of Kentucky to impose taxes on property used on the Ohio River. Union Barge Line Corp. v. Marcum, 360 S.W.2d 130, 1962 Ky. LEXIS 209 (Ky. 1962).

28. State's Jurisdiction.

A state cannot tax beyond its boundary. Bosworth v. Evansville & Bowlint Green Packet Co., 178 Ky. 716, 199 S.W. 1059, 1918 Ky. LEXIS 450 (Ky. 1918).

A franchise tax may not be assessed where no property is possessed within the jurisdiction by the alleged taxpayer, nor any business transacted therein. Reeves v. Service Lines, Inc., 291 Ky. 410, 164 S.W.2d 593, 1942 Ky. LEXIS 236 (Ky. 1942).

29. Estoppel.

Where a corporation has invoked the provisions of this section in an action to assess its property, it cannot later defend against an assessment made under this section on the ground that the section is unconstitutional. Commonwealth by Anderson v. Southern Pac. Co., 150 Ky. 97, 149 S.W. 1105, 1912 Ky. LEXIS 821 (Ky. 1912), overruled, Commonwealth v. Kentucky Heating Co., 176 Ky. 35, 195 S.W. 459, 1917 Ky. LEXIS 40 (Ky. 1917).

30. Burden of Proof.

There is a presumption that all companies mentioned in this section are liable for franchise tax, and the burden is on a company seeking to escape the tax to show that its business is not of the type mentioned or is not in fact a public service

business. State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933).

31. Franchise Fee.

A franchise fee based on a percentage of gross service revenues is not a tax, but is instead a charge bargained for in exchange for a specific property right, i.e., rental or compensation for the use of public streets. Berea College Utilities v. Berea, 691 S.W.2d 235, 1985 Ky. App. LEXIS 588 (Ky. Ct. App. 1985).

Cited in:

Chesapeake & O. R. Co. v. Louisville & N. R. Co., 154 Ky. 637, 157 S.W. 1107, 1913 Ky. LEXIS 121 (Ky. 1913); State Tax Com. v. Petroleum Exploration, 253 Ky. 119, 68 S.W.2d 777, 1933 Ky. LEXIS 977 (Ky. 1933); Goodlett v. Anderson County, 267 Ky. 166, 101 S.W.2d 421, 1936 Ky. LEXIS 761 (Ky. 1936); Shelbyville v. Citizens Bank of Shelbyville, 272 Ky. 559, 114 S.W.2d 719, 1938 Ky. LEXIS 143 (Ky. 1938); Greene v. Commonwealth, 275 Ky. 637, 122 S.W.2d 523, 1938 Ky. LEXIS 489 (Ky. 1938); Commonwealth v. Louisville Gas & Electric Co., 278 Ky. 466, 128 S.W.2d 778, 1938 Ky. LEXIS 68 (Ky. 1939); Fayette County v. Martin, 279 Ky. 387, 130 S.W.2d 838, 1939 Ky. LEXIS 299 (Ky. 1939); Kentucky State Tax Com. v. Tube Turns, Inc., 283 Ky. 474, 141 S.W.2d 875, 1940 Ky. LEXIS 358 (Ky. 1940); Commonwealth v. Cincinnati, N. O. & T. P. R. Co., 288 Ky. 43, 155 S.W.2d 460, 1941 Ky. LEXIS 47, 137 A.L.R. 301 (Ky. 1941); Lexington v. Lexington Tel. Co., 288 Ky. 640, 157 S.W.2d 119, 1941 Ky. LEXIS 174 (Ky. 1941); Dixie Greyhound Lines v. Paducah, 289 Ky. 196, 158 S.W.2d 433, 1942 Ky. LEXIS 532 (Ky. 1942); Reeves v. Louisville Gas & Electric Co., 290 Ky. 25, 160 S.W.2d 391, 1942 Ky. LEXIS 362 (Ky. 1942); Tomlin v. Taylor, 290 Ky. 619, 162 S.W.2d 210, 1942 Ky. LEXIS 468 (Ky. 1942); Reeves v. Service Lines, Inc., 291 Ky. 410, 164 S.W.2d 593, 1942 Ky. LEXIS 236 (Ky. 1942); Ashland Oil & Refining Co. v. Department of Revenue, 256 S.W.2d 359, 1953 Ky. LEXIS 721 (Ky. 1953); Luckett v. Texas Eastern Transmission Corp., 336 S.W.2d 567, 1960 Ky. LEXIS 338 (Ky. 1960); Board of Education v. Ashland Oil & Refining Co., 350 S.W.2d 475, 1961 Ky. LEXIS 101 (Ky. 1961).

NOTES TO UNPUBLISHED DECISIONS

1. Application.

Unpublished decision: State revenue cabinet properly determined that the tax the cable television company was required to pay was the tax on its operating tangible property and franchise, and, thus, the trial court erred in affirming the state tax appeal board's decision to the contrary. Revenue Cabinet v. Comcast Cablevision, 147 S.W.3d 743, 2003 Ky. App. LEXIS 330 (Ky. Ct. App. 2003).

Unpublished decision: Operating and nonoperating tangible property, once classified, were subject to both state and local taxes, while nonoperating intangible property was subject to a different state tax rate, and, thus, the state revenue cabinet determined the proper tax assessment for the cable television company by valuing the tangible property and the franchise, while not including the nonoperating intangible property in that calculation because to do so would have given the table television company too high of an assessment for valuation and tax purposes; accordingly, the state tax appeals board erred in affirming the trial court's decision to the contrary. Revenue Cabinet v. Comcast Cablevision, 147 S.W.3d 743, 2003 Ky. App. LEXIS 330 (Ky. Ct. App. 2003).

Unpublished decision: After cable television company created and delivered to the state revenue cabinet the report required by statutory law, the state revenue cabinet had the sole power to value and assess all of the property of the cable television company; moreover, the state revenue cabinet's valuation and assessment enabled it to properly determine the fair cash value of the operating property of the cable television company, which was what the cable television company was taxed on, as a unit, and, thus, the state revenue cabinet properly valued, assessed, and taxed the cable television company. Revenue Cabinet v. Comcast Cablevision, 147 S.W.3d 743, 2003 Ky. App. LEXIS 330 (Ky. Ct. App. 2003).

OPINIONS OF ATTORNEY GENERAL.

The valuation of the property of rural electric cooperatives must be accomplished at the state level. OAG 61-355.

Although no provision is made by the constitution or statutes for exemption of utility companies from city taxes, the statutes do provide a different method of assessment of property tax in the case of public service corporations as compared to the method used in the case of other taxpayers. OAG 62-40.

A city is without authority to levy an occupational license tax on the operations of Southern Bell Telephone & Telegraph Company within the corporate limits of the city. OAG 62-644.

A library district tax would be applicable to franchise assessments with a taxable situs within the library district. OAG 68-545.

Since the property valuation administrator has no duty to assess public utility property in the county, there is no statutory basis for requiring that the value of such property be included in the base upon which the property valuation administrator's compensation is computed. OAG 71-249.

The Department of Revenue values and assesses property of public utility corporations. OAG 71-249.

The property valuation administrator has no responsibilities or duties in connection with the assessment of the property of public utility corporations and is not even advised of the value placed upon the property by the state. OAG 71-249.

The property valuation administrator may, under the direction and supervision of the Department of Revenue, keep a record of the property of public utility corporations, but this does not constitute an assessment. OAG 71-249.

Where city chose to use the county assessment instead of a city assessment as provided in KRS 132.285, it could provide for a six month special budget and tax period to provide for the transition from a calendar year to a fiscal year basis and could require a public service company to pay a one half year's tax bill for such period notwithstanding the use of the word "annually" in this section. OAG 75-435.

The Ohio-Kentucky Utilities, Inc., a paper corporation set up by Floyd county to run utility facilities acquired by bonds pursuant to KRS 58.010 et seq., was not subject to a utility tax assessment, provided for by this section, by the Town of Wayland. OAG 78-679, 1978 Ky. AG LEXIS 158.

A city may not levy an occupational license tax against public service corporations, when those organizations pay ad valorem and franchise taxes levied pursuant to KRS Chapter 136. OAG 82-93, 1982 Ky. AG LEXIS 542.

Letter of electric corporation attached to payment of ad valorem taxes protesting payment and asking the sheriff to sign the letter acknowledging receipt of the protest did not constitute a valid or legal protest, since such taxes are assessed by the Revenue Cabinet and thus protests of such assessments must be made to the Revenue Cabinet; therefore, the sheriff should not sign such protest. OAG 83-202, 1983 Ky. AG LEXIS 295.

This section levies a property tax and not a franchise tax; consequently, a city ordinance imposing a franchise fee on a power company for the right to distribute electrical energy in the city did not amount to double taxation. OAG 83-233, superseding OAG 68-338, to the extent of conflict.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Expenses of public service commission, assessment of public utilities for, KRS 278.130.

Railroad taxes, assessment and collection, Ky. Const., § 182.

Rural electric cooperative corporations, taxes and exemptions, KRS 279.200.

Taxation, situs of property for, KRS 132.190.

Kentucky Law Journal.

Martin, Practice Before the Kentucky Department of Revenue, 28 Ky. L.J. 4 (1939).

Roberts, What Constitutes "Doing Business" by a Foreign Corporation in Kentucky, 31 Ky. L.J. 3 (1942).

Allphin, 1954 Kentucky Tax Legislation, 43 Ky. L.J. 76 (1954).

Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Property Tax Assessment Administration in Kentucky, 60 Ky. L.J. 141 (1971).

136.180. Notice and certification of valuation — Effect of appeal on payment of taxes — Payment of fee by any district which has value certified by department.

(1) The Department of Revenue shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation and the amount of assessment for state and local purposes. When the valuation has been finally determined, the department shall immediately certify, unless otherwise specified, to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount of property liable for county, city, or district tax.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(3) The Department of Revenue shall compute annually a multiplier for use in establishing the local tax rate for the operating property of railroads or railway companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.

(4) The Department of Revenue shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due sixty (60) days from the date of notice and shall be collected directly by the Department of Revenue. The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of subsection (5) of this section shall be deducted.

(5) The certification of valuation shall be filed by each county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district which has the value certified by the department shall pay an annual fee to the department which represents an allocation of department operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the department and shall apply to valuations for tax periods beginning on or after December 31, 1981.

History.

4083, 4084, 4102: amend. Acts 1960, ch. 186, Art. II, § 7; 1982, ch. 388, § 6, effective July 15, 1982; 1990, ch. 345, § 2, effective July 13, 1990; 1990, ch. 437, § 7, effective July 13, 1990; 1990, ch. 476, Pt. V, § 353, effective July 13, 1990; 1994, ch. 64, § 1, effective July 15, 1994; 1998, ch. 391, § 5, effective July 15, 1998; 2005, ch. 85, § 308, effective June 20, 2005; 2005, ch. 106, § 1, effective June 20, 2005; 2009, ch. 10, § 47, effective January 1, 2010; 2015 ch. 67, § 4, effective June 24, 2015; 2018 ch. 171, § 110, effective April 14, 2018; 2018 ch. 207, § 110, effective April 27, 2018.

Legislative Research Commission Notes.

(4/27/2018). This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.

(8/17/2006). In the final sentence of subsection (4) of this statute, a reference to "subsection (4) of this section" has been changed to read "subsection (6) of this section." Under the authority of KRS 7.136(1)(e) and (h), the Reviser of Statutes has made this change to correct an internal reference that should have been adjusted when subsections were renumbered in 1998 Ky. Acts ch. 391, sec. 5, and 2005 Ky. Acts ch. 106, sec. 1.

(6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

(11/1/90). The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. The two amending Acts do not appear to be in conflict and have been compiled together. Under the authority of KRS 7.136(1), the Reviser of Statutes has divided the text of this section into the indicated subdivisions. The original 1990 codification of KRS 136.180 and its accompanying note dated July 13, 1990, are superseded and without effect.

NOTES TO DECISIONS

Analysis

1. Collection Before Certification.
2. Misappropriation Before Assessment.
3. Conclusiveness.

4. Clerk's Fee.
5. Injunction.

1. Collection Before Certification.

The sheriff may not legally collect a franchise tax until the assessment has been certified to him by the county clerk. Commonwealth v. Brand, 166 Ky. 753, 179 S.W. 844, 1915 Ky. LEXIS 772 (Ky. 1915) (decided under prior law).

Sheriff who accepted railroad franchise taxes due school district was chargeable with amount there, although the assessment had not, at the time of such acceptance, been certified to the county clerk. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345, 1933 Ky. LEXIS 483 (Ky. 1933) (decided under prior law).

2. Misappropriation Before Assessment.

Sheriff who misappropriated franchise tax paid to him by railroad before certification of assessment to sheriff by county clerk could not be convicted of embezzling public funds. Commonwealth v. Brand, 166 Ky. 753, 179 S.W. 844, 1915 Ky. LEXIS 772 (Ky. 1915) (decided under prior law).

3. Conclusiveness.

Where the Department of Revenue has substantially followed the provisions of law regarding procedure for property valuation in fixing the value of a franchise, and no appeal has been taken, the action is final. Commonwealth by Anderson v. Southern Pac. Co., 150 Ky. 97, 149 S.W. 1105, 1912 Ky. LEXIS 821 (Ky. 1912), overruled, Commonwealth v. Kentucky Heating Co., 176 Ky. 35, 195 S.W. 459, 1917 Ky. LEXIS 40 (Ky. 1917) (decided under prior law).

4. Clerk's Fee.

The county clerk is entitled to no fee for making copies of the franchise assessment certificates for the collecting officers. Goodlett v. Anderson County, 267 Ky. 166, 101 S.W.2d 421, 1936 Ky. LEXIS 761 (Ky. 1936) (decided under prior law).

5. Injunction.

Action could be maintained in federal court to enjoin certification of assessments to county clerks, on allegation that tax was void or that assessment was not legally made. Louisville & N. R. Co. v. Bosworth, 209 F. 380, 1913 U.S. Dist. LEXIS 1117 (D. Ky. 1913) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

Where a county fiscal court established a cooperative extension district with a district tax on assessed property valuation, the tax was applicable to franchise values certified to the county. OAG 71-295.

VEHICLES OF SYSTEM OPERATING ROUTE PARTLY WITHIN STATE

136.1877. Application of section — Appeal from notice of tentative assessment — Effect of appeal on payment of taxes — Collection of state taxes — Aggregate local rate to be set annually — Distribution.

The provisions of this section shall apply to assessments made prior to January 1, 2007.

(1) The Department of Revenue shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the department in the manner outlined in KRS 136.1873 shall have sixty (60) days from the date of the department's notice of the tentative assessment to protest as provided by KRS 131.110.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(3) The state and local taxes on the property are due sixty (60) days from the date of notice and shall be collected directly by the Department of Revenue.

(4) The Department of Revenue shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.

(5) The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of KRS 136.180(5) shall be deducted.

History.

Enact. Acts 1990, ch. 437, § 3, effective July 13, 1990; 1992, ch. 391, § 8, effective July 14, 1992; 1998, ch. 391, § 4, effective July 15, 1998; 2005, ch. 85, § 316, effective June 20, 2005; 2005, ch. 106, § 5, effective June 20, 2005; 2006, ch. 252, Pt. XV, § 5, effective January 1, 2007; 2009, ch. 10, § 49, effective January 1, 2010; 2015 ch. 67, § 5, effective June 24, 2015; 2018 ch. 171, § 112, effective April 14, 2018; 2018 ch. 207, § 112, effective April 27, 2018.

Legislative Research Commission Notes.

(4/27/2018). This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.

OPINIONS OF ATTORNEY GENERAL.

KRS 136.1873, 136.1875, and this section do not subject any property to taxation because the constitution has already subjected all property in the state to taxation with a few limited exceptions. OAG 92-71, 1992 Ky. AG LEXIS 71.

There is nothing in KRS 136.1873, 136.1875, or this section that would exempt "the occasional, transient motorcoach, charter, or tour bus operation" from the assessment procedure set out in KRS 136.1873, nor is there anything unconstitutional in this procedure; it is simply an attempt by the state to insure compliance with the constitutional directive that all property be taxed. OAG 92-71, 1992 Ky. AG LEXIS 71.

136.190. Boundary report of cities of the home rule class and taxing districts.

(1) The superintendent of schools in each district in which any individual, group of individuals or corporation, operates public utility or other franchise taxpaying property assessed under KRS 136.120 shall, on or before the first day of January, 1957, furnish to the county clerk of the county in which the district is situated, to each franchise taxpayer within the district, and to the Department of Revenue, the boundary of his school district. The superintendent of schools in each district in which any franchise-paying corporation, individual, or group of individuals operates shall, on or before the first day of January, 1958, and each year thereafter, furnish to the county clerk, to each franchise taxpayer within the district, and to the Department of Revenue, any changes made in the boundary of his school district during the immediately preceding twelve (12) months.

(2) The engineer of cities of the first class and the city clerk of cities of the home rule class shall notify the county clerk, each franchise taxpayer within the city, and the Department of Revenue of their boundaries in the same manner as required of the superintendent of schools in subsection (1) of this section.

(3) The responsible governing official or the chairman of the governing body of any taxing district other than the county, school district, or city shall notify the county clerk, each franchise taxpayer within the district, and the Department of Revenue of their boundaries in the same manner as required of the superintendent of schools in subsection (1) of this section.

History.

4009, 4339-16; Acts 1956, ch. 170; 1960, ch. 186, Art. II, § 8; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 354, effective July 13, 1990; 2005, ch. 85, § 317, effective June 20, 2005; 2014, ch. 92, § 218, effective January 1, 2015.

OPINIONS OF ATTORNEY GENERAL.

The superintendent's report, which is mandatory under this section, is a report of the boundary as required for tax purposes. It does not establish the boundary, neither does it alter the boundary in the event of a possible erroneous survey or in the event of a subsequent failure of either board to object to a survey which is in fact inaccurate. The fact that the erroneous survey was unchallenged over a period of 12 years is of no consequence. OAG 70-393.

136.200. Allocation of railroad bridge assessment.

The assessment of railroad bridges spanning any river that constitutes a boundary of the state shall be allocated to the counties in which they are located, and the local tax derived therefrom shall be applied to each city, county, or taxing district in which the bridges are located.

History.

4102; Acts 1960, ch. 186, Art. II, § 9, effective March 25, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 355, effective July 13, 1990.

Compiler's Notes.

Former KRS 139.200 (4102: amend. Acts 1960, ch. 186, Art. II, § 9) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 355, effective July 13, 1990.

NOTES TO DECISIONS

1. Assessment.

A bridge owned and maintained by a railroad as a part of its railroad system is assessable only by the Department of Revenue, and not by the county tax commissioner (now property valuation administrator). Board of Equalization v. Louisville & N. R. Co., 139 Ky. 386, 109 S.W. 303, 33 Ky. L. Rptr. 78, 1908 Ky. LEXIS 9 (Ky. 1908).

INSURANCE COMPANIES AND OTHER MISCELLANEOUS TAXES

136.320. Tax on taxable capital of domestic life insurance companies in lieu of other taxes — State and local rates.

(1) Each life insurance company incorporated under the laws of and doing business in Kentucky shall value as of January 1 and report to the Department of Revenue by April 1 each year, on forms prescribed by the Department of Revenue, the following:

(a) The fair cash value of the company's intangible personal property, hereinafter referred to as "capital," consisting of all money in hand, shares of stock, notes, bonds, accounts, and other credits, exclusive of due and deferred premiums, whether secured by mortgage, pledge, or otherwise, or unsecured.

(b) The fair cash value of the company's intangible personal property exempt from taxation by law.

(c) The aggregate amount of the company's reserves, reduced by the amount of due and deferred premiums, maintained in accordance with the applicable provisions of KRS 304.6-040 and 304.6-130 to 304.6-180, on all outstanding policies and contracts supplementary thereto.

(d) Other information as may be required by the Department of Revenue to accurately determine the fair cash value of each company's "taxable capital" and "taxable reserves."

(2) Based on information supplied by each company and other information that may be available, the Department of Revenue shall value each company's "taxable capital" and "taxable reserves" as follows:

(a) "Taxable capital" shall be determined by deducting "taxable reserves" from "capital," less exempt intangible personal property.

(b) "Taxable reserves" shall be determined by multiplying the aggregate amount of reserves as computed in subsection (1)(c) of this section by the percentage determined by dividing "capital," less exempt intangible personal property, by "capital," including exempt intangible personal property.

(3)(a) An annual tax for state purposes shall be imposed against the fair cash value of "taxable capital" for calendar years beginning before 2000, at a rate of seventy cents ($0.70) on each one hundred dollars ($100).

(b) An annual tax for state purposes shall be imposed against every company making an election pursuant to KRS 136.335 to be taxed under this section, against the fair cash value of taxable capital for calendar years beginning in 2000 as follows:

1. For calendar year 2000, fifty-six cents ($0.56) on each one hundred dollars ($100);

2. For calendar year 2001, forty-two cents ($0.42) on each one hundred dollars ($100);

3. For calendar year 2002, twenty-eight cents ($0.28) on each one hundred dollars ($100);

4. For calendar year 2003, fourteen cents ($0.14) on each one hundred dollars ($100); and

5. For calendar year 2004 and each calendar year thereafter, one tenth of one cent ($0.001) on each one hundred dollars ($100).

(c) An annual tax for state purposes shall be imposed at a rate of one-tenth of one cent ($0.001) on each one hundred dollars ($100) of the fair cash value of "taxable reserves".

(d) Beginning in tax year 2004 an insurer may offset the tax liability imposed under this subsection against the tax liability imposed under subsection (4) of this section.

(4) For calendar year 2000, and each calendar year thereafter, every company subject to the tax imposed by subsection (3) of this section, and making an election pursuant to KRS 136.335 to be taxed under this section, shall pay the following rates of tax upon each one hundred dollars ($100) of premium receipts:

(a) For calendar year 2000, thirty-eight cents ($0.38);

(b) For calendar year 2001, seventy-two cents ($0.72);

(c) For calendar year 2002, one dollar and two cents ($1.02);

(d) For calendar year 2003, one dollar and twenty-eight cents ($1.28); and

(e) For calendar year 2004 and each calendar year thereafter, one dollar and fifty cents ($1.50).

Every company subject to the tax imposed by this subsection shall, by March 1 of each year, return to the Department of Revenue a statement under oath of all premium receipts on business done in this state during the preceding calendar year or since the last return was made. "Premium receipts" includes single premiums, premiums received for original insurance, premiums received for renewal, revival, or reinstatement of the policies, annual and periodical premiums, dividends applied for premiums and additions, and all other premium payments received on policies that have been written in this state, or on the lives of residents of this state, or out of this state on business done in this state, less returned premiums. No deduction shall be made for dividends on life insurance but dividends on accident and health insurance policies may be deducted.

(5) The taxes imposed under subsections (3) and (4) of this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district, except as provided in subsections (6) and (7) of this section.

(6) The county in which the principal office of the company is located may impose a tax of fifteen cents ($0.15) on each one hundred dollars ($100) of "taxable capital."

(7) The city in which the principal office of the company is located may impose a tax of fifteen cents ($0.15) on each one hundred dollars ($100) of "taxable capital."

(8) The Department of Revenue shall by September 1 each year bill each company for the state taxes. It shall immediately certify to the county clerk of the county in which the principal office of the company is located the value of "taxable capital" subject to local taxation. The county clerk shall prepare and deliver a bill to the sheriff for collection of taxes collectible by the sheriff and shall certify the value to all other collecting officers of districts authorized to levy a tax.

(9) Each company's real and tangible personal property shall be subject to taxation at fair cash value by the state, county, school, and other taxing districts in which the property is located in the same manner and at the same rates as all other property of the same class.

(10) Taxes on property subject to taxation under this section shall be subject to the same discount and penalties as provided in KRS 134.015 and shall be collected in the same manner as taxes on property locally assessed, except that the state tax on the "taxable capital" and "taxable reserves" shall be collected directly by the Department of Revenue.

(11) Any taxpayer subject to taxation under this section may protest in the manner provided in KRS 131.110.

History.

4237a-1; Acts 1966, ch. 160, §§ 1, 2; 1972, ch. 203, § 8; 1976, ch. 93, § 11, effective January 1, 1977; 1978, ch. 384, § 282, effective January 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 358, effective July 13, 1990; 1998, ch. 233, § 1, effective July 15, 1998; 2005, ch. 85, § 320, effective June 20, 2005; 2009, ch. 10, § 50, effective January 1, 2010.

Compiler's Notes.

Former KRS 136.320 (4237a-1: amend. Acts 1966, ch. 160, §§ 1, 2; 1972, ch. 203, § 8; 1976, ch. 93, § 11, effective January 1, 1977; 1978, ch. 384, § 282, effective January 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 358, effective July 1, 1990.

NOTES TO DECISIONS

Analysis

1. Statute of Limitations.
2. Assessment.
3. Capital.

1. Statute of Limitations.

Tax imposed on certain intangible property was an ad valorem property tax, and thus the two-year statute of limitations applied to an insurance company's claim for a refund; neither equitable recoupment nor set-off were available to the insurance company. Am. Life & Accident Ins. Co. of Ky. v. Commonwealth, 173 S.W.3d 910, 2004 Ky. App. LEXIS 299 (Ky. Ct. App. 2004).

2. Assessment.

Domestic life insurance company was not entitled to tax refunds because: (1) the value of the taxpayer's investment corporate stock was properly treated in the computation of the taxpayer's tax liability under KRS 136.320; and (2) assets booked as separate accounts were properly subjected to taxation. Monumental Life Ins. Co. v. Dep't of Revenue, 294 S.W.3d 10, 2008 Ky. App. LEXIS 207 (Ky. Ct. App. 2008), cert. denied, 559 U.S. 1037, 130 S. Ct. 2062, 176 L. Ed. 2d 414, 2010 U.S. LEXIS 2866 (U.S. 2010).

3. Capital.

Holdings booked by a domestic life insurance company into separate accounts account fell within the statutory definition

of capital in KRS 136.320(1)(a). Moreover, KRS 136.320 provided no exception for retirement and pension assets. Monumental Life Ins. Co. v. Dep't of Revenue, 294 S.W.3d 10, 2008 Ky. App. LEXIS 207 (Ky. Ct. App. 2008), cert. denied, 559 U.S. 1037, 130 S. Ct. 2062, 176 L. Ed. 2d 414, 2010 U.S. LEXIS 2866 (U.S. 2010).

OPINIONS OF ATTORNEY GENERAL.

A city is prohibited from levying an occupational license tax against a domestic life insurance company for the doing of business in the city. OAG 67-209.

The exemption from local taxation of domestic life insurance companies does not include agents of such companies. OAG 70-376.

A city can legally levy an occupational license tax on insurance companies if the city complies with all the restrictions contained in KRS 92.285 (repealed) and former subsection (5) of this section. OAG 82-188, 1982 Ky. AG LEXIS 450.

The language of the exempting clause contained in former subsection (3) of this section must be construed according to its common meaning, and therefore a city can levy a tax on a domestic life insurance company only as prescribed in former subsection (5) of this section. OAG 82-188, 1982 Ky. AG LEXIS 450.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

City license taxes, insurance companies, KRS 91A.080.

Retaliatory provision, domicile of alien insurer, KRS 304.3-270.

Revocation of authority, failure to pay taxes, KRS 304.3-200.

Kentucky Law Journal.

Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Complaint in Class Action to Declare City Occupational Tax Unconstitutional and to Enjoin Same, Form 355.08.

MULTICHANNEL VIDEO PROGRAMMING AND COMMUNICATIONS SERVICES TAX

136.602. Definitions for KRS 136.600 to 136.660.

As used in KRS 136.600 to 136.660:

(1) "Cable service" means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one (1) or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services;

(2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised.

(a) "Communications service" includes but is not limited to:

1. Local and long-distance telephone services;
2. Telegraph and teletypewriter services;
3. Prepaid calling services, and postpaid calling services;
4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
5. Channel services involving a path of communications between two (2) or more points;
6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
7. Caller ID services, ring tones, voice mail and other electronic messaging services;
8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7); and
9. Voice over Internet Protocol (VOIP);

(b) "Communications services" does not include information services or multichannel video programming service;

(3) "Department" means the Department of Revenue;

(4) "End user" means the person who utilized the multichannel video programming service. In the case of an entity, "end user" means the individual who used the service on behalf of the entity;

(5) "Engaged in business" means:

(a) Having any employee, representative, agent, salesman, canvasser, or solicitor operating in this state, under the authority of the provider, its subsidiary, or related entity, for the purpose of selling, delivering, taking orders, or performing any activities that help establish or maintain a marketplace for the provider;

(b) Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, agent or representative, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;

(c) Having real or tangible personal property in this state;

(d) Providing communications service by or through a customer's facilities located in this state;

(e) Soliciting orders from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or payment of the order utilizes the services of any financial institution, communications system, radio or television station, cable service, direct broadcast satellite or wireless cable service, print media, or other facility or service located in this state; or

(f) Soliciting orders from residents of this state on a continuous regular, systematic basis if the provider benefits from an agent or representative operating in this state under the authority of the provider to repair or service tangible personal property sold by the retailer;

(6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:

(a) Charges for Internet access as defined in 47 U.S.C. sec. 151; and

(b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;

(7) "In this state" means within the exterior limits of the Commonwealth of Kentucky and includes all territory within these limits owned by or ceded to the United States of America;

(8) "Multichannel video programming service" means live, scheduled, or on-demand programming provided by or generally considered comparable to or in competition with programming provided by a television broadcast station and shall include but not be limited to:

(a) Cable service;

(b) Satellite broadcast and wireless cable service;

(c) Internet protocol television provided through wireline facilities without regard to delivery technology; and

(d) Video streaming services;

(9) "Person" means and includes any individual, firm, corporation, joint venture, association, social club, fraternal organization, general partnership, limited partnership, limited liability partnership, limited liability company, nonprofit entity, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;

(10) "Place of primary use" means the street address where the end user's use of the multichannel video programming service primarily occurs;

(11) "Political subdivision" means a city, county, urban-county government, consolidated local government, or charter county government;

(12) "Provider" means any person receiving gross revenues for the provision of multichannel video programming service or communications service in this state;

(13) "Purchaser" means the person paying for multichannel video programming service;

(14) "Resale" means the purchase of a multichannel video programming service by a provider required to collect the tax levied by KRS 136.604 for sale, or incorporation into a multichannel video programming service for sale, including but not limited to:

(a) Charges paid by multichannel video programming service providers for transmission of video or other programming by another provider over facilities owned or operated by the other provider; and

(b) Charges for use of facilities for providing or receiving multichannel video programming services;

(15) "Retail purchase" means any purchase of a multichannel video programming service for any purpose other than resale;

(16) "Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;

(17) "Sale" means the furnishing of a multichannel video programming service for consideration;

(18)(a) "Sales price" means the total amount billed by or on behalf of a provider for the sale of multichannel video programming services in this state valued in money, whether paid in money or otherwise, without any deduction on account of the following:

1. Any charge attributable to the connection, movement, change, or termination of a multichannel video programming service; or

2. Any charge for detail billing;

(b) "Sales price" does not include any of the following:

1. Charges for installation, reinstallation, or maintenance of wiring or equipment on a customer's premises;

2. Charges for the sale or rental of tangible personal property;

3. Charges for billing and collection services provided to another multichannel video programming service provider;

4. Bad check charges;

5. Late payment charges;

6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision, upon the purchase, sale, use, or consumption of any multichannel video programming service, that is permitted or required to be added to the sales price of the multichannel video programming service; or

7. Internet access as defined in 47 U.S.C. sec. 151;

(19) "Satellite broadcast and wireless cable service" means point-to-point or point-to-multipoint distribution services that include but are not limited to direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the purchaser. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two (2) way service, and other similar services;

(20) "School district" means a school district as defined in KRS 160.010 and 160.020;

(21) "Special district" means a special district as defined in KRS 65.005(2)(a) that currently levies on any provider or its customers the public service corporation property tax under KRS 136.120; and

(22) "Video streaming services" means programming that streams live events, movies, syndicated and television programming, or other audio-visual content over the Internet for viewing on a television or other electronic device with or without regard to a particular viewing schedule.

History.
Enact. Acts 2005, ch. 168, § 89, effective January 1, 2006; 2006, ch. 6, § 3, effective March 6, 2006; 2007, ch. 141, § 13, effective July 1, 2007; 2009, ch. 99, § 1, effective July 1, 2009; 2013, ch. 40, § 83, effective March 21, 2013; 2019 ch. 151, § 17, effective June 27, 2019.

Legislative Research Commission Notes.
(6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 17 of that Act apply to transactions occurring on or after July 1, 2019.
(3/6/2006). 2006 Ky. Acts ch. 6, sec. 26, provides that this section applies retroactively to January 1, 2006.
(1/1/2006). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

NOTES TO DECISIONS

Cited in:
Directv, Inc. v. Treesh, 487 F.3d 471, 2007 FED App. 0201P, 2007 U.S. App. LEXIS 12504 (6th Cir. Ky. 2007); DirecTV, Inc. v. Treesh, 290 S.W.3d 638, 2009 Ky. LEXIS 145 (Ky. 2009).

136.605. Sourcing of communications services — Definitions.

(1) For purposes of KRS 136.600 to 136.660 the retailer shall source communications services as follows:

(a) A sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid wireless calling service, shall be sourced to the customer's or other purchaser's place of primary use;

(b) A sale of postpaid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signal is not that of the retailer;

(c) A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced as follows:

1. Over the counter. The sale is sourced to the business location of the seller;

2. Delivery to a specified address. The sale is sourced to the specified address when a purchaser or purchaser's donee receives the service at a location specified by the purchaser; or

3. Delivery address unknown. When the retailer does not know the address where the service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:

a. The address of the purchaser available from the business records of the retailer;

b. The billing address of the purchaser;

c. The address from which the service was provided; or

d. In the case of a sale of prepaid wireless calling service, the location associated with the mobile telephone number;

(d) A sale of a private communications service shall be sourced as follows:

1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.

2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points; and

(e) A sale of other communications services:

1. Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or

2. Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.

(2) For purposes of this section:

(a) "Air-to-ground radiotelephone service" has the same meaning as in KRS 139.195;

(b) "Call-by-call basis" means any method of charging for communications services where the price is measured by individual calls;

(c) "Communications channel" has the same meaning as in KRS 139.195;

(d) "Customer" has the same meaning as in KRS 139.195;

(e) "Customer channel termination point" has the same meaning as KRS 139.195;

(f) "Home service provider" has the same meaning as in KRS 139.195;

(g) "Postpaid calling service" means a communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the communications service. A postpaid calling service includes a communications service, except a prepaid wireless calling service, that would be a prepaid service except that it is not exclusively a communications service;

(h) "Prepaid calling service" means the right to access exclusively communications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(i) "Prepaid wireless calling service" means a communications service that:

1. Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;

2. Must be paid for in advance; and

3. Is sold in predetermined units of dollars of which the number declines with use in a known amount;

(j) "Private communications service" means a communications service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels; and

(k) "Service address" has the same meaning as in KRS 139.195.

History.

Enact. Acts 2007, ch. 141, § 15, effective July 1, 2007.

136.608. Exclusions from excise tax.

There are excluded from the tax imposed by KRS 136.604:

(1) Multichannel video programming services the purchase of which is prohibited from taxation under the Constitution or laws of the United States;

(2) Multichannel video programming services purchased by any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state, and multichannel video programming services purchased by counties, cities, schools, or special districts as defined in KRS 65.005. This exclusion shall apply only to purchases for use solely in the governmental function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants; and

(3) Multichannel video programming services purchased by resident, nonprofit educational, charitable, and religious institutions which have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code, provided that the service is to be used solely within the educational, charitable, or religious function of the institution.

History.

Enact. Acts 2005, ch. 168, § 92, effective January 1, 2006.

136.648. Gross revenues and excise tax fund and state baseline and local growth fund — Creation and administration of funds.

(1) There is established in the State Treasury a gross revenues and excise tax fund. The fund shall be held and administered by the Finance and Administration Cabinet. The cabinet shall invest money in the fund in the same manner as money in the state general fund.

(2) There is established in the State Treasury a state baseline and local growth fund. The fund shall be held and administered by the Finance and Administration Cabinet. The cabinet shall invest money in the fund in the same manner as money in the state general fund.

(3) All revenue from the tax imposed under KRS 136.604 and 136.616, including all penalties and interest attributable to the nonpayment of the tax or for noncompliance with KRS 132.825 and 136.600 to 136.660 shall be deposited into gross revenues and excise tax fund. Amounts deposited in the gross revenues and excise tax fund shall be allocated among the state, political subdivisions, school districts and special districts as provided in KRS 136.648, 136.650, 136.652, 136.654, and 136.656.

(4) All money in the gross revenues and excise tax fund designated for distribution to political subdivisions under KRS 136.648, 136.650, 136.652, 136.654, and 136.656:

(a) Shall not be withheld or reduced by the General Assembly or any state agency for any reason, except for adjustments provided for within KRS 132.825 and 136.600 to 136.660; and

(b) Shall be used solely and exclusively for the provision of services to the general public, including public protection, health services, education, libraries, transportation services, and economic development. No amount shall be used for purely local purposes affecting only the inhabitants of the particular political subdivision, such as the administration of local government. Neither the General Assembly nor any state agency shall mandate how the funds are to be used.

History.

Enact. Acts 2005, ch. 168, § 112, effective January 1, 2006.

NOTES TO DECISIONS

Cited in:

Directv, Inc. v. Treesh, 487 F.3d 471, 2007 FED App. 0201P, 2007 U.S. App. LEXIS 12504 (6th Cir. Ky. 2007).

136.650. Required participation in funds — Computation of amounts — Designated monthly hold harmless amount.

(1)(a) Every political subdivision, school district, and special district shall participate in the gross revenues and excise tax fund and the state baseline and local growth fund.

(b) On or before December 1, 2005, each political subdivision shall certify to the department on a prescribed form the amount of collections it received from the local franchise fees collected from communications service and multichannel video programming service providers and other fees collected to

fund public educational and government access programming during the period between July 1, 2004, and June 30, 2005. By certifying its participation under this subsection, each political subdivision:

1. Consents to the hearing process provided in KRS 136.658; and

2. Agrees to relinquish its right to enforce the portion of any contract or agreement that requires the payment of a franchise fee or tax on communications services and multichannel video programming services, regardless of whether the tax or fee is imposed on the provider or its customers.

(c) The amount of collections received by each political subdivision, school district, special district, and sheriff's department between July 1, 2004, and June 30, 2005, from the tax imposed by KRS 136.120 attributable to the franchise portion of the operating property, as noted in KRS 136.115, shall be calculated by the department from assessment data for calendar year 2004.

(2) The monthly portion of the gross revenues and excise tax fund that shall be distributed to political subdivisions, school districts and special districts under KRS 136.652 shall be computed as follows:

(a) Each political subdivision, school district and special district shall be assigned a percentage based on the amount of its collections certified under subsection (1) of this section as a ratio of the total certified amount of collections of all parties participating in the fund. This percentage shall be known as the "local historical percentage." The portion of the sheriff departments' certified collections identified in subsection (1) of this section from the tax imposed under KRS 136.120 attributable to the franchise portion of the operating property, as noted in KRS 136.115, that was imposed by county governments shall be added to each county's reported collections to determine its local historical percentage;

(b) The sheriff departments' collections certified under subsection (1) of this section that are retained by the sheriff departments as their fee for collecting the taxes shall be the sheriff departments' fixed hold-harmless amount;

(c) Three million thirty-four thousand dollars ($3,034,000), which represents one-twelfth ($^1/_{12}$) of the total potential collections, shall be designated as the "monthly hold-harmless amount"; and

(d) Each political subdivision's, school district's, and special district's local historical percentage shall be multiplied by the monthly hold-harmless amount to determine its monthly distribution from the fund.

(3) If during the period between June 30, 2005, and December 31, 2005, any political subdivision had a substantial change in its base revenue by enacting or modifying the rate of a local franchise fee prior to June 30, 2005, the political subdivision may request the department to determine its certified collection amount.

(4) If any political subdivision, school district, special district, or sheriff's department believes that the data used to determine its certified amount of collections are inaccurate, the political subdivision, school district, special district, or sheriff's department may request a redetermination by the oversight committee established by KRS 136.658. A redetermination shall be effective prospectively beginning with the next distribution cycle occurring ninety (90) days after the matter is finally settled.

History.

Enact. Acts 2005, ch. 168, § 113, effective January 1, 2006; 2006, ch. 6, § 5, effective March 6, 2006.

Legislative Research Commission Notes.

(3/6/2006). 2006 Ky. Acts ch. 6, sec. 27, provides that this section applies retroactively to December 1, 2005.

(1/1/2006). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

NOTES TO DECISIONS

Cited in:

Directv, Inc. v. Treesh, 487 F.3d 471, 2007 FED App. 0201P, 2007 U.S. App. LEXIS 12504 (6th Cir. Ky. 2007).

136.652. Distribution — Administrative costs — Monthly hold harmless amounts.

Money in the gross revenues and excise tax fund shall be distributed monthly as follows:

(1) One percent (1%) shall be deposited in a trust and agency account created in the State Treasury to be used by the department for administration costs associated with the implementation, collection, and distribution of the tax imposed by KRS 136.604 and 136.616.

(2) After the distribution required under subsection (1) of this section, the department shall distribute to each political subdivision, school district and special district the applicable monthly hold-harmless amount as calculated under KRS 136.650. In addition, the department shall distribute one-twelfth ($^1/_{12}$) of the sheriff department's fixed hold-harmless amount as defined in KRS 136.650(2)(b). For tax collections received in January and February of 2006, the department shall make the distribution by April 25, 2006. For all other periods, the department shall make distribution by the twenty-fifth day of the next calendar month following the tax receipts.

(3) After the distribution required by subsection (2) of this section, the department shall deposit one million two hundred fifty thousand dollars ($1,250,000) in the state general fund. This amount shall be adjusted on a prospective basis after the collection of the first twelve (12) months of tax receipts from the taxes imposed by KRS 136.604 and 136.616 to equal the average monthly tax receipts attributable to the taxation of satellite broadcast and wireless cable services under KRS 136.604 and 136.616. The amount shall then become the fixed amount distributed to the general fund.

(4) Money remaining in the gross revenues and excise tax fund after the distribution required by subsection (3) of this section shall be transferred to the state baseline and local growth fund established in KRS 136.648.

History.
Enact. Acts 2005, ch. 168, § 114, effective January 1, 2006.

Legislative Research Commission Notes.
(1/1/2006). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, F, 7, (1) at 2084.

136.654. Determination of distributions — State baseline and local growth fund.

(1) On or before December 1, 2005, and every January 31 thereafter, each participating political subdivision shall certify to the department its total tax receipts for the prior fiscal year. This amount shall be used to calculate the percentage of each political subdivision's portion of the account labeled under its county's name within the state baseline and local growth fund as described in subsection (3)(b) of this section. "Total tax receipts" shall not include revenue from nontax sources, such as intergovernmental revenues, charges for services, tuition, interfund transfers, interest and investment income, rental income, income from asset sales, beginning balances, or revenue from licenses and permits. "Total tax receipts" shall include the following:

(a) Real estate and tangible personal property taxes, including delinquent tax receipts;

(b) Franchise fees or taxes on utilities, other than multichannel video programming service and communications service utilities;

(c) Occupational and business license fees or taxes, including insurance premium taxes, net profits taxes, gross receipts taxes, payroll taxes, transient room taxes, restaurant taxes, and bank deposit taxes;

(d) Telephone emergency surcharge fees;

(e) Gross revenues tax hold-harmless and growth fund receipts; and

(f) Payments in lieu of taxes.

(2) On or before every January 31, each participating school district and special district shall certify to the department the amount of its prior year tax assessments under KRS Chapter 132 on companies' providing of multichannel video programming service and communications service. This amount shall be used to calculate the percentage of each school district's and special district's portion of the account labeled under its county's name within the state baseline and local growth fund as described in subsection (3)(b) of this section. For tax years with no assessments under KRS Chapter 132, the local historical percentage as defined in KRS 136.650 shall be used.

(3) Each political subdivision's, school district's, and special district's monthly portion of the state baseline and local growth fund shall be computed as follows:

(a) A "local growth portion" shall be determined as an amount of money that when added to the hold-harmless amount identified in KRS 136.650(2)(c) equals fifteen and six-tenths percent (15.6%) of the total amount deposited in the gross revenues and excise tax fund, minus the amount of distributions made under KRS 136.652(1) and (3).

(b) The local growth portion shall be accounted for by county within the state baseline and local growth fund based on the ratio of the gross revenues tax collected on multichannel video programming services and communications services provided in each county to the total statewide collections of the gross revenues tax. The county-by-county allotment of the local growth portion shall be known as the "county growth portion."

(c) The county growth portion shall be further segregated into the political subdivision allotment, the school district allotment, and the special district allotment based upon the ratio of each allotment category's total historical collections as calculated under KRS 136.650(2) to the total overall county historical collections as calculated from the certified collections under KRS 136.650(1).

(d) On or before April 25, 2006, each political subdivision's share of the political subdivision allotment shall be determined by multiplying the political subdivision allotment of the local growth portion as determined in paragraph (b) of this subsection by the percentage calculated in subsection (1) of this section.

(e) On or before April 25, 2006, each school district's share of the school district allotment shall be determined by multiplying the school district allotment as determined in paragraph (c) of this subsection by the percentage calculated in subsection (2) of this section.

(f) On or before April 25, 2006, each special district's share of the special district allotment shall be determined by multiplying the special district allotment as determined in paragraph (c) of this subsection by the percentage calculated in subsection (2) of this section.

(g) The respective allotment share for each participating political subdivision, school district, and special district shall be adjusted every July 1 following the year 2006, to account for any change in its percentages based on annual certifications required in subsections (1) and (2) of this section.

(h) Notwithstanding the annual certifications required in subsection (1) of this section, following the year 2006, political subdivisions may choose to determine their respective shares of the political subdivision allotment pursuant to an interlocal agreement as authorized under KRS 65.240. Activation or termination of an interlocal agreement shall comply with the notification requirements of subsection (1) of this section and shall become effective the following July 1. The terms of a timely interlocal agreement governing the distribution of a political subdivision allotment shall remain in effect until its timely termination by one of the participating political subdivisions.

History.
Enact. Acts 2005, ch. 168, § 115, effective January 1, 2006.

Legislative Research Commission Notes.
(1/1/2006). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory

references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

136.656. Distributions — County growth portion — State baseline portion.

All money deposited in the state baseline and local growth fund created under KRS 136.648 shall be distributed monthly, according to the same schedule for distribution from the gross revenues and excise tax fund, as follows:

(1) The county growth portion shall be distributed in accordance with the formulas established in KRS 136.654.

(2) After the distribution required under subsection (1) of this section, the remaining balance shall be deposited in the general fund. This amount shall be known as the "state baseline portion," which shall represent, if sufficient funds are available, eighty-four and four-tenths percent (84.4%) of the total amount deposited in the gross revenues and excise tax fund, minus the amount of distributions made under KRS 136.652(1) and (3).

History.

Enact. Acts 2005, ch. 168, § 116, effective January 1, 2006.

136.658. Local Distribution Fund Oversight Committee — Creation and duties.

(1) The Local Distribution Fund Oversight Committee is hereby created and administratively attached to and staffed by the department. The oversight committee shall consist of nine (9) members appointed by the Governor and shall be representative of local government and state government officials. The Governor shall receive recommendations for four (4) members each from the Kentucky Association of Counties and the Kentucky League of Cities from which the Governor shall select two (2) members each. The Governor shall receive recommendations for two (2) members each from the Kentucky School Board Association, the Kentucky Superintendents Association, and the Kentucky School Administrators Association from which the Governor shall select one (1) member each. One (1) member shall be appointed by the Governor to represent the interests of special districts other than school districts. The remaining member shall be the commissioner of the Department for Local Government, who shall serve as chairperson of the oversight committee. The members shall serve for a term of three (3) years. Five (5) members of the oversight committee shall constitute a quorum. A member may be removed for cause in accordance with procedures established by the oversight committee and shall serve without salary but shall be reimbursed for expenses in the same manner as state employees. Any vacancy occurring on the oversight committee shall be filled by the Governor for the unexpired term.

(2) The duties of the oversight committee shall be:

(a) To monitor the department's implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund and to report its findings to the commissioner of the department; and

(b) To act as a finder of fact for the commissioner of the department in disputes in and between political subdivisions, school districts, special districts, and sheriff departments, and between political subdivisions, school districts, special districts, and sheriff departments, and the department regarding the implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund.

(3) The department shall provide the oversight committee with an annual report reflecting the amounts distributed to each participating political subdivision, school district, special district, or sheriff department.

(4) Any political subdivision, school district, special district, or sheriff department may file a complaint and request a hearing with the oversight committee on a form prescribed by the committee. The oversight committee shall give notice to any political subdivision, school district, special district, or sheriff department that may be affected by the complaint. Any political subdivision, school district, special district, or sheriff department intending to respond to the complaint shall do so in writing within thirty (30) days of notice of the complaint.

(5) In conducting its business:

(a) The oversight committee shall give due notice of the times and places of its hearings;

(b) The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses;

(c) The oversight committee shall act by majority vote;

(d) The oversight committee shall adopt and publish rules of procedure and practice regarding its hearings; and

(e) The oversight committee shall make written findings and recommendations to the commissioner of the department.

(6) The commissioner of the department shall review the findings and recommendations of the oversight committee and issue a final ruling within sixty (60) days of receipt of the recommendations.

(7) The parties in the dispute shall have the rights and duties to appeal any final ruling to the Board of Tax Appeals under KRS 49.220.

(8) Nothing contained in this section shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the hearing process.

History.

Enact. Acts 2005, ch. 168, § 117, effective January 1, 2006; 2007, ch. 47, § 65, effective June 26, 2007; 2010, ch. 117, § 71, effective July 15, 2010; 2017 ch. 74, § 79, effective June 29, 2017; 2021 ch. 185, § 71, effective June 29, 2021.

PENALTIES

136.990. Penalties.

(1) Any corporation that fails to pay its taxes, penalty, and interest as provided in subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty dollars ($50) for each day the same remains unpaid, to

be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction.

(2) Any public service corporation, or officer thereof, that willfully fails or refuses to make reports as required by KRS 136.130 and 136.140 shall be fined one thousand dollars ($1,000), and fifty dollars ($50) for each day the reports are not made after April 30 of each year.

(3) Any superintendent of schools or county clerk who fails to report as required by KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each offense.

(4) Any company or association that fails or refuses to return the statement or pay the taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars ($1,000) for each offense.

(5) Any insurance company that fails or refuses for thirty (30) days to return the statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS 136.330 or 136.340, shall forfeit one hundred dollars ($100) for each offense. The commissioner of insurance shall revoke the authority of the company or its agents to do business in this state, and shall publish the revocation pursuant to KRS Chapter 424.

(6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(7) Where no other penalty is mentioned for failing to do an act required, or for doing an act forbidden by this chapter, the penalty shall be not less than ten dollars ($10) nor more than five hundred dollars ($500).

(8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under subsections (4) to (6) of this section.

(9) Any person who violates any of the provisions of KRS 136.073 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.

(10) If the tax imposed by KRS 136.073, whether assessed by the department or the taxpayer, or any installment or portion of the tax, is not paid on or before the date prescribed for its payment, interest shall be collected upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department.

(11) Any provider who violates the provisions of KRS 136.616(3) shall be subject to a penalty of twenty-five dollars ($25) per purchaser offense, not to exceed ten thousand dollars ($10,000) per month.

History.

4019a-15, 4029, 4087, 4091, 4099, 4103, 4230, 4231, 4232, 4236, 4237, 4281j-7; Acts 1958, ch. 126, § 12; 1962, ch. 94, § 9; 1962, ch. 210, § 23; 1966, ch. 255, § 133; 1976, ch. 155, § 6; 1982, ch. 452, § 12, effective July 1, 1982; 1986, ch. 496, § 10, effective August 1, 1986; 1990, ch. 163, § 6, effective July 13, 1990; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 359, effective July 13, 1990; 1992, ch. 338, § 20, effective July 14, 1992; 1992, ch. 403, § 6, effective July 14, 1992; 2005, ch. 85, § 339, effective June 20, 2005; 2006, ch. 6, § 6, effective March 6, 2006; 2010, ch. 24, § 102, effective July 15, 2010; 2019 ch. 151, § 18, effective June 27, 2019.

Compiler's Notes.

Section 17 of Acts 1976, ch. 155, provided that the provisions of the 1976 amendment to this section should apply to taxable years beginning after December 31, 1975.

Section 26 of Acts 1992, ch. 403, provides: "The provisions of this Act shall become effective for all tax returns or reports due on or after August 1, 1992 and all taxes assessed by the cabinet on or after December 31, 1992."

Legislative Research Commission Notes.

(6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 18 of that Act apply to transactions occurring on or after July 1, 2019.

(4/27/2018). KRS 136.070 was repealed in 2018 Ky. Acts chs. 171 and 207, but a conforming amendment was not made to this statute to address the reference it contains to KRS 136.070. The Reviser of Statutes has determined that making such a conforming change during the 2018 codification exceeds the permissible correction of manifest clerical or typographical errors under KRS 7.136(1)(h). Therefore, the reference to KRS 136.070 remains unchanged and would have to be changed pursuant to future legislative action.

(3/6/2006). 2006 Ky. Acts ch. 6, sec. 26, provides that this section applies retroactively to January 1, 2006.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Venue.
3. Failure to Make Report.
4. Collection of Fine.

1. Constitutionality.

Direct-collection clause of KRS 136.616 referred to non-expressive conduct in connection with collection of a state tax, not speech, and was beyond the protection of the First Amendment. So long as the direct-collection prong could stay on the books, so could the penalty provision, KRS 136.990(11), to which it applied. BellSouth Telecomms., Inc. v. Farris, 542 F.3d 499, 2008 FED App. 0343P, 2008 U.S. App. LEXIS 19170 (6th Cir. Ky. 2008).

2. Venue.

Penal action to recover fine for failing to report as required by KRS 136.130 must be brought in Franklin County. Commonwealth v. Morrell Refrigerator Co., 129 Ky. 738, 112 S.W. 860, 1908 Ky. LEXIS 216 (Ky. 1908).

3. Failure to Make Report.

Corporation which failed to make required report by KRS 136.130 because it did not receive from Department of Revenue (now Revenue Cabinet) blank form which department (now cabinet) had customarily mailed to corporations in previous years was liable to conviction for "wilfully" failing to report. Nashville, C. & S. L. R. Co. v. Commonwealth, 160 Ky. 50, 169 S.W. 511, 1914 Ky. LEXIS 394 (Ky. 1914).

Where representative of Department of Revenue (now Revenue Cabinet) required corporation to include in its report certain information that could not be obtained before date on which report was required to be made, corporation could not be convicted of wilfully failing to report under subsection (3) of this section. United Fuel Gas Co. v. Commonwealth, 171 Ky. 525, 188 S.W. 660, 1916 Ky. LEXIS 400 (Ky. 1916).

Where officer of corporation whose duty it was to file report honestly believed that subordinate officer had filed report, which had been made ready for filing, and report was filed as soon as omission was discovered, corporation could not be convicted of wilful failure to report. Danville Light, Power &

Traction Co. v. Commonwealth, 191 Ky. 270, 230 S.W. 38, 1921 Ky. LEXIS 302 (Ky. 1921).

Mere failure to file the report required by KRS 136.130 does not necessarily constitute "wilful" failure within the meaning of subsection (3) of this section. Danville Light, Power & Traction Co. v. Commonwealth, 191 Ky. 270, 230 S.W. 38, 1921 Ky. LEXIS 302 (Ky. 1921).

4. Collection of Fine.

Fine imposed by subsection (3) of this section may be recovered by penal action. Commonwealth v. Morrell Refrigerator Co., 129 Ky. 738, 112 S.W. 860, 1908 Ky. LEXIS 216 (Ky. 1908).

The fine imposed by subsection (3) of this section could not be collected in a civil suit by a revenue agent, it being collectible only after criminal conviction. Louisville Water Co. v. Commonwealth, 132 Ky. 311, 116 S.W. 711, 1909 Ky. LEXIS 115 (Ky. 1909).

Cited in:

Coleman v. Western & Southern Life Ins. Co., 264 Ky. 210, 94 S.W.2d 601, 1936 Ky. LEXIS 295 (Ky. 1936).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Moreland, Criminal Jurisdiction of Kentucky Courts: A Tentative Codification, 47 Ky. L.J. 7 (1958).

Kentucky Law Survey, Whiteside and Buechel, Kentucky Taxation, 65 Ky. L.J. 425 (1976-77).

CHAPTER 138
EXCISE TAXES

Cigarettes.

Section

138.208. Replacement tax — Total tax for school districts, fire districts, and emergency service boards — Annual assessment — Reduction — Distribution — Administrative regulations.

Motor Vehicle Usage.

138.470. Exemptions from tax. [Effective until January 1, 2028].

138.470. Exemptions from tax. [Effective January 1, 2028].

CIGARETTES

138.208. Replacement tax — Total tax for school districts, fire districts, and emergency service boards — Annual assessment — Reduction — Distribution — Administrative regulations.

(1) As used in this section:

(a) "Bonded warehouse or premises" does not include a revenue bond-financed warehouse as defined in KRS 132.140 for periods prior to the 2043 calendar year;

(b) "Local jurisdiction" means:

1. A school district;

2. A fire protection district or subdistrict authorized to levy the ad valorem tax permitted by KRS 75.015 and 75.040 and that provides fire or other emergency services; and

3. An area served by an emergency services board that levies the ad valorem tax permitted by KRS 75A.050 and provides fire or other emergency services; and

(c) "Taxpayer" means the owner, proprietor, or custodian of one (1) or more bonded warehouses or premises.

(2) Beginning with the 2026 calendar year and for each subsequent calendar year thereafter, in addition to any ad valorem taxes collected under KRS 132.150, there is imposed a replacement tax on every taxpayer with a bonded warehouse or premises located in a local jurisdiction that collected ad valorem tax during calendar year 2025.

(3) The total replacement tax for each school district shall be:

(a) An amount that is not less than zero; and

(b) The result from the following calculation:

1. The ad valorem tax under KRS 132.150 on distilled spirits stored or aging in a bonded warehouse or premises collected by or on behalf of the school district during calendar year 2023;

2. Minus the amount of the ad valorem tax under KRS 132.150 on distilled spirits stored or aging in a bonded warehouse or premises collected by or on behalf of the school district for the applicable calendar year; and

3. Minus the amount by which the Support Education Excellence in Kentucky program under KRS 157.310 to 157.440 final calculation for the school year ending during the applicable calendar year exceeds the Support Education Excellence in Kentucky program final calculation for the 2022-2023 school year, as determined by the Department of Education under KRS 157.410(3). For purposes of the Support Education Excellence in Kentucky final calculation under this subparagraph, the average daily attendance and equalization ratio for the school year ending during the applicable calendar year shall not be less than those for the 2022-2023 school year final calculation.

(4) The total replacement tax for each fire district or emergency services board shall be:

(a) An amount that is not less than zero; and

(b) The result from the following calculation:

1. The ad valorem tax under KRS 132.150 on distilled spirits stored or aging in a bonded warehouse or premises collected by or on behalf of the fire district or emergency services board during calendar year 2025;

2. Minus the amount of the ad valorem tax under KRS 132.150 on distilled spirits stored or aging in a bonded warehouse or premises collected by or on behalf of the district or board for the applicable calendar year.

(5)(a) Each year the department shall assess taxpayers the replacement tax for the preceding calendar year in proportion to the number of barrels of distilled spirits stored and aging at their bonded warehouse or premises in the local jurisdiction on January 1 of that preceding calendar year.

(b) If a business-wide reduction or extraordinary event occurs, any taxpayer may apply to the secre-

tary of the Finance and Administration Cabinet for a reduction in the taxpayer's replacement tax assessment.

(c) For purposes of this subsection:

1. "Business-wide reduction" means that the volume of distilled spirits distilled and barreled by all taxpayers at all business locations in this state during the applicable calendar year is less than the volume of distilled spirits distilled and barreled at all business locations in this state in calendar year 2025; and

2. "Extraordinary event" means a pandemic, epidemic, restrictive governmental laws or regulations enacted after March 31, 2023, riots, insurrection, war, acts of a government authority imposed after March 31, 2023, court orders issued after March 31, 2023, a natural disaster, a decrease in sales in excess of ten percent (10%), or other reason of a like nature determined by the secretary not to be the fault of the taxpayer and any other items determined by the secretary to be beyond the taxpayer's reasonable control, which prevents the taxpayer from distilling or barreling distilled spirits.

(6) All revenues received by the department from the tax imposed by this section shall be distributed to the local jurisdiction for which the tax was levied within sixty (60) days from the date received.

(7) The department shall administer the replacement tax levied by this section and, in conjunction or consultation with any agency representing a local jurisdiction, may promulgate administrative regulations to implement this section.

History.

2023 ch. 148, § 2, effective March 31, 2023; 2025 ch. 98, § 7, effective June 27, 2025.

MOTOR VEHICLE USAGE

138.470. Exemptions from tax. [Effective until January 1, 2028]

There is expressly exempted from the tax imposed by KRS 138.460:

(1)(a) Motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions; and

(b) The gross rental or lease charges for the rental or lease of a motor vehicle paid by the United States, or the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles titled or registered to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously titled in Kentucky on or after July 1, 2005, or previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. The motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a corporation or limited liability company to a proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved, if the transferor and the transferee are the same business entity except for a change in legal form;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(12) The interest of a partner in a motor vehicle when other interests are transferred to him;

(13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(6). The repossessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle;

(14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only;

(15) Motor carriers operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281;

(16)(a)1. Motor vehicles registered under KRS 186.050 that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; and

2. Farm trucks registered under KRS 186.050(4) that have a declared gross vehicle

weight with any towed unit of forty-four thousand and one (44,001) pounds or greater;

(b) To be eligible for the exemption established in paragraph (a) of this subsection, motor vehicles shall be registered at the appropriate range for the declared gross weight of the vehicle established in KRS 186.050(3)(b) and shall be prohibited from registering at a higher weight range. If a motor vehicle is initially registered in one (1) declared gross weight range and subsequently is registered at a declared gross weight range lower than forty-four thousand and one (44,001) pounds, the person registering the vehicle shall be required to pay the county clerk the usage tax due on the vehicle unless the person can provide written proof to the clerk that the tax has been previously paid;

(17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a beneficiary of the trust, if a direct transfer from the grantor of the trust to all individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;

(18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679;

(19) Motor vehicles transferred from a trustee of a trust to another person if:

(a) The grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; and

(b) A direct transfer from the grantor of the trust to the person would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section; and

(20) Motor vehicles under a manufacturer's statement of origin in possession of a licensed new motor vehicle dealer that are titled and transferred to a licensed used motor vehicle dealer and held for sale.

History.

4281i-3: amend. Acts 1950, ch. 63, § 59; 1956 (2nd Ex. Sess.), ch. 5, § 4A; 1960, ch. 5, Art. II, § 2; 1968, ch. 40, part III, § 3; 1970, ch. 13, § 1; 1972, ch. 84, part IV, § 1; 1972, ch. 184, § 1; 1974, ch. 123, § 1; 1976, ch. 155, § 4; 1980, ch. 144, § 1, effective July 15, 1980; 1986, ch. 118, § 105, effective July 1, 1987; 1990, ch. 187, § 3, effective July 13, 1990; 1992, ch. 342, § 1, effective July 14, 1992; 1994, ch. 54, § 2, effective July 15, 1994; 1998, ch. 290, § 1, effective July 15, 1998; 2003, ch. 103, § 4, effective October 1, 2003; 2003, ch. 124, § 39, effective October 1, 2003; 2005, ch. 173, Pt. XIX, § 1, effective August 1, 2005; 2006, ch. 6, § 12, effective March 6, 2006; 2011, ch. 53, § 1, effective August 1, 2011; 2014, ch. 83, § 4, effective July 15, 2014; 2015 ch. 88, § 1, effective June 24, 2015; 2021 ch. 156, § 6, effective July 1, 2021.

Compiler's Notes.

Section 2 of Acts 1998, ch. 290, provided that the 1998 amendments to this section "shall apply for motor vehicles transferred after July 31, 1998."

Legislative Research Commission Notes.

(1/1/2028). This statute was amended by 2026 Ky. Acts chs. 134 and 135, which do not appear to be in conflict and have been codified together.

(3/6/2006). 2006 Ky. Acts ch. 6, sec. 29, provides that this section applies retroactively to July 1, 2005.

(6/24/2003). 2000 Ky. Acts ch. 408, sec. 178, renumbered the former subsection (4) of KRS 186.045 as subsection (3), but that Act failed to include a conforming amendment to change the reference to that subsection in subsection (13) of this statute. Under KRS 7.136(1)(e), that change has now been made.

NOTES TO DECISIONS

Analysis

1. Municipalities.
2. Religious Institutions.
3. Commercial Motor Vehicles.

1. Municipalities.

Fourth-class city held exempt from the payment of use taxes on automobiles purchased by the city for municipal use. Thomas v. Elizabethtown, 403 S.W.2d 269, 1965 Ky. LEXIS 8 (Ky. 1965) (decided under prior law).

2. Religious Institutions.

This section exempted religious institutions from the tax imposed by subsection (2) of KRS 138.460. Gray v. Methodist Episcopal Church, etc., 272 Ky. 646, 114 S.W.2d 1141, 1938 Ky. LEXIS 180 (Ky. 1938) (decided under prior law).

3. Commercial Motor Vehicles.

This section did not exempt common carriers of passengers by motor bus from usage tax. Furste v. Dixie Traction Co., 286 Ky. 336, 150 S.W.2d 913, 1941 Ky. LEXIS 265 (Ky. 1941) (decided under prior law).

Cited in:

George v. Scent, 346 S.W.2d 784, 1961 Ky. LEXIS 341 (Ky. 1961).

OPINIONS OF ATTORNEY GENERAL.

Subsection (1) of this section does not exempt a motor vehicle sold to a pastor in his capacity as a private individual for his personal use. OAG 60-181.

The LKLP Council, a private nonprofit corporation whose general objective is the social, individual, and economic growth of Leslie, Knott, Letcher and Perry Counties, is not a governmental agency as defined in this section and is not entitled to an official license tag. OAG 67-257.

The motor vehicle usage tax was due on the transfer of a car from father to son upon the son's reaching the age of 21. OAG 68-326.

Since the Council of State Governments is a public institution it is exempted by this section from the motor vehicle usage tax. OAG 69-49.

A county humane society was an institution of public charity and as such was entitled to exemption from the motor vehicle usage tax on its animal ambulance. OAG 69-535.

An automobile owned by a church to transport children to a music education program was not exempt from the motor vehicle usage tax. OAG 71-233.

A county water district is a political subdivision of the commonwealth of Kentucky and is entitled to an exemption from the motor vehicle usage tax when its vehicles are presented for registration with the county clerk. OAG 71-376.

When the Kentucky Inspection Bureau was consolidated with Insurance Services Offices and that agency acquired all of the assets and liabilities of the Kentucky Inspection Bureau, the transfer of vehicles registered in the name of Kentucky Inspection Bureau to Insurance Services Offices

could not be exempted from the motor vehicle usage tax under either subsection (7) or (8) of this section. OAG 72-71.

A fire truck owned by a nonstock, nonprofit corporation whose purpose is to offer fire protection to citizens and their property in Owen County would be considered engaged primarily in charitable activities and exempted from paying the usage tax provided in subsection (2) of this section. OAG 73-145.

Since the federal Soldiers and Sailors Civil Relief Act exempts servicemen from motor vehicle usage tax without any qualification, the 1974 amendment to subsection (4) of this section which sought to limit such exemption only to motor vehicles acquired from dealers licensed or registered in Kentucky was unconstitutional. OAG 74-319.

The Grant County REACT organization is not entitled to exemption from the motor vehicle usage tax and is not entitled to official Kentucky motor vehicle license tags. OAG 77-36, 1977 Ky. AG LEXIS 734.

A motor vehicle leased to a fourth class city by an automobile dealer is subject to the motor vehicle usage tax imposed by KRS 138.460 so long as title remains in the automobile dealer. OAG 77-752, 1977 Ky. AG LEXIS 84.

The Department of Revenue's requirement, pursuant to subsection (8) of this section, that a transfer of a motor vehicle from a proprietorship to a corporation must take place on the same day the corporation is formed or a reasonable number of days thereafter is not in conflict with the statute. OAG 78-680, 1978 Ky. AG LEXIS 152.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Garrison, Martin, History of Kentucky Commercial Motor Vehicle Transportation Tax Legislation, 33 Ky. L.J. 3 (1944).

Article: The Tortuous History of Section 170 of the Kentucky Constitution: Has the Kentucky Supreme Court Finally and Conclusively Determined its Scope? , 57 U. Louisville L. Rev. 285, (2019).

138.470. Exemptions from tax. [Effective January 1, 2028]

There is expressly exempted from the tax imposed by KRS 138.460:

(1)(a) Motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions; and

(b) The gross rental or lease charges for the rental or lease of a motor vehicle paid by the United States, or the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles titled or registered to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously titled in Kentucky on or after July 1, 2005, or previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. The motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a corporation or limited liability company to a proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved, if the transferor and the transferee are the same business entity except for a change in legal form;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(12) The interest of a partner in a motor vehicle when other interests are transferred to him or her;

(13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(6). The repossessor shall hold the vehicle for resale only and not for personal use, unless he or she has previously paid the motor vehicle usage tax on the vehicle;

(14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only;

(15) Motor carriers operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281;

(16)(a)1. Motor vehicles registered under KRS 186.050 that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; and

2. Farm trucks registered under KRS 186.050(4) that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater.

(b) To be eligible for the exemption established in paragraph (a) of this subsection, motor vehicles

shall be registered at the appropriate range for the declared gross weight of the vehicle established in KRS 186.050(3)(b) and shall be prohibited from registering at a higher weight range. If a motor vehicle is initially registered in one (1) declared gross weight range and subsequently is registered at a declared gross weight range lower than forty-four thousand and one (44,001) pounds, the person registering the vehicle shall be required to pay the county clerk the usage tax due on the vehicle unless the person can provide written proof to the clerk that the tax has been previously paid;

(17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a beneficiary of the trust, if a direct transfer from the grantor of the trust to all individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;

(18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679;

(19) Motor vehicles transferred from a trustee of a trust to another person if:

(a) The grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; and

(b) A direct transfer from the grantor of the trust to the person would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;

(20) Motor vehicles under a manufacturer's statement of origin in possession of a licensed new motor vehicle dealer that are titled and transferred to a licensed used motor vehicle dealer and held for sale; and

(21) Motor vehicles transferred under KRS 186A.037.

History.

4281i-3: amend. Acts 1950, ch. 63, § 59; 1956 (2nd Ex. Sess.), ch. 5, § 4A; 1960, ch. 5, Art. II, § 2; 1968, ch. 40, part III, § 3; 1970, ch. 13, § 1; 1972, ch. 84, part IV, § 1; 1972, ch. 184, § 1; 1974, ch. 123, § 1; 1976, ch. 155, § 4; 1980, ch. 144, § 1, effective July 15, 1980; 1986, ch. 118, § 105, effective July 1, 1987; 1990, ch. 187, § 3, effective July 13, 1990; 1992, ch. 342, § 1, effective July 14, 1992; 1994, ch. 54, § 2, effective July 15, 1994; 1998, ch. 290, § 1, effective July 15, 1998; 2003, ch. 103, § 4, effective October 1, 2003; 2003, ch. 124, § 39, effective October 1, 2003; 2005, ch. 173, Pt. XIX, § 1, effective August 1, 2005; 2006, ch. 6, § 12, effective March 6, 2006; 2011, ch. 53, § 1, effective August 1, 2011; 2014, ch. 83, § 4, effective July 15, 2014; 2015 ch. 88, § 1, effective June 24, 2015; 2021 ch. 156, § 6, effective July 1, 2021; 2026 ch. 135, § 45, effective January 1, 2028; 2026 ch. 134, § 125, effective January 1, 2028.

CHAPTER 139
SALES AND USE TAXES

Exemptions.

Section
139.496. Exemption of certain sales.
139.497. Exemption for sales by schools, school-sponsored clubs and organizations or affiliated groups, certain nonprofit educational youth programs, and federally chartered education-related corporation at annual national convention held in state.

EXEMPTIONS

139.496. Exemption of certain sales.

(1) The taxes imposed in this chapter do not apply to the first one thousand dollars ($1,000) of sales made in any calendar year by individuals not engaged in the business of selling. This exemption is limited to garage or yard sales of household items by an individual or family which are in no way associated with or related to the operation of a business.

(2) The exemption does not apply to activities in which all or substantially all the household goods of a person are offered for sale.

History.

Enact. Acts 1976, ch. 77, part III, § 3, effective July 1, 1976; 1984, ch. 331, § 2, effective July 13, 1984; 1990, ch. 476, Pt. V, § 360; 1990, ch. 476, Pt. VII A, § 624, effective July 1, 1990; 2019 ch. 151, § 30, effective June 27, 2019.

Legislative Research Commission Notes.

(6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 30 of that Act apply to transactions occurring on or after July 1, 2019.

(7/13/90) The amendment to this section contained in Section 624 of Acts ch. 476 prevails over its repeal and reenactment in Section 360 of that Act, pursuant to Section 353(1) of the Act.

OPINIONS OF ATTORNEY GENERAL.

If a church sponsors activities in connection with a fund drive but is not conducting a regular selling activity in competition with private businesses, the first $500 of such sales are exempt from sales tax. OAG 78-36, 1978 Ky. AG LEXIS 721.

Exempt institutions regularly engaged in a selling activity are required to hold a sales and use tax permit, file returns and pay the tax due on gross receipts. OAG 78-37, 1978 Ky. AG LEXIS 722.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Whiteside and Buechel, Kentucky Taxation, 65 Ky. L.J. 425 (1976-77).

Treatises

Lexis KY Tax P.I. 4,491 Sales to Non-Profit Organizations are exempt from sales tax on purchases with limitations.

139.497. Exemption for sales by schools, school-sponsored clubs and organizations or affiliated groups, certain nonprofit educational youth programs, and federally chartered education-related corporation at annual national convention held in state.

Notwithstanding any other provisions of this chapter, the taxes imposed herein do not apply to:

(1) Sales by elementary or secondary schools or nonprofit elementary or secondary school-sponsored clubs and organizations or any nonprofit, elementary, or secondary school-affiliated groups such as parent-teacher organizations and booster clubs, whose membership may be composed of individuals other than students, provided the net proceeds from the sales are used solely for the benefit of the elementary or secondary school or its students. Nontaxable sales shall include sales resulting from agreements or contracts entered into with resident or nonresident organizations to participate in fund-raising campaigns for a percentage of the gross receipts where students act as agents or salesmen for the organizations by selling or taking orders for the sale of tangible personal property, and no one shall be required to pay sales or use taxes on such sales;

(2) Sales made by nonprofit educational youth programs affiliated with a land grant university cooperative extension service, if the net proceeds from the sales are used solely for the benefit of the affiliated programs; or

(3)(a) Sales of tangible personal property made by a federally chartered corporation at the corporation's annual national convention held in the Commonwealth.

(b) As used in this subsection, "federally chartered corporation" means a corporation federally chartered under Title 36 of the United States Code and whose stated purpose is to serve students and former students of vocational agriculture in middle and secondary schools to develop character, train for useful citizenship, and foster patriotism.

(c) The exemption provided in this subsection applies to sales made on and after October 1, 2014, but before December 31, 2021.

History.

Enact. Acts 1984, ch. 331, § 1, effective July 13, 1984; 1986, ch. 167, § 1, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 361, effective July 13, 1990; 1998, ch. 80, § 1, effective July 15, 1998; 2014, ch. 103, § 1, effective July 15, 2014.

Compiler's Notes.

Former KRS 139.497 (Enact. Acts 1984, ch. 331, § 1, effective July 13, 1984; 1986, ch. 167, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 361, effective July 13, 1990.

CHAPTER 141
INCOME TAXES

Education Opportunity Account Program.

Section

141.500. Education Opportunity Account Program. (See LRC Note below).
141.502. Definitions for KRS 141.500 to 141.528. (See LRC Note below).
141.504. Uniform process for education opportunity account allocation — Qualifying expenses — Provision for eligible student in county with population of 90,000 or more — Duration of education opportunity account — Prioritization of funding — Restrictions. (See LRC Note below).
141.506. Application to establish an education opportunity account for eligible students — Renewal — Process to cease funding student account. (See LRC Note below).
141.508. Application for tax credit — Preliminary approval subject to annual tax credit cap — Taxpayer notification — Taxpayer contribution — Account-granting organization certification of contribution. (See LRC Note below).
141.510. Certification and renewal of certification of an account-granting organization — Application — Required information — Department certification. (See LRC Note below).
141.512. Minimal allocation of contributions required to education opportunity accounts by account-granting organization — Standard application process for establishment of student eligibility for an account — Transfer of funds from one account-granting organization to another — Donations. (See LRC Note below).
141.514. Administration of education opportunity account tax credit and cap — Required annual publications on department Web site. (See LRC Note below).
141.516. Audit of account-granting organization by department — Notice of violation — Revocation of certificate. (See LRC Note below).
141.518. Account-granting organization system of payment to education service providers — Payments to an education opportunity account — Approval of education service providers. (See LRC Note below).
141.520. Effect of Education Opportunity Account Program on education service provider — Authority of government entities. (See LRC Note below).
141.522. Education Opportunity Account Program tax credit — Cap on credit — Prioritization. (See LRC Note below).
141.524. Report by department on Education Opportunity Account Program. (See LRC Note below).
141.526. Standing for parents of eligible students. (See LRC Note below).
141.528. Short title for KRS 141.500 to 141.528. (See LRC Note below).
141.900. Definitions Applicable to Taxable Years Prior to January 1, 2018.
141.901. Allocation and Apportionment of Net Income for Corporations and Providers.

EDUCATION OPPORTUNITY ACCOUNT PROGRAM

141.500. Education Opportunity Account Program. (See LRC Note below)

There is hereby established the Education Opportunity Account Program, also known as the EOA program. The purpose of the EOA program is to give more flexibility and choices in education to Kentucky residents and to address disparities in educational options available to students.

History.

2021 ch. 167, § 5, effective June 29, 2021.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the

Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

NOTES TO DECISIONS

1. Unconstitutional.

Circuit court's holding that the Education Opportunity Account Act (EOA Act) was unconstitutional was proper because the EOA Act violated the proscription in Ky. Const. § 184 on the raising or collecting of sums for education other than in common schools. Commonwealth ex rel. Cameron v. Johnson, 658 S.W.3d 25, 2022 Ky. LEXIS 378 (Ky. 2022).

141.502. Definitions for KRS 141.500 to 141.528. (See LRC Note below)

As used in KRS 141.500 to 141.528:

(1) "Account-granting organization" or "AGO" means a nonprofit organization that complies with the requirements of KRS 141.500 to 141.528 and:

(a) Receives contributions, allocates funds, and administers EOAs; or

(b) Is an intermediary organization;

(2) "Contribution" means a donation in the form of cash or marketable securities that is eligible for the tax credit permitted by KRS 141.522;

(3) "Curriculum" means a complete course of study for a particular content area or grade level;

(4) "Education opportunity account" or "EOA" means the account to which funds are allocated by an AGO to the parent of an EOA student in order to pay for expenses to educate the EOA student pursuant to the requirements of KRS 141.500 to 141.528;

(5) "Education service provider" means a person or organization that receives payments from an EOA to provide educational materials and services to EOA students;

(6) "Eligible student" means a resident of Kentucky who:

(a) Is a member of a household with an annual household income at the time of initially applying for an EOA from an AGO under this section of not more than one hundred seventy-five percent (175%) of the amount of household income necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789;

(b) Has previously received an EOA from an AGO under this section; or

(c) Is a member of the household of an eligible student that currently has an EOA from an AGO under this section;

(7) "Eligible taxpayer" means an individual or business, including but not limited to a corporation, S corporation, partnership, limited liability company, or sole proprietorship subject to tax imposed under KRS 141.020, 141.040, or 141.0401;

(8) "EOA student" means an eligible student who is participating in the EOA program;

(9) "Income" has the same meaning as in the United States Department of Agriculture, Food and Nutrition Service, Child Nutrition Programs, Income Eligibility Guidelines, Federal Register Vol. 83, No. 89, published May 8, 2018, and as updated annually as authorized by 42 U.S.C. sec. 1758(b)(1)(A);

(10) "Intermediary organization" means a nonprofit organization that complies with the requirements of KRS 141.500 to 141.528 and receives contributions to fund AGOs; and

(11) "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an EOA student.

History.

2021 ch. 167, § 6, effective June 29, 2021.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.504. Uniform process for education opportunity account allocation — Qualifying expenses — Provision for eligible student in county with population of 90,000 or more — Duration of education opportunity account — Prioritization of funding — Restrictions. (See LRC Note below)

(1) Each AGO shall create a uniform process for determining the amount allocated to each eligible student's EOA with the following limitations:

(a) For eligible students that intend to use the funds in the EOA to pay tuition at a nonpublic school or tuition as described in KRS 158.120(2), the EOA funds shall not exceed the lesser of:

1. Their parents' demonstrated financial need as determined by an independent financial analysis performed by an organization that is:

a. Experienced in evaluating a student's need for financial aid; and

b. Included on the department's list of approved organizations as required by KRS 141.514(2)(a); or

2. The actual amount of tuition and required fees charged by the school to students who do not receive assistance under this program;

(b) For all other eligible students, the EOA funds shall not exceed the lesser of:

1. The expected cost of educational services to be provided during the succeeding school year; or

2. The Commonwealth's guaranteed SEEK base amount for the immediately preceding school year reduced by the percentage equal to one-fourth (1/4) of the percentage by which the applicant's household income exceeds the applicable federal reduced lunch household income threshold; and

(c) For students in the foster care system, the AGO shall assume that the student's parents have no income or ability to pay for educational services for the purposes of prioritizing the students and determining the amount of assistance provided under this program.

(2)(a) The funds in an EOA shall not be used for athletics or any associated fees and shall only be used to pay for the tuition and fee expenses permitted by paragraph (b) of this subsection and the following qualifying expenses if covered by the AGO and incurred for the purpose of educating an EOA student:

1. Tuition or fees to attend a prekindergarten to grade twelve (12) public school;
2. Tuition or fees for online learning programs;
3. Tutoring services provided by an individual or a tutoring facility;
4. Services contracted for and provided by a public school, including but not limited to individual classes and extracurricular activities and programs;
5. Textbooks, curriculum, or other instructional materials, including but not limited to any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
6. Computer hardware or other technological devices that are primarily used to help meet an EOA student's educational needs;
7. Educational software and applications;
8. School uniforms;
9. Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition or fees for preparatory courses for these;
10. Tuition or fees for summer education programs and specialized after-school education programs, excluding after-school childcare;
11. Tuition, fees, instructional materials, and examination fees at a career or technical school;
12. Educational services and therapies, including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies provided by a licensed professional;
13. Tuition and fees at an institution of higher education for dual credit courses; and
14. Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.

(b) In addition to the variety of education-related expenses for public and nonpublic schools in the Commonwealth as provided by paragraph (a) of this subsection, EOA students that are residents of counties with a population of ninety thousand (90,000) or more, as determined by the 2010 decennial report of the United States Census Bureau, shall be permitted to use funds received through the EOA program for tuition and fees to attend nonpublic schools, because students in these counties have access to substantial existing nonpublic school infrastructure and there is capacity in these counties to either grow existing tuition assistance programs or form new nonprofits from existing networks that can provide tuition assistance to students over the course of the pilot program. Pursuant to KRS 141.524, the General Assembly shall assess whether the purposes of the EOA program are being fulfilled.

(3) EOA funds shall not be refunded, rebated, or shared with a parent or EOA student in any manner. Any refund or rebate for materials or services purchased with EOA funds shall be credited directly to the student's EOA.

(4) Parents may make payments for the costs of educational materials and services not covered by the funds in their student's EOA, but personal deposits into an EOA shall not be permitted.

(5) Funds allocated to an EOA shall not constitute taxable income to the parent or the EOA student.

(6)(a) An EOA shall remain in force, unless the EOA is closed because of a substantial misuse of funds, and any unused funds shall roll over from quarter to quarter and from year to year until:

1. The parent withdraws the EOA student from the EOA program;
2. The EOA student receives a high school diploma or equivalency certificate; or
3. The end of the school year in which the student reaches twenty-one (21) years of age;

whichever occurs first.

(b) When an EOA is closed, any unused funds shall revert to the AGO that granted the EOA and be allocated by that AGO to fund other EOAs. If the AGO that granted the EOA is no longer operating, the funds shall be transferred to another AGO operating in good standing with the Commonwealth.

(7) An AGO shall first prioritize funding EOAs for students, their siblings, and foster children living in the same household who received an EOA in the previous academic year and then to first-time applicants in accordance with subsection (8) of this section.

(8) For first-time applicants, an AGO shall prioritize awarding EOAs to the applicants as follows:

(a) A majority of funds available for first-time applicants shall be reserved for students whose household income does not exceed that necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789. Within in this group of applicants, the funds shall be further prioritized to fund EOAs in the order of the applicants with the most demonstrated financial need; and

(b) The remaining unfunded first-time applicants shall be selected for funding based on a random lottery until all remaining funds are allocated to EOAs.

(9) An AGO may define and limit the services that the EOA funds may cover.

(10) An AGO shall not accept a contribution from an eligible taxpayer if the eligible taxpayer designates that the contribution shall be used to award an EOA to a particular student.

(11) Dependents of the AGO's board of directors, its staff, and its donors are ineligible to receive an EOA.

History.

2021 ch. 167, § 7, effective June 29, 2021.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the

Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.506. Application to establish an education opportunity account for eligible students — Renewal — Process to cease funding student account. (See LRC Note below)

(1) To establish an EOA for an eligible student, the parent shall submit an application to an AGO.

(2) The AGO shall approve an application for an EOA if:

(a) An AGO verifies that the student on whose behalf the parent is applying is an eligible student;

(b) Funds are available for the EOA; and

(c) The parent signs an agreement with the AGO:

1. To use the funds in the EOA only for the covered qualifying expenses;

2. Not to establish any other EOA for the eligible student with any other AGO;

3. To comply with the rules and requirements of the EOA program; and

4. Not to use EOA funds to cover the cost of educational materials or services if they are currently receiving the same types of materials or services through the school district in which the student is enrolled.

(3) The AGO shall annually renew a student's EOA if funds are available unless the student's family income has increased above two hundred fifty percent (250%) of the amount of household income necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789.

(4) In the event that an eligible student becomes ineligible for reasons other than fraud or misuse of funds, the AGO may cease funding for the student's EOA provided that:

(a) The AGO immediately suspends payment of additional funds into the student's EOA. For EOAs that have been open for at least one (1) full school year, the EOA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the EOA. When no funds remain in the student's EOA, the AGO may close the EOA;

(b) If a parent reapplies to the AGO and signs a new written agreement, payments into the student's existing EOA may resume if the EOA is still open and active. A new EOA may be established if the student's EOA was closed; and

(c) An AGO shall adopt policies to provide the least disruptive process possible for EOA students desiring to leave the EOA program.

History.

2021 ch. 167, § 8, effective June 29, 2021.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.508. Application for tax credit — Preliminary approval subject to annual tax credit cap — Taxpayer notification — Taxpayer contribution — Account-granting organization certification of contribution. (See LRC Note below)

(1) Prior to making a contribution to an AGO, the taxpayer or an AGO acting on behalf of the taxpayer shall apply to the department for preapproval of the tax credit permitted by KRS 141.522 in a manner prescribed by the department. Each application shall be submitted separately and shall provide the total amount of proposed contributions and the year or years in which the contributions will be made, whether the proposed contributions will be in the form of cash or marketable securities, and the name of the AGO to which the contributions will be made.

(2) Subject to the annual tax credit cap established by KRS 141.522, the department shall preliminarily approve the amount of tax credit within ten (10) business days of receipt of the application and shall notify the taxpayer and the AGO. The notification shall include the amount of the tax credit preliminarily approved, the name of the AGO to which contributions may be made, and any other information the department deems necessary.

(3) If a taxpayer applies or the AGO applies on behalf of the taxpayer for preapproval when no amount of tax credit remains for allocation, but a portion of the total amount of tax credit available is pending verification, the department shall notify the taxpayer and the AGO that the application is being held in abeyance and will be funded on a first-come, first-served basis or will be denied if all preapproved contributions are timely made.

(4)(a) The taxpayer shall make the preapproved contribution to the AGO no later than the earlier of:

1. Fifteen (15) business days following the date of the department's preapproval notice, excluding weekends and holidays; or

2. June 30 of the fiscal year of the preapproval.

(b) If the preapproved contribution is in the form of marketable securities, the AGO shall monetize the securities within five (5) business days of receipt, excluding weekends and holidays, and notify the department within ten (10) business days of the monetization of the securities. If the monetized value of the marketable securities is less than the amount of the proposed contribution reflected on the application, the taxpayer shall supplement the contribution with additional cash to equal the amount of contribution reflected on the application. The taxpayer shall not receive preapproval for a tax credit in excess of the amount of proposed contribution reflected on the application form.

(5)(a) The AGO shall certify to the department the name of the taxpayer, amount of the contribution made, and the date on which the contribution was made within ten (10) days of when the contribution has been made.

(b) Upon receipt of certification that the contribution has been made or the expiration of the ten (10) day period without certification, whichever occurs first, the department shall modify the amount of credit pending certification, the amount of credit allocated to taxpayers, and the remaining credit available for allocation, as applicable.

History.
2021 ch. 167, § 9, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.510. Certification and renewal of certification of an account-granting organization — Application — Required information — Department certification. (See LRC Note below)

(1) An organization that seeks to become an AGO shall apply for initial certification or renewal of certification from the department.

(2) An application for initial certification as an AGO shall include:

(a) A copy of the AGO's incorporation documents;

(b) A copy of the AGO's Internal Revenue Service determination letter as a Section 501(c)(3) not-for-profit organization;

(c) A description of the methodology the AGO will use to evaluate whether a student is eligible to establish an EOA;

(d) A description of the application process the AGO will use for parents and eligible students;

(e) A description of the methodology the AGO will use to establish, fund, and manage EOAs;

(f) A description of the process the AGO will use to approve education service providers;

(g) A description of how the AGO will inform parents of approved education service providers; and

(h) A description of the AGO's procedures for crediting refunds from an education service provider back to a student's EOA.

(3) An application for renewal of certification as an AGO shall include:

(a) The AGO's completed Internal Revenue Service Form 990, submitted no later than November 30 of the year before the academic year that the AGO intends to fund EOAs;

(b) A copy of any audit that may be required by the department; and

(c)1. An annual report that includes:

a. The number of applications the AGO received during the previous academic year, by county and by grade level;

b. The name and address of all students that received EOA funds from the AGO during the previous academic year;

c. When the AGO is an intermediary organization, the name and address of all AGOs that received funds from the intermediary organization during the last fiscal year;

d. The total number of EOAs the AGO maintains;

e. The amount of funds the AGO:

i. . Received to fund EOAs during the last fiscal year;

ii. Distributed into EOAs during the last fiscal year;

iii. Has remaining after the distribution into EOAs and any obligations to fund EOAs in the future;

iv. Spent on administrative expenses and an accounting thereof during the last fiscal year; and

v. Spent on fees to private financial management firms or other organizations to maintain records and process transactions of the EOAs;

f. When the AGO is an intermediary organization, the amount of funds the intermediary organization:

i. Received to distribute to AGOs during the last fiscal year;

ii. Distributed to each AGO during the last fiscal year;

iii. Has remaining after the distribution into AGOs and any obligations to distribute to AGOs in the future;

iv. Spent on administrative expenses and an accounting thereof during the last fiscal year; and

v. Spent on fees to private financial management firms or other organizations to maintain records and process transactions;

g. A list of the AGO's approved education service providers; and

h. A description of how the AGO has complied with the operational requirements and responsibilities of KRS 141.500 to 141.528.

2. The annual report shall also:

a. Comply with uniform financial accounting standards;

b. Be attested to by an independent certified public accountant in accordance with procedures promulgated by the department; and

c. Be free of material misstatements or exceptions.

(4) The department shall only certify an AGO or renew an AGO's certification if the organization meets the requirements established by KRS 141.500 to 141.528. The department shall issue initial certifications within sixty (60) days of receiving the application and renew certifications within thirty (30) days of receiving the application.

(5) Upon application for renewal, an AGO shall demonstrate that:

(a) It is an intermediary organization that collects contributions exclusively for the use by AGOs; or

(b) It includes two (2) or more education service providers in its EOA program and has awarded at least fifty (50) EOAs aggregating a minimum of two hundred thousand dollars ($200,000) in the previous year and is expected to award at least fifty (50) EOAs

aggregating a minimum of two hundred thousand dollars ($200,000) in the succeeding year.

History.
2021 ch. 167, § 10, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.512. Minimal allocation of contributions required to education opportunity accounts by account-granting organization — Standard application process for establishment of student eligibility for an account — Transfer of funds from one account-granting organization to another — Donations. (See LRC Note below)

(1) An AGO shall ensure that at least ninety percent (90%) of the total annual contributions received are allocated to EOAs no later than the last day of the AGO's immediately succeeding calendar year or fiscal year, as applicable, unless the current year's total annual contributions received by the AGO exceed an amount equal to the average of the total annual contributions received in the immediately preceding three (3) years by more than fifteen percent (15%), in which case the excess amount may be carried forward and expended for EOAs in three (3) equal installments over the immediately succeeding three (3) years.

(2) An AGO shall maintain separate accounts for EOA funds and operating funds.

(3) Any interest that accrues from contributions that are eligible for the tax credit permitted by KRS 141.522 shall be allocated by the AGO to fund EOAs.

(4) An AGO shall create a standard application process for parents to establish their student's eligibility for an EOA. An AGO shall ensure that the application is readily available to interested families and may be submitted through various sources, including the Internet.

(5) An AGO shall provide parents with a written explanation of the allowable uses of EOA funds, the responsibilities of parents, and the duties of the AGO and the role of any private financial management firms or other organizations that the AGO may contract with to process EOA transactions or maintain records for other aspects of the EOA program.

(6)(a) An AGO may transfer funds to another AGO if additional funds are required to meet EOA demands at the receiving AGO or if the transferring AGO determines it cannot continue to operate due to any reason.

(b) If funds are transferred for the purpose of meeting EOA demands, no more than a combined aggregate of ten percent (10%) of the AGOs' total annual contributions received may be retained by the AGOs for administrative expenses.

(c) All transferred funds shall be allocated by the receiving AGO to its account for EOAs.

(d) All transferred amounts received by an AGO shall be separately disclosed in the receiving AGO's annual report for certification renewal pursuant to KRS 141.510.

(e) An AGO that receives a transfer of funds from an AGO that has determined it will not continue to operate shall agree to fund the EOAs established by the transferring AGO to the extent funds are available. The receiving AGO shall also prioritize the funding of transferred EOAs before funding new EOA applicants.

(7) An AGO may accept donations that are not eligible for the tax credit permitted by KRS 141.522, gifts, and grants to cover administrative costs, to inform the public about the EOA program, to fund additional EOAs or to offer assistance outside of the EOA program. Donations that are not eligible for the tax credit permitted by KRS 141.522 shall not be subject to KRS 141.500 to 141.528.

History.
2021 ch. 167, § 11, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.514. Administration of education opportunity account tax credit and cap — Required annual publications on department Web site. (See LRC Note below)

(1) To administer the tax credit and the total annual tax credit cap established in KRS 141.522, the department shall:

(a) Create the tax credit application form, the forms to be used by the department to notify the taxpayer and the AGO of preapproval or denial of the credit, and the educational materials to be distributed by the AGO;

(b) Create a Web site listing the amount of the total credit pending verification, the amount of the total credit allocated to date, and the remaining credit available to taxpayers making contributions to AGOs;

(c) Notify the taxpayer and the AGO of the amount of credit allocated to the taxpayer upon certification that the contribution has been made by the issuance of a tax credit allocation letter, which the taxpayer shall submit with the taxpayer's return when claiming the credit; and

(d) Collect necessary data to provide the report required by subsection (3) of this section.

(2) On or before January 1 of each year, the department shall publish on its Web site:

(a) A list of organizations that have been approved by the department to perform independent financial

analyses of parents' demonstrated financial needs; and

(b) A list of AGOs.

1. If an AGO fails to meet the requirements of this section, the department shall not include the organization on the list of AGOs the following calendar year.

2. Only contributions to AGOs on the list maintained by the department for each calendar year shall be recognized for tax credits awarded under KRS 141.522.

(3) The department shall produce and publish on its Web site an annual report that aggregates the data obtained from the annual reports submitted by AGOs for the renewal of their certification pursuant to KRS 141.510. The department's report shall not include any identifying information of EOA students or AGOs that would violate the confidentiality requirements in KRS 131.190(1).

History.
2021 ch. 167, § 12, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.516. Audit of account-granting organization by department — Notice of violation — Revocation of certificate. (See LRC Note below)

(1) The department may conduct an audit of an AGO or contract for the auditing of an AGO.

(2)(a) In the event that the department determines that there has been a violation of KRS 141.500 to 141.528 by an AGO, the department shall send written notice to the AGO.

(b) The AGO that receives written notice of a violation will have sixty (60) days from receipt of notice to correct the violation identified by the department.

(c) If the AGO fails or refuses to comply after sixty (60) days, the department may revoke the AGO's certification to participate in the EOA program.

(3) An AGO whose certificate has been revoked under this section:

(a) May appeal the revocation of its certification to the Kentucky Claims Commission pursuant to KRS 49.220;

(b) Shall continue administering EOAs that were donated prior to the date of notice stated on the revocation;

(c) Shall not accept any further contributions for the purpose of funding EOAs on or after the date of notice stated on the revocation; and

(d) Shall refund any contributions that were received for the purpose of funding EOAs on or after the date of notice stated on the revocation.

History.
2021 ch. 167, § 13, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.518. Account-granting organization system of payment to education service providers — Payments to an education opportunity account — Approval of education service providers. (See LRC Note below)

(1)(a) Each AGO shall implement a commercially viable, cost-effective, and parent-friendly system for payment of services from EOAs to education service providers.

(b) The AGO shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but shall provide maximum flexibility to parents by facilitating direct payments to education service providers or requests for preapproval of and reimbursements for qualifying expenses.

(c) An AGO may contract with private financial management firms or other organizations to develop the payment system.

(2) An AGO may contract with private financial management firms or other organizations to maintain records and process transactions of the EOAs.

(3) If funding is available, an AGO shall continue making payments into an EOA until:

(a) The parent does not renew the EOA;

(b) The AGO determines that the EOA student's family income has increased above two hundred fifty percent (250%) of the amount of household income necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789;

(c) The AGO determines that there was substantial misuse of the funds in the EOA; or

(d) The EOA student receives a high school diploma or equivalency certificate.

(4) Each AGO shall establish a process for approving education service providers.

(5) An AGO may approve education service providers on their own initiative, at the request of parents, or upon request from prospective education service providers.

History.
2021 ch. 167, § 14, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.520. Effect of Education Opportunity Account Program on education service provider — Authority of government entities. (See LRC Note below)

(1) Nothing in KRS 141.500 to 141.528 shall be deemed to limit the independence or autonomy of an education service provider or to make the actions of an education service provider the actions of the state government.

(2) Nothing in KRS 141.500 to 141.528 shall be construed to expand the regulatory authority of the state, its officers, or any county school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the EOA Program.

(3) An education service provider that accepts payment from an EOA pursuant to KRS 141.500 to 141.528 is not an agent of the state or federal government.

(4) An education service provider shall not be required to alter its creed, practices, admissions policy, or curriculum in order to accept payments from an EOA.

History.

2021 ch. 167, § 15, effective June 29, 2021.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.522. Education Opportunity Account Program tax credit — Cap on credit — Prioritization. (See LRC Note below)

(1)(a) Effective for taxable years beginning on or after January 1, 2021, but before January 1, 2026, a nonrefundable, nontransferable tax credit shall be permitted against the tax imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credit as provided in KRS 141.0205, as applicable, for contributions made during a taxable year to one (1) or more AGOs in accordance with the EOA program. To qualify for this credit, a taxpayer filing as an individual shall elect to claim a federal and Kentucky contribution deduction associated with the contributions made to an AGO that does not exceed an amount equal to the total contribution for the taxable year less the amount of credit allowed by this section for the taxable year.

(b) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

(2) The aggregate value of the total annual tax credit cap awarded shall not exceed twenty-five million dollars ($25,000,000).

(3) The credit amount awarded per taxpayer per taxable year shall be no more than the lesser of:

(a) Ninety-five percent (95%) of the total contributions made to an AGO, except as provided in subsection (4) of this section; or

(b) One million dollars ($1,000,000).

(4)(a) The taxpayer may elect to pledge a contribution for multiple taxable years, not to exceed a total of four (4) taxable years.

(b) If the multi-year pledge is made by the taxpayer and the amount of the contributions for each of the multiple taxable years is equal to or more than the amount of contributions made to the AGO in the taxable year within which the pledge is made, the amount of allowable credit shall be increased by two (2) percentage points to ninety-seven percent (97%) in the taxable year within which the pledge is made and for each pledged year.

(c) If the taxpayer does not remit the pledged amount of contributions during any taxable year for which a multi-year pledge is made, the taxpayer shall repay the portion of the credit resulting from the increase allowed by this subsection.

(5) Any tax credit awarded under this section that is not used by the taxpayer in the current taxable year may be carried forward for up to five (5) succeeding taxable years until the tax credit has been utilized.

(6) Tax credits under this section shall be awarded on a first-come, first-served basis each fiscal year within the limitations set forth in this section. The date and time stamp from each application for preapproval shall establish the order in which the application was received. For contributions pledged for multiple tax years, the contribution shall be considered the first in line for the years subsequent to the initial year of the pledge.

History.

2021 ch. 167, § 16, effective June 29, 2021.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.524. Report by department on Education Opportunity Account Program. (See LRC Note below)

The department shall provide the following information to the Interim Joint Committee on Appropriations and Revenue no later than November 1, 2022, and no later than November 1 of each year thereafter as long as the tax credit permitted by KRS 141.522 is taken:

(1) All information contained in each annual report filed by an AGO as required by KRS 141.510 and the administrative regulations promulgated thereunder, with each eligible student's identifying information removed and replaced with an assigned unique identification number;

(2) The number and total amount of EOAs awarded by AGOs to EOA students reported by household income range intervals of five thousand dollars ($5,000);

(3) The number and total amount of EOAs awarded by AGOs to EOA students:

(a) Who are currently in the Commonwealth's foster care program;

(b) Who have previously received an EOA under this section; and

(c) Who are members of a household in which a student has previously received an EOA under this section; and

(4) Any other information that may be necessary to assist the members of the General Assembly in determining that the purposes of this tax credit are being fulfilled.

History.
2021 ch. 167, § 17, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.526. Standing for parents of eligible students. (See LRC Note below)

If any part of KRS 141.500 to 141.528 is challenged in state court as violating either the state or federal constitutions, parents of students who would meet the criteria for being eligible students as defined by KRS 141.502 shall be permitted to intervene as of right in such lawsuit for the purposes of defending the EOA program's constitutionality.

History.
2021 ch. 167, § 18, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.528. Short title for KRS 141.500 to 141.528. (See LRC Note below)

KRS 141.500 to 141.528 may be cited as the "Education Opportunity Account Act" or "EOA Act."

History.
2021 ch. 167, § 19, effective June 29, 2021.

Legislative Research Commission Notes.
(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

141.900. Definitions Applicable to Taxable Years Prior to January 1, 2018.

The definitions in this section are the same as the definitions appearing in KRS 141.010 prior to its repeal and reenactment in Section 53 of 2018 Ky. Acts chs. 171 and 207. For taxable years beginning prior to January 1, 2018, as used in this chapter, unless the context requires otherwise:

(1) "Commissioner" means the commissioner of the department;

(2) "Department" means the Department of Revenue;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2015, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2015, that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) "Modified gross income" means the greater of:

(a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:

1. Include interest income derived from obligations of sister states and political subdivisions thereof; and

2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

(b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

(9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545,

21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;

(i)1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans. The "applicable amount" shall be:

a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and

d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

3. As used in this paragraph:

a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(j)1.a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(k) Exclude, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents, or for any person authorized to be provided excludable coverage by the taxpayer pursuant to the federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, or the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

(*l*) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;

(m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;

(n) Exclude any capital gains income attributable to property taken by eminent domain;

(o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

(t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; and

(u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;

(11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus:

(a) The deduction allowed by KRS 141.0202 as it existed prior to January 1, 2018;

(b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;

(c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010; and

(d)1. All the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except:

a. Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;

b. Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

c. The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof;

d. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;

e. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

f. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter;

g. The itemized deduction limitation established in 26 U.S.C. sec. 68 shall be determined using the applicable amount from 26 U.S.C. sec. 68 as it existed on December 31, 2006; and

h. A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section; and

2. Nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include the amount calculated under KRS 141.205;

(f) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(g) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(h) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(i) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(j) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(k) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(*l*) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and

(m) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus:

(a) The deduction allowed by KRS 141.0202 as it existed prior to January 1, 2018;

(b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;

(c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010; and

(d) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except:

1. Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

2. The deductions contained in Sections 243, 245, and 247 of the Internal Revenue Code;

3. The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

6. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

7. Any deduction prohibited by KRS 141.205;

8. Any dividends-paid deduction of any captive real estate investment trust; and

9. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;

(14)(a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.901. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;

(c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

(d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust

shall not be allowed any deduction for dividends paid;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero (0);

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24)(a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:

1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;

3. A foreign limited liability company as defined in KRS 275.015;

4. A limited liability company as defined in KRS 275.015;

5. A professional limited liability company as defined in KRS 275.015;

6. A foreign limited partnership as defined in KRS 362.2-102(9);

7. A limited partnership as defined in KRS 362.2-102(14);

8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);

9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;

10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;

11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;

12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and

13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

(25) "Doing business in this state" includes but is not limited to:

(a) Being organized under the laws of this state;

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

(d) Having one (1) or more individuals performing services in this state;

(e) Maintaining an interest in a pass-through entity doing business in this state;

(f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

(g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

(26) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;

(27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;

(28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; and

(29) "Captive real estate investment trust" means a real estate investment trust as defined in Section

856 of the Internal Revenue Code that meets the following requirements:

(a)1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or

2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and

(b)1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:

a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or

b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;

2. For the purposes of this paragraph:

a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and

b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and

(c) The real estate investment trust is not owned by another real estate investment trust.

History.

2018 ch. 171, § 52, effective April 14, 2018; enacted by 2018 ch. 207, § 52, effective April 27, 2018; 2020 ch. 91, § 16, effective April 15, 2020.

Legislative Research Commission Notes.

(4/15/2020). 2020 Ky. Acts ch. 91, sec. 76 provides that the changes made to this statute in Section 16 of that Act apply to taxable years beginning on or after January 1, 2019.

(4/27/2018). KRS 141.0202 was repealed in 2018 Ky. Acts chs. 171 and 207, but a conforming amendment was not made to this statute to address the reference it contains to KRS 141.0202. The Reviser of Statutes has determined that making such a conforming change during the 2018 codification exceeds the permissible correction of manifest clerical or typographical errors under KRS 7.136(1)(h). Therefore, the reference to KRS 141.0202 remains unchanged and would have to be changed pursuant to future legislative action.

141.901. Allocation and Apportionment of Net Income for Corporations and Providers.

The provisions of this section are the same as appeared in KRS 141.120 prior to its repeal and reenactment in Section 60 of 2018 Ky. Acts chs. 171 and 207. This section applies to all corporations for taxable years beginning prior to January 1, 2018, and to a provider, as defined in KRS 141.121, for taxable years beginning on or after January 1, 2018.

(1) As used in this section, unless the context requires otherwise:

(a) "Business income" means income arising from transactions and activity in the regular course of a trade or business of the corporation and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes integral parts of the corporation's regular trade or business operations;

(b) "Commercial domicile" means the principal place from which the trade or business of the corporation is managed;

(c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid or payable to employees for personal services;

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company;

(e) "Nonbusiness income" means all income other than business income;

(f) "Public service company" means any business entity subject to taxation under KRS 136.120;

(g) "Sales" means all gross receipts of the corporation not allocated under subsections (3) to (7) of this section, except as provided by KRS 141.121; and

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(2) Any corporation which is required by KRS 141.900 to allocate and apportion its net income shall allocate and apportion its net income as provided in this section.

(3) Rents and royalties from real property, intangible or tangible personal property, capital gains and losses, interest, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (4) to (7) of this section.

(4)(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state if and to the extent that the property is utilized in this state; or in their entirety if the corporation's commercial domicile is in this state and the corporation is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the

denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, the tangible personalty is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(d) Net rents and royalties from intangible personal property located in this state are allocable to this state. For purposes of this section, royalties from property leased in Kentucky shall be considered as royalties from intangible personal property.

(5)(a) Capital gains and losses from sales or other dispositions of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales or other dispositions of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale, or the corporation's commercial domicile is in this state and the corporation is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales or other dispositions of intangible personal property are allocable to this state if the corporation's commercial domicile is in this state.

(6) Interest is allocable to this state if the corporation's commercial domicile is in this state.

(7)(a) Patent and copyright royalties are allocable to this state if and to the extent that the patent or copyright is utilized by the payer in this state; or if and to the extent that the patent or copyright is utilized by the payer in a state in which the corporation is not taxable and the corporation's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the corporation's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the corporation's commercial domicile is located.

(8)(a) Except as provided in subsection (9) of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).

(b)1. The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the tax period; provided, however, that property which has been certified as a pollution control facility as defined in KRS 224.1-300 shall be excluded from the property factor.

2. Property owned is valued at its original cost. If the original cost of any property is not determinable or is nominal or zero (0) the property shall be valued by the department pursuant to administrative regulations promulgated by the department. Property rented is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals, provided that the rental and subrentals are reasonable. If the department determines that the annual rental or subrental rate is unreasonable, or if a nominal or zero (0) rate is charged, the department may determine and apply the rental rate as will reasonably reflect the value of the property rented by the corporation.

3. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the property.

(c) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in this state during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or payable by the corporation everywhere during the tax period. Compensation is paid or payable in this state if:

1. The individual's service is performed entirely within the state;

2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

3. Some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(d)1. The sales factor is a fraction, the numerator of which is the total sales of the corporation

in this state during the tax period, and the denominator of which is the total sales of the corporation everywhere during the tax period.

2. Sales of tangible personal property are in this state if:

a. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within this state regardless of the f.o.b. point or other conditions of the sale; or

b. The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government.

3. Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(9)(a) If the allocation and apportionment provisions of this section do not fairly represent the extent of the corporation's business activity in this state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable:

1. Separate accounting;

2. The exclusion of any one (1) or more of the factors;

3. The inclusion of one (1) or more additional factors which will fairly represent the corporation's business activity in this state; or

4. The employment of any other method to effectuate an equitable allocation and apportionment of income.

(b) A corporation may elect the allocation and apportionment methods for the corporation's business income provided for in subparagraphs 1. and 2. of this paragraph. The election, if made, shall be irrevocable for a period of five years.

1. All business income derived directly or indirectly from the sale of management, distribution, or administration services to or on behalf of regulated investment companies, as defined under the Internal Revenue Code of 1986, as amended, including trustees, and sponsors or participants of employee benefit plans which have accounts in a regulated investment company, shall be apportioned to this state only to the extent that shareholders of the investment company are domiciled in this state as follows:

a. Total business income shall be multiplied by a fraction, the numerator of which shall be Kentucky receipts from the services for the tax period and the denominator of which shall be the total receipts everywhere from the services for the tax period;

b. For purposes of subdivision a. of this subparagraph, Kentucky receipts shall be determined by multiplying total receipts for the tax period from each separate investment company for which the services are performed by a fraction. The numerator of the fraction shall be the average of the number of shares owned by the investment company's shareholders domiciled in this state at the beginning of and at the end of the investment company's taxable year, and the denominator of the fraction shall be the average of the number of the shares owned by the investment company shareholders everywhere at the beginning of and at the end of the investment company's taxable year; and

c. Nonbusiness income shall be allocated to this state as provided in subsections (4) to (7) of this section.

2. All business income derived directly or indirectly from the sale of securities brokerage services by a business which operates within the boundaries of any area of the Commonwealth, which on June 30, 1992, was designated as a Kentucky Enterprise Zone, as described in KRS 154.655(2) before that statute was renumbered in 1992, shall be apportioned to this state only to the extent that customers of the securities brokerage firm are domiciled in this state. The portion of business income apportioned to Kentucky shall be determined by multiplying the total business income from the sale of these services by a fraction determined in the following manner:

a. The numerator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by customers domiciled in Kentucky for the brokerage firm's taxable year;

b. The denominator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by all of the brokerage firm's customers for that year; and

c. Nonbusiness income shall be allocated to this state as provided in subsections (4) to (7) of this section.

(10) Public service companies and financial organizations required by KRS 141.900 to allocate and apportion net income shall allocate and apportion such income as follows:

(a) Nonbusiness income shall be allocated to this state as provided in subsections (4) to (7) of this section;

(b) Business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2). The payroll factor shall be determined as provided in subsection (8)(c) of this section. The property factor and sales factor shall be determined as provided by administrative regulations promulgated by the department.

(c) An affiliated group electing to file a consolidated return under KRS 141.200(4) or required to file a consolidated return under KRS 141.200(11) that includes a public service company, a provider of communications services or multichannel video programming services as defined in KRS 136.602, or a financial organization shall determine the amount of payroll to be included in the apportionment factor as provided in subsection (8)(c) of this section. The amount of property and sales of the public service company, provider of communications services or multichannel video programming services as defined in KRS 136.602, or financial organization to be included in the apportionment factors of the affiliated group shall be determined in accordance with administrative regulations promulgated by the department under paragraph (b) of this subsection.

(11) For taxable years beginning on or after January 1, 2007, a corporation that:

(a) Owns an interest in a limited liability pass-through entity; or

(b) Owns an interest in a general partnership organized or formed as a general partnership after January 1, 2006;

shall include the proportionate share of sales, property, and payroll of the limited liability pass-through entity or general partnership when apportioning income, and shall include the proportionate share of sales in calculating the tax due pursuant to KRS 141.0401. The phrases "an interest in a limited liability pass-through entity" and "an interest in a general partnership organized or formed as a general partnership after January 1, 2006," shall extend to each level of multiple-tiered pass-through entities.

History.

2018 ch. 171, § 59, effective April 14, 2018; enacted by 2018 ch. 207, § 59, effective April 27, 2018.

Legislative Research Commission Notes.

(4/27/2018). This statute was created by 2018 Ky. Acts ch. 171, sec. 59 and ch. 207, sec. 59, which are nearly identical and have been codified together.

TITLE XII

CONSERVATION AND STATE DEVELOPMENT

Chapter
147A. Program Development.
149. Forestry.
151B. Workforce Education.

CHAPTER 147A

PROGRAM DEVELOPMENT

Section
147A.020. Powers and duties of state local debt officer and state local finance officer.
Area Development Districts.
Section
147A.050. Area development districts created.
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147A.090. Duties of board of directors.
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147A.117. Contract for audit by certified public accountant or firm instead of the Auditor of Public Accounts — Conditions for.
147A.120. Limitation on districts' functions, powers and duties.

147A.020. Powers and duties of state local debt officer and state local finance officer.

(1) The state local debt officer and the state local finance officer within the Department for Local Government shall exercise the following administrative functions of the state:

(a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and

(b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.

(2) The state local debt officer shall have the following powers and duties:

(a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the Department for Local Government;

(b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;

(c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and

(d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.

(3) The state local finance officer shall have the following powers and duties:

(a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;

(b) To provide technical assistance and information to units of local government on matters including but not limited to fiscal management, purchases, and contracts; and

(c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

History.

Enact. Acts 1970, ch. 66, § 2; 1974, ch. 74, Art. II, § 10; 1978, ch. 155, § 68, effective June 17, 1978; 1980, ch. 188, § 108, effective July 15, 1980; 1980, ch. 295, § 103, effective July 15, 1980; 1982, ch. 393, § 48, effective July 15, 1982; 1984, ch. 70, § 1, effective July 13, 1984; 1994, ch. 508, § 45, effective July 15, 1994; 1998, ch. 69, § 53, effective July 15, 1998; 1998, ch. 85, § 6, effective July 15, 1998; 2007, ch. 47, § 67, effective June 26, 2007; 2010, ch. 117, § 5, effective July 15, 2010.

Compiler's Notes.

KRS 66.280 and 66.330 to 66.390 referred to in subsection (1)(a) of this section in the reference "KRS 66.280 to 66.390" were repealed by Acts 1996, ch. 280, § 30, effective July 15, 1996.

OPINIONS OF ATTORNEY GENERAL.

A city housing agency may not operate a section 8 existing housing program (42 USCS § 1437f) within the boundaries of another city. OAG 80-55, 1980 Ky. AG LEXIS 586.

A local public housing agency may operate a section 8 existing housing program (42 USCS § 1437f) outside of its territorial jurisdiction but within the county in which it is located under the provisions of KRS 79.110 to 79.180, as long as the fiscal court of the county and a city or cities within the county and a city housing authority join together in such an agreement. OAG 80-55, 1980 Ky. AG LEXIS 586.

An opinion expressed by a local government advisor of the Department of Local Government is advisory only and has no force of law since this section gives the Department of Local Government administrative powers only. OAG 80-89, 1980 Ky. AG LEXIS 561.

Although local governments are responsible for the enforcement of the state building code within the boundaries of their jurisdictions, the Department of Local Government may participate in the local enforcement program to the extent of providing funds for the research and planning of a program whereby various local governments will jointly conduct and operate an enforcement program. (Decision prior to 1982 enactment of KRS 147A.021). OAG 82-312, 1982 Ky. AG LEXIS 316.

AREA DEVELOPMENT DISTRICTS

147A.050. Area development districts created.

There is hereby created and established in the Commonwealth fifteen (15) area development districts consisting of the following counties:

(1) Purchase Area Development District which shall include the counties of Ballard, Carlisle, Hickman, Fulton, McCracken, Graves, Marshall, and Calloway;

(2) Pennyrile Area Development District which shall include the counties of Livingston, Crittenden, Lyon, Caldwell, Hopkins, Muhlenberg, Trigg, Christian and Todd;

(3) Green River Area Development District which shall include the counties of Union, Henderson, Webster, McLean, Daviess, Ohio and Hancock;

(4) Barren River Area Development District which shall include the counties of Logan, Simpson, Butler, Warren, Edmonson, Hart, Barren, Allen, Metcalfe and Monroe;

(5) Lincoln Trail Area Development District which shall include the counties of Breckinridge, Meade, Grayson, Hardin, Larue, Nelson, Washington, and Marion;

(6) Jefferson Area Development District which shall include the counties of Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer and Trimble;

(7) Northern Kentucky Area Development District which shall include the counties of Boone, Kenton, Campbell, Carroll, Gallatin, Owen, Grant and Pendleton;

(8) Buffalo Trace Area Development District which shall include the counties of Bracken, Mason, Robertson, Fleming and Lewis;

(9) Gateway Area Development District which shall include the counties of Rowan, Bath, Montgomery, Menifee, and Morgan;

(10) Fivco Area Development District which shall include the counties of Greenup, Boyd, Carter, Elliott, and Lawrence;

(11) Big Sandy Area Development District which shall include the counties of Johnson, Magoffin, Martin, Floyd, and Pike;

(12) Kentucky River Area Development District which shall include the counties of Wolfe, Owsley, Lee, Breathitt, Leslie, Perry, Knott, and Letcher;

(13) Cumberland Valley Area Development District which shall include the counties of Jackson, Rockcastle, Laurel, Clay, Knox, Whitley, Bell, and Harlan;

(14) Lake Cumberland Area Development District which shall include the counties of Taylor, Adair, Green, Casey, Russell, Pulaski, Clinton, Cumberland, Wayne, and McCreary; and

(15) Bluegrass Area Development District which shall include the counties of Anderson, Franklin, Woodford, Mercer, Boyle, Lincoln, Garrard, Jessamine, Fayette, Scott, Harrison, Bourbon, Nicholas, Clark, Madison, Powell, and Estill.

History.

Enact. Acts 1972, ch. 125, § 1.

NOTES TO DECISIONS

Cited in:

N. Ky. Area Dev. Dist. v. Wilson, 612 S.W.3d 916, 2020 Ky. LEXIS 460 (Ky. 2020).

OPINIONS OF ATTORNEY GENERAL.

The area development district dealt with in this section through KRS 147A.120 is an independent and autonomous

public corporation exercising a function of state government and is not under the day-to-day control of the central state government nor operating on funds drawn from the state treasury and therefore does not fall within the waiver of sovereign immunity granted in KRS chapter 44. OAG 72-366.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Area development fund, KRS 42.350.

Kentucky Law Journal.
Abramson, Kentucky's Future Need For Attorneys, 63 Ky. L.J. 323 (1974-1975).

147A.060. Board of directors for each district — Appointment — Terms — State officers and members of General Assembly may serve only in advisory capacity.

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation promulgated by the Department for Local Government in accordance with KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or members of their staffs may be designated as representatives with the consent of that body. The Department for Local Government, in specifying the composition of the board, shall conform to applicable federal requirements. A person who is a state officer, a deputy state officer, or a member of the General Assembly may serve only in a nonmember advisory capacity to the board of directors of an area development district. An area development district board of directors shall notify legislators of the provisions of this section and of their right to participate in the activities of the area development district. If a legislator chooses to participate in accordance with this section, the area development district shall send meeting notices to that legislator at the same time board members are notified of the meetings.

History.
Enact. Acts 1972, ch. 125, § 2; 1974, ch. 74, Art. II, § 9(4); 1978, ch. 155, § 69, effective June 17, 1978; 1984, ch. 187, § 1, effective July 13, 1984; 1998, ch. 69, § 58, effective July 15, 1998; 2000, ch. 450, § 1, effective July 14, 2000; 2007, ch. 47, § 73, effective June 26, 2007; 2010, ch. 117, § 12, effective July 15, 2010.

OPINIONS OF ATTORNEY GENERAL.

No conflict of interest arises where a member of the board or one of the advisory committees of an area development district votes for a project which directly benefits the group he represents, although a conflict would arise if he had some special additional personal interest, in which case he would be disqualified from voting on that particular project. OAG 75-260.

Administrative Regulation 200 KAR 10:010, issued by the Finance and Administration Cabinet pursuant to this section providing that no member of an area development district board would be eligible to serve more than two full terms consecutively in the same office, was effective against a member of the board who was serving in his third consecutive term and he was automatically disqualified. OAG 76-585.

An area development district is not an agency of state government for purposes of compliance with local planning and zoning requirements, nor does an area development district have authority to operate an offender re-entry program. OAG 13-004, 2013 Ky. AG LEXIS 34.

147A.070. Appointment of executive director — Election of executive committee, duties — Advertisement of open positions — Employees' compensation.

(1) Subject to the requirements of subsection (3) of this section, the board of directors in each district may appoint an executive director and deputy executive director and fix the salary for each position. The executive director shall perform, in the name of the board, such functions and duties and may exercise such authority of the board as the board may delegate to the executive director. The deputy executive director, if one is hired, shall perform such functions and duties as designated by the executive director.

(2) The board of directors in each district may elect from its membership an executive committee and delegate to the committee any of the following duties:

(a) To employ such staff members as may be required for the operations of the district;

(b) To manage the financial assets and obligations of the district;

(c) To guide the activities of the district between meetings of the board; and

(d) To perform such other duties as the board might delegate to it.

(3) On or after June 29, 2017, an open position for the executive director or deputy executive director with an area development district shall be advertised by the board of directors in a manner designed to provide adequate notice of the opening and sufficient time for interested applicants to apply. Advertisement of an open position shall, at a minimum, be published on the Web site of the district and published in accordance with KRS Chapter 424 at a minimum for a period of twenty-one (21) days.

(4) Bonuses, awards, one (1) time salary adjustments, special salary enhancements, or severance pay for any employee, unless severance pay is provided pursuant to a contract approved by the board, that do not constitute a permanent change in the employee's compensation shall not be made or awarded to any employee of a district.

History.
Enact. Acts 1972, ch. 125, § 3; 2017 ch. 33, § 1, effective June 29, 2017.

NOTES TO DECISIONS

1. Arbitration.
Trial court properly denied an employer's motion to compel arbitration because the arbitration agreement executed by the employer, a political subdivision, and an employee as a condition of her employment was unenforceable; the employer had no authority to enter into the arbitration agreement. N. Ky. Area Dev. Dist. v. Snyder, 2017 Ky. App. LEXIS 174 (Ky. Ct.

App. 2017), aff'd on other grounds, 570 S.W.3d 531, 2018 Ky. LEXIS 363 (Ky. 2018).

Authority of the Northern Kentucky Area Development District to enter into an arbitration agreement with an employee, if it existed at all, had to be derived from the enabling legislation because, as a political subdivision of the State, it had only those powers conferred on it by the legislature. N. Ky. Area Dev. Dist. v. Snyder, 2017 Ky. App. LEXIS 174 (Ky. Ct. App. 2017), aff'd on other grounds, 570 S.W.3d 531, 2018 Ky. LEXIS 363 (Ky. 2018).

OPINIONS OF ATTORNEY GENERAL.

Affirming OAG 73-318, Kentucky area development districts are political subdivisions of the state as borne out by the definition of public agency in KRS 65.230 and at the same time they constitute units of local government and thus qualify under the federal Intergovernmental Personnel Act of 1970 for the receipt of funds under federal programs. OAG 73-529.

Under this chapter and the bylaws of the area development district, the regular meetings of the district board of directors cannot be set by the executive committee of the board since under subsection (2)(d) of this section and the bylaws there was no express delegation to the executive committee by the board of the power to set regular meetings. OAG 76-482.

An employee of an area development district would not be prohibited from becoming a candidate for and holding a county or city office and at the same time continuing his employment with the district. OAG 76-662.

147A.080. Powers of board of directors.

Each board of directors shall have the power and authority to:

(1) Adopt and have a common seal and alter the same at pleasure;

(2) Sue and be sued;

(3) Adopt bylaws and make rules and regulations for the conduct of its business;

(4) Make and enter into all contracts or agreements necessary or incidental to the performance of its duties;

(5) Provide upon request basic administrative, research, and planning services for any planning and development body located within the district;

(6) Accept, receive, and administer loans, grants, or other funds or gifts from public and private agencies including the Commonwealth and the federal government for the purpose of carrying out the functions of the district;

(7) Expend such funds as may be considered by it to be advisable or necessary in the performance of its duties;

(8) Acquire, hold as may be necessary and convenient, encumber, or dispose of real and personal property, except that no board shall have the power of eminent domain;

(9) Charge fees, rents, and otherwise charge for services provided by the board, except that no board shall have any power to levy taxes;

(10) Enter into interlocal agreements or interstate compacts to the extent authorized by laws of the Commonwealth. An area development district organization shall be deemed a "public agency" as defined by the Interlocal Cooperation Act in KRS Chapter 65;

(11) Promote, organize, and advise special districts or other authorities in accordance with laws of the Commonwealth and act as the regional clearinghouse for such programs and projects as prescribed by federal regulation;

(12) Perform such other and further acts as may be necessary to carry out the duties and responsibilities created by KRS 147A.050 to 147A.120.

History.

Enact. Acts 1972, ch. 125, § 4; 1978, ch. 384, § 29, effective June 17, 1978.

NOTES TO DECISIONS

Analysis

1. Legislative Body.
2. Arbitration.

1. Legislative Body.

Northern Kentucky Area Development District (ADD) was not a legislative body for the purpose of the state health plan administration or for any other purpose; therefore, ADD was not appropriate legislative body to support hospital's application to establish an ambulance service. Northern Ky. Emergency Medical Servs. v. Christ Hosp. Corp., 875 S.W.2d 896, 1993 Ky. App. LEXIS 142 (Ky. Ct. App. 1993).

2. Arbitration.

Trial court properly denied an employer's motion to compel arbitration because the arbitration agreement executed by the employer, a political subdivision, and an employee as a condition of her employment was unenforceable; the employer had no authority to enter into the arbitration agreement. N. Ky. Area Dev. Dist. v. Snyder, 2017 Ky. App. LEXIS 174 (Ky. Ct. App. 2017), aff'd on other grounds, 570 S.W.3d 531, 2018 Ky. LEXIS 363 (Ky. 2018).

Authority of the Northern Kentucky Area Development District to enter into an arbitration agreement with an employee, if it existed at all, had to be derived from the enabling legislation because, as a political subdivision of the State, it had only those powers conferred on it by the legislature. N. Ky. Area Dev. Dist. v. Snyder, 2017 Ky. App. LEXIS 174 (Ky. Ct. App. 2017), aff'd on other grounds, 570 S.W.3d 531, 2018 Ky. LEXIS 363 (Ky. 2018).

Cited in:

N. Ky. Area Dev. Dist. v. Wilson, 612 S.W.3d 916, 2020 Ky. LEXIS 460 (Ky. 2020).

OPINIONS OF ATTORNEY GENERAL.

No conflict of interest arises where a member of the board or one of the advisory committees of an area development district votes for a project which directly benefits the group he represents, although a conflict would arise if he had some special additional personal interest, in which case he would be disqualified from voting on that particular project. OAG 75-260.

Although this section gives the board of directors power to sue and be sued, there is no waiver of sovereign immunity. OAG 75-458.

Under this chapter and the bylaws of the area development district, the regular meetings of the district board of directors cannot be set by the executive committee of the board since under subsection (2)(d) of KRS 147A.070 and the bylaws there was no express delegation to the executive committee by the board of the power to set regular meetings. OAG 76-482.

Under the powers entrusted to the Kentucky River Area Development District, the district may borrow money, contribute it to the county for the construction of a district office building, accept a deed to the property from the county and

subsequently encumber the property which it receives. OAG 77-396, 1977 Ky. AG LEXIS 387.

In contrast to counties, cities, and urban-county governments, the Blue Grass Area Development District does not have the authority to enact ordinances; thus, if the counties which make up the Blue Grass district desire to enact anti-litter container ordinances, the fiscal courts of each county must enact the ordinances on their own and, at the most, the board of directors of the development district might act in an advisory capacity. OAG 80-502, 1980 Ky. AG LEXIS 147.

There are no powers under this section and KRS 147A.090 to empower an area development district to administer, manage, implement, or directly operate programs developed, since these sections only empower the area development district to engage in the work of program development through administrative, research and planning effort. OAG 81-185, 1981 Ky. AG LEXIS 243.

This section and KRS 147A.090 authorize area development districts to engage in the work of program development through administrative, research and planning effort. They are not, however, authorized to administer, manage, implement or directly operate such programs once developed. OAG 82-312, 1982 Ky. AG LEXIS 316.

The General Assembly envisions that area development districts have the power and authority to provide "management assistance" to local governments since a contrary conclusion would be inconsistent with KRS 147A.021(3)(m) (now (3)(k)). OAG 83-460, 1983 Ky. AG LEXIS 38.

Sections 27 and 28 of the Kentucky Constitution would preclude a member of the General Assembly from serving at the same time as a member of the Board of Directors of an Area Development District. OAG 93-70, 1993 Ky. AG LEXIS 178.

147A.090. Duties of board of directors.

Each district board of directors shall have the power, duty, and authority to:

(1) Establish such functional advisory committees as may be necessary and advisable. These functional advisory committees shall be organized to meet such guidelines as may be required for federal or state assistance;

(2) Conduct the necessary research and studies and coordinate and cooperate with all appropriate groups and agencies in order to develop, and adopt and revise, when necessary, a district development plan or series of plans, including, but not limited to, the following districtwide plan elements: goals and objectives; water and sewer; land-use; and open space and recreation. Such plans shall serve as a general guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships;

(3) Prepare annually a report of its activities to the cities and counties within the district, the legislature, and the Governor. The board shall make copies of the report available to members of the public within the district;

(4) Comply with the provisions of KRS 65A.010 to 65A.090;

(5) Cooperate with the Kentucky Mountain Regional Recreation Authority established in KRS 148.0222 for the purpose of establishing, maintaining, and promoting recreational trails to increase economic development, tourism, and outdoor recreation for Kentucky's residents and visitors, not only in eastern Kentucky but throughout the Commonwealth; and

(6) Cooperate with the Kentucky Ohio River Regional Recreation Authority established in KRS 148.034 for the purpose of establishing, maintaining, and promoting recreational trails to increase economic development, tourism, and outdoor recreation for Kentucky's residents and visitors, not only along the Ohio River but throughout the Commonwealth.

History.

Enact. Acts 1972, ch. 125, § 5; 2013, ch. 40, § 56, effective March 21, 2013; 2017 ch. 164, § 8, effective June 29, 2017; 2024 ch. 151, § 6, effective July 15, 2024.

OPINIONS OF ATTORNEY GENERAL.

No conflict of interest arises where a member of the board or one of the advisory committees of an area development district votes for a project which directly benefits the group he represents, although a conflict would arise if he had some special additional personal interest, in which case he would be disqualified from voting for that particular project. OAG 75-260.

Where two men were appointed to two year terms on an advisory council to an area development district on September 14, 1976, and October 21, 1976, and no bylaw provision of the council allows such appointees to serve until their successors are appointed, vacancies automatically were created September 14, 1978 and October 21, 1978, respectively; but any actions performed by the two in the interim have been under color of title to the office and are valid. OAG 79-364, 1979 Ky. AG LEXIS 270.

There are no powers under KRS 147A.080 and this section to empower an area development district to administer, manage, implement, or directly operate programs developed, since these sections only empower the area development district to engage in the work of program development through administrative, research and planning effort. OAG 81-185, 1981 Ky. AG LEXIS 243.

KRS 147A.080 and this section authorize area development districts to engage in the work of program development through administrative, research and planning effort. They are not, however, authorized to administer, manage, implement or directly operate such programs once developed. OAG 82-312, 1982 Ky. AG LEXIS 316.

The General Assembly envisions that area development districts have the power and authority to provide "management assistance" to local governments since a contrary conclusion would be inconsistent with KRS 147A.021(3)(m) (now (3)(k)). OAG 83-460, 1983 Ky. AG LEXIS 38.

147A.100. Allocation of funds — Allocation formula — Alternative allocation.

(1) The Department for Local Government shall allocate area development district funds appropriated to the Joint Funding Administration Program to the area development districts in accordance with the following formula:

(a) Seventy percent (70%) of the total appropriation shall be allocated equally among all area development districts;

(b) Twenty percent (20%) of the total appropriation shall be allocated based upon each area development district's proportionate share of total state population as identified by the most recent federal decennial census; and

(c) Ten percent (10%) of the total appropriation shall be allocated based upon each area development district's proportionate share of total incorporated cities and counties as identified by the records of the Kentucky Secretary of State's land office at the time of the allocation.

(2) The Department for Local Government shall, upon the unanimous written direction of all area development districts, reduce the allocation based upon proportionate share of total incorporated cities and counties set forth in subsection (1)(c) of this section and instead allocate those funds to provide additional nonfederal dollars to area development districts for the purpose of maximizing federal awards.

History.
Enact. Acts 1972, ch. 125, § 6; 1974, ch. 74, Art. II, § 9(4); 2022 ch. 121, § 1, effective April 8, 2022.

OPINIONS OF ATTORNEY GENERAL.

Where some employees of an area development district do not join a group medical plan, the premium money that would have otherwise been payable by the district on behalf of those employes could not be applied to the premium on life insurance. OAG 77-533, 1977 Ky. AG LEXIS 330.

147A.110. District projects and property exempt from taxation.

As a public body, no area development district board shall be required to pay taxes or assessments upon any project or upon any property acquired or used by it or upon the income or proceeds therefrom.

History.
Enact. Acts 1972, ch. 125, § 7.

OPINIONS OF ATTORNEY GENERAL.

The Gateway Area Development District was created as a public body and, as such, would be a political subdivision of the state. OAG 73-318.

147A.115. Annual reports of receipt and expenditure of state and federal fundings.

(1) By December 31 of each year beginning in 2017, the Cabinet for Health and Family Services and the Education and Labor Cabinet shall, following any year in which the cabinet awarded federal or state funds to an area development district, prepare and submit a detailed report to the Legislative Research Commission and area development district board members. The report shall include the total amount of state and federal funds distributed to each area development district, broken down by funding source and program from the preceding fiscal year.

(2) By December 31 of each year beginning in 2017, each area development district shall, following any year in which the area development district receives state or federal funds, prepare and submit a detailed report to the Legislative Research Commission and area development board members. The report shall include the following financial information from the preceding fiscal year:

(a) For each allocation, distribution, award, or grant of state or federal funds, the total amount, the percentage of the total amount, and a description of the specific types of expenditures made for or allocated to:

1. Administrative costs;
2. Direct expenditures; and
3. Indirect expenditures;

(b) Allocation, distribution, award, or grant funds not expended, and an explanation of why the funds were not expended;

(c) The total amount of reserves carried forward by the area development district, identification of the source of those funds, and an explanation of why the funds are being carried forward; and

(d) For each program:

1. A list of direct services provided by the district;
2. A list of service providers contracted by the district and the services provided by those providers;
3. The number of eligible persons for the program, number of persons served by the program, and, if applicable, number of people on waiting lists for the program; and
4. The performance measures required by the contract used to evaluate the area development district's actions.

(3) The Legislative Research Commission shall distribute the report to the appropriate interim joint committees and to the budget review subcommittee that has jurisdiction over the Cabinet for Health Family Services or the Education and Labor Cabinet.

History.
2017 ch. 33, § 2, effective June 29, 2017; 2022 ch. 236, § 26, effective July 1, 2022.

147A.116. Required compliance with laws governing open meetings and records, procurement, a code of ethics, conflicts of interest, whistleblower protections, and compensation.

(1) By January 1, 2018, each area development district and any board, committee, or other organization created by an area development district shall:

(a) Comply with the provisions of KRS 61.870 to 61.884;

(b) Comply with the provisions of KRS 61.800 to 61.850;

(c) Comply with state and federal procurement statutes and administrative regulations, as applicable;

(d) Comply with and be subject to the provisions of KRS 65A.070 by either adopting a code of ethics or abiding by the applicable code of ethics pursuant to KRS 65A.070;

(e) Adopt policies to address conflicts of interest for employees and board members of the area development districts, which shall include a prohibition on employees and board members having any interest, either direct or indirect, in any contract entered into by the area development district or any agency created by the area development district;

(f) Be subject to the provisions of KRS 61.101 to 61.103;

(g) Subject to the provisions of KRS 14A.070(4), adopt, implement, and maintain a detailed and equitable compensation policy for its employees; and

(h) Establish and maintain an independent process to receive, analyze, investigate and resolve concerns relating to the area development district, including alleged violations of the code of ethics or any of the provisions of this section. The process shall include a monthly reporting requirement to the board members of the area development district of any reported concerns or alleged violations. If the process finds a reasonable likelihood that a violation exists, then that alleged violation shall be reported to the Department for Local Government, the Auditor of Public Accounts, and the Attorney General.

(2) By July 1, 2020, each area development district and any board, committee, or other organization created by an area development district shall provide public access to financial information in compliance with the provisions of KRS 65.312(4).

History.
2017 ch. 33, § 3, effective June 29, 2017.

147A.117. Contract for audit by certified public accountant or firm instead of the Auditor of Public Accounts — Conditions for.

(1) No area development district shall enter into any contract with a certified public accountant or firm to perform an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request. The area development district shall furnish the Auditor of Public Accounts with a comprehensive statement of the scope and nature of the proposed audit. The actual expense of an audit performed by the Auditor of Public Accounts shall be billed to the audited area development district.

(2) Any contract with a certified public accountant or firm entered into as a result of the Auditor of Public Accounts either declining to perform the audit or failing to respond within thirty (30) days of receipt of a written request for an audit shall specify the following:

(a) That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts for review;

(b) That the Auditor of Public Accounts shall have the right to review the certified public accountant or firm's work papers before and after the release of the audit; and

(c) That after review of the certified public accountant or firm's work papers, should discrepancies be found, the Auditor of Public Accounts shall notify the audited entity of the discrepancies. If the certified public accountant or firm does not correct these discrepancies prior to the release of the audit, the Auditor of Public Accounts may conduct its own audit to verify the findings of the certified public accountant's report.

(3) If an audit verifying the findings of the certified public accountant or firm's report is conducted by the Auditor of Public Accounts, the actual expense of the audit shall be billed to the area development district.

History.
2017 ch. 33, § 4, effective June 29, 2017.

147A.120. Limitation on districts' functions, powers and duties.

Nothing in KRS 147A.050 to 147A.120 shall be deemed to limit or authorize the limitation in any manner of the functions, powers, or duties of any department or agency of the Commonwealth or of any political subdivision. Nor shall anything in KRS 147A.050 to 147A.120 authorize the Finance and Administration Cabinet or an area development district to perform or discharge any powers, duties, or functions now reposed, or which may hereinafter be reposed, by law in the Kentucky Department of Education, local school districts, or other educational institutions.

History.
Enact. Acts 1972, ch. 125, § 8; 1974, ch. 74, Art. II, § 9(4).

NOTES TO DECISIONS

1. Certificate of Need.
Northern Kentucky Area Development District (ADD) was not a legislative body for the purpose of the state health plan administration or for any other purpose; therefore, ADD was not appropriate legislative body to support hospital's application to establish an ambulance service. Northern Ky. Emergency Medical Servs. v. Christ Hosp. Corp., 875 S.W.2d 896, 1993 Ky. App. LEXIS 142 (Ky. Ct. App. 1993).

CHAPTER 149
FORESTRY

Section
149.130. Federal forest reserve appropriations for county roads and schools.

149.130. Federal forest reserve appropriations for county roads and schools.

(1) All moneys paid to the state under an Act of Congress of May 23, 1908 (35 Stat. 260) as amended, and arising from any national forest reserve created in the state by the federal government, shall be paid over to the Finance and Administration Cabinet and be turned into the State Treasury. The Finance and Administration Cabinet shall keep a separate account of all funds so received.

(2) The treasurer of each county in which there is situated any part of a forest reserve owned by the United States shall ascertain and report to the Finance and Administration Cabinet the name and area of that part of each reserve located in his county. The Finance and Administration Cabinet shall apportion the amount received by reason of each reserve among the counties in which the reserve is located, according to the area of the reserve in each county. If a fund is received from a reserve which lies in only one (1) county, it shall all be apportioned to that county. The Finance and Administration Cabinet shall draw a warrant on the State Treasury in favor of the treasurer of each county for the amount apportioned to that county.

(3) The county treasurer shall place one-half (½) of the funds to the credit of the public roads of his county

and the other half (½) shall be distributed among the school districts in the county according to the area of the reserve in each school district.

History.
2007L-1 to 2007L-4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 362, effective July 13, 1990.

Compiler's Notes.
The Act of Congress of May 23, 1908 (35 Stat. 260) referred to in subsection (1) is compiled as 16 USCS § 500.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Consent to acquisition of national forest reserves, KRS 3.080.

CHAPTER 151B
WORKFORCE EDUCATION

Education and Labor Cabinet.

Section
151B.020. Education and Workforce Development Cabinet — Major organizational units — Secretary. [Repealed].
151B.022. National and state criminal background check required for all cabinet and affiliated employees with access to or use of federal tax information. [Repealed].

Kentucky Center for Statistics.

151B.131. Definitions for KRS 151B.131 to 151B.134.
151B.132. Office of the Kentucky Center for Statistics — Purpose — Kentucky Longitudinal Data System — Collection of education and workforce data — Certification and ownership of data — Funding.
151B.133. Duties of Office of the Kentucky Center for Statistics.
151B.134. Board of Kentucky Center for Statistics — Members — Duties and functions — Chair — Meetings.

Vocational Rehabilitation.

151B.180. Declaration of intent for KRS 151B.180 to 151B.210.
151B.185. Office of Vocational Rehabilitation — Divisions.
151B.190. Vocational rehabilitation services.
151B.195. Authority of the executive director of the Office of Vocational Rehabilitation — Annual report.
151B.200. Federal acts relating to vocational rehabilitation.
151B.205. State Treasurer designated as custodian of funds.
151B.210. Gifts may be received.

Employment First Council.

151B.225. Client Assistance Program. [Repealed].
151B.230. Foundation for Workforce Development — Funding — Board of trustees — Annual report. [Repealed].
151B.240. Statewide Independent Living Council.
151B.245. Statewide Council for Vocational Rehabilitation — Membership — Meetings.
151B.280. Offices within Department of Workforce Investment — Administrative regulations — Confidentiality of information. [Repealed].
151B.285. Administration and supervision of state employment offices — Duties of cabinet. [Renumbered].

Adult Education Learning System.

Section
151B.401. Legislative findings.
151B.402. Legislative findings relating to need for High School Equivalency Diplomas — Incentives — Administrative regulations — Learning contracts — Tuition discounts — Tax credit for employers — Annual report.
151B.403. Adult education programs aligned with federal college and career readiness standards — High School Equivalency Diploma — Programs and examinations — Previously issued equivalency or external diploma to be considered High School Equivalency Diploma — Validity of diplomas after changes in test selection.
151B.404. Definitions.
151B.406. Office of Adult Education — Educational strategy and responsibilities — Organization — Sole agency for developing and approving state plans.
151B.407. Foundation for Adult Education.
151B.408. Adult education and literacy system — Services — Duties and responsibilities of the Office of Adult Education.
151B.409. Adult education and literacy initiative fund.

Kentucky Assistive Technology Loan Corporation.

151B.450. Definitions for KRS 151B.450 to 151B.475.
151B.455. Kentucky Assistive Technology Loan Corporation — Board of directors — Qualifications — Appointment — Terms — Vacancy — Removal.
151B.460. Organization of board — Quorum — Meetings — Compensation — Disclosure of interest — Staff and administrative assistance — Records.
151B.470. Assistive technology loan fund established — Use — Administration.

EDUCATION AND LABOR CABINET

151B.020. Education and Workforce Development Cabinet — Major organizational units — Secretary. [Repealed]

History.
Enact. Acts 1990, ch. 470, § 1, effective July 1, 1990; 1992, ch. 395, § 1, effective July 14, 1992; 1994, ch. 469, § 6, effective July 15, 1994; 1996, ch. 134, § 3, effective July 15, 1996; 1996, ch. 217, § 2, effective July 15, 1996; 1996, ch. 261, § 1, effective July 15, 1996; 1996, ch. 271, § 5, effective July 15, 1996; 1998, ch. 50, § 2, effective July 15, 1998; 2000, ch. 156, § 2, effective July 14, 2000; 2000, ch. 199, § 1, effective July 14, 2000; 2001, ch. 38, § 2, effective June 21, 2001; 2002, ch. 300, § 2, effective July 15, 2002; 2003, ch. 29, § 6, effective June 24, 2003; 2003, ch. 31, § 2, effective June 24, 2003; 2006, ch. 211, § 21, effective July 12, 2006; 2009, ch. 11, § 13, effective June 25, 2009; 2013, ch. 15, § 3, effective June 25, 2013; 2013, ch. 59, § 38, effective June 25, 2013; 2019 ch. 146, § 11, effective June 27, 2019; 2019 ch. 173, § 2, effective June 27, 2019; 2021 ch. 99, § 2, effective June 29, 2021; repealed by 2022 ch. 236, § 177, effective July 1, 2022.

151B.022. National and state criminal background check required for all cabinet and affiliated employees with access to or use of federal tax information. [Repealed]

History.
2018 ch. 200, § 1, effective April 26, 2018; repealed by 2022 ch. 236, § 177, effective July 1, 2022.

KENTUCKY CENTER FOR STATISTICS

151B.131. Definitions for KRS 151B.131 to 151B.134.

As used in KRS 151B.131 to 151B.134, unless the context requires otherwise:

(1) "Board" means the Board of the Kentucky Center for Statistics established in KRS 151B.134(1);

(2) "De-identification" means a process for removing identity information so the data can be analyzed without disclosing the identity of the individuals or employers whose data are being utilized;

(3) "Education data" means the following data relating to student performance from early childhood learning programs through postsecondary education:

(a) College and career readiness;

(b) Course and grade;

(c) Degree, diploma, or credential attainment;

(d) Demographic;

(e) Educator;

(f) Enrollment;

(g) Financial aid;

(h) High School Equivalency Diploma;

(i) Remediation;

(j) Retention;

(k) State and national assessments;

(*l*) Transcripts;

(m) Vocational and technical education information; and

(n) Any other data impacting education deemed necessary by the office;

(4) "Kentucky Longitudinal Data System" is a statewide data system that contains education, workforce, and additional data identified by the Board of the Kentucky Center for Statistics;

(5) "Office" means the Office of the Kentucky Center for Statistics established in KRS 151B.132(1); and

(6) "Workforce data" means data relating to:

(a) Certification and licensure;

(b) Employer information;

(c) Employment status;

(d) Geographic location of employment;

(e) Job service and training information to support enhanced employment opportunities;

(f) Wage information; and

(g) Any other data impacting the workforce deemed necessary by the office.

History.

Enact. Acts 2013, ch. 18, § 1, effective June 25, 2013; 2013, ch. 90, § 1, effective June 25, 2013; 2017 ch. 63, § 11, effective June 29, 2017; 2019 ch. 154, § 1, effective June 27, 2019.

151B.132. Office of the Kentucky Center for Statistics — Purpose — Kentucky Longitudinal Data System — Collection of education and workforce data — Certification and ownership of data — Funding.

(1) The Office of the Kentucky Center for Statistics is hereby established and attached to the Education and Labor Cabinet, Office of the Secretary.

(2) The office's purpose is to collect accurate data in the Kentucky Longitudinal Data System in order to link the data and generate timely reports about student performance through employment to be used to guide decision makers in improving the Commonwealth of Kentucky's education system and training programs.

(3) The office shall be headed by an executive director appointed by the Governor pursuant to KRS 12.050. The executive director shall be appointed from nominations made to the Governor by the board. The office may employ additional staff necessary to carry out the office's duties consistent with available funding and state personnel laws.

(4) The public agencies providing data to the Kentucky Longitudinal Data System shall be:

(a) The Council on Postsecondary Education;

(b) The Department of Education;

(c) The Early Childhood Advisory Council;

(d) The Kentucky Higher Education Assistance Authority;

(e) The Kentucky Commission on Proprietary Education; and

(f) Other agencies of the Education and Labor Cabinet.

(5) The Kentucky Longitudinal Data System, upon approval of the board, may include data from any additional public agency.

(6) Any private institution of higher education, private school, or parochial school, upon approval of the board, may provide data to the Kentucky Longitudinal Data System.

(7) Any data provided to the Kentucky Longitudinal Data System shall be certified to be accurate by the providing agency, institution, or school. Ownership of data provided shall be retained by the providing entity.

(8) The office may receive funding for its operation of the Kentucky Longitudinal Data System from the following sources:

(a) State appropriations;

(b) Federal grants;

(c) User fees; and

(d) Any other grants or contributions from public agencies or other entities.

History.

Enact. Acts 2013, ch. 18, § 2, effective June 25, 2013; 2013, ch. 90, § 2, effective June 25, 2013; 2019 ch. 154, § 2, effective June 27, 2019; 2022 ch. 236, § 30, effective July 1, 2022.

Compiler's Notes.

(6/25/2013). This statute was created with identical text in 2013 Ky. Acts chs. 18 and 90, which were companion bills. These Acts have been codified together.

151B.133. Duties of Office of the Kentucky Center for Statistics.

The duties of the Office of the Kentucky Center for Statistics shall be to:

(1) Oversee and maintain the warehouse of data in the Kentucky Longitudinal Data System;

(2) Develop de-identification standards and processes using modern statistical methods;

(3) Conduct research and evaluation regarding federal, state, and local education and training programs at all levels;

(4) Audit and ensure compliance of education and training programs with applicable federal and state requirements as authorized by federal and state law;

(5) Work with public agencies and other entities to define statewide education, workforce development, and employment metrics and ensure the integrity and quality of data being collected;

(6) Link data from multiple sources for consideration in developing broad public policy initiatives;

(7) Develop requirements and definitions for data to be provided by any public agency, private institution of higher education, private school, or parochial school, as directed by the Board of the Kentucky Center for Statistics;

(8) Develop a reasonable fee schedule for services provided;

(9) Establish data quality standards;

(10) Promulgate administrative regulations necessary for the proper administration of the Kentucky Longitudinal Data System;

(11) Ensure compliance with the federal Family Educational Rights and Privacy Act, 20 U.S.C. sec 1232g, and all other relevant federal and state privacy laws;

(12) Respond to approved research data requests in accordance with the data access and use policy established by the board;

(13) Develop and disseminate, in cooperation with the Council on Postsecondary Education and the Department of Education, information on the employment and earnings of the public postsecondary institution graduates in Kentucky. This information shall be updated at least every three (3) years and shall be:

(a) Posted on the Web site of the Office of the Kentucky Center for Statistics;

(b) Posted on the Web site of the Council on Postsecondary Education;

(c) Posted on the Web site of each public postsecondary institution, with the Web site address published in each institution's catalogue; and

(d) Made available to every high school guidance and career counselor, who shall be notified of its availability for the purpose of informing all high school students preparing for postsecondary education; and

(14) Enter into contracts or other agreements with appropriate entities, including but not limited to federal, state, and local agencies, to the extent necessary to carry out its duties and responsibilities only if such contracts or agreements incorporate adequate protections with respect to the confidentiality of any information to be shared.

History.

Enact. Acts 2013, ch. 18, § 3, effective June 25, 2013; 2013, ch. 90, § 3, effective June 25, 2013; 2014, ch. 26, § 1, effective July 15, 2014; 2019 ch. 154, § 3, effective June 27, 2019.

151B.134. Board of Kentucky Center for Statistics — Members — Duties and functions — Chair — Meetings.

(1) The Board of the Kentucky Center for Statistics is hereby established and attached to the Education and Labor Cabinet, Office of the Secretary.

(2) The board shall be composed of:

(a) The commissioner of the Department of Education or designee;

(b) The secretary of the Cabinet for Health and Family Services or designee;

(c) The president of the Council on Postsecondary Education or designee;

(d) The secretary of the Education and Labor Cabinet or designee; and

(e) The executive director of the Kentucky Higher Education Assistance Authority or designee.

(3) The duties and functions of the board shall be to:

(a) Develop a detailed data access and use policy for requests that shall include but not be limited to the following:

1. Direct access to data in the Kentucky Longitudinal Data System shall be restricted to authorized staff of the office;

2. Data or information that may result in any individual or employer being identifiable based on the size or uniqueness of the population under consideration may not be reported in any form by the office; and

3. The office may not release data or information if disclosure is prohibited under relevant federal or state privacy laws;

(b) Establish the research agenda of the office;

(c) Make nominations to the Governor for the appointment of an executive director;

(d) Oversee compliance by the office with the federal Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, and other relevant federal and state privacy laws;

(e) Ensure that reports generated by the Office of the Kentucky Center for Statistics are distributed to appropriate personnel within the agencies represented by the board members; and

(f) Provide general oversight of the office.

(4) The secretary of the Education and Labor Cabinet shall serve as chair of the board.

(5) The board shall meet at least semiannually and at other times upon the call of the chair. The meetings shall be subject to the open meetings requirements of KRS 61.800 to 61.850 and 61.991.

(6) The board may form committees, work groups, or advisory councils to accomplish its purposes.

History.

Enact. Acts 2013, ch. 18, § 4, effective June 25, 2013; 2013, ch. 90, § 4, effective June 25, 2013; 2014, ch. 26, § 2, effective July 15, 2014; 2019 ch. 154, § 4, effective June 27, 2019; 2022 ch. 236, § 31, effective July 1, 2022.

VOCATIONAL REHABILITATION

151B.180. Declaration of intent for KRS 151B.180 to 151B.210.

In enacting KRS 151B.180 to 151B.210, it is the intention of the General Assembly of Kentucky to provide for and improve the vocational rehabilitation of citizens of the Commonwealth of Kentucky with physical and mental disabilities in order that they may increase their social and economic well-being and the productive capacity of the Commonwealth and nation.

History.
Repealed, reenact. and amend. Acts 1990, ch. 470, § 35, effective July 1, 1990; 1994, ch. 405, § 20, effective July 15, 1994.

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 1; 1984, ch. 316, § 1, effective July 13, 1984) was formerly compiled as KRS 163.110 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 35, effective July 1, 1990.

Legislative Research Commission Notes.
(7/13/90). This section has been treated by two 1990 Acts; its repeal and reenactment with amendment in Acts ch. 470 renumbered the section into KRS ch. 151B.

NOTES TO DECISIONS

Analysis

1. Jurisdiction of Court.
2. Contract Binding.
3. Award of Damages.
4. Rehabilitative Products.

1. Jurisdiction of Court.
Foreign corporation which contracted with Department of Education to modify van of quadriplegic and which in action by quadriplegic for breach of express and implied warranties of said contract received service of summons and complaint by registered letter from Secretary of State was subject to jurisdiction of court since it transacted business and contracted to supply goods and services within the state. Commonwealth Dep't of Education v. Gravitt, 673 S.W.2d 428, 1984 Ky. App. LEXIS 476 (Ky. Ct. App. 1984).

2. Contract Binding.
Since signature of agent of Department of Education was necessary on contract to authorize the process which would pay company for services in modifying van of quadriplegic, and such agent intended that the five (5) conditions contained in the contract should be enforceable against quadriplegic should the need arise, therefore intending the document as a whole to be binding, agent had authority and intent to enter into contract with quadriplegic. Commonwealth Dep't of Education v. Gravitt, 673 S.W.2d 428, 1984 Ky. App. LEXIS 476 (Ky. Ct. App. 1984).

Document in which Department of Education promised to modify van of quadriplegic in exchange for his acceptance of five (5) conditions some of which would transfer title to the department should the quadriplegic fail to abide by department's directions constituted a lawfully authorized contract between department and quadriplegic, and since nothing in KRS 163.110 to 163.180 (now 151B.180 et seq.) prohibited such contract, quadriplegic had valid cause of action against department under KRS 45A.245 for major defects which occurred as a result of the modification. Commonwealth Dep't of Education v. Gravitt, 673 S.W.2d 428, 1984 Ky. App. LEXIS 476 (Ky. Ct. App. 1984).

3. Award of Damages.
In an action by quadriplegic against Department of Education and foreign corporation for breach of warranties of contract between department and corporation for modification of quadriplegic's van, award of damages for use of rental vehicle during van's immobility and for assistance in transportation and remodification costs were proper but award for depreciation on personal property of quadriplegic and for payments on van were unrelated to the action and were improper. Commonwealth Dep't of Education v. Gravitt, 673 S.W.2d 428, 1984 Ky. App. LEXIS 476 (Ky. Ct. App. 1984).

In action by quadriplegic against Department of Education and foreign corporation for breach of express and implied warranties contained in contract for modification of quadriplegic's van, award of $10,200 damages was supported by the evidence where measure of damages was the difference in value of the van to the quadriplegic after it was modified as compared to its value before modification ($10,200), where quadriplegic introduced testimony that van had no value after modification and there was no direct testimony of department as to the value of the van after modification. Commonwealth Dep't of Education v. Gravitt, 673 S.W.2d 428, 1984 Ky. App. LEXIS 476 (Ky. Ct. App. 1984).

4. Rehabilitative Products.
The Department of Education is not a guarantor of products supplied as a rehabilitation service. Commonwealth Dep't of Education v. Gravitt, 673 S.W.2d 428, 1984 Ky. App. LEXIS 476 (Ky. Ct. App. 1984).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Education of physically handicapped, KRS ch. 167.

151B.185. Office of Vocational Rehabilitation — Divisions.

(1) The Office of Vocational Rehabilitation is hereby created within the Education and Labor Cabinet, Department of Workforce Development. The office shall consist of an executive director and those administrative bodies and employees provided or appointed pursuant to law. The office shall be composed of the Division of Program Policy and Support, the Division of Kentucky Business Enterprise, the Division of Blind Services, the Division of Field Services, and the Division of the Carl D. Perkins Vocational Training Center. Each division shall be headed by a director appointed by the secretary of the Education and Labor Cabinet under the provisions of KRS 12.050, and shall be composed of organizational entities as deemed appropriate by the secretary of the Education and Labor Cabinet.

(2) The Office of Vocational Rehabilitation shall have such powers and duties as contained in KRS 151B.180 to 151B.210 and KRS 163.450 to 163.480 and such other functions as may be established by administrative regulation.

(3) The office shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational rehabilitation.

(4) The chief executive officer of the office shall be the executive director of the Office of Vocational Rehabilitation. The executive director shall be appointed by the secretary of the Education and Labor Cabinet under the provisions of KRS 12.050. The executive director shall have experience in vocational rehabilitation and supervision and shall have general supervision and direction over all functions of the office and its employees, and shall be responsible for carrying out the programs and policies of the office.

(5) Except as otherwise provided, the office shall be the state agency responsible for all rehabilitation services and for other services as deemed necessary. The office shall be the agency authorized to expend all state

and federal funds designated for rehabilitation services. The Office of the Secretary of the Education and Labor Cabinet is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services.

(6) Employees under the jurisdiction of the Office of Vocational Rehabilitation who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems.

History.

Repealed, reenact. and amend. Acts 1990, ch. 470, § 36, effective July 1, 1990; 1994, ch. 469, § 27, effective July 15, 1994; 2006, ch. 211, § 44, effective July 12, 2006; 2007, ch. 45, § 1, effective June 26, 2007; 2009, ch. 11, § 21, effective June 25, 2009; 2019 ch. 146, § 12, effective June 27, 2019; 2022 ch. 236, § 32, effective July 1, 2022; 2025 ch. 29, § 3, effective July 1, 2025.

Compiler's Notes.

This section (Enact. Acts 1956, ch. 172, § 2; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 121, effective July 15, 1980; 1984, ch. 316, § 2, effective July 13, 1984; 1988, ch. 361, § 15, effective July 15, 1988) was formerly compiled as KRS 163.120 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 36, effective July 1, 1990.

Legislative Research Commission Notes.

(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

OPINIONS OF ATTORNEY GENERAL.

The State Board of Education is without power to remove the Division of Services for the Blind from the administration of the State Rehabilitation Agency and attach it directly to the Office of the State Superintendent of Public Instruction but the Governor under KRS 12.025 (repealed) may make such reorganizational change by executive order, subject to legislative confirmation at the next session of the General Assembly. OAG 75-606.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Carl D. Perkins Comprehensive Rehabilitation Center, 781 KAR 1:050.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Fees for service, 781 KAR 1:070.

General provisions for operation of the Office of Vocational Rehabilitation, 781 KAR 1:020.

Order of selection and economic need test for vocational rehabilitation services, 781 KAR 1:030.

Rehabilitation technology services, 781 KAR 1:040.

151B.190. Vocational rehabilitation services.

Vocational rehabilitation services shall be provided directly or through public or private instrumentalities to any individual with a physical or mental disability:

(1) Who maintains a domicile in the Commonwealth at the time of filing his application therefor, and whose vocational rehabilitation the State Vocational Rehabilitation Agency determines after full investigation can be satisfactorily achieved; or

(2) Who is eligible therefor under the terms of an agreement with another state or with the federal government.

History.

Repealed, reenact. and amend. Acts 1990, ch. 470, § 37, effective July 1, 1990; 1994, ch. 405, § 21, effective July 15, 1994; 1994, ch. 469, § 28, effective July 15, 1994.

Compiler's Notes.

This section (Enact. Acts 1956, ch. 172, § 3; 1984, ch. 316, § 3, effective July 13, 1984) was formerly compiled as KRS 163.130 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 37, effective July 1, 1990.

Legislative Research Commission Notes.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 405 and 469 which appear to be identical and have been codified together.

(7/13/90). This section has been treated by two 1990 Acts; its repeal and reenactment in Acts ch. 470 renumbered the section into KRS ch. 151B.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Carl D. Perkins Comprehensive Rehabilitation Center, 781 KAR 1:050.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Fees for service, 781 KAR 1:070.

General provisions for operation of the Office of Vocational Rehabilitation, 781 KAR 1:020.

Order of selection and economic need test for vocational rehabilitation services, 781 KAR 1:030.

Rehabilitation technology services, 781 KAR 1:040.

151B.195. Authority of the executive director of the Office of Vocational Rehabilitation — Annual report.

(1) The executive director of the Office of Vocational Rehabilitation:

(a) Shall promulgate administrative regulations in accordance with KRS Chapter 13A governing the services, personnel, and administration of vocational rehabilitation services for Kentucky;

(b) Shall establish a preference for in-state services, so long as the preference does not effectively deny an individual a necessary service that may be available outside of Kentucky;

(c) May enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;

(d) May establish and supervise the operation of small businesses established pursuant to KRS 151B.180 to 151B.210 to be conducted by eligible individuals with severe disabilities; and

(e) May establish state funded special programs for vocational rehabilitation in the state vocational rehabilitation agency.

(2) Except as provided in KRS 151B.190, the executive director shall promulgate administrative regulations to establish procedures and standards for service fee memoranda and fees for services provided to individuals or entities, public or private, including but not limited to community rehabilitation program service providers. Any revised procedure or standard for ser-

vice fee memoranda shall be established prior to the new fiscal year.

(3) The executive director is authorized to provide liability insurance or an indemnity bond against the negligence of drivers of motor vehicles owned or operated by the office for the transportation of applicants or clients of the office. If the transportation is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence to such amounts as the executive director designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any applicant or client or other person, or death or injury of any applicant or client or other person.

(4) The provisions of any other statute notwithstanding, the executive director is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

(5) The executive director shall submit an annual report of its activities for the preceding fiscal year to the Governor and the Legislative Research Commission for referral to the Interim Joint Committee on Families and Children and the Interim Joint Committee on Economic Development and Workforce Investment. Each report shall include a complete operating and financial statement of the Office of Vocational Rehabilitation.

History.

Repealed, reenact. and amend. Acts 1990, ch. 470, § 38, effective July 1, 1990; 1998, ch. 33, § 1, effective July 15, 1998; 2006, ch. 211, § 45, effective July 12, 2006; 2025 ch. 40, § 1, effective June 27, 2025.

Compiler's Notes.

This section (Enact. Acts 1956, ch. 172, § 4; 1976, ch. 377, § 5; 1978, ch. 155, § 83, effective June 17, 1978; 1984, ch. 316, § 4, effective July 13, 1984) was formerly compiled as KRS 163.140 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 38, effective July 1, 1990.

Legislative Research Commission Notes.

(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Carl D. Perkins Comprehensive Rehabilitation Center, 781 KAR 1:050.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Fees for service, 781 KAR 1:070.

General provisions for operation of the Office of Vocational Rehabilitation, 781 KAR 1:020.

Order of selection and economic need test for vocational rehabilitation services, 781 KAR 1:030.

Rehabilitation technology services, 781 KAR 1:040.

151B.200. Federal acts relating to vocational rehabilitation.

This state accepts and agrees to comply with all the provisions of the Acts of Congress of the United States approved June 2, 1920 (41 Stat. 735) relating to vocational rehabilitation and all subsequent acts when such acts apply to joint state and federally funded vocational rehabilitation programs.

History.

Repealed, reenact. and amend. Acts 1990, ch. 470, § 39, effective July 1, 1990; 1994, ch. 363, § 8, effective July 15, 1994.

Compiler's Notes.

This section (Enact. Acts 1956, ch. 172, § 6, effective May 18, 1956; 1980, ch. 266, § 1, effective July 15, 1980; 1984, ch. 316, § 5, effective July 13, 1984) was formerly compiled as KRS 163.160 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 39, effective July 1, 1990.

Legislative Research Commission Notes.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of Acts ch. 476.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

General provisions for operation of the Office of Vocational Rehabilitation, 781 KAR 1:020.

151B.205. State Treasurer designated as custodian of funds.

The State Treasurer is hereby designated as the custodian of all funds. The State Treasurer shall make disbursements for vocational rehabilitation purposes upon certification by the executive director of the Office of Vocational Rehabilitation.

History.

Repealed, reenact. and amend. Acts 1990, ch. 470, § 40, effective July 1, 1990; 2006, ch. 211, § 46, effective July 12, 2006.

Compiler's Notes.

This section (Enact. Acts 1956, ch. 172, § 7, effective May 18, 1956; 1984, ch. 316, § 6, effective July 13, 1984) was formerly compiled as KRS 163.170 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 40, effective July 1, 1990.

Legislative Research Commission Notes.

(7/13/90). This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

151B.210. Gifts may be received.

The executive director of the Office of Vocational Rehabilitation may accept and use gifts made by will or otherwise for carrying out the purposes of KRS

151B.180 to 151B.210. Gifts made under such conditions as in the judgment of the executive director of the Office of Vocational Rehabilitation are proper and consistent with the provisions of KRS 151B.180 to 151B.210 may be so accepted and shall be held, invested, reinvested, and used in accordance with the provisions of KRS 151B.180 to 151B.210.

History.
Repealed and reenact. Acts 1990, ch. 470, § 41, effective July 1, 1990; 2006, ch. 211, § 47, effective July 12, 2006.

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 8, effective May 18, 1956; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 122, effective July 15, 1980) was formerly compiled as KRS 163.180 and was repealed, reenacted, and amended as this section by Acts 1990, ch. 470, § 41, effective July 1, 1990.

Legislative Research Commission Notes.
(7/13/90). This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

EMPLOYMENT FIRST COUNCIL

151B.225. Client Assistance Program. [Repealed]

History.
Enact. Acts 1990, ch. 470, § 44, effective July 1, 1990; 1994, ch. 405, § 22, effective July 15, 1994; 1994, ch. 469, § 31, effective July 15, 1994; 2002, ch. 300, § 3, effective July 15, 2002; 2006, ch. 211, § 48, effective July 12, 2006; 2009, ch. 11, § 22, effective June 25, 2009; repealed by 2022 ch. 236, § 177, effective July 1, 2022.

151B.230. Foundation for Workforce Development — Funding — Board of trustees — Annual report. [Repealed]

History.
Enact. Acts 1992, ch. 417, § 9, effective July 14, 1992; 1994, ch. 469, § 32, effective July 15, 1994; 2006, ch. 211, § 49, effective July 12, 2006; 2009, ch. 11, § 23, effective June 25, 2009; repealed by 2021 ch. 26, § 12, effective June 29, 2021.

151B.240. Statewide Independent Living Council.

History.
Enact. Acts 1994, ch. 469, § 3, effective July 15, 1994; 2000, ch. 211, § 1, effective July 14, 2000; 2006, ch. 211, § 50, effective July 12, 2006; was renumbered to be § 194A.115, by 2016, ch. 32, § 2, effective July 12, 2016.

151B.245. Statewide Council for Vocational Rehabilitation — Membership — Meetings.

(1) The Statewide Council for Vocational Rehabilitation is hereby created within the Office of Vocational Rehabilitation to accomplish the purposes and functions enumerated in 29 U.S.C. secs. 701 et seq. Members of the council shall be appointed by the Governor pursuant to the guidelines in this section. When appointing members of the council, the Governor shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the council.

(2) The Statewide Council for Vocational Rehabilitation shall consist of the following members which shall serve for the following staggered initial terms but their successors shall serve for a term of three (3) years:

(a) One (1) representative of the Statewide Independent Living Council, who shall be the chair or other designee of the Statewide Independent Living Council and who shall serve an initial term of two (2) years;

(b) One (1) representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act who shall serve an initial term of one (1) year;

(c) One (1) representative of the Client Assistance Program established under 34 C.F.R. pt. 370, who shall be designated by the employee of the Education and Labor Cabinet responsible for overseeing the Client Assistance Program and who shall serve an initial term of one (1) year;

(d) One (1) representative of community rehabilitation program service providers who shall serve an initial term of three (3) years;

(e) Four (4) representatives of business, industry, and labor who shall each serve an initial term of three (3) years;

(f) One (1) representative of a disability group that includes individuals with physical, cognitive, sensory, and mental disabilities who shall serve an initial term of two (2) years;

(g) One (1) representative of a disability group that includes individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves who shall serve an initial term of two (2) years;

(h) One (1) current or former applicant for or recipient of vocational rehabilitation services who shall serve for an initial term of one (1) year;

(i) One (1) representative of the state educational agency responsible for the public education of students with disabilities who are eligible to receive services under Part B of the Individuals with Disabilities Education Act who shall serve for an initial term of one (1) year;

(j) One (1) representative of the Kentucky Workforce Innovation Board who shall serve an initial term of one (1) year;

(k) One (1) representative from the Kentucky Council for the Blind who shall serve an initial term of three (3) years;

(*l*) One (1) representative from the National Federation for the Blind from Kentucky who shall serve an initial term of three (3) years;

(m) One (1) representative from the Bluegrass Council of the Blind who shall serve an initial term of three (3) years;

(n) One (1) representative from the State Committee of Blind Vendors who shall serve an initial term of one (1) year;

(o) One (1) qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if em-

ployed by the designated state agency and who shall serve an initial term of two (2) years; and

(p) The executive director of the Office of Vocational Rehabilitation as an ex officio, nonvoting member of the council.

(3) The members of the council shall not be compensated for their service on the council. Council members shall be reimbursed for their necessary expenses pursuant to KRS 12.029.

(4) Including the initial appointment, and with the exception of the individuals set out in paragraphs (c) and (p) of subsection (2) of this section, members shall serve no more than two (2) successive terms. A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed shall be appointed for the remainder of the predecessor's term.

(5) A chair shall be selected by the members of the council from among the voting members of the council, subject to the veto power of the Governor.

(6) No member of the council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under state law.

(7) A majority of the members of the council shall be individuals with disabilities who meet the requirements of 34 C.F.R. sec. 361.5(c)(28) and who are not employed by the designated state unit.

(8) The council shall convene at least four (4) meetings a year in locations determined by the council to be necessary to conduct council business. The meetings shall be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session under the Open Meetings Act, KRS 61.805 to 61.850.

History.

Enact. Acts 1994, ch. 469, § 4, effective July 15, 1994; 2000, ch. 211, § 2, effective July 14, 2000; 2006, ch. 211, § 51, effective July 12, 2006; 2019 ch. 146, § 13, effective June 27, 2019; 2022 ch. 236, § 33, effective July 1, 2022.

Compiler's Notes.

Title I, part A, of the Rehabilitation Act Amendments of 1998, Pub. L. 105-220 referenced herein refers to the amendments to Title I, part A of the Rehabilitation Act of 1973 by Title IV, § 404 of P.L. 105-220.

151B.280. Offices within Department of Workforce Investment — Administrative regulations — Confidentiality of information. [Repealed]

History.

Enact. Acts 1996, ch. 271, § 1, effective July 15, 1996; 2006, ch. 211, § 53, effective July 12, 2006; 2009, ch. 11, § 25, effective June 25, 2009; 2019 ch. 146, § 14, effective June 27, 2019; repealed by 2022 ch. 236, § 177, effective July 1, 2022.

151B.285. Administration and supervision of state employment offices — Duties of cabinet. [Renumbered]

History.

Enact. Acts 1996, ch. 271, § 2, effective July 15, 1996; 2006, ch. 211, § 54, effective July 12, 2006; 2009, ch. 11, § 26, effective June 25, 2009; renumbered to KRS § 336.045 by 2021 ch. 184, § 2, effective April 5, 2021.

ADULT EDUCATION LEARNING SYSTEM

151B.401. Legislative findings.

The General Assembly of the Commonwealth of Kentucky finds and declares that:

(1) The economic future of the Commonwealth and the prosperity of its citizens depend on the ability of Kentucky businesses to compete effectively in the world economy;

(2) A well-educated and highly trained workforce provides businesses in the Commonwealth with the competitive edge critical for their success; and

(3) Too many adult Kentuckians are not full participants in the labor pool because they lack a high school diploma, its equivalent, or the workplace knowledge necessary to assure self-sufficiency for themselves and their families.

History.

Enact. Acts 1994, ch. 487, § 1, effective July 15, 1994; repealed and reenact., Acts 2006, ch. 211, § 167, effective July 12, 2006; repealed and reenacted by 2019 ch. 146, § 38, effective June 27, 2019.

151B.402. Legislative findings relating to need for High School Equivalency Diplomas — Incentives — Administrative regulations — Learning contracts — Tuition discounts — Tax credit for employers — Annual report.

(1) The General Assembly recognizes the critical condition of the educational level of Kentucky's adult population and seeks to stimulate the attendance at, and successful completion of, programs that provide a High School Equivalency Diploma. Incentives shall be provided to full-time employees who complete a High School Equivalency Diploma program within one (1) year and their employers.

(2) The Office of Adult Education within the Department of Workforce Development in the Education and Labor Cabinet shall promulgate administrative regulations to establish the operational procedures for this section. The administrative regulations shall include but not be limited to the criteria for:

(a) A learning contract that includes the process to develop a learning contract between the student and the adult education instructor with the employer's agreement to participate and support the student;

(b) Attendance reports that validate that the student is enrolled and studying for the High School Equivalency Diploma during the release time from work; and

(c) Final reports that qualify the student for the tuition discounts under subsection (3)(a) of this section and that qualify the employer for tax credits under subsection (4) of the section.

(3)(a) An individual who has been out of secondary school for at least three (3) years, develops and successfully completes a learning contract that re-

quires a minimum of five (5) hours per week to study for the High School Equivalency Diploma program, and successfully earns a High School Equivalency Diploma shall earn a tuition discount of two hundred fifty dollars ($250) per semester for a maximum of four (4) semesters at one (1) of Kentucky's public postsecondary institutions.

(b) The program shall work with the postsecondary institutions to establish notification procedures for students who qualify for the tuition discount.

(4) For taxable years beginning before January 1, 2028, an employer who assists an individual to complete his or her learning contract under the provisions of this section shall receive a state tax credit against the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205 for a portion of the released time given to the employee to study for the tests. The application for the tax credit shall be supported with attendance documentation provided by the Office of Adult Education and calculated by multiplying fifty percent (50%) of the hours released for study by the student's hourly salary, and not to exceed a credit of one thousand two hundred fifty dollars ($1250).

(5)(a) By November 1, 2026, and each November 1 thereafter as long as the employer High School Equivalency Diploma program incentive credit is claimed under this section, the department shall report to the Legislative Research Commission for referral to the Interim Joint Committee on Appropriations and Revenue:

1. The total number of returns claiming the credit for the taxable year;

2. The total amount of credit claimed for the taxable year;

3. By county, the total:

a. Number of employers participating in the High School Equivalency Diploma program;

b. Amount of High School Equivalency Diploma program incentive credit claimed; and

c. Number of full-time employees who complete the High School Equivalency Diploma program;

4. By taxpayer:

a. The name and location of the taxpayer claiming the credit as listed on the tax return;

b. The total number of tax credits claimed for the taxable year;

c. The total amount of credit claimed for the taxable year; and

d. The number of individuals assisted with completion of the High School Equivalency Diploma for the taxable year; and

5.a. In the case of taxpayers other than corporations, based on ranges of adjusted gross income of no larger than five thousand dollars ($5,000) for the taxable year, the total amount of credit claimed and the total number of returns claiming this credit for each adjusted gross income range.

b. In the case of corporations, based on ranges of net income of no larger than fifty thousand dollars ($50,000) for the taxable year, the total amount of credit claimed and the total number of returns claiming this credit for each net income range.

(b) The Office of Adult Education shall assist by providing the department with the information necessary to help fulfill the requirements under this subsection.

(c) The information required to be reported under this subsection shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

History.

Enact. Acts 2000, ch. 526, § 12, effective July 14, 2000; 2006, ch. 211, § 37, effective July 12, 2006; 2006 (1st Ex. Sess.), ch. 2, § 38, effective June 28, 2006; repealed and reenact. Acts 2013, ch. 59, § 33, effective June 25, 2013; repealed, reenact. and amend., Acts 2019, ch. 146, § 39, effective June 27, 2019; 2022 ch. 236, § 34, effective July 1, 2022; 2026 ch. 161, § 56, effective July 15, 2026.

Legislative Research Commission Notes.

(6/28/2006). 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

151B.403. Adult education programs aligned with federal college and career readiness standards — High School Equivalency Diploma — Programs and examinations — Previously issued equivalency or external diploma to be considered High School Equivalency Diploma — Validity of diplomas after changes in test selection.

(1) The Office of Adult Education within the Department of Workforce Development in the Education and Labor Cabinet shall promulgate administrative regulations to establish programs aligned with the College and Career Readiness Standards for Adult Education, or any other similar standards adopted by the federal Office of Career, Technical, and Adult Education, which upon successful completion, shall result in the issuance of a High School Equivalency Diploma.

(2)(a) At least one (1) program authorized under subsection (1) of this section shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education, to serve as a qualifying test, which upon passing, shall entitle students to receive a High School Equivalency Diploma.

(b) A qualifying test meeting the requirements of paragraph (a) of this subsection shall provide an option for students to be administered a written or paper test in lieu of an electronic administration.

(3) For purposes of any public employment, a High School Equivalency Diploma shall be considered equal to a high school diploma issued under the provisions of KRS 158.140.

(4) A High School Equivalency Diploma shall be issued without charge upon successfully completing a High School Equivalency Diploma program. A fee may

be assessed by the Office of Adult Education for the issuance of a duplicate High School Equivalency Diploma and for issuance of a duplicate score report. All fees collected for duplicate diplomas and score reports shall be used to support the adult education program.

(5) The Office of Adult Education is authorized to contract annually with an institution of higher education or other appropriate agency or entity for scoring High School Equivalency Diploma program examinations.

(6) On June 29, 2017, any high school equivalency diploma or external diploma previously recognized or issued by the Commonwealth shall be considered retroactively as a High School Equivalency Diploma.

(7) Upon issuance, a High School Equivalency Diploma shall not be invalidated by any subsequent changes in test selection under this section.

History.

Enact. Acts 1972, ch. 192, § 1; 1986, ch. 311, § 1, effective July 15, 1986; 1988, ch. 361, § 12, effective July 15, 1988; repealed, reenact. and amend. Acts 1990, ch. 470, § 23, effective July 1, 1990; 1990, 476, § 167; 1994, ch. 363, § 6, effective July 15, 1994; 1994, ch. 469, § 23, effective July 15, 1994; 1996, ch. 145, § 1, effective July 15, 1996; 1998, ch. 63, § 2, effective July 15, 1998; 2003, ch. 29, § 13, effective June 24, 2003; 2006, ch. 211, § 36, effective July 12, 2006; repealed and reenact., Acts 2013, ch. 59, § 32, effective June 25, 2013; 2017 ch. 63, § 1, effective June 29, 2017; repealed, reenact. and amend., Acts 2019, ch. 146, § 40, effective June 27, 2019; 2022 ch. 236, § 35, effective July 1, 2022; 2026 ch. 197, § 2, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 363 and 469. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 469, which was last enacted by the General Assembly, prevails under KRS 446.250.

(7/13/90). This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

151B.404. Definitions.

As used in KRS 151B.402, 151B.403, 151B.407, and 151B.408, unless the context indicates otherwise:

(1) "Adult education" means, for programs funded under the federal Workforce Innovation and Opportunity Act, services or instruction below the postsecondary level for individuals:

(a) Who have attained the age of sixteen (16) years of age;

(b) Who are not enrolled or required to be enrolled in secondary school under state law; and

(c) Who:

1. Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

2. Are unable to speak, read, or write the English language; or

3. Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education;

(2) "Family literacy services" means services that are of sufficient intensity in terms of hours, and of sufficient duration, to assist a family to make sustainable increases in its literacy level, and integrate the activities described in KRS 158.360; and

(3) "Literacy" means an individual's ability to read, write, and speak in English and compute and solve problems at levels of proficiency necessary to function on the job and in society to achieve one's goals and develop one's knowledge and potential.

History.

Enact. Acts 1994, ch. 487, § 2, effective July 15, 1994; 2000, ch. 526, § 9, effective July 14, 2000; repealed and reenact., Acts 2006, ch. 211, § 168, effective July 12, 2006; 2013, ch. 59, § 36, effective June 25, 2013; repealed, reenact. and amend., Acts 2019, ch. 146, § 41, effective June 27, 2019.

151B.406. Office of Adult Education — Educational strategy and responsibilities — Organization — Sole agency for developing and approving state plans.

(1) The Office of Adult Education is created within the Department of Workforce Development in the Education and Labor Cabinet to carry out the statewide adult education mission. The office shall implement a twenty (20) year state strategy to reduce the number of adults who are at the lowest levels of literacy and most in need of adult education and literacy services. The office shall have responsibility for all functions related to adult education and literacy. The office shall:

(a) Promote coordination of programs and responsibilities linked to the issue of adult education with other agencies and institutions;

(b) Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;

(c) Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;

(d) Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the statewide reading research center established under KRS 164.0207; and

(e) Administer the adult education and literacy initiative fund created under KRS 151B.409.

(2) The Office of Adult Education shall be organized in a manner as directed by the secretary of the Education and Labor Cabinet. The office shall be headed by an executive director appointed by the secretary of the Education and Labor Cabinet.

(3) The Office of Adult Education shall be the agency solely designated for the purpose of developing and approving state plans required by state or federal laws or regulations.

History.

Enact. Acts 2006, ch. 211, § 98, effective July 12, 2006; repealed, reenact. and amend., Acts 2019, ch. 146, § 45, effective June 27, 2019; 2022 ch. 236, § 36, effective July 1, 2022; 2023 ch. 55, § 2, effective July 1, 2024.

151B.407. Foundation for Adult Education.

(1) There is hereby established a nonprofit foundation to be known as the "Foundation for Adult Education." The purpose of the foundation shall be to supplement public funding for adult training in order to expand existing basic skills training programs.

(2) Funding for the foundation shall be obtained through contributions by the private sector. The foundation shall be empowered to solicit and accept funds from the private sector to be used for grants to local education agencies to fund adult basic education programs especially designed for business and industry. Contributors may specify that contributed funds be used to improve the educational level of their employees as it relates to the High School Equivalency Diploma program.

(3) The foundation shall be governed by a board of trustees to be appointed by the secretary of the Education and Labor Cabinet with responsibility for adult education programs based on recommendations from business, industry, labor, education, and interested citizens. Staff for the board of trustees shall be provided by the cabinet.

(4) The foundation shall be attached to the office of the secretary of the Education and Labor Cabinet for administrative purposes.

History.

Enact. Acts 1986, ch. 209, § 1, effective July 15, 1986; repealed, reenact. and amend. Acts 1990, ch. 470, § 24, effective July 1, 1990; 1996, ch. 217, § 3, effective July 15, 1996; 2003, ch. 29, § 14, effective June 24, 2003; 2006, ch. 211, § 38, effective July 12, 2006; 2009, ch. 11, § 19, effective June 25, 2009; 2013, ch. 15, § 4, effective June 25, 2013; repealed, reenact. and amend., Acts 2013, ch. 59, § 34, effective June 25, 2013; 2017 ch. 63, § 20, effective June 29, 2017; repealed, reenact. and amend., Acts 2019, ch. 146, § 46, effective June 27, 2019; 2022 ch. 236, § 37, effective July 1, 2022.

Legislative Research Commission Notes.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

151B.408. Adult education and literacy system — Services — Duties and responsibilities of the Office of Adult Education.

(1)(a) The Office of Adult Education shall promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout the state. The adult education and literacy system shall include diverse educational services provided by credentialed professionals, based on the learners' current needs and a commitment to lifelong learning.

(b) Services shall be provided at multiple sites appropriate for adult learning, including vocational and technical colleges, community colleges, comprehensive universities, adult education centers, public schools, libraries, family resource centers, adult correctional facilities, other institutions, and through the Kentucky Commonwealth Virtual University. Services shall be targeted to communities with the greatest need based on the number of adults at literacy levels I and II as defined by the 1997 Kentucky Adult Literacy Survey and other indicators of need.

(c) Access and referral services shall be initiated at multiple points including businesses, educational institutions, labor organizations, employment offices, and government offices.

(d) Multiple funding sources, program support, and partnerships to administer the adult education and literacy system may include student scholarship and grants; fees for services rendered; and other general, agency, local, state, federal, and private funds.

(2) Services included as part of the adult education and literacy system shall include but not be limited to functionally-contexted workplace essential skills training based on employers' needs, leading to a competency-based certificate indicating proficiency in critical thinking, computating, reading, writing, communicating, problem solving, team-building, and use of technology at various worksites regarding basic skills.

(3) In administering an adult education and literacy system, the Office of Adult Education shall:

(a) Assist providers with the development of quality job-specific and workplace essential skills instruction for workers in business and industry, literacy and adult basic education, adult secondary education, including High School Equivalency Diploma program preparation, English as a second language, and family literacy programs, in cooperation with local business, labor, economic development, educational, employment, and service support entities;

(b) Provide assessments of each student's skill and competency level allowing assessments to be shared with other educational and employment entities when necessary for providing additional educational programs, taking into consideration student confidentiality;

(c) Assist adult educators to meet professional standards;

(d) Create an awareness program in cooperation with the Administrative Office of the Courts to ensure that District and Circuit Court Judges are aware of the provisions of KRS 533.200 and the methods to access adult education and literacy programs for persons sentenced under the statute;

(e) Develop administrative regulations including those for business and industry service participation and mechanisms for service funding through all appropriate federal, state, local, and private resources;

(f) Require and monitor compliance with the program's administrative regulations and policies; and

(g) Develop and implement performance measures and benchmarks.

History.

Enact. Acts 1994, ch. 487, § 3, effective July 15, 1994; 1996, ch. 143, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 54, effective May 30, 1997; 2000, ch. 526, § 10, effective July 14, 2000; 2006, ch. 211, § 55, effective July 12, 2006; 2008, ch. 113, § 2, effective July 15, 2008; repealed and reenact., Acts 2013, ch. 59, § 35, effective June 25, 2013; 2017 ch. 63, § 21, effective June 29, 2017; repealed, reenact. and amend., Acts 2019, ch. 146, § 47, effective June 27, 2019.

151B.409. Adult education and literacy initiative fund.

(1) There is created in the Education and Labor Cabinet a special fund to be known as the adult education and literacy initiative fund, which shall consist of moneys appropriated by the General Assembly, gifts, grants, other sources of funding, public and private, and interest accrued by the fund. This fund shall not lapse at the end of a fiscal year but shall be carried forward to be used only for the purposes specified in this section. Moneys accumulated in this fund on June 27, 2019, shall remain in the fund and be transferred to the Education and Labor Cabinet to be used for purposes stated in this section.

(2) The purpose of the adult education and literacy initiative fund shall be to support strategies for adult education, to provide statewide initiatives for excellence, and to provide funds for research and development activities.

(3) The cabinet shall establish the guidelines for the use, distribution, and administration of the fund, financial incentives, technical assistance, and other support for strategic planning; and guidelines for fiscal agents to assess county and area needs and to develop strategies to meet those needs.

(4) The fund shall include the following strategies:

(a) Statewide initiatives. Funds shall be used to encourage collaboration with other organizations, stimulate development of models of adult education programs that may be replicated elsewhere in the state, provide incentives for adults, employers, and providers to encourage adults to establish and accomplish learning contracts, provide incentives to encourage participation in adult education, assist providers of county and area programs in areas of highest need, and for other initiatives of regional or statewide significance as determined by the cabinet. The statewide reading research center established under KRS 164.0207 shall evaluate the reading and literacy components of model programs funded under this paragraph.

(b) Research and demonstration. The funds shall be used to develop:

1. Standards for the preparation, professional development, and support for adult educators with the advice of the Office of Adult Education and as compatible with funds provided under Title II of the Federal Workforce Investment Act;

2. A statewide competency-based certification for transferable skills in the workplace; and

3. A statewide public information and marketing campaign.

History.

Enact. Acts 1997, ch. 1, § 150, effective May 30, 1997; repealed and reenact., Acts 2000, ch. 526, § 7, effective July 14, 2000; 2006, ch. 211, § 104, effective July 12, 2006; repealed, reenact. and amend., Acts 2019, ch. 146, § 49, effective June 27, 2019; 2022 ch. 236, § 38, effective July 1, 2022; 2023 ch. 55, § 3, effective July 1, 2024.

Legislative Research Commission Notes.

(7/7/97). Although designated to be created as a new section of KRS Chapter 164 by 1997 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 150, this statute has been codified into KRS Chapter 151B under KRS 7.136(1)(a) and (h) because its subject matter clearly belongs within that chapter.

KENTUCKY ASSISTIVE TECHNOLOGY LOAN CORPORATION

151B.450. Definitions for KRS 151B.450 to 151B.475.

As used in KRS 151B.450 to 151B.475, unless the context requires otherwise:

(1) "Assistive technology" means any item, piece of equipment, or device that enables an individual with a disability to improve his or her independence and quality of life;

(2) "Board" means the board of directors of the Kentucky Assistive Technology Loan Corporation;

(3) "Cabinet" means the Education and Labor Cabinet;

(4) "Corporation" means the Kentucky Assistive Technology Loan Corporation created under KRS 151B.455;

(5) "Fund" means the Kentucky assistive technology loan fund created under KRS 151B.470;

(6) "Qualified borrower" means an individual with a disability that affects a major life activity such as mobility, sensory and cognitive communications, or self-care, a parent or legal guardian of an individual with a disability, or a nonprofit organization that provides assistive technology to individuals with disabilities who meet the criteria for participating in the Kentucky assistive technology loan fund; and

(7) "Qualified lender" means a financial lending institution or other qualified organization contracted with by the corporation to provide loans for the purchase of assistive technology.

History.

Enact. Acts 1996, ch. 222, § 1, effective July 15, 1996; 2006, ch. 211, § 56, effective July 12, 2006; 2009, ch. 11, § 27, effective June 25, 2009; 2022 ch. 236, § 39, effective July 1, 2022.

151B.455. Kentucky Assistive Technology Loan Corporation — Board of directors — Qualifications — Appointment — Terms — Vacancy — Removal.

(1) The Kentucky Assistive Technology Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential governmental and public functions for the purpose of improving the quality of life for disabled persons who are residents of the Commonwealth of Kentucky by providing the ability to obtain low-interest loans to qualified borrowers for the acquisition of assistive technology.

(2) The corporation shall be governed by a board of directors consisting of seven (7) members as follows:

(a) The secretary of the Education and Labor Cabinet or the secretary's designated representative;

(b) One (1) attorney with lending expertise;

(c) One (1) representative of a financial lending institution; and

(d) Four (4) public members with a knowledge of assistive technology representing a range of disabilities.

(3) All board members shall be residents of the Commonwealth of Kentucky and all, with the exception of the secretary or the secretary's designee, shall be appointed by the Governor. Each public member shall be an individual with a disability, a parent of an individual with a disability, or a legal representative of an individual with a disability. In making appointments the Governor shall seek recommendations from disability-related associations and organizations representing the categories of disabilities for which appointments are being made.

(4) For initial appointments to the board, two (2) public members shall be appointed for terms of four (4) years each, two (2) public members for terms of three (3) years each, the attorney member for a term of two (2) years, and the member representing a financial lending institution for a term of one (1) year. All succeeding terms shall be for a period of four (4) years each, and each appointee shall serve for the appointed term and until a successor has been appointed and has duly qualified. No person shall serve more than two (2) successive full terms.

(5) If a vacancy on the board occurs, the Governor shall appoint a replacement who shall hold office during the remainder of the term vacated.

(6) The Governor may remove any board member in case of incompetency, neglect of duties, gross immorality, or malfeasance in office, and may upon removal declare the position vacant and appoint a person to fill the vacancy as provided in other cases of vacancy. If a board member is so removed, he or she may appeal. Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

History.

Enact. Acts 1996, ch. 222, § 2, effective July 15, 1996; 2006, ch. 211, § 57, effective July 12, 2006; 2009, ch. 11, § 28, effective June 25, 2009; 2022 ch. 236, § 40, effective July 1, 2022.

151B.460. Organization of board — Quorum — Meetings — Compensation — Disclosure of interest — Staff and administrative assistance — Records.

(1) At the first board meeting following initial appointment of all board members, the board shall elect a chair from its membership, and a chair shall be elected annually thereafter.

(2) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies on the board of directors.

(3) The board of directors shall meet at least once a quarter, and may meet at other times upon call of the chair or at the request of a majority of board members, and with a minimum of seven (7) days' notice.

(4) Board members shall receive no compensation for their services but may be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under KRS 151B.450 to 151B.475, subject to the availability of funding.

(5) If any board member has a direct or indirect interest in any qualified lender or any organization serving as a qualified borrower, the interest shall be disclosed and set forth in the minutes of the board, and the board member having the interest shall not participate in any action involving the organization in which he or she has the interest.

(6) The Education and Labor Cabinet shall provide technical, clerical, and administrative assistance to the board, together with necessary office space and personnel, and shall provide any other services and support necessary for the board to perform its functions. The cabinet shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers which constitute the official records of the corporation. The board may enter into a contract with the cabinet as may be proper and appropriate for the provision of these services.

History.

Enact. Acts 1996, ch. 222, § 3, effective July 15, 1996; 2006, ch. 211, § 58, effective July 12, 2006; 2009, ch. 11, § 29, effective June 25, 2009; 2022 ch. 236, § 41, effective July 1, 2022.

151B.470. Assistive technology loan fund established — Use — Administration.

(1) There is established in the State Treasury a permanent and perpetual fund to be known as the assistive technology loan fund, consisting of moneys that may be appropriated by the General Assembly, gifts, bequests, endowments, or grants from the United States government, its agencies and instrumentalities, and any other available sources of funds, public and private. Any fund balance at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be continuously appropriated only for the purposes specified in this section. Interest and income earned from the investment of funds shall remain in the fund and be credited to it.

(2) The fund shall be used to provide loans to qualified borrowers within the Commonwealth for the purpose of acquiring assistive technology designed to help individuals with disabilities become more independent. Loans shall be made to qualified borrowers through qualified lenders with the fund being used as appropriate to negotiate reduced interest rates, to buy down interest rates, and to provide loan guarantees.

(3) The fund shall be under the administrative control of the board.

(4) If the corporation is dissolved, any unencumbered moneys appropriated by the General Assembly remaining in the fund shall revert to the general fund, and any other unencumbered moneys shall be transferred to the Education and Labor Cabinet to be expended for programs and services for Kentuckians with disabilities.

History.

Enact. Acts 1996, ch. 222, § 5, effective July 15, 1996; 2006, ch. 211, § 59, effective July 12, 2006; 2009, ch. 11, § 30, effective June 25, 2009; 2022 ch. 236, § 42, effective July 1, 2022.

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EDUCATION

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156.253. [Repealed, reenacted, and amended.]

School District Audits.

156.255. Definitions for KRS 156.255 to 156.295.
156.260. [Repealed.]
156.265. State Committee for School District Audits.
156.270. [Repealed.]
156.275. Accountant — Selection — Reports.
156.280. [Repealed.]
156.285. Access to records — Witnesses — Subpoena.
156.290. [Repealed.]
156.295. Offenses — Penalties.
156.300. [Repealed.]
156.310. [Repealed.]
156.320. [Repealed.]
156.330. [Repealed.]
156.340. [Repealed.]
156.350. [Repealed.]
156.360. [Repealed.]
156.370. [Repealed.]
156.380. [Repealed.]

Instructional Materials Selection and Procurement.

156.395. Definitions for KRS 156.395 to 156.476.
156.400. School subjects review and selection groups — Instructional materials purchasing.
Section
156.405. State Quality Curriculum Task Force — Duties — Membership — Instructional materials reviewers.
156.407. Selection of instructional materials reviewers — Review and evaluation process — State-approved list of instructional materials and programs.
156.410. Standards and criteria for evaluation of instructional materials and programs — Submissions by publishers and developers.
156.412. Instructional materials depository — Establishment — Duties — Required use by school districts and Department of Education.
156.415. Conditions for placing instructional materials and programs on state-approved list.
156.420. Bond conditions for person, firm, or corporation offering textbooks. [Repealed].
156.425. Form of statement and bond — Supplemental statement and bond. [Repealed].
156.430. Violation of bond — Suit on bond. [Repealed].
156.433. Instructional materials eligible for purchase with state instructional materials funds — Administrative regulation — Review procedure — Purchases by state and distributions to school districts without cost.
156.435. Adoption of state-approved list — Rejections — Publication of list.
156.437. Administrative regulations for listing, adoption, and purchase of subject programs. [Repealed].
156.438. Administrative regulations for reviewing and resolving claims of factual errors in adopted textbooks. [Repealed].
156.439. District allocation of state instructional materials funds — Use — School plans — Carryover.
156.440. Sample copies of materials selected and placed on state-approved list of instructional materials.
156.445. Only state-approved instructional material or program to be used as core comprehensive resource — Exceptions — When changes to be effective — Approval of materials for private and parochial schools.
156.447. [Repealed.]
156.450. [Repealed.]
156.455. [Repealed.]
156.460. School official or employee not to act as instructional material agent.
156.465. Reward for adoption of instructional materials prohibited.
156.470. Copy of recommended titles to remain in specified office for period of adoption. [Repealed].
156.472. Textbooks for model and practice schools. [Repealed].
156.474. Multiple textbook adoptions. [Repealed].
156.475. Title. [Repealed].
156.476. Instructional materials for children with impaired vision — Requirement that publisher or developer of adopted instructional materials furnish American Printing House for the Blind with text in electronic format.

Miscellaneous.

156.480. Employees of department or school districts with decision-making authority prohibited from supplying goods or services for which school funds are expended — Penalties.
156.483. Restrictions on employing violent offenders or persons convicted of sex crimes — Criminal record check on job applicants.
156.485. [Repealed, reenacted, and amended.]
156.486. [Repealed, reenacted, and amended.]

Section
156.487. [Number not yet utilized.]
156.488. Department to communicate core content and career-readiness standards, assist in identifying students who are academically behind or have high absentee rates or discipline problems, and develop enhanced courses to be offered.
156.490. [Repealed.]
156.492. Authority to establish building and construction trade training program — Conditions.
156.495. Program to identify and locate missing children enrolled in Kentucky schools.
156.496. Family resource and youth services centers — Design — Core components — Location — Grant program — Prohibition on abortion counseling and referrals — Monetary donations.
156.497. Interagency Task Force on Family Resource Centers and Youth Services Centers — Formulation of five-year plan — Implementation. [Repealed.]
156.4975. Definitions for KRS 156.496, 156.4975, and 156.4977.
156.4977. Grants to local school districts for family resource and youth services centers — Supplemental grant program to provide health services.
156.498. Alternate approval procedure for federal food program eligibility for certain organizations.
156.499. [Repealed.]
156.500. Appointments to reflect reasonable minority representation.
156.501. Student health services — Responsibilities of Department of Education and Department for Public Health — Filling of position.
156.502. Health services in school setting — Designated provider — Liability protection.
156.503. Committee to study basketball tournaments — Membership — Meetings and recommendations.

Professional Practices Commission.

156.510. [Repealed.]
156.520. [Repealed.]
156.530. [Repealed.]
156.540. [Repealed.]
156.550. [Repealed.]

Professional Development for School Personnel.

156.551. Definitions for KRS 156.551 to 156.555.
156.553. Teachers' professional growth fund — Purposes — Courses — Duties of Department of Education — Professional development programs — Administrative regulations — Advancement by local boards of funds to teachers for professional development education — Reimbursement — Priority for use of funds from 2010 to 2016.
156.555. Center for Middle School Academic Achievement — Duties — Location at college or university.
156.557. Definitions — Statewide framework for teaching — District personnel evaluation system — Summative evaluations — Appeals — Prohibition against disclosure of confidential information — Limits on reporting of evaluation results.
156.560. Pilot program for performance-based professional development — Parameters determined by local board — Study and report by Department of Education.
156.565. Definitions for section — Principal leadership development practicum — Administrative regulations.

Teacher Education Scholarship Fund.

156.610. [Repealed.]
156.611. [Repealed, reenacted, and amended.]
156.613. [Repealed and reenacted.]
156.620. Applications for scholarships — Standards — Examination. [Repealed.]
156.630. Conditions for awarding scholarships — Requirements — Priority. [Repealed.]
156.640. [Repealed.]
156.650. When effective. [Repealed.]

Education Technology.

156.660. Definitions. [Repealed].
156.665. [Repealed.]
156.666. Council for Education Technology — Membership — Duties. [Repealed.]
156.670. Development of master plan for education technology.
156.671. Strategic plan for distance learning.
156.675. Prevention of transmission of social media and sexually explicit materials to schools — Administrative regulations — Local school district policy on student internet access — Limitation.
156.690. Teachers' computer purchase program. [Repealed].

Compact for Education.

156.710. Interstate Compact for Education.
156.715. Kentucky members of interstate commission.
156.720. Bylaws, where filed.

Interstate Compact on Educational Opportunity for Military Children.

156.730. Interstate Compact on Educational Opportunity for Military Children.
156.735. Rights of students whose parents are civilian military employees or members of the National Guard and Reserves same as those afforded in KRS 156.730.

Interagency Commission on Educational and Job Training Coordination.

156.740. Interagency Commission on Educational and Job Training Coordination — Membership.
156.745. Purposes — Responsibilities.
156.749. Administrative expenses — Meetings.
156.760. [Repealed, reenacted and amended.]
156.762. [Repealed and reenacted.]
156.764. [Repealed and reenacted.]
156.766. [Repealed and reenacted.]

Career and Technical Education.

156.800. Definitions for KRS 156.800 to 156.860.
156.802. Office of Career and Technical Education — Kentucky Board of Education.
156.804. Organizational structure of Office of Career and Technical Education — Ombudsman.
156.806. Career and Technical Education Advisory Committee — Purpose — Members.
156.808. Personnel of Office of Career and Technical Education — Administrative regulations — Appeals to Kentucky Technical Education Personnel Board.
156.810. Posting of full-time vacancies.
156.812. Employee benefits.
156.814. Personnel files.
156.816. Grounds for refusal to consider or to disqualify an applicant for, or to remove a person from, a certified or equivalent position.
156.818. Criminal conviction as grounds for disciplinary action.
156.820. Employees with continuing status — Appeals.
156.822. Appeal from final order of board.
156.824. Payment of reinstated employee.

Section
156.826. Employment status.
156.828. Employee evaluations.
156.830. Coercion of employees prohibited — Lay-off priorities.
156.832. Procedures for lay-offs.
156.834. Appeal to board of lay-off by continuing status employee.
156.836. Appeal of board's final order relating to lay-off of continuing status employee.
156.838. Prohibited activities.
156.840. Kentucky Technical Education Personnel Board.
156.842. Office of Career and Technical Education to manage state-operated secondary area vocational education and technology centers.
156.844. Local board's petition to commissioner of education seeking power to manage and control state-operated secondary vocational education and technology center — Issues related to transfer of employees.
156.846. Local board's power to relinquish management and control of vocational education center — Issues related to transfer of employees.
156.848. Agreements for training workers.
156.850. Federal acts relating to vocational education accepted.
156.852. Kentucky Board of Education authorized to carry out vocational education programs.
156.854. State Treasurer custodian of funds.
156.856. Tuition and fees in secondary area vocational education and technology centers.
156.858. Liability insurance for motor vehicles owned or operated by office in vocational schools and centers.
156.860. Medical and accident insurance for students.

Penalties.

156.990. Penalties.

DEPARTMENT GENERALLY

156.005. Chief state school officer defined for KRS Chapters 156 to 168.

For purposes of KRS Chapters 156 through 168, "chief state school officer" shall mean the Superintendent of Public Instruction until the close of business on December 31, 1990, and after that date it shall mean the commissioner of education.

History.
Enact. Acts 1990, ch. 476, Pt. II, § 33, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Education Law: An Overview of the Rose Decision and the Newest Suit on Educational Funding, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 23.

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.007. Local Superintendents Advisory Council.

(1) There is hereby established the Local Superintendents Advisory Council, which shall consist of eleven (11) local school district superintendents appointed by the Legislative Research Commission. Seven (7) members shall represent each of the Supreme Court districts as established by KRS 21A.010 and four (4) members shall represent the state at large. The members shall be appointed for a four (4) year term, except the initial appointments shall be as follows: four (4) members shall serve four (4) year terms; three (3) members shall serve two (2) year terms; and four (4) members shall serve one (1) year terms. A vacancy in the membership shall be filled by the commission for the unexpired term.

(2) The council shall advise the chief state school officer and the Kentucky Board of Education concerning the development of administrative regulations and education policy. The chief state school officer shall submit all proposed administrative regulations and educational policies for review by the council prior to seeking approval of the Kentucky Board of Education.

History.
Enact. Acts 1994, ch. 354, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Education Law: The Federal No Child Left Behind Act — The Kentucky Experience, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 35.

156.010. Commissioner's authority to organize Department of Education — Composition — Functions.

(1) The commissioner of education shall be the chief executive of the Department of Education. The commissioner shall be responsible for administering, structuring, and organizing the department and its services, including but not limited to the following:

(a) Technical assistance with curriculum design, school administration and finance, computer and technology services, media services, community education, career and technical education, STEM education as defined in KRS 158.845, education for exceptional children, and professional development;

(b) Compensatory education;

(c) Research and planning, which shall include, but not be limited to, a statewide research and development effort to identify or develop the best educational practices to be used in the public schools of the Commonwealth. Appropriations for this purpose may be used within the department or for contracting with other individuals, agencies, universities, laboratories, or organizations;

(d) Kentucky School for the Blind and the Kentucky School for the Deaf;

(e) Performance and outcome assessments;

(f) Monitoring the management of school districts, including administration and finance, implementation of state laws and regulations, and student performance; and

(g) Implementing state laws and the policies promulgated thereunder by the Kentucky Board of Education and the Education Professional Standards Board.

(2) The commissioner of education may delegate any authority to act on the commissioner's behalf in the supervision, inspection, and administration of the schools to the extent the commissioner has supervisory and administrative control.

(3) All employees of the Department of Education shall be reimbursed for necessary traveling expenses incurred in the performance of their official duties, and no part of the reimbursement shall be included in or accounted as a part of their salaries.

(4) The State Department of Education, in the operation and management of its schools and the programs at these schools, shall meet all required federal and state standards relating to facilities and personnel qualifications; however, no license or license fee shall be required for any school or program operated by the State Department of Education.

(5) The Department of Education shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for elementary and secondary education.

History.

4618-20, 4618-80: amend. Acts 1952, ch. 41, § 1; 1962, ch. 13, § 1; 1976, ch. 327, § 1; 1978, ch. 155, § 84, effective June 17, 1978; 1982, ch. 381, § 1, effective July 15, 1982; 1984, ch. 128, § 1, effective July 13, 1984; 1984, ch. 315, § 1, effective July 13, 1984; 1986, ch. 398, § 1, effective July 15, 1986; 1988, ch. 361, § 1, effective July 15, 1988; 1988, ch. 435, § 1, effective July 1, 1988; 1990, ch. 470, § 45, effective July 1, 1990; 1990, ch. 476, Pt. II, § 43, effective July 13, 1990; 1990, ch. 518, § 1, effective July 13, 1990; 1994, ch. 256, § 1, effective July 1, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2025 ch. 86, § 3, effective June 27, 2025.

NOTES TO DECISIONS

Cited in:

Eva N. v. Brock, 741 F. Supp. 626, 1990 U.S. Dist. LEXIS 8111 (E.D. Ky. 1990); Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 FED App. 0417P, 1994 U.S. App. LEXIS 36130 (6th Cir. Ky. 1994).

OPINIONS OF ATTORNEY GENERAL.

To the extent that KRS 156.016, which gives the power of reorganization of the Department of Education to the Commissioner of Education, is considered to conflict with KRS 12.028, which indicates that only the Governor or another elected state executive officer may file executive orders for reorganization, clearly, this section and KRS 156.016 supersede KRS 12.028 in that this section and KRS 156.016 were enacted into law more recently than KRS 12.028 and more specifically address the reorganization of the Department of Education. OAG 91-66, 1991 Ky. AG LEXIS 68.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Chapter 1 complaint procedures, 704 KAR 3:365.

Chapter 1, ESSIA migrant education requirements, 704 KAR 3:292.

Depository bond, penal sum, 702 KAR 3:090.

Depository of board, collateral, 702 KAR 3:090.

Fidelity bond, penal sum for Treasurer, Finance Officer, and others, 702 KAR 3:080.

Local responsibilities, 702 KAR 6:010.

Personnel; policies and procedures, 702 KAR 6:040.

156.015. Department schools to meet standards for facilities and personnel fixed by law — Licenses not required. [Repealed.]

Compiler's Notes.

This section (Enact. 1968, ch. 172, § 2) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.016. Abolition of employment positions — Reorganization.

(1) Effective at the close of business on June 30, 1991, all employment positions in the Department of Education shall be abolished and the employment of all employees in the positions shall be terminated. Employees whose employment has been terminated under the provisions of this section shall have the same reemployment rights granted career employees by KRS Chapter 18A, except these employees shall not have priority status on the register for reemployment in the Department of Education. This shall not be construed as prohibiting the Department of Education from rehiring an employee whose employment has been terminated.

(2) After a comprehensive study of the Department of Education and the goals and duties of the commissioner of education and the department as established under the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476, the commissioner shall reorganize the department, effective July 1, 1991. The reorganization of the department shall incorporate a strong orientation toward providing technical assistance to school districts. After the comprehensive study, which shall include consultations with current department employees, the commissioner shall establish all positions in the department and set the qualifications for the positions, effective no earlier than July 1, 1991. The commissioner may rehire any department employees whose employment is terminated at the close of business on June 30, 1991, under this section.

(3) This section is in response to a specific court decision demanding specific actions of the General Assembly. The actions authorized by this section are designed for a single time use only in response to the education situation. The actions authorized by this section shall not extend to any other situation or circumstance.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 42, effective July 13, 1990.

NOTES TO DECISIONS

1. Appeal of Termination.

Because their jobs were abolished under this section, a part of the Kentucky Education Reform Act, employees of the Kentucky Department of Education, dismissed from their jobs, rehired, and subsequently terminated, were not "reinstated" or "reemployed" and were therefore under "initial probation" and not "promotional probation" when they were discharged and did not have the right to an appeal before the Personnel Board. Hart v. Personnel Bd., 905 S.W.2d 507, 1995 Ky. App. LEXIS 154 (Ky. Ct. App. 1995).

2. —Time.

Employees of Kentucky Department of Education, dismissed from their jobs and rehired pursuant to the Kentucky Education Reform Act and subsequently terminated during their "initial probation" period, did timely appeal their terminations to the Personnel Board for the 30-day limit to file an appeal ran from the time of their discharge on not upon their placement on "initial probation." Hart v. Personnel Bd., 905 S.W.2d 507, 1995 Ky. App. LEXIS 154 (Ky. Ct. App. 1995).

OPINIONS OF ATTORNEY GENERAL.

Although the Commissioner of Education is an appointed chief executive officer of the Department of Education, as commissioner he has the executive authority, unilaterally, to reorganize the department, one time, under the mandate of subsection (3) of this section. OAG 91-66, 1991 Ky. AG LEXIS 68.

A statutorily, not a constitutionally, created property right exists for state merit employees who hold status in their positions. That right entails protection from dismissal, demotion, suspension or penalization except for cause, but does not entail protection from legislative abolishment of their positions and termination. OAG 91-66, 1991 Ky. AG LEXIS 68.

It is not unconstitutional for the Legislature to require reorganization of the Department of Education, in the course of developing an efficient system of common schools in compliance with Const., § 183. OAG 91-66, 1991 Ky. AG LEXIS 68.

Merit employees of the Department of Education may not appeal legislative terminations by Commissioner of Education under this section since in this section the General Assembly abolished all employment positions in the Department of Education and terminated the employment of all employees in those positions, effective at the close of business on June 30, 1991; the personnel board has no jurisdiction over these actions of the General Assembly; the Personnel Board is authorized neither to recreate the positions abolished by the General Assembly nor to reinstate employees whose employment has been terminated by the General Assembly. OAG 91-66, 1991 Ky. AG LEXIS 68.

To the extent that this section, which gives the power of reorganization of the Department of Education to the Commissioner of Education, is considered to conflict with KRS 12.028, which indicates that only the Governor or another elected state executive officer may file executive orders for reorganization, clearly, KRS 156.010 and this section supersede KRS 12.028 in that KRS 156.010 and this section were enacted into law more recently than KRS 12.028 and more specifically address the reorganization of the Department of Education. OAG 91-66, 1991 Ky. AG LEXIS 68.

While state merit employees hold a property right in their employment with the state to the extent that they may not be dismissed, demoted, suspended or otherwise penalized except for cause, there is no statutorily created property right that prevents legislative terminations from a particular agency because there is no statutory provision that provides that legislative terminations cannot take place absent cause. OAG 91-66, 1991 Ky. AG LEXIS 68.

While this section does not provide for seniority for purposes of termination or rehiring in the Department of Education, seniority applies in all other agencies under the provisions of KRS 18A.135(2) in that all employees of the Department of Education are to be treated as career employees when placed on reemployment lists. OAG 91-66, 1991 Ky. AG LEXIS 68.

Whether or not an individual who is rehired in the Department of Education will be rehired as a merit or nonmerit employee will depend upon whether the Commissioner of Education hires that individual for a merit or a nonmerit position. OAG 91-87, 1991 Ky. AG LEXIS 87.

Employees of the Department of Education who are terminated have no priority status for reemployment in the Department of Education; nevertheless, those employees have the rights of career employees which gives them priority on reemployment registers in other agencies. OAG 91-87, 1991 Ky. AG LEXIS 87.

In view of the fact that any employee rehired by the Department of Education would be a new employee, that employee, so long as he is hired into a classified position, would be required to serve a probationary period following the completion of which the individual would have status in the position that he occupies. OAG 91-87, 1991 Ky. AG LEXIS 87.

156.017. Regional service centers. [Repealed]

History.

Enact. Acts 1990, ch. 476, Pt. II, § 44, effective July 13, 1990; repealed by 2021 ch. 26, § 12, effective June 29, 2021.

156.018. Role of department with respect to program created by KRS 158.798.

The Department of Education in Kentucky shall promote, support, and assist in the program created in KRS 158.798 by:

(1) Identifying middle and high school students who have a high interest, aptitude, or achievement in math, science, and technology related courses, events, and activities;

(2) Cooperating with the Kentucky Science and Technology Council, Inc., in providing opportunities for middle school students to be recognized and encouraged in pursuit of math and science course work, related activities outside of the classroom, and careers in related fields;

(3) Participating with others in the administration of summer institutes, business and industry internships, career opportunities, and other related experiences directed toward middle and high school students; and

(4) Encouraging representatives from business and industry to participate in the mentorship, internship, scholarship, and career awareness components of the program.

History.

Enact. Acts 1992, ch. 408, § 2, effective July 14, 1992.

156.020. Appointment of assistant superintendent of public instruction — Divisions of department. [Repealed.]

Compiler's Notes.

This section (4384-6; amend. Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 1) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.022. Division of surplus property. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1960, ch. 68, Art. III, §§ 1 to 3; 1966, ch. 255, § 147; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 252, § 1, effective April 6, 1984) was repealed by Acts 1990, ch. 386, § 3, and by Acts 1990, ch. 476, Part VI, § 616, both effective July 13, 1990.

156.024. Department's budget requests to be submitted to state board.

Prior to submission of the formal budgetary requests

of the Department of Education, established in KRS 156.010, to the Governor and executive branch, complete copies of the budget areas in the board's jurisdiction shall be forwarded to the Kentucky Board of Education to enable it to fully investigate and review said requests and make recommendations to the Governor.

History.

Enact. Acts 1978, ch. 155, § 103, effective June 17, 1978; 1986, ch. 331, § 26, effective July 15, 1986; 1988, ch. 361, § 2, effective July 15, 1988; 1990, ch. 470, § 46, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 126, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Legislative Research Commission Notes.

(7/13/90). This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

156.026. Credits allowed transferred district employee.

(1) For purposes of this section, full-time service in a local school for not less than one hundred forty (140) days during the school year entitles an employee who transfers to the Department of Education to a full year of experience credit on the Personnel Cabinet pay schedule and a full year for the purpose of accumulation of annual leave and sick leave in the Department of Education.

(2) An employee of a local school district who transfers to become an employee of the Department of Education after June 30, 1983, shall be allowed to transfer accrued sick leave up to the maximum allowed for transfers for teachers between school districts as provided by KRS 161.155(4). The employee shall be allowed credit for each year of experience in the local school system for the purposes of determining salary in accordance with the current Personnel Cabinet pay schedule, and the rate of accumulation of annual and sick leave in the Department of Education.

(3) For purposes of determining eligibility for additional leave or other benefits based on longevity of service, an employee transferring from a school district to the Department of Education after June 30, 1983, shall be given credit for each year of service in the school district, as determined under subsection (1) of this section.

History.

Enact. Acts 1982, ch. 234, § 1, effective July 15, 1982; 1988 ch. 36, § 1, effective July 15, 1988; 1990, ch. 476, Pt. V, § 363, effective July 13, 1990; 1990, ch. 508, § 1, effective July 13, 1990; 1998, ch. 154, § 79, effective July 15, 1998; 2006, ch. 52, § 1, effective July 12, 2006.

Legislative Research Commission Notes.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

156.027. Preferential procurement status for publishers who supply materials in alternative formats for students with disabilities — Electronic versions of text that are compatible with Braille translation and speech synthesis software — Digital files.

(1) The following definitions shall apply to this section:

(a) "Alternative format" means any medium or format for the presentation of instructional materials that is needed by a student with an individualized education program or Section 504 Plan for a reading accommodation other than standard print, including but not limited to Braille, large print, audio recordings, digital text, and digital talking books;

(b) "Braille," "individualized education program," and "blind students" have the same meaning as defined under KRS 158.281;

(c) "Comparable version" denotes that all elements of the print version are present in the electronic version, including graphics with ALT tags though not necessarily in the same order or format;

(d) "Legacy materials" means images and graphics requiring release and permission from another source other than the publisher; and

(e) "Section 504 Plan" means a written statement developed for a student with a disability that includes the provision of regular or special education and related aids and services designed to meet individual educational needs in accordance with the federal regulations issued under 34 C.F.R. sec. 104.33.

(2) The purpose of this section shall be to ensure, to the extent feasible, that all students with disabilities in the public schools kindergarten through grade twelve (12) who require reading accommodations in accordance with an individualized education program or Section 504 Plan, including but not limited to students who are blind, visually impaired, or who have a specific learning disability as defined in KRS 157.200 or other disability affecting reading, shall have access to textbooks and instructional materials as defined by administrative regulations of the Kentucky Board of Education in alternative formats that are appropriate to their disability and educational needs.

(3) Notwithstanding any other statute to the contrary, the Department of Education shall give preferential procurement status to textbook and instructional materials from publishers who make their materials available in alternative formats for use by students with disabilities, or who can verify that an accessible format textbook or instructional material is currently available from or is in the process of being created by the American Printing House for the Blind, Recording for the Blind and Dyslexic, or another authorized entity, as defined under 17 U.S.C. sec. 121 and who commonly provide alternative format materials for use by students in Kentucky schools. The Department of Education may assign additional procurement preferences designed to ensure that students with disabilities have access to appropriate alternative formats to meet their needs.

(4) Effective July 1, 2003, the Department of Education shall require to the extent feasible any publisher of a textbook or program adopted for use in the public schools in kindergarten through grade twelve (12) to furnish computer files or electronic versions of the printed textbooks and instructional materials in formats comparable to the printed version that are compatible with commonly used Braille translation and speech synthesis software and include corrections and revisions as may be necessary to assure clarity in

presentation and use. Navigation within and between files should be reasonably efficient so that the disabled learner is able to fully utilize the material in a manner that yields the same result as the print version affords a nondisabled learner. File format shall be limited to those formats that allow for a comparable version that is readable with text and screen readers such as HTML, XML, or other formats that meet the criteria stated in this subsection. For extreme cases where ALT tags are not feasible, a tag may read, "This item is too complicated to render with current technology." Legacy materials shall be exempt from the criteria for this preference. These files shall be provided to the Department of Education and shall be provided at the same time and in composition and form comparable with the printed version and include corrections and revisions as may be necessary to ensure clarity in presentation and use. The Department of Education may define further requirements regarding additional characteristics of digital files submitted in compliance with this section as needed to provide appropriate alternative formats to meet the needs of students with disabilities.

(5) The Department of Education shall require publishers to make digital files, together with two (2) copies of the print version, available at no charge upon request to the American Printing House for the Blind for production of accessible Braille and other materials and to Recording for the Blind and Dyslexic or another authorized entity, as defined under 17 U.S.C. sec. 121, for production of accessible audio media, digital text, and digital talking books, which produce accessible format materials based on selection and scheduling needs.

(6) Nothing in this section shall in any way lessen the obligation of the public schools to provide for the instruction of blind students in the use of Braille in accordance with KRS 158.282 nor lessen the provision of Braille textbooks for blind students under KRS 156.476.

History.

Enact. Acts 2002, ch. 299, § 1, effective July 15, 2002; 2021 ch. 26, § 4, effective June 29, 2021.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Instructional resource adoption process, 704 KAR 3:455.

KENTUCKY BOARD OF EDUCATION

156.029. Kentucky Board of Education — Membership — Functions.

(1) There is hereby established a Kentucky Board of Education, which shall consist of eleven (11) voting members appointed by the Governor and confirmed by the Senate of the General Assembly, with the president of the Council on Postsecondary Education and the secretary of the Education and Labor Cabinet serving as ex officio nonvoting members, and an active public elementary or secondary school teacher and a public high school student appointed by the board as described in subsection (4) of this section serving as nonvoting members. Seven (7) voting members shall represent each of the Supreme Court districts as established by KRS 21A.010, and four (4) voting members shall represent the state at large. Each of the voting members shall serve for a four (4) year term, except the initial appointments shall be as follows: the seven (7) members representing Supreme Court districts shall serve a term which shall expire on April 14, 1994; and the four (4) at-large members shall serve a term which shall expire on April 14, 1992. Subsequent appointments shall be submitted to the Senate for confirmation in accordance with KRS 11.160.

(2) Appointments of the voting members shall be made without reference to occupation. No voting member at the time of his or her appointment or during the term of his or her service shall be engaged as a professional educator. Beginning with voting members appointed on or after June 29, 2021, appointments to the group of members representing Supreme Court districts and to the group of at-large members, respectively, shall reflect equal representation of the two (2) sexes, inasmuch as possible; reflect no less than proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration and the political affiliation of each appointee as of December 31 of the year preceding the date of his or her appointment; and reflect the minority racial composition of the Commonwealth based on the total minority racial population using the most recent census or estimate data from the United States Census Bureau. If the determination of proportional minority representation does not result in a whole number of minority members, it shall be rounded up to the next whole number. A particular political affiliation shall not be a prerequisite to appointment to the board generally; however, if any person is appointed to the board that does not represent either of the two (2) leading political parties of the Commonwealth, the proportional representation by political affiliation requirement shall be determined and satisfied based on the total number of members on the board less any members not affiliated with either of the two (2) leading political parties. Pursuant to KRS 63.080, a member shall not be removed except for cause or, beginning with voting members appointed on or after June 29, 2021, in accordance with KRS 63.080(3). Notwithstanding KRS 12.028, the board shall not be subject to reorganization by the Governor.

(3) Ex officio and other nonvoting members shall not be represented by proxy at any meeting of the board.

(4) The nonvoting teacher and student members shall be selected by the board from the state's seven (7) Supreme Court districts on a rotating basis from different districts. The public high school student shall be classified as a sophomore at the time of appointment. The teacher and student members shall serve for a one (1) year term. The board shall promulgate an administrative regulation establishing the process for selecting the nonvoting teacher and student members.

(5) A vacancy in the voting membership of the board shall be filled by the Governor for the unexpired term with the consent of the Senate. In the event that the General Assembly is not in session at the time of the appointment, the consent of the Senate shall be ob-

tained during the time the General Assembly next convenes.

(6) At the first regular meeting of the board in each fiscal year, a chair shall be elected from its voting membership and subject to Senate confirmation in accordance with KRS 11.160. If the person selected as chair is not confirmed by the Senate, he or she shall still retain his or her position on the board, but shall vacate his or her position as chair, and the voting members of the board shall select a new chair.

(7) The members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The commissioner of education shall serve as the executive secretary to the board.

(9) The primary function of the board shall be to develop and adopt policies and administrative regulations, with the advice of the Local Superintendents Advisory Council, by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 35, effective July 13, 1990; 1992, ch. 415, § 2, effective July 14, 1992; 1994, ch. 354, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 57, effective May 30, 1997; 2021 ch. 178, § 1, effective June 29, 2021; 2022 ch. 236, § 61, effective July 1, 2022; 2023 ch. 134, § 2, effective March 29, 2023; 2026 ch. 178, § 10, effective April 16, 2026; 2026 ch. 196, § 9, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 178 and 196, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

Cited in:

Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 FED App. 0417P, 1994 U.S. App. LEXIS 36130 (6th Cir. Ky. 1994).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Area center or public high school, standards for vocational department, 705 KAR 3:141.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Depository bond, penal sum, 702 KAR 3:090.

Depository of board, collateral, 702 KAR 3:090.

Effective Instructional Leadership Act, 704 KAR 3:325.

FFA Leadership Training Center, 705 KAR 4:081.

Fidelity bond, penal sum for Treasurer, Finance Officer, and others, 702 KAR 3:080.

General program standards for secondary career and technical education programs, 705 KAR 4:231.

Internal accounting, 702 KAR 3:130.

Intervention system for persistently low-achieving schools, 703 KAR 5:180.

Kentucky Special Education Mentor Program, 707 KAR 1:270.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

Selection and appointment of non-voting Kentucky board of education members, 701 KAR 5:160.Work-based learning program standards, 705 KAR 4:041.

156.030. State Board for Elementary and Secondary Education — Members — Compensation — Function. [Repealed.]

Compiler's Notes.

This section (4377-2, 4377-4, 4384-5, 4527-63; amend. Acts 1962, ch. 244, Art. III, § 1; 1968, ch. 152, § 116; 1968, ch. 172, § 1; 1978, ch. 155, § 85, effective June 17, 1978; 1978, ch. 384, § 567, effective June 17, 1978) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

156.031. Existing State Board for Elementary and Secondary Education to remain active until successor board appointed.

(1) Effective until the Governor appoints and the Senate and the House of Representatives of the General Assembly confirm the State Board for Elementary and Secondary Education as established in KRS 156.029, there is within the Department of Education a State Board for Elementary and Secondary Education which shall consist of thirteen (13) members. Seven (7) members shall be appointed, one (1) from each Supreme Court district, as established by KRS 21A.010, and six (6) members from the state at large, by the Governor to serve for terms of four (4) years.

(2) The terms of the appointees shall expire on June 30 in the appropriate year, and the terms of each new member appointed thereafter shall begin on July 1.

(3) Vacancies in the membership of the board shall be filled by the Governor for unexpired terms. Appointments shall be made without reference to occupation, political affiliation, or similar consideration. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.

(4) At the first regular meeting of the board in each fiscal year, a chairperson shall be elected from its voting membership.

(5) The Superintendent of Public Instruction or his designee shall be the executive officer of the board.

(6) The primary function of the board shall be to develop and adopt policies and administrative regulations by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board. Existing administrative regulations relating to statutes that are repealed and reenacted in the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, and that have not been objected to in the administrative review process as provided for in KRS Chapter 13A shall remain in effect until amended or repealed. Regulations promulgated under newly created or amended statutes in the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall be promulgated, reviewed, or amended, if necessary, and resubmitted to the Legislative Research Commission,

prior to December 30, 1990, except for regulations that are to be promulgated at another date in accordance with other provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476.

History.
Enact. Acts 1982, ch. 381, § 2, effective July 15, 1982; 1988, ch. 361, § 3, effective July 15, 1988; 1990, ch. 476, Pt. II, § 34, effective July 13, 1990.

Legislative Research Commission Notes.
(7/15/96). Under 1996 Ky. Acts ch. 362, sec. 6, references to the "State Board for Elementary and Secondary Education" in this statute have been left unchanged although the name of that board has been changed by that Act to the "Kentucky Board of Education."

As enacted, subsection (1) of this section states that the State Board of Education consists of fourteen members. However, it provides for the appointment of only thirteen members. The Reviser of Statutes, pursuant to KRS 7.136, has made a technical correction in subsection (1) by inserting thirteen in lieu of fourteen.

Pursuant to Executive Order 80-624, the terms of those members appointed on July 30, 1980 shall expire on June 30, as follows: three in 1981; three in 1982; four in 1983; and three in 1984.

OPINIONS OF ATTORNEY GENERAL.

This section and KRS 164.010 (now repealed) contain clearly irreconcilable, repugnant provisions, since this section directs the state Board of Education to elect one of its own members to serve as an ex officio member of the council on higher education and KRS 164.010 (now repealed), as amended, has not only deleted the reference to the state Board member on the council but also provides that the council is to be composed of the state superintendent of public instruction and 17 lay members appointed by the Governor, thus leaving no seat on the council to be occupied by a state Board of Education member. As Acts 1982, ch. 379, amending KRS 164.010 (now repealed), became operative on April 9, 1982, and Acts 1982, ch. 381, creating this section, did not become effective until July 15, 1982, the language in KRS 164.010 (now repealed) prevails, so that no member of the state Board of Education will be entitled to sit on the council of higher education. OAG 82-357, 1982 Ky. AG LEXIS 266.

Under this section the executive director of the council on higher education continues as an ex officio, nonvoting member of the state Board as the section clearly provides that the state Board is to consist of 14 members and, without the executive director of the council, there would only be 13 members. The General Assembly intended that the fourteenth member was to be identified by referring to Executive Order 80-624. OAG 82-357, 1982 Ky. AG LEXIS 266.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Annual in-service training of district board members, 702 KAR 1:115.
Application to exceed budget, 702 KAR 3:050.
Audit exceptions and corrections, 702 KAR 3:150.
Bidding procedures, 702 KAR 3:135.
Blind and deaf pupils, reimbursement for, 702 KAR 5:120.
Buses; specifications and purchases, 702 KAR 5:060.
Chapter 1 complaint procedures, 704 KAR 3:365.
District school nutrition director, 702 KAR 6:020.
Educational television equipment purchases, 702 KAR 3:170.
Emergency school loan fund; repayments, 702 KAR 4:100.
Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.
Facility programming and construction criteria, 702 KAR 4:170.
Fidelity bond, penal sum for Treasurer, Finance Officer, and others, 702 KAR 3:080.
Handicapped, reimbursement for, 702 KAR 5:100.
Local responsibilities, 702 KAR 6:010.
Lunch and breakfast requirements, 702 KAR 6:050.
Merger of independent and county school districts, 702 KAR 1:100.
Personnel; school nutrition employee qualifications, 702 KAR 6:045.
Personnel; policies and procedures, 702 KAR 6:040.
Physical education, 704 KAR 4:010.
Program cost calculation, 702 KAR 5:020.
Property disposal, 702 KAR 4:090.
Recognition of credits when transferring without transcript, 704 KAR 3:307.
Recreational facilities; school and community, 702 KAR 4:005.
Ride to the Center for the Arts Program Fund, 704 KAR 7:080.
State plan for the administration of Chapter 2, of the Augustus F. Hawkins — Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 704 KAR 3:335.
Student discipline guidelines, 704 KAR 7:050.
Teachers' salary scheduling, 702 KAR 3:070.
Time minimum for meals, 702 KAR 6:060.

156.032. State board for vocational-technical, adult education and vocational rehabilitation services — Membership — Function. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 361, § 4, effective July 15, 1988) was repealed by Acts 1990, ch. 470, § 72, effective July 1, 1990.

Legislative Research Commission Notes.
(7/13/90) This section was amended by one Act [Acts 1990, ch. 476, § 48] and repealed by another Act of the 1990 General Assembly. Pursuant to KRS 446.260, the Act [Acts 1990, ch. 470, § 72] repealing the section prevails.

156.033. Duties and powers of State Board for Adult, Vocational Education and Vocational Rehabilitation. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1990, ch. 476, Pt. II, § 49, effective July 13, 1990) was repealed by Acts 1992, ch. 417, § 12, effective July 14, 1992.

156.035. Legal status of board — Administration of fund.

(1) The Kentucky Board of Education is recognized to be a public body corporate and politic, and an agency and instrumentality of the Commonwealth in the performance of essential governmental functions.

(2) For the benefit of programs under its control and supervision, the board is authorized to implement the provisions of any Act of Congress appropriating and apportioning funds to the state, to receive funds appropriated by the Kentucky General Assembly, to provide for the proper apportionment and disbursement of such

funds in accordance with state or federal laws, and to accept and provide for the administration of any gifts, donations, or devises.

(3)(a) The board is authorized to expend funds necessary for errors and omissions insurance premiums for insurance to cover the defense of, and any damages and costs awarded in, any civil action brought against individual board members on account of an act made in the scope and course of their performance of legal duties as board members.

(b) The authorization of the expenditure of public funds for insurance is deemed critical to continuing to attract qualified individuals to become members of state boards, and is deemed to authorize the expenditure of public funds for a public purpose.

(c) Nothing in this subsection shall be construed as a waiver of the sovereign immunity of the Commonwealth with respect to claims against the Kentucky Board of Education, the Department of Education, or any of their respective officers, agents, or employees.

History.

Enact. Acts 1962, ch. 13, § 2; 1978, ch. 155, § 86, effective June 17, 1978; 1986, ch. 264, § 1, effective April 3, 1986; 1986, ch. 331, § 27, effective July 15, 1986; 1988, ch. 361, § 5, effective July 15, 1988; 1990, ch. 470, § 47, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 127, effective July 13, 1990; 1996, ch. 362, § 2, effective July 1, 1996.

Legislative Research Commission Notes.

(7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.

NOTES TO DECISIONS

Cited in:

Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 FED App. 0417P, 1994 U.S. App. LEXIS 36130 (6th Cir. Ky. 1994).

OPINIONS OF ATTORNEY GENERAL.

When this section, KRS 156.070 and 156.114 (repealed) are viewed cumulatively, there is strong support for the power of the State Board of Education to withhold state funds from any school district failing to file reports required by statute or regulation of the state board. OAG 79-464, 1979 Ky. AG LEXIS 166.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Chapter 1 complaint procedures, 704 KAR 3:365.

Chapter 1, ESSIA migrant education requirements, 704 KAR 3:292.

District school nutrition director, 702 KAR 6:020.

Homeless Children Education Program, 704 KAR 7:090.

Local responsibilities, 702 KAR 6:010.

Lunch and breakfast requirements, 702 KAR 6:050.

Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports, 702 KAR 6:090.

Personnel; policies and procedures, 702 KAR 6:040.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Secondary funding for state-operated vocational schools, 702 KAR 1:130.

SEEK funding formula, 702 KAR 3:270.

Selection and appointment of non-voting Kentucky board of education members, 701 KAR 5:160.

State plan for the administration of Chapter 2, of the Augustus F. Hawkins — Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 704 KAR 3:335.

Time minimum for meals, 702 KAR 6:060.

Withholding funds, 702 KAR 3:045.

156.040. Qualification of board members.

(1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(2) A member of the Kentucky Board of Education shall:

(a) Be at least thirty (30) years of age;

(b) Have at least an associate degree or its equivalent;

(c) Have been a resident of Kentucky for at least three (3) years preceding the member's appointment;

(d) Not hold a state office requiring the constitutional oath;

(e) Not be a member of the General Assembly;

(f) Not hold or discharge the duties of any civil or political office, deputyship, or agency under the city or county of his or her residence;

(g) Not be directly or indirectly interested in the sale to the Kentucky Board of Education or the Department of Education of books, stationery, or any other property, materials, supplies, equipment, or services for which board or department funds are expended;

(h) Not have a relative as defined in subsection (1) of this section who is employed by the Department of Education;

(i) Not have been removed from the board for cause; and

(j) Not be engaged as an elementary or secondary education professional educator.

History.

4377-5; amend. Acts 1962, ch. 244, Art. III, § 3; 1978, ch. 155, § 87, effective June 17, 1978; 1986, ch. 331, § 28, effective July 15, 1986; 1988, ch. 361, § 6, effective July 15, 1988; 1990, ch. 470, § 48, effective July 1, 1990; 1990, ch. 476, Pt. II, § 38, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 257, § 1, effective July 15, 1998; 2003, ch. 26, § 1, effective March 10, 2003; 2021 ch. 178, § 2, effective June 29, 2021.

Legislative Research Commission Notes.

(7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.

156.050. Rules — Secretary. [Repealed.]

Compiler's Notes.

This section (4377-7) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.060. Quorum — Meetings — Location of office — Compensation.

For meetings of the Kentucky Board of Education, a majority of the voting members shall constitute a quorum for the transaction of business. The board shall meet not less than every three (3) months and at other times it may be called as provided in this section. Special meetings of the board may be called by the chairperson, and upon written request of two (2) members, the chairperson shall call a special meeting of the board to be held not later than twenty (20) days following receipt of the written request. The chairperson shall give notice through the secretary by registered or certified mail, return receipt requested, to each member of the board at least ten (10) days prior to the time of any meeting unless all members of the board waive notice in writing. The offices of the board shall be at the seat of government in the Department of Education and shall be provided by the state. Members of the board may receive a per diem of one hundred dollars ($100) for each regular or special meeting attended and actual expenses for attending meetings, and may be reimbursed for other actual and necessary expenditures incurred in the performance of their duties authorized by the board. The per diem and expenses shall be paid out of the appropriation for the board.

History.

4377-8; amend Acts 1942, ch. 201, §§ 1, 2; 1962, ch. 244, Art. III, § 2; 1974, ch. 315, § 15; 1978, ch. 155, § 88, effective June 17, 1978; 1980, ch. 114, § 20, effective July 15, 1980; 1982, ch. 381, § 3, effective July 15, 1982; 1988, ch. 361, § 7, effective July 15, 1988; 1990, ch. 470, § 49, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 128, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

OPINIONS OF ATTORNEY GENERAL.

The literal language of this section provides a per diem and actual expenses for members of the State Board for Elementary and Secondary Education for attending regular or special meetings of the State Board for Elementary and Secondary Education and in other situations where matters relating to duties as a board member are performed, the board member is entitled to "actual and necessary expenditures" but not a per diem. OAG 79-466, 1979 Ky. AG LEXIS 185.

156.070. General powers and duties of state board — Administrative regulations — Designation of teams — Eligibility to play — Athletics participation consent form to include information on child dependency, neglect, and abuse — Restriction on reporting requirements.

(1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.

(a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.

(b) The state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.

(c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or by laws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer, football, and boys or coed lacrosse, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.

(d)1. The state board or any agency designated by the state board to manage interscholastic athletics shall allow a member school's team or students to play against students of a nonmember at-home private school, or a team of students from nonmember at-home private schools, if the nonmember at-home private schools and students comply with this subsection.

2. A nonmember at-home private school's team and students shall comply with the rules for student-athletes, including rules concerning:

a. Age;

b. School semesters;

c. Scholarships;

d. Physical exams;
e. Foreign student eligibility; and
f. Amateurs.

3. A coach of a nonmember at-home private school's team shall comply with the rules concerning certification of member school coaches as required by the state board or any agency designated by the state board to manage interscholastic athletics.

4. This subsection shall not allow a nonmember at-home private school's team to participate in a sanctioned:
a. Conference;
b. Conference tournament;
c. District tournament;
d. Regional tournament; or
e. State tournament or event.

5. This subsection does not allow eligibility for a recognition, award, or championship sponsored by the state board or any agency designated by the state board to manage interscholastic athletics.

6. A nonmember at-home private school's team or students may participate in interscholastic athletics permitted, offered, or sponsored by the state board or any agency designated by the state board to manage interscholastic athletics.

(e)1. Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced practice registered nurse, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any school athletic activity or sport.

2. Any interscholastic athletics participation consent form that is adopted by the Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall include the following information:
a. A student-athlete may report instances of child dependency, neglect, and abuse to any adult;
b. Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall report that information pursuant to KRS 620.030; and
c. References to instructions on reporting child dependency, neglect, and abuse, including KRS 620.030.

3. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall include the following information in any training for administrators and coaches under its jurisdiction:
a. The duty to report instances of child dependency, neglect, and abuse; and
b. Procedures for reporting child dependency, neglect, and abuse under KRS 620.030.

4. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.

(f) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. An exception to the provisions of this paragraph shall be made, and the student shall be eligible for high school athletics in Kentucky if the student:
1. Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;
2. Was retained in the primary school program because of an ARC committee recommendation; and
3. Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).

(g) The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations or bylaws that provide that:
1. A member school shall designate all athletic teams, activities, and sports for students in grades six (6) through twelve (12) as one (1) of the following categories:
a. "Boys";
b. "Coed"; or
c. "Girls";
2. The sex of a student for the purpose of determining eligibility to participate in an athletic activity or sport shall be determined by:
a. A student's biological sex as indicated on the student's original, unedited birth certificate issued at the time of birth; or
b. An affidavit signed and sworn to by the physician, physician assistant, advanced practice registered nurse, or chiropractor that conducted the annual medical examination required by paragraph (e) of this subsection under penalty of perjury establishing the student's biological sex at the time of birth;
3.a. An athletic activity or sport designated as "girls" for students in grades six (6) through twelve (12) shall not be open to members of the male sex.
b. This section shall not be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as "boys" or "coed"; and
4. Neither the state board, any agency designated by the state board to manage interscholastic athletics, any school district, nor any member school shall entertain a complaint, open an investigation, or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams, activities, or sports for students of the female sex.

(h)1. The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations that permit a school district to employ or assign non-

teaching or noncertified personnel or personnel without postsecondary education credit hours to serve in a coaching position. The administrative regulations shall give preference to the hiring or assignment of certified personnel in coaching positions.

2. A person employed in a coaching position shall be a high school graduate and at least twenty-one (21) years of age and shall submit to a criminal background check in accordance with KRS 160.380.

3. The administrative regulations shall specify post-hire requirements for persons employed in coaching positions.

4. The regulations shall permit a predetermined number of hours of professional development training approved by the state board or its designated agency to be used in lieu of postsecondary education credit hour requirements.

5. A local school board may specify post-hire requirements for personnel employed in coaching positions in addition to those specified in subparagraph 3. of this paragraph.

(i) Unless permitted to be eligible for varsity athletics by any transfer rule, policy, or administrative regulation promulgated by the state board or any agency designated by the state board to manage interscholastic athletics, any student who transfers enrollment from a district of residence to a nonresident district under KRS 157.350(4)(a) after enrolling in grade nine (9) and participating in a varsity sport shall be ineligible to participate in interscholastic athletics for one (1) calendar year from the date of the transfer. The state board or any agency designated by the state board to manage interscholastic athletics may adopt rules, policies, and bylaws and promulgate administrative regulations necessary to carry out this paragraph.

(j) No member school shall grant a student-athlete the right to use the member school's property, or intellectual property, such as trademarks, school uniforms, and copyrights, in the student's earning of compensation through name, image, and likeness activities. No student-athlete shall use school property or such intellectual property in earning compensation through name, image, and likeness activities. The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations to govern and enforce this paragraph.

(3)(a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction throughout the Commonwealth and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities with appurtenances and costs as may be incident to the issuance of the bonds.

(b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

(c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but

also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

(4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

(5) Upon the recommendation of the chief state school officer or his or her designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

(6) On or after June 27, 2025, the state board shall not impose any new reporting requirement upon public schools or public school districts that is not expressly authorized by state statute or federal law.

History.

1952 ch. 41, 4377-1, 4377-12, 4527-63, 4618.80; amend. Acts 1952, ch. 41, § 2; 1958, ch. 47, § 2; 1962, ch. 13, § 3; 1964, ch. 5; 1970, ch. 204, § 7; 1976, ch. 327, § 2; 1978, ch. 60, § 1, effective June 17, 1978; 1978, ch. 155, §§ 41, 82, 89, effective June 17, 1978; 1982, ch. 381, § 4, effective July 15, 1982; 1988, ch. 361, § 8, effective July 15, 1988; 1990, ch. 182, § 1, effective March 30, 1990; 1990, ch. 470, § 50, effective July 1, 1990; 1990, ch. 476, Pt. II, § 47, effective July 13, 1990; 1992, ch. 405, § 1, effective April 10, 1992; 1994, ch. 230, § 1, effective July 15, 1994; 1996, ch. 318, § 45, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 108, § 1, effective July 15, 1998; 2001, ch. 147, § 1, effective June 21, 2001; 2002, ch. 277, § 2, effective July 15, 2002; 2002, ch. 301, § 1, effective July 15, 2002; 2007, ch. 112, § 1, effective June 26, 2007; 2010, ch. 85, § 26, effective July 15, 2010; 2010, ch. 146, § 1, effective April 13, 2010; 2012, ch. 72, § 2, effective April 11, 2012; 2018 ch. 75, § 1, effective July 14, 2018; 2021 ch. 167, § 3, effective June 29, 2021; 2022 ch. 12, § 8, effective March 9, 2022; 2022 ch. 198, § 1, effective July 14, 2022; 2023 ch. 93, § 1, effective June 29, 2023; 2025 ch. 10, § 7, effective March 13, 2025; 2025 ch. 73, § 1, effective June 27, 2025; 2025 ch. 145, § 11, effective June 27, 2025; 2026 ch. 9, § 4, effective July 15, 2026.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.095, 156.492, 156.557, 157.360, 158.060, 158.070, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

(7/14/2022). 2022 Ky. Acts ch. 198, sec. 3, provides that the Act, which contains this statute and KRS 164.2813, may be cited as the Fairness in Women's Sports Act.

NOTES TO DECISIONS

Analysis

1. Board Subject to Title IX.
2. Athletics.

1. Board Subject to Title IX.

The Kentucky State Board for Elementary and Secondary Education, as a "recipient" of federal financial assistance, and the Kentucky High School Athletic Association, as an "agent" indirectly receiving federal funds, would both be subject to Title IX of the Education Amendments of 1972, as amended by the Civil Rights Restoration Act of 1987, 20 USCS §§ 1681-1688. Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 FED App. 0417P, 1994 U.S. App. LEXIS 36130 (6th Cir. Ky. 1994).

2. Athletics.

In creating the Kentucky Board of Education, the General Assembly recognized that its functions included the management of interscholastic athletics, and it authorized the Kentucky Board of Education to designate an agent for the purpose of performing that function, the Kentucky High School Athletic Association; interscholastic athletics have been recognized as an integral part of secondary education, and thus, have been considered a governmental function. Yanero v. Davis, 65 S.W.3d 510, 2001 Ky. LEXIS 203 (Ky. 2001).

Cited in:

Horner ex rel. Horner v. Kentucky High Sch. Ath. Ass'n, 206 F.3d 685, 2000 FED App. 96P, 2000 U.S. App. LEXIS 4282 (6th Cir. 2000).

OPINIONS OF ATTORNEY GENERAL.

The Kentucky High School Athletic Association may purchase property from an entity in which the Governor is a general partner, without violating KRS 45A.340. OAG 90-27, 1990 Ky. AG LEXIS 25.

If the board determines that it is not in the best interest of the general health and welfare of pupils of a particular weight and height to participate in high-contact sports, the board may, without violating this section, limit participation in such sports activities by students who fail to meet the weight and height requirements. OAG 90-87, 1990 Ky. AG LEXIS 87.

Nothing in this section prohibits the state board, the Kentucky High School Athletic Association, or local school boards from making rules that limit a student's participation in sports activities based on student's health, safety and academic standing. OAG 90-87, 1990 Ky. AG LEXIS 87.

This section, KRS 156.160, and the accompanying regulation, 704 KAR 7:055 set the standards to be followed by employees of the common schools with regard to the imposition of corporal punishment. OAG 92-20, 1992 Ky. AG LEXIS 20.

Effective July 14, 1992, under subsection (2) of this section the State Board for Elementary and Secondary Education and the Kentucky High School Athletic Association may, by rule, administrative regulation, or bylaw, restrict or prohibit 7th and 8th grade students from participating in high school varsity wrestling, soccer, and football. Regulation of participation of 7th or 8th grade students in high school varsity wrestling, soccer, and football is not mandatory, but within the discretion of the state board and the athletic association. OAG 92-98, 1992 Ky. AG LEXIS 101.

Although the Kentucky High School Athletic Association was originally created as a private, voluntary, unincorporated association, it assumed a public character as a policy making board of an institution of education when, pursuant to KRS 156.070(2) and 702 KAR 7:065 Section 1, it was designated by the Kentucky Board of Education as the agency responsible for managing interscholastic athletics in the schools. Accordingly, the KHSAA is a public agency for purposes of the Open Records Act. OAG 04-ORD-244, 2004 Ky. AG LEXIS 83.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Academic expectations, 703 KAR 4:060.

Administration Code for Kentucky's Educational Assessment Program, 703 KAR 5:080.

Advanced placement, 704 KAR 3:510.

Alternative education programs, 704 KAR 19:002.

Annual in-service training of district board members, 702 KAR 1:115.

Annual professional development plan, 704 KAR 3:035.

Application for approval of alternative school-based decision making model, 701 KAR 5:080.

Application to exceed budget, 702 KAR 3:050.

Approval for school district lease and retirement incentive annuity agreements, 702 KAR 3:300.

Area center or public high school, standards for vocational department, 705 KAR 3:141.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Assistance to low-achieving schools, 703 KAR 5:190.

Audit exceptions and corrections, 702 KAR 3:150.

Bidding procedures, 702 KAR 3:135.

Blind and deaf pupils, reimbursement for, 702 KAR 5:120.

Bond issue approval, 702 KAR 3:020.

Building sites; inspection, approval, 702 KAR 4:050.

Buses; specifications and purchases, 702 KAR 5:060.

Capital construction process, 702 KAR 4:160.

Career and technical education administrators, 16 KAR 3:080.

Certification of Nonpublic Schools, 704 KAR 3:315.

Chapter 1 complaint procedures, 704 KAR 3:365.

Chapter 1, ESSIA migrant education requirements, 704 KAR 3:292.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Common kindergarten entry screener, 704 KAR 5:070.

Commonwealth Diploma Program, 704 KAR 3:340.

Confidentiality of information, 707 KAR 1:360.

Corporal punishment., 704 KAR 7:170.

Criteria for Commonwealth Institute for Teachers, 701 KAR 5:070.

Definitions, 707 KAR 1:002.

Designation of agent to manage middle and high school interscholastic athletics, 702 KAR 7:065.

Determination of eligibility, 707 KAR 1:310.

District employee quarantine leave, 702 KAR 1:191.

District school nutrition director, 702 KAR 6:020.

Driver education programs, 601 KAR 13:110.

Drug testing of teachers involved in illegal use of controlled substances, 701 KAR 5:130.

Educational television equipment purchases, 702 KAR 3:170.

Effective Instructional Leadership Act, 704 KAR 3:325.

Emergency school loan fund; repayments, 702 KAR 4:100.

Endorsement for individual intellectual assessment, 16 KAR 3:070.

Energy Technology Engineering Career Pathway, 705 KAR 4:250.

Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

Examination prerequisites for principal certification, 16 KAR 6:030.

Extended school services, 704 KAR 3:390.

Facility programming and construction criteria, 702 KAR 4:170.

FFA Leadership Training Center, 705 KAR 4:081.

Fidelity bond, penal sum for Treasurer, Finance Officer, and others, 702 KAR 3:080.

Foreign teachers serving under the teacher exchange program, 16 KAR 4:070.

Free appropriate public education, 707 KAR 1:290.

Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.

General program standards for secondary career and technical education programs, 705 KAR 4:231.

Group health and life insurance, 702 KAR 1:035.

Guidelines for dropout prevention programs, 704 KAR 7:070.

Handicapped, reimbursement for, 702 KAR 5:100.

Home/hospital instruction, 704 KAR 7:120.

Homeless Children Education Program, 704 KAR 7:090.

Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 4:180.

Individual education program, 707 KAR 1:320.

Insurance requirements, 702 KAR 3:030.

Interim methods for verifying successful completion of the primary program, 703 KAR 4:040.

Internal accounting, 702 KAR 3:130.

Intervention system for persistently low-achieving schools, 703 KAR 5:180.

Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.

Kentucky Special Education Mentor Program, 707 KAR 1:270.

Local responsibilities, 702 KAR 6:010.

Lunch and breakfast requirements, 702 KAR 6:050.

Management improvement program, 703 KAR 3:205.

Mathematics Achievement Fund, 704 KAR 3:530.

Maximum class sizes, 702 KAR 3:190.

Merger of independent and county school districts, 702 KAR 1:100.

Minimum requirements for high school graduation, 704 KAR 3:305.

Minority teacher recruitment, 704 KAR 7:130.

Monitoring and recovery of funds, 707 KAR 1:380.

Personnel; policies and procedures, 702 KAR 6:040.

Physical education, 704 KAR 4:010.

Placement decisions, 707 KAR 1:350.

Preschool associate teachers, 704 KAR 3:420.

Preschool education program for four (4) year old children, 704 KAR 3:410.

Preschool grant allocations, 702 KAR 3:250.

Prevention of sexually explicit materials transmitted to schools via computer, 701 KAR 5:120.

Primary school program guidelines, 704 KAR 3:440.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Procedure for payment of employees, 702 KAR 3:060.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

Professional Growth and Effectiveness System, 704 KAR 7:065.

Proficiency evaluation, 16 KAR 5:030.

Program cost calculation, 702 KAR 5:020.

Programs for the gifted and talented, 704 KAR 3:285.

Pupil attendance, 702 KAR 7:125.

Pupil transportation: technical assistance and monitoring, 702 KAR 5:010.

Rank I classification, 16 KAR 8:010.

Reading diagnostic and intervention grants, 704 KAR 3:480.

Recognition of credits when transferring without transcript, 704 KAR 3:307.

Recreational facilities; school and community, 702 KAR 4:005.

Recruitment plan for position of school media librarian, 16 KAR 2:130.

Removal hearing procedures, 701 KAR 5:055.

Required Academic Standards for Mathematics, 704 KAR 8:040.
Required Academic Standards for Social Studies, 704 KAR 8:060.
Required academic standards for reading and writing, 704 KAR 8:020.
Required core academic standards, 704 KAR 3:303.
Required Kentucky Academic Standards for Science, 704 KAR 8:120.
Restructuring revenue bond issues, 702 KAR 3:260.
Ride to the Center for the Arts Program Fund, 704 KAR 7:080.
School council allocation formula: KETS District Administrative System Chart of Accounts, 702 KAR 3:246.
School district data security and breach procedures, 702 KAR 3:285.
School district Medicaid providers, 702 KAR 3:285.
School district tax rate formulas, 702 KAR 3:275.
School health services, 702 KAR 1:160.
School nurse, 16 KAR 2:060.
School psychologist, 16 KAR 2:090.
School to careers, 705 KAR 4:240.
Secondary funding for state-operated vocational schools, 702 KAR 1:130.
SEEK funding formula, 702 KAR 3:270.
State plan for the administration of Chapter 2, of the Augustus F. Hawkins — Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 704 KAR 3:335.
Student discipline guidelines, 704 KAR 7:050.
Student records; hearing procedures, 702 KAR 1:140.
Teacher disciplinary hearings, 701 KAR 5:090.
Teachers' Professional Growth Fund, 704 KAR 3:490.
Teachers' salary scheduling, 702 KAR 3:070.
Test designation for Teacher Loan/Scholarship Program, 704 KAR 15:100.
Time minimum for meals, 702 KAR 6:060.
Transfer of annexed property; hearing, 702 KAR 1:080.
Uniform academic course codes, 704 KAR 3:540.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.
Waiver requests, 701 KAR 5:170.
Withholding funds, 702 KAR 3:045.
Work-based learning program standards, 705 KAR 4:041.Writing portfolio procedures, 703 KAR 5:010.

Kentucky Law Journal.
Note, Official Immunity in Kentucky: The New Standard Under Yanero v. Davis, 90 Ky. L.J. 635 (2001-02).

156.071. Delegation of taking evidence and writing recommendation of disposition to hearing officer or panel — Compensatory time for staff conducting school facility public hearings.

The Kentucky Board of Education may, any statute to the contrary notwithstanding, delegate the taking of evidence, and the rendition of a written recommendation of disposition to the full board, to a panel of the board, to a single member of the board acting as a hearing officer, or to a hearing officer appointed by the board relative to any hearing, appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by this or any other chapter, to conduct, hear, or make; provided, the full board, as provided by statute, makes the final decision or determination, based upon the evidence submitted. For the purpose of serving as a hearing officer for the board, the board and the Department of Education shall not enter into a personal service contract; employ additional staff; or provide additional compensation to existing staff, except for compensatory time for staff who conduct school facility public hearings outside of their regular working hours.

History.
Enact. Acts 1982, ch. 349, § 1, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 364, effective July 13, 1990; 1992, ch. 147, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.

156.072. Waiver of reporting requirement.

(1) At the request of a local board of education or a school council, a local school district superintendent shall submit a request to the Kentucky Board of Education for a waiver from a reporting requirement established by a Kentucky Revised Statute that requires the paperwork to be submitted to the Kentucky Board of Education or the Department of Education.

(2) Upon a finding of good cause for the waiver, the Kentucky Board of Education may grant the waiver.

(3) The Kentucky Board of Education shall not waive statutory paperwork or reporting requirements necessary under federal law or relating to health, safety, or civil rights.

History.
Enact. Acts 2000, ch. 277, § 1, effective July 14, 2000.

156.074. Purchase contract for supplies, equipment — Specifications — Terms.

The Kentucky Board of Education, upon requisition to the Finance and Administration Cabinet, may secure price contract agreements for the purchase of supplies and equipment by district boards of education. The board by regulation shall specify the particular types of supplies and equipment for which contracts shall be secured and may revise such lists from time to time. The board, in consultation with the Finance and Administration Cabinet, shall fix standards of quality and quantity and shall develop standard specifications for supplies and equipment. The Finance and Administration Cabinet shall enter into price contract agreements under the law relating to state purchasing. Such contracts shall establish sources of supply, maximum prices to be paid, and shall set forth the length of time for which such contracts shall be valid, not to exceed one (1) year.

History.
Enact. Acts 1962, ch. 244, Art. II, § 6; 1966, ch. 255, § 148; 1974, ch. 74, Art. II, § 9(1); 1978, ch. 155, § 82, effective July 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 365, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Educational television equipment purchases, 702 KAR 3:170.

156.076. Price contracts information to be furnished district boards — Purchase conditions.

The chief state school officer shall furnish full information on established price contracts to each district

board of education. Any board of education may purchase supplies and equipment from the vendor to whom the contract has been awarded, under the terms of the contract. Any board of education may advertise for its own bids on supplies and equipment which meet the specifications of the contracts awarded by the Office of Material and Procurement Services in the Office of the Controller. Any board of education, after advertising for bids, may award contracts if the chief state school officer certifies that the bid offers supplies and equipment which meet the standards and specifications fixed by the Kentucky Board of Education and that the bid price is lower than that established by the price contract agreement. If supplies and equipment that meet the specifications of the contracts awarded by the Office of Material and Procurement Services or a federal, local, or cooperative agency are available for purchase elsewhere, a board of education may purchase those supplies and equipment without advertising for bids. However, prior to making the purchases, the board of education shall obtain certification from:

(1) The Department of Education for technology components defined in the master plan for education technology for which standards have been established by the Kentucky Board of Education. The department shall certify that the items to be purchased meet or exceed, at a lower cost, the specifications of the components of the original equipment of manufacturers currently holding Kentucky education technology system price contracts; and

(2) The district's finance officer for supplies and equipment other than that described in subsection (1) of this section. He shall certify that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, the local school district's bid, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the price contract agreement or available through the bidding process and the price does not exceed two thousand five hundred dollars ($2,500).

History.

Enact. Acts 1962, ch. 244, Art. II, § 7; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 129, effective July 13, 1990; 1996, ch. 89, § 4, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 5, § 9, effective July 14, 2000; 2005, ch. 85, § 590, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bidding procedures, 702 KAR 3:135.

Internal accounting, 702 KAR 3:130.

156.080. School census — Forms and rules for. [Repealed.]

Compiler's Notes.

This section (4434-30; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990. For present law see KRS 159.250.

156.090. Certificates of school employees — Board to publish regulations concerning. [Repealed.]

Compiler's Notes.

This section (4502-12; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.095. Professional development programs and training schedule — Required topics — Professional development coordinator — Long-term improvement plans — Training related to communication and sexual misconduct — Electronic consumer bulletin board — Training to address needs of students at risk of school failure — Teacher academics — Annual report to Juvenile Justice Oversight Council.

(1)(a) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.

(b) By August 1, 2025, the department shall create a four (4) year recurring professional development training schedule that includes all professional development for certified personnel required by subsection (2) of this section and federal law.

(c) Each local school district shall implement the professional development training schedule created by the department.

(2) All certified school district employees and public charter school employees shall complete at least one (1) hour of each of the following trainings within twelve (12) months of initial hire and at least once every four (4) years thereafter:

(a) How to respond to an active shooter situation training prepared by the Department of Criminal Justice Training in collaboration with the department, the Kentucky Law Enforcement Council, and the Center for School Safety;

(b) Child abuse and neglect prevention, recognition, and reporting training from the list of trainings approved by the department in accordance with subsection (7) of this section;

(c)1. High-quality, evidence-based suicide prevention training, including risk factors, warning signs, protective factors, response procedures, referral, postvention, and the recognition of signs and symptoms of possible mental illness.

2. As used in this paragraph, "postvention" means a series of planned supports and interventions with persons affected by a suicide for the purpose of facilitating the grieving or adjustment process, stabilizing the environment, reducing the risk of negative behaviors, and limiting the risk of further suicides through contagion; and

(d) Self-study review of seizure disorder materials.

(3)(a) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel.

Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include assisting with needs assessments, analyzing school data, planning and evaluation assistance, organizing districtwide programs requested by school councils or groups of teachers, or other coordination activities.

(b) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by the local board of education.

(c) The local district professional development coordinator may participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include but is not limited to the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The department shall regularly collect and distribute this information.

(4) The department shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451, including reducing the achievement gaps as determined by an equity analysis of the disaggregated student performance data from the state assessment program developed under KRS 158.6453; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs shall be made available to teachers based on their needs which shall include but not be limited to the following areas:

(a) Strategies to reduce the achievement gaps among various groups of students and to provide continuous progress;

(b) Curriculum content and methods of instruction for each content area, including differentiated instruction;

(c) School-based decision making;

(d) Assessment literacy;

(e) Integration of performance-based student assessment into daily classroom instruction;

(f) Nongraded primary programs;

(g) Research-based instructional practices;

(h) Instructional uses of technology;

(i) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;

(j) Instruction in reading, including phonics, phonemic awareness, comprehension, fluency, and vocabulary;

(k) Educational leadership; and

(*l*) Strategies to incorporate character education throughout the curriculum.

(5) The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.

(6)(a) Upon the request of a school district or school council, the department shall assist with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.

(b) Professional development strategies may include but are not limited to participation in subject matter academies, teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.

(c) In planning the use of the four (4) days for professional development under KRS 158.070, school councils and districts shall give priority to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. The district may use up to one (1) day to provide district-wide training and training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.

(d) State funds allocated for professional development shall be used to support professional development initiatives that are consistent with local school improvement and professional development plans and teachers' individual growth plans. The funds may be used throughout the year for all staff, including classified and certified staff and parents on school councils or committees. A portion of the funds allocated to each school council under KRS 160.345 may be used to prepare or enhance the teachers' knowledge and teaching practices related to the content and subject matter that are required for their specific classroom assignments.

(7)(a) The department shall develop and maintain a list of approved comprehensive evidence-informed trainings on child abuse and neglect prevention, recognition, and reporting that encompass child physical, sexual, and emotional abuse and neglect.

(b) The trainings shall be web-based or in-person and cover, at a minimum, the following topics:

1. Recognizing child physical, sexual, and emotional abuse and neglect;

2. Reporting suspected child abuse and neglect in Kentucky as required by KRS 620.030 and the appropriate documentation;

3. Responding to the child; and

4. Understanding the response of child protective services.

(c) The trainings shall include a questionnaire or other basic assessment tool upon completion to document basic knowledge of training components.

(d) Each local board of education shall adopt one (1) or more trainings from the list approved by the department to be implemented by schools.

(8)(a) By May 1, 2027, the Kentucky Department of Education, in collaboration with the Education Professional Standards Board, shall develop a training for school district employees, to be available via multiple delivery options, related to appropriate relationships and communication with students, inappropriate relationships and communication with students, sexual grooming, and sexual misconduct. Each local school district shall require all current employees to complete the training by June 30, 2027.

(b) Beginning with the 2027-2028 school year, every local school district shall require all new employees to undergo the training described in paragraph (a) of this subsection within ninety (90) days of the employee's initial hiring. Any new employee who has completed the training within the prior five (5) years with a previous employer shall be exempt from the requirement under this paragraph.

(c) The requirements of this subsection shall apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

(9) The department shall establish an electronic consumer bulletin board that posts information regarding professional development providers and programs as a service to school district central office personnel, school councils, teachers, and administrators. Participation on the electronic consumer bulletin board shall be voluntary for professional development providers or vendors, but shall include all programs sponsored by the department. Participants shall provide the following information: program title; name of provider or vendor; qualifications of the presenters or instructors; objectives of the program; program length; services provided, including follow-up support; costs for participation and costs of materials; names of previous users of the program, addresses, and telephone numbers; and arrangements required. Posting information on the bulletin board by the department shall not be viewed as an endorsement of the quality of any specific provider or program.

(10) The department shall provide voluntary training to address the characteristics and instructional needs of students at risk of school failure and most likely to drop out of school. The training shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with these students. The training for instructional personnel shall be designed to provide and enhance skills of personnel to:

(a) Identify at-risk students early in elementary schools as well as at-risk and potential dropouts in the middle and high schools;

(b) Plan specific instructional strategies to teach at-risk students;

(c) Improve the academic achievement of students at risk of school failure by providing individualized and extra instructional support to increase expectations for targeted students;

(d) Involve parents as partners in ways to help their children and to improve their children's academic progress; and

(e) Significantly reduce the dropout rate of all students.

(11) The department shall establish teacher academies to the extent funding is available in cooperation with postsecondary education institutions for elementary, middle school, and high school faculty in core disciplines, utilizing facilities and faculty from universities and colleges, local school districts, and other appropriate agencies throughout the state. Priority for participation shall be given to those teachers who are teaching core discipline courses for which they do not have a major or minor or the equivalent. Participation of teachers shall be voluntary.

(12) The department shall annually provide to the oversight council established in KRS 15A.063, the information received from local schools pursuant to KRS 158.449.

History.

Enact. Acts 1950, ch. 127, § 1; 1956 (1st Ex. Sess.), ch. 7, Art. II, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1985 (1st Ex. Sess.), ch. 10, § 1, effective October 18, 1985; 1990, ch. 476, Pt. I, § 12, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 4, effective July 15, 1998; 1998, ch. 609, § 1, effective July 15, 1998; 2000, ch. 162, § 4, effective July 14, 2000; 2000, ch. 452, § 3, effective July 14, 2000; 2000, ch. 527, § 10, effective July 14, 2000; 2002, ch. 302, § 2, effective July 15, 2002; 2009, ch. 101, § 8, effective March 25, 2009; 2010, ch. 6, § 1, effective July 15, 2010; 2014, ch. 132, § 10, effective July 15, 2014; 2015 ch. 7, § 1, effective June 24, 2015; 2016 ch. 125, § 1, effective July 15, 2016; 2017 ch. 171, § 2, effective June 29, 2017; 2018 ch. 53, § 1, effective July 14, 2018; 2019 ch. 5, § 15, effective March 11, 2019; 2020 ch. 5, § 10, effective February 21, 2020; 2024 ch. 165, § 9, effective July 15, 2024; 2024 ch. 202, § 2, effective July 15, 2024; 2025 ch. 145, § 3, effective June 27, 2025; 2026 ch. 74, § 10, effective April 10, 2026.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.492, 156.557, 157.360, 158.060, 158.070, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

(3/11/2019). Under the authority of KRS 7.136(1), the Reviser of Statutes has relettered the paragraphs in subsection (7) of this statute. No words were changed in this process.

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 162, 452, and 527. Where these Acts are not in conflict, they have been codified together. As to subsection (7) of this section, a conflict exists, in part, between Acts chs. 452 and 527. Under KRS 446.250, Acts ch. 527, which was last enacted by the General Assembly, prevails in this conflict.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Annual professional development plan, 704 KAR 3:035.

Occupation-based career and technical education certification, 16 KAR 2:020.

Probationary certificate for information technology teachers, 16 KAR 2:190.

Ranking of occupation-based career and technical education teachers, 16 KAR 8:040.

Northern Kentucky Law Review.
Kentucky Law Survey: Education, 29 N. Ky. L. Rev. 115 (2002).

156.0951. District consortia for professional development — Withdrawal by school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1990, ch. 476, Pt. I, § 13, effective July 13, 1990; 1994, ch. 247, § 2, effective July 15, 1994) was repealed by Acts 1998, ch. 609, § 5, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Annual professional development plan, 704 KAR 3:035.

156.097. Teacher institutes — Regulation.

(1) The Kentucky Board of Education shall develop regulations to establish a program of educational institutes for teachers. The purpose of such institutes shall be the general improvement of instruction within the Commonwealth.

(2) Teacher institutes shall be held during the summer months at various college campuses selected by the Kentucky Board of Education. Each institute shall be of one (1) week duration.

(3) The Kentucky Board of Education shall develop specific criteria relating to the selection of eligible teachers for institute participation, with an emphasis on selecting teachers with a demonstrated record of effective teaching.

(4) Any teacher selected and agreeing to participate in a particular teacher institute session shall be reimbursed for expenses incurred in attendance, and shall be awarded a stipend in an amount to be determined by the Kentucky Board of Education.

(5) The program shall encourage business and industry within the Commonwealth to become institute sponsors for teachers within the respective communities of such business and industry.

History.
Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 3, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 366, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.
This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 3, effective October 18, 1985) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 366, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Criteria for Commonwealth Institute for Teachers, 701 KAR 5:070.

156.100. Board may accept federal aid or gift, donation or devise. [Repealed.]

Compiler's Notes.
This section (4363-10; amend. Acts 1942, ch. 26, §§ 1, 2) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.101. Purpose of section — Definition of "instructional leader" — Effective instructional leadership program.

(1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals, with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education, have the primary responsibility for instructional leadership in the schools to which they are assigned.

(2) As used in this section, "instructional leader" means an employee of the public schools of the Commonwealth employed as a principal, assistant principal, supervisor of instruction, guidance counselor, director of special education, or other administrative position deemed by the Education Professional Standards Board to require an administrative certificate.

(3) In order to carry out the purpose of this section, the Kentucky Board of Education shall establish a statewide program to improve and maintain the quality of effective instructional leadership in the public schools of the Commonwealth.

(4) The effective instructional leadership program shall contain the following provisions:

(a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;

(b) Each instructional leader shall annually complete an intensive training program approved by the Kentucky Board of Education to include no fewer than twenty-one (21) participant hours of instruction. Hours completed by participants in the principal leadership development practicum under KRS 156.565 may be substituted to satisfy this requirement;

(c) The Kentucky Board of Education shall prescribe specific criteria for the training program. The Kentucky Department of Education may contract for specific training with qualified agencies or institutions or approve programs offered by training providers, including local district training programs, except that the department shall ensure the requirements of paragraph (d) of this subsection are met; and

(d) Annually, each local district superintendent shall report to the Kentucky Department of Education any instructional leader who fails to complete the training requirements of paragraph (b) of this subsection and shall place the leader on probation for one (1) year. The Department of Education shall verify completion of the required training. If the required training for the prior year and the current year is not completed during the probationary period, the Department of Education shall forward the information to the Education Professional Standards Board, which shall revoke the instructional leader's certificate.

(5) The Kentucky Department of Education shall ensure that training options in human resource management and conflict resolution techniques are available to education leaders throughout the state.

(6) This section shall be known as the Effective Instructional Leadership Act.

History.
Enact. Acts 1984, ch. 365, §§ 1, 2, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 2, effective October 18, 1985; 1986, ch. 442, § 2, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 130, effective July 13, 1990; 1992, ch. 148, § 1, effective July 14, 1992; 1996, ch. 9, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 206, § 1, effective July 15, 1998; 2000, ch. 527, § 11, effective July 14, 2000; 2005, ch. 110, § 1, effective June 20, 2005; 2024 ch. 124, § 3, effective July 15, 2024; 2026 ch. 154, § 2, effective July 15, 2026.

NOTES TO DECISIONS

1. Evaluation Appeals Panel.

2. —Procedure.
A nontenured teacher whose contract is recommended by the principal not to be renewed is entitled, pursuant to subsection 10 of this section, to challenge the findings of fact in his evaluation before the appeals panel who shall hold a hearing on both the substance and the procedure of the evaluation of which the teacher is entitled to receive proper notice with sufficient time to gather evidence to support his position, and also has the right to present expert testimony and engage counsel to assist him in the presentation of his case. Thompson v. Board of Educ., 838 S.W.2d 390, 1992 Ky. LEXIS 130 (Ky. 1992).

OPINIONS OF ATTORNEY GENERAL.

Notwithstanding the apparent legislative intent of KRS 161.020 to make the revocation of any instructional leader's certificate contingent upon laws then in force, this section clearly controls revocation of an instructional leader's certificate; therefore, a certificate of an instructional leader may be revoked for failure to obtain the hours of intensive training required by this section. All instructional leaders, including those who received a certificate prior to the effective date of this section, are required to comply with this section. OAG 88-37, 1988 Ky. AG LEXIS 37.

The legislative purpose of the instructional leadership program, set forth in subsection (1) of this section, was to develop a program which would result in improvement in the quality of performance of principals, assistant principals, supervisors of instruction, guidance counselors, or directors of special education. Practically, this prescribed program of improvement could not be effective if it did not supersede the general certificate renewal statute, subsection (3) of KRS 161.020. OAG 88-37, 1988 Ky. AG LEXIS 37.

The requirement of subsection (3) of KRS 161.020, that certificates be considered pursuant to the application of the laws which were in effect at the time of the granting of the certificate, is not in harmony with the instructional leadership program. Therefore, subsection (3) of KRS 161.020 is controlling except when an instructional leader fails to comply with the instructional leader improvement program. At such time, the state board may exercise its power of revocation granted by subsection (4) of this section. OAG 88-37, 1988 Ky. AG LEXIS 37.

The retrospective application of a law is not to be given unless the intent is clearly expressed or necessarily implied; it is necessarily implied that this section must be applied to those persons who received their certificates prior to 1984 to benefit the schools and is, therefore, retroactive. OAG 88-37, 1988 Ky. AG LEXIS 37.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Annual professional development plan, 704 KAR 3:035.
Effective Instructional Leadership Act, 704 KAR 3:325.
Kentucky Teacher Internship Program, 16 KAR 7:010.School counselor, provisional and standard certificates, all grades, 16 KAR 3:060.

Kentucky Bench & Bar.
Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Northern Kentucky Law Review.
Kentucky Law Survey: Education, 29 N. Ky. L. Rev. 115 (2002).

156.105. Principals Assessment Center — Assessment of principals required. [Repealed.]

Compiler's Notes.
This section (Enact. 1990, ch. 476, Pt. II, § 45, effective July 13, 1990; 1994, ch. 14, § 3, effective February 17, 1994) was repealed by Acts 1996, ch. 12, § 1, effective July 15, 1996.

Legislative Research Commission Notes.
(7/15/96). Under KRS 446.260, the repeal of this section in 1996 Ky. Acts ch. 12 prevails over its amendment in 1996 Ky. Acts ch. 343.

156.106. Critical shortage areas — Definition for section and KRS 161.605 — Appointment of retired teachers and administrators.

(1) For purposes of this section and KRS 161.605, "critical shortage area" means a lack of certified teachers in particular subject areas, in grade levels, or in geographic locations at the elementary and secondary level, as determined annually by the commissioner of education. The commissioner may use any source considered reliable including, but not limited to, data provided by the Education Professional Standards Board and local education agencies to identify the critical shortage areas.

(2)(a) The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to be used to appoint retired teachers and administrators to positions in critical shortage areas under this section and KRS 161.605.

(b) A retired teacher or administrator appointed to a position in a critical shortage area shall be paid, at a minimum, a salary at Rank II with ten (10) years of experience based on a single salary schedule adopted by the district.

(c) The commissioner of education shall report members reemployed under this section to the Kentucky Teachers' Retirement System.

(3) If a local school district needs a person to fill a critical shortage position after reaching its quota established under KRS 161.605, the commissioner of education with the approval of the executive director of the Kentucky Teachers' Retirement System may allow the district to exceed its quota if the statewide quota has not been met.

History.
Enact. Acts 2000, ch. 477, § 1, effective July 14, 2000; 2000, ch. 498, § 3, effective July 14, 2000; 2025 ch. 144, § 2, effective June 27, 2025.

Legislative Research Commission Notes.

(7/14/2000). Subsections (1) and (4) of this statute were enacted identically in 2000 Ky. Acts ch. 477, sec. 1, subsecs. (1) and (3), and ch. 498, sec. 3, subsecs. (1) and (3). Subsections (2) and (3) were enacted by the same two Acts but with nonidentical, but very similar, text, subsection (2) coming from Acts ch. 477, sec. 1, subsec. (2), and subsection (3) coming from Acts ch. 498, sec. 3, subsec. (2). Because the two Acts differ in the texts of their second subsections in newly created statutes, both versions have been codified. Cf. KRS 446.250. Acts ch. 477 (House Bill 519) was signed by the President of the Senate on April 11, 2000, at 10:28 a.m.; Acts ch. 498 (House Bill 739) was signed by the President of the Senate on April 11, 2000, at 1:15 p.m. The tables for the 2000 Kentucky Acts show Acts ch. 498 as being codified at KRS 156.497, but, because of the near identity of the sections, it was subsequently decided to merge them into a single KRS section for codification.

156.108. Districts of innovation — Definitions — Approval by Kentucky Board of Education — Administrative regulations to prescribe conditions and procedures to be used by local boards. [Repealed]

History.

Enact. Acts 2012, ch. 40, § 1, effective July 12, 2012; repealed by 2025 ch. 113, § 30, effective June 27, 2025.

156.110. Removal of school board members and public school officials. [Repealed.]

Compiler's Notes.

This section (4377-13, 4384-13) was repealed by Acts 1962, ch. 244, Art. I, § 4.

156.111. Superintendents Training Program and Assessment Center — Local board not responsible for training costs — Assessment of superintendents required — Contracts for training providers permitted.

(1) The Department of Education shall establish a Superintendents Training Program and Assessment Center. The department shall provide for assessor training and shall ensure that an assessment center includes but is not limited to training and participation in the following components:

(a) Core concepts of leadership and quality practices;

(b) Effective implementation of school-based decision making;

(c) Kentucky school law;

(d) Kentucky school finance and budgeting;

(e) School curriculum and assessment;

(f) Instructional leadership;

(g) School improvement;

(h) Community and board relations;

(i) Effective communication; and

(j) An executive coaching and mentoring program with an emphasis on demonstrated professional growth.

The department may provide assessment centers regionally.

(2) Notwithstanding any other statute to the contrary, an employing local board of education shall not be responsible for any training costs associated with a superintendent's participation in the training and assessment center process.

(3) At the conclusion of the training, each participant shall deliver to the employing board of education and the Kentucky Department of Education a comprehensive collection of work products and assessments that demonstrate proficiency in each area of training.

(4) In addition to any applicable certification and experience requirements, any person hired for the first time as superintendent in Kentucky shall successfully complete the assessment center process within two (2) years of taking office as superintendent.

(5) The Kentucky Board of Education shall adopt administrative regulations to govern the training content, number of hours, assessments, and work products for successful completion of the training and assessment center process. The board shall also establish the continuing professional development requirements for school superintendents to include, at a minimum, three (3) hours of annual training in school finance and three (3) hours of annual training in ethics.

(6) The Department of Education may contract with qualified agencies, organizations, or institutions or may approve programs offered by training providers to carry out the provisions of this section.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 46, effective July 13, 1990; 1994, ch. 14, § 1, effective February 17, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2014, ch. 77, § 1, effective April 10, 2014; ch. 136, § 3, effective July 15, 2014.

Legislative Research Commission Notes.

(7/15/2014). This statute was amended by 2014 Ky. Acts chs. 77 and 136, which do not appear to be in conflict and have been codified together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Superintendent training program and assessment process, 704 KAR 3:406.

156.112. State board for Occupational Education — Members — Compensation — Functions — Officers. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1978, ch. 155, § 95, effective June 17, 1978; 1980, ch. 114, § 21, effective July 15, 1980) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

DEPARTMENTS OF EDUCATION

156.114. Department for elementary and secondary education created — Deputy superintendent — Organization. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1978, ch. 155, § 96, effective June 17, 1978; 1980, ch. 295, § 40, effective July 15, 1980) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

156.116. Department for occupational education created — Deputy superintendent — Duties — Organization. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 155, § 97, effective June 17, 1978) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

156.118. Organization of the department of education. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 155, § 96, effective June 17, 1978; 1980, ch. 295, § 41, effective July 15, 1980) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

SUPERINTENDENT OF PUBLIC INSTRUCTION

156.120. Superintendent of Public Instruction — Location of office — Traveling expenses — Salary. [Repealed.]

Compiler's Notes.
This section (4384-2 to 4384-4, 4384-9; amend. Acts 1946, ch. 26, § 5, effective June 19, 1946; and ch. 27, sec. 3, effective June 19, 1946; 1990, ch. 476, Pt. II, § 40, effective July 13, 1990; 1992, ch. 27, § 14, effective March 2, 1992; 1994 ch. 209, § 11, effective July 15, 1994) was repealed by Acts 2006, ch. 211, § 170, effective July 12, 2006.

156.130. Superintendent is executive officer of State Board of Education — General duties. [Repealed.]

Compiler's Notes.
This section (4384-5, 4384-7, 4384-15, 4384-32; amend. Acts 1952, ch. 41, § 3; 1978, ch. 17, § 1) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

Legislative Research Commission Notes.
This section was also amended by Acts 1978, ch. 17, § 1, approved March 3, 1978. The later repeal by Acts 1978, ch. 155, § 165, approved March 29, 1978, however, prevails.

REMOVAL OR SUSPENSION OF SCHOOL OFFICERS

156.132. Removal or suspension of public school officers — Procedure, grounds, conditions.

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, member of a school council, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. In the case of a member of a school council, the written charges shall be provided to the local board of education.

(2) The chief state school officer shall recommend by written charges the suspension by the Kentucky Board of Education of any superintendent of schools or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. If the charges brought under this subsection represent an immediate threat to the public health, safety, or welfare, the Kentucky Board of Education shall summarily suspend the person against whom the charges are made. The action by the Kentucky Board of Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the Kentucky Board of Education without recommendation from the chief state school officer.

(3) The Kentucky Board of Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if, after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the proper school authorities having immediate jurisdiction, either the superintendent or the district board of education, have refused to act, have acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the Kentucky Board of Education under subsection (2) of this section shall be furnished with an emergency order specifying in detail the reasons for suspension and notifying the officer of his right to appeal the action and have an emergency hearing pursuant to KRS 13B.125.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the Kentucky Board of Education of any superintendent of schools or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of procedural rights conferred under KRS Chapter 13B. Within twenty (20) days after receipt of the charges, the officer may notify the Kentucky Board of Education of his intention to appear and answer the charges. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the officer fails to notify the board of his intention to appear and answer the charges, the Kentucky Board of Education may remove the officer by a majority vote, and the dismissal shall be final.

(6) The hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members.

(7) The Kentucky Board of Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare final order

specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district in accordance with KRS Chapter 13B. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

(9) If a superintendent of schools is removed from office or resigns while charges are pending pursuant to this section after July 15, 1994, any continuing contract pursuant to KRS 161.720 to 161.810 shall be terminated. If the removal is reversed upon appeal, the continuing contract shall be restored and he shall be paid his full salary for the period of suspension.

History.

Enact. Acts 1962, ch. 244, Art. I, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 30, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 50, effective July 13, 1990; 1992, ch. 376, § 1, effective July 14, 1992; 1994, ch. 103, § 1, effective July 15, 1994; 1994, ch. 472, § 1, effective July 15, 1994; 1996, ch. 318, § 46, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 15, effective April 14, 1998; 2021 ch. 144, § 1, effective June 29, 2021.

NOTES TO DECISIONS

Analysis

1. Grounds.
2. Authority to Remove.
3. —Recommendation of Superintendent of Public Instruction.
4. Time Restrictions.
5. —Failure to Comply.

1. Grounds.

Evidence that lame duck members of school board, by agreement with other members and one newly-elected member, employed close relatives of newly-elected member, shortly before expiration of their terms, was insufficient to justify removal of newly-elected member as usurper. Richardson v. Commonwealth, 275 Ky. 486, 122 S.W.2d 156, 1938 Ky. LEXIS 472 (Ky. 1938) (decided under prior law).

Arbitrary action of school board members in rejecting nominations of teachers by superintendent would be grounds for removal, and would perhaps subject them to liability for loss to school fund by payments to teachers wrongfully employed. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939) (decided under prior law).

It does not follow from the fact that a board as a body had acted arbitrarily and in excess of its power, that any particular member or members of the board had individually been guilty of immorality, misconduct of office, incompetency or wilful neglect of duty. Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1958) (decided under prior law).

Bad faith, misconduct or neglect of duty to justify removal of county board members by state board is not shown where county board takes no affirmative action contrary to state board surveys but only submits counter proposals. Kentucky State Board of Education v. Isenberg, 421 S.W.2d 81, 1967 Ky. LEXIS 52 (Ky. 1967).

Unquestionably the state board has the right to suspend and remove county board members for misconduct in office or for wilful neglect of duty and "misconduct in office" means to conduct amiss; bad behavior. Kentucky State Board of Education v. Isenberg, 421 S.W.2d 81, 1967 Ky. LEXIS 52 (Ky. 1967).

Where members of county board disagree with and refuse to follow state board recommendations for consolidation and construction of school buildings the members of the county board cannot be suspended from office for neglect of duty or misconduct. Kentucky State Board of Education v. Isenberg, 421 S.W.2d 81, 1967 Ky. LEXIS 52 (Ky. 1967).

2. Authority to Remove.

The State Board of Elementary and Secondary Education, under the Kentucky Education Reform Act, has the authority to remove members from a county board of education for misconduct in office; there is no language in either this section or KRS 160.180 which suggests, let alone mandates, that the Attorney General has the exclusive power to remove district board members for violations of KRS 160.180. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743, 1993 Ky. LEXIS 46 (Ky. 1993).

3. —Recommendation of Superintendent of Public Instruction.

Mandamus would not lie to compel state board to conduct hearing of charges filed against county superintendent and members of county board of education where superintendent had not recommended removal. Combs v. State Board of Education, 249 Ky. 320, 60 S.W.2d 957, 1933 Ky. LEXIS 529 (Ky. 1933) (decided under prior law).

Where board and county superintendent entered into a compromise agreement to settle differences between two factions the facts revealed a situation such as justified Superintendent of Public Instruction in making investigation to determine whether to recommend removal of board members or county superintendent. Board of Education v. Rose, 285 Ky. 217, 147 S.W.2d 83, 1940 Ky. LEXIS 604 (Ky. 1940) (decided under prior law).

A recommendation by the Superintendent of Public Instruction was a prerequisite to many kinds of action by the State Board of Education. Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1958) (decided under prior law).

The Superintendent of Public Instruction had a fair discretion as to whether to make a recommendation for removal of the county board of education and that discretion could not have been controlled by mandamus. Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1958) (decided under prior law).

Affidavit and supporting data submitted to the lower court by the superintendent showed a fair exercise of discretion in refusing to recommend action on the charges against individual board members and the opposing affidavit on behalf of the petitioners did not overcome this showing in mandamus proceedings (decided under prior law). Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1958).

4. Time Restrictions.

5. —Failure to Comply.

Although the Kentucky State Board for Elementary and Secondary Education, which found county board of education member guilty of attempting to influence the hiring or appointment of district employees, failed to comply with the time restrictions contained in this section, because the board member was not suspended and continued to serve until his removal after the hearing, member failed to articulate any prejudice suffered and decision was affirmed. Craig v. Ken-

tucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995).

Cited in:

Daugherty v. Hunt, 694 S.W.2d 719, 1985 Ky. App. LEXIS 587 (Ky. Ct. App. 1985).

OPINIONS OF ATTORNEY GENERAL.

The State Board of Education has enacted regulations for bidding on the purchase of school equipment and any bidding not conforming to these regulations can be reported to the Superintendent of Public Instruction who is empowered to make written charges against any superintendent or board member who is guilty of misconduct or unlawful acts. OAG 73-740.

Although KRS 156.132 through 156.146 (KRS 156.134, 156.140, 156.144 and 156.146, now repealed) gives the State Board of Education the right to suspend and remove county board members for misconduct in office or for wilful neglect of duty, the right to recall a school board member does not exist in this state. OAG 75-118.

Before the state board may send back to a local board of education the written charges, a majority of the state board must be of the opinion that a local superintendent is guilty of "immorality, misconduct in office, incompetency or wilful neglect of duty," after which the district board may commence consideration to remove its superintendent under KRS 160.350; refuse to act; or act in bad faith, arbitrarily or capriciously; but if the local board does anything other than take action to remove the local superintendent, after 30 days from receipt of the charges by the local board, the state board would regain "jurisdiction" and could then go forward to suspend the local superintendent. OAG 79-394, 1979 Ky. AG LEXIS 228.

If the information presented to the state board or state Superintendent is such as to serve an adequate basis to formulate an opinion of guilt without investigation, there is no reason why one would need be held. OAG 79-394, 1979 Ky. AG LEXIS 228.

In the case of the state board, "their opinion [that a school officer] is guilty," within subsection (1) of this section must be formulated by at least four of the seven voting members of the board. OAG 79-394, 1979 Ky. AG LEXIS 228.

Subsection (2) of this section is limited to consideration of a local board member or a local superintendent, but is not in any way applicable to a teacher or a principal as is the situation in subsection (1) of this section. OAG 79-394, 1979 Ky. AG LEXIS 228.

The provisions of this section make very clear that the actions of the state board are not dependent upon those of the state Superintendent. OAG 79-394, 1979 Ky. AG LEXIS 228.

The purpose of the summary hearing, provided for in subsection (2) of this section, is for the state board to consider the evidence and take a vote to see if a majority of the state board share the opinion that the local superintendent is guilty of "gross immorality, misconduct in office, incompetency or wilful neglect of duty." OAG 79-394, 1979 Ky. AG LEXIS 228.

"The proper school authorities," within subsection (1) of this section, is the local district board of education. OAG 79-394, 1979 Ky. AG LEXIS 228.

The regulations called for by subsection (2) of this section would be for the benefit of the state board members, not the local superintendent. OAG 79-394, 1979 Ky. AG LEXIS 228.

There exists no state board regulations relating to the summary hearing process called for in subsection (2) of this section. OAG 79-394, 1979 Ky. AG LEXIS 228.

When subsection (1) of this section refers to reporting a public school officer "who in [the superintendent's] opinion is guilty," a conclusive opinion of guilt is not required, but only a satisfaction in the superintendent's mind that the charges may be substantiated by evidence justifying and warranting consideration of removal and action by the local board of education. OAG 79-394, 1979 Ky. AG LEXIS 228.

Where the State Board of Education receives information alleging wrongdoing by a local school officer, it could ask the state Superintendent to investigate, and, if he declined, the state board could investigate on its own. OAG 79-394, 1979 Ky. AG LEXIS 228.

KRS 158.115 was the authorizing statute for a contract requiring a fiscal court to reimburse a school district on a straight per capita basis for nonpublic school students who rode public school buses and, absent full reimbursement by the fiscal court to the school board, the expenditure of public school moneys for transporting nonpublic school children would create a constitutional violation under Const., § 180 as well as other provisions. Therefore, failure by the school board to enforce the contract with the fiscal court would be tantamount to willful neglect of duty and could lead to removal from office. OAG 82-405, 1982 Ky. AG LEXIS 227.

In both KRS 160.345 hearings and KRS 156.132 hearings, the role of the Commissioner of Education in the hearings is authorized not by those statutes, but by the grant of authority vested in the commissioner as the executive and administrative officer of the Board of Education by KRS 156.148(3). OAG 02-4, 2002 Ky. AG LEXIS 1.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Removal hearing procedures, 701 KAR 5:055.

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.134. Notice of suspension — Answer — Hearing — Appeal. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 244, Art. I, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.136. Vacancies caused by suspension — Appointment — Term — Payment.

The Kentucky Board of Education, upon suspension of any officer under KRS 156.132, shall name a person to fill the vacancy caused by such suspension. Persons appointed by the Kentucky Board of Education to fill vacancies under KRS 156.132 and this section shall hold office only during the time an officer is suspended, not to exceed ninety (90) days from the date of suspension. At the expiration of such period, vacancies shall be filled in the manner provided by law for the office. Persons appointed by the Kentucky Board of Education to fill vacancies caused by suspension shall be paid from funds of the district board of education. Any person employed to fill the position of a superintendent who has been removed by the Kentucky Board of Education under KRS 156.132 shall be employed by the district board of education for periods not to exceed one (1) year if the superintendent has appealed to the courts and if the courts have not taken final action.

History.

Enact. Acts 1962, ch. 244, Art. I, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 188, § 117, effective July 15,

1980; 1990, ch. 476, Pt. II, § 51, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2021 ch. 144, § 2, effective June 29, 2021.

156.138. Duty of Attorney General.

The Attorney General, upon the written recommendation of either the Governor, the Auditor of Public Accounts, the chief state school officer, or the Kentucky Board of Education, shall institute the necessary actions to recover school funds, from any source, which he believes have been erroneously or improperly allowed or paid to any person.

History.

Enact. Acts 1962, ch. 244, Art. I, § 5; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 131, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

1. Antitrust Matters.

KRS 156.142 is not a limiting statute on the general powers of the Attorney General, and when he is empowered by statute to commence all action in all cases or hearings in all courts, in or out of the state, as set out in KRS 15.020, he is within his authority to commence a civil antitrust action in federal court. Commonwealth ex rel. Cowan v. Southern Belle Dairy Co., 801 S.W.2d 60, 1990 Ky. LEXIS 143 (Ky. 1990).

OPINIONS OF ATTORNEY GENERAL.

Under KRS 160.160, a board of education has the authority to bring an action in its own name for the recovery of funds improperly paid and the fact that the Attorney General also has this authority does not delimit the authority of the board of education but provides another means of bringing such an action when a local board for some reason has violated this provision and nothing in this section indicates that an action by the Attorney General shall be the exclusive recourse. OAG 73-867.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Actions Against a School Board or School Personnel, § 333.00.

156.140. Superintendent to control and appoint division heads and employes. [Repealed.]

Compiler's Notes.

This section (4384-7, 4434-31; amend. Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 3) was repealed by Acts 1960, ch. 63, § 26.

156.142. Jurisdiction.

In all actions brought under the provisions of KRS 156.132 to 156.138, jurisdiction shall be vested in the Circuit Court of the county in which the school district is located.

History.

Enact. Acts 1962, ch. 244, Art. I, § 6; 1978, ch. 384, § 44, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 132, effective July 13, 1990.

NOTES TO DECISIONS

1. Antitrust Matters.

This section is not a limiting statute on the general powers of the Attorney General, and when he is empowered by statute to commence all action in all cases or hearings in all courts, in or out of the state, as set out in KRS 15.020, he is within his authority to commence a civil antitrust action in federal court. Commonwealth ex rel. Cowan v. Southern Belle Dairy Co., 801 S.W.2d 60, 1990 Ky. LEXIS 143 (Ky. 1990).

156.144. Special judge, selection. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 244, Art. I, § 7) was repealed by Acts 1976 (Ex. Sess.), ch. 14, § 491, effective January 2, 1978.

156.146. Failure to select special judge, procedure. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 244, Art. I, § 8; 1976, ch. 62, § 89) was repealed by Acts 1976 (Ex. Sess.), ch. 14, § 491, effective January 2, 1978.

COMMISSIONER OF EDUCATION

156.147. Education Management Selection Commission — Selection of first commissioner of education.

(1) There is hereby created an Education Management Selection Commission. The commission shall consist of six (6) members to be appointed as follows: Three (3) by the Governor, one (1) by the President Pro Tempore of the Senate, one (1) by the Speaker of the House of Representatives, and one (1) jointly by the President Pro Tempore and the Speaker. The commission is temporary in nature and shall terminate after the State Board for Elementary and Secondary Education has signed a contract of employment with the first commissioner of education. The members shall serve without compensation, but shall be reimbursed for their reasonable and necessary actual expenses.

(2) The commission shall conduct a national search to identify the best qualified individual for the State Board for Elementary and Secondary Education to appoint as the first commissioner of education to carry out the duties of the chief state school officer. The individual shall be agreed upon by a unanimous vote of all of the members of the commission.

(3) The commission shall meet as soon as practicable after it is constituted. The members shall elect a chairperson, who shall be responsible for convening future meetings. The Governor's office and the Legislative Research Commission shall provide staff support to the commission.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 36, effective July 13, 1990.

Legislative Research Commission Notes.

(7/15/96). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, the reference to the State Board for Elementary and Secondary Education in subsections (1) and (2) of this statute has been left unchanged because that reference is historical in nature.

156.1475. Date of appointment of first commissioner of education.

The first commissioner of education selected in accordance with KRS 156.147 shall be appointed no later than December 31, 1990.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 39, effective July 13, 1990.

156.148. Commissioner of education — Selection — Term — Duties.

(1) The commissioner of education shall be the chief state school officer. He or she shall possess the professional qualifications determined by the Kentucky Board of Education as appropriate for the office.

(2) The commissioner shall:

(a) Be appointed or reappointed by the Kentucky Board of Education, subject to Senate confirmation in accordance with KRS 11.160;

(b) Serve for a term not to exceed four (4) years, unless removed by the Kentucky Board of Education; and

(c) Receive compensation as set by the board, the provisions of KRS 64.640 notwithstanding.

(3) The commissioner of education shall be the executive and administrative officer of the Kentucky Board of Education in its administration of all educational matters and functions placed under its management and control. He or she shall carry out all duties assigned to him or her by law; shall execute under the direction of the state board the educational policies, orders, directives, and administrative functions of the board; and shall direct the work of all persons employed in the Department of Education.

(4) The commissioner of education shall be reimbursed for all actual and necessary traveling expenses incurred by him or her in the performance of his or her duties.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 41, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2023 ch. 134, § 1, effective March 29, 2023.

OPINIONS OF ATTORNEY GENERAL.

In both KRS 160.345 hearings and KRS 156.132 hearings, the role of the Commissioner of Education in the hearings is authorized not by those statutes, but by the grant of authority vested in the commissioner as the executive and administrative officer of the Board of Education by KRS 156.148(3). OAG 02-4, 2002 Ky. AG LEXIS 1.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Edmondson and Rylee, Termination of the Tenured Teacher in Kentucky: Does K.R.S. 161.790

156.150. Bonds of division heads and assistants. [Repealed.]

Compiler's Notes.

This section (4384-8) was repealed by Acts 1946, ch. 27, § 10.

156.152. Price contract agreements for purchase of school buses.

The chief state school officer, as executive officer of the Kentucky Board of Education, upon application and requisition to the Finance and Administration Cabinet, is hereby authorized and directed to secure price contract agreements for the purchase of school buses by all district boards of education. The Finance and Administration Cabinet shall enter into price contract agreements under established purchasing procedure in keeping with the law relating to state purchasing. The price contract agreement shall establish sources of supply, maximum prices to be paid, and shall set forth the length of time for which contracts shall be valid.

History.

Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 20; 1966, ch. 255, § 149; 1974, ch. 74, Art. II, § 9(1); 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 133, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Buses; specifications and purchases, 702 KAR 5:060.

156.153. School bus standards — "School bus" defined — Standards and specifications for accessory equipment and supplies and replacement equipment — Standards for use of non-school bus passenger vehicles — Use of clean transportation fuels.

(1)(a) All school buses for which bids are made or bid contracts awarded shall meet the standards and specifications of the Kentucky Department of Education. The term "school bus," as used in this section, shall mean any motor vehicle which meets the standards and specifications for school buses as provided by law or by the standards or specifications of the Kentucky Department of Education authorized by law and used solely in transporting school children and school employees to and from school under the supervision and control and at the direction of school authorities, and shall further include school bus accessory equipment and supplies and replacement equipment considered to be reasonably adaptable for purchase from price contract agreements.

(b) The standards and specifications for accessory equipment and supplies and replacement equipment under paragraph (a) of this subsection shall be based on federal safety standards and shall not discriminate among manufacturers unless the Kentucky Department of Education finds evidence that a specific manufacturer's product is defective or dangerous to use.

(2) School buses shall be clearly marked as transporting students and shall undergo a safety inspection no less than once every thirty (30) days.

(3)(a) Districts may also use vehicles owned, leased, or contracted by the district that were designed and built by the manufacturer for passenger transportation of ten (10) or fewer passengers, including the driver, for transporting students to and from school

along regular bus routes and approved school activities.

(b) Non-school bus passenger vehicles used under this subsection shall be clearly marked as transporting students and undergo a safety inspection no less than once every thirty (30) days. However, non-school bus passenger vehicles that are not for daily use shall not be required to be inspected more frequently than once every three (3) months.

(c) Non-school bus passenger vehicles used under this subsection shall be operated by an employee or contractor of a local school district that has a valid Class D operator's license. An individual that operates a non-school bus passenger vehicle to transport a student or students without a current valid license required by this paragraph shall be subject to the penalties set forth in KRS 156.990(4).

(d) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish:

1. Minimum standards and specifications for non-school bus passenger vehicles used under this subsection, including a standard for minimum insurance coverage;

2. Minimum route safety standards and pick-up and drop-off protocols for transporting students to and from school along a regular bus route using non-school bus passenger vehicles that prohibit non-school bus passenger vehicles from depositing a student at a location that would require the student to cross a road or intersection to reach the student's destination;

3.a. Minimum qualifications, training, and drug testing requirements for an individual to be authorized to transport any student using a non-school bus passenger vehicle owned, leased, or contracted by a school district.

b. The minimum requirements for an individual authorized to transport students to and from approved school activities shall:

i. Require an individual to possess a valid driver's license and identify any moving violations that would disqualify an individual from being authorized to transport any student in a non-school bus passenger vehicle;

ii. Include an initial three (3) hour training and a basic first aid and cardiopulmonary resuscitation training; and

iii. Include drug testing requirements that shall require an individual to submit to drug testing consistent, to the greatest extent practicable, with the requirements of 49 C.F.R. pt. 40.

c. The minimum requirements for an individual transporting students along a regular bus route:

i. Shall include the requirements for an individual authorized to transport students to and from approved school activities; and

ii. May include additional requirements deemed necessary.

d. A local board of education may establish additional qualifications, training, and drug testing requirements for an individual to be authorized to transport any student in a non-school bus passenger vehicle.

(e) The transportation of a student pursuant to an agreement between a school district and a parent to reimburse the parent for arranging transportation of his or her own child to and from school or approved school activities shall not be subject to any requirement imposed pursuant to this section.

(4) As part of its regular procedure for establishing and updating standards and specifications for school buses and non-school bus passenger vehicles, the Kentucky Department of Education shall consider allowing school buses to operate using clean transportation fuels, as defined in KRS 186.750. If the department determines that school buses or non-school bus passenger vehicles may operate using clean transportation fuels while maintaining the same or a higher degree of safety as fuels currently allowed, it shall update its standards and specifications to allow for such use.

History.

Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 21; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 236, § 1, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 367, effective July 13, 1990; 1996, ch. 216, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2004, ch. 22, § 1, effective July 13, 2004; 2013, ch. 116, § 9, effective June 25, 2013; 2024 ch. 35, § 1, effective April 4, 2024; 2025 ch. 151, § 2, effective April 1, 2025; 2026 ch. 7, § 1, effective March 27, 2026.

Compiler's Notes.

This section (Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 21; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 236, § 1, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 367, effective July 13, 1990.

Legislative Research Commission Notes.

(7/15/2024). This statute was amended by 2024 Ky. Acts chs. 26 and 35, which do not appear to be in conflict and have been codified together.

(7/15/96). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, the reference to State Board for Elementary and Secondary Education in subsection (2) of this statute has been left unchanged because that reference is historical in nature.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Buses; specifications and purchases, 702 KAR 5:060.

156.154. Information respecting established price contract agreements — Purchase conditions of district boards.

The chief state school officer shall make available to all district boards of education full information respecting established price contract agreements, and any or all districts may procure buses from sources and at prices, terms, and conditions incorporated in the price contract agreements. Any district board of education may take its own bids on school buses which meet the specifications of the Kentucky Board of Education for school buses for which price contracts have been established, provided the chief state school officer approves the bids and purchase contract as meeting specifications of the Kentucky Board of Education. However, no district board of education shall purchase school buses

under the terms of this section unless the chief state school officer shall certify that the purchase price is lower than prices set forth in established price contract agreements for similar equipment.

History.
Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 22; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 134, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Buses; specifications and purchases, 702 KAR 5:060.

156.160. Promulgation of administrative regulations by Kentucky Board of Education — Voluntary compliance — Penalties.

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453 and distributed to local school districts and schools. The administrative regulations shall provide that:

1. If a school offers American sign language, the course shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

2. If a school offers the Reserve Officers Training Corps program, the course shall be accepted as meeting the physical education requirement for high school graduation notwithstanding other provisions of law;

3. Every public middle and high school's curriculum shall include instruction on the Holocaust and other cases of genocide, as defined by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, that a court of competent jurisdiction, whether a court in the United States or the International Court of Justice, has determined to have been committed by applying rigorous standards of due process; and

4. Beginning in the 2025-2026 school year, cursive writing shall be included as a course of study in all elementary schools and shall be designed to ensure proficiency in cursive writing by the end of grade five (5);

(b) Courses of study or educational experiences available to students in all middle and high schools to fulfill the prerequisites for courses in advanced science and mathematics as defined in KRS 158.845;

(c) The acquisition and use of educational equipment for the schools as recommended by the Kentucky Department of Education;

(d) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. The minimum requirements shall not include achieving any postsecondary readiness indicator as described in KRS 158.6455 or any minimum score on a statewide assessment administered under KRS 158.6453. Student scores from any assessment administered under KRS 158.6453 that are determined by the department's technical advisory committee to be valid and reliable at the individual level shall be included on the student transcript. The department's technical advisory committee shall submit its determination to the commissioner of education and the Legislative Research Commission;

(e)1. Beginning with the 2027-2028 school year, the requirements for an alternate high school diploma for students with disabilities:

a. Whose individualized education program indicates that, in accordance with 20 U.S.C. sec. 1414(d)(1)(A):

i. The student cannot participate in the regular statewide assessment; and

ii. An appropriate alternate assessment has been selected for the student based upon a modified curriculum and an individualized course of study;

b. That is obtained within the time period for which students are ensured the availability of a free appropriate public education consistent with KRS 158.100 and the federal Individuals with Disabilities Education Act, 20 U.S.C. sec. 1400 et seq.;

c. That, upon the completion of the requirements for an alternate high school diploma, maintains a student's right to continue to receive a free appropriate public education until the student earns a regular high school diploma or reaches the maximum age of eligibility for attendance, whichever occurs first; and

d. That complies with the criteria for a state-defined alternate high school diploma to meet requirements for inclusion in the adjusted cohort graduation rate under the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95; and

2. The requirements for a modified high school diploma for students with disabilities whose individualized education program indicates that, in accordance with 20 U.S.C. sec. 1414(d)(1)(A):

a. The student cannot participate in the regular statewide assessment;

b. An appropriate alternate assessment has been selected for the student based upon modified curriculum and an individualized course of study; and

c. Does not meet requirements for inclusion in the adjusted cohort graduation rate under the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95;

(f) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students'

Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(g) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(h) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his or her initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(i) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;

(j)1. A dental screening or examination by a dentist, dental hygienist, physician, registered nurse, advanced practice registered nurse, or physician assistant that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a dental screening or examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a five (5) or six (6) year-old child is enrolled in a public school.

2. A child shall be referred to a licensed dentist if a dental screening or examination performed by anyone other than a licensed dentist identifies the possibility of dental disease;

(k) The transportation of children to and from school;

(*l*) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(m) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(n) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts;

(o) The disposal of real and personal property owned by local boards of education; and

(p) The development and implementation of procedures, for all students who are homeless children and youths as defined in 42 U.S.C. sec. 11434a(2), to do the following:

1. Awarding and accepting of credit, including partial credit, for all coursework satisfactorily completed by a student while enrolled at another school;

2. Allowing a student who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

3. Awarding a diploma, at the student's request, by a district from which the student transferred, if the student transfers schools at any time after the completion of the student's second year of high school and the student is ineligible to graduate from the district to which the student transfers, but meets the graduation requirements of the district from which the student transferred; and

4. Exempting the student from all coursework and other requirements imposed by the local board of education that are in addition to the minimum requirements for high school graduation established by the Kentucky Board of Education pursuant to paragraph (d) of this subsection in the district to which the student transfers, if the student transfers schools at any time after the completion of the student's second year of high school and the student is ineligible to graduate both from the district to which the student transfers and the district from which the student transferred.

(2) Any private, parochial, or church school may voluntarily comply with:

(a) Curriculum, certification, and textbook standards established by the Kentucky Board of Education; and

(b) Employment standards established in KRS 160.151;

and be certified upon application to the board by such schools.

(3)(a) Any public school that violates the provisions of KRS 158.854 shall be subject to a penalty to be assessed by the commissioner of education as follows:

1. The first violation shall result in a fine of no less than one (1) week's revenue from the sale of the competitive food;

2. Subsequent violations shall result in a fine of no less than one (1) month's revenue from the sale of the competitive food;

3. "Habitual violations," which means five (5) or more violations within a six (6) month period, shall result in a six (6) month ban on competitive food sales for the violating school; and

4. Revenue collected as a result of the fines in this subsection shall be transferred to the food service fund of the local school district.

(b) Penalties under this subsection shall not be applicable to a student-based enterprise operating under KRS 158.854.

History.

4384-17, 4384-21, 4384-22, 4384-24 to 4384-30; amend. Acts 1974, ch. 348, § 2; 1978, ch. 117, § 16, effective August 31, 1979; 1978, ch. 155, § 90, effective June 17, 1978; 1984, ch. 297, § 1, effective July 13, 1984; 1990, ch. 453, § 2, effective July 13, 1990; 1990, ch. 476, Pt. I, § 31, effective July 13, 1990; 1992, ch. 195, § 10, effective April 3, 1992; 1992, ch. 362, § 1, effective July 14, 1992; 1992, ch. 444, § 1, effective July 14, 1992; 1994, ch. 98, § 8, effective July 15, 1994; 1994, ch. 354, § 3, effective July 15, 1994; 1994, ch. 404, § 1, effective July 15, 1994; 1996, ch. 7, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 204, § 1, effective July 15, 1998; 1998, ch. 434, § 2, effective April 14, 1998; 1998, ch. 598, § 9, effective April 14, 1998; 2000, ch. 308, § 8, effective July 14, 2000; 2002, ch. 148, § 1, effective July 15, 2002; 2004, ch. 97, § 2, effective July 13, 2004; 2005, ch. 84, § 1, effective June 20, 2005; 2008, ch. 92, § 1, effective July 15, 2008; 2008, ch. 134, § 12, effective July 15, 2008; 2010, ch. 85, § 27, effective July 15, 2010; 2012, ch. 27, § 1, effective July 12, 2012; 2017 ch. 80, § 10, effective June 29, 2017; 2017 ch. 177, § 9, effective June 29, 2017; 2018 ch. 60, § 1, effective July 14, 2018; 2019 ch. 144, § 1, effective June 27, 2019; 2020 ch. 112, § 3, effective July 15, 2020; 2021 ch. 79, § 2, effective June 29, 2021; 2024 ch. 203, § 1, effective July 15, 2024; 2025 ch. 113, § 2, effective June 27, 2025; 2026 ch. 15, § 1, effective July 15, 2026; 2026 ch. 74, § 8, effective April 10, 2026; 2026 ch. 81, § 2, effective July 15, 2026; 2026 ch. 196, § 10, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 15, 74, 81, and 196, which do not appear to be in conflict and have been codified together.

(7/14/2018). 2018 Ky. Acts ch. 60, sec. 2 provides that this statute amended in 2018 Ky. Acts ch. 60, sec. 1 may be cited as the Ann Klein and Fred Gross Holocaust Education Act.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 204, 434, and 598. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between chs. 434 and 598, Acts ch. 598, which was last enacted by the General Assembly, prevails under KRS 446.250.

NOTES TO DECISIONS

Analysis

1. Rule Requiring Minimum Number of Pupils.
2. Teacher's Contract.
3. Budget.
4. Rights of Conscience.
5. Teacher Certification.
6. Standardized Achievement Testing.
7. Additional Graduation Requirements.
8. Regulation of School Bus Operation.

1. Rule Requiring Minimum Number of Pupils.

A rule of the State Superintendent of Public Instruction, approved by the State Board of Education, to the effect that a minimum of 60 students is required for maintenance of a high school, is a valid administrative regulation carrying out the legislature's intent in its enactment of the school code, and is not an invalid exercise of a legislative function. Dicken v. Kentucky State Board of Education, 304 Ky. 343, 199 S.W.2d 977, 1947 Ky. LEXIS 579 (Ky. 1947).

Where high school has never had an attendance of 60 or more pupils as required by a rule of the State Superintendent of Public Education approved by the State Board of Education and passed in accordance with statutory authority until after order of discontinuance was made and where sudden increase in attendance was for purpose of obtaining a rescission of the order discontinuing the school, a mandatory injunction requiring revocation of the order discontinuing the high school cannot be granted. Pulliam v. Williams, 304 Ky. 351, 200 S.W.2d 731, 1947 Ky. LEXIS 628 (Ky. 1947).

2. Teacher's Contract.

Teacher's employment contract must be in writing; an oral contract is unenforceable. Leslie County Board of Education v. Melton, 277 Ky. 772, 127 S.W.2d 846, 1939 Ky. LEXIS 734 (Ky. 1939).

3. Budget.

In order to determine tax levy for school purposes for the ensuing school year the Board of Education should include in its sources statement in the budget a reasonable anticipated amount of collections of taxes delinquent in previous years, based on past years' experience but the board may deduct the amount of anticipated delinquencies in the collection of taxes under current levy. Middlesboro v. Board of Education, 302 Ky. 683, 195 S.W.2d 288, 1946 Ky. LEXIS 724 (Ky. 1946).

4. Rights of Conscience.

While the state has an interest in the education of its citizens which could be furthered through compulsory education, the rights of conscience of those who desire education of their children in private and parochial schools should be protected from regulations violative of such rights. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

5. Teacher Certification.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under KRS 161.030(2) will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

6. Standardized Achievement Testing.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

7. Additional Graduation Requirements.

Regulations promulgated under the authority of this section authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the

Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under KRS 158.645 et seq. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771, 1999 U.S. LEXIS 599 (U.S. 1999).

8. Regulation of School Bus Operation.

Where language of this section and KRS 189.540 was clear and unambiguous and authorized the Department of Transportation to regulate the operation of school buses, which necessarily included those persons operating the buses, there was no room for construction of the statutes and they must be accepted as they were written. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

Statutory grant of authority under KRS 156.160 and KRS 189.540 to Department of Transportation to adopt regulations to govern the design and operation of school buses was not unconstitutional special legislation because it applied only to public and not to private or parochial school bus drivers; the statutes apply equally to a class and further a legitimate state interest in safe transportation of public school children. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936); Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268, 1945 Ky. LEXIS 809 (1945); Phelps v. Witt, 304 Ky. 473, 201 S.W.2d 4, 1947 Ky. LEXIS 664 (Ky. 1947); Goins v. Jones, 258 S.W.2d 723, 1953 Ky. LEXIS 882 (Ky. 1953); Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1959).

OPINIONS OF ATTORNEY GENERAL.

The provision of this section requiring the Superintendent of Public Instruction to prepare rules and regulations to accredit commercial schools is mandatory. OAG 60-886.

The term "commercial schools" as used in this section, includes only business schools principally engaged in the instruction of typing, shorthand, bookkeeping and related subjects. OAG 60-886.

Under regulations enacted pursuant to subsection (9) (now subdivision (1)(k)) of this section, a county board of education may designate election day as a holiday and dismiss schools on that day. OAG 60-995.

A county board of education is not bound to allow private teachers to teach music in the public school building. OAG 73-653.

The requirement of the State Department of Education that a child participate in a health and physical education course does not impose a significant constitutional burden upon the freedom to exercise religious beliefs and, therefore, the state's interest in establishing a sound curriculum format for graduation must prevail over patchwork exceptions to course requirements. OAG 76-225; OAG 78-312, 1978 Ky. AG LEXIS 449.

Once approval to sell school property as surplus is given by the Superintendent of Public Instruction, there is no legal requirement that a board of education must dispose of the property by public auction or advertisement of sealed bids and the board may establish a price for the land and sell to any purchaser willing and able to meet that price if the figure represents at least the appraised fair market value of the property. OAG 76-291.

Although the State Board of Education is required to receive recommendation and advice from the Superintendent of Public Instruction as a condition precedent to the adoption of regulations, the board may exercise reasonable discretion in modifying the recommendation or advice. OAG 77-82, 1977 Ky. AG LEXIS 697.

A county school board may enter into a quitclaim deed relative to its future interest in a certain parcel of real property. OAG 77-541, 1977 Ky. AG LEXIS 243.

A local school board may, but is not required to, pay from school funds costs of contracting with local physicians for the performing of physical examinations required by school law or regulation. OAG 78-365, 1978 Ky. AG LEXIS 367.

The health, general welfare and safety of the school children in a school district constitutes a sufficient educational purpose to authorize the expenditure of school tax dollars to pay doctors for physical examinations for students and school employees. OAG 78-365, 1978 Ky. AG LEXIS 367.

Teachers and administrators and other school officials are responsible for the public education and are charged with the responsibility of implementing the rules and regulations of the Commonwealth for the control and management of the common schools and local board rules and regulations for schools in a school district. OAG 79-168, 1979 Ky. AG LEXIS 452.

A school system plan providing for three types of diplomas depending on whether a student chooses the regular, 18-credit program; the enrichment, 21-credit program; or the comprehensive, 22-credit program is in full compliance with the "minimum requirements for graduation" established by the state board pursuant to subsection (2) of this section. OAG 79-253, 1979 Ky. AG LEXIS 368.

Subsection (2) of this section is not a diploma statute. OAG 79-253, 1979 Ky. AG LEXIS 368.

A local board of education, pursuant to its broad authority under KRS 160.290, may require additional credit requirements over those minimally established by regulation of the State Board of Education, pursuant to subsection (2) of this section. OAG 80-118, 1980 Ky. AG LEXIS 523.

A medical examination required by a regulation promulgated pursuant to subsection (5) (now subsection (1)(g)) of this section in order to determine a high school student's eligibility for interscholastic athletics, cannot be performed by a chiropractor, since another regulation requires a medical physician's examination and a chiropractor is not a "physician" under the terms of subdivision (10) (now subdivision (12)) of KRS 311.550. OAG 81-335.

Kentucky Revised Statutes 156.070, this section, and the accompanying regulation, 704 KAR 7:055 set the standards to be followed by employees of the common schools with regard to the imposition of corporal punishment. OAG 92-20, 1992 Ky. AG LEXIS 20.

The existence of principles of justification in KRS 503.110 under which use of physical force will not be considered a crime does not change the fact that the State Board for Elementary and Secondary Education retains authority and supervision for management and control of common schools; that authority includes prescribing regulations for management of the schools. OAG 92-20, 1992 Ky. AG LEXIS 20.

The Kentucky Board of Education has preempted the issue of granting high school credit for 8th grade algebra courses and thus removed the decision from the local district. OAG 93-31, 1993 Ky. AG LEXIS 84.

If a school district or school which exceeds its threshold applies for a waiver from certain regulations, then under this section the Kentucky Board of Education has discretion to grant or deny the waiver request; however, the Board must first determine if the regulation is subject to waiver or if the regulation may not be waived under any circumstance since it relates to health and safety, civil rights, required by federal law, etc., next the Board must decide if a school or school district which exceeds its threshold should be granted a waiver from a particular regulation. OAG 95-25, 1995 Ky. AG LEXIS 183.

Exceeding its threshold is the only statutory requirement that a school or school district must meet in order to petition

the State Board for a waiver under subsection (2) of this section. OAG 95-25, 1995 Ky. AG LEXIS 183.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Administrative regulations, adoption and effective dates, KRS 13A.330.

Alternative education programs, 704 KAR 19:002.

Common kindergarten entry screener, 704 KAR 5:070.

Corporal punishment., 704 KAR 7:170.

District employee quarantine leave, 702 KAR 1:191.

Foundation program fund, requirements to be met by district to share in, KRS 157.350.

Free textbooks for children in correctional institutions, duties as to, KRS 157.190.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

School buses, regulations concerning, KRS 189.540.

School district audits, KRS 156.265.

Transportation of school children, KRS 158.110, 158.115.

Alternative education programs, 704 KAR 19:002.

Application for approval of alternative school-based decision making model, 701 KAR 5:080.

Approval for school district lease and retirement incentive annuity agreements, 702 KAR 3:300.

Bidding procedures, 702 KAR 3:135.

Building sites; inspection, approval, 702 KAR 4:050.

Bus drivers' qualifications; responsibilities, and training, 702 KAR 5:080.

Buses; specifications and purchases, 702 KAR 5:060.

Capital construction process, 702 KAR 4:160.

Certification of Nonpublic Schools, 704 KAR 3:315.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Common kindergarten entry screener. 704 KAR 5:070.

Commonwealth Diploma Program, 704 KAR 3:340.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

District school nutrition director, 702 KAR 6:020.

Districts of Innovation, 701 KAR 5:140.

Educational television equipment purchases, 702 KAR 3:170.

Facility programming and construction criteria, 702 KAR 4:170.

Foreign teachers serving under the teacher exchange program, 16 KAR 4:070.

Free appropriate public education, 707 KAR 1:290.

Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.

Guidelines for admission to the state-supported postsecondary education institutions in Kentucky, 13 KAR 2:020.

Handicapped, reimbursement for, 702 KAR 5:100.

Home/hospital instruction, 704 KAR 7:120.

Individual education program, 707 KAR 1:320.

Internal accounting, 702 KAR 3:130.

Kentucky All STARS for Preschool Programs, 704 KAR 3:015.

Lunch and breakfast requirements, 702 KAR 6:050.

Management improvement program, 703 KAR 3:205.

Merger of independent and county school districts, 702 KAR 1:100.

Minimum nutrition standards for food and beverages available on public school campuses during the school day; required nutrition and physical activity reports, 702 KAR 6:090.

Minimum requirements for high school graduation, 704 KAR 3:305.

Monitoring and recovery of funds, 707 KAR 1:380.

Personnel; school nutrition employee qualifications, 702 KAR 6:045.

Physical education, 704 KAR 4:010.

Placement decisions, 707 KAR 1:350.

Preschool associate teachers, 704 KAR 3:420.

Preschool education program for four (4) year old children, 704 KAR 3:410.

Preschool grant allocations, 702 KAR 3:250.

Prevention of sexually explicit materials transmitted to schools via computer, 701 KAR 5:120.

Primary school program guidelines, 704 KAR 3:440.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Property disposal, 702 KAR 4:090.

Pupil attendance, 702 KAR 7:125.

Pupil transportation: technical assistance and monitoring, 702 KAR 5:010.

Ranking of certified school personnel, 704 KAR 3:470.

Reading diagnostic and intervention grants, 704 KAR 3:480.

Recognition of credits when transferring without transcript, 704 KAR 3:307.

Required Academic Standards for Mathematics, 704 KAR 8:040.

Required Academic Standards for Social Studies, 704 KAR 8:060.

Required academic standards for reading and writing, 704 KAR 8:020.

Required core academic standards, 704 KAR 3:303.

Required Kentucky Academic Standards for Science, 704 KAR 8:120.

Restructuring revenue bond issues, 702 KAR 3:260.

School district Medicaid providers, 702 KAR 3:285.

School district tax rate formulas, 702 KAR 3:275.

School counselor, provisional and standard certificates, all grades, 16 KAR 3:060.School to careers, 705 KAR 4:240.

SEEK funding formula, 702 KAR 3:270.

Substitute teachers' salary scheduling, 702 KAR 3:075.

Time minimum for meals, 702 KAR 6:060.

Transfer of annexed property; hearing, 702 KAR 1:080.

Transportation of preschool children, 702 KAR 5:150.

Uniform academic course codes, 704 KAR 3:540.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

Use of physical restraint and seclusion in public schools, 704 KAR 7:160.

Waiver requests, 701 KAR 5:170.

Kentucky Bench & Bar.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Kentucky Law Journal.

Comment, Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-1979).

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

156.161. Waiver of administrative regulations and statutes by Kentucky Board of Education — Request by local board of education — Limitations — Assistance by Department of Education — Procedures — Schools of innovation — School district not penalized — Administrative regulation.

(1) Except as provided in KRS 156.1611 or otherwise provided in statute, the Kentucky Board of Education,

upon the request of the local board of education of a school district, may grant a waiver from the requirements of an administrative regulation promulgated by the state board or from a statute over which the state board has authority to enforce. The state board may also grant a waiver from the requirements of an administrative regulation promulgated by the Education Professional Standards Board or from a statute over which the Education Professional Standards Board has authority to enforce, after consultation with the Education Professional Standards Board. A waiver granted by the state board shall expire on June 30 of the third full school year after the request was first approved, regardless of subsequent amendment, unless the state board renews the waiver prior to expiration. However, a waiver related to specific school district facility projects that may include the construction or renovation of school buildings or the acquisition or disposition of property shall not expire unless the state board specifically provides for expiration when granting the waiver. The state board shall not approve any waiver request to overturn a certification determination of a specific individual by the Education Professional Standards Board. The state board shall not waive any statute or administrative regulation:

(a) Relating to health and safety, including required criminal background checks for staff and volunteers specified in KRS 160.380 and 161.148;

(b) Relating to civil rights;

(c) Required by federal law;

(d) Relating to compulsory attendance requirements under KRS 158.030 and 158.100, or the recording of data necessary for participation in the fund to support education excellence in Kentucky;

(e) Establishing certification requirements for teachers, except a waiver may authorize up to twenty-five percent (25%) of the teaching staff of a school may be employed without teacher certification if the individual possesses a:

1. Baccalaureate or graduate degree in the subject the individual is hired to teach; or

2. Recognized industry credential in the technical education area the individual is hired to teach;

(f) Requiring students' participation in state assessment of student performance as required under KRS 158.6453;

(g) Financial audits, audit procedures, and audit requirements under KRS 156.265;

(h) Open records and open meeting requirements under KRS Chapter 61;

(i) Purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480; or

(j) Requiring instructional time that is at least equivalent to the student instructional year specified in KRS 158.070.

(2) A waiver request under subsection (1) of this section shall:

(a) Identify the specific statutes and administrative regulations for which the local board is seeking a waiver;

(b) Specify the schools or programs within the district to which the waiver shall apply;

(c) Explain how the waiver for the schools or programs of each specific statute or administrative regulation will improve operations or student academic achievement; and

(d) Include any evidence the district wishes to submit to support the request.

(3) A local board may request the Kentucky Department of Education to assist in the development of a waiver request. To receive assistance, a local board shall provide the department with a list of innovative practices the local board intends to submit in a waiver request. The department shall provide a timely analysis of the list to the local board that identifies which statutes and administrative regulations under the authority of the state board or the Education Professional Standards Board, if any, would need to be waived to allow the innovative practice.

(4) The department may provide the state board an analysis of a waiver request to assist the state board with consideration of the waiver request. However, if the waiver request was previously analyzed by the department while assisting under subsection (3) of this section and has not been modified, then the analysis for the state board shall be consistent with the completed analysis for the local board. The department and the commissioner shall not recommend approval or denial to the state board, but may provide the benefits and disadvantages of approving the waiver request.

(5) Upon the majority vote of a local board approving a waiver request, the superintendent of the district or the local board's designee shall submit the waiver request to the state board. The state board shall consider the waiver of each statute or administrative regulation included in the request at a meeting occurring no later than thirty (30) calendar days after submission and shall either approve or deny the request. In considering approval for each statute or administrative regulation identified in a waiver request, the state board shall grant the request if, when considered in conjunction with the findings and declarations of KRS 156.1613, the waiver request reasonably demonstrates that approval is more likely than not:

(a) To improve that school's or program's operation without hindering student academic achievement; or

(b) To improve student academic achievement at that school or program.

(6) In submitting a waiver request for consideration under subsection (5) of this section, a local board may seek to identify the school or program that is the subject of the request as a school of innovation for the purposes of providing innovative educational opportunities to students. An application for identification as a school of innovation may also incorporate any waivers previously approved and in effect under this section or KRS 156.1611. The state board shall approve the request to be identified as a school of innovation if the request demonstrates that all the approved waivers under this section and KRS 156.1611 attempt to improve student outcomes in a manner that would be difficult or impossible without the approved waivers. Notwithstanding any previous expiration date, the waivers incorporated in the identification as a school of innovation shall expire on June 30 of the third full school year after the identification is made.

(7) A local board whose request to waive a statute or administrative regulation under subsection (5) or (6) of

this section was denied may amend the original request for reconsideration at the state board's next regularly scheduled meeting.

(8) A local board may seek to amend a previously approved waiver request by submitting the amendment for approval by the state board under the same procedures as the original request.

(9) A local board that is granted a waiver under subsection (5) or (6) of this section may submit a request to renew the waiver to the state board. A renewal request shall be submitted no earlier than six (6) months prior to that waiver's expiration. The renewal request shall include evidence of the operational improvement of the school or program that is subject to the waiver, the academic achievement of the students enrolled in the schools or program, comparisons of those students with similar students across the state, and any other evidence of the waiver's benefit to student academic achievement. If the state board finds that the waiver has had a positive impact on the school's or program's operation or the academic achievement of students, then the renewal request shall be approved. An approved renewal request shall extend the waiver for an additional three (3) school years. However, a waiver related to school district facility projects, as identified in subsection (1) of this section, shall not expire unless the state board specifically provides for expiration when granting the waiver.

(10) Any school that is subject to a waiver shall admit any and all children eligible to attend the school subject to the local board's policies.

(11) If the state board at any time finds by a two-thirds (2/3) majority vote that a specific waiver previously granted has hindered school or program operations, endangered students, impeded student academic achievement, or supported financial malfeasance or criminal activity, then the waiver shall be rescinded. The existence of a waiver shall not negate the legal duties or professional responsibilities of a district employee.

(12) The Kentucky Board of Education, the commissioner of education, and the Kentucky Department of Education shall not penalize a school district for an action that violates a statute or administrative regulation if:

(a) The action was described in a request for assistance under subsection (3) of this section; and

(b) The analysis of the request for assistance submitted to the district by the department:

1. Indicated that the action would not violate any statute or administrative regulation in existence at the time of the analysis; or

2. Did not include the statute or administrative regulation in existence at the time of the analysis and the exact request for assistance was approved as a waiver request by the Kentucky Board of Education.

(13) The state board shall promulgate administrative regulations in accordance with KRS Chapter 13A to adopt a standardized waiver request form and establish any procedures for processing waiver requests in compliance with this section.

History.

2025 ch. 113, § 1, effective June 27, 2025; 2026 ch. 180, § 2, effective July 15, 2026; 2026 ch. 196, § 15, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 180 and 196. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 196, which was last enacted by the General Assembly, prevails under KRS 446.250.

(6/27/2025). 2025 Ky. Acts ch. 113, sec. 31, provides that Sections 1 to 10 of the Act, which created this section and amended KRS 156.160, 156.445, 157.360, 158.070, 158.080, 158.854, 160.151, 160.380, and 164.769, may be cited as the School Innovation Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Waiver requests, 701 KAR 5:170

156.1611. Expedited waivers — Expiration — Rescission of waiver — Appeal of denial — Review.

(1) Notwithstanding any provision of KRS 156.161 to the contrary, the Kentucky Board of Education shall establish and maintain a list of expedited waivers that a local board of education may submit to the commissioner of education for approval. The list of expedited waivers shall include a waiver of all statutes and administrative regulations that prohibit a district from entering into an agreement with an education service provider to assist in the management and operation of a school or program. The waiver authority delegated to the commissioner of education by the state board shall be subject to the same limitations established in KRS 156.161(1).

(2) The commissioner shall consider an expedited waiver submitted under subsection (1) of this section and shall either approve or deny the request within ten (10) business days. The commissioner shall approve the request unless he or she determines that the expedited waiver would substantially:

(a) Hinder the operation of the district's schools or programs that are the subject of the waiver; or

(b) Impede student academic achievement within the schools or programs that are the subject of the waiver.

(3) An expedited waiver granted by the commissioner shall expire on June 30 of the third full school year after the request was first approved, regardless of subsequent amendment, unless the commissioner renews the waiver prior to expiration. The state board may extend the duration of specific expedited waivers on the list for a longer time or permanently.

(4) If the commissioner at any time finds that a specific expedited waiver previously granted under this section has substantially hindered school or program operations, endangered students, impeded student academic achievement, or supported financial malfeasance or criminal activity, then the waiver shall be rescinded. The existence of a waiver shall not negate the legal duties or professional responsibilities of district employees.

(5) A local board may appeal the denial of an expedited waiver by the commissioner to the state board. To be considered by the state board, the appeal shall be

filed within thirty (30) days of the denial. The state board shall consider the appeal within thirty (30) days of the appeal being filed.

(6) By July 1 of each year, the Kentucky Board of Education shall annually review the numbers and types of expedited waivers approved under this section and waivers granted under KRS 156.161 to determine if any amendments to or repeals of administrative regulations are necessary. The review shall also include the operation of schools of innovation under KRS 156.161. The state board may also recommend statutory changes to the General Assembly to reduce unnecessary burdens on school districts and any new best practices observed from schools of innovation that would benefit schools across the Commonwealth.

History.
2026 ch. 180, § 3, effective July 15, 2026.

156.1613. Findings and intent of General Assembly.

The General Assembly hereby finds and declares that locally driven innovation in public education can improve school operations and student outcomes. It is the intent of the General Assembly that KRS 156.161, 156.1611, and 157.360 provide local boards of education with flexibility to depart from statutory and administrative requirements that may constrain improvement, in order to pilot, implement, and refine innovative practices, particularly in schools serving students with unmet academic needs, where such practices are informed by promising approaches implemented in other public education settings, while maintaining appropriate safeguards for student welfare and academic achievement.

History.
2026 ch. 180, § 1, effective July 15, 2026.

156.162. Elective course on religious scripture — Purpose — Restrictions — Inclusion of course standards in program of studies.

(1) Pursuant to KRS 156.160, the Kentucky Board of Education shall promulgate administrative regulations to establish the courses of study for the different grades. The administrative regulation that sets forth the required and elective courses for the schools shall include:

(a) An elective social studies course on the Hebrew Scriptures, Old Testament of the Bible;

(b) An elective social studies course on the New Testament of the Bible; or

(c) An elective social studies course on the Hebrew Scriptures and the New Testament of the Bible.

(2) The purpose of a course under this section is to:

(a) Teach students knowledge of biblical content, characters, poetry, and narratives that are prerequisites to understanding contemporary society and culture, including literature, art, music, mores, oratory, and public policy; and

(b) Familiarize students with, as applicable:

1. The contents of the Hebrew Scriptures or New Testament;

2. The history of the Hebrew Scriptures or New Testament;

3. The literary style and structure of the Hebrew Scriptures or New Testament; and

4. The influence of the Hebrew Scriptures or New Testament on law, history, government, literature, art, music, customs, morals, values, and culture.

(3) A student shall not be required to use a specific translation as the sole text of the Hebrew Scriptures or New Testament and may use as the basic textbook a different translation of the Hebrew Scriptures or New Testament from that chosen by the school council.

(4) The Kentucky Department of Education shall include the course standards in the program of studies for Kentucky schools, including the teacher qualifications and required professional development.

(5) A course offered under this section shall follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in the school. A course under this section shall not endorse, favor, or promote, or disfavor or show hostility toward, any particular religion or nonreligious faith or religious perspective. The Kentucky Board of Education, in complying with this section, shall not violate any provision of the United States Constitution or federal law, the Kentucky Constitution or any state law, or any administrative regulations of the United States Department of Education or the Kentucky Department of Education.

History.
2017 ch. 187, § 1, effective June 29, 2017.

156.165. Superintendent to inform local boards of availability of federal funds for exceptional children. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1966, ch. 954, § 17) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.170. Superintendent may take special school census. [Repealed.]

Compiler's Notes.
This section (4384-22) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990. For present law see KRS 159.250.

156.180. Superintendent may attend educational conferences. [Repealed.]

Compiler's Notes.
This section (4384-10; amend. Acts 1976, ch. 327, § 3) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.190. Call and conduct of school conferences.

The chief state school officer may call and conduct conferences of boards of education, superintendents, supervisors, principals, teachers, attendance officers, and other regular public school employees, on matters relating to the condition, need, and improvement of the

schools. Personal traveling expenses incurred by those attending conferences called by the chief state school officer shall be a legitimate public expense and may be paid by boards of education.

History.
4384-16; amend. Acts 1990, ch. 476, Pt. IV, § 135, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

When attending a meeting or conference called by the Superintendent of Public Instruction pursuant to the provisions of this section, a member of a local board of education may be reimbursed pursuant to KRS 160.280 for expenses incurred outside his district. OAG 61-1052.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228, 1983 Ky. AG LEXIS 269.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228, 1983 Ky. AG LEXIS 269.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228, 1983 Ky. AG LEXIS 269.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Reports of local boards to Board of Education, KRS 160.340.
School district audits, KRS 156.265.

156.200. Examination and supervision of reports and accounts of boards of education and educational institutions.

The chief state school officer shall receive and examine all reports required by law or by the Kentucky Board of Education and, in person or through his assistants, shall examine and advise on the expenditures, business methods and accounts of all boards of education and all institutions placed under the management and control of the Department of Education as established in KRS 156.010. He shall see that all financial and educational accounts are accurately and neatly kept and that all reports are made according to the forms adopted by the Kentucky Board of Education.

History.
4384-14, 4384-30; amend. Acts 1978, ch. 155, § 91, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 136, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Audits.
2. Presentment of Accounts on Appeal.

1. Audits.
This section does not require audits by the Superintendent of Public Instruction although the power to audit all of the records of the board necessarily rests in him and in his supervisory capacity he may require reports, advise on expenditures and provide a standard of record keeping and reporting which the several boards must follow. Lewis v. Morgan, 252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952).

2. Presentment of Accounts on Appeal.
In order for Court of Appeals to ascertain whether floating indebtedness is of type which may be funded by issuance of bonds by Board of Education, a school budget prepared by the board and financial and educational accounts of Superintendent of Public Instruction showing complete account of financial expenditures during the previous fiscal year by board must be presented to the Court of Appeals. Ebert v. Board of Education, 277 Ky. 633, 126 S.W.2d 1111, 1939 Ky. LEXIS 706 (Ky. 1939).

OPINIONS OF ATTORNEY GENERAL.

Regulations for bidding promulgated under the authority of this section and KRS 156.070 by county Board of Education has the force of law. OAG 73-247.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.
Internal accounting, 702 KAR 3:130.
Minimum standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports, 702 KAR 6:090.
Restructuring revenue bond issues, 702 KAR 3:260.

156.210. Powers of chief state school officer.

(1) The chief state school officer shall have access to the papers, books and records of all teachers, trustees, superintendents, or other public school officials.

(2) He may administer oaths and may examine witnesses under oath in any part of the state in any matter pertaining to the public schools, and may cause the testimony to be reduced to writing. He may issue process to compel attendance of witnesses before him and compel witnesses to testify in any investigation he is authorized to make.

(3) When he or his assistants find any mismanagement, misconduct, violation of law, or wrongful or improper use of any district or state school fund, or neglect in the performance of duty on the part of any official, he shall report the same, and any other violation of the school laws discovered by him, to the Kentucky Board of Education, which shall, through the chief state school officer or one (1) of his assistants, call in the county attorney or the Commonwealth's attorney in the county or district where the violation occurs, and the attorney so called in shall assist in the indictment, prosecution, and conviction of the accused. If prosecution is not warrantable, the Kentucky Board of Education may rectify and regulate all such matters.

History.
4384-12, 4384-15; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 137, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

1. Construction.
This section and KRS 156.070 and 160.190 must be construed together and mean that the state board should have control over the common schools, with the power of removal of such board members who might be found guilty of specified charges. Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

Cited in:
Behanan v. Cobb, 2007 Ky. App. LEXIS 37 (Ky. Ct. App. 2007).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Heads of administrative departments may administer oaths and examine witnesses, KRS 12.120.
Bond issue approval, 702 KAR 3:020.

Treatises.
Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Actions Against a School Board or School Personnel, § 333.00.

156.220. Superintendent to render advice on any controversy or dispute involving proper administration of public schools. [Repealed.]

Compiler's Notes.
This section (4384-12; amend. Acts 1982, ch. 10, § 1, effective July 15, 1982) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.230. Chief state school officer to prepare publications.

(1) The chief state school officer shall annually prepare or cause to be prepared, and submit for approval and publication by the Kentucky Board of Education, a list of all public and private high schools or other secondary schools in the state, showing the classification of each.

(2) He shall, from time to time, prepare or cause to be prepared, and submit for approval and publication by the Kentucky Board of Education, such bulletins, programs, outlines of courses, placards, and courses of study as he deems useful in the promotion of the interests of the public schools.

(3) He shall also prepare for publication the administrative regulations, minimum standards for schools, and educational policies or programs adopted by the board for the operation, regulation, and government of the schools under its supervision.

History.
4384-19, 4384-31; amend. Acts 1952, ch. 41, § 4; 1978, ch. 155, § 92, effective June 17, 1978; 1988, ch. 361, § 9, effective July 15, 1988; 1990, ch. 470, § 51, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 138, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Legislative Research Commission Notes.
(7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

NOTES TO DECISIONS

Cited in:
Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1959).

OPINIONS OF ATTORNEY GENERAL.

The statement of the State Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayers' money. OAG 69-529.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Administrative regulations adoption and effective dates, KRS 13A.330.

Treatises.
Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Actions Against a School Board or School Personnel, § 333.00.

156.240. Chief state school officer to electronically publish school laws.

The chief state school officer shall prepare for electronic publication biennially, the complete school laws of the state, including abstracts of decisions of the Court of Justice, and opinions and interpretations of the Attorney General and the chief state school officer. He shall explain the true intent and meaning of the school laws and the published administrative regulations of the Kentucky Board of Education, and in doing so he shall freely consult the Attorney General.

History.
4384-11, 4384-18; amend. Acts 1976, ch. 62, § 90; 1978, ch. 155, § 93, effective June 17, 1978; 1988, ch. 361, § 10, effective July 15, 1988; 1990, ch. 470, § 52, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 139, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2018 ch. 105, § 2, effective April 4, 2018.

Legislative Research Commission Notes.
(7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.
(4/4/2018). The amendments made to this statute in 2018 Ky. Acts ch. 105, sec. 2 are effective April 4, 2018. SB 101 (Ch. 105) was delivered to the Governor on March 22, 2018. The 10-day, not counting Sundays, veto period began on the next day, March 23, and ended at midnight on April 3, 2018. The Governor returned that bill to the Secretary of State on April 2 without signing it. Therefore, since the Governor could have retrieved it and signed it or vetoed it prior to the end of April 3, the bill would not take effect until the first moment of April 4, 2018 following the expiration of the 10-day veto period.

156.250. Biennial report on education.

The chief state school officer shall biennially prepare the report of the Department of Education as established in KRS 156.010 to be submitted to the Governor

and the General Assembly. The report shall set out the number attending the public schools, the amount of state funds apportioned and the source from which derived, the amount raised by county school and independent school district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers, for the erection of school buildings, and for incidental and other expenses in the operation of the public schools under his supervision, together with any other facts, statistics, and information as may be deemed of interest, including recommendations for the improvement of the schools.

History.
4384-20; amend. Acts 1978, ch. 155, § 94, effective June 17, 1978; 1990, ch. 470, § 53, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 140, effective July 13, 1990.

Legislative Research Commission Notes.
(7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

156.253. Agreements for training workers for new and expanding industries — Reimbursement of industry for specified services. [Repealed, reenacted, and amended.]

Compiler's Notes.
This section (Enact. Acts 1980, ch. 31, § 1, effective March 12, 1980; 1984, ch. 111, § 90, effective July 13, 1984; 1988, ch. 361, § 11, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.120 by Acts 1990, ch. 470, § 22, effective July 1, 1990 and also amended by Acts 1990, ch. 476, Part V, § 141 and Acts 1990, ch. 496, § 48, however, pursuant to KRS 446.260 the repeal, reenactment and amendment by Acts 1990, ch. 470, § 22 prevails. See KRS 151B.120

SCHOOL DISTRICT AUDITS

156.255. Definitions for KRS 156.255 to 156.295.

As used in KRS 156.255 to 156.295:

(1) "Accountant" means a certified public accountant or a public accountant registered with the State Board of Accountancy.

(2) "Board" means the board of education of a school district.

(3) "Committee" means the State Committee for School District Audits.

(4) "State board" means the Kentucky Board of Education.

History.
Enact. Acts 1962, ch. 244, Art. II, § 1; 1978, ch. 155, § 82, effective June 17, 1978; Acts 1990, ch. 476, Pt. IV, § 142, effective July 13, 1990; 1994, ch. 296, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.

Legislative Research Commission Notes.
(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

156.260. State Textbook Commission; organization. [Repealed.]

Compiler's Notes.
This section (4421a-36) was repealed by Acts 1952, ch. 184, § 17.

156.265. State Committee for School District Audits.

(1) There shall be a State Committee for School District Audits comprised of the Governor, or a person designated by him, the Attorney General, the Auditor of Public Accounts, a person designated by the Legislative Research Commission to represent the Office of Education Accountability, and the commissioner of education. The Auditor of Public Accounts shall be the chair of the committee.

(2) The committee shall have the accounts of each board audited not less than once every fiscal year. The committee also may, at any time, cause to be made a comprehensive and complete audit of any board. Upon the written request of the state board, the commissioner of education, the Attorney General, the Auditor of Public Accounts, the Governor, or the Office of Education Accountability, the committee may cause the accounts of a board to be audited. Each audit shall cover such period of time, and shall include such auditing procedures and standards, as the committee may designate.

(3) Audits authorized under this section are in addition to any audits contemplated under KRS 11.090 or 156.200 or KRS Chapter 43.

(4) The actual expense of any audit authorized under this section shall be borne equally by the district board of education and by the committee from funds allocated to it.

(5) The committee shall meet at least quarterly. Additional or special meetings may be called by the chair.

History.
Enact. Acts 1962, ch. 244, Art. II, § 2; 1974, ch. 257, § 4; 1976, ch. 210, § 4; 1978, ch. 155, § 41, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 143, effective July 13, 1990; 1994, ch. 296, § 3, effective July 15, 1994; 2000, ch. 491, § 2, effective July 14, 2000.

Legislative Research Commission Notes.
(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 22, (9) at 2061.

OPINIONS OF ATTORNEY GENERAL.

Since the State Committee for School District Audits possesses its supervisory authority under this section to audit school boards, and since a school board under the express holding in Bell County Bd. of Educ. v. Lee, 239 Ky. 317, 39 S.W.2d 492, 1931 Ky. LEXIS 775 (1931), has authority to audit the sheriffs' school tax accounts, the state committee also has that authority. OAG 72-76.

This section gives the Committee for School District Audits the authority to include in its procedures an audit of the sheriffs' records concerning the disposition of collected school taxes. OAG 72-76.

It is entirely within the discretion of the committee whether a requested audit shall be made and who shall make it. OAG 73-451.

The Auditor of Public Accounts has no authority to undertake an audit of any school district unless directed to do so by the State Committee for School District Audits. OAG 73-451.

The State Committee for School District Audits could authorize an audit made by the Auditor of Public Accounts in lieu of an audit by an accountant in private practice. OAG 73-451.

This section and KRS 7.330 should be interpreted to allow both the state committee and the commission to authorize local school district audits consistent with their statutory authority and that such interpretation is both logical, reasonable and consistent with the apparent intent of the Legislature as evidenced by the words of the statute. OAG 89-29, 1989 Ky. AG LEXIS 29.

This section does not appear to be couched in terms of exclusivity; that is, it does not prohibit the statutory authority of another agency to conduct school district audits. OAG 89-29, 1989 Ky. AG LEXIS 29.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Audit exceptions and corrections, 702 KAR 3:150.

156.270. Conditions to be complied with before textbooks adopted or purchased. [Repealed.]

Compiler's Notes.
This section (4421a-37) was repealed by Acts 1952, ch. 184, § 17.

156.275. Accountant — Selection — Reports.

(1) The committee shall select, to make the audit authorized under KRS 156.265, accountants who are qualified under KRS Chapter 325 and the administrative regulations promulgated by the Kentucky State Board of Accountancy.

(2) Immediately upon completion of each audit, the accountant shall prepare a report of his findings and recommendations in such form and in such detail as the committee may prescribe. The report shall be to the committee and in such number of copies as specified by the committee. The committee shall furnish one (1) copy to the Kentucky Board of Education, one (1) copy to the district board of education to which the report pertains, one (1) copy to the chief state school officer and one (1) copy to the Auditor of Public Accounts. The district board of education shall keep a copy of the report on file in the office of the superintendent of schools of the district and the report shall be open to inspection by any interested person, subject to reasonable rules as to time and place of inspection.

History.
Enact. Acts 1962, ch. 244, Art. II, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 144, effective July 13, 1990; 1994, ch. 123, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.

Legislative Research Commission Notes.
(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into this statute.

OPINIONS OF ATTORNEY GENERAL.

Subsection (1) of this section prohibits the State Committee for School District Audits from selecting a certified public accountant (CPA) firm to perform a school board audit if the CPA has a spouse or dependent employed by the school district. Additionally, KRS 156.480 prohibits a CPA with a spouse employed by the school district from entering into a contract with the school system. OAG 93-16, 1993 Ky. AG LEXIS 28.

156.280. Conditions of bond of person offering textbooks. [Repealed.]

Compiler's Notes.
This section (4421a-37) was repealed by Acts 1952, ch. 184, § 17.

156.285. Access to records — Witnesses — Subpoena.

(1) The accountant shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money, and property of any board. Every officer or employee of any such board having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the accountant.

(2) The committee may require information on oath from any person touching any matters relative to any account that the accountant is required to audit. The committee may administer the oath, or have it done by any officer authorized to administer an oath.

(3) The committee may issue process and compel the attendance of witnesses before it, and administer oaths and compel witnesses to testify in any of the investigations the accountant is authorized to make.

History.
Enact. Acts 1962, ch. 244, Art. II, § 4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 368, effective July 13, 1990; 1994, ch. 296, § 5, effective July 15, 1994.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. II, § 4) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 368, effective July 13, 1990.

Legislative Research Commission Notes.
(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

156.290. Form of statement and bond; duration; supplemental statement and bond. [Repealed.]

Compiler's Notes.
This section (4421a-37) was repealed by Acts 1952, ch. 184, § 17.

156.295. Offenses — Penalties.

(1) Any officer or employee of a board or any other person who prevents, attempts to prevent, or obstructs an examination by the accountant made under KRS 156.265 and 156.275 is guilty of a high misdemeanor and shall, upon indictment and conviction in the Circuit Court of competent jurisdiction, be fined five hundred dollars ($500).

(2) Any person who fails or refuses to permit the examination provided for in KRS 156.285 or who interferes with such examination shall be fined not less than one hundred dollars ($100) or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both. Each refusal shall constitute a separate offense.

(3) Any person who has custody of any books, accounts, reports, vouchers, correspondence, files, records, money, and property that the accountant is authorized to examine under KRS 156.265 and 156.285 who fails or refuses when called upon by the committee for that purpose to permit the accountant to inspect any of such materials shall, upon conviction in the Circuit Court of competent jurisdiction, be fined not more than five hundred dollars ($500) and be subject to removal as provided by law.

(4) Any person who refuses to be sworn when required by the committee to be sworn for the purpose mentioned in subsection (2) of KRS 156.285 shall be fined not more than five hundred dollars ($500).

(5) Any witness called by the committee under subsection (3) of KRS 156.285 who fails, without legal excuse, to attend or testify shall be fined not more than five hundred dollars ($500).

History.
Enact. Acts 1962, ch. 244, Art. II, § 5; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 369, effective July 13, 1990; 1994, ch. 296, § 6, effective July 15, 1994.

Compiler's Notes.
This section (Enact. Acts 1962, Ch. 244, Art. II, § 5) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 369, effective July 13, 1990.

Legislative Research Commission Notes.
(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

156.300. Violation of bond; suit on. [Repealed.]

Compiler's Notes.
This section (4421a-42) was repealed by Acts 1952, ch. 184, § 17.

156.310. Adoption of lists of books from which city independent districts are to select basal texts; period of use of adopted books; number that may be changed at any adoption period; when adoption periods begin. [Repealed.]

Compiler's Notes.
This section (4421a-38; amend. 1944, ch. 166, § 1; 1948, ch. 87, § 2) was repealed by Acts 1952, ch. 184, § 17.

156.320. Adoption of basal texts for county districts and certain independent districts; adoption period. [Repealed.]

Compiler's Notes.
This section (4421a-39; amend. 1944, ch. 166, § 2; 1948. ch. 87, § 3) was repealed by Acts 1952, ch. 184, § 17.

156.330. Only approved books to be used as basal texts; when changes effective. [Repealed.]

Compiler's Notes.
This section (4421a-40; amend. Acts 1944, ch. 166, § 4; 1948, ch. 87, § 43) was repealed by Acts 1952, ch. 184, § 17.

156.340. Distribution of books; agents. [Repealed.]

Compiler's Notes.
This section (4421a-41) was repealed by Acts 1952, ch. 184, § 17.

156.350. Pupil removing from district; purchase of books from. [Repealed.]

Compiler's Notes.
This section (4421a-43) was repealed by Acts 1952, ch. 184, § 17.

156.360. School official or employe not to act as book agent. [Repealed.]

Compiler's Notes.
This section (4421a-45) was repealed by Acts 1952, ch. 184, § 17.

156.370. Reward for adoption of books forbidden. [Repealed.]

Compiler's Notes.
This section (4421a-44) was repealed by Acts 1952, ch. 184, § 17.

156.380. Disposition of sample books. [Repealed.]

Compiler's Notes.
This section (4421a-45) was repealed by Acts 1952, ch. 184, § 17.

INSTRUCTIONAL MATERIALS SELECTION AND PROCUREMENT

156.395. Definitions for KRS 156.395 to 156.476.

As used in KRS 156.395 to 156.476, unless the context requires otherwise:

(1) "Department" means the Kentucky Department of Education;

(2) "Grade band" means a collection of two (2) or more consecutive grade levels that are interconnected for cohesive instructional purposes in a content area;

(3) "Instructional materials" means tools used to assist in student learning, as defined in administrative regulations promulgated by the Kentucky Board of Education in accordance with KRS Chapter 13A;

(4) "Instructional materials depository" or "depository" means the instructional materials depository established under KRS 156.412;

(5) "Instructional materials reviewer" means a professional or lay citizen recommended and approved under KRS 156.407 to provide assistance to the department and task force in the review of instructional materials;

(6) "State-approved list" means the list of high quality instructional materials and programs developed, approved, and published under KRS 156.395 to 156.476; and

(7) "Task force" means the State Quality Curriculum Task Force established in KRS 156.405.

History.
Enact. Acts 1992, ch. 266, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2025 ch. 113, § 12, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.400. School subjects review and selection groups — Instructional materials purchasing.

(1) The chief state school officer shall arrange the elementary, middle, and high school subjects of reading and writing, mathematics, science, and social studies into instructional materials review and selection groups aligned with the process and schedule for reviewing Kentucky's academic standards and assessments established under KRS 158.6453. Subjects by grade or by grade band with rapidly changing or highly technical content may be considered more frequently than once during a six (6) year cycle.

(2) The chief state school officer may delay the purchase of instructional materials due to insufficient funds, but any purchases of instructional materials by a school district or the department shall be in accordance with this chapter.

History.
Enact. Acts 1952, ch. 184, § 1; 1974, ch. 71, § 1, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 1, effective July 15, 1982; 1984, ch. 161, § 1, effective July 13, 1984; 1988, ch. 138, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 145, effective July 13, 1990; 1992, ch. 266, § 7, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 1, effective July 14, 2000; 2025 ch. 113, § 13, effective July 1, 2026.

NOTES TO DECISIONS

Cited in:
Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437, 1986 Ky. LEXIS 262 (Ky. 1986).

OPINIONS OF ATTORNEY GENERAL.

Where a school district purchases textbooks and materials under the provisions of KRS 156.400 to 156.476, the statutory bidding procedure required by KRS 424.260 is not applicable. OAG 75-27.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

156.405. State Quality Curriculum Task Force — Duties — Membership — Instructional materials reviewers.

(1) The State Quality Curriculum Task Force is hereby established to:

(a) Promote increased access to high quality instructional materials;

(b) Support school districts in the evaluation, selection, and use of high quality instructional materials;

(c) Provide a state-approved list of current and high quality textbooks and instructional materials to school districts that complement the educational program in Kentucky schools;

(d) Provide a consumer guide to schools to aid with the selection of high quality instructional materials; and

(e) Provide for public participation in the review process.

(2)(a) The task force shall consist of a minimum of ten (10) appointive members who shall be appointed by the chief state school officer in accordance with subsection (6) of this section for terms of four (4) years, with two (2) appointments each year, except that every fourth year there shall be four (4) appointments. A member shall not be eligible to serve more than two (2) full terms consecutively.

(b) All vacancies that occur on the task force shall be filled in like manner for the remainder of the unexpired terms.

(c) The department and the task force shall receive assistance in the instructional materials review process from professionals and lay citizens appointed to be instructional materials reviewers under subsection (4) of this section.

(3) For the subjects of reading and writing, mathematics, science, and social studies, the task force shall:

(a) Select and direct the activities of the instructional materials reviewers, who shall develop and recommend subject specific selection criteria and evaluation forms to be used in a school district's selection of instructional materials and programs;

(b) Develop general selection criteria and evaluation forms with the help of the instructional materials reviewers and department staff to be used in a school district's selection of instructional materials and programs;

(c) Approve the selection criteria and evaluation forms developed by instructional materials reviewers under paragraph (a) of this subsection;

(d) Review the instructional materials reviewers' evaluations, and consider instructional materials or programs as it deems necessary, in order to select from them a state-approved list of high quality instructional materials;

(e) Provide notice of and the opportunity for public inspection of the instructional materials and programs that are included in the state-approved list and offered for adoption and use in the public schools, which may be done through the instructional materials depository;

(f) Select, recommend, and publish from the list provided by the instructional materials depository under KRS 156.407 the state-approved list of high quality instructional materials and programs; and

(g) Publish a consumer guide and distribute it to Kentucky public schools that shall include the general selection criteria, subject-specific selection criteria, and the evaluation forms for a school district's review and selection of instructional materials and programs.

(4) The instructional materials reviewers shall be:

(a) Composed of a minimum of eight (8) individuals who served on the advisory panels or review committees as part of the standards review process established in KRS 158.6453 for the area or areas being considered, two (2) of whom are parents who have a child currently enrolled in public schools in Kentucky; and

(b) Approved by the task force based on the recommendation of the chief state school officer.

(5) The instructional materials reviewers shall:

(a) Develop and submit to the task force subject specific selection criteria and evaluation forms to be used by school districts in reviewing instructional materials and programs; and

(b) Attend meetings and training sessions as requested by the task force and the department.

(6)(a) The chief state school officer shall appoint the following members of the task force:

1. Eight (8) members who have had not less than five (5) years teaching or supervising experience in the public schools of Kentucky and shall have had at the time of their appointment at least four (4) years of college training in a recognized institution of higher education, of whom:

a. Two (2) members who are classroom teachers or instructional coaches actively employed in the public schools of Kentucky as teachers or instructional coaches in subject field or fields for which the task force will select instructional materials; and

b. Six (6) members who are principals, instructional supervisors, or superintendents of public schools or public school systems;

2. At least one (1) member who is a member of the faculty of a public institution of higher education engaged in teacher preparation; and

3. At least one (1) member who is a lay citizen who has a child enrolled in a public school at the time of appointment.

(b) In appointing the members of the task force, the chief state school officer shall give due regard to representation from rural and urban areas and from elementary, middle, and high school levels.

(7) Members of the task force and the instructional materials reviewers shall serve without compensation but shall be reimbursed for necessary travel and expenses while attending meetings at the same per diem rate promulgated in administrative regulation for state employees under KRS Chapter 45. The department shall provide funds to school districts to cover the cost of substitute teachers for those teacher members of the task force at the rate established for substitute teachers at each school district.

(8) The meetings of the task force shall be open to the public, and notice of meetings shall be given in accordance with KRS 61.805 to 61.850.

(9) Not later than May 1 each year, if funding is available, the chief state school officer shall call the task force into session. The members of the task force shall elect one (1) of its voting members as chair.

(10) At the direction of the chief state school officer, the task force may select, recommend, and publish instructional materials in subjects beyond reading and writing, mathematics, science, and social studies to be added to the state-approved list. The review and selection process shall be in accordance with KRS 156.395 to 156.476.

History.

Enact. Acts 1952, ch. 184, § 2; 1974, ch. 71, § 2, effective March 13, 1974; 1976, ch. 74, § 6, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 2, effective July 15, 1982; 1988, ch. 138, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 146, effective July 13, 1990; 1992, ch. 266, § 8, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 2, effective July 14, 2000; 2025 ch. 113, § 14, effective July 1, 2026.

OPINIONS OF ATTORNEY GENERAL.

The State Textbook Commission may, pursuant to its legal authority, approve the adoption of a multivolume paperback edition or a single volume paperback edition of a textbook in lieu of the hardback edition. OAG 71-169.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
State Textbook Commission as division in Department of Education, KRS 156.010.

156.407. Selection of instructional materials reviewers — Review and evaluation process — State-approved list of instructional materials and programs.

(1) The chief state school officer shall, not later than one (1) academic year following the academic standards and assessment review process established in KRS 158.6453 for reading and writing, mathematics, science, and social studies, recommend at least eight (8) nominees for instructional materials reviewers who previously served on advisory panels or review committees under KRS 158.6453 for the content area or areas being reviewed.

(2) The State Quality Curriculum Task Force shall review and approve instructional materials reviewers based on the chief state school officer's recommendations as specified in KRS 156.405.

(3) The department's curriculum and instruction specialists shall serve as staff to the task force and reviewers and shall:

(a) Orient and train the task force and reviewers regarding departmental policy and review procedures; and

(b) Make available existing academic standards, the model curriculum framework established in KRS 158.6451, and selection criteria and evaluation forms for the review of instructional materials.

(4) The instructional materials reviewers shall develop subject specific criteria for instructional materials selection and evaluation, including but not limited to the following areas:

(a) Subject content, including its alignment to the academic standards and expectations established in KRS 158.6453;

(b) Audience;

(c) Format, including print, nonprint, and electronic modes of instruction;

(d) Readability and accessibility for all learners;

(e) Accuracy and evidence of a research basis with external validity and reliability;

(f) Cultural relevance and freedom from bias;

(g) Projected cost of the materials; and

(h) Ancillary materials.

(5) The task force shall develop general criteria, review and approve subject specific criteria, and provide the standard criteria and evaluation forms to be used by local schools and school districts in the evaluation, selection, and use of high quality instructional materials and programs.

(6)(a) The task force shall review the work of the instructional materials reviewers and, based on this review and any of its own reviews of textbooks or programs, establish the state-approved list of instructional materials and programs.

(b) The state-approved list of instructional materials and programs shall be free of factual error.

(c) Copies of all selection criteria and evaluation forms submitted by the instructional materials reviewers shall be:

1. Made available to task force members and maintained on file within the department for the duration of the review cycle; and

2. Provided in a consumer guide to schools and districts to aid in the selection of high quality instructional materials.

History.
Enact. Acts 1988, ch. 138, § 5, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 147, effective July 13, 1990; 1992, ch. 266, § 9, effective July 14, 1992; 2000, ch. 419, § 3, effective July 14, 2000; 2025 ch. 113, § 15, effective July 1, 2026.

156.410. Standards and criteria for evaluation of instructional materials and programs — Submissions by publishers and developers.

(1) The chief state school officer shall prepare minimum manufacturing standards, delineate content specifications in accordance with the academic standards established in KRS 158.6453 for Kentucky schools in grades kindergarten through twelve (12), and formulate other criteria for use in the evaluation of instructional materials to guide the instructional resources depository established in KRS 156.412, which shall require that all materials be suitable for use with a diverse population and be free of social, ethnic, racial, religious, age, gender, and geographic bias.

(2) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have authority to promulgate administrative regulations in accordance with KRS Chapter 13A:

(a) Pertaining to the evaluation, selection, and use of high quality instructional materials and programs on the state and local levels; and

(b) Relating to the agents and representatives of instructional materials and programs and the methods and procedures for use in adoptions on the state and local levels.

(3) The instructional materials depository shall properly advertise the subjects for which instructional materials adoptions will be made and notify the different publishers and developers of instructional materials. The publishers or developers shall file with the depository samples of instructional materials, filing fees, bids and bonds, and other specified information relative to the instructional materials that they desire to offer for adoption.

(4) The instructional materials depository shall:

(a) Review the bid information submitted by the publishers and developers;

(b) Verify that the bid complies with the specifications; and

(c) Prepare a list of instructional materials and programs, for consideration by the task force, indicating those in compliance with the standards and specifications and those not in compliance, detailing areas of noncompliance.

History.
Enact. Acts 1952, ch. 184, § 3; 1974, ch. 71, § 3, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 138, § 3, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 148, effective July 13, 1990; 1996, ch. 362, § 6, effective July

15, 1996; 2000, ch. 419, § 4, effective July 14, 2000; 2025 ch. 113, § 16, effective July 1, 2026.

OPINIONS OF ATTORNEY GENERAL.

In determining the meaning of the words "shall file" as used in subsection (4), the word "shall" when used in statutes is mandatory and "mailing" cannot be considered "filing" so that in order for material to be considered filed, it must be received in the office of the Superintendent of Public Instruction not later than midnight, August 20. OAG 73-640.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

156.412. Instructional materials depository — Establishment — Duties — Required use by school districts and Department of Education.

(1)(a) The Kentucky Department of Education shall establish an instructional materials depository for the schools of the Commonwealth.

(b) The department may enter into contracts to designate an entity to serve as the department's agent to carry out the responsibilities of the depository under KRS 156.395 to 156.476.

(c) To leverage the purchasing power of the Commonwealth's schools, the depository shall negotiate prices on behalf of the department and all school districts.

(2)(a) In accordance with KRS Chapter 45A, school districts and the department shall use the depository in purchasing the instructional materials included in the state-approved list established by the State Quality Curriculum Task Force under KRS 156.395 to 156.476.

(b) Superintendents of school districts shall use the instructional materials depository to report the school district's selection of instructional materials to the department, unless the school district purchases approved alternate instructional materials under KRS 156.439.

(3) The depository shall make available to school districts and the public the necessary information for assessing the instructional materials included in the state-approved list. The information shall include but not be limited to:

(a) Each of the instructional materials included in the state-approved list, capable of being organized by grade or grade band and content area;

(b) Summary results of the instructional materials evaluations conducted by the task force and any factual error identified in the instructional materials;

(c) A list of the accompanying manuals, workbooks, and other ancillary items for instructional materials included in the state-approved list; and

(d) A list of the school districts within the state that have adopted each of the instructional materials, including for each school district:

1. The statewide assessment results in the associated content area; and

2. Identification of any interim or formative assessment utilized by the district pursuant to KRS 158.6453(8).

History.
2025 ch. 113, § 11, effective July 1, 2026.

156.415. Conditions for placing instructional materials and programs on state-approved list.

Before instructional materials and programs offered for adoption and use in public schools of Kentucky may be placed on the state-approved list, the person, firm, or corporation offering the materials for adoption and use shall file with the instructional materials depository:

(1) Copies of all instructional materials and programs that the person, firm, or corporation desires to offer for adoption and use, with a sworn statement of the list price and the lowest wholesale price at which each of the titles is sold in any adopting unit;

(2) A statement that all the titles offered for sale, adoption, and use, do comply with the standards and specifications for instructional materials designated by the chief state school officer as regards paper, binding, printing, illustrations, subject matter, and other items included in the standards and specifications;

(3) Copies of any revision or special editions of the instructional materials and programs filed, with a statement describing in detail each point of difference from the regular edition filed, and the list price and the lowest wholesale price at which the revision or special edition is sold anywhere in the United States; and

(4) An affidavit certifying any instructional materials that the publisher or developer offers in the state are free of factual error at the time the publisher or developer is placed on the state-approved list.

History.
Enact. Acts 1952, ch. 184, § 4; 1974, ch. 71, § 4, effective March 13, 1974; 1990, ch. 476, Pt. IV, § 149, effective July 13, 1990; 2000, ch. 419, § 5, effective July 14, 2000; 2025 ch. 113, § 17, effective July 1, 2026.

156.420. Bond conditions for person, firm, or corporation offering textbooks. [Repealed]

History.
Enact. Acts 1952, ch. 184, § 5; 1974, ch. 71, § 5, effective March 13, 1974; 1990, ch. 476, Pt. IV, § 150, effective July 13, 1990; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.425. Form of statement and bond — Supplemental statement and bond. [Repealed]

History.
Enact. Acts 1952, ch. 184, § 6; 1974, ch. 71, § 6, effective March 13, 1974; 1990, ch. 476, Pt. IV, § 151, effective July 13, 1990; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.430. Violation of bond — Suit on bond. [Repealed]

History.
Enact. Acts 1952, ch. 184, § 7; 1990, ch. 476, Pt. IV, § 152,

effective July 13, 1990; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.433. Instructional materials eligible for purchase with state instructional materials funds — Administrative regulation — Review procedure — Purchases by state and distributions to school districts without cost.

(1) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall promulgate an administrative regulation identifying instructional materials eligible for purchase with state instructional materials funds. The regulation shall identify instructional materials which are subject to review before being recommended for use, establish a procedure for the review, and a process for adding an instructional material to the state-approved list.

(2) The department shall report the state-approved list of instructional materials for the use of school personnel as selected by the task force.

(3) The chief state school officer, subject to the approval of the Kentucky Board of Education, may purchase instructional materials from the publishers or developers whose instructional materials have been adopted by a school district for grades kindergarten through twelve (12) and distribute them without cost to the pupils attending the public schools in the school district.

(4) Allocations and purchases using state instructional materials funds shall be conducted in accordance with KRS 156.395 to 156.476.

History.

Enact. Acts 1992, ch. 266, § 2, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 6, effective July 14, 2000; 2025 ch. 113, § 18, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Instructional resource adoption process, 704 KAR 3:455.

156.435. Adoption of state-approved list — Rejections — Publication of list.

(1) The State Quality Curriculum Task Force shall select, recommend, and publish the state-approved list of instructional materials or programs for reading and writing, mathematics, science, and social studies in each grade or grade band, taking into account the needs of the various types of students.

(2) The task force shall have the authority to reject any book which:

(a) Contains subversive material or information that is offered for listing or adoption. If the task force finds on the state-approved list any book which contains subversive material or information, the task force shall have authority to remove the book from the state-approved list;

(b) Is in noncompliance with academic standards established in KRS 158.6453; or

(c) Is not of high quality in terms of the content provided, the audience addressed, the format used, the readability and accessibility of material or the ancillary materials provided the teacher and students.

(3) The task force shall have the authority to solicit additions for the state-approved list to be included in the instructional materials depository established in KRS 156.412.

(4) The chief state school officer shall prepare the state-approved list of instructional materials or programs for reading and writing, mathematics, science, and social studies and publish the list along with a consumer guide and distribute the selection criteria and evaluation forms to the superintendents of each school district in Kentucky on or before November 15 of each adoption year.

History.

Enact. Acts 1952, ch. 184, § 8; 1974, ch. 71, § 7, effective March 13, 1974; 1982, ch. 9, § 1, effective July 15, 1982; 1982, ch. 154, § 3, effective July 15, 1982; 1988, ch. 138, § 4, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 153, effective July 13, 1990; 1992, ch. 266, § 5, effective July 14, 1992; 2000, ch. 419, § 7, effective July 14, 2000; 2025 ch. 113, § 19, effective July 1, 2026.

NOTES TO DECISIONS

Cited in:

Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437, 1986 Ky. LEXIS 262 (Ky. 1986).

OPINIONS OF ATTORNEY GENERAL.

The term "book," as used in this section, is not limited to a mere physical object and is no legal obstacle to the adoption of a multivolume paperback edition of a textbook. OAG 71-169.

The term "books or programs," as used in this section, restricts the list to be compiled by the State Textbook Commission to print materials. OAG 76-207.

156.437. Administrative regulations for listing, adoption, and purchase of subject programs. [Repealed]

History.

Enact. Acts 1964, ch. 193, § 1; 1974, ch. 71, § 8, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 2, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 154, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 8, effective July 14, 2000; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.438. Administrative regulations for reviewing and resolving claims of factual errors in adopted textbooks. [Repealed]

History.

Enact. Acts 2011, ch. 72, § 1, effective June 8, 2011; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.439. District allocation of state instructional materials funds — Use — School plans — Carryover.

(1) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the method for calculating and distributing a district's allocation of state

instructional materials funds. The district's allocation shall be used by schools to purchase:

(a) Instructional materials and programs from the state-approved list;

(b) Instructional materials and programs not on the state-approved list if notification is submitted to the department that the material meets the selection criteria of the task force in KRS 156.405(3)(a) or (b), the subject specific criteria of the instructional materials reviewers pursuant to KRS 156.407(4), and compliance with the required specifications;

(c) Instructional materials and programs, with an approved plan pursuant to subsection (2) of this section;

(d) Instructional materials and programs for a subject not included in the state-approved list if the district demonstrates that the district already maintains high quality instructional materials in the subjects included on the state-approved list and has a need in a subject not included on the state-approved list; or

(e) Any combination of the above.

(2) The district shall use the instructional materials depository established in KRS 156.412 to identify all purchases it makes with an instructional materials allocation and shall keep on file a plan developed by each school, in accordance with administrative regulations promulgated by the Kentucky Board of Education, for providing the necessary instructional materials for all grades for reading and writing, mathematics, science, and social studies. A school may carry forward to the next school year any part of its instructional materials allocation which has been distributed to the district.

History.

Enact. Acts 1992, ch. 266, § 3, effective July 14, 1992; 1996, ch. 318, § 48, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 9, effective July 14, 2000; 2025 ch. 113, § 20, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Instructional resource adoption process, 704 KAR 3:455.

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.440. Sample copies of materials selected and placed on state-approved list of instructional materials.

Publishers or developers, upon the request of the instructional materials depository established in KRS 156.412 or superintendents of school districts, shall furnish the requested sample copies of their materials that were selected and placed on the state-approved list of recommended instructional materials by the State Quality Curriculum Task Force.

History.

Enact. Acts 1952, ch. 184, § 9; 1974, ch. 71, § 9, effective March 13, 1974; 1982, ch. 154, § 4, effective July 15, 1982; 1984, ch. 410, § 9, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 155, effective July 13, 1990; 1992, ch. 266, § 4, effective July 14, 1992; 2000, ch. 419, § 10, effective July 14, 2000; 2025 ch. 113, § 21, effective July 1, 2026.

NOTES TO DECISIONS

Cited in:

Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437, 1986 Ky. LEXIS 262 (Ky. 1986).

156.445. Only state-approved instructional material or program to be used as core comprehensive resource — Exceptions — When changes to be effective — Approval of materials for private and parochial schools.

(1) Instructional materials or programs for reading and writing, mathematics, science, and social studies shall not be used in any public school in Kentucky as a core comprehensive resource unless they have been recommended and listed on the state-approved list by the State Quality Curriculum Task Force, or unless a school and district has met the notification requirements under subsection (2) of this section. Any changes of instructional materials made by the task force shall not become effective until grades and classes of school districts have completed work for which the adopted materials then in use were originally intended. This section shall not apply to the supplementary materials that are needed from time to time.

(2) The superintendent of a school district shall submit a notification to the department if the school district plans to adopt instructional materials or a program as a core comprehensive resource for reading and writing, mathematics, science, or social studies that is not on the state-approved list by submitting evidence that the instructional materials or program it has chosen meets the selection criteria of the task force in KRS 156.405(3)(a) or (b) and the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(4) and complies with the required specifications.

(3) In approving text materials for private and parochial schools for the purpose of KRS 156.160(2) the text materials shall be approved if they are comprehensive and appropriate to the grade level in question notwithstanding the fact that they may contain elements of religious philosophy.

History.

Enact. Acts 1952, ch. 184, § 10; 1978, ch. 136, § 5, effective July 1, 1979; 1978, ch. 155, § 160, effective June 17, 1978; 1984, ch. 297, § 2, effective July 13, 1984; 1990, ch. 476, Pt. I, § 32, effective July 13, 1990; 1992, ch. 266, § 6, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 11, effective July 14, 2000; 2025 ch. 113, § 3, effective June 27, 2025; 2025 ch. 113, § 22, effective July 1, 2026.

NOTES TO DECISIONS

1. Previous Editions.

A board of education upon adopting a new edition of a text may provide that pupils owning used copies of a previous edition could use same. Schlake v. Board of Education, 240 Ky. 426, 42 S.W.2d 526, 1931 Ky. LEXIS 414 (Ky. 1931) (decided under prior law).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Comment, Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-1979).

Northern Kentucky Law Review.
Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

156.447. Optional purchase of supplemental textbooks, materials, and equipment. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1964, ch. 193, § 2; 1970, ch. 229, § 1; 1972, ch. 369, § 1; 1976, ch. 74, § 2, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 364, § 1, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 156, effective July 13, 1990) was repealed by Acts 1992, ch. 266, § 11, effective July 14, 1992.

156.450. Distribution of books — Agents. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1952, ch. 184, § 11; 1982, ch. 9, § 3, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 157, effective July 13, 1990) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

156.455. Purchase of books from pupil moving from district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1952, ch. 184, § 13; 1982, ch. 9, § 4, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 158, effective July 13, 1990) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

156.460. School official or employee not to act as instructional material agent.

A superintendent, teacher, or other official or employee of any institution supported wholly or in part by public funds shall not act, directly or indirectly, as agent for any person whose instructional materials are identified on the state-approved list.

History.
Enact. Acts 1952, ch. 184, § 13; 1990, ch. 476, Pt. IV, § 159, effective July 13, 1990; 2025 ch. 113, § 23, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
State support of education, KRS ch. 157.

156.465. Reward for adoption of instructional materials prohibited.

No person shall secure or attempt to secure the adoption of any instructional materials in any school district in this state, by rewarding or promising to reward, directly or indirectly, any person in any public school district in the state. No person shall offer or give any emolument to any person in any school district in this state for any vote or promise to vote, or the use of his influence, for any instructional materials to be used in this state.

History.
Enact. Acts 1952, ch. 184, § 14; 1990, ch. 476, Pt. IV, § 160, effective July 13, 1990; 2025 ch. 113, § 24, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Unlawful compensation of public servant, KRS 521.040.

156.470. Copy of recommended titles to remain in specified office for period of adoption. [Repealed]

History.
Enact. Acts 1952, ch. 184, § 15; 1974, ch. 71, § 10, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 5, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 161, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 12, effective July 14, 2000; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.472. Textbooks for model and practice schools. [Repealed]

History.
Enact. Acts 1960, ch. 99, § 1; 1974, ch. 71, § 11, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 162, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; repealed by 2020 ch. 66, § 4, effective July 15, 2020.

156.474. Multiple textbook adoptions. [Repealed]

History.
Enact. Acts 1960, ch. 99, § 2; 1974, ch. 71, § 12, effective March 13, 1974; 1976, ch. 74, § 3, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 6, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 163, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.475. Title. [Repealed]

History.
Enact. Acts 1976, ch. 74, § 1; 1990, ch. 476, Pt. IV, § 164, effective July 13, 1990; repealed by 2025 ch. 113, § 29, effective July 1, 2026.

156.476. Instructional materials for children with impaired vision — Requirement that publisher or developer of adopted instructional materials furnish American Printing House for the Blind with text in electronic format.

(1) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall select suitable instructional materials and programs in an appropriate format, which include braille textbooks, and other materials available in clear type of eighteen (18) to twenty-four (24) points in the different subject areas for children with impaired vision who are attending the public schools of the Commonwealth of Kentucky in grades kindergarten through twelve (12).

These instructional materials shall not be subject to the official bids, filing fees, sampling, and the stipulated list prices, lowest wholesale prices, and the standards and specifications required for the instructional materials approved and listed by the State Quality Curriculum Task Force under KRS 156.395 to 156.476 for regular use by the pupils attending the public schools of the State of Kentucky. The Kentucky Board of Education, upon the recommendation of the chief state school officer, may promulgate an administrative regulation determining the pupils eligible for the instructional materials, the number and types of instructional materials to be purchased, and the general administration of the program. The chief state school officer, subject to the approval of the Kentucky Board of Education, may purchase these books and materials and distribute them without cost to the pupils with impaired vision attending the public schools of the state. All instructional materials and programs purchased under this section for the pupils with impaired vision are the property of the state.

(2) The Department of Education shall require any publisher or developer of an instructional material or program adopted for use in the public schools of the Commonwealth to furnish the American Printing House for the Blind with an electronic version of those instructional materials either in the American Standard Code for Information Interchange, (ASCII), or in any other format which can be readily translated into braille or large print.

History.

Enact. Acts 1960, ch. 99, § 3; 1974, ch. 71, § 13, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 7, effective July 15, 1982; 1986, ch. 463, § 1, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 165, effective July 13, 1990; 1992, ch. 382, § 4, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 13, effective July 14, 2000; 2025 ch. 113, § 25, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Instructional resource adoption process, 704 KAR 3:455.

MISCELLANEOUS

156.480. Employees of department or school districts with decision-making authority prohibited from supplying goods or services for which school funds are expended — Penalties.

(1) No commissioner, associate commissioner, deputy commissioner, director, manager, purchasing agent, or other employee of the Department of Education with decision-making authority over the financial position of a school, school district, or school system shall have any pecuniary interest in the school, school district, or school system, either directly or indirectly, in an amount exceeding twenty-five dollars ($25) per year, either at the time of or after his appointment to office, in supplying any goods, services, property, merchandise, or services, except personal services that are in addition to those required by contract for employment, of any nature whatsoever for which school funds are expended. If any person specified in this subsection receives, directly or indirectly, any gift, reward, or promise of reward for his influence in recommending or procuring the use of any goods, services, property, or merchandise of any kind whatsoever for which school funds are expended, he shall upon conviction be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and his office or appointment shall without further action be vacant.

(2) No employee of any county or independent school district with decision-making authority over the financial position of the school district shall have any pecuniary interest, either directly or indirectly, in an amount exceeding twenty-five dollars ($25) per year, either at the time of or after his appointment to office, in supplying any goods, services, property, merchandise, or services, except personal services that are in addition to those required by contract for employment, of any nature whatsoever for which school funds are expended. If any person specified in this subsection receives, directly or indirectly, any gift, reward, or promise of reward for his influence in recommending or procuring the use of any goods, services, property, or merchandise of any kind whatsoever for which school funds are expended, he shall upon conviction be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and his office or appointment shall without further action be vacant.

History.

Enact. Acts 1956, (1st Ex. Sess.) Ch. 7, Art. II, § 7; 1966, ch. 89, § 7; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 370, effective July 13, 1990; 1994, ch. 123, § 2, effective July 15, 1994.

Compiler's Notes.

This section (Enact. Acts 1956, (1st Ex. Sess.) Ch. 7, Art. II, § 7; 1966, ch. 89, § 7) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 370, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Determination of Forfeiture.
2. Vacancy and Penalty.

1. Determination of Forfeiture.

If misconduct of school superintendent is proven it automatically works a forfeiture of the incumbent's right to the office and the provision is self-executing but the fact of the existence of the grounds of forfeiture must be determined by a judicial tribunal and not by county board of education. Arnett v. De Weese, 304 S.W.2d 784, 1957 Ky. LEXIS 281 (Ky. 1957).

An individual who had been nominated by county board of education as superintendent of schools upon board's declaration that incumbent had forfeited his office by entering into a contract to rent certain property to the board, employing his wife as finance officer of the board, contracting with the board to serve as secretary, being a partner in a firm operating a school bus line under contract with the board and receiving travel expenses from the board could bring declaratory judgment action for determination of whether forfeiture had taken place and whether he was entitled to the office. Arnett v. De Weese, 304 S.W.2d 784, 1957 Ky. LEXIS 281 (Ky. 1957).

2. Vacancy and Penalty.

This section is a positive and imperative declaration that if any school official or employee shall commit any of the acts

enumerated in this section, his office "shall without further action be vacant, and he shall, upon conviction, be deemed guilty of a misdemeanor and fined not less than fifty dollars nor more than five hundred dollars." Arnett v. De Weese, 304 S.W.2d 784, 1957 Ky. LEXIS 281 (Ky. 1957).

OPINIONS OF ATTORNEY GENERAL.

Although generally a school board member may not be removed for acts committed in a prior term of office, he may be removed for such acts in a case involving gross fraud in the management of his office, or in a case of a continuing duty to act imposed upon him by virtue of the public trust implicit in his office. OAG 61-145.

The treasurer of a local board of education, who received a salary of $10.00 per month and who had a pecuniary interest in an agency that sold insurance to the board of education, would be disqualified as treasurer if the pecuniary interest in the sale, direct or indirect, was in excess of $25.00. OAG 61-211.

Absent a showing that a superintendent did not attend to the regular duties of the office, there is no statutory authority or other legal basis for the view that any or all of a superintendent's salary could be recovered. OAG 69-515.

Any consideration as to the potential prosecution based upon actual evidence which would indicate a violation of KRS 156.480 should in the normal course of events be made by the county attorney or the Commonwealth's attorney in the district where the violation occurred, following receipt of formal notification and presentation of competent evidence. OAG 69-515.

A superintendent is a teacher within the application of the statute and may receive extra pay from the board for extra personal services in addition to his regular full-time duties as superintendent. OAG 69-515.

Where a school superintendent does rent property or supply general services to the school district by which he is employed, and where the amount involved exceeds $25.00, this section is violated. OAG 69-515.

Where the board of education rented office space in a building in which the superintendent had a financial interest and the lease was one in which the superintendent realized a direct or indirect financial interest, a violation occurred. OAG 69-515.

A teacher who is also an insurance agent may not properly submit a bid on school property insurance to the district which employs him as a schoolteacher. OAG 70-527.

The purpose of this section is to prevent a supplier from receiving an undue advantage over other suppliers to a school system either by being employed by the school system directly or by having a close connection with one so employed. OAG 71-474.

Where a husband sold instructional aids and his wife was employed as a teacher, he would be prohibited from selling supplies to the system by which she was employed. OAG 71-474.

Under KRS 161.770, a leave of absence from the school system can only be granted for illness, maternity or other disability, and educational or professional purposes and as operating a garbage service is not one of these statutory reasons, the school board should not have granted a leave of absence but should have required the teacher to resign or continue working and, if the teacher is on a bona fide leave of absence, he would be violating this section by selling the services of his garbage service to the school system. OAG 73-651.

Since the school board does not have the authority to oust an officer or employee on the grounds of conflict of interest, it may accept a low competitive bid from a retail sporting goods supplier although the wholesaler or the retailer is an employee of the school board even though the board knows that the wholesaler will be in violation of this statute. OAG 73-671.

Regardless of whether the treasurer receives an honorarium or salary, he is an employee of the school board, and as such, he is subject to this section and thus would be prohibited from selling insurance to the board. OAG 75-461.

A county school board is not legally precluded from accepting the low bid of and contracting with an employee of the school district; however, if the school district employee enters into a contract with the school board to furnish five freezers for five schools in the county since such bid does not come within the statutory exception of personal services which are in addition to those required by contract for employment, he has violated the provisions of this section but whether he has forfeited his office by such violation is a matter for the courts to determine. OAG 77-228, 1977 Ky. AG LEXIS 551.

A violation under this section is to be prosecuted within one (1) year after it is committed. OAG 79-155, 1979 Ky. AG LEXIS 484.

The wrong committed by a violation of this section is an "offense" which is a "violation" since only a fine and not incarceration may be imposed. OAG 79-155, 1979 Ky. AG LEXIS 484.

The Model Procurement Code would not prohibit an assistant school principal from submitting a competitive bid to the school board for services as a professional auctioneer. OAG 80-605, 1980 Ky. AG LEXIS 57.

Where the wife of an assistant superintendent of county schools owned one half (½) of a flower shop which occasionally entered into contracts with various schools in the system, such contracts would violate this section. OAG 81-311 (OAG 78-315 withdrawn).

KRS 156.275(1) prohibits the State Committee for School District Audits from selecting a certified public accountant (CPA) firm to perform a school board audit if the CPA has a spouse or dependent employed by the school district. Additionally, this section prohibits a CPA with a spouse employed by the school district from entering into a contract with the school system. OAG 93-16, 1993 Ky. AG LEXIS 28.

An "employee with decision-making authority over the financial position of the school district" includes, first of all, certain school officials with broad authority over the financial position of the school district including the superintendent, the assistant superintendents, principals and school council members. Other school employees with power to make financial and budgetary decisions with regard to the allocation of funds and the purchase of goods, services, property, or merchandise, also have "decision-making authority." The authority to recommend expenditure items also represents such authority. OAG 94-61, 1994 Ky. AG LEXIS 293.

In order to conclude whether an employee is covered under subsection (2) of this section it may be necessary to review the employee's job description and determine the extent of influence extended over purchases by the school system. OAG 94-61, 1994 Ky. AG LEXIS 293.

156.483. Restrictions on employing violent offenders or persons convicted of sex crimes — Criminal record check on job applicants.

(1) The State Department of Education shall not employ, in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime defined in KRS 17.165 as a felony. The Department of Education may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor. The Department of Education shall request all conviction information for any applicant for employment from the

Justice and Public Safety Cabinet prior to employing the applicant.

(2) Each application form, provided by the Department of Education to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(3) Any request for records under subsection (1) of this section shall be on a form approved by the Justice and Public Safety Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(4) The provisions of this section shall apply after July 15, 1988, to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor.

History.

Enact. Acts 1988, ch. 345, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 166, effective July 13, 1990; 2007, ch. 85, § 164, effective June 26, 2007.

156.485. GED certificate recognized — Fee for issuance — Funding for essay requirement — Employment of staff to score essays. [Repealed, reenacted, and amended.]

Compiler's Notes.

This section (Enact. Acts 1972, ch. 192, § 1; 1986, ch. 311, § 1, effective July 15, 1986; 1988, ch. 361, § 12, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.125 by Acts 1990, ch. 470, § 23, effective July 1, 1990. It was also amended by Acts 1990, ch. 476, Part IV, § 167. See KRS 151B.125.

156.486. GED foundation for adult education. [Repealed, reenacted, and amended.]

Compiler's Notes.

This section (Enact. Acts 1986, ch. 209, § 1, effective July 15, 1986) was repealed, reenacted, and amended as KRS 151B.130 by Acts 1990, ch. 470, § 24, effective July 1, 1990. It was also repealed and reenacted by Acts 1990, ch. 476, Part V, § 371. Pursuant to § 653(1) of Acts 1990, ch. 476, Part VIII, ch. 470 prevails over ch. 476.

156.487. [Number not yet utilized.]

Legislative Research Commission Notes.

(7/14/2000). The tables to the 2000 Kentucky Acts show 2000 Ky. Acts ch. 498, sec. 3, as being codified at this KRS number. However, because 2000 Ky. Acts ch. 477, sec. 1, was nearly identical to the section from Acts ch. 498, it was subsequently decided during codification to merge both Acts together at KRS 156.106, so that KRS 156.487 was not used.

156.488. Department to communicate core content and career-readiness standards, assist in identifying students who are academically behind or have high absentee rates or discipline problems, and develop enhanced courses to be offered.

(1) Prior to January 1, 2013, the Kentucky Department of Education shall communicate to all local school districts the minimum core content standards for postsecondary education introductory courses and career-readiness standards required under KRS 158.6453.

(2) Prior to the beginning of the 2013-2014 school year, the department shall assist districts in the analyses of assessment data to identify students who are academically behind, who have higher than normal absentee rates, or who have a record of discipline problems at the end of grade six (6), grade eight (8), grade nine (9), grade ten (10), and grade eleven (11).

(3) The department shall develop enhanced courses in English, reading, and mathematics to be offered to students in grade six (6), grade nine (9), grade ten (10), grade eleven (11), and grade twelve (12) who are academically behind to help them meet the college and career-readiness standards.

History.

Enact. Acts 2012, ch. 150, § 3, effective April 19, 2012.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included the creation of this statute, shall be known as the "Career Pathways Act of 2012."

156.490. Governor's conference on education. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1956, ch. 64, §§ 1 to 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.492. Authority to establish building and construction trade training program — Conditions.

(1) The Kentucky Department of Education may enter into an agreement with any building and construction trade organization to develop a training program for school counselors providing services to students in the Commonwealth. The purpose of the training program shall be to promote building and construction trades and training facilities available to students by making school counselors aware of what is available to students participating in the building and construction trade. The training program shall include information relating to:

(a) The pay and benefits available to people who work in the building and construction trades; and

(b) Job opportunities, pre-apprenticeships, apprenticeships, and pathways within the building and construction trade industry.

(2) The participating trade organization shall ensure ample opportunities for school counselors that serve grades seven (7) through twelve (12) to complete the training created under subsection (1) of this section annually and shall bear all costs associated with the training. The participating trade organization may choose to offer professional development opportunities to teachers who serve students in grades seven (7) through twelve (12), if resources are available for this purpose.

(3) The department shall include the training program created in this section on the electronic consumer

bulletin board created pursuant to KRS 156.095 if requested by the training program.

(4) A school counselor serving students in grades seven (7) through twelve (12) may complete four (4) hours of training developed under this section which shall count towards the twenty-one (21) hours required annually pursuant to KRS 156.101(4)(b).

(5) Local boards of education or school-based decision making councils may incorporate this training as part of the four (4) days of professional development required pursuant to KRS 158.070(3)(a) for teachers who serve students in grades seven (7) through twelve (12) if offered by the participating trade organization.

History.

2024 ch. 221, § 2, effective July 15, 2024; 2025 ch. 145, § 9, effective June 27, 2025; 2026 ch. 74, § 13, effective April 10, 2026; 2026 ch. 154, § 4, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 74 and 154, which do not appear to be in conflict and have been codified together.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.557, 157.360, 158.060, 158.070, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

156.495. Program to identify and locate missing children enrolled in Kentucky schools.

(1) The Department of Education shall weekly distribute the names, provided by the Department of Kentucky State Police, of all missing children and children who have been recovered to all public and private schools admitting children in preschool through grade twelve (12).

(2) Every public and private school in this state shall notify local law enforcement or the Department of Kentucky State Police at its earliest known contact with any child whose name appears on the list of missing Kentucky children.

(3) The department shall encourage each public and private school to engage in a program whereby the parents of children who are absent from school are notified in person or by telephone to verify if they know that the child is not attending school.

History.

Enact. Acts 1984, Ch. 382, § 14 effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 372, effective July 13, 1990; 2003, ch. 39, § 2, effective June 24, 2003; 2007, ch. 85, § 165, effective June 26, 2007.

Compiler's Notes.

This section (Enact. Acts 1984, Ch. 382, § 14 effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 372, effective July 13, 1990.

156.496. Family resource and youth services centers — Design — Core components — Location — Grant program — Prohibition on abortion counseling and referrals — Monetary donations.

(1) Family resource and youth services centers shall be designed to meet the needs of children and their families by providing services to enhance a student's ability to succeed in school. If resources are limited, students and families who are the most economically disadvantaged shall receive priority status for receiving services.

(2) Family resource centers shall be located in or near each elementary school in the Commonwealth in which twenty percent (20%) or more of the student body are eligible for free or reduced-price school meals. Family resource centers shall promote identification and coordination of existing resources and shall include but not be limited to the following core components for each site:

(a) Full-time preschool child care for children two (2) and three (3) years of age;

(b) After-school child care for children ages four (4) through twelve (12), with the child care being full-time during the summer and on other days when school is not in session;

(c) Families in training, which shall consist of an integrated approach to home visits, group meetings, and monitoring child development for new and expectant parents;

(d) Family literacy services as described in KRS 158.360 or a similar program designed to provide opportunities for parents and children to learn together and promote lifelong learning; and

(e) Health services or referrals to health services, or both.

(3) Youth services centers shall be located in or near each school in the Commonwealth, except elementary schools, in which twenty percent (20%) or more of the student body are eligible for free or reduced-price school meals. Youth services centers shall promote identification and coordination of existing resources and shall include but not be limited to the following core components for each site:

(a) Referrals to health and social services;

(b) Career exploration and development;

(c) Summer and part-time job development for high school students;

(d) Substance abuse education and counseling; and

(e) Family crisis and mental health counseling.

(4) A grant program is hereby established to provide financial assistance to eligible school districts to establish or maintain family resource or youth services centers. The Cabinet for Health and Family Services shall award grants pursuant to KRS 156.4977. Funding provided to the Cabinet for Health and Family Services for the grant program and agency administrative costs shall include an increase that is equal to or greater than the general fund growth factor provided in agency budget instructions.

(5) A family resource or youth services center that receives funding for one (1) year or more shall not be considered ineligible for funding based solely on the percent of the student body eligible for free or reduced-price school meals unless the percent of the student body eligible for free or reduced-price school meals is below twenty percent (20%) for five (5) consecutive years.

(6) A school district shall not operate a family resource center or a youth services center that provides

abortion counseling or makes referrals to a health care facility for the purpose of seeking an abortion.

(7) A school district may accept monetary donations for the operation and maintenance of family resource and youth services centers. Any donations given to the school district for the operation and maintenance of family resource and youth services centers shall be used only for the operation and maintenance of family resource and youth services centers, and for no other purpose.

History.

Enact. Acts 2008, ch. 120, § 2, effective July 15, 2008; 2019 ch. 76, § 1, effective June 27, 2019.

156.497. Interagency Task Force on Family Resource Centers and Youth Services Centers — Formulation of five-year plan — Implementation. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1990, ch. 476, Pt. I, § 18, effective July 13, 1990;1992, ch. 291, § 3, effective April 15, 1992; 1994, ch. 194, § 1, effective July 15, 1994; 1996, ch. 271, § 9, effective July 15, 1996; 2000, ch. 271, § 1, effective March 31, 2000) was repealed by Acts 2006, ch. 211, § 170, effective July 12, 2006.

156.4975. Definitions for KRS 156.496, 156.4975, and 156.4977.

As used in KRS 156.496, 156.4975, and 156.4977:

(1) "Core component" means one (1) of the activities or services for children and their families provided by a family resource or youth services center required by KRS 156.496;

(2) "Health services" means preventive and health care services provided in a school setting and includes but is not limited to supplemental classroom instructional services related to health by an advanced practice registered nurse, registered nurse, or licensed practical nurse;

(3) "Optional component" means one (1) of the activities or services provided for children or their families as part of the implementation of a family resource or youth services center in addition to those required by KRS 156.496 and designed to satisfy unique community needs; and

(4) "Secretary" means the secretary of the Cabinet for Health and Family Services.

History.

Enact. Acts 1992, ch. 291, § 1, effective April 15, 1992; 2005, ch. 99, § 127, effective June 20, 2005; 2008, ch. 120, § 1, effective July 15, 2008; 2008, ch. 179, § 1, effective July 15, 2008; 2010, ch. 85, § 28, effective July 15, 2010.

Legislative Research Commission Notes.

(7/15/2008). This section was amended by 2008 Ky. Acts chs. 120 and 179, which do not appear to be in conflict and have been codified together.

156.4977. Grants to local school districts for family resource and youth services centers — Supplemental grant program to provide health services.

(1) Grants shall be awarded to eligible local school districts to implement family resource and youth services centers as defined in KRS 156.496.

(2) Grant proposal instructions shall be developed by the Cabinet for Health and Family Services. The instructions shall be contained in a grant application package and distributed to each local public school district in which there are qualifying schools.

(3) A proposal review team comprised of at least three (3) members shall review proposals and score each application in accordance with training provided and scoring procedures established by the Cabinet for Health and Family Services. Proposal reviewers shall be selected by the secretary of the Cabinet for Health and Family Services. The reviewers shall submit the scored proposals to the secretary of the Cabinet for Health and Family Services. Written notification of the secretary's final decision on proposals shall be provided by the secretary to each applicant school district.

(4) The application from each qualifying school or school consortium shall contain the following:

(a) A statement of need;

(b) Proposed goals and outcomes;

(c) A description of the actual services and activities to be provided at the center and how they shall be provided;

(d) A description of how the children and families with the most urgent needs will be served first;

(e) Written agreements with other service providers;

(f) A description of the development, composition, and role of the local advisory council;

(g) The strategies to disseminate information;

(h) A training plan;

(i) A description of procedures to be followed to obtain parental permission for services and for sharing confidential information with other service providers. Procedures shall be developed pursuant to federal law and the Kentucky Revised Statutes including, but not limited to, KRS 210.410, 214.185, 222.441, 645.030, and Chapters 620 and 635 and shall require that no family resource center or youth services center offer contraceptives to minor students prior to receiving the express consent of the student's parent or legal guardian;

(j) A plan to minimize stigma;

(k) A work plan for each of the core components and optional components;

(*l*) Job descriptions for staff;

(m) A description of the center location and school accessibility;

(n) A description of the hours of operation of the center;

(o) A financial strategy and budget;

(p) A program evaluation plan; and

(q) Letters of endorsement and commitment to the center from community agencies and organizations.

(5) Grant proposal instruction and scoring procedures shall be made available to all qualifying schools.

(6) As funding becomes available, a supplemental grant program may fund the employment of a physician licensed under KRS Chapter 311 or nurse licensed under KRS Chapter 314 to provide health services as defined in KRS 156.4975 in a family resource or youth services center.

(a) The supplemental grant program shall be managed by the Cabinet for Health and Family

Services, and schools that have a family resource or youth services center may apply for grant funds under the guidelines and criteria established by promulgation of administrative regulations pursuant to KRS Chapter 13A.

(b) The supplemental grant program may receive state appropriations, federal funds, gifts, or other contributions for the purposes specified under this subsection.

(c) A supplemental grant shall not exceed fifty percent (50%) of a grant awarded under subsection (1) of this section, and a supplemental grant shall not reduce the amount of a grant awarded to a local school district under subsection (1) of this section.

History.
Enact. Acts 1992, ch. 291, § 2, effective April 15, 1992; 1994, ch. 194, § 2, effective July 15, 1994; 1994, ch. 334, § 18, effective July 15, 1994; 1998, ch. 174, § 1, effective March 27, 1998; 2005, ch. 99, § 128, effective June 20, 2005; 2008, ch. 120, § 3, effective July 15, 2008; 2008, ch. 179, § 2, effective July 15, 2008.

Legislative Research Commission Notes.
(7/15/2008). This section was amended by 2008 Ky. Acts chs. 120 and 179, which do not appear to be in conflict and have been codified together.

156.498. Alternate approval procedure for federal food program eligibility for certain organizations.

As the administering agency for the Child and Adult Care Food Program funded by the United States Department of Agriculture, the Kentucky Department of Education shall establish an alternate approval procedure, as required by the applicable federal rules and regulations, to review information submitted by organizations operating centers or programs for children for which licensing or approval is not available in this state, in order to establish eligibility for the federal food program. The department shall establish the alternate approval procedure no later than August 1, 1996. As a condition of the alternate approval procedures, the department shall require submission of health, sanitation, and fire and safety permits for all centers or programs seeking alternate approval.

History.
Enact. Acts 1996, ch. 81, § 2, effective July 15, 1996.

Compiler's Notes.
The federal regulations relating to the Child and Adult Care Food Program referenced herein are found at 7 CFR part 226.

156.499. Termination of boards, commissions, councils and committees. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 40, effective October 18, 1985; 1988, ch. 179, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.500. Appointments to reflect reasonable minority representation.

The General Assembly directs that appointments made by the appointing authority to every board, commission, council or other type of advisory or decision-making body created or reenacted by the Education Reform Act of 1990 reflect reasonable minority representation of the membership and that active minority participation at every level of implementation be continually encouraged.

History.
Enact. Acts 1990, ch. 476, Pt. III, § 116, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

School council committees are advisory bodies created by Kentucky Education Reform Act, therefore, school council committees must be formed consistent with this section, which requires reasonable minority representation on the committees. OAG 94-8, 1994 Ky. AG LEXIS 305.

156.501. Student health services — Responsibilities of Department of Education and Department for Public Health — Filling of position.

(1) The Department of Education shall provide leadership and assistance to local school districts relating to student health services. The department, working in cooperation with the Department for Public Health, shall provide, contract for services, or identify resources to improve student health services, including but not limited to the following:

(a) Standardized protocols and guidelines for health procedures to be performed by health professionals and school personnel. The protocols and guidelines shall include but not be limited to the following:

1. The delegation of nursing functions consistent with administrative regulations promulgated by the Kentucky Board of Nursing;

2. Training of designated nonmedical school personnel; and

3. Appropriate documentation and recordkeeping including, but not limited to, notification to school administrators and parents or guardians of the provision of health services by a school employee, including certification of medical necessity for health services signed by a health care professional, and informed consent for the provision of health services by a parent or guardian.

A copy of the protocols and guidelines shall be made available to each school in the Commonwealth and shall be maintained by each school in the school's library;

(b) Consultation, technical assistance, and development of quality improvement measures for the state and local boards of education, individual public schools, and local health departments;

(c) Facilitation of statewide and local data collection and reporting of school health services; and

(d) Information and resources that relate to the provision of school health services.

(2) The Department of Education shall establish a position to assist in carrying out the responsibilities required under subsection (1) of this section. The position may be established with existing personnel resources, or by contract, with an individual who is a

registered nurse licensed under the provisions of KRS Chapter 314.

History.
Enact. Acts 2002, ch. 294, § 1, effective July 15, 2002; 2024 ch. 165, § 15, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School health services, 702 KAR 1:160.

156.502. Health services in school setting — Designated provider — Liability protection.

(1) As used in this section:

(a) "Health services" means the provision of direct health care, including the administration of medication; the operation, maintenance, or health care through the use of medical equipment; or the administration of clinical procedures. "Health services" does not include first aid or emergency procedures; and

(b) "School employee" means an employee of the public schools of this Commonwealth.

(2) Health services shall be provided, within the health care professional's current scope of practice, in a school setting by:

(a) A physician who is licensed under the provisions of KRS Chapter 311;

(b) An advanced practice registered nurse, registered nurse, or licensed practical nurse who is licensed under the provisions of KRS Chapter 314;

(c) A nonlicensed health technician that has the administration of health services in his or her contract or job description as a job responsibility and who is delegated responsibility to perform the health service by a physician, advanced practice registered nurse, or registered nurse and has been trained and approved in writing by the delegating physician or delegating nurse for delegable health services; or

(d) A school employee who is delegated responsibility to perform the health service by a physician, advanced practice registered nurse, or registered nurse; and

1. Has been trained by the delegating physician or delegating nurse for the specific health service, if that health service is one that could be delegated by the physician or nurse within his or her scope of practice; and

2. Has been approved in writing by the delegating physician or delegating nurse. The approval shall state that the school employee consents to perform the health service when the employee does not have the administration of health services in his or her contract or job description as a job responsibility, possesses sufficient training and skills, and has demonstrated competency to safely and effectively perform the health service. The school employee shall acknowledge receipt of training by signing the approval form. A copy of the approval form shall be maintained in the student's record and the personnel file of the school employee. A delegation to a school employee under this paragraph shall be valid only for the current school year.

(3) If no school employee has been trained and delegated responsibility to perform a health service, the school district shall make any necessary arrangement for the provision of the health service to the student in order to prevent a loss of a health service from affecting the student's attendance or program participation. The school district shall continue with this arrangement until appropriate school personnel are delegated the responsibility for health care in subsection (2) of this section.

(4) A school employee who has been properly delegated responsibility for performing a medical procedure under this section shall act as an agent of the school and be granted liability protection under the Federal Paul P. Coverdell Teacher Liability Protection Act of 2001, Pub. L. No. 107-110, unless the claimant establishes by clear and convincing evidence that harm was proximately caused by an act or omission of the school employee that constitutes negligence, willful or criminal misconduct, or a conscious, flagrant indifference to the rights and safety of the individual harmed.

(5) Nothing in this section shall be construed to deny a student his or her right to attend public school and to receive public school services, or to deny, prohibit, or limit the administration of emergency first aid or emergency procedures.

History.
Enact. Acts 2002, ch. 294, § 2, effective July 15, 2002; 2010, ch. 85, § 29, effective July 15, 2010; 2014, ch. 3, § 1, effective March 5, 2014.

Compiler's Notes.
The Federal Paul P. Coverdell Teacher Liability Protection Act of 2001, Pub. L. No. 107-110, referenced herein is compiled as 20 USCS §§ 6731 et seq.

NOTES TO DECISIONS

Cited in:
R.K. v. Bd. of Educ., 755 F. Supp. 2d 800, 2010 U.S. Dist. LEXIS 132930 (E.D. Ky. 2010).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School health services, 702 KAR 1:160.

Kentucky Bench & Bar.
Elliott & Fink, Medication Use in Schools: Education Law Meets Pharmacy Law, Volume 75, No. 1, January 2011, Ky. Bench & Bar 5.

156.503. Committee to study basketball tournaments — Membership — Meetings and recommendations.

(1) The agency designated by the Kentucky Board of Education to manage interscholastic athletics shall appoint a committee by September 1, 2002, to study the current format and scheduling of the state girls and boys high school basketball tournaments and consider the pros and cons of the scheduling, taking into consideration the physical and mental demands on the players, the impact on the school instructional calendar, the

availability of facilities, and other related factors as determined by the committee.

(2) The committee shall consist of the following representatives, one (1) of whom shall be male, and one (1) of whom shall be female, except in paragraphs (f) and (i):

(a) Two (2) coaches, who may be active or former coaches;

(b) Two (2) current superintendents of school districts that have high school athletic programs;

(c) Two (2) current high school principals;

(d) Two (2) former players, who participated in at least one (1) state tournament;

(e) Two (2) athletic directors, active or former;

(f) Two (2) former members of the board of control of the high school athletic association designated by the state board to govern interscholastic athletics;

(g) Two (2) active referees;

(h) Two (2) citizen members; and

(i) Two (2) members of the General Assembly, one (1) appointed by the Senate President and one (1) appointed by the Speaker of the House.

(3) Representation appointed to the committee pursuant to subsection (2)(f) and (i) of this section may be based on gender equity if female candidates are available.

(4) The committee shall meet as needed during the 2002-2003 school year and make recommendations to the board of control of the athletics association prior to the scheduling of the high school tournaments for the 2003-2004 school year. The report shall also be presented to the Interim Joint Committee on Education.

History.
Enact. Acts 2002, ch. 212, § 1, effective July 15, 2002.

PROFESSIONAL PRACTICES COMMISSION

156.510. Professional Practices Commission — Nomination and appointment. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 123, § 1) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.520. Membership. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 123, § 2) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.530. Responsibilities. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 123, § 3) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.540. Powers — Recommendations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 123, § 4) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.550. Financing. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 123, § 5) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

PROFESSIONAL DEVELOPMENT FOR SCHOOL PERSONNEL

156.551. Definitions for KRS 156.551 to 156.555.

As used in KRS 156.551 to 156.555, unless the context requires otherwise:

(1) "Center" means the Center for Middle School Academic Achievement;

(2) "Fund" means the Teachers' Professional Growth Fund;

(3) "Middle school" means grades five (5) through eight (8), regardless of school or district configuration; and

(4) "Reliable, replicable research" means objective, valid, scientific studies that:

(a) Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;

(b) Rely on measurements that meet established standards of reliability and validity;

(c) Test competing theories, where multiple theories exist; and

(d) Are subjected to peer review before results are published.

History.
Enact. Acts 2000, ch. 527, § 1, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Teachers' Professional Growth Fund, 704 KAR 3:490.

156.553. Teachers' professional growth fund — Purposes — Courses — Duties of Department of Education — Professional development programs — Administrative regulations — Advancement by local boards of funds to teachers for professional development education — Reimbursement — Priority for use of funds from 2010 to 2016.

(1) The teachers' professional growth fund is hereby created to provide teachers with high quality professional development in content knowledge in mathematics, reading, science, language arts, social studies, arts and humanities, practical living, vocational studies, and foreign languages; classroom-based screening, diagnostic, assessment, and intervention strategies; and teaching methodologies, including professional development that may lead to additional certification endorsements or renewal of certification. Based on available funds, student achievement data, and teacher data, the Kentucky Board of Education shall annually determine the priority for content emphasis based on the greatest needs.

(2)(a) The fund may provide moneys to teachers for:

1. Tuition reimbursement for successful completion of college or university level courses, including online courses and seminars, approved for this purpose by the Education Professional Standards Board;

2. Stipends for participation in and successful completion of:

a. College or university courses, including online courses and seminars, approved for this purpose by the Education Professional Standards Board;

b. Teacher institutes developed for core content instructors by the Department of Education in compliance with KRS 156.095; and

c. Other professional development programs approved by the Kentucky Department of Education, including professional development for teachers participating in grants awarded by the Middle School Mathematics and Science Scholars Program established under KRS 158.848;

3. Reimbursement for the purchase of materials required for professional development programs; and

4. Reimbursement for other approved professional development activities throughout the school year, including reimbursement for:

a. Travel to and from professional development workshops; and

b. Travel to and from other schools for the observation of, and consultation with, peer mentors.

(b) The fund may be used to provide grants to local school districts to support staff participation in specific, statewide initiatives for the professional development of teachers and administrators in specific content areas as established by the Kentucky Department of Education and the Kentucky Board of Education under the provisions of subsections (4), (5), and (6) of this section and referenced in KRS 158.842.

(c) The fund may be used to provide grants to colleges and universities to plan and develop statewide professional development institutes and other professional development services.

(d) The fund may be used to provide grants to local school districts, to colleges and universities, or other entities to assist the Kentucky Department of Education in evaluating costs and the effectiveness of activities and initiatives established under this section.

(3) The Education Professional Standards Board shall determine the college and university courses, including online courses and seminars, for which teachers may receive reimbursement from the fund.

(4) The Department of Education shall:

(a) Administer the fund.In order to process reimbursements to teachers promptly, the reimbursements shall not be subject to KRS 45A.690 to 45A.725;

(b) Determine the professional development programs for which teachers may receive reimbursement, or districts or colleges and universities may receive grants, from the fund;

(c) Determine the level of stipend or reimbursement, subject to the availability of appropriated funds, for particular courses and programs, under subsection (2) of this section; and

(d) Provide an accounting of fund expenditures and results of the use of the funds for each biennium to the Interim Joint Committee on Education by November 1 of each odd-numbered year.

(5) The professional development programs approved by the Department of Education for which teachers may receive support from the fund shall:

(a) Focus on improving the content knowledge of teachers;

(b) Provide training in the use of research-based and developmentally appropriate classroom-based screening, diagnostic, assessment, and intervention strategies;

(c) Provide instruction on teaching methods to effectively impart content knowledge to all students;

(d) Include intensive training institutes and workshops during the summer;

(e) Provide programs for the ongoing support of teacher participants throughout the year, which may include:

1. A peer coaching or mentoring, and assessment program; and

2. Planned activities, including:

a. Follow-up workshops; and

b. Support networks of teachers of the core disciplines using technologies, including but not limited to telephone, video, and online computer networks;

(f) Provide teacher participants with professional development credit toward renewal of certification under the provisions of KRS 161.095, relating to continuing education for teachers; and

(g) Provide teacher participants with the opportunity to obtain certificate endorsements or extensions in critical shortage areas, with priority given to mathematics and science through 2016, and in core content areas to their existing certifications through the TC-HQ process, established by the Education Professional Standards Board to meet the requirements of the No Child Left Behind Act of 2001, 20 U.S.C. sec. 6301 et seq.

(6) The Kentucky Board of Education shall specify through promulgation of administrative regulations:

(a) The application and approval process for receipt of funds;

(b) The requirements and process for the disbursal of funds; and

(c) The number of each kind of approved course for which applicants may receive funds.

(7) Notwithstanding any other provisions to the contrary, a local school board may advance the funds necessary for its teachers to participate in a college course or professional development seminar or activity approved by the Kentucky Department of Education and the Education Professional Standards Board under provisions of this section and receive reimbursement from the department at the conclusion of the activity or course by the teacher. If funds are advanced for the benefit of a teacher under this subsection, but the teacher does not fulfill his or her obligation, the teacher shall reimburse the school district for the funds expended by the district on the teacher's behalf.

(8) Notwithstanding the provisions of KRS 45.229, unexpended funds in the teachers' professional growth fund in the 2000-2001 fiscal year or in any subsequent fiscal year shall not lapse but shall carry forward to the next fiscal year and shall be used for the purposes established in subsections (1) and (2) of this section.

(9) Notwithstanding any provisions of this section to the contrary, beginning June 1, 2006, through the 2009-2010 school year, priority for the use of funds from the teachers' professional growth fund shall be used to train and support teams of teachers from all school levels to be trained as reading coaches and mentors or as mathematics coaches and mentors in statewide institutes referenced in KRS 158.840 and 158.842, and for selected teachers to be highly trained in providing diagnostic assessment and intervention services for students in the primary program struggling with mathematics.

(a) The design of the statewide mathematics institutes to train mathematics coaches and mentors shall be developed by the Committee for Mathematics Achievement established in KRS 158.842. The committee shall provide recommendations to the Kentucky Department of Education and the Kentucky Board of Education in the preparation of administrative regulations that may be promulgated by the board to implement the provisions of this subsection relating to mathematics.

(b) The design of the professional development program to provide highly trained mathematics intervention teachers in the primary program shall be developed by the Center for Mathematics in collaboration with public and private institutions of postsecondary education.

(c) The development of the statewide program to train reading coaches and mentors shall be coordinated by the Kentucky Department of Education with recommendations from the statewide reading research center established under KRS 164.0207 and the reading steering committee established in KRS 158.794. The design of the program shall reflect a consensus of the agencies involved in the development of the program. The training program for reading coaches and mentors shall complement other statewide reading initiatives, funded with state and federal funds, and shall give priority to teachers in grades four (4) through twelve (12). The program shall be implemented no later than June 1, 2006. The board shall promulgate administrative regulations required to implement the provisions of this subsection relating to reading.

(10) Notwithstanding any provision of this section to the contrary, beginning June 1, 2010, through the 2015-2016 school year, priority for the use of funds from the teachers' professional growth fund shall be for the purpose of increasing the number of certified teachers with extensions or endorsements in mathematics and science as described in subsection (5)(g) of this section.

History.

Enact. Acts 2000, ch. 527, § 2, effective July 14, 2000; 2001, ch. 135, § 1, effective June 21, 2001; 2002, ch. 135, § 4, effective April 2, 2002; 2005, ch. 164, § 5, effective March 18, 2005; 2008, ch. 134, § 13, effective July 15, 2008; 2008, ch. 185, § 2, effective April 24, 2008; 2023 ch. 55, § 5, effective July 1, 2024.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Teachers' Professional Growth Fund, 704 KAR 3:490.

156.555. Center for Middle School Academic Achievement — Duties — Location at college or university.

(1) The Center for Middle School Academic Achievement is created to improve the content knowledge and instructional practice of middle school teachers through the coordination of professional development programs for middle school teachers, the provision of technical assistance to schools and teachers, and the collection and dissemination of information and research regarding effective models of teaching the core disciplines to middle school students.

(2) The center shall:

(a) Foster collaboration between the center, the Department of Education, the Education Professional Standards Board, postsecondary institutions of education, postsecondary departments or colleges of arts and sciences, and other entities to develop content-based teacher preparation programs and ongoing professional development programs for middle school teachers, aligned with the Department of Education's core content for assessment;

(b) Assist school districts in assessing and addressing their needs and deficiencies in middle school curriculum and instruction;

(c) Assist grant recipients of the Middle School Mathematics and Science Scholars Program established under KRS 158.848 with professional development for participating teachers;

(d) Assist middle school teachers in establishing and maintaining networks of communication to share information regarding middle school instructional practice, curriculum development, and other areas of common interest, building upon existing networks;

(e) Develop and maintain a clearinghouse for information about:

1. Educational models addressing content knowledge and skills of middle school students, based on reliable, replicable research;

2. Core content achievement levels of Kentucky students in relation to students in other states and other countries; and

3. The relationship between student achievement levels and curriculum content, curriculum structure and alignment with content, teacher training, and teaching methods;

(f) Develop and implement a research structure, in collaboration with the Department of Education, to evaluate the effectiveness of different middle school instructional models; and

(g) Submit an annual report to the Governor and the Legislative Research Commission by September 1 of each year. The report shall include information outlining the center's activities, information provided by the Kentucky Department of Education

regarding the use of money from the Teachers' Professional Growth Fund, and other information regarding efforts to improve the quality of middle school instruction in Kentucky.

(3) With the advice of the commissioner of education and the Education Professional Standards Board, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Center for Middle School Academic Achievement at a public or private college or university. The council shall choose a college or university that has demonstrated the coordination of course delivery between the faculties of the college of education and arts and sciences departments within the college or university. The council shall approve the location for the center no later than November 15, 2000.

History.

Enact. Acts 2000, ch. 527, § 3, effective July 14, 2000; 2008, ch. 134, § 14, effective July 15, 2008.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

156.557. Definitions — Statewide framework for teaching — District personnel evaluation system — Summative evaluations — Appeals — Prohibition against disclosure of confidential information — Limits on reporting of evaluation results.

(1) As used in this section:

(a) "Formative evaluation" means a continuous cycle of collecting evaluation information and providing feedback with suggestions regarding the certified employee's professional growth and performance; and

(b) "Summative evaluation" means the summary of, and conclusions from, the evaluation data, including formative evaluation data that:

1. Occur at the end of an evaluation cycle; and

2. Include a conference between the evaluator and the evaluated certified employee and a written evaluation report.

(2) The Kentucky Department of Education, in consultation with the Kentucky teacher and principal steering committees and other groups deemed appropriate by the commissioner of education, shall develop a statewide framework for teaching that shall promote the continuous professional growth and development of skills needed to be a highly effective teacher or a highly effective administrator in a school or district.

(3) Each district shall develop and implement a personnel evaluation system aligned with the statewide framework for teaching established in subsection (2) of this section that shall:

(a) Use multiple measures of effectiveness;

(b) Include both formative and summative evaluation components;

(c) Measure professional effectiveness;

(d) Support professional growth;

(e) Have at least four (4) performance levels;

(f) Be used to inform personnel decisions;

(g) Be considerate of the time requirements of evaluators at the local level and shall not require that all certified school personnel have a formal summative evaluation each year; and

(h) Rate teachers or administrators by multiple measures instead of a single measure.

(4) The performance criteria by which teachers and administrators shall be evaluated shall include but not be limited to:

(a) Performance of professional responsibilities related to his or her assignment, including attendance and punctuality and evaluating results;

(b) Demonstration of effective planning of curricula, classroom instruction, and classroom management, based on research-based instructional practices, or school management skills based on validated managerial practices;

(c) Demonstration of knowledge and understanding of subject matter content or administrative functions and effective leadership techniques;

(d) Promotion and incorporation of instructional strategies or management techniques that are fair and respect diversity and individual differences;

(e) Demonstration of effective interpersonal, communication, and collaboration skills among peers, students, parents, and others;

(f) Performance of duties consistent with the goals for Kentucky students and mission of the school, the local community, laws, and administrative regulations;

(g) Demonstration of the effective use of resources, including technology;

(h) Demonstration of professional growth;

(i) Adherence to the professional code of ethics; and

(j) Attainment of the teacher standards or the administrator standards as established by the Education Professional Standards Board that are not referenced in paragraphs (a) to (i) of this subsection.

(5) The following provisions shall apply to each school district's personnel evaluation system:

(a) Certified school personnel, below the level of superintendent, shall be evaluated;

(b) The evaluation system shall include formative evaluation and summative evaluation components; and

(c) The Kentucky Board of Education shall adopt administrative regulations incorporating written guidelines for a local school district to follow in implementing the personnel evaluation system and shall require the following:

1. All evaluations of certified school personnel below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;

2. The immediate supervisor of the certified school personnel member shall be designated as the primary evaluator. At the request of a teacher, observations by other teachers trained in the teacher's content area or curriculum content specialists may be incorporated into the formative process for evaluating teachers;

3. All monitoring or observation of performance of a certified school personnel member shall be conducted openly and with full knowledge of the personnel member;

4. Evaluators shall be trained, tested, and approved in accordance with administrative regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school personnel. Evaluators shall receive support and resources necessary to ensure consistent and reliable ratings;

5. The personnel evaluation system shall include a plan whereby the person evaluated is given assistance for professional growth as a teacher or administrator. The system shall also specify the processes to be used when corrective actions are necessary in relation to the performance of one's assignment;

6. The system shall require annual summative evaluations for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7). The system shall require summative evaluations once every five (5) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7), principals, assistant principals, and other certified administrators. Additional summative evaluations may be performed at the discretion of the immediate supervisor of a teacher or other professional based upon a case-by-case analysis of the performance criteria set forth in subsection (4) of this section but shall not be imposed as a uniform requirement across the system; and

7. The training requirement for evaluators contained in subparagraph 4. of this paragraph shall not apply to district board of education members.

(6)(a) Each superintendent shall be evaluated according to a policy and procedures developed by the local board of education and approved by the department.

(b) The summative evaluation of the superintendent shall be in writing, discussed and adopted in an open meeting of the board and reflected in the minutes, and made available to the public upon request.

(c) Any preliminary discussions relating to the evaluation of the superintendent by the board or between the board and the superintendent prior to the summative evaluation shall be conducted in closed session.

(7) The Kentucky Board of Education shall establish an appeals procedure for certified school personnel who believe that the local school district failed to properly implement the evaluation system. The appeals procedure shall not involve requests from individual certified school personnel members for review of the judgmental conclusions of their personnel evaluations.

(8) The local board of education shall establish an evaluation appeals panel for certified school personnel that shall consist of two (2) members elected by the certified employees of the local district and one (1) member appointed by the board of education who is a certified employee of the local board of education. Certified school personnel who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation.

(9) The Kentucky Department of Education may annually provide for on-site visits by trained personnel to review and ensure appropriate implementation of the evaluation system by the local school district. The department shall provide technical assistance to local districts to eliminate deficiencies and to improve the effectiveness of the evaluation system.

(10) The disclosure, pursuant to KRS Chapter 61, of any data or information, including student growth data, that local school districts or the Kentucky Department of Education collect on individual classroom teachers under this section is prohibited.

(11) The results of evaluations conducted under this section shall not be included in the accountability system described in KRS 158.6455 and no reporting requirements related to these results shall be imposed upon the local school districts by the Kentucky Department of Education.

History.

Enact. Acts 2000, ch. 527, § 4, effective July 14, 2000; 2010, ch. 157, § 1, effective July 15, 2010; 2013, ch. 55, § 1, effective June 25, 2013; 2017 ch. 156, § 1, effective April 10, 2017; 2025 ch. 145, § 1, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.492, 157.360, 158.060, 158.070, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

(7/15/2010). The internal numbering of subsection (4) of this statute has been modified by the Reviser of Statutes from the way it appeared in 2010 Ky. Acts ch. 157, sec. 1, under the authority of KRS 7.136(1).

NOTES TO UNPUBLISHED DECISIONS

Analysis

1. In General.
2. Judicial Review.

1. In General.

Unpublished Decision: Certified school teacher who received formal teaching evaluations was not entitled to formal evaluations for extra service coaching assignments before a school district could remove him from his basketball coaching position. Bd. of Educ. of Erlanger-Elsmere Sch. Dist. v. Code, 57 S.W.3d 820, 2001 Ky. LEXIS 137 (Ky. 2001).

Unpublished Decision: General Assembly's delegation of authority in Ky. Rev. Stat. Ann. § 156.557 did not violate the nondelegation doctrine as State Evaluation Appeals Panel (SEAP) was not an administrative agency, and the evaluation process and the SEAP review did not result in an adjudication of a teacher's legal rights. Travis v. State Evaluation Appeals Panel, 2018 Ky. App. LEXIS 244 (Ky. Ct. App. 2018), sub. op., 2019 Ky. App. Unpub. LEXIS 331 (Ky. Ct. App. May 10, 2019).

2. Judicial Review.

Unpublished Decision: State Evaluation Appeals Panel (SEAP) was not an administrative agency subject to judicial review where the focus of its review was determining whether the school district failed to properly implement the evaluation system, it could not adjudicate a teacher's legal rights, duties,

privileges, or immunities, and the fact that Ky. Rev. Stat. Ann. § 156.557 contained no provision authorizing judicial review indicated that the General Assembly had not contemplated that SEAP decisions were subject to judicial review. Travis v. State Evaluation Appeals Panel, 2018 Ky. App. LEXIS 244 (Ky. Ct. App. 2018), sub. op., 2019 Ky. App. Unpub. LEXIS 331 (Ky. Ct. App. May 10, 2019).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Professional Growth and Effectiveness System, 704 KAR 3:370.

156.560. Pilot program for performance-based professional development — Parameters determined by local board — Study and report by Department of Education.

(1)(a) Beginning in the 2023-2024 school year, and continuing until the end of the 2025-2026 school year, a school district may establish a pilot program for teachers to develop and implement a performance-based professional development project, which is designed to produce measurable outcomes of positive impact on student performance.

(b) The pilot program shall require two (2) or more teachers to design an instructional practice or strategy project to address an identified school or district academic or nonacademic classroom problem.

(c) Successful completion of a project under this section shall satisfy up to three (3) days of the requirement to complete four (4) days of professional development under KRS 158.070(3)(a).

(d) A local board of education may award a teacher a stipend for successful completion of a project.

(2) The local board of education shall determine the parameters for the performance-based professional development pilot program, including but not limited to:

(a) A project application process;

(b) Review and approval of project proposals;

(c) Submission of completed project analysis and results;

(d) Evaluation of completed projects;

(e) The awarding of professional development credit, including the amount of the credit and when it will be credited; and

(f) The awarding of a stipend, if applicable.

(3)(a) The Kentucky Department of Education shall study the completed pilot projects for their impact on schools and districts to determine the attributes of quality performance-based professional development and the best practices for measuring its effectiveness.

(b) By August 1, 2027, the department shall report its findings and any recommendations for revising professional development policy to the Interim Joint Committee on Education.

History.
2018 ch. 174, § 1, effective July 14, 2018; 2023 ch. 40, § 1, effective June 29, 2023.

156.565. Definitions for section — Principal leadership development practicum — Administrative regulations.

(1) As used in this section:

(a) "Department" means the Kentucky Department of Education; and

(b) "Principal" means a person who:

1. Is the primary administrator and instructional leader of a public school or program;

2. Supervises students and school employees; and

3. Is selected by the district's superintendent pursuant to KRS 160.345.

(2) There is hereby established the principal leadership development practicum to provide all new principals within the first four (4) years of experience in the position with leadership development training. It is the intent of the General Assembly to ensure that a school district or principal incurs no cost for the participation in the practicum and the principal receives a stipend toward the cost of the third year of the practicum. The Kentucky Department of Education shall develop and operate the practicum, subject to the following provisions:

(a) The practicum shall operate based on cohorts of new principals and offer four (4) years of leadership development training with specific requirements in each year. The department shall annually establish a calendar for the operation of the practicum;

(b) Each year's cohort of new principals shall consist of those people who first became principals by September 1 of each year;

(c) The department shall establish the minimum requirements for successful completion of each year, including hours of instruction or specific work products;

(d) The first and second year of the practicum shall provide professional learning and mentorship supports to new principals, subject to the following:

1. The mentors shall have significant and successful experience as a principal and may be currently employed in a school district or retired. The mentors shall provide ongoing support to the new principals through the first and second school year with regular personal sessions to provide individualized support to the new principal;

2. The mentorship shall also provide the cohort of new principals an opportunity to build a peer support network;

3. The professional learning provided by the department shall be aligned to the most recent professional standards adopted by the National Policy Board for Educational Administration and include, at a minimum, the following topics:

a. Personnel evaluation and feedback;

b. School-based decision making and school councils;

c. Implementation of instructional leadership, high-quality instructional materials, and curriculum alignment;

d. Assessment and accountability;

e. Multitiered systems of support;

f. Services for exceptional children and youth; and

g. School safety; and

4. Professional learning under subparagraph 3. of this paragraph shall utilize any existing train-

ings required in administrative regulation or statute or developed by the department. Additional professional learning developed by the department shall first be approved by the Kentucky Board of Education;

(e) The third year of the practicum shall require, as funds are available, that the new principal participate in an intensive leadership program during the summer with follow-up sessions throughout the following year. The leadership program shall be established by the department in partnership with the Kentucky Chamber Foundation. A new principal shall be exempted from the requirements of this paragraph if:

1. The new principal misses the intensive leadership program during the summer due to illness or an emergency;

2. The absence is approved by the superintendent of the school district in which the new principal is employed; and

3. The new principal completes an alternative program established by the department; and

(f) The fourth year of the practicum shall not be mandatory but shall provide high-level leadership training options for new principals. The department shall establish the standards for training providers and the trainings under this paragraph, including the number of hours required. The department shall maintain a list of training providers who are eligible to provide the high-level leadership training and make it available to new principals; and

(g) After the fourth year, each principal shall continue leadership development through the effective instructional leadership program established in KRS 156.101.

(3) A principal may submit the participant hours of instruction that the principal earns under this section during a year toward the twenty-one (21) participant hours required by the effective instructional leadership program established in KRS 156.101. The department shall grant program credit for the verified hours the principal submits.

(4) If a person discontinues serving as a principal during the first four (4) years of service and subsequently returns to a principal position, then that person shall continue the new principal program for the year in which the person was previously participating.

(5) The principal leadership development practicum required under this section shall begin on July 1, 2027, for the 2027-2028 school year with a cohort of principals with less than one (1) year of experience in the position. Subsequent cohorts shall be admitted as provided in subsection (2) of this section.

(6) The Kentucky Board of Education may promulgate administrative regulations in accordance with KRS Chapter 13A for the operation of the section.

History.
2026 ch. 154, § 1, effective July 15, 2026.

TEACHER EDUCATION SCHOLARSHIP FUND

156.610. Teacher education scholarship fund — Board, membership, term, expenses. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. VI, § 1; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 2, effective July 15, 1982.

156.611. Legislative intent — Student loans for mathematics and science. [Repealed, reenacted, and amended.]

Compiler's Notes.
This section (Enact. Acts 1982, ch. 412, § 1, effective July 15, 1982; 1985 (1st Ex. Sess.), ch. 10, § 39, effective October 18, 1985) was repealed, reenacted, and amended as KRS 164.768 by Acts 1988, ch. 34, § 1, effective July 15, 1988 and was subsequently repealed by Acts 1994, ch. 163, § 3, effective July 15, 1994.

156.613. Legislative intent — Student loans for teacher education. [Repealed and reenacted.]

Compiler's Notes.
This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 4, effective October 18, 1985) was repealed and reenacted as KRS 164.770 by Acts 1988, ch. 34, § 2, effective July 15, 1988.

156.620. Applications for scholarships — Standards — Examination. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. VI, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 2, effective July 15, 1982.

156.630. Conditions for awarding scholarships — Requirements — Priority. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. VI, § 3; 1974, ch. 308, § 33; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 2, effective July 15, 1982.

156.640. Conditions of eligibility. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. VI, § 4; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 2, effective July 15, 1982.

156.650. When effective. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. VI, § 5) was repealed by Acts 1982, ch. 412, § 2, effective July 15, 1982.

EDUCATION TECHNOLOGY

156.660. Definitions. [Repealed]

History.
Enact. Acts 1990, ch. 476, Pt. I, § 19, effective July 13, 1990; repealed by 2026 ch. 196, § 25, effective July 1, 2026.

156.665. Council for Education Technology — Development of long-range plan — Other responsibilities. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1990, ch. 476, Pt. I, § 21, effective July 13, 1990; 1992 ch. 415, § 3, effective July 14, 1992) was repealed by Acts 1992, ch. 195, § 15, effective April 3, 1992.

Legislative Research Commission Notes.
(7/14/92) This section was amended by the 1992 Regular Session of the General Assembly and also repealed. Pursuant to KRS 446.260, the repeal prevails.

156.666. Council for Education Technology — Membership — Duties. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1992, ch. 195, § 8, effective April 3, 1992;1994, ch. 209, § 12, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997, (1st Ex. Sess.), ch. 1, § 58, effective May 30, 1997; 2000, ch. 506, § 19, effective July 14, 2000; 2000, ch. 536, § 19, effective July 14, 2000; 2005, ch. 85, § 591, effective June 20, 2005) was repealed by Acts 2006, ch. 211, § 170, effective July 12, 2006.

156.670. Development of master plan for education technology.

(1) The Kentucky Department of Education shall develop the master plan for education technology and submit the plan to the Kentucky Board of Education and the Legislative Research Commission for approval. Implementation of each stage of the master plan shall begin immediately upon approval of the board and the Legislative Research Commission. The plan shall outline the Commonwealth's five (5) year activities related to purchasing, developing, and using technology to:

(a) Improve learning and teaching and the ability to meet individual students' needs to increase student achievement;

(b) Improve curriculum delivery to help meet the needs for educational equity across the state;

(c) Improve delivery of professional development;

(d) Improve the efficiency and productivity of administrators; and

(e) Encourage development by the private sector and acquisition by districts of technologies and applications appropriate for education.

(2) The five (5) year plan shall cover all aspects of education technology, including but not limited to its use in educational instruction and administration, video and computer systems, software and hardware, multiple delivery systems for satellite, microwave, cable, instructional television fixed service, fiber optic, and computer connections products, the preparation of school buildings for technological readiness, and the development of staff necessary to implement the plan.

(3) The five (5) year plan shall include specific recommendations to the Kentucky Board of Education for the adoption of administrative regulations to establish and implement a uniform and integrated system of standards and guidelines for financial accounting and reporting which shall be used by all school districts.

(4) The integrated technology-based communications system shall provide comprehensive, current, accurate, and accessible information relating to management, finance, operations, instruction, and pupil programs which are under the jurisdiction of the Department of Education.

(5) To facilitate communication among teachers, parents, students, and prospective employers of students, and to provide access to many vital technological services, the five (5) year plan shall include the installation of a telephone in each classroom.

(6) In designing and implementing the five (5) year plan, the department shall consider seeking the active participation of private organizations whose knowledge and assistance will be useful.

(7) The department shall submit its recommendations to the Kentucky Board of Education, which shall accept the recommendations or return them to the department along with suggestions for changes to make the recommendations consistent with the policies of the Kentucky Board of Education.

History.
Enact. Acts 1990, ch. 476, Pt. I, § 22, effective July 13, 1990; 1992, ch. 195, § 9, effective April 3, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2026 ch. 196, § 11, effective July 15, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.

156.671. Strategic plan for distance learning.

The chief state school officer shall convene the Commissioner of the Department for Information Systems, one (1) representative of Kentucky Educational Television, one (1) representative of the Council on Postsecondary Education, and one (1) representative of the Department of Education to create a strategic plan for distance learning in the Commonwealth and submit it to the Legislative Research Commission by July 1, 1993. The plan shall set forth the Commonwealth's vision for developing a long-term and statewide distance learning strategy. It shall include, but not be limited to, definitions of the types of distance learning delivery systems, an evaluation process for determining and certifying the educational and cost effectiveness of each type of delivery system, comparisons of the various types of delivery systems, and recommendations for implementation.

History.
Enact. Acts 1992, ch. 195, § 14, effective April 3, 1992; 1997 (1st Ex. Sess.), ch. 1, § 59, effective May 30, 1997.

156.675. Prevention of transmission of social media and sexually explicit materials to schools — Administrative regulations — Local school district policy on student internet access — Limitation.

(1) The Kentucky Board of Education shall promulgate administrative regulations to prevent social media and sexually explicit material from being transmitted via any video or computer system, software or hardware product, or internet service managed or provided to local schools or school districts.

(2) Each local school district and school shall utilize the latest available filtering technology to ensure that social media and sexually explicit material is not made available to students.

(3) The Kentucky Department of Education shall make available to school districts and schools upon request and without cost, state-of-the-art software products that enable local districts and schools to prevent access to social media and sexually explicit material. The department shall also notify all school districts and schools of the availability of the software. Any product provided or obtained by a district or school shall meet the requirements of subsection (2) of this section.

(4) Each local school district shall establish a policy regarding student internet access that shall include but not be limited to parental consent for student internet use, teacher supervision of student computer use, and auditing procedures to determine whether education technology is being used for the purpose of accessing social media or sexually explicit or other objectionable material.

(5) The provisions of subsections (1) to (4) of this section shall only apply to social media that a student is not authorized by a teacher to access for an instructional purpose.

History.

Enact. Acts 1998, ch. 330, § 1, effective July 15, 1998; 2025 ch. 90, § 2, effective June 27, 2025.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Prevention of sexually explicit materials transmitted to schools via computer, 701 KAR 5:120.

156.690. Teachers' computer purchase program. [Repealed]

History.

Enact. Acts 1990, ch. 476, Pt. I, § 23, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; repealed by 2026 ch. 196, § 25, effective July 1, 2026.

COMPACT FOR EDUCATION

156.710. Interstate Compact for Education.

The compact for education is hereby entered into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I.

PURPOSE AND POLICY

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

ARTICLE II.

STATE DEFINED

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III.

THE COMMISSION

A. The Education Commission of the States, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the Governor; two shall be members of the state legislature selected by its respective houses and serving in

such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the Governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten (10) non-voting commissioners selected by the steering committee for terms of one (1) year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III J.

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the Governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV.

POWERS

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto, available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V.

COOPERATION WITH FEDERAL GOVERNMENT

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten (10) representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI.

COMMITTEES

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two (32) members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth (¼) of the voting membership of the steering committee shall consist of Governors, one-fourth (¼) shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two (2) years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen (16) for one (1) year and sixteen (16) for two (2) years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regular ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two (2) terms as a member of the steering committee; provided that service for a partial term of one (1) year or less shall not be counted toward the two (2) term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two (2) or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII.

FINANCE

A. The commission shall advise the Governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III G of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III G thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII.

ELIGIBLE PARTIES — ENTRY INTO AND WITHDRAWAL

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least ten (10) eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the Governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX.

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

History.

Enact. Acts 1968, ch. 125, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 373, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1968, ch. 125, § 1) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 373, effective July 13, 1990.

156.715. Kentucky members of interstate commission.

The Kentucky representation on the commission provided by Article III of the compact consists of seven (7) members, one (1) of whom shall be the Governor; two (2) of whom shall be members of the General Assembly, a representative and a senator, selected by the Legislative Research Commission in accordance with KRS 8.080; and four (4) of whom shall be appointed by and serve at the pleasure of the Governor.

History.

Enact. Acts 1968, Ch. 125, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 374, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1968, Ch. 125, § 2) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 374, effective July 13, 1990.

156.720. Bylaws, where filed.

Pursuant to Article III(I.) of the compact, the commission established by the compact shall file a copy of its bylaws and any amendment thereto with the Legislative Research Commission.

History.

Enact. Acts 1968, Ch. 125, § 3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 375, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1968, Ch. 125, § 3) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 375, effective July 13, 1990.

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

156.730. Interstate Compact on Educational Opportunity for Military Children.

ARTICLE I

PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements;

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance require-

ments, scheduling, sequencing, grading, course content, or assessment;

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

D. Facilitating the on-time graduation of children of military families;

E. Providing for promulgation and enforcement of administrative rules implementing the provisions of this compact;

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

G. Promoting coordination between this compact and other compacts affecting military children; and

H. Promoting flexibility and cooperation between the educational system, parents, and students in order to achieve educational success for students.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chs. 1209 and 1211;

B. "Children of military families" means a school-aged child or children enrolled in kindergarten through twelfth (12th) grade, in the household of an active duty member;

C. "Compact commissioner" means the voting representative of each compacting state appointed pursuant to Article VIII of this compact;

D. "Deployment" means the period of one (1) month prior to a service member's departure from his or her home station on military orders through six (6) months after return to the home station;

E. "Educational records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs;

F. "Extracurricular activities" means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletics competitions, demonstrations, displays, and club activities;

G. "Interstate Commission on Educational Opportunity for Military Children" means the commission created under Article IX of this compact, which is generally referred to as "Interstate Commission";

H. "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth (12th) grade public educational institutions;

I. "Member state" means a state that has enacted this compact;

J. "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers, and harbor projects, or flood control projects;

K. "Non-member state" means a state that has not enacted this compact;

L. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought;

M. "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;

N. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought;

O. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. Territory;

P. "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth (12th) grade;

Q. "Transition" means the formal and physical process of transferring from school to school or the period of time in which a student moves from one school in the sending state to another school in the receiving state;

R. "Uniformed service(s)" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services; and

S. "Veteran" means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

ARTICLE III
APPLICABILITY

A. Except as otherwise provided in this section, this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chs. 1209 and 1211;

2. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and

3. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. Inactive members of the National Guard and Military Reserves;

2. Members of the uniformed services now retired, except as provided for in this section;

3. Veterans of the uniformed services, except as provided for in this section; and

4. Other U.S. Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV

EDUCATIONAL RECORDS AND ENROLLMENT

A. Unofficial or "hand-carried" educational records: In the event that official educational records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial educational records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official educational records/transcripts: Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official educational records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations: Compacting states shall give thirty (30) days from the date of enrollment, or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and first grade entrance age: Students shall be allowed to continue their enrollment at the grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V

PLACEMENT AND ATTENDANCE

A. Course placement: When the student transfers before or during the school year, the receiving state shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advance Placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement: The receiving state shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include but are not limited to:

1. Gifted and talented programs; and

2. English as a second language (ESL).

This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services:

1. In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. sec. 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and

2. In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. sec. 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. secs. 12131 to 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the

receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility: Local education agency administrative officials shall have flexibility in waiving course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities: A student whose parent or legal guardian is an active member of the uniformed services, as defined by this compact, and has been called to active duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI
ELIGIBILITY

A. Eligibility for enrollment:

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent;

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in the jurisdiction other than that of the custodial parent; and

3. A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation: State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII
GRADUATION

In order to facilitate the on-time graduation of children of military families, state and local education agencies shall incorporate the following procedures:

A. Waiver requirements: Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams-States shall accept:

1. Exit or end-of-course exams required for graduation from the sending state;

2. National norm-referenced achievement tests; or

3. Alternative testing, in lieu of testing requirements for graduation in the receiving state.

In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of Article VII, C shall apply.

C. Transfers during senior year: Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with sections A and B of this Article.

ARTICLE VIII
STATE COORDINATION

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least:

1. The state superintendent of education;

2. A superintendent of a school district with a high concentration of military children;

3. A representative from a military installation;

4. One legislative member each from the General Assembly's Senate and House of Representatives, to be chosen respectively by the President of the Senate and the Speaker of the House of Representatives. The respective leaders will then forward the names of their chosen members to the Governor. The members shall serve at the pleasure of the President and Speaker;

5. One representative from the executive branch of government; and

6. Other offices and stakeholder groups the State Council deems appropriate.

A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a voting member of the State Council.

ARTICLE IX

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to a vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one (1) year term. Members of the executive committee shall be entitled to one (1) vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Department of Defense shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Certify, for a meeting or portion of a meeting closed pursuant to this provision, by the Interstate Commission's legal counsel or designee, that the meeting may be closed and in so doing reference each relevant exemptible provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote or the Interstate Commission.

I. Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the

means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subsection shall not be construed to create a private right of action against the Interstate Commission or any member state.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states;

B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

E. To establish and maintain offices which shall be located within one or more of the member states;

F. To purchase and maintain insurance and bonds;

G. To borrow, accept, hire, or contract for services of personnel;

H. To establish and appoint committees including but not limited to an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

I. To elect or appoint such officers, attorneys, employees, agents, or consultants and to fix their compensation, define their duties and determine their qualifications to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of them;

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, whether real, personal, or mixed;

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

M. To establish a budget and make expenditures;

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission;

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;

P. To coordinate education, training and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity;

Q. To establish uniform standards for the reporting, collecting, and exchanging of data;

R. To maintain corporate books and records in accordance with the bylaws;

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within twelve (12) months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the offices and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and

7. Providing "start up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a

chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers, and Personnel:

1. The executive committee shall have authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for, the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of the Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority: The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure: Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule

represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a Rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight:

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may effect the powers, responsibilities, or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

B. Default, Technical Assistance, Suspension, and Termination-If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, the bylaws, or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states of the nature of default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination, including obligations the performance of which extends beyond the effective date of suspension or termination.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution:

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement:

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The Interstate Commission may by majority vote of the members initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules, and bylaws against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff, which must be in a

total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

A. Withdrawal:

1. Once effective, the compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extends beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact:

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws:

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact:

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

History.
Enact. Acts 2008, ch. 61, § 1, effective July 15, 2008; 2015 ch. 90, § 1, effective June 24, 2015; 2024 ch. 100, § 3, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.
ADA Amendments Issue: Article: Education for Americans with Disabilities: Reconciling IDEA with the 2008 ADA Amendments, 37 N. Ky. L. Rev. 389 (2010).

156.735. Rights of students whose parents are civilian military employees or members of the National Guard and Reserves same as those afforded in KRS 156.730.

(1) Notwithstanding any other statutes to the contrary, students of civilian military employees and of persons serving in the National Guard and Reserves shall be afforded the same rights as students of military families under KRS 156.730 if the parents are required to move to perform their job responsibilities resulting in the students having to change schools.

(2) As used in this section, "student" means the child of a civilian military employee or National Guard or Reserve personnel for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

History.
Enact. Acts 2009, ch. 31, § 1, effective June 25, 2009; 2024 ch. 100, § 4, effective July 15, 2024.

INTERAGENCY COMMISSION ON EDUCATIONAL AND JOB TRAINING COORDINATION

156.740. Interagency Commission on Educational and Job Training Coordination — Membership.

(1) The Interagency Commission on Educational and Job Training Coordination is hereby created. Its membership shall be composed of the following individuals, serving in an ex officio capacity:

(a) The chairman of the Council on Postsecondary Education;

(b) The president of the Council on Postsecondary Education;

(c) The chairman of the Kentucky Board of Education;

(d) The commissioner of the Department of Education;

(e) The commissioner of the Department of Workforce Development;

(f) The chairman of the Board for the Kentucky Higher Education Assistance Authority; and

(g) The president of the Kentucky Community and Technical College System.

(2) Members shall serve by virtue of their office. The chairman of the commission shall be chosen annually by a simple majority vote of the members. A quorum for conducting business shall be one-half (1/2) of the members plus one (1). The chair shall rotate annually, so that no person or agency holds the chairmanship in successive years.

History.
Enact. Acts 1992, ch. 322, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 60, effective May 30, 1997; 2003, ch. 29, § 19, effective June 24, 2003; 2006, ch. 211, § 79, effective July 12, 2006; 2022 ch. 236, § 62, effective July 1, 2022.

156.745. Purposes — Responsibilities.

(1) The commission members may decide among themselves those voluntary actions which enhance state efforts to properly educate, train, and reeducate Kentucky's present and future workforce, to the end that all adult Kentuckians who are willing and able to work are employed within the Commonwealth in good jobs of their choosing.

(2) Specific responsibilities of the commission shall include implementation of:

(a) Programs to provide maximum flexibility for students in transferring from one (1) school or college to another, including changes which minimize or eliminate loss of credit;

(b) Aggressive efforts to expand the Work/Study Scholarship Program available through the Kentucky Higher Education Assistance Authority;

(c) Continuing exploration of cooperation between businesses and state agencies, and businesses and university or vocational school job training programs; and

(d) Scheduling of meetings of the commission, to be held at least three (3) annually, to accomplish these purposes.

History.
Enact. Acts 1992, ch. 322, § 2, effective July 14, 1992.

156.749. Administrative expenses — Meetings.

(1) Administrative expenses of the commission will be borne by the respective participating agencies, as a part of each agency's normal budget for basic operations. In each year, the agency represented by the chairman shall provide any necessary staff support required, including provision of a secretary, whose duties shall include the taking of minutes and distribution thereof. The agency represented by the chairman shall make arrangements for meeting facilities.

(2) All meetings will be held in Frankfort, Kentucky, upon the call of the chairman or a majority vote of the membership. In the initial year, the commissioner of the Department of Workforce Development shall serve as chairperson.

History.
Enact. Acts 1992, ch. 322, § 3, effective July 14, 1992; 2006, ch. 211, § 80, effective July 12, 2006; 2022 ch. 236, § 63, effective July 1, 2022.

156.760. Kentucky on Community Volunteerism and Service. [Repealed, reenacted and amended.]

Compiler's Notes.

This section (Enact. Acts 1996, ch. 310, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 61, effective May 30, 1997; 1998, ch. 89, § 1, effective July 15, 1998) was repealed, reenacted and amended as KRS 194B.570 by Acts 2000, ch. 203, § 1, effective July 14, 2000.

156.762. Initial membership — Term limits. [Repealed and reenacted.]

Compiler's Notes.

This section (Enact. Acts 1996, ch. 310, § 2, effective July 15, 1996) was repealed and reenacted as KRS 194B.572 by Acts 2000, ch. 203, § 2, effective July 14, 2000.

156.764. Purpose of commission. [Repealed and reenacted.]

Compiler's Notes.

This section (Enact. Acts 1996, ch. 310, § 3, effective July 15, 1996) was repealed and reenacted as KRS 194B.575 by Acts 2000, ch. 203, § 3, effective July 14, 2000.

156.766. Duties of commission — Authority for administrative regulations. [Repealed and reenacted.]

Compiler's Notes.

This section (Enact. Acts 1996, ch. 310, § 4, effective July 15, 1996) was repealed and reenacted as KRS 194B.578 by Acts 2000, ch. 203, § 4, effective July 14, 2000.

CAREER AND TECHNICAL EDUCATION

156.800. Definitions for KRS 156.800 to 156.860.

As used in KRS 156.800 to 156.860, unless the context indicates otherwise:

(1) "Appointing authority" means the commissioner of education or any person authorized by the commissioner to act on behalf of the Office of Career and Technical Education with respect to employee appointments, position establishments, payroll documents, reemployment lists, waiver requests, or other position actions. The designation shall be in writing and signed by both the commissioner and the designee;

(2) "Base salary" means the compensation to which an employee is entitled under the salary schedule adopted pursuant to the provisions of KRS 156.808(3)(h);

(3) "Board" means the Kentucky Technical Education Personnel Board established in KRS 156.840;

(4) "Certified employees" means those employees who fill school or educational assignments requiring the issuance of a certificate. These employees in the Office of Career and Technical Education are subject to personnel administration under KRS 156.800 to 156.860;

(5) "Class" means a group of positions sufficiently similar as to the duties performed, scope of discretion and responsibility, minimum requirements of training, and other characteristics that the same title and the same schedule of compensation have been or may be applied to each position in the group;

(6) "Classified" means status as merit system employees under the provisions of KRS Chapter 18A;

(7) "Continuing status" means the acquisition of tenure with all rights and privileges granted by the provisions of KRS 156.800 to 156.860 which must be preceded by four (4) years of successful employment;

(8) "Demotion" means a change in an employee's position to another class having less discretion or responsibility;

(9) "Emergency appointment" means employment for a maximum period of sixty (60) days without regard to the certification process for any position in the Office of Career and Technical Education requiring certification or its equivalent;

(10) "Employee" means a person regularly employed in a position in the Office of Career and Technical Education for which compensation is on a full-time or part-time basis;

(11) "Equivalent employees" means those employees with educational backgrounds similar to certified personnel in the administration and conduct of educationally related services. These employees in the Office of Career and Technical Education shall be subject to personnel administration under KRS 156.800 to 156.860;

(12) "Hearing officer" means a member of the board, a person hired for this purpose by personal service contract, or an assistant attorney general;

(13) "Index" means the percentage add-on in a salary structure which compensates for the scope of discretion and responsibility of the position;

(14) "Initial probation" means the one (1) year period following initial appointment of certified and equivalent employees under KRS 156.826 which requires special observation and evaluation of a person's work and which must be passed successfully before eligibility for renewal of limited status;

(15) "Limited status" means employment that is renewable on an annual basis;

(16) "Penalization" means actions including demotion, dismissal, suspension, involuntary transfer, reduction in rank or pay, or the abridgement or denial of rights granted to state employees or other disciplinary actions;

(17) "Position" means employment involving duties requiring the services of one (1) person;

(18) "Promotion" means changing an employee from a position in one (1) class to a position in another class carrying a greater scope of discretion and responsibility;

(19) "Promotional probation" means the twelve (12) month period of service following the promotion of an employee with continuing status which must be successfully completed in order for the employee to remain in the position;

(20) "Reemployment" means the rehiring of an employee with continuing status who has been laid-off;

(21) "Reemployment list" means the separate list of names of persons who have been separated from

certified or equivalent positions in the Office of Career and Technical Education by reason of lay-off. Reemployment lists shall be used as provided by the provisions of KRS 156.830;

(22) "Reinstatement" means the restoration of a certified or equivalent employee who has resigned in good standing or who has been ordered reinstated by the board or a court to a position in the former class or to a position of like status and pay;

(23) "Seasonal employees" means employees employed in a seasonal position. Seasonal position means a position that is temporary, and which coincides with a particular season or seasons of the year;

(24) "Temporary employee" means an employee appointed to a temporary position. Temporary position means a position that is created for a definite period of time;

(25) "Transfer" means a movement of any certified or equivalent employee from one (1) position to another having the same salary range and the same level of responsibility; and

(26) "Unclassified employee" means any temporary or seasonal employee and any employee in a policymaking position who shall be exempt from the state service under KRS Chapter 18A and who is employed in the Office of Career and Technical Education under KRS 156.800 to 156.860.

History.

Enact. Acts 1990, ch. 470, § 4, effective July 1, 1990; 1992, ch. 417, § 2, effective July 14, 1992; 1994, ch. 363, § 1, effective July 15, 1994; 1994, ch. 469, § 5, effective July 15, 1994; 2000, ch. 526, § 17, effective August 15, 2000; 2003, ch. 29, § 5, effective June 24, 2003; 2006, ch. 211, § 20, effective July 12, 2006; repealed, reenact. and amend., Acts 2013, ch. 59, § 1, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.010.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Professional Growth and Effectiveness System, 704 KAR 3:370.

156.802. Office of Career and Technical Education — Kentucky Board of Education.

(1) The Office of Career and Technical Education is hereby created within the Department of Education. The office shall consist of those administrative bodies and employees provided by or appointed by the commissioner of education pursuant to KRS 156.010.

(2) The commissioner of education may appoint an assistant, pursuant to KRS 156.010, and delegate authority to the assistant regarding the Office of Career and Technical Education.

(3) The Department of Education shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of:

(a) State-operated secondary area vocational education and technology centers. When appropriate, the Department of Education shall provide education training programs through contracts with private business and industries. These programs may be on a shared cost basis or on a total cost recovery basis; and

(b) The Carol Martin Gatton Kentucky FFA Leadership Training Center located in Hardinsburg, Kentucky.

(4) The commissioner of education shall have the authority to enter into agreements or contracts with other government or education agencies, including local school districts, in order to carry out services under the office's jurisdiction.

(5)(a) Secondary area vocational education and technology centers shall be operated in compliance with program standards established by the Kentucky Board of Education. Principals, counselors, and teaching staff shall meet the qualifications and certification standards for all secondary vocational personnel as established by the Education Professional Standards Board.

(b) The Kentucky Board of Education shall be the eligible agency solely designated for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational-technical or technology education. The Kentucky Board of Education shall involve representatives from all eligible recipient categories in the development of the required plans.

(c) In accordance with 20 U.S.C. sec. 2302(12), the Kentucky Board of Education is hereby designated to be the "eligible agency" that is the sole state agency responsible for the administration of vocational and technical education and the supervision of the administration of vocational and technical education.

(6)(a) Except for the duties that the Kentucky Board of Education must retain pursuant to 20 U.S.C. sec. 2341, the Kentucky Board of Education shall be authorized to delegate all of the other duties and responsibilities of the eligible agency to the Office of Career and Technical Education within the Department of Education, including but not limited to the administration, operation, and supervision of the Perkins program and the authority to receive, hold, and disburse funds awarded under the state plan.

(b) The Kentucky Board of Education shall delegate to the Kentucky Workforce Investment Board the state leadership activities referred to in 20 U.S.C. sec. 2344 to be conducted in accordance with the required and permissible uses of funds specified in the Carl D. Perkins Career and Technical Education Act of 2006 and subsequent amendments thereto. The maximum amount of funds allowed by 20 U.S.C. sec. 2322(a)(2) shall be reserved and made available for state leadership activities.

(7) The commissioner of education shall be permitted to enter into memorandums of agreement with individuals on a year-to-year basis to fill positions in hard-to-find teaching specialties. The agreements and compensation for hard-to-find teaching specialties shall be approved by the commissioner of education and shall not be subject to the provisions of KRS Chapter 45A. All agreements shall be filed with the secretary of the Finance and Administration Cabinet.

(8) The commissioner of education shall, from time to time, prepare or cause to be prepared any bulletins,

programs, outlines of courses, placards, and courses of study deemed useful in the promotion of the interests of technical and vocational education.

History.
Enact. Acts 1990, ch. 470, § 2, effective July 1, 1990; 1994, ch. 469, § 7, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 44, effective May 30, 1997; 2003, ch. 29, § 7, effective June 24, 2003; 2006, ch. 151, § 1, effective July 12, 2006; 2006, ch. 211, § 22, effective July 12, 2006; 2009, ch. 11, § 14, effective June 25, 2009; repealed, reenact. and amend., Acts 2013, ch. 59, § 3, effective June 25, 2013; 2026 ch. 196, § 14, effective July 15, 2026.

Compiler's Notes.
The provision referenced as 20 USCS § 2302(9) in (7)(b) above is now found at 20 USCS § 2302(12).
This section was formerly compiled as KRS 151B.025.

Legislative Research Commission Notes.
(7/12/2006). This section was amended by 2006 Ky. Acts chs. 151 and 211. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 211, which was last enacted by the General Assembly, prevails under KRS 446.250.
(7/12/2006). 2006 Ky. Acts ch. 211, sec. 171, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in the Act, as it confirms the reorganization of the executive branch and establishment of the Education Cabinet. Such a correction has been made in this section.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Administration of area technology centers, 780 KAR 2:010.
Area center or public high school, standards for vocational department, 705 KAR 3:141.
Area technology center facility standards, 780 KAR 7:020.
Compensation plan, 780 KAR 3:020.
Definitions for 780 KAR Chapter 7, 780 KAR 7:010.
Discipline of students, 780 KAR 2:060.
Equipment inventory and insurance, 780 KAR 7:060.
Facility maintenance, 780 KAR 7:040.
FFA Leadership Training Center, 705 KAR 4:081.
General program standards for secondary career and technical education programs, 705 KAR 4:231.
General standards, 780 KAR 4:010.
Kentucky State Plan for Career and Technical Education, 780 KAR 1:010.
Live work projects, 780 KAR 2:040.
Secondary funding for state-operated vocational schools, 702 KAR 1:130.
Standards for secondary programs, 780 KAR 4:030.
Steering and advisory committees for area technology centers primarily serving secondary students, 780 KAR 2:030.
Student medical and accident insurance, 780 KAR 2:110.Work-based learning program standards, 705 KAR 4:041.

156.804. Organizational structure of Office of Career and Technical Education — Ombudsman.

The Office of Career and Technical Education shall have the following organizational structure:

(1) The commissioner of education shall appoint an assistant pursuant to KRS 12.050 and 156.010 and assign duties as appropriate;

(2) The appointing authority shall appoint an ombudsman pursuant to KRS 12.050 and specify his or her functions and duties; and

(3) The Kentucky Technical Education Personnel Board, pursuant to KRS 156.840, shall be attached to the Department of Education for administrative purposes.

History.
Enact. Acts 1990, ch. 470, § 3, effective July 1, 1990; 1994, ch. 469, § 8, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 1, § 45, effective May 30, 1997; 2000, ch. 33, § 1, effective July 14, 2000; 2003, ch. 29, § 8, effective June 24, 2003; 2006, ch. 211, § 23, effective July 12, 2006; 2009, ch. 11, § 15, effective June 25, 2009; repealed, reenact. and amend., 2013, ch. 59, § 6, effective June 25, 2013.

Compiler's Notes.
This section was formerly compiled as KRS 151B.030.

156.806. Career and Technical Education Advisory Committee — Purpose — Members.

(1) The commissioner of education shall establish and appoint members to a Career and Technical Education Advisory Committee to advise the Department of Education on the development of a robust and effective career and technical education program.

(2) The committee shall include representatives of business, industry, and the Kentucky Community and Technical College System; the commissioner of the Department of Workforce Development; and any other individuals deemed appropriate by the commissioner of education.

History.
Enact. Acts 2013, ch. 59, § 2, effective June 25, 2013; 2022 ch. 236, § 64, effective July 1, 2022.

156.808. Personnel of Office of Career and Technical Education — Administrative regulations — Appeals to Kentucky Technical Education Personnel Board.

(1) The Kentucky Board of Education shall promulgate, by administrative regulations, personnel policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated vocational facilities. All other staff shall remain under the authority of the Kentucky Personnel Cabinet and KRS Chapter 18A. Employees who transfer to or from the KRS Chapter 18A personnel system shall transfer accrued annual, compensatory, and sick leave.

(2) As provided in KRS 156.800 to 156.860, the Kentucky Board of Education shall promulgate administrative regulations for the administration of a personnel system in the Office of Career and Technical Education which are consistent with the provisions of KRS 156.800 to 156.860 and with federal standards for state government agencies receiving federal grants.

(3) The Kentucky Board of Education shall promulgate administrative regulations for full-time and part-time certified and equivalent staff governing:

(a) Establishment and abolishment of positions, including a prohibition against eliminating funding for or abolishment of a teaching position at a state-operated secondary area vocational education and technology center during a school year in which students are enrolled in the program;

(b) Applications;

(c) Classification and compensation plans;

(d) Incentive programs;

(e) Selection of employees;

(f) Types of appointments;

(g) Attendance, including hours of work, compensatory time, and annual, court, military, sick, maternity, voting, and special leaves of absence;

(h) Preparation, maintenance, and revision of a position classification plan and an equitable salary schedule for certified and equivalent staff based on qualifications, experience, and responsibilities;

(i) Extent and duration of the state-operated area vocational education and technology centers' school term, use of school days, and extended employment;

(j) Employee evaluations;

(k) Programs to improve the work effectiveness of employees including staff development;

(*l*) Demotion;

(m) Dismissal;

(n) Lay-offs;

(o) Suspensions and other disciplinary measures;

(p) Probationary periods, limited employment status, and continuing employment status;

(q) Promotion;

(r) Transfer;

(s) Appeals; and

(t) Employee grievances and complaints.

(4)(a) Administrative regulations promulgated by the Kentucky Board of Education shall comply with the provisions of KRS 156.800 to 156.860 and KRS Chapter 13A and shall have the force and effect of law.

(b) Administrative regulations promulgated by the Kentucky Board of Education shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of KRS 156.800 to 156.860.

(c) No administrative body other than the Kentucky Board of Education shall promulgate administrative regulations governing the subject matters specified in this section.

(d) Policies and procedures for the implementation of administrative regulations shall be developed by the Department of Education.

(5) The commissioner of education shall be the appointing authority with respect to all personnel actions for the Office of Career and Technical Education. The commissioner may authorize a designee to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, reemployment lists, waiver requests, or other position actions. Any personnel designation shall be in writing. Authority to employ personnel may be delegated to the vocational school management by the commissioner. Any recommendation for employment from the local level shall be based on guidelines promulgated by the commissioner of education and shall be contingent upon confirmation by the commissioner of education.

(6) The Kentucky Board of Education shall promulgate other administrative regulations to govern proceedings which relate to certified and equivalent employees and which shall provide for:

(a) The procedures to be utilized by the Kentucky Technical Education Personnel Board in the conduct of hearings, consistent with KRS Chapter 13B;

(b) Discharge, as provided by this section;

(c) Imposition, as a disciplinary measure, of a suspension from service without pay for up to thirty (30) working days and, in accordance with the provisions of KRS 156.820, for the manner of notification of the employee of the discipline and right of appeal;

(d) Promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct;

(e) Supplementary information for the salary schedule for certified and equivalent staff including teachers, counselors, administrators, managers, and educational consultants in state-operated vocational technical facilities, field offices, and central office in the Office of Career and Technical Education that shall provide uniformity, recognition of education, teaching, and supervisory experience and use as a base the average salary paid to beginning classroom teachers by all public schools in the state for personnel with comparable qualifications and experience. Indexes may be incorporated in the compensation plan for administrative responsibilities. The salary schedule shall be computed annually, and shall be submitted to and approved by the Governor;

(f) Reemployment of laid-off employees in accordance with the provisions of KRS 156.800 to 156.860;

(g) Establishment of a plan for resolving employee grievances and complaints. The plan shall not restrict rights granted employees by the provisions of KRS 156.800 to 156.860; and

(h) Any other administrative regulations not inconsistent with this chapter and KRS Chapter 13A proper and necessary for its enforcement.

(7) The Department of Education shall make investigations, either on petition of a citizen, taxpayer, interested party, or as deemed necessary by the commissioner, concerning the enforcement and effect of KRS 156.808, 156.810, 156.812, 156.814, 156.816, 156.818, 156.820, 156.822, 156.824, 156.826, 156.828, 156.830, 156.832, 156.834, 156.836, and 156.838, shall require observance of the provisions and the administrative regulations promulgated pursuant to the provisions of KRS 156.800 to 156.860 and KRS Chapter 13A, and shall make investigation as requested by the General Assembly or the Governor and to report thereon.

(8) The Kentucky Board of Education shall promulgate administrative regulations, pursuant to KRS Chapter 13A, for an appeal system for aggrieved certified or equivalent employees.

(9) The Kentucky Technical Education Personnel Board shall hear appeals from applicants for positions or from certified, equivalent, and unclassified employees who have been dismissed, demoted, suspended, or otherwise penalized for cause. Effective August 15, 2000, appeals from assistants and secretaries in the Office of Career and Technical Education attached to

policymaking positions shall be governed by KRS 18A.095. The State Personnel Board, established in KRS 18A.045, shall hear appeals that are pending as of August 15, 2000, from assistants and secretaries attached to policymaking positions in the Office of Career and Technical Education.

(10) The Kentucky Technical Education Personnel Board may, any statute to the contrary notwithstanding, delegate the conduct of the hearing and the rendition of a recommended order to the full board, to a panel of the board, or to a hearing officer, relative to any hearing appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by KRS 156.800 to 156.860 or any other chapter, to conduct, hear, or make; provided, however, that the full board as provided by statute, makes the final order, based upon the evidence submitted.

(11) The Kentucky Board of Education shall promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the unclassified service including the preparation and maintenance of a salary schedule and other administrative regulations authorized by KRS 156.800 to 156.860.

(12) The annual percentage salary increment for all certified and equivalent employees subject to the personnel system established under KRS 156.800 to 156.860 shall be at least equal to that funded and provided for other elementary and secondary teachers.

(13) The positions of employees who are transferred, effective July 1, 1998, from the former Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees who are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in KRS 156.800 to 156.860 or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS 156.800 to 156.860 or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted toward years of experience for calculating benefits and compensation.

History.

Enact. Acts 1990, ch. 470, § 5, effective July 1, 1990; 1992, ch. 417, § 3, effective July 14, 1992; 1994, ch. 363, § 2, effective July 15, 1994; 1994, ch. 469, § 9, effective July 15, 1994; 1996, ch. 318, § 41, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 46, effective May 30, 1997; 1998, ch. 154, § 78, effective July 15, 1998; 2000, ch. 526, § 18, effective August 15, 2000; 2003, ch. 29, § 9, effective June 24, 2003; 2006, ch. 211, § 24, effective July 12, 2006; repealed, reenact. and amend., 2013, ch. 59, § 7, effective June 25, 2013; 2026 ch. 196, § 19, effective July 15, 2026.

Compiler's Notes.

This section was formerly compiled as KRS 151B.035.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. IV, 2 at 2165.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeals and hearings, 780 KAR 3:120.
Appeals and hearings, 780 KAR 6:100.
Appointments, 780 KAR 3:030.
Appointments, 780 KAR 6:030.
Attendance, compensatory time, and leave for certified and equivalent service, 780 KAR 3:072.
Attendance, compensatory time and leave for unclassified service, 780 KAR 6:062
Certified and equivalent service administrative regulations, 780 KAR 3:065.
Classification plan, 780 KAR 3:010.
Classification plan, 780 KAR 6:010.
Compensation plan, 780 KAR 3:020.
Compensation plan, 780 KAR 6:020.
Disciplinary actions, 780 KAR 3:110.
Disciplinary actions, 780 KAR 6:090.
Employee actions, 780 KAR 3:100.
Employee actions, 780 KAR 6:080.
Employee evaluations, 780 KAR 3:035.
Employee grievances, 780 KAR 3:130.
Extent and duration of school term, use of school days and extended employment, 780 KAR 3:080.
Local school district service credit, 780 KAR 3:160.
Probationary periods, 780 KAR 3:060.
Probationary periods, 780 KAR 6:050.
Records and reports, 780 KAR 3:090.
Records and reports, 780 KAR 6:070.
Sick leave sharing procedures for certified and equivalent service, 780 KAR 3:075.
Sick leave sharing procedures for unclassified service, 780 KAR 6:065.
Special appointments, 780 KAR 3:040.
Special appointments, 780 KAR 6:040.
Staff development and in-service, 780 KAR 3:150.
Unclassified service administrative regulation, 780 KAR 6:005.

156.810. Posting of full-time vacancies.

All full-time vacancies shall be posted in all schools and offices ten (10) days prior to filling a certified or equivalent position in the classified section of the personnel system contained in KRS 156.800 to 156.860.

History.

Enact. Acts 1994, ch. 475, § 6, effective July 15, 1994; repealed, reenact. and amend., 2013, ch. 59, § 8, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.037.

156.812. Employee benefits.

(1) All certified, equivalent, and unclassified employees in the Office of Career and Technical Education shall be:

(a) Provided the same health insurance coverage as all other state government employees provided in KRS 18A.225;

(b) Eligible to participate in the deferred compensation system provided for all state government employees by KRS 18A.250 to 18A.265;

(c) Provided the same life insurance coverage provided all state employees pursuant to KRS 18A.205 to 18A.215;

(d) Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made

pursuant to KRS 45.101 in the performance of their official duties; no part of the reimbursement shall be included in or accounted as a part of their salaries;

(e) Ensured equal employment opportunity regardless of race, color, religion, national origin, disability, sex, or age; and

(f) Given those holidays and rights granted state employees pursuant to KRS 18A.190.

(2) Employees under the jurisdiction of the former Department for Technical Education who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems. All new certified and equivalent employees hired by the office shall be placed in the Kentucky Teachers' Retirement System.

History.

Enact. Acts 1990, ch. 470, § 6, effective July 1, 1990; 1994, ch. 405, § 17, effective July 15, 1994; 1994, ch. 469, § 10, effective July 15, 1994; 2000, ch. 526, § 19, effective August 15, 2000; 2006, ch. 211, § 25, effective July 12, 2006; repealed and reenact., Acts 2013, ch. 59, § 9, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.040.

156.814. Personnel files.

(1) The records of the Office of Career and Technical Education shall be public records and shall be open to public inspection, as provided in KRS 61.870 to 61.884.

(2)(a) A personnel file shall be maintained by the Department of Education for each employee. The files maintained by the Department of Education shall be the official personnel file for the employees.

(b) Each file shall include but not be limited to the employee's name, address, title of positions held, classifications, rates of compensation, and all changes in status, including evaluations, promotions, demotions, lay-offs, transfers, disciplinary actions, commendations, and awards. Each file shall contain the complete record and supporting documentation for each personnel action.

(c) When an employee is reprimanded for misconduct, other infraction, or failure to perform duties in a proper or adequate manner, the supervising employee taking the action shall document the action in detail, and shall provide the employee with a copy of the documentation. The supervising employee shall inform the employee of his or her right to prepare a written response to the action taken after the employee has reviewed the written documentation prepared by the supervising employee. The employee's response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response in the employee's personnel file and shall transmit a copy to be placed in the central office personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for in this subsection have been placed in the employee's personnel files.

(3) Upon written request, an employee shall have the right to examine his or her personnel file. An employee may comment in writing on any item in the file. The comments shall be made a part of the file and shall be attached to the specific record or document to which they pertain.

(4) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge, or impede the exercise of the rights granted in any manner by this section and by KRS 61.878.

History.

Enact. Acts 1990, ch. 470, § 7, effective July 1, 1990; 1994, ch. 469, § 11, effective July 15, 1994; 2000, ch. 526, § 20, effective August 15, 2000; 2006, ch. 211, § 26, effective July 12, 2006; 2009, ch. 11, § 16, effective June 25, 2009; repealed, reenact. and amend., Acts 2013, ch. 59, § 10, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.045.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Records and reports, 780 KAR 3:090.
Records and reports, 780 KAR 6:070.

156.816. Grounds for refusal to consider or to disqualify an applicant for, or to remove a person from, a certified or equivalent position.

Except as provided by the provisions of KRS 156.800 to 156.860, the appointing authority or designee for the Office of Career and Technical Education may refuse to consider an applicant for a certified or equivalent position or, after consideration, may disqualify the applicant or may remove an employee already appointed if:

(1) It is found that the person did not maintain certification or that certification has been revoked for the position;

(2) The person is unable to perform the duties of the position;

(3) The person made a false statement of material fact in the application;

(4) The application was not submitted correctly or within the prescribed time limits;

(5) The person has been convicted of a felony within the preceding five (5) years and has not had civil rights restored or has not been pardoned by the Governor;

(6) The person has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;

(7) The person has previously been dismissed from a position in his department for cause or has resigned while charges for dismissal for cause of which the person had knowledge were pending; or

(8) The person has otherwise violated the provisions of KRS 156.800 to 156.860.

History.

Enact. Acts 1990, ch. 470, § 8, effective July 1, 1990; 1992, ch. 417, § 4, effective July 14, 1992; 1994, ch. 363, § 3, effective July 15, 1994; 1994, ch. 469, § 12, effective July 15, 1994; 2006, ch. 211, § 27, effective July 12, 2006; repealed, reenact. and amend., Acts 2013, ch. 59, § 11, effective June 25, 2013.

Compiler's Notes.
This section was formerly compiled as KRS 151B.050.

156.818. Criminal conviction as grounds for disciplinary action.

Subject to the provisions of KRS 156.820, any certified and equivalent employee who is convicted of a felony or job-related misdemeanor may be subject to any disciplinary action deemed appropriate, including dismissal.

History.
Enact. Acts 1992, ch. 417, § 5, effective July 14, 1992; repealed, reenact. and amend., Acts 2013, ch. 59, § 12, effective June 25, 2013.

Compiler's Notes.
This section was formerly compiled as KRS 151B.052.

156.820. Employees with continuing status — Appeals.

(1) All certified and equivalent employees who previously held merit status under KRS Chapter 18A shall become continuing status employees in the Office of Career and Technical Education.

(2) Prior to dismissal, an employee with continuing status shall be notified in writing of the intent to dismiss. The notice shall also state:

(a) The specific reasons for dismissal including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the intent to dismiss is based;

3. The date, time, and place of the action or activity; and

4. The name of the parties involved; and

(b) That the employee has the right to appear personally, or with counsel if counsel has been retained, to reply to the appointing authority or a designee.

(3) The Office of Career and Technical Education shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the appointing authority or a designee. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:

(a) The right granted an employee under the provisions of this section relating to pretermination hearings; and

(b) The time limits and procedures to be followed by all parties in pretermination hearings.

(4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day of receipt of notice, the employee may request to appear, personally or with counsel if counsel is retained, to reply to the appointing authority or a designee.

(5) The appearance shall be held six (6) working days after receipt of an employee's request to appear before the appointing authority or a designee, excluding the day the employee's request is received, unless the employee and the appointing authority or a designee agree to a later date.

(6) No later than five (5) working days after the employee appears before the appointing authority or a designee, excluding the day of the appearance, the appointing authority or a designee shall:

(a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and

(b) Notify the employee in writing of the decision.

(7) If the appointing authority or a designee determines that the employee shall be dismissed, the employee shall be notified in writing of:

(a) The effective date of dismissal or other penalization;

(b) The specific reason for the action, including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the dismissal is based;

3. The date, time, and place of the action or activities; and

4. The names of the parties involved; and

(c) That the employee may appeal the dismissal to the Kentucky Technical Education Personnel Board within thirty (30) days after receipt of this notification, excluding the day the notice is received.

(8) A certified or equivalent employee with continuing status who is demoted or suspended shall be notified in writing of:

(a) The demotion or suspension;

(b) The effective date of the demotion or suspension;

(c) The specific reason for the action including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the demotion or suspension is based;

3. The date, time, and place of the action or activity; and

4. The name of the parties involved; and

(d) That the employee has the right to appeal to the Kentucky Technical Education Personnel Board within thirty (30) days, excluding the day of receipt of notification.

(9) Any employee or applicant for employment may appeal to the board on the grounds that the right to inspect or copy records, including preliminary and other supporting documentation, relating to the employee has been denied, abridged, or impeded. The board shall conduct a hearing to determine if the records related to the employee or applicant, and if the right to inspect or copy was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy the records has been denied, abridged, or impeded, the board shall order that the records be made available for inspection and copying.

(10) Any certified, equivalent, or unclassified employee may appeal an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age to the board. Nothing in this section shall be construed to preclude any employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

(11)(a) Appeals to the Kentucky Technical Education Personnel Board shall be in writing on an appeal form prescribed by the Office of Career and Technical Education. Appeal forms shall be available at the employee's place of work. The Office of Career and Technical Education shall be responsible for the distribution of the forms.

(b) The appeal form shall be attached to any notice, or copy of the notice, of dismissal, demotion, suspension, involuntary transfer, or other penalization, or notice of any other action an employee may appeal under the provisions of this section.

(c) Upon receipt of the appeal by the board, the appointing authority or a designee shall be notified, and the board shall schedule a hearing that shall be conducted in accordance with KRS Chapter 13B.

(12)(a) Except as provided in this section, an appeal shall be decided by the board only after a hearing. The board shall not deny, reject, or sustain an appeal, or make any other determination relating to an appeal, except after a hearing is conducted pursuant to the provisions of this section and KRS Chapter 13B.

(b) The board may deny a hearing to an employee who has failed to file an appeal over which the board has jurisdiction or within the time prescribed by this section and to an unclassified employee who has failed to state the cause for dismissal. The board shall notify the employee of its denial in writing and shall inform the employee of his or her right to appeal the denial under the provisions of KRS 156.822.

(c) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing. Any party to the hearing shall be permitted an adequate opportunity to rebut or comment upon the information.

(13) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:

(a) Employ class action procedures; or

(b) Conduct test representative cases.

(14) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.

(15)(a) If the board finds that the action complained of was taken by the appointing authority or designee in violation of laws prohibiting favor for, or discrimination against, or bias with respect to political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of the individual's sex, age, or disability, the appointing authority or designee shall immediately reinstate the employee to his or her former position or a position of like status and pay, without loss of pay for the period of penalization, or otherwise make the employee whole;

(b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his or her former position or a position of like status and pay, without loss of pay for the period of penalization, or otherwise make the employee whole;

(c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify, or rescind the disciplinary action; and

(d) In all other cases, the board shall rescind the action taken or grant other relief to which the employee is entitled.

(16) If a final order of the board is appealed, a court shall award reasonable attorney's fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. The award shall not include attorney's fees attributable to the hearing before the board.

History.

Enact. Acts 1990, ch. 470, § 9, effective July 1, 1990; 1992, ch. 417, § 6, effective July 14, 1992; 1994, ch. 363, § 4, effective July 15, 1994; 1994, ch. 405, § 18, effective July 15, 1994; 1994, ch. 469, § 13, effective July 15, 1994; 1996, ch. 318, § 42, effective July 15, 1996; 2000, ch. 526, § 21, effective August 15, 2000; 2003, ch. 29, § 10, effective June 24, 2003; 2006, ch. 211, § 28, effective July 12, 2006; repealed and reenact., Acts 2013, ch. 59, § 13, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.055.

156.822. Appeal from final order of board.

(1) Any final order of the board either upholding or invalidating the dismissal, demotion, suspension, or other penalization of a certified, equivalent, or unclassified employee may be appealed either by the employee or by the appointing authority.

(2) The party aggrieved may appeal the final order by filing a petition with the clerk of the Franklin Circuit Court in accordance with KRS Chapter 13B.

(3) If the appeal is from an order upholding the dismissal, demotion, suspension, or other penalization, the burden of appearing and defending the action of the board shall be upon the appointing authority. If the appeal is from an order refusing to uphold the dismissal, demotion, suspension, or other penalization, the burden of appearing and defending the action of the board shall be upon the employee.

History.

Enact. Acts 1990, ch. 470, § 10, effective July 1, 1990; 1996, ch. 318, § 43, effective July 15, 1996; repealed and reenact., Acts 2013, ch. 59, § 14, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.060.

156.824. Payment of reinstated employee.

(1)(a) When a certified, equivalent, or unclassified employee has been finally ordered reinstated without loss of pay, pursuant to the provisions of KRS 156.822, the board shall forward a certified copy of the order to the Department of Education. The department shall process proper payment to the employee for the period of suspension, the payment to be made out of the agency's appropriations. If no funds or insufficient funds are available in the agency's appropriations, then payment shall be made out of the judgments section of the general fund of the biennial state budget.

(b) Gross moneys which are earned by the employee from other sources during the period of suspension shall set off against the gross sum due the employee, to the extent that the moneys were earned in a number of hours comparable to the length of time the employee would have worked in the previous job where dismissal occurred. The commissioner of education shall by regulation provide an administrative procedure for determining reasonable earnings to be set off.

(c) All other deductions shall be deducted as required by law or by other state regulation.

(2)(a) Both the employee's and employer's contributions to the Kentucky Teachers' Retirement System or the Kentucky Employees Retirement System shall be based upon the gross amount due the employee, before set-off or deduction, except for set-off caused by earnings on which employee and employer contributions to the Kentucky Teachers' Retirement System or the Kentucky Employees Retirement System have been paid.

(b) Member and employer contributions paid into the system in which the employee participated after dismissal shall be transferred to the system in which the employee participated prior to illegal dismissal. In the event of a difference in member or employer contribution rates between the retirement system under which the member was covered prior to dismissal and the retirement system of participation before reinstatement by the board, the member and employer shall pay or receive a refund in order to adjust their respective contribution to the appropriate rate for the system under which the employee would have participated if dismissal had not occurred.

History.

Enact. Acts 1990, ch. 470, § 11, effective July 1, 1990; 1994, ch. 469, § 14, effective July 15, 1994; 2000, ch. 526, § 22, effective August 15, 2000; 2003, ch. 29, § 11, effective June 24, 2003; 2006, ch. 211, § 29, effective July 12, 2006; repealed, reenact. and amend., Acts 2013, ch. 59, § 15, effective June 25, 2013; 2021 ch. 26, § 5, effective June 29, 2021.

Compiler's Notes.

This section was formerly compiled as KRS 151B.065.

156.826. Employment status.

(1) All certified and equivalent employees shall serve a one (1) year probationary period for renewal of limited status. An employee may be separated from the position or reduced in class during this initial probationary period and shall not have a right to appeal except as provided in KRS 156.820. If the employee is separated from the position, notice in writing shall be received at least ten (10) working days prior to separation. A copy of the notification shall be forwarded to the commissioner. Unless the commissioner notifies the employee of separation prior to the end of the initial probationary period, the employee shall be eligible for renewable limited status. Limited status employees are subject to reemployment on an annual basis. Limited status employees may be dismissed without cause before the annual anniversary date.

(2) After completion of the initial probationary period, the individual shall be considered on limited status until successful completion of the fourth year, at which time the employee may be placed on continuing status.

(3) An employee who has been assigned continuing status may not be demoted, disciplined, or dismissed without cause except as provided by provisions in KRS 156.800 to 156.860.

(4) An employee with continuing status who has been promoted shall serve a probationary period of one (1) year in the new position. During the period of promotional probation, the employee shall retain the rights and privileges granted by the provisions of KRS 156.800 to 156.860 to continuing status employees.

(5) During the promotional probationary period, the employee with continuing status may be reverted at the discretion of the appointing authority to a position in the class formerly held.

(6) A continuing status employee who has been laid-off may return to a position with continuing status if an appropriate position is available.

History.

Enact. Acts 1990, ch. 470, § 12, effective July 1, 1990; 1992, ch. 417, § 7, effective July 14, 1992; 2000, ch. 526, § 23, effective July 14, 2000; repealed, reenact. and amend., 2013, ch. 59, § 16, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.070.

NOTES TO DECISIONS

1. Limited Status.

Employee could not make a *prima facie* showing of sex discrimination because she did not establish that she was similarly situated to a co-worker, whom the employee alleged received more favorable treatment that her, and the reasons stated for her non-renewal were sufficiently non-discriminatory; the employee could be non-renewed without reasons, and the co-worker could not be terminated without cause because he was a continuing status employee. Commonwealth v. Solly, 253 S.W.3d 537, 2008 Ky. LEXIS 127 (Ky. 2008).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeals and hearings, 780 KAR 3:120.
Probationary periods, 780 KAR 3:060.

156.828. Employee evaluations.

(1) The commissioner of education shall adopt written evaluation procedures for all certified and equivalent employees of the Office of Career and Technical Education. The procedures shall be based upon recommendations received from a committee composed of equal numbers of teachers, counselors, and administrators of the Office of Career and Technical Education.

(2) Evaluations shall be in writing. An evaluator shall follow all statutory and regulatory provisions for evaluation and shall present and explain all documentation affecting an employee's evaluation, as well as discuss every aspect of performance with the employee at each evaluation. The evaluator shall solicit the employee's opinions and suggestions and shall advise

the employee of the measures needed to improve performance.

(3) Each full-time employee who has completed initial probation, and each part-time employee who works over one hundred (100) hours each month and who has completed initial probation shall be evaluated.

(4)(a) The first-line supervisor of an employee shall be the evaluator, providing the period of supervision has been for a period of at least ninety (90) calendar days.

(b) If the evaluator has supervised an employee for at least ninety (90) calendar days and ceases to be the employee's first-line supervisor after such period of time, the evaluation of the employee shall be at least five (5) workings days prior to the day when the responsibility for supervision ceases.

(c) If the first-line supervisor ceases to be the supervisor of an employee due to the suspension, demotion, or dismissal of the first-line supervisor, paragraph (b) of this subsection shall not apply.

(d) If the first-line supervisor ceases to be an employee's supervisor because the employee transfers, the first-line supervisor shall evaluate the employee prior to transfer, if the period of supervision of the employee is not less than ninety (90) calendar days prior to notification of transfer.

(5) Teachers and administrators in the state-operated secondary area vocational education and technology centers shall be evaluated in the following categories and appropriate criteria for each category shall be described in the written evaluation procedure:

(a) School or classroom management, as appropriate;

(b) Job knowledge and skills;

(c) Instructional management;

(d) Employee conduct; and

(e) Professional responsibility.

(6) All other certified and equivalent staff in the field and in the central office shall be evaluated in the following categories with appropriate criteria described in written evaluation procedures:

(a) Job knowledge and skills;

(b) Quality of work;

(c) Employee conduct; and

(d) Professional responsibility.

(7) There shall be established by the commissioner of education an evaluation appeals procedure for certified or equivalent personnel in the Office of Career and Technical Education.

(8)(a) Within five (5) working days of an evaluation, an employee may request reconsideration of the evaluation by the evaluator.

(b) Within five (5) working days of the reconsideration, an employee may:

1. Submit a written response to any evaluation which shall be attached to the evaluation; and

2. Submit a written request for reconsideration of any evaluation to the second-line supervisor.

(c) No later than fifteen (15) working days after receipt of the request, the second-line supervisor shall inform the employee and the evaluator in writing of the decision after the second-line supervisor has:

1. Obtained written statements from both the employee and the evaluator; or

2. Met with the employee and the evaluator; and

3. Reviewed the evaluation process according to statutory or regulatory requirements as well as the ratings.

(9) Within thirty (30) days after the employee has received the written decision of the second-line supervisor, the employee may appeal an evaluation to the next level. For the state-operated secondary area vocational education and technology centers, this appeal shall go to the ombudsman for mediation. If not resolved at this level, the employee may file an appeal with the appointing authority or designee who shall make a final ruling. For other employees in the Office of Career and Technical Education, this appeal shall go to the appropriate office head and then to the appointing authority or designee.

(10) If an employee receives an overall unsatisfactory evaluation rating on two (2) successive evaluations, the employee shall be:

(a) Demoted to a position commensurate with abilities; or

(b) Terminated.

History.

Enact. Acts 1990, ch. 470, § 13, effective July 1, 1990; 1992, ch. 417, § 8, effective July 14, 1992; 1994, ch. 469, § 15, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 1, § 47, effective May 30, 1997; 2003, ch. 29, § 12, effective June 24, 2003; 2006, ch. 211, § 30, effective July 12, 2006; repealed, reenact. and amend., Acts 2013, ch. 59, § 17, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.075.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Employee evaluations, 780 KAR 3:035.

156.830. Coercion of employees prohibited — Lay-off priorities.

(1) It shall be unlawful to coerce certified and equivalent employees who may be or who are subject to lay-off to resign or retire in lieu of lay-off. Dismissals shall comply with applicable statutes and lay-offs shall not be utilized as a method of dismissal.

(2) In the same office, county, and job classification, temporary, emergency, limited status, and probationary employees shall be laid-off before permanent full-time or permanent part-time employees with continuing status. The Office of Career and Technical Education shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.

(3) If two (2) or more employees subject to lay-off in a lay-off plan submitted to the commissioner of education have the same qualifications and similar performance evaluations, the employee with the lesser seniority shall be laid-off first.

(4) An employee who is laid-off shall be placed on a reemployment list for the class of position from which laid-off and for any class for which such employee is qualified.

(5) For a period of three (3) years, laid-off employees shall be considered before any applicant from outside

the Office of Career and Technical Education, except another laid-off employee with more seniority who is already on the list.

(6) For a period of three (3) years, a laid-off employee shall not be removed from the list unless:

(a) The laid-off employee notifies the office in writing that he or she no longer wishes to be considered for a position on the list;

(b) Two (2) written offers of appointment are declined, the offers to be for a position of the same classification and salary, and located in the same county or contiguous counties, as the position from which laid-off;

(c) Two (2) written offers to schedule an interview are made and the laid-off employee fails to respond to a certified letter requesting the laid-off employee to schedule an interview within ten (10) working days;

(d) The laid-off employee fails to report for an interview after notification in writing at least ten (10) calendar days prior to the date of the interview;

(e) The laid-off employee cannot be located by postal authorities at the last address provided; or

(f) The laid-off employee has willfully violated the provisions of KRS 156.800 to 156.860.

(7) When a laid-off employee has accepted a bona fide offer of appointment to any position, effective on a specified date, the employee's name may be removed from the list for all classes for which the maximum salary is the same as or less than that of the class of appointment.

(8) When a laid-off employee is removed from the reemployment list, the employee shall be notified in writing and shall be notified of the right to appeal to the board under provisions of KRS 156.820.

History.

Enact. Acts 1990, ch. 470, § 14, effective July 1, 1990; 1994, ch. 363, § 5, effective July 15, 1994; 1994, ch. 469, § 16, effective July 15, 1994; 2000, ch. 526, § 24, effective July 14, 2000; 2006, ch. 211, § 31, effective July 12, 2006; repealed, reenact. and amend., Acts 2013, ch. 59, § 18, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.080.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Employee actions, 780 KAR 3:100.

156.832. Procedures for lay-offs.

(1) A lay-off of an employee with continuing status in the Office of Career and Technical Education due to the abolition of a position, lack of funds, or economic or employment trends resulting in a lack of work or a material change in duties or organization shall comply with the provisions of this section.

(2) Prior to the notification of lay-off and prior to the lay-off of an employee, the Department of Education shall prepare a lay-off plan. The plan shall contain the name of the employee and the reasons, in detail, for the lay-off. Upon approval of the plan by the appointing authority or designee, the employee shall be notified of the pending lay-off, and of:

(a) The reason for the lay-off;

(b) The procedures established by the provisions of KRS 156.830 and this section for the lay-off of employees; and

(c) The rights granted employees subject to lay-off and to laid-off employees.

(3)(a) An employee subject to lay-off shall be considered for a vacant position within the office of the same pay grade, level of duties, and responsibilities for which the employee is qualified.

(b) If a vacancy does not exist, the employee shall be considered for any vacant position within his office for which qualifications are held.

(4) If no position is available to an employee subject to lay-off under the procedure established by subsection (3) of this section, the employee shall be notified of the layoff in writing at least thirty (30) days prior to implementation of the lay-off.

History.

Enact. Acts 1990, ch. 470, § 15, effective July 1, 1990; 1994, ch. 469, § 17, effective July 15, 1994; 2000, ch. 526, § 25, effective August 15, 2000; 2006, ch. 211, § 32, effective July 12, 2006; repealed, reenact. and amend., Acts 2013, ch. 59, § 19, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as KRS 151B.085.

NOTES TO DECISIONS

Analysis

1. Notice.
2. Show Cause.

1. Notice.

Where continuing status employee received a notice detailing the reason for his layoff and informing him of his rights as a continuing status employee, the notice was sufficient. Koo v. Commonwealth Dep't for Adult & Technical Educ., 919 S.W.2d 531, 1995 Ky. App. LEXIS 223 (Ky. Ct. App. 1995).

2. Show Cause.

It was not necessary that Department of Adult and Technical Education show cause to continuing status employee laid off following the abolishment of his position as auxiliary services specialist. Koo v. Commonwealth Dep't for Adult & Technical Educ., 919 S.W.2d 531, 1995 Ky. App. LEXIS 223 (Ky. Ct. App. 1995).

District Court properly dismissed a former public employee's federal and state due process claims because, although the employee had a right to insist that her former employer follow the procedures set forth in KRS 151B.085, the statute contained no "cause" requirement where a continuing employee was laid off because her position was abolished. Thus, the employee had no protectible property interest in her continued employment. Gragg v. Somerset Tech. College, 373 F.3d 763, 2004 FED App. 0190P, 2004 U.S. App. LEXIS 12229 (6th Cir. Ky. 2004).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeals and hearings, 780 KAR 3:120.
Employee actions, 780 KAR 6:080.

156.834. Appeal to board of lay-off by continuing status employee.

(1) A continuing status employee may appeal his lay-off on the grounds that the procedures in KRS 156.832 were not followed.

(2) An appeal filed by a continuing status employee shall be filed with the board within thirty (30) days of the effective date of the lay-off. The board shall hear any appeal filed by a continuing status employee within sixty (60) days of the filing date, and it shall render a final order within ninety (90) days of the filing date.

History.
Enact. Acts 1994, ch. 475, § 4, effective July 15, 1994; repealed, reenact. and amend., Acts 2013, ch. 59, § 20, effective June 25, 2013.

Compiler's Notes.
This section was formerly compiled as 151B.086.

156.836. Appeal of board's final order relating to lay-off of continuing status employee.

(1) A final order of the board either upholding or invalidating the lay-off of a continuing status employee may be appealed either by the employee or by the appointing authority.

(2) The party aggrieved may appeal that order by filing a petition with the clerk of the Franklin Circuit Court in accordance with KRS Chapter 13B.

History.
Enact. Acts 1994, ch. 475, § 5, effective July 15, 1994; 1996, ch. 318, § 44, effective July 15, 1996; repealed and reenact., Acts 2013, ch. 59, § 21, effective June 25, 2013.

Compiler's Notes.
This section was formerly compiled as 151B.087.

156.838. Prohibited activities.

(1) No certified or equivalent employee shall be appointed or promoted to, or demoted or dismissed from, any position or in any way favored or discriminated against with respect to employment because of political or religious opinions or affiliations, ethnic origin, sex, disability, or age.

(2) No person shall use or promise to use, directly or indirectly, any official authority to influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position requiring certification or equivalent, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of a person.

(3) No certified or equivalent employee nor the commissioner shall directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any certified or equivalent employee.

(4) No certified or equivalent employee shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise the right as a citizen privately to express an opinion and to cast a vote. Certified or equivalent employees may be candidates for and occupy a town or school district office if the office is one for which no compensation, other than a per diem payment, is provided and the election is on a nonpartisan basis.

History.
Enact. Acts 1990, ch. 470, § 16, effective July 1, 1990; 1994, ch. 405, § 19, effective July 15, 1994; 1994, ch. 469, § 18, effective July 15, 1994; repealed and reenact., Acts 2013, ch. 59, § 22, effective June 25, 2013.

Compiler's Notes.
This section was formerly compiled as 151B.090.

156.840. Kentucky Technical Education Personnel Board.

(1) The Kentucky Technical Education Personnel Board is hereby established to conduct personnel appeals from certified and equivalent employees in the Office of Career and Technical Education under KRS 156.800 to 156.860. Appeals shall be conducted in accordance with the provisions established in KRS Chapter 13B. The board shall be attached to the Department of Education for administrative purposes.

(2) The Kentucky Technical Education Personnel Board shall be composed of five (5) voting members, three (3) of whom shall be selected from employees within the Department of Education, except no member shall be an employee within the Office of Career and Technical Education. The remaining two (2) members shall be teachers employed by the Office of Career and Technical Education's Area Technology Centers. The election of the teacher representatives may be conducted by written ballot, Internet balloting, intranet balloting, or electronic mail. The teacher candidates may be present when the balloting is tallied. All votes cast shall be tallied by an independent entity.

(a) The Governor shall appoint the two (2) members elected by the teachers employed by the Office of Career and Technical Education's Area Technology Centers and the three (3) members selected from employees within the Department of Education. All members shall be appointed by the Governor to four (4) year terms, and each term shall end on June 30 of the fourth year.

(b) Terms of new members or reappointed members shall begin on July 1 of the year beginning their term. If a vacancy occurs during a term, the Governor shall appoint a replacement to serve the remainder of the unexpired term within thirty (30) days of the vacancy. The Governor shall select a replacement from the group where the vacancy occurred. The manner of selection for the replacement shall be the same as the manner of the original selection.

(c) The members shall possess an understanding of the personnel system established in KRS 156.800 to 156.860.

(d) A chair shall be elected annually by members of the board.

(3) The board shall meet as necessary to comply with time frames for conducting personnel appeals under KRS Chapter 13B and KRS 156.800 to 156.860, and at other times as deemed necessary by the chair of the board. For meetings of the board, a majority of the

voting members shall be present to constitute a quorum for the transaction of business.

(4) The Office of Career and Technical Education shall provide administrative, budgetary and support staff services for the board.

(5) Pursuant to KRS 156.010, employees of the Department of Education who serve as members of the board shall not receive additional salary for serving as members on the board. However, upon approval of the commissioner of education, board members shall be entitled to reimbursement of actual and necessary expenses incurred while performing their duties as an active member of the board.

(6) During personnel appeals conducted by the board, both parties shall be given the opportunity to have a representative present at each step of the process.

History.

Enact. Acts 2003, ch. 29, § 1, effective June 24, 2003; 2006, ch. 211, § 33, effective July 12, 2006; 2009, ch. 11, § 17, effective June 25, 2009; repealed, reenact. and amend., Acts 2013, ch. 59, § 23, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as 151B.097.

156.842. Office of Career and Technical Education to manage state-operated secondary area vocational education and technology centers.

The Office of Career and Technical Education shall have the management and control of state-operated secondary area vocational education and technology centers, and all programs and services operated in these centers.

History.

Enact. Acts 2003, ch. 29, § 2, effective June 24, 2003; 2006, ch. 211, § 34, effective July 12, 2006; repealed and reenact., Acts 2013, ch. 59, § 24, effective June 25, 2013.

Compiler's Notes.

This section was formerly compiled as 151B.112.

156.844. Local board's petition to commissioner of education seeking power to manage and control state-operated secondary vocational education and technology center — Issues related to transfer of employees.

(1)(a) A local board of education may submit a request to the commissioner of education to assume authority for the management and control of a state-operated secondary vocational education and technology center. Upon agreement between the commissioner of education and the local board of education for the transfer of a state-operated secondary vocational education and technology center, all personnel, equipment, and supplies shall be transferred to the local board of education and shall be utilized for the operation of the locally operated vocational center.

(b) Beginning March 18, 2021, if a state-operated secondary vocational education and technology center serves more than one (1) school district, any agreement under paragraph (a) of this subsection shall require the local board to continue to serve the additional school district or districts through a memorandum of understanding. The executed memorandum of understanding shall be submitted to the commissioner of education at the same time as the request to assume authority for management and control of the state-operated secondary vocational education and technology center.

(2) A certified employee who is affected by a transfer to the local board of education under subsection (1) of this section shall be granted a one (1) year limited contract by the local board of education, except as provided in subsection (5) of this section, and shall be employed on the local district salary schedule. A classified employee shall be guaranteed employment equal to his or her present status for at least one (1) complete school term, except as provided in subsection (5) of this section. A transferred employee shall be provided the benefits of comparable employees in the district and shall be subject to all rules and policies of the local board of education, including but not limited to disciplinary and personnel actions that are the same as those that may be exercised by the district for any other employee in the district during a contract period.

(3) A transferred employee who has accrued annual leave and compensatory time shall be paid a lump sum for the accrued time at the effective date of the transfer by the Department of Education. The employee shall be granted credit for accrued sick leave up to the maximum allowed for transfers of teachers between school districts. Sick leave credit shall be awarded to a classified employee based on the local board policy. Any excess sick leave that a classified or certified employee has earned that the district will not accept in the transfer may be requested to be held in escrow by the appropriate state personnel system under KRS Chapter 18A or KRS 156.800 to 156.860, and the sick leave balance shall be restored to the employee if the employee returns to a state government position.

(4) An employee who is to be transferred to a local board of education under provisions of this section but who chooses not to accept a one (1) year limited contract with the board shall be separated from the state system and the employee's position shall be abolished. The employee may apply for any state position for which the employee is qualified but shall not be granted priority over other applicants for a position because the employee's position was abolished due to a transfer of the vocational education and technology center. An employee who refuses a contract with the local board shall be provided a lump-sum payment for accrued annual leave and compensatory time, and the employee's sick leave balance shall be placed in escrow by the appropriate state personnel system under KRS Chapter 18A or KRS 156.800 to 156.860. The sick leave balance shall be restored to the employee if the employee returns to a state government position.

(5) A certified employee who has earned continuing status in the state certified personnel system under KRS 156.800 to 156.860 shall be granted a continuing service contract as defined in KRS 161.720 upon transfer to a local board of education under subsection (1) of this section. A principal who has earned continuing status prior to transfer shall be granted a continuing

service contract, but the provisions relating to demotion of the principal under KRS 161.765 shall apply. A classified employee who has four (4) years of continuous active service in the state certified personnel system under KRS 156.800 to 156.860 at the time of transfer shall be offered an employment contract at the time of transfer that shall be considered a continuing service contract as defined in KRS 161.720 for a minimum of five (5) complete school terms.

(6) An employee of the Office of Career and Technical Education who is transferred to the local school district and who occupies a position covered by the Kentucky Teachers' Retirement System shall remain in the Kentucky Teachers' Retirement System.

(7) After the effective date of the transfer, the local board of education shall receive funding for the support of the local board of education center operations pursuant to KRS 157.069. In addition, the local board of education shall receive one hundred percent (100%) of the Support Education Excellence in Kentucky program funds from the Department of Education that are generated from students enrolled in the center.

History.

Enact. Acts 2013, ch. 59, § 4, effective June 25, 2013; 2021 ch. 40, § 2, effective March 18, 2021.

156.846. Local board's power to relinquish management and control of vocational education center — Issues related to transfer of employees.

(1) Notwithstanding KRS 156.808, 156.812, 156.814, 156.816, 156.820, and 156.826, upon approval of the Kentucky Board of Education, a local board of education that has operated an area vocational education and technical center for at least five (5) years may relinquish authority for the management and control of the area vocational education and technical center to the Kentucky Department of Education. The local board of education shall transfer all personnel, equipment, and supplies to the Office of Career and Technical Education within the Kentucky Department of Education.

(2) A certified employee who is affected by a transfer to the Office of Career and Technical Education under subsection (1) of this section shall be granted the same status by the Office of Career and Technical Education as he or she had at the close of employment with the local board of education and shall be employed on the state salary schedule. A classified employee shall be guaranteed employment equal to his or her status in the local school district for at least one (1) complete school term. A transferred employee shall be provided the benefits of comparable employees in the Office of Career and Technical Education and shall be subject to all rules and policies of the Office of Career and Technical Education, including but not limited to disciplinary and personnel actions that are the same as those that may be exercised by the office for any other employee in the Commonwealth during a contract period.

(3) The employee shall be granted credit for accrued sick leave by the Office of Career and Technical Education up to the maximum allowed for transfers of teachers between school districts. The Office of Career and Technical Education shall award sick leave credit to a classified employee based on the sick leave accumulated in the local district. Any excess sick leave that a classified or certified employee earned that had been held in escrow by the appropriate state personnel system under KRS Chapter 18A or KRS 156.800 to 156.860 when the transfer was made to the local board of education shall be restored to the employee.

(4) An employee who is to be transferred to the Office of Career and Technical Education under provisions of this section but who chooses not to accept a contract with the Commonwealth shall be separated from the state system and the employee's position shall be abolished. The employee may apply for any state position for which the employee is qualified but shall not be granted priority over other applicants for a position because the employee's position was abolished due to a transfer of the area vocational education and technical center. An employee who refuses a contract with the Office of Career and Technical Education shall have the employee's sick leave balance placed in escrow by the state personnel system under KRS Chapter 18A or KRS 156.800 to 156.860. The sick leave balance shall be restored to the employee if the employee returns to a state government position.

(5) A certified employee, other than a principal, who has earned continuing status in the local school district under KRS 161.740(1), shall be granted continuing status under the provisions of KRS 156.820. A principal may be granted continuing status as a teacher, but the provisions relating to demotion of the principal under KRS 156.820 shall apply.

(6) An employee of a local board of education who is transferred to the Office of the Career and Technical Education and who occupies a position covered by the Kentucky Teachers' Retirement System shall remain in the Kentucky Teachers' Retirement System.

(7) General fund moneys previously appropriated to a local board of education for support of the area vocational education and technical center shall be appropriated to the Department of Education.

History.

Enact. Acts 2013, ch. 59, § 5, effective June 25, 2013.

156.848. Agreements for training workers.

(1) The executive director of the Office of Adult Education within the Department of Workforce Development in the Education and Labor Cabinet and the commissioner of education may enter into agreements to train workers for new manufacturing jobs in new or expanding industries characterized by one (1) or more of the following criteria: a high average skill, a high average wage, rapid national growth, or jobs feasible and desirable for location in rural regions. Such agreements shall not be subject to the requirements of KRS 45A.045 and KRS 45A.690 to 45A.725 when awarded on the basis of a detailed training plan approved by the appropriate agency head. Reimbursement to the industry shall be made upon submission of documents validating actual training expenditure not to exceed the amount approved by the training plan.

(2) The executive director and the commissioner of education may approve authorization for his or her agency to enter into agreements with industries whereby the industry may be reimbursed directly for the following services:

(a) The cost of instructors' salaries when the instructor is an employee of the industry to be served;

(b) Cost of only those supplies, materials, and equipment used exclusively in the training program; and

(c) Cost of leasing a training facility should a vocational education school or the industrial plant not be available.

History.

Enact. Acts 1980, ch. 31, § 1, effective March 12, 1980; 1984, ch. 111, § 90, effective July 13, 1984; 1988, ch. 361, § 11, effective July 15, 1988; repealed, reenacted, and amend., Acts 1990, ch. 470, § 22, effective July 1, 1990; repealed, reenact. and amend., Acts 2013, ch. 59, § 25, effective June 25, 2013; 2019 ch. 146, § 26, effective June 27, 2019; 2022 ch. 236, § 65, effective July 1, 2022.

Compiler's Notes.

This section (Enact. Acts 1980, ch. 31, § 1, effective March 12, 1980; 1984, ch. 111, § 90, effective July 13, 1984; 1988, ch. 361, § 11, effective July 15, 1988) was formerly compiled as KRS 156.253 and was repealed, reenacted, and amended as this section by Acts 1990, ch. 470, § 22, effective July 1, 1990.

This section was formerly compiled as 151B.120.

Legislative Research Commission Notes.

(7/13/90). The repeal, with reenactment and amendment, of this section prevailed over its amendment by two other Acts of the 1990 Regular Session pursuant to KRS 446.260. The Reviser has changed internal numbering references pursuant to KRS 7.136(1).

156.850. Federal acts relating to vocational education accepted.

This state accepts and agrees to comply with all the provisions of the Acts of Congress of the United States approved February 23, 1917, and all subsequent acts relating to vocational education, the purpose of which is to provide training, develop skills, abilities, understandings, attitudes, work habits, and appreciation, and to impart knowledge and information needed by workers to enter into and make progress in their chosen vocations. These training opportunities shall be provided for the young people who are enrolled in the regular day schools and, also, for out-of-school youth and adults, both employed and unemployed, who are in need of and can profit by vocational training.

History.

4526-1; amend. Acts 1956, ch. 165, § 2; repealed, reenact. and amend, Acts 1990, ch. 470, § 28, effective July 1, 1990; repealed and reenact., Acts 2013, ch. 59, § 26, effective June 25, 2013.

Compiler's Notes.

This section (4526-1; amend. Acts 1956, ch. 165, § 2) was formerly compiled as KRS 163.020 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 28, effective July 1, 1990.

This section was formerly compiled as 151B.145.

Legislative Research Commission Notes.

(7/13/90). This section has been treated by two 1990 Acts; its repeal and reenactment in Acts Ch. 470 renumbered the section into KRS Ch. 151B.

OPINIONS OF ATTORNEY GENERAL.

Where a student is enrolled in a high school and taking classes there and is also receiving part of his instruction each day at a vocational school, his district would be entitled to full ADA credit for his attendance. OAG 73-639.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Administration of area technology centers, 780 KAR 2:010.

General standards, 780 KAR 4:010.

Kentucky State Plan for Career and Technical Education, 780 KAR 1:010.

156.852. Kentucky Board of Education authorized to carry out vocational education programs.

The Kentucky Board of Education is vested with the authority to carry out the purposes of the program of vocational education and the provisions of the Acts of Congress accepted by KRS 156.850, and is given all the necessary power and authority in promulgating administrative regulations and administering vocational education and carrying out the provisions of the acts relating thereto.

History.

4526-2; amend. Acts 1956, ch. 165, § 3; 1978, ch. 155, § 83, effective June 17, 1978; repealed, reenact., and amend., Acts 1990, ch. 470, § 29, effective July 1, 1990; repealed and reenact., Acts 2013, ch. 59, § 27, effective June 25, 2013.

Compiler's Notes.

This section (4526-2; amend. Acts 1956, ch. 165, § 3; 1978, ch. 155, § 83, effective June 17, 1978) was formerly compiled as KRS 163.030 and was repealed, reenacted, and amended as this section by Acts 1990, ch. 470, § 29, effective July 1, 1990.

This section was formerly compiled as 151B.150.

Legislative Research Commission Notes.

(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Area technology center facility standards, 780 KAR 7:020.

Discipline of students, 780 KAR 2:060.

Equipment insurance, 780 KAR 7:070.

Equipment inventory and insurance., 780 KAR 7:060.

Facility maintenance, 780 KAR 7:040.

General standards, 780 KAR 4:010.

Kentucky State Plan for Career and Technical Education, 780 KAR 1:010.Live works projects, 780 KAR 2:040.

State Board of Education may acquire buildings for vocational education activities, KRS 156.070.

156.854. State Treasurer custodian of funds.

The State Treasurer is custodian of all money received by the state from the federal government under the federal acts accepted by KRS 156.850, and the

State Treasurer shall collect the money and pay it out upon the order of the commissioner of education.

History.
526-7; amend. Acts 1978, ch. 155, § 83, effective June 17, 1978; repealed, reenact. and amend. Acts 1990, ch. 470, § 30, effective July 1, 1990; repealed, reenact. and amend. Acts 2013, ch. 59, § 28, effective June 25, 2013.

Compiler's Notes.
This section (4526-7; amend. Acts 1978, ch. 155, § 83, effective June 17, 1978) was formerly compiled as KRS 163.070 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 30, effective July 1, 1990.
This section was formerly compiled as KRS 151B.155.

Legislative Research Commission Notes.
(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

156.856. Tuition and fees in secondary area vocational education and technology centers.

Tuition and fees for secondary pupils enrolled in the state secondary area vocational education and technology centers operated by the Office of Career and Technical Education shall be free to all residents of Kentucky. The Kentucky Board of Education shall fix the rate of tuition and fees for adults who are enrolled in secondary programs in the state-operated area vocational education and technology centers under its control. Adult students enrolled in full-time postsecondary programs under the jurisdiction of the Kentucky Community and Technical College System that are physically located in an area vocational education or technology center shall pay the tuition as established by the Council on Postsecondary Education and fees as established by the board of regents for the Kentucky Community and Technical College System.

History.
Enact. Acts 1976, ch. 327, § 5; 1978, ch. 155, § 83, effective June 1, 1978; repealed, reenact. and amend. Acts 1990, ch. 470, § 32, effective July 1, 1990; repealed, reenact. and amend. Acts 2013, ch. 59, § 29, effective June 25, 2013.

Compiler's Notes.
This section (Enact. Acts 1976, ch. 327, § 5; 1978, ch. 155, § 83, effective June 1, 1978) was formerly compiled as KRS 163.087 and was repealed, reenacted and amended by Acts 1990, ch. 470, § 32, effective July 1, 1990.
This section was formerly compiled as KRS 151B.165.

Legislative Research Commission Notes.
(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

156.858. Liability insurance for motor vehicles owned or operated by office in vocational schools and centers.

The commissioner of education may provide liability insurance for licensed and nonlicensed motor vehicles owned or operated by the Office of Career and Technical Education in vocational schools and centers. If the transportation of members of the student bodies is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence in such amounts as the commissioner of education designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any student or other person, or death or injury of any student or other person.

History.
Enact. Acts 1986, ch. 416, § 1, effective April 10, 1986; repealed, reenact. and amend. Acts 1990, ch. 470, § 33, effective July 1, 1990; repealed, reenact. and amend. Acts 2013, ch. 59, § 30, effective June 25, 2013.

Compiler's Notes.
This section (Enact. Acts 1986, ch. 416, § 1, effective April 10, 1986) was formerly compiled as KRS 163.088 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 33, effective July 1, 1990.
This section was formerly compiled as KRS 151B.170.

Legislative Research Commission Notes.
(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

156.860. Medical and accident insurance for students.

(1) The Kentucky Board of Education is authorized to provide medical and accident insurance for students enrolled in the state secondary area technology centers and area vocational education centers. The Department of Education may enter into a contract or contracts with one (1) or more sureties or insurance companies or their agents to provide appropriate medical and accident insurance coverage and to provide group coverage to all students enrolled in state-operated schools under its jurisdiction. The appropriate group coverage shall be issued by one (1) or more sureties or insurance companies authorized to transact business in this state, and such coverage shall be approved by the commissioner of insurance.

(2) The Kentucky Board of Education shall promulgate administrative regulations to implement the medical and accident insurance program. The Kentucky Board of Education may fix the rate of fees for all secondary students, the provisions of KRS 156.856 with respect to fees for secondary students notwithstanding, as he or she deems necessary to meet the expense in whole or in part for appropriate student medical and accident insurance.

(3) The limits of liability and other appropriate provisions for student medical and accident insurance authorized by this section shall be set by the Kentucky Board of Education.

History.
Enact. Acts 1988, ch. 289, § 1, effective July 15, 1988; repealed, reenact, and amend., Acts 1990, ch. 470, § 34, effective July 1, 1990; repealed, reenact. and amend., Acts 2013, ch. 59, § 31, effective June 25, 2013.

Compiler's Notes.
This section (Enact. Acts 1988, ch. 289, § 1, effective July 15, 1988) was formerly compiled as KRS 163.089 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 34, effective July 1, 1990.
This section was formerly compiled as KRS 151B.175

Legislative Research Commission Notes.
(7/13/90). The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

PENALTIES

156.990. Penalties.

(1) Any witness who fails, without legal excuse, to attend or to testify, when required by the chief state school officer under these provisions, shall be fined not more than twenty-five dollars ($25) for each offense.

(2) Any person who violates any of the provisions of KRS 156.395 to 156.476 shall be fined not more than five hundred dollars ($500) or imprisoned not more than three (3) months, or both.

(3) A violation of subsection (1) of KRS 156.483 shall cause the Department of Education to be fined not less than five hundred dollars ($500) or more than one thousand dollars ($1,000).

(4) Any person who operates a non-school bus passenger vehicle to transport a student or students within the Commonwealth without holding a current valid license as required pursuant to KRS 156.153(3)(c) shall be guilty of a Class D felony.

History.
Enact. Acts 1952, ch. 184, § 16; 1988, ch. 345, § 6, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 168, effective July 13, 1990; 2024 ch. 35, § 3, effective April 4, 2024; 2025 ch. 113, § 26, effective July 1, 2026.

Compiler's Notes.
Former KRS 156.990 (4384-15,4421a-46) was repealed by Acts 1952, ch. 184, § 17.

CHAPTER 157

STATE SUPPORT OF EDUCATION

General Provisions.

Section
157.010. Elements of the school fund.
157.014. [Repealed.]
157.016. [Repealed.]
157.018. [Repealed.]
157.020. [Repealed.]
157.022. [Repealed.]
157.024. [Repealed.]
157.030. Net revenue to be distributed — Incidental expenses not to be deducted.
157.040. [Repealed.]
157.050. [Repealed.]
157.051. [Repealed.]
157.052. [Repealed.]
157.053. [Repealed.]
157.054. [Repealed.]
157.055. [Repealed.]
157.060. Reports of funds received and spent by school districts.
157.061. Annual audits of school districts. [Repealed].
157.063. Adaptive Kindergarten Readiness Pilot Project — Selection of provider — Duties — Report.
157.065. School breakfast program — Annual report by schools not offering.
157.067. Kentucky successful schools trust fund.
157.069. Definitions — Distribution of general funds for technology centers and converted career and technical education centers — Career and technical education innovation and support fund — Distribution of funds to state-operated area technology centers and locally operated career and technical education — Oversight by the Office of Career and Technical Education — Administrative regulations — Publication of information on Kentucky Department of Education website.
157.070. [Repealed.]
157.072. Career and technical education accessibility fund.
157.075. Differentiated compensation plans — Professional compensation fund — Department of Education recommendations on teacher compensation.
157.077. Support for summer learning programs — Segregation and use of funds. [Repealed].
157.080. [Repealed.]
157.090. [Repealed.]

Textbooks.

157.100. Funds for textbooks, programs, and instructional regulation for free distribution.
157.110. Determination of grades and subjects to be provided with textbooks — Rental of textbooks — Free textbooks for certain students.
157.120. [Repealed.]
157.130. [Repealed.]
157.140. Responsibility for books not returned — Enforcement.
157.145. Rebinding of textbooks.
157.150. Textbooks property of state.
157.160. Sale of obsolete textbooks.
157.170. Administrative regulations for sale of books and materials for private use.
157.180. School furniture or supplies not to be sold by teachers or employees distributing books.
157.190. Funds for textbooks, programs, and instructional materials for children in specified facilities.

Special Educational Programs.

157.195. Legislative findings on students' right to quality education.
157.196. Individual education plan for exceptional children — Administrative regulations.
157.197. Kentucky Special Education Mentor Program — Criteria.
157.198. Dyslexia trust fund.
157.200. Definitions for KRS 157.200 to 157.290.
157.210. [Repealed.]
157.220. Functions of Department of Education in special education programs — Maximum class size and caseload.
157.221. [Repealed.]
157.222. [Repealed.]

Section
157.224. Statewide plan for exceptional education programs — Annual applications and reports — Improvement plan — Special education trust fund — Administrative hearings.
157.226. Preschool program for disabled children. [Repealed.]
157.230. Special educational programs of school districts.
157.240. [Repealed.]
157.250. Certification requirement for teachers — Exception.
157.260. Annual reports of disabled children by school districts.
157.270. Instruction in child's home or hospital. [Renumbered].
157.280. Special education program furnished by district other than that of child's residence, or privately — Sharing costs — Transportation — Transportation to and from state schools for the deaf and blind.
157.285. Related services provided by local boards of education.
157.290. Tentative preapproval of plans for special education programs.
157.295. [Repealed.]
157.300. [Repealed.]
157.305. [Repealed.]

Fund to Support Education Excellence in Kentucky.

157.310. Declaration of legislative intent.
157.312. [Repealed.]
157.315. [Repealed.]
157.317. [Repealed.]
157.3175. Preschool education program — Grant allocation — Eligibility for free preschool education — Program components — Certification of fully utilized program.
157.318. Network of regional training centers for preschool and early childhood education established.
157.320. Definitions for KRS 157.310 to 157.440.
157.330. Fund to support education excellence in Kentucky.
157.340. [Repealed.]
157.350. Eligibility of districts for participation in fund to support education excellence in Kentucky.
157.360. Base funding level — Adjustment — Enforcement of maximum class sizes — Allotment of program funds — Recalculation of allocated funds — Lengthening of school days.
157.362. Portion of assessed value not included in calculation of local effort.
157.370. Allotment of transportation units.
157.380. [Repealed.]
157.390. Determination of teachers' salaries and other required public school funding components — Additional compensation expenses.
157.395. Salary supplement for national board certified teachers.
157.397. Salary supplement for speech-language pathologists or audiologists — Supplement to be considered in calculation for retirement.
157.400. [Repealed.]
157.410. Payments of funds to districts.
157.420. Restrictions governing expenditure of funds from public school fund — Use of historic settlement school facilities — Use of capital outlay funds after mid-year adjustment — Evaluation of school buildings.
157.430. Percentage reduction in allotments in case of insufficient appropriation by General Assembly.
157.440. Levy of an equivalent tax rate — Participation in Facilities Support Program — District may exceed levy authorized by KRS 160.470 if approved by voters — Compensating tax rate.
Section
157.442. Adjustment in district allotment from fund to support education excellence in Kentucky relating to loss of state funds resulting from property assessment amendment.

Efficient School Design.

157.450. Intent of KRS 157.450 and 157.455.
157.455. Definitions — Legislative findings — Efficient school design — Development of guidelines — Assistance to school districts.

Experimental Programs.

157.510. [Repealed.]
157.520. [Repealed.]
157.530. [Repealed.]
157.540. [Repealed.]

Power Equalization Program Fund.

157.545. [Repealed.]
157.550. [Repealed.]
157.555. [Repealed.]
157.560. [Repealed.]
157.564. [Repealed.]
157.565. [Repealed.]
157.570. [Repealed.]
157.575. [Repealed.]
157.580. [Repealed.]

Ride to the Center for the Arts Program Fund.

157.605. Establishment of fund.
157.606. Administration — Grants — Authority to promulgate administrative regulations.

Intellectually Gifted or Talented Children Program Fund.

157.610. [Repealed.]

School Facilities Construction Commission.

157.611. School Facilities Construction Commission — Legislative intent.
157.615. Definitions for KRS 157.611 to 157.640.
157.617. Creation — Powers — Members — Duties.
157.618. Emergency and targeted investment fund — Purposes — Reimbursement requirement — Administrative regulations — Annual report.
157.620. School district participation requirements.
157.621. Additional tax levies for debt service, new facilities, and major renovations in school districts — Criteria — Equalization funding.
157.622. Assistance to school districts — Priority order of needs — Exception — Reallocation of funds — Disposition of bond savings and refinancing savings.
157.623. Funding urgent and critical construction needs — Proceeds of litigation or insurance to be used for reimbursement.
157.625. Issuance of bonds.
157.627. Requirements for issuance — Accounting procedure.
157.628. Reimbursement for bonds previously issued.
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157.710. [Renumbered.]
157.720. [Renumbered.]
157.730. [Renumbered.]
157.740. [Renumbered.]
157.750. [Renumbered.]

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157.800. [Repealed.]
157.805. [Repealed.]
157.810. [Repealed.]
157.815. [Repealed.]
157.820. [Repealed.]
157.825. [Repealed.]
157.830. [Repealed.]
157.835. [Repealed.]
157.840. [Repealed.]
157.845. [Repealed.]
157.850. [Repealed.]
157.855. [Repealed.]
157.860. [Repealed.]
157.865. [Repealed.]
157.870. [Repealed.]
157.875. [Repealed.]
157.880. [Repealed.]
157.885. [Repealed.]
157.890. [Repealed.]
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Environmental Education.

157.900. Statement of legislative purpose.
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157.990. Penalties.

GENERAL PROVISIONS

157.010. Elements of the school fund.

The school fund shall consist of the fund dedicated by the Constitution and laws of this Commonwealth for the purpose of sustaining a system of common schools therein. The annual resources of the fund shall consist of:

(1) The interest on the bond of the Commonwealth for one million three hundred twenty-seven thousand dollars ($1,327,000) at the rate of six percent (6%) per annum payable on the first day of January and July of each year.

(2) The interest on the proceeds of fifty-two thousand dollars ($52,000) formerly invested in Liberty Loan Bonds under authority of Chapter 6 of the Acts of 1920, now invested by the Kentucky Board of Education.

(3) The dividends from whatever remains of the original investment of seventy-three thousand five hundred dollars ($73,500) in the capital stock of the Bank of Kentucky.

(4) The interest on the bond of the Commonwealth for three hundred eighty-one thousand nine hundred eighty-six dollars and eight cents ($381,986.08) due the several counties and remaining a perpetual obligation against the Commonwealth for the benefit of the respective counties, at the rate of six percent (6%) per annum payable annually on the first day of July to the counties entitled to it and in the proportion to which they are entitled, to be used exclusively in aid of common schools.

(5) The interest at six percent (6%) per annum, payable on the first day of January and July each year, on six hundred six thousand six hundred forty-one dollars and three cents ($606,641.03) received from the United States under an act approved March 2, 1891, for which the Commonwealth has executed bond pursuant to Chapter 6 of the Acts of 1892.

(6) Such sums as are appropriated by the General Assembly in aid of the common schools.

History.

4370-1, 4370-2; Acts 1978, Ch. 155, § 82, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 376, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.

This section (4370-1, 4370-2; amend. Acts 1978, Ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 376, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Common Fund.
2. School Funds.
3. —Use.
4. —Payment.

1. Common Fund.

Common school fund is distinct from district school funds in that common school fund is distributed by the state to the various school districts on a per capita basis. Commonwealth ex rel. Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751, 1941 Ky. LEXIS 21 (Ky. 1941).

This section defines "state school funds" and is not an exclusive reference for definition of "school funds." Commonwealth ex rel. Commonwealth ex rel. Breckinridge v. Collins, 379 S.W.2d 436, 1964 Ky. LEXIS 237 (Ky. 1964).

2. School Funds.

3. —Use.

School fund must be used exclusively in aid of common schools, and an act appropriating a part of the school fund to purchase "Collins' History of Kentucky" is unconstitutional. Collins v. Henderson, 74 Ky. 74, 1874 Ky. LEXIS 14 (Ky. 1874) (decided under prior law).

School fund is to be used solely for educational purposes. Crabbe v. Board of Trustees, 132 Ky. 478, 116 S.W. 706, 1909 Ky. LEXIS 113 (Ky. 1909) (decided under prior law).

Funds appropriated by the Legislature out of general funds in aid of common schools become a part of the common school fund, and are subject to Ky. Const., § 186 (distribution and use of school funds). Board of Education v. Talbott, 261 Ky. 66, 86 S.W.2d 1059, 1935 Ky. LEXIS 592 (Ky. 1935).

4. —Payment.

Common school fund can be paid only to school districts and not to another department of state government or to a private institution. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).

In order for there to be a common school there must be a common school district. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008, 1951 Ky. LEXIS 1101 (Ky. 1951).

Cited in:

Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

OPINIONS OF ATTORNEY GENERAL.

Inasmuch as common school funds may only be paid to common school districts, a county school board may not expend public common school funds to transport students attending a nonpublic model school. OAG 76-261.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22, 1987 Ky. AG LEXIS 63.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Compulsory attendance, KRS ch. 159.

Conduct of schools; pre-school child care centers, KRS ch. 158.

Department of Education, KRS ch. 156.

Fund set apart for common schools, Ky. Const., §§ 184, 188.

General Assembly to provide for schools, Ky. Const., § 183.

Investment and distribution of school fund, Ky. Const., §§ 185, 186.

Race or color not to affect distribution of school fund, Ky. Const., § 187.

Sectarian schools, appropriation for forbidden, Ky. Const., § 189.

School districts, KRS ch. 160.

School employees; teachers retirement and tenure, KRS ch. 161.

School property and buildings, KRS ch. 162.

Vocational education and rehabilitation, KRS ch. 163.

Kentucky Law Journal.

Article: New Directions in School Funding and Governance: Moving from Politics to Evidence, 98 Ky. L.J. 653 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: Foreword: Rights, Remedies, and Rose, 98 Ky. L.J. 703 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: Judicial Humility: The Enduring Legacy of Rose v. Council for Better Education, 98 Ky. L.J. 717 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: Justiciability, Adequacy, Advocacy, and the "American Dream", 98 Ky. L.J. 739 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: The Evolving Role of the Courts in School Reform Twenty Years After Rose, 98 Ky. L.J. 789 (2009/2010).

157.014. Commission on Public Education. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1960, ch. 141, § 1, effective March 25, 1960) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.016. Executive director and staff. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1960, ch. 141, § 2, effective March 25, 1960) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.018. Operations until July 1, 1964. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 186, § 1) was repealed by Acts 1966, ch. 24, Part IV (5).

157.020. Purposes for which school fund may be used. [Repealed.]

Compiler's Notes.

This section (4370-2, 4370-3) was repealed by Acts 1954, ch. 214, § 16.

157.022. Legislative Research Commission to furnish services; charges. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 186, § 3) was repealed by Acts 1966, ch. 24, Part IV (5).

157.024. Legislator to be member. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 186, § 4) was repealed by Acts 1966, ch. 24, Part IV (5).

157.030. Net revenue to be distributed — Incidental expenses not to be deducted.

The net revenue of the common school fund accruing during each school year shall constitute the sum to be distributed. No fee, discount, check, or other incidental expense shall be paid out of the distributable share of the revenue apportioned to any school district.

History.

4370-3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 377, effective July 13, 1990.

Compiler's Notes.

This section (4370-3) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 377, effective July 13, 1990.

157.040. Distribution of fund on per capita basis. [Repealed.]

Compiler's Notes.

This section (4370-4, 4434-29) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.050. Method of distribution. [Repealed.]

Compiler's Notes.
This section (4370-6; amend. Acts 1942, ch. 123, §§ 1, 2) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.051. Definitions for KRS 157.052 to 157.055. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 17, § 1; 1946, ch. 131, § 1; 1949 (Ex. Sess.), ch. 6, § 1; 1950, ch. 122, § 1) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.052. School equalization fund administration and distribution, control of. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 17, § 2; 1944, ch. 113, § 1; 1946, ch. 131, § 2; 1949 (Ex. Sess.), ch. 6, § 2) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.053. Method of determining eligibility of districts to share in equalization fund; determination of allotments; minimum allotments; application of unallotted balance. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 17, § 3; 1944, ch. 113; 1946, ch. 131, § 3; 1948, ch. 16; 1949 (Ex. Sess.), ch. 6, § 3; 1950, ch. 122, § 2) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.054. Allotment and distribution of equalization fund. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 17, § 4; 1949 (Ex. Sess.), ch. 6, § 4) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.055. Rules governing administration and expenditure of equalization money by local boards; liability of local boards. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 17, § 5; 1949 (Ex. Sess.), ch. 6, § 5) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.060. Reports of funds received and spent by school districts.

The officials of each educational institution and each school district supported in whole or in part from taxation shall make a report to the Kentucky Board of Education or the Kentucky Technical Education Personnel Board established in KRS 156.840 at the close of each scholastic year, showing in detail all funds received from the state and from all other sources during the year, and a detailed statement of all expenditures for the year.

History.
4370-5; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 361, § 13, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 169, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2003, ch. 29, § 20, effective June 24, 2003; 2013, ch. 59, § 47, effective June 25, 2013.

157.061. Annual audits of school districts. [Repealed]

History.
Enact. Acts 1990, ch. 476, Pt. III, § 102, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; repealed by 2025 ch. 86, § 8, effective June 27, 2025.

157.063. Adaptive Kindergarten Readiness Pilot Project — Selection of provider — Duties — Report.

(1) The General Assembly hereby finds and declares that:

(a) During the first five (5) years of life, children experience rapid learning and development that have effects that endure their lifetimes;

(b) A key milestone in children's development is their transition into and readiness for kindergarten;

(c) High quality early childhood literacy programs can significantly improve a child's readiness for kindergarten and future academic success;

(d) Children in Kentucky would benefit from access to varied and effective early literacy services; and

(e) Developing new and innovative services for the children of the Commonwealth can expand access to early literacy services and improve kindergarten readiness.

(2) As used in this section:

(a) "Child-care center" has the same meaning as in KRS 199.894;

(b) "Contractor" means the educational technology provider selected pursuant to subsection (4) of this section;

(c) "Department" means the Kentucky Department of Education; and

(d) "Eligible child" means a child who is four (4) or five (5) years old and is not currently enrolled in kindergarten in a public school district, but is eligible to enroll during the following school year.

(3) The Adaptive Kindergarten Readiness Pilot Project is hereby established to provide preschool children with access to educational technology programs that use family engagement to improve kindergarten readiness. The pilot project shall:

(a) During the 2024-2025 and 2025-2026 school years, provide a cohort of eligible children during each school year with access to an educational technology program that:

1. Utilizes family engagement to deliver age-appropriate instruction in reading that may be implemented in homes or in child-care centers;

2. Offers optional instruction in mathematics and science;

3. Aligns with relevant state standards for preschool under KRS 157.3175;

4. Assists with the objectives of the Head Start Act, 42 U.S.C. sec. 9801 et seq.;

5. Assists children with disabilities in preparing for kindergarten; and

6. Meets the benchmarks for evidence-based programs established by the United States Department of Education;

(b) Operate under the oversight of the Kentucky Department of Education;

(c) Solicit families to encourage their eligible child's participation in the pilot project through public information campaigns, outreach programs, and referrals from other educational entities that are partially focused on communities and areas of the state encountering persistent poverty;

(d) Reserve forty percent (40%) of a cohort's membership for eligible students with a household income of no more than two hundred percent (200%) of the federal poverty level. However, if a seat reserved under this paragraph remains vacant for more than two (2) months, the seat in that cohort may be given to any eligible child. The pilot project shall enroll eligible children as students in both the reserved and unreserved membership in the order the completed applications were submitted. The maximum enrollment for each cohort shall be established by the department and provider based on the funds available;

(e) Use:

1. A multisensory reading tutoring program; and

2. A validated adaptive reading test that does not require the presence of trained adults to administer and that has been demonstrated as an accurate indicator of a child's reading readiness; and

(f) As needed and at no cost for the student's family, for the duration of the student's participation in the pilot project, provide a student with a household income of no more than four hundred percent (400%) of the federal poverty level with:

1. A computer or tablet; and

2. Access to internet service.

(4) The Kentucky Department of Education shall select a provider to implement the pilot project under the department's oversight. In evaluating provider applicants, the department shall require an applicant to have:

(a) At least three (3) years of experience in implementing similar services;

(b) Conducted a randomized controlled trial or other external evaluation that support the efficacy of the educational technology program the provider implements; and

(c) Capabilities to:

1. Partner with preschool, head start, and childcare centers to serve participating students;

2. Communicate with parents and other education professionals involved in the pilot project;

3. Update the instructional software as needed;

4. Validate user access;

5. Collect user data;

6. Store research data;

7. Produce reports for parents, schools, the department, and the Legislative Research Commission; and

8. Comply with state and federal education and digital privacy laws.

(5) The selected provider shall:

(a) Develop a recruitment plan to solicit families to participate in the pilot project;

(b) Implement the pilot project in compliance with subsection (3) of this section;

(c) Provide administrative and technical support to students, families, and any other involved education professionals for the installation and operation of the instructional software;

(d) Seek the advice and expertise of local stakeholders, such as public and private early childhood education professionals, the department, local school board members, kindergarten teachers, and parents, on the implementation of the pilot project in areas such as:

1. Soliciting families to participate in the pilot project;

2. Providing training to families and education professionals; and

3. Motivating families to regularly use the instructional software; and

(e) At the conclusion of each school year, report any data required by the department to conduct an evaluation of the pilot project's effectiveness.

(6) By December 1, 2025, the department shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committee on Education, that contains the following:

(a) The extent to which the pilot project is accomplishing the objectives identified in this section;

(b) The number of families:

1. Participating in the project;

2. Who have received technology devices or internet service in the project; and

3. Who have household incomes of no more than two hundred percent (200%) of the federal poverty level or who reside in areas of persistent poverty;

(c) The number of private and public educational entities the provider has partnered with during the pilot project;

(d) The frequency of use of the instructional software;

(e) Obstacles encountered with software usage, hardware, internet access, or providing technical assistance; and

(f) Student performance on any kindergarten entry or exit assessments conducted by school districts or public charter schools that compare students have participated in the project and students who have not.

(7) The Kentucky Department of Education shall implement this section to the extent that federal funds are available.

History.

2024 ch. 65, § 1, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2024). 2024 Ky. Acts ch. 65, sec. 2, provides that:

"Notwithstanding the provider selection requirements in Section 1 of this Act [this statute], if by the date this Act becomes law, the Kentucky Department of Education has already entered into a contract with an entity to provide services that are substantially similar to the Adaptive Kindergarten Readiness Pilot Project established in Section 1 of this Act, and that entity substantially meets the eligibility require-

ments for a 'provider' under Section 1 of this Act, the Kentucky Board of Education may vote to select that entity to be the provider for Section 1 of this Act."

157.065. School breakfast program — Annual report by schools not offering.

(1) Any school that does not offer a school breakfast program shall submit an annual report no later than September 15 to the Kentucky Board of Education indicating the reasons for not offering the program. The report shall include the number of children enrolled at the school and the number of children who are eligible for free or reduced priced meals under the federal program.

(2) The state board shall inform the school of the value of the school breakfast program, its favorable effects on student attendance and performance, and the availability of funds to implement the program.

History.

Enact. Acts 1994, ch. 364, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2018 ch. 159, § 49, effective July 14, 2018; 2022 ch. 211, § 21, effective January 1, 2023; 2022 ch. 223, § 5, effective January 1, 2023; 2025 ch. 86, § 5, effective June 27, 2025.

157.067. Kentucky successful schools trust fund.

(1) To carry out the purpose of rewarding successful schools as provided in KRS Chapter 158, the Kentucky successful schools trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for payments of rewards to successful schools shall be credited to the fund and invested until needed for payments to successful schools. All interest earned on moneys in the funds shall be retained in the fund for reinvestment.

(2) Upon certification of eligibility by the Kentucky Board of Education, the Finance and Administration Cabinet shall issue a warrant and the State Treasurer shall issue a check to the eligible school. All moneys credited to the fund, including interest, shall be used only for payments to eligible schools and shall not lapse, but shall be carried forward in the next biennial budget.

History.

Enact. Acts 1990, ch. 476, Pt. III, § 103, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

157.069. Definitions — Distribution of general funds for technology centers and converted career and technical education centers — Career and technical education innovation and support fund — Distribution of funds to state-operated area technology centers and locally operated career and technical education — Oversight by the Office of Career and Technical Education — Administrative regulations — Publication of information on Kentucky Department of Education website.

(1) As used in this section:

(a) "Administrative operations costs" means costs associated with the operations and staffing of a state-operated area technology center, including but not limited to personnel, facility costs, building utilities and maintenance, and custodial and office supplies;

(b) "Approved career and technical education dual credit" means earning a grade of "C" or higher for a Kentucky Department of Education-approved career and technical education dual credit course equivalent to three (3) hours of college credit;

(c) "Approved career and technical education pathway" means a four (4) course career and technical education pathway approved by the Kentucky Department of Education that provides a coherent, articulated sequence of rigorous academic and career-related courses within a career and technical education program area, and leads to an associate degree, an industry-recognized certificate or license, or a baccalaureate or higher degree;

(d) "Concentrator" means a student who has earned at least two (2) credits for no less than two (2) courses in a single career and technical education pathway;

(e) "Converted career and technical education center" means a center providing locally operated career and technical education for which a local district assumed authority from the state for the management and control of the center during the 2020-2021, 2021-2022, or 2022-2023 academic years;

(f) "General-cost career and technical education program" means a career and technical education program or pathway in which high-cost technical equipment, materials, or facilities are not required;

(g) "General-cost full-time equivalents" means the total number of secondary students enrolled in general-cost career and technical education programs, multiplied by the number of hours those students are enrolled, and divided by six (6) hours;

(h) "High-cost career and technical education program" means a career and technical education program or pathway in which high-cost equipment, materials, or facilities are required;

(i) "Locally operated career and technical education" means a district program that provides secondary students with one (1) or more approved career and technical education pathways;

(j) "State-operated area technology center" means a state-operated secondary school facility with the primary purpose of offering approved career and technical education pathways;

(k) "Supplemental funding" or "supplemental funds" means moneys appropriated by the General Assembly to support qualifying locally operated career and technical education centers and programs and state-operated area technology centers and programs based on enrollment and incentive criteria;

(*l*) "Technical skill attainment" means earning an industry-recognized certification, licensure, or credential as identified by the Kentucky Workforce Innovation Board pursuant to KRS 158.6455(1)(d) or passing an end-of-program assessment for articulated postsecondary credit as designated by the Kentucky Department of Education Office of Career and Technical Education;

(m) "Weighted high-cost full-time equivalents" means the total number of secondary students enrolled in high-cost career and technical education programs, multiplied by the number of credit hours in which those students are enrolled, divided by six (6) hours, and multiplied by one and one-half (1.5); and

(n) "Work-based learning program" means a cooperative education program, internship, or registered apprenticeship within the student's chosen approved career and technical education pathway.

(2) The Kentucky Department of Education shall provide funds from the department's annual general fund appropriation to support the administrative operations costs of state-operated area technology centers and converted career and technical education centers.

(3) For converted career and technical education centers, beginning with fiscal year 2024-2025, the Kentucky Department of Education shall deduct from funds designated for the state-operated area technology centers an amount equal to the administrative operations costs of each converted career and technical education center in the amount received by the center in the most recent fiscal year that the center was under state management and control. The funds for each converted career and technical education center shall be divided as follows:

(a) Seventy-five percent (75%) of the funds shall be sent to the local district that has assumed management and control of the center; and

(b) Twenty-five percent (25%) of the funds shall be sent to the career and technical education innovation and support fund established in subsection (4) of this section.

(4)(a) There is hereby established in the State Treasury a restricted fund to be known as the career and technical education innovation and support fund to receive the funds allocated under subsection (3)(b) of this section. The fund shall consist of moneys received from state appropriations, gifts, grants, and federal funds. The fund shall be administered by the Office of Career and Technical Education. Amounts deposited in the fund shall be used for:

1. Supporting innovation in new or emerging career fields;

2. Supporting state-operated area technology centers that may experience hardship or natural disasters;

3. Personnel costs to provide technical assistance to local districts providing locally operated career and technical education, including technical assistance relating to the monitoring and oversight on the use of supplemental career and technical education funding; and

4. Any other purposes reasonably related to improving student outcomes in career and technical education.

(b) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.

(5) Beginning with the 2024-2025 fiscal year and for each fiscal year thereafter, the Kentucky Department of Education shall distribute to local districts providing locally operated career and technical education and to state-operated area technology centers all general funds designated as supplemental funds to career and technical education programs, subject to the following:

(a) A local district providing locally operated career and technical education or a state-operated area technology center shall maintain eligibility for receipt of federal funding pursuant to the Strengthening Career and Technical Education for the 21st Century Act, Pub. L. No. 115-224, to be eligible to receive supplemental funding pursuant to this subsection;

(b) All supplemental funds distributed pursuant to this subsection shall be used to improve student outcomes in career and technical education pathways for students in grades nine (9) through twelve (12), including but not limited to student supplies, resources, materials, and equipment that is designed for enhanced quality of instruction in a career and technical education pathway, the purchase and maintenance of industry standard equipment, assisting students with achieving technical skill attainment, and supporting career and technical student organization participation;

(c)1. Supplemental funds for career and technical education shall be divided and allocated to each local district providing locally operated career and technical education and to each state-operated area technology center, with sixty percent (60%) dedicated for enrollment-based funding and forty percent (40%) for incentive-based funding.

2. The sixty percent (60%) enrollment-based funding shall be based on a statewide full-time equivalent calculation of the total weighted high-cost full-time equivalents and general-cost full-time equivalents during the prior school year, subject to the following:

a. The department shall then distribute the enrollment-based funds for each state-operated area technology center or local district providing locally operated career and technical education based on the center's or district's proportional share of the combined weighted high-cost full-time equivalents and general-cost full-time equivalents of the prior year;

b. The department shall distribute the state-operated area technology center fund portion to the respective state-operated area technology centers and the local district fund portion to the respective local districts; and

c. The department shall classify qualifying programs as either a high-cost career and technical education program or a general-cost career and technical education program.

3. The forty percent (40%) incentives-based funding shall be based on an annual statewide calculation of the total number of qualifying student incentives. The calculation shall only use students that are in grade twelve (12) and use the total incentives earned by those students during secondary education at a state-operated area technology center or within a local district. Once a student has been included in a year's calculation, that student shall not be included in any subsequent year's calculation, subject to the following:

a. Qualifying student incentives for students in their grade twelve (12) year shall include:

i. Reaching the designation of a concentrator;

ii. Technical skill attainment;

iii. Completing a required number of hours or achieving a benchmark within a work-based learning program; and

iv. Earning an approved career and technical education dual credit;

b. The incentives in subdivision a. of this subparagraph shall be allotted to the state-operated area technology center or local district in which it was earned. Each type of incentive shall only be counted once per student at state-operated area technology centers and once per student at local districts for a maximum of four (4) incentives per student at state-operated area technology centers and four (4) incentives at local districts throughout their secondary career and technical education. For incentive criteria that is achieved more than once at state-operated area technology centers, the incentive shall be counted for the state-operated area technology center where it was first achieved. For incentive criteria that is achieved more than once at local districts, the incentive shall be counted for the local district where it was first achieved;

c. The department shall distribute incentives-based funds for each state-operated area technology center or local district based on the center's or district's proportional share of the combined number of qualifying student incentives achieved by students in grade twelve (12) at a state-operated area technology center or within a local district throughout their secondary career and technical education. The incentives-based funds shall be distributed to the state-operated area technology center or local district in which the incentive was achieved; and

d. The department shall distribute the state-operated area technology center fund portion to the respective state-operated area technology centers and the local district fund portion to the respective local districts;

(d) There shall be no mid-year adjustment to the allocation of career and technical education supplemental funding for a center or local district; and

(e) Notwithstanding the restriction in paragraph (b) of this subsection, a district may submit a waiver request to the Office of Career and Technical Education to use a portion of its allocation of supplemental funds for career and technical education programming for students in grades (5) through eight (8). The district shall submit a request which details the district's plan for career and technical education programming for students in grades five (5) through eight (8). In reviewing the request, the Office of Career and Technical Education shall consider whether:

1. The district details a plan for orientation and exploration of broad-based industries by giving students knowledge and experience regarding careers within these industries and exploratory or hands-on skills used in the industry;

2. There is direct alignment between middle and secondary career and technical education pathways within the requesting district; and

3. Such designation of supplemental funding for programming for students in grades five (5) through eight (8) does not have a significant detrimental impact on the programming available for students in secondary grades.

(6) The Office of Career and Technical Education shall monitor and provide oversight of state funds distributed pursuant to this section to ensure that the use of funding by eligible recipients meets the approved criteria as described in this section.

(7) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed in the administration of this section and for disbursement of moneys.

(8) The Kentucky Department of Education shall publish on the department's website:

(a) The list of all career and technical education programs available to students and the program's designation as a high-cost career and technical education program or as a general-cost career and technical education program;

(b) A report of the supplemental funding amounts provided to each local district and to each state-operated area technology center, including an explanation of the amount designated as enrollment-based funding and as incentives-based funding; and

(c) A report of the administrative operations costs provided to each state-operated area technology center and to each converted career and technical education center, as well as the amount contributed toward the career and technical education innovation and support fund.

History.

Enact. Acts 2001, ch. 123, § 5, effective June 21, 2001; 2006, ch. 211, § 81, effective July 12, 2006; 2013, ch. 59, § 39, effective June 25, 2013; 2019 ch. 133, § 1, effective June 27, 2019; 2021 ch. 40, § 1, effective March 18, 2021; repealed and reenacted by 2024 ch. 210, § 1, effective July 1, 2024; 2026 ch. 138, § 6, effective July 15, 2026.

Legislative Research Commission Notes.

(3/18/2021). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of the text and corresponding internal references in subsection (2) of this statute during codification. The words in the text were not changed.

(3/18/2021). 2021 Ky. Acts ch. 40, sec. 3 provides: "Whereas Section 1(5) of this Act [subsection (5) of this statute] codifies previously non-codified actions of the General Assembly set forth in [2020] Ky. Acts ch. 92, Section 1(5) of this Act [subsection (5) of this statute] shall be retroactive to April 15, 2020."

157.070. War orphans; aid to. [Repealed.]

Compiler's Notes.

This section (4376b-11) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.072. Career and technical education accessibility fund.

(1) For purposes of this section:

(a) "Career academy" means a small learning community within a larger high school that:

1. Consists of a heterogeneous group of students taking classes together for at least two (2) years and who are taught by a team of teachers from different disciplines;

2. Provides a college-preparatory academic curriculum based on a career theme that helps students see relationships and connections between academic subjects and their applications in specific career pathways and in broad career areas such as health science, business, pre-engineering, agribusiness, and advanced manufacturing; and

3. Provides opportunities through partnerships with employers, colleges, and the community for students to engage in internships and work-based learning with adult mentors to motivate students to achieve;

(b) "Career guidance coach" means a person who is assigned one hundred percent (100%) of his or her time to:

1. The development of students', teachers', and parents' understanding of broad career themes and opportunities through career pathways;

2. Academic advising and career counseling;

3. Assisting students in the development of individual learning plans; and

4. Providing assistance to other teachers;

(c) "Career pathway" means a coherent, articulated sequence of rigorous academic and career-related courses, commencing in ninth grade and leading to an associate degree, an industry-recognized certificate or license, or a baccalaureate or higher degree. A career pathway is developed, implemented, and maintained in partnership among secondary and postsecondary education institutions, businesses, and employers. Career pathways are available to all students, including adult learners, and are designed to lead to rewarding careers; and

(d) "Career pathway program of study" means a coherent, articulated sequence of rigorous academic and career and technical education courses, including dual credit opportunities, that prepares secondary students for postsecondary study leading to postsecondary degrees, industry certifications, or licensure.

(2) There is hereby created a trust and agency account to be known as the career and technical education accessibility fund, to be administered by the Kentucky Department of Education. The fund shall consist of proceeds from grants, federal funds, contributions, appropriations, or other moneys made available for the purposes of the fund. The fund shall provide grants to be used for:

(a) The development of career pathways and programs of study in high-demand occupational fields for students in middle schools and high schools; and

(b) The establishment of career academies in secondary schools. Each career academy shall employ general education faculty who teach the academic core content and career and technical education faculty who focus the majority of the content around a broad career area and, when possible, employ career guidance coaches to advise students. Career academies shall provide students an opportunity to earn a high school diploma and simultaneously earn postsecondary education credit. They shall also provide opportunities to earn industry certification in high-demand fields, including biotechnology, environmental sustainability, agriculture, health, engineering, information technology, and other emerging career areas.

(3) The grants may be used within a high school facility, career and technical education center, or in an area technology center.

(4) The programs may, based on written policies of the education institution in consultation with and approval of the Kentucky Community and Technical College System, serve adult learners who may have interrupted their secondary education and wish to reenter a program or adults who wish to pursue initial study in a career and technical education field.

(5) Funds shall be distributed through a grant program to eligible school districts and the Kentucky Tech System on a matching basis as funds are available.

(6) Financial gifts and in-kind contributions from any business or industry, a community college, or other entity may be accepted to meet the matching requirements based on criteria established by the Kentucky Board of Education.

(7) Pursuant to KRS Chapter 13A, the Kentucky Board of Education shall promulgate administrative regulations that specify the:

(a) Eligibility requirements for participation in the grant program. Low graduation rates, as determined in accordance with the methodology established by the National Center for Education Statistics, shall be high priority for participation in the grant program;

(b) Matching requirements;

(c) Application and review process;

(d) Accountability and data requirements for grant recipients;

(e) Procedures for the reallocation of any unused fund balance;

(f) Grant continuation requirements; and

(g) Other components essential to the implementation of this section.

(8) Notwithstanding KRS 45.229, any unused balance in the career and technical education accessibility fund shall not lapse but shall be carried forward into the next fiscal year and used only for the purposes described in subsection (2) of this section. Any interest earnings of the fund shall become a part of the fund and shall not lapse. Moneys in the fund are hereby appropriated for the purposes set forth in this section.

(9) Schools receiving grants shall have an active local advisory council comprised of industry leaders and employers and postsecondary education faculty to provide input on long-range goals for career and technical education.

(10) Nothing in this section shall prohibit a school that has begun the implementation of a career pathway or a career academy prior to April 19, 2012, from qualifying for funds under this section.

History.

Enact. Acts 2012, ch. 150, § 5, effective April 19, 2012.

Legislative Research Commission Notes.
(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included the creation of this statute, shall be known as the "Career Pathways Act of 2012."

157.075. Differentiated compensation plans — Professional compensation fund — Department of Education recommendations on teacher compensation.

(1) For purposes of this section, "compensation" means the combination of base salary, salary supplements, and other benefits provided a teacher.

(2)(a) A school district may develop differentiated compensation programs that provide additional compensation above the single salary schedule described in KRS 157.420 and defined in KRS 157.320. Differentiated compensation plans shall have one (1) or more of the following purposes:

1. To recruit and retain teachers in critical shortage areas;

2. To help reduce the number of emergency certified teachers employed in the district;

3. To provide incentives to recruit and retain highly skilled teachers to serve in difficult assignments and hard-to-fill positions;

4. To provide career advancement opportunities for classroom teachers who voluntarily wish to participate; or

5. To reward teachers for increasing their skills, knowledge, and instructional leadership within the district or school.

(b) The Kentucky Board of Education shall promulgate administrative regulations defining the factors that may be included in a differentiated compensation plan and procedures that shall be used in the development and approval of differentiated compensation plans.

(3)(a) There is hereby established a professional compensation fund in the State Treasury. Beginning in the 2002-2004 biennium and thereafter, the fund shall be used to provide grants to school districts to pilot differentiated compensation programs for teachers. During the 2002-2004 biennium, the fund shall provide grants to at least five (5) school districts for a two (2) year period. The number of grants may increase or decrease based on the funds available and as deemed feasible by the Kentucky Department of Education.

(b) The district grants shall be used for one (1) or more of the purposes described in subsection (2)(a) of this section.

(c) The professional compensation fund may receive state appropriations, gifts, and grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated for the purposes specified in this section.

(d) The fund shall be administered by the Kentucky Department of Education and shall be distributed on the basis of criteria promulgated in an administrative regulation by the Kentucky Board of Education. The administrative regulation shall specify the maximum size of grants, the application and selection process, the obligations of the local board of education, the evaluation and data requirements, and other details as deemed necessary by the board.

(4) Upon request, the Kentucky Department of Education shall provide assistance to any district that wishes to develop a differentiated compensation program.

(5) During the 2002-2004 biennium, the Kentucky Department of Education shall gather information and summarize the characteristics and impact of the various differentiated compensation programs. By October 1, 2004, the department shall provide recommendations to the Interim Joint Committee on Education as to the feasibility of establishing a statewide teacher advancement program or other ideas for modifying teacher compensation.

History.
Enact. Acts 2002, ch. 135, § 2, effective April 2, 2002.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Differentiated compensation, 702 KAR 3:310.

157.077. Support for summer learning programs — Segregation and use of funds. [Repealed]

History.
Enact. Acts 2012, ch. 131, § 4, effective July 12, 2012; 2020 ch. 112, § 8, effective July 15, 2020; repealed by 2026 ch. 196, § 25, effective July 1, 2026.

157.080. Method of paying aid; determination of eligibility. [Repealed.]

Compiler's Notes.
This section (4376b-12) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.090. Maximum allowed each child; vocational aid if surplus exists. [Repealed.]

Compiler's Notes.
This section (4376b-13) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

TEXTBOOKS

157.100. Funds for textbooks, programs, and instructional regulation for free distribution.

The Commonwealth of Kentucky shall provide funds for textbooks, programs, and other instructional materials that shall be distributed under an administrative regulation promulgated by the Kentucky Board of Education without cost to pupils attending grades kindergarten through twelve (12) of the public schools

of the state, in the manner and upon the conditions set out in KRS 157.110 and 157.180.

History.
4421c-1, 4421c-4; amend. Acts 1974, ch. 71, § 14; 1976, ch. 74, § 4, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 8, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 170, effective July 13, 1990; 1992, ch. 266, § 10, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 14, effective July 14, 2000.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Free Textbooks.
3. —Payment.

1. Constitutionality.
Law providing for purchase and distribution of free textbooks by the state does not violate Ky. Const., § 49. State Board of Education v. Kenney, 230 Ky. 287, 18 S.W.2d 1114, 1929 Ky. LEXIS 71 (Ky. 1929).

2. Free Textbooks.

3. —Payment.
Free textbooks are to be paid for out of the general fund of the state. State Board of Education v. Kenney, 230 Ky. 287, 18 S.W.2d 1114, 1929 Ky. LEXIS 71 (Ky. 1929).

The purchase of free textbooks is not an "ordinary expense" of the government. State Board of Education v. Kenney, 230 Ky. 287, 18 S.W.2d 1114, 1929 Ky. LEXIS 71 (Ky. 1929).

OPINIONS OF ATTORNEY GENERAL.

The Kentucky Department of Education cannot furnish textbooks free for grades 1 through 8 to students attending private schools. OAG 72-73.

A public school cannot use the withholding of grades, diplomas or records as a leverage to force a student to meet his obligations concerning property. OAG 82-386, 1982 Ky. AG LEXIS 262.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Indigent children, board of education of school district may furnish free textbooks to, KRS 160.330.

Instructional resource adoption process, 704 KAR 3:455.

State Textbook Commission, adoption of books by, KRS 156.405 to 156.445.

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Northern Kentucky Law Review.
Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

157.110. Determination of grades and subjects to be provided with textbooks — Rental of textbooks — Free textbooks for certain students.

(1) In the purchase and distribution of textbooks for grades nine (9) through twelve (12), if sufficient funds are not available to furnish textbooks for all four (4) grades, the chief state school officer, subject to the approval of the Kentucky Board of Education, shall determine for what grades and subjects textbooks shall be provided.

(2) Local school districts, which do not provide a free textbook program for all students in grades nine (9) through twelve (12), shall establish, pursuant to Kentucky Board of Education administrative regulations, a process whereby pupils in grades nine (9) through twelve (12) may rent textbooks for a reasonable fee. Rental fees collected by the district shall be used for the maintenance of textbooks, the purchase of new textbooks, and the provision of free textbooks to pupils in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks.

(3) No pupil shall be denied the use of textbooks due to an inability to rent or purchase them. Local school districts shall establish, pursuant to Kentucky Board of Education administrative regulations, a process by which to provide free textbooks to pupils unable to rent or purchase them, including a process by which those students shall be informed of the availability of, and guidelines and procedures for, obtaining free textbooks.

(4) The Kentucky Board of Education shall adopt administrative regulations to insure the availability of free textbooks to those pupils in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks and shall use the guidelines of the free and reduced price lunch programs to determine inability to rent or purchase textbooks. The regulations shall also provide for exceptional circumstances, under which pupils who do not meet free and reduced price lunch guidelines may be provided free textbooks.

History.
4421d-1; amend. Acts 1974, ch. 71, § 15; 1976, ch. 74, § 5, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 5, effective July 15, 1982; 1986, ch. 462, § 1, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 171, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

157.120. Requisitions for books — Shipments — Invoices. [Repealed.]

Compiler's Notes.
This section (4421c-4, 4421c-5; amend. Acts 1974, ch. 71, § 16, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 172, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

157.130. Regulations governing textbooks. [Repealed.]

Compiler's Notes.
This section (4421c-7, 4421c-11, 4421d-1; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 173, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

157.140. Responsibility for books not returned — Enforcement.

Each pupil, or his parent or guardian, shall be responsible to the teacher for all books not returned by the pupil, and a pupil not returning all books delivered to him shall not be entitled to the benefits of KRS 157.100 to 157.180 until the books are paid for by the pupil, or his parent or guardian, or accounted for in keeping with the regulations of the Kentucky Board of Education.

History.
4421c-11; amend. Acts 1966, ch. 184, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 174, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

OPINIONS OF ATTORNEY GENERAL.

A public school cannot use the withholding of grades, diplomas or records as a leverage to force a student to meet his obligations concerning property. OAG 82-386, 1982 Ky. AG LEXIS 262.

The effect of this section is to prohibit the issuing of additional textbooks to a student who has not returned or paid for books previously issued. OAG 82-386, 1982 Ky. AG LEXIS 262.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

157.145. Rebinding of textbooks.

The chief state school officer shall each year cause textbooks that have not been made obsolete by new adoptions and that are in need of, and have valid content justifying rebinding, to be rebound by entering into a contract with a bindery who will perform services for districts within the Commonwealth of Kentucky at a state contract price.

History.
Enact. Acts 1956, ch. 178, §§ 1 to 3; 1974, ch. 71, § 17, effective March 13, 1974; 1982, ch. 154, § 6, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 175, effective July 13, 1990; 2000, ch. 419, § 15, effective July 14, 2000.

157.150. Textbooks property of state.

All textbooks purchased under the provisions of KRS 157.100 shall be the property of the state. Each superintendent shall be custodian of the books in the district. The superintendent shall issue the books to the various schools in the district according to an administrative regulation promulgated by the Kentucky Board of Education.

History.
4421c-6; amend. Acts 1974, ch. 71, § 18, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 176, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 16, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

157.160. Sale of obsolete textbooks.

The chief state school officer, subject to the approval of the Kentucky Board of Education, shall promulgate an administrative regulation for the disposal of textbooks and programs that will no longer be used for instruction. Each superintendent may make obsolete books and materials available to the residents of his district. He may publicize in the newspaper the availability of the books and materials and the procedure for obtaining them in accordance with this section. Any funds accruing from the sale of the books and materials shall be paid into the local district's account.

History.
4421c-8; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 7, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 177, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 17, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Instructional resource adoption process, 704 KAR 3:455.

157.170. Administrative regulations for sale of books and materials for private use.

The chief state school officer, subject to the approval of the Kentucky Board of Education, shall promulgate an administrative regulation governing the sale of books and materials by superintendents to pupils, parents, or guardians of pupils attending the public schools of the state who desire to hold books and materials as their own property. Superintendents shall not sell books and materials to private or sectarian schools. Books and materials sold under this section shall be sold at the retail contract price. Funds accruing from the sales shall be paid into the local district's account.

History.
4421c-9; amend. Acts 1974, ch. 71, § 19, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 178, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 18, effective July 14, 2000.

157.180. School furniture or supplies not to be sold by teachers or employees distributing books.

No teacher or school employee engaged in the distribution of textbooks under the provisions of KRS 157.100 to 157.170 shall sell, distribute, or in any way deal in any kind of school furniture or supplies for use in any public schools.

History.
4421c-7; amend. Acts 1990, ch. 476, Pt. IV, § 179, effective July 13, 1990.

157.190. Funds for textbooks, programs, and instructional materials for children in specified facilities.

The Kentucky Department of Education shall cooperate with the Kentucky Educational Collaborative for State Agency Children to distribute funds for textbooks, programs, and instructional materials for use by children placed in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Health and Family Services' residential, day treatment, clinical, and group home programs.

History.

Enact. Acts 1942, ch. 24, §§ 1 to 4; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 9, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 180, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 19, effective July 14, 2000; 2005, ch. 99, § 129, effective June 20, 2005.

SPECIAL EDUCATIONAL PROGRAMS

157.195. Legislative findings on students' right to quality education.

The General Assembly declares that all students of the Commonwealth have a right to an appropriate and quality education in the public schools and the right to achieve the capacities under KRS 158.645. The General Assembly challenges all school personnel to take the necessary action to help each individual student complete elementary and secondary school with the capacities to transition successfully to adult life.

History.

Enact. Acts 1998, ch. 514, § 1, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

ADA Amendments Issue: Article: Education for Americans with Disabilities: Reconciling IDEA with the 2008 ADA Amendments, 37 N. Ky. L. Rev. 389 (2010).

157.196. Individual education plan for exceptional children — Administrative regulations.

(1) The General Assembly declares that parents play a critical role in the education of their students. Parents have a major responsibility to assist in the education of their students and deserve respect and meaningful involvement in the decision-making process related to the students' education.

(2) Each exceptional student as defined in KRS 157.200 shall have an individual education plan that shall serve as the centerpiece of the student's educational career and the communication vehicle between the parents and school personnel. The plan shall enable the parents and school personnel to decide the student's educational needs, the services needed to achieve those needs, and the anticipated results. The plan shall be used as a document to monitor the student's progress. School personnel shall provide the parents with reports of the progress toward the student's annual goals at least as often as report cards go to nondisabled students.

(3) The Kentucky Board of Education shall promulgate administrative regulations establishing procedures for the development and monitoring of individual education plans that are in compliance with the Federal Individuals with Disabilities Education Act, as amended. These administrative regulations shall be written in clear, easily understood language that is free of education jargon.

History.

Enact. Acts 1998, ch. 514, § 2, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Programs for the gifted and talented, 704 KAR 3:285.

Kentucky Bench & Bar.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

157.197. Kentucky Special Education Mentor Program — Criteria.

(1) The Kentucky Board of Education shall promulgate administrative regulations to establish the criteria for the Kentucky Special Education Mentor Program that shall be implemented by July 1, 1999. The designation of "Kentucky Special Education Mentor" shall be given to the state's most outstanding and highly skilled persons who are certified to teach or administer special education and who are willing to accept assignments in districts whose special education programs are found to be noncompliant with state or federal requirements. The assignments shall require the mentor to:

(a) Work in a district or school on a full-time or part-time basis for a designated period of time to assist the staff with creating and implementing its special education improvement plan as required in KRS 157.224. The mentor shall have the authority to review and amend decisions previously made by the district or school staff. If a highly skilled educator under KRS 158.782 is assigned to the same site as the mentor, they shall share responsibilities under policy of the Department of Education;

(b) Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance with exceptional students and other students at risk of school failure;

(c) Evaluate and make recommendations on the retention, dismissal, or transfer of certified staff in a noncompliant district or school;

(d) Recommend up to ten (10) additional work days annually to be paid for by the Department of Education for personnel in affected schools who work with exceptional students for planning, working with parents and guardians, curriculum development, or other activities that will help the district or school meet the goals of its improvement plan; and

(e) Complete an intensive training program, provided by the Department of Education and approved by the Kentucky Board of Education, prior to being

assigned to assist a district's or school's staff with creating and implementing its district or school improvement plan. The training program shall include but not be limited to instruction in the methods of personnel evaluation, district or school organization, curriculum, and assessment. The training shall be made available to local district personnel on a cost recovery basis.

(2) The Kentucky Special Education Mentor Program criteria shall include:

(a) A selection process that shall allow for self nomination, provide for a broad spectrum of instructional positions, and generate statewide representation. Nominations of qualified special educators who have retired since July 1, 1994, shall be considered. Special education professionals and representatives of various advocacy and constituent groups shall be included in the development of the selection process and the review of applicants;

(b) Each recipient shall receive a monetary award of two hundred fifty dollars ($250) when selected and shall also be paid in accordance with his or her current salary for other program requirements requiring additional days of employment under subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Special Education Mentor Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky Special Education Mentor when that person is assigned to a noncompliant school or district;

(c) The Kentucky Special Education Mentor assigned to a noncompliant district or school shall receive a salary supplement of thirty-five percent (35%) of their base annual salary for each year of service in that capacity. Retired mentors shall be paid for their rank and experience on the district's salary schedule plus the salary supplement. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If the assigned school achieves the threshold level in the next biennial review, the mentor shall receive his or her portion of the reward due to the entire staff calculated on his or her base salary regardless of decisions made by the school staff under KRS 158.6455;

(d) The Kentucky Special Education Mentor shall be granted professional leave under KRS 161.770 for up to two (2) years if determined by the state board to be necessary. Kentucky Special Education Mentors shall not lose any employee benefits as a result of their special assignments to a school or district; and

(e) A Kentucky Special Education Mentor shall not be assigned to a school or to a district assignment in the district in which the educator is employed.

History.

Enact. Acts 1998, ch. 514, § 3, effective July 15, 1998.

Legislative Research Commission Notes.

(7/15/98). Although 1998 Ky. Acts ch. 514, sec. 3, contained a citation to "Section 5 of [the] Act" (codified at KRS 157.200), it is clear from context that Section 6 (codified at KRS 157.224) was intended. This latter reference has been used for codification under KRS 7.136(1)(h).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Special Education Mentor Program, 707 KAR 1:270.

157.198. Dyslexia trust fund.

(1) There is created a dyslexia trust fund administered by the Kentucky Department of Education.

(2) The dyslexia trust fund may receive appropriations, federal funds, contributions, gifts, and donations.

(3) The purpose of the dyslexia trust fund shall be to finance grants to local school districts for support of students identified with the characteristics of dyslexia.

(4) Notwithstanding KRS 45.229, moneys remaining in the fund at the close of a fiscal year shall not lapse but shall carry forward into the succeeding fiscal year. Interest earned on any moneys in the fund shall accrue to the fund. Amounts from the fund shall be disbursed and expended in accordance with this section.

(5) The Department of Education shall submit on an annual basis a report detailing all expenditures under this section to the Kentucky Board of Education and the General Assembly.

History.

2018 ch. 206, § 1, effective January 1, 2019.

157.200. Definitions for KRS 157.200 to 157.290.

As used in KRS 157.200 to 157.290:

(1) "Admissions and release committee" or "ARC" means a group of individuals that is responsible for developing, reviewing, or revising an individualized education program for an exceptional child or youth;

(2) "Caseload" means the number of exceptional children and youth assigned to a teacher of exceptional children and youth for the purpose of overseeing the management of individualized specially designed instruction and related services as required by the individualized education program;

(3) "Exceptional children and youth" means persons under twenty-one (21) years of age who differ in one (1) or more respects from same-age peers in physical, mental, learning, emotional, or social characteristics and abilities to such a degree that they need special educational programs or services for them to benefit from the regular or usual facilities or educational programs of the public schools in the districts in which they reside. The Department of Education, through administrative regulations promulgated by the Kentucky Board of Education, shall interpret the statutory definitions of exceptionality. An exceptionality is any trait so defined in this section or by administrative regulations promulgated by the Kentucky Board of Education. Requirements of average daily attendance for exceptional classes shall be regulated by statute, or in the absence of direction by administrative regulations promulgated by the Kentucky Board of Education. Categories of exceptionalities included within but not limited by this definition are as follows:

(a) "Orthopedic impairment" means a severe physical impairment of bone or muscle which adversely affects educational performance to the extent that specially designed instruction is required

for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes;

(b) "Other health impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, due to a chronic or acute health problem which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. Chronic health problems may include, but are not be limited to, a heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy, rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes, attention deficit disorder, attention deficit hyperactive disorder, or acquired immune deficiency syndrome;

(c) "Speech or language impairment" means a communication disorder such as stuttering, impaired articulation, impaired language, impaired voice, delayed acquisition of language, or absence of language that adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education;

(d) "Hearing impairment" means a physiological hearing loss:

1. Ranging from mild to profound, which is either permanent or fluctuating, and of such a degree that the pupil is impaired in the processing of linguistic information via the auditory channel either with or without amplification; or

2. That adversely affects educational performance so that specially designed instruction is required for the child or youth to benefit from education.

The term shall include both deaf and hard of hearing children;

(e) "Mental disability" means a deficit or delay in intellectual and adaptive behavior functioning, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education, and which is typically manifested during the developmental period;

(f) "Specific learning disability" means a disorder in one (1) or more of the psychological processes primarily involved in understanding or using spoken or written language, which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. "Specific learning disability" may include conditions such as dyslexia, dyscalculia, dysgraphia, developmental aphasia, or perceptual motor disabilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. Determination of the existence of a specific learning disability shall include documentation that a child does not make sufficient progress in meeting age or grade-level content standards when provided with appropriate instruction and learning experiences delivered by qualified personnel, including the child's response to scientific, research-based interventions and additional information derived from an individual evaluation. The term does not include a learning problem which is primarily the result of:

1. A hearing impairment;

2. Visual, physical, mental, or emotional-behavioral disabilities;

3. Environmental, cultural, or economic differences; or

4. Limited English proficiency;

(g) "Emotional-behavioral disability" means a condition characterized by behavioral excess or deficit which significantly interferes with a pupil's interpersonal relationships or learning process to the extent that it adversely affects educational performance so that specially designed instruction is required in order for the pupil to benefit from education;

(h) "Multiple disability" means a combination of two (2) or more disabilities resulting in significant learning, developmental, or behavioral and emotional problems, which adversely affects educational performance and, therefore, requires specially designed instruction in order for the pupil to benefit from education. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition;

(i) "Deaf-blind" means auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that the pupil cannot be appropriately educated in special education programs designed solely for pupils with hearing impairments, visual impairments, or severe disabilities, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities;

(j) "Visually disabled" means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils;

(k) "Developmental delay" means a significant discrepancy between a child's current level of performance in basic skills such as cognition, language or communication, self-help, social-emotional, or fine or gross motor, and the expected level of performance for that age. The term shall be used only with children ages three (3) through eight (8);

(*l*) "Traumatic brain injury" means an acquired impairment to the neurological system resulting from an insult to the brain which adversely affects educational performance and causes temporary or permanent and partial or complete loss of:

1. Cognitive functioning;

2. Physical ability; or

3. Communication or social-behavioral interaction.

The term does not include a brain injury that is congenital or degenerative, or a brain injury induced by birth trauma;

(m) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance. Characteristics of autism include:

1. Engagement in repetitive activity and stereotyped movement;

2. Resistance to environmental change or change in daily routine; and

3. Unusual responses to sensory experience.

The term does not include children with characteristics of an emotional-behavioral disability; and

(n) "Gifted and talented student" means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts;

(4) "Related services" means transportation and the developmental, corrective, and other supportive services required to assist an exceptional child or youth to benefit from special education, and may include, but are not limited to, speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health services; social work services in schools; and parent counseling and training;

(5) "Special classes" means specially equipped and staffed classes in which an exceptional child or youth, individually or in small groups, spends part of his or her day receiving specially designed instruction or related services as determined by the ARC;

(6) "Special education" means specially designed instruction to meet the unique needs of an exceptional child or youth;

(7) "Special educational facilities" means physical facilities designed or adapted to meet the needs of exceptional children and youth, and approved according to administrative regulations promulgated by the Kentucky Board of Education; and

(8) "Transition services" means a coordinated set of activities for a pupil designed within an outcome-oriented process, that promotes movement from school to postschool activities. The term includes:

(a) Postsecondary education;

(b) Vocational training; and

(c) Integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests, and shall include instruction, community experience, the development of employment, and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

History.

Enact. Acts 1948, ch. 4, § 1; 1956, ch. 162, § 1; 1962, ch. 169, § 1; 1970, ch. 46, § 1; 1972, ch. 16, § 1; 1974, ch. 53, § 1; 1976, ch. 345, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 183, § 7, effective July 15, 1980; 1980, ch. 286, § 1, effective July 15, 1980; 1990, ch. 476, Pt. IV, § 282, effective July 13, 1990; 1992, ch. 377, § 1, effective July 14, 1992; 1994, ch. 280, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 5, effective July 15, 1998; 2001, ch. 95, § 2, effective June 21, 2001; 2012, ch. 45, § 2, effective July 12, 2012; 2026 ch. 196, § 5, effective July 15, 2026.

NOTES TO DECISIONS

Cited in:

Tilton v. Jefferson County Bd. of Education, 705 F.2d 800, 1983 U.S. App. LEXIS 28721 (6th Cir. 1983), cert. denied, 465 U.S. 1006, 104 S. Ct. 999, 79 L. Ed. 2d 231, 1984 U.S. LEXIS 880, 52 U.S.L.W. 3550 (1984).

OPINIONS OF ATTORNEY GENERAL.

Foundation program funds authorized by the Legislature for the education of handicapped children may be paid for children who are under six (6) years of age. OAG 72-294.

The 1972 amendment to this section raises no question as to the constitutionality of this statute. OAG 72-343.

A board of education may contract with a private institution for services for a child who is classified as an exceptional or handicapped child pursuant to KRS 157.240 (now repealed). OAG 72-561.

A board of education may enter a contract with a parochial school to educate children handicapped with dyslexia. OAG 72-733.

Where the first district finds a child to be unable to attend school based on KRS 159.030, there is nothing to require the second school district to require the evaluation described under KRS 159.030(3) (now 159.030(2)) prior to enrollment; nevertheless, the child may qualify for evaluation for special education services under KRS 157.200 through 157.290. OAG 91-171, 1991 Ky. AG LEXIS 171.

To be eligible for Medicaid reimbursement for speech pathology services under federal regulations, a provider must either be or work under the direction of a speech pathologist. A speech pathologist under federal regulations must have American Speech and Hearing Association certification or its equivalent or have a master's degree in speech-language pathology and be in the process of acquiring the necessary work experience for such certification. The application of this standard to persons certified by the Education Professional Standards Board must be determined on a case-by-case basis. OAG 2008-04, 2008 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification requirements for teachers of exceptional children, 16 KAR 4:020.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Programs for the gifted and talented, 704 KAR 3:285.

Kentucky Bench & Bar.

Richardson, Alphabet Soup: Finding Your Way Through Special Education in the 90's, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 13.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

157.210. Division of Special Education for Handicapped Children; duties and functions; director; assistants. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1948, ch. 4, § 2) was repealed by Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 8.

157.220. Functions of Department of Education in special education programs — Maximum class size and caseload.

(1) The Department of Education is hereby designated as the agency for cooperation with the state and federal government agencies, the nonpublic school programs and local schools of Kentucky in carrying out the provisions of KRS 157.200 to 157.290.

(2) The Kentucky Board of Education shall promulgate necessary administrative regulations in accordance with KRS 157.200 to 157.290, including but not limited to establishment of classes, eligibility and admission of pupils, curriculum, class size and caseload limitations in accordance with subsection (3) of this section, housing, special equipment, and instructional supplies.

(3) In providing special education services for the exceptional children and youth specified in KRS 157.200(3)(a) to (m):

(a) The maximum class size for special classes for students with the following conditions shall be limited to:

1. Eight (8) students with autism;
2. Ten (10) students with a developmental delay;
3. Eight (8) students with an emotional-behavioral disability;
4. Ten (10) students with a functional mental disability;
5. Six (6) students with a hearing impairment;
6. Fifteen (15) students with a mild mental disability;
7. Ten (10) students with multiple disabilities;
8. Sixteen (16) students with an orthopedic impairment;
9. Sixteen (16) students with an other health impairment;
10. Ten (10) students in kindergarten to grade five (5) and fifteen (15) students in grades six (6) to twelve (12) with a specific learning disability; and
11. Ten (10) students with a visual disability;

(b) The maximum caseloads for teachers of special classes shall be as follows:

1. Fifteen (15) students with autism;
2. Fifteen (15) students with a developmental delay;
3. Fifteen (15) students with an emotional-behavioral disability;
4. Ten (10) students with a functional mental disability;
5. Eight (8) students with a hearing impairment;
6. Fifteen (15) students in kindergarten to grade five (5) and twenty (20) students in grades six (6) to twelve (12) with a mild mental disability;
7. Ten (10) students with multiple disabilities;
8. Twenty (20) students with an orthopedic impairment;
9. Twenty (20) students with an other health impairment;
10. Fifteen (15) students in kindergarten to grade five (5) and twenty (20) students in grades six (6) to twelve (12) with a specific learning disability; and
11. Ten (10) students with a visual disability;

(c) For speech-language pathologists the caseload limitations in KRS 334A.190 shall apply;

(d) Special classes containing more than one (1) disability category shall use the category of the majority of students in the class to determine the maximum class size established in paragraph (a) of this subsection;

(e) Two (2) students above the maximum class size established in paragraph (a) of this subsection may be added to a class if a paraprofessional is present;

(f) If a teacher of exceptional children and youth provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) students in grades six (6) to twelve (12) and fifteen (15) students in kindergarten to grade five (5);

(g) If a teacher of exceptional children and youth provides services through a combination of collaboration and special classes, the maximum caseload shall not exceed those established in paragraph (b) of this subsection;

(h) Teachers of special classes who are assigned student records of more than one (1) disability category shall use the category of the majority of students on the caseload to determine the maximum caseload established in paragraph (b) of this subsection; and

(i) State preschool caseload and class size maximums shall be maintained pursuant to KRS 157.3175.

(4) The Department of Education is authorized to receive contributions and donations that may be made to carry out KRS 157.200 to 157.290.

(5) Local supervision of special educational facilities for exceptional children and youth shall be approved by the Department of Education according to administrative regulations promulgated by the Kentucky Board of Education.

History.

Enact. Acts 1948, ch. 4, § 3; 1962, ch. 169, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 2, effective July 15, 1980; 1984, ch. 128, § 2, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 181, effective July 13, 1990; 1994, ch. 376, § 5, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2026 ch. 196, § 4, effective July 15, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Blind and deaf pupils, reimbursement for, 702 KAR 5:120.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Home/hospital instruction, 704 KAR 7:120.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.
Programs for the gifted and talented, 704 KAR 3:285.

157.221. Office of education for exceptional children — Functions — Duties of State Board for Elementary and Secondary Education. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1972, ch. 15, § 1; 1976, ch. 345, § 3; 1978, ch. 155, § 99, effective June 17, 1978; 1980, ch. 286, § 3, effective July 15, 1980, ch. 128, § 3, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.222. Advisory task forces for special education. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1970, ch. 47, § 1) was repealed by Acts 1974, ch. 74, Art. VI, § 108.

157.224. Statewide plan for exceptional education programs — Annual applications and reports — Improvement plan — Special education trust fund — Administrative hearings.

(1) The Commonwealth of Kentucky is committed to providing a comprehensive educational program for its exceptional children and youth. The Department of Education coordinates, directs, and monitors that program. State direction and implementation of a statewide special education program is manifested in the biennial appropriation of funds to assure a quality educational opportunity for exceptional children and youth in existing, locally operated, classrooms.

(2) All county and independent boards of education shall operate special education programs pursuant to an annual application which has been approved by the Kentucky Department of Education pursuant to standards set out in administrative regulations promulgated by the Kentucky Board of Education. If any county or independent board of education fails to operate and implement special education programs in accordance with the standards, the application of the county or independent board of education for funding pursuant to KRS 157.360 may be considered insufficient and the add-on funds generated under that statute may be withheld by the Kentucky Board of Education until the program is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended. The add-on funds shall not be withheld until the district has had the benefit of intense assistance from the Department of Education, a Kentucky Special Education Mentor under the provisions of KRS 157.197 or other assistance approved by the department for at least two (2) years. The superintendent of each local school district shall certify its enrollment of exceptional children and youth to the Department of Education. The department shall audit student enrollment and monitor local district compliance in accordance with Kentucky Board of Education administrative regulations.

(3) The Kentucky Board of Education administrative regulations shall set forth the data local school districts shall submit in their annual applications and reports. The data shall be reported in the same format as data submitted to the Department of Education for all other students and shall include, but not be limited to:

(a) The number of students who are suspended, expelled, and quit school annually;

(b) The success of students placed in various classroom settings including, but not limited to, regular classrooms, resource rooms, self-contained classrooms, and vocational programs as measured by the state assessment program; and

(c) Information about students' successful transition to adult life.

(4) Local school districts and schools found to be noncompliant with state board administrative regulations shall develop an improvement plan that shall be submitted to the Department of Education for approval. Local school districts shall use specialized resources in the development of the plan which may include universities, regional resource centers, professional organizations, and constituent advocacy groups.

(5) There is hereby created a special education trust fund to receive the funds withheld under subsection (2) of this section and interest accrued from the funds invested. The funds and interest shall not lapse, but shall be returned to the district when it is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended.

(6) All administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. The provisions of KRS Chapter 13B notwithstanding, the decision of the hearing officer in hearings under this section shall be the final order and shall be rendered pursuant to 34 C.F.R. 300.511. A parent, public agency, or eligible student may only request the administrative hearing within three (3) years of the date the parent, public agency, or eligible student knew about the alleged action that forms the basis for the complaint, unless a longer period is reasonable because the violation is continuing. This three (3) year limit shall not limit the introduction of evidence older than three (3) years if the evidence is relevant to the complaint and shall not apply to the parent or the eligible student if the parent or eligible student was prevented from requesting the hearing due to:

(a) Failure of the local educational agency to provide prior written or procedural safeguards notices;

(b) False representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

(c) The local educational agency's withholding of information relevant to the hearing issues from the parent.

History.

Enact. Acts 1970, ch. 47, § 4; 1976, ch. 345, § 4; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 4, effective July 15, 1980; 1984, ch. 128, § 4, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 182, effective July 13, 1990; 1992, ch. 377, § 2, effective July 14, 1992; 1996, ch. 318, § 47, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 6, effective July 15, 1998; 2004, ch. 124, § 1, effective July 13, 2004.

Compiler's Notes.

The Federal Individuals with Disabilities Education Act referenced in subdivision (5) is compiled as 20 USCS §§ 1400 et seq.

OPINIONS OF ATTORNEY GENERAL.

Where the parents of an exceptional school age child were opposed to the child's attendance in a county T.M.R. unit, the dispute over the child's placement was a proper subject for a due process hearing authorized by State Board of Education regulations. OAG 76-507.

Although, for the year 1987-1988, the General Assembly funded 4360 classroom units for special education students, which was approximately 683 units less than the number requested or anticipated by the local school district, this level of funding by the General Assembly did not violate this section or KRS 157.310. OAG 88-17, 1988 Ky. AG LEXIS 17.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Kentucky Special Education Mentor Program, 707 KAR 1:270.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Programs for the gifted and talented, 704 KAR 3:285.

157.226. Preschool program for disabled children. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1990, ch. 476, Pt. I, § 17, effective July 13, 1990; 1992, ch. 377, § 3, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996) was repealed by Acts 2013, chs. 86, § 2, and 102, § 2, effective June 25, 2013.

157.230. Special educational programs of school districts.

School boards of any school district subject to KRS 157.200 to 157.290, shall establish and maintain special educational programs for exceptional children and youth who are residents of their school district, or contract for programs as may be authorized by KRS 157.280.

History.

Enact. Acts 1948, ch. 4, § 4; 1956, ch. 162, § 2; 1962, ch. 169, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 5, effective July 15, 1980; 1982, ch. 119, § 1, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 378, effective July 13, 1990; 2026 ch. 196, § 6, effective July 15, 2026.

Compiler's Notes.

This section (Enact. Acts 1948, ch. 4, § 4; 1956, ch. 162, § 2; 1962, ch. 169, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 5, effective July 15, 1980; 1982, ch. 119, § 1, effective July 15, 1982) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 378, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

If a factual determination were to be made that a proposed United Cerebral Palsy school would furnish an approved program for the instruction of exceptional children and that such a program was needed by the local school board, the board could execute a lease of property for such a school for the nominal sum of $1.00 per year. OAG 70-805.

Exceptional children who are residents of a private nonsectarian institution may be instructed in the institution, either in a leased or donated room, by a public school teacher. OAG 74-681.

Pursuant to KRS 157.270, a local board of education is required to provide home training for exceptional children, but an institutional home, standing in loco parentis for exceptional children, cannot under this section legally require a school district to establish and maintain special education classes for its inmates. OAG 74-681.

A school district is not required to pay any part of a private placement of a handicapped child so long as the public school district is and remains committed to providing a free appropriate education for that handicapped child within the public schools; thus, if the parents of a handicapped child unilaterally place their child in an out-of-state residential school without first pursuing their statutory and regulatory remedies in their local school district, the school district would not be required to pick up any of the cost of the private education selected by the parents. OAG 83-184, 1983 Ky. AG LEXIS 312.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Programs for the gifted and talented, 704 KAR 3:285.

Kentucky Bench & Bar.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

Northern Kentucky Law Review.
ADA Amendments Issue: Article: Education for Americans with Disabilities: Reconciling IDEA with the 2008 ADA Amendments, 37 N. Ky. L. Rev. 389 (2010).

157.240. Determination of status of child as physically or mentally handicapped. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1948, ch. 4, § 5; 1962, ch. 169, § 4) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

157.250. Certification requirement for teachers — Exception.

No person shall be employed to teach or serve as special education coordinator, director, supervisor, or other special education administrator in any special education program authorized by KRS 157.200 to 157.290 unless he holds certification as required by the Education Professional Standards Board. However, any teacher or administrator serving on July 14, 1992, in the affected position who has had satisfactory evaluations of his performance in that position during his time of service shall be excluded from the requirement of this section.

History.
Enact. Acts 1948, ch. 4, § 6; 1962, ch. 169, § 5; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 379, effective July 13, 1990; 1992, ch. 377, § 4, effective July 14, 1992.

Compiler's Notes.
This section (Enact. Acts 1948, ch. 4, § 6; 1962, ch. 169, § 5; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 379, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Certification requirements for teachers of exceptional children, 16 KAR 4:020.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Director of special education, 16 KAR 3:040.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.260. Annual reports of disabled children by school districts.

Each school district shall ascertain annually all children within the district who are disabled and shall report to the Department of Education on forms provided by the Department of Education and according to administrative regulations promulgated by the Kentucky Board of Education.

History.
Enact. Acts 1948, ch. 4, § 7; 1962, ch. 169, § 6; 1990, ch. 476, Pt. IV, § 183, effective July 13, 1990; 1992, ch. 377, § 5, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.270. Instruction in child's home or hospital. [Renumbered]

History.
Enact. Acts 1948, ch. 4, § 8, 1962, ch. 169, § 7; 1974, ch. 293, § 1; 1984, ch. 111, § 178, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 380, effective July 13, 1990; renumbered to § 158.033 by 2020 ch. 104, § 1, effective July 15, 2020.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.280. Special education program furnished by district other than that of child's residence, or privately — Sharing costs — Transportation — Transportation to and from state schools for the deaf and blind.

(1) If the number of children of school age in one (1) classification of exceptionality in a district is not sufficient to justify a special education program for that exceptionality in that district, or if a school district does not provide a special education program for that exceptionality, the board shall provide a program by contract with another county or independent district or private organization that maintains a special education program approved by the Kentucky Board of Education for that exceptionality. When a district or private organization undertakes, under operation of a tuition contract or of law, to provide in its classes for these pupils residing in another district, the district of residence of these pupils shall share the total cost of the special education program in proportion to the number of pupils or in accordance with contract agreement between the two (2) districts or district and private organization.

(2) If a local school district's admissions and release committee determines that a child requires placement in a special education program operated by another county or independent district or private organization, the resident local school district shall assume respon-

sibility for the payment of the costs incurred in educating the child. The school board of the school district in which any child resides shall pay for his transportation to and from the program in the other school district or to the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost.

(3) If a local school district's admission and release committee determines that the local school district has an appropriate educational program for a child and a parent chooses to place the child in a program or facility in another county or independent district or private organization, the parent shall assume responsibility for payment of the costs incurred in educating the child.

(4) If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf or the Kentucky School for the Blind, under regulation of the Kentucky Board of Education and under provisions of KRS 167.015 to 167.170, the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis, as approved by the Kentucky Board of Education upon recommendation of the chief state school officer. Students who live more than two hundred (200) miles from either school shall not be required to go home more than twice each month. The Kentucky Board of Education shall promulgate administrative regulations to set forth the transportation schedule and the weekend activities for students who remain at school.

(5) If a child of school age is admitted as a day school pupil for instruction at the Kentucky School for the Deaf or the Kentucky School for the Blind, under regulation of the Kentucky Board of Education and under provisions of KRS 167.015 to 167.150, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis, as approved by the Kentucky Board of Education upon recommendation of the chief state school officer. School districts providing this transportation shall be reimbursed from the transportation fund of the foundation program at the same rate per trip as that which is calculated under subsection (4) of this section.

History.

Enact. Acts 1948, ch. 4, § 9; 1962, ch. 169, § 8; 1974, ch. 79, § 1; 1976, ch. 271, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 7, effective July 15, 1980; 1982, ch. 119, § 2, effective July 15, 1982; 1982, ch. 358, § 1, effective July 15, 1982; 1986, ch. 225, § 1, effective July 15, 1986; 1990, ch. 108, § 1, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 184, effective July 13, 1990; 1992, ch. 257, § 1, effective July 14, 1992; 1994, ch. 376, § 4, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.

OPINIONS OF ATTORNEY GENERAL.

While general tax dollars provided by the state may be used to pay a portion of the costs incurred in operating special education classes for exceptional children, a local board of education is precluded from spending school funds for such purpose even though such an operation is a most laudable and commendable one. OAG 72-86.

The $300 per year limitation on transportation costs is applicable only in a case where one (1) school district contracts with another school district to provide instruction for an exceptional child. OAG 72-693.

Since nothing in the statutes requires that the parents of a deaf child must consent to the child attending the Kentucky School for the Deaf or lose the benefits provided by other statutes, a local school district is required to pay the educational tuition of one (1) of its students who attends special classes in another system although the child in question is a deaf child whose parents will not consent to his attendance at the Kentucky School for the Deaf. OAG 74-531.

Where a board of education contracts for special education services with a private school it would not be entitled to ADA or bonus unit foundation program funds for the pupils involved. OAG 74-742.

A public school district may receive ADA or bonus unit foundation funds for special education program pupils who for a part of the day receive contracted services at a regional state university. OAG 74-742.

A public school may not pay the tuition of a deaf student who attends a Catholic school at the parents' election after rejection of the public school's arrangement for the child to be admitted to the Kentucky School for the Deaf. OAG 74-660; 74-914.

It was not the legislative intent of this section that districts without sufficient educational facilities pay the expense of exceptional children at boarding schools or schools not accessible by daily commuting, and thus the school district is not authorized under this section to send a child who needs special education to a school in another state more than 100 miles away. OAG 74-914.

This section contains no minimum or maximum amounts which may be spent and therefore authorizes the spending of whatever is necessary for education and transportation. OAG 74-914.

A licensed day care center is a private organization within the meaning of this section but whether it qualifies as a contractor to provide special education programs must be decided by the State Board of Education under its regulations and guidelines. OAG 75-56.

It was not the legislative intent of this section to require local school districts to pay the transportation costs of exceptional children at boarding or other schools not accessible by daily commuting, and, therefore, this section does not authorize the reimbursement, from funds provided by the state from the minimum foundation program, of local school funds expended for school bus transportation of deaf students from a school for the deaf to their homes for weekend visits with their parents. OAG 75-609.

A local school system must continue to provide an appropriate educational program for an exceptional child even beyond the age of compulsory attendance, and if a school does not have such program for a child past the compulsory attendance age in any one classification of exceptionality, the school must contract with another county or independent school district or private organization that maintains a special education program approved by the State Department of Education for that exceptionality. OAG 77-116, 1977 Ky. AG LEXIS 667.

A local public school may not interpret this section as authorization to provide special education programs for only compulsory school age children, for special education children are entitled to a twelve-grade school service or until a child reaches 21 years of age. OAG 77-116, 1977 Ky. AG LEXIS 667.

The language of this section requires a local school district only to provide transportation to and from either the Kentucky School for the Blind or the Kentucky School for the Deaf

on a regularly scheduled basis, at intervals of no less than one each month; however, a school may, in the reasonable discretion of the local board of education, pay daily commuting costs out of local school money when a child is attending either school as a day student and the distance is reasonable between the home school district and the appropriate state residential school. OAG 77-137, 1977 Ky. AG LEXIS 644.

A school district is not required to pay any part of a private placement of a handicapped child so long as the public school district is and remains committed to providing a free appropriate education for that handicapped child within the public schools; thus, if the parents of a handicapped child unilaterally place their child in an out-of-state residential school without first pursuing their statutory and regulatory remedies in their local school district, the school district would not be required to pick up any of the cost of the private education selected by the parents. OAG 83-184, 1983 Ky. AG LEXIS 312.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Blind and deaf pupils, reimbursement for, 702 KAR 5:120.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.285. Related services provided by local boards of education.

Local boards of education may contract to provide "related services" to exceptional children when the appropriate services are not available through a public or private agency.

History.

Enact. Acts 1972, ch. 16, § 2; 1980, ch. 286, § 7, effective July 15, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 381, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1972, ch. 16, § 2; 1980, ch. 286, § 7, effective July 15, 1980) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 381, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

There is nothing in this section which raises a question as to its constitutionality. OAG 72-343.

Under this section the tuition rate must be set by bargaining and negotiation between the school district and the agency. OAG 72-343.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.290. Tentative preapproval of plans for special education programs.

The local superintendent of schools shall present to the chief state school officer an application for tentative preapproval of a plan for special education programs for exceptional children.

History.

Enact. Acts 1948, ch. 4, § 10; 1962, ch. 169, § 9; 1990, ch. 476, Pt. IV, § 185, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Kentucky Bench & Bar.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

157.295. Additional supervisors for special education programs. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 169, § 10(1); 1970, ch. 92, § 29) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

157.300. Payment by state of excess per capita cost of educating handicapped children; budgets; reports; applications. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1948, ch. 4, § 11) was repealed by Acts 1962, ch. 169, § 11.

157.305. Qualification of private schools for education of exceptional children — Conditions. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1960, ch. 107; 1970, ch. 197, § 1; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

FUND TO SUPPORT EDUCATION EXCELLENCE IN KENTUCKY

157.310. Declaration of legislative intent.

It is the intention of the General Assembly to assure

substantially equal public school educational opportunities for those in attendance in the public schools of the Commonwealth, but not to limit nor to prevent any school district from providing educational services and facilities beyond those assured by the state supported program. The program shall provide for an efficient system of public schools throughout the Commonwealth, as prescribed by Section 183 of the Constitution of Kentucky, and for the manner of distribution of the public school fund among the districts and its use for public school purposes, as prescribed by Section 186 of the Constitution.

History.
Enact. Acts 1976, ch. 93, § 19, effective July 1, 1976; 1990, ch. 476, Pt. III, § 93, effective July 13, 1990.

Legislative Research Commission Notes.
Former KRS 157.310 (Enact. Acts 1954, ch. 214, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2703.

NOTES TO DECISIONS

1. Construction.
The minimum foundations law (KRS 157.310 to 157.440) does not affect the policy of KRS 161.760 that a teacher in continuing service status, once promoted in salary, cannot be demoted in salary without such cause as would justify termination of his contract, and elimination of duties or responsibilities cannot be used as a device for demotion in salary. Board of Education v. Lawrence, 375 S.W.2d 830, 1963 Ky. LEXIS 193 (Ky. 1963) (decision prior to 1964 amendment of KRS 161.760).

The procedure for preparation and approval of the school budget and the levying of school taxes is complicated by the fact the statutes relating to the foundation program (KRS 157.310 to 157.370) are not adequately correlated with the school district financing program dealt with in KRS 160.460 and 160.470. Holmes v. Walden, 394 S.W.2d 458, 1965 Ky. LEXIS 182 (Ky. 1965).

OPINIONS OF ATTORNEY GENERAL.

A student teacher may not legally take charge of a classroom in the absence of the regular teacher, for if such was done the local school district would forfeit its right to receive average daily attendance allotments, for in computing this apportionment there shall be included only the attendance of pupils engaged in educational activities under the immediate control and supervision of a school employee who possesses a valid certificate. OAG 63-269.

Local school boards have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age. OAG 65-410.

It is proper to afford ADA credit to a public school district for the public school portion of dual enrollment situations involving public and nonpublic schools. OAG 68-150.

A public school district may receive ADA or bonus unit foundation funds for special education program pupils who for a part of the day receive contracted services at a regional state university. OAG 74-742.

Where a board of education contracts for special education services with a private school it would not be entitled to ADA or bonus unit foundation funds for the pupils involved. OAG 74-742.

The State Board of Education is not authorized by statute to withhold funds from a local school board because the schools in its district are not of a certain rating. OAG 75-552.

School bus transportation may be provided from local school funds for trips of deaf students from a school for the deaf to their homes for weekend visits with their families, but there is no provision in the minimum foundation law permitting reimbursement from the minimum foundation program. OAG 75-609.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

Although, for the year 1987-1988, the General Assembly funded 4360 classroom units for special education students, which was approximately 683 units less than the number requested or anticipated by the local school district, this level of funding by the General Assembly did not violate KRS 157.224 or this section. OAG 88-17, 1988 Ky. AG LEXIS 17.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Article: New Directions in School Funding and Governance: Moving from Politics to Evidence, 98 Ky. L.J. 653 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: Foreword: Rights, Remedies, and Rose, 98 Ky. L.J. 703 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: Judicial Humility: The Enduring Legacy of Rose v. Council for Better Education, 98 Ky. L.J. 717 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: Justiciability, Adequacy, Advocacy, and the "American Dream", 98 Ky. L.J. 739 (2009/2010).

Special Feature: Rose At 20: The Past And Future Of School Finance Litigation: The Evolving Role of the Courts in School Reform Twenty Years After Rose, 98 Ky. L.J. 789 (2009/2010).

157.312. Declaration of legislative intent to authorize public kindergarten. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 20, effective July 1, 1976) was repealed by Acts 1988, ch. 33, § 3, effective July 15, 1988.

Former KRS 157.312 (Enact. Acts 1972, ch. 151, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

157.315. Regulations for operation of public kindergarten — Attendance eligibility. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 21, effective July 1, 1976; 1978, ch. 136, § 1, effective July 1, 1979; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 367, § 1, effective July 13, 1984) was repealed by Acts 1988, ch. 33, § 3, effective July 15, 1988.

Former KRS 157.315 (Enact. Acts 1972, ch. 151, § 2) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

157.317. Development of statewide Early Childhood Education Program — Kentucky Early Childhood Advisory Council. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 397, § 5, effective July

13, 1984; 1988, ch. 33, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 15, effective July 13, 1990; 1990, ch. 518, § 2, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 426, § 112, effective July 15, 1998; 2002, ch. 14, § 10, effective July 14, 2000; 2000 ch. 204, § 1, effective July 14, 2000) was repealed by Acts 2000, ch. 308, § 28, effective July 14, 2000. For present law, see KRS 200.700 et seq.

Legislative Research Commission Notes.

(7/14/2000). Under KRS 446.260, the repeal of this section in 2000 Ky. Acts ch. 308 prevails over its amendment in 2000 Ky. Acts chs. 14 and 204.

157.3175. Preschool education program — Grant allocation — Eligibility for free preschool education — Program components — Certification of fully utilized program.

(1) Each local school district shall ensure that a developmentally appropriate half-day preschool education program is provided for each child who is at risk of educational failure and who is four (4) years of age by August 1. All other four (4) year old children shall be served to the extent placements are available. The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall adopt administrative regulations establishing the guidelines for the program. Administrative regulations shall establish eligibility criteria, program guidelines, and standards for personnel.

(2) "Developmentally appropriate preschool program" means a program which focuses on the physical, intellectual, social, and emotional development of young children. The preschool program shall help children with their interpersonal and socialization skills.

(3) Funds appropriated by the General Assembly for the preschool education programs shall be granted to local school districts according to a grant allotment system approved by the Kentucky Board of Education. Children who are at risk shall be identified based on the Federal School Lunch Program eligibility criteria for free lunch. Appropriations shall be separate from all other funds appropriated to the Department of Education and shall be administered in accordance with applicable federal and state statutes and administrative regulations. Eligible local school districts shall receive funds based on the average number of preschool children being served on December 1 and March 1 of the prior academic year who are appropriately identified as:

(a) Three (3) and four (4) years of age with disabilities; and

(b) Four (4) years of age identified as at risk of educational failure.

Local school districts may develop cooperative arrangements with other school districts or organizations in accordance with KRS 157.280.

(4) A child shall be eligible for a free and appropriate preschool education and related services if:

(a)1. The child has been identified as a child with a disability in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. sec. 1400 et seq.; or

2. The child has been identified in accordance with the definitions and procedures for exceptional children and youth in accordance with KRS 157.200(3)(a) to (m); and

(b) The child is three (3) or four (4) years of age by August 1.

(5) The chief state school officer shall receive and review proposals from local school districts for grants to operate or oversee the operation of developmentally appropriate preschool education programs. Districts may submit proposals for implementing new services, enhancing existing preschool education services, or contracting for services. In designing a local early childhood education program, each district shall work with existing preschool programs to avoid duplication of programs and services, to avoid supplanting federal funds, and to maximize Head Start funds in order to serve as many four (4) year old children as possible.

(6) Each program proposal shall include, at a minimum:

(a) A description of the process conducted by the district to ensure that the parents or guardians of all eligible participants have been made aware of the program and of their right to participate;

(b) A description of the planned educational programming and related services;

(c) The estimated number of children participating in the program;

(d) Strategies for involving children with disabilities;

(e) Estimated ratio of staff to children with the maximum being one (1) adult for each ten (10) children;

(f) The estimated percentage of children participating in the program who are at risk of educational failure;

(g) Information on the training and qualifications of program staff and documentation that the staff meet required standards;

(h) A budget and per-child expenditure estimate;

(i) A plan to facilitate active parental involvement in the preschool program, including provisions for complementary parent education when appropriate;

(j) Facilities and equipment which are appropriate for young children;

(k) The days of the week and hours of a day during which the program shall operate;

(*l*) A plan for coordinating the program with existing medical and social services, including a child development and health screening component;

(m) Assurances that participants shall receive breakfast or lunch;

(n) Program sites which meet state and local licensure requirements;

(o) A plan for coordinating program philosophy and activities with the local district's primary school program;

(p) An evaluation component; and

(q) Certification from the local Head Start director that the Head Start program is fully utilized pursuant to subsection (4) of this section.

(7) If the superintendent and local Head Start director are unable to reach an agreement on whether a Head Start program is fully utilized, the superinten-

dent or local Head Start director shall notify the chief state school officer. The local Head Start director shall provide the chief state school officer all information relevant to the utilization of the Head Start program. Within thirty (30) days of notification from the superintendent or local Head Start director, the chief state school officer shall make a determination of whether a Head Start program is fully utilized and may execute the certification required by subsection (6)(q) of this section on behalf of the local Head Start director.

(8) Programs shall reflect an equitable geographic distribution representative of all areas of the Commonwealth.

History.

Enact. Acts 1990, ch. 476, Pt. I, § 16, effective July 13, 1990; 1992, ch. 456, § 2, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2013, ch. 86, § 1, effective June 25, 2013; 2013, ch. 102, § 1, effective June 25, 2013; 2022 ch. 190, § 1, effective July 14, 2022; 2026 ch. 196, § 7, effective July 15, 2026.

Legislative Research Commission Notes.

(6/25/2013). This statute was amended by 2013 Ky. Acts chs. 86 and 102. Where those Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 86, which was last enacted by the General Assembly, prevails under KRS 446.250.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky All STARS for Preschool Programs, 704 KAR 3:015.

Interdisciplinary early childhood education, birth to primary, 16 KAR 2:040.

Preschool associate teachers, 704 KAR 3:420.

Preschool education program for four (4) year old children, 704 KAR 3:410.

Preschool grant allocations, 702 KAR 3:250.

Probationary certificate for teachers of children, birth to primary, 16 KAR 2:140.

Transportation of preschool children, 702 KAR 5:150.

157.318. Network of regional training centers for preschool and early childhood education established.

(1) There is hereby established a network of regional training centers for preschool and early childhood education as specified in the 1987 state preschool grant application for Public Law 99-457. The purpose of the regional training centers shall be to provide peer to peer training, consultation, technical assistance, and materials to personnel from local school districts and other agencies operating programs for disabled and at-risk preschool children.

(2) The regional training centers shall receive federal funds from Public Law 99-457, Education of the Handicapped Act, Part B, and may receive state appropriations, gifts, and grants. No additional centers shall be established unless the existing centers receive at least the same level of funding as in the 1988 fiscal year.

(3) The Kentucky Board of Education shall promulgate such regulations as may be needed in the administration of the regional training centers. In administering this section, the chief state school officer shall consult with the regional training centers and the districts and agencies served by this program.

History.

Enact. Acts 1990, ch. 453, § 1, effective July 13, 1990; 1994, ch. 405, § 23, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.

The Education of the Handicapped Act and the amendments thereto under Public Law 99-457, referred to in subsections (1) and (2), are compiled as 20 USCS §§ 1400 et seq., now known as the Individuals with Disabilities Education Act.

157.320. Definitions for KRS 157.310 to 157.440.

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the commissioner of education. The commissioner of education shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(2) "Average daily attendance" means the aggregate days attended by pupils in a public school, adjusted for weather-related low attendance days if applicable, divided by the actual number of days the school is in session, after the five (5) days with the lowest attendance have been deducted.

(a) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and

(b) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;

(3) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;

(4) "Board" means the board of education of any county or independent school district;

(5) "District" means any school district as defined by law;

(6) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(7) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher,

for a minimum of one hundred forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;

(8) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session after the five (5) days with the lowest attendance have been deducted. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;

(9) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board;

(10) "National board certification salary supplement" means an annual supplement added for the life of the certificate to the base salary of a teacher who attains national board certification;

(11) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year;

(12) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(13) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(14) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(15) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(16) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(17) "Virtual program" means a program offered by a public school district in which all courses in the program are virtual, do not include regular in-person instruction, and are designed as an alternative to traditional in-person school programs; and

(18) "Weather-related low attendance day" means a school day on which the district's attendance falls below the average daily attendance for the prior year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the commissioner of education in accordance with Kentucky Board of Education administrative regulations.

History.

Enact. Acts 1976, ch. 93, § 22, effective July 1, 1976; 1976, ch. 93, § 12, effective July 1, 1977; 1978, ch. 133, § 1, effective June 17, 1978; 1980, ch. 182, § 1, effective July 15, 1980; 1984, ch. 367, § 2, effective July 13, 1984; 1990, ch. 351, § 1, effective July 13, 1990; 1990, ch. 476, Pt. III, § 94, effective July 13, 1990; 1994, ch. 240, § 1, effective July 15, 1994; 1994, ch. 254, § 1, effective July 15, 1994; 1996, ch. 20, § 4, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 6, § 1, effective July 15, 1998; 1998, ch. 309, § 1, effective July 15, 1998; 1998, ch. 591, § 2, effective July 15, 1998; 2000, ch. 257, § 7, effective July 14, 2000; 2000, ch. 389, § 2, effective July 14, 2000; 2025 ch. 94, § 2, effective March 27, 2025.

Legislative Research Commission Notes.

(3/27/2025). Under the authority of KRS 7.136, the reviser of statutes has rearranged the subsections in this statute to place the definitions in alphabetical order. The words in the statute were not changed.

Former KRS 157.320 (Enact. Acts 1954, ch. 214, § 2; 1960, ch. 145, § 1; 1968, ch. 208, § 1; 1972, ch. 151, § 3; 1972, ch. 372, § 3; 1974, ch. 265, § 2) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (19) at 2072.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

NOTES TO DECISIONS

1. Salary Schedule.

Where teachers in one (1) school district earned credits toward salary increases on different basis from teachers in

second district, salary plan established pursuant to KRS 157.310 to 157.440 after merging of two (2) districts, which granted teachers from each district the credits under former salary plans, was reasonable and was not discriminatory. Ambs v. Board of Educ., 570 S.W.2d 638, 1978 Ky. App. LEXIS 575 (Ky. Ct. App. 1978).

Cited in:

Holmes v. Walden, 394 S.W.2d 458, 1965 Ky. LEXIS 182 (Ky. 1965); Preuss v. Board of Education, 667 S.W.2d 391, 1984 Ky. App. LEXIS 448 (Ky. Ct. App. 1984).

OPINIONS OF ATTORNEY GENERAL.

Teaching experience with a Head Start program does not qualify as "teaching experience" for the purposes of determining a teacher's salary unless the teacher was under contract with an accredited public or nonpublic school at the time of participation in the program. OAG 76-152.

A county school board could prepare a salary schedule so as to increase the salaries of teachers assigned to schools within the jurisdiction of a city which has levied an occupational tax. OAG 77-427, 1977 Ky. AG LEXIS 391.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts would not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four (4) of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two (2) mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106, 1982 Ky. AG LEXIS 519.

A reduction in state appropriations to the Minimum Foundation Fund for teachers' salaries, legal or illegal, could not be said to have reduced the number of days required for a minimum school term in the Commonwealth's public common schools; the law still requires 185 days and that four (4) of these days be devoted to in-service training for public common school teachers and the elimination of state money for two (2) in-service days did not take the requirement for the two (2) days away. OAG 82-106, 1982 Ky. AG LEXIS 519.

While KRS 157.330(2) requires that foundation program funds are to be drawn out or appropriated only "as provided by statute," it is entirely proper for the State Board of Education to adopt a regulation intending to implement the statutory law. OAG 84-314, 1984 Ky. AG LEXIS 72.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown is precatory in nature and in light of Const., §§ 184 and 186 cannot be carried out, for the funds involved are foundation program funds and not just general funds appropriated for education, and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314, 1984 Ky. AG LEXIS 72.

Salary schedules may properly be prepared so as to increase the salaries of particular county teachers, teaching within the city, in an amount equal to the occupational tax imposed upon those teachers. OAG 86-33, 1986 Ky. AG LEXIS 53.

The provision that kindergarten shall be provided at a minimum for one-half (½) day, five (5) days a week, for a full school year, for each kindergarten pupil, went into effect on July 13, 1990. OAG 90-73, 1990 Ky. AG LEXIS 73.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Differentiated compensation, 702 KAR 3:310.
Handicapped, reimbursement for, 702 KAR 5:100.
Program cost calculation, 702 KAR 5:020.
Pupil attendance, 702 KAR 7:125.
SEEK funding formula, 702 KAR 3:270.
Teachers' salary scheduling, 702 KAR 3:070.
Withholding funds, 702 KAR 3:045.

157.330. Fund to support education excellence in Kentucky.

(1) There is hereby established the fund to support education excellence in Kentucky consisting of appropriations for distribution to districts in accordance with the provisions of KRS 157.310 to 157.440.

(2) The resources of the public school fund shall be paid into the State Treasury, and shall be drawn out or appropriated only in aid of public schools as provided by statute.

History.

Enact. Acts 1976, ch. 93, § 23, effective July 1, 1976; 1990, ch. 476, Pt. III, § 95, effective July 13, 1990.

Legislative Research Commission Notes.

Former KRS 157.330 (Enact. Acts 1954, ch. 214, § 3; 1956, ch. 106, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

OPINIONS OF ATTORNEY GENERAL.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

While subsection (2) of this section requires that foundation program funds are to be drawn out or appropriated only "as provided by statute," it is entirely proper for the State Board of Education to adopt a regulation intending to implement the statutory law. OAG 84-314, 1984 Ky. AG LEXIS 72.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit, with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown, is precatory in nature and in light of Const., §§ 184 and 186 cannot be carried out, for the funds involved are foundation program funds and not just general funds appropriated for education, and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314. (Refers to 1984 Budget)

157.340. Distribution of funds from per capita account. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1954, ch. 214, § 4) was repealed by Acts 1956, ch. 106, § 8.

157.350. Eligibility of districts for participation in fund to support education excellence in Kentucky.

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

(1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The Kentucky Board of Education, upon recommendation of the commissioner of education, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;

(2) Operates all schools for a minimum school term as provided in KRS 158.070 and administrative regulations of the Kentucky Board of Education. If the school term is less than one hundred eighty-five (185) days, including not less than one hundred seventy (170) student attendance days as defined in KRS 158.070 or one thousand sixty-two (1,062) hours of instructional time, for any reason not approved by the Kentucky Board of Education on recommendation of the commissioner, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;

(3)(a) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440.

(b)1. Contracts, renewals, or extensions entered into on or after July 1, 2026, shall not provide any superintendent, as defined in KRS 161.720, a percentage pay increase greater than the percentage pay increase provided to classroom teachers in the district. Upon the expiration of the superintendent's contract, the local board and superintendent may negotiate a salary increase, which shall be set forth in a new contract.

2. An administrator, as defined in KRS 161.720, shall not receive a percentage pay increase greater than the percentage pay increase provided to classroom teachers in the district unless the pay increase is:

a. In conjunction with a professional advancement that imposes a significant change in job duties and responsibilities; or

b. The result of local board action to uniformly increase the pay associated with a specific job category.

3. The commissioner of education may grant a waiver of this paragraph if requested by a local board. If the commissioner denies a waiver request from a local board, a waiver of this paragraph may be requested in accordance with KRS 156.161;

(4) Includes no nonresident pupils in its average daily attendance, except:

(a) Those nonresident pupils admitted pursuant to district nonresident pupil policies adopted under KRS 158.120; and

(b) A nonresident pupil who attends a district in which a parent of the pupil is employed. All tuition fees required of a nonresident pupil may be waived for a pupil who meets the requirements of this paragraph.

This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital and pupils who have been expelled for behavioral reasons who shall be counted in average daily attendance under KRS 157.320;

(5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls; and

(6) Any school district which fails to comply with subsection (5) of this section shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. The hearing shall be conducted in accordance with KRS Chapter 13B. A district under this subsection shall, at the hearing, have an opportunity to show inability to comply.

History.

Enact. Acts 1976, ch. 93, § 24, effective July 1, 1976; 1976, ch. 93, § 13, effective July 1, 1977; 1978, ch. 133, § 2, effective June 17, 1978; 1990, ch. 476, Pt. III, § 96, effective July 13, 1990; 1992, ch. 258, § 1, effective April 7, 1992; 1996, ch. 318, § 50, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 309, § 2, effective July 15, 1998; 2005, ch. 52, § 1, effective June 20, 2005; 2007, ch. 104, § 1, effective June 26, 2007; 2013, ch. 56, § 1, effective June 25, 2013; 2014, ch. 14, § 4, effective July 15, 2014; 2021 ch. 167, § 1, effective June 29, 2021; 2026 ch. 9, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

Former KRS 157.350 (Enact. Acts 1954, ch. 214, § 5; 1956, ch. 106, § 2; 1960, ch. 145, § 2; 1974, ch. 349, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (17) at 2072.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

NOTES TO DECISIONS

Analysis

1. Tenure.
2. Additional Compensation.
3. Local Tax Levy.

1. Tenure.

The minimum foundation law requiring a school district to pay all teachers on the basis of a single salary schedule does not affect the tenure law which provides that a teacher with a continuing service status, once promoted in salary, cannot be demoted in salary without such cause as would justify termination of her contract, and elimination of duties or responsibilities cannot be used as a device for demotion in salary. Board of Education v. Lawrence, 375 S.W.2d 830, 1963 Ky. LEXIS 193 (Ky. 1963) (decision prior to amendment of KRS 161.760).

2. Additional Compensation.

Continuation of extra pay after extra duties have been eliminated was not for extra duties but for extra qualifications and is not an unconstitutional diversion of school funds, and a teacher who received compensation in addition to her base pay for her various responsibilities as principal of an elementary school was entitled to receive additional compensation when removed as principal and assigned to ordinary teaching position. Board of Education v. Lawrence, 375 S.W.2d 830, 1963 Ky. LEXIS 193 (Ky. 1963) (decision prior to amendment of KRS 161.760).

3. Local Tax Levy.

Any school district otherwise qualified under this section has the right to qualify by requiring a sufficient tax levy. Holmes v. Walden, 394 S.W.2d 458, 1965 Ky. LEXIS 182 (Ky. 1965) (decided under prior law).

Cited in:

Preuss v. Board of Education, 667 S.W.2d 391, 1984 Ky. App. LEXIS 448 (Ky. Ct. App. 1984).

OPINIONS OF ATTORNEY GENERAL.

The Fort Knox schools are not public common schools and, therefore, a county school system cannot enter into a written agreement with the Fort Knox system concerning special education children so as to receive minimum foundation program funds for its children's instruction. OAG 76-670.

It is truly in the discretion of the local board of education to establish a reasonable tuition fee for nonresident students; however, the better practice would be for a local board to attempt to establish a tuition fee sufficient to defray any reasonably calculated per capita costs not funded through the state foundation program funds for educating a nonresident child. OAG 78-265, 1978 Ky. AG LEXIS 462.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts could not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four (4) of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two (2) mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106, 1982 Ky. AG LEXIS 519.

A reduction in state appropriations to the Minimum Foundation Fund for teachers' salaries, legal or illegal, could not be said to have reduced the number of days required for a minimum school term in the commonwealth's public common schools, the law still requires 185 days and that four of these days be devoted to in-service training for public common school teachers and the elimination of state money for two (2) in-service days did not take the requirement for the two (2) days away. OAG 82-106, 1982 Ky. AG LEXIS 519.

Should local boards of education fail to enter into a written agreement to allow nonresident pupils to attend school in a certain district, then the local board of education that educates the nonresident pupil is not eligible to receive attendance credit and funding for those pupils. OAG 91-75, 1991 Ky. AG LEXIS 75.

So long as two (2) districts enter into a written agreement that a particular district will allow nonresident pupils to attend, then that district which is educating the nonresident pupils may receive the pupils' share of funds from the Fund to Support Education Excellence in Kentucky. By administrative regulation, the local boards of education that execute written agreements for average daily attendance of nonresident pupils are required to submit a copy of any agreement to the State Department of Education by November 15 of each year. OAG 91-75, 1991 Ky. AG LEXIS 75.

Supplemental agreements in which a district requires that the district taking the greater number of nonresident children must give back to the home district a certain percentage of state funds attributable to the excess nonresident students are impermissible and may be unconstitutional. OAG 91-75, 1991 Ky. AG LEXIS 75.

There appears to be no legal authority for sending money to a district where a child is not being educated, and such a practice may lead to inequitable funding levels in violation of Const., § 183, which requires that the General Assembly provide for an efficient system of schools, and has resulted in a complete revision of the system of school finance, which has set forth careful procedures to ensure that local districts receive the necessary funding per average daily attendance to carry out the mandated education. OAG 91-75, 1991 Ky. AG LEXIS 75.

There is no statutory authorization for any district which enters into an agreement concerning the education of nonresident pupils to require that the districts taking the greater number of nonresident children agree to give back to the home district a percentage of the state funds attributable to the excess nonresident students. OAG 91-75, 1991 Ky. AG LEXIS 75.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Pupil attendance, 702 KAR 7:125.

157.360. Base funding level — Adjustment — Enforcement of maximum class sizes — Allotment of program funds — Recalculation of allocated funds — Lengthening of school days.

(1)(a) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.

(b) When determining the biennial appropriations for the program, the average daily attendance for each fiscal year shall include an estimate of the number of students graduating early under the provisions of KRS 158.142.

(2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year, except a district shall receive an amount equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level for each student who graduated early under the provisions of KRS 158.142. Each district's base funding level shall be adjusted by the following factors:

(a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay for:

1. Alternative programs for students who are at risk of dropping out of school before achieving a diploma; and

2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;

(b) The number and types of exceptional children in the district as defined by KRS 157.200. Specific weights for each category of exceptionality shall be used in the calculation of the add-on factor for exceptional children; and

(c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which ensures that no public school funds are used for the transportation of nonpublic students.

(3) Beginning with the 2015-2016 school year and each year thereafter, the General Assembly shall annually allocate funds equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level for each student who graduated early under the provisions of KRS 158.142 the previous school year to the Kentucky Higher Education Assistance Authority for deposit in the early graduation scholarship trust fund.

(4) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.

(5)(a) Except for those schools which have implemented school-based decision making, the commissioner of education shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (6) of this section, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);

2. Twenty-eight (28) in grade four (4);

3. Twenty-nine (29) in grades five (5) and six (6); and

4. Thirty-one (31) in grades seven (7) to twelve (12).

(b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school:

1. Classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day; and

2. Virtual program teachers shall not exceed the equivalent of three hundred (300) pupil hours per day.

(c) The commissioner of education, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request a temporary exemption from the Kentucky Department of Education when unusual circumstances warrant an increased class size for an individual class. A request for a temporary exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. The Kentucky Board of Education shall review all temporary exemptions within forty-five (45) business days, and shall revoke the temporary exemption or approve an exemption for the remainder of the school year. A district shall not receive any temporary or state board-approved exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).

(d) In all schools the commissioner of education shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent or school-based decision making council may request an exemption pursuant to paragraph (c) of this subsection. An exemption shall not be granted if the increased class size will impede any exceptional child from achieving his or her individual education program in the least restrictive environment.

(6) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.

(7) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the commissioner of education.

(8) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.

(9) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

(10) If the average daily attendance for the current school year in any district decreases by ten percent

(10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.

(11) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).

(12)(a) Instructional salaries for vocational agriculture classes shall be for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Department of Education. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.

(b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the commissioner of education a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.

(13)(a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and

(b) Pursuant to administrative regulations of the Kentucky Board of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short-term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported annually on forms provided by the Department of Education.

(14) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection and for virtual programs, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

(15) Effective July 1, 2001, there shall be no deduction applied against the base funding level for any pupil in average daily attendance who spends a portion of his or her school day in a program at a state-operated career and technical education or vocational facility.

(16) During a fiscal year, a school district may request that the Department of Education recalculate its funds allocated under this section if the current year average daily attendance for the twenty (20) day school month as defined in KRS 158.060(2) that contains the most days within the calendar month of January exceeds the prior year adjusted average daily attendance plus growth by at least one percent (1%). Any adjustments in the allotments approved under this subsection shall be proportional to the remaining days in the school year and subject to available funds under the program to support education excellence in Kentucky.

(17) To calculate the state portion of the program to support education excellence in Kentucky for a school district, the Department of Education shall subtract the local effort required under KRS 157.390(5) from the calculated base funding under the program to support education excellence in Kentucky, as required by this section. The value of the real estate used in this calculation shall be the lesser of the current year assessment or the prior year assessment increased by four percent (4%) plus the value of current year new property. The calculation under this subsection shall be subject to available funds.

(18) Notwithstanding any other statute or budget of the Commonwealth language to the contrary, time missed due to shortening days for emergencies may be made up by lengthening school days in the school calendar without any loss of funds under the program to support education excellence in Kentucky.

History.

1976 ch. 93, Enact. Acts 1976, ch. 93, § 25, effective July 1, 1976, effective July 1, 1976; 1978, ch. 133, § 3, effective June 17, 1978; 1980, ch. 183, § 6, effective July 15, 1980; 1982, ch. 97, § 3, effective July 15, 1982; 1982, ch. 119, § 3, effective July 15, 1982; 1982, ch. 358, § 2, effective July 15, 1982; 1984, ch.

41, § 1, effective July 13, 1984; 1984, ch. 367, § 3, effective July 13, 1984; 1984, ch. 368, § 1, effective July 13, 1984; 1984, ch. 397, § 6, effective July 13, 1984; 1984, ch. 410, § 10, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 5, effective October 18, 1985; 1986, ch. 39, § 1, effective July 15, 1986; 1986, ch. 73, § 1, effective July 15, 1986; 1986, ch. 157, § 1, effective July 15, 1986; 1986, ch. 173, § 1, effective March 28, 1986; 1988, ch. 361, § 14, effective July 15, 1988; 1990, ch. 476, Pt. III, § 97, effective July 13, 1990; 1990, ch. 518, § 3, effective July 13, 1990; 1992, ch. 323, § 1, effective July 14, 1992; 1992, ch. 406, § 1, effective April 10, 1992; 1994, ch. 74, § 1, effective July 15, 1994; 1994, ch. 405, § 24, effective July 15, 1994; 1996, ch. 65, § 1, effective July 15, 1996; 1996, ch. 87, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 493, § 10, effective April 10, 1998; 2000, ch. 389, § 3, effective July 14, 2000; 2000, ch. 526, § 15, effective July 14, 2000; 2001, ch. 123, § 6, effective June 21, 2001; 2002, ch. 126, § 1, effective April 2, 2002; 2009, ch. 74, § 1, effective June 25, 2009; 2009, ch. 88, § 4, effective March 24, 2009; 2013, ch. 104, § 3, effective June 25, 2013; 2021 ch. 26, § 6, effective June 29, 2021; 2025 ch. 94, § 3, effective March 27, 2025; 2025 ch. 113, § 4, effective June 27, 2025; 2025 ch. 145, § 10, effective June 27, 2025; 2026 ch. 180, § 4, effective July 15, 2026; 2026 ch. 196, § 16, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 180 and 196. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 196, which was last enacted by the General Assembly, prevails under KRS 446.250.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.492, 156.557, 158.060, 158.070, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

(6/25/2013). A reference to "subsection (5)" in subsection (5)(a) of this statute has been changed in codification to "subsection (6)" under KRS 7.136(1)(e) and (h). In 2013 Ky. Acts ch. 104, sec. 3, a new subsection (3) was inserted into this statute and subsequent subsections were renumbered, but the internal reference in the existing language was overlooked.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (2) at 2070.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (17) at 2072.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (20) at 2072.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

NOTES TO DECISIONS

1. Average Daily Attendance.

School board could order school closed when the student population of the school fell below minimum required for state aid. Earle v. Harrison County Board of Education, 404 S.W.2d 455, 1966 Ky. LEXIS 299 (Ky. 1966).

OPINIONS OF ATTORNEY GENERAL.

Students who have been excused from school to attend religious instruction, in accordance with the provisions of KRS 158.210 to 158.260, may be considered in attendance at the public schools for purposes of the Minimum Foundation Program. OAG 66-116.

It is proper to afford ADA credit to a public school district for the public school portion of dual enrollment situations involving public and nonpublic schools. OAG 68-150.

The interlocal cooperative board may receive foundation program units in supervision based on a consolidation of the overage generated by the individual participating school districts. OAG 74-351.

A public school district may receive ADA or bonus unit foundation funds for special education program pupils who for a part of the day receive contracted services at a regional state university. OAG 74-742.

Where a board of education contracts for special education services with a private school it would not be entitled to ADA or bonus unit foundation program funds for the pupils involved. OAG 74-742.

The Superintendent of Public Education has adopted 704 KAR 3:175 which defines the criteria which a person filling the position of school psychologist must meet if the position is to be funded by money from the foundation program which criteria do not include the requirement that the "school psychiatrist" be licensed by the Board of Psychological Examiners; rather this regulation does not permit any person who is not licensed by the board to hold himself out as a psychologist or to practice psychology in violation of KRS 319.005 and 319.010, but merely establishes the criteria which an otherwise qualified psychologist must meet if his position is to be funded with money from the foundation program, and any person holding himself out as a "school psychologist" or engaging in the practice of psychology without a license issued by the board violates KRS Chapter 319 and is subject to the penalties contained in KRS 319.990. OAG 79-108, 1979 Ky. AG LEXIS 535.

The Superintendent of Public Education has authority to define the personnel to whom or for whom classroom units are adopted. OAG 79-108, 1979 Ky. AG LEXIS 535.

Where an entire classroom unit (under subsection (9) of this section) is involved, the director of pupil personnel must devote his or her entire time to the duties of that office and would not be able to also serve as the director of transportation; however where a proportionate fraction of a unit is involved, the requirement of KRS 159.140(1) would be met by the director of pupil personnel by spending an amount of time in the same proportion to the normal school day that the fraction bears to the unit will constitute devoting the entire time to the duties of the office. OAG 80-389, 1980 Ky. AG LEXIS 281.

If the General Assembly desires to change the average daily attendance (ADA) formula used for allotment of classroom units for Foundation Program Fund purposes from the previous school year figure as required by this section, it would have to amend this section and not attempt to reach that result with language in an appropriations bill; even if such language did appear in the biennial budget bill, the language would have to be disregarded as not being a constitutional part of the appropriations act, since the budget bill to the extent that it relates to a subject other than the budget must be deemed in violation of § 51 of the Constitution. OAG 83-383. (Refers to 1982 Budget.)

The General Assembly may not constitutionally revise, restrict or modify the provisions of existing substantive statutory law or create new substantive law by language contained in the appropriations act; thus, even if the biennial budget bill had not inadvertently omitted the desired change in the average daily attendance (ADA) formula, the Department of Education could not have legally implemented it. OAG 83-383. (Refers to 1982 Budget.)

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit, with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown, is precatory in nature and in light of Const.,

§§ 184 and 186 cannot be carried out, for the funds involved are foundation program funds and not just general funds appropriated for education, and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314. (Refers to 1984 Budget.)

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.530 and 160.550(1), as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132, 1985 Ky. AG LEXIS 20.

The language, "districts which contract to furnish transportation for students attending nonpublic schools to adopt any payment formula so long as no public school funds are used," permits school districts to use formulas other than the per capita formula. OAG 90-81, 1990 Ky. AG LEXIS 81.

Fourth grade students are not allowed to be in ungraded classrooms with students from the primary school (K-3) as joint classes with ungraded students are prohibited. OAG 92-42, 1992 Ky. AG LEXIS 38.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Maximum class sizes, 702 KAR 3:190.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Pupil attendance, 702 KAR 7:125.

SEEK funding formula, 702 KAR 3:270.

Waiver requests, 701 KAR 5:170.

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

157.362. Portion of assessed value not included in calculation of local effort.

The portion of the assessed value of distilled spirits exempted from ad valorem taxes under KRS 132.140 shall not be included in the calculation of the local effort required for Support Education Excellence in Kentucky or the tax rate-setting process in KRS Chapter 160.

History.

2023 ch. 148, § 4, effective March 31, 2023; 2025 ch. 98, § 8, effective June 27, 2025.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

157.370. Allotment of transportation units.

(1) In determining the cost of transportation for each district, the chief state school officer shall determine the average cost per pupil per day of transporting pupils in districts having a similar density of transported pupils per square mile of area served by not less than nine (9) different density groups.

(2) The annual cost of transportation shall include all current costs for each district plus annual depreciation of pupil transportation vehicles calculated in accordance with the administrative regulations of the Kentucky Board of Education for such districts that operate district-owned vehicles.

(3) The aggregate and average daily attendance of transported pupils shall include all public school pupils transported at public expense who live one (1) mile or more from school. Children with disabilities may be included who live less than this distance from school. The aggregate and average daily attendance referred to in this subsection shall be the aggregate and average daily attendance of transported pupils the prior year adjusted for current year increases in accordance with Kentucky Board of Education administrative regulations.

(4) The square miles of area served by transportation shall be determined by subtracting from the total area in square miles of the district the area not served by transportation in accordance with administrative regulations of the Kentucky Board of Education. However, if one (1) district authorizes another district to provide transportation services for a part of its area, this area shall be deducted from the area served by the authorizing district and added to the area served by the district actually providing the transportation.

(5) The density of transported pupils per square mile of area served for each district shall be determined by dividing the average daily attendance of transported pupils by the number of square miles of area served by transportation.

(6) The chief state school officer shall determine the average cost per pupil per day of transporting pupils in districts having a similar density by constructing a smoothed graph of cost for the density groups required by subsection (1). This graph shall be used to construct a scale showing the average costs of transportation for districts having a similar density of transported pupils. Costs shall be determined separately for county school districts and independent school districts. No independent school district will receive an average cost per pupil per day in excess of the minimum received by any county district or districts. These costs shall be the costs per pupil per day of transported pupils included in the public school fund and these costs shall be recalculated each biennium.

(7) The scale of transportation costs included in the fund to support education excellence in Kentucky for county and independent districts is determined in accordance with the provisions of KRS 157.310 to 157.440 for the biennium beginning July 1, 1990.

(8) The cost of transporting a district's pupils from the parent school to a state vocational-technical school or to a vocational educational center shall be calculated separately from the calculation required by subsections (1) through (7) of this section. The amount calculated shall be paid separately to each district from program funds budgeted for vocational pupil transportation, as a reimbursement based on the district's cost for providing this service. The amount of reimbursement shall be calculated in accordance with Kentucky Board of Education administrative regulations. In the event that the appropriation for vocational pupil transportation in the biennial budget is insufficient to meet the total calculated cost of this service for all districts, the amount paid to each district shall be ratably reduced. For the purpose of this subsection, the parent school shall be interpreted to mean that school in which the pupil is officially enrolled in a district's public common school system.

(9) The Kentucky Board of Education shall determine the type of pupil with a disability that qualifies for special type transportation to and from school. Those qualified pupils for which the district provides special type transportation shall have their aggregate days' attendance multiplied by five (5.0) and added to that part of the district's aggregate days' attendance that is multiplied by the district's adjusted cost per pupil per day in determining the district's pupil transportation program cost for allotment purposes.

History.

Enact. Acts 1976, ch. 93, § 26, effective July 1, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, § 98, effective July 13, 1990; 1994, ch. 405, § 25, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.

Legislative Research Commission Notes.

Former KRS 157.370 (Enact. Acts 1954, ch. 214, § 7; 1956, ch. 106, § 8; 1960, ch. 145, § 4; 1972, ch. 372, § 5; 1974, ch. 196, § 2; 1974, ch. 265, § 4; 1976, ch. 78, § 2) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (20) at 2072.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (26) at 2073.

NOTES TO DECISIONS

1. High School Pupils Paying Fare.

If high school pupils are charged school bus fares they cannot be counted in the allotment of the school board's transportation units in the Minimum Foundation Program under this section. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Handicapped, reimbursement for, 702 KAR 5:100.

Program cost calculation, 702 KAR 5:020.

Pupil transportation: technical assistance and monitoring, 702 KAR 5:010.

SEEK funding formula, 702 KAR 3:270.

157.380. Determination of local tax effort. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1976, ch. 93, § 27) was repealed by Acts 1976, ch. 93, § 14, effective July 1, 1977.

A former section (Enact. Acts 1954, ch. 214, § 8; 1956, ch. 106, § 3; 1958, ch. 13; 1960, ch. 145, § 5; 1962, ch. 222; 1965 (1st Ex. Sess.), ch. 2, § 15; 1968, ch. 209; 1976, ch. 260, § 4; 1976, ch. 342, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

157.390. Determination of teachers' salaries and other required public school funding components — Additional compensation expenses.

(1) For purposes of the state teacher salary schedule, teachers shall be placed on the schedule based on certification rank as established by the Education Professional Standards Board under KRS 161.1211 and by their years of experience as follows:

1. Zero (0) to three (3) years;
2. Four (4) to nine (9) years;
3. Ten (10) to fourteen (14) years;
4. Fifteen (15) to nineteen (19) years; and
5. Twenty (20) or more years.

(2) The rank and experience of the teacher shall be determined on September 15 of each year.

(3) The amount to be included in the base funding level for capital outlay shall be determined by multiplying the average daily attendance by the amounts set forth in the biennial budget.

(4) The amount to be included in the public school fund of each district for transportation shall be determined in accordance with the provisions of KRS 157.370.

(5) The total amount of money distributable to each district from the public school fund shall include the base funding per pupil in average daily attendance, an amount for at-risk students, an amount for the types and numbers of students with disabilities, an amount for students served in home and hospital settings, and the allotments in subsections (3) and (4) of this section, less the amount of local tax revenues generated for school purposes, up to a maximum equivalent local rate of thirty cents ($0.30) as defined by KRS 157.615(6).

(6) A classroom teacher or administrator may be provided additional compensation, funds for instructional and program materials, and other related costs for serving as a classroom mentor, teaching partner, or professional development leader in core discipline areas including reading, and other subject areas as appropriate to other education professionals in a state approved program or state approved activities. The Kentucky Department of Education shall administer the funds appropriated for these purposes. The Kentucky Board of Education shall promulgate administrative regulations to define the guidelines for programs and activities that qualify for funds including the application and approval process, the individual participant requirements, the amount of compensation, the timelines, and reporting requirements. The board shall solicit recommendations from the Education Professional Standards Board and staff of the Kentucky

Department of Education in developing its administrative regulations.

(7) A school district may provide monetary compensation in addition to that provided through the single salary schedule, as defined in KRS 157.320, to all classroom teachers employed in a school that is identified by the Kentucky Department of Education as being in targeted or comprehensive support and improvement status as described in KRS 160.346.

History.

Enact. Acts 1976, ch. 93, § 28, effective July 1, 1976; 1978, ch. 133, § 4, effective July 17, 1978; 1984, ch. 367, § 4, effective July 13, 1984; 1984, ch. 368, § 2, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 6, effective October 18, 1985; 1988, ch. 41, § 1, effective July 15, 1988; 1990, ch. 476, Pt. III, § 99, effective July 13, 1990; 1992, ch. 195, § 12, effective July 14, 1992; 1992, ch. 392, § 1, effective July 14, 1992; 1996, ch. 298, § 3, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 4, effective July 14, 2000; 2000, ch. 527, § 12, effective July 14, 2000; 2002, ch. 135, § 5, effective April 2, 2002; 2018 ch. 71, § 1, effective July 14, 2018.

Legislative Research Commission Notes.

Former KRS 157.390 (Enact. Acts 1954, ch. 214, § 9; 1956, ch. 106, § 4; 1960, ch. 145, § 6; 1962, ch. 244, Art. V; 1964, ch. 171, § 1; 1966, ch. 24, part 1, § 1; 1968, ch. 210; 1970, ch. 116, § 1; 1972, ch. 333, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

NOTES TO DECISIONS

Analysis

1. Certificate of Professional Standing.
2. Tenure.
3. Salary.

1. Certificate of Professional Standing.

A certificate of professional standing may be abolished or limited by the Legislature. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

2. Tenure.

Teacher tenure is statutory and not contractual, and the Legislature may abridge or destroy it. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

3. Salary.

The General Assembly has the power to provide that teachers with less qualification than a four-year degree shall receive only a minimum salary and the fact that the motive of such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

Where teachers in one (1) school district earned credits toward salary increases on different basis from teachers in second district, salary plan established pursuant to KRS 157.310 to 157.440 after merging of two (2) districts, which granted teachers from each district the credits under former salary plans, was reasonable and was not discriminatory. Ambs v. Board of Educ., 570 S.W.2d 638, 1978 Ky. App. LEXIS 575 (Ky. Ct. App. 1978).

OPINIONS OF ATTORNEY GENERAL.

Under this section the second experience level is attained with the completion of four years of experience, so that a teacher who has completed three years of teaching and is in his fourth year is only entitled to the salary permitted for "0-3" years of experience. OAG 68-102.

Under subsection (2) of this section and SBE 21.070(3) teachers' salary schedules are required to have only three separate increments for experience, namely 0 to 3 years, 4-9 years, and 10 years and over. There is no requirement that the salary schedules contain ten separate annual increments for experience. OAG 68-395.

Under this section experience credit can only be given for actual teaching experience and a teacher who was wrongfully excluded from teaching could not receive experience credit for the period of wrongful exclusion. OAG 68-564.

In order to rank a teacher, it is incumbent upon the State Board of Education, with its power to make regulations, to specify what criteria may be considered as equivalent to a college degree for those teachers who have completed the required number of college hours but who do not have a bachelor's degree. OAG 75-495.

No authority exists for anyone during the present biennium to increase the value of the "other current expenses" category of a classroom unit above the established levels appropriated by the 1976 General Assembly. OAG 77-358, 1977 Ky. AG LEXIS 428.

Where a school teacher was ill and missed most of one month and part of the next, during which time the schools were closed 17 days due to severe weather and permission was granted by the department of education to cut short the school year by five (5) days, as calamity days, the teacher was entitled to be paid for the calamity days; however, since she would have been unable to teach on these days, she must take these days as sick leave days under KRS 161.155. OAG 78-311, 1978 Ky. AG LEXIS 420.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

There is nothing in the school laws to preclude a school district from establishing a cafeteria insurance plan for its teachers, pursuant to the conditions and criteria set out in Section 125 of the Internal Revenue Code. However the money available to the teacher to be applied, if desired, to a cafeteria plan is still a part of that teacher's salary even though nontaxable; the teacher can elect to take a part of the money provided for by the school district in this regard as cash and, of course, this amount would be taxable. Moreover, the school districts must include the amount of money established for such a plan in all computations required for single salary schedule determinations, including the procedure required for determining the amount of money to be received by a school district for teachers' salaries from the Minimum Foundation Fund. OAG 83-151, 1983 Ky. AG LEXIS 346.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Differentiated compensation, 702 KAR 3:310.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Planned Fifth-year Program, 16 KAR 8:020.

Procedure for payment of employees, 702 KAR 3:060.

Professional Development Leadership and Mentor Fund, 704 KAR 3:500.

Ranking of certified school personnel, 704 KAR 3:470.

School psychologist, 16 KAR 2:090.

SEEK funding formula, 702 KAR 3:270.

Substitute teachers' salary scheduling, 702 KAR 3:075.

Teachers' salary scheduling, 702 KAR 3:070.

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

157.395. Salary supplement for national board certified teachers.

(1) Notwithstanding any other statute to the contrary, a public school teacher, or a secondary teacher employed in a Kentucky Tech school or career and technical education program operated by the Department of Education, who has attained certification from the National Board for Professional Teaching Standards as of July 14, 2000, through July 1, 2020, shall receive an annual national board certification salary supplement of two thousand dollars ($2,000) for the life of the certificate. A teacher who attains certification from the National Board for Professional Teaching Standards after July 1, 2020, shall receive an annual national board certification salary supplement for the life of the certificate in accordance with the amount appropriated for this purpose by the General Assembly. If an annual supplement amount appropriated by the General Assembly is less than two thousand dollars ($2,000), the local board may provide an additional supplement up to the amount required for the total annual supplement to equal two thousand dollars ($2,000). The supplement shall be added to:

(a) The teacher's base salary on the local board's single salary schedule and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System; or

(b) The state-employed teacher's base salary and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System.

If a nationally certified teacher becomes no longer employed as a classroom teacher or a teacher mentor in the field of his or her national certification, the supplement shall cease.

(2) A local board of education or the Department of Education shall request reimbursement for these purposes from the fund to support education excellence described in KRS 157.330.

History.

Enact. Acts 2000, ch. 257, § 5, effective July 14, 2000; 2010, ch. 39, § 1, effective July 15, 2010; 2013, ch. 59, § 40, effective June 25, 2013; 2020 ch. 113, § 3, effective July 15, 2020.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (8) at 2070.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Procedure for payment of employees, 702 KAR 3:060.

Teachers' National Certification Incentive Trust Fund, 16 KAR 1:040.

157.397. Salary supplement for speech-language pathologists or audiologists — Supplement to be considered in calculation for retirement.

Notwithstanding any other statute to the contrary:

(1)(a) If funds are appropriated by the General Assembly for this purpose, a local board of education shall provide an annual salary supplement to all speech-language pathologists or audiologists:

1. Who are employed by the local board of education to provide or coordinate speech-language pathology or audiology services for students; and

2. Who hold:

a.i. A certificate of clinical competence issued by the American Speech-Language Hearing Association; or

ii. Board certification from the American Board of Audiology; and

b.i. A valid Kentucky credential approved and issued by the Education Professional Standards Board under KRS Chapter 161; or

ii. A license approved and issued by the Kentucky Board of Speech-Language Pathology and Audiology under KRS Chapter 334A.

(b) The salary supplement shall be in the same amount as the salary supplement provided to a public school teacher who has attained certification from the National Board for Professional Teaching Standards as provided in KRS 157.395. If the amount appropriated by the General Assembly is less than the amount necessary to meet the requirements of this paragraph, the salary supplement received by each qualified speech-language pathologist or audiologist shall be reduced proportionately by the Department of Education so that all eligible individuals receive the same amount as a supplement.

(c) The supplement shall remain available to a speech-language pathologist or audiologist so long as funds are appropriated for this purpose by the General Assembly, and the speech-language pathologist or audiologist continues to meet the requirements established by this subsection. The supplement shall cease if the speech-language pathologist or audiologist is employed in another capacity by the local board where the provision of speech-language pathology or audiology services is incidental to his or her other duties.

(d) The Department of Education shall:

1. Determine how many speech-language pathologists and audiologists qualify for the supplement each year;

2. Determine the amount of the supplement available each year for each qualified speech-language pathologist and audiologist based on appropriated funds available;

3. Notify each local board of education of the supplement amount available to each qualifying speech-language pathologist and audiologist employed by the local board of education; and

4. Develop a process for payment to local boards of education of supplement amounts due;

(2) If funds are not appropriated by the General Assembly to support the salary supplement established by subsection (1) of this section, a local board of education may provide an annual salary supple-

ment under the conditions established by subsection (1) of this section using the resources available to the local board of education; and

(3) The supplement authorized by this section shall be considered in the calculation for contribution to the Kentucky Teachers' Retirement System.

History.
Enact. Acts 2010, ch. 109, § 1, effective July 15, 2010.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

157.400. Procedure for determining amount distributable to each district from foundation program fund. [Repealed.]

Compiler's Notes.
This section (Acts 1976, ch. 93, § 29; 1976, ch. 93, § 15) was repealed by Acts 1978, ch. 133, § 9, effective June 17, 1978.

157.410. Payments of funds to districts.

For each school year the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw warrants on the State Treasurer for the amount of the public school fund due each district. Checks shall be issued by the State Treasurer and transmitted to the Department of Education or electronically transferred for distribution to the proper officials of the school districts when the districts have fully complied with the school laws and administrative regulations of the Kentucky Board of Education. The chief state school officer shall:

(1) Determine, on or before May 1 of each year, the estimated allotment of school funds to which each district is entitled for the upcoming fiscal year under KRS 157.310 to 157.440. On July 1, August 1, and September 1 of each fiscal year, one-twelfth ($^1/_{12}$) of the estimated allotment shall be paid to each school district;

(2) Revise the estimated allotment on or before October 1 of each year. On October 1, November 1, December 1, January 1, February 1, and March 1 of each fiscal year, one-twelfth ($^1/_{12}$) of the revised estimated allotment shall be paid to each school district; and

(3) Determine, on or before March 1 of each year, the exact final amount of the common school funds to which each district is entitled for the fiscal year. The remainder of the amount due to each district for the fiscal year shall be distributed in equal installments on April 1, May 1, and June 1 of each fiscal year.

History.
Enact. Acts 1976, ch. 93, § 30, effective July 1, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 368, § 3, effective July 13, 1984; 1990, ch. 476, Pt. III, § 100, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 5, effective July 14, 2000; 2018 ch. 171, § 5, effective April 14, 2018; 2018 ch. 207, § 5, effective April 27, 2018; 2018 ch. 131, § 1, effective July 14, 2018.

Legislative Research Commission Notes.
(7/14/2018). This statute was amended by 2018 Ky. Acts chs. 131, 171, and 207, which do not appear to be in conflict and have been codified together.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (17) at 2072.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
SEEK funding formula, 702 KAR 3:270.
Withholding funds, 702 KAR 3:045.

157.420. Restrictions governing expenditure of funds from public school fund — Use of historic settlement school facilities — Use of capital outlay funds after mid-year adjustment — Evaluation of school buildings.

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

(1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.

(2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.

(3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.

(4)(a) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account

and may be used by the district only for capital outlay projects approved by the commissioner of education in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:

1. For direct payment of construction costs;

2. For debt service on voted and funding bonds;

3. For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;

4. For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and

5. As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.

(b) A district may submit a request to the commissioner of education to use funds from the per pupil capital outlay allotment to purchase land for a new school or to modify an existing school if the project is included on the district facility plan for completion within eight (8) years. The land shall not be included in the calculation of the school district's unmet need. The commissioner may grant or deny the district's request at his or her discretion.

(c) A district which has experienced an increase in adjusted average daily attendance, as defined by administrative regulation, of twenty percent (20%) or more over a five (5) year period may submit a request to the commissioner of education to use capital outlay funds for the operation of a new school for the first two (2) years following its opening. The commissioner may grant or deny the district's request at his or her discretion.

(d) A local school district may submit a request to the commissioner of education to use capital outlay funds for maintenance expenditures or for the purchase of property insurance without forfeiting the district's participation in the School Facilities Construction Commission program. Maintenance requests may include other priorities that are not considered major renovations, such as repair, renovation, or system upgrades that are necessary to maintain the integrity of an existing school facility.

(5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:

(a) The energy conservation measures shall include facility alteration;

(b) The energy conservation measures shall be identified in the district's approved facility plan;

(c) The current facility systems are consuming excess maintenance and operating costs;

(d) The savings generated by the energy conservation measures are guaranteed;

(e) The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and

(f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.

(6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the commissioner of education under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds, except when the current expenditures are approved by the commissioner of education under subsection (4)(b) or (c) of this section.

(7) If a survey shows that a school district has no capital outlay needs as shown in subsection (4)(a)1., 2., 3., and 4. of this section, upon approval of the commissioner of education, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.

(8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.

(a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.

(b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.

(c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.

(9) Beginning in fiscal year 2011-2012, the Kentucky Department of Education shall standardize the

process for evaluating the overall quality and condition of all school buildings across the state. The evaluation process shall:

(a) Result in consistent categorization of buildings for local planning purposes and for the distribution of state general fund moneys designated for capital construction;

(b) Be based on measurable, objective criteria;

(c) Include numerical scoring with weights to recognize building components and characteristics that address:

1. Life safety issues;
2. Compliance with state and federal codes;
3. Compliance with requirements under the Americans with Disabilities Act;
4. Community spaces;
5. Instructional areas;
6. Mechanical, electrical, plumbing, and other technology systems;
7. Site and exterior building conditions;
8. Age of the buildings;
9. Feasibility of building additions or major renovations;
10. The districts' facility capacities;
11. Current use of temporary facilities; and
12. Projected enrollment growth; and

(d) Use of a third-party evaluator that utilizes an already established software-based system to perform the first, base-line evaluation.

(10) The Kentucky Board of Education shall promulgate an administrative regulation upon recommendation of the Kentucky Department of Education and the School Facilities Construction Commission to implement subsection (9) of this section.

(11) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.

(12) Notwithstanding the provisions of subsections (4) and (6) of this section, a local district that has requested a mid-year adjustment in the support education excellence in Kentucky funding under KRS 157.360(16) may request permission from the commissioner of education to use capital outlay funds for the purchase of school buses or to use the capital outlay funds for increased operational expenses for the first three (3) years following the increased growth in the district without forfeiture of the district's participation in the School Facilities Construction Commission Program. The commissioner may grant or deny the district's request.

History.

Enact. Acts 1976, ch. 93, § 31, effective July 1, 1976; 1978, ch. 133, § 5, effective June 17, 1978; 1984, ch. 188, § 1, effective July 13, 1984; 1988, ch. 292, § 1, effective July 15, 1988; 1990, ch. 476, Pt. III, § 106, effective July 13, 1990; 1990, ch. 518, § 5, effective July 13, 1990; 1992, ch. 183, § 1, effective July 14, 1992; 1994, ch. 435, § 3, effective July 15, 1994; 1996, ch. 87, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 254, § 1, effective July 15, 1998; 1998, ch. 375, § 9, effective July 15, 1998; 2002, ch. 135, § 1, effective July 1, 2004; 2009, ch. 53, § 1, effective June 25, 2009; 2009, ch. 74, § 2, effective June 25, 2009; 2010, ch. 134, § 3, effective July 15, 2010; 2013, ch. 104, § 4, effective June 25, 2013.

Legislative Research Commission Notes.

(10/19/2004). 2004 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 11, provides, "Notwithstanding KRS 157.420(2), all certified and classified staff employed by local boards of education shall receive:

"(1) A cost-of-living adjustment of not less than two percent in fiscal year 2004-2005 and shall apply retroactively to July 1, 2004; and

"(2) Effective January 1, 2005, an additional cost-of-living adjustment of one percent is provided. The cost-of-living adjustments shall be in addition to the normal rank and experience increases attained by certified staff and in addition to any salary increase a classified employee might obtain due to additional experience or job classification."

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (4) at 2070.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

NOTES TO DECISIONS

1. School Closing.

Although school board did not specifically refer to school as a possible "functional center", it clearly considered all ramifications, under this section, of keeping school open; thus, decision to close school was not arbitrary. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779, 1992 Ky. App. LEXIS 182 (Ky. Ct. App. 1992).

OPINIONS OF ATTORNEY GENERAL.

Where a school teacher was ill and missed most of one month and part of the next, during which time the schools were closed 17 days due to severe weather and permission was granted by the Department of Education to cut short the school year by five days, as calamity days, the teacher was entitled to be paid for the calamity days; however, since she would have been unable to teach on these days, she must take these days as sick leave days under KRS 161.155. OAG 78-311, 1978 Ky. AG LEXIS 420.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bond issue approval, 702 KAR 3:020.

Capital construction process, 702 KAR 4:160.

Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 4:180.

157.430. Percentage reduction in allotments in case of insufficient appropriation by General Assembly.

If, when the apportionments are being determined under the provisions of KRS 157.310 to 157.440, funds appropriated by the General Assembly to the public school fund are insufficient to provide the amount of money required under KRS 157.390, the chief state school officer, unless otherwise provided by the General Assembly in a budget bill, shall make a percentage

reduction in the allotments to reduce the total of these allotments to funds available.

History.
Enact. Acts 1976, ch. 93, § 32, effective July 1, 1976; 1978, ch. 133, § 6, effective June 17, 1978; 1984, ch. 410, § 11, effective July 13, 1984; 1990, ch. 476, Pt. III, § 101, effective July 13, 1990.

Legislative Research Commission Notes.
By reason of the amendment of KRS 157.390 by Acts 1985 (Ex. Sess.), ch. 10, § 6, a technical correction has been made in the reference to that section by the Reviser of Statutes, pursuant to KRS 7.136.
Former KRS 157.430 (Enact. Acts 1954, ch. 214, sec. 13; 1956, ch. 106, secs. 7, 8; 1960, ch. 145, sec. 9; 1964, ch. 171, sec. 1) was repealed by Acts 1974, ch. 363, sec. 18, effective June 30, 1976.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
SEEK funding formula, 702 KAR 3:270.

157.440. Levy of an equivalent tax rate — Participation in Facilities Support Program — District may exceed levy authorized by KRS 160.470 if approved by voters — Compensating tax rate.

(1)(a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after July 1, 1990, the board of education of each school district may levy an equivalent tax rate as defined in KRS 160.470(9)(a) which will produce up to fifteen percent (15%) of those revenues guaranteed by the program to support education excellence in Kentucky. The levy for the 1990-91 school year shall be made no later than October 1, 1989, and no later than October 1, 1990, for the 1991-92 school year, and by October 1 of each odd-numbered year thereafter. Effective with the 1990-91 school year, revenue generated by this levy shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment.

(b) To participate in the Facilities Support Program of Kentucky, the board of education of each school district shall commit at least an equivalent tax rate of five cents ($0.05) to debt service, new facilities, or major renovations of existing school facilities, or the purchase of land if approved by the commissioner of education as provided in KRS 157.420(4)(b). The five cents ($0.05) shall be in addition to the thirty cents ($0.30) required by KRS 160.470(9) and any levy pursuant to paragraph (a) of this subsection. The levy shall be made no later than October 1 of each odd-numbered year. Eligibility for equalization funds for the biennium shall be based on the district funds committed to debt service on that date. The five cents ($0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment. The equalization funds shall be committed to debt service to the greatest extent possible, but any excess equalization funds not needed for debt service shall be deposited to a restricted building fund account. The funds may be escrowed for future debt service or used to address categorical priorities listed in the approved facilities plan pursuant to KRS 157.420.

(c) The board of education of each school district may contribute the levy equivalent tax rate of five cents ($0.05) and equalization funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, as provided under KRS 45A.353, 56.774, and 58.600 shall be based on the following guidelines:

1. Energy conservation measures shall include facility alteration;
2. Energy conservation measures shall be identified in the district's approved facility plan pursuant to KRS 157.420;
3. The current facility systems are consuming excess maintenance and operating costs;
4. The savings generated by the energy conservation measures are guaranteed;
5. The levy equivalent tax rate of five cents ($0.05) and equalization funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
6. The equipment that is replaced has exceeded its useful life as determined by a life cycle cost analysis.

(d) The rate levied by a local board of education under the provisions of this subsection shall not be subject to the public hearing provisions of KRS 160.470(7) or to the recall provisions of KRS 160.470(8).

(e) A school district which is at or above the equivalent tax rates permitted under the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year.

(2)(a) A district may exceed the maximum provided by KRS 160.470(1) provided that, upon request of the board of education of the school district, the county board of elections shall submit to the qualified voters of the district, in the manner of submitting and voting as prescribed in paragraph (b) of this subsection, the question whether a rate which would produce revenues in excess of the maximum provided by KRS 160.470(1) shall be levied. The rate that may be levied under this section may produce revenue up to no more than thirty percent (30%) of the revenue guaranteed by the program to support education excellence in Kentucky plus the revenue produced by the tax authorized by this section. Revenue produced by this levy shall not be equalized with state funds. If a majority of those voting on the question favor the increased rate, the tax levying authority shall, when the next tax rate for the district is fixed, levy a rate not to exceed the rate authorized by the voters.

(b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk,

and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

(3) For the 1966 tax year and for all subsequent years for levies which were approved prior to December 8, 1965, no local board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section and except that a rate which has been approved by the voters under this section but which was not levied by the local board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.

(4) Notwithstanding the limitations contained in subsection (3) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapter 162.

(5) The chief state school officer shall certify the compensating tax rate to the levying authorities.

History.

Enact. Acts 1954, ch. 214, § 14; 1965 (1st Ex. Sess.), ch. 2, § 6; 1970, ch. 118, § 3; 1976, ch. 127, § 22; 1978, ch. 133, § 7, effective June 17, 1978; 1990, ch. 476, Pt. III, § 107, effective July 13, 1990; 1990, ch. 518, § 4, effective July 13, 1990; 1994, ch. 435, § 1, effective July 15, 1994; 1996, ch. 87, § 3, effective July 15, 1996; 1998, ch. 375, § 10, effective July 15, 1998; 2000, ch. 389, § 9, effective July 14, 2000; 2009, ch. 53, § 2, effective June 25, 2009; 2026 ch. 161, § 75, effective April 14, 2026; 2026 ch. 129, § 5, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 129 and 161, which do not appear to be in conflict and have been codified together.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (5) at 2070.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

NOTES TO DECISIONS

Analysis

1. Submission to Voters.
2. —Unrelated Objective.
3. Specification of Maximum Rate.
4. Listing of Existing Taxes.
5. Referendum Not Required.
6. Increase in Building Fund Levy.
7. Voter Recall Election.
8. School Funding.

1. Submission to Voters.

The Legislature in this section has taken recognizance of the two (2) entirely separate and distinct tax rate limitations of KRS 157.380 (now repealed) and 160.475 and provided that the maximum levy under either statute may be exceeded only by a vote of the people. Holmes v. Walden, 394 S.W.2d 458, 1965 Ky. LEXIS 182 (Ky. 1965).

2. —Unrelated Objective.

Combining unrelated objectives in a single question is not necessarily improper or invalid and proposition presenting an essentially unified scheme, all parts of which were reasonably related afforded voter a free and fair choice in determining the merits of the proposal and two (2) separate questions as to whether taxpayer was for or against a combined tax authorization for public school purposes were proper as to form and substance. Hulbert v. Board of Education, 382 S.W.2d 389, 1964 Ky. LEXIS 342 (Ky. 1964).

3. Specification of Maximum Rate.

With respect to the matter of fixing a specific rate this section makes it clear that only a maximum rate need be specified in the proposition submitted to the voters. Hopson v. Board of Education, 280 S.W.2d 489, 1955 Ky. LEXIS 154 (Ky. 1955).

4. Listing of Existing Taxes.

No law requires the listing on the ballot of existing taxes in the proposal for a new tax. Hulbert v. Board of Education, 382 S.W.2d 389, 1964 Ky. LEXIS 342 (Ky. 1964).

5. Referendum Not Required.

Although county voted tax rate was higher, referendum in former city school district was not necessary condition precedent to imposition of uniform tax rate throughout city-county merged school district since the situation of the residents of the former city school district is analogous to that of property owners who automatically become liable for a voted indebtedness of a city upon annexation of their property. Board of Education v. Harville, 416 S.W.2d 730, 1967 Ky. LEXIS 280 (Ky. 1967).

6. Increase in Building Fund Levy.

Where voted building fund levy of school district had always been insufficient to meet rental payments required for the payment of revenue bonds so that part thereof had been paid from the general fund levy, the addition of subsection (7) to KRS 160.477 (now repealed) in a 1965 "rollback" act did not authorize an increase in building fund levy over the compensating rate as defined in KRS 132.010 to pay all of such rentals since subsection (3) of this section and 160.477(7) simply restate and reaffirm the proposition that bond and rental payments must come out of the building fund levy, or out of the extra voted general fund levy or out of the basic general fund levy. Fayette County Board of Education v. White, 410 S.W.2d 612, 1966 Ky. LEXIS 37 (Ky. 1966).

7. Voter Recall Election.

County board of education's levy of a utility gross receipts licenses tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

The 1990 change in KRS 160.470(10) and (11) (now 160.470(7) and (8)) prevents voter recall of a property tax levy if the tax revenue is intended to provide mandatory minimum base funding or permissive Tier One funding, but under the previous funding scheme, the "notwithstanding" language of KRS 160.470 had no abrogative effect on voter recall of

permissive utility taxes and the General Assembly preserved this right in the funding scheme. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

8. School Funding.

The present school funding statutes permit local boards of education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables boards of education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding according to the mandate of Section 183 of the Kentucky Constitution; and that is all that Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

Cited in:

Miller v. Nunnelley, 468 S.W.2d 298, 1971 Ky. LEXIS 334 (Ky. 1971), cert. denied, 404 U.S. 941, 92 S. Ct. 286, 30 L. Ed. 2d 255, 1971 U.S. LEXIS 564 (1971); Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

A fiscal court may legally levy a tax at a figure above the $1.50 maximum set by KRS 160.475 where the figure is the amount necessary to provide the required local tax effort for participation in the Minimum Foundation Program by the local school district. OAG 65-600.

Former subsections (2) and (4) of KRS 160.470 relate to the basic general fund levy while former subsection (6) of KRS 160.477 (now repealed) and subsection (2) of this section limit special voted levies to the compensating tax rate. Accordingly, these statutes do not authorize an independent school district to apply a 10 percent increase to the special voted tax in effect in the district. OAG 67-300.

The maximum property tax levies for a merged school district for 1968-1969 are calculated as follows: (a) To the revenue that would be produced by applying the old city districts basic general fund levy for 1967-1968 to the assessment for that year add the revenue that would be produced by applying the old county (as it existed before the merger) district's basic general fund levy for 1967-1968 to the assessment for that year. The sum of these figures is the total amount of ad valorem tax revenue in the computation of the maximum permissible ad valorem tax revenue under subsection (3) of KRS 160.470. The proper basic fund levy can be calculated from the combined revenue and combined assessment figures (with net growth treated separately as indicated by former subdivision (3)(b) of KRS 160.470); (b) The special voted general fund rate (KRS 157.440) should be calculated at the proper compensating tax rate under the formula established in subdivision (6) of KRS 132.010 based on the 1965 revenue from this source and the 1966 assessment; (c) The special voted building fund rate (KRS 160.477 (now repealed)) should be calculated at the proper "compensating tax rate," again using the formula appearing in subdivision (6) of KRS 132.010; (d) The overall tax rate can then be determined by adding the rates in (a), (b), and (c) above. OAG 68-343.

A county board of education cannot, under the authority of subsection (3) of this section, levy a tax sufficient to meet the principal and interest payments on an outstanding bond issue authorized by the voters under this section and incurred to finance the construction of a high school, if the bond and rental requirements can be met by the use of total school district tax revenue. OAG 70-302.

Inasmuch as the state is only liable for its share of the expense of a special school tax election if the election is paid for by the county, the state would not be authorized to pay any portion of the election cost where the expense is paid by a citizens' educational advisory committee. OAG 76-214.

Even though the 1990 amendment to KRS 160.470 by Ch. 476, § 105 set a new maximum equivalent tax rate, since in subdivision (1)(c) of this section the 1990 amendment by Ch. 476, § 107 to that section provided that any school district, which is at or above the equivalent tax rate permitted, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year, Jefferson County may keep its equivalent tax rate at 75.9 cents for the 1990-91 school year. OAG 90-45, 1990 Ky. AG LEXIS 42.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) (now 160.470(9)(a)) or for the purpose of participating in the "Tier 1" program set forth in this section, a school board must follow the notice and hearing requirements of KRS 160.593 and KRS 160.603, but the recall provisions of KRS 160.597 do not apply. OAG 90-88, 1990 Ky. AG LEXIS 88.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bond issue approval, 702 KAR 3:020.
Restructuring revenue bond issues, 702 KAR 3:260.
SEEK funding formula, 702 KAR 3:270.

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Kentucky Law Journal.

Stevens, Property Tax Revenue Assessment Levels and Taxing Rate: The Kentucky Rollback Law, 60 Ky. L.J. 105 (1971).

157.442. Adjustment in district allotment from fund to support education excellence in Kentucky relating to loss of state funds resulting from property assessment amendment.

(1) After the Department of Revenue submits the certified property assessment data to the chief state school officer as required pursuant to KRS 160.470(4), a local board of education may request to the chief state school officer an adjustment in funding if:

(a) It is determined that the total assessed valuation of real property or personal property as defined in KRS 132.010 for the school district is amended; and

(b) The impact of that amendment is equal to or greater than one percent (1%) of the school district's net general fund to support education excellence in Kentucky allotment as of March 1 of the same fiscal year of the impacted property assessment.

(2) Any adjustments in the funding formula under this section shall be:

(a) No more than an amount equal to the net loss of state funds provided through the program to support education excellence in Kentucky; and

(b) Subject to available funds under the program to support education excellence in Kentucky.

(3) Documentation of the amendment shall be provided by the school district.

History.
2026 ch. 196, § 20, effective July 15, 2026.

EFFICIENT SCHOOL DESIGN

157.450. Intent of KRS 157.450 and 157.455.

It is the intent of KRS 157.450 and 157.455 to:

(1) Support the construction of new school buildings and the renovation of existing school buildings in a manner that will create a healthy environment for students and teachers while saving energy, resources, and operational expenses; and

(2) Encourage the use of a life-cycle cost, holistic approach to building design that considers school design, construction, operation, and maintenance in the initial decision-making process.

History.
Enact. Acts 2010, ch. 134, § 1, effective July 15, 2010.

157.455. Definitions — Legislative findings — Efficient school design — Development of guidelines — Assistance to school districts.

(1) As used in this section:

(a) "Life-cycle cost analysis" means to calculate and compare different building designs to identify which is the best investment over the long term. Life-cycle costs include design and construction costs, operating costs, maintenance costs, and repair and replacement costs, adjusted for the time value of money;

(b) "Net zero building" means a building in which the amount of energy provided by on-site renewable energy sources is equal to the amount of energy used by the building; and

(c) "Efficient school design" means a school building design:

1. That meets, at a minimum, the requirements of the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) for schools at the "Certified" level or certification under a comparable system with equivalent requirements or other building performance certification systems, such as the United States Department of Energy's Energy Star program;

2. That ensures energy savings from a building design that equates to or exceeds ten percent (10%) over the American Society of Heating, Refrigerating, and Air Conditioning Engineers energy standard 90.1-2007; and

3. For which whole building life-cycle cost analysis illustrates that the design is cost-effective.

(2) The General Assembly hereby finds that schools that are constructed or renovated using efficient school design are proven effective vehicles for accomplishing some or all of the following beneficial public purposes:

(a) Lower operating costs and increased asset value;

(b) Reduced waste sent to landfills;

(c) Conservation of energy and water;

(d) Reduced storm drainage runoff;

(e) Healthier, safer environments for occupants;

(f) Reduced emissions of greenhouse gases; and

(g) Improved student attendance and performance by:

1. Using the building as a teaching tool;

2. Using the local environment as a context for curriculum integration;

3. Providing rigorous, highly relevant, and applied learning; and

4. Improving productivity by making buildings healthier for occupants, especially through the increased use of natural light.

(3) The Kentucky Department of Education and all school districts undertaking the construction of new school buildings or the major renovation of existing school buildings are strongly encouraged to:

(a) Meet or exceed efficient school design standards in planning and designing all new buildings and major renovation projects;

(b) Use life-cycle cost analysis to evaluate different design proposals; and

(c) Consider the possibility that each new school building or major renovation of a building could be a net zero building, either during the construction or renovation, or at a later date as resources become available.

(4) The Department of Education shall develop and adopt guidelines for efficient school design, net zero buildings, and life-cycle cost analysis, including the identification of appropriate computer-based simulation programs for use in undertaking life-cycle cost analysis.

(5) The Department of Education and the Office of Energy Policy shall assist school districts in:

(a) Developing methods for measuring ongoing operating savings resulting from the use of efficient school design;

(b) Identifying sources for training for school staff and students to ensure that efficient school design features and components are fully utilized; and

(c) Identifying ways that efficient school design and its energy-saving components can be integrated into the school curriculum.

History.
Enact. Acts 2010, ch. 134, § 2, effective July 15, 2010; 2018 ch. 29, § 59, effective July 14, 2018; 2022 ch. 66, § 1, effective July 14, 2022.

EXPERIMENTAL PROGRAMS

157.510. Definitions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 265, § 1(1); 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 186, effective July 13, 1990) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

157.520. Authorization of experimental programs — Administrative regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 265, §§ 1(2) to (5); 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV,

§ 187, effective July 13, 1990; 1994, ch. 6, § 1, effective July 15, 1994) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

157.530. Reimbursement of school district — Allotment of funds. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 265, §§ 1(6), (7); 1990, ch. 476, Part III, § 188, effective July 13, 1990) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

157.540. Evaluation of programs — Annual progress reports. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 265, § 1(8); 1990, ch. 476, Pt. III, § 189, effective July 13, 1990) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

POWER EQUALIZATION PROGRAM FUND

157.545. Power equalization program fund. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 2, effective July 1, 1977) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.550. Determination of amount of state power equalization support for each school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 3, effective July 1, 1977) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.555. Calculation of amount of state power equalization support. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 4, effective July 1, 1977; 1978, ch. 147, § 3, effective March 28, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.560. Determination of maximum rate of power equalization support — Minimum rate established. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 5, effective July 1, 1977; 1985 (1st Ex. Sess.), ch. 10, § 8, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.564. Twenty-five cent school levy tax by district school board necessary for eligibility for state power equalization support. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 137, § 1, effective March 27, 1984; 1985 (1st Ex. Sess), ch. 10, § 7, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.565. Procedure for increasing tax rate to maximum support of power equalization — Substitution of revenue from permissive taxes to qualify for matching funds where tax rate not sufficient. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 6, effective July 1, 1977; 1978, ch. 147, § 1, effective March 28, 1978; 1982, ch. 217, § 2, effective July 15, 1982) was repealed by Acts 1984, ch. 137, § 3, effective March 27, 1984.

157.570. Procedure for payments of funds to districts. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 7, effective July 1, 1977; 1978, ch. 147, § 27, effective March 28, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.575. Power equalization support — Calculation of equivalent tax rate. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 8, effective July 1, 1977; 1978, ch. 147, § 4, effective March 28, 1978; 1986, ch. 119, § 2, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.580. Use of power equalization funds. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 9, effective October 18, 1985; 1986, ch. 435, § 1, effective July 15, 1986; 1988, ch. 337, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

RIDE TO THE CENTER FOR THE ARTS PROGRAM FUND

157.605. Establishment of fund.

There is hereby established the "Ride to the Center for the Arts Program Fund" in the Department of Education. The fund may receive state appropriations, gifts, grants, federal funds, and tax receipts. Moneys from the fund shall be disbursed for purposes specified in KRS 157.606.

History.
Enact. Acts 1988, ch. 281, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 190, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Ride to the Center for the Arts Program Fund, 704 KAR 7:080.

157.606. Administration — Grants — Authority to promulgate administrative regulations.

(1) To facilitate opportunities for statewide participation by public school children in the Commonwealth in educational experiences available through the Kentucky Center for the Arts, the Department of Education shall administer the Ride to the Center for the Arts Program. Moneys from the ride to the center for the arts fund shall be used to provide matching funds to local school districts for the cost of transportation of students in grades six (6), seven (7), eight (8), and nine (9) for the purpose of visiting the Kentucky Center for the Arts.

(2) Grants shall be in the amount equal to one-half (½) the total transportation cost of the visit, as submitted and certified to by the local district to the chief state school officer or his designee.

(3) The Kentucky Board of Education shall promulgate administrative regulations as may be needed in the administration of the program and disbursement of moneys from the fund.

History.

Enact. Acts 1988, ch. 281, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 191, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Ride to the Center for the Arts Program Fund, 704 KAR 7:080.

INTELLECTUALLY GIFTED OR TALENTED CHILDREN PROGRAM FUND

157.610. Intellectually gifted or talented children program funds. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1978, ch. 133, § 8) was repealed by Acts 1980, ch. 183, § 9, effective July 15, 1980.

SCHOOL FACILITIES CONSTRUCTION COMMISSION

157.611. School Facilities Construction Commission — Legislative intent.

(1) By establishing the School Facilities Construction Commission, the General Assembly expresses its commitment to help local districts meet the school construction needs and the education technology needs of the state in a manner which will insure an equitable distribution of funds based on unmet facilities need and the total implementation of the Kentucky Education Technology System.

(2) The commission is empowered to act on behalf of school districts to issue bonds in the name of the commission and to enter into lease agreements with local boards of education to finance construction of new facilities, major renovation of existing school facilities. The commission is also empowered to enter into agreements which may provide for a percentage discount, on a biennially renewable basis, of annual lease agreements due the commission for those districts which participate. The commission is also empowered to enter into lease agreements with the Department of Education to build state-owned facilities operated by the Department of Education or to purchase or lease education technology equipment and related software identified in the technology master plan for those facilities or the Department of Education.

(3) The commission shall assist local school boards meet their education technology needs by distributing state funds appropriated for this purpose and by assisting school boards to design efficient finance plans for the bonding, purchase or lease of education technology equipment and related software identified in the technology master plan.

(4) The commission shall administer two (2) separate programs: the school construction funding program and the education technology funding program. Funds appropriated for each program shall be maintained, administered, and audited separately.

(5) Nothing in KRS 157.611 to 157.640 shall prohibit a school district from issuing bonds, including general obligation bonds, in accordance with KRS Chapter 66 or 162.

History.

Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 26, effective October 18, 1985; 1986, ch. 435, § 1, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 382, effective July 13, 1990; 1992, ch. 195, § 5, effective April 3, 1992; 2024 ch. 126, § 2, effective July 15, 2024.

Compiler's Notes.

This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 26, effective October 18, 1985; 1986, ch. 435, § 1, effective July 15, 1986) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 382, effective July 13, 1990.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2065.

OPINIONS OF ATTORNEY GENERAL.

The Kentucky School Facilities Construction Commission Act, KRS 157.611 to 157.640, does not give the Commission unilateral power to choose whether that Act or KRS 162.120 to 162.300 will be used to finance school building construction. OAG 86-50, 1986 Ky. AG LEXIS 39.

The Kentucky School Facilities Construction Commission can enter into participation agreements with local school districts providing for the payment of debt service on bonds issued by local issuing agencies without the necessity of taking title and leasing school projects to local districts. OAG 86-50, 1986 Ky. AG LEXIS 39.

Construction projects for which the School Facilities Construction Commission may provide assistance are those listed on the school facilities plans of eligible school districts approved as of June 30 of the year preceding the session of the General Assembly at which funding for the projects is provided through the appropriation of funds for the payment of debt service on the Commission's bonds. As a result, offers of assistance made by the Commission under the applicable

statutes are, by statutory necessity, specific as to projects, and the Commission does not have the authority to allow a school district to expend funds available to the district under the original offer of assistance for a project which was not on the approved facility plan as of June 30 of the year preceding the biennium in which funding is approved, but which has since been added to a duly approved facility plan. OAG 87-46, 1987 Ky. AG LEXIS 37.

157.615. Definitions for KRS 157.611 to 157.640.

As used in KRS 157.611 to 157.640, unless the context requires otherwise:

(1) "Available local revenue" means the sum of the school building fund account balance; the bonding potential of the capital outlay and building funds; and the capital outlay fund account balance on June 30 of odd-numbered years. These accounts shall be as defined in the manual for Kentucky school financial accounting systems;

(2) "Board of education" means the governing body of a county school district or an independent school district;

(3) "Bonds" or "bonds of the commission" means bonds issued by the commission, or issued by a city, county, or other agency or instrumentality of the Board of Education, in accordance with KRS Chapter 162, payable as to principal and interest from rentals received from a board of education or from the department pursuant to a lease or from contributions from the commission, and constitute municipal bonds exempt from taxation under the Constitution of the Commonwealth;

(4) "Department" means the State Department of Education;

(5) "District technology plan" means the plan developed by the local district and the Department of Education and approved by the Kentucky Board of Education upon the recommendation of the Kentucky Department of Education;

(6) "Equivalent tax rate" means the rate which results when the income from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Department of Revenue as provided by KRS 160.470;

(7) "Kentucky Education Technology System" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education with the recommendation of the Kentucky Department of Education and approved by the Legislative Research Commission;

(8) "Lease" or "lease instrument" means a written instrument for the leasing of one (1) or more school projects executed by the commission as lessor and a board of education as lessee, or executed by the commission as lessor and the department as lessee, as the case may be;

(9) "Lease/purchase agreement" means a lease between the school district or the department and a vendor that includes an option to purchase the technology equipment or software at the end of the lease period;

(10) "Percentage discount" means the degree to which the commission will participate in meeting the bond and interest redemption schedule required to amortize bonds issued by the commission on behalf of a local school district;

(11) "Project" means a defined item of need to construct new facilities or to provide major renovation of existing facilities which is identified on the priority schedule of the approved school facilities plan;

(12) "School facilities plan" means the plan developed pursuant to the survey specified by KRS 157.420 and by administrative regulations of the Kentucky Board of Education;

(13) "Technology master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Kentucky Department of Education and approved by the Kentucky Board of Education and the Legislative Research Commission;

(14) "Unmet facilities need" means the total cost of new construction and major renovation needs as shown by the approved school facilities plan less any available local revenue;

(15) "Unmet technology need" means the total cost of technology need as shown by the approved technology plan of the local district; and

(16) "Eligible district" means any local school district having an unmet facilities need, as defined in this section, in excess of one hundred thousand dollars ($100,000) or a district qualifying for education technology funding.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 27, effective October 18, 1985; 1988, ch. 213, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 192, effective July 13, 1990; 1992, ch. 195, § 6, effective April 3, 1992; 1996, ch. 87, § 4, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 165, § 1, effective June 21, 2001; 2005, ch. 85, § 592, effective June 20, 2005; 2026 ch. 196, § 12, effective July 15, 2026.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

OPINIONS OF ATTORNEY GENERAL.

The Kentucky School Facilities Construction Commission can enter into participation agreements with local school districts providing for the payment of debt service on bonds issued by local issuing agencies without the necessity of taking title and leasing school projects to local districts. OAG 86-50, 1986 Ky. AG LEXIS 39.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Education Technology Funding Program guidelines, 750 KAR 2:010.

Requirements for school and district report cards, 703 KAR 5:140.

SEEK funding formula, 702 KAR 3:270.

157.617. Creation — Powers — Members — Duties.

(1) An independent corporate agency and instrumentality of the Commonwealth is hereby created and

established with all the general corporate powers incidental thereto. The corporation shall be known as "The School Facilities Construction Commission" and shall be endowed with perpetual succession and with the power to contract and to be contracted with, to sue and be sued, to have and to use a corporate seal, to adopt bylaws and regulations, subject to the provisions of KRS Chapter 13A, for the orderly conduct of its affairs.

(2) The commission shall consist of the secretary of the Finance and Administration Cabinet and eight (8) members appointed by the Governor. The members shall possess a knowledge of long-term debt financing or school facility planning and construction. Appointment shall become effective on January 1 and end on December 31, except the initial appointments shall become effective when made by the Governor. Members shall serve staggered six (6) year terms, except when making the initial appointments three (3) members shall be appointed for six (6) year terms, three (3) members shall be appointed for four (4) year terms, and two (2) members shall be appointed for two (2) year terms. The Governor shall appoint a chairman and vice chairman for the first year; thereafter a chairman and vice chairman shall be elected annually by the membership. The commission may elect other officers it considers necessary and shall employ a director and staff necessary to manage the program.

(3) If any of the officers of the commission whose signatures or facsimiles thereof appear on any bonds of the commission, or on any other instruments or documents pertaining to the functions of the commission, shall cease to be such officers before delivery of the bonds, or before the effective date or occasion of such instruments or documents, the signatures, and facsimiles thereof, shall nevertheless be valid for all purposes the same as if the officers had remained in office until such delivery or effective date or occasion.

(4) Officers, employees, and agents of the commission having custody of money shall at all times be bonded to the maximum amount reasonably anticipated to be held at any one (1) time; and each bond shall have good corporate surety, provided by a surety company authorized to do business in the Commonwealth, to be approved in each instance by the commission. Premiums for such surety shall be paid from the budgeted funds of the commission.

(5) The commission shall at all times keep and maintain books of record and account reflecting accurately all its financial transactions. The commission shall be audited annually and shall submit a written report of its activities to the Governor. A copy of each report shall be filed with the Legislative Research Commission.

(6) Moneys received by the commission as rentals under any lease, and from the sale of bonds are declared not to be funds of the Commonwealth, but shall be corporate funds of the commission to be held, administered, invested, and disbursed as trust funds under the terms, provisions, pledges, covenants, and agreements set forth in its leases and bond resolutions and bonds.

(7) The commission and all of its transactions, activities, and proceedings in the authorization and issuance of its bonds, execution of leases, acceptance of conveyances of property, transaction of conveyances of property, and otherwise, shall be exempt from all provisions relating to custodianship by the Secretary of State of title documents, leases, abstracts of title, maps, and other records as provided in KRS 56.020 and 56.320. Conveyances of property to or by the commission shall not be deemed to be conveyances to or by the Commonwealth, and title to any property acquired by the commission shall be held by the commission in its own name.

(8) The Finance and Administration Cabinet shall provide technical assistance to the commission in the issuance of bonds.

History.

Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 28, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 383, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 28, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 383, effective July 13, 1990.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Commission procedures, 750 KAR 1:010.

157.618. Emergency and targeted investment fund — Purposes — Reimbursement requirement — Administrative regulations — Annual report.

(1) The emergency and targeted investment fund is hereby created as a restricted fund in the State Treasury, to be administered by the School Facilities Construction Commission.

(2)(a) Notwithstanding KRS 45.229 or any other provision of the Kentucky Revised Statutes, any appropriations to the School Facilities Construction Commission that have not been expended at the end of a fiscal year shall not lapse but shall be transferred to the emergency and targeted investment fund. The fund may also receive other appropriations from the General Assembly and reimbursements from local school districts.

(b) Notwithstanding KRS 45.229, amounts remaining in the emergency and targeted investment fund at the end of a fiscal year shall not lapse but shall be carried forward to the next fiscal year, to be used for the purposes set forth in this section.

(3) Notwithstanding KRS 157.620 and 157.622, the commission may use moneys in the fund to:

(a) Offer grants for the purposes of financing the construction and equipping of new facilities, or the major renovation of current facilities, if a local school district's facilities are:

1. Destroyed or severely damaged by an emergency. For the purposes of this paragraph, "emer-

gency" means a condition that arises from an accident, catastrophe, or other unforeseen occurrence such as a fire, storm, flood, or other event that involves unusual danger to the lives or property of area residents; or

2. Destroyed or severely damaged through a criminal or negligent act; or

(b) Award a cash grant to a school district to assist in bringing the school up to code if:

1. A school building is to be closed by a state or federal official or agency, including the state fire marshal or the Department for Environmental Protection; and

2. The Kentucky Department of Education has declared the situation to be an emergency.

(4) If a school district receives assistance from the commission under this section and subsequently, as a result of litigation or insurance, receives funds for the original facility, the school district shall reimburse the fund an amount equal to the amount received pursuant to this section. If the litigation or insurance receipts are less than the amount received under this section, the district shall reimburse the fund an amount equal to the amount received as a result of litigation or insurance, less the district's costs and legal fees in securing the judgment or payment.

(5) The commission, in cooperation with the department, shall promulgate administrative regulations under KRS Chapter 13A establishing the process to apply for and receive funds from the emergency and targeted investment fund.

(6) By October 1 of each year, the commission shall provide a report on the fund's activities to the Legislative Research Commission.

History.

Enact. Acts 2014, ch. 102, § 32, effective July 15, 2014; 2016 ch. 138, § 4, effective April 27, 2016.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (3) at 2066.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

157.620. School district participation requirements.

(1) To participate in the school construction funding program, the district must have unmet needs as defined by KRS 157.615 and must meet the following eligibility criteria:

(a) Commit at least an equivalent tax rate of five cents ($0.05) to debt service, new facilities, or major renovations of existing school facilities as defined by KRS 157.440. A district that levies the five cents ($0.05) and has not accepted an official offer of assistance from the School Facilities Construction Commission, made pursuant to KRS 157.611, may use receipts from the levy for other purposes as determined by the district board of education.

(b) On July 1 of odd-numbered years, the district board of education shall restrict all available local revenue, as defined by KRS 157.615, for school building construction, to be utilized in accordance with the priorities determined by the most current school facilities plan approved by the Kentucky Board of Education.

(2) Interest earned on restricted funds required by this section shall become a part of the restricted funds.

(3) Funds restricted by the requirements of this section may be used by the district for projects or a portion thereof as listed in priority order on the approved school facilities plan prior to receiving state funds. Any local school district which is not an eligible district may be permitted, upon written application to the Department of Education, to transfer funds restricted by KRS 157.611 to 157.640 for other school purposes.

(4) Not later than October 15 of the year immediately preceding an even-numbered year regular session of the General Assembly, the Kentucky Board of Education shall submit a statement to the School Facilities Construction Commission certifying the following in each district:

(a) The amount of school facility construction needs in each district;

(b) The amount of available local revenue in each district; and

(c) That the district has or has not met the eligibility criteria established by subsection (1) of this section.

(5) Construction needs shall be those needs specified in the school facilities plan approved by the Kentucky Board of Education as of June 30 of the year preceding an even-numbered year regular session of the General Assembly.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 29, effective July 29, 1985; 1988, ch. 356, § 1, effective April 10, 1988; 1990, ch. 476, Pt. IV, § 193, effective July 13, 1990; 1990, ch. 518, § 6, effective July 13, 1990; 1992, ch. 251, § 1, effective July 14, 1992; 1992, ch. 352, § 1, effective July 14, 1992; 1994, ch. 435, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 58, § 16, effective June 21, 2001; 2001, ch. 165, § 2, effective June 21, 2001.

Legislative Research Commission Notes.

(6/21/2001). This section was amended by 2001 Ky. Acts chs. 58 and 165, which do not appear to be in conflict and have been codified together.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

OPINIONS OF ATTORNEY GENERAL.

Construction projects for which the School Facilities Construction Commission may provide assistance are those listed on the school facilities plans of eligible school districts approved as of June 30 of the year preceding the session of the General Assembly at which funding for the projects is provided through the appropriation of funds for the payment of debt service on the Commission's bonds. As a result, offers of assistance made by the Commission under the applicable statutes are, by statutory necessity, specific as to projects, and the Commission does not have the authority to allow a school district to expend funds available to the district under the

original offer of assistance for a project which was not on the approved facility plan as of June 30 of the year preceding the biennium in which funding is approved, but which has since been added to a duly approved facility plan. OAG 87-46, 1987 Ky. AG LEXIS 37.

The plain language of this section permits the county prospectively to commit 5¢ of the 36.2¢ equivalent tax rate now in effect for debt service, new facilities or major renovations of existing school facilities in order to qualify to participate in the school construction funding program, regardless of the fact that in the past the district may not have had a voted building tax. OAG 90-80, 1990 Ky. AG LEXIS 80.

This section permits any district which has a current levy exceeding both the required 30¢ and the 5¢ tax, not to levy an additional tax. OAG 90-80, 1990 Ky. AG LEXIS 80.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Implementation guidelines - Kentucky School Facilities Planning Manual, 702 KAR 4:180.

School district tax rate formulas, 702 KAR 3:275.

SEEK funding formula, 702 KAR 3:270.

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

157.621. Additional tax levies for debt service, new facilities, and major renovations in school districts — Criteria — Equalization funding.

(1) In addition to the levy required by KRS 157.440(1)(b) to participate in the Facilities Support Program of Kentucky, local school districts that have made the levy required by KRS 157.440(1)(b) are authorized to levy the following additional equivalent rates to support debt service, new facilities, or major renovations of existing school facilities, which levies shall not be subject to recall under any provision of the Kentucky Revised Statutes, or to voter approval under the provisions of KRS 157.440(2):

(a)1. Prior to April 24, 2008, local school districts that have experienced student population growth during a five (5) year period may levy an additional five cents ($0.05) equivalent rate for debt service and new facilities. The tax rate levied by the district under this provision shall not be equalized by state funding, except as provided in paragraph (b) of this subsection. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district.

2. A local school district shall meet the following criteria in order to levy the tax provided in subparagraph 1. of this paragraph:

a. Growth of at least one hundred fifty (150) students in average daily attendance and three percent (3%) overall growth for the five (5) preceding years;

b. Bonded debt to the maximum capability of at least eighty percent (80%) of capital outlay from the Support Education Excellence in Kentucky funding program, all revenue from the local facility tax, and all receipts from state equalization on the local facility tax;

c. Current student enrollment in excess of available classroom space; and

d. A local school facility plan that has been approved by the Kentucky Board of Education and certified to the School Facilities Construction Commission;

(b)1. In addition to the levy authorized by paragraph (a) of this subsection, a local school district may levy an additional five cents ($0.05) equivalent rate under the same terms and conditions established by paragraph (a) of this subsection beginning in fiscal year 2003-2004 if the levy was made prior to April 24, 2008, and if the local school district:

a. Levied the five cents ($0.05) equivalent rate authorized by paragraph (a) of this subsection; and

b. Still meets the requirements established by paragraph (a)2. of this subsection.

2. Any school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in fiscal year 2003-2004. Equalization shall be provided at one hundred fifty percent (150%) of the statewide average per pupil assessment, subject to subsection (6) of this section. Equalization funds shall be used as provided in KRS 157.440(1)(b).

3. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district; and

(c)1. A local school district that meets the following conditions may levy an additional five cents ($0.05) equivalent rate on and after April 24, 2008:

a. The local school district is located in a county that will have more students as a direct result of the new mission established for Fort Knox by the Base Realignment and Closure (BRAC) 2005 issued by the United States Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. No. 100-526, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. sec. 2687 note; and

b. The commissioner of education has determined, based upon the presentation of credible data, that the projected increased number of students is sufficient to require new facilities or the major renovation of existing facilities to accommodate the new students, and has approved the imposition of the additional levy.

2. Any local school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph, and that has not received equalization funding under subsection (2) or (3) of this section, shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in the fiscal year following the fiscal year in which the levy authorized by subparagraph 1. of this paragraph is imposed. Equalization shall be provided at

one hundred fifty percent (150%) of the statewide average per pupil assessment, subject to subsection (6) of this section. Equalization funds shall be used as provided in KRS 157.440(1)(b).

3. Any levy imposed under this paragraph by a local school district shall continue until removed by the local school district.

(2)(a) Any local school district that, prior to April 27, 2016, levied an equivalent rate that:

1. Was subject to recall at the time it was levied; and

2. Included a rate of at least five cents ($0.05) equivalent rate for the purpose of debt service for school construction or major renovation of existing school facilities;

shall be eligible for retroactive equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in fiscal year 2003-2004, subject to subsection (6) of this section. Equalization funds shall be used as provided in KRS 157.440(1)(b).

(b) It is the intent of the General Assembly that for levies described in this subsection that are imposed on or after April 27, 2016, equalization funds, if provided by the General Assembly, shall terminate upon the earlier of June 30, 2038, or the date the bonds for the local school district supported by this equalization funding are retired. Equalization shall be subject to subsection (6)(b) and (c) of this section, the fiscal condition of the Commonwealth, and funding by the General Assembly.

(3) Any local school district that:

(a) Levied an equivalent tax rate as of April 24, 2008, that included at least ten cents ($0.10) that was devoted to building purposes, or that had debt service corresponding to a ten cents ($0.10) equivalent rate;

(b) Did not receive equalized growth funding pursuant to subsection (1)(b)2. of this section; and

(c) Has been approved by the commissioner of education;

shall be eligible for equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in fiscal year 2005-2006, subject to subsection (6)(b) and (c) of this section and the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b). Equalization funds shall be available to a local school district pursuant to this subsection until the earlier of June 30, 2038, or the date the bonds for the local school district supported by this equalization funding are retired.

(4)(a) Notwithstanding any other provision of this section, any local school district receiving equalization funding prior to April 27, 2016, related to an equivalent rate levy described in subsection (1), (2), (3), or (5) of this section shall continue to receive the equalization funding related to the applicable equivalent rate levy, subject to subsection (6) of this section, the limitations established by subsections (1), (2), (3), and (5) of this section, the fiscal condition of the Commonwealth, and the provision of funding by the General Assembly, until amended by subsequent action of the General Assembly. A local school district described in this paragraph shall not be eligible to receive equalization for any additional equivalent rate levies made by it on or after April 27, 2016.

(b) Notwithstanding any other provision of this section, any local school district that has imposed an equivalent rate levy described in subsection (1)(a) or (b) or (2) of this section prior to April 27, 2016, that qualifies for equalization but that has not yet received equalization funding shall be eligible for equalization funding as provided in subsection (1)(a) or (b) or (2) of this section, subject to subsection (6) of this section.

(c) On and after April 24, 2008, a local school district not included in paragraph (a) or (b) of this subsection shall be prohibited from imposing an equivalent rate levy under the provisions of subsection (1)(a) or (b) of this section, and shall not be eligible for equalization funding under the provisions of this section.

(d) On and after April 24, 2008, a local school district meeting the requirements of subsection (1)(c) of this section may impose the levy authorized by subsection (1)(c) of this section, and shall qualify for equalization as provided in subsection (1)(c) of this section, subject to subsection (6) of this section.

(5)(a) Any local school district that:

1. Had school facilities classified as Category 5 on May 18, 2010, by the Kentucky Department of Education; and

2. Levied an additional five cents ($0.05) equivalent tax rate prior to April 27, 2016, for debt service, new construction, and major renovation beyond the five cents ($0.05) equivalent tax rate required by KRS 157.440(1)(b), except as provided in paragraph (b) of this subsection;

shall be eligible for equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in the fiscal year following the fiscal year in which the levy was imposed subject to subsection (6) of this section. This levy shall be subject to the recall provisions of KRS 132.017.

(b) School districts that levied a five cents ($0.05) equivalent tax rate for debt service, new construction, and major renovation, beyond the rate required by KRS 157.440(1)(b) prior to May 18, 2010, shall not be required to levy an additional tax to receive the equalization funds provided in paragraph (a) of this subsection.

(c) If the school district utilizes the equalization funds to support a bond issue for construction purposes, equalization funds shall be provided until the earlier of twenty (20) years or date the bonds are retired.

(d) In the event that a school district receives funding pursuant to this subsection to support construction of a new school facility and subsequently, as a result of litigation, receives funding for the same facility for which state funds were provided, that school district shall reimburse the Commonwealth an amount equal to the amount provided under paragraph (a) of this subsection. Any funds received in this manner shall be deposited in the budget

reserve trust fund account established in KRS 48.705.

(6)(a) For equivalent tax rates levied under this section prior to January 1, 2026, equalization funds authorized under this section shall terminate upon the earlier of twenty (20) years or the date the bonds supported by the equalization funding are retired. Equalization shall be subject to the fiscal condition of the Commonwealth and funding by the General Assembly.

(b) For equivalent tax rates levied under this section on or after January 1, 2026, equalized funds shall not be authorized under this section or provided by the state.

(c) The commissioner of education shall compile a list of every equivalent tax rate levied by a school district under the authority of this section, the bonds or debt service to which the equivalent tax rate revenues and any related equalized funds are dedicated, and the date those bonds or debt service are scheduled to be retired. This list shall be submitted to the Legislative Research Commission for referral to the Interim Joint Committee on Appropriations and Revenue Committee by September 1 of each year until the equalization funds are terminated under paragraph (a) of this subsection.

History.

Enact. Acts 1994, ch. 436, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 10, effective July 14, 2000; 2008, ch. 80, § 1, effective April 11, 2008; ch. 132, § 13, effective April 24, 2008; repealed and reenact., Acts 2009, ch. 86, § 12, effective March 24, 2009; 2016 ch. 138, § 5, effective April 27, 2016; 2018 ch. 171, § 3, effective April 14, 2018; 2018 ch. 207, § 3, effective April 27, 2018; 2026 ch. 161, § 91, effective April 14, 2026.

Legislative Research Commission Notes.

(4/27/2018). This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstood."

(4/24/2008). This section was amended by 2008 Ky. Acts chs. 80 and 132, in nearly identical form. After passage of House Bill 734 (which became 2008 Ky. Acts ch. 80), House Bill 704 (which became 2008 Ky. Acts ch. 132) was enacted containing amendments to this section that are identical to those in House bill 734, with the addition of a few phrases. While there is no conflict in the text of these Acts and they have been codified together, the phrase "the effective date of this Act" has been codified as "April 24, 2008," in accordance with KRS 446.250, which provides that the last Act passed by the General Assembly prevails.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (11) at 2071.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (12) at 2071.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (13) at 2071.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (14) at 2071.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 1, (24) at 2073.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School district tax rate formulas, 702 KAR 3:275.

157.622. Assistance to school districts — Priority order of needs — Exception — Reallocation of funds — Disposition of bond savings and refinancing savings.

The School Facilities Construction Commission shall be governed by the following procedures in providing assistance to school districts for construction purposes:

(1) Upon receipt of the certified statements from the Kentucky Board of Education as required by KRS 157.620, the commission shall compute the unmet needs of all eligible districts as defined by KRS 157.615;

(2) Assistance to each eligible district shall be determined by computing the ratio of the available state funding to total unmet need statewide. Based on the computed ratio, an equivalent percentage of each eligible district's unmet need will be funded;

(3) Each eligible district which has otherwise complied with the provisions of KRS 157.615 and 157.620 shall be offered sufficient funding to finance construction of the portion of its unmet need computed by applying the ratio determined in subsection (2) of this section to the total unmet need of the district. The funds shall be applied to the projects listed on the most current facility plan approved by the Kentucky Board of Education, and the funds shall be applied to projects in the priority order listed on the plan. Exceptions to the priority order of projects may be approved by the School Facilities Construction Commission when it is documented by the local board of education and approved by the Kentucky Board of Education upon the recommendation of the chief state school officer that the school district's priority order of needs has changed. The exceptions shall not alter the amount of the offer of assistance;

(4) The commission shall promulgate administrative regulations whereby an eligible district which fails in any budget period to receive an allocation of state funds that is sufficient to fund the district's priority project or portions thereof may accumulate credit, subject to the availability of funds, for its unused state allocation for a period not to exceed eight (8) years. Accumulation and retention of credit is contingent upon the transfer of available local revenue to the restricted construction account by June 30 of each year;

(5) Except as provided in subsection (6) of this section, all unused state allocations accumulated according to the provisions of subsection (3) of this section shall be reallocated by the commission. The reallocation shall follow the process and intent as set forth in this section with eligible districts being those districts which contribute unused state allocations to the reallocation account. Any district which has an unused state allocation after funding its first priority project in a biennium is not eligible for consideration for additional funds from the reallocation account. Any funding received and utilized from the reallocation account by a district shall equally reduce the credit as set forth in this section; and

(6) Refinancing savings that have occurred since July 1, 1997, and subsequent savings to the commission generated over the life of a bond by the local district's refinancing of the bond shall be dedicated to the district's account by the commission. Any funds accumulated in this account shall be used toward the district's next priority, but shall not be deducted from the district's share of commission funds under subsection (3) of this section.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 30, effective October 18, 1985; 1988, ch. 213, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 194, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 591, § 1, effective July 15, 1998; 2001, ch. 165, § 3, effective June 21, 2001; 2006, ch. 156, § 1, effective July 12, 2006.

Legislative Research Commission Notes.

(6/21/2001). A reference to "subsection (7)" in subsection (5) of this statute has been changed in codification to "subsection (6)" under KRS 7.136(1)(e) and (h). In 2001 Ky. Acts ch. 165, sec. 3, the existing subsection (6) was renumbered as subsection (5), but an internal reference to that subsection in the existing language of this statute was overlooked.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

OPINIONS OF ATTORNEY GENERAL.

The Kentucky School Facilities Construction Commission can enter into participation agreements with local school districts providing for the payment of debt service on bonds issued by local issuing agencies without the necessity of taking title and leasing school projects to local districts. OAG 86-50, 1986 Ky. AG LEXIS 39.

Construction projects for which the School Facilities Construction Commission may provide assistance are those listed on the school facilities plans of eligible school districts approved as of June 30 of the year preceding the session of the General Assembly at which funding for the projects is provided through the appropriation of funds for the payment of debt service on the Commission's bonds. As a result, offers of assistance made by the Commission under the applicable statutes are, by statutory necessity, specific as to projects, and the Commission does not have the authority to allow a school district to expend funds available to the district under the original offer of assistance for a project which was not on the approved facility plan as of June 30 of the year preceding the biennium in which funding is approved, but which has since been added to a duly approved facility plan. OAG 87-46, 1987 Ky. AG LEXIS 37.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Commission procedures, 750 KAR 1:010.

Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 4:180.

157.623. Funding urgent and critical construction needs — Proceeds of litigation or insurance to be used for reimbursement.

(1) Notwithstanding KRS 157.620 and any provision included in an enacted executive branch budget, urgent and critical construction needs shall be determined by the Department of Education. The department shall provide a funding allocation to a school district for a school that has been closed to the public because it is structurally unsound as determined by a certified engineer, or is otherwise uninhabitable as determined by the commissioner of education, and has a bond that has not been retired. The commissioner of education shall determine if a school qualifying under this subsection shall receive an allocation and shall determine which of the following options is in the best interest of the Commonwealth:

(a) To allot funding to the school district to retire the unpaid debt on the structurally unsound or uninhabitable building; or

(b) To provide the semi-annual debt service payments on the current issue.

(2) If funds are not available for the purpose set out in subsection (1) of this section, the costs shall be deemed a necessary government expense and shall be paid from the general fund surplus account under KRS 48.700 or the budget reserve trust fund under KRS 48.705.

(3) If a school district receives an allotment under subsection (1) of this section and subsequently, as the result of litigation or insurance, receives funds for the original facility, the school district shall reimburse the Commonwealth an amount equal to that received pursuant to subsection (1) of this section. If the litigation or insurance receipts are less than the amount received pursuant to subsection (1) of this section, the district shall reimburse the Commonwealth an amount equal to that received as a result of litigation or insurance less the district's costs and legal fees in securing the judgment or payment. Any funds received in this manner shall be deposited in the budget reserve trust fund account established in KRS 48.705.

History.

Enact. Acts 2011, ch. 32, § 1, effective March 15, 2011.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

157.625. Issuance of bonds.

(1) Bonds of the commission shall be issued in the name of the commission, shall be designated "school

building revenue bonds" or, if appropriate, "school building revenue refunding bonds," and shall additionally be identified by the name of the board of education executing the lease. If the commission shall issue more than one (1) series of bonds for the same lessee from time to time, each series, including the first or subsequent to the first, shall additionally be identified distinctly by alphabetical or chronological designation, by date of the bonds, or otherwise as the commission may determine.

(2) For the purpose of determining any limit prescribed by any law for investment of any public funds, or funds of banks, trust companies, insurance companies, building and loan associations, credit unions, pension and retirement funds, and fiduciaries, in obligations of a single obligor, bonds issued by the commission pursuant to KRS 157.615 to 157.640 shall not be deemed to be bonds or obligations of the same obligor except to the aggregate of all series of bonds involving leases of a single board of education.

(3) Bonds issued by the commission under the provisions of KRS 157.615 to 157.640 are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them. The bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

(4) Nothing contained herein shall be construed to prohibit a board of education from electing to issue bonds on the local level through a city, county, or other agency and instrumentality of the board of education, and in such event the commission may enter into a participation agreement with the board of education implementing the commission's participation in the financing plan represented by the bonds. In the event of the issuance of bonds on the local level, the board of education may pledge and assign the commission's participation to the issuer to secure the bonds, and may contract with the issuer to permit the collection by the commission or the issuer of rentals due from the board of education under the lease in the event of a failure by the board of education to make the payments in a timely manner.

History.

Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 31, effective October 18, 1985; 1988, ch. 213, § 2, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 384, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 31, effective October 18, 1985; 1988, ch. 213, § 2, effective July 15, 1988) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 384, effective July 13, 1990.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

OPINIONS OF ATTORNEY GENERAL.

The Kentucky School Facilities Construction Commission Act, KRS 157.611 to 157.640, does not give the Commission unilateral power to choose whether that Act or KRS 162.120 to 162.300 will be used to finance school building construction. OAG 86-50, 1986 Ky. AG LEXIS 39.

The Kentucky School Facilities Construction Commission can use a composite bond issue to provide funding for multiple school districts in one bond issue, but each district should be identified separately in the issue. OAG 86-50, 1986 Ky. AG LEXIS 39.

157.627. Requirements for issuance — Accounting procedure.

In connection with each bond issue of the commission as defined in KRS 157.615(3), it shall be the duty of the commission:

(1) To require the district board of education to insure the project to its full insurable value, or to the amount of the bonds outstanding from time to time, whichever is the less, against the hazards covered by the standard fire insurance policy with standard endorsement of "extended coverage," and to require that a copy of each policy be delivered to the commission for inspection and for its records;

(2) To require periodic accounting from all depositories of funds, the same to be submitted on forms prepared and supplied by the commission;

(3) To furnish to the certified public accountant auditing the district, summary identification and description of each issue, and to request that the financial records of the board of education relating thereto be audited as a part of the annual audit of the board of education, and that a separate statement or report thereof be filed with the commission;

(4) To send to each board of education at least thirty (30) days before the due date of any debt service or rental payment a notice of the amount of debt service or rental to become due and the date thereof, and to require acknowledgment thereof; and

(5) To receive from the board of education, satisfactory evidence that sufficient funds have been transmitted to the commission or its agent, or will be so transmitted, in the event of the board's failure to pay debt service and administrative costs when due, as provided in the bond or lease, to notify and request that the department withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated to it, and to request that the department transfer the required amount thereof to the commission for the account of the board of education.

History.

Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985; 1988, ch. 213, § 4, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 385, effective July 13, 1990; 2024 ch. 126, § 4, effective July 15, 2024.

Compiler's Notes.
This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985; 1988, ch. 213, § 4, effective July 15, 1988) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 385, effective July 13, 1990.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

OPINIONS OF ATTORNEY GENERAL.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22, 1987 Ky. AG LEXIS 63.

157.628. Reimbursement for bonds previously issued.

(1) A school district which has issued revenue bonds according to the provisions of KRS Chapter 162 shall be eligible to participate in a reimbursement schedule if all of the following conditions are met:

(a) The district met all criteria for first round financing except that the district had no unmet needs on its facility survey in effect at that time;

(b) An amended facility survey, approved prior to June 30, 1986, is on file with the Department of Education; and

(c) Revenue bonds were issued after January 1, 1986, and prior to January 1, 1987.

(2) Annual reimbursement shall be provided for bond debt service equal to the amount to which the district would have been entitled if the facility survey had been updated prior to first round funding.

History.
Enact. Acts 1988, ch. 356, § 2, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 386, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1988, ch. 356, § 2, effective July 15, 1988) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 386, effective July 13, 1990.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

157.630. Sale of bonds — Publication area.

Bonds of the commission shall be sold in such form and in such manner as the commission deems appropriate in accordance with prevailing market conditions. If the bonds are sold on the basis of sealed bids or proposals, the "publication area," as that term is used in KRS Chapter 424, shall not be deemed to be the area within which the office of the commission is situated, but shall be deemed to be the "publication area" of the board of education executing the lease. If the bonds are sold on the basis of sealed bids or proposals, the sale shall be publicly advertised by means of a notice conforming to the provisions of KRS 424.140, and the same shall be published at least one (1) time, at least seven (7) days in advance of the date set forth for opening bids, in a daily newspaper having bona fide general circulation throughout the Commonwealth. If such publication is made, it shall be sufficient for publication in the "publication area" to be made only one (1) time, at least seven (7) days in advance of the date set forth for the opening of bids. If a copy of the sale notice be delivered or transmitted in good faith to the qualified newspaper of the "publication area" in time for publication in an issue thereof published seven (7) days or more in advance of the date set forth for the opening of bids, and with direction for publication therein, any failure of such newspaper to make publication as directed shall not invalidate the sale of the bonds by the commission on the designated date, nor require postponement or cancellation thereof.

History.
Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 387, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 387, effective July 13, 1990.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

OPINIONS OF ATTORNEY GENERAL.

The Kentucky School Facilities Construction Commission must sell its bonds or the bonds of local issuing agencies issued on behalf of eligible school districts to which the Commission has made a commitment on a negotiated basis at a publicly advertised, competitive sale pursuant to this section. OAG 86-50, 1986 Ky. AG LEXIS 39.

157.632. Department to require audit.

It shall be the duty of the department, upon written request of the commission:

(1) To cause the certified public accountant auditing the district to audit the financial records relating to any identified and described bond issue of the commission, as an incident to the certified public accountant's next ensuing annual audit of such board of education, and each subsequent annual audit; and to provide a statement or report to the commission.

(2) Upon receiving a notification and request from the commission to ascertain whether the lease of the board of education has been renewed and is in force in accordance with its terms, and if the same is ascertained to be in force; to withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated by the department for the board of education, and to comply with the terms of the notification and request of the commission for the account of said board of education.

History.
Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 34, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 388, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 34, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 388, effective July 13, 1990.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

157.635. Revenue bonds for state projects.

(1) The School Facilities Construction Commission is hereby authorized to issue revenue bonds for the purpose of financing projects authorized by the General Assembly based upon lease rental agreements with the Kentucky Department of Education for the purpose of:

(a) Acquiring sites and building vocational schools which are to be owned by the state and operated by the Department of Education;

(b) Constructing additions and extensions to the School for the Deaf and the School for the Blind which are owned by the state and operated by the Department of Education; and

(c) Building projects for vocational rehabilitation programs which are owned by the state and operated by the Department of Education.

(2) In exercising the authority in subsection (1) of this section, the commission will act under the applicable provisions of KRS Chapter 56.

History.
Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 35, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 389, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 35, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 389, effective July 13, 1990.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (4) at 2066.

157.640. Successor agency of Kentucky School Building Authority.

The School Facilities Construction Commission is the successor agency of the Kentucky School Building Authority created by the 1978 Acts of the General Assembly Chapter 153. All powers, duties, obligations, and assets of the Kentucky School Building Authority, including an obligation for only those projects which have been approved for funding or partial funding as of July 1, 1985, and for which funds have been appropriated by the General Assembly as of June 30, 1986, are hereby transferred to the School Facilities Construction Commission. The commission is hereby empowered with all rights of successorship necessary to assure continuance of all legal and contractual functions and liabilities associated with the outstanding bonds issued in the name of the Kentucky School Building Authority and may refund such bonds previously issued in the name of the Kentucky School Building Authority.

History.
Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 36, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 390, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 36, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 390, effective July 13, 1990.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.

157.650. Construction of certain sections relating to educational technology — Power of School Facilities Construction Commission.

(1) By establishing the education technology funding program in the School Facilities Construction Commission, the General Assembly expresses its commitment to promote a partnership with the state and the local public school districts to meet the educational technology needs of Kentucky's students in a manner which will insure an equitable distribution of funds. Nothing in KRS 157.611, 157.615, 157.650 to 157.665, or 160.160 shall be construed as limiting a local school district's legal options to acquire education technology equipment and related software with state dollars if the equipment and software is approved under the master technology plan.

(2) The School Facilities Construction Commission is empowered to assist requesting local boards of education to issue bonds or to enter into lease agreements, or both, to finance the purchase or lease of technological equipment and related software or major renovation of existing school facilities to allow the use of educational technology.

History.
Enact. Acts 1992, ch. 195, § 1, effective April 3, 1992.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (1) at 2074.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Education Technology Funding Program guidelines, 750 KAR 2:010.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.

157.655. Education technology program.

(1) To participate in the education technology funding program, a local public school district shall have an unmet technology need described in its local district

technology plan and approved by the Kentucky Board of Education pursuant to its technology master plan, and shall match equally the amount of funds offered by the School Facilities Construction Commission for this purpose each biennium.

(2) If a local board of education determines that for any reason the district's approved technology plan is grossly inconsistent with the administrative regulations governing the development of the plan, the local board may certify, by official action, the reason for the inconsistency and may request that the Department of Education reevaluate the technology plan of the district. After review of the data, the chief state school officer may require a reevaluation and the approval of a new technology plan certified prior to an official offer from the School Facilities Construction Commission. If the chief state school officer elects to recommend the new technology plan to the Kentucky Board of Education, the board shall notify the School Facilities Construction Commission of any change required in the offer of assistance for the district.

History.
Enact. Acts 1992, ch. 195, § 2, effective April 3, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2026 ch. 196, § 13, effective July 15, 2026.

Legislative Research Commission Notes.
(7/15/96). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, references to the State Board for Elementary and Secondary Education in subsections (1) and (2) of this statute have been left unchanged because those references are historical in nature.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (1) at 2074.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Education Technology Funding Program guidelines, 750 KAR 2:010.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.

157.660. Procedures for providing assistance for education technology.

The School Facilities Construction Commission shall be governed by the following procedures in making an offer of assistance to local public school districts for providing education technology:

(1) The base level of assistance to each eligible district shall be determined by dividing the total amount available for education technology by the total of the prior year's statewide average daily attendance of the eligible districts times the district's prior year's average daily attendance.

(2) The funds shall be applied to the projects listed in the district's technology plan, and the funds shall be applied to projects in the priority order listed on the plan except as provided in KRS 157.655(2). The first priority for the expenditure of each new offer of assistance shall be to meet the previous obligations of bonds, leases, or other financial agreements made for education technology by the district.

(3) The commission shall establish administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years.

(4) All unused state funds allocated according to the provisions of subsection (1) of this section shall be reallocated by the commission. The reallocation shall follow the process and intent as set forth in this section with eligible districts being those districts which have the available local matching funds and have not completely implemented the Kentucky Education Technology System.

History.
Enact. Acts 1992, ch. 195, § 3, effective April 3, 1992.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (1) at 2074.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Education Technology Funding Program guidelines, 750 KAR 2:010.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.

157.665. Kentucky education technology trust fund.

(1) To carry out the purpose of providing educational technology for the public system of education pursuant to KRS Chapter 156, the Kentucky education technology trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for the purchase or lease of education technology for the public system of education shall be credited to the fund and invested until needed. All interest earned on money in the fund shall be retained in the fund for reinvestment.

(2) All funds appropriated for these purposes by the 1990 and 1992 Regular Sessions of the General Assembly and thereafter, and any interest generated by these funds, shall be transferred to the account on April 3, 1992. All money credited to the fund, including interest, shall be used only for education technology purposes as defined by the Kentucky Board of Education's technology master plan and shall not lapse, but shall be carried forward in the next biennial budget. The purposes expressed in this section shall be deemed to be the purposes for which any budgetary appropriation for educational technology shall have been made.

(3) Funds shall be transferred to the local school districts upon certification of the School Facilities Construction Commission that the district has met the criteria for assistance. All other expenditures shall require the approval of the Kentucky Board of Education.

History.
Enact. Acts 1992, ch. 195, § 4, effective April 3, 1992; 1996, ch. 362, § 6, effective July 15, 1996.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 27, (2) at 2065.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (1) at 2074.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Education Technology Funding Program guidelines, 750 KAR 2:010.
Requirements for school and district report cards, 703 KAR 5:140.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.

BLUEGRASS STATE SKILLS CORPORATION

157.710. Definitions for KRS 157.720 to 157.750. [Renumbered.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 211, § 1, effective July 13, 1984, repealed and reenact. Acts 1990, ch. 476, Pt. V, § 391, effective July 13, 1990) was renumbered as KRS 154.12-204 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.720. Bluegrass State Skills Corporation — Board. [Renumbered.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 211, § 2, effective July 13, 1984; 1988, ch. 199, § 1, effective July 15, 1988; 1988, ch. 205, § 8, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 195, effective July 13, 1990) was renumbered as KRS 154.12-205 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.730. Duties of corporation. [Renumbered.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 211, § 3, effective July 13, 1984; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 392, effective July 13, 1990) was renumbered as KRS 154.12-206 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.740. Grants-in-aid. [Renumbered.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 211, § 4, effective July 13, 1984; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 393, effective July 13, 1990) was renumbered as KRS 154.12-207 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.750. Annual report. [Renumbered.]

Compiler's Notes.
This section (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 394, effective July 13, 1990) was renumbered as KRS 154.12-208 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

KENTUCKY SCHOOL BUILDING AUTHORITY

157.800. Legislative intent. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 1, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.805. Definitions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 2, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.810. Trust and agency powers. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 3, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.815. Kentucky school building authority. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 4, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.820. Signatures on bonds — Quorum — Meetings — Bylaws — Rules and regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 5, effective July 17, 1978; 1980, ch. 114, § 22) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.825. Duty of authority. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 6, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.830. Director of authority. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 7, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.835. Cost participation formula. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 8, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.840. Eligibility classification system. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 9, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.845. Eligibility for assistance. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 10, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.850. Participation agreements — Bonds. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 11, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

Legislative Research Commission Notes.
Although KRS 157.850 was amended by Acts 1986, ch. 23, § 10, effective July 15, 1986, it was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986. Pursuant to KRS 446.100, the repeal prevails.

157.855. Moneys from rentals and bond sales as corporate funds. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 12, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.860. Officers, employes and agents to be bonded. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 13, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.865. Records and accounts — Annual audit. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 14, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.870. Prerequisites for bond issue. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 15, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.875. Duties of department. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 16, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.880. Bond issue — Legal investment. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 17, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.885. Exemptions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 18, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.890. Sale of bonds — Publication area. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 19, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.895. Revenue bonds. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 153, § 20, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

ENVIRONMENTAL EDUCATION

157.900. Statement of legislative purpose.

The General Assembly hereby declares that maintaining a clean and healthy environment is a state priority and is the individual and collective responsibility of all citizens of Kentucky. It is therefore in the public interest that a comprehensive environmental education initiative be undertaken to promote an informed and knowledgeable citizenry with the skills and attributes necessary to effectively and constructively solve existing environmental problems, prevent new ones, and maintain a balanced and economically healthy environment for future generations.

History.
Enact. Acts 1990, ch. 408, § 1, effective July 13, 1990.

157.905. Definitions.

As used in KRS 157.900 to 157.915:

(1) "Environmental education" means an education process dealing with the interrelationships among the natural world and its man-made surroundings; is experience-based; interdisciplinary in its approach; and is a continuous life-long process that provides the citizenry with the basic knowledge and skills necessary to individually and collectively encourage positive actions for achieving and maintaining a sustainable balance between man and the environment.

(2) "Environmental literacy" means having adequate knowledge and understanding of environmental information, concepts and processes.

History.
Enact. Acts 1990, ch. 408, § 2, effective July 13, 1990.

157.910. Kentucky Environmental Education Council.

(1) There is hereby established the Kentucky Environmental Education Council, referred to hereafter as the council, to provide leadership and planning for environmental education for the population of Ken-

tucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education and Labor Cabinet for administrative purposes.

(2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.

(3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.

(4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

(5) The council membership shall elect a chairperson to serve a one (1) year term.

History.

Enact. Acts 1990, ch. 408, § 3, effective July 13, 1990; 1994, ch. 209, § 13, effective July 15, 1994; 1998, ch. 67, § 2, effective July 15, 1998; 2006, ch. 211, § 85, effective July 12, 2006; 2009, ch. 11, § 46, effective June 25, 2009; 2022 ch. 236, § 66, effective July 1, 2022.

157.915. Functions of council.

The functions of the council shall be to:

(1) Create and update annually a five (5) year management and operational plan to make as effective as possible the coordination, delivery, and marketing of all state environmental education programs;

(2) Establish an interagency subcommittee to advise the council on environmental education matters;

(3) Establish and help coordinate the activities of regional environmental education centers and advisory committees at all state universities and at the central office of the Kentucky Community and Technical College System to serve as networks for the dissemination of environmental education programs, materials, and information across the state;

(4) Establish a competitive system for awarding grants for the establishment and maintenance of regional environmental education centers;

(5) Seek and receive private support to fund state and regional environmental education initiatives;

(6) Assist in the integration and evaluation of environmental education in existing school curricula;

(7) Monitor and report periodically on environmental literacy in Kentucky and continually assess trends and needs in environmental education on a local, state, national, and global basis; and

(8) Make recommendations and seek changes through regulations, legislation, and other means to promote environmental literacy in Kentucky.

History.

Enact. Acts 1990, ch. 408, § 4, effective July 13, 1990; 2013, ch. 93, § 1, effective June 25, 2013.

GEOGRAPHY EDUCATION

157.920. Geography education — Legislative findings and goal.

(1) The General Assembly hereby finds that:

(a) The decline in geographic literacy has been widely recognized;

(b) Geographic knowledge is essential to social, political, and environmental leadership potential and civic involvement; and

(c) Support should be given to local efforts to restore geography education to the school curriculum, train teachers, prepare teaching materials, and raise public awareness of the importance of geography education.

(2) The General Assembly establishes, on behalf of the citizens of the Commonwealth, a goal that the next generation of students in Kentucky will graduate with the geographic skills and knowledge that will guarantee their readiness to meet the economic, environmental, and civic challenges of the future.

History.

Enact. Acts 2000, ch. 259, § 1, effective July 14, 2000.

157.921. Kentucky Geographic Education Board — Purpose — Membership — Bylaws.

(1) The Kentucky Geographic Education Board is established to provide leadership and planning for geography education for the population of Kentucky through the efforts of elementary, secondary, and postsecondary educators, government agencies, and public interests. The board shall be an independent agency and be attached to the Education and Labor Cabinet for administrative purposes.

(2) The twelve (12) member board shall be appointed to two (2) year terms, initially appointed by the Governor, and composed of the following members:

(a) Three (3) representatives from postsecondary institutions;

(b) One (1) representative from the Council for Social Sciences;

(c) Six (6) representatives from elementary and secondary schools;

(d) One (1) representative of the Department of Education; and

(e) One (1) representative of the Council on Postsecondary Education.

(3) The board shall select from its membership a chair and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies that occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.

(4) The board members shall receive no compensation but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

History.
Enact. Acts 2000, ch. 259, § 2, effective July 14, 2000; 2006, ch. 211, § 86, effective July 12, 2006; 2009, ch. 11, § 47, effective June 25, 2009; 2022 ch. 236, § 67, effective July 1, 2022.

157.922. Functions of the board.

The functions of the board shall be to:

(1) Create an annual plan to improve assessment, curriculums, outreach, and professional development related to geography education in Kentucky;

(2) Establish a competitive system for awarding grants for programs to encourage and support geography education;

(3) Seek and receive private support to fund state programs to encourage and support geography education;

(4) Prepare an annual report of its activities and annual plan, forward copies of the report to the Governor, the Legislative Research Commission, the Kentucky Board of Education, and the Council on Postsecondary Education, and make copies available to citizens of the Commonwealth; and

(5) Make recommendations and seek changes through administrative regulations, legislation, and other means to promote geography education in Kentucky.

History.
Enact. Acts 2000, ch. 259, § 3, effective July 14, 2000.

157.924. Geography education trust fund — Purposes.

(1) The Kentucky geography education trust fund is established in the State Treasury to award grants for programs that encourage and support geography education in Kentucky. Funds appropriated by the General Assembly in each biennial budget for the purpose of supporting geography education shall be credited to the fund and invested until needed. The fund may also receive gifts, grants from private and public sources, and federal funds. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for geography education purposes as defined by the Kentucky Geographic Education Board.

(2) Money appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.

History.
Enact. Acts 2000, ch. 259, § 4, effective July 14, 2000.

PENALTIES

157.990. Penalties.

(1) Any person who willfully violates any of the provisions of KRS 157.100 to 157.180 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(2) Any person who willfully violates any of the provisions of KRS 157.310 to 157.440 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History.
Enact. Acts 1976, ch. 93, § 33, effective July 1, 1976; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 395, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1976, ch. 93, § 33, effective July 1, 1976) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 395, effective July 13, 1990.

Legislative Research Commission Notes.
Former KRS 157.990 (4421c-10; amend. Acts 1954, ch. 214, § 15) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

OPINIONS OF ATTORNEY GENERAL.

A public school cannot use the withholding of grades, diplomas or records as a leverage to force a student to meet his obligations concerning property. OAG 82-386, 1982 Ky. AG LEXIS 262.

CHAPTER 158

CONDUCT OF SCHOOLS — SPECIAL PROGRAMS

Section

158.005. Definition of "character education.".
158.007. Definitions for chapter.

Conduct of Schools.

158.010. Uniform school system to be maintained — Variations.
158.020. [Repealed.]
158.021. [Repealed.]
158.025. [Repealed.]
158.030. "Common school" defined — Attendance at public school and primary school program — Advancement without regard to age — Local boards to adopt policy establishing petition and evaluation process for students who do not meet age requirements.
158.031. Primary school program — Authority for administrative regulations — Attributes — Part time attendance — Grouping — Advancement — Reporting requirements.
158.032. Flagging record of missing child — Procedure upon recovery — Documents required upon enrollment or transfer.
158.033. Instruction in student's home or hospital — Signed statement of diagnosed condition — Student may receive home or hospital instruction effective on day of admittance — Calculation of instructional sessions for purposes of KRS 157.360 — Students with disabilities — Administrative regulations.
158.035. Certificate of immunization.
158.036. [Repealed.]
158.037. Report of immunization results.
158.038. Student identification badges must contain hotline number contact information relating to domestic violence, sexual assault, and suicide prevention — Recommendation required of Cabinet for Health and Family Services.
158.039. Suicide prevention awareness information and lessons.
158.040. [Repealed.]
158.041. Display of child abuse, human trafficking, and safe haven baby box hotline numbers in schools.

Section
158.050. School year.
158.060. Access to teacher employment contract — School month and school day — Duty-free lunch period — Nonteaching time for teachers.
158.065. [Repealed.]
158.070. Definitions — School district calendar committee — School calendar adoption procedures — Variable student instructional year — Professional development — Holidays and days closed — Waivers — Scheduling of athletic competitions — Continuing education for students — Student attendance days and their equivalents in instructional year — Nontraditional instruction program — Administrative regulations — Breakfast program — Calculation of service credit and equivalent time for days missed by employees due to emergencies.
158.072. Eligible students — Change of residence within district — Option to remain enrolled in original school — Transportation.
158.075. Veterans Day observance in public schools.
158.080. Private and parochial schools — Courses — School calendar.
158.090. [Repealed.]
158.100. Program required to be provided by school district — Additional programs permitted — Refugee or legal alien students — Virtual high school completion program — School district may establish virtual programs.
158.102. Requirement for library media center — Employment of librarian.
158.105. War veterans may complete high school course without tuition.
158.107. [Repealed.]
158.108. Effect of failure to pay for or rent school supplies.
158.110. Transportation of pupils.
158.115. Supplementation of school bus transportation system by county out of general funds — Annual report to Interim Joint Committee on Appropriations and Revenue.
158.120. Nonresident pupils — Nonresident pupil policy — Tuition — Enrollment of nonresident pupils in virtual programs — Limitations — Sunset.
158.130. [Repealed.]
158.135. Reimbursement for school services for state agency children in state institution or day treatment center or in custody of Department of Juvenile Justice.
158.137. Educational passports for state agency children.
158.139. Facilitation and enablement of employment opportunities for graduates with alternate high school diplomas — Requirements for Department of Workforce Development.
158.140. Admission to high school — Promotion — Classification — High school diploma — Alternative high school diploma — Academy diploma — Posthumous diploma — Diploma for certain honorably discharged veterans — Vocational certificate of completion.
158.141. Passing grade on civics test or course in civic literacy required for high school graduation — Testing procedures — Department to submit testing data to the Legislative Research Commission — Instruction areas for civic literacy course — Administrative regulations.
158.1411. Financial literacy requirements for high school graduation — Establishment of academic standards, curricula, and guidelines for financial literacy.
Section
158.1413. Essential workplace ethics instruction program — Required biennial collaboration — Symbol of attainment of essential workplace ethics indicators.
158.1415. Curriculum for instruction on human sexuality or sexually transmitted diseases — Written consent of parents — Notification to parents — Provision of alternative curriculum — Exceptions.
158.142. Early high school graduation program — Requirements — Early Graduation Scholarship Certificate — Award from early graduation scholarship trust fund.
158.143. High school equivalency diploma — Eligibility — State agency child — Student enrolled in district-operated alternative education program.
158.144. Adult caregiver with whom minor student resides may, by affidavit, establish authority to make school-related decisions for minor student — Conditions — Caretaker's decision may be superseded — Obligations and liability of person relying on affidavit of authority — Revocation of affidavit — Statute subordinate to federal law — Penalty.
158.145. Legislative findings and declarations on school dropout rate.
158.146. Establishment of strategy to address school dropout problem — Department to provide technical assistance, award grants, and disseminate information to school districts and school level personnel.
158.148. Definitions of "bullying" and "parent or guardian"— Discipline guidelines, transportation services policy, and model policies — Local code of acceptable behavior and discipline — Required contents of code.
158.149. Use of tobacco products, alternative nicotine products, and vapor products on school property and during school activities — Written policies — Penalties — Department to post nicotine awareness information on website — Annual reports.
158.150. Suspension or expulsion of students — Alternative program or other intervention — Removal from classroom — Return of expelled student to school district.
158.153. Punishment based on child's records — Disclosure of records — Cause of action — Districtwide standards of behavior for students participating in extracurricular activities.
158.154. Principal's duty to report certain acts to local law enforcement agency. [Repealed].
158.155. Reporting of specified incidents of student conduct — Notation on school records — Report to law enforcement of certain student conduct — Immunity — Reports filed by law enforcement agency created by local board of education.
158.1559. Superintendent of each local school district shall require the principal of each school within the district to provide written notice to all students, parents, and guardians about the provisions of KRS 508.078, and the potential penalties for terroristic threatening — Notice shall be given within ten days of the first instructional day of each school year.
158.156. Reporting of commission of felony KRS Chapter 508 offense against a student — Investigation — Immunity from liability for reporting — Privileges no bar to reporting.

Section
158.157. Superintendent of each local school district to require principals to provide written notice of and age-appropriate information on KRS 531.125 to students in grades four through twelve, parents, and guardians — Applicability to public charter schools.
158.158. Local board of education to require each public school with instructional space for students in grades six through twelve to display information on sexual extortion — Requirements — Applicability to public charter schools — Department to publish recommendations for required information.
158.160. Notification to school by parent or guardian of child's medical condition threatening school safety — Exclusion of child with communicable disease from school — Closing of school during epidemic.
158.162. Mandatory adoption of emergency management response plan in each school — School to maintain portable automated external defibrillators — Emergency response drills — Consequence of schools failing to comply.
158.1621. Reporting of number of portable automated external defibrillators.
158.1622. School AED fund.
158.163. Earthquake and tornado emergency procedure system.
158.164. Building lockdown procedures — Practice.
158.165. Possession and use of personal telecommunications device by public school student.
158.170. Bible to be read.
158.175. Recitation of Lord's prayer and pledge of allegiance — Instruction in proper respect for and display of the flag — Observation of moment of silence or reflection.
158.177. Teaching of evolution — Right to include Bible theory of creation.
158.178. Ten Commandments to be displayed. [Unconstitutional.]
158.180. [Repealed.]
158.181. Legislative findings.
158.182. Definitions for KRS 158.181 to 158.187.
158.183. Prohibited acts by students — Rights of student — Duties of local board of education — Administrative remedies.
158.184. Construction favoring establishment clause, religious liberty, and free speech.
158.185. Construction prohibiting school employee from leading, directing, or encouraging religious or anti-religious activity in violation of establishment clause.
158.186. Copies of law to local school board, school-based decision making council, and certified employees.
158.187. Short title for KRS 158.181 to 158.187.
158.188. Teaching activities permitted in the secular study of religion with the use of the Bible or other scripture.
158.189. Legislative findings — Policies for use of restrooms by students of the opposite biological sex — Requirements — Best available accommodation to be provided.
158.190. Sectarian, infidel, or immoral books prohibited.
158.191. Health and mental health services related to human sexuality, contraception, or family planning — District to notify parents — District prohibited from keeping student information confidential from a parent — Prohibition on policies for use of pronouns that do not conform to a student's biological sex.

Section
158.192. Complaint alleging that material, program, or event is harmful to minors — Complaint resolution policy — Determination by principal — Appeal — Final disposition by board — Request by parent or guardian to preclude student access — Parent's or guardian's access — Model policy.
158.193. Private religious expression by school employees — Activities permitted while employees are on duty — Construction.
158.194. Bill of Rights to be displayed.
158.195. Display of national motto in public elementary and secondary schools — Reading and posting in public schools of texts and documents on American history and heritage — Posting of restrictions on child labor in public school buildings that contain instructional space for students in grades six through twelve.
158.196. Instructional materials standards and concepts — Documents and speeches to be included.
158.197. Elective course on religious scripture — Purpose — Restrictions —School council or governing body authorized to display historic religious and non-religious artifacts, monuments, symbols, and texts in conjunction with course of study.
158.200. Moral instruction — Conditions — Quarterly reports.
158.210. Survey of desire for moral instruction may be made. [Repealed].
158.220. Time allowed for moral instruction in suitable place. [Repealed].
158.230. Arrangements with persons in charge. [Repealed].
158.240. Credit for moral instruction. [Repealed].
158.250. Activities for nonparticipants in moral instruction classes. [Repealed].
158.260. Cost of moral instruction. [Repealed].
158.270. [Repealed.]
158.280. [Repealed.]
158.281. Definitions for KRS 156.476, 158.281, 158.282, and 161.051.
158.282. Instruction of all blind students in the use of braille — Assessment for blind students in program — Exceptions.
158.285. [Repealed.]
158.286. [Repealed.]
158.290. School fundraising activities.
158.292. Excused absences for students who serve as election officers.
158.293. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Inclusion in instructional program.
158.294. Excused absences for students who participate in Veterans' Service Organization Burial Honor Guard — Inclusion in instructional program.
158.295. [Repealed.]
158.297. Meningococcal meningitis disease and vaccine information.
158.299. Type 1 diabetes informational materials — Requirements.
158.300. [Repealed.]
158.301. Legislative findings on skin cancer risks — Schools encouraged to educate students on risks of exposure to ultraviolet rays.
158.302. Cardiopulmonary resuscitation on training required for high school students.
158.303. Educational segment on prevention of pediatric abusive head trauma encouraged.

Section
158.305. Definitions for section — Implementation of multi-tiered system of supports for kindergarten through grade three — Evidence — Assistance — Universal screener and diagnostic assessment — Comprehensive reading program — Training — Reading improvement plan and team — Accelerated interventions — Teacher academies or coaching models — Web-based resource — Collaboration — Screening not to be considered evaluation for special education.
158.306. Approved list of reading curriculum and interventions — Standards — Science of reading program — Three-cueing system prohibited — Administrative regulations.
158.307. Dyslexia toolkit to assist school districts in instructing students with dyslexia — Professional development related to dyslexia — Local board of education policy to identify and assist students in kindergarten through grade three with dyslexia — Annual report.
158.310. [Repealed.]
158.320. [Repealed.]
158.330. [Repealed.]
158.340. [Repealed.]
158.350. [Repealed.]
158.355. [Repealed.]

Preschool Programs.

158.360. Family literacy services.

Voter Education.

158.380. [Repealed.]
158.385. [Repealed.]
158.390. [Repealed.]
158.395. [Repealed.]

Alcohol and Drug Education.

158.405. [Repealed.]
158.410. [Repealed.]
158.415. [Repealed.]
158.420. [Repealed.]
158.425. [Repealed.]
158.430. [Repealed.]

School Safety and School Discipline.

158.440. Legislative findings on school safety and order.
158.441. Definitions for chapter.
158.4410. State school security marshal, duties and responsibilities — Marshal appointed by and reporting to the commissioner of the Department of Criminal Justice Training — Annual report to the Center for School Safety, the Legislative Research Commission, and the Kentucky Board of Education — School security risk assessment tool, purpose — Areas considered when evaluating school security — Annual verification of completion of state security risk assessment — Additional mandatory training, when required.
158.4412. Appointment of district's school safety coordinator — School safety coordinator's functions and duties — Policies and procedures excluded from application of KRS 61.870 to 61.884 — Limitation of civil and criminal liability for school district, school safety coordinator, and school employees acting in good faith.
Section
158.4414. Cooperation of school personnel with local and state law enforcement agencies in efforts to assign certified school resource officers to each campus as funds and personnel become available — Employment of guardians — Memorandum of understanding between local boards of education and law enforcement agencies or the Kentucky State Police — Policies and procedures stating the purpose of the school resource officer program and defining roles and expectations — School resource officer to be armed with firearm — Promulgation of administrative regulations establishing levels of training for certification of school resource officers — Course curriculum, specifications for training requirements, and consequences for deficiencies in required training — Officers to regain certification status upon completion of training deficiency — Local school district superintendents to report annually to the Center for School Safety upon the number and placement of school resource officers in the district, source of funding, and methods of employment for each position.
158.4415. Kentucky State Police school resource officer (KSPSRO), specifications for employment as a school resource officer by a school district — When officer considered an employee of the school district and when an employee of the Kentucky State Police — Duties and prohibited activities — Funding of position — Rights, privileges, immunities, and matters of defense protected.
158.4416. Trauma-informed approach to education — Goals for employment of school-based counselors — Trauma-informed team to recognize and deal with issues of student trauma — Collaboration for services between two or more school districts or between school districts, educational cooperatives, or other public or private entities — Annual report to department on school-based mental health service providers in each district — Report to Interim Joint Committee on Education — Toolkits to develop trauma-informed approach in schools — Plan and strategies for implementing trauma-informed approach.
158.4418. Annual report on trauma-informed approach plans and school-based mental health services — Model interagency agreements.
158.442. Center for School Safety — Duties — School safety coordinator training program — Members of board — Center for School Safety and its board of directors not subject to reorganization by the Governor.
158.443. Terms of board members — Meetings — Selection of administrator for the center — Duties of board of directors.
158.4431. Employment of Kentucky guardians by local boards of education — Qualifications — Contents of required policies — Civil and criminal immunity.
158.4433. School Mapping Data Program — Administration by Kentucky 911 Services Board — Required capabilities.
158.444. Administrative regulations relating to school safety — Role of Department of Education to maintain statewide data collection system — Reportable incidents — Annual statistical reports — Confidentiality.
158.445. Local assessment of school safety and school discipline — District assessment — Local plans.

Section
158.4451. Kentucky Office of Homeland Security shall make available an anonymous reporting tool to allow students, parents, and community members to supply information about potentially harmful, dangerous, or criminal activities to public safety agencies and school officials — Required use of reporting tool or alternative by local school districts.
158.446. Use of appropriated funds.
158.4461. The General Assembly finds that private financial and philanthropic support of public school districts by all members of the community fosters student success, safety, and well-being — The General Assembly encourages the organization of foundations under KRS Chapter 273 to support public school districts in any district for which no such foundation exists.
158.447. Required review of CPTED principles prior to school construction or renovation.
158.448. Protocols for student records within student information system.
158.449. Annual report of assessment of disruptive behavior school incidents resulting in a complaint.

Consumer Education.

158.450. [Repealed.]
158.455. [Repealed.]
158.460. [Repealed.]
158.465. [Repealed.]
158.470. [Repealed.]

Local School District Police Department.

158.471. Local board of education authorized to establish police department for local school districts.
158.473. Police officers appointed by local board of education — Powers.
158.475. Appointed police officers to comply with KRS 61.300 and other requirements set by the local board of education.
158.477. Appointment or promotion to ranks, grades, and positions — Compensation — Employment contract permitted.
158.479. Emergency vehicles — Radio systems — Reporting.
158.481. Authority of local board to regulate traffic and parking — Fees — Violations.
158.483. Prohibition against false representation as police officer, agent, or employee of a police department of a local school district.

School Bus Stop Arm Camera Monitoring Systems.

158.485. Definitions for KRS 158.485 to 158.490.
158.486. School bus stop arm camera monitoring systems — Enforcement of violations — Use of recorded images.
158.487. Civil penalties — Disposition of revenues.
158.488. Stop arm camera violation notice — Contents — Destruction of recorded images.
158.489. Contest of violation — Evidence — Standard of proof — Defenses.
158.490. Suspension of motor vehicle registration for nonpayment of civil penalty — Required notice.
158.505. [Repealed.]
158.510. [Repealed.]
158.515. [Repealed.]
158.520. [Repealed.]
158.525. [Repealed.]
158.530. [Repealed.]
158.535. [Repealed.]
158.540. [Repealed.]
Section
158.545. [Repealed.]
158.550. [Repealed.]

Instruction for Gifted and Talented Students.

158.600. [Repealed.]
158.605. [Repealed.]
158.607. [Repealed.]
158.610. [Repealed.]
158.615. [Repealed.]
158.617. [Repealed.]
158.618. [Repealed.]
158.620. [Repealed.]

Advanced Placement and Dual Enrollment.

158.622. Administrative regulations of Kentucky Board of Education relating to advanced placement courses — Duties of Department of Education relating to advanced placement and dual enrollment programs — Credit for Virtual High School and advanced placement courses.
158.625. Deadline for training required under KRS 161.166.

Sports Medicine Program.

158.640. [Repealed.]
158.6401. [Repealed.]
158.6402. [Repealed.]
158.6403. [Repealed.]

Educational Improvement.

158.645. Capacities required of students in public education system.
158.6450. Instruction in voter registration and election procedures.
158.6451. Legislative declaration on goals for Commonwealth's schools — Model curriculum framework.
158.6452. School Curriculum, Assessment, and Accountability Council.
158.6453. Definitions for section — Review of academic standards and assessments — Revisions to academic standards — Review committees — Advisory panels — Standards and assessments process review committee — Administrative regulations — Information and training — Statewide assessment program — Academic components — Student assessments — College admissions examination — School report card — Individual student report — Writing program — School profile report — Advanced coursework or accelerated learning district plan.
158.6454. National Technical Advisory Panel on Assessment and Accountability. [Repealed].
158.6455. State school accountability system — List of certifications, licensures, and credentials — Dashboard — Reimbursement for assessment — Administrative regulations — Consequences for schools that fail to exit support status — Components of accountability system — Appeals of performance judgments — Report.
158.6456. Locally developed indicators of quality — Data — Department of Education assistance and payment — Administrative regulations.
158.6457. Definitions for KRS 158.6452, 158.6453, 158.6455, and 158.6457.
158.6458. Plan for implementation of state assessment and accountability system — Report.
158.6459. Intervention strategies for accelerated learning — Individualized learning plan — Support and technical assistance.
158.646. Kentucky Institute for Education Research Board.

Section
158.647. Education Assessment and Accountability Review Subcommittee — Members — Duties — Vote required to act. [Effective until January 1, 2027].
158.647. Education Assessment and Accountability Review Subcommittee — Membership — Terms — Vacancies — Duties — Vote required to act. [Effective January 1, 2027].
158.6471. Meetings — Education Assessment and Accountability Review Subcommittee, powers, process, and procedures when reviewing — Assignment of regulation to committee — Education committees, powers, process, and procedures when reviewing.
158.6472. Review of administrative regulations.
158.648. State Advisory Council for Gifted and Talented Education — Purpose — Duties.
158.6485. Governor's School for Entrepreneurs Program — Entrepreneurship education organization — Advisory board — Appropriations — Accounting practices and program reports — Restricted use of funds.
158.649. Achievement gaps — Data on student performance — Policy for reviewing academic performance — Student achievement targets — Reporting requirements — Review and revision of improvement plan.
158.650. Definitions for KRS 158.680 to 158.710. [Repealed].
158.660. [Repealed.]
158.665. [Repealed.]
158.670. [Repealed.]
158.680. State Advisory Committee for Educational Improvement. [Repealed].
158.683. [Renumbered.]
158.685. Standards of student, program, service, and operational performance to be established — Educationally deficient school district — Action to eliminate deficiency — Education development district. [Repealed].
158.690. [Repealed.]
158.700. [Repealed.]
158.710. Responsibilities and functions of educationally deficient districts and education development districts — Plans required — Reports required. [Repealed].
158.720. [Repealed.]
158.730. [Repealed.]
158.740. [Repealed.]
158.750. [Repealed.]
158.760. School-to-Careers System — Legislative intent — Goals.
158.7603. School-to-Careers Grant Program — Authority for administrative regulations — Advisory committee.
158.770. Advisory committee on writing program.
158.775. Writing program pilot project.
158.780. Management improvement programs.
158.782. Monitoring and review of turnaround plan — Skilled assistance.
158.785. Collection and review of management data — Management audit — Conditions for designation as state assisted or state managed district — Actions required.
158.790. [Repealed, reenacted and amended.]
158.791. Legislative findings and intent regarding reading and mathematics.
158.792. Definitions for KRS 158.792 and 164.0207 — Reading diagnostic and intervention fund — Grants for reading intervention programs — Administrative regulations — Use of grant funds — Information and reports provided by Department of Education.
158.794. Reading Diagnostic and Intervention Grant Steering Committee — Membership — Duties.
158.795. Renumbered as KRS 151B.140, effective July 1, 1990.
158.796. Governor's Scholars Program — Purpose — Governor's Scholars Program, Inc. — Board of directors — Funding — Reports.
158.797. [Repealed.]
158.798. Program to encourage studies in mathematics, science, and related technologies — Role of Kentucky Science and Technology Council, Inc.
158.799. Name for program created by KRS 158.798.
158.7991. Legislative findings and declarations.
158.7992. Program to promote instruction in the arts and foreign languages.
158.800. [Repealed.]
158.801. Definitions for KRS 158.801 and 158.803.
158.803. Early mathematics testing program — Purposes — Development and requirements of program — Annual reports.
158.805. Commonwealth school improvement fund — Purposes — Criteria for grants to schools needing assistance.
158.806. Read to succeed fund — Teacher professional learning academies — Literacy coaching program.
158.807. Data research initiative — Purposes — Implementation.
158.808. Energy technology career track program.
158.809. Virtual computer science career academy — Development and requirements — Annual reports.

Secondary Career and Technical Education.

158.810. Definitions for KRS 158.810 to 158.816.
158.812. Legislative intent, findings, and declarations.
158.814. Comprehensive plan on secondary career and technical education programs — Consultation with Career and Technical Education Advisory Committee.
158.816. Annual statewide analysis and report of academic achievement of technical education students — Assistance plan — Occupation skill standards and assessments.
158.818. Evidence-based instructional models to address needs of at-risk students — Focus — Components — Training for high school teachers — Incorporation into existing programs.

Asthma, Diabetes, and Seizure Disorder Medications.

158.830. Legislative findings — Construction of KRS 158.830 to 158.836.
158.832. Definitions for KRS 158.830 to 158.838.
158.834. Self-administration of medications by students with documented medical conditions — Authorization — Written statement — Acknowledgment of liability limitation — Duration of permission.
158.836. Possession and use of medications to treat documented medical conditions — Schools electing to keep epinephrine, injectable epinephrine devices, bronchodilator rescue inhalers, and undesignated glucagon on premises — Policies and protocols — Limitation of liability.
158.837. Use of undesignated glucagon by practitioner, pharmacist, or trained individual — Storage — Contacting parents, guardians, and emergency services — Good Samaritan exception — Immunity from civil liability.

Section
158.838. Emergency administration and self-administration of diabetes and seizure disorder medications — Required training — Required written statements and seizure action plan — Limitation on liability — Renewal of permission — Expiration dates of medication — Self-performance of diabetes care tasks — Diabetes or seizure disorder not to prevent attendance at school the student would ordinarily attend.

Student Achievement in Mathematics and Reading.

158.840. General Assembly findings and intent — Importance of students' reading and mathematics skills in achieving scholastic goals — Roles of statewide entities in improving student achievement.
158.8401. Definitions for KRS 158.840 to 158.844.
158.8402. Administrative regulations — Multitiered system of supports for mathematics — Implementation status report — Technical assistance and training to local districts — Requirements for superintendent of public charter school board of directors — Mathematics diagnostic assessment — Improvement plan and accelerated interventions — Resources.
158.842. Committee for Mathematics Achievement — Membership, purposes, organization, staffing, and duties of committee — Report to Interim Joint Committee on Education.
158.843. Kentucky numeracy counts fund — Uses — Eligibility.
158.844. Mathematics achievement fund — Creation — Use and disposition of moneys — Administrative regulations — Requirements for grant applicants — Department to provide information to schools and to make annual report to Interim Joint Committee on Education.

Student Achievement in STEM Disciplines.

158.845. Definitions for KRS 158.845 to 158.849.
158.846. Legislative findings concerning academic achievement in STEM disciplines.
158.847. Science and mathematics advancement fund — Purposes — Administrative regulations.
158.848. Grant programs concerning STEM disciplines and AP and IB courses.
158.849. Long-term statewide goals concerning STEM disciplines and AP and IB course participation.

School Nutrition.

158.850. Limitation on sale of retail fast foods in school cafeteria.
158.852. School food service director or menu planner — Credentials and certificates — Continuing education.
158.854. Administrative regulation specifying minimum nutritional standards for foods sold outside school breakfast and lunch programs — Restrictions upon sale of certain foods and beverages — Waiver — Definitions — Exceptions — Student-based enterprise to sell competitive foods.
158.855. Purchase of Kentucky-grown agricultural products permitted by local school board or school district participating in any United States Department of Agriculture Child Nutrition Program — Exemption from KRS 45A.345 to 45A.460 and 424.260.
158.856. Annual assessment and evaluation of school nutrition in district — Special board meeting and public forum to discuss nutrition and physical activity in the schools — School district to prepare and submit findings and recommendations to Board of Education. [Repealed].

Examination Upon Completion of Core Content Course.

Section
158.860. Examination upon completion of core content course.

Summer Learning Program for Disadvantaged and Low-achieving Children.

158.865. Legislative findings — Development of summer learning program encouraged — Purposes of program. [Repealed].
158.866. Definitions for KRS 158.865 to 158.867. [Repealed].
158.867. Minimum requirements for summer learning camps at schools with certain Title I programs — Mandatory reports — Student participation guidelines — Teacher compensation — Summary annual reports. [Repealed].

Penalties.

158.990. Penalties.

158.005. Definition of "character education."

As used in KRS Chapters 156 and 158, unless the context requires otherwise, "character education" means instructional strategies and curricula that:

(1) Instill and promote core values and qualities of good character in students including altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline;

(2) Reflect the values of parents, teachers, and local communities; and

(3) Improve the ability of students to make moral and ethical decisions in their lives.

History.

Enact. Acts 2000, ch. 162, § 1, effective July 14, 2000.

158.007. Definitions for chapter.

As used in KRS Chapter 158 unless the context requires otherwise:

(1) "Advanced placement" or "AP" means a college-level course that incorporates all topics and instructional strategies specified by the College Board on its standard syllabus for a given subject area and is licensed by the College Board.

(2) "Advanced science and mathematics" means Advanced Placement or AP biology, calculus, chemistry, computer science, environmental science, and physics, and International Baccalaureate or IB biology, chemistry, computer science, environmental systems, mathematical studies, further mathematics, and physics.

(3) "Board" means the Kentucky Board of Education.

(4) "College Board Advanced Placement examination" means the advanced placement test administered by the College Entrance Examination Board.

(5) "College Board" means the College Entrance Examination Board, a national nonprofit association that provides college admission guidance and advanced placement examinations.

(6) "Core curriculum" means at least one (1) course in science, one (1) course in mathematics, and at least one (1) course in two (2) of the following subject areas: English, social studies, foreign language, and the arts.

(7) "Department" means the Kentucky Department of Education.

(8) "Dual credit" means a college-level course of study developed in accordance with KRS 164.098 in which a high school student receives credit from both the high school and postsecondary institution in which the student is enrolled upon completion of a single class or designated program of study.

(9) "Dual enrollment" means a college-level course of study developed in accordance with KRS 164.098 in which a student is enrolled in a high school and postsecondary institution simultaneously.

(10) "International Baccalaureate" or "IB" means the International Baccalaureate Organization's Diploma Programme, a comprehensive two (2) year program designed for highly motivated students.

(11) "Kentucky Virtual High School" means secondary-level instructional programs or courses offered by the Kentucky Department of Education through the Internet and other on-line, computer-based methods.

(12) "Kentucky Virtual University" means a college-level instructional program offered by the Council on Postsecondary Education through the Internet or other on-line, computer-based methods.

History.

Enact. Acts 2002, ch. 97, § 1, effective July 15, 2002; 2008, ch. 134, § 15, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Advanced placement, 704 KAR 3:510.

CONDUCT OF SCHOOLS

158.010. Uniform school system to be maintained — Variations.

(1) A uniform system of common schools shall be maintained in Kentucky.

(2) Local school districts may, with approval of local boards of education, provide special programs and services to one (1) or more areas of the district in contrast to other areas where the variation is a reasonable one based on an attempt to equalize the education progress of the students within the district.

History.

4363-1; 1978, ch. 19, § 1, effective June 17, 1978; 1972, ch. 254, § 5; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 396, effective July 13, 1990.

Compiler's Notes.

This section (4363-1; amend. Acts 1972, ch. 254, § 5; 1978, ch. 19, § 1, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 396, effective July 13, 1990.

Legislative Research Commission Notes.

1988 Acts, chapter 172, § 1, provides that each public elementary and secondary school classroom in the Commonwealth of Kentucky prominently display a copy of the Bill of Rights, embodying the individual liberties safeguarded by the Constitution of the United States.

NOTES TO DECISIONS

Analysis

1. Control Over Common Schools.
2. Equal and Uniform Educational Opportunities.

1. Control Over Common Schools.

Though the funds are raised by both general taxation by the Commonwealth and special taxation by local boards their expenditure is under the control of the State Board of Education and all public schools of the state, even in cities having unusual powers over their schools, are state institutions and members of the Board of Education are state officers and title to school property is in the Commonwealth and is held by the board in trust for the state. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

Maintenance, management and control of public school system is strictly a governmental function provided by the Constitution or statutes enacted pursuant thereto and the Legislature in making such provisions may provide exclusive remedies for the infringement of any rights that may be perpetrated by any officer or officers in the maintenance of the project. Marshall v. White, 287 Ky. 290, 152 S.W.2d 945, 1941 Ky. LEXIS 531 (Ky. 1941).

It is clear that the General Assembly intended that the state board should have control over the common schools with the power of removal of such board members who might be found guilty of specified charges as a means of maintaining a uniform school system. Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

2. Equal and Uniform Educational Opportunities.

Operation of two (2) high schools in western part of county and none in eastern part without providing equal and uniform educational opportunities for those in the eastern half is clearly arbitrary, discriminatory, and in violation of this section and Const., § 183. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

The fundamental mandate of the Constitution and the statutes of Kentucky is that there shall be equality and that all public schools shall be nonpartisan and nonsectarian. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

Cited in:

Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

OPINIONS OF ATTORNEY GENERAL.

The approval of the State Department of Education is required in order to conduct a school on a continuous basis. OAG 67-277.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification of school employees, KRS 161.010 to 161.120.

Cigarette smoking prohibited on school ground, KRS 438.050.

Courses of study, Board of Education to prescribe standards for, KRS 156.160.

Flags to be furnished schools, KRS 2.040.

Libraries of schools, Department for Libraries and Archives to aid, KRS 171.140.

Local or special act for common school prohibited, Ky. Const., § 59(25).

Practice schools, KRS 164.380.

Race or color not to affect distribution of school fund, Ky. Const., § 187.

Regional Educational Compact, discrimination prohibited, KRS 164.540.

Students called into active service in National Guard, KRS 38.470.

Textbooks, selection and use, KRS 156.405 to 156.445.

158.020. Separate schools for white and colored children. [Repealed.]

Compiler's Notes.

This section (4363-8, 4399-49) was repealed by Acts 1966, ch. 184, § 8.

158.021. Exceptions to requirement of separate schools for white and colored students. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1948, ch. 112; 1950, ch. 155) was repealed by Acts 1966, ch. 184, § 8.

158.025. Hospital courses in medicine, surgery, or nursing not restricted by KRS 158.020. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1948, ch. 112) was repealed by Acts 1966, ch. 184, § 8.

158.030. "Common school" defined — Attendance at public school and primary school program — Advancement without regard to age — Local boards to adopt policy establishing petition and evaluation process for students who do not meet age requirements.

(1) "Common school" means an elementary or secondary school of the state supported in whole or in part by public taxation. No school shall be deemed a "common school" or receive support from public taxation unless the school is taught by a certified teacher for a minimum school term as defined by KRS 158.070 and every child residing in the district who satisfies the age requirements of this section has had the privilege of attending it. Provided, however, that any child who is six (6) years of age, or who may become six (6) years of age by October 1, shall attend public school or qualify for an exemption as provided by KRS 159.030. Any child who is five (5) years of age, or who may become five (5) years of age by October 1, may enter a primary school program, as defined in KRS 158.031, and may advance through the primary program without regard to age in accordance with KRS 158.031(6).

(2) Beginning with the 2017-2018 school year, any child who is six (6) years of age, or who may become six (6) years of age by August 1, shall attend public school or qualify for an exemption as provided by KRS 159.030. Any child who is five (5) years of age, or who may become five (5) years of age by August 1, may enter a primary school program, as defined in KRS 158.031, and may advance through the primary program without regard to age in accordance with KRS 158.031(6).

(3) Each local school board shall adopt a policy to permit a parent or guardian to petition the board to allow a student to attend public school who does not meet the age requirements of subsection (1) or (2) of this section. The policy shall include an evaluation process that will help determine a student's readiness for school and shall ensure that any tuition amount charged under this policy is the same amount charged to a student who meets the age requirements of subsection (1) or (2) of this section. Students enrolled under this policy shall be included in a school's average daily attendance for purposes of funding as provided in KRS 157.310 to 157.440.

History.

4363-2; amend. Acts 1946, ch. 155, § 1; 1950, ch. 108; 1952, ch. 145, § 1; 1962, ch. 74; 1972, ch. 151, § 4; 1978, ch. 136, § 2, effective July 1, 1979; 1980, ch. 306, § 2, effective July 15, 1980; 1984, ch. 367, § 5, effective July 13, 1984; 1984, ch. 397, § 7, effective July 13, 1984; 1988, ch. 33, § 2, effective July 15, 1988; 1990, ch. 476, Pt. I, § 25, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 434, § 3, effective July 15, 1998; 2006, ch. 20, § 2, effective July 12, 2006; 2012, ch. 123, § 1, effective July 12, 2012; 2015 ch. 62, § 1, effective June 24, 2015.

NOTES TO DECISIONS

Analysis

1. Educational Units Not Included.
2. Recreational Training.
3. Residence of Child.
4. Public School.
5. Attendance Not Required.

1. Educational Units Not Included.

Teaching of higher branches of learning in a common school was not a violation of common school law. Newman v. Thompson, 4 S.W. 341, 9 Ky. L. Rptr. 199 (Ky. Ct. App. 1887) (decided under prior law).

"Common school" does not include a college. Pollitt v. Lewis, 269 Ky. 680, 108 S.W.2d 671, 1937 Ky. LEXIS 659 (Ky. 1937).

Common schools as used in the Constitution mean "public" or "free" schools maintained by the state at public expense, as distinguished from any private, parochial or sectarian school. Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942).

2. Recreational Training.

Common school system embraces physical training. Dodge v. Jefferson County Board of Education, 298 Ky. 1, 181 S.W.2d 406, 1944 Ky. LEXIS 815 (Ky. 1944).

3. Residence of Child.

The solution of the question of residence of a child for purpose of attending school is not to be found always in the site of the property for taxation, either generally or for school purposes, and where house in which child lived was more than half within the city, child resided in the city and could attend city schools without payment of tuition. Turner v. City Board of Education, 313 Ky. 383, 231 S.W.2d 27, 1950 Ky. LEXIS 869 (Ky. 1950).

4. Public School.

Common schools were schools actually taught by teachers legally qualified to teach in districts legally established and under the control of the trustees elected under those laws. Collins v. Henderson, 74 Ky. 74, 1874 Ky. LEXIS 14 (Ky. 1874) (decided under prior law).

The term a "common school" is synonymous with "public" school. Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983), unconstitutional, Commonwealth ex rel. Cole-

man v. Council for Better Educ., Inc., 730 S.W.3d 787, 2026 Ky. LEXIS 3 (Ky. 2026).

5. Attendance Not Required.

Family court acted properly in determining that the Commonwealth could not establish a prima facie case for educational neglect where the child was only five years old when she was enrolled in kindergarten and incurred the absences which provided the basis for the temporary removal petition, pursuant to Ky. Rev. Stat. Ann. § 158.030(2), her enrollment and attendance were optional, and there could be no educational neglect of a child for excessive absenteeism who was not required by law to attend school. Commonwealth v. H. K., 595 S.W.3d 498, 2019 Ky. App. LEXIS 218 (Ky. Ct. App. 2019).

OPINIONS OF ATTORNEY GENERAL.

A board of education may enter into a tuition contract only with another common school as defined in this section. OAG 61-423.

Breckinridge Training School, state operated vocational schools, and Lincoln Institute are not "common schools" which term is synonymous with the phrase "approved public school" as used in KRS 158.130 (now repealed). OAG 61-423.

The phrase "approved public school" as used in KRS 158.130 (now repealed) is synonymous with the term "common school" as defined in this section. OAG 61-423.

It was the intent of the Legislature to make the last day of December the cutoff date for school admissions so that all children who are or who will become six (6) years of age by December 31 following the opening day of school, may enter school provided they do so within 30 calendar days of the beginning of the school year. OAG 61-507.

No ADA payments could be made to a school district where a child was allowed to enroll in the first grade who did not meet the age requirements. OAG 63-22.

Unless he met the statutory age requirements of Kentucky a child could not be enrolled in the first grade of the common schools of Kentucky even though he had previously been attending first grade in another state. OAG 63-22.

In order for a local school board to have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age the program would have to be part of the common school program. OAG 65-410.

Local school boards have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age. OAG 65-410.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privileges to some nonresident children while denying the same privilege to others. OAG 66-550.

While this section extends the right of school attendance to children six (6) years of age, that right must be exercised within 30 calendar days of the opening of school, and a child who was six (6) years of age in October and who applied for admission to a Kentucky school more than 30 days after the opening of school was not eligible for enrollment since his attendance at kindergarten in Indiana did not constitute an enrollment in regular school classes. OAG 67-102.

So long as a child remains in bona fide residence in the Bellewood Presbyterian Home the child has the privilege of attending schools in the school district in which the home is situated. OAG 68-126.

A child who resides within the geographical boundaries of the school district is not removed therefrom by the mere fact that control over the property in which the child resides has been ceded to the federal government by the Commonwealth, and, under this section, the child may attend the school of the district without payment of tuition. OAG 68-582.

A vocational school does not come within the statutory definition of a "common school" and a pupil attending a vocational school would not be attending a public common school and the district in which he resides cannot receive ADA credit. OAG 73-639.

If a properly accredited school of the state of Florida certifies the enrollment of a child as a first grade pupil, the public school in the district to which she moves in Kentucky should accept her as a first grade pupil. OAG 74-626.

Children who attend tuition-free school must attend the school in the district where they physically live. OAG 76-116.

Inasmuch as common school funds may only be paid to common school districts, a county school board may not expend public common school funds to transport students attending a nonpublic model school. OAG 76-261.

A child placed by the Department for Human Resources in a foster home has a right to attend school in the district where the foster home is located, regardless of where the parents of the child reside. OAG 77-311, 1977 Ky. AG LEXIS 468.

A child is entitled to go to school, tuition free, in the school district in which the guardian is a resident. OAG 78-64, 1978 Ky. AG LEXIS 681.

A child who has reached his eighteenth birthday is entitled to attend school without payment of tuition in the school district in which he actually resides. OAG 78-64, 1978 Ky. AG LEXIS 681.

If a child who is not residing with his legal custodian is not residing in a particular school district primarily for school purposes, tuition generally would not be chargeable but the matter of free tuition must be decided by the school board on a case by case basis. OAG 78-64, 1978 Ky. AG LEXIS 681.

A school district is required to admit for enrollment, tuition free, a child living with the child's custodian declared by court order or other legal process who resides in the school district, irrespective of whether the court order is one for temporary custody or one for permanent custody. OAG 78-64, 1978 Ky. AG LEXIS 681.

Since KRS 157.200 et seq. and 20 USCS § 1401 et seq. mandate equal educational opportunities for exceptional and nonexceptional children; a child with cerebral palsy who will be five (5) after September 1, but before December 31, must be given readiness testing for early kindergarten enrollment, which must be geared to the particular category of exceptionality and comparably equivalent for exceptional and nonexceptional children alike. OAG 79-254, 1979 Ky. AG LEXIS 371.

Since a child who is five (5) years of age by October 1 "may enter a public school kindergarten" under this section, there is no legal authority to support an argument that a six-year-old child can be required to complete kindergarten, irrespective of whether the child has participated in kindergarten before, or that the child can be required to repeat the year of kindergarten if, in the opinion of the kindergarten teacher, the child has not successfully completed the kindergarten program, accordingly, a child reaching the age of six (6) by October 1 is entitled to commence his or her school career in the first grade. OAG 81-287, 1981 Ky. AG LEXIS 141.

Although this section prohibits a school district from "promoting" a child in a kindergarten program into the first grade who has not met the statutory prescribed age of first grade entrance, the district would not be precluded from developing a program of instruction in the kindergarten class that would challenge the child's academic skills and abilities even if the program was equivalent to a first grade program. OAG 82-44, 1982 Ky. AG LEXIS 598.

KRS 158.090 (now repealed) authorizes a local school district to establish a kindergarten program to include children under five (5) but at least four (4) years of age; however, the cost of educating those four-year-old students would have to be

totally borne by local school district because only those children meeting the kindergarten requirements set out in this section and the state board regulations can be counted for Minimum Foundation money purposes. OAG 82-44, 1982 Ky. AG LEXIS 598.

Where a child, who had been enrolled in the public school kindergarten program of another state, became five (5) years old on November 30th, she could legally transfer into Kentucky public school kindergarten program, even though she did not meet the requirement of this section that she reach five (5) years of age by October 1st of that year, since the full faith and credit provisions of the United States Constitution, Art. 4, § 1, requires that the child's prior enrollment be recognized by Kentucky. OAG 82-44, 1982 Ky. AG LEXIS 598.

A child who is not old enough to attend a public school as a first grader may nevertheless enroll the following year in a public school as a second grader if the child has completed first grade in a nonpublic school. OAG 82-408, 1982 Ky. AG LEXIS 240.

A child who will not be six (6) years old by October 1, but who has attended a private kindergarten program may not be permitted to enroll in the first grade in a public common school. OAG 82-408, 1982 Ky. AG LEXIS 240.

Strict adherence to the age qualification provisions of this section is called for, absent a transfer-from-out-of-state situation. OAG 82-408, 1982 Ky. AG LEXIS 240.

The last sentence of this section is no longer subject to application; such sentence served only as a transition provision relative to what the law had been prior to 1980 amendment. That is, only for purposes of the 1980-1981 school year could a child who was not yet six (6) years old by October 1, but who would become six (6) years of age by December 31, 1980, and who had successfully completed kindergarten, public or private, still be permitted to enroll in the first grade. OAG 82-408, 1982 Ky. AG LEXIS 240.

There is no statute that regulates the entrance age for a child to attend a nonpublic school and one could not constitutionally be enacted due to the Kentucky Supreme Court's view of Const., § 5 and the proscription against state regulation of nonpublic schools. OAG 82-408, 1982 Ky. AG LEXIS 240.

A kindergarten student may be retained in kindergarten if the parents and school officials feel such retention would be in the best interest of the child; absent parental consent, a child who is six (6) years old by October 1, is entitled to commence his school career in the first grade. OAG 83-106, 1983 Ky. AG LEXIS 391.

Since Kentucky school law lacks a requirement that a child must attend kindergarten, a school district could not require a child old enough to enroll in first grade to enroll in kindergarten; However, parents could hold their child back a year and initially enroll their child in the kindergarten program even though the child would qualify under this section to enter first grade. OAG 83-106, 1983 Ky. AG LEXIS 391.

The lead-in phrase of this section, which reads "Notwithstanding any statute to the contrary," cannot be construed, by implication, to have lowered the compulsory attendance age range to five (5). OAG 85-55, 1985 Ky. AG LEXIS 95.

Both this section and KRS 158.100 must be considered as addressing and affecting only public common school districts. OAG 85-55, 1985 Ky. AG LEXIS 95.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55, 1985 Ky. AG LEXIS 95.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55, 1985 Ky. AG LEXIS 95.

The day of birth should no longer be counted when computing age for purposes of this section, and thus, a child whose birthday is October 2 does not actually become a year older until October 2, and as a result, he or she is not required to attend school in the year of becoming six (6), but instead is required to attend school the following year (withdrawing OAG 62-411). OAG 86-40, 1986 Ky. AG LEXIS 47.

The term "school" as used in KRS 218A.990 (now repealed), prohibiting trafficking in controlled substances near such a building, is not restricted to the definition of "common public school" in this section; therefore, it could include vocational/technical schools which have classroom instruction. OAG 88-73, 1988 Ky. AG LEXIS 73.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Penalty to which school board member subject for admission of under-age child, KRS 158.990.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Interim methods for verifying successful completion of the primary program, 703 KAR 4:040.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Primary school program guidelines, 704 KAR 3:440.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Pupil attendance, 702 KAR 7:125.

158.031. Primary school program — Authority for administrative regulations — Attributes — Part time attendance — Grouping — Advancement — Reporting requirements.

(1) In this section, "primary school program" means that part of the elementary school program in which children are enrolled from the time they begin school until they are ready to enter the fourth grade. Notwithstanding any statute to the contrary, successful completion of the primary school program shall be a prerequisite for a child's entrance into fourth grade.

(2) The Kentucky Board of Education shall establish, by administrative regulation, methods of verifying successful completion of the primary school program in

carrying out the goals of education as described in KRS 158.6451.

(3) The primary program shall include the following critical attributes: developmentally appropriate educational practices; multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement.

(4) Each school council or, if none exists, the school shall determine the organization of its ungraded primary program including the extent to which multiage groups are necessary to implement the critical attributes based on the critical attributes and meeting individual student needs.

(5) The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.

(6) A school district may advance a student through the primary program when it is determined that it is in the best educational interest of the student. A student who is at least five (5) years of age, but less than six (6) years of age, and is advanced in the primary program may be classified as other than a kindergarten student for purposes of funding under KRS 157.310 to 157.440 if the student is determined to have acquired the academic and social skills taught in kindergarten as determined by local board policy in accordance with the process established by Kentucky Board of Education administrative regulation.

(7) Data shall be collected by each school district on the number of students, in each school having a primary program, who take five (5) years to complete the primary program. The data shall be reported in the annual performance report described in KRS 158.6453.

History.

Enact. Acts 1998, ch. 434, § 1, effective July 15, 1998; 2006, ch. 20, § 1, effective July 12, 2006.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Requirements for school and district report cards, 703 KAR 5:140.

158.032. Flagging record of missing child — Procedure upon recovery — Documents required upon enrollment or transfer.

(1) Upon notification by the commissioner of education of a child's disappearance, any school in which the child is currently or was previously enrolled shall flag the record of the child so that when a copy of or information regarding the child's record is requested, the school shall be alerted that the record is that of a missing child. The school shall immediately report to local law enforcement or the Department of Kentucky State Police any request concerning flagged records or any knowledge as to the whereabouts of any missing child.

(2) Upon notification by the commissioner of education of any missing child who has been recovered, the school shall remove the flag from the child's record.

(3) Upon enrollment of a student for the first time in any elementary or secondary school, the school shall notify in writing the person enrolling the student that within thirty (30) days the person shall provide either:

(a) A certified copy of the student's birth certificate; or

(b) Other reliable proof of the student's identity and age, and an affidavit of the inability to produce a copy of the birth certificate.

(4) Upon the failure of a person enrolling the student to comply with this section, the school shall notify the person in writing that unless he complies within ten (10) days the case shall be referred to the Department of Kentucky State Police or local law enforcement officials for investigation. If compliance is not obtained within the ten (10) day period, the school shall so refer the case.

(5) Within fourteen (14) days after enrolling a transfer student, each elementary or secondary school shall request directly from the student's previous school a certified copy of the student's record. Any school receiving a request of a student's record which has been flagged as the record of a missing child shall not forward the student's record but shall instead notify local law enforcement or the Department of Kentucky State Police.

History.

Enact. Acts 1986, ch. 72, § 3, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 196, effective July 13, 1990; 2003, ch. 39, § 3, effective June 24, 2003; 2007, ch. 85, § 166, effective June 26, 2007.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Preschool education program for four (4) year old children, 704 KAR 3:410.

158.033. Instruction in student's home or hospital — Signed statement of diagnosed condition — Student may receive home or hospital instruction effective on day of admittance — Calculation of instructional sessions for purposes of KRS 157.360 — Students with disabilities — Administrative regulations.

(1) If in any district there are students not able even with the help of transportation to be assembled in a school, instruction shall be provided to the student in the student's home or in a hospital.

(2) For a student to be eligible for home or hospital instruction, a signed statement of the diagnosed condition requiring home or hospital instruction shall be provided in accordance with KRS 159.030(2).

(3) For a student admitted to an inpatient facility, the student may receive home or hospital instruction effective on the day of admittance. Nothing in this subsection shall exempt a board of education from the documentation requirements of KRS 159.030(2)(a).

(4) For the purposes of KRS 157.360, a student instructed under this section who receives a minimum of two (2) instructional sessions a week with a minimum of one (1) hour of instruction per session by a

certified teacher provided by the board of education shall equal the student attending five (5) days in school.

(5) For students with disabilities, the admissions and release committee shall be responsible for placement decisions regarding home or hospital instruction in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. sec. 1400 et seq. The home or hospital instruction shall be provided pursuant to the individual education program as determined by the admissions and release committee. For the purposes of KRS 157.360, students receiving home or hospital instruction under this subsection may be counted in attendance in accordance with subsection (4) of this section.

(6) The Kentucky Board of Education shall promulgate administrative regulations to establish the components of home or hospital instruction.

(7) An instructional session may be delivered in person, electronically, or through other means established in regulation.

History.

Enact. Acts 1948, ch. 4, § 8, 1962, ch. 169, § 7; 1974, ch. 293, § 1; 1984, ch. 111, § 178, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 380, effective July 13, 1990; renumbered from § 157.270 by 2020 ch. 104, § 1, effective July 15, 2020; 2025 ch. 27, § 1, effective June 27, 2025.

Compiler's Notes.

This section (Enact. Acts 1948, ch. 4, § 8, 1962, ch. 169, § 7; 1974, ch. 293, § 1; 1984, ch. 111, § 178, effective July 13, 1984) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 380, effective July 13, 1990.

This section was formerly compiled as KRS 157.270 and was renumbered as this section effective July 15, 2020.

OPINIONS OF ATTORNEY GENERAL.

Inasmuch as local school tax revenues are involved in the kind of training provided for by KRS 157.270 and 159.030, the statutes are open to constitutional challenge since this type of training could possibly be considered not part of the common schools but a welfare program. OAG 74-681.

Pursuant to this section, a local board of education is required to provide home training for exceptional children but an institutional home for exceptional children cannot under KRS 157.230 legally require a school district to establish and maintain special educational classes for its inmates. OAG 74-681.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

158.035. Certificate of immunization.

Except as provided in KRS 214.036, no child shall be eligible to enroll as a student in any public or private elementary or secondary school without first presenting a certificate from a medical physician, osteopathic physician, or advanced practice registered nurse licensed in any state. The certificate shall state that the child has been immunized against diphtheria, tetanus, poliomyelitis, rubeola, and rubella in accordance with the provisions of this section and KRS 214.010, 214.020, 214.032 to 214.036, and 214.990 and the administrative regulations of the secretary for health and family services. The governing body of private and public schools shall enforce the provisions of this section.

History.

Enact. Acts 1962, ch. 95, § 3; 1968, ch. 87, § 3; 1972, ch. 341, § 1; 1974, ch. 74, Art. VI, § 107(1); 1976, ch. 14, § 2; 1988, ch. 436, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 197, effective July 13, 1990; 1998, ch. 426, § 113, effective July 15, 1998; 2005, ch. 99, § 130, effective June 20, 2005; 2010, ch. 85, § 69, effective July 15, 2010.

NOTES TO DECISIONS

1. Constitutionality.

Since the primary effect of the state immunization program was to improve and protect the health and well being of citizens, the exemption for members of a religious denomination, the teachings of which are opposed to medical immunization against disease, did not make this statute unconstitutional as being in violation of the establishment clause of the first amendment. Kleid v. Board of Education, 406 F. Supp. 902, 1976 U.S. Dist. LEXIS 16997 (W.D. Ky. 1976).

Cited in:

Piatt v. Louisville & Jefferson County Board of Education, 556 F.2d 809, 1977 U.S. App. LEXIS 12994 (6th Cir. 1977).

OPINIONS OF ATTORNEY GENERAL.

This section requires local school authorities to refuse enrollment in school, whether initial enrollment in the school system or transfer into the school system, if a child has not been tested or immunized as required by law. OAG 76-256.

The county board of health is authorized to enforce the immunization requirements of this section and KRS 214.034 by entering an order under KRS 212.245 or proceeding directly against the parent, guardian or custodian of the child who fails to have him immunized by having a criminal complaint sworn out against the offender. OAG 78-24, 1978 Ky. AG LEXIS 717.

The July 18, 1979 amendment of 902 KAR 2:060 allowing pupils who have begun, but not completed, immunization to attend school for the limited period of time necessary for completion of the immunization schedule is not in conflict with this section, since the requirement is a certificate that the child has been immunized, not that the immunization schedule has been completed. OAG 79-420, 1979 Ky. AG LEXIS 212.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Penalty for violation of this section. KRS 214.990.

158.036. Tuberculosis test requirements — Exemption. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1976, ch. 128, § 1) was repealed by Acts 1988, ch. 277, § 4, effective July 15, 1988.

158.037. Report of immunization results.

Each public or private elementary or secondary school shall report immunization results to its local health department in accordance with regulations promulgated by the Cabinet for Health and Family Services.

History.
Enact. Acts 1976, ch. 128, § 2; 1990, ch. 476, Pt. IV, § 198, effective July 13, 1990; 1998, ch. 302, § 2, effective July 15, 1998; 1998, ch. 426, § 114, effective July 15, 1998; 2005, ch. 99, § 131, effective June 20, 2005.

158.038. Student identification badges must contain hotline number contact information relating to domestic violence, sexual assault, and suicide prevention — Recommendation required of Cabinet for Health and Family Services.

(1) Beginning August 1, 2020, any student identification badge issued to a student in grades six (6) through twelve (12) by a public school shall contain the contact information for:

(a) A national domestic violence hotline;

(b) A national sexual assault hotline; and

(c) A national suicide prevention hotline.

(2) The requirements of subsection (1) of this section shall apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

(3) By July 20, 2020, the Cabinet for Health and Family Services shall publish recommendations for at least one (1) national hotline accessible twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days a year that specializes in each of the hotline categories required by subsection (1) of this section.

History.
2020 ch. 54, § 1, effective July 15, 2020.

158.039. Suicide prevention awareness information and lessons.

(1) The Cabinet for Health and Family Services shall post on its website high-quality, evidence-based suicide prevention awareness information, which shall include information on recognizing the warning signs of a suicide crisis. The website shall include information related to suicide prevention training opportunities offered by the cabinet or an agency recognized by the cabinet as a training provider.

(2) Every public school and public charter school shall provide two (2) high quality, evidence-based suicide prevention awareness lessons each school year, the first by September 15 and the second by January 15, either in person, by live streaming, or via a video recording to all students in grades six (6) through twelve (12). Every public school shall provide an opportunity for any student absent on the day the high quality, evidence-based suicide prevention awareness lesson was initially presented to receive the lesson at a later time. The information may be obtained from the Cabinet for Health and Family Services or from a commercially developed suicide prevention training program.

History.
2025 ch. 145, § 5, effective June 27, 2025.

Legislative Research Commission Notes.
(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which created this section and KRS 158.041, and amended KRS 156.070, 156.095, 156.492, 156.557, 157.360, 158.060, 158.070, 158.4416, and 161.031, may be cited as the Red Tape Reduction Act.

158.040. Entering age. [Repealed.]

Compiler's Notes.
This section (4363-4) was repealed by Acts 1946, ch. 155, § 2.

158.041. Display of child abuse, human trafficking, and safe haven baby box hotline numbers in schools.

Every public school shall prominently display the statewide child abuse hotline number administered by the Cabinet for Health and Family Services, the National Human Trafficking Hotline number administered by the United States Department of Health and Human Services, and the Safe Haven Baby Boxes Crisis Line number administered by the Safe Haven Baby Boxes national organization or any equivalent successor entity. The requirements of this section shall also apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

History.
2025 ch. 145, § 4, effective June 27, 2025.

Legislative Research Commission Notes.
(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which created this section and KRS 158.039, and amended KRS 156.070, 156.095, 156.492, 156.557, 157.360, 158.060, 158.070, 158.4416, and 161.031, may be cited as the Red Tape Reduction Act.

158.050. School year.

The school year shall begin on July 1 and end on June 30.

History.
4363-3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 397, effective July 13, 1990.

Compiler's Notes.
This section (4363-3) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 397, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Nomination of Employees.
2. Approval of Employees.
3. Child Support.

1. Nomination of Employees.
This section contemplates that the superintendent of schools shall nominate teachers for the next school year at some time between April 1 and the beginning of the next school year on July 1, though the particular school may not open until a later date. (See KRS 160.380.) Beckham v.

Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940).

Although the school year shall begin on July 1, the superintendent does not forfeit his right to make nominations of school employees by failing to make them by July 1 of each year and the county board of education has no right or authority to make appointments in the absence of nominations by the superintendent. (See KRS 160.380.) Smith v. Beverly, 314 Ky. 651, 236 S.W.2d 914, 1951 Ky. LEXIS 719 (Ky. 1951).

2. Approval of Employees.

Since the school year begins on July 1, teachers must be chosen by that date, and the school board cannot refuse to act on recommendations submitted before that date, or postpone action until after that date. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939).

The board of education cannot divest a nominated teacher of his rights by postponing its approval of his nomination until after July 1 without legal cause. (See KRS 160.380.) Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940).

3. Child Support.

In a child support dispute, a trial court erred by assigning May 30, 2014 as the end of the school and as the termination date for a father's obligation to pay child support because the school year ended on June 30, pursuant to statute; however, there was no error in failing to extend the school year to November 2014 to allow the student to finish his senior year after the age of majority. Mix v. Petty, 465 S.W.3d 891, 2015 Ky. App. LEXIS 40 (Ky. Ct. App. 2015).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Fiscal year for school districts, KRS 160.450.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

158.060. Access to teacher employment contract — School month and school day — Duty-free lunch period — Nonteaching time for teachers.

(1) Each teacher shall be provided access to a copy of his or her employment contract upon request.

(2) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools.

(3) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.

(4) Except for children with disabilities and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(5) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

(6) Character education programs and activities shall be considered valuable and legitimate components of the actual school work constituting a school day under subsection (4) of this section.

History.

4363-6; amend. Acts 1962, ch. 244, Art. VII, § 1; 1974, ch. 271, § 1; 1976, ch. 345, § 1; 1978, ch. 306, § 1, effective March 30, 1978; 1984, ch. 359, § 1, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 12, effective October 18, 1985; 1986, ch. 40, § 1, effective July 15, 1986; 1990, ch. 476, Pt. I, § 26, effective July 13, 1990; 1994, ch. 6, § 2, effective July 15, 1994; 1994, ch. 394, § 21, effective July 15, 1994; 1994, ch. 405, § 26, effective July 15, 1994; 1996, ch. 20, § 1, effective July 15, 1996; 1996, ch. 195, § 24, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 162, § 5, effective July 14, 2000; 2000, ch. 261, § 3, effective July 14, 2000; 2025 ch. 145, § 2, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.492, 156.557, 157.360, 158.070, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

NOTES TO DECISIONS

Cited in:

Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

OPINIONS OF ATTORNEY GENERAL.

Lunch periods could not be used to conduct religious classes if the district is utilizing portions of the lunch period to meet the six-hour school work requirement of this section. OAG 64-111.

The term "actual school work" as used in this section means instructional hours, either of purely academic classroom instruction or reasonably calculated to achieve general educational objectives within such standards for school instructional programs as have been approved by the State Board of Education pursuant to its power to prescribe curricula under

KRS 156.070. OAG 70-222; OAG 78-344, 1978 Ky. AG LEXIS 384.

A proposed plan of a county school district to institute a pilot program of in-service training of teachers which would require the dismissing of pupils for one-half day each week would be in violation of KRS 158.070(2)(b) (see now subsection (9)) which requires a pupil's attendance in school for a minimum term and this section which provides that six hours of actual classroom work shall constitute a school day. OAG 73-98.

Rural teachers who are required by the board to work a reasonably longer day than city teachers in the same district are not entitled to extra compensation solely on the basis of a longer working day. OAG 75-297.

Within the statutory limits of from six to nine hours, each school district may adopt its own schedule of classes and professional duties of its teachers and it is not required that the working day of all teachers in a district be the same length. OAG 75-297.

Neither a teacher who has taught three hours per day for 185 school days nor a teacher who has taught full time for 94 school days may be considered to have a year of actual service for tenure purposes. OAG 76-278.

School administrators may permit a study hall or activity period to be used by a student outside the school for a program of off-school-premises work since participation in such program would not be shortening of the school day but merely shortening the portion of the full regular school day which the child is in attendance in the school classroom. OAG 76-545.

While KRS 158.107 (repealed) did not prohibit the charging of a student to attend sports events, these sports events may not properly be held during any part of the regular school day so as to shorten the six hours required "of actual school work." OAG 79-381, 1979 Ky. AG LEXIS 251.

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.530 and 160.550(1), as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132, 1985 Ky. AG LEXIS 20.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Holidays, KRS ch. 2.
Pupil attendance, 702 KAR 7:125.
School calendar, 702 KAR 7:140.
SEEK funding formula, 702 KAR 3:270.

158.065. Year-round school program — Legislative intent. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1972, ch. 372, § 1) was repealed by Acts 1974, ch. 265, § 6.

158.070. Definitions — School district calendar committee — School calendar adoption procedures — Variable student instructional year — Professional development — Holidays and days closed — Waivers — Scheduling of athletic competitions — Continuing education for students — Student attendance days and their equivalents in instructional year — Nontraditional instruction program — Administrative regulations — Breakfast program — Calculation of service credit and equivalent time for days missed by employees due to emergencies.

(1) As used in this section:

(a) "Election" has the same meaning as in KRS 121.015;

(b) "Minimum school term" or "school term" means not less than one hundred eighty-five (185) days composed of the student attendance days, teacher professional days, and holidays;

(c) "School calendar" means the document adopted by a local board of education that establishes the minimum school term, student instructional year or variable student instructional year, and days that school will not be in session;

(d) "School district calendar committee" means a committee that includes at least the following:

1. One (1) school district principal;
2. One (1) school district office administrator other than the superintendent;
3. One (1) member of the local board of education;
4. Two (2) parents of students attending a school in the district;
5. One (1) school district elementary school teacher;
6. One (1) school district middle or high school teacher;
7. Two (2) school district classified employees; and
8. Two (2) community members from the local chamber of commerce, business community, or tourism commission;

(e) "Student attendance day" means any day that students are scheduled to be at school to receive instruction, and encompasses the designated start and dismissal time;

(f) "Student instructional year" means at least one thousand sixty-two (1,062) hours of instructional time for students delivered on not less than one hundred seventy (170) student attendance days;

(g) "Teacher professional day" means any day teachers are required to report to work as determined by a local board of education, with or without the presence of students; and

(h) "Variable student instructional year" means at least one thousand sixty-two (1,062) hours of instructional time delivered on the number of student attendance days adopted by a local board of education which shall be considered proportionally equivalent to one hundred seventy (170) student attendance days and calendar days for the purposes of a student instructional year, employment contracts that are based on the school term, service credit under KRS 161.500, and funding under KRS 157.350.

(2)(a) The local board of education, upon recommendation of the local school district superintendent, shall annually appoint a school district calendar committee to review, develop, and recommend school calendar options.

(b) The school district calendar committee, after seeking feedback from school district employees, parents, and community members, shall recommend school calendar options to the local school district superintendent for presentation to the local board of education. The committee's recommendations shall comply with state laws and regulations and consider the economic impact of the school calendar on the community and the state.

(c) Prior to adopting a school calendar, the local board of education shall hear for discussion the school district calendar committee's recommendations and the recommendation of the superintendent at a meeting of the local board of education.

(d) During a subsequent meeting of the local board of education, the local board shall adopt a school calendar for the upcoming school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, student attendance days, and days on which schools shall be dismissed. The local board may schedule days for breaks in the school calendar that shall not be counted as a part of the minimum school term.

(e) For local board of education meetings described in paragraphs (c) and (d) of this subsection, if the meeting is a regular meeting, notice shall be given to media outlets that have requests on file to be notified of special meetings stating the date of the regular meeting and that one (1) of the items to be considered in the regular meeting will be the school calendar. The notice shall be sent at least twenty-four (24) hours before the regular meeting. This requirement shall not be deemed to make any requirements or limitations relating to special meetings applicable to the regular meeting.

(f) A local school board of education that adopts a school calendar with the first student attendance day in the school term starting no earlier than the Monday closest to August 26 may use a variable student instructional year. Districts may set the length of individual student attendance days in a variable student instructional schedule, but no student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.

(3)(a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of students pursuant to the requirements of KRS 156.095. At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.

(b)1. A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred eighty-five (185) days that a teacher shall be employed.

2. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.

3. No teacher or administrator shall be permitted to count participation in a professional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.

(c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.

(d) Each local board may use two (2) days for planning activities without the presence of students.

(e) Each local board may close schools for the number of days deemed necessary for:

1. National or state emergency or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;

2. Local emergency which would endanger the health or safety of children; and

3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the commissioner of education.

(4)(a) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt administrative regulations governing the use of student attendance days as a result of a local

emergency, as described in subsection (3)(e) 2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of waivers from the requirements of a student instructional year in subsection (1)(f) of this section for districts that wish to adopt innovative instructional calendars, or for circumstances that would create extreme hardship.

(b) If a local board of education amends its school calendar after its adoption due to an emergency, it may lengthen or shorten any remaining student attendance days by thirty (30) minutes or more, as it deems necessary, provided the amended calendar complies with the requirements of a student instructional year in subsection (1)(f) of this section or a variable student instructional year in subsection (1)(h) of this section. No student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.

(5)(a)1. In setting the school calendar, school may be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings.

2. These two (2) days for statewide professional meetings may be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the commissioner of education may designate alternate dates.

3. If schools are scheduled to operate during days designated for the statewide professional meeting, the school district shall permit employees who are delegates to attend as compensated professional leave time and shall employ substitute teachers in their absence.

4. The commissioner of education shall designate one (1) additional day during the school year when schools may be closed to permit professional school employees to participate in regional or district professional meetings.

5. These three (3) days so designated for attendance at professional meetings may be counted as a part of the minimum school term.

(b) If any school in a district is used as a voting place pursuant to KRS 117.065, the school district may be closed on the days of the election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.

(c) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:

1. Designate the day as one (1) of the four (4) holidays permitted under subsection (3)(c) of this section; or

2. Not include the day in the minimum school term specified in subsection (1) of this section.

(6)(a) The Kentucky Board of Education, or the organization or agency designated by the board to manage interscholastic athletics, shall be encouraged to schedule athletic competitions outside the regularly scheduled student attendance day.

(b) Any member of a school-sponsored interscholastic athletic team who competes in a regional tournament or state tournament sanctioned by the Kentucky Board of Education, or the organization or agency designated by the board to manage interscholastic athletics, and occurring on a regularly scheduled student attendance day may be counted present at school on the date or dates of the competition, as determined by local board policy, for a maximum of two (2) days per student per year. The student shall be expected to complete any assignments missed on the date or dates of the competition.

(c) The school attendance record of any student for whom paragraph (b) of this subsection applies shall indicate that the student was in attendance on the date or dates of competition.

(7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts and shall include criteria by which the commissioner of education may approve a district's request for a waiver under KRS 156.161 to use an alternative service delivery option, including providing services during the student attendance day on a limited basis. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the student attendance day.

(8) Notwithstanding any other statute, each school term shall include no less than the equivalent of the student instructional year in subsection (1)(f) of this section, or a variable student instructional year in subsection (1)(h) of this section, except that the commissioner of education may grant up to the equivalent of ten (10) student attendance days for school districts that have a nontraditional instruction plan approved by the commissioner of education on days when the school district is closed for health or safety reasons. The district's plan shall indicate how the nontraditional instruction process shall be a continuation of learning that is occurring on regular student attendance days. Instructional delivery methods, including the use of technology, shall be clearly delineated in the plan. Average daily attendance for purposes of Support Education Excellence in Kentucky program funding during the student attendance days granted shall be calculated in compliance with administrative regulations promulgated by the Kentucky Board of Education.

(9) The Kentucky Board of Education shall promulgate administrative regulations to prescribe the conditions and procedures for districts to be approved for the nontraditional instruction program. Administrative regulations promulgated by the board under this section shall specify:

(a) The application, plan review, approval, and amendment process;

(b) Reporting requirements for districts approved for the program, which may include but are not limited to examples of student work, lesson plans, teacher work logs, and student and teacher participation on nontraditional instruction days. Documentation to support the use of nontraditional instruction days shall include clear evidence of learning continuation;

(c) Timelines for initial approval as a nontraditional instruction district, length of approval, the renewal process, and ongoing evaluative procedures required of the district;

(d) Reporting and oversight responsibilities of the district and the Kentucky Department of Education, including the documentation required to show clear evidence of learning continuation during nontraditional instruction days; and

(e) Other components deemed necessary to implement this section.

(10) Notwithstanding the provisions of KRS 158.060(4) and the provisions of subsection (2) of this section, a school district shall arrange bus schedules so that all buses arrive in sufficient time to provide breakfast prior to the beginning of the student attendance day. The superintendent of a school district that participates in the Federal School Breakfast Program may also authorize up to fifteen (15) minutes of the student attendance day to provide the opportunity for children to eat breakfast during instructional time.

(11) Notwithstanding any other statute to the contrary, the following provisions shall apply to a school district that misses student attendance days due to emergencies, including weather-related emergencies:

(a) A certified school employee shall be considered to have fulfilled the minimum one hundred eighty-five (185) day contract with a school district under KRS 157.350 and shall be given credit for the purpose of calculating service credit for retirement under KRS 161.500 for certified school personnel if:

1. State and local requirements under this section are met regarding the equivalent of the number and length of student attendance days, teacher professional days, professional development days, holidays, and days for planning activities without the presence of students; and

2. The provisions of the district's school calendar to make up student attendance days missed due to any emergency, as approved by the Kentucky Department of Education when required, including but not limited to a provision for additional instructional time per day, are met.

(b) Additional time worked by a classified school employee shall be considered as equivalent time to be applied toward the employee's contract and calculation of service credit for classified employees under KRS 78.615 if:

1. The employee works for a school district with a school calendar approved by the Kentucky Department of Education that contains a provision that additional instructional time per day shall be used to make up full days missed due to an emergency;

2. The employee's contract requires a minimum six (6) hour work day; and

3. The employee's job responsibilities and work day are extended when the instructional time is extended for the purposes of making up time.

(c) Classified employees who are regularly scheduled to work less than six (6) hours per day and who do not have additional work responsibilities as a result of lengthened student attendance days shall be excluded from the provisions of this subsection. These employees may be assigned additional work responsibilities to make up service credit under KRS 78.615 that would be lost due to lengthened student attendance days.

History.

4370-7; amend. Acts 1952, ch. 104; 1962, ch. 244, Art. VII, § 2; 1964, ch. 6, § 1; 1964, ch. 133, § 1; 1966, ch. 29, paras. (1), (2); 1966, ch. 255, § 150; 1972, ch. 372, § 2; 1974, ch. 265, § 5; 1976, ch. 209, § 1; 1978, ch. 306, § 2, effective March 30, 1978; 1984, ch. 359, § 2, effective July 13, 1984; 1986, ch. 373, § 1, effective July 15, 1986; 1990, ch. 476, Pt. I, § 27, effective July 13, 1990; 1992, ch. 398, § 1, effective July 14, 1992; 1994, ch. 394, § 22, effective July 15, 1994; 1994, ch. 464, § 1, effective July 15, 1994; 1996, ch. 20, § 2, effective July 15, 1996; 1996, ch. 195, § 25, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 580, § 4, effective July 15, 1998; 1998, ch. 609, § 2, effective July 15, 1998; 2000, ch. 261, § 1, effective July 14, 2000; 2000, ch. 527, § 13, effective July 14, 2000; 2001, ch. 134, § 1, effective June 21, 2001; 2002, ch. 131, § 1, effective July 15, 2002; 2002, ch. 169, § 1, effective July 15, 2002; 2004, ch. 89, § 1, effective April 6, 2004; 2005, ch. 178, § 1, effective June 20, 2005; 2010, ch. 136, § 1, effective July 15, 2010; 2010, ch. 146, § 2, effective April 13, 2010; 2013, ch. 107, § 1, effective June 25, 2013; 2014, ch. 14, § 3, effective July 15, 2014; 2016 ch. 138, § 6, effective April 27, 2016; 2017 ch. 68, § 1, effective June 29, 2017; 2018 ch. 53, § 2, effective July 14, 2018; 2018 ch. 153, § 3, effective July 14, 2018; 2018 ch. 174, § 2, effective July 14, 2018; 2022 ch. 168, § 2, effective April 8, 2022; 2022 ch. 41, § 1, effective July 14, 2022; 2025 ch. 113, § 5, effective June 27, 2025; 2025 ch. 125, § 24, effective June 27, 2025; 2025 ch. 145, § 6, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 113, 125, and 145, which do not appear to be in conflict and have been codified together.

6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.492, 156.557, 157.360, 158.060, 158.4416, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

(4/8/2022). 2022 Ky. Acts ch. 168, sec. 4, provides that the Act, which amended this statute, may be cited as Wyatt's Act.

(7/14/2018). 2018 Ky. Acts ch. 153, sec. 5, provides that 2018 Ky. Acts ch. 153 may be cited as the "Lyndsey Crunk Act." This statute was amended in Section 3 of that Act.

(6/24/2015). In subsection (5)(b) 1. of this statute, a reference to "subsection (4)(d) of this section" has been changed to read "subsection (3)(d) of this section." In subsection (10) of this statute, a reference to "subsection (1) of this section" has been changed to read "subsection (2) of this section." When the

statute was amended in 2014 Ky. Acts ch.14, sec. 3, the subsections were renumbered, but the reference to subsections (4) and (1) were not changed to conform. The Reviser of Statutes has made the conforming changes under the authority of KRS 7.136.

(7/15/2010). The amendments made to this section by 2010 Ky. Acts ch. 136 shall be known as the "Make a Difference for Kids Act of 2010."

(1/29/2002). The words "upon request of the statewide professional education association having the" were inadvertently omitted from subsection (6)(a) of this section when it was amended by 2001 Ky. Acts ch. 134, sec. 1. These words have been restored to the section by the reviser of statutes under KRS 7.136 and 446.280.

(6/21/2001). A reference to "subsection (3)(c)" in subsection (6)(b)1. of this statute has been changed in codification to "subsection (4)(c)" under KRS 7.136(1)(e) and (h). In 2001 Ky. Acts ch. 134, sec. 1, the existing subsection (3) was renumbered as subsection (4), but an internal reference to that subsection in the existing language of this statute was overlooked.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (4) at 2075.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

NOTES TO DECISIONS

Analysis

1. Snow Days.
2. Child Support.

1. Snow Days.

Teachers were not entitled to unemployment benefits for days they missed due to snow, where the days were made up at a later date within the contract year and their incomes remained intact. Tackett v. Kentucky Unemployment Ins. Com., 630 S.W.2d 76, 1982 Ky. App. LEXIS 204 (Ky. Ct. App. 1982).

2. Child Support.

In a child support dispute, a trial court erred by assigning May 30, 2014 as the end of the school and as the termination date for a father's obligation to pay child support because the school year ended on June 30, pursuant to statute; however, there was no error in failing to extend the school year to November 2014 to allow the student to finish his senior year after the age of majority. Mix v. Petty, 465 S.W.3d 891, 2015 Ky. App. LEXIS 40 (Ky. Ct. App. 2015).

OPINIONS OF ATTORNEY GENERAL.

Under this section the school board must provide some form of alternative service to be performed by a teacher who does not wish to attend KEA meetings. OAG 60-374.

The approval of the State Department of Education is required in order to conduct a school on a continuous basis. OAG 67-277.

Since regulations provide days when schools are closed for mourning and disaster shall be counted as school days, a teacher who would have taught had school been conducted was entitled to compensation for those days. OAG 67-289.

If in a specific factual situation the only reasonably available access roads which may be utilized to provide transportation to a particular school or schools of the district are so impassable as to create a substantial risk of injury to the pupils who must use these roads, or if in a specific factual situation the only reasonably available access roads are being used by overweight or oversized vehicles in such a manner as to create a hazard under the circumstances to the transportation of schoolchildren, the superintendent does have the power to declare an emergency day or days. OAG 70-568.

The fact that a superintendent may declare an emergency day in a given factual situation carries with it the power to delay the opening of school, if transportation to the school would create a risk, until the hazardous condition can be rectified. OAG 70-568.

The superintendent of the district is imposed with a positive responsibility to exercise the discretion vested by subsection (2) of this section in the best interest of the health and safety of the children attending the district schools. OAG 70-568.

The superintendent of the school district is vested with the discretion of making a factual determination as to whether conditions beyond the control of the superintendent are such as to endanger the safety of children attending the schools of the district. OAG 70-568.

A proposed plan of a county school district to institute a pilot program of in-service training of teachers which would require the dismissing of pupils for one-half (½) day each week would be in violation of subdivision (2)(b) (see now (9)) of this section which requires a pupil's attendance in school for a minimum term and KRS 158.060 which provides that six (6) hours of actual classroom work shall constitute a school day. OAG 73-98.

This section leaves the matter of professional days to the discretion of the local board of education and if the superintendent and the board wish to grant a professional day privilege to a professional educators' organization, there is no reason why they may not do so. OAG 73-668.

A reduction in state appropriations to the minimum foundation fund for teachers' salaries, legal or illegal, could not be said to have reduced the number of days required for a minimum school term in the commonwealth's public common schools; the law still requires 185 days and that four (4) of these days be devoted to in-service training for public common school teachers and the elimination of state money for two (2) in-service days did not take the requirement for the two (2) days away. OAG 82-106, 1982 Ky. AG LEXIS 519.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts could not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four (4) of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two (2) mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106. (Refers to 1982 Budget.)

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356, 1982 Ky. AG LEXIS 265.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228, 1983 Ky. AG LEXIS 269.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228, 1983 Ky. AG LEXIS 269.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and admin-

istrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, and meals for school administrators to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong and/or lobbying activities conducted by their professional associations. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, meals, and substitute teachers, for teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization, and/or lobbying activities conducted by their organization. OAG 83-228, 1983 Ky. AG LEXIS 269.

A teacher may take his or her sick leave days on any day of the school year upon compliance with the statutorily required presentation of a personal affidavit or certificate of a physician or as provided for by an appropriately adopted regulation of policy of a local board of education, and a teacher who uses accumulated sick leave to cover a period of absence is not required to use a sick leave day when the schools are already closed for a paid holiday, since the teacher is authorized by this section to be paid for such holidays without the payment being charged to accumulated sick leave. OAG 83-457, 1983 Ky. AG LEXIS 40.

Schools may offer, but not compel, students who have excessive unexcused absences, attendance in a summer program when attendance in a summer program will enable the students to achieve the appropriate goals. OAG 92-95, 1992 Ky. AG LEXIS 106.

There is no specific statute authorizing a board of education to require a student who has excessive absences to attend a summer program. OAG 92-95, 1992 Ky. AG LEXIS 106.

Days that a school is closed for spring vacation cannot be characterized as legal holidays, and therefore do not toll an agency's response time in responding to an open records request. Days on which students, faculty, and staff are not present for any reason other than Saturdays, Sundays, and legal holidays must therefore be calculated into the three-day response time. OAG 01-ORD-94, 2001 Ky. AG LEXIS 188.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Annual professional development plan, 704 KAR 3:035.

Certification of Nonpublic Schools, 704 KAR 3:315.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Evaluation of charter school authorizers, 701 KAR 8:020.

Extended school services, 704 KAR 3:390.

Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.

Pupil attendance, 702 KAR 7:125.

Reading diagnostic and intervention grants, 704 KAR 3:480.

School calendar, 702 KAR 7:140.

Kentucky Bench & Bar.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

158.072. Eligible students — Change of residence within district — Option to remain enrolled in original school — Transportation.

(1) For purposes of this section, "eligible student" shall mean a public school student enrolled in kindergarten or grade one (1), two (2), or three (3) who qualifies for free or reduced-price school meals or attends a school that participates in the community eligibility provision of the National School Lunch Program.

(2) When an eligible student changes his or her residence during the school year and the change in residence results in the student being assigned to a different school within the same school district, the parent or guardian of the eligible student shall have the option to request the student, and any of the student's siblings enrolled in the same school in any grade, remain enrolled in the original school, regardless of the transportation decision made under subsection (3) of this section.

(3)(a) Notwithstanding KRS 158.110, if the student remains enrolled in the original school, the school district shall provide transportation to the original school from the student's new residence, except as provided in paragraph (b) of this subsection.

(b) The superintendent may deny the transportation request if he or she determines the distance and travel time that the student would spend in transport is impracticable. The district shall report the transportation denial and supporting rationale to the Kentucky Department of Education.

History.

2023 ch. 158, § 1, effective June 29, 2023.

158.075. Veterans Day observance in public schools.

All public schools shall observe Veterans Day under this section.

(1) On Veterans Day, or one (1) of the five (5) school days preceding Veterans Day, one (1) class or instructional period shall be devoted to the observance of Veterans Day.

(2) Students shall assemble in one (1) or more groups, as decided by the school principal, to attend the Veterans Day program.

(3) The program shall be approved by the principal and, at a minimum, shall consist of a teacher and a veteran speaking on the meaning of Veterans Day.

(4) To develop a Veterans Day program, Kentucky public schools are encouraged to seek advice from the Kentucky Department of Veterans' Affairs and veterans' service organizations, including but not limited to the American Legion and the Veterans of Foreign Wars.

History.

Enact. Acts 2003, ch. 162, § 1, effective June 24, 2003; 2006, ch. 142, § 1, effective July 12, 2006.

158.080. Private and parochial schools — Courses — School calendar.

Private and parochial schools certified in accordance with KRS 156.160(2) shall:

(1) Be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state; and

(2) Operate on a school calendar with a minimum school term and student instructional year, as defined in KRS 158.070.

History.

4434-3; Acts 1972, ch. 372, § 6; 1978, ch. 136, § 6, effective July 1, 1979; 1978, ch. 155, § 161, effective June 17, 1978; 1978, ch. 384, § 45, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 398, effective July 13, 1990; 1996, ch. 10, § 1, effective July 15, 1996; 2023 ch. 154, § 1, effective June 29, 2023; 2025 ch. 113, § 6, effective June 27, 2025.

Compiler's Notes.

This section (4434-3; amend. Acts 1972, ch. 372, § 6; 1978, ch. 136, § 6, effective July 1, 1979; 1978, ch. 155, § 161, effective June 17, 1978; 1978, ch. 384, § 45, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 398, effective July 13, 1990.

Legislative Research Commission Notes.

(6/27/2025). Under the authority of KRS 7.136, the reviser of statutes has changed "KRS 156.160(3)" to "KRS 156.160(2)" in this statute to conform to the deletion of a subsection and renumbering of subsequent subsections in KRS 156.160 by 2025 Ky. Acts ch. 113, sec. 2.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Rights of Conscience.
3. Teachers.
4. —Certification.
5. Standardized Achievement Testing.

1. Constitutionality.

This section does not offend the Bill of Rights provided that the "several branches of study" are rationally related to the education of children to exercise their right of suffrage and to participate in the democratic system. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

2. Rights of Conscience.

While the state has an interest in the education of its citizens which could be furthered through compulsory education, the rights of conscience of those who desire education of their children in private and parochial schools should be protected. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

3. Teachers.

4. —Certification.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under KRS 161.030(2) will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

5. Standardized Achievement Testing.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification of Nonpublic Schools, 704 KAR 3:315.

158.090. Kindergartens — Night schools. [Repealed.]

Compiler's Notes.

This section (4399-50) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.100. Program required to be provided by school district — Additional programs permitted — Refugee or legal alien students — Virtual high school completion program — School district may establish virtual programs.

(1) Notwithstanding any statute to the contrary, each school district shall provide an approved preschool school program through twelve (12) grade school service. An approved preschool school program through eight (8) grade school service shall be provided for the children residing in the district by maintaining schools. An approved high school service for all children of high school grade under twenty-one (21) years of age residing in the district shall be provided either by maintaining the schools within the district or by contract with another district. The board of education of any school district, subject to the approval of the chief state school officer, may establish night schools, industrial schools, and other schools for the residents of the district as it deems advisable.

(2) A school district may provide an approved high school program to a student who is a refugee or legal alien until the student graduates or until the end of the school year in which the student reached the age of twenty-one (21), whichever occurs first.

(3)(a) The board of education of any school district may establish a virtual high school completion program for residents of the district of at least twenty-one (21) years of age that is designed to allow high school dropouts to complete high school graduation requirements through the use of virtual instruction.

(b) A student shall be eligible to enroll in a district's program if the student:

1. Is a resident of the district;

2. Is at least twenty-one (21) years of age;

3. Had previously dropped out of a high school; and

4. Had earned at least sixteen (16) credits at the time of dropping out.

(c) Notwithstanding paragraph (b)1. of this subsection, a program may enroll a nonresident student if the student otherwise qualifies for enrollment.

(d) To enroll in a district's program, a student shall provide a notarized transcript evidencing any credits earned previously towards graduation that are not from that district.

(e) To earn a high school diploma through the virtual program, a district shall require a student to either:

1. Complete the high school graduation requirements of the district that were or would have been applicable to the student at the time the student dropped out of high school; or

2. Complete the high school graduation requirements of the district in effect at the time of enrolling in the virtual program.

(f) A district may charge a student reasonable tuition and fees for the program.

(4) A school district may establish a virtual program as defined in KRS 157.320 for students. The local board of education of the school district that operates a virtual program shall adopt policies to address a student's failure to complete state-mandated assessments, including but not limited to kindergarten readiness screeners or assessments required under KRS 158.6453.

History.

3480-1, 3480-2, 4363-5a, 4399-2, 4399-3; amend. Acts 1966, ch. 184, § 2; 1978, ch. 20, § 1, effective June 17, 1978; 1984, ch. 367, § 6, effective July 13, 1984; 1990, ch. 476, Pt. I, § 28, effective July 13, 1990; 2014, ch. 78, § 1, effective July 15, 2014; 2020 ch. 17, § 1, effective July 15, 2020; 2025 ch. 94, § 5, effective March 27, 2025.

NOTES TO DECISIONS

Analysis

1. School Grades.
2. Education Facilities for All Residents under Twenty-one.
3. High School.
4. —Minimum Students for Maintaining.
5. —Contracts with Another District.
6. —Attendance.
7. Uniform or Equal Facilities.
8. School Taken Over by City.

1. School Grades.

The county school board is not required to provide for the teaching of twelve (12) grades in each school in the district. Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288, 1934 Ky. LEXIS 435 (Ky. 1934).

A school board may maintain schools (1) in which only the elementary grades are taught, (2) in which only the four higher grades are taught, (3) in which all twelve (12) grades are taught, (4) in which the first six (6) grades are taught, (5) junior high schools (seventh, eighth and ninth grades), (6) senior high schools (tenth, eleventh and twelfth grades), (7) or any combination of same, provided it does not act arbitrarily or abuse its discretion. Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288, 1934 Ky. LEXIS 435 (Ky. 1934).

2. Education Facilities for All Residents under Twenty-one.

This section mandatorily directs that each board of education shall provide public education facilities for residents of its district who are under twenty-one. Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

3. High School.

4. —Minimum Students for Maintaining.

A rule of the state Superintendent of Public Instruction, approved by the State Board of Education to the effect that a minimum of 60 students is required for maintenance of a high school, was a valid administrative regulation carrying out the Legislature's intent in its enactment of the school code, and was not an invalid exercise of a legislative function. Dicken v. Kentucky State Board of Education, 304 Ky. 343, 199 S.W.2d 977, 1947 Ky. LEXIS 579 (Ky. 1947).

5. —Contracts with Another District.

Under law providing that county board could unite with city or town in order to establish a high school for the joint use of the county and city, a county board of education and the board of education of a fourth-class city could contract to establish and maintain joint high and grade schools. Board of Education v. Knox County Board of Education, 260 Ky. 115, 84 S.W.2d 62, 1935 Ky. LEXIS 447 (Ky. 1935) (decided under prior law).

The right to contract with another district to teach certain grades is conferred upon the county board of education and an independent school district is not authorized to make such contract. Board of Trustees v. State Board of Education, 269 Ky. 253, 106 S.W.2d 985, 1937 Ky. LEXIS 585 (Ky. 1937).

6. —Attendance.

Law repealing sections dealing with pupil attending the most convenient high school does not violate Ky. Const., § 51, and there is now no law requiring the county board of education to give a high school pupil the privilege of attending the most convenient high school. Stallins v. Caldwell County Board of Education, 274 Ky. 824, 120 S.W.2d 656, 1938 Ky. LEXIS 350 (Ky. 1938).

Even though it would be more economical and for the best interests of the high school pupils to attend high schools other than those maintained by the county board, whether they attend high schools other than those maintained by the county board and whether some of the high schools should be discontinued is a matter within the discretion of the board. Stallins v. Caldwell County Board of Education, 274 Ky. 824, 120 S.W.2d 656, 1938 Ky. LEXIS 350 (Ky. 1938).

7. Uniform or Equal Facilities.

The fact that a board of education provided only an eight-month school term for the colored school, while a nine-month term was provided for the white school, did not constitute a violation of Ky. Const., § 187, there being no allegation that the faculty, facilities or equipment of the colored school were unequal to that of the white school. Board of Education v. Ballard, 299 Ky. 370, 185 S.W.2d 538, 1945 Ky. LEXIS 426 (Ky. 1945) (decision prior to 1966 amendment).

8. School Taken Over by City.

Where school building and grounds located in city of fifth class had been operated by county board of education as a school for colored children, prior to law requiring independent districts in such cities to provide school service for colored children, the county board of education was not entitled to any payment for the property upon its being taken over by the city under the 1936 act. Board of Education v. Board of Education, 292 Ky. 261, 166 S.W.2d 295, 1942 Ky. LEXIS 69 (Ky. 1942) (decision prior to 1966 amendment).

Cited in:
Trenton Graded School Dist. v. Board of Education, 278 Ky. 607, 129 S.W.2d 143, 1939 Ky. LEXIS 474 (Ky. 1939).

OPINIONS OF ATTORNEY GENERAL.

Local school boards have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age. OAG 65-410.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privileges to some nonresident children while denying the same privilege to others. OAG 66-550.

Where children residing on federal property attend schools operated and financed by the federal government, if the property in the federally-owned areas were subject to local ad valorem taxation by the school districts, and if the responsibility for educating children residing in these areas was transferred to the local school districts, then those resident children could properly and lawfully be included in the computation of state minimum foundation program fund allocations. OAG 68-50.

The duty of the school district to provide transportation under KRS 158.110 extends only to children of elementary grades who reside within its district. OAG 69-140.

A school district which grants nonresident pupils the privilege of attending its school for which tuition is charged, is not compelled to furnish transportation to such nonresident students. OAG 69-140.

The obligation of a local school district to provide an education to those children residing in the school district is not affected by the compulsory attendance laws since said laws affect those children wanting to get away from education in the schools, not those desiring to stay in school. OAG 77-116, 1977 Ky. AG LEXIS 667.

An unmarried girl under the age of 16, who has given birth to a child and is mothering that child, is not required to attend school, even though there is no delineated exemption under KRS 159.030; however, if the girl finds it necessary to remain out of school for several years, she is entitled to attend school later, up until she has received 12 years education or reached the age of 21. OAG 81-73, 1981 Ky. AG LEXIS 351.

Both KRS 158.030 and this section must be considered as addressing and affecting only public common school districts. OAG 85-55, 1985 Ky. AG LEXIS 95.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55, 1985 Ky. AG LEXIS 95.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55, 1985 Ky. AG LEXIS 95.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school student application, lottery, and enrollment, 701 KAR 8:010.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.
Pupil attendance, 702 KAR 7:125.
Special education facilities for exceptional or handicapped children, KRS 157.230 to 157.290.

158.102. Requirement for library media center — Employment of librarian.

(1) The board of education for each local school district shall establish and maintain a library media center in every elementary and secondary school to promote information literacy and technology in the curriculum, and to facilitate teaching, student achievement, and lifelong learning.

(2)(a) Schools shall employ a school media librarian to organize, equip, and manage the operations of the school media library. The school media librarian shall hold the appropriate certificate of legal qualifications in accordance with KRS 161.020 and 161.030. A certified school media librarian may be employed to serve two (2) or more schools in a school district with the consent of the school councils.

(b) If a vacancy occurs, the school council may fill the vacancy on a temporary basis by employing:

1. A person who is pursuing certification as a school media librarian in accordance with administrative regulations promulgated by the Education Professional Standards Board; or

2. A temporary employee for a period not to exceed sixty (60) days.

History.
Enact. Acts 2000, ch. 339, § 1, effective July 14, 2000.

158.105. War veterans may complete high school course without tuition.

Each school district in this state shall admit to its twelve (12) grade school service, without tuition, any veteran of the Armed Forces whose attendance was interrupted, before completing the approved twelve (12) grade school course, because of induction or enlistment in the Armed Forces. The veteran shall apply for reenrollment in the public school system of the district of his residence not later than four (4) years after his honorable discharge from the Armed Forces. However, this is not intended to apply to enrollment by veterans

in special courses for which tuition is paid under the provisions of federal laws, or otherwise.

History.
Enact. Acts 1948, ch. 123; 1990, ch. 476, Pt. IV, § 199, effective July 13, 1990.

158.107. Fee, rental or purchase of instructional materials prohibited — Exceptions — Annual report on funds expended by public school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 132, § 1, effective June 17, 1978; 1980, ch. 306, § 1, effective July 15, 1980) was repealed by Acts 1982, ch. 19, § 2, effective February 26, 1982.

158.108. Effect of failure to pay for or rent school supplies.

No child shall be denied full participation in any educational program due to an inability to pay for, or rent, necessary school supplies, including textbooks.

History.
Enact. Acts 1982, ch. 19, § 1, effective February 26, 1982; 1986, ch. 462, § 2, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 200, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

KRS 159.140(7) (see now 159.140 (1)(h)) and 160.330 may be read in complete harmony with this section. OAG 82-359, 1982 Ky. AG LEXIS 268.

There is no federal prohibition against charging a fee to the parents of a handicapped child that will be charged to the parents of a nonhandicapped student as a part of the regular education program; but if the object or reason for a fee will solely relate to the fulfillment of a handicapped child's individual educational program, a charge may not be made to the parents of the handicapped child. Nevertheless, a very close scrutiny of the charges to be made by a school district will be required regarding each handicapped child. OAG 82-359, 1982 Ky. AG LEXIS 268.

A school district cannot use parents' inability to pay or refusal to pay against a student. OAG 82-464, 1982 Ky. AG LEXIS 176.

No child is to be denied the opportunity to participate in an educational program due to the parents' inability to pay; how such "inability to pay" is determined is up to the reasonable discretion of each local school board. OAG 82-464, 1982 Ky. AG LEXIS 176.

No school district can use "debt" collection as an obstacle to prevent a child from receiving an education in one of the public common schools. OAG 82-464, 1982 Ky. AG LEXIS 176.

The 1982 General Assembly in repealing KRS 158.107 and enacting this section has again authorized local school districts to charge parents incidental fees associated with the instruction of their children; thus, the school districts may charge parents for materials and supplies for courses and projects that related to any educational program, remembering the special considerations applicable to handicapped children. Parents are entitled to be informed what the fee they are being charged will be used for, that is, what is going to be received by the child in return for the payment of this money by the parent. OAG 82-464, 1982 Ky. AG LEXIS 176.

This section is not to be used for general fund raising, but only to reimburse the school district for materials and supplies provided to a child as a part of a child's educational program. OAG 82-464, 1982 Ky. AG LEXIS 176.

158.110. Transportation of pupils.

(1) Boards of education may provide transportation from their general funds or otherwise for any pupil of any grade to the nearest school to the pupil's residence within the district if the pupil does not live within a reasonable walking distance to such nearest school of appropriate grade level. The local board may provide transportation by means of a board-operated transportation system, transit authorities organized and operating pursuant to KRS Chapter 96A, local governmental mass transit systems, and individual contracted buses and vehicles.

(2) When space is not available at the nearest school, boards of education may provide transportation from their general funds or otherwise for any pupil of any grade who does not live within a reasonable walking distance to the nearest school of appropriate grade level where space is available. Transportation may be provided by means pursuant to subsection (1) of this section.

(3) Public elementary and secondary schools shall not change their present grade level structure without written permission from the Kentucky Board of Education.

(4) The boards of education shall adopt policies to ensure the comfort, health, and safety of the pupils who are transported, consistent with the regulations of the Kentucky Board of Education regarding the transportation of pupils.

(5) Boards of education shall adopt a transportation services policy based on the statewide transportation services policy guidelines. The transportation services policy shall contain the terms and conditions for use of transportation services for pupils who are transported and for their parents, legal guardians, or other persons exercising custodial control or supervision of the pupils who are transported, consistent with the requirements of KRS 158.148.

History.
4399-20; amend. Acts 1944, ch. 173, § 10; 1976, ch. 78, § 3, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1986, ch. 161, § 1, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 201, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2024 ch. 9, § 1, effective July 15, 2024.

NOTES TO DECISIONS

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1. In General.

County board of education is an arm of the state and in operating common schools it is engaged in a governmental capacity. Wallace v. Laurel County Bd. of Education, 287 Ky. 454, 153 S.W.2d 915, 1941 Ky. LEXIS 556 (Ky. 1941).

2. Relation to Other Laws.

School district had to allow students to attend the school nearest home, not merely to register at the school nearest home. That interpretation of KRS 159.070 was consistent with KRS 158.110. Fell v. Jefferson County Bd. of Educ., 2011 Ky. App. LEXIS 176 (Ky. Ct. App. 2011), rev'd, 391 S.W.3d 713, 2012 Ky. LEXIS 148 (Ky. 2012).

3. Constitutionality.

This section is not unconstitutional as being a delegation of legislative power. County Board of Education v. Goodpaster, 260 Ky. 198, 84 S.W.2d 55, 1935 Ky. LEXIS 444 (Ky. 1935).

So much of this section as provides for free transportation for pupils attending private schools is unconstitutional. Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942) (decision prior to 1944 amendment).

Paragraphs 1 and 2 of Acts 1976, ch. 78, § 3, which amended subsections (1) and (2) of this section, in effect allowed local school boards to refuse to expend funds for cross district busing, thereby circumventing the state's responsibility to comply with court desegregation orders, and were unconstitutional. Carroll v. Board of Education, 561 F.2d 1, 1977 U.S. App. LEXIS 11870 (6th Cir. Ky. 1977), cert. denied, 435 U.S. 904, 98 S. Ct. 1449, 55 L. Ed. 2d 494, 1978 U.S. LEXIS 945 (U.S. 1978).

Paragraph 3 of Acts 1976, ch. 78, § 3, which amended subsection (3) of this section relating to change of grade level structures, violated the provision of Ky. Const., § 51 against more than one (1) subject in legislation. Carroll v. Board of Education, 561 F.2d 1, 1977 U.S. App. LEXIS 11870 (6th Cir. Ky. 1977), cert. denied, 435 U.S. 904, 98 S. Ct. 1449, 55 L. Ed. 2d 494, 1978 U.S. LEXIS 945 (U.S. 1978).

4. Purpose.

The statute was enacted to protect children from traffic hazards they would encounter in walking to school, not to protect the children from seeing evidence that the roads are being used for drinking or immoral purposes. Hoefer v. Hardin County Board of Education, 441 S.W.2d 418, 1969 Ky. LEXIS 317 (Ky. 1969).

5. Application.

This section applies to independent school districts as well as to county school districts. Schmidt v. Payne, 304 Ky. 58, 199 S.W.2d 990, 1947 Ky. LEXIS 584 (Ky. 1947).

6. Elementary Pupils.

This section is mandatory with respect to elementary pupils, and discretionary as to pupils in higher grades. Ex parte County Board of Education, 260 Ky. 246, 260 Ky. 249, 84 S.W.2d 59, 1935 Ky. LEXIS 445 (Ky. 1935).

This section is mandatory as to elementary grades. The school board must either enroll the pupil in a school within reasonable walking distance of his home, or, if facilities are not available for the pupil at such a school, the board must furnish transportation to some other school selected by it. Hines v. Pulaski County Board of Education, 292 Ky. 100, 166 S.W.2d 37, 1942 Ky. LEXIS 46 (Ky. 1942).

7. Costs.

The transportation of pupils does not require the levy of a special tax. The cost is payable from general funds or otherwise. Ex parte County Board of Education, 260 Ky. 246, 260 Ky. 249, 84 S.W.2d 59, 1935 Ky. LEXIS 445 (Ky. 1935).

Given the state's constitutional duty to make public education available and to fund the school system thus created, the burden of additional costs of transporting students resulting from a federal desegregation order fell on the state if local school district was unable to fund such transportation. Carroll v. Department of Health, Education & Welfare, 410 F. Supp. 234, 1976 U.S. Dist. LEXIS 16031 (W.D. Ky. 1976), aff'd, Carroll v. Board of Education, 561 F.2d 1, 1977 U.S. App. LEXIS 11870 (6th Cir. Ky. 1977).

8. Definition of "or otherwise."

The words "or otherwise" have reference to funds that may come to the hands of the board of education other than through the exercise of a coercive revenue producing power. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

9. Reasonable Walking Distance.

It is the mandatory duty of a board of education to furnish transportation to children who do not live within reasonable walking distance of the school attended. Madison County Board of Education v. Skinner, 299 Ky. 707, 187 S.W.2d 268, 1945 Ky. LEXIS 809 (Ky. 1945).

Where young children were required to walk two (2) or three (3) miles to school, over a tortuous and dangerous road crossing narrow bridge, railroad, and federal highway carrying fast moving traffic, independent school board's determination that children were within "reasonable walking distance" was abuse of discretion, and therefore writ of mandamus would be granted to compel board to furnish pupils transportation as soon as possible. Schmidt v. Payne, 304 Ky. 58, 199 S.W.2d 990, 1947 Ky. LEXIS 584 (Ky. 1947).

Walking distances for elementary pupils which do not exceed two (2) miles, where no particularly hazardous road conditions are involved, are not unreasonable and travel for about two (2) miles on a gravel road without shoulders or walkways over which approximately 50 cars passed each day was within reasonable walking distance. Board of Education v. Bowling, 312 Ky. 749, 229 S.W.2d 769, 1950 Ky. LEXIS 767 (Ky. 1950).

Where distance children had to walk to school was at the most two and one-quarter (2¼) miles along streets which did not present any particular hazards and they had school safety patrol and traffic patrolwoman to assist them in crossing the streets it was not mandatory upon the board to furnish transportation. Bowen v. Meyer, 255 S.W.2d 490, 1953 Ky. LEXIS 657 (Ky. 1953).

The distance alone, which at the most was two and one-quarter (2¼) miles, was not an unreasonable walking distance for pupils in an elementary school. Bowen v. Meyer, 255 S.W.2d 490, 1953 Ky. LEXIS 657 (Ky. 1953).

The board of education necessarily must be allowed some discretion in determining what is a reasonable walking distance in any particular situation, and the courts should not interfere unless the board has acted in an arbitrary and unreasonable manner in refusing to furnish transportation. Bowen v. Meyer, 255 S.W.2d 490, 1953 Ky. LEXIS 657 (Ky. 1953).

Where the plaintiff's children had to walk one-half (½) to seven-tenths ($^{7}/_{10}$) of a mile to reach a school bus, there was not sufficient substantial evidence to compel a finding by the trial court that the board of education acted arbitrarily or unreasonably in refusing to take a bus to the plaintiff's home. Hoefer v. Hardin County Board of Education, 441 S.W.2d 418, 1969 Ky. LEXIS 317 (Ky. 1969).

The fact that road may be insufficiently patrolled by the law enforcement officers is not sufficient reason to require the school board to send a school bus one-half (½) mile down narrow one-lane gravel road over unsafe bridge to the plaintiff's residence where there was no turnaround to pick up elementary school pupils and board of education did not act

arbitrarily and unreasonably in requiring children to walk up the road to the bus line. Hoefer v. Hardin County Board of Education, 441 S.W.2d 418, 1969 Ky. LEXIS 317 (Ky. 1969).

10. Reasonable Mode of Transportation.

Where school bus was operated over main highway, but certain pupils lived on dirt side roads, over which it was impossible to operate a school bus of regular size, and in bad weather such roads became in such condition as to make it unsafe for children to travel on foot, order of court requiring school board to furnish "such reasonable mode of transportation as the condition of the roads permit" was affirmed, it being contemplated that school board would pay for transportation of pupils by parents in private automobiles. Madison County Board of Education v. Skinner, 299 Ky. 707, 187 S.W.2d 268, 1945 Ky. LEXIS 809 (Ky. 1945).

11. Charging Fees or Fares.

The whole tenor of the statutes is that the transportation shall be furnished for grade school pupils at public expense. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

The general powers of a board of education are broad enough to encompass the operation of a transportation system under which high school pupils are charged a fee. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

Free transportation may be furnished indigent high school pupils under appropriate and reasonable regulations although high school pupils are charged fees for transportation. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

Charging of fares to high school pupils will not have the effect of reducing the per pupil minimum state aid under KRS 157.400 (repealed). Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

Charging fees to high school pupils does not give a pupil residing within reasonable walking distance of the school a matter of right to tender the fare and ride the bus. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

12. Purchase of Buses.

The board may either purchase buses and hire drivers, or contract with persons who own their own vehicles. Smith v. Rose, 293 Ky. 583, 169 S.W.2d 609, 1943 Ky. LEXIS 663 (Ky. 1943).

13. Liability.

14. —County Board.

Act of furnishing transportation is not removed from governmental function, even if provision requiring board to furnish such transportation should be deemed mandatory and not merely permissive. Wallace v. Laurel County Bd. of Education, 287 Ky. 454, 153 S.W.2d 915, 1941 Ky. LEXIS 556 (Ky. 1941).

County board of education was not liable for personal injuries, allegedly due to negligence of school bus driver, to pupil who alighted from bus and was struck by passing car, since board was engaged in governmental function in furnishing transportation. Wallace v. Laurel County Bd. of Education, 287 Ky. 454, 153 S.W.2d 915, 1941 Ky. LEXIS 556 (Ky. 1941).

When a board of education has secured an insurance policy, under KRS 160.310, insuring against liability (rather than loss) arising from the operation of its school buses, the board may not interpose the defense, in an action for damages arising from negligent operation of a school bus, that the operation of school buses is a governmental function. Taylor v. Knox County Bd. of Educ., 292 Ky. 767, 167 S.W.2d 700, 1942 Ky. LEXIS 144 (Ky. 1942), overruled in part, Grayson County Bd. of Educ. v. Casey, 157 S.W.3d 201, 2005 Ky. LEXIS 50 (Ky. 2005).

In suit against county board of education where board carried liability insurance under KRS 160.310 it was within the province of the jury to find bus driver was negligent and that nine-year-old boy was not contributorily negligent in collision of his bicycle with a school bus. Pike County Bd. of Education v. Varney, 253 S.W.2d 253, 1952 Ky. LEXIS 1074 (Ky. 1952).

No liability may be imposed upon the individual board members when they fail to perform or perform negligently some duty owing the public but the transportation of pupils is a necessary part of the school program and the carrying of liability insurance under KRS 160.310 is an expense incident thereto and failing of school board to require bus operators to carry liability insurance renders the members of the board individually liable. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

15. Gasoline Tax.

Boards of education are liable for tax on gasoline purchased by them. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

Payment of gasoline tax by boards of education does not violate Const., § 184. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

16. Hauling Voters to Polls.

Use of school buses to haul voters to polls at subdistrict tax levy election is not inherently vicious, but is subject to criticism if passengers are limited to adherents of one (1) side. Gill v. Board of Education, 288 Ky. 790, 156 S.W.2d 844, 1941 Ky. LEXIS 142 (Ky. 1941).

Cited in:

Ex parte County Board of Education, 260 Ky. 246, 260 Ky. 249, 84 S.W.2d 59, 1935 Ky. LEXIS 445 (Ky. 1935); Cox v. Barnes, 469 S.W.2d 61, 1971 Ky. LEXIS 288 (Ky. 1971); Joslin v. Board of Education, 585 F. Supp. 37, 1983 U.S. Dist. LEXIS 15249 (E.D. Ky. 1983).

OPINIONS OF ATTORNEY GENERAL.

A school district which grants nonresident pupils the privilege of attending its school for which tuition is charged, is not compelled to furnish transportation to such nonresident students. OAG 69-140.

The duty of the school board to provide transportation extends only to children of elementary grades who reside within its district. OAG 69-140.

Common school funds may be used for transporting pupils from private or parochial schools to public vocational schools where the private school students attend vocational schools on a split day basis and where regular school bus transportation is used. OAG 75-300.

A school bus may be used to transport children to a child care center or scout meeting after school if the delivery point is along the usual bus route, the distance is greater than a reasonable walking distance, and the driver has permission from the principal who in turn has secured permission from the parents. OAG 75-645.

A board of education is not under an obligation to provide transportation where the students or parents have refused the school provided for the children and instead the parents take their children to another public school. OAG 76-55.

If school district money in any respect and in any amount is used to transport nonpublic school children, the Kentucky Constitution will be violated. OAG 82-392, 1982 Ky. AG LEXIS 250.

It was not constitutionally permissible for the board of education to provide transportation for parochial school pupils

from their homes to the nearest public schools, so long as they do not live within a reasonable walking distance to such school, where transportation from public schools to parochial schools would then be provided either by the fiscal court or the local parochial school system. OAG 82-392, 1982 Ky. AG LEXIS 250.

To the extent nonpublic school children are transported on public school buses, irrespective of their point of departure, the local school district must be reimbursed on a per capita basis to avoid constitutional violation. Accordingly, it would not be appropriate for the board of education to provide transportation for parochial pupils from their homes to the nearest public school, so long as they do not live within a reasonable walking distance to such school, and for the board of education to be reimbursed by either the fiscal court and/or the local parochial school system for the additional cost (if any) to the school system, since reimbursement is required to be on a "per capita" basis. OAG 82-392, 1982 Ky. AG LEXIS 250.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Insurance of school buses, KRS 160.310.

Transportation of pupils, regulations concerning, KRS 156.160.

158.115. Supplementation of school bus transportation system by county out of general funds — Annual report to Interim Joint Committee on Appropriations and Revenue.

(1) Each county may furnish transportation from its general funds, and not out of any funds or taxes raised or levied for educational purposes or appropriated in aid of the common schools, to supplement the present school bus transportation system for the aid and benefit of all pupils of elementary grade attending school in compliance with the compulsory school attendance laws of the Commonwealth of Kentucky who do not reside within reasonable walking distance of the school they attend and where there are no sidewalks along the highway they are compelled to travel; and any county may provide transportation from its general funds to supplement the present school bus transportation system for the aid of any pupil of any grade who does not live within reasonable walking distance of the school attended by him in compliance with the compulsory school attendance laws and where there are no sidewalks along the highway he is compelled to travel.

(2) Each county may provide transportation by means of local board of education operated transportation systems, transit authorities organized and operating pursuant to KRS Chapter 96A, local governmental mass transit systems, and individual contracted buses and vehicles.

(3) By September 30 of each year, the secretary of the Transportation Cabinet shall report to the General Assembly's Interim Joint Committee on Appropriations and Revenue the following information for those fiscal court applications received by the Transportation Cabinet:

(a) The annual cost to transport an individual pupil by local school district;

(b) The total annual cost to transport all pupils;

(c) The number of nonpublic school pupils transported by district;

(d) The amount of money needed to fund actual costs to transport the projected number of nonpublic pupils over the next biennium; and

(e) A history by year of participating counties requesting funding to transport nonpublic students, the funding requested by the counties, and the actual funding provided to the counties.

History.

Enact. Acts 1974, ch. 156; 1986, ch. 161, § 6, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 399, effective July 13, 1990; 2008, ch. 131, § 1, effective July 15, 2008.

Compiler's Notes.

This section (Enact. Acts 1974, ch. 156; 1986, ch. 161, § 6, effective July 15, 1986) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 399, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Nonpublic School Pupils.
4. Expenditure from General Fund.
5. —Use of School Funds.
6. Limitation on Transportation.
7. Transportation Subsidies.
8. —Constitutionality.

1. Constitutionality.

This section does not violate Const., § 5 notwithstanding that it would authorize transportation of children to parochial schools as well as public schools for it is simply an exercise of police power for the protection of children against the inclemency of the weather and the hazards of highway traffic. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

This section does not violate § 26, of the Constitution. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

This section does not violate Const., § 180 as authorizing a diversion of tax proceeds. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

This section does not violate either the provisions of Const., § 171 requiring that tax levys be only for public purposes or the provision of Const., § 3 forbidding a special privilege. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

This section is valid as legislation intended for public purpose of protecting children from dangers of highways and is not invalid as intended for private purpose of aiding private, parochial or sectarian schools notwithstanding that such schools would indirectly benefit by virtue of transportation of their pupils. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

2. Construction.

This section's use of the word "may" denotes that the section permits county fiscal courts to supplement the present bus school transportation system, but does not require it to do so. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

3. Nonpublic School Pupils.

Children attending private, parochial or sectarian schools under the provisions of KRS 159.030 are "attending school in compliance with the compulsory school attendance laws"

within the meaning of this section. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

Fiscal court may, under this section, bear the expense of transporting children attending parochial or private schools. Rawlings v. Butler, 290 S.W.2d 801, 1956 Ky. LEXIS 345 (Ky. 1956).

This section contemplates transportation furnished by the fiscal court to "all pupils" equally, but contemplates neither furnishing transportation selectively to some pupils and not others nor direct payment to the general fund of private institutions. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

4. Expenditure from General Fund.

Fiscal court should make general fund unit in county budget large enough to cover amount to be expended under this section, rather than attempt to levy a special tax for the purpose. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

5. —Use of School Funds.

The school district cannot constitutionally expend any of its funds to transport nonpublic school pupils and expenditures under this section must be by county out of general funds. Board of Education v. Jefferson County, 333 S.W.2d 746, 1960 Ky. LEXIS 198 (Ky. 1960).

6. Limitation on Transportation.

Transportation may be furnished only to those who did not live within reasonable walking distance of the school, and where there are no sidewalks at or within a reasonable distance of their homes, but having once boarded the bus they will not be required to leave it until they have been transported to within a reasonable distance of their school. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

7. Transportation Subsidies.

Taxpayer challenge to expenditures for transportation of nonpublic school students in Acts 1994 (1st Ex. Sess.), ch. 5, Part XI, E. and administrative regulation setting up procedure for distribution of funds provided by the Act (600 KAR 5:010) was not moot for although payment had already been made for the 1994-95 school year at the time of the appeal of the Circuit Court's dismissal of the action the payments for the 1995-96 school year were still pending and since the legislature has historically approved various expenditures pursuant to KRS 158.115 it is a matter likely to come again before the legislature. Price v. Commonwealth, 945 S.W.2d 429, 1996 Ky. App. LEXIS 136 (Ky. Ct. App. 1996).

8. —Constitutionality.

Grants made by fiscal court from county tax revenues by direct payment to certain specified privately-owned schools designated as transportation subsidies violated Ky. Const., § 171, which provides that taxes shall be levied for public purposes only, and subsection (1) of KRS 61.080, which provides that county funds may be appropriated only for lawful purposes. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

Award of 99 percent of fiscal court's transportation subsidy to educational institutions that promote religious teachings and beliefs, while equivalent support for the public school optional program was withheld violated Ky. Const., §§ 5, 189. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

Grants made by fiscal court from county tax revenue by direct payment to certain specified privately-owned schools which were designated as a transportation subsidies violated Ky. Const., § 184 when such payments were made directly to the nonpublic school, for Ky. Const., § 184 provides that money cannot be expended for education other than in common schools without a vote of the public, because public money is being expended for the benefit of the private institution rather than providing specifically for the health and safety of all the children. Fiscal Court v. Brady, 885 S.W.2d 681, 1994 Ky. LEXIS 88 (Ky. 1994).

Cited in:

Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268, 1945 Ky. LEXIS 809 (1945).

OPINIONS OF ATTORNEY GENERAL.

Under this section the fiscal court may appropriate moneys out of its general fund to pay the transportation expenses of retarded children who are attending nonpublic schools. OAG 61-547.

A fiscal court may appropriate funds to aid a local board of education in the transportation of students attending nonpublic schools. OAG 61-668.

A county can expend money from its properly budgeted general fund to the county board of education for the specific transportation purposes outlined in the statute, provided that such expenditure is actually supplemental to the present school bus transportation system for such affected class of students, and provided the formula for such expenditure is observed. OAG 67-241.

This section is permissive and the fiscal court is not required to supplement school bus transportation in any given year even though it may have done so in prior years. OAG 67-433.

It seems clear that in enacting this section the Legislature intended that when the fiscal court of a county decided to furnish transportation to pupils in parochial schools, the school board in the county which was then furnishing transportation to the public schools would have to enlarge its operation to include the parochial schools and be compensated from the general funds of the county on a pro rata basis. OAG 72-795.

Common school funds may be used for transporting pupils from private or parochial schools to public vocational schools where the private school students attend vocational schools on a split day basis and where regular school bus transportation is used. OAG 75-300.

Under this section, a fiscal court may fund the cost of transporting students to parochial schools within its district. OAG 76-529.

While this section authorizes a county to supplement the transportation of school children under certain conditions out of its general funds, it does not apply to the rocking and maintenance of a school bus turnaround on private property. OAG 79-200, 1979 Ky. AG LEXIS 425.

A county fiscal court may provide snow removal service to the county schools in exchange for the transporting of nonpublic school students, provided that the value of such service is fairly and accurately determined, provisions are made for the payment to the county school system of any balance due, and appropriate procurement laws are followed where applicable; the best method for handling any legitimate exchange of services as outlined would be for the county school system to pay for the service and for the county fiscal court to pay that amount back to the county school system for the transporting of nonpublic school students. OAG 80-390, 1980 Ky. AG LEXIS 277.

It is not constitutionally permissible for the board of education to provide transportation for parochial school pupils from their homes to the nearest public schools so long as they do not live within a reasonable walking distance to such school, where transportation from public schools to parochial schools would then be provided either by the fiscal court or the local parochial school system. OAG 82-392, 1982 Ky. AG LEXIS 250.

To the extent nonpublic school children are transported on public school buses, irrespective of their point of departure, the local school district must be reimbursed on a per capita basis to avoid constitutional violation. Accordingly, it would not be appropriate for the board of education to provide transportation for parochial pupils from their homes to the nearest public school, so long as they do not live within a reasonable walking distance to such school, and for the board of education to be reimbursed by either the fiscal court and/or the local parochial school system for the additional cost (if any) to the school system, since reimbursement is required to be on a "per capita" basis. OAG 82-392, 1982 Ky. AG LEXIS 250.

A member of the board of education of a particular county would not be personally liable if the school board failed to collect from the fiscal court the amount due under its contract with the fiscal court for the transportation of students to and from parochial schools, when the fiscal court contracted and agreed to pay such transportation expense. Only the school board had a responsibility to collect the money due under the contract with the fiscal court. OAG 82-405, 1982 Ky. AG LEXIS 227.

This section was the authorizing statute for a contract requiring a fiscal court to reimburse a school district on a straight per capita basis for nonpublic school students who ride public school buses and, absent full reimbursement by the fiscal court to the school board, the expenditure of public school moneys for transporting nonpublic school children would create a constitutional violation under Const., § 180 as well as other provisions. Therefore, failure by the school board to enforce the contract with the fiscal court would be tantamount to willful neglect of duty and could lead to removal from office. OAG 82-405, 1982 Ky. AG LEXIS 227.

A proposal by the fiscal court to pay a sum equal to 150 percent of the purported "actual cost" of transporting all the school children in a school district may not be legally tolerated, since it appears that a purported "actual increase cost" figure for the cost of transporting the nonpublic school children may not be constitutionally determined. OAG 83-294.

158.120. Nonresident pupils — Nonresident pupil policy — Tuition — Enrollment of nonresident pupils in virtual programs — Limitations — Sunset.

(1) A board of education shall adopt a nonresident pupil policy to govern the terms under which the district shall allow enrollment of nonresident pupils. Upon allowing nonresident pupil enrollment, the policy shall allow nonresident children to be eligible to enroll in any public school located within the district. The policy shall not discriminate between nonresident pupils, but may recognize enrollment capacity, as determined by the local school district. The nonresident pupil policy and any subsequent changes adopted by a board of education shall be filed with the Kentucky Department of Education no later than thirty (30) days following their adoption.

(2) Any board of education may charge a reasonable tuition fee per month for each child attending its schools whose parent, guardian, or other legal custodian is not a bona fide resident of the district. Any controversy as to the fee shall be submitted to the Kentucky Board of Education for final settlement. The fee shall be paid by the board of education of the school district in which the pupil resides, except in cases where the board makes provision for the child's education within his or her district. If a board of education is required to pay a pupil's tuition fee, the pupil shall be admitted to a school only upon proper certificate of the board of education of the district in which he or she resides.

(3) When it appears to the board of education of any school district that it is convenient for a pupil of any grade residing in that district to attend an approved public school in another district, the board of education may enter into a tuition contract with the public school authorities of the other school district for that purpose, but before a contract is entered into with public school authorities in another state the school shall have been approved by the state school authorities of that state through the grades in which the pupil belongs. When a district undertakes, under operation of a tuition contract or of law, to provide in its school for pupils residing in another district, the district of their residence shall share the total cost of the school, including transportation when furnished at public expense, in proportion to the number of pupils or in accordance with contract agreement between the two (2) boards.

(4) As used in this subsection, "virtual program" has the same meaning as in KRS 157.320. A school district may enroll nonresident pupils on a full-time basis in kindergarten through grade twelve (12) in a virtual program established under KRS 158.100 by that district. Nonresident pupil enrollment shall be subject to the following requirements:

(a) Beginning with the 2025-2026 school year, the statewide total enrollment of nonresident pupils in virtual programs offered by school districts shall not exceed an enrollment cap of one percent (1%) of the previous year's total statewide student enrollment in all school districts. By July 1, 2025, and each year thereafter until June 30, 2028, the Kentucky Department of Education shall publish on its website the previous year's total statewide student enrollment in all school districts and the one percent (1%) value of that number. The information shall remain on the website for the remainder of each school year;

(b) Each school district shall report in the student information system the nonresident pupils enrolled in the district's virtual programs. The department shall monitor the number of statewide total enrollment of nonresident pupils in virtual programs;

(c) If the number of statewide total enrollment of nonresident pupils in virtual programs reaches eighty-five hundredths of one percent (0.85%) of the previous year's total statewide student enrollment in all school districts, the department shall alert all school districts operating virtual programs that the nonresident enrollment cap has almost been reached. Upon receiving the alert, a school district shall notify any nonresident pupil seeking enrollment in a virtual program operated by the school district that the pupil will be provisionally enrolled until the department can confirm that the pupil's enrollment would not exceed the enrollment cap, and shall report the pupil as provisionally enrolled in the student information system. If the department determines that a pupil's enrollment would exceed the enrollment cap, the department shall notify the school district that the pupil cannot be approved for enrollment due to the enrollment cap. The department shall determine whether the pupil's enrollment will exceed the enrollment cap and provide notice to the school district of

the determination. If the department fails to provide the school district with the determination within two (2) business days, the pupil shall be deemed to not exceed the enrollment cap and the provisional status shall be removed;

(d) If the nonresident enrollment cap is reached, the department shall notify all school districts operating virtual programs and that no additional nonresident pupils shall be enrolled until such time as nonresident enrollment falls below the enrollment cap;

(e) After reaching the nonresident enrollment cap, if the number of statewide total enrollment of nonresident pupils in virtual programs falls back below the enrollment cap, the department shall notify all school districts operating virtual programs that nonresident enrollment may resume again, but any nonresident pupils enrolled for the remainder of the school year shall be provisionally enrolled, following the same process outlined in paragraph (c) of this subsection; and

(f) The nonresident enrollment cap established in this subsection shall not apply to any of the following pupils:

1. A sibling of a pupil already enrolled into the same virtual program;

2. A pupil who is a dependent of a member of the Armed Forces of the United States; or

3. A pupil with a medical condition for which enrolling into the virtual program may be beneficial to the pupil, which shall be evidenced in a written statement signed by the pupil's physician.

All documentation related to these exceptions to the nonresident enrollment cap shall be maintained by the school district enrolling the nonresident pupil as part of the pupil's official record.

(5) A school district operating a virtual program that enrolls nonresident pupils shall no longer continue the enrollment of nonresident pupils in the program after June 30, 2028, unless explicit permission to do so is provided by the General Assembly.

History.

4399-51; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 202, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2021 ch. 167, § 2, effective June 29, 2021; 2025 ch. 94, § 4, effective March 27, 2025.

NOTES TO DECISIONS

Analysis

1. Residence in District.
2. Tuition.
3. —Payment.
4. Discretion of Board.
5. Pleadings.

1. Residence in District.

When an inmate of a children's home is placed in a "boarding home" in another school district, he is entitled to attend school in the latter district without payment of tuition. Wirth v. Board of Education, 262 Ky. 291, 90 S.W.2d 62, 1935 Ky. LEXIS 787 (Ky. 1935).

Denial of a school district's claim for nonresident tuition from a family was appropriate because the family members were bona fide residents of the district as they properly notified the district of their intention to live within the district and paid the tuition for a semester. When their house which they purchased within the district was not completed in time, they then leased an apartment in the district, moved part of their belongings to the apartment, and spent some nights in the apartment so that they could be residents of the district. Beechwood Bd. of Educ. v. Wintersheimer, 493 S.W.3d 390, 2016 Ky. App. LEXIS 103 (Ky. Ct. App. 2016).

2. Tuition.

The fact that the receiving board did not secure as high a tuition from nonresidents as it might have does not, in the absence of corruption or bad faith, make its acts illegal. White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. Ct. App. 1936).

3. —Payment.

Where city boundaries extended beyond those of independent school district said school district could enjoin resident of city living beyond the boundaries of the district from sending his children to said school until he paid the tuition charged under this section. Jenkins Independent School Dist. v. Hunt, 314 Ky. 760, 237 S.W.2d 65, 1951 Ky. LEXIS 748 (Ky. 1951).

4. Discretion of Board.

The matter of whether to pay tuition for a child's attendance at a school of another district is a matter within the board's discretion, and the refusal of the board of such a request, made merely on the ground of convenience, cannot be classed as arbitrary or unreasonable. Wheat v. Adair County Board of Education, 460 S.W.2d 806, 1970 Ky. LEXIS 589 (Ky. 1970) (decision under former KRS 158.130, now repealed).

5. Pleadings.

Where petitioners were closer to a neighboring county school than to a school in their own county, allegations of inconvenience did not state a claim on which relief could be granted against the board of education. Wheat v. Adair County Board of Education, 460 S.W.2d 806, 1970 Ky. LEXIS 589 (Ky. 1970) (decision under former KRS 158.130, now repealed).

OPINIONS OF ATTORNEY GENERAL.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privileges to some nonresident children while denying the same privilege to others. OAG 66-550.

Without a showing that the circumstances differ, the exemption of certain nonresidents without the exemption of all would be arbitrary and illegal. OAG 67-48.

Where the construction of a lake separates a portion of a school district from the remainder of the district and would require high school students in the separated portion to travel 65 miles to attend the district high school, the school is not reasonably accessible to the students and, under this section, it is the obligation of the board of education of the divided district to pay the tuition of those students at the high school of a more readily accessible district. OAG 67-276.

Where children residing on federal property attend schools operated and financed by the federal government, if the property in the federally-owned areas were subject to local ad valorem taxation by the school districts, and if the responsibility for educating children residing in these areas was transferred to the local school districts, then those resident children could properly and lawfully be included in the com-

putation of state minimum foundation program fund allocations. OAG 68-50.

A school district which grants nonresident pupils the privilege of attending its school for which tuition is charged, is not compelled to furnish transportation to such nonresident students. OAG 69-140.

The duty of the school district to provide transportation under KRS 158.110 extends only to children of elementary grades who reside within its district. OAG 69-140.

Under this section and KRS 158.130 (now repealed), the school district in which a parent resides is not required to pay tuition for the children of such parent to attend school in another district where the school district of the parent's residence has provided educational facilities and the children would be sent to another school district merely because of the personal preference of the parent. OAG 72-271.

A school district is required to admit for enrollment, tuition free, a child living with the child's custodian declared by court order or other legal process who resides in the school district, irrespective of whether the court order is one for temporary custody or one for permanent custody. OAG 78-64, 1978 Ky. AG LEXIS 681.

If a child who is not residing with his legal custodian is not residing in a particular school district primarily for school purposes, tuition generally would not be chargeable but the matter of free tuition must be decided by the school board on a case by case basis. OAG 78-64, 1978 Ky. AG LEXIS 681.

A child is entitled to go to school, tuition free, in the school district in which the guardian is a resident. OAG 78-64, 1978 Ky. AG LEXIS 681.

A child who has reached his eighteenth birthday is entitled to attend school without payment of tuition in the school district in which he actually resides. OAG 78-64, 1978 Ky. AG LEXIS 681.

It is truly in the discretion of the local board of education to establish a reasonable tuition fee for nonresident students; however, the better practice would be for a local board to attempt to establish a tuition fee sufficient to defray any reasonably calculated per capita costs not funded through the state foundation program funds for educating a nonresident child. OAG 78-265, 1978 Ky. AG LEXIS 462.

Although a county school district and an independent school district can establish a policy concerning the times when a student could transfer from one school district to another, they could not prevent a student from returning to attend the schools in the district in which he resides. OAG 80-47, 1980 Ky. AG LEXIS 593.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Special education program in district other than that of child's residence, KRS 157.280.

158.130. Pupils sent to other districts. [Repealed.]

Compiler's Notes.

This section (4399-52) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.135. Reimbursement for school services for state agency children in state institution or day treatment center or in custody of Department of Juvenile Justice.

(1) As used in this section, unless the context otherwise requires:

(a) "State agency children" means:

1.a. Those children of school age committed to or in custody of the Cabinet for Health and Family Services and placed, or financed by the cabinet, in a Cabinet for Health and Family Services operated or contracted institution, treatment center, facility, including those for therapeutic foster care and excluding those for nontherapeutic foster care; or

b. Those children placed or financed by the Cabinet for Health and Family Services in a private facility pursuant to child care agreements including those for therapeutic foster care and excluding those for nontherapeutic foster care;

2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the intellectually disabled;

3. Those children committed to or in custody of the Department of Juvenile Justice and placed in a department operated or contracted facility or program; and

4. Those children referred by a court-designated worker as defined in KRS 600.020 and admitted to a Department of Juvenile Justice operated or contracted day treatment program;

(b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if identified on an individual educational plan, and more intensive educational programming; and

(c) "Therapeutic foster care" means a remedial care program for troubled children and youth that is in the least restrictive environment where the foster parent is trained to implement planned, remedial supervision and care leading to positive changes in the child's behavior. Children served in this placement have serious emotional problems and meet one (1) or more of the following criteria:

1. Imminent release from a treatment facility;

2. Aggressive or destructive behavior;

3. At risk of being placed in more restrictive settings, including institutionalization; or

4. Numerous placement failures.

(2)(a) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.

(b) The Department of Education shall, to the extent possible within existing appropriations, set aside an amount of the state agency children funds designated by the General Assembly in the biennial budget to reimburse a school district for its expenditures exceeding twenty percent (20%) of the total

amount received from state and federal sources to serve a state agency child.

(3) The General Assembly shall, if possible, increase funding for the education programs for state agency children by a percentage increase equal to that provided in the biennial budget for the base funding level for each pupil in the program to support education excellence in Kentucky under KRS 157.360 and, if applicable, by an amount necessary to address increases in the number of state agency children being served.

(4) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for Health and Family Services unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.

(5) The Department of Juvenile Justice shall contract with a public university or nonprofit education entity utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.

(6) Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

History.

Enact. Acts 1952, ch. 88, §§ 1 to 4; 1958, ch. 126, § 19; 1976, ch. 126, § 1; 1978, ch. 150, § 2, effective June 17, 1978; 1984, ch. 316, § 7, effective July 13, 1984; 1984, ch. 410, § 12, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 203, effective July 13, 1990; 1992, ch. 357, § 1, effective July 1, 1993; 1994, ch. 376, § 2, effective July 15, 1994; 1996, ch. 358, § 65, effective July 1, 1997; 1998, ch. 426, § 115, effective July 15, 1998; 1998, ch. 433, § 1, effective July 15, 1998; 1998, ch. 538, § 1, effective April 13, 1998; 2005, ch. 99, § 132, effective June 20, 2005; 2010, ch. 141, § 7, effective July 15, 2010; 2018 ch. 56, § 1, effective July 14, 2018; 2022 ch. 78, § 2, effective July 14, 2022; 2026 ch. 69, § 11, effective July 15, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Educational Collaborative for State Agency Children, 505 KAR 1:080.

SEEK funding formula, 702 KAR 3:270.

158.137. Educational passports for state agency children.

(1) As used in this section:

(a) "State agency child" or "state agency children" means "state agency children" defined in KRS 158.135;

(b) "School or educational facility" means any public school, private school, day treatment center, or any other public or private entity that provides educational services to state agency children; and

(c) "Educational passport" means a standard form completed by a school or educational facility which a state agency child is leaving which provides a receiving school or facility with basic demographic and academic information about the state agency child.

(2) When the placement of a state agency child is changed and the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the Cabinet for Health and Family Services or the Department of Juvenile Justice. The Cabinet for Health and Family Services or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

(3) A standard educational passport form shall be developed by the Kentucky Department of Education in consultation with the Cabinet for Health and Family Services and the Department of Juvenile Justice. The Kentucky Department of Education shall make the form available to all schools or educational facilities serving state agency children.

History.

Enact. Acts 1998, ch. 398, § 1, effective July 15, 1998; 2005, ch. 99, § 133, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Educational Collaborative for State Agency Children, 505 KAR 1:080.

158.139. Facilitation and enablement of employment opportunities for graduates with alternate high school diplomas — Requirements for Department of Workforce Development.

In order to facilitate and enable employment opportunities for students graduating with a Kentucky alternate high school diploma pursuant to KRS 156.160(1)(e) and 158.140(2)(b), the Department of Workforce Development in the Education and Labor Cabinet shall:

(1) Conduct outreach to employers to encourage employment opportunities for those who have obtained a Kentucky alternate high school diploma;

(2) Create a process for employers to request addition to or removal from the list of employers with employment opportunities for those who have obtained a Kentucky alternate high school diploma; and

(3) Publish on the Department of Workforce Development's website the list of employers, organized by county, created under subsection (2) of this section.

History.

2026 ch. 15, § 2, effective July 15, 2026.

158.140. Admission to high school — Promotion — Classification — High school diploma — Alternative high school diploma — Academy diploma — Posthumous diploma — Diploma for certain honorably discharged veterans — Vocational certificate of completion.

(1) When a pupil in any public elementary school or any approved private or parochial school completes the prescribed elementary program of studies, he or she is entitled to a certificate of completion signed by the teacher or teachers under whom the program was completed. The certificate shall entitle the pupil to admission into any public high school. Any promotions or credits earned in attendance in any approved public school are valid in any other public school to which a pupil may go, but the superintendent or principal of a school, as the case may be, may assign the pupil to the class or grade to which the pupil is best suited. In case a pupil transfers from the school of one (1) district to the school of another district, an assignment to a lower grade or course shall not be made until the pupil has demonstrated that he or she is not suited for the work in the grade or course to which he or she has been promoted.

(2) Upon successful completion of all state and local board requirements, the student shall receive:

(a) A diploma indicating graduation from high school; or

(b) An alternate high school diploma if the student has a disability and has completed a modified curriculum and an individualized course of study pursuant to requirements established by the Kentucky Board of Education in accordance with KRS 156.160.

(3)(a) The Gatton Academy of Mathematics and Science in Kentucky, located at Western Kentucky University, and the Craft Academy for Excellence in Science and Mathematics, located at Morehead State University, may award a diploma to any student who completes his or her high school program at the respective academy. If the academy issues a diploma, the board of regents of the host university shall provide to the commissioner of education a letter of assurance that the program of study completed by its students, in combination with previously earned secondary credits, meets the minimum high school graduation requirements established by the Kentucky Board of Education under KRS 156.160(1)(d).

(b) A local school district may award a joint diploma with the Gatton Academy of Mathematics and Science in Kentucky or the Craft Academy for Excellence in Science and Mathematics to any student who was enrolled in a district high school and completed his or her high school program at the respective academy.

(c) The respective academy and the home school district shall ensure that student transcripts from each institution accurately reflect the dual credit coursework.

(4) A local school board may award a diploma indicating graduation from high school to any student posthumously with the high school class the student was expected to graduate.

(5)(a) A local board of education shall award an authentic high school diploma to an honorably discharged veteran who did not complete high school prior to being inducted into the United States Armed Forces during:

1. World War II, as defined in KRS 40.010;

2. The Korean conflict, as defined in KRS 40.010; or

3. The Vietnam War. As used in this paragraph, "Vietnam War" means the period beginning August 5, 1964, and ending May 7, 1975. However, for a member of the United States Armed Forces serving in Vietnam prior to August 5, 1964, the period shall begin February 28, 1961.

(b) Upon recommendation of the commissioner, the Kentucky Board of Education in consultation with the Kentucky Department of Veterans' Affairs shall promulgate administrative regulations to establish the guidelines for awarding the authentic diplomas referred to in paragraph (a) of this subsection.

(6) Any high school graduation requirements adopted by a local board shall not include achieving a minimum score on a statewide assessment administered under KRS 158.6453.

(7) The Department of Education shall establish the requirements for a vocational certificate of completion. A student who has returned to school after dropping out shall receive counseling concerning the vocational program. A student who has completed the requirements established for a vocational program shall receive a vocational certificate of completion specifying the areas of competence.

History.

4363-5; Acts 1984, ch. 224, § 1, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 400, effective July 13, 1990; 1998, ch. 598, § 10, effective April 14, 1998; 2002, ch. 121, § 1, effective July 15, 2002; 2004, ch. 97, § 1, effective July 13, 2004; 2005, ch. 53, § 1, effective June 20, 2005; 2005, ch. 54, § 1, effective June 20, 2005; 2008, ch. 134, § 26, effective July 15, 2008; 2012, ch. 27, § 2, effective July 12, 2012; 2015 ch. 15, § 1, effective June 24, 2015; 2020 ch. 112, § 4, effective July 15, 2020; 2026 ch. 15, § 3, effective July 15, 2026.

Compiler's Notes.

This section (4363-5; amend. Acts 1984, ch. 224, § 1, effective July 13, 1984) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 400, effective July 13, 1990.

Legislative Research Commission Notes.

(7/15/2008). A reference to "KRS 156.160(1)(c)" in subsection (3)(a) of this statute, as amended by 2008 Ky. Acts ch. 134, sec. 26, has been changed in codification to "KRS 156.160(1)(d)" by the Reviser of Statutes under the authority of KRS 7.136(1) to reflect the insertion of a new paragraph in KRS 156.160(1) and change in the designation of succeeding paragraphs in 2008 Ky. Acts ch. 92, sec. 1.

NOTES TO DECISIONS

1. Completion of Program at Academy.

Individuals with Disabilities Education Act did not apply to a high school student who needed support accommodations while attending a residential program at a dual-credit, dual-enrollment school located on a state university campus because it was a postsecondary school and thus not included in

a free appropriate public education, although Kentucky's secondary school curriculum includes dual-credit and dual-enrollment courses and the student remained enrolled at the district high school. Bradley v. Jefferson Cnty. Pub. Sch., 88 F.4th 1190, 2023 FED App. 276P, 2023 U.S. App. LEXIS 33938 (6th Cir. Ky. 2023).

OPINIONS OF ATTORNEY GENERAL.

Retention and promotion of pupils is entirely a matter of local board of education policy and not a matter for control by parents. Parents do not have a right to demand that a child be retained at a particular grade level for any reason, and especially not for athletic purposes. OAG 82-473, 1982 Ky. AG LEXIS 162.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of this section. OAG 85-55, 1985 Ky. AG LEXIS 95.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Recognition of credits when transferring without transcript, 704 KAR 3:307.

World War II and Korean Veterans diplomas, 704 KAR 7:140.

158.141. Passing grade on civics test or course in civic literacy required for high school graduation — Testing procedures — Department to submit testing data to the Legislative Research Commission — Instruction areas for civic literacy course — Administrative regulations.

(1) Beginning with the entering ninth grade class of the 2025-2026 school year, and each year thereafter, graduation requirements for each student in every public high school in Kentucky graduating with a regular diploma shall include successful completion of either:

(a) A one-half (1/2) credit course in civic literacy that includes instruction in the areas required in subsection (5) of this section; or

(b) A civics test composed of one hundred (100) questions drawn from those that are set forth within the civics test administered by the United States Citizenship and Immigration Services to persons seeking to become naturalized citizens.

(2) A local board of education shall determine which option under subsection (1) of this section shall be required for graduates of the school district.

(3) If the board requires the completion of subsection (1)(b) of this section:

(a) The board shall prepare or approve a test composed of the questions described in subsection (1)(b) of this section and shall disseminate the test to all public high schools of the district. The test shall be administered by each public high school in the district;

(b) A public high school shall provide each student with the opportunity to take the test as many times as necessary for the student to pass the test without the use of instructional aids during testing, including but not limited to textbooks and internet browser searching. A student shall not receive a regular high school diploma until the student successfully completes the test as specified in paragraph (c) of this subsection;

(c) A student shall be considered to have successfully completed the test if at least seventy percent (70%) of the questions are answered correctly. A student who has passed a similar test within the previous five (5) years may provide the board with evidence of successful completion and shall not be required to take the test under this section;

(d) By September 1, 2026, and each year thereafter, each school district requiring a civics test for graduation shall submit annual testing data to the Kentucky Department of Education. The department shall compile the data and by November 1 of each year submit an annual report to the Legislative Research Commission for referral to the Interim Joint Committee on Education. The report shall include:

1. The first-time successful completion rate of the civics test; and

2. The average number of times a student takes the civics test for successful completion; and

(e) Provisions of this section shall be subject to the requirements and accommodations of a student's individualized education program as defined in KRS 158.281 or a Section 504 Plan as defined in KRS 156.027.

(4) Students pursuing an early graduation program as established in KRS 158.142 shall complete the requirement prior to the student's graduation.

(5) A civic literacy course shall include but not be limited to instruction in the following areas:

(a) An overview of America's founding history, including but not limited to key texts; the role and operations of local, state, and national governments; the rights and responsibilities of citizenship; federalism; civil liberties; and civil rights;

(b) Principles of the United States government;

(c) The Constitution of Kentucky and the Constitution of the United States;

(d) Institutions of the United States government and the responsibilities of the executive branch, legislative branch, and judicial branch;

(e) State government and local governments and the role of each;

(f) Political parties and interest groups;

(g) Campaigns and elections;

(h) United States Congress;

(i) Domestic policy;

(j) Foreign policy;

(k) Comparative systems;

(*l*) International relations; and

(m) Major issues facing government.

(6) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS 156.160 to establish academic standards for civic literacy.

History.

2017 ch. 109, § 1, effective June 29, 2017; 2024 ch. 122, § 1, effective July 15, 2024.

158.1411. Financial literacy requirements for high school graduation — Establishment of academic standards, curricula, and guidelines for financial literacy.

(1) For students entering grade nine (9) on or before June 30, 2025, successful completion of one (1) or more courses or programs that meet the financial literacy standards shall be a Kentucky public high school graduation requirement.

(2) For students entering grade nine (9) on or after July 1, 2025, successful completion of a one (1) credit course in financial literacy shall be a Kentucky public high school graduation requirement.

(3) The graduation requirement in subsections (1) and (2) shall also apply to a student pursuing an early graduation program as established in KRS 158.142.

(4) The financial literacy course required in subsection (2) of this section shall align to the student's individual learning plan and include but not be limited to instruction in the following areas:

(a) Budgeting;

(b) Saving and investing;

(c) Credit and debt;

(d) Insurance and risk management, including but not limited to personal insurance policies;

(e) Taxes; and

(f) The necessity of critical review and understanding of documents prior to signing agreement or approval and the ability to provide a signature in cursive.

(5) The financial literacy course required in subsection (2) of this section shall be accepted as an elective course requirement for high school graduation notwithstanding any other provisions of law.

(6) In accordance with KRS 156.160, the Kentucky Board of Education shall promulgate administrative regulations establishing academic standards for financial literacy.

(7) The local superintendent, after consultation with the local board of education, school-based decision making council, and principal of each high school, shall determine curricula for course offerings that are aligned with the financial literacy academic standards promulgated by the Kentucky Board of Education.

(8) The Department of Education shall develop financial literacy guidelines for local schools and districts.

(9) Local schools and districts may consult with the Kentucky Financial Empowerment Commission established in KRS 41.450 when developing and implementing the financial literacy standards.

(10) The Department of Education shall identify through the system for uniform academic course codes, which courses meet the requirements for the financial literacy course required in subsection (2) of this section.

History.

2018 ch. 81, § 1, effective July 14, 2018; 2025 ch. 58, § 1, effective June 27, 2025.

158.1413. Essential workplace ethics instruction program — Required biennial collaboration — Symbol of attainment of essential workplace ethics indicators.

(1) Each school district shall implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace. Each student in elementary, middle, and high school shall receive essential workplace ethics instruction that shall include but not be limited to:

(a) Adaptability, including an openness to learning and problem solving, an ability to embrace new ways of doing things, and a capability for critical thinking;

(b) Diligence, including seeing a task through to completion;

(c) Initiative, including taking appropriate action when needed without waiting for direct instruction;

(d) Knowledge, including exhibiting an understanding of work-related information, the ability to apply that understanding to a job, and effectively explain the concepts to colleagues in reading, writing, mathematics, science, and technology as required by the job;

(e) Reliability, including showing up on time, wearing appropriate attire, self-control, motivation, and ethical behavior;

(f) Remaining drug-free; and

(g) Working well with others, including effective communication skills, respect for different points of view and diversity of coworkers, the ability to cooperate and collaborate, enthusiasm, and the ability to provide appropriate leadership to or support for colleagues.

(2)(a) A school district shall use the essential workplace ethics characteristics listed in subsection (1) of this section when creating a program or when choosing an existing program.

(b) Each school district's local workforce investment board, in conjunction with local economic development organizations from its state regional sector, and other economic, workforce, or industry organizations the workforce investment board deems necessary, shall recommend to the school district best practices which may be used by schools to implement an essential workplace ethics program.

(3) Every odd-numbered year, each local school board shall collaborate with the local workforce investment board, in conjunction with local economic development organizations from its state regional sector, and other economic, workforce, or industry organizations the workforce investment board deems necessary, to establish essential workplace ethics indicators for middle and high school students that are aligned with the essential workplace ethics characteristics listed in subsection (1) of this section.

(4) Each local school board shall design and adopt a diploma seal, certificate, card, or other identifiable symbol to award students deemed as having minimally demonstrated attainment of the local board's essential workplace ethics indicators.

History.

2018 ch. 158, § 1, effective July 14, 2018; 2026 ch. 196, § 22, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.

158.1415. Curriculum for instruction on human sexuality or sexually transmitted diseases — Written consent of parents — Notification to parents — Provision of alternative curriculum — Exceptions.

(1) If a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the following content:

(a) Abstinence from sexual activity is the desirable goal for all school-age children;

(b) Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems;

(c) The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship;

(d) A policy to respect parental rights by ensuring that:

1. Except as provided in subsection (4)(b) of this section, children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or

2. Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation; and

(e) A policy to notify a parent in advance and obtain the parent's written consent before the parent's child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases authorized in this section.

(2) Any course, curriculum, or program offered by a public school on the subject of human sexuality provided by school personnel or by third parties authorized by the school shall:

(a) Provide an alternative course, curriculum, or program without any penalty to the student's grade or standing for students whose parents have not provided written consent as required in subsection (1)(e) of this section;

(b) Be subject to an inspection by parents of participating students that allows parents to review the following materials:

1. Curriculum;
2. Instructional materials;
3. Lesson plans;
4. Assessments or tests;
5. Surveys or questionnaires;
6. Assignments; and
7. Instructional activities;

(c) Be developmentally appropriate; and

(d) Be limited to a curriculum that has been subject to the reasonable review and response by stakeholders in conformity with this subsection and KRS 160.345(2).

(3) A public school offering any course, curriculum, or program on the subject of human sexuality shall provide notification to the parents of a student at least two (2) weeks prior to the student's planned participation in the course, curriculum, or program. The notification shall:

(a) Inform the parents of the provisions of subsection (2) of this section;

(b) Provide the date the course, curriculum, or program is scheduled to begin;

(c) Detail the process for a parent to review the materials outlined in subsection (2) of this section;

(d) Explain the process for a parent to provide written consent for the student's participation in the course, curriculum, or program; and

(e) Provide the contact information for the teacher or instructor of the course, curriculum, or program and a school administrator designated with oversight.

(4) Nothing in this section shall prohibit school personnel from:

(a) Discussing human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation to a topic of instruction from a curriculum approved pursuant to KRS 160.345;

(b) Providing age-appropriate instruction on child sexual abuse through curriculum or programs in accordance with the standards set forth by the National Children's Alliance and approved by the Children's Advocacy Centers of Kentucky, regardless of grade level; or

(c) Responding to a question from a student during class regarding human sexuality as it relates to a topic of instruction from a curriculum approved pursuant to KRS 160.345.

History.

2018 ch. 156, § 1, effective July 14, 2018; 2023 ch. 132, § 2, effective March 29, 2023; 2025 ch. 149, § 3, effective June 27, 2025.

158.142. Early high school graduation program — Requirements — Early Graduation Scholarship Certificate — Award from early graduation scholarship trust fund.

(1) Beginning with the 2014-2015 school year, a public school student may complete an early high school graduation program and qualify for an Early Graduation Scholarship Certificate for use at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or nonprofit, independent institution that is accredited by the Southern Association of Colleges and Schools, if conditions specified in this section are met.

(2) Each student desiring to complete an early graduation program shall indicate to the secondary school principal his or her intent prior to the beginning of grade nine (9) or as soon thereafter as the intent is known. The intent shall be indicated on a form provided by the Kentucky Department of Education and signed by the parent.

(3) For early graduation in accordance with this section, a student shall successfully complete the requirements for early high school graduation as estab-

lished in administrative regulation by the Kentucky Board of Education.

(4) The Kentucky Board of Education or a local board of education shall not impose graduation requirements that would prohibit a student who is pursuing an early graduation program as described in this section from finishing high school in less than four (4) years.

(5) Students pursuing early graduation may take two (2) high school English courses in an academic year.

(6) Students pursuing early graduation may complete selected courses at the middle school level. Each school district is encouraged to provide access to all middle school students to English I and Algebra I courses for high school credit. Access may be provided by each middle school offering the course on-site or by the district providing transportation for students to a central location within the district, to a neighboring school within the district, or to a neighboring school district. The district may also provide access for the student to take these courses online based on the local board of education policy.

(7)(a) In addition to the regular high school diploma, a student who completes a program of study that meets the requirements of subsection (3) of this section shall receive an Early Graduation Scholarship Certificate signed by the high school principal and district superintendent.

(b) A student who earns an Early Graduation Scholarship Certificate shall be eligible for a scholarship award to be used at an institution described in subsection (1) of this section. The award amount shall be equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level as described in KRS 157.360 for the year in which the student graduates.

(c) The student shall be eligible for the scholarship award only for the next academic year following early graduation.

(d) Each public high school shall report all Early Graduation Scholarship Certificate recipients by July 1 for the previous academic year to the Kentucky Higher Education Assistance Authority.

(e) Each postsecondary institution described in subsection (1) of this section shall notify the Kentucky Higher Education Assistance Authority of students with an Early Graduation Scholarship Certificate who enroll in the institution. The authority shall disburse the award amount described in paragraph (b) of this subsection from the early graduation trust fund established by KRS 164.7892.

History.

Enact. Acts 2013, ch. 104, § 1, effective June 25, 2013; 2022 ch. 54, § 1, effective July 14, 2022.

158.143. High school equivalency diploma — Eligibility — State agency child — Student enrolled in district-operated alternative education program.

(1) Notwithstanding any other statute to the contrary, a state agency child, as defined in KRS 158.135(1), who is at least seventeen (17) years of age shall be eligible to seek attainment of a High School Equivalency Diploma.

(2) Notwithstanding any other statute to the contrary, a student enrolled in a district-operated alternative education program shall be eligible to seek attainment of a High School Equivalency Diploma if the student:

(a) Is at least seventeen (17) years of age;

(b) Is not on track to graduate, as defined by the local board of education policy; and

(c) Has previously attained a passing score on an official readiness test for a High School Equivalency Diploma program authorized by the Office of Adult Education pursuant to KRS 151B.403.

(3) Notwithstanding KRS 159.010 or any school district policy adopted pursuant to KRS 159.010, a student who has attained a High School Equivalency Diploma in accordance with subsection (1) or (2) of this section shall be exempt from compulsory attendance.

(4) A local board of education shall adopt a policy to define when a student enrolled in a district-operated alternative education program is not on track to graduate. The Kentucky Board of Education may publish a recommended model policy for local boards of education but shall not impose any restrictions or requirements upon the content of the local board policy.

History.

2017 ch. 170, § 1, effective June 29, 2017; 2022 ch. 78, § 1, effective July 14, 2022.

158.144. Adult caregiver with whom minor student resides may, by affidavit, establish authority to make school-related decisions for minor student — Conditions — Caretaker's decision may be superseded — Obligations and liability of person relying on affidavit of authority — Revocation of affidavit — Statute subordinate to federal law — Penalty.

(1) As used in this section, "caregiver" has the same meaning as provided in KRS 405.024(1).

(2)(a) A caregiver may be authorized to make school-related decisions for a minor residing in the caregiver's home, including but not limited to decisions concerning enrollment, attendance, extracurricular activities, discipline, special education and related services, and other school-related activities, if the caregiver presents to the school a duly executed affidavit as described in KRS 405.024(2).

(b) A school shall honor a caregiver's authority to make school-related decisions for a minor residing in the caregiver's home if the caregiver presents the school with a duly executed affidavit as described in KRS 405.024(2). The affidavit shall be valid in the school district in which the caregiver resides, but a school official charged with the responsibility of enrolling a minor shall not honor the affidavit if the official has reasonable grounds to believe that the affidavit is presented solely for the purpose of enrolling the minor in a school for the purpose of:

1. Access to athletics programs; or

2. Circumventing the school assignment, attendance, or boundaries policies of the school district

to gain access to curricula, services, or programs unique to a particular school and not offered at other schools the minor would be eligible to attend.

(3) A school-related decision made by a caregiver under the affidavit described in KRS 405.024(2) shall be superseded by a decision of a parent, de facto custodian as defined in KRS 403.270, guardian, or legal custodian of the minor. A school official shall refuse to honor a caregiver's decision if he or she has actual knowledge that a parent, de facto custodian as defined in KRS 403.270, guardian, or legal custodian has made a school-related decision superseding the decision of a caregiver.

(4) A person who relies in good faith on a duly executed affidavit as described in KRS 405.024(2) shall be under no obligation to undertake further investigation into the circumstances forming the basis of the caregiver's authority to make school-related decisions for the minor to whom the affidavit applies.

(5) A person who relies in good faith on a duly executed affidavit as described in KRS 405.024(2) in honoring a school-related decision of a caregiver shall not be subject to criminal or civil liability because of that reliance.

(6) An affidavit described in KRS 405.024(2) may be revoked by the minor's parent, de facto custodian, guardian, legal custodian, or caregiver, and shall be revoked if the minor to whom it applies ceases to reside with the caregiver. If an affidavit is revoked, the caregiver shall give written notice of revocation to any school to which the affidavit was presented for the purposes of enrolling the minor and establishing the caregiver's authority to make school-related decisions for the minor.

(7) The provisions of this section shall not supersede the provisions of:

(a) The Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq., and its accompanying regulations at 34 C.F.R. pts. 300 et seq.;

(b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 705(20) and 794 to 794b, and its accompanying regulations at 34 C.F.R. pts. 104 et seq.; and

(c) The Family Educational and Privacy Rights Act, 20 U.S.C. sec. 1232g, and its accompanying regulations at 34 C.F.R. pts. 99 et seq.

(8) A person who knowingly makes a false statement in an affidavit described in KRS 405.024(2) shall be guilty of a Class A misdemeanor as required under KRS 405.024(11).

History.

Enact. Acts 2014, ch. 69, § 3, effective July 15, 2014.

158.145. Legislative findings and declarations on school dropout rate.

(1) The General Assembly hereby finds that:

(a) Little progress has been made in reducing the state's student dropout rate;

(b) The number of school dropouts in Kentucky is unacceptable;

(c) The factors, such as lack of academic success, poor school attendance, lack of parental support and encouragement, low socioeconomic status, poor health, child abuse, drug and alcohol addictions, alienation from school and community, and other factors that are associated with an increased probability of students dropping out of school, occur long before the end of compulsory school age;

(d) Students who drop out of school before graduation are less likely to have the basic capacities as defined in KRS 158.645 and the skills as defined in KRS 158.6451;

(e) The number of school dropouts seriously interferes with Kentucky's ability to develop and maintain a well-educated and highly trained workforce;

(f) The effects of students dropping out of school can be felt throughout all levels of society and generations in increased unemployment and underemployment, reduced personal and family incomes, increased crime, decreased educational, social, emotional, and physical well-being, and in increased needs for government services; and

(g) The positive reduction in school dropouts can only be achieved by comprehensive intervention and prevention strategies.

(2) The General Assembly declares on behalf of the people of the Commonwealth the following goals to be achieved by the year 2006:

(a) The statewide annual average school dropout rate will be cut by fifty percent (50%) of what it was in the year 2000. All students who drop out of a school during a school year and all students who have not graduated, fail to enroll in the school for the following school year, and do not transfer to another school, shall be included in the statewide annual average school dropout rate;

(b) No school will have an annual dropout rate that exceeds five percent (5%); and

(c) Each county will have thirty percent (30%) fewer adults between the ages of sixteen (16) and twenty-four (24) without a high school diploma or a High School Equivalency Diploma than the county had in the year 2000.

History.

Enact. Acts 2000, ch. 452, § 1, effective July 14, 2000; 2004, ch. 103, § 1, effective July 13, 2004; 2017 ch. 156, § 16, effective April 10, 2017; 2017 ch. 63, § 12, effective June 29, 2017.

Legislative Research Commission Notes.

(6/29/2017). This statute was amended by 2017 Ky. Acts chs. 63 and 156, which do not appear to be in conflict and have been codified together.

158.146. Establishment of strategy to address school dropout problem — Department to provide technical assistance, award grants, and disseminate information to school districts and school level personnel.

(1) No later than December 30, 2000, the Kentucky Department of Education shall establish and implement a comprehensive statewide strategy to provide assistance to local districts and schools to address the student dropout problem in Kentucky public schools. In the development of the statewide strategy, the department shall engage private and public representatives who have an interest in the discussion. The statewide

strategy shall build upon the existing programs and initiatives that have proven successful. The department shall also take into consideration the following:

(a) Analyses of annual district and school dropout data as submitted under KRS 158.148 and 158.6453;

(b) State and federal resources and programs, including, but not limited to, extended school services; early learning centers; family resource and youth service centers; alternative education services; preschool; service learning; drug and alcohol prevention programs; School-to-Careers; High Schools that Work; school safety grants; and other relevant programs and services that could be used in a multidimensional strategy;

(c) Comprehensive student programs and services that include, but are not limited to, identification, counseling, mentoring, and other educational strategies for elementary, middle, and high school students who are demonstrating little or no success in school, who have poor school attendance, or who possess other risk factors that contribute to the likelihood of their dropping out of school; and

(d) Evaluation procedures to measure progress within school districts, schools, and statewide.

(2) No state or federal funds for adult education and literacy, including but not limited to funds appropriated under KRS 151B.409 or 20 U.S.C. secs. 9201 et seq., shall be used to pay for a high school student enrolled in an alternative program operated or contracted by a school district leading to a certificate of completion or a High School Equivalency Diploma.

(3) The department, with assistance from appropriate agencies, shall provide technical assistance to districts requesting assistance with dropout prevention strategies and the development of district and schoolwide plans.

(4) The department shall award grants to local school districts for dropout prevention programs based upon available appropriations from the General Assembly and in compliance with administrative regulations promulgated by the Kentucky Board of Education for this purpose. Seventy-five percent (75%) of the available dropout funds shall be directed to services for at-risk elementary and middle school students, including, but not limited to, identification, counseling, home visitations, parental training, and other strategies to improve school attendance, school achievement, and to minimize at-risk factors. Twenty-five percent (25%) of the funds shall be directed to services for high school students identified as likely to drop out of school, including, but not limited to, counseling, tutoring, extra instructional support, alternative programming, and other appropriate strategies. Priority for grants shall be awarded to districts that average, over a three (3) year period, an annual dropout rate exceeding five percent (5%).

(5) The department shall disseminate information on best practices in dropout prevention in order to advance the knowledge for district and school level personnel to address the dropout problem effectively.

History.

Enact. Acts 2000, ch. 452, § 2, effective July 14, 2000; 2004, ch. 103, § 3, effective July 13, 2004; 2017 ch. 63, § 13, effective June 29, 2017; 2019 ch. 146, § 27, effective June 27, 2019.

158.148. Definitions of "bullying" and "parent or guardian"— Discipline guidelines, transportation services policy, and model policies — Local code of acceptable behavior and discipline — Required contents of code.

(1) As used in this section:

(a)1. "Bullying" means any unwanted verbal, physical, or social behavior among students that involves a real or perceived power imbalance and is repeated or has the potential to be repeated:

a. That occurs on school premises, on school-sponsored transportation, or at a school-sponsored event; or

b. That disrupts the education process; and

2. This definition shall not be interpreted to prohibit civil exchange of opinions or debate or cultural practices protected under the state or federal Constitution where the opinion expressed does not otherwise materially or substantially disrupt the education process; and

(b) "Parent or guardian" means a parent, legal guardian, or other person exercising custodial control or supervision of a student.

(2) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of Professional Educators, the Kentucky Association of School Superintendents, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, and in collaboration with the Center for School Safety, the Department of Education shall develop or update as needed and distribute to all districts by August 31 of each even-numbered year:

(a) Statewide student discipline guidelines to ensure safe schools, including the definition of serious incident for the reporting purposes as identified in KRS 158.444;

(b) Statewide transportation services policy guidelines to ensure the safety of students, operators of vehicles, and other passengers using district-provided transportation;

(c) Recommendations designed to improve the learning environment and school climate, parental and community involvement in the schools, and student achievement; and

(d) Model policies to implement the provisions of this section and KRS 158.110, KRS 158.156, 158.444, 525.070, and 525.080.

(3) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, the department, in collaboration with the Center for School Safety, shall identify successful strategies currently being used in programs in Kentucky and in other states and shall incorporate those strategies into the statewide student discipline guidelines, transportation services policy guidelines, and the recommendations under subsection (2) of this section.

(4) Copies of the statewide student discipline guidelines and the transportation services policy guidelines shall be distributed to all school districts. The state-

wide student discipline guidelines shall contain broad principles and legal requirements to guide local districts in the development of their own code of acceptable behavior and discipline; the selection of discipline and classroom management techniques by school councils under KRS 158.155 and 160.345; the development of the district transportation services policy; and the development of the district-wide safety plan.

(5)(a) Each local board of education shall adopt a code of acceptable behavior and discipline based on the statewide student discipline guidelines that shall apply to the students in each school operated by the board. The code shall be updated no less frequently than every two (2) years.

(b) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an emergency.

(c) The code shall prohibit bullying.

(d) The code shall contain the standard of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.

(e) The code shall contain:

1. Procedures for identifying, documenting, and reporting incidents of bullying, incidents of violations of the code, and incidents for which reporting is required under KRS 158.156;

2. Procedures for investigating and responding to a complaint or a report of bullying or a violation of the code, or of an incident for which reporting is required under KRS 158.156, including reporting incidents to the parents or guardians of the students involved;

3. A strategy or method of protecting a complainant or person reporting:

a. An incident of bullying;

b. A violation of the code; or

c. An incident for which reporting is required under KRS 158.156; from retaliation;

4. A process for informing students, parents or guardians, and school employees of the requirements of the code and the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080, including training for school employees; and

5. Information regarding the consequences of bullying and violating the code and violations reportable under KRS 158.155, 158.156, or 158.444.

(f) The principal of each school shall apply the code of acceptable behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.

(g) A copy of the code of acceptable behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents or guardians shall be provided copies of the code.

(6)(a) Each local board of education shall adopt a transportation services policy to apply to students while on transportation provided for or by the district, and to their parents or guardians. The policy shall be updated no less frequently than every two (2) years, with the first update being completed by the first instructional day of the 2024-2025 school year.

(b) The superintendent or designee shall be responsible for overall implementation and supervision. The board shall select and implement the appropriate discipline and transportation management techniques necessary to carry out the policy. The board shall establish a process for a two-way communication system for bus drivers and other employees, volunteers, or contractors to notify a supervisor, superintendent, or other administrator of an emergency.

(c) The policy shall contain the standard of behavior expected from each student while being transported by or for the district and the consequences of failure to obey the standards. The policy shall include:

1. Procedures for identifying, documenting, and reporting incidents of bullying, incidents of violations of the policy, and incidents for which reporting is required under KRS 158.156;

2. Procedures for investigating and responding to a complaint or a report of bullying or a violation of the policy, or of an incident for which reporting is required under KRS 158.156, including reporting incidents to the parents or guardians of the students involved;

3. A strategy or method of protecting a complainant or person reporting a violation of the policy from retaliation;

4. When a student is alleged by an operator of transportation to have committed a violation of the policy that places the student or others at risk of physical harm or otherwise makes it unsafe for the driver to continue transporting students, and as permitted by state and federal law, a process that allows the operator of the vehicle to:

a. Refuse further transportation of the student at the time of the incident, upon notification of the emergency pursuant to paragraph (b) of this subsection, and transfer the student to:

i. An appropriate district official who has reported to the location of the vehicle;

ii. An appropriate district official located at a location designated in the transportation services policy or by an appropriate district official, including but not limited to a bus compound or transfer station;

iii. Law enforcement; or

iv. The student's parent or guardian; and

b. Upon filing and submitting a written report to the superintendent or designee, refuse future transportation of the student until an interim or final determination of disciplinary action by the

superintendent or designee pursuant to local board policy;

5. For alleged violations of the policy not covered by subparagraph 4. of this paragraph and submitted by the operator of the vehicle, a requirement that the superintendent or designee issue an interim or final determination of disciplinary action pursuant to local board policy within one (1) week of the report being submitted;

6. A process allowing for the operator of a vehicle to:

a. File a written or electronic complaint or report of the misconduct, including a recommendation regarding revocation of the student's transportation privileges; and

b. Be heard during any disciplinary proceedings against a student relating, at least in part, to misconduct that occurred during the operator's transportation of the student;

7. A requirement that any recommendation by the operator of a vehicle shall be considered by the superintendent or designee as a factor in the interim or final determination of disciplinary action on the complaint or report;

8. A requirement that the operator of a vehicle, to the extent permitted by law, receive written notice from the superintendent or designee of the investigation, disciplinary action imposed, and reasoning in response to the reported misconduct; and

9. A disciplinary structure that provides for:

a. Interventions or disciplinary consequences that reflect the severity of the violation; and

b. Increased intervention and consequences upon subsequent violations of the policy.

(d) The policy shall contain the standard of behavior expected from parents or guardians of students being transported by or for the district while interacting with district transportation staff and the consequences of failure to follow the standards. The policy shall include:

1. Procedures for investigating and responding to a complaint or report made by an operator of transportation alleging parent or legal guardian misconduct;

2. A requirement that the operator of a vehicle be provided an opportunity to be heard and to make a recommendation regarding future transportation of the student during any disciplinary proceedings relating, at least in part, to alleged misconduct by the student's parent or guardian and the impact upon a student's transportation privileges; and

3. An intervention or consequences structure that provides for the placement of conditions upon or revocation of a student's transportation privileges based upon parent or guardian misconduct that provides for:

a. Interventions or consequences that reflect the severity of the parent or guardian's misconduct; and

b. Increased intervention and consequences upon subsequent violations of the policy.

(e) The policy shall include references to relevant criminal violations based on potential misconduct covered by the policy, including but not limited to the following statements:

1. "KRS 511.020 makes it a Class B felony for a person, with the intent to commit a crime, knowingly entering or remaining unlawfully upon a school bus, and when in effecting entry or while upon the school bus or in the immediate flight therefrom, the person or another participant in the crime causes physical injury to another person or uses or threatens the use of a dangerous instrument against another person.";

2. "KRS 508.078 makes it a Class C felony for a person to intentionally threaten to commit any act likely to result in death or serious physical injury to any employee of an elementary or secondary school, which includes a school bus driver.";

3. "KRS 508.025 makes it a Class D felony for a person to recklessly, with a deadly weapon or dangerous instrument, or intentionally cause or attempt to cause physical injury to a school bus driver or other school employee acting in the course and scope of their employment.";

4. "KRS 519.020 makes it a Class A misdemeanor for a person to obstruct governmental operations, which includes intentionally obstructing, impairing, or hindering the performance of a governmental function by using or threatening to use violence, force or physical interference."; and

5. "KRS 525.070 makes it a Class B misdemeanor for a person, with intent to intimidate, harass, annoy, or alarm another person, to strike, shove, kick, or otherwise subject another to physical contact.".

(f) The policy shall include a process for an operator of a vehicle, upon the reinstatement of a student's transportation privileges after an interim or final determination of disciplinary action, to elect to receive an alternate route assignment in lieu of transporting the student.

(g) The superintendent or designee of each district shall apply the transportation services policy uniformly and fairly to each student without partiality or discrimination.

(h) The superintendent or designee shall require every student in the district and at least one (1) parent or guardian of each student to acknowledge in writing the receipt, comprehension, and agreement of adherence to the transportation safety policy within seven (7) days of the student's first day of attendance during each school year. Failure to submit written acknowledgement by a student or their parent or guardian may be grounds for revocation of a student's transportation privileges until the acknowledgment is properly received.

(7) Any action under this section related to students with disabilities shall be in compliance with applicable federal law.

History.

Enact. Acts 1984, ch. 397, § 3, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 13, effective October 18, 1985; 1990, ch. 476, Pt. IV, § 204, effective July 13, 1990; 1996, ch. 8, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 493, § 11, effective April 10, 1998; 2000, ch. 452, § 4, effective July 14, 2000; 2008, ch. 125, § 3, effective

July 15, 2008; 2014, ch. 132, § 12, effective July 15, 2014; 2016 ch. 81, § 1, effective July 15, 2016; 2024 ch. 9, § 2, effective July 15, 2024; 2024 ch. 174, § 37, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2016). In codification, the Reviser of Statutes has altered the internal numbering of subsection (5) of this statute from the way it appeared in 2016 Ky. Acts ch. 81, sec. 1 under the authority of KRS 7.136(1)(a).

(7/15/2024). This statute was amended by 2024 Ky. Acts chs. 9 and 174, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

1. No Evidence of Bullying.

In a suit by the estate of the decedent, a 13-year-old eighth-grader who allegedly committed suicide based on being bullied at school, against various teachers and administrators, even though the teachers were not immune from suit, the trial court did not err by granting summary judgment as the estate presented no credible evidence that the decedent was bullied because, the estate never placed in the record the affidavits from the decedent's classmates describing the torment the decedent endured and that the principal was notified of the cruel conduct and teachers turned a blind eye to it; and, without some factual support for the bullying allegations, there was no evidence of the teachers' negligence under the anti-bullying policies. Patton v. Bickford, 2016 Ky. LEXIS 95 (Ky. Mar. 17, 2016), sub. op., 529 S.W.3d 717, 2016 Ky. LEXIS 681 (Ky. 2016), modified, 2017 Ky. LEXIS 302 (Ky. Aug. 24, 2017).

NOTES TO UNPUBLISHED DECISIONS

1. Maintenance of Safe Learning Environment.

Circuit court erred in ruling that two former high school principals were not entitled to qualified official immunity for injuries sustained by a student because the principals were performing their general supervisory duties by making hallway assignments and walking the school's hallways as part of their job requirements and the principals were necessarily required to use their discretion to fill an absent teacher's station where the Student Supervision Schedule did not include a clear directive for the particular situation. Beward v. Whitaker, 2016 Ky. App. Unpub. LEXIS 754 (Ky. Ct. App. 2016), review denied, ordered not published, 2016 Ky. LEXIS 481 (Ky. Sept. 15, 2016).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Student discipline guidelines, 704 KAR 7:050.

Kentucky Bench & Bar.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

158.149. Use of tobacco products, alternative nicotine products, and vapor products on school property and during school activities — Written policies — Penalties — Department to post nicotine awareness information on website — Annual reports.

(1) As used in this section:

(a) "Alternative nicotine product" has the same meaning as in KRS 438.305;

(b) "Tobacco product" has the same meaning as in KRS 438.305; and

(c) "Vapor product" has the same meaning as in KRS 438.305.

(2) The use of any tobacco product, alternative nicotine product, or vapor product:

(a) Shall be prohibited for all persons and at all times on or in all property, including any vehicle, that is owned, operated, leased, or contracted for use by a local board of education;

(b) Shall be prohibited for all students while attending or participating in any school-related student trip or student activity; and

(c) Shall be prohibited for school district employees, volunteers, and all other individuals affiliated with a school while the user is attending or participating in any school-related student trip or student activity and is in the presence of a student or students.

(3) Each local board of education shall implement this section by adopting written policies that prohibit the use of tobacco products, alternative nicotine products, and vapor products pursuant to this section. The policies shall provide for:

(a) The distribution of evidence-based, age-appropriate nicotine prevention and cessation material to all students of the district at the beginning of each school year;

(b) Access to evidence-based, age-appropriate nicotine prevention and cessation material throughout the school year for all students of the district;

(c) Adequate notice regarding the policy to be provided to students, parents and guardians, school employees, and the general public;

(d) A requirement to post signage on or in all property, including any vehicle, that is owned, operated, leased, or contracted for use by a local board of education, clearly stating that use of tobacco products, alternative nicotine products, and vapor products is prohibited at all times and by all persons on or in the property; and

(e) A requirement that school employees enforce the policies.

(4)(a) A person who violates subsection (2) of this section, or policies adopted by a local board of education pursuant to subsection (3) of this section, shall be subject to penalties as set forth by the local board of education.

(b) In the district's code of acceptable behavior and discipline formulated under KRS 158.148(5), each local board of education shall include a policy which, at a minimum, provides that if a student under the age of twenty-one (21) violates subsection (2) of this section, then the district will confiscate the alternative nicotine products, tobacco products, or vapor products and:

1. For the first incident, the school counselor or other school-based mental health services provider shall provide to the parent or guardian and the student evidence-based, age-appropriate nicotine cessation information to include but not be limited to materials, programs, and referrals for treatment;

2. A second incident shall result in providing information as required in subparagraph 1. of this

paragraph and disciplinary action as determined by the board and included in the district's code of acceptable behavior and discipline; and

3. The third and subsequent incidents may result in an in-school or out- of-school suspension of that student. The school shall provide the opportunity for a student to complete an evidence-based, age-appropriate nicotine education program during an in-school suspension.

(5) Nothing in this section shall be interpreted or construed to:

(a) Permit use of a tobacco product, alternative nicotine product, or vapor product, where it is otherwise restricted by this section, other state or federal law, administrative regulation, or executive order;

(b) Prevent a local board of education or any other local governmental entity from adopting local ordinances, regulations, or policies relating to use of a tobacco product, alternative nicotine product, or a vapor product, in public places of employment, and nonenclosed areas, that are more restrictive than what is provided for in this section; or

(c) Repeal any existing local ordinances, regulations, or policies that provide restrictions on the use of a tobacco product, alternative nicotine product, or vapor product, in addition to those provided for in this section.

(6) By August 1, 2024, the department, after consultation with the Cabinet for Health and Family Services, shall post on its website nicotine awareness information to include but not be limited to the various types of products containing nicotine, the health issues associated with nicotine, and a list of evidence-based cessation programs available to school districts.

(7) The department, regional educational cooperatives, and local boards of education may identify and apply for grant opportunities relating to nicotine usage, including but not limited to nicotine cessation, vaping, and tobacco products containing nicotine, and the health consequences of the use of nicotine products.

(8) No later than August 1 of each year, each local board of education shall submit a report to the department that includes:

(a) The number of behavior incidents for each product defined in subsection (1) of this section, listed by school and grade; and

(b) The number of incidents in paragraph (a) of this subsection for which medical intervention was provided, listed by school, grade, and product.

(9) No later than September 1 of each year, the department shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committee on Education that compiles all of the data required in subsection (8) of this section.

History.

2019 ch. 198, § 1, effective June 27, 2019; 2024 ch. 149, § 1, effective July 15, 2024.

Compiler's Notes

This section was formerly codified as KRS 438.345.

158.150. Suspension or expulsion of students — Alternative program or other intervention — Removal from classroom — Return of expelled student to school district.

(1) All students admitted to the common schools shall comply with the lawful regulations for the government of the schools:

(a) Willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property of students, the carrying or use of weapons or dangerous instruments, or other incorrigible bad conduct on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school; and

(b) Assault or battery or abuse of school personnel; stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities constitutes cause for suspension or expulsion from school.

(2)(a) Each local board of education shall adopt a policy requiring the expulsion from school for a period of at least twelve (12) months for a student who:

1. Is determined by the board through clear and convincing evidence to have made threats that pose a danger to the well-being of students, faculty, or staff of the district;

2. Is determined by the board to have brought a weapon to a school under its jurisdiction. In determining whether a student has brought a weapon to school, a local board of education shall:

a. Use the definition of "unlawful possession of a weapon on school property" described in KRS 527.070; and

b. Include bus stops; or

3. Is in grade six (6) to twelve (12) and is determined by the board to have recklessly, with a deadly weapon or dangerous instrument, or intentionally caused or attempted to cause physical injury to a school district employee on school property or at a school function under the board's jurisdiction. In considering the actions of a student under this subparagraph, a local board of education shall use the definitions of "dangerous instrument," "deadly weapon," and "physical injury" in KRS 500.080, and "intentionally" and "recklessly" in KRS 501.020.

(b) The board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have:

1. Possessed prescription drugs or controlled substances for the purpose of sale or distribution at a school under the board's jurisdiction;

2. Physically assaulted, battered, or abused another student on school property, at a bus stop, or at a school function under the board's jurisdiction; or

3. Physically assaulted, battered, or abused school personnel or other students off school property and the incident is likely to substantially disrupt the educational process.

(c) As used in this subsection:

1. "Bus stop" means a location where students wait for, board, or disembark a school bus of the school district while those actions are occurring; and

2. "School personnel" shall not include a student who is employed by a school or enrolled in any school-based apprenticeship program.

(3)(a) The board may modify the expulsion requirement and length for students on a case-by-case basis, except the length of expulsion shall be at least twelve (12) months for a violation set forth in subsection (2)(a) of this section.

(b) This section shall not prohibit a board from expelling a student for longer than twelve (12) months.

(c)1. A board that has expelled a student from the student's regular school setting shall provide or ensure that educational services are provided to the student in an appropriate alternative program or setting, unless the board has made a determination, on the record, supported by clear and convincing evidence, that the expelled student posed a threat to the safety of other students or school staff and could not be placed into an appropriate alternative program or setting. Behavior which constitutes a threat shall include but not be limited to the physical assault, battery, or abuse of others; the threat of physical force; being under the influence of drugs or alcohol; the use, possession, sale, or transfer of drugs or alcohol; the carrying, possessing, or transfer of weapons or dangerous instruments; and any other behavior which may endanger the safety of others. Other intervention services as indicated for each student may be provided by the board or by agreement with the appropriate state or community agency. The board may refer the student for evaluation or treatment by the appropriate state or community agency, and may provide other intervention as indicated for each student. A state agency that provides the service shall be responsible for the cost.

2. For purposes of this paragraph, "appropriate alternative program or setting" means a program or setting that is not in the school building the student would otherwise attend, and includes but is not limited to a virtual program as defined in KRS 157.320 and a state-funded agency program.

3. Educational services provided to an expelled student under this paragraph shall not include transportation from the student's residence to, or returning from, an appropriate alternative program or setting.

4. An expelled student shall not participate in any school-sponsored extracurricular or interscholastic activity of the district while the student is expelled.

(d)1. In lieu of expelling a student, or upon the expiration of a student's expulsion, a superintendent may place a student into an alternative program or setting if the superintendent determines placement of the student in his or her regular school setting is likely to substantially disrupt the education process or constitutes a threat to the safety of other students or school staff. The action shall not be taken until the parent, guardian, or other person having legal custody or control of the student has had an opportunity to have a hearing before the board or an appeals committee as described in subparagraph 2. of this paragraph.

2. The board may adopt a policy to establish an appeals committee and delegate the authority to hear appeals made under this paragraph to that committee.

3. The alternative program or setting may be provided virtually.

4. Notwithstanding any other statute or administrative regulation to the contrary, students placed in an alternative program or setting under this paragraph shall be counted in attendance and membership for state funding purposes in the same manner as other students participating in alternative programs of the district.

5. Students placed in an alternative program or setting under this paragraph shall be subject to compulsory attendance requirements under KRS Chapter 159 and applicable local board policy.

6. Following the initial alternative placement of a student under this paragraph, the board shall review the alternative program or setting placement at least once per year and determine if the placement should be continued in accordance with subparagraph 1. of this paragraph.

(4) For purposes of this subsection, "charges" means substantiated behavior that falls within the grounds for suspension or expulsion enumerated in subsection (1) of this section, including behavior committed by a student while enrolled in a private or public school, or in a school within another state. A school board may adopt a policy providing that, if a student is suspended or expelled for any reason or faces charges that may lead to suspension or expulsion but withdraws prior to a hearing from any public or private school in this or any other state, the receiving district may review the details of the charges, suspension, or expulsion and determine if the student will be admitted, and if so, what conditions may be imposed upon the admission, which may include placement of the student into an alternative program or setting as described in subsection (3)(d) of this section.

(5)(a) School administrators, teachers, or other school personnel may immediately remove or cause to be removed threatening or violent students from a classroom setting or from the district transportation system pending any further disciplinary action that may occur. Each board of education shall adopt a policy to assure the implementation of this section and to assure the safety of the students and staff.

(b) Except as described in subsection (10) of this section:

1. A principal may establish procedures for a student's removal from and reentry to the class-

room when the student's behavior disrupts the classroom environment and education process or the student challenges the authority of a supervising adult. In addition to removal, the student shall be subject to further discipline for the behavior consistent with the school's code of conduct;

2. A student who is removed from the same classroom three (3) times within a thirty (30) day period shall be considered chronically disruptive and may be suspended from school in accordance with this section, and no other basis for suspension shall be deemed necessary;

3. At any time during the school year, for a student who has been removed from the classroom under this paragraph, a principal may require a review of the classroom issues with the teacher and the parent, guardian, or other person having legal custody or control of the student and determine a course of action for the teacher and student regarding the student's continued placement in the classroom;

4. At any time during the school year, a principal may permanently remove a student from a classroom for the remainder of the school year if the principal determines the student's continued placement in the classroom will chronically disrupt the education process for other students;

5. When a student is removed from a classroom under this paragraph temporarily or permanently, the principal shall determine the placement of the student in lieu of that classroom, which may include but is not limited to:

a. Another classroom in that school; or

b. An alternative program or setting, which may be provided virtually, as approved by the superintendent;

6. Any permanent action by a principal under this paragraph shall be subject to an appeal process in accordance with a policy adopted by the board; and

7. Policies compliant with this paragraph shall be included in the code of behavior and discipline adopted by the board of education under KRS 158.148 and the policies adopted by the school council under KRS 160.345.

(6) A student shall not be suspended from the common schools until after at least the following due process procedures have been provided:

(a) The student has been given oral or written notice of the charge or charges against him or her which constitute cause for suspension;

(b) The student has been given an explanation of the evidence of the charge or charges if the student denies them; and

(c) The student has been given an opportunity to present his or her own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

(7)(a) The superintendent, principal, assistant principal, or head teacher of any school may suspend a student but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the student.

(b)1. The board of education of any school district may expel or extend the expulsion of any student for misconduct as described in subsection (1) of this section, but the action shall not be taken until the parent, guardian, or other person having legal custody or control of the student has had an opportunity to have a hearing before the board. The decision of the board shall be final.

2. Within thirty (30) days prior to the end of a student's expulsion, the board shall review the details of the expulsion and current factors and circumstances, including if ending the expulsion will substantially disrupt the education process or constitute a threat to the safety of students or school staff, to determine if the expulsion shall be extended for a period not to exceed twelve (12) months.

3. The expulsion review process shall be used prior to the end of each expulsion period until the board ends the expulsion or the student is no longer subject to compulsory attendance under KRS 159.010.

4. Each board of education shall adopt a policy for implementation of the process described in this paragraph.

(8)(a) Suspension of exceptional children, as defined in KRS 157.200, shall be considered a change of educational placement if:

1. The child is removed for more than ten (10) consecutive days during a school year; or

2. The child is subjected to a series of removals that constitute a pattern because the removals accumulate to more than ten (10) school days during a school year and because of other factors, such as the length of each removal, the total amount of time the child is removed, and the proximity of removals to one another.

(b) The admissions and release committee shall meet to review the placement and make a recommendation for continued placement or a change in placement and determine whether regular suspension or expulsion procedures apply. Additional evaluations shall be completed, if necessary.

(c) If the admissions and release committee determines that an exceptional child's behavior is related to his or her disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be termi-

nated during a period of expulsion and during a suspension after a student is suspended for more than a total of ten (10) days during a school year. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

(9) Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

(10) Any action under this section related to students with disabilities shall be in compliance with applicable federal law.

(11) This section shall not be interpreted or construed to preclude the requirements contained in KRS 158.305 or 158.4416.

(12) Notwithstanding the term of an expulsion established under this section or by the board, an expelled student shall be allowed to return to the school district subject to the following:

(a) At least twenty-six (26) weeks shall have passed since the student was expelled;

(b) The student was expelled pursuant to subsection (2)(a)3. of this section and had not previously been expelled;

(c) The expelled student shall have:

1. Written and submitted a letter to any person injured by the actions that resulted in the expulsion and to the adjudicating body established in paragraph (d) of this subsection that requests the end of the student's expulsion;

2. Completed a total number of community service hours that is at least equal to fifteen (15) hours for each week since the student was expelled;

3. Earned a cumulative grade point average of at least three (3) on any coursework completed since the student was expelled; and

4. Any other requirements established by the board; and

(d) Upon satisfying all requirements established in paragraphs (a), (b), and (c) of this subsection, an adjudicating body shall review the expelled student's request to end the expulsion. The adjudicating body shall:

1. Be composed of the superintendent or designee, the principal or designee, and any individual person injured by the actions that resulted in the expulsion;

2. Review the expelled student's request and evidence of satisfying the requirements under paragraphs (a), (b), and (c) of this subsection; and

3. Only authorize the end of the student's expulsion upon unanimous agreement of the members of the adjudicating body.

History.

4363-9; Acts 1978, ch. 271, § 1, effective June 17, 1978; 1982, ch. 12, § 1, effective July 15, 1982; 1986, ch. 255, § 2, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 401, effective July 13, 1990; 1992, ch. 378, § 1, effective July 14, 1992; 1996, ch. 51, § 1, effective July 15, 1996; 1998, ch. 493, § 12, effective April 10, 1998; 2001, ch. 95, § 1, effective June 21, 2001; 2006, ch. 139, § 1, effective July 12, 2006; 2023 ch. 76, § 1, effective June 29, 2023; 2026 ch. 50, § 1, effective July 15, 2026.

Compiler's Notes.

This section (4363-9; amend. Acts 1978, ch. 271, § 1, effective June 17, 1978; 1982, ch. 12, § 1, effective July 15, 1982; 1986, ch. 255, § 2, effective July 15, 1986) was repealed and reenacted as the same section number by Acts 1990, Pt. V, § 401, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Regulations.
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1. Regulations.

A pupil could be expelled for violation of rules of a school, and courts would not interfere with such an action unless it was arbitrary or malicious. Board of Education v. Booth, 110 Ky. 807, 62 S.W. 872, 23 Ky. L. Rptr. 288, 1901 Ky. LEXIS 140 (Ky. 1901) (decided under prior law).

The superintendent of a school may make reasonable rules for the school, and suspend students for violation thereof. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370, 1936 Ky. LEXIS 37 (Ky. 1936).

A rule requiring students to be in their rooms by a certain hour is reasonable. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370, 1936 Ky. LEXIS 37 (Ky. 1936).

Refusal to obey rule requiring students to be in their rooms by a certain hour constitutes wilful disobedience and defiance. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370, 1936 Ky. LEXIS 37 (Ky. 1936).

This section and KRS 161.180 plainly authorize public schools to make and enforce reasonable regulations for the government of such schools during school hours. Casey County Board of Education v. Luster, 282 S.W.2d 333, 1955 Ky. LEXIS 238 (Ky. 1955).

This statute preempts the right of the school officials to promulgate disciplinary regulations that impose additional punishment for the conduct that results in suspension. Dorsey v. Bale, 521 S.W.2d 76, 1975 Ky. LEXIS 147 (Ky. 1975).

2. —Insubordination.

A suspension for insubordination conditioned upon apology before the students is not unreasonable. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370, 1936 Ky. LEXIS 37 (Ky. 1936).

3. —Vaccination.

This section together with KRS 160.290 and 214.050 (repealed) authorized county board of education to promulgate and enforce its own rules requiring compulsory vaccination of school children or it would enforce such a rule of the county or State Board of Health by excluding from the schools children who were not vaccinated. Mosier v. Barren County Board of Health, 308 Ky. 829, 215 S.W.2d 967, 1948 Ky. LEXIS 1050 (Ky. 1948).

4. —Married Students.

School board regulation requiring that any student who shall marry shall withdraw from the school, subject to being readmitted after one year if the principal permits it, is unreasonable and arbitrary and for that reason invalid. Board

of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

5. —Alcohol or Drugs.

A high school regulation, which provides for mandatory suspension on the first offense for the use of, possession of, or trafficking in drugs or alcoholic beverages on school property or at school functions, does not exceed the authority granted to a school under this section, which allows for either suspension or expulsion for the use or possession of alcoholic beverages or drugs. Clark County Bd. of Education v. Jones, 625 S.W.2d 586, 1981 Ky. App. LEXIS 303 (Ky. Ct. App. 1981).

6. — —Particular cases.

With regard to both observers and participants, school athletic events held at other schools are school-sponsored activities; thus student was properly suspended when he was found to be in possession of alcohol during a basketball tournament in which his school was participating. Pirschel v. Sorrell, 2 F. Supp. 2d 930, 1998 U.S. Dist. LEXIS 5503 (E.D. Ky. 1998).

Where student was expelled for remainder of school year under this section for smoking marijuana, the offense was of sufficient gravity so that the discipline imposed was not excessive to the extent of violating the student's right to substantive due process. Petrey v. Flaugher, 505 F. Supp. 1087, 1981 U.S. Dist. LEXIS 10458 (E.D. Ky. 1981).

Where a county board of education automatically expelled several high school students for consuming alcohol on a school-sponsored trip, the trial court's finding that the board acted arbitrarily was not clearly erroneous, since the record showed that the board had not given consideration to any other factors such as the previous general conduct of the students involved, the probability of a recurring violation, or the possibility of alternative punishment or restrictions. Clark County Bd. of Education v. Jones, 625 S.W.2d 586, 1981 Ky. App. LEXIS 303 (Ky. Ct. App. 1981).

Circuit court did not err in granting summary judgment in favor of appellees in conjunction with the review of appellant student's administrative suspension because the school had more than substantial evidence to support the suspension as multiple officials gave consistent evidence, as memorialized by the official report, supporting the facts of the student's intoxication, his own admission of profanity, and his altercation that led to the in-school safety monitor's suffering a cut to his forehead and a black eye. Carpenter v. Goodall, 686 S.W.3d 251, 2024 Ky. App. LEXIS 9 (Ky. Ct. App. 2024).

7. Refusal to Consent to Search.

Where freshman high school student, implicated by fellow students in bringing to school firecrackers which were set off during class, refused request of the school administration to search her purse, which request was reasonable under the circumstances, a suspension of five (5) days was not inappropriate. Bahr v. Jenkins, 539 F. Supp. 483, 1982 U.S. Dist. LEXIS 12479 (E.D. Ky. 1982).

8. Refusal to Participate in Commencement.

Refusal to take a part assigned in commencement exercises constituted disobedience and was ground for suspension. Cross v. Board of Trustees, 129 Ky. 35, 110 S.W. 346, 33 Ky. L. Rptr. 472, 1908 Ky. LEXIS 135 (Ky. 1908) (decided under prior law).

9. Due Process.

Where the principal testified that each of the requirements provided for under subsection (2) of this section were met, and no proof controverted that testimony, the plaintiffs failed to demonstrate that they were denied procedural due process in their five-day suspension from school as a penalty for using alcoholic beverages at a school-sponsored convention. Katchak v. Glasgow Independent School System, 690 F. Supp. 580, 1988 U.S. Dist. LEXIS 10318 (W.D. Ky. 1988).

There was no procedural due process violation where principal informed student that he was being suspended for possession of alcohol on school property rather than at a school-sponsored activity off school property, because this did not prevent student from stating his own version of the facts; furthermore, student did not dispute or deny possessing alcohol. Pirschel v. Sorrell, 2 F. Supp. 2d 930, 1998 U.S. Dist. LEXIS 5503 (E.D. Ky. 1998).

Even if the provisions of KRS 13B.140(1) and 13B.010(1) were applicable to the actions of a county board of education, the board waived any jurisdictional defect by not objecting until after the Circuit Court and the Court of Appeals decided the issues regarding a student's expulsion pursuant to KRS 158.150, for having marijuana and prescription drugs in his car. M.K.J. v. Bourbon County Bd. of Educ., 2008 Ky. App. LEXIS 286 (Ky. Ct. App. 2008).

Termination of plaintiff student's out-of-district status during the school year was an expulsion requiring a pre-expulsion hearing under KRS 158.150, which had not been held, thus, his due-process claim against defendants, a school district and its officials, should have survived summary judgment. G.C. v. Owensboro Pub. Sch., 711 F.3d 623, 2013 FED App. 0078P, 2013 U.S. App. LEXIS 6159 (6th Cir. Ky. 2013).

Cited in:

Kaelin v. Grubbs, 682 F.2d 595, 1982 U.S. App. LEXIS 17579 (6th Cir. 1982); Trzop v. Centre College, 2000 Ky. App. LEXIS 85 (Ky. Ct. App. 2000).

OPINIONS OF ATTORNEY GENERAL.

This section defines the method of enforcing school disciplinary rules and regulations and does not authorize withholding a pupil's school records at the end of the school year because the pupil has damaged school textbooks and other school property and has not made restitution. OAG 61-315.

This section is not applicable to a model and practice school conducted by a state college or university pursuant to KRS 164.380. OAG 70-149.

A teacher may not lower a student's academic grades because of misconduct. OAG 72-753.

An "in school suspension" is a contradiction in terms and not within the disciplinary procedures authorized by this section as a suspended pupil should be barred from the school premises during the period of suspension in order to produce the desired effect upon the pupil, his parents, and the decorum of the school. OAG 73-305.

This section authorizes expulsion of a child from public school for no longer than the current school year, for it is not the policy of the state to expel a child permanently. OAG 74-165.

Unexcused absence from school may constitute wilful disobedience. OAG 74-312.

If the attendance of a pupil over 16 years of age is so poor as to indicate a lack of interest in completing his school courses, the board of education would be justified in expelling him. OAG 74-312.

A school board regulation providing that a student fails a course after nine (9) absences is invalid since it in effect considers the student to be automatically expelled after the nine (9) absences but does not afford him a hearing or an opportunity to be heard and gives no consideration to the cause of the absences. OAG 75-124.

KRS chapter 387 pertaining to guardians makes no provision for a guardian "for school purposes only" and therefore the appointment of a guardian "for school purposes only" through trial commissioner's order was a nullity and the school board was not legally bound to recognize such an order. OAG 75-170.

Although there is no provision in this section that entitles a student to a hearing prior to a suspension, under the U.S. Constitution, a student may not be withdrawn from the school roll without a notice and hearing by either the superintendent, principal, head teacher or the board of education. OAG 76-735.

School personnel may not temporarily, by suspension or expulsion, deny a child's property interest in educational benefits without following rudimentary due process procedures. OAG 77-12, 1977 Ky. AG LEXIS 775.

Since this section provides that the decision of the board is final, legal action would be maintainable in a court of competent jurisdiction with the test being whether the school personnel had acted arbitrarily or maliciously in expelling a student. OAG 77-12, 1977 Ky. AG LEXIS 775.

A suspended student, who is compelled to stay at the school building but who is not being afforded any alternative educational program or school counseling, is legally absent from school and may not be counted for purposes of figuring average daily attendance. OAG 77-419, 1977 Ky. AG LEXIS 364.

School officials have authority to withdraw from any pupil the privilege of participating in out-of-class activities of the school band for misconduct during field trips. OAG 77-427, 1977 Ky. AG LEXIS 391.

School personnel would not be required to permit a student who has been suspended to do make-up work for class activities and assignments missed during the period of a suspension from school. OAG 77-547, 1977 Ky. AG LEXIS 235.

A school board attorney, if he is to serve the role as the prosecutor, should limit his advice to the board to explaining the legal obligations the board has in an expulsion hearing before the hearing commences and the school board attorney should at no time advise the board during an expulsion hearing in which he is participating. OAG 78-673, 1978 Ky. AG LEXIS 163.

Notice consists of two (2) parts, first the student should be made aware of the standard of expected behavior in a school system; and second the student and the student's parent(s), guardian or legal custodian should receive adequate written notice from the board of education or its designee containing a statement of the specific charges and grounds which, if proven, would justify expulsion. OAG 78-673, 1978 Ky. AG LEXIS 163.

Only a local board of education, by an official act, can expel a student. OAG 78-673, 1978 Ky. AG LEXIS 163.

Policies regarding discipline of conduct of pupils should be promulgated to the students through the permissive statute outlining the adoption and promulgation of a code of student rights and responsibilities. OAG 78-673, 1978 Ky. AG LEXIS 163.

The board should report in writing the decision of the board to the parent(s), guardian or legal custodian, and if the hearing has involved multiple charges, the report should include which charges, if less than all, the board found to be supported by the evidence, and upon which the board made the decision to expel. OAG 78-673, 1978 Ky. AG LEXIS 163.

The due process hearing of: (1) oral or written notice of the charge or charges, (2) an explanation of the charge or charges, and (3) an opportunity for the pupil to present his own version of the facts is to be followed for all suspensions, irrespective of duration. OAG 78-673, 1978 Ky. AG LEXIS 163.

The minimum requirements to be followed for a due process hearing prior to expulsion are: (1) notice, (2) legal counsel, (3) impartial hearing, and (4) written notification of the decision, but a criminal type due process hearing is not required nor is a judicial or quasi-judicial trial required. OAG 78-673, 1978 Ky. AG LEXIS 163.

The procedural due process which must be afforded in an expulsion situation should be greater than that in a suspension situation and the extent and degree of due process to be given in a hearing will increase as the possible penalty affecting constitutionally protected rights becomes greater. OAG 78-673, 1978 Ky. AG LEXIS 163.

The school board must allow the student to be represented by legal counsel, but the board does not have to provide an attorney if the student and his or her parents choose not to have one, or if an attorney cannot be afforded, and the board need not advise the student or parent that they may retain legal counsel to assist them in preparation of a defense at the expulsion hearing. OAG 78-673, 1978 Ky. AG LEXIS 163.

The student is entitled to an orderly hearing, either closed or open, as the student desires, at which he must be given full opportunity to give his or her side of the story before the board and to produce either oral testimony or written affidavits of witnesses in his or her behalf, and the opportunity should be given to cross-examine witnesses. OAG 78-673, 1978 Ky. AG LEXIS 163.

The student is entitled to have consideration of the evidence by an impartial tribunal which means the board members should have shunned prior involvement in the situation, but exposure to evidence prior to the hearing is insufficient in itself to impugn the fairness of the board member at the adversary hearing and there need not be proof of the charges beyond a reasonable doubt nor that there be a unanimous decision of the board. OAG 78-673, 1978 Ky. AG LEXIS 163.

The written notice should further provide the evidence and the witnesses the school will produce at the hearing and the date, place and time for the hearing should be set forth, which hearing should probably be scheduled to be held no earlier than five (5) days from the day the notice is received or not later than the next regular school board meeting. OAG 78-673, 1978 Ky. AG LEXIS 163.

There is no time duration spelled out in the Kentucky school law or elsewhere for suspension. OAG 78-673, 1978 Ky. AG LEXIS 163.

A general search of all lockers for rotting food, missing library books, or overall cleanliness could be, under most circumstances, an administrative search; and, the fact that contraband, stolen articles, controlled drugs, alcoholic beverages, dangerous weapons, or the like, were inadvertently discovered during the administrative search would not void the search and any such unlawful items found could stand as evidence and as a basis for cause in a possible suspension or expulsion hearing. OAG 79-168, 1979 Ky. AG LEXIS 452.

Even if the primary purpose of a search of an older student is based upon reasonable suspicion and the purpose of the search is for possible school disciplinary action and not criminal prosecution, it must be remembered the "causes" upon which suspension or expulsion may be based are very much with overtones of criminality. OAG 79-168, 1979 Ky. AG LEXIS 452.

In the situation where a search is conducted by a law enforcement officer with a school officer without consent, without a search warrant, and without any of the case law delineated exceptions existing (e.g., search incident to lawful arrest), the evidence seized would most likely be subject to the exclusionary rule in any criminal action and some case authority would support a conclusion that the evidence seized could also not be used in school disciplinary actions. OAG 79-168, 1979 Ky. AG LEXIS 452.

In view of the responsibilities of teachers and school administrators and in view of the fact that teachers and administrators are state officers or employees they are within the purview of fourth amendment and Const., § 10 restraint upon activities of the government. OAG 79-168, 1979 Ky. AG LEXIS 452.

For good cause shown a local board may deny readmission of a nonresident student based upon the student's prior failure to abide by the board-adopted standards of conduct to which he may be lawfully held. OAG 79-327, 1979 Ky. AG LEXIS 306.

Once a student is permitted to enroll in a nonresident school for a school year, the law applicable to student conduct and the

possibility of suspension and/or expulsion under this section comes into play. OAG 79-327, 1979 Ky. AG LEXIS 306.

Termination of the privilege of attending a nonresident school during the course of a school year is an expulsion and must be so handled and effected only after a hearing before the "foreign" board of education. OAG 79-327, 1979 Ky. AG LEXIS 306.

The term "drugs" means controlled substances or illegal drugs. OAG 82-633, 1982 Ky. AG LEXIS 19.

Pursuant to this section, a school board may adopt a policy establishing as a separate legal cause for suspension or expulsion those practices prohibited by KRS 218A.350 concerning substances that simulate controlled substances. OAG 82-633, 1982 Ky. AG LEXIS 19.

The power of suspension granted to the superintendent, principal, assistant principal, or head teacher of a school may be carried over to the next school year if the student's misconduct fell within the prohibited behavior described in this section; in the instance that a hearing cannot be held immediately following willful disobedience of the student, the hearing must be held during the summer vacation in accordance with the appropriate due process procedures. OAG 88-65 (overruling OAG 74-165).

The board, in deciding whether a carry-over expulsion is appropriate, should examine whether the student's behavior was so egregious as to endanger the health and safety of students and staff, and whether continued attendance by the student would be in the best interest of the district in light of the denial of future education for the student. OAG 88-65 (overruling OAG 74-165).

Behavior which occurs after a student arrives at home and outside school sponsored activities will not be a basis for school discipline unless the behavior is of a serious violent nature or would directly affect the school's discipline or the welfare of its students and employees. OAG 91-171, 1991 Ky. AG LEXIS 171.

A school board may not adopt a plan to deduct points from a student's final grade for each unexcused absence. Despite the board's stated intent to act in the best interest of the students, the deduction of five (5) points from a pupil's final grade is a penalty. Such a penalty, in the guise of an incentive to get children to attend school, is not permissible; providing an opportunity for a student to make up the points does not change this conclusion — it is still an impermissible penalty. OAG 96-28, 1996 Ky. AG LEXIS 30.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28, 1996 Ky. AG LEXIS 30.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Teachers and teachers' aides responsible for conduct of children, KRS 161.180.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Discipline of students, 780 KAR 2:060.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Pupil attendance, 702 KAR 7:125.

Student discipline guidelines, 704 KAR 7:050.

Kentucky Law Journal.

Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Kentucky Law Survey, Oberst and Hunt, Administrative and Constitutional Law, 71 Ky. L.J. 417 (1982-83).

158.153. Punishment based on child's records — Disclosure of records — Cause of action — Districtwide standards of behavior for students participating in extracurricular activities.

(1) Unless the action is taken pursuant to KRS 158.150, no school, school administrator, teacher, or other school employee shall expel or punish a child based on information contained in a record of an adjudication of delinquency or conviction of an offense received by the school pursuant to KRS 610.345 or from any other source. Nothing in this subsection shall be construed to prohibit a local school board or school official from instituting disciplinary proceedings against any student for violating the discipline policy of the school or school district or taking actions necessary to protect staff and students. Actions to protect staff and students may be taken only after the principal makes a determination that the conduct of the student reflected in the records of the school or obtained by the school from the court indicates a substantial likelihood of an immediate and continuing threat that the student will cause harm to students or staff, and that the restrictions to be ordered represent the least restrictive alternative available and appropriate to remedy the threat, and that the determination and supporting material be documented in the child's record. The action of the principal, in addition to or in lieu of any other procedure available, may be appealed by the child or the child's parent or guardian to the superintendent of the school system or to the Circuit Court in the county in which the school is located, and the appealing party may be represented by counsel.

(2) Except as provided in KRS 610.345, no school, school administrator, teacher, or other school employee who has custody of records received or maintained by the school pursuant to KRS 610.345 or who has received information contained in or relating to a record received by the school pursuant to KRS 610.345 shall disclose the fact of the record's existence, or any information contained in the record or received from the record to any other person, including but not limited to other teachers, school employees, pupils, or parents other than the pupil, or parents of the pupil who is the subject of the record.

(3) The child and his parent or guardian shall have a civil cause of action against the school board and against any school administrator violating subsection (1) or (2) of this section or divulging information in violation of KRS 610.345 or 610.340. This civil cause of action shall be in addition to any other criminal or administrative remedy provided by law.

(4) Nothing in this section shall be construed to prohibit a local board of education from establishing districtwide standards of behavior for students who participate in extracurricular and cocurricular activities, including athletics. A school principal may deny or terminate a student's eligibility to participate in extra-

curricular or cocurricular activities if the student has violated the local district behavior standards or the council's criteria for participation, as described in KRS 160.345(2)(i)8. A student's right to participate in extracurricular or cocurricular activities, including athletics, may be suspended, pending investigation of an allegation that the standards of behavior have been violated.

History.

Enact. Acts 1996, ch. 358, § 61, effective July 15, 1996; 1998, ch. 107, § 1, effective July 15, 1998; 2024 ch. 51, § 3, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/96). Under 1996 Ky. Acts ch. 358, sec. 67(2), this statute becomes effective July 15, 1996.

158.154. Principal's duty to report certain acts to local law enforcement agency. [Repealed]

History.

Enact. Acts 1998, ch. 493, § 13, effective April 10, 1998; repealed by 2024 ch. 174, § 54, effective July 15, 2024.

158.155. Reporting of specified incidents of student conduct — Notation on school records — Report to law enforcement of certain student conduct — Immunity — Reports filed by law enforcement agency created by local board of education.

(1) Any school employee who knows or has reasonable cause to believe that a person has made threats or plans of violence which are intended to target a school or students or who knows that a firearm is present on school property in violation of KRS 527.070 shall immediately cause a report to be made pursuant to subsection (10) of this section.

(2) Any school employee shall immediately report pursuant to subsection (10) of this section any act which the employee has a reasonable cause to believe has occurred on school property or at a school-sponsored or sanctioned event involving:

(a) Intentional physical injury, or intentional attempt to cause physical injury, as defined in KRS 500.080, of any school employee;

(b) Intentional assault resulting in serious physical injury, as defined in KRS 500.080;

(c) A sexual offense;

(d) Kidnapping;

(e) Assault with the use of a weapon;

(f) Possession of a firearm or deadly weapon in violation of the law;

(g) The use, possession, or sale of a controlled substance in violation of the law; or

(h) Intentional or wanton damage to property causing a pecuniary loss of five hundred dollars ($500) or more.

(3) Any school employee who receives information from a student or other person of conduct which is required to be reported under subsection (1) or (2) of this section shall report the conduct pursuant to subsection (10) of this section, unless the school employee has cause to believe a student's disability interfered with his or her ability to conform to the student code of conduct.

(4) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, principal, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student has been adjudicated guilty or expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs. The sworn statement or affirmation shall be sent to the receiving school within five (5) working days of the time when the student requests enrollment in the new school.

(5) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his or her records, those records shall reflect the charges and final disposition of the expulsion proceedings.

(6) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his or her records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.

(7) The husband-wife privilege of KRE 504 or any professional-client privilege, including those set forth in KRE 506 and 507, shall not be a ground for refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.

(8) This section shall not be construed as to require self-incrimination.

(9) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:

(a) Making the report; and

(b) Participating in any judicial proceeding that resulted from the report.

(10) Notice required pursuant to this section shall be given to:

(a) Any law enforcement agency created by the local board of education;

(b) A local law enforcement agency not created by the local board of education; or

(c) The Department of Kentucky State Police.

(11)(a) A local board of education that has created a law enforcement agency shall designate a local law enforcement agency not created by the local board of

education to receive reporting information from the law enforcement agency created by the local board of education.

(b) A law enforcement agency created by the local board of education shall file a report each week with the local law enforcement agency designated pursuant to paragraph (a) of this subsection identifying all reports received pursuant to this section by the law enforcement agency created by the local board of education during the preceding week.

History.
Enact. Acts 1994, ch. 471, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2004, ch. 185, § 2, effective July 13, 2004; 2007, ch. 85, § 167, effective June 26, 2007; 2024 ch. 174, § 36, effective July 15, 2024; 2026 ch. 50, § 2, effective July 15, 2026.

Legislative Research Commission Notes.
(7/15/94). A comma has been added after the second use of the word "premises" in paragraph (b) of subsection (4) of this statute. The drafter of 1994 Ky. Acts ch. 471 advises and the context clearly establishes that the omission of this comma in that Act was a manifest clerical or typographical error. See KRS 7.136(1)(h).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Chenoweth and Chenoweth, Education Law: I'm Going to Beat You Up!: Reporting Student Conduct Under "the Bullying Bill", Vol. 72, No. 6, November 2008, Ky. Bench & Bar 10.

158.1559. Superintendent of each local school district shall require the principal of each school within the district to provide written notice to all students, parents, and guardians about the provisions of KRS 508.078, and the potential penalties for terroristic threatening — Notice shall be given within ten days of the first instructional day of each school year.

The superintendent of each local school district shall require the principal of each school within the district to provide written notice to all students, parents, and guardians of students within ten (10) days of the first instructional day of each school year of the provisions of KRS 508.078 and potential penalties under KRS 532.060 and 534.030 upon conviction.

History.
2019 ch. 5, § 22, effective March 11, 2019.

158.156. Reporting of commission of felony KRS Chapter 508 offense against a student — Investigation — Immunity from liability for reporting — Privileges no bar to reporting.

(1) Any employee of a school or a local board of education who knows or has reasonable cause to believe that a school student has been the victim of a violation of any felony offense specified in KRS Chapter 508 committed by another student while on school premises, on school-sponsored transportation, or at a school-sponsored event shall immediately cause an oral or written report to be made to the principal of the school attended by the victim. The principal shall notify the parents, legal guardians, or other persons exercising custodial control or supervision of the student when the student is involved in an incident reportable under this section. The principal shall file with the local school board and the local law enforcement agency or the Department of Kentucky State Police or the county attorney within forty-eight (48) hours of the original report a written report containing:

(a) The names and addresses of the student and his or her parents, legal guardians, or other persons exercising custodial control or supervision;

(b) The student's age;

(c) The nature and extent of the violation;

(d) The name and address of the student allegedly responsible for the violation; and

(e) Any other information that the principal making the report believes may be helpful in the furtherance of the purpose of this section.

(2) An agency receiving a report under subsection (1) of this section shall investigate the matter referred to it. The school board and school personnel shall participate in the investigation at the request of the agency.

(3) Anyone acting upon reasonable cause in the making of a report required under this section in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action.

(4) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding student harassment in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding student harassment.

History.
Enact. Acts 2008, ch. 125, § 1, effective July 15, 2008.

NOTES TO UNPUBLISHED DECISIONS

1. Negligence Per Se.
When school officials were sued regarding a student who bullied a parent's child, the officials could not be held to be negligent per se under Ky. Rev. Stat. Ann. §§ 158.154 or 158.156 because (1) the officials' decision as to whether the requirements of these statutes were invoked involved the use of discretion, so the officials were entitled to qualified official immunity, and (2) the child's injury did not rise to the level addressed by these statutes. Slattery v. J.F., 2015 Ky. App. Unpub. LEXIS 871 (Ky. Ct. App. 2015), review denied, ordered not published, 2016 Ky. LEXIS 60 (Ky. Feb. 10, 2016).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Chenoweth and Chenoweth, Education Law: I'm Going to Beat You Up!: Reporting Student Conduct Under "the Bullying Bill", Vol. 72, No. 6, November 2008, Ky. Bench & Bar 10.

158.157. Superintendent of each local school district to require principals to provide written notice of and age-appropriate information on KRS 531.125 to students in grades four through twelve, parents, and guardians — Applicability to public charter schools.

(1) The superintendent of each local school district shall require the principal of each school within the district to provide written notice of the provisions of KRS 531.125 to students in grades four (4) and above in an age-appropriate manner and to parents or guardians of all students within ten (10) days of the first instructional day of each school year.

(2) The requirements of subsection (1) of this section shall apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

History.
2025 ch. 9, § 4, effective June 27, 2025.

158.158. Local board of education to require each public school with instructional space for students in grades six through twelve to display information on sexual extortion — Requirements — Applicability to public charter schools — Department to publish recommendations for required information.

(1) By August 1, 2025, local boards shall require each public school with instructional spaces for students in grades six (6) through twelve (12) to display, in a prominent location in each school building, a legible printed sign in English and Spanish at least eight and one-half (8.5) inches by eleven (11) inches in size that shall contain:

(a) An age-appropriate description of sexual extortion consistent with the definition in KRS 531.125.

(b) Contact information for state or local law enforcement for reporting or seeking assistance relating to sexual extortion;

(c) Contact information for federal law enforcement for reporting or seeking assistance relating to sexual extortion;

(d) Contact information for a national suicide prevention hotline; and

(e) The Uniform Resource Locator (URL), a Quick Response (QR) code, or similar resource to identify the website address for informational and support resources regarding sexual extortion provided by the National Center for Missing and Exploited Children or any federally funded successor entity.

(2) The requirements of subsection (1) of this section shall apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

(3) By July 15, 2025, the department shall publish recommendations for information to be included consistent with subsection (1) of this section.

History.
2025 ch. 9, § 5, effective June 27, 2025.

158.160. Notification to school by parent or guardian of child's medical condition threatening school safety — Exclusion of child with communicable disease from school — Closing of school during epidemic.

(1) A parent, legal guardian, or other person or agency responsible for a student shall notify the student's school if the student has any medical condition which is defined by the Cabinet for Health and Family Services in administrative regulation as threatening the safety of the student or others in the school. The notification shall be given as soon as the medical condition becomes known and upon each subsequent enrollment by the student in a school. The principal, guidance counselor, or other school official who has knowledge of the medical condition shall notify the student's teachers in writing of the nature of the medical condition.

(2) If any student is known or suspected to have or be infected with a communicable disease or condition for which a reasonable probability for transmission exists in a school setting, the superintendent of the district may order the student excluded from school. The time period the student is excluded from school shall be in accordance with generally accepted medical standards which the superintendent shall obtain from consultation with the student's physician or the local health officer for the county in which the school district is located. During the presence in any district of dangerous epidemics, the board of education of the school district may order the school closed.

History.
4399-59; amend. Acts 1990, ch. 213, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 402, effective July 13, 1990; 1992, ch. 393, § 1, effective July 14, 1992; 1998, ch. 426, § 116, effective July 15, 1998; 2005, ch. 99, § 134, effective June 20, 2005.

Compiler's Notes.
This section (4399-59) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 402, effective July 13, 1990.

Legislative Research Commission Notes.
(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Certificate of immunization required prior to enrollment, KRS 158.035.

158.162. Mandatory adoption of emergency management response plan in each school — School to maintain portable automated external defibrillators — Emergency response drills — Consequence of schools failing to comply.

(1) As used in this section:

(a) "Emergency management response plan" or "emergency plan" means a written document to prevent, mitigate, prepare for, respond to, and recover from emergencies; and

(b) "First responders" means local fire, police, and emergency medical personnel.

(2)(a) Each local board of education shall require the school council or, if none exists, the principal in each school building in its jurisdiction to adopt an emergency plan. The emergency plan shall include:

1. Procedures to be followed in case of medical emergency, fire, severe weather, earthquake, or a building lockdown as defined in KRS 158.164;

2. A written cardiac emergency response plan; and

3. A copy of the data created through the School Mapping Data Program pursuant to KRS 158.4433 or, if the school mapping data is unavailable, a diagram of the facility that clearly identifies the location of each automated external defibrillator.

(b) The emergency plan shall be provided to appropriate first responders and all school staff.

(c) The emergency plan shall be reviewed following the end of each school year by the school nurse, school council, the principal, and first responders and revised as needed.

(d) The principal shall discuss the emergency plan with all school staff prior to the first instructional day of each school year and document the time and date of any discussion.

(e) The cardiac emergency response plan shall be rehearsed by simulation prior to the beginning of each athletic season by all:

1. Licensed athletic trainers, school nurses, and athletic directors; and

2. Interscholastic coaches and volunteer coaches of each athletic team active during that athletic season.

(f) The emergency plan shall be excluded from the application of KRS 61.870 to 61.884.

(3) Each local board of education shall require the school council or, if none exists, the principal in each school building to:

(a) Establish primary and secondary evacuation routes for all rooms located within the school and shall post the routes in each room by any doorway used for evacuation;

(b) Identify the best available severe weather safe zones, in consultation with local and state safety officials and informed by guiding principles set forth by the National Weather Service and the Federal Emergency Management Agency, and post the location of safe zones in each room of the school;

(c) Develop practices for students to follow during an earthquake;

(d) Develop and adhere to practices to control the access to each school building. Practices shall include but not be limited to:

1. Controlling outside access to exterior doors during the school day;

2. Controlling the main entrance of the school with electronically locking doors, a camera, and an intercom system;

3. Controlling access to individual classrooms;

4. Requiring classroom doors to be equipped with hardware that allows the door to be locked from the outside but opened from the inside;

5. Requiring classroom doors to remain closed and locked during instructional time, except:

a. In instances in which only one (1) student and one (1) adult are in the classroom; or

b. When approved in writing by the state school security marshal;

6. Requiring classroom doors with windows to be equipped with material to quickly cover the window during a building lockdown;

7. Allowing for the use of secondary locking mechanisms on classroom doors, notwithstanding any provisions of the Kentucky Building Code promulgated pursuant to KRS Chapter 198B to the contrary;

8. Requiring all visitors to report to the front office of the building, provide valid identification, and state the purpose of the visit; and

9. Providing a visitor's badge to be visibly displayed on a visitor's outer garment;

(e) Maintain a portable automated external defibrillator in a public, readily accessible, well-marked location in every school building and, as funds become available, at school-sanctioned athletic practices and competitions and:

1. Adopt procedures for the use of the portable automated external defibrillator during an emergency;

2. Adopt policies for compliance with KRS 311.665 to 311.669 on training, maintenance, notification, and communication with the local emergency medical services system;

3. Ensure that a minimum of three (3) employees in the school and all interscholastic athletic coaches be trained on the use of a portable automated external defibrillator in accordance with KRS 311.667;

4. Ensure that all interscholastic athletic coaches maintain a cardiopulmonary resuscitation certification recognized by a national accrediting body on heart health; and

5. No later than November 1 of each school year, submit an annual report to the Kentucky Department of Education on:

a. The number and location of each portable automated external defibrillator in every school building;

b. The name, school, and training date of each school district employee and interscholastic athletic coach in the district trained in the use of a portable automated external defibrillator; and

c. The progress made towards having a portable automated external defibrillator at all school-sanctioned athletic practices and competitions; and

(f) Require development of an event-specific emergency action plan for each school-sanctioned nonathletic event held off-campus to be used during a medical emergency, which may include the provision of a portable automated external defibrillator. The plan shall:

1. Include a delineation of the roles of staff and emergency personnel, methods of communication, any assigned emergency equipment including a portable automated external defibrillator, a cardiac emergency response plan, and access to and plan for emergency transport; and

2. Be in writing and distributed to any member of school personnel attending the school-sanctioned event in an official capacity.

(4) All schools shall be in compliance with the provisions of subsection (3)(d) of this section.

(5)(a) Each local board of education shall require the principal in each public school building in its jurisdiction to conduct, at a minimum, emergency response drills to include:

1. One (1) severe weather drill, one (1) earthquake drill, and one (1) lockdown drill within the first thirty (30) instructional days of each school year and again during the month of January; and

2. The emergency response plan rehearsal by simulation required by subsection (2) of this section and the venue-specific emergency action plan rehearsal by simulation required by KRS 160.445(5) prior to the beginning of each athletic season.

(b) Required fire drills shall be conducted according to administrative regulations promulgated by the Department of Housing, Buildings and Construction. Whenever possible, first responders shall be invited to observe emergency response drills.

(6) No later than November 1 of each school year, a local district superintendent shall send verification to the Kentucky Department of Education that all schools within the district are in compliance with the requirements of this section.

(7) A district with a school not in compliance with the requirements of subsection (3)(d) of this section by July 1, 2022, shall not be eligible for approval by the Kentucky Department of Education for new building construction or expansion in the 2022-2023 school year and any subsequent year without verification of compliance, except for facility improvements that specifically address the school safety and security requirements of this section, when deemed necessary for the protection of student or staff health and safety, or to comply with other legal requirements or orders.

History.

Enact. Acts 2013, ch. 126, § 1, effective June 25, 2013; 2013, ch. 133, § 1, effective June 25, 2013; 2015 ch. 38, § 1, effective June 24, 2015; 2019 ch. 5, § 14, effective March 11, 2019; 2020 ch. 5, § 11, effective February 21, 2020; 2023 ch. 165, § 1, effective June 29, 2023; 2024 ch. 165, § 10, effective July 15, 2024; 2024 ch. 208, § 1, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2024). This statute was amended by 2024 Ky. Acts chs. 165 and 208, which do not appear to be in conflict and have been codified together.

(6/29/2023). 2023 Ky. Acts ch. 165, sec. 1, which amended this statute, contained a reference to subsection (5) of Section 4 of this Act, though it is clear from the text of the Act that the reference was meant to be to subsection (5) of Section 5 of the Act, as only that section dealt with venue-specific emergency action plan rehearsal by simulation. The Reviser of Statutes has corrected this manifest clerical or typographical error during codification under the authority of KRS 7.136(1).

(6/25/2013). This statute was created by 2013 Ky. Acts chs. 126 and 133, which were companion bills and are substantively identical. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 126 prevails under KRS 446.250 as the Act which passed the General Assembly last.

158.1621. Reporting of number of portable automated external defibrillators.

(1) By August 1 of each year, each school district shall report to the Kentucky Department of Education on the number of portable automated external defibrillators at each school within the district.

(2) By October 1 of each year, the Kentucky Department of Education shall publish a report on the number of portable automated external defibrillators in Kentucky public schools by school and school district to the department's website and submit the report to the General Assembly's Interim Joint Committee on Education, Interim Joint Committee on Health Services, and Interim Joint Committee on Families and Children.

History.

2023 ch. 165, § 2, effective June 29, 2023.

Legislative Research Commission Notes.

(6/29/2023). Pursuant to 2023 Ky. Acts ch. 165, sec. 7, a reference to the Interim Joint Committee on Health, Welfare, and Family Services in subsection (2) of this section has been changed in codification to the Interim Joint Committee on Health Services and the Interim Joint Committee on Families and Children.

158.1622. School AED fund.

(1) There is hereby created a trust and agency account to be known as the school AED fund to be administered by the Cabinet for Health and Family Services, in collaboration with the Department of Education. Amounts deposited in the fund shall be used for the purpose of awarding needs-based grants to public schools for:

(a) The purchase and maintenance of portable automated external defibrillators and other medical devices used to diagnose, prevent, or treat a medical condition that is harmful to student athletes; and

(b) The provision of cardiopulmonary resuscitation training.

(2) The school AED fund shall consist of any:

(a) Appropriations designated for the fund;

(b) Funds, grants, and receipts from fundraising activities on behalf of the fund; and

(c) Other moneys made available for the purposes of the fund.

(3) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.

(4) Any interest earnings of the fund shall become a part of the fund and shall not lapse.

(5) Moneys deposited in the fund are hereby appropriated for the purposes set forth in this section and shall not be appropriated or transferred by the General Assembly for any other purposes.

(6) Nothing in this section shall be interpreted to restrict the ability of a school or school district to accept direct private donations for the purchase or maintenance of an automated external defibrillator or other medical device used to diagnose, prevent, or treat a medical condition that is harmful to student athletes.

History.

2023 ch. 165, § 4, effective June 29, 2023; 2024 ch. 208, § 2, effective July 15, 2024.

158.163. Earthquake and tornado emergency procedure system.

The board of each local school district, and the governing body of each private and parochial school or school district, shall establish an earthquake and tornado emergency procedure system in every public or private school building in its jurisdiction having a capacity of fifty (50) or more students, or having more than one (1) classroom. The earthquake and tornado emergency procedure system shall include, but not be limited to, all of the following:

(1) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs. A drop procedure and safe area evacuation practice shall be held at least twice during each school year, with the first practice for a drop procedure and a safe area evacuation being held within the first thirty (30) instructional days of each school year and one (1) practice being held during the month of January;

(2) A drop procedure. As used in this section, "drop procedure" means an activity by which each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows;

(3) A safe area. As used in this section, "safe area" means a designated space including an enclosed area with no windows, a basement or the lowest floor using the interior hallway or rooms, or taking shelter under sturdy furniture;

(4) Protective measures to be taken before, during, and following an earthquake or tornado; and

(5) A program to ensure that the students and the certificated and classified staff are aware of, and properly trained in, the earthquake and tornado emergency procedure system.

History.

Enact. Acts 1992, ch. 29, § 1, effective July 14, 1992; 2000, ch. 433, § 1, effective July 14, 2000; 2013, ch. 126, § 2, effective June 25, 2013; 2013, ch. 133, § 2, effective June 25, 2013.

Legislative Research Commission Notes.

(6/25/2013). This statute was amended with identical text in 2013 Ky. Acts chs. 126 and 133, which were companion bills. These Acts have been codified together.

158.164. Building lockdown procedures — Practice.

(1) As used in this section, "building lockdown" means to restrict the mobility of building occupants to maintain their safety and care.

(2) Each local board of education shall require the school council or, if none exists, the principal in each public school building in its jurisdiction to establish procedures to perform a building lockdown, including protective measures to be taken during and immediately following the lockdown. Local law enforcement agencies shall be invited to assist in establishing lockdown procedures.

(3) Students, certified staff, and classified staff shall be informed annually of building lockdown procedures.

(4) A building lockdown practice shall be held at least twice during each school year, with at least one (1) practice being held within the first thirty (30) instructional days of the school year and one (1) practice being held during the month of January.

History.

Enact. Acts 2006, ch. 120, § 1, effective July 12, 2006; 2013, ch. 126, § 3, effective June 25, 2013; 2013, ch. 133, § 3, effective June 25, 2013.

Legislative Research Commission Notes.

(6/25/2013). This statute was amended with identical text in 2013 Ky. Acts chs. 126 and 133, which were companion bills. These Acts have been codified together.

158.165. Possession and use of personal telecommunications device by public school student.

(1)(a) The board of education of each school district shall adopt a policy regarding the possession and use of a personal telecommunications device by a student while on school property or while attending a school-sponsored or school-related activity on or off school property, and shall include the policy in the district's written standards of student conduct.

(b) The policy shall, at a minimum, prohibit a student's use of a personal telecommunications device during instructional time, except during an emergency, if directed to do so by a teacher for an instructional purpose, or if authorized by a teacher.

(c) A student who violates the policy shall be subject to discipline as provided by board policy.

(2) As used in this section, "personal telecommunications device":

(a) Means a device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor, including but not limited to a paging device and a cellular telephone; and

(b) Does not include any device a student is authorized to use pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. sec. 1400 et seq., the Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq., or the Rehabilitation Act of 1973, 29 U.S.C. sec. 701 et seq., or successor acts.

History.

Enact. Acts 1990, ch. 87, § 1, effective March 19, 1990; 2000, ch. 34, § 1, effective July 14, 2000; 2025 ch. 90, § 1, effective June 27, 2025.

158.170. Bible to be read.

The teacher in charge shall read or cause to be read a portion of the Bible daily in every classroom or session room of the common schools of the state in the presence of the pupils therein assembled, but no child shall be required to read the Bible against the wish of his parents or guardian.

History.

4363-7.

NOTES TO DECISIONS

1. In General.

The Bible is not a sectarian book. Hackett v. Brooksville Graded School Dist., 120 Ky. 608, 87 S.W. 792, 27 Ky. L. Rptr.

1021, 1905 Ky. LEXIS 144 (Ky. 1905) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

A school teacher may read any portion of the New Testament to students while in a public classroom. OAG 60-1099.

The prohibition against the conduct of religious or devotional exercises through a reading of the Bible in the common school system is not circumvented by the designation of such activities as "classes." OAG 63-790.

Because of the difficulty of communication for community churches, nonsectarian nondenominational religious instruction can be given to deaf children at the deaf school on a voluntary basis on Sunday by teachers employed by the school. OAG 64-111.

Children can say grace before lunch in the schools. OAG 64-111.

Lunch periods could not be used to conduct religious classes if the district is utilizing portions of the lunch period to meet the six-hour school work requirement of KRS 158.060. OAG 64-111.

Missionaries would be precluded from making periodic visits to the schools to conduct religious services during regular scheduled periods. OAG 64-111.

The nativity scene can be used in schools at Christmas so long as no religious significance is attached thereto. OAG 64-111.

The utterance of prayers or the reading of the Bible can continue in PTA meetings and voluntary Bible classes held without the regular school hours or school curriculum. OAG 64-111.

There would be nothing objectionable in a student, during a period of meditation, voluntarily or spontaneously saying a prayer, silent or vocal, but a teacher could not do so. OAG 64-111.

This section is unconstitutional as violative of the first and fourteenth amendments of the United States Constitution under the doctrine of Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 20 Ohio Op. 2d 328, 1962 U.S. LEXIS 847, 86 A.L.R.2d 1285 (1962) and School Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844, 1963 U.S. LEXIS 2611 (1963). OAG 79-463, 1979 Ky. AG LEXIS 165.

For those school officials, employees and school board members that participate in or permit the continued practice of Bible reading as denounced by the United States Supreme Court, there stands a strong possibility of a legal claim by a student against them that the student's constitutional rights are being infringed under color of state law by these school personnel's actions. OAG 79-463, 1979 Ky. AG LEXIS 165.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Tobergte, The Impact of Kentucky's Present Constitution Upon Business Growth & Development, Volume 51, No. 3, Summer 1987 Ky. Bench & B. 21.

Kentucky Law Journal.

Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

158.175. Recitation of Lord's prayer and pledge of allegiance — Instruction in proper respect for and display of the flag — Observation of moment of silence or reflection.

(1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.

(2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day.

(3) The Kentucky Board of Education shall develop a program of instruction relating to the flag of the United States of America, including instruction in etiquette, the correct use and display of the flag, and other patriotic exercises as may be related. This program of instruction shall be provided to each public school for use in its course of instruction. The program of instruction, at a minimum, shall include the provisions of 4 U.S.C. secs. 1 to 3 and 4 U.S.C. secs. 5 to 9.

(4) The board of education of each local school district may purchase or otherwise acquire and provide for display in each classroom copies of the Declaration of Independence, the Gettysburg Address, and other documents the local board deems significant to the history of Kentucky and the United States.

(5)(a) The board of education of each local school district shall establish a policy and develop procedures whereby, at the commencement of the first class of each day in all public schools, there shall be a moment of silence or reflection of at least one (1) minute, but not to exceed two (2) minutes, in duration.

(b) The policy required in paragraph (a) of this subsection shall ensure that all pupils remain seated and silent and make no distracting display so that each pupil may, in the exercise of his or her individual choice, meditate, pray, or engage in any other silent activity which does not interfere with, distract from, or impede other pupils' exercise of individual choice. The policy shall prohibit district personnel from providing instruction to any student regarding the nature of any reflection that a student may engage in during the moment of silence or reflection. The policy shall require notification be sent to parents or guardians providing information on the policy and encouraging parents and guardians to provide guidance to their pupils regarding the moment of silence or reflection.

History.

Enact. Acts 1976, ch. 145, § 1; 1980, ch. 304, § 1, effective July 15, 1980; 1986, ch. 339, § 1, effective July 15, 1986; 1988, ch. 435, § 3, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 205, effective July 13, 1990; 1996, ch. 85, § 1, effective July 15,

1996; 2000, ch. 235, § 1, effective July 14, 2000; 2025 ch. 111, § 1, effective June 27, 2025.

OPINIONS OF ATTORNEY GENERAL.

Students who, for religious or political beliefs or other personal convictions, do not participate in the salute and pledge of allegiance to the flag should remain in their seats quietly, and school employees should be directed to avoid any action intended to coerce or influence a student to participate in the pledge if the student desires not to so participate. OAG 80-456, 1980 Ky. AG LEXIS 198.

The clear intent of the General Assembly in subsection (2) of this section is that: (1) The pledge of allegiance ceremony of recitation will be offered each school day, not just once or twice a week, and (2) that the opportunity to participate in the pledge of allegiance will occur as a first item on the school day agenda, not at midmorning or at the end of the school day. OAG 80-456, 1980 Ky. AG LEXIS 198.

This section as it relates to the pledge of allegiance violates no provision of either the United States or Kentucky Constitutions; the key to the facial constitutionality of this section is that pupil participation in the recitation of the pledge of allegiance to the flag is voluntary. OAG 80-456, 1980 Ky. AG LEXIS 198.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Kentucky Law Survey: Education, 29 N. Ky. L. Rev. 115 (2002).

158.177. Teaching of evolution — Right to include Bible theory of creation.

(1) In any public school instruction concerning the theories of the creation of man and the earth, and which involves the theory thereon commonly known as evolution, any teacher so desiring may include as a portion of such instruction the theory of creation as presented in the Bible, and may accordingly read such passages in the Bible as are deemed necessary for instruction on the theory of creation, thereby affording students a choice as to which such theory to accept.

(2) For those students receiving such instruction, and who accept the Bible theory of creation, credit shall be permitted on any examination in which adherence to such theory is propounded, provided the response is correct according to the instruction received.

(3) No teacher in a public school may stress any particular denominational religious belief.

(4) This section is not to be construed as being adverse to any decision which has been rendered by any court of competent jurisdiction.

History.

Enact. Acts 1976, ch. 261, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 403, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1976, ch. 261, § 1) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 403, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

158.178. Ten Commandments to be displayed. [Unconstitutional.]

(1) It shall be the duty of the Superintendent of Public Instruction, provided sufficient funds are available as provided in subsection (3) of this section, to ensure that a durable, permanent copy of the Ten Commandments shall be displayed on a wall in each public elementary and secondary school classroom in the Commonwealth. The copy shall be sixteen (16) inches wide by twenty (20) inches high.

(2) In small print below the last commandment shall appear a notation concerning the purpose of the display, as follows: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States."

(3) The copies required by this section shall be purchased with funds made available through voluntary contributions made to the State Treasurer for the purposes of this section.

History.

Enact. Acts 1978, ch. 436, § 1, effective June 17, 1978.

Compiler's Notes.

This section (Acts 1978, ch. 436, § 1, effective June 17, 1978) was declared unconstitutional in Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980), rehearing denied, 449 U.S. 1104, 101 S. Ct. 904, 66 L. Ed. 2d 832 (1981).

NOTES TO DECISIONS

1. Constitutionality.

Since the pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature, this section has no secular legislative purpose and is therefore unconstitutional as violative of the establishment clause of the First Amendment of the United States Constitution; it does not matter that the posted copies are financed by voluntary private contributions, for the mere posting of the copies under the auspices of the Legislature provides the official support of the state government that the establishment clause prohibits. Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199, 1980 U.S. LEXIS 2 (U.S. 1980).

OPINIONS OF ATTORNEY GENERAL.

The United States Supreme Court in Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199, 1980 U.S. LEXIS 2 (1980) determined that this section is unconstitutional, concluding that the permanent posting of copies of the Ten Commandments in the public common schools of Kentucky violates the First Amendment and the Fourteenth Amendment of the United States Constitution and the decision requires the removal of the copies presently hanging on the walls of the public common schools since the court found that the pre-eminent purpose for posting is plainly religious in nature. OAG 81-12. (Withdraws OAG 78-605).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Comment, Stone v. Graham: A Fragile Defense of Individual Religious Autonomy, 69 Ky. L.J. 392 (1980-81).

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Bartlett, Displaying the Ten Commandments on Public Property: The Kentucky Experience: Wasn't It Written In Stone?, 30 N. Ky. L. Rev. 163 (2003).

158.180. Books criticizing school of healing prohibited. [Repealed.]

Compiler's Notes.

This section (4363-11a) was repealed by Acts 1978, ch. 21, § 2, effective June 17, 1978.

158.181. Legislative findings.

(1) The General Assembly finds the following:

(a) Judicial decisions concerning religion, free speech, and public education are widely misunderstood and misapplied;

(b) Confusion surrounding these decisions has caused some to be less accommodating of the religious liberty and free speech rights of students than permitted under the First Amendment to the United States Constitution;

(c) Confusion surrounding these decisions has resulted in needless conflicts and litigation;

(d) The Supreme Court of the United States has ruled that the establishment clause of the First Amendment to the United States Constitution requires that public schools neither advance or inhibit religion. Public schools should be neutral in matters of faith and should treat religion with fairness and respect;

(e) Neutrality to religion does not require hostility to religion. The establishment clause does not prohibit reasonable accommodation of religion, nor does the clause prohibit appropriate teaching about religion;

(f) Accommodation of religion is required by the free speech and free exercise clauses of the First Amendment to the United States Constitution; and

(g) Setting forth the religious liberty rights of students in a statute would assist students and parents in the enforcement of the religious liberty rights of students and would provide impetus to efforts in public schools to accommodate religious belief in feasible cases.

(2) The purpose of KRS 158.181 to 158.187 is to create a safe harbor for schools desiring to avoid litigation and to allow the free speech and religious liberty rights of students to the extent permissible under the establishment clause.

History.

Enact. Acts 1998, ch. 294, § 1, effective July 15, 1998.

158.182. Definitions for KRS 158.181 to 158.187.

As used in KRS 158.181 to 158.187, unless the context requires otherwise:

(1) "Establishment clause" means the portion of the First Amendment to the United States Constitution that forbids laws respecting an establishment of religion;

(2) "Free exercise clause" means the portion of the First Amendment to the United States Constitution that forbids laws prohibiting the free exercise of religion;

(3) "Free speech clause" means the portion of the First Amendment to the United States Constitution that forbids laws abridging the freedom of speech;

(4) "Public school" means any school that is operated by the state, a political subdivision of the state, or a governmental agency within the state; and

(5) "Student" means an individual attending a public school.

History.

Enact. Acts 1998, ch. 294, § 2, effective July 15, 1998.

158.183. Prohibited acts by students — Rights of student — Duties of local board of education — Administrative remedies.

(1) Consistent with the Constitutions of the United States of America and the Commonwealth of Kentucky, a student shall have the right to carry out an activity described in any of paragraphs (a) to (j) of subsection (2) of this section, if the student does not:

(a) Infringe on the rights of the school to:

1. Maintain order and discipline;

2. Prevent disruption of the educational process; and

3. Determine educational curriculum and assignments;

(b) Harass other persons or coerce other persons to participate in the activity; or

(c) Otherwise infringe on the rights of other persons.

(2) Consistent with the Constitutions of the United States of America and the Commonwealth of Kentucky, and subject to the provisions of subsection (1) of this section, a student shall be permitted to voluntarily:

(a) Pray or engage in religious activities in a public school, vocally or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate, speak on, or engage in nonreligious matters alone or with other students in the public school;

(b) Express religious or political viewpoints in a public school to the same extent and under the same circumstances as a student is permitted to express viewpoints on nonreligious or nonpolitical topics or subjects in the school;

(c) Express religious or political viewpoints in classroom, homework, artwork, and other written and oral assignments free from discrimination or penalty based on the religious or political content of the submissions;

(d) Speak to and attempt to discuss religious or political viewpoints with other students in a public school to the same extent and under the same circumstances as a student is permitted to speak to and attempt to share nonreligious or nonpolitical viewpoints with other students. However, any student may demand that this speech or these attempts to share religious or political viewpoints not be directed at him or her;

(e) Distribute religious or political literature in a public school, subject to reasonable time, place, and manner restrictions to the same extent and under

the same circumstances as a student is permitted to distribute literature on nonreligious or nonpolitical topics or subjects in the school;

(f) Display religious messages on items of clothing to the same extent that a student is permitted to display nonreligious messages on items of clothing;

(g) Access public secondary school facilities during noninstructional time as a member of a religious student organization for activities that may include prayer, Bible reading, or other worship exercises to the same extent that members of nonreligious student organizations are permitted access during noninstructional time;

(h) Use school media, including the public address system, the school newspaper, and school bulletin boards, to announce student religious meetings to the same extent that a student is permitted to use school media to announce student nonreligious meetings;

(i) Meet as a member of a religious student group during noninstructional time in the school day to the same extent that members of nonreligious student groups are permitted to meet, including before and after the school day; and

(j) Be absent, in accordance with attendance policy, from a public school to observe religious holidays and participate in other religious practices to the same extent and under the same circumstances as a student is permitted to be absent from a public school for nonreligious purposes.

(3) Consistent with its obligations to respect the rights secured by the Constitutions of the United States of America and the Commonwealth of Kentucky, a local board of education shall ensure that:

(a)1. The selection of students to speak at official events is made without regard to the religious or political viewpoint of the student speaker;

2. The prepared remarks of the student are not altered before delivery, except in a viewpoint-neutral manner, unless requested by the student. However, student speakers shall not engage in speech that is obscene, vulgar, offensively lewd, or indecent; and

3. If the content of the student's speech is such that a reasonable observer may perceive affirmative school sponsorship or endorsement of the student speaker's religious or political viewpoint, the school shall communicate, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the school;

(b) Religious and political organizations are allowed equal access to public forums on the same basis as nonreligious and nonpolitical organizations; and

(c) No recognized religious or political student organization is hindered or discriminated against in the ordering of its internal affairs, selection of leaders and members, defining of doctrines and principles, and resolving of organizational disputes in the furtherance of its mission, or in its determination that only persons committed to its mission should conduct these activities.

(4) Consistent with its obligations to respect the rights secured by the Constitutions of the United States of America and the Commonwealth of Kentucky, a local board of education shall permit public schools in the district to sponsor artistic or theatrical programs that advance students' knowledge of society's cultural and religious heritage, as well as provide opportunities for students to study and perform a wide range of music, literature, poetry, and drama.

(5) No action may be maintained under KRS 158.181 to 158.187 unless the student has exhausted the following administrative remedies;

(a) The student or the student's parent or guardian shall state his or her complaint to the school's principal. The principal shall investigate and take appropriate action to ensure the rights of the student are resolved within seven (7) days of the date of the complaint;

(b) If the concerns are not resolved, then the student or the student's parent or guardian shall make a complaint in writing to the superintendent with the specific facts of the alleged violation;

(c) The superintendent shall investigate and take appropriate action to ensure that the rights of the student are resolved within thirty (30) days of the date of the written complaint; and

(d) Only after the superintendent's investigation and action may a student or the student's parent or legal guardian pursue any other legal action.

History.

Enact. Acts 1998, ch. 294, § 3, effective July 15, 1998; 2017 ch. 15, § 1, effective June 29, 2017.

158.184. Construction favoring establishment clause, religious liberty, and free speech.

(1) Nothing in KRS 158.181 to 158.187 shall be construed to affect, interpret, or in any way address the establishment clause.

(2) The specification of religious liberty or free speech rights in KRS 158.181 to 158.187 shall not be construed to exclude or limit religious liberty or free speech rights otherwise protected by federal, state, or local law.

History.

Enact. Acts 1998, ch. 294, § 4, effective July 15, 1998.

158.185. Construction prohibiting school employee from leading, directing, or encouraging religious or anti-religious activity in violation of establishment clause.

Nothing in KRS 158.181 to 158.187 shall be construed to support, encourage, or permit a teacher, administrator, or other employee of the public schools to lead, direct, or encourage any religious or anti-religious activity in violation of the portion of the First Amendment of the United States Constitution prohibiting laws respecting an establishment of religion.

History.

Enact. Acts 1998, ch. 294, § 5, effective July 15, 1998.

158.186. Copies of law to local school board, school-based decision making council, and certified employees.

Before September 15 of each year, the commissioner of education shall:

(1) E-mail electronic copies or send paper copies of KRS 158.183 and 158.195 directly to each local school board, school-based decision making council, and certified employee in Kentucky; and

(2) Certify compliance with this section to the Interim Joint Committee on Education by submitting to the committee:

(a) A copy of all materials, other than the statutes, sent as part of the notice; and

(b) The dates materials were sent.

History.

Enact. Acts 1998, ch. 294, § 6, effective July 15, 1998; 2017 ch. 15, § 3, effective June 29, 2017; 2018 ch. 66, § 1, effective July 14, 2018.

158.187. Short title for KRS 158.181 to 158.187.

KRS 158.181 to 158.187 may be cited as the Nicole Hadley, Jessica James, and Kayce Steger Act.

History.

Enact. Acts 1998, ch. 294, § 7, effective July 15, 1998.

158.188. Teaching activities permitted in the secular study of religion with the use of the Bible or other scripture

A teacher in a public school shall be permitted to:

(1) Teach about religion with the use of the Bible or other scripture, but without providing religious instruction, for the secular study of:

(a) The history of religion;

(b) Comparative religions;

(c) The Bible as literature;

(d) The role of religion in the history of the United States and other countries; and

(e) Religious influences on art, music, literature, and social studies; and

(2) Teach about religious holidays, including religious aspects, and celebrate the secular aspects of holidays.

History.

2017 ch. 15, § 2, effective June 29, 2017.

158.189. Legislative findings — Policies for use of restrooms by students of the opposite biological sex — Requirements — Best available accommodation to be provided.

(1) As used in this section:

(a) "Biological sex" means the physical condition of being male or female, which is determined by a person's chromosomes, and is identified at birth by a person's anatomy; and

(b) "School" means a school under the control of a local board of education or a charter school board of directors.

(2) The General Assembly finds that:

(a) School personnel have a duty to protect the dignity, health, welfare, and privacy rights of students in their care;

(b) Children and young adults have natural and normal concerns about privacy while in various states of undress, and most wish for members of the opposite biological sex not to be present in those circumstances;

(c) Allowing students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex:

1. Will create a significant potential for disruption of school activities and unsafe conditions; and

2. Will create potential embarrassment, shame, and psychological injury to students;

(d) Parents have a reasonable expectation that schools will not allow minor children to be viewed in various states of undress by members of the opposite biological sex, nor allow minor children to view members of the opposite sex in various states of undress; and

(e) Schools have a duty to respect and protect the privacy rights of students, including the right not to be compelled to undress or be unclothed in the presence of members of the opposite biological sex.

(3) Each local board of education or charter school board of directors shall, after allowing public comment on the issue at an open meeting, adopt policies necessary to protect the privacy rights outlined in subsection (2) of this section and enforce this subsection. Those policies shall, at a minimum, not allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex.

(4)(a) A student who asserts to school officials that his or her gender is different from his or her biological sex and whose parent or legal guardian provides written consent to school officials shall be provided with the best available accommodation, but that accommodation shall not include the use of school restrooms, locker rooms, or shower rooms designated for use by students of the opposite biological sex while students of the opposite biological sex are present or could be present.

(b) Acceptable accommodations may include but are not limited to access to single-stall restrooms or controlled use of faculty bathrooms, locker rooms, or shower rooms.

History.

2023 ch. 132, § 3, effective March 29, 2023.

158.190. Sectarian, infidel, or immoral books prohibited.

No book or other publication of a sectarian, infidel, or immoral character, or that reflects on any religious denomination, shall be used or distributed in any common school. No sectarian, infidel, or immoral doctrine shall be taught in any common school.

History.

4363-11; Acts 1942, ch. 208, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 404, effective July 13, 1990.

Compiler's Notes.

This section (4363-11; amend Acts 1942, ch. 208, § 1) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 404, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Injunction for Enforcement.
2. Bible.

1. Injunction for Enforcement.

An injunction should have been issued by the Circuit Court prohibiting school officers, including the board of education, from violating this section, expending public school funds for religious or sectarian purposes, keeping sectarian periodicals in and about the libraries of the county schools and stopping the operating of public school buses on religious holidays not legalized as state or national holidays. Wooley v. Spalding, 293 S.W.2d 563, 1956 Ky. LEXIS 73 (Ky. 1956).

2. Bible.

The Bible is not a sectarian book. Hackett v. Brooksville Graded School Dist., 120 Ky. 608, 87 S.W. 792, 27 Ky. L. Rptr. 1021, 1905 Ky. LEXIS 144 (Ky. 1905) (decided under prior law).

Cited in:

Rawlings v. Butler, 290 S.W.2d 801, 1956 Ky. LEXIS 345, 60 A.L.R.2d 285 (Ky. 1956).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

158.191. Health and mental health services related to human sexuality, contraception, or family planning — District to notify parents — District prohibited from keeping student information confidential from a parent — Prohibition on policies for use of pronouns that do not conform to a student's biological sex.

(1) As used in this section:

(a) "External health care provider" means a provider of health or mental health services that is not employed by or contracted with the school district to provide services to the district's students;

(b) "Health services" has the same meaning as in KRS 156.502;

(c) "Mental health services" means services provided by a school-based mental health services provider as defined in KRS 158.4416 but shall not include academic or career counseling; and

(d) "Parent" means a person who has legal custody or control of the student such as a mother, father, or guardian.

(2) Upon a student's enrollment and at the beginning of each school year, the district shall provide a notification to the student's parents listing each of the health services and mental health services related to human sexuality, contraception, or family planning available at the student's school and of the parents' right to withhold consent or decline any of those specific services. A parent's consent to a health service or mental health service under this subsection shall not waive the parent's right to access the student's educational or health records held by the district or the notifications required under subsection (3) of this section.

(3) Except as provided in subsection (5) of this section, as part of a school district's effort to provide a safe and supportive learning environment for students, a school shall notify a student's parents if:

(a) The school changes the health services or mental health services related to human sexuality, contraception, or family planning that it provides, and shall obtain parental consent prior to providing health services or mental health services to the student; or

(b) School personnel make a referral:

1. For the student to receive a school's health services or mental health services; or

2. To an external health care provider, for which parental consent shall be obtained prior to the referral being made.

(4) School districts and district personnel shall respect the rights of parents to make decisions regarding the upbringing and control of the student through procedures encouraging students to discuss mental or physical health or life issues with their parents or through facilitating the discussion with their parents.

(5)(a) The Kentucky Board of Education or the Kentucky Department of Education shall not require or recommend that a local school district keep any student information confidential from a student's parents. A district or school shall not adopt policies or procedures with the intent of keeping any student information confidential from parents.

(b) The Kentucky Board of Education or the Kentucky Department of Education shall not require or recommend policies or procedures for the use of pronouns that do not conform to a student's biological sex as indicated on the student's original, unedited birth certificate issued at the time of birth pursuant to KRS 156.070(2)(g)2.

(c) A local school district shall not require school personnel or students to use pronouns for students that do not conform to that particular student's biological sex as referenced in paragraph (b) of this subsection.

(d) Nothing in this subsection shall prohibit a school district or district personnel from withholding information from a parent if a reasonably prudent person would believe, based on previous conduct and history, that the disclosure would result in the child becoming a dependent child or an abused or neglected child as defined in KRS 600.020. The fact that district personnel withhold information from a parent under this subsection shall not in itself constitute evidence of failure to report dependency, neglect, or abuse to the Cabinet for Health and Family Services under KRS 620.030.

(6) Prior to a well-being questionnaire or assessment, or a health screening form being given to a child for research purposes, a school district shall provide the student's parent with access to review the material and shall obtain parental consent. Parental consent shall not be a general consent to these assessments or forms but shall be required for each assessment or form. A parent's refusal to consent shall not be an indicator of having a belief regarding the topic of the assessment or form.

(7) Nothing in this section shall:

(a) Prohibit a school district or the district's personnel from seeking or providing emergency medical or mental health services for a student as outlined in the district's policies; or

(b) Remove the duty to report pursuant to KRS 620.030 if district personnel has reasonable cause to believe the child is a dependent child or an abused or neglected child due to the risk of physical or emotional injury identified in KRS 600.020(1)(a)2. or as otherwise provided in that statute.

History.

2023 ch. 132, § 1, effective March 29, 2023.

158.192. Complaint alleging that material, program, or event is harmful to minors — Complaint resolution policy — Determination by principal — Appeal — Final disposition by board — Request by parent or guardian to preclude student access — Parent's or guardian's access — Model policy.

(1) As used in this section, "harmful to minors" means materials, programs, or events that:

(a) Contain the exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks or the female breast, or visual depictions of sexual acts or simulations of sexual acts, or explicit written descriptions of sexual acts;

(b) Taken as a whole, appeal to the prurient interest in sex; or

(c) Are patently offensive to prevailing standards regarding what is suitable for minors.

(2) No later than July 1, 2023, each local board of education shall adopt a complaint resolution policy for its local schools to be used to address complaints submitted by parents or guardians alleging that material, a program, or an event that is harmful to minors has been provided or is currently available to a student enrolled in the local school district who is the child of the parent or guardian. The complaint resolution process shall require that:

(a) Complaints be submitted in writing to the principal of the school where the student is enrolled;

(b) Complaints provide the name of the complainant, a reasonably detailed description of the material, program, or event that is alleged to be harmful to minors, and how the material, program, or event is believed to be harmful to minors;

(c) Within seven (7) business days of receiving a written complaint, the school principal shall review the complaint and take reasonable steps to investigate the allegations in the complaint, including but not limited to reviewing the material, program, or event that is alleged to be harmful to minors;

(d) The school principal shall determine whether the material, program, or event that is the subject of the complaint is harmful to minors;

(e) The school principal shall determine whether student access to material that is the subject of the complaint shall remain, be restricted, or be removed;

(f) The school principal shall determine whether a program or event that is the subject of the complaint shall be eligible for future participation by students in the school;

(g) Within ten (10) business days of receiving the complaint, unless another schedule is mutually agreed to by the parent or guardian and the school principal, the school principal shall confer with the parent or guardian and inform him or her whether the material, program, or event that is the subject of the complaint was determined to be harmful to minors and what the resolution will be in accordance with paragraphs (e) and (f) of this subsection;

(h) Appeals of the school principal's determination provided for in paragraphs (d), (e), and (f) of this subsection shall:

1. Be subject to full administrative and substantive review by the local board of education and shall not be delegated;

2. Include an opportunity for the parent or guardian to provide input during public comment at a local board of education meeting;

3. Be completed within thirty (30) calendar days of receiving the written appeal unless another time frame is mutually agreed upon by the parent or guardian and the local board of education; and

4. Be discussed and voted on during a meeting of the local board of education subject to the open records and open meeting requirements under KRS Chapter 61;

(i) The board's final disposition of the appeal shall be made in writing and shall state whether the material, program, or event was determined to be harmful to minors and whether student access to the material will remain, be restricted, or be removed and whether the program or event shall be eligible for future participation by students in the school; and

(j) Within fifteen (15) business days from the date of a final disposition, the title of the material or a description of the program or event submitted for appeal pursuant to paragraph (h) of this subsection, whether the material, program, or event was determined to be harmful to minors, whether student access to the material will remain, be restricted, or be removed or whether the program or event shall be eligible for future participation by students in the school, and the vote cast by each individual board member shall:

1. Be published on the website of the local board of education where it shall remain available for review; and

2. Be published in the newspaper with the largest circulation in the county.

(3)(a) A parent or guardian may request in writing to the school, after final disposition is determined by the board as provided for in subsection (2)(i) of this section, that the school ensure his or her student does not have access to the material, program, or event that the parent or guardian believes to be harmful to minors but was allowed to remain or be eligible for future participation.

(b) The school shall ensure that the student whose parent or guardian has made a request as provided for in paragraph (a) of this subsection does not have

access to the material or is not allowed to participate in the program or event that the parent or guardian believes to be harmful to minors.

(4) A parent or guardian not having filed the appeal may request in writing access to the appealed materials, programs, or events for review and shall abide by the school's and district's policies and procedures when requesting and reviewing such information.

(5) No later than May 1, 2023, the Department of Education shall promulgate a model policy for a complaint resolution process that meets the requirements of subsections (2), (3), and (4) of this section.

History.
2023 ch. 120, § 1, effective March 29, 2023.

158.193. Private religious expression by school employees — Activities permitted while employees are on duty — Construction.

(1) For the purposes of this section, "on duty" means those times when a school district employee is:

(a) Required by the district to be on campus or at another designated location and required to perform the scope of the employee's duties; or

(b) Otherwise acting as a designated representative of the school district.

(2) A school district shall not punish or prohibit an employee from, or punish an employee for, engaging in private religious expression otherwise protected by the First Amendment to the United States Constitution absent a showing that the employee has engaged in actual coercion.

(3) While a school district employee is on duty, the employee may, at a minimum:

(a) Engage in religious expression and discussions and share religious materials with other employees at the same time and in the same manner that employees are permitted to engage in nonreligious expression and discussions outside the scope of duties;

(b) Engage in private religious expression at a time when it is otherwise permissible for an employee to engage in private expressive conduct or act outside the scope of duties;

(c) Meet with other district employees for prayer or religious study during times that the employee is allowed to act outside the scope of duties, including but not limited to employee breaks, time before school, and during lunch;

(d) Work as a sponsor of a student religious club or organization and assist students in planning meetings, activities, and events to the same extent that employee sponsors of nonreligious clubs or organizations are permitted to do so;

(e) Wear religious clothing, symbols, or jewelry, provided that such items otherwise comply with any dress code implemented by the school district;

(f) Decorate their desk and other personal spaces with personal items that reflect their religious beliefs to the same extent that other employees are permitted to decorate their desk and other personal spaces with personal items; and

(g) During noninstructional time, engage in religious expression and share religious materials to the same extent that other employees may engage in private expression permitted under the First Amendment to the United States Constitution.

(4) Nothing in this section shall be construed to authorize the state or any other governmental organization to:

(a) Require any person to participate in prayer or any other religious activity; or

(b) Violate the constitutional rights of any person.

(5) This section shall not be construed to limit a school district's authority to:

(a) Maintain order and discipline on school property in a content-neutral and viewpoint-neutral manner;

(b) Protect the safety of students, employees, and visitors; and

(c) Adopt and enforce policies and procedures regarding student speech at school that respect the rights of students.

History.
2023 ch. 89, § 1, effective June 29, 2023.

158.194. Bill of Rights to be displayed.

Each public elementary and secondary school classroom in the Commonwealth of Kentucky shall prominently display a copy of the Bill of Rights, embodying the individual liberties safeguarded by the Constitution of the United States.

History.
Enact. Acts 1988, ch. 172, § 1, effective July 15, 1988.

Legislative Research Commission Notes.
(9/30/99). This statute was created by a joint resolution of the 1988 Regular Session of the General Assembly and was previously carried as an LRC Note under KRS 158.010. Because the enactment is permanent in nature, see KRS 7.131(2), the Reviser of Statutes has codified this text as KRS 158.194 under KRS 7.136(1)(a).

158.195. Display of national motto in public elementary and secondary schools — Reading and posting in public schools of texts and documents on American history and heritage — Posting of restrictions on child labor in public school buildings that contain instructional space for students in grades six through twelve.

(1)(a) Local boards shall require each public elementary and secondary school to display the national motto of the United States, "In God We Trust," in a prominent location in the school.

(b) The display required in paragraph (a) of this subsection may take the form of but is not limited to a mounted plaque or student artwork.

(2) As used in this section, "prominent location" means a school entryway, cafeteria, or common area where students are likely to see an item on display.

(3) Local boards may allow any teacher or administrator in a public school district of the Commonwealth to read or post in a public school building, classroom, or

event any excerpts or portions of: the national motto; the national anthem; the pledge of allegiance; the preamble to the Kentucky Constitution; the Declaration of Independence; the Mayflower Compact; the writings, speeches, documents, and proclamations of the founding fathers and presidents of the United States; United States Supreme Court decisions; and acts of the United States Congress including the published text of the Congressional Record. There shall be no content-based censorship of American history or heritage in the Commonwealth based on religious references in these writings, documents, and records.

(4) Beginning in the 2025-2026 school year, local boards shall require each public school building that contains instructional space for students in grades six (6) through twelve (12) to conspicuously display in a prominent location, in both English and Spanish, a printed abstract of KRS 339.210 to 339.450, a list of the limited or prohibited occupations for minors, and a notice stating the working hours per day for each day of the week permissible for minors to work. The same information or display shall also be posted on a district's or school's website.

History.

Enact. Acts 1992, ch. 170, § 4, effective July 14, 1992; 2019 ch. 82, § 1, effective June 27, 2019; 2025 ch. 73, § 2, effective June 27, 2025.

NOTES TO DECISIONS

Cited in:

Doe v. Harlan County Sch. Dist., 96 F. Supp. 2d 667, 2000 U.S. Dist. LEXIS 6632 (E.D. Ky. 2000).

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Kentucky Law Survey: Education, 29 N. Ky. L. Rev. 115 (2002).

158.196. Instructional materials standards and concepts — Documents and speeches to be included.

(1) A public school or public charter school shall provide instruction and instructional materials that are aligned with the social studies academic standards adopted in accordance with KRS 158.6453 and consistent with the following concepts:

(a) All individuals are created equal;

(b) Americans are entitled to equal protection under the law;

(c) An individual deserves to be treated on the basis of the individual's character;

(d) An individual, by virtue of the individual's race or sex, does not bear responsibility for actions committed by other members of the same race or sex;

(e) The understanding that the institution of slavery and post-Civil War laws enforcing racial segregation and discrimination were contrary to the fundamental American promise of life, liberty, and the pursuit of happiness, as expressed in the Declaration of Independence, but that defining racial disparities solely on the legacy of this institution is destructive to the unification of our nation;

(f) The future of America's success is dependent upon cooperation among all its citizens;

(g) Personal agency and the understanding that, regardless of one's circumstances, an American has the ability to succeed when he or she is given sufficient opportunity and is committed to seizing that opportunity through hard work, pursuit of education, and good citizenship; and

(h) The significant value of the American principles of equality, freedom, inalienable rights, respect for individual rights, liberty, and the consent of the governed.

(2) Nothing in subsection (1) of this section shall be construed to restrict a public school or public charter school from providing instruction or using instructional materials that include:

(a) The history of an ethnic group, as described in textbooks and instructional materials adopted by a school district;

(b) The discussion of controversial aspects of history; or

(c) The instruction and instructional materials on the historical oppression of a particular group of people.

(3)(a) Notwithstanding the every six (6) year schedule set forth in KRS 158.6453(2)(a), no later than July 1, 2023, the Kentucky Department of Education shall incorporate fundamental American documents and speeches into the grade-level appropriate middle and high school social studies academic standards and align corresponding assessments, including but not limited to:

1. The Mayflower Compact;
2. The Declaration of Independence;
3. The Constitution of the United States;
4. The Federalist No. 1 (Alexander Hamilton);
5. The Federalist Nos. 10 and 51 (James Madison);
6. The June 8, 1789, speech on amendments to the Constitution of the United States by James Madison;
7. The first ten (10) amendments to the Constitution of the United States, also known as the Bill of Rights;
8. The 1796 Farewell Address by George Washington;
9. The United States Supreme Court opinion in Marbury v. Madison, 5 U.S. 137 (1803);
10. The Monroe Doctrine by James Monroe;
11. What to the Slave is the Fourth of July? speech by Frederick Douglass;
12. The United States Supreme Court opinion in Dred Scott v. Sandford, 60 U.S. 393 (1857);
13. Final Emancipation Proclamation by Abraham Lincoln;
14. The Gettysburg Address by Abraham Lincoln;
15. Declaration of Rights of the Women of the United States by Susan B. Anthony, Matilda Joslyn Gage, and Elizabeth Cady Stanton;
16. The September 18, 1895, Atlanta Exposition Address by Booker T. Washington;
17. Of Booker T. Washington and Others by W.E.B. Du Bois;

18. The United States Supreme Court opinion in Plessy v. Ferguson, 163 U.S. 537 (1896);

19. The August 31, 1910, New Nationalism speech by Theodore Roosevelt;

20. The January 11, 1944, State of the Union Address by Franklin D. Roosevelt;

21. The United States Supreme Court opinions in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954) and Brown v. Board of Education of Topeka, 349 U.S. 294 (1955);

22. Letter from Birmingham Jail by Martin Luther King, Jr.;

23. The August 28, 1963, I Have a Dream speech by Martin Luther King, Jr.; and

24. A Time for Choosing by Ronald Reagan.

(b) This revision shall not delay or otherwise impact the existing schedule as set forth in KRS 158.6453(2).

History.
2022 ch. 196, § 4, effective July 14, 2022.

Legislative Research Commission Notes.
(7/14/2022). 2022 Ky. Acts ch. 196, sec. 8, provides that Sections 4 and 5 of the Act, this statute and KRS 161.164, may be cited as the Teaching American Principles Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Required Academic Standards for Social Studies, 704 KAR 8:060.

158.197. Elective course on religious scripture — Purpose — Restrictions —School council or governing body authorized to display historic religious and nonreligious artifacts, monuments, symbols, and texts in conjunction with course of study.

(1) A school-based decision making council under administrative regulations of the Kentucky Board of Education may offer students in grade nine (9) or above:

(a) An elective social studies course on the Hebrew Scriptures, Old Testament of the Bible;

(b) An elective social studies course on the New Testament of the Bible; or

(c) An elective social studies course on the Hebrew Scriptures and the New Testament of the Bible.

(2) The purpose of a course under this section is to:

(a) Teach students knowledge of biblical content, characters, poetry, and narratives that are prerequisites to understanding contemporary society and culture, including literature, art, music, mores, oratory, and public policy; and

(b) Familiarize students with, as applicable:

1. The contents of the Hebrew Scriptures or New Testament;

2. The history of the Hebrew Scriptures or New Testament;

3. The literary style and structure of the Hebrew Scriptures or New Testament; and

4. The influence of the Hebrew Scriptures or New Testament on law, history, government, literature, art, music, customs, morals, values, and culture.

(3) A student shall not be required to use a specific translation as the sole text of the Hebrew Scriptures or New Testament and may use as the basic textbook a different translation of the Hebrew Scriptures or New Testament from that chosen by the school council.

(4) A course offered under this section shall follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in the school. A course under this section shall not endorse, favor, or promote, or disfavor or show hostility toward, any particular religion or nonreligious faith or religious perspective. A school-based decision making council, in complying with this section, shall not violate any provision of the United States Constitution or federal law, the Kentucky Constitution or any state law, or any administrative regulations of the United States Department of Education or the Kentucky Department of Education.

(5) Any school council organized pursuant to KRS 160.345 or, if none exists, the principal, may authorize the display of historic artifacts, monuments, symbols, and texts, including but not limited to religious materials, in conjunction with a course of study that includes an elective course in history, civilization, ethics, comparative religion, literature, or other subject area that uses such artifacts, monuments, symbols, and texts as instructional material if the display is:

(a) Appropriate to the overall educational purpose of the course; and

(b) Consistent with the requirements of KRS 42.705.

History.
Enact. Acts 2006, ch. 34, § 4, effective March 24, 2006; 2017 ch. 187, § 2, effective June 29, 2017.

158.200. Moral instruction — Conditions — Quarterly reports.

(1) The boards of education of local school districts may provide an opportunity for pupils to attend moral instruction in their jurisdiction, in the manner provided in this section.

(2)(a) Local boards of education shall allow pupils to be excused for up to one (1) hour on no more than one (1) day each week, which shall include time attributed to travel to and from, to attend a district-approved request for a moral instruction offering upon receiving the consent of the pupil's parent or guardian.

(b) Moral instruction provided under this section shall not take place on school property.

(c) Pupil participation in moral instruction shall be voluntary and free from coercion by school personnel.

(d) Moral instruction shall be given without expense to any local board of education above de minimis administrative expenses incurred in carrying out this section.

(3) An individual, organization, entity, or any combination thereof seeking to provide a moral instruction offering for pupils shall submit a written, signed re-

quest to the local board of education of a school district regarding the proposed moral instruction offering. The request shall include:

(a) Contact information for the primary individual who will be providing the moral instruction, as well as all other individuals who may be transporting pupils or providing moral instruction to students through the offering;

(b) A statement acknowledging and agreeing to be bound by the requirements placed upon moral instruction offerings under this section;

(c) The address or a description of the location where the moral instruction will be provided;

(d) A transportation plan to ensure the safety of pupils while traveling to and from moral instruction within the allotted time period;

(e) A statement acknowledging and agreeing to inform the parent or guardian of a participating pupil that the school district and its employees and agents shall not incur any liability as a result of any injury sustained by the pupil related to participation in the moral instruction offering;

(f) A statement acknowledging and agreeing to indemnify and hold harmless the school district and its employees and agents against any claims relating to the moral instruction offering or transportation to or from the offering; and

(g) Proof of insurance coverage to be carried by the provider that shall include adequate insurance for liability, property loss, and personal injury of students related to the moral instruction offering or transportation to or from the offering.

(4)(a) Upon receipt of a request under subsection (3) of this section, the local board of education may make arrangements with the person seeking to provide the moral instruction offering as the local board deems necessary.

(b) Upon approval by the local board of a request under this section, the superintendent of the school district shall require each individual identified in the request to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a clear CA/N check, provided by the individual, consistent with the provisions of KRS 160.380(7). The individuals, or the organization or entity through which the moral instruction offering will be provided, shall be responsible for all costs associated with obtaining the criminal history and CA/N checks under this paragraph.

(c) As a condition of the agreement between the local board and a provider, the local board shall require that any individual identified in the request under subsection (3) of this section be barred from providing transportation or participating in moral instruction offerings under this section upon receipt by the school district of a report documenting a record of:

1. Child abuse or neglect;

2. A sex crime or criminal offense against a victim who is a minor, as defined in KRS 17.500; or

3. A violent crime as defined in KRS 17.165;

by the individual. The prohibition shall continue until the local board receives an updated record for that individual that does not contain a disqualifying item.

(5) A pupil who attends a moral instruction offering at the time specified and for the period fixed shall be:

(a) Credited with the time of attendance as if he or she had been in actual attendance in school, and the time shall be included as part of the actual school work required in KRS 158.060. A pupil shall not be penalized for any school work missed during the specified time; and

(b) Included in calculating the average daily attendance for the Support Education Excellence in Kentucky program as if the pupil was in actual attendance in school.

(6) A pupil who does not participate in a moral instruction offering shall remain in school during the time when the instruction is being given, and shall take noncredit enrichment courses or participate in educational activities not required in the regular curriculum, and that time shall be included as part of the actual school work required in KRS 158.060. Students of different grade levels may be placed into combined classrooms in accordance with maximum class size allotments as described in KRS 157.360. These courses or activities shall be supervised by certified school personnel and may include but are not limited to study hall, computer instruction, music, art, library, physical education, and tutorial assistance.

(7) A school district shall not discriminate against a pupil for his or her participation or nonparticipation in a moral instruction offering.

(8)(a) Each local board of education shall submit the following information quarterly to the Kentucky Department of Education:

1. The name of each applicant that submitted a request to provide a moral instruction offering;

2. The date of the application;

3. The local board's approval or denial of the application; and

4. If the request was denied, the reason for the denial.

(b) The Kentucky Department of Education shall compile the quarterly reports required by this subsection and submit a combined report to the Legislative Research Commission no later than December 1 of each year for referral to the appropriate Interim Joint Committee on Education.

History.

4363-7a; amend. Acts 1990, ch. 476, Pt. IV, § 206, effective July 13, 1990; 2025 ch. 111, § 2, effective June 27, 2025; 2026 ch. 74, § 14, effective April 10, 2026.

OPINIONS OF ATTORNEY GENERAL.

This section is permissive, not mandatory. OAG 60-953.

The State Department of Education has no responsibility for released time religious instruction carried on by a school board in cooperation with churches in the school district. OAG 73-481.

Sections KRS 158.200 to 158.260 do not authorize the releasing of pupils for moral instruction on any basis other than one hour per week and thus a release on an accumulated basis, though equivalent, violates the statutes. OAG 75-218.

158.210. Survey of desire for moral instruction may be made. [Repealed]

History.
4363-7b; amend. Acts 1990, ch. 476, Pt. IV, § 207, effective July 13, 1990; repealed by 2025 ch. 111, § 3, effective June 27, 2025.

158.220. Time allowed for moral instruction in suitable place. [Repealed]

History.
4363-7c; amend. Acts 1990, ch. 476, Pt. IV, § 208, effective July 13, 1990; repealed by 2025 ch. 111, § 3, effective June 27, 2025.

158.230. Arrangements with persons in charge. [Repealed]

History.
4363-7d; amend. Acts 1990, ch. 476, Pt. IV, § 209, effective July 13, 1990; repealed by 2025 ch. 111, § 3, effective June 27, 2025.

158.240. Credit for moral instruction. [Repealed]

History.
4363-7e; amend. Acts 1990, ch. 70, § 1, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 210, effective July 13, 1990; repealed by 2025 ch. 111, § 3, effective June 27, 2025.

158.250. Activities for nonparticipants in moral instruction classes. [Repealed]

History.
4363-7f; amend. Acts 1990, ch. 70, § 2, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 211, effective July 13, 1990; repealed by 2025 ch. 111, § 3, effective June 27, 2025.

158.260. Cost of moral instruction. [Repealed]

History.
4363-7g; amend. Acts 1990, ch. 476, Pt. IV, § 212, effective July 13, 1990; repealed by 2025 ch. 111, § 3, effective June 27, 2025.

158.270. Instruction as to nature and effect of alcoholic liquor and narcotics required — Textbooks to include these subjects. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 50) was repealed by Acts 1974, ch. 392, § 13.

158.280. Instruction in the environment — Selection of books for. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1944, ch. 157; 1972, ch. 41, § 1) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.281. Definitions for KRS 156.476, 158.281, 158.282, and 161.051.

As used in KRS 156.476, 158.282, 161.051, and this section:

(1) "Braille" means the system of reading and writing through touch commonly known as Standard English Braille;

(2) "Individualized education program (IEP)" means a written statement developed for an exceptional student eligible for special education services in accordance with administrative regulations promulgated pursuant to KRS 157.200 to 157.290;

(3) "Blind student" means a student between the ages of three (3) and twenty-one (21) for whom an individualized education program is required and who:

(a) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than twenty degrees; or

(b) Has a medically indicated expectation of visual deterioration which would bring the student within the provisions of subsection (3)(a) of this section; or

(c) Functions as if he is blind even though the student may not technically meet the visual acuity or medical standards set forth in this subsection.

History.
Enact. Acts 1992, ch. 382, § 1, effective July 14, 1992.

RESEARCH REFERENCES AND PRACTICE AIDS

Research References and Practice Aids

Cross-References.
Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Northern Kentucky Law Review.
ADA Amendments Issue: Article: Education for Americans with Disabilities: Reconciling IDEA with the 2008 ADA Amendments, 37 N. Ky. L. Rev. 389 (2010).

158.282. Instruction of all blind students in the use of braille — Assessment for blind students in program — Exceptions.

(1) The purpose of KRS 156.476, 158.281, 161.051, and this section shall be to assure, to the maximum extent possible, that all blind students shall be instructed in the use of braille.

(2) The written individualized education program for each exceptional student, as promulgated by administrative regulation, shall also include the following assessment for blind students:

(a) A braille skills inventory, including an assessment of the student's strengths and weaknesses;

(b) A statement as to whether the use of braille shall be that student's primary mode of communication;

(c) The date on which braille instruction shall begin;

(d) The length of the period of instruction, and the frequency and duration of each instructional session; and

(e) The level of competency in braille reading and writing to be achieved, and the assessment measures to be used in determining if that level has been achieved.

(3) Braille instruction and use shall not be required by this section if, during the course of developing the blind student's individualized educational program, the members of the Administrative Admission and Release Committee as established for this purpose, pursuant to administrative regulations, concur that the student shall not be required to learn to read and write braille. In reaching its decision, the committee shall consider the student's reading readiness, functional reading skills, reading comprehension rate and stamina, functional writing skills, communication skills, eye condition and prognosis, and functional vision and tactile discrimination skills. Upon reaching this determination the committee shall write into the individualized education program of a blind student, the factors and evidence considered by the committee in reaching its decision.

(4) Nothing in this section shall require the exclusive use of instruction in braille if other methods of reading and writing may also be learned by the student.

History.
Enact. Acts 1992, ch. 382, § 2, effective July 14, 1992.

158.285. Teaching of Kentucky government — Statewide program — Instruction of all grade levels. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 373, § 1) was repealed by Acts 1990, ch. 476, Art. VI, § 616, effective July 13, 1990.

158.286. Teaching of Kentucky government — Adoption of policies by local school districts. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 373, § 2) was repealed by Acts 1990, ch. 476, § 616.

158.290. School fundraising activities.

(1) No student shall be compelled to solicit or meet any kind of quota in a fundraising activity. Solicitations by students shall be on a completely voluntary basis and no grade changes or any other sanctions shall be imposed for refusal or failure of a student to engage in any solicitations or other fundraising activity. No public school shall promote or engage in a schoolwide fundraising project without the prior approval of the local board of education.

(2) Nothing in this section shall prohibit student participation in classes in which salesmanship is an integral part of the prescribed curriculum.

History.
Enact. Acts 1978, ch. 150, § 1, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 405, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1978, ch. 150, § 1, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 405, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

The phrase "schoolwide fund raising project" refers to each individual school or school building, and not the schools collectively within a school system, and only when the solicitation affects the entire school, not necessarily a percentage of the students participating, i.e., when the classes, clubs and organizations, etc., solicit or participate in a fund-raising activity, the profits from which will go to purchase an item for the school, then such a fund raising activity would need to be approved by the local board of education. OAG 78-508.

The prohibition of subsection (1) of this section does not reach participation or involvement in voluntary extracurricular activities sponsored or endorsed by a local school system. OAG 79-330, 1979 Ky. AG LEXIS 304.

The fact that school children participate during nonschool hours in Booster Club activities, or that the activity takes place on school property with prior approval of the local board, does not require the school board to approve of the Booster Club fund raising activity even if it is a so-called "school wide fund raising project." OAG 79-556, 1979 Ky. AG LEXIS 79.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Internal accounting, 702 KAR 3:130.

158.292. Excused absences for students who serve as election officers.

Students who serve as election officers under KRS 117.045(9) shall be granted one (1) day of excused absence for each election day served.

History.
Enact. Acts 2002, ch. 265, § 2, effective July 15, 2002.

158.293. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Inclusion in instructional program.

(1) An excused absence may be granted, subject to approval by the local school board, to all students of Kentucky secondary schools who participate in the Military Burial Honor Guard Program, as set out in KRS 36.390 to 36.396. Most likely these would be students already participating in JROTC, drum corps, or other military programs; however, the Military Burial Honor Guard Program is not limited to these students. This excused absence should include time spent training, traveling, and participating in the Military Burial Honor Guard Program.

(2) The local school board may also adopt a policy to allow students to participate in the Military Burial Honor Guard Program as a part of the instructional program.

(3) This policy of either excused absences or including Military Burial Honor Guard Program participation as a part of the instructional program shall not in any way penalize the local school district.

History.
Enact. Acts 2000, ch. 378, § 5, effective July 1, 2000.

158.294. Excused absences for students who participate in Veterans' Service Organization Burial Honor Guard — Inclusion in instructional program.

(1) An excused absence may be granted, subject to approval by the local school board, to all students of

Kentucky secondary schools who participate in the Veterans' Service Organization Burial Honor Guard Program. Most likely these would be students already participating in JROTC, drum corps, or other military programs; however, the Veterans' Service Organization Burial Honor Guard Program is not limited to these students. This excused absence should include time spent training, traveling, and participating in the Veterans' Service Organization Burial Honor Guard Program.

(2) The local school board may also adopt a policy to allow students to participate in the Veterans' Service Organization Burial Honor Guard Program as a part of the instructional program.

(3) This policy of either excused absences or including Veterans' Service Organization Burial Honor Guard Program participation as a part of the instructional program shall not in any way penalize the local school district.

History.
Enact. Acts 2002, ch. 43, § 5, effective July 15, 2002.

158.295. Development of program to deal with delinquency, drug abuse, vandalism, absenteeism and other related acts of student behavior. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 443, § 1, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Part VI, § 616, effective July 13, 1990.

158.297. Meningococcal meningitis disease and vaccine information.

(1) If, at the beginning of a school year, a board of education for a local school district provides information on immunizations, infectious disease, medications, or other school health issues to parents and guardians of students in grades six (6) through twelve (12), then the following information about meningococcal meningitis disease and its vaccine shall be included:

(a) A description of causes, symptoms, and means of transmission;

(b) A list of sources for additional information; and

(c) Related recommendations issued by the National Centers for Disease Control and Prevention.

(2) The Department of Education, in cooperation with the Department for Public Health, shall develop and make available the information about meningococcal meningitis disease and its vaccine to local school districts as required under subsection (1) of this section in an efficient manner that shall include posting the information on its Web site.

History.
Enact. Acts 2006, ch. 129, § 1, effective July 12, 2006.

158.299. Type 1 diabetes informational materials — Requirements.

(1)(a) The Kentucky Department of Education, in coordination with the Department for Public Health, the Kentucky Board of Licensed Diabetes Educators, or any other entity the department deems appropriate, shall develop Type 1 diabetes informational materials for the parents and guardians of students. The informational materials shall include but not be limited to a:

1. Description of Type 1 diabetes;

2. Description of the risk factors and warning signs associated with Type 1 diabetes;

3. Description of the need for screening for early detection of Type 1 diabetes using a blood autoantibody test; and

4. Recommendation for parents and guardians to immediately consult with their child's primary care provider to develop an appropriate treatment plan if they believe that their child displays warning signs associated with Type 1 diabetes or has received positive early detection screening results. Parents and guardians shall be advised that a treatment plan may include consultation with, and examination by, a specialty health care provider licensed to practice medicine or osteopathy, including but not limited to an endocrinologist.

(b) The department shall make the informational materials required by this subsection available to school districts at no cost on the department's website.

(2) Each local board of education and public charter school board of directors shall make the Type 1 diabetes informational materials developed in accordance with subsection (1) of this section available on the school or school district website, in the main front entrance of each school, and in each family resource and youth services center.

History.
2026 ch. 85, § 16, effective July 15, 2026.

158.300. Definitions for KRS 158.300 to 158.350. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 168, § 1; 1962, ch. 196, § 5; 1964, ch. 194, § 1) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.301. Legislative findings on skin cancer risks — Schools encouraged to educate students on risks of exposure to ultraviolet rays.

(1) The General Assembly finds that:

(a) The chief cause of skin cancer is exposure to ultraviolet rays from natural sunlight and artificial sources;

(b) According to the American Cancer Society, skin cancer is one (1) of the most common types of cancer in the United States, with one (1) in five (5) Americans developing skin cancer in his or her lifetime and one (1) American dying from skin cancer every hour;

(c) The lifetime risk of getting skin cancer is linked to sun exposure and sunburn during childhood and adolescence;

(d) World and national health organizations have published guidelines or instructional materials regarding sun safety and skin cancer prevention for schools; and

(e) Schools have the potential to positively influence pupil behavior regarding skin cancer prevention.

(2) The General Assembly hereby encourages each public school to provide age-appropriate education to all students on the risks associated with exposure to ultraviolet rays from natural sunlight and artificial sources.

(a) The education should be included within the existing health curriculum as required by KRS 156.160(1)(a) and in accordance with the curriculum policy adopted by the school-based decision making council or, if none exists, by the school principal.

(b) The education should be consistent with guidelines published by world or national health organizations and should include, but not be limited to:

1. The facts and statistics about skin cancer;
2. The cause and impact of skin cancer; and
3. Strategies and behaviors to reduce individual risks for skin cancer.

(c) The Kentucky Department of Education shall provide instructional resources, including information from national standards and health organizations.

History.

Enact. Acts 2006, ch. 148, § 1, effective July 12, 2006.

158.302. Cardiopulmonary resuscitation on training required for high school students.

(1) The General Assembly hereby finds that training Kentucky students in cardiopulmonary resuscitation procedures will:

(a) Increase students' ability to respond to emergency situations at school, home, and public places;

(b) Benefit Kentucky communities by rapidly increasing the number of people ready to respond to sudden cardiac arrest, a leading cause of death in the United States; and

(c) Assist students in becoming responsible citizens consistent with the goals established in KRS 158.6451.

(2) Every public high school shall provide cardiopulmonary resuscitation training to students as part of the health course or the physical education course that is required for high school graduation or the Junior Reserve Officers Training Corps course that meets the physical education requirement. The training shall:

(a) Be based on the nationally recognized, evidenced-based guidelines for cardiopulmonary resuscitation certification published by a national accrediting body on heart health;

(b) Incorporate psychomotor skills training to support cognitive learning; and

(c) Make students aware of the purpose of an automated external defibrillator and its ease and safety of use.

(3) The training does not have to be provided by a certified instructor or result in students being certified in cardiopulmonary resuscitation.

(4) A school administrator may waive the requirement that a student receive instruction under subsection (2) of this section if the student has a disability or is physically unable to perform the psychomotor skills component of the instruction required.

History.

2016 ch. 70, § 1, effective July 15, 2016; 2023 ch. 165, § 3, effective June 29, 2023.

158.303. Educational segment on prevention of pediatric abusive head trauma encouraged.

Kentucky schools are encouraged to include a segment concentrating on the prevention of pediatric abusive head trauma, as defined in KRS 620.020, during a student's final year of study at Kentucky high schools. Important areas of concentration for this segment would include information related to the prevention and recognition of pediatric abusive head trauma. This segment should also suggest methods of calming crying infants, techniques for caregivers to use to calm themselves when confronted with an infant that is crying inconsolably, and a discussion relating to selecting responsible care providers for infant children.

History.

Enact. Acts 2010, ch. 171, § 3, effective July 15, 2010.

158.305. Definitions for section — Implementation of multitiered system of supports for kindergarten through grade three — Evidence — Assistance — Universal screener and diagnostic assessment — Comprehensive reading program — Training — Reading improvement plan and team — Accelerated interventions — Teacher academies or coaching models — Web-based resource — Collaboration — Screening not to be considered evaluation for special education.

(1) As used in this section:

(a) "Aphasia" means a condition characterized by either partial or total loss of the ability to communicate verbally or through written words. A person with aphasia may have difficulty speaking, reading, writing, recognizing the names of objects, or understanding what other people have said. The condition may be temporary or permanent and does not include speech problems caused by loss of muscle control;

(b) "Dyscalculia" means the inability to understand the meaning of numbers, the basic operations of addition and subtraction, the complex operations of multiplication and division, or to apply math principles to solve practical or abstract problems;

(c) "Dysgraphia" means difficulty in automatically remembering and mastering the sequence of muscle motor movements needed to accurately write letters or numbers;

(d) "Dyslexia" has the same meaning as in KRS 158.307;

(e) "Enrichment program" means accelerated intervention within the school day or outside of the school day or school calendar led by individuals most qualified to provide the intervention that includes evidence-based reading instructional programming related to reading instruction in the areas of phonemic awareness, phonics, fluency, vocabulary, and comprehension, and other instructional strategies

aligned to reading and writing standards required by KRS 158.6453 and outlined in administrative regulation promulgated by the Kentucky Board of Education;

(f) "Evidence-based" has the same meaning as in 20 U.S.C. sec. 7801(21);

(g) "Phonemic awareness" has the same meaning as in KRS 158.307;

(h) "Reading diagnostic assessment" has the same meaning as in KRS 158.792;

(i) "Reading improvement plan" means an accelerated intervention plan for a student in kindergarten through grade four (4) that is developed to increase a student's rate of progress toward proficient performance in reading that is identified as necessary based on the student's results on an approved reading diagnostic assessment. This plan should be developed in collaboration and accordance with any existing program services plan, individualized education program, or Section 504 Plan unless the program services plan, individualized education program, or Section 504 Plan already addresses improving reading;

(j) "Reading improvement team" means a team that develops and oversees the progress of a reading improvement plan and includes:

1. The parent or guardian of the student that is the subject of the reading improvement plan;

2. No less than one (1) regular education teacher of the student to provide information about the general curriculum for same-aged peers;

3. A representative of the local education agency who is knowledgeable about the reading curriculum and the availability of the evidence-based literacy resources of the local education agency; and

4. Any specialized certified school employees for students receiving language instruction educational programming or special education services; and

(k) "Universal screener" means a process of providing a brief assessment to all students within a grade level to assess the students' performance on the essential components of reading.

(2) Notwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations to further define a multitiered system of supports for district-wide use of a system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs. At a minimum, evidence of implementation shall be submitted by the district to the department by October 1 of each year and shall include but not be limited to the activities required under KRS 158.649.

(3) The department shall provide technical assistance and training, if requested by a local district, to assist in the implementation of the district-wide, multitiered system of supports as a means to identify and assist any student experiencing difficulty in reading, writing, mathematics, or behavior and to determine appropriate instructional modifications needed by advanced learners to make continuous progress.

(4) The technical assistance and training shall be designed to improve:

(a) The use of specific screening processes and programs to identify student strengths and needs;

(b) The use of screening data for designing instructional interventions;

(c) The use of multisensory instructional strategies and other interventions validated for effectiveness by evidence-based research;

(d) Progress monitoring of student performance; and

(e) Accelerated, intensive, direct instruction that addresses students' individual differences, including advanced learners, and enables students that are experiencing difficulty to catch up with typically performing peers.

(5)(a) Each superintendent or public charter school board of directors shall select:

1. At least one (1) universal screener for reading that is determined by the department to be reliable and valid to be administered to all students in kindergarten through grade three (3); and

2. At least one (1) reading diagnostic assessment for reading that is determined by the department to be reliable and valid to be administered as part of a multitiered system of supports for students in kindergarten through grade three (3).

(b) Notwithstanding KRS 158.6453(19) and 160.345, each superintendent or public charter school board shall adopt a common comprehensive reading program that is determined by the department to be reliable, valid, and aligned to reading and writing standards required by KRS 158.6453 and outlined in administrative regulation promulgated by the Kentucky Board of Education for kindergarten through grade three (3) for all schools or a subset of schools, with consultation of all affected elementary school councils.

(c) All teachers of students in kindergarten through grade three (3), including public charter school teachers, shall be trained on any reading diagnostic assessment and universal screener selected by the superintendent or public charter school board prior to administration of the assessment. The training shall address:

1. How to properly administer the reading diagnostic assessment;

2. How to interpret the results of the reading diagnostic assessment to identify students needing interventions;

3. How to use the assessment results to design instruction and interventions;

4. The use of the assessment to monitor the progress of student performance; and

5. The use of accelerated, intensive, and direct instruction that addresses students' individual differences and enables students to achieve proficiency in reading, including but not limited to daily, one-on-one instruction.

(6) A universal screener determined by the department to be reliable and valid shall be:

(a) Given in the first forty-five (45) days of the school year for all kindergarten students at a public school or public charter school;

(b) Given in the first thirty (30) days of the school year for grades one (1) through three (3) at a public school or public charter school; and

(c) Given within the final fourteen (14) instructional days of the school year to all students in kindergarten and first grade at a public school or public charter school.

(7) A reading improvement plan shall be developed and implemented by a reading improvement team for any student in kindergarten through grade three (3) identified as needing accelerated interventions to progress toward proficient performance in reading. The reading improvement plan shall require:

(a) Intensive intervention that includes effective instructional strategies and appropriate instructional materials necessary to help the student make accelerated progress toward proficient performance in reading and become ready for the next grade, including but not limited to daily, one-on-one instruction with students the most in need provided by certified teachers specifically trained to provide one-on-one instruction;

(b) A school to provide a written quarterly progress report containing the information required by paragraph (a) of this subsection to a parent or guardian of any student subject to a reading improvement plan. The written quarterly progress report for the reading improvement plan may be included in the school's existing quarterly progress report; and

(c) Individual placement decisions for children who are eligible for special education and related services to be determined by the appropriate admissions and release committee in accordance with administrative regulations promulgated by the Kentucky Board of Education.

(8) If a student's rate of progress toward proficient performance in reading needs accelerated interventions as demonstrated by the results of an approved reading diagnostic assessment, the local school district shall provide:

(a) Enrichment programs through grade three (3) using evidence-based reading instruction and other strategies;

(b) Intensive instructional services, progress monitoring measures, and supports to students through grade three (3); and

(c) Parents and legal guardians of students identified for accelerated interventions in reading in kindergarten through grade three (3) with a "Read at Home" plan, including information on how to participate in regular parent-guided home reading.

(9)(a) Beginning in the 2025-2026 school year:

1. A kindergarten student who had a reading improvement plan for the school year may remain in kindergarten for an additional school year if a school determines that the student:

a. Did not meet grade level benchmarks in reading while in kindergarten as determined by the universal screener given in accordance with subsection (6) of this section;

b. Did not master the Kentucky reading academic standards for kindergarten students based on assessments given in accordance with KRS 158.6453(8); or

c. Is not properly prepared to be successful in the first grade; and

2. A first-grade student who had a reading improvement plan for the school year shall remain in first grade for an additional school year if a school determines that the student:

a. Did not meet grade level benchmarks in reading while in first grade as determined by the universal screener given in accordance with subsection (6) of this section;

b. Did not master the Kentucky reading academic standards for first grade students based on assessments given in accordance with KRS 158.6453(8); or

c. Is not properly prepared to be successful in the second grade.

(b) Notwithstanding paragraph (a) of this subsection, placement decisions for students eligible for special education and related services shall be determined by the admissions and release committee in accordance with administrative regulations promulgated by the Kentucky Board of Education.

(c) Notwithstanding paragraph (a) of this subsection, a student who remained in kindergarten under this subsection shall not subsequently be required to remain in first grade, and a student shall not be required to remain in first grade for more than one (1) additional year.

(d) The school shall reevaluate and make necessary changes to the reading improvement plan of any student remaining in kindergarten or first grade and shall continue to provide all programs and services required under subsection (8) of this section during the additional year of kindergarten or first grade.

(e) A student provided an additional year of kindergarten or first grade under this subsection may advance through the primary school program when it is determined by the school to be in the best educational interest of the student pursuant to KRS 158.031.

(10) If a student does not score in the proficient performance level or higher in reading, as defined in KRS 158.791(2), on the state annually required grade three (3) assessment, the local school district shall provide:

(a)1. Enrichment programs in grade four (4) using evidence-based reading instruction and other strategies; or

2. Intensive instructional services, progress monitoring measures, and supports to students in grade four (4); and

(b) Written notification of the interventions and supports described in paragraph (a) of this subsection to the parent or legal guardian of the student, including a description of proposed interventions and supports to be provided.

(11) By September 1, 2023, if funds are appropriated, the department shall establish required teacher academies or coaching models for teachers of students in prekindergarten through grade three (3). The teacher academies or coaching models shall be related to evidence-based practices in instruction, instructional materials, and assessment in reading.

(12) The department shall develop and maintain a web-based resource providing teachers access to:

(a) Information on the use of specific screening processes and programs to identify student strengths and needs, including those for advanced learners;

(b) Current, evidence-based research and age-appropriate instructional tools that may be used for substantial, steady improvement in:

1. Reading when a student is experiencing difficulty with phonemic awareness, phonics, vocabulary, fluency, general reading comprehension, or reading in specific content areas, or is exhibiting characteristics of dyslexia, aphasia, or other reading difficulties;

2. Writing when a student is experiencing difficulty with consistently producing letters or numbers with accuracy or is exhibiting characteristics of dysgraphia;

3. Mathematics when a student is experiencing difficulty with basic math facts, calculations, or application through problem solving, or is exhibiting characteristics of dyscalculia or other mathematical difficulties; or

4. Behavior when a student is exhibiting behaviors that interfere with his or her learning or the learning of other students; and

(c) Current, evidence-based research and age-appropriate instructional tools that may be used for continuous progress of advanced learners.

(13) The department shall encourage districts to utilize both state and federal funds as appropriate to implement a district-wide multitiered system of supports.

(14) The department is encouraged to coordinate technical assistance and training on current best practice interventions with state postsecondary education institutions.

(15) The department shall collaborate with the statewide reading research center established under KRS 164.0207, the Kentucky Center for Mathematics, the Kentucky Center for Instructional Discipline, the Education Professional Standards Board, the Council on Postsecondary Education, postsecondary teacher education programs, and other agencies and organizations as deemed appropriate to ensure that teachers are prepared to utilize evidence-based interventions in reading, writing, mathematics, and behavior.

(16) In compliance with 20 U.S.C. sec. 1414(a)(1)(E), screening of a student to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services and nothing in this section shall limit a school district from completing an initial evaluation of a student suspected of having a disability.

History.

Enact. Acts 2012, ch. 45, § 1, effective July 12, 2012; 2017 ch. 156, § 2, effective April 10, 2017; 2018 ch. 88, § 2, effective July 14, 2018; 2022 ch. 40, § 2, effective March 29, 2022; 2023 ch. 55, § 6, effective July 1, 2024; 2025 ch. 103, § 1, effective June 27, 2025.

Legislative Research Commission Notes.

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which amended this statute, may be cited as the Read to Succeed Act.

(7/14/2018). 2018 Ky. Acts ch. 88, sec. 4 provides that 2018 Ky. Acts ch. 88 shall be known and may be cited as the "Ready to Read Act." This statute was amended in Section 2 of that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

The Use of Response-to-Intervention in Kindergarten through Grade 3, 704 KAR 3:095.

158.306. Approved list of reading curriculum and interventions — Standards — Science of reading program — Three-cueing system prohibited — Administrative regulations.

(1) As used in this section:

(a) "Curriculum" means the content and plan for instruction, including materials, instructional programs, texts, lesson plans, and assessments needed to help students develop critical skills, knowledge, and meet or exceed proficiency in required academic standards;

(b) "Educator preparation program" means a program approved by the Education Professional Standards Board that prepares individuals for licensure as teachers, school leaders, or other school or district administrators;

(c) "Reading intervention" means curriculum, activities, and evidence-based strategies used to accelerate student progress toward proficiency in reading, including but not limited to individual instruction, small groups, multisensory approaches, tutoring, mentoring, and the use of technology that targets specific reading skills and abilities; and

(d) "Three-cueing system" means any model of teaching students to read based on meaning, structure and syntax, and visual cues, which may also be known as "MSV."

(2) The Kentucky Department of Education shall establish an approved list of reading curriculum and interventions that are scientifically researched and evidence-based that may be used by schools to meet the requirements of subsection (3)(b) of this section and that do not include instructional strategies that employ the three-cueing system of reading.

(3)(a) By the 2029-2030 school year, no public school district shall use any curriculum, reading intervention, or program of instruction that utilizes the three-cueing system of teaching students to read.

(b) Each public school district shall ensure that:

1. All curriculum, reading interventions, and programs of instruction utilized to teach students to read are high-quality, fully aligned to state content standards, and based on literacy strategies that are scientifically researched with proven results in teaching phonemic awareness, phonics, fluency, vocabulary, and comprehension;

2. Beginning with the 2029-2030 school year, no school in the district is utilizing a three-cueing system of teaching students to read; and

3. By June 30, 2029, all interdisciplinary early childhood through grade five (5) educators have completed a science of reading professional learning program approved by the department.

(4) Beginning with the 2030-2031 school year, if the Kentucky Board of Education determines that a public school district has violated subsection (3) of this section, the board shall notify the public school district of the violation.

(5) The department, the Education Professional Standards Board, educational cooperatives, special education cooperatives, early childhood regional training centers, and local school districts are prohibited from providing or utilizing any professional development that uses the three-cueing system of teaching students to read.

(6) The Education Professional Standards Board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish criteria for reading curriculum for each state-approved educator preparation program.

History.
2026 ch. 74, § 1, effective April 10, 2026.

158.307. Dyslexia toolkit to assist school districts in instructing students with dyslexia — Professional development related to dyslexia — Local board of education policy to identify and assist students in kindergarten through grade three with dyslexia — Annual report.

(1) As used in this section:

(a) "Dyslexia" means a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge;

(b) "Evidence-based" has the same meaning as in 20 U.S.C. sec. 7801(21); and

(c) "Phonemic awareness" means the ability to recognize that a spoken word consists of a sequence of individual sounds and the ability to manipulate individual sounds in speaking.

(2) The Department of Education shall make available a dyslexia toolkit that includes guidance, technical assistance, and training to assist all local school districts in the implementation of evidence-based practices for instructing students identified with or displaying characteristics of dyslexia.

(3) The dyslexia toolkit shall include but not be limited to the following guidance for local districts targeting students in kindergarten through grade three (3) who have been identified with or displaying characteristics of dyslexia:

(a) Evidence-based practices designed specifically for students with dyslexia;

(b) Characteristics of targeted instruction for dyslexia;

(c) Guidance on developing instructional plans for students with dyslexia;

(d) Best practices toward meaning-centered reading and writing;

(e) Structured multisensory and literacy approaches to teaching language and reading skills; and

(f) Suggested professional development activities.

(4) The department shall collaborate with the Education Professional Standards Board, Council on Postsecondary Education, and other groups as necessary to improve and update professional development opportunities for teachers specifically related to dyslexia. Professional development opportunities may focus on:

(a) Development and ongoing implementation of training and coaching for teachers;

(b) Identifying high-quality trainers to provide support to local districts utilizing a coaching model to develop building level dyslexia experts;

(c) Developing awareness training modules for all instructional staff to include information about characteristics of dyslexia; and

(d) Evidence-based interventions, structured multisensory and literacy approaches to teach language and reading skills, and accommodations for dyslexia and other specific learning disabilities.

(5) Each local board of education shall develop a policy addressing the implementation of a program for the identification of and strategies for assisting students in kindergarten through grade three (3) with dyslexia.

(6) The local board policies shall include but not be limited to:

(a) The definition and characteristics of dyslexia;

(b) A process for identifying students who are displaying characteristics of dyslexia;

(c) A process for the utilization of evaluation tools to accurately identify students who are displaying characteristics of dyslexia. Any qualified dyslexia evaluation tool utilized by a local district shall address but not be limited to the following components:

1. Phonological awareness and phonemic awareness;
2. Sound symbol recognition;
3. Alphabet knowledge;
4. Decoding skills;
5. Encoding skills; and
6. Rapid naming;

(d) A process for how evaluation tools are administered and evaluated by trained district personnel or licensed professionals;

(e) A process for outreach to parents of students identified with or displaying the characteristics of dyslexia with information and resource materials and how dyslexia may be addressed in the student's educational setting;

(f) Identification of evidence-based interventions, structured multisensory and literacy approaches to teach language and reading skills, and accommodations that schools may utilize to provide services to students identified as having dyslexia; and

(g) A process for monitoring a student's progress, including assessments to ascertain whether the intervention services improve the student's language processing and reading skills.

(7) By June 30, 2028, and June 30 of each year thereafter for five (5) years, each local school district

shall provide the department the following data for the current school year:

(a) The number of students in kindergarten through grade three (3) that were identified through the approved universal screener and reading diagnostic assessment as defined in KRS 158.305 as displaying characteristics of dyslexia;

(b) The number of students in paragraph (a) of this subsection that were identified as needing enrichment programs as defined in KRS 158.305;

(c) The number of students in kindergarten through grade three (3) that were participating in literacy interventions within the school setting; and

(d) The process or tools used to evaluate student progress.

History.
2018 ch. 88, § 1, effective July 14, 2018; 2026 ch. 74, § 2, effective April 10, 2026.

Legislative Research Commission Notes.
(7/14/2018). 2018 Ky. Acts ch. 88, sec. 4 provides that 2018 Ky. Acts ch. 88 shall be known and may be cited as the "Ready to Read Act." This statute was created in Section 1 of that Act.

158.310. Permit — Requirements. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 168, § 2; 1964, ch. 194, § 2) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.320. Centers, inspection of — Records to be kept — Reports to be made. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 168, § 3; 1964, ch. 194, § 3) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.330. Board of education to make rules and regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 168, § 4; 1964, ch. 194, § 4; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.340. Fees, how credited in state treasury. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 168, § 5; 1964, ch. 194, § 5) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.350. Advisory committee, appointment of — Duties. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 168, § 6, effective May 18, 1956) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.355. Early childhood education — State policy. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 11, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

PRESCHOOL PROGRAMS

158.360. Family literacy services.

(1) The Office of Adult Education shall provide technical assistance to providers to develop family literacy services. The technical assistance shall be evaluated on a regular basis by contracted evaluators outside the program.

(2) The services shall:

(a) Provide parents with instruction in basic academic skills, life skills which include parenting skills, and employability skills;

(b) Provide the children with developmentally appropriate educational activities;

(c) Provide planned high-quality educational experiences requiring interaction between parents and their children;

(d) Be of sufficient intensity and duration to help move families to self- sufficiency and break the cycle of under education and poverty; and

(e) Be designed to reduce duplication with other educational providers to ensure high quality and efficient services.

History.
Enact. Acts 1986, ch. 378, § 1, effective July 15, 1986; 1988, ch. 158, § 1, effective July 15, 1988; 1990, ch. 470, § 25, effective July 1, 1990; 1990, ch. 476, Pt. V, § 406, effective July 13, 1990; 1992, ch. 456, § 1, effective July 14, 1992; 1994, ch. 405, § 27, effective July 15, 1994; 1996, ch. 145, § 4, effective July 15, 1996; 1998, ch. 127, § 1, effective July 15, 1998; 2000, ch. 526, §§ 11, 26, effective July 14, 2000; 2006, ch. 211, § 87, effective July 12, 2006; 2019 ch. 146, § 28, effective June 27, 2019.

Compiler's Notes.
This section (Enact. Acts 1986, ch. 378, § 1, effective July 15, 1986; 1988, ch. 158, § 1, effective July 15, 1988) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 406, effective July 13, 1990.

Legislative Research Commission Notes.
(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of Acts ch. 476.

VOTER EDUCATION

158.380. Administration of voter education law. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 149, § 1, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.385. Instruction required in grades nine to twelve. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 149, § 2, effective July

14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.390. Development of comprehensive statewide program for public schools. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 149, § 3, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.395. Local school district policy. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 149, § 4, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

ALCOHOL AND DRUG EDUCATION

158.405. Administration — Rules and regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.410. Instruction. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 3) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.415. Development of program — Curricula. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.420. Teacher's and administrator's training programs. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 5) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.425. Policy of local school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 6; 1978, ch. 155, § 83, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.430. Teacher's assistants permitted. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 7) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

SCHOOL SAFETY AND SCHOOL DISCIPLINE

158.440. Legislative findings on school safety and order.

The General Assembly finds that:

(1) Every student should have access to a safe, secure, and orderly school that is conducive to learning;

(2) All schools and school districts must have plans, policies, and procedures dealing with measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior; and

(3) State and local resources are needed to enlarge the capacities for research, effective programming, and program evaluation that lead to success in addressing safety and discipline within the schools.

History.
Enact. Acts 1998, ch. 493, § 1, effective April 10, 1998.

NOTES TO UNPUBLISHED DECISIONS

1. Immunity.
School principal was not entitled to qualified immunity in a personal injury case because the maintenance of a parking lot was ministerial in nature; the principal was responsible for all facets of operations at the school, and he had a ministerial duty to maintain the parking lots in a safe manner consistent with KRS 158.440(1). Hurt v. Parker, 2013 Ky. App. Unpub. LEXIS 1010 (Ky. Ct. App. 2013), vacated, 2014 Ky. LEXIS 526 (Ky. Oct. 15, 2014).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Requirements for school and district report cards, 703 KAR 5:140.

158.441. Definitions for chapter.

As used in this chapter:

(1) "Intervention services" means any preventive, developmental, corrective, supportive services or treatment provided to a student who is at risk of school failure, is at risk of participation in violent behavior or juvenile crime, or has been expelled from the school district. Services may include, but are not limited to, screening to identify students at risk for emotional disabilities and antisocial behavior; direct instruction in academic, social, problem solving, and conflict resolution skills; alternative educational programs; psychological services; identification and assessment of abilities; counseling services; medical services; day treatment; family services; work and community service programs;

(2) "Kentucky State Police school resource officer" or "KSPSRO" means a Kentucky State Police officer, CVE R Class, or Trooper R Class, as defined in KRS 16.010, who is employed by a school district as a school resource officer, as defined in this section, through a contract as secondary employment for the officer;

(3) "School activities" means official school functions held on school property, including student at-

tendance days as defined in KRS 158.070, athletic events, and graduation;

(4) "School property" means any public school building, public school vehicle, public school campus, grounds, recreational area, or athletic field in the charge of the school district;

(5) "School resource officer" or "SRO" means an officer whose primary job function is to work with youth at a school site as described in KRS 158.4414, who has specialized training to work with youth at a school site pursuant to KRS 158.4414, and who is:

(a)1. A sworn law enforcement officer certified under KRS 15.380 to 15.404;

2. A special law enforcement officer appointed pursuant to KRS 61.902 and certified under KRS 15.380 to 15.404; or

3. A police officer appointed pursuant to KRS 158.471; and

(b) Employed:

1. Through a contract between a local law enforcement agency and a school district;

2. Through a contract as secondary employment for an officer, as defined in KRS 16.010, between the Department of Kentucky State Police and a school district; or

3. Directly by a local board of education;

(6) "School safety" means a program of prevention that protects students and staff from substance abuse, violence, bullying, theft, the sale or use of illegal substances, exposure to weapons and threats on school grounds, and injury from severe weather, fire, and natural disasters; and

(7) "School security" means procedures followed and measures taken to ensure the security of school buildings, classrooms, and other school facilities and properties.

History.

Enact. Acts 1998, ch. 493, § 2, effective April 10, 1998; 2014, ch. 132, § 13, effective July 15, 2014; 2018 ch. 171, § 4, effective April 14, 2018; 2018 ch. 207, § 4, effective April 27, 2018; 2019 ch. 5, § 1, effective March 11, 2019; 2019 ch. 197, § 1, effective April 9, 2019; 2020 ch. 5, § 1, effective February 21, 2020; 2022 ch. 189, § 9, effective July 14, 2022; 2024 ch. 165, § 3, effective July 15, 2024.

Legislative Research Commission Notes.

(3/11/2019). 2019 Ky. Acts ch. 5, sec. 24 states that Sections 1 to 23 of that Act shall be known and may be cited as the School Safety and Resiliency Act. This statute was amended in Section 1 of that Act.

158.4410. State school security marshal, duties and responsibilities — Marshal appointed by and reporting to the commissioner of the Department of Criminal Justice Training — Annual report to the Center for School Safety, the Legislative Research Commission, and the Kentucky Board of Education — School security risk assessment tool, purpose — Areas considered when evaluating school security — Annual verification of completion of state security risk assessment — Additional mandatory training, when required.

(1) There is established within the Department of Criminal Justice Training the office of the state school security marshal. The state school security marshal shall enhance school safety by monitoring school safety and security initiatives, developing reasonable training and other guidelines, developing a school security risk assessment tool pursuant to subsection (5) of this section, and ensuring compliance with the provisions of subsection (7) of this section and KRS 158.162(3).

(2) The office of the state school security marshal shall conduct on-site reviews to ensure compliance with subsection (7) of this section and KRS 158.162(3) as deemed necessary by the state school security marshal.

(3) The state school security marshal shall be appointed by and report to the commissioner of the Department of Criminal Justice Training.

(4) By September 1 of each year the state school security marshal shall present an annual report to the board of the Center for School Safety which shall consist of a summary of the findings and recommendations made regarding the school safety and security activity of the previous school year and other items of significance as determined by the Center for School Safety or the Department of Criminal Justice Training. Once presented, the annual report information shall also be submitted to the Legislative Research Commission and the Kentucky Board of Education.

(5) By July 1, 2020, the state school security marshal shall develop and update as necessary a school security risk assessment tool in collaboration with the Center for School Safety and the Kentucky Department of Education to be used by local school districts to identify threats, vulnerabilities, and appropriate safety controls for each school within the district. The tool shall be approved by the board of directors of the Center for School Safety pursuant to KRS 158.443(9)(b) and used by local school administrators when completing a school security risk assessment in accordance with this section.

(6) The assessment tool shall enable administrators to evaluate school security compared to best practices and standards in a minimum of the following areas:

(a) School emergency and crisis preparedness planning;

(b) Security, crime, and violence prevention policies and procedures;

(c) Physical security measures;

(d) Professional development training needs;

(e) Support service roles in school safety, security, and emergency and crisis preparedness planning;

(f) School resource officer staffing, operational practices, and related services;

(g) School and community collaboration on school security; and

(h) An analysis of the cost effectiveness of recommended physical security controls.

(7) No later than July 15, 2021, and each subsequent year, the local district superintendent shall send verification to the state school security marshal and the Kentucky Department of Education that all schools within the district have completed the school security risk assessment for the previous year. School security risk assessments shall be excluded from the application of KRS 61.870 to 61.884 pursuant to KRS 61.878(1)(m).

(8) Beginning with the 2021-2022 school year and each subsequent year, any school that has not com-

pleted a school security risk assessment in the previous year shall be required to provide additional mandatory training as established by the Department of Criminal Justice Training for all staff employed at the school.

History.
2019 ch. 5, § 4, effective March 11, 2019.

158.4412. Appointment of district's school safety coordinator — School safety coordinator's functions and duties — Policies and procedures excluded from application of KRS 61.870 to 61.884 — Limitation of civil and criminal liability for school district, school safety coordinator, and school employees acting in good faith.

(1) Beginning with the 2019-2020 school year, each local school district superintendent shall appoint an individual to serve as the district's school safety coordinator and primary point of contact for public school safety and security functions.

(2) The district's school safety coordinator shall:

(a) Complete the school safety coordinator training program developed by the Center for School Safety within six (6) months of his or her date of appointment;

(b) Designate a school safety and security threat assessment team at each school of the district consisting of two (2) or more staff members in accordance with policies and procedures adopted by the local board of education to identify and respond to students exhibiting behavior that indicates a potential threat to school safety or security. Members of a threat assessment team may include school administrators, school counselors, school resource officers, school-based mental health services providers, teachers, and other school personnel;

(c) Provide training to school principals within the district on procedures for completion of the school security risk assessment required pursuant to KRS 158.4410;

(d) Review all school security risk assessments completed within the district and prescribe recommendations as needed in consultation with the state school security marshal;

(e) Advise the local school district superintendent by July 1, 2021, and annually thereafter of completion of required security risk assessments;

(f) Formulate recommended policies and procedures, which shall be excluded from the application of KRS 61.870 to 61.884, for an all-hazards approach including conducting emergency response drills for hostage, active shooter, and building lockdown situations in consultation and coordination with appropriate public safety agencies to include but not be limited to fire, police, and emergency medical services for review and adoption as part of the school emergency plan required by KRS 158.162. The recommended policies shall encourage the involvement of students, as appropriate, in the development of the school's emergency plan;

(g) Maintain the district's copies of the school mapping data created through the School Mapping Data Program pursuant to KRS 158.4433 to be made available to appropriate public safety agencies, but which shall be excluded from the application of KRS 61.870 to 61.884; and

(h) Ensure each school campus is toured at least once per school year, in consultation and coordination with appropriate public safety agencies, to review policies and procedures and provide recommendations related to school safety and security.

(3) The school district, school safety coordinator, and any school employees participating in the activities of a school safety and security threat assessment team, acting in good faith upon reasonable cause in the identification of students pursuant to subsection (2)(b) of this section shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:

(a) Identifying the student and implementing a response pursuant to policies and procedures adopted under subsection (2)(b) of this section; or

(b) Participating in any judicial proceeding that results from the identification.

History.
2019 ch. 5, § 5, effective March 11, 2019; 2020 ch. 5, § 2, effective February 21, 2020; 2024 ch. 165, § 12, effective July 15, 2024.

158.4414. Cooperation of school personnel with local and state law enforcement agencies in efforts to assign certified school resource officers to each campus as funds and personnel become available — Employment of guardians — Memorandum of understanding between local boards of education and law enforcement agencies or the Kentucky State Police — Policies and procedures stating the purpose of the school resource officer program and defining roles and expectations — School resource officer to be armed with firearm — Promulgation of administrative regulations establishing levels of training for certification of school resource officers — Course curriculum, specifications for training requirements, and consequences for deficiencies in required training — Officers to regain certification status upon completion of training deficiency — Local school district superintendents to report annually to the Center for School Safety upon the number and placement of school resource officers in the district, source of funding, and methods of employment for each position.

(1) Local boards of education, school district superintendents, administrators of state-controlled facilities, and local and state law enforcement agencies shall cooperate to assign one (1) or more certified school resource officers to serve each campus where one (1) or more school buildings are used to deliver instruction to students on a continuous basis.

(2) Local boards of education shall ensure, for each campus in the district, that at least one (1) certified school resource officer is assigned to and working on-site full-time in the school building or buildings on the campus. If sufficient funds and qualified personnel are not available for this purpose for every campus, the local board of education shall fulfill the requirements of this subsection on a per campus basis, as approved in writing by the state school security marshal, until a certified school resource officer is assigned to and working on-site full-time on each campus in the district.

(3) Beginning with the 2026-2027 school year, a local board of education that is unable to meet the requirement of subsection (2) of this section may, after consultation with and approval by the state school security marshal, employ one (1) or more guardians pursuant to KRS 158.4431 to provide safety and security measures for schools within the district. The use of guardians under this subsection shall not be used to replace the certified school resource officer required under subsection (2) of this section, but only to provide safety and security resources until a certified school resource officer is available.

(4) Beginning with the 2026-2027 school year, a local board of education that has met the requirement of subsection (2) of this section may employ one (1) or more guardians pursuant to KRS 158.4431 to provide additional school safety and security measures within the district.

(5) Local boards of education utilizing a school resource officer employed by a law enforcement agency or the Department of Kentucky State Police shall enter into a memorandum of understanding with the law enforcement agency or the Department of Kentucky State Police that specifically states the purpose of the school resource officer program and clearly defines the roles and expectations of each party involved in the program. The memorandum shall provide that the school resource officer shall not be responsible for school discipline matters that are the responsibility of school administrators or school employees.

(6) Local boards of education utilizing a school resource officer employed directly by the local board of education shall adopt policies and procedures that specifically state the purpose of the school resource officer program and clearly define the roles and expectations of school resource officers and other school employees.

(7) In accordance with KRS 61.926, 527.020, and 527.070, as applicable, each school resource officer shall be armed with a firearm, notwithstanding any provision of local board policy, local school council policy, or memorandum of agreement.

(8) The Kentucky Law Enforcement Council, in collaboration with the Center for School Safety, shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish, update, and maintain three (3) levels of training for certification of school resource officers as follows: School Resource Officer Training I (SRO I), School Resource Officer Training II (SRO II), and School Resource Officer Training III (SRO III). Each level shall consist of forty (40) hours of training, with SRO I to be completed within one (1) year of the date of the officer's employment and SRO II and SRO III within the subsequent two (2) years.

(9) Course curriculum for school resource officers shall include but not be limited to:

(a) Foundations of school-based law enforcement;

(b) Threat assessment and response;

(c) Youth drug use and abuse;

(d) Social media and cyber security;

(e) School resource officers as teachers and mentors;

(f) Youth mental health awareness;

(g) Diversity and bias awareness training;

(h) Trauma-informed action;

(i) Understanding students with special needs; and

(j) De-escalation strategies.

(10) All school resource officers with active school resource officer certification status shall successfully complete forty (40) hours of annual in-service training that has been certified or recognized by the Kentucky Law Enforcement Council for school resource officers.

(11) In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the in-service training within one (1) year, the commissioner of the Department of Criminal Justice Training or a designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training.

(12) Any school resource officer who fails to successfully complete training requirements within the specified time periods, including any approved time extensions, shall lose his or her school resource officer certification and shall no longer serve in the capacity of a school resource officer in a school.

(13) When a school resource officer is deficient in required training, the commissioner of the Department of Criminal Justice Training or his or her designee shall notify the council, which shall notify the officer and the officer's employing agency.

(14) A school resource officer who has lost school resource officer certification due solely to the officer's failure to meet the training requirements of this section may regain certification status as a school resource officer and may resume service in the capacity of a school resource officer in a school setting upon successful completion of the training deficiency.

(15) No later than November 1 of each year, the local school district superintendent shall report to the Center for School Safety the number and placement of school resource officers in the district. The report shall include the source of funding and method of employment for each position.

(16) Nothing in this section shall be interpreted or construed to require a local government or any of its agencies or offices to fund the school resource officer positions required of local boards of education under this section. For purposes of this subsection, "local government" has the same meaning as in KRS 65.8840.

(17) Nothing in this section shall prevent a private or parochial school from entering into a memorandum of understanding with a local law enforcement agency or the Department of Kentucky State Police to provide school resource officers employed by the local law enforcement agency or the Department of Kentucky State Police.

History.

2019 ch. 5, § 6, effective March 11, 2019; 2020 ch. 5, § 3, effective February 21, 2020; 2022 ch. 189, § 1, effective July 14, 2022; 2023 ch. 104, § 1, effective June 29, 2023; 2024 ch. 165, § 4, effective July 15, 2024; 2025 ch. 86, § 7, effective June 27, 2025.

158.4415. Kentucky State Police school resource officer (KSPSRO), specifications for employment as a school resource officer by a school district — When officer considered an employee of the school district and when an employee of the Kentucky State Police — Duties and prohibited activities — Funding of position — Rights, privileges, immunities, and matters of defense protected.

(1) A KSPSRO shall possess sworn law enforcement authority and shall be trained in school-based policing and crisis response including all training required of school resource officers. If a school district decides to utilize a KSPSRO, the school district and the officer shall first enter into a memorandum of understanding that clarifies the purpose of the KSPSRO program and the roles and expectations of the participating entities. Any contract entered into pursuant to this subsection shall include:

(a) A provision specifying that the KSPSRO shall follow the policies and procedures of the Department of Kentucky State Police and shall abide by federal, state, and local laws. The responsibility and decision to arrest or take other police action lies solely with the KSPSRO, respective to state law and the KSPSRO's departmental standard operating procedures or standing order. The KSPSRO's continual collaboration with school personnel and his or her understanding of each student's needs may impact the decision to arrest or take other police action, but the responsibility is that of the KSPSRO;

(b) A provision stipulating that the KSPSRO shall be an employee of the school district, but shall revert to Department of Kentucky State Police employee status during such time that the KSPSRO takes police action pursuant to state or federal law. The KSPSRO shall be under the immediate supervision and direction of the Department of Kentucky State Police when taking police action;

(c) A provision stipulating that the school district shall be responsible for worker's compensation coverage for the KSPSRO; and

(d) A provision detailing how liability coverage will be provided for any acts or omissions of the KSPSRO within the scope of his or her duties.

(2)(a) A KSPSRO shall promote the safety and security of students and school personnel during school activities and on school property.

(b) A KSPSRO may assist with supportive activities and programs, including but not limited to:

1. Planning and implementing procedures that train and drill all school personnel to respond to crisis events, control access to the school property during the school day, and close or partially close the school property after students arrive;

2. Identifying risk and protective factors of students; and

3. Coordinating nurturing intervention and prevention efforts.

(c) A KSPSRO shall not address school discipline issues that do not constitute crimes or that do not impact the immediate health or safety of the students or school personnel.

(d) A KSPSRO shall not administer formal school discipline such as detentions, suspensions, or expulsions. These decisions are the sole responsibility of school personnel.

(3) Notwithstanding KRS Chapter 11A, the KSPSRO shall wear the uniform and utilize the vehicles, firearms, ammunition, and equipment issued to him or her by the Department of Kentucky State Police or other agency-authorized clothing or equipment. In the event additional weapons or gear is utilized than that which is carried on his or her person, the storage of these items shall be defined by the Department of Kentucky State Police. If a vehicle or equipment is damaged during the scope of a KSPSRO's secondary employment with the school district, but not while the KSPSRO is engaged in police action, the school district is responsible for restitution to the Department of Kentucky State Police.

(4) Notwithstanding subsection (2) of this section, a KSPSRO shall be deemed an employee of the Department of Kentucky State Police for all purposes whenever engaged in any police action, including arrests, searches and seizures, uses of force, issuing citations, serving warrants, pursuing suspects, or investigating criminal offenses or vehicle accidents.

(5) Nothing in this section shall be construed to require the Department of Kentucky State Police to assign or provide funding for KSPSROs.

(6) Nothing in this section shall be deemed to waive or otherwise limit the rights, privileges, immunities, and matters of defense, now available or hereafter made available, to school districts, the Department of Kentucky State Police, any local law enforcement agency, any KSPSRO, or any school resource officer in any suit brought against them in consequence of acts or omissions.

History.
2019 ch. 197, § 2, effective April 9, 2019.

158.4416. Trauma-informed approach to education — Goals for employment of school-based counselors — Trauma-informed team to recognize and deal with issues of student trauma — Collaboration for services between two or more school districts or between school districts, educational cooperatives, or other public or private entities — Annual report to department on school-based mental health service providers in each district — Report to Interim Joint Committee on Education — Toolkits to develop trauma-informed approach in schools — Plan and strategies for implementing trauma-informed approach.

(1) For purposes of this section:

(a) "Direct services" means in-person or virtual services provided directly to a student by a school counselor, including but not limited to individual counseling, group counseling, and individual student planning, scheduling, and registration;

(b) "Indirect services" means services provided on behalf of a student as a result of interactions with others, including but not limited to consultation and collaboration with parents, teachers, and other educators;

(c) "School counselor" means an individual who holds a valid school counselor certificate issued in accordance with the administrative regulations of the Education Professional Standards Board;

(d) "School psychologist" means an individual who holds a valid school psychology certificate issued in accordance with the administrative regulations of the Education Professional Standards Board;

(e) "School social worker" means an individual who holds a valid school social work certificate issued in accordance with the administrative regulations of the Education Professional Standards Board;

(f) "School-based mental health services provider" means a certified school counselor, school psychologist, school social worker, or other qualified mental health professional as defined in KRS 202A.011;

(g) "Trauma" means physical, emotional, or life-threatening harm; and

(h) "Trauma-informed approach" means incorporating principles of trauma awareness and trauma-informed practices in a school in order to foster a safe, stable, and understanding learning environment for all students and staff and ensuring that all students are known well by at least one (1) adult in the school setting.

(2) The General Assembly recognizes that all schools must provide a place for students to feel safe and supported to learn throughout the school day, and that any trauma a student may have experienced can have a significant impact on the ability of a student to learn. The General Assembly directs all public schools to adopt a trauma-informed approach to education in order to better recognize, understand, and address the learning needs of students impacted by trauma and to foster a learning environment where all students, including those who have been traumatized, can be safe, successful, and known well by at least one (1) adult in the school setting. The requirements of this subsection shall apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

(3)(a) As funds and qualified personnel become available:

1. Each school district and each public charter school shall employ at least one (1) school counselor in each school with the goal of the school counselor spending at least sixty percent (60%) or more of his or her time providing direct services to students and no more than forty percent (40%) of his or her time providing indirect services to students; and

2. It shall be the goal that each school district and each public charter school shall provide at least one (1) school counselor or school-based mental health services provider who is employed by the school district for every two hundred fifty (250) students, including but not limited to the school counselor required in subparagraph 1. of this paragraph.

(b) A school counselor or school-based mental health services provider at each school shall be the facilitator of a trauma-informed team to identify and assist students whose learning, behavior, and relationships have been impacted by trauma. The trauma-informed team may consist of school administrators, school counselors, school psychologists, school social workers, school-based mental health services providers, community-based mental health services providers hired by the district, family resource and youth services coordinators, school nurses, school resource officers, and any other school or district personnel.

(c) The trauma-informed team shall:

1. Provide assistance to school personnel to enable them to support students whose learning, behavior, and relationships have been impacted by trauma;

2. Identify ways to recognize and respond to mental health issues in all students; and

3. Identify ways to build resiliency and wellness in all students.

(d) Each school counselor or school-based mental health services provider providing services pursuant to this section, and the trauma-informed team members described in paragraph (b) of this subsection, shall provide training, guidance, and assistance to other administrators, teachers, and staff on:

1. Recognizing symptoms of trauma in students;

2. Utilizing interventions and strategies to support the learning needs of those students; and

3. Implementing the plan for a trauma-informed approach as described in subsection (5) of this section.

(e)1. School districts may employ or contract for the services of school-based mental health services providers to assist with the development and implementation of a trauma-informed approach

and the development of a trauma-informed team pursuant to this subsection and to enhance or expand student mental health support services as funds and qualified personnel become available.

2. School-based mental health services providers may provide services through a collaboration between two (2) or more school districts or between school districts and educational cooperatives or any other public or private entities, including but not limited to local or regional mental health day treatment programs.

(f) No later than November 1 of each year, the local school district superintendent shall report to the department the number of school-based mental health service providers, the position held, placement in the district, certification or licensure held, the source of funding for each position, a summary of the job duties and work undertaken by each school-based mental health service provider, and the approximate percent of time devoted to each duty over the course of the year.

(g) The department shall annually compile and maintain a list of school-based mental health service providers by district which shall include the information required in paragraph (f) of this subsection.

(h) No later than June 1 of each year, the department shall provide the Interim Joint Committee on Education with the information reported by local school district superintendents and compiled in accordance with paragraph (g) of this subsection.

(4) The department shall make available a toolkit that includes guidance, strategies, behavioral interventions, practices, and techniques to assist school districts and public charter schools in developing a trauma-informed approach in schools.

(5) Each local board of education and board of a public charter school shall develop a plan for implementing a trauma-informed approach in its schools. The plan shall include but not be limited to strategies for:

(a) Enhancing trauma awareness throughout the school community;

(b) Conducting an assessment of the school climate, including but not limited to inclusiveness and respect for diversity;

(c) Developing trauma-informed discipline policies;

(d) Collaborating with the Department of Kentucky State Police, the local sheriff, and the local chief of police to create procedures for notification of trauma-exposed students; and

(e) Providing services and programs designed to reduce the negative impact of trauma, support critical learning, and foster a positive and safe school environment for every student.

(6) The trauma-informed approach plan developed in accordance with subsection (5) of this section shall be reviewed and updated annually and submitted to the department. The department shall annually provide a summary of the trauma-informed approach strategies being used in districts to the board and the Legislative Research Commission for referral to the Interim Joint Committee on Education.

History.

2019 ch. 5, § 16, effective March 11, 2019; 2020 ch. 5, § 4, effective February 21, 2020; 2022 ch. 234, § 1, effective July 14, 2022; 2024 ch. 165, § 5, effective July 15, 2024; 2025 ch. 145, § 7, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.492, 156.557, 157.360, 158.060, 158.070, and 161.031, and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

158.4418. Annual report on trauma-informed approach plans and school-based mental health services — Model interagency agreements.

(1) The Kentucky Department of Education shall annually provide to the Kentucky Board of Education and the Legislative Research Commission for referral to the Interim Joint Committee on Education a summary of the data gathered pursuant to subsection (2)(a) to (c) of this section.

(2) The department shall:

(a) Collect the plans for a trauma-informed approach required by KRS 158.4416(5);

(b) Compile information from the 2020-2021 school year and each year thereafter regarding Medicaid billing for school-based mental health services provided by school-based or contracted mental health services providers;

(c) Compile and monitor the number and types of mental health services providers who are providing services in schools and the progress being made toward reaching the goal specified in KRS 158.4416(3)(a); and

(d) Coordinate technical assistance, professional development, and evidence-based training of school staff on childhood trauma-related experiences.

(3) The department shall collaborate with the Center for School Safety to develop model interagency agreements between local school districts and other local public agencies, including but not limited to health departments, departments of social services, mental health agencies, and courts, in order to provide cooperative services and sharing of costs for services to students who are at risk of academic failure, at risk of mental health crises, at risk of participation in juvenile crime, or who have been expelled from the school district.

History.

2024 ch. 165, § 6, effective July 15, 2024.

158.442. Center for School Safety — Duties — School safety coordinator training program — Members of board — Center for School Safety and its board of directors not subject to reorganization by the Governor.

(1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety and school security programs, best practices, training standards, research results, and new programs; and, in collaboration with

the Department of Education and others, to provide technical assistance for safe schools.

(2) To fulfill its mission, the Center for School Safety shall:

(a) Establish a clearinghouse for information and materials concerning school violence prevention;

(b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;

(c) Analyze the data collected in compliance with KRS 158.444;

(d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;

(e) Administer a school safety grant program for local districts as directed by the General Assembly;

(f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;

(g) Prepare and disseminate information regarding best practices in creating safe and effective schools;

(h) Advise the Kentucky Board of Education on administrative policies and administrative regulations relating to school safety and security;

(i) By July 1 of each year, provide an annual report to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky, including the number and placement of school resource officers working in school districts in Kentucky and the source of funding and method of employment for each position in accordance with KRS 158.4414;

(j) Develop and implement a school safety coordinator training program based on national and state best practices in collaboration with the Kentucky Department of Education for school safety coordinators appointed pursuant to KRS 158.4412. The training shall be approved by the board of directors of the Center for School Safety and include instruction on at least the following:

1. Policies and procedures for conducting emergency response drills using an all-hazards approach including hostage and active shooter situations;

2. Identification and response to threats to school safety and security; and

3. Preparing for, conducting, and reviewing school security risk assessments in accordance with KRS 158.4410;

(k) Develop and implement a system to provide certification to school districts that the center has verified that:

1. A potential Kentucky guardian, as defined in KRS 158.4431, has met all of the requirements of KRS 158.4431(3); and

2. Individuals employed as guardians meet the requirements of KRS 158.4431(4) and (5), as necessary;

(*l*) If funds are available, employ an individual whose job responsibilities include oversight of the guardian program, including but not limited to:

1. The requirements of paragraph (k) of this subsection; and

2. The creation of model policy to be used by local boards of education when adopting the policies in KRS 158.4431(8); and

(m) Award a school safety coordinator certificate of completion to a school safety coordinator upon satisfactory completion of the training program.

(3) The Center for School Safety shall be governed by a board of directors consisting of fifteen (15) members. Members shall consist of:

(a) The commissioner or a designee of the Department of Education;

(b) The secretary or a designee of the Cabinet for Health and Family Services;

(c) The commissioner or a designee of the Department for Behavioral Health, Developmental and Intellectual Disabilities;

(d) The commissioner or a designee of the Department of Kentucky State Police;

(e) The commissioner or a designee of the Department of Criminal Justice Training;

(f) The executive director or a designee of the Kentucky Office of Homeland Security;

(g) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky League of Cities;

(h) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky School Boards Association;

(i) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky Association of School Superintendents;

(j) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky Association of School Resource Officers;

(k) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky Education Association;

(*l*) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky School Nurses Association;

(m) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky Association for Psychology in the Schools;

(n) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky School Counselor Association; and

(o) A representative which shall be appointed by the Governor from one (1) list of three (3) names submitted by the Kentucky Parent Teacher Association.

(4) Notwithstanding KRS 12.028, the Center for School Safety and its board of directors shall not be subject to reorganization by the Governor.

History.

Enact. Acts 1998, ch. 493, § 3, effective April 10, 1998; 2000, ch. 14, § 11, effective July 14, 2000; 2006, ch. 211, § 84, effective July 12, 2006; 2009, ch. 11, § 48, effective June 25, 2009; 2012, ch. 146, § 14, effective July 12, 2012; 2012, ch. 158, § 10, effective July 12, 2012; 2019 ch. 5, § 2, effective March 11, 2019; 2024 ch. 165, § 2, effective July 15, 2024; 2026 ch. 163, § 3, effective April 14, 2026.

Legislative Research Commission Notes.

(7/12/2012). This statute was amended by 2012 Ky. Acts chs. 146 and 158, which do not appear to be in conflict and have been codified together.

(7/12/2012). This statute was amended by 2012 Ky. Acts chs. 146 and 158, which do not appear to be in conflict and have been codified together.

158.443. Terms of board members — Meetings — Selection of administrator for the center — Duties of board of directors.

(1) Each nonstate-government employee member of the board of directors for the Center for School Safety shall serve a term of four (4) years or until his or her successor is duly qualified. A member may be reappointed, but shall not serve more than two (2) consecutive terms.

(2) The members who are nonstate-government employees shall be reimbursed for travel, meals, and lodging and expenses relating to official duties of the board from funds appropriated for this purpose.

(3) The board of directors shall meet a minimum of four (4) times per year. The board of directors shall be attached to the Office of the Secretary of the Education and Labor Cabinet for administrative purposes.

(4) The board of directors shall annually elect a chair and vice chair from the membership. The board may form committees as needed.

(5) The board of directors shall appoint an executive director for the Center for School Safety and establish all positions for appointment by the executive director.

(6) Using a request-for-proposal process, the board of directors shall select a public university or a nonprofit education entity to administer the Center for School Safety for a period of not less than four (4) years unless funds for the center are not appropriated or the board determines that the administrator for the center is negligent in carrying out its duties as specified in the request for proposal and contract. The administrator for the center shall be the fiscal agent for the center and:

(a) Receive funds based on the approved budget by the board of directors and the General Assembly's appropriation for the center. The center shall operate within the fiscal policies of the administrator of the center and in compliance with policies established by the board of directors per the request for proposal and contract; and

(b) Employ the staff of the center who shall have the retirement and employee benefits granted other similar employees of the administrator of the center.

(7) The board of directors shall annually approve:

(a) A work plan for the center;

(b) A budget for the center;

(c) Operating policies as needed; and

(d) Recommendations for grants to local school districts and schools to assist in the development of programs and individualized approaches to work with violent, disruptive, or academically at-risk students, and consistent with provisions of KRS 158.445.

(8) The board of directors shall prepare a biennial budget request to support the Center for School Safety and to provide program funds for local school district grants.

(9) The board of directors shall additionally:

(a) Approve a school safety coordinator training program developed by the Center for School Safety in accordance with KRS 158.442;

(b) Approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A; and

(c) Review the organizational structure and operations of the Center for School Safety and provide recommendations, as needed, for improvements in its organizational and operational performance.

(10) The board shall collaborate with the department as directed in KRS 158.4418(3), to develop model interagency agreements between local school districts and other local public agencies, including but not limited to health departments, departments of social services, mental health agencies, and courts, in order to provide cooperative services and sharing of costs for services to students who are at risk of school failure, are at risk of participation in juvenile crime, or have been expelled from the school district.

History.

Enact. Acts 1998, ch. 493, § 4, effective April 10, 1998; 2006, ch. 211, § 88, effective July 12, 2006; 2009, ch. 11, § 49, effective June 25, 2009; 2019 ch. 5, § 3, effective March 11, 2019; 2022 ch. 236, § 68, effective July 1, 2022; 2024 ch. 165, § 7, effective July 15, 2024.

158.4431. Employment of Kentucky guardians by local boards of education — Qualifications — Contents of required policies — Civil and criminal immunity.

(1) As used in this section, a "Kentucky guardian" or "guardian" means an employee of a local board of education who is employed for the purpose of providing school safety and security to students and staff on a school site. A person providing services as a guardian may only include honorably discharged veterans, retired Kentucky state troopers, retired special and sworn law enforcement officers, and former federal law enforcement officers. A guardian certified by the Center for School Safety as having met all requirements of this section is deemed to be an authorized individual under KRS 527.070(3)(f) and may be armed with a firearm on school property.

(2) Local boards of education may employ as many guardians as the board considers necessary for the safety and security of its schools.

(3) Prior to hiring a guardian, the local board of education shall require the applicant to provide certification from the Center for School Safety that he or she meets all of the following minimum requirements:

(a) Is a citizen of the United States and the Commonwealth of Kentucky;

(b) Has received a high school diploma or a High School Equivalency Diploma;

(c) Is currently licensed under KRS 237.110 to carry a concealed weapon;

(d) Has completed and passed background checks as required pursuant to KRS 160.380(7)(a), and has not been convicted of any felony, any misdemeanor under KRS 510.120, 510.130, 510.140, or 510.148, or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct under KRS Chapter 510, or have had any offense listed in this paragraph expunged;

(e) Has passed a medical examination completed by a licensed physician, physician assistant, or advanced practice registered nurse to determine if he or she can perform the duties of a guardian;

(f) Has passed a drug screening test administered or approved by the Kentucky Law Enforcement Council. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse;

(g) Has passed the following examinations administered by the Kentucky Law Enforcement Council:

1. A background investigation to determine the person's suitability for the position of guardian;

2. A psychological suitability screening to determine the person's suitability to perform guardian duties; and

3. A polygraph examination to determine the person's suitability to perform guardian duties;

(h) Has passed the following courses provided by the Department of Criminal Justice Training:

1. Active Shooter Response;

2. Enhanced Handgun Performance; and

3. Patrol Rifle;

(i) Has passed the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140;

(j) Has been honorably discharged from the Armed Forces of the United States within the five (5) years immediately preceding an initial contract to be a guardian as evidenced by a Department of Defense form DD 214, or is a retired Kentucky state trooper, retired special or sworn law enforcement officer, or former federal law enforcement officer. Each agency that employed a retired Kentucky state trooper, retired special law enforcement officer, or sworn law enforcement officer shall provide to the retired individual proof of prior employment in a prompt and efficient manner, without charge to the individual; and

(k) Has met any other requirements imposed by the local board of education, which may include but are not limited to a preemployment written examination.

(4) Each guardian shall be required to complete annual firearm proficiency testing and shall meet the standard in the same manner as set forth in KRS 237.140(4)(a) to (c).

(5) Each guardian shall be required to complete the course requirements for School Resource Officer Training I (SRO I) as set forth in KRS 158.4414(8).

(6) The employing local board of education may require the completion of any additional courses and training as determined to be necessary by the board.

(7) Any cost associated with subsections (3) to (6) of this section shall be the responsibility of the guardian unless otherwise agreed to by the employing local board of education. The Kentucky Law Enforcement Council shall not charge more to guardians for tests, assessments, or training completed than what is customarily charged to any other type of applicant tested, assessed, or trained by the council.

(8) A local board of education employing a guardian shall collaborate with the local police department, local sheriff, area post of the Department of Kentucky State Police, and the state school security marshal in order to adopt school district policy regarding:

(a) The job description of the guardian, including but not limited to the scope of duties, responsibilities, and direct supervisor of the guardian;

(b) The uniform to be worn by guardians that would best suit the needs of the schools while also allowing outside agencies to easily identify guardians;

(c) The procedures, processes, and chain of command to be used during an emergency in which law enforcement agencies are called to the school; and

(d) The type of firearm and ammunition to be used by the guardian, if any.

(9) A local board of education shall be immune from civil or criminal liability in all claims arising out of any action of a guardian.

(10) Guardians shall possess all the immunities and defenses now available or hereafter made available under state law to sheriffs, constables granted peace officer powers, and police officers in any suit brought against them in consequence of acts done in the course of their employment.

(11) Nothing in this section requires a local board of education to hire or provide guardians. Participation by a local board of education in the use of a guardian is voluntary and subject to the availability of local school district funds. Any local board of education that opts to participate shall do so at its own expense.

History.

2024 ch. 165, § 1, effective July 15, 2024; 2026 ch. 74, § 12, effective April 10, 2026.

158.4433. School Mapping Data Program — Administration by Kentucky 911 Services Board — Required capabilities.

(1) As used in this section, "school mapping data" means mapping information provided in an electronic or a digital format to assist first responders in responding to emergencies at schools.

(2)(a) The General Assembly does hereby establish the School Mapping Data Program to be administered by the Kentucky 911 Services Board. The Kentucky 911 Services Board shall utilize available funds to develop school mapping data for each public school, public charter school, and any private school that requests to participate in the program. The program shall be administered by the Kentucky 911 Services Board pursuant to this section, which may

include contracting for services pursuant to the relevant provisions of the Kentucky Model Procurement Code in KRS Chapter 45A. The Kentucky 911 Services Board shall be responsible for ensuring that all funds received for and expended related to the School Mapping Data Program are utilized for the purposes of school mapping.

(b) The Kentucky 911 Services Board shall provide the data developed by the program to the state school security marshal, participating schools, participating districts, and local law enforcement and public safety agencies for use in response to emergencies and for conducting drills required under KRS 158.162(5). The school mapping data shall be excluded from the application of KRS 61.870 to 61.884.

(c) The Kentucky 911 Services Board shall apply for any federal grant funds that may be used to accomplish the purposes of the program. The Kentucky 911 Services Board may also solicit private funds to support the program.

(3) The School Mapping Data Program shall establish a single verified source of mapping data for each participating school campus in the state that is standardized, accurate, and accessible to public safety agencies to ensure efficient response to any emergency on a school campus. The school mapping data provided shall:

(a) Be compatible with software platforms used by local, county, state, and federal public safety agencies that provide emergency services to the specific school for which the data is provided without requiring such agencies to purchase additional software or requiring a fee to view or access the data;

(b) Be compatible with security software platforms in use by the participating school or district for which the data is provided without requiring the school or district to purchase additional software or requiring a fee to view or access the data;

(c) Be in a printable format and, if requested by a law enforcement or public safety agency or participating school or district in addition to those described in paragraph (a) of this subsection, be in a digital file format that can be integrated into interactive mobile platforms in use;

(d) Be verified by the Kentucky 911 Services Board, or any entity contracted by the Kentucky 911 Services Board to develop the mapping data pursuant to this section for accuracy by a walk-through of school buildings and grounds;

(e) Be oriented to true north;

(f) Include accurate floor plans overlaid on current, verified aerial imagery of campus;

(g) Contain site-specific labeling that matches the structure of school buildings that includes:

1. Room labels;
2. Hallway names or identifiers;
3. External door or stairwell numbers;
4. Locations of hazards;
5. Critical utility locations;
6. Key boxes;
7. Automated external defibrillators; and
8. Trauma kits;

(h) Contain site-specific labeling that matches the school grounds that includes:

1. Parking areas;
2. Athletic fields;
3. Surrounding roads; and
4. Neighboring properties;

(i) Be overlaid with a gridded coordinate system;

(j) Not be modified or updated independently without corresponding updates to school mapping data within software platforms used by local, county, state, and federal public safety agencies that provide emergency services to the specific school; and

(k) Provide to public safety agencies and participating schools or districts the school mapping data developed pursuant to the program perpetually and at no cost to the public safety agencies or participating schools or districts.

(4) A participating school district or campus shall not be required to adopt new school mapping data if, as of July 1, 2024, the school district or campus previously implemented school mapping data with capabilities that meet the requirements of subsection (3)(a) to (k) of this section.

History.

2024 ch. 165, § 11, effective July 15, 2024; 2026 ch. 163, § 1, effective April 14, 2026.

Legislative Research Commission Notes.

(7/15/2024). In subsection (2)(b) of this statute, a reference to "the state security marshal" has been changed in codification to read "the state school security marshal." The reviser of statutes has made this correction of a manifest clerical or typographical error under the authority of KRS 7.136.

158.444. Administrative regulations relating to school safety — Role of Department of Education to maintain statewide data collection system — Reportable incidents — Annual statistical reports — Confidentiality.

(1) The Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.

(2) The Kentucky Department of Education shall:

(a) Collaborate with the Center for School Safety in carrying out the center's mission;

(b) Establish and maintain a statewide data collection system by which school districts shall report by sex, race, and grade level:

1.a. All incidents of violence and assault against school employees and students;

b. All incidents of possession of guns or other deadly weapons on school property or at school functions;

c. All incidents of the possession or use of alcohol, prescription drugs, or controlled substances on school property or at school functions; and

d. All incidents in which a student has been disciplined by the school for a serious incident, including the nature of the discipline, or charged criminally for conduct constituting a violation of any offense specified in KRS Chapter 508; KRS 525.070 occurring on school premises, on school-sponsored transportation, or at school functions; or KRS 525.080;

2. The number of arrests, the charges, and whether civil damages were pursued by the injured party;

3. The number of suspensions, expulsions, and corporal punishments; and

4. Data required during the assessment process under KRS 158.445; and

(c) Provide all data collected relating to this subsection to the Center for School Safety according to timelines established by the center.

(3) The Department of Education shall provide the Office of Education Accountability and the Education Assessment and Accountability Review Subcommittee with an annual statistical report of the number and types of incidents reported under subsection (2)(b) of this section. The report shall include all monthly data and cumulative data for each reporting year. Reportable incidents shall be grouped in the report in the same manner that the reportable incidents are grouped in subsection (2)(b)1. of this section. Data in the report shall be sorted by individual school district, then by individual schools within that district, and then by individual grades within each school. The report shall not contain information personally identifying any student. The reporting period shall be for an academic year, and shall be delivered no later than August 31 of each year.

(4) All personally identifiable student data collected pursuant to subsection (2)(b) of this section shall be subject to the confidentiality provisions of the Kentucky Family Education Rights and Privacy Act, KRS 160.700 to 160.730, and to the federal Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, and its implementing regulations.

(5) Parents, legal guardians, or other persons exercising custodial control or supervision shall have the right to inspect or challenge the personally identifiable student records as permitted under the Kentucky Family Education Rights and Privacy Act and the federal Family Educational Rights and Privacy Act and implementing regulations.

(6) Data collected under this section on an individual student committing an incident reportable under subsection (2)(b)1. of this section shall be placed in the student's disciplinary record.

History.

Enact. Acts 1998, ch. 493, § 5, effective April 10, 1998; 2008, ch. 125, § 2, effective July 15, 2008.

NOTES TO DECISIONS

1. Qualified Immunity.

Circuit court did not err in determining that appellee in-school security monitor had qualified official immunity against appellant student's battery claim because the student's inebriation and decision to go to the parking lot and enter his vehicle, contrary to the school officials' reasonable verbal instruction to enter the assistant principals' offices, compelled the security monitor to exercise the discretion afforded to him under the law to physically secure the student's cooperation in the interest of school safety and chose increasing degrees of physical restraint. Carpenter v. Goodall, 686 S.W.3d 251, 2024 Ky. App. LEXIS 9 (Ky. Ct. App. 2024).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Corporal punishment., 704 KAR 7:170.

Discipline of students, 780 KAR 2:060.

Use of physical restraint and seclusion in public schools, 704 KAR 7:160.

Kentucky Bench & Bar.

Chenoweth and Chenoweth, Education Law: I'm Going to Beat You Up!: Reporting Student Conduct Under "the Bullying Bill", Vol. 72, No. 6, November 2008, Ky. Bench & Bar 10.

158.445. Local assessment of school safety and school discipline — District assessment — Local plans.

(1) Each local school shall conduct an assessment of school safety and student discipline including a review of the following:

(a) Reports of school incidents relating to disruptive behaviors;

(b) The school's behavior and discipline codes for clarity and appropriate notice to students and parents;

(c) The school's hierarchy of responses to discipline problems and actual disciplinary outcomes;

(d) Training needs for instructional staff in classroom management, student learning styles, and other specialized training to enhance teachers' capacity to engage students and minimize disruptive behavior;

(e) The array of school services to students at risk of academic failure, dropping out, or truancy;

(f) The engagement of parents at the earliest stages of problem behavior;

(g) Training needs for students in the development of core values and qualities of good character, anger reduction, conflict resolution, peer mediation, and other necessary skills;

(h) Training needs of parents;

(i) Existing school council policies relating to student discipline and student information;

(j) The school's physical environment;

(k) The school's student supervision plan;

(*l*) Existing components of the school improvement plan or consolidated plan that focus on school safety and at-risk students, and the effectiveness of the components; and

(m) Other data deemed relevant by the school council or school administration.

A school that does not complete an assessment process shall not be eligible for funds under the state school safety grant program.

(2) Each local school district shall complete a district-level assessment of district-level data, resources, policies and procedures, and district-wide needs as identified from the individual school assessment process. The district shall engage local community agencies including law enforcement and the courts in the assessment process.

(3) As a result of the district assessment and analysis of data, resources, and needs, each board of education shall adopt a plan for immediate and long-term strategies to address school safety and discipline. The development of the plan shall involve at least one (1)

representative from each school in the district as well as representatives from the community as a whole, including representatives from the local juvenile delinquency prevention council if a council exists in that community. The process of planning shall be determined locally depending to a large extent on the size and characteristics of the district.

(4) The district plan under subsection (3) of this section shall be the basis for any request for funds under the state school safety grant program. The district plan shall include the local code of acceptable behavior and discipline and the transportation services policy as required under KRS 158.148 and a description of instructional placement options for threatening or violent students.

History.

Enact. Acts 1998, ch. 493, § 6, effective April 10, 1998; 2000, ch. 162, § 6, effective July 14, 2000; 2024 ch. 9, § 3, effective July 15, 2024.

158.4451. Kentucky Office of Homeland Security shall make available an anonymous reporting tool to allow students, parents, and community members to supply information about potentially harmful, dangerous, or criminal activities to public safety agencies and school officials — Required use of reporting tool or alternative by local school districts.

(1) The Kentucky Office of Homeland Security, after collaborating with the Center for School Safety, the Kentucky Department of Education, the Department of Criminal Justice Training, and the Department of Kentucky State Police, shall make available to each local school district an anonymous reporting tool that allows students, parents, and community members to anonymously supply information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. The reporting tool shall be accessible at least by telephone call, electronic email, and a mobile device application.

(2) The reporting tool shall notify the reporting individual of the following:

(a) The reporting individual may supply the information anonymously; and

(b) If the individual chooses to disclose his or her identity, that information shall be shared with the appropriate law enforcement agency and school officials. Law enforcement and school officials shall be required to maintain the information as confidential.

(3) Information reported using the tool shall immediately be sent to the administration of each school district affected and the law enforcement agencies responsible for protection of those school districts, including but not limited to the local sheriff's office, the local city police department, and the Kentucky State Police.

(4) Law enforcement dispatch centers, school districts, schools, and other entities identified by the Kentucky Office of Homeland Security shall be made aware of the reporting tool.

(5) The Kentucky Office of Homeland Security, in collaboration with the Center for School Safety, the Kentucky Department of Education, the Department of Criminal Justice Training, and the Department of Kentucky State Police, shall develop and provide a comprehensive training and awareness program on the use of the anonymous reporting tool.

(6) The Kentucky Office of Homeland Security shall maintain and update the anonymous reporting tool and shall collaborate with the agencies listed in subsection (1) of this section prior to making substantial changes to the tool.

(7) Each local school district shall provide an anonymous reporting tool that allows students, parents, and community members to anonymously supply information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials.

(8) In order to meet the requirement of subsection (7) of this section, local school districts shall:

(a) Use the anonymous reporting tool described in subsections (1) to (4) of this section; or

(b)1. Provide an alternative anonymous reporting tool other than the tool made available pursuant to subsection (1) of this section, as long as the chosen reporting tool satisfies all of the requirements established in subsections (1) to (4) of this section; and

2. Develop and provide a comprehensive training and awareness program on the use of the chosen anonymous reporting tool.

History.

2019 ch. 5, § 21, effective March 11, 2019; 2024 ch. 165, § 8, effective July 15, 2024.

158.446. Use of appropriated funds.

Of the funds appropriated to support the school safety fund program in the biennial budget, twenty percent (20%) of the funds in 1998-99, and ten percent (10%) in 1999-2000, shall be used for the operation of the Center for School Safety and grants to be distributed by the Center to support exemplary programs in local school districts. The remainder of the appropriation shall be distributed to local school districts on a per pupil basis. The funds shall be used for the purpose of improving school safety and student discipline through alternative education programs and intervention services in compliance with KRS 158.148, 158.150, and 158.445. School districts shall be responsible for documenting the purposes for which these funds were expended.

History.

Enact. Acts 1998, ch. 493, § 7, effective April 10, 1998.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (4) at 2075.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (5) at 2075.

158.4461. The General Assembly finds that private financial and philanthropic support of public school districts by all members of the community fosters student success, safety, and well-being — The General Assembly encourages the organization of foundations under KRS Chapter 273 to support public school districts in any district for which no such foundation exists.

(1) The board of directors of any public school district foundation, or foundation formed exclusively to benefit a particular public school, organized as a nonstock, nonprofit corporation under KRS Chapter 273 and that is either in existence on March 11, 2019, or incorporated after March 11, 2019, may accept gifts or donations that are restricted by the grantor to be used in furtherance of lawful school safety, security, and student health purposes to the extent allowed by applicable federal tax laws. The board of directors shall use gifts or donations exclusively for the purpose for which they are granted.

(2) The General Assembly hereby finds and declares that private financial and philanthropic support of public school districts by all members of the community fosters greater student success, safety, and wellbeing. To advance these goals, the General Assembly hereby encourages the organization of foundations to support public school districts in any district for which no foundation exists on March 11, 2019, under KRS Chapter 273 relating to nonstock, nonprofit corporations.

(3) Pursuant to KRS 160.580, a local board of education may directly accept gifts or donations that are restricted by the grantor to be used in furtherance of lawful school safety, security, and student health purposes to the extent allowed by applicable laws and shall use any accepted gift or donation for the purpose for which it was granted.

History.
2019 ch. 5, § 23, effective March 11, 2019.

158.447. Required review of CPTED principles prior to school construction or renovation.

The Kentucky Department of Education shall require a local board of education to review Crime Prevention Through Environment Design principles, or CPTED principles, when constructing a new school building or when renovating an existing school building.

History.
Enact. Acts 2013, ch. 126, § 4, effective June 25, 2013; 2013, ch. 133, § 4, effective June 25, 2013.

Legislative Research Commission Notes.
(6/25/2013). This statute was created with identical text in 2013 Ky. Acts chs. 126 and 133, which were companion bills. These Acts have been codified together.

158.448. Protocols for student records within student information system.

The Kentucky Department of Education shall develop protocols for student records within the student information system which:

(1) Provide notice to schools receiving the records described in KRS 610.345 relating to a student transferring to a new school or district;

(2) Promote expeditious enrollment and placement of students in foster care who are transferring to a new school or district, in accordance with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95;

(3) Promote the sharing of information regarding students in foster care among schools, districts, the Cabinet for Health and Family Services, and a child's caseworker, pursuant to applicable law; and

(4) Protect the privacy rights of students and parents guaranteed under the federal Family Educational Rights and Privacy Act.

History.
Enact. Acts 2013, ch. 126, § 5, effective June 25, 2013; 2013, ch. 133, § 5, effective June 25, 2013; 2020 ch. 64, § 1, effective July 15, 2020; 2024 ch. 51, § 2, effective July 15, 2024.

Legislative Research Commission Notes.
(6/25/2013). This statute was created with identical text in 2013 Ky. Acts chs. 126 and 133, which were companion bills. These Acts have been codified together.

158.449. Annual report of assessment of disruptive behavior school incidents resulting in a complaint.

Each local school shall annually provide to the Department of Education, through the Kentucky Department of Education's student information system, an assessment of school incidents relating to disruptive behaviors resulting in a complaint, including whether:

(1) The incident involved a public offense or noncriminal misconduct;

(2) The incident was reported to law enforcement or the court-designated worker and the charge or type of noncriminal misconduct that was the basis of the referral or report; and

(3) The report was initiated by a school resource officer.

History.
Enact. Acts 2014, ch. 132, § 11, effective July 15, 2014.

CONSUMER EDUCATION

158.450. Administration — Rules and regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 8; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.455. Instruction. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 9) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.460. Development of program — Curricula. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 10) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.465. Teacher's and administrator's training programs. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 11) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.470. Policy of local school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 392, § 12; 1978, ch. 155, § 83, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

LOCAL SCHOOL DISTRICT POLICE DEPARTMENT

158.471. Local board of education authorized to establish police department for local school districts.

Pursuant to the authority granted to them under KRS 160.160 and 160.290, local boards of education are authorized to establish a police department for local school districts, appoint police officers and other employees, prescribe distinctive uniforms for the police officers of the school district, and designate and operate emergency vehicles. Police officers appointed under this section shall take an appropriate oath of office in the form and manner consistent with the Constitution of Kentucky. Police officers appointed pursuant to this section shall be granted with the protections provided in KRS 15.520 and shall be certified in accordance with KRS 15.380(1)(e).

History.
2022 ch. 189, § 2, effective July 14, 2022.

158.473. Police officers appointed by local board of education — Powers.

(1) Police officers appointed by the local board of education pursuant to KRS 158.471 shall be peace officers and conservators of the peace. They shall have general police powers including the power to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the local board of education authorizing and employing them. Without limiting the generality of the foregoing, such police officers are hereby specifically authorized and empowered, and it shall be their duty:

(a) To preserve the peace, maintain order, and prevent unlawful use of force or violence or other unlawful conduct on all property owned by or being used by the school district for appropriate educational services and extracurricular activities, and to protect all persons and property located thereon from injury, harm, and damage;

(b) If permitted by and in accordance with local board of education policy, to enforce, and to assist the school district in the enforcement of, the lawful rules, regulations, and code of conduct of the school district; and

(c) To assist and cooperate with other law enforcement agencies and officers.

Provided, however, that such police officers shall exercise the powers herein granted upon any real property owned or occupied by the local board of education, including any streets passing through and adjacent thereto. Said powers may be exercised where the local board of education owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency where the property is located, dependent upon the jurisdiction involved.

(2) Police officers may exercise their powers away from the locations described in subsection (1) of this section only when:

(a) In immediate pursuit of an actual or suspected violator of the law;

(b) Authorized to do so pursuant to the agreement authorized by subsection (1) of this section;

(c) Requested to act by the chief of police of the city or county in which the school district's property is located;

(d) Requested to act by the sheriff of the county in which the school district's property is located;

(e) Requested to act by the commissioner of the Department of Kentucky State Police;

(f) Requested to act by the authorized delegates of those persons or agencies listed in paragraph (c), (d), or (e) of this subsection;

(g) Requested to assist a state, county, or municipal police officer, sheriff, or other peace officer in the performance of his or her lawful duties; or

(h) Operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.

(3) Police officers appointed pursuant to KRS 158.471 shall have, in addition to the other powers enumerated herein, the power to conduct investigations anywhere in this Commonwealth, provided the investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the employing school district. At the discretion of the local school board's police officials, the school board's police department may coordinate said investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.

(4) Police departments created and operated by the local board of education shall for all purposes, be deemed public police departments, and its sworn police officers are deemed public police officers.

(5) Nothing in KRS 158.471 to 158.483 shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Department of Kentucky State Police, sheriff, constable, or other peace officer, either on the property of a local school district or otherwise.

History.
2022 ch. 189, § 3, effective July 14, 2022.

158.475. Appointed police officers to comply with KRS 61.300 and other requirements set by the local board of education.

All persons appointed as police officers pursuant to KRS 158.471 shall, at the time of their employment:

(1) Comply with the requirements of KRS 61.300; and

(2) Possess whatever other requirements as may be set by the local board of education which employs them.

History.
2022 ch. 189, § 4, effective July 14, 2022.

158.477. Appointment or promotion to ranks, grades, and positions — Compensation — Employment contract permitted.

(1) The local board of education may provide for the appointment or promotion to the ranks and grades and positions of the department officers and civilians as are considered by the board to be necessary for the efficient administration of the department. The officers and civilians shall receive compensation as shall be fixed and paid by the board.

(2)(a) The local board of education may, as a condition of employment, require a newly appointed department officer to enter into an employment contract for a period of no longer than five (5) years from the date of appointment.

(b) If a department officer who entered into a contract authorized under this subsection accepts employment as a peace officer with another law enforcement agency, that law enforcement agency shall reimburse the local board of education that initially hired the department officer for the actual costs incurred and expended by the local board of education that are associated with the initial hiring of that department officer, including but not limited to the application process, training costs, equipment costs, salary, and fringe benefits. The local board of education that initially hired the department officer shall be reimbursed for the costs from the time of the department officer's initial application until appointment.

History.
2022 ch. 189, § 5, effective July 14, 2022; 2023 ch. 69, § 4, effective June 29, 2023.

158.479. Emergency vehicles — Radio systems — Reporting.

(1) Vehicles used for emergency purposes by the police department of a school district shall be considered emergency vehicles, be equipped with blue lights and sirens, and be operated in conformance with the requirements of KRS Chapter 189.

(2) Police officers directly employed by the board of education of a local school district pursuant to KRS 158.471 shall have the rights accorded to peace officers provided under KRS 527.020.

(3) Police departments established by boards of education may install, maintain, and operate radio systems on police or other radio frequencies under licenses issued by the Federal Communications Commission, or its successor, KRS 432.570 to the contrary notwithstanding.

(4) Police departments of local school districts shall comply with the requirements of the Kentucky Revised Statutes and the Justice and Public Safety Cabinet with regard to reporting of criminal and other statistics.

History.
2022 ch. 189, § 6, effective July 14, 2022.

158.481. Authority of local board to regulate traffic and parking — Fees — Violations.

(1) Each board of education of a local school district, having the power and authority to govern and control the method and purpose of use of property owned or occupied by its respective local school district, including travel over that property, is hereby confirmed in its authority to regulate the traffic and parking of motor vehicles, bicycles, or other vehicles as well as the traffic of pedestrians on, over, and across the streets, roads, paths, and grounds of real property owned, used, or occupied by the local school district. The regulations applicable to traffic and parking may include but are not limited to the following provisions:

(a) Provisions governing the registration, speed, operation, parking and times, places, and manner of use of motor vehicles, bicycles, and other vehicles;

(b) Provisions prescribing penalties for the violation of those regulations, which penalties may include the imposition of reasonable charges, the removing and impounding, at the expense of the violator, of vehicles which are operated or parked in violation of the regulations, and the denial of permission to operate vehicles on the property of the local school district; and

(c) Provisions establishing reasonable charges and fees for the registration of vehicles and for the use of parking spaces or facilities owned or occupied by the local school district. Provided, however, that nothing in this section shall be deemed to limit or restrict the powers of any other governmental authority having jurisdiction over public streets, roads, alleys, or ways.

(2) Motor vehicle moving violations of regulations issued under this section shall be deemed violations of the appropriate equivalent sections of the motor vehicle laws of the Commonwealth and may be prosecuted in the courts having territorial jurisdiction over the physical location of the offense.

History.
2022 ch. 189, § 7, effective July 14, 2022.

158.483. Prohibition against false representation as police officer, agent, or employee of a police department of a local school district.

No person shall falsely represent himself or herself to be a police officer, agent, or employee of a police department of a local school district and in that assumed character arrest or detain, search, or question, in any manner the person or property of any person, nor shall any person without the authority of the board of education of the local school district wear the official

uniform, insignia, badge, or identification of the department.

History.
2022 ch. 189, § 8, effective July 14, 2022.

SCHOOL BUS STOP ARM CAMERA MONITORING SYSTEMS

158.485. Definitions for KRS 158.485 to 158.490.

As used in KRS 158.485 to 158.490:

(1) "Camera monitoring system" means a system with one (1) or more camera sensors or computers installed and operated on a school bus that:

(a) Produce recorded images; and

(b) Record the activation status of the stop arm and the time, date, and location of the school bus when the recorded images are captured;

(2) "Owner" has the same meaning as in KRS 186.010;

(3) "Recorded images" means two (2) or more photographic images or a segment of any video medium recorded by a camera monitoring system which show on at least one (1) image or portion of video the registration plate number of a motor vehicle being operated in violation of KRS 189.370;

(4) "School district" means a county school district as described in KRS 160.010 or an independent school district as described in KRS 160.020; and

(5) "Stop arm camera violation" means a violation of KRS 189.370 that is recorded by a camera monitoring system and enforced in accordance with KRS 158.485 to 158.490.

History.
2026 ch. 62, § 1, effective July 15, 2026.

158.486. School bus stop arm camera monitoring systems — Enforcement of violations — Use of recorded images.

(1) A school district may install and maintain a camera monitoring system on any school bus operated by the school district for the enforcement of a civil penalty against the owner of a motor vehicle for a stop arm camera violation.

(2) A school district may contract with a private vendor or manufacturer to install, operate, and maintain camera monitoring systems on school buses operated by the school district.

(3) A stop arm camera violation may be enforced by a law enforcement agency, a certified peace officer, or a school resource officer as defined in KRS 158.441, upon review of the recorded images produced by a camera monitoring system.

(4) A school bus with a camera monitoring system installed and maintained in accordance with this section shall display a warning sign notifying the public of the camera monitoring system.

(5) Recorded images and other records related to a specific stop arm camera violation are private information and shall only be accessible to authorized personnel for the purpose of enforcing stop arm camera violations.

History.
2026 ch. 62, § 2, effective July 15, 2026.

158.487. Civil penalties — Disposition of revenues.

(1) The amount of a civil penalty for a stop arm camera violation shall be:

(a) Three hundred dollars ($300) for the first civil penalty; and

(b) Five hundred dollars ($500) for each subsequent civil penalty issued to an owner within a three (3) year period.

(2) All revenue generated from a civil penalty for a stop arm camera violation shall be collected and retained by the school district operating the camera monitoring system, unless the penalty is collected as a result of action taken in the Court of Justice, in which case court costs may be deducted from the amount paid to the school district.

(3) A law enforcement agency may charge and collect from the school district a fee of twenty-five dollars ($25) from every civil penalty collected by the school district under this section for a violation that was enforced by the law enforcement agency.

(4) A stop arm camera violation shall not result in points being assessed against the driving record of the owner or operator of the vehicle in violation.

History.
2026 ch. 62, § 3, effective July 15, 2026.

158.488. Stop arm camera violation notice — Contents — Destruction of recorded images.

(1) Upon a determination to issue a stop arm camera violation notice, the following documents shall be sent, either by the law enforcement agency or the school district's agent, by first-class mail to the owner of a motor vehicle within thirty (30) days of a stop arm camera violation:

(a) The stop arm camera violation notice form as described in subsection (2) of this section;

(b) A copy of the recorded images for the stop arm camera violation; and

(c) A signed, sworn statement from a law enforcement officer that, based on inspection of the recorded images, the motor vehicle was being operated in violation of KRS 189.370. This statement may be signed electronically and is admissible in any proceeding challenging a stop arm camera violation.

(2) The stop arm camera violation notice form shall contain in substance the following information:

(a) The name and address of the registered owner of the vehicle;

(b) A statement that the notice represents a determination that a stop arm camera violation has been committed by the owner of the vehicle and that the determination shall be final unless contested in accordance with KRS 158.489;

(c) The date and time of the violation;

(d) The location of the violation;

(e) The amount of the civil penalty imposed and the date by which the civil penalty shall be paid;

(f) Instructions on how to pay the civil penalty to the school district or its designated agent;

(g) Information advising the owner as to the manner and time in which the civil penalty may be contested; and

(h) A warning that failure to pay the civil penalty imposed or to contest the matter in a timely manner is an admission of liability and shall result in the suspension of the motor vehicle's registration.

(3) A recorded image produced by a camera monitoring system shall be destroyed:

(a) No later than thirty-one (31) days from the date the recorded image is captured if the recorded image does not result in a stop arm camera violation notice form issued under this section; or

(b) Upon final disposition of the stop arm camera violation if the recorded image results in a stop arm camera violation notice form issued under this section.

History.
2026 ch. 62, § 4, effective July 15, 2026.

158.489. Contest of violation — Evidence — Standard of proof — Defenses.

(1) A recorded image produced by a camera monitoring system shall be sufficient evidence of a violation of KRS 189.370 and shall be admitted without further authentication for the purposes of enforcement. There shall be a rebuttable presumption that when any school bus is stopped with its stop arm activated it is for the purpose of receiving or discharging passengers, and that the school bus signal lights are activated and operational when a recorded image includes an electronic indicator signifying activation of signal lights.

(2) In a contest to a stop arm camera violation, liability shall be determined by a preponderance of the evidence and it shall be a defense that:

(a) The motor vehicle or the motor vehicle registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation;

(b) The civil penalty is not enforceable because at the time and location of the violation the stop arm was not activated;

(c) The owner was not operating the vehicle at the time of the violation. An owner who raises this defense shall identify, under penalty of perjury, the person who was operating the vehicle at the time of the violation, including at a minimum the operator's name and address;

(d) The person operating the motor vehicle received a citation from a law enforcement officer for a violation of KRS 189.370 at the date and approximate time listed on the stop arm camera violation form;

(e) The violation was necessary to allow the passage of an emergency vehicle; or

(f) The violation occurred while the operator was participating in a funeral procession.

(3) A contest to a stop arm camera violation shall be heard by the District Court, and the school district and applicable law enforcement agency shall defend the stop arm camera violation.

(4) A school district may contract for legal services to fulfill the obligations in subsection (3) of this section.

History.
2026 ch. 62, § 5, effective July 15, 2026.

158.490. Suspension of motor vehicle registration for nonpayment of civil penalty — Required notice.

(1) If a stop arm camera violation civil penalty is not paid or contested in accordance with KRS 158.489 within sixty (60) days, the applicable law enforcement agency or officer may notify the Transportation Cabinet of the nonpayment.

(2) Upon notice of nonpayment, the cabinet shall:

(a) Send a notice of suspension by certified mail with restricted delivery and return receipt; and

(b) Suspend the registration of the motor vehicle until the civil penalty is paid.

(3) The applicable law enforcement agency or officer shall notify the cabinet of the need to release a suspension levied under this section within one (1) business day of collecting the funds to satisfy the civil penalty.

History.
2026 ch. 62, § 6, effective July 15, 2026.

158.505. Definitions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 2, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.510. Purpose. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 3, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.515. Administration — Rules and regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 4, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.520. Curriculum — Areas included. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 5, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.525. Development of program — Functions of department. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 6, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.530. Policy of local school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 7, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.535. Assistance from persons outside school system permitted. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 8, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.540. Implementation of KRS 158.510 to 158.545. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 9, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.545. Application by school district for funding — Grants. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 10, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.550. Title. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 56, § 1, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

INSTRUCTION FOR GIFTED AND TALENTED STUDENTS

158.600. Legislative intent of KRS 158.605 to 158.620 and 157.360. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 149, § 1, effective June 17, 1978; 1980, ch. 183, § 1, effective July 15, 1980; 1984, ch. 128, § 5, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.605. Definitions for KRS 158.600 to 158.620 and 157.360. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 149, § 1, effective June 17, 1978; 1980, ch. 183, § 2, effective July 15, 1980) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.607. Advisory council for gifted and talented education — Two year existence — Powers and duties. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 298, § 1, effective July 13, 1984; 1986, ch. 309, § 1, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.610. Local district requirements to be set by administrative regulation to implement program. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 149, § 3, effective June 17, 1978; 1980, ch. 183, § 3, effective July 15, 1980; 1984, ch. 298, § 2, effective July 15, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.615. Reimbursement for experimental programs. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 149, § 4, effective June 17, 1978; 1980, ch. 183, § 8, effective July 15, 1980) was repealed by Acts 1988, ch. 254, § 4, effective July 15, 1988.

158.617. Inservice training. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1980, ch. 183, § 5, effective July 15, 1980) was repealed by Acts 1988, ch. 254, § 4, effective July 15, 1988.

158.618. Evaluation procedure to monitor gifted and talented programs. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 298, § 3, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.620. Reports required. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 149, § 5, effective June 17, 1978; 1980, ch. 183, § 4, effective July 15, 1980; 1986, ch. 309, § 2, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

ADVANCED PLACEMENT AND DUAL ENROLLMENT

158.622. Administrative regulations of Kentucky Board of Education relating to advanced placement courses — Duties of Department of Education relating to advanced placement and dual enrollment programs — Credit for Virtual High School and advanced placement courses.

(1) The Kentucky Board of Education shall promulgate administrative regulations establishing the criteria a school shall meet in order to designate a course an advanced placement course, including content and program standards concerning student admission criteria, data collection, and reporting.

(2) Upon receipt of adequate federal funding for these purposes, the Department of Education shall:

(a) Expand advanced placement teacher training institutes, including offering advanced placement teacher training instruction and assistance through

the Kentucky Virtual High School or in conjunction with the Council on Postsecondary Education through the Kentucky Virtual University;

(b) Require teachers who are planning to participate in advanced placement teacher training and complete advanced placement training at advanced placement institutes facilitated by the department to sign an agreement to teach at least one (1) advanced placement course in a Kentucky public school or the Kentucky Virtual High School when assigned by the school principal;

(c) Develop the Kentucky Virtual Advanced Placement Academy which shall offer school districts and their students access to a core advanced placement curriculum through the Kentucky Virtual High School;

(d) Identify, in conjunction with the Council on Postsecondary Education, resources at the secondary and postsecondary levels that can be directed toward advanced placement or dual enrollment instruction;

(e) Compare the costs of offering advanced placement courses through traditional on-site instruction, the Kentucky Virtual High School, and other methods and shall offer each school district assistance, if requested, in analyzing how the school district can most cost-effectively offer the largest number of advanced placement courses;

(f) Identify current and future funding sources for advanced placement or dual enrollment instructional programs and the amount of funds available or anticipated from those sources; and

(g) Submit a report to the Kentucky General Assembly outlining compliance with this section.

(3) Each school district shall:

(a) Accept for credit toward graduation any course a student successfully completes through the Kentucky Virtual High School and incorporate the grade the student receives in a Kentucky Virtual High School course in calculating that student's grade point average without distinction between the grade received in the Kentucky Virtual High School course and courses taught within the school district for which the student receives a grade;

(b) Accept for credit toward graduation and completion of high school course requirements an advanced placement, a high school equivalent, or a Kentucky Virtual High School course taken by a student in grades 5, 6, 7, or 8 if that student attains performance levels expected of high school students in that district as determined by achieving a score of "3" or higher on a College Board Advanced Placement examination or a grade of "B" or better in a high school equivalent or a Kentucky Virtual High School course; and

(c) Pay tuition and other costs for students from their districts who are enrolled in a Kentucky Virtual High School course for credit that is part of the student's regular school day coursework by proportionately sharing funds generated under KRS 157.360 or other funding sources.

History.

Enact. Acts 2002, ch. 97, § 2, effective July 15, 2002; 2008, ch. 134, § 16, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Advanced placement, 704 KAR 3:510.

Kentucky Bench & Bar.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

158.625. Deadline for training required under KRS 161.166.

By July 1, 2010, at least one (1) employee in each middle school and high school shall have successfully completed the on-line coaches training under KRS 161.166. The cost of acquiring the training shall be borne by the local school district.

History.

Enact. Acts 2008, ch. 134, § 7, effective July 15, 2008.

SPORTS MEDICINE PROGRAM

158.640. Legislative purpose. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1986, ch. 144, § 1, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.6401. Definitions. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1986, ch. 144, § 2, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.6402. Advisory council for sports medicine programs. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1986, ch. 144, § 3, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.6403. Implementation of experimental incentive program to assist local school district sports medicine programs. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1986, ch. 144, § 4, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

EDUCATIONAL IMPROVEMENT

158.645. Capacities required of students in public education system.

The General Assembly recognizes that public education involves shared responsibilities. State government, local communities, parents, students, and school employees must work together to create an efficient public school system to achieve excellence in education. Parents and students must assist schools with efforts to assure student attendance, preparation for school, and involvement in learning. The cooperation of all

involved is necessary to assure that desired outcomes are achieved. It is the intent of the General Assembly to create a system of public education which shall allow and assist all students to acquire the following capacities:

(1) Literacy, including communication skills necessary to function in a complex and changing world;

(2) Knowledge to make wise economic, social, career, and political choices;

(3) Core values and qualities of good character to make moral and ethical decisions throughout life;

(4) Understanding of our constitutional republic, the three (3) branches of government, and how government impacts citizens, the community, the state, and the nation;

(5) Sufficient self-knowledge and knowledge of the student's own mental and physical wellness;

(6) Sufficient grounding in the arts to enable each student to appreciate the student's own cultural and historical heritage;

(7) Sufficient preparation to choose and pursue the student's life's work intelligently; and

(8) Skills to enable each student to compete competitively with students in other states.

History.

Enact. Acts 1990, ch. 476, Pt. I, § 2, effective July 13, 1990; 2000, ch. 162, § 2, effective July 14, 2000; 2025 ch. 86, § 1, effective June 27, 2025.

NOTES TO DECISIONS

Analysis

1. Intent of Kentucky Educational Reform Act of 1990.
2. Testing Program.

1. Intent of Kentucky Educational Reform Act of 1990.

The essential strategic point of the Kentucky Educational Reform Act (Enact. Acts 1990, ch. 476) is the decentralization of decision making authority so as to involve all participants in the school system, not limited to, but including school councils and local school boards; affording each the opportunity to contribute actively to the educational process and the provisions set out the structural framework by which this decentralization of decision making authority is to occur. Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

2. Testing Program.

Regulations promulgated under the authority of KRS 156.160 authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under this act. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771, 1999 U.S. LEXIS 599 (U.S. 1999).

Cited in:

Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Academic expectations, 703 KAR 4:060.

Kentucky's Accountability System, 703 KAR 5:270.

Minimum requirements for high school graduation, 704 KAR 3:305.

Required Academic Standards for Social Studies, 704 KAR 8:060.

Required academic standards for reading and writing, 704 KAR 8:020.

Required Kentucky Academic Standards for Science, 704 KAR 8:120.

School and district accountability, recognition, support, and consequences, 703 KAR 5:225.

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

158.6450. Instruction in voter registration and election procedures.

(1) The General Assembly hereby finds that knowledge of procedures for voter registration and participation in elections is essential for all Kentucky students to acquire the capacities established in KRS 158.645(2) and (4). Instruction in election procedures is consistent with the goals of responsible citizenship established in KRS 158.6451.

(2) Every secondary school shall provide students in the twelfth grade information on:

(a) How to register to vote;

(b) How to vote in an election using a ballot; and

(c) How to vote using an absentee ballot.

(3) A school may provide this information through classroom activities, written materials, electronic communication, Internet resources, participation in mock elections, and other methods identified by the principal after consulting with teachers.

History.

Enact. Acts 2011, ch. 50, § 1, effective June 8, 2011.

158.6451. Legislative declaration on goals for Commonwealth's schools — Model curriculum framework.

(1) The General Assembly finds, declares, and establishes that:

(a) Schools shall expect a high level of academic achievement of all students;

(b) Schools shall develop their students' ability to:

1. Use communication and mathematics skills for purposes and situations they will encounter throughout their lives;

2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, civics, and practical living studies to situations they will encounter throughout their lives;

3. Become self-sufficient individuals of good character exhibiting the qualities of altruism, citizenship, courtesy, hard work, honesty, human worth, justice, knowledge, patriotism, respect, responsibility, and self-discipline;

4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;

5. Think critically, creatively, and independently to solve problems in school situations and in a variety of situations they will encounter in life;

6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources; and

7. Express their creative talents and interests in visual arts, music, dance, and dramatic arts;

(c) Schools shall increase their students' rate of school attendance;

(d) Schools shall increase their students' graduation rates and reduce their students' dropout and retention rates;

(e) Schools shall reduce physical and mental health barriers to learning; and

(f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and military service.

(2) The Kentucky Board of Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, alternative ways of using school time, and strategies to incorporate character education throughout the curriculum.

History.

Enact. Acts 1990, ch. 476, Pt. I, § 3, effective July 13, 1990; 1994, ch. 256, § 2, effective July 1, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 162, § 3, effective July 14, 2000; 2009, ch. 101, § 1, effective March 25, 2009; 2025 ch. 86, § 2, effective June 27, 2025.

NOTES TO DECISIONS

Cited in:

Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Academic expectations, 703 KAR 4:060.

Accountability administrative procedures and guidelines, 703 KAR 5:240.

Advance placement, 704 KAR 3:510.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Corporal punishment., 704 KAR 7:170.

Extended school services, 704 KAR 3:395.

Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.

Guidelines for admission to the state-supported postsecondary education institutions in Kentucky, 13 KAR 2:020.

Interim methods for verifying successful completion of the primary program, 703 KAR 4:040.

Kentucky's Accountability System, 703 KAR 5:270.

Kentucky teaching certificates, 16 KAR 2:010.

Minimum requirements for high school graduation, 704 KAR 3:305.

Next Generation Instructional Programs and Support, 703 KAR 5:230.

Next-Generation Learners, 703 KAR 5:200.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

Required Academic Standards for Mathematics, 704 KAR 8:040.

Required academic standards for reading and writing, 704 KAR 8:020.

Required Academic Standards for Social Studies, 704 KAR 8:060.

Required core academic standards, 704 KAR 3:303.

Required Kentucky Academic Standards for Science, 704 KAR 8:120.

School and district accountability, recognition, support, and consequences, 703 KAR 5:225.

Kentucky Bench & Bar.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

158.6452. School Curriculum, Assessment, and Accountability Council.

(1) A School Curriculum, Assessment, and Accountability Council is hereby created to study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, identifying academic competencies and deficiencies of individual students, holding schools accountable for learning, and assisting schools to improve their performance. The council shall advise the Kentucky Board of Education and the Legislative Research Commission on issues related to the development and communication of the academic expectations and core content for assessment, the development and implementation of the statewide assessment and accountability program, recognition of high performing schools, imposition of sanctions, and assistance for schools to improve their performance under KRS 158.6453, 158.6455, 158.782, and 158.805.

(2) The School Curriculum, Assessment, and Accountability Council shall be composed of seventeen (17) voting members appointed by the Governor and subject to Senate confirmation in accordance with KRS 11.160. On making appointments to the council, the Governor shall assure broad geographical representation and representation of elementary, middle, and secondary school levels; assure equal representation of the two (2) sexes, inasmuch as possible; and assure that appointments reflect the minority racial composition of the Commonwealth. The members shall serve terms of two (2) years with no member serving more than two (2) consecutive terms, except that seven (7) of the initial appointments shall be for four (4) year terms. The members shall be appointed as follows:

(a) Two (2) parents from recommendations submitted by organizations representing school councils and parents;

(b) Two (2) teachers from recommendations submitted by organizations representing teachers;

(c) Two (2) superintendents from recommendations submitted by organizations representing superintendents;

(d) Two (2) principals from organizations representing school administrators;

(e) Two (2) local school board members from recommendations submitted by organizations representing school boards;

(f) Two (2) school district assessment coordinators from recommendations submitted by organizations representing district assessment coordinators;

(g) Two (2) employers in the state from recommendations submitted by organizations representing business and industry;

(h) Two (2) university professors with expertise in assessment and measurement; and

(i) One (1) at-large member.

(3) The School Curriculum, Assessment, and Accountability Council shall elect a chair annually from its membership, who shall be subject to Senate confirmation in accordance with KRS 11.160. If the person selected as chair is not confirmed by the Senate, he or she shall still retain his or her position on the council, but shall vacate his or her position as chair, and the council shall select a new chair.

(4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the council or while serving as representative of the council.

(5) The School Curriculum, Assessment, and Accountability Council shall meet at least four (4) times each year at times and places as it determines by resolution.

(6) The School Curriculum, Assessment, and Accountability Council shall be attached to the Department of Education for administrative purposes. It shall be provided appropriate staff and resources to conduct its work.

History.

Enact. Acts 1998, ch. 598, § 5, effective April 14, 1998; 2009, ch. 101, § 3, effective March 25, 2009; 2026 ch. 178, § 11, effective April 16, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Education Law: The Federal No Child Left Behind Act — The Kentucky Experience, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 35.

158.6453. Definitions for section — Review of academic standards and assessments — Revisions to academic standards — Review committees — Advisory panels — Standards and assessments process review committee — Administrative regulations — Information and training — Statewide assessment program — Academic components — Student assessments — College admissions examination — School report card — Individual student report — Writing program — School profile report — Advanced coursework or accelerated learning district plan.

(1) As used in this section:

(a) "Accelerated learning" means an organized way of helping students meet individual academic goals by providing direct instruction to eliminate student performance deficiencies or enable students to move more quickly through course requirements and pursue higher level skill development;

(b) "Advanced coursework" means educational programs or opportunities designed to challenge students with more rigorous content beyond the standard curriculum, including but not limited to advanced placement, International Baccalaureate, and honors courses;

(c) "Constructed-response items" or "performance-based items" means individual test items that require the student to create an answer rather than select a response and may include fill-in-the-blank, short-answer, extended-answer, open-response, and writing-on-demand formats;

(d) "Criterion-referenced test" means a test that is aligned with defined academic content standards and measures an individual student's level of performance against the standards;

(e) "Formative assessment" means a process used by teachers and students during instruction to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes. Formative assessments may include the use of commercial assessments, curriculum-embedded assessments, classroom observations, teacher-designed assessments, and other processes and assignments to gain information about individual student learning that reflects developmentally appropriate grade-level performance;

(f) "Interim assessments" means assessments that are given periodically throughout the year to provide diagnostic information and to show individual student performance against content standards;

(g) "Summative assessment" means an assessment given at the end of the school year, semester, or other period of time to evaluate students' performance against academic standards within a unit of instruction or a course; and

(h) "Writing" means a purposeful act of thinking and expression that uses language to explore ideas and communicate meaning to others. Writing is a complex, multifaceted act of communication and is distinct from basic handwriting or penmanship.

(2)(a) Every six (6) years, the Kentucky Department of Education shall implement a process for reviewing Kentucky's academic standards and the alignment of corresponding assessments for possible revision or replacement to ensure alignment with transition readiness standards necessary for global competitiveness, state career and technical education standards, and KRS 158.196.

(b) The revisions to the academic standards shall:

1. Focus on critical knowledge, skills, and capacities needed for success in the global economy;

2. Result in fewer but more in-depth standards to facilitate mastery learning;

3. Communicate expectations more clearly and concisely to teachers, parents, students, and citizens;

4. Be based on evidence-based research;

5. Consider international benchmarks; and

6. Ensure that the standards are aligned from elementary to high school to postsecondary education so that students can be successful at each education level.

(c)1. The department shall establish four (4) standards and assessments review committees, with

each committee composed of a minimum of six (6) Kentucky public school teachers and a minimum of two (2) representatives from Kentucky institutions of higher education, including at least one (1) representative from a public institution of higher education. Each committee member shall teach in the subject area that his or her committee is assigned to review and have no prior or current affiliation with a curriculum or assessment resources vendor.

2. One (1) of the four (4) committees shall be assigned to focus on the review of reading and writing academic standards and corresponding assessments in reading, one (1) on the review of mathematics academic standards and assessments, one (1) on the review of science academic standards and assessments, and one (1) on the review of social studies academic standards and assessments.

(d)1. The department shall establish twelve (12) advisory panels to advise and assist each of the four (4) standards and assessments review committees.

2. Three (3) advisory panels shall be assigned to each standards and assessments review committee. One (1) panel shall review the standards and assessments for kindergarten through grade five (5), one (1) shall review the standards and assessments for grades six (6) through eight (8), and one (1) shall review the standards and assessments for grades nine (9) through twelve (12).

3. Each advisory panel shall be composed of at least one (1) representative from a Kentucky institution of higher education and a minimum of six (6) Kentucky public school teachers who teach in the grade level and subject reviewed by the advisory panel to which they are assigned and have no prior or current affiliation with a curriculum or assessment resources vendor.

(e) The commissioner of education and the president of the Council on Postsecondary Education shall also provide consultants for the standards and assessments review committees and the advisory panels who are business and industry professionals actively engaged in career fields that depend on the various content areas.

(f)1. The standards and assessments process review committee is hereby established and shall be composed of the commissioner of education or designee as a nonvoting member and nine (9) voting representatives of public schools, of whom at least two (2) shall be parents of public school students, appointed by the Governor and confirmed by the Senate in accordance with KRS 11.160 as follows:

a. One (1) language arts teacher;
b. One (1) math teacher;
c. One (1) science teacher;
d. One (1) social studies teacher;
e. Two (2) school principals;
f. Two (2) school superintendents; and
g. One (1) school board member.

2. On making appointments to the committee, the Governor shall ensure broad geographical urban and rural representation and representation of elementary, middle, and high school levels; ensure equal representation of the two (2) sexes, inasmuch as possible; and ensure that appointments reflect the minority racial composition of the Commonwealth.

3. The review of the committee shall be limited to the procedural aspects of the review process undertaken prior to its consideration.

4. Notwithstanding KRS 12.028, the committee shall not be subject to reorganization by the Governor.

(g)1. The review process implemented under this subsection shall be an open, transparent process that allows all Kentuckians an opportunity to participate. The department shall ensure the public's assistance in reviewing and suggesting changes to the standards and alignment adjustments to corresponding state assessments by establishing a website dedicated to collecting comments by the public and educators. An independent third party, which has no prior or current affiliation with a curriculum or assessment resources vendor, shall be selected by the department to collect and transmit the comments to the department for dissemination to the appropriate advisory panel for review and consideration.

2. Each advisory panel shall review the standards and assessments for its assigned subject matter and grade level and the suggestions made by the public and educators. After completing its review, each advisory panel shall make recommendations for changes to the standards and alignment adjustments for assessments to the appropriate standards and assessments review committee.

3. Each standards and assessments review committee shall review the findings and make recommendations to revise or replace existing standards and to adjust alignment of assessments.

4. The recommendations shall be published on the website established in this subsection for the purpose of gathering additional feedback from the public. The commissioner shall subsequently present the recommendations and the public feedback to the Interim Joint Committee on Education.

5. The commissioner shall subsequently provide a report to the standards and assessments process review committee summarizing the process conducted under this subsection and the resulting recommendations. The report shall include but not be limited to the timeline of the review process, public feedback, and responses from the Interim Joint Committee on Education.

6. After receiving the commissioner's report, the standards and assessments process review committee shall either concur that stakeholders have had adequate opportunity to provide input on standards and the corresponding alignment of state assessments or find the input process deficient. If the process is found deficient, the recommendations may be returned to the appropriate standards and assessments review committee for review as described in subparagraph 3. of this paragraph. If the process is found sufficient, the

recommendations shall be forwarded without amendment to the Kentucky Board of Education.

(h) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for the administration of the review process, including staggering the timing and sequence of the review process by subject area and remuneration of the review committees and advisory panels described in paragraphs (c) and (d) of this subsection.

(i)1. The Kentucky Board of Education shall consider for approval the revisions to academic standards for a content area and the alignment of the corresponding state assessment once recommendations are received from the standards and assessments process review committee. Existing state academic standards shall remain in place until the board approves new standards.

2. Any revision to, or replacement of, the academic standards and assessments as a result of the review process conducted under this subsection shall be implemented in Kentucky public schools no later than the second academic year following the review process. Existing academic standards shall be used until new standards are implemented.

3. The Department of Education shall disseminate the academic standards to the schools and teacher preparation programs.

(j) The Department of Education shall provide or facilitate statewide training sessions for existing teachers and administrators on how to:

1. Integrate the revised academic standards into classroom instruction;

2. Better integrate performance assessment of students within their instructional practices; and

3. Help all students use higher-order thinking and communication skills.

(k) The Education Professional Standards Board in cooperation with the Kentucky Board of Education and the Council on Postsecondary Education shall coordinate information and training sessions for faculty and staff in all of the teacher preparation programs in the use of the revised academic standards. The Education Professional Standards Board shall ensure that each teacher preparation program includes use of the academic standards in the preservice education programs and that all teacher interns will have experience planning classroom instruction based on the revised standards.

(*l*) The Council on Postsecondary Education in cooperation with the Kentucky Department of Education and the postsecondary education institutions in the state shall coordinate information sessions regarding the academic standards for faculty who teach in the various content areas.

(m) The Education Professional Standards Board shall, as a condition of program approval, require teacher preparation programs to align curriculum with the expectations set forth in the state's academic standards.

(3)(a) The Kentucky Board of Education shall be responsible for creating and implementing a balanced statewide assessment program that measures the students', schools', and districts' achievement of the goals set forth in KRS 158.645 and 158.6451, to ensure compliance with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, and to ensure school accountability.

(b) The board shall revise the annual statewide assessment program as needed in accordance with revised academic standards and corresponding assessment alignment adjustments approved by the board under subsection (2) of this section.

(c) The statewide assessments shall not include any academic standards not approved by the board under subsection (2) of this section.

(d) The board shall seek the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; the Education Assessment and Accountability Review Subcommittee, and the department's technical advisory committee in the development of the assessment program. The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.

(4)(a) The academic components of the statewide assessment program shall be composed of annual student summative tests, which may include a combination of multiple competency-based assessment and performance measures approved by the Kentucky Board of Education.

(b) The annual student summative tests shall:

1. Measure individual student achievement in reading, mathematics, science, and social studies at designated grades;

2. Provide teachers and parents a valid and reliable comprehensive analysis of skills mastered by individual students;

3. Provide diagnostic information that identifies strengths and academic deficiencies of individual students in the content areas;

4. Provide information to teachers that can enable them to improve instruction for current and future students;

5. Provide longitudinal profiles for students; and

6. Ensure school and district accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451, except the statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.

(5) The state student assessments shall include the following components:

(a) Elementary and middle grades requirements are:

1. A criterion-referenced test each in mathematics and reading in grades three (3) through eight (8) that is valid and reliable for an individual student and that measures the depth and breadth of the academic standards; and

2. A criterion-referenced test each in science and social studies that is valid and reliable for an individual student as necessary to measure the

depth and breadth of the academic standards to be administered one (1) time within the elementary and middle grades, respectively;

(b) High school requirements are:

1. A criterion-referenced test in mathematics, reading, and science that is valid and reliable for an individual student and that measures the depth and breadth of Kentucky's academic content standards to be administered one (1) time within the high school grades;

2. A criterion-referenced test in social studies that is valid and reliable for an individual student as necessary to measure the depth and breadth of the academic standards to be administered one (1) time within the high school grades; and

3. A college admissions examination to assess English, reading, mathematics, and science in the spring of grade eleven (11);

(c) The Kentucky Board of Education shall add any other component necessary to comply with the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, as determined by the United States Department of Education;

(d) The criterion-referenced components required in this subsection shall be composed of constructed response items and multiple choice items; and

(e) The results of the assessment program developed under this subsection shall be used by schools and districts to determine appropriate instructional modifications for all students in order for students to make continuous progress, including that needed by advanced learners.

(6) Each school district shall administer the statewide student assessment during the last fourteen (14) days of school in the district's instructional calendar. The Kentucky Board of Education may change the testing window to allow for innovative assessment systems or other online test administration and shall promulgate administrative regulations that minimize the number of days of testing and outline the procedures to be used during the testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements.

(7) A student enrolled in a district-operated or district-contracted alternative program shall participate in the appropriate assessments required by this section.

(8) A local school district may select and use commercial interim or formative assessments or develop and use its own formative assessments to provide data on how well its students are growing toward mastery of Kentucky academic standards, so long as the district's local school board develops a policy minimizing the reduction in instructional time related to the administration of the interim assessments. Nothing in this section precludes teachers from using ongoing teacher-developed formative processes.

(9) Each school that enrolls primary students shall use diagnostic assessments and prompts that measure readiness in reading and mathematics for its primary students as determined by the school to be developmentally appropriate. The schools may use commercial products, use products and procedures developed by the district, or develop their own diagnostic procedures. The results shall be used to inform the teachers and parents or guardians of each student's skill level.

(10) The state board shall ensure that a technically sound longitudinal comparison of the assessment results for the same students shall be made available.

(11) The following provisions shall apply to the college admissions examination described in subsection (5)(b)3. of this section:

(a) The cost of the college admissions examination administered to students in high school shall be paid for by the Kentucky Department of Education. The costs of additional college admissions examinations shall be the responsibility of the student;

(b) If funds are available, the Kentucky Department of Education shall provide a college admissions examination preparation program to all public high school juniors. The department may contract for necessary services; and

(c) Accommodations provided to a student with a disability taking the college admissions assessment under this subsection shall consist of:

1. Accommodations provided in a manner allowed by the college admissions assessment provider when results in test scores are reportable to a postsecondary institution for admissions and placement purposes, except as provided in subparagraph 2. of this paragraph; or

2. Accommodations provided in a manner allowed by a student's individualized education program as defined in KRS 158.281 for a student whose disability precludes valid assessment of his or her academic abilities using the accommodations provided under subparagraph 1. of this paragraph when the student's scores are not reportable to a postsecondary institution for admissions and placement purposes.

(12) Kentucky teachers shall have a significant role in providing feedback about the design of the assessments, except for the college admissions exam described in subsection (5)(b)3. of this section. The assessments shall be designed to:

(a) Measure developmentally appropriate grade-level performance aligned to the academic standards;

(b) Provide valid and reliable scores for schools. If scores are reported for students individually, they shall be valid and reliable; and

(c) Minimize the time spent by teachers and students on assessment.

(13) The results from assessment under subsections (3) and (5) of this section shall be reported to the school districts and schools no later than seventy-five (75) days following the last day the assessment can be administered. Assessment reports provided to the school districts and schools shall include an electronic copy of an operational subset of test items from each assessment administered to their students and the results for each of those test items by student and by school.

(14) The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation studies that shall include but not be limited to the consistency of student results across

multiple measures, the congruence of school scores with documented improvements in instructional practice and the school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Commission by July 1 of the first year of each biennium. A summary of the findings shall be submitted to the Legislative Research Commission by September 1 of the second year of the biennium.

(15) The Department of Education and the state board shall offer optional assistance to local school districts and schools in developing and using continuous assessment strategies needed to ensure student progress. The continuous assessment shall provide diagnostic information to improve instruction to meet the needs of individual students.

(16) The Administration Code for Kentucky's Assessment Program shall include prohibitions of inappropriate test preparation activities by school district employees charged with test administration and oversight, including but not limited to the issue of teachers being required to do test practice in lieu of regular classroom instruction and test practice outside the normal work day. The code shall include disciplinary sanctions that may be taken toward a school or individuals.

(17) The Kentucky Board of Education, after the Department of Education has received advice from the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the department's technical advisory committee, shall promulgate an administrative regulation under KRS Chapter 13A to establish the components of a reporting structure for assessments administered under this section. The reporting structure shall include the following components:

(a) A school report card that clearly communicates with parents and the public about school performance. The school report card shall be sent to the parents of the students of the districts, and information on electronic access to a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include but not be limited to the following components reported by race, gender, and disability when appropriate:

1. Student academic achievement, including the results from each of the assessments administered under this section;

2. For Advanced Placement, Cambridge Advanced International, and International Baccalaureate, the courses offered, the number of students enrolled, completing, and taking the examination for each course, and the percentage of examinees receiving a score of three (3) or better on AP examinations, a score of "e" or better on Cambridge Advanced International examinations, or a score of four (4) or better on IB examinations. The data shall be disaggregated by gender, race, students with disabilities, and economic status;

3. Nonacademic achievement, including the school's attendance, retention, graduation rates, and student transition to postsecondary;

4. School learning environment, including measures of parental involvement;

5. Until June 30, 2030, targeted quality measures, which shall include a measure of the change from the prior school year on the following factors:

a. The percentage of certified teachers within the school and district who have attained:

i. Rank II status or higher as determined by the Education Professional Standards Board; or

ii. Certification from the National Board for Professional Teaching Standards;

b. For schools and districts containing students in grade eight (8), the percentage of students earning at least one (1) high school credit upon the completion of the student's grade eight (8) school year; and

c. For schools and districts containing students in grade twelve (12), the percentage of graduating students who have:

i. Completed the Free Application for Federal Student Aid by the student's graduation date; or

ii. A parent or legal guardian that has submitted an appropriate form to the school or district to opt out of completion of the Free Application for Federal Student Aid after completing a district-approved presentation regarding the Free Application for Federal Student Aid; and

6. Any other school performance data required by the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor;

(b) An individual student report to parents for each student in grades three (3) through eight (8) summarizing the student's skills in reading, science, social studies, and mathematics. The school's staff shall develop a plan for accelerated learning for any student with identified deficiencies or strengths; and

(c) A student's score on the college admissions assessment administered under subsection (5)(b)3. of this section.

(18)(a) Every six (6) years, the Kentucky Department of Education shall implement a comprehensive process for reviewing and revising the academic standards in visual and performing arts and practical living skills and career studies for all levels and in world language for middle and high schools. The department shall develop review committees for the standards for each of the content areas that include representation from certified specialist public school teachers and postsecondary teachers in those subject areas.

(b) The academic standards in practical living skills for elementary, middle, and high school levels shall include a focus on drug abuse prevention, with an emphasis on the prescription drug epidemic and the connection between prescription opioid abuse and addiction to other drugs, such as heroin and synthetic drugs.

(c) The department shall provide to all schools guidelines for programs that incorporate the adopted academic standards in visual and performing arts and practical living and career studies. The depart-

ment shall provide to middle and high schools guidelines for including a foreign language program. The guidelines shall address program length and time, courses offered, staffing, resources, and facilities.

(d) The Kentucky Department of Education, in consultation with certified public school teachers of visual and performing arts, may develop program standards for the visual and performing arts.

(19)(a) The Kentucky Department of Education shall develop and distribute to all school districts guidelines for including an effective writing program across the content areas aligned to the academic standards. The department shall provide professional learning opportunities to support authentic and disciplinary-specific writing across the curriculum for superintendents, school-based decision making councils, principals, teachers, and teacher preparation programs.

(b) Each superintendent of a local school district shall adopt policies that determine the writing program for the local school district and ensure the writing program policy is published on the district's website. The writing program shall include disciplinary-specific writing across the curriculum and incorporate a variety of language resources, technological tools, and multiple opportunities for students to develop complex communication skills for a variety of purposes.

(20)(a) The Kentucky Department of Education, in consultation with the review committees described in subsection (18) of this section, shall develop a school profile report to be used by all schools to document how they will address the adopted academic standards in their implementation of the programs as described in subsection (18) of this section, which may include student opportunities and experiences in extracurricular activities. The department shall include the essential workplace ethics program on the school profile report.

(b) By October 1 of each year, each school principal shall complete the school profile report, which shall be signed by the members of the school council, or the principal if no school council exists, and the superintendent. The report shall be electronically transmitted to the Kentucky Department of Education, and the original shall be maintained on file at the local board office and made available to the public upon request. The department shall include a link to each school's profile report on its website.

(c) If a school staff member, student, or a student's parent has concerns regarding deficiencies in a school's implementation of the programs described in subsection (18) of this section, he or she may submit a written inquiry to the school council.

(21)(a) No later than December 1, 2025, each local board of education shall adopt a district plan establishing clear policies on the promotion of advanced coursework or accelerated learning in language arts, mathematics, social studies, and science by grade level for students in grades four (4) to twelve (12).

(b) The district plan required by paragraph (a) of this subsection shall:

1. Be published on a publicly accessible location on the district website;

2. Describe the strategies and approach to advanced coursework or accelerated learning options by grade level for language arts, mathematics, social studies, and science; and

3. Require that the service delivery options for students identified as gifted and talented in language arts, mathematics, social studies, and science include the following for each grade level and subject area:

a.i. Accelerated learning; or

ii. Advanced coursework; and

b. At least one (1) of the following service delivery options:

i. Collaborative teaching and consultation services;

ii. Special counseling services;

iii. Differentiated study experiences for individuals and cluster groups in the regular classroom;

iv. Distance learning;

v. Enrichment services that are not extracurricular during the school day;

vi. Independent study;

vii. Mentorships;

viii. Resource services delivered in a pull-out classroom or other appropriate instructional setting;

ix. Seminars;

x. Travel study options; or

xi. Special schools or self-contained classrooms for students in grades four (4) through twelve (12) only.

(c) The district plan required by paragraph (a) of this subsection may:

1. Automatically enroll a student who scores distinguished in any subject area on the most recent statewide assessment for which scores are available in available advanced coursework for that subject area and any corresponding subject area designated by the local board of education;

2. Include eligibility criteria for qualification for available advanced coursework for all other students;

3. Require written consent from a parent or guardian of a student to withdraw or exclude a student that is eligible for advanced coursework according to the district plan from that advanced coursework. If a student requests to withdraw from advanced coursework to pursue another educational opportunity, a principal may withdraw the student without written consent from a parent or guardian only after a good-faith attempt to contact the parent or guardian is unsuccessful; and

4. Permit a principal to withdraw a student from advanced coursework without written consent from his or her parent or guardian if the student's participation in advanced coursework would have an adverse educational impact on a student, including interference with his or her career pathway, access to career and technical education coursework, or another educational opportunity.

(22) The Kentucky Board of Education may promulgate administrative regulations in accordance with

KRS Chapter 13A to administer the provisions of subsection (21) of this section.

History.

1990 ch. 476, Enact. Acts 1990, ch. 476, Pt. I, § 4, effective July 13, 1990, effective July 13, 1990; 1994, ch. 256, § 3, effective July 15, 1994; 1994, ch. 408, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 11, effective April 14, 1998; 2002, ch. 213, § 1, effective July 15, 2002; 2006, ch. 227, § 1, effective July 12, 2006; 2008, ch. 134, § 17, effective July 15, 2008; 2009, ch. 101, § 2, effective March 25, 2009; 2016 ch. 136, § 6, effective July 15, 2016; 2017 ch. 156, § 3, effective April 10, 2017; 2018 ch. 158, § 2, effective April 13, 2018; 2019 ch. 199, § 1, effective June 27, 2019; 2020 ch. 112, § 6, effective July 15, 2020; 2021 ch. 79, § 3, effective June 29, 2021; 2022 ch. 137, § 1, effective July 14, 2022; 2022 ch. 196, § 2, effective July 14, 2022; 2024 ch. 203, § 2, effective July 15, 2024; 2025 ch. 113, § 28, effective July 1, 2026; 2025 ch. 148, § 1, effective June 27, 2025; 2026 ch. 138, § 2, effective July 15, 2026.

Legislative Research Commission Notes.

(4/10/2017). 2017 Ky. Acts ch. 156, sec. 18 provided that, in adopting amendments made to this statute in Section 3 of that Act, the General Assembly intends, among other actions, to repeal the common core standards.

(3/25/2009). In subsection (11) of this statute, a reference to subsection "(10)(a) of this section" has been changed to read "subsection (5)(a) and (b) of this section." When this section was renumbered, the reference to "subsection (10)(a)" was not changed to conform. The Reviser of Statutes has made a conforming change under the authority of KRS 7.136.

(3/25/2009). In 2009 Ky. Acts ch. 101, sec. 16, a not-to-be-codified section, two references to "Section 2.(11)(c) of this Act" should have referred to "Section 2.(7)(c) of this Act." When Section 2 of the Act (KRS 158.6453) was renumbered, these references to subsection (7) in Section 16 of the Act were not changed.

(7/12/2006). 2006 Ky. Acts ch. 211, sec. 171, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in the Act, as it confirms the abolition of the Cabinet for Workforce Development and establishment of the Education Cabinet. Such a correction has been made in this section.

NOTES TO DECISIONS

1. Testing Program.

Regulations promulgated under the authority of KRS 156.160 authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under KRS 158.645 et seq. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771, 1999 U.S. LEXIS 599 (U.S. 1999).

Cited in:

Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Academic expectations, 703 KAR 4:060.

Accountability administrative procedures and guidelines, 703 KAR 5:240.

Administrative Code for Kentucky's Educational Assessment Program, 703 KAR 5:080.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Extended school services, 704 KAR 3:395.

Guidelines for admission to the state-supported postsecondary education institutions in Kentucky, 13 KAR 2:020.

Intervention system for persistently low-achieving schools, 703 KAR 5:180.

Kentucky's Accountability System, 703 KAR 5:270.

Next Generation Instructional Programs and Support, 703 KAR 5:230.

Next-Generation Learners, 703 KAR 5:200.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

Required Academic Standards for Mathematics, 704 KAR 8:040.

Required academic standards for reading and writing, 704 KAR 8:020.

Required Academic Standards for Social Studies, 704 KAR 8:060.

Required Kentucky Academic Standards for Science, 704 KAR 8:120.

Requirements for school and district report cards, 703 KAR 5:140.

School and district accountability, recognition, support, and consequences, 703 KAR 5:225.

Writing portfolio procedures, 703 KAR 5:010.

Kentucky Bench & Bar.

Education Law: The Federal No Child Left Behind Act — The Kentucky Experience, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 35.

158.6454. National Technical Advisory Panel on Assessment and Accountability. [Repealed]

History.

Enact. Acts 1998, ch. 598, § 6, effective April 14, 1998; repealed by 2021 ch. 79, § 5, effective June 29, 2021.

158.6455. State school accountability system — List of certifications, licensures, and credentials — Dashboard — Reimbursement for assessment — Administrative regulations — Consequences for schools that fail to exit support status — Components of accountability system — Appeals of performance judgments — Report.

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1)(a) The Kentucky Board of Education shall create an accountability system to classify districts and schools in accordance with the academic standards and student assessment program developed pursuant to KRS 158.6453.

(b) The state accountability system shall include an annual meaningful differentiation of all public schools in the state using multiple measures that describe the overall performance of each district, school, and student subgroup. Beginning with data from the 2026-2027 school year, performance shall be based on a combination of academic and school quality indicators and measures, here-

inafter called "state indicators." The state indicators shall exclusively include:

1. Student assessment results;

2. Measures of individual student growth in reading and mathematics;

3. Progress toward achieving English proficiency by limited English proficiency students;

4. Student engagement as measured by chronic absenteeism, which shall be defined as a student missing ten percent (10%) or more of yearly school time for excused or unexcused reasons throughout the school year;

5. High school graduation rates;

6. Beginning July 1, 2030, targeted quality measures, which shall include a measure of the change from the prior school year on the following factors:

a. The percentage of certified teachers within the school and district who have attained:

i. Rank II status or higher as determined by the Education Professional Standards Board; or

ii. Certification from the National Board for Professional Teaching Standards;

b. For schools and districts containing students in grade eight (8), the percentage of students earning at least one (1) high school credit upon the completion of the student's grade eight (8) school year; and

c. For schools and districts containing students in grade twelve (12), the percentage of graduating students who have:

i. Completed the Free Application for Federal Student Aid by the student's graduation date; or

ii. A parent or legal guardian that has submitted an appropriate form to the school or district to opt out of completion of the Free Application for Federal Student Aid after completing a district-approved presentation regarding the Free Application for Federal Student Aid.

The targeted quality measures shall have a cumulative weight in accountability of no less than five percent (5%);

7. Postsecondary readiness for each high school student, which shall be included as an academic indicator, and shall be measured by one (1) of the following:

a. Meeting or exceeding a college readiness benchmark score on the college admissions examination used as the statewide assessment in KRS 158.6453(5)(b)3. or a college placement examination approved by the Council on Postsecondary Education. The college readiness benchmark score shall be established by the Council on Postsecondary Education;

b. Achieving a minimum of three (3) hours of dual credit by completing a course approved by the Kentucky Board of Education or qualifying for a minimum of three (3) hours of postsecondary articulated credit associated with a statewide articulation agreement;

c. Achieving a benchmark score on an Advanced Placement, International Baccalaureate, Cambridge Advanced International, or other nationally recognized exam approved by the Kentucky Board of Education that generally qualifies the student for three (3) or more hours of college credit;

d. Completing a required number of hours or achieving a benchmark within an apprenticeship, cooperative, or internship that is:

i. Not required to be offered as a high school course or during the regular school day, week, or year;

ii. Aligned with a credential or associate degree; and

iii. Approved by the Kentucky Board of Education after receiving input from the Local Superintendents Advisory Council; or

e. Achieving any industry-recognized certifications, licensures, or credentials, with more weight in accountability for industry-recognized certifications, licensures, or credentials identified as high demand in accordance with the process described in paragraph (e) of this subsection. Eligible industry-recognized certifications, licensures, or credentials shall not be limited to those earned in conjunction with a minimum sequence of courses. Each high school shall publicly report the credits, hours, and credentials on an annual basis; and

8. Any other factor mandated by the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor.

(c)1. The Kentucky Department of Education shall develop an online display of the state accountability system results hereinafter called a "dashboard." A color-coded performance level for each state indicator and overall performance shall be displayed in a straightforward manner on the dashboard by district, school, and individual subgroups. Overall performance shall aggregate all available data for the state indicators.

2. The percentile cut scores for the color-coded performance level for each state indicator and overall performance shall be based on distribution and shall be approved by the Kentucky Department of Education and the Local Superintendents Advisory Council. The cut scores shall remain in place for at least six (6) years unless existing cut scores no longer support a meaningful differentiation of schools as required by the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor.

(d) Based on data from the Kentucky Center for Education and Workforce Statistics, each local workforce investment board, in conjunction with local economic development organizations from its state regional sector, shall annually compile a list of industry-recognized certifications, licensures, and credentials specific to the state and regional workforce area, rank them by demand for the state and regional area, and provide the list to the Kentucky Workforce Innovation Board. The Ken-

tucky Workforce Innovation Board, in conjunction with the Kentucky Department of Education, may revise the lists before the Kentucky Department of Education disseminates the lists to all school districts to be used as postsecondary readiness indicators.

(e)1. The Kentucky Department of Education shall pay for the cost of an assessment taken by a high school student for attaining an industry-recognized certification, credential, or licensure if the student consecutively completes at least two (2) related career pathway courses approved by the department prior to taking the assessment.

2. If a high school student has not completed the two (2) course requirement described in subparagraph 1. of this paragraph but meets performance-based experience eligibility and passes an assessment, the department shall provide a weighted reimbursement amount to the school district for the cost of the assessment based on the level of demand of the certificate, credential, or license earned. The Kentucky Board of Education shall promulgate regulations establishing the performance-based experience eligibility requirements and weighted reimbursement amounts.

(f) Prior to promulgating administrative regulations to revise the accountability system, the board shall seek advice from the School Curriculum, Assessment, and Accountability Council; the Office of Education Accountability; the Education Assessment and Accountability Review Subcommittee; and the department's technical advisory committee.

(2) A student's test scores shall be counted in the accountability measure of:

(a)1. The school in which the student is currently enrolled if the student has been enrolled in that school for at least a full academic year as defined by the Kentucky Board of Education; or

2. The school in which the student was previously enrolled if the student was enrolled in that school for at least a full academic year as defined by the Kentucky Board of Education; and

(b) The school district if the student is enrolled in the district for at least a full academic year as defined by the Kentucky Board of Education; and

(c) The state if the student is enrolled in a Kentucky public school prior to the beginning of the statewide testing period.

(3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the department's technical advisory committee, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish more rigorous action, intervention, and appropriate consequences for schools that fail to exit comprehensive support and improvement status described in KRS 160.346. The consequences shall be designed to improve the academic performance and learning environment of identified schools and may include but not be limited to:

(a) A review and audit process to determine the appropriateness of a school's or district's classification and to recommend needed assistance;

(b) School and district improvement plans;

(c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;

(d) Education assistance from highly skilled certified staff; and

(e) Observation of school personnel.

(4) All students who drop out of school during a school year shall be included in a school's annual average school graduation rate calculation.

(5) After receiving the advice of the Education Assessment and Accountability Review Subcommittee, the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the department's technical advisory committee, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a three (3) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when one (1) or more schools in the district fail to exit comprehensive support and improvement status after three (3) consecutive years of implementing the turnaround intervention process described in KRS 160.346.

(6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the department's technical advisory committee, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a process whereby a school or school district shall be allowed to appeal any performance judgment made by the department under this section or KRS 160.346 of a principal, superintendent, school, or school district which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the three (3) year assessment period which are beyond the control of the appellant school or school district.

(7) Advice and recommendations provided by the department's technical advisory committee shall be summarized and reported by the department by July 1 and December 1 of each year to the Office of Education Accountability. The report shall include:

(a) Advice and recommendations provided by panel members relating to:

1. Development and modification to the assessment and accountability system;

2. The development of administrative regulations governing the assessment and accountability system;

3. The setting of standards used in the assessment and accountability system; and

4. KRS 158.6453, 158.6455, 158.782, or 158.860; and

(b) Any documentation used by the panel in support of the panel's advice and recommendations.

Upon receipt of the report, the Office of Education Accountability shall forward the report to the Education Assessment and Accountability Review Subcommittee and the co-chairs of the Interim Joint Committee on Education.

History.

Enact. Acts 1990, ch. 476, Pt. I, § 5, effective July 13, 1990; 1994, ch. 256, § 4, effective July 1, 1994; 1994, ch. 408, § 3, effective July 15, 1994; 1996, ch. 318, § 49, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 12, effective April 14, 1998; 2000, ch. 212, § 2, effective July 14, 2000; 2000, ch. 452, § 6, effective July 14, 2000; 2004, ch. 58, § 1, effective July 13, 2004; 2004, ch. 103, § 2, effective July 13, 2004; 2004, ch. 188, § 2, effective July 13, 2004; 2006, ch. 227, § 3, effective July 12, 2006; 2009, ch. 101, § 4, effective March 25, 2009; 2017 ch. 156, § 4, effective April 10, 2017; 2019 ch. 199, § 2, effective June 27, 2019; 2020 ch. 112, § 1, effective July 15, 2020; 2021 ch. 79, § 1, effective June 29, 2021; 2022 ch. 137, § 2, effective July 14, 2022; 2023 ch. 56, § 1, effective March 22, 2023; 2026 ch. 138, § 3, effective July 15, 2026.

Legislative Research Commission Notes.

(6/29/2021). In codification, a correction has been made to subsection (7)(a)4. of this statute. Section 1 of 2021 Senate Bill 129, which amended this statute, contains a reference to "KRS 158.78," a number that does not correspond to any existing section of the Kentucky Revised Statutes. It is clear from the context and from consultation with the drafter that the reference was intended to read "KRS 158.782." Under the authority of KRS 7.136, the Reviser of Statutes has corrected this reference.

(3/25/2009). The Reviser of Statutes has altered the internal numbering of subsection (2) of this statute from the way it appears in 2009 Ky. Acts ch. 101, sec. 4, under the authority of KRS 7.136(1)(c).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Reward Entitlement.
3. Testing Program.

1. Constitutionality.

The statute is not unconstitutionally vague. Walker v. Kentucky Dep't of Educ., 981 S.W.2d 128, 1998 Ky. App. LEXIS 28 (Ky. Ct. App. 1998).

2. Reward Entitlement.

A person who was a certified staff member when a school earned a reward, but was no longer on staff when the reward was received by the school, was entitled to a portion of the reward; further, a person who was on staff at the time the reward was received, but not when it was earned, is not entitled to a portion of the reward. Walker v. Kentucky Dep't of Educ., 981 S.W.2d 128, 1998 Ky. App. LEXIS 28 (Ky. Ct. App. 1998).

3. Testing Program.

Regulations promulgated under the authority of KRS 156.160 authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under KRS 158.645 et seq. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 1997 Ky. App. LEXIS 74 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771, 1999 U.S. LEXIS 599 (U.S. 1999).

Cited in:

Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

OPINIONS OF ATTORNEY GENERAL.

A recommendation of dismissal of a certified staff member from a distinguished educator is binding on the superintendent. Upon receiving the recommendation, the superintendent is required to "notify the staff member pursuant to KRS 161.790." OAG 92-135, 1992 Ky. AG LEXIS 211.

Following the State Board's declaration that a school is "in crisis," the full-time and part-time members of the certified staff are automatically to be placed on probation. This occurs before any determination is made as to whether any particular teacher shall be dismissed, retained, or transferred. Once assigned to work with the school, the Kentucky Distinguished Educator is required, every six (6) months, to evaluate the certified staff, and to make recommendations to the superintendent regarding continued employment. OAG 92-135, 1992 Ky. AG LEXIS 211.

Only recommendations of dismissal from a distinguished educator to a superintendent are binding. Recommendations for transfer must conform to bargained contracts that are in effect between the school district and employees. Accordingly, the superintendent has discretion, when recommendations other than dismissal are made, to take such actions as are feasible, given the limitations of bargained contracts and of available vacancies. OAG 92-135, 1992 Ky. AG LEXIS 211.

Success of each school is to be determined by measuring the school's improvement in its proportion of successful students, based on the outcome goals. OAG 92-135, 1992 Ky. AG LEXIS 211.

Teachers dismissed upon recommendation of a distinguished educator continue to have a statutory right to be given cause for their dismissal and a right of appeal. OAG 92-135, 1992 Ky. AG LEXIS 211.

Termination of a teacher who is placed on probation under the criteria of subsection (5) (former provisions have been deleted by amendment) of this section constitutes termination for cause under KRS 161.790, and accordingly invokes a right of appeal. OAG 92-135, 1992 Ky. AG LEXIS 211.

The distinguished educator has authority to override decisions of the school staff. The distinguished educator also has authority to override decisions of the local superintendent when recommending dismissal of certified personnel. OAG 92-135, 1992 Ky. AG LEXIS 211.

When a distinguished educator makes a dismissal recommendation to the superintendent pursuant to this section, that recommendation is binding on the superintendent. The recommendation is based on an individual evaluation of the teacher by the distinguished educator after a minimum of six (6) months of evaluation. In view of the fact that the termination is for cause, based on an evaluation of the teacher, some documentation or evidence is required. OAG 92-135, 1992 Ky. AG LEXIS 211.

This section permits a local school council or principal to use school reward money to pay teacher bonuses, and these bonuses are permissible under the Kentucky Constitution because they are "for school purposes." OAG 00-2, 2000 Ky. AG LEXIS 1.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Academic expectations, 703 KAR 4:060.

Accountability administrative procedures and guidelines, 703 KAR 5:240.

Administrative Code for Kentucky's Educational Assessment Program, 703 KAR 5:080.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Assistance to low-achieving schools, 703 KAR 5:190.

Intervention system for persistently low-achieving schools, 703 KAR 5:180.

Kentucky's Accountability System, 703 KAR 5:270..

Next Generation Instructional Programs and Support, 703 KAR 5:230.

Next-Generation Learners, 703 KAR 5:200.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

School and district accountability, recognition, support, and consequences, 703 KAR 5:225.

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Education Law: The Federal No Child Left Behind Act — The Kentucky Experience, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 35.

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

158.6456. Locally developed indicators of quality — Data — Department of Education assistance and payment — Administrative regulations.

(1) As used in this section:

(a) "Locally developed indicators of quality" means measures or indicators created or adopted by a local school district that:

1. Are aligned with the academic standards established in KRS 158.6453;

2. Allow all students to demonstrate their ability to apply grade-appropriate, standards-driven knowledge, content, and skills in real-world applications; and

3. May include additional locally identified indicators related to priorities established by the local community that serve to complement the requirements in subparagraphs 1. and 2. of this paragraph. These indicators may include student well-being, fiscal responsibility, or school safety; and

(b) "Vibrant learning" means an educational experience that is:

1. Characterized by student agency and the application of knowledge and skills aligned with the academic standards established in KRS 158.6453;

2. Developed in partnership with students' families, local communities, and the local workforce; and

3. Demonstrated through personalized projects, outputs, experiences, or other produced results reflecting each individual student's academic and career interests.

(2) Each local school district may develop and implement a system of locally developed indicators of quality in accordance with administrative regulations promulgated by the Kentucky Board of Education. The locally developed indicators of quality shall include:

(a) Student participation in vibrant learning experiences; and

(b) Locally developed indicators of performance.

(3) A local school district utilizing a system of locally developed indicators of quality shall:

(a) When an indicator involves student data, include student performance data for all students, disaggregated by individual subgroups, where permissible; and

(b) Develop a publicly available, online display that clearly communicates each applicable school and the district's performance on the locally developed indicators of quality, disaggregated by individual subgroups, where permissible.

(4) The Kentucky Department of Education:

(a) Shall offer technical assistance to local school districts in their development of locally developed indicators of quality; and

(b) May offer a one (1) time payment to offset costs incurred by local school districts in the development of locally developed indicators of quality. A financial payment provided under this paragraph shall not exceed fifteen thousand dollars ($15,000) per district.

(5) The Kentucky Board of Education may promulgate administrative regulations in accordance with KRS Chapter 13A necessary to administer the provisions of this section.

History.

2026 ch. 138, § 1, effective July 15, 2026.

158.6457. Definitions for KRS 158.6452, 158.6453, 158.6455, and 158.6457.

As used in this section and KRS 158.6452, 158.6453, and 158.6455, unless the context requires otherwise:

(1) "Accountability index" means the statistic, as provided by KRS 158.6455(1), that combines a school's academic and nonacademic factors;

(2) "Core content for assessment" means the content identified for all students to know that is to be included on the state assessment; and

(3) "Nonacademic factors" means the statistic that describes school success on:

(a) Increasing attendance and decreasing retention rates at the elementary school level;

(b) Increasing attendance rates and decreasing retention and dropout rates at the middle school level; and

(c) Increasing attendance rates and decreasing retention and dropout rates and improving the transition to adult life at the secondary school level.

History.

Enact. Acts 1998, ch. 598, § 1, effective April 14, 1998; 2017 ch. 156, § 17, effective April 10, 2017.

158.6458. Plan for implementation of state assessment and accountability system — Report.

The Department of Education shall develop a plan for implementing the state assessment and accountability system created under KRS 158.6453 and 158.6455 and shall report quarterly to the Interim Joint Committee on Education on its progress in the following areas:

(1) Establishing a consistent structure of test components, grade-level testing distribution, and test administration procedures;

(2) Beginning a new cycle of equating procedures for which their adequacy and precision can be tested rigorously and conducting appropriate equating analyses to accommodate the new accountability system;

(3) Publishing more complete and informative guides for interpreting school accountability changes;

(4) Reviewing school accountability classifications to assure their construct validity in all cases where they are applied;

(5) Developing and implementing a validity research plan as required under KRS 158.6453;

(6) Establishing additional routine audits of key processes in the assessment and accountability program;

(7) Maintaining and cataloging a library of technical documents related to the assessment and accountability program for internal and external review purposes. In addition, the department shall produce an annual technical report for audiences that include educators, testing coordinators, parents, and legislators; and

(8) Maintaining a vigorous ongoing program of research and documentation of the effects of the assessment and accountability system on Kentucky schools.

History.

Enact. Acts 1998, ch. 598, § 17, effective April 14, 1998; 2009, ch. 101, § 5, effective March 25, 2009; 2017 ch. 156, § 5, effective April 10, 2017.

158.6459. Intervention strategies for accelerated learning — Individualized learning plan — Support and technical assistance.

(1) A high school student whose highest score on the college admissions examination under KRS 158.6453(5)(b)3. in English, reading, or mathematics is below the systemwide standard established by the Council on Postsecondary Education for entry into a credit-bearing course at a public postsecondary institution without placement in a remedial course or an entry-level course with supplementary academic support shall be provided the opportunity to participate in accelerated learning designed to address his or her identified academic deficiencies prior to high school graduation.

(2) A high school, in collaboration with its school district, shall develop and implement accelerated learning that:

(a) Allows a student's learning plan to be individualized to meet the student's academic needs based on an assessment of test results and consultation among parents, teachers, and the student; and

(b) May include changes in a student's class schedule.

(3) The Kentucky Department of Education, the Council on Postsecondary Education, and public postsecondary institutions shall offer support and technical assistance to schools and school districts in the development of accelerated learning.

History.

Enact. Acts 2006, ch. 227, § 2, effective July 12, 2006; 2009, ch. 101, § 6, effective March 25, 2009; 2016 ch. 136, § 7, effective July 15, 2016; 2017 ch. 156, § 6, effective April 10, 2017; 2026 ch. 138, § 4, effective July 15, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Extended school services, 704 KAR 3:390.

158.646. Kentucky Institute for Education Research Board.

(1) The Kentucky Institute for Education Research Board is hereby created.

(2) The board shall establish a corporation which can qualify and obtain status under Section 501(c)(3) of the Internal Revenue Code. The purpose and mission of the corporation shall be to solicit and raise funds through private foundations, grants, and government agencies to support the independent evaluation of the Kentucky Education Reform Act and related activities. The corporation shall serve as a stimulus and clearinghouse for Kentucky Education Reform Act related research projects.

(3)(a) The board shall cause an in-depth evaluation of the impact of Kentucky Education Reform Act to be performed. This evaluation shall include, but not be limited to, the effect of the reforms on students, individual schools, school systems, and educators. The evaluation shall also include an analysis of the reliability and validity of the changes in scores between baseline scores and scores from subsequent administrations of tests.

(b) The board shall make recommendations to the citizens and elected leaders of the Commonwealth concerning the enhancement of the benefits of the Kentucky Education Reform Act and the expansion and improvement of services to students.

(c) The board shall establish an organizational capacity to:

1. Develop and manage implementation of a research design to include the issuing of requests for proposals; awarding of contracts; and general oversight and coordination of the quality and quantity of research;

2. Conduct research in accordance with a comprehensive research design and establish priorities; and

3. Design and implement a comprehensive educational data information system.

(d) The board shall prepare an annual report of its activities and the activities of the corporation and

forward copies to the Governor, the Legislative Research Commission, the Kentucky Board of Education, and the Council on Postsecondary Education and make copies available to the citizens of the Commonwealth.

(e) The board shall hire an executive officer and other necessary personnel to carry out its responsibilities.

(f) The board shall consist of ten (10) members who shall initially be appointed to two (2) year terms by the Governor. The board shall select from its membership a chairperson and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies which occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.

History.

Enact. Acts 1994, ch. 408, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 62, effective May 30, 1997.

Compiler's Notes.

This section was formerly codified as KRS 158.683 and was renumbered by the Reviser of Statutes as KRS 158.646, effective September 16, 1996.

Section 501(c)(3) of the Internal Revenue Code is compiled as 26 USCS § 501(c)(3).

The Kentucky Education Reform Act referred to in subsection (2) of this section was enacted by Acts 1990, ch. 476 and is compiled mainly throughout Title XII. Education.

Legislative Research Commission Notes.

(9/16/96). This statute has been renumbered as KRS 158.646 from KRS 158.683 in order to remove the statute from the sunset provision contained in KRS 158.710(6). Initial placement of this statute within the range set out in the sunset provision was an inadvertent mistake in codification. 1994 Ky. Acts ch. 408, sec. 1 did not direct that the statute be placed within the range set out in the sunset provision.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

158.647. Education Assessment and Accountability Review Subcommittee — Members — Duties — Vote required to act. [Effective until January 1, 2027]

(1) A permanent subcommittee of the Legislative Research Commission to be known as the Education Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members of the subcommittee shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. The co-chairs shall have joint responsibilities for subcommittee meeting agendas and presiding at subcommittee meetings. A majority of the entire membership of the Education Assessment and Accountability Review Subcommittee shall constitute a quorum, and all actions of the subcommittee shall be by vote of a majority of its entire membership. Any vacancy that may occur in the membership of the subcommittee shall be filled by the same appointing authority who made the original appointment.

(2) The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in KRS 158.6453, 158.6455, and 158.782, and for any administrative regulation promulgated under provisions of KRS 158.860.

(3) The subcommittee may temporarily authorize the Kentucky Department of Education or Kentucky Board of Education to require a new report that is not expressly required by state statute or federal law while the General Assembly is not in session. The temporary authorization shall expire upon the sine die adjournment of the next regular session of the General Assembly.

(4) The subcommittee shall advise and monitor the Office of Education Accountability in the performance of its duties according to the provisions of KRS 7.410.

(5) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.

(6) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.

History.

Enact. Acts 1998, ch. 598, § 2, effective April 14, 1998; 2000, ch. 437, § 2, effective July 14, 2000; 2002, ch. 235, § 1, effective April 8, 2002; 2003, ch. 185, § 6, effective March 31, 2003; 2006, ch. 119, § 2, effective July 12, 2006; 2025 ch. 35, § 10, effective January 1, 2027; 2026 ch. 196, § 23, effective July 1, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Education Law: The Federal No Child Left Behind Act — The Kentucky Experience, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 35.

158.647. Education Assessment and Accountability Review Subcommittee — Membership — Terms — Vacancies — Duties — Vote required to act. [Effective January 1, 2027]

(1) A permanent subcommittee of the Legislative Research Commission to be known as the Education

Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members of the subcommittee shall be appointed in January of each odd-numbered year and shall serve for terms of two (2) years. The President of the Senate and Speaker of the House of Representatives shall each appoint one (1) member of the subcommittee from their chamber to serve as co-chair. The co-chairs shall have joint responsibilities for subcommittee meeting agendas and presiding at subcommittee meetings. A majority of the entire membership of the Education Assessment and Accountability Review Subcommittee shall constitute a quorum, and all actions of the subcommittee shall be by vote of a majority of its entire membership. Any vacancy that may occur in the membership of the subcommittee shall be filled within thirty (30) days of the occurrence, in the same manner as the original appointment, and for the balance of the vacated member's term.

(2) The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in KRS 158.6453, 158.6455, and 158.782, and for any administrative regulation promulgated under provisions of KRS 158.860.

(3) The subcommittee may temporarily authorize the Kentucky Department of Education or Kentucky Board of Education to require a new report that is not expressly required by state statute or federal law while the General Assembly is not in session. The temporary authorization shall expire upon the sine die adjournment of the next regular session of the General Assembly.

(4) The subcommittee shall advise and monitor the Office of Education Accountability in the performance of its duties according to the provisions of KRS 7.410.

(5) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.

(6) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.

History.

Enact. Acts 1998, ch. 598, § 2, effective April 14, 1998; 2000, ch. 437, § 2, effective July 14, 2000; 2002, ch. 235, § 1, effective April 8, 2002; 2003, ch. 185, § 6, effective March 31, 2003; 2006, ch. 119, § 2, effective July 12, 2006; 2025 ch. 35, § 10, effective January 1, 2027; 2026 ch. 196, § 23, effective July 1, 2026; 2026 ch. 196, § 24, effective January 1, 2027.

158.6471. Meetings — Education Assessment and Accountability Review Subcommittee, powers, process, and procedures when reviewing — Assignment of regulation to committee — Education committees, powers, process, and procedures when reviewing.

(1) When reviewing an administrative regulation pursuant to KRS 158.647, the Education Assessment and Accountability Review Subcommittee shall have the same powers and use the same process and procedures as the Administrative Regulation Review Subcommittee under KRS Chapter 13A, except as otherwise authorized by subsection (2) of this section.

(2)(a) If the subcommittee places an administrative regulation on its agenda for review, and at that meeting the subcommittee fails to achieve a quorum to conduct the review, the administrative regulation shall be deferred for up to forty-five (45) days and shall be placed on the agenda for review at the subcommittee's next meeting.

(b) If at the next meeting the subcommittee fails to achieve a quorum, then the administrative regulation shall be considered reviewed by the subcommittee and shall proceed in accordance with the process outlined under KRS Chapter 13A.

(3) The subcommittee may request the same professional and clerical support as is provided to the Administrative Regulation Review Subcommittee in reviewing administrative regulations.

(4) After review by the subcommittee, the Commission shall at its next regularly scheduled meeting assign a filed administrative regulation as appropriate to the Interim Joint Committee on Education, the Senate standing Education Committee, the House standing Education Committee, or the Senate and the House standing committees meeting jointly.

(5) When reviewing an administrative regulation, the Education Committee shall have the same powers and use the same process and procedures as other interim joint committees or standing committees with subject matter jurisdiction under KRS Chapter 13A.

History.

Enact. Acts 1998, ch. 598, § 4, effective April 14, 1998; 2003, ch. 89, § 18, effective June 24, 2003; 2019 ch. 192, § 16, effective June 27, 2019; 2021 ch. 125, § 4, effective June 29, 2021.

158.6472. Review of administrative regulations.

The review of administrative regulations promulgated by the Kentucky Board of Education under the authority granted by KRS 158.6453, 158.6455, and 158.782 shall comply with the provisions of KRS 158.6471 and KRS Chapter 13A.

History.

Enact. Acts 1998, ch. 598, § 3, effective April 14, 1998.

158.648. State Advisory Council for Gifted and Talented Education — Purpose — Duties.

(1) The State Advisory Council for Gifted and Talented Education is hereby created and attached to the

Kentucky Department of Education. The council's purpose is to make recommendations regarding the provisions of services for gifted and talented students in Kentucky's education system.

(a) The council shall be composed of nineteen (19) voting members who shall be appointed by the Governor and three (3) nonvoting, ex officio members. The members shall be appointed representing various constituencies as follows:

1. Four (4) members shall be teachers within local school districts representing elementary, middle, and high school levels with at least one (1) full-time teacher of gifted and talented students and one (1) full-time teacher who teaches in a regular classroom;

2. Four (4) members shall be parents of students in local school districts, including two (2) parents of students identified as gifted and talented and at least one (1) who serves or has served on a school council;

3. Three (3) members shall be from postsecondary education institutions, including one (1) from an independent college or university;

4. One (1) member shall be a superintendent of a local school district;

5. Two (2) members shall be principals, including one (1) from an elementary or middle school and one (1) from a high school;

6. Two (2) members shall be coordinators of gifted and talented programs and services in local school districts;

7. One (1) member shall be a local board of education member;

8. One (1) member shall represent the visual and performing arts; and

9. One (1) member shall be appointed from the private business sector.

(b) The three (3) nonvoting ex officio members shall be: the state consultant for gifted and talented education in the Kentucky Department of Education, a staff person designated by the executive secretary of the Education Professional Standards Board, and a staff person designated by the president of the Council on Postsecondary Education. Vacancies shall be filled by the Governor as they occur in a manner consistent with the provisions for initial appointment.

(c) Each board member shall serve a three (3) year term or until a successor is appointed, except that for initial appointments to the board, three (3) of the members shall be appointed to serve a one (1) year term, eight (8) of the members shall be appointed to serve a two (2) year term, and eight (8) of the members shall be appointed to serve a three (3) year term. A member may be reappointed but may not serve more than two (2) consecutive terms.

(2) The council shall advise the commissioner of education, the Kentucky Board of Education, and the Education Professional Standards Board concerning the development of administrative regulations and education policy regarding gifted and talented students. The commissioner of education and the executive secretary for the Education Professional Standards Board shall submit proposed administrative regulations and educational policies relating to gifted and talented education and other administrative regulations that impact gifted and talented students for review by the advisory council prior to seeking approval of the appropriate board.

(3) As the advisory council considers issues relating to gifted and talented students, it shall seek dialogue with other agencies and organizations, including the Parent Teachers Association, the Governor's Scholars Program, the Governor's School for the Arts, the Governor's School for Entrepreneurs Program, the Kentucky Association of School Councils, the Kentucky Association for Gifted Education, the Kentucky School Boards Association, the Kentucky Association of School Administrators, and the Kentucky Council for Exceptional Children.

(4) The advisory council shall annually elect a chair from its membership, establish meeting operational procedures, and meet at least two (2) times annually.

(5) The Department of Education shall provide staff and administrative support and shall administer the funds appropriated to support the expenses of the council.

(6) The members of the advisory council shall serve without compensation but shall be reimbursed for necessary expenses in the same manner as state employees.

History.

Enact. Acts 1998, ch. 547, § 1, effective July 15, 1998; 2016 ch. 150, § 3, effective July 15, 2016.

158.6485. Governor's School for Entrepreneurs Program — Entrepreneurship education organization — Advisory board — Appropriations — Accounting practices and program reports — Restricted use of funds.

(1) The Governor's School for Entrepreneurs Program is established as a statewide summer experiential education program for creative and enterprising students to enhance the next generation of business and economic leaders and enrich future economic development across the Commonwealth. The Governor's School for Entrepreneurs Program shall be attached to the Office of the Secretary in the Education and Labor Cabinet for administrative purposes.

(2) As used in this section, "entrepreneurship education organization" means a not-for-profit organization that has:

(a) Received tax-exempt status from the United States Internal Revenue Service;

(b) Registered with the Office of the Kentucky Secretary of State;

(c) A statewide mission to generate interest and knowledge in entrepreneurship; and

(d) A history of operating education programs focused on entrepreneurship.

(3)(a) The Governor or the Governor's designee from the executive cabinet, the commissioner of education, the president of the Council on Postsecondary Education, and the secretary of the Education and Labor Cabinet shall serve as ex officio members of an advisory board to the Governor's School for Entrepre-

neurs Program. In addition, the Governor shall appoint five (5) members to the advisory board as provided in paragraph (b) of this subsection.

(b) By July 31, 2016, the Governor shall appoint five (5) initial members of the advisory board to serve as follows:

1. One (1) shall be appointed to serve a three (3) year term;

2. Two (2) shall be appointed to serve a (2) year term; and

3. Two (2) shall be appointed to serve a (1) year term.

Members appointed by the Governor may be reappointed by the Governor to serve successive terms. In making gubernatorial appointments, the Governor shall consider recommendations and information on business and entrepreneurial experience provided by a nominating committee of the board and shall attempt to promote geographic balance on the board. The Governor shall make appointments to fill gubernatorial vacancies as they occur. Each appointment after the initial appointment shall be for a three (3) year term unless the appointment is to fill the unexpired portion of a term.

(4) The Education and Labor Cabinet shall contract with an entrepreneurship education organization to administer and operate the statewide Governor's School for Entrepreneurs Program created in this section. The Education and Labor Cabinet shall approve the contract application criteria, the process for submission of a contract application, and the structure and type of evaluation criteria used in the contract application review process.

(5) The annual appropriation for the statewide Governor's School for Entrepreneurs Program from the general fund shall be transmitted to an entrepreneurship education organization on July 1 of each year to facilitate the operation of the summer program. Funds shall be used only for the purposes of the statewide Governor's School for Entrepreneurs Program and, notwithstanding KRS 45.229, shall not lapse at the end of the fiscal year.

(6)(a) The entrepreneurship education organization shall follow standard accounting practices and shall submit the following financial reports to the Office of the Secretary of the Education and Labor Cabinet, the Finance and Administration Cabinet, and the Legislative Research Commission:

1. Quarterly reports of expenditures of state funds for the Governor's School for Entrepreneurs Program, submitted on or before the thirtieth day after the end of each quarter in the organization's fiscal year;

2. Annual reports of receipts and expenditures for the Governor's School for Entrepreneurs Program, submitted on or before the sixtieth day after the end of the fiscal year of the organization; and

3. The report of an annual financial compilation or review conducted by an independent accounting firm, submitted on or before September 1 of each year.

(b) On or before March 1 of each year, the entrepreneurship education organization shall file a report detailing the operations of the Governor's School for Entrepreneurs Program for the preceding year with the Office of the Secretary of the Education and Labor Cabinet, the Finance and Administration Cabinet, and the Legislative Research Commission. The report shall include information concerning the program, student and faculty demographics, and program outcomes according to such measures of success as the advisory board to the statewide Governor's School for Entrepreneurs Program, in collaboration with the entrepreneurship education organization, may develop.

(c) Nothing in this section shall prevent the entrepreneurship education organization from soliciting program support, cooperation, and funds from private businesses, foundations, industries, and government agencies with an interest in technological innovations, economic development, and entrepreneurial education. Funds may be solicited, accepted, received, and expended from public and private sources for the purpose of implementing this section.

(7) The entrepreneurship education organization may perform other programs and initiatives pertaining to its mission so long as all funds appropriated for the statewide Governor's School for Entrepreneurs Program are restricted solely for the design, development, and operation of the statewide Governor's School for Entrepreneurs Program.

History.

2016 ch. 150, § 1, effective July 15, 2016; 2022 ch. 236, § 69, effective July 1, 2022.

158.649. Achievement gaps — Data on student performance — Policy for reviewing academic performance — Student achievement targets — Reporting requirements — Review and revision of improvement plan.

(1) "Achievement gap" means the difference between performance goals and actual performance on each of the tested areas by grade level of the state assessment program for each of the various subgroups of students as described in the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, including male and female students, students with and without disabilities, students with and without English proficiency, minority and nonminority students, and students who are eligible for free and reduced lunch and those who are not eligible for free and reduced lunch.

(2) By October 1 of each year, the Department of Education shall provide each school council, or the principal if a school council does not exist, data on its students' performance as shown by the state assessment program described in KRS 158.6453. The data shall include but not be limited to information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, English proficiency, and participation in the federal free and reduced price lunch program, and any other subgroups as described in the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor. The information from the department shall include an equity analysis that shall identify the substantive differences among the various

groups of students identified in subsection (1) of this section. Beginning with the 2012-2013 school year, the reporting requirement in this subsection shall be no later than seventy-five (75) days following the first day the assessment can be administered.

(3) Each local board of education upon the recommendation of the local district superintendent shall adopt a policy for reviewing the academic performance on the state assessments required under KRS 158.6453 for various groups of students, including major racial groups, gender, disability, free and reduced price school lunch eligibility, and limited English proficiency. The local board policy shall be consistent with Kentucky Board of Education administrative regulations. Upon agreement of the school-based decision making council, or the principal if there is not a council, and the superintendent, the local board shall establish an annual target for each school for reducing identified gaps in achievement as set out in subsection (4) of this section.

(4) By February 1 of each year, the school-based decision making council, or the principal if there is not a council, with the involvement of parents, faculty, and staff shall set the school's targets for eliminating any achievement gap and submit them to the superintendent for consideration. The superintendent and the school-based decision making council, or the principal if there is not a council, shall agree on the targets before they are submitted to the local board of education for adoption.

(5) By January 1 of each year, the school council, or the principal if a school council does not exist, with the involvement of parents, faculty, and staff, shall review the data and revise the school improvement plan to include the targets, strategies, activities, and a time schedule calculated to eliminate the achievement gap among various groups of students to the extent it may exist. The plan shall include but not be limited to activities designed to address the following areas:

(a) Curriculum alignment within the school and with schools that send or receive the school's students;

(b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;

(c) Professional development to address the goals of the plan;

(d) Parental communication and involvement;

(e) Attendance improvement and dropout prevention; and

(f) Technical assistance that will be accessed.

(6) The principal shall convene a public meeting at the school to present and discuss the plan prior to submitting it to the superintendent and the local board of education for review, in the public meeting required under KRS 160.340.

(7) Based on the disaggregated assessment results, the local board shall determine if each school achieved its targets for each group of students. Only data for a group of students including ten (10) or more students shall be considered.

(8) Notwithstanding KRS 160.345(8) and 158.070(7), if a local board determines that a school has not met its target to reduce the identified gap in student achievement for a group of students, the local board shall require the council, or the principal if no council exists, to submit its revisions to the school improvement plan describing the use of professional development funds and funds allocated for continuing education to reduce the school's achievement gap for review and approval by the superintendent. The plan shall address how the school will meet the academic needs of the students in the various groups identified in subsection (1) of this section.

(9) The superintendent shall report to the local school board and the commissioner of education if a school fails to meet its targets in any academic content area to reduce the gap in student achievement for any student group for two (2) consecutive years. The school's improvement plan shall be subject to review and approval by the Kentucky Department of Education and the school shall submit an annual status report. The Department of Education may provide assistance as defined in KRS 160.346 to schools as it deems necessary to assist the school in meeting its goals.

(10) The school-based decision making council, or the principal if there is not a council, shall no longer be required to seek approval of the plan under subsections (8) and (9) of this section when it meets its target for reducing the gap in student achievement for the various groups of students identified in subsection (1) of this section.

History.

Enact. Acts 2002, ch. 302, § 1, effective July 15, 2002; 2009, ch. 101, § 7, effective March 25, 2009; 2010, ch. 146, § 3, effective April 13, 2010; 2014, ch. 14, § 5, effective July 15, 2014; 2017 ch. 156, § 7, effective April 10, 2017; 2020 ch. 112, § 7, effective July 15, 2020; 2022 ch. 168, § 3, effective April 8, 2022.

Legislative Research Commission Notes.

(4/8/2022). 2022 Ky. Acts ch. 168, sec. 4, provides that the Act, which amended this statute, may be cited as Wyatt's Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Evaluation of charter school authorizers, 701 KAR 8:020.
Kentucky's Accountability System, 703 KAR 5:270.

158.650. Definitions for KRS 158.680 to 158.710. [Repealed]

History.

Enact. Acts 1978, ch. 151, § 2, effective June 17, 1978; 1982, ch. 13, § 1, effective July 15, 1982; 1984, ch. 65, § 1, effective July 13, 1984; 1984, ch. 347, § 1, effective July 13, 1984; 1988, ch. 357, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 8, effective July 13, 1990; repealed by 2017 ch. 80, § 58, effective June 29, 2017; repealed by 2017 ch. 177, Pt D, § 8, effective June 29, 2017.

Compiler's Notes.

This section (Enact. Acts 1978, ch. 151, § 2, effective June 17, 1978; 1982, ch. 13, § 1, effective July 15, 1982; 1984, ch. 65, § 1, effective July 13, 1984; 1984, ch. 347, § 1, effective July 13, 1984; 1988, ch. 357, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 8, effective July 13, 1990) was repealed by Acts 2017, ch. 80, § 58, effective June 29, 2017.

158.660. Intent and purpose. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 3, effective June 17, 1978; 1982, ch. 13, § 2, effective July 15, 1982; 1984, ch. 347, § 2, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.665. Basic skills development regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1984, ch. 397, § 42, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.670. Department to administer educational improvement act — Administrative regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 4, effective June 17, 1978; 1984, ch. 347, § 4, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.680. State Advisory Committee for Educational Improvement. [Repealed]

History.
Enact. Acts 1978, ch. 151, § 5, effective June 17, 1978; 1988, ch. 357, § 4, effective July 15, 1988; 1990, ch. 476, Pt. I, § 9, effective July 13, 1990; repealed by 2017 ch. 80, § 58, effective June 29, 2017; repealed by 2017 ch. 177, Pt D, § 8, effective June 29, 2017.

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 5, effective June 17, 1978; 1988, ch. 357, § 4, effective July 15, 1988; 1990, ch. 476, Pt. I, § 9, effective July 13, 1990) was repealed by Acts 2017, ch. 80, § 58, effective June 29, 2017.

158.683. Kentucky Institute for Education Research Board. [Renumbered.]

Compiler's Notes.
This section was renumbered as KRS 158.646, effective September 16, 1996.

158.685. Standards of student, program, service, and operational performance to be established — Educationally deficient school district — Action to eliminate deficiency — Education development district. [Repealed]

History.
Enact. Acts 1984, ch. 347, § 3, effective July 13, 1984; 1988, ch. 357, § 5, effective July 15, 1988; 1990, ch. 476, Pt. I, § 10, effective July 13, 1990; repealed by 2017 ch. 80, § 58, effective June 29, 2017; repealed by 2017 ch. 177, Pt D, § 8, effective June 29, 2017.

Compiler's Notes.
This section (Enact. Acts 1984, ch. 347, § 3, effective July 13, 1984; 1988, ch. 357, § 5, effective July 15, 1988; 1990, ch. 476, Pt. I, § 10, effective July 13, 1990) was repealed by Acts 2017, ch. 80, § 58, effective June 29, 2017.

158.690. Assessment and testing program — Publication of test results. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 6, effective June 17, 1978; 1982, ch. 13, § 3, effective July 15, 1982; 1984, ch. 66, § 1, effective July 13, 1984; 1984, ch. 347, § 5, effective July 13, 1984; 1986, ch. 341, § 1, effective July 15, 1986, 1988, ch. 357, § 6, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.700. Specific duties of department relating to testing. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 7, effective June 17, 1978; 1982, ch. 13, § 4, effective July 15, 1982; 1984, ch. 347, § 6, effective July 13, 1984; 1984, ch. 397, § 1, effective July 13, 1984, 1988, ch. 357, § 7, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.710. Responsibilities and functions of educationally deficient districts and education development districts — Plans required — Reports required. [Repealed]

History.
Enact. Acts 1978, ch. 151, § 8, effective June 17, 1978; 1982, ch. 13, § 5, effective July 15, 1982; 1984, ch. 347, § 7, effective July 13, 1984; 1988, ch. 357, § 8, effective July 15, 1988; 1990, ch. 476, Pt. I, § 11, effective July 13, 1990; repealed by 2017 ch. 80, § 58, effective June 29, 2017; repealed by 2017 ch. 177, § 8, effective June 29, 2017.

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 8, effective June 17, 1978; 1982, ch. 13, § 5, effective July 15, 1982; 1984, ch. 347, § 7, effective July 13, 1984; 1988, ch. 357, § 8, effective July 15, 1988; 1990, ch. 476, Pt. I, § 11, effective July 13, 1990) was repealed by Acts 2017, ch. 80, § 58, effective June 29, 2017.

158.720. Coordination of local educational improvement plan with master inservice educational plan — Technical assistance by department. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 9, effective June 17, 1978; 1982, ch. 13, § 6, effective July 15, 1982) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.730. Department to submit plans and reports to various officers and agencies. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 10, effective June 17, 1978; 1984, ch. 347, § 8, effective July 13, 1984; 1988, ch. 357, § 9, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.740. Title. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1978, ch. 151, § 1, effective June 17, 1978; 1988, ch. 357, § 10, effective July 15, 1988) was

repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.750. Testing on basic skills — Exemption — Remedial instruction — Supplemental classroom units — Selection of students for remedial instruction. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1984, ch. 403, § 1, effective July 13, 1984; 1986, ch. 341, § 2, effective July 15, 1986; 1988, ch. 357, § 11, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.760. School-to-Careers System — Legislative intent — Goals.

(1) It is the intent of the General Assembly that a School-to-Careers System be developed to serve as an umbrella for career-related programs in the public schools, including School-to-Work, Tech Prep, and High Schools That Work initiatives.

(2) The goals of the School-to-Careers System shall be to:

(a) Increase the math, science, communications, social studies, and technical skills of all students through the implementation of a more rigorous and relevant applied curriculum and instructional process;

(b) Increase the awareness of job and career availability in the future workforce and the skills required to obtain those positions;

(c) Increase the postsecondary education's entry and completion rates and reduce the percentage of students taking remedial courses;

(d) Decrease the high school dropout rate through a system of increased guidance and extra help focused on academics and career achievement;

(e) Make all students aware of employer expectations in order to be successful;

(f) Increase the daily attendance rate at all secondary schools; and

(g) Provide the educational experiences that will cause all students to meet the goals and capacities identified in KRS 158.645 and KRS 158.6451 for Kentucky students.

History.

Enact. Acts 1998, ch. 444, § 1, effective April 9, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School to careers, 705 KAR 4:240.

158.7603. School-to-Careers Grant Program — Authority for administrative regulations — Advisory committee.

(1) The School-to-Careers Grant Program shall be provided by the General Assembly to provide matching funds to school districts or consortia of school districts for the development and implementation of comprehensive plans that include:

(a) A comprehensive career awareness and exploration program for all students in grades K-8 to include study of Kentucky's fourteen (14) career clusters;

(b) High level academic and vocational courses for all secondary students to replace a general track curriculum;

(c) A comprehensive career guidance program to assist all secondary students in developing individual graduation plans;

(d) Applied academic instructional models for all disciplines and integration of academics and vocational education curriculum;

(e) Implementation of industry skill standards within all relevant academic and vocational education programs;

(f) Planned instructional programs to meet the needs of students with disabilities and other special needs students;

(g) Opportunity for students to receive, in addition to a high school diploma, a Career Major Certificate upon completion of the high school graduation requirements, work-based learning experiences, specific course work, and a career culminating project;

(h) Opportunity for students to participate in structured workbased learning;

(i) Linkages with postsecondary institutions that create a smooth and seamless transition from secondary to postsecondary education;

(j) Professional development for faculty and staff focused on developing integrated and applied curriculum; and

(k) A School-to-Careers Partnership Council composed of representatives of business, labor, education agencies, parents, students, teachers, administrators, and community organizations.

(2) The Kentucky Board of Education shall promulgate administrative regulations that set forth the request for proposal process, the criteria for grant awards, the responsibilities of local districts and consortia seeking matching funds, the level of funding available, and criteria for evaluating the success of the programs.

(3) The Department of Education shall administer the funds and shall provide technical assistance to local districts and consortia in developing, implementing, and evaluating School-to-Careers programs.

(4) The commissioner of education shall establish a state advisory committee composed of business, industry, labor, education, and government with a minimum of fifty-one percent (51%) of its membership from the employment sector to advise the department in the School-to-Careers program. The members shall serve without compensation but may be reimbursed for necessary travel expenses.

(5) The grant funds may be used to enhance on-going efforts such as Tech Prep, School-to-Work, and High Schools that Work initiatives.

History.

Enact. Acts 1998, ch. 444, § 2, effective April 9, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School to careers, 705 KAR 4:240.

158.770. Advisory committee on writing program.

An advisory committee on writing shall be created by the Kentucky Board of Education to make recommendations to the board regarding the establishment of an intensive writing component in the state program of studies for grades seven (7) through ten (10) and the establishment of innovative pilot writing programs in selected local school districts in grades seven (7) through ten (10).

(1) The advisory committee shall be composed of nine (9) members appointed by the Kentucky Board of Education. The majority of the membership shall be educators currently employed by local school districts or public universities.

(2)(a) On July 13, 1990, the terms of the current members of the advisory committee shall expire and the Kentucky Board of Education shall appoint members as follows: three (3) members shall serve two (2) year terms, three (3) members shall serve three (3) year terms, and three (3) members shall serve four (4) year terms.

(b) As the terms described in subsection (a) of this section expire, members appointed thereafter shall serve four (4) year terms.

(3) All operating expenses of the committee shall be approved by the Kentucky Board of Education and paid from funds budgeted to the writing programs. Members shall be reimbursed for actual expenses for attendance at committee meetings and for other actual expenses incurred in carrying out their official duties.

(4) The functions of the committee shall be as follows:

(a) Analyze the program of studies of grades seven (7) through ten (10) and make recommendations to the Kentucky Board of Education on the options for including an intensive writing program;

(b) Make recommendations to the Kentucky Board of Education on methods of integrating writing into the curriculum in grades seven (7) through ten (10);

(c) Make recommendations to the Kentucky Board of Education relative to the development of teacher training programs and workshops designed to facilitate the effective teaching of writing;

(d) Develop and recommend to the Kentucky Board of Education criteria for local district participation in the pilot program;

(e) Develop a monitoring and ongoing evaluation system; and

(f) Recommend to the Kentucky Board of Education a grant allotment system to award funds to eligible districts.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 14, effective October 18, 1985; 1990, ch. 476, Pt. IV, § 213, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

158.775. Writing program pilot project.

(1) The Kentucky Board of Education shall select school districts to participate in pilot programs based upon the criteria recommended by the advisory committee on writing.

(2) The Kentucky Board of Education shall authorize grants of funds to school districts selected for participation in the program based on the grant allotment system recommended by the advisory committee on writing.

(3) Teacher aides may be employed in selected districts to assist in the implementation of this program. Such aides shall meet the same qualifications required of kindergarten aides in KRS 161.044.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 15, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 407, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.

This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 15, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 407, effective July 13, 1990.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

158.780. Management improvement programs.

(1) The Kentucky Board of Education shall establish a program for voluntary management improvement, for involuntary supervision, and for assuming full control of a local school district.

(a) The voluntary improvement program shall assist local districts with the development of innovative management practices and help them adopt currently accepted practices.

(b) If the Kentucky Board of Education believes that a critical lack of efficiency or effectiveness in the governance or administration of a local school district exists, it shall conduct an administrative hearing in compliance with KRS Chapter 13B. If it is determined that there is a critical lack of efficiency or effectiveness in the governance or administration, the state board shall assume sufficient supervision of the district to ensure that appropriate corrective action occurs. Neither the state board, the chief state school officer, nor his designee shall assume the supervision of the district until an administrative hearing has been conducted under KRS Chapter 13B.

(c) If the Kentucky Board of Education believes that the pattern of a lack of efficiency or effectiveness in the governance or administration of a school district warrants action, it shall conduct an administrative hearing in compliance with KRS Chapter 13B. If it is determined that the pattern does warrant action, it shall declare the district a "state assisted district" or a "state managed district" and the state board shall then assume control of the district as set forth in this section and KRS 158.785.

(2) The Kentucky Board of Education shall adopt necessary administrative regulations to carry out the provisions of this section and KRS 158.785, including an administrative regulation to more specifically establish and implement the standards for designation as a "state assisted district" and a "state managed district."

(3) The Kentucky Board of Education may delegate to the chief state school officer the authority it deems necessary to carry out the provisions of this section and KRS 158.785. However, neither the state board, the chief state school officer, nor his designee shall assume the supervision of the district until an administrative hearing has been conducted under the provisions of KRS Chapter 13B.

History.
Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 16, effective October 18, 1985; 1990, ch. 476, Pt. IV, § 214, effective July 13, 1990; 1992, ch. 184, § 1, effective July 14, 1992; 1996, ch. 32, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Management improvement program, 703 KAR 3:205.

158.782. Monitoring and review of turnaround plan — Skilled assistance.

(1) To align with the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, the Kentucky Department of Education shall promulgate administrative regulations establishing the monitoring and periodic review of the implementation of a local school district's turnaround plan for a school identified for comprehensive support and improvement described in KRS 160.346. The monitoring and review process shall be limited to performing an annual review of the school's state assessment data and measures of school quality, periodic site visits, observation, and interviews of representative stakeholders and students.

(2) Schools and districts receiving highly skilled assistance from the Kentucky Department of Education prior to April 10, 2017, shall continue to receive assistance in accordance with the established assistance plan.

History.
Enact. Acts 1990, ch. 476, Pt. I, § 6, effective July 13, 1990; 1994, ch. 408, § 4, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 14, effective April 14, 1998; 2004, ch. 188, § 3, effective July 13, 2004; 2017 ch. 156, § 8, effective April 10, 2017.

Compiler's Notes.
The section is set out to correct an error in the publication process.

OPINIONS OF ATTORNEY GENERAL.

Both KRS 161.770 and subdivision (2)(e) (now subdivision (2)) of this section provide for the granting of a leave for a period of not more than two consecutive school years; however, both statutes authorize renewal of a leave of absence, upon approval. OAG 91-134, 1991 Ky. AG LEXIS 133.

The distinguished educator has authority to override decisions of the school staff. The distinguished educator also has authority to override decisions of the local superintendent when recommending dismissal of certified personnel. OAG 92-135, 1992 Ky. AG LEXIS 211.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.
Assistance to low-achieving schools, 703 KAR 5:190.
Qualifications for professional school positions, 16 KAR 4:010.

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

158.785. Collection and review of management data — Management audit — Conditions for designation as state assisted or state managed district — Actions required.

(1) The Kentucky Board of Education shall establish a program to improve specific aspects of the management of local school districts as described in KRS 158.780.

(2) The State Department of Education shall, pursuant to administrative regulations promulgated by the Kentucky Board of Education, collect and review data relative to the instructional and operational performance of local school districts. When a review of the data or of any other information, including site investigations of local management practices, indicates the presence of critically ineffective or inefficient management, the chief state school officer shall order a management audit of the governance and administration of the district. A local school board or superintendent may also request a management audit of the district.

(3) If a management audit, conducted for any of the reasons set forth in subsection (2) of this section, indicates that there is a pattern of a significant lack of efficiency and effectiveness in the governance or administration of a school district, the chief state school officer shall recommend the district to the Kentucky Board of Education either as a "state assisted district" or a "state managed district."

(4) The Kentucky Board of Education shall promulgate an administrative regulation establishing a procedure for considering the recommendation of the chief state school officer to declare a district a "state assisted district" or a "state managed district." This procedure shall fully comply with the procedures for administrative hearings established in KRS Chapter 13B.

(5) When the chief state school officer presents a recommendation to the state board for designation as a "state assisted district" or a "state managed district," he shall establish the following:

(a) Existence of a pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district;

(b) The pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district continues to exist; and

(c) State assistance or state management is necessary to correct the inefficiencies and ineffectiveness.

(6) When a district is designated a "state assisted district" under subsection (4) of this section, the following actions shall be required of the chief state school officer:

(a) Management assistance shall be provided to the district to develop and implement a plan to correct deficiencies found in the management audit.

(b) The Department of Education shall monitor the development and implementation of the correctional plan to improve the governance or administration of the school district. If the chief state school officer determines that the plan is being inadequately developed or implemented, he shall make a recommendation to the Kentucky Board of Education to declare the district a "state managed district."

(7) If the state board designates a district a "state managed district" under subsection (4) of this section, the following actions shall be required of the chief state school officer:

(a) All administrative, operational, financial, personnel, and instructional aspects of the management of the school district formerly exercised by the local school board and the superintendent shall be exercised by the chief state school officer or his designee.

(b) The local superintendent may be removed from office by the Kentucky Board of Education pursuant to KRS 156.132.

(c) Notwithstanding any statute to the contrary, after thirty (30) days after a district becomes a "state managed district" any appointment to an administrative position may be revoked by the chief state school officer and the individual employee may be reassigned to any duty for which that person is qualified. The chief state school officer shall provide to the reassigned employee written reasons for the reassignment. The individual shall not be dismissed from subsequent employment except as provided by KRS 156.132 and 161.790.

(d) The chief state school officer shall make the administrative appointments as necessary to exercise full and complete control of all aspects of the management of the district. The chief state school officer, through the appointments, may make any and all decisions previously made by the local school board and the local superintendent. The chief state school officer shall retain clear supervisory and monitoring powers over the operation and management of the district.

(8) A school district shall be designated as a "state managed district" until the Kentucky Board of Education determines that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit have been corrected. Each year following the school year in which the designation of a "state managed district" was made, the chief state school officer shall report the status of the corrective action being taken to the Kentucky Board of Education. No local school district shall remain in the status of a "state managed district" longer than three (3) consecutive school years unless the Kentucky Board of Education extends the time after a complete review of a new management audit. Any judicial review of actions taken by the chief state school officer or the board under KRS 158.780 or this section shall be in accordance with the provisions for conducting judicial review of administrative hearings outlined in KRS Chapter 13B.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, §§ 17 and 18, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 408, effective July 13, 1990; 1992, ch. 184, § 2, effective July 14, 1992; 1996, ch. 32, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2021 ch. 144, § 3, effective June 29, 2021.

Compiler's Notes.

This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, §§ 17 and 18, effective October 18, 1985) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 408, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Management improvement program, 703 KAR 3:205.

158.790. Governor's commission on literacy. [Repealed, reenacted and amended.]

Compiler's Notes.

This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 23, effective October 18, 1985; 1988, ch. 179, § 2, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.135 by Acts 1990, ch. 470, § 26, effective July 1, 1990. It was also amended by Acts 1990, ch. 476, Pt. IV, § 215; however, the repeal, reenactment, and amendment by ch. 470 prevails. The section was subsequently repealed by Acts 1994, ch. 469, § 40, effective July 15, 1994.

158.791. Legislative findings and intent regarding reading and mathematics.

(1) The General Assembly hereby finds that:

(a) Reading proficiency is a gateway skill necessary for all of Kentucky students to achieve the academic goals established in KRS 158.6451. It is Kentucky's goal that all children learn to read well before exiting grade three (3) and that all middle and high school students have the skills necessary to read complex materials in specific core subjects and comprehend and constructively apply the information; and

(b) Mathematics proficiency is essential for all Kentucky students to achieve the academic goals established in KRS 158.6451. It is Kentucky's goal that all children have the skills necessary to demonstrate procedural skill and fluency, building from conceptual understanding to application, in order to solve real-world problems.

(2) It is the intent of the General Assembly that:

(a) Every elementary school:

1. Provide comprehensive schoolwide reading and mathematics instruction aligned to reading, writing, and mathematics standards required by KRS 158.6453 and outlined in administrative regulation promulgated by the Kentucky Board of Education;

2. Provide a multitiered system of supports, as set forth in and required by KRS 158.305, to support and engage all students in learning to read at the proficient level, meaning a level that reflects developmentally appropriate grade-level performance, by the end of grade three (3);

3. Provide a multitiered system of supports, as set forth in KRS 158.8402, to support and engage all students in learning to apply mathematical content and practices at a proficient level, meaning a level that reflects developmentally appropriate

grade-level performance, by the end of grade five (5);

4. Ensure quality instruction for reading and mathematics by highly trained teachers and intervention by individuals most qualified to provide the intervention; and

5. Provide high quality library media programs;

(b) Every middle and high school:

1. Provide direct, explicit instruction to students lacking skills in how to read, learn, and analyze information in key subjects, including language, reading, English, mathematics, science, social studies, arts and humanities, practical living skills, and career studies;

2. Ensure that teachers have the skills to help all students develop critical content knowledge, strategies, and skills for subject-based reading and grade-level appropriate mathematics;

3. Provide a multitiered system of supports to support and engage all students in learning to apply mathematical content and practices at a proficient level; and

4. Ensure all students routinely have opportunities to experience high- quality mathematics instruction, learn challenging, grade-level appropriate mathematics content and practices, and receive the necessary support to make progress toward proficiency;

(c) The Kentucky Department of Education shall provide technical assistance to local school districts in the identification of high-quality professional development, including teaching strategies to help teachers in each subject area to:

1. Implement evidence-based reading, intervention, and instructional strategies that emphasize phonemic awareness, phonics, fluency, vocabulary, comprehension, and connections between reading and writing acquisition, and motivation to read to address the diverse needs of students;

2. Implement evidence-based mathematics instruction, intervention, and instructional strategies that emphasize algebraic reasoning, conceptual understanding, procedural skill and fluency, geometry, data and measurement, statistics and probability, number sense, place value understanding, spatial reasoning, and subitizing for multiplicative reasoning;

3. Identify and teach the grade-level content, practices, and skills that students need to comprehend the concepts and content of each subject area; and

4. Use learning experiences and high-quality instructional materials that will help the students comprehend, meet grade-level expectations, and constructively apply information based on the unique content of each subject area;

(d) The Education Professional Standards Board shall review and revise when deemed necessary the teacher certification and licensure requirements to ensure that all teachers, regardless of the subject area taught, are prepared to improve students' subject reading and mathematics skills; and

(e) The department shall collaborate with relevant groups for the purpose of increasing student outcomes in literacy and mathematics.

History.

Enact. Acts 2005, ch. 127, § 2, effective March 18, 2005; 2010, ch. 42, § 1, effective July 15, 2010; 2022 ch. 40, § 1, effective March 29, 2022; 2024 ch. 222, § 1, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which amended this statute and KRS 158.840 and 158.842 and created KRS 158.8401, 158.8402, 158.843, and 164.3061, may be cited as the Kentucky Numeracy Counts Act.

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which amended this statute, may be cited as the Read to Succeed Act.

(3/18/2005). 2005 Ky. Acts ch. 127, which included an amendment to this section, KRS 158.791, provides that the Act shall be cited as the "Read to Achieve Act of 2005."

158.792. Definitions for KRS 158.792 and 164.0207 — Reading diagnostic and intervention fund — Grants for reading intervention programs — Administrative regulations — Use of grant funds — Information and reports provided by Department of Education.

(1) As used in this section and KRS 164.0207, unless the context requires otherwise:

(a) "Comprehensive reading program" means any print, nonprint, or electronic medium of reading instruction designed to assist students. For students in kindergarten through grade three (3), program instructional resources shall include instruction in five (5) key areas: phonemic awareness, phonics, fluency, vocabulary, and comprehension;

(b) "Reading diagnostic assessment" means an assessment that measures a student's skills against established performance levels in essential components of reading and identifies students that require intervention in at least one (1) of those components to accelerate the student's progress toward proficient performance in reading;

(c) "Reading intervention program" means short-term intensive instruction in the essential skills necessary to read proficiently that is provided to a student by a highly trained teacher. This instruction may be conducted one-on-one or in small groups; shall be evidence-based, reliable, and replicable; and shall be based on the ongoing assessment of individual student needs; and

(d) "Reliable, replicable evidence" means objective, valid, scientific studies that:

1. Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;

2. Rely on measurements that meet established standards of reliability and validity;

3. Test competing theories, where multiple theories exist;

4. Are subjected to peer review before their results are published; and

5. Discover effective strategies for improving reading skills.

(2) The reading diagnostic and intervention fund is created to help teachers and library media specialists improve the reading skills of struggling readers in

kindergarten through grade three (3) and to assist schools in employing reading interventionists who specialize in providing those services. The Department of Education, upon the recommendation of the Reading Diagnostic and Intervention Grant Steering Committee, shall provide renewable, two (2) year grants to schools to support teachers and reading interventionists in the implementation of reliable, replicable evidence-based reading intervention programs that use a balance of diagnostic tools and instructional strategies that emphasize phonemic awareness, phonics, fluency, vocabulary, comprehension, and connections between writing and reading acquisition and motivation to read to address the diverse learning needs of those students reading at low levels. Any moneys in the fund at the close of the fiscal year shall not lapse but shall be carried forward to be used for the purposes specified in this section.

(3)(a) The Kentucky Board of Education shall promulgate administrative regulations, based on recommendations from the Department of Education that shall include but not be limited to a school selection process with a focus on those with the most need, professional learning supports in literacy, and early reading instruction to:

1. Identify eligible grant applicants, taking into consideration how the grant program described in this section will relate to other grant programs;

2. Specify the criteria for acceptable reading and literacy diagnostic assessments and intervention programs;

3. Specify the criteria for acceptable ongoing assessment of each child to determine his or her reading progress;

4. Establish the minimum evaluation process for an annual review of each grant recipient's program and progress;

5. Identify the annual data that must be provided from grant recipients;

6. Define the application review and approval process;

7. Establish matching requirements deemed necessary;

8. Define the professional development and continuing education requirements for teachers, library media specialists, administrators, and staff of grant recipients;

9. Establish the conditions for renewal of a two (2) year grant; and

10. Specify other conditions necessary to implement the purposes of this section.

(b) The board shall require that a grant applicant provide assurances that the following principles will be met if the applicant's request for funding is approved:

1. An evidence-based comprehensive schoolwide reading program will be available;

2. Intervention services will supplement, not replace, regular classroom instruction;

3. Intervention services will be provided to struggling kindergarten through grade three (3) readers within the school based upon ongoing assessment of their needs; and

4. A system for informing parents of struggling readers of the available family literacy services within the district will be established.

(c) The board shall not restrict how a grant applicant utilizes grant funds as it relates to the applicant's use of funds for professional development, resources, tools, employment of reading interventionists, and other expenses authorized by this section. The grant applicant shall have discretion in allocating grant funds for purposes authorized by this section; however, the board may consider the effectiveness of those uses in reviewing the application.

(4) In order to qualify for funding, the school council, or if none exists, the principal or the superintendent of schools, shall allocate matching funds required by grant recipients under subsection (3) of this section. Funding for professional development allocated to the school council under KRS 160.345 and for continuing education under KRS 158.070 may be used as part of the school's match.

(5) The Department of Education shall make available to schools:

(a) Information concerning successful, evidence-based comprehensive reading programs, diagnostic tools for pre- and post-assessment, and intervention programs, from the statewide reading research center established under KRS 164.0207;

(b) Strategies for successfully implementing early reading programs, including professional development support and the identification of funding sources; and

(c) A list of professional development providers offering teacher training related to reading that emphasizes the essential components for successful reading: phonemic awareness, phonics, fluency, vocabulary, comprehension, and connections between writing and reading acquisition and motivation to read.

(6) The Department of Education shall submit a report to the Interim Joint Committee on Education no later than November 1 of each year outlining the use of grant funds. The annual report for an odd-numbered year shall include an estimate of the cost to expand the reading diagnostic and intervention fund.

(7) The Department of Education shall report program data to an external evaluator for analysis of the program's success in meeting the goal of increasing early literacy student outcomes.

History.

Enact. Acts 1998, ch. 580, § 1, effective July 15, 1998; 2005, ch. 127, § 3, effective March 18, 2005; 2009, ch. 11, § 50, effective June 25, 2009; 2022 ch. 40, § 5, effective March 29, 2022; 2022 ch. 236, § 70, effective July 1, 2022; 2023 ch. 55, § 7, effective July 1, 2024.

Legislative Research Commission Notes.

(7/1/2022). This statute was amended by 2022 Ky. Acts chs. 40 and 236. Ch. 236 combined the Education and Workforce Development Cabinet and Labor Cabinet and amended all applicable statutes to remove each and every existing reference to either of those cabinets and insert the name of the successor agency, "Education and Labor Cabinet," in its place. One such replacement was made in this section, but the amendment of this section in ch. 40 removed the cabinet reference in its entirety, making the name update unnecessary.

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 9, reads as follows: "Notwithstanding any regulation or rule adopted by the Ken-

tucky Department of Education, any grant application submitted previously to the department in accordance with during the 2021-2022 school year under KRS 158.792 shall be subject to Section 5 of this Act [this statute, as amended by 2022 Ky. Acts ch. 40, sec. 5]."

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which amended this statute, may be cited as the Read to Succeed Act.

(3/18/2005). 2005 Ky. Acts ch. 127, which included an amendment to this section, KRS 158.792, provides that the Act shall be cited as the "Read to Achieve Act of 2005."

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Extended school services, 704 KAR 3:395.

Reading diagnostic and intervention grants, 704 KAR 3:480.

158.794. Reading Diagnostic and Intervention Grant Steering Committee — Membership — Duties.

(1) The Reading Diagnostic and Intervention Grant Steering Committee is hereby created for the purpose of advising the Kentucky Board of Education and the Department of Education concerning the implementation and administration of universal screeners, reading diagnostic assessments, and a statewide professional development program for early literacy. The committee shall be composed of fourteen (14) members, including the commissioner of education or the commissioner's designee and the following members, to be appointed by the Governor:

(a) Four (4) elementary school teachers with a specialty or background in reading and literacy or reading intervention;

(b) One (1) elementary school parent;

(c) One (1) elementary school principal;

(d) One (1) elementary special education teacher;

(e) One (1) postsecondary educator who trains and prepares elementary reading teachers;

(f) One (1) speech-language pathologist;

(g) One (1) elementary librarian or certified media specialist;

(h) One (1) elementary reading intervention teacher;

(i) One (1) teacher with experience assisting children who are deaf or hearing-impaired; and

(j) One (1) private sector member with reading intervention experience.

(2) Each member of the committee, other than the commissioner of education or the commissioner's designee, shall serve for a term of three (3) years or until a successor is appointed, except that upon initial appointment, five (5) members shall serve a one (1) year term, four (4) members shall serve a two (2) year term, and four (4) members shall serve a three (3) year term.

(3) A majority of the full authorized membership shall constitute a quorum.

(4) The committee shall elect, by majority vote, a chair, who shall be the presiding officer of the committee, preside at all meetings, and coordinate the functions and activities of the committee. The chair shall be elected or reelected each calendar year.

(5) The committee shall be attached to the Department of Education for administrative purposes.

(6) The committee shall:

(a) Identify needs, trends, and issues in schools throughout the state regarding reading and literacy programs;

(b) Make recommendations regarding the content of administrative regulations to be promulgated by the Kentucky Board of Education under KRS 158.792;

(c) Advise the Kentucky Board of Education and the Department of Education regarding costs and effectiveness of various reading intervention programs; and

(d) Advise the Department of Education on:

1. Suggested universal screeners for reading to be administered to students in kindergarten through grade three (3) as required by KRS 158.791;

2. Suggested criteria for reading diagnostic assessments to be administered to students in kindergarten through grade three (3) as required by KRS 158.791; and

3. The development, implementation, and outcomes of a statewide professional development program to include early literacy skills instruction and student engagement.

History.

Enact. Acts 1998, ch. 580, § 2, effective July 15, 1998; 2000, ch. 204, § 2, effective July 14, 2000; 2005, ch. 127, § 4, effective March 18, 2005; 2022 ch. 40, § 6, effective March 29, 2022.

Legislative Research Commission Notes.

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which amended this statute, may be cited as the Read to Succeed Act.

(3/18/2005). 2005 Ky. Acts ch. 127, which included an amendment to this section, KRS 158.794, provides that the Act shall be cited as the "Read to Achieve Act of 2005."

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Reading diagnostic and intervention grants, 704 KAR 3:480.

158.795. Statewide adult literacy program. [Renumbered as KRS 151B.140, effective July 1, 1990.]

Compiler's Notes.

This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 24, effective October 18, 1985; 1988, ch. 179, § 3, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.140 by Acts 1990, ch. 470, § 26, effective July 1, 1990. It was also amended by Acts 1990, ch. 476, Pt. IV, § 215; however, the repeal, reenactment, and amendment by ch. 470 prevails. The section was subsequently repealed by Acts 2000, ch. 526, § 30, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Adult Literacy Program fund, 700 KAR 1:010.

State Adult Literacy Program plan, 700 KAR 1:020.

158.796. Governor's Scholars Program — Purpose — Governor's Scholars Program, Inc. — Board of directors — Funding — Reports.

(1) The Governor's Scholars Program is established

to implement an enrichment program for academically gifted students to enhance the next generation of civic and economic leaders and create models of educational excellence. Governor's Scholars Program, Inc. is authorized to operate the Governor's Scholars Program. The Governor's Scholars Program shall be attached to the Office of the Secretary in the Education and Labor Cabinet for administrative purposes.

(2)(a) The Governor or the Governor's designee from the executive cabinet, the commissioner of education, and the president of the Council on Postsecondary Education shall serve as ex officio voting members of the board of directors of Governor's Scholars Program, Inc. In addition, the Governor shall appoint five (5) members of the board as provided in paragraph (b) of this subsection. Other board members of Governor's Scholars Program, Inc. shall be selected in the manner set forth in the articles of incorporation and bylaws of the corporation.

(b) After June 20, 2005, the Governor shall appoint board members as follows:

1. In 2005, the Governor shall appoint two (2) board members to serve three (3) year terms;

2. In 2006, the Governor shall appoint two (2) members to serve three (3) year terms; and

3. In 2007, the Governor shall appoint one (1) member to serve a three (3) year term.

Members appointed by the Governor may be reappointed by the Governor to serve successive terms. In making gubernatorial appointments, the Governor shall consider recommendations and information provided by the nominating committee of the board and shall attempt to promote geographic balance on the board. One (1) of the gubernatorial appointees shall be designated by the board to serve on the committee that functions as the executive committee of Governor's Scholars Program, Inc. The Governor shall make appointments to fill gubernatorial vacancies as they occur. Each appointment after the initial appointment shall be for a three (3) year term unless the appointment is to fill the unexpired portion of a term.

(c) The board of directors shall have the authority to hire, fire, and manage all program personnel, including the executive director.

(3) The annual appropriation for the Governor's Scholars Program from the general fund shall be transmitted to Governor's Scholars Program, Inc. on July 1 of each year to facilitate the operation of the summer program. Funds shall be used only for the purposes of the Governor's Scholars Program and shall not lapse at the end of the fiscal year.

(4)(a) Governor's Scholars Program, Inc. shall follow standard accounting practices and shall submit the following financial reports to the Office of the Governor, the Finance and Administration Cabinet, and the Legislative Research Commission:

1. Quarterly reports of expenditures of state funds, submitted on or before the thirtieth day after the end of each quarter in the corporation's fiscal year;

2. Annual reports of receipts and expenditures for the Governor's Scholars Program, submitted on or before the sixtieth day after the end of the fiscal year of the corporation; and

3. The report of an annual financial audit conducted by an independent auditor, submitted on or before September 1 of each year.

(b) On or before March 1 of each year, Governor's Scholars Program, Inc. shall file with the Office of the Governor, the Finance and Administration Cabinet, and the Legislative Research Commission a report detailing the operations of the Governor's Scholars Program for the preceding year. The report shall include information concerning the summer program, student and faculty demographics, and program outcomes according to such measures of success as the board may adopt.

History.

Enact. Acts 1994, ch. 209, § 6, effective July 15, 1994; 2005, ch. 35, § 1, effective June 20, 2005; 2012, ch. 71, § 3, effective July 12, 2012; 2022 ch. 236, § 71, effective July 1, 2022.

Legislative Research Commission Notes.

(6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

158.797. Parenting and family life skills education. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1988, ch. 147, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.798. Program to encourage studies in mathematics, science, and related technologies — Role of Kentucky Science and Technology Council, Inc.

(1) It is the intention of the General Assembly to generate a substantial increase in the number of mathematicians, scientists, and engineers in the Kentucky workforce in order to foster economic growth in the business sector and to provide high quality jobs for Kentuckians. A program shall be established to encourage studies in math, science, and related technologies, beginning with middle school and continuing through advanced college level work, leading to sustained job placements in Kentucky's technological and innovative businesses and industries. Principal activities for developing, coordinating, and implementing this program shall be conducted by the Kentucky Science and Technology Council, Inc., a private, nonprofit corporation comprised of leaders from education, government, and the private sector.

(2) The Kentucky Science and Technology Council, Inc., may solicit, accept, receive, invest, and expend funds from any public or private source for the purpose of implementing the provisions in this section.

(3) The Kentucky Science and Technology Council, Inc., shall coordinate, promote, and support activities designed to:

(a) Recognize Kentucky middle school students with a high interest, aptitude, or achievement in math, science, and technology related courses, events, and activities; and

(b) Develop additional learning experiences outside the traditional classroom courses, to enhance interest in math and science for middle and high school students, including summer and weekend institutes, skills, application in real world situations, business and industry internships and mentorships, and career awareness exploration.

(c) Solicit program support, cooperation, and funds from private businesses, industries, and government entities with an interest and need for technological innovation;

(d) Develop a college-level academic scholarship program for students in math, science, engineering, and other technology related disciplines, soliciting contributions from private businesses and industries;

(e) Develop internship and post-degree placement commitment plans for industries and those students participating in internships or receiving scholarships; and

(f) Submit an annual report to the Governor and the Legislative Research Commission concerning:

1. Activities related to achieving the program's objectives for the preceding year;

2. Factual information about Kentucky students' progress in math, science, and related technologies and business and industries' changing technological needs; and

3. Recommendations to improve the program in achieving its purposes.

History.

Enact. Acts 1992, ch. 408, § 1, effective July 14, 1992.

158.799. Name for program created by KRS 158.798.

The Kentucky Science and Technology Council, Inc., shall, in cooperation with the Department of Education and the Council on Postsecondary Education, develop and conduct a competition among Kentucky middle and high school students for the purpose of choosing a Kentuckian of national or international acclaim as a scientist, mathematician, or engineer for whom the programs developed under KRS 158.798 shall be named.

History.

Enact. Acts 1992, ch. 408, § 5, effective July 14, 1992; 1997 (1st Ex. Sess.), ch. 1, § 63, effective May 30, 1997; 2022 ch. 236, § 72, effective July 1, 2022.

158.7991. Legislative findings and declarations.

(1)(a) The General Assembly finds and declares that the integration of the arts and foreign languages into the school curriculum benefits students by increasing their motivation to learn; improves attendance; fosters multicultural understanding; and develops neurological cognitive potential through higher-order thinking skills, creativity, and problem solving. Further, the General Assembly finds and declares that arts and foreign language education can renew and invigorate faculty and can foster greater parent and community participation and support.

(b) The General Assembly notes that it created a system of public education that allows and assists all students to acquire certain capacities provided under KRS 158.645, including communication skills necessary to function in a complex and changing civilization and sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage.

(c) The General Assembly further notes that its goals for public schools under KRS 158.6451 include: to develop students' abilities to use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives; to apply core concepts and principles from mathematics, the sciences, the arts, the humanities, and social studies; and to connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various sources.

(2) It is the intent of the General Assembly in enacting KRS 158.7992 to address the findings and declarations set out in subsection (1) of this section.

History.

Enact. Acts 2003, ch. 35, § 1, effective June 24, 2003.

158.7992. Program to promote instruction in the arts and foreign languages.

(1) The Department of Education shall establish a program that promotes the integration of the arts and foreign languages in the elementary school program. A school shall submit an application through the district superintendent, with the agreement of the school council or of the principal, if a council does not exist. The department shall award a grant to at least one (1) school per region based on the quality of the application in meeting the criteria established in subsection (2) of this section. Special consideration shall be given, but not limited to, a school that does not have an existing comprehensive arts and foreign language program.

(2) School programs under subsection (1) of this section shall include, but not be limited to, the following components:

(a) Instruction in each of the four (4) disciplines of dance, drama, music, and the visual arts that includes the core content skills and knowledge taught in a sequential manner and includes all students in the elementary school;

(b) Intense instruction in at least one (1) foreign language that includes skills and knowledge related to communicative language and culture and includes all students in the elementary school;

(c) Integration of arts and foreign language instruction across the curriculum;

(d) Coordination of the programs by teachers with appropriate arts and foreign language certification;

(e) Professional development for teachers and administrators designed to facilitate the effective teaching of arts and foreign languages;

(f) An effective monitoring and evaluation system that includes student performance assessment;

(g) Partnerships with parents, local cultural agencies, individual artists, and native speakers of the foreign language who work in collaboration with classroom teachers;

(h) Support from the local school board, the school council, and teachers; and

(i) Student attendance at one (1) or more live performance or visual art exhibition each school year.

(3) The Department of Education shall report annually by July 1 of each year on the implementation of the program to the Governor and the Legislative Research Commission.

History.

Enact. Acts 2003, ch. 35, § 2, effective June 24, 2003.

158.800. Educational excellence improvement fund — Intent — Allotment of funds. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 37, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.801. Definitions for KRS 158.801 and 158.803.

As used in this section and KRS 158.803, unless the context otherwise requires:

(1) "Program" means the Kentucky Early Mathematics Testing Program; and

(2) "Participating colleges or universities" means all public postsecondary education institutions in Kentucky and any private college or university in Kentucky that chooses to participate in the Kentucky Early Mathematics Testing Program.

History.

Enact. Acts 2000, ch. 258, § 1, effective July 14, 2000.

158.803. Early mathematics testing program — Purposes — Development and requirements of program — Annual reports.

(1) The Kentucky Early Mathematics Testing Program is created to lower the number of high school graduates in Kentucky who require remediation in mathematics upon enrollment in postsecondary education institutions, by providing information to primarily high school sophomores and juniors statewide regarding their level of mathematics knowledge in relation to standards required for community and technical colleges and university level mathematics courses early enough for students to address deficiencies while still in high school.

(2) The testing program shall be a computer website-based program that incorporates a variety of diagnostic mathematics tests to identify knowledge and skills needed for postsecondary education courses.

(3) The testing program shall be developed and conducted by a public university. The Council on Postsecondary Education, with the advice of the Department of Education, shall develop a process to solicit, review, and select a proposal for the development and implementation of the computer website-based testing program. The council shall approve the location of the program at a public university no later than September 1, 2000. The university shall be the fiscal agent for the testing program and shall receive the funds appropriated by the General Assembly.

(4) The program shall be available to all interested Kentucky public and private high school students in grades ten (10) and eleven (11). Student participation in the program shall be voluntary, and program test scores shall not be:

(a) Placed on a student's high school transcript; or

(b) Used by postsecondary education institutions in the admissions process.

(5) The computer website testing program shall be available to all Kentuckians for evaluation of an individual's mathematics knowledge and skills.

(6) The program shall encourage the active participation of all public and private high schools in Kentucky.

(7) The computer website testing program shall:

(a) Develop or adopt appropriate tests to determine the level of mathematics knowledge of high school students in relation to the standards of placement tests given at the community and technical colleges and undergraduate public universities. In the development or adoption of the tests, consideration shall be given to the program of studies and the minimum requirements for high school graduation established in KRS 156.160 and the alignment of these standards with postsecondary course standards;

(b) Develop a structure to permit each participating student the opportunity to take the computer-based test at school in the presence of school personnel or at the student's home in the presence of his or her parents or guardian;

(c) Score the completed tests and provide the test scores and diagnostic information on a student's knowledge and skills electronically to the student and the high school upon completion of the test in the form of electronic mail or printable files or screens.

(d) Provide the following information for up to three (3) participating postsecondary education institutions specified by the student as a possible college choice:

1. The student's test score;

2. A list of mathematics courses required for the student's intended major at a postsecondary education institution;

3. A list of any remedial courses the student might be required to take based on the student's current level of mathematics knowledge as demonstrated on the test;

4. The estimated cost of the remedial courses the student might be required to take; and

5. The high school courses and the specific mathematical concepts or functions a student should consider studying in order to address any deficiencies;

(e) Encourage the chair of the mathematics department or the academic dean at each of the participating postsecondary education institutions specified by the student as a possible college choice to send a personalized letter to the student that:

1. Encourages the student to take additional high school mathematics courses to address deficiencies in mathematics knowledge; or

2. Congratulates the student who does well on the test for his or her achievement and encourages continued study in mathematics; and

(f) Develop and implement a strategy to raise awareness and encourage participation in the program, targeting high school students, parents, high school faculty and administrators, mathematics departments or faculty at postsecondary education institutions, and the general public.

(8) The Kentucky Department of Education shall provide assistance as necessary to the Kentucky Early Mathematics Testing Program to implement the provisions of this section and KRS 158.801.

(9) The public university that conducts the testing program shall submit an annual report to the Kentucky Board of Education and the Council on Postsecondary Education regarding its activities, and the effects of the program on levels of remediation required by participating students.

History.

Enact. Acts 2000, ch. 258, § 2, effective July 14, 2000.

158.805. Commonwealth school improvement fund — Purposes — Criteria for grants to schools needing assistance.

(1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise a school's performance level. The Kentucky Board of Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

(a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management, including better use of formative and summative, performance-based assessments;

(b) To assist in replicating successful programs developed in other districts including those calculated to reduce achievement gaps as defined in KRS 158.649;

(c) To encourage cooperative instructional or management approaches to specific school educational problems; and

(d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.

(2) The Kentucky Board of Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools identified by the board as needing assistance under KRS 158.6455.

(3) The Kentucky Board of Education shall have the sole authority to approve grants from the fund.

(4) The Kentucky Board of Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests may include funding for personnel costs, except funding for personnel costs shall not continue after school improvement funds are no longer provided. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.

(5) The Kentucky Board of Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the Kentucky Board of Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

History.

Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 10, effective October 18, 1985; 1990, ch. 476, Pt. I, § 7, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 13, effective April 14, 1998; 2002, ch. 302, § 3, effective July 15, 2002; 2009, ch. 101, § 11, effective March 25, 2009; 2017 ch. 156, § 9, effective April 10, 2017.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Management improvement program, 703 KAR 3:205.

Kentucky Bench & Bar.

Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

158.806. Read to succeed fund — Teacher professional learning academies — Literacy coaching program.

(1) The read to succeed fund is hereby created to train and support teachers and library media specialists to improve the reading skills of students in kindergarten through grade three (3) as set forth in subsection (2) of this section and in KRS 158.305(5). The fund shall consist of all moneys received from state appropriations, gifts, grants, and federal funds for this purpose. The Department of Education shall administer the fund.

(2) The Department of Education shall implement teacher professional learning academies related to evidence-based practices in instruction, instructional materials, and assessment in reading using moneys appropriated or otherwise received by the read to succeed fund.

(3) The department shall create a literacy coaching program using moneys appropriated or otherwise received by the read to succeed fund. The program shall:

(a) Use data coaches to improve reading and literacy;

(b) Determine the effectiveness of intensive data-focused professional development; and

(c) Provide expert support in literacy and early reading instruction and intervention.

(4) Notwithstanding the provisions of KRS 45.229, unexpended funds in the read to succeed fund in the 2022-2023 fiscal year or in any subsequent fiscal year shall not lapse but shall carry forward to the next fiscal year and shall be used for the purposes established in subsections (1) and (2) of this section.

(5) Any interest earned on moneys in the read to succeed fund shall become part of the fund and shall not lapse.

History.
2022 ch. 40, § 8, effective March 29, 2022.

Legislative Research Commission Notes.
(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which created this statute, may be cited as the Read to Succeed Act.

158.807. Data research initiative — Purposes — Implementation.

(1) There is hereby created the Kentucky data research initiative, a partnership between elementary and secondary schools and postsecondary education research institutions to maximize research capabilities through computer resources. The initiative shall be jointly facilitated by the Kentucky Department of Education and the Council on Postsecondary Education.

(2) The purposes of the data research initiative are to expand the availability of computing resources not available at the research institutions at a relatively low cost, to do education outreach to students and teachers in Kentucky's K-12 system, to expand the research institutions' presence throughout the state, and to maximize the use of computer assets that have already been purchased in K-12 systems but are often underused.

(3) By December 1, 2005, the commissioner of the Department of Education and the president of the Council on Postsecondary Education shall convene appropriate postsecondary education and elementary and secondary educators and administrators to determine how this initiative might be developed, funded, and utilized to enhance research capabilities in the sciences and health-related fields or other appropriate fields of research.

History.
Enact. Acts 2005, ch. 173, Pt. XX, § 1, effective March 20, 2005.

158.808. Energy technology career track program.

(1) Subject to the availability of funds, the Department of Education shall establish an energy technology career track program. The purpose of the program is to provide grants to school districts to develop and implement an energy technology engineering career track across middle and high schools within the district. Program components may include but not be limited to career exploration and counseling, strategies to increase the rigor of instruction in pertinent core content areas, strategies to link core content to an energy technology career focus, professional development for teachers, and cooperative learning opportunities with industry and postsecondary institutions.

(2) The Kentucky Board of Education shall promulgate administrative regulations for the administration of the energy technology career track program. The Department of Education shall administer the program, approve grant recipients, and distribute the funds to local school districts.

History.
Enact. Acts 2007 (2nd Ex. Sess.), ch. 1, § 54, effective August 30, 2007; 2008, ch. 139, § 17, effective July 15, 2008; repealed and reenact., Acts 2010, ch. 5, § 17, effective February 25, 2010; 2013, ch. 59, § 41, effective June 25, 2013.

Legislative Research Commission Notes.
(2/25/2010). 2010 Ky. Acts ch. 5, sec. 28, provides that the repeal and reenactment of this section in that Act "shall apply retroactively to July 15, 2008."

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Energy Technology Engineering Career Pathway, 705 KAR 4:250.

158.809. Virtual computer science career academy — Development and requirements — Annual reports.

(1) It is the intention of the General Assembly to increase the Commonwealth's economic competitiveness in the technology and computing employment sector by significantly increasing the capacity to educate and prepare high school students for the technology workforce. A virtual computer science career academy shall be established to expand access to accelerated, early college career pathways for Kentucky high school students and prepare them for careers in computing, particularly in the field of data science. Principal activities for developing, coordinating, and implementing the academy shall be conducted by WeLeadCS, a private, nonprofit corporation composed of leaders from education, government, and technology and computing sector employers.

(2) WeLeadCS may solicit, accept, receive, invest, and expend funds from any public or private source for the purpose of implementing the provisions in this section.

(3) WeLeadCS shall:

(a) Establish a program in which Kentucky teachers provide virtual, synchronous instruction for dual college credit computing courses to accelerate students' completion of computer science degrees and development of the academic knowledge, technical skills, and employability skills necessary for careers in high-level computing occupations;

(b) Collaborate with the Kentucky Center for Statistics to define workforce needs and opportunities in the technology and computing sector in each local workforce development area;

(c) Develop the nation's first sequential high school career pathway preparing students for careers in data science. The career pathway shall include opportunities for students to earn industry certifications prioritized by employers and college credit for courses that will culminate in accelerated postsecondary degree completion;

(d) Partner with employers in the technology and computing sector to provide a work-based learning program to connect student learning to real-world practices, expose students to a variety of career options with the technology and computing sector, ensure students develop the tools necessary to compete in the workforce, and provide opportunities for job shadowing, internships, and apprenticeships;

(e) Collaborate with employers, K-12 and postsecondary school educators, and state education leaders to develop local and statewide initiatives to raise awareness of career opportunities in the technology and computing sector, particularly in data science;

(f) Advise students in the virtual academy about Kentucky postsecondary degree opportunities in computer science in demand by employers in the technology and computing sector, transferring college credits earned through the academy to expedite and reduce costs of college degree completion, and aligning personal skills and academic abilities to postsecondary degree requirements and employers' expectations;

(g) Recruit and train Kentucky certified teachers to deliver high-quality, synchronous virtual instruction and support students in a virtual learning environment;

(h) Coordinate with the Kentucky Department of Education, local school districts, and postsecondary institutions to ensure compliance with statutes and regulations governing student privacy, grading, articulation agreements, student transcripts, and other administrative details; and

(i) Submit an annual report to the Kentucky Board of Education and the Legislative Research Commission on the academy, including but not limited to student enrollment, course completion, college credit hours earned, industry certifications earned, and student matriculation to postsecondary institutions.

History.
2022 ch. 227, § 1, effective July 14, 2022.

SECONDARY CAREER AND TECHNICAL EDUCATION

158.810. Definitions for KRS 158.810 to 158.816.

For purposes of KRS 158.810 to 158.816:

(1) "Advanced manufacturing" means manufacturing that uses technology and knowledge-based processes that leverage human, intellectual, and financial capital to create globally competitive products;

(2) "At-risk" means a student who is academically unprepared, has inadequate academic preparation for the next educational level, or who is in danger of dropping out of school;

(3) "Career academy" means a small learning community within a larger high school that:

(a) Consists of a heterogeneous group of students taking classes together for at least two (2) years who are taught by a team of teachers from different disciplines;

(b) Provides a college-preparatory academic curriculum based on a career theme that helps students see relationships and connections between academic subjects and their applications in specific career pathways and in broad career areas such as health science, business, pre-engineering, agribusiness, and advanced manufacturing; and

(c) Provides opportunities through partnerships with employers, colleges, and the community for students to engage in internships and work-based learning with adult mentors to motivate students to achieve;

(4) "Career and technical education" means a program of study that leads to the development of academic and specialized occupational skills in career fields;

(5) "Career guidance coach" means a counselor who is assigned one hundred percent (100%) of his or her time to:

(a) The development of students', teachers', and parents' understanding of broad career themes and opportunities through career pathways;

(b) Academic advising and career counseling;

(c) Assisting students in the development of individual learning plans; and

(d) Providing assistance to other teachers;

(6) "Career pathway" means a coherent, articulated sequence of rigorous academic and career-related courses, commencing in ninth grade and leading to an associate degree, an industry-recognized certificate or license, or a baccalaureate or higher degree. A career pathway is developed, implemented, and maintained in partnership among secondary and postsecondary education institutions, businesses, and employers. Career pathways are available to all students, including adult learners, and are designed to lead to rewarding careers;

(7) "Career pathway program of study" means a coherent, articulated sequence of rigorous academic and career and technical education courses, including dual credit opportunities, that prepares secondary students for postsecondary study leading to postsecondary degrees, industry certifications, or licensure;

(8) "Evidence-based instructional model" or "evidence-based model" means the application of valid and relevant knowledge to education activities and programs, which are based on the findings from systematic and empirical methods including observations, experiments, and rigorous data analyses;

(9) "Industry certification" means certification that is awarded to a student who has passed a standardized, valid, industry-based examination that measures the knowledge and skills recognized nationally by employers or by an industry group or association within Kentucky as representing the level of proficiency that is needed to enter a specific field;

(10) "Technical literacy" means a student's ability to read and comprehend the language of a field of study, understand the major technical concepts of that field, and apply the appropriate mathematics concepts to typical problems encountered in the workplace;

(11) "Secondary area technology center" or "secondary area center" means a school facility dedicated to the primary purpose of offering five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas. An area center may be called a "magnet technology center" or "career center" or may be assigned another working title by the parent agency. An area center may be either state or locally operated; and

(12) "Career and technical education department" means a portion of a school facility that has five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas.

History.

Enact. Acts 2001, ch. 123, § 1, effective June 21, 2001; 2012, ch. 150, § 2, effective April 19, 2012.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included an amendment to this statute, shall be known as the "Career Pathways Act of 2012."

158.812. Legislative intent, findings, and declarations.

(1) It is the intent of the General Assembly to provide rigorous academic and career and technical education programs that are relevant for all students and that encourage at-risk students to graduate from high school prepared to enter postsecondary education institutions or the workforce with needed skills.

(2) The purposes of elementary and secondary education programs of career and technical education are to:

(a) Provide students opportunities to understand the relevance of and master academic skills in mathematics, science, English, reading, and communications as well as technical literacy in broad-based career fields;

(b) Provide students a variety of opportunities to master the usage of technology;

(c) Prepare individuals with specialized, transferable academic skills and technical skills for gainful employment in broad-based career fields; and

(d) Assist individuals in making successful transitions from school to work, to postsecondary education, to the military, or from one (1) career to another.

(3) The General Assembly acknowledges that:

(a) Rigorous, relevant, and high-quality career and technical education offers students an opportunity to develop skills in mathematics, science, English, reading, communication, problem-solving, and technology, and in career and technical areas that are essential to meet the goals for Kentucky education as described in KRS 158.6451 and that help students achieve the capacities required of all students as defined in KRS 158.645;

(b) Students need access to career pathway programs that meet high standards, connect technical skills with core academic requirements for high school students, and align with postsecondary education requirements and business and industry needs;

(c) Students can accelerate their overall scholastic achievement when given an opportunity to learn in an integrated school- and work-based environment;

(d) Students are less likely to drop out of school when they are making academic progress and see relevance in the program of study to their future potential for success; and

(e) The General Assembly has a responsibility to provide the resources that recognize the increased costs for offering high-quality, relevant career and technical education programs.

History.

Enact. Acts 2001, ch. 123, § 2, effective June 21, 2001; 2012, ch. 150, § 1, effective April 19, 2012.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included an amendment to this statute, shall be known as the "Career Pathways Act of 2012."

158.814. Comprehensive plan on secondary career and technical education programs — Consultation with Career and Technical Education Advisory Committee.

(1) In order to ensure that high-quality, relevant secondary career and technical programs are available to students in all school districts that enable them to gain the academic and technical skills to meet high school graduation requirements and for successful transition to postsecondary education, work, or the military and to support present-day and future needs of Kentucky employers, the Department of Education shall:

(a) Review and revise as needed the equipment and facilities standards for each career and technical education program identified and described in the career and technical education supplement to the Kentucky program of studies and published by the Department of Education; and

(b) Determine the statewide unmet needs for career and technical education capital projects, including renovations and expansions of existing facilities and the construction of new technology centers, through a needs assessment process. This process shall be tied to specific criteria in determining if the current programs or career pathways offered in locally and state-operated facilities are appropriate for the students in the school districts served as well as for determining if new programs are needed. The statewide assessment of capital needs for career and technical education shall be incorporated into the local school district facility plan as required by KRS 157.420. The Kentucky Board of Education shall incorporate criteria within the administrative regulations relating to school facility plan requirements to prioritize need for career and technical education programming, regardless of whether the programs are locally or state-operated.

(2) The Career and Technical Education Advisory Committee established in KRS 156.806 shall be consulted in carrying out the requirements of this section.

History.

Enact. Acts 2001, ch. 123, § 3, effective June 21, 2001; 2006,

ch. 211, § 82, effective July 12, 2006; 2012, ch. 150, § 6, effective April 19, 2012; 2013, ch. 59, § 42, effective June 25, 2013.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included an amendment to this statute, shall be known as the "Career Pathways Act of 2012."

158.816. Annual statewide analysis and report of academic achievement of technical education students — Assistance plan — Occupation skill standards and assessments.

(1) The Department of Education, with involvement of representatives from the local school districts and teacher preparation institutions, shall complete an annual statewide analysis and report of academic achievement of technical education students who have completed or are enrolled in a sequence of a technical program of at least three (3) high school credits.

(2)(a) The analysis shall include the previous year's results from the state assessment program described in KRS 158.6453. The data shall be disaggregated for all high school students by career cluster areas of agriculture, business and marketing, human services, health services, transportation, construction, communication, and manufacturing and by special populations. Where available, disaggregated data from other national assessments shall also be used.

(b) In addition to assessment scores required under paragraph (a) of this subsection, the analysis shall include:

1. The number of students who took state or national assessments of skill standards and qualified for skills certificates;

2. The number of senior concentrators as defined in the Carl D. Perkins Vocational and Technical Education Act, Pub. L. No. 105-332, who have attained a high school diploma or equivalent;

3. The number of students who made successful transitions to work, military, or postsecondary education. A successful transition to postsecondary education means a student enters directly into advanced training, a certificate program, or a degree program without having to take remedial academic courses;

4. The number of students employed in nontraditional careers; and

5. Other factors deemed appropriate by the state education agencies or required under federal law.

(3)(a) The Department of Education shall coordinate the development of a statewide technical assistance plan to aid providers of programs in identifying areas for improvement for those schools that do not meet their school performance goal and for those schools where technical students as a group do not score equal to or better than the school average in each of the academic areas. The plan shall address methodologies for further analysis at each school including but not limited to:

1. The academic course-taking patterns of the technical students;

2. The rigor and intensity of the technical programs and expectations for student performance in reading, math, science, and writing and other academic skills as well as in technical skill development;

3. The level of communication and collaboration between teachers in technical programs and academic programs, planning, and opportunity for analyzing student achievement, particularly between faculty in the comprehensive high schools with the faculty in state-operated or locally operated secondary area centers and vocational departments;

4. The faculties' understanding of Kentucky's program of studies, academic expectations, and core content for assessment;

5. The knowledge and understanding of academic teachers and technical teachers in integrating mutually supportive curricula content;

6. The level of curricula alignment and articulation in grades eight (8) to sixteen (16);

7. The availability of extra help for students in meeting higher standards;

8. The availability and adequacy of school career and guidance counseling;

9. The availability and adequacy of work-based learning;

10. The availability and adequacy of distance learning and educational technology;

11. The adequacy of involvement of business and industry in curricula, work-based learning, and program development; and

12. The adequacy of teachers' preparation to prepare them for teaching both academic and technical skills to all students that are necessary for successful transition to postsecondary education, work, or the military.

(b)1. The department and the office, in cooperation with the Education Professional Standards Board, teacher preparation programs, postsecondary education institutions, and other appropriate partners, shall ensure that academic core content is embedded or integrated within the performance requirements for teacher education students.

2. Beginning with the 2013-2014 school year and thereafter, the Education Professional Standards Board shall, as a condition of program approval, require career and technical educator preparation programs to include instructional techniques for teacher education students to embed reading, mathematics, and science knowledge and skills into all career and technical education instruction at the secondary level.

(c) The department, in cooperation with the Kentucky Community and Technical College System, shall encourage postsecondary education and business and industry to provide professional development and training opportunities to engage technical faculty in continuous improvement activities to enhance their instructional skills.

(d) The department shall continue efforts with business and industry to develop occupation skill standards and assessments. All efforts shall be made with the involvement of business, industry, and la-

bor. Skill standards and assessments, where available, shall be used as the focus of the curricula.

(4) The department shall consult with the Education Professional Standards Board in carrying out the requirements of this section as they relate to teacher preparation.

History.

Enact. Acts 2001, ch. 123, § 4, effective June 21, 2001; 2006, ch. 211, § 83, effective July 12, 2006; 2009, ch. 101, § 9, effective March 25, 2009; 2012, ch. 150, § 7, effective April 19, 2012; 2013, ch. 59, § 43, effective June 25, 2013.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included an amendment to this statute, shall be known as the "Career Pathways Act of 2012."

158.818. Evidence-based instructional models to address needs of at-risk students — Focus — Components — Training for high school teachers — Incorporation into existing programs.

(1) If funds are appropriated for the purposes of funding evidence-based instructional models or if internal state or federal funds are available, the Kentucky Department of Education, in collaboration with the Kentucky Community and Technical College System, the Education Professional Standards Board, and other appropriate educational entities, shall recommend evidence-based models for addressing the needs of at-risk students.

(2) The evidence-based models shall include a variety of programs and curricula proven to be effective for at-risk students, and shall focus on:

(a) Identification of students at risk for inadequate academic preparation for the next grade level or at risk for dropping out of school;

(b) Reduction in the number of students retained in grade nine (9) and reduction of high school failure rates;

(c) Improvement of student performance through grade-level standards in reading and mathematics with an emphasis on grade nine (9);

(d) Assistance to students and their parents or legal guardians in identifying students' career and educational goals, developing individual learning plans, and the appropriate programs of study to achieve these goals; and

(e) Assistance to adult students in obtaining a high school diploma or a recognized postsecondary education credential that has value in the workplace.

(3) The evidence-based models shall include the following components designed to facilitate more students having a successful start in high school and successfully completing grade nine (9) requirements:

(a) The use of flexible scheduling as appropriate to increase students' time in the study of core language arts and mathematics;

(b) The assignment of the most effective teachers as leaders for instructional teams in grade nine (9) to improve instructional planning, delivery of instruction, and the use of reteaching strategies;

(c) The assignment of mentors to teach students study skills and habits necessary to become independent learners and, when possible, the use of career guidance coaches to advise students; and

(d) Career courses, including career exploration, in grade nine (9) to incorporate project-based instruction that requires the application of grade nine (9) level reading, mathematics, and science skills and that uses a wide variety of technology.

(4)(a) If state or federal funds are available, all career and technical education teachers who teach high school students shall receive training in how to embed reading, mathematics, and science knowledge and skills in specific career and technical education courses.

(b) Training required under paragraph (a) of this subsection may be provided by local school districts or postsecondary education institutions, including community and technical colleges, and outside providers that have a record of working effectively with schools in redesigning the ninth grade.

(5) Career and technical education teachers shall provide evidence through the courses they teach that the students' academic achievement is increased as defined by administrative regulations promulgated by the Kentucky Board of Education and developed in collaboration with the Kentucky Community and Technical College System.

(6) The evidence-based models shall be incorporated into career and technical education programs, career academies, and career pathway programs of study developed under KRS 157.072.

History.

Enact. Acts 2012, ch. 150, § 4, effective April 19, 2012; 2013, ch. 59, § 44, effective June 25, 2013.

Legislative Research Commission Notes.

(4/19/2012). 2012 Ky. Acts ch. 150, sec. 10, provides that the Act, which included the creation of this statute, shall be known as the "Career Pathways Act of 2012."

ASTHMA, DIABETES, AND SEIZURE DISORDER MEDICATIONS

158.830. Legislative findings — Construction of KRS 158.830 to 158.836.

The General Assembly of the Commonwealth of Kentucky finds that:

(1) Asthma is the seventh-most prevalent chronic health condition in the United States and is the leading serious chronic illness of children;

(2) Asthma is the third-ranking cause of hospitalization among children under age fifteen (15) and accounts for almost one (1) in six (6) of all pediatric emergency room visits;

(3) Approximately two hundred fifty thousand (250,000) Kentuckians suffer from asthma, including over sixty thousand (60,000) children;

(4) Nationally more than five thousand four hundred (5,400) individuals die from asthma each year;

(5) Asthma is the number-one cause of school absences attributed to chronic conditions;

(6) Asthma is manageable with treatment and medications;

(7) Physicians and other health care practitioners instruct children with asthma in the proper use of asthma medications; and

(8) KRS 158.830 to 158.836 shall be construed to provide unobstructed access to asthma medications for elementary and secondary school students with asthma.

History.
Enact. Acts 2002, ch. 50, § 1, effective July 15, 2002.

158.832. Definitions for KRS 158.830 to 158.838.

As used in KRS 158.830 to 158.838:

(1) "Anaphylaxis" means an allergic reaction resulting from sensitization following prior contact with an antigen which can be a life-threatening emergency. Anaphylaxis may be triggered by, among other agents, foods, drugs, injections, insect stings, and physical activity;

(2) "Bronchodilator rescue inhaler" means medication used to relieve asthma symptoms or respiratory distress along with devices and device components needed to appropriately administer the medication, including but not limited to disposable spacers;

(3) "Documented medical condition" means a life-threatening allergy, asthma, risk of anaphylaxis, risk of respiratory distress, diabetes, hypoglycemia, adrenal crisis, or other life-threatening medical condition as diagnosed by a health care practitioner;

(4) "Medications" means all medicines individually prescribed by a health care practitioner for the student that pertain to his or her documented medical condition, including epinephrine, bronchodilator rescue inhalers, nebulizers, glucagon, Solu-Cortef, or other medication;

(5) "Health care practitioner" means a physician or other health care provider who has prescriptive authority;

(6) "Self-administration" means the student's use of his or her prescribed medications, pursuant to prescription or written direction from the health care practitioner; and

(7) "Seizure action plan" means a written, individualized health plan designed to acknowledge and prepare for the health care needs of a student diagnosed with a seizure disorder that is prepared by the student's treating physician.

History.
Enact. Acts 2002, ch. 50, § 2, effective July 15, 2002; 2004, ch. 132, § 5, effective April 21, 2004; 2018 ch. 153, § 1, effective July 14, 2018; 2021 ch. 112, § 1, effective June 29, 2021; 2026 ch. 75, § 7, effective April 10, 2026.

Legislative Research Commission Notes.
(7/14/2018). 2018 Ky. Acts ch. 153, sec. 5, provides that 2018 Ky. Acts ch. 153 may be cited as the "Lyndsey Crunk Act." This statute was amended in Section 1 of that Act.

158.834. Self-administration of medications by students with documented medical conditions — Authorization — Written statement — Acknowledgment of liability limitation — Duration of permission.

(1) The board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of medications by a student who has a documented medical condition as defined in KRS 158.832 if the student's parent or guardian:

(a) Provides written authorization for self-administration to the school; and

(b) Provides a written statement from the student's health care practitioner that the student has a documented medical condition and has been instructed in self-administration of the student's prescribed medications to treat the documented medical condition. The statement shall also contain the following information:

1. The name and purpose of the medications;
2. The prescribed dosage;
3. The time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and
4. The length of time for which the medications are prescribed.

(2) The statements required in subsection (1) of this section shall be kept on file in the office of the school nurse or school administrator.

(3) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall incur no liability as a result of any injury sustained by the student from the self-administration of his or her medications to treat his or her documented medical condition. The parent or guardian of the student shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the self-administration of medications used to treat his or her documented medical condition. Nothing in this subsection shall be construed to relieve liability of the school or its employees for negligence.

(4) The permission for self-administration of medications shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (1) to (3) of this section.

History.
Enact. Acts 2002, ch. 50, § 3, effective July 15, 2002; 2004, ch. 132, § 6, effective April 21, 2004; 2026 ch. 75, § 8, effective April 10, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Elliott & Fink, Medication Use in Schools: Education Law Meets Pharmacy Law, Volume 75, No. 1, January 2011, Ky. Bench & Bar 5.

158.836. Possession and use of medications to treat documented medical conditions — Schools electing to keep epinephrine, injectable epinephrine devices, bronchodilator rescue inhalers, and undesignated glucagon on premises — Policies and protocols — Limitation of liability.

(1) Upon fulfilling the requirements of KRS 158.834,

a student with a documented medical condition as defined in KRS 158.832 may possess and use medications to treat the documented medical condition when at school, at a school-sponsored activity, under the supervision of school personnel, or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.

(2) A student who has a documented medical condition shall have:

(a) Epinephrine, a bronchodilator rescue inhaler, a nebulizer, glucagon, Solu-Cortef, or other medication as prescribed by a health care practitioner and provided by his or her parent or guardian in his or her possession or in the possession of the school nurse, school administrator, or his or her designee in all school environments that the student may be in, including the classroom, the cafeteria, the school bus, and on field trips; and

(b) A written individual health care plan in place for the prevention and proactive management for the student in all school environments that the student may be in, including the classroom, the cafeteria, the school bus, and on field trips. The individual health care plan required under this paragraph may be incorporated in the student's individualized education program required under Pub. L. No. 94-142 or the student's 504 plan required under Pub. L. No. 93-112.

(3)(a) Each school is encouraged to keep epinephrine in a minimum of two (2) locations in the school, including but not limited to the school office and the school cafeteria, so that epinephrine may be administered to any student believed to be having a life-threatening allergic or anaphylactic reaction. Schools electing to keep epinephrine shall maintain it in a secure, accessible, but unlocked location. The provisions of this paragraph shall apply to the extent that the epinephrine is donated to a school or a school has sufficient funding to purchase the epinephrine.

(b) Each school is encouraged to keep a bronchodilator rescue inhaler or nebulizer in a minimum of two (2) locations in the school, including but not limited to the school office and athletic office, so that bronchodilator rescue inhalers or nebulizers may be administered to any student believed to be having asthma symptoms or respiratory distress. Schools electing to keep bronchodilator rescue inhalers or nebulizers shall maintain them in a secure, accessible, but unlocked location. The provisions of this paragraph shall apply to the extent that the bronchodilator rescue inhalers or nebulizers are donated to a school or a school has sufficient funding to purchase the bronchodilator rescue inhalers or nebulizers.

(c) Each school is encouraged to stock undesignated glucagon as permitted under KRS 158.837 in a minimum of two (2) locations in the school, including but not limited to the school office and athletic office, so that undesignated glucagon may be administered to a student in accordance with the student's diabetes medical management plan as defined in KRS 158.837, Section 504 plan pursuant to the Rehabilitation Act of 1973, 29 U.S.C. sec. 794, individualized education program, or other written accommodations plan to administer glucagon to the student. Schools electing to stock undesignated glucagon shall maintain it in a secure, accessible, unlocked location and in accordance with KRS 158.837. This paragraph shall apply to the extent that the undesignated glucagon is donated to a school or a school has sufficient funding to purchase and stock undesignated glucagon.

(d) Each school electing to keep epinephrine or bronchodilator rescue inhalers, nebulizers, or undesignated glucagon, shall implement policies and procedures for managing a student's life-threatening allergic reaction, anaphylactic reaction, asthma, or hypoglycemia, developed and approved by the local school board.

(e) The Kentucky Department for Public Health shall develop clinical protocols in the school health section of the Core Clinical Service Guide manual that is maintained in the county or district public health department to address epinephrine, bronchodilator rescue inhalers, nebulizers, and glucagon kept by schools under this subsection and to advise on clinical administration of the epinephrine, bronchodilator rescue inhalers, nebulizers, and glucagon. The protocols shall be developed in collaboration with local health departments or local clinical providers and local schools and local school districts.

(4) Any school employee authorized under KRS 156.502 to administer medication shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the administration or the assistance in the administration of epinephrine, a bronchodilator rescue inhaler, nebulizer, glucagon, Solu-Cortef, or other prescribed medication to any student believed in good faith to be having a life-threatening allergic or anaphylactic reaction, asthma symptoms or respiratory distress, hypoglycemia, or adrenal crisis.

History.

Enact. Acts 2002, ch. 50, § 4, effective July 15, 2002; 2004, ch. 132, § 7, effective April 21, 2004; 2013, ch. 52, § 1, effective June 25, 2013; 2021 ch. 112, § 2, effective June 29, 2021; 2026 ch. 75, § 9, effective April 10, 2026.

158.837. Use of undesignated glucagon by practitioner, pharmacist, or trained individual — Storage — Contacting parents, guardians, and emergency services — Good Samaritan exception — Immunity from civil liability.

(1) As used in this section:

(a) "Administer" means to give glucagon;

(b) "Authorized entity" means a public, private, or parochial school that has a trained individual on the premises or is officially associated with a trained individual;

(c) "Diabetes medical management plan" means a written, individualized diabetes care plan prepared by the student's treating diabetes practitioner or practitioner team that prescribes how the student's diabetes needs are to be met in the school setting;

(d) "Pharmacist" has the same meaning as in KRS 315.010;

(e) "Trained individual" means a school employee or contractor who has successfully completed an

approved education training program under KRS 158.838; and

(f) "Undesignated glucagon" means glucagon prescribed in the name of an authorized entity.

(2) A health care practitioner, acting within the health care practitioner's scope of practice, may prescribe undesignated glucagon in the name of an authorized entity or trained individual for use in accordance with this section.

(3) A pharmacist may dispense undesignated glucagon for a prescription issued in the name of an authorized entity or trained individual for use in accordance with this section.

(4) A trained individual may administer undesignated glucagon in an emergency situation when a school nurse or other licensed health care practitioner is not immediately available and the trained individual believes in good faith that a student is experiencing severe hypoglycemia or other conditions noted in that student's diabetes medical management plan.

(5) An authorized entity that acquires and stocks a supply of undesignated glucagon with a valid prescription shall:

(a) Store the undesignated glucagon in accordance with the manufacturer's instructions in a location that is immediately accessible to trained individuals and any additional requirements established by the Kentucky Department for Public Health; and

(b) Require a school nurse or a trained individual to be responsible for the storage, maintenance, and general oversight of the undesignated glucagon acquired by the authorized entity.

(6) Any authorized entity or trained individual that acquires and stocks a supply of undesignated glucagon in accordance with this section shall notify the assigned school nurse or other school health care provider, an agent of the local emergency medical services, and the local emergency communications or dispatch center of the existence, location, and type of glucagon acquired.

(7) Any authorized entity or trained individual that administers or provides undesignated glucagon to a student who is believed to be experiencing severe hypoglycemia or other conditions noted in that student's diabetes medical management plan shall contact the student's parent, guardian, or emergency contact, and local emergency medical services as soon as possible.

(8) The requirements of subsection (7) of this section shall not apply to any individual who administers or provides undesignated glucagon if that individual is acting as a Good Samaritan under KRS 313.035 and 411.148.

(9) Any authorized entity or trained individual that, in good faith and without compensation, renders emergency care or treatment by the use of undesignated glucagon under this section or KRS 158.834 shall be immune from civil liability for any personal injury resulting from the care or treatment, or resulting from any act or failure to act in providing or arranging further medical treatment, if the person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

(10) The immunity granted under subsection (9) of this section applies to:

(a) A health care practitioner who prescribes or authorizes the emergency use of undesignated glucagon;

(b) A pharmacist who fills a prescription for undesignated glucagon;

(c) A trained individual who administers or provides undesignated glucagon;

(d) An authorized entity that acquires and stocks undesignated glucagon, or provides undesignated glucagon to a trained individual; and

(e) An individual trainer or training entity providing the required training to a trained individual.

(11) The immunity granted under subsection (9) of this section shall not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the care or treatment.

History.

2026 ch. 75, § 6, effective April 10, 2026.

158.838. Emergency administration and self-administration of diabetes and seizure disorder medications — Required training — Required written statements and seizure action plan — Limitation on liability — Renewal of permission — Expiration dates of medication — Self-performance of diabetes care tasks — Diabetes or seizure disorder not to prevent attendance at school the student would ordinarily attend.

(1)(a) Beginning July 15, 2014, the board of each local public school district and the governing body of each private and parochial school or school district shall have at least one (1) school employee at each school who has met the requirements of KRS 156.502 on duty during the entire school day to administer or assist with the self-administration of the following medication:

1. Glucagon subcutaneously to students with diabetes who are experiencing hypoglycemia or other conditions noted in the health care practitioner's written statement under subsection (2)(a)2. of this section;

2. Insulin subcutaneously, through the insulin delivery method used by the student and at the times and under the conditions noted in the health care practitioner's written statement under subsection (2)(a)2. of this section; and

3. A seizure rescue medication or medication prescribed to treat seizure disorder symptoms approved by the United States Food and Drug Administration and any successor agency.

(b) For those assigned the duties under paragraph (a) of this subsection, the training provided under KRS 156.502 shall include instruction in administering:

1. Insulin and glucagon, as well as recognition of the signs and symptoms of hypoglycemia and hyperglycemia and the appropriate steps to be taken to respond to these symptoms; and

2. Seizure medications, as well as the recognition of the signs and symptoms of seizures and the appropriate steps to be taken to respond to these symptoms.

(c) Any training program or guidelines adopted by any state agency for training of school personnel in the diabetes care tasks covered by this section shall be fully consistent with training programs and guidelines developed by the American Diabetes Association. Notwithstanding any state agency requirement or other law to the contrary, for purposes of this training a local school district shall be permitted to use any adequate and appropriate training program or guidelines for training of school personnel in the diabetes care tasks covered under this section.

(d) Any training program or guidelines adopted by any state agency for training of school personnel in the health care needs of students diagnosed with a seizure disorder shall be fully consistent with best practice guidelines from medical professionals with expertise in seizure treatment.

(2)(a) Prior to administering any of the medications listed under subsection (1)(a) of this section to a student, the student's parent or guardian shall:

1. Provide the school with a written authorization to administer the medication at school;

2. Provide a written statement from the student's health care practitioner, which shall contain the following information:

a. Student's name;

b. The name and purpose of the medication;

c. The prescribed dosage;

d. The route of administration;

e. The frequency that the medication may be administered; and

f. The circumstances under which the medication may be administered; and

3. Provide the prescribed medication to the school in its unopened, sealed package with the label affixed by the dispensing pharmacy intact.

(b) In addition to the statements required in paragraph (a) of this subsection, the parent or guardian of each student diagnosed with a seizure disorder shall collaborate with school personnel to implement the seizure action plan. The Kentucky Board of Education shall promulgate administrative regulations establishing procedures for the implementation of seizure action plans.

(3)(a) The statements and seizure action plan required in subsection (2) of this section shall be kept on file in the office of the school nurse or school administrator.

(b) Any school personnel or volunteers responsible for the supervision or care of a student diagnosed with a seizure disorder shall be given notice of the seizure action plan, the identity of the school employee or employees trained in accordance with subsection (1)(a) of this section, and the method by which the trained school employee or employees may be contacted in the event of an emergency.

(4) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall not incur any liability as a result of any injury sustained by the student from any reaction to any medication listed under subsection (1)(a) of this section that a parent or guardian has authorized the school district to administer to a student to treat a hypoglycemic or hyperglycemic episode or a seizure or its administration, unless the injury is the result of negligence or misconduct on behalf of the school or its employees. The parent or guardian of the student shall sign a written statement acknowledging that the school shall incur no liability except as provided in this subsection, and the parent or guardian shall hold harmless the school and its employees against any claims made for any reaction to any medication listed under subsection (1)(a) of this section that a parent or guardian has authorized the school district to administer to a student to treat a hypoglycemic or hyperglycemic episode or a seizure or its administration if the reaction is not due to negligence or misconduct on behalf of the school or its employees.

(5) The permission for the administration of any of the medications listed under subsection (1)(a) of this section shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (2) to (4) of this section.

(6) The school nurse or school administrator shall check the expiration date monthly for each medication listed under subsection (1)(a) of this section that is in the possession of the school. At least one (1) month prior to the expiration date of each medication, the school nurse or school administrator shall inform the parent or guardian of the expiration date.

(7) Upon the written request of the parent or guardian of the student and written authorization by the student's health care practitioner, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin through the insulin delivery system the student uses, treat hypoglycemia and hyperglycemia, and otherwise attend to the care and management of his or her diabetes in the school setting and at school-related activities. A student shall be permitted to possess on his or her person at all times necessary supplies and equipment to perform these monitoring and treatment functions. Upon request by the parent or student, the student shall have access to a private area for performing diabetes care tasks.

(8)(a) Beginning July 15, 2014, a school district shall permit a student who has diabetes or a seizure disorder to attend the same school the student would attend if the student did not have diabetes or a seizure disorder. Such a student may only be transferred to a different school based on health care needs if the individualized education program team, the Section 504 team, or, if appropriate, the student's health services team, makes the determination that the student's health condition requires that the student's care be provided by a licensed health care professional at a different school. For the purpose of this determination, the teams shall include the parent or guardian. The parent or guardian may invite the student's treating physician to the team meeting and the team shall consider the physician's input, whether in person or in written form, when making this determination. This determination shall be

based on individualized factors related to the student's health conditions. A school district shall not prohibit a student who has diabetes or a seizure disorder from attending any school on the sole basis that:

1. The student has diabetes or a seizure disorder;

2. The school does not have a full-time school nurse; or

3. The school does not have school employees who are trained in accordance with KRS 156.502 and assigned to provide care under this section.

(b) Parents or guardians of students who have diabetes or a seizure disorder shall not be required or pressured by school personnel to provide care for a student with diabetes or a seizure disorder during regular school hours or during school-related activities in which the student is a participant. For the purposes of this paragraph, a participant is not a student who merely observes the activity.

(9) The requirements of subsections (1) to (8) of this section shall apply only to schools that have a student enrolled who:

(a) Has a seizure disorder and has a seizure rescue medication or medication prescribed to treat seizure disorder symptoms approved by the United States Food and Drug Administration and any successor agency prescribed by the student's health care provider; or

(b) Has diabetes mellitus and has any of the medications listed under subsection (1)(a) of this section prescribed by the student's health care provider.

(10) Nothing in this section shall be construed to require a school employee to consent to administer medications listed under subsection (1)(a) of this section to a student if the employee does not otherwise consent to provide the health service under KRS 156.502.

(11) Notwithstanding any other provision of the law to the contrary:

(a) The administration of the medications listed under subsection (1)(a) of this section by school employees shall not constitute the practice of nursing and shall be exempt from all applicable statutory and regulatory provisions that restrict the activities that may be delegated to or performed by a person who is not a licensed health care professional; and

(b) A licensed health care professional may provide training to or supervise school employees in the administration of the medications listed under subsection (1)(a) of this section.

History.

Enact. Acts 2005, ch. 177, § 2, effective June 20, 2005; 2014, ch. 3, § 2, effective March 5, 2014; 2018 ch. 153, § 2, effective July 14, 2018.

Legislative Research Commission Notes.

(7/14/2018). 2018 Ky. Acts ch. 153, sec. 5, provides that 2018 Ky. Acts ch. 153 may be cited as the "Lyndsey Crunk Act." This statute was amended in Section 2 of that Act.

NOTES TO UNPUBLISHED DECISIONS

1. Injunctive Relief.

Unpublished decision: Where a diabetic student alleged that a school board discriminated against the student by moving the student out of the student's neighborhood school to a different school that had a full-time nurse on staff, the student's request for injunctive relief was moot because the actions that the student sought to enjoin was already forbidden by Ky. Rev. Stat. Ann. § 158.838(8)(a), and the school board had not "singled out" the student for disparate treatment based on the student's diabetes. R.K. v. Bd. of Educ., 637 Fed. Appx. 922, 2016 FED App. 0079N, 2016 U.S. App. LEXIS 2060 (6th Cir. Ky. 2016).

STUDENT ACHIEVEMENT IN MATHEMATICS AND READING

158.840. General Assembly findings and intent — Importance of students' reading and mathematics skills in achieving scholastic goals — Roles of statewide entities in improving student achievement.

(1) The General Assembly hereby finds that reading and mathematics proficiency are gateway skills necessary for all Kentucky students to achieve the academic goals established in KRS 158.6451. It is the General Assembly's intent that:

(a) All students in kindergarten through grade three (3) having difficulty in reading and mathematics receive early diagnosis and intervention services from highly trained teachers;

(b) All students in kindergarten through grade three (3) needing to make accelerated progress toward proficiency in mathematics based on data from valid and reliable universal screening and diagnostic assessments receive high-quality, evidence-based mathematics instruction and intervention aligned to the Kentucky academic standards for mathematics;

(c) All students demonstrate proficiency in reading and mathematics as they progress through the relevant curricula and complete each assessment level required by the Kentucky Board of Education for the state assessment program established under KRS 158.6453 and in compliance with the requirements of the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor; and

(d) Students who are struggling in reading and mathematics or are not at the proficient level on statewide assessments shall be provided evidence-based and developmentally appropriate diagnostic and intervention services, and instructional modifications necessary to learn.

The General Assembly, the Kentucky Board of Education, the Kentucky Department of Education, the Council on Postsecondary Education, colleges and universities, local boards of education, school administrators, school councils, teachers, parents and families, and other educational entities, such as the Education Professional Standards Board, P-16 councils, the statewide reading research center established under KRS 164.0207, and the Center for Middle School Academic Achievement must collaborate if the intentions specified in this subsection are to be met. Intensive focus on student achievement in reading and mathematics does not negate the responsibility of any entity to help

students obtain proficiency in other core curriculum content areas.

(2) The General Assembly's role is to set policies that address the achievement levels of all students and provide resources for the professional growth of teachers and administrators, assessing students' academic achievement, including valid and reliable universal screening and diagnostic assessment and instructional interventions, technology innovations, targeted reading and mathematics statewide initiatives, research and the distribution of research findings, services for students beyond the regular school day, and other services needed to help struggling learners.

(3) The Kentucky Board of Education shall regularly review and modify, when appropriate, its statewide assessment policies and practices to enable local school districts and schools to carry out the provisions of the statewide assessment and accountability system, required under KRS 158.6453 to improve student achievement in mathematics and reading.

(4) The Kentucky Department of Education shall:

(a) Provide assistance to schools and teachers, including publicizing professional development opportunities, methods of measuring effective professional development, the availability of high quality instructional materials, and developmentally appropriate, valid, and reliable screening and diagnostic assessments of student competency in mathematics and reading. The department shall provide access to samples of units of study, annotated student work, diagnostic instruments, and research findings, and give guidance on parental engagement;

(b) Work with state and national educators and subject-matter experts to identify student reading and mathematical skills in each subject area that align with the state content standards adopted under KRS 158.6453 and identify teaching strategies in each subject area that can be used explicitly to develop the identified reading and mathematical skills under this paragraph;

(c) Encourage the development of comprehensive middle and high school adolescent reading and mathematics plans to be incorporated into the curricula of each subject area to improve the reading comprehension and mathematical skills of all students;

(d) Conduct an annual review of the state grant programs it manages and make recommendations, when needed, to the Interim Joint Committee on Education for changes to statutory requirements that are necessary to gain a greater return on investment;

(e) Provide administrative support and oversight to programs to train classroom coaches and mentors to help teachers with reading and mathematics instruction; and

(f) Require no reporting of instructional plans, formative assessment results, staff effectiveness processes, or interventions implemented in the classroom, except for:

1. Interventions implemented under KRS 158.305(2) and 158.8402;

2. Funds provided under KRS 158.792 or 158.844; or

3. Schools that are identified for comprehensive support and improvement and fail to exit comprehensive support and improvement status after three (3) consecutive years of implementing the turnaround intervention process as described in KRS 160.346.

(5) The Education Professional Standards Board, in cooperation with the Council on Postsecondary Education, shall exercise its duties and functions under KRS 161.028 to ensure that teacher education programs are fulfilling the needs of Kentucky for highly skilled teachers. The Education Professional Standards Board shall:

(a) Coordinate the federal and state grant programs it administers with other statewide initiatives relating to improving student achievement in reading and mathematics to avoid duplication of effort and to make efficient use of resources;

(b) Submit a report every three (3) years to the Legislative Research Commission for referral to the appropriate Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue, summarizing the compliance of each teacher preparation program for alignment to early childhood education or elementary regular education standards and to the instructional requirements set forth in KRS 164.306(1) and 164.3061;

(c) Regularly report program data to an external evaluator for an annual analysis of the ability of teacher preparation programs to properly train and equip teacher preparation program students with the literacy and mathematics content knowledge and skills to educate students in kindergarten through grade three (3); and

(d) Exercise its duties and responsibilities under KRS 161.030 and 161.048 to ensure highly qualified teachers.

(6) Colleges and universities shall:

(a) Utilize institution-wide resources to work with elementary and secondary educators and other entities to align curriculum content to ensure that students who achieve proficiency on standards established at the prekindergarten through secondary levels will require no remediation to successfully enter a postsecondary education program;

(b) Provide quality undergraduate teacher preparation programs to ensure that those preparing to teach reading or mathematics at all grade levels have the necessary content knowledge, assessment and diagnostic skills, and teaching methodologies and that teachers in all subject areas have the requisite skills for helping students at all grade levels develop critical strategies and skills for reading and comprehending subject matter;

(c) Deliver evidence-based continuing education for teachers in reading and mathematics through institutes, graduate level courses, and other professional development activities that support a statewide agenda for improving student achievement in reading and mathematics;

(d) Conduct or assist with research on best practices in assessment, intervention strategies, teaching methodologies, costs and effectiveness of instructional models, and other factors as appropriate to reading and mathematics;

(e) Provide staff to consult and provide technical assistance to teachers, staff, and administrators at elementary, middle, and secondary school sites;

(f) Assume active roles in the statewide initiatives referenced in KRS 156.553 and 158.842; and

(g) Develop written procedures for measuring the effectiveness of activities outlined in paragraphs (a) to (f) of this subsection.

(7) School councils at all school levels are encouraged to identify and allocate resources to qualified teachers to become coaches or mentors in mathematics or coaches or mentors in reading with a focus on improving student achievement in their respective schools.

(8) Local school boards and superintendents shall provide local resources to supplement or match state and federal resources to support teachers, school administrators, and school councils in helping students achieve proficiency in reading and mathematics.

(9) Local school superintendents shall provide leadership and resources to the principals of all schools to facilitate curriculum alignment, communications, and technical support among schools to ensure that students are academically prepared to move to the next level of schooling.

History.

Enact. Acts 2005, ch. 164, § 1, effective March 18, 2005; 2010, ch. 42, § 2, effective July 15, 2010; 2017 ch. 156, § 10, effective April 10, 2017; 2022 ch. 40, § 4, effective March 29, 2022; 2023 ch. 55, § 8, effective July 1, 2024; 2024 ch. 222, § 2, effective July 1, 2024; 2025 ch. 17, § 1, effective June 27, 2025.

Legislative Research Commission Notes.

(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which amended this statute and KRS 158.791 and 158.842 and created KRS 158.8401, 158.8402, 158.843, and 164.3061, may be cited as the Kentucky Numeracy Counts Act.

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which amended this statute, may be cited as the Read to Succeed Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Mathematics Achievement Fund. 704 KAR 3:530.

158.8401. Definitions for KRS 158.840 to 158.844.

As used in KRS 158.840 to 158.844:

(1) "Conceptual understanding" means connecting prior knowledge to new ideas and concepts, and making sense of why a mathematical idea is important and the kinds of contexts in which it is useful;

(2) "Diagnostic assessment" means a testing instrument that assesses a student's current knowledge base of academic content;

(3) "Dyscalculia" has the same meaning as in KRS 158.305;

(4) "Enrichment program" means accelerated intervention within the school day or outside of the school day or school calendar, led by individuals most qualified to provide the intervention and specifically determined to address the individual learning needs of students based on universal screening and diagnostics assessments in mathematics;

(5) "Evidence-based" has the same meaning as in 20 U.S.C. sec. 7801(21);

(6) "Mathematics" means the curriculum of numbers and computations, geometry and measurements, probability and statistics, and algebraic ideas;

(7) "Mathematics coach" means a mathematics leader whose primary responsibility is to provide ongoing support for one (1) or more mathematics teachers. The role of the coach is to improve mathematics teaching practices by working with teachers in their classrooms, observing and providing feedback to them, modeling appropriate teaching practices, conducting workshops or institutes, establishing learning communities, and gathering appropriate and useful resources;

(8) "Mathematics diagnostic assessment" means an assessment that identifies a student at risk of failure in mathematics or a student with major deficits in numeracy and other mathematical concepts and skills;

(9) "Mathematics improvement plan" means an accelerated intervention plan for a student in grade kindergarten through grade three (3) that is developed to increase a student's rate of progress toward proficient performance in mathematics that is identified as necessary based on the student's results on an approved mathematics diagnostic assessment;

(10) "Mathematics improvement team" means a team that develops and oversees the progress of a mathematics improvement plan and includes:

(a) The parents or guardians of the student that is the subject of the mathematics improvement plan;

(b) No less than one (1) regular education teacher of the student, to provide information about the general curriculum for same-aged peers;

(c) A representative of the local education agency who is knowledgeable about the mathematics curriculum and the availability of the evidence-based mathematics resources of the local education agency; and

(d) Any specialized certified school employees, including but not limited to mathematics teachers, specialists, or coaches, for students receiving mathematics instruction educational programming or special education services;

(11) "Mathematics intervention program" means an intensive instructional program that is based on valid research and is provided by a highly trained teacher to specifically meet individual students' needs;

(12) "Multitiered system of supports" means a systemic, continuous improvement framework in which evidence-based problem-solving and decision making is practiced across all levels of the educational system for supporting students. The framework of MTSS utilizes high quality evidence-based instruction, intervention, and assessment practices to ensure that every student receives the appropriate level of support to be successful. A multitiered system of supports helps schools and districts to organize resources through alignment of academic standards, implemented with fidelity and sustained over time, in order to accelerate the performance of every student to achieve and exceed proficiency;

(13) "Number sense" means the ability to represent whole and rational numbers in multiple ways, numerical magnitude estimation, selecting and using benchmarks such as tens or hundreds, decomposing and recomposing numbers, understanding the effects of operations on numbers, and performing mental calculation and estimation;

(14) "Numeracy" means the development of the basic concepts which include counting, place value, addition and subtraction strategies, multiplication and division strategies, and the concepts of time, money, and length;

(15) "Place value understanding" means the understanding of representations and concepts necessary to successfully process multi-digit numbers;

(16) "Spatial reasoning" means the capacity to mentally generate, transform, and rotate a visual image and thus understand and recall spatial relationships between objects;

(17) "Subitizing" means quickly recognizing and naming how many objects are in a group without counting; and

(18) "Universal screener" means a process of providing a brief assessment to all students within a grade level to assess the students' performance in mathematical content and practices.

History.
2024 ch. 222, § 3, effective July 15, 2024.

Legislative Research Commission Notes.
(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which created this statute and KRS 158.8402, 158.843, and 164.3061 and amended KRS 158.791, 158.840, and 158.842, may be cited as the Kentucky Numeracy Counts Act.

158.8402. Administrative regulations — Multitiered system of supports for mathematics — Implementation status report — Technical assistance and training to local districts — Requirements for superintendent of public charter school board of directors — Mathematics diagnostic assessment — Improvement plan and accelerated interventions — Resources.

(1) Notwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to define and establish a multitiered system of supports that shall include evidence-based mathematics instruction, intervention, and instructional strategies for district-wide use for students in kindergarten through grade three (3).

(2) By November 1, 2027, and each year thereafter, the department shall submit the implementation status of the multitiered system of supports required pursuant to subsection (1) of this section for all school districts to the Legislative Research Commission for referral to the Interim Joint Committee on Education.

(3) The department shall provide technical assistance and training to local districts to assist in the implementation of the district-wide, multitiered system of supports as a means to identify and assist any student experiencing difficulty in mathematics.

(4) The technical assistance and training shall be designed to improve:

(a) The use of specific screening processes and diagnostic assessments to identify student strengths and needs;

(b) The use of universal screening and diagnostic data for implementing instruction and intervention, as needed;

(c) The use of valid and reliable evidence-based instructional strategies and interventions for mathematics education;

(d) Progress monitoring of student performance; and

(e) Accelerated, intensive, direct instruction that addresses students' individual differences, including advanced learners, and enables students that are experiencing difficulty to catch up with typically performing peers.

(5)(a) By January 1, 2026, each superintendent or public charter school board of directors shall select:

1. At least one (1) universal screener for mathematics that is determined by the department to be valid and reliable to be administered to all students in kindergarten through grade three (3); and

2. At least one (1) diagnostic assessment for mathematics that is determined by the department to be reliable and valid to be administered as part of a multitiered system of supports for students in kindergarten through grade three (3).

(b) Each superintendent or public charter school board of directors shall adopt an evidence-based curriculum along with high-quality instructional resources for mathematics that is determined by the department to be reliable, valid, and aligned to Kentucky academic standards for mathematics required by KRS 158.6453 for kindergarten through grade three (3).

(c) All teachers of students in kindergarten through grade three (3), including public charter school teachers, shall be trained on any mathematics universal screener and diagnostic assessment selected by the superintendent or public charter school board prior to administration of the assessment. The training shall address:

1. How to properly administer the mathematics universal screener and diagnostic assessment;

2. How to interpret the results of the mathematics universal screener and diagnostic assessment to identify students needing interventions;

3. How to use the assessment results to design instruction and interventions;

4. The use of the assessment to monitor the progress of student performance; and

5. The use of accelerated, intensive, and direct instruction that addresses students' individual differences and enables students to achieve proficiency in mathematics, including but not limited to daily, one-on- one instruction.

(6) Beginning with the 2026-2027 school year, a universal screener determined by the department to be valid and reliable shall be given in the first thirty (30) calendar days of the school year to each student in

kindergarten through grade three (3) at a public school or public charter school.

(7) Those students determined to be at risk for not meeting grade-level benchmarks in mathematics for kindergarten through grade three (3) based on the universal screener shall be given a mathematics diagnostic assessment determined by the department to be valid and reliable to identify the individual student deficits in numeracy and other mathematical content and practices as listed in subsection (1) of this section in the first forty-five (45) calendar days of the school year.

(8) A mathematics improvement plan shall be developed and implemented in the first sixty (60) calendar days of the school year by a mathematics improvement team for any student in kindergarten through grade three (3) identified as needing accelerated interventions to progress toward proficient performance in mathematics. The mathematics improvement plan shall require:

(a) Intensive intervention that includes effective instructional strategies and high-quality instructional resources necessary to help the student make accelerated progress toward proficient performance in mathematics and become ready for the next grade, including but not limited to daily, one-on- one instruction with students the most in need provided by certified teachers specifically trained and most qualified to provide one-on-one instruction in numeracy; and

(b) Written quarterly progress reports provided by the school to a parent or guardian of any student subject to a mathematics improvement plan. The written quarterly progress report for the mathematics improvement plan may be included in the school's existing quarterly student progress report.

(9) Beginning in the 2026-2027 school year, if a student's rate of progress toward proficient performance in mathematics needs accelerated interventions as demonstrated by the results of an approved universal screener and mathematics diagnostic assessment, the local school district shall provide:

(a) Enrichment programs using evidence-based mathematics instruction and other strategies;

(b) Intensive instructional services, progress monitoring measures, and supports; and

(c) Parents and legal guardians of students identified for accelerated interventions in mathematics with information on how to encourage mathematics success at home.

(10) By September 1, 2025, if funds are available, the department shall establish teacher academies or coaching models for teachers of students in kindergarten through grade eight (8). The teacher academies or coaching models shall be related to evidence-based practices in instruction, instructional materials, and assessment in mathematics.

(11) The department shall develop and maintain a web-based resource providing teachers access to:

(a) Screening and diagnostic tools, universal screeners, screening processes, and diagnostic assessments;

(b) Evidence-based curriculum;

(c) High quality instructional resources; and

(d) General supports and lesson plans.

(12) The department shall encourage districts to utilize both state and federal funds, as appropriate, to implement a district-wide multitiered system of supports, including high-quality mathematics instruction and instructional resources, evidence-based intervention strategies and materials, aligned curriculum-based professional learning, and ongoing, job-embedded coaching supports.

(13) In compliance with 20 U.S.C. sec. 1414(a)(1)(E), screening of a student to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special education and related services, and nothing in this section shall limit a school district from completing an initial evaluation of a student suspected of having a disability.

History.

2024 ch. 222, § 4, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which created this statute and KRS 158.8401, 158.843, and 164.3061 and amended KRS 158.791, 158.840, and 158.842, may be cited as the Kentucky Numeracy Counts Act.

158.842. Committee for Mathematics Achievement — Membership, purposes, organization, staffing, and duties of committee — Report to Interim Joint Committee on Education.

(1) The Committee for Mathematics Achievement is hereby created for the purposes of developing a multifaceted strategic plan to improve student achievement in mathematics at all levels of schooling, prekindergarten through postsecondary and adult. At a minimum the plan shall address:

(a) Evidence-based curriculum that is aligned prekindergarten through postsecondary, including consensus among high school teachers and postsecondary education faculty about expectations, curriculum, and assessment;

(b) Attitudes and beliefs of teachers about mathematics;

(c) Teachers' knowledge of mathematics;

(d) Diagnostic assessment, intervention services, universal screeners, and instructional strategies;

(e) Shortages of teachers of mathematics, including incentives to attract strong candidates to mathematics teaching;

(f) Statewide institutes that prepare cadres of mathematics leaders in local school districts, which may include highly skilled retired mathematics teachers, to serve as coaches and mentors in districts and schools;

(g) Cohesive continuing education options for experienced mathematics classroom teachers;

(h) Closing the student achievement gap among various student subpopulations;

(i) Curriculum expectations and assessments of students among the various school levels, prekindergarten, primary, elementary, middle, and high school;

(j) Curriculum expectations and assessments for adult education centers;

(k) Introductory postsecondary education mathematics courses that are appropriate to the wide array of academic programs and majors;

(*l*) Research to analyze further the issues of transition from high school or High School Equivalency Diploma programs to postsecondary education mathematics; and

(m) The early mathematics testing program under KRS 158.803. Other factors may be included in the strategic plan as deemed appropriate by the committee to improve mathematics achievement of Kentucky students.

(2) The committee shall be composed of twenty-three (23) members as follows:

(a) The commissioner of education or his or her designee;

(b) The president of the Council on Postsecondary Education or his or her designee;

(c) The president of the Association of Independent Kentucky Colleges and Universities or his or her designee;

(d) The secretary of the Education and Labor Cabinet or his or her designee;

(e) Four (4) representatives with a specialty in mathematics or mathematics education who have expertise and experience in professional development, especially with coaching and mentoring of teachers, from any of the public postsecondary education institutions defined in KRS 164.001. The representatives shall be selected by mutual agreement of the president of the Council on Postsecondary Education and the commissioner of education;

(f) One (1) adult education mathematics instructor selected by the secretary of the Education and Labor Cabinet;

(g) Two (2) elementary, two (2) middle, and two (2) high school mathematics teachers, appointed by the commissioner of education;

(h) Three (3) school administrators or building-level mathematics instructional coaches, with one (1) each representing elementary, middle, and high school, appointed by the commissioner of education;

(i) Two (2) district administrators or district-level mathematics instructional coaches appointed by the commissioner of education;

(j) The executive director of the Center for Mathematics created under KRS 164.525 or his or her designee;

(k) The executive director of AdvanceKentucky or his or her designee; and

(*l*) The executive director of the Partnership Institute for Math and Science Education Reform or his or her designee.

(3) A majority of the membership present shall constitute a quorum.

(4) Each member of the committee, other than members who serve by virtue of their positions, shall serve for a term of three (3) years or until a successor is appointed and qualified.

(5) A chair of the committee shall be elected each calendar year. An individual may not serve as chair for more than three (3) consecutive years. The chair shall be the presiding officer of the committee, and coordinate the functions and activities of the committee.

(6) The committee shall be attached to the Kentucky Department of Education for administrative purposes. The commissioner of education shall contract with a mathematics-trained professional to provide part-time staff support to the committee. The commissioner of education and the president of the council shall reach consensus in the selection of a person to fill the position. The person selected shall have a graduate degree, a mathematics or mathematics education major, and teaching or administrative experience in elementary and secondary education. The person shall not be a current employee of any entity represented on the committee. The department shall provide office space and other resources necessary to support the staff position and the work of the committee.

(7) The committee, under the leadership of the chair, may organize itself into appropriate subcommittees and work structures to accomplish the purposes of the committee.

(8) Members of the committee shall serve without compensation but shall be reimbursed for necessary travel and expenses while attending meetings at the same per diem rate promulgated in administrative regulation for state employees under provisions of KRS Chapter 45. Funds shall be provided school districts to cover the cost of substitute teachers for those teachers on the committee at each district's established rate for substitute teachers.

(9) If a vacancy occurs within the committee during its duration, the vacancy shall be filled in the same manner as set forth in the original appointment.

(10) The committee shall provide a final written report of committee activities and progress regarding the strategic plan required under subsection (1) of this section to the Interim Joint Committee on Education and the Legislative Research Commission by May 1, 2025.

(11) The committee shall have ongoing responsibility for providing advice and guidance to policymakers in the development of statewide policies and in the identification and allocation of resources to improve mathematics achievement. In carrying out this responsibility, the committee shall periodically review the strategic plan and make modifications as deemed appropriate and report those to the Interim Joint Committee on Education.

(12) The committee shall collaborate with the Center for Mathematics to ensure that there is ongoing identification of research and evidence-based intervention programs for K-12 students who have fallen behind in mathematics, rigorous mathematics curricula that prepare students for the next level of schooling, research and evidence-based professional development models that prepare teachers in mathematics and pedagogy, and strategies for closing the gap between high school or a High School Equivalency Diploma program and postsecondary mathematics preparation.

History.

Enact. Acts 2005, ch. 164, § 2, effective March 18, 2005; 2006, ch. 211, § 89, effective July 12, 2006; 2009, ch. 11, § 51, effective June 25, 2009; 2017 ch. 63, § 15, effective June 29, 2017; 2019 ch. 146, § 29, effective June 27, 2019; 2022 ch. 236, § 73, effective July 1, 2022; 2024 ch. 222, § 5, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which amended this statute and KRS 158.791 and 158.840 and created KRS 158.8401, 158.8402, 158.843, and 164.3061, may be cited as the Kentucky Numeracy Counts Act.

(3/18/2005). 2005 Ky. Acts ch. 164, sec. 2, subsection (3), contained a reference to "subsection (1)(f) of this section." This reference should have been changed to "subsection (2)(f) of this section" when the Senate committee substitute inserted a new subsection (1). The Statute Reviser, under the authority of KRS 7.136, has made the change.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Mathematics Achievement Fund, 704 KAR 3:530.

Teachers' Professional Growth Fund, 704 KAR 3:490.

158.843. Kentucky numeracy counts fund — Uses — Eligibility.

(1) The Kentucky numeracy counts fund is hereby created for the purpose of training and supporting teachers to improve the mathematics content and practices of students in kindergarten through grade eight (8), as set forth in subsection (2) of this section and KRS 158.8402(12). The fund shall consist of all moneys received from state appropriations, gifts, grants, and federal funds for this purpose. The department shall administer the fund.

(2) The department shall implement teacher professional learning academies related to evidence-based practices in instruction, instructional materials, and assessment in mathematics using moneys appropriated to or otherwise received by the Kentucky numeracy counts fund.

(3) The department shall create a mathematics coaching program using moneys appropriated to or otherwise received by the Kentucky numeracy counts fund. The program shall:

(a) Use data coaches to improve mathematics instruction and intervention;

(b) Determine the effectiveness of intensive data-focused professional development; and

(c) Provide expert support in mathematics instruction and intervention.

(4)(a) The department shall provide grants to local school districts and public charter schools. The grant shall only be used to purchase approved high- quality research and evidence-based curriculum aligned to kindergarten through grade three (3) academic standards in mathematics and expenditures for curriculum-based professional learning to implement new curriculum.

(b) To be eligible to receive a grant, a local school district or public charter school shall:

1. Submit an application in accordance with paragraph (c) of this subsection; and

2. Agree to adopt a common comprehensive mathematics program that is determined by the department to be reliable, valid, and aligned to mathematics standards required by KRS 158.6453 and outlined in an administrative regulation promulgated by the Kentucky Board of Education.

(c) Local school districts shall submit applications that include a district-wide plan and public charter schools shall submit applications that include a school plan for implementation of mathematics curriculum that includes:

1. How the district or public charter school will implement the new curriculum by school and by grade level; and

2. The timeline for the rollout of upgraded curriculum materials for core instruction in classrooms.

(d) Available grant funding shall be distributed to eligible applicants based on a rubric developed by the department. The rubric shall consider the information provided in accordance with paragraphs (b) and (c) of this subsection and prioritize applications from local school districts or public charter schools:

1. In which more than fifty percent (50%) of the enrolled students scored below the statewide average on the statewide assessments in mathematics administered for the preceding school year;

2. With the greatest need for financial assistance; and

3. That propose comprehensive plans most likely to increase student achievement in mathematics.

(e) The department shall distribute the awarded grant money to a public charter school authorizer, and the authorizer shall distribute one hundred percent (100%) of the grant money to the charter school.

(5) Notwithstanding the provisions of KRS 45.229, unexpended funds in the Kentucky numeracy counts fund shall not lapse but shall carry forward to the next fiscal year and shall be used for the purposes established in this section.

(6) Any interest earned on moneys in the fund shall become part of the fund and shall not lapse.

History.

2024 ch. 222, § 6, effective July 15, 2024.

Legislative Research Commission Notes.

(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which created this statute and KRS 158.8401, 158.8402 and 164.3061, and amended KRS 158.791, 158.840, and 158.842, may be cited as the Kentucky Numeracy Counts Act.

158.844. Mathematics achievement fund — Creation — Use and disposition of moneys — Administrative regulations — Requirements for grant applicants — Department to provide information to schools and to make annual report to Interim Joint Committee on Education.

(1) The mathematics achievement fund is hereby created to provide developmentally appropriate diagnostic assessment and intervention services to students, primary through grade 12, to help them reach proficiency in mathematics on the state assessments under KRS 158.6453 and in compliance with the "No Child Left Behind Act of 2001," 20 U.S.C. secs. 6301 et seq., as required under KRS 158.840.

(2) The grant funds may be used to support the implementation of diagnostic and intervention services in mathematics. The use of funds may include: pay for

extended time for teachers, released time for teachers to serve as coaches and mentors or to carry out other responsibilities needed in the implementation of intervention services, payment of substitute teachers needed for the support of mathematics teachers, purchase of materials needed for modification of instruction, and other costs associated with diagnostic and intervention services or to cover other costs deemed appropriate by the Kentucky Board of Education.

(3) The fund shall:

(a) Provide funding for the Center for Mathematics created in KRS 164.525 and the costs of training selected teachers in the diagnostic assessment and intervention skills that are needed to assist struggling students in the primary program and other grade levels;

(b) Provide renewable, two (2) year local grants to school districts and for purposes described in subsection (2) of this section; and

(c) Provide operational funding for the Committee for Mathematics Achievement created in KRS 158.842.

(4) Any funds appropriated to the mathematics achievement fund that are specifically designated by the General Assembly to support the Center for Mathematics shall be appropriated to the Council on Postsecondary Education and distributed to the university administering the center, as determined by the council under KRS 164.525.

(5) Any moneys in the fund at the close of a fiscal year shall not lapse but shall be carried forward to be used for the purposes specified in this section.

(6) Any interest earnings of the fund shall become a part of the fund and shall not lapse.

(7)(a) Any funds appropriated to the mathematics achievement fund and specifically designated by the General Assembly as funding for grants to local school districts or to support the Committee for Mathematics Achievement shall be administered by the Kentucky Department of Education.

(b) The Kentucky Board of Education shall promulgate administrative regulations relating to the grants for local school districts based on recommendations from the Committee for Mathematics Achievement, the secretary of the Education and Labor Cabinet, the commissioner of education, and the Center for Mathematics established in KRS 164.525. The administrative regulations shall:

1. Identify eligibility criteria for grant applicants;

2. Specify the criteria for acceptable diagnostic assessments and intervention programs and coaching and mentoring programs;

3. Establish the minimum annual evaluation process for each grant recipient;

4. Identify the annual data that must be provided from each grant recipient;

5. Define the application and approval process;

6. Establish matching fund requirements if deemed necessary by the board;

7. Define the obligations for professional development and continuing education for teachers, administrators, and staff of each grant recipient;

8. Establish the conditions for renewal of a two (2) year grant; and

9. Specify other conditions necessary to implement the purposes of this section.

(c) As part of the application process, the board shall require that a grant applicant provide assurances that the following principles will be met if the applicant's request for funding is approved:

1. Mathematics instruction will be standards-based and utilize research-based practices;

2. Intervention and support services will supplement, not replace, regular classroom instruction; and

3. Intervention services will be provided to primary program students and other students who are at risk of mathematics failure within the school based upon ongoing assessments of their needs.

(d) If matching funds are required, the school council or, if none exists, the principal or the superintendent of schools, shall allocate matching funds. Funding for professional development allocated to the school council under KRS 160.345 and for continuing education under KRS 158.070 may be used to provide a portion or all of a school's required match.

(e) The Department of Education shall make available to schools:

1. Information from the Center for Mathematics regarding diagnostic assessment and intervention programs and coaching and mentoring programs of proven-practice in meeting the needs of primary students and other students who are at risk of failure;

2. Technical assistance to potential applicants and grant recipients;

3. A list of professional development providers offering teacher training in diagnostic assessment and intervention strategies and coaching and mentoring; and

4. Information from the Center for Mathematics on how to communicate to parents effective ways of interacting with their children to improve their mathematics concepts, skills, and understanding.

(f) The Department of Education shall submit a report to the Interim Joint Committee on Education no later than September 1 of each year outlining the use of grant funds. By November 1, 2007, the Department of Education with input from the Committee for Mathematics Achievement and the Center for Mathematics shall conduct a statewide needs assessment of the resources needed in each school to help each child achieve proficiency in mathematics by the year 2014 and report to the Interim Joint Committee on Education an estimate of the cost and a specific timeline for meeting the goal established by the Commonwealth.

History.

Enact. Acts 2005, ch. 164, § 3, effective March 18, 2005; 2009, ch. 11, § 52, effective June 25, 2009; 2022 ch. 236, § 74, effective July 1, 2022.

Legislative Research Commission Notes.

(3/18/2005). 2005 Ky. Acts ch. 164, sec. 3, contained three references to the Mathematics Achievement Committee. The correct name for this entity is the Committee for Mathematics Achievement. The Statute Reviser, under the authority of KRS 7.136, has changed these references to be consistent with

sec. 2 of this Act, which created the Committee for Mathematics Achievement and was codified as KRS 158.842.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Mathematics Achievement Fund. 704 KAR 3:530.

STUDENT ACHIEVEMENT IN STEM DISCIPLINES

158.845. Definitions for KRS 158.845 to 158.849.

As used in KRS 158.845 to 158.849:

(1) "STEM" means science, technology, engineering, and mathematics; and

(2) "Advanced science and mathematics" means Advanced Placement biology, calculus, chemistry, computer science, environmental science, and physics, and International Baccalaureate biology, chemistry, computer science, environmental systems, mathematical studies, further mathematics, and physics.

History.
Enact. Acts 2008, ch. 134, § 1, effective July 15, 2008.

158.846. Legislative findings concerning academic achievement in STEM disciplines.

The General Assembly hereby finds that:

(1) The future of Kentucky depends upon the ability to develop intellectual capital that can drive the research and development activities that will allow the Commonwealth to successfully compete in the global knowledge-based economy;

(2) Kentucky's natural resources, the nation's need for energy independence, and the worldwide movement toward the creation of cleaner and more sustainable energy technologies afford Kentucky the opportunity to become an international leader in energy diversification;

(3) Strengthening Kentucky's position in key areas of the knowledge-based economy, including energy and environmental technology, biosciences, materials science, advanced manufacturing, information technology, human health and development, and other fields, requires a strong and steady stream of researchers, workers, policymakers, and entrepreneurs trained in the STEM disciplines;

(4) The number of Kentucky's elementary and secondary students interested in pursuing, and adequately prepared for success in, the STEM disciplines in college and the workforce is insufficient to meet the challenges and opportunities with which Kentucky is confronted;

(5) The number of Kentucky's elementary, middle, and secondary school teachers who are highly qualified to provide instruction in the STEM disciplines is insufficient to adequately prepare students for careers in the knowledge-based economy; and

(6) Bold, collaborative, and strategic action is needed by all stakeholders in Kentucky's P-20 education system, business sector, and government to improve Kentucky's position for success in the knowledge-based economy by expanding and strengthening STEM educational opportunities from prekindergarten through the doctoral degree level, inspiring more Kentuckians to pursue those opportunities, and linking those opportunities with a coherent set of statewide economic and workforce development strategies.

History.
Enact. Acts 2008, ch. 134, § 2, effective July 15, 2008.

158.847. Science and mathematics advancement fund — Purposes — Administrative regulations.

(1)(a) The science and mathematics advancement fund is hereby created to provide incentives for public schools to provide or expand student access to rigorous science and mathematics curricula, to make available advanced science and mathematics courses and college credit in these disciplines for high school students, and to increase the quantity and quality of science and mathematics teachers in Kentucky.

(b) Funds may be used in support of public schools to provide:

1. Payment of student fees for AP and IB examinations;

2. Scholarships for high school students to take advanced science and mathematics courses through the Kentucky Virtual High School when those courses are not offered at the school in which they are enrolled;

3. Two (2) year grants to high schools to support the start-up of advanced science and mathematics courses;

4. Two (2) year renewable grants to middle schools to support accelerated student learning in science and mathematics;

5. Grants to school districts for programs to develop and implement an energy technology engineering career track; and

6. Professional development opportunities, and payment of expenses and stipends for participation, for elementary school teachers to deepen their content knowledge and improve instructional practice in science and mathematics.

(c) The fund may receive state appropriations, grants, gifts, federal funds, or any other funds, public or private.

(d) Funds from the science and mathematics advancement fund shall be distributed after all other funds available for these purposes have been obligated, including state funds, federal funds, or any funds available through a scholarship program administered by the Kentucky Higher Education Assistance Authority.

(2) The Kentucky Board of Education shall promulgate administrative regulations for the administration of the science and mathematics advancement fund. The Kentucky Department of Education shall administer the fund, approve grant recipients, and distribute the funds to local school districts and other appropriate educational agencies.

History.
Enact. Acts 2008, ch. 134, § 3, effective July 15, 2008.

Legislative Research Commission Notes.
(7/15/2008). The Reviser of Statutes has renumbered subsection (1) of this statute from the way it appeared in 2008 Ky. Acts ch. 134, sec. 3, under the authority of KRS 7.136(1)(a).

158.848. Grant programs concerning STEM disciplines and AP and IB courses.

(1) Using funds from the science and mathematics advancement fund, the Department of Education shall establish the following grant programs for public schools:

(a) High School Advanced Science and Mathematics Course Start-up Program;

(b) Middle School Mathematics and Science Scholars Program; and

(c) District Energy Technology Career Track Program.

(2)(a) High School Advanced Science and Mathematics Course Start-up Program. The purpose of the program is to increase the number of students who successfully complete rigorous science and mathematics coursework during high school by providing support to high schools to offer additional advanced science and mathematics courses with highly trained teachers and appropriate course materials.

(b) The program shall provide two (2) year grants to high schools. To qualify for a grant, a school shall initiate at least one (1) advanced mathematics and science course. During the first year of the grant, funds shall be used for planning and the training of teachers. During the second year of the grant, funds shall be used to provide additional support for implementation of an advanced science and mathematics course.

(c) Permissible uses of funds include additional training for an advanced science and mathematics teacher and the purchase of classroom supplies, textbooks, laboratory equipment, and other instructional materials.

(d) A high school applying for a grant under this subsection shall provide assurances that:

1. All teachers of advanced science and mathematics courses supported by the grant shall participate in a College Board-endorsed AP summer training institute or International Baccalaureate-sponsored IB summer workshop, as available; and

2. All students completing AP courses supported by the grant shall take the AP examination, and all students enrolled in the IB courses supported by the grant shall take the IB examination, in the respective content areas.

(3)(a) Middle School Mathematics and Science Scholars Program. The purpose of the program is to increase the number of students entering high school who are well-prepared to undertake rigorous mathematics and science coursework, culminating in successful completion of advanced science and mathematics courses and high achievement on AP and IB examinations.

(b) The program shall provide two (2) year renewable grants to middle schools to support intensive, accelerated student learning in mathematics and the sciences, to be offered at no cost to participants. Grants shall be used to support activities that may include but not be limited to programs during the school day, after-school programs, Saturday programs, or multiweek summer sessions.

(c) The grant application shall ensure that teachers participating in the grant have the skills to provide intensive, accelerated student learning in mathematics or the sciences and that they will receive ongoing, relevant professional development.

(d) A middle school receiving grants shall collaborate with elementary schools from which it receives students, and with high schools to which it sends students, to share information on grant activities; strengthen alignment of curricula, content-knowledge expectations, and instructional practice between schools; and provide relevant professional development opportunities.

(e) The accelerated learning program shall include strategies to improve the academic skills in mathematics and science for all students for whom significant academic achievement gaps have been identified and to attract them into higher level mathematics and science courses. Specific activities to recruit and enroll students from all racial, ethnic, and socioeconomic groups within the school shall be conducted. Each grant applicant shall provide assurances that the necessary resources will be allocated and utilized to help students in all subpopulations academically succeed in the accelerated learning program and to meet the enrollment goal. The enrollment goal shall be that the number of students representing each racial, ethnic, and socioeconomic group enrolled in the mathematics and science accelerated learning program shall not be less than nor limited to the percentage of each group in the total school population.

(4) District Energy Technology Career Track Program. The purpose of the program is to provide grants to school districts to develop and implement an energy technology engineering career track across middle and high schools within the district as described in KRS 158.808.

History.
Enact. Acts 2008, ch. 134, § 4, effective July 15, 2008.

Legislative Research Commission Notes.
(7/15/2008). The Reviser of Statutes has renumbered subsections (2) and (3) of this statute from the way they appeared in 2008 Ky. Acts ch. 134, sec. 4, under the authority of KRS 7.136(1)(a).

158.849. Long-term statewide goals concerning STEM disciplines and AP and IB course participation.

(1) The Kentucky Board of Education shall establish long-term and annual statewide goals for increasing:

(a) The number of high schools providing rigorous curricula and making available accelerated classes and college credit for students;

(b) The number and percentage of students enrolled in and completing AP and IB courses by content area;

(c) The number and percentage of students taking the AP and IB examinations in advanced science and mathematics;

(d) The number and percentage of students receiving a score of three (3) or better on the AP examinations or four (4) or better on IB examinations in advanced science and mathematics;

(e) The number and percentage of students whose families are eligible for free or reduced-price lunch receiving a score of three (3) or better on AP examinations or four (4) or better on IB examinations;

(f) The number and percentage of students in underrepresented groups, including females, minorities, students with disabilities, English language learners, and students whose families are eligible for free or reduced-price lunch, taking computer science courses as defined by the Kentucky Department of Education in middle school and high school, including career and technical education programs;

(g) The number of teachers successfully completing a College Board-endorsed AP or IB summer training institute;

(h) The number of teachers with the knowledge and training needed to prepare students for high achievement on AP and IB examinations in advanced science and mathematics; and

(i) Other criteria determined by the board.

(2)(a) The Kentucky Department of Education shall develop a program evaluation framework regarding the use of the science and mathematics advancement fund for the purposes set forth in KRS 158.847. The program evaluation framework shall address areas including but not limited to the use of funds, the number of grants and awards, student achievement outcomes, and trends over time on the indicators established to measure progress against the statewide goals under subsection (1) of this section.

(b) Beginning in 2008, the department shall submit an annual report no later than December 1 to the Kentucky Board of Education and the Interim Joint Committee on Education. The report for 2008 shall provide a status report on the implementation of programs supported by the science and mathematics advancement fund. Subsequent reports shall incorporate information collected and analyzed based on the program evaluation framework under paragraph (a) of this subsection.

(c) Beginning in 2020, the department shall submit an annual report no later than December 1 to the Kentucky Board of Education and the Interim Joint Committee on Education that includes an unduplicated count of the number and percentage of public school students participating in computer science courses and other computer science educational opportunities. The data shall be disaggregated by gender, race, disability, English proficiency, and participation in the federal free and reduced-price lunch program. The report shall also include the number of computer science courses or programs offered in each school, the nature of the computer science courses or programs, the number of advanced placement computer science classes offered, and the number of computer science instructors at each school disaggregated by certification, gender, and terminal degree.

History.

Enact. Acts 2008, ch. 134, § 5, effective July 15, 2008; 2020 ch. 60, § 1, effective July 15, 2020.

SCHOOL NUTRITION

158.850. Limitation on sale of retail fast foods in school cafeteria.

Beginning with the 2006-2007 school year, each school shall limit access to no more than one (1) day each week to retail fast foods in the cafeteria, whether sold by contract, commercial vendor, or otherwise.

History.

Enact. Acts 2005, ch. 84, § 2, effective June 20, 2005.

158.852. School food service director or menu planner — Credentials and certificates — Continuing education.

(1) Each district shall appoint a food service director who is responsible for the management and oversight of the food service program in the district, except two (2) or more contiguous districts may form one (1) "school food service area" and a school food service director shall be jointly selected by the participating school superintendents to oversee the school food service area.

(2)(a) Any person serving as a school food service director or person otherwise responsible for menu planning in each school district on June 20, 2005, shall be credentialed as a "school food service and nutrition specialist" or certified by a Level 2 certificate issued by the American School Food Service Association within three (3) years after June 20, 2005. No school district shall be required to have more than one (1) person with a credential or certificate under this section.

(b) After June 20, 2005, a person appointed to serve as school food service director or the person designated for menu planning who does not hold the "school food service and nutrition specialist" credential or the Level 2 certificate issued by the American School Food Service Association shall obtain the appropriate credential within three (3) years of his or her appointment or designation. No school district shall be required to have more than one (1) person with a credential or certificate under this section.

(c) Eight (8) clock hours of the required continuing education for maintaining the appropriate credential or certificate under this subsection shall be directly related to applied nutrition and healthy meal planning and preparation.

(3) School cafeteria managers shall annually receive at least two (2) hours of continuing education in applied nutrition and healthy meal planning and preparation.

History.

Enact. Acts 2005, ch. 84, § 3, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

District school nutrition director, 702 KAR 6:020.

158.854. Administrative regulation specifying minimum nutritional standards for foods sold outside school breakfast and lunch programs — Restrictions upon sale of certain foods and beverages — Waiver — Definitions — Exceptions — Student-based enterprise to sell competitive foods.

(1) The Kentucky Board of Education shall promulgate an administrative regulation in accordance with KRS Chapter 13A to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales. Minimum nutritional standards shall be based on the most recent edition of the United States Department of Agriculture's Dietary Guidelines for Americans. The administrative regulation shall address serving size, sugar, and fat content of the foods and beverages. School districts may impose more stringent standards than the standards implemented under the administrative regulation. A school shall follow the minimum standards specified in the administrative regulation unless a waiver has been requested under KRS 156.161 by the school district for the school from the Kentucky Board of Education. Notwithstanding the duration of a waiver granted under KRS 156.161, any waiver approved by the Kentucky Board of Education relating to this section shall be reviewed on an annual basis.

(2) As used in this section:

(a) "Competitive food" means any food or beverage item sold in competition with the National School Breakfast and National School Lunch programs. The term does not include any food or beverage sold a la carte in the cafeteria;

(b) "School day" means the period of time between the arrival of the first student at the school building and the end of the last instructional period;

(c) "School-day-approved beverage" means water, one hundred percent (100%) fruit juice, lowfat milk, and any beverage that contains no more than ten (10) grams of sugar per serving; and

(d) "Student-based enterprise" means a district-approved program operated by a school district's students as part of a course designed to provide students with knowledge and experience of the operation of a business.

(3) No school may sell competitive foods or beverages from the time of the arrival of the first student at the school building until thirty (30) minutes after the last lunch period.

(4) Only school-day-approved beverages shall be sold in elementary schools during the school day in vending machines, school stores, canteens, or fundraisers that sell beverages by students, teachers, or groups.

(5) Nothing in this section or KRS 158.850 shall be construed to limit the sale of any foods or beverages by fundraisers off school property.

(6) Notwithstanding subsection (3) of this section, a local board of education may identify a student-based enterprise to sell competitive foods throughout the school day. The local board may establish policies for the operation of the student-based enterprise and for the use of the proceeds from the operation of the student-based enterprise. Competitive foods sold by a student-based enterprise shall comply with the minimum nutritional standards established under subsection (1) of this section.

History.

Enact. Acts 2005, ch. 84, § 4, effective June 20, 2005; 2025 ch. 113, § 7, effective June 27, 2025; 2026 ch. 81, § 1, effective July 15, 2026.

Compiler's Notes.

For provisions regarding National School Breakfast and National School Lunch Programs referenced herein, see 42 USCS § 1773 and 42 USCS §§ 1751 et seq., respectively.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports, 702 KAR 6:090.

Waiver requests, 701 KAR 5:170.

158.855. Purchase of Kentucky-grown agricultural products permitted by local school board or school district participating in any United States Department of Agriculture Child Nutrition Program — Exemption from KRS 45A.345 to 45A.460 and 424.260.

(1) As used in this section:

(a) "Agricultural product" has the same meaning as in KRS 260.016; and

(b) "Kentucky-grown agricultural product" has the same meaning as in KRS 260.016.

(2) A local school board or local school district participating in any of the United States Department of Agriculture Child Nutrition Programs may purchase Kentucky-grown agricultural products in accordance with federal law and shall not be subject to KRS 45A.345 to 45A.460 or 424.260.

(3) This section shall not be construed to exempt a local school board or local school district from any other requirement established by state or federal law.

History.

2026 ch. 8, § 1, effective March 27, 2026.

158.856. Annual assessment and evaluation of school nutrition in district — Special board meeting and public forum to discuss nutrition and physical activity in the schools — School district to prepare and submit findings and recommendations to Board of Education. [Repealed]

History.

Enact. Acts 2005, ch. 84, § 5, effective June 20, 2005; repealed by 2025 ch. 86, § 8, effective June 27, 2025.

EXAMINATION UPON COMPLETION OF CORE CONTENT COURSE

158.860. Examination upon completion of core content course.

(1) As used in this section:

(a) "Core course" means any course offered in the middle grades or high school grades that is a specific high school graduation requirement or a course that may be used to fulfill a minimum graduation requirement in the content areas of language arts, mathematics, science, and social studies as specified in administrative regulation promulgated by the Kentucky Board of Education under the provisions of KRS 156.160; and

(b) "End-of-course examination" or "end-of-course exam" means a test that measures a student's knowledge and skills upon completion of a core content course.

(2) The Kentucky Department of Education shall coordinate the development of end-of-course exams.

(a) The development process shall initially include end-of-course exams for Algebra I, Algebra II, and Geometry.

(b) Content teachers in the core courses, postsecondary faculty including subject matter specialists as well as teacher educators, curriculum specialists, and other appropriate practitioners shall be involved in the development and review of items for the exams. Content teachers shall comprise the majority of the developers and reviewers of the test items.

(c) The department shall ensure that each end-of-course exam:

1. Aligns with the standards, content, goals, and academic expectations relevant to the course;

2. Requires student demonstration of knowledge, comprehension, application, and higher order cognitive skills;

3. Provides reliable and valid test items;

4. Is available to schools in an on-line format if resources are available; and

5. Provides individual student scores; test item analyses; aggregate comparisons of student data at the school, district, and state levels; and disaggregated data by student subpopulations at the school district and state levels.

(d) The department shall make available a parallel form for each exam.

(e) The initial end-of-course exam developed as required in paragraph (a) of this subsection shall be available and piloted in selected school districts no later than the end of the 2007-2008 school year.

(3) The department may contract for services as deemed necessary to fulfill its duties under this section.

(4) The Kentucky Department of Education shall conduct a study of the end-of-course examinations and the processes used during the pilot of the exams.

(a) Following the initial use of the end-of-course exams in Algebra 1, Algebra II, and Geometry, the department, with assistance from the developers identified in subsection (2)(b) of this section, shall determine whether the exams meet the requirements in subsection (2)(c) of this section. The determination shall be based on an analysis of individual test items, analyses of student results on the exams, pilot teachers' input, and review of other data gathered during the pilot year.

(b) The department shall consult with the Education Assessment and Accountability Review Subcommittee, the National Technical Advisory Panel on Assessment and Accountability, and the School Curriculum, Assessment, and Accountability Council regarding the implications for statewide implementation and shall advise the Kentucky Board of Education of its findings and recommendations.

(c) Following the consultations and discussions required in paragraphs (a) and (b) of this subsection, the commissioner of education shall report the findings of the pilot project and policy options to the Interim Joint Committee on Education.

(5) End-of-course exams in the pilot period shall not be used as a criterion for formally evaluating or compensating teachers. Student results may be discussed during the formative evaluation stage in compliance with KRS 156.557.

(6) The department shall develop the test procedures, including testing accommodations for students with special needs, retest provisions, reporting requirements, and other procedures as necessary to implement the provisions of this section.

(7) A teacher shall use a student's score on any end-of-course exam that is administered in calculating the student's final grade in accordance with policies of the local board of education and the school-based decision making council.

(8) The commissioner of education or a designee shall provide a written status report regarding implementation of this section to the Interim Joint Committee on Education and the Education Assessment and Accountability Review Subcommittee by December 1, 2007, and July 1, 2008.

(9) The Kentucky Department of Education and local school districts shall use end-of-course exams to promote increased student accountability. The department and local school districts shall also use test results to determine the need for technical assistance, professional development, and other resources to improve instruction.

History.

Enact. Acts 2006, ch. 119, § 1, effective July 12, 2006.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Next-Generation Learners, 703 KAR 5:200.

SUMMER LEARNING PROGRAM FOR DISADVANTAGED AND LOW-ACHIEVING CHILDREN

158.865. Legislative findings — Development of summer learning program encouraged — Purposes of program. [Repealed]

History.

Enact. Acts 2012, ch. 131, § 1, effective July 12, 2012; repealed by 2026 ch. 196, § 25, effective July 1, 2026.

158.866. Definitions for KRS 158.865 to 158.867. [Repealed]

History.
Enact. Acts 2012, ch. 131, § 2, effective July 12, 2012; repealed by 2026 ch. 196, § 25, effective July 1, 2026.

158.867. Minimum requirements for summer learning camps at schools with certain Title I programs — Mandatory reports — Student participation guidelines — Teacher compensation — Summary annual reports. [Repealed]

History.
Enact. Acts 2012, ch. 131, § 3, effective July 12, 2012; repealed by 2026 ch. 196, § 25, effective July 1, 2026.

PENALTIES

158.990. Penalties.

(1) Any member of a school board who votes to permit entrance to a school of any child not eligible therefor under the provisions of KRS 158.030 shall be fined not less than five dollars ($5) nor more than fifty dollars ($50).

(2) Any person who intentionally violates KRS 158.155 shall be guilty of a:

(a) Class B misdemeanor for the first offense; and

(b) Class A misdemeanor for the second or subsequent offense.

History.
4363-7, 4363-8, 4363-11a; Acts 1952, ch. 145, § 2; 1974, ch. 308, § 34; 1978, ch. 21, § 1, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 409, effective July 13, 1990; 1994, ch. 471, § 2, effective July 15, 1994; 2026 ch. 50, § 3, effective July 15, 2026.

Compiler's Notes.
This section (4363-7, 4363-8, 4363-11a; amend. Acts 1952, ch. 145, § 2; 1974, ch. 308, § 34; 1978, ch. 21, § 1, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 409, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

CHAPTER 159
COMPULSORY ATTENDANCE

Section
159.010. Parent or custodian to send child to school — Age limits for compulsory attendance — Local board of education may adopt policy extending compulsory attendance requirements to age 18 — All local boards to extend age limit upon adoption of policy by 55 percent of school districts — Notification and counseling prior to withdrawal — Encouragement to reenroll after withdrawal.
159.020. Transferring child from one district to another.
159.030. Exemptions from compulsory attendance.
159.035. Participation in 4-H activities, page programs of the General Assembly, and ten days of military basic training to be considered attendance — Excused absence for educational enhancement or attendance at Kentucky State Fair — Appeal of denial of excused absence — Exception for testing periods — Excused absences for deployment and return days of parent or guardian on active duty — Excused absence to visit parent or guardian on R and R — Excused absence due to mental or behavioral health status.
159.040. Attendance at private and parochial schools.
159.050. [Repealed.]
159.051. Loss of license or permit by student for dropping out of school or for academic deficiency — Procedures for reinstatement.
159.060. [Repealed.]
159.070. Attendance districts — Enrollment permitted in school nearest home.
159.075. Pre-enrollment and preadmission of child whose parent or guardian is transferred to military installation or is returning to the state after being separated from the military.
159.080. Director of pupil personnel and assistants.
159.090. Directors of pupil personnel for united districts.
159.100. [Repealed.]
159.110. [Repealed.]
159.120. [Repealed.]
159.130. Powers of directors of pupil personnel.
159.140. Duties of director of pupil personnel or assistant.
159.150. Definitions of truant and habitual truant — Attendance record requirements — Adoption of truancy policies by local school boards — Implementation of early intervention and prevention programs.
159.152. Truancy intervention in grades 6 through 12 — Duties of director of pupil personnel — Notice to court-designated worker.
159.160. Attendance reports to superintendent.
159.170. Withdrawals — Teachers to investigate and report — Entry of expulsion in student record — Collection and dissemination of student records.
159.180. Parents responsible for children's violations.
159.190. [Repealed.]
159.200. [Repealed.]
159.210. [Repealed.]
159.220. [Repealed.]
159.230. [Repealed.]
159.240. [Repealed.]
159.250. Nature of census.
159.260. [Repealed.]
159.270. False report of census prohibited.

Penalties.

159.990. Penalties.

159.010. Parent or custodian to send child to school — Age limits for compulsory attendance — Local board of education may adopt policy extending compulsory attendance requirements to age 18 — All local boards to extend age limit upon adoption of policy by 55 percent of school districts — Notification and counseling prior to withdrawal — Encouragement to reenroll after withdrawal.

(1)(a) Except as provided in KRS 159.030 and paragraphs (b) and (c) of this subsection, each parent,

guardian, or other person residing in the state and having in custody or charge any child who has entered the primary school program or any child between the ages of six (6) and sixteen (16) shall send the child to a regular public day school for the full term that the public school of the district in which the child resides is in session or to the public school that the board of education of the district makes provision for the child to attend. A child's age is between six (6) and sixteen (16) when the child has reached his or her sixth birthday and has not passed his or her sixteenth birthday.

(b)1. Effective with the 2015-2016 school year, a local board of education may, upon the recommendation of the superintendent, adopt a district-wide policy to require, except as provided in KRS 159.030, each parent, guardian, or other person residing in the district and having in custody or charge any child who has entered the primary school program or any child between the ages six (6) and eighteen (18) to send the child to a regular public school for the full term of the district in which the child resides or to the public school that the district makes provisions for the child to attend.

2. All children residing in the district, except as provided in KRS 159.030, shall be subject to the local board's compulsory age policy.

3. A district shall impose the same compulsory age requirement for all students residing in the district, even if the district has entered a contract to permit some students to attend school in another public school district that has not adopted a policy under this paragraph.

4. A local board of education adopting a policy under this paragraph shall certify to the Kentucky Department of Education that the district has, or will have, programs in place to meet the needs of potential dropouts. Implementation of the policy shall be contingent on notice of approval by the department.

(c) When fifty-five percent (55%) of all local school districts have adopted a policy in accordance with paragraph (b) of this subsection, all local school districts shall be required to adopt the compulsory attendance requirements under paragraph (b) of this subsection. This requirement shall be effective with the school year that occurs four (4) years after the fifty-five percent (55%) threshold is met.

(2) An unmarried child between the ages of sixteen (16) and eighteen (18) who resides in a district that has not adopted a policy under subsection (1)(b) of this section who wishes to terminate his or her public or nonpublic education prior to graduating from high school shall do so only after a conference with the principal or his or her designee, and the principal shall request a conference with the parent, guardian, or other custodian. Written notification of withdrawal must be received from his parent, guardian, or other person residing in the state and having custody or charge of him. The child and the parent, guardian, or other custodian shall be required to attend a one (1) hour counseling session with a school counselor on potential problems of nongraduates.

(3) A child's age is between sixteen (16) and eighteen (18) when the child has reached his sixteenth birthday and has not passed his eighteenth birthday. Written permission for withdrawal shall not be required after the child's eighteenth birthday. Every child who is a resident in this state is subject to the laws relating to compulsory attendance, including the compulsory attendance requirements of a school district under subsection (1)(b) of this section. Neither the child nor the person in charge of the child shall be excused from the operation of those laws or the penalties under them on the ground that the child's residence is seasonable or that his or her parent is a resident of another state.

(4) Each school district shall contact each student between the ages of sixteen (16) and eighteen (18) who has voluntarily withdrawn from school under subsection (2) of this section within three (3) months of the date of withdrawal to encourage the student to reenroll in a regular program, alternative program, or High School Equivalency Diploma program. In the event the student does not reenroll at that time, the school district shall make at least one (1) more attempt to reenroll the student before the beginning of the school year following the school year in which the student terminated his or her enrollment.

History.

4434-1, 4434-18; amend. Acts 1978, ch. 136, § 3, effective July 1, 1979; 1984, ch. 74, § 1, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 42, effective October 18, 1985; 1988, ch. 312, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 29, effective July 13, 1990; 1998, ch. 611, § 1, effective July 15, 1998; 2000, ch. 452, § 5, effective July 14, 2000; 2013, ch. 11, § 1, effective June 25, 2013; 2017 ch. 63, § 16, effective June 29, 2017.

NOTES TO DECISIONS

Analysis

1. Compulsory Attendance.
2. —Exemption.
3. Removal of Superintendent.
4. Purpose of Schools.
5. Attendance in District in Which Child Resides.

1. Compulsory Attendance.

This section requiring compulsory attendance at school does not make members of board of education insurers of child's safety and well-being while attending school. Wood v. Board of Education, 412 S.W.2d 877, 1967 Ky. LEXIS 445 (Ky. 1967).

Jury verdict against school administrator on malicious prosecution claim reversed even though there was a lack of probable cause for the sexual misconduct charges brought against father, because the charges were brought by the county attorney's office rather than the county school administrator, and the administrator did not allege in his criminal complaint that the father had induced his daughter to engage in sexual activity, merely that the father had failed to send the child to school. Collins v. Williams, 10 S.W.3d 493, 1999 Ky. App. LEXIS 94 (Ky. Ct. App. 1999).

2. —Exemption.

Section 159.030 does not have the effect of exempting from compulsory attendance under this section those pupils who are enrolled in private, sectarian or parochial schools; it merely exempts them from attending the common schools. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

3. Removal of Superintendent.

Evidence that county superintendent of schools disregarded teachers' and directors of pupil personnel's duties to enforce the compulsory school law assisted in sustaining county board of education's action in removing him from office. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

4. Purpose of Schools.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

5. Attendance in District in Which Child Resides.

Circuit court erred in overruling a father's objections and in confirming and adopting a recommendation of the Domestic Relations Commissioner that the parties' minor child be enrolled in the school district where the mother resided because the child was statutorily required to attend school in the district in which she resided after the parents—who had joint custody—had reached an agreement on the critical issue. Keeton v. Keith, 511 S.W.3d 918, 2017 Ky. App. LEXIS 16 (Ky. Ct. App. 2017).

Cited in:

Jones v. Board of Education, 470 S.W.2d 829, 1971 Ky. LEXIS 283 (Ky. 1971), cert. denied, 405 U.S. 975, 92 S. Ct. 1196, 31 L. Ed. 2d 249, 1972 U.S. LEXIS 3406 (1972).

OPINIONS OF ATTORNEY GENERAL.

The marriage of a child under the age of 16 years emancipates said child from the provisions of this section for the reason that the marriage gives rise to a new relation inconsistent with the concept of subjection to the control and care of the parent. OAG 61-953.

Parents of Negro children who presented their children for admission to two (2) schools located in South Frankfort which were within five blocks of their homes but to which only first grade Negro children had been admitted, who, despite the fact that there was unused classroom space for about 75 or 90 pupils, were refused admission and directed to an all-Negro school located in North Frankfort, about one and one-half (1½) miles from their homes and in poor physical condition, could not be prosecuted under this section upon their failure or refusal to comply, since parents can only be required to send their children to a school that meets constitutional standards. OAG 62-855.

If, when a child becomes 7 years of age he cannot attend school in compliance with this section because his parents refuse to have the smallpox immunization required by KRS 214.050 (repealed), the parents of the child would be subject to prosecution for failure to comply with the compulsory attendance laws. OAG 63-662.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privilege to some nonresident children while denying the same privilege to others. OAG 66-550.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

Children aged 14 and 15 who are resident enrollees of a job corps center situated in Kentucky would be subject to the provisions of this section and in order to be excused from compulsory school attendance must come within one (1) of the exceptions contained in KRS 159.030. OAG 68-137.

The State Superintendent of Education's statement in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A board of education could accept pupils of all school employees without tuition payment regardless of where they live as long as the board complies with the requirements of KRS 159.240 to 159.260 (KRS 159.240 and 159.260 now repealed) and with foundation program provisions of KRS Chapter 157. OAG 72-154.

Under this section a parent residing in one (1) school district who desires to send his children to school in another district out of personal preference may not require the school district in which he is a resident to pay tuition charges for the children sent to a school in another district. OAG 72-271.

It is not the district in which taxes are paid but the district in which children reside with their parents or guardian that determines where the children may attend the public schools without the payment of tuition. OAG 72-593.

Although a board of education does not have to accept nonresident students on a tuition basis, if it decides to do so it must charge all pupils at the same rate which is not based upon a varying scale that is determined upon some extraneous factor such as the assessed value of a person's residential property. OAG 73-837.

A true dual enrollment whereby pupils attend a public school part time and a private school part time is legally permissible. OAG 74-331.

A child who is unable to sit still in school or remain in the classroom because of an emotional problem is eligible to be excused from public school and may be taught by a teacher coming to his home but it would be reasonable for the attendance officer to require a medical report on the child each year until he is able regularly to attend school. OAG 74-633.

The boards of education of high school districts within a county may require that students transferring to another school without changing residence complete that school year in the school transferred to without further transferring. OAG 75-602.

The compulsory attendance laws only apply to children between the ages of seven (7) and 16. OAG 76-566. (Decision prior to 1978 amendment).

Since KRS 159.990(1) refers only to actions against adults failing to comply with KRS 159.010 to 159.170 and not to juveniles charged under KRS 159.150, KRS 159.990(1) is not applicable in a juvenile proceeding for habitual truancy under KRS 208.020(1)(c) (now repealed). OAG 76-607.

If a parent or legal guardian of a child enrolls that child in a private or parochial day school that has not been approved by the State Board of Education, the parent or legal guardian is not fulfilling his obligation mandated by this section. OAG 77-514, 1977 Ky. AG LEXIS 262.

In keeping with the legislative intent of being as all encompassing as possible, the terms "other person" and "custody or charge" cover everyone from the adult having legal custody of a child to one having mere custody or control. OAG 78-64, 1978 Ky. AG LEXIS 681.

The only exemptions authorized by statute to the compulsory attendance provisions set forth in this section are those spelled out in KRS 159.030, and mode of transportation to school is not included. OAG 78-392, 1978 Ky. AG LEXIS 346.

The lead-in phrase of KRS 158.030, which reads "Notwithstanding any statute to the contrary," cannot be construed, by

implication, to have lowered the compulsory attendance age range to five (5). OAG 85-55, 1985 Ky. AG LEXIS 95.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55, 1985 Ky. AG LEXIS 95.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55, 1985 Ky. AG LEXIS 95.

A married child under the age of 16 has a legal responsibility to attend school, but once a child marries, the parent or guardian no longer has a legal obligation to ensure that the child attends school; however, if the spouse of a minor who is under the age of 16 and who is an habitual truant, is found to be a person exercising custodial control or supervision as defined in subdivision (26) (now subdivision (43)) of KRS 600.020, the spouse may be subject to penalties under the Juvenile Code. OAG 87-40, 1987 Ky. AG LEXIS 43.

A parent, guardian, or other custodian may be subject to the penalties found in KRS 159.990 for failure to comply with subsection (2) of this section, which requires 60 days' written notice and counseling prior to an unmarried child between the ages of 16 and 18 withdrawing from school. OAG 87-40, modifying OAG 64-312 to extent inconsistent.

It is clear from the language of KRS 600.020(24) (now (28)) and KRS 610.010(1)(c) (now (2)(b)) that a student under the age of 18 years who is failing to attend school in violation of this section is subject to a delinquency prosecution in accordance with the Juvenile Code. OAG 90-106, 1990 Ky. AG LEXIS 151.

This section requires that all students under the age of 18 years attend school and requires that a student over the age of 16 years and under the age of 18 years may withdraw *only* after the written notification and school conference, the obvious purpose of the statute being to deter students from leaving high school before graduation. OAG 90-106, 1990 Ky. AG LEXIS 151.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certificate of immunization required, KRS 158.035.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

When minor under 16 may be employed during school hours, KRS 339.230.

Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

Pupil attendance, 702 KAR 7:125.

Kentucky Law Journal.

Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Walters, The Constitutional Duty of Teachers to Protect Students: Employing the "Sufficient Custody" Test, 83 Ky. L.J. 229 (1994-95).

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

Caldwell's Kentucky Form Book, 5th Ed., Notification of Withdrawal from School, Form 256.08.

Petrilli, Kentucky Family Law, Juvenile Court, § 32.31.

Petrilli, Kentucky Family Law, Forms, Family Offenses, Information against parent for failure to send children to school, Form 4.7.

159.020. Transferring child from one district to another.

Any parent, guardian, or other person having in custody or charge any child who has entered the primary school program and is subject to compulsory attendance under KRS 159.010 who removes the child from a school district during the school term shall enroll the child in a regular public day school in the district to which the child is moved, and the child shall attend school in the district to which the child is moved for the full term provided by that district.

History.

4434-2; amend. Acts 1984, ch. 367, § 7, effective July 13, 1984; 1988, ch. 312, § 2, effective July 15, 1988; 1990, ch. 476, Pt. I, § 30, effective July 13, 1990; 2013, ch. 11, § 2, effective June 25, 2013.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

159.030. Exemptions from compulsory attendance.

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

(a) Who is a graduate from an accredited or an approved four (4) year high school; or

(b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or

(c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or

(d) Whose physical or mental condition prevents or renders inadvisable attendance at school; or

(e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or

(f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;

(g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.

(2)(a) Before granting an exemption under subsection (1)(d) of this section, the board of education of the district in which the child resides shall require submission to the board of satisfactory evidence in the form of a signed statement of a properly licensed physician, advanced practice registered nurse, physician's assistant, psychologist, psychiatrist, or qualified mental health professional as defined in KRS 202A.011 responsible for diagnosing and treating the child, stating that the diagnosed condition of the child prevents or renders inadvisable attendance at school and requires home or hospital instruction. If the condition is mental health related, then the signed statement shall be completed by a qualified mental health professional as defined in KRS 202A.011. On the basis of such evidence, the local board of education may exempt the child from compulsory attendance.

(b) Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of two (2) of the professional persons in accordance with paragraph (a) of this subsection, except that this requirement shall not apply to a child whose signed statement certifies that the student has a chronic physical condition that prevents or renders inadvisable attendance at school and is unlikely to substantially improve within one (1) year.

(c) Exemptions of any student under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated.

(3) The Kentucky Board of Education may promulgate administrative regulations to establish the components of compulsory attendance and exemptions.

History.

4434-3; amend. Acts 1948, ch. 107, § 27; 1974, ch. 75, § 1; 1978, ch. 136, § 4, effective July 1, 1979; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 8, effective July 15, 1980; 1984, ch. 111, § 91, effective July 13, 1984; 1984, ch. 297, § 3, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 216, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 173, § 1, effective July 15, 1998; 2000, ch. 451, § 1, effective July 14, 2000; 2004, ch. 46, § 1, effective July 13, 2004; 2010, ch. 85, § 30, effective July 15, 2010; 2020 ch. 104, § 2, effective July 15, 2020; 2023 ch. 31, § 1, effective June 29, 2023.

NOTES TO DECISIONS

Analysis

1. Attendance at Private or Parochial School.
2. Transportation.
3. Nonpublic Schools.
4. —Closing.
5. —Teachers.
6. —Right to Attend.

1. Attendance at Private or Parochial School.

This section does not have the effect of exempting from compulsory attendance laws those pupils who are enrolled in private, sectarian or parochial schools; it merely exempts them from attending the common schools. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

2. Transportation.

KRS 158.115 providing that county may provide transportation out of general funds applies to children attending private, sectarian or parochial schools in compliance with the compulsory school attendance laws. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 1945 Ky. LEXIS 746 (Ky. 1945).

3. Nonpublic Schools.

4. —Closing.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one (1) or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

5. —Teachers.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under KRS 161.030(2) will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

6. —Right to Attend.

While the state has an interest in the education of its citizens which could be furthered through compulsory education, the rights of conscience of those who desire education of their children in private and parochial schools should be protected. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

Cited in:

Fannin v. Williams, 655 S.W.2d 480, 1983 Ky. LEXIS 290 (Ky. 1983).

OPINIONS OF ATTORNEY GENERAL.

A child who is unable to sit still in school or remain in the classroom because of an emotional problem is eligible to be excused from public school and may be taught by a teacher coming to his home, but it would be reasonable for the attendance officer to require a medical report on the child each year until he is able regularly to attend school. OAG 74-633.

Pursuant to KRS 157.270, a local board of education is required to provide home training for exceptional children but an institutional home for exceptional children cannot, under KRS 157.230, legally require a school district to establish and maintain special education classes for its inmates. OAG 74-681.

Exceptional children who are residents of a private nonsectarian institution are entitled to attend the public schools in the county in which the institution is located free of charge if

they are physically and mentally able and qualified to be educated in regular classes. OAG 74-681.

Exceptional children who are residents of a private nonsectarian institution may be instructed in the institution, either in a leased or donated room, by a public school teacher. OAG 74-681.

If a parent or legal guardian of a child enrolls that child in a private or parochial day school that has not been approved by the state board of education, the parent or legal guardian is not fulfilling his obligation mandated by KRS 159.010. OAG 77-514, 1977 Ky. AG LEXIS 262.

The only exemptions authorized by statute to the compulsory attendance provisions set forth in KRS 159.010 are those spelled out in this section, and mode of transportation to school is not included. OAG 78-392, 1978 Ky. AG LEXIS 346.

Although there is no delineated exemption under this section, a married student, even though under the age of 16 years, may not be required to attend school, since requiring attendance ignores the hard facts of reality and is in conflict with the concept that marriage is a domestic relation which is highly favored by law. OAG 81-73, 1981 Ky. AG LEXIS 351.

An unmarried girl under the age of 16, who has given birth to a child and is mothering that child, is not required to attend school, even though there is no delineated exemption under this section; however, if the girl finds it necessary to remain out of school for several years, she is entitled to attend school later, up until she has received 12 years education or reached the age of 21, under KRS 158.100. OAG 81-73, 1981 Ky. AG LEXIS 351.

Prior to childbirth, an unmarried pregnant girl under the age of 16 years is required to go to school unless she can meet one (1) of the exemptions under this section. OAG 81-73, 1981 Ky. AG LEXIS 351.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55, 1985 Ky. AG LEXIS 95.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55, 1985 Ky. AG LEXIS 95.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55, 1985 Ky. AG LEXIS 95.

A married child under the age of 16 has a legal responsibility to attend school, but once a child marries, the parent or guardian no longer has a legal obligation to ensure that the child attends school; however, if the spouse of a minor who is under the age of 16 and who is an habitual truant, is found to be a person exercising custodial control or supervision as defined in subdivision (26) (now subdivision (43)) of KRS 600.020, the spouse may be subject to penalties under the Juvenile Code. OAG 87-40, 1987 Ky. AG LEXIS 43.

The decision to refuse to enroll a student who is a legal resident of the district, but has been expelled from another district for activities placing the safety and welfare of other students at risk, must be made on a case by case basis. OAG 91-171, 1991 Ky. AG LEXIS 171.

There is nothing to prevent a second school district from initiating an exemption based on evidence supplied from another district that attendance is unadvisable. OAG 91-171, 1991 Ky. AG LEXIS 171.

Where the first district finds a child to be unable to attend school based on this section, there is nothing to require the second school district to require the evaluation described under subsection (3) of this section prior to enrollment; nevertheless, the child may qualify for evaluation for special education services under KRS 157.200 through 157.290. OAG 91-171, 1991 Ky. AG LEXIS 171.

The opinion issued in OAG 87-40 reversed OAG 81-79 and therefore married children under sixteen (16) years old must attend school. OAG 93-37, 1993 Ky. AG LEXIS 90.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification of Nonpublic Schools, 704 KAR 3:315..

Home/hospital instruction, 704 KAR 7:120.

Pupil attendance, 702 KAR 7:125.

Loss of license or permit by student for dropping out of school or for academic deficiency, 159.051.

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

Petrilli, Kentucky Family Law, Forms, Family Offenses, Information against parent for failure to send children to school, Form 4.7.

159.035. Participation in 4-H activities, page programs of the General Assembly, and ten days of military basic training to be considered attendance — Excused absence for educational enhancement or attendance at Kentucky State Fair — Appeal of denial of excused absence — Exception for testing periods — Excused absences for deployment and return days of parent or guardian on active duty — Excused absence to visit parent or guardian on R and R — Excused absence due to mental or behavioral health status.

(1) Notwithstanding the provisions of any other statute, any student in a public school who is enrolled in a properly organized 4-H club shall be considered present at school for all purposes when participating in regularly scheduled 4-H club educational activities, provided, the student is accompanied by or under the supervision of a county extension agent or the designated 4-H club leader for the 4-H club educational activity participated in.

(2) Notwithstanding the provisions of any other statute, any student in a public school shall be considered present for all purposes for up to ten (10) days while attending basic training required by a branch of the United States Armed Forces.

(3) Beginning with the 2021-2022 school year, notwithstanding the provisions of any other statute, any

student enrolled in a public school shall not have his or her perfect attendance record negatively affected by participating in any of the page programs of the General Assembly.

(4) Students applying for excused absence for attendance at the Kentucky State Fair shall by granted one (1) day of excused absence.

(5) Except as provided in paragraph (e) of this subsection, a public school principal shall give a student an excused absence of up to ten (10) school days to pursue an educational enhancement opportunity determined by the principal to be of significant educational value, including but not limited to participation in an educational foreign exchange program or an intensive instructional, experiential, or performance program in one (1) of the core curriculum subjects of English, science, mathematics, social studies, foreign language, and the arts.

(a) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.

(b) Educational enhancement opportunities under this subsection shall not include nonacademic extracurricular activities, but may include programs not sponsored by the school district.

(c) If a request for an excused absence to pursue an educational enhancement opportunity is denied by a school principal, a student may appeal the decision to the district superintendent, who shall make a determination whether to uphold or alter the decision of the principal. If a superintendent upholds a principal's denial, a student may appeal the decision to the local board of education, which shall make a final determination. A principal, superintendent, and local board of education shall make their determinations based on the provisions of this subsection and the district's school attendance policies adopted in accordance with KRS 158.070 and KRS 159.150.

(d) A student receiving an excused absence under the provisions of this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

(e) A student shall not be eligible to receive an excused absence under the provisions of this subsection for an absence during a school's testing window established for assessments of the state assessment developed under KRS 158.6453 or during a testing period established for the administration of additional district-wide assessments at the school, except if a principal determines that extenuating circumstances make an excused absence to pursue an educational enhancement opportunity appropriate.

(6)(a) If a student's parent, de facto custodian, or other person with legal custody or control of the student is a member of the United States Armed Forces, including a member of a state National Guard or a Reserve component called to federal active duty, a public school principal shall give the student:

1. An excused absence for one (1) day when the member is deployed;

2. An additional excused absence for one (1) day when the service member returns from deployment; and

3. Excused absences for up to ten (10) days for visitation when the member is stationed out of the country and is granted rest and recuperation leave.

(b) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.

(c) A student receiving an excused absence under this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

(7) A local school board may include provisions in its student attendance policy for excused absences due to a student's mental or behavioral health status.

History.

Enact. Acts 1960, ch. 245; 1990, ch. 476, Pt. IV, § 217, effective July 13, 1990; 2004, ch. 87, § 1, effective July 13, 2004; 2006, ch. 252, § 9, effective April 25, 2006; 2009, ch. 18, § 1, effective June 25, 2009; 2009, ch. 101, § 10, effective March 25, 2009; 2016 ch. 47, § 1, effective July 15, 2016; 2016 ch. 128, § 1, effective July 15, 2016; 2022 ch. 168, § 1, effective April 8, 2022; 2022 ch. 228, § 1, effective July 14, 2022.

Legislative Research Commission Notes.

(7/14/2022). This statute was amended by 2022 Ky. Acts chs. 168 and 228, which do not appear to be in conflict and have been codified together.

(4/8/2022). 2022 Ky. Acts ch. 168, sec. 4, provides that the Act, which amended this statute, may be cited as Wyatt's Act.

OPINIONS OF ATTORNEY GENERAL.

It is impermissible for a teacher incorporating classroom participation as part of the overall academic grade to give a student a lower grade in a course than he earned while in class for failure to participate in class on days when he was absent under a legitimate excused absence. OAG 79-539, 1979 Ky. AG LEXIS 99.

A school board may not adopt a plan to deduct points from a student's final grade for each unexcused absence. Despite the board's stated intent to act in the best interest of the students, the deduction of five (5) points from a pupil's final grade is a penalty. Such a penalty, in the guise of an incentive to get children to attend school, is not permissible; providing an opportunity for a student to make up the points does not change this conclusion — it is still an impermissible penalty. OAG 96-28, 1996 Ky. AG LEXIS 30.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28, 1996 Ky. AG LEXIS 30.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Pupil attendance, 702 KAR 7:125.

Kentucky Bench & Bar.

Quinn, Education Law: Education of Gifted Students in Kentucky. Vol. 72, No. 6, November 2008, Ky. Bench & Bar 25.

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Notification of Withdrawal from School, Form 256.08.

159.040. Attendance at private and parochial schools.

Attendance at private and parochial schools shall be kept by the authorities of such schools in a register provided by the Kentucky Board of Education, and such school authorities shall make attendance and scholarship reports in the same manner as is required by law or by regulation of the Kentucky Board of Education of public school officials. Such schools shall at all times be open to inspection by directors of pupil personnel and officials of the Department of Education.

History.

4434-3; Acts 1966, ch. 89, § 2; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 410, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.

This section (4434-3; amend. Acts 1966, ch. 89, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 410, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification of Nonpublic Schools, 704 KAR 3:315..

Courses of instruction and term required of private and parochial schools, KRS 158.080.

Loss of license or permit by student for dropping out of school or for academic deficiency, 159.051.

159.050. Attendance of blind or deaf children at special schools. [Repealed.]

Compiler's Notes.

This section (4434-3; amend. Acts 1966, ch. 89, § 3) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

159.051. Loss of license or permit by student for dropping out of school or for academic deficiency — Procedures for reinstatement.

(1) When a student who is at least fifteen (15) years of age but less than eighteen (18) years of age drops out of school or is declared to be academically deficient, the school administrator or his or her designee shall notify the superintendent of schools of the district in which the student is a resident or is enrolled. The reports shall be made at the end of each semester but may be made earlier in the semester for accumulated absences. A student shall be deemed to have dropped out of school when he or she has nine (9) or more unexcused absences in the preceding semester. Any absences due to suspension shall be unexcused absences. A student shall be deemed to be academically deficient when he or she has not received passing grades in at least four (4) courses, or the equivalent of four (4) courses, in the preceding semester. The local school board shall adopt a policy to reflect a similar standard for academic deficiency for students in alternative, special education, or part-time programs.

(2) Within ten (10) days after receiving the notification, the superintendent shall report the student's name and Social Security number to the Transportation Cabinet. As soon as possible thereafter, the cabinet shall notify the student that his or her operator's license, intermediate license, permit, or privilege to operate a motor vehicle has been revoked or denied and shall inform the student of his or her right to a hearing before the District Court of appropriate venue to show cause as to the reasons the license, permit, or privilege should be reinstated. Within fifteen (15) days after this notice is sent, the custodial parent, legal guardian, or next friend of the student may request an ex parte hearing before the District Court. The student shall not be charged District Court filing fees. The notification shall inform the student that he or she is not required to have legal counsel.

(3) In order for the student to have the license reinstated, the court shall be satisfied that:

(a) The license is needed to meet family obligations or family economic considerations which, if unsatisfied, would create an undue hardship; or

(b) The student is the only licensed driver in the household; or

(c) The student is not considered a dropout or academically deficient pursuant to this section.

If the student satisfies the court, the court shall notify the cabinet to reinstate the student's license at no cost. The student, if aggrieved by a decision of the court issued pursuant to this section, may appeal the decision within thirty (30) days to the Circuit Court of appropriate venue. A student who is being schooled at home shall be considered to be enrolled in school.

(4) A student who has had his or her license revoked under this section may reapply for a license as early as the end of the semester during which he or she enrolls in school and successfully completes the educational requirements. A student may also reapply for a license at the end of a summer school semester which results in the student having passed at least four (4) courses, or the equivalent of four (4) courses, during the successive spring and summer semesters, and the courses meet the educational requirements for graduation. The student shall provide proof issued by the school within the preceding sixty (60) days that he or she is enrolled and is not academically deficient.

History.

Enact. Acts 1990, ch. 234, § 1, effective July 13, 1990; 1994, ch. 503, § 1, effective July 15, 1994; 2007, ch. 36, § 1, effective June 26, 2007; 2025 ch. 81, § 5, effective March 25, 2025.

Legislative Research Commission Notes.

(6/26/2007). Under the authority of KRS 7.136(1), the Reviser of Statutes in codification has changed the internal numbering system of subsection (3) of this statute. The words in the text were not changed.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction With Other Law.

3. Application.

1. Constitutionality.

The "No Pass-No Drive" law, operating to suspend 16 or 17 year olds' licenses for dropping out or deficient academics, is constitutional since it rationally relates to its objective, provides for sufficient judicial review (limited to clerical errors), and violates neither Equal Protection nor Procedural Due Process (since the interest is a legitimately regulated privilege, not a fundamental right). Codell v. D.F., 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

There was no rational basis for the geographically-based distinction created by KRS 159.051 between students subject to losing their operator's licenses under the statute and students precluded from the statute; thus, KRS 159.051 was unconstitutional. D.F. v. Codell, 127 S.W.3d 571, 2003 Ky. LEXIS 262 (Ky. 2003).

Fundament right to an education included the right to the equal opportunity to achieve academic success, but it included no guarantee of success itself, and KRS 159.051 in no way interfered with a student's fundamental right to an education. However, there was no rational basis for the geographically-based distinction created by KRS 159.051 between students subject to losing their operator's licenses under the statute and students precluded from the statute; thus, KRS 159.051 was unconstitutional. D.F. v. Codell, 127 S.W.3d 571, 2003 Ky. LEXIS 262 (Ky. 2003).

2. Construction With Other Law.

The Transportation Cabinet is authorized to enforce KRS 159.051 as it relates to KRS 186.440, 186.450, and 186.470, all of which concern persons under the age of 18 who apply for or possess an instruction permit or driver's license. Codell v. D.F., 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

Although KRS 159.051 violates the Family Education Rights and Privacy Act of 1974 (FERPA), that does not strike the "No Pass-No Drive" law from the books, since FERPA does not ban disclosures of education records, but simply directs that funds will not be available to any educational agency which has such a policy; moreover, FERPA concerns only nonconsensual disclosure meaning that once a parent has consented to the disclosure of such information, the policy may be continued without sacrificing the entitlement to federal funds. Codell v. D.F., 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

3. Application.

KRS 159.051 provides for disclosure of education information regardless of whether the student has actually applied for an instruction (driver) permit, thereby consenting to the release of the information. Codell v. D.F., 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

OPINIONS OF ATTORNEY GENERAL.

The requirements of Acts 1990, ch. 234 (KRS 186.450, 186.470 and this section) that applicants for driving permits and operator's licenses who are under the age of 18 and who have not graduated from high school provide proof that they are currently enrolled or have been enrolled in the prior semester of school may be implemented immediately if it is limited to requiring the applicants to provide this proof based only on whether the applicants have withdrawn from school; requiring the applicants to provide proof of enrollment based on whether the applicants have "dropped out" of school as defined in Section 1(1) of the Act (KRS 159.051) should not be implemented immediately, because such immediate implementation would cause the Act to be applied retroactively without statutory authorization. In addition, the Act's requirement that these applicants provide proof that they are not or have not been found academically deficient should not be implemented immediately, because such immediate implementation would cause the Act to be applied retroactively without statutory authorization; those requirements of the Act which will not be implemented immediately should be implemented at any future date in which the "preceding semester" referred to in the Act will have occurred after July 13, 1990. OAG 90-54, 1990 Ky. AG LEXIS 54.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Loss of license or permit by student for dropping out of school or for academic deficiency, 159.051.

159.060. Special schools for handicapped children. [Repealed.]

Compiler's Notes.

This section (4434-33) was repealed by Acts 1948, ch. 4, § 13.

159.070. Attendance districts — Enrollment permitted in school nearest home.

Each school district shall constitute a separate attendance district unless two (2) or more contiguous school districts, with the approval of the Kentucky Board of Education, unite to form one (1) attendance district. Controversies arising in attendance districts relating to attendance matters shall be submitted to the Kentucky Board of Education for settlement. In case an agreement suitable to all parties cannot be reached, the Kentucky Board of Education may dissolve a united district. In case of dissolution, each school district involved may unite with other contiguous school districts in forming a united attendance district or may act as a separate attendance district. Within the appropriate school district attendance area, parents or legal guardians shall be permitted to enroll their children in the public school nearest their home.

History.

4434-5, 4436-6; amend. Acts 1976, ch. 79, § 1, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 218, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Application to Jefferson County.
2. "Enrollment".

1. Application to Jefferson County.

The last sentence of this section violates the Fourteenth Amendment insofar as it applies to Jefferson County, in that it would operate to frustrate the mandates of the Sixth Circuit to eradicate state-imposed segregation in the Jefferson County school system. Newburg Area Council, Inc. v. Board of Education, 583 F.2d 827, 1978 U.S. App. LEXIS 9562 (6th Cir. Ky. 1978).

2. "Enrollment".

School district had to allow students to attend the school nearest home, not merely to register at the school nearest home, because "enroll in," as used in KRS 159.070, means to become a student at the school. Fell v. Jefferson County Bd. of

Educ., 2011 Ky. App. LEXIS 176 (Ky. Ct. App. 2011), rev'd, 391 S.W.3d 713, 2012 Ky. LEXIS 148 (Ky. 2012).

KRS 159.070 does not grant a statutory right for schoolchildren to attend the school nearest their home; the assignment of pupils to schools within a school district is a matter the Kentucky General Assembly has committed to the sound discretion of the local school board. Jefferson County Bd. of Educ. v. Fell, 391 S.W.3d 713, 2012 Ky. LEXIS 148 (Ky. 2012).

Parents' suit against a board of education, claiming their children were denied their right under KRS 159.070 to attend the public school nearest their home, was properly dismissed because KRS 159.070 conferred no such right; the assignment of pupils to schools within a school district was a matter within the sound discretion of the local school board. Jefferson County Bd. of Educ. v. Fell, 391 S.W.3d 713, 2012 Ky. LEXIS 148 (Ky. 2012).

159.075. Pre-enrollment and preadmission of child whose parent or guardian is transferred to military installation or is returning to the state after being separated from the military.

(1) A child of a military family may pre-enroll or participate in preadmission in a school district if the parent or guardian of the child:

(a) Is transferred to or is pending transfer to a military installation or to a reserve component within the state while on active military duty pursuant to an official military order; or

(b) Is returning to the state within one (1) year of being separated from the military with an honorable discharge, discharge under honorable conditions, or a general discharge under honorable conditions.

(2)(a) A school district shall accept an application for enrollment and course registration by electronic means for a child who meets the requirements set forth in subsection (1) of this section, including enrollment in a specific school or program within the school district.

(b) A school district shall not require the parent or guardian of a child who meets the requirements set forth in subsection (1) of this section to appear in person for enrollment or course registration, including enrollment in a specific school or program within the school district.

(3) The parent or guardian of a child who meets the requirements set forth in subsection (1) of this section shall provide proof of residence to the school district within ten (10) days after the arrival date provided on official documentation. The parent or guardian may use, as proof of residence, military orders or the address of:

(a) A temporary on-post billeting facility;

(b) A purchased or leased home or apartment;

(c) Any federal government housing or off-post military housing, including off-post military housing that may be provided through a public-private venture; or

(d) A home under contract to be built.

(4) A child who utilizes this section shall not, until actual attendance or enrollment in the school district:

(a) Count for the purposes of average daily attendance as defined in KRS 157.320 or 157.350; or

(b) Be included in the state assessment and system pursuant to KRS 158.6453 or 158.6455.

(5) To accommodate for temporary housing, if a child utilizes this section to enroll in a district, but the residence identified in subsection (3) of this section has not yet become available, then the district shall allow the child to enroll and begin attending the district regardless of the child's temporary residence and subsequently be included in the district's calculation of average daily attendance under KRS 157.320, for a period of up to one (1) year from the parent's or guardian's reporting-for-duty date or separation date before being considered a resident of another district.

History.

2019 ch. 163, § 1, effective June 27, 2019; 2020 ch. 28, § 1, effective July 15, 2020; 2024 ch. 131, § 1, effective July 15, 2024.

159.080. Director of pupil personnel and assistants.

(1) Each superintendent of a local school district shall appoint a director of pupil personnel and assistants as are deemed necessary. Salaries of directors and assistants shall be fixed by the board of education.

(2) Directors of pupil personnel shall have the general qualifications of teachers and, in addition, shall hold a valid certificate issued in accordance with the administrative regulations of the Education Professional Standards Board. Certificates valid on January 1, 1956, for attendance officer shall hereafter be valid for the positions of director of pupil personnel. Certificates shall be reissued or renewed in accordance with the terms of the administrative regulations of the Education Professional Standards Board in effect at the time of application for reissuance or renewal.

(3) Directors of pupil personnel and assistants shall be allowed their necessary and authorized expenses incurred in the performance of their duties. Each board shall bear the expense of its directors of pupil personnel and assistants incurred in its district.

(4) The office of the superintendent of schools shall be the office of the director of pupil personnel and suitable space shall be provided therein or adjacent thereto for him or her.

History.

4434-6; amend. Acts 1956, ch. 237, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 219, effective July 13, 1990; 1992, ch. 42, § 2, effective July 14, 1992; 1996, ch. 343, § 2, effective July 15, 1996; 2006, ch. 130, § 1, effective July 12, 2006.

NOTES TO DECISIONS

Analysis

1. Appointment.
2. Rejection of Nominee.

1. Appointment.

This section is mandatory, and the board must appoint the director of pupil personnel recommended by the superintendent, unless the recommendee does not possess the statutory qualifications, is morally or educationally unfit, or some other valid reason for rejection is shown. Bernard v. Sims, 279 Ky. 565, 131 S.W.2d 505, 1939 Ky. LEXIS 321 (Ky. 1939).

2. Rejection of Nominee.

This section contemplates that director of pupil personnel shall be appointed before July 1, but where recommendation was made before July 1, and board illegally rejected nominee, the nomination remained before the board and the nominee should be appointed, in the absence of valid reasons for rejecting him, at a subsequent meeting. Bernard v. Sims, 279 Ky. 565, 131 S.W.2d 505, 1939 Ky. LEXIS 321 (Ky. 1939).

If original nominee is validly rejected, superintendent may nominate another qualified person. Bernard v. Sims, 279 Ky. 565, 131 S.W.2d 505, 1939 Ky. LEXIS 321 (Ky. 1939).

Cited in:

Bernard v. Humble, 298 Ky. 74, 182 S.W.2d 24, 1944 Ky. LEXIS 842 (Ky. 1944).

OPINIONS OF ATTORNEY GENERAL.

A person may not serve as director of pupil personnel of a county school district, a state office, and county judge (now county judge/executive) pro tem, a county office, as the two offices are incompatible under KRS 61.080. OAG 74-382.

The mere fact that the legislature has enacted KRS 159.080 to 159.140 does not automatically preempt the Lexington-Fayette Urban County Government from enacting local legislation, which would allow the police to stop youths who are off school property during school hours and return to their schools those who do not have a legitimate excuse for their absence; however, such activity by the police would be in direct contravention with KRS 630.030 of the state juvenile code, thus would be deemed invalid. OAG 95-36, 1995 Ky. AG LEXIS 85.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Professional certificate for directors and assistant directors of pupil personnel, 16 KAR 3:030.

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

159.090. Directors of pupil personnel for united districts.

Two (2) or more contiguous school districts may unite to form one (1) attendance district and the superintendent of schools of the districts shall appoint directors of pupil personnel as are necessary. The salary of directors of pupil personnel in united districts shall be borne by the employing boards in the proportion that the average daily attendance of each district bears to the total average daily attendance of the united district.

History.

4434-6; Acts 1956, ch. 237, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 411, effective July 13, 1990; 1992, ch. 42, § 3, effective July 14, 1992.

Compiler's Notes.

This section (4434-6; amend. Acts 1956, ch. 237, § 2) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 411, effective July 13, 1990.

159.100. Qualifications of attendance officers. [Repealed.]

Compiler's Notes.

This section (4434-6) was repealed by Acts 1956, ch. 237, § 3.

159.110. Expenses of directors of pupil personnel. [Repealed.]

Compiler's Notes.

This section (4434-6; amend. Acts 1956, ch. 237, § 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

159.120. Office quarters of directors of pupil personnel. [Repealed.]

Compiler's Notes.

This section (4434-7; amend. Acts 1956, ch. 237, § 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

159.130. Powers of directors of pupil personnel.

The director of pupil personnel and his assistants shall be vested with the powers of peace officers, provided, however, that they shall not have the authority to serve warrants. They may investigate in their district any case of nonattendance at school of any child of compulsory school age or suspected of being of that age. They may take such action in accordance with law as the superintendent directs. They may under the direction of the superintendent of schools and the board of education or the Kentucky Board of Education, institute proceedings against any person violating any provisions of the laws relating to compulsory attendance and the employment of children. They may enter all places where children are employed and do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children of compulsory school age. No person shall refuse to permit or in any way interfere with the entrance therein of a director of pupil personnel or in any way interfere with any investigation therein.

History.

4434-12, 4434-13; Acts 1946, ch. 30; 1956, ch. 237, § 5; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 412, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.

This section (4434-12, 4434-13; amend. Acts 1946, ch. 30; 1956, ch. 237, § 5; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 412, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

OPINIONS OF ATTORNEY GENERAL.

Where a child between the ages of seven (7) and 16 is enrolled in a day school not approved by the State Board of Education, the board of education, through its director of pupil personnel, shall conduct an investigation as to why a child of compulsory school age is not attending public school and report to the school board and, under the direction from either the superintendent of schools or the local board of education or the state board of education, institute the appropriate legal proceedings against anyone found violating the compulsory attendance laws. OAG 77-514, 1977 Ky. AG LEXIS 262.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Child labor, KRS ch. 339.
Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

159.140. Duties of director of pupil personnel or assistant.

(1) The director of pupil personnel, or an assistant appointed under KRS 159.080, shall:

(a) Devote his or her entire time to the duties of the office except as provided in subsection (2) of this section;

(b) Enforce the compulsory attendance and census laws in the attendance district he or she serves;

(c) Acquaint the school with the home conditions of a habitual truant as defined in KRS 159.150(3), and the home with the work and advantages of the school;

(d) Ascertain the causes of irregular attendance and truancy, through documented contact with the custodian of the student, and seek the elimination of these causes, which shall include performing the duties required in KRS 159.152 in those schools within the district that are participating in the SOAR Program under KRS 610.033;

(e) Secure the enrollment in school of all students who should be enrolled and keep all enrolled students in reasonably regular attendance;

(f) Attempt to visit the homes of students who are reported to be in need of books, clothing, or parental care;

(g) Provide for the interviewing of students and the parents of those students who quit school to determine the reasons for the decision. The interviews shall be conducted in a location that is nonthreatening for the students and parents and according to procedures and interview questions established by an administrative regulation promulgated in accordance with KRS Chapter 13A by the Kentucky Board of Education. The questions shall be designed to provide data that can be used for local district and statewide research and decision-making. Data shall be reported annually to the local board of education and the Department of Education;

(h) Report to the superintendent of schools in the district in which the student resides the number and cost of books and school supplies needed by any student whose parent, guardian, or custodian does not have sufficient income to furnish the student with the necessary books and school supplies; and

(i) Keep the records and make the reports that are required by law, by administrative regulation of the Kentucky Board of Education, and by the superintendent and board of education.

(2) A local school district superintendent may waive the requirement that a director of pupil personnel devote his or her entire time to his or her duties. The superintendent shall report the decision to the commissioner of education.

(3) In any action brought to enforce compulsory attendance laws, the director of pupil personnel or an assistant shall document the home conditions of the student and the intervention strategies attempted and:

(a) For a minor in kindergarten to grade five (5) whose parent or guardian is in violation of the provisions of KRS 159.010(1)(a) by allowing the child to be absent without excuse for fifteen (15) or more days during a school year, shall report the matter to the county attorney for determination of appropriate court intervention, if any; and

(b) For a minor in grade six (6) through twelve (12) who is a habitual truant as defined in KRS 159.150(3) and has been absent without excuse for fifteen (15) or more days during a school year, shall report the matter to the county attorney for a determination of appropriate court intervention and, if a complaint is filed with the court-designated worker, proceed under KRS 610.030(7).

History.
4434-6, 4434-8 to 4434-10; amend. Acts 1956, ch. 237, § 6; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 220, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 7, effective July 15, 1998; 2003, ch. 159, § 1, effective March 31, 2003; 2006, ch. 130, § 2, effective July 12, 2006; 2014, ch. 132, § 14, effective July 15, 2014; 2024 ch. 163, § 1, effective July 15, 2024; 2026 ch. 69, § 4, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. In General.
2. Construction.
3. Subject Matter Jurisdiction.

1. In General.
This section is mandatory in providing that the director of personnel spend his full time on his duties. Board of Education v. Miller, 299 S.W.2d 626, 1957 Ky. LEXIS 417 (Ky. 1957).

2. Construction.
Where administrator no longer worked for the Board of Education, the claim that the Board violated this section by assigning her job responsibilities not explicitly enumerated in the statute was rendered moot and the injunctive relief granted by the court in response was vacated. Buntin v. Breathitt County Bd. of Educ., 134 F.3d 796, 1998 FED App. 0025P, 1998 U.S. App. LEXIS 786 (6th Cir. Ky. 1998).

3. Subject Matter Jurisdiction.
Court had no subject matter jurisdiction in truancy cases because (1) home conditions were described in required forms as "no visible barriers to attendance," which was too ambiguous to ascertain what was meant and did not meet a statutory requirement to acquaint students' schools with home conditions, (2) many areas of the form were left blank, and (3) a court's speculative statement that the court "bet" a school had made attempts to assist a student and family as statutorily required before filing a complaint showed the court did not know if the school had done what was necessary to invoke the court's jurisdiction. J.L.C. v. Commonwealth, 491 S.W.3d 519, 2016 Ky. App. LEXIS 41 (Ky. Ct. App. 2016).

Cited in:
N.K. v. Commonwealth, 324 S.W.3d 438, 2010 Ky. App. LEXIS 192 (Ky. Ct. App. 2010).

OPINIONS OF ATTORNEY GENERAL.

Before the 2003 amendments, although the positions of county director of pupil personnel and city director of pupil personnel were not incompatible as such, they are incompatible in fact because, under prior law, subdivision (1) of this section requires that a director of pupil personnel must devote his entire time to his duties which he could not do in two (2) such positions. OAG 60-1027.

Before the 2003 amendments, even though the language of this section provides that the director of pupil personnel shall devote his entire time to the duties of his office, such director may be a member of the board of trustees of a public library district. OAG 67-83.

Where a child between the ages of seven (7) and 16 is enrolled in a day school not approved by the State Board of Education, the board of education through its director of pupil personnel, shall conduct an investigation as to why a child of compulsory school age is not attending public school and report to the school board and, under the direction from either the superintendent of schools or the local board of education or the State Board of Education, institute the appropriate legal proceedings against anyone found violating the compulsory attendance laws. OAG 77-514, 1977 Ky. AG LEXIS 262.

Before the 2003 amendments, where an entire classroom unit (under KRS 157.360(9)) is involved, the director of pupil personnel must devote his or her entire time to the duties of that office and would not be able to also serve as the director of transportation; however where a proportionate fraction of a unit is involved, the requirement of subdivision (1) of this section would be met by the director of pupil personnel by spending an amount of time in the same proportion to the normal school day that the fraction bears to the unit will constitute devoting the entire time to the duties of the office. OAG 80-389, 1980 Ky. AG LEXIS 281.

Subdivision (7) (now (1)(h)) of this section and KRS 160.330 may be read in complete harmony with KRS 158.108. OAG 82-359, 1982 Ky. AG LEXIS 268.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Board of education to furnish books and supplies for indigent children, KRS 160.330.

Child labor law, enforcement, KRS 339.450.

Reports as to disabled children, KRS 157.260.

Pupil attendance, 702 KAR 7:125.

159.150. Definitions of truant and habitual truant — Attendance record requirements — Adoption of truancy policies by local school boards — Implementation of early intervention and prevention programs.

(1) Any student who has attained the age of six (6) years, but has not reached his or her eighteenth birthday, who has been absent from school without valid excuse for three (3) or more days, or tardy without valid excuse on three (3) or more days, is a truant.

(2) Any student enrolled in a public school who has attained the age of eighteen (18) years, but has not reached his or her twenty-first birthday, who has been absent from school without valid excuse for three (3) or more days, or tardy without valid excuse on three (3) or more days, is a truant.

(3) Any student who has been reported as a truant two (2) or more times is an habitual truant.

(4) For the purposes of establishing a student's status as a truant, the student's attendance record is cumulative for an entire school year. If a student transfers from one (1) Kentucky public school to another during a school year, the receiving school shall incorporate the attendance information provided under KRS 159.170 in the student's official attendance record.

(5) A local board of education may adopt reasonable policies that:

(a) Require students to comply with compulsory attendance laws;

(b) Require truants and habitual truants to make up unexcused absences;

(c) Impose sanctions for noncompliance; and

(d) Collaborate and cooperate with the Court of Justice, the Department for Community Based Services, the Department of Juvenile Justice, regional community mental health centers, and other service providers to implement and utilize early intervention and prevention programs, such as truancy diversion, truancy boards, mediation, and alternative dispute resolution to reduce referrals to a court-designated worker.

History.

4434-14; Acts 1982, ch. 33, § 1, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 413, effective July 13, 1990; 1998, ch. 611, § 2, effective July 15, 1998; 2005, ch. 172, § 1, effective June 20, 2005; 2007, ch. 122, § 1, effective June 26, 2007; 2014, ch. 132, § 15, effective July 1, 2015.

OPINIONS OF ATTORNEY GENERAL.

Even though a child over 16 years of age is truant, the penalties of KRS 159.990 cannot be imposed upon the child's parent, guardian or custodian. OAG 64-312.

Since a boycott by pupils is regarded as offending the truancy statutes, statement by State Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A child is delinquent who, inter alia, is an habitual truant from school pursuant to KRS 208.020 (now repealed) and the punishment for truancy for either the child or his parents is a matter within the discretion of the Juvenile Court. OAG 73-390.

The determination of what is a "valid excuse" for an absence from school rests in the policy making authority of the local board of education and a child may not be determined a truant if the absence is excused in accordance with guidelines concerning excused versus unexcused absences developed by the local board. OAG 76-566.

While the two definitions of "habitual truant" in this section and KRS 600.020(24) (now 600.020(28)) cannot be reconciled in terms of their language, it may be possible to reconcile them in their application. KRS 159.140 gives directors of pupil personnel authority to enforce compulsory attendance laws, including this section. Penalties are set forth under KRS 159.990 and are enforced by the District Court. Through exclusive jurisdiction over habitual truants the District Court has discretion in enforcement. The court may either rely on a director of pupil personnel to initiate proceedings for violations of this section, or the court may order a director of pupil personnel to enforce KRS 600.020(24), in which case the director would have authority to apply the definition found therein. OAG 91-79, 1991 Ky. AG LEXIS 79.

The opinion issued in OAG 87-40 reversed OAG 81-79 and therefore married children under sixteen (16) years old must attend school. OAG 93-37, 1993 Ky. AG LEXIS 90.

A married female under 16 years of age is a "child" as defined in KRS 600.020. OAG 93-37, 1993 Ky. AG LEXIS 90.

KRS 600.020(26) (now 600.020(28)) controls over this section in ascertaining the number of days a child must have unexcused absences prior to being found habitually truant under the Unified Juvenile Code. OAG 93-37, 1993 Ky. AG LEXIS 90.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28, 1996 Ky. AG LEXIS 30.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

159.152. Truancy intervention in grades 6 through 12 — Duties of director of pupil personnel — Notice to court-designated worker.

In addition to the duties assigned under KRS 159.140, the director of pupil personnel, or an assistant appointed under KRS 159.080, shall:

(1) Upon a student in grades six (6) through twelve (12) becoming a truant as defined in KRS 159.150(1), provide written notice to the student and the student's parent, guardian, or other person exercising custodial control or supervision of the following:

(a) The number of the student's unexcused absences;

(b) An explanation of the attendance policy, including policies for required documentation for excused absences;

(c) Available resources and tools intended to prevent further unexcused absences; and

(d) Contact information with office hours for the parent, guardian, or other person exercising custodial control or supervision to contact the director of pupil personnel, or an assistant appointed under KRS 159.080, to discuss barriers to attendance and potential solutions to overcome those barriers;

(2) Upon a student in grades six (6) through twelve (12) being absent without excuse five (5) days during a school year, provide notice to the court-designated worker using a truancy intervention pre-complaint form of the following:

(a) The number and dates of the student's unexcused absences;

(b) A copy of the written notice provided to the student and the student's parent, guardian, or other person exercising custodial control or supervision required in subsection (1) of this section;

(c) Contact information for the parent, guardian, or other person exercising custodial control or supervision; and

(d) A description of the interventions and support services offered to the student and the student's parent, guardian, or other person exercising custodial control or supervision; and

(3) Participate in the SOAR Program established in KRS 610.033 if available at the school.

History.

2026 ch. 69, § 3, effective July 15, 2026.

159.160. Attendance reports to superintendent.

The principal or teacher in charge of any public, private, or parochial school shall report to the superintendent of schools of the district in which the school is situated the names, ages, and places of residence of all pupils in attendance at his school, together with any other facts that the superintendent may require to facilitate carrying out the laws relating to compulsory attendance and employment of children. The reports shall be made within two (2) weeks of the beginning of each school year.

History.

4434-15; amend. Acts 1990, ch. 476, Pt. IV, § 221, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Loss of license or permit by student for dropping out of school or for academic deficiency, 159.051.

159.170. Withdrawals — Teachers to investigate and report — Entry of expulsion in student record — Collection and dissemination of student records.

(1) Whenever any child of compulsory school age withdraws from school, the teacher of the student shall ascertain the reason. The fact of the withdrawal and the reason for it shall be immediately transmitted by the teacher to the superintendent of schools of the district in which the school is located. If the student has withdrawn because of change of residence, the next residence shall be ascertained and included in the report.

(2) The Kentucky Department of Education shall ensure that the student information system facilitates the collection of student data and the transfer of education records among schools and local districts.

(3) Within five (5) days of a student being expelled under KRS 158.150, a school district shall enter the expulsion in the student's record within the student information system.

(4) A school district shall notify the Kentucky Department of Education when a new student enrolls in a school in the district.

(5) The Kentucky Department of Education, upon notification of a student's enrollment in a school, shall forward within ten (10) working days all records regarding the student collected under this section to the receiving district.

History.

4434-16; Acts 1978, ch. 155, § 82; effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 414, effective July 13, 1990; amend. 1996, ch. 362, § 6, effective July 15, 1996; 2007, ch. 122, § 2, effective June 26, 2007; 2026 ch. 50, § 4, effective July 15, 2026.

Compiler's Notes.

This section (4434-16; amend. Acts 1978, ch. 155, § 82; effective June 17, 1978) was repealed and reenacted as the

same section number by Acts 1990, ch. 476, Pt. V, § 414, effective July 13, 1990.

The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Pupil attendance, 702 KAR 7:125.

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

159.180. Parents responsible for children's violations.

Every parent, guardian, or custodian of a child residing in any school district in this state is legally responsible for any violation of KRS 159.010 to 159.170 by the child. Before any proceedings are instituted against the parent, guardian, or custodian for violation of KRS 159.010 to 159.170, a written notice of the violation shall be served on the person by the director of pupil personnel, and one (1) day shall be given for the termination of the violation. After such notice, if the violation is continued or if the provisions of KRS 159.010 to 159.170 are again violated during the school term by the child, no further notice shall be necessary and the parent or guardian shall be punishable as provided in KRS 159.990. A notice by certified mail, return receipt requested, or by personal service by the director of pupil personnel shall be a legal notice.

History.

4434-17; Acts 1958, ch. 126, § 16; 1966, ch. 89, § 4; 1974, ch. 315, § 16; 1980, ch. 114, § 23, effective July 15, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 415, effective July 13, 1990.

Compiler's Notes.

This section (4434-17; amend. Acts 1958, ch. 126, § 16; 1966, ch. 89, § 4; 1974, ch. 315, § 16; 1980, ch. 114, § 23, effective July 15, 1980) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 415, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Since a boycott by pupils is regarded as offending the truancy statutes statement by State Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A child is delinquent who, inter alia, is an habitual truant from school pursuant to KRS 208.020 (now repealed) and the punishment for truancy for either the child or his parents is a matter within the discretion of the Juvenile Court. OAG 73-390.

As Judge of the Juvenile Court, the county judge (now county judge/executive) has exclusive jurisdiction over any child who is found to be an habitual truant as well as all persons, including parents, who contribute to conditions which cause a child to become delinquent and any violation can be punished by a fine or imprisonment or both, or a parent or guardian can be fined for violation of the compulsory attendance law but no statute provides for committing a child to jail for truancy. OAG 73-769.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Parent and child, KRS ch. 405.

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

Caldwell's Kentucky Form Book, 5th Ed., Notification of Withdrawal from School, Form 256.08.

159.190. Parental or truant schools may be provided in certain districts. [Repealed.]

Compiler's Notes.

This section (4434-32) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.200. Location of parental or truant schools. [Repealed.]

Compiler's Notes.

This section (4434-32) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.210. Religious instruction in parental or truant schools. [Repealed.]

Compiler's Notes.

This section (4434-32) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.220. Probation — Children placed on. [Repealed.]

Compiler's Notes.

This section (4434-32; amend. 1976 (Ex. Sess.), ch. 14, § 162) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.230. Violation of probation — Effect of. [Repealed.]

Compiler's Notes.

This section (4434-32; amend. 1976 (Ex. Sess.), ch. 14, § 163) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.240. Continuing school census to be maintained. [Repealed.]

Compiler's Notes.

This section (4434-25) was repealed by Acts 1990, ch. 476, Part VI, § 616, effective July 13, 1990.

159.250. Nature of census.

The director of pupil personnel of each school district, working under the direction of the superintendent of schools, shall institute and maintain a complete, accurate, permanent, and continuous census of all children between the ages of five (5) and twenty-one (21) enrolled in the public schools in the district. A child's age is between five (5) and twenty-one (21) when the child has reached his fifth birthday and has not passed the twenty-first birthday. The school census shall specify the name, date of birth, and sex of each child; the name, nationality, and post-office address of each parent, guardian, or custodian of the child; the school district in which the child resides; and the school in which the child is enrolled. The school shall be described by number and name. The census shall contain any other data required by the chief state school officer. Each board of education shall furnish its director of pupil personnel with assistance it deems necessary for the institution and maintenance of the census.

History.

4434-25, 4434-26; amend. Acts 1966, ch. 89, § 5; 1984, ch. 367, § 8, effective July 13, 1984; 1988, ch. 94, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 222, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Use.
2. Questioning Report.

1. Use.

The pupil census records are superior to teacher's affidavit in establishing whether individual attended school. Spurlock v. Commonwealth, 350 S.W.2d 472, 1961 Ky. LEXIS 99 (Ky. 1961).

2. Questioning Report.

State superintendent may question in a judicial proceeding the accuracy of census reports. Louisville School Board v. Superintendent of Public Instruction, 102 Ky. 394, 43 S.W. 718, 19 Ky. L. Rptr. 1350, 1897 Ky. LEXIS 134 (Ky. 1897). (Decided under former KRS 159.260, now repealed).

OPINIONS OF ATTORNEY GENERAL.

Since the purpose of maintaining public school census records is to serve the interest of the state in enforcing the compulsory attendance law the use of such records to compile a private mailing list is not legally warranted. OAG 75-274.

The public school census records are public records but are not always open for public inspection since opening them thereto, without the written consent of the parents, might jeopardize a school district's entitlement to federal funds. OAG 75-274.

159.260. Report of census to superintendent of public instruction. [Repealed.]

Compiler's Notes.

This section (4434-27; amend. Acts 1966, ch. 89, § 6; 1978, ch. 155, ch. 82, effective June 17, 1978; 1984, ch. 367, § 9, effective July 13, 1984) was repealed by Acts 1988, ch. 94, § 3, effective July 15, 1988.

159.270. False report of census prohibited.

No director of pupil personnel or other person shall willfully or fraudulently report a larger number of children of school age in any district than the actual number, or otherwise make a false report of the census.

History.

4434-28; amend. Acts 1966, ch. 89, § 7; 1990, ch. 476, Pt. IV, § 223, effective July 13, 1990; 1996, ch. 20, § 3, effective July 15, 1996.

PENALTIES

159.990. Penalties.

(1) Any parent, guardian, or custodian who intentionally fails to comply with the requirements of KRS 159.010 to 159.170, except as provided in subsection (5) of this section, shall be fined one hundred dollars ($100) for the first offense, and two hundred fifty dollars ($250) for the second offense. Each subsequent offense shall be classified as a Class B misdemeanor. A new offense shall not be constituted until any previous offense has been finally adjudicated. The court trying the case may suspend enforcement of the fine if the child is immediately placed in attendance at a school, and may finally remit the fine if the attendance continues regularly for the full school term. School attendance may be proved by an attested certificate of the principal or teacher in charge of the school.

(2) Any principal, teacher, director of pupil personnel, assistant director of pupil personnel, or other school officer who intentionally fails to comply with the provisions of KRS 159.010 to 159.250, or of KRS 160.330 shall be fined not less than twenty-five dollars ($25) nor more than fifty dollars ($50). Upon conviction under this subsection, a director of pupil personnel or assistant director of pupil personnel shall be removed from office and have his certificate revoked, and a principal, teacher, or other school officer may have his certificate revoked.

(3) Any person, other than those persons mentioned in subsections (1) and (2) of this section, who fails to comply with any of the provisions of this chapter relating to compulsory attendance, or who violates any of the provisions of KRS 159.130, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200), or imprisoned in the county jail for not more than sixty (60) days, or both.

(4) Any person who violates any of the provisions of KRS 159.270 shall be liable to a fine of not less than fifty dollars ($50) and shall be liable to the punishment prescribed by law for the crime of false swearing. If he is an officer, he shall be removed from office; and if he is a director of pupil personnel, his certificate shall be revoked.

(5) Any of the following who intentionally fails to comply with the requirements of KRS 159.150 shall be fined one hundred dollars ($100) for the first offense and two hundred fifty dollars ($250) for each subsequent offense:

(a) A student enrolled in a public school who has attained the age of eighteen (18) years, but who has not yet reached his or her twenty-first birthday, for whom a guardian has not been appointed by a court of competent jurisdiction, whether or not that student is identified as an exceptional child or youth under KRS 157.200(3)(a) to (m);

(b) A parent, guardian, or custodian of a student enrolled in a public school who has not reached his or her eighteenth birthday; or

(c) A guardian appointed by a court of competent jurisdiction of a student who is enrolled in a public school, has been identified as an exceptional child or youth under KRS 157.200(3)(a) to (m), and has attained the age of eighteen (18) years, but who has not yet reached his or her twenty-first birthday.

Any person described in paragraph (a), (b), or (c) of this subsection shall be informed by personnel of the local school district that a public school student who has not reached his or her twenty-first birthday shall be subject to truancy laws.

(6) All fines imposed and all sums required to be paid as penalties under this section shall, after payment of the costs of prosecution and recovery thereof, be paid into the treasury of the district board of education and become a part of the school fund of the district.

History.

4434-13, 4434-20 to 4434-24, 4434-28; Acts 1966, ch. 89, § 8; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 416, effective July 13, 1990; 1992, ch. 42, § 1, effective July 14, 1992; 2005, ch. 172, § 2, effective June 20, 2005; 2026 ch. 196, § 8, effective July 15, 2026.

Compiler's Notes.

This section (4434-13, 4434-20 to 4434-24, 4434-28; amend. Acts 1966, ch. 89, § 8) was repealed and reenacted as the same section number by Acts 1990, ch. 476, Pt. V, § 416, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

OPINIONS OF ATTORNEY GENERAL.

A police court has jurisdiction to try parents of children who fail to attend school in violation of the statute. OAG 61-880.

Even though a child over 16 years of age is truant, the penalties of this section cannot be imposed upon the child's parent, guardian or custodian. OAG 64-312, modified by OAG 87-40 to the extent of conflict.

Since a boycott by pupils is regarded as offending the truancy statutes statement by state Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A child is delinquent who, inter alia, is an habitual truant from school pursuant to KRS 208.020 (now repealed) and the punishment for truancy for either the child or his parents is a matter within the discretion of the juvenile court. OAG 73-390.

As Judge of the Juvenile Court, the county judge (now county judge/executive) has exclusive jurisdiction over any child who is found to be an habitual truant as well as all persons, including parents, who contribute to conditions which cause a child to become delinquent and any violation can be punished by a fine or imprisonment or both or a parent or guardian can be fined for violation of the compulsory attendance law but no statute provides for committing a child to jail for truancy. OAG 73-769.

The penalty for failure to comply with the compulsory education statutes can only be by fine, and no amount of jail detention is authorized by statute. OAG 73-846.

Unless a child is excepted from immunization or testing for tuberculosis under this section, a child who does not comply with immunization and testing requirements cannot enroll in any public or private school system, and the child's failure to attend school will subject the parents or the custodians to the penalties set forth in this section. OAG 76-256.

Since subsection (1) of this section refers only to actions against adults failing to comply with KRS 159.010 to 159.170 and not to juveniles charged under KRS 159.150, subsection (1) of this section is not applicable in a juvenile proceeding for habitual truancy under KRS 208.020(1)(c) (now repealed). OAG 76-607.

A charge under subsection (1)(c) of KRS 530.070 requires proof of habitual truancy which is not required to be proved to establish a charge under subsection (1) of this section; therefore a parent or legal guardian could be charged and punished under subsection (1) of this section and a prosecution under one of these sections would not be a bar to a prosecution under the other. OAG 77-514, 1977 Ky. AG LEXIS 262.

A parent, guardian, or other custodian may be subject to the penalties found in this section for failure to comply with subsection (2) of KRS 159.010, which requires 60 days' written notice and counseling prior to an unmarried child between the ages of 16 and 18 withdrawing from school. OAG 87-40, modifying OAG 64-312 to extent inconsistent.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Notification of Withdrawal from School, Form 256.08.

CHAPTER 160
SCHOOL DISTRICTS

General Provisions.

Section

160.010. County school district, what constitutes.
160.020. Composition of independent school districts.
160.030. [Repealed.]
160.040. Merger of districts.
160.041. Merger of independent district with county district.
160.042. Election of members — Present terms to continue, exception.
160.043. [Repealed and Reenacted.]
160.044. Time of election and terms of merged district board members.
160.045. Transfer of adjacent territory to school district other than that in which it is located.
160.047. [Repealed.]
160.048. Transfer of area containing school outside district.
160.049. [Repealed.]
160.050. [Repealed.]
160.060. [Repealed.]
160.065. Liability for indebtedness in case of annexation.
160.070. [Repealed.]
160.080. [Repealed.]
160.090. [Repealed.]
160.100. [Repealed.]
160.105. Fire and extended insurance coverage — Primary liability insurance coverage.
160.107. Application and implementation requirements for districts of innovation. [Repealed].
160.110. [Repealed.]
160.120. [Repealed.]

Section
160.125. School of innovation pilot project — Fund — Applications — Distribution of funds — Report — Matching funds — Termination of participation.
160.130. [Repealed.]
160.135. Truancy intervention — Collection and reporting of data — Requirements — Annual report.
160.140. [Repealed.]
160.145. Definitions — Designated traceable communication system — Unauthorized electronic communication — Parental authorization for exceptions — Communications that are not restricted — Disclosure of affiliation — Report of unauthorized electronic communication — Disciplinary penalties — Notification and investigation of report.
160.148. Prohibition of nondisclosure agreement relating to misconduct involving minor or student.
160.150. [Repealed.]
160.151. Criminal background checks and clear CA/N checks for new certified hires and student teachers in certified nonpublic schools — New checks on teachers permitted every five years — Fingerprinting — Disclosure statement — Employment of offenders by certified nonpublic schools — Forms — Nondisclosure agreement prohibited.
160.152. Kentucky Educator Placement Service System — Requirements — Operation — Annual report.
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Community Schools.

160.155. Definitions for KRS 160.157.
160.156. State plan for community education — Grant program.
160.157. Funding of community schools.
160.158. Council for Community Education — Membership — Bylaws — Officers — Meetings — Reimbursement of expenses.

Public Charter Schools.

160.1590. Definitions for KRS 160.1590 to 160.1599.
160.1591. Legislative findings and declarations — Public charter school project.
160.15911. Kentucky Public Charter School Pilot Project — Authorizers — Approval of charter application — Collective may act as substitute authorizer — Annual report — Performance review — Contract renewal.
160.1592. Public charter schools part of state's public education system — Exemption from laws and regulations — School requirements — Enrollment option information for parents — Board of directors — Buildings and grounds, liability insurance, and other undertakings — Requirement to be nonsectarian and nondiscriminatory — Authorized grade levels — Programs and services for students with disabilities — Participation in athletic, academic, and other programs — Single-sex public charter schools permitted — Amendments to charter contract — Acceptance of credits earned and grades received in public charter school — Leave of absence to teach in public charter school.
160.1593. Application to establish public charter school — Submission to authorizer and state board — Required application information.
160.1594. Public charter school authorizer — Duties — Application reviews and decisions — Criteria for approval — Explanation of decision — Submission to Department of Education — School board member charter authorization training.
Section
160.1595. Request for technical assistance — Appeal of approval or denial to state board — Judicial review — Joint oversight.
160.1596. Board of directors of public charter schools — Required elements of charter contract with authorizer — Calculation of daily average attendance — Proportional transfer of funds — Services — Negotiation by collaborative — Calculations for first year — Authorizer fee — Schedule for funds transfer — Grants — Share of state and federal funds — Distribution of closed school's assets — Administrative regulations — Annual report by authorizer.
160.1597. Term of approved charter school contract — Contract between board of directors and authorizer's governing body — Corporate powers — Prohibition against tax levies and use of eminent domain — Immunity from liability.
160.1598. Renewal or nonrenewal of charter contract — School performance report — Reasons for nonrenewal or revocation — Administrative regulations — Report of action taken and reason for decision — School closure protocol.
160.1599. Conversion of public noncharter school to public charter school — Establishment requirements — Administrative regulations — Governance — Enrollment requirements — Employees — Collective bargaining — School facilities.

Boards of Education.

160.160. Definition of "large school district" — Boards of education — Powers and procedures — Approval of Department of Education required for mortgages and leases — Authorization for general obligation bonds — Rental and debt service payments — Funds intercept — Sale of real or personal property by board.
160.170. Oath of board members.
160.180. Eligibility for membership on local board of education — Removal from office — Reelection — Annual in-service training requirements.
160.190. Process to fill vacancy.
160.200. Time of election of board members.
160.210. Election of board members — Divisions in districts — Change in boundary lines of divisions — Boards in large school districts.
160.211. Divisions for the Jefferson County Board of Education.
160.212. Election of board members where school district extends beyond a single county's boundary.
160.220. Secret votes — Nominating petitions.
160.230. Presentation of candidate names.
160.240. General election laws apply.
160.250. Politics of candidate not to be indicated — Definition of election booth.
160.260. Number of candidates to be voted for.
160.270. Regular and special meetings — Public comment period.
160.280. Per diem and expenses for board members — Eligibility for insurance plans.
160.290. General powers and duties of board.
160.291. Manner of payment of salaries to school employees — Pay for extra duties or services — Fringe benefits program.
160.293. Development of school property recreational facilities for school and community purposes.
160.294. Recycling requirement for local school districts — Exemptions.
160.295. Procedure for promulgation of code of student rights and responsibilities for secondary schools — Prohibited student activities.

Section
160.297. [Renumbered].
160.300. Investigations by board — Power to summon witnesses.
160.303. Reciprocal preference for resident bidders.
160.305. Contracts for use of school buses to transport persons eligible for transportation services.
160.306. [Repealed.]
160.310. Board to provide insurance for school buses.
160.320. Roads or passways to school buildings for pupils.
160.325. Mandatory participation in Kentucky Energy Efficiency Program. [Repealed].
160.330. Board may furnish necessary school supplies free of charge — Free textbooks for indigent children — Waiver of fees.
160.335. Board may distribute refurbished surplus technology to low-income students.
160.340. Reports by boards to Kentucky Board of Education — Filing of policies on specified matters.
160.345. Definitions — Required adoption of school councils for school-based decision making — Composition — Responsibilities — Personnel decisions — Procedures to fill vacancy in principal position — Professional development — Exemption — Formula for allocation of school district funds — Intentionally engaging in conduct detrimental to school-based decision making by board member, superintendent, district employee, or school council member — Complaint procedure — Disciplinary action — Rescission of right to establish and powers of council — Wellness policy.
160.346. Definitions — Targeted and comprehensive support and improvement — Revised plans — Turnaround audit — Removal of principal — Review and report — Intervention process — Professional learning requirement — Adoption of evidence-based curriculum and selection of high-quality instructional resources — Exit criteria — Schools requiring rigorous support and action — District with significant number of targeted schools — Evidence of violation — Restoration of school's right to establish council.
160.347. Removal of school council member.
160.348. Advanced placement, International Baccalaureate, dual enrollment, dual credit courses, and other advanced coursework.

District Officers and Employees.

160.350. Superintendent of schools — Appointment — Term — Vacancy — Publication of each superintendent's contract and any contract amendment, renewal, extension, or addendum — Qualifications — Removal — Contract extension.
160.352. Screening committee — Minority representation — Recommendations for superintendent.
160.360. [Repealed.]
160.370. Superintendent as executive agent of board — Duties — Duties of local board of education and superintendent in county with consolidated local government or having five hundred thousand inhabitants — Approval of small purchases in county with consolidated local government.

Section
160.380. School district personnel actions — Restrictions on appointment of relatives, violent offenders, and persons convicted of sex crimes — Restriction on assignment to alternative education program as disciplinary action — Disclosure of disciplinary action related to abusive conduct of applicant — Background checks and clear CA/N checks — Requirements for drivers of non school bus passenger vehicles — Probationary status — Termination on basis of criminal record — Application forms — Allegation of abusive conduct made against employee — Employees charged with felony offenses — Notification by employee found to have abused or neglected a child.
160.382. Exit surveys.
160.390. Duties of superintendent — Personnel actions.
160.395. Duty of superintendents to distribute information to school board and school council members.
160.400. Duties of outgoing superintendent.
160.410. Expenses of superintendent and employees.
160.420. [Repealed.]
160.430. [Repealed.]
160.431. School finance officer — Certification requirements — Continuing education — Financial reports.
160.440. Secretary of board of education.
160.445. Sports safety course required for interscholastic coaches — Training and education on symptoms, treatment, and risks of concussion — Venue-specific emergency action plans.

District Finances.

160.450. Fiscal year of school districts.
160.455. Definition of tax-levying authority.
160.460. Levy of school taxes — Procedures.
160.461. Local board of education budget — Schedule of adoption — Minimum reserve.
160.462. [Repealed.]
160.463. School district financial disclosure website — Publication of financial statement and school report card.
160.464. [Repealed.]
160.470. Tax rate limits — Hearing — Levy exceeding four percent increase subject to recall vote or reconsideration — Levy of minimum equivalent tax rate.
160.472. Determination of maximum permissible school district revenue.
160.473. Limits for board of education tax rates on personal property — Public hearing and recall not applicable.
160.474. [Repealed.]
160.475. Ad valorem tax levy for school purposes — Maximum rates — Subdistrict taxes abolished.
160.476. School building fund taxes — Investment — Expenditures — Audit.
160.477. [Repealed.]
160.480. [Repealed.]
160.482. Occupational license, policy (counties of 300,000).
160.483. Occupational license fees, rates, exemptions (counties of 300,000) — Sunset on new taxes — Regulation of ministers.

Section
160.484. Occupational license fees, imposition and discontinuation (counties of 300,000) — Sunset on new taxes.
160.485. Occupational license fees, adoption — Referendum procedure.
160.486. Occupational license fees — Collection — Distribution (counties of 300,000).
160.487. Action for refund of occupational license fees (counties of 300,000).
160.488. Effect of occupational license fees law (counties of 300,000).
160.490. [Repealed.]
160.500. Collector of school taxes — Allowances to — Special collector — Tax bills.
160.505. Certain taxes to be collected by person appointed by board of education.
160.510. Taxes paid to depository — Reports of tax collector.
160.515. Cash rounding for payments to school districts.
160.520. Penalties for tax delinquency — General laws apply.
160.530. Use of school money.
160.531. [Repealed.]
160.532. [Repealed.]
160.533. [Repealed.]
160.534. [Repealed.]
160.540. Power to borrow money in anticipation of taxes.
160.550. Expenditure of funds in excess of income and revenue of any year — Certification of school district — Penalties.
160.560. Treasurer of board of education — Selection — Bond — Duties.
160.570. Depository of board — Bond — Duties.
160.580. Gift, grant, or devise to school board.
160.590. [Repealed.]
160.593. Levy of occupational license tax and utility gross receipts license tax for schools.
160.595. [Repealed.]
160.597. Levy recall procedure.
160.599. Emergency loans to public common school districts.
160.600. [Renumbered.]

Occupational License Tax for Schools.

160.601. Taxes, how designated.
160.603. Notice and hearing before levy.
160.605. Occupational license tax for schools — Exemptions.
160.607. Rate of tax — Sunset on new taxes.
160.608. [Repealed.]
160.609. [Repealed.]
160.610. [Repealed.]
160.611. Nonresidents of school districts exempt.

Utility Gross Receipts License Tax for Schools.

160.613. Utility gross receipts license tax for schools — Exemptions — User liable if supplier is exempt — Direct pay authorization — Tollers.
160.6131. Definitions for KRS 160.613 to 160.617.
160.614. Tax on gross receipts from furnishing of cable television services and multichannel video programming services.
160.6145. Utility gross receipts license tax returns, payments transmitted electronically — Waiver — Administrative regulations. [Repealed.]
160.615. Taxes payable, when — Extension.
160.6151. Administration of taxes authorized by KRS 160.613 and 160.614.
160.6152. Superintendents to provide information to department and to utilities — Allocation of tax payments — Agreement by participating districts within county to allocate based on average daily attendance — Resolution of conflicts.
160.6153. Procedure when allocation on taxpayer's return varies from school district boundary information provided by superintendents — Adjustment — Exceptions — Reallocation agreement.
160.6154. Collection and distribution of taxes imposed under KRS 160.613 and 160.614.
160.6155. Taxes to be distributed in compliance with KRS 160.613 to 160.617.
160.6156. Refund of utility gross receipts tax — Effect of utility's rate increase — Appeal to Circuit Court.
160.6157. Penalty provisions applicable to taxes levied by school districts — Penalty imposed for erroneous billing.
160.6158. Waiver of penalties.
160.617. Utility rate increase.
160.620. [Repealed.]

Excise Tax for Schools.

160.621. Excise tax on individual income for schools. [Repealed].
160.623. [Repealed.]
160.625. Excise tax returns — Payment — Form. [Repealed].
160.627. Information on state income tax liability of school district residents — Department of Revenue as tax collector. [Repealed].
160.630. [Repealed.]
160.631. Definitions for KRS 160.632. [Renumbered.]
160.632. Reimbursement of districts for school services to out-of-school district children — Reports — Payment. [Renumbered.]
160.633. Deposit of excise tax proceeds. [Repealed].

General Provisions on School Taxes.

160.635. Continuance of tax until reduced — Expiration date.
160.637. Reimbursement of costs.
160.640. Custodian of tax funds to give bond — Department of Revenue excepted — Expense, how paid.
160.642. Custodian to be audited.
160.644. Tax proceeds, apportionment to districts.
160.646. [Repealed.]
160.648. Penalty for failure to make returns or pay tax.

Kentucky Family Education Rights and Privacy Act.

160.700. Definitions related to KRS 160.700 to 160.730.
160.705. Confidentiality of students' education records — Procedures for protection and preservation of education records and recordings of school activities.
160.710. Notification of privacy rights — Written policies.
160.715. Inspection and review of records — Procedures — Fees for copying permitted.
160.720. Consent to release of records — Release without consent — Waiver by student — Records of release.
160.725. Directory information on student — Student's right to restrict release — Official recruiters' access to public high school campuses and student directory information.
160.730. Challenge of contents of record — Procedure.

Penalties.

160.990. Penalties.
160.991. [Repealed.]

GENERAL PROVISIONS

160.010. County school district, what constitutes. Each county in this state constitutes a county school district, except that, in counties in which there are

independent school districts, the county school district consists of the remainder of the county outside of the boundaries of the independent school districts.

History.
4399-2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 417, effective July 13, 1990.

Compiler's Notes.
This section (4399-2) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 417, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Principal School District Units.
2. Merger.

1. Principal School District Units.
Under the statutes, counties are the principal school district units. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452, 1948 Ky. LEXIS 861 (Ky. 1948).

2. Merger.
Since matters affecting the schools and their management were vested in the local board of education, a school board could not delegate or shift its responsibilities to a fiscal court or the electorate by requesting that the fiscal court place on ballot the question of whether the voters favored the consolidation or merger of certain county schools. Hickman County Fiscal Court v. Workman, 528 S.W.2d 730, 1975 Ky. LEXIS 89 (Ky. 1975).

Cited in:
Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946); Brown v. Hardin County Bd. of Educ., 358 S.W.2d 488, 1962 Ky. LEXIS 176 (Ky. 1962); Wigginton v. Nelson County Board of Education, 408 S.W.2d 647, 1966 Ky. LEXIS 133 (Ky. 1966).

OPINIONS OF ATTORNEY GENERAL.

Library districts organized under KRS 173.470 or 173.720 are not exempt from the payment of the tax imposed by this chapter. OAG 68-241.

Where territory annexed by the city was omitted from the city's school boundary lines but was also dropped from the county school district, it would continue to remain in the county school district. OAG 70-634.

As a school district is a municipality having jurisdiction over the disposal of its own sewage, it would be fully eligible to participate and receive any grant from the Federal Environmental Protection Agency for the construction of a sewage treatment facility or septic tank system. OAG 72-573.

A school district is a political subdivision of the state, a public body, and a district created by statute with specific powers and a municipality within the meaning of 33 USCS § 1173(f). OAG 72-573.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
T.V.A., prorated distribution to school districts of payments to Revenue Cabinet, made by, KRS 96.895.

Kentucky Law Journal.
Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Northern Kentucky Law Forum.
Sixth Circuit Notes: Constitutional Law — School Desegregation — State-Created District Lines can be Disregarded Where There is Evidence that they have been crossed to Perpetuate Dual School Systems —, 3 N.Y. St. L.F. 108 (1975).

160.020. Composition of independent school districts.

(1) All school districts embracing designated cities together with the territory within their limits, including any territory added for school purposes outside of the city limits, and all independent graded common school districts having a school census enumeration of two hundred (200) or more children, constitute independent school districts, except those which have merged with a county school district since June 14, 1934. No independent district other than a designated city shall continue to operate when its school census enumeration of children falls below two hundred (200) pupils unless it appears to the Kentucky Board of Education that the district can maintain a more efficient program of school service by operating as an independent district.

(2) As used in this section, "designated city" means a city classified as a city of the first, second, third, fourth, or fifth class as of January 1, 2014, under the city classification system in effect prior to January 1, 2015. The Department of Education shall, on or before January 1, 2015, create an official registry listing the cities that qualify as a "designated city" under this section and shall publish that registry on its Web site.

History.
4399-3; amend. Acts 1974, ch. 49, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 224, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2014, ch. 92, § 223, effective January 1, 2015.

NOTES TO DECISIONS

Analysis

1. Boundaries Conterminous with City.
2. Change of City's Classification.
3. Annexation.
4. Pupil Census Below Minimum.
5. Contracts by District.
6. Desegregation.

1. Boundaries Conterminous with City.
The action of a city in appropriating funds to supplement the salaries of teachers in an independent school district whose boundaries were conterminous with those of the city is inhibited by Ky. Const., § 179. Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946).

Although some of the independent districts are conterminous with cities of the Commonwealth, each is a municipality or political subdivision separate and distinct from such a city and over which the city has no control. Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946).

An appropriation of funds by a city, to supplement salaries of teachers in independent school districts having boundaries conterminous with those of city, would violate Ky. Const., § 159. Board of Education v. Corbin, 301 Ky. 686, 192 S.W.2d 951, 1946 Ky. LEXIS 544 (Ky. 1946).

The General Assembly in enacting this section and KRS 160.010 intended and did establish an independent school

district in the city of Louisville, free from the control of the city though the boundaries are conterminous. Louisville v. Board of Education, 302 Ky. 647, 195 S.W.2d 291, 1946 Ky. LEXIS 725 (Ky. 1946).

2. Change of City's Classification.
This section does not automatically create a new independent school district when a sixth-class city is made a fifth-class city. Board of Education v. Board of Education, 293 S.W.2d 568, 1956 Ky. LEXIS 74 (Ky. 1956).

3. Annexation.
Property in county school district annexed by city does not, by operation of this section automatically become part of the city independent school district. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452, 1948 Ky. LEXIS 861 (Ky. 1948).

KRS 160.045 provides the exclusive procedures by which an independent school district may annex county school district territory. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452, 1948 Ky. LEXIS 861 (Ky. 1948).

City school districts are independent of the city government and legislative provision for school purpose annexation must be considered apart from statutes authorizing cities to annex territory for other purposes involving other consideration. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452, 1948 Ky. LEXIS 861 (Ky. 1948).

4. Pupil Census Below Minimum.
Where, after annexation of part of town by city, census enumeration of children in town independent school district fell below 250, no action was necessary by State Board of Education to place what remained of town school district with county district. Board of Education v. Board of Education, 284 Ky. 774, 146 S.W.2d 30, 1940 Ky. LEXIS 581 (Ky. 1940).

Where State Board abolished independent school district whose white pupil census fell below the required minimum and the school was continued by county board until State Board of Education deferred accrediting it because it had less than 60 pupils, consolidation of the high school with other high schools in the county by the county board was not an abuse of discretion. Nethery v. McMullen, 313 Ky. 39, 230 S.W.2d 79, 1950 Ky. LEXIS 796 (Ky. 1950).

5. Contracts by District.
Since the school board was a body politic and corporate, a government agency, and a public corporation, it was authorized to enter into a lease or contract with another governmental agency. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

6. Desegregation.
Where it was stipulated that no student was ever excluded from independent school district because of race and there was no evidence that such district had committed other racial segregatory practices or that the boundaries of the district were drawn in 1911 to include whites and exclude blacks, district was not required to be included in court ordered desegregation plan, for the court rejected the argument that as a matter of law the very existence of an independent school district created under this section prior to the 1974 amendment indicated that the system must of necessity be a vestige of state-imposed segregation. Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. Ky. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792, 1977 U.S. LEXIS 2129 (U.S. 1977).

Cited in:
Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946); Schmidt v. Payne, 304 Ky. 58, 199 S.W.2d 990, 1947 Ky. LEXIS 584 (Ky. 1947); Cawood v. Hensley, 247 S.W.2d 27, 1952 Ky. LEXIS 661 (Ky. 1952); Newburg Area Council, Inc. v. Board of Education, 510 F.2d 1358, 1974 U.S. App. LEXIS 5699 (6th Cir. 1974).

OPINIONS OF ATTORNEY GENERAL.

A person seeking election to an independent school district board must live and reside within the district. OAG 76-121.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

160.030. Temporary independent districts. [Repealed.]

Compiler's Notes.
This section (4399-3; amend. Acts 1974, ch. 49, § 3; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 351, § 1, effective July 15, 1982.

160.040. Merger of districts.

Boards of education of any two (2) or more contiguous school districts may by concurrent action merge their districts into one (1). In case of a merger, the members of the boards of education of the merged districts may serve out the terms for which they were elected. The resulting district shall take over all the assets and legal liabilities of the districts joining in the merger. Tax levies authorized for the payment of interest and the retirement of bonds or to create sinking funds for such purposes shall continue to be levied and collected over the same area by or for the new board in accordance with the laws under which the levies were originally made until all bonded obligations of the old district have been retired.

History.
4399-4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 418, effective July 13, 1990.

Compiler's Notes.
This section (4399-4) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 418, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Town District with City and County.
2. Two Districts When One Lies in Two Counties.
3. "Concurrent Action."
4. Terms of Merger.
5. —Motive.
6. —Joint Board Members.
7. —Powers and Duties.
8. —Disposition of Assets and Liabilities.
9. —Ouster of Superintendent.
10. Consummation of Original Plan of Financing Building.
11. Discretion of Boards.
12. Delegation of Board Authority.

1. Town District with City and County.
Merger of town independent school district with city district and with county district resulted, where on dissolution of town district part of it went to city district and part to county

district. Board of Education v. Board of Education, 284 Ky. 774, 146 S.W.2d 30, 1940 Ky. LEXIS 581 (Ky. 1940).

2. Two Districts When One Lies in Two Counties.

Two (2) contiguous independent school districts may consolidate and merge into a single new independent school district under this section even though portions of one district lie in two counties. Board of Education v. Butler, 256 S.W.2d 516, 1953 Ky. LEXIS 749 (Ky. 1953).

3. "Concurrent Action."

"Concurrent action" does not necessitate simultaneous action in joint session. It is sufficient that such steps be taken in cooperation and looking to the same purpose. McGlone v. Horton, 258 Ky. 453, 80 S.W.2d 522, 1935 Ky. LEXIS 177 (Ky. 1935).

4. Terms of Merger.

This section, as opposed to KRS 160.041, governs the powers of the two districts in making a merger agreement to fix the terms of such merger. La Follette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457, 1951 Ky. LEXIS 687 (Ky. 1951).

5. —Motive.

The motive for merging districts is immaterial. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935).

6. —Joint Board Members.

All members of the boards of the merged districts become members of the joint board clothed with all the authority conferred by law upon the members of such boards. McGlone v. Horton, 258 Ky. 453, 80 S.W.2d 522, 1935 Ky. LEXIS 177 (Ky. 1935).

The merger agreements, which provided that if, for any reason, any appointed member of the merged board could not complete his temporary term, the position was to be filled with an alternate, did not conflict with KRS 160.190 as the agreements merely provided temporary security for all school districts during the critical transition, and authority for the agreements was provided for by the general authority granted by virtue of the merger statute, this section. Appeal of Muhlenberg County Bd. of Education, 714 S.W.2d 168, 1986 Ky. App. LEXIS 1194 (Ky. Ct. App. 1986).

7. —Powers and Duties.

Where two contiguous school districts were merged, the members of the board of education of the merged districts who were serving out the terms for which they were elected had the power to execute a contract with the superintendent of one of the former districts as superintendent of the new merged district and upon declaration of vacancy of the office before expiration of his contract term he was entitled to salary withheld. McClellan v. Darnell, 351 S.W.2d 191, 1961 Ky. LEXIS 157 (Ky. 1961).

8. —Disposition of Assets and Liabilities.

The last part of this section, respecting disposition of assets and liabilities, applies to mergers effected under KRS 160.030 (repealed), as well as to those effected by concurrent action of two contiguous districts. Board of Education v. Nelson, 268 Ky. 83, 103 S.W.2d 691, 1937 Ky. LEXIS 413 (Ky. 1937).

The assumption of debts by a county school district under this section does not violate Ky. Const., § 157. Board of Education v. Nelson, 268 Ky. 83, 103 S.W.2d 691, 1937 Ky. LEXIS 413 (Ky. 1937).

Provision in resolution of city board directing employment of superintendent for four-year term that employment should terminate if city and county boards merged, must be deemed part of employment contract actually made with superintendent notwithstanding provision was not contained in contract, since resolution was foundation of contract and no liability continued for county board to assume on merger. Martin v. Board of Education, 284 Ky. 818, 146 S.W.2d 12, 1940 Ky. LEXIS 579 (Ky. 1940).

County board is impressed only with legal liabilities of districts joining in merger, and hence where city board, at time of merging with county board, had relieved itself of liability to employ superintendent for four years, county board was not under liability to superintendent. Martin v. Board of Education, 284 Ky. 818, 146 S.W.2d 12, 1940 Ky. LEXIS 579 (Ky. 1940).

Contract for four-year term between city board and superintendent was not liability of county board, where city and county boards merged, and contract between boards was drawn by superintendent providing that county board was to employ superintendent and to perform contracts made by city board for one specified school year. Martin v. Board of Education, 284 Ky. 818, 146 S.W.2d 12, 1940 Ky. LEXIS 579 (Ky. 1940).

Employment by county board of superintendent for second one-year period following year for which he had been employed pursuant to contract of merger between city and county boards was not ratification of earlier contract for four-year term made by city board, but not assumed by county board on merger. Martin v. Board of Education, 284 Ky. 818, 146 S.W.2d 12, 1940 Ky. LEXIS 579 (Ky. 1940).

On merger of city independent school district with county school district by agreement the property owners of former city district become liable for voted indebtedness of county district and referendum on increase in rate within city is unnecessary. Board of Education v. Harville, 416 S.W.2d 730, 1967 Ky. LEXIS 280 (Ky. 1967).

9. —Ouster of Superintendent.

Superintendent could not be ousted by four to three vote of board of education which had consisted of ten members following merger under this section but had fallen to seven by reason of expiration of some of the terms since KRS 160.350 providing for ouster by four members of a board of education contemplated a board of five members as provided by KRS 160.160 or 80% of the board. Wesley v. Board of Education, 403 S.W.2d 28, 1966 Ky. LEXIS 319 (Ky. 1966).

10. Consummation of Original Plan of Financing Building.

When an independent district attempts to provide a building pursuant to KRS 162.120, a subsequent merger with the county district does not prevent consummation of the original plan of financing. Piggott v. Kasey, 271 Ky. 651, 113 S.W.2d 5, 1938 Ky. LEXIS 33 (Ky. 1938).

11. Discretion of Boards.

School boards have a liberal discretion in merging districts. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935).

The burden of proving an abuse of discretion is on the accuser. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935).

12. Delegation of Board Authority.

Since matters affecting the schools and their management were vested in the local board of education and the State Department of Education, a school board could not delegate or shift its responsibilities to a fiscal court or the electorate by requesting that the fiscal court place on ballot the question of whether the voters favored the consolidation or merger of certain county schools. Hickman County Fiscal Court v. Workman, 528 S.W.2d 730, 1975 Ky. LEXIS 89 (Ky. 1975).

Cited in:

Stuff v. Webster County Board of Education, 339 S.W.2d 189, 1960 Ky. LEXIS 443 (Ky. 1960); Board of Education v.

Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

OPINIONS OF ATTORNEY GENERAL.

Where, under the provisions of this section and KRS 160.041, there is a merger of a city and a county school district each of which has special voted taxes applicable to it: (1) The city school district would continue to be subject to its special voted taxes unless the merger agreement provided otherwise. (2) The city board of education may decline to have levied the special voted tax if it deems the tax unnecessary or unwise; however, the county board of education, both as originally constituted and as a joint board following merger must concur and cooperate in an agreement to this end. The city board will cease to exist on merger; hence it will have nothing to say about the special voted tax of the county school district. Acting ex parte, the city board may not, prior to merger, adopt the county districts voted levy. (3) The property owners in the city district will be subject to the county district's special voted tax when the merger is completed. This will occur automatically upon merger without any referendum. (4) The merger agreement should be drawn so as to coincide merger with applicable tax and school years to avoid any question about the tax levied for a current school year based upon an assessment that pre-dated merger. OAG 67-315.

Once two school districts have been merged, there is no procedure by which the merger can be dissolved. OAG 71-380.

This section and KRS 160.041 provide that in the event of a merger of two school districts the members of the boards of education of the merged districts may serve out the terms for which they were elected. OAG 72-252.

This section and KRS 160.041 provide the exclusive means by which school districts may be merged. OAG 72-252.

The fiscal court, under KRS 67.083, has no authority to place a question on the ballot to be submitted to the voters concerning the merger of school districts as KRS 67.083 limits the powers of a county to those that do not conflict with the constitution or statutes and as the legislature, under this section, has provided the procedure for merging school districts, this field is pre-empted, and since the school districts are agencies of the state, not the county, all decisions affecting school questions are to be made by the district boards of education and the State Department of Education. OAG 73-272.

Inasmuch as this section is not restricted to the merger of an independent school district with a county school district, it would be possible for two county school districts to merge. OAG 77-777, 1977 Ky. AG LEXIS 7.

Following the merger of an independent school district with a county school district the resultant district is the county district. OAG 83-325, 1983 Ky. AG LEXIS 172.

Upon a merger of a county school district and an independent school district, the utility gross receipts license tax of three percent in effect in the county school district would become effective as to the entire merged district. OAG 83-325, 1983 Ky. AG LEXIS 172.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

160.041. Merger of independent district with county district.

(1) When a board of education of an independent school district desires to have its district become a part of the county school district, it shall by motion so record its desire in the minutes of the board. The board, or its executive officer, shall convey this request to the county board of education. At its next regular meeting, or at a special meeting held prior thereto, the county board of education shall pass upon this request.

(2) If the county board of education refuses, or the two (2) boards of education cannot agree upon such a proposition of merger of the independent district with the county district, the question of merger shall be submitted to the qualified voters of the two (2) districts at the next regular election if the question is filed with the county clerk not later than the second Tuesday in August preceding the regular election.

(a) If a majority of those voting on the question favor merger, the school boards of the two (2) school districts shall jointly develop a plan for adoption of the merger.

(b) If the two (2) school boards cannot agree to the terms of merger within sixty (60) days following the date of the regular election, the chief state school officer shall develop the terms of the adoption of merger.

(c) Notwithstanding subsection (2)(a) of this section, if the independent school district cannot meet its current operating expenses from projected revenue and if the two (2) school boards cannot agree to the terms of a merger, the proposition of merger shall be submitted to the Kentucky Board of Education, and the Kentucky Board of Education shall determine whether the two (2) districts should be merged and if merged the terms thereto.

(d) Upon completion of the plan for adoption of the merger, whether prepared by the school boards or the superintendent, it shall become effective and the independent district shall become a part of the county school district as set out in the plan.

History.

Enact. Acts 1948, ch. 238; 1976, ch. 212, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 225, effective July 13, 1990; 1996, ch. 195, § 56, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Application.
2. Two Alternative Methods.
3. Merger.
4. —Terms or Conditions.
5. —Grounds for Effectuating.
6. —Desegregation.

1. Application.

Where parties assented to merger of city and county school districts the provisions of KRS 160.041 are inapplicable because there was no failure or refusal to agree on terms. Board of Education v. Harville, 416 S.W.2d 730, 1967 Ky. LEXIS 280 (Ky. 1967).

2. Two Alternative Methods.

This section provides for two alternatives: (1) merger by agreement or (2) merger by compulsion of the state board. La Follette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457, 1951 Ky. LEXIS 687 (Ky. 1951).

3. Merger.

4. —Terms or Conditions.
In the case of merger by compulsion the state board is to fix the terms, but in the case of merger by agreement no directions are given as to the terms or conditions of the merger. La Follette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457, 1951 Ky. LEXIS 687 (Ky. 1951).

5. —Grounds for Effectuating.
This section does not specify any grounds which must be established to lawfully effectuate a merger. Hopkins County Board of Education v. Hopkins County, 242 S.W.2d 742, 1951 Ky. LEXIS 1066 (Ky. 1951).

6. —Desegregation.
If the District Court should find that a formal consolidation or merger of districts was required to effectuate an effective desegregation plan for the county as a whole, administrative problems would to a large extent be obviated since the merger or consolidation could be effectuated under this section, which authorizes the reconsolidation of school districts within a single county even without the consent of the county school board. Newburg Area Council, Inc. v. Board of Education, 510 F.2d 1358, 1974 U.S. App. LEXIS 5699 (6th Cir. Ky. 1974), cert. denied, 421 U.S. 931, 95 S. Ct. 1658, 44 L. Ed. 2d 88, 1975 U.S. LEXIS 1407 (U.S. 1975).

OPINIONS OF ATTORNEY GENERAL.

Where, under the provisions of KRS 160.040 and this section there is a merger of a city and a county school district each of which has special voted taxes applicable to it: (1) The school city would continue to be subject to its special voted taxes unless the merger agreement provided otherwise. (2) The city board of education could decline to have levied the special voted tax if it deemed the tax unnecessary or unwise; however, the county board of education both as originally constituted and as a joint board following merger must concur and cooperate in an agreement to this end. The city board will cease to exist on merger; hence it will have nothing to say about the special voted tax of the county school district. Acting ex parte the city board may not, prior to merger, adopt the county district's voted levy. (3) The property owners in the city district will be subject to the county district's special voted tax when the merger is completed. This will occur automatically upon merger without referendum. (4) The merger should be drawn so as to coincide merger with applicable tax and school years to avoid any question about the tax levied for a current school year based upon an assessment that pre-dated merger. OAG 67-315.

This section grants the right to initiate merger proceedings to an independent school district; however, no such authority is granted to a county school district. OAG 72-252., 3 N.Y. St. L.F. 108 (1975).

Where a merger or the terms of a merger cannot be agreed upon this section allows the independent board of education to appeal to the superintendent of public instruction and ask that the matter be submitted to the State Board of Education for final settlement. OAG 72-252., 3 N.Y. St. L.F. 108 (1975).

Where the voters have cast their ballots in favor of the merger of two school districts, but where the two school boards have not agreed on the terms of the plan for adoption of the merger, the terms of adoption developed by the Superintendent of Public Instruction to resolve the dispute are not required to be approved by the State Board of Education. OAG 76-341.

Following the merger of an independent school district with a county school district the resultant district is the county district. OAG 83-325, 1983 Ky. AG LEXIS 172.

Upon a merger of a county school district and an independent school district, the utility gross receipts license tax of three percent (3%) in effect in the county school district would become effective as to the entire merged district. OAG 83-325, 1983 Ky. AG LEXIS 172.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Merger of independent and county school districts, 702 KAR 1:100.

Kentucky Law Journal.
Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Northern Kentucky Law Forum.
Sixth Circuit Notes: Constitutional Law — School Desegregation — State-Created District Lines can be Disregarded Where There is Evidence that they have been crossed to Perpetuate Dual School Systems — Newburg Area Council, Inc. v. Board of Education, 510 F.2d 1358, 1974 U.S. App. LEXIS 5699 (6th Cir. 1974), cert. denied, 421 U.S. 931, 95 S. Ct. 1658, 44 L. Ed. 2d 88, 1975 U.S. LEXIS 1407 (1975).

160.042. Election of members — Present terms to continue, exception.

(1) Upon a merger under the provisions of KRS 160.040 and 160.041 of an independent school district in a city of the first class with a county school district in counties containing a city of the first class, the members of the county board of education of the merged county school district, shall be elected pursuant to KRS 160.200 and 160.210.

(2) Each member of the respective boards of education at the time of the merger of the districts, may continue to hold office until the expiration of his or her term of office, but any vacancy occurring among such members for any reason shall not be filled.

History.
Enact. Acts 1952, ch. 90, §§ 1, 2; repealed and reenact., 1958, ch. 126, § 17, effective June 19, 1958; 1974, ch. 224, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 419, effective July 13, 1990; 2026 ch. 154, § 10, effective April 14, 2026.

Compiler's Notes.
Former KRS 160.042 (Acts 1952, ch. 90, §§ 1, 2) and former KRS 160.043 (Acts 1952, ch. 90, § 2) were repealed and reenacted as KRS 160.042 by Acts 1958, ch. 126, § 17.

KRS 160.042 (Repealed and reenacted Acts 1958, ch. 126, § 17; 1974, ch. 224, § 1) was repealed and reenacted as KRS 160.042 by Acts 1990, ch. 476, Pt. V, § 419, effective July 13, 1990.

NOTES TO DECISIONS

1. Continuation of Two Boards.
Provision for city school board members to continue serving with county school board upon merger of school district of first-class city with county school district does not constitute "local or special legislation" forbidden by state Constitution where there is a justifiable need for the experience of city board members as to problems arising from urbanization. Board of Education v. Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

160.043. Terms of board members unaffected by merger; vacancies not to be filled. [Repealed and Reenacted.]

Compiler's Notes.

This section (Enact. Acts 1952, ch. 90, § 2) and former KRS 160.042 (Acts 1952, ch. 90, §§ 1, 2) were repealed and reenacted as KRS 160.042 by Acts 1958, ch. 126, § 17.

160.044. Time of election and terms of merged district board members.

(1) At the regular November election during the first even-numbered year nearest to the time of the merger of the districts, as above set out, two (2) members of the county board of education shall be elected from the county at large for a term of four (4) years, and two (2) years after such first election, three (3) members of the county board of education shall be elected for a term of four (4) years, and in each even-numbered year thereafter an election shall be held from the county at large to fill the membership of the county board of education for the term that will expire on the first Monday in January following, and the regularly elected members shall hold office for four (4) years, and until their successors are elected and qualified.

(2) Any vacancy occurring in the membership of the county board after members have been elected from the county at large shall be filled as now provided by KRS 160.190.

History.

Enact. Acts 1952, ch. 90, §§ 3, 4, effective June 19, 1952; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 420, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1952, ch. 90, §§ 3, 4, effective June 19, 1952) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 420, effective July 13, 1990.

NOTES TO DECISIONS

1. Elections from Districts.

In merger situations, KRS 160.210 mandates that elections of school board members shall be from districts, not the county-at-large. Appeal of Muhlenberg County Bd. of Education, 714 S.W.2d 168, 1986 Ky. App. LEXIS 1194 (Ky. Ct. App. 1986).

160.045. Transfer of adjacent territory to school district other than that in which it is located.

(1) If seventy-five percent (75%) of either the registered voters or property owners in an area adjacent to either a county or independent school district petition the respective school boards for a transfer of property to the school board district other than that in which it is located, or if either board initiates an action, the school boards may effect the transfer by agreement, duly spread upon the minutes of their respective boards.

(2) If the boards fail to agree within ninety (90) days from the filing of petitions for the transfer, either board may petition the chief state school officer for approval or disapproval of the transfer of the property involved. In his consideration for giving approval or disapproval, he shall be governed by any policies and rules and regulations of the Kentucky Board of Education which may be affected by the transfer of the property and shall give due consideration to the following: the ratio of the wealth of the territory involved in its relation to the total wealth of the district from which the territory will be annexed; the effect of the proposed territorial loss or gain on the educational programs of the respective districts; extent of and effect on the physical plant, facilities, and equipment available in each of the affected districts; the indebtedness and bonded or rental obligations of the respective districts; any contemplated indebtedness or obligation arising out of the proposed transfer; and other factors as may have a bearing upon the determination of the desirability of the proposed annexation from the vantage point of all interested persons.

(3) In those instances where the requested transfer will result in a surplus of physical plant, facilities, or equipment in the transferring school district, the chief state school officer shall determine an equitable plan for the transfer of any surplus to the annexing district as his plan may determine will be needed. His plan shall be based on the fair value of the property on a replacement basis, taking into consideration its age and condition. In any considerations and suggestions which he may propose for the settlement of the differences between the boards of education, he shall be bound by any agreements outstanding between the boards of education of the school districts on July 15, 1982.

(4) If the chief state school officer is unable to arrive at a satisfactory agreement with the two (2) boards of education concerning the transfer of the involved property within one hundred twenty (120) days from the time it is presented to him, either board may request that he bring the matter before the Kentucky Board of Education at its next regularly scheduled meeting. The state board shall grant and schedule an administrative hearing, and the hearing shall be conducted in accordance with KRS Chapter 13B. In that event, he shall file with the Kentucky Board of Education all the facts which he has gathered, the recommendation he has made, and the basis for his recommendation, for their consideration. In those instances where, after giving consideration to the factors set forth in subsection (2) of this section, the chief state school officer determines that a transfer of only a portion of the territory in question is in the best interest of the respective districts, he may recommend to the Kentucky Board of Education a modified plan of transfer of territory.

History.

Enact. Acts 1946, ch. 140; 1948, ch. 90; 1956, ch. 240, § 1; 1974, ch. 315, § 17; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 114, § 24, effective July 15, 1980; 1982, ch. 32, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 226, effective July 13, 1990; 1996, ch. 318, § 51, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Purpose.
3. Application.

4. Annexed Territory.
5. Property Owners.

1. Constitutionality.

This section does not violate Ky. Const., § 59 as being special legislation. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949).

This section does not violate Ky. Const., §§ 2, 19, 52 or 183. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

2. Purpose.

The object of this section was to encourage the making of the city school district boundaries coextensive with those of the city. Howell v. Collier, 282 S.W.2d 327, 1955 Ky. LEXIS 236 (Ky. 1955).

3. Application.

This section provides the exclusive procedures by which an independent school district may annex county school district territory. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452, 1948 Ky. LEXIS 861 (Ky. 1948).

This section authorizes only the incorporation of such areas annexed to a city as are coextensive with an area designated, defined or described as a separate territory in the annexation proceedings by the city. Howell v. Collier, 282 S.W.2d 327, 1955 Ky. LEXIS 236 (Ky. 1955).

4. Annexed Territory.

Property in county school district annexed by city does not, by operation of KRS 160.020, automatically become part of the city independent school district. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452, 1948 Ky. LEXIS 861 (Ky. 1948).

The annexed territory must be treated as an indivisible unit. Howell v. Collier, 282 S.W.2d 327, 1955 Ky. LEXIS 236 (Ky. 1955).

County board had no power to prevent transfer of territory annexed to a city to city school district where 75 percent of owners of real property in the territory petitioned to be taken into city school district and city school board approved the petition. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

5. Property Owners.

Both the husband and wife in estates known as tenancy by the entirety are owners of property and their interest is sufficient to make them "owners of real property" within the meaning of this section. Campbell County Board of Education v. Boulevard Enterprises, Inc., 360 S.W.2d 744, 1962 Ky. LEXIS 223 (Ky. 1962).

The term "owners" was meant to designate all people who owned any interest in property which would permit them to be concerned with community school affairs. Campbell County Board of Education v. Boulevard Enterprises, Inc., 360 S.W.2d 744, 1962 Ky. LEXIS 223 (Ky. 1962).

Cited in:

Turner v. City Board of Education, 313 Ky. 383, 231 S.W.2d 27, 1950 Ky. LEXIS 869 (Ky. 1950); Board of Education v. Board of Education, 293 S.W.2d 568, 1956 Ky. LEXIS 74 (Ky. 1956); Board of Education v. Board of Education, 472 S.W.2d 496, 1971 Ky. LEXIS 200 (Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

The term "adjacent" as used in this section means "adjoining" rather than "nearby" and property may not be transferred from one school district to another if it does not adjoin the school district to which it is to be transferred. OAG 62-54.

A county tax commissioner has no authority to transfer property from one school district to another in the county without the approval of either the voters, property owners, or school boards of the districts involved. OAG 67-429.

The methods prescribed by this section are the exclusive methods by which boundary lines between adjacent school districts may be changed, and an erroneous report of a boundary line made pursuant to KRS 136.190 neither established nor altered the boundary line even though it remained unchallenged for a period of 12 years. OAG 70-393.

The phrase "next regularly scheduled meeting" in subsection (4) does not include a specially called meeting. OAG 74-463.

The responsibility of determining the boundaries of two school districts within the same county rests with the boards of education of the two districts. OAG 80-621, 1980 Ky. AG LEXIS 42.

Those citizens living in an annexed area of a city are not entitled to vote in the city school board race unless and until the area annexed is also annexed by the city school district, pursuant to this section; such persons must vote in the county school district in which they presently live, irrespective of any agreement between the two school districts regarding in which district the children of residents of the annexed area will be allowed to attend school. OAG 84-372, 1984 Ky. AG LEXIS 15.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Transfer of annexed property; hearing, 702 KAR 1:080.

Kentucky Law Journal.

Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

160.047. Application of KRS 160.045. [Repealed.]

Compiler's Notes.

This section which, was declared unconstitutional in Board of Educ. v. Board of Educ., 472 S.W.2d 496 (Ky Ct. App. 1971). (Enact. Acts 1970, ch. 189, § 1) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.048. Transfer of area containing school outside district.

(1) The General Assembly hereby finds that from time to time various school boards, in the exercise of their administrative discretion, have determined that their school districts would be most efficiently administered if one (1) or more of the district's schools were constructed and operated on land located outside the school districts' boundaries. The General Assembly further finds that this has been desirable and in furtherance of an efficient system of common schools. As urbanization increases, and school districts throughout the Commonwealth become more densely populated, available school sites within such districts will proportionately diminish, and it will with increasing frequency be necessary to construct schools on land not within the district of the school board constructing such schools. When a school is so located, it is more efficient for the school district constructing the school, but it is less efficient for the statewide system of common schools and for the children residing in the immediate neighborhood of the new school, who reside in a different school district, and therefore must be transported to other, more distant schools. This situation results in an inefficient utilization of state and local school funds

and school facilities, and is a result of the artificially-drawn school district boundary lines. The General Assembly further finds that the discretionary method of transfer presently provided by KRS 160.045 is not adequate to assure an efficient operation of the common schools, and that it is desirable to provide for mandatory transfer of such areas. Pursuant to section 183 of the Kentucky Constitution, the General Assembly declares that such situations are special situations and require special treatment. It is the intent of the General Assembly to provide by this statute a special method whereby such areas may be transferred to the school district operating the school or schools.

(2) If seventy-five percent (75%) of either the registered voters or property owners in an area adjacent to a school district other than the district in which such area is located and in which area there is located a school owned and operated by such adjacent school district petition the school board of the school district which owns and operates such school and the school board of the school district in which such area is located for the transfer of such area from the school district in which it is located to the school district which owns and operates such school, then such area shall be so transferred.

(3) The effective date of such transfer shall be sixty (60) days after the date on which the petition is filed with the two (2) school boards; personal delivery of said petition to any member of the school board or to the superintendent of the school district shall constitute "filing" for purposes of this section. Provided, that if such effective date falls during a term of the school district in which such area is located, the two (2) school boards involved may, by agreement, defer the effective date of such transfer until the end of said term.

(4) The terms and conditions of such transfer shall be determined in the manner provided for the determination of the terms and conditions of transfer under KRS 160.045, except that the chief state school officer, the Kentucky Board of Education, and the respective reviewing courts shall have no power to disapprove such transfer.

(5) Upon such transfer, the recipient district shall assume a portion of the bonded indebtedness of the losing district, as provided in KRS 160.065; such bonds shall remain the obligation of the issuing agency, and shall not be affected in any way by such transfer, except that each year the recipient district shall pay to the losing district a sum of money sufficient to make the payments on the portion of such indebtedness assumed by the recipient district, and such annual payments shall continue until all of the bonded indebtedness outstanding at the time of the transfer is paid in full.

(6) The method of transfer provided in this section shall be an alternative method to that set forth in KRS 160.045, and this section shall have no effect whatsoever on KRS 160.045.

History.

Enact. Acts 1972, ch. 349, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 227, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Cited in:

Newburg Area Council, Inc. v. Board of Education, 510 F.2d 1358, 1974 U.S. App. LEXIS 5699 (6th Cir. 1974), cert. denied, 421 U.S. 931, 95 S. Ct. 1658, 44 L. Ed. 2d 88, 1975 U.S. LEXIS 1407 (1975).

OPINIONS OF ATTORNEY GENERAL.

This section is not indefinite as to its determination of an area, is not ineffective as lacking authority to determine the sufficiency or composition of an area, provides the necessary procedural stress to effect a transfer and is not unconstitutional or ineffective because of vagueness. OAG 72-254.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Forum.

Sixth Circuit Notes: CONSTITUTIONAL LAW — SCHOOL DESEGREGATION — STATE-CREATED DISTRICT LINES CAN BE DISREGARDED WHERE THERE IS EVIDENCE THAT THEY HAVE BEEN CROSSED TO PERPETUATE DUAL SCHOOL SYSTEMS — Newburg Area Council, Inc. v. Board of Educ., 510 F.2d 1358, 1974 U.S. App. LEXIS 5699 (6th Cir. 1974), cert. denied, Board of Education v. Newburg Area Council, Inc., 421 U.S. 931, 95 S. Ct. 1658, 44 L. Ed. 2d 88, 1975 U.S. LEXIS 1407 (1975).

160.049. Transfer of adjacent territory between school districts in county containing first-class city. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1970, ch. 189, §§ 2, 3) was repealed by Acts 1978, ch. 34, § 1, effective June 17, 1978.

160.050. Annexation of adjacent part of county school district by independent district; approval; vote. [Repealed.]

Compiler's Notes.

This section (4399-4b) was repealed by Acts 1956, ch. 240, § 2.

160.060. Annexation of part of independent district by county district. [Repealed.]

Compiler's Notes.

This section (4399-4b) was repealed by Acts 1956, ch. 240, § 3.

160.065. Liability for indebtedness in case of annexation.

When any property assessable for school purposes in one school district is annexed by or transferred to another school district, the recipient district shall assume a part of the indebtedness, if any, of the other school district incurred for school buildings and grounds in the proportion the assessed valuation of property taxable for school purposes transferred bears to the total assessed valuation of property taxable for school purposes in the district losing the territory.

History.

Enact. Acts 1942, ch. 197 § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 421, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1942, ch. 197) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 421, effective July 13, 1993.

NOTES TO DECISIONS

1. Revenue Bonds.
Revenue bonds do not constitute an indebtedness of the issuing school district and city school district, to which territory was transferred from county school district after voters of county district had authorized special school building tax to pay rentals for school buildings to be financed by issuance of revenue bonds, was not liable for any part of the bonds under this section. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

Cited in:
Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016, 1949 Ky. LEXIS 954 (Ky. 1949).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Title to school property in transferred territory, KRS 162.020.

160.070. Subdistricts; county board of education may change; exceptions; boundaries of districts. [Repealed.]

Compiler's Notes.
This section (4399-6, 4399-14) was repealed by Acts 1956, ch. 237, § 7.

160.080. Subdistricts in two or more counties. [Repealed.]

Compiler's Notes.
This section (4399-15) was repealed by Acts 1956, ch. 237, § 7.

160.090. Trustee of subdistrict; qualifications; term. [Repealed.]

Compiler's Notes.
This section (4399-7, 4399-8, 4399-10) was repealed by Acts 1956, ch. 237, § 7.

160.100. Election of subdistrict trustee; notice of candidacy; qualifications of voters; ballots. [Repealed.]

Compiler's Notes.
This section (4399-8) was repealed by Acts 1956, ch. 237, § 7.

160.105. Fire and extended insurance coverage — Primary liability insurance coverage.

The Kentucky Board of Education shall by regulation require each school district to:

(1) Provide for fire and extended insurance coverage on each building owned by the board which is not surplus to its needs as shown by the approved facilities plan. The requirement for such coverage shall not exceed replacement cost and shall allow for the features of coinsurance and deductibles; and

(2) Provide each certified employee of the district with primary liability insurance coverage for an amount of not less than one million dollars ($1,000,000) for the protection of the employee from liability arising in the course and scope of pursuing the duties of employment.

History.
Enact. Acts 1982, ch. 93, § 1, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 422, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2023 ch. 99, § 2, effective June 29, 2023.

Compiler's Notes.
This section (Enact. Acts 1982, ch. 93, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 422, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Insurance requirements, 702 KAR 3:030.

160.107. Application and implementation requirements for districts of innovation. [Repealed]

History.
Enact. Acts 2012, ch. 40, § 2, effective July 12, 2012; 2017 ch. 80, § 11, effective June 29, 2017; 2017 ch. 156, § 13, effective April 10, 2017; 2017 ch. 177, § 10, effective June 29, 2017; 2020 ch. 112, § 12, effective July 15, 2020; repealed by 2025 ch. 113, § 30, effective June 27, 2025.

160.110. Time, place and method of conducting election. [Repealed.]

Compiler's Notes.
This section (4399-8) was repealed by Acts 1956, ch. 237, § 7.

160.120. Duties of subdistrict trustee generally. [Repealed.]

Compiler's Notes.
This section (4399-11) was repealed by Acts 1956, ch. 237, § 7.

160.125. School of innovation pilot project — Fund — Applications — Distribution of funds — Report — Matching funds — Termination of participation.

(1) There is hereby established the school of innovation pilot project to provide school districts with the opportunity to explore innovative school operation models.

(2)(a) There is hereby established in the State Treasury a trust and agency account to be known as the school of innovation pilot project fund. The fund shall consist of moneys received from state appropriations, gifts, grants, and federal funds.

(b) The fund shall be administered by the Kentucky Department of Education.

(c) Amounts deposited in the fund shall be used to support the school of innovation pilot project under this section and no other purpose.

(d) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.

(3) The school of innovation pilot project shall begin August 1, 2026, and end June 30, 2028, and shall consist of:

(a) Beginning with the first year of the pilot project, any school of innovation established by Covington Independent School District; and

(b) To the extent funds are available and beginning with the 2027-2028 school year, a cohort of two (2) schools of innovation chosen from applications submitted by local boards of education that meet the following criteria:

1. The applicant has previously or concurrently been approved under KRS 156.161 for a school of innovation;

2. The school of innovation is not a virtual program as defined in KRS 157.320;

3. The application proposes a significant innovative educational opportunity to improve student outcomes, school operations, or both through approaches that would be difficult or impractical to implement under existing statutory or regulatory requirements; and

4. The applicant identifies matching moneys consisting of district revenues, philanthropic contributions, or other funds that are to be dedicated for the operation of the school of innovation until the end of the pilot project and which shall be eligible to serve as matching funds under subsection (4) of this section.

(4) The Kentucky Board of Education shall:

(a) Establish an annual timeline for application submission and approval for each year of the pilot project; and

(b) Review and approve two (2) applications under subsection (3) of this section for admission into the pilot project under subsection (3)(b) of this section to the extent that funds are available during the operation of the pilot project. The department shall distribute funds from the school of innovation pilot project fund to an approved applicant in amounts that match the funds dedicated by the approved applicant under subsection (3) of this section. The funds shall be distributed on a regular schedule to the approved applicant so long as the applicant operates the school of innovation as outlined in the approved application. An approved applicant may submit an amended application so long as the amended application continues to meet the minimum requirements of subsection (3) of this section. Both the matching funds and the pilot project funds shall be restricted to the operation and support of the school of innovation, unless granted a waiver from the Kentucky Board of Education.

(5) At the end of each school year, a school district participating in the pilot project shall submit to the Kentucky Department of Education a report which shall be compiled by the department and submitted to the Legislative Research Commission for referral to the Interim Joint Committee on Education. The report shall include:

(a) A description of the district's school of innovation activities during the school year and how the school is innovating, including innovations through the waiving of statute or administrative regulation;

(b) The education service providers and any other entities the school district has partnered with for the operation of the school of innovation;

(c) A general accounting of how the district and matching pilot project funds have been used;

(d) The academic programs offered by the school of innovation;

(e) The enrollment details of the school of innovation;

(f) What student and school performance factors the district shall use to determine success of the school of innovation and the current status on those factors; and

(g) What hindrances to innovation the district may have encountered.

(6) Matching funds for the pilot project may include contributions from one (1) or more private or philanthropic entities, including nonprofit organizations that partner with school districts to support the design or implementation of schools of innovation.

(7) An application under subsection (3) of this section:

(a) May be submitted collectively by two (2) or more local boards of education; and

(b) Shall identify the waivers applicable to each school district, the responsibilities of each school district in operating the school of innovation, and the matching funds each school district shall provide to support the school of innovation.

(8) If the Kentucky Board of Education at any time finds by a two-thirds (2/3) majority vote that the operation of the school of innovation under this subsection has endangered students, impeded student academic achievement, or supported financial malfeasance or criminal activity, then the school of innovation's participation in the long-term component of the school of innovation pilot project shall be terminated and no further funds shall be distributed.

History.

2026 ch. 180, § 5, effective July 15, 2026.

Legislative Research Commission Notes

(7/15/2026). 2026 Ky. Acts ch. 180, sec. 6, provides:

"For the school of innovation under [KRS 160.125(3)(a)]:

(1) By August 1, 2026, the board of education of Covington Independent Schools shall submit the district's collection of waivers pursuant to [KRS 156.161] for establishing any school of innovation within the district to the Kentucky Board of Education for inclusion under [KRS 160.125(3)(a)];

(2) Notwithstanding any requirement of KRS 156.161 to the contrary, within thirty days of the submission under subsection (1) of this section, the Kentucky Board of Education shall approve any waiver requested for a school of innovation that satisfies the requirements of [KRS 156.161(1)].

(3) Any distribution of funds shall be to Educate NKY Inc. to support the establishment of schools of innovation within the Covington Independent School District and shall be conditioned upon an agreement between Educate NKY Inc. and the Covington Independent School District for the support and operation of schools of innovation; and

(4) Funds distributed shall only be used for the operation of the schools of innovation within the Covington Independent School District."

160.130. Nomination of teachers in subdistricts. [Repealed.]

Compiler's Notes.

This section (4399-9) was repealed by Acts 1956, ch. 237, § 7.

160.135. Truancy intervention — Collection and reporting of data — Requirements — Annual report.

(1) As used in this section:

(a) "Complaint" has the same meaning as in KRS 600.020;

(b) "Court-designated worker" has the same meaning as in KRS 600.020; and

(c) "Habitual truant" has the same meaning as in KRS 159.150(3).

(2) The purpose of this section is to require the collection and reporting of data that will aid in the understanding of the impact that various interventions have on the attendance of students who are habitually truant.

(3) Beginning in the 2027-2028 school year, each school district shall document the following information in the state student information system:

(a) The filing of a complaint for habitual truancy by the school district with the court-designated worker;

(b) The resolution of the habitual truancy complaint filed with the court-designated worker, including the date of the resolution and whether the complaint was:

1. Not pursued;

2. Successfully diverted;

3. Forwarded to the county attorney for court action; or

4. Resolved in some other manner;

(c) The reporting of a student to the county attorney as required by KRS 159.140(3)(b); and

(d) When a habitual truancy petition is filed with the court.

(4) By December 1, 2028, and by December 1 of each year until December 1, 2031, the Kentucky Department of Education shall submit to the Legislative Research Commission for referral to the Interim Joint Committee on Education and the Interim Joint Committee on Judiciary an annual report that includes the information under this subsection for the prior school term. The information shall be reported by school district, and within each school district by gender, race, and grade level, and contain the following:

(a) The number of students reported to the county attorney as required under KRS 159.140(3)(b);

(b) The number of students against whom a complaint for habitual truancy is filed with the court-designated worker, and among those children:

1. The number of unexcused absences per student prior to the filing of the complaint for habitual truancy;

2. The number of students placed on diversion by the court-designated worker and the number of unexcused absences per student after the student is placed on diversion;

3. The number of students who successfully complete diversion and the number of unexcused absences per student after diversion is completed; and

4. The number of students whose case is referred to court on a habitual truancy complaint, and the number of unexcused absences per student after the complaint is referred to court; and

(c) The number of students who are withdrawn from a school district following the report to the county attorney under KRS 159.140(3)(b).

History.

2026 ch. 69, § 5, effective July 15, 2026.

160.140. Vacancy in office of subdistrict trustee; how filled. [Repealed.]

Compiler's Notes.

This section (4399-10) was repealed by Acts 1956, ch. 237, § 7.

160.145. Definitions — Designated traceable communication system — Unauthorized electronic communication — Parental authorization for exceptions — Communications that are not restricted — Disclosure of affiliation — Report of unauthorized electronic communication — Disciplinary penalties — Notification and investigation of report.

(1) As used in this section:

(a) "Commercial or local government affiliation" means:

1. Having an ownership interest in, being employed by, or being a customer or client of a commercial business or activity; or

2. An association with a city, county, consolidated local government, urban-county government, charter county government, or unified local government;

(b) "Family member" means:

1. A parent, brother, sister, son, daughter, aunt, uncle, cousin, nephew, niece, or grandparent related to the student by consanguinity, affinity, or adoption; or

2. An adult that resides in the same household as the student;

(c) "Parent" means a parent, legal guardian, a person acting as a parent in the absence of a parent or guardian, or other individual or agency responsible for the student;

(d) "Private electronic communication" means electronic communication that involves direct one-on-one or group conversations that are only accessible to the participants;

(e) "Qualified school volunteer" means an adult who:

1. Is not:

a. A school district employee; or

b. Enrolled in the school district; and

2. Has served the school or school district at any point during the current school year:

a. As a student teacher, a nonfaculty coach or assistant coach, a nonfaculty sponsor of an ex-

tracurricular program or activity, or a school-sponsored academic tutor; or

b. In a nonfaculty student services role designated as a qualified school volunteer by the local board of education;

(f) "School district employee ":

1. Means a school administrator, classified employee, certified employee, contractor hired by the district to provide direct services to students, or compensated nonfaculty coach or assistant coach;

2. Includes any Kentucky Department of Education or educational cooperative employee who is assigned to a school or area technology center within the school district on a full-time basis and granted official access as a user of the traceable communication system; and

3. Does not include any student enrolled in the district;

(g) "Traceable communication system" means one (1) or more electronic school notification and communication programs or applications that:

1. Are designated by a local board of education in accordance with subsection (2) of this section;

2. Trace all communications sent to or by a student; and

3. Provide parents an opportunity to access and review those communications; and

(h) "Unauthorized electronic communication":

1. Means private electronic communication with a student enrolled in a school district by the school district's employee or qualified school volunteer who is not the student's family member that occurs outside of a designated traceable communication system and without prior written parental consent;

2. Includes any private electronic communication with a student or students enrolled in the school district through a personal email account, text messaging, social media, or other private electronic communication program outside of the traceable communication system; and

3. Does not include:

a. Virtual school instruction, including nontraditional instruction, online course instruction, and home-health instruction;

b. Academic feedback mechanisms;

c. Electronic translation services;

d. Electronic communication with any telephone number provided by a parent for the purpose of school communication with that parent;

e. Electronic communication in which a parent of the student is included as a recipient or participant;

f. Electronic communication between two (2) or more school district employees or qualified school volunteers and one (1) or more students that is in direct relation to an academic, athletic, or extracurricular purpose;

g. Electronic communication between a school resource officer or director of pupil personnel and a student in which the principal, vice principal, or a school-based mental health services provider, as defined by KRS 158.4416, is included as a recipient that is in direct relation to the safety, engagement, or attendance of a student;

h. Voice communication on an official telephone number affiliated with the school or school district;

i. Social media posts and comments that are not private electronic communication;

j. Electronic communication related to commercial products or services with a telephone number, email address, or other electronic account affiliated with a lawful commercial business; or

k. Secure messaging for healthcare providers.

(2) Each local board of education shall designate a traceable communication system for school district employees and qualified school volunteers to communicate electronically with students enrolled in the school district. The principal of each public school shall provide parents written or electronic notification within the first ten (10) days of the school year of each electronic school notification and communication program designated within the traceable communication system. The notification shall include instructions for parents to access and review communications sent through each electronic school notification and communication program.

(3)(a) A school district employee or qualified school volunteer shall not engage in unauthorized electronic communication.

(b) A school district employee that violates paragraph (a) of this subsection may be subject to disciplinary action in accordance with:

1. For certified employees, KRS 161.120 and 161.790; or

2. For classified employees, KRS 161.011(7).

(c) A qualified school volunteer that violates paragraph (a) of this subsection may be prohibited by the school district from future school volunteer opportunities.

(4) A parent may submit written consent to authorize a designated school district employee or qualified school volunteer who is not a family member to participate in private electronic communication with his or her child outside of the traceable communication system. The written consent:

(a) Shall be filed in the administrative office of the student's school;

(b) Shall be submitted to the administrative office of the school prior to any private electronic communication being sent from a school district employee or qualified school volunteer to a student outside of the traceable communication system;

(c) Shall designate each specific school district employee or qualified school volunteer that may participate in private electronic communication with the student outside of the traceable communication system and shall not be transferable to any other school district employee or qualified school volunteer;

(d) May be revoked by the parent who filed the consent at any time. Upon notice of a revocation, the administrative office shall promptly notify the school district and each school district employee and qualified school volunteer subject to the revocation;

(e) May establish terms limiting electronic communication with a student, including establishing an expiration for the term of the consent. Any electronic

communication with the student enrolled in the school district outside of the traceable communication system under this subsection shall comply with all terms of the written consent;

(f) Shall not be rejected or denied by the school or school district unless the written consent fails to properly identify the applicable student, school district employee, or qualified school volunteer. Upon receipt of the written consent, the administrative office shall deliver a copy of the written consent to the school district and the designated school district employee or qualified school volunteer;

(g) Shall not be compelled as a requirement for a student to participate in an academic, athletic, or extracurricular opportunity; and

(h) Shall not authorize a school district employee or qualified school volunteer to engage in inappropriate or sexual electronic communication with a student or be used as a basis of a defense for a school district employee or qualified school volunteer that engages in inappropriate or sexual electronic communication with a student or students.

(5) Notwithstanding subsections (2) and (3) of this section, this section shall not restrict any private electronic communications:

(a) Between a student and his or her family member who is a school district employee or qualified school volunteer;

(b) Between a student and a school district employee or qualified school volunteer who reasonably believes an emergency exists that creates an imminent risk to any person or property, provided the school district employee promptly discloses the private electronic communication to his or her immediate supervisor after the fact in accordance with subsection (7) of this section;

(c) During and in direct relation to a school-sanctioned field trip the student has parental consent to attend;

(d) During and in direct relation to work-based learning experiences; or

(e) That are directly related to a commercial or local government affiliation that has been previously disclosed in accordance with subsection (6) of this section.

(6) A school district employee or qualified school volunteer may submit a written disclosure notifying the school district of a commercial or local government affiliation that could reasonably result in private electronic communication with a student outside of the traceable communication system. Upon filing the written disclosure, subsequent private electronic communication directly related to the disclosed commercial or local government affiliation is no longer subject to the restrictions of subsections (2) and (3) of this section in accordance with subsection (5)(e) of this section.

(7)(a) A school district employee or qualified school volunteer that participated in unauthorized electronic communication subject to subsection (2) and (3) of this section or reasonably believes that another school district employee or qualified school volunteer participated in unauthorized electronic communication that is subject to subsections (2) and (3) of this section that has not been previously reported shall immediately notify the supervising principal or applicable supervisor. If the subject of the report is the principal or a district-wide employee, the reporting employee or volunteer shall immediately notify the superintendent of the school district. If the subject of the report is the superintendent or a Kentucky Department of Education employee assigned to a school or area technology center within the school district on a full-time and continuing basis, the reporting employee or volunteer shall immediately notify the commissioner of education and the chair of the local board of education.

(b) A school district employee that violates paragraph (a) of this subsection may be subject to disciplinary action in accordance with:

1. For certified employees, KRS 161.120 and 161.790; or

2. For classified employees, KRS 161.011(7).

(8)(a) Upon receipt of a report alleging that a school district employee or qualified school volunteer violated subsection (2) or (3) of this section, the commissioner of education, a principal, or a superintendent shall immediately:

1. Notify the parent of each student that is an alleged party to the unauthorized electronic communications; and

2.a. If the individual that is the subject of the report is a certified employee:

i. Notify the Education Professional Standards Board, which shall promptly investigate all allegations received under this subsection and proceed with appropriate disciplinary actions in accordance with KRS 161.120; and

ii. Investigate the underlying allegations and proceed with appropriate disciplinary actions in accordance with KRS 161.790;

b. If the individual that is the subject of the report is a classified employee, investigate the underlying allegations and proceed with appropriate disciplinary actions in accordance with KRS 161.011(7);

c. If the individual that is the subject of the report is a qualified school volunteer, the school or district shall investigate the underlying allegations and, if substantiated, the qualified school volunteer may be prohibited from future school and district volunteer opportunities; and

d. Notwithstanding any statute to the contrary, notify the parent of each student that is an alleged party to the unauthorized electronic communication of each material phase of the investigation and disciplinary action under this subparagraph, including but not limited to a written summary of the results of an investigation and the final outcome of the disciplinary action.

(b) A principal or superintendent who violates paragraph (a) of this subsection shall be subject to disciplinary action in accordance with KRS 156.132 and 161.120.

History.

2025 ch. 149, § 1, effective June 27, 2025; 2026 ch. 129, § 1, effective April 13, 2026.

Legislative Research Commission Notes.

4/13/2026). 2026 Ky. Acts ch. 129, sec. 14, provides: "If a school district volunteer was prohibited from future school

volunteer opportunities pursuant to subsection (3)(c) of KRS 160.145 prior to [April 13, 2026], a school district may permit that person to participate in future school volunteer opportunities."

160.148. Prohibition of nondisclosure agreement relating to misconduct involving minor or student.

A public school district or public charter school shall not enter into a nondisclosure agreement relating to misconduct involving a minor or student, including abusive conduct as defined in KRS 160.380.

History.
2026 ch. 74, § 6, effective April 10, 2026.

160.150. Tax levies in subdistricts; limitation and election on. [Repealed.]

Compiler's Notes.
This section (4399-6, 4399-12, 4399-12a) was repealed by Acts 1946, ch. 36, § 3.

160.151. Criminal background checks and clear CA/N checks for new certified hires and student teachers in certified nonpublic schools — New checks on teachers permitted every five years — Fingerprinting — Disclosure statement — Employment of offenders by certified nonpublic schools — Forms — Nondisclosure agreement prohibited.

(1) For purposes of this section, "certified nonpublic school" means a private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with KRS 156.160(2).

(2)(a) 1. A certified nonpublic school shall require a national and state criminal background check and require a clear CA/N check, as defined in KRS 160.380, on all new certified hires in the school and student teachers assigned to the school and may require a new national and state criminal background check and require a clear CA/N check on each certified teacher once every five (5) years of employment.

2. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check and were required to have a clear CA/N check for previous employment may be excluded from the initial national or state criminal background checks.

(b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the Department of Kentucky State Police or the Administrative Office of the Courts.

(c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Department of Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Department of Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.

(3)(a) When a certified nonpublic school requires a criminal background check or requires a clear CA/N check under this section, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE APPLICANT HAS NO ADMINISTRATIVE FINDINGS OF CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES."

(b) The school or school board may require an adult who is permitted access to school grounds on a regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity, a volunteer, or a visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the Department of Kentucky State Police or Administrative Office of the Courts and require a clear CA/N check.

(c) Any request for records from the Department of Kentucky State Police under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police if required. The results of the state criminal background check and the results of the national criminal history background check shall be sent to the hiring superintendent. When a background check of child abuse and neglect records is requested, the person seeking employment shall provide to the hiring superintendent a clear CA/N check.

(d) Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.

(4)(a) A certified nonpublic school shall not employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3) or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. A certified nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.

(b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a certified nonpublic school

may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check or the receipt of a clear CA/N check, provided by the individual.

(c) Employment, including probationary employment, at a certified nonpublic school shall be contingent on the receipt of a criminal history background check documenting that the employee has no record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 and the receipt of a clear CA/N check, provided by the individual.

(5) The form for requesting a CA/N check shall be made available on the Cabinet for Health and Family Services website.

(6) A certified nonpublic school shall not enter into a nondisclosure agreement relating to misconduct involving a minor or student, including abusive conduct as defined in KRS 160.380.

History.

Enact. Acts 2002, ch. 285, § 1, effective July 15, 2002; 2006, ch. 182, § 17, effective July 12, 2006; 2007, ch. 85, § 168, effective June 26, 2007; 2010, ch. 111, § 1, effective July 15, 2010; 2017 ch. 115, § 2, effective July 1, 2018; 2019 ch. 31, § 2, effective June 27, 2019; 2025 ch. 113, § 8, effective June 27, 2025; 2026 ch. 74, § 9, effective April 10, 2026.

Legislative Research Commission Notes.

(6/27/2019). Under the authority of KRS 7.136(1), the Reviser of Statutes has relettered the paragraphs in subsection (2) of this statute. No words were changed in this process.

160.152. Kentucky Educator Placement Service System — Requirements — Operation — Annual report.

(1) As used in this section, "Kentucky Educator Placement Service System" or "system" means the online statewide job posting system operated by the Kentucky Department of Education for vacancies at, and applications to, local school districts and public charter schools.

(2) The Kentucky Department of Education shall ensure that the Kentucky Educator Placement Service System:

(a) Is accessible through the department's website;

(b) Includes a mechanism for local school districts and public charter schools to electronically post job openings on the system as provided in subsection (4) of this section;

(c) Allows the public to review job postings;

(d) Allows potential applicants to create one (1) or more universal applications and electronically submit applications and relevant application materials to multiple local school districts or public charter schools; and

(e) Permits school districts and public charter schools to access, review, and download applications and application materials.

(3) Each job posting for a vacancy at a school district or public charter school shall include the school district's or public charter school's policy against discrimination in employment.

(4) School districts and public charter schools shall electronically post all job openings to the system. All postings must include an opening and closing date for each position posted.

(5) The Kentucky Department of Education shall operate and maintain the system to ensure that job postings are current, including tracking each unique position posted, monitoring for repeated position postings, and removing outdated postings, and to collect accurate data about employment in public schools.

(6) Nothing in this section shall:

(a) Prohibit a school district or public charter school from advertising job openings and recruiting employees independently from the system;

(b) Prohibit a school district or public charter school from using another method of advertising job openings or another applicant tracking system in addition to the system;

(c) Require all job applications for posted vacancies to be submitted digitally or only be submitted through the system; or

(d) Provide the Kentucky Department of Education with any regulatory authority in the hiring process or hiring decisions of any school district or public charter school.

(7) The Kentucky Department of Education shall prepare a report detailing data from the system and its implication for the status of employment in public schools, including but not limited to the number and type of unique and duplicated job postings, how often postings are viewed by the public, and positions that are remaining vacant by type, certification requirement, and location. The report shall be submitted to the Legislative Research Commission for referral to the Interim Joint Committee on Education annually by October 1.

History.

2023 ch. 164, § 3, effective June 29, 2023; 2026 ch. 196, § 2, effective July 15, 2026.

160.153. Purple Star School Program — Requirements.

(1) As used in this section:

(a) "Military-connected student" means a child enrolled in a Kentucky public school who is a dependent of a current or former member of the Armed Forces of the United States, the Kentucky National Guard, or any reserve component thereof; and

(b) "Purple star school" means any public, private, or public charter school serving any grades of kindergarten through twelfth grade that has committed to supporting the educational and social-emotional needs of military-connected students, as identified by the Kentucky Commission on Military Affairs.

(2) The Kentucky Commission on Military Affairs shall establish the Purple Star School Program and establish an application, review, and designation process for eligible schools.

(3) To qualify as a purple star school, the school shall:

(a) Designate a staff member as a military liaison to serve as the point of contact between the school and military-connected students and their families, whose duties shall include:

1. Identifying military-connected students enrolled in the school;

2. Determining appropriate services available to military-connected students;

3. Coordinating programs relevant to military-connected students;

4. Assisting military-connected students in transitioning into or out of the school;

5. Facilitating optional professional development for staff members on issues related to military-connected students;

6. Completing a Kentucky Commission on Military Affairs purple star school questionnaire to provide feedback for program improvements; and

7. Completing Kentucky purple star school self-paced online training events, including military youth in Kentucky;

(b) Maintain a web page on the school's website that includes a prominent display of the Kentucky purple star logo provided by the Kentucky Commission on Military Affairs, resources for military-connected students and their families, and information regarding:

1. Relocation, enrollment, registration, and transferring records in the school;

2. Academic planning, course sequences, and advanced classes available;

3. Counseling and other support services available for military-connected students enrolled in the school; and

4. Contact information for the military liaison designated in this subsection;

(c) Host at least one (1) military recognition event annually that connects the school with the military community; and

(d) Submit an application for designation as a purple star school with the Kentucky Commission on Military Affairs.

History.
2024 ch. 193, § 1, effective July 15, 2024.

COMMUNITY SCHOOLS

160.155. Definitions for KRS 160.157.

As used in KRS 160.157, unless the context otherwise requires:

(1) "Board" means the board of education of a local school district;

(2) "Community school" means a school that makes its facilities available for citizen use, coordinates activities of local citizens in identifying program needs and establishing priorities, identifies and utilizes available program resources, and assists in the initiation of programs to improve the cultural, social, recreational, and educational opportunities available in a community;

(3) "Community education program" means a program in which a public building, including a public elementary or secondary school, is used as a community center operated by a local education agency in cooperation with other groups in the community, community organizations, and local governmental agencies to provide educational, recreational, cultural, health care, and other related community services in accordance with the needs, interests, and concerns of the community; and

(4) "Community education director" means an employee of a local school district who is responsible for a countywide program of community education in a school district or school districts.

History.
Enact. Acts 1982, ch. 107, § 1, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 423, effective July 13, 1990; 2009, ch. 42, § 1, effective June 25, 2009.

Compiler's Notes.
This section (Enact. Acts 1982, ch. 107, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 423, effective July 13, 1990.

160.156. State plan for community education — Grant program.

(1) The Kentucky Board of Education shall develop a state plan for community education which sets forth the goals and objectives of the program and establishes a system of priorities for targeting available resources on the areas with the greatest need.

(2) The Kentucky Department of Education shall administer a grant program pursuant to KRS 160.155 and 160.157 to provide money to local school districts to employ one (1) full-time community education director to plan and manage programs and services for community education that are targeted to the greatest educational needs in the community and to encourage cooperation among all local school districts in a county. Funds shall also be used to provide professional development training to all state-funded community education directors.

(3) Funds appropriated for this purpose shall be distributed by the Kentucky Department of Education through a grant process. Districts shall provide a twenty-five percent (25%) cash match in order to receive state community education funding.

History.
Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 25, effective October 18, 1985; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 424, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 428, § 2, effective July 15, 1998; 2009, ch. 42, § 2, effective June 25, 2009.

Compiler's Notes.
This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 25, effective October 18, 1985) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 424, effective July 13, 1990.

160.157. Funding of community schools.

(1) A public school district may receive funding for a community school program if it meets all of the following criteria:

(a) Submits an application for approval by the Kentucky Board of Education in the manner and form prescribed by the Department of Education;

(b) Submits a plan, approved by the local board, which outlines the proposed community education program, including procedures for obtaining the involvement and cooperation of other agencies and groups in identifying and recommending programs for meeting locally determined needs;

(c) Establishes a council with the power to make district-wide decisions of policy to assist in conducting community needs assessments and recommending program priorities;

(d) Employs one (1) full-time community education director.

(2) Two (2) or more school districts may combine for purposes of qualifying for state funds if the local districts identify a district of record for purposes of receiving state community education funds, maintaining records, and filing reports. Two (2) or more districts in the same county that wish to apply for state funds shall submit a joint proposal.

(3) Each grantee receiving state funds for a community education program shall submit an annual report to the Kentucky Department of Education. The report shall include an evaluation of the program and a financial statement. Failure to submit the report shall result in the loss of state funding.

History.

Enact. Acts 1982, ch. 107, § 2, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 425, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 428, § 3, effective July 15, 1998; 2009, ch. 42, § 3, effective June 25, 2009.

Compiler's Notes.

This section (Enact. Acts 1982, ch. 107, § 2, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 425, effective July 13, 1990.

160.158. Council for Community Education — Membership — Bylaws — Officers — Meetings — Reimbursement of expenses.

(1) A state Council for Community Education shall be established for the purpose of advising the commissioner of education and the Department of Education on issues relating to community education programs and making recommendations for the funding of local community education programs.

(2) The council shall have a membership of fifteen (15) persons, appointed by the Governor. Membership may include, but not be limited to, representatives of the following groups:

(a) Civic organizations;
(b) Community-based organizations;
(c) Community education organizations;
(d) Local government;
(e) Local school district administrators;
(f) Parent organizations;
(g) Postsecondary education;
(h) School boards; and
(i) Teachers.

(3) In the event of a vacancy on the council, the Kentucky Community Education Association and the commissioner or his or her designee for community education shall work jointly to create a list of at least three (3) nominees to present to the Governor for consideration. If more than one (1) vacancy exists on the council at the same time, the committee shall submit a number of nominees equal to three (3) times the number of vacancies. The Governor may select the appointee from among the nominees.

(4) The commissioner of education or the commissioner's designee shall convene the first meeting of the council for the purpose of establishing the bylaws of the council and electing officers to include: chairman, vice chairman, and secretary. The council shall schedule all subsequent meetings.

(5) The council shall not meet more than four (4) times annually. Members may be reimbursed for expenses but shall not receive a per diem allowance.

History.

Enact. Acts 1998, ch. 428, § 1, effective July 15, 1998; 2019 ch. 178, § 1, effective June 27, 2019.

PUBLIC CHARTER SCHOOLS

History.

2017 ch. 102, § 1, effective June 29, 2017.

160.1590. Definitions for KRS 160.1590 to 160.1599.

As used in KRS 160.1590 to 160.1599:

(1) "Achievement gap" means the difference between performance goals and actual performance on state standardized examinations and other academic performance measures for subgroups of students, especially groups defined by socioeconomic status, race, and ethnicity;

(2) "Applicant" means an eligible person or persons, organization, or entity that seeks approval from a charter school authorizer to establish a public charter school;

(3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) "Charter contract" or "contract" means a fixed-term, renewable contract between a charter school and an authorizer that identifies the roles, powers, responsibilities, and performance expectations for each party to the contract pursuant to KRS 160.1596;

(5) "Charter school board of directors" means the independent board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school's application;

(6) "Conversion public charter school" means a public charter school that existed as a noncharter public school prior to becoming a public charter school;

(7) "District of location" means the public school district in which a public charter school is physically located;

(8) "Education service provider" means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(9) "Local school board" or "local board" means a school board exercising management and control of a local school district;

(10) "Local school district" means a county or independent school district as identified in KRS 160.010 and 160.020;

(11) "Parent" means a parent, guardian, or other person or entity having legal custody of a child;

(12) "Proportionate per pupil basis" means multiplying an amount of funds by a fraction, with the numerator being the average daily attendance of the public charter school, and the denominator being the average daily attendance of the school district of location;

(13) "Proportionate per pupil transported basis" means multiplying an amount of funds by a fraction, with the numerator being the aggregate daily attendance of students transported by a public charter school, and the denominator being the aggregate daily attendance of students transported by the school district of location;

(14) "Public charter school" means a public school that:

(a) Is a public body corporate and politic, exercising public power, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this section;

(b) Has autonomy over decisions, including but not limited to matters concerning finance, personnel, scheduling, curriculum, and instruction;

(c) Is governed by an independent board of directors;

(d) Is established and operating under the terms of a charter contract between the public charter school's board of directors and its authorizer;

(e) Is a public school to which parents choose to send their children;

(f) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated;

(g) Offers a comprehensive instructional program to enrolled students;

(h) Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and

(i) Operates under the oversight of its authorizer in accordance with its charter contract;

(15) "Public charter school authorizer" or "authorizer" means an entity or body that reviews, approves, or denies charter applications, enters into charter contracts with applicants, oversees public charter schools, and renews, does not renew, or revokes charter contracts. Authorizers shall include:

(a) A local school board of a local school district, which shall only have authority to approve charter applications within the boundaries of its district;

(b) A collaborative among local school boards that forms to set up a regional public charter school to be located within the area managed and controlled by those local school boards;

(c) The mayor of a consolidated local government, who shall be considered an authorizer governing board for the purposes of KRS 160.1590 to 160.1599 and who may only authorize public charter schools to be physically located within the county in which the city is located and who has submitted a written notice to the state board that he or she intends to serve as an authorizer; and

(d) The chief executive officer of an urban-county government, who shall be considered an authorizer governing board for the purposes of KRS 160.1590 to 160.1599 and who may only authorize public charter schools to be physically located within the county in which the city is located and who has submitted a written notice to the state board that he or she intends to serve as an authorizer;

(16) "Qualified teacher" means a person certified by the Education Professional Standards Board pursuant to KRS 161.028, 161.030, 161.046, or 161.048;

(17) "State board" means the Kentucky Board of Education;

(18) "Student" means any child who is eligible for attendance in a public school in Kentucky;

(19) "Urban academy" means a public charter school that includes an enrollment preference for students who live in close proximity to the school as defined in the charter contract; and

(20) "Virtual public charter school" means a public charter school that offers educational services primarily or completely through an online program.

History.

2017 ch. 102, § 1, effective June 29, 2017; 2020 ch. 112, § 9, effective July 15, 2020; 2022 ch. 213, § 1, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1591. Legislative findings and declarations — Public charter school project.

(1) The General Assembly hereby finds and declares that:

(a) Reducing achievement gaps in Kentucky is necessary for the state to realize its workforce and economic development potential;

(b) Past and current measures have been insufficient for making progress toward reducing the state's achievement gaps;

(c) Additional public school options are necessary to help reduce socioeconomic, racial, and ethnic achievement gaps; and

(d) The demand exists for high-quality public charter schools in the Commonwealth.

(2) The General Assembly hereby establishes a public charter school project to benefit parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning outcomes by creating additional high-performing schools with high standards for student performance;

(b) Encourage the use of different, high-quality models of teaching, governing, scheduling, or other aspects of schooling that meet a variety of student needs;

(c) Close achievement gaps for low-performing groups of public school students;

(d) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;

(e) Increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure; and

(f) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public education system.

(3) Beginning in academic year 2022-2023, any authorizer may authorize an unlimited number of public charter schools.

(4) A public charter school shall not be a virtual public charter school.

(5)(a) Enrollment preference for a conversion public charter school shall be given to students who attended the school the previous school year. If the number of students enrolled does not exceed the capacity of the school, secondary preference shall be given to students who reside within the district boundary in which the public charter school is located.

(b) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. The enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in paragraph (f) of this subsection.

(c) Enrollment preference for public charter schools identified as an urban academy in the charter contract shall be given to students who live in close proximity to the school, as governed by the charter contract.

(d) Enrollment preference may be given to the children of the public charter school's board of directors and full-time employees of the public charter school provided they constitute no more than ten percent (10%) of the total student population.

(e) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and students who attend persistently low-achieving noncharter public schools.

(f) If capacity is insufficient to enroll all students who wish to attend any specific grade level or program at a public charter school, the school shall select students through a randomized and transparent lottery. The lottery process may allow for siblings in a lottery or different lotteries to be admitted together.

(6) Consistent with the requirements of KRS 160.1590 to 160.1599 and 161.141, the state board shall promulgate administrative regulations to guide student application, lottery, and enrollment in public charter schools.

History.

2017 ch. 102, § 2, effective June 29, 2017; 2020 ch. 112, § 10, effective July 15, 2020; 2022 ch. 213, § 2, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.15911. Kentucky Public Charter School Pilot Project — Authorizers — Approval of charter application — Collective may act as substitute authorizer — Annual report — Performance review — Contract renewal.

(1) The Kentucky Public Charter School Pilot Project is hereby established to study the impact of public charter schools within the common school system.

(2) Authorizers for the pilot project shall include:

(a) A school board of a county school district located in a county with a consolidated local government, which shall have authorizing jurisdiction within the territory of the district's boundaries; and

(b) Notwithstanding KRS 160.1590, the board of regents of Northern Kentucky University, which shall have authorizing jurisdiction within any county containing four (4) or more local school districts. The board of regents shall only become a pilot project authorizer if the board adopts a resolution confirming the status by January 1, 2023. The board of regents shall send notice of the resolution to each local board within the jurisdiction, the Kentucky Board of Education, and the Legislative Research Commission. The board of regents may decline to be an authorizer by July 1, 2023, in the same manner.

(3) By July 1, 2023, each pilot project authorizer shall solicit, review, and approve at least one (1) charter application for a public charter school within the authorizer's jurisdiction that serves as an urban academy. The charter contract shall be for a five (5) year term, but otherwise subject to KRS 160.1590 to 160.1599. The pilot authorizers shall submit a copy of the approved charter contracts to the Legislative Research Commission.

(4)(a) If on July 1, 2023, the Northern Kentucky University board of regents is not a pilot project authorizer, then notwithstanding KRS 160.1590, a collective of metropolitan local school boards that is composed of two (2) members from each local board of a district located in a county that contains four (4) or more local school districts shall become a substitute pilot project authorizer. Each local board shall select its members to serve on the collective.

(b) The collective shall have authorizing authority within the collective districts' boundaries. The collective shall adopt authorizer policies as if it were a single local board and may allocate authorizer fees as necessary to support authorizer functions. The collective may contract with other governmental or

nonprofit organizations to assist with public charter school oversight.

(c) By July 1, 2024, the collective shall solicit, review, and approve at least one (1) charter application for a public charter school within the authorizer's jurisdiction that serves as an urban academy. The charter contract shall be for a five (5) year term, but otherwise subject to KRS 160.1590 to 160.1599. The pilot authorizers shall submit a copy of the approved charter contracts to the Legislative Research Commission.

(5) By July 1 of each year the charter contract is in effect, the pilot project authorizers shall submit an annual report to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue detailing the authorizer's oversight activities over the previous year. The report shall have content and be in a format approved by the Education Assessment and Accountability Review Subcommittee with the assistance of the Office of Education Accountability.

(6) Starting in 2024 and until the initial charter contract ends, the Office of Education Accountability shall annually review the performance of the public charter schools authorized under this section and submit the report to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue. The Education Assessment and Accountability Review Subcommittee may provide guidance to the Office of Education Accountability on the content and format of the report.

(7) Upon the end of the initial term of the charter contract, the pilot authorizers shall review the reports under subsection (5) of this section and determine if the contract shall be renewed in the same manner as any other charter contract under the provisions of KRS 160.1598. The decision shall be appealable under KRS 160.1595.

History.

2022 ch. 213, § 11, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school funding, 701 KAR 8:050.

160.1592. Public charter schools part of state's public education system — Exemption from laws and regulations — School requirements — Enrollment option information for parents — Board of directors — Buildings and grounds, liability insurance, and other undertakings — Requirement to be nonsectarian and nondiscriminatory — Authorized grade levels — Programs and services for students with disabilities — Participation in athletic, academic, and other programs — Single-sex public charter schools permitted — Amendments to charter contract — Acceptance of credits earned and grades received in public charter school — Leave of absence to teach in public charter school.

(1) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a local school district, or a school, except the public charter school shall adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public schools and to all requirements otherwise identified in KRS 160.1590 to 160.1599 and 161.141.

(2) A public charter school may elect to comply with any one (1) or more provisions of any state statute or administrative regulation.

(3) A public charter school shall:

(a) Be governed by a board of directors;

(b) Be established and operate in pursuit of a specific set of educational objectives as defined in the charter contract between the school's board of directors and its authorizer;

(c) Ensure students meet compulsory attendance requirements under KRS 158.030 and 158.100 and record student enrollment and attendance in a manner necessary for participation in the fund to support education excellence in Kentucky;

(d) Hire only qualified teachers to provide student instruction;

(e) Ensure high school course offerings meet or exceed the minimum required under KRS 156.160 for high school graduation;

(f) Design its education programs to meet or exceed the student performance standards adopted by the Kentucky Board of Education;

(g) Ensure students' participation in required state assessment of student performance, as required under KRS 158.6453;

(h) Adhere to all generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements as are applied to other public schools under KRS 156.265;

(i) Utilize the same system for reporting student information data and financial data as is utilized by other school districts across the state;

(j) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all public school employees and volunteers within the public schools specified in KRS 160.380 and 161.148;

(k) Comply with open records and open meeting requirements under KRS Chapter 61;

(*l*) Comply with purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480, or provide to the public charter school board of directors a detailed monthly report of school purchases over ten thousand dollars ($10,000), including but not limited to curriculum, furniture, and technology;

(m) Provide instructional time that is at least equivalent to the student instructional year specified in KRS 158.070;

(n) Provide data to the Kentucky Department of Education and the authorizer as required by the Kentucky Department of Education or authorizer to generate a school report card under KRS 158.6453;

(o) Operate under the oversight of its authorizer in accordance with its charter contract and application;

(p) As a public body corporate, have all the powers necessary for carrying out the terms of its charter contract, including the power to:

1. Receive and disburse funds for school purposes;

2. Secure appropriate insurance and enter into contracts and leases;

3. Contract with an education service provider, provided the board of directors of the public charter school retains oversight and authority over the school;

4. Incur debt in reasonable anticipation of the receipt of public or private funds;

5. Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

6. Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter;

7. Acquire real property for use as its facility or facilities, from public or private sources; and

8. Employ or contract with other entities for the provision of teaching, professional, and support staff, as needed;

(q) Conduct an admissions lottery if capacity is insufficient to enroll all students who wish to attend the school and ensure that every student has a fair opportunity to be considered in the lottery and that the lottery is competently conducted, equitable, randomized, transparent, impartial, and in accordance with targeted student population and service community as identified in KRS 160.1593(3) so that students are accepted in a public charter school without regard to ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability; and

(r) Establish a food program for students that, at a minimum, provides free and reduced-price meals to students identified as qualifying for such meals under federal guidelines for the National School Lunch Program.

(4) For purposes of this subsection, a member of the board of directors of a public charter school shall be considered an officer under KRS 61.040 and shall be removed from office under the statute's provisions.

(5) A local school district shall provide or publicize to parents and the general public information about public charter schools authorized by the local school district as an enrollment option within the district to the same extent and through the same means that the school district provides and publicizes information about noncharter public schools in the district.

(6) A local school district shall not assign or require any student enrolled in the local school district to attend a public charter school.

(7)(a) For purposes of ensuring compliance with this section and the charter under which it operates, a public charter school shall be administered by a public charter school board of directors accountable to the authorizer in a manner agreed to in the charter contract, as negotiated between the public charter school applicant and the authorizer.

(b) The board of directors of a public charter school shall consist of a minimum of two (2) parents of students attending any public charter school operating under the direction of the board of directors.

(c) A member of the board of directors of a public charter school shall:

1. Not be an employee of that school or of an education service provider that provides services to the school; and

2. File full disclosure reports and identify any potential conflicts of interest, relationships with management organizations, and relationships with family members who are applying to or are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school and shall make these documents available online through the authorizer.

(8) Collectively, members of the board of directors shall possess expertise in leadership, curriculum and instruction, law, and finance.

(9)(a) A board of directors may hold one (1) or more charter contracts.

(b) Each public charter school under contract with a board of directors shall be separate and distinct from any other public charter school under contract with the board of directors.

(10) The board of directors shall be responsible for the operation of its public charter school, including but not limited to preparation of a budget, contracting for services, school curriculum, and personnel matters.

(11) The board of directors shall:

(a) Ensure that all meetings of the board are publicized in advance according to the rules governing the authorizer and are open to the public at times convenient to parents; and

(b) Require any education service provider contracted with the board to provide a monthly detailed budget to the board.

(12)(a) A public charter school may negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations. The public charter school shall have standing to sue and be sued in its own name for the enforcement of any contract under color of authority granted by KRS 160.1590 to 160.1599. A public charter school may own, rent, or lease its space.

(b) Any entity contracted to provide educational services or goods to a public charter school in an amount exceeding ten thousand dollars ($10,000) shall be subject to the Open Records Act under KRS Chapter 61 for all records associated with the public charter school contract.

(13) A public charter school shall be exempt from administrative regulations governing public schools for purposes of zoning and local land use regulation. The Finance and Administration Cabinet shall annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by the state and that may be suitable for the operation of a public charter school and shall provide the list to applicants for public charter schools and to existing public charter schools upon request.

(14) A public charter school shall be nonsectarian in its programs, admissions policies, employment practices, partnerships, and all other operations and shall not have entrance requirements or charge tuition or fees, except that a public charter school may require the payment of fees on the same basis and to the same extent as other public schools.

(15) A public charter school shall not discriminate against any student, employee, or any other person on the basis of ethnicity, religion, national origin, sex, disability, special needs, athletic ability, academic ability, or any other ground that would be unlawful if done by a public school.

(16) A public charter school shall serve one (1) or more of grades kindergarten through twelve (12) and shall limit admission to students within the grade levels served.

(17) A public charter school shall provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services. A public charter school shall establish an admissions and release committee at the school and the committee shall:

(a) Develop an individualized education program for each student with a disability; or

(b) Review, revise, or utilize a student's individualized education program completed by the admissions and release committee of the student's former school. If needed, the committee shall work collaboratively with staff from the student's former school to review and revise a student's existing individualized education program.

(18)(a) A public charter school shall be eligible to participate in state-sponsored or district-sponsored interscholastic athletics, academic programs, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools. Participants shall comply with eligibility requirements of students enrolled in noncharter public schools.

(b) A public charter school has no obligation to provide extracurricular activities or access to facilities for students enrolled in the public charter school.

(c) If a public charter school sponsors interscholastic athletic activities, students enrolled in the public charter school shall be considered eligible to participate in interscholastic competitions by the Kentucky Board of Education or the agency designated by the state board to manage interscholastic athletics, if other eligibility requirements are met. A student enrolled in a public charter school that sponsors an interscholastic athletic activity shall be ineligible to participate in that activity at any other school.

(d) If a public charter school does not offer any interscholastic athletic activity sanctioned by the Kentucky Board of Education or the agency designated by the state board to manage interscholastic athletics, a student enrolled in the public charter school shall be eligible to participate at the school the student would attend based on the student's residence.

(e) If a public charter school offers any interscholastic athletic activity sanctioned by the Kentucky Board of Education or the agency designated by the state board to manage interscholastic athletics, a student enrolled in the public charter school shall be ineligible to participate in any interscholastic athletic activity at any other school.

(19) Nothing in this section shall be construed to prevent the establishment of a single-sex public charter school consistent with federal regulations or a public charter school designed to provide expanded learning opportunities for students at risk of academic failure or for students with special needs.

(20) The authorizer of a public charter school shall semiannually consider for approval a public charter school's proposed amendments to a charter contract. The authorizer may consider requests for amendments more frequently upon mutual agreement between the authorizer and the public charter school. The denial of

an amendment request is appealable pursuant to KRS 160.1595.

(21) If a student who was previously enrolled in a public charter school enrolls in another public school located within the state, the new school shall accept any credits earned and grades received by the student in courses or instructional programs while enrolled in the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept credits from other public schools.

(22) A teacher employed by a local board of education under a continuing service contract and offered employment with a public charter school shall be granted a two (2) year leave of absence to teach in a public charter school. The leave of absence shall commence on the first day of service to the public charter school. During the first or second year of the leave of absence, the teacher may notify the local board of education that the teacher intends to return to a teaching position in the local school district. The teacher shall be allowed to return to a teaching position in the local school district at the appropriate salary for the teacher's years of experience and educational level. After two (2) years on leave, the relationship between the teacher and the local board of education shall be determined by the local board and the local board shall notify the teacher of the decision.

History.

2017 ch. 102, § 3, effective June 29, 2017; 2021 ch. 144, § 6, effective June 29, 2021; 2022 ch. 213, § 3, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1593. Application to establish public charter school — Submission to authorizer and state board — Required application information.

(1) An application to establish a public charter school may be submitted to a public charter school authorizer by teachers, parents, school administrators, community residents, public organizations, nonprofit organizations, or a combination thereof.

(2) An applicant shall submit an application for approval of a public charter school to an authorizer and shall also submit a written notification of the application simultaneously to the state board as a record of the filing. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(3) The information provided in the application shall be consistent with this section and shall include:

(a) A mission statement and a vision statement for the public charter school, including the targeted student population and the community the school hopes to serve, and shall outline how the public charter school will establish resident and nonresident enrollment policies which shall be subject to the same limitations as a school district;

(b) A description of the school's proposed academic program that is aligned with state standards, and that implements one (1) or more of the purposes described in KRS 160.1591, and the instructional methods that will support the implementation and success of the program;

(c)1. The student achievement goals for the public charter school's educational program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals; and

2. An explanation of how the school's proposed educational program is likely to improve the achievement of traditionally underperforming students, serve the needs of students with individualized education programs, or provide students with career readiness education opportunities;

(d) The school's plan for using external, internal, and state-required assessments to measure student progress on the performance framework as identified in KRS 160.1596, and how the school will use data to drive instruction and continued school improvement;

(e) The proposed governance structure of the school, including a list of members of the initial board of directors, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of directors, and the organizational structure of the school that clearly presents lines of authority and reporting between the board of directors, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(f)1. Plans and timelines for student recruitment and enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with KRS 160.1591 and 160.1592;

2. An application shall demonstrate a plan to recruit at least one hundred (100) students, unless the application is focused on serving special needs or at-risk students or students seeking career readiness education; and

3. If the application is for a public charter school located in a district with total student enrollment of seven thousand five hundred (7,500) or less, then the application shall include a memorandum of understanding with the district of location endorsing the application. However, if the application is for an urban academy located within a county where the total enrollment of all independent school districts is greater than seven thousand five hundred (7,500), then this subparagraph shall not apply;

(g) A proposed five (5) year budget, including the start-up year and projections for four (4) additional years with clearly stated assumptions;

(h) Draft fiscal and internal control policies for the public charter school;

(i) Requirements and procedures for programmatic audits and assessments at least once annually, with audits and assessments being comparable in scope to those required of noncharter public schools;

(j) A draft handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(k) A draft of the policies and procedures by which students may be disciplined, including students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(*l*) A description of the facilities to be used by the public charter school, including the location of the school, if known, and how the facility supports the implementation of the school's academic program. If the facilities to be used by the proposed school are not known at the time the application is submitted, the applicant shall notify the authorizer within ten (10) business days of acquiring facilities for the school. The school shall obtain certification of occupancy for the facilities at least thirty (30) days prior to the first student instructional day;

(m) The proposed ages and grade levels to be served by the public charter school, including the planned, minimum, and maximum enrollment per grade per year;

(n) The school calendar and school day schedule, which shall total at least the equivalent to the student instructional year specified in KRS 158.070;

(o) Types and amounts of insurance coverage to be obtained by the public charter school, which shall include adequate insurance for liability, property loss, and the personal injury of students comparable to other schools within the local school district operated by the local school board;

(p) A description of the health and food services to be provided to students attending the school;

(q) Procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the district of location or to another charter school located within the local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in KRS 160.1598;

(r) A code of ethics for the school setting forth the standards of conduct expected of its board of directors, officers, and employees;

(s) Plans for recruiting and developing staff;

(t) A staffing chart for the school's first year and a staffing chart for the term of the charter;

(u) A plan for parental and community involvement in the school, including the role of parents in the administration and governance of the school;

(v) The public charter school's plan for identifying and successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including but not limited to the school's plan for compliance with all applicable federal and state laws and regulations;

(w) A description of cocurricular and extracurricular programs and how they will be funded and delivered;

(x) The process by which the school will resolve any disputes with the authorizer; and

(y) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan.

(4) If the public charter school applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to:

(a) Provide evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(b) Provide student performance data and financial audit reports for all current and past public charter schools;

(c) Provide documentation of and explanation for any actions taken against any of its public charter schools for academic, financial, or ethical concerns;

(d) Provide evidence of current capacity for growth;

(e) Provide a term sheet setting forth:

1. The proposed duration of the service contract;

2. The annual proposed fees to be paid to the education service provider;

3. The roles and responsibilities of the board of directors, the school staff, and the education service provider;

4. The scope of services and resources to be provided by the education service provider;

5. Performance evaluation measures and timelines;

6. Compensation structure, including clear identification of all fees to be paid to the education service provider;

7. Methods of contract oversight and enforcement;

8. Investment disclosure; and

9. Conditions for renewal and termination of the contract; and

(f) Disclose and explain any existing or potential conflicts of interest between the board of directors and the proposed education service provider or any affiliated business entities.

History.

2017 ch. 102, § 4, effective June 29, 2017; 2022 ch. 213, § 4, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1594. Public charter school authorizer — Duties — Application reviews and decisions — Criteria for approval — Explanation of decision — Submission to Department of Education — School board member charter authorization training.

(1) A public charter school authorizer shall:

(a) Fulfill the expectations and intent of this section and KRS 160.1590 to 160.1599 and 161.141;

(b) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(c) Establish an annual timeline consistent with statutory guidelines with deadlines to solicit, invite, accept, and evaluate applications from applicants;

(d) Approve new and renewal charter applications that meet the requirements of this section and KRS 160.1593;

(e) Decline to approve charter applications that:

1. Fail to meet the requirements of this section and KRS 160.1593; or

2. Are for a school that would be wholly or partly under the control or direction of any religious denomination;

(f) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(g) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(h) Determine whether each charter contract it authorizes merits renewal or revocation; and

(i) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

1. Organizational capacity and infrastructure;

2. Soliciting and evaluating applications;

3. Performance contracting;

4. Ongoing public charter school oversight and evaluation; and

5. Charter approval, renewal, and revocation decision making.

(2) In reviewing applications, the public charter school authorizer is encouraged to give preference to applications that demonstrate the intent, capacity, and capability to provide comprehensive learning experiences to:

(a) Students identified by the applicants as at risk of academic failure;

(b) Students with special needs as identified in their individualized education program as defined in KRS 158.281; and

(c) Students who seek career readiness education opportunities.

(3) After a charter applicant submits a written application to establish a public charter school, the authorizer shall:

(a) Complete a thorough review process;

(b) Conduct an in-person interview with the applicant group;

(c) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(d) Provide a detailed analysis of the application to the applicant or applicants, which shall include any identified deficiencies;

(e) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies, including allowing an applicant to request a sixty (60) day extension to seek technical assistance in curing deficiencies from the state board under KRS 160.1595; and

(f) Approve or deny a charter application based on established objective criteria or request additional information.

(4) In deciding to approve a charter application, the authorizer shall:

(a) Grant charters only to applicants that possess competence in all elements of the application requirements identified in this section and KRS 160.1593;

(b) Base decisions on documented evidence collected through the application review process; and

(c) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(5) Unless an extension is requested under subsection (3) of this section, no later than sixty (60) days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall adopt by resolution all charter approval or denial decisions in an open meeting of the authorizer's board of directors.

(6) Any failure to act on a charter application within sixty (60) days of the established application submission deadline shall be deemed an approval by the authorizer.

(7) An application shall be approved if the public charter school authorizer finds that:

(a) The public charter school described in the application meets the requirements established by this section and KRS 160.1590 and 160.1592;

(b) The applicant demonstrates the ability to operate the school in an educationally and fiscally sound manner; and

(c) Approving the application is likely to improve student learning and achievement and further the purposes established by KRS 160.1591.

(8) An authorizer shall provide a written explanation within five (5) days of adopting a resolution, for the public record, stating its reasons for approval or denial of a charter application, including a thorough explanation of how the charter application either meets or fails to meet established objective criteria for making charter application decisions, and the authorizing process which the authorizer used to review, evaluate, and make its final decision.

(9) An authorizer's charter application approval shall be submitted to the Kentucky Department of Education as written notice.

(10) When an authorizer that is a local school board or a collaborative of local school boards receives a charter school application, any member of the board or

boards who has not received charter authorization training within twelve (12) months immediately preceding the date the application was received shall receive six (6) hours of in-service training prior to evaluating the charter application. Except for training provided prior to July 15, 2020, the training shall be in addition to the annual in-service training required under KRS 160.180, and each board shall select the trainer to deliver the training to its members. Charter authorizer training shall not be required of any local school board member until a charter application is submitted to the board or boards.

History.
2017 ch. 102, § 5, effective June 29, 2017; 2020 ch. 112, § 5, effective July 15, 2020; 2022 ch. 213, § 5, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.
Charter school funding, 701 KAR 8:050.
Charter school student application, lottery, and enrollment, 701 KAR 8:010.
Conversion charter school petition, conversion, and operation, 701 KAR 8:040.
Evaluation of charter school authorizers, 701 KAR 8:020.

160.1595. Request for technical assistance — Appeal of approval or denial to state board — Judicial review — Joint oversight.

(1) Any applicant or board of directors of a public charter school may request technical assistance from the Kentucky Department of Education to address deficiencies identified by an authorizer. The department shall respond within thirty (30) days of the request.

(2)(a) The state board, upon receipt of a notice of appeal, shall review decisions of any other authorizer concerning the approval or denial of a public charter school application, the nonrenewal or revocation of a public charter school's contract, the denial of a public charter school's request to consider a charter amendment, or the unilateral imposition of conditions in the charter contract, in accordance with the provisions of this section.

(b) A charter applicant or approved public charter school who wishes to appeal a decision of an authorizer concerning a charter application, a charter amendment, or the nonrenewal or revocation of a charter, or the unilateral imposition of conditions, shall provide the state board and the authorizer with a notice of appeal within thirty (30) days after the authorizer's decision. The appellant shall limit the grounds of the appeal to the grounds for the denial of or the nonrenewal or revocation of a charter, or the unilateral imposition of conditions, whichever is being appealed, specified by the authorizer. The notice shall include a brief statement of the reasons the public charter school applicant or public charter school contends the authorizer's denial of or nonrenewal or revocation of a charter, or imposition of conditions was in error.

(c) If the notice of appeal relates to an authorizer's decision to deny, refuse to renew, or revoke a charter or to an authorizer's unilateral imposition of conditions that are unacceptable to the charter applicant or public charter school, the appeal and review process shall be as follows:

1. Within forty-five (45) days after receipt of the notice of appeal and after reasonable public notice, the state board, at a public hearing which may be held in the school district in which the proposed public charter school has applied for a charter or where the public charter school exists, shall review the decision of the authorizer and make its findings;

2. The state board shall determine:

a. If the final decision of the authorizer was contrary to the best interest of the students or community; and

b. If the application failed to satisfy the requirements of KRS 160.1593(3) and (4);

3. If the state board finds that the authorizer's decision was contrary to the best interest of the students or community and the application satisfies the statutory requirements, the state board shall remand such final decision to the authorizer with instructions to approve the charter application or amendment, or to renew or reinstate the charter, or to approve or disapprove conditions imposed. The decision of the state board shall be a final action subject to judicial review in the Circuit Court encompassing the school district in which the public charter school is located; and

4. Charters granted to applicants by authorizers after a successful appeal to the state board, as outlined in subparagraph 3. of this paragraph, shall be provided joint oversight by the authorizer and the state board for, at a minimum, the first five (5) years of the school's operation, and until the authorizer, state board, and public charter school agree that charter oversight may be provided solely by the authorizer. The state board shall be a formal participant in all authorizing decision making concerning the public charter school during that period, and shall be included in all communication between the public charter school and the authorizer.

History.
2017 ch. 102, § 6, effective June 29, 2017; 2022 ch. 236, § 75, effective July 1, 2022; 2022 ch. 213, § 6, effective July 14, 2022.

Legislative Research Commission Notes.
(7/14/2022). This statute was amended by 2022 Ky. Acts chs. 213 and 236. Ch. 236 combined the Education and Workforce Development Cabinet and Labor Cabinet and amended all applicable statutes to remove each and every existing reference to either of those cabinets and insert the name of the successor agency, "Education and Labor Cabinet," in its place. One such replacement was made in this section, but the amendment of this section in ch. 213 removed the cabinet reference in its entirety, making the name update unnecessary.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school appeal process, 701 KAR 8:030.
Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1596. Board of directors of public charter schools — Required elements of charter contract with authorizer — Calculation of daily average attendance — Proportional transfer of funds — Services — Negotiation by collaborative — Calculations for first year — Authorizer fee — Schedule for funds transfer — Grants — Share of state and federal funds — Distribution of closed school's assets — Administrative regulations — Annual report by authorizer.

(1)(a) For purposes of this section, a member of the board of directors of a public charter school shall be considered an officer under KRS 61.040 and shall, within sixty (60) days of final approval of an application, take an oath of office as required under KRS 62.010.

(b) Within seventy-five (75) days of the final approval of an application, the board of directors and the authorizer shall enter into a binding charter contract that establishes the academic and operational performance expectations and measures by which the public charter school will be evaluated.

(c) The executed charter contract shall become the final authorization for the public charter school. The charter contract shall include:

1. The term of the contract;

2. The agreements relating to each item required under KRS 160.1592(3) and 160.1593(3), as modified or supplemented during the approval process;

3. The rights and duties of each party;

4. The administrative relationship between the authorizer and the public charter school;

5. The allocation of state, local, and federal funds, and the schedule to disburse funds to the public charter school by the authorizer;

6. The process the authorizer will use to provide ongoing oversight, including a process to conduct annual site visits;

7. The specific commitments of the public charter school authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

8. The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found in the annual review;

9. The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the board of directors of the public charter school;

10. The process agreed to by the authorizer and the board of directors of the public charter school that identifies how disputes between the authorizer and the board will be handled; and

11. Any other terms and conditions agreed to by the authorizer and the board of directors, including pre-opening conditions. Reasonable conditions shall not include enrollment caps or operational requirements that place undue constraints on a public charter school or are contradictory to the provisions of KRS 160.1590 to 160.1599 and 161.141. Such conditions, even when incorporated in a charter contract, shall be considered unilaterally imposed conditions.

(d)1. The performance provisions within a charter contract shall be based on a performance framework that sets forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate each public charter school. The performance framework shall include at a minimum indicators, measures, and metrics for:

a. Student academic proficiency;

b. Student academic growth;

c. Achievement gaps in both student proficiency and student growth for student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

d. Student attendance;

e. Student suspensions;

f. Student withdrawals;

g. Student exits;

h. Recurrent enrollment from year to year;

i. College or career readiness at the end of grade twelve (12);

j. Financial performance and sustainability; and

k. Board of directors' performance and stewardship, including compliance with all applicable statutes, administrative regulations, and terms of the charter contract.

2. The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance. The proposed indicators shall be consistent with the purposes of KRS 160.1590 to 160.1599 and 161.141 and shall be negotiated with the authorizer.

3. The performance framework shall require the disaggregation of student performance data by subgroups, including race, sex, socioeconomic status, and areas of exceptionality.

4. The authorizer shall be responsible for collecting, analyzing, and reporting to the state board all state-required assessment and achievement data for each public charter school it oversees.

(e) Annual student achievement performance targets shall be set, in accordance with the state accountability system, by each public charter school in conjunction with its authorizer, and those measures shall be designed to help each school meet applicable federal, state, and authorizer goals.

(f) The charter contract shall be signed by the chair of the governing board of the authorizer and the chair of the board of directors of the public charter

school. An approved charter application shall serve as a charter contract for the public charter school.

(g) No public charter school may commence operations without a charter contract executed according to this section and approved in an open meeting of the governing board of the authorizer.

(2) Within five (5) days after entering into a charter contract, a copy of the executed contract shall be submitted by the authorizer to the commissioner of education.

(3) For the purposes of local and state funding, a public charter school shall serve as a school of the district of location.

(4) For the purposes of federal funding, a public charter school shall serve as a local education agency.

(5) All students enrolled in a public charter school shall be included in the average daily attendance calculation under KRS 157.360 and the aggregate and average daily attendance of transported pupils calculation under KRS 157.370 of the district of location in the same manner as any other public schools in the district and shall be reported by the public charter schools to the school district and state Department of Education for purposes of calculating the state and local share of funding for each public charter school.

(6) Notwithstanding the formula for allocating district funds under KRS 160.345(8) and any other statute governing a district's funding of schools, unless an authorizing district agrees to provide a larger sum of funding in the charter contract, after local capital outlay funds that are restricted in use pursuant to KRS 157.420(4) and funds under KRS 157.440(1)(b) and 157.621 necessary to meet debt service obligations on bonds or other financing mechanisms for new construction and renovation projects for school facilities are excluded, and before any other funds are budgeted for district use, a district shall transfer to each of the public charter schools located within the district:

(a) The amount that is proportional to the public charter school's enrollment or average daily attendance in comparison with the overall district qualifying numbers for:

1. Funds that are related to students' attendance and enrollment and allocated to the district of location pursuant to KRS 157.360;

2. Any add-on or funding factors provided for in the state budget;

3. Any add-on or funding factors provided for by the Kentucky Department of Education; and

4. Funds pursuant to KRS 157.360(2)(a) and (b) and (13)(a).

For each funding source identified in this paragraph, the transfer amount shall be based on the public charter school's qualifying student enrollment or average daily attendance, depending on the method used in the funding source's calculation;

(b) On a proportionate per pupil basis:

1. Education funds allocated to the school district pursuant to KRS 157.440(1)(a) and (2)(a), or pursuant to any applicable federal statute; and

2. All taxes and payments in lieu of taxes transferred to the district of location or levied and collected by the district of location; and

(c) On a proportionate per pupil transported basis, transportation funds calculated pursuant to KRS 157.360(2)(c) and 157.370 and distributed to the district of location, unless the school district provides transportation to students attending the public charter school under written terms agreed upon by the district and the public charter school in either the charter contract or, if the district is not the public charter school's authorizer, a separate agreement.

(7)(a) If transportation funds are transferred under this section to a public charter school, then the public charter school receiving those funds shall provide transportation services to the enrolled students residing within the district of location.

(b) If funds designated for providing additional services to specific students are transferred under this section, then the public charter school receiving those funds shall provide those services in the same manner as the district of location.

(c) If transportation services are not provided by the public charter school and no written agreement to provide transportation services with the district of location exists, then no transportation funds shall be transferred and the district of location shall not be responsible for providing transportation to the public charter school's students.

(8) Notwithstanding the identification of funds to be transferred in this section, a collaborative among local school boards authorizing a public charter school may negotiate among the local boards and a charter applicant to identify the amount of funds to be transferred to the public charter school. The agreement shall be detailed in the charter contract.

(9)(a) For the calculation of amounts under subsections (6) and (7) of this section during the first school year of operation of a public charter school in a school district, beginning with the start of instruction:

1. The public charter school's average daily attendance shall be calculated based on a projection of the public charter school's enrollment and the district's overall average daily attendance;

2. The public charter school's aggregate daily attendance of students transported shall be calculated based on a projection of the public charter school's enrollment and transportation plan and the district's overall aggregate daily attendance of students transported; and

3. The amounts attributable to each individual student's attendance at the public charter school shall be calculated based on a projection of the public charter school's enrollment and demographics and the district's overall enrollment and demographics.

(b) The calculations shall be adjusted in January of the first school year of operation to reflect the first semester's actual data. Subsequent years of operation shall be calculated using actual data from the prior school year.

(10)(a) Funds identified for transfer under this section shall be transferred by a district of location to each of the public charter schools located within the district. However, up to three percent (3%) of the funds identified under this section for transfer to a public charter school may be retained by an authorizer as an authorizer fee.

(b) If the authorizer of a public charter school does not include the local board of education of the district

of location, then the district of location shall transfer the authorizer fee to the public charter school's authorizer.

(c) If the Kentucky Board of Education requires the authorization of a public charter school on appeal from an authorizer, the board shall receive twenty-five percent (25%) of the authorizing fee for the duration of joint oversight required by KRS 160.1595.

(11) Funds identified for transfer by a district of location to a public charter school under this section shall be transferred throughout the school year according to a schedule determined by the state board. The scheduled dates shall be within thirty (30) days of the dates of state disbursement of funds to school districts. Failure to transfer required funds shall, for every five (5) days late, result in a fine to the violator of not less than five percent (5%) of the total funds per funding period to be transferred. Fines imposed shall be transferred to the public charter school affected by the delay.

(12) A public charter school shall be eligible for federal and state competitive grants and shall not be excluded from an opportunity to apply or participate so long as the public charter school meets the criteria established for the respective grants. Each public charter school that receives grant aid shall comply with all requirements to receive such aid.

(13) A public charter school shall receive a proportionate per pupil share of any state moneys not otherwise identified in this section that is received by the school district of location. The public charter school shall also receive, according to federal law, moneys generated under federal categorical aid programs for students that are eligible for the aid and attending the public charter school. Each public charter school that receives such aid shall comply with all requirements to receive such aid.

(14) The commissioner of education shall apply for all federal funding that supports charter school initiatives for which a state must be the applicant and shall cooperate with any public charter school in its efforts to seek federal funding.

(15) If a public charter school closes for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to the creditors of the school, then to the district of location or authorizing districts if authorized by a collaborative of local boards of education. If the assets are insufficient to satisfy outstanding obligations, the authorizer shall petition to Circuit Court of the county in which the public charter school is located to prioritize the distribution of assets.

(16) The state board shall promulgate administrative regulations to:

(a) Establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance; and

(b) Govern the calculation and distribution of funds due to public charter schools from school districts, the schedule of distribution of funds, and the imposition of fines for late distribution of funds.

(17) By August 31, 2023, and annually thereafter, each public charter school authorizer shall submit to the commissioner of education, the secretary of the Education and Labor Cabinet, and the Interim Joint Committee on Education a report to include:

(a) The names of each public charter school operating under contract with the authorizer during the previous academic year that:

1. Closed during or after the academic year; or
2. Had the contract nonrenewed or revoked;

(b) The names of each public charter school operating under contract with the authorizer during the previous academic year that have not yet begun to operate;

(c) The number of applications received, the number reviewed, and the number approved;

(d) A summary of the academic and financial performance of each public charter school operated under contract with the authorizer during the previous academic year; and

(e) The authorizing duties and functions performed by the authorizer during the previous academic year.

History.

2017 ch. 102, § 7, effective June 29, 2017; 2020 ch. 112, § 11, effective July 15, 2020; 2022 ch. 236, § 76, effective July 1, 2022; 2022 ch. 213, § 7, effective July 14, 2022.

Legislative Research Commission Notes.

(7/14/2022). This statute was amended by 2022 Ky. Acts chs. 213 and 236, which do not appear to be in conflict and have been codified together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1597. Term of approved charter school contract — Contract between board of directors and authorizer's governing body — Corporate powers — Prohibition against tax levies and use of eminent domain — Immunity from liability.

(1) Upon the approval of a charter contract by a public charter school authorizer, the applicant shall be permitted to operate a public charter school for a term of five (5) years.

(2) The board of directors of the public charter school shall negotiate and execute a charter contract with the governing body of the authorizer.

(3) A public charter school shall have all corporate powers necessary and desirable for carrying out a public charter school program in accordance with this section and the terms of the charter contract, including all of the powers of a local board of education and of a local school district, except as otherwise provided in KRS 160.1590 to 160.1599.

(4) The powers granted to a public charter school under this section constitute the performance of essen-

tial public purposes and governmental purposes of this state. A public charter school shall be exempt to the same extent as other public schools from all taxation, fees, assessments, and special ad valorem levies on its earnings and its property. Instruments of conveyance to or from a public charter school and any bonds or notes issued by a public charter school, together with the income received, shall at all times be exempt from taxation.

(5) A public charter school shall not have the power to levy taxes or to acquire property by eminent domain, but shall have police powers to the same extent and under the same requirements as a local school district.

(6) The board of directors of the public charter school shall have final authority over policy and operational decisions of the public charter school, although the decision-making authority may be delegated to the administrators and staff of the school in accordance with the provisions of the charter contract.

(7) Notwithstanding any other statute to the contrary, no civil liability shall attach to any public charter school authorizer or to any of its members or employees, individually or collectively, for any acts or omissions of the public charter school. Neither the local school district nor the Commonwealth shall be liable for the debts or financial obligations of a public charter school or any person or corporate entity who operates a public charter school.

History.

2017 ch. 102, § 8, effective June 29, 2017; 2022 ch. 213, § 8, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1598. Renewal or nonrenewal of charter contract — School performance report — Reasons for nonrenewal or revocation — Administrative regulations — Report of action taken and reason for decision — School closure protocol.

(1) A charter contract may be renewed by the authorizer for a term of duration of five (5) years, although the authorizer may vary the term to as few as three (3) years. Any variation in the public charter school's term must be solely based on the performance, demonstrated capacities, and particular circumstances of a public charter school. Authorizers may grant renewal with specific conditions for necessary improvements to a public charter school, but may not impose conditions inconsistent with KRS 160.1590 to 160.1599.

(2)(a) No later than one (1) calendar year prior to the expiration date of a charter contract, an authorizer shall issue a public charter school performance report and charter renewal application guidance to the public charter school it authorized. The performance report shall summarize the school's performance record to date, based on the performance framework required under KRS 160.1596 and the charter contract, and shall provide notice of any weaknesses or concerns related to the school that may jeopardize its position in seeking renewal if not timely rectified and of any strengths or achievements that support its position in seeking renewal.

(b) The school shall have twenty (20) days to respond to the performance report and submit any corrections or clarification for the report to the authorizer.

(c) Within ten (10) days of receiving a school's response, the authorizer shall review the response and issue a final performance report to the school.

(3)(a) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

1. Present additional evidence beyond the data contained in the performance report supporting its case for charter renewal;

2. Describe improvements undertaken or planned for the school; and

3. Detail the school's plan for the next charter term.

(b) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, which shall be based on the performance framework as identified in the charter contract.

(4)(a) No later than six (6) months prior to the expiration date of a charter contract, the board of directors of a public charter school seeking charter contract renewal shall submit a renewal application to the authorizer pursuant to the renewal application guidance issued by the authorizer.

(b) The authorizer shall rule by resolution on the renewal application no later than thirty (30) days after receipt of the application.

(5) In making charter application, renewal, or other appealable decisions, an authorizer shall:

(a) Make its decision within established timeframes. Any failure of the authorizer to act on a charter application, renewal, or other appealable decision shall be deemed an approval of the requested action;

(b) Base its decision on evidence of the public charter school's performance over the term of the charter contract in accordance with the performance framework required in the charter contract;

(c) Ensure that data used in making renewal decisions is available to the public charter school and the public; and

(d) Provide a public report summarizing the evidence basis for each decision.

(6) A charter contract may not be renewed if the authorizer determines that the public charter school has:

(a) Committed a material violation of any of the terms, conditions, standards, or procedures required under KRS 160.1590 to 160.1599 and 161.141 or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(b) Failed to meet or make significant progress toward the performance expectations identified in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(d) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(7) An authorizer may take immediate action to revoke a charter contract if a violation threatens the health and safety of the students of the public charter school.

(8) The State Board of Education shall promulgate administrative regulations establishing a revocation and nonrenewal process for charter authorizers that:

(a) Provides the charter holder with a timely notification of the prospect of revocation or nonrenewal and of the reasons for such possible closure;

(b) Allows a charter holder a reasonable time in which to prepare a response;

(c) Provides the charter holder with an opportunity to submit documentation and provide testimony challenging the rationale behind the closure and in support of the continuation of the school at a public meeting held for that purpose;

(d) Allows the charter holder the right to representation by counsel and to call witnesses on behalf of the charter holder;

(e) Permits the recording of such proceedings; and

(f) After a reasonable period of deliberation, requires a final determination be made and conveyed in writing to the charter holder.

(9) If an authorizer revokes or does not renew a contract, the authorizer shall clearly state, in a resolution of its governing board the reason for the revocation or nonrenewal.

(10) Within ten (10) days of taking action to renew, not renew, or revoke a charter, the authorizer shall report to the state board the action taken, and shall provide a report to the public charter school at the same time the report is issued to the state board. The report shall include a copy of the resolution adopted by the authorizer's governing board describing the action taken and reasons for the decision and assurance as to compliance with all of the procedural requirements and application elements found in KRS 160.1593.

(11) An authorizer shall develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. If a public charter school closes for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol. If a public charter school is subject to closure, following exhaustion of any appeal allowed under KRS 160.1595, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure of the public charter school in the name and interest of the public charter school.

History.

2017 ch. 102, § 9, effective June 29, 2017; 2022 ch. 213, § 9, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

160.1599. Conversion of public noncharter school to public charter school — Establishment requirements — Administrative regulations — Governance — Enrollment requirements — Employees — Collective bargaining — School facilities.

(1) An existing public school not scheduled for closure may be converted into a public charter school and be identified to become a conversion public charter school if an applicant indicates to a valid authorizer the intent to convert an existing public school into a conversion public charter school.

(2) A conversion public charter school may only be established if:

(a) A school has been identified by the Kentucky Department of Education as performing in the lowest five percent (5%) of its level and sixty percent (60%) of the parents or guardians of students who attend the school have signed a petition requesting the conversion, which shall be completed and submitted to a valid authorizer no later than ninety (90) days after the date of the first signature;

(b) A school has been identified by the Kentucky Department of Education as not performing in the lowest five percent (5%) of its level and sixty percent (60%) of the parents or guardians of students who attend the school have signed a petition requesting the conversion, which is approved by a majority vote of the local school board. If approved the completed petition shall be submitted to a valid authorizer no later than ninety (90) days after the date of the first signature; or

(c) The local school board votes to convert an existing public school over which it has authority.

(3) For each conversion option identified in subsection (2) of this section, the Kentucky Board of Education shall promulgate administrative regulations to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school.

(4) A conversion public charter school shall be governed by a board of directors constituted and empowered as provided in KRS 160.1592.

(5) A conversion public charter school shall continue to comply with all federal and state requirements concerning the treatment of children with special needs and accept all students who attended the school prior to its conversion who wish to attend.

(6) A conversion public charter school shall hire its own employees.

(7) An employee who works in a conversion public charter school shall be an employee of the public charter school.

(8)(a) For any collective bargaining agreement entered into on or after June 29, 2017, a governing board shall not be bound by its collective bargaining agreement for employees of a conversion public charter school.

(b) Employees of a conversion public charter school may organize and collectively bargain only as a unit separate from other school employees.

(9) A conversion public charter school shall continue to be housed in the same public school facility and shall have the option of using the existing assets of the school.

History.

2017 ch. 102, § 10, effective June 29, 2017; 2022 ch. 213, § 10, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school appeal process, 701 KAR 8:030.

Charter school funding, 701 KAR 8:050.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Evaluation of charter school authorizers, 701 KAR 8:020.

BOARDS OF EDUCATION

160.160. Definition of "large school district" — Boards of education — Powers and procedures — Approval of Department of Education required for mortgages and leases — Authorization for general obligation bonds — Rental and debt service payments — Funds intercept — Sale of real or personal property by board.

(1) As used in this section and KRS 160.180 and 160.210, "large school district" means a school district that has more than three hundred thousand (300,000) inhabitants.

(2) Each school district shall be under the management and control of a board of education consisting of five (5) members to be known as the "Board of Education of...., Kentucky." Each board of education shall be a body politic and corporate with perpetual succession. It may sue and be sued; make contracts; expend funds necessary for liability insurance premiums and for the defense of any civil action brought against an individual board member in his or her official or individual capacity, or both, on account of an act made in the scope and course of his or her performance of legal duties as a board member; purchase, receive, hold, and sell property; issue its bonds to build and construct improvements; and do all things necessary to accomplish the purposes for which it is created. Each board of education shall elect a chair and vice chair from its membership in a manner and for a term prescribed by the board not to exceed two (2) years. Upon the election of a chair and vice chair, each board of education shall review, with the superintendent and the school finance officer, the specific procedures and responsibilities of the board and district employees relating to the district budget. The review shall not count toward the annual in-service training requirements established in KRS 160.180.

(3) No board of education shall participate in any financing of school buildings, school improvements, appurtenances thereto, or furnishing and equipment, including education technology equipment without:

(a) First establishing the cost of the project in advance of financing, based on the receipt of advertised, public, and competitive bids for such project, in accordance with KRS Chapter 424; and

(b) Establishing the cost of financing in advance of the sale of any bonds, certificates of participation in any leases, or other evidences of financial commitments issued by or on behalf of such board. Any bonds, leases, participations, or other financial arrangements shall not involve a final commitment of the board until the purchaser or lender involved shall have been determined by public advertising in accordance with KRS Chapter 424.

(4) No board of education shall make a mortgage, lien, or other encumbrance upon any school building owned by the board, or transfer title to any such school building as part of any financing arrangement, without the specific approval of the Department of Education, and without the transaction being entered into pursuant to a detailed plan or procedure specifically authorized by Kentucky statute.

(5) Without the approval of the Department of Education, no board may lease, as lessee, a building or public facility that has been or is to be financed at the request of the board or on its behalf through the issuance of bonds by another public body or by a nonprofit corporation serving as an agency and instrumentality of the board, or by a leasing corporation. Any lease, participation, or other financial arrangement shall not involve a final commitment of the board unless and until the purchaser or lender involved in same shall have been determined by public advertising in accordance with KRS Chapter 424. No transaction shall be entered into by the board except upon the basis of public advertising and competitive bidding in accordance with KRS Chapter 424.

(6) A school district may issue general obligation bonds in accordance with KRS Chapter 66.

(7) Rental payments due by a board under a lease approved by the Department of Education in accordance with subsection (5) of this section, and debt service payments under a general obligation bond issued in accordance with this section, shall be due and payable not less than ten (10) days prior to the interest

due date for the bonds, notes, or other debt obligations issued to finance the building or public facility. If a board fails to make a rental payment when due under a lease or a debt service payment when due for a general obligation bond issue, upon notification to the Department of Education by the paying agent, bond registrar, or trustee for the bonds not less than three (3) days prior to the interest due date, the Department of Education shall withhold or intercept any funds then due the board to the extent of the amount of the required payment on the bonds and remit the amount to the paying agent, bond registrar, or trustee as appropriate. Thereafter, the Department of Education shall resolve the matter with the board and adjust remittances to the board to the extent of the amount paid by the Department of Education on the board's behalf.

(8) Bonds, notes, or leases negotiated to provide education technology shall not be sold for longer than seven (7) years or the useful life of the equipment as established by the state technology master plan, whichever is less.

(9) Notwithstanding any requirements of public advertising, competitive bidding, or approval by the Department of Education, or any administrative regulation promulgated pursuant to KRS 156.160(1)(o), a local board may authorize the transfer or sale of the district's real or personal property to another governmental or quasi-governmental agency in exchange for money or a similar type of property that equals or exceeds the fair market value of the district property as determined by an independent appraisal conducted by:

(a) An individual or organization not affiliated with the district or its officers or employees, using a generally accepted national or professional standard; or

(b) A district's officers or employees using a nationally published valuation of property based on the most recent edition of the publication.

History.

4399-17, 4399-18; amend. Acts 1974, ch. 224, § 2; 1978, ch. 11, § 1, effective February 24, 1978; 1982, ch. 59, § 1, effective July 15, 1982; 1988, ch. 421, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 88, effective July 13, 1990; 1992, ch. 195, § 7, effective April 3, 1992; 1994, ch. 288, § 1, effective July 15, 1994; 2023 ch. 63, § 7, effective June 29, 2023; 2024 ch. 126, § 3, effective July 15, 2024; 2026 ch. 154, § 5, effective April 14, 2026; 2026 ch. 196, § 18, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 154 and 196, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

Analysis

1. Nature of Board.
2. Members.
3. Powers and Authority.
4. —To Sue and Be Sued.
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1. Nature of Board.

A board, being a continuing body, cannot, following a change of members, rescind a prior sale on the mere ground that it was a bad bargain. Trustees of Congregational Church v. Evarts Graded Common School Dist., 230 Ky. 94, 18 S.W.2d 887, 1929 Ky. LEXIS 25 (Ky. 1929) (decided under prior law).

A city school board is a municipal corporation. Smith v. Board of Education, 23 F. Supp. 328, 1938 U.S. Dist. LEXIS 2170 (D. Ky. 1938).

A board of education is a taxing district or municipality. Lee v. Board of Education, 261 Ky. 379, 87 S.W.2d 961, 1935 Ky. LEXIS 666 (Ky. 1935); Smith v. Board of Education, 23 F. Supp. 328, 1938 U.S. Dist. LEXIS 2170 (D. Ky. 1938). But see Farson v. County Board of Education, 100 F.2d 974, 1939 U.S. App. LEXIS 4586 (6th Cir. Ky. 1939).

A county board of education is a "quasi municipal corporation" governed by rules applicable to strict municipalities. Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941); Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

Since a county school board is neither the state nor its alter ego, U.S. Const., amend. XI, does not bar recovery of attorney's fees against a county board of education in a suit challenging county school desegregation plans. Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. Ky. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792, 1977 U.S. LEXIS 2129 (U.S. 1977).

County board of education is a political body with a corporate structure and is entitled to the protection of Const., § 2. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880, 1996 Ky. LEXIS 130 (Ky. 1996).

The local school boards, pursuant to KRS 160.160, as well as the Kentucky Board of Education, pursuant to KRS 156.070, have been established as state agencies through which the General Assembly implements its constitutional mandate to oversee public schools. Yanero v. Davis, 65 S.W.3d 510, 2001 Ky. LEXIS 203 (Ky. 2001).

2. Members.

A member of a board of education is a state officer. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937); Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053, 1937 Ky. LEXIS 242 (Ky. 1937); Ward v. Siler, 272 Ky. 424, 114 S.W.2d 516, 1938 Ky. LEXIS 139 (Ky. 1938).

On merger by agreement of independent school district with county school district it is proper to read KRS 160.041 in the light of KRS 160.040 and to look to the latter for the powers of the two districts in making a merger agreement to fix the terms of such merger and the two boards of education have the authority to agree that members of the independent school district board will serve temporarily on the board of the newly enlarged district. La Follette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457, 1951 Ky. LEXIS 687 (Ky. 1951).

3. Powers and Authority.

School property is held in trust by the board of education for the use and benefit of the school as a "state institution." Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949).

This section vests boards of education with broad powers in the conduct and management of their affairs and the term "school purposes" is a broad and comprehensive one which might well include facilities for the housing of all school

activities, including shops and home economics buildings, as well as living quarters for teachers and custodial employees where conditions warrant. Ford v. Pike County Board of Education, 310 Ky. 177, 220 S.W.2d 389, 1949 Ky. LEXIS 876 (Ky. 1949).

County boards have broad discretion under this section and KRS 160.290 in the selection of school sites and when the board has obtained the approval of the Superintendent of Public Instruction on its plan for a new building, it is not for the court to say whether the board has acted wisely or unwisely in determining where the school should be located and the only question for the court's determination is whether the board is exceeding its authority or is acting arbitrarily. Perry County Board of Education v. Deaton, 311 Ky. 227, 223 S.W.2d 882, 1949 Ky. LEXIS 1100 (Ky. 1949).

Local school board could institute co-education in high school where provision in a deed to the land on which the school was located stipulated the property could be used only for white male pupils since there was an invalid delegation of governmental powers in that the covenant restricted the school board's discretionary powers. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

The board has the implied powers to employ and pay an accountant to make general audit of the school records. Lewis v. Morgan, 252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952).

Under the broad authority of this section and KRS 160.290 the county board of education has power to adopt appropriate and reasonable regulations whereby indigent high school pupils may be furnished transportation without charge. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

Even though there was no specific statutory authority for school board to employ an attorney, members of county board of education had implied authority to employ attorneys to represent them in actions and had implied power to expend school funds for attorney's fees and court costs in defending the actions where such employment was necessary for their protection and the accomplishment of the purposes for which they were created. Hogan v. Glasscock, 324 S.W.2d 815, 1959 Ky. LEXIS 385 (Ky. 1959).

Since the school board was a body politic and corporate, a government agency, and a public corporation, it was authorized to enter into a lease or contract with another governmental agency. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

A lawsuit to declare an education system unconstitutional falls within the authority, if not the duty, of local school boards to fulfill their statutory responsibilities, no matter who the defendants are. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

4. —To Sue and Be Sued.

Words "to sue and to be sued" do not authorize an action for negligence committed by officers or agents of the board in performing public duty but have reference to suits respecting matters within the scope of the duties of the board. Wallace v. Laurel County Bd. of Education, 287 Ky. 454, 153 S.W.2d 915, 1941 Ky. LEXIS 556 (Ky. 1941).

The legislature created boards of education as bodies corporate with power to sue and be sued in their corporate name. Howell v. Haney, 330 S.W.2d 941, 1959 Ky. LEXIS 213 (Ky. 1959).

A county board of education is "a body politic and corporate" which may sue and be sued. Moore v. Babb, 343 S.W.2d 373, 1960 Ky. LEXIS 105 (Ky. 1960).

5. — —Actions by Board.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statute makes the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Education v. Ballard, 299 Ky. 370, 185 S.W.2d 538, 1945 Ky. LEXIS 426 (Ky. 1945).

This section and KRS 160.290 place upon the boards of education, not taxpayers, the initial responsibility of maintaining legal actions on behalf of the school districts and an individual has no standing to institute an action for alleged unlawful expenditures of school funds until he has demanded the board to bring the action and the board has refused to comply unless he clearly shows that a demand would have been futile although some members of the board were members at the time of alleged unlawful expenditures. Farler v. Perry County Board of Education, 355 S.W.2d 659, 1961 Ky. LEXIS 19 (Ky. 1961).

6. — —Actions Against Board Members.

Teacher's action against members of the board as individuals for a specific order requiring the board to assign her to a school for the year 1959-60 was not maintainable. Moore v. Babb, 343 S.W.2d 373, 1960 Ky. LEXIS 105 (Ky. 1960).

Members of board of education are not liable individually for injuries to student caused by employes of board. Wood v. Board of Education, 412 S.W.2d 877, 1967 Ky. LEXIS 445 (Ky. 1967).

7. — —Actions Against Board.

A superintendent of schools of city of fourth class who was wrongfully discharged by board of education before the end of his term was not barred from recovering salary by statute of frauds as minutes of board appointing him was a sufficient writing. Smith v. Board of Education, 23 F. Supp. 328, 1938 U.S. Dist. LEXIS 2170 (D. Ky. 1938).

Fact that there is no fund available to pay judgment against county board of education for refund of illegal taxes does not invalidate judgment, since county board of education may sue and be sued, and sufficient funds may be lawfully raised by taxation and used to pay the judgment. Board of Education v. Louisville & N. R. Co., 280 Ky. 650, 134 S.W.2d 219, 1939 Ky. LEXIS 184 (Ky. 1939).

A taxpayer may not bring suit in a matter concerning public funds until he has first requested the authorized school board, county or other public body to institute such action and the official body has refused to comply. Reeves v. Jefferson County, 245 S.W.2d 606, 1951 Ky. LEXIS 1263 (Ky. 1951).

County board of education as well as the county are necessary parties in a suit for recount of the ballots and to contest the legality of election under KRS 122.140 (repealed) and the petition cannot be amended to add a new party or parties after the time for filing the petition has expired. Howell v. Haney, 330 S.W.2d 941, 1959 Ky. LEXIS 213 (Ky. 1959).

The county board of education is a public corporation which can act only as a body and not by individual members acting separately and it must be made a party in an action alleging unlawful discharge of superintendent of schools rather than three of five board members. Johnson v. King, 349 S.W.2d 845, 1961 Ky. LEXIS 78 (Ky. 1961).

8. —Interest on Judgment.

The fact that this section makes a board of education a body politic and subject to suit, does not divest the board of immunity regarding interest, absent a statutory provision. Since a state can be sued only with its consent, a statute waiving immunity must be strictly construed and cannot be read to encompass the allowance of interest unless so specified. Powell v. Board of Educ., 829 S.W.2d 940, 1991 Ky. App. LEXIS 154 (Ky. Ct. App. 1991).

9. —Sale and Conveyance of School Property.

Boards of education are authorized to convey school property. Bellamy v. Board of Education, 255 Ky. 447, 74 S.W.2d 920, 1934 Ky. LEXIS 259 (Ky. 1934).

Though the board of education has the right to sell and convey school property it cannot sell and convey all of such property in the county at one time and for a grossly inadequate price. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

Although there is no statutory limitation on the action of boards of education in selling and conveying school property, their action in so doing must be consonant with their duty to maintain an adequate school system within the limits of their finances; and any action by a board which imperils the entire school system of a county, or a portion thereof, may be called in question by the courts. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

10. —Selection of School Sites.

Subject to the approval of the State Superintendent of Public Instruction, county boards of education are given broad discretion in the selection of sites for schools. Once the approval of the State Superintendent has been obtained, the courts will not interfere with the selection of the site unless there is positive proof of fraud, collusion, or a clear abuse of discretion. Justice v. Clemons, 308 Ky. 820, 215 S.W.2d 992, 1948 Ky. LEXIS 1059 (Ky. 1948).

Courts may not interfere with proposed plan of county board of education for location of school unless there is shown a clear abuse of discretion vested in the board by this section and KRS 160.290. Goins v. Jones, 258 S.W.2d 723, 1953 Ky. LEXIS 882 (Ky. 1953).

In taxpayer suit to enjoin county board of education since evidence did not show that the board was without serious consideration and lacked a reasonable discretion and was arbitrary in locating a proposed new elementary school near the western boundary of the county instead of the geographical center, the court was without authority or power to interfere. Goins v. Jones, 258 S.W.2d 723, 1953 Ky. LEXIS 882 (Ky. 1953).

A school board is vested with the power to select public school sites, subject only to the limitation that it cannot act arbitrarily or beyond the pale of sound discretion and has authority to condemn land for future school needs. Pike County Board of Education v. Ford, 279 S.W.2d 245, 1955 Ky. LEXIS 521 (Ky. 1955).

11. —Conducting of School System.

Regulation which required students upon marriage to withdraw from school and to remain out of school for one year and then to be readmitted only on permission of principal was arbitrary and unreasonable and therefore invalid. Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

The conduct of a public school system is committed to the discretion of the school board. Earle v. Harrison County Board of Education, 404 S.W.2d 455, 1966 Ky. LEXIS 299 (Ky. 1966).

Where student population fell below minimum required for state aid a reasonable basis was afforded for school board to order the school closed. Earle v. Harrison County Board of Education, 404 S.W.2d 455, 1966 Ky. LEXIS 299 (Ky. 1966).

The Kentucky General Assembly clearly has given local school boards the power and authority to close schools and consolidate schools within a local system. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779, 1992 Ky. App. LEXIS 182 (Ky. Ct. App. 1992).

12. —Punishment of Students.

The statute governing the suspension of students for the violation of regulations of the school system preempts the right of the school officials to impose additional punishment for conduct resulting in suspension. Dorsey v. Bale, 521 S.W.2d 76, 1975 Ky. LEXIS 147 (Ky. 1975).

13. —Merger of Districts.

Provision for seven board members rather than five upon merger of the school district of a city of the first class with the county school district does not constitute "local or special legislation" forbidden by state Constitution where a seven-man board is justified by the larger size of student population, greater amount of property to manage, more extensive financing requirements, and the presence of minority group enclaves. Board of Education v. Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

14. Removal.

Sufficient evidence was presented to support a judgment of removal of school board members for misconduct. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743, 1993 Ky. LEXIS 46 (Ky. 1993).

15. Immunity.

Finding against the school board in an action involving hazing was improper under KRS 160.160 because governmental immunity should have been sustained since municipal school boards are entitled to governmental immunity; there had been an intention to create an overall uniformity in all public schools with resulting coalescence between the powers and duties of an independent school system and those of a county school system. Jenkins Indep. Schs v. Doe, 379 S.W.3d 808, 2012 Ky. App. LEXIS 196 (Ky. Ct. App. 2012).

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936); Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962); Wesley v. Board of Education, 403 S.W.2d 28, 1966 Ky. LEXIS 319 (Ky. 1966); Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976), cert. denied, Board of Education v. Newburg Area Council, Inc., 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792, 1977 U.S. LEXIS 2129 (1977);Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990).

OPINIONS OF ATTORNEY GENERAL.

In the exercise of reasonable discretion, a board of education may decide that it is in the best interests of the school district to participate in the student teacher-training program. OAG 63-269.

A commission, agency, or city has the power to condemn property of a school board for the general purpose for which each was created. OAG 65-330.

A school board may sell property directly to a city or its agency or commission without the necessity of a public offering, and it may also negotiate for a settlement out of court at any point during a condemnation proceeding. OAG 65-330.

As a school district is a municipal corporation and stands on the same constitutional grounds as a county as to levying taxes and as the statutes are now written the school districts set the tax rate and the function of the fiscal court in levying school taxes is merely perfunctory, there should be no reason why the statutes could not be amended to make the school district the tax levying authority for school taxes. OAG 73-704.

A board of education has the authority to bring an action in its own name for the recovery of funds improperly paid and the fact that the Attorney General also has this authority does not delimit the authority of the board of education but provides

another means of bringing such an action when a local board for some reason fails to do so and nothing in KRS 156.138 indicates that an action by the Attorney General shall be the exclusive recourse. OAG 73-867.

The school board has broad discretion under this section and KRS 160.290 in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the school board under KRS 162.140 as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building unless the county could negotiate to purchase the property from the school board. OAG 74-221.

The board of education may purchase land from a boosters club under the same authority that it purchases land from any person. OAG 75-1.

Being married is not a legal reason for a regulation forbidding a student to go on a class trip. OAG 75-163.

A local school board has the implied authority to employ an attorney to represent the board in its corporate capacity in litigation with the State Board of Education and to pay resulting legal fees from the general fund. OAG 75-552.

Where a legal action contesting the election of certain board members was brought against individual board members and not the board of education, the payment by the county board of education of legal fees and stenographic costs would be an illegal expenditure of public common school funds. OAG 77-580, 1977 Ky. AG LEXIS 214.

In the sale of surplus school property by a school district, only a cash transaction would be satisfactory. OAG 77-771, 1977 Ky. AG LEXIS 30.

The provision of this section allowing the school board to appropriate funds for the disposal of civil actions brought against school board members due to an act in the scope and course of the performance of their duties does not extend to the defense of a suit brought in quo warranto against a board member for an allegedly disqualifying act under KRS 160.180(4). OAG 78-648, 1978 Ky. AG LEXIS 181.

Since a local board is a "body politic and corporate" which may only transact business at a properly held meeting, by majority vote, a single member is powerless to cause an audit to be conducted of a school's financial records. OAG 79-321, 1979 Ky. AG LEXIS 307.

There is no legal basis that would require a local board of education to determine "cause" existed before a new chairperson could be chosen. OAG 80-48, 1980 Ky. AG LEXIS 594.

Two members of a five-member board of education have no authority to act for the board as a body, thus where two board members offered to remove a written reprimand by the board from a high school coach's record in consideration of a resignation by the coach, such an offer was without legal significance. OAG 80-119, 1980 Ky. AG LEXIS 524.

A local county board of education is sufficiently representative of the geographic area that it serves to qualify as an agency with which a community action agency could contract, and therefore, as long as the subject matter of the contract related to the purpose of promoting public education, a county board of education could enter into a contract with a community action agency pursuant to this section and KRS 160.290. OAG 82-387, 1982 Ky. AG LEXIS 248.

Under the broad powers of a school board, pursuant to this section and KRS 160.290, it could employ a security guard to look after its properties; such security guard, to be effective, should be a special local peace officer commissioned according to KRS 61.360. OAG 84-107, 1984 Ky. AG LEXIS 279.

A local board of education may open or close a school without the recommendation of the local superintendent. OAG 85-98, 1985 Ky. AG LEXIS 49.

Where one or more school districts initiate a suit to enforce state equalization of school funding within the Commonwealth, interested school districts may contribute reasonable amounts of money from school funds to meet the costs of the suit, including reasonable attorney's fees; such expenditure would, however, have to be made in accordance with appropriate budget considerations. OAG 85-100, 1985 Ky. AG LEXIS 53.

Although this section and KRS 160.290(1) do not provide a specific statutory pronouncement upon what a local board of education may expend, school funds may be expended for those purposes authorized either expressly or by necessary implication by the statutes. OAG 85-100, 1985 Ky. AG LEXIS 53.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22, 1987 Ky. AG LEXIS 63.

The local board has responsibility for control and management of the school district as a whole, and has the authority to make contracts and agreements; the board has management and control of school funds, and fixes the compensation of the employees. OAG 92-29, 1992 Ky. AG LEXIS 29.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of Sections 180, 184 and 186 of the Kentucky Constitution; the act also falls within the parameters of this section as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63, 1992 Ky. AG LEXIS 63.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65, 1992 Ky. AG LEXIS 65.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bond issue approval, 702 KAR 3:020.

Capital construction process, 702 KAR 4:160.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Prather, Establishing Schools, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 19.

Kentucky Law Journal.

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

160.170. Oath of board members.

Every person elected to a board of education shall, before assuming the duties of the office, take the following oath, in addition to the constitutional oath:

"State of Kentucky,

"County of _____

"_____, being duly sworn, says that he or she is eligible under the law to serve as a member of the board of

education, and that he or she will, while serving as a member of such board, carry out all duties prescribed by law and remain eligible for membership on the board of education

"_____

"Subscribed and sworn to before me this ____ day _____of "_____ "

The oath shall be kept on record by the board.

History.

4399-23; amend. Acts 1990, ch. 476, Pt. II, § 72, effective July 13, 1990; 2024 ch. 215, § 2, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Taking Oath and Filing of Record.

1. Constitutionality.

Because this section and KRS 160.180(3) clearly prohibit school board members from engaging in nepotism or favoritism, conduct in which the Commonwealth has a significant interest, and their wording, as their meaning, is simple and unequivocal and not susceptible to arbitrary or discriminatory enforcement, the statutes are not unconstitutionally vague or overbroad. Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995).

2. Taking Oath and Filing of Record.

Member elected to board of education qualified by taking oath of office and filing same at first meeting of board at which his term began, and his office could not be declared vacant because he failed to file documentary evidence of his educational qualification as required by bylaws of board. Oakes v. Remines, 273 Ky. 750, 117 S.W.2d 948, 1938 Ky. LEXIS 713 (Ky. 1938).

Members did not forfeit office and were not subject to removal where they had taken constitutional oath but had failed through inadvertence to take the additional statutory oath until five (5) months after entering office at which time they discovered the omission and took the oath in writing and entered it in the school board records. Commonwealth ex rel. Breckinridge v. Marshall, 361 S.W.2d 103, 1962 Ky. LEXIS 228 (Ky. 1962).

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936); Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936); Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52, 1949 Ky. LEXIS 826 (Ky. 1949).

OPINIONS OF ATTORNEY GENERAL.

Where five months after taking office school board members had not yet taken the statutory oath of office the board members forfeited their office for failure to qualify within a reasonable time after their election. OAG 61-485.

Where five months after taking office school board members had not yet taken the statutory oath, the State Board of Education was required to fill the resulting vacancies pursuant to KRS 160.190. OAG 61-485.

It is permissible for a successful candidate for the school board to take the statutory oath of office at a school board meeting to be held the second Monday in January. OAG 65-4.

Where a person who was elected a member of the county board of education and who had received a certificate of election refused to take the oath of office, such office became vacant 30 days after the beginning of the term or 30 days after receipt by the person elected of the certificate of election, whichever event was later and the other members of the board should thereafter immediately make an appointment to fill the vacancy under the duty imposed on them by KRS 160.190. OAG 69-60.

Persons who are ineligible to serve on school board should resign; however, unless a private citizen is claiming the office for himself, there is no proceeding short of an Attorney General ouster complaint which could prevent such individuals from taking the oath of office. OAG 92-160, 1992 Ky. AG LEXIS 275.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Constitutional oath, Ky. Const., § 228.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Education Law: Hiring and Termination Issues, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 17.

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Oath of Board Members, Form 333.01.

160.180. Eligibility for membership on local board of education — Removal from office — Reelection — Annual in-service training requirements.

(1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, and daughter.

(2) A person shall only be eligible for membership on a board of education if the person:

(a) Has attained the age of twenty-four (24) years;

(b) Has been a citizen of Kentucky for at least three (3) years preceding the election and is a voter of the district for which he or she is elected;

(c) Has completed at least the twelfth grade or has been issued a High School Equivalency Diploma, as evidenced by:

1. An affidavit signed under penalty of perjury certifying completion of the twelfth grade or the equivalent that has been filed with the nominating petition required by KRS 118.315; or

2. A transcript evidencing completion of the twelfth grade or the results of a twelfth grade equivalency examination that has been filed with the nominating petition required by KRS 118.315;

(d) Does not hold any elective federal, state, county, or city office;

(e) Is not, at the time of his or her election, directly or indirectly interested in the sale to the board of books, stationery, or any other property, materials, supplies, equipment, or services for which school funds are expended;

(f) Has not been removed from membership on a board of education for cause;

(g) Does not have a relative employed by the school district, in the case of a person elected after July 13, 1990. This shall not apply to a board member holding office on July 13, 1990, whose relative was not initially hired by the district during the tenure of the board member; and

(h) For boards of education of large school districts, is not an employee of a board of education in the Commonwealth whose position requires work on more than one hundred (100) days per year.

(3)(a) A member of a board of education shall be subject to removal from office pursuant to KRS 415.050 and 415.060 if, after the election the member:

1. Becomes interested in any contract with or claims against the board, of the kind mentioned in subsection (2)(e) of this section;
2. Moves his or her residence from the division for which he or she was chosen;
3. Attempts to influence the employment of any school employee, except the superintendent or school board attorney;
4. Is convicted of a felony;
5. Performs acts of malfeasance in performance of duties prescribed by law;
6. Willfully misuses, converts, or misappropriates public property or funds; or
7. Does anything that would render the member ineligible for reelection.

(b) In accordance with KRS 7.410, the Office of Education Accountability shall have the duty and responsibility to investigate current local board of education members for allegations of conduct prohibited by paragraph (a) of this subsection. After review and investigation, the Office of Education Accountability shall refer appropriate matters to the Attorney General.

(4) A member of a board of education shall be eligible for reelection unless he or she becomes disqualified.

(5)(a) The annual in-service training requirements for all members of boards of education in office as of December 31, 2014, shall be as follows:

1. Twelve (12) hours for members with zero to three (3) years of experience;
2. Eight (8) hours for members with four (4) to seven (7) years of experience; and
3. Four (4) hours for members with eight (8) or more years of experience.

(b) The in-service training requirements of this subsection shall include a minimum of:

1. One (1) hour of ethics training every year;
2. One (1) hour of open meetings and open records training every four (4) years; and
3. Two (2) hours of finance training every two (2) years.

(6) For all members of boards of education who begin their initial service on or after January 1, 2015, the in-service training requirements shall be:

(a) Twelve (12) hours for members with zero to eight (8) years of experience each year, which shall include a minimum of:

1. One (1) hour of ethics training each year;
2. One (1) hour of open meetings and open records training within the first twelve (12) months of initial service and at least once every four (4) years thereafter;
3. Three (3) hours of finance training within the first two (2) years of initial service, and two (2) hours of finance training at least once every two (2) years thereafter; and
4. One (1) hour of superintendent evaluation within the first two (2) years of service; and

(b) Eight (8) hours for members with more than eight (8) years of experience each year, which shall include a minimum of:

1. One (1) hour of ethics training each year;
2. One (1) hour of open meetings and open records training at least once every four (4) years; and
3. Two (2) hours of finance training at least once every two (2) years.

(7) The Kentucky Board of Education shall identify the criteria for fulfilling the requirements of subsections (5) and (6) of this section.

History.

4399-22; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1978, ch. 272, § 1, effective June 17, 1978; 1980, ch. 43, § 1, effective July 15, 1980; 1984, ch. 376, § 1, effective July 13, 1984; 1986, ch. 417, § 1, effective July 15, 1986; 1990, ch. 214, § 1, effective July 13, 1990; 1990, ch. 476, Pt. II, § 71, effective July 13, 1990; 1996, ch. 145, § 5, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 416, § 1, effective July 15, 1998; 2014, ch. 136, § 1, effective July 15, 2014; 2017 ch. 63, § 17, effective June 29, 2017; 2017 ch. 192, § 1, effective June 29, 2017; 2018 ch. 105, § 3, effective April 4, 2018; 2024 ch. 215, § 1, effective July 15, 2024; 2026 ch. 154, § 7, effective April 14, 2026; 2026 ch. 196, § 17, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 154 and 196, which do not appear to be in conflict and have been codified together.

(4/4/2018). The amendments made to this statute in 2018 Ky. Acts ch. 105, sec. 3 are effective April 4, 2018. SB 101 (Ch. 105) was delivered to the Governor on March 22, 2018. The 10-day, not counting Sundays, veto period began on the next day, March 23, and ended at midnight on April 3, 2018. The Governor returned that bill to the Secretary of State on April 2 without signing it. Therefore, since the Governor could have retrieved it and signed it or vetoed it prior to the end of April 3, the bill would not take effect until the first moment of April 4, 2018 following the expiration of the 10-day veto period.

(7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Application.
4. Voter of District for Which Elected.
5. Educational Requirements.
6. —Teacher's Affidavit.
7. —Schoolmate Affidavit.
8. —Mandatory.
9. —Burden of Proof.
10. —Summary Judgment.
11. Holding Civil or Political Office.
12. Interest in Sale to Board.
13. Interest in Contract or Claim.
14. Ineligible for Reelection.
15. Employment of Relatives.
16. Removal.
17. —De Facto Officer.
18. —Estoppel Against.

19. Lack of Qualifications.
20. Appeal.
21. Duty to Supervise.

1. Constitutionality.

Subdivision (1)(d) (now (2)(e)) and subsection (2) (now (3)) of this section, a "resign-to-run" statute, do not deny school board members their rights of free speech or equal protection of the laws. Yonts v. Commonwealth, 700 S.W.2d 407, 1985 Ky. LEXIS 285 (Ky. 1985).

This section is not unconstitutional because of its failure to state the penalty for its violation; the title specifically tells that this statute lists the eligibility requirements necessary to hold office and anyone who cannot meet these requirements cannot hold the office of board member. Cross v. Commonwealth, 795 S.W.2d 65, 1990 Ky. App. LEXIS 123 (Ky. Ct. App. 1990).

Subsection (2)(i) of this section does not violate the First Amendment, nor the equal protection clause of the Fourteenth Amendment of the United States Constitution. Chapman v. Gorman, 839 S.W.2d 232, 1992 Ky. LEXIS 124 (Ky. 1992).

Because KRS 160.170 and subsection (3) of this section clearly prohibit school board members from engaging in nepotism or favoritism, conduct in which the Commonwealth has a significant interest, and their wording, as their meaning, is simple and unequivocal and not susceptible to arbitrary or discriminatory enforcement, the statutes are not unconstitutionally vague or overbroad. Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995).

KRS 160.180, and its definition of "relative," is constitutional and bears a rational relationship to the elimination of nepotism. Commonwealth ex rel. Stumbo v. Crutchfield, 157 S.W.3d 621, 2005 Ky. LEXIS 82 (Ky. 2005).

Inclusion of aunt/uncle in the definition of "relative" within KRS 160.180 rationally promotes the governmental goal of eliminating nepotism and the Kentucky General Assembly was not acting irrationally by not including niece/nephew when it formulated the definition of "relative" and drawing the line elsewhere. Commonwealth ex rel. Stumbo v. Crutchfield, 157 S.W.3d 621, 2005 Ky. LEXIS 82 (Ky. 2005).

2. Construction.

These provisions are mandatory. Whittaker v. Commonwealth, 272 Ky. 794, 115 S.W.2d 355, 1938 Ky. LEXIS 208 (Ky. 1938). See Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353, 1938 Ky. LEXIS 207 (Ky. 1938); Commonwealth by Meredith v. Moye, 273 Ky. 384, 116 S.W.2d 952, 1938 Ky. LEXIS 647 (Ky. 1938); Commonwealth v. Mullins, 286 Ky. 242, 150 S.W.2d 668, 1941 Ky. LEXIS 242 (Ky. 1941).

3. Application.

This section applied to all candidates, even though they had previously held office before the enactment of this section. Commonwealth v. Mullins, 286 Ky. 242, 150 S.W.2d 668, 1941 Ky. LEXIS 242 (Ky. 1941) (Decision prior to 1998 amendment).

4. Voter of District for Which Elected.

This section requires a candidate to be a fully qualified legal voter. Moore v. Tiller, 409 S.W.2d 813, 1966 Ky. LEXIS 74 (Ky. 1966).

Person who moved into a residence outside of division of school district and lived therein for three years was not a resident of the division of the school district although he had always theretofore lived in division, was registered there and expressed an intention to retain his residence therein. Moore v. Tiller, 409 S.W.2d 813, 1966 Ky. LEXIS 74 (Ky. 1966).

A person may have many residences but in the absence of showing an intention of abandoning his Kentucky citizenship, his state of origin, he will be deemed a Kentucky citizen for the purpose of qualifying for office in that state; therefore, where a man was born and raised here, and his every act manifested his intent to remain a citizen of this state, not merely to return here, his temporary and involuntary absences from Kentucky did not serve to terminate his standing as a citizen. Dickey v. Bagby, 574 S.W.2d 922, 1978 Ky. App. LEXIS 638 (Ky. Ct. App. 1978).

5. Educational Requirements.

The legislature was authorized to require completion of the eighth grade. Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353, 1938 Ky. LEXIS 207 (Ky. 1938) (Decision prior to 1990 amendment).

Board of education has no authority to pass bylaw requiring board's members-elect, when attempting to qualify, to first present to the board legal evidence that they possess educational requirements of this section. Oakes v. Remines, 273 Ky. 750, 117 S.W.2d 948, 1938 Ky. LEXIS 713 (Ky. 1938).

The taking of oath of office before the date the term of office of predecessor expired was merely anticipating and getting ready to assume duties at the appointed time and did not make person elected as member of the county board of education a usurper and no cause of action would lie including quo warranto or injunction on grounds he did not have an eighth grade education so was not qualified and the later assumption of the office and the amendment of the petition thereafter could not give life to the premature petition. Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52, 1949 Ky. LEXIS 826 (Ky. 1949) (Decision prior to 1990 amendment).

The requirement of subsection (1)(c) (now (2)(c)) of this section that no person shall be eligible to membership on a board of education unless he has completed at least the eighth grade in the common school, means that such requirement must be met before such member is elected to office. Commonwealth ex rel. Buckman v. Preece, 257 S.W.2d 51, 1953 Ky. LEXIS 764 (Ky. 1953) (Decision prior to 1990 amendment).

Attorney General had the right to withdraw from proceeding at any time prior to judgment and trial court could not render judgment on merits when he had withdrawn from proceeding to oust board of education members on grounds they lacked educational requirements prior to entry of judgment. Choate v. Commonwealth, 347 S.W.2d 81, 1961 Ky. LEXIS 347 (Ky. 1961).

6. —Teacher's Affidavit.

A verified statement from the teacher under whom the eighth grade was completed is sufficient evidence of educational qualifications. Commonwealth v. Griffen, 268 Ky. 830, 105 S.W.2d 1063, 1937 Ky. LEXIS 536 (Ky. 1937) (Decision prior to 1990 amendment).

An affidavit that applicant completed the sixth grade, which was then equivalent to the eighth grade, is insufficient. Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353, 1938 Ky. LEXIS 207 (Ky. 1938) (Decision prior to 1990 amendment).

An affidavit of a teacher which does not identify the grade completed is insufficient. Whittaker v. Commonwealth, 272 Ky. 794, 115 S.W.2d 355, 1938 Ky. LEXIS 208 (Ky. 1938) (Decision prior to 1990 amendment).

Affidavit of teacher other than one under whom eighth grade was completed has no probative value. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280, 1941 Ky. LEXIS 182 (Ky. 1941) (Decision prior to 1990 amendment).

In the absence of contradictory proof, teacher's affidavit is conclusive of qualification. The Commonwealth may introduce evidence contradicting affidavit but it is not required to plead against it. Commonwealth by Funk v. Sizemore, 243 S.W.2d 671, 1951 Ky. LEXIS 1156 (Ky. 1951) (Decision prior to 1990 amendment).

Neither the failure to produce a certificate nor the fact that appellee enrolled in the seventh grade after having completed the eighth grade is sufficient to overcome the probative value of the statements contained in his teacher's affidavit that

appellee successfully completed the eighth grade. Commonwealth ex rel. Breckinridge v. King, 343 S.W.2d 139, 1961 Ky. LEXIS 408 (Ky. 1961) (Decision prior to 1990 amendment).

A teacher's affidavit is the weakest kind of proof of a person's completion of the eighth grade and its probative effect may be overcome by contradictory evidence. Spurlock v. Commonwealth, 350 S.W.2d 472, 1961 Ky. LEXIS 99 (Ky. 1961) (Decision prior to 1990 amendment).

7. —Schoolmate Affidavit.

Affidavits of former schoolmates do not supply the statutory requirement. Whittaker v. Commonwealth, 272 Ky. 794, 115 S.W.2d 355, 1938 Ky. LEXIS 208 (Ky. 1938).

Educational qualification cannot be established by member or his schoolmates. Commonwealth by Funk v. Clark, 311 Ky. 710, 225 S.W.2d 118, 1949 Ky. LEXIS 1224 (Ky. 1949).

This section does not permit verbal testimony of the party or even his schoolmates to be considered. Commonwealth ex rel. Buckman v. Preece, 257 S.W.2d 51, 1953 Ky. LEXIS 764 (Ky. 1953).

8. —Mandatory.

Provisions of subsection (1)(c) (now (2)(c)) of this section are mandatory and applicant must prove qualification of eighth grade education by one of the methods provided. Commonwealth by Dummit v. Mullins, 307 Ky. 383, 211 S.W.2d 133, 1948 Ky. LEXIS 741 (Ky. 1948) (Decision prior to 1990 amendment).

9. —Burden of Proof.

Proof of educational qualifications must substantially comply with this section. Affidavit of substitute teacher who taught for two (2) or three weeks was insufficient, and testimony of fellow students and others could not be considered. Commonwealth by Meredith v. Moye, 273 Ky. 384, 116 S.W.2d 952, 1938 Ky. LEXIS 647 (Ky. 1938).

The legislature intended to permit proof of eligibility in any of the specified methods, so a member may qualify by examination, even if he did not complete the eighth grade, or by affidavit without reference to school records, and a photostatic copy of one member's signature and samples of his handwriting could not be considered as lack of education. Commonwealth by Meredith v. Moye, 273 Ky. 384, 116 S.W.2d 952, 1938 Ky. LEXIS 647 (Ky. 1938).

Member of county board of education did not possess statutory educational requirements where he admitted his lack in demurrer to petition for ouster. Commonwealth v. Wilson, 273 Ky. 745, 117 S.W.2d 935, 1938 Ky. LEXIS 709 (Ky. 1938).

10. —Summary Judgment.

In action for ouster of county board of education member's failure to respond properly to request for admission under CR 36.01, that he had never completed the eighth grade constituted an admission and summary judgment should have been sustained and board of education member ousted. Commonwealth ex rel. Matthews v. Rice, 415 S.W.2d 618, 1966 Ky. LEXIS 10 (Ky. 1966) (Decision prior to 1990 amendment).

11. Holding Civil or Political Office.

This provision does not deal with offices, deputyships or agencies under the state. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143, 1937 Ky. LEXIS 475 (Ky. 1937).

Although concurrent membership on county board of education and county election board is not a violation of this section unless it is in law a local office as distinguished from state office it is inherently inconsistent or repugnant as their occupancy by one person is detrimental to public interest. Adams v. Commonwealth, 268 S.W.2d 930, 1954 Ky. LEXIS 931 (Ky. 1954).

Where a member of a county board of education was an unsuccessful candidate for his party's nomination to the office of county tax commissioner for his county and an action was brought to oust him from membership on the board on the grounds that under the terms of this section his office was vacated when he became a candidate, the trial court erred in sustaining a motion to dismiss the complaint, even though the office of tax commissioner is a state office and is not specifically enumerated in subsection (1)(d) (now (2)(e)) of this section. Commonwealth ex rel. Buckman v. Miller, 272 S.W.2d 468, 1954 Ky. LEXIS 1109 (Ky. 1954).

The county hospital board serves as an advisory body to the fiscal court agency or deputyship of the county as those terms are used in this section. Commonwealth ex rel. Hancock v. Bowling, 562 S.W.2d 310, 1978 Ky. LEXIS 323 (Ky. 1978).

12. Interest in Sale to Board.

In general, the disqualifying interest must be pecuniary or proprietary by which the member stands to gain or lose something. However, the interest is not sufficient to disqualify the officer if the opportunity for self-benefit is a mere possibility or is remote or collateral. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

The term "service" includes teaching, and one teaching under contract with the board for which he is a candidate is a disqualified candidate. Whittaker v. Commonwealth, 272 Ky. 794, 115 S.W.2d 355, 1938 Ky. LEXIS 208 (Ky. 1938).

One under contract to teach school in county was disqualified to hold membership on board of education of that county, because of interest in the sale of services for which school funds are expended. Commonwealth v. Begley, 273 Ky. 636, 117 S.W.2d 599, 1938 Ky. LEXIS 692 (Ky. 1938).

A board member is not guilty of violating this section where he has divested himself of all interest in the note in question prior to his election. Commonwealth by Meredith v. Hardin, 286 Ky. 404, 150 S.W.2d 477, 1941 Ky. LEXIS 227 (Ky. 1941).

Where teacher applied for teaching position and county board of education notified him of employment, he was not eligible to be elected to membership on the board of education because at the time of his election he was interested in sale of services to the board. Commonwealth ex rel. Funk v. Robinson, 314 Ky. 344, 235 S.W.2d 780, 1950 Ky. LEXIS 1092 (Ky. 1950).

The office of member of board of education has been declared vacated where member was interested in sale of material or supplies to school even though member's motives were proper and the sales were nonprofit. Commonwealth ex rel. Breckinridge v. Collins, 379 S.W.2d 436, 1964 Ky. LEXIS 237 (Ky. 1964).

Member of board, who at time of his election had contract with board of education to transport students and continued to perform his contract for a period but ceased before taking office, and member who sold small amounts of supplies to a class in the school after becoming a member, were disqualified from holding office. Commonwealth ex rel. Matthews v. Coatney, 396 S.W.2d 72, 1965 Ky. LEXIS 102 (Ky. 1965).

No profit need be made on a sale of goods by a board member to a school board in order to violate this section, and it is immaterial whether the funds used to make the purchase were the result of an activity fund raised solely by the students. Commonwealth ex rel. Hancock v. Marshall, 559 S.W.2d 497, 1977 Ky. App. LEXIS 868 (Ky. Ct. App. 1977).

Where a board member is without knowledge of a sale to the board or is not in the position of having to approve a contract or sale to the board, the prohibition of this section is not contravened. Commonwealth ex rel. Hancock v. Marshall, 559 S.W.2d 497, 1977 Ky. App. LEXIS 868 (Ky. Ct. App. 1977).

One who is the president, employee and majority stockholder of a company selling merchandise to a school board comes within the purview of one "indirectly interested" as prohibited by this section. Commonwealth ex rel. Hancock v. Marshall, 559 S.W.2d 497, 1977 Ky. App. LEXIS 868 (Ky. Ct. App. 1977).

13. Interest in Contract or Claim.

Evidence justified trial court's refusal to declare member of county board a usurper in office because of interest in contracts for purchase of coal from schools where he prepared the bids for five bidders, four of whom received seven contracts out of 25 bids for and three of whom filled the contracts by purchasing the coal from coal mine in which the board member was a partner, in absence of evidence that he reached his object and accomplished his purpose of profiting by the contracts through the bidders as secret agencies or intermediaries or by sharing with them. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

The interest is not sufficient to disqualify the member if the opportunity for self-benefit is a mere possibility or is so remote or collateral, such as being only a debtor, that it cannot be reasonably calculated to affect his judgment or conduct in the making of the contract or in its performance. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

Mere fact that contractor with a municipal board, without previous arrangement or agreement, saw fit to buy material or supplies from a member of the board does not render the contract vicious or ordinarily subject the officer to merited criticism or a forfeiture of his office; the possibility of profit from a subsequent independent contract in the absence of inculpatory circumstances ought not to be regarded as having a corrupt influence upon the mind of the officer. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

Bare implication or inference that under the stimulus of expected contingent profit an officer acted wrongfully, in opposition to positive testimony and several contradicting circumstances, should not prevail or justify the court in applying the statute under which office shall without further action be vacant. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

The mere fact that a contractor with a school board, without previous arrangement or agreement, bought materials from a board member is not ground for forfeiture of office. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

If the conditions prohibited in subsection (2) of this section exist at the time of election, the candidate is disqualified and board member, who was teacher at time of election, but who resigned prior to qualification as board member, was disqualified. Whittaker v. Commonwealth, 272 Ky. 794, 115 S.W.2d 355, 1938 Ky. LEXIS 208 (Ky. 1938).

The interest referred to herein must be a monetary interest moving directly or indirectly to the member, and not a mere emotional interest. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280, 1941 Ky. LEXIS 182 (Ky. 1941).

Board member's testimony that his store had made sales to board but that it was in his wife's name "for internal revenue purposes" was a violation of this section as an indirect interest in sales to board. Brooks v. Commonwealth, 286 S.W.2d 913, 1956 Ky. LEXIS 436 (Ky. 1956).

When county board of education member's term of office had expired during pendency of appeal, court would not decide whether he became disqualified by becoming directly or indirectly interested in sale to board of stationery and similar supplies since the circumstances had changed or events had occurred making the determination unnecessary and great public interest was not involved and a decision would not settle a concrete issue but would declare an academic question of law. Commonwealth by Breckinridge v. Woods, 342 S.W.2d 534, 1961 Ky. LEXIS 391 (Ky. 1961).

The facts that the amount involved was small and trivial and that full value was given to school by the school board member are immaterial on a charge under this section that he sold items totaling $64.85 through his hardware store to the school system. Stringer v. Commonwealth, 428 S.W.2d 203, 1968 Ky. LEXIS 709 (Ky. 1968).

14. Ineligible for Reelection.

The fact that a member of the county board of education was re-elected to a new term after his violation of the acts complained of does not "whitewash" him or furnish a defense. Stringer v. Commonwealth, 428 S.W.2d 203, 1968 Ky. LEXIS 709 (Ky. 1968).

A school board member who violates this section is ineligible for re-election. Commonwealth ex rel. Breckinridge v. Winstead, 430 S.W.2d 647, 1968 Ky. LEXIS 407 (Ky. 1968).

15. Employment of Relatives.

Board members have a discretion in voting on an applicant who is related to one of the board members, notwithstanding that the applicant is duly qualified and nominated. Hall v. Boyd County Board of Education, 265 Ky. 500, 97 S.W.2d 38, 1936 Ky. LEXIS 523 (Ky. 1936).

Evidence that lame duck members of school board, by agreement with other members and one newly-elected member, employed close relatives of newly-elected member, shortly before expiration of their terms, was insufficient to justify removal of newly-elected member as usurper. Richardson v. Commonwealth, 275 Ky. 486, 122 S.W.2d 156, 1938 Ky. LEXIS 472 (Ky. 1938).

Vote of board member to vest in superintendent authority to hire bus drivers without approval of the board, following which the superintendent employed the board member's son, was not a vote regarding employment of a relative. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280, 1941 Ky. LEXIS 182 (Ky. 1941).

Where school board member voted for the employment of his sister he was disqualified as a member and his reelection and assumption of a new tern did not "whitewash" such misconduct. Letcher v. Commonwealth, 414 S.W.2d 402, 1966 Ky. LEXIS 12 (Ky. 1966).

Where the defendant, as a member of the county board of education, seconded a motion to hire certain school bus drivers, one of whom was his cousin, but did not vote, there was no violation, for the statute forbids voting, not seconding a motion. Commonwealth ex rel. Matthews v. Combs, 426 S.W.2d 461, 1968 Ky. LEXIS 652 (Ky. 1968).

A board of education can speak only through its records and such records cannot be enlarged or restricted to enable a school board member, by parol testimony, to prove that he did not vote for his wife's employment. Stringer v. Commonwealth, 428 S.W.2d 203, 1968 Ky. LEXIS 709 (Ky. 1968).

Where the minutes of the school board showed that it had voted unanimously to employ the sister of one of the board members as manager of the school cafeteria, the chancellor's finding that the member did not vote in violation of the statute was in error. Commonwealth ex rel. Matthews v. Ford, 444 S.W.2d 908, 1969 Ky. LEXIS 237 (Ky. 1969).

Where the minutes of a local board of education showed that one of its members had voted for a sister and niece for employment with the board, but these had been amended to show he had not so voted, and the Commonwealth sought to introduce affidavits of witnesses that he had so voted, in opposition to his motion for summary judgment, it was error to grant summary judgment, since such evidence is admissible to show mistake or fraud in the minutes recording these votes. Commonwealth ex rel. Stephens v. Stephenson, 574 S.W.2d 328, 1978 Ky. App. LEXIS 619 (Ky. Ct. App. 1978).

A member of a county board of education was properly ousted for affirmatively voting to hire twenty-two (22) individuals, one of whom was his first cousin. Cross v. Commonwealth, 795 S.W.2d 65, 1990 Ky. App. LEXIS 123 (Ky. Ct. App. 1990).

Although school board member urges the court to carve another exception from the statute which would allow him to

remain eligible for office, this cannot be done where the language of the anti-nepotism statute is clear and unambiguous; it is of no importance when his daughter-in-law became his relative, it is only important under the statute that she is his relative. Newby v. Commonwealth ex rel. Gorman, 911 S.W.2d 606, 1995 Ky. LEXIS 150 (Ky. 1995).

Attorney General's ouster petition should not have been denied with regard to seeking to disqualify an elected county board of education member, whose uncle was a bus driver within the school district. Disqualifying aunts/uncles pursuant to KRS 160.180 rationally promoted the governmental goal of eliminating nepotism. Commonwealth ex rel. Stumbo v. Crutchfield, 157 S.W.3d 621, 2005 Ky. LEXIS 82 (Ky. 2005).

16. Removal.

This section did not impliedly repeal law regarding usurpation of office in relation to school officers, and Attorney General may institute an action under such law to prevent usurpation of office of member of county board of education, on grounds of misconduct as well as lack of qualifications. Richardson v. Commonwealth, 275 Ky. 486, 122 S.W.2d 156, 1938 Ky. LEXIS 472 (Ky. 1938).

One violating this section may be proceeded against as a usurper by Attorney General or person claiming office. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280, 1941 Ky. LEXIS 182 (Ky. 1941).

County board of education could not declare the office of one of its duly elected and qualified members vacant, on the ground he had moved from district; removal could be accomplished only by ouster proceedings under KRS 415.050. Salyers v. Lyons, 304 Ky. 320, 200 S.W.2d 749, 1947 Ky. LEXIS 637 (Ky. 1947).

A county board cannot declare vacant the seat of a member of that board, who has been duly elected and qualified, on the ground that the member does not possess some qualification as for membership required by this section. Board of Education v. Cassell, 310 Ky. 274, 220 S.W.2d 552, 1949 Ky. LEXIS 890 (Ky. 1949).

Resignation of member of county board of education who was interested in a contract which might disqualify him under this section prior to appointment of his successor was an abandonment of office and not a forfeiture and other members of board could bring a declaratory judgment action for determination of abandonment under KRS 418.045 where only the Commonwealth or a person entitled to the office could bring an action in nature or quo warranto to adjudge forfeiture. Hall v. Allen, 313 Ky. 441, 231 S.W.2d 702, 1950 Ky. LEXIS 898 (Ky. 1950).

County board of education members cannot be ousted or enjoined from the performance of their duties except as the result of an action brought by the person who claims the office or in an action brought by the Attorney General of the Commonwealth. Griffey v. Board of Education, 385 S.W.2d 319, 1964 Ky. LEXIS 157 (Ky. 1964).

A member of a county board of education does not vacate his office without any further action when he is guilty of conduct which violates this section but he must be removed by ouster proceedings and county residents and taxpayers cannot maintain class action for declaratory judgment to enjoin performance of certain official acts. Griffey v. Board of Education, 385 S.W.2d 319, 1964 Ky. LEXIS 157 (Ky. 1964).

The State Board of Elementary and Secondary Education (now Board of Education), under the Kentucky Education Reform Act, has the authority to remove members from a county board of education for misconduct in office; there is no language in either KRS 156.132 or this section which suggests, let alone mandates, that the Attorney General has the exclusive power to remove district board members for violations of KRS 160.180. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743, 1993 Ky. LEXIS 46 (Ky. 1993).

Sufficient evidence was presented to support a judgment of removal of school board members for misconduct. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743, 1993 Ky. LEXIS 46 (Ky. 1993).

17. —De Facto Officer.

A school board member against whom ouster proceedings are commenced is a de facto officer until he is ousted and should be allowed to vote pending a trial and judgment on the merits. Commonwealth ex rel. Breckinridge v. Winstead, 430 S.W.2d 647, 1968 Ky. LEXIS 407 (Ky. 1968).

18. —Estoppel Against.

Courts should be slow to invoke estoppel against the state in its efforts to enforce a statute the purpose of which is to prevent "conflict of interest" situations and prevent self-interest in the deliberation of public servants. Stringer v. Commonwealth, 428 S.W.2d 203, 1968 Ky. LEXIS 709 (Ky. 1968).

19. Lack of Qualifications.

The burden is upon the board member to establish his eligibility for the office. Commonwealth v. Coffee, 329 S.W.2d 203, 1958 Ky. LEXIS 5 (Ky. 1958). See Saylor v. Rockcastle County Board of Education, 286 Ky. 63, 149 S.W.2d 770, 1941 Ky. LEXIS 216 (Ky. 1941).

The burden of establishing eligibility is on the candidate. Commonwealth v. Mullins, 286 Ky. 242, 150 S.W.2d 668, 1941 Ky. LEXIS 242 (Ky. 1941).

Lack of qualification may be proved by any evidence that would be competent under ordinary rules of evidence to establish the fact in issue. Lear v. Commonwealth, 317 S.W.2d 492, 1958 Ky. LEXIS 95 (Ky. 1958).

20. Appeal.

Great regard must be had on appeal for the finding of fact by the trial court that board member had not committed the prohibited act which would declare office vacant. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

21. Duty to Supervise.

Because no discovery was conducted, the lower court was unable to undertake the proper analysis to determine whether the superintendent had failed to enact rules or whether the coaches had completely failed to supervise the football team. The record was devoid of those necessary facts and thus, it was impossible to analyze whether the coaches were entitled to qualified official immunity; additionally, the trial court did not have any facts to enable it to determine whether the superintendent had acted in good faith. Jenkins Indep. Schs v. Doe, 379 S.W.3d 808, 2012 Ky. App. LEXIS 196 (Ky. Ct. App. 2012).

Cited in:

Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144, 1995 U.S. Dist. LEXIS 8019 (E.D. Ky. 1995).

OPINIONS OF ATTORNEY GENERAL.

Under this section membership on the school board is politically incompatible with holding a local county office, and a member of the school board who becomes a candidate for county office automatically vacates his position on the school board. OAG 60-341.

Under this section, the question of educational qualification for membership on a board of education is a fact to be determined by the evidence, and an uncontroverted affidavit from a former teacher would be sufficient to establish eligibility. OAG 60-590.

This section which establishes the qualifications for members of local boards of education does not contain any requirements concerning religion, and a person of the Catholic faith,

if he meets the statutory qualifications, may be a member of a local board. OAG 60-917.

A person who at the time of his election to the board of education, is a partner in a construction company, which in the current month has been awarded a school contract with the board of education of which he is a member, is ineligible for membership on the board. OAG 60-947.

This section does not prohibit a board of education from transacting business with the son-in-law of one of its members, but the related member must not vote on the proposal. OAG 60-957.

If a board member moves his residence within the district but from the division in which he was chosen, he is no longer eligible for office, but the move does not automatically create a vacancy. OAG 60-1028.

A person is not made ineligible for membership on a board of education because at the time of his election to the board, he had a claim for services rendered pending before the board, when the work on which the claim was based had been completed. OAG 60-1029.

This section does not establish physical health as a qualification of membership on a school board and a person who is given a 100 percent disability rating by the Veteran's Administration and is under the care of a nurse, is not precluded from serving as a member on a local board of education. OAG 60-1034.

A woman whose husband sells insurance to a board of education has an indirect interest in the insurance and is prohibited by this section from serving on the board. OAG 62-712.

Under this section, an owner and operator of a school bus who is under contract with county school district to transport pupils for the school year, since he cannot unilaterally dissolve his contract, is ineligible to serve as a member of the board of education during the term of the contract. OAG 62-956.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself would be valid until the school board member resigned or was removed from office. OAG 65-211.

No constitutional or statutory incompatibility exists between membership on the school board and membership on the municipal housing commission. OAG 66-673.

A vote by a member of a board of education for approval of payment to a validly employed kinsman of the board member for services rendered is not proscribed by subsection (4) (now (3)) of this section. OAG 67-47.

A school board member is prohibited from contracting with the board of which he is a member despite the fact that the contract is let pursuant to sealed bids. OAG 67-212.

A board member who receives a subcontract to perform a substantial portion of the work under a prime contract awarded by a board of education thereby becomes "indirectly" interested in the contract in contravention of the statute. OAG 67-212.

If a school board member without previous arrangement or agreement and in the absence of inculpatory circumstances leases equipment to a contractor for use under a school contract, the board member does not thereby violate the statute. OAG 67-212.

The local manager of a public utility firm who has no proprietary interest in the firm, is not disqualified, either by the provisions of this section or at common law, from service on a local board of education by virtue of the fact that the board imposes a utilities gross receipts tax on the utility pursuant to KRS 160.613. OAG 67-274.

A physician is not disqualified by this section from service on a local board of education by reason of the fact that he renders professional services to school children and is compensated for some of these services by insurance which covers the children in incidents arising at or en route to or from school, since the premium for the insurance is paid by the parents and not from school funds. OAG 68-250.

Where a board of education purchases sporting goods equipment from a sporting goods store located in the county adjoining the school district, which store is owned by a brother of the chairman of the board of education, the existence of a conflict of interest on the part of the board member would depend upon the issues of fact in the case, namely whether the board member possesses a financial and/or proprietary interest in the sporting goods business, either directly or indirectly. OAG 68-303.

Since the position of county precinct chairman of a political party is neither a constitutional office, a statutory office, nor a form of public employment, the county precinct chairman is not disqualified by subsection (1)(d) (now (1)(f)) of this section from service on a local board of education. OAG 68-535.

The position of executive director or assistant executive director of a municipal housing commission is state employment and there is no incompatibility between these positions and the office of school board member. OAG 68-599.

A person employed as customer relations manager by the telephone company is not disqualified by this section from service on the local board of education because the school board might impose a utility gross receipts tax on his employer, nor would he be prevented from attending a meeting at which the subject was discussed, but he should refrain from participating in the discussion or voting on the proposal and should make his abstinence a matter of record. OAG 69-119.

If payments accepted by a board member of an independent district represent payment for services in any amount or to any degree, or if though purporting to be for actual and necessary expenses, are not for duties authorized by the board, acceptance of such would offend this section in rendering the member ineligible. OAG 69-292.

Where an eighth-grade equivalency test given locally was neither an examination approved by the Superintendent of Public Instruction or adopted by the state board, nor given under the direction of the state board or the State Superintendent, it would not suffice to qualify the candidate for the school board. OAG 70-463.

A member of the city commission running for membership on a board of education would not become ineligible for city council until he assumed the school board office. OAG 70-558.

A person can become a candidate for school board membership and at the same time continue to serve on the city commission. OAG 70-558.

There is no statutory or constitutional incompatibility between the position of director of the urban renewal agency and membership on the independent board of education. OAG 70-587.

An individual whose spouse, at the time of the individual's prospective election, or thereafter while a member of a school board, owns one-sixth of the capital stock of a dairy selling milk to the board could not properly be eligible for membership or serve on the board because the indirect financial interest would offend this section. OAG 70-613.

A person could serve on a county board of health and on the board of education at the same time without forfeiting the first office he held. OAG 70-632.

There is no constitutional or statutory provision that would prohibit a member of the county board of education from being appointed as a director or member of a water district. OAG 70-723.

If it could be demonstrated that the assistant cashier's connection with the depository bank for the school board was limited to the employer-employee relationship, there would be no disqualification from that person's serving on the school board. OAG 70-809.

If the assistant cashier of the depository bank for school board funds is in fact an officer, having been so designated by

the bank's board of directors, he would be disqualified from serving on the school board. OAG 70-809.

A member of a board of education who is in the building material business may neither supply services nor materials to a prime contractor for use on a school building project which is being constructed with funds of the board of education of which he is a member. OAG 70-828.

Where a person elected to the school board was the majority stockholder in a corporation that sold soft drinks to school-controlled organizations, the continuation of such sales by the corporation would offend this section. OAG 71-33.

A school board member who was employed as truck sales manager and who made a motion and voted to purchase a truck from the firm which he represented forfeits his office immediately upon such a transaction, but if he does not resign, he will have to be removed by the court upon proof of the improper transaction. OAG 72-110.

A school board member who is the editor of a local newspaper is disqualified from serving on the board, where the editor's paper prints the high school paper, even though the high school paper is self-supporting and does not have its bills paid by the board of education. OAG 72-111.

There was no violation of this section where a member of the board of education voted to pay the salary of his great nephew employed as a teacher in the district as the relationship of great nephew is not proscribed by this section. OAG 72-303.

A school board member may not own stock in an institution where the board of education deposits its money at a prescribed rate of interest. OAG 72-327.

There is no conflict of interest where a superintendent of schools owns stock in an institution where the board of education deposits its money at a prescribed rate of interest. OAG 72-327.

A temporary absence from the state for three months to take a job in another state on a trial basis would not disqualify that person from being a candidate for the school board. OAG 72-499.

This section would not be violated where a school board member voted to award a contract to a company which employs his nephew. OAG 72-525.

A former resident of Kentucky who moved his residence for several years and returned to Kentucky on August 12, 1972, would not be an eligible candidate for membership on a county board of education in the November, 1972 election. OAG 72-670.

Where a member of the school board is a salesman for a plumbing supply hous but does not sell within the county of the school board on which he serves and has no interest in the firm for which he sells, he would not become disqualified to serve on the board when the board contemplates the purchase of equipment from such member's employer. OAG 72-691.

The term "has been removed" in subsection (1)(f) (now (2)(h)) of this section means that the person has been removed by a court judgment and does not include a voluntary resignation; therefore, a person who voluntarily resigns in a conflict of interest situation may save his eligibility to later serve on the board. OAG 72-777.

There is no conflict of interest where a member of a county board of education is an unpaid officer and director of a nonprofit corporation which, as part of its service, provides water service to some of the county schools. OAG 72-840.

A board of education member is not disqualified for his office when the school board deposits money in an institution in which he is an officer, director, or stockholder as this is not the type of contract referred to in this section for which school board funds are expended. OAG 73-71.

A member of a district board of education may not be removed from office for being convicted on a charge of driving a motor vehicle while intoxicated as this offense is a misdemeanor and conviction therefor would not disqualify a person from office. OAG 73-113.

Unless a person has lost his voting franchise or has committee disqualifying acts in a prior term, alleged wrongdoing prior to his assumption of his office as a board member cannot be used to remove him from the board. OAG 73-128.

Where a member of a county board of education and her husband owned a weekly newspaper, the only newspaper in that county, this section would not in view of KRS 424.120 and KRS 424.220 prohibit the publishing of school financial statements and legal notice in such newspaper. OAG 73-438; OAG 74-516.

Employment of a school board member by a subcontractor on a school construction project is not sufficient direct or indirect interest in the contract so as to disqualify the board member for his office. OAG 73-455.

A member of the board of education who is also an insurance company representative could sell life insurance to teachers employed by the board, where the teachers employed the board in writing to withhold from the teachers' salary the amount of the premium, since the board member is dealing directly with individual teachers, and the money to be withheld from the individual salary of the teacher has vested in him and is no longer "school funds." OAG 73-503.

A member of a board of education may be removed only for cause and where two members of a school board have refused to approve payment of bills (there being a vacancy on the school board and this refusal therefore effectively blocking payment), it is doubtful if this action would be held sufficient to remove the board members and the apparent solution would be to fill the school board vacancy pursuant to the provisions of KRS 160.190. OAG 73-523.

A member of the board of directors of a southern states cooperative who serves without remuneration other than that received by any other customer of the cooperative is not disqualified from serving as a member of a board of education which makes purchases from the southern states cooperative. OAG 73-530.

Where a superintendent of schools recommended the employment of a high school principal, the employment was moved by the chairman of the board of education and seconded by a member of the board of education who was a first cousin of the candidate for the principal's position, the chairman of the board voted yes on the motion, the member seconding the motion abstained because of his relationship with the candidate and two other members of the board abstained, there was no illegality involved. The three members of the board abstaining are counted as acquiescing with the majority of those present voting and the vote of the single person voting, the chairman, was decisive in carrying the motion and approving the recommendation of the superintendent. OAG 73-531.

When a school board member moves his residence from the school district, this disqualifies him from membership on the board but his actions as a member of the school board would be legally effective until he either resigns or is removed by court order pursuant to ouster proceedings instituted by and on behalf of the Attorney General under KRS 415.050. OAG 73-558.

Where member of board of education was a gasoline distributor who, solely as the result of federal mandatory fuel allocation regulations, was the supplier of gasoline for the school district, there was no violation of proscription against conflict of interest. OAG 74-132.

Where school board member purchased materials for cheerleader uniforms and was reimbursed by the school principal, such reimbursement was not forbidden as a conflict of interest under this section. OAG 74-293.

No conflict of interests would exist if the wife of a publisher of a paper that publishes legal advertisements for the county board of education is elected to the board of education. OAG 74-516.

When a school board member moves his residence from the district for which he was chosen he will continue as a de facto

member of the board of education and all his acts as a board member shall be valid until he either resigns or is removed by judgment of a court upon an action brought in the name of the commonwealth upon relation of the Attorney General. OAG 74-613; OAG 76-612.

A teacher employed by a county board of education may legally be a candidate for the county board of education but if elected he would have to be released from his contract to teach before he would be eligible to serve. OAG 74-649.

A person may not be a school board member and hold a position on the planning and zoning commission at the same time, but until he either resigns or is ousted by a judgment of the court, he is de facto officer in both agencies and his actions as such are valid. OAG 75-123.

A dentist who is a member of a county board of education may perform dental services for school children under the auspices of the county health program since the funds involved are not school funds. OAG 75-358.

There is no conflict where a school board member's wife is a teacher in the same school system. OAG 75-416.

A formal agreement between a bank and the school board as to a special rate of interest to be paid on money deposited by the board and a special rate of interest to be charged on loans to the board constitutes a contract for services and therefore creates a conflict of interest as to board members who are stockholders of the bank. OAG 75-481; 75-553, modified by OAG 77-231 to the extent of conflict.

When a school board member commits a disqualifying act, he is subject to removal by a court in a quo warranto proceeding brought by the Attorney General when requested by interested citizens, but until the school board member either resigns or is declared removed by a court judgment, he may continue as a de facto member of the board. OAG 75-481, modified by OAG 77-231 to the extent of conflict.

If a bid is accepted, the contract is valid and enforceable even though the contract creates a conflict of interest. OAG 75-481, modified by OAG 77-231 to the extent of conflict.

A local board of education may accept a bid from a bank for the payment of interest on deposits and for the charging of interest on loans if a member of the board of education is not a stockholder in that bank but only an advisory member as he has no monetary interest in the transaction. OAG 75-481, modified by OAG 77-231 to the extent of conflict.

There is no conflict of interest when a school board member holds stock in a public utility or a company having a legally authorized monopoly and sells services or materials to the school board. OAG 75-553, modified by OAG 77-231 to the extent of conflict.

The courts must decide if a school board candidate meets the residency requirements and actually and legally lives in the district or district division which he seeks to represent. OAG 76-121.

It would not be a violation of this section for a board of education to award a contract for milk and dairy products to the companies submitting the low bid where one of the members of the board of education has a son who is employed as one of the 12 route salesmen by the firm submitting the low bid paid on the basis of salary and commission, and if the contract is awarded to his employer, he and the other route salesmen will participate in the contract by furnishing the dairy products to the school system and where the member of the board of education has no interest in or association with the firm submitting the low bid and his son has no ownership in the company but is only an employee. OAG 76-372.

An employee of Kentucky Educational Television Authority under the state merit system who receives no profit from her work other than her regular salary may legally become a candidate for and serve, if elected, as a member of the local school board and at the same time retain her employment with Kentucky Authority for Educational Television. OAG 76-394.

A conflict of interest would exist where an employee of a department store from which material and supplies were purchased with school funds is elected to the school board and the board continues to purchase material and supplies from her employer. OAG 76-408; 77-519.

Since the Economic Development Council is an agency of the city, county and chamber of commerce and the administrator of the Council serves at the same time the city, county and chamber of commerce, the position of assistant administrator is of a so-called hybrid nature, that is neither a city or county position as contemplated in Ky. Const., § 165, KRS 61.080 and KRS 160.180(1)(d) (now (2)(f)) and therefore no incompatibility would exist between the position of assistant administrator of the Economic Development Council and membership on a county school board. OAG 76-495.

Since there exists no statutory or state constitutional incompatibility by holding two (2) state office positions, a Circuit Court Clerk or an employee of that office may legally qualify to be elected to membership on a local board of education. OAG 76-509.

A member of a board of education would not be prohibited by this section from doing business with a P.T.A. group. OAG 76-596.

A school board member who sells goods and services to the school sponsor of an eighth grade class within the school district violates the provisions of this section. OAG 76-596.

Where a member of a local school board for an independent school system moves his residency into another school district, he should resign his position on the board at the time of the permanent removal of his residence from the district and where a member of a local school board of an independent school system does not remove his residence from the city until after the election, his election would be valid but the board member should resign as soon as he moves from the city. OAG 76-612.

A member of a board of education which merges with another board of education to form a new board of education composed of the former two (2) boards of education who is permitted to serve out his unexpired term can file for reelection to a vacant seat on the new school board and still retain his present position which he holds as a result of the merger. OAG 77-34, 1977 Ky. AG LEXIS 743.

A member of a county board of education would have to resign his position from the county school board prior to his becoming a candidate for sheriff in a May primary election. OAG 77-134, 1977 Ky. AG LEXIS 643.

Only those transactions with a board of education which cause the school board to expend school funds create the disqualifying act prohibited under this section for the individual who serves on a local board of education and who also is an officer, director or stockholder of a banking institution with which the school board does business. OAG 77-231; OAG 78-830, modifying OAG 75-481 and 75-553 to the extent of conflict.

Members of county board of education are state officers and at the same time the position of state ABC officer is one authorized pursuant to KRS 241.090 and such representatives have full police powers which may or may not place their position in the category of a state officer; and although subsection (1)(d) (now (1)(f)) of this section prohibits a school board member from holding and discharging the duties of any local office or agency under the city or county of his residence, it would not prohibit a school board member from holding employment or an appointive office with the state and of course a board member could not become a candidate for any public office, local or state; however, Const., § 165 and KRS 61.080 do not prohibit a person from holding two (2) state offices or employment at the same time. OAG 77-245, 1977 Ky. AG LEXIS 582.

A county school board candidate who is a potato chip salesman could not continue to make sales to the county

schools if he is elected to the school board. OAG 77-416, 1977 Ky. AG LEXIS 347.

The courts must decide on a case by case basis whether a conflict of interest exists under this section. OAG 77-519, 1977 Ky. AG LEXIS 240.

Although a member of a school board would be disqualified from holding that office at the time of his filing for the office of county judge (now county judge/executive), the board member does not vacate that office unless he either resigns or is removed by court action. OAG 77-588, 1977 Ky. AG LEXIS 190.

A board member confronted with a subsection (4) situation should have the board's minutes reflect that the school board member has disqualified himself or herself from voting and not merely abstained. OAG 78-159 (opinion prior to 1990 amendment).

Failing to meet the qualifications or doing that which is proscribed in this section constitutes cause for consideration for removal of a board of education member from office for usurpation of that office. OAG 78-159, 1978 Ky. AG LEXIS 570.

The voting on position assignment is a matter coming within the term "appointment" as used in this section. OAG 78-159, 1978 Ky. AG LEXIS 570.

This section is applicable to matters involving position assignments which are in effect appointments within the school system. OAG 78-159, 1978 Ky. AG LEXIS 570.

This section should be a clarion signal to board members that whenever matters are raised which relate to a relative they should consider disqualifying themselves from voting on the matter. OAG 78-159, 1978 Ky. AG LEXIS 570.

Where a member of the board of education sells from his business two (2) locks to a contract bus driver's hired driver, where the board member did not receive money from claims or contracts of the board no disqualifying act was committed, for the board member did not sell an item of property to the board of education and he did not receive any school funds in payment for this property. OAG 78-274, 1978 Ky. AG LEXIS 442.

If the local board of education votes to approve payment for medical examinations required by school law or regulation and to adopt a policy to regulate such payment, the contracting with the physician/spouse of the chairperson of the local board of education to perform any examinations for which any school money is expended would create a disqualifying condition prohibited by this section. OAG 78-365, 1978 Ky. AG LEXIS 367.

The holding of the two (2) state office positions of superintendent of schools and member of a local school board does not by itself present a statutory or constitutional incompatibility under KRS 61.080 and Const., § 165. OAG 78-413, 1978 Ky. AG LEXIS 351.

It does not constitute a conflict for a person serving an independent school district as a school principal to serve simultaneously as a school board member of the county school district in which the independent district is located. OAG 78-509.

There is no statutory incompatibility between the offices of assistant commissioners of the Kentucky High School Athletic Association and members of a county board of education. OAG 78-583, 1978 Ky. AG LEXIS 239.

Nothing in this section prevents one who has a brother who is a school principal from serving on the school board in the same system provided he does not participate in any vote concerning his brother. OAG 78-620, 1978 Ky. AG LEXIS 228.

If a person is employed as a vocational school coordinator by a county board of education, then he could become a candidate for membership on the board but he could not serve on the board and at the same time continue to serve as an employee of a county school system. OAG 78-645, 1978 Ky. AG LEXIS 185.

A person could hold office on the county board of education and at the same time serve as a state conservation officer. OAG 78-773, 1978 Ky. AG LEXIS 67.

Subsection (1)(f) (now (2)(g)) of this section does not prohibit a candidate for board membership from having an interest in a contract or claim with the board for which school funds are expended so long as the contractual or claim relationship is terminated in all respects at the time of the election. OAG 78-830, 1978 Ky. AG LEXIS 8.

The best practice most assuredly would always be for an individual to end any contractual or claim relationship with a board of education prior to becoming a candidate for membership on the board. OAG 78-830, 1978 Ky. AG LEXIS 8.

The spouse of a school board member may not furnish professional services as team physician for the school system even if he receives reimbursement from the system's insurance carrier for treatment of injuries received by team members and not from the system directly nor would the physician's donation of said insurance payments to the school system's athletic fund remove any violation of this section. OAG 78-832, 1978 Ky. AG LEXIS 9.

The spouse of a school board member may not receive compensation from school funds for performing a physical examination required of school bus drivers even if he has been selected to perform said examination by the bus driver and not by the school system. OAG 78-832, 1978 Ky. AG LEXIS 9.

A person holding the position of membership on the Marshall County Board of Education cannot at the same time serve as city treasurer of Calvert City. OAG 79-1, 1979 Ky. AG LEXIS 627.

Since this section does not list "father-in-law," a board member may vote on a motion to employ or appoint his or her father-in-law in the school system. OAG 79-91, 1979 Ky. AG LEXIS 528.

The intent of this section is to exclude a board member who is related to an individual from casting a negative or affirmative vote regarding a matter of employment concerning the individual and is broad enough to cover any personnel action that particularly applies to the employment status of an individual related to a board member in a degree of kinship spelled out in the law; thus, a board member related to an employee was proper in disqualifying herself from casting a vote on the motion for termination of that employee. OAG 79-249, 1979 Ky. AG LEXIS 375.

Either a board member or his family is free to submit bids for purchase of surplus school property. OAG 79-269, 1979 Ky. AG LEXIS 376.

The key to whether action of a school board member would be in violation of this section is whether the school board member has an interest, directly or indirectly, in a claim or contract for which school moneys are expended, no matter how small. OAG 79-269, 1979 Ky. AG LEXIS 376.

Under this section, a realty firm which employs a board member, or the wife of a board member, may not be considered for use in connection with the sale of surplus school property. OAG 79-269, 1979 Ky. AG LEXIS 376.

Even a small stockholder interest in a bank by a school board member constitutes a disqualifying act when a local board of education borrows from that bank. OAG 79-555, 1979 Ky. AG LEXIS 86.

If the only transaction between a bank and the school board is the demand deposit of funds for the drawing of checks or the deposit of school moneys in time deposits on which interest is paid by the bank to the school, there is no violation of this section when an officer, director or stockholder of the subject bank is also a member of the school board. OAG 79-555, 1979 Ky. AG LEXIS 86.

While local school board members considering tax measures have a twofold interest which may not be always compatible, this kind of action fails to create a legal conflict of interest and does not amount to a situation "for which school funds are

expended" and funds received by the local board members as is proscribed in this section. OAG 79-555, 1979 Ky. AG LEXIS 86.

The office of city school board member and that of county comptroller are incompatible. OAG 80-92, 1980 Ky. AG LEXIS 562.

No conflict of interest will arise where a county board of education member, who is also a dairy farmer, begins selling milk to a subsidiary of the company that has the contract to sell the entire school system milk, and he need not disqualify himself from voting as a board member on the milk contract, although he might do so to avoid even an appearance of impropriety. OAG 80-184, 1980 Ky. AG LEXIS 463.

A person is eligible to run for a county board of education from the district from which they normally reside even though he or she has been temporarily forced to live outside the district by virtue of a casualty loss and repairs to their normal domicile. OAG 80-274, 1980 Ky. AG LEXIS 379.

The provisions of subsection (1)(d) (now (2)(f)) of this section would prohibit an assistant Commonwealth Attorney from holding membership on the board of education while continuing to serve as assistant Commonwealth Attorney since the office of assistant Commonwealth's Attorney is a state office. OAG 80-476, 1980 Ky. AG LEXIS 204.

This section requires that a teacher who desires to be elected to a position on the board of education by which he or she is employed must not be performing teaching services on or after the date of the election. OAG 80-557, 1980 Ky. AG LEXIS 96.

A school board member is not placed in a disqualifying position under this section simply because the spouse of the board member is a salaried employee with the law firm which is to be retained to represent the school system and/or school board, since the spouse-employee is not in a position to control or have input into who the law firm does business with, is not an owner or an officeholder in the law firm and actually has no financial interest in the law firm, in that receiving a salary does not create a financial interest. OAG 81-67, 1981 Ky. AG LEXIS 361.

If a board member is in a position of not being able to vote on a matter involving a relative, the proper procedure is to disqualify himself from voting; a board member should not state he is abstaining on the motion since in Kentucky, by case law, an abstention vote is counted as acquiescing with the majority of those present and voting. OAG 81-351, 1981 Ky. AG LEXIS 82.

A resignation from office by a school board member prior to the initiation of an ouster proceeding will not purge the board member's disqualifying acts of misconduct so as to preclude the Attorney General from instituting a quo warranto or ouster action in the future should the board member, after resignation, be appointed to or gain a school board member position by election since reappointment or reelection to a school board member position does not stand as condonation of prior disqualifying acts of misconduct and such acts continue to provide legal cause to remove a school board member from membership. OAG 82-32, modifying OAG 72-777.

Even though it is alleged that a county board of education member does not meet the educational qualifications prescribed in subdivision (1)(c) (now (2)(c)) of this section, the Family Educational Rights and Privacy Act of 1974 (20 USCS, § 1232g) prohibits a school superintendent from providing to the office of Attorney General any information contained in the educational records of the former student who now is serving as the board member, unless there is in writing the prior written consent of the board member to do so. OAG 82-53 (opinion prior to the 1990 amendment).

Because the statutory language of subdivision (2)(i) of this section does not express any specific time requirement, the eligibility requirement in that provision takes effect at the time that the elected officer takes office. OAG 90-109, 1990 Ky. AG LEXIS 148.

"Eligible to membership on a board of education" relates not to the time when filing as a candidate, and not to the time of election, but to the time when the elected candidate takes the oath of office and assumes the office; the expression "eligible to membership" means qualified for office. OAG 90-109, 1990 Ky. AG LEXIS 148.

School board chairman who is running for re-election, may file despite the employment of his daughter by the school district for the remainder of his current term; however, as soon as the current term of office has expired, the terms of this section will not permit him to be eligible for membership on the school board if he has relatives who are employed by the school district and who were hired by the school district after the board member took office. OAG 90-109, 1990 Ky. AG LEXIS 148.

The Kentucky Education Reform Act of 1990 clearly provides, in transitional sections, that incumbent members of school boards are eligible both to serve out the remainder of their terms, and to run for re-election, despite having relatives who were hired during their tenure employed by the school district; however, the elected candidate will not be eligible to take the oath of office and to serve as a board member unless the relatives first resign from employment. OAG 90-109, 1990 Ky. AG LEXIS 148.

Continuous employment is ended if the relationship between the employer and the employee is severed. OAG 90-126, 1990 Ky. AG LEXIS 135.

The phrase "initially hired", as used in subdivision (2)(i) of this section, contemplates the beginning of the relative's continuous employment by the school district, whether that employment is in a classified position or certified position, and whether that employment is part time, temporary, or full time. That employment, however, must be continuous. OAG 90-126, 1990 Ky. AG LEXIS 135.

The question of when an individual became a board member's relative has no impact on determining when the individual was "initially hired." The statutory exception applies to a board member whose current relatives were not initially hired by the school district during the board member's tenure. The statute offers no exception for a board member's current relative who was not a relative at the time of being "initially hired." OAG 90-126, 1990 Ky. AG LEXIS 135.

Where a substitute teacher continued to teach from 1982 through 1986, when the teacher's brother became a board member, and on to the present without interruption, the teacher would be found to have been initially hired prior to the time that the brother became a member of the board. OAG 90-126, 1990 Ky. AG LEXIS 135.

A teacher employed by a school board of a district where the teacher does not reside is not prohibited from simultaneously serving as a member of a school board of a different district where the teacher *does* reside. OAG 90-127, 1990 Ky. AG LEXIS 134.

A member of the county board of education may sell insurance to school employees on an individual basis. OAG 90-138, 1990 Ky. AG LEXIS 156.

Any board member in office on July 13, 1990, who is re-elected after that date, will not be eligible to take office and to serve on the board of education if a relative (as defined in this section) who was hired after the incumbent's earlier election, remains employed by the district. OAG 90-141, 1990 Ky. AG LEXIS 164.

Any new candidate who was elected after July 13, 1990, who has relatives (as defined in this section) employed by the school district, will not be eligible to take office and to serve on the board of education. OAG 90-141, 1990 Ky. AG LEXIS 164.

Eligibility criteria for membership on a board of education are mandatory; therefore, unless the elected candidate meets all of the statutory criteria, that individual is ineligible to

serve on the board of education. OAG 90-141, 1990 Ky. AG LEXIS 164.

Only the person entitled to the office or the Attorney General (on behalf of the Commonwealth) may institute and prosecute an action to prevent usurpation of office; neither the superintendent of schools nor a private citizen may do so, nor may the county board of education declare the office of one of its members vacant because of forfeiture on account of violation of this section. OAG 90-141, 1990 Ky. AG LEXIS 164.

A conflict of interest exists where the Board of Education is expending school funds to a bank for the handling of bonds for the school district and a member of the Board of Education is married to a member of the Board of Directors of the bank. OAG 91-16, 1991 Ky. AG LEXIS 16.

The superintendent of schools has no liability should an ineligible board member take office and attempt to serve; however, this office has asked superintendents and boards of education to advise the Attorney General office of such circumstances so that the situation may be evaluated and appropriate action may be taken. OAG 91-16, 1991 Ky. AG LEXIS 16.

There is no conflict of interest statute prohibiting school board members from voting on general salary increases that affect teachers who are related to those board members and who work in the school system. OAG 91-60, 1991 Ky. AG LEXIS 60.

An individual who withdrew from high school with 14 credits and entered the Armed Forces on November 4, 1952, honorably completed his military obligations, entered an accredited college in September 1956 and earned 46½ credit hours, has been a board member for 16 years and is presently chairman, is not eligible to run for re-election unless that individual completes the twelfth grade or obtains his GED, and he also must file an affidavit as required under subdivision (2)(d) of this section certifying completion of the twelfth grade or its equivalent. OAG 91-76, 1991 Ky. AG LEXIS 76.

A potential conflict of interest exists between the requirements of subsection (3) of this section for members of boards of education concerning influence in hiring school employees, and the duties authorized by KRS 160.345(2)(g) and (i) for members of site-based councils; subsection (3) of this section expressly prohibits a member of a board of education from having any influence on hiring of school personnel, while KRS 160.345(2)(g) and (i) give members of the council authority to recommend candidates to the principal to be hired. OAG 91-148, 1991 Ky. AG LEXIS 148.

Even if a board member, who was also a council member, were to disqualify himself, while serving on the council, from engaging in any consideration of applicants or from voting on recommended applicants for school district positions, thereby eliminating potential conflicts over hiring issues, other potential conflicts could develop since the board sets policies for the councils of the district on areas in which the interests of the board may differ from the interests of the councils. OAG 91-148, 1991 Ky. AG LEXIS 148.

If a school board member is elected to a site-based decision making council, the provisions of this section and KRS 160.345 create potential statutory conflicts of interest should that board member attempt to carry out the duties of both positions with regard to hiring decisions. OAG 91-148, 1991 Ky. AG LEXIS 148.

The express language of this section does not preclude a board member from seeking election as a parent representative on the school council. OAG 91-148, 1991 Ky. AG LEXIS 148.

The terms "brother" and "sister" include half-brother and half-sister, but not step-daughter or step-son. OAG 91-206, 1991 Ky. AG LEXIS 204.

Attorney General opined that no statutory conflict of interest exists under KRS 45A.340 and this section between the positions of member of the State Board for Elementary and Secondary Education and executive director of the Lincoln Foundation; but it was not possible for the Attorney General to provide a general ruling as to whether a potential conflict of interest may exist at common law. OAG 91-226, 1991 Ky. AG LEXIS 223.

Where county board of education incumbent candidate's aunt was initially employed in August 1975, after incumbent began serving on the school board, and incumbent's aunt was reemployed in August 1981, again, during incumbent's tenure as a board member, under the provisions of subdivision (2)(i) of this section incumbent was ineligible to run for reelection to the county school board. OAG 92-81, 1992 Ky. AG LEXIS 87.

A school board member who took the oath of office in January, 1991 and who has an aunt who is a blood relative working as a classified employee for the school system is ineligible to serve as a board member due to his aunt's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160, 1992 Ky. AG LEXIS 275.

A school board member who was re-elected in November 1992 whose spouse is currently working for the school system and was hired after he became a board member is ineligible to serve as a board member due to his wife's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160, 1992 Ky. AG LEXIS 275.

A prospective school board member who was elected in November 1992 and has a father and a sister who are currently working as classified employees for the school system is ineligible to serve on the board due to the school district's employment of his father and sister and while he has not yet taken the oath of office he should decline to take the oath of office and immediately inform the school board of his intent not to take it. OAG 92-160, 1992 Ky. AG LEXIS 275.

Where school board members who are ineligible to serve on the board due to the employment of a relative by the school system and who refuse to resign, the Office of the Attorney General may instigate ouster proceedings against them. OAG 92-160, 1992 Ky. AG LEXIS 275.

An ineligible school board member who has taken the oath of office is a legal member of the board until he resigns or is ousted by an order of court; such member is considered a de facto officer and discharges his duties under color of title; thus any action taken by the board is legal notwithstanding the vote of the ineligible member. OAG 92-160, 1992 Ky. AG LEXIS 275.

This section expressly prohibits a member of a board of education from remaining on the board after becoming a candidate for any office which is incompatible with the office of school board member, and applies to both county school district boards and to independent schools district boards; therefore, a board member having become a candidate for a city commission while simultaneously serving as a member of that city's independent schools district board of education, was subject to removal. OAG 96-16, 1996 Ky. AG LEXIS 347.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Incompatible offices, Ky. Const., §§ 165, 237; KRS 61.080.

Removal of board members, KRS 156.132 to 156.142.

Removal of officers generally, KRS 415.030 and 415.060.

Annual in-service training of district board members, 702 KAR 1:115.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Young, Who's the Boss?, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 10.

Education Law: Hiring and Termination Issues, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 17.

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.190. Process to fill vacancy.

(1) Any vacancy in any board of education shall be filled by a majority vote of the remaining members of the local board within sixty (60) days after the vacancy occurs. Within thirty (30) days of the vacancy, the local board shall, for two (2) weeks, have solicited applications by posting a notice announcing the vacancy on the district's website and by placing an advertisement in the newspaper of the largest general circulation in the county. An applicant shall file a letter of intent with the local board affirming that the applicant meets the eligibility requirements as established by KRS 160.180 and shall submit with the application a transcript evidencing completion of the twelfth grade or results of a twelfth grade equivalency examination. After the two (2) weeks of advertisement on the district's website and in the newspaper, the local board shall select from the applicants under this subsection to fill the vacancy.

(2) If the local board fails to make an appointment under subsection (1) of this section, then the chief state school officer shall fill the vacancy within sixty (60) days of the failure.

(3) The member chosen under this section shall meet the eligibility requirements as established by KRS 160.180 and shall hold office until his or her successor is elected or appointed, and has qualified.

(4) Any vacancy having an unexpired term of one (1) year or more on August 1 after the vacancy occurs shall be filled for the unexpired term by an election to be held at the next regular election after the vacancy occurs. The elected member shall succeed the member chosen under subsection (1) or (2) of this section to fill the vacancy. Nominating petitions shall be filed with the county clerk not later than the second Tuesday in August preceding the day for holding the regular election for the unexpired term. Declarations of intent to be a write-in candidate shall be filed with the county clerk in accordance with KRS 117.265.

(5)(a) If no candidate files a petition of nomination or declaration of intent to be a write-in candidate to fill an unexpired term on a local board of education under subsection (4) of this section, then a new vacancy shall exist on November 1 and the vacancy shall be filled according to subsection (1) of this section.

(b) If no candidate files a petition of nomination or declaration of intent to be a write-in candidate for a new term on a local board of education opening pursuant to KRS 118.315 and 118.365, then a vacancy shall exist on January 1 and the vacancy shall be filled according to subsection (1) of this section.

History.

4399-30; amend. Acts 1974, ch. 57, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 376, § 2, effective July 13, 1984; 1990, ch. 476, Pt. II, § 70, effective July 13, 1990; 2019 ch. 24, § 1, effective June 27, 2019; 2024 ch. 224, § 28, effective April 27, 2024.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Manner of Filling.
3. —Ninety Day Limitation.
4. Vacancy from Date of Judgment.
5. Abandonment of Office.
6. Redistricting.
7. Temporary Term During Merger.

1. Construction.

This section and KRS 156.070 and 156.210 must be construed together and mean that the state board should have control over the common schools, with the power of removal of such board members who might be found guilty of specified charges. Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

2. Manner of Filling.

State Board of Education had power to fill vacancies caused by judgments declaring two (2) members of school board to be usurpers, where remaining members did not fill vacancies within 90-day period following entry of judgments. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605, 1939 Ky. LEXIS 723 (Ky. 1939) (Decision prior to 1990 amendment).

3. —Ninety Day Limitation.

This section makes no distinction between vacancies whether from death, resignation or other cause, and in every case the board's power to fill the vacancy is limited to the period of 90 days after the vacancy occurs. Kash v. Day, 239 S.W.2d 959, 1951 Ky. LEXIS 917 (Ky. 1951).

4. Vacancy from Date of Judgment.

Where two (2) members of school board were adjudged to be usurpers in quo warranto proceeding in Circuit Court, judgment was effective as of its date, notwithstanding appeal and execution of supersedeas bond, and where judgment was affirmed on appeal, their offices were vacant from the date of the original judgment, rather than the date the mandate was filed or judgment entered according to the mandate. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605, 1939 Ky. LEXIS 723 (Ky. 1939).

5. Abandonment of Office.

A vacancy may be created by abandonment of the office, and one who has done so is thereafter estopped from denying the vacancy. Horn v. Wells, 253 Ky. 494, 69 S.W.2d 1011, 1934 Ky. LEXIS 695 (Ky. 1934).

6. Redistricting.

A school board member, sitting as a de facto officer, who casts a deciding vote in favor of a redistricting plan which moves his precinct from one district to another may run for the school board seat in his new district. Burkhart v. Blanton, 635 S.W.2d 328, 1982 Ky. App. LEXIS 222 (Ky. Ct. App. 1982).

7. Temporary Term During Merger.

The merger agreements, which provided that if, for any reason, any appointed member of the merged board could not complete his temporary term, the position was to be filled with an alternate, did not conflict with this section as the agreements merely provided temporary security for all school districts during the critical transition, and authority for the agreements was provided for by the general authority granted by virtue of the merger statute, KRS 160.040. Appeal of

Muhlenberg County Bd. of Education, 714 S.W.2d 168, 1986 Ky. App. LEXIS 1194 (Ky. Ct. App. 1986).

Cited in:

Saylor v. Rockcastle County Board of Education, 286 Ky. 63, 149 S.W.2d 770, 1941 Ky. LEXIS 216 (Ky. 1941); Choate v. Commonwealth, 347 S.W.2d 81, 1961 Ky. LEXIS 347 (Ky. 1961).

OPINIONS OF ATTORNEY GENERAL.

Where five months after taking office school board members had not yet taken the statutory oath, the state board of education was required to fill the resulting vacancies pursuant to this section. OAG 61-485. (Decision prior to 1990 amendment).

Vacancies on school boards are not filled by election for the unexpired terms as is the case with respect to all other vacancies in elective offices. OAG 72-796.

Where a member of the board of education resigned in July 1975, and the board appointed another person to fill the vacancy which expired in January, 1977, since the unexpired term exceeds one year as of the November election, the newly appointed board member will only serve until his successor was elected in the November 1975 election to finish the unexpired term. OAG 75-540.

In view of KRS 63.010 and this section, the resignation of a board member is not effective, and there is no vacancy on the board, until the resignation is tendered in writing to and accepted by the board. OAG 75-635.

A vacancy occurring on a county board of education on September 30 could not be filled at the November election for that year but would have to be filled in the general election the following year. OAG 77-649, 1977 Ky. AG LEXIS 131.

Where a school board member, whose term was not to expire until December, 1982, resigned in August, 1980, the board will appoint someone to fill the vacancy until November, 1980, at which time someone will be elected to fill out the unexpired term to serve until December, 1982; where two natural four year vacancies on the board will also be filled at the November, 1980 general election, the candidates interested in running for the unexpired term should specify on the petition form that they are running for the unexpired term as this office is required to be listed as such on the ballot and separately from the offices to be filled for regular four year terms; in the event that no candidates file to fill the unexpired term, the county clerk is nevertheless required to place the office on the ballot for the unexpired term for "write-in" purposes since this section requires that the vacancy be filled which is not predicated on the filing of candidates for the vacancy. OAG 80-414, 1980 Ky. AG LEXIS 230.

Where a county board of education member resigned on March 2 after filing as a candidate for sheriff, lost the primary election for sheriff on May 26 and was reappointed to the board by the other board members on June 2, his reappointment was invalid, since the legal vacancy occurred when the member became a candidate for an incompatible office under subsection (2) of KRS 160.180, and because the board of education did not fill the vacancy within 90 days of the vacancy, as required by this section, the State Board of Education must fill the vacancy, because the power to fill the vacancy passes from the local to the State Board after the 90 days have elapsed, but the State Board's 30-day period to take action does not begin until it has received notice that the 90 days have passed. OAG 81-316, 1981 Ky. AG LEXIS 136.

Subsection (2) of this section applies to all district school board appointments whether under subsection (1) of this section or under KRS 160.210(1)(b), and it requires an election for the remainder of the term if one year or more of the term remains to be served; therefore, a district school board member appointed pursuant to KRS 160.210(1)(b) serves only until the next (November) regular election unless less than one year remains to be served at the time the position becomes vacant. OAG 90-135, 1990 Ky. AG LEXIS 153.

The legislature's intent is clear that appointees to a local board of education may serve no longer than one year until the next November election; to conclude that a person appointed at the beginning of the four year term under KRS 160.210(1)(b) could serve the entire four year term but a person appointed to complete a term in which less than four years but more than one year remains could only serve until the next November election would lead to an absurd result. OAG 90-135, 1990 Ky. AG LEXIS 153.

A school board member who took the oath of office in January, 1991 and who has an aunt who is a blood relative working as a classified employee for the school system is ineligible to serve as a board member due to his aunt's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160, 1992 Ky. AG LEXIS 275.

A school board member who was re-elected in November 1992 whose spouse is currently working for the school system and was hired after he became a board member is ineligible to serve as a board member due to his wife's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160, 1992 Ky. AG LEXIS 275.

A prospective school board member who was elected in November 1992 and has a father and a sister who are currently working as classified employees for the school system is ineligible to serve on the board due to the school district's employment of his father and sister and while he has not yet taken the oath of office he should decline to take the oath of office and immediately inform the school board of his intent not to take the oath. OAG 92-160, 1992 Ky. AG LEXIS 275.

A write in candidate may only run for a school board seat in which there is a validly filed and qualified candidate on the ballot. OAG 03-001, 2003 Ky. AG LEXIS 3.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Resignations, removals and vacancies, KRS Ch. 63.

Kentucky Bench & Bar.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

160.200. Time of election of board members.

(1) All elections for members of boards of education shall be in even numbered years, for a term of four (4) years. Except as provided in subsection (3) of this section, the elections shall be held at the regular November election.

(2) In each even numbered year, there shall be held an election in every county and independent district to fill the membership of the boards of education for the terms that will expire on the first Monday in January following, and the regularly elected members shall hold office for four (4) years and until their successors are elected and have qualified.

(3) Any independent school district embracing a designated city may, at the discretion of its board of education, hold its election of board members at its public school building on the first Saturday in May. The election shall be held by three (3) officers appointed by the board of education and the expenses of the election

shall be paid from the treasury of the school district. In all other respects the provisions of this chapter relating to holding elections for board members shall apply.

(4) As used in this section, "designated city" means a city classified as a city of the fifth class as of January 1, 2014, under the city classification system in effect prior to January 1, 2015. The Department of Education shall, on or before January 1, 2015, create an official registry listing the cities that qualify as a "designated city" under this section and shall publish that registry on its website.

History.

1982, ch. 59, § 2, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 228, effective July 13, 1990; 2014, ch. 92, § 224, effective January 1, 2015; 2026 ch. 154, § 6, effective April 14, 2026; 4399-24, 4399-27; amend. Acts 1974, ch. 224, § 3; 2026 ch. 154, § 6, effective April 14, 2026.

NOTES TO DECISIONS

Analysis

1. Time of Election.
2. —Designation of Election Day.
3. —Notice.
4. Local Option Election.
5. Election Contest.

1. Time of Election.

A member of the county board of education is a state officer rather than a local officer and where term would not end at next succeeding annual election vacancy should be filled by election for the remainder of the term at November election along with members for the United States House of Representatives. Ward v. Siler, 272 Ky. 424, 114 S.W.2d 516, 1938 Ky. LEXIS 139 (Ky. 1938).

2. —Designation of Election Day.

When a board designates the first Saturday in May as the regular election day, it remains so until changed. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053, 1937 Ky. LEXIS 242 (Ky. 1937).

3. —Notice.

The May elections are regular and general political elections, and no notice thereof is required. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053, 1937 Ky. LEXIS 242 (Ky. 1937).

4. Local Option Election.

A local option election cannot be held within 30 days of a school board election held in May. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053, 1937 Ky. LEXIS 242 (Ky. 1937).

5. Election Contest.

Appointment of county school superintendent prior to time when vacancy would occur, by board of which three members whose terms had expired purported to act for three duly elected and qualified members pending determination of election contest which was decided prior to occurrence of vacancy, was void. Maynard v. Gilbert, 283 Ky. 227, 140 S.W.2d 1064, 1940 Ky. LEXIS 320 (Ky. 1940).

Cited in:

Spurlock v. Spradlin, 266 Ky. 164, 98 S.W.2d 480, 1936 Ky. LEXIS 627 (Ky. 1936); Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946); Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52, 1949 Ky. LEXIS 826 (Ky. 1949); Cawood v. Hensley, 247 S.W.2d 27, 1952 Ky. LEXIS 661 (Ky. 1952); Adams v. Commonwealth, 268 S.W.2d 930, 1954 Ky. LEXIS 931 (Ky. 1954); Commonwealth ex rel. Buckman v. Miller, 272 S.W.2d 468, 1954 Ky. LEXIS 1109 (Ky. 1954); Commonwealth by Breckinridge v. Woods, 342 S.W.2d 534, 1961 Ky. LEXIS 391 (Ky. 1961); Board of Education v. Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

OPINIONS OF ATTORNEY GENERAL.

Under subsection (2) of this section, if an apparently successful candidate for school board is restrained or enjoined by a court from taking office pending the outcome of an election contest, the incumbent member of the board will hold over until the controversy is resolved and since the incumbent is continuing his term and not commencing a new term, he need not take the oath of office. OAG 60-1265.

Under subsection (2) of this section an incumbent board member continues to serve until the new member is qualified or until a vacancy is declared to exist. OAG 60-1266.

It is permissible for a successful candidate for the school board to take the statutory oath of office at a school board meeting to be held the second Monday in January. OAG 65-4.

No recall of local school board members is provided for in this chapter. OAG 75-118.

Where, after a merger of school boards during the transitional period due to the procedure for election of members to the new school board provided for in subsection (3) of KRS 160.210, some divisions of the county would not be represented by any board member, the board should, by lot, determine a member to represent these unrepresented divisions until the election for the initial four year term is held for representatives from these sections. OAG 77-35, 1977 Ky. AG LEXIS 747.

160.210. Election of board members — Divisions in districts — Change in boundary lines of divisions — Boards in large school districts.

(1) In independent school districts, the members of the school board shall be elected from the district at large. In county school districts, members shall be elected from divisions.

(2) The board of education of each county school district shall divide its district into five (5) divisions containing integral voting precincts and as equal in population insofar as is practicable. In dividing the county district into divisions the board shall, if more than one (1) of its members reside in one (1) division, determine by lot which member from that division shall represent that division, and which members shall represent the divisions in which no member resides. The members so determined to represent divisions in which no member resides shall be considered the members from those divisions until their terms expire, and thereafter the members from those divisions shall be nominated and elected as provided in KRS 160.200 and 160.220 to 160.250.

(3) Any changes made in division boundary lines shall be to make divisions as equal in population and containing integral voting precincts insofar as is practical. No change may be made in division boundary lines less than five (5) years after the last change in any division lines, except in case of merger of districts, a change in territory due to annexation, or to allow compliance with KRS 117.055(2).

(4)(a) Notwithstanding the provisions of subsection (3) of this section, if one hundred (100) residents of a county school district division petition the Kentucky

Board of Education stating that the school district divisions are not divided as nearly equal in population as can reasonably be expected, the chief state school officer shall cause an investigation to determine the validity of the petition, the investigation to be completed within thirty (30) days after receipt of the petition.

(b) If the investigation reveals the school district to be unequally divided according to population, the Kentucky Board of Education, upon the recommendation of the chief state school officer, shall order the local board of education to make changes in school district divisions as are necessary to equalize population within the five (5) school divisions.

(c) If any board fails to comply with the order of the Kentucky Board of Education within thirty (30) days or prior to August 1 in any year in which any members of the board are to be elected, members shall be elected from the district at large until the order of the Kentucky Board of Education has been complied with.

(d) No change shall be made in the boundary of any division under the provisions of this subsection after June 1 in the year in which a member of the school board is to be elected from any division.

(5) Notwithstanding the provisions of subsection (2) of this section:

(a) In large school districts, there shall be five (5) divisions as equal in population as is practicable, with members elected from divisions. To be eligible to be elected from a division, a candidate shall reside in that division. The county school district divisions for Jefferson County, Kentucky, shall be as provided in KRS 160.211; and

(b) The terms of the members, KRS 160.044 notwithstanding, shall be four (4) years.

(6) Responsibility for the establishment and the changing of school board division boundaries of large school districts shall be with the county board of education, subject to the review and approval of the county board of elections. Where division and census tract boundaries do not coincide with existing election precinct boundaries, school board divisions shall be redrawn to comply with precinct boundaries. In no instance shall precinct boundaries be redrawn nor shall a precinct be divided to accommodate the drawing of school board division lines. All changes under this section shall be completed on or before January 1 in any year in which a member of the board is to be elected from any division. A record of all changes in division lines shall be kept in the offices of the county board of education and the county board of elections. The board of education shall publish all changes pursuant to KRS Chapter 424. A copy of the newspaper in which the notice is published shall be filed with the chief state school officer within ten (10) days following its publication.

History.

4399-24; amend. Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 6; 1966, ch. 239, § 146; 1968, ch. 48; 1974, ch. 224, § 4; 1978, ch. 155, § 82, effective June 17, 1978; 1978, ch. 380, § 1, effective June 17, 1978; 1982, ch. 59, § 3, effective July 15, 1982; 1982, ch. 227, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 69, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 243, § 13, effective April 1, 1998; 2004, ch. 148, § 1, effective July 13, 2004; 2018 ch. 105, § 4, effective April 4, 2018; 2019 ch. 24, § 2, effective June 27, 2019; 2026 ch. 175, § 20, effective April 14, 2026; 2026 ch. 154, § 8, effective April 14, 2026.

Legislative Research Commission Notes.

(4/14/2026). This statute was amended by 2026 Ky. Acts chs. 154 and 175, which do not appear to be in conflict and have been codified together.

(4/4/2018). The amendments made to this statute in 2018 Ky. Acts ch. 105, sec. 4 are effective April 4, 2018. SB 101 (Ch. 105) was delivered to the Governor on March 22, 2018. The 10-day, not counting Sundays, veto period began on the next day, March 23, and ended at midnight on April 3, 2018. The Governor returned that bill to the Secretary of State on April 2 without signing it. Therefore, since the Governor could have retrieved it and signed it or vetoed it prior to the end of April 3, the bill would not take effect until the first moment of April 4, 2018 following the expiration of the 10-day veto period.

NOTES TO DECISIONS

Analysis

1. Divisions or Consolidation of Schools.
2. "Reside" Defined.
3. Contiguous Territory.
4. Elections from Districts.

1. Divisions or Consolidation of Schools.

Where there has been a merger of an independent school district with the county district, the county board should redivide its territory to take care of the increased constituency. Stuff v. Webster County Board of Education, 339 S.W.2d 189, 1960 Ky. LEXIS 443 (Ky. 1960).

The statutory power under this section is vested in the board of education and not in the Circuit Court and the court did not have the power to require the board to redivide its district within the five-year period after the board had adopted an order changing its division boundaries following a merger of an independent school district with the county district. Stuff v. Webster County Board of Education, 339 S.W.2d 189, 1960 Ky. LEXIS 443 (Ky. 1960).

Consolidation of schools by county board of education could not be collaterally attacked on basis that the five divisions of the county educational district from which members were elected did not comply with the provisions of this section that they be nearly equal in population and contain integral voting precincts. Stuff v. Webster County Board of Education, 339 S.W.2d 189, 1960 Ky. LEXIS 443 (Ky. 1960).

Creation of seven election districts by reference to census tracts to be used only upon the merger of the school district of a first-class city with the county school district for election of board members does not violate Const., § 59 since election districts laid out by the board of education would likely give less representation to various minority groups than the census tract districts. Board of Education v. Board of Education, 522 S.W.2d 854, 1975 Ky. LEXIS 143 (Ky. 1975).

A school board member, sitting as a de facto officer, who casts a deciding vote in favor of a redistricting plan which moves his precinct from one district to another may run for the school board seat in his new district. Burkhart v. Blanton, 635 S.W.2d 328, 1982 Ky. App. LEXIS 222 (Ky. Ct. App. 1982).

2. "Reside" Defined.

To reside means to "live, dwell, abide, sojourn, stay, remain, lodge" and an individual who had physically resided for three years outside division of school district without other than a "floating" intention to return to his former residential area was not temporarily absent from the district and since he had

lost his legal voter status in the district he was not qualified to serve the district as a member of the county board of education and his name should be removed from the ballot. Moore v. Tiller, 409 S.W.2d 813, 1966 Ky. LEXIS 74 (Ky. 1966).

3. Contiguous Territory.

It was not competent for county school district, under subsection (2) of this section, to divide county school district into election districts which were not composed of contiguous territory. Marshall v. White, 287 Ky. 290, 152 S.W.2d 945, 1941 Ky. LEXIS 531 (Ky. 1941).

4. Elections from Districts.

In merger situations, this section mandates that elections of school board members shall be from districts, not the county-at-large. Appeal of Muhlenberg County Bd. of Education, 714 S.W.2d 168, 1986 Ky. App. LEXIS 1194 (Ky. Ct. App. 1986).

Cited in:

Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777, 1946 Ky. LEXIS 948, 1946 Ky. LEXIS 949 (Ky. 1946); Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

OPINIONS OF ATTORNEY GENERAL.

The statute simply requires that the school division boundaries be changed to coincide with the precinct lines when such is possible under the terms of this section. OAG 62-242.

The attempt of a board of education to redistrict the school boundary lines on January 6 of the year in which school board members were to be elected was invalid and of no effect. OAG 64-166.

If creating an unrepresented division is unavoidable in order to substantially comply with the statutory requirement regarding population, such change would be legal and the provisions of subsection (2) should be utilized. OAG 65-775.

There is nothing illegal where due to consolidation the election precinct boundaries are bisected by the school division boundary lines and the magisterial boundary lines, because they are controlled by separate statutes. OAG 68-141.

If a redivision of a school district made pursuant to subsection (4) of this section results in a division in which two members of the board reside and a division in which no member of the board resides, the provisions of subsection (2) of this section should be utilized and the board should determine by lot which of the two members residing in the same division shall represent the division in which no member resides. OAG 68-393.

The boundary lines of the divisions of the county school districts are finally determined by the local board of education so as to equalize population within the five school divisions. OAG 69-403.

The divisions of a school district for the purpose of electing members to the board of education should be made on the basis of population and the number of registered voters in the respective divisions has no bearing on the matter. OAG 73-862.

Where an attempt by a school district to comply with this statute leaves intact existing voting precinct boundaries but results in a disparity of 15 to 20 percent in population between the districts, the board of education has considerable latitude in trying to equalize population, and the voting precincts will not be disturbed unless the population is so unequal as to offend fourteenth amendment rights. OAG 74-17.

Where after merger of two school districts the boards of education of the districts divided the county into five divisions which did not contain strict integral voting precincts, but were divided by school district boundary lines, board of elections had no jurisdiction to require boards of education to redraw district lines so as not to split precinct boundary lines. OAG 74-197.

A person seeking election to a county school district board must live and reside in the division of the school district from which he seeks election. OAG 76-121.

It is the sole duty and obligation of the school board, pursuant to this section, to alter school division boundary lines as provided therein. OAG 76-367; OAG 76-417.

Where, after a merger of school boards during the transitional period due to the procedure for election of members to the new school board provided for in subsection (3) of this section, some divisions of the county would not be represented by any board member, the board should, by lot, determine a member to represent these unrepresented divisions until the election for the initial four year term is held for representatives from these sections. OAG 77-35, 1977 Ky. AG LEXIS 747.

Initial four-year terms to the new seven member board positions of the Board of Education of Jefferson County not an election of a successor to those going off the Board, is what is called for in subsection (3) of this section. OAG 77-35, 1977 Ky. AG LEXIS 747.

A local board of education may designate attendance areas and draw boundary lines under its general authority provided by KRS 160.290 and nothing in this section prevents this being done in an election year. OAG 78-366, 1978 Ky. AG LEXIS 371.

Subdivision (1)(b) of this section necessarily precludes write-in votes when no candidate has filed a nominating petition for that school board position within the statutory deadline, since no election is held in that event. OAG 90-105, 1990 Ky. AG LEXIS 93.

Write-in votes are authorized in a county school board division election only if at least one valid nominating petition has been filed for the school board position in that particular geographic division; otherwise, KRS Chapter 160 does not require an election in that particular division, and write-in votes for the school board position in that particular division are not authorized since subdivision (1)(b) of this section directs the "chief state school officer" to appoint the school board member representing that particular division. OAG 90-105, 1990 Ky. AG LEXIS 93.

KRS 160.190(2) applies to all district school board appointments whether under KRS 160.190(1) or under subdivision (1)(b) of this section and requires an election for the remainder of the term if one year or more of the term remains to be served; therefore, a district school board member appointed pursuant to subdivision (1)(b) of this section serves only until the next (November) regular election unless less than one year remains to be served at the time the position becomes vacant. OAG 90-135, 1990 Ky. AG LEXIS 153.

The legislature's intent is clear that appointees to a local board of education may serve no longer than one year until the next November election; to conclude that a person appointed at the beginning of the four year term under subdivision (1)(b) of this section could serve the entire four year term but a person appointed to complete a term in which less than four years but more than one year remains could only serve until the next November election would lead to an absurd result. OAG 90-135, 1990 Ky. AG LEXIS 153.

In the event of an annexation or merger, the school board may redraw the division lines through existing county voting precincts where it is impracticable to maintain voting precincts; however, splitting a precinct is a last resort to be used only when equalization cannot be obtained in any other way. OAG 93-6, 1993 Ky. AG LEXIS 327.

Subsection (3) of this section does not set a specific time frame that a school board must follow when drawing the redistricting lines; however, the school board should vote on a redistricting plan as expeditiously as possible. The restriction in subdivision (4)(d) of this section forbidding redrawing division lines after August 1 in a board election year would not

apply in a redistricting resulting from an annexation or merger; the August 1 redistricting deadline would only apply when residents file a petition to redistrict with the State Board for Elementary and Secondary Education pursuant to subsection (4) of this section. OAG 93-6, 1993 Ky. AG LEXIS 327.

Subsection (6) of this section applies only to counties containing cities of the first class since this subsection may conflict with the redistricting requirements that apply to other counties. OAG 93-6, 1993 Ky. AG LEXIS 327.

Under subsection (3) of this section, a county board of education was required to redraw the divisions where the boundary lines of the county board of education decreased by 1,000 acres of property and caused unequal division of population in the school district. OAG 93-6, 1993 Ky. AG LEXIS 327.

A write in candidate may only run for a school board seat in which there is a validly filed and qualified candidate on the ballot. OAG 03-001, 2003 Ky. AG LEXIS 3.

Proposal of the Department of Education to have the Commissioner of Education appoint a school board member when all candidates for that position have withdrawn their petitions of nomination prior to the August filing deadline, but to have an election whenever at least one petition remains on file for that seat at the August deadline, is consistent with the language and intent of subsection (1) of this section. OAG 04-007, 2004 Ky. AG LEXIS 8.

160.211. Divisions for the Jefferson County Board of Education.

(1) The divisions for the Jefferson County Board of Education shall be based upon the precinct identification codes and precinct boundaries maintained by the Jefferson County Clerk's Office as of March 19, 2026. The divisions shall be composed of the following territory in Jefferson County that is part of the Jefferson County School District:

(a) Division One shall consist of the following territory:

G140 G141 G143 G144 G145 G146 G150 G156 G161 G169 G174 G177 G186 G189 G190 G191 G192 G193 J173 J174 K110 K111 K112 K113 K114 K116 K117 K122 K123 K125 K140 K142 K150 K155 K159 K160 K161 K162 K163 K164 K165 K167 K169 K170 K171 K172 K173 K176 K177 K178 K179 L169 L170 L171 L172 L173 L174 L175 L176 L195 L203 L204 L205 L206 L207 L208 L216 L217 L218 L219 L220 M107 M110 M121 M129 M181 M185 M186 M188 M189 M191 M192 M193 M194 M195 M196 M197 M198 M199 M201 M202 M203 N101 N102 N103 N104 N105 N106 N107 N115 N117 N128 N134 N135 N136 N145 N147 N148 N152 N157 N162 N163 N164 N165 N167 N171 N173 N179 O105 O107 O112 O117 O119 O121 O127 O135 O136 O145 O146 O147 O150 O151 O152 O153 O154

(b) Division Two shall consist of the following territory:

C123 C124 C128 C130 C131 C137 C138 D114 D116 D117 D120 D122 D132 D137 D139 D141 D142 D146 D147 D148 D149 D150 D151 D155 D156 D157 D158 D159 D160 D161 D163 D164 D165 D166 D167 E139 E141 E142 E143 E144 E154 E155 E157 E162 E171 E173 E175 E176 E183 E185 E188 E189 G157 G158 G159 G160 G163 G164 G165 G170 G171 G172 G173 G178 G179 G180 G181 G182 G183 G184 G185 G187 G188 G194 G195 G196 H117 H120 H121 H164 K153 L165 L167 L168 L177 L178 L179 L180 L181 L182 L183 L184 L186 L187 L188 L189 L192 L193 L194 L196 L197 L198 L199 L201 L209 L210 L211 L212 L213 L215 M159 M176 M177 M178 M179 M210 M213 N151 N153 N170 N174 N177 N181 Q107 Q137 Q138 Q140 Q142 Q146 Q150 Q151 Q156 Q162 Q163 Q164 Q165 Q166 Q167 Q168 Q169 V101 V106 V133 V134

(c) Division Three shall consist of the following territory:

B153 B158 B159 B161 B172 B183 B191 B192 B193 B198 B199 B201 B202 D152 D153 D154 D168 D169 D171 D172 D173 E145 E181 E190 E191 E192 E193 E194 E195 E196 E197 E198 E199 E201 E202 E203 E204 E205 E206 E207 F106 F145 F151 F152 F153 F158 F163 F164 F167 F169 F170 F171 F172 F176 F179 F180 F184 F188 F189 F190 F191 F192 G175 G176 N130 N178 S116 S118 S125 S126 S128 S129 S130 S139 S140 S143 S144 S153 S160 S161 S165 S166 S167 S168 S169 S170 S171 S172 S173 S174 S175 S176 S177 S178 S179 V104 V105 V107 V108 V109 V110 V111 V112 V113 V114 V116 V118 V120 V121 V123 V125 V126 V127 V129 V130 V131 V136 V137 V138 V139 V140 V141 V142 V143 V144 V145 V146

(d) Division Four shall consist of the following territory:

A146 A147 A148 A149 A150 A151 A154 C101 C102 C103 C104 C105 C106 C108 C109 C110 C111 C113 C115 C126 C129 C134 C152 C153 C154 C155 C156 C157 H123 H124 H125 H126 H130 H154 H155 H163 H165 H166 H167 H168 H171 H176 H177 H178 H180 H181 H182 H185 I169 J105 J108 J111 J113 J117 J119 J120 J140 J163 J165 J166 J168 J169 J170 J171 J172 K118 K119 K131 K134 K135 K137 K141 K143 K151 K152 K154 K156 K157 K158 K166 K168 K174 K175 K180 L166 L185 M123 M124 M131 M168 M180 M182 M183 M184 M211 M212 N154 N155 N156 N158 N160 N161 N166 N168 N169 N172 N175 N176 N180 O109 O111 O113 O124 O126 O130 O131 O138 O148 O149 Q103 Q127 Q148 Q153 Q154 Q155 Q161 Q170

(e) Division Five shall consist of the following territory:

A107 A108 A111 A113 A114 A115 A118 A119 A121 A124 A125 A126 A127 A128 A129 A134 A136 A139 A142 A145 A152 A153 B124 B134 B149 B154 B160 B162 B163 B166 B168 B169 B173 B175 B177 B184 B187 B188 B189 B190 B194 B195 B196 B197 H138 H144 H147 H169 H173 H175 H183 H184 I126 I130 I133 I135 I141 I144 I145 I146 I151 I152 I153 I154 I157 I158 I159 I160 I161 I162 I163 I164 I165 I166 I167 I168 I170 I171 I172 I173 I174 I175 J122 J123 J135 J137 J138 J145 J150 J152 J153 J156 J157 J158 J159 J160 J162 J164 O141 O144 Q109 Q115 Q125 Q132 Q141 Q143 Q144 Q145 Q171 Q172

(2) If any precinct or part of a precinct that is part of Jefferson County School District is not identified in subsection (1) of this section, the county board of elections shall add that territory to a contiguous division. All actions taken by the county board of elections under this subsection shall be to ensure that minimal changes are made that allow the divisions to fall within a five percent (5%) population deviation.

History.

2026 ch. 154, § 9, effective April 14, 2026.

160.212. Election of board members where school district extends beyond a single county's boundary.

(1) In a school district where the district boundary extends beyond the boundary of a single county, candidates for election to the school board shall be elected from the district at large. Nomination papers shall be filed with and certified by the clerk of the county in which the candidate resides in accordance with the provisions of KRS 118.165.

(2)(a) The clerk of the county in which a certified candidate resides shall provide the name of the certified candidate to the clerk in each county in which the school district boundary extends.

(b) The name of the certified candidate shall appear on the ballot in all counties in which the school district boundary extends.

(3) Each clerk shall certify the vote totals for every candidate receiving votes to the clerk of the other counties into which the boundary of the school district extends, and a certificate of election shall be issued in accordance with KRS 118.425.

History.
2016 ch. 62, § 5, effective July 15, 2016.

160.220. Secret votes — Nominating petitions.

All elections for members of boards of education shall be by secret vote. The county clerk shall cause to be prepared for presentation to the voters the names of legally eligible candidates who have filed a petition as provided in KRS 118.315.

History.
4399-25; Acts 1964, ch. 83, § 1; 1966, ch. 255, § 151; 1972, ch. 188, § 65, effective December 1, 1972; 1978, ch. 384, §§ 46, 568, effective June 17, 1978; 1982, ch. 360, § 45, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 426, effective July 13, 1990.

Compiler's Notes.
This section (4399-25; amend. Acts 1964, ch. 83, § 1; 1966, ch. 255, § 151; 1972, ch. 188, § 65, effective December 1, 1972; 1978, ch. 384, §§ 46, 568, effective June 17, 1978; 1982, ch. 360, § 45, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 426, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Ballot.
2. Name on Ballot.
3. Candidate Entitled to Office.
4. Contest of Election.

1. Ballot.
Elections not conducted by secret ballot are illegal and will be set aside. Bowles v. Knight, 257 Ky. 640, 78 S.W.2d 913, 1935 Ky. LEXIS 68 (Ky. 1935).

2. Name on Ballot.
Where court had decided name of candidate for member of county board of education was not properly on the ballot at the November election, therefore he was not elected a member and there was vacancy in the office, appeal from determination in quo warranto as to whether he was qualified was a moot question and was dismissed. Commonwealth ex rel. Meredith v. Bogie, 287 Ky. 103, 152 S.W.2d 286, 1941 Ky. LEXIS 504 (Ky. 1941).

Where, through mistake of printer, ballots for election of school board members in one educational division erroneously carried names of candidates from another division, neither election officers nor voters had right to strike out printed names and substitute written names of proper candidates, and all such ballots were void. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454, 1943 Ky. LEXIS 509 (Ky. 1943).

Where ballots furnished to some of precincts in one educational division, in school board election, were void because they erroneously carried names of candidates from another division, and total number of registered voters in such precincts was more than 20 percent of the total for the educational division, the entire election was void although the votes actually cast in such precincts did not change the result of the election. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454, 1943 Ky. LEXIS 509 (Ky. 1943). See Hillard v. Lakes, 294 Ky. 659, 172 S.W.2d 456, 1943 Ky. LEXIS 510 (Ky. 1943).

3. Candidate Entitled to Office.
The candidate for an office who has not received a plurality of the legal votes cast is not entitled to the office although the candidate who received a plurality of the legal votes is, for any reason, ineligible except where a successful candidate has violated the corrupt practice act in a primary election. Bogie v. Hill, 286 Ky. 732, 151 S.W.2d 765, 1941 Ky. LEXIS 323 (Ky. 1941).

4. Contest of Election.
Failure to sue to enjoin placing of opponent's name on ballot does not prevent candidate from thereafter contesting his opponent's election on that ground. Bogie v. Hill, 286 Ky. 732, 151 S.W.2d 765, 1941 Ky. LEXIS 323 (Ky. 1941).

A candidate for office duly nominated in the manner prescribed may maintain an action to have the election vacated. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454, 1943 Ky. LEXIS 509 (Ky. 1943).

160.230. Presentation of candidate names.

The candidate names shall be presented to the voters in the form prescribed by the general election law, except that no party emblem or distinguishing mark shall be used, save the words "School Candidates." The order in which the names of the candidates are to appear shall be determined by lot. As many additional spaces shall be left blank as there are members to be elected from the district or division as the case may be.

History.
4399-25; Acts 1962, ch. 88, § 3; 1982, ch. 360, § 46, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 427, effective July 13, 1990.

Compiler's Notes.
This section (4399-25; amend. Acts 1962, ch. 88, § 3; 1982, ch. 360, § 46, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 471, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Voting Machine Act.
2. Right to Have Name on Ballot.
3. Erroneous Listing of Candidates.

1. Voting Machine Act.
Provisions of this section in conflict with the Voting Machine Act (repealed) are repealed by the act wherever voting ma-

chines are used in elections for members of the board of education. Grauman v. Jefferson County Fiscal Court, 294 Ky. 149, 171 S.W.2d 36, 1943 Ky. LEXIS 402 (Ky. 1943).

2. Right to Have Name on Ballot.

The right of a candidate to have his name printed on the ballot is a valuable right not to be lightly disregarded. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454, 1943 Ky. LEXIS 509 (Ky. 1943).

3. Erroneous Listing of Candidates.

Where, through mistake of printer, ballots for election of school board members in one educational division erroneously carried names of candidates from another division, neither election officers nor voters had right to strike out printed names and substitute written names of proper candidates, and all such ballots were void. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454, 1943 Ky. LEXIS 509 (Ky. 1943).

Where ballots furnished to some of precincts in one educational division, in school board election, were void because they erroneously carried names of candidates from another division, and total number of registered voters in such precincts was more than 20 percent of the total for the educational division, the entire election was void although the votes actually cast in such precincts did not change the result of the election. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454, 1943 Ky. LEXIS 509 (Ky. 1943); Hillard v. Lakes, 294 Ky. 659, 172 S.W.2d 456, 1943 Ky. LEXIS 510 (Ky. 1943).

Cited in:

Grauman v. Jefferson County Fiscal Court, 294 Ky. 149, 171 S.W.2d 36, 1943 Ky. LEXIS 402 (Ky. 1943); Adams v. Commonwealth, 268 S.W.2d 930, 1954 Ky. LEXIS 931 (Ky. 1954); Commonwealth ex rel. Buckman v. Miller, 272 S.W.2d 468, 1954 Ky. LEXIS 1109 (Ky. 1954); Roberts v. Byrd, 344 S.W.2d 378, 1961 Ky. LEXIS 220 (Ky. 1961).

OPINIONS OF ATTORNEY GENERAL.

The provisions of this section which prohibit placing party emblems or distinguishing marks on school ballots qualify and supersede the provisions of KRS 118.080 (repealed) that require candidates to designate a party and device by which they are to be designated on the ballot and school candidates are not permitted to make such designations. OAG 64-666.

School elections are nonpartisan in the sense that the candidates are under what is designated as a school ballot without any party emblem or party designation and as a consequence would appear to fall within the exception to the Hatch Act. OAG 68-476.

Since school board candidates nominated by petition under KRS 118.315 may not, under this section, be represented by any political organization, the petitioners of such candidates may not fill vacancies occurring after the deadline for filing in the manner prescribed in KRS 118.325. OAG 75-612.

If at least one valid nominating petition is filed for election to an independent school board, an election must be held, and write-in votes may be made for all five school board positions. OAG 90-105, 1990 Ky. AG LEXIS 93.

160.240. General election laws apply.

The general election laws shall apply to all elections of school board members.

History.

Acts 1978, ch. 30, § 1, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 428, effective July 13, 1990; 2014, ch. 92, § 225, effective January 1, 2015; 4399-25; 2026 ch. 154, § 11, effective April 14, 2026.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Residence of Voter.

1. Construction.

The general election laws apply in school elections only in those instances where the school law is silent, and do not apply when the school law contains specific provisions concerning the same subject matter. Huff v. Black, 259 Ky. 550, 82 S.W.2d 473, 1935 Ky. LEXIS 326 (Ky. 1935) (decided under prior law).

2. Residence of Voter.

In order to cast a legal vote, one must have lived in the state and county for the time required by Ky. Const., § 145, and must also have lived in the school district or voting precinct for 60 days before the election. Branham v. Branham, 276 Ky. 767, 125 S.W.2d 225, 1939 Ky. LEXIS 577 (Ky. 1939) (decided under prior law).

Voter who left the district, married a nonresident, left him without getting a divorce, and returned to the district less than six months before election, was not eligible to vote in the district. Branham v. Branham, 276 Ky. 767, 125 S.W.2d 225, 1939 Ky. LEXIS 577 (Ky. 1939) (decided under prior law).

Voter who owned realty and a few household goods and kept a garden in a district, but worked and spent most of her time in another district, was not entitled to vote in the first district. Branham v. Branham, 276 Ky. 767, 125 S.W.2d 225, 1939 Ky. LEXIS 577 (Ky. 1939) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

KRS 160.210(1)(b) necessarily precludes write-in votes when no candidate has filed a nominating petition for that school board position within the statutory deadline since no election is held in that event. OAG 90-105, 1990 Ky. AG LEXIS 93.

Write-in votes are permitted if at least one candidate has filed a valid nominating petition for that school board position. OAG 90-105, 1990 Ky. AG LEXIS 93.

A write in candidate may only run for a school board seat in which there is a validly filed and qualified candidate on the ballot. OAG 03-001, 2003 Ky. AG LEXIS 3.

160.250. Politics of candidate not to be indicated — Definition of election booth.

(1) No election officer or other person within an election booth shall tell or indicate to a voter the political affiliation of any candidate.

(2) An election booth means an area in which a voter casts his vote which is designed in such a manner that the secrecy of the vote is insured.

History.

4399-25; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 429, effective July 13, 1990.

Compiler's Notes.

This section (4399-25) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 429, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Adams v. Commonwealth, 268 S.W.2d 930, 1954 Ky. LEXIS 931 (Ky. 1954).

160.260. Number of candidates to be voted for.

(1) The voting in county districts shall be by divisions. Each voter shall vote for only one (1) candidate. The legally eligible candidate receiving the highest number of votes cast in his division shall be declared elected.

(2) In independent school districts each voter may vote for as many candidates as there are members to be elected, and the number of board members to be elected shall be indicated. The candidates, in number equal to the number of members to be chosen, who have the highest number of votes shall be declared elected.

History.

4399-25; Acts 1982, ch. 360, § 47, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 614, effective July 13, 1990.

Compiler's Notes.

This section (4399-25; amend. Acts 1982, ch. 360, § 47, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 614, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Marshall v. White, 287 Ky. 290, 152 S.W.2d 945, 1941 Ky. LEXIS 531 (Ky. 1941).

OPINIONS OF ATTORNEY GENERAL.

If at least one valid nominating petition is filed for election to an independent school board, an election must be held, and write-in votes may be made for all five school board positions. OAG 90-105, 1990 Ky. AG LEXIS 93.

160.270. Regular and special meetings — Public comment period.

(1) Each board of education shall hold at least one (1) regular meeting each month, at a time and place fixed by the board. Special meetings may be called by the chairman. On request of three (3) members of the board, the secretary shall call a special meeting. Each member of the board shall have timely notice of each meeting and the nature, object, and purpose for which it is called. Any board member failing to attend three (3) consecutive regular meetings, unless excused by the board for reason satisfactory to it, shall be removed from office pursuant to KRS 415.050 and 415.060. A majority of the board shall constitute a quorum for the transaction of business, but a concurring vote by a majority of the board, the number of board members in the quorum notwithstanding, shall be necessary to take any particular action unless otherwise specified by statute.

(2) Each regular meeting shall include a public comment period of at least fifteen (15) minutes. Any board rules and policies regarding conduct during school board meetings shall apply during the public comment period.

(3) The secretary shall be present at the meetings of the board, except when his or her own tenure, salary, or the administration of his or her office is under consideration, and shall record in a book provided for that purpose all its official proceedings, which shall be a public record open to inspection.

History.

4399-20, 4399-29; Acts 1978, ch. 23, § 1, effective June 17, 1978; 1982, ch. 910, § 1, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 430, effective July 13, 1990; 2022 ch. 92, § 1, effective July 14, 2022.

Compiler's Notes.

This section (4399-20, 4399-29; amend. Acts 1978, ch. 23, § 1, effective June 17, 1978; 1982, ch. 910, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 430, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Regular Place of Meeting.
2. Called Meeting.
3. Notice.
4. Unexcused Absence.
5. Removal Proceedings.
6. Changed Meeting Date.
7. Open Meeting.

1. Regular Place of Meeting.

In the absence of a formal designation of a regular place of meeting, such a regular place will be deemed established by the repeated holding of meetings at a particular place. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010, 1936 Ky. LEXIS 340 (Ky. 1936).

Notice of a meeting implies that it will be held at the regular place of meeting. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010, 1936 Ky. LEXIS 340 (Ky. 1936).

When notice of a meeting does not designate the place of meeting, and it is not held at the regular place of meeting, all steps taken at such meeting are invalid. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010, 1936 Ky. LEXIS 340 (Ky. 1936).

2. Called Meeting.

Where a called meeting was a continuation of a previous regular meeting, it was proper for the superintendent to recommend teachers at the called meeting, even though the continuation was for a different purpose. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331, 1942 Ky. LEXIS 345 (Ky. 1942).

3. Notice.

Notices of special meetings need not be written. They may be oral and may be delivered by the secretary. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935).

When members failed to attend special meeting for lack of interest, the fact that notice was delivered only 15 minutes before the meeting is immaterial. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935).

In absence of legal notice to all members of a special meeting, absence of a member renders invalid all steps taken at such meeting. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010, 1936 Ky. LEXIS 340 (Ky. 1936).

Member of school board was entitled to notice of meeting, although at time of meeting he was under injunction prohibiting him from acting as member or exercising any of the duties of his office, but where a second meeting was held, of which he was given notice, and at which the action taken at the former meeting was ratified, the defect was cured. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605, 1939 Ky. LEXIS 723 (Ky. 1939).

Where there has not been legal notice of a special meeting of the school board, the action taken at the special meeting is invalid if one of the members of the board is absent. Board of

Education v. Nevels, 551 S.W.2d 15, 1977 Ky. App. LEXIS 690 (Ky. Ct. App. 1977).

When all the members of the board are present and have an opportunity to participate in all the actions taken at a special meeting, the validity of the action taken at the special meeting is not affected by the form of the notice. Board of Education v. Nevels, 551 S.W.2d 15, 1977 Ky. App. LEXIS 690 (Ky. Ct. App. 1977).

Where the records of the special meeting of the school board did not reflect that any objection was made to the notice of the special meeting or that any objection was made to any action taken at the meeting on the grounds that it was not included within the notice, the action taken at such meeting was not invalidated because of the form of the notice of the meeting. Board of Education v. Nevels, 551 S.W.2d 15, 1977 Ky. App. LEXIS 690 (Ky. Ct. App. 1977).

4. Unexcused Absence.

Unexcused absence for three consecutive regular meetings does not ipso facto vacate a board member's office. The board must take action thereon. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935). See Spurlock v. Spradlin, 266 Ky. 164, 98 S.W.2d 480, 1936 Ky. LEXIS 627 (Ky. 1936).

A change in the date of meeting during the absence of a member without notice to him and without his knowledge is a good excuse for absence. Baisden v. Floyd County Board of Education, 270 Ky. 839, 110 S.W.2d 671, 1937 Ky. LEXIS 153 (Ky. 1937).

This section contemplates that type of inaction revealing an intention to abandon the duties of the office. Commonwealth ex rel. Buckman v. Mason, 284 S.W.2d 825, 1955 Ky. LEXIS 53 (Ky. 1955).

5. Removal Proceedings.

On appeal of removal cases, the court can only consider whether the board acted arbitrarily, unlawfully, without authority, without evidence, or abused its discretion. Baisden v. Floyd County Board of Education, 270 Ky. 839, 110 S.W.2d 671, 1937 Ky. LEXIS 153 (Ky. 1937).

The motives of the board in removal proceedings are not open to inquiry. Baisden v. Floyd County Board of Education, 270 Ky. 839, 110 S.W.2d 671, 1937 Ky. LEXIS 153 (Ky. 1937).

6. Changed Meeting Date.

Where school board changed monthly meeting date in open meeting, where press release had been issued, where newspaper article appeared, and where citizens appeared at the meeting, there was no positive showing that the board had decided any matters regarding closing the school in closed session. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779, 1992 Ky. App. LEXIS 182 (Ky. Ct. App. 1992).

7. Open Meeting.

Action of the school board at a closed meeting could not be ratified at the open public meeting because no vote was taken during an open session and because consensus was not established. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

Vote was not rendered unnecessary at the school board meeting under KRS 61.805 because it was not possible to determine if a consensus or collective decision was made. Webster County Bd. of Educ. v. Newell, 392 S.W.3d 431, 2013 Ky. App. LEXIS 31 (Ky. Ct. App. 2013).

Cited in:

Saylor v. Rockcastle County Board of Education, 286 Ky. 63, 149 S.W.2d 770, 1941 Ky. LEXIS 216 (Ky. 1941); Board of Education v. Cassell, 310 Ky. 274, 220 S.W.2d 552, 1949 Ky. LEXIS 890 (Ky. 1949); Johnson v. King, 349 S.W.2d 845, 1961 Ky. LEXIS 78 (Ky. 1961).

OPINIONS OF ATTORNEY GENERAL.

When a member of a board of education fails to attend three regular meetings and is not excused by the board, a vacancy exists and, since a state office is involved, it is the duty of the Attorney General under KRS 415.050 to institute ouster proceedings. OAG 60-1137.

Unless a member of the board of education resigns upon his being called to active duty in the armed forces his position is suspended and no one can be appointed to fill it in his absence. OAG 61-847.

A member of a board of education does not abandon his office within the meaning of the statute by virtue of his being called for military service. OAG 61-847.

To act effectively in voting on a proposal a majority vote of the quorum present is necessary and an abstention is no longer counted as an acquiescence in order to obtain a majority. OAG 61-945, 62-422.

Neither an interested person nor his representative has the absolute right to take the original records of a district board of education into a private room without the secretary or the secretary's representative being present. OAG 68-291.

Neither the interested person nor his representative has the right to reproduce the records of a district board of education by any photostatic means whatsoever. OAG 68-291.

The right of inspection cannot override the public interest in safe and permanent maintenance of the records. OAG 68-291.

Where the necessary interest is present, the interested person or his representative is entitled to obtain a certified copy of the contract between the board of education and the secretary upon payment of such reasonable fee therefor as may be prescribed by regulation of the district board. OAG 68-291.

A school board may, in its discretion, meet in executive session and may, during such session, take a formal vote, but the matter voted on and the record of the vote taken must be recorded in the minutes. OAG 69-281.

Where five board members were present at a meeting and two (2) voted yes on a motion and three did not vote, the motion did not pass. OAG 69-395, but see OAG 74-545.

Under the common law and the existing statutory law in this state, a school board has the sole discretion as to whether its meetings shall be open to the press and other members of the public. OAG 73-143.

The word "majority" in subsection (1) of this section means a majority of those present and voting; thus, where five board members were present at a meeting, a motion was carried when two (2) members voted yes, one member voted no and two (2) members abstained. OAG 74-545, but see OAG 69-395.

There was no statutory requirement for the president of the school board to provide school board members with an agenda of the matters to be taken up at a regular board meeting and the fact that a tentative agenda was sent to the members omitting any mention that a superintendent was to be appointed does not present any irregularity. OAG 75-488.

In absence of any statutory provision to the contrary, when a regular meeting of the local school board is once duly organized at the time and place appointed, the board possesses the incidental power to adjourn its regular meeting to a future time and such adjournment does not require any agenda to be prepared or for there to exist a special purpose for the adjournment; however, the time to which a meeting is adjourned should be specified and if any board members were not present at the regular meeting, they should be notified of the adjournment date and time; moreover there are no limiting provisions in the statutes as to the number of adjournments a regular meeting can in fact have. OAG 76-450.

There is no statutory requirement that an agenda be prepared for regular meetings of the school board but if an agenda is prepared it is a public record; an agenda is required for a special meeting of the school board and it is also a "public

record"; such agendas are "public records" pursuant to KRS 61.872 and open for inspection by any person during the regular office hours of the public agency. OAG 77-221, 1977 Ky. AG LEXIS 547.

The minutes of a school board meeting may be amended at a subsequent meeting to conform them to the facts, but the minutes may not be changed to reflect a change in position on a question before the board or to show something other than what had actually occurred at the previous meeting. OAG 77-494, 1977 Ky. AG LEXIS 298.

If a motion for a special meeting is made and that motion passes by at least three members of the board, the subject matter of the motion would reflect what the agenda must cover and no other matter may be discussed at the meeting. OAG 77-496, 1977 Ky. AG LEXIS 294.

Where a lawsuit resulted from the action of a majority of a school board in rescinding the contract of the superintendent of schools, the board had implied power to expend school funds for attorney fees and court costs incurred in defending the board's actions. OAG 77-608, 1977 Ky. AG LEXIS 186.

The failure on the part of a board member to attend three successive regular meetings does not by itself create a vacancy in the board; the Attorney General's office must authorize an ouster proceeding. OAG 78-78, 1978 Ky. AG LEXIS 661.

A local board can hire a superintendent or do anything else in a specially called meeting which can be done at a regular meeting. OAG 78-274, 1978 Ky. AG LEXIS 442.

If the superintendent of schools is also the secretary of the board, he or she shall not meet with the board when the superintendent's tenure, salary or the administration of his office is under consideration, for while the two positions of superintendent and secretary may be separable, the body cannot be; in this situation a temporary secretary should be appointed to take the minutes of the board's proceedings. OAG 78-274, 1978 Ky. AG LEXIS 442.

In view of the language in KRS 61.825 (repealed), the "timely notice" requirement of this section is "at least 24 hours prior to the time of such meeting as specified in the notice." OAG 78-274, 1978 Ky. AG LEXIS 442.

The statutory language requiring the secretary of the board of education to call a special meeting and to see that properly detailed timely notice is given is mandatory and the secretary's refusal to act could be the basis for rescission of the secretary's contract; however, the failure to perform the functions of the secretary of the board could not constitute legal cause for removal from office as superintendent when the same person holds the two positions, for the two positions are separable. OAG 78-274, 1978 Ky. AG LEXIS 442.

A majority vote of the board is required to fill a vacancy on the board. OAG 78-819, 1978 Ky. AG LEXIS 22.

Since KRS 61.850 specifically provides that the provisions of KRS 61.805 to 61.850 should not be construed as repealing any other laws relating to meetings, but merely supplements them, and since this section is a piece of specific legislation dealing with school boards, in the event of a conflict between that section and KRS 61.825 (repealed), which requires a request by a majority of the members of a governing body, the provision of subsection (1) of this section allowing only three members to call a meeting should prevail. OAG 79-130, 1979 Ky. AG LEXIS 494.

Two members of a five-member board of education have no authority to act for the board as a body, thus where two board members offered to remove a written reprimand by the board from a high school coach's record in consideration of a resignation by the coach, such an offer was without legal significance. OAG 80-119, 1980 Ky. AG LEXIS 524.

When a closed session of a school board is held as authorized by KRS 61.810, minutes of the closed session should be made, but the board, in its discretion, may require the minutes to be sealed and withheld from public inspection and such minutes will not be part of the regular minutes of the meeting required by subsection (2) of this section. OAG 81-235, 1981 Ky. AG LEXIS 205.

For practical examples of the effect of possible votes with a five-member school board, see OAG 82-374, 1982 Ky. AG LEXIS 260.

The practical effect of the 1982 amendment to this section is that, for a typical five-member school board, three board members must agree in order for an action before the board to pass. OAG 82-374, 1982 Ky. AG LEXIS 260.

Under subsection (1) of this section, board members who abstain will be considered to have acquiesced with the majority of those present and voting. OAG 82-374, 1982 Ky. AG LEXIS 260.

A special meeting of a school board may deal only with matters which are stated in the call of the meeting of which each member of the board receives timely notice unless all of the members are present and unanimously agree to consider an additional subject which was not included in the call. OAG 83-71, 1983 Ky. AG LEXIS 425.

When all the members of the board of education are present, and all the members agree to take up an additional subject, the required advance notice of the subjects to be discussed in the meeting may be waived since the advance notice is for the benefit of the board members, not for the benefit of the news media or the public; the waiver must be by unanimous consent. OAG 83-71, 1983 Ky. AG LEXIS 425.

A school board member abstaining from voting for a board action in which he or she has a conflict of interest, in order to prevent the problematic circumstance caused by consideration of the abstention as a vote acquiescing with the majority, should be absent either from the entire meeting or from the discussion and the vote on the issue in which he or she has the conflict. OAG 88-35, 1988 Ky. AG LEXIS 35.

The rule that abstaining voters are considered as acquiescing with the majority applies in instances where a required affirmative number of votes is not mandated by the controlling statute or ordinance. OAG 88-35, 1988 Ky. AG LEXIS 35.

The language of this section which is applicable to local boards of education and states that a concurring vote by a majority of the board, the number of board members in the quorum notwithstanding, shall be necessary to take any particular action unless otherwise specified by statute does not apply to KRS 161.120, which is applicable to the Education Professional Standards Board. OAG 91-107, 1991 Ky. AG LEXIS 107.

Subsection (1) of this section requires that a majority of the statutory board of education be present to constitute a quorum and that the majority must concur in their vote to take action; therefore, a minimum of three out of five members on a five member board, or four out of seven members on a seven member board, must be present in order to have a quorum present to transact business and when the bare minimum number of board members necessary to transact business are present, all must concur in their vote to take action. OAG 92-77, 1992 Ky. AG LEXIS 84.

While the school board violated the Open Meetings Act by its failure to file a written response to the complaint within the statutorily mandated time frame, its decision to not renew the superintendent's contract was not a violation of the Open Meetings Act as that action was within the agenda of activities set forth in the notice for that special meeting which stated that "The purpose of the meeting will be to discuss renewal/or action of the Superintendent's contract." OAG 97-OMD-43.

County board of education and superintendent of county schools violated the Open Meetings Act, specifically KRS 61.823(4)(a), by their failure to notify in writing all board members at least 24 hours prior to the commencement of those meetings even though the board had complied with the requirements of subsection (1) of this section. 97-OMD-90.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and

Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

160.280. Per diem and expenses for board members — Eligibility for insurance plans.

(1) Members of boards of education shall receive no salaries, but members of boards of education may receive, for each day a regular or special meeting is attended, a per diem of one hundred fifty dollars ($150) and their actual expenses. Members shall receive this same per diem for training required by KRS 160.180. In no case shall the expenses incurred within the district or per diem of any member exceed six thousand dollars ($6,000) in any calendar year.

(2) Members of boards of education may be reimbursed for actual and necessary expenditures incurred outside the district in the performance of their duties authorized by the board.

(3) All claims shall be made out according to law and filed with the secretary of the board and shall be approved and paid as other claims against the board.

(4) Board members shall be eligible to participate in any group medical or dental insurance plan provided to employees of the district pursuant to KRS 161.158. Participating board members shall pay the full cost of any premium required for their participation in the plan.

History.

4399-32; Acts 1954, ch. 220, § 1; 1962, ch. 57; 1976, ch. 256, § 1; 1976, ch. 278, § 1; 1978, ch. 31, § 1, effective June 17, 1978; 1982, ch. 59, § 4, effective July 15, 1982; 1982, ch. 227, § 2, effective July 15, 1982; 1986, ch. 82, § 1, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 431, effective July 13, 1990; 1992, ch. 170, § 1, effective July 14, 1992; 2000, ch. 454, § 1, effective July 14, 2000; 2007, ch. 88, § 1, effective June 26, 2007; 2019 ch. 25, § 1, effective July 1, 2019.

Compiler's Notes.

This section (4399-32; amend. Acts 1954, ch. 220, § 1; 1962, ch. 57; 1976, ch. 256, § 1; 1976, ch. 278, § 1; 1978, ch. 31, § 1, effective June 17, 1978; 1982, ch. 59, § 4, effective July 15, 1982; 1982, ch. 227, § 2, effective July 15, 1982; 1986, ch. 82, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 431, effective July 13, 1990.

NOTES TO DECISIONS

1. Transportation Expense for Board Members.

The superintendent of schools of the county board of education was the executive agent and officer of the board and as such was in charge of the management and control of the school buses owned and operated by the board, with authority to direct the operator of the school bus to permit a member of the county board of education to ride upon the bus and thus save the board the expense of his transportation under this section and the board member was lawfully riding in the school bus within the liability policy issued for protection of any school child or other person from negligence of the bus driver. Standard Acc. Ins. Co. v. Perry County Board of Education, 72 F. Supp. 142, 1947 U.S. Dist. LEXIS 2468 (D. Ky. 1947).

Cited in:

Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940).

OPINIONS OF ATTORNEY GENERAL.

Although county school board members are elected on a nonpartisan basis, since they do receive a per diem and expenses, a merit system employee in a classified position would be disqualified from serving on the county school board. OAG 60-441.

A member of a county board of education is only entitled to receive the per diem allowance authorized by this section for meetings actually attended. OAG 60-1135.

Under this section a member of a board of education may receive a maximum of $200 for per diem payments per annum and also receive a maximum of $200 per annum for expenses actually incurred. OAG 61-313.

A member of a local board of education may not be reimbursed for expenses incurred outside his district in the performance of his duties except when he is attending a meeting or conference called by the Superintendent of Public Instruction pursuant to the provisions of KRS 156.190. OAG 61-1052.

The members of a board of education would be entitled to per diem payments for attending adjourned meetings held on a day or days after the regular monthly meeting date. OAG 64-157.

Expenditures under this section are authorized only to legal members of boards of education and a board member who has become ineligible to serve due to moving his permanent residence from within the district would not be entitled to payment for services rendered after that time. OAG 65-800.

If payments accepted by a board member of an independent district represent payment for services in any amount or to any degree, or if though purporting to be for actual and necessary expenses, are not for duties authorized by the board, acceptance of such would offend KRS 160.180 in rendering the member ineligible. OAG 69-292.

The per diem received by a county school board member under this section is synonymous with "salary" and imports the idea of compensation for personal services. OAG 74-385.

A classified state employee cannot seek membership on a county school board which is an elective office and whose members receive a per diem of $10.00 and expenses pursuant to this section. OAG 74-646.

A board of education may not pay a travel reimbursement claim of a board member unless that expense was authorized by the board before the expense is incurred, nor may the board authorize the incurring of out-of-district expenses by board members and then refuse to pay upon presentation to the board of a valid documented claim for the actual expenses incurred. OAG 76-329.

The local board of education cannot compensate a member for earnings lost due to attendance at an approved training session, as required by KRS 160.180(5), since subsection (1) of this section forbids school board members from receiving a salary. OAG 85-53, 1985 Ky. AG LEXIS 102.

Pursuant to subsection (3) of this section, a district board of education may legally pay the expenses of a member for attending an approved training program, as required by KRS 160.180(5). OAG 85-53, 1985 Ky. AG LEXIS 102.

Subsection (1) of this section allows a district to pay a board member $40 for each meeting actually attended up to a maximum per diem of $1,000 during any calendar year. Also, the board member may receive reimbursement, up to a maximum of $1,000, for actual expenses incurred within the district in any calendar year. OAG 92-136, 1992 Ky. AG LEXIS 198.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

160.290. General powers and duties of board.

(1) Each board of education shall have general control and management of the public schools in its district and may establish schools and provide for courses and other services as it deems necessary for the promotion of education and the general health and welfare of pupils, consistent with the administrative regulations of the Kentucky Board of Education. Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education. Each board shall exercise generally all powers prescribed by law in the administration of its public school system, appoint the superintendent of schools, and fix the compensation of employees.

(2) Each board shall make and adopt, and may amend or repeal, rules, regulations, and bylaws for its meetings and proceedings for the management of the schools and school property of the district, for the transaction of its business, and for the qualification and duties of employees and the conduct of pupils. The rules, regulations, and bylaws made by a board of education shall be consistent with the general school laws of the state and shall be binding on the board of education and parties dealing with it until amended or repealed by an affirmative vote of a majority of the members of the board. The rules, regulations, and bylaws shall be spread on the minutes of the board and be open to the public. The rules, regulations, and bylaws may include the use of reverse auctions as defined in KRS 45A.070 in the procurement of goods and leases.

(3) Local boards of education electing to enter into agreements pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300, with other local boards of education to establish consortia to provide services in accordance with the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476, may transfer real or personal property to the consortia without receiving fair market value compensation. The joint or cooperative action may employ employees transferred from employment of a local board of education, and the employees shall retain their eligibility for the Kentucky Teachers' Retirement System. The chief state school officer, under administrative regulations of the Kentucky Board of Education, may allot funding to an interlocal cooperative board created by two (2) or more local school districts pursuant to KRS 65.210 to 65.300 to provide educational services for the mutual advantage of the students in the representative districts. All statutes and administrative regulations that apply to the use of these funds in local school districts shall also apply to cooperative boards.

History.

Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4399-20, 4399-33; amend. Acts 1978, ch. 52, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 74, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2010, ch. 63, § 11, effective July 15, 2010.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Limitation.
3. Under KERA of 1990.
4. Control of State Board of Education.
5. Determining School Attendance.
6. Transportation.
7. Suspension or Expulsion of Pupils.
8. Courses of Instruction.
9. Employment of Accountant and Attorney.
10. Employment of Night Watchperson.
11. Teachers.
12. —Mandatory Leave.
13. Membership Dues.
14. Ratification of Contract.
15. Establishing Schools.
16. —Financing.
17. —Location.
18. Closing Schools.
19. Recreation Center.
20. Donation to Board.
21. Sale and Conveyance of School Property.
22. Adoption of Grievance Procedure.
23. Maintaining Legal Actions.
24. Liability of Individual Board Members.
25. Appeal.

1. Constitutionality.

This section did not delegate legislative power to the county board in violation of the Constitution. County Board of Education v. Goodpaster, 260 Ky. 198, 84 S.W.2d 55, 1935 Ky. LEXIS 444 (Ky. 1935).

2. Limitation.

The authority of county boards of education is strictly statutory, and they must closely follow the statute prescribing the manner and form of the performance of their duties. Knott County Board of Education v. Martin, 256 Ky. 515, 76 S.W.2d 601, 1934 Ky. LEXIS 441 (Ky. 1934).

These powers are not arbitrary, and the reasonable discretion of the board must not be abused. Ex parte County Board of Education, 260 Ky. 246, 260 Ky. 249, 84 S.W.2d 59, 1935 Ky. LEXIS 445 (Ky. 1935).

A board can exercise no power not expressly or by necessary implication granted to it; nor can it by its own actions deprive itself of the powers given it, nor enlarge or diminish them. Smith v. Board of Education, 264 Ky. 150, 94 S.W.2d 321, 1936 Ky. LEXIS 285 (Ky. 1936).

Discretion vested in boards of education to expend school moneys is subject to constitutional restriction that such expenditures must be for purposes of common school education. Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940).

School boards have no powers except those relating to operation and management of public schools and they are vested with broad governmental powers in the management of public schools under their jurisdiction. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

Since matters affecting the schools and their management were vested in the local board of education and the State Department of Education, a school board could not delegate or shift its responsibilities to a fiscal court or the electorate by requesting that the fiscal court place on ballot the question of whether the voters favored the consolidation or merger of certain county schools. Hickman County Fiscal Court v. Workman, 528 S.W.2d 730, 1975 Ky. LEXIS 89 (Ky. 1975).

3. Under KERA of 1990.

Each participating group in the common school system had been delegated its own independent sphere of responsibility and the Kentucky Education Reform Act (Enact. Acts 1990, ch. 476) did not delegate to local boards of education the authority to require board approval of school council actions. Board of

Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

The waiver requirement of KRS 160.345 enables a school council to ask for a deviation from district policy, if it determines that the needs of an individual school would best be met in a manner different than that devised by the local board. The waiver provision is present to enable flexibility, not to indicate approval authority by the board over council policy development. This interpretation serves the intent of the Kentucky Education Reform Act (Enacts. Acts. 1990, ch. 476) to decentralize decision making authority. Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

The essential strategic point of the Kentucky Educational Reform Act (Enact. Acts 1990, ch. 476) is the decentralization of decision making authority so as to involve all participants in the school system, not limited to, but including school councils and local school boards; affording each the opportunity to contribute actively to the educational process and the provisions set out the structural framework by which this decentralization of decision making authority is to occur. Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

4. Control of State Board of Education.

The administrative control of the board exercised under this section must be consistent with the rules and regulations of the State Board of Education. Gearhart v. Kentucky State Board of Education, 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962). See Earle v. Harrison County Board of Education, 404 S.W.2d 455, 1966 Ky. LEXIS 299 (Ky. 1966).

Where members of county board disagreed with and refused to follow state board recommendations for consolidation and construction of school buildings the members of the county board could not be suspended from office for neglect of duty or misconduct. Kentucky State Board of Education v. Isenberg, 421 S.W.2d 81, 1967 Ky. LEXIS 52 (Ky. 1967).

5. Determining School Attendance.

The school board has the right to determine which school within the district a pupil shall attend. Hines v. Pulaski County Board of Education, 292 Ky. 100, 166 S.W.2d 37, 1942 Ky. LEXIS 46 (Ky. 1942).

6. Transportation.

The general powers of the board of education under KRS 158.110, 160.160, 160.330 and this section are broad enough to encompass the operation of a transportation system under which high school pupils are charged a fee. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

Under the broad authority of KRS 160.160 and this section the county board of education has power to adopt appropriate and reasonable regulations whereby indigent high school pupils may be furnished transportation without charge. Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

7. Suspension or Expulsion of Pupils.

Regulation of school board that a student who marries must immediately withdraw from school and cannot be readmitted for one full year, and then only as a special student with permission of the principal is invalid as it is arbitrary and unreasonable. There is the complete absence of any standard or guideline for the principal concerning readmission and the fatal vice of the regulation lies in its sweeping, advance determination that every married student, regardless of the circumstances, must lose at least a year's schooling. Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

The school board is empowered to suspend or expel pupils for violations of lawful regulations of the school. Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

The school board is vested with the duty and power to control and manage high school and is authorized to enforce reasonable regulations, including disciplinary rules. Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

This statute is directed to the rules and regulations for the conduct of students and not to the disciplinary measures taken for the breach of those rules and regulations. Dorsey v. Bale, 521 S.W.2d 76, 1975 Ky. LEXIS 147 (Ky. 1975).

8. Courses of Instruction.

Under this section a school board is vested with general control and management of the public schools in its district, and may provide such courses of instruction and other services as it deems necessary for the promotion of education and the general health and welfare of its pupils, consistent with the rules and regulations of the State Board of Education. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

9. Employment of Accountant and Attorney.

The board has the implied power to employ and pay an accountant to make a general audit of the school records. Lewis v. Morgan, 252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952).

Even though there was no specific statutory authority for school board to employ attorney, members of county board of education had implied authority to employ attorneys to represent them in actions and had implied power to expend school funds for attorneys' fees and court costs in defending the actions where such employment was necessary for their protection and the accomplishment for the purposes for which they were created and for the promotion of public education. Hogan v. Glasscock, 324 S.W.2d 815, 1959 Ky. LEXIS 385 (Ky. 1959).

10. Employment of Night Watchperson.

Breathitt County Board of Education (Board) was immune from suit, KRS 160.290(1), as the employment of a night watchperson to reside on school grounds served the Board's educational function; because the Board was engaged in a governmental rather than a proprietary function, it was entitled to immunity from damages claims arising from that function. Breathitt County Bd. of Educ. v. Prater, 292 S.W.3d 883, 2009 Ky. LEXIS 193 (Ky. 2009).

11. Teachers.

Boards may establish reasonable qualifications for teachers higher than the minimum provided by statute. Board of Education v. Messer, 257 Ky. 836, 79 S.W.2d 224, 1935 Ky. LEXIS 96 (Ky. 1935).

The board has discretion to determine the number of teachers necessary to properly conduct each of its schools. Simpson County Board of Education v. Strickler, 268 Ky. 72, 103 S.W.2d 705, 1937 Ky. LEXIS 419 (Ky. 1937).

12. —Mandatory Leave.

Policy G25.000 of the Jefferson County school board mandating a one-month leave of absence, without pay, from October 15 to November 15, for employees who were candidates for part-time political offices violated such candidates rights to free speech and free political association, and denied those candidates the equal protection of the law, in violation of both federal and Commonwealth constitutions. Allen v. Board of Education, 584 S.W.2d 408, 1979 Ky. App. LEXIS 429 (Ky. Ct. App. 1979), overruled in part, Cook v. Popplewell, 394 S.W.3d 323, 2011 Ky. LEXIS 174 (Ky. 2011).

13. Membership Dues.

This section and KRS 165.270 (now repealed) vesting boards of education with control of school funds with right to use same to promote public education in such ways as they may

deem necessary and proper, is sufficiently broad to authorize payment by county and city board of education, out of public school fund, of annual membership dues in Kentucky school boards association. Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940).

14. Ratification of Contract.

A board may ratify a defective contract if it had authority to make it originally, provided that the method of ratification conforms to the procedure necessary for its original execution. Knott County Board of Education v. Martin, 256 Ky. 515, 76 S.W.2d 601, 1934 Ky. LEXIS 441 (Ky. 1934).

Architect could not recover on quantum meruit, where his alleged contract with school superintendent was void because not ratified, by order in writing, by board of education at a regular meeting. Oberwarth v. McCreary County Board of Education, 275 Ky. 319, 121 S.W.2d 716, 1938 Ky. LEXIS 426 (Ky. 1938).

15. Establishing Schools.

A school board must maintain a 12-grade service, but need not do so in each school it maintains. It may maintain schools (1) in which only the elementary grades are taught, (2) in which only the four higher grades are taught, (3) in which all 12 grades are taught, (4) in which the first six grades are taught, (5) junior high schools (seventh, eighth and ninth grades), (6) senior high schools (tenth, eleventh and twelfth grades), or (7) any combination of same, provided it does not act arbitrarily or abuse its discretion. Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288, 1934 Ky. LEXIS 435 (Ky. 1934) (decided under prior law).

A fiscal court cannot exercise its judgment in opposition to the judgment of the county board of education as to the need to enlarge and improve the school system for the county unless expenditures or illegal computation is unlawfully arrived at or bad faith appears. Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947).

Where school board accepted gift from alumni society to purchase land for school building and had covenant in deed that school was for white male students the covenant was void as it ceded away the board's governmental powers and restricted its discretion and was against public policy. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

A school board is vested with the power to select public school sites, subject only to the limitation that it cannot act arbitrarily or beyond the pale of sound discretion and has authority to condemn land for future school needs. Pike County Board of Education v. Ford, 279 S.W.2d 245, 1955 Ky. LEXIS 521 (Ky. 1955).

16. —Financing.

School boards have broad powers in financing their property. Scott County Board of Education v. McMillen, 270 Ky. 483, 109 S.W.2d 1201, 1937 Ky. LEXIS 100 (Ky. 1937).

Where population of county was approximately 8,617, estimated assessment of property for taxation in county was $6,425,000, county had existing bonded debt of $225,000 and county board of education approximately $100,000 and the 150 high school pupils of the system were taken care of at the headquarters building in the extreme western part of the county along with the elementary grade pupils, an additional bonded debt of $250,000 to erect a new high school building to be paid by rents received annually from board of education as provided by KRS 162.140 was not arbitrary action or abuse of the discretion of the board that would justify judicial review. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601, 1950 Ky. LEXIS 896 (Ky. 1950).

Whether county board of education was financially able to erect high school building and whether its erection jeopardized future program of county educational system were matters strictly for administrative decision of the board. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601, 1950 Ky. LEXIS 896 (Ky. 1950).

17. —Location.

Subject to the approval of the State Superintendent of Public Instruction, county boards of education are given broad discretion in the selection of sites for schools. Once the approval of the State Superintendent has been obtained, the courts will not interfere with the selection of the site unless there is positive proof of fraud, collusion, or a clear abuse of discretion. Justice v. Clemons, 308 Ky. 820, 215 S.W.2d 992, 1948 Ky. LEXIS 1059 (Ky. 1948).

Courts may not interfere with proposed plan of county board of education for location of school unless there is shown a clear abuse of discretion vested in the board by this section and KRS 160.160. Goins v. Jones, 258 S.W.2d 723, 1953 Ky. LEXIS 882 (Ky. 1953).

In taxpayer suit to enjoin county board of education evidence did not show that the board was without serious consideration and lacking a reasonable discretion and was arbitrary in locating a proposed new elementary school near the western boundary of the county instead of the geographical center and the court was without authority or power to interfere. Goins v. Jones, 258 S.W.2d 723, 1953 Ky. LEXIS 882 (Ky. 1953).

Establishment of a central high school by board was not arbitrary or unreasonable under the circumstances. Wigginton v. Nelson County Board of Education, 408 S.W.2d 647, 1966 Ky. LEXIS 133 (Ky. 1966).

18. Closing Schools.

A board of education must act in good faith upon a sound, just and reasonable basis, and have due regard for the public interests and consequences of its actions upon the children affected and it must not act arbitrarily in discontinuing a school. Wells v. Board of Education, 289 S.W.2d 492, 1956 Ky. LEXIS 283 (Ky. 1956).

Where student population fell below minimum required for state aid a reasonable basis was afforded for school board to order the school closed. Earle v. Harrison County Board of Education, 404 S.W.2d 455, 1966 Ky. LEXIS 299 (Ky. 1966).

The Kentucky General Assembly clearly has given local school boards the power and authority to close schools and consolidate schools within a local system. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779, 1992 Ky. App. LEXIS 182 (Ky. Ct. App. 1992).

19. Recreation Center.

Purchase by a school district, acting alone, of land in another county for the establishment of a recreation center for the joint benefit of school children and 4-H club members was an arbitrary administration of public funds and, thus, illegal. Wilson v. Graves County Board of Education, 307 Ky. 203, 210 S.W.2d 350, 1948 Ky. LEXIS 704 (Ky. 1948).

20. Donation to Board.

The jurisdiction conferred by this section relates to school property arising from public funds and necessarily does not apply to specific charitable trust donations made to a particular type of school district for its exclusive benefit, which is controlled by KRS 160.580. Board of Education v. Todd County Board of Education, 289 Ky. 803, 160 S.W.2d 170, 1942 Ky. LEXIS 645 (Ky. 1942).

The county board of education in taking out insurance policy on district school building built by specific charitable trust donation was only a naked trustee of the property, while pupils of district school were the real beneficiaries and thus entered to proceeds of the insurance. Board of Education v. Todd County Board of Education, 289 Ky. 803, 160 S.W.2d 170, 1942 Ky. LEXIS 645 (Ky. 1942).

21. Sale and Conveyance of School Property.

A board, being a continuing body, cannot, following a change of members rescind a prior sale on the mere ground that it was a bad bargain. Trustees of Congregational Church v. Evarts Graded Common School Dist., 230 Ky. 94, 18 S.W.2d 887, 1929 Ky. LEXIS 25 (Ky. 1929) (decided under prior law).

Boards of education were authorized to convey school property. Bellamy v. Board of Education, 255 Ky. 447, 74 S.W.2d 920, 1934 Ky. LEXIS 259 (Ky. 1934) (decided under prior law).

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

Although there is no statutory limitation on the action of boards of education in selling and conveying school property, their action in so doing must be consonant with their duty to maintain an adequate school system within the limits of their finances; and any action by a board which imperils the entire school system of a county, or a portion thereof, may be called in question by the courts. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

Though the board of education has the right to sell and convey school property it cannot sell and convey all of such property in the county at one time and for a grossly inadequate price. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

22. Adoption of Grievance Procedure.

The adoption of a grievance procedure is clearly within the authority granted a school board by this section. International Brotherhood of Firemen & Oilers v. Board of Education, 393 S.W.2d 793, 1965 Ky. LEXIS 245 (Ky. 1965).

Denial of third-party representation in grievances before a school board is not arbitrary. International Brotherhood of Firemen & Oilers v. Board of Education, 393 S.W.2d 793, 1965 Ky. LEXIS 245 (Ky. 1965).

23. Maintaining Legal Actions.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statute makes the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Education v. Ballard, 299 Ky. 370, 185 S.W.2d 538, 1945 Ky. LEXIS 426 (Ky. 1945).

Boards of education and not the taxpayers have the initial responsibility of maintaining legal actions on behalf of the school districts and a taxpayer may not bring suit in a matter concerning public funds until he has first requested the authorized school board to institute suit and it has failed to comply. Reeves v. Jefferson County, 245 S.W.2d 606, 1951 Ky. LEXIS 1263 (Ky. 1951).

This section and KRS 160.160 place upon the boards of education, not taxpayers, the initial responsibility of maintaining legal actions on behalf of the school districts and an individual has no standing to institute an action for alleged unlawful expenditures of school funds until he has demanded the board to bring the action and the board has refused to comply unless he clearly shows that a demand would have been futile although some members of the board were members at the time of alleged unlawful expenditures. Farler v. Perry County Board of Education, 355 S.W.2d 659, 1961 Ky. LEXIS 19 (Ky. 1961).

A lawsuit to declare an education system unconstitutional falls within the authority, if not the duty, of local school boards to fulfill their statutory responsibilities, no matter who the defendants are. Rose v. Council for Better Educ., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989).

24. Liability of Individual Board Members.

The individual members of a board of education cannot be subjected to individual liability for failing to perform a general duty owed the public in the administration of a good school program, but where the members fail to perform some definite and specific ministerial act they may be held liable individually. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

25. Appeal.

The only question for the court's determination is whether the board is exceeding its authority or is acting arbitrarily. Perry County Board of Education v. Deaton, 311 Ky. 227, 223 S.W.2d 882, 1949 Ky. LEXIS 1100 (Ky. 1949).

Where the county board in the exercise of its statutory discretion had promulgated a plan and the highest educational administrative body, the state board, had approved it, the court will not substitute its own judgment for such quasi-legislative and quasi-executive action unless clearly exceeded statutory or constitutional limitations of power. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601, 1950 Ky. LEXIS 896 (Ky. 1950).

The government and conduct of public schools, in general, is committed to the discretion of the school board and courts will not interfere with the board's exercise of such discretion unless it appears the board has acted arbitrarily or maliciously. Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51 (Ky. 1964).

Cited in:

Ex parte County Board of Education, 260 Ky. 246, 260 Ky. 249, 84 S.W.2d 59, 1935 Ky. LEXIS 445 (Ky. 1935); Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953); Commonwealth ex rel. Breckinridge v. Collins, 379 S.W.2d 436, 1964 Ky. LEXIS 237 (Ky. 1964); Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976); Belcher v. Gish, 555 S.W.2d 264, 1977 Ky. LEXIS 505 (Ky. 1977); Board of Education v. Garner, 556 S.W.2d 453, 1977 Ky. App. LEXIS 819 (Ky. Ct. App. 1977); Hines v. Board of Education, 492 F. Supp. 469, 1980 U.S. Dist. LEXIS 12817 (E.D. Ky. 1980); Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990); Patton v. Bickford, 2013 Ky. App. LEXIS 109 (Ky. Ct. App. 2013).

OPINIONS OF ATTORNEY GENERAL.

Under this section, a local board of education has the authority to charge a reasonable incidental fee for prescribed courses of study, such as a science course, and also collect a reasonable incidental fee for general school supplies, but may not withhold a pupil's grades or credits for failure to pay such fees. OAG 60-1017.

A local board of education may not lease school property for the purpose of constructing a swimming pool which would permanently impair the future use of the property for school purposes. OAG 60-1018.

Under this section a local board of education may, by regulation, adopt its own policy regarding the employment of pregnant teachers. OAG 61-13.

Under subsection (2) of this section a local board of education may pass a resolution requiring that all of its high school principals hold a master's degree as a prerequisite to their employment but such resolution could not be made applicable to persons serving as principals at the time the resolution was adopted until their present contract as principal has expired. OAG 61-413.

In the exercise of reasonable discretion, a board of education may decide that it is in the best interests of the school district to participate in the student teacher-training program. OAG 63-269.

A board of education may prohibit any student who operates his automobile on the way to or from school in a reckless or wanton manner from driving said motor vehicle to or from school. OAG 63-486.

A board of education may provide and maintain an automobile for the benefit of the school superintendent while discharging the duties attendant to his office. OAG 64-130.

A county board of education regulation, which required that the marriage of any pupil within a school year would be sufficient cause to drop him from school attendance, would probably not be enforceable due to the fact that it did not allow any discretion upon the board's part and applied blanketly without regard to the circumstances of each case. OAG 64-877.

A commission, agency, or city has the power to condemn property of a school board for the general purpose for which each was created. OAG 65-330.

A school board may sell property directly to a city or its agency or commission without the necessity of a public offering, and it may also negotiate for a settlement out of court at any point during a condemnation proceeding. OAG 65-330.

The superintendent of schools may not enter into a binding Kentucky work experience and training program contract on behalf of the district unless authorized to do so by proper action of the school board. OAG 65-411.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

Without a showing that the circumstances differ, the exemption of certain nonresidents without the exemption of all would be arbitrary and illegal. OAG 67-48.

Neither an interested person nor his representative has the absolute right to take the original records of a district board of education into a private room without the secretary or the secretary's representative being present. OAG 68-291.

Neither the interested person nor his representative has the right to reproduce the records of a district board of education by any photostatic means whatsoever the person chooses. OAG 68-291.

The right of inspection cannot override the public interest in safe and permanent maintenance of the records. OAG 68-291.

Where the necessary interest is present, the interested person or his representative is entitled to obtain a certified copy of the contract between the board of education and the secretary upon payment of such reasonable fee therefor as may be prescribed by regulation of the district board. OAG 68-291.

Purchases of athletic equipment of over $1,000 by a district school board would have to be made by the bidding procedure even though the purchase money was derived from admissions to athletic exhibitions. OAG 69-327.

The test of whether a regulation is arbitrary, capricious, unreasonable or discriminatory is whether the conduct, style of dress, hairstyle, beard or mustache may reasonably be forecast to cause substantial disruption or material interference with school activities, or whether it could reasonably be forecast to have a material adverse effect on the health, discipline or decorum of the institution. OAG 69-423.

Under subsection (1) of this section a board of education, consistent with the rules and regulations of the State Board of Education, may expend money for the installation of gifts received pursuant to KRS 160.580. OAG 69-431.

Under subsection (2) of this section, a school board may make regulations designed to protect the general welfare and safety of students and in doing so may take into account specific standards of moral conduct, so that school dances could be eliminated as an approved school function by the board unless such ban were imposed for religious reasons, in which case it would violate Ky. Const., § 5 and United States Const., Amend. 1. OAG 70-167.

KRS 161.770 is to be regarded as exclusive and takes precedence over this section. OAG 70-771.

School districts have no authority to promulgate regulations which create speed limits which are more stringent than the speed limits allowed by state statute. OAG 71-207.

A board of education may validly enact legislation whereby a teacher shall lose one-fourth of a day's pay if his tardiness during a given month exceeds 15 minutes. OAG 72-362.

Any regulation promulgated by a local board must bear a reasonable relationship to some valid objective within the purview of the local board. OAG 72-498.

A provision in bylaws adopted by a county board of education specifying that the bylaws could not be repealed or abolished except by majority vote of the people of the county was void. OAG 73-5.

A school board may adopt regulations pertaining to hair and dress as long as said regulations are reasonable and have a connection with student conduct, but an individual classroom teacher, athletic coach, band director or other school personnel has no authority to impose his own taste in such matters. OAG 73-233.

Although title to school property is technically vested in the Commonwealth, control of school property is placed in the hands of the district board of education who has the power to convey an interest in the real estate by an easement and, if giving the easement causes any diminution in property value, the school board would be entitled to be compensated for the easement. OAG 73-276.

The authority to make regulations pertaining to hair styles resides in the board of education and cannot be delegated to individuals as the board of education is the policy-making agent of the Commonwealth and the school superintendent and principals are the administrators of the board's policy and are to see that teachers and other school personnel carry out that policy. OAG 73-284.

The board of education may enact a hair style code for boys, but it may enact only one and it must apply to the entire district alike and to all boys of the district alike and such code should have a reasonable relationship to student conduct and to furthering the educational process. OAG 73-284.

As the board of education of the school district is given general authority over the business affairs of the district and the control of school property, there would be nothing wrong with school districts leasing the school buses for a fair remuneration if, in the board's discretion, said leasing would cause no interference with the operation of the school system and it would receive a fair return for the use of its property. OAG 73-306.

A board of education has the power to make general regulations pertaining to its employees becoming candidates for elective office. OAG 73-322.

A school board has the authority to require a teacher or principal to take a leave of absence if he announces as a candidate for public office whether the teacher or principal desires the leave or not; however, the board is under no legal obligation to grant such a leave and may grant or refuse a request therefor. OAG 73-322.

As the superintendent is the executive agent of the board of education and has the responsibility to carry out the lawful orders of the board, the order of the board eliminating the position of deputy superintendent for the year 1973-74 and to so notify the incumbent is a lawful order but the incumbent must be notified by May 15 that his salary for the next year will be reduced or he will be entitled to at least the same salary he received during the present year. OAG 73-378.

When a board of education officially decides to eliminate a position or not to fill a position for the coming year and to employ the person filling the eliminated position in a position

of reduced responsibility and salary, it is necessary that the employee be notified that his position and salary will be reduced for the coming year before May 15 and the superintendent and the board will then have until July 1 to decide on the new position for said employee. OAG 73-378; 76-360.

The announcement over a school speaker system or the distribution of notices to children on school property of meetings of an organization of parents to promote a constitutional amendment which would forbid busing of school pupils for the purpose of achieving racial balance in the public schools constitutes an illegal use of school property and improperly interjects political questions into the operation of the public school. OAG 74-118.

The school board has broad discretion under KRS 160.160 and this section in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the school board under KRS 162.140 as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building unless the county could negotiate the purchase of the property from the school board. OAG 74-221.

A school board may enact a reasonable regulation that a pupil may not be absent on more than a limited number of days and still receive credit for his courses. OAG 74-312.

A school board may not bind the school district to an employment agreement for any set duration. OAG 74-367.

This section empowers a local school board to pay a termination payment of three months' pay to a superintendent of schools who resigns before his contract has expired. OAG 74-708.

A board of education may reasonably regulate the use of school property by charging $5.00 for a permit allowing students who drive to school to park on school grounds. OAG 74-734.

Whether a board of education may allow a period of sick leave and leave of absence for maternity confinement to run in immediate succession is a matter within the sole discretion of the board. OAG 74-745.

As an agency of the state a school district enjoys sovereign immunity from liability and may not legally expend school funds for premises liability insurance without an enabling statute. OAG 74-746.

In the absence of statute or regulation governing emergency or sick leave for regular part-time employees of the county board of education, the board may enact such policy as it deems proper. OAG 74-770.

This section is not authorization for boards of education to regulate students' use of cars as a means of transportation to and from school nor could the boards be held liable in tort for injury to students on or off school grounds, due to the school boards' sovereign immunity. OAG 74-783.

A board of education may not legally expend public funds to purchase insurance to protect board members from personal liability arising from claims against them for errors and omissions committed by them in the performance of their official duties. OAG 75-81.

A school board regulation providing that a student fails a course after nine absences is invalid since it in effect considers the student to be automatically expelled after the nine absences but does not afford him a hearing and an opportunity to be heard and gives no consideration to the cause of the absences. OAG 75-124.

There is no obligation on a school board's part to negotiate with its employees as the internal management of common schools and teachers is vested in the local board of education and through KRS 161.140 (now repealed), 161.170, 160.290 and 160.370 the board has vested control over the compensation, duties, working conditions and related items concerning teachers. OAG 75-126.

Being married is not a legal reason for forbidding a student to go on a class trip. OAG 75-163.

KRS Chapter 387 pertaining to guardians makes no provision for a guardian "for school purposes only" and therefore the appointment of such a guardian through trial commissioner's order is a nullity and the school board is not legally bound to recognize such an order. OAG 75-170.

Where a board of education has adopted different time schedules for the city and the rural schools within its district, rural teachers who are required to work a reasonably longer day than city teachers in the same district are not entitled to extra compensation solely on the basis of a longer working day. OAG 75-297.

Within the statutory limits of from six to nine hours (KRS 158.060), each school district may adopt its own schedule of classes and professional duties of its teachers and it is not required that the working day of all teachers in the same district be exactly the same length of time. OAG 75-297.

Although KRS 160.560 requires each board of education to elect a treasurer but is silent as to compensation for the treasurer, under this section, the board may fix a reasonable compensation for the treasurer. OAG 75-461.

A local civil defense unit has no authority to demand the use of school property and, while the school district may not donate the use of its property for nonschool purposes, it may lease the property for fair remuneration. OAG 75-466.

A local school board has the implied authority to employ an attorney to represent it in its corporate capacity in litigation with the State Board of Education and to pay resulting legal fees from the general fund. OAG 75-552.

A board of education may adopt a uniform policy relative to sick leave which would permit granting a teacher credit for accumulated sick leave at the time of previous termination of employment but a board should not grant sick leave credit on only a case by case basis. OAG 75-587.

The boards of education of high school districts within a county may adopt a policy requiring that students transferring to another school without changing residence complete that school year in the school transferred to without further transferring. OAG 75-602.

Boards of education under their general powers may establish reasonable policies for the retention, demotion and promotion of pupils, including requiring that pupils passed by their teachers move on to the next higher grade. OAG 75-603.

In view of sections 180, 184 and 186 of the Constitution public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

There have been no decisions by the Court of Appeals involving the liability of boards of education or their members for personal injuries or property damage resulting from the boards' authorized use of student safety patrols to control vehicular and pedestrian traffic on public streets in or around school premises, but the general principle is that school board members will not be held personally liable for a loss or injury resulting from an act within the scope of their authority and within their jurisdiction in the absence of negligence. OAG 75-614.

A board of education may establish student safety patrols for street traffic instructional purposes inside the limits of school property but may not make or enforce traffic regulation on roads or driveways within or outside the limits of school property. OAG 75-614.

There is no constitutional or legislative requirement that the cost of education to public school pupils must be free and a board of education may require that pupils be charged a reasonable fee for school supplies. OAG 75-619.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Where a school board provides a fixed source of money to be used in purchasing fringe benefits for each of its teachers, it may afford the teachers the option to receive the fringe benefits or an equivalent fixed sum in cash. OAG 75-646.

Although the board of education, under this section, has the power to adopt rules for the operation of schools, the General Assembly did not intend to impose upon local boards the duty to make and enforce rules which reach into each classroom. OAG 75-656.

The broad powers given to boards of education allow enactment by them of a regulation governing whether a school absence not authorized by statute will be considered excused or unexcused, subject only to the restriction that the regulation be reasonable and not arbitrary. OAG 75-694.

A board of education, pursuant to the powers granted in subsection (2) of this section, may adopt a uniform policy of sick leave for teachers which would permit a teacher to transfer all or a specific number of accumulated sick leave days from another school district, whether in state or out. OAG 75-697.

The local board of education, not the child, has the right to determine which school the child shall attend. OAG 76-55.

The board of education, in its discretion, determines the number of administrative and teaching positions it deems necessary and proper for the school system. OAG 76-118.

The requirement of the State Department of Education that a child participate in a health and physical education course does not impose a significant constitutional burden upon the freedom to exercise religious beliefs, and therefore the state's interest in establishing a sound curriculum format for graduation must prevail over patchwork exceptions to course requirements. OAG 76-225.

A teacher would not be bound by a local board of education policy restricting the number of semester hours of college or university study that can be taken by its certified employees during a school year, for such a policy would pose an unreasonable burden on teachers who by mandatory law must complete additional college or university study within a specified period of time in order to continue their professional work. OAG 76-311.

A board of education may adopt rules and regulations governing out-of-district travel for its members. OAG 76-329.

A board of education cannot lawfully contract away amendatory obligation of approval given it by the statutes and, therefore, any contractual provisions of a superintendent's contract in derogation of the expressed statutory outline of powers and duties of a superintendent of a public common school system and a local board of education would be void. OAG 76-360.

A local board of education has the power to adopt reasonable policies over and above, but not in conflict with, the State Board of Education regulations concerning the selection of children from those eligible to attend kindergarten classes, therefore a local board of education does not have to permit a six (6) year old child in its kindergarten program. OAG 76-412.

While there is no law prohibiting the operation of motorcycles and minibikes upon the parking lot and grounds of a school, such activity may be regulated by the local board of education and the local board of education could adopt such rules and regulations as it deemed necessary regarding these activities; however, it would be illegal for the local board of education to spend public school moneys to support this activity on school property. OAG 77-11, 1977 Ky. AG LEXIS 770.

A local board of education may enact a personal leave policy for its noncertified employees as it deems proper. OAG 77-115, 1977 Ky. AG LEXIS 666.

A county board of education has the power and authority to grant a permanent easement over school grounds to a property owner for purposes of ingress and egress to his property by pedestrians and vehicles. OAG 77-298, 1977 Ky. AG LEXIS 480.

A local board of education would be without legislative authority to lease to a private corporation six outdoor tennis courts and adjacent parking area to be used for private gain during the winter months. OAG 77-342, 1977 Ky. AG LEXIS 472.

Local school boards may not establish policies or regulations which serve to discriminate against married students. OAG 77-361, 1977 Ky. AG LEXIS 421.

A board of education policy denying automatically a married student the right to participate in extracurricular activities associated with the school would interfere with the married student's civil liberties. OAG 77-361, 1977 Ky. AG LEXIS 421.

Although a board of education has authority to establish a fee for extracurricular activities, the board could not compel the payment of the fee nor could the board withhold the recording of grades of a student who has failed to pay the fee. OAG 77-574, 1977 Ky. AG LEXIS 222.

A local board of education may adopt a blanket policy of retirement of noncertified employees at age 65. OAG 77-595, 1977 Ky. AG LEXIS 198.

It is within the discretionary power of the board of education of a county school system to adopt an enrollment policy which would permit the parents of students residing in the county to enroll their children in schools outside the usual attendance area. OAG 77-736, 1977 Ky. AG LEXIS 42.

A local school board may elect to purchase liability insurance for its employees and pay all or a portion of the premium from board of education funds. OAG 78-21, 1978 Ky. AG LEXIS 700.

A local board of education can appoint a committee, the function of which would be advisory in nature with respect to the search for qualified individuals to fill the position of chief deputy superintendent inasmuch as a local board of education may appoint a committee concerning any matter that relates to a proper subject of inquiry by it. OAG 78-41, 1978 Ky. AG LEXIS 665.

The local board of education has authority over the control and management of the school and the duty to adopt rules and regulations governing various aspects of the schools in the school district. OAG 78-204, 1978 Ky. AG LEXIS 529.

A local school board may, but is not required to, pay from school funds costs of contracting with local physicians for the performing of physical examinations required by school law or regulation. OAG 78-365, 1978 Ky. AG LEXIS 367.

A local board of education may designate attendance areas and draw boundary lines under its general authority provided by this section and nothing in KRS 160.210 prevents this being done in an election year. OAG 78-366, 1978 Ky. AG LEXIS 371.

A school system has the right to suspend a child from the school bus for misconduct. OAG 78-392, 1978 Ky. AG LEXIS 346.

A local school board has the discretionary power and authority to structure course offerings so as to require attendance in a school district for eight school semesters before graduation. OAG 78-606, 1978 Ky. AG LEXIS 225.

When the board of education opened a new school which was to enroll all of the students in certain grades who formerly were enrolled in several schools, it was permissible, under this section, to transfer proportionate amounts of school activities account moneys from the accounts of the old schools and set up a new account with them for the new school since this section gives school boards control over internal account funds as well as general account moneys. OAG 78-644, 1978 Ky. AG LEXIS 212.

The fixing of the salary for an assistant superintendent position is left as a sole responsibility of a local board. OAG 79-88, 1979 Ky. AG LEXIS 526.

Teachers and administrators and other school officials are responsible for the public education and are charged with the responsibility of implementing the rules and regulations of the Commonwealth for the control and management of the common schools and local board rules and regulations for schools in a school district. OAG 79-168, 1979 Ky. AG LEXIS 452.

A local board of education may not permit the use of any school facilities that interferes with school activities. OAG 79-321, 1979 Ky. AG LEXIS 307.

The use of school facilities is subject to the determination of a local board of education and it is paramount that the board adopt rules and regulations regarding the permitting of the use of school property so that such use does not in any way interfere with the conducting of any school program, curricular or co-curricular. OAG 79-321, 1979 Ky. AG LEXIS 307.

It is impermissible for a teacher incorporating classroom participation as part of the overall academic grade to give a student a lower grade in a course than he earned while in class for failure to participate in class on days when he was absent under a legitimate excused absence. OAG 79-539, 1979 Ky. AG LEXIS 99.

A local board of education may prescribe the manner and duration of the selection of a board chairperson. OAG 80-48, 1980 Ky. AG LEXIS 594.

There is no legal basis that would require a local board of education to determine "cause" existed before a new chairperson could be chosen. OAG 80-48, 1980 Ky. AG LEXIS 594.

A local board of education has the lawful authority and duty to prescribe the manner in which school buildings and facilities may be used by groups during nonschool hours. OAG 80-78, 1980 Ky. AG LEXIS 564.

A local board of education, pursuant to its broad authority under this section, may require additional credit requirements over those minimally established by regulation of the State Board for Elementary and Secondary Education (now State Board of Education), pursuant to KRS 156.160(2). OAG 80-118, 1980 Ky. AG LEXIS 523.

While there is no statutory language in the state school laws providing for written reprimands, under a board of education's broad authority granted to it by this section, a written reprimand is permissible. OAG 80-119, 1980 Ky. AG LEXIS 524.

A school district may not advance money to its employees for travel or other necessary expenses prior to the expense actually being incurred since the applicable statutes contemplate reimbursement, not an advancement of money. OAG 80-395, 1980 Ky. AG LEXIS 278.

KRS 438.050, as it is written, proscribes only the smoking of tobacco products; however, the board of education may regulate, under the authority of this section and KRS 160.340, the use of tobacco products such as snuff or chewing tobacco in ways other than smoking, by its employees, other adults or students. OAG 81-295, 1981 Ky. AG LEXIS 138.

Subsection (2) of this section does not permit an attempt by a school board to establish residential requirements for school employees, particularly in light of the fact that there are no other teacher qualification statutes requiring residence in the district where employed. OAG 82-59, 1982 Ky. AG LEXIS 574.

A local county board of education is sufficiently representative of the geographic area that it serves to qualify as an agency with which a community action agency could contract, and therefore, as long as the subject matter of the contract related to the purpose of promoting public education, a county board of education could enter into a contract with a community action agency pursuant to KRS 160.160 and this section. OAG 82-387, 1982 Ky. AG LEXIS 248.

Retention and promotion of pupils is entirely a matter of local board of education policy and not a matter for control by parents. Parents do not have a right to demand that a child be retained at a particular grade level for any reason, and especially not for athletic purposes. OAG 82-473, 1982 Ky. AG LEXIS 162.

Although school boards must see that their policies and regulations are reasonable and nonarbitrary, both on their face and as applied, this responsibility does not require the exact identical result in all situations. OAG 82-623, 1982 Ky. AG LEXIS 9.

Pursuant to KRS 158.150, a school board may adopt a policy establishing, as a separate legal cause for suspension or expulsion, those practices prohibited by KRS 218A.350 concerning substances that simulate controlled substances. OAG 82-633, 1982 Ky. AG LEXIS 19.

Even though local boards of education are to promote "the general health and welfare of pupils," as a matter of prudence teachers probably should not dispense drug store health remedies such as aspirin to school children, whether of elementary or secondary school age. OAG 83-115, 1983 Ky. AG LEXIS 382.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228, 1983 Ky. AG LEXIS 269.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228, 1983 Ky. AG LEXIS 269.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Ky. Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, and meals for school administrators to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong and/or lobbying activities conducted by their professional associations. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, meals, and substitute teachers, for teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization, and/or lobbying activities conducted by their organization. OAG 83-228, 1983 Ky. AG LEXIS 269.

A school board may, by regulation, establish reasonable rules and policies affecting the use of motor vehicles by students and school employees on school grounds and in school-related activities; however, there has been no authority delegated by the General Assembly to school boards under which such boards may create and punish public offenses either in the area of traffic regulation or parking. OAG 84-107, 1984 Ky. AG LEXIS 279.

Under the broad powers of a school board, pursuant to KRS 160.160 and this section, it could employ a security guard to look after its properties; such security guard, to be effective, should be a special local peace officer commissioned according to KRS 61.360. OAG 84-107, 1984 Ky. AG LEXIS 279.

A local board of education may open or close a school without the recommendation of the local superintendent. OAG 85-98, 1985 Ky. AG LEXIS 49.

Where one or more school districts initiate a suit to enforce state equalization of school funding within the Commonwealth, interested school districts may contribute reasonable amounts of money from school funds to meet the costs of the suit, including reasonable attorney's fees; such expenditure would, however, have to be made in accordance with appropriate budget considerations. OAG 85-100, 1985 Ky. AG LEXIS 53.

Although KRS 160.160 and subsection (1) of this section do not provide a specific statutory pronouncement upon what a local board of education may expend, school funds may be expended for those purposes authorized either expressly or by necessary implication by the statutes. OAG 85-100, 1985 Ky. AG LEXIS 53.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22, 1987 Ky. AG LEXIS 63.

With limited exceptions, as provided for open meetings of public agencies, a local school board may prohibit nonstudents from entering upon school property, irrespective of the nature of activities being conducted upon the property. OAG 90-11, 1990 Ky. AG LEXIS 11.

Based on the language of subsection (2) it does appear that the board may, in general, prescribe qualifications and duties with regard to categories of employees while the superintendent prescribes with more specificity, the duties of individual positions. OAG 91-10, 1991 Ky. AG LEXIS 10.

The board of education continues to have responsibility for "general control and management of the public schools in its district" including "control and management of all school funds," and including setting "compensation of employees," but the board alone continues to have the power to create and abolish positions and it is the responsibility of the superintendent to make decisions regarding how and when to fill positions. OAG 91-10, 1991 Ky. AG LEXIS 10.

There is no conflict of interest statute prohibiting school board members from voting on general salary increases that affect teachers who are related to those board members and who work in the school system. OAG 91-60, 1991 Ky. AG LEXIS 60.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under Ky. Const., §§ 180, 184 and 186; therefore, under Ky. Const., §§ 180, 184, and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85, 1991 Ky. AG LEXIS 85.

The board of education, as part of its responsibility for the management of the district public schools as a whole, manages all school funds (which includes setting compensation of employees); creates and abolishes positions of employment in the school system; and has the authority to adopt rules and regulations concerning the qualifications and duties of employees by categories. OAG 91-122, 1991 Ky. AG LEXIS 119.

The school council does not have authority, unilaterally, to create and abolish positions or to set compensation for the school as a whole. Once the school council learns of available funding and the number of positions available for the school from the board, then the council may determine the number of individuals to be employed in each job class. It remains the responsibility of the local board of education, to establish the overall number of positions and to set the compensation of employees. If this were not the case, staffing and salaries from school to school could lack consistency with drastic effects on the district budget. OAG 91-122, 1991 Ky. AG LEXIS 119.

Authority concerning the use of all tobacco products by employees, students and visitors in school buildings, on school grounds or on field trips rests with the local board of education, not with superintendents and principals, unless that authority is delegated to them by the board. OAG 91-137, 1991 Ky. AG LEXIS 127.

KRS 438.050 does not grant authority to superintendents or principals beyond that authority granted to those officials by the Board; and, as currently written, does not forbid smoking of tobacco products at outdoor athletic events, depending on what smoking areas are to be designated in the schools. OAG 91-137, 1991 Ky. AG LEXIS 127.

The local board has responsibility for control and management of the school district as a whole, and has the authority to make contracts and agreements; the board has management and control of school funds, and fixes the compensation of the employees. OAG 92-29, 1992 Ky. AG LEXIS 29.

While the superintendent is responsible for personnel actions including, among other things, hiring and assignments, to the extent that the local board is responsible for control and management of school funds, the board may determine the amount of extended employment and compensation for personnel employed beyond the 185 day period; any reduction in salary to a teacher (which includes most administrators for purposes of the teachers tenure law), must be accompanied by appropriate notice. OAG 92-29, 1992 Ky. AG LEXIS 29.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65, 1992 Ky. AG LEXIS 65.

The superintendent has the responsibility to make individual personnel decisions and to define the duties of particular employee positions. However, the local board has the responsibility to manage the entire district, control school funds, set compensation, create and abolish positions of employment and adopt regulations for qualifications and duties of classes of employees. OAG 92-133, 1992 Ky. AG LEXIS 196.

If a local board in a single-school district elects to implement SBDM this decision controls over the vote of the school staff. OAG 93-31, 1993 Ky. AG LEXIS 84.

The decision of the local board of education in a single-school district not to implement SBDM controls over the school's desires to enter SBDM. OAG 93-31, 1993 Ky. AG LEXIS 84.

The local board may reject a school council's policy on corporal punishment if the local school board has a policy banning corporal punishment based on concerns for liability or concerns for health and safety. OAG 93-31, 1993 Ky. AG LEXIS 84.

A school board may not require principals to be residents of the school district. OAG 01-7, 2001 Ky. AG LEXIS 10.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Conferences of public school officials, board to pay expenses of, KRS 156.190.

District employee quarantine leave, 702 KAR 1:191.

Flags to be supplied for display at schools, KRS 2.040.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

School employees, provisions as to, KRS Ch. 161.

Teachers' retirement, board to make salary deductions and reports for, KRS 161.560.

Teachers' tenure law, KRS 161.720 to 161.810.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:002.
Determination of eligibility, 707 KAR 1:310.
District school nutrition director, 702 KAR 6:020.
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Home/hospital instruction, 704 KAR 7:120.
Individual education program, 707 KAR 1:320.
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Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.
Recreational facilities; school and community, 702 KAR 4:005.
Required Academic Standards for Mathematics, 704 KAR 8:040.
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160.291. Manner of payment of salaries to school employees — Pay for extra duties or services — Fringe benefits program.

(1) All school employees working on a continuing, regular basis, shall be paid regularly, on dates determined by the employing board of education, during the school year or during the fiscal year for twelve (12) month employees, the provisions of KRS 337.020 notwithstanding. The gross salary received on each pay date will be an amount equal to the school employee's annual salary divided by the number of pay dates, except a local board of education shall pay an employee any remaining salary owed prior to the end of the fiscal year upon completion of the employee's responsibilities or duties if so notified by the employee.

(2) Salary amounts shall be paid on the prescribed pay dates without deduction for days on which schools were closed; provided, however, any time not worked for which pay is received must be made up prior to the end of that current school year, or pay so received shall be withheld from the final salary payment of that school year.

(3) Gross Salary payments under subsection (1) of this section need not, but may, include pay for extra duties or services. Payment for extra duties or services must be paid pursuant to a payment plan adopted by the board of education prior to the beginning of the school year. The board of education may also adopt a plan for providing a program of fringe benefits to its employees.

(4) All payments made for salaries, extra duties, and fringe benefits by the board of education under the authority of this section are deemed to be for services rendered and for the benefit of the common schools; the payments do not affect the eligibility of any school system to participate in the public school fund as established in KRS Chapter 157. Nor shall any individual board member or administrator be held liable where additional payments for such service become necessary. Provided, however, that nothing in this section authorizes or requires the payment of salaries to personnel when schools are closed as a result of a strike or other work stoppage or when schools are open and personnel fail to render services. No part of this section shall be law if any part is declared unconstitutional.

(5) Subsection (2) of this section does not apply to those employed on a twelve (12) month basis.

History.

Enact. Acts 1978, ch. 49, § 1, effective March 28, 1978; 1980, ch. 341, § 1, effective June 15, 1980; 1982, ch. 86, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 229, effective July 13, 1990; 1994, ch. 174, § 1, effective July 15, 1994; 1998, ch. 177, § 1, effective March 27, 1998.

OPINIONS OF ATTORNEY GENERAL.

This section is limited to certified personnel. OAG 79-337, 1979 Ky. AG LEXIS 293.

As classified employees usually will not have performed any services for so-called snowbank days, these employees would be ineligible to be paid for these days. If classified employees have been already paid for such snowbank days, they would have to have deducted from their pay at the end of the school year an amount equal to the snowbank days pay received. OAG 82-132, 1982 Ky. AG LEXIS 518.

School boards do not have an option on whether to pay classified employees for snow days; all regular, full-time employees (except those employed on a 12-month basis) are to continue to receive their regular pay even though school is closed. OAG 82-132, 1982 Ky. AG LEXIS 518.

There is no improper discrimination between classified employees and certified employees of a school district based upon an ability of teachers to participate in an extended school day plan (snowbank) days and an inability of classified employees to do the same, as there are two distinct classifications of school employees. It is only the arbitrary classification and treatment of individuals that runs afoul of Ky. Const., § 2 and U.S. Const., Amend. 14. OAG 82-132, 1982 Ky. AG LEXIS 518.

This section applies to all school employees, certified and classified, who work on a continuing, regular basis excluding those employed on a 12-month basis. OAG 82-132, 1982 Ky. AG LEXIS 518.

This section calls for all of the full-time, regular employees of a school district to be treated in parity. Thus, while school employees are to continue to receive their pay checks even

though not actually working, it is the school district's obligation under this section and Ky. Const., § 3 to see that before the school year has ended, teachers and classified employees alike have only been paid for school days actually worked. OAG 82-132, 1982 Ky. AG LEXIS 518.

This section must be viewed as applying to classified employees even though they may not be paid a "salary" in the sense that term is usually thought of, because to interpret it otherwise would be to continue to limit the statute to only school teachers and that, obviously, is not what was intended by the General Assembly by its 1980 amendment. OAG 82-132, 1982 Ky. AG LEXIS 518.

One time payments to teachers to induce retirement are constitutional under Ky. Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23, 1996 Ky. AG LEXIS 35.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

District employee quarantine leave, 702 KAR 1:191.

Procedure for payment of employees, 702 KAR 3:060.

160.293. Development of school property recreational facilities for school and community purposes.

Any statute to the contrary notwithstanding, upon the recommendation of the chief state school officer, the Kentucky Board of Education may adopt administrative regulations authorizing a local board of education to enter into an agreement with a public agency for the purpose of developing and maintaining on school property recreational facilities for school and community purposes in accordance with the following standards:

(1) The property must be used in such a manner and at such times so that there will be no interference with school activities.

(2) The control and management of this property shall be in accordance with administrative regulations adopted hereunder by the Kentucky Board of Education.

(3) All agreements must have the prior approval of the chief state school officer and the Attorney General.

(4) Any agreement executed herein shall not be considered an indebtedness within the meaning of Sections 157 and 158 of the State Constitution of Kentucky.

History.

Enact. Acts 1974, ch. 348, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 230, effective July 13, 1990; 1996, ch.362, § 6, effective July 10, 1996.

OPINIONS OF ATTORNEY GENERAL.

A city may lease land from a school board over a long term, and may install recreational facilities thereon, when those facilities will be beneficial to the school district. OAG 78-472.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under Ky. Const., §§ 180, 184 and 186; therefore, under Ky. Const., §§ 180, 184, and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85, 1991 Ky. AG LEXIS 85.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Recreational facilities; school and community, 702 KAR 4:005.

160.294. Recycling requirement for local school districts — Exemptions.

(1) Each local board of education shall adopt a plan and procedures for recycling white paper and cardboard in all board-owned and operated facilities.

(2) A local board of education shall be exempt from the requirement to establish a recycling program as described in this section if:

(a) There is no recycling facility within the county or within a reasonable distance in an adjoining geographic area; or

(b) The district cannot locate a recycling vendor to service the school district, without incurring a negative fiscal impact.

(3) The board may delegate to each school or school council the responsibility for designing its own procedures; however, the superintendent or the superintendent's designee shall periodically review the operating procedures to assure that recycling is being carried out.

History.

Enact. Acts 1998, ch. 558, § 1, effective July 15, 1998.

160.295. Procedure for promulgation of code of student rights and responsibilities for secondary schools — Prohibited student activities.

(1) The board of education of each public school district in the Commonwealth may adopt and promulgate a code of student rights and responsibilities for secondary schools from recommendations of a committee composed of students, faculty, parents, and school district administrative personnel.

(2) Such committee shall consist of two (2) students, two (2) parents of students, two (2) faculty members, two (2) representatives from administrative personnel of the district, and one (1) member of the local school board.

(3) The student and faculty members of such committee shall be elected by their peers in the local school district; the administrative personnel shall be appointed by the school district superintendent, and the parents selected by the faculty and student body. Members of such committee shall serve for a term of one (1) year and may be reelected or reappointed in following years. Initial composition of the elected members of such committee shall be by the following:

(a) The district superintendent shall notify each school within the district, each school principal or head teacher, the students of the district, and the parents of students within the district as to the method for receiving nominations for membership on the committee and of the methods by which the election of members shall take place. Such notification shall take place on or before the first day of school for each school term.

(b) Nominations for the student, faculty, and parent members of the committee shall be received in writing by the district superintendent within thirty (30) days following the commencement of each school term.

(c) The election of student, faculty, and parent members of the committee shall be held within fourteen (14) days following the closing of nominations under the supervision of the district superintendent.

(d) The initial meeting of the elected and appointed members shall be no later than fourteen (14) days following the election.

(4) Each committee member shall be entitled to a single vote and any code of student rights and responsibilities adopted by a majority of the committee membership shall be submitted to the district board of education which may cause such code, in whole or in part, to be implemented in the public schools of the district.

(5) All meetings of the committee shall be open to the public and the committee shall hold at least one (1) public hearing on the proposed code before it is adopted and submitted to the district board of education for implementation.

(6) The code of student rights and responsibilities adopted by the committee may define rights and responsibilities regarding, but not limited to, the following:

(a) Right of expression, including, but not limited to, appearance, assembly, association, and circulation of petitions and literature;

(b) Right to participate in decision-making procedures directly affecting students;

(c) Right to procedural due process concerning major disciplinary action, as defined by the code;

(d) Right to receive academic grades based only upon academic performance;

(e) Right to freedom from abuse and threat of abuse by members of school faculties and administration personnel; and

(f) Right of access by a student to his or her own records and guarantee of the confidentiality of a student's academic records outside of the school system, except upon written authorization of the student or his or her parents or guardians.

(7) Students shall refrain from activity which materially or substantially disrupts the educational process or presents a clear and present danger to the health and safety of persons or property, or infringes on the rights of others.

History.

Enact. Acts 1974, ch. 249, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 432, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1974, ch. 249, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 432, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Policies regarding discipline of conduct of pupils should be promulgated to the students through the permissive statute outlining the adoption and promulgation of a code of student rights and responsibilities. OAG 78-673, 1978 Ky. AG LEXIS 163.

This section merely outlines one suggested plan for enacting a code of student rights and responsibilities, and a different committee structure is permissible where all elements of the community are represented and the board of education has final determination of such a code. OAG 79-322, 1979 Ky. AG LEXIS 308.

160.297. Military recruiters' access to public high school campuses and student directory information. [Renumbered].

Compiler's Notes.

This section was amended by Acts 1994, ch. 98, § 6 and renumbered as KRS 160.725 by the Revisor of Statutes pursuant to KRS 7.136, effective July 15, 1994.

160.300. Investigations by board — Power to summon witnesses.

(1) A board of education may, in any investigation or proceeding before it, concerning a matter that may be a proper subject of inquiry by it, summon witnesses by subpoena, enforce their attendance, and require that they testify under properly administered oath.

(2) No person so summoned shall refuse to attend or to produce a written statement to be used as legal evidence in the investigation or proceeding, or, if present, refuse to testify concerning any matter that may be a proper subject of inquiry.

History.

4399-55; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 434, effective July 13, 1990.

Compiler's Notes.

This section (4399-55) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 434, effective July 13, 1990.

NOTES TO DECISIONS

1. Discovery and Amendment.

In an action under KRS 161.790 the school board had the right to inquire into teacher's official actions and to expect frank answers and was entitled to the benefit of discovery and amendment although it would have been better practice for the board to have taken his deposition or direct his appearance before it at some time prior to the hearing which it had the right to do under this section. Board of Education v. Chattin, 376 S.W.2d 693, 1964 Ky. LEXIS 471 (Ky. 1964), overruled, Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607, 1967 Ky. LEXIS 325 (Ky. 1967).

OPINIONS OF ATTORNEY GENERAL.

Under the provisions of this section, a local board of education may not conduct an investigation of one of its own members for alleged improper official acts. OAG 76-491.

A person appointed under this section to receive testimony regarding the conduct of the schools would have no authority to issue subpoenas requiring the attendance and testimony of persons who are not employees of the school district. OAG 77-365, 1977 Ky. AG LEXIS 418.

Because classified public school employee have no statutory post-termination remedy, local school boards should enact policies pursuant to KRS 161.011(9)(c) implementing due process hearing procedures applicable to classified employees prior to termination. Minimum standards of due process require reasonable notice of hearing, right to appear and

produce evidence, right to call witnesses and conduct cross-examination, right to counsel, impartial decision-maker, and statement of basis for decision. OAG 2005-06, 2005 Ky. AG LEXIS 5.

160.303. Reciprocal preference for resident bidders.

For all contracts awarded by a local board of education, the board shall apply the reciprocal preference for resident bidders described in KRS 45A.494.

History.
Enact. Acts 2010, ch. 162, § 19, effective July 15, 2010.

160.305. Contracts for use of school buses to transport persons eligible for transportation services.

(1) The Cabinet for Health and Family Services may enter into a contract with the local board of education of any school district in the Commonwealth for the use of school buses to transport persons eligible for transportation services at times when the buses are not needed to transport students to or from school or school events. Persons eligible for these transportation services shall be:

(a) Sixty-two (62) years of age or older;
(b) Those with physical or mental disabilities; or
(c) Any other person designated by the Cabinet for Health and Family Services as appropriate for these transportation services.

(2) Before this contract is entered into, the Cabinet for Health and Family Services shall formulate a plan for the use of school buses for these purposes and shall submit it to the local board of education for its approval or disapproval. The plan for the use of school buses for these transportation purposes shall include routes, schedules, cost, and any other matters deemed necessary by both parties.

(3) The cost of transporting persons eligible under the provisions of subsection (1) of this section shall be borne by the Cabinet for Health and Family Services.

History.
Enact. Acts 1974, ch. 322, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 435, effective July 13, 1990; 1994, ch. 405, § 28, effective July 15, 1994; 1998, ch. 426, § 117, effective July 15, 1998; 2005, ch. 99, § 135, effective June 20, 2005.

Compiler's Notes.
This section (Enact. Acts 1974, ch. 322, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 435, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.306. Implementation of KRS 160.305 — Pilot projects. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 251, § 1) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.310. Board to provide insurance for school buses.

Each board of education may set aside funds to provide for liability and indemnity insurance against the negligence of the drivers or operators of school buses, other motor vehicles, and mobile equipment owned or operated by the board. If the transportation of pupils is let out under contract, the contract shall require the contractor to carry indemnity or liability insurance against negligence in such amount as the board designates. In either case, the indemnity bond or insurance policy shall be issued by some surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment, not to exceed the limits of the policy, rendered against the insured for loss or damage to property of any school child or death or injury of any school child or other person.

History.
4399-20a, 4399-20b; Acts 1960, ch. 97, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 436, effective July 13, 1990; 2015, ch. 57, § 17, effective June 24, 2015; 2015, ch. 106, § 2, effective June 24, 2015.

Compiler's Notes.
This section (4399-20a, 4399-20b; amend. Acts 1960, ch. 97, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 436, effective July 13, 1994.

Legislative Research Commission Notes.
(6/24/2015). This statute was amended by 2015 Ky. Acts chs. 57 and 106 (HB 117 and HB 525, respectively), which are in conflict. The later-passed bill, HB 525, prevails in the event of a conflict. In this case, HB 525 reversed the amendments made to this statute in HB 117, resulting in no change being made to this statute in the 2015 Regular Session.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Coverage Mandatory.
3. Liability of County School Superintendent.
4. Liability of Board.
5. Judgment Against Board.

1. Constitutionality.
The carrying of liability insurance on school buses is an expense incident to a rational program of school transportation, and the requirement of this section that such insurance be carried does not violate Const., § 184. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

2. Coverage Mandatory.
Provision of this section that coverage of policy shall include "any school child or other person" who suffers injury or death as the result of the negligence of a driver of a school bus owned or operated by the board of education is mandatory and constitutes a part of the policy as fully and effectively as if written in the policy and provisions of policy to restrict liability within narrower limits are void. Standard Acc. Ins. Co. v. Perry County Board of Education, 72 F. Supp. 142, 1947 U.S. Dist. LEXIS 2468 (D. Ky. 1947).

3. Liability of County School Superintendent.
County school superintendent is not individually liable for failing to see that board requires liability insurance of bus

contractors. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

4. Liability of Board.

Fact that this section allows board to carry liability insurance against negligence of drivers of school buses owned by board or operated under contract by it, does not make board liable for tort of its agents or employees. Wallace v. Laurel County Bd. of Education, 287 Ky. 454, 153 S.W.2d 915, 1941 Ky. LEXIS 556 (Ky. 1941).

Members of school board who fail to require bus contractors to carry liability insurance are individually liable in damages to person injured through negligent operation of bus. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

Failure to carry pupil transportation insurance as provided in this section may result in individual liability of board members. Gilbert v. Harlan County Board of Education, 309 S.W.2d 771, 1958 Ky. LEXIS 363 (Ky. 1958).

Board of Claims Act, KRS 44.070 et seq., retained the inherent immunities of the Commonwealth of Kentucky, its agencies, and its employees, except where specifically waived by the Act or another statute, and KRS 160.310 did not waive an education board's governmental immunity from suit either expressly or by such overwhelming implications from the text as left no room for any other reasonable construction; a trial court properly dismissed on governmental immunity grounds a suit brought by an injured person against an education board which sought damages arising from an accident which occurred while property purchased by the injured person was being loaded by a board employee onto the injured person's truck. Grayson County Bd. of Educ. v. Casey, 157 S.W.3d 201, 2005 Ky. LEXIS 50 (Ky. 2005).

5. Judgment Against Board.

When a board of education has secured an insurance policy, under this section, insuring against liability (rather than loss) arising from the operation of its school buses, the board may not interpose the defense, in an action for damages arising from negligent operation of a school bus, that the operation of school buses is a governmental function. Taylor v. Knox County Bd. of Educ., 292 Ky. 767, 167 S.W.2d 700, 1942 Ky. LEXIS 144 (Ky. 1942), overruled in part, Grayson County Bd. of Educ. v. Casey, 157 S.W.3d 201, 2005 Ky. LEXIS 50 (Ky. 2005).

If judgment is entered in such a case, it cannot be collected out of school funds, but will furnish the basis for suit against the insurer. Taylor v. Knox County Bd. of Educ., 292 Ky. 767, 167 S.W.2d 700, 1942 Ky. LEXIS 144 (Ky. 1942), overruled in part, Grayson County Bd. of Educ. v. Casey, 157 S.W.3d 201, 2005 Ky. LEXIS 50 (Ky. 2005).

This section permits the board to be sued and a judgment against it to measure the liability of the insurance carrier to the injured party. Brooks v. Clark County, 297 Ky. 549, 180 S.W.2d 300, 1944 Ky. LEXIS 746 (Ky. 1944).

Cited in:

Thacker v. Pike County Board of Education, 301 Ky. 781, 193 S.W.2d 409, 1946 Ky. LEXIS 569 (Ky. 1946); Chambers v. Ideal Pure Milk Co., 245 S.W.2d 589, 1952 Ky. LEXIS 594 (Ky. 1952); Pike County Bd. of Education v. Varney, 253 S.W.2d 253, 1952 Ky. LEXIS 1074 (Ky. 1952); Roland v. Catholic Archdiocese of Louisville, 301 S.W.2d 574, 1957 Ky. LEXIS 482 (Ky. 1957); Upchurch v. Clinton County, 330 S.W.2d 428, 1959 Ky. LEXIS 200 (Ky. 1959); Dunlap v. University of Kentucky Student Health Servs. Clinic, 716 S.W.2d 219, 1986 Ky. LEXIS 300 (Ky. 1986).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bus drivers' commercial driver's license required, KRS 189.540.

Regulations as to school buses, KRS 189.540.

Transportation of school children, KRS 158.110, 158.115.

Kentucky Law Journal.

Comments, The Employee Defense Act: Wearing Down Sovereign Immunity, 66 Ky. L.J. 150 (1977-78).

160.320. Roads or passways to school buildings for pupils.

Any board of education may make provision for roads or passways to its school buildings to accommodate all pupils who are entitled to attend school, and may apply to the county judge/executive or the governing authority of the city having jurisdiction to open the same as other roads and passways are opened for public necessity and convenience. If there is no road or passway from the residence of any pupil to the school building which he attends it shall be lawful for such pupil, in attending school, to walk over the property of any person between the residence of the pupil and the school building.

History.

4399-61; Acts 1978, ch. 384, § 292, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 437, effective July 13, 1990.

Compiler's Notes.

This section (4399-61; amend. Acts 1978, ch. 384, § 292, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 437, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268, 1945 Ky. LEXIS 809 (1945).

160.325. Mandatory participation in Kentucky Energy Efficiency Program. [Repealed]

History.

Enact. Acts 2008, ch. 139, § 16, effective July 15, 2008; repealed and reenact., Acts 2010, ch. 5, § 16, effective February 25, 2010; 2010, ch. 24, § 210, effective July 15, 2010; 2018 ch. 29, § 60, effective July 14, 2018; repealed by 2019 ch. 142, § 1, effective June 27, 2019.

160.330. Board may furnish necessary school supplies free of charge — Free textbooks for indigent children — Waiver of fees.

(1) Each board of education may furnish necessary school supplies free of charge to indigent children in its school district or to such other children as it deems advisable, under such rules and regulations as it may adopt, except that free textbooks must be provided to indigent children as provided in KRS 157.110.

(2) Local school districts shall establish, pursuant to Kentucky Board of Education administrative regulations, a process by which to waive fees for pupils who qualify for free and reduced priced lunches, including a process by which such students shall be informed of the fee waiver provisions.

History.
4363-12, 4434-11; amend. Acts 1956 (4th Ex. Sess.), ch. 2; 1978, ch. 53, § 1, effective June 17, 1978; 1986, ch. 462, § 3, effective July 15, 1986; 1990, ch. 476, Pt. II, § 77, effective July 13, 1990; 1996, ch. 362, § 6, effective July 10, 1996.

NOTES TO DECISIONS

Cited in:
Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

OPINIONS OF ATTORNEY GENERAL.

A fiscal court, subject to available funds in the budget, may provide an appropriation from county funds for the purpose of providing textbooks and school supplies needed by the indigent schoolchildren of the district through proper budgetary action as prescribed in KRS Ch. 68. OAG 70-548.

The "tax levying authority" mentioned in this section refers to the school board of a district rather than the fiscal court. OAG 70-548.

This section contains no authority for a county to furnish books and school supplies to indigent children, but KRS 67.080(8) authorized a fiscal court to furnish such free books and supplies out of county funds. OAG 70-548 (opinion prior to 1978 amendment of KRS 67.080).

This section provides that the school superintendent must report to the school board of the district the number and cost of textbooks and school supplies needed by the indigent schoolchildren of the district and the school board shall then allocate from school funds a sum of money sufficient to cover such needs. OAG 70-548.

There is no constitutional or legislative requirement that the cost of education to public school pupils must be free and a board of education may require that pupils be charged a reasonable fee for school supplies. OAG 75-619.

KRS 159.140 (7) and this section may be read in complete harmony with KRS 158.108. OAG 82-359, 1982 Ky. AG LEXIS 268.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Director of pupil personnel to report needs of indigent children to superintendent, KRS 159.140.

Free textbooks furnished by state, KRS 157.100.

Penalty for failure of superintendent to report, KRS 159.990.

160.335. Board may distribute refurbished surplus technology to low-income students.

(1) A local board of education may adopt a policy for distribution of refurbished surplus technology to low-income students who do not have technology in their homes. The policy shall include:

(a) A written determination that the property no longer meets the Kentucky Education Technology System standards established by the Kentucky Department of Education;

(b) A process for identifying eligible students and distributing the surplus technology property; and

(c) Documentation of all distributions of property.

(2) The local district is encouraged to work with local businesses and organizations to participate in the program and with its career technical programs and student organizations to refurbish the technology.

(3) The local district shall be subject to KRS 45A.425(1) to (4) for any surplus technology not distributed in accordance with this section.

History.
Enact. Acts 2008, ch. 14, § 1, effective July 15, 2008.

160.340. Reports by boards to Kentucky Board of Education — Filing of policies on specified matters.

(1) Each board of education shall, on the forms prepared by the chief state school officer and approved by the Kentucky Board of Education, prepare and submit to the Kentucky Board of Education reports on all phases of its school service. Each board may prepare and publish for the information of the public a report on the progress of its schools.

(2) Each board of education shall file in the board's office its policies relating to the following matters:

(a) Transportation of pupils;

(b) Discipline and conduct of pupils;

(c) Limitations or restrictions on use of school facilities;

(d) Conduct of meetings of the board of education, including policies on the calling of executive sessions;

(e) Personnel policies that apply to certified employees, including fringe benefits, salary schedules, nonclassroom duties, in-service training, teacher-student ratio, hiring, assignment, transfer, dismissal, suspension, reinstatement, promotion, and demotion;

(f) Evaluation of certified employees;

(g) Selection of textbooks and instructional materials;

(h) Expenditure and accounting for school funds, including all special funds; and

(i) Policies dealing with school-based decision making.

(3)(a) The local board of education may adopt a policy requiring that each school council, or if none exists, the principal, make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board.

(b) Biennially, the local board shall review in a public meeting the portion of each school's consolidated plan that sets forth the activities and schedule to reduce the achievement gaps for the various groups of students as required in KRS 158.649. If a district has more than twenty (20) schools, the district may review the achievement gap data of each school in a comprehensive district report at a regularly scheduled meeting of the board. The report shall include the schools' and district's plans to reduce any identified gaps in student achievement.

(4) It is intended that these policies shall cover matters within the authority and discretion of the district board of education and not matters otherwise required by law or regulation. Such policies shall be filed in the board's office by August 15, 1974, shall be kept up to date by filing annual amendments thereto each August 15 and shall be public records.

History.
4399-54; amend. Acts 1974, ch. 186, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 231, effective July 13, 1990; 1992, ch. 376, § 2, effective July 14, 1992; 1996, ch. 146, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2002, ch. 302, § 4, effective July 15, 2002; 2020 ch. 112, § 13, effective July 15, 2020.

NOTES TO DECISIONS

1. Liability.
Although a ban that prohibited a teacher from attending a local teachers' meeting made by a school principal and a director of employee relations violated his free association rights, the unconstitutional acts were not made by final policymakers under KRS 161.790, 160.370, and 160.340 and thus could not give rise to school board liability. Baar v. Jefferson County Bd. of Educ., 666 F. Supp. 2d 701, 2009 U.S. Dist. LEXIS 100066 (W.D. Ky. 2009), modified, 686 F. Supp. 2d 699, 2010 U.S. Dist. LEXIS 14570 (W.D. Ky. 2010).

Cited in:
Buntin v. Breathitt County Bd. of Educ., 134 F.3d 796, 1998 FED App. 25P, 1998 U.S. App. LEXIS 786 (6th Cir. 1998).

NOTES TO UNPUBLISHED DECISIONS

1. Liability.
Unpublished decision: Defendant board of education was not liable for plaintiff teacher's claim of constitutional violation, as his reprimand was ordered by other defendant school officials who acted without a policy or custom of the board, and under KRS 161.790, 160.370, 160.340, the officials who reprimanded the teacher had no final policymaking authority. Baar v. Jefferson County Bd. of Educ., 476 Fed. Appx. 621, 2012 FED App. 0262N, 2012 U.S. App. LEXIS 5019 (6th Cir. Ky. 2012).

OPINIONS OF ATTORNEY GENERAL.

A local board of education is not obligated to pay for medical examinations and if the board is going to approve such payment it should be done based upon a local school board policy directed specifically at the matter, since this section requires a local board of education to have on file in its office policies relating to "expenditure and accounting for school funds." OAG 78-365, 1978 Ky. AG LEXIS 367.

A school system has the right to suspend a child from the school bus for misconduct. OAG 78-392, 1978 Ky. AG LEXIS 346.

Policies regarding discipline of conduct of pupils should be promulgated to the students through the permissive statute outlining the adoption and promulgation of a code of student rights and responsibilities. OAG 78-673, 1978 Ky. AG LEXIS 163.

KRS 438.050, as it is written, proscribes only the smoking of tobacco products; however, the board of education may regulate, under the authority of KRS 160.290 and this section, the use of tobacco products such as snuff or chewing tobacco in ways other than smoking, by its employees, other adults or students. OAG 81-295, 1981 Ky. AG LEXIS 138.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65, 1992 Ky. AG LEXIS 65.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Audit exceptions and corrections., 702 KAR 3:150.
Financial matters, reports to State Board of Education with respect to, KRS 157.060.
Revenue Cabinet, reports to, KRS 131.030, 131.130, 131.140, 134.140.
Superintendent of Public Instruction to supervise accounts and reports of local boards, KRS 156.160, 156.200.
Teachers' retirement, records for to be kept, KRS 161.560.

Kentucky Bench & Bar.
Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.
Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.345. Definitions — Required adoption of school councils for school-based decision making — Composition — Responsibilities — Personnel decisions — Procedures to fill vacancy in principal position — Professional development — Exemption — Formula for allocation of school district funds — Intentionally engaging in conduct detrimental to school-based decision making by board member, superintendent, district employee, or school council member — Complaint procedure — Disciplinary action — Rescission of right to establish and powers of council — Wellness policy.

(1) For the purpose of this section:

(a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school;

(b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school. The term "school" does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;

2. Instructional programs operated in institutions or schools outside of the district; or

3. Alternative schools designed to provide services to at-risk populations with unique needs;

(c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of principals and assistant principals; and

(d) "Parent" means:

1. A parent, stepparent, or foster parent of a student; or

2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

(2) Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include but not be limited to a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision-making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees;

(b)1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during the teacher representative's term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Council elections may allow voting to occur over multiple days and via electronic means. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal shall be the chair of the school council.

2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty;

(c)1. The school council shall have the responsibility to set school policy that shall be consistent with district board policy and which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451 and goals for the district established by the board. The principal shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection;

(d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy;

(e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply;

(f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals;

(g) The local superintendent shall determine which curriculum, textbooks, instructional materials, and student support services shall be provided in the school after consulting with the local board of education, the school principal, and the school council and after a reasonable review and response period for stakeholders in accordance with local board of education policy. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school principal after consultation with the school council. The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment;

(h) Personnel decisions at the school level shall be as follows:

1. From a list of qualified applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with paragraph (i)11. of this subsection. The superintendent shall provide additional applicants to the principal upon request when qualified applicants are available. The superintendent may forward to the school principal the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect;

2. If the vacancy to be filled is the position of principal:

a. The superintendent shall fill the vacancy after consultation with the school council consistent with paragraph (i)11. of this subsection;

b. Prior to consultation with the school council, each member shall sign a nondisclosure agreement forbidding the disclosure of information shared and discussions held during consultation;

c. A person who believes a violation of the nondisclosure agreement referred to in subdivision b. of this subparagraph has occurred may file a written complaint with the Kentucky Board of Education; and

d. A school council member found to have violated the nondisclosure agreement referred to in subdivision b. of this subparagraph may be subject to removal from the school council by the Kentucky Board of Education under subsection (9)(e) of this section;

3. Notwithstanding subparagraph 2. of this paragraph, if the vacancy to be filled is the position of principal in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C, then:

a. The outgoing principal shall not serve on the council during the principal selection process. The superintendent or the superintendent's designee shall serve as the chair of the council for the purpose of the hiring process and shall have voting rights during the selection process;

b. The council shall have access to the applications of all persons certified for the position. The principal shall be elected on a majority vote of the membership of the council. The school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training; and

c. Notwithstanding the requirement that a principal be elected by a majority vote of the council, the selection of a principal shall be subject to approval by the superintendent. If the superintendent does not approve the principal selected by the council, then the superintendent may select the principal;

4. No principal who has been previously removed from a position in the district for cause may be considered for appointment as principal in that district;

5. Personnel decisions made at the school level under the authority of subparagraph 1. of this paragraph shall be binding on the superintendent who completes the hiring process;

6. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020; and

7. Notwithstanding other provisions of this paragraph, if the applicant is the spouse of the superintendent and the applicant meets the service requirements of KRS 160.380(3)(a), the applicant shall only be employed upon the recommendation of the principal and the approval of a majority vote of the school council;

(i) The school council shall adopt a policy that shall be consistent with local board policy and shall be implemented by the principal in the following additional areas:

1. Curriculum responsibilities under KRS 158.6453(19);

2. Assignment of all instructional and noninstructional staff time;

3. Assignment of students to classes and programs within the school;

4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;

5. Determination of use of school space during the school day related to improving classroom teaching and learning;

6. Planning and resolution of issues regarding instructional practices;

7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;

8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;

9. Adoption of an emergency plan as required in KRS 158.162;

10. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and

11. Procedures to assist the council with consultation in the selection of the principal by the superintendent, and the selection of personnel by the principal, including but not limited to meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation; and

(j) Each school council shall annually review data as shown on state and local student assessments

required under KRS 158.6453. The data shall include but not be limited to information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council, with the involvement of parents, faculty, and staff, shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b) by April 1 of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than October 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.

(3) The policies adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;

(d) Professional development plans developed pursuant to KRS 156.095;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) All schools shall implement school-based decision making in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. Experienced members may participate in the training for new members to fulfill their training requirement. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education. By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS

156.095, except as provided in KRS 158.649. School councils of small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

(9)(a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

(c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

(d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or a member of a school council from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

(e) Notwithstanding paragraph (d) of this subsection and KRS 7.410(2)(c), if the state board determines a violation of the nondisclosure agreement required by subsection (2)(h)2.b. of this section by a school council member has occurred, the state board shall remove the member from the school council, and the member shall be permanently prohibited from serving on any school council in the district.

(10) Notwithstanding subsections (1) to (9) of this section, a school's right to establish or maintain a school-based decision making council and the powers, duties, and authority granted to a school council may be rescinded or the school council's role may be advisory if the commissioner of education or the Kentucky Board of Education takes action under KRS 160.346.

(11) Each school council of a school containing grades K-5 or any combination thereof, or if there is no school council, the principal, shall develop and implement a wellness policy that includes moderate to vigorous physical activity each day and encourages healthy choices among students. The policy may permit physical activity to be considered part of the instructional day, not to exceed thirty (30) minutes per day, or one hundred and fifty (150) minutes per week. Each school council, or if there is no school council, the principal, shall adopt an assessment tool to determine each child's level of physical activity on an annual basis. The council or principal may utilize an existing assessment program. The Kentucky Department of Education shall make available a list of available resources to carry out the provisions of this subsection. The department shall report to the Legislative Research Commission no later than November 1 of each year on how the schools are providing physical activity under this subsection and on the types of physical activity being provided. The policy developed by the school council or principal shall comply with provisions required by federal law, state law, or local board policy.

History.

Enact. Acts 1990, ch. 476, Pt. I, § 14, effective July 13, 1990; 1992, ch. 376, § 3, effective July 14, 1992; 1992, ch. 393, § 3, effective July 14, 1992; 1994, ch. 103, § 3, effective July 15, 1994; 1994, ch. 187, § 1, effective July 15, 1994; 1994, ch. 247, § 1, effective July 15, 1994; 1994, ch. 411, § 1, effective July 15, 1994; 1994, ch. 484, § 1, effective July 15, 1994; 1996, ch. 34, § 1, effective July 15, 1996; 1996, ch. 74, § 1, effective July 15, 1996; 1996, ch. 146, § 1, effective July 15, 1996; 1996, ch. 318, § 52, effective July 15, 1996; 1996, ch. 362, §§ 1 and 6, effective July 15, 1996; 1998, ch. 493, § 14, effective April 10, 1998; 1998, ch. 609, § 3, effective July 15, 1998; 2000, ch. 212, § 1, effective July 14, 2000; 2000, ch. 339, § 2, effective July 14, 2000; 2000, ch. 418, § 1, effective July 14, 2000; 2000, ch. 527, § 14, effective July 14, 2000; 2002, ch. 152, § 1, effective July 15, 2002; 2002, ch. 302, § 5, effective July 15, 2002; 2003, ch. 81, § 1, effective June 24, 2003; 2004, ch. 188, § 4, effective July 13, 2004; 2005, ch. 84, § 6, effective June 20, 2005; 2008, ch. 105, § 1, effective July 15, 2008; 2009, ch. 101, § 12, effective March 25, 2009; 2011, ch. 76, § 1, effective June 8, 2011; 2012, ch. 85, § 2, effective July 12, 2012; 2013, ch. 126, § 8, effective June 25, 2013; 2013, ch. 133, § 8, effective June 25, 2013; 2016 ch. 104, § 1, effective July 15, 2016; 2017 ch. 156, § 11, effective April 10, 2017; 2019 ch. 31, § 3, effective June 27, 2019; 2019 ch. 65, § 2, effective June 27, 2019; 2021 ch. 144, § 4, effective June 29, 2021; 2022 ch. 196, § 1, effective July 14, 2022; 2025 ch. 86, § 4, effective June 27, 2025.

Legislative Research Commission Notes.

(4/10/2017). In codification, the Reviser of Statutes has corrected a manifest clerical or typographical error in subsection(2)(j) of this statute by replacing "November 1" with "October 1" regarding the date that the Department of Education must annually transmit student performance data shown by the state assessment program to each school council. This correction was made to conform with the same change of dates in 2017 Ky. Acts ch. 156, sec. 7, subsec. (2), codified in KRS 158.649.

(7/15/96). This section was amended by 1996 Ky. Acts chs. 34, 74, 146, 318, and 362. Where these Acts are not in conflict, they have been codified together. A conflict exists between Acts chs. 34 and 362. Under KRS 446.250, Acts ch. 362, which was last enacted by the General Assembly, prevails.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (6) at 2075.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Intent of Kentucky Educational Reform Act of 1990.
3. Authority of Local Boards Under KERA of 1990.
4. Hiring in Local Schools.
5. Title IX Claims.

1. Constitutionality.

Since the General Assembly has made a strong showing of intent to eradicate nepotism within the school districts of the Commonwealth, this legislation enjoys a strong presumption

of constitutionality. Department of Educ. v. Risner, 913 S.W.2d 327, 1996 Ky. LEXIS 2 (Ky. 1996).

Since the school based council is an authoritative body within the local school district, and the restriction in subdivision (2)(a) of this section prohibiting school district employees or their spouses from serving as parent members on the school based councils directly addresses the appearance of nepotism within that body and is clearly related to the goals of the legislature to eradicate nepotism within the school districts of the Commonwealth, they are not unconstitutional as a violation of the equal protection clause of the Fourteenth Amendment. Department of Educ. v. Risner, 913 S.W.2d 327, 1996 Ky. LEXIS 2 (Ky. 1996).

2. Intent of Kentucky Educational Reform Act of 1990.

The essential strategic point of the Kentucky Educational Reform Act (Enact. Acts of 1990, ch. 476) is the decentralization of decision making authority so as to involve all participants in the school system, not limited to, but including school councils and local school boards; affording each the opportunity to contribute actively to the educational process and the provisions set out the structural framework by which this decentralization of decision making authority is to occur. Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

3. Authority of Local Boards Under KERA of 1990.

Each participating group in the common school system had been delegated its own independent sphere of responsibility and the Kentucky Education Reform Act (Enact. Acts 1990, ch. 476) did not delegate to local boards of education the authority to require board approval of council actions. Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

The waiver requirement of KRS 160.345 enables a school council to ask for a deviation from district policy, if it determines that the needs of an individual school would best be met in a manner different than that devised by the local board. The waiver provision is present to enable flexibility, not to indicate approval authority by the board over council policy development. Board of Educ. v. Bushee, 889 S.W.2d 809, 1994 Ky. LEXIS 152 (Ky. 1994).

Because the authority provided under KRS 160.345(2)(c)(1) was reasonable and legitimate, the dress code adopted by a middle school did not violate the student's right under Ky. Const., § 2 to be free from arbitrary and capricious state action. Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 2005 FED App. 0058P, 2005 U.S. App. LEXIS 1969 (6th Cir. Ky. 2005).

In a teacher's employment dispute with a school board, it was error to reverse summary judgment granted to individual members of a school's site-based decision making council (SBDMC) by finding a fact issue as to whether the members were entitled to official immunity because whether the members complied with a ministerial duty to adopt a curriculum was not material to the SBDMC's decision to adopt one course instead of another, where neither course was mandated by law, resulting in the teacher's loss of employment. Knott County Bd. of Educ. v. Patton, 415 S.W.3d 51, 2013 Ky. LEXIS 636 (Ky. 2013).

4. Hiring in Local Schools.

Since passage of the Kentucky Education Reform Act, the local school has stopped its direct involvement in hiring school personnel, the school principal has the responsibility, after consulting with the school council, of hiring school personnel from a list of applicants submitted by the superintendent. Yanero v. Davis, 65 S.W.3d 510, 2001 Ky. LEXIS 203 (Ky. 2001).

Trial court erred in interpreting KRS 160.345(2)(h), which would have allowed a superintendent to manipulate the system by recommending with impunity only one (1) applicant out of ten (10) or twelve (12) of those seeking an open principal's position and refusing to provide more, in effect forcing the council to select his choice; such was contrary to the Legislature's intent to create a decentralized decision-making authority that so long as the applicants possessed the qualifications as required by statute, they must be provided to the decision-making authority for its consideration in selection of a principal. Robinson v. Back, 2003 Ky. App. LEXIS 104 (Ky. Ct. App. 2003), aff'd, 139 S.W.3d 895, 2004 Ky. LEXIS 87 (Ky. 2004).

Only reading of KRS 160.345(2)(h) that is in line with the Kentucky Education Reform Act's stated goals of decentralization and shared decision-making authority is one by which the school council holds ultimate authority in selecting the school's principal; thus, "qualified," as used in the last sentence of KRS 160.345(2)(h) means that, upon the request of the school council, the local superintendent is required to forward all remaining applications that meet statutory requirements for the position. Young v. Hammond, 139 S.W.3d 895, 2004 Ky. LEXIS 87 (Ky. 2004).

In a rejected applicant's action alleging gender discrimination and a violation of KRS 160.345(2)(h), summary judgment in favor of the local school superintendent was properly reversed because he acted contrary to the requirements of KRS 160.345(2)(h) when he refused to forward the applicant's application for the position of principal to the local school board, even though they requested the applications for all "qualified" candidates, and because she had established a prima facie case for gender discrimination in light of the court's holding that KRS 160.345(2)(h) did not require a recommendation from the superintendent to be a "qualified" candidate. Young v. Hammond, 139 S.W.3d 895, 2004 Ky. LEXIS 87 (Ky. 2004).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law and asserting that a teacher was not rehired because of her union activities, where pursuant to KRS 160.345(2)(h), a school superintendent's only participation in hiring decisions by the schools was that the superintendent forwarded a list of applicants to the schools, and there was no evidence that the superintendent failed to include the teacher's name on the lists for the positions for which she applied, the teacher failed to establish the causation element of some of her First Amendment retaliation claims; hearsay evidence that a different individual had told the schools not to hire the teacher did not connect the superintendent to the challenged hiring decisions. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

5. Title IX Claims.

Plaintiff's Title IX claim against a school board, based on a teacher's alleged sexual abuse of her child, survived summary judgment because there was a disputed fact issue as to whether the actions of a principal and superintedant — "appropriate persons" to receive notice under Title IX — were clearly unreasonable in light of the known circumstances such that they acted with deliberate indifference to known acts of harassment. 2014 U.S. Dist. LEXIS 37823.

OPINIONS OF ATTORNEY GENERAL.

"Relative" as used in this section should have the same definition as "relative" in KRS 160.380(1)(a), as meaning "father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law." OAG 90-102, 1990 Ky. AG LEXIS 96.

Administrative opposition to the implementation of School Based Decision Making (SBDM) decisions should be easily circumvented since each SBDM council will include the school's lead administrator who will have the same input that the faculty members and parents have on the council and therefore, any administrative opposition that exists will be a part of the council's decision-making process and any decision

the council reaches should represent a consensus of the entire school community. OAG 91-24, 1991 Ky. AG LEXIS 24.

If there is school board opposition to school based decision making (SBDM) the SBDM council could seek assistance from the Office of Education Accountability and if they cannot assist the council, then legal action should be considered to force the school board to comply with this section. OAG 91-24, 1991 Ky. AG LEXIS 24.

It was proper for faculty to vote to enter School Based Decision Making (SBDM) before the 1-1-91 date by which the school board must have in place a policy implementing SBDM, for the SBDM statute specifically allows early entry into school-based decision making. OAG 91-24, 1991 Ky. AG LEXIS 24.

Since subdivision (2)(g) (now (2)(f)) of this section expressly prohibits the council from having authority to recommend transfers or dismissals, that responsibility remains part of the principal's duties and according to subdivision (2)(i) (now (2)(h)) of this section, those decisions are binding on the superintendent. Therefore in a school where there are two physical education teachers, and one will suffice, it is the principal (not the council) who has the authority to move a teacher to a classroom teacher position, as needed, assuming that the physical education teacher is certified for the other position and in the same manner, the principal, not the council, who may transfer one of two librarians, as needed, to another position within the same school so long as the librarian is certified for that position. OAG 91-115, 1991 Ky. AG LEXIS 115.

"Transfer" as used in this section encompasses both movement from one position to another within a school as well as movement from a position in one school to a position in another school. OAG 91-115, 1991 Ky. AG LEXIS 115.

Assuming that a school council exists, KRS 160.380(2)(a), which gives the authority and responsibility for all appointments and promotions of teachers and other public school employees to the superintendent, is qualified by subsection (2)(g) and (i) (now (2)(f) and (2)(h)) of this section to the extent that the superintendent recommends applicants to a particular school and the principal fills the vacancies after consultation with the school council. Therefore, when an initial assignment or the filling of a vacancy is involved, the principal and council make personnel decisions upon receiving the list of recommended applicants from the superintendent. OAG 91-122, 1991 Ky. AG LEXIS 119.

In case of requests for transfer, subdivision (2)(g) (now (2)(f)) of this section clearly specifies that the school council has no authority to make recommendations to either the principal or superintendent in such matters. OAG 91-122, 1991 Ky. AG LEXIS 119.

The school council does not have authority, unilaterally, to create and abolish positions or to set compensation for the school as a whole. Once the school council learns of available funding and the number of positions available for the school from the board, then the council may determine the number of individuals to be employed in each job class. It remains the responsibility of the local board of education, to establish the overall number of positions and to set the compensation of employees. If this were not the case, staffing and salaries from school to school could lack consistency with drastic effects on the district budget. OAG 91-122, 1991 Ky. AG LEXIS 119.

Authority concerning the use of all tobacco products by employees, students and visitors in school buildings, on school grounds or on field trips rests with the local board of education, not with superintendents and principals, unless that authority is delegated to them by the board. OAG 91-137, 1991 Ky. AG LEXIS 127.

KRS 438.050 does not grant authority to superintendents or principals beyond that authority granted to those officials by the Board; and, as currently written, does not forbid smoking of tobacco products at outdoor athletic events, depending on what smoking areas are to be designated in the schools. OAG 91-137, 1991 Ky. AG LEXIS 127.

A potential conflict of interest exists between the requirements of KRS 160.180(3) for members of boards of education concerning influence in hiring school employees, and the duties authorized by subsections (2)(g) and (i) (now (2)(f) and (2)(h)) of this section for members of site-based councils; KRS 160.180(3) expressly prohibits a member of a board of education from having any influence on hiring of school personnel, while subsections (2)(g) and (i) (now (2)(f) and (2)(h)) of this section give members of the council authority to recommend candidates to the principal to be hired. OAG 91-148, 1991 Ky. AG LEXIS 148.

Even if a board member, who was also a council member, were to disqualify himself, while serving on the council, from engaging in any consideration of applicants or from voting on recommended applicants for school district positions, thereby eliminating potential conflicts over hiring issues, other potential conflicts could develop since the board sets policies for the councils of the district on areas in which the interests of the board may differ from the interests of the councils. OAG 91-148, 1991 Ky. AG LEXIS 148.

If a school board member is elected to a site-based decision making council, the provisions of KRS 160.180 and this section create potential statutory conflicts of interest should that board member attempt to carry out the duties of both positions with regard to hiring decisions. OAG 91-148, 1991 Ky. AG LEXIS 148.

Members of school councils are not entitled to receive compensation for their services to the school at this time because funds have not been appropriated by the General Assembly. OAG 91-192, 1991 Ky. AG LEXIS 193.

Subsections (2)(c) and (2)(j)5 (now (2)(i)(5)) of this section do not authorize a school council to create a parking lot on their school campus through private funding because the local school board has the responsibility to initiate construction. OAG 91-215, 1991 Ky. AG LEXIS 214.

Within broad parameters set by the local school board on school property, subsection (2)(j)5 (now (2)(i)(5)) of this section provides the council with the authority to set policies on the use of school property outside of the school as well as inside of the school during the school day; therefore, a school council may set limits concerning use of a school parking lot where staff members park their vehicles, and where school children are dropped off, e.g., to ensure the safety of children. OAG 91-215, 1991 Ky. AG LEXIS 214.

Whether parents may participate on school-based decision making council committees is a matter to be addressed by local school board policy. OAG 92-57, 1992 Ky. AG LEXIS 57.

A superintendent may not transfer a principal from school A to school B without school council approval, when both schools are operating under the governance of a council; under this section, the superintendent makes recommendations to school B when the principal retires and once that position is filled by the council, and finalized by the superintendent, if another vacancy exists for a principal in school A, then the superintendent repeats the process. OAG 92-78, 1992 Ky. AG LEXIS 85.

As of July 14, 1992, parent representatives who are elected after the effective date of House Bill 182 (Acts 1992, ch. 376) shall be eligible to serve on a school council so long as they are neither employed by the school district, nor related to employees of the school district; parent representatives who are elected prior to the effective date of the act must meet the requirements in effect at the time that they begin to serve. OAG 92-88, 1992 Ky. AG LEXIS 78.

The office of the Attorney General opined that House Bill 182 (Acts 1992, ch. 376) operates prospectively to require that parent representatives who are elected after the act becomes effective (July 14, 1992), shall comply with the eligibility criteria imposed by House Bill 182; therefore, parent repre-

sentatives who are elected prior to July 14, 1992, need not resign due to the change in eligibility criteria. OAG 92-88, 1992 Ky. AG LEXIS 78.

Consultation, as used in this section, has only that meaning applied through customary usage, i.e., to seek, advice. Therefore, the principal retains final hiring authority. OAG 92-131, 1992 Ky. AG LEXIS 197.

In view of the fact that the statute clearly gives to the superintendent the power to make recommendations to the principal for his consideration, upon consultation of the principal with the council, the council has a right to see applications and accompanying materials on applicants who have been recommended, but not on applicants who have not been recommended by the superintendent. OAG 92-131, 1992 Ky. AG LEXIS 197.

It is impermissible for the council to interview applicants who have not been recommended by the superintendent. Whether the council may interview recommended applicants is a matter to be negotiated between the council and the principal. OAG 92-131, 1992 Ky. AG LEXIS 197.

The spouse of a tenured certified employee who is on leave from the County School System may not serve as a parent member of a School Based Decision Making Council in the County School System school. OAG 92-157, 1992 Ky. AG LEXIS 272.

The school council anti-nepotism clause in subsection (2)(a) of this section is an attempt by the General Assembly to rid Kentucky schools of conflicts of interests and favoritism. OAG 92-157, 1992 Ky. AG LEXIS 272.

A local school district or a school would be ill-advised to adopt a policy determining that parent members of a committee formed pursuant to subdivision (2)(d) of this section are "school officials" and entitled to access of confidential student records. The danger in enacting so broad a policy interpreting "school officials" is that the intent of the Family Educational Rights and Privacy Act (FERPA) will be disregarded. Additionally, a school could lose its federal funding if a violation of FERPA has occurred. OAG 93-5, 1993 Ky. AG LEXIS 326.

Because of the risk in allowing unauthorized persons to review confidential student records, the best policy is to strictly interpret the "school officials" exception to the Federal Education Records Privacy Act (FERPA) and not include parent members of school councils in the definition of "school officials" for purposes of 20 USCS § 1232g(b)(1)(A). OAG 93-35, 1993 Ky. AG LEXIS 88.

Before any confidential student's records may be released to the members of the school council, the local school district or school must adopt a policy as required by Family Educational Rights and Privacy Act (FERPA) finding that the administrator or principal, teacher and parent members of a school-based decision making council are "school officials" pursuant to 20 USCS § 1232g(b)(1)(A). The policy must also define the "legitimate educational interests" of the school council members. 34 CFR 99.6(a)(4). OAG 93-5, 1993 Ky. AG LEXIS 326.

In order to achieve the educational goals envisioned by the Kentucky Education Reform Act (KERA) the school council must be intricately aware of the grades, test scores and special needs of the students attending the school; therefore, in order to carry out their statutory duties, all of the members of a school based decision making council may be considered "school officials" for purposes of the Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g. OAG 93-5, 1993 Ky. AG LEXIS 326.

Any board policy relating to the initial vote to enter SBDM must offer the faculty a reasonable opportunity to vote. OAG 93-31, 1993 Ky. AG LEXIS 84.

If a local board in a single-school district elects to implement SBDM this decision controls over the vote of the school staff. OAG 93-31, 1993 Ky. AG LEXIS 84.

If a school's staff votes to enter SBDM in October, but board policy states that school council terms run from July to June, the school does not need to wait nine months to implement SBDM. Rather, the school should be given a brief time to permit elections and training before allowing the school council to begin its tenure. This delay should not exceed a couple of months. OAG 93-31, 1993 Ky. AG LEXIS 84.

It is consistent with the goals of KERA for a superintendent to receive input from a council-elect prior to selecting a principal for its school in the event there is a vacancy in the spring before council members' terms officially begin. However, the final decision will remain with the superintendent. OAG 93-31, 1993 Ky. AG LEXIS 84.

The decision of the local board of education in a single-school district not to implement SBDM controls over the school's desires to enter SBDM. OAG 93-31, 1993 Ky. AG LEXIS 84.

The exemption in subsection (5) of this section for single-school districts from SBDM will continue to apply until the statute is amended or repealed. OAG 93-31, 1993 Ky. AG LEXIS 84.

The local board may reject a school council's policy on corporal punishment if the local school board has a policy banning corporal punishment based on concerns for liability or concerns for health and safety. OAG 93-31, 1993 Ky. AG LEXIS 84.

A teacher may cast a vote for the teacher representatives at his or her school and also cast a vote for the parent representatives at another school where his or her child is enrolled. Additionally, if the teacher has been assigned to the same school where his or her child is enrolled then the teacher may vote for the teacher representatives and the parent representatives. OAG 93-49, 1993 Ky. AG LEXIS 282.

Although there is no statutory nepotism prohibition in Kentucky Education Reform Act (KERA) prohibiting a School Based Decision Making Council member from participating in the selection of the principal when the member's son has applied for the principal position, allowing a school council member to cast a vote to select her son as principal violates the spirit of KERA and has the appearance of impropriety. OAG 93-50, 1993 Ky. AG LEXIS 284.

Pursuant to subsection (7) of this section, a school may apply to be exempt from the school-based decision making (SBDM) administrative structure to allow the SBDM council to elect any member as a chair by submitting an administrative model through the appropriate channels to the Chief State School Officer and the State Board for Elementary and Secondary Education. OAG 93-52, 1993 Ky. AG LEXIS 286.

The correct interpretation of subdivision (2)(j) (now (2)(i)) of this section is that school councils have authority to set policy regarding the assignment of all instructional and non-instructional staff time and the principal is authorized to administer the policy and to make assignments as to individual staff members. OAG 93-55, 1993 Ky. AG LEXIS 289.

A local school board does not have the authority to adopt a policy requiring school councils to have committees; however, individual school councils have the discretion to form committees. OAG 94-8, 1994 Ky. AG LEXIS 305.

While a local school board may not require a school council to form committees, if committees are formed at the discretion of the council, this section authorizes the local school board to adopt policies requiring parental representation on school council committees. OAG 94-8, 1994 Ky. AG LEXIS 305.

While local school boards cannot require school councils to have committees, if councils at their discretion have committees, the school board had the statutory authority to enact a policy requiring the school council to allow parents to serve on committees; however, a school board could not enact a policy precluding any parents from serving on school council committees. OAG 94-8, 1994 Ky. AG LEXIS 305.

School council committees are advisory bodies created by Kentucky Education Reform Act, therefore, school council committees must be formed consistent with KRS 156.500,

which requires reasonable minority representation on the committees. OAG 94-8, 1994 Ky. AG LEXIS 305.

This section authorizes a local school board to require that proposed SBDM policies be timely reviewed by legal counsel and a Central Office Administrator prior to implementation for consistency with state or federal law, concerns for health and safety, concerns for liability, available financial resources or contractual obligations. OAG 94-29, 1994 Ky. AG LEXIS 258.

When the amendment to this section by 1994, Ch. 484, § 1 became effective on July 15, 1994, any schools having eight percent or more minority students enrolled and having school councils which did not have minority members on that date, were required to immediately have a special election to elect a minority parent and a minority teacher to the school council, even if the first regular election after July 15, 1994 was not until some time later. OAG 94-41, 1994 Ky. AG LEXIS 271.

Although schools are not required to implement school-based decision making (SBDM) until 1996, once the decision to implement SBDM is made then the schools or school district is bound by the dictates of this section. Accordingly, the school district must follow the statutory method of opting out of SBDM as allowed pursuant to subsection (5) of this section and may not enact a policy allowing for repeal of SBDM in a method not contemplated by statute. OAG 94-51, 1994 Ky. AG LEXIS 282.

Proposed school council plan to allow all parents, and not just the parents of minority students, to participate in special minority representative election did not comply with subdivision (2)(b) of this section. OAG 94-60, 1994 Ky. AG LEXIS 292.

School council plan to hold a special minority election, if necessary, on the same night as and immediately following the regular election did not comply with subdivision (2)(b) of this section since the election would not be held in a "timely manner" and proper notice would not be given to all minority parents and parents of minority students regarding the special election. OAG 94-60, 1994 Ky. AG LEXIS 292.

Subdivision (2)(b) of this section which limits participation in the election of the minority representative to minority parents only (rather than permitting all parents — minority and non-minority) to vote is not unconstitutional. OAG 94-60, 1994 Ky. AG LEXIS 292.

"Qualified applicants" referred to in subsection (2) of this section means all persons who meet all qualifications set forth by statute, regulations, and school board policies. OAG 95-10, 1995 Ky. AG LEXIS 26.

Under this section, if a school seeking to fill personnel vacancies continues to request more names of qualified applicants from the superintendent, then it must be provided with all available applications which conform to minimum statutory, regulatory and board policy requirements and the superintendent is not allowed to withhold applicants from consideration by the school based on his or her subjective considerations; which does not mean that the superintendent is denied the opportunity to render subjective comments and recommendations, but that the superintendent must eventually give the school all applications which meet the minimum legal qualifications and comply with legitimate school board policies. OAG 95-10, 1995 Ky. AG LEXIS 26.

School council has the authority to determine the school curriculum and to make corresponding decisions as to the number of personnel in each job classification necessary to implement its policies. While this may result in the transfer of an employee, it is not the recommendation of such by the council, and thus is not a violation of the statutory prohibition against a school council recommending transfers or dismissals. Such recommendations and decisions, which have a district-wide impact, are still in the purview of the local school board and superintendent. OAG 96-38, 1996 Ky. AG LEXIS 76.

The Office of Education Accountability cannot prosecute a case to have an executive branch employee disciplined or removed for violation of subsection (9)(a). OAG 02-4, 2002 Ky. AG LEXIS 1.

In both KRS 160.345 hearings and KRS 156.132 hearings, the role of the Commissioner of Education in the hearings is authorized not by those statutes, but by the grant of authority vested in the commissioner as the executive and administrative officer of the Board of Education by KRS 156.148(3). OAG 02-4, 2002 Ky. AG LEXIS 1.

HB 176 (2010, ch. 1) does not specify a mechanism by which retention decisions must be made. HB 176 does not prohibit the superintendent from developing a collaborative model that involves a committee making a recommendation on retention decisions. Parties to a teacher collective bargaining agreement may collaborate and otherwise agree to apply provisions of the collective bargaining agreement as long as those agreements do not violate the express provisions of HB 176. OAG 12-003, 2012 Ky. AG LEXIS 47.

An underrepresented ethnic group in a school is an ethnic group whose representation is not fair and reasonable in proportion to the number of such students in the school. Eligibility to serve as the minority member on a school council is determined by the parent's status and not the child's. OAG 12-011, 2012 Ky. AG LEXIS 131.

Whatever the status of the ballots when the parents cast their votes at the PTA election, once they were conveyed to the school they became public records because they were "in the possession of or retained by a public agency." The record does not support the school's position that it lacked custody or control of the parent election records. Nothing in KRS 160.345(2)(b)1. addresses the disposition of open records requests for records generated in the course of a PTA election or in any way vests exclusive custody and control of parent election records in the PTA. OAG 01-ORD-94, 2001 Ky. AG LEXIS 188.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Application for approval of alternative school-based decision making model, 701 KAR 5:080.

Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.

Guidelines for alternative models for school-based decision making, 701 KAR 5:100.

Instructional resource adoption process, 704 KAR 3:455.

Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports, 702 KAR 6:090.

School council allocation formula: KETS District Administrative System Chart of Accounts, 702 KAR 3:246.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Young, Who's the Boss?, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 10.

Education Law: Hiring and Termination Issues, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 17.

Owsley, Education Law: Why Can't I Wear That? Student Clothing and Free Speech, Vol. 72, No. 6, November 2008, Ky. Bench & Bar 14.

Kentucky Law Journal.

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.346. Definitions — Targeted and comprehensive support and improvement — Revised plans — Turnaround audit — Removal of principal — Review and report — Intervention process — Professional learning requirement — Adoption of evidence-based curriculum and selection of high-quality instructional resources — Exit criteria — Schools requiring rigorous support and action — District with significant number of targeted schools — Evidence of violation — Restoration of school's right to establish council.

(1) As used in this section:

(a) "Department" means the Kentucky Department of Education;

(b) "ESSA" means the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor;

(c) "Level" means elementary, middle, or high school;

(d) "Turnaround" means a comprehensive transformation of a school to achieve accelerated, meaningful, and sustainable increases in student achievement through improved school leadership and school district support;

(e) "Turnaround plan" means a mandatory school plan that is designed to improve student learning and performance with evidence-based interventions as defined in ESSA and that is developed and implemented by the local school district in partnership with stakeholders, including the principal, other school leaders, teachers, and parents; and

(f) "Turnaround team" means the turnaround training and support team described in subsection (9)(a) of this section.

(2)(a) The department shall annually identify a school for targeted support and improvement if the school has one (1) or more of the same subgroups, as defined by ESSA, whose performance in the state accountability system by level is at or below that of all students in any of the lowest-performing five percent (5%) of all schools for three (3) consecutive years.

(b) Beginning with the 2021-2022 school year, and every three (3) years thereafter, the department shall identify a school for additional targeted support and improvement if the school has one (1) or more subgroups, as defined by ESSA, whose performance in the state accountability system by level is at or below the summative performance of all students in any of the lowest-performing five percent (5%) of all schools identified under subsection (3)(a) of this section and the school was identified in the immediately preceding year for targeted support and improvement as described in paragraph (a) of this subsection.

(3) The department shall annually identify a school for comprehensive support and improvement if the school is:

(a) In the lowest-performing five percent (5%) of all schools in its level based on the school's performance in the state accountability system;

(b) A high school with a four (4) year cohort graduation rate that is less than eighty percent (80%); or

(c) Identified by the department for additional targeted support and improvement under subsection (2)(b) of this section and fails to exit additional targeted support and improvement status based on criteria established under subsection (12) of this section.

(4)(a) When a school is identified for targeted support and improvement under subsection (2)(a) of this section, the local school personnel, working with stakeholders, including the principal, other school leaders, teachers, and parents, shall revise its school improvement plan, which shall be subject to review and approval by the local board of education.

(b) Each revised plan shall be informed by all available indicators, including student performance compared to long-term goals, and shall include:

1. Components of turnaround leadership development and support;

2. Identification of critical resource inequities;

3. Evidence-based interventions; and

4. Additional actions that address the causes of consistently underperforming subgroups of students.

(c) If adequate performance progress, as defined by the department, is not made, the local school district shall take additional action to assist and support the school in reaching performance goals.

(5) When a school is identified for additional targeted support and improvement under subsection (2)(b) of this section, the local school district shall take more rigorous district-determined action to assist and support the school in reaching performance goals.

(6)(a) When a school is identified for comprehensive support and improvement, an audit shall be performed by the department to diagnose the causes of the school's low performance.

(b) The audit conducted under this subsection shall be the only comprehensive audit required for a school unless the school fails to exit comprehensive support and improvement status as described in subsection (12) of this section or exits comprehensive support and improvement status but subsequently repeats as a school identified for comprehensive support and improvement.

(7) When a school is identified for targeted support and improvement or comprehensive support and improvement for two (2) or more consecutive years, the superintendent may remove the principal.

(8)(a) The audit conducted by the department under subsection (6) of this section shall include:

1. A diagnosis of the causes of the school's low performance, with an emphasis on underperforming subgroups of students and corresponding critical resource inequities;

2. An assessment and recommendation to the superintendent regarding the best strategies to address the school's specific needs;

3. An assessment of the interaction and relationship among the superintendent, central office personnel, and the school principal;

4. A recommendation of the steps the school may implement to launch and sustain a turnaround process;

5. A recommendation to the local board of education of the turnaround principles and strategies necessary for the superintendent to assist the school with turnaround; and

6. An assessment and recommendation to the superintendent regarding the principal's capacity to lead the turnaround effort in the school.

(b) The report of an audit conducted under this subsection shall be provided to the superintendent, local board of education, school principal, commissioner of education, and the Kentucky Board of Education.

(9) After completion of the audit described in subsection (8) of this section, each school identified for comprehensive support and improvement shall engage in the following turnaround intervention process:

(a) The superintendent and principal shall collaborate with the department to create a turnaround training and support team for the school identified for comprehensive support and improvement. The local board of education shall approve the turnaround team;

(b) The authority of the school council granted under KRS 160.345 shall be transferred to the superintendent;

(c) The superintendent shall select a principal for the school if a principal vacancy occurs. The superintendent shall consult with the turnaround team, parents, certified staff, and classified staff before appointing a principal replacement;

(d) Upon recommendation of the principal, the superintendent may reassign certified staff members to a comparable position in the school district;

(e) The superintendent shall collaborate with the turnaround team to design ongoing turnaround training and support for the principal and a corresponding monitoring system of effectiveness and student achievement results;

(f) The principal shall collaborate with the turnaround team to establish an advisory leadership team representing school stakeholders including other school leaders, teachers, and parents;

(g)1. In consultation with the department, the local school board shall collaborate with the superintendent, principal, turnaround team, and the advisory leadership team to propose a three (3) year turnaround plan.

2. The turnaround plan shall include requests to the department for exemptions from submitting documentation that are identified by the principal, advisory leadership team, and turnaround team as inhibitors to investing time in innovative instruction and accelerated student achievement of diverse learners including ongoing staff instructional plans, student interventions, formative assessment results, or staff effectiveness processes.

3. The turnaround plan shall be reviewed for approval by the superintendent and the local board of education and shall be subject to review, approval, monitoring, and periodic review by the department as described in KRS 158.782;

(h) The school district may request technical assistance from the department for development and implementation of the turnaround plan, which may include conducting needs assessments, selecting evidence-based interventions, and reviewing and addressing resource inequities;

(i) The turnaround plan shall be fully implemented by the first full day of the school year following the school year the school was identified for comprehensive support and improvement; and

(j) The superintendent shall periodically report to the local school board, and at least annually to the commissioner of education, on the implementation and results of the turnaround plan.

(10) The department shall establish required professional learning for teachers of students in schools identified for comprehensive support and improvement. Required professional learning shall be related to evidence-based practices in instruction, instructional materials implementation, and assessment for reading and mathematics and aligned to Kentucky academic standards required by KRS 158.6453.

(11) Each superintendent or public charter school board of directors shall adopt evidence-based curriculum and select high-quality instructional resources for schools identified for comprehensive support and improvement. High-quality instructional materials selected by the superintendent shall be determined by the department to be reliable, valid, and aligned to Kentucky academic standards required by KRS 158.6453 for reading and mathematics.

(12) The Kentucky Board of Education shall establish annual statewide exit criteria for schools identified for targeted support and improvement, additional targeted support and improvement, and comprehensive support and improvement.

(13) If a school enters comprehensive support and improvement status and does not make any annual improvement, as determined by the department, for two (2) consecutive years, or if the school does not exit the status after three (3) years, the school shall enter a school intervention process chosen by the commissioner of education that provides more rigorous support and action by the department to improve the school's performance.

(14) For school districts that include a significant number of schools, as determined by the department, identified for targeted support and improvement:

(a) The department shall periodically review a local board's resource allocations to support school improvement and provide technical assistance to the local school board; and

(b) The department may provide a recommended list of turnaround or school intervention providers that have demonstrated success implementing evidence-based strategies.

(15) If, in the course of a school audit, the audit team identifies information suggesting that a violation of KRS 160.345(9)(a) may have occurred, the commissioner of education shall forward the evidence to the Office of Education Accountability for investigation.

(16) A school's right to establish a council granted under KRS 160.345 may be restored by the local board of education two (2) years after the school exits comprehensive support and improvement status.

History.

Enact. Acts 2004, ch. 188, § 1, effective July 13, 2004; 2010,

ch. 1, § 1, effective January 14, 2010; 2012, ch. 61, § 2, effective July 12, 2012; 2017 ch. 156, § 12, effective April 10, 2017; 2019 ch. 199, § 3, effective June 27, 2019; 2020 ch. 112, § 2, effective July 15, 2020; 2025 ch. 92, § 1, effective June 27, 2025; 2026 ch. 9, § 3, effective March 27, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Charter school student application, lottery, and enrollment, 701 KAR 8:010.

Intervention system for persistently low-achieving schools, 703 KAR 5:180.

Kentucky's Accountability System, 703 KAR 5:270.

160.347. Removal of school council member.

A member of a school council may be removed from the council for cause, after an opportunity for hearing before the local board, by a vote of four-fifths (⅘) of the membership of a board of education after the recommendation of the chief state school officer pursuant to KRS 156.132. Written notices setting out the charges for removal shall be spread on the minutes of the board and given to the member of the school council.

History.

Enact. Acts 1994, ch. 103, § 2, effective July 15, 1994.

160.348. Advanced placement, International Baccalaureate, dual enrollment, dual credit courses, and other advanced coursework.

(1)(a) The Kentucky Department of Education shall make available to schools information concerning the prerequisite content necessary for success in advanced coursework, including secondary courses, Advanced Placement or AP courses, and International Baccalaureate or IB courses. The department shall provide sample syllabi, instructional resources, and instructional supports for teachers that will assist in preparing students for more rigorous coursework.

(b) Each school-based decision making council, or principal if none exists, shall offer a core curriculum of AP, IB, dual enrollment, dual credit courses, or other advanced coursework using either or both on-site instruction or online alternatives. In addition, each school-based decision making council shall comply with any additional requirements for AP, IB, dual enrollment, dual credit, and advanced coursework courses that may be established cooperatively by the Kentucky Department of Education, the Education Professional Standards Board, and the Council on Postsecondary Education in accordance with the definitions in KRS 158.007.

(c) When practicable, the school-based decision making council, or principal if none exists, shall offer advanced coursework, as defined in KRS 158.6453, in mathematics, reading, science, and English language arts for students in grades four (4) through twelve (12).

(2) Every school-based decision making council, or principal if none exists, shall establish a policy that is consistent with any district plan adopted by a local board of education in accordance with KRS 158.6453(21) on the recruitment and assignment of students to advanced coursework options in accordance with paragraph (b) of this subsection that recognizes that all students have the right to participate in a rigorous and academically challenging curriculum. The policy shall require that the school notifies all students, parents, and guardians of the:

(a) Long-term benefits of student participation in advanced coursework; and

(b) Advanced coursework opportunities available at the school.

(3) Students shall be admitted to advanced coursework in accordance with the district plan adopted in accordance with KRS 158.6453(21).

(4) Students that successfully complete high school advanced coursework shall receive credit toward graduation in accordance with KRS 158.622(3).

(5) Students enrolled in AP or IB courses in the public schools shall have the cost of the examinations paid by the Kentucky Department of Education.

History.

Enact. Acts 2002, ch. 97, § 3, effective July 15, 2002; 2008, ch. 134, § 18, effective July 15, 2008; 2025 ch. 148, § 2, effective June 27, 2025.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2024 Ky. Acts ch. 175, Pt. I, C, 2, (5) at 1832.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 2, (1) at 2073.

NOTES TO DECISIONS

1. Dual-credit and Dual-enrollment Courses.

Individuals with Disabilities Education Act did not apply to a high school student who needed support accommodations while attending a residential program at a dual-credit, dual-enrollment school located on a state university campus because it was a postsecondary school and thus not included in a free appropriate public education, although Kentucky's secondary school curriculum includes dual-credit and dual-enrollment courses and the student remained enrolled at the district high school. Bradley v. Jefferson Cnty. Pub. Sch., 88 F.4th 1190, 2023 FED App. 276P, 2023 U.S. App. LEXIS 33938 (6th Cir. Ky. 2023).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Advanced placement, 704 KAR 3:510.

DISTRICT OFFICERS AND EMPLOYEES

160.350. Superintendent of schools — Appointment — Term — Vacancy — Publication of each superintendent's contract and any contract amendment, renewal, extension, or addendum — Qualifications — Removal — Contract extension.

(1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following the individual's appointment. The appoint-

ment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign during a term and accept a new term from the same board of education prior to the expiration date of the present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.

(2) Each board of education shall publish on the district's website and submit to the Kentucky Department of Education, within thirty (30) days of execution, each superintendent's contract, amendment, renewal, extension, or addendum thereto as:

(a) A scanned copy of the fully executed document; and

(b) An electronic text version of the document in a format prescribed by the department that accurately sets forth the terms of the executed document and is accessible for publication in compliance with applicable accessibility requirements.

(3) The department shall publish the documents submitted under subsection (2) of this section within thirty (30) days of receipt on the department's website. The department shall not remove information submitted under subsection (2) of this section from its website for at least ten (10) school years.

(4) An individual shall not assume the duties of superintendent in a district until he or she provides the board of education with a copy of a certificate for school superintendent issued by the Education Professional Standards Board or its legal predecessor. A superintendent shall hold a valid certificate throughout the period of employment. A superintendent shall successfully complete the training program and assessment center process within two (2) years of assuming the duties of superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association that has the school district's funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.

(5) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the commissioner of education. However, if the dismissal of the superintendent has been recommended by a highly skilled certified educator pursuant to KRS 158.6455 and the action is approved by the commissioner of education, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the commissioner of education for removing the superintendent. The commissioner of education shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during the superintendent's appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, the commissioner of education shall either approve or reject the board's request.

(6) After the completion of a superintendent's first contract or after four (4) years, whichever comes last, the board of education may, no later than June 30, extend the contract of the superintendent for one (1) additional year beyond the current term of employment.

History.

4399-34; amend. Acts 1942, ch. 113, § 13; 1966, ch. 89, § 9; 1984, ch. 246, § 1, effective July 13, 1984; 1988, ch. 34, § 3, effective July 15, 1988; 1990, ch. 476, § 75, effective July 13, 1990; 1992, ch. 170, § 3, effective July 14, 1992; 1994, ch. 14, § 2, effective February 17, 1994; 1996, ch. 349, § 2, effective July 15, 1996; 1998, ch. 77, § 1, effective July 15, 1998; 1998, ch. 598, § 18, effective April 14, 1998; 2000, ch. 470, § 1, effective July 14, 2000; 2004, ch. 117, § 1, effective July 13, 2004; 2014, ch. 77, § 2, effective April 10, 2014; 2026 ch. 9, § 2, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. Nature of Offices.
2. Compatibility of Offices.
3. Appointment.
4. —Time.
5. —Validity.
6. —Rescission.
7. Qualifications.
8. Residency Requirement.
9. Salary.
10. Term.
11. Removal.
12. —Cause.
13. —Charges.
14. —Hearing.
15. —Evidence.
16. Procedure on Appeal.

1. Nature of Offices.

A superintendent was a state officer. Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931) (decided under prior law).

The office of superintendent is one of trust. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

A school superintendent is a public officer. Whitley County Board of Education v. Rose, 267 Ky. 283, 102 S.W.2d 28, 1937 Ky. LEXIS 314 (Ky. 1937). See Smith v. Board of Education, 23 F. Supp. 328, 1938 U.S. Dist. LEXIS 2170 (D. Ky. 1938).

2. Compatibility of Offices.

One cannot at the same time be superintendent and teacher. Knuckles v. Board of Education, 272 Ky. 431, 114 S.W.2d 511, 1938 Ky. LEXIS 138 (Ky. 1938).

Position of assistant superintendent of county schools is an administrative position and is incompatible with the position of teacher and by holding the incompatible position of teacher one appointed assistant superintendent failed to enter upon his duties as such barring him from recovering compensation as assistant superintendent. Richardson v. Bell County Board of Education, 296 Ky. 520, 177 S.W.2d 871, 1944 Ky. LEXIS 572 (Ky. 1944).

3. Appointment.

4. —Time.

A county superintendent of schools may be appointed prior to the first day of April in the year in which his term begins, provided that the terms of the members of the board in office at the time the appointment is made must extend beyond the date when the term of the superintendent begins. Maynard v. Allen, 276 Ky. 485, 124 S.W.2d 765, 1939 Ky. LEXIS 547 (Ky. 1939).

A second contract for office of superintendent was enforceable although the second contract was entered into one year prior to the expiration of the first contract, where it was ratified by the board of education after the expiration of the first contract. Farley v. Board of Education, 424 S.W.2d 124, 1968 Ky. LEXIS 443 (Ky. 1968).

Since there is nothing in this section authorizing the appointment of the school superintendent which would justify limiting the power of the school board to appoint a school superintendent prior to the first day of January, the board of education could appoint a school superintendent at a December 5 meeting. Board of Education v. Nevels, 551 S.W.2d 15, 1977 Ky. App. LEXIS 690 (Ky. Ct. App. 1977).

5. —Validity.

Where five-member board of education voted to grand superintendent a new four-year contract but due to an election contest one of the members was a de facto officer whose vote could not be counted in determining whether the superintendent was validly appointed to a new term, the superintendent's appointment was valid where two (2) members voted in favor of the contract, one member voted against and one member abstained, for the vote of the member who abstained will be taken as being in favor of the appointment. Board of Education v. Nevels, 551 S.W.2d 15, 1977 Ky. App. LEXIS 690 (Ky. Ct. App. 1977).

6. —Rescission.

Where person was appointed superintendent by resolution duly adopted, and four-year contract was executed and approved by proper resolution, following which the board adopted a resolution rescinding its former action and appointed another person as superintendent, person first appointed was entitled, before commencement of term for which appointment was made, to bring declaratory judgment action to establish his right to office. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

In declaratory judgment proceeding to establish right of appointee to office of superintendent, it was proper for court to set matter for early hearing. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

Alleged duress by State Board of Education consisting of threats by State Board to prosecute county board members for school law violations unless certain person was appointed as superintendent did not authorize county board to rescind order of appointment, where appointee did not participate in alleged duress. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

Alleged immoral conduct of appointee to office of superintendent would not justify rescission of resolution of appointment; in such case board must resort to power of removal. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

The appointment of a superintendent does not result from a contract negotiated between the board and the appointee, but from a formal election prescribed by statute, and once made in the manner prescribed cannot be rescinded. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

Fact that appointee to office of superintendent in Laurel County held appointment to same office in Jackson County, covering same term, was not ground for rescinding appointment, since appointee could resign appointment in Jackson County before commencement of term in Laurel County, and in any event acceptance of Laurel County office would vacate Jackson County office. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456, 1942 Ky. LEXIS 201 (Ky. 1942).

7. Qualifications.

In an action to compel county board of education to employ him for a specific school at a specific salary, a school principal was bound by stipulation of facts as to qualifications of school superintendent in the absence of fraud or mistake in entering into the stipulation. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951).

8. Residency Requirement.

Trial court did not err in granting the Commonwealth's motion to dismiss a petition or a declaration of rights filed by a school district, board of education, and superintendent, contesting the constitutionality of KRS 160.350(2) because requiring the superintendent to reside in Kentucky after he was appointed was not an improper restraint upon his right to travel and migrate under Ky. Const. § 24 and the United States Constitution; KRS 160.350(2) imposed a permissible residency requirement because there was no requirement that a candidate for superintendent had to have been a Kentucky resident for a certain number of years, but instead, Kentucky residency was imposed as a condition of employment that could occur after hiring. Newport Indep. Sch. District/Newport Bd. of Educ. v. Commonwealth, 300 S.W.3d 216, 2009 Ky. App. LEXIS 118 (Ky. Ct. App. 2009).

KRS 160.350(2) did not deny a superintendent equal protection of the law because that a Kentucky resident would have a better comprehension of Kentucky's educational needs was a rational basis for Kentucky's requirement that superintendents live in Kentucky. Newport Indep. Sch. District/Newport Bd. of Educ. v. Commonwealth, 300 S.W.3d 216, 2009 Ky. App. LEXIS 118 (Ky. Ct. App. 2009).

9. Salary.

The salary of a superintendent cannot be changed during the term of office. Whitley County Board of Education v. Rose, 267 Ky. 283, 102 S.W.2d 28, 1937 Ky. LEXIS 314 (Ky. 1937). (But see Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

Superintendent of schools is not an "officer" within Const., §§ 161, 235 and 246 prohibiting change in compensation of officers during term. Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

10. Term.

The fact that the board adopted an order fixing the term of the superintendent did not prevent it from subsequently employing a superintendent for a term of four years. Smith v. Board of Education, 264 Ky. 150, 94 S.W.2d 321, 1936 Ky. LEXIS 285 (Ky. 1936).

Once the length of term has been fixed the board loses control over the term thus created. Board of Education v. Gulick, 398 S.W.2d 483, 1966 Ky. LEXIS 489 (Ky. 1966).

Where the board employed a superintendent for a four-year term it could not create a new term until the expiration of the four-year period. Consequently the reemployment of the superintendent for a four-year term three years after his first

four-year term had begun was invalid. Board of Education v. Gulick, 398 S.W.2d 483, 1966 Ky. LEXIS 489 (Ky. 1966).

Where a school superintendent resigned after serving only ten days of his four-year term and there remained a vacancy of three years and 355 days, the board could not shorten that term and appoint one man for one year and another man for the remaining three years of the vacancy as the vacancy exists in the term of office rather than in the office itself and the contract with the first appointee, by operation of law, was for the remainder of the term. Childers v. Pruitt, 511 S.W.2d 233, 1974 Ky. LEXIS 485 (Ky. 1974).

Until the superintendent's term is finally established (either by formal acceptance of the board of education's offer or by commencement of service of the term), the board retains complete control over the process and has authority to increase the length of the term. Stagnolia v. Board of Education, 714 S.W.2d 486, 1986 Ky. App. LEXIS 1158 (Ky. Ct. App. 1986).

Where the superintendent refused to accept the one-year term, the county board of education could change the term of the superintendent to four years prior to the commencement of that term. Stagnolia v. Board of Education, 714 S.W.2d 486, 1986 Ky. App. LEXIS 1158 (Ky. Ct. App. 1986).

11. Removal.

A superintendent wrongfully ousted is entitled to his full salary until his successor is appointed, and thereafter he is entitled to any part of his salary not being paid to his successor. Smith v. Board of Education, 23 F. Supp. 328, 1938 U.S. Dist. LEXIS 2170 (D. Ky. 1938).

On appeal of removal cases, the court can only consider whether the board acted arbitrarily, unlawfully, without authority, without sufficient legal evidence, or abused its discretion. Meade County Board of Education v. Powell, 254 Ky. 352, 71 S.W.2d 638, 1934 Ky. LEXIS 76 (Ky. 1934); Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936); Starns v. Board of Education, 280 Ky. 747, 134 S.W.2d 643, 1939 Ky. LEXIS 212 (Ky. 1939).

The motive for initiation of removal proceedings is immaterial. Meade County Board of Education v. Powell, 254 Ky. 352, 71 S.W.2d 638, 1934 Ky. LEXIS 76 (Ky. 1934); Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

The findings of fact of the board in removal proceedings are conclusive, in the absence of abuse of discretion. Thompson v. Pendleton County Board of Education, 258 Ky. 843, 81 S.W.2d 863, 1935 Ky. LEXIS 249 (Ky. 1935); Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

Hostile or prejudiced attitude of board does not disqualify them to try a removal proceeding. Thompson v. Pendleton County Board of Education, 258 Ky. 843, 81 S.W.2d 863, 1935 Ky. LEXIS 249 (Ky. 1935).

School boards have a wide discretion in removing teachers and employees. Smith v. Board of Education, 264 Ky. 150, 94 S.W.2d 321, 1936 Ky. LEXIS 285 (Ky. 1936).

Where after merger of a county and independent district the board consisted of seven members, a vote of four members was insufficient to oust the superintendent of schools. Since this section requires 80 percent of a five member board to oust the superintendent 80 percent of a seven member board should likewise be required. Wesley v. Board of Education, 403 S.W.2d 28, 1966 Ky. LEXIS 319 (Ky. 1966).

The object of the statutory requirements imposed on the school board is to create a record on which its action may be tested for arbitrariness. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

Removal of plaintiff as a school superintendent pursuant to KRS 160.350 was an integral governmental function and the county board of education was entitled to governmental immunity; therefore, the trial court erred by denying the board's motion for summary judgment on plaintiff's state law claims. Crittenden County Bd. of Educ. v. Hargis, 2011 Ky. App. LEXIS 13 (Ky. Ct. App. 2011).

12. —Cause.

"Cause" means legal cause. Smith v. Board of Education, 264 Ky. 150, 94 S.W.2d 321, 1936 Ky. LEXIS 285 (Ky. 1936).

Fact that superintendent filed charges against board members is not legal cause for removal, when he acted in good faith. Smith v. Board of Education, 264 Ky. 150, 94 S.W.2d 321, 1936 Ky. LEXIS 285 (Ky. 1936).

Political activity is ground for removal. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

Charge, sufficiently supported by evidence, that superintendent had signed contract with director of pupil personnel and sent contract to State Board of Education, without notifying county board and with knowledge that county board had not approved appointment of director of pupil personnel, and that two actions were pending in court involving appointment of director of pupil personnel constituted legal cause for removal of superintendent. Starns v. Board of Education, 280 Ky. 747, 134 S.W.2d 643, 1939 Ky. LEXIS 212 (Ky. 1939).

The word "cause" means legal cause and not any cause which board authorized to make such removal may deem sufficient and it is implied that removal cannot be at mere will of those vested with power of removal or without any cause but it must be a cause relating to and affecting the administration of the office and must be restricted to something of a substantial nature directly affecting the rights and interests of the public and evidence did not show "good cause or legal cause" which must be the basis of removal of superintendent of schools by county board of education. Bourbon County Board of Education v. Darnaby, 314 Ky. 419, 235 S.W.2d 66, 1950 Ky. LEXIS 1090 (Ky. 1950).

The word "cause" means legal cause and not any cause which the board authorized to make such removal may deem sufficient. Hoskins v. Keen, 350 S.W.2d 467, 1961 Ky. LEXIS 97 (Ky. 1961).

Failure to perform duties prescribed by law is cause for removal. Hoskins v. Keen, 350 S.W.2d 467, 1961 Ky. LEXIS 97 (Ky. 1961).

The sufficiency of the cause is a question of law for the courts. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

The word "cause," as used in this section, means a "legal" cause. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

13. —Charges.

It is not the duty of the person filing charges to record them on the board's minutes. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

The board cannot be deprived of its power to hear charges because of the failure of the secretary to record the charges in the minutes. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

Written notice served on superintendent setting out charges for removal need not be signed, sworn to or verified. Starns v. Board of Education, 280 Ky. 747, 134 S.W.2d 643, 1939 Ky. LEXIS 212 (Ky. 1939).

The specified charges must be definite enough to give the accused a fair opportunity to defend himself. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

When the board conducted a hearing, the production of its evidence in support of the charges served the purpose of making specific that which might otherwise have been considered too general from the charges alone. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

14. —Hearing.

Since, under this section, a hearing is not necessary in the first place, the absence of order and fairness in its conduct

cannot be prejudicial. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

15. —Evidence.

In the absence of an affirmative showing to the contrary, 15 days is a sufficient period for the presentation of evidence. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

Although it was a primary responsibility of the school principals to carry out fire drills, their uniform failure to have fire drills over a long period of time sustained the charge that the defendant failed to see that fire drills were carried out. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

Where a witness gave direct testimony sufficient to convict on the allegation that the defendant used or sought to use the distribution of federal relief money to get votes for his candidates, that alone was sufficient to support the board's case. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

16. Procedure on Appeal.

Where the transcript of the proceedings before the board was used in lieu of the introduction of original proof, the dismissed superintendent was free to subject the school board members to interrogation under the Rules of Civil Procedure at any time after his suit was filed. Bell v. Board of Education, 450 S.W.2d 229, 1970 Ky. LEXIS 428 (Ky. 1970).

Cited in:

Commonwealth v. Howard, 379 S.W.2d 475, 1964 Ky. LEXIS 247 (Ky. 1964); Wicker v. Board of Education, 826 F.2d 442, 1987 U.S. App. LEXIS 10768 (6th Cir. 1987); Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995).

OPINIONS OF ATTORNEY GENERAL.

This section, which establishes the qualifications for superintendents does not contain any requirements concerning religion, and a person of the Catholic faith, if he meets the statutory qualifications, may be superintendent. OAG 60-917.

A board of education that approved the employment of a superintendent for a period of two (2) years could amend the order to read four years and extend the length of employment prior to the time the superintendent took office. OAG 61-548.

Where a superintendent whose term was to expire on June 30 planned to resign prior to January 1 and three board members were to be elected at the preceding November election, an appointment by the old board could be made only until the expiration of the resigning superintendent's term. OAG 64-592.

In June, 1964, a board, some of whose members had terms which expired in January, 1965, did not have authority to issue to its superintendent a contract to begin July 1, 1965, since the terms of some of its members did not extend beyond the date when the new term of office was to begin. OAG 65-96.

In the event of a vacancy created by resignation this section authorizes the appointment of a successor for the unexpired portion of the term only, and the board is without power to make an appointment for a term that would commence prior to the expiration of any other term. OAG 67-213.

After school board decided to employ an individual as superintendent for a one-year term, the board had authority to adopt another resolution 12 days later hiring the same individual as superintendent and secretary to the board for a two-year term. OAG 72-74.

There is no obligation to contract with one man to serve the entire unexpired term of a school superintendent as long as said part of term expires on June 30 and there is no splicing together of partial terms of office but only a fragmenting of a four-year term which was established by the board of education and as long as the appointment is made by the same authority that is authorized to act when the vacancy actually occurs. OAG 73-743.

There is no conflict between this section and KRS 161.721 as, irrespective of when a superintendent becomes eligible for continuing contract status in the district, such status is not as to the position of superintendent but just to employment in the school district. OAG 76-82.

A local board of education has the authority and discretion under the circumstances to establish the salary of a superintendent but is under no obligation to negotiate the superintendent's salary and the superintendent is without power to compel a board of education to contract to pay him more than the board, in its judgment, deems appropriate. OAG 76-360.

The statutory language requiring the secretary of the board of education to call a special meeting and to see that properly detailed timely notice is given is mandatory and the secretary's refusal to act could be the basis for rescission of the secretary's contract; however, the failure to perform the functions of the secretary of the board could not constitute legal cause for removal from office as superintendent when the same person holds the two positions, for the two positions are separable. OAG 78-274, 1978 Ky. AG LEXIS 442.

Under this section a board of education may agree to enter into a contract with an individual for the position of superintendent before the existing contract of the superintendent has expired so long as the term of no board member will expire in the interim between the making of a contract and its effective date. OAG 78-274, 1978 Ky. AG LEXIS 442.

The holding of the two state officer positions of superintendent of schools and member of a local school board does not by itself present a statutory or constitutional incompatibility, under KRS 61.080 and Const., § 165. OAG 78-413, 1978 Ky. AG LEXIS 351.

By provisions of this section the board is to fix the salary of the superintendent and only that board which entered into the contract to take effect on July 1 of this year had or ever could have had any right to set its terms; since that board in office in July at the commencement of the contract could have increased the salary of the superintendent starting on July 1, it may now increase the salary to a figure mutually agreeable to the superintendent and the board of education. OAG 78-819, 1978 Ky. AG LEXIS 22.

The position of local superintendent of schools is a state office. OAG 79-149, 1979 Ky. AG LEXIS 488.

A local board of education may give a superintendent who is over 65 a contract for more than one year. OAG 79-213, 1979 Ky. AG LEXIS 416.

An individual may serve as a superintendent under contract pursuant to this section until the end of the school year in which the age of 70 is reached. OAG 79-213, 1979 Ky. AG LEXIS 416.

Although the duration of an existing contract's terms may not be changed, a board of education membership that will be in office at the time a new contract term is to be established may agree in advance to enter into a contract with an individual to be the superintendent. OAG 79-321, 1979 Ky. AG LEXIS 307.

While a superintendent may acquire tenure in the same manner as for teachers pursuant to KRS 161.721, that does not make an appointment as a superintendent under this section, which is under an entirely different contractual basis and which may be for one, two, three or four years, employment where "teacher tenure" may be transferred to the position pursuant to KRS 161.740; thus, where a teacher attains tenure in one school system and then accepts the position of superintendent of schools in another school district, the superintendent would be required to attain tenure in the new school system by following KRS 161.721. OAG 80-147, 1980 Ky. AG LEXIS 502.

A local board of education can direct the superintendent to make a recommendation relative to a teacher's contract since a recommendation is required by law and may be a part of appropriately adopted local board policies; the refusal by a superintendent to make a recommendation could be considered legal cause for the superintendent's removal. OAG 80-205, 1980 Ky. AG LEXIS 455.

A local board of education, after having once fixed the term of a superintendent's office cannot then change the number of years of the term. OAG 84-283, 1984 Ky. AG LEXIS 91.

If for any reason a superintendent-elect did not want the one year contract offered by the local board of education and resigned, the person taking his place would be limited to the one year contract. OAG 84-283, 1984 Ky. AG LEXIS 91.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification of school employees, KRS 161.010 to 161.123.

Leave of absence, KRS 161.770.

Reinstatement of former superintendent returning from Armed Forces, KRS 161.740.

Resignations, removals and vacancies, KRS Ch. 63.

Superintendent eligible for continuing contract status under teachers' tenure law, KRS 161.721.

Termination of contract, KRS 161.780.

Superintendent training program and assessment process, 704 KAR 3:406.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Prather, Establishing Schools, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 19.

160.352. Screening committee — Minority representation — Recommendations for superintendent.

(1) For purposes of this section the term "minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in a local school district.

(2) Each board of education shall appoint a superintendent of schools after receiving the recommendations of a screening committee. A screening committee shall be established within thirty (30) days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent, except that when the board determines a vacancy will not occur before six (6) months from the date of determination, the board shall establish a screening committee at least ninety (90) days before the first date on which the position may be filled.

(3) A screening committee shall be composed of:

(a) Two (2) teachers, elected by the teachers in the district;

(b) One (1) board of education member, appointed by the board chairman;

(c) One (1) principal, elected by the principals in the district;

(d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district;

(e) One (1) classified employee, elected by the classified employees in the district; and

(f) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more, as determined by the enrollment on the preceding October 1, the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the parents in an election conducted by the local school board. Parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.

(4) Prior to appointing a superintendent of schools, the board of education shall consider the recommendations of the screening committee, but the board shall not be required to appoint a superintendent from the committee's recommendations.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 76, effective July 13, 1990; 1994, ch. 159, § 1, effective April 1, 1994; 1994, ch. 255, § 1, effective July 15, 1994; 1994, ch. 400, § 1, effective April 11, 1994; 1996, ch. 362, § 2, effective July 15, 1996; 1998, ch. 257, § 2, effective July 15, 1998.

OPINIONS OF ATTORNEY GENERAL.

A screening committee may be composed only of those individuals expressly mentioned in this section and to appoint additional members by unilateral action on the part of the board or pursuant to a regulation passed by the Board of Education would be in violation of KRS 13A.120 and KRS 13A.130. OAG 91-3, 1991 Ky. AG LEXIS 3.

While the Board of Education receives recommendations from the screening committee concerning the appointment of a superintendent, the board is not required to appoint a superintendent from the committee's recommendations; the Board of Education has the discretion to consult with and to receive recommendations from sources other than the committee in order to insure consideration of qualified applicants and to enable the board to honor its commitment to Affirmative Action. OAG 91-3, 1991 Ky. AG LEXIS 3.

While this section unambiguously provides that local school boards establish the rules and procedures governing the superintendent selection committee, the election of the teacher representatives to that committee must be conducted under the sole authority of the teachers themselves. OAG 02-006, 2002 Ky. AG LEXIS 5.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

160.360. Assistant superintendents. [Repealed.]

Compiler's Notes.

This section (4399-34; amend. Acts 1942, ch. 113, § 13) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.370. Superintendent as executive agent of board — Duties — Duties of local board of education and superintendent in county with consolidated local government or having five hundred thousand inhabitants — Approval of small purchases in county with consolidated local government.

(1) The superintendent shall be the executive agent of the board that appoints him or her and shall meet with the board, except when his or her own tenure, salary, or the administration of his or her office is under consideration. As executive officer of the board, the superintendent shall see that the laws relating to the schools, the bylaws, rules, and regulations of the Kentucky Board of Education, and the regulations and policies of the district board of education are carried into effect. He or she may administer the oath required by the board of education to any teacher or other person. He or she shall be the professional adviser of the board in all matters. He or she shall prepare, under the direction of the board, all rules, regulations, bylaws, and statements of policy for approval and adoption by the board. He or she shall have general supervision, subject to the control of the board of education, of the general conduct of the schools, the course of instruction, the discipline of pupils, and the management of business affairs. He or she shall be responsible for the hiring and dismissal of all personnel in the district.

(2) For a county school district in a county with a consolidated local government adopted under KRS Chapter 67C or having five hundred thousand (500,000) or more inhabitants:

(a) A local board of education shall:

1. Delegate authority to the superintendent over the district's day-to-day operations and implementation of the board-approved strategic plan and budget in a manner that promotes the efficient, timely operation of the district, including but not limited to the authority over contracts related to daily operations of the district, pupil transportation, personnel matters, and the organizational structure of administrative staff;

2. By December 1 each year, approve a rolling five (5) year strategic plan for the district that outlines student outcome goals, faculty and staff improvement goals, facility and infrastructure improvement, and other key objectives that the superintendent and board believe are in the best interest of student outcomes and the community;

3. Review and approve a rolling three (3) year projection of expenses and revenues;

4. Approve an annual budget for the district, which shall include any budgetary decisions relevant to the district's ability to obtain necessary revenue, including tax revenue, in accordance with the requirements of state law and regulation;

5. By December 1 each year, oversee:

a. An annual audit of the financial dealings of the district and the reporting of key financial performance data in order to ensure fair and accurate reporting to the board; and

b. An annual review of student performance in the district and the reporting of key student performance data to ensure compliance with state and federal law and accurate reporting to the board;

6. Recruit and hire the superintendent and negotiate the terms of employment and compensation of a prospective superintendent;

7. Complete an annual review of the superintendent's performance with regard to the duties assigned in subsection (1) of this section and paragraph (b) of this subsection; and

8. Be responsible for the dismissal of the superintendent;

(b) Notwithstanding any provision to the contrary in subsection (1) of this section, the superintendent shall:

1. Provide a quarterly, informational report to the board on the administrative actions taken by the superintendent to carry out the district's daily operations and implementation of the strategic plan as well as a budget to actual financial update;

2. Prepare all rules, regulations, bylaws, and statements of policy for approval and adoption by the board, with approval not to be withheld without a two-thirds (2/3) vote of the board to deny approval or adoption;

3. Supervise the general conduct of the schools, the course of instruction, the discipline of pupils, the employment matters of all employees and contractors, and the management of business affairs of the district;

4. Be responsible for the hiring, employment terms, dismissal, and organizational structure of all personnel in the district in compliance with all laws and in a manner that best serves the students of the district; and

5. Notwithstanding any law that assigns an administrative duty, responsibility, or authority to a board of education, or other law to the contrary, be responsible for any administrative duty not explicitly granted to the board under paragraph (a) of this subsection;

(c) If the school district adopts the provisions of the Kentucky Model Procurement Code, the board shall authorize the superintendent to approve purchases, in accordance with small purchase procedures adopted by the board, for any contract for which a determination is made that the aggregate amount of the contract does not exceed two hundred fifty thousand dollars ($250,000);

(d) The board shall authorize the superintendent to approve a line-item transfer within its annual budget as she or he deems necessary, provided that the aggregate amount of all transfers do not exceed two hundred fifty thousand dollars ($250,000) per quarter. The superintendent shall provide a quarterly report to the board on any purchases made under this subsection; and

(e) Any purchase or transfer completed pursuant to paragraph (c) or (d) of this subsection shall be within the approved budget of the district, aligned to the strategic plan of the district, and reported to the board at the next regularly scheduled board meeting.

History.
4399-34; amend. Acts 1966, ch. 89, § 10; 1990, ch. 476, Pt. II, § 89, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2019 ch. 65, § 1, effective June 27, 2019; 2022 ch. 196, § 3, effective July 14, 2022; 2026 ch. 153, § 1, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. Public Officer.
2. Management and Control of School Buses.
3. Liability.
4. Discretion of Assistant Superintendent.
5. Title IX Claims.
6. Constitutionality.

1. Public Officer.
Superintendent of schools is not an "officer" within Const., §§ 161, 235 and 246 prohibiting change in compensation of officers during term. Board of Education v. De Weese, 343 S.W.2d 598, 1960 Ky. LEXIS 116 (Ky. 1960).

2. Management and Control of School Buses.
The superintendent of schools of the county board of education was the executive agent and officer of the board and as such was in charge of the management and control of the school buses owned and operated by the board, with authority to direct the operator of the school bus to permit a member of the county board of education to ride upon the bus and thus save the board the expense of transportation under KRS 160.280 and the board member was lawfully riding in the school bus within the liability policy issued for protection of any school child or other person from negligence of the bus driver. Standard Acc. Ins. Co. v. Perry County Board of Education, 72 F. Supp. 142, 1947 U.S. Dist. LEXIS 2468 (D. Ky. 1947).

Where memorandum containing guidelines for public school bus drivers was issued by director for transportation services rather than by superintendent of schools, court held that guidelines issued were not tantamount to regulations and that the superintendent had an oversight role and duty of preparation, but not necessarily a duty to write the memorandum at issue. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

3. Liability.
School superintendent is not liable individually for failing to see that board require school bus contractors to carry liability insurance as required by KRS 160.310. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591, 1943 Ky. LEXIS 531 (Ky. 1943).

A county board of education could not be held accountable for the failure of its superintendents to properly apply KRS 161.155. Ramsey v. Board of Educ., 789 S.W.2d 784, 1990 Ky. App. LEXIS 19 (Ky. Ct. App. 1990).

Although a ban that prohibited a teacher from attending a local teachers' meeting made by a school principal and a director of employee relations violated his free association rights, the unconstitutional acts were not made by final policymakers under KRS 161.790, 160.370, and 160.340 and thus could not give rise to school board liability. Baar v. Jefferson County Bd. of Educ., 666 F. Supp. 2d 701, 2009 U.S. Dist. LEXIS 100066 (W.D. Ky. 2009), modified, 686 F. Supp. 2d 699, 2010 U.S. Dist. LEXIS 14570 (W.D. Ky. 2010).

4. Discretion of Assistant Superintendent.
The assistant superintendent was allowed no discretion in enforcing a school board policy which required a high school student to maintain a 2.0 grade point average in five of six classes to remain eligible to participate in extracurricular activities. Thompson v. Fayette County Public Schools, 786 S.W.2d 879, 1990 Ky. App. LEXIS 40 (Ky. Ct. App. 1990).

5. Title IX Claims.
Plaintiff's Title IX claim against a school board, based on a teacher's alleged sexual abuse of her child, survived summary judgment because there was a disputed fact issue as to whether the actions of a principal and superintendant — "appropriate persons" to receive notice under Title IX — were clearly unreasonable in light of the known circumstances such that they acted with deliberate indifference to known acts of harassment. 2014 U.S. Dist. LEXIS 37823.

6. Constitutionality.
Where the Kentucky General Assembly passed a bill that gave greater autonomy and power to school superintendents, but only applied to one school district, KRS 160.370(2) was intended to apply only to a specific locale, not a class, and consequently were local or special legislation prohibited under Ky. Const. §§ 59 and 60. Cameron v. Jefferson Cnty. Bd. of Educ., 2023 Ky. App. LEXIS 79 (Ky. Ct. App. Oct. 6, 2023, sub. op., 2023 Ky. App. Unpub. LEXIS 754 (Ky. Ct. App. Oct. 6, 2023).

In an action challenging Kentucky Senate Bill 1 to restructure the relationship between school boards and superintendents in counties with a consolidated local government, a County Board of Education had constitutional standing to challenge the constitutionality of SB 1 and SB 1 did not violate Ky. Const. §§ 59 and 60 because it applied to an open class of county school districts in a county with a consolidated local government, rather than a particular individual, object, or locale. Coleman v. Jefferson Cnty. Bd. of Educ., 2024 Ky. LEXIS 400 (Ky. 2024).

Cited in:
Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936); Taylor v. Hampton, 271 S.W.2d 887, 1954 Ky. LEXIS 1057 (Ky. 1954); Board of Education v. Bentley, 383 S.W.2d 677, 1964 Ky. LEXIS 51, 11 A.L.R.3d 990 (Ky. 1964); Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995).

NOTES TO UNPUBLISHED DECISIONS

1. Liability.
Unpublished decision: Defendant board of education was not liable for plaintiff teacher's claim of constitutional violation, as his reprimand was ordered by other defendant school officials who acted without a policy or custom of the board, and under KRS 161.790, 160.370, 160.340, the officials who reprimanded the teacher had no final policymaking authority. Baar v. Jefferson County Bd. of Educ., 476 Fed. Appx. 621, 2012 FED App. 0262N, 2012 U.S. App. LEXIS 5019 (6th Cir. Ky. 2012).

OPINIONS OF ATTORNEY GENERAL.

A county board of education regulation, which required that the marriage of any pupil within a school year would be sufficient cause to drop him from school attendance, would probably not be enforceable due to the fact that it did not allow any discretion upon the board's part and applies blanketly without regard to the circumstances of each case. OAG 64-877.

The superintendent of schools may not enter into a binding Kentucky work experience and training program contract on behalf of the district unless authorized to do so by proper action of the school board. OAG 65-411.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic

physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

Where the superintendent in the proper exercise of discretion does not recommend a particular certified teacher for a certain vacancy, it is not legally possible to employ that teacher in that district and for the purposes of KRS 161.100, no qualified teacher is available. OAG 69-389.

The superintendent's professional function in providing recommendations of personnel inherently vests him with the authority and responsibility of exercising sound discretion in determining whether a particular applicant can be recommended based upon the superintendent's professional knowledge and judgment and includes the responsibility and authority to recommend unfavorably and/or withhold recommendations. OAG 69-389.

There is no obligation on a school board's part to negotiate with its employees as the internal management of schools and teachers is vested in the local board of education and through KRS 161.140 (repealed), 161.170, 160.290 and 160.370 the school board has vast control over the compensation, duties, working conditions and related items concerning teachers. OAG 75-126.

An administrative employment policy which was adopted at the same county school board meeting at which it was first presented without an opportunity for the superintendent to make comment or recommendation would be void. OAG 77-336, 1977 Ky. AG LEXIS 436.

A board of education cannot lawfully contract away amendatory obligation of approval given it by the statutes and, therefore, any contractual provisions of a superintendent's contract in derogation of the expressed statutory outline of powers and duties of a superintendent of a public common school system and a local board of education would be void. OAG 76-360.

Where, at the regular June meeting of the board of education, the board ordered the superintendent of schools to advertise for bids for insurance and, at the July regular meeting of the board, the superintendent asked the board to rescind so much of its order to advertise for bids of insurance because negotiations for a contract for insurance were in the making and a motion for the requested recession was passed by a three-two vote, the board voted in essence to ratify the actions of the superintendent by rescinding so much of the order to bid relating to insurance and, since the board of education may ratify any action it could have legally taken in the first place, it was legal for the board not to bid on insurance contracts. OAG 77-518, 1977 Ky. AG LEXIS 247.

If the superintendent of schools is also the secretary of the board, he or she shall not meet with the board when the superintendent's tenure, salary or the administration of his office is under consideration, for while the two positions of superintendent and secretary may be separable, the body cannot be; in this situation a temporary secretary should be appointed to take the minutes of the board's proceedings. OAG 78-274, 1978 Ky. AG LEXIS 442.

Since the language in this section, to the effect that the superintendent shall meet with the board except when his own tenure, salary or administration of his office is considered, is merely directory, a local board of education may, by a concurring vote of a majority of the board, waive its statutory prerogative of meeting out of the presence of the superintendent when the superintendent's tenure, salary or the administration of his office will be considered. OAG 82-604, 1982 Ky. AG LEXIS 31.

A local board of education may open or close a school without the recommendation of the local superintendent. OAG 85-98, 1985 Ky. AG LEXIS 49.

When the legislature provided the superintendent with discretion to recommend a candidate to the board for appointment, the legislature did not choose to restrict the superintendent to one individual; beyond consideration of minimum requirements, set by law, the exercise of discretion necessitates freedom to choose, and where a qualified candidate is related to a board member, the superintendent is not precluded from recommending that candidate, despite the relationship, nor is the board precluded from approving that candidate if it so chooses. OAG 89-58, 1989 Ky. AG LEXIS 58.

There is no authority for a Board of Education to retain some right to hear charges concerning classified employees, to make a decision, and later to direct the superintendent on whether or not to dismiss an employee. OAG 90-129, 1990 Ky. AG LEXIS 132.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65, 1992 Ky. AG LEXIS 65.

Enacting a seniority policy for classified employees exceeds the legal authority of the board and circumvents the superintendent's role in personnel matters. It ties the hands of the superintendent in making personnel decision and may be an attempt by the local board to influence the hiring or appointment of district employees in violation of KRS 160.170. OAG 92-133, 1992 Ky. AG LEXIS 196.

The Kentucky Education Reform Act removed personnel duties from the local board and placed the responsibility in the hands of the superintendent. OAG 92-133, 1992 Ky. AG LEXIS 196.

The superintendent has the responsibility to make individual personnel decisions and to define the duties of particular employee positions. However, the local board has the responsibility to manage the entire district, control school funds, set compensation, create and abolish positions of employment and adopt regulations for qualifications and duties of classes of employees. OAG 92-133, 1992 Ky. AG LEXIS 196.

The opinion in OAG 92-133 is overruled since the 1994 General Assembly enacted House Bill 50 (Enact. Acts 1994, ch. 25) which provides local school boards with the authority to adopt a seniority policy for classified employees. OAG 94-37, 1994 Ky. AG LEXIS 266.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Boundaries of district, superintendent to furnish to railroad or bridge company, KRS 136.190, 136.990.

Conferences of public school officials, superintendent to attend, KRS 156.190.

Reports of financial matters to state board of education, KRS 157.060.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Education Law: Hiring and Termination Issues, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 17.

160.380. School district personnel actions — Restrictions on appointment of relatives, violent offenders, and persons convicted of sex crimes — Restriction on assignment to alternative education program as disciplinary action — Disclosure of disciplinary action related to abusive conduct of applicant — Background checks and clear CA/N checks — Requirements for drivers of non school bus passenger vehicles — Probationary status — Termination on basis of criminal record — Application forms — Allegation of abusive conduct made against employee — Employees charged with felony offenses — Notification by employee found to have abused or neglected a child.

(1) As used in this section:

(a) "Abusive conduct" means sexual misconduct and conduct subject to mandatory reporting under KRS 620.030 that involves a minor or student;

(b) "Administrative finding of child abuse or neglect" means a substantiated finding of child abuse or neglect issued by the Cabinet for Health and Family Services that is:

1. Not appealed through an administrative hearing conducted in accordance with KRS Chapter 13B;

2. Upheld at an administrative hearing conducted in accordance with KRS Chapter 13B and not appealed to a Circuit Court; or

3. Upheld by a Circuit Court in an appeal of the results of an administrative hearing conducted in accordance with KRS Chapter 13B;

(c) "Alternative education program" means a program that exists to meet the needs of students that cannot be addressed in a traditional classroom setting but through the assignment of students to alternative classrooms, centers, or campuses that are designed to remediate academic performance, improve behavior, or provide an enhanced learning experience. Alternative education programs do not include career or technical centers or departments;

(d) "Clear CA/N check" means a letter from the Cabinet for Health and Family Services indicating that there are no administrative findings of child abuse or neglect relating to a specific individual;

(e) "Relative" means father, mother, brother, sister, husband, wife, son, and daughter; and

(f) "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) Except as provided in KRS 160.346, the school district personnel actions identified in this section shall be carried out as follows:

(a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself or herself to another position within the school district;

(b) When a vacancy occurs in a local school district, the superintendent shall submit the job posting to the statewide job posting system described in KRS 160.152 fifteen (15) days before the position shall be filled. The local school district shall post position openings in the local board office for public viewing; and

(c) When a vacancy needs to be filled in less than fifteen (15) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer outside of the process established in KRS 156.161. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(3) Restrictions on employment of relatives shall be as follows:

(a) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is qualified for the position the employee holds. A superintendent's spouse who has previously been employed in a school system may be an employee of the school district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection;

(b) No superintendent shall employ a relative of a school board member of the district;

(c) No principal's relative shall be employed in the principal's school; and

(d) A relative that is ineligible for employment under paragraph (a), (b), or (c) of this subsection may be employed as a substitute for a certified or classified employee if the relative is not:

1. A regular full-time or part-time employee of the district;

2. Accruing continuing contract status or any other right to continuous employment;

3. Receiving fringe benefits other than those provided other substitutes; or

4. Receiving preference in employment or assignment over other substitutes.

(4) No superintendent shall assign a certified or classified staff person to an alternative education program as part of any disciplinary action taken pursuant to KRS 161.011 or 161.790 as part of a corrective action plan established pursuant to the local district evaluation plan.

(5) No superintendent shall employ in any position in the district any person who:

(a) Has been convicted of an offense that would classify a person as a violent offender under KRS 439.3401;

(b) Has been convicted of a sex crime as defined by KRS 17.500 or a misdemeanor offense under KRS Chapter 510;

(c) Is required to register as a sex offender under KRS 17.500 to 17.580; or

(d) Has an administrative finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services.

(6)(a) If requested by a school district regarding an applicant for a position:

1. A school district, public school, or nonpublic school that employs or previously employed the applicant shall disclose any disciplinary action, and any resulting resignation or termination, related to abusive conduct while the applicant was employed by the school or school district; and

2. A school district, public school, or nonpublic school located in a member state of the Interstate Teacher Mobility Compact that employs or previously employed the applicant shall disclose any disciplinary action, and any resulting resignation or termination, related to abusive conduct while the applicant was employed by the school or school district.

(b) Any school district, public school, nonpublic school, or any school employees making a disclosure pursuant to paragraph (a) of this subsection of any disciplinary action and any resulting resignation or termination shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of:

1. Making the disclosure; or

2. Participating in any judicial proceeding that may result from making the disclosure.

(c) Upon disclosure under paragraph (a) of this subsection of disciplinary action involving abusive conduct by an applicant, the school district considering the applicant for employment shall, if the application is for a certified position, request information from the Education Professional Standards Board related to pending and resolved disciplinary action against the applicant involving abusive conduct.

(d) Upon request from a school district under paragraph (c) of this subsection, the school district, public school, or nonpublic school of previous or current employment or the Educational Professional Standards Board shall provide the requested information, if applicable, within ten (10) working days.

(e) If there is a finding of abusive conduct regarding an applicant, the applicant shall be:

1. Ineligible for hire by the school district; and

2. Subject to dismissal or termination if the applicant is hired by the school district or is a current employee of the school district.

(f) The Education Professional Standards Board shall create and implement procedures for responding to a school district upon receiving an inquiry described in paragraph (d) of this subsection.

(7) Requirements for background checks shall be as follows:

(a) A superintendent shall require the following individuals to submit to a national and state criminal background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a clear CA/N check, provided by the individual:

1. Each new certified or classified hire;

2. A nonfaculty coach or nonfaculty assistant as defined under KRS 161.185;

3. A student teacher;

4. A school-based decision making council parent member; and

5. Any adult who is permitted access to school grounds on a regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity;

(b)1. The requirements of paragraph (a) of this subsection shall not apply to:

a. Classified and certified individuals employed by the school district prior to June 27, 2019;

b. Certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check and who have a clear CA/N check for the previous employment; or

c. Student teachers who have submitted to and provide a copy of a national and state criminal background check by the Department of Kentucky State Police and the Federal Bureau of Investigation through an accredited teacher education institution in which the student teacher is enrolled and who have a clear CA/N check.

2. The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Pub. L. No. 92-544;

(c) A parent member may serve prior to the receipt of the criminal history background check and clear CA/N check required by paragraph (a) of this subsection but shall be removed from the council on receipt by the school district of a report documenting a record of abuse or neglect, or a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500, or as a violent offender as defined in KRS 17.165, and no further procedures shall be required;

(d) A superintendent may require a volunteer or a visitor to submit to a national and state criminal

history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a clear CA/N check, provided by the individual;

(e) The superintendent shall require any driver of any non-school bus passenger vehicle authorized to transport students to and from school along a regular bus route who does not have a valid commercial driver's license issued in accordance with KRS Chapter 281A with an "S" endorsement to:

1. Submit to a national and state criminal background check by the Department of Kentucky State Police and the Federal Bureau of Investigation at least once every three (3) years and a criminal records check conducted in accordance with KRS 27A.090 in all other years;

2. Submit to drug testing consistent with the administrative regulations promulgated in accordance with KRS 156.153;

3. Provide a copy of a valid driver's license and a biannual driving history record check performed by the Transportation Cabinet that does include a moving violation;

4. Provide an annual clear CA/N check;

5. Immediately notify the superintendent of any conviction for a violation under KRS Chapter 189 for which penalty points are assessed; and

6. Immediately notify the superintendent of any citation or arrest for a violation of any provision of KRS Chapter 189A. The superintendent shall inform the Kentucky Department of Education of the notification; and

(f) The superintendent shall require any driver of any non-school bus passenger vehicle authorized to transport students to and from approved school activities who does not have a valid commercial driver's license with an "S" endorsement issued in accordance with KRS Chapter 281A to:

1. Submit to a state criminal records check from the Justice and Public Safety Cabinet or the Administrative Office of the Courts, or both, in accordance with KRS 17.160(1) prior to being authorized and annually thereafter;

2. Submit to drug testing consistent with the administrative regulations promulgated in accordance with KRS 156.153;

3. Provide a copy of a valid driver's license and a driving history record check performed by the Transportation Cabinet that does not include a disqualifying moving violation prior to being authorized and in accordance with school district policy thereafter;

4. Immediately notify the superintendent of any conviction for a violation under KRS Chapter 189 for which penalty points are assessed; and

5. Immediately notify the superintendent of any citation or arrest for a violation of any provision of KRS Chapter 189A. The superintendent shall inform the Kentucky Department of Education of the notification.

(8)(a) If a certified or classified position remains unfilled after July 31 or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check and a clear CA/N check, provided by the individual. Application for the criminal record and a request for a clear CA/N check of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165 and receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.

(9) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165, or on the basis of a CA/N check showing an administrative finding of child abuse or neglect.

(10)(a) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police, the Federal Bureau of Investigation, and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.

(b) Each application form, provided by the employer to an applicant for a certified or classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE APPLICANT HAS NO ADMINISTRATIVE FINDINGS OF CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES."

(c) Each application form for a district position shall require the applicant to:

1. Identify the states in which he or she has maintained residency, including the dates of residency; and

2. Provide picture identification.

(11)(a) When an allegation of abusive conduct is made against a school district employee to another school district employee, the school district employee in receipt of the allegation, whether communicated in writing, electronically, or orally, shall report the allegation to the school principal and in accordance with KRS 620.030. The principal shall document the allegation in writing and notify the superintendent or designee. An investigation of the allegation shall be conducted by the school district until it is completed and shall not end prior to completion due to the employee transferring positions within the school district or leaving the school district, unless directed by the Cabinet for Health and Family Services or law enforcement officials to cease the investigation.

(b) Notwithstanding KRS 161.151, all records and references relating to an allegation of abusive conduct by a school district employee with a student or minor shall be included and remain in an employee's personnel file until completion of an investigation. If, after completion of an investigation, the allegation is determined to be false or unsubstantiated, all records and references relating to the allegation shall be removed from the employee's personnel file.

(12) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, any certified or classified employee of the school district shall notify the superintendent within seven (7) calendar days of being charged with any offense which is classified as a felony. The superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.

(13) Notwithstanding any law to the contrary, each certified and classified employee of the school district shall notify the superintendent if he or she has been found by the Cabinet for Health and Family Services to have abused or neglected a child, and if he or she has waived the right to appeal a substantiated finding of child abuse or neglect or if the substantiated incident was upheld upon appeal. Any failure to report this finding shall result in the certified or classified employee being subject to dismissal or termination.

(14) The superintendent shall annually notify school district employees of the self-reporting requirements of subsections (12) and (13) of this section.

(15) The form for requesting a CA/N check shall be made available on the Cabinet for Health and Family Services website.

(16) Subsections (1) and (5) to (14) of this section shall apply to public charter schools as a health and safety requirement under KRS 160.1592(1).

History.

4399-34; amend. Acts 1942, ch. 113, § 13; 1958, ch. 126, § 18; 1966, ch. 89, § 11; 1974, ch. 88, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 345, § 4, effective July 15, 1988; 1990, ch. 476, Pt. II, § 78, effective July 13, 1990; 1990, ch. 518, § 7, effective July 13, 1990; 1992, ch. 401, § 1, effective July 14, 1992; 1994, ch. 192, § 1, effective July 15, 1994; 1994, ch. 483, § 1, effective July 15, 1994; 1996, ch. 349, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 178, § 2, effective July 15, 1998; 1998, ch. 362, § 1, effective July 15, 1998; 1998, ch. 467, § 1, effective July 15, 1998; 1998, ch. 489, § 1, effective July 15, 1998; 2001, ch. 60, § 3, effective June 21, 2001; 2005, ch. 177, § 1, effective June 20, 2005; 2006, ch. 182, § 18, effective July 12, 2006; 2006, ch. 221, § 5, effective July 12, 2006; 2007, ch. 85, § 169, effective June 26, 2007; 2009, ch. 38, § 1, effective June 25, 2009; 2010, ch. 1, § 2, effective January 14, 2010; 2012, ch. 61, § 1, effective July 12, 2012; 2012, ch. 85, § 1, effective July 12, 2012; 2016 ch. 104, § 2, effective July 15, 2016; 2017 ch. 37, § 1, effective July 1, 2018; 2017 ch. 115, § 3, effective July 1, 2018; 2018 ch. 105, § 1, effective April 2, 2018; 2019 ch. 31, § 1, effective June 27, 2019; 2020 ch. 32, § 1, effective July 15, 2020; 2022 ch. 160, § 1, effective July 14, 2022; 2023 ch. 164, § 6, effective June 29, 2023; 2024 ch. 35, § 2, effective April 4, 2024; 2024 ch. 106, § 2, effective July 15, 2024; 2025 ch. 113, § 9, effective June 27, 2025; 2026 ch. 7, § 2, effective March 27, 2026; 2026 ch. 74, § 7, effective April 10, 2026; 2026 ch. 196, § 21, effective July 1, 2026.

Compiler's Notes.

P.L. 92-544, referred to in (4)(d), may be found as notes to various sections throughout the United States Code. For provisions relating to sharing of FBI criminal information in employment situations, see the notes following 28 USCS § 534.

Legislative Research Commission Notes.

(7/1/2026). This statute was amended by 2026 Ky. Acts chs. 7, 74, and 196, which do not appear to be in conflict and have been codified together.

(4/10/2026). This statute was amended by 2026 Ky. Acts chs. 7 and 74, which do not appear to be in conflict and have been codified together.

(4/4/2018). The amendments made to this statute in 2018 Ky. Acts ch. 105, sec. 1 are effective April 4, 2018. 2018 Ky. Acts ch. 105, sec. 1 amended the version of KRS 160.380 that was scheduled to take effect on July 1, 2018. That July 1 version would now take effect instead at the first moment of April 4, 2018, as amended by 2018 Ky. Acts ch. 105, sec. 1, superseding the current version. SB 101 (Ch. 105) was delivered to the Governor on March 22, 2018. The 10-day, not counting Sundays, veto period began on the next day, March 23, and ended at midnight on April 3, 2018. The Governor returned that bill to the Secretary of State on April 2 without signing it. Therefore, since the Governor could have retrieved it and signed it or vetoed it prior to the end of April 3, the bill would not take effect until the first moment of April 4, 2018 following the expiration of the 10-day veto period.

(7/12/2012). Under the authority of KRS 7.136(1), the Reviser of Statutes in codification has changed the internal numbering of subsection (6) of this statute. The words in the text were not changed.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. State Employees.
4. Recommendations.

5. —Appointments.
6. —Time for Approval.
7. —Approval.
8. —Rejection.
9. —Withdrawal.
10. —Transfers.
11. — —Arbitrariness.
12. — —Justification.
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14. Rights of Employee.
15. Teaching Credentials.
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17. Erroneous Designation of Position.
18. County Superintendent.
19. —Time for Appointments.
20. —Removal.
21. Liability for Removal.
22. Liability of Local Boards of Education.
23. Workers' Compensation.

1. Constitutionality.

Subdivision (2)(f) of this section does not violate the First Amendment, nor the equal protection clause of the Fourteenth Amendment of the United States Constitution. Chapman v. Gorman, 839 S.W.2d 232, 1992 Ky. LEXIS 124 (Ky. 1992).

Since the General Assembly has made a strong showing of intent to eradicate nepotism within the school districts of the Commonwealth, this legislation enjoys a strong presumption of constitutionality. Department of Educ. v. Risner, 913 S.W.2d 327, 1996 Ky. LEXIS 2 (Ky. 1996).

2. Application.

This section does not apply to the employment of school bus drivers, since the board has the privilege of either contracting with a person who provides his own vehicle or hiring drivers for vehicles owned by the board. Smith v. Rose, 293 Ky. 583, 169 S.W.2d 609, 1943 Ky. LEXIS 663 (Ky. 1943).

Janitors, bus drivers, and mechanics are public employees within the meaning of this section. Reed v. Greene, 243 S.W.2d 892, 1951 Ky. LEXIS 1172 (Ky. 1951).

Certified public accountant hired by board to audit records is independent contractor and not employee requiring recommendation of superintendent. Lewis v. Morgan, 252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952).

An attorney employed by the board in an attorney-client relationship is an independent contractor and not a "public school employee" within the meaning of this section. Hobson v. Howard, 367 S.W.2d 249, 1963 Ky. LEXIS 14 (Ky. 1963).

KRS 342.640 specifically deals with the definition of an employee within the context of the Workers' Compensation Act; therefore, it prevails over provisions regarding employees in the Kentucky Education Reform Act, KRS ch. 160. Pike County Bd. of Educ. v. Mills, 260 S.W.3d 366, 2008 Ky. App. LEXIS 245 (Ky. Ct. App. 2008).

3. State Employees.

A principal is a state employee. Board of Trustees v. Renfroe, 259 Ky. 644, 83 S.W.2d 27, 1935 Ky. LEXIS 370 (Ky. 1935).

Teachers in the common schools are state employees. Board of Education v. Talbott, 261 Ky. 66, 86 S.W.2d 1059, 1935 Ky. LEXIS 592 (Ky. 1935).

Where plaintiff student filed suit against defendants, a school district and school officials, after he was the victim of sexual harassment by a male teacher, defendants were entitled to summary judgment on the basis of qualified immunity because, in hiring faculty, they were performing a discretionary function within the scope of their authority. Because the student failed to demonstrate that defendants acted in bad faith and there was no evidence that defendants willfully or maliciously intended to harm the student or acted with a corrupt motive, defendants were entitled to summary judgment. Cole v. Shadoan, 782 F. Supp. 2d 428, 2011 U.S. Dist. LEXIS 21633 (E.D. Ky. 2011).

4. Recommendations.

It is not necessary that the recommendations be made in writing; a verbal recommendation is sufficient if it is made in person by the superintendent. Hudson v. Ohio County Board of Education, 253 Ky. 709, 70 S.W.2d 375, 1934 Ky. LEXIS 725 (Ky. 1934) (decided under prior law).

The county superintendent may nominate teachers in all county schools except in subdistrict schools, where only the elementary grades, that is, up to or through the eighth grade, are taught. Hudson v. Ohio County Board of Education, 253 Ky. 709, 70 S.W.2d 375, 1934 Ky. LEXIS 725 (Ky. 1934). See Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288, 1934 Ky. LEXIS 435 (Ky. 1934) (decided under prior law).

A verbal recommendation is sufficient if made in person by the superintendent. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740, 1941 Ky. LEXIS 62 (Ky. 1941) (decided under prior law).

This section contemplates that the superintendent of schools shall nominate teachers for the next school year at some time between April 1 and the beginning of the next school year on July 1, though the particular school may not open until a later date. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940) (decided under prior law).

Where superintendent attempted to recommend teachers at three separate meetings, and at the first meeting the board refused to consider recommendations because two members of board were absent, although a quorum was present, at second meeting board claimed that recommendations could not be considered because it was a special meeting, and at third meeting board adjourned when superintendent offered recommendations, conduct of board indicated a fixed determination to thwart recommendations, which amounted to an unjustified rejection. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331, 1942 Ky. LEXIS 345 (Ky. 1942) (decided under prior law).

Where list containing recommendations was filed with minutes, and was later used by board in making some appointments, the fact that the board expunged at a later meeting so much of minutes as recited that superintendent had offered list to board did not make recommendations ineffective. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331, 1942 Ky. LEXIS 345 (Ky. 1942) (decided under prior law).

The fact that the list containing recommendations was not specific in one instance in designating position for which teacher was recommended did not make this recommendation ineffective, where evidence was that board understood what position was intended. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331, 1942 Ky. LEXIS 345 (Ky. 1942) (decided under prior law).

The recommendation of teachers may be written or oral. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331, 1942 Ky. LEXIS 345 (Ky. 1942) (decided under prior law).

Teachers may be employed by the local board of education only upon the recommendation of the local superintendent of schools, and any employment without that recommendation is void. Gaines v. Board of Education, 554 S.W.2d 394, 1977 Ky. App. LEXIS 759 (Ky. Ct. App. 1977) (decided under prior law).

5. —Appointments.

Failure of superintendent to object to appointment by county board of education without her recommendation did not estop her from objecting where the appointment was being used to perpetuate appointee in office. Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739, 1948 Ky. LEXIS 682 (Ky. 1948) (decided under prior law).

An appointment or election of a school principal by the county board of education without the recommendation of the county superintendent is void and the principal cannot use it

as a foundation upon which to rest his claim that because of it the board is compelled to continue his employment. Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739, 1948 Ky. LEXIS 682 (Ky. 1948) (decided under prior law).

6. —Time for Approval.

Since school year begins July 1, teachers must be chosen by that date, and school board cannot refuse to act on recommendations before that date or postpone action until after that date. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939) (decided under prior law).

The board of education cannot divest a nominated teacher of his rights by postponing its approval of his nomination until after July 1 without legal cause. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940) (decided under prior law).

It is the duty of the superintendent to nominate teachers for the ensuing year, and the duty of the board to accept the nominations, in the absence of cause for rejection, before the beginning of the school year. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483, 1942 Ky. LEXIS 233 (Ky. 1942) (decided under prior law).

A teacher recommended by the superintendent has a vested right to have her nomination recognized by the board before the school year begins. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483, 1942 Ky. LEXIS 233 (Ky. 1942) (decided under prior law).

7. —Approval.

If a nominee possesses the necessary educational and moral qualifications it is the duty of the board to approve of his recommendation. Stith v. Powell, 251 Ky. 155, 64 S.W.2d 491, 1933 Ky. LEXIS 827 (Ky. 1933) (decided under prior law).

It is ordinarily the duty of the board to employ persons nominated by the superintendent, provided said nominees possess the necessary moral and educational qualifications. Hall v. Boyd County Board of Education, 265 Ky. 500, 97 S.W.2d 38, 1936 Ky. LEXIS 523 (Ky. 1936) (decided under prior law).

Board members have a discretion in voting on an applicant who is related to one of the board members, notwithstanding the applicant is duly qualified and nominated. Hall v. Boyd County Board of Education, 265 Ky. 500, 97 S.W.2d 38, 1936 Ky. LEXIS 523 (Ky. 1936) (decided under prior law).

It is the duty of the board to approve appointment of those recommended, except in instances where substantial cause is shown. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740, 1941 Ky. LEXIS 62 (Ky. 1941) (decided under prior law).

School board was entitled to reject a recommendation for a continuing contract for a teacher without a finding of cause. Dorr v. Fitzer, 525 S.W.2d 462, 1975 Ky. LEXIS 104 (Ky. 1975) (decided under prior law).

KRS 161.740 providing that "if the teacher is employed by the board" a continuing contract shall be issued, when construed in regard to its relation with this section, means that the board has an open choice whether or not to make the employment that will result in a continuation contract. Dorr v. Fitzer, 525 S.W.2d 462, 1975 Ky. LEXIS 104 (Ky. 1975) (decided under prior law).

8. —Rejection.

Action by teacher whose recommendation for employment had been rejected without cause was primarily against school board, and it was only necessary to join teacher who, through customary mode of appointment, was put in her place, and not teacher who had been given her place by subsequent shifting of teachers. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939) (decided under prior law).

Arbitrary action of school board members in rejecting nominations of teachers by superintendent would be grounds for removal, and would perhaps subject them to liability for loss to school fund by payments to teachers wrongfully employed. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939) (decided under prior law).

Where nominations were presented by superintendent at board meeting, and motion to accept recommendation and employ teachers was lost, the action of the board was a rejection, and later resolutions changing the minutes to show otherwise were ineffective. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939) (decided under prior law).

Where a county has been made one district by the consolidation and abolition of subdistricts, the county superintendent has the authority to nominate teachers, and his recommendations can be rejected only for cause. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939) (decided under prior law).

Nomination under this section of a teacher possessing the requisite qualifications gives him the prima facie right of approval, and the burden of showing legal disqualification rests upon the board of education. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940) (decided under prior law).

The power of the board of education to disapprove prospective teachers nominated by the superintendent of schools must not be exercised arbitrarily; the board must show some legal cause for disapproving the persons nominated. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940) (decided under prior law).

General conclusions by board of education that certain certified persons nominated as teachers were not "fit" or "suitable" did not show sufficient legal cause for rejection of nominations. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940) (decided under prior law).

Although teacher whose recommendation for position of principal was unlawfully rejected had not suffered any monetary loss because she was employed as ordinary teacher at same salary as principal, and although term for which recommendation was made had expired at time of appeal to court of appeals, teacher was nevertheless entitled to judgment holding that board acted beyond its legal duty in rejecting recommendation, and should have granted her a contract as principal. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331, 1942 Ky. LEXIS 345 (Ky. 1942) (decided under prior law).

It is mandatory duty of a board of education to elect a recommendee of its superintendent, if such recommendee possesses the necessary moral and educational qualifications, and in passing on any recommendations made by its superintendent, no board has the right to arbitrarily reject a recommendee, but it is limited in its right of rejection, in the exercise of sound discretion, to determine whether the recommendee is morally fit or educationally qualified for the position to which he is recommended. Smith v. Beverly, 314 Ky. 651, 236 S.W.2d 914, 1951 Ky. LEXIS 719 (Ky. 1951) (decided under prior law).

9. —Withdrawal.

A superintendent may withdraw a nomination at the meeting at which it is considered. Stith v. Powell, 251 Ky. 155, 64 S.W.2d 491, 1933 Ky. LEXIS 827 (Ky. 1933) (decided under prior law).

Upon rejection of a nominee by the board, the superintendent may withdraw said nomination, and nominate another. Hale v. Board of Education, 254 Ky. 96, 70 S.W.2d 975, 1934 Ky. LEXIS 16 (Ky. 1934) (decided under prior law).

10. —Transfers.

Even though teachers' tenure law provides that upon recommendation of the superintendent a teacher eligible for continuing service status shall be reemployed, it did not mean that he must be employed to teach in the same school in which he taught the preceding year and where the county is in one district by virtue of consolidation and abolition of districts superintendent has the authority by this section to transfer

teachers, subject to the approval of the board, and a teacher eligible for continuing service status may be assigned to any school in the district. Ritchie v. Dunn, 297 Ky. 410, 180 S.W.2d 284, 1944 Ky. LEXIS 738 (Ky. 1944) (decided under prior law).

This section does not contain any direction, or even any suggestion, as to the time at which a transfer must or may be made. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951) (decided under prior law).

The board of education has the right at any time during the school year, upon recommendation of the superintendent, to transfer a principal from one school to another. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951) (decided under prior law).

A principal holding a continuing contract could be transferred to a teaching position in another school, but his teaching salary could not be reduced. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951) (decided under prior law).

The county board of education had the right to transfer school principal from one position to another and where board agreed to keep him as teacher but he declined and obtained employment elsewhere he could not recover for breach of contract. Welch v. Board of Education, 247 S.W.2d 536, 1952 Ky. LEXIS 722 (Ky. 1952) (decided under prior law).

Where a contract stated that if a teacher was transferred to a less convenient school, facts as to the cause of the transfer must be shown but that the superintendent had the final say, showing of cause was for the information of the teacher, not as a condition of the validity of the transfer. Snapp v. Deskins, 450 S.W.2d 246, 1970 Ky. LEXIS 436 (Ky. 1970) (decided under prior law).

Where, in an action to enjoin the school board from transferring school employees, the evidence would authorize a finding of arbitrariness, the case was remanded for a decision as to whether each individual case was arbitrary. Snapp v. Deskins, 450 S.W.2d 246, 1970 Ky. LEXIS 436 (Ky. 1970) (decided under prior law).

Where school board minutes did not indicate that transfer of principal was on recommendation of superintendent, evidence outside the minutes of the board could not be utilized to prove that the transfer was with the recommendation of the superintendent as required by this section, and the Circuit Court erred in failing to hold the transfer void. Stafford v. Board of Education, 642 S.W.2d 596, 1982 Ky. App. LEXIS 267 (Ky. Ct. App. 1982) (decided under prior law).

Under the language of this section, the board is under an obligation to act on the superintendent's recommendation regarding the transfer of teachers, either affirmatively or negatively; failure to so act, whether by postponement or by a deadlocked vote, renders any attempted transfer invalid. Burkhart v. Board of Education, 649 S.W.2d 855, 1983 Ky. App. LEXIS 286 (Ky. Ct. App. 1983) (decided under prior law).

This section requires that the transfer of any teacher be made only upon the recommendation of the superintendent, subject to the approval of the board; accordingly, where the superintendent recommended the transfer of two (2) teachers but the board failed to approve the transfer because of a deadlocked vote such deadlock did not constitute approval under the terms of this section, and consequently, the attempted transfer was invalid. Burkhart v. Board of Education, 649 S.W.2d 855, 1983 Ky. App. LEXIS 286 (Ky. Ct. App. 1983) (decided under prior law).

11. — —Arbitrariness.

A mere showing by school employees that the school board gave no legitimate reasons for the transfers would not be enough, in the absence of a showing of circumstances attending the transfer such as would raise an inference of arbitrariness. Snapp v. Deskins, 450 S.W.2d 246, 1970 Ky. LEXIS 436 (Ky. 1970) (decided under prior law).

The strength of the inferences of arbitrariness is to be measured in the light of the very broad discretionary authority necessarily vested in the superintendent and board of education in the administration of the schools. Snapp v. Deskins, 450 S.W.2d 246, 1970 Ky. LEXIS 436 (Ky. 1970) (decided under prior law).

12. — —Justification.

The burden is not on the board, initially, to justify the transfers of employees, and the burden will shift to the board only when the complaining employees have made an affirmative showing of nonjustification. Snapp v. Deskins, 450 S.W.2d 246, 1970 Ky. LEXIS 436 (Ky. 1970) (decided under prior law).

13. —Review by State.

The provision of this section for review of the refusal by a board of education to approve teachers nominated by the superintendent is for the purpose of settling bona fide differences of opinion between the superintendent and the board of education; where the board has refused its approval without legal cause, the rejected nominee may bring an action of mandamus. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747, 1940 Ky. LEXIS 235 (Ky. 1940) (decided under prior law).

Where a local board refuses approval of superintendent's recommendations without legal justification and the party aggrieved has resorted to the courts for relief, jurisdiction attaches and the provision for appeal to the State Board of Education is no longer applicable. Board of Education v. Miller, 299 S.W.2d 626, 1957 Ky. LEXIS 417 (Ky. 1957) (decided under prior law).

14. Rights of Employee.

When approval of nominations is arbitrarily refused, the law will imply a contract which may be specifically enforced, and for breach of which damages may be allowed against the board members individually to the extent to which damage could not be minimized by the nominee, the burden of proving an effort to minimize damages being on the nominee. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740, 1941 Ky. LEXIS 62 (Ky. 1941) (decided under prior law).

Teacher whose nomination has been wrongfully rejected or ignored has no cause of action against members of board individually until they have caused payments to be made to another teacher employed for the same position. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483, 1942 Ky. LEXIS 233 (Ky. 1942) (decided under prior law).

Superintendent who recommends teacher in place of one whose nomination by former superintendent was wrongfully rejected is personally liable in damages. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483, 1942 Ky. LEXIS 233 (Ky. 1942) (decided under prior law).

A teacher whose nomination has been wrongfully rejected or ignored by the board has the right, before the board has employed and paid another teacher in her place, to compel the board by suit for specific performance to accept her recommendation; if she waits until after the board has employed and paid the other teacher she has no cause of action against the board as such, but has a cause of action for damages against members of the board individually, and against the superintendent who recommended the substitute, and her failure to bring suit for specific performance before employment of the substitute does not constitute laches. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483, 1942 Ky. LEXIS 233 (Ky. 1942) (decided under prior law).

Teacher, who was not employed by the school board under a continuing contract although she had taught in the system for four years and her name appeared on the superintendent's list as eligible for a continuing contract, was not deprived of a vested right to a teaching position without notice and a hearing since the provisions of this section did not apply. Dorr v. Fitzer, 525 S.W.2d 462, 1975 Ky. LEXIS 104 (Ky. 1975) (decided under prior law).

15. Teaching Credentials.

A school board may employ a nurse and teacher of health and physical education, and such person need not have teaching credentials. Board of Education v. Simmons, 245 Ky. 493, 53 S.W.2d 940, 1932 Ky. LEXIS 625 (Ky. 1932) (decided under prior law).

School principal did not have authority to bind a local school board and a school superintendent to pay a school employee retroactive pay at a certified teacher's salary for a period when the employee did not have certification, and summary judgment in favor of the board and the superintendent was warranted. Springer v. Bullitt County Bd. of Educ., 196 S.W.3d 528, 2006 Ky. App. LEXIS 183 (Ky. Ct. App. 2006) (decided under prior law).

16. Necessity for Contract.

A person legally qualified and properly nominated, whose name has not been withdrawn, has a vested right to perform the duties of the position and receive the emoluments thereof, whether or not a contract has been executed and approved by the board. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740, 1941 Ky. LEXIS 62 (Ky. 1941) (decided under prior law).

17. Erroneous Designation of Position.

The fact that an employee was designated erroneously as superintendent instead of principal is immaterial. Sugg v. Board of Trustees, 255 Ky. 356, 74 S.W.2d 198, 1934 Ky. LEXIS 236 (Ky. 1934) (decided under prior law).

18. County Superintendent.

19. —Time for Appointments.

A county superintendent of schools may be appointed prior to the first day of April in the year in which his term begins provided the appointment is made by the same board that is authorized to act when the vacancy actually occurs but this does not mean that the personnel of the board must remain the same but that members in office at the time the appointment is made must extend beyond the date when the term of the appointed officer begins. Maynard v. Allen, 276 Ky. 485, 124 S.W.2d 765, 1939 Ky. LEXIS 547 (Ky. 1939).

20. —Removal.

A charge that county superintendent as secretary of the board of education sent to the State Board of Education a statement in writing that the board had elected a director of pupil personnel when the board had not only failed to do so but had refused to do so constituted sufficient charges for removal of the county superintendent by the county board of education. Starns v. Board of Education, 280 Ky. 747, 134 S.W.2d 643, 1939 Ky. LEXIS 212 (Ky. 1939).

Former superintendent, despite contract provision calling for her return to her previous position of assistant superintendent upon termination for any reason, was not entitled to position of assistant superintendent because the formalities concerning her initial appointment were not fulfilled and school board was incapable of ratifying such appointment as it had no power of appointment. Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144, 1995 U.S. Dist. LEXIS 8019 (E.D. Ky. 1995).

21. Liability for Removal.

Superintendent was not held to have acted as a "final policymaker" in removing plaintiff from her position as secretary to the high school principal and refusing to recommend her for any other position. Therefore, his actions were not those of the county board of education and board could not be held liable in plaintiff's § 1983 action. Adkins v. Board of Educ., 982 F.2d 952, 1993 U.S. App. LEXIS 30 (6th Cir. Ky. 1993).

22. Liability of Local Boards of Education.

Even after passage of the Kentucky Education Reform Act on July 13, 1990, which expanded state control of local boards of education, the Kentucky local boards of education are not arms of the state and, thus, they are not entitled to Eleventh Amendment immunity. Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144, 1995 U.S. Dist. LEXIS 8019 (E.D. Ky. 1995).

Summary judgment in favor of county board of education in the employee's 42 USCS § 1983 action alleging a First Amendment claim and a state whistleblower claim was reversed because the employee's concerns fell within the mixed speech category because community had an interest in knowing how the district's teachers were hired and when the district did not follow state law or its own hiring practices under KRS 160.380(2)(a), (b); likewise, a school district making purchases without approval, not accounting for funds earmarked for a specific purpose, and not balancing sections of the budget would affect and interest the community taxpayers. Banks v. Wolfe County Bd. of Educ., 330 F.3d 888, 2003 FED App. 0184P, 2003 U.S. App. LEXIS 11292 (6th Cir. Ky. 2003).

23. Workers' Compensation.

Band instructor who began working for a board of education under an oral contract and who was injured in the course of his duties was an "employee" under KRS 342.640 for purposes of workers' compensation benefits even though the formalities of KRS 160.380 regarding his hiring (in particular, a contract signed by the board superintendent) were not completed until three (3) months after the injury. Pike County Bd. of Educ. v. Mills, 260 S.W.3d 366, 2008 Ky. App. LEXIS 245 (Ky. Ct. App. 2008).

Cited in:

Bernard v. Humble, 298 Ky. 74, 182 S.W.2d 24, 1944 Ky. LEXIS 842 (Ky. 1944); Taylor v. Hampton, 271 S.W.2d 887, 1954 Ky. LEXIS 1057 (Ky. 1954); Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1958); Miller v. Board of Education, 54 F.R.D. 393, 1971 U.S. Dist. LEXIS 14508 (D. Ky. 1971); Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264, 1995 Ky. App. LEXIS 124 (Ky. Ct. App. 1995); Bailey v. Floyd County Bd. of Educ., 106 F.3d 135, 1997 FED App. 39P, 1997 U.S. App. LEXIS 1516 (6th Cir. 1997); Ky. Exec. Branch Ethics Comm'n v. Wooten, 465 S.W.3d 453, 2014 Ky. App. LEXIS 158 (Ky. Ct. App. 2014).

OPINIONS OF ATTORNEY GENERAL.

While there are no express provisions which would prohibit an outgoing superintendent from recommending himself for a position as principal, an outgoing superintendent is prohibited from taking official action on his own employment. OAG 60-451.

The phrase "and other public school employe" as used in this section, includes the position of director of pupil personnel, and the board of education must accept the recommendation of an outgoing superintendent unless the nominee is found to be morally unfit or educationally unqualified. OAG 60-451.

A board of education is not required to advertise for bids in the selection of school bus drivers. OAG 61-634.

The employment of school bus drivers is not within the purview of either former law identical to present KRS 162.070 or 424.260. OAG 61-634.

An attorney engaged by a county board of education is not a "public school employee" within the meaning of this section and may be engaged without the recommendation of the school superintendent. OAG 67-84.

Where the superintendent in the proper exercise of discretion does not recommend a particular certified teacher for a certain vacancy, it is not legally possible to employ that

teacher in that district and for the purposes of KRS 161.100, no qualified teacher is available. OAG 69-389.

The failure of the board to review and approve the transfers of two (2) teachers from one school to another would not of itself invalidate the transfers unless it could be shown that the teachers were improperly transferred to a position to which they were not qualified, or that the transfers were made arbitrarily or solely for political or improper purposes. OAG 71-431.

The movement of two (2) teachers from one school to another in the same school district would constitute a transfer as referred to in this section. OAG 71-431.

When the superintendent and the majority of the board of education are stalemated to the extent that the board will not approve any recommendation for a certain position made by the superintendent, the matter may be submitted to State Board of Education pursuant to this section. OAG 73-333.

A board of education would be acting at its peril, both as a board and as individual members, if it dismissed any employee without the superintendent's recommendation and without being able to show sufficient cause although this section leaves open the question of whether the dismissal of a nontenured employee must be recommended by the superintendent. Ky. Const., § 2 has been frequently interpreted to forbid a public body from exercising arbitrary power. OAG 73-366.

As the superintendent is the executive agent of the board of education and has the responsibility to carry out the lawful orders of the board, the order of the board eliminating the position of deputy superintendent for the year 1973-74 and to so notify the incumbent is a lawful order but the incumbent must be notified by May 15 that his salary for the next year will be reduced or he will be entitled to at least the same salary he received during the present year. OAG 73-378.

When a board of education officially decides to eliminate a position or not to fill a position for the coming year and to employ the person filling the eliminated position in a position of reduced responsibility and salary, it is necessary that the employee be notified that his position and salary will be reduced for the coming year before May 15 and the superintendent and the board will then have until July 1 to decide on the new position for said employee. OAG 73-378; 76-360.

While a board of education may act only upon the recommendations of the superintendent as to the placement of teachers and other certificated personnel in specific positions in specific schools, it is the board ultimately which must approve such assignments and must give notice to the teachers and other personnel as to their assignment and a superintendent may not place teachers and other certificated personnel in specific jobs in specific schools without the approval of the board of education. OAG 73-523.

While noncertificated employees of the school district may be employed only upon the recommendation of the superintendent, the superintendent may not employ an individual he has recommended without the approval of the board of education. If the board rejects the superintendent's recommendation, the superintendent may recommend another person for the said position. The board of education may continue to reject the superintendent's recommendations but may not employ a person for the said position that the superintendent has not recommended. It is only when the superintendent and the majority of the board of education are stalemated to the extent that the board will not approve any recommendations for a certain position made by the superintendent that the matter may be submitted to the State Board of Education for resolution. OAG 73-523.

Before a teacher acquires tenure, the school administration need not make a finding as to the moral fitness of a teacher in order to elect that the teacher shall not be reemployed but may base their decision upon fitness to teach. OAG 74-575.

If a teacher can make a case of arbitrary action against him by the local school board or by the State Board of Education, he may obtain relief in court despite the provision that the decision of the State Board shall be final. OAG 74-575.

The State Board of Education sits as an administrative body not as a judicial body and the hearing is not designed to satisfy the requirements of due process of law. OAG 74-575.

The board's failure to act decisively on the superintendent's recommendation before May 15 will result in the reemployment of a currently employed teacher for the ensuing school year. OAG 74-661.

If an outgoing superintendent has recommended the appointments of noncertified personnel and the board desires to approve these recommendations, there is nothing that may be done by the new superintendent, but the superintendent has the power to remove clerks at pleasure. OAG 76-290.

Unless a recommended position reassignment for a certified employee is made and approved by the board of education before July 15, these positions would stand unchanged for the next school year. OAG 76-360.

A board of education cannot lawfully contract away amendatory obligation of approval given it by the statutes and, therefore, any contractual provisions of a superintendent's contract in derogation of the expressed statutory outline of powers and duties of a superintendent of a public common school system and a local board of education would be void. OAG 76-360.

A local board of education may create and dispose of administrative positions without a recommendation of the superintendent; however, when an administrative position is created, it is the responsibility of the superintendent to recommend an individual to that position. OAG 77-114, 1977 Ky. AG LEXIS 665.

While an advisory search committee may be established by the board of education to assist the superintendent in seeking out qualified individuals for a position in the school system, in the end it is the superintendent alone who decides who will be recommended to the board to fill a position. OAG 78-41, 1978 Ky. AG LEXIS 665.

A board of education may reject a recommendation or nomination by the local superintendent, whether it is of a certified or classified employee, only for a legal cause of substantial nature relating to and affecting the carrying out of the position for which the individual was recommended. OAG 79-78, 1979 Ky. AG LEXIS 559.

A local board of education may not reject a superintendent's recommendation regarding personnel employment or appointment for just any reason it chooses, and the reasons for such rejection must be based in good faith on legal causes in order for the rejection to have legal justification. OAG 79-78, 1979 Ky. AG LEXIS 559.

In situations where the board has in good faith, based upon legal causes, rejected the recommendations of a superintendent, it behooves the local board to take the matter to the state board for review. OAG 79-78, 1979 Ky. AG LEXIS 559.

A local board of education can direct the superintendent to make a recommendation relative to a teacher's contract since a recommendation is required by law and may be a part of appropriately adopted local board policies; the refusal by a superintendent to make a recommendation could be considered legal cause for the superintendent's removal. OAG 80-205, 1980 Ky. AG LEXIS 455.

Although a superintendent could refuse to make a recommendation to the board of education regarding the renewal or not of a teacher's contract, such refusal would be a neglect of a lawfully imposed duty. OAG 80-205, 1980 Ky. AG LEXIS 455.

Being a jailer and a school bus driver at the same time involves no statutory incompatibility. However, it is possible that such dual roles will, in a particular county, present a common law incompatibility in that the jailer may not be able

to execute both functions in the manner required by law. OAG 82-452, 1982 Ky. AG LEXIS 183.

A board of education cannot discuss the "hiring, firing, promotion or discipline" of individual employees without first receiving a recommendation from the superintendent. OAG 83-379, 1983 Ky. AG LEXIS 116.

The superintendent must make an unequivocal recommendation on personnel matters before the board goes into closed session to discuss specific individuals, and the superintendent's list of teachers to be employed or not employed is not to be composed in conference between the superintendent and the board. OAG 83-379, 1983 Ky. AG LEXIS 116.

When the legislature provided the superintendent with discretion to recommend a candidate to the board for appointment, the legislature did not choose to restrict the superintendent to one individual; beyond consideration of minimum requirements, set by law, the exercise of discretion necessitates freedom to choose, and where a qualified candidate is related to a board member, the superintendent is not precluded from recommending that candidate, despite the relationship, nor is the board precluded from approving that candidate if it so chooses. OAG 89-58, 1989 Ky. AG LEXIS 58.

Relationships by marriage must be expressly included in a statute to fall within the statutory requirements. OAG 90-68, 1990 Ky. AG LEXIS 68.

The term "aunt" does not include aunts by marriage, particularly where a statute has expressly prohibited certain relationships by marriage. OAG 90-68, 1990 Ky. AG LEXIS 68.

If a superintendent who received his contract from the local board of education in July, 1989 were to remain superintendent on July 1, 1991, the spouse who has been a classified employee for five years will not be eligible to retain employment under the exception of this section pertaining, generally, to relatives; however, if the spouse has 20 or more years of service in school systems, then that spouse would be eligible to retain employment so long as she would not be supervising other classified employees. OAG 90-94, 1990 Ky. AG LEXIS 104.

Spouses are eligible for the first exception set forth pertaining to relatives in subsection (2)(e) of this section; that is, spouses, along with other qualified relative who are employees of the district prior to July 13, 1990 and who are certified employees, may retain their positions so long as their spouse, the superintendent, holds office on July 1, 1991, and any spouse of a superintendent who is unable to retain employment under the exception pertaining, generally, to relatives, may be eligible to retain employment under the second exception which pertains to both certified and classified employees by having 20 or more years of service in school systems. OAG 90-94, 1990 Ky. AG LEXIS 104.

The Kentucky Education Reform Act of 1990 clearly provides, in transitional sections, that incumbent members of school boards are eligible both to serve out the remainder of their terms, and to run for re-election, despite having relatives who were hired during their tenure employed by the school district; however, the elected candidate will not be eligible to take the oath of office and to serve as a board member unless the relatives first resign from employment. OAG 90-109, 1990 Ky. AG LEXIS 148.

If superintendent's wife's employment by the school district does not qualify under one of the two (2) exemptions contained within subdivision (2)(e) of this section, the school board would be required to terminate superintendent's employment or spouse's employment effective July 1, 1991. OAG 90-130, 1990 Ky. AG LEXIS 131.

Where a board member has served continuously as a member of the local Board of Education from 1955 up to present and ran for re-election in the fall of 1990, and where his spouse worked for the Board of Education as a teacher in 1948-49, before the two were married and the spouse returned to work as a teacher from 1956-1985 and returned in 1986 and is currently employed as a teacher, the spouse's "initial employment" would be when the spouse most recently came on board and remained continuously employed, that being the school year of 1986-87, and, as the board member became a member of the board in 1955, and the spouse subsequently became employed, the spouse could continue to be employed only for the remainder of the board member's current term which ended December 31, 1990. OAG 91-10, 1991 Ky. AG LEXIS 10.

The term "principal's spouse" does not include spouses of an assistant principal, particularly where this section has expressly prohibited certain relationships; had the legislature wished to include spouses of assistant principals the legislature would have done so. OAG 91-13, 1991 Ky. AG LEXIS 13.

Because a classified school employee who is a principal's spouse is not included in the statutory exception, there are no conditions under which a classified spouse of a principal may work in his or her spouse's school, but a certified school employee who is the principal's spouse may work in his or her spouse's school if: (1) the certified spouse was employed in the principal's school during the 1989-90 school year; and (2) there is no position for which the certified spouse is certified to fill in another school operated in the district. OAG 91-28, 1991 Ky. AG LEXIS 28.

The requirements of subsection (2)(g) apply to all school employees, whether the employees are certified or classified. OAG 91-28, 1991 Ky. AG LEXIS 28.

The use of the word "certified" in the language of the exception in subsection (2)(g) limits the application of this exception to certified employees, therefore, the phrase, "for which the spouse is certified to fill," indicates that the spouse must be certified to fill some position in the school district for this exception to apply to the spouse. OAG 91-28, 1991 Ky. AG LEXIS 28.

The application of the exception under subdivision (2)(g) of this section depends only on whether a position exists in another school, not on whether a vacancy exists in another school and if an appropriate position exists in another school in the district, then the certified spouse must be transferred to that position; an individual occupying the position that is needed for the principal's spouse must also be transferred to accommodate the transfer of the principal's spouse. OAG 91-28, 1991 Ky. AG LEXIS 28.

Where the spouse of a superintendent, assuming such spouse had been employed for 20 years or more in the school system, was employed by a school system on July 1, 1990, as a food service director and assuming such position was not supervisory but rather a liaison role, the school board would be able to continue to employ her as food service director after July 1, 1991, without violating subdivision (2)(e) of this section, but if the facts of spouse's employment are contrary to either of these assumptions, then her continued employment after July 1, 1991, could violate subdivision (2)(e) of this section. OAG 91-64, 1991 Ky. AG LEXIS 66.

Assuming that a school council exists, subdivision (2)(a) of this section, which gives the authority and responsibility for all appointments and promotions of teachers and other public school employees to the superintendent, is qualified by KRS 160.345(2)(g) and (i) (now 160.345(2)(f) and (h)) to the extent that the superintendent recommends applicants to a particular school and the principal fills the vacancies after consultation with the school council. Therefore, when an initial assignment or the filling of a vacancy is involved, the principal and council make personnel decisions upon receiving the list of recommended applicants from the superintendent. OAG 91-122, 1991 Ky. AG LEXIS 119.

A superintendent may change assignments of personnel prior to July 16 without creating "vacancies" as defined by subsection (1)(b) (now (1)(c)) of this section, but after July 15, when positions are occupied by personnel as assigned by the superintendent, and when certified position openings occur due to resignation, dismissal, transfer, death, nonrenewal of

contract, or creation of new positions, those openings constitute "vacancies" under subsection (1)(b) (now (1)(c)) of this section. OAG 91-149, 1991 Ky. AG LEXIS 149.

Coaches' positions must be handled the same as other extra-duty or extra-curricular assignments in that the distinction to be made is whether the extra duties are added to a new or vacant full-time position or to a separate position as opposed to whether the extra duties are merely assigned to the incumbent of a full-time position. OAG 91-149, 1991 Ky. AG LEXIS 149.

Employment of teachers is deemed to be employment in the district, not in a particular position or school, consequently, assignments of position and school, under certain conditions, do not constitute transfers when those assignments are different from previous assignments of position and school. OAG 91-149, 1991 Ky. AG LEXIS 149.

Generally, paid extra-duty or extra-curricular assignments do not have to be posted in accordance with this section. OAG 91-149, 1991 Ky. AG LEXIS 149.

The superintendent may post extra-duty or extra-curricular assignments which are to be assigned to the incumbent of a full-time position to ensure that anyone who is interested in being considered for the assignments may apply. OAG 91-149, 1991 Ky. AG LEXIS 149.

To the extent that a separate position is created for the purpose of hiring an individual to provide duties which cannot be carried out by a full-time member of the faculty, then the extra-duty or extra-curricular assignments would be posted as part of that position. OAG 91-149, 1991 Ky. AG LEXIS 149.

When extra duties are merely additional assignments, posting of those assignments is not required under the provisions of subsections (2)(a) through (c) of this section, however, when a full-time position is created or becomes vacant, to the extent that extra-duty or extra-curricular assignments are considered to be attached to the full-time new or vacant position, then the extra-duty or extra-curricular assignments would be posted as part of the new or vacant full-time position. OAG 91-149, 1991 Ky. AG LEXIS 149.

Where a superintendent contemplates filling an opening created by resignation by transferring another teacher into that position; filling the second opening by transferring another teacher into the second position, and contemplates advertising the third opening for which he has no specific hiring plan, it is necessary to post each vacancy as it occurs after July 15 of each school year. OAG 91-149, 1991 Ky. AG LEXIS 149.

Where an interim superintendent's spouse does not have 20 years' service in school districts, the spouse is not required to resign, so long as the interim superintendent is not a candidate for permanent appointment, and serves only for the brief period necessary to appoint a permanent superintendent, not to exceed 6 months. OAG 91-179, 1991 Ky. AG LEXIS 179.

The terms "brother" and "sister" include half-brother and half-sister, but not step-daughter or step-son. OAG 91-206, 1991 Ky. AG LEXIS 204.

A teacher and athletic director in a junior high school who accepts a position in a new high school as teacher and athletic director has not necessarily experienced a promotion; the change may simply be a transfer. OAG 92-1, 1992 Ky. AG LEXIS 1.

Extra-service positions involve payment for additional tasks that a teacher assumes, such as coach or yearbook sponsor, and to conclude that any assumption of special tasks within the school would constitute promotion, when the level of duties may not change in a material way, and when the compensation is small, would appear to be unduly burdensome; therefore, whether assumption of an extra-service position constitutes a promotion will require analysis of the level of duties and responsibilities and of the level of compensation, as well, perhaps, of the manner in which such positions are assumed; without facts to indicate a material and permanent change in duties, extra-service positions would not constitute promotions. OAG 92-1, 1992 Ky. AG LEXIS 1.

The assumption of teaching duties in a full-time position by a former substitute teacher does not necessarily constitute a promotion, as substitute teaching may include part-time or full-time duties, similar in nature to the duties assumed in a regular full-time position; the determination of whether or not a promotion has occurred will depend on the facts of the individual case in question. OAG 92-1, 1992 Ky. AG LEXIS 1.

Under subsection (2)(e) of this section, as of July 1, 1991, a superintendent has been prohibited from employing a relative in the school district. The prohibition does not apply to a superintendent's spouse who has 20 years of service in school systems so long as the superintendent's spouse does not supervise anyone other than teacher aides and student teachers. OAG 92-45, 1992 Ky. AG LEXIS 40.

Subsection (2)(e) of this section prohibits supervisory responsibility that is regular and permanent, and not to encompass the occasional episodes that may occur when one acts, temporarily, in the place of the principal. OAG 92-45, 1992 Ky. AG LEXIS 40.

A superintendent can transfer a principal from site based school A to site based school B upon the retirement of the current principal in school B, without council approval, making a vacancy in site based school A, if schools A and B are not school-based decision making schools. OAG 92-78, 1992 Ky. AG LEXIS 85.

The superintendent has ultimate authority over personnel decisions affecting non-certified or classified staff in the school district. Nevertheless, principals and school councils share responsibility over certain personnel decisions, related to classified employees. OAG 92-135, 1992 Ky. AG LEXIS 211.

It is consistent with the goals of KERA for a superintendent to receive input from a council-elect prior to selecting a principal for its school in the event there is a vacancy in the spring before council members' terms officially begin. However, the final decision will remain with the superintendent. OAG 93-31, 1993 Ky. AG LEXIS 84.

A vacancy, as defined by KRS 160.380(1)(b) (now (1)(c)), can occur at any time during the year, not just after July 15. As a general rule, when a vacancy occurs in a local school district, the superintendent must notify the Kentucky Department of Education, and post the position opening in the local school board office for thirty (30) days before filling the position. OAG 97-7, withdrawing, in pertinent part, OAG 91-149, 1991 Ky. AG LEXIS 149.

A school superintendent cannot promote his son to assistant principal in the same school district; changing from the position of teacher to assistant principal constitutes a promotion, regardless of whether there is a corresponding salary increase, and a superintendent is prohibited by subsection (2)(e) from promoting a relative. OAG 99-6, 1999 Ky. AG LEXIS 250.

The Jefferson County Public School System's current method of annually posting job vacancies for certified positions on a district wide basis, followed by posting of specific school building jobs as they are known to be available, complies with the requirements of KRS 160.380. OAG 10-003, 2010 Ky. AG LEXIS 114.

HB 176 (2010, ch. 1) does not specify a mechanism by which retention decisions must be made. HB 176 does not prohibit the superintendent from developing a collaborative model that involves a committee making a recommendation on retention decisions. Parties to a teacher collective bargaining agreement may collaborate and otherwise agree to apply provisions of the collective bargaining agreement as long as those agreements do not violate the express provisions of HB 176. OAG 12-003, 2012 Ky. AG LEXIS 47.

The Board must disclose the national and state criminal history background checks, required by KRS 160.380 as a condition of employment, that are located in the personnel file.

Given the compelling public interest in confirming that school employees charged with the supervision and education of our students are of good character, the absence of any statutory restriction on access, and the failure of the Board to articulate a specifically protected privacy interest relative to these records, their disclosure does not constitute a clearly unwarranted invasion of personal privacy within the meaning of KRS 61.878(1)(a). OAG 03-ORD-141, 2003 Ky. AG LEXIS 209.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Alternative education programs, 704 KAR 19:002.
Deduction from salaries for teachers' retirement fund, KRS 161.560.
Full-time enrolled online, virtual and remote learning programs, 704 KAR 3:535.
School employees, provisions as to, KRS Ch. 161.
Teachers' tenure law, KRS 161.720 to 161.810.
Alternative education programs, 704 KAR 19:002.
District school nutrition director, 702 KAR 6:020.
Drug testing of teachers involved in illegal use of controlled substances, 701 KAR 5:130.
Emergency certification and out-of-field teaching, 16 KAR 2:120.
Lunch and breakfast requirements, 702 KAR 6:050.
Minority teacher recruitment, 704 KAR 7:130.
Personnel; policies and procedures, 702 KAR 6:040.

Kentucky Bench & Bar.
Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.
Young, Who's the Boss?, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 10.

Kentucky Law Journal.
Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Northern Kentucky Law Review.
Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process —Wells v. Board of Regents, 545 F.2d 15, 1976 U.S. App. LEXIS 6054 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716, 1977 U.S. App. LEXIS 13918 (6th Cir. 1977), 5 N. Ky. L. Rev. 141 (1978).

160.382. Exit surveys.

(1) When a school district employee voluntarily leaves the district, the local board of education shall ensure that each employee completes an exit survey in accordance with a policy approved by the board.

(2)(a) The Kentucky Department of Education shall develop a system for school districts to report exit survey information without providing personally identifiable information for use in evaluating factors impacting teacher retainment.

(b) Information submitted by an employee and reported to the department shall include but not be limited to the position vacated, the employee's years of service in the position and in the district, if the employee is taking a similar position in another district, and the reason or reasons provided for leaving the district.

History.
2023 ch. 164, § 2, effective June 29, 2023.

160.390. Duties of superintendent — Personnel actions.

(1) The superintendent shall devote himself exclusively to his duties. He shall exercise general supervision of the schools of his district, examine their condition and progress, and keep himself informed of the progress in other districts. He shall prepare or have prepared all budgets, salary schedules, and reports required of his board by statute or the Kentucky Board of Education. He shall advise himself of the need of extension of the school system of the district, shall receive and examine reports from teachers and other school officers, and shall make reports from time to time as required by the rules of his board or as directed by the board. He shall be responsible to the board for the general condition of the schools. He shall be responsible for all personnel actions including hiring, assignments, transfer, dismissal, suspension, reinstatement, promotion, and demotion and reporting the actions to the local board.

(2) All personnel actions by the superintendent as described in subsection (1) of this section shall be recorded in the minutes of the local board of education at the next meeting after the action is taken and shall not be effective prior to receipt of written notice of the personnel action by the affected employee from the superintendent.

History.
4399-34; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 90, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2026 ch. 129, § 6, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. Application.
2. Administrative Duties.

1. Application.
Since superintendent's action in demoting school administrator was effective when administrator received notice of demotion from superintendent, while KRS 161.765 admittedly provides administrators with enhanced procedural protections, it does nothing to change the effective date of a demotion, and it is that effective date that controls for the purpose of the May 15 deadline set forth in KRS 161.760 and the fact that an administrator might contest the demotion, and thus the action might not become final for some time is of no consequence under subsection (2) of the section. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

KRS 161.760(2) does not require finality to effect a reduction in salary and by its very terms subsection (2) of this section makes the superintendent's personnel action effective upon receipt of the written notice by the affected employee; therefore, where administrator received notice of demotion on April 26 followed by a specific statement of reasons for the demotion on May 9, the requirements of KRS 161.760(3) have been met. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

2. Administrative Duties.
This section requires the superintendent and, necessarily, the assistant superintendent, to devote themselves exclusively to their duties, which are administrative in nature and do not include teaching, and the holding of the incompatible position of teacher operates to prevent a duly appointed assistant superintendent from being entitled to compensation as assistant superintendent. Richardson v. Bell County Board

of Education, 296 Ky. 520, 177 S.W.2d 871, 1944 Ky. LEXIS 572 (Ky. 1944).

Cited in:

Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936); Hoskins v. Keen, 350 S.W.2d 467, 1961 Ky. LEXIS 97 (Ky. 1961); Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144, 1995 U.S. Dist. LEXIS 8019 (E.D. Ky. 1995); Bailey v. Floyd County Bd. of Educ., 106 F.3d 135, 1997 FED App. 39P, 1997 U.S. App. LEXIS 1516 (6th Cir. 1997).

OPINIONS OF ATTORNEY GENERAL.

If an outgoing superintendent had recommended the appointments of noncertified personnel and the board desires to approve these recommendations, there is nothing that may be done by the new superintendent, but the superintendent has the power to remove clerks at pleasure. OAG 76-290.

This section cannot be construed to prohibit or even necessarily curtail the nonschool related activities of a local superintendent of schools. OAG 79-149, 1979 Ky. AG LEXIS 488.

There is no authority for a Board of Education to retain some right to hear charges concerning classified employees, to make a decision, and later to direct the superintendent on whether or not to dismiss an employee; the only involvement of the board after July 13, 1990 is to receive notice of the action taken by the superintendent. OAG 90-129, 1990 Ky. AG LEXIS 132.

As an employee of the local board of education, the superintendent is bound to carry out the duties and responsibilities assigned by the board so long as those duties are permissible under the law; the superintendent is to prepare all budgets, salary schedules, and reports required by the local board of education and by the state board of elementary and secondary education. OAG 92-29, 1992 Ky. AG LEXIS 29.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65, 1992 Ky. AG LEXIS 65.

Members of the board of education may only inspect the nonexempt records contained in the personnel files of certified and classified employees. Since the board of education no longer plays any role in personnel actions, it does not enjoy any greater right of access to the files and board's right to inspect the personnel files of certified and classified employees of the school system is therefore the same as the right of inspection enjoyed by any citizen under this section. OAG 92-141, 1992 Ky. AG LEXIS 218.

Because classified public school employees have no statutory post-termination remedy, local school boards should enact policies pursuant to KRS 161.011(9)(c) implementing due process hearing procedures applicable to classified employees prior to termination. Minimum standards of due process require reasonable notice of hearing, right to appear and produce evidence, right to call witnesses and conduct cross-examination, right to counsel, impartial decision-maker, and statement of basis for decision. OAG 2005-06, 2005 Ky. AG LEXIS 5.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Reports of financial matters to State Board of Education, KRS 157.060.

Superintendent of Public Instruction to supervise financial reports, KRS 156.160, 156.200.

Kentucky Bench & Bar.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

160.395. Duty of superintendents to distribute information to school board and school council members.

(1) Superintendents of public school districts shall distribute the written information provided by the Office of the Attorney General and the Department for Libraries and Archives under KRS 15.257 and 171.223 to each elected school board member and each school council member, as designated in KRS 160.345(2), within their respective districts. Distribution shall be accomplished within sixty (60) days of receiving the written information from the Office of the Attorney General and the Department for Libraries and Archives. Distribution to newly elected or appointed members shall be accomplished within sixty (60) days of their election or appointment. The distribution may be by electronic means.

(2) Superintendents shall require signatory proof that each school board member and school council member has received the written information as required under subsection (1) of this section, shall maintain documentation of receipt on file, and shall certify to the Office of the Attorney General that the written information has been distributed as required.

History.

Enact. Acts 2005, ch. 45, § 4, effective June 20, 2005.

160.400. Duties of outgoing superintendent.

An outgoing superintendent shall, before his last month's salary is paid, make all reports required by law to date of his retirement and shall have information assembled to date of his retirement for any reports to be made by the incoming superintendent.

History.

Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 438, effective July 13, 1990.

Compiler's Notes.

This section (4399-34) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 438, effective July 13, 1990.

160.410. Expenses of superintendent and employees.

A board of education may pay the necessary expenses of its superintendent and other employees when such expenses are incurred on order of the board.

History.

Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 439, effective July 13, 1990.

Compiler's Notes.

This section (4399-35) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 439, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Where the use of the superintendent of school's personal car on school business was not considered and approved by the

board of education prior to the use, the board could not legally pay the superintendent's claim for reimbursement. OAG 77-331, 1977 Ky. AG LEXIS 445.

A school district may not advance money to its employes for travel or other necessary expenses prior to the expense actually being incurred since the applicable statutes contemplate reimbursement, not an advancement of money. OAG 80-395, 1980 Ky. AG LEXIS 278.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228, 1983 Ky. AG LEXIS 269.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228, 1983 Ky. AG LEXIS 269.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, and meals for school administrators to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong and/or lobbying activities conducted by their professional associations. OAG 83-228, 1983 Ky. AG LEXIS 269.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, meals, and substitute teachers, for teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization, and/or lobbying activities conducted by their organization. OAG 83-228, 1983 Ky. AG LEXIS 269.

160.420. Interest in teacher's claim prohibited. [Repealed.]

Compiler's Notes.

This section (4399-36) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.430. Business directors in cities of the first two classes. [Repealed.]

Compiler's Notes.

This section (4399-37) was repealed by Acts 1966, ch. 89, § 16.

160.431. School finance officer — Certification requirements — Continuing education — Financial reports.

(1) The local district superintendent shall appoint a finance officer who shall be responsible for the cash, investment, and financial management of the school district.

(2)(a) A person initially employed as a school finance officer on or after July 1, 2015, shall obtain certification from the Department of Education prior to holding the position and entering the duties of the position of school finance officer.

(b) The Kentucky Board of Education shall promulgate administrative regulations to prescribe the criteria and procedures to be used in the certification process for a school finance officer.

(c) The administrative regulations promulgated under this subsection shall specify:

1. The initial qualification requirements for school finance officer certification;

2. The certification application and appeal process; and

3. The certification renewal process.

(3) The school finance officer shall be required to complete forty-two (42) hours of continuing education every two (2) years from a provider approved by the Department of Education. The Kentucky Board of Education shall promulgate administrative regulations to identify and prescribe the criteria for fulfilling the requirements of this subsection. The administrative regulations shall specify:

(a) The topics of continuing education;

(b) Qualifications for continuing education providers;

(c) Consequences for failure to meet the continuing education requirement; and

(d) Requirements for reinstatement of school finance officer certification.

(4)(a) The finance officer shall present a detailed monthly financial report for board approval to include the previous month's revenues and expenditures of the district. The monthly report shall be posted on the district's website for a minimum of six (6) months after its approval.

(b) Within six (6) months following the end of each fiscal year, the finance officer shall submit to the Kentucky Department of Education a detailed annual financial report to include the district's total assets, liabilities, revenues, and expenditures. The annual report shall be posted on the district's financial disclosure website required in KRS 160.463 and department's website for a minimum of two (2) years.

(c)1. The Department of Education shall review each district's annual financial report and shall provide, within two (2) months of receipt, the local board of education a written report indicating the financial status of the district. The department's written report shall be posted on the department's website and the district financial disclosure website required in KRS 160.463 for a minimum of two (2) years.

2. The commissioner of education shall annually present to the Interim Joint Committee on Education a copy of the department's written report for each district.

(d) Nothing in this subsection shall lessen the obligation of a school district to publish its financial statements in accordance with KRS 160.463.

History.

Enact. Acts 2000, ch. 389, § 1, effective July 14, 2000; 2014, ch. 136, § 2, effective July 15, 2014; 2018 ch. 171, § 7, effective April 14, 2018; 2018 ch. 207, § 7, effective April 27, 2018; 2026 ch. 129, § 3, effective July 15, 2026.

160.440. Secretary of board of education.

Each board of education shall appoint a secretary for a term of one (1), two (2), three (3), or four (4) years. The secretary shall not be a member of the board of education. The board of education of any district may appoint its superintendent as secretary. However, a superintendent who serves as secretary to the board shall not receive compensation in addition to that which he receives for serving as superintendent. The board may fix a reasonable salary for the secretary. The secretary shall keep the records of the board and perform other duties imposed upon him by the board. All orders of the board must be signed by the secretary and countersigned by the chairman of the board. The secretary shall be custodian of all securities, documents, title papers, and other papers of the board under such conditions as the board may direct. The secretary, when other than the superintendent, shall make all records of the board available to the superintendent and the board of education at any time and shall furnish the superintendent of schools and the board of education such information as is revealed by the records at any time upon the request of the superintendent or the board of education.

History.

4399-38; amend. Acts 1978, ch. 6, § 1, effective June 17, 1978; 1982, ch. 14, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 91, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Superintendent as Secretary.
2. Notice of Special Meetings.
3. Custodian of Records.
4. Recordation of Charges upon Minutes.

1. Superintendent as Secretary.

Where all five (5) members of the board of education were present at meeting where superintendent was appointed secretary of the board, but due to the fact that the vote of one member should have been disregarded since her election had been declared invalid by the court, the vote on the motion to appoint superintendent as secretary would have been a tie vote, the appointment of the superintendent as secretary was an invalid appointment. Board of Education v. Nevels, 551 S.W.2d 15, 1977 Ky. App. LEXIS 690 (Ky. Ct. App. 1977).

2. Notice of Special Meetings.

Notices of special meetings may be delivered by the secretary. Board of Education v. Stevens, 261 Ky. 475, 88 S.W.2d 3, 1935 Ky. LEXIS 678 (Ky. 1935).

3. Custodian of Records.

The secretary is custodian of the records of the board, and acts under the supervision of the superintendent. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

4. Recordation of Charges upon Minutes.

Failure of the secretary to record charges upon the minutes does not deprive the board of its right to hear and try the charges against an employee. Hunter v. Board of Education, 265 Ky. 162, 96 S.W.2d 265, 1936 Ky. LEXIS 453 (Ky. 1936).

OPINIONS OF ATTORNEY GENERAL.

The secretary to the board of education is not a public officer within the meaning of Ky. Const., § 235 and consequently, subject to the general principles of contract law, the salary of the secretary may be changed during his term. OAG 60-480.

The secretary of a board of education is an employee and not an officer and, by mutual agreement, his contract may be renegotiated both as to salary and to length of term of office. OAG 61-509.

If the superintendent of schools is also the secretary of the board, he or she shall not meet with the board when the superintendent's tenure, salary or the administration of his office is under consideration, for while the two positions of superintendent and secretary may be separable, the body cannot be; in this situation a temporary secretary should be appointed to take the minutes of the board's proceedings. OAG 78-274, 1978 Ky. AG LEXIS 442.

Serving as a legal assistant is not a legitimate duty to be imposed upon the secretary to the local board of education. OAG 78-274, 1978 Ky. AG LEXIS 442.

The amendment of this section by Acts 1990, ch. 176, pt. II, § 91, which provided that a superintendent may not be paid for secretarial duties performed for the board of education, terminates a contract between a superintendent and a school board that allows the superintendent to be paid for serving as secretary to the board; however, compensation already paid to a superintendent for performance of a pre-existing contract since adoption of the Kentucky Education Reform Act need not be refunded since no legal recovery can be had a subsequent illegal performance. OAG 91-63, 1991 Ky. AG LEXIS 65.

160.445. Sports safety course required for interscholastic coaches — Training and education on symptoms, treatment, and risks of concussion — Venue-specific emergency action plans.

(1)(a) The Kentucky Board of Education or organization or agency designated by the board to manage interscholastic athletics shall require each interscholastic coach to complete a sports safety course consisting of training on how to prevent common injuries. The content of the course shall include but not be limited to emergency planning, heat and cold illnesses, emergency recognition, head injuries including concussions, neck injuries, facial injuries, cardiopulmonary resuscitation, use of a portable automated external defibrillator in accordance with KRS 311.667, and principles of first aid. The course shall also be focused on safety education and shall not include coaching principles.

(b) The state board or its agency shall:

1. Establish a minimum timeline for a coach to complete the course;

2. Approve providers of a sports safety course;

3. Be responsible for ensuring that an approved course is taught by qualified professionals who shall either be athletic trainers, registered nurses, physicians, or physician's assistants licensed to practice in Kentucky;

4. Establish the minimum qualifying score for successful course completion; and

5. Require a coach to earn a cardiopulmonary resuscitation certification recognized by a national accrediting body on heart health.

(c) A course shall be reviewed for updates at least once every thirty (30) months and revised if needed.

(d) A course shall be able to be completed through hands-on or online teaching methods in ten (10) clock hours or less.

(e)1. A course shall include an end-of-course examination with a minimum qualifying score for successful course completion established by the board or its agency.

2. All coaches shall be required to take the end-of-course examination and shall obtain at least the minimum qualifying score.

(f) At least one (1) person who has completed the course shall be at every interscholastic athletic practice and competition.

(2)(a) The state board or its agency shall require each interscholastic coach to complete training on how to recognize the symptoms of a concussion and how to seek proper medical treatment for a person suspected of having a concussion. The training shall be approved by the state board or its agency and may be included in the sports safety course required under subsection (1)(a) of this section.

(b) The board or its agency shall develop guidelines and other pertinent information or adopt materials produced by other agencies to inform and educate student athletes and their parents or legal guardians of the nature and risk of concussion and head injury, including the continuance of play after concussion or head injury. Any required physical examination and parental authorization shall include acknowledgement of the education information required under this paragraph.

(c) Upon request, the board or its agency shall make available to the public any training materials developed by the board or agency used to satisfy the requirements of paragraph (a) of this subsection. The board or its agency shall not be held liable for the use of any training materials so disseminated.

(3)(a) A student athlete suspected by an interscholastic coach, school athletic personnel, or contest official of sustaining a concussion during an athletic practice or competition shall be removed from play at that time and shall not return to play prior to the ending of the practice or competition until the athlete is evaluated to determine if a concussion has occurred. The evaluation shall be completed by a physician or a licensed health care provider whose scope of practice and training includes the evaluation and management of concussions and other brain injuries. A student athlete shall not return to play on the date of a suspected concussion absent the required evaluation.

(b)1. Upon completion of the required evaluation, a coach:

a. May return a student athlete to play if the physician or licensed health care provider determines that no concussion has occurred; or

b. Shall not return a student athlete to play if the physician or licensed health care provider determines that a concussion has occurred.

2. If no physician or licensed health care provider described in paragraph

(a) of this subsection is present at the practice or competition to perform the required evaluation, a coach shall not return a student athlete to play who is suspected of sustaining a concussion. The student athlete shall not be allowed to participate in any subsequent practice or athletic competition unless written clearance from a physician is provided.

(c) A student athlete deemed to be concussed shall not return to participate in any athletic practice or competition occurring on the day of the injury. The injured student athlete shall not be allowed to participate in any subsequent practice or athletic competition unless written clearance from a physician is provided.

(4) The state board or its agency shall adopt rules governing interscholastic athletics that encourage each school that participates in interscholastic athletics to provide access to at least one (1) portable automated external defibrillator in a public, readily accessible, well-marked location at each school-sanctioned athletic practice or competition, including any practice or competition held off campus.

(5) The state board or its agency shall adopt rules governing interscholastic athletics conducted by local boards of education to require each school that participates in interscholastic athletics to develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall:

(a) Include a delineation of the roles of staff and emergency personnel, methods of communication, available emergency equipment, and access to and plan for emergency transport;

(b) If one is available, identify the location of a portable automated external defibrillator and the procedures for its use during an emergency; and

(c) Be in writing, reviewed by the principal of the school, distributed to all appropriate personnel, posted conspicuously at all venues, and reviewed annually and rehearsed by simulation prior to the beginning of each athletic season by all:

1. Licensed athletic trainers, first responders, school nurses, athletic directors; and

2. Interscholastic coaches and volunteer coaches of each athletic team active during that athletic season.

(6) Each school shall submit annual written certification to the state board or its agency of the existence of a venue-specific emergency action plan that the school has reviewed and rehearsed by simulation as required by subsection (5)(c) of this section.

(7) Each school shall maintain complete and accurate records of its compliance with this section and shall make the records available for review by the state board or its agency upon request.

History.

Enact. Acts 2009, ch. 90, § 2, effective March 24, 2009; 2012, ch. 72, § 1, effective April 11, 2012; 2013, ch. 30, § 8, effective June 25, 2013; 2017 ch. 160, § 1, effective June 29, 2017; 2023 ch. 165, § 5, effective June 29, 2023.

DISTRICT FINANCES

160.450. Fiscal year of school districts.

The fiscal year of all school districts shall begin on July 1 and end on June 30.

History.
4399-39; amend. Acts 1964, ch. 100; 1978, ch. 7, § 1, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 440, effective July 13, 1990.

Compiler's Notes.
This section (4399-39; amend. Acts 1964, ch. 100; 1978, ch. 7, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 440, effective July 13, 1994.

NOTES TO DECISIONS

Cited in:
White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. 1936).

OPINIONS OF ATTORNEY GENERAL.

School boards and cities are covered by Ky. Const., § 169, except where otherwise provided by statute. OAG 85-65, 1985 Ky. AG LEXIS 85.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Fiscal year, Const., § 169.
School year, KRS 158.050.
Procedure for payment of employees, 702 KAR 3:060.

160.455. Definition of tax-levying authority.

As used in KRS 160.460 to 160.597, unless the context requires otherwise:

"Tax-levying authority" shall mean boards of education of county school districts and independent school districts.

History.
Enact. Acts 1976, ch. 127, § 1; 1990, ch. 476, Pt. V, § 232, effective July 13, 1990.

160.460. Levy of school taxes — Procedures.

(1) All school taxes shall be levied by the board of education of each school district. The tax-levying authority shall levy an ad valorem tax within the limits prescribed in KRS 160.470, which will obtain for the school district the amount of money needed as shown in the district's working budget submitted under KRS 160.461.

(2) The tax-levying authority shall make an annual school levy not later than July 1. The school levy shall not be made until the working budget has been received and approved by the Kentucky Board of Education. The failure of the authority to make the levy by the date prescribed shall not invalidate any levy made thereafter.

(3) All school taxes shall be levied on all property subject to local taxation in the jurisdiction of the tax-levying authority. If the school levy is to be made upon the city assessment, which is hereby authorized for independent school districts embraced by designated cities, the clerk of the city shall furnish to the school district or districts which the city embraces, the assessed valuation of property subject to local taxation in the school district, as determined by its tax assessor. If the school levy is to be made upon the county assessment the county clerk shall furnish to the proper school district or districts the assessed valuation of property subject to local taxation in the district or districts, as certified by the Kentucky Department of Revenue. No later than July 1, 1994, all real property located in the state and subject to local taxation shall be assessed at one hundred percent (100%) of fair cash value.

(4) As used in this section, "designated city" means a city classified as a city of the first, second, third, or fourth class as of January 1, 2014, under the city classification system in effect prior to January 1, 2015. The Department of Education shall, on or before January 1, 2015, create an official registry listing the cities that qualify as a "designated city" under this section and shall publish that registry on its website.

History.
1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. V, § 104, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2005, ch. 85, § 593, effective June 20, 2005; 2014, ch. 92, § 226, effective January 1, 2015; 2026 ch. 129, § 7, effective April 13, 2026; 4399-40; amend. Acts 1949 (Ex. Sess.), ch. 7, § 1; 1950, ch. 71; 1976, ch. 127, § 2; 2026 ch. 129, § 7, effective July 15, 2026.

NOTES TO DECISIONS

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1. In General.
2. Levy.
3. —Time of Making.
4. —Refusal.
5. —Amount.
6. Surplus Revenue.
7. Taxing District.
8. Collection of Delinquent Taxes.
9. Decisions by Local School Board.

1. In General.
The fiscal court must make the levy requested when the proposed budget shows facts authorizing it, and the board has not acted in bad faith. Elliott County Fiscal Court v. Elliott County Board of Education, 193 Ky. 66, 234 S.W. 947, 1921 Ky. LEXIS 181 (Ky. 1921); County Board of Education v. Fiscal Court of Marshall County, 229 Ky. 774, 17 S.W.2d 1009, 1929 Ky. LEXIS 830 (Ky. 1929); McCreary County Fiscal Court v. McCreary County Board of Education, 236 Ky. 149, 32 S.W.2d 741, 1930 Ky. LEXIS 702 (Ky. 1930); Hockensmith v. County Board of Education, 240 Ky. 76, 41 S.W.2d 656, 1931 Ky. LEXIS 345 (Ky. 1931); Allen County Fiscal Court v. Allen County Board of Education, 242 Ky. 546, 46 S.W.2d 1070, 1932 Ky. LEXIS 304 (Ky. 1932); Madison County Board of Education v. Madison County Fiscal Court, 246 Ky. 201, 54 S.W.2d 652, 1932 Ky. LEXIS 725 (Ky. 1932); Newell v. Cincinnati, N. O. & T. P. R. Co., 246 Ky. 628, 55 S.W.2d 662, 1932 Ky. LEXIS 816 (Ky. 1932) (decided under prior law).

All taxes imposed for common school purposes in this state are state taxes even though they are for use in schools located in the territory affected by the tax. Paducah-Illinois R. Co. v. Graham, 46 F.2d 806, 1931 U.S. Dist. LEXIS 1138 (D. Ky. 1931); Commonwealth v. Louisville Nat'l Bank, 220 Ky. 89, 294 S.W. 815, 1927 Ky. LEXIS 478 (Ky. 1927) (decided under prior law).

A local school tax is a state tax. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

2. Levy.
Mandamus may issue to compel the calling of a special term of the fiscal court and the making of a levy. Fiscal Court of

Cumberland County v. Board of Education, 191 Ky. 263, 230 S.W. 57, 1921 Ky. LEXIS 311 (Ky. 1921) (decided under prior law).

If the levy requested is insufficient, the court may levy a sufficient tax. Madison County Board of Education v. Madison County Fiscal Court, 246 Ky. 201, 54 S.W.2d 652, 1932 Ky. LEXIS 725 (Ky. 1932); Newell v. Cincinnati, N. O. & T. P. R. Co., 246 Ky. 628, 55 S.W.2d 662, 1932 Ky. LEXIS 816 (Ky. 1932) (decided under prior law).

Fact that State Board of Education had not approved the tax rate is not fatal. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

The form of the levy is not material. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law).

Where boundary lines of independent school district were not coterminous with those of the city, the fiscal court of the county was the tax levying authority for the district. Howard v. Board of Education, 311 Ky. 130, 223 S.W.2d 721, 1949 Ky. LEXIS 1076 (Ky. 1949).

3. —Time of Making.

Tax levy made on June 21 was valid, in view of provision of this section that failure to make levy in April should not invalidate a levy thereafter made. Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218, 1946 Ky. LEXIS 891 (Ky. 1946) (Decision prior to 1949 amendment).

4. —Refusal.

When the council relies on bad faith or corruption as ground for refusal to make the levy desired by the school board, the bad faith or corruption must be clearly charged. White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. Ct. App. 1936).

Inaccuracies in estimated items in county school budget submitted by board of education, due to subsequent developments, did not justify fiscal court's refusal to levy taxes required by budget, in absence of showing board had acted illegally or in bad faith. Stokley v. Fleming County Board of Education, 305 Ky. 602, 205 S.W.2d 168, 1947 Ky. LEXIS 881 (Ky. 1947).

5. —Amount.

The board of education of a city of the second class has the exclusive right to determine within lawful limits the amount of money necessary to be expended and the items for which it shall be expended in the operation of the schools, and, unless the board of commissioners of the city can show an illegal expenditure, or a computation unlawfully arrived at, or bad faith on the part of the school board, it must levy a tax within the limits prescribed by the Constitution and statutes sufficient to raise the revenue required under the provisions of the budget filed with it by the board of education. The board of commissioners has no legal right to question the advisability of the expenditure of the items contained in the budget submitted. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

Since the legislature has provided for penalties to offset any deficiency which might be incurred by failure to pay taxes when due, commissioners were within legal rights in deciding that a $1.00 levy requested by the school board was based on a computation unlawfully arrived at, as it appeared 89 cents would produce sufficient revenue if fully collected. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

The board of commissioners of a second-class city performs its whole duty when it levies upon the taxable property of the city a tax which, when collected, will produce the sum requested by the board and it is not required to levy a higher tax on the theory that some of the taxpayers will fail to pay during the year for which the tax is levied. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

The fiscal court must levy the ad valorem tax and the poll tax at the rate specified by the board of education; it has no discretion in the matter. Fiscal Court of Monroe County v. Board of Education, 294 Ky. 758, 172 S.W.2d 624, 1943 Ky. LEXIS 534 (Ky. 1943).

Where board of education undertook to have two levies simultaneously made upon bank shares, namely, 40¢ for general purposes and 50¢ for special purposes the trial court reasonably apportioned the 40¢ maximum between the general and special purpose in the proportion that the resolution of the board of education called to be levied on all other property, namely, $1.50 for general school purposes and 50¢ for "special school building" purpose. Board of Education v. Citizens Fidelity Bank & Trust Co., 263 S.W.2d 112, 1953 Ky. LEXIS 1148 (Ky. 1953).

Where a proposed general budget for fiscal year was submitted to the fiscal court and to the State Board of Education for approval by county board of education as provided by KRS 160.470 requesting it to impose a general school tax of $1.50 per $100 valuation of property subject to local tax and Superintendent of Public Instruction certified to the board that the tax rate necessary to produce the required "local tax effort" to participate in the "public school foundation program fund" would be $1.57 per $100 of assessed valuation which was in effect a disapproval of the budget and required an amended tax levy, the fiscal court should have levied and imposed a tax rate of $1.57 for general school purposes. Holmes v. Walden, 394 S.W.2d 458, 1965 Ky. LEXIS 182 (Ky. 1965).

6. Surplus Revenue.

The mere fact that an expenditure will absorb that portion of anticipated revenue which would otherwise have been surplus does not preclude the school board from making necessary expenditures upon discovery that the funds are available for that purpose. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

7. Taxing District.

A board of education is a taxing district or municipality. Lee v. Board of Education, 261 Ky. 379, 87 S.W.2d 961, 1935 Ky. LEXIS 666 (Ky. 1935).

8. Collection of Delinquent Taxes.

In independent districts embracing cities of the first four classes, it is the duty of the city, and not of the school board, to cause delinquent taxes to be collected and to allow credits thereon. McKinney's Adm'x v. Commonwealth, 260 Ky. 608, 86 S.W.2d 167, 1935 Ky. LEXIS 504 (Ky. 1935).

9. Decisions by Local School Board.

The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990).

Cited in:

Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947); Folks v. Barren County, 313 Ky. 515, 232 S.W.2d 1010, 1950 Ky. LEXIS 919 (Ky. 1950); Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976).

OPINIONS OF ATTORNEY GENERAL.

When a portion of an independent school district lies outside of the city limits, the school district is not "embraced" by the city within the meaning of subsection (1) (now (3)) of this section and the fiscal court is the levying authority for school

taxes and the governmental unit which approves the school budget. OAG 61-414.

There is no deadline in terms of a calendar date by which a city board of education must submit its tax rate to the city. OAG 64.380.

An independent school district in the city could not share part of the expense incurred by the city in reassessing property located within the city. OAG 67-1.

Where an independent school district is composed of different cities, the tax levying authority is the governing body of each city in the district. OAG 68-594.

Where not all of the residents of three cities included in an independent school district lived inside the school district and one city had its own tax assessor while two (2) other cities were assessed by the county assessor, the proper tax levying authority for the district was the county fiscal court and the election expense should be borne by the fiscal court. OAG 69-2.

School taxes shall be levied by the fiscal court in each county, except in independent school districts embraced by cities of the first four classes. OAG 74-187.

Local boards of education must assume all administrative responsibility concerning bond issues for school sites and buildings; however, since school financing is done almost exclusively through school building revenue bonds pursuant to KRS 162.210 to 162.300 and KRS 58.010 to 58.120 inclusive, there is no authority for any change in the preexisting procedure used for school revenue bonds and the fiscal courts and county treasurers must continue to perform the customary functions heretofore served by them in that regard. OAG 76-711.

Pursuant to this section and KRS 132.280, independent school districts embraced in cities of the first four classes may use the city assessment or the county assessment. OAG 77-497, 1977 Ky. AG LEXIS 269.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bank franchise and local deposit tax, KRS 136.500 to 136.575.

Boundaries of school district to be furnished to railroad or bridge company to enable it to determine tax due, KRS 136.190, 136.990.

Revenue Cabinet to certify to county clerk the portion of corporate franchises or tangible property subject to local taxation, KRS 136.180.

School fund, distribution of, Ky. Const., § 186; KRS Ch. 157.

Lien for taxes, KRS 132.990, 134.420.

Municipal electric plant to pay sum equivalent to tax based on book value, KRS 96.820.

Municipal light, water or gas plant may pay tax equivalent to school district, KRS 96.536.

Property of dissolved religious society to go to county seminary, KRS 273.130.

Property subject to local taxation, KRS 132.030, 132.150, 132.190, 132.200, 136.180, 136.200, 136.300.

Superintendent of schools may recommend assessment changes, KRS 133.120.

Tax rate not to be fixed until assessment is certified by tax commission to county clerk, KRS 133.185.

Kentucky Law Journal.

Stephenson, Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Turner, Property Tax Assessment Administration in Kentucky, 60 Ky. L.J. 141 (1971).

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.461. Local board of education budget — Schedule of adoption — Minimum reserve.

(1) Each local board of education, with the assistance of the district superintendent and district finance officer, shall establish a budget for each fiscal year as follows:

(a) On or before January 31, the superintendent shall submit to the local board for review at a public meeting a draft budget that provides line item estimated revenues and proposed expenditures for the subsequent fiscal year;

(b) On or before May 31:

1. And at least two (2) weeks prior to the public meeting required by subparagraph 2. of this paragraph, the superintendent shall submit to the local board a complete proposed tentative budget for the local board's consideration; and

2. At a public meeting of the local board:

a. The local board shall review the proposed tentative budget; and

b. After any discussion or amendment, the local board shall adopt a tentative budget for the subsequent fiscal year; and

(c) On or before September 30:

1. And at least two (2) weeks prior to the meeting required by subparagraph 2. of this paragraph, the superintendent shall:

a. Submit to the local board a complete proposed working budget for the local board's consideration;

b. Submit to the local board a report explaining:

i. The projected revenues from the various taxes levied by the district;

ii. The appropriations that the district expects to receive from state and federal sources;

iii. The projected expenditures for personnel, transportation, maintenance, and materials for the operation of the district;

iv. Any one (1) time major expenses expected for the year, including those for special projects or programs;

v. The projected revenues and expenditures associated with restricted funds, including facilities funds;

vi. The costs associated with debts incurred by the district; and

vii. How the minimum reserve required in subsection (2) of this section shall be maintained; and

c. Deliver the items in subdivisions a. and b. of this subparagraph in a digital format to local board members. However, if a local board member requests the items also be delivered in physical format, the superintendent shall provide those within one (1) business day of the request in the format requested;

2. At a public meeting of the local board:

a. The superintendent shall present to the local board:

i. The proposed working budget; and

ii. The report required in subparagraph 1.b. of this paragraph;

b. The local board shall review the proposed working budget; and

c. After any discussion or amendment, the local board shall adopt a working budget for the fiscal year; and

3. The local board shall submit to the Kentucky Board of Education the adopted working budget for final approval.

(2) A superintendent shall not propose and a local board of education shall not adopt a draft, tentative, or working budget that does not include a minimum reserve of at least two percent (2%) of the total budget.

History.
2026 ch. 129, § 2, effective July 15, 2026.

160.462. Financial analysis of school system — Format of presentation (counties of 300,000). [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 254, § 1) was repealed by Acts 1978, ch. 275, § 1, effective June 17, 1978.

160.463. School district financial disclosure website — Publication of financial statement and school report card.

(1) The local board of education of each school district shall direct its superintendent to publish on the school district's main website a link to a district financial disclosure website that contains:

(a) The following financial reports to be published monthly for the previous month:

1. The accounts payable invoice vendor report;

2. The accounts payable check reconciliation report;

3. The balance sheet;

4. The vendor payment report from the start of the fiscal year to the date of the report;

5. The monthly financial report required under KRS 160.431; and

6. If the school district's budget reserve is below four percent (4%) of the total budget:

a. A summary of any purchases made through a district procurement card; and

b. Credit card statements;

(b) The following:

1. The employment contract of the superintendent, including any appendices;

2. Within five (5) days of approval by the local board of education, any amendments to the contract of the superintendent;

3. A link to the Kentucky Department of Education's website on school district personnel information, including superintendent compensation; and

4. Upon separation of the superintendent:

a. The gross salary paid to the superintendent during the superintendent's final fiscal year;

b. The total sick leave days accumulated by the superintendent immediately prior to separation and the amount paid to the superintendent for the accumulated sick leave days upon separation; and

c. The total annual and personal days accumulated by the superintendent immediately prior to separation and the amount paid to the superintendent for the accumulated annual and personal leave days upon separation;

(c) The following annual reports:

1. By January 1 of each year, a report detailing any other compensation provided to the superintendent during the past year beyond what is reported under paragraph (b) of this subsection;

2. Upon receipt by the district under KRS 156.275, the district's independent financial audit report; and

3. Upon adoption under KRS 160.461, the district's working budget; and

(d) The reports required under KRS 160.431.

(2)(a) The local board of education of each school district shall direct its superintendent to publish the complete annual financial statement and the school report card annually:

1. In the newspaper of the largest general circulation in the county;

2. Electronically on a website of the school district; or

3. By printed copy at a prearranged site at the main branch of the public library within the school district.

(b) If publication on a website of the school district or by printed copy at the public library is chosen, the superintendent shall be directed to publish notification in the newspaper of the largest circulation in the county as to the location where the document can be viewed by the public.

(c) The notification shall include the address of the library or the electronic address of the website where the documents can be viewed.

(d) Each system's financial statements shall be prepared and presented on a basis consistent with that of the other systems.

History.
Enact. Acts 1972, ch. 254, § 2; repealed and reenact. Acts 1990, ch. 476, Pt. III, § 108, effective July 13, 1990; 2018 ch. 171, § 6, effective April 14, 2018; 2018 ch. 207, § 6, effective April 27, 2018; 2026 ch. 129, § 4, effective July 15, 2026.

Compiler's Notes.
This section (Enact. Acts 1972, ch. 254, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part III, § 108, effective July 13, 1994.

Legislative Research Commission Notes.
(7/15/2026). 2026 Ky. Acts ch. 129, sec. 13, provides: "Upon [July 15, 2026], the school board of each school district shall direct its superintendent publish on the district financial disclosure website required in [this statute] the most recent information available to the district for the items listed in subsection (1) of [this statute]."

160.464. School board to brief members of General Assembly (counties of 300,000). [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 254, § 3) was repealed by Acts 1984, ch. 146, § 1, effective July 13, 1984.

160.470. Tax rate limits — Hearing — Levy exceeding four percent increase subject to recall vote or reconsideration — Levy of minimum equivalent tax rate.

(1)(a) Notwithstanding any statutory provisions to the contrary, a local board of education shall not levy a general tax rate which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsections (9) and (10) of this section and KRS 157.440.

(b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the "...general tax rate that could have been levied in the preceding year...," referred to in subsection (1)(a) of this section, for purposes of computing the general tax rate for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

(2) A local board of education shall not levy a general tax rate within the limits imposed in subsection (1) of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsections (9) and (10) of this section and KRS 157.440 and 157.621, until the local board of education has complied with the provisions of subsection (7) of this section.

(3) Upon receipt of property assessments from the Department of Revenue, the commissioner of education shall certify the following to each local board of education:

(a) The general tax rate that a local board of education could levy under the provisions of subsection (1) of this section, and the amount of revenue expected to be produced;

(b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate the amount of revenue expected to be produced; and

(c) The general tax rate which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced.

(4) Upon completion of action on property assessment data, the Department of Revenue shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.

(5) Within thirty (30) days after the local board of education has received its assessment data, the rates levied shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the local board of education to furnish the rates within the time prescribed shall not invalidate any levy made thereafter.

(6)(a) A local board of education proposing to levy a general tax rate shall make the following information public:

1. The general tax rate levied in the preceding year, and the revenue produced by that rate;

2. The proposed tax rate for the current year and the revenue expected to be produced by that rate;

3. A clear explanation if the proposed tax rate is expected to produce more or less revenue generated for the school district than received from the general tax rate in the preceding year and the general areas to which any increase in revenue will be allocated;

4. A specific reference to this section and KRS 132.017, along with a statement as to whether any portion of the proposed tax rate, if adopted, would be subject to recall; and

5. A statement to the effect that the General Assembly has required publication of the information contained herein.

(b) To make the information in paragraph (a) of this subsection public, the local board of education:

1. Shall publish the information for at least two (2) consecutive weeks on the home page of its website and in the newspaper of largest circulation in the county in a display type advertisement of not less than twelve (12) column inches;

2. Shall read the information into the record of the school board meeting in which the general tax rate is adopted;

3. Shall post the information on its social media platforms; and

4. May issue a notice containing the information to the editor of all print media.

(7)(a) Except as provided in subsections (9) and (10) of this section and KRS 157.440, a local board of education proposing to levy a general tax rate within the limits of subsection (1) of this section which exceeds the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district does not have a suitable office to hold the hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The local board of education shall include the following information in the publication required in subsection (6) of this section and advertisement of the hearing:

1. The compensating general tax rate, and the revenue expected from it;

2. The revenue expected from new property and personal property;

3. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published; and

4. The purpose of the hearing.

(c) In lieu of the two (2) published notices in the newspaper, a single notice containing the required information required by subsection (6) of this section and paragraph (b) of this subsection may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an oppor-

tunity to present oral testimony. The local board of education may set reasonable time limits for testimony.

(8)(a) That portion of a general tax rate, except as provided in subsections (9) and (10) of this section, KRS 157.440, and KRS 157.621, levied by an action of a local board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the local board of education as provided for in KRS 132.017, and shall be advertised as provided for in subsection (6) of this section and paragraph (b) of this subsection.

(b) The local board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate, except as provided in subsections (9) and (10) of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, on the home page of its website and in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The fact that the local board of education has adopted such a rate;

2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and

3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(9)(a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents ($0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the local for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Department of Revenue. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.617, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

(b) Failure of a board to comply with paragraph (a) of this subsection may constitute a forfeiture of office by its members pursuant to KRS 415.050 and 415.060.

(10) A local board of education may levy a general tax rate that will produce revenue from real property, exclusive of revenue from new property, that is four percent (4%) over the amount of the revenue produced by the compensating tax rate as defined in KRS 132.010.

History.

4339-40; amend. Acts 1949 (Ex. Sess.), ch. 7, § 2; 1956, ch. 177; 1965 (1st Ex. Sess.), ch. 2, § 3; 1970, ch. 118, § 1; 1976, ch. 127, § 3; 1976, ch. 187, § 1; 1976, ch. 93, § 16, effective January 1, 1977; 1978, ch. 155, § 82, effective June 17, 1978; 1979 (Ex. Sess.), ch. 25, § 6, effective February 13, 1979; 1980, ch. 317, § 7, effective July 15, 1980; 1980, ch. 319, § 6, effective July 15, 1980; 1982, ch. 360, § 49, effective July 15, 1982; 1984, ch. 137, § 2, effective March 27, 1984; 1990, ch. 476, Pt. III, § 105, effective July 13, 1990; 1992, ch. 40, § 1, effective July 14, 1992; 1994, ch. 436, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 399, § 1, effective July 15, 1998; 2000, ch. 389, § 6, effective July 14, 2000; 2005, ch. 85, § 594, effective June 20, 2005; 2005, ch. 168, § 154, effective March 18, 2005; 2021 ch. 144, § 5, effective June 29, 2021; 2026 ch. 129, § 8, effective July 15, 2026; 2026 ch. 161, § 74, effective April 14, 2026.

Legislative Research Commission Notes.

7/15/2026). This statute was amended by 2026 Ky. Acts chs. 129 and 161, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Determination of Expenditures.
3. Estimate of Anticipated Revenue.
4. Premature Submission.
5. Indebtedness.
6. Amendment by Court.
7. Evidence of Budget.
8. Determination of Maximum Rate.
9. Voter Recall Elections.

1. Constitutionality.

This statute did not violate the Fourteenth Amendment because it was not arbitrary, not irrelevant to the achievement of the state's objectives, not invidiously discriminatory, not administered unevenly, not based on some hidden motive and did bear a reasonable relationship to the legitimate purpose of preserving the financial integrity of the state. Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971).

The "rollback" law is not unconstitutional as perpetuating unconstitutional assessments, for the taxing power of the district is not frozen, because under KRS 157.440 a district, by popular vote, can select as high a rate as it chooses. Miller v. Nunnelley, 468 S.W.2d 298, 1971 Ky. LEXIS 334 (Ky.), cert. denied, 404 U.S. 941, 92 S. Ct. 286, 30 L. Ed. 2d 255, 1971 U.S. LEXIS 564 (U.S. 1971).

The present school funding statutes permit local Boards of Education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables Boards of Education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding, according to the mandate of Section 183 of the Kentucky Constitution; and that is all that Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989) requires. Board of Educ. v.

Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

2. Determination of Expenditures.

Board of education had right to appropriate by amended budget additional funds to be received in the fiscal year from collection of delinquent taxes which it had not anticipated to improvement of its physical properties, which had been badly damaged by flood, and the propriety of its decision in doing so cannot be questioned by the board of commissioners of second-class city, unless the board of commissioners can show the properties not to be in need of repair or reconstruction and the mere fact that the expenditure will absorb that portion of the anticipated revenue which would otherwise be surplus does not preclude the school board from making necessary expenditures upon discovery that the funds are available for the purpose. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

The board of education has the exclusive right to determine within lawful limits the amount of money necessary to be expended and the items for which it shall be expended in the operation of the schools, and, unless the governing authorities of the tax levying districts can show an illegal expenditure, or a computation unlawfully arrived at, or bad faith on the part of the school board, it must levy a tax within limits prescribed by the Constitution and statutes sufficient to raise the revenue required under the provisions of the budget filed with it by the board of education. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

Budget submitted by board of education was not unlawful or did not indicate bad faith which would warrant refusal by fiscal court to levy taxes pursuant to it where commission for collection was correct when made, but was rendered excessive by a subsequent court of appeal's decision. Stokley v. Fleming County Board of Education, 305 Ky. 602, 205 S.W.2d 168, 1947 Ky. LEXIS 881 (Ky. 1947).

3. Estimate of Anticipated Revenue.

The board of education cannot base its estimate of anticipated revenue on experience in collecting taxes and deduct the amount which may not be collected within the fiscal year but it must base its estimate on what the rate would produce if all the taxes were collected in the fiscal year. Paducah v. Board of Education, 289 Ky. 284, 158 S.W.2d 615, 1942 Ky. LEXIS 538 (Ky. 1942).

4. Premature Submission.

Premature submission of budget does not show bad faith. White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. Ct. App. 1936).

5. Indebtedness.

Where voted building fund levy of school district had always been insufficient to meet rental payments required for the payment of revenue bonds, so that part thereof had been paid from the general fund levy, the addition of subsection (7) to KRS 160.477 (repealed) in a 1965 "rollback" act did not authorize an increase in building fund levy over the compensating rate as defined in KRS 132.010 to pay all of such rentals. Fayette County Board of Education v. White, 410 S.W.2d 612, 1966 Ky. LEXIS 37 (Ky. 1966).

6. Amendment by Court.

When a court finds a budget to be incorrect, it is not necessary that an amended budget be submitted to the council. It may be amended in the trial court. White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. Ct. App. 1936).

7. Evidence of Budget.

In all cases where budgets and financial reports are available they are the best evidence of the information therein contained and they should be made a part of the record in order for the courts to have a clear and definite idea as to whether or not the officials have had due regard for the finances of the taxing district. Ebert v. Board of Education, 277 Ky. 633, 126 S.W.2d 1111, 1939 Ky. LEXIS 706 (Ky. 1939).

8. Determination of Maximum Rate.

The language of KRS 132.487(3), governing a centralized ad valorem tax system for motor vehicles, clearly and unequivocally removes all valuations of and tax revenues from motor vehicles from the base amount used in determining the compensating tax rate and maximum possible tax rate envisioned under the provisions of KRS 68.245, 132.023, 132.027, and this section. Kling v. Geary, 667 S.W.2d 379, 1984 Ky. LEXIS 216 (Ky. 1984).

9. Voter Recall Elections.

The 1990 change in subsections (10) and (11) (now (9) and (10)) of this section prevents voter recall of a property tax levy if the tax revenue is intended to provide mandatory minimum base funding or permissive Tier One funding, but under the previous funding scheme, the "notwithstanding" language of this section had no abrogative effect on voter recall of permissive utility taxes and the General Assembly preserved this right in the funding scheme. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

Cited in:

Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940); Bell v. Board of Education, 308 Ky. 848, 215 S.W.2d 1007, 1948 Ky. LEXIS 1065 (Ky. 1948); Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961); State Property & Bldg. Com. v. Hays, 346 S.W.2d 3, 1961 Ky. LEXIS 277 (Ky. 1961); Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971); Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976).

OPINIONS OF ATTORNEY GENERAL.

There is no deadline in terms of a calendar date by which a city board of education must submit its tax rate to the city. OAG 64-380.

Under the 1965 amendment to KRS 160.470, school districts which do not seek percentage increases are frozen or limited to income received in the 1965-1966 school year plus net assessment (new property) growth, but districts seeking the additional percentage increases are thereafter limited permanently to the income received at the end of the 1967-1968 school year plus subsequent net assessment (new property) growth. OAG 65-655.

If a school's fiscal year was the calender year, in order to use the increase, the budget would have to be prepared and separated into the two (2) school terms involved so that the increase would apply to the school year rather than the calendar year. OAG 65-820.

The increase is to be permitted for "school years" rather than "fiscal years." OAG 65-820.

A school board may elect to continue to operate at the 1965-1966 revenue level for the coming and following school years, may request one percentage increase for either 1966-1967 or 1967-1968, or may request percentage increases for both of those years. OAG 66-387.

A local board of education may forego requesting any percentage increase in its ad valorem tax revenue for the 1966-1967 school year, in which event the limitations pre-

scribed in subsection (2) of this section govern, but may then request an increase for the 1967-1968 school year if its need for that school year so dictates. OAG 66-387.

Revenue received by school districts from electric plant boards is not ad valorem tax revenue for purposes of this section and a plant board does not have net assessment growth that can be included in the Department of Revenue's (now Revenue Cabinet's) certification of net assessment growth. OAG 66-441.

A county school board could request a budget increase and the levy of a utility gross receipts license tax in the same year. OAG 66-675.

The words "preceding year's rate" mean the correct rate that could have been levied for the preceding year if final assessment figures had been available and used in the certification given by the Superintendent of Public Instruction. OAG 67-165.

A county school district may receive a credit toward the "required local tax effort" figure of former law regarding attendance for income received from the state and paid from federal funds granted to the state for distribution among the schools. OAG 67-231.

State Board of Education could not approve deficit expenditure unless a school district acted reasonably and in good faith in anticipating the collection of revenue in circumstances where the debt is contracted because of failure to collect such revenue. Only in such cases is the debt valid. OAG 67-293.

Subsections (2) and (4) of this section relate to the basic general fund levy while KRS 160.477(6) (repealed) and KRS 157.440(2) limit special voted levies to the compensating tax rate. Accordingly, these statutes do not authorize an independent school district to apply a 10 percent increase to the special voted tax in effect in the district. OAG 67-300.

The district board of education can request the Circuit Court to mandamus the fiscal court to make the levy requested. OAG 67-510.

The fiscal court cannot avoid the levy of an increased property tax when properly requested to do so by the county board of education. OAG 67-510.

Where the rates actually levied the preceding year were less than what could properly have been levied, the general fund budget can be drawn this year on the basis of the revenue that would have been produced the year before from the levy of the general fund tax at the correct maximum rate which would have been certified by the Superintendent of Public Instruction if he had been correctly advised of the true total assessed value of property in the district subject to such taxes. OAG 68-186.

The maximum property tax levies for a merged school district for 1968-1969 are calculated as follows: (a) To the revenue that would be produced by applying the old city district's basic general fund levy for 1967-1968 to the assessment for that year add the revenue that would be produced by applying the old county (as it existed before the merger) district's basic general fund levy for 1967-1968 to the assessment for that year. The sum of these figures is the total amount of ad valorem tax revenue in the computation of the maximum permissible local ad valorem tax revenue under subsection (3) of this section. The proper basic general fund levy can be calculated from the combined revenue and combined current assessment figures (with net growth treated separately). (b) The special voted general fund rate should be calculated at the proper compensating tax rate under the formula established in KRS 132.010(6) based on the 1965 revenue from this source and the 1966 assessment. (c) The special voted building fund rate (KRS 160.477 (repealed)) should be calculated at the proper "compensating tax rate," again using the formula appearing in KRS 132.010(6). (d) The overall tax rate can then be determined by adding the rates in (a), (b), and (c) above. OAG 68-343.

Following the tax rollback, the Executive Department of State Government had the authority and duty to provide supplemental payments to certain schools under the minimum foundation program as would insure the orderly continuation of the common schools program and as would prevent the regression of the program. OAG 70-474.

It is mandatory that local boards of education use the rates prescribed by the Department of Education. OAG 70-540.

The Department of Education has authority under this section for setting local tax rates for school purposes. OAG 70-540.

Assessments for school tax levy purposes under this section and for state aid purposes under KRS 157.380 (repealed) must be the same. OAG 72-330.

The county ad valorem tax revenue is limited to the application of the preceding year's tax rate to the preceding year's assessment, exclusive of voting levies, plus the revenue determined from applying the effective tax rate to the net assessment growth base. OAG 74-393.

Unless a school board indicates that the budget goes beyond the limit of this section or the fiscal court proves illegality, fraud or bad faith, and assuming budget approval by the State Board of Education, the fiscal court must accept the board's budget, fixing the necessary tax rate and making the tax levy required accordingly. OAG 74-455.

The mere fact that a school authority waited until after the city fixed its tax rate to come in and fix the school board's tax rate, in the absence of a showing of corruption, bad faith or illegality on the part of the school board, is not sufficient grounds for the city council to refuse to set the rate asked. OAG 74-499.

Even though due to a delay in certifying the county assessment, the advertising and hearing requirements necessary to levying a school district's tax rate would not be completed 45 days before the date of the next regular election, the school district, of its own volition, could waive the petition and place the question on the ballot. OAG 82-485, 1982 Ky. AG LEXIS 187.

While the amending of KRS 160.470 and the making of each school district their own tax levying authority repeals that part of KRS 424.250 as to filing the budget with a clerk, the other part of the statute calling for the budget to be published in a newspaper is capable of being observed. OAG 82-603, 1982 Ky. AG LEXIS 30.

Even though the 1990 amendment to this section by Ch. 476, § 105 set a new maximum equivalent tax rate, since in subsection (1)(c) of KRS 157.440 the 1990 amendment by Ch. 476, § 107 to that section provided that any school district, which is at or above the equivalent tax rate permitted, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year, Jefferson County may keep its equivalent tax rate at 75.9 cents for the 1990-91 school year. OAG 90-45, 1990 Ky. AG LEXIS 42.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in subdivision (12)(a) (now (9)(a)) of this section or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of KRS 160.593 and KRS 160.603, but the recall provisions of KRS 160.597 do not apply. OAG 90-88, 1990 Ky. AG LEXIS 88.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Education of the physically handicapped, KRS Chapter 167.

State vocational rehabilitation, KRS 151B.180 to 151B.210.

School council allocation formula: KETS District Administrative System Chart of Accounts, 702 KAR 3:246.

School district tax rate formulas, 702 KAR 3:275.

SEEK funding formula, 702 KAR 3:270.

Kentucky Bench & Bar.
Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Kentucky Law Journal.
Kentucky Law Survey, Vasek and Bradley, Kentucky Taxation, 68 Ky. L.J. 777 (1979-1980).
Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.472. Determination of maximum permissible school district revenue.

Notwithstanding any provisions of this chapter to the contrary, the tax rate on motor vehicles and trailers for the preceding year shall be applied to the preceding year's total valuation of such motor vehicles and trailers and the resulting amount added to the revenue from other tangible personal property for purposes of determining the maximum permissible school district revenue under KRS 160.470.

History.
Enact. Acts 1978, ch. 371, § 6, effective January 1, 1981; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 441, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1978, ch. 371, § 6, effective January 1, 1981) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 441, effective July 13, 1994.

160.473. Limits for board of education tax rates on personal property — Public hearing and recall not applicable.

(1)(a) For assessment years beginning before January 1, 2029, in the event that a general tax rate applicable to real property levied by a local board of education will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the local board of education may levy a general tax rate applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property; however, in no event shall the general tax rate levied by the local board of education applicable to personal property exceed the prior year general tax rate applicable to personal property levied by the respective local board of education.

(b) For assessment years beginning on or after January 1, 2029, in the event that a general tax rate applicable to real property levied by a local board of education will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the local board of education may levy a general tax rate applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property; however, in no event shall the general tax rate levied by the local board of education applicable to personal property exceed:

1. The prior year general tax rate applicable to personal property levied by the respective local board of education; or

2. The general tax rate applicable to personal property levied by the respective local board of education for the January 1, 2028, assessment year.

(2) The general tax rate applicable to personal property levied by a local board of education under the provisions of subsection (1) of this section shall not be subject to the public hearing provisions of KRS 160.470(7) and to the recall provisions of KRS 160.470(8).

History.
Enact. Acts 1982, ch. 397, § 7, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. III, § 109, effective July 13, 1990; 2000, ch. 389, § 11, effective July 14, 2000; 2026 ch. 129, § 9, effective July 15, 2026; 2026 ch. 161, § 76, effective April 14, 2026.

Compiler's Notes.
This section (Enact. Acts 1982, ch. 397, § 7, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part III, § 109, effective July 13, 1990.

Legislative Research Commission Notes.
(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 129 and 161, which do not appear to be in conflict and have been codified together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School district tax rate formulas, 702 KAR 3:275.

160.474. Cumulative increase for 1982-83 only — Limit — Public hearing and recall not applicable. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1982, ch. 397, § 8, effective July 15, 1982; repealed and reenacted by Acts 1990, ch. 476, Part III, § 110, effective July 13, 1990) was repealed by Acts 2000, ch. 389, § 13, effective July 14, 2000.

160.475. Ad valorem tax levy for school purposes — Maximum rates — Subdistrict taxes abolished.

(1) Except as otherwise provided in KRS 157.440, 160.470(1), and 160.476(4), the ad valorem tax levy for school purposes, other than sinking fund purposes, in each school district, shall be not more than one dollar and fifty cents ($1.50) annually on each one hundred dollars ($100) of property subject to local taxation.

(2) All existing subdistrict school tax levies, except those required to retire voted bonds, are hereby abolished.

History.
Enact. Acts 1946, ch. 36, §§ 1(1), (2), 2; 1974, ch. 316, § 3; 1974, ch. 386, § 30; 1976, ch. 93, § 17, effective January 1, 1977; 1990, ch. 476, Pt. III, § 111, effective July 13, 1990; 1996, ch. 87, § 5, effective July 15, 1996; 2000, ch. 389, § 12, effective July 14, 2000.

NOTES TO DECISIONS

1. Exceeding Maximum.
Regardless of time or amount, the principle remains the

same, that the voting of the tax does not impose a tax in futuro, but merely grants authority to the taxing power to increase the amount of the annual tax that the law otherwise authorizes to be levied. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

Only a maximum rate need be specified in the proposition submitted to the voters under KRS 157.440 to exceed the maximum levy under this section. Hopson v. Board of Education, 280 S.W.2d 489, 1955 Ky. LEXIS 154 (Ky. 1955).

A special annual tax levy above the present maximum regular levy authorized by this section may be made to authorize the principal and interest of the bonds. Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

The maximum school property tax rate of one dollar and fifty cents ($1.50) on each $100 valuation may be exceeded when increased levy is necessary to provide the required local tax effort in order to participate in the foundation program under KRS 157.380 (now repealed). Holmes v. Walden, 394 S.W.2d 458, 1965 Ky. LEXIS 182 (Ky. 1965).

Cited in:

Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218, 1946 Ky. LEXIS 891 (Ky. 1946); Bell v. Board of Education, 308 Ky. 848, 215 S.W.2d 1007, 1948 Ky. LEXIS 1065 (Ky. 1948); Folks v. Barren County, 313 Ky. 515, 232 S.W.2d 1010, 1950 Ky. LEXIS 919 (Ky. 1950); Fendley v. Board of Education, 240 S.W.2d 837, 1951 Ky. LEXIS 1023 (Ky. 1951); Board of Education v. Harville, 416 S.W.2d 730, 1967 Ky. LEXIS 280 (Ky. 1967); Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976).

OPINIONS OF ATTORNEY GENERAL.

A fiscal court may legally levy a tax at a figure above the $1.50 maximum set by this section where the figure is the amount necessary to provide the required local tax effort for participation in the minimum foundation program by the local school district. OAG 65-600.

Under the 1965 amendment to KRS 160.470, school districts which do not seek percentage increases are frozen or limited to income received in the 1965-1966 school year plus net assessment (new property) growth, but districts seeking the additional percentage increases are thereafter limited permanently to the income received at the end of the 1967-1968 school year plus subsequent net assessment (new property) growth. OAG 65-655.

Cities or counties may not levy a poll tax since it has been eliminated by amendment of KRS 68.090, 92.280 and this section. OAG 74-631.

The poll tax is not a prerequisite to the right to vote and is nothing more than another revenue measure for the taxing jurisdiction in question. OAG 72-816. (Decision prior to 1974 amendment).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bank franchise and local deposit tax, KRS 136.500 to 136.575.

City of first class may levy tax for support of municipal university, KRS 165.030.

Electric and water plant of third-class city may pay tax equivalent to school district, KRS 96.179.

Limits on levies for school purposes on distilled spirits, KRS 132.150.

Municipal light, water or gas plant may pay tax equivalent to school district, KRS 96.536.

Rate of school tax on railroad bridge, KRS 136.180, 136.200.

Sinking fund purposes, tax levy for, KRS 162.090.

Kentucky Law Journal.

Reynolds, Education Finance Reform Litigation and Separation of Powers: Kentucky Makes Its Contribution, 80 Ky. L.J. 309 (1990-91).

160.476. School building fund taxes — Investment — Expenditures — Audit.

(1) The board of education of any district may, in addition to other taxes for school purposes, levy not less than four cents ($0.04) nor more than twenty cents ($0.20) on each one hundred dollars ($100) valuation of property subject to local taxation, to provide a special fund for the purchase of sites for school buildings and physical education and athletic facilities, for the erection and complete equipping of school buildings and physical education and athletic facilities, and for the major alteration, enlargement and complete equipping of existing buildings and physical education and athletic facilities, provided, however, that such tax shall come within the maximum school tax levy provided by KRS 160.470. In addition to or in lieu of this special tax, any board of education may pay into this special fund at the close of any fiscal year the proceeds from the sale of land or property no longer needed for school purposes and all or any balances remaining in the general fund over and above the amount necessary for discharging obligations for the fiscal year in full.

(2) The special fund provided for herein shall be kept in a separate account designated as "school building fund." The fund shall be kept in a depository selected by the board of education, or invested in bonds of the United States, of this state, or county or municipality in this state, provided, however, that such investments shall be approved by the Kentucky Board of Education.

(3) All expenditures from such fund shall be made solely for the purposes enumerated herein and shall be made in accordance with the school laws of the state at such times as the board of education determines. The board of education shall cause to be made annually an audit of the building fund by a certified public accountant or by an accountant approved by the State Department of Education.

(4) Notwithstanding the provisions of any other subsection of this section to the contrary, for the 1966 tax year and for all subsequent years no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010. The chief state school officer shall certify the compensating tax rate to the district board of education.

History.

Enact. Acts 1946, ch. 36, § 1(3); 1965 (1st Ex. Sess.), ch. 2, § 4; 1976, ch. 127, § 4; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. III, § 112, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

1. High School Stadium.

A board is not authorized to expend funds for a high school stadium as the latter is not a "school building" within the meaning of this section. Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953) (decided under prior law).

Cited in:

Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218, 1946 Ky. LEXIS 891 (Ky. 1946); Lewis v. Morgan,

252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952); Ranier v. Board of Education, 273 S.W.2d 577, 1954 Ky. LEXIS 1190 (Ky. 1954); Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976).

OPINIONS OF ATTORNEY GENERAL.

Boards of education may place their general funds in banks designated as depositories pursuant to KRS 160.570 and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of this section, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School property and buildings, KRS Ch. 162.
Bond issue approval, 702 KAR 3:020.
Restructuring revenue bond issues, 702 KAR 3:260.
School district tax rate formulas, 702 KAR 3:275.
SEEK funding formula, 702 KAR 3:270.

160.477. Special voted building taxes — Purposes — Special fund to be in separate account — Expenditures from fund. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1950, ch. 142; 1965 (1st Ex. Sess.), ch. 2, § 5; 1970, ch. 118, § 2; 1976, ch. 127, § 5; 1978, ch. 155, § 82, effective June 17, 1978; 1986, ch. 187, § 1, effective July 15, 1986; 1990, ch. 48 § 84, effective July 13, 1990; 1990, ch. 476, Pt. III, § 113, effective July 13, 1990) was repealed by Acts 1996, ch. 87, § 7, effective July 15, 1996.

160.480. Minimum limits on ad valorem tax; poll tax. [Repealed.]

Compiler's Notes.

This section (2980, 4399-40) was repealed by Acts 1946, ch. 36, § 3.

160.482. Occupational license, policy (counties of 300,000).

To help provide for an efficient system of common schools in any county having three hundred thousand (300,000) or more inhabitants, the General Assembly delegates to the fiscal courts and boards of education of any such county the powers and duties set forth in KRS 160.482 to 160.488. The General Assembly finds and declares that in any such county there are besetting public education special problems which can best be solved pursuant to KRS 160.482 to 160.488. Furthermore, the General Assembly declares that the public policy of the Commonwealth is not offended but is best served by the authority of KRS 160.482 to 160.488 for the imposition, payment, and collection of license fees on businesses, trades, occupations, and professions over and above license fees that may already be imposed thereon.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 17; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 442, effective July 13, 1990.

160.483. Occupational license fees, rates, exemptions (counties of 300,000) — Sunset on new taxes — Regulation of ministers.

(1)(a) The license fees imposed under KRS 160.482 to 160.488 on businesses, trades, occupations, and professions shall be at a single, uniform percentage rate not to exceed one-half of one percent (0.5%) of:

1. Salaries, wages, and commissions, and other compensations earned by persons within the county for work done and services performed or rendered in the county; and

2. The net profits of all businesses, trades, occupations, and professions, for activities conducted in the county.

(b) Beginning on or after January 1, 2027:

1. A school tax is not authorized to be imposed under KRS 160.482 to 160.488 and 160.605 in a school district that does not already have one imposed; and

2. The rate of a school tax imposed under KRS 160.482 to 160.488 and 160.605 shall never increase.

(2) The license fees, once imposed, shall continue from year to year until changed as prescribed in KRS 160.484.

(3)(a) It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.

(b) To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license fee. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.

(4) No license fee shall be imposed upon or collected from:

(a) Any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state;

(b) Any savings and loan association whether state or federally chartered;

(c) Any income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training;

(d) Any income received by precinct workers for election training or work at election booths in state,

county, and local primary, regular, or special elections;

(e) A public service company which pays an ad valorem tax; or

(f) Any individual who is not a resident of the county of the tax-levying authority imposing the tax.

(5) Pursuant to this section, no tax-levying authority shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others by the tax-levying authority on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 17; 1976, ch. 104, § 2; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 443, effective July 13, 1990; 1998, ch. 509, § 6, effective July 15, 1998; 2005, ch. 167, § 5, effective July 1, 2005; 2005, ch. 168, § 76, effective January 1, 2006; 2026 ch. 161, § 78, effective April 14, 2026.

Compiler's Notes.

Section 10 of Acts 1998, ch. 509, provided that the 1998 amendments to this section "apply to tax years beginning after December 31, 1997."

Legislative Research Commission Notes.

(1/1/2006). This section was amended by 2005 Ky. Acts chs. 167 and 168, which do not appear to be in conflict and have been codified together.

160.484. Occupational license fees, imposition and discontinuation (counties of 300,000) — Sunset on new taxes.

(1) Except as provided in subsections (2), (3), and (4) of this section the fiscal court has discretion to impose or not impose the license fees authorized by KRS 160.482 to 160.488 at a percentage rate, not to exceed one-half of one percent (0.5%), determined by the fiscal court. A fiscal court shall not proceed under this subsection without first giving all boards of education in the county thirty (30) days notice of its intention.

(2) If one (1) or more boards of education of school districts within the county which contain at least ninety percent (90%) of county's inhabitants, in the same calendar year certify to the fiscal court requests for a license fee at an identical percentage rate, not to exceed one-half of one percent (0.5%), then the fiscal court shall impose such license fees at the requested rate.

(3) Any license fees imposed under subsection (1) or (2) of this section shall remain in full effect from year to year until all boards of education within the county have certified to the fiscal court requests for a reduction in the percentage rate theretofore imposed. Thereafter, the fiscal court shall reduce the rate to the highest rate certified as yet necessary by any local board of education in the county. The fiscal court may require each local board of education to make no more than one (1) certificate annually.

(4) Beginning on or after January 1, 2027:

(a) A school tax is not authorized to be imposed under KRS 160.482 to 160.488 and 160.605 in a school district that does not already have one imposed; and

(b) The rate of a school tax imposed under KRS 160.482 to 160.488 and 160.605 shall never increase.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 18; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 444, effective July 13, 1990; 2026 ch. 161, § 79, effective April 14, 2026.

160.485. Occupational license fees, adoption — Referendum procedure.

(1) The imposition of license fees authorized hereby shall be by order or resolution of the fiscal court. There shall be no more than one (1) order or resolution passed in any one (1) calendar year. In the case of license fees required to be imposed pursuant to subsection (2) of KRS 160.484, the fiscal court shall make the order or resolution within ten (10) days following receipt of the first request which makes subsection (2) of KRS 160.484 effective.

(2)(a) The order or resolution of the fiscal court imposing license fees pursuant to subsections (1), (2), or (4) of KRS 160.484 shall go into effect forty-five (45) days after its passage.

(b) During the forty-five (45) days next following the passage of the order or resolution, any five (5) qualified voters who reside in the county may commence petition proceedings to protest the passage of the order or resolution by filing with the county clerk an affidavit stating that they constitute the petition committee and that they will be responsible for circulating the petition and filing it in the proper form within forty-five (45) days from the passage of the order or resolution. The affidavit shall state their names and addresses and specify the address to which all notices to the committee are to be sent. Upon receipt of the affidavit, the county clerk shall:

1. At the time of filing of the affidavit, notify the petition committee of all statutory requirements for the filing of a valid petition under this section;

2. At the time of the filing of the affidavit, notify the petition committee that the clerk will publish a notice identifying the tax levy being challenged and providing the names and addresses of the petition committee in a newspaper of general circulation within the county, if such publication exists, if the petition committee remits an amount equal to the cost of publishing the notice determined in accordance with the provisions of KRS 424.160 at the time of the filing of the affidavit. If the petition committee elects to have the notice published, the clerk shall publish the notice within five (5) days of receipt of the affidavit; and

3. Deliver a copy of the affidavit to the fiscal court and the impacted school districts.

(c) The petition shall be filed with the county clerk within forty-five (45) days of the passage of the order or resolution. All papers of the petition shall be uniform in size and style and shall be assembled in one (1) instrument for filing. Each sheet of the petition shall contain the names of voters from one (1) voting precinct only, and shall include the name,

number and designation of the precinct in which the voters signing the petition live. The inclusion of an invalid signature on a page shall not invalidate the entire page of the petition, but shall instead result in the invalid signature being stricken and not counted. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name, street address, and Social Security number or birthdate of the person signing. The petition shall be signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election.

(d) Upon the filing of the petition with the county clerk, the order or resolution shall be suspended until after the election referred to in subsection (3) of this section is held, or until the petition is finally determined to be insufficient and no further action may be taken pursuant to paragraph (h) of this subsection.

(e) The clerk shall immediately notify the fiscal court and the impacted school districts that the petition has been received and shall, within thirty (30) days of the receipt of the petition, make a determination of whether the petition contains enough signatures of qualified voters to place the order or resolution before the voters.

(f) If the county clerk finds the petition to be sufficient, the clerk shall certify to the petition committee, the fiscal court, and the impacted school boards within the thirty (30) day period provided for in paragraph (e) of this subsection that the petition is properly presented and in compliance with the provisions of this section, and that the order or resolution levying the tax will be placed before the voters for approval.

(g) If the county clerk finds the petition to be insufficient, the clerk shall, within the thirty (30) day period provided for in paragraph (e) of this subsection, notify, in writing, the petition committee, the fiscal court and the impacted school districts of the specific deficiencies found. Notification shall be sent by certified mail and shall be published at least one (1) time in a newspaper of general circulation within the county or, if there is no such newspaper, shall be posted at the courthouse door.

(h) A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court of the county and shall be limited to the validity of the county clerk's determination. Any petition challenging the county clerk's final determination shall be filed within ten (10) days of the issuance of the clerk's final determination.

(3) Upon validation of the petition, the fiscal court shall submit to the voters of the county at the next regular election or called common school district election, which shall be held not less than thirty-five (35) days nor more than forty-five (45) days from the date the signatures on the petition are validated by the county clerk, the question as to whether the license fees for common school purposes shall be levied. Any called common school election shall comply with the provisions of KRS 118.025. If the election is held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The question shall be so framed that the voter may by his vote answer, "for" or "against." If a majority of the votes cast upon the question oppose its passage, the order or resolution shall not go into effect. If a majority of the votes cast upon the question favor its passage, the order or resolution shall go into effect.

(4) License fees imposed pursuant to KRS 160.482 to 160.488 shall become effective on the date specified in the order or resolution, but no later than the first day of the calendar year first beginning after the day the order or resolution is made.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 19; 1978, ch. 384, § 47, effective June 17, 1978; 1982, ch. 217, § 3, effective July 15, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 445, effective July 13, 1990; 1996, ch. 195, § 57, effective July 15, 1996; 2005, ch. 121, § 3, effective June 20, 2005.

Legislative Research Commission Notes.

(6/20/2005). 2005 Ky. Acts ch. 121, § 6, provides: "The provisions of this Act shall apply to ordinances, orders, resolutions or motions passed after July 15. 2005."

NOTES TO DECISIONS

Analysis

1. Verification of Petition.
2. Number of Petitioners Needed.

1. Verification of Petition.

Where the petition contained the signatures and addresses of the signers, but there was no verification of the addresses on the petition, and where the proponents of the petition undertook to file new verifying affidavits subsequent to the expiration of the time for filing, such late action could not cure the defectiveness of the petition and it remained insufficient to fulfill the requirements of this section. Board of Education v. Fiscal Court of Warren County, 485 S.W.2d 752, 1972 Ky. LEXIS 141 (Ky. 1972).

2. Number of Petitioners Needed.

Where fiscal court imposed tax levy on utilities in the county and the school districts and, within 30 days after passage of the tax levy, a petition was filed with the court for a referendum on the tax, containing a number of names equal to 15% of the votes in the school districts, the fiscal court was not authorized to order the tax levy suspended since the recall petition was not countywide and therefore contained insufficient number of signatures. Fiscal Court of Campbell County v. Board of Education, 522 S.W.2d 454, 1975 Ky. LEXIS 138 (Ky. 1975).

OPINIONS OF ATTORNEY GENERAL.

Although subsection (2) of this section provides that each sheet of the petition should contain the signatures of voters in but one voting precinct, the whole sheet would not be disqualified where one of the persons signing that sheet was not a voter in that precinct, even though that person would be subject to disqualification. OAG 72-174.

The election referred to in subsection (3) of this section refers to the regular November election that takes place every year. OAG 72-174.

The "not less than sixty days" provision in subsection (3) of this section refers to the date of passage of the fiscal court order levying the school tax. OAG 72-174.

The provision in subsection (2) of this section that the petition contain the signatures of 15% of the votes cast in the county for the office receiving the greatest total vote at the last preceding presidential election does not mean that every precinct in the county must be represented by 15% of the votes cast in the precinct, but that the aggregate number of signers must be 15%. OAG 72-174.

Under subsection (2) of this section, the fiscal court must conduct an examination of the petition, and if it is regular on its face then the election is ordered as directed in subsection (3) of this section, subject to an appeal from the fiscal court order to the circuit court. OAG 72-174.

In order to generate the referendum provisions of this section the signatures equal to 15 percent of those districts whose boards of education requested the tax are needed. OAG 72-471.

After a tax levy is approved by the court under KRS 160.593 the question as to whether such tax should be levied may be passed on by the voters pursuant to the procedures specified in this section. OAG 72-521.

Any school district in which a special school tax is levied or about to be levied may petition for a referendum to recall said tax within the district and such recall would not have to be on a countywide basis as the 1972 amendment to KRS 160.593 by chapter 271, section 1 provides that a tax shall be limited to the district requesting the tax. OAG 72-576.

The provisions of this section providing for recall on a countywide basis were amended by implication by the 1972 amendment to KRS 160.593 by chapter 271, section 1. OAG 72-603.

Where a request for the levy of a utility gross receipts tax for schools was defeated at the 1972 general election and the fiscal court has been presented with new requests for the imposition of said tax and the residents of the districts have filed petitions protesting the tax levy and requesting that the matter be placed on the ballot, the utility tax question can only be held at the general election in November, unless there has been a called election with respect to county school questions at a time other than the November election. OAG 73-301.

The petition provided for in this section should be filed with the county clerk who is the clerk of the fiscal court. OAG 76-440.

In a referendum seeking recall of certain school taxes while there is no specific wording for the ballot question provided in this section, it would appear that under the terms of subsection (3) it is the responsibility of the fiscal court to frame the question. OAG 76-440.

The county clerk's responsibilities on behalf of the fiscal court concerning a referendum petition that may be filed seeking the recall of certain taxes are that of accepting and checking the petition to see that it is legal on its face and in compliance with this section and KRS 160.609 (repealed), insofar as the number and validity of the signatures are concerned. OAG 76-440.

There is no requirement that notice be published with respect to the filing of the petition for referendum seeking recall of certain school taxes or the referendum election provided for in this section; however, if such petition is found to be valid, the referendum question would appear on the ballot face required to be published by the clerk pursuant to KRS 424.290. OAG 76-440.

160.486. Occupational license fees — Collection — Distribution (counties of 300,000).

The license fees imposed by authority of KRS 160.482 to 160.488 shall be collected by the fiscal court or its agent, and the proceeds thereof shall be promptly divided and distributed to each school district within the county in proportion to the number of pupils in average daily attendance in each school district as shown by the most recent statistics certified by the chief state school officer pursuant to KRS 157.310 to 157.440. The fees shall be used for any purpose for which other common school funds may be used.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 20; 1990, ch. 476, Pt. IV, § 233, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.

This section is valid and does not contravene the express will of the people contained in the Constitution of Kentucky. Board of Education v. Board of Education, 458 S.W.2d 6, 1970 Ky. LEXIS 160 (Ky. 1970).

OPINIONS OF ATTORNEY GENERAL.

This section requires the distribution of the proceeds of the occupational license fees on the basis of the "most recent" data on average daily attendance and revised average daily attendance statistics cannot be applied retroactively to the beginning of the fiscal year to alter the percentage of proceeds distributed to the school districts in the county. OAG 67-183.

160.487. Action for refund of occupational license fees (counties of 300,000).

Any person who has paid the license fees imposed under KRS 160.484 and 160.485 may bring an action for the refund thereof without interest only within one (1) year after the license fees for any year become due. If the court finds that the license fees were invalidly collected for any reason, it shall order a refund thereof.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 21; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 446, effective July 13, 1990.

160.488. Effect of occupational license fees law (counties of 300,000).

(1) KRS 68.180, 68.185, 68.190, and 160.482 to 160.488 shall not be construed as repealing any other laws of the Commonwealth relating to the levy, assessment, and collection of taxes or license fees but shall be held and construed to authorize an additional license fee, against which the credit allowed by KRS 68.190 does not apply.

(2) KRS 68.180, 68.185, 68.190, and 160.482 to 160.488 shall not in any manner repeal, amend, affect, or apply to any existing statute exempting property from local taxation, or fixing a special rate on proper classification, or imposing a state tax which is declared to be in lieu of all local taxation.

(3) The provisions of any statute relating to ad valorem taxes do not apply to KRS 68.180, 68.185, 68.190, and 160.482 to 160.488 or to the license fees authorized by it.

History.

Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 22; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 447, effective July 13, 1990.

160.490. Maximum limits on ad valorem tax. [Repealed.]

Compiler's Notes.

This section (2980, 4399-40) was repealed by Acts 1946, ch. 36, § 3.

160.500. Collector of school taxes — Allowances to — Special collector — Tax bills.

(1) School taxes shall be collected by the sheriff for county school districts and by the regular tax collector of the city or special tax collector for the independent school districts at the same time and in the same manner as other local taxes are collected, except as provided in this section and in KRS 160.510. The bond of the regular or special tax collector shall be made to cover the duties as the tax collector of the school district or districts for which he or she collects taxes. The tax collector shall be entitled to a commission equal to his or her expenses incurred in collecting the school taxes, provided that the commission shall not be less than one and one-half percent (1.5%) or more than four percent (4%) of the amount of school taxes collected, plus four percent (4%) of the amount of any interest earned on the amounts collected and invested by the tax collector prior to distribution to the school district. No allowance shall be made for the collection of school taxes to any collecting officer who continues to collect taxes after the term that would not be allowed him or her had he collected the taxes during his or her term.

(2) An independent school district may select a special tax collector to collect its school taxes. If an independent school district selects a special tax collector, a majority of the members of the independent school district board of education shall fix a commission for the special tax collector at a rate of not less than one and one-half percent (1.5%) and not more than four percent (4%) of the school taxes or school funds collected by the special tax collector from the local school levy in such independent school district, plus four percent (4%) of the amount of any interest earned on the amounts collected and invested by the tax collector prior to distribution to the school district. The special tax collector shall be required to execute bond in the same manner as provided in KRS 160.560 for the execution of a treasurer's bond, and the penal sum of the bond shall not be less than the aggregate of the tax bills that come into the hands of the special tax collector.

(3) The clerk shall include all school taxes on the regular tax bills furnished the tax collector unless an independent district has selected a special tax collector, in which case the school taxes shall be listed by the clerk on a separate bill. The clerk shall be allowed a fee not to exceed three cents ($0.03) for each separate school tax bill, to be paid by the independent district board of education.

(4) The county clerk shall be the ad valorem tax collector for motor vehicle taxes for county and independent school districts, and shall receive a commission of four percent (4%) of all such moneys collected for any school district, which commission shall be deducted monthly before payment to the depository of the district board of education.

(5) The General Assembly of Kentucky finds that commissions and fees set by the General Assembly for services performed in collecting ad valorem taxes by county clerks are the reasonable costs of collection by county clerks and their offices. The county clerk shall account for all funds collected to each taxing authority; however, in any accounting or settlement with district boards of education, the county clerk shall not be required to itemize any incremental costs in any accounting or settlement for ad valorem taxes collected.

History.

4399-40, 4399-41; amend. Acts 1946, ch. 143; 1976, ch. 127, § 6; 1982, ch. 264, § 13, effective January 1, 1984; 1988, ch. 355, § 2, effective July 15, 1988; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 448, effective July 13, 1990; 2009, ch. 10, § 64, effective January 1, 2010.

Compiler's Notes.

This section (4399-40, 4399-41; amend. Acts 1946, ch. 143; 1976, ch. 127, § 6; 1982, ch. 264, § 13, effective January 1, 1984; 1988, ch. 355, § 2, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 448, effective July 13, 1994.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Fee to Be Reasonable Cost.
3. —Determination.
4. Collection after Expiration of Term.
5. Collection Costs.

1. Constitutionality.

The additional three percent fee formerly allowed the sheriff of Jefferson County for the collection of school taxes violated Ky. Const., §§ 180, 184 as a diversion of more than $50,000 annually from school purposes would have resulted. Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

A flat four percent fee violates provisions of Ky. Const., §§ 180, 184, against diverting taxes or school funds in cases where the reasonable cost of collection is less than the amount reached by the application of the four percent formula to the total amount of taxes collected. Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W.2d 672, 1949 Ky. LEXIS 1251 (Ky. 1949).

Retention by sheriff of four percent of school tax collected was unconstitutional diversion of school funds where evidence indicated one percent was sufficient to cover cost of collecting school tax and the extra three percent was to be used by the sheriff for general expenses of his office. Board of Education v. Wagers, 239 S.W.2d 48, 1951 Ky. LEXIS 836 (Ky. 1951).

Although it may have been that the General Assembly's intent was to create a flat four percent commission for the county clerks for collecting the taxes, such interpretation would bring subsection (3) of KRS 134.805 into conflict with Ky. Const., §§ 180, 184; therefore, a county clerk may not receive a fee for collecting the school tax which is in excess of his or her actual cost of collection, not exceeding four percent. Benson v. Board of Education, 748 S.W.2d 156, 1988 Ky. App. LEXIS 11 (Ky. Ct. App. 1988).

2. Fee to Be Reasonable Cost.

Four percent fee fixed by this section could only be allowed where the reasonable cost of collection justified allowance of the maximum fee and where sheriff did not employ deputies and had no expenses for supplies and equipment, maximum fee was not allowable. Wells v. Board of Education, 244 S.W.2d 160, 1951 Ky. LEXIS 1204 (Ky. 1951).

Under this section, the sheriff is entitled to retain as compensation the reasonable cost of collecting school taxes, not to exceed four percent. Davie v. Board of Education, 249 S.W.2d 954, 1952 Ky. LEXIS 891 (Ky. 1952).

The school fund is chargeable only with the reasonable expenses actually incurred in collecting the school tax. Board

of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

Even though this section authorizes the sheriff to charge a fee of four percent of the school taxes collected, if the charge, including his compensation, exceeds reasonable costs of collecting, he is limited to a lesser charge. Grayson County Board of Education v. Boone, 452 S.W.2d 371, 1970 Ky. LEXIS 348 (Ky. 1970).

3. —Determination.

The question of whether a four percent fee is reasonable will be adjudged according to the facts developed in each case. Board of Education v. Wagers, 239 S.W.2d 48, 1951 Ky. LEXIS 836 (Ky. 1951).

Entire annual salaries of sheriff's deputies were not chargeable to collection of taxes, but allowance should be made for personal supervisory services of sheriff and under the facts allowance in fixing the reasonable cost of collection at two percent (2%) of the school taxes collected was not erroneous. Board of Education v. Ballard, 249 S.W.2d 956, 1952 Ky. LEXIS 892 (Ky. 1952).

The trial court must fix the quantity of the fee for collecting school taxes at a figure commensurate with the services rendered. Barren County Board of Education v. Edmunds, 252 S.W.2d 882, 1952 Ky. LEXIS 1036 (Ky. 1952).

For the purpose of determining the cost of school tax collections the expense must be determined on the basis of a reasonable compensation for the time devoted by the deputies to tax collection work and a percentage contract between the sheriff and his deputies whereby they receive compensation computed on basis of tax collection cannot be used to determine cost of collection of such tax. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

In an action to determine the sheriff's fees for school tax collection where it was stipulated that the county attorney and county clerk received $6,100 through salary and fees, it was proper to allow the sheriff the same amount, as a basis upon which to compute the percentage of the sheriff's compensation chargeable to tax collections. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

Sheriff should be allowed compensation for collecting the franchise and oil production taxes which were paid by large checks at his office with no collection work required. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

Simply deducting from the total expenses of the sheriff's office the amount of money paid the sheriff by the state for law-enforcement work, was not a proper way of determining what expenses were attributable to tax collection work for the amount of money received by sheriff in the form of compensation has nothing at all to do with a determination of the expenses of office. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

In a declaratory judgment action to determine the sheriff's fee for collecting school taxes where the proof was not adequate to enable the court to make a final and correct decision, the case was remanded for the purpose of taking further proof designed to show what portion of the time of the sheriff and his deputies was devoted to tax collection work. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

The school fund cannot be compelled to finance law-enforcement functions of the sheriff's office. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

Although each case must be decided upon the particular facts involved, the general formula in computing the cost of collection (although it is not intended to be applied as an exact mathematical rule) has been to (1) first determine the percentage of their time the sheriff and his deputies devote to all tax collection work, and take this percentage of their total compensation giving the compensation for personal services allocable to the collection of all taxes then (2) to determine the ratio of school tax collections to total tax collections and apply it to the amount of compensation for personal services allocated to the cost of collecting all taxes, thus producing the amount allocable to school tax collection and (3) when costs other than personal services were involved to allocate them according to the same formula except where clearly attributable to a specific activity and (4) local standards of compensation were given some consideration in determining the sum that should be allowed the sheriff for his own services. However the keeping of more adequate and detailed records by the sheriff might eliminate the necessity of applying any formula. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

Where from the record it was clear that no settlement had been made in the county court for school taxes, and that by tacit understanding the sheriff had paid over to the school board all tax collections except the amount of his commission which was in dispute, the sheriff's contention that the only remedy of the school board was by taking exceptions to the sheriff's settlement in county court was without merit and an action for a declaratory judgment was maintainable. Board of Education v. Workman, 256 S.W.2d 528, 1953 Ky. LEXIS 756 (Ky. 1953).

Where no accurate time accounting could be made for school tax collection by the sheriff and his employees but the four percent he retained was not excessive, there was no diversion of school funds in the retention of the four percent. Grayson County Board of Education v. Boone, 452 S.W.2d 371, 1970 Ky. LEXIS 348 (Ky. 1970).

4. Collection after Expiration of Term.

In view of provision of subsection (1) of this section that no allowance shall be made for collection of school taxes to any collecting officer who continues to collect taxes after his term that would not be allowed to him had he collected the taxes during his term, a sheriff who could not claim, during his term, the increased collection fee provided by the 1946 amendment to this section, because he was in office at the time the amendment became effective, likewise could not claim the increased fee in serving as special tax collector after expiration of his term. Weber v. True, 304 Ky. 681, 202 S.W.2d 174, 1947 Ky. LEXIS 704 (Ky. 1947).

5. Collection Costs.

The allocation of the costs of collection of school taxes based on a percentage of revenue collected does not violate Const., § 184; such collection costs in no way diminish the constitutional command that school taxes must be appropriated to the common schools and no other purpose. These basic principles were not changed by the adoption of the Kentucky Education Reform Act of 1990. Board of Educ. v. Williams, 930 S.W.2d 399, 1996 Ky. LEXIS 94 (Ky. 1996).

Cited in:

Board of Education v. Newport, 283 Ky. 215, 140 S.W.2d 1046, 1940 Ky. LEXIS 314 (Ky. 1940); Stokley v. Fleming County Board of Education, 305 Ky. 602, 205 S.W.2d 168, 1947 Ky. LEXIS 881 (Ky. 1947).

OPINIONS OF ATTORNEY GENERAL.

Since, under KRS 160.400, the fiscal court is the levying authority for school districts not embraced by cities of the first four classes, the county sheriff must collect the taxes levied on behalf of such schools. OAG 61-414.

Under subsection (1) of this section a board of education may not enter into a contract with a sheriff to pay, as a fee for the collection of school taxes, a certain percentage of the amount collected but may contract to pay a reasonable amount

which approximates the cost of collection not to exceed four percent. OAG 62-335.

If penalties collected on delinquent taxes are due and owing to the local school district, then to permit the sheriff to retain said penalty moneys would constitute an unlawful use of school funds for other than school purposes. OAG 63-121.

Subsection (1) of this section requires that the sheriff's bond be made to cover his duties as tax collector of the school district or districts for which he collects taxes and if the sheriff fails to pay over to the school district the proper amount of tax money, he is liable on his official bond. OAG 64-159.

Where the sheriff turned in all school taxes for which he was accountable, excess fees should not have been paid to the school board. OAG 65-779.

A special tax collector selected by an independent school district pursuant to subsection (2) of this section is an officer of the school district and an employee of the school district under the definition of that term in the Social Security Act and enabling legislation enacted by the Kentucky General Assembly. OAG 67-95.

A county attorney would have no official duty to represent the sheriff in a lawsuit filed by the school board against the sheriff for fees reimbursable to the school board. OAG 67-144.

A fee increase to the sheriff for collecting county school taxes could be made retroactive to the beginning of the tax year. OAG 67-164.

The county clerk is entitled to a fee of three cents per bill for preparation of separate tax bills if a special school tax collector is selected, but the clerk is entitled to no compensation if the sheriff collects the school taxes on the regular county tax bills. OAG 67-288.

It is mandatory that the county clerk prepare the tax bills for an independent school district. OAG 67-288.

Separate tax bills should be prepared only if the independent school district selects a tax collector other than the sheriff. OAG 67-288.

The sheriff's excess fees for collecting school tax should be turned over to the county as excess fees and any part of such fees which exceeds the cost of collection should be delivered to the board of education as school money. OAG 69-59.

Under subsection (1) of this section, the regular tax collecting authority is required to collect school taxes for the independent school district if so requested. OAG 69-283.

A special tax collector is not liable for uncollectible tax bills but can only be held to a duty to diligently and faithfully attempt to collect all taxes due. OAG 72-290.

There is no final date by which the independent school district must notify the county sheriff or the county clerk of its intent to change collectors and if the tax bills in question have been prepared by the county clerk and delivered to the sheriff for collection, it would appear that the sheriff is the collector of taxes for the independent school district and the fee for such collection can be from one percent to four percent, depending upon what is sufficient to cover the costs of collection. OAG 73-630.

The tax collector is entitled to recover the reasonable cost of collection of school taxes, not to exceed four percent of the amount collected, in accordance with an itemized statement of collection expenses which he must file. OAG 73-804.

It is up to the sheriff to keep the school tax collection separate from other collections in order to determine the legal fee. OAG 74-595.

The sheriff should not settle his fee with the school board or receive it until after he computes the reasonable cost of collection, since his fee cannot exceed the reasonable cost of collection. OAG 74-595.

If a sheriff receives 4% for school taxes collected under this section, and a later determination indicates that the reasonable cost of collection is a lesser fee, then he must charge the school board the lesser fee and the excess or illegal part of the fee must be returned to the school board. OAG 74-595.

The county sheriff who acts as the regular tax collector for the school district is not required by this section to purchase an additional bond for the collection of school taxes and, if the school board decides for any reason that an additional bond is required, the premium for such bond should be paid with school district funds. OAG 75-23.

There is no requirement of a written contract for the collection of school taxes. OAG 75-131.

Even though a 4% commission fee for the collection of school taxes is authorized, if the charge including his compensation exceeds the reasonable costs of collecting the taxes, the sheriff can be limited to a lesser commission rate. OAG 75-131.

Where the fiscal court directly pays a portion of the expenses of the sheriff's office, the portion of that payment which is attributable to the expenses of the sheriff's office incurred in collecting school taxes may be collected by the sheriff from the county board of education as a part of the cost of collecting school taxes and, in turn, should be repaid by the sheriff to the fiscal court. OAG 75-361.

The sheriff's fee for collecting school taxes can be up to four percent of the taxes collected, except the fee cannot exceed the reasonable cost of collecting such taxes. OAG 76-627.

A sheriff could not base his fee for collecting school taxes on nine months of his salary, for the sheriff must compute his cost of collection of school taxes as a percentage of the cost of collection of all taxes. OAG 77-98, 1977 Ky. AG LEXIS 685.

Nothing in this section provides for the fiscal court to either assume part of the cost for each special tax collector or share envelope and postage costs. OAG 77-290, 1977 Ky. AG LEXIS 487.

Once the sheriff's total fee for collecting school taxes is properly computed the constitutional test of diversion is met since the constitutional diversion occurs no sooner than the reasonable cost of collection is exceeded, regardless of how much the excess is. OAG 78-146, 1978 Ky. AG LEXIS 703.

The reasonable cost of collecting school taxes is based upon a proper determination of the cost of collecting all taxes, and then the determination of the cost of collecting school taxes and that percentage of the total time allocable to school tax collection is really the percentage of all taxes collected represented by school taxes. OAG 78-146, 1978 Ky. AG LEXIS 703.

The total cost of collecting school taxes (prior to the 75% and 25% distribution at state level) is strictly constitutional as being an expenditure for school purposes. OAG 78-146, 1978 Ky. AG LEXIS 703.

The definition of the word "shall" as used in subsection (3) of this section is mandatory and the county clerk may not break the tax bill down into two installments. OAG 79-536, 1979 Ky. AG LEXIS 96.

A school system need not delay payment of the collection fee until all taxes are collected; a predetermined time, be it monthly or otherwise, for payment by the school district to the sheriff of his fee for school tax collection, if based upon a reasonable approximation of the cost of collection, is legally permissible. OAG 82-587. (Opinion prior to effective date of 1982 amendment.)

A sheriff, or other tax collection agent, if retained by an independent school district, may not deduct the collection fee before school tax funds are presented to the depository for the school district; since, pursuant to KRS 160.510, the sheriff, and special tax collector also, are obligated to make monthly statements of the amount of school taxes collected, all tax amounts collected must be turned over to the depository of the district board of education. OAG 82-587. (Opinion prior to effective date of 1982 amendment.)

A school system may write a monthly check for the collection fee for the collection of taxes providing the sheriff delivers a proper bill; a school may monthly, or bimonthly, agree to pay the sheriff his fee, up to four percent, covering the school taxes collected for the particular reporting period, based upon a showing by the sheriff of the reasonable costs incurred in

collecting the school taxes. OAG 82-587. (Opinion prior to effective date of 1982 amendment.)

It is clear from the express language and context of subsection (1) of this section that the one and one-half percent fee must be based upon an actual and reasonable expense at least equal to that percentage; where the facts indicate that the actual and reasonable expense was something less than one and one-half percent, only that lesser percentage could be paid the sheriff. Regardless of the statutory fee treatment given by the General Assembly, the sheriff's fee cannot exceed the actual and reasonable cost of collection up to a maximum of four percent. OAG 84-325, 1984 Ky. AG LEXIS 62.

The clerk's fee for collecting school ad valorem taxes on motor vehicles is the reasonable cost of collecting such taxes, not to exceed four percent. OAG 84-369, 1984 Ky. AG LEXIS 20.

City is not entitled to a collection fee under this section for its services in collecting a utility gross receipts license tax levied by the County Board of Education when the city is the owner and operator of the water utility taxed. OAG 91-170, 1991 Ky. AG LEXIS 170.

A board of education cannot designate the sheriff to collect some school taxes, and designate an employee to collect the remainder, because a shared responsibility would defeat the legislative intention present in this section and KRS 160.505 to make a single person responsible for collection of the taxes. OAG 92-11, 1992 Ky. AG LEXIS 11.

Collection agencies may not collect school taxes imposed by county school districts because under subsection (1) of this section the sheriff is designated as the party responsible for the collection of school taxes for county schools; the only alternative is provided by KRS 160.505, which authorizes a board of education to "appoint a person who shall be responsible for collection and administration" of the tax which clearly contemplates that the person so appointed will be an employee of the school district rather than a private contractor. OAG 92-11, 1992 Ky. AG LEXIS 11.

While delinquent taxes may be placed in a separate logical category from school taxes in general, it is a category without legal significance; delinquent school taxes are still school taxes, and their collection must comply with the statutory provisions for the collection of school taxes. OAG 92-11, 1992 Ky. AG LEXIS 11.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Assessments of taxing districts, when to be certified to county clerk, KRS 134.140.

County clerk to calculate taxes due school districts, KRS 132.550.

Sheriff is tax collector, by virtue of his office, unless payment is directed to be made to some other officer, KRS 134.140.

160.505. Certain taxes to be collected by person appointed by board of education.

KRS 160.500 to the contrary notwithstanding, if a tax authorized by KRS 160.593 to 160.597, 160.601 to 160.617, and 160.635 to 160.648 shall be collected by a local board of education, the local board of education shall appoint a person who shall be responsible for collection and administration of such tax. If one (1) or more boards of education agree in writing to levy identical taxes authorized by the statutes mentioned hereinabove, the boards of education so agreeing shall jointly appoint a person who shall be responsible for collection and administration of such tax as provided for in KRS 160.593(2). The position may be full-time or part-time and his compensation shall be fixed by the board and/or boards of education. The bond of this person shall be made to cover his duties as tax collector.

History.

Enact. Acts 1978, ch. 233, § 37, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 449, effective July 13, 1990; 2026 ch. 161, § 80, effective April 14, 2026.

Compiler's Notes.

This section (Enact. Acts 1978, ch. 233, § 37, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 449, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

A board of education cannot designate the sheriff to collect some school taxes, and designate an employee to collect the remainder, because a shared responsibility would defeat the legislative intention present in KRS 160.500 and this section to make a single person responsible for collection of the taxes. OAG 92-11, 1992 Ky. AG LEXIS 11.

Collection agencies may not collect school taxes imposed by county school districts because under KRS 160.500(1), the sheriff is designated as the party responsible for the collection of school taxes for county schools; the only alternative is provided by this section, which authorizes a board of education to "appoint a person who shall be responsible for collection and administration" of the tax which clearly contemplates that the person so appointed will be an employee of the school district rather than a private contractor. OAG 92-11, 1992 Ky. AG LEXIS 11.

While delinquent taxes may be placed in a separate logical category from school taxes in general, it is a category without legal significance; delinquent school taxes are still school taxes, and their collection must comply with the statutory provisions for the collection of school taxes. OAG 92-11, 1992 Ky. AG LEXIS 11.

160.510. Taxes paid to depository — Reports of tax collector.

The tax collector shall, on or before the tenth day of each month, pay to the depository of the district board of education the amount of school tax collected up to and including the last day of the preceding month, except that the county clerk shall deduct his collection fee before payment to the district board of education depository. The amount so paid together with the classes of property from which it was received shall be reported in writing to the treasurer of the board. The report shall be accompanied by a duplicate of the receipt for the money given to the tax collector by the depository. The tax collector shall make final settlement with the district board of education at the same time he makes final settlement with the local taxing authority to which he is responsible. Blanks for such purposes shall be furnished by the Kentucky Board of Education.

History.

4399-40; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 355, § 3, effective July 15, 1988; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 450, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.

This section (4399-40; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 355, § 3, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 450, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Prior Month's Collection.
2. Liability of Collector.
3. Deduction Before Deposit.

1. Prior Month's Collection.

The sheriff becomes indebted to the school board each month for taxes collected the month before. Helton v. Hoskins, 278 Ky. 352, 128 S.W.2d 732, 1939 Ky. LEXIS 426 (Ky. 1939).

2. Liability of Collector.

Acceptance of a tax collector's final settlement release him and his sureties from further liability for delinquent taxes. McKinney's Adm'x v. Commonwealth, 260 Ky. 608, 86 S.W.2d 167, 1935 Ky. LEXIS 504 (Ky. 1935).

Where sheriff collected $201,210.40 in school taxes and at the time of settlement withheld $8,048.40 representing a fee of 4 percent but claimed $4,900 as a fee and the board of education claimed he was entitled to only $800 and the court allowed him $3,782.75, he was liable for interest on the difference between the $3,782.75 commission allowed him by the court and the $8,048.40 he withheld. However, the costs should be divided equally between the sheriff and the board since the fee awarded the sheriff by the court was substantially in excess of the amount to which the board sought to limit him. Board of Education v. Collins, 259 S.W.2d 17, 1953 Ky. LEXIS 904 (Ky. 1953).

3. Deduction Before Deposit.

The plain reading of this section requires that the whole amount of school tax collected be paid to the depository; thus, a clerk may not deduct his or her fee prior to paying to the depository of the School District Board of Education the amount of the school tax collected. Benson v. Board of Education, 748 S.W.2d 156, 1988 Ky. App. LEXIS 11 (Ky. Ct. App. 1988).

OPINIONS OF ATTORNEY GENERAL.

The gross amount of all tax collections by the sheriff must be paid over to the school district and the school district treasurer should then reimburse the sheriff in the amount of his agreed-to commission. OAG 75-131.

A sheriff acting as collector of school taxes may not, after the 10th of the month, withhold school taxes collected from a district, but if he does withhold beyond the 10th, he is liable for 6% interest on the unpaid amount. OAG 76-54.

A tax collector cannot retain his collection fee out of the school taxes collected; instead, he must turn over to the school board all the taxes collected and the board will then pay him the proper fee. OAG 76-251.

The sheriff has no statutory authority to invest tax money during the period prior to his turning the money over to the appropriate taxing authority. OAG 80-518, modifying OAG 78-9, 1978 Ky. AG LEXIS 704.

A school system need not delay payment of the collection fee until all taxes are collected; a predetermined time, be it monthly or otherwise, for payment by the school district to the sheriff of his fee for school tax collection, if based upon a reasonable approximation of the cost of collection, is legally permissible. OAG 82-587, 1982 Ky. AG LEXIS 45.

A school system may write a monthly check for the collection fee for the collection of taxes providing the sheriff delivers a proper bill; a school may monthly, or bimonthly, agree to pay the sheriff his fee, up to four percent, covering the school taxes collected for the particular reporting period, based upon a showing by the sheriff of the reasonable costs incurred in collecting the school taxes. OAG 82-587, 1982 Ky. AG LEXIS 45.

A sheriff, or other tax collection agent if retained by an independent school district, may not deduct the collection fee before school tax funds are presented to the depository for the school district; since, pursuant to this section, the sheriff, and special tax collector also, is obligated to make monthly statements of the amount of school taxes collected, all tax amounts collected must be turned over to the depository of the district board of education. OAG 82-587, 1982 Ky. AG LEXIS 45.

160.515. Cash rounding for payments to school districts.

(1) In satisfaction of debts owed to a school district:

(a) Rounding cash transactions to the nearest five cent ($0.05) increment shall occur:

1. When pennies are not available to complete resolution of a transaction; and

2. On settlement of the final bill of sale, invoice, or fee after all individual items, duties, fees, taxes, and charges are calculated to the exact cent; and

(b) Noncash transactions shall continue to be settled to the cent without rounding.

(2) As used in this section, "the nearest five cent ($0.05) increment" means:

(a) Amounts ending in one cent ($0.01) and two cents ($0.02) are rounded down to the nearest ten cents ($0.10);

(b) Amounts ending in three cents ($0.03) and four cents ($0.04) are rounded up to the nearest five cents ($0.05);

(c) Amounts ending in six cents ($0.06) and seven cents ($0.07) are rounded down to the nearest five cents ($0.05);

(d) Amounts ending in eight cents ($0.08) and nine cents ($0.09) are rounded up to the nearest ten cents ($0.10); and

(e) Amounts ending in zero cents ($0.00) and five cents ($0.05) remain unchanged.

(3) Notwithstanding any other statute to the contrary, any person selling goods or services shall not be in violation of any requirements, laws, administrative regulations, or standards of this state or political subdivision of this state based on any action taken in compliance with this section.

History.

2026 ch. 161, § 25, effective July 15, 2026.

160.520. Penalties for tax delinquency — General laws apply.

The laws applying to penalties on and the collection of delinquent school taxes, except the taxes imposed by KRS 160.613 to 160.617 shall be the same as the general laws applying to penalties on and the collection of delinquent taxes of the taxing districts which embrace the various school districts.

History.

4399-40; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 451, effective July 13, 1990; 2004, ch. 79, § 16, effective July 1, 2005.

NOTES TO DECISIONS

Analysis

1. Penalties and Interest.
2. Liability of Collector.

1. Penalties and Interest.

Penalties and interest on delinquent school taxes belong to the board of education. Board of Education v. Paducah, 261 Ky. 549, 88 S.W.2d 292, 1935 Ky. LEXIS 700 (Ky. 1935); Pineville v. Board of Education, 272 Ky. 636, 114 S.W.2d 1088, 1938 Ky. LEXIS 161 (Ky. 1938) (decided under prior law).

2. Liability of Collector.

The collector must account for penalty and interest payable by taxpayer, and he was liable for interest as of the statutory due date. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000, 1934 Ky. LEXIS 693 (Ky. 1934) (decided under prior law). But see Clarke v. Commonwealth, 233 Ky. 728, 26 S.W.2d 1041, 1930 Ky. LEXIS 655 (Ky. 1930) (decided under prior law).

A city tax collector was liable for only such penalties on delinquent taxes as were prescribed by the city ordinances. Board of Education v. Hatton, 253 Ky. 828, 70 S.W.2d 923, 1934 Ky. LEXIS 746 (Ky. 1934) (decided under prior law).

A city is liable to the school board for all school taxes, penalty and interest that have been collected, but not for amounts due and uncollected. Board of Education v. Paducah, 261 Ky. 549, 88 S.W.2d 292, 1935 Ky. LEXIS 700 (Ky. 1935) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

Penalties and interest accruing on delinquent school taxes must be paid to the board of education. OAG 60-808.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Taxes on corporate franchises, when due, KRS 136.050.

160.530. Use of school money.

The money collected by taxation under the provisions of KRS 160.460 to 160.520 and other school money shall be expended by the board of education in accordance with the working budget submitted to and approved by the Kentucky Board of Education.

History.

4399-40; amend. Acts 1954, ch. 214, § 16(1), 1976, ch. 127, § 7; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 452, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2026 ch. 129, § 10, effective July 15, 2026.

Compiler's Notes.

This section (4399-40; amend. Acts 1954, ch. 214, § 16(1), 1976, ch. 127, § 7; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 452, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. District School Funds.
2. Judgment Against County Board of Education.
3. Decisions by Local School Board.

1. District School Funds.

District school funds collected by taxation under the provisions of KRS 160.460 to 160.520 do not become part of the common school fund of the state which is distributed by the state to the various school districts on a per capita basis and the state has nothing to do with the funds of the local school district. Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751, 1941 Ky. LEXIS 21 (Ky. 1941).

2. Judgment Against County Board of Education.

Fact that there is no fund available to pay judgment against county board of education for refund of illegal taxes does not invalidate judgment, since county board of education may sue and be sued, and sufficient funds may be lawfully raised by taxation and used to pay the judgment. Board of Education v. Louisville & N. R. Co., 280 Ky. 650, 134 S.W.2d 219, 1939 Ky. LEXIS 184 (Ky. 1939).

3. Decisions by Local School Board.

The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990).

OPINIONS OF ATTORNEY GENERAL.

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.550(1) and this section, as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132, 1985 Ky. AG LEXIS 20.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Agricultural extension work, appropriations may be made from school funds for, KRS 247.080.

Boards of education of Louisville and Jefferson County may pay money to city-county board of health for school health services, KRS 212.470.

Conferences of school officials, expenses of to be paid from school funds, KRS 156.190.

Financial matters to be reported to state board of education, KRS 157.060.

Investment of school funds, KRS 386.050.

School district not to lend credit or become stockholder in corporation, Ky. Const., § 179.

State school fund, distribution of, Ky. Const., § 186; KRS Ch. 157.

Superintendent of public instruction to supervise accounts of local boards, KRS 156.160, 156.200.

160.531. Board of education in county containing a city of the first class may impose license fees on business, trade, occupation or profession; rates; approval of voters required; exemptions. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1956, ch. 108, §§ 1 and 3) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.532. Election. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 108, § 2) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.533. Collection of license fees. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 108, § 4) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.534. Provisions of KRS 160.460, 160.500 and 160.510 inapplicable to license fees. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 108, § 5) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.540. Power to borrow money in anticipation of taxes.

Any board of education may borrow money on the credit of the board and issue negotiable notes in anticipation of revenues from school taxes and state revenue for the fiscal year in which the money is borrowed, and may pledge the anticipated revenues from state and local sources for the payment of principal and interest on the loan. The rate of interest shall be at the rate or rates or method of determining rates as the board determines. In all cases such loans shall be repaid within the fiscal year in which they are borrowed.

History.
4399-44; amend. Acts 1982, ch. 45, § 1, effective July 15, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 453, effective July 13, 1990; 1996, ch. 274, § 33, effective July 15, 1996.

Compiler's Notes.
This section (4399-44; amend. Acts 1982, ch. 45, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 453, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Floating Indebtedness.
2. Limitation on Borrowing.
3. Liquidation of Notes.

1. Floating Indebtedness.
A floating indebtedness cannot be funded without violating Ky. Const., §§ 157 and 158 when it arose because expenditures exceeded the revenue provided for. Downey v. Board of Education, 243 Ky. 66, 47 S.W.2d 931, 1932 Ky. LEXIS 30 (Ky. 1932) (decided under prior law).

A valid floating indebtedness may be funded without violating Ky. Const., §§ 157 and 158. Lee v. Board of Education, 261 Ky. 379, 87 S.W.2d 961, 1935 Ky. LEXIS 666 (Ky. 1935). See Lawson v. Board of Education, 265 Ky. 630, 97 S.W.2d 542, 1936 Ky. LEXIS 545 (Ky. 1936); Abbott v. Oldham County Board of Education, 272 Ky. 654, 114 S.W.2d 1128, 1938 Ky. LEXIS 176 (Ky. 1938).

2. Limitation on Borrowing.
Provisions of this section are held to be limitations on actual borrowing, and not on the power to incur indebtedness which is controlled by the Constitution. Waller v. Georgetown Board of Education, 209 Ky. 726, 273 S.W. 498, 1925 Ky. LEXIS 589 (Ky. 1925) (decided under prior law).

A county board of education can accumulate a valid indebtedness only by borrowing in anticipation of the collection of a levy an amount not exceeding the total of said taxes to be collected, which borrowing is to be paid from said revenue when collected. Farson v. County Board of Education, 100 F.2d 974, 1939 U.S. App. LEXIS 4586 (6th Cir. Ky. 1939).

A county board of education has no authority to incur or refund indebtedness in excess of revenue, and recitals in its resolution furnish no basis for estoppel. Farson v. County Board of Education, 100 F.2d 974, 1939 U.S. App. LEXIS 4586 (6th Cir. Ky. 1939).

A school board cannot validly anticipate revenue in excess of the amount which it has fixed in its budget. Ebert v. Board of Education, 278 Ky. 75, 128 S.W.2d 185, 1939 Ky. LEXIS 375 (Ky. 1939).

3. Liquidation of Notes.
Where county board of education had incurred a $141,000 debt represented by promissory notes due to great deficiency in allocable franchise tax collections and the expenditures giving rise to the debt were for legitimate school purposes, revenue bonds could be issued to liquidate the indebtedness and an annual special tax in excess of maximum regular ad valorem tax levy authorized by statute could be levied to amortize principal and interest of funding bonds validly issued by the county school district where the maximum regular levy provided by KRS 160.475 was insufficient. Bell v. Board of Education, 343 S.W.2d 804, 1961 Ky. LEXIS 433 (Ky. 1961).

OPINIONS OF ATTORNEY GENERAL.

KRS 58.430 does not implicitly repeal or in any way modify the maximum interest rate a school district may pay on money borrowed in anticipation of taxes. OAG 80-571, 1980 Ky. AG LEXIS 87.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Banks not limited in loans to school districts, KRS 286.3-290.

Bonds, power to issue, KRS 162.080 to 162.100, KRS Ch. 66.

Laws authorizing political subdivision to borrow money must specify purpose, Ky. Const., § 178.

160.550. Expenditure of funds in excess of income and revenue of any year — Certification of school district — Penalties.

(1) No superintendent shall recommend and no board member shall knowingly vote for an expenditure in excess of the income and revenue of any year, as shown by the working budget adopted by the board and approved by the Kentucky Board of Education, except for a purpose for which bonds have been voted or in case of an emergency declared by the Kentucky Board of Education.

(2) Any school district having authorized an expenditure in violation of subsection (1) of this section may be so certified at any time by the Kentucky Board of Education. A district so certified shall thereafter, any contrary statutory provisions notwithstanding, make no expenditure of money, give no authorization involving the expenditure of money, and make no employ-

ment, purchase, or contract, unless the chief state school officer has approved in writing, as fiscally sound and necessary, the expenditure, authorization, employment, purchase, or contract. Any expenditure, authorization, employment, purchase, or contract made in violation of this subsection shall be void.

(3) Any school district subject to the provisions of subsection (2) of this section shall so remain until such time as the Kentucky Board of Education has approved, in conformity with KRS 160.461, a working budget for the district for a succeeding fiscal year.

(4) In addition to the penalties set forth in KRS 160.990, any person who knowingly expends or authorizes the expenditure of school district funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severably liable in person and upon any official bond he has given to such district to the extent of any payments on the void claim. For purposes of this section, "knowingly" shall mean a person acts with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.

History.

4399-45; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 92, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 234, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2026 ch. 129, § 11, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. Annual Cash Basis.
2. Expenditures Limited to Budget.
3. Amended or Supplemental Budget.
4. Penalties.

1. Annual Cash Basis.

Aside from certain capital outlay expenditures, all of the statutes relating to school financing contemplate that school districts shall operate on a cash basis from year to year. Bell v. Board of Education, 308 Ky. 848, 215 S.W.2d 1007, 1948 Ky. LEXIS 1065 (Ky. 1948).

2. Expenditures Limited to Budget.

A school board cannot validly anticipate revenue in excess of the amount which it has fixed in its budget. Ebert v. Board of Education, 278 Ky. 75, 128 S.W.2d 185, 1939 Ky. LEXIS 375 (Ky. 1939).

3. Amended or Supplemental Budget.

Where a county board proposed to construct a new school, revised plans setting out the financing as well as the architectural plans must be submitted in the form of an amended or supplemental budget to the state board for consideration and approval. (This opinion has prospective effect only and did not impair the validity of any revenue bonds already issued.) Bell v. Board of Education, 308 Ky. 848, 215 S.W.2d 1007, 1948 Ky. LEXIS 1065 (Ky. 1948).

4. Penalties.

Subsection (2), the "prior written approval" statute, does not provide an independent basis for removing school board members from office under KRS 160.990(4). Hale v. Combs, 30 S.W.3d 146, 2000 Ky. LEXIS 121 (Ky. 2000).

Cited in:

White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. 1936); Board of Education v. Talbott, 286 Ky. 543, 151 S.W.2d 42, 1941 Ky. LEXIS 283 (Ky. 1941).

OPINIONS OF ATTORNEY GENERAL.

A local board of education may never legally present a deficit budget for approval; the fact that a local board can show that it will live within its means for a current fiscal year but cannot eradicate a carried forward deficit does not put the district in a legal financial posture. OAG 79-464, 1979 Ky. AG LEXIS 166.

A local superintendent and local board members who violate this section may be prosecuted and fined in the District Court for this violation and are subject to removal from office. OAG 79-464, 1979 Ky. AG LEXIS 166.

The intent of this section is that every fiscal year will be commenced by each public common school district with a balanced budget. OAG 79-464, 1979 Ky. AG LEXIS 166.

This section and 702 KAR 3:050 clearly prohibit a "running" deficit financial status by a local board of education. OAG 79-464, 1979 Ky. AG LEXIS 166.

This section and 703 KAR 3:050 safeguard against deficit spending by local boards of education. OAG 79-464, 1979 Ky. AG LEXIS 166.

Under this section, once the local board of education finds itself in an emergency situation, it applies to the State Superintendent of Public Instruction who, if he finds the evidence supports the claim of an emergency, submits the application and his finding for approval to the State Board for Elementary and Secondary Education (now State Board of Education), which application, if approved, would permit a deficit expenditure to be carried forward to the next year during which the deficit must be eradicated. OAG 79-464, 1979 Ky. AG LEXIS 166.

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.530 and subsection (1) of this section, as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132, 1985 Ky. AG LEXIS 20.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Application to exceed budget, 702 KAR 3:050.

160.560. Treasurer of board of education — Selection — Bond — Duties.

(1) Each board of education shall elect a treasurer for the board. The board may elect its secretary to serve as treasurer. The board may remove the treasurer from office at any time for cause by a vote of a majority of the members of the board.

(2) The treasurer shall execute an official bond for the faithful performance of the duties of his office, to be approved by the local board and the commissioner of education. The bond shall be guaranteed by a surety company authorized to do business in this state, and

shall be in an amount determined by the board of education in accordance with the administrative regulations promulgated by the Kentucky Board of Education. The premium on the bond shall be paid by the board of education. A copy of the bond shall be filed with the board of education and with the commissioner of education.

(3) The treasurer shall receive all moneys to which the board is entitled by the Constitution or by the statutes, except as otherwise provided by law, or which may in any way come into its possession, and deposit such funds in the properly designated depository. He shall withdraw such funds from the depository only upon proper order of the board. He shall keep a full and complete account of all funds in such manner and make such reports concerning them as is required by the board of education or by the Kentucky Board of Education. He shall preserve all records relating to the transactions and duties of the office and turn them over to his successor along with all public funds in his hands and all accounts and records after due and proper audit is made by a competent outside agent when he is required to do so by the board of education.

(4) The treasurer shall issue his check on the depository for payment of all legal claims which have been authorized for payment in accordance with policies previously adopted by the local board of education and approved by the commissioner of education.

History.

4399-42; amend. Acts 1956, ch. 173; 1978, ch. 54, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 235, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 7, effective July 14, 2000.

NOTES TO DECISIONS

Cited in:

Lewis v. Morgan, 252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952); Commonwealth v. Hamilton, 905 S.W.2d 83, 1995 Ky. App. LEXIS 151 (Ky. Ct. App. 1995).

OPINIONS OF ATTORNEY GENERAL.

The treasurer of a local board of education, who received a salary of $10.00 per month and who had a pecuniary interest in an agency that sold insurance to the board of education, would be disqualified as treasurer if the pecuniary interest in the sale, direct or indirect, was in excess of $25.00. OAG 61-211.

The offices of treasurer of the school board and city clerk are incompatible. OAG 61-823.

The secretary and treasurer of the city board of education and the treasurer of the county board of education were disqualified from serving on the electric plant board. OAG 61-846.

While a board of education may discharge its secretary and its attorney at any time, the board may only remove its treasurer for cause by a vote of three members of the board and the treasurer is entitled to a hearing as to the cause of removal. OAG 73-128.

The treasurer of a county school board is considered a state officer and may not at the same time serve as commissioner of a municipal public utility which office in all probability constitutes a municipal office and, even if not, constitutes municipal employment. OAG 74-707.

As this section requires each board of education to elect a treasurer but is silent as to compensation for the treasurer, under the general powers given to boards of education under KRS 160.290, the board may fix a reasonable compensation. OAG 75-461.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bonds of public officers, conditions, recovery on, KRS 62.060 to 62.080.

Fidelity bond, penal sum for Treasurer, Finance Officer, and others, 702 KAR 3:080.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

160.570. Depository of board — Bond — Duties.

(1) Each board of education shall appoint a bank, trust company, or savings and loan association to serve as its depository, and if its annual receipts from all sources exceed one hundred thousand dollars ($100,000), it may designate additional depositories. The depository may be designated for a period not to exceed two (2) years, and before entering upon its duties shall agree with the board as to the rate of interest to be paid on average daily or monthly balances.

(2) The depository selected shall, before entering upon its duties, provide collateral in accordance with KRS 41.240, to be approved by the local board of education in accordance with Kentucky Board of Education administrative regulations, and to be approved by the commissioner of education. A board of education may enter into an agreement with its depository whereby the premium on collateral guaranteed by a surety company may be paid either by the board or by the depository. If the board pays the premium, the depository shall allow the board not less than two percent (2%) interest on its average daily or average monthly balances.

(3) The depository shall hold for the board all funds deposited by the treasurer of the board or its tax collector or duly authorized agent, subject to withdrawal by the board at any time, and shall pay all funds so deposited to such person and in such manner as the board directs. The depository shall keep full and complete accounts of all of the board's funds, and make reports to the board or its authorized agents upon request. The depository shall keep all records relating to the transactions and duties of the office and turn them over to the successor of its office along with all school funds in hand. The board of education may at any time require a due and proper audit of the depository's records of the funds of the board by a competent outside agent.

History.

4399-43; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 337, § 1, effective July 15, 1980; 1982, ch. 43, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 236, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 8, effective July 14, 2000; 2001, ch. 99, § 1, effective June 21, 2001; 2010, ch. 155, § 1, effective July 15, 2010; 2024 ch. 215, § 3, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. Bond.
2. —Approval.
3. —Alterations.
4. —Form.
5. Application of Funds.
6. Audit of Records.
7. Liability for Failure of Depository.

1. Bond.

The bond of a depository is a guarantee of the security of the funds and the assurance that they will be delivered on demand, and such bond imposes a greater responsibility than a bond conditioned upon the faithful performance of the duties of an officer. Phillips v. Board of Education, 283 Ky. 173, 140 S.W.2d 819, 1940 Ky. LEXIS 292 (Ky. 1940).

2. —Approval.

Failure of school board or officer to approve or secure approval of bond of depository does not affect liability of sureties on bond, since requirement for approval is for protection of public funds and not for benefit of sureties, and since government is not responsible for laches or wrongful acts of its officers. Bennett v. County Board of Education, 273 Ky. 143, 116 S.W.2d 302, 1938 Ky. LEXIS 612 (Ky. 1938).

3. —Alterations.

Burden was on plaintiff seeking to recover from defendants as sureties on depository bond to prove that alterations changing bond from treasurer's bond to depository bond were made prior to defendants' signatures, or if subsequent, by their agreement. Phillips v. Board of Education, 283 Ky. 173, 140 S.W.2d 819, 1940 Ky. LEXIS 292 (Ky. 1940).

4. —Form.

The bond need not be signed by the principal. United States Fidelity & Guaranty Co. v. Board of Education, 228 Ky. 426, 15 S.W.2d 255, 1929 Ky. LEXIS 559 (Ky. 1929) (decided under prior law).

5. Application of Funds.

A bank, which is treasurer of a school board, and to which the board is indebted, cannot apply funds held by it to satisfaction of a matured debt due it by the board. Citizens' Bank of Morehead v. Rowan County Board of Education, 245 Ky. 384, 53 S.W.2d 549, 1932 Ky. LEXIS 584 (Ky. 1932).

6. Audit of Records.

Statutory power to audit records of depository was merely an addition to the powers of the board and was not intended as limiting or restricting the inherent power to conduct its final affairs. Lewis v. Morgan, 252 S.W.2d 691, 1952 Ky. LEXIS 1019 (Ky. 1952).

7. Liability for Failure of Depository.

Treasurer and sureties are not liable for failure of a depository when its selection is by law given to another. Edwards v. Logan County, 244 Ky. 296, 50 S.W.2d 83, 1932 Ky. LEXIS 393 (Ky. 1932).

OPINIONS OF ATTORNEY GENERAL.

Subsection (4) of this section does not require the county board of education to designate a depository within the county. OAG 60-554.

Subsection (1) of this section requires that interest be paid on the average daily or monthly balances of school board funds in a depository. OAG 60-554.

While the exact rate is not specified, subsection (1) of this section requires that some interest be paid. OAG 60-600.

The requirements of this section are mandatory, not directory, and unless they are fully complied with there has been no valid designation of a depository. OAG 60-600.

Boards of education may place their general funds in banks designated as depositories pursuant to this section and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

A local board of education is violating the law if it deposits money in a bank other than its named depository bank. OAG 79-538, 1979 Ky. AG LEXIS 98.

Applicable Kentucky administrative regulations could be amended to lawfully provide that obligations of a Federal Farm Credit Bank, the Federal National Mortgage Association and the Federal Home Loan Bank could be used as collateral as security for the depository bond mentioned in this section, since KRS 41.240(4)(a) permits as collateral obligations or securities issued or guaranteed by any federal governmental agency. OAG 85-3, 1985 Ky. AG LEXIS 149.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bonds of depositories of public funds, conditions, recovery on, KRS 62.060 to 62.080.

Depository bond, penal sum, 702 KAR 3:090.

Depository of board, collateral, 702 KAR 3:090.

160.580. Gift, grant, or devise to school board.

All sums arising from any gift, grant, or devise by any person wherein the intent is expressed that the same is to be used to aid in the education of children in any school district in this state shall be held and used for the purposes specified in the gift, grant, or devise. The district board of education shall receive the gift, grant, or devise for the benefit of the schools of its district and shall hold and use it as requested by the donor or devisor, provided that the purpose for which it is used shall be in harmony with the aims and general program of public education in this state.

History.

4399-57; amend. Acts 1974, ch. 49, § 4; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 454, effective July 13, 1990.

Compiler's Notes.

This section (4399-57; amend. Acts 1974, ch. 49, § 4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 454, effective July 13, 1994.

NOTES TO DECISIONS

Analysis

1. Application.
2. Trustee.
3. Discretionary Powers of Board.

1. Application.

The jurisdiction conferred by KRS 160.290 relates to school property arising from public funds and necessarily does not apply to specific charitable trust donations made to a particular type of school district for its exclusive benefit, which are controlled by this section. Board of Education v. Todd County Board of Education, 289 Ky. 803, 160 S.W.2d 170, 1942 Ky. LEXIS 645 (Ky. 1942).

2. Trustee.

The county board of education in taking out insurance policy on district school building built by specific charitable trust donation was only a naked trustee of the property, while pupils of district school were the real beneficiaries and thus entitled to proceeds of the insurance. Board of Education v. Todd County Board of Education, 289 Ky. 803, 160 S.W.2d 170, 1942 Ky. LEXIS 645 (Ky. 1942).

3. Discretionary Powers of Board.

School board could make a white male high school coeducational although the land on which the school was built was partially purchased with funds contributed by the alumni association and the school board allowed the alumni association to be made a third party to the deed conveying the land and inserted a covenant that the school board agreed with the alumni association that it would hold said property for the exclusive use and benefit of white male students since the covenant in the deed was void as interfering with the exercise by the school board of its discretionary powers in the management and control of the public schools under its jurisdiction and against general public policy. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

Cited in:

Japs v. Board of Education, 291 S.W.2d 825, 1956 Ky. LEXIS 402 (Ky. 1956).

OPINIONS OF ATTORNEY GENERAL.

Under this section a school board is obligated to accept a gift provided that the potential use of the gift may be considered to be in harmony with the aims and general program of public education in the state. OAG 69-431.

160.590. Special funds — Disposition of. [Repealed.]

Compiler's Notes.

This section (4399-60) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.593. Levy of occupational license tax and utility gross receipts license tax for schools.

(1) Any board of education of a school district may, after compliance with the public hearing requirement contained in KRS 160.603, levy school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.617, and 160.635 to 160.648. The imposition of any tax levied under the provisions of 160.593 to 160.597, 160.601 to 160.617, and 160.635 to 160.648 shall be limited to the territory of the school district except as provided in subsection (2) of this section.

(2) Two (2) or more boards of education may agree in writing to levy identical school taxes authorized by KRS 160.605 to 160.611 and 160.613 to 160.617. After the levying in each district so agreeing of a tax under the terms of such agreement, the receipts from said tax shall be held in a common fund and disbursed therefrom to each district on the basis of average daily attendance, as set forth in KRS 160.644. Any districts levying taxes under the terms of such an agreement shall be deemed to constitute a combined taxing district for the purposes of reference in KRS Chapter 160.

History.

Enact. Acts 1966, ch. 24, Part III, § 1; 1972, ch. 203, § 19, 1972, ch. 271, § 1; 1974, ch. 125, § 1; 1974, ch. 308, § 35; 1976, ch. 127, § 8; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 98, § 1, effective July 15, 1982; 1984, ch. 43, § 1, effective July 13, 1984; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 455, effective July 13, 1990; 2026 ch. 161, § 81, effective April 14, 2026.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 1; 1972, ch. 203, § 19, 1972, ch. 271, § 1; 1974, ch. 125, § 1; 1974, ch. 308, § 35; 1976, ch. 127, § 8; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 98, § 1, effective July 15, 1982; 1984, ch. 43, § 1, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 455, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Utility Tax.
2. —Levy.
3. —Distribution.

1. Utility Tax.

2. —Levy.

As presently worded, this section and KRS 160.644 do not prohibit an individual school district from unilaterally levying a utility tax on the territory within its school district. Moreover, the legislature obviously intended this practice to be the rule rather than the exception. Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984).

There is nothing in this section and KRS 160.644 to preclude a school district which had agreed with another district or districts to levy taxes from rescinding that agreement and levying the taxes unilaterally. Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984).

3. —Distribution.

If a utility tax is levied by an individual school district, all the money goes to that school board. If the tax is levied by multiple districts in combination, the money is distributed proportionately. Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984).

Cited in:

Cunningham v. Grayson, 541 F.2d 538, 1976 U.S. App. LEXIS 7450 (6th Cir. 1976), cert. denied, Board of Education v. Newburg Area Council, Inc., 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792, 1977 U.S. LEXIS 2129 (1977); Board of Elections v. Board of Education, 635 S.W.2d 324, 1982 Ky. App. LEXIS 221 (Ky. Ct. App. 1982); Storer Communications of Jefferson County, Inc. v. Oldham County Bd. of Educ., 850 S.W.2d 340, 1993 Ky. App. LEXIS 47 (Ky. Ct. App. 1993).

OPINIONS OF ATTORNEY GENERAL.

A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

Unless a county board of education had acted in bad faith the fiscal court had no alternative but to accept the school budget as presented to them and levy the requested three percent utility gross receipts license tax. OAG 67-435.

If the school board complies with this section and with KRS 160.603, the fiscal court is mandatorily required to levy a

utility gross receipts license tax, within 15 days of such request, at the rate requested. OAG 69-367.

The term "shall" in the statute is mandatory. OAG 69-367.

Where a school board complies with the provisions of this section and KRS 160.603, the fiscal court is mandatorily required to levy the requested tax within 15 days of such request and at the rate requested. OAG 72-365.

It would appear that a school board which does not wish to have the tax applied to its district should make such fact known by formal written motion entered into the board minutes. OAG 72-471.

Under the 1972 amendment to this section the voters of one district can recall the tax for that particular district while the voters of another district can vote to have the tax remain in effect. OAG 72-471.

If the fiscal court refuses to levy a requested tax, the school board would have the right to sue the court to compel the levy but if only a minority of the members of the court vote against the levy the board would have no right of action against such minority. OAG 72-521.

The fiscal court is required to levy a requested tax when it is presented with a properly passed resolution of the school board requesting such tax. OAG 72-521.

This section empowers either of two county school districts to levy a utilities tax under KRS 160.613. OAG 72-521.

Any school district in which a special school tax is levied or about to be levied may petition for a referendum to recall said tax within the district and such recall would not have to be on a countywide basis. OAG 72-576.

Where a petition to have the issue of a school tax placed on the ballot is filed, the names of residents of an independent school district which does not desire to have the tax imposed in its jurisdiction may properly be removed from the petition. OAG 72-579.

Districts which have taken no action to either request or deny a levy may come in at a later date and make a request as applicable to their particular district. OAG 72-603.

Once the fiscal court has approved a requested levy the question of whether or not such tax should be levied may be passed on to the voters pursuant to the procedures specified in KRS 160.485. OAG 72-603.

The 1972 amendment to this section amends by implication the provisions of KRS 160.485 insofar as that section provides for recall on a countywide basis. OAG 72-603.

The question of the imposition of a utilities gross receipts tax should be placed on the ballot only in the territory encompassed by the three districts requesting the tax. OAG 72-603.

The tax is to be imposed only in the territorial limits of the district making the request for the levy. OAG 72-603.

The word "shall" appearing in this section is mandatory. OAG 75-152.

Where the school board had requested the fiscal court to levy a gross receipts utility tax for school purposes after compliance with this section and KRS 160.603 and the fiscal court refused to levy such tax, the county attorney could not represent the school board if a suit against fiscal court became necessary because of conflict of interest as county attorney pursuant to KRS 69.210. OAG 75-152.

Where a county adopts a three percent utility gross receipts license tax for schools, pursuant to subsection (1) of this section the applicable board or boards of education must levy the school tax, not the fiscal court, since the fiscal court has nothing to do with the levying and collecting of this tax. OAG 80-331, 1980 Ky. AG LEXIS 321.

The consequence of the 1976 amendment to this section was to let school districts that had been mandatorily tied together by preexisting law go their separate ways unless they requested in writing to levy an identical tax as a combined taxing district and had that request approved by the State Board of Education. School districts that had their request approved by the State Board would have the receipts from the tax distributed between the districts based upon average daily attendance as set forth in KRS 160.644. If this positive step of requesting the State Board of Education approval was not sought, each school district by itself continued to levy the tax, but was limited to the territory of its school district. Of course, any school district wishing to decrease the rate of its tax or cease levying the tax altogether could do so. OAG 82-146, 1982 Ky. AG LEXIS 500.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) (now KRS 160.470(9)(a)) or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of this section and KRS 160.603, but the recall provisions of KRS 160.597 do not apply. OAG 90-88, 1990 Ky. AG LEXIS 88.

160.595. Only one tax to be in effect at any time. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, part III, § 2; 1972, ch. 203, § 20; 1972, ch. 271, § 2; 1976, ch. 127, § 9) was repealed by Acts 1984, ch. 43, § 2, effective July 13, 1984.

160.597. Levy recall procedure.

Any school tax authorized by KRS 160.593 to 160.597, 160.601 to 160.617, and 160.635 to 160.648 may be recalled as follows:

(1)(a) The order or resolution levying any of the school taxes designated in this section shall go into effect not less than forty-five (45) days nor more than ninety (90) days after its passage.

(b) During the forty-five (45) days immediately following the passage of the order or resolution, any five (5) qualified voters who reside in the school district levying the tax may commence petition proceedings to protest the passage of the order or resolution by filing with the county clerk an affidavit stating that they constitute the petition committee and that they will be responsible for circulating the petition and filing it in the proper form within forty-five (45) days from the passage of the order or resolution. The affidavit shall state their names and addresses and specify the address to which all notices to the committee are to be sent. Upon receipt of the affidavit, the county clerk shall:

1. At the time of filing of the affidavit, notify the petition committee of all statutory requirements for the filing of a valid petition under this section;

2. At the time of the filing of the affidavit, notify the petition committee that the clerk will publish a notice identifying the tax levy being challenged and providing the names and addresses of the petition committee in a newspaper of general circulation within the county, if such publication exists, if the petition committee remits an amount equal to the cost of publishing the notice determined in accordance with the provisions of KRS 424.160 at the time of the filing of the affidavit. If the petition committee elects to have the notice published, the clerk

shall publish the notice within five (5) days of receipt of the affidavit; and

3. Deliver a copy of the affidavit to the local board of education or combined taxing district.

(c) The petition shall be filed with the county clerk within forty-five (45) days of the passage of the order or resolution. All papers of the petition shall be uniform in size and style and shall be assembled in one (1) instrument for filing. Each sheet of the petition shall contain the names of voters from one (1) voting precinct only, and shall include the name, number and designation of the precinct in which the voters signing the petition live. The inclusion of an invalid signature on a page shall not invalidate the entire page of the petition, but shall instead result in the invalid signature being stricken and not counted. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name, street address, and Social Security number or birthdate of the person signing. The petition shall be signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election, except in consolidated local governments, where the petition shall be signed by a number of registered and qualified voters equal to at least five percent (5%) of the total number of votes cast in the last preceding presidential election.

(d) Upon the filing of the petition with the county clerk, the order or resolution shall be suspended from going into effect for that district until after the election provided for in subsection (2) of this section is held, or until the petition is finally determined to be insufficient and no further action may be taken pursuant to paragraph (h) of this subsection.

(e) The county clerk shall immediately notify the local board of education or combined taxing district that the petition has been received and shall, within thirty (30) days of receipt of the petition, make a determination of whether the petition contains enough signatures of qualified voters to place the order or resolution before the voters.

(f) If the county clerk finds the petition to be sufficient, the clerk shall certify to the local board of education or combined taxing district and the petition committee within the thirty (30) day period provided for in paragraph (e) of this subsection, that the petition is properly presented and in compliance with the provisions of this section, and that the order or resolution levying the tax will be placed before the voters for approval.

(g) If the county clerk finds the petition to be insufficient, the clerk shall, within the thirty (30) day period provided for in paragraph (e) of this subsection, notify, in writing, the petition committee and the school district or combined taxing district levying the tax of the specific deficiencies found. Notification shall be sent by certified mail, and shall be published at least one (1) time in a newspaper of general circulation within the county containing the school district levying the tax or, if there is no such newspaper, shall be posted at the courthouse door.

(h) A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court of the county in which the school district is located, and shall be limited to the validity of the county clerk's determination. Any petition challenging the county clerk's final determination shall be filed within ten (10) days of the issuance of the clerk's final determination.

(2) If the petition is sufficient, the county clerk shall, at the option of the local board of education, either submit the question to the voters of the school district at the next regular election or submit the question to the voters of the school district at a called common school election, which is to be held not less than thirty-five (35) days nor more than forty-five (45) days from the date the signatures on the petition are validated by the county clerk. Any called common school election shall comply with the provisions of KRS 118.025. If the election is to be held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The question shall be so framed that the voter may by his vote answer, "for" or "against." If a majority of the votes cast in a district or combined taxing district upon the question oppose its passage, the order or resolution shall not go into effect in that district or combined taxing district. If a majority of the votes cast in a district or combined taxing district upon the question favor its passage, the order or resolution shall go into effect in that district. If the election is to be held in more than one (1) school district within a county, the votes shall be counted separately. The cost of a called common school election shall be borne by the school district causing the election to be held.

(3) If any statute in existence on June 17, 1978, is found to be in conflict with any provision of this section, the provisions of this section shall prevail.

History.

Enact. Acts 1966, ch. 24, part III, § 3; 1972, ch. 203, § 21; 1974, ch. 125, § 6; 1976, ch. 127, § 10; 1978, ch. 345, § 1, effective June 17, 1978; 1980, ch. 114, § 25, effective July 15, 1980; 1980, ch. 188, § 118, effective July 15, 1980; 1982, ch. 48, § 1, effective March 3, 1982; 1982, ch. 217, § 4, effective July 15, 1982; 1982, ch. 360, § 50, effective July 15, 1982; 1990, ch. 48, § 85, effective July 13, 1990; 1990, ch. 476, Pt. V, § 456, effective July 13, 1990; 1996, ch. 195, § 58, effective July 15, 1996; 2005, ch. 121, § 4, effective June 20, 2005; 2026 ch. 161, § 82, effective April 14, 2026.

Legislative Research Commission Notes.

(6/20/2005). 2005 Ky. Acts ch. 121, § 6, provides: "The provisions of this Act shall apply to ordinances, orders, resolutions or motions passed after July 15. 2005."

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. Timeliness of Petition.

4. Sufficiency of Petition.
5. Verification by Affidavit.
6. Levy Subject to Recall.
7. Levy Not Subject to Recall.

1. Constitutionality.

The present school funding statutes permit local Boards of Education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables Boards of Education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding, according to the mandate of Section 183 of the Kentucky Constitution; and that is all that Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 1989 Ky. LEXIS 55 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

2. Application.

The county Board of Education argued that the enactment of KRS 160.614 indicated that the General Assembly intended that the recall provisions of this section would not be applicable to utility taxes levied to provide base or Tier One funding, but KRS 160.614 merely expanded the utilities subject to a permissive school funding levy to include cable television and in the absence of a strong statutory indication to the contrary, an express statute will not be deemed to have been abrogated by implication. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

3. Timeliness of Petition.

Where the 30th day following the levy of a utility gross receipts tax was a Saturday, and the taxpayers' petition to recall the levy and place the question before the voters for approval was filed on the following Monday, the county board of elections erroneously refused to consider the petition on the ground that it was not filed within the 30-day period since, under KRS 446.030(1) and (2), the last day of the period is not included in the 30 days if it is a Saturday or Sunday; however, the taxpayers' remedy was to reapply to the board of elections, pointing out the error, rather than to file an action in court. Taxpayer's Action Group v. Madison County Bd. of Elections, 652 S.W.2d 666, 1983 Ky. App. LEXIS 294 (Ky. Ct. App. 1983).

4. Sufficiency of Petition.

Circuit court erred in granting summary judgment to a board of education and declaring that the county clerk erred in certifying a tax recall petition because "petition committee" was merely a convenient way to refer to the individuals who initiated the petition and did not deprive them of standing, although there were technical flaws, given the liberal construction afforded to statutes, the petition substantially complied with the statutory requirements, and the county clerk properly determined that because the committee did not request publication of notice, none was required. Petition Comm. v. Bd. of Educ., 509 S.W.3d 58, 2016 Ky. App. LEXIS 109 (Ky. Ct. App. 2016).

5. Verification by Affidavit.

Where affidavits were merely read, signed, and notarized, and only one circulator of the petition testified that some form of oath may have taken place, while testimony of the others was clear that it did not, the petitions were not "verified by affidavit" as required by this section. Board of Elections v. Board of Education, 635 S.W.2d 324, 1982 Ky. App. LEXIS 221 (Ky. Ct. App. 1982).

An affidavit implies the taking of an oath as to the truth of its contents. A later administration of an oath to persons who previously signed affidavits cannot make the affidavits sufficient after the time has elapsed for filing the petitions to be verified, nor does the later administration of an oath constitute the "newly discovered evidence" provided for in Civil Rule 59.01(g). Board of Elections v. Board of Education, 635 S.W.2d 324, 1982 Ky. App. LEXIS 221 (Ky. Ct. App. 1982).

6. Levy Subject to Recall.

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

School district board of education's levy of a utility gross receipts license tax on cable television services, pursuant to subsection (2) of KRS 160.614, was subject to the levy recall procedure set out in this section. Owensboro Cablevision v. Libs, 863 S.W.2d 331, 1993 Ky. App. LEXIS 60 (Ky. Ct. App. 1993).

7. Levy Not Subject to Recall.

The 1990 change in KRS 160.470(10) and (11) (now KRS 160.470(9) and (10)) prevents voter recall of a property tax levy if the tax revenue is intended to provide mandatory minimum base funding or permissive Tier One funding, but under the previous funding scheme, the "notwithstanding" language of KRS 160.470 had no abrogative effect on voter recall of permissive utility taxes and the General Assembly preserved this right in the funding scheme. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

Cited in:

Board of Education v. Fiscal Court of Warren County, 485 S.W.2d 752, 1972 Ky. LEXIS 141 (Ky. 1972); Doe v. Knox County Bd. of Educ., 918 F. Supp. 181, 1996 U.S. Dist. LEXIS 7231 (E.D. Ky. 1996).

OPINIONS OF ATTORNEY GENERAL.

A recall petition must be filed within 30 days following the passage of the order or resolution of the fiscal court levying the tax. OAG 72-522.

A county may proportionately reduce the occupational license tax imposed under KRS 160.605 by enacting an ordinance with a logical arrangement for such a reduction, when the tax is to be levied after the start of the fiscal year and likewise penalties may be imposed for failure to pay the tax, but such penalties must be codified by ordinance. OAG 78-383, 1978 Ky. AG LEXIS 403.

It is the responsibility of the county board of elections to frame the question for the ballot proposal for recall of school taxes under this section. OAG 79-462, 1979 Ky. AG LEXIS 170.

Where a county board of education levied a utility gross receipts tax pursuant to an order authorized by KRS 160.613, after which a recall petition was presented to the county board of elections requesting that the tax levy be placed on the ballot for voter approval or disapproval, the board of education's subsequent withdrawal of the tax levy order was a valid exercise of its discretion and the board of elections would not be required to still submit the recall question to the voters, since the necessity of the public having to bear the expense of holding such an election would serve no useful purpose. OAG 80-442, 1980 Ky. AG LEXIS 242.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) (now KRS 160.470(9)(a)) or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of KRS 160.593 and KRS 160.603, but the recall provisions of this section do not apply. OAG 90-88, 1990 Ky. AG LEXIS 88.

Any board complying fully with the provisions of KRS 160.614 and KRS 160.603 is not subject to the provisions of this section. OAG 90-96, 1990 Ky. AG LEXIS 102.

160.599. Emergency loans to public common school districts.

(1) A special fund is hereby created which shall be known as "the emergency revolving school loan fund account," hereinafter referred to as account. This account, which shall be administered by the Kentucky Board of Education, is for the purpose of providing emergency loans to eligible public common school districts.

(2) In order to be eligible for a loan from the account, a school district shall meet all of the following conditions:

(a) A loss of physical facilities must have been suffered as a result of a fire or a natural disaster;

(b) Insurance on such facilities was insufficient to replace the loss;

(c) The district is bonded to practical capacity and has insufficient resources to meet its immediate capital outlay needs as determined by an investigation of the chief state school officer.

(3) As an alternative to the criteria in subsection (2) of this section, a school district shall be eligible for a loan from the account if the sheriff has failed to collect or disburse delinquent tax revenue, which is for the benefit of the school district, within the fiscal year that the school district is to utilize those receipts according to its budget.

(4) Under the criteria of subsection (2) of this section, no loan from the account shall be made for a period in excess of ten (10) years, and under the criteria of subsection (3) of this section, no loan from the account shall be made for a period in excess of three (3) years. The maximum amount of any one (1) loan from the account shall not exceed two hundred fifty thousand dollars ($250,000) and shall be determined by the Kentucky Board of Education on recommendation of the chief state school officer.

(5) The Kentucky Board of Education shall establish the terms and conditions for repaying the principal of such loan and interest shall not be charged on the loan. No loan shall cover a loss prior to January 1, 1972.

(6) School districts eligible under this section to borrow from the account shall file formal application for such loan on forms provided by the state department of education. Before any loan is made, the application must be approved by the Kentucky Board of Education on the recommendation of the chief state school officer.

(7) All repayments of loans made under this section shall be paid into the emergency revolving school loan fund account, which shall be funded by an appropriation through the biennial budget. Balances remaining in the fund shall not revert to the general fund at the end of any fiscal year.

(8) On approval of the loan application by the Kentucky Board of Education on the recommendation of the chief state school officer, the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw a warrant on the State Treasurer for the amount of the approved loan that is due the school district. The check shall be issued by the State Treasurer and transmitted to the Department of Education for distribution to the proper official of the school district when the district has complied with the rules and regulations of the Kentucky Board of Education.

(9) Any loan to a local school district under the provisions of this section shall not be considered as an indebtedness of the school district within the meaning of Sections 157 and 158 of the Kentucky Constitution.

History.

Enact. Acts 1974, ch. 133, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. III, § 114, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Emergency school loan fund; repayments, 702 KAR 4:100.

160.600. Accepting bribe for employment of school employee. [Renumbered.]

Compiler's Notes.

This section (4399-58) was renumbered as KRS 160.991 and has since been repealed.

OCCUPATIONAL LICENSE TAX FOR SCHOOLS

160.601. Taxes, how designated.

The school taxes authorized by KRS 160.605 to 160.611 and 160.613 to 160.617 shall be known as an occupational license tax for schools and a utility gross receipts tax for schools as set out in the following sections.

History.

Enact. Acts 1966, ch. 24, Part III, § 4; 1972, ch. 203, § 22; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 457, effective July 13, 1990; 2026 ch. 161, § 83, effective April 14, 2026.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 4; 1972, ch. 203, § 22) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 457, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

Any settlement of claims for taxes owed, including interest and penalties, would be a diversion of school fund moneys for a purpose other than that of the common schools. OAG 88-46, 1988 Ky. AG LEXIS 46.

Interest and penalties on past due and unpaid taxes belong to the local school district in the same manner as the taxes. OAG 88-46, 1988 Ky. AG LEXIS 46.

The allowance of a settlement or compromise of interest and penalties which have accrued to taxes owed a school district would be a circumvention of the provisions of this section. The result of the settlement or reduction would be that the property for which the tax was reduced would have been taxed at a different rate, which would be determined only upon the negotiating skills of the parties involved. OAG 88-46, 1988 Ky. AG LEXIS 46.

There is no statute which allows a local board to remit or release a claim for taxes, interest or penalty, in whole or in part. OAG 88-46, 1988 Ky. AG LEXIS 46.

160.603. Notice and hearing before levy.

No local board of education shall levy any of the school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.617, and 160.635 to 160.648, except the levy required by KRS 160.614(3) and (6), until after compliance with the following:

(1) The local board of education desiring to levy any one (1) of these taxes shall give notice of any proposed levy of one (1) of the school taxes. Notwithstanding any statutory provisions to the contrary, notice shall be given by causing to be published, at least one (1) time in a newspaper of general circulation published in the county or by posting at the courthouse door if there be no such newspaper, the fact that such levy is being proposed. The advertisement shall state that the local board of education will meet at a place and on a day fixed in the advertisement, not earlier than one (1) week and not later than two (2) weeks from the date of the advertisement, for the purpose of hearing comments and complaints regarding the proposed increase and explaining the reasons for such proposal;

(2) The local board of education shall conduct a public hearing at the place and on the date advertised for the purpose of hearing comments and complaints regarding the proposed levy and explaining the reasons for such proposal; and

(3) In the event that a combined taxing district desires to levy any one (1) of these taxes, the boards of education shall make a joint advertisement and hold a joint hearing in the manner prescribed heretofore for an individual school district.

History.

Enact. Acts 1966, ch. 24, Part III, § 5; 1972, ch. 203, § 23, 1974, ch. 125, § 2; 1976, ch. 127, § 11; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 458, effective July 13, 1990; 2005, ch. 168, § 128, effective March 18, 2005; 2009, ch. 99, § 2, effective July 1, 2009; 2026 ch. 161, § 84, effective April 14, 2026.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 5; 1972, ch. 203, § 23, 1974, ch. 125, § 2; 1976, ch. 127, § 11) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 458, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Notice.

1. Constitutionality.

The authorization to the school boards to adopt an occupational tax does not violate Const., § 29. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

2. Notice.

Wide publicity is not a substitute for statutory compliance, but when coupled with a notice which substantially follows the legal requirements the notice may be held valid. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

Where the notice of a public hearing on the adoption of the occupational tax did not state that it was for the purpose of hearing comments and complaints and the number of the house bill under which the hearing was to be held was incorrectly printed but the notice was supported by front-page publicity, there was substantial compliance with the notice requirement. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

Cited in:

Flincheum v. Hickman County Kentucky Board of Education, 503 S.W.2d 752, 1973 Ky. LEXIS 50 (Ky. 1973).

OPINIONS OF ATTORNEY GENERAL.

Unless a county board of education had acted in bad faith the fiscal court had no alternative but to accept the school budget as presented to them and levy the requested three percent utility gross receipts license tax. OAG 67-435.

If the school board complies with KRS 160.593 and with this section, the fiscal court is mandatorily required to levy a utility gross receipts license tax, within 15 days of such request, at the rate requested. OAG 69-367.

Where a school board complies with the provisions of this section and KRS 160.593, the fiscal court is mandatorily required to levy the requested tax within 15 days of such request and at the rate requested. OAG 72-365.

Where the fiscal court levies the utility gross receipts license tax authorized by KRS 160.613, the public should be notified by the school board in compliance with this section. OAG 74-288.

Where the school board had requested the fiscal court to levy a gross receipts utility tax for school purposes after compliance with KRS 160.593 and this section and the fiscal court refused to levy such tax, the county attorney could not represent the school board if a suit against fiscal court became necessary because of conflict of interest as county attorney pursuant to KRS 69.210. OAG 75-152.

The utility gross receipts license tax is levied by the fiscal court at the request of the school district board of education. OAG 80-22, 1980 Ky. AG LEXIS 625.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) (now KRS 160.470(9)(a)) or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of KRS 160.593 and this section, but the recall provisions of KRS 160.597 do not apply. OAG 90-88, 1990 Ky. AG LEXIS 88.

Any board complying fully with the provisions of KRS 160.614 and this section is not subject to the provisions of KRS 160.597. OAG 90-96, 1990 Ky. AG LEXIS 102.

160.605. Occupational license tax for schools — Exemptions.

There is hereby authorized the levy of an occupational license tax for schools on salaries, wages, commissions, and other compensation of individuals for work done and services performed or rendered in a county and on the net profits of all businesses, professions, or occupations from activities conducted in a county. No public service company which pays an ad valorem tax is required to pay an occupational license tax for schools. No occupational license tax for schools

shall be imposed upon or collected from any insurance company, bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special election.

History.

Enact. Acts 1966, ch. 24, Part III, § 6; 1976, ch. 104, § 3; 1976, ch. 301, § 8; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 459, effective July 13, 1990; 1998, ch. 509, § 7, effective July 15, 1998.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 6; 1976, ch. 104, § 3; 1976, ch. 301, § 8) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 459, effective July 13, 1990.

Section 10 of Acts 1998, ch. 509, provided that the 1998 amendments to this section "apply to tax years beginning after December 31, 1997."

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Resolution and Order.
3. Notice of Hearing.

1. Constitutionality.

The statute did not make an unconstitutional delegation of authority to tax. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

2. Resolution and Order.

Where a resolution was adopted making the tax levy at the meeting of the fiscal court on July 2, 1968 and it was implemented by amendment at the August 20 meeting and the amendment did not change the amount, nature or purpose of the levy, there was no violation of the enabling statute. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

Where the resolution and order as amended adopting the tax levy did not provide for all possible controversies, it was not void for uncertainty. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

3. Notice of Hearing.

Where the notice of a public hearing on the adoption of the occupational tax did not state that it was for the purpose of hearing comments and complaints and the number of the house bill under which the hearing was to be held was incorrectly printed but the notice was supported by front-page publicity, there was substantial compliance with the notice requirement. Turrell v. Board of Education, 441 S.W.2d 767, 1969 Ky. LEXIS 327 (Ky. 1969).

OPINIONS OF ATTORNEY GENERAL.

A county may impose an occupational license tax for school purposes under this section only as to earned income and such a tax can be levied against natural or artificial persons as to the amount of income earned or services performed within the county limits, except as to those activities which are isolated, occurring infrequently (nonsystematic) or are a result of temporary special employment and, furthermore, an occupational license tax may be imposed upon a federal reservation by a county, notwithstanding the exclusive jurisdiction of the federal government. OAG 78-383, 1978 Ky. AG LEXIS 403.

A county may proportionately reduce the occupational license tax imposed under KRS 160.605 by enacting an ordinance with a logical arrangement for such a reduction, when the tax is to be levied after the start of the fiscal year and likewise penalties may be imposed for failure to pay the tax, but such penalties must be codified by ordinance. OAG 78-383, 1978 Ky. AG LEXIS 403.

A proportionate deduction may be used where the taxing ordinance is effectuated during the middle of a calendar-tax year, so long as it is logically arranged. OAG 78-383, 1978 Ky. AG LEXIS 403.

If a Union County business, whether a partnership or a corporation, performs work and services outside the county, only that portion which is earned in Union County is taxable. OAG 78-383, 1978 Ky. AG LEXIS 403.

The board of education can require the employer to comply with the occupational license tax ordinance by explicitly stating in a separate ordinance a penalty for failure to comply. OAG 78-383, 1978 Ky. AG LEXIS 403.

The scope of an occupational license tax as relates to revenue received for the privilege of engaging in a livelihood is confined to earned income. OAG 78-383, 1978 Ky. AG LEXIS 403.

Where a person resides is not the basis for levying an occupational license tax; the touchstone is where the person works and whether that activity is continuous or systematic. OAG 78-383, 1978 Ky. AG LEXIS 403.

Where an employee enters his place of employment is not important; rather, the question is where he is to perform the work, and therefore, in the case of a coal miner, the location of the entrance to the mine is unimportant but the location of the vein he works is important. OAG 78-383, 1978 Ky. AG LEXIS 403.

Union county may impose and collect an occupational license tax on earned income of persons employed at Camp Breckinridge. OAG 78-383, 1978 Ky. AG LEXIS 403.

160.607. Rate of tax — Sunset on new taxes.

(1) The school tax authorized by KRS 160.482 to 160.488 and 160.605 shall be at a single uniform rate not to exceed one-half of one percent (0.5%) and shall continue from year to year until changed as prescribed in KRS 160.635 and 160.484.

(2) Any county having five hundred thousand (500,000) or more inhabitants is authorized to increase the school tax rate to exceed the maximum set in subsection (1) of this section by one-quarter of one percent (0.25%) before April 14, 2026.

(3) Beginning on or after January 1, 2027:

(a) A school tax is not authorized to be imposed under KRS 160.482 to 160.488 and 160.605 in a school district that does not already have one imposed; and

(b) The rate of a school tax imposed under KRS 160.482 to 160.488 and 160.605 shall never increase.

History.

Enact. Acts 1966, ch. 24, Part III, § 7; 1972, ch. 254, § 4; 1974, ch. 251, § 1; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 460, effective July 13, 1990; 2026 ch. 161, § 77, effective April 14, 2026.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 7; 1972, ch. 254, § 4; 1974, ch. 251, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 460, effective July 13, 1990.

160.608. Authorization for levy of either or both utility gross receipts tax and excise tax on income, in addition to occupational license taxes. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 251, § 2; 1982, ch. 50, § 2, effective March 4, 1982) was repealed by Acts 1984, ch. 43, § 2, effective July 13, 1984.

160.609. Procedure for recall of levy. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1974, ch. 251, § 3; 1982, ch. 50, § 1, effective March 4, 1982) was repealed by Acts 1984, ch. 43, § 2, effective July 13, 1984.

160.610. Fort Knox independent school district. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1944, ch. 26, §§ 1, 2) was repealed by Acts 1966, ch. 255, § 283.

160.611. Nonresidents of school districts exempt.

No occupational license tax for schools shall be collected from any individual who is not a resident of the school district imposing the school tax.

History.
Enact. Acts 1966, ch. 24, Part III, § 8; 1976, ch. 127, § 12; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 461, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1966, ch. 24, Part III, § 8; 1976, ch. 127, § 12) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 461, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.
This section, which exempts nonresidents of the county from paying the license or occupational tax for schools, did not violate either the state or federal Constitutions because it taxed only the persons living in that area that would receive the benefit. Board of Education v. Board of Education, 458 S.W.2d 6, 1970 Ky. LEXIS 160 (Ky. 1970).

UTILITY GROSS RECEIPTS LICENSE TAX FOR SCHOOLS

160.613. Utility gross receipts license tax for schools — Exemptions — User liable if supplier is exempt — Direct pay authorization — Tollers.

(1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the district, of utility services, except that "gross receipts" shall not include amounts received for furnishing:

(a) Energy or energy-producing fuels to a person engaged in manufacturing or industrial processing as provided in subsection (3) or (4) of this section, if that person provides the utility services provider with a copy of its utility gross receipts license tax energy direct pay authorization, as provided in subsection (3) of this section, and the utility service provider retains a copy of the authorization in its records;

(b) Utility services which are to be resold; or

(c) Notwithstanding subsection (2) of this section, electricity used or consumed at a colocation facility in commercial mining of cryptocurrency:

1. If the facility operator provides the utility services provider with a copy of its utility gross receipts license tax exemption certificate, as authorized by subsection (6) of this section, and the utility service provider retains a copy of the exemption certificate in its records; or

2. If the utility service provider is a governmental agency, the facility operator shall retain the exemption certificate in its records.

(2) If any user of utility services purchases the utility services directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax, then the user of the utility services, if the tax has been levied in the user's school district, shall be liable for the tax and shall register with and pay directly to the department, in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all utility services received by the tax rate levied under the provisions of this section.

(3) A person engaged in manufacturing or industrial processing whose cost of energy or energy-producing fuels used in the course of manufacturing or industrial processing exceeds an amount equal to three percent (3%) of the cost of production may apply to the department for a utility gross receipts license tax energy direct pay authorization. Cost of production shall be computed on the basis of a plant facility, which shall include all operations within the continuous, unbroken, integrated manufacturing or processing production process that ends with a product packaged and ready for sale. If the person receives confirmation of eligibility from the department, the person shall:

(a) Provide the utility services provider with a copy of the utility gross receipts license tax energy direct pay authorization issued by the department for all purchases of energy and energy-producing fuels; and

(b) Report and pay directly to the department, in accordance with the provisions of KRS 160.615, the utility gross receipts license tax due.

(4) A person who performs a manufacturing or industrial processing activity for a fee and does not take ownership of the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity is a toller. For periods on or after July 1, 2018, the costs of the tangible personal property shall be excluded from the toller's cost of production at a plant facility with tolling operations in place as of July 1, 2018.

(5) For plant facilities that begin tolling operations after July 1, 2018, the costs of tangible personal property shall be excluded from the toller's cost of production if the toller:

(a) Maintains a binding contract for periods after July 1, 2018, that governs the terms, conditions, and

responsibilities with a separate legal entity, which holds title to the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity;

(b) Maintains accounting records that show the expenses it incurs to fulfill the binding contract that include but are not limited to energy or energy-producing fuels, materials, labor, procurement, depreciation, maintenance, taxes, administration, and office expenses;

(c) Maintains separate payroll, bank accounts, tax returns, and other records that demonstrate its independent operations in the performance of its tolling responsibilities;

(d) Demonstrates one (1) or more substantial business purposes for the tolling operations germane to the overall manufacturing, industrial processing activities, or corporate structure at the plant facility. A business purpose is a purpose other than the reduction of utility gross receipts license tax liability for the purchases of energy and energy-producing fuels; and

(e) Provides information to the department upon request that documents fulfillment of the requirements in paragraphs (a) to (d) of this subsection and gives an overview of its tolling operations with an explanation of how the tolling operations relate and connect with all other manufacturing or industrial processing activities occurring at the plant facility.

(6)(a) The operator of a colocation facility primarily engaged in the commercial mining of cryptocurrency may apply to the department for a utility gross receipts license tax exemption certificate. If the operator receives confirmation of eligibility from the department, it:

1. Shall provide the utility services provider with a copy of the utility gross receipts license tax exemption certificate issued by the department for all purchases of electricity; or

2. Keep the certificate on file if the utility service provider is a governmental agency.

(b) The utility gross receipts license tax exemption shall be effective from the date of confirmation of eligibility until June 30, 2030.

History.

Enact. Acts 1966, ch. 24, Part III, § 9; 1974, ch. 250, § 1, 1980, ch. 27, § 1, effective March 6, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 462, effective July 13, 1990; 1998, ch. 500, § 1, effective July 15, 1998; 2002, ch. 69, § 5, effective July 15, 2002; 2004, ch. 79, § 2, effective July 1, 2005; 2014, ch. 137, § 1, effective July 15, 2014; 2019 ch. 151, § 74, effective June 27, 2019; 2021 ch. 122, § 2, effective July 1, 2021.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 9; 1974, ch. 250, § 1, 1980, ch. 27, § 1, effective March 6, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 462, effective July 13, 1990.

Legislative Research Commission Notes.

(6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 74 of that Act apply to transactions occurring on or after July 1, 2019.

(6/27/2019). This statute was amended in Section 74 of 2019 Ky. Acts ch. 151. Section 86 of that Act reads, "No claim for refund or credit of a tax overpayment for any taxable period ending prior to July 1, 2018, made by an amended return, tax refund application, or any other method after June 30, 2018, and based on the amendments to subsection (3) of Section 27 of this Act or based on the amendments to Section 74 [this statute] or 75 of this Act, shall be recognized for any purpose."

(6/27/2019). This statute was amended in Section 74 of 2019 Ky. Acts ch. 151. Section 87 of that Act reads, "Notwithstanding KRS 446.090, the amendments to subsection (3) of Section 27 of this Act [KRS 139.480] and the amendments to Sections 74 [this statute] and 75 [KRS 160.6131] of this Act are not severable. If the amendment made to subsection (3) of Section 27 of this Act or the amendments to Section 74 or 75 of this Act is declared invalid for any reason, then all amendments to subsection (3) of Section 27 of this Act and the amendments to Sections 74 and 75 of this Act shall also be invalid."

(7/12/2006). 2005 Ky. Acts ch. 123, relating to the creation and organization of the Environmental and Public Protection Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Liability for Tax.
3. Exemptions.
4. Regulations.
5. Refund.
6. Recall Election.

1. Constitutionality.

The tax authorized under this section is for state purposes and, therefore, does not violate the provisions of Ky. Const., § 181. Lamar v. Board Education, 467 S.W.2d 143, 1971 Ky. LEXIS 359 (Ky. 1971).

Taxation of gross receipts from sales of gas which has moved in interstate commerce and is delivered direct to a Kentucky consumer is not an infringement of the commerce clause of the United States Constitution. Texas Gas Transmission Corp. v. Board of Education, 502 S.W.2d 82, 1973 Ky. LEXIS 70 (Ky. 1973).

The county regulation requiring the payment of the Utility Gross Receipts License Tax by the direct payment method in order to claim the exemption under this section to the extent that the cost of energy or energy-producing fuels used by a manufacturer, processor, miner, or refiner exceeds three percent of its cost of production, did not violate Ky. Const., §§ 171 and 172, as the regulation was neither arbitrary nor unreasonable, and the taxpayer was not assessed for excess tax. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. Ky. 1986).

2. Liability for Tax.

Where a fiscal court levied a utility gross receipts license tax of three percent pursuant to KRS 160.613 and a utility therefore increased its customers' bills by three percent (3%) pursuant to KRS 160.617, the utility was the taxpayer liable for its consequent increase in gross receipts since such receipts were not exempt from sales tax and the increase could not be considered as a tax on customers in which the utility company merely acted as a collection agency. Luckett v. Electric & Water Plant Board, 558 S.W.2d 611, 1977 Ky. LEXIS 543 (Ky. 1977).

Although not regulated as a public utility, a broker derived utility gross receipts when it furnished natural gas directly to a customer. Thus, the broker was subject to imposition of

utility tax under KRS 160.613(1). Commonwealth v. St. Joseph Health Sys., Inc., 398 S.W.3d 446, 2013 Ky. App. LEXIS 11 (Ky. Ct. App. 2013).

Any entity, whether regulated as a public utility or not, that furnishes utility services derives utility gross receipts from the furnishing of those utility services and, therefore, is subject to imposition of utility tax under KRS 160.613(1). Commonwealth v. St. Joseph Health Sys., Inc., 398 S.W.3d 446, 2013 Ky. App. LEXIS 11 (Ky. Ct. App. 2013).

3. Exemptions.

The county regulation requiring the payment of the Utility Gross Receipts License Tax in order to claim the exemption under subsection (1) of this section did not enlarge or limit the terms of the legislative enactment, and the county fiscal court had the authority to promulgate regulations for the collection of the tax; therefore, the regulation did not violate the law, and the taxpayer was not entitled to a refund for the overpaid tax on the ground that the regulation was invalid and it paid the excess tax involuntarily. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. Ky. 1986).

The regulation requiring the payment of the Utility Gross Receipts License Tax by the direct payment method in order to claim the exemption to the extent that the cost of energy or energy-producing fuels used by a manufacturer, processor, miner or refiner exceeds three percent (3%) of its cost of production did not conflict with the enabling statute. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. Ky. 1986).

A local regulation providing for a local utility tax for the purpose of collecting revenue for schools was invalid to the extent that it allowed taxpayers with an energy direct pay authorization (EDPA) to claim an exemption for energy costs that exceeded three percent (3%) of the cost of production and provided no regulatory scheme for a refund of excess tax paid prior to the time a taxpayer is eligible to obtain an EDPA. Inland Container Corp. v. Mason County Bd. of Educ., 6 S.W.3d 374, 1999 Ky. LEXIS 149 (Ky. 1999).

4. Regulations.

Where the direct payment method caused less disruption in the finances of the county school district, the county regulation which gave refunds or credits to taxpayers who paid according to the direct payment method when their cost of energy or energy-producing fuels used exceeded three percent (3%) of their cost of production, but denied it to those who failed to use that method, did not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. Ky. 1986).

5. Refund.

Since the Utility Gross Receipts License Tax is a local tax and the moneys levied by the tax are not paid into the state treasury, KRS 134.580 would not provide a refund to a taxpayer. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. Ky. 1986).

6. Recall Election.

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

Cited in:

Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971); Board of Education v. Fiscal Court of Warren County, 485 S.W.2d 752, 1972 Ky. LEXIS 141 (Ky. 1972); Board of Elections v. Board of Education, 635 S.W.2d 324, 1982 Ky. App. LEXIS 221 (Ky. Ct. App. 1982); Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984); Directv, Inc. v. Treesh, 290 S.W.3d 638, 2009 Ky. LEXIS 145 (Ky. 2009).

OPINIONS OF ATTORNEY GENERAL.

A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

Bottled gas companies are not utilities and are not subject to the utility gross receipts license tax. OAG 66-555.

Electrical power furnished to coal mines for the purpose of mining coal would be exempt from the three percent utility gross receipts license tax if it can be shown by the mining companies that such electrical power consumed by them is more than three percent of their total cost of production. OAG 66-599.

The county fiscal court would be the proper party to institute any legal action to enforce the collection and payment of the utility gross receipts license tax. OAG 66-599.

Electrical power furnished to coal mines for the purpose of mining coal would be exempt from the three percent utility gross receipts license tax to the extent that such power used by the companies exceeds three percent of their total cost of production. OAG 66-663.

A county school board could request a budget increase and the levy of a utility gross receipts license tax in the same year. OAG 66-675.

The utility gross receipts license tax would not apply to the sale of mineral spring water, fuel oil, or drinking water in a particular school district. OAG 67-51.

Since the utility gross receipts license tax for schools is on the vendor there is no exemption for agencies of the federal government. OAG 67-201.

A water district is not required to pay the three percent utility tax on sewerage charges where such charges are made a part of the total water bill and are not itemized or separated on the bill to the customer. OAG 67-282.

Utility companies are not responsible for payment of the three percent tax on sewerage charges when the charge is determined from water consumption but is separated from the rest of the utility bill. OAG 67-282.

The monthly remittance of the gross receipts license tax for schools is mandatory and the Attorney General's office has no authority to approve a different period for the payment of the tax. OAG 67-403.

Unless a county board of education had acted in bad faith the fiscal court had no alternative but to accept the school budget as presented to them and levy the requested three percent utility gross receipts license tax. OAG 67-435.

For a pulp and paper company the price of pulp wood and other raw materials would be excluded from operating costs. OAG 68-58.

Each source of energy or energy-producing fuel would be taxable to the extent it does not exceed three percent of production. OAG 68-58.

In determining the cost of energy or energy-producing fuels each type of energy-producing fuel would have to be treated separately. OAG 68-58.

The cost to a pulp and paper company of treating water from the river could be treated as cost of production, but not as a cost of energy or energy-producing fuels. OAG 68-58.

A natural gas pipeline company, required by the provisions of KRS 278.485 to furnish gas to homeowners living adjacent to its lines, but not required to serve the public in general, is not a public utility and is not required to collect the tax imposed by this section. OAG 68-179.

The school board may request the tax at any time. OAG 69-17.

The levy can become effective within a reasonable time after the provisions of this section have been complied with, which would be 30 to 60 days. OAG 69-17.

A county public library is required to pay a school tax on utilities. OAG 69-202.

If the school board complies with KRS 160.593 and with 160.603, the fiscal court is mandatorily required to levy a utility gross receipts license tax, within 15 days of such request, at the rate requested. OAG 69-367.

The collection of the tax authorized by this section is limited to utility services furnished to customers located within the county and would not extend to utility services furnished customers in an adjoining state. OAG 69-576.

Energy furnished a company for manufacturing, processing, mining, or refining purposes would be exempt from the utility gross receipts tax only to the extent that the cost of the energy used exceeds three percent of the cost of production. OAG 70-757.

The housing authority of Lexington, under the provisions of KRS 80.190, is required to pay the utility gross receipts license tax for schools provided for in this section. OAG 70-788.

The procedure for reducing the tax is set out in KRS 160.635. OAG 71-323.

This section contains no tax exemptions for counties and other political subdivisions. OAG 72-460.

A city-owned utility, as well as a public utility, is required to pay the three percent utility gross receipts tax for schools when it has been enacted by the fiscal court upon request of the school district after notice and hearing in accordance with KRS 160.603. OAG 73-822.

A city-owned utility is not entitled to be paid the expense of collecting the utility gross receipts tax since it may pass the tax on to consumers through a rate increase which, in contrast to a public utility under the Public Service Commission, may be done without commission approval. OAG 73-822.

Whether or not a rural electric cooperative corporation increases its rates it must pay the utility gross receipts license tax for schools provided in KRS 160.613 since the exemption provided for in KRS 279.200 was repealed by the later enactment of KRS 160.613 and 160.617, leaving as the only exemption that provided for in KRS 160.613. OAG 74-507.

As the tax authorized by this section may be passed on to the customers directly as a rate increase, the amounts paid thereunder are not deductible by the utility for state income tax purposes. OAG 74-814.

The flat charge for the furnishing of energy to security lights would fall within the definition of gross receipts set out in this section and would subject such fee to the tax provided in the section. OAG 75-432.

A rural water district required to pay the utility gross receipts tax may increase its rates by 3%, but the increase shall be noted on the bills as a "rate increase for school taxes" and any expenses incurred in passing the tax on to the customers must be absorbed by the utility company. OAG 75-455.

The state, county and city governments are subject to the utility gross receipts license tax authorized by this section. OAG 76-269.

Where a water district, which purchases water from the municipal water and sewer commission, sells water to its own customers and bills them individually, the water district must pay the utility gross receipts license tax to the county finance officer on the amount it bills to its individual customers, but if the customers resell the water to commercial haulers, then the customers must pay the utility tax. OAG 76-269.

Since the utility gross receipts license tax is denominated a rate increase with only those exceptions set out herein, religious institutions would not be exempt from paying the tax. OAG 80-22, 1980 Ky. AG LEXIS 625.

A school board is not prohibited from decreasing the tax rate below the maximum three percent if, in the board's discretion, such a decrease is deemed warranted. OAG 80-59, 1980 Ky. AG LEXIS 579.

The local board of education has discretion to adopt a resolution calling for the levying of a utility gross receipts license tax for an indefinite number of years to come or to prescribe a predetermined number of years for existence of the tax. OAG 80-59, 1980 Ky. AG LEXIS 579.

Where a county board of education levied a utility gross receipts tax pursuant to an order authorized by this section, after which a recall petition was presented to the county board of elections requesting that the tax levy be placed on the ballot for voter approval or disapproval pursuant to KRS 160.597, the board of education's subsequent withdrawal of the tax levy order was a valid exercise of its discretion and the board of elections would not be required to still submit the recall question to the voters, since the necessity of the public having to bear the expense of holding such an election would serve no useful purpose. OAG 80-442, 1980 Ky. AG LEXIS 242.

The furnishing of telephonic communications services "within the county" is the taxable event and the basis of the county's jurisdiction to impose the gross receipts tax. OAG 82-45, 1982 Ky. AG LEXIS 402.

The installation, maintenance and continued provision of telephones to residents within a county must constitute the furnishing of "telephonic communications services" and the phrase "telephonic communications services" makes no distinction between local calls and intrastate long distance calls; consequently, there is no reasonable basis to assume that the legislature ever intended to make such a distinction. OAG 82-45, 1982 Ky. AG LEXIS 402.

Any intrastate long distance telephone call which is made to or from a telephone located within a county where the tax is applicable and which is billed to that telephone is subject to the utility gross receipts license tax and the customer's payment for such a call would then be included in "gross receipts" as defined in this section; any suggestion that such a payment should not be included in gross receipts is simply not supported by the plain language of this section since the only amounts that are to be exempted from gross receipts are specifically set out and those exemptions do not include receipts from intrastate long distance telephone calls. OAG 82-45, 1982 Ky. AG LEXIS 402.

Two (2) school districts, which were a combined taxing district prior to 1976 amendment of KRS 160.593, were no longer a combined taxing district for the levying of the three percent utility gross receipts license tax, where, at no time after June 19, 1976, did the two (2) school districts seek and obtain written approval from the State Board of Education to continue to levy an identical tax as a combined taxing district. OAG 82-146, 1982 Ky. AG LEXIS 500.

A religious institution is not exempt from paying the utility gross receipts license tax. OAG 82-190, 1982 Ky. AG LEXIS 483.

The 3% utility gross receipts license tax authorized by this section may not be collected on sewerage and thus the water usage and sewerage usage will have to be separated on the bill in order for the 3% to be charged only on the water usage. OAG 82-519, 1982 Ky. AG LEXIS 110.

Upon a merger of a county school district and an independent school district, the utility gross receipts license tax of three percent in effect in the county school district would become effective as to the entire merged district. OAG 83-325, 1983 Ky. AG LEXIS 172.

Telephonic communications services encompass telephonic equipment provided to consumers by telephone companies for a periodic fee which would be included in gross receipts subject to the tax. OAG 83-346, 1983 Ky. AG LEXIS 144.

Since cable television is not specifically named in this section, and does not fall within the meaning of "telephonic and telegraphic communications services" because it is not a form of communication provided by telephones or telegraphs,

the tax does not apply to cable television. OAG 83-346, 1983 Ky. AG LEXIS 144.

Even though a utility company may raise its rates under KRS 160.617 to compensate for the utility gross receipts license tax levied by this section, this does not make it a tax levied on the customers; it remains the utility company's liability. Consequently, the Providence Housing Authority, a tax exempt organization, is not exempt from paying the added cost since it is not paying the utility gross receipts license tax, it is paying for utility services. OAG 83-445, 1983 Ky. AG LEXIS 45.

The utility gross receipts tax is not actually a tax on the consumer, but rather is a tax on the utility itself although the utility does have the statutory authority, under KRS 160.617, to pass on the tax to the consumer; there is no statutory basis for providing an exemption to any consumer. OAG 84-70, 1984 Ky. AG LEXIS 315.

Where the only road by which one could gain access to property located in a county which had a utility gross receipts tax was through the adjacent county, which did not have such tax, and where the Property Valuation Administrators of the two counties agreed to allow residents of such property to pay their property taxes in adjacent county in exchange for the county magistrate in that area caring for the roads and providing other services to these people, such arrangement had no valid legal basis and residents of the property were not entitled to exemption from utility gross receipts tax if their property was within the boundaries of the county school district, even though their children attended school in the adjacent county. OAG 84-70, 1984 Ky. AG LEXIS 315.

While this section does contain an exemption for utilities that are resold, it is obvious that the exemption applies only to utility purchases that are resold as utilities, in which event the reseller becomes liable for the tax as a supplier of the utility; in the case of a brick manufacturer, presumably the water purchases represent the cost of a raw material necessary for production; although the water may be a component of the finished bricks, nobody buys bricks to get the water out of them and therefore, the manufacturer may not be deemed to be reselling the water utility, and consequently its water purchases are taxable. OAG 92-22, 1992 Ky. AG LEXIS 22.

County is obligated to pay the cost of taxes imposed on utilities that are passed through to the county as a consumer. County is not entitled to a refund of such taxes that have been previously paid. OAG 93-17, 1993 Ky. AG LEXIS 29.

160.6131. Definitions for KRS 160.613 to 160.617.

As used in KRS 160.613 to 160.617:

(1) "Department" means the Department of Revenue;

(2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.

(a) "Communications service" includes but is not limited to:

1. Local and long-distance telephone services;
2. Telegraph and teletypewriter services;
3. Postpaid calling services;
4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
5. Channel services involving a path of communications between two (2) or more points;
6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
7. Caller ID services, ring tones, voice mail, and other electronic messaging services;
8. Mobile wireless telecommunications service and fixed wireless service as defined in KRS 139.195; and
9. Voice over Internet Protocol (VOIP).

(b) "Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:

1. Information services;
2. Internet access as defined in 47 U.S.C. sec. 151;
3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;
4. The sale of directory and other advertising and listing services;
5. Billing and collection services provided to another communications service provider;
6. Cable service, satellite broadcast, satellite master antenna television, wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996, and internet protocol television provided through wireline facilities without regard to delivery technology;
7. The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:
   a. Carrier access charges, excluding user access fees;
   b. Right of access charges;
   c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
   d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
   e. Charges for use of facilities for providing or receiving communications service;
8. Prepaid calling services and prepaid wireless calling service;
9. Interstate telephone service, if the interstate charge is separately itemized for each call; and
10. If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records;

(3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased;

(4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in

any form, as consideration for the furnishing of utility services;

(5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas;

(6) "Cable service" has the same meaning as in KRS 136.602;

(7) "Satellite broadcast and wireless cable service" has the same meaning as in KRS 136.602;

(8) "Ring tones" has the same meaning as in KRS 136.602;

(9) "Multichannel video programming service" has the same meaning as in KRS 136.602;

(10) "Industrial processing" has the same meaning as in KRS 139.010;

(11) "Manufacturing" has the same meaning as in KRS 139.010;

(12) "Plant facility" has the same meaning as in KRS 139.010;

(13) "Commercial mining of cryptocurrency" has the same meaning as in KRS 139.516; and

(14) "Colocation facility" has the same meaning as in KRS 139.516.

History.

Enact. Acts 2004, ch. 79, § 1, effective July 1, 2005; 2005, ch. 85, § 595, effective June 20, 2005; 2005, ch. 168, § 129, effective March 18, 2005; 2007, ch. 141, § 17, effective July 1, 2007; 2009, ch. 99, § 3, effective July 1, 2009; 2019 ch. 151, § 75, effective June 27, 2019; 2021 ch. 122, § 3, effective July 1, 2021; 2026 ch. 161, § 45, effective August 1, 2026.

Compiler's Notes.

The definition of "internet access" referred to in subsection (2)(b)2 above is found in Sec. 1101 of the Internet Tax Freedom Act, which appears as a note under 47 U.S.C.S. § 151.

Section 602 of the federal Telecommunications Act of 1996, referred to in (2)(b)6., may be found as a note following 47 USCS § 152.

Legislative Research Commission Notes.

(6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 75 of that Act apply to transactions occurring on or after July 1, 2019.

(6/27/2019). This statute was amended in Section 75 of 2019 Ky. Acts ch. 151. Section 86 of that Act reads, "No claim for refund or credit of a tax overpayment for any taxable period ending prior to July 1, 2018, made by an amended return, tax refund application, or any other method after June 30, 2018, and based on the amendments to subsection (3) of Section 27 of this Act or based on the amendments to Section 74 or 75 [this statute] of this Act, shall be recognized for any purpose."

(6/27/2019). This statute was amended in Section 75 of 2019 Ky. Acts ch. 151. Section 87 of that Act reads, "Notwithstanding KRS 446.090, the amendments to subsection (3) of Section 27 of this Act [KRS 139.480] and the amendments to Sections 74 [KRS 160.613] and 75 [this statute] of this Act are not severable. If the amendment made to subsection (3) of Section 27 of this Act or the amendments to Section 74 or 75 of this Act is declared invalid for any reason, then all amendments to subsection (3) of Section 27 of this Act and the amendments to Sections 74 and 75 of this Act shall also be invalid."

160.614. Tax on gross receipts from furnishing of cable television services and multichannel video programming services.

(1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable service in addition to the gross receipts derived from the furnishing of the utility services defined in KRS 160.6131.

(2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable service, in addition to the gross receipts derived from the furnishing of the utility services defined in KRS 160.6131, if the school district board of education repeats the notice and hearing requirements of KRS 160.603, but only as to the levy of the tax on the gross receipts derived from the furnishing of cable service.

(3) A utility gross receipts license tax initially levied by a school district board of education on or after July 1, 2005, shall include the gross receipts derived from the furnishing of direct satellite broadcast and wireless cable service in addition to the gross receipts derived from the furnishing of utility services defined in KRS 160.6131 and cable service.

(4) Any school district that has cable service included in the base of a utility gross receipts tax levied prior to July 1, 2005, shall, as of July 1, 2005, include gross receipts derived from the furnishing of direct satellite broadcast and wireless cable service in the base of its utility gross receipts tax at the same rate as applied to cable service, unless the school district board of education chooses to opt out of this requirement by following the procedures set forth in subsection (5) of this section.

(5) Any school district board of education may elect to opt out of the base expansion required by subsection (4) of this section. However, any district electing to opt out of the provisions of subsection (4) of this section shall also remove from the base of its utility gross receipts tax all gross receipts from the furnishing of cable service. To opt out of the provisions of subsection (4) of this section, a school district board of education shall, before May 1, 2005:

(a) Determine the amount of revenue that will be lost from removing gross receipts of cable service from the base of the utility gross receipts tax, and how that revenue will be replaced; and

(b) Provide written notice of the intent to opt out of the base expansion required by subsection (4) of this section to the Department of Revenue, the Department of Education, all cable service providers operating in the district, and the public.

1. Notice to the public shall be accomplished through the publication at least one (1) time in a newspaper of general circulation in the county, or by a posting at the courthouse door if there is no such newspaper, of the fact that the district board has elected to opt out of the base expansion required by subsection (4) of this section. The notice shall include the following information:

a. The amount of revenue that will be lost from removing gross receipts of cable service from the base of the utility gross receipts tax and how that revenue will be replaced; and

b. The date, time, and location of a meeting of the board, not earlier than one (1) week or later than two (2) weeks from the date of the notice,

for the purpose of hearing comments regarding the proposed action of the board, and explaining the reasons for the proposed action.

2. The board of education shall conduct a public hearing at the place and on the date and time provided in the notice for the purpose of hearing comments regarding the proposed action of the board, and explaining the reasons for the proposed action.

(6) A utility gross receipts license tax initially levied by a school district board of education on or after July 1, 2009, shall include the gross receipts derived from the furnishing of multichannel video programming service in addition to the gross receipts derived from the furnishing of utility services.

(7) Any school district board of education that has cable service and direct satellite broadcast and wireless cable service included in the base of a utility gross receipts tax levied prior to July 1, 2009, shall, as of July 1, 2009, include gross receipts derived from the furnishing of Internet protocol television service provided through wireline facilities without regard to delivery technology, in the base of its utility gross receipts tax at the same rate as applied to cable service and direct satellite broadcast and wireless cable service.

History.

Enact. Acts 1990, ch. 476, Pt. III, § 115, effective July 13, 1990; 2004, ch. 79, § 3, effective July 1, 2005; 2005, ch. 168, § 130, effective March 18, 2005; 2009, ch. 99, § 4, effective July 1, 2009.

Legislative Research Commission Notes.

(3/18/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

NOTES TO DECISIONS

Analysis

1. Application.
2. Recall Election.
3. Federal Preemption.

1. Application.

The county Board of Education argued that the enactment of this section indicated that the General Assembly intended that the recall provisions of KRS 160.597 would not be applicable to utility taxes levied to provide base or Tier One funding, but this section merely expanded the utilities subject to a permissive school funding levy to include cable television and in the absence of a strong statutory indication to the contrary, an express statute will not be deemed to have been abrogated by implication. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

2. Recall Election.

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431, 1992 Ky. App. LEXIS 22 (Ky. Ct. App. 1992).

School district board of education's levy of a utility gross receipts license tax on cable television services, pursuant to subsection (2) of this section, was subject to the levy recall procedure set out in KRS 160.597. Owensboro Cablevision v. Libs, 863 S.W.2d 331, 1993 Ky. App. LEXIS 60 (Ky. Ct. App. 1993).

3. Federal Preemption.

Section 602(a) of the Telecommunications Act of 1996 preempts local taxation of direct-to-home broadcast satellite programming; the gross receipt taxes which various local school district boards of education impose on satellite programming providers pursuant to KRS 1601.140 are local taxes which carry the administrative burdens the federal law was intended to avoid. DirecTV, Inc. v. Treesh, 290 S.W.3d 638, 2009 Ky. LEXIS 145 (Ky. 2009), cert. denied, 558 U.S. 1111, 130 S. Ct. 1053, 175 L. Ed. 2d 882, 2010 U.S. LEXIS 161 (U.S. 2010).

Providers of broadcast satellite services were not subject to the gross receipts tax of KRS 160.614(3) because the gross receipts tax, as administered, was the sort of local imposition preempted by Pub. L. No. 104-104, Title VI, § 602(a) (reprinted at 47 U.S.C.S. § 152, historical and statutory notes), of the federal Telecommunications Act of 1996. DirecTV, Inc. v. Treesh, 290 S.W.3d 638, 2009 Ky. LEXIS 145 (Ky. 2009), cert. denied, 558 U.S. 1111, 130 S. Ct. 1053, 175 L. Ed. 2d 882, 2010 U.S. LEXIS 161 (U.S. 2010).

Cited in:

Storer Communications of Jefferson County, Inc. v. Oldham County Bd. of Educ., 850 S.W.2d 340, 1993 Ky. App. LEXIS 47 (Ky. Ct. App. 1993).

OPINIONS OF ATTORNEY GENERAL.

Any board complying fully with the provisions of this section and KRS 160.603 is not subject to the provisions of KRS 160.597. OAG 90-96, 1990 Ky. AG LEXIS 102.

The inclusion of cable television services under the utility gross receipts license tax is merely an enlargement of the class of utilities subject to the utility gross receipts license tax and not a new tax. OAG 90-96, 1990 Ky. AG LEXIS 102.

160.6145. Utility gross receipts license tax returns, payments transmitted electronically — Waiver — Administrative regulations. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 2005, ch. 184, § 4, effective June 20, 2005) was repealed by Acts 2010, ch. 147, § 9, effective July 15, 2010.

160.615. Taxes payable, when — Extension.

(1) The school taxes authorized by KRS 160.613 and 160.614 shall be due and payable monthly and shall be remitted to the department on or before the twentieth day of the next succeeding calendar month.

(2) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the department in the form prescribed by the department, together with any tax due.

(3) For purposes of facilitating the administration, payment or collection of the taxes levied by KRS 160.613 and 160.614, the department, in consultation with the impacted school district, may permit or require returns or tax payments for periods other than those prescribed in subsections (1) and (2) of this section.

(4) The department may, upon written request received on or prior to the due date of the return or tax, for good cause satisfactory to the department, extend the time for filing the return or paying the tax for a period not to exceed thirty (30) days.

(5) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the tax would otherwise have been due.

History.

Enact. Acts 1966, ch. 24, Part III, § 10; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 463, effective July 13, 1990; 2004, ch. 79, § 4, effective July 1, 2005; 2006, ch. 6, § 21, effective March 6, 2006.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 10) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 463, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. 1986).

OPINIONS OF ATTORNEY GENERAL.

A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

The monthly remittance of the gross receipts license tax for schools is mandatory and the Attorney General's office has no authority to approve a different period for the payment of the tax. OAG 67-403.

The levy can become effective within a reasonable time after the provisions of KRS 160.613 have been complied with which would be 30 to 60 days. OAG 69-17.

160.6151. Administration of taxes authorized by KRS 160.613 and 160.614.

For purposes of administering the taxes authorized by KRS 160.613 and 160.614 relating to the sourcing of communications services and the rights of customers, the provisions of KRS 136.602, 136.605, and 139.775 shall apply.

History.

Enact. Acts 2004, ch. 79, § 5, effective July 1, 2005; 2007, ch. 141, § 18, effective July 1, 2007.

160.6152. Superintendents to provide information to department and to utilities — Allocation of tax payments — Agreement by participating districts within county to allocate based on average daily attendance — Resolution of conflicts.

(1) The superintendent of schools in each school district levying the tax permitted by KRS 160.593 shall, on or before March 31, 2005, provide to the department and to each entity providing utility services within the school district, the boundaries of the school district.

(2) If the boundaries reported to the department and to each entity providing utility services within the school district change, the superintendent of schools shall report the boundary changes to the department and to each entity providing utility services within the school district.

(3) The department and entities providing utility services within the school district shall allocate tax payments among the various school districts imposing the taxes authorized by KRS 160.613 and 160.614 in accordance with the most recent boundary information provided by the superintendents, as adjusted by any agreements entered into pursuant to KRS 160.6153. The department and entities providing utility services within a school district shall not be responsible for nor subject to the imposition of penalties or interest relating to, distribution errors resulting from incorrect boundary information provided pursuant to this section, and may rely upon the most recent boundary information and any agreements entered into pursuant to KRS 160.6153 and provided by each superintendent as accurate.

(4) If more than one (1) school district board of education within a county levies the taxes permitted under KRS 160.613 or 160.614, the participating districts may choose to allocate the taxes collected and distributed by the department in proportion to the number of pupils in average daily attendance in the participating districts that levy the tax as shown by the final certification by the chief state school officer for the previous school year pursuant to the provisions of KRS 157.310 to 157.440. Implementation of this allocation shall be based on the following provisions:

(a) The participating districts shall provide a jointly executed agreement to the department thirty (30) days prior to the first distribution to be so allocated;

(b) The agreement shall remain in effect until one (1) of the participating districts notifies the department and any other participating districts by certified mail thirty (30) days prior to the effective date of any change in allocation that the agreement is dissolved; and

(c) The department shall make annual adjustments to allocations made pursuant to an agreement entered into under this subsection based upon changes in the number of pupils in average daily attendance in the participating districts as shown by the final certification by the chief state school officer for the previous school year pursuant to the provisions of KRS 157.310 to 157.440.

(5) If there is a conflict regarding school district boundaries, the department may, until the conflict is resolved, distribute the total tax revenues collected for the districts involved in the conflict proportionately to the districts based upon the average daily attendance in the districts for the previous school year.

History.

Enact. Acts 2004, ch. 79, § 9, effective July 1, 2005; 2006, ch. 6, § 19, effective March 6, 2006.

Legislative Research Commission Notes.

(3/6/2006). 2006 Ky. Acts ch. 6, § 26, provides that this section applies retroactively to January 1, 2006.

160.6153. Procedure when allocation on taxpayer's return varies from school district boundary information provided by superintendents — Adjustment — Exceptions — Reallocation agreement.

(1) If the department determines that the allocation among districts as submitted by the taxpayer on the return varies from the school district boundary information submitted to the department pursuant to KRS 160.6152, the department shall:

(a) Make a proposed administrative adjustment to correct the erroneous allocation going forward;

(b) Determine whether the erroneous allocation was used on prior returns and if it was, make a proposed administrative adjustment going back a maximum of one (1) year from the date the erroneous allocation was discovered; and

(c) Retain taxes collected and still on hand for distribution to the impacted districts that are related to the erroneous allocation until the proposed administrative adjustment becomes final.

(2) Within ten (10) days of the discovery of the erroneous allocation, the department shall notify the taxpayer and the impacted school districts in writing of the allocation discrepancy, including the dollar amount at issue, the proposed administrative adjustment to be made, and the process for agreeing to or filing an exception to the proposed administrative adjustment.

(3) The proposed administrative adjustment shall become final upon the earlier of the receipt by the department of written acceptance of the administrative adjustment by all impacted school districts or the expiration of forty-five (45) days from the date of the notice with no exception having been filed.

(4)(a) Exceptions to the proposed administrative adjustment shall be filed with the commissioner of the department, within forty-five (45) days from the date of the notice, and shall include a supporting statement setting forth the basis of the exception. A copy of any exception filed shall also be mailed to the impacted utility services provider and any other impacted school district.

(b) After the exception has been filed, the impacted school district may request a conference with the department. The request shall be granted in writing stating the time and date of the conference. Other impacted school districts and the impacted utility services provider may also attend any conference. Additional conferences may be held upon mutual agreement.

(c) After considering the exceptions filed by the impacted school district, including any information provided during any conferences, a final administrative ruling shall be issued by the department. The final administrative ruling shall be mailed to all impacted school districts as well as the impacted utility services provider.

(d) The impacted school district filing the exception may request in writing a final ruling at any time after filing exceptions and a supporting statement, and the department shall issue the ruling within thirty (30) days after the request is received by the department.

(e) After a final ruling has been issued, the school district may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the school district is located.

(5) The method and timing of the implementation of a final administrative ruling that requires a reallocation of previously distributed tax receipts shall be determined by agreement of the impacted school districts, provided that any agreement allowing for adjustments to be made over time in the future shall not extend beyond four (4) years.

(a) The department shall, upon request of the impacted school districts, assist in the development of an agreement.

(b) An agreement that requires distribution changes that vary from the district boundary information shall be provided to the department so that distributions can be made in accordance with the agreement.

(c) If the impacted school districts fail to reach an agreement regarding the reallocation of previously distributed tax receipts, the department shall adjust distributions going forward for four (4) years so that at the expiration of four (4) years, the district that should have received the original distribution has recouped all of the funds distributed erroneously, and the district that erroneously received the funds has repaid all of the funds distributed erroneously.

History.

Enact. Acts 2004, ch. 79, § 7, effective July 1, 2005; 2006, ch. 6, § 22, effective March 6, 2006.

160.6154. Collection and distribution of taxes imposed under KRS 160.613 and 160.614.

(1) The department shall collect all taxes imposed by school districts pursuant to KRS 160.613 and 160.614, and shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of these taxes as provided under KRS Chapters 131, 134, and 135, except as otherwise provided in KRS 160.613 to 160.617. The department shall distribute the taxes collected to each school district imposing the tax on a monthly basis. Distributions shall be made in accordance with the district boundary information submitted to the department pursuant to KRS 160.6152, as modified by any adjustments or agreements made pursuant to the provisions of KRS 160.6153.

(2) From each distribution, the department shall deduct an amount which represents the proportionate share of the department's actual operating and overhead expenses incurred in the collection and administration of the taxes not to exceed one percent (1%) of the amount collected. The department shall report its actual expenses and the allocation of expenses among school districts to the Kentucky Board of Education on a quarterly basis.

(3) As soon as practicable after each return is received, the department may examine and audit it. If the amount of tax computed by the department is greater than the amount returned by the taxpayer, the excess shall be assessed by the department on behalf of the school district within two (2) years from the date

prescribed by law for the filing of the return including any extensions granted, except as provided in this section. A notice of the assessment shall be mailed to the taxpayer.

(4) In the case of a failure to file a return or the filing of a fraudulent return, the excess may be assessed at any time.

History.

Enact. Acts 2004, ch. 79, § 6, effective July 1, 2005; 2006, ch. 6, § 23, effective March 6, 2006.

160.6155. Taxes to be distributed in compliance with KRS 160.613 to 160.617.

The taxes collected by the department pursuant to KRS 160.613 to 160.617 are remitted to the department for administrative purposes only and shall remain the property of the local school districts levying the tax. The amounts so collected shall not be distributed, allocated, expended, or used in any manner except as provided in KRS 160.613 to 160.617.

History.

Enact. Acts 2004, ch. 79, § 12, effective July 1, 2005; 2006, ch. 6, § 24, effective March 6, 2006.

160.6156. Refund of utility gross receipts tax — Effect of utility's rate increase — Appeal to Circuit Court.

(1) Any utility service provider or any registered user of utility services as provided in KRS 160.613(2) or (3) that has paid the utility gross receipts tax imposed by a school district pursuant to KRS 160.613 and 160.614 to the department may request a refund or credit for any overpayment of tax or any payment where no tax was due within two (2) years after the tax due date, including any extensions granted.

(2) A request for refund shall be in writing, and shall be made to the department with a copy to the school district to which the tax was allocated. The request shall state the amount requested, the applicable period, and the basis for the request.

(3)(a) Refunds shall be authorized by the department, in consultation with the chairman or finance officer of the district board of education, with interest as provided in KRS 131.183.

(b) Notwithstanding paragraph (a) of this subsection, a utility service provider shall not be entitled to a refund or credit of the taxes paid under KRS 160.613 or 160.614 if the utility service provider has increased its rates in accordance with KRS 160.617, unless the utility service provider refunds or credits its related customers the amount of overpayment made to the department.

(4) The department shall make authorized tax refunds, including interest, from current tax collections in its possession allocated for distribution to the affected district. Applicable school district distributions and the department administrative expense allocation provided for pursuant to KRS 160.6154(2) shall be adjusted proportionately to reflect refunds paid. If sufficient funds are not available from the current distribution cycle, the department shall pay refunds from subsequent amounts collected for distribution to the affected district until all refund payments, including interest, have been completed.

(5) If the department denies a requested refund in whole or in part, the taxpayer may appeal the denial to the Circuit Court in the county where the school district is located within thirty (30) days from the mailing date of the denial.

History.

Enact. Acts 2004, ch. 79, § 8, effective July 1, 2005; 2006, ch. 6, § 20, effective March 6, 2006; 2008, ch. 132, § 4, effective April 24, 2008; repealed and reenact. 2009, ch. 86, § 4, effective March 24, 2009; 2014, ch. 137, § 2, effective July 15, 2014.

Legislative Research Commission Notes.

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstood."

(3/6/2006). 2006 Ky. Acts ch. 6, § 26, provides that this section applies retroactively to January 1, 2006.

NOTES TO DECISIONS

1. Applicability.

Because an action challenging the imposition of utility services tax was initiated by the consumer, not the provider, KRS 160.6156(1) was inapplicable and the consumer was not required to exhaust administrative remedies. Commonwealth v. St. Joseph Health Sys., Inc., 398 S.W.3d 446, 2013 Ky. App. LEXIS 11 (Ky. Ct. App. 2013).

160.6157. Penalty provisions applicable to taxes levied by school districts — Penalty imposed for erroneous billing.

(1) The uniform penalty provisions of KRS 131.180 shall apply to all taxes levied by school districts pursuant to KRS 160.613 and 160.614.

(2) In addition to the penalties provided by KRS 131.180 and the taxes imposed under KRS 160.613 and 160.614, any utility service provider that erroneously bills customers after being notified of the error by the department shall be subject to a penalty of twenty-five dollars ($25) per subsequent error, not to exceed ten thousand dollars ($10,000) per month.

History.

Enact. Acts 2004, ch. 79, § 10, effective July 1, 2005; 2008, ch. 132, § 5, effective April 24, 2008; repealed and reenact. 2009, ch. 86, § 5, effective March 24, 2009.

Legislative Research Commission Notes.

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstood."

160.6158. Waiver of penalties.

(1) Notwithstanding any other provisions to the contrary, the commissioner of the department, in consultation with an impacted school district, shall waive any penalty, but not interest, where it is shown to the satisfaction of the department that the failure to file or pay timely is due to reasonable cause.

(2) The penalty imposed by KRS 160.6157(2) may be waived by the department based on reasonable cause.

History.

Enact. Acts 2004, ch. 79, § 11, effective July 1, 2005; 2008, ch. 132, § 6, effective April 24, 2008; repealed and reenact. 2009, ch. 86, § 6, effective March 24, 2009.

Legislative Research Commission Notes.

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

(3/24/2009). 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstood."

(7/12/2006). 2005 Ky. Acts ch. 123, relating to the creation and organization of the Environmental and Public Protection Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

160.617. Utility rate increase.

Notwithstanding KRS 278.040(8), or any other provision to the contrary, any utility, cable service provider, or satellite broadcast and wireless cable service provider required to pay the tax authorized by KRS 160.613 or 160.614 may increase its rates in any school district in which it is required to pay the school tax by the amount of the school tax imposed, up to three percent (3%). Any utility, cable service provider, or satellite broadcast and wireless cable service provider so increasing its rates shall separately state on the bills sent to its customers the amount of the increase and shall identify the amount as: "Rate increase for school tax."

History.

Enact. Acts 1966, ch. 24, Pt. III, § 11; 1976, ch. 127, § 13; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 464, effective July 13, 1990; 2004, ch. 79, § 13, effective July 1, 2005; 2005, ch. 168, § 131, effective March 18, 2005; 2026 ch. 185, § 9, effective April 15, 2026.

Legislative Research Commission Notes.

(6/20/2005). A manifest clerical or typographical error contained in the 2005 Ky. Acts ch. 168, sec. 168 amendments to this section has been corrected in codification under the authority of KRS 7.136(1)(h).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Increase in Gross Receipts.

1. Constitutionality.

This section does not impose an arbitrary or discriminatory tax classification in violation of Ky. Const., §§ 2, 171. Lamar v. Board Education, 467 S.W.2d 143, 1971 Ky. LEXIS 359 (Ky. 1971).

2. Increase in Gross Receipts.

Where a fiscal court levied a utility gross receipts license tax of three percent pursuant to KRS 160.613 and a utility therefore increased its customers' bills by three percent pursuant to KRS 160.617, the utility was the taxpayer liable for its consequent increase in gross receipts since such receipts were not exempt from sales tax and the increase could not be considered as a tax on customers in which the utility company merely acted as a collection agency. Luckett v. Electric & Water Plant Board, 558 S.W.2d 611, 1977 Ky. LEXIS 543 (Ky. 1977).

Cited in:

Baker v. Strode, 348 F. Supp. 1257, 1971 U.S. Dist. LEXIS 14893 (W.D. Ky. 1971); Texas Gas Transmission Corp. v. Board of Education, 502 S.W.2d 82, 1973 Ky. LEXIS 70 (Ky. 1973).

OPINIONS OF ATTORNEY GENERAL.

The utility company should pay the tax to the county finance officer who would then distribute the tax to the school districts in the county. OAG 66-420.

The fiscal court could by regulation require a periodic roster or list of legal users or customers from the utility company. OAG 66-420.

A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

The county fiscal court would be the proper party to institute any legal action to enforce the collection and payment of the utility gross receipts license tax. OAG 66-599.

Since the utility gross receipts license tax for schools is on the vendor there is no exemption for agencies of the federal government. OAG 67-201.

The three percent (3%) tax can be passed on to the consumer, but if this option is exercised the special three percent (3%) must be identified on the utility bill. OAG 70-757.

Whether or not a rural electric cooperative corporation increases its rates it must pay the utility gross receipts license tax for schools provided in KRS 160.613 since the exemption provided for in KRS 279.200 was repealed by the later enactment of KRS 160.613 and 160.617, leaving the only exemption that provided for in KRS 160.613. OAG 74-507.

A utility may not impose Kentucky sales and use tax upon that part of the bill which is a license tax as there is nothing in the Kentucky Constitution which authorizes the levy of a tax on a tax. OAG 75-221.

Where a water district, which purchases water from the municipal water and sewer commission, sells water to its own customers and bills them individually, the water district must pay the utility gross receipts license tax to the county finance officer on the amount it bills to its individual customers, but if the customers resell the water to commercial haulers, then the customers must pay the utility tax. OAG 76-269.

Even though a utility company may raise its rates under this section to compensate for the utility gross receipts license tax levied by KRS 160.613, this does not make it a tax levied on the customers; it remains the utility company's liability. Consequently, the Providence Housing Authority, a tax ex-

empt organization, is not exempt from paying the added cost since it is not paying the utility gross receipts license tax, it is paying for utility services. OAG 83-445, 1983 Ky. AG LEXIS 45.

The utility gross receipts tax is not actually a tax on the consumer, but rather is a tax on the utility itself although the utility does have the statutory authority, under this section, to pass on the tax to the consumer; there is no statutory basis for providing an exemption to any consumer. OAG 84-70, 1984 Ky. AG LEXIS 315.

160.620. Independent school district at Louisville and Jefferson County Children's Home. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 198) was repealed by Acts 1966, ch. 255, § 283.

EXCISE TAX FOR SCHOOLS

160.621. Excise tax on individual income for schools. [Repealed]

History.
Enact. Acts 1966, ch. 24, Part III, § 12; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 465, effective July 13, 1990; repealed by 2026 ch. 161, § 133, effective April 14, 2026.

160.623. Regulations on excise. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1966, ch. 24, part III, § 13) was repealed by Acts 1976, ch. 127, § 23.

160.625. Excise tax returns — Payment — Form. [Repealed]

History.
Enact. Acts 1966, ch. 24, Part III, § 14; 1976, ch. 127, § 14; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 466, effective July 13, 1990; repealed by 2026 ch. 161, § 133, effective April 14, 2026.

160.627. Information on state income tax liability of school district residents — Department of Revenue as tax collector. [Repealed]

History.
Enact. Acts 1966, ch. 24, Part III, § 15; 1976, ch. 127, § 15; 1982, ch. 98, § 2, effective July 15, 1982; 1982, ch. 105, § 2, effective March 24, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 467, effective July 13, 1990; 2005, ch. 85, § 596, effective June 20, 2005; repealed by 2026 ch. 161, § 133, effective April 14, 2026.

160.630. Schools at Houses of Reform and Louisville-Jefferson County Children's Home classed as common schools and entitled to benefits as such. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1950, ch. 184, §§ 1-5) was repealed by Acts 1966, ch. 255, § 283.

160.631. Definitions for KRS 160.632. [Renumbered.]

Compiler's Notes.
This section (Enact. Acts 1952, ch. 88, § 1; 1958, ch. 126, § 19) has been recompiled as KRS 158.135(1), (2).

160.632. Reimbursement of districts for school services to out-of-school district children — Reports — Payment. [Renumbered.]

Compiler's Notes.
This section (Enact. Acts 1952, ch. 88, §§ 2 to 4) has been recompiled as KRS 158.135(3) to (5).

160.633. Deposit of excise tax proceeds. [Repealed]

History.
Enact. Acts 1966, ch. 24, Part III, § 16; 1982, ch. 98, § 3, effective July 15, 1982; 1982, ch. 105, § 3, effective March 24, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 468, effective July 13, 1990; repealed by 2026 ch. 161, § 133, effective April 14, 2026.

GENERAL PROVISIONS ON SCHOOL TAXES

160.635. Continuance of tax until reduced — Expiration date.

School taxes imposed under KRS 160.593 to 160.597, 160.601 to 160.617, and 160.635 to 160.648 shall remain in full force and effect from year to year until the local board of education reduces the rate in effect; however, at the time the tax is first levied the board may set a date on which the tax shall expire.

History.
Enact. Acts 1966, ch. 24, Part III, § 17, 1972, ch. 203, § 24; 1974, ch. 125, § 3; 1976, ch. 127, § 16; 1980, ch. 27, § 2, effective March 6, 1980; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 469, effective July 13, 1990; 2026 ch. 161, § 85, effective April 14, 2026.

Compiler's Notes.
This section (Enact. Acts 1966, ch. 24, Part III, § 17, 1972, ch. 203, § 24; 1974, ch. 125, § 3; 1976, ch. 127, § 16; 1980, ch. 27, § 2, effective March 6, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 469, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

A school board is not prohibited from decreasing the tax rate below the maximum three percent (3%) if, in the board's discretion, such a decrease is deemed warranted. OAG 80-59, 1980 Ky. AG LEXIS 579.

160.637. Reimbursement of costs.

Reasonable expenses not to exceed the actual costs of collection incurred by any tax collector, except the Department of Revenue, for the administration or collection of the school taxes authorized by KRS 160.605 to 160.611 and 160.613 to 160.617 shall be reimbursed by the local boards of education on a monthly basis or on the basis agreed upon by the

boards of education and the tax collector. The expenses shall be borne by the school districts on a basis proportionate to the revenue received by the districts.

History.
Enact. Acts 1966, ch. 24, part III, § 18; 1972, ch. 203, § 25; 1976, ch. 127, § 17; 1982, ch. 105, § 4, effective March 24, 1982; 1984, ch. 111, § 92, effective July 13, 1984; 1988, ch. 324, § 1, effective July 15, 1988; 1990, ch. 177, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 470, effective July 13, 1990; 2005, ch. 85, § 597, effective June 20, 2005; 2005, ch. 112, § 3, effective June 20, 2005; 2019 ch. 151, § 76, effective June 27, 2019; 2019 ch. 196, § 14, effective June 27, 2019; 2026 ch. 161, § 86, effective April 14, 2026.

Legislative Research Commission Notes.
(6/27/2019). This statute was amended by 2019 Ky. Acts chs. 151 and 196, which do not appear to be in conflict and have been codified together.
(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

160.640. Custodian of tax funds to give bond — Department of Revenue excepted — Expense, how paid.

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611 and 160.613 to 160.617, except the Department of Revenue, shall be required to secure a corporate surety bond in an amount to be set by the Kentucky Board of Education. The cost of the surety bond shall be considered a part of the cost of the administration of the school taxes authorized under KRS 160.605 to 160.611 and 160.613 to 160.617.

History.
Enact. Acts 1966, ch. 24, Part III, § 19; 1976, ch. 127, § 18; 1978, ch. 155, § 82; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 471, effective July 13, 1990; 1996. ch. 362, § 6, effective July 15, 1996; 2004, ch. 79, § 14, effective July 1, 2005; 2005, ch. 85, § 598, effective July 1, 2005; 2026 ch. 161, § 87, effective April 14, 2026.

160.642. Custodian to be audited.

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611 and 160.613 to 160.617 shall be audited as provided by KRS 156.265 to 156.285.

History.
Enact. Acts 1966, ch. 24, Pt. III, § 20; 1972, ch. 203, § 27; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 472, effective July 13, 1990; 1994, ch. 296, § 7, effective July 15, 1994; 2026 ch. 161, § 88, effective April 14, 2026.

Compiler's Notes.
This section (Enact. Acts 1966, ch. 24, Part III, § 20; 1972, ch. 203, § 27) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 472, effective July 13, 1990.

Legislative Research Commission Notes.
(9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter (296), Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

160.644. Tax proceeds, apportionment to districts.

The school taxes and penalties collected under KRS 160.593 to 160.597, 160.601 to 160.617, 160.635 to 160.648 shall be distributed to the treasurer of the board of education of the school district. In the event that more than one (1) local board of education within the county is participating in one (1) of these tax levies, the funds collected shall be distributed in proportion to the tax rate levied and the number of pupils in average daily attendance in the participating districts as shown by the final certification by the chief state school officer for the previous school year pursuant to the provisions of KRS 157.310 to 157.440.

History.
Enact. Acts 1966, ch. 24, part III, § 21; 1972, ch. 203, § 28; 1974, ch. 125, § 4; 1990, ch. 476, Pt. IV, § 237, effective July 13, 1990; 2026 ch. 161, § 89, effective April 14, 2026.

NOTES TO DECISIONS

Analysis

1. Utility Tax.
2. —Levy.
3. —Distribution.

1. Utility Tax.

2. —Levy.
As presently worded, KRS 160.593 and this section do not prohibit an individual school district from unilaterally levying a utility tax on the territory within its school district. Moreover, the legislature obviously intended this practice to be the rule rather than the exception. Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984).
There is nothing in KRS 160.593 and this section to preclude a school district which had agreed with another district or districts to levy taxes from rescinding that agreement and levying the taxes unilaterally. Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984).

3. —Distribution.
If a utility tax is levied by an individual school district, all the money goes to that school board. If the tax is levied by multiple districts in combination, the money is distributed proportionately. Board of Education v. Independent Bd. of Education, 681 S.W.2d 429, 1984 Ky. App. LEXIS 497 (Ky. Ct. App. 1984).

OPINIONS OF ATTORNEY GENERAL.

Where two (2) school districts which were a combined taxing district prior to the 1976 amendment of KRS 160.593 never obtained written approval to continue to act as a combined district, this section was no longer applicable to the collection and distribution of the utility gross receipts tax as levied in one of the two (2) districts. OAG 82-146, 1982 Ky. AG LEXIS 500.

160.646. Finance officer to administer tax — Appointment. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, part III, § 22; 1972, ch. 203, § 29; 1974, ch. 125, § 5) was repealed by Acts 1976, ch. 127, § 23.

160.648. Penalty for failure to make returns or pay tax.

(1) Any person, individual, or corporation required by the provisions of KRS 160.605 to 160.611 to file any return or report or furnish any information requested under the authority of KRS 160.605 to 160.611 who fails to file such return or report or furnish such information on or before the date required shall pay a penalty in the amount of ten dollars ($10) for each failure.

(2) Any person, individual, or corporation who fails to pay, on or before the due date, any school tax authorized by KRS 160.605 to 160.611 and levied by the local board of education shall pay a penalty of one percent (1%) per month of the amount of such tax past due until paid.

History.

Enact. Acts 1966, ch. 24, Part III, § 23; 1972, ch. 203, § 30; 1976, ch. 127, § 19; repealed and reenact., Acts 1990, ch. 476, Pt. IV, § 473, effective July 13, 1990; 2004, ch. 79, § 15, effective July 1, 2005; 2026 ch. 161, § 90, effective April 14, 2026.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 24, Part III, § 23; 1972, ch. 203, § 30; 1976, ch. 127, § 19) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 473, effective July 13, 1994.

NOTES TO DECISIONS

1. In General.

The statute does not allow a county board of education to negotiate the amount of tax, interest, or penalties owed by a taxpayer prior to collection of the tax. Inland Container Corp. v. Mason County Bd. of Educ., 6 S.W.3d 374, 1999 Ky. LEXIS 149 (Ky. 1999).

Cited in:

Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Education, 806 F.2d 678, 1986 U.S. App. LEXIS 34147 (6th Cir. 1986).

OPINIONS OF ATTORNEY GENERAL.

Neither the school nor the tax collector can abate past due interest or penalty on local school taxes paid prior to or after filing suit for collection of the unpaid taxes, penalty and interest. OAG 88-46, 1988 Ky. AG LEXIS 46.

This section is not written in a permissive form but requires the payment of the penalty which has accrued at a rate of one percent per month until the taxes have been paid. OAG 88-46, 1988 Ky. AG LEXIS 46.

KENTUCKY FAMILY EDUCATION RIGHTS AND PRIVACY ACT

160.700. Definitions related to KRS 160.700 to 160.730.

As used in this chapter, unless the context otherwise requires:

(1) "Directory information" means the student's name, address, telephone listing, date and place of birth, participation in school recognized sports and activities, height and weight of members of athletic teams, dates of attendance, awards received, major field of study, and the most recent previous educational agency or institution attended by the student, contained in education records in the custody of the public schools;

(2) "Educational institution" means any public school providing an elementary and secondary education, including vocational;

(3) "Education record" means data and information directly relating to a student that is collected or maintained by educational institutions or by a person acting for an institution including academic records and portfolios; achievement tests; aptitude scores; teacher and counselor evaluations; health and personal data; behavioral and psychological evaluations; and directory data recorded in any medium including handwriting, magnetic tapes, film, video, microfiche, computer-generated and stored data, or data otherwise maintained and used by the educational institution or a person acting for an institution. "Education record" shall not include:

(a) Records of instructional, supervisory, and assisting administrative personnel which are in the sole possession of the maker and are not accessible or revealed to any other person except a substitute for any of those persons;

(b) Records maintained by a law enforcement unit of the educational institution that were created by that law enforcement unit for the purpose of law enforcement;

(c) In the case of persons who are employed by an educational agency or institution but who are not in attendance at that agency or institution, records made and maintained in the normal course of business which relate exclusively to that person in the person's capacity as an employee and are not available for use for any other purpose; or

(d) Records on a student who is eighteen (18) years of age or older, which are made, used, or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional for treatment of the student, and are not available to anyone other than persons providing this treatment, except a physician or other appropriate professional of the student's choice.

(4) "Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school and therefore the permission or consent required of, and the rights accorded to the parents of the student shall thereafter be required of, and accorded to the student;

(5) "School official" means personnel employed in instructive and administrative positions with a school board or educational institution. Parents and other noneducational persons who are elected or appointed to school-based decision making councils or committees thereof, or other voluntary boards or committees shall not be considered school officials.

History.

Enact. Acts 1994, ch. 98, § 1, effective July 15, 1994.

NOTES TO DECISIONS

1. Open Records Act.

Kentucky takes the view that the Family Educational Rights and Privacy Act (FERPA) prohibits disclosure of education records under the Kentucky Open Records Act; Kentucky has adopted its own version of FERPA, applicable to elementary and secondary schools indicating the General Assembly has determined that education records are not subject to the Open Records Act. Kernel Press, Inc. v. Univ. of Ky., 2019 Ky. App. LEXIS 92 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 905 (Ky. Ct. App. May 17, 2019).

OPINIONS OF ATTORNEY GENERAL.

A county school system did not violate the Open Records Act in denying a request to inspect a videotape recording of an incident involving the requester's son that occurred on a county school bus; the videotape qualified for exclusion from public inspection under KRS 61.878(1)(k) and (1)(l) which incorporate the Family Educational Rights and Privacy Act and its state counterpart into the Open Records Act as it contained information on more than one student and such information was inextricably intermingled and therefore nonsegregable, and, therefore, the school system could not disclose the videotape in such a way as to meaningfully honor the rights of the requester to inspect the tape without violating the corresponding rights of the other students and their parents in nondisclosure of the tape to third parties. OAG 99-ORD-217, 1999 Ky. AG LEXIS 215.

Photographs of students performing school work are considered confidential as education records and may be excluded from public inspection if the school system has not taken appropriate steps to designate them as directory information. Photographs of students working with a school counselor or in counseling would be privileged and confidential. OAG 02-ORD-61, 2002 Ky. AG LEXIS 123.

Because videotapes of students in a school classroom are educational records, and because all educational records are exempt from disclosure under the Open Records Act, and since the exemptions for the Open Records Act apply based on the records rather than the status of the requester, the school district properly denied the request of a teacher for access to videotapes made of her own classroom pursuant to KRS 61.878(1)(k) and (l). OAG 02-ORD-132, 2002 Ky. AG LEXIS 160.

The video recording of the basketball game falls within the definition of an education record for purposes of both FERPA and KFERPA: it contains information directly related to particular students and is maintained by the educational agency or institution; the video was part of the communications course work or extra-curricular activity of the school; and the student commentator in the recording was readily identifiable by his voice and the tape served as the basis by the school in disciplining the student for his communications activity. Thus, the School District properly denied the request on the basis that release of an education record containing personally identifiable information of a student is prohibited by FERPA and KFERPA, incorporated into the Open Records Act by operation KRS 61.878(1)(k) and (l). OAG 03-ORD-49, 2003 Ky. AG LEXIS 135.

The list of County students awaiting enrollment in the school is a record that consists of harmless directory information which does not implicate student and family privacy interests, and which is similar, if not identical, to information the Board previously disclosed in response to another open records request. Under these circumstances, the board's invocation of 20 USCS § 1232g and KRS 160.700, et seq., is legally unsupportable. OAG 03-ORD-120, 2003 Ky. AG LEXIS 66.

Information that is maintained by a school and that can reasonably lead to the identity of a student is information directly related to a student constitutes an educational record. Unless the school system has first given the parents and students notice and an opportunity to designate the information on a student that may be released, release is prohibited under both the federal act and state law. Because the release of the information is prohibited under federal and state law, the information is exempt from disclosure under the Open Records Act, KRS 61.878(1)(k) and (l). OAG 03-ORD-163, 2003 Ky. AG LEXIS 143.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Elliott & Fink, Medication Use in Schools: Education Law Meets Pharmacy Law, Volume 75, No. 1, January 2011, Ky. Bench & Bar 5.

160.705. Confidentiality of students' education records — Procedures for protection and preservation of education records and recordings of school activities.

(1) Education records of students in the public educational institutions in this state are deemed confidential and shall not be disclosed, or the contents released, except under the circumstances described in KRS 160.720.

(2) School officials shall take precautions to protect and preserve all education records, including records generated and stored in the education technology system. School officials shall:

(a) Retain for a minimum period of one (1) week a master copy of any digital, video, or audio recordings of school activities without editing, altering, or destroying any portion of the recordings, although secondary copies of the master copy may be edited; and

(b) Retain for a minimum of one (1) month in an appropriate format, a master copy of any digital, video, or audio recordings of activities that include, or allegedly include, injury to students or school employees without editing, altering, or destroying any portion of the recordings.

(3) Recordings of school activities shall be subject to privacy and confidentiality requirements as provided in this chapter.

History.

Enact. Acts 1994, ch. 98, § 2, effective July 15, 1994; 2013, ch. 14, § 1, effective June 25, 2013.

OPINIONS OF ATTORNEY GENERAL.

A county public school system violated the Open Records Act in partially denying a request for records relating to traditional school enrollment policies and residency requirements; the school system's reliance on KRS 160.705 et seq. and 20 USCS § 1232g, incorporated into the Open Records Act by operation of KRS 61.878(1)(k) and (1)(l), was misplaced. OAG 00-ORD-119, 2000 Ky. AG LEXIS 127.

Any records from a school counselor which identify or lead to the identification of a student or a student's parent are privileged and confidential. Hence, these records are exempt from disclosure under the Open Records law. OAG 02-ORD-61, 2002 Ky. AG LEXIS 123.

Photographs of students performing school work are considered confidential as education records and may be excluded

from public inspection if the school system has not taken appropriate steps to designate them as directory information. Photographs of students working with a school counselor or in counseling would be privileged and confidential. OAG 02-ORD-61, 2002 Ky. AG LEXIS 123.

The video recording of the basketball game falls within the definition of an education record for purposes of both FERPA and KFERPA: it contains information directly related to particular students and is maintained by the educational agency or institution; the video was part of the communications course work or extra-curricular activity of the school; and the student commentator in the recording was readily identifiable by his voice and the tape served as the basis by the school in disciplining the student for his communications activity. Thus, the School District properly denied the request on the basis that release of an education record containing personally identifiable information of a student is prohibited by FERPA and KFERPA, incorporated into the Open Records Act by operation KRS 61.878(1)(k) and (l). OAG 03-ORD-49, 2003 Ky. AG LEXIS 135.

Both records at issue constitute an "education record," maintained by the school as part of a student's educational activity and disciplinary record. One was an e-mail from the principal of the school to the superintendent of the County Schools and the other was a Student Behavior Referral form, containing both the teacher's and the principal's reports on the incident and identifying the student. They both describe the details of the incident involving the student. OAG 03-ORD-78, 2003 Ky. AG LEXIS 60.

The list of County students awaiting enrollment in the school is a record that consists of harmless directory information which does not implicate student and family privacy interests, and which is similar, if not identical, to information the Board previously disclosed in response to another open records request. Under these circumstances, the board's invocation of 20 USCS § 1232g and KRS 160.700, et seq., is legally unsupportable. OAG 03-ORD-120, 2003 Ky. AG LEXIS 66.

Because the School District has not implemented the statutory mechanism for designating any information directly relating to its students as directory information, the School District properly denied the request. OAG 03-ORD-146, 2003 Ky. AG LEXIS 70.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Elliott & Fink, Medication Use in Schools: Education Law Meets Pharmacy Law, Volume 75, No. 1, January 2011, Ky. Bench & Bar 5.

160.710. Notification of privacy rights — Written policies.

Parents or eligible students shall be informed of the rights of privacy and confidentiality accorded student education records. The educational institution shall determine the means and method of notice and adopt written policies consistent with the state law.

History.

Enact. Acts 1994, ch. 98, § 3, effective July 15, 1994.

160.715. Inspection and review of records — Procedures — Fees for copying permitted.

(1) Parents of students or eligible students attending public institutions or who have been in attendance shall have the right to inspect and review student education records within a reasonable time of making a request to inspect.

(2) Educational institutions shall establish procedures for honoring requests for inspection within a reasonable time. Fees for copying materials and documents may be charged.

History.

Enact. Acts 1994, ch. 98, § 4, effective July 15, 1994.

160.720. Consent to release of records — Release without consent — Waiver by student — Records of release.

(1) Parents or eligible students may consent to the release of written documents by completing and signing forms devised by the educational institution identifying the records to be released, the date of the release, the party to whom the release is granted, and the purpose of the request.

(2) Educational institutions shall not permit the release or disclosure of records, reports, or identifiable information on students to third parties other than directory information as defined in KRS 160.700, without parental or eligible student consent except to:

(a) Other school officials, including teachers, with legitimate education interests and purposes.

(b) Other school systems, colleges, and universities to which the student has sought enrollment and transfer, or from which the student was graduated.

(c) Federal, state, or local officials who carry out a lawful function and who are authorized to receive this information pursuant to statute or regulation. This authority includes requests from any agency of the federal and state government for the purpose of determining a student's eligibility for military service.

(d) Federal, state, or local officials to whom the information is required to be disclosed or reported.

(e) Individuals or organizations conducting legitimate studies, surveys, and data collection in such a manner so as not to permit personal identification of the students or parents.

(f) Accrediting organizations enlisted to carry out accrediting functions.

(g) Parents of a dependent student of the parent as defined in Section 152 of the Internal Revenue Code of 1954 (26 U.S.C. sec. 152).

(3) Students may waive the right to inspect confidential recommendations relating to admission to educational institutions, application for employment, and receipt of an honor or honorary recognition. In the case of admissions, the waiver of release shall apply if the student, upon request, is notified of names of persons or organizations making confidential recommendations, and those recommendations are used solely for the purpose intended.

(4) Records of release for information contained in education records, other than directory information indicating the agency, institution, or organization that has requested or has had access to student education records and indicating the purpose of the release or inspection shall be maintained by the educational institution. These records of release shall be limited to inspection by parents, eligible students, school officials and their assistants who are responsible for custody of education records; by school officials within the educa-

tional institution who have legitimate educational interests; and by federal and state officials and representatives conducting audits and evaluations of the education programs or in connection with the enforcement of federal or state legal requirements relating to the programs.

History.
Enact. Acts 1994, ch. 98, § 5, effective July 15, 1994.

NOTES TO DECISIONS

1. Teacher's Interest in Viewing Records.
Substantial evidence did not support a Circuit Court's finding that, under the Family Educational Rights and Privacy Act (FERPA), 20 USCS § 1232g, and the Kentucky Family Educational Rights and Privacy Act (FERPA), KRS 160.700 et seq., a teacher had no legitimate educational interest in viewing videotape recordings of her own classroom. The case was remanded for a hearing to determine whether her request under the Kentucky Open Records Act, KRS 61.870 et seq., was made pursuant to a legitimate educational interest as defined by FERPA and KFERPA. Medley v. Bd. of Educ., 168 S.W.3d 398, 2004 Ky. App. LEXIS 305 (Ky. Ct. App. 2004).

Cited in:
Doe v. Knox County Bd. of Educ., 918 F. Supp. 181, 1996 U.S. Dist. LEXIS 7231 (E.D. Ky. 1996).

OPINIONS OF ATTORNEY GENERAL.

Because videotapes of students in a school classroom are educational records, and because all educational records are exempt from disclosure under the Open Records Act, and since the exemptions for the Open Records Act apply based on the records rather than the status of the requester, the school district properly denied the request of a teacher for access to videotapes made of her own classroom pursuant to KRS 61.878(1)(k) and (l). OAG 02-ORD-132, 2002 Ky. AG LEXIS 160.

160.725. Directory information on student — Student's right to restrict release — Official recruiters' access to public high school campuses and student directory information.

(1) An educational institution may publish and release to the general public directory information relating to a student. An educational institution shall give public notice of the categories of directory information that it has designated as directory information with respect to each student in attendance and shall allow a reasonable time after the notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without prior consent.

(2)(a) If an educational institution provides access to its campus or its student directory information to persons or groups which make students aware of occupational or educational options, the board shall provide access on the same basis to official recruiting representatives of:

1. The Armed Forces of the United States;
2. The Kentucky Air National Guard;
3. The Kentucky Army National Guard; and
4. The service academies of the Armed Forces of the United States.

(b) Local secondary schools shall provide the student directory information to official recruiting representatives by September 30 of each year.

(c) Student directory information given to official recruiting representatives may be used for the purpose of informing students of educational and career opportunities available in the Armed Forces of the United States, the Kentucky Air National Guard, the Kentucky Army National Guard and the service academies of the Armed Forces of the United States.

History.
Enact. Acts 1972, ch. 84, § 2, effective July 15, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 433, effective July 13, 1990; 1994, ch. 98, § 6, effective July 15, 1994; 2002, ch. 39, § 1, effective July 15, 2002.

Compiler's Notes.
This section as enacted (Enact. Acts 1972, ch. 84, § 2, effective July 15, 1982) was codified as KRS 160.297, was repealed and reenacted by Acts 1990, ch. 476, Part V, § 473, effective July 13, 1990, was amended by 1994, ch. 98, § 6 and was renumbered by the Reviser of Statutes as this section effective July 15, 1994, pursuant to KRS 7.136(1).

160.730. Challenge of contents of record — Procedure.

(1) Parents or eligible students may challenge the content of a student record to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. The right to challenge shall also provide the opportunity for rebuttal to, and the correction, deletion, or expunction of, any inaccurate, misleading, or inappropriate information.

(2) A challenge to the record may take the form of an informal discussion among the parents, student, and school officials. Any agreement between these parties shall be reduced in writing, signed by all parties, and placed in the student's records. If no agreement can be reached, either party may request a formal hearing to the challenge which shall be conducted in accordance with procedures established by rules and regulations of the Department of Education and the Council on Postsecondary Education for educational institutions under their jurisdiction. The rules and regulations shall provide that a formal hearing be conducted within a reasonable time after the request for a hearing; and an official of the educational institution who has no direct interest in the outcome of the challenge shall conduct the hearing and render a decision on the challenge within a reasonable time after the hearing. All parties to the challenge shall be afforded a full and fair opportunity to present evidence relevant to the issues raised. Furthermore, school officials shall take the necessary action to implement the decision.

History.
Enact. Acts 1994, ch. 98, § 7, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 1, § 64, effective May 30, 1997.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Student records; hearing procedures, 702 KAR 1:140.

PENALTIES

160.990. Penalties.

(1) Any person who violates any of the provisions of KRS 160.250 shall be fined not more than two hundred dollars ($200).

(2) Any person who violates any of the provisions of KRS 160.300 shall be fined not less than ten ($10) nor more than fifty dollars ($50).

(3) Any superintendent who violates any of the provisions of KRS 160.350 to 160.400 shall be fined not less than one hundred ($100) nor more than one thousand dollars ($1,000) for each offense, and the violation is grounds for revocation of his certificate.

(4) Any person who violates any of the provisions of KRS 160.550 shall be fined not less than fifty ($50) nor more than one hundred dollars ($100), and shall be subject to removal from office.

(5) The Kentucky Board of Education may withhold funds allotted under KRS 157.350 from any local district which violates KRS 160.380(5) in the amount of one thousand dollars ($1,000) per violation.

(6) In addition to penalties listed in this section, any local district which violates KRS 160.380(5) shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

History.

4399-25, 4399-34, 4399-36, 4399-45, 4399-55; amend. Acts 1988, ch. 345, § 7, effective July 15, 1988; 1990, ch. 476, Pt. II, § 86, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2012, ch. 61, § 3, effective July 12, 2012; 2019 ch. 31, § 4, effective June 27, 2019.

Compiler's Notes.

The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

1. Prior Written Approval.

KRS 160.550(2), the "prior written approval" statute, does not provide an independent basis for removing school board members from office under subsection (4) of this section. Hale v. Combs, 30 S.W.3d 146, 2000 Ky. LEXIS 121 (Ky. 2000).

Cited in:

White v. Board of Education, 263 Ky. 91, 91 S.W.2d 539, 1936 Ky. LEXIS 123 (Ky. 1936).

160.991. Accepting bribe for employment of school employee. [Repealed.]

Compiler's Notes.

This section (4399-58) which was formerly compiled as KRS 160.600, was renumbered, and was repealed by Acts 1974, ch. 406, § 336, effective January 1, 1975.

CHAPTER 161

SCHOOL EMPLOYEES — TEACHERS' RETIREMENT AND TENURE

Certification of School Employees.

Section

161.010. Definitions for KRS 161.020 to 161.134.
161.011. Definitions of "classified employee" and "seniority" — Job classifications and minimum qualifications — Requirement of written contracts and written personnel policies — Reduction in force — Registry of vacant classified employee positions and training — Review of local board policies by Department of Education.
161.017. Education Professional Standards Board to be headed by commissioner of education — Duties and powers.
161.020. Certificates required of school employees — Filing requirements — Validity and terms for renewal.
161.025. [Repealed.]
161.027. Preparation program for principals — Assessment — Certificates and statements of eligibility — Renewal.
161.028. Education Professional Standards Board — Powers and duties regarding the preparation and certification of professional school personnel — Membership.
161.030. Certification authority — Assessments of beginning teachers and teachers seeking additional certification — Conditional certificates — Temporary certificates — Emeritus and exception certificates.
161.031. New teacher induction and mentor programs provided by school districts — Definitions — Standards — Evaluations — Annual report.
161.032. Certification incentive fund — Purpose of grants — Eligibility — Priorities — Forgivable loan incentive — Stipend — Other financial incentives.
161.035. [Repealed.]
161.040. [Repealed.]
161.042. Status of student teachers — Responsibility to administrative staff and supervising teachers — Professional competency requirement for supervising teachers.
161.044. Requirements for teachers' aides — Legal status — Preference to certified applicants — Training.
161.046. Adjunct instructors.
161.048. Legislative findings — Alternative certification program — Purpose — Options — Testing and eligibility requirements — Salary schedule.
161.049. Professional support teams — Training program — Alternate training program.
161.050. [Repealed.]
161.051. Braille requirements for teacher certification of blind and visually impaired students.
161.052. Certification of teachers for gifted education.
161.053. Certification of teachers of exceptional children/communication disorders.
161.060. [Repealed.]
161.070. [Repealed.]
161.080. [Repealed.]
161.090. [Repealed.]
161.095. Continuing education for teachers — Extension for military service — Administrative regulations.
161.100. Emergency certificates.
161.102. Substitute teaching certificates — Types — Conditions.
161.110. [Repealed.]
161.115. Deletion of certificate, certificate endorsement, or subject specialization from official certification record at holder's option — Restoration of deleted areas of certification.
161.120. Disciplinary actions relating to certificates — Complaint review process — Superintendent report of school employee whose contract is terminated or not reviewed — Hearing — Appeals.
161.121. [Repealed.]

Section
161.1211. Classification of teachers.
161.122. [Repealed.]
161.1221. Out-of-field teaching.
161.1222. Pilot teacher internship program — Report to Interim Joint Committee on Education — Appropriated funds. [Repealed].
161.123. Reciprocity certification for out-of-state teachers.

Interstate Agreement on Qualification of Educational Personnel.

161.124. Interstate Agreement on Qualification of Educational Personnel.
161.126. Designation of commissioner of education as state official under agreement — Handling contracts under agreement.
161.130. [Repealed.]

National Board Certification of Teachers.

161.131. Legislative findings and goals on national board certification.
161.132. Definitions for KRS 161.131 to 161.134 and KRS 157.395 and 161.123.
161.133. Teachers' national certification incentive trust fund — Purposes — Appropriations.
161.134. Preparation for national board certification — Incentives — Authority to prorate reimbursements if funds insufficient — Administrative regulations for mentoring program.
161.135. Interstate Teacher Mobility Compact.

Regulations as to School Employees.

161.140. [Repealed.]
161.141. Participation in retirement systems — State-sponsored insurance program — Appropriations for retirement and insurance — Sick leave credit — Requirements and prohibitions concerning public charter school employees and local school boards — Employees of education service provider.
161.145. Cost of physical examination required for employment of classified personnel.
161.148. Use of volunteer personnel — Criminal records check — Orientation — Exception.
161.150. [Repealed.]
161.151. Removal of references to criminal allegations not resulting in charge or conviction from school employee's personnel file — Nonpreclusion of separate investigation.
161.152. Emergency leave for school employees.
161.153. Leave for jury duty for teachers and state employees.
161.154. Personal leave days for school employees.
161.155. Definitions for section — Salary, benefits, and leave for employee or teacher when victim of assault — Sick leave for employee or teacher — Sick leave bank — Sick leave donation program — Maternity leave — Payment for unused sick leave upon retirement or death — Funding allocation — Report.
161.156. [Repealed.]
161.157. Credits allowed transferred employee of Department of Education or Education Professional Standards Board.
161.158. Group insurance — Board's termination of participation in state health plan — Employees offered coverage in state health plan under federal law eligible for state-funded contribution — Deductions from salaries.
161.159. Adoption of rules and regulations to implement life insurance program.
161.160. [Repealed.]
161.162. [Repealed.]
161.163. Employees' application form not to require disclosure of religious affiliation.
161.164. Political activity prohibited — Discrimination prohibited — Instructional materials requirements — Student not required to advocate for perspective with which he or she does not agree — Employee not required to engage in training that stereotypes group.
161.165. Recruitment of minority teachers.
161.166. Training program for Kentucky Virtual High School on-line coaches.
161.167. Program to encourage persons to enter Kentucky teaching profession — Reports.
161.168. Certified employee granted leave of absence for active military service — Medical insurance — Contribution to retirement system to be retroactive — Credit given — Exclusions.
161.170. Teachers to enforce course of study and use of books — Removal for failure.
161.175. Teachers involved in illegal use of controlled substances.
161.180. Supervision of pupils' conduct.
161.185. Certified or classified staff member to accompany students on school-sponsored or endorsed trips — Exceptions.
161.190. Abuse of teacher, classified employee, or school administrator prohibited.
161.195. Notice to teacher of student's history of physically abusive conduct or carrying a concealed weapon.
161.200. Records to be kept by teachers — Exceptions.
161.210. Reports to be made by teachers.
161.212. Educators Employment Liability Insurance Program — Fund.

Teachers' Retirement.

161.220. Definitions for KRS 161.220 to 161.716 and 161.990.
161.230. Retirement system — Purpose — Name.
161.235. Establishment of hybrid cash balance plan for new Teachers' Retirement System members who begin participating on or after January 1, 2019 — TRS members with fewer than five years of service may elect participation. [Repealed].
161.240. [Repealed.]
161.250. Board of trustees to control retirement — Membership — Appeals — Trustee education program — Public disclosure of meeting notices and agendas and Annual Comprehensive Financial Report — Administrative regulations for authorized benefit improvements.
161.260. Election of members of board of trustees.
161.270. Vacancies, how filled.
161.280. Oath of board members.
161.290. Meetings, compensation, and expenses of board members.
161.300. Quorum.
161.310. Administrative regulations — Rules, regulations, and policies of participating employers to conform to chapter — Retirement incentives.
161.320. Record of proceedings — Annual report.
161.330. Cost of administration, how paid — Office space.
161.340. Officers of board — Personnel of system — Contracting for services and commodities — Liability insurance — Leave balances.
161.350. [Repealed.]
161.360. [Repealed.]

Section
161.370. Treasurer, auditor, and legal adviser of board — Annual audit of Teachers' Retirement System.
161.380. Duties of treasurer — Custodian of securities.
161.390. Actuarial data to be kept.
161.400. Duties of actuary — Actuarial investigations, valuations, and analyses.
161.410. [Repealed.]
161.420. Funds and accounts of retirement system.
161.430. Investment of funds — Standards of conduct — Investment procurement policy — Proxy voting guidelines.
161.440. Assignment of interest to funds.
161.450. [Repealed.]
161.460. Conflict of interest — Trustees, employees, members of General Assembly, public servants.
161.470. Membership — Forfeiture of service credit — Termination of membership — Forfeiture of benefits — Reinstatement — Payment of accumulated account balance.
161.480. Statement of member — Designation of beneficiaries.
161.490. Investigation of statement.
161.500. Service credit.
161.505. [Repealed.]
161.507. Prior service credit for veterans — Credit for military service and uniformed service by active contributing member.
161.510. [Repealed.]
161.515. Out-of-state service credit — Contribution — Kentucky Peace Corps and federal Peace Corps service credit — Retirement factor.
161.516. [Repealed.]
161.520. Payment of survivor's benefit on death.
161.522. Survivors of certain members retired for disability may elect annuity.
161.525. Death of member eligible to retire — Options of beneficiary — Monthly minimum allowance to surviving spouse — Payments to special needs trust.
161.530. Restoration of forfeited account — Exception.
161.540. Members' contributions — Picked-up contributions.
161.545. Contributions and service credit for substitute service, part-time service, or leave of absence — Contributions not to be picked up — Purchases of service credit for leaves of absence for health, child-rearing, and educational improvement reasons.
161.546. [Repealed.]
161.5461. Purchase of service credit with rolled-over or transferred retirement funds.
161.5465. Member with twenty years' service credit may purchase five years' service credit — Exceptions.
161.547. Member having service as legislator may purchase four years' credit in the retirement system.
161.548. Purchase of service credit by individual who served in a regional community program for mental health and individuals with an intellectual disability.
161.549. Purchase of service credit by individual who was employed at a Federal Head Start agency.
161.550. Contribution to system by employers and state — Contributions to pension, medical insurance, and life insurance funds.
161.552. Definitions for section — Employer contributions for retiree health benefits to be deposited into state accumulation fund when medical insurance fund reaches actuarial funding level of at least one hundred percent — Restoration of funding.
161.553. Funding of past statutory benefit improvements — Schedules for appropriations — Cost-of-living increases. [Repealed].

Section
161.555. Employer contributions for members employed in positions established under federal educational acts.
161.556. Employer contributions for members employed by regional educational cooperatives.
161.560. Deduction and forwarding of teachers' contributions — Reporting requirements — Picked-up employee contributions — Correction of omitted member contributions.
161.565. Reduction and pick-up of contributions by university faculty members.
161.567. Authorization for optional retirement plan for designated employees of certain public universities.
161.568. Eligibility to participate in optional retirement plan — Election to change from optional retirement plan to Kentucky Teachers' Retirement System.
161.569. Effect of election to participate — Payment of benefits — Taxation and attachment of benefits — Employer contributions.
161.570. [Repealed.]
161.580. Individual accounts to be kept — Other data — Summary plan description — Publication — Recipients.
161.585. Member's account confidential — Release of certain information from accounts of current or former legislators — Medical records on file confidential — Production of records in response to a subpoena or court order.
161.590. Service credit at retirement.
161.595. Credit upon service retirement.
161.597. Installment payments for purchase of service credit by active contributing members.
161.600. Retirement conditions — Consolidation of accounts — Applications and forms — Surviving spouse.
161.603. Resumption of teaching by retired member — Waiver of annuity payments. [Repealed.]
161.605. Resumption of employment by retired member — Continuation of retirement allowance — Individuals who retire and are reemployed — Part-time, substitute teaching, and nonteaching employment — Health insurance coverage.
161.607. Employment in position covered by other Kentucky retirement system.
161.608. Calculation of benefits of member who has an account with another state system.
161.610. [Repealed.]
161.611. Supplemental retirement benefit plan — Purpose — Administration — Eligibility — Payments.
161.612. Membership of individuals providing part-time and substitute services — Service credit — Participation in benefits.
161.614. Court-ordered back salary and reinstatement.
161.615. Limited defined contribution plan — Purpose — Administration — Eligibility — Payments.
161.620. Retirement allowances for university and nonuniversity retirees — Amount — Increases — Payments for adult dependents.
161.623. Use of unused sick-leave days to determine service credit — Applicability to individuals becoming members on or after July 1, 2008 — Maximum amount.
161.624. Responsibilities of members.
161.625. [Repealed.]
161.630. Benefit options — Change in benefit option by retiree — Beneficiary redesignation after retirement.
161.633. Foundational component for persons who became nonuniversity members on or after January 1, 2022 — Valuation assessment — Adjustments to maintain funding level and contain costs — Construction.

Section
161.634. Foundational component for persons who became university members on or after January 1, 2022 — Valuation assessment — Adjustments to maintain funding level and contain costs — Construction.
161.635. Supplemental component for persons who became nonuniversity members on or after January 1, 2022 — Benefit — Contributions — Election upon termination of employment and upon retirement — Plans authorized under Internal Revenue Code.
161.636. Supplemental component for persons who became university members on or after January 1, 2022 — Benefit — Contributions — Election upon termination of employment and upon retirement — Plans authorized under Internal Revenue Code.
161.640. Payment of annuities — Payroll deductions — Electronic fund transfer, exception — Payments to special needs trust.
161.643. Records and annual reports for annuitants employed by school districts or agencies — Penalty for noncompliance — System may require more frequent reporting.
161.650. Death of retired member — Payment to beneficiaries — Effect of divorce decree — Failure to designate beneficiary.
161.655. Life insurance benefit — Assignment of benefit.
161.660. [Repealed.]
161.661. Disability retirement.
161.662. Status of disabled teachers and superintendents.
161.663. Disability retirement with less than required years of service.
161.670. [Repealed.]
161.675. Hospital and medical benefits and health insurance coverage for eligible recipients of retirement allowances from Teachers' Retirement System — Applicability to individuals becoming members on or after July 1, 2008 — Health insurance supplement payments — Coverage for spouses, dependents, and disabled children of retirees — Exemption from premium tax.
161.677. Kentucky Teachers' Retirement System insurance trust fund.
161.680. Mistake in payment — Correction of error — Collection of overpayments.
161.690. Falsifying record prohibited.
161.695. Use and acceptance of electronic signatures.
161.700. Funds exempt from taxation and process — Assignment to trustee of special needs trust — Taxability after December 31, 1997 — Benefits not considered marital property — Qualified domestic relations order.
161.705. [Repealed.]
161.710. Local system merged with state system.
161.712. [Repealed.]
161.714. Inviolable contract.
161.715. [Repealed.]
161.716. Federal laws take precedence over Kentucky statutes pertaining to Teachers' Retirement System.

Teachers' Tenure.

161.720. Definitions for teachers' tenure law.
161.721. Superintendent eligible for continuing contract status.
161.730. Limited or continuing contract with teachers required.
Section
161.740. Eligibility for continuing service status — Limited status employee on approved military leave — Transfer of teachers — Reinstatement after service in Armed Forces — District-level administrative position in county with consolidated local government.
161.750. Nonrenewal of limited contracts.
161.760. Notice of salary to be paid to teacher — Increases — Reductions in responsibility.
161.765. Procedures for demotion of administrative personnel — Appeal.
161.770. Leaves of absence.
161.780. Termination of contract by teacher or superintendent — Resignation binding as of date of acceptance.
161.790. Termination of contract by board — Administrative hearing tribunal — Sanctions.
161.795. Investigation of and records that school employee acted improperly relating to statewide assessment program — Certain records to be expunged.
161.800. Suspension of contracts on reducing number of teachers.
161.810. Continuance of status in case of annexation or consolidation of schools.

Civil Service for Noninstructional Employees of Board of Education of City of Second Class.

161.821. [Repealed.]
161.822. [Repealed.]
161.823. [Repealed.]
161.824. [Repealed.]
161.825. [Repealed.]
161.826. [Repealed.]
161.827. [Repealed.]
161.828. [Repealed.]
161.829. [Repealed.]
161.830. [Repealed.]
161.831. [Repealed.]
161.832. [Repealed.]
161.833. [Repealed.]
161.834. [Repealed.]
161.835. [Repealed.]
161.836. [Repealed.]
161.837. [Repealed.]
161.841. [Repealed.]

Penalties.

161.990. Penalties.

CERTIFICATION OF SCHOOL EMPLOYEES

161.010. Definitions for KRS 161.020 to 161.134.

As used in KRS 161.020 to 161.134:

(1) "College or university work of graduate grade" means academic preparation which extends beyond the usual four (4) year program of undergraduate studies leading to a bachelor's degree and which is completed at a college or university accredited for the graduate level;

(2) "Continuing education" means study or other activities to provide professional improvement and personal growth for certified teachers throughout their career. It may include, but shall not be limited

to, university courses, an advanced degree, or a combination of field-based experience, individual research, and approved professional development activities, pursuant to KRS 156.095;

(3) "Professional certificate" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments in the area in which certification is being sought;

(4) "Provisional certificate" means the document issued to an individual prior to the issuance of a professional certificate;

(5) "Standard college or university" means an institution accredited by the Southern Association of Colleges and Schools or by one of the other recognized regional accrediting agencies or by the Education Professional Standards Board;

(6) "Student teacher" means an adult who has completed the prerequisite teacher preparation as prescribed by the accredited teacher education institution in which he or she is enrolled, and who is jointly assigned by the institution and a local school district to engage in a period of practice teaching under the direction and supervision of the administrative and teaching staff of the school district and the institution; and

(7) "Teacher's aide" means an adult school employee who works under the direction of the professional administrative and teaching staff in performing, within the limitations of his or her training and competency, certain instructional and noninstructional functions in the school program including, but not limited to, clerical duties, tutoring individual pupils, leading pupils in recreational activities, conducting pupils from place to place, assisting with classroom instruction as directed by the teacher, aiding the school librarian, and preparing and organizing instructional materials and equipment.

History.

4502-2; amend. Acts 1972, ch. 178, § 1; 1978, ch. 55, § 1, effective June 17, 1978; 1985 (1st Ex. Sess.), ch. 10, § 38, effective October 18, 1985; 1988, ch. 38, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 53, effective July 13, 1990; 1996, ch. 298, § 2, effective July 15, 1996; 2001, ch. 137, § 5, effective June 21, 2001; 2017 ch. 14, § 1, effective June 29, 2017; 2024 ch. 124, § 4, effective July 15, 2024.

NOTES TO DECISIONS

1. Limited or Continuing Contract.

Under Teachers' Tenure Act the county board of education could enter into a limited or continuing contract with teacher. Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739, 1948 Ky. LEXIS 682 (Ky. 1948).

OPINIONS OF ATTORNEY GENERAL.

Although conservation officers cannot act as teachers, they may act as guest lecturers on conservation without being licensed as teachers if a certified teacher remains in the classroom and maintains control of the class. OAG 63-37.

A student teacher may not legally take charge of a classroom in the absence of the regular teacher. OAG 63-269.

In view of the description of duties and definition of "paraprofessional" and "teacher aide" given in subsections (6) and (7) (definition of "paraprofessional" has been deleted and see now (5) for definition of "teacher's aide") of this section, and the fact that KRS 161.044(1), (2), and (3) refer to such persons performing "supplementary instructional and noninstructional activities with pupils," and that while reference is made to "provisions established by the State Board of Education," such regulations have not been prepared and adopted, it would appear that a teacher's aide cannot conduct a class, even with a teacher present. OAG 73-206.

Since the State Board of Education has adopted regulations relating to paraprofessional personnel (704 KAR 15:080), a local board of education could prepare a job description outlining the duties of a paraprofessional which would include some limited teaching responsibilities if the paraprofessional held a valid and appropriate teaching certificate; however, the instructional assistance of a paraprofessional with a teaching certificate may not be permitted to supplant the day to day teaching responsibilities of the regular classroom teacher. OAG 76-555.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Conduct of schools, KRS Ch. 158.
Education of the physically handicapped, KRS Ch. 167.
Instructional leader's certification, KRS 156.101.
Legal notices, KRS Ch. 424.
Military leave, annual, KRS 61.396.
School districts, KRS Ch. 160.
School property and buildings, KRS Ch. 162.
Junior Reserve Officers Training Corps certification, 16 KAR 2:100.
Rank I classification, 16 KAR 8:010.
Rank I classification, 16 KAR 8:010.
Standards for Certified Teacher Leader, 16 KAR 1:016

161.011. Definitions of "classified employee" and "seniority" — Job classifications and minimum qualifications — Requirement of written contracts and written personnel policies — Reduction in force — Registry of vacant classified employee positions and training — Review of local board policies by Department of Education.

(1)(a) "Classified employee" means an employee of a local district who is not required to have certification for his or her position as provided in KRS 161.020.

(b) "Seniority" means total continuous months of service in the local school district, including all approved paid and unpaid leave.

(2) The commissioner of education shall establish by January 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in that position unless he or she holds the qualifications for the position as established by the commissioner of education.

(3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he or she holds at least a high school diploma or high school certificate of completion or High School Equivalency Diploma, or is provided an opportunity by the school district upon employment to obtain a High School Equivalency Diploma at no cost to the

employee. Licenses or credentials issued by a government entity that require specialized skill or training may also substitute for this requirement.

(4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a High School Equivalency Diploma to enroll in a program to obtain a High School Equivalency Diploma.

(5) Local districts shall enter into written contracts with classified employees. Contracts with classified employees shall be renewed annually except contracts with the following employees:

(a) An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than May 15, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.

(b) An employee who has completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than May 15, that the contract is not being renewed due to one (1) or more of the reasons described in subsection (7) of this section. Upon written request within ten (10) days of the receipt of the notice of nonrenewal, the employee shall be provided with a specific and complete written statement of the grounds upon which the nonrenewal is based. The employee shall have ten (10) days to respond in writing to the grounds for nonrenewal.

(6) Local districts shall provide in contracts with classified employees of family resource and youth services centers the same rate of salary adjustment as provided for other local board of education employees in the same classification.

(7) Nothing in this section shall prevent a superintendent from terminating a classified employee for incompetency, neglect of duty, insubordination, inefficiency, misconduct, immorality, or other reasonable grounds which are specifically contained in board policy.

(8) The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.

(a) When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.

(b) If it becomes necessary to reduce employees who have more than four (4) years of continuous active service, the superintendent shall make reductions based upon seniority and qualifications within each job classification affected.

(c) Employees with more than four (4) years of continuous active service shall have the right of recall positions if positions become available for which they are qualified. Recall shall be done according to seniority with restoration of primary benefits, including all accumulated sick leave and appropriate rank and step on the current salary schedule based on the total number of years of service in the district.

(9) Local school boards shall develop and provide to all classified employees written policies which shall include but not be limited to:

(a) Terms and conditions of employment;

(b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and

(c) Discipline guidelines and procedures that satisfy due process requirements.

(10) Local school boards shall maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties. If financially feasible, local school boards may provide training opportunities for classified employees focusing on topics to include but not be limited to suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR). If suicide prevention training is offered it may be accomplished through self-study review of suicide prevention materials.

(11) The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

History.

Enact. Acts 1988, ch. 388, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 54, effective July 13, 1990; 1994, ch. 25, § 1, effective July 15, 1994; 1998, ch. 590, § 1, effective April 14, 1998; 2000, ch. 271, § 2, effective March 31, 2000; 2002, ch. 5, § 1, effective July 15, 2002; 2003, ch. 29, § 21, effective June 24, 2003; 2006, ch. 211, § 90, effective July 12, 2006; 2008, ch. 113, § 6, effective April 14, 2008; 2010, ch. 136, § 2, effective July 15, 2010; 2017 ch. 63, § 18, effective June 29, 2017; 2019 ch. 146, § 30, effective June 27, 2019; 2022 ch. 236, § 77, effective July 1, 2022; 2023 ch. 68, § 1, effective March 22, 2023.

Legislative Research Commission Notes.

(7/15/2010). The amendments made to this section by 2010 Ky. Acts ch. 136 shall be known as the "Make a Difference for Kids Act of 2010."

(7/5/2001). Previous references to "subsection (6) of this section" in subsection (5)(b) of this statute were not changed to "subsection (7)" when the subsections renumbered in 2000 Ky. Acts ch. 271, sec. 2. It is clear from the context that this should have been done but was inadvertently overlooked. This omission has been corrected by the Reviser of Statutes under KRS 7.136(1)(e) and (h).

NOTES TO DECISIONS

Analysis

1. Due Process and Policy Procedures.
2. Due Process When Termination Is for Cause.
3. Reasons for Nonrenewal.
4. Seniority Requirements.

1. Due Process and Policy Procedures.

Where under defendant school district's policy, developed under KRS 161.011(9)(c), plaintiff former employee was pro-

vided an abbreviated pre-termination meeting to present his side of the story, but was not afforded a post-termination hearing, the employee was not required to plead or prove the inadequacy of post-termination state-law remedies under 42 USCS § 1983, and thus, the District Court erred in granting summary judgment to the school district on the employee's claim of a deprivation of due process. Mitchell v. Fankhauser, 375 F.3d 477, 2004 FED App. 0225P, 2004 U.S. App. LEXIS 14383 (6th Cir. Ky. 2004).

2. Due Process When Termination Is for Cause.

Where under defendant school district's policy, plaintiff former employee was provided an abbreviated pre-termination meeting to present his side of the story as to whether he should be fired for "cause" under KRS 161.011(5), (7), for allegedly stealing school property, but was not afforded a post-termination hearing, the employee was not required to plead or prove the inadequacy of post-termination state-law remedies under 42 USCS § 1983, and thus, the District]ourt erred in granting summary judgment to the school district on the employee's claim of a deprivation of due process. Mitchell v. Fankhauser, 375 F.3d 477, 2004 FED App. 0225P, 2004 U.S. App. LEXIS 14383 (6th Cir. Ky. 2004).

3. Reasons for Nonrenewal.

Even if a school employee had presented a claim pursuant to KRS 161.011(5)(a), her claim could not succeed because the plain language of the statute provided that after receipt of the letter stating that her contract would not be renewed, she had 10 days within which to request written reasons for nonrenewal; because she did not submit a written request for a statement of reasons within 10 days from her receipt of the termination letter, thus she had no cause of action. Cornett v. Byrd, 2007 U.S. Dist. LEXIS 18054 (E.D. Ky. 2007).

4. Seniority Requirements.

When a school district consolidated two schools into one, resulting in a decrease in an employee's compensation and responsibilities, the seniority requirements of KRS 161.011(8) did not apply because (1) the school district did not reduce the district's total number of employees, and (2) a "reduction in force" did not include a transfer within the employee's employment. Webb v. Meyer, 406 S.W.3d 444, 2013 Ky. LEXIS 364 (Ky. 2013).

Employee did not show a job as a family literacy instructor made the employee a "certified employee," under KRS 161.020, rather than a "classified employee" because (1) the job did not require a certificate from the Education Professional Standards Board as a condition precedent to employment, and (2) the fact the employee had a certificate and the job included instruction did not make the employee a "certified employee." Spalding v. Marion County Bd. of Educ., 452 S.W.3d 611, 2014 Ky. App. LEXIS 71 (Ky. Ct. App. 2014).

Cited in:

Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

OPINIONS OF ATTORNEY GENERAL.

Anyone employed as a bus driver or cook initially before or on July 13, 1990, does not need a high school diploma or GED certificate; anyone initially employed after that date may satisfy the requirement by enrolling in a GED program and proceeding under the schedule for satisfactory progress set by the Board of Adult, Vocational Education and Vocational Rehabilitation (now Department for Adult Education and Literacy). OAG 90-103, 1990 Ky. AG LEXIS 95.

"Certified employee" means teacher, principal, superintendent, director of pupil personnel, and any employee who supervises any such employee or who has any type of responsibility for instruction or teaching of pupils; school bus drivers and cooks are not "certified employees" and therefore are "classified employees." OAG 90-103, 1990 Ky. AG LEXIS 95.

The opinion in OAG 92-133 is overruled since the 1994 General Assembly enacted House Bill 50 (Enact. Acts 1994, ch. 25) which provides local school boards with the authority to adopt a seniority policy for classified employees. OAG 94-37, 1994 Ky. AG LEXIS 266.

Because classified public school employee have no statutory post-termination remedy, local school boards should enact policies pursuant to KRS 161.011(9)(c) implementing due process hearing procedures applicable to classified employees prior to termination. Minimum standards of due process require reasonable notice of hearing, right to appear and produce evidence, right to call witnesses and conduct cross-examination, right to counsel, impartial decision-maker, and statement of basis for decision. OAG 2005-06, 2005 Ky. AG LEXIS 5.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bus driver's qualifications, responsibilities, and training, 702 KAR 5:080.

Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

Kentucky Bench & Bar.

Education Law: Hiring and Termination Issues, Vol. 68, No. 5, Sept. 2004, Ky. Bench & Bar 17.

Schoening & Guilfoyle, The Legal Implications of a Reduction in Force, Vol. 74, No. 4, July 2010, Ky. Bench & Bar 12.

161.017. Education Professional Standards Board to be headed by commissioner of education — Duties and powers.

(1) The administration of the duties of the Education Professional Standards Board, established in KRS 161.028, shall be headed by the commissioner of education and shall include the following:

(a) Setting up appropriate organizational structures and personnel policies for approval by the board;

(b) Appointing all staff;

(c) Preparing annual reports on the board's program of work;

(d) Carrying out policy and program directives of the board; and

(e) Performing all other duties and responsibilities assigned by state law.

(2) With approval of the board, the commissioner of education may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the board.

(3) The commissioner of education shall have access to the papers, books, and records of education personnel as part of an inquiry or investigation relating to disciplinary actions against a certified employee.

(4) Pursuant to KRS 161.120, the commissioner of education, on behalf of the board, may issue administrative subpoenas for the attendance of witnesses and the production of documents relevant to disciplinary cases under consideration. Compliance with the subpoenas shall be enforceable by the Circuit Court in Franklin County.

History.
Enact. Acts 2001, ch. 137, § 1, effective June 21, 2001; 2002, ch. 288, § 2, effective July 15, 2002; 2021 ch. 26, § 7, effective June 29, 2021.

161.020. Certificates required of school employees — Filing requirements — Validity and terms for renewal.

(1)(a) No person shall be eligible to hold the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued, or receive salary for services rendered in the position, unless he or she holds a certificate of legal qualifications for the position, issued by the Education Professional Standards Board.

(b) No person seeking initial employment as a school finance officer on or after July 1, 2015, shall be eligible to hold the position of school finance officer unless the person holds a certificate of legal qualification for the position, issued by the Kentucky Department of Education.

(2) No person shall enter upon the duties of a position requiring certification qualifications until his or her certificate has been filed or credentials registered with the local district employer.

(3) The validity and terms for the renewal of any certificate shall be determined by the laws and regulations in effect at the time the certificate was issued.

History.
4502-6, 4502-10, 4502-11, 4503-2; amend. Acts 1978, ch. 56, § 1, effective June 17, 1978; 1990, ch. 476, Pt. II, § 55, effective July 13, 1990; 2001, ch. 137, § 6, effective June 21, 2001; 2014, ch. 136, § 4, effective July 15, 2014.

NOTES TO DECISIONS

Analysis

1. Limitation or Abolishment of Professional Standing.
2. Tenure.
3. Certificate.
4. —Filing
5. Minimum Qualifications.
6. —Date Determined.
7. —Ineligibility.
8. —Less Than Four-Year Degree.
9. Administrator.
10. Equitable Estoppel.

1. Limitation or Abolishment of Professional Standing.
A certificate of professional standing may be abolished or limited by the legislature. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

2. Tenure.
Teacher tenure is statutory and not contractual, and the legislature may abridge or destroy it. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

3. Certificate.
The qualification of an applicant as teacher must be determined as of time when he begins to fulfill the contract and not as of date of application, but teacher must hold certificate when he begins to teach. Martin v. Knott County Board of Education, 275 Ky. 483, 122 S.W.2d 98, 1938 Ky. LEXIS 454 (Ky. 1938).

Summary judgment granted to the school board and the school superintendent was appropriate because the employee could not be paid retroactive pay at a certified teacher's salary. A teacher was not entitled to be paid as a certified teacher until the teacher had obtained certification pursuant to KRS 161.020. Springer v. Bullitt County Bd. of Educ., 196 S.W.3d 528, 2006 Ky. App. LEXIS 183 (Ky. Ct. App. 2006).

Employee did not show a job as a family literacy instructor made the employee a "certified employee," under KRS 161.020, rather than a "classified employee" because (1) the job did not require a certificate from the Education Professional Standards Board as a condition precedent to employment, and (2) the fact the employee had a certificate and the job included instruction did not make the employee a "certified employee." Spalding v. Marion County Bd. of Educ., 452 S.W.3d 611, 2014 Ky. App. LEXIS 71 (Ky. Ct. App. 2014).

4. —Filing
A discharged teacher, suing to compel reinstatement, must allege compliance with subsection (2). Bullock v. Brown, 258 Ky. 522, 80 S.W.2d 593, 1935 Ky. LEXIS 207 (Ky. 1935).

Teacher, whose certificate had expired previous year and who failed to file with school board evidence of his qualification to teach, was not entitled to damages for board's failure to employ him. Martin v. Knott County Board of Education, 275 Ky. 483, 122 S.W.2d 98, 1938 Ky. LEXIS 454 (Ky. 1938).

5. Minimum Qualifications.
Boards of education may establish minimum qualifications for teachers higher than those required by statute. Board of Education v. Messer, 257 Ky. 836, 79 S.W.2d 224, 1935 Ky. LEXIS 96 (Ky. 1935).

6. —Date Determined.
The qualification to teach is to be determined as of the day an applicant is to begin teaching, and not as of the date of application for the position. Reynolds v. Spurlock, 257 Ky. 582, 78 S.W.2d 787, 1935 Ky. LEXIS 60 (Ky. 1935). See Swinford v. Chasteen, 261 Ky. 249, 87 S.W.2d 373, 1935 Ky. LEXIS 623 (Ky. 1935); Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149, 1939 Ky. LEXIS 716 (Ky. 1939).

7. —Ineligibility.
Where minor was ineligible to be teacher because she held no certificate and failed to qualify for same under former KRS 161.040, she was a volunteer and entitled to no salary for the period prior to her eighteenth birthday. Floyd County Board of Education v. Slone, 307 S.W.2d 912, 1957 Ky. LEXIS 119 (Ky. 1957).

8. —Less Than Four-Year Degree.
The General Assembly has the power to provide that teachers with less qualification than a four-year degree shall receive only a minimum salary and the fact that the motive of such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

9. Administrator.
An administrator is one who (1) holds a position categorized as an administrative position pursuant to KRS 161.720(8) or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Education, 684 S.W.2d 7, 1984 Ky. App. LEXIS 529 (Ky. Ct. App. 1984).

10. Equitable Estoppel.
It was error to grant summary judgment dismissing an employee's claim that a school board (board) was equitably

estopped from claiming the employee was not a "certified employee" because there was a genuine issue of material fact as to whether the board's conduct during the employee's employment led the employee to reasonably believe the employee was a "certified employee," given various representations that the employee was such an employee. Spalding v. Marion County Bd. of Educ., 452 S.W.3d 611, 2014 Ky. App. LEXIS 71 (Ky. Ct. App. 2014).

OPINIONS OF ATTORNEY GENERAL.

A school psychologist does not fall within the group of school personnel excluded from the provisions of KRS Ch. 319 by KRS 319.015(4) and consequently, an individual may not be employed as a school psychologist without being a licensed psychologist pursuant to the provisions of that chapter. OAG 67-180.

Since a school district is a public agency under the Open Records Law and the certificates required by this section are public records as defined in KRS 61.870(2), denial of a request to inspect certificates required by this section to be filed with the board of education was improper under the Open Records Law, except that information, if any, on the certificates of a personal nature, such as social security numbers, home addresses and telephone numbers, need not be released. OAG 85-109, 1985 Ky. AG LEXIS 42.

Notwithstanding the apparent legislative intent of this section to make the revocation of any instructional leader's certificate contingent upon laws then in force, KRS 156.101 clearly controls revocation of an instructional leader's certificate; therefore a certificate of an instructional leader may be revoked for failure to obtain the hours of intensive training required by KRS 156.101. All instructional leaders, including those who received a certificate prior to the effective date of the statute, are required to comply with KRS 156.101. OAG 88-37, 1988 Ky. AG LEXIS 37.

The legislative purpose of the instructional leadership program, set forth in subsection (1) of KRS 156.101, was to develop a program which would result in improvement in the quality of performance of principals, assistant principals, supervisors of instruction, guidance counselors or directors of special education. Practically, this prescribed program of improvement could not be effective if it did not supersede this section. OAG 88-37, 1988 Ky. AG LEXIS 37.

The requirement of subsection (3) of this section, that certificates be considered pursuant to the application of the laws which were in effect at the time of the granting of the certificate, is not in harmony with the instructional leadership program. Therefore, subsection (3) of this section is controlling except when an instructional leader fails to comply with the instructional leader improvement program. At such time, the state board may exercise its power of revocation granted by subsection (4) of KRS 156.101. OAG 88-37, 1988 Ky. AG LEXIS 37.

"Certified employee" means teacher, principal, superintendent, director of pupil personnel, and any employee who supervises any such employee or who has any type of responsibility for instruction or teaching of pupils; school bus drivers and cooks are not "certified employees" and therefore are "classified employees." OAG 90-103, 1990 Ky. AG LEXIS 95.

The Cabinet for Workforce Development was directed to release the employment applications and resumes of the named employees of a state vocational-technical school, after separating or otherwise masking any information of a personal nature which appeared on those documents, including the employees' home addresses, social security numbers, and medical information; if the employees' teaching certificates were contained in the file, they too should have been released. OAG 92-59, 1992 Ky. AG LEXIS 59.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Assessment prerequisites for teacher certification, 16 KAR 6:010.

Career and technical education school principals, 16 KAR 3:080.

Certificate renewals and teaching experience, 16 KAR 4:060.

Certification fees, 16 KAR 4:040.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Certification for school superintendent, 16 KAR 3:010.

Certification for supervisor of instruction, 16 KAR 3:020.

Certification requirements for teachers of exceptional children, 16 KAR 4:020.

Continuing Education Option for certificate renewal and rank change, 16 KAR 8:030.

Dating of certification, 16 KAR 4:050.

Director of special education, 16 KAR 3:040.

District school nutrition director, 702 KAR 6:020.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Emeritus Certificate, 16 KAR 2:220.

Endorsement for individual intellectual assessment, 16 KAR 3:070.

Endorsement for teachers for gifted education, 16 KAR 2:110.

Examination prerequisites for principal certification, 16 KAR 6:030.

Examination prerequisites for teacher certification, 16 KAR 6:010.

Exception certificate, 16 KAR 2:230.

Foreign teachers serving under the teacher exchange program, 16 KAR 4:070.

Guidance counselor, provisional and standard certificates, all grades, 16 KAR 3:060.

Interdisciplinary early childhood education, birth to primary, 16 KAR 2:040.

Interim certificate,16 KAR 2:240.

Junior Reserve Officers Training Corps certification, 16 KAR 2:100.

Kentucky professional and provisional teacher certificates, 16 KAR 2:010.

Kentucky Principal Internship Program, 16 KAR 7:020.

Kentucky teaching certificates, 16 KAR 2:010.

Local educator assignment data, 16 KAR 1:050.

Master of arts in teaching, 16 KAR 5:050.

Occupation-based career and technical education certification, 16 KAR 2:020.

One (1) year conditional certificate, 16 KAR 2:180.

Out-of-state preparation, 16 KAR 4:030.

Part-time adjunct instructor certificate, 16 KAR 9:040.

Planned Fifth-year Program, 16 KAR 8:020.

Probationary certificate for information technology teachers, 16 KAR 2:190.

Probationary certificate for middle school teachers, 16 KAR 2:170.

Probationary certificate for teachers of children, birth to primary, 16 KAR 2:140.

Probationary certificate for teachers of engineering and technology education, 16 KAR 2:150.

Probationary certificate for teachers of exceptional children, 16 KAR 2:160.

Probationary endorsement for teachers for English as a second language, 16 KAR 2:200.

Professional certificate for college faculty: secondary education, 16 KAR 9:030.

Professional certificate for directors and assistant directors of pupil personnel, 16 KAR 3:030.

Professional certificate for instructional leadership — school principal, all grades, 16 KAR 3:050.

Professional certificate for school social worker, 16 KAR 2:070.

Proficiency evaluation, 16 KAR 5:030.

Provisional and probationary certificates for school social worker, 16 KAR 2:080.

Provisional certificate for college faculty, 16 KAR 9:020.

Qualifications for professional school positions, 16 KAR 4:010.

Rank I classification, 16 KAR 8:010.

Ranking of occupation-based career and technical education teachers, 16 KAR 8:040.

Recency and certification fees, 16 KAR 4:040.

Recruitment plan for position of school media librarian, 16 KAR 2:130.

School nurse, 16 KAR 2:060.

School psychologist, 16 KAR 2:090.

Standards for admission to educator preparation, 16 KAR 5:020.

Standards for certified school personnel, 16 KAR 1:010.

Substitute teachers and emergency school personnel, 16 KAR 2:030.

University-based alternative certification program for teachers of world languages, 16 KAR 9:090.

Written examination prerequisites for occupation-based career and technical education teachers, 16 KAR 6:020.

Kentucky Bench & Bar.

Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

161.025. Kentucky council on teacher education and certification created — Membership — Terms — Duties. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1972, ch. 248, § 2; 1978, ch. 155, § 101, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

161.027. Preparation program for principals — Assessment — Certificates and statements of eligibility — Renewal.

(1) The Education Professional Standards Board, pursuant to KRS 161.028, shall by administrative regulation establish requirements for a preparation program in institutions of higher education for all new applicants for principal certification and establish criteria for admission to the program.

(2) The Education Professional Standards Board and the Council on Postsecondary Education shall evaluate the preparation programs for principals and maintain only those institutional programs that can demonstrate both the quality and the capability to enroll adequate numbers of students to justify the resources necessary for maintenance of a quality program.

(3) The Education Professional Standards Board shall develop or select appropriate assessments for applicants seeking certification as principals, including an assessment of the ability to apply knowledge, instructional leadership, management, and supervision skills.

(4) The Education Professional Standards Board shall establish the minimum score for successful completion of assessments and shall establish a reasonable fee to be charged applicants for the actual cost of administration of the assessments. The Education Professional Standards Board shall provide for confidentiality of assessment scores.

(5) The certification of principals shall require the successful completion of the examinations required by subsection (3) of this section. A one (1) year certificate may be given to a person who has:

(a) A comparable certificate from another state; or

(b) All other qualifications except the assessments and is selected as a principal or assistant principal in a district where the superintendent certifies to the Education Professional Standards Board that there is a limited number of applicants to meet the requirements.

Upon successful completion of the assessments, a certificate shall be issued for an additional four (4) years. A person employed in Kentucky as a principal or assistant principal who was certified in another state and practiced in that state for two (2) or more years is exempt from taking the assessment described in subsection (3)(a) of this section.

(6) Upon successful completion of the approved preparation program and the assessments, the Education Professional Standards Board shall issue to the applicant a statement of eligibility for internship valid for five (5) years. If the applicant does not gain employment as a principal within the five (5) year period, the applicant shall reestablish eligibility by repeating and passing the assessments in effect at that time or by completing a minimum of six (6) graduate hours, directly related to instructional leadership, management, or supervision, at a regionally or nationally accredited institution. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility. Upon obtaining employment for an internship position as principal or assistant principal within the period of eligibility, the applicant shall be issued the appropriate one (1) year certificate for the position.

(7) Following successful completion of the first year of principalship, the principal certificate shall be extended for four (4) years. Renewal of the certificate shall require the completion of a continuing education requirement as prescribed by the Education Professional Standards Board.

History.

Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 22, effective October 18, 1985; 1988, ch. 275, § 1, effective April 9, 1988; 1990, ch. 476, Pt. II, § 60, effective July 13, 1990; 1996, ch. 343, § 3, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 65, effective May 30, 1997; 1998, ch. 362, § 2, effective July 15, 1998; 2005, ch. 111, § 1, effective June 20, 2005; 2020 ch. 113, § 2, effective July 15, 2020; 2026 ch. 154, § 3, effective July 15, 2026.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Career and technical education school principals, 16 KAR 3:080.

Certification fees, 16 KAR 4:040.

Examination prerequisites for principal certification, 16 KAR 6:030.
Kentucky Principal Internship Program, 16 KAR 7:020.
Professional certificate for instructional leadership — school principal, all grades, 16 KAR 3:050.
University-based alternative certification program, 16 KAR 9:080.

161.028. Education Professional Standards Board — Powers and duties regarding the preparation and certification of professional school personnel — Membership.

(1) The Education Professional Standards Board is recognized to be a public body corporate and politic and an agency and instrumentality of the Commonwealth, in the performance of essential governmental functions. The Education Professional Standards Board has the authority and responsibility to:

(a) Establish standards and requirements for obtaining and maintaining a teaching certificate;

(b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. College or university programs may be approved by the board for a college or university with regional institutional level accreditation or national institutional level accreditation that is recognized by the United States Department of Education and is eligible to receive federal funding under 20 U.S.C. secs. 1061 to 1063. Program standards shall reflect national standards and shall address, at a minimum, the following:

1. The alignment of programs with the state's core content for assessment as defined in KRS 158.6457;

2. Research-based classroom practices, including effective classroom management techniques;

3. Emphasis on subject matter competency of teacher education students;

4. Methodologies to meet diverse educational needs of all students;

5. The consistency and quality of classroom and field experiences, including early practicums and student teaching experiences;

6. The amount of college-wide or university-wide involvement and support during the preparation as well as the induction of new teachers;

7. The diversity of faculty;

8. The effectiveness of partnerships with local school districts; and

9. The performance of graduates on various measures as determined by the board;

(c) Include in the standards established for programs for the preparation of teachers under paragraph (b) of this subsection the requirement that interdisciplinary early childhood education or elementary regular education programs shall:

1. Provide instruction on how to teach reading and language arts using scientifically researched and evidence-based reading instruction and reading intervention programs as defined in KRS 158.306; and

2. Not provide instruction on teaching reading and language arts that incorporates a three-cueing system as defined in KRS 158.306;

(d) Require all interdisciplinary early childhood through grade five (5) educators who receive certification pursuant to KRS 161.048(2) to (6) and (9) to complete within two (2) years of initial employment a science of reading professional learning program approved by the department;

(e) Conduct an annual review of diversity in teacher preparation programs;

(f) Provide assistance to universities and colleges in addressing diversity, which may include researching successful strategies and disseminating the information, encouraging the development of nontraditional avenues of recruitment and providing incentives, waiving administrative regulations when needed, and other assistance as deemed necessary;

(g) Discontinue approval of programs that do not meet standards or whose graduates do not perform according to criteria set by the board;

(h) Issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate;

(i) Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;

(j) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;

(k) Recommend to the Kentucky Board of Education the essential data elements relating to teacher preparation and certification, teacher supply and demand, teacher attrition, teacher diversity, and employment trends to be included in a state comprehensive data and information system and periodically report data to the appropriate Interim Joint Committee on Education;

(*l*) Submit reports to the Governor and the Legislative Research Commission and inform the public on the status of teaching in Kentucky;

(m) Devise a credentialing system that provides alternative routes to gaining certification and greater flexibility in staffing local schools while maintaining standards for teacher competence;

(n) Develop a professional code of ethics;

(o) Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, the costs associated with disciplinary action against a certificate holder under KRS 161.120, and the costs associated with the development and maintenance of the Kentucky Educator Placement Service System required under KRS 160.152;

(p) Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing, by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver;

(q) Promote the development of one (1) or more innovative, nontraditional or alternative administrator or teacher preparation programs through public or private colleges or universities, private contractors, the Department of Education, or the Kentucky Commonwealth Virtual University and waive administrative regulations if needed in order to implement the program;

(r) Grant approval, if appropriate, of a university's request for an alternative program that enrolls an administrator candidate in a postbaccalaureate administrator preparation program concurrently with employment as an assistant principal, principal, assistant superintendent, or superintendent in a local school district. An administrator candidate in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Principal Internship Program, notwithstanding provisions of KRS 161.030, or the Superintendent's Assessment process, notwithstanding provisions of KRS 156.111, as appropriate. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the candidate's successful completion of the program, internship requirements, and assessments as required by the board;

(s) Employ consultants as needed;

(t) Enter into contracts. Disbursements to professional educators who receive less than one thousand dollars ($1,000) in compensation per fiscal year from the board for serving on an assessment validation panel or as a test scorer or proctor shall not be subject to KRS 45A.690 to 45A.725;

(u) Sponsor studies, conduct research, conduct conferences, and publish information as appropriate; and

(v) Issue orders as necessary in any administrative action before the board.

(2)(a) The board shall be composed of seventeen (17) members. The secretary of the Education and Labor Cabinet and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:

1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;

2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;

3. One (1) member representative of local boards of education; and

4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer or head of an educator preparation program of an independent not-for-profit college or university.

(b) The members appointed by the Governor shall be confirmed by the Senate under KRS 11.160. If the General Assembly is not in session at the time of the appointment, persons appointed shall serve prior to confirmation, but the Governor shall seek the consent of the Senate at the next regular session or at an intervening extraordinary session if the matter is included in the call of the General Assembly.

(c) Each appointed member shall serve a three (3) year term. A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his or her successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he or she was appointed shall no longer be eligible to serve in that position.

(d) Members of the board shall serve without compensation but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.

(e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from the member's place of employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.

(f)1. A chair shall be elected by and from the membership and confirmed by the Senate in accordance with KRS 11.160. If the person selected as chair is not confirmed by the Senate, he or she shall still retain his or her position on the board, but shall vacate his or her position as chair, and the membership shall select a new chair.

2. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chair. Regular meetings shall be held at least semiannually on call of the chair.

(g) The commissioner of education shall serve as executive secretary to the board and may designate staff to facilitate his or her duties.

(h) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 56, effective July 13, 1990; 1994, ch. 265, § 1, effective July 15, 1994; 1994, ch. 470, § 1, effective July 15, 1994; 1996, ch. 107, § 1, effective July 15, 1996; 1996, ch. 343, § 4, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 66, effective May 30, 1997; 1998, ch. 362, § 3,

effective July 15, 1998; 2000, ch. 527, § 15, effective July 14, 2000; 2001, ch. 137, § 7, effective June 21, 2001; 2002, ch. 288, § 3, effective July 15, 2002; 2004, ch. 117, § 2, effective July 13, 2004; 2021 ch. 26, § 8, effective June 29, 2021; 2021 ch. 204, § 1, effective June 29, 2021; 2022 ch. 236, § 78, effective July 1, 2022; 2025 ch. 33, § 1, effective June 27, 2025; 2026 ch. 74, § 5, effective April 10, 2026; 2026 ch. 178, § 12, effective April 16, 2026; 2026 ch. 196, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

(4/16/2026). This statute was amended by 2026 Ky. Acts chs. 74 and 178, which do not appear to be in conflict and have been codified together.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 74, 178, and 196, which do not appear to be in conflict and have been codified together.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

NOTES TO DECISIONS

1. Executive Membership.

Due to the immense authority of the Education Professional Standards Board, certain local Boards of Education are members of the executive branch and are within the definition of "governmental body" were that phrase relevant to Ky. Rev. Stat. Ann. § 45A.245(1)'s waiver. Bd. of Educ. of Paris v. Earlywine, 719 S.W.3d 1, 2025 Ky. LEXIS 13 (Ky. 2025).

Cited in:

Commonwealth ex rel. Beshear v. Bevin, 575 S.W.3d 673, 2019 Ky. LEXIS 214 (Ky. 2019); Commonwealth ex rel. Beshear v. Bevin, 575 S.W.3d 673, 2019 Ky. LEXIS 214 (Ky. 2019).

OPINIONS OF ATTORNEY GENERAL.

The Educational Professional Standards Board (EPSB) lacks the authority to delegate the holding of a revocation hearing, as found in KRS 161.120, to a hearing officer. Nowhere in the statutory sections dealing with the board is there any authority for such a delegation of power, and therefore, based upon the lack of authority granted to the EPSB under their statutes, the board must be physically present to "hear" the evidence introduced during a hearing. Of course, a hearing officer may assist the Board during and following the hearing. OAG 91-37, 1991 Ky. AG LEXIS 37.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Alternative training program eligibility requirements for middle school and secondary school teachers, 16 KAR 9:050.

Alternative training program for preparation of candidates for initial teacher certification, 16 KAR 9:060.

Assessment prerequisites for teacher certification, 16 KAR 6:010.

Career and technical education school principals, 16 KAR 3:080.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Certificate renewals and successful teaching experience, 16 KAR 4:060.

Certification fees, 16 KAR 4:040.

Certification for school superintendent, 16 KAR 3:010.

Certification for supervisor of instruction, 16 KAR 3:020.

Certification requirements for teachers of exceptional children, 16 KAR 4:020.

Continuing Education Option for certificate renewal and rank change, 16 KAR 8:030.

Dating of certification, 16 KAR 4:050.

Director of special education, 16 KAR 3:040.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Emeritus Certificate, 16 KAR 2:220.

Endorsement for individual intellectual assessment, 16 KAR 3:070.

Endorsement for teachers for gifted education, 16 KAR 2:110.

Examination prerequisites for teacher certification, 16 KAR 6:010.

Exception certificate, 16 KAR 2:230.

Expedited route to certification, 16 KAR 9:110.

Guidance counselor, provisional and standard certificates, all grades, 16 KAR 3:060.

Interdisciplinary early childhood education, birth to primary, 16 KAR 2:040.

Junior Reserve Officers Training Corps certification, 16 KAR 2:100.

Kentucky Primary Alternative Certification Program, 16 KAR 9:070.

Kentucky professional and provisional teacher certificates, 16 KAR 2:010.

Kentucky Principal Internship Program, 16 KAR 7:020.

Kentucky Teacher Internship Program, 16 KAR 7:010.

Kentucky teaching certificates, 16 KAR 2:010.

Local educator assignment data, 16 KAR 1:050.

Master of arts in teaching, 16 KAR 5:050.

Occupation-based career and technical education certification, 16 KAR 2:020.

One (1) year conditional certificate, 16 KAR 2:180.

Out-of-state preparation, 16 KAR 4:030.

Part-time adjunct instructor certificate, 16 KAR 9:040.

Planned Fifth-year Program, 16 KAR 8:020.

Probationary certificate for information technology teachers, 16 KAR 2:190.

Probationary certificate for middle school teachers, 16 KAR 2:170.

Probationary certificate for teachers of children, birth to primary, 16 KAR 2:140.

Probationary certificate for teachers of engineering and technology education, 16 KAR 2:150.

Probationary certificate for teachers of exceptional children, 16 KAR 2:160.

Probationary endorsement for teachers for English as a second language, 16 KAR 2:200.

Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial, 16 KAR 1:030.

Professional certificate for college faculty: secondary education, 16 KAR 9:030.

Professional certificate for directors and assistants of pupil personnel, 16 KAR 3:030.

Professional certificate for exceptional work experience, limited to secondary education, 16 KAR 9:010.

Professional certificate for instructional leadership — school principal, all grades, 16 KAR 3:050.

Professional certificate for school social worker, 16 KAR 2:070.

Professional code of ethics for Kentucky school certified personnel, 16 KAR 1:020.

Provisional and probationary certificates for school social worker, 16 KAR 2:080.

Provisional certificate for college faculty, 16 KAR 9:020.

Qualifications for professional school positions, 16 KAR 4:010.

Rank I classification, 16 KAR 8:010.

Ranking of occupation-based career and technical education teachers, 16 KAR 8:040.

Recency and certification fees, 16 KAR 4:040.

School psychologist, 16 KAR 2:090.

Standards for accreditation of educator preparation units and approval of programs, 16 KAR 5:010.

Standards for admission to educator preparation, 16 KAR 5:020.

Standards for certified school personnel, 16 KAR 1:010.

Standards for Certified Teacher Leader, 16 KAR 1:016.

Substitute teachers and emergency school personnel, 16 KAR 2:030.

University-based alternative certification program, 16 KAR 9:080.

University based alternative certification program for teachers of world languages, 16 KAR 9:090.

Written examination prerequisites for occupation-based career and technical education teachers, 16 KAR 6:020.

Kentucky Bench & Bar.

Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

Northern Kentucky Law Review.

Kentucky Law Survey: Education, 29 N. Ky. L. Rev. 115 (2002).

161.030. Certification authority — Assessments of beginning teachers and teachers seeking additional certification — Conditional certificates — Temporary certificates — Emeritus and exception certificates.

(1) Notwithstanding the age of the pupil, the certification of all teachers and other school personnel, in public schools only, is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the system of public schools, except as provided for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board. After July 15, 1994, all certificate applications and other data collection instruments of the board shall include a request for voluntary information about the applicant's ethnic background. This information shall be available to help local school districts locate minority candidates. A person who holds a certificate prior to this requirement may request that ethnic information be added to his or her file. Nothing in this section shall preclude the right of an individual in a nonpublic school from seeking voluntary certification by the Education Professional Standards Board.

(2) Certificates shall be issued upon written application and in accordance with statutes and regulations in effect at the time of application to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.

(3)(a) Certification of all new teachers and teachers seeking additional certification shall require the successful completion of appropriate assessments prior to certification. The assessments shall be selected by the Education Professional Standards Board and shall measure knowledge in the specific teaching field of the applicant, including content of the field and teaching of that content. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment. The assessments shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the assessments and the approved teacher preparation program, a professional certificate valid for five (5) years shall be issued.

(b) If an applicant for teacher certification has completed the approved teacher preparation program and has taken but failed to successfully complete the appropriate assessments selected by the Education Professional Standards Board, a conditional certificate may be issued for a period not to exceed one (1) year. The employing school district, in collaboration with the teacher education institution, shall provide technical assistance and mentoring support to the conditionally certified teacher. The teacher shall retake the assessments during the validity period of the conditional certificate. The conditional certificate shall not be reissued. Upon successful completion of the required assessments, a professional certificate valid for five (5) years shall be issued. The Education Professional Standards Board shall promulgate administrative regulations to establish the standards and procedures for issuance of a conditional certificate.

(c) If an out-of-state teacher with less than two (2) years' experience comes to Kentucky after the deadline for taking the assessments, a temporary certificate may be issued for a period up to six (6) months. The teacher shall take the assessments during the period of the temporary certificate. If the teacher fails the assessments, the temporary certificate shall be valid only for the current semester. If the teacher passes the assessments, a professional certificate valid for five (5) years shall be issued.

(4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the assessments shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any assessment to repeat that assessment, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Education Professional Standards Board shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.

(5) If an applicant establishes eligibility for a five (5) year professional certificate under the provisions of subsection (3)(a) of this section, the applicant shall also be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board.

(6)(a) The Education Professional Standards Board shall issue a ten (10) year emeritus certificate to an applicant who has:

1. Retired or will retire not more than one (1) year prior to the expiration date of the certificate;
2. Met the requirements to receive an emeritus certificate as set forth in administrative regulation promulgated by the Education Professional Standards Board; and
3. Completed the required application unless the provisions of KRS 161.120 apply.

(b) The Education Professional Standards Board shall issue a one (1) time five (5) year exception certificate to an individual:

1. Whose certificate has expired;
2. Whose rank upon expiration was Rank I or Rank II;
3. Who has met the requirements to receive an exception certificate as set forth in administrative regulation promulgated by the Education Professional Standards Board;
4. Who completed three (3) years of classroom instruction prior to the certificate's expiration; and
5. Who has completed the required application unless the provisions of KRS 161.120 apply.

(c) The Education Professional Standards Board shall issue a five (5) year certificate to an individual:

1. Whose certificate has expired;
2. Who has met the requirements for a certificate or statement of eligibility in an administrative regulation promulgated by the Education Professional Standards Board; and
3. Who submits proof of successful completion of six (6) credit hours of graduate coursework.

(d) The Education Professional Standards Board shall issue a one (1) time five (5) year certificate to an individual:

1. Whose certificate has expired;
2. Who has met the requirements for a certificate or statement of eligibility in an administrative regulation promulgated by the Education Professional Standards Board; and
3. Who submits a waiver issued by a school district superintendent exempting the applicant from the requirement to submit proof of successful completion of six (6) credit hours of graduate coursework under paragraph (c)3. of this subsection.

(7) The Education Professional Standards Board shall approve the curricula of any college or university, or of any department thereof, for the training of teachers, and any nontraditional or alternative teacher preparation program offered in a public or private postsecondary education institution, private contractor, or state agency, and shall also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

(8) The issuance of any certificate, except emergency certificates issued pursuant to KRS 161.100, by the Education Professional Standards Board shall not be dependent upon an offer of employment. The certification process, except for emergency certificates, is independent of any job prospects and certification shall be awarded on the basis of completing a teacher preparation program or an alternative certification pathway and passing required assessments.

History.

4502-1; amend. Acts 1968, ch. 152, § 117; 1970, ch. 49, § 1; 1972, ch. 248, § 1; 1978, ch. 155, § 102, effective June 17, 1978; 1984, ch. 396, § 1, effective July 13, 1984; 1986, ch. 119, § 1, effective July 13, 1986; 1988, ch. 388, § 2, effective July 15, 1988; 1990, ch. 476, Pt. II, § 57, effective July 13, 1990; 1994, ch. 192, § 2, effective July 15, 1994; 1994, ch. 417, § 1, effective July 15, 1994; 1996, ch. 343, § 5, effective July 15, 1996; 1998, ch. 362, § 4, effective July 15, 1998; 2000, ch. 375, § 3, effective July 14, 2000; 2001, ch. 137, § 8, effective June 21, 2001; 2002, ch. 288, § 1, effective July 15, 2002; 2021 ch. 187, § 1, effective June 29, 2021; 2024 ch. 124, § 1, effective July 15, 2024; 2026 ch. 196, § 3, effective July 15, 2026.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

NOTES TO DECISIONS

Analysis

1. Nonpublic School Teachers.
2. Administrator.

1. Nonpublic School Teachers.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under subsection (2) of this section will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Board for Elementary & Secondary Education v. Rudasill, 589 S.W.2d 877, 1979 Ky. LEXIS 295 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1592 (U.S. 1980).

2. Administrator.

An administrator is one who (1) holds a position categorized as an administrative position pursuant to KRS 161.720(8), or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Education, 684 S.W.2d 7, 1984 Ky. App. LEXIS 529 (Ky. Ct. App. 1984).

Cited in:

Crawley v. Board of Education, 658 F.2d 450, 1981 U.S. App. LEXIS 18054 (6th Cir. 1981).

OPINIONS OF ATTORNEY GENERAL.

Under this section a teacher certified to teach only in a nonpublic school would not be qualified to teach in a public school. OAG 70-355.

The 1970 amendment to this section was not discriminatory because it established different standards for certification of teachers in public and nonpublic schools. OAG 70-355.

The provisions of this section as amended in 1972 supersedes and repeals by implication the provisions of KRS 164.020 as to determination of the curricula for teacher education. OAG 72-272.

The 1986 General Assembly intended to require licensing by the Board of Speech Language Pathology and Audiology of those certified speech language pathologists and audiologists who began teaching or had a certificate issued after August 1, 1986, or who had a master's degree in such subjects; those persons who were certified by the Department of Education on and prior to August 1, 1986, and who had not obtained a master's degree in speech language pathology or audiology, or the substantive equivalent, and who render speech language pathology or audiology services exclusively in the public schools were not required to obtain a license from the Board of Speech Language Pathology and Audiology. OAG 87-34, 1987 Ky. AG LEXIS 51.

A school board may not require principals to be residents of the school district. OAG 01-7, 2001 Ky. AG LEXIS 10.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Alternative training program eligibility requirements for middle school and secondary school teachers, 16 KAR 9:050.

Alternative training program for preparation of candidates for initial teacher certification, 16 KAR 9:060.

Assessment prerequisites for teacher certification, 16 KAR 6:010.

Career and technical education school principals, 16 KAR 3:080.

Certificate renewals and teaching experience, 16 KAR 4:060.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Certification fees, 16 KAR 4:040.

Certification for school superintendent, 16 KAR 3:010.

Certification for supervisor of instruction, 16 KAR 3:020.

Certification requirements for teachers of exceptional children, 16 KAR 4:020.

Continuing Education Option for certificate renewal and rank change, 16 KAR 8:030.

Dating of certification, 16 KAR 4:050.

Director of special education, 16 KAR 3:040.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Endorsement for individual intellectual assessment, 16 KAR 3:070.

Emeritus Certificate, 16 KAR 2:220.

Endorsement for teachers for gifted education, 16 KAR 2:110.

Examination prerequisites for principal certification, 16 KAR 6:030.

Examination prerequisites for teacher certification, 16 KAR 6:010.

Exception certificate, 16 KAR 2:230.

Expedited route to certification, 16 KAR 9:110.

Foreign teachers serving under the teacher exchange program, 16 KAR 4:070.

Guidance counselor, provisional and standard certificates, all grades, 16 KAR 3:060.

Interdisciplinary early childhood education, birth to primary, 16 KAR 2:040.

Junior Reserve Officers Training Corps certification, 16 KAR 2:100.

Kentucky Primary Alternative Certification Program, 16 KAR 9:070.

Kentucky professional and provisional teacher certificates, 16 KAR 2:010.

Kentucky Teacher Internship Program, 16 KAR 7:010.

Kentucky teaching certificates, 16 KAR 2:010.

Local educator assignment data, 16 KAR 1:050.

Master of arts in teaching, 16 KAR 5:050.

Occupation-based career and technical education certification, 16 KAR 2:020.

One (1) year conditional certificate, 16 KAR 2:180.

Out-of-state preparation, 16 KAR 4:030.

Part-time adjunct instructor certificate, 16 KAR 9:040.

Planned Fifth-year Program, 16 KAR 8:020.

Probationary certificate for information technology teachers, 16 KAR 2:190.

Probationary certificate for middle school teachers, 16 KAR 2:170.

Probationary certificate for teachers of children, birth to primary, 16 KAR 2:140.

Probationary certificate for teachers of engineering and technology education, 16 KAR 2:150.

Probationary certificate for teachers of exceptional children, 16 KAR 2:160.

Probationary endorsement for teachers for English as a second language, 16 KAR 2:200.

Professional certificate for directors and assistants of pupil personnel, 16 KAR 3:030.

Professional certificate for exceptional work experience, limited to secondary education, 16 KAR 9:010.

Professional certificate for instructional leadership — school principal, all grades, 16 KAR 3:050.

Professional certificate for school social worker, 16 KAR 2:070.

Professional code of ethics for Kentucky school certified personnel, 16 KAR 1:020.

Proficiency evaluation, 16 KAR 5:030.

Provisional and probationary certificates for school social worker, 16 KAR 2:080.

Provisional certificate for college faculty, 16 KAR 9:020.

Qualifications for professional school positions, 16 KAR 4:010.

Rank I classification, 16 KAR 8:010.

Ranking of occupation-based career and technical education teachers, 16 KAR 8:040.

Recency and certification fees, 16 KAR 4:040.

Recruitment plan for position of school media librarian, 16 KAR 2:130.

School nurse, 16 KAR 2:060.

School psychologist, 16 KAR 2:090.

Standards for accreditation of educator preparation units and approval of programs, 16 KAR 5:010.

Standards for admission to educator preparation, 16 KAR 5:020.

Standards for certified school personnel, 16 KAR 1:010.

Standards for Certified Teacher Leader, 16 KAR 1:016.

Substitute teachers and emergency school personnel, 16 KAR 2:030.

University-based alternative certification program, 16 KAR 9:080.

University-based alternative certification program for teachers of world languages, 16 KAR 9:090.

Written examination prerequisites for occupation-based career and technical education teachers, 16 KAR 6:020.

Kentucky Law Journal.

Comment, Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-1979).

Smith, Medical and Psychotherapy Privileges and Confidentiality: On Giving With One Hand and Removing With the Other, 75 Ky. L.J. 473 (1986-87).

161.031. New teacher induction and mentor programs provided by school districts — Definitions — Standards — Evaluations — Annual report.

(1) As used in this section:

(a) "Mentor" means an educator who has at least three (3) full years of experience under a professional certificate and who has been trained to assist a beginning educator in the same professional role with his or her professional responsibilities and general school and district procedures; and

(b) "New teacher induction and mentor program" means a multiyear, structured program of mentorship and professional development in which trained mentors provide constructive feedback to new teachers.

(2) The Education Professional Standards Board shall develop standards and guidance for school districts to implement new teacher induction and mentor programs. All school districts are encouraged to provide an induction program for teachers in their first year of teaching that is aligned with the standards and guidance for school districts developed by the Education Professional Standards Board.

(3) Standards for new teacher induction and mentor programs shall include but not be limited to the following:

(a) An orientation program for new teachers and other incoming teachers to be provided at the beginning of and throughout the first year of employment;

(b) Assignment of a mentor teacher to a new teacher within the first two (2) weeks of teaching and remaining with the new teacher for the first year of the new teacher's employment in the school. The mentoring relationship shall be composed of activities that the beginning teacher and mentor participate in together, including but not limited to coteaching, lesson planning, and observation;

(c) The creation of a support team to provide assistance for new teachers, including focus on each new teacher's individual professional growth and development plan;

(d) Workshops and training, including professional development opportunities specifically designed for the beginning teacher that provides vital information on topics relevant during the first year in the classroom;

(e) Workshops and training for mentors prior to assignment to a beginning teacher on the skills necessary for effective mentoring;

(f) Opportunities for the new teacher to meet with the assigned mentor to share successes and troubleshooting strategies;

(g) Support teams to link the beginning teacher with a network of teachers in the school or district, in addition to their mentor, that the beginning teacher can rely on for assistance and guidance, especially for content specialization; and

(h) Formative and summative evaluations to provide feedback for a beginning teacher to gain an understanding of his or her strengths and weaknesses and to grow professionally.

(4) The Education Professional Standards Board shall develop evaluations and rubrics aligned to state academic standards and state and local procedures that shall be based on the following standards of effective teaching:

(a) Curriculum, content mastery, planning, and assessment;

(b) Teaching all students; and

(c) Family engagement.

(5) Rubrics shall describe practice in detail at different levels of performance.

(6) Categories of evidence shall be included to assess educator performance, including multiple measures of student learning, observations, and additional relevant evidence.

(7) Evaluations shall include new teacher self-assessment, individual goal setting and plan development, implementation of the plan, formative assessment, and a summative evaluation.

(8) By October 1 of each year, the Education Professional Standards Board shall provide a report to the Legislative Research Commission for referral to the Interim Joint Committee on Education. The report shall include but not be limited to:

(a) Identification of the school districts that have not implemented an induction program for teachers in their first year of teaching that is aligned with the standards and guidance for local districts developed by the Education Professional Standards Board;

(b) The number of mentor teachers and the educator preparation programs that were attended by the mentor teachers;

(c) The number of new teachers and the educator preparation programs that were attended by the new teachers;

(d) An analysis of how prepared new teachers are upon entering the profession;

(e) The types of training utilized by districts to train new teachers, mentors, and support teams;

(f) The types of remediation or supports needed by districts for new teachers that were not covered in the educator preparation programs;

(g) The major components of each new teacher induction and mentor program;

(h) How new teacher induction and mentor programs are operated and funded;

(i) How long new teachers receive mentor support;

(j) The estimated annual amount spent per new teacher;

(k) Measures being utilized to gauge the new teacher induction and mentor program's effectiveness; and

(*l*) Impact on teacher retention.

(9) The Education Professional Standards Board shall accumulate long-term data for analysis of the impact of teacher induction and mentor programs on new teacher retention.

History.

2024 ch. 124, § 2, effective July 15, 2024; 2025 ch. 145, § 8, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 145, sec. 14, provides that the Act, which amended this section and KRS 156.070, 156.095, 156.492, 156.557, 157.360, 158.060, 158.070, and 158.4416,

and created KRS 158.039 and 158.041, may be cited as the Red Tape Reduction Act.

161.032. Certification incentive fund — Purpose of grants — Eligibility — Priorities — Forgivable loan incentive — Stipend — Other financial incentives.

(1)(a) There is hereby created a certification incentive fund in the State Treasury to be administered by the Education Professional Standards Board. The fund shall provide grants to eligible recipients for conducting institutes as described in KRS 161.048(8), including the costs of salaries of institute instructors, consultants, materials, stipends and loans to participants, other costs associated with the institutes, and costs of assistance to teachers throughout their first year of teaching.

(b) Eligible recipients of grant funds may be nonprofit organizations, institutions, and agencies, including but not limited to postsecondary education institutions, school districts, education cooperatives, and consortia of school districts.

(c) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the grant program, including minimal participation levels and maximum grant awards.

(2)(a) The Education Professional Standards Board shall determine priority for specific institutes.

(b) The board shall request proposals and approve at least one (1) summer institute for the purpose described in paragraph (a) of this subsection each academic year. The institute shall be a minimum of ninety (90) clock hours, based on six (6) hour days for a three (3) week period.

(c) Each individual who completes a summer institute shall have additional hours of formal instruction or assistance during the first year of teaching to reach the minimum number of clock hours as required in KRS 161.048(8)(b).

(d) The candidate shall be assigned a teacher mentor by the grant recipient the first year of teaching. Payment of the teacher mentor shall be from the grant provided under subsection (1) of this section.

(3)(a) Individuals who are accepted into an institute shall be provided a forgivable loan incentive at the beginning of the institute to encourage their participation. The amount of the forgivable loan shall be determined by the Education Professional Standards Board. The loan shall be forgiven if the participant teaches in a Kentucky public or Kentucky Board of Education certified nonpublic school for one (1) year within the three (3) years following the awarding of the loan.

(b) If an individual does not successfully complete the institute or teach in a qualifying Kentucky school, the loan must be repaid according to procedures promulgated in administrative regulation by the Kentucky Higher Education Assistance Authority.

(c) The Education Professional Standards Board shall enter into a memorandum of understanding with the Kentucky Higher Education Assistance Authority to administer the forgivable loan incentive under this section. Based on the memorandum of understanding, the authority may retain a portion of the funds for administering the forgivable loan incentive. Funds recovered under provisions of this section, minus the administrative costs, shall be returned to the State Treasury.

(4) Each individual who successfully completes a summer institute shall be awarded a stipend equal to the amount of the forgivable loan as described in subsection (3) of this section. The stipend shall be awarded at the end of the institute without restrictions.

(5) Grant recipients and local school districts may offer financial incentives to potential participants and individuals who complete an institute from fund sources other than the grant funds.

History.

Enact. Acts 2008, ch. 185, § 1, effective April 24, 2008; 2024 ch. 124, § 5, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Professional certificate for college faculty: secondary education, 16 KAR 9:030.

161.035. Validity of certificates issued prior to 1950. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1950, ch. 103, § 2) was repealed by Acts 1978, ch. 56, § 3, effective June 17, 1978.

161.040. General qualifications for certificates. [Repealed.]

Compiler's Notes.

This section (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 474, effective July 13, 1990) was repealed by Acts 1998, ch. 362, § 6, effective July 15, 1998.

161.042. Status of student teachers — Responsibility to administrative staff and supervising teachers — Professional competency requirement for supervising teachers.

(1) The Education Professional Standards Board shall provide through administrative regulation for the utilization of the common schools for the preparation of teacher education students from the colleges and universities.

(2) Within the provisions established by the Education Professional Standards Board, local boards of education are authorized to enter into cooperative agreements, including financial arrangements, with colleges and universities for the purpose of providing professional laboratory experiences and student teaching experiences for students preparing for the education profession.

(3) The Education Professional Standards Board shall promulgate administrative regulations defining the professional requirements and general duties of a supervising teacher and requirements for a local school district and school to be used for this purpose.

(4) A student teacher who is jointly assigned under agreement by a teacher education institution and a

local board of education shall have the same legal status and protection as a certified teacher employed within the school district and shall be responsible to the administrative staff of the school district and the supervising teacher to whom he or she is assigned. All student teachers shall be subject to the state and national criminal records checks required of certified hires under provisions of KRS 160.380.

(5) Teacher education students, other than student teachers, may be permitted through cooperative agreements between the local school district and the teacher education institution, to engage in supplementary instructional activities with pupils under the direction and supervision of the professional administrative and teaching staff of the school district. Teacher education students shall not be subject to the criminal records checks required under KRS 160.380 or 161.148.

History.

Enact. Acts 1972, ch. 178, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 11, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 67, effective July 13, 1990; 1992, ch. 409, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 60, § 2, effective June 21, 2001; 2001, ch. 137, § 9, effective June 21, 2001.

Legislative Research Commission Notes.

(6/21/2001). This section was amended by 2001 Ky. Acts chs. 60 and 137, which do not appear to be in conflict and have been codified together.

OPINIONS OF ATTORNEY GENERAL.

A student teacher may not perform services as a student teacher in the absence of a regular classroom teacher. OAG 75-70.

A student teacher may be held liable in tort for his negligent acts or omissions just as may a regular teacher but his actions, and whether he acted as a reasonable person would act under the circumstances, must be judged in the light of the fact that he is acting under the supervision and direction of a regular classroom teacher. OAG 75-70.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

161.044. Requirements for teachers' aides — Legal status — Preference to certified applicants — Training.

(1) The Kentucky Board of Education shall promulgate administrative regulations governing the qualifications of teachers' aides in the common schools. All teachers' aides working in kindergarten or with entry level students in primary classes and all instructional teachers' aides initially employed after July 1, 1986, except those with current teacher certification, shall have a high school diploma or a High School Equivalency Diploma.

(2) "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall possess skills necessary to perform their duties and shall meet the requirements established in KRS 161.011 and 160.380.

(3) Within the administrative regulations established by the Kentucky Board of Education, a local district may employ teachers' aides in supplementary instructional and noninstructional activities with pupils. While engaged in an assignment as authorized under the administrative regulations, and as directed by the professional administrative and teaching staff, these personnel shall have the same legal status and protection as a certified teacher in the performance of the same or similar duties.

(4) Local districts shall give preference to applicants for the position of teacher's aide who have regular or emergency teacher certification.

(5) Local districts shall provide training of the instructional teacher's aide with the certified employee to whom he is assigned.

History.

Enact. Acts 1972, ch. 178, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1985 (1st Ex. Sess.), ch. 10, § 19, effective October 18, 1985; 1988, ch. 38, § 2, effective July 15, 1988; 1990, ch. 476, Pt. II, § 68, effective July 13, 1990; 1994, ch. 417, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 336, § 2, effective July 14, 2000; 2012, ch. 61, § 4, effective July 12, 2012; 2017 ch. 63, § 19, effective June 29, 2017; 2019 ch. 31, § 5, effective June 27, 2019.

OPINIONS OF ATTORNEY GENERAL.

In view of the description of duties and definitions of "paraprofessional" and "teacher aide" given in KRS 161.010(6) and (7) (definition of "paraprofessional" has been deleted and "teacher's aide" is now defined in (5)) and the fact that subsections (1), (2) and (3) of this section refer to such persons performing "supplementary instructional and noninstructional activities with pupils" and that while reference is made to "provisions established by the State Board of Education," such regulations have not been prepared and adopted, it would appear that a teacher's aide cannot conduct a class even with a teacher present. OAG 73-206.

Since the State Board of Education has adopted regulations relating to paraprofessional personnel (704 KAR 15:080), a local board of education could prepare a job description outlining the duties of a paraprofessional which would include some limited teaching responsibilities if the paraprofessional held a valid and appropriate teaching certificate; however, the instructional assistance of a paraprofessional with a teaching certificate may not be permitted to supplant the day to day teaching responsibilities of the regular classroom teacher. OAG 76-555.

The distinction in subsection (1) of this section between kindergarten teacher aides and the other aides was drawn to indicate that all kindergarten teacher aides, regardless of when they were hired, must comply with the requirements, while non-kindergarten aides must comply only if they were initially hired after July 1, 1986. OAG 86-43, 1986 Ky. AG LEXIS 45.

161.046. Adjunct instructors.

(1) For purposes of this section, "adjunct instructor" means an individual who has training or experience in a specific subject area and who has met the requirements for certification as an adjunct instructor established by the Education Professional Standards Board.

(2) The Education Professional Standards Board shall adopt administrative regulations governing the qualifications and utilization of adjunct instructors. These administrative regulations shall specify the minimum essential competencies which must be demonstrated by persons seeking an adjunct instructor certificate.

(3) Holders of an adjunct instructor certificate shall be employed on an annual contract basis and shall not be eligible for continuing service status pursuant to KRS 161.740 or for the retirement provisions of KRS 161.220 through 161.714, except that the return to work limitations set forth in KRS 161.605 shall apply to any retired member of the Kentucky Teachers' Retirement System who resumes employment as an adjunct instructor. The granting of successive annual contracts to the holder of an adjunct instructor certificate shall not give rise to a claim of expectation of continuing employment.

(4) Local school boards may contract with certificated adjunct instructors for part-time services on an hourly, daily, or other periodic basis as best meets the needs of the board. An adjunct instructor shall not fill a position that will result in the displacement of a qualified teacher with a regular certificate who is already employed in the district.

(5) An orientation program shall be developed and implemented for adjunct instructors by the local school board.

History.

Enact. Acts 1984, ch. 276, § 1, effective July 13, 1984; 1990, ch. 476, Pt. II, § 61, effective July 13, 1990; 1998, ch. 589, § 2, effective July 15, 1998; 2008, ch. 78, § 24, effective July 1, 2008; 2014, ch. 71, § 7, effective July 15, 2014.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certification fees, 16 KAR 4:040.

Part-time adjunct instructor certificate, 16 KAR 9:040.

161.048. Legislative findings — Alternative certification program — Purpose — Options — Testing and eligibility requirements — Salary schedule.

(1) The General Assembly hereby finds that:

(a)1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;

2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;

3. There are persons who should be recruited to teach in Kentucky's public schools as they have academic majors, strong verbal skills as shown by a verbal ability test, and deep knowledge of content, characteristics that empirical research identifies as important attributes of quality teachers;

4. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and

5. There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers;

(b) There are hereby established alternative certification program options as described in subsections (2) to (10) of this section;

(c) It is the intent of the General Assembly that the Education Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky;

(d) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs; and

(e) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section. If the certification option requires employment prior to certification, the procedures shall establish a process for candidates to obtain an eligible for hire letter from the Education Professional Standards Board.

(2) Option 1: Certification of a person with exceptional work experience. An individual who has exceptional work experience shall receive a one (1) year provisional certificate with approval by the Education Professional Standards Board of an application by the individual under the following conditions:

(a) The application contains documentation of all education and work experience;

(b) The candidate has documented exceptional work experience in the area in which certification is being sought; and

(c) The candidate possesses:

1. A bachelor's degree or a graduate degree;

2. A minimum cumulative grade point average of two and seventy-five hundredths (2.75) on a four (4) point scale or a minimum grade point average of three (3.0) on a four (4) point scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution; and

3. An academic major or a passing score on the academic content assessment in the area in which certification is being sought by the applicant as designated by the Education Professional Standards Board.

After successful completion of one (1) year of teaching and upon the recommendation of the employing school district to the Education Professional Standards Board, the candidate shall receive a professional certificate and shall be subject to certificate renewal requirements the same as other teachers with a professional certificate.

(3) Option 2: Certification through a local school district training program. A local school district or group of school districts may seek approval for a training program. The state-approved local school district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification for a teacher at any grade level.

The training program may be offered for all teaching certificates approved by the Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local school district alternative training program, the candidate shall possess:

(a) A bachelor's degree or a graduate degree;

(b) A minimum cumulative grade point average of two and seventy-five hundredths (2.75) on a four (4) point scale or a minimum grade point average of three (3) on a four (4) point scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution; and

(c) A passing score on the academic content assessment in the area in which certification is being sought by the applicant as designated by the Education Professional Standards Board. To be eligible to take an academic content assessment, the applicant shall have completed a thirty (30) hour major in the academic content area or five (5) years of experience in the academic content area as approved by the Education Professional Standards Board.

An individual may participate in a local school district training program upon meeting the participation requirements as established in this subsection and approval by the Education Professional Standards Board of an application by the individual. The candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. After successful completion of the local school district training program, one (1) year of teaching, and upon the recommendation of the employing school district to the Education Professional Standards Board, the candidate shall receive a professional certificate and shall be subject to certificate renewal requirements the same as other teachers with a professional certificate.

(4) Option 3: Certification of a professional from a postsecondary institution: A candidate who possesses the following qualifications may receive a one (1) year provisional certificate for teaching at any level:

(a) A master's degree or doctoral degree in the academic content area for which certification is sought; and

(b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic content area for which certification is sought in a regionally or nationally accredited institution of higher education.

After successful completion of one (1) year of teaching and upon the recommendation of the employing school district to the Education Professional Standards Board, the candidate shall receive a professional certificate and shall be subject to certificate renewal requirements the same as other teachers with professional certificates.

(5) Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, computer science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under KRS 161.046.

(6) Option 5: Certification of a veteran of the Armed Forces. The Education Professional Standards Board shall issue a statement of eligibility, valid for five (5) years, for teaching at the elementary, secondary, and secondary career technical education levels to a veteran of the Armed Forces who was honorably discharged from active duty as evidenced by Defense Department Form 214 (DD 214) or National Guard Bureau Form 22 or to a member of the Armed Services currently serving with six (6) or more years of honorable service, including Reserves, National Guard, or active duty. The candidate shall possess:

(a) A bachelor's degree or graduate degree;

(b) A minimum cumulative grade point average of two and seventy-five hundredths (2.75) on a four (4) point scale or a minimum grade point average of three (3) on a four (4) point scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution; and

(c) An academic major or a passing score on the academic content assessment in the area in which certification is being sought by the applicant as designated by the Education Professional Standards Board.

The eligible veteran shall receive a one (1) year provisional certificate with approval by the Education Professional Standards Board of an application by the veteran. After successful completion of one (1) year of teaching and upon the recommendation of the employing school district to the Education Professional Standards Board, the veteran shall receive a professional certificate.

(7) Option 6: University alternative program. With approval of the Education Professional Standards Board, a university may provide an alternative program that enrolls students in a postbaccalaureate teacher preparation program concurrently with employment as a teacher in a local school district. A student in the alternative program shall be granted a one (1) year provisional certificate. The one (1) year provisional certificate may be renewed four (4) additional years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the teacher candidate's successful completion of the program and all academic content assessments in the specific teaching field of the applicant as designated by the Education Professional Standards Board, and upon the recommendation of the employing school district.

(8) Option 7: Certification of a person in a field other than education to teach in elementary, middle, or secondary programs. This option shall not be limited to teaching in shortage areas. An individual certified under provisions of this subsection shall be issued a one (1) year provisional certificate, renewable for a maximum of four (4) additional years with approval of the Education Professional Standards Board.

(a) The candidate shall possess:

1. A bachelor's degree with a declared academic major in the area in which certification is sought or a graduate degree in a field related to the area in which certification is sought; and

2. A minimum cumulative grade point average of two and seventy-five hundredths (2.75) on a four

(4) point scale or a minimum grade point average of three (3) on a four (4) point scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution.

(b) Upon meeting the requirements of paragraph (a) of this subsection and enrolling in an approved institute, the Education Professional Standards Board shall issue the candidate a one (1) year provisional certificate or during the first year of the certificate, the teacher shall complete the following:

1. For elementary teaching, the individual shall successfully complete a two hundred forty (240) hour institute that is an equivalent of six (6) hour days for eight (8) weeks. The providers and the content of the institute shall be approved by the Education Professional Standards Board. The content shall include research-based teaching strategies in reading and math, research on child and adolescent growth, knowledge of individual differences, including teaching exceptional children, and methods of classroom management.

2. For middle and secondary teaching, the individual shall successfully complete a one hundred eighty (180) hour institute that is an equivalent of six (6) hour days for six (6) weeks. The providers and the content of the institute shall be approved by the Education Professional Standards Board and shall include research-based teaching strategies, research on child and adolescent growth, knowledge of individual differences, including teaching exceptional children, and methods of classroom management.

(c) The candidate shall receive a professional certificate and shall be subject to certificate renewal requirements the same as other teachers with a professional certificate:

1. After meeting the requirements of this option;

2. After obtaining a passing score on the academic content assessment in the area in which certification is being sought;

3. After successfully completing one (1) year of teaching; and

4. Upon the recommendation of the employing school district to the Education Professional Standards Board.

(9) Option 8: Certification of a Teach for America participant to teach in elementary, middle, or high schools. Nothing in this subsection shall conflict with the participation criteria of the Teach for America program. An individual certified under this subsection shall be issued a one (1) year provisional certificate.

(a) The candidate shall possess:

1. A bachelor's degree;

2. A successful completion of the summer training institute and ongoing professional development required by Teach for America, including instruction in goal-oriented, standards-based instruction, diagnosing and assessing students, lesson planning and instructional delivery, classroom management, maximizing learning for diverse students, and teaching methodologies; and

3. A passing score on the academic content assessment in the area in which certification is being sought as designated by the Education Professional Standards Board.

(b) The provisional certificate granted under this subsection may be renewed two (2) times with a recommendation of the superintendent and approval of the Education Professional Standards Board.

(c) A Teach for America participant shall be issued a professional certificate upon the participant's successful completion of one (1) year of teaching and the assessments relating to teaching of subject matter required by the Education Professional Standards Board under KRS 161.030, and upon the recommendation of the employing school district to the Education Professional Standards Board.

(d) Notwithstanding any statute or administrative regulation to the contrary, a teacher certified under this subsection shall have ten (10) years to complete a master's degree or fifth year program, or the equivalent as specified by the Education Professional Standards Board in administrative regulation.

(10) Option 9: Expedited certification of a person to teach at any grade level through a cooperative program. With approval of the Education Professional Standards Board, a college or university may partner with a school district to develop an expedited certification program that results in a bachelor's degree and initial certification within three (3) school years.

(a) The program shall:

1. Include a residency or paraprofessional component which employs the person within the participating district for the duration of the program to gain work experience to supplement the expedited program and reduced coursework;

2. Utilize experienced teachers employed by the district to provide coaching and to mentor the candidates; and

3. Be designed to meet the needs of the participating district and may include an emphasis in developing a teacher pipeline for the district's students, improving the numbers of underrepresented populations among the district's workforce, or focusing on increasing the number of teachers with certification areas that are in high demand.

(b) A school district entering into a cooperative partnership shall ensure the availability of funding for each candidate employed within the district in the residency or paraprofessional program for the duration of the candidate's participation in the program. However, nothing in this subsection shall be interpreted as requiring the district to continue employing the candidate during the program or after the candidate has received initial certification.

(c) A person who has begun a traditional path or another option for certification shall be eligible to transfer into this option if the person meets the program's requirements.

(d) If a school district participating in a cooperative partnership determines to end the partnership, the district shall no longer accept new candidates to the program but shall continue the partnership until the district's employed candidates for Option 9 certification complete the program or are no longer employed by the district.

(11) A public school teacher certified under subsections (2) to (10) of this section shall be placed on the

local district salary schedule for the rank corresponding to the degree held by the teacher.

(12) Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:

(a) An out-of-state license to teach exceptional students; and

(b) A bachelor's or master's degree in the certification area or closely related area for which certification is sought.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 58, effective July 13, 1990; 1996, ch. 137, § 1, effective July 15, 1996; 1996, ch. 343, § 6, effective July 15, 1996; 1998, ch. 514, § 8, effective July 15, 1998; 1998, ch. 589, § 1, effective July 15, 1998; 2000, ch. 161, § 1, effective July 14, 2000; 2004, ch. 117, § 3, effective July 13, 2004; 2005, ch. 111, § 2, effective June 20, 2005; 2008, ch. 177, § 1, effective July 15, 2008; 2010, ch. 79, § 1, effective July 15, 2010; 2017 ch. 14, § 2, effective June 29, 2017; 2022 ch. 161, § 1, effective July 14, 2022; 2023 ch. 54, § 1, effective March 22, 2023; 2023 ch. 164, § 5, effective June 29, 2023; 2024 ch. 124, § 6, effective April 9, 2024.

Legislative Research Commission Notes.

(3/22/2023). 2023 Ky. Acts ch. 54, sec. 2, provides, "Any person granted an emergency teaching certificate pursuant to KRS 161.100 by the Education Professional Standards Board during the 2022-2023 school year shall be eligible to renew that emergency certificate for the 2023-2024 school year, notwithstanding any administrative regulation to the contrary."

(7/14/2022). 2022 Ky. Acts ch. 161, sec. 2, provides, "Any person granted an emergency teaching certificate pursuant to KRS 161.100 by the Education Professional Standards Board during the 2021-2022 school year shall be eligible to renew that emergency certificate for the 2022-2023 school year, notwithstanding any administrative regulation to the contrary."

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Alternative training program eligibility requirements for middle school and secondary school teachers, 16 KAR 9:050.

Alternative training program for preparation of candidates for initial teacher certification, 16 KAR 9:060.

Certification fees, 16 KAR 4:040.

Expedited route to certification, 16 KAR 9:110.

Kentucky Primary Alternative Certification Program, 16 KAR 9:070.

Kentucky Teacher Internship Program, 16 KAR 7:010.

Part-time adjunct instructor certificate, 16 KAR 9:040.

Professional certificate for college faculty: secondary education, 16 KAR 9:030.

Professional certificate for exceptional work experience, limited to secondary education, 16 KAR 9:010.

Standards for admission to educator preparation, 16 KAR 5:020.

Standards for certified school personnel, 16 KAR 1:010.

University-based alternative certification program, 16 KAR 9:080.

University based alternative certification program for teachers of world languages, 16 KAR 9:090.

161.049. Professional support teams — Training program — Alternate training program.

(1) As used in this section, "professional support team" means a school principal, an experienced teacher, a college or university faculty member, and an instructional supervisor. If an instructional supervisor or college or university faculty member is not available, the district shall assign a member with comparable experience. The school principal shall serve as the chairman of the team.

(2) The Education Professional Standards Board shall establish a training program for professional support teams which shall be implemented by the board or contracted with another agency. The training shall include content and procedures for the evaluation of teacher candidates. Completion of the training shall be evidenced by successfully passing the examinations prescribed by the board.

(3) A local school district seeking to hire a teacher pursuant to KRS 161.048(3) shall submit a plan for a local district alternative training program to the Education Professional Standards Board and have it approved in accordance with administrative regulations established by the Board. The district shall show evidence that it has sought joint sponsorship of the program with a college or university. No local school district shall employ a teacher seeking certification in a state-approved local district training program unless it has submitted a plan and received approval by the Education Professional Standards Board.

(4) Each state approved local district alternative training program shall provide the teacher candidate with essential knowledge and skills and include, but not be limited to, the following components:

(a) A full-time seminar and practicum of no less than eight (8) weeks' duration prior to the time the candidate assumes responsibility for a classroom. The content of the formal instruction shall be prescribed by the Education Professional Standards Board and shall include an introduction to basic teaching skills through supervised teaching experiences with students, as well as an orientation on the policies, organization, and curriculum of the employing district.

(b) A period of classroom supervision while the candidate assumes responsibility on a one-half (1/2) time basis for a classroom and continuing for eighteen (18) weeks. During this period, the candidate shall be visited and critiqued no less than one (1) time per week by one (1) or more members of a professional support team appointed by the local district and assigned according to the administrative regulations adopted by the Education Professional Standards Board. The candidate shall be formally evaluated at the end of five (5) weeks, at the end of the second five (5) weeks, and at the end of the last eight (8) weeks by the members of the team. During this period, the candidate shall continue formal instruction which emphasizes student assessment, child development, learning, curriculum, instruction of exceptional children, and school and classroom organization.

(c) An additional period of at least eighteen (18) weeks continued supervision of the teacher candidate who may be assigned full-time classroom duties. During this period the teacher candidate shall be critiqued at least once per month and shall be observed formally and evaluated at least twice. No

more than two (2) months shall pass without a formal observation. Formal instruction shall also continue during this period. In addition, opportunities shall be provided for the teacher candidate to observe the teaching of experienced teachers.

(5) At least two hundred fifty (250) hours of formal instruction shall be provided in all three (3) phases of the program combined.

(6) At the conclusion of the alternative training program, the chair of the support team shall prepare a comprehensive evaluation report on the teacher candidate's performance. This report shall be submitted to the Education Professional Standards Board and shall contain a recommendation as to whether the teacher candidate shall be issued a teaching certificate. The support team shall make one (1) of the following recommendations:

(a) Approved: recommends issuance of the certificate;

(b) Insufficient: recommends the candidate be allowed to seek reentry into a teacher preparation program; or

(c) Disapproved: recommends the candidate not be allowed to enter a teacher preparation program.

History.

Enact. Acts 1990, ch. 476, Pt. II, § 59, effective July 13, 1990; 1998, ch. 589, § 3, effective July 15, 1998; 2001, ch. 137, § 10, effective June 21, 2001; 2024 ch. 124, § 7, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Alternative training program eligibility requirements for middle school and secondary school teachers, 16 KAR 9:050.

Alternative training program for preparation of candidates for initial teacher certification, 16 KAR 9:060.

Kentucky Primary Alternative Certification Program, 16 KAR 9:070.

161.050. Kinds of certificates issued. [Repealed.]

Compiler's Notes.

This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.051. Braille requirements for teacher certification of blind and visually impaired students.

Teachers seeking to be certified in the education of blind and visually impaired students shall be required, prior to certification, to demonstrate competence in reading and writing braille, and in the use of appropriate instructional methods for teaching braille by use of the braille writer, the slate and stylus, and through the use of computer devices commonly used in the elementary and secondary instruction of blind students. Any teacher who teaches a blind student braille, or monitors a student's braille usage, shall demonstrate competence in braille. The Education Professional Standards Board shall promulgate administrative regulations to assess such competency which shall be consistent with the guidelines for braille instructors as adopted by the National Library Services for the Blind and Physically Handicapped.

History.

Enact. Acts 1992, ch. 382, § 3, effective July 14, 1992.

161.052. Certification of teachers for gifted education.

All persons employed as teachers for gifted education shall hold an appropriate certificate endorsement for gifted education, except that all teachers having certificates initially issued for a duration period on or before July 1, 1984, or proper renewals thereof, shall remain eligible thereafter for assignment as teachers for gifted education, for the grade levels of the base certificate, provided any such assignment was valid under the original certificate at the time it was issued.

History.

Enact. Acts 1998, ch. 589, § 4, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Endorsement for teachers for gifted education, 16 KAR 2:110.

161.053. Certification of teachers of exceptional children/communication disorders.

(1) The Education Professional Standards Board shall have the authority and responsibility to certify as a teacher of exceptional children/communication disorders, an individual who has:

(a) Completed an approved program of preparation that corresponds to the certificate;

(b) Achieved a passing score on an appropriate assessment as determined by the Education Professional Standards Board;

(c) Fulfilled other requirements for teacher certification as determined by the Education Professional Standards Board, in accordance with KRS Chapter 161 and administrative regulations promulgated thereunder; and

(d) Completed the requirements set forth in subsection (2) of this section.

(2) The Education Professional Standards Board shall issue two (2) levels of certification for teachers of exceptional children/communication disorders:

(a) Baccalaureate level certification shall be issued to a person who has:

1. Completed an approved program of preparation leading to a bachelor's degree in speech-language pathology;

2. Been granted licensure as a speech-language pathology assistant from the Kentucky Board of Speech-Language Pathology and Audiology, under KRS Chapter 334A; and

3. Completed the other requirements set forth in subsection (1) of this section; and

(b) Master's level certification shall be issued to a person who has:

1. Completed an approved program of preparation leading to a master's degree in speech-language pathology; and

2. Completed the other requirements specified in subsection (1) of this section.

(3) A person holding licensure through the Kentucky Board of Speech-Language Pathology and Audiology as

a speech-language pathology assistant, but not certified as a teacher of exceptional children/communication disorders, may:

(a) Continue to work in the public schools as a classified employee under the provisions of KRS Chapter 334A and administrative regulations promulgated by the Kentucky Board of Speech-Language Pathology and Audiology; or

(b) Pursue certification as a baccalaureate level teacher of exceptional children/communication disorders while working as a speech-language pathology assistant.

(4) A bachelor's level teacher of exceptional children/communication disorders shall work under requirements for speech-language pathology assistants set forth in KRS Chapter 334A.

(5) The Education Professional Standards Board shall develop a policy through the promulgation of administrative regulations by June 30, 2001, to permit a speech-language pathology assistant with two (2) years or more of successful professional experience pursuing certification as a baccalaureate level teacher of exceptional children to:

(a) Substitute prior professional experience for student teaching requirements; and

(b) Substitute prior professional experience for beginning teacher internship requirements.

(6) A teacher of exceptional children/communication disorders shall receive salary and benefits, including membership in the Teachers' Retirement System, commensurate with his or her education, certification, and experience as prescribed by law. Years of experience as a speech-language pathology assistant shall be included in the calculation of all benefits, including membership in the Teachers' Retirement System, for individuals with baccalaureate level certification as a teacher of exceptional children/communication disorders.

History.

Enact. Acts 2000, ch. 375, § 1, effective July 14, 2000; 2024 ch. 124, § 8, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Certification fees, 16 KAR 4:040.

161.060. Elementary certificates; provisional and standard. [Repealed.]

Compiler's Notes.

This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.070. High school certificates; provisional and standard. [Repealed.]

Compiler's Notes.

This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.080. Administration and supervision certificates; provisional and standard. [Repealed.]

Compiler's Notes.

This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.090. Attendance officers' certificates. [Repealed.]

Compiler's Notes.

This section (4502-4) was repealed by Acts 1950, ch. 103, § 2.

161.095. Continuing education for teachers — Extension for military service — Administrative regulations.

(1) The Education Professional Standards Board, with the advice of the Kentucky Board of Education, shall:

(a) Promulgate administrative regulations to establish procedures for a teacher to maintain his or her certificate by successfully completing meaningful continuing education;

(b) Develop standards for continuing education related to maintaining a certificate, including university courses, an advanced degree, or a combination of field-based experience, individual research, and approved professional development; and

(c) Establish a system of quality assurance related to continuing education activities and certification requirements.

(2)(a) The Education Professional Standards Board shall extend the validity period of a certificate of a member of the Armed Forces of the United States of America by one (1) year for each year the member is determined by the board to have been prohibited by military service or training from pursuing an advanced degree or completing professional development required to maintain certification; and

(b) The Education Professional Standards Board shall promulgate administrative regulations to establish an application process and develop guidelines for the process by which education or professional development is considered to have been prohibited by military service.

History.

Enact. Acts 1996, ch. 298, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2017 ch. 14, § 3, effective June 29, 2017; 2018 ch. 149, § 1, effective July 14, 2018.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Continuing Education Option for certificate renewal and rank change, 16 KAR 8:030.

Kentucky Teacher Internship Program, 16 KAR 7:010.

Rank I classification, 16 KAR 8:010.

Standards for certified school personnel, 16 KAR 1:010.

161.100. Emergency certificates.

When a district board of education satisfies the Education Professional Standards Board that it is impossible to secure qualified teachers for a position in

a school under the control of the district board, the Education Professional Standards Board may issue emergency certificates to persons who meet the qualifications determined by the Education Professional Standards Board for emergency certificates. An emergency certificate shall be valid only for the specific job for which issued and for the current school term. The Education Professional Standards Board may require the passing of a written examination before an emergency certificate is issued. The examination shall be prepared and administered and the papers graded in the state offices of the Education Professional Standards Board under the direction of the commissioner of education, in accordance with administrative regulations approved by the Education Professional Standards Board.

History.
4502-5; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 62, effective July 13, 1990; 2001, ch. 137, § 11, effective June 21, 2001; 2021 ch. 26, § 9, effective June 29, 2021.

Legislative Research Commission Notes.
(3/22/2023). 2023 Ky. Acts ch. 54, sec. 2, provides as follows: "Any person granted an emergency teaching certificate pursuant to KRS 161.100 by the Education Professional Standards Board during the 2022-2023 school year shall be eligible to renew that emergency certificate for the 2023-2024 school year, notwithstanding any administrative regulation to the contrary."

NOTES TO DECISIONS

1. Hiring Practices.
In a special education teacher's suit against a board of education for rejecting his application and hiring a teacher for the position who had only an emergency certification, summary judgment in favor of the board of education was proper because, although the special education teacher's level of certification was superior to the certification of the teacher hired, the board of education's policy required it to consider an applicant's certification level, educational background, prior work experience, recommendations, and personal characteristics shown during the interview process. Because the teacher's prior employer gave him a poor evaluation and absolutely did not recommend him for employment and because there was testimony that the teacher was under review by the professional standards board at the time of his application, the board had before it substantial evidence relating to the factors it was required to consider under its policy, and the teacher failed to raise the existence of an issue of material fact sufficient to defeat summary judgment. Hicks v. Magoffin County Bd. of Educ., 292 S.W.3d 335, 2009 Ky. App. LEXIS 145 (Ky. Ct. App. 2009).

OPINIONS OF ATTORNEY GENERAL.

Where the superintendent in the proper exercise of discretion does not recommend a particular certified teacher for a certain vacancy, it is not legally possible to employ that teacher in that district and for the purposes of this section, no qualified teacher is available. OAG 69-389.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Certification requirements for teachers of exceptional children, 16 KAR 4:020.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Substitute teachers and emergency school personnel, 16 KAR 2:030.

161.102. Substitute teaching certificates — Types — Conditions.

(1) Notwithstanding KRS 161.1211, the Education Professional Standards Board shall issue a one (1) year emergency certificate for substitute teaching to any applicant who possesses a minimum of a high school diploma or High School Equivalency Diploma and has met the requirements to receive the certificate as set forth in administrative regulation promulgated by the Education Professional Standards Board, subject to the provisions of KRS 161.120(1).

(2) The Education Professional Standards Board shall issue a five (5) year certificate for substitute teaching to any applicant who possesses a bachelor's degree in any subject area from a regionally or nationally accredited postsecondary education institution.

(3) The Education Professional Standards Board shall issue a ten (10) year certificate for substitute teaching to any applicant who:

(a) Holds a valid statement of eligibility for a Kentucky teaching certificate;

(b) Previously held a Kentucky teaching certificate which required the completion of a four (4) year teacher preparation program and a bachelor's degree; or

(c) Currently holds or previously held a valid out-of-state teaching certificate which required the completion of a four (4) year teacher preparation program and a bachelor's degree.

(4) The issuance of a substitute teaching certificate shall be subject to the provisions of KRS 161.120(1).

(5) The one (1) year emergency certificate for substitute teaching authorized in subsection (1) of this section shall not be valid for:

(a) Full-time employment with a school district as a substitute teacher; or

(b) The replacement of the teacher of record for more than twenty (20) consecutive instructional days.

History.
Enact. Acts 2003, ch. 160, § 3, effective March 31, 2003; 2024 ch. 221, § 1, effective July 15, 2024.

161.110. When certificates to be renewed. [Repealed.]

Compiler's Notes.
This section (4502-13) was repealed by Acts 1978, ch. 56, § 3, effective June 17, 1978.

161.115. Deletion of certificate, certificate endorsement, or subject specialization from official certification record at holder's option — Restoration of deleted areas of certification.

The holder of any type of Kentucky teacher certification issued by the Education Professional Standards Board may, at the holder's option, have any certificate, certificate endorsement, or subject specialization de-

leted from the official certification record upon application, subject to the following provisions:

(1) The application shall be submitted to the Education Professional Standards Board on a form furnished by the board. The form shall include the information required by this section and the applicant shall verify the information by affidavit. The application shall be submitted between September 1 and December 1 and shall become effective on the following July 1. If the requirements of this section are satisfied, the Education Professional Standards Board shall notify the applicant and the applicant's employing school or school district on or before February 1 following submission of the application, that the decertification has been approved.

(2) No portion of the certification shall be deleted for any subject or assignment in which the teacher has had experience during the three (3) year period preceding the request in an amount equivalent to one (1) year of full-time employment (140 days) during which at least one (1) period per day was in the subject or assignment corresponding to the portion of the certification requested for deletion.

(3) If the certification for classroom teaching at the secondary level is to be retained, at least one (1) teaching major or one (1) area of concentration shall be retained.

(4) A certificate which is a prerequisite or a concurrent requirement to the issuance of another certificate or certificate endorsement held by the applicant shall be retained.

(5) Applications for restoration of areas of certification deleted under this section shall be submitted to the Education Professional Standards Board showing restored competency and proficiency by completion of twelve (12) semester hours of credit pertinent to the deleted areas as prescribed by an institution approved for teacher education. A transcript or other appropriate verification of completion of the twelve (12) semester hours of credit from the institution approved for teacher education shall be accepted as evidence showing restoration of competency and proficiency in the areas of certification.

History.

Enact. Acts 1984, ch. 229, § 1, effective July 13, 1984; 1990, ch. 476, Pt. II, § 63, effective July 13, 1990.

161.120. Disciplinary actions relating to certificates — Complaint review process — Superintendent report of school employee whose contract is terminated or not reviewed — Hearing — Appeals.

(1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons:

(a) Being convicted of, or entering an Alford plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:

1. A felony;

2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525, 529, 530, or 531; or

3. A misdemeanor involving a student or minor.

A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;

(b) Having sexual contact as defined in KRS 510.010 with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;

(c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action;

(d) Demonstrating willful or careless disregard for the health, welfare, or safety of others;

(e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;

(f) Possessing, using, or being under the influence of alcohol, which impairs the performance of duties;

(g) Unlawfully possessing or unlawfully using a drug during the performance of duties;

(h) Incompetency or neglect of duty;

(i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;

(j) Failing to report as required by subsection (3) of this section;

(k) Failing to comply with an order of the Education Professional Standards Board;

(*l*) Violating any state statute relating to schools or the teaching profession;

(m) Violating the professional code of ethics for Kentucky school certified personnel established by the Education Professional Standards Board through the promulgation of administrative regulation;

(n) Violating any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or

(o) Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection.

(2) The Education Professional Standards Board shall respond to complaints against a certificate holder by the following process:

(a)1. Except as provided in subparagraph 2. of this paragraph, within thirty (30) calendar days of the receipt of a completed complaint, board staff shall conduct an initial review to determine whether there is sufficient evidence that a violation may have occurred and shall provide notice of the initial determination to the certificate holder within seven (7) business days that shall include the complete copy of the report and all underlying

relevant documents and records. If the complaint alleges unauthorized electronic communication as defined in KRS 160.145, sexual contact, or other sexual misconduct, the identity of a complainant that is not the superintendent and any identifying information of the minor involved in the complaint shall remain confidential.

2. When a complaint alleges unauthorized electronic communication, as defined in KRS 160.145, sexual contact, or other sexual misconduct, the board staff shall have one hundred twenty (120) days to conduct the initial review required by subparagraph 1. of this paragraph;

(b) Upon receipt of the notice, the certificate holder shall have thirty (30) calendar days to respond or provide a rebuttal to any complaint that was determined to contain sufficient evidence that a violation may have occurred. The response period shall be extended an additional thirty (30) calendar days upon the certificate holder's written request submitted to the board;

(c) Within ten (10) business days of the receipt of the certificate holder's response or the end of the response period established in paragraph (b) of this subsection, board staff shall conduct another review of the complaint to determine if sufficient evidence exists to support a violation. If the board staff determines that the evidence is:

1. Insufficient, then the board staff shall recommend dismissal and shall notify the certificate holder and the complainant of the recommendation within seven (7) business days of the determination; or

2. Sufficient, then the board staff shall have seven (7) business days to notify the certificate holder and the complainant of the determination. Notice to the complainant shall only state that further proceedings will occur;

(d) Upon a determination that sufficient evidence exists to support a possible violation, within the notice required under paragraph (c)2. of this subsection, board staff shall initiate an in-person or virtual conference with the certificate holder to share information and to determine if an agreed resolution can be recommended to the board concerning the alleged violation. The conference shall be scheduled within thirty (30) calendar days of the determination. The certificate holder may decline the conference. If the conference does not occur due to the certificate holder's failure to respond within the thirty (30) calendar days, the required conference shall be considered waived. The certificate holder may have an attorney present at the conference;

(e) Upon the conclusion of the thirty (30) calendar days conference period, the board shall act on the complaint within thirty (30) calendar days. If the board fails to act on the complaint within the thirty (30) calendar days, then the complaint shall be considered dismissed. The board shall consider the entirety of the complaint with any associated response or recommended agreed resolution to determine:

1. Dismissal, conditional dismissal upon completion of training, admonishment, further investigation, or initiation of a hearing;

2. Approval of the recommended agreed resolution; or

3. A deferral if:

a. The content of the complaint is subject to ongoing:

i. Criminal investigation or proceedings;

ii. Child abuse, dependency, or neglect investigation by an authorized state agency; or

iii. Teacher tribunal process as provided in KRS 161.790; or

b. The deferral is agreed to by the certificate holder; and

(f) The provision of a confirmation of receipt from the board to the certificate holder whenever the certificate holder submits a response or correspondence to the board.

(3)(a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, address, phone number, Social Security number, and position name of any certified school employee in the superintendent's district:

1. Whose contract is terminated or not renewed, for cause except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure;

2. Who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause;

3. Who is convicted in a criminal prosecution; or

4. Who otherwise may have engaged in any actions or conduct while employed in the school district that might reasonably be expected to warrant consideration for action against the certificate under subsection (1) of this section. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) calendar days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, that may warrant action against the certificate under subsection (1) of this section, and shall forward copies of all relevant documents and records in his or her possession.

(c) The Education Professional Standards Board shall provide the superintendent confirmation of receipt of any report submitted by the superintendent within seven (7) business days and shall provide the superintendent with notice of:

1. Whether or not board staff determine that there is sufficient evidence in the report that a violation may have occurred; and

2. Any board action taken against the certificate holder who is the subject of the report.

(d) The Education Professional Standards Board may consider reports and information received from other sources.

(e) The certified school employee shall be given a copy of any report provided to the Education Profes-

sional Standards Board by the district superintendent or other sources. The employee shall have the right to file a written rebuttal pursuant to subsection (2) of this section to the report which shall be placed in the official file with the report.

(4) A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.

(5) The board may issue a written admonishment to the certificate holder if the board determines, based on the evidence, that a violation has occurred that is not of a serious nature. A copy of the written admonishment shall be placed in the official file of the certificate holder. The certificate holder may respond in writing to the admonishment within thirty (30) calendar days of receipt and have that response placed in his or her official certification file. Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) calendar days of receipt of the admonishment. Upon receipt of a request for a hearing, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B within thirty (30) calendar days of receipt of the request.

(6)(a) In accordance with the timeline specified in this section, the Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B:

1. Upon determining that a complaint warrants possible revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;

2. After denying an application for a certificate, upon written request filed within thirty (30) calendar days of receipt of the letter advising of the denial; or

3. After issuing a written admonishment, upon written request for a hearing filed within thirty (30) calendar days of receipt of the written admonishment.

(b) If after the hearing required under paragraph (a) of this subsection is scheduled and the certificate holder or applicant believes the hearing is not timely, the certificate holder or applicant may submit a request for an expedited hearing, and the hearing shall be conducted within sixty (60) calendar days of the request.

(c) Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.

(d) The hearing shall be conducted before a hearing officer secured by the board pursuant to KRS 13B.030 and the board may:

1. Employ hearing officers;

2. Contract with another agency for hearing officers;

3. Contract with private attorneys through personal service contracts; or

4. Secure a hearing officer from the Attorney General's office.

(e) The hearing shall afford the certificate holder all the rights secured under KRS Chapter 13B.

(7) The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.

(8) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student or minor, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student or minor which are needed as a result of the sexual contact.

(9) At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certificate holder.

(10) The board may reconsider, modify, or reverse its decision on any disciplinary action.

(11)(a) Suspension of a certificate shall be for a specified period of time, not to exceed two (2) years.

(b) At the conclusion of the specified period, upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the certificate shall be reactivated.

(c) A suspended certificate is subject to expiration and termination.

(12)(a) Revocation of a certificate is a permanent forfeiture. The board shall establish the minimum period of time before an applicant can apply for a new certificate.

(b) At the conclusion of the specified period, and upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the applicant shall bear the burden of proof to show that he or she is again fit for practice.

(c) The board shall have discretion to impose conditions that it deems reasonably appropriate to ensure the applicant's fitness and the protection of public safety. Any conditions imposed by the board shall address or apply to only that time period after the revocation of the certificate.

(13) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court or the Circuit Court of the county in which the certificate holder was employed when the incident occurred in accordance with KRS 13B.140.

History.

4502-9; amend. Acts 1978, ch. 56, § 2, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 188, § 119, effective July 15, 1980; 1990, ch. 476, Pt. II, § 64, effective July 13, 1990; 1992, ch. 182, § 1, effective July 14, 1992; 1994, ch. 265, § 2, effective July 15, 1994; 1994, ch. 470, § 2, effective July 15, 1994; 1996, ch. 318, § 54, effective July 15, 1996; 1996, ch. 343, § 7, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 362, § 5, effective July 15, 1998; 1998, ch. 465, § 2, effective July 15, 1998; 2000, ch. 269, § 1, effective July 14, 2000; 2024 ch. 209, § 1, effective July 15, 2024; 2025 ch. 149, § 2, effective June 27, 2025; 2026 ch. 65, § 3, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/96). This section was amended by 1996 Ky. Acts chs. 318 and 343. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 343,

which was last enacted by the General Assembly, prevails under KRS 446.250.

(7/15/94). This statute was amended by 1994 Ky. Acts chs. 265 and 470, which were companion bills and are substantively identical. These Acts have been codified together. For the few minor variations between the Acts, Acts ch. 470 prevails under KRS 446.250, as the Act which passed the General Assembly last.

NOTES TO DECISIONS

1. Immunity.

A school superintendent as a public official acting under express authority of law is entitled to absolute immunity from a defamation action, even if the information he forwarded to the Professional Standards Board, regarding the reasons why a principal's contract wasn't renewed, was false. Matthews v. Holland, 912 S.W.2d 459, 1995 Ky. App. LEXIS 214 (Ky. Ct. App. 1995).

OPINIONS OF ATTORNEY GENERAL.

Although this section seems to provide for an abbreviated consideration by the state board of revocation of certificate, a fundamentally fair adversary due process hearing would, at the minimum, be required, and a decision to revoke a certificate must be by a majority vote of the membership of the state board (four votes). OAG 79-394, 1979 Ky. AG LEXIS 228.

The state superintendent need not recommend revocation of certificate even though he has recommended suspension or removal under KRS 156.132 for the same acts. OAG 79-394, 1979 Ky. AG LEXIS 228.

The Educational Professional Standards Board (EPSB) lacks the authority to delegate the holding of a revocation hearing, as found in this section, to a hearing officer. Nowhere in the statutory sections dealing with the board is there any authority for such a delegation of power, and therefore, based upon the lack of authority granted to the EPSB under their statutes, the board must be physically present to "hear" the evidence introduced during a hearing. Of course, a hearing officer may assist the Board during and following the hearing. OAG 91-37, 1991 Ky. AG LEXIS 37.

The Education Professional Standards Board, as a public agency, may meet to take action so long as a majority of the members are present and express themselves by vote. This section provides that a majority of the board may take official action upon hearing the evidence presented, and it would not be appropriate to require that additional members who are not present and did not hear the evidence should render a vote. It is clear that the quorum necessary for the board to conduct business may also act. The Education Professional Standards Board, composed of 15 members, may act when eight members are present to hear the evidence and to take action; that action may consist of a vote of which a majority of those present prevail over the rest. OAG 91-107, 1991 Ky. AG LEXIS 107.

The language of KRS 160.270 which is applicable to local boards of education and states that a concurring vote by a majority of the board, the number of board members in the quorum notwithstanding, shall be necessary to take any particular action unless otherwise specified by statute does not apply to this section, which is applicable to the Education Professional Standards Board. OAG 91-107, 1991 Ky. AG LEXIS 107.

A report written under subsections (2)(a) and (b) of this section does not represent final agency action, but is more closely analogous to an internal affairs report and is exempt under KRS 61.878. OAG 91-198, 1991 Ky. AG LEXIS 207.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Additional grounds for revocation of certificates, KRS 158.990, 159.990, 161.990.

Removal of school employees, KRS 156.132 to 156.142.

Suspension of certificate in case of breach of contract by teacher, KRS 161.780.

Part-time adjunct instructor certificate, 16 KAR 9:040.

Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial, 16 KAR 1:030.

Professional code of ethics for Kentucky school certified personnel, 16 KAR 1:020.

Standards for certified school personnel, 16 KAR 1:010.

Kentucky Bench & Bar.

Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

Kentucky Law Journal.

Comments, The Dismissal of Public School Teachers for Aberrant Behavior, 64 Ky. L.J. 911 (1975-76).

161.121. Definitions for KRS 161.122. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 20, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

161.1211. Classification of teachers.

(1) The Education Professional Standards Board shall rank teachers as follows:

(a) Rank I. Those holding regular certificates who have met the requirements for Rank II and have additionally earned:

1. A master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education;

2. Initial certification of the National Board for Professional Teaching Standards; or

3. Thirty (30) additional semester hours of approved graduate work or equivalent continuing education.

The board shall not allow a teacher who qualified for Rank I status on the basis of his or her national board certification to maintain that classification if the national board certificate is revoked for misconduct or voided for other reasons.

(b) Rank II. Those holding regular certificates and who:

1. Have a master's degree in a subject field approved by the Education Professional Standards Board;

2. Have earned initial certification of the National Board for Professional Teaching Standards; or

3. Have completed equivalent continuing education.

The board shall not allow a teacher who qualified for Rank II status on the basis of his or her national board certification to maintain that classification if the national board certificate is revoked for misconduct or voided for other reasons.

(c) Rank III. Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.

(d) Rank IV. Those holding emergency certificates and who have ninety-six (96) to one hundred twenty-eight (128) semester hours of approved college training or the equivalent.

(e) Rank V. Those holding emergency certificates and who have sixty-four (64) to ninety-five (95) semester hours of approved college training or the equivalent.

(2) In determining ranks, the Education Professional Standards Board shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit or equivalent continuing education. The board, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.

(3) For purposes of the state salary schedule only as referenced in KRS 158.070, rank shall be determined on September 15 of each year.

(4) Nothing in this section shall allow the Education Professional Standards Board by regulation to reclassify downward any teachers in Ranks II or I.

History.

Enact. Acts 2000, ch. 527, § 7, effective July 14, 2000; 2006, ch. 87, § 1, effective July 12, 2006; 2020 ch. 113, § 1, effective July 15, 2020.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Continuing Education Option for certificate renewal and rank change, 16 KAR 8:030.

Differentiated compensation, 702 KAR 3:310.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

One (1) year conditional certificate, 16 KAR 2:180.

Provisional certificate for college faculty, 16 KAR 9:020.

Rank I classification, 16 KAR 8:010.

Ranking of occupation-based career and technical education teachers, 16 KAR 8:040.

161.122. Career-ladder commission to develop pilot program — Commission report required — Initiation of two-year program. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1984, ch. 397, § 2, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 21, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

161.1221. Out-of-field teaching.

(1) The Education Professional Standards Board shall define "out-of-field" teaching and inform all local school districts of the definition.

(2) By November 15 of each year, the Education Professional Standards Board shall identify every teacher assigned classes out-of-field in the current school year and shall inform the Kentucky Department of Education.

(3) The Kentucky Department of Education shall provide to each school district a summary of the teachers identified as teaching out-of-field and give the district opportunity to correct the situation during the year. No teacher shall be reduced in salary due to being involuntarily moved out-of-field or being hired into a position out of his or her field. Emergency certification shall not be a valid reason for reducing any certified teacher's salary.

History.

Enact. Acts 2000, ch. 527, § 6, effective July 14, 2000; 2004, ch. 117, § 4, effective July 13, 2004; 2005, ch. 111, § 3, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Local educator assignment data, 16 KAR 1:050.

University-based alternative certification program for teachers of world languages, 16 KAR 9:090.

161.1222. Pilot teacher internship program — Report to Interim Joint Committee on Education — Appropriated funds. [Repealed]

History.

Enact. Acts 2003, ch. 6, § 1, effective March 7, 2003; 2005, ch. 111, § 4, effective June 20, 2005; repealed by 2024 ch. 124, § 9, effective July 15, 2024.

161.123. Reciprocity certification for out-of-state teachers.

Notwithstanding any other statute to the contrary, an experienced, out-of-state teacher shall qualify for a regular provisional certificate if the applicant:

(1) Completes the application process;

(2) Holds a valid certificate issued by the state where the applicant most recently taught; and

(3) Holds a valid certificate issued by the National Board of Professional Teaching Standards.

History.

Enact. Acts 2000, ch. 257, § 6, effective July 14, 2000.

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

161.124. Interstate Agreement on Qualification of Educational Personnel.

The Interstate Agreement on Qualification of Educational Personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I.

PURPOSE, FINDINGS, AND POLICY

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of these persons wherever gained,

thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of these programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage these personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

ARTICLE II.

DEFINITIONS

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept," or any variant thereof, means to recognize and give effect to one (1) or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

(5) "Originating state" means a state and its subdivisions, if any, whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state and its subdivisions which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

ARTICLE III.

INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this Article only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(2) Any contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

(c) Waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than five years but any contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous

review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV.

APPROVED AND ACCEPTED PROGRAMS

(1) Nothing in this agreement should be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

ARTICLE V.

INTERSTATE COOPERATION

The party states agree that:

(1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement.

(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

ARTICLE VI.

AGREEMENT EVALUATION

The designated state officials of any party state may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendation for changes.

ARTICLE VII.

OTHER ARRANGEMENTS

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII.

EFFECT AND WITHDRAWAL

(1) This agreement shall become effective when enacted into law by two (2) states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the agreement, but no withdrawal shall take effect until one (1) year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX.

CONSTRUCTION AND SEVERABILITY

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History.

Enact. Acts 1970, ch. 174, § 1; 1990, ch. 476, Pt. II, § 65, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Out-of-state preparation, 16 KAR 4:030.

161.126. Designation of commissioner of education as state official under agreement — Handling contracts under agreement.

(1) The "designated state official" for this state shall be the commissioner of education. The commissioner of education shall enter into contracts pursuant to Article III of the agreement only with the approval of the specific text by the Education Professional Standards Board.

(2) True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the Education Professional Standards Board and in the office of the Secretary of State. The commissioner of education shall publish all contracts in convenient form.

History.

Enact. Acts 1970, ch. 174, §§ 2, 3; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 66, effective

July 13, 1990; 2001, ch. 137, § 12, effective June 21, 2001; 2021 ch. 26, § 10, effective June 29, 2021.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Out-of-state preparation, 16 KAR 4:030.

161.130. Fees for certificates; agency fund account. [Repealed.]

Compiler's Notes.
This section (4502-8; amend. Acts 1950, ch. 103, § 3) was repealed by Acts 1960, ch. 98.

NATIONAL BOARD CERTIFICATION OF TEACHERS

161.131. Legislative findings and goals on national board certification.

(1) The General Assembly hereby finds that:

(a) Student achievement is directly related to the competency levels of the teachers and the teachers' ability to nurture student learning;

(b) All students are entitled to have teachers who know the subjects they teach and who demonstrate skill for managing and monitoring student learning;

(c) Teachers who meet entry-level standards need support and opportunities to develop higher-level skills throughout their teaching careers;

(d) Certification through the National Board for Professional Teaching Standards is based on high and rigorous standards and provides a process of development and assessment of teachers' knowledge, skills and abilities embedded in classroom practices in the certificate field; and

(e) Teachers who successfully meet the certification requirements through the National Board for Professional Teaching Standards can help strengthen the teaching profession within their schools and school districts by advising, assisting, and mentoring new teachers; by serving as role models and master teachers to student teachers; and by assisting other experienced teachers who seek national board certification.

(2) The General Assembly establishes, on behalf of the public school teachers and students in the Commonwealth, a goal that by the year 2020 there will be at least one (1) national board certified teacher in every public school in Kentucky.

History.
Enact. Acts 2000, ch. 257, § 1, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Teachers' National Certification Incentive Trust Fund, 16 KAR 1:040.

161.132. Definitions for KRS 161.131 to 161.134 and KRS 157.395 and 161.123.

As used in KRS 161.131 to 161.134 and KRS 157.395 and 161.123, unless the context otherwise requires:

(1) "Mentor" means a highly skilled, experienced teacher who provides systematic and on-going support and assistance to other teachers in a school or school district to help them improve their teaching skills and practices;

(2) "National Board for Professional Teaching Standards" and "national board" means a nonpartisan, independent, and nonprofit board composed of teachers and others that has developed a set of high and rigorous standards for accomplished teachers and that operates a national voluntary system to assess and certify teachers who meet their standards; and

(3) "National board certification" means a demonstration by an experienced teacher of his or her teaching practice as measured against high and rigorous standards through a comprehensive assessment process administered by the National Board for Professional Teaching Standards.

History.
Enact. Acts 2000, ch. 257, § 2, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Teachers' National Certification Incentive Trust Fund, 16 KAR 1:040.

161.133. Teachers' national certification incentive trust fund — Purposes — Appropriations.

(1) There is hereby established a "Teachers' National Certification Incentive Trust Fund" in the State Treasury for the purposes of:

(a) Funding stipends for teachers to prepare for certification by the National Board for Professional Teaching Standards;

(b) Reimbursing a portion of the certification fee to each teacher who is awarded national board certification;

(c) Reimbursing local boards of education or the Department of Education for persons who serve as substitute teachers for national board certification candidates; and

(d) Funding stipends for national board certified teachers who serve as mentors to other teachers within the school district or the Kentucky Tech system.

(2) Appropriations by the General Assembly in each biennial budget for the purpose of supporting national board certification shall be credited to the fund and invested until needed. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for the purposes of this section. Funds appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.

(3) The Education Professional Standards Board shall promulgate administrative regulations that establish the procedures for the administration of the funds as described in this section and the requirements for participating teachers, local boards of education, and the Department of Education. The board shall allocate only those funds to teachers, school districts, or

the department for the purposes in this section for which other sources of funds are not being received. The board may limit the number of participants accepted in any given enrollment or application period due to the lack of available funds.

(4) Money in the fund shall be distributed to local boards of education, the Department of Education, and teachers by the Education Professional Standards Board in compliance with the administrative regulations promulgated by the board.

History.

Enact. Acts 2000, ch. 257, § 3, effective July 14, 2000; 2003, ch. 160, § 1, effective March 31, 2003; 2010, ch. 39, § 2, effective July 15, 2010; 2013, ch. 59, § 45, effective June 25, 2013.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Teachers' National Certification Incentive Trust Fund, 16 KAR 1:040.

161.134. Preparation for national board certification — Incentives — Authority to prorate reimbursements if funds insufficient — Administrative regulations for mentoring program.

(1)(a) A teacher pursuing national board certification shall receive from the fund established under KRS 161.133 a stipend of two hundred dollars ($200) per day for two (2) days beyond the school contract year to prepare for the certification assessments.

(b) A local board of education shall provide five (5) days' released time during the school year for a teacher pursuing national board certification. The local board of education shall request reimbursement from the fund established under KRS 161.133 for substitute teacher pay based on the local board of education salary schedule for substitute teachers and for stipends paid to a teacher described in subsection (3) of this section. A local board of education may, at its own expense, provide additional released time for teachers pursuing national board certification.

(c) If a teacher does not successfully complete all assessments required for national board certification during a school year, the provisions in this subsection may be applied to a second school year.

(d) When funds are not available to fully fund the requirements of paragraphs (a), (b), and (c) of this subsection for all national board applicants, the board may prorate the specified reimbursements in paragraphs (a) and (b) and may limit the conditions under which provisions of paragraph (c) shall be applied to second year participants. The board shall establish the procedures for carrying out the provisions of this subsection in an administrative regulation.

(2)(a) As of July 14, 2000, a teacher who attains national board certification shall be reimbursed seventy-five percent (75%) of the certification fee for the initial ten (10) year certificate, except the Education Professional Standards Board may decrease the percentage of reimbursement if a teacher receives payment other than a repayable loan for the same purpose from another source and the cumulative amount would exceed one hundred percent (100%) of the cost of the certification fee.

(b) Fees for retaking one (1) or more entries of the national board assessment for the initial national board certificate and fees for renewal of the certificate shall be at the teacher's expense.

(c) Nothing in this subsection shall prohibit the board from reimbursing a percentage of the initial certification fee to a teacher who has received a repayable loan from a local board of education or other agency to offset initial costs.

(3) A national board certified teacher may receive a stipend in addition to his or her annual compensation for serving as a mentor to teachers within his or her school or school district. The Education Professional Standards Board shall promulgate administrative regulations under which a local board of education, in cooperation with the school-based decision making council, may establish a mentoring program within a school to utilize national board certified teachers. The administrative regulations shall specify the conditions for the mentoring program as well as the amount of the stipend that will be provided to a teacher serving as a mentor.

History.

Enact. Acts 2000, ch. 257, § 4, effective July 14, 2000; 2003, ch. 160, § 2, effective March 31, 2003.

2008-2010 Budget Reference.

See State/Executive Branch Budget, 2008 Ky. Acts ch. 127, Pt. I, E, 10, (1) at 510; and State/Executive Branch Budget Memorandum, 2008 Ky. Acts ch. 188, at 1413 (Final Budget Memorandum, Vol. III, at E-38).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Teachers' National Certification Incentive Trust Fund, 16 KAR 1:040.

161.135. Interstate Teacher Mobility Compact.

ARTICLE I

PURPOSE

It is the purpose of this compact to facilitate the mobility of teachers across the member states, with the goal of supporting teachers through a new pathway to licensure. Through this compact, the member states seek to establish a collective regulatory framework that expedites and enhances the ability of teachers to move across state lines.

This compact is intended to achieve the following objectives:

A. Create a streamlined pathway to licensure mobility for teachers;

B. Support the relocation of eligible military spouses;

C. Facilitate and enhance the exchange of teacher licensure, investigative, and disciplinary information between the member states;

D. Enhance the power of state and district level education officials to hire qualified, competent teachers by removing barriers to the employment of out-of-state teachers;

E. Support the retention of teachers in the profession by removing barriers to re-licensure in a new state; and

F. Maintain state sovereignty in the regulation of the teaching profession. The member states hereby ratify the same intentions by subscribing hereto.

ARTICLE II

DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions shall govern the terms herein:

A. "Active military member" means any person with full-time duty status in the uniformed service of the United States, including members of the National Guard and Reserve;

B. "Adverse action" means any limitation or restriction imposed by a member state's licensing authority on the licensee's ability to work as a teacher, such as revocation, suspension, reprimand, or probation;

C. "Bylaws" means those bylaws established by the commission;

D. "Career and technical education license" means a current, valid authorization issued by a member state's licensing authority allowing an individual to serve as a teacher in preschool through twelfth grade public educational settings in a specific career and technical education area;

E. "Charter member states" means a member state that has enacted legislation to adopt this compact where such legislation predates the initial meeting of the commission after the effective date of the compact;

F. "Commission" means the interstate administrative body whose membership consists of delegates of all states that have enacted this compact and which is known as the Interstate Teacher Mobility Compact Commission;

G. "Commissioner" means the delegate of a member state;

H. "Eligible license" means a license to engage in the teaching profession, which requires at least a bachelor's degree and the completion of a state-approved program for teacher licensure;

I. "Eligible military spouse" means the spouse of an active military member who is relocating as a result of a military mission, military career progression requirement, or a terminal move due to separation, retirement, or death of the member;

J. "Executive committee" means a group of commissioners elected or appointed to act on behalf of, and within the powers granted to them by, the commission as provided for herein;

K. "Licensing authority" means an official, agency, board, or other entity of a state that is responsible for the licensing and regulation of teachers authorized to teach in preschool through twelfth grade public educational settings;

L. "Member state" means any state that has adopted this compact, including all agencies and officials of such a state;

M. "Receiving state" means any state that a teacher has applied for licensure under this compact;

N. "Rule" means any regulation promulgated by the commission under this compact, which shall have the force of law in each member state;

O. "State" means a state, territory, or possession of the United States and the District of Columbia;

P. "State practice laws" means a member state's law, rules, and regulations that govern the teaching profession, define the scope of such profession, and create the methods and grounds for imposing discipline;

Q. "State specific requirements" means a requirement for licensure covered in coursework or examination that includes content of unique interest to the state;

R. "Teacher" means an individual who currently holds an authorization from a member state that forms the basis for employment in the preschool through twelfth grade public schools of the state to provide instruction in a specific subject area, grade level, or student population; and

S. "Unencumbered license" means a current, valid eligible license that is not a restricted, probationary, provisional, substitute, or temporary credential.

ARTICLE III

LICENSURE UNDER THE COMPACT

A. Licensure under this compact pertains only to the initial grant of a license by the receiving state. Nothing herein applies to any subsequent or ongoing compliance requirements that a receiving state might require for teachers.

B. Each member state shall, in accordance with the rules of the commission, define, compile, and update as necessary, a list of eligible licenses and career and technical education licenses that the member state is willing to consider for equivalency under this compact and provide the list to the commission. The list shall include those licenses that a receiving state is willing to grant to teachers from other member states, pending a determination of equivalency by the receiving state's licensing authority.

C. Upon the receipt of an application for licensure by a teacher holding an unencumbered license, the receiving state shall determine which of the receiving state's eligible licenses the teacher is qualified to hold and shall grant such a license or licenses to the applicant. Such a determination shall be made in the sole discretion of the receiving state's licensing authority and may include a determination that the applicant is not eligible for any of the receiving state's eligible licenses. For all teachers who hold an unencumbered license, the receiving state shall

grant one (1) or more unencumbered licenses that, in the receiving state's sole discretion, are equivalent to the license or licenses held by the teacher in any other member state.

D. For active military members and eligible military spouses who hold a license that is not unencumbered, the receiving state shall grant an equivalent license or licenses that, in the receiving state's sole discretion, is equivalent to the license or licenses held by the active military member or eligible military spouse, except where the receiving state does not have an equivalent license.

E. For a teacher holding an unencumbered career and technical education license, the receiving state shall grant an unencumbered license equivalent to the career and technical education license held by the applying teacher and issued by another member state, as determined by the receiving state in its sole discretion, except when a career and technical education teacher does not hold a bachelor's degree and the receiving state requires a bachelor's degree for licenses to teach career and technical education. A receiving state may require career and technical education teachers to meet state industry-recognized requirements, if required by law in the receiving state.

ARTICLE IV

LICENSURE NOT UNDER THE COMPACT

A. Except as provided in Article III above, nothing in this compact shall be construed to limit or inhibit the power of a member state to regulate licensure or endorsements overseen by the member state's licensing authority.

B. When a teacher is required to renew a license received pursuant to this compact, the state granting such a license may require the teacher to complete state specific requirements as a condition of licensure renewal or advancement in that state.

C. For the purposes of determining compensation, a receiving state may require additional information from teachers receiving a license under the provisions of this compact.

D. Nothing in this compact shall be construed to limit the power of a member state to control and maintain ownership of its information pertaining to teachers, or limit the application of a member state's laws or regulations governing the ownership, use, or dissemination of information pertaining to teachers.

E. Nothing in this compact shall be construed to invalidate or alter any existing agreement or other cooperative arrangement which a member state may already be a party to or limit the ability of a member state to participate in any future agreement or other cooperative arrangement to:

1. Award teaching licenses or other benefits based on additional professional credentials, including but not limited to National Board Certification;

2. Participate in the exchange of names of teachers whose licenses have been subject to an adverse action by a member state; or

3. Participate in any agreement or cooperative arrangement with a non-member state.

ARTICLE V

TEACHER QUALIFICATIONS AND REQUIREMENTS FOR LICENSURE UNDER THE COMPACT

A. Except as provided for active military members or eligible military spouses in Article III. D. of this compact, a teacher may only be eligible to receive a license under this compact when that teacher holds an unencumbered license in a member state.

B. A teacher eligible to receive a license under this compact, unless otherwise provided for herein, shall:

1. Upon their application to receive a license under this compact, undergo a criminal background check in the receiving state in accordance with the laws and regulations of the receiving state; and

2. Provide the receiving state with information in addition to the information required for licensure for the purposes of determining compensation, if applicable.

ARTICLE VI

DISCIPLINE/ADVERSE ACTIONS

A. Nothing in this compact shall be deemed or construed to limit the authority of a member state to investigate or impose disciplinary measures on teachers according to the state practice laws thereof.

B. Member states shall be authorized to receive and shall provide files and information regarding the investigation and discipline, if any, of teachers in other member states upon request. Any member state receiving such information or files shall protect and maintain the security and confidentiality thereof, in at least the same manner that it maintains its own investigatory or disciplinary files and information. Prior to disclosing any disciplinary or investigatory information received from another member state, the disclosing state shall communicate its intention and purpose for such disclosure to the member state that originally provided that information.

ARTICLE VII

ESTABLISHMENT OF THE INTERSTATE TEACHER MOBILITY COMPACT COMMISSION

A. The interstate compact member states hereby create and establish a joint public agency known as the Interstate Teacher Mobility Compact Commission. The commission is a joint interstate governmental agency composed of states that have enacted the Interstate Teacher Mobility Compact. Nothing in this

interstate compact shall be construed to be a waiver of sovereign immunity.

B. The membership, voting, and meetings provisions are as follows:

1. Each member state shall have and be limited to one (1) delegate to the commission, who shall be given the title of commissioner.

2. The commissioner shall be the primary administrative officer of the state licensing authority or their designee.

3. Any commissioner may be removed or suspended from office as provided by the law of the state from which the commissioner is appointed.

4. The member state shall fill any vacancy occurring in the commission within ninety (90) days.

5. Each commissioner shall be entitled to one (1) vote about the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners' participation in meetings by telephone or other means of communication.

6. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The commission shall have the following powers and duties:

1. Establish a code of ethics for the commission;

2. Establish the fiscal year of the commission;

3. Establish bylaws for the commission;

4. Maintain financial records in accordance with the bylaws of the commission;

5. Meet and take such actions as are consistent with the provisions of this interstate compact, the bylaws, and the rules of the commission;

6. Promulgate uniform rules to implement and administer this interstate compact. The rules shall have the force and effect of law and shall be binding in all member states. In the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect of law;

7. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any member state licensing authority to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including but not limited to employees of a member state or an associated nongovernmental organization that is open to membership by all states;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees including standing committees composed of members and such other interested persons as may be designated in this interstate compact, rules, or bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an executive committee;

18. Establish and develop a charter for an executive information governance committee to advise on facilitating exchange of information, use of information, data privacy, and technical support needs, and provide reports as needed;

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this interstate compact consistent with the state regulation of teacher licensure; and

20. Determine whether a state's adopted language is materially different from the model compact language such that the state would not qualify for participation in the compact.

D. The Executive Committee of the Interstate Teacher Mobility Compact Commission:

1. Shall have the power to act on behalf of the commission according to the terms of this interstate compact and the bylaws of the commission;

2. Shall be composed of eight (8) voting members as follows:

a. The commission chair, vice chair, and treasurer; and

b. Five (5) members who are elected by the commission from the current membership composed of four (4) voting members representing geographic regions and one (1) at-large voting member in accordance with commission bylaws;

3. May have its members added or removed by the commission as provided in commission bylaws;

4. Shall meet at least once annually; and

5. Shall have the following duties and responsibilities:

a. Make recommendations to the entire commission regarding changes to the rules or bylaws, changes to the compact legislation, fees paid by interstate compact member states such as annual dues, and any compact fee charged by the member states on behalf of the commission;

b. Ensure commission administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the commission;

e. Monitor compliance of member states and provide reports to the commission; and

f. Perform other duties as provided in the rules or bylaws.

E. Meetings of the Commission:

1. All meetings shall be open to the public, and public notice of meetings shall be given in accordance with commission bylaws.

2. The commission, the executive committee, or other committees of the commission may convene in a closed, nonpublic meeting if the commission, executive committee, or other committees of the commission must discuss:

a. Noncompliance of a member state with its obligations under the compact;

b. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact;

j. Matters specifically exempted from disclosure by federal or member state statute; and

k. Other matters as set forth by commission bylaws and rules.

3. If a meeting, or portion of a meeting, is closed pursuant to this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The commission shall keep minutes of meetings of the executive committee, commission, and other committees of the commission and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

F. Financing of the Commission:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The commission may accept all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest.

3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission, in accordance with the commission rules.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to accounting procedures established under commission bylaws. All receipts and disbursements of commission funds shall be reviewed annually in accordance with commission bylaws, and a report of the review shall be included in and become part of the annual report of the commission.

G. Qualified Immunity, Defense, and Indemnification:

1. The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or re-

sponsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE VIII.

RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this interstate compact and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. The commission shall promulgate reasonable rules to achieve the intent and purpose of this interstate compact. In the event the commission exercises its rulemaking authority in a manner that is beyond purpose and intent of this interstate compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect of law in the member states.

C. If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact within four (4) years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

D. Rules or amendments to the rules shall be adopted or ratified at a regular or special meeting of the commission in accordance with commission rules and bylaws.

E. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule with forty-eight (48) hours' notice, with opportunity to comment, provided that the usual rulemaking procedures shall be retroactively applied to the rule as soon as reasonably possible, and in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

ARTICLE IX.

FACILITATING INFORMATION EXCHANGE

A. The commission shall provide for facilitating the exchange of information to administer and implement the provisions of this compact in accordance with the rules of the commission, consistent with generally accepted data protection principles.

B. Nothing in this compact shall be deemed or construed to alter, limit, or inhibit the power of a member state to control and maintain ownership of its licensee information or alter, limit, or inhibit the laws or regulations governing licensee information in the member state.

ARTICLE X.

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight:

1. The executive and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact shall have standing as statutory law.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct, or any such similar matter.

3. All courts and all administrative agencies shall take judicial notice of the compact, the rules of the commission, and any information provided to a member state pursuant thereto in any judicial or quasi-judicial proceeding in a member state pertaining to the subject matter of this compact or which may affect the powers, responsibilities, or actions of the commission.

4. The commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the commission service of process shall render a judgment or order void as to the commission, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination:

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

a. Written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

b. Remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the commissioners of the member states, and all rights, privileges, and benefits conferred on that

state by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, the state licensing authority, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution:

1. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

2. The commission shall promulgate a rule providing for both binding and nonbinding alternative dispute resolution for disputes as appropriate.

D. Enforcement:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XI.

EFFECTUATION, WITHDRAWAL, AND AMENDMENT

A. The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state.

1. On or after the effective date of the compact, the commission shall convene and review the enactment of each of the charter member states to determine if the statute enacted by each such charter member state is materially different from the model compact statute.

2. A charter member state whose enactment is found to be materially different from the model compact statute shall be entitled to the default process set forth in Article X.

3. Member states enacting the compact subsequent to the charter member states shall be subject to the process set forth in Article VII. C. 20 to determine if their enactments are materially different from the model compact statute and whether they qualify for participation in the compact.

B. If any member state is later found to be in default, or is terminated or withdraws from the compact, the commission shall remain in existence and the compact shall remain in effect even if the number of member states should be less than ten (10).

C. Any state that joins the compact after the commission's initial adoption of the rules and bylaws shall be subject to the rules and bylaws as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state, as the rules and bylaws may be amended as provided in this compact.

D. Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's licensing authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

E. This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XII.

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state, a state seeking membership in the compact, or of the United States or the applicability thereof to any other government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If

this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

ARTICLE XIII.

CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

A. Nothing herein shall prevent or inhibit the enforcement of any other law of a member state that is not inconsistent with the compact.

B. Any laws, statutes, regulations, or other legal requirements in a member state in conflict with the compact are superseded to the extent of the conflict.

C. All permissible agreements between the commission and the member states are binding in accordance with their terms.

History.
2023 ch. 164, § 1, effective June 29, 2023.

REGULATIONS AS TO SCHOOL EMPLOYEES

161.140. Duties of school employees prescribed by board of education. [Repealed.]

Compiler's Notes.
This section (4503-1) was repealed by Acts 1982, ch. 34, § 1, effective July 15, 1982.

161.141. Participation in retirement systems — State-sponsored insurance program — Appropriations for retirement and insurance — Sick leave credit — Requirements and prohibitions concerning public charter school employees and local school boards — Employees of education service provider.

(1) As used in this section, "education service provider," "public charter school," "local school board," and "local school district" have the same meanings as in KRS 160.1590.

(2)(a) Public charter school employees shall participate in the Teachers' Retirement System or the County Employees Retirement System, as determined by their eligibility for participation in the appropriate system and provided the public charter school satisfies the criteria set by the Internal Revenue Service to participate in a governmental retirement plan.

(b) Teachers and other certified personnel shall make any required employee contributions to the Teachers' Retirement System under KRS 161.220 to 161.716.

(c) Classified employees shall make any required employee contributions to the County Employees Retirement System under KRS 78.510 to 78.852.

(d) A public charter school shall participate in the state-sponsored health insurance program on the same basis as a local school district pursuant to KRS 18A.225.

(e) Any state appropriation for retirement, health, or life insurance benefits made on behalf of a local public employee or a school district employee shall also be made on behalf of a public charter school employee.

(f) A public charter school shall make any required employer contributions to the Teachers' Retirement System under KRS 161.220 to 161.716 and the County Employees Retirement System under KRS 78.510 to 78.852 in the same manner as local school districts.

(g) For the purposes of calculating sick leave credit under KRS 161.220 to 161.716, teachers and other certified personnel of a public charter school shall not accumulate more days of sick leave during their employment with the public charter school than they would have otherwise accumulated as a certified employee of the school district of location.

(3)(a) A public charter school employee shall not be required to be a member of any collective bargaining agreement.

(b) A public charter school employee who enters into any collective bargaining unit must do so as a separate unit from the local school district.

(4) A local school board shall not require any employee of the local school district to be employed in a public charter school or any student enrolled in the school district to attend a public charter school.

(5) A local school board shall not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a public charter school.

(6) An employee of an education service provider shall not be considered a public charter school employee, but shall meet the same certification and background check requirements otherwise required of a public charter school employee.

History.
2017 ch. 102, § 11, effective June 29, 2017; 2022 ch. 213, § 12, effective July 14, 2022.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Charter school student application, lottery, and enrollment, 701 KAR 8:010.
Conversion charter school petition, conversion, and operation, 701 KAR 8:040.
Evaluation of charter school authorizers, 701 KAR 8:020.

161.145. Cost of physical examination required for employment of classified personnel.

(1) When a physical examination is required as a condition of employment of classified personnel, excluding bus drivers, the examination shall be provided at no cost to the employee by the board. The examination shall be provided by the county health department if

appropriate health department personnel are available.

(2) If employee elects to be examined by private physician, the cost of examination shall be borne by employee.

(3) Each examination shall include a risk assessment and the appropriate follow-up with skin testing or chest X-ray for applicants who are determined to be at risk for developing tuberculosis in accordance with the recommendations of the Centers for Disease Control and Prevention. The risk assessment and the appropriate follow-up for those determined to be at risk shall be conducted prior to August 1 of the employable year in which the person is employed.

History.
Enact. Acts 1980, ch. 70, § 1, effective March 20, 1980; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 475, effective July 13, 1990; 2008, ch. 144, § 2, effective July 15, 2008.

Compiler's Notes.
This section (Enact. Acts 1980, ch. 70, § 1, effective March 20, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 475, effective July 13, 1994.

OPINIONS OF ATTORNEY GENERAL.

KRS 336.220 does not apply to public employers and under this section the Board of Education is not required to pay the cost of physical examinations of bus drivers who work for the board. OAG 91-1, 1991 Ky. AG LEXIS 1.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School health services, 702 KAR 1:160.

161.148. Use of volunteer personnel — Criminal records check — Orientation — Exception.

(1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.

(2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.

(3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.

(4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice and Public Safety Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.

(5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.

(6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

History.
Enact. Acts 2000, ch. 336, § 1, effective July 14, 2000; 2001, ch. 60, § 1, effective June 21, 2001; 2007, ch. 85, § 170, effective June 26, 2007.

161.150. Minimum salary for teachers. [Repealed.]

Compiler's Notes.
This section (4399-46) was repealed by Acts 1954, ch. 214, § 16.

161.151. Removal of references to criminal allegations not resulting in charge or conviction from school employee's personnel file — Nonpreclusion of separate investigation.

(1) Except as provided in KRS 160.380, all records and references relating to an allegation of a criminal offense committed by a school employee that did not lead to formal charges and all records relating to a criminal proceeding in which a school employee was found not guilty or the charges were dismissed shall be removed from the school employee's personnel file by the superintendent or the superintendent's designee in the local school district.

(2) The provisions of subsection (1) of this section shall not preclude a school district from separately investigating, taking action upon, and creating and maintaining records on the same or a similar fact situation upon which the allegations of a criminal offense was based.

History.
Enact. Acts 1998, ch. 469, § 1, effective July 15, 1998; 2026 ch. 74, § 11, effective April 10, 2026.

161.152. Emergency leave for school employees.

(1) For the purpose of this section, "school personnel" shall mean any person employed as a full-time employee in the public schools.

(2) Each district board of education may allow each person employed as a full-time employee in the public schools not to exceed three (3) emergency days per school year for reasons designated by the district board of education, without loss of salary to the employee and without affecting his sick leave.

(3) Personal leave granted under this section shall not be treated as having effect on the provisions of KRS 161.155, except that school personnel, after using the maximum days allowed in subsection (2) of this section, may, upon the recommendation of the school district superintendent and approval of the district board of education, use up to three (3) sick-leave days per school year for emergency leave according to the district board policy as established pursuant to subsection (2) of this section.

(4) Payments made by a district board of education under the provisions of this section are presumed to be for services rendered and for the benefit of the common schools and the payments do not affect the eligibility of any school district to participate in the public school funding program as established in KRS Chapter 157.

History.

Enact. Acts 1970, ch. 170, § 1; 1986, ch. 126, § 1, effective July 15, 1986; 1990, ch. 476, § 238, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Under this section the granting of emergency leave is discretionary on the part of the board of education, and if the board, within its discretion, decides to grant emergency leave, this section provides that the district board of education may designate the specific reasons for which the leave will be granted, and limitations which exclude the death of a mother-in-law from the emergency leave benefits is a legal limitation. OAG 71-199.

The fact that teachers of the Jewish faith are not granted emergency days with pay when they are absent on religious holidays does not constitute unjust discrimination against such teachers. OAG 72-348.

A school board does not have to have an emergency leave regulation, but if it does have one, it cannot provide that emergency leave shall be charged as sick leave. OAG 73-832.

Proposal of school board to grant certified personnel two emergency leave days and one personal leave day for a total of three and to grant noncertified personnel three emergency leave days and no personal leave days does not follow the requirements of this section and KRS 161.154 and the board cannot permit two emergency days for certified personnel and three emergency days for noncertified personnel. OAG 76-427.

If a teacher is absent on an extended school day and is not covered by sick leave, personal leave or emergency death leave, he or she loses one and one-fifth day's salary. OAG 78-367, 1978 Ky. AG LEXIS 360.

161.153. Leave for jury duty for teachers and state employees.

(1) Any teacher or state employee, except employees subject to the provisions of KRS Chapter 18A, who serves on a jury in any duly constituted local, state, or federal court shall be granted leave with full compensation, less any compensation received as jury pay, for the period of his actual jury service, which leave shall be in addition to all other leave to which the teacher or state employee may be entitled.

(2) Any state employee who is subject to the provisions of KRS Chapter 18A and who serves on a jury in any duly constituted local, state, or federal court shall be granted leave with full compensation for the period of his actual jury service, which shall be in addition to all other leave to which the employee may be entitled.

History.

Enact. Acts 1972, ch. 97, § 1; 1978, ch. 269, § 8, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 476, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1972, ch. 97, § 1; 1978, ch. 269, § 8, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 476, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

A teacher is to receive his or her school teacher's compensation less $5.00 per day received as jury pay, but the $7.50 per diem received need not be deducted from the teacher's regular compensation. OAG 78-696, 1978 Ky. AG LEXIS 145.

161.154. Personal leave days for school employees.

(1) For the purpose of this section, "school employees" shall mean any person for whom certification is required as a basis of employment in the public schools.

(2) Each district board of education may provide up to three (3) personal leave days per school year to school employees, without loss of salary to the employee and without affecting any other type of leave granted by law, regulation, or school board policy. Local boards of education may establish policy regarding the number of teachers who may take personal leave on any one (1) day.

(3) Personal leave granted under this section shall not be treated as having effect on the provisions of KRS 161.152 to 161.155 and shall be supported by personal statement of the school employee stating that the leave taken is personal in nature; no other reason for or verification of the leave shall be required.

(4) Payments to school employees made by a district board of education under the provisions of this section are presumed to be for services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school foundation program fund as established in KRS Chapter 157.

History.

Enact. Acts 1976, ch. 238, § 1; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 477, effective July 13, 1990; 2023 ch. 164, § 10, effective June 29, 2023.

Compiler's Notes.

This section as enacted (Enact. Acts 1976, ch. 238, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 477, effective July 13, 1990.

161.155. Definitions for section — Salary, benefits, and leave for employee or teacher when victim of assault — Sick leave for employee or teacher — Sick leave bank — Sick leave donation program — Maternity leave — Payment for unused sick leave upon retirement or death — Funding allocation — Report.

(1) As used in this section:

(a) "Assault" shall mean an act that intentionally causes injury so significant that the victim is deter-

mined to be, by certification of a physician or surgeon duly qualified under KRS Chapter 342, incapable of performing the duties of his or her job;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's or employee's spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in law, brothers and sisters, parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's or employee's home;

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days; and

(e) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state.

(2) Each district board of education shall allow to each teacher and full-time employee in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher or employee if he or she presents a personal statement or a certificate of a physician stating that the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a member of his or her immediate family who was ill, or for the purpose of mourning a member of his or her immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher or employee on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher or employee under the provisions of subsection (4) of this section.

(3) A school district shall coordinate among the income and benefits from workers' compensation, temporary disability retirement, and district payroll and benefits so that there is no loss of income or benefits to a teacher or employee for work time lost because of an assault while performing the teacher's or employee's assigned duties for a period of up to one (1) year after the assault. In the event a teacher or employee suffers an assault while performing his or her assigned duties that results in injuries that qualify the teacher or employee for workers' compensation benefits, the district shall provide leave to the teacher or employee for up to one (1) year after the assault with no loss of income or benefits under the following conditions:

(a) The district shall pay the salary of the teacher or employee between the time of the assault and the time the teacher's or employee's workers' compensation income benefits take effect, or the time the teacher or employee is certified to return to work by a physician or surgeon duly qualified under KRS Chapter 342, whichever is sooner;

(b) The district shall pay, for up to one (1) year from the time of the assault, the difference between the salary of the teacher or employee and any workers' compensation income benefits received by the teacher or employee resulting from the assault. Payments by the district shall include payments for intermittent work time missed as a result of the assault during the one (1) year period. If the teacher's or employee's workers' compensation income benefits cease during the one (1) year period after the assault, the district shall also cease to make payments under this paragraph;

(c) The Commonwealth, through the Kentucky Department of Education, shall make the employer's health insurance contribution during the period that the district makes payments under paragraphs (a) and (b) of this subsection;

(d) The Commonwealth, through the Kentucky Department of Education, shall make the employer's contribution to the retirement system in which the teacher or employee is a member during the period that the district makes payments under paragraphs (a) and (b) of this subsection; and

(e) Payments to a teacher or employee under paragraphs (a) and (b) of this subsection shall be coordinated with workers' compensation benefits under KRS Chapter 342, disability retirement benefits for teachers under KRS 161.661 to 161.663, and disability retirement benefits for employees under KRS 61.600 to 61.621 and 78.5522, 78.5524, 78.5526, 78.5528, and 78.5530so that the teacher or employee receives income equivalent to his or her full contracted salary, but in no event shall the combined payments exceed one hundred percent (100%) of the teacher's or employee's full contracted salary.

(4) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he or she transfers his or her place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.

(5) Accumulated days of sick leave shall be granted to a teacher or employee if, prior to the opening day of the school year, a statement or a certificate of a physician is presented to the district board of education, stating that the teacher or employee is unable to commence his or her duties on the opening day of the school year, but will be able to assume his or her duties within a period of time that the board determines to be reasonable.

(6) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(7) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations

upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(8)(a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher or employee may receive donations of sick leave if:

1.a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or

b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;

2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;

3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and

4. The teacher or employee has complied with the school district's policies governing the use of sick leave.

(c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(9)(a) A teacher or employee may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(b) On or before July 1, 2030, each school district shall establish a policy to provide up to thirty (30) paid maternity leave days for a teacher or employee who gives birth to a child. The maternity leave days shall be used without deduction of salary and shall be used prior to the teacher or employee using any other leave. Any maternity leave days unused by the teacher or employee shall not transfer into sick leave or be converted to any other leave type and shall expire upon return to work. This paragraph shall not limit a school district's authority to establish additional paid maternity benefits or to provide paid parental leave benefits.

(10)(a) A district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%).

(b) Except as provided in paragraph (c) of this subsection, payment for unused sick leave days under this subsection shall be incorporated into the annual salary of the final year of service for inclusion in the calculation of the employee's or teacher's retirement allowance only at the time of his or her initial retirement, provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(c) For a teacher or employee who becomes a nonuniversity member of the Teachers' Retirement System on or after January 1, 2022, as provided by KRS 161.220, payment for unused sick leave days under this subsection shall not be incorporated into the annual compensation used to calculate the teacher's or employee's retirement allowance in the foundational benefit component as described by KRS 161.633 but may be deposited into the nonuniversity member's supplemental benefit component as provided by KRS 161.635.

(d) For a teacher or employee who begins employment with a local school district on or after July 1, 2008, the maximum amount of unused sick leave days a district board of education may recognize in calculating the payment of compensation to the teacher or employee under this subsection shall not exceed three hundred (300) days.

(e)1. Actuarial costs to the Teachers' Retirement System for the inclusion of payment for unused sick leave days that are eligible for compensation under paragraph (b) of this subsection shall be funded in accordance with this paragraph.

2. The state shall pay the actuarial costs for the compensation attributable to the actual unused sick leave accrued as of June 30, 2025, plus annual adjustments to the sick leave balance each fiscal year thereafter, based upon the sick leave accrued or used by the teacher or employee, not to exceed thirteen (13) additional days per year. Unused sick leave payable by the state shall not include any

annual leave described by KRS 161.540(1)(f) or the cost of unused sick days for employees retiring from agencies listed in KRS 161.220(4)(d) and (f).

3. The last employer who is compensating the unused sick day as provided in paragraph (a) of this subsection shall pay the actuarial costs of compensation for unused sick leave days not paid by the state under subparagraph 2. of this paragraph. Upon the teacher's or employee's retirement, the Teachers' Retirement System shall bill the last employer for the cost of the unused sick days, and the employer shall pay the costs within fifteen (15) days after receiving notification of the cost from the system.

4. The actuarial costs of the unused sick days shall be the amount payable for unused sick days after the fixed statutory employee and employer contributions have been paid as provided in KRS 161.540 and 161.550(1) and that is necessary to fund the benefit.

(f) For the fiscal year ending June 30, 2025, and each fiscal year thereafter, each school district shall annually report to the Teachers' Retirement System the sick leave balances for each teacher and employee who is a member of the Teachers' Retirement System. The report shall include for each teacher or employee:

1. The sick leave days accrued at the beginning of the fiscal year;

2. The sick leave days accrued during the fiscal year;

3. Any other days of leave added to the sick leave balance during the fiscal year by rollover, conversion, or any other method;

4. The sick leave days used during the fiscal year; and

5. The sick leave balance at the end of the fiscal year.

(g) Each school district shall file with the Teachers' Retirement System information regarding their sick leave policies and provisions that are applicable to members of the system, including:

1. The number of sick leave days accrued annually under the sick leave program established pursuant to subsection (2) of this section;

2. Any other types of leave and the amount of leave by type that may, prior to retirement or at the time of retirement, be included by rollover, conversion, or any other method, in an employee's sick leave balance pursuant to any district policy or any contract entered into by the district; and

3. Any other information required by the system.

The reporting required by this paragraph shall include a description of whether the policies or contracts governing sick leave policies apply to all employees, a class of employees, or a specific employee of the district.

(11) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (10) of this section.

(12) The death benefit provided in subsection (10) of this section may be cited as the Baughn Benefit.

History.

Enact. Acts 1948, ch. 88; 1962, ch. 75; 1968, ch. 27; 1970, ch. 184, § 1; 1974, ch. 7, § 1; 1974, ch. 274, § 1; 1976, ch. 132, § 1; 1976, ch. 239, § 1; 1980, ch. 244, § 1, effective July 15, 1980; 1982, ch. 35, § 1, effective July 15, 1982; 1982, ch. 314, § 1, effective July 15, 1982; 1982, ch. 326, § 1, effective July 1, 1982; 1986, ch. 54, § 1, effective July 15, 1986; 1986, ch. 126, § 2, effective July 15, 1986; 1986, ch. 395, § 1, effective July 15, 1986; 1986, ch. 450, § 1, effective July 15, 1986; 1988, ch. 363, § 20, effective July 1, 1988; 1988, ch. 375, § 1, effective July 15, 1988; 1990, ch. 483, § 4, effective July 13, 1990; 1990, ch. 476, Pt. V, § 478, effective July 13, 1990; 1996, ch. 147, § 1, effective July 15, 1996; 1996, ch. 309, § 1, effective July 15, 1996; 1998, ch. 530, § 1, effective July 15, 1998; 2000, ch. 137, § 1, effective July 14, 2000; 2000, ch. 381, § 1, effective July 14, 2000; 2000, ch. 390, § 1, effective July 14, 2000; 2000, ch. 485, § 1, effective July 14, 2000; 2002, ch. 138, § 1, effective July 15, 2002; 2004, ch. 145, § 1, effective July 13, 2004; 2006, ch. 52, § 2, effective July 12, 2006; 2008 (1st Ex. Sess.), ch. 1, § 28, effective June 27, 2008; 2010, ch. 164, § 2, effective July 1, 2010; 2018 ch. 107, § 44, effective July 14, 2018; 2021 ch. 102, § 82, effective April 1, 2021; 2021 ch. 157, § 5, effective January 1, 2022; 2023 ch. 164, § 9, effective June 29, 2023; 2025 ch. 138, § 1, effective March 31, 2025.

Editor's Notes

The Auditor of Public Accounts shall perform a special audit of benefit programs provided by the Teachers' Retirement System which shall be paid by the Teachers' Retirement System as part of its normal administrative expenses. The special audit shall be limited to:

(1) An audit of the sick leave program established by Section 1 of 2025 Ky. Ch. 138 as it relates to the Teachers' Retirement System and the sick leave reported by local school districts to the Teachers' Retirement System as of June 30, 2025, to ensure that only the sick leave that is eligible for payment under Section 1 of 2025 Ky. Ch. 138 and inclusion in a retiring employee's final average salary as defined in Section 2 of 2025 Ky. Ch. 138 is being reported correctly according to Section 1 of 2025 Ky. Ch. 138 and that the cost of the sick leave program is being reported correctly according to Section 5 of 2025 Ky. Ch. 138;

(2) An audit of the employers listed in subsection (4) of Section 2 of 2025 Ky. Ch. 138 to determine if any listed employers are providing coverage in the Teachers' Retirement System for other entities on a contract basis, through a memorandum of agreement, or other method. The audit shall provide a listing of each employer providing the retirement coverage, a listing of entities for which retirement coverage is being provided through the employer and the number of employees covered for each entity, and any estimated costs to the state for providing the Teachers' Retirement System coverage to these entities; and

(3) An audit of the Teachers' Retirement System's annual leave program established by KRS 161.540(1)(f) to report the agencies that are including annual leave payments in a retiring employee's final average salary as defined in Section 2 of 2025 Ky. Ch. 138, to report the policies of each agency participating in the annual leave program and the number of employees covered by the policy of each agency, to evaluate how annual leave is reported to the system and whether changes should be made to annual leave reporting process to the system to ensure proper cost estimates, and a review of the cost of the annual leave program that is required to be

disclosed in the annual valuation as required by Section 5 of 2025 Ky. Ch. 138.

Legislative Research Commission Notes.

(3/31/2025). Under the authority of KRS 7.136, the reviser of statutes has rearranged the paragraphs in subsection (1) of this statute to place the definitions in alphabetical order. The words in the statute were not changed.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Transfer of Accumulated Leave.
3. Reduction of Accumulated Leave.
4. Property Interest.
5. Liability for Improper Application.
6. Accumulation Above Statutory Caps.

1. Purpose.

The sick leave statute and the tenure statute, as embodied in this section and in KRS 161.740 respectively, are both designed to protect a teacher by allowing transfer from one school district to another without losing accumulated benefits. Young v. Board of Education, 661 S.W.2d 787, 1983 Ky. App. LEXIS 384 (Ky. Ct. App. 1983).

2. Transfer of Accumulated Leave.

Even though the legislature has not specifically defined a meaning for the phrase, "transfers his place of employment from one school district to another within the state" as used in subsection (3) (now (4)) of this section, it is quite logical to infer that the construction to be applied to the statutory language infers that the sick leave statute requires continuity of employment from one district to another district. Young v. Board of Education, 661 S.W.2d 787, 1983 Ky. App. LEXIS 384 (Ky. Ct. App. 1983).

Under the provisions of subsection (3) (now (4)) of this section, in order for accumulated sick leave days to remain credited upon transfer from one school district to another within the state, the transfer must be a direct one; accordingly, county board of education properly refused to credit teacher, who left school system entirely and subsequently returned, with the unused sick leave days accumulated during her first period of employment in the public school system. Young v. Board of Education, 661 S.W.2d 787, 1983 Ky. App. LEXIS 384 (Ky. Ct. App. 1983).

3. Reduction of Accumulated Leave.

The conduct of the school board in reducing the teacher's unused accumulated sick leave was rational in that it desired to conform its records with this section, and no denial of substantive due process took place. Sublette v. Board of Education, 664 F. Supp. 265, 1987 U.S. Dist. LEXIS 10597 (W.D. Ky. 1987).

4. Property Interest.

This section, as well as the recording of the teacher's accumulated sick leave days on her sick leave cards by school officials, could have created a legitimate claim of entitlement by the teacher to her accumulated sick leave days; consequently, she could have had a constitutionally protected property interest in those days and could not be deprived of such interest without being afforded due process of law. Ramsey v. Board of Educ., 844 F.2d 1268, 1988 U.S. App. LEXIS 5433 (6th Cir. Ky. 1988).

5. Liability for Improper Application.

A county board of education could not be held accountable for the failure of its superintendents to properly apply this section. Ramsey v. Board of Educ., 789 S.W.2d 784, 1990 Ky. App. LEXIS 19 (Ky. Ct. App. 1990).

6. Accumulation Above Statutory Caps.

There is no dispute but that this section requires affirmative action by a board of education to allow accumulation above the statutory caps. Ramsey v. Board of Educ., 789 S.W.2d 784, 1990 Ky. App. LEXIS 19 (Ky. Ct. App. 1990).

OPINIONS OF ATTORNEY GENERAL.

Subsection (2) of this section includes sick leave for mental or emotional illnesses as well as physical sickness. OAG 60-1193.

Under this section the cause of the illness is not controlling and sick leave is allowed for illness due to pregnancy. OAG 61-13.

A school board has legal authority to purchase liability insurance to cover the liability for sick leave payments imposed by this section. OAG 64-841.

This section does not authorize a "lump-sum" payment of additional salary in lieu of accumulated sick leave at the termination of employment either during or at the end of the school year or in the event of the termination of employment for purposes of retirement. OAG 67-371.

Subsection (2) of this section authorizes the use of either a personal affidavit or a physician's certificate to support a sick leave absence and a regulation of the board prohibiting the use of the personal affidavit would be improper. OAG 67-447.

Aside from the inherent right of the board to disallow sick leave by reason of fraud, the allowance of sick leave, within the minimum prescribed by this section, upon the presentment of a personal affidavit or physician's certificate is not discretionary. OAG 67-523.

The phrase "member of his immediate family," added to this section by the 1970 amendment, includes any member of the teacher's household who is bound to the teacher by blood or marriage. OAG 70-412.

Maternity leave is not "sick leave" within the meaning of this section but a "leave of absence" under KRS 161.770 and as such it results in a cessation of salary benefits during the period of absence. OAG 70-730.

There is no apparent legal basis for distinguishing between types of illnesses which may incapacitate a teacher for duty or for restoring and crediting, as accumulated sick leave, those sick leave days either unused during the 1958-68 period or cut off by the prior 20-day ceiling. OAG 71-144.

Under this section a teacher not treated by a physician may present a personal affidavit and a teacher treated by a physician may present a certificate signed by the physician which need not be in the form of an affidavit. OAG 72-302.

A teacher may receive full sick leave and worker's compensation benefits at the same time. OAG 72-684.

A school board does not have to have an emergency leave regulation, but if it does have one, it cannot provide that emergency leave shall be charged as sick leave. OAG 73-832.

Whether or not a teacher was entitled to payment for accumulated sick leave was a question of fact within the province of the board of education to decide and in making the determination as to the facts the board could consider what effect its decision would have on similar circumstances which might arise in the future where the teacher presented a certificate of a physician stating that she was totally disabled

from her teaching position but the board had in its possession a statement from another high school that part of the time during the teacher's absence from her teaching position she was completing her library practice at that high school. OAG 74-119.

A regulation by a board of education that not more than thirty days of accumulated sick leave may be used in one year is void. OAG 74-378.

A public school teacher does not have an absolute right to receive paid sick leave, even if already accumulated, for a normal pregnancy but does have a statutory right to such leave for illness due to surgery performed after, but not connected with, the birth of the child. OAG 74-741.

A teacher, who is absent to care for a spouse who is ill, is entitled to all accumulated sick leave up to 60 days as of June 21, 1974 and all accumulated, unused sick leave without limit after that date. OAG 75-209.

Accumulated sick leave must, if requested, be given for childbirth but only for the days the physician certifies the teacher is actually disabled from performing her teaching duties, but this ruling need not be made retroactive. OAG 75-259.

Although accumulated sick leave may not be granted for child care following childbirth, a leave of absence for that purpose is appropriate. OAG 75-259.

A certificate by a physician signed by rubber stamp is sufficient certification of a teacher's illness. OAG 75-359.

In allowing paid sick leave for childbirth, a teacher should be granted leave only for the days she, or a member of her immediate family, were ill, based upon the presentation of her personal affidavit or the certificate of a physician. OAG 75-367.

A public school teacher may claim sick leave in addition to receiving worker's compensation benefits. OAG 75-604 (affirming OAG 40-041).

When a teacher transfers from the local board of education to the vocational school system, none of the teacher's accrued benefits are carried over to the new position. OAG 76-151.

A local board of education could establish a policy permitting a school principal to accept statements signed by teachers relating to request for sick leave even though the statements have not been notarized. OAG 77-307, 1977 Ky. AG LEXIS 475.

Where a school teacher was ill and missed most of one month and part of the next, during which time the schools were closed 17 days due to severe weather and permission was granted by the department of education to cut short the school year by five days, as calamity days, the teacher was entitled to be paid for the calamity days; however, since she would have been unable to teach on these days, she must take these days as sick leave days under this section. OAG 78-311, 1978 Ky. AG LEXIS 420.

If a teacher is absent on an extended school day and is not covered by sick leave, personal leave or emergency death leave, he or she loses one and one-fifth day's salary. OAG 78-367, 1978 Ky. AG LEXIS 360.

In the event a teacher is absent for illness during the time the school system is operating on the extended school day, this constitutes a deduction of one and one-fifth days from his or her current or accumulated sick leave. OAG 78-367, 1978 Ky. AG LEXIS 360.

A local board of education continues to have at its reasonable discretion the authority to adopt a uniform policy relative to sick leave which would permit granting to teachers, who had resigned with accumulated sick leave and who were subsequently reemployed, part or all of the previously accumulated sick leave, and the length of time between resignation and reemployment issue is simply for the board to determine. OAG 79-148, 1979 Ky. AG LEXIS 482.

KRS 161.740(1)(c) and subsection (3) (now (4)) of this section are quite similar and should be construed consistently one with the other. OAG 79-148, 1979 Ky. AG LEXIS 482.

The language in this section that "any accumulated sick leave days, not to exceed thirty (30) days, credited to a teacher shall remain so credited in the event he transfers his place of employment from one school district to another within the state" contemplates a continuity of employment from one school district to another. OAG 79-148, 1979 Ky. AG LEXIS 482.

Although this section will not permit a school board requirement of a physician's certificate of an employee's disability to work in that an affidavit of the teacher will suffice, there is nothing in KRS 161.770 to preclude a board of education from requiring a physician's certificate; a school board could adopt such a policy pursuant to KRS 160.340(2)(e) which requires the board to adopt personnel policies that apply to certified employees. OAG 80-151, 1980 Ky. AG LEXIS 640.

Sick leave with pay under this section is available to the pregnant teacher who is thereby disabled from performing her teaching duties, but a pregnant condition in and of itself would not entitle a teacher to sick leave; if, however, the teacher by affidavit or physician's certificate states she is ill or otherwise disabled from teaching due to her "pregnancy, childbirth or other related medical conditions," then a local board of education must permit the teacher to take days of accumulated sick leave. OAG 80-151, 1980 Ky. AG LEXIS 640.

The teacher who requests and goes on a leave of absence under KRS 161.770 is not entitled to sick leave days authorized under this section; any sick leave accrued that is desired to be taken should be used before the teacher commences the leave of absence without pay status, authorized by KRS 161.770. OAG 80-151, 1980 Ky. AG LEXIS 640.

The language of this section stating that compensation may be credited for unused sick leave "after July 1, 1981," does not prohibit crediting of such credit to those certificated employees, otherwise eligible, who retire prior to July 1, 1981, provided that the additional amount to be added to their last year of final salary, due to accumulated unused sick days, is determined not later than July 15, 1981. OAG 81-1, 1981 Ky. AG LEXIS 429.

A plan which provides an annual bonus to teachers who use no sick leave is not legally permissible in Kentucky. There is no statute authorizing a bonus for unused sick leave and, if the legislature passed such a statute, it would be unconstitutional as violative of Ky. Const., § 3. OAG 82-316, 1982 Ky. AG LEXIS 327.

The provisions of this section preempt the field of teachers' sick leave and set the limits for local boards on that subject. OAG 82-316, 1982 Ky. AG LEXIS 327.

A county school board may not by policy choose to compensate an employee or teacher, at the time of retirement, for less than all of the unused sick leave days rightly accumulated; although this section gives the board discretion in setting the rate of compensation as long as it doesn't exceed 30 percent of the teacher's last annual salary, the language of the section clearly requires that the retiring teacher be compensated for "each" unused sick leave day. OAG 83-191, 1983 Ky. AG LEXIS 306.

A teacher may take his or her sick leave days on any day of the school year upon compliance with the statutorily required presentation of a personal affidavit or certificate of a physician or as provided for by an appropriately adopted regulation or policy of a local board of education, and a teacher who uses accumulated sick leave to cover a period of absence is not required to use a sick leave day when the schools are already closed for a paid holiday, since the teacher is authorized by KRS 158.070 to be paid for such holidays without the payment being charged to accumulated sick leave. OAG 83-457, 1983 Ky. AG LEXIS 40.

The 1986 amendment to subsection (5) (now (9)) of this section is constitutionally valid so that a teacher may use up to 30 days of sick leave following the adoption of a child or children. OAG 86-66, 1986 Ky. AG LEXIS 20.

A teacher is entitled to utilize earned sick leave due to disability from pregnancy, childbirth or recovery therefrom. OAG 86-66, 1986 Ky. AG LEXIS 20.

Employee who transferred from one school district to another is entitled to the sick leave days earned during her prior employment in the other school district. OAG 91-135, 1991 Ky. AG LEXIS 137.

Compensation for sick leave as set forth in subsections (8) and (9) (now (10) and (11)) of this section is constitutionally permissible. OAG 91-219, 1991 Ky. AG LEXIS 217.

Compensation for unused sick leave at time of retirement does not constitute a bonus, in contravention of Section 3 of the Kentucky Constitution, but instead constitutes part of retirement benefits. OAG 91-219, 1991 Ky. AG LEXIS 217.

There is no authority that would have enabled the superintendent to transfer more than 30 days of sick leave from county to county, but once in the new county, the superintendent could accumulate sick leave days without limitation. OAG 91-219, 1991 Ky. AG LEXIS 217.

This section allows the board to grant a superintendent only those unused sick leave days which he was entitled to keep upon transfer from county to county. OAG 91-219, 1991 Ky. AG LEXIS 217.

Under subsection (9) (now (11)) of this section, a teacher who has transferred from one school district to another after July 15, 1981, is entitled to credit for unused sick leave days "to which entitled on the date of transfer," for the purpose of compensation at the time of retirement as per subsection (8) (now (10)) of this section. OAG 91-219, 1991 Ky. AG LEXIS 217.

Under subsection (1)(a) of this section, "teacher" consistently has been defined to include "any person for whom certification is required as a basis of employment in the common schools of the state"; this definition includes principals and superintendents, who are certified as teachers and as administrators. OAG 91-219, 1991 Ky. AG LEXIS 217.

Under subsections (8) and (9) (now (10) and (11)) of this section, after employee has completed 27 years of service, not withstanding sick leave, the school board may approve compensation for unused sick leave days, and apply that compensation toward the teacher or employee's final salary. OAG 91-219, 1991 Ky. AG LEXIS 217.

A son-in-law and daughter-in-law are not included in the definition of immediate relative (son-in-law and daughter-in-law are now included per 2000 amendment) in subdivision (1)(c) of this section. OAG 93-39, 1993 Ky. AG LEXIS 92.

At the death of an employed active public school teacher, a school board may not pay the decedent's estate or named beneficiary the value of the employee's accumulated unused sick leave even if the employee were eligible for retirement; rather, a local school district may only compensate a district employee at the time of retirement for accumulated unused sick leave. OAG 94-39, 1994 Ky. AG LEXIS 268.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

District employee quarantine leave, 702 KAR 1:191.

161.156. Free physical examinations. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1950, ch. 204) was repealed by Acts 1972, ch. 301, § 21.

161.157. Credits allowed transferred employee of Department of Education or Education Professional Standards Board.

An employee of the Department of Education or the Education Professional Standards Board who transfers to become an employee of the local school district shall be allowed credit for accrued sick leave up to the maximum allowed for transfers for teachers between school districts as provided by KRS 161.155(4) and shall be allowed credit for each full year of employment with the Department of Education or the Education Professional Standards Board for the determination of pay under the school districts' single salary schedule.

History.

Enact. Acts 1982, ch. 234, § 2, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 479, effective July 13, 1990; 2001, ch. 137, § 13, effective June 21, 2001; 2006, ch. 52, § 3, effective July 12, 2006.

Compiler's Notes.

This section (Enact. Acts 1982, ch. 234, § 2, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 479, effective July 13, 1990.

161.158. Group insurance — Board's termination of participation in state health plan — Employees offered coverage in state health plan under federal law eligible for state-funded contribution — Deductions from salaries.

(1)(a) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees including the state employee health insurance group as described in KRS 18A.225 to 18A.2287, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As permitted in KRS 160.280(4), board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.

(b) If a district board of education participates in the state employee health insurance program, as described in KRS 18A.225 to 18A.2287, for its active employees and terminates participation and there is a state appropriation approved by the General Assembly for the employer's contribution for active employees' health insurance coverage, neither the board of education nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.

(c) If a district board of education participates in the state employee health insurance program as described in KRS 18A.225 to 18A.2287 for its active employees, all district employees who are required to be offered health insurance coverage for purposes of, and in accordance with, the federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, shall be eligible for the state-funded contribution appropriated by the General Assembly for the

employer's contribution for active employees' health insurance coverage, including reimbursements for the cost of retiree health insurance as required by KRS 61.637(17)(b)4. and 78.5540(4)(b)4.

(2)(a) Each district board of education shall adopt policies or regulations which will provide for:

1.a. Deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof.

b. The deductions shall be made from salaries earned in at least eight (8) different pay periods.

c. The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums.

d. The district board is prohibited from deducting membership dues of an employee organization, membership organization, or labor organization. This provision shall apply to contracts entered into, opted in, extended or renewed on or after January 9, 2017.

e. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction; and

2. Deductions from payments for the per diem and actual expenses provided under KRS 160.280(1) to members of the district board of education whenever a request is presented by a board member to the board. The deductions may be made for but not be limited to membership dues, health insurance purchases, scholarship funds, and contributions to a political action committee.

(b) The deductions under paragraph (a)1. and 2. of this subsection shall be remitted to the appropriate organization or association as specified by the employees within thirty (30) days following the deduction, provided the district has received appropriate invoices or necessary documentation.

(c) Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.

(3) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

History.

Enact. Acts 1970, ch. 166, § 1; 1972, ch. 322, § 1; 1978, ch. 234, § 1, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 239, effective July 13, 1990; 1992, ch. 170, § 2, effective July 14, 1992; 1998, ch. 557, § 1, effective July 15, 1998; 2000, ch. 438, § 3, effective April 21, 2000; 2007, ch. 88, §§ 2, 4, effective June 26, 2007; 2014, ch. 55, § 1, effective July 15, 2014; 2017 ch. 6, § 7, effective January 9, 2017; 2023 ch. 133, § 6, effective March 29, 2023; 2024 ch. 214, § 3, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. Payroll Deductions.
2. Membership Dues.

1. Payroll Deductions.

This chapter permits employee organizations to participate in payroll deductions. Kentucky Educators Public Affairs Council v. Kentucky Registry of Election Finance, 677 F.2d 1125, 1982 U.S. App. LEXIS 19286 (6th Cir. Ky. 1982).

Reverse check-off procedure utilized by the Kentucky Educators Public Affairs Council, an unincorporated political action committee established by the Kentucky Education Association (KEA), whereby contributions were deducted from KEA members' paychecks unless the member affirmatively checked off that he declined to contribute and whereby the member could subsequently decide not to participate and obtain a refund, was neither coercion nor an assessment under KRS 121.320, and sufficiently protected the rights of dissenting members. Hence, an order of the Kentucky Registry of Election Finance finding KEPAC's procedure violative of KRS 121.320 infringed on KEPAC's first amendment rights to collect money for political purposes. Kentucky Educators Public Affairs Council v. Kentucky Registry of Election Finance, 677 F.2d 1125, 1982 U.S. App. LEXIS 19286 (6th Cir. Ky. 1982).

Section 337.060 did not prohibit a school board from deducting union dues from employees' wages where such deduction was authorized by subsection (2) of this section. Clevinger v. Board of Educ., 789 S.W.2d 5, 1990 Ky. LEXIS 40 (Ky. 1990), abrogated as stated in Cook v. Popplewell, 394 S.W.3d 323, 2011 Ky. LEXIS 174 (Ky. 2011).

2. Membership Dues.

The common, ordinary meaning of "membership" is the total number of members of an organization. Unions are made up of members. There is nothing in this section that hints that union members were not to be included along with other membership organizations. Thus, "membership dues" perforce includes union dues. Clevinger v. Board of Educ., 789 S.W.2d 5, 1990 Ky. LEXIS 40 (Ky. 1990), abrogated as stated in Cook v. Popplewell, 394 S.W.3d 323, 2011 Ky. LEXIS 174 (Ky. 2011).

OPINIONS OF ATTORNEY GENERAL.

The members of families of employees and/or the dependents of employees may, within the discretion of the board, participate in the various types of group coverage provided the extra cost of the family coverage or dependent coverage is paid by the employee. OAG 70-336.

Where a district board of education desires to pay all or any part of the premiums on group policies for district employees, the advertising and competitive bid procedure of KRS 424.260 should be followed where the amount to be paid by the board is in excess of $1,000. OAG 70-687.

This section does not disqualify political organizations from receiving the authorized deductions. OAG 72-663.

This section requires that each school board make payroll deductions for the Kentucky Educator's Public Affairs Council when properly authorized according to its adopted policies and regulations. OAG 72-663.

A school board cannot be required, after making one deduction for health insurance, to make any other deductions for cancer insurance or for insurance for any other specific disease. OAG 72-707.

The board of education may make such rules as are reasonable and it would be reasonable to require that there be a minimum number of employees desiring a particular deduction before it shall be made by the board. OAG 72-802.

Board of education may contract for an insurance plan for its employees as long as it pays all or part of the premium on the policies. OAG 73-390.

In a proposed contract between an insurance company and Fayette County Board of Education to provide tax sheltered annuities in lieu of full salary for any employee, a section holding the school district liable for any act of negligence was improper under this section and the doctrine of sovereign immunity. OAG 74-414.

Where a school board provides a fixed sum of money to be used in purchasing fringe benefits for each of its teachers, it may afford the teachers the option to receive the fringe benefits or an equivalent fixed sum in cash. OAG 75-646.

Although a board of education would be required to make deductions from teachers' salaries for membership in a credit union, the board would not be required to withhold monthly payments on loans taken out by members from the credit union. OAG 77-333, 1977 Ky. AG LEXIS 447.

A local school board may elect to purchase liability insurance for its employees and pay all or a portion of the premium from board of education funds. OAG 78-21, 1978 Ky. AG LEXIS 700.

This section, permissive in nature, would permit a school board to pay any or all of the costs of a group optical insurance plan coverage for its employees, but not for the employees' families unless such a plan was included in a group medical plan. OAG 78-592, 1978 Ky. AG LEXIS 232.

A reduction for the Kentucky Deferred Compensation System Program is not a "deduction" for a tax-sheltered annuity, but is a different type of program than tax-sheltered annuities; accordingly, where an employee participates in a tax-sheltered annuity and the Kentucky Public Employee's Deferred Compensation System, the reduction for both is not the "same type" of deduction, and does not violate subsection (2) of this section. OAG 80-515, 1980 Ky. AG LEXIS 149.

KRS 18.510 to 18.600 (now see KRS 18A.230 to 18A.350) and this section are not in conflict and school employees can participate in both school annuity programs and the Kentucky Deferred Compensation System Program. OAG 80-515, 1980 Ky. AG LEXIS 149.

There is nothing in the school laws to preclude a school district from establishing a cafeteria insurance plan for its teachers, pursuant to the conditions and criteria set out in 26 USCS § 125. However, the money available to the teacher to be applied, if desired, to a cafeteria plan is still a part of that teacher's salary even though nontaxable; the teacher can elect to take a part of the money provided for by the school district in this regard as cash and, of course, this amount would be taxable. Moreover, the school districts must include the amount of money established for such a plan in all computations required for single salary schedule determinations, including the procedure required for determining the amount of money to be received by a school district for teachers' salaries from the Minimum Foundation Fund. OAG 83-151, 1983 Ky. AG LEXIS 346.

A reverse dues check-off procedure is permissible under KRS 161.158(2), provided that employees are presented with a knowing and voluntary opportunity to opt out in writing. Thus, a board of education may use an opt-out policy for deducting membership dues. OAG 13-009, 2013 Ky. AG LEXIS 125.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Group health and life insurance, 702 KAR 1:035.

161.159. Adoption of rules and regulations to implement life insurance program.

The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall adopt rules and regulations to implement the state life insurance program provided for employees of the common schools subject to the following standards:

(1) The life insurance program shall cover both certified and noncertified common school personnel.

(2) The life insurance program shall be made available to all regular full-time personnel as defined by the Kentucky Board of Education regulations.

History.
Enact. Acts 1974, ch. 237, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 240, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Group health and life insurance, 702 KAR 1:035.

161.160. Marriage of teachers; restraint of prohibited. [Repealed.]

Compiler's Notes.
This section (4503-11) was repealed by Acts 1942, ch. 113, § 13.

161.162. Discrimination prohibited. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1962, ch. 244, Art. IV, § 1) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990. For present law see KRS 161.164.

161.163. Employees' application form not to require disclosure of religious affiliation.

No application form for certified or classified employees used by any school district shall contain any block or question that would require the applicant to disclose his religious affiliation.

History.
Enact. Acts 1972, ch. 59, § 1; repealed and reenact. Acts 1990, ch. 476, Pt. IV, § 480, effective July 13, 1990; 1994, ch. 21, § 1, effective July 15, 1994.

Compiler's Notes.
This section (Enact. Acts 1972, ch. 59, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 480, effective July 13, 1990.

161.164. Political activity prohibited — Discrimination prohibited — Instructional materials requirements — Student not required to advocate for perspective with which he or she does not agree — Employee not required to engage in training that stereotypes group.

(1) No employee of the local school district shall take part in the management or activities of any political campaign for school board.

(2) No candidate for school board shall solicit or accept any political assessment, subscription, contribution, or service of any employee of the school district.

(3) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position as teacher or employee of any district board of education, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.

(4) No teacher or employee of any district board of education shall be appointed or promoted to, or demoted or dismissed from, any position or in any way favored or discriminated against with respect to employment because of his political or religious opinions or affiliations or ethnic origin or race or color or sex or age or disabling condition.

(5) Any instruction or instructional materials on current, controversial topics related to public policy or social affairs provided to public school or public charter school students, regardless of whether the individual that provides the instruction is employed by the local school district or public charter school, shall be:

(a) Within the range of knowledge, understanding, age, and maturity of the students receiving the instruction; and

(b) Relevant, objective, nondiscriminatory, and respectful to the differing perspectives of students.

(6) An employee of a public school district or public charter school shall not violate a student's First Amendment rights by requiring or incentivizing a student to advocate in a civic space on behalf of a perspective with which the student or the parent or guardian of a minor student does not agree.

(7) An employee of a local school district or public charter school shall not be required to engage in training, orientation, or therapy that coerces the employee to stereotype any group.

(8) The local superintendent shall inform all school employees of the provisions of this section.

History.

Enact. Acts 1962, ch. 244, Art. IV, § 2; 1990, ch. 476, Pt. II, § 79, effective July 13, 1990; 1994, ch. 405, § 29, effective July 15, 1994; 2022 ch. 196, § 5, effective July 14, 2022.

Legislative Research Commission Notes.

(7/14/2022). 2022 Ky. Acts ch. 196, sec. 8, provides that Sections 4 and 5 of the Act, this statute and KRS 158.196, may be cited as the Teaching American Principles Act.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
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4. Purpose.
5. Solicitation of Money or Services.
6. Discrimination Suit.
7. Evidence of Discrimination.
8. Office of Superintendent.
9. Removal of Administrator.
10. Protected Conduct.

1. Constitutionality.

2. —Management.

The word "management" as used in subsection (1) of this section is constitutional because it does give school employees a fair notice of the standard of conduct to which they will be held accountable. While there may be some confusion over what constitutes a political activity, a person exercising ordinary common sense can discern the difference between a political activity, such as placing a sign in the yard, and managing or directing a school board candidate's campaign. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

3. —Activities.

A person of ordinary intelligence cannot identify the conduct prohibited under the word "activities" as used in subsection (1) of this section. Moreover, the word "activities" is not facially intelligible or clear; therefore, this section is unconstitutionally vague because it does not give school employees a fair notice of the standard of conduct to which they are to be held accountable. The criteria established are so vague that the enforcing authority is vested with too much discretion. Consequently, many school employees would suffer a chilling effect on political expression of all kinds. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

4. Purpose.

Kentucky Constitution § 183 places a duty on the General Assembly to establish an efficient common school system free from political influence and this section and KRS 161.990 were enacted by the General Assembly in an effort to comply with this directive. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

5. Solicitation of Money or Services.

Subsection (2) of this section clearly puts a school board candidate on notice that he or she is not to solicit school district employees for either money or services; it gives fair and plain notice to those to whom it applies and is not subject to arbitrary enforcement. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

Subsection (2) of this section is not overly broad. The state has a legitimate compelling interest in regulating the conduct of school board candidates in connection with their ability to receive money and services from school district employees. There is a real and present danger in any system where those who have the overall responsibility for the administration of the schools can attain their position in large part because of solicitations from those who work for the system. Political neutrality for school employees is a sound element in any efficient system of education. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

6. Discrimination Suit.

An applicant who was denied consideration for two teaching positions could not bring a discrimination suit under this section, which applies only to teachers and employees — not applicants — of any state board of education. Creech v. McQuinn, 957 S.W.2d 261, 1997 Ky. App. LEXIS 15 (Ky. Ct. App. 1997).

Summary judgment in favor of defendants was reversed because the teacher's claims of violations of her First and Fourteenth Amendment rights of freedom of expression, speech, and association and her rights under KRS 161.164 and 161.162 (now repealed) were not precluded by the alleged political nature of her position as the grants department director because the teacher lacked political discretion in her

position as director and nothing in the teacher's duties rendered her advice particularly sensitive or confidential, nor did the teacher control the lines of communication between the superintendent and the general public. Justice v. Pike County Bd. of Educ., 348 F.3d 554, 2003 FED App. 0392P, 2003 U.S. App. LEXIS 22631 (6th Cir. Ky. 2003).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law, specifically §§ 1, 2 and 8 of the Kentucky Constitution and KRS 161.164 and 161.750(2), a teacher asserted that she was not rehired because of her union activities. Because hiring school district employees is an act essential to the function of the school district, Kentucky's governmental immunity protected the school district and the school superintendent, in his official capacity, from liability for the teacher's state-law claims. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law, specifically §§ 1, 2 and 8 of the Kentucky Constitution and KRS 161.164 and 161.750(2), a teacher asserted that she was not rehired because of her union activities. For claims against the school superintendent in his individual capacity for hiring decisions in which he actually participated and or in which his role was unclear, the superintendent was not entitled to summary judgment; it had long been established that discharging or failing to hire or retain an employee because she engaged in protected speech was wrongful, so the superintendent was not entitled to qualified immunity from liability for those claims. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law and asserting that a teacher was not rehired because of her union activities, where the teacher failed to establish that a school board participated in, or should have participated in, the challenged hiring decisions, and KRS 161.164 and 161.750 indicated that the school board played no role in such hiring decisions, the teacher failed to establish causation and the school board was entitled to summary judgment on the teacher's First Amendment retaliation claim. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law and asserting that a teacher was not rehired because of her union activities. Where the school superintendent admitted that he had made hiring decisions for district-wide positions the teacher was denied, and KRS 161.164 and 161.750 provided further support of the superintendent's role in the hiring process, the teacher established, for summary judgment purposes, the causation element of her First Amendment retaliation claim, and because it had long been clear that discharging a public employee for engaging in protected speech and association violated the First Amendment, the superintendent was not entitled to qualified immunity against liability for that claim. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

7. Evidence of Discrimination.

As a matter of proof, there need be no more than an inference of arbitrariness in the dismissal or transfer of a teacher on account of political activities to bring the action within the prohibition of this section and where the evidence showed that an assistant principal and the school superintendent supported opposing candidates in a board of education election and that, shortly thereafter, the superintendent dismissed the principal because of an alleged decrease in student population and funding, which did not in fact exist, arbitrariness was clearly established. Harlan County Board of Education v. Stagnolia, 555 S.W.2d 828, 1977 Ky. App. LEXIS 805 (Ky. Ct. App. 1977) (decided under prior law).

8. Office of Superintendent.

Former law similar to subsection (4) of this section did not prevent a board of education from failing to reappoint a superintendent once his contract has expired; and with the office of superintendent being an appointed position, it was not inconceivable that political views and allegiances could be a consideration in the selection. Floyd v. Board of Education, 598 S.W.2d 460, 1979 Ky. App. LEXIS 528 (Ky. Ct. App. 1979) (decided under prior law).

9. Removal of Administrator.

An administrator has been given no right of tenure to an administrative position and may be removed from such position by the local board of education upon recommendation of the superintendent for any reason not offending some right protected by the state or federal constitutions or this section. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989) (decided under prior law).

10. Protected Conduct.

Although a school administrator's use of her religious beliefs in exercising her administrative duties and in exercising authority over teachers was offensive to some of the teachers, it did not invariably pose some substantial threat to public safety, peace or order, rendering her behavior in this regard to be protected conduct. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

A teacher employed by a school board of a district where the teacher does not reside is not prohibited from simultaneously serving as a member of a school board of a different district where the teacher *does* reside. OAG 90-127, 1990 Ky. AG LEXIS 134.

Employee of a school board for a county in which employee does not live, may campaign for or seek election to the school board in the district of employee's residence since employee is not employed by that district's school board. OAG 90-127, 1990 Ky. AG LEXIS 134.

Subsection (3) of this section refers to "any district" whereas subsection (1) refers to "the local school district" and subsection (2) refers to "the school district"; because of the difference in wording (namely, the use of "the" in subsection (1) as opposed to "any," prior to "district"), the General Assembly intended the restrictions on campaigning under subsections (1) and (2) *only* to apply to persons employed by the school district where the candidate is seeking to be elected. OAG 90-127, 1990 Ky. AG LEXIS 134.

A member of the county board of education may sell insurance to school employees on an individual basis. OAG 90-138, 1990 Ky. AG LEXIS 156.

A school board candidate may not solicit or accept any money, goods, property, or services, from a school district employee. However, in the case of "services," the First Amendment right to voice one's political opinion must be balanced against the state's interest in ridding schools of undue political influence. Conduct which would be permitted includes: registration and voting, signing of nominating petitions, the expressing of personal opinions regarding a school board candidate, and the display of political pictures, signs, buttons, or bumper stickers. Additionally, school board candidates may provide on request, campaign literature for the personal use of a school district employee. In contrast, the following activities would be prohibited: campaign literature distribution by a school employee, solicitation of political support by a school district employee in canvassing a district or soliciting political support for a school board candidate, either in person, by telephone, or in writing, and providing assistance or working for the school board candidate's campaign. OAG 92-145.

School board candidates may not solicit or accept contributions and services from school district employees. This prohibition applies equally to agents of the candidate; therefore, the school board candidate's campaign manager and staff are prohibited from soliciting or accepting the services of school employees on behalf of the campaign. OAG 92-145.

A school board candidate need not either accept or decline an endorsement of a local education association or similar employee union. Endorsing a school board candidate is not the same as contributing or providing a service to the campaign; rather, voluntary endorsement of a candidate is the same as an expression of personal opinion and therefore not prohibited by this section. OAG 92-145.

A school board candidate may not solicit or accept the following services from a school district employee: (1) distributing campaign material, literature, or signs; (2) working for the campaign by canvassing voters, stuffing campaign envelopes, working at a campaign phone bank, or driving the candidate; (3) performing any fundraising services or contributing money, goods or property; or (4) being involved with the management of a school board campaign. OAG 92-145.

This section clearly prohibits a school board candidate from accepting cash contributions from a political action committee (PAC) whose members are local school employees. OAG 92-145.

This section prohibits a school board candidate from accepting contributions or services from school employees. The fact that the school employees have formed a political action committee does not change the fact that the employees are actually providing the service or contribution, even if activities such as manning telephone banks, door-to-door solicitation, or distribution of campaign material are described by the PAC as "in-kind" contributions. Allowing the PAC to do indirectly what the school board candidates are prohibited from doing directly is a violation of this section. OAG 92-145.

The local education association or school employee union may not attempt to evade the statutory prohibition against contributing to school board elections by claiming their actions are independent of the campaign. OAG 92-145.

Constitutional factors that should be utilized when determining whether a political expression or promise by a school board candidate has violated subsection (3) of this section are the precise nature of the promise; the conditions upon which it is given; the circumstances under which it is made; the size of the audience; and the nature and size of the group to be benefited. OAG 92-156, 1992 Ky. AG LEXIS 271.

A statement by a school board candidate that he prefers a certain individual to serve as superintendent is protected by the first amendment of the United States Constitution and the Kentucky Constitution. OAG 92-156, 1992 Ky. AG LEXIS 271.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Human Rights Commission, KRS 344.150 to 344.190.

161.165. Recruitment of minority teachers.

(1) The Kentucky Department of Education in cooperation with the Education Professional Standards Board, the Kentucky Board of Education, local school districts, universities, and colleges, and the Council on Postsecondary Education shall review and revise as needed the strategic plan for increasing the number of minority teachers and administrators in the Commonwealth. The plan shall include, but not be limited to, recommendations on ways to:

(a) Identify methods for increasing the percentage of minority educators in proportion to the number of minority students;

(b) Establish programs to identify, recruit, and prepare as teachers minority persons who have already earned college degrees in other job fields;

(c) Create awareness among secondary school guidance counselors of the need for minority teachers.

(2) The Kentucky Department of Education and the Education Professional Standards Board shall promote programs that increase the percentage of minorities who enter and successfully complete a four (4) year teacher preparation program and provide support to minority students in meeting qualifying requirements for students entering a teacher preparation program at institutions of higher education.

(3) The Kentucky Department of Education with input from the Education Professional Standards Board shall periodically submit a report to the Interim Joint Committee on Education that evaluates the results of these efforts and includes accompanying recommendations to establish a continuing program for increasing the number of minorities in teacher education.

History.

Enact. Acts 1992, ch. 432, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 67, effective May 30, 1997; 2001, ch. 137, § 14, effective June 21, 2001.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

161.166. Training program for Kentucky Virtual High School on-line coaches.

By July 1, 2009, the Kentucky Department of Education, in cooperation with teacher education institutions, shall develop a training program for certified and classified personnel to become on-line coaches to provide effective support to students enrolled in courses through the Kentucky Virtual High School.

History.

Enact. Acts 2008, ch. 134, § 6, effective July 15, 2008.

161.167. Program to encourage persons to enter Kentucky teaching profession — Reports.

(1) By January 1, 2001, the Kentucky Department of Education, with help from representatives of the Education Professional Standards Board, the Council on Postsecondary Education, the Kentucky Higher Education Assistance Authority, the Association of Independent Kentucky Colleges and Universities, public and private not-for-profit postsecondary institutions, and local educational agencies, shall develop a plan, including timelines for implementation, for a multidimensional recruitment and information program, to encourage persons to enter the teaching profession and to seek employment in Kentucky.

(2) The program shall not supplant or diminish current efforts required in KRS 161.165.

(3) The components of the program shall include:

(a) Early recruitment programs to inform middle and high school students about the potential of teaching as a career;

(b) Programs to encourage paraprofessionals in schools, as well as other nontraditional students, to pursue additional education to become teachers;

(c) Programs to enlist highly skilled career employees in specific content areas to pursue teaching as a second career;

(d) Options for recruiting persons with liberal arts and sciences majors and current students with nondeclared majors into nontraditional and accelerated teacher preparation programs;

(e) Marketing strategies for informing the public of the importance of high quality teaching to student achievement, the value of teachers to society as a whole, the benefits and rewards of teaching, and the options for entering teacher preparation, including scholarship information; and

(f) Expanding the Kentucky Department of Education's electronic bulletin board for certified vacancies in local school districts to include an option for potential teachers to voluntarily post their availability for education positions within the state.

(4) No later than March 15, 2001, the Department of Education shall present a status report of the recruitment and information program to the Interim Joint Committee on Education; and no later than October 15, 2001, the Department of Education shall present to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue a summary report with recommendations.

History.

Enact. Acts 2000, ch. 527, § 5, effective July 14, 2000.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, C, 3, (9) at 2075.

161.168. Certified employee granted leave of absence for active military service — Medical insurance — Contribution to retirement system to be retroactive — Credit given — Exclusions.

Notwithstanding any other statute to the contrary, a certified employee of a local board of education who is a member of a state National Guard or a Reserve component ordered to active military duty by the President of the United States shall be granted a leave of absence for this purpose and shall be considered to be rendering service to the state.

(1) A local board of education that has granted military leave to a certified employee and has a commitment from the employee to return to work upon the conclusion of military leave may provide the employer's contribution toward the purchase of the state's medical insurance program during the period of military leave as long as the employee or spouse pays the additional cost of dependent coverage.

(2) Upon the employee's return to work, the Commonwealth of Kentucky shall pay the member contribution and any accrued interest that is required to be paid under KRS 161.507(4)(b) in order for the member to receive retirement service credit for the period of active military duty. Under no circumstances shall a member be entitled to service credit under this paragraph that is in violation of the provisions of KRS 161.500. The provisions of this subsection shall be retroactive to January 1, 2003, for employees who have been deployed to active combat service.

(3) For each year of military service or each year of combined military and school service within a school year, the certified employee shall receive a year of service credit for purposes of the district's single salary schedule defined in KRS 157.320.

(4) No provisions of this section shall be construed to provide disability benefits under KRS 161.611 or 161.663, survivorship benefits under KRS 161.520, life insurance benefits under KRS 161.555 or any other benefit available from the Kentucky Teachers' Retirement System as a result of active military service, or conditions or injuries resulting from active military service, except for the accrual of service credit which shall be acknowledged by the retirement system subject to the relevant conditions set forth in KRS 161.507.

History.

Enact. Acts 2004, ch. 161, § 1, effective July 13, 2004; 2006, ch. 85, § 1, effective July 12, 2006; 2007, ch. 92, § 2, effective June 26, 2007.

161.170. Teachers to enforce course of study and use of books — Removal for failure.

Each teacher in the public schools shall enforce the course of study, the use of the legally authorized textbooks, and the rules and regulations prescribed for the schools. If any teacher willfully refuses or neglects to comply with the law or such rules and regulations, the local superintendent may remove him at any time. When so removed the teacher shall receive payment only for the time taught.

History.

4503-3; amend. Acts 1990, ch. 476, Pt. IV, § 241, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

A school board may impose reasonable regulations governing the appearance of the teachers it employs. OAG 79-158, 1979 Ky. AG LEXIS 468.

A teacher is obligated, not only to enforce the rules and regulations for the school system, but also to comply with those rules and regulations. OAG 79-158, 1979 Ky. AG LEXIS 468.

The authority to promulgate such rules and regulations rests solely with the board of education; the school administrators, such as principals, do not have the authority to set rules and regulations. OAG 79-158, 1979 Ky. AG LEXIS 468.

One time payments to teachers to induce retirement are constitutional under Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23, 1996 Ky. AG LEXIS 35.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Removal of teachers, KRS 156.132 to 156.142.

161.175. Teachers involved in illegal use of controlled substances.

(1) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a teacher who has been reprimanded or otherwise disciplined by the teacher's employer because the teacher engaged in misconduct involving the illegal use of controlled substances shall, as a condition of retaining employment, submit to random or periodic drug testing in accordance with administrative regulations promulgated by the Kentucky Board of Education for a period not to exceed twelve (12) months from the date such reprimand or disciplinary action occurred.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a teacher whose certificate has been suspended or revoked by the Education Professional Standards Board because the teacher engaged in misconduct involving the illegal use of controlled substances shall, as a condition of reinstatement or reissuance of the certificate, submit to drug testing in accordance with administrative regulations promulgated by the Education Professional Standards Board.

(3) No teacher may be subject to drug testing under this section unless and until it has been determined in an administrative or judicial proceeding that the teacher engaged in misconduct involving the illegal use of controlled substances.

(4) For purposes of this section, the term "teacher" shall mean any person for whom certification is required as a basis for employment in the public schools of the Commonwealth.

(5) Nothing in this section shall be interpreted or construed to limit the authority of the Education Professional Standards Board to impose or require additional conditions for the reissuance or reinstatement of a certificate.

(6) The administrative regulations promulgated pursuant to this section shall contain provisions that ensure due process under the law.

History.

Enact. Acts 2006, ch. 221, § 4, effective July 12, 2006.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Drug testing of teachers involved in illegal use of controlled substances, 701 KAR 5:130.

Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial, 16 KAR 1:030.

161.180. Supervision of pupils' conduct.

(1) Each teacher and administrator in the public schools shall in accordance with the rules, regulations, and bylaws of the board of education made and adopted pursuant to KRS 160.290 for the conduct of pupils, hold pupils to a strict account for their conduct on school premises, on the way to and from school, and on school sponsored trips and activities.

(2) The various boards of education of the Commonwealth of Kentucky, and the principals of the public schools, may use teacher's aides in supervisory capacities, such as playground supervision, hallway supervision, lunchroom and cafeteria supervision, and other like duties, including, but not limited to, recreational activities and athletic events, relating to the supervision and control of the conduct of the pupils; and while so engaged, such teacher's aides shall have the same authority and responsibility as is granted to and imposed by law upon teachers in the performance of the same or similar duties.

History.

4503-4; amend. Acts 1970, ch. 105, § 1; 1978, ch. 273, § 1, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 481, effective July 13, 1990.

Compiler's Notes.

This section (4503-4; amend. Acts 1970, ch. 105, § 1; 1978, ch. 273, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 481, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Use of Discipline.
3. Mandatory Reporting of Sexual Abuse.
4. Qualified Immunity.

1. Construction.

This section and KRS 158.150 plainly authorize public schools to make and enforce reasonable regulations for the government of such schools during school hours. Casey County Board of Education v. Luster, 282 S.W.2d 333, 1955 Ky. LEXIS 238 (Ky. 1955).

A public school teacher can be held liable for injuries caused by the negligent supervision of her students. The premise for this duty is that a child is compelled to attend school so that the protective custody of teachers is mandatorily substituted for that of the parent. A special, fiduciary quasi-parental relationship is created and imposes an affirmative duty on the district, its faculty, and its administrators to take all reasonable steps to prevent foreseeable harm to its students. Additionally, KRS 161.180(1) explicitly requires each public school teacher and administrator to hold pupils to strict account for their conduct on school premises. A teacher retains some discretion with respect to the means or method by which to exercise the duty to supervise students properly and to protect them from foreseeable harm. Nelson v. Turner, 256 S.W.3d 37, 2008 Ky. App. LEXIS 177 (Ky. Ct. App. 2008).

2. Use of Discipline.

Where a teacher believes that she is in danger of bodily harm, the jury must be instructed as to the defendant teacher's power under this section to exercise such disciplinary force as is necessary to restrain the complaining witness before the defendant teacher can be found guilty of assault and battery. Owens v. Commonwealth, 473 S.W.2d 827, 1971 Ky. LEXIS 168 (Ky. 1971).

3. Mandatory Reporting of Sexual Abuse.

To find that KRS 620.030 does not apply, there must be a finding that the act committed upon the child is not an act of sexual abuse. For purposes of KRS Chapter 600, the definition of a neglected or abused child is set forth at KRS 600.020. If sexual abuse has occurred, then the mandatory reporting requirement in KRS 620.030 would have required the teacher to report this incident and such mandatory reporting would result in this being considered a ministerial rather than a discretionary act which would preclude the teacher from claiming qualified official immunity. Nelson v. Turner, 256 S.W.3d 37, 2008 Ky. App. LEXIS 177 (Ky. Ct. App. 2008).

4. Qualified Immunity.

School officials were entitled to qualified immunity from an action filed by a student based on sexual abuse by a teacher because the school officials' duty to supervise was a discretionary act, as the school officials had only a general supervisory duty over the student and were not actually involved in active supervision at the times relevant to the student's complaint. Ritchie v. Turner, 559 S.W.3d 822, 2018 Ky. LEXIS 434 (Ky. 2018).

Cited in:

Williams v. Ky. Dep't of Educ., 113 S.W.3d 145, 2003 Ky. LEXIS 175 (Ky. 2003); Patton v. Bickford, 2013 Ky. App. Unpub. LEXIS 1002 (Ky. Ct. App. 2013).

NOTES TO UNPUBLISHED DECISIONS

1. Construction.

School officials sued for negligent supervision and negligence per se regarding a student who bullied a parent's child were entitled to qualified official immunity because (1) the officials' decision regarding appropriate discipline for the offending student was discretionary, (2) neither Ky. Rev. Stat. Ann. § 161.180(1) nor the school district's disciplinary code imposed a ministerial duty on the officials, and (3) the officials met the requirements of both the statute and the disciplinary code by exercising discretion to discipline the offender. Slattery v J.F., 2015 Ky. App. Unpub. LEXIS 871 (Ky. Ct. App. May 29, 2015).

OPINIONS OF ATTORNEY GENERAL.

Under this section, a teacher is authorized to detain a student who had failed to prepare his lessons for a reasonable period of time after school hours. OAG 61-293.

A teacher may be assigned "extra duties" without "extra compensation" so long as said "extra duties" are not unreasonable, arbitrary, or discriminatory. OAG 63-106.

A board of education may prohibit any student who operates his automobile on the way to or from school in a reckless or wanton manner from driving said motor vehicle to or from school. OAG 63-486.

A school teacher may search a pupil's pockets or purse and confiscate such articles as cigarette lighters, pocket knives, or key chains with cigarette lighters attached if the teacher acts with reasonable judgment and for good cause, without malice and for the welfare of the child, as well as the school, but the parents should be advised of the action. OAG 64-329.

A teacher has the right to administer corporal punishment to students enrolled in the school but not enrolled in the teacher's classroom so long as it does not exceed that which appears to be appropriate under the circumstances. OAG 69-534.

A teacher does have the legal authority to discipline students enrolled in the school but not enrolled in the teacher's classroom. OAG 69-534.

Teachers' aides, both paid and volunteer, may serve in supervisory capacities with the same authority and responsibility as teachers when assigned these duties by the school principal and will be held to the same accountability for negligence as a teacher but the school board itself cannot be held liable for the negligence of either teachers or teachers' aides. OAG 73-770.

It was improper for supervisor to order a teacher to bathe a first grade pupil as such a duty may not reasonably be defined as a teaching duty. OAG 74-241.

This section is not authorization for school officials to regulate students' use of cars as a means of transportation to and from school nor could the school board be held liable in tort for injury to students on or off school grounds, due to the school boards' sovereign immunity in torts. OAG 74-783.

This section does not conflict with a school board's policy, requiring that corporal punishment take place in the principal's office with both the principal and teacher being present, to such a degree that the policy can be considered invalid. OAG 75-693.

Under this section, teachers could impose some reasonable form of punishment to regulate student conduct off school grounds when a child is coming to or going from the school. OAG 76-348.

If a child brings to school medication that has been prescribed by a physician, the teacher would not be required to assume the responsibility to see that the medication is taken. OAG 77-530, 1977 Ky. AG LEXIS 278.

A principal may require teachers to supervise the loading of school buses even though the last bus does not leave until after 3:30 p.m. OAG 77-718, 1977 Ky. AG LEXIS 57.

A school system has the right to suspend a child from the school bus for misconduct. OAG 78-392, 1978 Ky. AG LEXIS 346.

Corporal punishment is a legitimate form of discipline to be used in Kentucky's public common schools but with some restraints legally implied, for example, the force used must be reasonable and not excessive; and, although teachers have, by Kentucky Penal Code provision (KRS 503.110), guidelines for justification of use of physical force upon a pupil, if the punishment is excessive, the school teacher or administrator inflicting the spanking may be held liable in damages to the child and possibly subject to criminal penalties. OAG 78-704, 1978 Ky. AG LEXIS 136.

In view of the responsibilities of teachers and school administrators and in view of the fact that teachers and administrators are state officers or employes they are within the purview of fourth amendment and Ky. Const., § 10 restraint upon activities of the government. OAG 79-168, 1979 Ky. AG LEXIS 452.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Permissible use of force by teachers under penal code, KRS 503.110.

Suspension of pupils, KRS 158.150.

Kentucky Law Journal.

Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Actions Against a School Board or School Personnel, § 333.00.

Caldwell's Kentucky Form Book, 5th Ed., Complaint to Oust Member of School Board for Conflict of Interests, Form 333.02.

Kentucky Instructions to Juries (Civil), 5th Ed., Assault and Battery, § 28.13.

161.185. Certified or classified staff member to accompany students on school-sponsored or endorsed trips — Exceptions.

(1) Except as provided in subsection (2), boards of education shall require a certified or classified staff member who is at least twenty-one (21) years of age to accompany students on all school-sponsored or school-endorsed trips. Local boards of education may adopt a policy that specifies the job classifications of staff members who may accompany students on trips under this section.

(2) Boards of education may permit a nonfaculty coach or nonfaculty assistant, as defined by administrative regulation promulgated by the Kentucky Board of Education under KRS 156.070(2), to accompany students on all school-sponsored or school-endorsed athletic trips. A nonfaculty coach or nonfaculty assistant shall be at least twenty-one (21) years of age, shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 which is classified as a felony, and shall submit to a criminal record check under KRS 160.380.

(3) Prior to assuming his or her duties, a nonfaculty coach or nonfaculty assistant shall successfully complete training provided by the local school district. The training shall include, but not be limited to, information on the physical and emotional development of students of the age with whom the nonfaculty coach and nonfaculty assistant will be working, the district's and school's discipline policies, procedures for dealing with discipline problems, and safety and first aid training. Follow-up training shall be provided annually.

History.

Enact. Acts 1968, ch. 61; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 482, effective July 13, 1990; 1998, ch. 178, § 1, effective July 15, 1998; 2011, ch. 9, § 1, effective March 9, 2011.

Compiler's Notes.

This section (Enact. Acts 1968, ch. 61) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 482, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Where students are engaged in an extracurricular activity, such as a senior prom, which is held off school grounds, the board of education members would not be subject to liability for permitting the students to drive themselves to the school-sponsored activity, in the event of a student's injury or death while driving to or from the location. OAG 76-40.

161.190. Abuse of teacher, classified employee, or school administrator prohibited.

Whenever a teacher, classified employee, or school administrator is functioning in his capacity as an employee of a board of education of a public school system, it shall be unlawful for any person to direct speech or conduct toward the teacher, classified employee, or school administrator when such person knows or should know that the speech or conduct will disrupt or interfere with normal school activities or will nullify or undermine the good order and discipline of the school.

History.

4503-8; amend. Acts 1986, ch. 255, § 1, effective July 15, 1986; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 483, effective July 13, 1990; 2015 ch. 76, § 1, effective June 24, 2015.

Compiler's Notes.

This section (4503-8; amend. Acts 1986, ch. 255, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 483, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.

Statute is not unconstitutionally vague and is neither overbroad nor unconstitutional as-applied; the statute authorizes conviction for directing speech toward a school administrator that will reasonably disrupt normal school activities, and standing in the schoolhouse foyer and angrily offering to fight the principal while class is in session is conduct that will disrupt day-to-day school activities, such that defendant should have understood that he could be convicted under the statute. Masters v. Commonwealth, 551 S.W.3d 458, 2017 Ky. App. LEXIS 661 (Ky. Ct. App. 2017), cert. denied, 586 U.S. 1186, 139 S. Ct. 1221, 203 L. Ed. 2d 258, 2019 U.S. LEXIS 901 (U.S. 2019).

This section is an unconstitutional violation of the First Amendment of the U.S. Constitution and Const., §§ 1(4) and 8. Commonwealth v. Ashcraft, 691 S.W.2d 229, 1985 Ky. App. LEXIS 554 (Ky. Ct. App. 1985) (Decision prior to 1986 amendment and 1990 repeal and reenactment).

Statute is constitutional and does not seek to suppress expression, but rather attempts to preserve a suitable learning environment by curbing unreasonable and potentially dangerous disruptions to routine school operations; students, parents, and members of the public may still reasonably express frustration with school employees, but angrily telling someone you are going to physically harm them is precisely the type of speech that would incite a reasonable person to violence, and such a threat against a principal during the school day foreseeably triggers a safety protocol. Masters v. Commonwealth, 551 S.W.3d 458, 2017 Ky. App. LEXIS 661 (Ky. Ct. App. 2017), cert. denied, 586 U.S. 1186, 139 S. Ct. 1221, 203 L. Ed. 2d 258, 2019 U.S. LEXIS 901 (U.S. 2019).

Cited in:

Owens v. Commonwealth, 473 S.W.2d 827, 1971 Ky. LEXIS 168 (Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

The public harassment of schoolteachers by pupils could be dealt with under this section or under KRS 161.180 when the misconduct is committed between the times the pupils leave their homes until they return home. OAG 72-826.

Although this section does not apply to the relationship of a superintendent and a teacher, it is generally recognized that the best professional practice would be for a teacher's faults to be discussed with him privately or at least not before his pupils. OAG 73-825.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Gormley and Hartman, The Kentucky Bill of Rights: A Bicentennial Celebration, 80 Ky. L.J. 1 (1990-91).

161.195. Notice to teacher of student's history of physically abusive conduct or carrying a concealed weapon.

Before a student with a documented history of physical abuse of a school employee or of carrying a concealed weapon on school property or at a school function is assigned to work directly with or comes in contact with a teacher, that teacher shall be notified in writing by the principal, guidance counselor, or other school official who has knowledge of the student's behavior. The notice shall describe the nature of the student behavior.

History.

Enact. Acts 1992, ch. 393, § 2, effective July 14, 1992.

161.200. Records to be kept by teachers — Exceptions.

(1) Each teacher in the public schools shall keep an approved record which shall be left with the superintendent or as he directs at the close of the term. The record shall show the program of recitations, classification, attendance, and grading of all pupils who attended school at any time during the school year, and such other facts as are required.

(2) Notwithstanding the provisions of subsection (1) of this section, approved pupil attendance records, for state accounting purposes and for the purpose of state computation of pupil attendance, may be kept in a central location in the local elementary or secondary school. After attendance is reported and recorded by the classroom teacher, either a certified or noncertified person shall complete and check records in accordance with the methods and regulations approved by the superintendent of the local school district and the chief state school officer. A designated certified person within the local elementary or secondary school shall be responsible for auditing and certifying state attendance documents to verify their accuracy.

History.

4503-5; amend. Acts 1978, ch. 312, § 1, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 242, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Pupil attendance, 702 KAR 7:125.

161.210. Reports to be made by teachers.

(1) Each teacher or other person in the public schools shall make reports and inventories to the district superintendent at the time and in the manner prescribed by the district board of education and the Kentucky Board of Education.

(2) No teacher shall willfully make a false monthly or term report of time taught or other item or shall willfully fail to make a required report.

History.

4503-6, 4503-7; amend. Acts 1978, ch. 8, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 484, effective July 13, 1990; amend. 1996, ch. 362, § 6, effective July 1, 1996.

Compiler's Notes.

This section (4503-6, 4503-7; amend. Acts 1978, ch. 8, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 484, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Procedure for payment of employees, 702 KAR 3:060.

161.212. Educators Employment Liability Insurance Program — Fund.

(1) The Educators Employment Liability Insurance Program is hereby established in the Kentucky Department of Education for the purpose of providing educators employment liability insurance to protect all certified employees of Kentucky public schools from liability for judgments or settlements that are in excess of the coverage provided in KRS 160.105.

(2) Not later than July 1, 2024, the department shall contract with an insurance agency, broker, or company to provide excess liability coverage to the coverage required in KRS 160.105 for an additional amount of not less than one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) aggregate for each certified employee, which shall be inclusive of legal fees. The department shall notify each certified employee that the coverage has been provided.

(3) If the certified educators' association with the largest number of members in the Commonwealth provides greater, more comprehensive coverage than the amounts provided in subsection (2) of this section, then the coverage provided by the program in subsection (2) shall be at least equivalent to that amount.

(4) The purchase of liability insurance under this section shall not constitute a waiver of any immunity or defense the insured may now or in the future assert under state or federal law, regulation, or rule.

(5) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the insurance program under this section.

(6)(a) The Educators Employment Liability Insurance Program fund is hereby created as a trust and agency account fund in the State Treasury to be administered by the Kentucky Department of Education for the purpose of providing educators' employment liability insurance to certified employees as described in this section.

(b) The fund shall consist of general fund appropriations, gifts and grants from public and private sources, and federal funds. All moneys included in the fund shall be appropriated for the purposes set forth in this section.

(c) Any unalloted or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the fund.

(d) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section.

History.

2023 ch. 99, § 1, effective June 29, 2023.

TEACHERS' RETIREMENT

161.220. Definitions for KRS 161.220 to 161.716 and 161.990.

As used in KRS 161.220 to 161.716 and 161.990:

(1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;

(2) "Retirement allowance" means the amount annually payable during the course of his or her natural life to a member who has been retired by reason of service;

(3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

(4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, employees participating in the system pursuant to KRS 196.167(3)(b)1., and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

(a) Local boards of education and public charter schools if the public charter school satisfies the criteria set by the Internal Revenue Service to participate in a governmental retirement plan;

(b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;

(c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;

(d) Other public education agencies as created by the General Assembly and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

(e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;

(f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

(g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;

(h) The Office of Career and Technical Education;

(i) The Office of Vocational Rehabilitation;

(j) The Kentucky Educational Collaborative for State Agency Children;

(k) The Governor's Scholars Program;

(*l*) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member, except that any person who becomes a member on or after January 1, 2022, and subsequently draws a monthly lifetime retirement allowance, shall upon reemployment after retirement not earn a second retirement account;

(m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;

(n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620;

(o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;

(p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are

serving in a professional job classification as defined by the department;

(q) The Governor's School for Entrepreneurs Program;

(r) Employees of the Office of Adult Education within the Department of Workforce Development in the Education and Labor Cabinet who were employees of the Council on Postsecondary Education, Kentucky Adult Education Program and who were members of the Kentucky Teachers' Retirement System at the time the Program was transferred to the cabinet pursuant to Executive Orders 2019-0026 and 2019-0027;

(s) Employees of the Education Professional Standards Board who were members of the Kentucky Teachers' Retirement System at the time the employees were transferred to the Kentucky Department of Education pursuant to Executive Order 2020-590; and

(t) WeLeadCS, the virtual computer science career academy established in KRS 158.809;

(5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he or she, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

(6) "New teacher" means any member not a present teacher;

(7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;

(8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;

(9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for individuals who become members prior to January 1, 2022, who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement for individuals who become members prior to January 1, 2022, or within the five (5) years immediately prior to the date of the member's retirement for individuals who become members on or after January 1, 2022, the amount of salary to be included for each of those three (3) years or five (5) years, as applicable, for the purpose of calculating the final average salary shall be limited to the lesser of:

(a) The member's actual salary; or

(b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years or five (5) years, as applicable, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes. The board of trustees may promulgate an administrative regulation in accordance with KRS Chapter 13A to establish a methodology for measuring the limitation so that the combined increases in salary for each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible percentage increase received by other members of the employer for the same three (3) year period.

For individuals who became members of the retirement system prior to July 1, 2021, this limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. The board of trustees may promulgate an administrative regulation in accordance with KRS Chapter 13A to provide definitions for a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall, for individuals subject to KRS 161.155(10) who became nonuniversity members of the system prior to January 1, 2022, be included as part of a retiring member's annual compensation for the member's last year of active service;

(10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsec-

tion (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;

(11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;

(12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;

(13) "Regular interest" means:

(a) For an individual who becomes a member prior to July 1, 2008, interest at three percent (3%) per annum;

(b) For an individual who becomes a member on or after July 1, 2008, but prior to January 1, 2022, interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment; and

(c) For an individual who becomes a member on or after January 1, 2022, the rolling five (5) year yield on a thirty (30) year United States Treasury bond as of the end of May prior to the most recently completed fiscal year, except that:

1. Once the member has at least sixty (60) months of service in the system it shall mean interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to employee contributions in the foundational benefit component or any other contributions made by the employee to the foundational benefit component that are refundable to the employee upon termination of employment; and

2. The board shall have the authority to adjust the regular interest rate for individuals who become members on or after January 1, 2022, in accordance with KRS 161.633 and 161.634;

(14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;

(15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;

(16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;

(17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;

(18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

(19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;

(20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the immediate preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the immediate preceding fiscal year;

(21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;

(22) "Full actuarial cost," when used to determine the payment or payments that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The board may promulgate administrative regulations in accordance with KRS Chapter 13A to provide the methodology for the assessment of and procedures for the payment and collection of the full actuarial cost of the purchased service. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400;

(23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick leave, annual, personal, and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1,

2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;

(24) "Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;

(25) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:

(a) Is issued by a court or administrative agency; and

(b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee;

(26) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order;

(27) "University member" means an individual who becomes a member through employment with an employer specified in subsection (4)(b) and (n) of this section;

(28) "Nonuniversity member" means an individual who becomes a member through employment with an employer specified under subsection (4) of this section, except for those members employed by an employer specified in subsection (4)(b) and (n) of this section;

(29) "Accumulated employer contribution" means the employer contribution deposited to a member's account through the supplemental benefit component and regular interest credited on such amounts as provided by KRS 161.635 for nonuniversity members and KRS 161.636 for university members;

(30) "Accumulated account balance" means:

(a) For members who began participating in the system prior to January 1, 2022, the member's accumulated contributions; or

(b) For members who began participating in the system on or after January 1, 2022, the combined sum of the member's accumulated contributions and the member's accumulated employer contributions;

(31) "Foundational benefit component" means the benefits provided by KRS 161.220 to 161.716 to individuals who become members on or after January 1, 2022, except for the supplemental benefit component and retiree health benefits set forth in KRS 161.675; and

(32) "Supplemental benefit component" means:

(a) The benefit established pursuant to KRS 161.635 for individuals who become nonuniversity members on or after January 1, 2022; or

(b) The benefit established pursuant to KRS 161.636 for individuals who become university members on or after January 1, 2022.

History.

1946 ch. 111, 4506b-2; amend. Acts 1946, ch. 111, § 1; 1954, ch. 196, § 1, 2; 1960, ch. 44, § 1; 1962, ch. 64, § 1; 1964, ch. 43, § 1; 1966, ch. 16, § 1; 1966, ch. 255, § 152; 1968, ch. 136, § 1; 1972, ch. 82, § 1; 1974, ch. 395, § 1; 1976, ch. 351, § 1, effective July 1, 1976; 1978, ch. 152, § 1, effective March 28, 1978; 1982, ch. 166, § 11, effective July 15, 1982; 1984, ch. 253, § 3, effective July 1, 1984; 1984, ch. 302, § 1, effective July 13, 1984; 1986, ch. 440, § 1, effective July 1, 1986; 1988, ch. 363, § 1, effective July 1, 1988; 1990, ch. 442, § 1, effective July 13, 1990; 1990, ch. 470, § 54, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 243, effective July 13, 1990; 1992, ch. 192, § 1, effective July 1, 1992; 1992, ch. 357, § 2, effective July 14, 1992; 1994, ch. 369, § 1, effective July 1, 1994; 1994, ch. 469, § 34, effective July 15, 1994; 1996, ch. 271, § 10, effective July 15, 1996; 1996, ch. 359, § 2, effective July 1, 1996; 1997 (1st Ex. Sess.), ch. 1, § 68, effective May 30, 1997; 1998, ch. 50, § 3, effective July 15, 1998; 1998, ch. 515, § 2, effective July 1, 1998; 2000, ch. 498, § 5, effective July 1, 2000; 2001, ch. 51, § 1, effective June 21, 2001; 2001, ch. 137, § 15, effective June 21, 2001; 2002, ch. 275, § 3, effective July 1, 2002; 2002, ch. 300, § 4, effective July 15, 2002; 2004, ch. 121, § 1, effective July 1, 2004; 2006, ch. 211, § 91, effective July 12, 2006; 2008, ch. 78, § 2, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 29, effective June 27, 2008; 2010, ch. 104, § 4, effective April 8, 2010; 2010, ch. 148, § 9, effective July 15, 2010; 2010, ch. 164, § 3, effective July 1, 2010; 2016 ch. 150, § 4, effective July 15, 2016; 2018 ch. 107, § 45, effective July 14, 2018; 2019 ch. 146, § 31, effective June 27, 2019; 2021 ch. 26, § 11, effective June 29, 2021; 2021 ch. 157, § 6, effective January 1, 2022; 2021 ch. 192, § 2, effective June 29, 2021; 2022 ch. 236, § 79, effective July 1, 2022; 2022 ch. 213, § 14, effective July 14, 2022; 2025 ch. 64, § 1, effective June 27, 2025; 2025 ch. 138, § 2, effective March 31, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 64 and 138, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). This section was amended by three Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails.

NOTES TO DECISIONS

1. Annual Compensation.

Circuit court did not err in affirming the teachers' retirement system's determination that an employee's annual incentive pay was to be excluded from his annual compensation in determining his retirement benefits as that interpretation was more reasonable and consistent with agency interpretation, and incentive pay was not available to all other employees. Smith v. Teachers' Ret. Sys., 515 S.W.3d 672, 2017 Ky. App. LEXIS 11 (Ky. Ct. App. 2017).

Cited in:

Cooksey v. Board of Education, 316 S.W.2d 70, 1957 Ky. LEXIS 3 (Ky. 1957).

OPINIONS OF ATTORNEY GENERAL.

Under KRS 61.410 participation in the social security program is mandatory for all public employees of the Commonwealth except those employees occupying a position to which the provisions of KRS 161.220 to 161.710 are applicable and consequently, the executive secretary, assistant executive secretary, senior accountant and administrative officer of the teacher's retirement system are neither subject to, nor eligible for, participation in the social security program. OAG 69-355.

If additional teaching activity falls within the category of being in fact a part of the regularly approved program of the public school district or the vocational school for which certi-

fication or a professional level of training is required as a condition of employment, then teachers' retirement applies and the teacher would not be eligible for social security participation. The additional hours requiring services beyond the normal teaching day are regarded as an extension of the regular full-time employment. OAG 69-430.

When the professional staff members of the division of disability determinations were a part of the department of education they were allowed to participate in the Kentucky Teachers' Retirement System and were exempt from participation in the federal social security program; however, when this division was transferred to the Department for Human Resources, the members lost their status as professional staff members and, although they had the option of retaining membership in the Kentucky Teachers' Retirement System or joining the Kentucky Employees Retirement System, it was mandatory they participate in the federal social security program. OAG 73-767.

Any employee of the Kentucky Authority for Educational Television currently a member of the Kentucky Employees Retirement System who, because of subsection (4)(d) of this section, may be qualified to participate in the teachers' retirement system has the option of joining the teachers' retirement system as provided by KRS 161.607 or retaining membership in Kentucky Employees Retirement System as provided by KRS 61.680. OAG 74-305.

ROTC teachers may be employed without being certified but an uncertified ROTC teacher may not be a member of the Kentucky Teacher's Retirement System. OAG 74-387.

Participation by the faculty of Western Kentucky University in the State Teacher's Retirement System is mandatory and where, as in this case, a majority of the faculty elects under KRS 61.435 to participate in the federal social security program, participation in that program also is mandatory and there is no legal way thereafter that the faculty can withdraw or discontinue its participation. OAG 75-268.

The salary an individual earns as a state legislator does not fall within the statutory definition under KTRS law as "annual compensation" which is subject to employee contributions in the KTRS. OAG 78-226, 1978 Ky. AG LEXIS 494.

Interpretation of what constitutes a "professional level of training" is a responsibility resting with the Board of Trustees of the Teachers Retirement System of the state of Kentucky, which has defined the term to mean graduation from a recognized college or university or its equivalent. OAG 85-133, 1985 Ky. AG LEXIS 15.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Additional contributions, 102 KAR 1:130.

Administrative staff membership, 102 KAR 1:037.

Calculation of final average salary if there is a corresponding change in length of employment during any of the final three (3) years immediately prior to retirement, 102 KAR 1:340.

Executive secretary's qualifications, 102 KAR 2:025.

Final average salary based on average of three (3) highest salaries, 102 KAR 1:220.

Full actuarial cost purchase, 102 KAR 1:350.

Increase in compensation limit, 102 KAR 1:240.

New entrants, 102 KAR 1:039.

Part-time service for university, college, and community college members, 102 KAR 1:036.

Qualified domestic relations orders, 102 KAR 1:320.

Rollovers from other plans, 102 KAR 1:250.

Rollovers and transfers of contributions to other plans, 102 KAR 1:245.

Rules and administrative regulations, 102 KAR 1:010.

Kentucky Law Journal.

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

161.230. Retirement system — Purpose — Name.

The Teachers' Retirement System is established as of July 1, 1940, for the purpose of providing retirement allowances for teachers, their beneficiaries, and survivors under the provisions of KRS 161.155 and 161.220 to 161.714. The Teachers' Retirement System of the State of Kentucky shall be an independent agency and instrumentality of the Commonwealth and this status shall only be amended or changed by the General Assembly. It shall have the powers and the privileges of a corporation and shall be known as the "Teachers' Retirement System of the State of Kentucky." Its business shall be transacted, its funds invested, and its cash and securities held in that name, or in the name of its nominee or title holding organization provided that its nominee or title holding organization is authorized by board of trustees' resolution solely for the purpose of facilitating the transfer of securities or acquiring and holding title to real property. The board of trustees may designate a nominee as provided in KRS 286.3-225; or it may name as nominee a partnership composed of selected trustees and employees of the system, and formed for the sole purpose of holding legal or registered title of such securities, and for the transfer of securities in accordance with directions of the board of trustees.

History.

4506b-1; amend. Acts 1972, ch. 82, § 2; 1982, ch. 326, § 2, effective July 1, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 485, effective July 13, 1990; 2025 ch. 138, § 3, effective March 31, 2025.

Compiler's Notes.

This section (4506b-1; amend. Acts 1972, ch. 82, § 2; 1982, ch. 326, § 2, effective July 1, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 485, effective July 13, 1994.

NOTES TO DECISIONS

1. Purpose.

The purpose of pensions for retired teachers is to provide an inducement to teachers to remain in the profession so that the school system will benefit from having experienced teachers, and to reward faithful service rendered for meager compensation. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

Cited in:

Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963, 1942 Ky. LEXIS 2 (Ky. 1942).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Minimum distribution, 102 KAR 1:170.

161.235. Establishment of hybrid cash balance plan for new Teachers' Retirement System members who begin participating on or after January 1, 2019 — TRS members with fewer than five years of service may elect participation. [Repealed]

History.

2018 ch. 107, § 43, effective July 14, 2018; repealed by 2021 ch. 157, § 41, effective January 1, 2022.

161.240. Districts, institutions and offices included in system; junior colleges. [Repealed.]

Compiler's Notes.

This section (4506b-3: amend. Acts 1948, ch. 194) was repealed by Acts 1964, ch. 43, § 23.

161.250. Board of trustees to control retirement — Membership — Appeals — Trustee education program — Public disclosure of meeting notices and agendas and Annual Comprehensive Financial Report — Administrative regulations for authorized benefit improvements.

(1)(a) The general administration and management of the retirement system, and the responsibility for its proper operation and for making effective provisions of KRS 161.155 and 161.220 to 161.714 are vested in a board of trustees to be known as the "Board of Trustees of the Teachers' Retirement System of the State of Kentucky."

(b) The board of trustees shall consist of the following:

1. The chief state school officer;

2. The State Treasurer;

3. Two (2) trustees, appointed by the Governor of the Commonwealth, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. These two (2) trustees shall have investment experience. For purposes of this subparagraph, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 161.460, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:

a. A portfolio manager acting in a fiduciary capacity;

b. A professional securities analyst or investment consultant;

c. A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment-related capacity;

d. A chartered financial analyst in good standing as determined by the CFA Institute; or

e. A university professor, teaching investment-related studies; and

4. Seven (7) other trustees elected as provided in KRS 161.260. Four (4) of the elective trustees shall be members of the retirement system, to be known as teacher trustees, two (2) shall be persons who are not members of the teaching profession, to be known as the lay trustees, and one (1) shall be an annuitant of the retirement system to be known as the retired teacher trustee. One (1) teacher trustee shall be elected annually for a four-year term. The retired teacher trustee shall be elected every four (4) years. The chief state school officer and the State Treasurer are considered ex officio members of the board of trustees and may designate in writing a person to represent them at board meetings.

(c)1. Elective trustees shall not serve more than three (3) consecutive four (4) year terms. An elective trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board of trustees.

2. The term limits established by subparagraph 1. of this paragraph shall apply to elective trustees serving on or after July 1, 2012, and all terms of office served prior to July 1, 2012, shall be used to determine if the elective trustee has exceeded the term limits provided by subparagraph 1. of this paragraph.

(d)1. Each appointed trustee shall serve a term of four (4) years. An appointed trustee shall not serve more than three (3) consecutive four (4) year terms. An appointed trustee who has served three (3) consecutive terms may be appointed again after an absence of four (4) years from the board of trustees.

2. Any vacancy that occurs in an appointed position shall be filled in the same manner that provides for the selection of the trustee; however, any vacancy shall be filled only for the duration of the unexpired term.

(2) A member, retired member, or designated beneficiary may appeal the retirement system's decisions that materially affect the amount of service retirement allowance, amount of service credit, eligibility for service retirement, or eligibility for survivorship benefits to which that member, retired member, or designated beneficiary claims to be entitled. All appeals must be in writing and filed with the retirement system within thirty (30) days of the claimant's first notice of the retirement system's decision. For purposes of this section, notice shall be complete and effective upon the date of mailing of the retirement system's decision to the claimant at the claimant's last known address. Failure by the claimant to file a written appeal with the retirement system within the thirty (30) day period shall result in the decision of the retirement system becoming permanent with the effect of a final and unappealable order. The deadline to file a written appeal shall not be subject to the jurisdiction of any court or appeal process, nor shall it otherwise be tolled or waived. Appeals may include a request for an administrative hearing which shall be conducted in accordance with the provisions of KRS Chapter 13B. The board of trustees may establish an appeals committee whose members shall be appointed by the chairperson and who shall have the authority to act upon the report and recommendation of the hearing officer by issuing a final order on behalf of the full board of trustees. A member, retired member, or designated beneficiary who has filed a timely, written appeal of a decision of the retirement system may, following the administrative hearing and issuance of the final order by the board of trustees, appeal the final order of the board of trustees to the Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.

(3) The board of trustees shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:

(a) A required orientation program for all new trustees to the board. The orientation program shall include training on:

1. Benefits and benefits administration;

2. Investment concepts, policies, and current composition and administration of retirement system investments;

3. Laws, bylaws, and administrative regulations pertaining to the retirement system and to fiduciaries; and

4. Actuarial and financial concepts pertaining to the retirement system. If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under KRS 161.290 until the trustee has completed the orientation program;

(b) Annual required training for trustees on the administration, benefits, financing, and investing of the retirement system. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under KRS 161.290 until the board member has met the annual training requirements; and

(c) The retirement system shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.

(4) In order to improve public transparency regarding the administration of the system, the board of trustees shall adopt a best practices model by posting the following information to the retirement system's website and shall make available to the public:

(a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the retirement system's website at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;

(b) The Annual Comprehensive Financial Report with the information as follows:

1. A general overview and update on the retirement system by the executive secretary;

2. A listing of the board of trustees;

3. A listing of key staff;

4. An organizational chart;

5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;

6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total net return on retirement system investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;

7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and

8. A general statistical section, including information on contributions, benefit payouts, and retirement system demographic data;

(c) All external audits;

(d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;

(e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;

(f) The retirement system's summary plan description;

(g) The retirement system's law book;

(h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;

(i) All investment holdings in aggregate, fees, and commissions for each fund administered by the board, which shall be updated on a quarterly basis for fiscal years beginning on or after July 1, 2017. The system shall request from all managers, partnerships, and any other available sources all information regarding fees and commissions and shall, based on the requested information received:

1. Disclose the dollar value of fees or commissions paid to each individual manager or partnership;

2. Disclose the dollar value of any profit sharing, carried interest, or any other partnership incentive arrangements, partnership agreements, or any other partnership expenses received by or paid to each manager or partnership; and

3. As applicable, report each fee or commission by manager or partnership consistent with standards established by the Institutional Limited Partners Association (ILPA).

In addition to the requirements of this paragraph, the system shall also disclose the name and address of all individual underlying managers or partners in any fund of funds in which system assets are invested;

(j) An update of net of fees investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund, for each asset class administered by the board, and for each manager. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2017;

(k) All contracts or offering documents for services, goods, or property purchased or utilized by the system;

(*l*) A searchable database of the system's expenditures and a listing of each individual employed by the system along with the employee's salary or wages. In lieu of posting the information required by this paragraph to the system's website, the system may provide the information through a website established by the executive branch to inform the public about executive branch agency expenditures and public employee salaries and wages; and

(m) All proxy vote reports as provided by KRS 161.430(8).

(5) Notwithstanding the requirements of subsection (4) of this section, the retirement system shall not be required to furnish information that is protected under KRS 161.585, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement system's

ability to competitively invest in real estate or other asset classes, except that no provision of this section or KRS 61.878 shall exclude disclosure and review of all contracts, including investment contracts, by the board, the Auditor of Public Accounts, and the Government Contract Review Committee established pursuant to KRS 45A.705 or the disclosure of investment fees and commissions as provided by this section. If any public record contains material which is not excepted under this section, the system shall separate the excepted material by removal, segregation, or redaction, and make the nonexcepted material available for examination.

(6) For any benefit improvements the General Assembly has authorized the board of trustees to establish under KRS 161.220 to 161.716 and that require formal adoption by the board, the board shall establish the benefits by promulgation of administrative regulations in accordance with KRS Chapter 13A.

History.

4506b-5; amend. Acts 1972, ch. 82, § 3; 1974, ch. 395, § 2, effective July 1, 1974; 1982, ch. 326, § 3, effective July 1, 1982; 1990, ch. 476, Pt. IV, § 244, effective July 13, 1990; 2000, ch. 498, § 6, effective July 1, 2000; 2002, ch. 275, § 4, effective July 1, 2002; 2008 (1st Ex. Sess.), ch. 1, § 30, effective June 27, 2008; 2012, ch. 75, § 10, effective April 11, 2012; 2017 ch. 12, § 5, effective March 10, 2017; 2023 ch. 94, § 7, effective June 29, 2023; 2025 ch. 138, § 4, effective March 31, 2025.

Legislative Research Commission Notes.

(3/10/2017). 2017 Ky. Acts ch. 12, sec. 15 provided that, for the purposes of providing staggered appointments of the two trustees established by subsection (1)(b) of this statute, the Governor shall appoint one trustee for an initial term of four years and one trustee for an initial term of two years, provided that the initial term of two years shall not count towards the term limitations in subsection (1)(d) of this statute for the one trustee so appointed.

(6/27/2008). The Reviser of Statutes has altered the numbering of subsection (3)(a) of this statute from the way it appeared in 2008 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 30, under the authority of KRS 7.136(1)(c).

(6/27/2008). 2008 (1st Extra Sess.) Ky. Acts ch. 1, sec. 44, provides "The provisions of...subsection (1)(c) of Section 30 of this Act (this statute) that reduce the term limits of elected or appointed members of the board of trustees of the...Kentucky Teachers' Retirement System shall apply to terms of office beginning after July 1, 2008."

OPINIONS OF ATTORNEY GENERAL.

A certified teacher who has taught long enough to acquire a vested interest in the teachers' retirement system but who left teaching for another occupation several years before would be "a member of the teaching profession" and would not be eligible to serve as a lay member of the board of trustees of the teachers' retirement system, since this section envisioned a person with an objective approach who would not be influenced by having a teaching background. OAG 71-150.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Teachers' Retirement System Trustees Education Program, 102 KAR 1:300.

161.260. Election of members of board of trustees.

An election shall be held on or before June 1 of each year to elect trustees. The trustees to be elected each year shall depend upon the respective terms of the trustees elected under Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 7 and Acts 1940, Ch. 192, paragraph 7a, and KRS 161.250. Each trustee shall assume office on July 1 following his election and shall serve for a term of four (4) years. The elections shall be conducted by ballot under the supervision of the chief state school officer. Each person who is a contributing member as a result of full-time employment in a position covered by the retirement system or who is an annuitant of the retirement system shall have the right to vote. Each person who is a contributing member as a result of part-time or substitute employment in a position covered by the retirement system shall be permitted to vote as provided in KRS 161.612. Nominations for trustees shall be made by a nominating committee consisting of one (1) committee member selected by the retirement system membership of each of the districts of the Kentucky Education Association, and one (1) committee member to be selected by retired teachers, on a statewide basis, from among the annuitants of the retirement system. No person may be a member of the nominating committee who is not a member of the system, except for the committee member to be selected from among the annuitants of the system. The president of the Kentucky Education Association shall preside over the meeting of the nominating committee and the secretary of the Teachers' Retirement System shall act as secretary to the committee. Two (2) persons shall be nominated by the nominating committee for each position to be filled. All expenses of the election shall be paid by the board of trustees out of its general expense fund.

History.

4506b-6, 4506b-6a; amend. Acts 1960, ch. 44, § 2; 1970, ch. 95, § 1; 1972, ch. 82, § 4; 1990, ch. 476, Pt. IV, § 245, effective July 13, 1990; 2004, ch. 121, § 2, effective July 1, 2004.

OPINIONS OF ATTORNEY GENERAL.

The members of the Kentucky Teachers' Retirement System Trustee Nominating Committee are entitled to reimbursement out of the board of trustees' general expenses fund for all reasonable, actual and necessary expenses incurred in attending the nomination meeting. OAG 83-479, 1983 Ky. AG LEXIS 18.

161.270. Vacancies, how filled.

Vacancies occurring during the terms of the elective members shall be filled by the remaining members of the board of trustees by election for the unexpired terms.

History.

4506b-7; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 486, effective July 13, 1990.

Compiler's Notes.

This section (4506b-7) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 486, effective July 13, 1990.

161.280. Oath of board members.

Each member of the board of trustees shall, within ten (10) days after his appointment or election, take an

oath that he will support the Constitution of the United States and the Constitution of Kentucky, that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any provisions of the law applicable to the retirement system. The oath of office shall be subscribed to by the member making it and certified to by the officer before whom it is taken, and shall be immediately filed in the office of the Secretary of State.

History.
4506b-9; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 487, effective July 13, 1990.

Compiler's Notes.
This section (4506b-9) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 487, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Constitutional oath, Ky. Const., § 228.
When constitutional oath to be taken, KRS 62.010.

161.290. Meetings, compensation, and expenses of board members.

(1) The board of trustees shall meet on the third Monday during the months of March, June, September, and December of each year. Special meetings may be called by the chairperson upon giving adequate notice to each member of the board of trustees. The business to be transacted at special meetings shall be specified in the notice of the meeting.

(2) The members of the board of trustees shall serve without compensation, except that elective trustees shall receive ninety dollars ($90) for each day the board is in session and all elected trustees shall be reimbursed from the expense fund for all necessary expenses they incur through service to the board without limitation of the provisions of KRS Chapters 44 and 45.

(3) The board of trustees may authorize a per diem, not to exceed ninety dollars ($90) per day, for trustees representing the system on committees or commissions established by statute or for service as an official representative of the board of trustees.

(4) The school district or other public agency or entity of the state which employs a teacher trustee who is required to attend regular or special meetings of the board of trustees, represent the system on committees or commissions, or serve as an official representative of the board of trustees shall provide the teacher trustee with special leave with pay and pay the compensation for a substitute for the teacher trustee during periods of absence upon certification by the teacher trustee that the trustee is performing these duties for the system.

History.
4506b-8, 4506b-15; Acts 1960, ch. 44, § 3; 1972, ch. 82, § 5; 1974, ch. 395, § 53; 1974, ch. 395, § 3; 1976, ch. 351, § 2, effective July 1, 1976; 1982, ch. 326, § 4, effective July 1, 1982; 1986, ch. 440, § 2, effective July 1, 1986; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 488, effective July 13, 1990; 1992, ch. 192, § 2, effective July 1, 1992; 2021 ch. 192, § 3, effective June 29, 2021.

Compiler's Notes.
This section (4506b-8, 4506b-15: amend. Acts 1960, ch. 44, § 3; 1972, ch. 82, § 5; 1974, ch. 395, § 53; 1974, ch. 395, § 3; 1976, ch. 351, § 2, effective July 1, 1976; 1982, ch. 326, § 4, effective July 1, 1982; 1986, ch. 440, § 2, effective July 1, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 488, effective July 13, 1990.

161.300. Quorum.

Seven (7) members of the board of trustees shall constitute a quorum. Each trustee shall be entitled to one (1) vote. Four (4) votes or a majority of the trustees present whichever is the larger number shall be necessary for a decision by the trustees at any meeting of the board.

History.
4506b-10; Acts 1974, ch. 395, § 4, effective July 1, 1974; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 489, effective July 13, 1990; 2017 ch. 12, § 6, effective March 10, 2017.

Compiler's Notes.
This section (4506b-10: amend. Acts 1974, ch. 395, § 4, effective July 1, 1974) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 489, effective July 13, 1990.

161.310. Administrative regulations — Rules, regulations, and policies of participating employers to conform to chapter — Retirement incentives.

(1) The board of trustees shall from time to time promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business.

(2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.

(3) All rules, regulations, or policies adopted, or decisions made, by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments with no resulting financial obligation for the state. Any retirement incentive provided by the employer to a member on the condition that the member terminate employment with the employer shall be deemed a retirement incentive for purposes of this subsection if the member retires within six (6) months following the member's termination in employment. Retirement incentives include remuneration of any kind and any tangible or intangible benefit provided to or on behalf of the member before, after, or at the member's date of retirement. Retirement incentives do not include lump-sum payments for accumulated sick, annual, or compensatory leave that are generally available to members upon termination of employment. Notwithstanding any provision of KRS 161.220 to 161.716 to the contrary, retirement incentives shall not be included in a member's final average salary or annual compensation as

defined under KRS 161.220(9) and (10), respectively. This subsection shall not apply to retirement incentive plans adopted by local boards of education prior to December 31, 1997, and to those employees of local school districts who retired on or before July 1, 1998.

History.
4506b-11; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 490, effective July 13, 1990; 1994, ch. 369, § 2, effective July 1, 1994; 1998, ch. 515, § 3, effective July 1, 1998; 2002, ch. 275, § 5, effective July 1, 2002; 2008, ch. 78, § 3, effective July 1, 2008; 2021 ch. 192, § 4, effective June 29, 2021.

Compiler's Notes.
This section (4506b-11) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 490, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
401(h) established pursuant to 26 U.S.C. 401(h) account, 102 KAR 1:105.
Additional contributions, 102 KAR 1:130.
Administrative staff membership, 102 KAR 1:037.
Annuity payments, 102 KAR 1:155.
Annuity tables, 102 KAR 1:160.
Application for retirement, 102 KAR 1:070.
Basis for options, 102 KAR 1:145.
Benefit eligibility conditions for members providing part-time and substitute services, 102 KAR 1:310.
Credit for military service, 102 KAR 1:057.
Disability, 102 KAR 1:140.
Disability retirement review and examinations, 102 KAR 1:290.
Election of chairperson, vice chairperson, 102 KAR 2:010.
Employment by retired members, 102 KAR 1:035.
Executive secretary's qualifications, 102 KAR 2:025.
Final average salary based on average of three (3) highest salaries, 102 KAR 1:220.
Fractional service year for members initially employed on a full-time basis, 102 KAR 1:038.
General compliance with federal tax laws, 102 KAR 1:225.
Increase in compensation limit, 102 KAR 1:240.
Insurance, 102 KAR 1:100.
Interest credited to accounts, 102 KAR 1:135.
Investment policies, 102 KAR 1:175.
Investment policies for insurance trust fund, 102 KAR 1:178.
Kentucky Industrial Development Finance Authority investments, 102 KAR 1:180.
Kentucky teachers' retirement system trustees education program, 102 KAR 1:300.
Leave of absence, 102 KAR 1:110.
Limitations on benefits, 102 KAR 1:230.
Minimum distribution, 102 KAR 1:170.
New entrants, 102 KAR 1:039.
Omitted contributions, 102 KAR 1:125.
Optional benefits, 102 KAR 1:150.
Out-of-state service interest rates, 102 KAR 1:050.
Part-time service for university, college, and community college members, 102 KAR 1:036.
Payroll reports, 102 KAR 1:195.
Qualified domestic relations orders, 102 KAR 1:320.
Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System, 102 KAR 1:185.
Refunds, 102 KAR 1:060.
Rollovers and transfers of contributions to other plans, 102 KAR 1:245.
Rollovers from other plans, 102 KAR 1:250.
Rules and administrative regulations, 102 KAR 1:010.
Service credit required for member to qualify for three (3) percent retirement factor, 102 KAR 1:280.
Statement of member account, 102 KAR 1:270.
Submission of employer data, 102 KAR 1:210.
Substitute teachers and nonuniversity, noncommunity college part-time members, 102 KAR 1:030.
Summary plan description, 102 KAR 1:260.
Surviving children's benefits, 102 KAR 1:165.
Transfer to other systems, 102 KAR 1:045.
Value of service performed, 102 KAR 1:200.

161.320. Record of proceedings — Annual report.

The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall publish on or before January 1 of each year a report giving an account of the operation of the system, showing the fiscal transactions of the system for the preceding year and the amount of the accumulated cash and securities of the system, and containing the last balance sheet showing the financial condition of the system.

History.
4506-17; Acts 1968, ch. 136, § 2; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 491, effective July 13, 1990.

Compiler's Notes.
This section (4506-17: amend. Acts 1968, ch. 136, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 491, effective July 13, 1990.

161.330. Cost of administration, how paid — Office space.

The cost of administration of the retirement system shall be paid out of the expense fund established for that purpose by the board of trustees. The board of trustees shall be responsible for the approval and administration of the expense fund budget, subject to the limitations imposed by KRS 161.420(1). Expenses for the operation of the retirement system shall be in such amounts as the board of trustees approves. The board of trustees is authorized to purchase or lease suitable office quarters for the operation of the retirement system.

History.
4506b-14; Acts 1972, ch. 82, § 6, 1984, ch. 253, § 4 effective July 1, 1984; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 492, effective July 13, 1990.

Compiler's Notes.
This section (4506b-14; amend. Acts 1972, ch. 82, § 6, 1984, ch. 253, § 4 effective July 1, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 492, effective July 13, 1990.

161.340. Officers of board — Personnel of system — Contracting for services and commodities — Liability insurance — Leave balances.

(1)(a) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The chairperson shall not serve more than four (4) consecutive years as chairperson or vice chairperson of the board. The

vice chairperson shall not serve more than four (4) consecutive years as chairperson or vice chairperson of the board. A trustee who has served four (4) consecutive years as chairperson or vice chairperson of the board may be elected chairperson or vice chairperson of the board after an absence of two (2) years from the position.

(b) The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.

(2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

(3)(a) Except as provided by KRS 161.430(7), the board shall contract for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services, insurance, and commodities, as are required to carry out the obligations of the board in accordance with the provisions of this chapter, subject to KRS Chapters 45, 45A, 56, and 57 but without the limitations provided by KRS Chapters 12 and 13B.

(b) The board shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General. The hourly rate of reimbursement for any contract for legal services under this paragraph shall not exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, unless a higher rate is specifically approved by the secretary of the Finance and Administration Cabinet or his or her designee.

(4) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties. Insurance may be obtained or provided by contracting with an insurance carrier, by self-insurance, by indemnification, or by any combination thereof.

(5) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.

(6) Notwithstanding any statute to the contrary, the executive branch of government shall accept from the Teachers' Retirement System all accrued annual and sick leave balances and service credits of employees leaving the Teachers' Retirement System and accepting appointments within the executive branch. These leave balances shall be attested to by the Teachers' Retirement System and shall not exceed those limits established by statute or administrative regulation for employees of the executive branch.

History.

4506b-12; amend. Acts 1958, ch. 8, § 1; 1960, ch. 44, § 4; 1962, ch. 64, § 2; 1964, ch. 43, § 2; 1972, ch. 82, § 7; 1976, ch. 351, § 3, effective July 1, 1976; 1978, ch. 110, § 103, effective January 1, 1979; 1980, ch. 206, § 1, effective July 1, 1980; 1982, ch. 326, § 5, effective July 15, 1982; 1984, ch. 253, § 5, effective July 1, 1984; 1986, ch. 440, § 3, effective July 1, 1986; 1988, ch. 363, § 2, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 493, effective July 13, 1990; 1994, ch. 369, § 3, effective July 1, 1994; 1996, ch. 359, § 3, effective July 1, 1996; 1998, ch. 515, § 4, effective July 1, 1998; 2002, ch. 275, § 6, effective July 1, 2002; 2004, ch. 121, § 3, effective July 1, 2004; 2008, ch. 78, § 4, effective July 1, 2008; 2010, ch. 164, § 4, effective July 1, 2010; 2012, ch. 75, § 11, effective April 11, 2012; 2017 ch. 12, § 7, effective March 10, 2017; 2021 ch. 192, § 5, effective June 29, 2021.

Compiler's Notes.

This section (4506b-12; amend. Acts 1958, ch. 8, § 1; 1960, ch. 44, § 4; 1962, ch. 64, § 2; 1964, ch. 43, § 2; 1972, ch. 82, § 7; 1976, ch. 351, § 3, effective July 1, 1976; 1978, ch. 110, § 103, effective January 1, 1979; 1980, ch. 206, § 1, effective July 1, 1980; 1982, ch. 326, § 5, effective July 15, 1982; 1984, ch. 253, § 5, effective July 1, 1984; 1986, ch. 440, § 3, effective July 1, 1986; 1988, ch. 363, § 2, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 493, effective July 13, 1990.

Legislative Research Commission Notes.

(3/10/2017). 2017 Ky. Acts ch. 12, sec. 12 provided that amendments made to subsection (3) of this statute in 2017 Kt. Acts ch. 12, sec. 7 governing placement agents and contracts or offerings entered into by the state-administered retirement systems shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.

(3/10/2017). 2017 Ky. Acts ch. 12, sec. 13 provided that amendments made to subsection (3) of this statute in 2017 Ky. Acts ch. 12, sec. 7 governing the application of the Model Procurement Code, KRS Chapter 45A, and related statutes to the state-administered retirement systems, shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.

OPINIONS OF ATTORNEY GENERAL.

The board of the teachers' retirement system could provide for payment for annual leave for its executive secretary, but such action would be subject to the approval of the commissioner of personnel. OAG 70-470.

Just as KRS 64.640 provides an upper limit for all employees with regard to their potential salary, including any five percent increases, this section must be read into KRS 18A.350 to 18A.360 (now repealed) to provide an absolute upper salary limit for the executive secretary of the Teachers' Retirement

System to be the maximum set for commissioners by KRS 64.640(2). OAG 82-355, 1982 Ky. AG LEXIS 320.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Election of chairperson, vice chairperson, 102 KAR 2:010.

161.350. Bonds of employes. [Repealed.]

Compiler's Notes.
This section (4506b-13) was repealed by Acts 1946, ch. 27, § 40.

161.360. Workmen's compensation and unemployment compensation may be adopted for employes. [Repealed.]

Compiler's Notes.
This section (4506b-35) was repealed by Acts 1956, ch. 154.

161.370. Treasurer, auditor, and legal adviser of board — Annual audit of Teachers' Retirement System.

(1) The State Treasurer, the Auditor of Public Accounts, and the Attorney General shall be treasurer, auditor, and legal adviser, respectively, of the board of trustees, and shall be liable upon their official bonds for the faithful performance of such duties. They shall serve without compensation except as provided by subsection (2)(b) of this section. When the board of trustees deems it for the best interests of the retirement system, it may employ attorneys and pay reasonable fees for the services rendered.

(2)(a) The board shall annually procure an audit of the Teachers' Retirement System. The audit shall be conducted in accordance with generally accepted auditing standards. Except as provided by paragraph (b) of this subsection, the board may select an independent certified public accountant to perform the audit and pay reasonable fees for the services rendered. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion.

(b) At least once every five (5) years, the Auditor of Public Accounts shall perform the audit described by this subsection, and the system shall reimburse the Auditor of Public Accounts for all costs of the audit. The Auditor of Public Accounts shall determine which fiscal year during the five (5) year period the audit prescribed by this paragraph will be completed.

(3) The board shall make copies of the audit required by this section available for examination by any active contributing member or annuitant in the office of the executive secretary of the Teachers' Retirement System and in such other places as may be necessary to make the audit available to all active contributing members and annuitants. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.

History.
4506b-18; amend. Acts 1980, ch. 246, § 7, effective July 15, 1980; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 494, effective July 13, 1990; 2012, ch. 75, § 12, effective April 11, 2012.

Compiler's Notes.
This section (4506b-18; amend. Acts 1980, ch. 246, § 7, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 494, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

The teacher's retirement system is not required by law to honor an inter-account bill from the state auditor for the expense incurred as a consequence of an audit of the system. OAG 74-164.

If the state auditor cannot perform the services requested by the board of the teachers' retirement system, the board may contract with outside auditors to perform these services, but a contract with the state auditor to provide auditing services for the retirement system at a cost equal to or less than that which could be secured from other outside auditors is illegal since, if the state auditor can perform the services, they are to be provided without compensation. OAG 74-564.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Attorneys for state agencies, employment of, KRS 12.210.

161.380. Duties of treasurer — Custodian of securities.

(1) The State Treasurer is the custodian of all cash funds of the retirement system. He shall honor and pay all vouchers drawn on the retirement funds. The Treasurer shall honor and pay all vouchers drawn on the retirement funds for payment of securities purchased upon order of the board. All payments from the several funds of the retirement system shall be made only upon vouchers signed by the executive secretary, the chairman of the board of trustees of the retirement system, or persons delegated in writing by the board.

(2) The board of trustees shall appoint a custodian or custodians of the securities acquired under authority of KRS 161.430 and the custodian or custodians shall be responsible for the safekeeping of all securities placed in his custody. The custodian shall collect dividends, interests, and payments on principal as they become due, and deposit such funds with the State Treasurer for credit to the guarantee fund of the system. The custodian shall, upon delivery of the securities to him, make payment for same as authorized by the board of trustees. When securities are sold by the board of trustees, the custodian shall deliver such securities to the purchaser upon receipt of payment from said purchaser.

(3) The board of trustees may require such surety from the custodian as they deem necessary for the protection of securities held by such custodian.

History.
4506b-22; amend. Acts 1964, ch. 43, § 3; 1974, ch. 395, § 5, effective July 1, 1974; 1982, ch. 414, § 1, effective July 15, 1982; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 495, effective July 13, 1990.

Compiler's Notes.
This section (4506b-22; amend. Acts 1964, ch. 43, § 3; 1974, ch. 395, § 5, effective July 1, 1974; 1982, ch. 414, § 1, effective

July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 495, effective July 13, 1990.

161.390. Actuarial data to be kept.

The board of trustees shall keep in convenient form the data necessary for the actuarial valuation of the various funds of the retirement system and for determining the administrative costs of the system.

History.

4506b-16; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 496, effective July 13, 1990.

Compiler's Notes.

This section (4506b-16) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 496, effective July 13, 1990.

NOTES TO DECISIONS

1. Application.

The Kentucky Education Reform Act (KERA) Board of Education's failure to take official, and presumably final, action in informing school personnel of demotion prior to May 15 as provided by KRS 161.760(3) and thus invalidating the demotion had been changed by the enactment of KRS 160.390 which effectively supersedes the May 15 requirement and under the plain language of KRS 161.760 and 160.390 makes the superintendent's action of demotion effective upon mere written notice to the affected employee of the action. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

161.400. Duties of actuary — Actuarial investigations, valuations, and analyses.

(1)(a) The board of trustees shall designate as actuary a competent person who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries. He or she shall be the technical adviser of the board on matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith.

(b)1. At least once in each two (2) year period, the board shall cause an actuarial investigation to be made of all of the economic experience under the retirement system, including but not limited to the inflation rate, investment return, and payroll growth assumptions, relative to the economic assumptions and funding methods previously adopted by the board.

2. At least once in each five (5) year period, the actuary shall make an actuarial investigation into all of the demographic actuarial assumptions used, including but not limited to mortality tables, withdrawal rates, and retirement rate assumptions, relative to the demographic actuarial assumptions previously adopted by the board.

3. Each actuarial investigation shall include at a minimum a summary of the changes in actuarial assumptions and funding methods recommended in the investigation and the projected impact of the recommended changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a thirty (30) year period.

(c) At least annually the actuary shall make an actuarial valuation of the retirement system. The valuation shall include:

1. A description of the actuarial assumptions used, and the assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience;

2. A description of any funding methods utilized or required by state law in the development of the actuarial valuation results;

3. A description of any changes in actuarial assumptions and methods from the previous year's actuarial valuation;

4. The actuarially recommended contribution rate for employers for the upcoming budget periods;

5. A thirty (30) year projection of the funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers based upon the actuarial assumptions, funding methods, and experience of the system as of the valuation date;

6. A sensitivity analysis that evaluates the impact of changes in system assumptions, including but not limited to the investment return assumption, payroll growth assumption, and medical inflation rates, on employer contribution rates, funding levels, and unfunded liabilities;

7. The full actuarial cost of the sick leave program established by KRS 161.155(10) and the full actuarial costs of annual leave program established by KRS 161.540(1)(f), including the total actuarially accrued liabilities of the sick leave program and the annual leave program determined and reported separately, and the total actuarial costs to annually finance each program as a percentage of payroll and in total dollars broken down by each funding source; and

8. A breakdown of each individual employer's share of the actuarially accrued liability as determined solely by the system's consulting actuary and assigned to each employer based upon the last participating employer of the member or annuitant as of the valuation date. The breakdown shall include a value for each individual employer, including but not limited to each individual school district, each university, each state agency, and every other individual employer who participates in the system.

(d) On the basis of the results of the valuations, the board of trustees shall make necessary changes in the retirement system within the provisions of law and shall establish the contributions payable by employers and the state specified in KRS 161.550, including changes prescribed by KRS 161.633, 161.634, 161.635, and 161.636, as applicable.

(e) For any change in actuarial assumptions, funding methods, retiree health insurance premiums and subsidies, or any other decisions made by the board that impact system liabilities and actuarially recommended contribution rates for employers and that are not made in conjunction with the actuarial investigations required by paragraph (b) of this subsec-

tion, an actuarial analysis shall be completed showing the projected impact of the changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a thirty (30) year period.

(2) Actuarial factors and actuarial cost factor tables in use by the retirement system for all purposes shall be determined by the actuary of the retirement system and approved by the board of trustees by resolution and implemented without the necessity of an administrative regulation.

(3) A copy of each actuarial investigation, actuarial analysis, and valuation required by subsection (1) of this section shall be forwarded electronically to the Legislative Research Commission no later than ten (10) days after receipt by the board, and the Legislative Research Commission shall distribute the information received to the committee staff and co-chairs of any committee that has jurisdiction over the Teachers' Retirement System. The actuarial valuation required by subsection (1)(c) of this section shall be submitted no later than November 15 following the close of the fiscal year.

History.

1960 ch. 44, 4506b-20; amend. Acts 1960, ch. 44, § 5; 1962, ch. 64, § 3; 1976, ch. 351, § 4, effective July 1, 1976; 1978, ch. 152, § 2, effective March 28, 1978; 1980, ch. 246, § 3, effective July 15, 1980; 1990, ch. 442, § 19, effective July 1, 1990; 1990, ch. 476, Pt. V, § 497, effective July 13, 1990; 2000, ch. 498, § 7, effective July 1, 2000; 2002, ch. 275, § 7, effective July 1, 2002; 2016 ch. 133, § 6, effective July 15, 2016; 2018 ch. 107, § 46, effective July 14, 2018; 2021 ch. 64, § 4, effective June 29, 2021; 2021 ch. 157, § 12, effective January 1, 2022; 2022 ch. 165, § 4, effective July 14, 2022; 2025 ch. 64, § 2, effective June 27, 2025; 2025 ch. 138, § 5, effective March 31, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 64 and 138, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Annuity tables, 102 KAR 1:160.

161.410. Medical Review Board, designation; duties. [Repealed.]

Compiler's Notes.

This section (4506b-19; amend. Acts 1960, ch. 44, § 6) was repealed by Acts 1964, ch. 43, § 23.

161.420. Funds and accounts of retirement system.

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

(1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the dividends and interest income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

(2)(a) The teachers' savings fund shall consist of:

1. The contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund; and

2. For individuals who become members of the Teachers' Retirement System on or after January 1, 2022, who are participating in the supplemental benefit component, the employer contributions paid into the supplemental benefit component and regular interest on those contributions as provided by KRS 161.635 and 161.636 that is assigned by the board of trustees from the guarantee fund.

For individuals who become members on or after January 1, 2022, the system shall account for funds in the teachers' savings fund attributable to the nonuniversity members foundational benefit component, nonuniversity members supplemental benefit component, university members foundational benefit component, and university members supplemental benefit component.

(b) A member may not borrow any amount of his or her accumulated account balance in the teachers' savings fund, or any regular interest earned thereon.

(c) The accumulated contributions or accumulated account balance of a member which are returned to him or her upon his or her withdrawal or paid to his or her estate or designated beneficiary in the event of his or her death shall be paid from the teachers' savings fund.

(d) Any accumulated account balance in the teachers' savings fund forfeited by a failure of a teacher or his or her estate to claim these contributions shall be transferred from this fund to the guarantee fund.

(e) Except as provided by paragraph (f) of this subsection, the accumulated account balance of a member in the teachers' savings fund shall be transferred from this fund to the allowance reserve fund in the event of retirement by reason of service or disability.

(f) For an individual who becomes a member of the Teachers' Retirement System on or after January 1, 2022, who is participating in the supplemental benefit component who elects to annuitize his or her accumulated account balance in the supple-

mental benefit component as prescribed by KRS 161.635(5)(a) or (b) or 161.636(5)(a) or (b), the member's accumulated account balance in the supplemental benefit component shall be transferred from this fund to the allowance reserve fund;

(3) The state accumulation fund shall consist of funds paid by employers and appropriated by the state for the purpose of providing pension annuities and survivor benefits, including any sums appropriated for meeting unfunded liabilities of pension annuities and any sums that are directed to pay down the unfunded liabilities of pension annuities as provided in KRS 161.552, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520 and 161.525. There shall also be transferred from the state accumulation fund to the teachers' savings fund, the amount needed to fund the mandatory employer contributions required by KRS 161.635 and 161.636;

(4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520 and 161.525. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;

(5)(a) The medical insurance fund, which is an account established according to 26 U.S.C. sec. 401(h), shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675, including:

1. The member contributions required by KRS 161.540(1)(a)2., (b)2., (c)3., and (d)3.;

2. The employer contribution required by KRS 161.550(1)(a)2., (b)2., (c)2., (d)3., and (e)3. and (3), except as provided in KRS 161.552;

3. State appropriations as set forth in KRS 161.550(2), unless the contributions are made to a trust fund under 26 U.S.C. sec. 115 established by the board for this purpose; and

4. Interest income from the investments of the fund from contributions received by the fund under subparagraphs 1. to 3. of this paragraph, and from income earned on those investments.

(b) All claims for benefits under KRS 161.675 shall be paid from this fund or from any trust fund under 26 U.S.C. sec. 115 as established by the board for this purpose. Any amounts deposited to the fund that are not required to meet current costs shall be maintained as a reserve in the fund for these benefits. The board shall take the necessary and appropriate steps, including promulgating administrative regulations and procedures to maintain the status of the medical insurance fund as an account subject to 26 U.S.C. sec. 401(h);

(6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund;

(7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of Section 403(b) of the Internal Revenue Code by a member of the Teachers' Retirement System with accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations in accordance with KRS Chapter 13A to manage this program;

(8) The supplemental retirement benefit fund shall consist of those funds contributed by the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The board of trustees shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer this program;

(9) The life insurance benefit fund shall consist of amounts accumulated for the purpose of providing benefits provided under KRS 161.655. The board of trustees may allocate to this fund a percentage of the employer and state contributions as provided under KRS 161.550. The allocation to this fund will be in an amount that the actuary determines necessary to fund the obligation of providing the benefits provided under KRS 161.655; and

(10) The stabilization reserve account shall consist of amounts in two (2) separate accounts:

(a) One (1) that includes employer contributions as provided by KRS 161.550(1)(d)1. and 2. that exceeds the combined actuarially required employer contribution for the foundational benefit component and the mandatory employer contribution to the supplemental benefit component as provided by KRS 161.633 and 161.635 for those individuals who become nonuniversity members on or after January 1, 2022; and

(b) One (1) that includes employer contributions as provided by KRS 161.550(1)(e)1. and 2. that exceeds the combined actuarially required employer contribution for the foundational benefit component and the mandatory employer contribution to the supplemental benefit component as provided by KRS 161.634 and 161.636 for those individuals who become university members on or after January 1, 2022.

Notwithstanding any other statute to the contrary, funds in these accounts shall only be used to pay off the unfunded liability of the pension and life insurance funds.

History.

4506b-35; amend. Acts 1964, ch. 43, § 4; 1974, ch. 395, § 6, effective July 1, 1974; 1978, ch. 152, § 3, effective March 28, 1978; 1984, ch. 253, § 6, effective July 1, 1984; 1986, ch. 440, § 4, effective July 1, 1986; 1988, ch. 363, § 3, effective July 1, 1988; 1990, ch. 442, § 2, effective September 1, 1990; 1990, ch. 476, Pt. V, § 498, effective July 13, 1990; 1992, ch. 192, § 3, effective July 1, 1992; 1994, ch. 369, § 4, effective July 1, 1994; 1998, ch. 515, § 5, effective July 1, 1998; 2000, ch. 498, § 8, effective July 1, 2000; 2002, ch. 275, § 8, effective July 1, 2002; 2004, ch. 121, § 4, effective July 1, 2004; 2008 (1st Ex. Sess.), ch. 1, § 31, effective June 27, 2008; 2010, ch. 159, § 2, effective July 1, 2010; 2018 ch. 107, § 47, effective July 14, 2018; 2021 ch. 157, § 13, effective January 1, 2022; 2025 ch. 126, § 2, effective June 27, 2025.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

Section 403(b) of the Internal Revenue Code referred to in subsection (7) of this section is codified as 26 USCS § 403(b).

Section 415 of the Internal Revenue Code, referred to in subsection (8), is codified as 26 USCS § 415.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

401(h) established pursuant to 26 U.S.C. 401(h) account, 102 KAR 1:105.

161.430. Investment of funds — Standards of conduct — Investment procurement policy — Proxy voting guidelines.

(1)(a) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities.

(b)1. The board shall contract with experienced competent investment managers to invest and manage assets of the system. The board may also employ qualified investment staff to advise it on investment matters and to invest and manage assets of the system not to exceed fifty percent (50%) of the system's assets. The board may contract with one (1) or more general investment consultants, as well as specialized investment consultants, to advise it on investment matters.

2. All internal investment staff and investment consultants shall adhere to the Code of Ethics and Standards of Professional Conduct, and all board trustees shall adhere to the Code of Conduct for Members of a Pension Scheme Governing Body, promulgated by the CFA Institute. Investment managers shall comply with the federal Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder and shall comply with all other applicable federal securities statutes and related rules and regulations that apply to investment managers.

3. No investment manager shall manage more than forty percent (40%) of the funds of the retirement system.

(c) The board may appoint an investment committee to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.

(2)(a) For the purposes of this subsection:

1. "Solely in the interest of the members and annuitants " shall be determined using only pecuniary factors and shall not include any purpose to further a nonpecuniary interest;

2. "Pecuniary factor" means a consideration having a direct and material connection to the financial risk or financial return of an investment;

3. A "material connection" is established if there is a substantial likelihood that a reasonable investor would consider it important in determining the financial risk or the financial return of an investment;

4. "Nonpecuniary interest" includes but is not limited to an environmental, social, political, or

ideological interest which does not have a direct and material connection to the financial risk or financial return of an investment;

5. "Investment manager" and "investment consultant" shall have the same definition attributed to "investment adviser" under the federal Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2;

6. "Shareholder-sponsored proposal" means a proposal by a shareholder included in the proxy statement of an issuer of securities pursuant to 17 C.F.R. sec. 240.14a-8;

7. "Economic analysis" means a written analysis of the economic impact of a shareholder-sponsored proposal, which shall include, at a minimum:

a. The subject matter of the shareholder-sponsored proposal;

b. Whether the board of directors of the issuer of securities opposes the shareholder-sponsored proposal and the stated reasons for the opposition;

c. Whether the shareholder-sponsored proposal is consistent with the investment policy of the retirement system;

d. The economic benefits and costs of implementing the shareholder-sponsored proposal, as written, in the long and short term;

e. The quantifiable impact of the shareholder-sponsored proposal, as written, on the investment returns of the funds of the retirement system; and

f. An explanation of the modeling, procedures, and processes used to complete the economic analysis; and

8.a. "Proxy adviser" means any person who is engaged in the business of providing advice, research, analysis, ratings, or recommendations specifically with respect to proxy voting and who has entered into an agreement or contracted with the board of trustees of the retirement system to receive compensation for those purposes.

b. "Proxy adviser" does not include an investment manager or investment consultant as defined in this paragraph.

(b) The board members, investment managers, investment consultants, or other fiduciaries, and proxy advisers shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:

1. For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;

2. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims;

3. By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

4. In accordance with the federal, state, and common laws, administrative regulations, and other instruments governing the system and fiduciaries.

(c) Evidence that a fiduciary has considered or acted on a nonpecuniary interest shall include but is not limited to:

1. Statements, explanations, reports, or correspondence;

2. Communications with portfolio companies;

3. Statements of principles or policies, whether made individually or jointly;

4. Votes of shares or proxies; or

5. Coalitions, initiatives, agreements, or commitments to which the fiduciary is a participant, affiliate, or signatory.

(d) When exercising or recommending a vote on a shareholder-sponsored proposal, a proxy adviser that has entered into an agreement or contracted with the board of trustees of the retirement system acts solely in the interest of the members and annuitants under this subsection if:

1. The proxy adviser's vote or recommendation is consistent with the recommendation of the board of directors of the issuer of the shares, provided:

a. The board of directors of the issuer of the shares is composed of a majority of independent directors; and

b. The recommendation of the board of directors is not for the purpose of furthering a nonpecuniary interest; or

2. The proxy adviser's vote or recommendation is inconsistent with the recommendation of the board of directors of the issuer of the shares, provided the proxy adviser conducts and documents an economic analysis demonstrating that the vote or recommendation is solely in the interest of the members and annuitants.

(3)(a) In choosing and contracting for professional investment management and consulting services, the board shall do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment manager shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management and consulting services shall be financed from the guarantee fund in amounts approved by the board.

(b) An investment manager or consultant appointed under this section shall acknowledge in writing his or her fiduciary responsibilities to the fund. To be eligible for appointment, an investment manager, consultant, or an affiliate, shall be:

1. Registered under the Federal Investment Advisers Act of 1940; or

2. A bank as defined by that Act; or

3. An insurance company qualified to perform investment services under the laws of more than one (1) state.

(c) Proxy advisers and proxy voting services shall comply with all applicable provisions of the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder, and shall comply with all other federal statutes and related rules and regulations that apply to proxy advisers and proxy voting services.

(d) No contract or agreement, whether made in writing or not, shall in any manner waive, restrict, or limit a fiduciary's liability as to any of the duties imposed by this section. Any agreement shall specify that it is made in the Commonwealth of Kentucky and governed by the laws of the Commonwealth of Kentucky, unless the agreement is in commingled investments or real property outside the Commonwealth, in which case the agreements may be made in or governed by laws outside of the Commonwealth provided that the other requirements of this section are met.

(4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines and may permit its staff and investment managers who are employed or under contract with the board pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.

(5) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.

(6) Notwithstanding any other provision of KRS 161.220 to 161.716, no funds of the Teachers' Retirement System, including fees and commissions paid to an investment manager, private fund, or company issuing securities, who manages systems assets, shall be used to pay fees and commissions to placement agents. For purposes of this subsection, "placement agent" means a third-party individual, who is not an employee, or firm, wholly or partially owned by the entity being hired, who solicits investments on behalf of an investment manager, private fund, or company issuing securities.

(7) All contracts for the investment or management of assets of the system shall not be subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the following process to develop and adopt an investment procurement policy with which all prospective contracts for the investment or management of assets of the system shall comply:

(a) On or before July 1, 2017, the board shall consult with the secretary of the Finance and Administration Cabinet or his or her designee to develop an investment procurement policy, which shall be written to meet best practices in investment management procurement;

(b) Thirty (30) days prior to adoption, the board shall tender the preliminary investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee for review and comment;

(c) Upon receipt of comments from the secretary of the Finance and Administration Cabinet or his or her designee, the board shall choose to adopt or not adopt any recommended changes;

(d) Upon adoption, the board shall tender the final investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee;

(e) No later than thirty (30) days after receipt of the investment procurement policy, the secretary or his or her designee shall certify whether the board's investment procurement policy meets or does not meet best practices for investment management procurement; and

(f) Any amendments to the investment procurement policy shall adhere to the requirements set forth by paragraphs (b) to (e) of this subsection.

(8)(a) The board shall adopt written proxy voting guidelines which are consistent with the fiduciary duties and other requirements of this section.

(b) The board shall not adopt the recommendations of a proxy adviser or proxy voting service and shall not allow such proxy adviser or proxy voting service to vote on behalf of the system, unless the proxy adviser or proxy voting service acknowledges in writing and accepts under contract its duties under this section and commits to follow the board-adopted proxy voting guidelines when voting the system's shares in order to comply with the board's fiduciary duties and other responsibilities under this section.

(c) All shares held by or on behalf of the system, and which the system is entitled to vote under state, federal, or common laws, shall be voted according to the proxy voting guidelines adopted by the board and subject to the fiduciary duties and other requirements of this section by:

1. The board, the investment committee of the board, or an employee or employees of the system who are fiduciaries under this section and are appointed or otherwise authorized by the board; or

2. A proxy adviser or proxy voting service that acknowledges in writing and accepts under contract its duties under this section and commits to follow the board-adopted proxy voting guidelines when voting the system's shares in order to comply with the board's fiduciary duties and other responsibilities under this section.

(d) All proxy votes shall be reported at least quarterly to the board. For each vote, the report shall provide:

1. The vote caption;
2. The date of the vote;
3. The company's name;
4. The vote cast for the system;
5. The recommendation of the company's management; and
6. If applicable, the recommendation of the proxy adviser or proxy voting service.

History.

4506b-21; amend. Acts 1954, ch. 215; 1958, ch. 8, § 2; 1960, ch. 44, § 7; 1962, ch. 64, § 4; 1964, ch. 43, § 5; 1966, ch. 16, § 2; 1968, ch. 136, § 3; 1972, ch. 82, § 8; 1978, ch. 152, § 4, effective March 28, 1978; 1980, ch. 246, § 10, effective July 15, 1980; 1984, ch. 253, § 7, effective July 1, 1984; 1988, ch. 363, § 4, effective July 1, 1988; 1990, ch. 442, § 18, effective July 1, 1990; 1990, ch. 476, Pt. V, § 499, effective July 13, 1990; 1992, ch. 192, § 4, effective July 1, 1992; 1994, ch. 369, § 5, effective July 1, 1994; 2002, ch. 275, § 9, effective July 1, 2002; 2004, ch. 121, § 5, effective July 1, 2004; 2008 (1st Ex. Sess.), ch. 1, § 32, effective June 27, 2008; 2012, ch. 75, § 13, effective April 11, 2012; 2017 ch. 12, § 8, effective March 10, 2017; 2019 ch. 72, § 3, effective March 25, 2019; 2023 ch. 94, § 8, effective June 29,

2023; 2025 ch. 115, § 4, effective June 27, 2025; 2025 ch. 138, § 6, effective March 31, 2025.

Compiler's Notes.
The Federal Investment Advisors Act of 1940, referred to in (3)(b)1., may be found as 15 USCS § 80b-1 et seq.

Legislative Research Commission Notes.
(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 115 and 138, which do not appear to be in conflict and have been codified together.
(3/10/2017). 2017 Ky. Acts ch. 12, sec. 12 provided that amendments made to subsection (6) in 2017 Ky. Acts ch. 12, sec. 8 governing placement agents and contracts or offerings entered into by the state-administered retirement systems shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.
(3/10/2017). 2017 Ky. Acts ch. 12, sec. 13 provided that amendments made to subsection (7) of this statute in 2017 Ky. Acts ch. 12, sec. 8 governing the application of the Model Procurement Code, KRS Chapter 45A, and related statutes to the state-administered retirement systems, shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.
(4/11/2012). 2012 Ky. Acts ch. 75, sec. 18, provides that the amendments made to subsection (6) of this statute regarding unregulated placement agents by 2012 Ky. Acts ch. 75, sec. 13, "shall apply to contracts established or contracts renewed on or after July 1, 2012."

OPINIONS OF ATTORNEY GENERAL.

Revenue bonds issued by a municipality for the creation of a parking facility are not public utility revenue bonds as the term is used in the statute. OAG 63-129.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Administration of trusts and investment of trust funds, KRS Ch. 386.
Investment policies, 102 KAR 1:175.
Investment policies for insurance trust fund, 102 KAR 1:178.
Kentucky Industrial Development Finance Authority investments, 102 KAR 1:180.

161.440. Assignment of interest to funds.

At the end of each fiscal year the board of trustees shall assign from the guarantee fund interest at the regular interest rate to the teachers' savings fund, the state accumulation fund, and the allowance reserve fund. The amounts so allowed shall be due and payable to the funds and shall be annually credited thereto by the board of trustees from interest and other earnings on money of the retirement system.

History.
4506b-23; amend. Acts 1964, ch. 43, § 6; 1984, ch. 253, § 8, effective July 1, 1984; 1990, ch. 442, § 3, effective July 1, 1990; 1990, ch. 476, Pt. V, § 500, effective July 13, 1990; 2002, ch. 275, § 10, effective July 1, 2002; 2008 (1st Ex. Sess.), ch. 1, § 33, effective June 27, 2008.

Legislative Research Commission Notes.
(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Interest credited to accounts, 102 KAR 1:135.

161.450. Cash on deposit. [Repealed.]

Compiler's Notes.
This section (4506b-24: repealed and reenact. Acts 1990, ch. 476, Pt. V, § 501, effective July 13, 1990) was repealed by Acts 1996, ch. 359, § 20, effective July 1, 1996.

161.460. Conflict of interest — Trustees, employees, members of General Assembly, public servants.

(1) No trustee or employee of the board of trustees shall:

(a) Have any interest, direct or indirect, in the gain or profits of any investment or any other legal, business, or financial transaction made by the board, except that any such trustee or employee may be a member, employee, or beneficiary of the plans administered by the board or authority;

(b) Directly or indirectly for himself or as an agent for another, use any of the assets of the retirement system in any manner except to make current and necessary payments authorized by the board;

(c) Become an endorser, surety, or obligor for moneys loaned to or borrowed from the board;

(d) Have a contract or agreement with the retirement system, individually or through a business owned by the trustee or the employee;

(e) Use his or her official position with the retirement system to obtain a financial gain or benefit or advantage for himself or herself or a family member;

(f) Use confidential information acquired during his or her tenure with the retirement system to further his or her own economic interests or that of another person; or

(g) Hold outside employment with, or accept compensation from, any person or business with which he or she has involvement as part of his or her official position with the retirement system. The provisions of this subsection shall not prohibit a trustee from serving as an employee of an agency participating in the Kentucky Teachers' Retirement System.

(2) No trustee or employee of the board of trustees, who has served as a trustee or employee of the board on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees for a period of five (5) years following termination of his or her position, except that any such trustee or employee may be a member, employee, or beneficiary of the Teachers' Retirement System.

(3)(a) No person who is serving as a member of the General Assembly or is a public servant as defined by KRS 11A.010(9) shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees, except that any such member or public servant may be a member, employee, or beneficiary of the Teachers' Retirement System.

(b) No person who was serving as a member of the General Assembly on or after July 1, 2017, or was serving as a public servant as defined by KRS 11A.010(9) on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees for a period of five (5) years following termination of his or her position, except that any such member or public servant may be a member, employee, or beneficiary of the Teachers' Retirement System.

History.

4506b-25; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 502, effective July 13, 1990; 2012, ch. 75, § 14, effective April 11, 2012; 2018 ch. 107, § 48, effective July 14, 2018; 2019 ch. 72, § 4, effective March 25, 2019.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (4506b-25) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 502, effective July 13, 1990.

161.470. Membership — Forfeiture of service credit — Termination of membership — Forfeiture of benefits — Reinstatement — Payment of accumulated account balance.

(1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.

(2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his or her deposits may repay the system the amount withdrawn plus interest and reestablish his or her service credit as provided in subsection (3) of this section.

(3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit.

(4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.

(5) Membership in the retirement system shall be terminated:

(a) By retirement for service;

(b) By death;

(c) By withdrawal of the member's accumulated account balance;

(d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years; or

(e) For persons whose membership begins on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his or her employment as provided in subparagraphs 1. and 2. of this paragraph.

1. Notwithstanding any provision of law to the contrary, a person whose membership begins on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his or her employment shall forfeit rights and benefits earned under the retirement system, except for the return of his or her accumulated contributions and interest credited on those contributions through the date of conviction.

2. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

Except for paragraph (e) of this subsection, upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of these funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

(6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his or her accumulated account balance, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state or employer with a view to his or her retirement, except as provided by KRS 161.635 and 161.636, or to contributions made to the medical insurance fund. A member who is withdrawing from service prior to retirement eligibility shall be entitled to a refund following sixty (60) days after his or her last day of employment. If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his or her service for the purpose of obtaining service credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form. A member may not withdraw any part of his or her accumulated account

balance in the retirement system except as provided by this subsection.

(7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member, unless a beneficiary was otherwise applicably designated by the deceased member, then to the beneficiary, all of his or her accumulated account balance, including any payments made by the member to the state accumulation fund, but the estate or beneficiary shall have no claim on any contributions made by the state or employer with a view to the retirement of the member, except as provided by KRS 161.635 and 161.636, or to contributions made to the medical insurance fund.

(8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

History.

4506b-27; amend. Acts 1960, ch. 44, § 8; 1962, ch. 64, § 5; 1964, ch. 43, § 7; 1968, ch. 136, § 4; 1972, ch. 82, § 9; 1974, ch. 395, § 7; 1976, ch. 351, § 5, effective July 1, 1976; 1978, ch. 152, § 5, effective March 28, 1978; 1980, ch. 206, § 2, effective July 1, 1980; 1982, ch. 326, § 6, effective July 1, 1982; 1984, ch. 253, § 9, effective July 1, 1984; 1986, ch. 440, § 5, effective July 1, 1986; 1988, ch. 363, § 5, effective July 1, 1988; 1990, ch. 442, § 4, effective July 1, 1990; 1990, ch. 476, Pt. V, § 503, effective July 13, 1990; 2000, ch. 273, § 2, effective July 14, 2000; 2002, ch. 275, § 11, effective July 1, 2002; 2018 ch. 107, § 49, effective July 14, 2018; 2021 ch. 192, § 6, effective June 29, 2021; 2021 ch. 157, § 14, effective January 1, 2022; 2025 ch. 138, § 7, effective March 31, 2025.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

OPINIONS OF ATTORNEY GENERAL.

Where a person elected not to become a member of the State Teachers' Retirement System at its beginning but contributions were taken out of his salary, when he returned to Kentucky after previously withdrawing the contributions, he would return as a former member under subsection (2) of this section. OAG 64-120.

If additional teaching activity falls within the category of being in fact a part of the regularly approved program of the public school district or the vocational school for which certification or a professional level of training is required as a condition of employment, then teachers' retirement applies and the teacher would not be eligible for social security participation. The additional hours requiring services beyond the normal teaching day are regarded as an extension of the regular full-time employment. OAG 69-430.

ROTC teachers may be employed without being certified but an uncertified ROTC teacher may not be a member of the Kentucky Teachers' Retirement System. OAG 74-387.

The two-year service requirement is necessary to reinstate an account with the teachers' retirement system and may be met by any current service accumulated by any active participating member of any of the retirement systems enumerated under this section. OAG 74-565.

While subsection (5) of this section evidences the intent of the legislature that "service retirement" be of such significance so as to terminate membership in the system, "disability retirement" is not cast in such terms of finality. OAG 79-522, 1979 Ky. AG LEXIS 123.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Minimum distribution, 102 KAR 1:170.
New entrants, 102 KAR 1:039.
Refunds, 102 KAR 1:060.

161.480. Statement of member — Designation of beneficiaries.

(1)(a) Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall designate a primary beneficiary or two (2) or more cobeneficiaries to receive any benefits accruing from the death of the member.

(b) A contingent beneficiary may be designated in addition to the primary beneficiary or cobeneficiaries. The member may name more than one (1) contingent beneficiary.

(c) Any beneficiary designation made by the member, including the estate should the estate become the beneficiary by default, shall remain in effect until changed by the member on forms prescribed by the Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, even that of a trust, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. An individual who is married prior to becoming a member of the retirement system and remains married at the time of becoming a member shall have his or her spouse considered the primary beneficiary, unless the member designates another beneficiary. A final divorce decree shall terminate an ex-spouse's status as either primary beneficiary, cobeneficiary, or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary beneficiary, cobeneficiary, or contingent beneficiary.

(d) To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's accumulated account balance in the retirement system as provided under KRS 161.470(7). A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.

(e) In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be

deemed to be the beneficiary, unless the member is married at the time of his or her death, in which case the spouse shall be deemed the beneficiary.

(f) Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system.

(2) The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section. The provisions of this section shall not apply to any account from which a member is drawing a retirement allowance or to the life insurance benefit available under KRS 161.655.

History.
Repealed and reenacted by 2021 ch. 157, § 15, effective January 1, 2022.

Legislative Research Commission Notes.
(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

161.490. Investigation of statement.

To the extent to which it is used in determining the liability of any fund of the retirement system, the board of trustees shall ascertain the correctness of the statement filed under KRS 161.480 by the best evidence it is able to obtain. If official records are not available as to length of service, age, salary, or other information required for the administration of the retirement system, the board may use its discretion as to the evidence to be accepted.

History.
4506b-30; Acts 1964, ch. 43, § 9; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 505, effective July 13, 1990.

Compiler's Notes.
This section (4506b-30: amend. Acts 1964, ch. 43, § 9) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 505, effective July 13, 1990.

161.500. Service credit.

(1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

(2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.

(3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.

(4) No service credit shall be granted in the Teachers' Retirement System for service that has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

History.
4506b-31; amend. Acts 1962, ch. 64, § 6, 1972, ch. 82, § 10; 1984, ch. 253, § 10; effective July 1, 1984; 1988, ch. 363, § 7, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 506, effective July 13, 1990; 1998, ch. 515, § 6, effective July 1, 1998; 2000, ch. 498, § 9, effective July 1, 2000; 2018 ch. 107, § 51, effective July 14, 2018; 2021 ch. 192, § 8, effective June 29, 2021; 2021 ch. 157, § 16, effective January 1, 2022.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.
This section (4506b-31; amend. Acts 1962, ch. 64, § 6, 1972, ch. 82, § 10; 1984, ch. 253, § 10; effective July 1, 1984; 1988, ch. 363, § 7, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 506, effective July 13, 1990.

161.505. Prior service credit to war veterans for military service. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1954, ch. 64) was repealed by Acts 1976, ch. 351, § 23.

161.507. Prior service credit for veterans — Credit for military service and uniformed service by active contributing member.

(1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and the administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retire-

ment system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or (2) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.

(2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.

(4)(a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall pay to the retirement system the full actuarial cost of the service credit purchased as provided under KRS 161.220(22). These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.

(b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid. Members participating in the supplemental benefit component who make the regular member contribution required by this paragraph, shall also receive the mandatory employer contributions in the supplemental benefit component for the period of service purchased.

(5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum. The member shall pay the full actuarial cost of this service in the military reserves or the National Guard as provided in KRS 161.220(22). Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or (2) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

History.

Enact. Acts 1962, ch. 64, § 20; 1968, ch. 136, § 5; 1972, ch. 82, § 11; 1972, ch. 342, § 1; 1974, ch. 395, § 8; 1976, ch. 351, § 7, effective July 1, 1976; 1980, ch. 206, § 3, effective July 1, 1980; 1982, ch. 166, § 31, effective July 15, 1982; 1984, ch. 253, § 11, effective July 1, 1984; 1984, ch. 302, § 3, effective July 13, 1984; 1986, ch. 440, § 6, effective July 1, 1986; 1990, ch. 442, § 5, effective July 1, 1990; 1990, ch. 476, Pt. V, § 507, effective July 13, 1990; 1992, ch. 293, § 1, effective July 14, 1992; 1996, ch. 359, § 4, effective July 1, 1996; 1998, ch. 105, § 27, effective July 15, 1998; 2000, ch. 385, § 41, effective July 14, 2000; 2000, ch. 498, § 10, effective July 1, 2000; 2002, ch. 275, § 13, effective July 1, 2002; 2004, ch. 121, § 7, effective July 1, 2004; 2018 ch. 107, § 52, effective July 14, 2018; 2021 ch. 157, § 17, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 385 and 498. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 498, which was last enacted by the General Assembly, prevails under KRS 446.250.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

1. Teacher.

Where the plaintiff was employed as a teacher in this Commonwealth when he was inducted into military service,

he was entitled to service credit for his military service, even though he was not reemployed by the same school system. Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

This section could not allow prior service credit where a person was released from active service, subject to call to active service, to follow his own personal pursuits. OAG 72-404.

An active member may receive credit for military service under the Kentucky Teachers' Retirement System although he is drawing benefits from another state based in part upon the same military service. OAG 74-374.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Credit for military service, 102 KAR 1:057.

Full actuarial cost purchase, 102 KAR 1:350.

161.510. Prior service allowed new members. [Repealed.]

Compiler's Notes.

This section (Repealed and reenact., Acts 1990, ch. 476, Pt. V, § 508, effective July 13, 1990) was repealed by Acts 2000, ch. 498, § 22, effective July 1, 2000.

161.515. Out-of-state service credit — Contribution — Kentucky Peace Corps and federal Peace Corps service credit — Retirement factor.

(1) For the purposes of this section, "out-of-state service" shall mean service in any state in a comparable position on a full-time basis, which would be covered if in Kentucky.

(2)(a) An active contributing member who has been a contributing member of the retirement system for at least one (1) full scholastic year subsequent to the latest out-of-state service, may present for credit service rendered out of state, not to exceed ten (10) years actually taught as a certified or licensed teacher. All members who elect to purchase this service shall pay to the retirement system the full actuarial cost as provided under KRS 161.220(22). For each year of which the retirement system shall accept payment, one (1) year of service credit shall be given. For members who purchased this service under the cost formula as it existed under this subsection on June 30, 2005, this credit may not be used to meet the service requirements of KRS 161.525, 161.600, or 161.661, except as provided in subsection (2)(c) of this section. No credit shall be granted for service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(b) A member of the retirement system having teaching service in the elementary or secondary schools operated by the United States overseas or in this country, or in a public college or university in Kentucky, not included in the Teachers' Retirement System of the State of Kentucky, may present this service for credit in the retirement system on the same basis as provided above for out-of-state service credit; however, no service may be presented which shall be used as a basis for retirement benefits in any program supported wholly or in part by a public institution or governmental agency. This service when added to service credited under subsection (2)(a) of this section shall not exceed a total of ten (10) years' service credit.

(c) A member having service referred to in subsection (2)(a) or (2)(b) of this section who purchased this service under the cost formula as it existed under those subsections on June 30, 2005, may elect to use this service for meeting the requirements of KRS 161.600(1)(c) by making an additional contribution to the state accumulation fund equal to a member contribution rate of eight percent (8%) for each year so used. These payments shall not be picked up as described in KRS 161.540(2). The salary base to be used in determining this additional contribution shall be the final average salary which is used in calculating the member's regular retirement annuity.

(3) Members entering the Teachers' Retirement System for the first time, July 1, 1976, and after this date, shall not receive credit for service defined in subsections (2)(a) or (2)(b) of this section in excess of one (1) year of credit for each two (2) years of Kentucky service in a covered position or ten (10) years, whichever is the lesser number.

(4) A member, having completed service as a volunteer in the Kentucky Peace Corps created by KRS 154.1-720, may purchase service credit for the time served in the corps on the same basis as provided in this section for the purchase of out-of-state service credit. A member, having completed service as a federal Peace Corps volunteer, may purchase up to two (2) years of service credit for time served in the Peace Corps on the same basis as provided in this section for the purchase of out-of-state service credit.

(5) Service purchased under this section by members shall be credited based upon the retirement factor established by KRS 161.620, as applicable.

History.

Enact. Acts 1946, ch. 111, § 2; 1960, ch. 44, § 9; 1962, ch. 64, § 8; 1966, ch. 16, § 4; 1972, ch. 82, § 13; 1974, ch. 395, § 9; 1976, ch. 351, § 9, effective July 1, 1976; 1982, ch. 166, § 32, effective July 15, 1982; 1984, ch. 253, § 12, effective July 1, 1984; 1984, ch. 302, § 4, effective July 13, 1984; 1986, ch. 442, § 1, effective July 15, 1986; 1988, ch. 363, § 8, effective July 1, 1988; 1990, ch. 442, § 6, effective July 1, 1990; 1990, ch. 476, Pt. V, § 509, effective July 13, 1990; 1992, ch. 100, § 13, effective July 14, 1992; 1994, ch. 369, § 7, effective July 1, 1994; 1994, ch. 406, § 8, effective July 15, 1994; 1994, ch. 485, § 33, effective July 15, 1994; 1996, ch. 359, § 5, effective July 1, 1996; 2002, ch. 275, § 14, effective July 1, 2002; 2004, ch. 121, § 8, effective July 1, 2004; 2008, ch. 78, § 6, effective July 1, 2008; 2018 ch. 107, § 53, effective July 14, 2018; 2021 ch. 192, § 9, effective June 29, 2021; 2021 ch. 157, § 18, effective January 1, 2022.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore,

constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

NOTES TO DECISIONS

Cited in:
Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

A teacher who retires from his Kentucky teaching position without informing the teachers' retirement system of any teaching service he may have accumulated as a teacher outside the state and whose annuity is calculated on the basis of his service in Kentucky cannot be credited with his out-of-state service more than two years after the effective date of his retirement. OAG 74-671.

An individual who taught in schools in East Africa as part of the United States Agency for International Development program in schools which were part of the Uganda and Kenya educational systems and under the direct control of those countries may not be credited by the Teachers' Retirement System for such teaching service. OAG 76-364.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Full actuarial cost purchase, 102 KAR 1:350.
Out-of-state service interest rates, 102 KAR 1:050.

161.516. Teachers in noneducational state institutions authorized to come into retirement system. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 102) was repealed by Acts 1962, ch. 64, § 9.

161.520. Payment of survivor's benefit on death.

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

(1) Where there is a surviving widow or widower who is named as the primary beneficiary of the member's retirement account, the benefit shall be:

(a) One hundred eighty dollars ($180) per month with no restriction on other income;

(b) Two hundred forty dollars ($240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars ($6,600) per year or five hundred fifty dollars ($550) per month; or

(c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.600(1) or (2), as applicable. In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision;

(2)(a) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars ($200) per month in the case of one (1) child, three hundred forty dollars ($340) per month in the case of two (2) children, four hundred dollars ($400) per month in the case of three (3) children, and four hundred forty dollars ($440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.

(b) Notwithstanding any provision of law to the contrary, the surviving spouse may elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section only if the surviving spouse is designated as the primary beneficiary and:

1. Is a biological or adoptive parent of all children eligible for a benefit under this subsection and has not had his or her parental rights terminated; or

2. Has been appointed as legal guardian of all of the children eligible under paragraph (a) of this subsection.

(c) To elect a lump-sum refund of the member's accumulated account balance under paragraph (b) of this subsection, the surviving spouse who is designated as the primary beneficiary must sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsection (1) of this section. The surviving spouse shall not waive the survivorship benefits available under this subsection or subsections (1) and (6) of this section if any of the member's children have attained age eighteen (18) or older unless all of those children consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection;

(3)(a) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his or her dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars ($200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.

(b) Notwithstanding any provision of law to the contrary, the surviving spouse shall not elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section unless:

1. The surviving spouse is designated as the primary beneficiary;

2. The surviving spouse has been appointed by the court as guardian, conservator, or other fiduciary with sufficient general or specific authority to waive the survivorship benefits available under this subsection for any child or children age eighteen (18) or older who have been adjudicated incompetent to make decisions on their own behalf by a court of law; and

3. Any child or children age eighteen (18) or older who are mentally competent to make decisions on their own behalf consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection.

(c) If eligible to elect a lump-sum refund of the member's accumulated account balance, the surviving spouse shall sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsections (1) and (2) of this section;

(4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars ($200) per month for one (1) parent or two hundred ninety dollars ($290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member;

(5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars ($165) per month. In order to qualify, the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period;

(6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school level. The benefit to a dependent parent or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency;

(7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary;

(8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable;

(9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, or in the event that the surviving spouse elects not to receive survivorship benefits on his or her own behalf or on behalf of any of the member's children as permitted under subsections (2) and (3) of this section, the board of trustees shall pay to the estate or the designated beneficiaries of the deceased member a refund of his or her accumulated account balance as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated account balance at the time of death, the board of trustees shall pay to the estate or designated beneficiaries of the deceased member the balance of the accumulated account balance;

(10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits; and

(11) Benefits under subsections (2) and (3) of this section shall apply to a child who is a legally adopted survivor at the time of the death of the member. This provision shall be retroactive to include a child who was born after January 1, 1990, and is a legally adopted survivor of a member whose death occurred prior to July 15, 2008.

History.

4506b-33; amend. Acts 1958, ch. 7, § 2; 1962, ch. 64, § 10; 1964, ch. 43, § 10; 1966, ch. 16, § 5; 1968, ch. 136, § 6; 1970, ch. 54, § 1; 1972, ch. 82, § 14; 1974, ch. 386, § 31; 1974, ch. 395, § 10; 1976, ch. 351, § 10, effective July 1, 1976; 1978, ch. 152, § 7, effective March 28, 1978; 1980, ch. 206, § 4, effective July 1, 1980; 1980, ch. 246, § 15, effective July 15, 1980; 1984, ch. 253, § 13, effective July 1, 1984; 1986, ch. 440, § 7, effective July 1, 1986; 1988, ch. 363, § 9, effective July 1, 1988; 1990, ch. 442, § 7, effective July 1, 1990; 1990, ch. 476, Pt. V, § 510, effective July 13, 1990; 1992, ch. 192, § 6, effective July 1, 1992; 1994, ch. 369, § 8, effective July 1, 1994; 2004, ch. 121, § 9, effective July 1, 2004; 2006, ch. 189, § 4, effective July 1, 2006; 2008, ch. 67, § 1, effective July 15, 2008; 2008, ch. 78, § 7, effective July 1, 2008; 2018 ch. 107, § 54, effective July 14, 2018; 2021 ch. 157, § 19, effective January 1, 2022; 2021 ch. 192, § 10, effective June 29, 2021; 2021 ch. 96, § 11, effective June 29, 2021; 2026 ch. 34, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch.

107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

NOTES TO DECISIONS

Cited in:
Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

An assignment of accumulated contributions is not revoked by marriage. OAG 63-483.

The statute permits a refund of accumulated contributions to the estate of the teacher, if he dies intestate or does not assign such contributions, or to his assigned beneficiary if he names one. OAG 63-483.

A decree of divorce providing for the restoration of property under KRS 403.060 (repealed) operates to extinguish the interest of a deceased teacher's former spouse which arose by virtue of being designated as the named beneficiary of her teachers retirement system benefits prior to the divorce. OAG 67-380.

Survivors who in 1962 elected to remain under the 1958 statute would also be eligible to take advantage of the 1970 increased benefits if they so elected. OAG 70-487.

A widow who would otherwise be entitled to a widow's allowance under this section would not be precluded from such benefit by the fact that a divorce was pending between her and her husband at the time of his death or by the entry of a divorce decree after his death. OAG 70-508.

In the case of a deceased teacher, under this section, either survivors' benefits or a refund of contributions, but not both, is to be paid and the designated beneficiary gets a first chance. OAG 70-625.

A widow would not be entitled to a survivor's benefit under this section if she is convicted of a felony for her husband's death. OAG 70-692.

Where a widow is under indictment resulting from her husband's death, no payments should be made as a widow's benefit under this section until such time as she is acquitted on the charge. OAG 70-692.

Where, following a teacher's death, his children were actually living with their mother but a judgment had been entered granting custody to their grandfather as legal guardian, payments for the children under the survivor's benefits should be made to the grandfather. OAG 70-692.

One or more surviving minor children of deceased parents, both of whom were members of the teachers' retirement system, were entitled to survivor benefits under the statute from the retirement account of each of the parents. OAG 75-184.

Where a teacher applied for service retirement February 17, 1975, to be effective the coming fiscal year and chose a straight life annuity with a refundable balance to her beneficiary, such retirement became effective on July 1, 1975, and the fact that she died July 29, 1975, prior to receiving her first check has no bearing on her retirement and her husband is entitled only to a refund of the balance in her account rather than the amounts provided under this section or KRS 161.525. OAG 75-579.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
"Dependent" defined, KRS 161.220.

Benefit eligibility conditions for members providing part-time and substitute services, 102 KAR 1:310.

Minimum distribution, 102 KAR 1:170.

Surviving children's benefits, 102 KAR 1:165.

161.522. Survivors of certain members retired for disability may elect annuity.

Upon the death of a member retired for disability who had a minimum of twenty-seven (27) years of service at the time of death, except as provided in KRS 161.661(6), the spouse, if named as the primary beneficiary of the member's account, shall be entitled to elect, in lieu of a refund of the member's account, an annuity actuarially equivalent to the annuity that would have been paid to the deceased member had retirement for service been effective on the day immediately preceding the member's death. This option shall be available only during the entitlement period described under KRS 161.661(3) and (4) prior to the recalculation of the member's disability allowance under KRS 161.661(5). In selecting this right, the spouse shall be limited to selecting an option providing a straight life annuity with refundable balance or a term certain option. There shall be a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This section applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1988, and to surviving spouses of members who die on or after July 1, 1984, except that the member shall have been retired for disability with a minimum of thirty (30) years of service if either of these two (2) conditions were met prior to July 1, 1990.

History.
Enact. Acts 1984, ch. 253, § 14, effective July 1, 1984; 1990, ch. 442, § 8, effective July 13, 1990; 1990, ch. 476, Pt. V, § 511, effective July 13, 1990; 1994, ch. 369, § 9, effective July 1, 1994; 1996, ch. 359, § 6, effective July 1, 1996; 2002, ch. 275, § 15, effective July 1, 2002; 2008, ch. 78, § 8, effective July 1, 2008; 2018 ch. 107, § 55, effective July 14, 2018; 2021 ch. 157, § 20, effective January 1, 2022.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Minimum distribution, 102 KAR 1:170.

161.525. Death of member eligible to retire — Options of beneficiary — Monthly minimum allowance to surviving spouse — Payments to special needs trust.

(1) Upon death of a member in active contributing status at the time of death, who was eligible to retire by reason of service, the spouse, if named as the primary beneficiary of the member's retirement account, or in the absence of an eligible spouse a legal dependent of the member, if named as the primary beneficiary, shall be entitled to elect, in lieu of a refund of the member's accumulated account balance or benefits provided in KRS 161.520, an annuity actuarially equivalent at the

attained age of the beneficiary to the annuity that would have been paid to the deceased member had retirement been effective on the day immediately preceding the member's death. Under the provisions of KRS 61.680, benefits shall be processed as if the member retired for service. In exercising this right the spouse or legal dependent shall be limited to selecting an option providing either a straight life annuity with refundable balance or a term certain option. A spouse may receive the annuity provided by this section at the same time as children are qualifying for survivors' benefits under the provisions of KRS 161.520; however, a legal dependent, other than a spouse, may not receive these payments if children have qualified for benefits under that section.

(2) A spouse qualifying for an annuity under subsection (1) of this section may defer the payments in order to reduce the actuarial discounts to be applied due to age.

(3) Upon death of a member in active contributing status at the time of his or her death, who had a minimum of twenty-seven (27) years of service, the spouse, if named as the primary beneficiary of the member's account shall be entitled to a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This provision applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1986, and to surviving spouses of members who die on or after July 1, 1986.

(4) If the surviving spouse or legal dependent eligible for a benefit under subsection (1) of this section is the sole beneficiary of a special needs trust, the annuity payments made under subsection (1) of this section shall be made payable to the special needs trust.

History.

Enact. Acts 1964, ch. 43, § 22; 1968, ch. 136, § 7; 1972, ch. 82, § 15; 1976, ch. 351, § 11, effective July 1, 1976; 1986, ch. 440, § 8, effective July 1, 1986; 1990, ch. 442, § 9, effective July 1, 1990; 1990, ch. 476, Pt. V, § 512, effective July 13, 1990; 1994, ch. 369, § 10, effective July 1, 1994; 1996, ch. 359, § 7, effective July 1, 1996; 2004, ch. 121, § 10, effective July 1, 2004; 2018 ch. 107, § 56, effective July 14, 2018; 2021 ch. 157, § 21, effective January 1, 2022; 2026 ch. 18, § 9, effective July 15, 2026.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

OPINIONS OF ATTORNEY GENERAL.

This section confers upon a deceased teacher's surviving spouse, providing the spouse is the designated beneficiary, the annuity the teacher could have taken the day before his death, and is limited by the provisions of KRS 161.620(4). OAG 67-443.

The survivor of a deceased member who, pursuant to this section, accepts a ten year certain annuity, cannot, without the consent of his beneficiary, change the beneficiary. OAG 70-365.

Where a teacher filed for retirement benefits by electing an annuity while designating her sister as beneficiary and then died two days before her retirement, the designation of beneficiary was effective and the sister was entitled to receive the annuity the deceased teacher would have received. OAG 71-466.

Where a teacher applied for service retirement February 17, 1975, to be effective the coming fiscal year and chose a straight life annuity with a refundable balance to her beneficiary, such retirement became effective on July 1, 1975, and the fact that she died July 29, 1975, prior to receiving her first check has no bearing on her retirement and her husband is entitled only to refund of the balance in her account rather than the amounts provided under KRS 161.520 or this section. OAG 75-579.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Minimum distribution, 102 KAR 1:170.

161.530. Restoration of forfeited account — Exception.

Except as provided in KRS 6.696, if a member, whose account has been forfeited under previous provisions of this section, shall return to teaching in a covered position in Kentucky, and reinstates the lost service credit as provided in KRS 161.470(3), the funds transferred from the member's account shall be restored to his account, without interest, and shall be credited against the payment required for reinstatement of service credit.

History.

4506b-34; amend. Acts 1972, ch. 82, § 16; 1976, ch. 351, § 12, effective July 1, 1976; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 513, effective July 13, 1990; 1993 (1st Ex. Sess.), ch. 4, § 81, effective September 16, 1993; 1994, ch. 369, § 11, effective July 1, 1994.

Compiler's Notes.

This section (4506b-34; amend. Acts 1972, ch. 82, § 16; 1976, ch. 351, § 12, effective July 1, 1976) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 513, effective July 13, 1990.

161.540. Members' contributions — Picked-up contributions.

(1)(a) Each individual who becomes a contributing nonuniversity member prior to January 1, 2022, shall contribute to the retirement system twelve and eight hundred fifty-five thousandths percent (12.855%) of annual compensation, of which:

1. Nine and one hundred five thousandths percent (9.105%) of annual compensation shall be used to fund pension benefits; and

2. Three and three-quarters percent (3.75%) of annual compensation shall be used to fund retiree health benefits.

(b) Each individual who becomes a contributing university member prior to January 1, 2022, shall contribute to the retirement system ten and four-tenths percent (10.4%) of annual compensation, of which:

1. Seven and six hundred twenty-five thousandths percent (7.625%) of annual compensation shall be used to fund pension benefits; and

2. Two and seven hundred seventy-five thousandths percent (2.775%) of annual compensation shall be used to fund retiree health benefits.

(c) Each individual who becomes a contributing nonuniversity member on or after January 1, 2022, shall contribute to the retirement system fourteen and three-quarters percent (14.75%) of annual compensation, of which:

1. Nine percent (9%) of annual compensation shall be used to fund pension benefits in the foundational benefit component as described by KRS 161.633. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by KRS 161.635;

2. Two percent (2%) of annual compensation shall fund the required employee contribution in the supplemental benefit component in KRS 161.635, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs of the foundational benefit component within the provisions of KRS 161.633; and

3. Three and three-quarters percent (3.75%) of annual compensation shall be used to fund retiree health benefits.

(d) Each individual who becomes a contributing university member on or after January 1, 2022, shall contribute to the retirement system nine and seven hundred seventy-five thousandths percent (9.775%) of annual compensation, of which:

1. Five percent (5%) of annual compensation shall be used to fund pension benefits in the foundational benefit component as described by KRS 161.634. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by KRS 161.636;

2. Two percent (2%) of annual compensation shall fund the required employee contribution in the supplemental benefit component in KRS 161.636, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs of the foundational benefit component within the provisions of KRS 161.634; and

3. Two and seven hundred and seventy-five thousandths percent (2.775%) of annual compensation shall be used to fund retiree health benefits.

(e) When the funds established to actuarially fund pension annuities and the medical insurance fund established under KRS 161.420 become fully funded as determined by the annual actuarial valuation, the board of trustees shall recommend to the General Assembly that the contributions required under paragraph (a)2., (b)2., (c)3., or (d)3. of this subsection shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.

(f) Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall, subject to KRS 161.220(10), be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. Notwithstanding the provisions of this subsection or any other statute to the contrary, for retirement calculation purposes, members may only be credited for payment of annual leave under the following conditions:

1. Payment by an employer for annual leave shall be equally available to all members serving under contracts requiring the same number of worked days and greater; and

2. At least two (2) members of the employer shall receive payment for annual leave.

(g) The contribution of members shall not exceed the applicable percentages on annual compensation as set forth in this section or as where otherwise limited by statute. When a member retires, if it is determined that he or she has made contributions on a salary in excess of the amount to be included for the purpose of calculating his or her final average salary, any excess contribution shall be refunded in a lump sum to the member's employer for distribution to the member.

(2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010. The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

History.

4506b-36; amend. Acts 1946, ch. 111, § 3; 1954, ch. 196, § 3; 1960, ch. 44, § 10; 1964, ch. 43, § 11; 1970, ch. 168, § 2; 1974, ch. 395, § 11; effective July 1, 1974; 1978, ch. 152, § 8, effective March 28, 1978; 1980, ch. 188, § 120, effective July 15, 1980; 1980, ch. 206, § 5, effective July 1, 1980; 1982, ch. 166, § 4, effective July 15, 1982; 1982, ch. 326, § 7, effective July 1, 1982; 1984, ch. 253, § 15, effective July 1, 1984; 1984, ch. 302, § 2, effective July 13, 1984; 1988, ch. 240, § 3, effective July 15, 1988; 1988, ch. 260, § 3, effective July 15, 1988; 1988, ch. 363, § 10, effective July 1, 1988; 1990, ch. 476, Pts. V and VII D, §§ 514, 648, effective April 11, 1990; 1992, ch. 192, § 7, effective July 1, 1992; 1994, ch. 369, § 12, effective July 1, 1994; 1994, ch. 469, § 35, effective July 15, 1994; 1996, ch. 359, § 8, effective July 1, 1996; 2002, ch. 275, § 16, effective July 1, 2002; 2008, ch. 11, § 1, effective April 7, 2008; 2008, ch. 78, § 9, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 34, effective June 27, 2008; 2010, ch. 159, § 3, effective July 1, 2010; 2010, ch. 164, § 6, effective July 1, 2010; 2018 ch. 107, § 57, effective July 14, 2018; 2018 ch. 171, § 94, effective April 14, 2018; 2018 ch. 207, § 94, effective April 27, 2018; 2021 ch. 192, § 11, effective June 29, 2021; 2021 ch. 157, § 7, effective January 1, 2022; 2025 ch. 126, § 3, effective June 27, 2025.

Compiler's Notes.
The Internal Revenue Code, referred to herein, is codified as Title 26, USCS.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 28, (3) at 2066.

OPINIONS OF ATTORNEY GENERAL.

Since a state's legislator's salary does not fall within the definition of "annual compensation" in KRS 161.220, a legislator who retains membership in the KTRS cannot legally make contributions to the KTRS or acquire credit in the KTRS, but must, in effect, relinquish his participation in the KTRS and participate in the KERS in order to acquire any service credit in a public retirement system — in this case the KERS. OAG 78-226, 1978 Ky. AG LEXIS 494.

University faculty members of Kentucky Teachers' Retirement System who are also covered by the social security system are not being discriminated against by having smaller contributions and benefits factors than other such members, as of 1980, since the differences are designed to offset social security increases. OAG 78-729, 1978 Ky. AG LEXIS 124.

Subsection (2) of this section and KRS 161.560, which are clear and unequivocal on their face, require an interpretation which would foreclose any direct payment by a local board of education to the Kentucky Teachers' Retirement System of a portion of the employee's contributions to the retirement system; however, these sections would not exclude any arrangement whereby a local board of education would reimburse its employees for a portion of the employee's contributions into the retirement system after the payroll deductions have already been made and credited to the KTRS. OAG 81-373, 1981 Ky. AG LEXIS 55.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Internal accounting, 702 KAR 3:130.
New entrants, 102 KAR 1:039.

161.545. Contributions and service credit for substitute service, part-time service, or leave of absence — Contributions not to be picked up — Purchases of service credit for leaves of absence for health, child-rearing, and educational improvement reasons.

(1)(a) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees if contributions were not otherwise made as a result of the service.

(b) Members placed on leave of absence during a period of full-time employment as defined in KRS 161.220(21) may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence during a period of full-time employment as defined in KRS 161.220(21) since July 1, 1964, for reasons of health as defined under the Federal Family Medical Leave Act of 1993, 29 U.S.C. secs. 2601 et seq., child rearing, or to improve their educational qualifications, and did not purchase the leave of absence as provided in subsection (1) of this section may obtain credit for the leave of absence as provided under the administrative regulations of the board of trustees and under the following conditions:

(a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence or by other documentation that was generated contemporaneously with the leave that is determined by the retirement system to reasonably establish that a leave of absence was granted;

(b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing the appropriate contributions in the state accumulation fund and medical insurance fund; and

(c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.

(3) Sabbatical leaves of absence granted by any one (1) of the five (5) universities identified in KRS 161.220(4)(b) for which the university employee is provided full pay at the rate he or she was provided as a full-time employee immediately preceding the sabbatical leave shall be deemed as full-time employment provided for the university, and employee and employer contributions shall be made in accordance with KRS 161.540 and 161.550.

(4) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(5) Notwithstanding any other provisions of this section to the contrary, purchase of service credit under subsection (2) of this sectionfor individuals who become members on or after July 1, 2008, shall be purchasable only at the full actuarial cost.

History.
Enact. Acts 1960, ch. 44, § 14; 1968, ch. 136, § 8; 1974, ch. 395, § 12, effective July 1, 1974; 1978, ch. 152, § 9, effective March 28, 1978; 1980, ch. 206, § 6, effective July 1, 1980; 1982, ch. 166, § 12, effective July 15, 1982; 1984, ch. 253, § 16, effective July 1, 1984; 1984, ch. 302, § 5, effective July 13, 1984; 1986, ch. 440, § 9, effective July 1, 1986; 1988, ch. 363, § 11, effective July 1, 1988; 1988, ch. 373, § 3, effective July 15, 1988; 1990, ch. 442, § 10, effective July 1, 1990; 1990, ch. 476, Pt. V, § 515, effective July 13, 1990; 1992, ch. 192, § 8, effective July 1, 1992; 1994, ch. 369, § 13, effective July 1, 1994; 1996, ch. 259, § 1, effective July 15, 1996; 1996, ch. 359, § 9, effective July 1, 1996; 1998, ch. 515, § 7, effective July 1, 1998; 2002, ch.

275, § 17, effective July 1, 2002; 2004, ch. 121, § 11, effective July 1, 2004; 2008, ch. 78, § 10, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 35, effective June 27, 2008; 2018 ch. 107, § 58, effective July 14, 2018; 2021 ch. 192, § 12, effective June 29, 2021; 2021 ch. 157, § 22, effective January 1, 2022.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

OPINIONS OF ATTORNEY GENERAL.

The fact a teacher was on unpaid leave of absence under KRS 161.770 may be shown by board minutes even though a specific item cannot be pointed to in the minutes; in this regard, if it can be shown through a composite of board minutes, probably extending over several years, and possibly with the aid of payroll records which would have been approved by board action at a meeting, that the employment status of a teacher could have been nothing other than being on a leave of absence under the authority of KRS 161.770, this would serve as compliance with this section. OAG 78-778. Compare OAG 78-346, 1978 Ky. AG LEXIS 413.

A Kentucky Teacher's Retirement System member who did not officially request a maternity leave, and who did not supply a verified copy of the board minutes granting such leave of absence, may make contributions, if the member can produce board minutes showing that she was not terminated, then rehired. OAG 79-96, 1979 Ky. AG LEXIS 540.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Fractional service year for members initially employed on a full-time basis, 102 KAR 1:038.

Full actuarial cost purchase, 102 KAR 1:350.

Leave of absence, 102 KAR 1:110.

Part-time service for university, college, and community college members, 102 KAR 1:036.

Substitute teachers and nonuniversity, noncommunity college part-time members, 102 KAR 1:030.

Northern Kentucky Law Review.

General Law Issue: Note: Front Pay Under the FMLA, 38 N. Ky. L. Rev. 259 (2011).

161.546. Member may purchase 4 years' credit in Teachers' Retirement System for teaching in private college or university in Kentucky that accepts students under Kentucky Higher Education Assistance Authority program. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1990, ch. 480, § 4, effective July 13, 1990) was repealed by Acts 1996, ch. 359, § 20, effective July 1, 1996.

161.5461. Purchase of service credit with rolled-over or transferred retirement funds.

(1) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by rolling over funds from a previous plan to the extent that rollovers are permitted by the rules set forth in the Internal Revenue Code. The rollovers may be made directly from a previous qualified plan or through a conduit individual retirement account as permitted by the rules set forth in the Internal Revenue Code.

(2) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by transferring funds directly from a retirement plan maintained by the Commonwealth of Kentucky to the extent that transfers are permitted by the rules set forth in the Internal Revenue Code.

(3) The amount of any transfer or rollover purchase as permitted under subsections (1) and (2) of this section, excluding that portion credited to the medical insurance fund under KRS 161.420(5), shall be credited to the individual member's account and shall be considered accumulated contributions of the member.

History.

Enact. Acts 2000, ch. 498, § 4, effective July 1, 2000; 2002, ch. 275, § 18, effective July 1, 2002.

Compiler's Notes.

The Internal Revenue Code, referred to in subsections (1) and (2), is codified as Title 26, USCS.

161.5465. Member with twenty years' service credit may purchase five years' service credit — Exceptions.

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.220 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as provided in KRS 161.220(22). The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597. Notwithstanding any other statute to the contrary, the Kentucky Teachers' Retirement System shall recognize nonqualified service credit purchased with another retirement system only to the extent that the member had an equivalent number of full months of active employment in the position covered by the other retirement system during the period that the nonqualified service was purchased. This section shall not apply to individuals who become members on or after July 1, 2008, except that a teacher of a local school board may purchase up to ten (10) months of service under this section if the teacher is retiring and has completed the prior school year with at least twenty-six (26) years and two (2) months of service but less than twenty-seven (27) years of service.

History.

Enact. Acts 1998, ch. 515, § 16, effective July 1, 1998; 2000, ch. 498, § 11, effective July 1, 2000; 2002, ch. 275, § 19,

effective July 1, 2002; 2008 (1st Ex. Sess.), ch. 1, § 36, effective June 27, 2008; 2018 ch. 107, § 59, effective July 14, 2018; 2021 ch. 157, § 23, effective January 1, 2022.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.
Section 1526 of the Federal Taxpayer Relief Act of 1997 referred to herein is codified as 26 USCS §§ 415(k)(3) and 415(n).

OPINIONS OF ATTORNEY GENERAL.

With regard to members who purchase service credit pursuant to the statute and who qualify for retirement pursuant to KRS 161.600, the Kentucky Teachers' Retirement System must provide medical insurance benefits to those members for those years purchased. OAG 99-7, 1999 Ky. AG LEXIS 189.

The purchase of service credits pursuant to the statute cannot be restricted to only those members who are retiring. OAG 99-7, 1999 Ky. AG LEXIS 189.

The payment for the purchase of service credits under the statute is not required to be only by lump sum payment; thus, members may pay for such service credits in installment payments pursuant to KRS 161.597. OAG 99-7, 1999 Ky. AG LEXIS 189.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Fractional service year for members initially employed on a full-time basis, 102 KAR 1:038.
Full actuarial cost purchase, 102 KAR 1:350.
Part-time service for university, college, and community college members, 102 KAR 1:036.
Substitute teachers and nonuniversity, noncommunity college part-time members, 102 KAR 1:030.

161.547. Member having service as legislator may purchase four years' credit in the retirement system.

A member of the retirement system having service as a Kentucky legislator which is not credited by any retirement system administered by the Commonwealth of Kentucky may present such service, not to exceed four (4) years, for credit in the retirement system by paying the full actuarial cost of the service as determined by the system actuary. The member may purchase all or part of his or her service as a legislator, but no less than one (1) year of service. The entire payment shall be placed in the teachers' saving fund.

History.
Enact. Acts 1990, ch. 480, § 5, effective July 13, 1990; 2018 ch. 107, § 60, effective July 14, 2018; 2021 ch. 157, § 24, effective January 1, 2022.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Full actuarial cost purchase, 102 KAR 1:350.

161.548. Purchase of service credit by individual who served in a regional community program for mental health and individuals with an intellectual disability.

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed in a regional community service program for mental health and individuals with an intellectual disability, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system, may obtain credit for the period of his or her service in the regional community program for mental health and individuals with an intellectual disability by paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22). The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or (2) or 161.661(1). The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

History.
Enact. Acts 1996, ch. 346, § 2, effective July 15, 1996; 2000, ch. 498, § 12, effective July 1, 2000; 2012, ch. 146, § 15, effective July 12, 2012; 2018 ch. 107, § 61, effective July 14, 2018; 2021 ch. 157, § 25, effective January 1, 2022.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Full actuarial cost purchase, 102 KAR 1:350.

161.549. Purchase of service credit by individual who was employed at a Federal Head Start agency.

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a Federal Head Start agency, operated under 42 U.S.C. secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by purchasing this service credit under the same conditions that out-of-state service credit may be purchased under KRS 161.515. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or (2) or 161.661(1). Pay-

ment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

History.

Enact. Acts 1998, ch. 268, § 1, effective July 15, 1998; 2000, ch. 498, § 13, effective July 1, 2000; 2004, ch. 54, § 1, effective July 13, 2004; 2018 ch. 107, § 62, effective July 14, 2018; 2021 ch. 157, § 26, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Full actuarial cost purchase, 102 KAR 1:350.

161.550. Contribution to system by employers and state — Contributions to pension, medical insurance, and life insurance funds.

(1) Each employer, except as provided in KRS 161.552 and 161.555, shall contribute annually to the Teachers' Retirement System a permanent employer contribution rate on behalf of each employee it employs equal to:

(a) Thirteen and one hundred five thousandths percent (13.105%) of the total annual compensation of nonuniversity members who become members prior to July 1, 2008. Of this permanent employer contribution rate:

1. Twelve and three hundred fifty-five thousandths percent (12.355%) of the total annual compensation shall be used to fund pension and life insurance benefits; and

2. Except as provided in KRS 161.552, three-quarters of a percent (0.75%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund except as provided in KRS 161.552;

(b) Fourteen and one hundred five thousandths percent (14.105%) of the total annual compensation of nonuniversity members who become members on or after July 1, 2008, but prior to January 1, 2022. Of this permanent employer contribution rate:

1. Thirteen and three hundred fifty-five thousandths percent (13.355%) of the total annual compensation shall be used to fund pension and life insurance benefits; and

2. Except as provided in KRS 161.552, three-quarters of a percent (0.75%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund except as provided in KRS 161.552;

(c) Thirteen and sixty-five hundredths percent (13.65%) of the total annual compensation of university members who become members prior to January 1, 2022. Of this permanent employer contribution rate:

1. Ten and eight hundred seventy-five thousandths percent (10.875%) of the total annual compensation shall be used to fund pension and life insurance benefits; and

2. Except as provided in KRS 161.552, two and seven hundred seventy-five thousandths percent (2.775%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund except as provided in KRS 161.552;

(d) Ten and three-quarters percent (10.75%) of the total annual compensation of nonuniversity members who become members on or after January 1, 2022. Of this permanent employer contribution rate:

1. Eight percent (8%) of the total annual compensation shall be used to fund pension and life insurance benefits. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by KRS 161.635;

2. Two percent (2%) of the total annual compensation shall be used to fund the mandatory employer contribution of the supplemental benefit component, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs within the provisions of KRS 161.633; and

3. Except as provided in KRS 161.552, three-quarters of one percent (0.75%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subdivision in that trust fund except as provided in KRS 161.552; and

(e) Nine and seven hundred seventy-five thousandths percent (9.775%) of total annual compensation of university members who become members on or after January 1, 2022. Of this permanent employer contribution rate:

1. Five and seven hundred seventy-five thousandths percent (5.775%) of the total annual compensation shall be used to fund pension and life insurance benefits. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by KRS 161.636;

2. Two percent (2%) of the total annual compensation shall be used to fund the mandatory employer contribution of the supplemental benefit component, except that the board may direct these

contributions on a prospective basis into the pension and life insurance funds to contain costs within the provisions of KRS 161.634; and

3. Except as provided in KRS 161.552, two percent (2%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund except as provided in KRS 161.552.

(2) In addition to the required contributions in subsection (1) of this section, the state shall contribute annually to the Teachers' Retirement System a percentage of the total salaries of the state-funded and federally funded members it employs to pay the cost of health insurance coverage for retirees who are not eligible for Medicare and who retire on or after July 1, 2010, less the amounts that are otherwise required to be paid by the retirees under KRS 161.675. The board shall deposit funds in the medical insurance fund unless the board of trustees has established a trust fund under 26 U.S.C. sec. 115 for this purpose. In this case, the board may deposit the employer contribution in that trust fund. This contribution shall be known as the state medical insurance fund stabilization contribution. The percentage to be contributed by the state under this subsection:

(a) Shall be determined by the retirement system's actuary for each biennial budget period;

(b) May be suspended or adjusted by the General Assembly if in its judgment the welfare of the Commonwealth so demands; and

(c) Shall not exceed the lesser of the actual benefit cost for retirees not eligible for Medicare who retire on or after July 1, 2010, or the amount contributed by employers under subsection (3) of this section.

(3) All employers who employ nonuniversity members shall make a contribution for each payroll on behalf of their active employees who participate in the Teachers' Retirement System in an amount equal to three percent (3%) of payroll of those active employees. Except as provided in KRS 161.552, the contribution specified by this subsection shall be used to fund retiree health benefits.

(4) When the funds established to actuarially fund pension annuities and the medical insurance fund established under KRS 161.420 become fully funded as determined by the annual actuarial valuation, the board of trustees shall recommend to the General Assembly that the contributions required under subsections (1)(c)2. and (e)3. and (3) of this section shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated. The decrease, suspension, or elimination in contributions required under subsection (1)(c)2. of this section shall not exceed two and twenty-five thousandths percent (2.025%) of annual compensation. The decrease, suspension, or elimination in contributions required under subsection (1)(e)3. of this section shall not exceed one and twenty-five hundredths percent (1.25%) of annual compensation.

(5) Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155, 161.168, 161.507(4), 161.515, 161.545, 161.605, 161.612, and 161.620(1), (3), (5), (6), and (7). In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members. This subsection shall not apply to costs applicable to individuals who become members on or after January 1, 2022.

History.

4507b-37; amend. Acts 1960, ch. 44, § 11; 1976, ch. 351, § 13, effective July 1, 1976; 1978, ch. 152, § 10, effective March 28, 1978; 1982, ch. 326, § 8, effective July 1, 1982; 1984, ch. 253, § 17, effective July 1, 1984; 1986, ch. 440, § 10, effective July 1, 1986; 1988, ch. 363, § 12, effective July 1, 1988; 1990, ch. 442, § 11, effective July 1, 1990; 1990, ch. 476, Pt. V, § 516, effective July 13, 1990; 1992, ch. 192, § 9, effective July 1, 1992; 1996, ch. 359, § 19, effective July 1, 1996; 1998, ch. 515, § 8, effective July 1, 1998; 2002, ch. 275, § 20, effective July 1, 2002; 2004, ch. 121, § 12, effective July 1, 2004; 2006, ch. 85, § 2, effective July 12, 2006; 2010, ch. 159, § 4, effective July 1, 2010; 2018 ch. 107, § 63, effective July 14, 2018; 2021 ch. 157, § 8, effective January 1, 2022; 2025 ch. 126, § 4, effective June 27, 2025; 2025 ch. 138, § 19, effective March 31, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 126 and 138, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). In amending this section, 1990 House Bill 653, Acts Ch. 442, § 11, did not underline the year "1990" which was intended to be added after "July 1," at the beginning of the section. As directed by KRS 446.270, the Reviser of Statutes has deleted this material from the text of this statute. Section 20 of Acts Ch. 442 provides, however, that "the provisions of this Act shall become effective July 1, 1990."

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Actuary to recommend state contributions, KRS 161.400.

161.552. Definitions for section — Employer contributions for retiree health benefits to be deposited into state accumulation fund when medical insurance fund reaches actuarial funding level of at least one hundred percent — Restoration of funding.

(1) As used in this section:

(a) "Funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the retirement system's actuary in the retirement system's annual actuarial valuation for the medical insurance fund;

(b) "Medical insurance fund" means all contributions and amounts included in the funds established in KRS 161.420(5) and 161.677; and

(c) "State accumulation fund" means the fund established in KRS 161.420(3).

(2) Except as provided in subsection (3) of this section, when the medical insurance fund has reached an actuarial funding level of at least one hundred percent (100%) as determined by the annual actuarial valuation, the employer contributions for retiree health benefits as provided in KRS 161.550(1)(a)2., (b)2., (c)2., (d)3., and (e)3. and (3) shall be deposited into the state accumulation fund to help pay down the unfunded liabilities of pension annuities instead of being deposited into the medical insurance fund. Deposits to the state accumulation fund shall occur on and after the beginning of the fiscal year following the annual actuarial valuation in which the criteria of this subsection are first met.

(3) After reaching an actuarial funding level of at least one hundred percent (100%), if the actuarial funding level of the medical insurance fund falls below ninety-five percent (95%) as determined by the annual actuarial valuation, the employer contributions for retiree health benefits as provided in KRS 161.550(1)(a)2., (b)2., (c)2., (d)3., and (e)3. and (3) shall be deposited into the medical insurance fund instead of the state accumulation fund. Deposits to the medical insurance fund shall occur on and after the beginning of the fiscal year following the annual actuarial valuation in which the criteria of this subsection are met and shall continue until the actuarial funding level of the medical insurance fund is at least one hundred percent (100%). When the medical insurance fund regains an actuarial funding level of at least one hundred percent (100%), the provisions of subsection (2) of this section shall apply.

History.

2025 ch. 126, § 1, effective June 27, 2025.

161.553. Funding of past statutory benefit improvements — Schedules for appropriations — Cost-of-living increases. [Repealed]

History.

Enact. Acts 1992, ch. 192, § 13, effective July 1, 1992; 1994, ch. 369, § 15, effective July 1, 1994; 1996, ch. 359, § 10, effective July 1, 1996; 1998, ch. 515, § 9, effective July 1, 1998; 2000, ch. 498, § 14, effective July 1, 2000; 2002, ch. 275, § 21, effective July 1, 2002; 2004, ch. 121, § 13, effective July 1, 2004; 2006, ch. 189, § 1, effective July 1, 2006; 2008, ch. 78, § 11, effective July 1, 2008; 2010, ch. 164, § 7, effective July 1, 2010; 2021 ch. 192, § 13, effective June 29, 2021; repealed by 2025 ch. 138, § 20, effective March 31, 2025.

161.555. Employer contributions for members employed in positions established under federal educational acts.

Each employer employing members of the Teachers' Retirement System in positions established under educational acts adopted by the federal Congress shall contribute to the Teachers' Retirement System an amount equal to that contributed by the members of that employer plus an additional two and forty-five hundredths percent (2.45%) for fiscal years 2003 and 2004. Beginning fiscal year 2005 and each year thereafter, each employer shall contribute an amount equal to the employer contribution provided under KRS 161.550.

History.

Enact. Acts 1966, ch. 16, § 8; 1974, ch. 395, § 13, effective July 1, 1974; 1988, ch. 363, § 19, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 517, effective July 13, 1990; 1994, ch. 369, § 23, effective July 1, 1994; 2002, ch. 275, § 22, effective July 1, 2002.

Compiler's Notes.

This section (Enact. Acts 1966, ch. 16, § 8; 1974, ch. 395, § 13, effective July 1, 1974; 1988, ch. 363, § 19, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 517, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Additional contributions, 102 KAR 1:130.

161.556. Employer contributions for members employed by regional educational cooperatives.

Each regional educational cooperative referred to in KRS 161.220(4)(e) employing members of the Teachers' Retirement System shall have the employer contributions provided in the same manner as for members employed by local boards of education.

History.

Enact. Acts 1994, ch. 369, § 14, effective July 1, 1994.

161.560. Deduction and forwarding of teachers' contributions — Reporting requirements — Picked-up employee contributions — Correction of omitted member contributions.

(1)(a) Each agency, school district, and institution employing members of the retirement system shall deduct from the compensation of each member for each payroll period subsequent to the date the individual became a member, the percentage of his or her compensation due under the rates prescribed in KRS 161.540. No later than fifteen (15) days following each pay date, the employer shall have on deposit with the retirement system all required deductions. The retirement system may charge the employer interest at an annual rate not to exceed eight percent (8%) for deductions not deposited within the specified fifteen (15) days.

(b) Each employer employing members of the retirement system shall have on file at the retirement system's office no later than fifteen (15) days following each pay date payroll reports, contributions lists, and other data required by administrative regulation of the board. The retirement system may impose a penalty on the employer not to exceed one thousand

dollars ($1,000) when the employer does not meet the reporting date. However, the retirement system may waive the penalty for good cause.

(c) Each employer employing members of the retirement system shall have on file at the retirement system's office an annual summary report of member contributions and periods employed no later than August 1 following the completion of each fiscal year. The retirement system may impose a penalty on the employer not to exceed one thousand dollars ($1,000) when the employer does not meet the August 1 reporting date. However, the retirement system may waive the penalty for good cause.

(d) The deductions described by paragraph (a) of this subsection shall be made notwithstanding the fact that the salary as a result may be less than the minimum compensation provided by law. Every member shall be deemed to consent and agree to the deductions, and the deductions shall be considered as having been paid to the member. After August 1, 1982, member contributions shall be picked up by the agency pursuant to KRS 161.540(2).

(2) If an employer fails to deduct the correct retirement contribution from a member's compensation, the member may make the contribution that should have been deducted by the employer and receive retirement credit for the payment. For correction of omitted member contributions that occur more than one (1) year after the year in which the error was made, the employer shall be responsible for paying interest to the retirement system at a rate of eight percent (8%) from the end of the year in which the service was performed to the date of payment.

History.

4506b-38; amend. Acts 1964, ch. 43, § 12; 1982, ch. 166, § 13, effective July 15, 1982; 1984, ch. 253, § 18, effective July 1, 1984; 1984, ch. 302, § 6, effective July 13, 1984; 1988, ch. 363, § 13, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 518, effective July 13, 1990; 1996, ch. 359, § 11, effective July 1, 1996; 2002, ch. 275, § 23, effective July 1, 2002; 2021 ch. 192, § 14, effective June 29, 2021.

Compiler's Notes.

This section (4506b-38; amend. Acts 1964, ch. 43, § 12; 1982, ch. 166, § 13, effective July 15, 1982; 1984, ch. 253, § 18, effective July 1, 1984; 1984, ch. 302, § 6, effective July 13, 1984; 1988, ch. 363, § 13, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 518, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

ROTC teachers who hold regular teacher's certification are eligible for membership in the Kentucky Teachers' Retirement System and their employing school district is required to deduct from their salary the membership dues as provided by this section. OAG 74-387 (opinion prior to 1990 repeal. and reenact.).

KRS 161.540(2) and this section, which are clear and unequivocal on their face, require an interpretation which would foreclose any direct payment by a local board of education to the Kentucky Teachers' Retirement System (KTRS) of a portion of the employee's contributions to the retirement system; however, these sections would not exclude any arrangement whereby a local board of education would reimburse its employees for a portion of the employee's contributions into the retirement system after the payroll deductions have already been made and credited to the KTRS. OAG 81-373 (opinion prior to 1990 repeal. and reenact.).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Internal accounting, 702 KAR 3:130.
Omitted contributions, 102 KAR 1:125.
Payroll reports, 102 KAR 1:195.
Submission of employer data, 102 KAR 1:210.

161.565. Reduction and pick-up of contributions by university faculty members.

Notwithstanding any other provisions of KRS Chapter 161, the contribution of university faculty members may be reduced by amounts up to two and two hundred fifteen thousandths percent (2.215%) if amounts sufficient to replace the reduction are authorized and contributed to the Teachers' Retirement System by the board of regents of the employing university. After August 1, 1982, any contribution by a university faculty member shall be picked up by the employing university pursuant to KRS 161.540(2).

History.

Enact. Acts 1980, ch. 79, § 1, effective July 1, 1980; 1982, ch. 166, § 33, effective July 15, 1982; 1984, ch. 253, § 19, effective July 1, 1984; 1984, ch. 302, § 7, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 519, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1980, ch. 79, § 1, effective July 1, 1980; 1982, ch. 166, § 33, effective July 15, 1982; 1984, ch. 253, § 19, effective July 1, 1984; 1984, ch. 302, § 7, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 519, effective July 13, 1990.

161.567. Authorization for optional retirement plan for designated employees of certain public universities.

(1) An optional retirement plan is hereby authorized for designated employees of public postsecondary education institutions who are also eligible for membership in the Kentucky Teachers' Retirement System under KRS 161.220(4)(b) and 161.470(1). The purpose of the optional retirement plan shall be to provide suitable retirement and death benefits, while affording the maximum portability of these benefits to the eligible employees as an alternative to membership in the retirement system. Benefits shall be provided by the purchase of annuity contracts, mutual fund accounts, or similar investment products, or a combination thereof, collectively referred to as contracts or annuity contracts, at the option of the participant and offered by the selected provider for plans established under Section 403(b) of the Internal Revenue Code. The specific provisions of provider contracts with respect to the benefits payable to members and their beneficiaries shall prevail over specific provisions relating to the same subjects found in KRS 161.220 to 161.716, other than this section.

(2) The boards of regents of those institutions identified in KRS 161.220(4)(b) shall select no less than two (2) but no more than four (4) companies from which to purchase contracts under the optional retirement plan.

As criteria for this selection, the boards of regents shall consider, among other things, and as appropriate for the type of contract provider, the following:

(a) The portability of the contracts offered or to be offered by a company, based on the number of states in which the company provides contracts under similar plans;

(b) The efficacy of the contracts in the recruitment and retention of employees for the various state public postsecondary education institutions;

(c) The nature and extent of the rights and benefits to be provided by the contracts for participating employees and their beneficiaries;

(d) The relation of the rights and benefits to the amount of contributions required;

(e) The suitability of the rights and benefits to the needs and interests of eligible employees and the various state public postsecondary education institutions; and

(f) The ability of the designated companies to provide the rights and benefits under those contracts.

History.

Enact. Acts 1994, ch. 290, § 1, effective July 15, 1994; 1996, ch. 253, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 69, effective May 30, 1997; 2008, ch. 78, § 25, effective July 1, 2008.

161.568. Eligibility to participate in optional retirement plan — Election to change from optional retirement plan to Kentucky Teachers' Retirement System.

(1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an election to participate in the optional retirement plan within thirty (30) days after their employment date. This election shall be irrevocable except as otherwise provided in this subsection. No member of the Kentucky Teachers' Retirement System who terminates employment and is subsequently reemployed by the same or another public postsecondary education institution which participates in the Kentucky Teachers' Retirement System may be eligible to elect to participate in the optional retirement plan unless the date of reemployment is at least six (6) months after the date of termination. All elections made under this subsection shall be in writing and shall be filed with the appropriate officer of the employer institution. Persons who originally elected to participate in the optional retirement plan may later change their elections only as follows:

(a) Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time during his or her lifetime to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System. This election to change from the optional retirement plan to Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the system. Any person exercising this election shall not be entitled to purchase as service credit in the Kentucky Teachers' Retirement System any prior service with his or her postsecondary education institution employer;

(b) Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System who previously elected to participate in the optional retirement plan may irrevocably elect one (1) time within his or her first six (6) years and six (6) months of continuous service in any one (1) or more of the institutions identified in KRS 161.220(4)(b), to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System and also become eligible to purchase as service credit his or her prior service with his or her postsecondary education employer. This election to change from the optional retirement plan to the Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the retirement system. Persons electing to change from the optional retirement plan to the Kentucky Teachers' Retirement System may purchase service credit only for their prior years of service for a postsecondary education institution identified in KRS 161.220(4)(b) during which they participated in the optional retirement plan. The election to purchase prior service as service credit shall be received in the retirement system's office on forms prescribed by the retirement system within the six (6) year and six (6) month period provided to make the election to begin participation in the Kentucky Teachers' Retirement System. The cost of purchasing this service shall be calculated by adding both the employer and member contributions that would have been paid to the Kentucky Teachers' Retirement System had the individual purchasing this service participated in the Kentucky Teachers' Retirement System instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System by the postsecondary education institution as provided by KRS 161.569(5), or KRS 161.569(5)(a)2. as it existed on June 30, 2007. Interest at Kentucky Teachers' Retirement System's actuarially assumed rate shall be paid on these net contributions by the person electing to change to the Kentucky Teachers' Retirement System from the optional retirement plan. These payments shall not be picked up as described in KRS 161.540(2). Persons who elect to change from the optional retirement plan to the Kentucky Teachers' Retirement System may elect to purchase as service credit, beginning with the most recent years, any portion of their prior years of service during which time they participated in the optional retirement plan, or none of those years. Members may purchase service credit for prior years of service by rolling over funds from their optional retirement plan account as provided under KRS 161.5461, or by rolling over or transferring other plan funds as permitted by the

rules set forth in the Internal Revenue Code, or by making an after-tax lump-sum cash payment;

(c) Effective July 1, 2008, persons otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time to change their election and to prospectively participate in the Kentucky Teachers' Retirement System and purchase service credit for their prior years of service during which they participated in the optional retirement plan. This election shall be filed in writing with the Kentucky Teachers' Retirement System no later than December 31, 2008. Persons who change their election prior to July 1, 2008, to prospectively participate in the Kentucky Teachers' Retirement System may purchase service credit for their prior years of service during which they participated in the optional retirement plan. The purchase of prior years of service under this paragraph shall be subject to the same conditions and purchase costs as described in paragraph (b) of this subsection, except that the election to purchase service credit shall be on file with the Kentucky Teachers' Retirement System no later than December 31, 2008; and

(d) Persons electing to change to the Kentucky Teachers' Retirement System under paragraphs (a), (b), and (c) of this subsection shall be eligible to participate, based upon their age and allowable service credit, in the disability, survivorship, and medical insurance programs under the conditions and in the degree as they exist on the date that they file their election with the retirement system, but shall be subject to any changes to those programs from that date forward, including any changes that may affect their eligibility for or degree of participation in those programs. Prior service purchased as service credit as permitted under paragraphs (b) and (c) of this subsection shall not be considered for meeting eligibility requirements or determining the extent of participation in these programs. Persons electing to change to the Kentucky Teachers' Retirement System shall not be eligible for the survivorship or disability programs based upon medical conditions that existed prior to the filing of their elections.

(2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, the employee shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

History.

Enact. Acts 1994, ch. 290, § 2, effective July 15, 1994; 1996, ch. 253, § 2, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 70, effective May 30, 1997; 2004, ch. 121, § 25, effective July 1, 2004; 2008, ch. 11, § 2, effective April 7, 2008; 2018 ch. 107, § 64, effective July 14, 2018; 2021 ch. 157, § 27, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

161.569. Effect of election to participate — Payment of benefits — Taxation and attachment of benefits — Employer contributions.

(1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as the participant is employed in a position for which the optional retirement plan is available, except as provided in KRS 161.568(1).

(2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.

(3) Benefits shall be payable to optional retirement plan participants or their beneficiaries by the designated companies in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.

(4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education. Except contracts issued and rights accrued in the optional retirement plan on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(5) Each institution shall contribute for each payroll period of each fiscal year to the Kentucky Teachers' Retirement System, an amount equal to five and one-tenth percent (5.1%) of the total salaries of all persons who elect or elected to participate in the optional retirement plan instead of the Kentucky Teachers' Retirement System. This payment shall continue to be made until June 30, 2018. No contributions shall be payable on or after July 1, 2018, to the Kentucky Teachers' Retirement System for all persons who elect or elected to participate in the optional retirement plan instead of the Kentucky Teachers' Retirement System.

History.

Enact. Acts 1994, ch. 290, § 3, effective July 15, 1994; 1995 (2nd Ex. Sess.), ch. 1, § 8, effective April 28, 1995; 1996, ch. 253, § 3, effective July 15, 1996; 2004, ch. 121, § 26, effective July 1, 2004; 2008, ch. 11, § 3, effective April 7, 2008; 2018 ch. 171, § 23, effective April 14, 2018; 2018 ch. 207, § 23, effective April 27, 2018.

Legislative Research Commission Notes.

(4/27/2018). This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Minimum distribution, 102 KAR 1:170.

161.570. Reports by employing agency. [Repealed.]

Compiler's Notes.
This section (4506b-38) was repealed by Acts 1964, ch. 43, § 23.

161.580. Individual accounts to be kept — Other data — Summary plan description — Publication — Recipients.

(1) The board of trustees shall provide for the maintenance of an individual account for each member showing the amount of the member's accumulated account balance. Such individual accounts shall be identified in the records of the system by name, date of birth, and Social Security number. It shall collect and keep in convenient form such data as is necessary for the preparation of the required mortality and service tables and for the compilation of such other information as is required for the actuarial valuation of the assets and liabilities of the various funds of the retirement system.

(2) The board shall prepare and furnish to all active contributing members a summary plan description, written in a manner calculated to be understood by the average member or annuitant, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the Teachers' Retirement System. The board may furnish the summary plan description by posting it on the retirement system's Web site.

(3) The summary plan description shall include:

(a) The name of the retirement system, the name and address of the executive secretary, and the name, address, and title of each member of the board of trustees;

(b) The name and address of the person designated for the service of legal process;

(c) The system's requirements for participation and benefits;

(d) A description of retirement formulas for normal, early, and disability retirement, and survivor benefits;

(e) A description of the requirements for vesting of pension benefits;

(f) A list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;

(g) The sources of financing retirement benefits, and statutory requirements for funding;

(h) A statement after each actuarial valuation as to whether funding requirements are being met; and

(i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.

(4) The board may publish the summary plan description in the form of a comprehensive pamphlet or booklet, or in the form of periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection (2) of this section and furnished to active contributing members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.

(5) The board shall provide to annuitants so much of the summary plan description as they need to understand changes in benefits which apply to them.

History.
Repealed and reenacted by 2021 ch. 157, § 28, effective January 1, 2022.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

161.585. Member's account confidential — Release of certain information from accounts of current or former legislators — Medical records on file confidential — Production of records in response to a subpoena or court order.

(1) Each member's or annuitant's account shall be administered in a confidential manner, and specific data regarding a member or annuitant shall not be released for publication, except that:

(a) The member or annuitant may authorize the release of his or her account information;

(b) The board of trustees may release member or annuitant account information to the employer or to other state and federal agencies as it deems necessary or in response to a lawful subpoena or order issued by a court of law; or

(c)1. Upon request by any person, the system shall release the following information from the accounts of any member or annuitant of the Kentucky Teachers' Retirement System, if the member or annuitant is a current or former officeholder in the Kentucky General Assembly:

a. The first and last name of the member or annuitant;

b. The status of the member or annuitant, including but not limited to whether he or she is a contributing member, a member who is not contributing but has not retired, a retiree receiving a monthly retirement allowance, or a retiree who has returned to work following retirement with an agency participating in the system;

c. If the individual is an annuitant, the monthly retirement allowance that he or she was receiving at the end of the most recently completed fiscal year;

d. If the individual is a member who has not yet retired, the estimated monthly retirement allowance that he or she is eligible to receive on the first date he or she would be eligible for an

unreduced retirement allowance, using his or her service credit, accumulated account balance, and final average salary at the end of the most recently completed fiscal year; and

e. The current or last participating employer of the member or annuitant, if applicable.

2. No information shall be disclosed under this paragraph from an account that is paying benefits to a beneficiary due to the death of a member or annuitant.

(2) The release of information under subsection (1)(c) of this section shall not constitute a violation of the Open Records Act, KRS 61.870 to 61.884.

(3) Medical records which are included in a member's or annuitant's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member or annuitant in writing or as otherwise provided by law or in response to a lawful subpoena or order issued by a court of law. A member appealing the denial of a disability retirement application and his or her legal counsel shall be entitled to all written recommendations and reports submitted by the medical review committee to the Teachers' Retirement System under KRS 161.661(14). Such recommendations and reports shall otherwise be maintained in a confidential manner and shall not be subject to release under any conditions, including in response to a subpoena or order issued by a court of law notwithstanding any other statute to the contrary.

(4)(a) When a subpoena is served upon any employee of the Kentucky Teachers' Retirement System requiring the production of any data, information, or records, it is sufficient if the employee of the Kentucky Teachers' Retirement System charged with the responsibility of being custodian of the original, or his or her designated staff, delivers either of the following:

1. Legible and durable copies of records certified by the employee or designated staff; or

2. An affidavit stating the information required by the subpoena.

(b) The production of records or an affidavit shall be in lieu of any personal testimony of any employee of the Kentucky Teachers' Retirement System unless, after the production of records or an affidavit, a separate subpoena is served upon the retirement system specifically directing the testimony of an employee of the retirement system. When a subpoena is served on any employee of the retirement system requiring the employee to give testimony or produce records for any purpose, in the absence of a court order requiring the testimony of or production of records by a specific employee, the system may designate an employee to give testimony or produce records upon the matter referred to in the subpoena. The board of trustees may promulgate an administrative regulation for the recovery of reasonable travel and administrative expenses for those occasions when an employee of the retirement system is required to travel from his or her home or office to provide testimony or records. Recoverable expenses may include the travel expenses, wages, salary, and overtime paid to the employee by the retirement system for the period of time that the employee is away from the office. The cost of these expenses shall be borne by the party issuing the subpoena compelling the employee's travel. The board of trustees may also promulgate an administrative regulation establishing a reasonable fee for the copying, compiling, and mailing of requested records.

(c) The certification required by this subsection shall be signed before a notary public by the employee and shall include the full name of the member or annuitant, the last four digits of the Social Security number of the member or annuitant, and a legend substantially to the following effect: "The records are true and complete reproductions of the original, microfiched, or electronically stored records which are housed in the retirement system's office. This certification is given in lieu of the undersigned's personal appearance."

(d) When the affidavit or copies of records are delivered to a requesting party for use in deposition they shall, after termination of the deposition, be delivered by the requesting party personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending.

(e) Upon completion of delivery by the retirement system of copies of records by their deposit in the mail or by their personal delivery to the requesting party, the retirement system shall cease to have any responsibility or liability for the records and their continued maintenance in a confidential manner.

(f) Records of the Kentucky Teachers' Retirement System that are susceptible to reproduction may be proved as to foundation, identity, and authenticity without preliminary testimony, by use of legible and durable copies, certified in accordance with the provisions of this subsection.

(g) The provisions of this subsection shall not be construed to prohibit the Kentucky Teachers' Retirement System from asserting any exemption, exception, or relief provided under the Kentucky Rules of Civil Procedure or other applicable law.

(5) For purposes of this section, "records" includes retirement estimates, affidavits, and other documents prepared by or in the possession of the Kentucky Teachers' Retirement System in response to information requested in a lawful subpoena or order issued by a court of law.

History.

Repealed and reenacted by 2021 ch. 157, § 29, effective January 1, 2022; 2025 ch. 138, § 8, effective March 31, 2025.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/1/2010). This section was amended by 2010 Ky. Acts chs. 148 and 164 which are in conflict in their use of the terms "documents" and "records" in this section. Pursuant to KRS 446.250, Acts ch. 164 which was last enacted by the General Assembly prevails; however, four instances of the term "documents" in subsection (4)(b) of this section have been changed in codification to "records" in order to use the term consis-

tently and in accordance with its meaning as set forth in subsection (1) of this section. This change was made by the Reviser of Statutes under the authority of KRS 7.136(1).

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

161.590. Service credit at retirement.

(1) At retirement the total service credited to a teacher shall consist of prior and subsequent service rendered by him or her for which service credit has been allowed.

(2) Kentucky service, presented at the time of retirement, may not be used in calculating benefits under KRS 161.525, 161.620, or 161.661, if such service has been used to increase benefits in another retirement system, not including Old Age and Survivors Insurance Benefits under the Social Security Administration.

(3) No service credit shall be added to a member's account after the effective date of retirement for service.

History.

4506b-40; amend. Acts 1962, ch. 64, § 11; 1974, ch. 395, § 14, effective July 1, 1974; 1978, ch. 152, § 11, effective March 28, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 522, effective July 13, 1990; 2018 ch. 107, § 67, effective July 14, 2018; 2021 ch. 157, § 30, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (4506b-40; amend. Acts 1962, ch. 64, § 11; 1974, ch. 395, § 14, effective July 1, 1974; 1978, ch. 152, § 11, effective March 28, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 522, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Transfer to other systems, 102 KAR 1:045.

161.595. Credit upon service retirement.

(1) Upon service retirement, a member of the Teachers' Retirement System may obtain credit for all or any part of the service otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or in the service of the United States government for which service credit is not otherwise given, upon the payment by the member of the full actuarial cost of the service credit purchased as defined in KRS 161.220(22). Such payments shall not be picked up, as described in KRS 161.540(2).

(2) The amount paid under this section shall be considered as accumulated contributions of the individual member.

(3) No person shall be allowed credit for the same period of service in more than one (1) of these three (3) retirement systems.

History.

Enact. Acts 1962, ch. 107, §§ 3 to 5; 1980, ch. 206, § 7, effective July 1, 1980; 1982, ch. 166, § 34, effective July 15, 1982; 1982, ch. 414, § 3, effective July 15, 1982; 1984, ch. 253, § 20, effective July 1, 1984; 1984, ch. 302, § 8, effective July 13, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 523, effective July 13, 1990; 2000, ch. 498, § 15, effective July 1, 2000; 2018 ch. 107, § 68, effective July 14, 2018; 2021 ch. 157, § 31, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (Enact. Acts 1962, ch. 107, §§ 3 to 5; 1980, ch. 206, § 7, effective July 1, 1980; 1982, ch. 166, § 34, effective July 15, 1982; 1982, ch. 414, § 3, effective July 15, 1982; 1984, ch. 253, § 20, effective July 1, 1984; 1984, ch. 302, § 8, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 523, effective July 13, 1990.

161.597. Installment payments for purchase of service credit by active contributing members.

(1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.

(2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.

(3) To qualify for installment payments, the total cost of the service purchase, including any chargeable interest, shall exceed one thousand dollars ($1,000).

(4) Installment payments shall be at least fifty dollars ($50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months. Interest at eight percent (8%) per annum, unless the board specifies in an administrative regulation a different interest rate, shall be charged on all installment payment purchases of service credit that are purchasable at less than full actuarial cost. Interest shall be assigned to the guarantee fund.

(5) Installment payments shall be made on a monthly basis by electronic fund transfer. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560, except that subject to approval by the Internal Revenue Service and only as permitted by the Internal Revenue Code, installment payments shall be made on a tax-deferred basis.

(6) A member may elect to terminate electronic fund transfers at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may continue to make installment payments. Termination of employment in a covered position shall terminate installment payments. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments

shall be in default. A member in default shall receive a refund of all prior installment payments and the member's service credit shall be reduced accordingly. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.

(7) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

History.

Enact. Acts 1996, ch. 359, § 1, effective July 1, 1996; 1998, ch. 515, § 10, effective July 1, 1998; 2004, ch. 121, § 14, effective July 1, 2004; 2021 ch. 192, § 15, effective June 29, 2021.

OPINIONS OF ATTORNEY GENERAL.

The payment for the purchase of service credits under the statute is not required to be only by lump sum payment; thus, members may pay for such service credits in installment payments pursuant to this section. OAG 99-7, 1999 Ky. AG LEXIS 189.

161.600. Retirement conditions — Consolidation of accounts — Applications and forms — Surviving spouse.

(1) An individual who becomes a member of the retirement system prior to January 1, 2022, may qualify for service retirement by meeting one (1) of the following requirements:

(a) Attainment of age sixty (60) years and completion of five (5) years of Kentucky service;

(b)1. For an individual who becomes a member before July 1, 2008, attainment of age fifty-five (55) years and completion of a minimum of five (5) years of Kentucky service with an actuarial reduction of the basic allowance of five percent (5%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number; and

2. For an individual who becomes a member on or after July 1, 2008, attainment of age fifty-five (55) years and completion of a minimum of ten (10) years of Kentucky service with an actuarial reduction of the basic retirement allowance of six percent (6%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number;

(c) Completion of twenty-seven (27) years of Kentucky service. Out-of-state service earned in accordance with the provisions of KRS 161.515(2) may be used to meet this requirement; or

(d) Completion of the necessary years of service under provisions of KRS 61.559(2)(c) if the member is retiring under the reciprocity provisions of KRS 61.680. A member retiring under this paragraph who has not attained age fifty-five (55) shall incur an actuarial reduction of the basic allowance determined by the system's actuary for each year the member's service credit is less than twenty-seven (27).

(2) An individual who becomes a member of the retirement system on or after January 1, 2022, shall, except as adjusted by the board pursuant to KRS 161.633 or 161.634, as applicable, be eligible to retire upon attainment of:

(a) Age sixty-five (65) and completion of a minimum of five (5) years of Kentucky service;

(b) Age sixty (60) and completion of a minimum of ten (10) years of Kentucky service;

(c) Age fifty-seven (57) and completion of a minimum of thirty (30) years of Kentucky service; or

(d) Age fifty-seven (57) and completion of a minimum of ten (10) years of Kentucky service with an actuarial reduction of the basic retirement allowance of six percent (6%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than thirty (30), whichever is the lesser number.

(3) Any person who has been a member in Kentucky for twenty-seven (27) years or more and who withdraws from covered employment may continue to pay into the fund each year until the end of the fiscal year in which he or she reaches the age of sixty-five (65) years, the current contribution rate based on the annual compensation received during the member's last full year in covered employment, less any payment received for accrued sick leave or accrued leave from an employer. The member shall be entitled to receive a retirement allowance as provided in KRS 161.620 at any time after withdrawing from covered employment and payment of contributions under this subsection. No member shall make contributions as provided for in this subsection if the member is at the same time making contributions to another retirement system in Kentucky supported wholly or in part by public funds.

(4) Service credit in the Kentucky Employees Retirement System, the State Police Retirement System, the Legislators' Retirement Plan, the County Employees Retirement System, or the Judicial Retirement System may be used in meeting the service requirements of subsections (1)(a) to (c) and (2) of this section, provided the service is subsequent to July 1, 1956.

(5) Upon death, disability, or service retirement, a member's accounts under all state supported retirement systems shall be consolidated, as provided by this section and by KRS 61.680, for the purpose of determining eligibility and amount of benefits, which shall include medical benefits. Upon determination of benefits, each system shall pay the applicable percentage of total benefits. The effective date of retirement under this subsection shall be determined by each retirement system for the portion of the payments that will be made.

(6) No retirement annuity shall be effective until written application and option election forms are filed with the retirement office in accordance with administrative regulations of the board of trustees. A member may withdraw his or her retirement application, postpone his or her effective retirement date, or change his or her retirement option if these elections are made no later than the fifteenth day of the month in which the member has made application for retirement. The

deadline for making these changes shall not be subject to the jurisdiction of any court or appeal process, nor shall it otherwise be tolled or waived.

(7) The surviving spouse of an active contributing member, if named as beneficiary of the member's account, may purchase retirement credit that the member was eligible to purchase prior to the member's death.

History.

4506b-41; amend. Acts 1960, ch. 44, § 12; 1962, ch. 64, § 12; 1964, ch. 43, § 13; 1968, ch. 136, § 9; 1972, ch. 82, § 17; 1974, ch. 395, § 15; 1976, ch. 351, § 15, effective July 1, 1976; 1978, ch. 43, § 1, effective June 17, 1978; 1978, ch. 152, § 12, effective March 28, 1978; 1982, ch. 114, § 1, effective July 15, 1982; 1982, ch. 326, § 14, effective July 1, 1982; 1986, ch. 440, § 11, effective July 1, 1986; 1988, ch. 240, § 1, effective July 15, 1988; 1988, ch. 260, § 1, effective July 15, 1988; 1988, ch. 363, § 14, effective July 1, 1988; 1990, ch. 442, § 13, effective July 1, 1990; 1990, ch. 476, Pt. V, § 524, effective July 13, 1990; 1994, ch. 369, § 16, effective July 1, 1994; 1996, ch. 359, § 12, effective July 1, 1996; 2004, ch. 121, § 15, effective July 1, 2004; 2008, ch. 78, § 13, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 37, effective June 27, 2008; 2018 ch. 107, § 69, effective July 14, 2018; 2021 ch. 157, § 9, effective January 1, 2022; 2025 ch. 138, § 9, effective March 31, 2025.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

This section was amended by three 1988 Acts, part of which conflict and cannot be compiled together. Pursuant to KRS 446.250, the later enactment prevails.

NOTES TO DECISIONS

1. Compulsory Retirement.

A regulation requiring compulsory retirement of teachers at age 65 does not conflict with this section since a teacher's employment between age 65 and age 70, the statutory age for compulsory retirement, is discretionary with the board of education under KRS 161.720. Belcher v. Gish, 555 S.W.2d 264, 1977 Ky. LEXIS 505 (Ky. 1977) (decided under prior law).

Cited in:

Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

That portion of a regulation that fixes the effective date of all applications for service retirement as of July 1 of the fiscal year succeeding the fiscal year in which the application was filed, is valid as an explanation and elaboration of the phrase "end of the current fiscal year" as used in this section, but so much of the regulation as authorizes the executive secretary to make exceptions is invalid. OAG 60-792 (decided under prior law).

There is no vested right in a pension system until the participant has become an actual beneficiary, and consequently, the General Assembly may change teachers' retirement benefits except where the benefits have become vested through the member's having met the conditions and having become an actual beneficiary; so that a teacher who retires after the effective date of the 1968 amendment to subsection (1) of this section with fewer than five years of Kentucky service will not be entitled to a pension but in lieu thereof will receive a refund of his accumulated employee contributions. OAG 68-316 (decided under prior law).

A teacher who taught in Kentucky prior to 1941 would fulfill the condition of subsection (2) of this section when her Kentucky service, either prior or subsequent, totaled five years, and when she reached the age of 70. She would of course have to teach subsequently to 1941 in order to receive credit for her prior service under KRS 161.510 (now repealed); however, she would not have to have five (5) years of subsequent service. OAG 70-822 (decided under prior law).

The mandatory retirement age for teachers is set at 70 by this section and this may not be changed by a regulation of the board of education. OAG 72-363 (decided under prior law).

There is no age limit requiring retirement of substitute teachers. OAG 73-847 (decided under prior law).

Seventy is the mandatory retirement age, but a teacher between ages 65 and 70 is on a limited contract and does not have a right to work until age 70 if the school board decides prior to May 15 any year after age 65 not to rehire. OAG 74-454 (decided under prior law).

Upon reaching the age of 65 a school administrator no longer has a continuing service contract but may be employed on a limited contract from year to year until reaching the age of 70, the mandatory retirement age provided by this section. OAG 75-2 (decided under prior law).

An individual may serve as a superintendent under contract pursuant to KRS 160.350 until the end of the school year in which the age of 70 is reached. OAG 79-213 (decided under prior law).

Generally, in order to qualify for retirement, a member of the retirement system must have completed 27 years of service, notwithstanding accumulation of sick leave. OAG 91-219, 1991 Ky. AG LEXIS 217.

One time payments to teachers to induce retirement are constitutional under Ky. Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23, 1996 Ky. AG LEXIS 35.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Application for retirement, 102 KAR 1:070.

Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System, 102 KAR 1:185.

Substitute teachers and nonuniversity, noncommunity college part-time members, 102 KAR 1:030.

Kentucky Law Journal.

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

161.603. Resumption of teaching by retired member — Waiver of annuity payments. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1964, ch. 43, § 19; 1972, ch. 82, § 18; 1976, ch. 351, § 16, effective July 1, 1976; 1978, ch. 152, § 13, effective March 28, 1978; 1990, ch. 442, § 14, effective July 1, 1990; 1990, ch. 476, Pt. V, § 525, effective July 13, 1990; 1992, ch. 192, § 10, effective July 14, 1992; 1996, ch. 359, § 13,

effective July 1, 1996; 2002, ch. 275, § 24, effective July 1, 2002) was repealed by Acts 2008 (1st Ex. Sess.), ch. 1, § 42, effective June 27, 2008.

161.605. Resumption of employment by retired member — Continuation of retirement allowance — Individuals who retire and are reemployed — Part-time, substitute teaching, and nonteaching employment — Health insurance coverage.

Any member retired by reason of service may return to work in a position covered by the Kentucky Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

(1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position, or in a position providing substitute teaching service, covered by the Teachers' Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, excluding employer-provided medical insurance required under subsection (4) of this section, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Nonqualified service credit purchased under the provisions of KRS 161.5465 or elsewhere with any state-administered retirement system shall not be used to meet the thirty (30) year requirement set forth in this subsection. Out-of state teaching service provided in public schools for kindergarten through grade twelve (12) may count toward the thirty (30) year requirement set forth in this subsection even if it is not purchased as service credit, if the member obtains from his or her out-of-state employer certification of this service on forms prescribed by the retirement system;

(2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position, or in a position providing substitute teaching service, covered by the Teachers' Retirement System and earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, excluding employer-provided medical insurance required under subsection (4) of this section, shall be considered;

(3) Under this section, an employer may employ full-time a number of retired members not to exceed ten percent (10%) of the membership actively employed full-time by that employer. The board of trustees may reduce this ten percent (10%) cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the ten percent (10%) cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the Kentucky Department of Education which the department may approve on a year-by-year basis;

(4)(a) Except as provided by subsection (9) of this section, a retired member returning to work in a full-time or part-time position, or in a position providing substitute teaching service under subsection (1) or (2) of this section, shall contribute to an account with the retirement system that shall be administered independently from and with no reciprocal impact with the member's original retirement account, or any other account from which the member is eligible to draw a retirement allowance.

(b) Except as provided by subsection (9) of this section, a retired member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The new account shall independently meet all vesting requirements as well as all other conditions set forth in KRS 161.600(1) or (2), as applicable, before any retirement allowance is payable from this account. The retirement allowance accruing under this new account shall be calculated pursuant to KRS 161.620. This new account shall not entitle the member to a duplication of the benefits offered under KRS 161.620(7) or 161.675, nor shall this new account provide the benefits offered by KRS 161.520, 161.525, 161.620(3), 161.655, 161.661, or 161.663.

(c) A retired member returning to work for an employer that participates in a state-administered retirement system shall waive his or her medical insurance with the Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is offered by the member's active employer. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member.

(d) A retired member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the

member would have otherwise been eligible to purchase prior to the member's initial retirement.

(e) A retired member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470;

(5) The board of trustees may annually, on July 1, adjust the current daily rate of a member's last annual compensation, for each full twelve (12) month period that has elapsed subsequent to the member earning his or her last annual compensation, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. Each annual adjustment shall become part of the member's daily rate base. Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations, and the member shall be refunded his or her retirement contributions made on the compensation that exceeds these salary limitations. Notwithstanding any other provision of law to the contrary, a member retiring from a local school district who returns to work for a local school district under subsection (1) or (2) of this section shall be entitled, without any reduction to his or her retirement allowance or any other retirement benefit, to earn a minimum amount equal to two hundred dollars ($200) per day;

(6)(a) A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer.

(b) A retired member who is returning to work for an employer that has employees who participate in the Teachers' Retirement System shall comply with the separation-from-service requirements in this subsection before performing any service for the employer, regardless of whether the retired member is providing service in a position covered by the Teachers' Retirement System.

(c) The starting date for any separation from service required under this subsection shall be the effective date of the member's retirement.

(d) The separation-from-service requirements of this subsection are not met if there is a prearranged agreement between the member and an employer that has employees who participate in the Teachers' Retirement System prior to retirement for the member to work for the employer after retirement.

(e) The Teachers' Retirement System may require the member and the employer for which the member is returning to work to certify in writing on a form prescribed by the Teachers' Retirement System that no prearranged agreement was or will be entered into between the member and employer prior to retirement for the member to work for the employer after retirement.

(f) Failure to comply with the separation-from-service requirements in this subsection voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service;

(7)(a) Effective July 1, 2004, local school districts may employ retired members in full-time or part-time teaching or administrative positions in critical shortage areas without limitation on the compensation of the retired members that is otherwise required by subsections (1) and (2) of this section. The number of retired members that a local school district may employ under this subsection shall be no more than four (4) members per local school district or ten percent (10%) of the total active members employed by the local school district on a full-time basis as defined under KRS 161.220(21), whichever number is greater. Retired members returning to work under this subsection shall be subject to the separation-from-service requirements set forth in subsection (6) of this section. Retired members returning to work under this subsection shall waive their medical insurance coverage with the retirement system during their period of reemployment and receive medical insurance coverage that is offered by the member's active employer. Retired members returning to work under this subsection shall contribute to an account subject to the conditions set forth in subsection (4) of this section. Retired members returning to work under this subsection shall make contributions to the retirement system at the rate provided under KRS 161.540. The employer shall make contributions at the rate provided under KRS 161.550. Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at the rates determined by the retirement system's actuary that reflect any accrued liability resulting from the reemployment of these members.

(b) The Department of Education may employ retired members in full-time or part-time teaching or nonteaching positions without the limitations on compensation otherwise required by subsections (1) and (2) of this section to fill critical shortage areas in the schools it operates, including the Kentucky School for the Blind and the Kentucky School for the Deaf, and to serve on audit teams. The department shall be subject to the same requirements as local school districts as provided in

paragraph (a) of this subsection, except the Teachers' Retirement System shall determine the maximum number of employees that may be employed under this paragraph;

(8) The return-to-work limitations set forth in this section shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or a position described in KRS 161.046 or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this section. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection;

(9)(a) Notwithstanding the provisions of this section, individuals who become members on or after January 1, 2022, who subsequently retire and begin drawing a monthly lifetime retirement allowance from the Teachers' Retirement System, who following retirement are reemployed with an employer participating in the Teachers' Retirement System, shall not be eligible to contribute to or earn benefits in a second retirement account in the Teachers' Retirement System during the period of reemployment.

(b) The provisions of subsections (1) to (7) of this section are not subject to KRS 161.714;

(10) Retired members may be employed in a part-time teaching capacity by an agency described in KRS 161.220(4)(b) or (n), not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. Retired members may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by an agency described in KRS 161.220(4)(b) or (n) in a position that would otherwise be covered by the retirement system. Except as otherwise provided by this subsection, the return to work provisions set forth in subsections (1) to (7) of this section shall not apply to retired members who return to work solely for an agency described in KRS 161.220(4)(b) or (n). Calculation of the number of days and teaching hours for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service. Any member who exceeds the twelve (12) hour or one hundred (100) day limitations of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding twelve (12) hours, one hundred (100) days, or any apportionment of the two (2) combined. Retired members returning to work for an employer described in KRS 161.220(4)(b) or (n) shall comply with the separation-from-service requirements of subsection (6) of this section;

(11) When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (10) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (10) of this section; and

(12) For retired members who return to work during any one (1) fiscal year in both a position described in KRS 161.220(4)(b) or (n) and in a position described under another provision under KRS 161.220(4), and for retired members who return to work in a position described under KRS 161.220(4)(b) or (n) in both a teaching and an administrative or nonteaching capacity, the board of trustees shall adopt a methodology for a pro rata apportionment of days and hours that the retired member may work in each position.

(13) Notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, an annuitant who has returned to work following retirement with an employer that does not participate in the state-administered retirement systems shall not be required to take health insurance coverage through the employer and the system shall continue to provide health insurance coverage and benefits to the annuitant during the period of employment, except as may be required by the Medicare Secondary Payer Act under 42 U.S.C. sec. 1395y(b).

(14) Any member retired by reason of service may waive his or her annuity and return to full-time employment in a Teachers' Retirement System-covered position that is on the certified salary schedule under the following conditions:

(a) The member shall:

1. Receive no annuity payments while employed in a full-time position described in this subsection;

2. Make contributions on the salaries received for the service in a full-time position;

3. If employed for at least one (1) consecutive contract year in a full-time position, have his or her retirement annuity recalculated as provided in the regular retirement formula in KRS 161.620(1), except that, regardless of salaries earned during waiver, a monthly retirement allowance recalculated under this paragraph shall not be increased by more than ten percent (10%) per full contract year of waiver worked or a prorated percentage for a year during waiver when less than a full contract year was worked. The recalculated retirement allowance shall be less any applicable actuarial discount applied to

the original retirement allowance due to the election of a joint and last survivor option; and

4. Waive his or her medical insurance coverage with the Teachers' Retirement System during the period of reemployment and instead shall receive the medical insurance coverage that is generally offered by the member's active employer;

(b)1. The member's estate or, if there is a beneficiary applicably designated by the member, then the beneficiary, shall continue to be eligible for life insurance benefits as provided in KRS 161.655.

2. Retirement option, plan account type, and beneficiary designation on original retirement shall not be altered by postretirement employment under this subsection, and dependents and spouses of the members shall not become eligible for benefits under KRS 161.520, 161.525, or 161.661 due to postretirement employment;

(c)1. When a member returns to a full-time position described in this subsection and as provided in paragraph (a) of this subsection, the employer is required to withhold and remit regular retirement contributions.

2. The member shall be returned to the annuity rolls on July 1 following completion of the contract year or on the first day of the month following the month of termination of service. A member shall not be returned to the annuity rolls until after he or she has filed a retirement application in compliance with KRS 161.600(6). Any discounts applied at the time of the original retirement due to service or age may be reduced or eliminated in the recalculation subject to the ten percent (10%) cap in paragraph (a) of this subsection; and

(d) A member retired by reason of service who has been employed the equivalent of twenty-five (25) days or more during a school year under KRS 161.605 may waive the member's retirement annuity and return to a position described in this subsection during that school year a maximum of one (1) time during any five (5) year period, beginning with that school year.

History.

Enact. Acts 1952, ch. 226; 1958, ch. 10; 1964, ch. 43, § 14; 1972, ch. 82, § 19; 1980, ch. 102, § 1, effective July 15, 1980; 1990, ch. 442, § 15, effective July 1, 1990; 1990, ch. 476, Pt. V, § 526, effective July 13, 1990; 1992, ch. 192, § 11, effective July 1, 1992; 1996, ch. 359, § 14, effective July 1, 1996; 1998, ch. 515, § 11, effective July 1, 1998; 2000, ch. 477, § 2, effective July 14, 2000; 2000, ch. 498, § 16, effective July 1, 2000; 2002, ch. 275, § 25, effective July 1, 2002; 2004, ch. 121, § 16, effective July 1, 2004; 2008, ch. 78, § 14, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 38, effective June 27, 2008; 2010, ch. 164, § 9, effective July 1, 2010; 2018 ch. 107, § 70, effective July 14, 2018; 2021 ch. 192, § 16, effective June 29, 2021; 2021 ch. 157, § 32, effective January 1, 2022; 2025 ch. 144, § 1, effective June 27, 2025; 2026 ch. 34, § 2, effective July 15, 2026.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/1/2004). In subsection (13) of this statute, two references to "subsection (11) of this section" have been changed to read "subsection (12) of this section." When the statute was amended in 2004 Ky. Acts ch. 121, sec. 16, the subsections were renumbered, but the references to subsection (11) were not changed to conform. The Reviser of Statutes has made the conforming change under authority of KRS 7.136.

(7/1/2004). 2004 Ky. Acts ch. 121, sec. 27, provides that "The provisions of subsection (8) of Section 16 of this Act [KRS 161.605] supersede the provisions relating to critical shortage positions set forth in 2003 Kentucky Acts ch. 156, sec. 1 [Executive Branch Budget Bill]."

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Editor's Notes

Notwithstanding the amendments made to subsection (11) of 2025 Ky. Ch. 144, retired members participating in the retirement waiver program established by KRS 161.605(11) prior to the effective date of 2025 Ky. Ch. 144 may continue to participate in the program.

2022-2024 Budget Reference.

See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. III, 42 at 1754.

OPINIONS OF ATTORNEY GENERAL.

A "substitute" teacher is one who temporarily substitutes to teach for another regularly employed teacher who is temporarily absent from her work. OAG 64-288.

There is no age limit requiring retirement of substitute teachers. OAG 73-847.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Compensation plan, 780 KAR 3:020.

Employment of KTRS retiree in full-time position, 702 KAR 1:150.

161.607. Employment in position covered by other Kentucky retirement system.

(1) Any member of the Teachers' Retirement System who enters employment covered by the Kentucky Employees Retirement System, the State Police Retirement System, or the County Employees Retirement System, prior to July 1, 1976, may retain membership in the Teachers' Retirement System instead of joining the new system.

(2) Retention of membership in the Teachers' Retirement System by any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System shall be effected by conforming with KRS 61.680(4)(c). Members of the General Assembly who retain membership shall make retirement contributions based upon their annual compensation as defined under KRS 161.220 or on their creditable compensation as defined under KRS 61.510, whichever is the larger amount. Service as a member of the General Assembly may be used to meet the service

requirements of KRS 61.680(2)(a) regardless of the system to which contributions are made by the member.

(3) Any member of the Teachers' Retirement System entering employment as described in subsection (1) of this section must exercise the option within ninety (90) days of the beginning of such employment.

(4) Persons who enter service covered by the Teachers' Retirement System prior to July 1, 1976, and who hold membership in a Kentucky retirement system financed in whole or part with public funds may retain membership in that system providing the statutes and regulations governing said system make continued membership possible.

(5) Any person who has elected an option provided in this section may cancel such election and gain membership in the system which normally covers the position in which currently employed, provided that such cancellation of option election must be completed prior to January 1, 1977.

History.

Enact. Acts 1964, ch. 43, § 21; 1968, ch. 136, § 10; 1976, ch. 351, § 17, effective July 1, 1976; 1980, ch. 206, § 8, effective July 1, 1980; 1982, ch. 458, § 6, effective April 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 527, effective July 13, 1990; 2000, ch. 498, § 17, effective July 1, 2000.

Compiler's Notes.

This section (Enact. Acts 1964, ch. 43, § 21; 1968, ch. 136, § 10; 1976, ch. 351, § 17, effective July 1, 1976; 1980, ch. 206, § 8, effective July 1, 1980; 1982, ch. 458, § 6, effective April 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 527, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Persons who are covered by any one of the three publicly financed Kentucky retirement systems can maintain their coverage in the system of their choice provided they are qualified when they change jobs. While the statutes do not specifically prohibit a subsequent change after an election has been made, neither do they give a covered employee the unqualified right to make such a change. However, in the absence of a specific provision prohibiting subsequent change after an election, and in view of the broad authorization for reciprocal arrangements, we believe the statutes would permit the various retirement systems to authorize a subsequent change, provided appropriate regulations are promulated. OAG 69-501.

There is no statutory right for an employee who has made an election to remain in one of the three publicly financed Kentucky retirement systems to have his account frozen in that system and be treated as a new employee by the agency which has been employing him. Such procedure could not be permitted without appropriate reciprocal regulations by the retirement systems involved. OAG 69-501.

The term "employment covered by the Kentucky employees retirement system" in this section embraces the term "service" as defined in KRS 61.510(9) and as referred to in KRS 61.595 so that an employee of the Kentucky Department of Agriculture for the three years immediately preceding July 1, 1956, when there was no Kentucky Employees Retirement System in existence, would still be entitled to purchase credit in the Teachers' Retirement System for the three years in question pursuant to the option contained in this section. OAG 73-749.

Any employee of the Kentucky Authority for Educational Television currently a member of the Kentucky Employees Retirement System who, because of KRS 161.220(4), may be qualified to participate in the teachers' retirement system has the option of joining the teachers' retirement system as provided by subsection (3) (now subsection (4)) of this section or retaining membership in Kentucky Employees Retirement System as provided by KRS 61.680. OAG 74-305.

In the present situation, the language of subsection (5) of this section and KRS 61.680(4)(b) is clear and unambiguous, and while these statutes provide that an employee may retain Kentucky Teachers' Retirement System membership upon transfer to another agency covered by other government retirement systems, and that such an employee may cancel his election to retain KTRS membership, it specifically provides that any cancellation of option election must be made prior to January 1, 1977. OAG 78-744, 1978 Ky. AG LEXIS 91.

161.608. Calculation of benefits of member who has an account with another state system.

The provisions of KRS 61.680 are hereby recognized and shall be followed in calculating benefits of any member of the Teachers' Retirement System who also has an account with the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System. The benefits shall be calculated using a membership date as follows:

(1) Teachers' Retirement System shall use the other state-administered retirement systems' membership entry date to establish eligibility for and participation in benefits if it is the earlier membership entry date between the systems, and this date shall not be subsequently changed once entered in the member's record; and

(2) For individuals who begin participation in the Teacher's Retirement System on or after July 1, 2026, service subsequently reinstated or established in another system for an earlier period or date shall not change the individual's continued participation in the Teachers' Retirement System account type in which they participated prior to the reinstatement.

History.

Enact. Acts 1974, ch. 128, § 38, effective March 26, 1974; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 528, effective July 13, 1990; 2026 ch. 34, § 3, effective July 15, 2026.

Compiler's Notes.

This section (Enact. Acts 1974, ch. 128, § 38, effective March 26, 1974) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 528, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

This section and KRS 61.680 are to be interpreted to mean that once an individual with joint accounts in the various state retirement systems consolidates those accounts and is eligible to retire in the system under which he is presently covered and does so, all other retirement systems in which he has an account must pay their proportional share of benefits to him even though he might not otherwise be eligible due to his age. OAG 74-904.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial

Retirement System, and Teachers' Retirement System, 102 KAR 1:185.

161.610. Withdrawal after thirty years; benefit rights; options. [Repealed.]

Compiler's Notes.

This section (4506b-42: amend. Acts 1950, ch. 194; 1962, ch. 64, § 13) was repealed by Acts 1964, ch. 43, § 23.

161.611. Supplemental retirement benefit plan — Purpose — Administration — Eligibility — Payments.

(1) The board of trustees is authorized to provide a supplemental retirement benefit plan for the sole purpose of enabling the employer to apply the same formula for determining benefits payable to all members of the retirement system employed by the employer, whose benefits under the retirement system are limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time. This plan is intended to constitute a qualified governmental excess benefit plan as described in Section 415 of the Internal Revenue Code.

(2) The board of trustees shall administer this plan and have full discretionary fiduciary authority to determine all questions in connection with the plan. The board of trustees may adopt procedural rules and administrative regulations and may employ and rely on any legal counsel, actuaries, accountants, and agents as it deems advisable to assist in the administration of this plan.

(3) All members and retired former members in the retirement system shall be eligible to participate in this plan whenever their benefits under the retirement system would exceed the limitation on benefits imposed by Section 415 of the Internal Revenue Code.

(4) On or after the effective date of this plan, the employer shall pay to each eligible member in the retirement system who retires on or after that date and to each former member who retired before that date and his or her beneficiaries a supplemental pension benefit, equal to the amount by which the benefit that would have been payable under the retirement system, without regard to any provision therein incorporating the limitation on benefits imposed by Section 415 of the Internal Revenue Code, exceeds the benefit actually payable, taking into account the limitation imposed on the retirement system by Section 415 of the code. These supplemental pension benefits shall be computed and payable under the same terms and conditions and to the same person as the benefits payable to, or on account of, an eligible member under the retirement system.

(5) Benefits payable under this plan shall not be subject to the dollar limit applicable to eligible deferred compensation plans under Section 457 of the Internal Revenue Code, nor to the "substantial risk or forfeiture" rules of Section 457(f) of the code applicable to ineligible deferred compensation plans. In addition, benefits payable under this plan shall not be taken into account in determining whether any other plan of the employer is an eligible deferred compensation plan under Section 457 of the code.

(6) Funding of benefits payable under this plan shall be provided by the state, as employer, and shall be segregated from funds that are maintained by the retirement system for payment of the regular benefits provided by the retirement system. The employer may establish a grantor trust for payment of benefits provided under this plan, with the employer treated as "grantor" thereof for purposes of Section 677 of the Internal Revenue Code. The rights of any person to receive benefits under this plan are limited to those of a general creditor of the employer.

History.

Enact. Acts 2000, ch. 498, § 1, effective July 1, 2000; 2002, ch. 275, § 26, effective July 1, 2002.

Compiler's Notes.

Section 415 of the Internal Revenue Code, referred to in subsections (1), (3) and (4), is codified as 26 USCS § 415.

Section 457 of the Internal Revenue Code, referred to in subsection (5), is codified as 26 USCS § 457.

Section 677 of the Internal Revenue Code, referred to in subsection (6), is codified as 26 USCS § 677.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Limitations on benefits, 102 KAR 1:230.

161.612. Membership of individuals providing part-time and substitute services — Service credit — Participation in benefits.

Effective July 1, 2002, any individual occupying a position on a part-time basis that requires certification or graduation from a four (4) year college or university as a condition of employment and any individual providing part-time or substitute teaching services that are the same or similar to those teaching services provided by certified, full-time teachers shall be a member of the Teachers' Retirement System, according to the conditions and only to the extent set forth in this section, if the individual is employed by one (1) of the public boards, institutions, or agencies set forth in KRS 161.220, excluding those public boards, institutions, and agencies described in KRS 161.220(4)(b) and (n). Members providing part-time and substitute services shall participate in the retirement system as follows:

(1) Members providing part-time and substitute services shall accrue service credit as provided under KRS 161.500 and be entitled to a retirement allowance upon meeting the service retirement conditions of KRS 161.600. The board of trustees shall adopt a methodology for accrediting service credit to these members on a pro rata basis. The methodology adopted by the board of trustees may be amended as necessary to ensure its actuarial soundness. The retirement allowance for members providing part-time and substitute services shall be calculated pursuant to KRS 161.620 and 161.635 or 161.636, as applicable, except that the provisions of KRS 161.620(3) shall not apply. Members providing part-time and substitute services who meet the service retirement conditions of KRS 161.600 may also be eligible to participate as approved by the board of trustees in the medical insurance program provided

by the retirement system under KRS 161.675. Members providing part-time and substitute services shall make contributions to the Teachers' Retirement System at the rate provided under KRS 161.540. A member who provides part-time or substitute services, or in the event of the death of the member, the member's estate or applicably designated beneficiary, will be entitled, within ninety (90) days of the posting of the annual report submitted by the member's employer, to a refund of contributions as permitted and limited by KRS 161.470;

(2)(a)1. The board of trustees shall adopt eligibility conditions under which members providing part-time and substitute services may participate in the benefits provided under KRS 161.520, 161.655, 161.661, and 161.663.

2. For all disability retirement applications filed with the Teachers' Retirement System on or after July 1, 2021, disability retirement payments and any other recurring payments payable by any other state-administered retirement system to members providing part-time or substitute services shall be applied to reduce, on a dollar-for-dollar basis, the minimum monthly disability retirement allowance of five hundred dollars ($500) provided for under KRS 161.661(6).

3. Effective July 1, 2021, members providing part-time or substitute services shall not be eligible to apply for a disability retirement allowance if they are eligible for a service retirement allowance that is not subject to an actuarial reduction required under KRS 161.600(1)(b) or (d).

(b) The board of trustees may permit members providing part-time or substitute services to participate in other benefits offered by the retirement system by promulgating administrative regulations that establish eligibility conditions for participation in these benefits. All eligibility conditions adopted by the board of trustees pursuant to this subsection may be amended as necessary to ensure their actuarial soundness;

(3) In addition to the pro rata methodology adopted by the board of trustees under subsection (1) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding the accrual, retention, accreditation, and use of service credit that apply to members providing full-time services. In addition to the eligibility conditions set forth by the board of trustees under subsection (2) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding both the eligibility to participate and the extent of participation in any benefit offered under KRS 161.220 to 161.716 that apply to members providing full-time services;

(4) Notwithstanding any other provisions of this section to the contrary, instructional assistants who provide teaching services in the local school districts on a full-time basis in positions covered by the County Employees Retirement System who are used as substitute teachers on an emergency basis for five (5) days or less during any one (1) fiscal year shall not be considered members of the Teachers' Retirement System during that period in which they are serving as substitute teachers for five (5) days or less;

(5) The board of trustees may adopt a pro rata methodology to determine the annual compensation of members providing part-time and substitute services in order to determine benefits provided under KRS 161.661 and 161.663. Members providing part-time and substitute services who had retirement contributions posted to their accounts during the previous fiscal year and who have not had those contributions refunded to them are eligible to vote for the board of trustees;

(6) The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership; and

(7) The provisions of this section are not subject to KRS 161.714.

History.

Enact. Acts 2002, ch. 275, § 1, effective July 1, 2002; 2004, ch. 121, § 17, effective July 1, 2004; 2008, ch. 78, § 15, effective July 1, 2008; 2018 ch. 107, § 71, effective July 14, 2018; 2021 ch. 192, § 17, effective June 29, 2021; 2021 ch. 157, § 33, effective January 1, 2022.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

2022-2024 Budget Reference.

See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. III, 42 at 1754.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Benefit eligibility conditions for members providing part-time and substitute services, 102 KAR 1:310.

Substitute teachers and nonuniversity, noncommunity college part-time members, 102 KAR 1:030.

161.614. Court-ordered back salary and reinstatement.

A court order awarding additional back salary to or reinstating a member as a result of employment in a position covered by the Teachers' Retirement System shall entitle the member to additional salary or service credit, or both, under the following circumstances:

(1) Members shall make contributions to the Teachers' Retirement System at the rate set forth in KRS 161.540 and members' employers shall make contributions at the rate set forth in KRS 161.550, with interest accruing on all contributions at the rate of eight percent (8%) per annum from the end of each fiscal year that back salary or the reinstatement was

ordered. Contributions, plus interest, shall be made for each year that back salary or reinstatement was ordered. No service or salary credit shall be credited to a member's account unless full contributions are paid to the Teachers' Retirement System;

(2) The member may have court-ordered back salary credited to his or her account only to the extent that the member actually received payment for the back salary and only to the extent that the court-ordered back salary is within the salary scale that was available to the member in the covered position for the years that the back salary was awarded. Court-ordered back salary can be credited to the member's account only as permitted under KRS 161.220(9) and (10). The member may have court-ordered service credited to his or her account only after the retirement system has received the contributions and interest on the full compensation that would normally be earned in the position that is the subject of the litigation;

(3) The member's employer ordered to pay back salary or to reinstate the member by a court of competent jurisdiction shall provide the retirement system with a breakdown of the back salary awarded to the member on a year-by-year basis;

(4) The calculations of the contributions and interest required to be paid for court-ordered back salary or reinstatement shall be provided by the retirement system to the member or the member's employer at the member's or employer's request. Requests for these calculations shall be made with at least two (2) weeks of advance notice to the retirement system to provide these calculations. The retirement system will calculate accrued interest as of the last day of the month during which payment of the full contributions are made;

(5) For purposes of this section, a settlement agreement that provides back salary or reinstatement, and is adopted by order or judgment of a court of competent jurisdiction or is referenced in an order dismissing the action as settled shall have the same effect as a court order adjudicating the matter. Orders entered by a government board or agency as a result of litigation conducted on an administrative hearing level and legally binding arbitration and mediation awards shall be considered as court orders for the purposes of this section; and

(6) Under no circumstances shall a member be entitled to service credit as a result of court-ordered reinstatement that is in violation of the provisions of KRS 161.500.

History.

Enact. Acts 2002, ch. 275, § 2, effective July 1, 2002; 2004, ch. 121, § 18, effective July 1, 2004; 2008, ch. 78, § 16, effective July 1, 2008; 2021 ch. 192, § 18, effective June 29, 2021.

161.615. Limited defined contribution plan — Purpose — Administration — Eligibility — Payments.

(1) The board of trustees is authorized to implement a limited defined contribution plan for the sole purpose of providing retirement allowance payments for retired members who have been approved by the retirement system for full-time reemployment as provided in KRS 161.605.

(2) The defined contribution plan shall be administered separately from the regular benefits provided for members of the retirement system, except that the contributions to the plan shall be invested in the same manner as other contributions to the retirement system.

(3) The provisions of this section apply only to those retired members who were permitted to return to work under the critical shortage provisions of KRS 161.605(7) as they existed on June 30, 2002. The provisions of this section shall not apply to any retired member returning to work on or after July 1, 2002.

(4) Separate member accounts shall be maintained for participants in this plan which shall reflect the annual contributions made to the participant's account based on the rates and interest levels specified in KRS 161.605.

(5) When the retiree's reemployment terminates, the total contributions and accrued interest in the participant's account will be paid in a lump-sum payment or on an actuarial straight life monthly basis to the retiree. If the member dies prior to making application for a retirement allowance under this plan, the beneficiary designated by the participant for this plan shall receive a refund of the funds in the account. If there is a remaining balance in the account at the death of the participant after retirement from this plan, it shall be paid to the beneficiary designated by the participant for this benefit.

(6) Retired members shall be eligible to receive their retirement annuity when approved for reemployment and participation in this plan. Service as a reemployed retiree may not be used in any manner for credit under the regular retirement benefit plans provided by the retirement system.

History.

Enact. Acts 2000, ch. 498, § 2, effective July 1, 2000; 2002, ch. 275, § 27, effective July 1, 2002; 2018 ch. 107, § 72, effective July 14, 2018; 2021 ch. 157, § 34, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

161.620. Retirement allowances for university and nonuniversity retirees — Amount — Increases — Payments for adult dependents.

(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

(a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all

nonuniversity members. Except as otherwise provided by this section, the annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are university members shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section;

(b) For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary;

(c) The board of trustees may approve for members who initially retire on or after July 1, 2004, and who become nonuniversity members before July 1, 2008, a retirement allowance of three percent (3%) of the member's final average salary for each year or partial year of service credit earned in excess of thirty (30) years. This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714;

(d) For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2008, but prior to January 1, 2022, the retirement allowance shall be:

1.a. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;

b. Two percent (2%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;

c. Two and three-tenths percent (2.3%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or

d. Two and one-half percent (2.5%) of the member's final average salary for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and

2. Three percent (3%) of the member's final average salary for each year or partial year of service earned in excess of thirty (30) years of service at retirement subject to the same terms and conditions as set forth in paragraph (c) of this subsection;

(e) For individuals who become university members of the Teachers' Retirement System on or after July 1, 2008, but prior to January 1, 2022, the retirement allowance shall be:

1. One and one-half percent (1.5%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;

2. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;

3. One and eighty-five hundredths percent (1.85%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but less than twenty-seven (27) years of service at retirement; or

4. Two percent (2%) of the member's final average salary for each year of service if the member has earned twenty-seven (27) or more years of service at retirement;

(f) For individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022, the retirement allowance shall, except as adjusted by the board pursuant to KRS 161.633, be the following percentage of the member's final average salary for each year of service:

1. One and seven-tenths percent (1.7%), which shall be increased incrementally each month the member's age at retirement is greater than sixty (60) so that the incremental increase is four one-hundredths of one percent (0.04%) for each complete additional year of age at retirement in excess of sixty (60), not to exceed a value of one and nine-tenths percent (1.9%) at age sixty-five (65) or greater; plus

2.a. One-quarter of one percent (0.25%), if the member has earned at least twenty (20) but less than thirty (30) years of service at retirement; or

b. One-half of one percent (0.50%), if the member has earned thirty (30) or more years of service at retirement;

(g) For individuals who become university members of the Teachers' Retirement System on or after January 1, 2022, the retirement allowance shall, except as adjusted by the board pursuant to KRS 161.634, be the following percentage of the member's final average salary for each year of service:

1. Seven-tenths of one percent (0.7%), which shall be increased incrementally each month the member's age at retirement is greater than sixty (60) so that the incremental increase is four one-hundredths of one percent (0.04%) for each complete additional year of age in excess of sixty (60), not to exceed a value of nine-tenths of one percent (0.9%) at age sixty-five (65) or greater; plus

2.a. One-quarter of one percent (0.25%), if the member has earned at least twenty (20) but less than thirty (30) years of service at retirement; or

b. One-half of one percent (0.50%), if the member has earned thirty (30) or more years of service at retirement; and

(h) The retirement allowance of a member at retirement, as measured on a life annuity, shall not exceed the member's last yearly salary or the member's final average salary, whichever is the greater amount. For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of KRS 161.220(9) and (10). This paragraph shall not apply to the supplemental benefit component.

(2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. This subsection shall not apply to benefits from the supplemental benefit component, and the board may adjust this value for individuals who become members on or after January 1, 2022, as provided by KRS 161.633 or 161.634, as applicable.

(3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars ($400) effective July 1, 2002, and not less than four hundred forty dollars ($440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection, except the following:

(a) Individuals who become members of the Teachers' Retirement System on or after July 1, 2008; or

(b) Members whose retirement allowance payment is reduced below the minimum allowance as a result of its division in a qualified domestic relations order or any other provision permitted under KRS 161.700.

(4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his or her beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

(5) Effective July 1, 2008, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed three and one-half percent (3.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.

(6) Effective July 1, 2009, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed seven-tenths of one percent (0.7%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.

(7) Effective July 1, 1990, monthly payments of two hundred dollars ($200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto. This payment may be applied for and managed by the parent who is the retired member without necessity of court order or other legal authority.

(8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.

(9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

History.

4506b-43; amend. Acts 1946, ch. 111, § 4; 1950, ch. 78, § 1;

1954, ch. 194; 1954, ch. 196, § 4; 1956, ch. 146; 1960, ch. 44, § 13; 1962, ch. 64, § 14; 1964, ch. 43, § 15; 1966, ch. 16, § 6; 1968, ch. 136, § 11; 1970, ch. 54, § 2; 1970, ch. 168, § 1; 1972, ch. 82, § 20; 1974, ch. 395, § 16; 1976, ch. 351, § 18, effective July 1, 1976; 1978, ch. 43, § 2, effective June 17, 1978; 1978, ch. 152, § 14, effective March 28, 1978; 1980, ch. 206, § 9, effective July 1, 1980; 1982, ch. 326, § 9, effective July 1, 1982; 1982, ch. 414, § 4, effective July 15, 1982; 1984, ch. 104, § 1, effective July 13, 1984; 1984, ch. 253, § 21, effective July 1, 1984; 1986, ch. 440, § 12, effective July 1, 1986; 1988, ch. 240, § 2, effective July 15, 1988; 1988, ch. 260, § 2, effective July 15, 1988; 1988, ch. 363, § 15, effective July 1, 1988; 1990, ch. 131, § 1, effective July 13, 1990; 1990, ch. 442, § 16, effective July 1, 1990; 1990, ch. 476, Pt. V, § 529, effective July 13, 1990; 1992, ch. 192, § 12, effective July 1, 1992; 1994, ch. 369, § 18, effective July 1, 1994; 1996, ch. 359, § 15, effective July 1, 1996; 1998, ch. 515, § 12, effective July 1, 1998; 2000, ch. 498, § 18, effective July 1, 2000; 2002, ch. 275, § 28, effective July 1, 2002; 2004, ch. 121, § 19, effective July 1, 2004; 2006, ch. 189, § 2, effective July 1, 2006; 2008, ch. 78, § 17, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 39, effective June 27, 2008; 2010, ch. 148, § 10, effective July 15, 2010; 2010, ch. 164, § 10, effective July 1, 2010; 2018 ch. 107, § 73, effective July 14, 2018; 2021 ch. 192, § 19, effective June 29, 2021; 2021 ch. 157, § 10, effective January 1, 2022; 2026 ch. 34, § 4, effective July 15, 2026.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. The two amending Acts have been compiled together where they are not in conflict. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

Compiler's Notes.

Sections 401(a)(17) and 415 of the Internal Revenue Service Code, referred to in this section, are codified as 26 USCS §§ 401(a)(17) and 415, respectively.

NOTES TO DECISIONS

Cited in:

Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL.

While subsection (1) of this section provided a mandatory increase applicable to all teachers retired prior to July 1, 1964, the increase must be regarded as increasing the actuarial value and would not necessarily increase monthly payments in benefit options other than the straight life annuity. OAG 68-274 (decided under prior law).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Minimum distribution, 102 KAR 1:170.

Optional benefits, 102 KAR 1:150.

Service credit required for member to qualify for three (3) percent retirement factor, 102 KAR 1:280.

Value of service performed, 102 KAR 1:200.

161.623. Use of unused sick-leave days to determine service credit — Applicability to individuals becoming members on or after July 1, 2008 — Maximum amount.

(1) Effective July 1, 1982, and thereafter, a district board of education or other employer of members of the Teachers' Retirement System may compensate, at the time of retirement for service, an active contributing member for unused sick-leave days in accordance with this section.

(2) Upon the member's application for service retirement, the employer shall certify the retiring member's unused accumulated sick-leave balance to the board of trustees of the Kentucky Teachers' Retirement System. The member's sick-leave balance, expressed in days, shall be divided by one hundred eighty-five (185) days to determine the amount of service credit that may be considered for addition to the member's retirement account for the purpose of determining the retirement allowance under KRS 161.620. Notwithstanding any statute to the contrary, sick-leave credit that is accredited under this section or by one (1) of the other state-administered retirement systems shall not be used for the purpose of determining whether the member is eligible to receive a retirement allowance from the Kentucky Teachers' Retirement System.

(3) The board shall compute the cost to the retirement system of the sick-leave credit for each retiring member and shall bill the last employer of the retiring member for such cost. The employer shall pay the cost of such service credit to the retirement system within fifteen (15) days after receiving notification of the cost from the board.

(4) Retiring members who receive service credit under this section shall not be eligible to receive compensation for accrued sick leave under KRS 161.155(10) or any other statutory provision.

(5) Employer participation is optional and the employer may opt to purchase less service credit than the member is eligible to receive provided the same percentage of reduction is made applicable to all retiring members of the employer during a school fiscal year.

(6) The board of trustees shall formulate and adopt necessary rules and regulations for the administration of the foregoing provisions.

(7) Payments to the retirement system for service credit obtained under this section or for compensation credit obtained under KRS 161.155(10) shall be based on the full actuarial cost as defined in KRS 161.220(22).

(8) For an individual who becomes a member on or after July 1, 2008, the maximum amount of unused accumulated sick leave that may be considered for addition to the member's retirement account for purposes of determining the retirement allowance under KRS 161.620 shall not exceed three hundred (300) days.

History.

Enact. Acts 1982, ch. 326, § 10, effective July 1, 1982; 1986, ch. 450, § 2, effective July 15, 1986; 1990, ch. 476, Pt. V, § 530, effective July 13, 1990; 1990, ch. 483, § 5, effective July 13, 1990; 1998, ch. 530, § 2, effective July 15, 1998; 2000, ch. 498, § 19, effective July 1, 2000; 2002, ch. 275, § 29, effective July 1, 2002; 2006, ch. 52, § 4, effective July 12, 2006; 2008, ch. 78,

§ 18, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 40, effective June 27, 2008; 2018 ch. 107, § 74, effective July 14, 2018; 2021 ch. 157, § 35, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

OPINIONS OF ATTORNEY GENERAL.

Generally, in order to qualify for retirement, a member of the retirement system must have completed 27 years of service, notwithstanding accumulation of sick leave. OAG 91-219, 1991 Ky. AG LEXIS 217.

At the death of an employed active public school teacher, a school board may not pay the decedent's estate or named beneficiary the value of the employee's accumulated unused sick leave even if the employee were eligible for retirement; rather, a local school district may only compensate a district employee at the time of retirement for accumulated unused sick leave. OAG 94-39, 1994 Ky. AG LEXIS 268.

161.624. Responsibilities of members.

The employees of the Teachers' Retirement System shall endeavor to provide full and complete information to all inquiries presented by members or beneficiaries of members. The members or beneficiaries of the members shall assume full responsibility for obtaining adequate and sufficient information concerning their eligibility for retirement benefits, for selection of the type of benefit available to them, filing and other deadlines, and for adherence to the employment restrictions applicable to retired members.

History.

Enact. Acts 1982, ch. 326, § 11, effective July 1, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 531, effective July 13, 1990; 1994, ch. 369, § 19, effective July 1, 1994; 2025 ch. 138, § 10, effective March 31, 2025.

Compiler's Notes.

This section (Enact. Acts 1982, ch. 326, § 11, effective July 1, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 531, effective July 13, 1990.

161.625. Increased allowances. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1958, ch. 7, § 1) was repealed by Acts 1964, ch. 43, § 23.

161.630. Benefit options — Change in benefit option by retiree — Beneficiary redesignation after retirement.

(1)(a) A member, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves.

(b) An individual who is participating in the supplemental benefit component as provided by KRS 161.635 or 161.636 may, before the effective date of retirement, elect to receive his or her accumulated account balance accrued in the supplemental benefit component annuitized into a monthly payment under one (1) of the actuarial equivalent payment options approved by the board of trustees.

(c) No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in KRS 161.620, 161.635(5)(a), or 161.636(5)(a), as applicable. This section does not apply to disability allowances as provided in KRS 161.661(1).

(2) The retirement option chosen by a retiree at the time of service retirement shall remain in force unless the retiree elects to make a change under the following conditions:

(a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement that provides indefinitely continuing benefits to a spousal beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or

(b) Following marriage or remarriage, or the death of the designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.

(3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the life annuity with refundable balance or the predetermined years certain and life thereafter option. A member may remove a beneficiary at any time, but shall not designate a substitute beneficiary. If a member elects to remove a beneficiary, the member's retirement allowance shall not change regardless of the retirement option selected by the member, even if the removed beneficiary predeceases the member. A member who is subject to the beneficiary designation restriction of this subsection shall only be allowed to name a new beneficiary when experiencing a qualifying event under subsection (2) of this section, and shall make this change within the deadline established in subsection (4) of this section.

(4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event. The deadline for electing a new optional plan of payment or for changing a beneficiary shall not be subject to the jurisdiction of any court or appeal process, nor shall it otherwise be tolled or waived.

History.

4506b-48; amend. Acts 1962, ch. 64, § 15; 1976, ch. 351, § 19, effective July 1, 1976; 1978, ch. 152, § 15, effective March 28, 1978; 1988, ch. 363, § 16, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 532, effective July 13, 1990; 1994, ch. 369, § 20, effective July 1, 1994; 2004, ch. 121,

§ 20, effective July 1, 2004; 2008, ch. 78, § 19, effective July 1, 2008; 2010, ch. 164, § 11, effective July 1, 2010; 2018 ch. 107, § 75, effective July 14, 2018; 2021 ch. 192, § 20, effective June 29, 2021; 2021 ch. 157, § 36, effective January 1, 2022; 2025 ch. 138, § 11, effective March 31, 2025.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (4506b-48; amend. Acts 1962, ch. 64, § 15; 1976, ch. 351, § 19, effective July 1, 1976; 1978, ch. 152, § 15, effective March 28, 1978; 1988, ch. 363, § 16, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 532, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Annuity tables, 102 KAR 1:160.
Basis for options, 102 KAR 1:145.
Minimum distribution, 102 KAR 1:170.
Optional benefits, 102 KAR 1:150.

161.633. Foundational component for persons who became nonuniversity members on or after January 1, 2022 — Valuation assessment — Adjustments to maintain funding level and contain costs — Construction.

(1) Individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022, shall be provided a foundational plan, which shall be known as the foundational benefit component, a supplemental benefit component established by KRS 161.635, and retiree health benefits as provided by KRS 161.675. For purposes of this section, the foundational benefit component includes all benefits provided by KRS 161.220 to 161.716 for individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022, with the exception of the supplemental benefit component established by KRS 161.635 and retiree health benefits established by KRS 161.675.

(2) Notwithstanding KRS 161.220 to 161.716, the actuary designated by the board of trustees under KRS 161.400 shall, as part of the annual valuation of the pension fund, assess the funding levels, unfunded liabilities, and the actuarially required employer contribution rates payable solely on behalf of individuals who first become nonuniversity members on or after January 1, 2022. Computation of the employer contribution rate payable shall be based upon amortizing unfunded liabilities using the level-dollar amortization method.

(3) If, on the basis of the valuation assessment required under subsection (2) of this section, the funding level for the foundational benefit component payable on behalf of individuals who first become nonuniversity members on or after January 1, 2022, falls below ninety percent (90%), the board shall, notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, make one (1) or more of the following changes to maintain the funding level and to contain pension and life insurance benefit costs within the maximum statutory employer contribution rate for the foundational benefit component of eight percent (8%) of annual compensation as provided by KRS 161.550(1)(d)1.:

(a) Utilize moneys from the stabilization reserve account for nonuniversity membership and employers established by KRS 161.420(10)(a);

(b) Utilize prospective mandatory employee and employer contributions to the supplemental benefit component as provided by KRS 161.635 to provide funding for the foundational benefit component; or

(c) Prospectively adjust for individuals who become nonuniversity members on or after January 1, 2022, one (1) or more of the following parts of the foundational benefit component:

1. Regular interest rate established by KRS 161.220(13)(c);

2. The retirement factors established by KRS 161.620(1)(f);

3. The age and service requirements to retire as established by KRS 161.600(2);

4. The cost-of-living adjustment established by KRS 161.620(2); or

5. The age and service requirements and the retirement allowance provided during the entitlement period under KRS 161.661.

Notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, the board of trustees may utilize any and all of the above adjustments at any time on all individuals who become nonuniversity members on or after January 1, 2022, in order to maintain the funding level of the foundational benefit component and employer costs as provided by this subsection.

(4) For purposes of this section, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation.

(5) This section shall only apply to individuals who became nonuniversity members of the Teachers' Retirement System on or after January 1, 2022.

(6) The provisions of this section shall not be construed to authorize the board to retroactively restore benefits or eligibility for benefits in the foundational benefit component or supplemental benefit that were previously reduced by the board pursuant to subsection (3)(b) and (c) of this section.

History.

2021 ch. 157, § 1, effective January 1, 2022.

161.634. Foundational component for persons who became university members on or after January 1, 2022 — Valuation assessment — Adjustments to maintain funding level and contain costs — Construction.

(1) Individuals who become university members of the Teachers' Retirement System on or after January 1,

2022, shall be provided a foundational plan, which shall be known as the foundational benefit component, a supplemental benefit component established by KRS 161.636, and retiree health benefits as provided by KRS 161.675. For purposes of this section, the foundational benefit component includes all benefits provided by KRS 161.220 to 161.716 for individuals who become university members of the Teachers' Retirement System on or after January 1, 2022, with the exception of the supplemental benefit component established by KRS 161.636 and retiree health benefits established by KRS 161.675.

(2) Notwithstanding KRS 161.220 to 161.716, the actuary designated by the board of trustees under KRS 161.400 shall, as part of the annual valuation of the pension fund, assess the funding levels, unfunded liabilities, and the actuarially required employer contribution rates payable solely on behalf of individuals who first become university members on or after January 1, 2022. Computation of the employer contribution rate payable shall be based upon amortizing unfunded liabilities using the level-dollar amortization method.

(3) If, on the basis of the valuation assessment required under subsection (2) of this section, the funding level for the foundational benefit component payable on behalf of individuals who first become university members on or after January 1, 2022, falls below ninety percent (90%), the board shall, notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, make one (1) or more of the following changes to maintain the funding level and to contain pension and life insurance benefit costs within the maximum statutory employer contribution rate for the foundational benefit component of five and seven hundred seventy-five thousandths percent (5.775%) of annual compensation as provided by KRS 161.550(1)(e)1.:

(a) Utilize moneys from the stabilization reserve account for university membership and employers established by KRS 161.420(10)(b);

(b) Utilize prospective mandatory employee and employer contributions to the supplemental benefit component as provided by KRS 161.636 to provide funding for the foundational benefit component; or

(c) Prospectively adjust for individuals who become university members on or after January 1, 2022, one (1) or more of the following parts of the foundational benefit component:

1. Regular interest rate established by KRS 161.220(13)(c);

2. The retirement factors established by KRS 161.620(1)(g);

3. The age and service requirements to retire as established by KRS 161.600(2);

4. The cost-of-living adjustment established by KRS 161.620(2); or

5. The age and service requirements and the retirement allowance provided during the entitlement period under KRS 161.661.

Notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, the board of trustees may utilize any and all of the above adjustments at any time on all individuals who become university members on or after January 1, 2022, in order to maintain the funding level of the foundational benefit component and employer costs as provided by this subsection.

(4) For purposes of this section, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation.

(5) This section shall only apply to individuals who became university members of the Teachers' Retirement System on or after January 1, 2022.

(6) The provisions of this section shall not be construed to authorize the board to retroactively restore benefits or eligibility for benefits in the foundational benefit component or supplemental benefit that were previously reduced by the board pursuant to subsection (3)(b) and (c) of this section.

History.

2021 ch. 157, § 2, effective January 1, 2022.

161.635. Supplemental component for persons who became nonuniversity members on or after January 1, 2022 — Benefit — Contributions — Election upon termination of employment and upon retirement — Plans authorized under Internal Revenue Code.

(1) An individual who becomes a nonuniversity member of the Teachers' Retirement System on or after January 1, 2022, shall receive the retirement benefits provided by this section in addition to the retirement benefits provided under KRS 161.620. The retirement benefits provided by this section shall be known as the supplemental benefit component.

(2) The supplemental benefit component shall provide a benefit based upon a member's accumulated account balance which shall include:

(a) Mandatory contributions made by the member as provided by KRS 161.540(1)(c)2.;

(b) Voluntary contributions made by the member, which may include lump-sum payments;

(c) Mandatory contributions made by the employer as provided by KRS 161.550(1)(d)2.;

(d) Voluntary employer contributions at the option of the employer, which may include but not be limited to a voluntary employer contribution to attract and retain new teachers of one thousand dollars ($1,000) for each of the first five (5) years of contributing service to the system; and

(e) Regular interest, which shall be credited to the member's account annually on June 30 of each fiscal year, by multiplying the member's accumulated account balance in the supplemental benefit component on June 30 of the preceding fiscal year by the regular interest rate.

(3)(a) Member contributions and employer contributions as provided by subsection (2)(a) to (d) of this section shall be credited to the member's account at least monthly as contributions are reported and posted to the system in accordance with KRS 161.560.

(b) No employer contributions or interest shall be provided to a member who has taken a refund of his or her accumulated account balance as provided by

KRS 161.470 or who has retired and annuitized his or her accumulated account balance as authorized by this section.

(4)(a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 161.500, who elects to take a refund of his or her accumulated account balance as provided by KRS 161.470, shall forfeit the accumulated employer contribution, and shall only receive a refund of his or her accumulated contributions.

(b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 161.500, who elects to take a refund of his or her accumulated account balance as provided by KRS 161.470, shall receive a full refund of his or her accumulated account balance.

(5) A nonuniversity member eligible to retire under KRS 161.600(2) may upon retirement, in addition to the other benefits provided by KRS 161.620, elect to:

(a) Have all or a portion of his or her accumulated account balance in the supplemental benefit component annuitized into a lifetime monthly retirement allowance by the system in accordance with the actuarial assumptions and actuarial methods adopted by the board for the supplemental benefit component and in effect on the member's retirement date;

(b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options established by the board pursuant to KRS 161.630;

(c) Take a distribution of the accumulated account balance in the supplemental benefit component over a period certain as authorized by the board; or

(d) Take a full or partial refund of his or her accumulated account balance as provided by KRS 161.470.

A member participating in the supplemental benefit component shall not be required to take a distribution or annuitize his or her accumulated account balance in the supplemental benefit component when he or she begins drawing a retirement allowance from the foundational benefit component and may instead choose to begin drawing a distribution or annuitize his or her accumulated account balance in the supplemental benefit component at any date following his or her retirement date from the foundational benefit component.

(6) This section only applies to individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022.

(7) The board of trustees shall have the authority to utilize or establish any plan or plans authorized under the Internal Revenue Code to provide the benefits set forth in this section.

History.

2021 ch. 157, § 3, effective January 1, 2022; 2025 ch. 138, § 12, effective March 31, 2025.

161.636. Supplemental component for persons who became university members on or after January 1, 2022 — Benefit — Contributions — Election upon termination of employment and upon retirement — Plans authorized under Internal Revenue Code.

(1) An individual who becomes a university member of the Teachers' Retirement System on or after January 1, 2022, shall receive the retirement benefits provided by this section in addition to the retirement benefits provided under KRS 161.620. The retirement benefits provided by this section shall be known as the supplemental benefit component.

(2) The supplemental benefit component shall provide a benefit based upon a member's accumulated account balance which shall include:

(a) Mandatory contributions made by the member as provided by KRS 161.540(1)(d)2.;

(b) Voluntary contributions made by the member, which may include lump-sum payments;

(c) Mandatory contributions made by the employer as provided by KRS 161.550(1)(e)2.;

(d) Voluntary employer contributions; and

(e) Regular interest, which shall be credited to the member's account annually on June 30 of each fiscal year, by multiplying the member's accumulated account balance in the supplemental benefit component on June 30 of the preceding fiscal year by the regular interest rate.

(3)(a) Member contributions and employer contributions as provided by subsection (2)(a) to (d) of this section shall be credited to the member's account at least monthly as contributions are reported and posted to the system in accordance with KRS 161.560.

(b) No employer contributions or interest shall be provided to a member who has taken a refund of his or her accumulated account balance as provided by KRS 161.470 or who has retired and annuitized his or her accumulated account balance as authorized by this section.

(4)(a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 161.500, who elects to take a refund of his or her accumulated account balance as provided by KRS 161.470, shall forfeit the accumulated employer contribution, and shall only receive a refund of his or her accumulated contributions.

(b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 161.500, who elects to take a refund of his or her accumulated account balance as provided by KRS 161.470, shall receive a full refund of his or her accumulated account balance.

(5) A university member eligible to retire under KRS 161.600(2) may upon retirement, in addition to the other benefits provided by KRS 161.620, elect to:

(a) Have all or a portion of his or her accumulated account balance in the supplemental benefit component annuitized into a lifetime monthly retirement allowance by the system in accordance with the actuarial assumptions and actuarial methods adopted by the board for the supplemental benefit component and in effect on the member's retirement date;

(b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options established by the board pursuant to KRS 161.630;

(c) Take a distribution of the accumulated account balance in the supplemental benefit component over a period certain as authorized by the board; or

(d) Take a full or partial refund of his or her accumulated account balance as provided by KRS 161.470.

A member participating in the supplemental benefit component shall not be required to take a distribution or annuitize his or her accumulated account balance in the supplemental benefit component when he or she begins drawing a retirement allowance from the foundational benefit component and may instead choose to begin drawing a distribution or annuitize his or her accumulated account balance in the supplemental benefit component at any date following his or her retirement date from the foundational benefit component.

(6) This section only applies to individuals who become university members of the Teachers' Retirement System on or after January 1, 2022.

(7) The board of trustees shall have the authority to utilize or establish any plan or plans authorized under the Internal Revenue Code to provide the benefits set forth in this section.

History.

2021 ch. 157, § 4, effective January 1, 2022; 2025 ch. 138, § 13, effective March 31, 2025.

161.640. Payment of annuities — Payroll deductions — Electronic fund transfer, exception — Payments to special needs trust.

(1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year shall be no earlier than July 1 next following the end of such fiscal year. Notwithstanding any other statutory provisions to the contrary, members filling positions that customarily require twelve (12) months of service during a fiscal year cannot retire prior to July 1 without a corresponding pro rata reduction in salary and service credit. The board of trustees may determine which positions customarily require twelve (12) months of service during a fiscal year.

(2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.

(3)(a) All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All retiree, beneficiary, and survivor monthly allowance payments, except as otherwise provided in paragraph (b) or (c) of this subsection, shall be made by electronic fund transfer. Except as provided in paragraph (b) or (c) of this subsection, all monthly payments shall be made payable only to an account solely in the name of the retiree, beneficiary, or survivor as an individual and natural person, or to a joint account in the name of the retiree, beneficiary, or survivor as an individual and natural person and another individual and natural person.

(b) If the retiree, beneficiary, or survivor is a resident of a nursing or assisted-care home, monthly payments may be made to the order of the nursing or assisted-care home for the benefit of the retiree, beneficiary, or survivor by including the retiree's, beneficiary's, or survivor's name. Monthly annuity checks so paid to a nursing or assisted-care home may be sent by mail rather than electronic fund transfer.

(c) If the retiree, beneficiary, or survivor is the sole beneficiary of a special needs trust:

1. Monthly payments shall be made to the order of the special needs trust, and checks may be sent by mail to the special needs trust for the benefit of the retiree, beneficiary, or survivor;

2. Upon the death of the retiree, beneficiary, or survivor of a special needs trust, the trustee of that trust shall notify the Teachers' Retirement System;

3. Any payments made to a special needs trust that are not properly payable to the special needs trust shall be returned to the Teachers' Retirement System and shall not be subject to claims for reimbursement from any state for Medicaid benefits paid on behalf of the beneficiary under any Medicaid payback provision, and any overpayments of retirement allowance received by the special needs trust shall be repaid to the Teachers' Retirement System; and

4. The Teachers' Retirement System may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this paragraph.

History.

4506b-46; amend. Acts 1952, ch. 144, § 1; 1972, ch. 82, § 21; 1980, ch. 206, § 10, effective July 1, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 533, effective July 13, 1990; 1998, ch. 515, § 13, effective July 1, 1998; 2004, ch. 121, § 21, effective July 1, 2004; 2008, ch. 78, § 20, effective July 1, 2008; 2026 ch. 18, § 10, effective July 15, 2026.

Compiler's Notes.

This section (4506b-46; amend. Acts 1952, ch. 144, § 1; 1972, ch. 82, § 21; 1980, ch. 206, § 10, effective July 1, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 533, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Annuity payments, 102 KAR 1:155.
Application for retirement, 102 KAR 1:070.
Minimum distribution, 102 KAR 1:170.

161.643. Records and annual reports for annuitants employed by school districts or agencies — Penalty for noncompliance — System may require more frequent reporting.

(1) Each school district, institution, and agency employing annuitants of the retirement system shall have on file at the retirement system's office an annual summary report of the days employed and the compensation paid to each annuitant, the sick leave reporting requirements established by KRS 161.155(10)(f), and other data as required by administrative regulation of the board of trustees no later than August 1, following the completion of each fiscal year.

(2) The retirement system may impose a penalty on the employer not to exceed one thousand dollars ($1,000) when the employer does not meet the August 1 filing date or fails to provide the information required for employment of annuitants of the retirement system. However, the retirement system may waive the penalty for good cause.

(3) The retirement system may promulgate administrative regulations in accordance with KRS Chapter 13A to require employers to report more frequently than on an annual basis.

History.

Enact. Acts 1994, ch. 369, § 17, effective July 1, 1994; 2021 ch. 192, § 21, effective June 29, 2021; 2025 ch. 138, § 14, effective March 31, 2025.

161.650. Death of retired member — Payment to beneficiaries — Effect of divorce decree — Failure to designate beneficiary.

(1) In the case of death of a member who has retired by reason of service or disability, any portion of the member's accumulated contributions, including member contributions to the state accumulation fund and regular interest to the date of retirement, that has not, and will not be paid as an allowance or benefit shall be paid to the member's beneficiary in such manner as the board of trustees elects.

(2)(a) The member may designate a primary beneficiary or two (2) or more cobeneficiaries to receive any remaining accumulated member contributions payable under this section.

(b) A contingent beneficiary may be designated in addition to the primary beneficiary or the cobeneficiaries. The member may designate two (2) or more contingent beneficiaries.

(c) To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of any remaining funds of the member's accumulated contributions.

(d) Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. Cobeneficiaries shall be composed of a single class of individuals, or trusts where permitted, who will share in equal proportions in any payment that may become available under this section.

(e)1. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent marriage or divorce.

2. Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, even that of a trust, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. An individual who is married prior to becoming a retired member of the retirement system and remains married at the time of becoming a retired member shall have his or her spouse considered the primary beneficiary, unless the member designates another beneficiary for any amounts payable under subsection (1) of this section.

3. A final divorce decree shall terminate the beneficiary status of an ex-spouse unless, subsequent to divorce, the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.

(f) In the event that the member fails to designate a beneficiary or all designated beneficiaries predecease the member, any remaining accumulated member contributions shall be payable to the member's estate, unless the member is married at the time of his or her death, in which case any remaining contributions shall be payable to his or her spouse.

History.

Repealed and reenacted by 2021 ch. 157, § 38, effective January 1, 2022.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (4506b-47; amend. Acts 1962, ch. 64, § 16; 1972, ch. 82, § 22; 1976, ch. 35, § 20, effective July 1, 1976) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 534, effective July 13, 1990.

161.655. Life insurance benefit — Assignment of benefit.

(1) Effective July 1, 2000, the Teachers' Retirement System shall:

(a) Provide a life insurance benefit in a minimum amount of five thousand dollars ($5,000) for its members who are retired for service or disability, except that the minimum amount for an individual who becomes a member on or after January 1, 2022, and retires for service or disability shall be ten thousand dollars ($10,000). This life insurance benefit shall be payable upon the death of a member retired for service or disability to the member's estate or to a party designated by the member on a form prescribed by the retirement system; and

(b) Provide a life insurance benefit in a minimum amount of two thousand dollars ($2,000) for its active contributing members, except that the minimum amount for an individual who becomes a member on or after January 1, 2022, and is an active contributing member shall be five thousand dollars ($5,000). This life insurance benefit shall be payable upon the death of an active contributing member to the member's estate or to a party designated by the member on a form prescribed by the retirement system.

(2)(a) The member may name one (1) primary and one (1) contingent beneficiary for receipt of the life insurance benefit. To the extent permitted by the

Internal Revenue Code, a trust may be designated as beneficiary for receipt of the life insurance benefit.

(b) Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system.

(c) In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be deemed to be the beneficiary, unless the member is married at the time of his or her death, in which case the spouse shall be deemed the beneficiary.

(d)1. Any beneficiary designation made by the member, including the estate should the estate become the beneficiary by default, shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent marriage or divorce.

2. A valid marriage license shall terminate any previously designated beneficiary, even that of a trust, and establish the spouse as beneficiary unless, subsequent proof of the marriage, the member or retired member redesignates someone other than the new spouse as the beneficiary.

3. An individual who is married prior to becoming an active member or a retired member of the retirement system and remains married at the time of becoming an active or retired member of the retirement system shall have his or her spouse considered the primary beneficiary, unless the member designates another beneficiary.

4. A final divorce decree shall terminate the beneficiary status of an ex-spouse unless, subsequent to divorce, the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.

(e) The Teachers' Retirement System shall not acknowledge a beneficiary designation unless the life insurance beneficiary form is received by the Teachers' Retirement System prior to the member's death, or the life insurance beneficiary form has been deposited in the mail with a postmark date no later than the date of the member's death.

(3) Application for payment of life insurance proceeds shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the coverage and payment of proceeds by the life insurance benefit under this section.

(4) Suit or civil action shall not be required for the collection of the proceeds of the life insurance benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the proceeds of the life insurance benefit.

(5) Upon the death of a member of the Teachers' Retirement System, the life insurance provided pursuant to subsection (1) of this section may be assigned by the designated beneficiary to a bank or licensed funeral home.

History.

Enact. Acts 1958, ch. 7, § 4; 1962, ch. 64, § 17; 1964, ch. 43, § 16; 1968, ch. 136, § 12; 1970, ch. 54, § 3; 1978, ch. 152, § 16, effective March 28, 1978; 1980, ch. 206, § 11, effective July 1, 1980; 1988, ch. 363, § 17, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 535, effective July 13, 1990; 1992, ch. 192, § 14, effective July 1, 1992; 1996, ch. 359, § 16, effective July 1, 1996; 1998, ch. 515, § 14, effective July 1, 1998; 2000, ch. 498, § 20, effective July 1, 2000; 2002, ch. 275, § 30, effective July 1, 2002; 2004, ch. 121, § 23, effective July 1, 2004; 2008, ch. 78, § 22, effective July 1, 2008; 2010, ch. 164, § 12, effective July 1, 2010; 2011, ch. 68, § 2, effective June 8, 2011; 2018 ch. 107, § 76, effective July 14, 2018; 2021 ch. 192, § 23, effective June 29, 2021; 2021 ch. 157, § 11, effective January 1, 2022.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (Enact. Acts 1958, ch. 7, § 4; 1962, ch. 64, § 17; 1964, ch. 43, § 16; 1968, ch. 136, § 12; 1970, ch. 54, § 3; 1978, ch. 152, § 16, effective March 28, 1978; 1980, ch. 206, § 11, effective July 1, 1980; 1988, ch. 363, § 17, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 535, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

401(h) established pursuant to 26 U.S.C. 401(h) account, 102 KAR 1:105.

Benefit eligibility conditions for members providing part-time and substitute services, 102 KAR 1:310.

161.660. Disability allowance. [Repealed.]

Compiler's Notes.

This section (4506b-44; amend. Acts 1946, ch. 111, § 5; 1950, ch. 79, § 1; 1958, ch. 7, § 3; 1962, ch. 64, § 18) was repealed by Acts 1964, ch. 43, § 23.

161.661. Disability retirement.

(1)(a) Any member who is accredited by the Teachers' Retirement System for five (5) or more years of service in Kentucky after July 1, 1941, may retire for disability and be granted a disability allowance if found to be eligible as provided in this section. Application for disability benefits shall be made within one (1) year of the last contributing service in Kentucky, and the disability must have occurred during the most recent period of employment in a position covered by the Teachers' Retirement System and subsequent to the accreditation by the Teachers' Retirement System of five (5) years of retirement system service credit in Kentucky. The deadline for filing an application for disability benefits shall not be subject to the jurisdiction of any court or appeal process, nor shall it otherwise be tolled or waived. A disability occurring during the regular vacation immediately following the last period of active service

in Kentucky or during an official leave for which the member is entitled to make regular contributions to the retirement system, shall be considered as having occurred during a period of active service.

(b) The annual disability allowance shall be equal to sixty percent (60%) of the member's final average salary.

(c) The following individuals shall not be eligible for disability benefits under this section:

1. Members with twenty-seven (27) or more years of service credit; and

2. Individuals who become members on or after July 1, 2021, who are eligible for an unreduced benefit under KRS 161.600(1)(b)2. or (d).

(2) The provisions of KRS 161.520, 161.525, and subsections (3), (4), and (5) of this section shall not apply to disability retirees whose benefits were calculated on the service retirement formula nor to survivors of these members.

(3) Members shall earn one (1) year of entitlement to disability retirement, at sixty percent (60%) of the member's final average salary, for each four (4) years of service in a covered position, but any member meeting the service requirement for disability retirement shall be credited with no less than five (5) years of eligibility.

(4) A member retired by reason of disability shall continue to earn service credit at the rate of one (1) year for each year retired for disability. This service shall be credited to the member's account at the expiration of entitlement as defined in subsection (3) of this section, or when the member's eligibility for disability benefits is terminated upon recommendation of a medical review committee, and this service shall be used in calculating benefits as provided in subsection (5) of this section, but under no circumstances shall this service be used to provide the member with more than twenty-seven (27) years of total service credit. The service credit shall be valued at the same level as service earned by active members as provided under KRS 161.600 or 161.620.

(5) Any member retired by reason of disability and remaining disabled at the expiration of the entitlement period shall have his or her disability benefits recalculated using the service retirement formula with service credit earned as set out in subsection (4) of this section. The retirement allowance shall be calculated as set forth in KRS 161.620, except that those persons less than sixty (60) years of age shall be considered as sixty (60) years of age. Members having their disability benefits recalculated under this subsection shall not be entitled to a benefit based upon an average of their three (3) highest salaries as set forth in KRS 161.220(9), unless approved otherwise by the board of trustees.

(6) Members who have their disability retirement allowance recalculated at the expiration of the entitlement period shall continue to have coverage under the post-retirement medical insurance program. Restrictions on employment shall remain in effect until the member attains age seventy (70) or until the member's eligibility is discontinued. KRS 161.520 and 161.525 shall not apply to survivors of disability retirees whose retirement allowances have been recalculated at the expiration of the entitlement period. Members who have their disability retirement allowance recalculated at the expiration of their entitlement period shall be entitled to a minimum monthly allowance of five hundred dollars ($500) as the basic straight life annuity. The minimum allowance shall be effective July 1, 1992, and shall apply to those members who have had their allowance recalculated prior to that date and to disability retirees who will have their benefit allowance recalculated on or after that date. For individuals who become members on or after July 1, 2021, disability retirement payments and any other recurring payments payable by any other state-administered retirement system shall be applied to reduce, on a dollar-for-dollar basis, the minimum monthly disability retirement allowance payable under this subsection.

(7) Effective July 1, 1992, members retired for disability prior to July 1, 1964, shall be entitled to a minimum monthly allowance of five hundred dollars ($500) as their basic straight life annuity and their surviving spouse shall be eligible for survivor benefits as provided in KRS 161.520(1)(a) and (b).

(8) Any member retired by reason of disability may voluntarily waive disability benefits and any member, who is immediately eligible for service retirement, may elect to waive disability benefits and retire for service on the basis of service credited to the member on the effective date of the disability retirement.

(9) In order to qualify for retirement by reason of disability a member must suffer from a physical or mental condition presumed to be permanent in duration and of a nature as to render the member incapable of being gainfully employed in a covered position. The incapability must be revealed by a competent examination by a licensed physician or physicians and must be approved by a majority of a medical review committee.

(10) A member retired by reason of disability shall be required to undergo periodic examinations at the discretion of the board of trustees to determine whether the disability allowance shall be continued. When examination and recommendation of a medical review committee indicate the disability no longer exists, the allowance shall be discontinued. Failure to undergo examinations and provide the Teachers' Retirement System with requested medical documentation shall result in a suspension of disability benefits.

(11) Eligibility for payment shall begin on the first day of the month following receipt of the application in the Teachers' Retirement System office, or the first of the month next following the last payment of salary or sick leave benefits by the employer, whichever is the later date.

(12) No person who receives a disability allowance may be employed in a position that entails duties or qualification requirements similar to positions subject to participation in the retirement system either within or without the State of Kentucky. So doing shall constitute a misdemeanor and shall result in loss of the allowance from the first date of this service. For purposes of this subsection and subsection (13) of this section, "employment" and "occupation," and derivatives thereof, mean any activity engaged in by the member receiving disability allowance from which income is earned. A member who applies for and is approved for disability retirement on or after July 1,

2002, and whose annual disability benefit is less than forty thousand dollars ($40,000) may earn income in any occupation other than covered employment only to the extent that the annual income from the other employment when added to the annual disability benefit does not exceed forty thousand dollars ($40,000). For any member who exceeds this limit as a result of income from other employment, the Kentucky Teachers' Retirement System shall reduce the member's disability benefit on a dollar-for-dollar basis for each dollar that the member's combined annual disability benefit and annual income from other employment exceeds forty thousand dollars ($40,000). The board of trustees may annually increase the forty thousand dollar ($40,000) limit by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%). The retirement system may require income and employment verification from the member, including but not limited to copies of tax returns and federal forms W-2 and W-4P. Failure to provide the Teachers' Retirement System with requested income and employment verification documentation shall result in a suspension of disability benefits. Submission of false or fraudulent documentation shall, in addition to criminal penalties, result in disqualification of all disability benefits from the date the fraudulent documentation was submitted.

(13) All members who applied for disability retirement before July 1, 2002, and were approved as a result of that application shall be subject to the income limitations as they existed on June 30, 2002, until July 1, 2006. Effective July 1, 2006, the twenty-seven thousand dollar ($27,000) limitation shall be increased to forty thousand dollars ($40,000) and may be adjusted by the board of trustees by the consumer price index in the manner described in subsection (12) of this section. The recipient of a disability allowance who engages in any gainful occupation other than covered employment must make a report of the duties involved, compensation received, and any other pertinent information required by the board of trustees. The retirement system may require income and employment verification from the member, including but not limited to copies of tax returns and federal forms W-2 and W-4P. Failure to provide the Teachers' Retirement System with requested income and employment verification documentation shall result in a suspension of disability benefits. Submission of false or fraudulent documentation shall, in addition to criminal penalties, result in disqualification of all disability benefits from the date the fraudulent documentation was submitted.

(14) The board of trustees shall designate medical review committees, each consisting of three (3) licensed physicians. A medical review committee shall pass upon all applications for disability retirement and upon all applicant statements, medical certifications, and examinations submitted in connection with disability applications. The disposition of each case shall be recommended by a medical review committee in writing to the retirement system. Members of a medical review committee shall follow administrative regulations regarding procedures as the board of trustees may enact and shall be paid reasonable fees and expenses as authorized by the board of trustees in compliance with the provisions of KRS 161.330 and 161.340. The retirement system may secure additional medical examinations and information as it deems necessary. A member may appeal any final agency decision denying his or her disability retirement application pursuant to the provisions of KRS 161.250(2). In the event of such an appeal, the member and his or her legal counsel shall be entitled to all written recommendations and reports submitted by the medical review committee to the Teachers' Retirement System. Such recommendations and reports shall otherwise be maintained in a confidential manner and shall not be subject to release under any conditions, including in response to a subpoena or order issued by a court of law notwithstanding any other statute to the contrary.

(15) A disability may be presumed to be permanent if the condition creating the disability may be reasonably expected to continue for one (1) year or more from the date of application for disability benefits.

(16) Any member who has voluntarily waived disability benefits or whose disability benefits have been discontinued on recommendation of a medical review committee, may apply for reinstatement of disability benefits. The application for reinstatement must be made to the retirement system within twelve (12) months of the date disability benefits terminated. If the termination of benefits were voluntary, the reinstatement may be made without medical examination if application is made within three (3) months of the termination date. Other applications for reinstatement will be processed in the same manner as new applications for benefits.

(17) No person who is receiving disability benefits under this section may be employed in a position which qualifies the person for membership in a retirement system financed wholly or in part with public funds. Employment in a position prohibited by this subsection shall result in disqualification for those disability benefits from the date of employment in the prohibited position.

(18) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section, or becomes disqualified from receiving a portion of those benefits due to income from other than covered employment, shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum, beginning on the date the written notice of disqualification is sent, shall be charged if the debt is not repaid within sixty (60) days after the date of written notice of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits. The Teachers' Retirement System may, in order to collect an outstanding debt, reduce or terminate any benefit that a member is otherwise entitled to receive.

(19) Notwithstanding any other provision of this section to the contrary, individuals who become mem-

bers on or after January 1, 2022, shall be eligible for an actuarially determined disability benefit as prescribed by the board of trustees via administrative regulations promulgated by the board. The board of trustees shall arrange by appropriate contract or on a self-insured basis a disability plan to provide the disability benefits and may adjust the benefits in accordance with KRS 161.633(3) or 161.634(3).

History.

Enact. Acts 1964, ch. 43, § 18; 1966, ch. 16, § 7; 1968, ch. 136, § 13; 1972, ch. 82, § 23; 1974, ch. 395, § 17; 1976, ch. 351, § 21, effective July 1, 1976; 1978, ch. 152, § 17, effective March 28, 1978; 1980, ch. 206, § 12, effective July 1, 1980; 1986, ch. 440, § 13, effective July 1, 1986; 1990, ch. 442, § 17, effective July 1, 1990; 1990, ch. 476, Pt. V, § 536, effective July 13, 1990; 1992, ch. 192, § 15, effective July 1, 1992; 1994, ch. 369, § 21, effective July 1, 1994; 1996, ch. 359, § 17, effective July 1, 1996; 2002, ch. 275, § 31, effective July 1, 2002; 2006, ch. 189, § 3, effective July 1, 2006; 2018 ch. 107, § 77, effective July 14, 2018; 2021 ch. 192, § 24, effective June 29, 2021; 2021 ch. 157, § 37, effective January 1, 2022; 2025 ch. 138, § 15, effective March 31, 2025.

Legislative Research Commission Notes.

(1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

NOTES TO DECISIONS

Cited in:

Justice v. Pike County Bd. of Educ., 348 F.3d 554, 2003 FED App. 0392P, 2003 U.S. App. LEXIS 22631 (6th Cir. Ky. 2003).

OPINIONS OF ATTORNEY GENERAL.

A teacher retired for disability would remain in disability retirement until her eligibility period had expired, even though she had reached age 60 during such eligibility period. OAG 64-741.

An application for a disability allowance does not have to be made within any specific time. OAG 70-476.

The applicant's condition at the time of the termination of employment would govern in determining whether or not he is disabled. OAG 70-476.

A member of the retirement system who qualifies for and accepts disability retirement may not thereafter during such period of disability elect to qualify and receive regular retirement for service until the period of eligibility for disability benefits has expired. OAG 73-181.

Where a school teacher was terminated in 1976, and instituted suit in an attempt to be reinstated, which suit was finally resolved against him in 1978, he clearly missed the deadline of one year provided in subsection (1) and could not, thereafter, apply for disability retirement. OAG 79-49, 1979 Ky. AG LEXIS 591.

A teacher seeking benefits under subsection (1) of this section while on leave of absence under KRS 161.770 has in effect terminated his or her tenure contract status and accompanying rights with the board of education when the teachers' retirement system approves that teacher's application for disability retirement, which means the teacher has "retired" for the purposes of KRS 161.720 to 161.810; and if the teacher, who has been granted leave of absence and accepted by the teachers' retirement system for disability retirement benefits, then becomes able to return to work, the board of education no longer has to afford to that teacher his or her former tenure rights. OAG 79-157, 1979 Ky. AG LEXIS 474.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Benefit eligibility conditions for members providing part-time and substitute services, 102 KAR 1:310.

Disability, 102 KAR 1:140.

Disability retirement review and examinations, 102 KAR 1:290.

Minimum distribution, 102 KAR 1:170.

Substitute teachers and nonuniversity, noncommunity college part-time members, 102 KAR 1:030.

161.662. Status of disabled teachers and superintendents.

(1) Teachers and superintendents with continuing status who retire because of disability shall, notwithstanding provisions of KRS 161.720 to 161.810 to the contrary, retain continuing status in the school district from which they retired for twenty-four (24) calendar months from the date of retirement, if the teacher or superintendent:

(a) Is approved for disability retirement under the provisions of KRS 161.661, or

(b) Is approved for disability retirement but elects to have benefits calculated on the service retirement formula under the provisions of KRS 161.661, or

(c) Is disqualified from receiving disability retirement benefits by KRS 161.661(2) but is otherwise eligible for disability retirement under the remaining provisions of KRS 161.661.

(2)(a) If the superintendent recovers from disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the employing board of education within the twenty-four (24) calendar month period but not later than April 15 prior to the beginning of the school term, the board of education shall reinstate the superintendent to active continuing status at the beginning of the school term. If notice of recovery from disability is not presented to the employing board of education within the twenty-four (24) calendar month period, or if the superintendent states to the board, in a verified document, prior to expiration of the twenty-four (24) calendar month period that he or she will not return to employment in the school system, the continuing service contract of the superintendent shall terminate as by retirement under the provisions of KRS 161.661.

(b) If the teacher recovers from disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the superintendent within the twenty-four (24) calendar month period but not later than April 15 prior to the beginning of the school term, the superintendent shall reinstate the teacher to active continuing status at the beginning of the school term. If notice of recovery from disability is not presented to the superintendent within the twenty-four (24) calendar month period, or if the teacher states to the superin-

tendent, in a verified document, prior to expiration of the twenty-four (24) calendar month period that he or she will not return to employment in the school system, the continuing service contract of the teacher shall terminate as by retirement under the provisions of KRS 161.661.

(3) Retirement because of disability under this section shall not be cause for termination of the contract of a teacher or superintendent under KRS 161.790 during the twenty-four (24) calendar month period described in this section. A teacher or superintendent who applies for disability retirement under the provisions of KRS 161.661 shall retain continuing service status during the period of time the application for disability retirement is being processed. If the application is not approved, the teacher or superintendent may return to the contract, employment, or leave status held prior to submission of the application.

(4)(a) If the superintendent recovers from the disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the employing board of education within twenty-five (25) through forty-two (42) months from the date of retirement, the board shall give priority consideration to reemployment of the superintendent for the first available position for which the superintendent is qualified and certified.

(b) If the teacher recovers from the disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the superintendent within twenty-five (25) through forty-two (42) months from the date of retirement, the superintendent shall give priority consideration to reemployment of the teacher for the first available position for which the teacher is qualified and certified.

History.

Enact. Acts 1982, ch. 219, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 246, effective July 13, 1990.

161.663. Disability retirement with less than required years of service.

Any active contributing member with less than five (5) years of Kentucky service may apply and be approved for disability retirement under KRS 161.661 if the member is found to be mentally or physically incapacitated as a result of an injury related directly to their covered employment. All conditions and restrictions specified under KRS 161.661 shall be applicable, except that the initial annual disability allowance shall be equal to fifty percent (50%) of the member's current annual contract salary and the member's last annual contract salary shall be used in lieu of the final average salary in the recalculation of the member's benefit at the expiration of the eligibility period.

History.

Enact. Acts 1988, ch. 363, § 18, effective July 1, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 537, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1988, ch. 363, § 18, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 537, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Benefit eligibility conditions for members providing part-time and substitute services, 102 KAR 1:310.

Minimum distribution, 102 KAR 1:170.

161.670. Disability to be established by medical examination. [Repealed.]

Compiler's Notes.

This section (4506b-45; amend. Acts 1962, ch. 64, § 19) was repealed by Acts 1964, ch. 43, § 23.

161.675. Hospital and medical benefits and health insurance coverage for eligible recipients of retirement allowances from Teachers' Retirement System — Applicability to individuals becoming members on or after July 1, 2008 — Health insurance supplement payments — Coverage for spouses, dependents, and disabled children of retirees — Exemption from premium tax.

(1) The board of trustees shall arrange by appropriate contract or on a self-insured basis to provide a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance from the Teachers' Retirement System. The board of trustees may also arrange to provide health insurance coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500 as an alternative to group hospital and medical insurance for persons eligible for hospital and medical benefits under this section. The board of trustees may authorize eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age sixty-five (65) to be included in the state-sponsored health insurance that is provided to active teachers and state employees under KRS 18A.225. Members who are sixty-five (65) or older and retired for service shall not be eligible to participate in the state employee health insurance program as described in KRS 18A.225.

(2)(a) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage and eligibility conditions to meet the changing needs of the annuitants and, when necessary, to contain the expenses of the insurance program within the funds available to finance the insurance program, except as provided by paragraph (b) of this subsection. The contracts and administrative regulations shall provide for but not be limited to hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. An annuitant whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years' creditable Kentucky service in the Teachers' Retirement System or five (5) years of combined creditable service in the state-administered retirement systems if the member is retiring under the reciprocity provisions of

KRS 61.680, 61.702, and 78.5536. An annuitant shall not elect coverage through more than one (1) of the state-administered retirement systems. The board of trustees shall offer coverage to the disabled child of an annuitant regardless of the disabled child's age if the annuitant pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits.

(b) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, shall not be eligible for benefits under this section unless the member has at least fifteen (15) or more years of service credited under KRS 161.500 or another state-administered retirement system.

(3) All expenses for benefits under this section shall be paid from the funding provisions contained in KRS 161.420(5), from a trust fund established by the board under 26 U.S.C. sec. 115, premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute.

(4)(a) The board of trustees shall determine the amount of health insurance supplement payments that the Teachers' Retirement System will provide to assist eligible annuitants in paying the cost of their health insurance, based on the funds available in the medical insurance fund and any trust fund established by the board for this purpose under 26 U.S.C. sec. 115. The board of trustees shall establish the maximum monthly amounts of health insurance supplement payments that will be made by the Kentucky Teachers' Retirement System for eligible annuitants. The board of trustees shall annually establish the percentage of the maximum monthly health insurance supplement payment that will be made, based on age and years of service credit of eligible recipients of a retirement allowance. Monthly health insurance supplement payments made by the retirement system may not exceed the amount of the single coverage insurance premium chosen by the eligible annuitants. In order to qualify for health insurance supplements, the annuitant must agree to pay the difference between the insurance premium and the applicable supplement payment, by payroll deduction from his or her retirement allowance, or by a payment method approved by the retirement system.

(b)1. The board shall, effective July 1, 2010, have the authority to charge retired members who are not paying the Standard Medicare Part B premium an amount equal to the Standard Medicare Part B premium in addition to any other payments determined by the board to be necessary to contain costs within the available funding. If the board determines that retired members who are not paying the Standard Medicare Part B premium should pay the equivalent of the Standard Medicare Part B premium, the board shall phase in the premium according to the following schedule:

July 1, 2010 .....Thirty-three percent (33%)

July 1, 2011 .....Sixty-seven percent (67%)

July 1, 2012, and thereafter ..One hundred percent (100%)

2. If the board requires retired members to pay the charges specified in subparagraph 1. of this paragraph, the amount payable shall not be reduced by the board until the funds established to actuarially fund pension annuities and the medical insurance fund established under KRS 161.420 each achieve an actuarial funding level of at least one hundred percent (100%).

3. Nothing in this paragraph shall limit the board's authority to change the levels of coverage, eligibility conditions, or levels of health insurance supplement for retirees in order to contain costs within available funding.

(c) The board of trustees may offer, on a full-cost basis, health care insurance coverage provided by the retirement system to spouses and dependents of eligible annuitants not otherwise eligible for regular coverage. Recipients of a retirement allowance from the retirement system must agree to pay the cost of this coverage by payroll deduction from their retirement allowance or by a payment method approved by the retirement system.

(d) The board of trustees shall offer, on a full-cost basis, health insurance coverage provided by the retirement system to the disabled child of an annuitant, regardless of the age of the disabled child. A child shall be considered disabled for purposes of this section if the child has been determined to be eligible for federal Social Security disability benefits.

(5) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from any trust fund established by the board for this purpose under 26 U.S.C. sec. 115, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.

(6) The board of trustees may approve health insurance supplement payments to eligible annuitants who are less than sixty-five (65) years of age, as reimbursement for hospital and medical insurance premiums made by annuitants for their individual coverage. Eligible annuitants or recipients are those annuitants who are not eligible for Medicare and who do not reside in Kentucky or in an area outside of Kentucky where comparable coverage is available. The reimbursement payments shall not exceed the minimum supplement payment that would have been made had the annuitant lived in Kentucky. Eligible annuitants or recipients shall submit proof of payment to the retirement system for hospital and medical insurance that they have obtained. Reimbursement payments shall be made on a quarterly basis.

(7) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system or any trust fund established for this purpose by the board.

(8) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.

(9) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the medical insurance fund or another trust fund established by the board for this purpose shall not constitute taxable income to an insured recipient.

(10) In the event that a member is providing services on less than a full-time basis under KRS 161.605, the retirement system may pay the full cost of the member's health insurance coverage for the full fiscal year that the member is providing those services, at the conclusion of which, the retirement system may then bill the active employer and the active employer shall reimburse the retirement system for the cost of the health insurance coverage incurred by the retirement system on a pro rata basis for the time that the member was employed by the active employer.

History.

Enact. Acts 1964, ch. 43, § 20; 1970, ch. 54, § 4; 1974, ch. 395, § 18; 1976, ch. 351, § 22, effective July 1, 1976; 1978, ch. 43, § 3, effective June 17, 1978; 1978, ch. 152, § 18, effective March 28, 1978; 1980, ch. 206, § 13, effective July 1, 1980; 1984, ch. 253, § 22, effective July 1, 1984; 1986, ch. 440, § 14, effective July 1, 1986; 1990, ch. 476, Pt. V, § 538, effective July 13, 1990; 1990, ch. 489, § 10, effective July 13, 1990; 1992, ch. 192, § 16, effective July 1, 1992; 1994, ch. 369, § 22, effective July 1, 1994; 1996, ch. 359, § 18, effective July 1, 1996; 1998, ch. 515, § 15, effective July 1, 1998; 2000, ch. 438, § 4, effective April 21, 2000; 2000, ch. 498, § 21, effective July 1, 2000; 2002, ch. 275, § 32, effective July 1, 2002; 2006, ch. 164, § 4, effective July 12, 2006; 2008, ch. 78, § 23, effective July 1, 2008; 2008 (1st Ex. Sess.), ch. 1, § 41, effective June 27, 2008; 2010, ch. 159, § 5, effective July 1, 2010; 2021 ch. 102, § 83, effective April 1, 2021; 2025 ch. 126, § 5, effective June 27, 2025.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 28, (2) at 2066.

OPINIONS OF ATTORNEY GENERAL.

The board of trustees of the teacher's retirement system is authorized to make payment from the hospital and insurance fund of the retirement system directly to an institution or individual who has provided or is providing services to a retired covered member teacher without the necessity of entering a contract. OAG 72-675.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

401(h) established pursuant to 26 U.S.C. 401(h) account, 102 KAR 1:105.

Insurance, 102 KAR 1:100.

161.677. Kentucky Teachers' Retirement System insurance trust fund.

(1)(a) The Kentucky Teachers' Retirement System insurance trust fund is hereby created. All assets received in the trust fund shall be deemed trust funds to be held and applied solely as provided in this section. Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Teachers' Retirement System.

(b) The trust fund is intended to be established as a trust exempt from taxation under 26 U.S.C. sec. 115.

(2) The trust fund is created for the purpose of providing a trust separate from the funds under KRS 161.420. Trust fund assets are dedicated for use for health benefits as provided in KRS 161.675, and as permitted under 26 U.S.C. secs. 105 and 106, for present and future eligible recipients of a retirement allowance from the Kentucky Teachers' Retirement System.

(3) The trust fund shall be administered by the board of trustees established by KRS 161.250, and the board shall serve as trustees of the fund. The board shall manage the assets of the fund in the same general manner in which it administers the retirement funds, except that the asset allocation may differ and separate accounting and financial reporting shall be maintained for the trust fund.

(4) In addition to the requirements of subsection (2) of this section, the employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the trust fund.

(5) If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.

(6) The board of trustees may promulgate administrative regulations and adopt procedures and a trust document to implement this section and take all action necessary and appropriate to provide that the income of the trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

(7) The establishment of the Kentucky Teachers' Retirement System insurance trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

(8) The trust fund established under this section, at the direction of the board of trustees, shall consist of amounts, excluding those amounts that have been deposited to an account established pursuant to 26 U.S.C. sec. 401(h), that have been accumulated for the purpose of providing benefits as provided in KRS 161.675, including:

(a) Contributions required under KRS 161.550;

(b) Contributions required under KRS 161.675(4)(b); and

(c) Interest income from the investments of the fund from contributions received by the fund and from income earned on those investments.

History.

Enact. Acts 2010, ch. 159, § 1, effective July 1, 2010; 2010, ch. 164, § 1, effective July 1, 2010.

Legislative Research Commission Notes.

(7/1/2010). This section was created by 2010 Ky. Acts chs. 159 and 164, which do not appear to be in conflict and have been codified together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Investment policies for insurance trust fund, 102 KAR 1:178.

161.680. Mistake in payment — Correction of error — Collection of overpayments.

(1) If any change or error in a record results in any individual receiving from the retirement system more or less than the individual was entitled to receive as determined by the board of trustees or staff of the Teachers' Retirement System, the board of trustees or staff shall, when the error is discovered, correct the error, and as far as practicable adjust the payments so that the actuarial equivalent of the benefit to which the individual was entitled shall be paid.

(2) The Teachers' Retirement System shall take all practicable and cost-effective steps to collect overpayments from a member's or retiree's account. Methods of correction of overpayments from any member's or retiree's account shall include but are not limited to reclamation of the overpayment from the member's or retiree's account at the depository bank, the deduction of moneys from account refunds, deduction from the retirement allowance or joint and survivor annuity payable from the account, and deduction of moneys from the life insurance benefit. Collection of overpayments shall be initiated regardless of the designated beneficiary for any amounts payable from the account.

History.
4506b-50; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 539, effective July 13, 1990; 2004, ch. 121, § 24, effective July 1, 2004; 2021 ch. 192, § 25, effective June 29, 2021; 2025 ch. 138, § 16, effective March 31, 2025.

Compiler's Notes.
This section (4506b-50) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 539, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

This section cannot be applied retroactively to correct an error in granting a full year's service credit for half-time teaching, as it was a teachers' retirement system policy during the period of time involved to give such credit and therefore there was no mistake. OAG 73-270.

A teacher who retires from his Kentucky teaching position without informing the teachers' retirement system of any teaching service he may have accumulated as a teacher outside the state and whose annuity is calculated on the basis of his service in Kentucky cannot under this section be credited with his out-of-state service more than two years after the effective date of his retirement since a change or error in a record is not involved. OAG 74-671.

161.690. Falsifying record prohibited.

No person shall knowingly make any false statement, nor shall any person falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system.

History.
4506b-50; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 540, effective July 13, 1990.

Compiler's Notes.
This section (4506b-50) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 540, effective July 13, 1990.

161.695. Use and acceptance of electronic signatures.

(1) Notwithstanding any provision of KRS 161.220 to 161.716 to the contrary, the Teachers' Retirement System may, when it deems appropriate, use and accept electronic signatures on any retirement system document, and for any reason that the retirement system would otherwise require a signature, if the electronic signatures are submitted using technology that the board of trustees of the retirement system deems sufficient to protect their integrity, security, and authenticity.

(2) If deemed appropriate for use and acceptance under this section, an electronic signature shall have the same force and effect as a handwritten signature.

(3) The board of trustees of the retirement system may promulgate an administrative regulation in accordance with KRS Chapter 13A to establish guidelines for the use and acceptance of electronic signatures.

History.
2021 ch. 192, § 1, effective June 29, 2021.

161.700. Funds exempt from taxation and process — Assignment to trustee of special needs trust — Taxability after December 31, 1997 — Benefits not considered marital property — Qualified domestic relations order.

(1) Except as otherwise provided by this section and KRS 161.655(5), the right of a member to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under KRS 161.220 to 161.716, and the money in the various funds established pursuant to KRS 161.220 to 161.716 are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or other process, and shall not be assigned.

(2) Notwithstanding the provisions of subsection (1) of this section, retirement allowances and other benefits accrued or accruing under KRS 161.220 to 161.716 to a person who is the beneficiary of a special needs trust may be assigned to the trustee of that special needs trust. Any retirement allowances or other benefits assigned to a special needs trust under this subsection, or accrued or accruing under KRS 161.220 to 161.716 to a person who is the beneficiary of a special needs trust, shall cease upon the death of the beneficiary of the special needs trust and shall not be subject to state reimbursement for Medicaid benefits paid on behalf of the beneficiary under a Medicaid payback provision.

(3) Notwithstanding subsection (1) of this section, retirement benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(4) Retirement allowance, disability allowance, accumulated account balance, or any other benefit under

the retirement system shall not be classified as marital property pursuant to KRS 403.190(1), except to the extent permitted under KRS 403.190(4). Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d), except to the extent permitted under KRS 403.190(4).

(5) Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:

(a) The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;

(b) The order meets the requirements established by the retirement system and by subsections (5) to (13) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations order by promulgation of administrative regulations in accordance with KRS Chapter 13A; and

(c) The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (b) of this subsection.

(6) A qualified domestic relations order shall not:

(a) Require the retirement system to take any action not authorized under state or federal law;

(b) Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;

(c) Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the system and as provided by subsections (5) to (13) of this section; or

(d) Grant any separate interest to any person other than the participant.

(7) Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.

(8) If the qualified domestic relations order meets the requirements established by the system and by subsections (5) to (13) of this section, payments to the alternate payee shall be distributed under the following conditions:

(a) If the participant is retired and is receiving a monthly retirement allowance, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (5) to (13) of this section; or

(b) If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of his or her accumulated account balance as provided by KRS 161.470(6).

(9) An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:

(a) The death of the participant;

(b) The death of the alternate payee; or

(c) The termination of benefits to the participant under any provision of KRS 161.220 to 161.716.

(10) An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.

(11) The cost of living adjustment provided to the participant pursuant to KRS 161.620 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:

(a) If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or

(b) If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:

1. The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or

2. The alternate payee shall receive no cost of living adjustment.

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.

(12) Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by retirement system. All fees and expenses shall be established by the administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:

(a) Solely by the participant;
(b) Solely by the alternate payee; or
(c) Equally shared by the participant and alternate payee.

(13) The retirement system shall honor a qualified domestic relations order issued prior to July 15, 2010, for prospective benefit payments if the order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.

History.
4506b-51; amend. Acts 1980, ch. 206, § 14, effective July 1, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 541, effective July 13, 1990; 1995 (2nd Ex. Sess.), ch. 1, § 6, effective April 28, 1995; 1998, ch. 255, § 36, effective July 15, 1998; 2002, ch. 275, § 33, effective July 1, 2002; 2010, ch. 148, § 12, effective July 15, 2010; 2011, ch. 68, § 4, effective June 8, 2011; 2018 ch. 107, § 79, effective July 14, 2018; repealed and reenacted by 2021 ch. 157, § 39, effective January 1, 2022; 2026 ch. 18, § 11, effective July 15, 2026.

Legislative Research Commission Notes.
(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

161.705. Voluntary contributions by or for member. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1950, ch. 79, § 2; 1964, ch. 43, § 17; 1974, ch. 395, § 19, effective July 1, 1974; 1978, ch. 152, § 19, effective March 28, 1978; 1982, ch. 166, § 35, effective July 15, 1982; 1984, ch. 302, § 9, effective July 13, 1984 which was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 542, effective July 13, 1990) was repealed by Acts 1992, ch. 192, § 18, effective July 1, 1992.

161.710. Local system merged with state system.

(1) The local retirement systems merged with the state retirement system under the provisions of 1938 Ky. Acts (1st Ex. Sess.), ch. 1, sec. 49, shall be discontinued. The payment of all benefits to members on the retired roll at the time of discontinuance shall become the obligation of the school district in which the local system was operated prior to its discontinuance. The method of determining and paying refundable deposits due members of the local system shall be as provided in 1938 Ky. Acts (1st Ex. Sess.), ch. 1, sec. 49.

(2) Payments to annuitants in cities of the first class or in areas formerly constituting a city of the first class which have been consolidated with their county shall not exceed the amount being received by them at the time the local retirement system is discontinued. The sum that remains after the death of all annuitants shall be used by the local board of education for general school purposes.

(3) The local board of education shall continue to invest the funds transferred to it for the benefit of the existing annuitants as long as such annuitants live. Such investment shall be governed by 1934 Ky. Acts, ch. 65, Art. IX, except that the local board of education is substituted for the board of trustees of the local retirement system. The local board of education shall keep all funds transferred to it by the local retirement system and all income from the investment of such funds in a separate fund to be known as the annuity fund. The local board of education may pay from the fund any reasonable expenses necessary for the fund's administration and general management. The local board of education shall safeguard the fund by requiring such additional surety bond of the treasurer as it deems necessary, by providing for an annual audit by a reputable auditing firm, by spreading on the minutes of the board of education at least annually a report of investments, assets, and liabilities, and the names, addresses, and annuities of annuitants, and by making such an appropriation to the fund from local school revenues as will guarantee the full and complete discharge of all obligations to annuitants.

History.
4506b-49; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 543, effective July 13, 1990; 2002, ch. 346, § 175, effective July 15, 2002.

Compiler's Notes.
This section (4506b-49) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 543, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Purpose.
3. Rights of Employees on Merger.
4. Payment from General Funds.

1. Constitutionality.
That portion of this section which authorized a special levy by the local board of education violated Ky. Const., § 51. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

Payment of teachers' retirement pensions does not violate Ky. Const., §§ 3, 179, 181 nor 181a (now 181). Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

2. Purpose.
This section is intended to recognize rather than impair the right of retired teachers. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

3. Rights of Employees on Merger.
Retired teachers belonging to a local system who have made mandatory contributions have a vested contract right to payment which may not be revoked or impaired. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

Merger of Louisville system with state system caused cessation of conditions for which Louisville retirement trust fund was created, justifying precipitation of right of beneficiaries. Louisville v. Board of Education, 291 Ky. 7, 163 S.W.2d 23, 1942 Ky. LEXIS 170 (Ky. 1942).

Where law under which Louisville teachers' retirement system was established provided that teachers terminating their employment or dying before receiving any benefits should be entitled to the return of one-half of the contributions

paid in by them, such teachers were entitled, upon the merging of the Louisville system with the state system, to an immediate return of one-half of their contributions, by virtue of the provisions of Acts 1938 (1st Ex. Sess.), ch. 1, § 49, without being required to wait until their employment was terminated. Louisville v. Board of Education, 291 Ky. 7, 163 S.W.2d 23, 1942 Ky. LEXIS 170 (Ky. 1942).

4. Payment from General Funds.

The intention of the legislature that local school districts shall continue liable for pensions due retired teachers under local retirement systems is so strong that, even though a special tax authorized for that purpose is unconstitutional, the districts must necessarily pay said obligations from general funds in order to effectuate said intention. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

Payments to retired teachers of pensions out of general school funds are for school purposes, and the legislature is authorized to so provide. Board of Education v. Louisville, 288 Ky. 656, 157 S.W.2d 337, 1941 Ky. LEXIS 198 (Ky. 1941).

161.712. Payments to teachers who worked prior to July 1, 1940. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1980, ch. 206, § 15, effective July 1, 1980, repealed and reenact. Acts 1990, ch. 476, Pt. V, § 544, effective July 13, 1990) was repealed by Acts 1996, ch. 359, § 20, effective July 1, 1996.

161.714. Inviolable contract.

It is hereby declared that in consideration of the contributions by members and in further consideration of benefits received by the state from the member's employment, KRS 161.220 to 161.710 shall constitute, except as provided in KRS 6.696, an inviolable contract of the Commonwealth, and the benefits provided herein, except as provided in KRS 6.696, shall not be subject to reduction or impairment by alteration, amendment, or repeal.

History.

Enact. Acts 1978, ch. 152, § 20, effective March 28, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 545, effective July 13, 1990; 1992, ch. 192, § 17, effective July 1, 1992; 1993 (1st Ex. Sess.), ch. 4, § 82, effective September 16, 1993; 2018 ch. 107, § 80, effective July 14, 2018; 2021 ch. 157, § 40, effective January 1, 2022.

Legislative Research Commission Notes.

(12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

Compiler's Notes.

This section (Enact. Acts 1978, ch. 152, § 20, effective March 28, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 545, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Since the membership of the system is composed of all new teachers and all present teachers, the contract is not merely between the retired members of the system and the Commonwealth, but between the present teachers and all new teachers and the Commonwealth. OAG 81-416, 1981 Ky. AG LEXIS 32.

The General Assembly is prohibited by this section, Const., § 19 and U.S. Const., art. I, § 10, from enacting any law which would impair or reduce the expected retirement benefit of any present or new teacher, or those benefits received by retired members; however, any amendment which would not reduce or impair benefits is not prohibited and the retirement system statutes may also be amended to affect those individuals who will become members of the system at a future date. OAG 81-416, 1981 Ky. AG LEXIS 32.

161.715. Pensions for certain teachers not eligible for benefits under teachers' retirement system. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 140, §§ 1, 2) was repealed by Acts 1976, ch. 351, § 23.

161.716. Federal laws take precedence over Kentucky statutes pertaining to Teachers' Retirement System.

In the event that federal laws are in conflict with the Kentucky Revised Statutes pertaining to the Teachers' Retirement System, federal laws shall take precedence. When necessary to comply with federal laws, the board of trustees may defer or stop payments of allowances until the conflict is resolved. The board of trustees shall adopt such regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members, survivors of members and the system.

History.

Enact. Acts 1984, ch. 253, § 23, effective July 1, 1984; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 546, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1984, ch. 253, § 23, effective July 1, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 546, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

401(h) established pursuant to 26 U.S.C. 401(h) account, 102 KAR 1:105.

General compliance with federal tax laws, 102 KAR 1:225.

Increase in compensation limit, 102 KAR 1:240.

Limitations on benefits, 102 KAR 1:230.

Minimum distribution, 102 KAR 1:170.

Rollovers and transfers of contributions to other plans, 102 KAR 1:245.

Rollovers from other plans, 102 KAR 1:250.

TEACHERS' TENURE

161.720. Definitions for teachers' tenure law.

(1) The term "teacher" for the purpose of KRS 161.730 to 161.810 shall mean any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of the superintendent.

(2) The term "year" as applied to terms of service means actual service of not less than seven (7) school months within a school year; provided, however, that any board of education may grant a leave of absence for

professional advancement or military leave for active duty service with full credit for service.

(3) The term "limited contract" shall mean a contract for the employment of a teacher for a term of one (1) year only or for that portion of the school year that remains at the time of employment.

(4) The term "continuing service contract" shall mean a contract for the employment of a teacher which shall remain in full force and effect until:

(a) The teacher resigns or retires;

(b) The contract is terminated or suspended as provided in KRS 161.790 and 161.800; or

(c) For contracts entered into on or after July 1, 2019, the teacher begins employment in a district-level administrative position in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C. For purposes of this section and KRS 161.730 to 161.810, "district-level administrative position" means an administrative position in a local school district that has administrative-level duties and responsibilities that are not limited to one (1) school in the district.

(5) The term "continuing status" means employment of a teacher under a continuing contract.

(6) The term "standard" or "college" certificate for the purpose of KRS 161.730 to 161.810 shall mean any certificate issued upon the basis of graduation from a standard four (4) year college or completion of a local district alternative certification training program.

(7) The term "superintendent" for the purpose of KRS 161.765 shall mean the school officer appointed by a board of education under the authority of KRS 160.350 or any person authorized by law to perform the duties of that officer.

(8) The term "administrator" for the purpose of KRS 161.765 shall mean a certified employee, below the rank of superintendent, who devotes the majority of his or her employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, school psychologist, or school business administrator. The term "administrator" shall also include those assistant, associate, or deputy superintendents who do not fall within the definition of "superintendent" as set forth in subsection (7) of this section.

(9) The terms "demote" or "demotion" for the purpose of KRS 161.765 shall mean a reduction in rank from one (1) position on the school district salary schedule to a different position on that schedule for which a lower salary is paid. The terms shall not include lateral transfers to positions of similar rank and pay or minor alterations in pay increments required by the salary schedule.

History.

Enact. Acts 1942, ch. 113, § 1; 1944, ch. 98; 1964, ch. 41, § 1; 1974, ch. 356, § 1; 1988, ch. 50, § 1, effective July 15, 1988; 1990, ch. 518, § 8, effective July 13, 1990; 1990, ch. 476, § 80, effective July 13, 1990; 1992, ch. 85, § 1, effective July 14, 1992; 1998, ch. 176, § 1, effective July 15, 1998; 2004, ch. 161, § 2, effective July 13, 2004; 2019 ch. 65, § 3, effective June 27, 2019.

NOTES TO DECISIONS

Analysis

1. Legislative Intent.
2. Nature of Tenure.
3. Continuing Service Contract.
4. Certificate.
5. Less Than Four Year Degree.
6. Enforcement.
7. Administrator.
8. Resignation.
9. Superintendent.
10. Transfer to Noncertified Position.
11. Demotion.
12. Notification Requirements.
13. Determining Type of Contract.
14. Limited Contract.

1. Legislative Intent.

The legislative intent of subsection (8) of this section was not to classify as an administrator one who, incidental to his primary duties which are not administrative in nature, occasionally evaluates or supervises other board employees. Bradshaw v. Board of Education, 607 S.W.2d 427, 1979 Ky. App. LEXIS 541 (Ky. Ct. App. 1979).

2. Nature of Tenure.

Teacher tenure is statutory and not contractual, and the Legislature may abridge or destroy it. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

3. Continuing Service Contract.

Where continuing contract under teacher's tenure law provided that services under the contract "are to be performed in such school or schools and/or in such position and at such place or places as may be designated by the superintendent of the district and approved by the board," the board of education had the right to transfer the principal from one position to another and from one school to another on recommendation of the superintendent but his salary could not be reduced even though the contract stated it could be increased or decreased. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951).

Board of education could transfer teacher under continuing service contract but could not reduce his salary unless the contract had been modified by mutual consent in writing. Huff v. Harlan County Board of Education, 408 S.W.2d 457, 1966 Ky. LEXIS 111 (Ky. 1966).

Where teacher employed under continuing service contract as an elementary school principal, refused to accept transfer to position as principal of high school at same salary on ground he was not qualified and then was given position as teacher at reduced salary, he was entitled to judgment for difference between the old and new salaries. Huff v. Harlan County Board of Education, 408 S.W.2d 457, 1966 Ky. LEXIS 111 (Ky. 1966).

A continuing service contract is a legislatively granted status rather than a real contractual right, and the legislature having created the status could abolish it regardless of any papers that the parties executed. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

The board of education improperly denied a continuing service contract to a teacher who taught continuously in the same district from 1958 through 1971 except for the 1966-67 school year, since under the provisions of KRS 161.740(1)(b) he was eligible for such a contract. Estill County Board of Education v. Rose, 518 S.W.2d 341, 1974 Ky. LEXIS 14 (Ky. 1974).

Under subsection (4), a continuing service contract ends by operation of law on a teacher's 65th birthday so that the teacher reverts to a nontenure status and may be employed at the discretion of the board of education upon a limited contract for one year at a time. Belcher v. Gish, 555 S.W.2d 264, 1977 Ky. LEXIS 505 (Ky. 1977) (decided under prior law).

Tenured school teachers who were suspended because of decreased enrollment did not have a property right in continued employment and its benefits to entitle them to a pre-suspension hearing. Downs v. Henry County Bd. of Education, 769 S.W.2d 49, 1988 Ky. App. LEXIS 190 (Ky. Ct. App. 1988).

4. Certificate.

A certificate of professional standing may be abolished or limited by the legislature. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

5. Less Than Four Year Degree.

The General Assembly has the power to provide that teachers with less qualification than a four-year degree shall receive only a minimum salary and the fact that the motive of such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair. Gullett v. Sparks, 444 S.W.2d 901, 1969 Ky. LEXIS 234 (Ky. 1969).

6. Enforcement.

The State Department of Education should use the means at its disposal to see that the provisions of the teachers' tenure law are observed. Marshall v. Conley, 258 S.W.2d 911, 1953 Ky. LEXIS 893 (Ky. 1953).

A teacher's salary is established and paid by public officials and, as such, injunctive relief in the form of mandamus is an appropriate means of enforcing rights to salary during a teacher's tenure in office. White v. Board of Education, 697 S.W.2d 161, 1985 Ky. App. LEXIS 631 (Ky. Ct. App. 1985).

7. Administrator.

An assistant principal with administrative tenure was an "administrator" within the meaning of subsection (8). Harlan County Board of Education v. Stagnolia, 555 S.W.2d 828, 1977 Ky. App. LEXIS 805 (Ky. Ct. App. 1977).

Where a high school classroom teacher also served as the head football coach at the school, the fact that during the time he was coach he had assistant coaches who were under his supervision was not enough to classify him as an administrator within subsection (8) of this section for the purpose of KRS 161.765 relating to the demotion of administrators, since his occasional supervision of other board employees was merely incidental to his primary duties which were not administrative in nature. Bradshaw v. Board of Education, 607 S.W.2d 427, 1979 Ky. App. LEXIS 541 (Ky. Ct. App. 1979).

An administrator is one who (1) holds a position categorized as an administrative position pursuant to subsection (8) of this section, or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Education, 684 S.W.2d 7, 1984 Ky. App. LEXIS 529 (Ky. Ct. App. 1984).

The ordinary duties of a school principal differ greatly from those of a school teacher, as administrative personnel have either fiscal management duties and educational supervisory duties, or both, with responsibilities which are quite different from those of classroom teachers. The role of an administrator in carrying out policy and in formulating overall policy is also quite different from that of a teacher, and it is certainly not beyond reason that the legislature would deem it advisable not to give one whose supervisory and policy role is so different the same kind of job protection given to a classroom teacher. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

In suit by principal who was demoted to teacher, alleging that denial of his right to the pre-demotion hearing provided for administrators in KRS 161.765 deprived him of equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution and an exercise of arbitrary power prohibited by Ky. Const., § 2, since "administrators" as defined by subsection (8) of this section as it existed prior to its 1992 amendment did not include "principals" as "administrators", the court employing the "rational basis scrutiny" held that since there were several distinctions between "principals" and "administrators", there was a rational basis for the exclusion of "principals" from the definition of "administrators" and thus such exclusion did violate the Fourteenth Amendment of the U.S. Constitution or Ky. Const., § 2. Roberts v. Mooneyhan, 902 S.W.2d 842, 1995 Ky. App. LEXIS 77 (Ky. Ct. App.), op. withdrawn, sub. op., 902 S.W.2d 842, 1995 Ky. App. LEXIS 132 (Ky. Ct. App. 1995).

8. Resignation.

Where plaintiff, a teacher, had been employed in one school district for six (6) successive years, resigned, taught in another school system the following year, again resigned, took a year off and then taught for three (3) years in a third school district before being released, he was entitled to no hearing under KRS 161.790, since, although he had achieved tenure at his first position, when he resigned he lost his tenure by reason of subsection (4) of this section and subdivision (1)(c) of KRS 161.740 is inapplicable. Carpenter v. Board of Education, 582 S.W.2d 645, 1979 Ky. LEXIS 265 (Ky. 1979).

9. Superintendent.

A superintendent is not afforded the protection of KRS 161.765 which deals exclusively with the procedure for demotion of administrative personnel. Floyd v. Board of Education, 598 S.W.2d 460, 1979 Ky. App. LEXIS 528 (Ky. Ct. App. 1979).

The office of superintendent is outside the scope of the provisions of the Teacher Tenure Act. Floyd v. Board of Education, 598 S.W.2d 460, 1979 Ky. App. LEXIS 528 (Ky. Ct. App. 1979).

10. Transfer to Noncertified Position.

Where a high school principal was transferred, at the same pay level, to a newly created position, as the supervisor of transportation for the school system, the transfer from a certified to a noncertified position amounted to "termination" as a "teacher" under subsections (1) and (4) of this section; accordingly the principal was entitled to a hearing as required by KRS 161.790. Crawley v. Board of Education, 658 F.2d 450, 1981 U.S. App. LEXIS 18054 (6th Cir. Ky. 1981).

11. Demotion.

Where an educator is transferred to a position of less responsibility, and the transfer is not accompanied by an immediate major reduction in pay, but there is to be a reduction in a subsequent year, the transfer becomes a demotion when (and if) that reduction takes place. Accordingly, where principal was transferred to less responsible post but his salary remained the same, it could not be said that he had been demoted from one position on the salary schedule to a position for which a lower salary was paid. Stafford v. Board of Education, 642 S.W.2d 596, 1982 Ky. App. LEXIS 267 (Ky. Ct. App. 1982).

In the case of the demotion or reassignment of a probationary administrator, the provision in the definition of a school year covering seven months' service only has meaning when coupled with the words "within a school year." Thus an administrator must only serve seven months "within each school year" beginning July 1 and ending June 30 in order to have worked "three years" as an administrator. If such administrator has already worked seven months during his third school year or will have worked seven months before June 30 of his third year of administrative service, he must be notified

of a demotion before May 15 of that year, under this section. Board of Educ. v. Paul, 846 S.W.2d 675, 1992 Ky. LEXIS 116 (Ky. 1992).

12. Notification Requirements.

A full-time teacher in 1986-87 who had her 1987-88 contract reduced to half time, but received no notification of the reduction in responsibilities, was deemed reemployed for the succeeding school year which constituted her fourth year and satisfied the service requirement under the tenure law. Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

13. Determining Type of Contract.

Where the school board minutes did not disclose whether teacher/plaintiff's contract was continuing or limited, resorting to other pertinent records was permissible. Board of Educ. v. Jones, 823 S.W.2d 457, 1992 Ky. LEXIS 6 (Ky. 1992).

Where dismissed bus driver's lack of legitimate expectation of continued employment within the Whitley County Schools was evidenced by both his contract of employment and by this section, he could not pursue a due process claim based upon the assertion of a property right. Creager v. Board of Educ., 914 F. Supp. 1457, 1996 U.S. Dist. LEXIS 6302 (E.D. Ky. 1996).

14. Limited Contract.

Where the employment contract signed by teacher was clearly designated a "Limited Contract of Employment" appearing in large block letters and in bold type, the document unequivocally designated the period of employment under the contract as one year and nowhere provided that her contract was one of a continuing nature or tenured status. Board of Educ. v. Jones, 823 S.W.2d 457, 1992 Ky. LEXIS 6 (Ky. 1992).

Cited in:

Redding v. Fincel, 311 Ky. 534, 224 S.W.2d 671, 1949 Ky. LEXIS 1179 (Ky. 1949); Board of Education v. Moore, 264 S.W.2d 292, 1953 Ky. LEXIS 1250 (Ky. Ct. App. 1953); Lewis v. Board of Education, 348 S.W.2d 921, 1961 Ky. LEXIS 42 (Ky. 1961); Miller v. Noe, 432 S.W.2d 818, 1968 Ky. LEXIS 358 (Ky. 1968); Bates v. Dause, 502 F.2d 865, 1974 U.S. App. LEXIS 6898 (6th Cir. Ky. 1974); Settle v. Camic, 552 S.W.2d 693, 1977 Ky. App. LEXIS 736 (Ky. Ct. App. 1977); Gaines v. Board of Education, 554 S.W.2d 394, 1977 Ky. App. LEXIS 759 (Ky. Ct. App. 1977); Kelly v. Board of Education, 566 S.W.2d 165, 1977 Ky. App. LEXIS 916 (Ky. Ct. App. 1977); Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980); Board of Education v. Rothfuss, 639 S.W.2d 545, 1982 Ky. LEXIS 297 (Ky. 1982); Banks v. Board of Education, 648 S.W.2d 542, 1983 Ky. App. LEXIS 281 (Ky. Ct. App. 1983); Young v. Board of Education, 661 S.W.2d 787, 1983 Ky. App. LEXIS 384 (Ky. Ct. App. 1983); Daugherty v. Hunt, 694 S.W.2d 719, 1985 Ky. App. LEXIS 587 (Ky. Ct. App. 1985); Matthews v. Holland, 912 S.W.2d 459, 1995 Ky. App. LEXIS 214 (Ky. Ct. App. 1995); Bailey v. Floyd County Bd. of Educ., 106 F.3d 135, 1997 FED App. 39P, 1997 U.S. App. LEXIS 1516 (6th Cir. 1997); Springer v. Bullitt County Bd. of Educ., 196 S.W.3d 528, 2006 Ky. App. LEXIS 183 (Ky. Ct. App. 2006).

OPINIONS OF ATTORNEY GENERAL.

Teachers at the Kentucky School for the blind are protected by the tenure law. OAG 60-1043.

The tenure law only guarantees a teacher the right to continued employment within the school system of the contracting district and consequently a board of education may transfer a teacher from one position and/or school to another within the district. OAG 61-559.

Since under KRS 161.760(3) (now (4)), a teacher has no right to employment in a particular position or school within the school district, the refusal to assume a tendered position, pursuant to the provisions of subsection (4) of this section, works a forfeiture of the right of continued employment, and a teacher who rejected tendered employment at the beginning of the school year but assumed another position in the same school district one month after the opening of school, is not entitled to be paid for the first month of the school year. OAG 70-150.

A principal who has tenure in a school district who wishes to resign his supervisory position and retain tenure status by accepting a teaching position should request the school board for such a reassignment in order that his continuing service contract will remain in effect, but if the board denies the request for reassignment, he will have to continue to work at his principal's post to keep his continuing service contract in effect. OAG 72-214.

It is clear under subsections (1) and (4) of this section that resignation ends the continuing service contract provided for each teacher. OAG 72-214.

Under subsection (4) of this section, a teacher's right to tenure under a continuing service contract terminates on his sixty-fifth birthday and, if the employing board gives notice by May 15 that the teacher will not be employed after age 65, the teacher does not have either a continuing or a limited contract after age 65. OAG 73-232 (decided under prior law).

Under this section and KRS 161.740, a local board of education may not require a master's degree of a teacher in order to qualify for a continuing contract and, since teachers' tenure is regulated by statute, it may not be altered by any regulations of a local board of education. OAG 73-421.

It is within the legal discretion of the board of education to adopt a policy of compulsory retirement at age 65 or at any age between 65 and 70. OAG 73-456 (decided under prior law).

Teachers who were not granted professional leaves of absence and who obtained other employment forfeited their rights under the teachers' tenure law. OAG 74-311.

A person who has reached the age of 65 no longer has a continuing contract and therefore has no vested right to be employed or reemployed as a teacher. OAG 74-638 (decided under prior law).

Where the particular local board of education has adopted a policy of not employing any person 65 years of age or older, it may employ a person as director of pupil personnel under the implementation of state board of education regulation 40.220(2) rather than employ a fully certified and experienced person who is available in the county but who has attained the age of 65 years. OAG 74-638 (decided under prior law).

Upon reaching the age of 65 a school administrator no longer has a continuing service contract but may be employed on a limited contract from year to year until reaching the age of 70, the mandatory retirement age provided by KRS 161.600 (decided under prior law). OAG 75-2.

Although KRS 161.765 applies to guidance counsellors, where a counsellor is reassigned as a teacher at the same salary he is not entitled to a hearing under KRS 161.765 since he has not been demoted within the meaning of this section. OAG 75-368.

When a teacher transfers from the local board of education to the vocational school system, none of the teacher's accrued benefits are carried over to the new position. OAG 76-151.

Neither a teacher who has taught three hours per day for 185 school days nor a teacher who has taught full time for 94 school days may be considered to have a year of actual service for tenure purposes. OAG 76-278.

A teacher who was employed as a substitute teacher for at least 140 school days in the 1972-73 and 1973-74 school years and who was employed as a regular teacher during the 1974-75 and 1975-76 school years would have tenure in the school system if employed by the board of education for the academic year of 1976-77. OAG 76-282.

A teacher must be certified before commencing service which is to be credited toward the four years actual service in the same school district required for continuing service status. OAG 76-284.

Where a teacher taught regularly in the school system for four years and received a continuing education contract and then during the next three years taught but was required to take many days leave of absence due to illness, was on maternity leave and then resigned from her teaching position and such resignation was accepted and the following year she requested to be considered for a position and was reemployed, such teacher should be reemployed and given a limited contract for the school year; however, if such teacher is recommended to the board by the superintendent for a contract for the following school year that contract will be for a continuing service status. OAG 76-490.

The transfer from assistant principal to guidance counselor with an accompanying withdrawal of the pay increment provided for the position of assistant principal does not amount to a demotion. OAG 77-332, 1977 Ky. AG LEXIS 446.

It would appear that a demotion involves at least two positions and, accordingly, when a school board changes only contract characteristics, specifically duration of the contract, of a single administrative position, this action does not constitute a demotion for the purposes of KRS 161.765. OAG 78-148, 1978 Ky. AG LEXIS 568.

A superintendent is specifically excluded from the definition of the term "administrator" in subsection (8) of this section. OAG 79-111, 1979 Ky. AG LEXIS 511.

A teacher seeking benefits under KRS 161.661(1) while on leave of absence under KRS 161.770 has in effect terminated his or her tenure contract status and accompanying rights with the board of education when the teachers' retirement system approves that teacher's application for disability retirement, which means the teacher has "retired" for the purposes of KRS 161.720 to 161.810; and if the teacher, who has been granted leave of absence and accepted by the teachers' retirement system for disability retirement benefits, then becomes able to return to work, the board of education no longer has to afford to that teacher his or her former tenure rights. OAG 79-157, 1979 Ky. AG LEXIS 474.

There are no provisions in the tenure laws to preclude a teacher from being employed for additional years of employment past the age of 70 years on a limited year-to-year contract basis under this section. OAG 81-72, 1981 Ky. AG LEXIS 365.

A teacher must teach at least 140 six-hour days in a 185-day school term in order to be given credit for a year under the tenure law. OAG 82-614, 1982 Ky. AG LEXIS 40.

Where a teacher worked only one-half time in the school years 1976-77, 1977-78, 1978-79 and 1979-80 and did not in any school year teach at least 140 six-hour school days so as to be entitled to a year of credit towards tenure, the board of education had no legal right to award a continuing service contract to her after she had completed four years of part-time teaching and such contract was not binding and was void and could have no legal effect; in such instance, the board should issue a limited contract to such teacher after a majority vote on a motion before the board to do so and the minutes of the board should reference the previous minutes when the unlawful tenure contract had been approved. OAG 82-614, 1982 Ky. AG LEXIS 40.

A teacher on a limited teaching contract only has a statutorily protected expectation of employment for a one-year term. OAG 84-43, 1984 Ky. AG LEXIS 343.

The federal Age Discrimination in Employment Act, (ADEA) as amended effective January 1, 1987, preempts and makes invalid the upper age restrictions found in subsection (4) of this section; school boards may not have any employment practice affecting employees in the protected age range (which is age 40 and over) that is motivated by or the result of age, and tenured school employees in the protected age range may hold that tenure status or merit status until they resign, retire, or until their contracts are lawfully terminated or suspended. OAG 87-12 (withdrawing OAG 79-204; opinion prior to 1988 amendment.)

A teacher with tenure in one district must achieve tenure in the second district within the statutory time period. OAG 91-189, 1991 Ky. AG LEXIS 189.

Under subsection (2) of this section, the part-time service of a teacher for school years 1988-1990 does not qualify for consideration for eligibility for tenure. OAG 91-189, 1991 Ky. AG LEXIS 189.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

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Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process —Wells v. Board of Regents, 545 F.2d 15, 1976 U.S. App. LEXIS 6054 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716, 1977 U.S. App. LEXIS 13918 (6th Cir. 1977), 5 N. Ky. L. Rev. 141 (1978).

161.721. Superintendent eligible for continuing contract status.

The superintendent shall be eligible for continuing contract status when he meets all requirements prescribed in KRS 161.720 to 161.810 for continuing contracts for teachers.

History.

Enact. Acts 1944, ch. 98; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 615, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1944, ch. 98) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 615, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

There is no conflict between this section and KRS 160.350 as, irrespective of when a superintendent becomes eligible for continuing contract status in the district, such status is not as to the position of superintendent of the school but just to employment in the school district. OAG 76-82; 76-99.

A local board of education may give a superintendent who is over 65 a contract for more than one year. OAG 79-213, 1979 Ky. AG LEXIS 416.

While a superintendent is eligible for tenure in a school system, a person holding the position of local school superintendent is not per se covered by the teacher tenure laws. OAG 79-213, 1979 Ky. AG LEXIS 416.

While a superintendent may acquire tenure in the same manner as for teachers, that does not make an appointment as a superintendent under KRS 160.350, which is under an

entirely different contractual basis and which may be for one, two, three or four years, employment where "teacher tenure" may be transferred to the position pursuant to KRS 161.740; thus, where a teacher attains tenure in one school system and then accepts the position of superintendent of schools in another school district, the superintendent would be required to attain tenure in the new school system by following this section. OAG 80-147, 1980 Ky. AG LEXIS 502.

161.730. Limited or continuing contract with teachers required.

Each local district shall enter into written contracts, either limited or continuing, for the employment of all teachers.

History.

Enact. Acts 1942, ch. 113, § 2; 1944, ch. 98; 1964, ch. 41, § 2; 1990, ch. 476, Pt. II, § 81, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Right to Continuing Contract.
2. Length of Contract.

1. Right to Continuing Contract.

A teacher, eligible for a continuing contract, after having taught two (2) years under a limited contract, acquires no absolute right to a continuing contract upon subsequent reemployment under a limited contract. Payne v. Bush, 249 S.W.2d 789, 1952 Ky. LEXIS 867 (Ky. 1952).

2. Length of Contract.

Where there was no formal contract of employment between assistant supervisor and the board as contemplated by this section, his reemployment could not be for less than two years as provided by KRS 161.750 and although the board had the unquestioned right to transfer him from position of assistant supervisor to teacher it had no authority to reduce his salary for the second year. Board of Education v. Moore, 264 S.W.2d 292, 1953 Ky. LEXIS 1250 (Ky. Ct. App. 1953) (Decision prior to 1964 amendment of KRS 161.750).

Where board reemployed principal year by year by accepting the recommendation of the superintendent and making a minute thereof despite the mandatory provision of KRS 161.750 that the reemployment may be for not less than two (2) years, his contract extended through two school years and his salary could not be reduced during the second year upon transfer to a position paying less compensation without charges being preferred against him under KRS 161.790. Board of Education v. Justice, 268 S.W.2d 648, 1954 Ky. LEXIS 921 (Ky. 1954) (Decision prior to 1964 amendment of KRS 161.750).

Cited in:

Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739, 1948 Ky. LEXIS 682 (Ky. 1948); Ford v. Jones, 372 F. Supp. 1187, 1974 U.S. Dist. LEXIS 9572 (E.D. Ky. 1974).

OPINIONS OF ATTORNEY GENERAL.

That a certain anticipated source or revenue fails to materialize cannot authorize a refusal by the local boards to honor the legal contractual obligations that exist with their teachers for at least a minimum school term. OAG 82-106, 1982 Ky. AG LEXIS 519.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts could not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106, 1982 Ky. AG LEXIS 519.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appointment of school employees, KRS 160.380.

161.740. Eligibility for continuing service status — Limited status employee on approved military leave — Transfer of teachers — Reinstatement after service in Armed Forces — District-level administrative position in county with consolidated local government.

(1) Teachers eligible for continuing service status in any school district shall be those teachers who meet qualifications listed in this section:

(a) Hold a standard or college certificate as defined in KRS 161.720 or meet the certification standards for vocational education teachers established by the Education Professional Standards Board.

(b) When a currently employed teacher is reemployed by the superintendent after teaching four (4) consecutive years in the same district, or after teaching four (4) years which shall fall within a period not to exceed six (6) years in the same district, the year of present employment included, the superintendent shall issue a written continuing contract if the teacher assumes his or her duties, except as provided in subsection (4) of this section, and the superintendent shall notify the board of the action taken. A limited status employee on approved military leave shall be awarded service credit for each year of military service or each year of combined military and school service within a school year toward continuing contract status. If the leave time will qualify the teacher for continuing contract status, the local district may require the teacher to complete a one (1) year probationary period upon return. If required, the local district shall notify the teacher in writing within fourteen (14) days following receipt of the military leave request. Each day served in the General Assembly by a board of education employee during a regular or extraordinary session shall be included in the computation of a year as defined in KRS 161.720(2).

(c) When a teacher has attained continuing contract status in one (1) district and becomes employed in another district, the teacher shall retain that status, except as provided in subsection (4) of this section. However, a district may require a one (1) year probationary period of service in that district before granting that status. For purposes of this subsection, the continuing contract of a teacher shall

not be terminated when the teacher leaves employment, all provisions of KRS 161.720 to 161.810 to the contrary notwithstanding, and the continuing service contract shall be transferred to the next school district, under conditions set forth in this section, for a period of up to seven (7) months from the time employment in the first school district has terminated. Nothing contained herein shall be construed to give a teacher a right to reemployment in the first school district during the seven (7) month period following termination.

(d) Service credit toward a continuing contract shall begin only when a teacher is properly certified as defined in KRS 161.720(6) or, in the case of a vocational education teacher, when the required certification standards established by the Education Professional Standards Board have been met.

(2) Vocational education teachers fulfilling the requirements in subsection (1) of this section as of July 15, 1982, shall be eligible for continuing service status.

(3) Whether employed under a limited contract or continuing service contract status, any teacher or superintendent who has been or may be hereafter inducted into the Armed Forces of this country, shall at the expiration of service be reemployed or reinstated in a comparable position as of the beginning of the next school year, provided application is made at least thirty (30) days before the opening of school, unless physically or mentally incapacitated according to medical notations on official discharge papers. Vacancies created by military leaves shall be filled by teachers or superintendents employed by the board of education under a limited contract of one (1) year or less.

(4) Beginning July 1, 2019, a teacher employed in a district-level administrative position in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C shall not be issued a written continuing contract. However, if a teacher had a written continuing contract prior to becoming employed in a district-level administrative position and transfers to another position in the district that is not a district-level administrative position, then the teacher shall revert to continuing service contract status. If the teacher becomes employed in another district, the teacher shall revert to continuing service contract status subject to the provisions of subsection (2)(c) of this section regarding probation and the time period for transferring a continuing service contract to another school district.

History.

Enact. Acts 1942, ch. 113, § 3; 1944, ch. 98; 1954, ch. 60; 1964, ch. 41, § 3; 1974, ch. 185, § 1; 1982, ch. 354, § 1, effective July 15, 1982; 1982, ch. 401, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 82, effective July 13, 1990; 2001, ch. 136, § 3, effective June 21, 2001; 2004, ch. 161, § 3, effective July 13, 2004; 2019 ch. 65, § 4, effective June 27, 2019.

NOTES TO DECISIONS

Analysis

1. Administrator.
2. Contracts.
3. —Eligibility.
4. —Continuing Contract.
5. — —Approval by Board.
6. —Determination of Type.
7. —Nonrenewal.
8. Reduction of Responsibilities.
9. Reemployment.
10. Transfer of Accumulated Benefits.
11. Waiver of Rights.

1. Administrator.

Unlike a teacher, a school administrator, even one who has completed three years administrative service, is not ever granted a continuing service contract as an administrator. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

2. Contracts.

3. —Eligibility.

This section does not require teaching in the six (6) successive years immediately preceding the 1955-56 school year in its eligibility provisions. Cooksey v. Board of Education, 316 S.W.2d 70, 1957 Ky. LEXIS 3 (Ky. 1957).

It is sufficient under this section for a teacher to have taught any six (6) years, hold a certificate as defined in KRS 161.720 and be employed for the school year 1955-56. Cooksey v. Board of Education, 316 S.W.2d 70, 1957 Ky. LEXIS 3 (Ky. 1957).

Where teacher had taught three (3) consecutive years before signing a limited contract of two (2) years, she was entitled under the law to a continuing service contract at the end of the first year of the limited two-year contract. Moore v. Babb, 343 S.W.2d 373, 1960 Ky. LEXIS 105 (Ky. 1960).

In 1963, to be eligible for continuing service status, the four years of service required did not need to be accumulated after a certificate had been obtained but could include years of service acquired prior to the time of obtaining a certificate. Whitley County Board of Education v. Meadors, 444 S.W.2d 890, 1969 Ky. LEXIS 230 (Ky. 1969).

In 1971, a board of education improperly denied a continuing service contract to a teacher who had taught continuously in the same district from 1958 through 1971 except for the 1966-67 school year, since under the provisions of subsection (1)(b) of this section he was eligible for such a contract. Estill County Board of Education v. Rose, 518 S.W.2d 341, 1974 Ky. LEXIS 14 (Ky. 1974).

Where teacher was employed under limited contract for four (4) years and her name was on the superintendent's list of teachers eligible for continuing contracts but the school board voted not to hire her, in which action the superintendent acquiesced, such refusal to renew the contract was proper. Dorr v. Fitzer, 525 S.W.2d 462, 1975 Ky. LEXIS 104 (Ky. 1975).

This section is applicable only during the fourth year of employment and not after that year is completed and a subsequent year begun. Singleton v. Board of Education, 553 S.W.2d 848, 1977 Ky. App. LEXIS 751 (Ky. Ct. App. 1977).

Where a teacher has completed the four-year probationary period under a limited contract, thus attaining eligibility for a continuing contract, this section and not KRS 161.750 is the controlling statute regarding notice and the giving of reasons requirements. Singleton v. Board of Education, 553 S.W.2d 848, 1977 Ky. App. LEXIS 751 (Ky. Ct. App. 1977).

Where a teacher's contract for one school year called for his services as a half-day assistant principal, along with being the track coach and the assistant football coach, his contract as such required him to expend hours appreciably less than the regular school hours, and therefore, his contract for that year would not be credited toward a continuing service contract and would not be used in computing his tenure. Board of Education v. Rothfuss, 639 S.W.2d 545, 1982 Ky. LEXIS 297 (Ky. 1982).

4. —Continuing Contract.

The law will not step in and vitiate an agreement limited as to time, which the teacher consented to teach under, and

automatically enlarge it into a contract of unrestricted duration. Payne v. Bush, 249 S.W.2d 789, 1952 Ky. LEXIS 867 (Ky. 1952).

Under this section tenure of teachers with seven (7) years of consecutive service extended beyond the time that the board of education had any authority to enter into limited contract, and when after such time had elapsed, new contracts were entered into, such new contracts could only have been continuing contracts. Taylor v. Hampton, 271 S.W.2d 887, 1954 Ky. LEXIS 1057 (Ky. 1954).

A contract of employment for a period of time other than a regular school year, except for excused absences, does not qualify the teacher toward continuing contract status. Board of Education v. Rothfuss, 639 S.W.2d 545, 1982 Ky. LEXIS 297 (Ky. 1982).

Tenured school teachers who were suspended because of decreased enrollment did not have a property right in continued employment and its benefits to entitle them to a pre-suspension hearing. Downs v. Henry County Bd. of Education, 769 S.W.2d 49, 1988 Ky. App. LEXIS 190 (Ky. Ct. App. 1988).

Although the teacher was employed for four consecutive years, the teacher was subsequently employed in a different capacity; therefore, because the teacher was not "currently employed," the teacher was not denied a continuing service contract pursuant to KRS 161.740(b)(1) when the offer of employment as a substitute teacher was extended. Jones v. Bd. of Educ. of Laurel County, 295 S.W.3d 120, 2008 Ky. App. LEXIS 345 (Ky. Ct. App. 2008).

Circuit court's ruling that a continuing service contract was unenforceable was error as the analytical focus was on the portability of a teacher's tenure status from one school district to the next, which was measured by how long a tenured teacher went without working before employment in another district, not on how long the teacher worked in a particular school year. Smith v. Bennett, 644 S.W.3d 516, 2021 Ky. App. LEXIS 109 (Ky. Ct. App. 2021).

Circuit court had applied the wrong statute, Ky. Rev. Stat. Ann. § 161.720(2), where the Legislature had clearly intended that no statute other than Ky. Rev. Stat. Ann. § 161.740(1)(a) was to bear on the determination of a teacher's continuing service status. Smith v. Bennett, 644 S.W.3d 516, 2021 Ky. App. LEXIS 109 (Ky. Ct. App. 2021).

Under Ky. Rev. Stat. Ann. § 161.740(1)(a), the teacher was entitled to continuing contract status and enforcement of the continuing service contract as he had been continuously employed before the board hired him, and there was no evidence of unsatisfactory performance. Smith v. Bennett, 644 S.W.3d 516, 2021 Ky. App. LEXIS 109 (Ky. Ct. App. 2021).

5. — —Approval by Board.

The provision that "if the teacher is employed by the board" a continuing contract shall be issued, when construed in relation with KRS 160.380 which provides for recommended appointments of teachers, means that the board has an open choice whether or not to make the employment that will result in a continuation contract. Dorr v. Fitzer, 525 S.W.2d 462, 1975 Ky. LEXIS 104 (Ky. 1975).

School board was entitled to reject a recommendation for a continuing contract for a teacher without a finding of cause. Dorr v. Fitzer, 525 S.W.2d 462, 1975 Ky. LEXIS 104 (Ky. 1975).

6. —Determination of Type.

Where the school board minutes did not disclose whether teacher/plaintiff's contract was continuing or limited, resorting to other pertinent records was permissible. Board of Educ. v. Jones, 823 S.W.2d 457, 1992 Ky. LEXIS 6 (Ky. 1992).

7. —Nonrenewal.

Although teacher had not yet completed four years employment, she was entitled to notice and a statement of the reasons for the decision of the school board not to renew her contract. Sparks v. Board of Education, 549 S.W.2d 323, 1977 Ky. App. LEXIS 664 (Ky. Ct. App. 1977).

Teachers under limited contracts who completed four (4) years of teaching had neither a statutory nor an implied right under the Fourteenth Amendment to a statement of specific reasons for the failure of the board of education to extend a continuing contract. Singleton v. Board of Education, 553 S.W.2d 848, 1977 Ky. App. LEXIS 751 (Ky. Ct. App. 1977).

Where plaintiff, a teacher, was employed in one school district for six (6) successive years, resigned, taught in another school system the following year, again resigned, took a year off and then taught for three (3) years in a third school district before being released, he was entitled to no hearing under KRS 161.790, since, although he had achieved tenure at his first position, when he resigned he lost his tenure by reason of subsection (4) of KRS 161.720 and subdivision (1)(c) of this section is inapplicable. Carpenter v. Board of Education, 582 S.W.2d 645, 1979 Ky. LEXIS 265 (Ky. 1979).

8. Reduction of Responsibilities.

A full-time teacher in 1986-87 who had her 1987-88 contract reduced to half time, but received no notification of the reduction in responsibilities, was deemed reemployed for the succeeding school year which constituted her fourth year and satisfied the service requirement under the tenure law. Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

Where a teacher had a reduction of responsibilities without proper statutory notification for both the 1987-88 and 1988-89 school years, she was entitled to a full-time contract and full pay and benefits commensurate with her educational rank and teaching experience as determined by the school district's approved salary schedule for the school years in question. Omitted contributions to the Kentucky Teachers Retirement System for 1987-88 and 1988-89 should also have been paid by the board and teacher in their proper proportions as determined by statutory law. Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

9. Reemployment.

This section provides that upon the recommendation of the superintendent of schools a teacher eligible for continuing service status shall be reemployed but this does not mean that he must be employed to teach in the same school in which he taught the preceding year. Ritchie v. Dunn, 297 Ky. 410, 180 S.W.2d 284, 1944 Ky. LEXIS 738 (Ky. 1944).

Where the plaintiff was employed as a teacher in this Commonwealth when he was inducted into military service, he was entitled to service credit for his military service, even though he was not reemployed by the same school system. Watkins v. Oldham, 731 S.W.2d 829, 1987 Ky. App. LEXIS 503 (Ky. Ct. App. 1987).

10. Transfer of Accumulated Benefits.

The sick leave statute and the tenure statute, as embodied in KRS 161.155 and in this section respectively, are both designed to protect a teacher by allowing transfer from one school district to another without losing accumulated benefits. Young v. Board of Education, 661 S.W.2d 787, 1983 Ky. App. LEXIS 384 (Ky. Ct. App. 1983).

11. Waiver of Rights.

Though teacher who had not worked the requisite four (4) years to attain tenure had received a tenure contract by mistake, school board did not waive its right to insist upon the qualifications in this section. Dause v. Bates, 369 F. Supp. 139, 1973 U.S. Dist. LEXIS 13495 (W.D. Ky. 1973), rev'd, 502 F.2d 865, 1974 U.S. App. LEXIS 6898 (6th Cir. Ky. 1974) (on other grounds).

Cited in:

Lone Jack Graded School Dist. v. Hendrickson, 304 Ky. 317, 200 S.W.2d 736, 1947 Ky. LEXIS 631 (Ky. 1947); Beverly v.

Highfield, 307 Ky. 179, 209 S.W.2d 739, 1948 Ky. LEXIS 682 (Ky. 1948); Redding v. Fincel, 311 Ky. 534, 224 S.W.2d 671, 1949 Ky. LEXIS 1179 (Ky. 1949); Welch v. Board of Education, 247 S.W.2d 536, 1952 Ky. LEXIS 722 (Ky. 1952); Payne v. Stevens, 251 S.W.2d 469, 1952 Ky. LEXIS 924 (Ky. 1952); Babb v. Moore, 374 S.W.2d 516, 1964 Ky. LEXIS 385 (Ky. 1964); Snapp v. Deskins, 450 S.W.2d 246, 1970 Ky. LEXIS 436 (Ky. 1970); Ford v. Jones, 372 F. Supp. 1187, 1974 U.S. Dist. LEXIS 9572 (E.D. Ky. 1974); Settle v. Camic, 552 S.W.2d 693, 1977 Ky. App. LEXIS 736 (Ky. Ct. App. 1977).

OPINIONS OF ATTORNEY GENERAL.

The board may, without cause, refuse to reemploy a teacher who has taught only two (2) years in the school district. OAG 61-567.

This section does not require that the procurement of the college or standard certificate precede the four-year period of teaching within the district, and if a teacher who has taught four (4) years in a school district and subsequently received his college certificate is recommended for reemployment, he is eligible for a continuing contract. OAG 61-567.

Under subsection (1)(b) of this section, a teacher who has four (4) years of service within the district and who satisfied the other requirements is eligible for continuing contract status, if he is recommended for reemployment, whether that service be consecutive or not. OAG 61-597.

A teacher who holds a life extended teaching certificate based on less than graduation from a standard four-year college and who also holds an AB degree but has no teaching certificate based on that degree, does not meet the eligibility requirements for a continuing service contract, and the erroneous issue of such contract by a board of education is void. OAG 67-24.

A teacher returning to employment with a board of education after being discharged from military service is entitled to those increments which normally would have accrued if employment with the board had not been interrupted by military service. OAG 70-709.

The principles applicable to reinstatement of veterans in employment by the central branch of state government are equally applicable to employment with a board of education. OAG 70-709.

Where a teacher left his teaching position to enter military service and remained in the service for 25 years, on his return to teaching he was not entitled to credit military service in determining his salary increments. OAG 71-416.

A teacher who has taught in the same district and is recommended by the superintendent to be reemployed is issued a written continuing contract and the application blank a school board requires to be filled out and submitted each year does not constitute a contract. OAG 72-349.

A teacher acquires tenure even while teaching out of his qualified field if he has been doing so upon a provisional certificate. OAG 72-637.

A teacher who has taught four (4) out of the last six (6) years, is reemployed for a fifth year and who has a standard certificate has acquired tenure. OAG 72-637.

A teacher who taught on a limited contract for four (4) years and was asked to resign after her fourth year with the understanding that she would be rehired and who was in fact rehired on her fifth limited contract would be eligible for tenure. OAG 72-664.

Subsection (2) (now (3)) of this section which contains the term "reemployed or reinstated in a comparable position" means that the employment after military service must be comparable to the prior employment only as to compensation and employee benefits but the employment assignment need not be the same or comparable to the employment assignment prior to military service and the reemployed teacher is entitled to be credited with the same seniority he would have gained upon proper performance of his employment if it had not been interrupted for military duty and to receive the same increments he would have received. OAG 73-266.

Subsection (2) (now (3)) of this section refers only to the armed forces of the United States, and has no reference to an elementary school principal being elected to the state legislature. OAG 73-322.

When a shortage of funds necessitates the reduction of teaching personnel, the only statutory preference granted is to teachers with a continuing contract, and the school board upon the recommendation of the superintendent may reemploy or not reemploy such teachers as have a limited contract provided those not to be reemployed are notified by May 15th. OAG 73-383.

Since teachers' tenure is regulated by statute it may not be altered by any regulation of a local board of education and under this section and KRS 161.720 a local board of education may not require a master's degree of a teacher in order to qualify for a continuing contract. OAG 73-421.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three (3) years, returned from her leave and taught two (2) consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received unless her contract is terminated for cause or her contract is suspended. OAG 73-486; 73-702.

Where a teacher with two years' teaching experience in the county school system immediately prior to serving two (2) years in the armed forces from which he was recently discharged timely applied for reemployment in the school system, said teacher should be "reinstated or reemployed in a comparable position" in conformity with the interpretation of that phrase and it was improper to notify this veteran that he would not be reemployed as a teacher because of loss of units and funds in the school system. OAG 73-513.

A teacher who had been employed for five consecutive years in one school district prior to July 1973, resigned his position in August 1973, and returned to his teaching position in January 1974 would be eligible for a limited contract but if at the end of the 1973-74 school year was reemployed, would then be eligible for a continuing contract by operation of law since he would meet all of the criteria of subsection (1)(b) of this section. OAG 74-31.

When a teacher is relieved from military service and makes proper application to be reemployed, the school district is required to promptly reinstate the teacher with all the rights and benefits provided public employees by KRS 61.371-61.379 which supersedes KRS 161.740(2) (now (3)). OAG 74-258.

The board does not have the option to delay, for one year, awarding a teacher who has served on four limited contracts, a continuing contract. OAG 74-290.

A teacher who has tenure after the effective date of the 1974 amendment cannot be placed on probationary status in any school district in the state. OAG 74-370.

When a teacher who has a continuing contract in one district transfers to another school district in the state, the employing district may employ the teacher with the understanding he is to be on probation for one year, but the employing board should include such a provision in the teacher's contract and also record the condition in its official minutes. OAG 74-396, modifying OAG 74-370.

A teacher who had tenure but did not teach during the prior year because of dismissal or resignation can regain tenure in one year only by reemployment in the original district, and only then can the move be made to a new district without loss of the original tenure. OAG 74-421.

A school board cannot confer tenure upon a teacher as a teacher acquires tenure by operation of law when the conditions of this section are fulfilled. OAG 74-580.

Teachers who have not been on tenure in any system since the 1970-71 school year cannot be on tenure in the 1974-75 school year unless they have taught in the school district for four consecutive years or four out of the last six years and are now reemployed by the school district upon recommendation of the superintendent. OAG 74-580.

There is only one class of tenure and it includes school administrators who are required to have certification by the state department of education and are therefore included under the term "teachers" under KRS 161.720 for the purpose of a continuing service contract. OAG 75-2.

An individual, who has completed one year as an assistant principal and who for ten years just prior to said year was not employed in education and prior to the ten-year period, was a teacher on tenure, cannot be demoted without following the procedures of KRS 161.765 but under KRS 161.740 does not have tenure or a continuing contract and could be dismissed upon recommendation of the superintendent at the end of the school year without going through the procedures of KRS 161.790. OAG 75-413.

A teacher, after being employed for four (4) years as principal in a school which has now been closed and then being demoted to an elementary teacher, cannot be given a one-year contract for the coming year as this section provides that when a currently employed teacher is reemployed after teaching four consecutive years in the same district, he shall have a continuing contract. OAG 75-492.

Where a teacher was employed by a board of education for four consecutive years from the 1970-71 school year through the 1973-74 school year, and where the teacher was rehired by the school board for the 1975-76 school year following his employment as a teacher in Ohio during the 1974-75 school year, the teacher was only eligible for a limited contract by the 1975-76 academic year, but upon reemployment for 1976-77, the teacher was entitled to a continuing status contract. OAG 76-277.

Neither a teacher who has taught three (3) hours per day for 185 days nor a teacher who has taught full time for 94 school days may be considered to have a year of actual service for tenure purposes. OAG 76-278.

A teacher who was employed as a substitute teacher for at least 140 school days in the 1972-73 and 1973-74 school years and who was employed as a regular teacher during the 1974-75 and 1975-76 school years would have tenure in the school system if employed by the board of education for the academic year of 1976-77. OAG 76-282.

A board of education may not legally grant a continuing service contract to a teacher after only three (3) years of service in the district. OAG 76-282.

A teacher must be certified before commencing service which is to be credited toward the four (4) years actual service in the same school district required for continuing service status. OAG 76-284.

Years spent in military service are not to be considered toward the four-year requirement for tenure status. OAG 76-316.

Where a teacher taught regularly in the school system for four (4) years and received a continuing education contract and then during the next three (3) years taught but was required to take many days leave of absence due to illness, was on maternity leave and then resigned from her teaching position and such resignation was accepted and the following year she requested to be considered for a position and was reemployed, such teacher should be reemployed and given a limited contract for the school year; however, if such teacher is recommended to the board by the superintendent for a contract for the following school year that contract will be for a continuing service status. OAG 76-490.

In a renewal of a limited contract situation, the absence of a recommendation to the board not to renew must be considered as a positive recommendation for renewal of the contract and those teachers in that situation would have a teaching contract for the ensuing year. OAG 77-308, 1977 Ky. AG LEXIS 484.

When a currently employed teacher who is eligible for continuing contract status is recommended for reemployment by the superintendent and the board votes favorably on that recommendation, the teacher is rehired and is entitled to tenure in the school system. OAG 77-413, 1977 Ky. AG LEXIS 354.

Where a teacher, who had attained tenure with a common school system, left to teach for seven years at a state correctional facility, and then rejoined the common school system, he lost his tenure when he resigned the county teaching position to accept employment with the state and since he had not been employed by another public common school the provision of subsection (1)(c) of this section is inapplicable and thus he must satisfy the requirements for securing tenure. OAG 78-319, 1978 Ky. AG LEXIS 414.

The language of subsection (1)(c) of this section calls for continuity of teacher service from one school district to another, and any other construction would permit lapse of unlimited time between teaching service in one school district and another; if the lapse has been long enough, a one-year probationary period could be wholly insufficient to afford an opportunity for the second school district to evaluate the teacher's performance before a tenure contract would have to be considered. OAG 78-320, 1978 Ky. AG LEXIS 415.

Although the chairman and secretary of the board of education, and the teacher, each signed a continuing service contract, the action would be ultra vires and void where the teacher had three (3) years of experience teaching, and a limited contract must issue. OAG 78-831, 1978 Ky. AG LEXIS 6.

If a teacher moved from one school system where a tenure status contract was enjoyed in the 1973-1974 school year to another school system for the 1974-1975 school year, tenure status could have been given immediately or after a one-year probation but if the move had been made in the 1972-1973 school year, the school system would not have been at liberty to give a tenured contract two (2) years hence for 1974-1975 and a full four years' service would have been required before a teacher would have been eligible for a tenure contract. OAG 79-28, 1979 Ky. AG LEXIS 598.

Subsection (1)(c) of this section and KRS 161.155(3) are quite similar and should be construed consistently one with the other. OAG 79-148, 1979 Ky. AG LEXIS 482.

Where a school teacher has obtained tenure in a continuing service contract in one school district and becomes employed in another district, he can either be immediately granted a tenured contract without a probationary one-year period in the new district or can be placed on a one-year probation period, but the new superintendent and board cannot, under this section, wait two (2), three (3) or four (4) years before granting tenure in a continuing service contract. OAG 81-68, 1981 Ky. AG LEXIS 364.

A teacher must teach at least 140 six-hour days in a 185-day school term in order to be given credit for a year under the tenure law. OAG 82-614, 1982 Ky. AG LEXIS 40.

Where a teacher worked only one-half (½) time in the school years 1976-77, 1977-78, 1978-79 and 1979-80 and did not in any school year teach at least 140 six-hour school days so as to be entitled to a year of credit towards tenure, the board of education had no legal right to award a continuing service contract to her after she had completed four (4) years of part-time teaching and such contract was not binding and was void and could have no legal effect; in such instance, the board should issue a limited contract to such teacher after a majority vote on a motion before the board to do so and the minutes of the board should reference the previous minutes when the unlawful tenure contract had been approved. OAG 82-614, 1982 Ky. AG LEXIS 40.

Subdivision (1)(c) of this section, as amended in 1982, may be applied to any teacher who either had already resigned or who, since July 15, 1982, has resigned and seven months have not elapsed since the resignation; in either situation, at the time of the resignation, the teacher must have enjoyed continuing service contract status with the school district resigned from. OAG 82-619, 1982 Ky. AG LEXIS 28.

A teacher who had taught the prerequisite four years and had been reemployed by a board for the fifth year but who resigned before signing a continuing contract, and before performing any work at the beginning of the fifth year, acquired tenure and where such teacher had resigned after accepting employment with second school system, which system required teachers who had tenure in another district to serve a one-year probationary period before being placed on tenure or continuing contract status, the teacher was entitled to a continuing service contract and tenure upon being reemployed by the second school system after serving the one-year's probationary service. OAG 82-619, 1982 Ky. AG LEXIS 28.

When a teacher with tenure in one district resigns and becomes employed in a second district, if the second district requires a year of probation, the teacher must complete probation during the time period that the teacher retains status in the former district. OAG 91-189, 1991 Ky. AG LEXIS 189.

One time payments to teachers to induce retirement are constitutional under Ky. Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23, 1996 Ky. AG LEXIS 35.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appointment of school employees, KRS 160.380.

Professional Growth and Effectiveness System, 704 KAR 3:370..

Kentucky Law Journal.

Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Northern Kentucky Law Review.

Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process —Wells v. Board of Regents, 545 F.2d 15, 1976 U.S. App. LEXIS 6054 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716, 1977 U.S. App. LEXIS 13918 (6th Cir. 1977), 5 N. Ky. L. Rev. 141 (1978).

161.750. Nonrenewal of limited contracts.

(1) Any teacher employed under a limited contract may be reemployed under the provisions of KRS 161.720 to 161.810 for the succeeding school year at the same salary, plus any increment or decrease as provided by the salary schedule, upon notification of the board by the superintendent of schools that the contract of the teacher is renewed.

(2) If the superintendent does not renew the contract he shall present written notice to the teacher that the contract will not be renewed no later than May 15 of the school year during which the contract is in effect. Upon receipt of a request by the teacher, the superintendent shall provide a written statement containing the specific, detailed, and complete statement of grounds upon which the nonrenewal of contract is based.

(3) The teacher shall be presumed to have accepted employment, unless he notifies the superintendent of schools in writing to the contrary on or before the fifteenth day of June, and a written contract for the succeeding year shall be executed accordingly.

History.

Enact. Acts 1942, ch. 113, § 4; 1944, ch. 98; 1964, ch. 41, § 4; 1970, ch. 169, § 1; 1976, ch. 103, § 1; 1990, ch. 476, Pt. II, § 83, effective July 13, 1990; 2008, ch. 113, § 4, effective April 14, 2008.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Notice.
4. Reemployment.
5. Action Against Board.
6. Statement of Grounds.
7. Hearing.
8. Governmental Immunity.

1. Constitutionality.

Absent any showing of a compelling governmental interest, the alleged policy of a school board in showing preference for hiring natives of its county would have constituted an inherently suspect classification and, therefore, would have been unconstitutionally discriminatory and preferential in violation of Ky. Const., §§ 1, 2, and 3. Johnson v. Dixon, 501 S.W.2d 256, 1973 Ky. LEXIS 128 (Ky. 1973).

2. Construction.

In this section, "may" has reference to the discretion of the board in employing teachers under limited contracts within the minimum and maximum limits provided by the statute. Board of Education v. Moore, 264 S.W.2d 292, 1953 Ky. LEXIS 1250 (Ky. Ct. App. 1953) (decision prior to 1964 amendment).

If the school board had reemployed a nontenured teacher for an additional school year or if he had not received written notice prior to May 15 of the year for which he was employed, then he would have a contract valid for the succeeding school year as provided by this section and his salary could not have been reduced except pursuant to KRS 161.760. Bowlin v. Thomas, 548 S.W.2d 515, 1977 Ky. App. LEXIS 654 (Ky. Ct. App. 1977).

3. Notice.

Where board did not give teacher notice as required by this section of intention not to reemploy her a short delay in obtaining a renewal certificate from the state superintendent did not justify the board in denying her the right to teach and it was liable for her salary as teacher for the school term which she would have earned if she had taught. Ball v. Bunch, 324 S.W.2d 828, 1959 Ky. LEXIS 394 (Ky. 1959).

Registered letters sent on May 1, 1973, to inform three teachers that their continuing service contract would expire on July 1, 1973, and would not be renewed met the requirements of subsection (2). Belcher v. Gish, 555 S.W.2d 264, 1977 Ky. LEXIS 505 (Ky. 1977), (decision prior to 1976 amendment).

Although teacher had not yet completed four years employment, she was entitled to notice and a statement of the reasons for the decision of the school board not to renew her contract. Sparks v. Board of Education, 549 S.W.2d 323, 1977 Ky. App. LEXIS 664 (Ky. Ct. App. 1977).

Requirement of giving specific reasons upon request is not a condition of the validity of the school board's action in not renewing a contract. Sparks v. Board of Education, 549 S.W.2d 323, 1977 Ky. App. LEXIS 664 (Ky. Ct. App. 1977).

Where a teacher has completed the four-year probationary period under a limited contract, thus attaining eligibility for a continuing contract, KRS 161.740 and not this section is the controlling statute regarding notice and the giving of reasons requirements. Singleton v. Board of Education, 553 S.W.2d 848, 1977 Ky. App. LEXIS 751 (Ky. Ct. App. 1977).

The underlying intent of subsection (2) is to insure untenured teachers ample notice of not being reemployed so that they will have adequate time to obtain employment elsewhere for the coming school year, and that the teacher has a right to know why he is not being reemployed, so that the situation may be corrected if it is within the power of the teacher to do so. Gaines v. Board of Education, 554 S.W.2d 394, 1977 Ky. App. LEXIS 759 (Ky. Ct. App. 1977).

The giving of timely written notice by the local superintendent of schools to two (2) untenured teachers that their contracts would not be renewed was sufficient to terminate their employment without the approval of the board of education. Gaines v. Board of Education, 554 S.W.2d 394, 1977 Ky. App. LEXIS 759 (Ky. Ct. App. 1977).

A full-time teacher in 1986-87 who had her 1987-88 contract reduced to half time, but received no notification of the reduction in responsibilities, was deemed reemployed for the succeeding school year which constituted her fourth year and satisfied the service requirement under the tenure law. Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

Where a teacher had a reduction of responsibilities without proper statutory notification for both the 1987-88 and 1988-89 school years, she was entitled to a full-time contract and full pay and benefits commensurate with her educational rank and teaching experience as determined by the school district's approved salary schedule for the school years in question. Omitted contributions to the Kentucky Teachers Retirement System for 1987-88 and 1988-89 should also have been paid by the board and Powell in their proper proportions as determined by statutory law. Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

County's procedure of notifying all nontenured teachers that they will not be rehired, when in practice most are, is obviously an attempt to "circumvent" this section. Gibson v. Board of Educ., 805 S.W.2d 673, 1991 Ky. App. LEXIS 31 (Ky. Ct. App. 1991).

Had the board of education provided a written statement of the actual reasons for refusing to rehire a nontenured teacher, as contemplated by subsection (2) of this section, its duty to him would have been fulfilled by the mailing of same to the teacher's current address. Gibson v. Board of Educ., 805 S.W.2d 673, 1991 Ky. App. LEXIS 31 (Ky. Ct. App. 1991).

Subsection (2) of this section requires a statement, if requested, from the school board to the nontenured teacher giving the specific, detailed and complete reasons why the teacher is not being reemployed. Failure to provide the statement results in the nontenured teacher being reemployed automatically by operation of law in the school system. Thompson v. Board of Educ., 838 S.W.2d 390, 1992 Ky. LEXIS 130 (Ky. 1992).

4. Reemployment.

Board has no right to contract for reemployment for one year only after employee has had a year's service or after the termination of the first contract and such reemployment contracts will be held to be for successive two-year periods commencing from the expiration of the year's service or after termination of the first contract. Board of Education v. Justice, 268 S.W.2d 648, 1954 Ky. LEXIS 921 (Ky. 1954) (decision prior to 1964 amendment).

Where the defendant board of education entered into a "professional agreement" with the plaintiff education association outlining a five-step grievance procedure, this need not be utilized in a case where the board decides "not to reemploy" a teacher pursuant to subsection (2) of this section, since the board has an absolute right of dismissal which cannot be limited by contract. Board of Education v. Louisville Education Asso., 574 S.W.2d 310, 1977 Ky. App. LEXIS 931 (Ky. Ct. App. 1977).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law and asserting that a teacher was not rehired because of her union activities. Where the school superintendent admitted that he had made hiring decisions for district-wide positions the teacher was denied, and KRS 161.164 and 161.750 provided further support of the superintendent's role in the hiring process, the teacher established, for summary judgment purposes, the causation element of her First Amendment retaliation claim, and because it had long been clear that discharging a public employee for engaging in protected speech and association violated the First Amendment, the superintendent was not entitled to qualified immunity against liability for that claim. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

5. Action Against Board.

Nontenured teacher who brought suit alleging that the school board wrongfully failed to renew his teaching contract was not required to go through the useless act of requesting the board to give him specific reasons for his not being reemployed when the board had already stated its reasons in a letter notifying him of the nonrenewal of his contract. Bowlin v. Thomas, 548 S.W.2d 515, 1977 Ky. App. LEXIS 654 (Ky. Ct. App. 1977).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law and asserting that a teacher was not rehired because of her union activities, where the teacher failed to establish that a school board participated in, or should have participated in, the challenged hiring decisions, and KRS 161.164 and 161.750 indicated that the school board played no role in such hiring decisions, the teacher failed to establish causation and the school board was entitled to summary judgment on the teacher's First Amendment retaliation claim. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

6. Statement of Grounds.

Subsection (2) of this section requires a board of education to do more than merely recite its provision, it requires a board to provide substantive reasons for nonrenewal of a nontenured teacher's contract. Phillips v. Board of Education, 580 S.W.2d 730, 1979 Ky. App. LEXIS 401 (Ky. Ct. App. 1979).

7. Hearing.

A school board neither has to rehire a teacher on a limited contract nor provide him with a hearing if he is not rehired. Gibson v. Board of Educ., 805 S.W.2d 673, 1991 Ky. App. LEXIS 31 (Ky. Ct. App. 1991).

8. Governmental Immunity.

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law, specifically §§ 1, 2 and 8 of the Kentucky Constitution and KRS 161.164 and 161.750(2), a teacher asserted that she was not rehired because of her union activities. Because hiring school district employees is an act essential to the function of the school district, Kentucky's governmental immunity protected the school district and the school superintendent, in his official capacity, from liability for the teacher's state-law claims. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

In a civil rights suit brought under 42 USCS § 1983 and Kentucky law, specifically §§ 1, 2 and 8 of the Kentucky Constitution and KRS 161.164 and 161.750(2), a teacher asserted that she was not rehired because of her union activities. For claims against the school superintendent in his individual capacity for hiring decisions in which he actually participated and or in which his role was unclear, the superintendent was not entitled to summary judgment; it had long been established that discharging or failing to hire or retain an employee because she engaged in protected speech was wrongful, so the superintendent was not entitled to qualified immunity from liability for those claims. Smith v. Floyd County Bd. of Educ., 401 F. Supp. 2d 789, 2005 U.S. Dist. LEXIS 29220 (E.D. Ky. 2005).

Cited in:

Welch v. Board of Education, 247 S.W.2d 536, 1952 Ky. LEXIS 722 (Ky. 1952); Cooksey v. Board of Education, 316 S.W.2d 70, 1957 Ky. LEXIS 3 (Ky. 1957); Ford v. Jones, 372 F. Supp. 1187, 1974 U.S. Dist. LEXIS 9572 (E.D. Ky. 1974); Estill County Board of Education v. Rose, 518 S.W.2d 341, 1974 Ky. LEXIS 14 (Ky. 1974); Fayette County Education Asso. v. Hardy, 626 S.W.2d 217, 1980 Ky. App. LEXIS 438 (Ky. Ct. App. 1980); Evans v. Montgomery County Bd. of Education, 712 S.W.2d 358, 1986 Ky. App. LEXIS 1125 (Ky. Ct. App. 1986); Matthews v. Holland, 912 S.W.2d 459, 1995 Ky. App. LEXIS 214 (Ky. Ct. App. 1995).

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Mailing notice on May 15 to a teacher on a limited contract that his contract would not be renewed for the following year would not be effective where the notice could not possibly be received by him until a day or two later. OAG 71-338.

When a continuing service contract terminates by operation of law at age 65 the status of the teacher then becomes the same as one who is employed under a limited contract, and unless notified before May 15 that he is not reemployed for the ensuing year the teacher has a limited contract for the next year. OAG 72-363.

If a school board has given a written limited contract to a teacher between the ages of 65 and 70, but chooses in a subsequent year not to renew said contract, a statement that the board has a policy against employing teachers who have reached the age of 65 years is a sufficient reason for not renewing the teacher's contract. OAG 73-231 (decided under prior law).

If a superintendent does not recommend a teacher for reemployment, that teacher's contract does not automatically end with the school year as board of education action is absolutely necessary in order to create a contract or to deny a renewal of a contract which will otherwise be renewed by operation of law. OAG 74-661.

A local board of education can direct the superintendent to make a recommendation relative to a teacher's contract since a recommendation is required by law and may be a part of appropriately adopted local board policies; the refusal by a superintendent to make a recommendation could be considered legal cause for the superintendent's removal. OAG 80-205, 1980 Ky. AG LEXIS 455.

Although a superintendent could refuse to make a recommendation to the board of education regarding the renewal or not of a teacher's contract, such refusal would be a neglect of a lawfully imposed duty. OAG 80-205, 1980 Ky. AG LEXIS 455.

If there is no recommendation by a superintendent and no action by the board of education, the teacher will be deemed reemployed since the board of education unequivocally cannot vote for nonrenewal of a teacher's contract absent a recommendation of the superintendent. OAG 80-205, 1980 Ky. AG LEXIS 455.

The effect of a tie vote by a board of education on the renewal of a teacher's contract is that the matter being voted upon has not been passed or approved. OAG 80-205, 1980 Ky. AG LEXIS 455.

Where a board of education member abstains from voting in a rehire or fire situation, the member's "pass" vote is to be counted as voting with the majority of those present and voting. OAG 80-205, 1980 Ky. AG LEXIS 455.

A teacher who had taught the prerequisite four years and had been reemployed by a board for the fifth year but who resigned before signing a continuing contract, and before performing any work at the beginning of the fifth year, acquired tenure and where such teacher had resigned after accepting employment with second school system, which system required teachers who had tenure in another district to serve a one-year probationary period before being placed on tenure or continuing contract status, was entitled to a continuing service contract and tenure upon being reemployed by the second school system after serving the one-year's probationary service. OAG 82-619, 1982 Ky. AG LEXIS 28.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Teachers to be appointed after February 1, KRS 160.380.

Kentucky Law Journal.

Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Northern Kentucky Law Review.

Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process —Wells v. Board of Regents, 545 F.2d 15, 1976 U.S. App. LEXIS 6054 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716, 1977 U.S. App. LEXIS 13918 (6th Cir. 1977), 5 N. Ky. L. Rev. 141 (1978).

161.760. Notice of salary to be paid to teacher — Increases — Reductions in responsibility.

(1) The superintendent of schools shall give notice not later than forty-five (45) days before the first student attendance day of the succeeding school year or June 15, whichever occurs earlier, to each teacher who holds a contract valid for the succeeding school year, stating the best estimate as to the salary to be paid the teacher during the year. The salary shall not be lower than the salary paid during the preceding school year, unless the reduction is a part of a uniform plan affecting all teachers in the entire district, or unless there is a reduction of responsibilities. Nothing herein shall prevent increases of salary after the superintendent's annual notice has been given. All teachers who refuse assignment shall notify the superintendent in writing not later than thirty (30) days before the first student attendance day of the school year.

(2) Transfer or change in appointment of teachers later than thirty (30) days before the first student attendance day of the school year shall be made only to fill vacancies created by illness, death, or resignations; to reduce or increase personnel because of a shift in school population; to make personnel adjustments after consolidation or merger; or to assign personnel accord-

ing to their certification pursuant to KRS 161.010 to 161.120 provided, in the latter instance, that the teacher was appointed to a position outside his or her field of certification in the previous year.

(3) Reduction of responsibility for a teacher may be accompanied by a corresponding reduction in salary provided that written notification stating the specific reason for the reduction shall be furnished to the teacher not later than ninety (90) days before the first student attendance day of the school year or May 15, whichever occurs earlier.

(4) Employment of a teacher, under either a limited or a continuing contract, is employment in the school district only and not in a particular position or school.

History.

Enact. Acts 1942, ch. 113, § 5; 1944, ch. 98; 1964, ch. 41, § 5; 1970, ch. 169, § 2; 1982, ch. 338, § 1, effective July 15, 1982; 1982, ch. 362, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 84, effective July 13, 1990; 2002, ch. 78, § 1, effective July 15, 2002; 2008, ch. 113, § 5, effective April 14, 2008.

NOTES TO DECISIONS

Analysis

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1. Application.

This section applies to annual contract teachers and the notice required to alter their pay or reassign them; it does not apply to the demotion of tenured administrative personnel. Frisby v. Board of Education, 707 S.W.2d 359, 1986 Ky. App. LEXIS 1097 (Ky. Ct. App. 1986).

While this section is couched in terms only of "teachers" its provisions apply to school administrators as well, since, by definition, administrators are also teachers. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

2. Property Interest.

Employment of a teacher is employment in the school district only and not in a particular position or school; therefore, a teacher has no constitutionally protected property interest in his or her present position. Banks v. Burkich, 788 F.2d 1161, 1986 U.S. App. LEXIS 24368 (6th Cir. Ky. 1986).

3. Arbitrary Action.

It is clear from the language of this section that the prohibition against arbitrary action applies to all public bodies and all public officials, e.g., school boards and school superintendents, in their assertion or attempted exercise of political power. Board of Educ. v. Jayne, 812 S.W.2d 129, 1991 Ky. LEXIS 51 (Ky. 1991).

4. Particular Employees.

5. —Administrators With Longer Tenure.

Where subsection (1) of KRS 161.765, which applies to an administrator with less than three years of administrative service, provides that procedural safeguards of this section concerning notice and reassignment must be complied with, subsection (2) of KRS 161.765, which provides no such express requirement, must be read together with this section in order to furnish administrators of longer tenure with procedural safeguards in addition to those provided under this section. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

6. —Superintendent.

The office of superintendent is outside the scope of the provisions of the Teacher Tenure Act. Floyd v. Board of Education, 598 S.W.2d 460, 1979 Ky. App. LEXIS 528 (Ky. Ct. App. 1979).

7. Demotion.

Where an assistant principal was simply transferred to a position of less responsibility, which would command substantially less pay, but the transfer was not accompanied by an immediate major reduction in pay (and thus was not a demotion as defined), it nevertheless became a demotion when the pay was reduced in a subsequent year. Cooper v. Board of Education, 587 S.W.2d 845, 1979 Ky. App. LEXIS 473 (Ky. Ct. App. 1979).

The Circuit Court did not err in requiring the county board of education to pay a school principal who had been demoted to classroom teacher the same salary in the succeeding year after the demotion as he was paid in his last year as principal, where the school board had not yet acted on the superintendent's recommendation and reduced the principal's salary by May 15 of his last year as principal. Daugherty v. Hunt, 694 S.W.2d 719, 1985 Ky. App. LEXIS 587 (Ky. Ct. App. 1985).

In the case of the demotion or reassignment of a probationary administrator, the provision in the definition of a school year covering seven months' service only has meaning when coupled with the words "within a school year." Thus an administrator must only serve seven months "within each school year" beginning July 1 and ending June 30 in order to have worked "three years" as an administrator. If such administrator has already worked seven months during his third school year or will have worked seven months before June 30 of his third year of administrative service, he must be notified of a demotion before May 15 of that year, under KRS 161.760. Board of Educ. v. Paul, 846 S.W.2d 675, 1992 Ky. LEXIS 116 (Ky. 1992).

The Kentucky Board of Education's failure to take official, and presumably final, action in informing school personnel of demotion prior to May 15 as provided by subsection (3) of this section and thus invalidating the demotion had been changed by the enactment of KRS 160.390 which effectively superseded the May 15 requirement and under the plain language of this section and KRS 160.390 made the superintendent's action of demotion effective upon mere written notice to the affected employee of the action. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

Since superintendent's action in demoting school administrator was effective when administrator received notice of demotion from superintendent, while KRS 161.765 admittedly provides administrators with enhanced procedural protections, it does nothing to change the effective date of a demotion, and it is that effective date that controls for the purpose of the May 15 deadline set forth in this section and the fact that an administrator might contest the demotion, and thus the action might not become final for some time is of no consequence under KRS 160.390(2). Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

Subsection (2) of this section does not require finality to effect a reduction in salary and by its very terms KRS 160.390(2) makes the superintendent's personnel action effective upon receipt of the written notice by the affected em-

ployee; therefore, where administrator received notice of demotion on April 26 followed by a specific statement of reasons for the demotion on May 9, the requirements of subsection (3) of this section were met. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

8. —Grounds.

The grounds for a demotion of an administrator are left to the sound discretion of the superintendent and board of education so long as they do not act in an arbitrary or unreasonable manner. Board of Educ. v. Williams, 806 S.W.2d 649, 1991 Ky. App. LEXIS 10 (Ky. Ct. App. 1991).

9. Reduction of Responsibility.

Where a teacher had a reduction of responsibilities without proper statutory notification for both the 1987-88 and 1988-89 school years, she was entitled to a full-time contract and full pay and benefits commensurate with her educational rank and teaching experience as determined by the school district's approved salary schedule for the school years in question. Omitted contributions to the Kentucky Teachers Retirement System for 1987-88 and 1988-89 should also have been paid by the board and Powell in their proper proportions as determined by statutory law. Board of Educ. v. Powell, 792 S.W.2d 376, 1990 Ky. App. LEXIS 81 (Ky. Ct. App. 1990).

10. —Notice.

Regarding notice of reduction of responsibility, actual notice is not sufficient to satisfy this section; written notification is required. Board of Educ. v. Williams, 806 S.W.2d 649, 1991 Ky. App. LEXIS 10 (Ky. Ct. App. 1991).

Where certified letter notifying teacher of his removal as vocational coordination and of a corresponding reduction in salary was delivered to the post office on May 13 and a return receipt placed in teacher's box on that date but teacher did not pick up the letter until May 17, written notification was furnished teacher prior to May 15 as required by this section and his own failure to collect and read his mail does not negate that fact. Board of Educ. v. Williams, 806 S.W.2d 649, 1991 Ky. App. LEXIS 10 (Ky. Ct. App. 1991).

11. —Reason.

Where letter informing teacher of removal as a coordinator and of a corresponding reduction in salary stated that the reason for such replacement was that the position would be incorporated into the central office staff but superintendent in his disposition, stated that the reason for transferring the duties was that he had had "numerous complaints among the vocational staff there" but declined to identify who had complained or what the complaints involved, the reason stated in the letter was not the reason underlying the action, and the notification did not satisfy subsection (3) of this section. Board of Educ. v. Williams, 806 S.W.2d 649, 1991 Ky. App. LEXIS 10 (Ky. Ct. App. 1991).

When this section requires reasons, it means true reasons. Charges against a teacher must be specific enough for him to prepare a defense. Board of Educ. v. Williams, 806 S.W.2d 649, 1991 Ky. App. LEXIS 10 (Ky. Ct. App. 1991).

12. Reduction of Salary.

County board of education could not predicate any right to reduce school principal's salary after August 1st upon the mere absence of a formal order reinstating his continuing contract suspended in March based on an order discontinuing school which order was rescinded in May and the board thereafter had a position in its school system for which he was qualified and to which the board assigned him in July. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951) (decision prior to 1964 amendment).

While a principal holding a continuing contract under teacher's tenure law could be transferred to a teaching position in another school his salary could not be reduced even though he was employed under a continuing contract stating his salary could be increased or decreased. Board of Education v. Hogge, 239 S.W.2d 459, 1951 Ky. LEXIS 885 (Ky. 1951) (decision prior to 1964 amendment).

A board of education does not have the right to reduce the salaries of its school principals without a reduction in the salaries of its other teaching personnel, since the reduction of salaries of all principals in the district did not constitute a uniform plan affecting the entire teaching staff. Greenup County Bd. of Education v. Harper, 256 S.W.2d 37, 1953 Ky. LEXIS 718 (Ky. 1953), but see Preuss v. Board of Education, 667 S.W.2d 391, 1984 Ky. App. LEXIS 448 (Ky. Ct. App. 1984).

This section says that if a teacher having continuing service status has been entrusted with a position of extra responsibility which carries extra compensation above the base salary, she shall be deemed to possess such experience, training and other qualifications as to command the higher pay, and is entitled to continue to receive the higher compensation by reason of such qualifications, without regard to whether she continues to be assigned extra duties. Board of Education v. Lawrence, 375 S.W.2d 830, 1963 Ky. LEXIS 193 (Ky. 1963).

Although he had refused a position as high school principal on the ground he was not qualified and later learned he was qualified, the board of education could transfer an employe whose continuing service contract did not specify the school or class of position from elementary principal of one school to high school teacher in another school but it could not reduce his salary where the reduction was not part of a uniform plan affecting the entire district unless the continuing service contract was modified by mutual consent in writing. Huff v. Harlan County Board of Education, 408 S.W.2d 457, 1966 Ky. LEXIS 111 (Ky. 1966).

A teacher was not estopped, by continuing to teach, from claiming his full former salary where his duties were reduced, but this section was not complied with as to salary reduction notification. Board of Education v. Stephens, 449 S.W.2d 421, 1970 Ky. LEXIS 467 (Ky. 1970).

The failure of the board of education to notify a teacher by May 15 foreclosed the board's right to reduce the teacher's salary for the ensuing school year, even though it had reduced his duties from those of a principal to a teacher. Board of Education v. Stephens, 449 S.W.2d 421, 1970 Ky. LEXIS 467 (Ky. 1970).

If the school board had reemployed a nontenured teacher for an additional school year or if he had not received written notice prior to May 15 of the year for which he was employed then he would have had a contract valid for the succeeding school year and his salary could not have been reduced except pursuant to the provisions of this section. Bowlin v. Thomas, 548 S.W.2d 515, 1977 Ky. App. LEXIS 654 (Ky. Ct. App. 1977).

Even though tenured teacher was aware of reduction in duties and salary for ensuing year by May 15 of preceding year, the board of education had no right to reduce his salary for the ensuing school year where it failed to give him timely notice in writing of the proposed reduction in salary. Settle v. Camic, 552 S.W.2d 693, 1977 Ky. App. LEXIS 736 (Ky. Ct. App. 1977).

Where a school board hired a math and science coordinator for 11 months, rather than nine and one-fourth (9¼) months at an increased salary, and therefore was aware of his position despite their claims that he was not officially hired in a capacity as a math and science coordinator, and where the board subsequently stripped him of his coordinating duties and reduced his salary without the recommendation of the superintendent, its action was arbitrary, capricious and void. Board of Education v. Garner, 556 S.W.2d 453, 1977 Ky. App. LEXIS 819 (Ky. Ct. App. 1977).

The notice required by this section to notify a teacher of the reason for reduction in his salary need not contain a specific reason for the reduction of that teacher's responsibility. Brad-

shaw v. Board of Education, 607 S.W.2d 427, 1979 Ky. App. LEXIS 541 (Ky. Ct. App. 1979).

Where a notice of proposed demotion was sent to a school principal three (3) days after the May 15 statutory deadline for notice of reduction in salary under this section, there was no valid notice of reduction in salary or reassignment since the notice was only superintendent's recommendation that she be demoted and the board of education had not yet acted on the superintendent's recommendation. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

A school board must affirmatively act on a superintendent's recommendation of a proposed demotion and notify the teacher involved of such action before May 15 in order for it to be effective; accordingly, where the superintendent's recommendation that the administrator be demoted from director of pupil personnel to a position as a classroom teacher was made in April, but the board of education failed to act on the recommendation until June, the notice requirements of subsection (2) (now (3)) of this section were not complied with and the board's action was void. Banks v. Board of Education, 648 S.W.2d 542, 1983 Ky. App. LEXIS 281 (Ky. Ct. App. 1983).

Although statutes do not require a school district to compensate its certified personnel for extra services, once extra compensation is paid, no reduction thereof may be made except in the two situations allowed by subsection (1) of this section. Preuss v. Board of Education, 667 S.W.2d 391, 1984 Ky. App. LEXIS 448 (Ky. Ct. App. 1984).

Where school system adopted new method of paying administrators which did not use the three components of base pay, extended pay and extra service pay, and principal's extra service pay was thereby reduced even though his total salary increased, principal, and others in same position, did incur a salary reduction under this section; since administrators' duties were not decreased and as they were not provided notice of the reduction in salary, the reductions were validly made only if the administrative salary schedule was a part of a uniform plan affecting the entire district. Preuss v. Board of Education, 667 S.W.2d 391, 1984 Ky. App. LEXIS 448 (Ky. Ct. App. 1984).

Where a reduction decreased a component of salary paid only to principals and not to teachers, i.e., the extra service component, it was necessary, in order to be uniform, only that all principals with the same education, experience and other classifying factors received the same pay throughout the entire system; where that was done the reduction in the salary component did not violate this section even though it applied only to administrators and not to teachers. Preuss v. Board of Education, 667 S.W.2d 391, 1984 Ky. App. LEXIS 448 (Ky. Ct. App. 1984).

13. —"Major" Reduction.

A 25 percent reduction in earnings as a result of transfer would be a major, as opposed to a minor, reduction in earnings. Cooper v. Board of Education, 587 S.W.2d 845, 1979 Ky. App. LEXIS 473 (Ky. Ct. App. 1979).

14. —Uniform Plan of Reduction.

The specific notice of the nature of that provided in subsection (3) of this section is not required as a condition precedent to implementation of a state-mandated plan encompassing all teachers simply because some teachers are affected more than others or perhaps some teachers are not affected at all. White v. Board of Education, 697 S.W.2d 161, 1985 Ky. App. LEXIS 631 (Ky. Ct. App. 1985).

"A uniform plan affecting all teachers in the entire district" does not mean that every teacher must suffer a like impact from a plan, or indeed any impact at all, rather, it means that a plan encompassing every teacher is valid notwithstanding that some teachers may be situated outside the scope of impact. White v. Board of Education, 697 S.W.2d 161, 1985 Ky. App. LEXIS 631 (Ky. Ct. App. 1985).

The clear wording of this section mandates that reductions in salary which are a part of "a uniform plan affecting all teachers in the entire district" may be had without the specific notice required in subsection (3) of this section; this latter section is designed to give notice only to those persons who have suffered a reduction in responsibility and corresponding reduction in salary outside of an overall plan affecting all teachers. White v. Board of Education, 697 S.W.2d 161, 1985 Ky. App. LEXIS 631 (Ky. Ct. App. 1985).

15. Transfer.

The provisions of this section prohibiting the transfer of a teacher after July 15, except for specific, statutory exceptions, are to be strictly construed; accordingly, where the superintendent, in early July, recommended the transfer of two teachers but the board failed to approve the transfer, consistently deadlocking on a 2-2 vote for several days beyond July 15, the board, in effect, failed to act on the recommendation and consequently, the circuit court's finding that a de facto transfer had occurred was without authority and erroneous. Burkhart v. Board of Education, 649 S.W.2d 855, 1983 Ky. App. LEXIS 286 (Ky. Ct. App. 1983).

By the enactment of this statute the General Assembly of Kentucky clearly established that a teacher who has a contract to teach, has no absolute right to a particular teaching job in a particular school and the school boards have discretion to transfer teachers within their district. Board of Educ. v. Jayne, 812 S.W.2d 129, 1991 Ky. LEXIS 51 (Ky. 1991).

Two (2) teachers who were transferred to other schools after failing to improve their pass/failure rate, suffered no injury as they suffered no loss of pay, and no loss of fringe benefits, nor was there evidence indicating that the decision of the superintendent and the school board was based on racial discrimination, gender discrimination, religious discrimination, or political activity discrimination and therefore Ky. Const., § 2 was not invoked. Board of Educ. v. Jayne, 812 S.W.2d 129, 1991 Ky. LEXIS 51 (Ky. 1991).

Cited in:

Board of Education v. Moore, 264 S.W.2d 292, 1953 Ky. LEXIS 1250 (Ky. 1953); Board of Education v. Justice, 268 S.W.2d 648, 1954 Ky. LEXIS 921 (Ky. 1954); Fayette County Education Asso. v. Hardy, 626 S.W.2d 217, 1980 Ky. App. LEXIS 438 (Ky. Ct. App. 1980); Bd. of Educ. of Erlanger-Elsmere Sch. Dist. v. Code, 57 S.W.3d 820, 2001 Ky. LEXIS 137 (Ky. 2001); Pigue v. Christian County Bd. of Educ., 65 S.W.3d 540, 2001 Ky. App. LEXIS 79 (Ky. Ct. App. 2001).

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There is no reduction in the salary of a coach who is transferred to a teaching position if the compensation paid for the extra duty of coaching is terminated when he stops performing coaching services. OAG 61-559.

This section and KRS 161.780 are not in conflict since this section concerns termination of employment only and KRS 161.780 concerns refusal of an assignment. OAG 64-576.

An individual who served as a principal of a high school during the 1970-71 school year, and was reduced to the position of a teacher in an elementary school for the school year of 1971-72, was entitled to the same salary he received as a high school principal, since he was not notified of the reduction until after May 15, 1971, as required by this section. OAG 72-72.

A principal may not be given less increase in his over-all salary than the basic salary increase passed by the legislature for all teachers when all other teachers have received the stipulated increase. OAG 72-390.

A school board may not reduce a principal's extra pay for extra services without also making a reduction in the extra services accordingly. OAG 72-390.

If an elementary school principal was granted a leave of absence to serve in an elective office, he would not be entitled to his original position upon the termination of his leave of absence, but could be assigned by the board of education to any position. OAG 73-322.

No right upon the part of the teacher to have a hearing against the decision of the board in making the reassignment is implicit in this section and such decision can only be challenged upon the grounds that it is arbitrary. OAG 73-342.

When a school board decides to demote a principal or teacher it should give him notice prior to May 15th as provided by this section, together with a statement of the causes for demotion, and within a reasonable time it should notify him of a given date between May 15th and July 1st upon which he may have a hearing if he desires one. OAG 74-96, modifying OAG 73-342.

As the superintendent is the executive agent of the board of education and has the responsibility to carry out the lawful orders of the board, the order of the board eliminating the position of deputy superintendent for the year 1973-74 and to so notify the incumbent is a lawful order but the incumbent must be notified by May 15 that his salary for the next year will be reduced or he will be entitled to at least the same salary he received during the present year. OAG 73-378.

When a board of education officially decides to eliminate a position or not to fill a position for the coming year and to employ the person filling the eliminated position in a position of reduced responsibility and salary, it is necessary that the employee be notified that his position and salary will be reduced for the coming year before May 15 and the superintendent and the board will than have until July 1 to decide on the new position for said employee. OAG 73-378; OAG 76-360.

School board may withhold an increment from a teacher's salary where teacher did not conform to board policy requiring normal progress toward an M.A. degree, subject to the provisions of former KRS 157.420. OAG 74-290.

When the superintendent has not recommended a reduction in duties and salary and when a proper notice has not been given stating the reasons therefor by May 15, the board of education may not on its own volition vote a reduction in salary. OAG 74-625.

There is no provision in this section which gives a teacher a right to a supervisory position because of his seniority, since the assignment of teachers and principals is entirely within the discretion of the school board. OAG 74-757.

Notice of the amount of a reduction in compensation due to the reduction or elimination of extra service must be given along with the notice of the reduction in extra service by May 15. OAG 75-339.

Serving as a coach or assistant coach of a school team is extra service as contemplated in this section. OAG 75-339.

A teacher who also is a coach may resign his coaching duties without resigning as a teacher and upon such resignation may be assigned to teach in another school in the district. OAG 75-397.

Not permitting a husband and wife to teach in the same building is a legitimate exercise of the power of the school board. OAG 75-532.

Although an outgoing superintendent of a county school system had the responsibility for making the recommendations for contracts for the limited contract personnel for the next school term by May 15, the new superintendent could determine position assignments of the certified personnel in the school system up to July 15. OAG 76-290.

A teacher who was hired to teach and placed in a reading position by the board does not have a claim to that position and her rights would not be violated if the principal and the superintendent later feeling it would be in the best interest of the school transferred the teacher to a fifth grade class in the same school, for a teacher, whether under limited or continuing contract, is employed in the school district only and not in a particular position or school and a teacher may be reassigned by the school board, upon recommendation by the superintendent, up to July 15 and after this date reassignment of certified personnel may be made only under the limited circumstances provided for in subsection (1) (now (2)) of this section. OAG 76-436.

Where because of budgetary considerations a county board of education must reduce the number of administrative personnel through the elimination of administrative positions, those individuals who have not completed three years of administrative service in the school system must first be recommended for demotion. OAG 77-282, 1977 Ky. AG LEXIS 495.

If by May 15 a county board of education has not notified a certified employee who has held the position of athletic director that he will no longer be assigned that position and the reasons therefor and that there will be a reduction in pay, the board would be foreclosed from reducing that employee's salary for the upcoming school year. OAG 77-573, 1977 Ky. AG LEXIS 226.

The dates specified in subsection (1) of this section are actual and no changes in the salary schedule may be made for the following school year thereafter, unless a deficit would otherwise result. OAG 78-641, 1978 Ky. AG LEXIS 210.

While a clear obligation rests with the local school superintendent to professionally advise and to prepare salary schedules, the local board is in a position of adopting as is or modifying the tendered salary schedule as it, in exercising its discretion consistent with state laws and budgetary constraints, deems necessary. OAG 78-641, 1978 Ky. AG LEXIS 210.

If employment of a teacher is going to be linked to a particular position or responsibility, such as coaching, the superintendent should recommend accordingly; and by like token the board of education is not at liberty to, in essence, vote upon only part of the recommendation. OAG 80-205, 1980 Ky. AG LEXIS 455.

For individuals who have failed to hold administrative positions in a school district for at least three years, the school district is not required to implement the due process procedures including a hearing outlined in KRS 161.765, but must only follow this section. OAG 82-135, 1982 Ky. AG LEXIS 504.

Seniority is not required by statute to come into play in deciding which administrative employees to transfer as a result of reductions; however, school districts may adopt a procedure of considering seniority as a factor in a reduction of administrators situation. OAG 82-135, 1982 Ky. AG LEXIS 504.

Since the Court of Appeals has concluded that an administrator protected by KRS 161.765 should also have the benefit of the procedural safeguards of subsection (2) (now subsection (3)) of this section, if a school district, with the recommendation of the local superintendent, intends to demote an administrator with three or more years administrative service, the written notice of demotion and the opportunity for a due process hearing under KRS 161.765 must be completed before May 15. OAG 82-135, 1982 Ky. AG LEXIS 504.

Teachers and administrators, even those with more than three years of administrative service who are protected under KRS 161.765, do not have a statutorily protected right to a particular teaching or administrative position. OAG 82-135, 1982 Ky. AG LEXIS 504.

Where a local board of education has been paying a supplement to a teacher or a specific group of teachers for a period of several years, and then decides to reduce the supplement by a small amount over a period of years, with the intent to eliminating it, the board is not required to show that reduction when providing its July 1st best estimate of salaries or salaries to be paid to the teacher or group of teachers. OAG 85-87, 1985 Ky. AG LEXIS 65.

A superintendent may change assignments of personnel prior to July 16 without creating "vacancies" as defined by KRS 160.380(1)(b) (now (1)(c)), but after July 15, when positions are occupied by personnel as assigned by the superintendent, and when certified position openings occur due to resignation, dismissal, transfer, death, nonrenewal of contract, or creation of new positions, those openings constitute "vacancies" under KRS 160.380(1)(b) (now (1)(c)). OAG 91-149, 1991 Ky. AG LEXIS 149.

Employment of teachers is deemed to be employment in the district, not in a particular position or school, consequently, assignments of position and school, under certain conditions, do not constitute transfers when those assignments are different from previous assignments of position and school. OAG 91-149, 1991 Ky. AG LEXIS 149.

While the superintendent is responsible for personnel actions including, among other things, hiring and assignments, to the extent that the local board is responsible for control and management of school funds, the board may determine the amount of extended employment and compensation for personnel employed beyond the 185 day period; any reduction in salary to a teacher (which includes most administrators for purposes of the teachers tenure law), must be accompanied by appropriate notice. OAG 92-29, 1992 Ky. AG LEXIS 29.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Wolnitzek, The Fair Demotion Act, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 23.

Treatises.

Caldwell's Kentucky Form Book, 5th Ed., Complaint Against School District for Reduction of Salary as Part of Uniform Plan, Form 333.04.

161.765. Procedures for demotion of administrative personnel — Appeal.

(1) A superintendent may demote an administrator by complying with the requirements of KRS 161.760 when the administrator:

(a) Has not completed three (3) years of administrative service, not including leave granted under KRS 161.770; or

(b) Is in a district-level administrative position in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C.

(2) Except for an administrator described in subsection (1)(b) of this section, an administrator who has completed three (3) years of administrative service, not including leave granted under KRS 161.770, cannot be demoted unless the following procedures have been complied with:

(a) The superintendent shall give written notice of the demotion to the board of education and to the administrator. If the administrator wishes to contest the demotion, he or she shall, within ten (10) days of receipt of the notice, file a written statement of his or her intent to contest with the superintendent. If the administrator does not make timely filing of his or her statement of intent to contest, the action shall be final.

(b) Upon receipt of the notice of intent to contest the demotion, a written statement of grounds for demotion, signed by the superintendent, shall be served on the administrator. The statement shall contain:

1. A specific and complete statement of grounds upon which the proposed demotion is based, including, where appropriate, dates, times, names, places, and circumstances;

2. The date, time, and place for a hearing, the date to be not less than twenty (20) nor more than thirty (30) days from the date of service of the statement of grounds for demotion upon the administrator.

(c) Upon receipt of the statement of grounds for demotion the administrator shall, within ten (10) days, file a written answer. Failure to file such answer, within the stated period, will relieve the board of any further obligation to hold a hearing and the action shall be final. The board shall issue subpoenas as are requested.

(d) The hearing on the demotion shall be public or private, at the discretion of the administrator and shall be limited to the matters set forth in the written statement of grounds for demotion. The board shall provide to the administrator a verbatim transcript of the hearing. The board of education shall hear the case, with the board chairman presiding. The board, upon hearing the evidence and argument presented, shall retire to private chambers to arrive at a decision. Counsel or representatives for either party in the hearing shall not be consulted by the board unless the corresponding counsel or representatives for the other party are present and unless a verbatim transcript of such consultation is made for the record.

(e) Within five (5) days from the close of the hearing, the board of education shall advise the parties of its decision and shall take official action in the case.

(f) Appeal from final board action may be taken in the same manner and under the same provisions as an appeal from tribunal action under KRS 161.790.

History.

Enact. Acts 1974, ch. 356, § 2; 1990, ch. 476, Pt. IV, § 283, effective July 13, 1990; 2019 ch. 65, § 5, effective June 27, 2019.

NOTES TO DECISIONS

Analysis

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1. Application.

The language of this section would seem to indicate that it was intended to apply to disciplinary actions against tenured

school administrators for it refers to giving complete and specific grounds upon which the proposed demotion is based including dates, names, places and circumstances; provides for a hearing of the grounds which may be in private at the request of the administrator; and provides that the board, upon hearing the evidence and argument of counsel, shall decide the issue. Cooper v. Board of Education, 587 S.W.2d 845, 1979 Ky. App. LEXIS 473 (Ky. Ct. App. 1979).

The Kentucky Board of Education's failure to take official, and presumably final, action in informing school personnel of demotion prior to May 15 as provided by KRS 161.760(3) and thus invalidating the demotion had been changed by the enactment of KRS 160.390 which effectively superseded the May 15 requirement and under the plain language of KRS 161.760 and 160.390 made the superintendent's action of demotion effective upon mere written notice to the affected employee of the action. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

Since superintendent's action in demoting school administrator was effective when administrator received notice of demotion from superintendent, while this section admittedly provides administrators with enhanced procedural protections, it does nothing to change the effective date of a demotion, and it is that effective date that controls for the purpose of the May 15 deadline set forth in KRS 161.760 and the fact that an administrator might contest the demotion, and thus the action might not become final for some time is of no consequence under KRS 160.390(2). Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

Language is plain: once an administrator completes three years of administrative service, not including any leaves of absence, he or she is entitled to the statute's procedural safeguards; the statute does not require that the administrative service occur in the same school district. Hardin v. Jefferson Cty. Bd. of Educ., 558 S.W.3d 1, 2018 Ky. App. LEXIS 217 (Ky. Ct. App. 2018).

Phrase "three years of administrative service, not including leave granted under Ky. Rev. Stat. Ann. § 161.770" in Ky. Rev. Stat. Ann. § 161.765 plainly means exactly what it appears to mean: the three-year prerequisite period of § 161.765 does not include any time an administrator spends on leave pursuant to Ky. Rev. Stat. Ann. § 161.770. Hardin v. Jefferson Cty. Bd. of Educ., 558 S.W.3d 1, 2018 Ky. App. LEXIS 217 (Ky. Ct. App. 2018).

2. Administrators.

3. —Generally.

An administrator is one who (1) holds a position categorized as an administrative position pursuant to KRS 161.720(8), or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Education, 684 S.W.2d 7, 1984 Ky. App. LEXIS 529 (Ky. Ct. App. 1984).

This section requires that an administrative position itself be certificated and that the employee also be specifically certified for the position, before the due process provisions of this section are triggered; thus, where the employee held an administrative position, but he was not certified as such by the State Board of Education, he was therefore not technically qualified for such position, so that his transfer from the position of health coordinator to teacher was made according to law, and his due process rights were not offended. Petett v. Board of Education, 684 S.W.2d 7, 1984 Ky. App. LEXIS 529 (Ky. Ct. App. 1984).

The ordinary duties of a school principal differ greatly from those of a school teacher, as administrative personnel have either fiscal management duties and educational supervisory duties, or both, with responsibilities which are quite different from those of classroom teachers. The role of an administrator in carrying out policy and in formulating overall policy is also quite different from that of a teacher, and it is certainly not beyond reason that the legislature would deem it advisable not to give one whose supervisory and policy role is so different the same kind of job protection given to a classroom teacher. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

Administrator had completed five years of administrator service prior to the decision to demote him: three years in one county and two years in another; he was entitled to the procedural safeguards before being demoted, the school system failed to afford him those protections, and the circuit court erred in finding that the administrator failed to state a claim. Hardin v. Jefferson Cty. Bd. of Educ., 558 S.W.3d 1, 2018 Ky. App. LEXIS 217 (Ky. Ct. App. 2018).

4. —Longer Tenure.

Where subsection (1) of this section, which applies to an administrator with less than three years of administrative service, provides that procedural safeguards of KRS 161.760 concerning notice and reassignment must be complied with, subsection (2) of this section, which provides no such express requirement, must be read together with KRS 161.760 in order to furnish administrators of longer tenure with procedural safeguards in addition to those provided under KRS 161.760. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

5. —Probationary.

In the case of the demotion or reassignment of a probationary administrator, the provision in the definition of a school year covering seven months' service only has meaning when coupled with the words "within a school year." Thus an administrator must only serve seven months "within each school year" beginning July 1 and ending June 30 in order to have worked "three years" as an administrator. If such administrator has already worked seven months during his third school year or will have worked seven months before June 30 of his third year of administrative service, he must be notified of a demotion before May 15 of that year, under KRS 161.760. Board of Educ. v. Paul, 846 S.W.2d 675, 1992 Ky. LEXIS 116 (Ky. 1992).

6. Superintendent.

A superintendent is not afforded the protection of this section which deals exclusively with the procedure for demotion of administrative personnel. Floyd v. Board of Education, 598 S.W.2d 460, 1979 Ky. App. LEXIS 528 (Ky. Ct. App. 1979).

7. Continuing Service Contract.

Unlike a teacher, a school administrator, even one who has completed three (3) years administrative service, is not ever granted a continuing service contract as an administrator. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

8. Statement of Grounds for Demotion.

Where notice to school counselors only stated that demotion was based upon required reduction of expenditures and did not say why expenditures were required to be reduced, why the reduction should be applied to the counselors as opposed to reducing some other expenditure, why a particular counselor was selected as opposed to another counselor or other administrator of equal pay and rank, where the specific budget adjustment was made nor when a budget would be adopted for that year or if one had been adopted, such notice was inadequate. Hartman v. Board of Education, 562 S.W.2d 674, 1978 Ky. App. LEXIS 477 (Ky. Ct. App. 1978).

Where statement of grounds for school principal's demotion gave specific occasions with dates in some instances and in others, where dates were not given, the nature of the allegations were such that citing specific dates or occasions would

not seem necessary to permit principal to formulate a defense, the statement sufficiently complies with the specificity and completeness of subsection (2)(b) of this section. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

Since this section does not set forth the grounds necessary to demote a school administrator who has completed three (3) years of administrative service nor even state a specific requirement of "cause" for demotion, the grounds are left to the sound discretion of the local superintendent and board of education, subject to the limitation that the grounds not be arbitrary or unreasonable or otherwise violative of a right protected by the state or federal Constitution. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

Where superintendent's letter to administrator, while arguably containing only general statements of charges against administrator alluded to past correspondence between the two that set forth in some detail the source of the superintendent's dissatisfaction with administrator's performance, administrator was sufficiently informed of the specific reasons for his demotion and corresponding reduction in salary. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

Subsection (2)(b)(1) of this section protects administrators from demotions based on vague, unsubstantiated or generalized allegations of misconduct. The provision exists to allow administrators to know the specific nature of the charges against them, in order to evaluate the accusation intelligently and prepare for a hearing on the matter. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

Although superintendent failed to set out a date, time and place for the hearing on the demotion of the administrator in letter sent to administrator informing him of the reasons for his demotion, where administrator requested and received a twenty-five (25) day continuance, the failure to comply with the technical requirements of subsection (2)(b)(2) of this section in no way compromised his defense, and no prejudice resulted. Estreicher v. Board of Educ., 950 S.W.2d 839, 1997 Ky. LEXIS 88 (Ky. 1997).

9. Untimely Notification of Demotion.

A school board must affirmatively act on a superintendent's recommendation of a proposed demotion and notify the teacher involved of such action before May 15 in order for it to be effective; accordingly, where the superintendent's recommendation that the administrator be demoted from director of pupil personnel to a position as a classroom teacher was made in April, but the board of education failed to act on the recommendation until June, the notice requirements of subsection (2) (now (3)) of KRS 161.760 were not complied with and the board's action was void. Banks v. Board of Education, 648 S.W.2d 542, 1983 Ky. App. LEXIS 281 (Ky. Ct. App. 1983).

The Circuit Court did not err in requiring the county board of education to pay a school principal who had been demoted to classroom teacher the same salary in the succeeding year after the demotion as he was paid in his last year as principal, where the school board had not yet acted on the superintendent's recommendation and reduced the principal's salary by May 15 of his last year as principal. Daugherty v. Hunt, 694 S.W.2d 719, 1985 Ky. App. LEXIS 587 (Ky. Ct. App. 1985).

10. Lateral Transfer.

This section cannot be evaded by the expedient of a lateral transfer to a position of less responsibility in one year followed by a reduction in pay in a succeeding year when the duties of the new position at the time of the transfer were so significantly less as to have justified a major reduction in pay at the time of transfer. Cooper v. Board of Education, 587 S.W.2d 845, 1979 Ky. App. LEXIS 473 (Ky. Ct. App. 1979).

Where an assistant principal was simply transferred to a position of less responsibility, which would command substantially less pay, but the transfer was not accompanied by an immediate major reduction in pay (and thus was not a demotion as defined), it nevertheless became a demotion when the pay was reduced in a subsequent year. Cooper v. Board of Education, 587 S.W.2d 845, 1979 Ky. App. LEXIS 473 (Ky. Ct. App. 1979).

A 25 percent reduction in earnings as a result of transfer would be a major, as opposed to a minor, reduction in earnings. Cooper v. Board of Education, 587 S.W.2d 845, 1979 Ky. App. LEXIS 473 (Ky. Ct. App. 1979).

Where an educator is transferred to a position of less responsibility, and the transfer is not accompanied by an immediate major reduction in pay, but there is to be a reduction in a subsequent year, the transfer becomes a demotion when (and if) that reduction takes place. Accordingly, where principal was transferred to less responsible post but his salary remained the same, it could not be said that he had been demoted from one position on the salary schedule to a position for which a lower salary was paid. Stafford v. Board of Education, 642 S.W.2d 596, 1982 Ky. App. LEXIS 267 (Ky. Ct. App. 1982).

11. Removal.

An administrator has been given no right of tenure to an administrative position and may be removed from such position by the local board of education upon recommendation of the superintendent for any reason not offending some right protected by the state or federal constitutions or KRS 161.162 (repealed). Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

12. Reinstatement.

Where school principal had been demoted after a Roman circus type hearing by a school board biased against him, and based on testimony of a group of teachers similarly biased against him to the point they had agitated for his removal, the board's decision was arbitrary and unreasonable and the trial court's order reinstating the principal would be affirmed. Hart County Board of Education v. Broady, 577 S.W.2d 423, 1979 Ky. App. LEXIS 376 (Ky. Ct. App. 1979).

13. Hearing.

Under this section, an administrator must be afforded a hearing in the event of demotion regardless of the reason for the demotion. Harlan County Board of Education v. Stagnolia, 555 S.W.2d 828, 1977 Ky. App. LEXIS 805 (Ky. Ct. App. 1977).

Where an assistant principal was an administrator with tenure and, subsequent to his termination, was reemployed as an elementary school teacher, he was in fact demoted and was entitled to a hearing. Harlan County Board of Education v. Stagnolia, 555 S.W.2d 828, 1977 Ky. App. LEXIS 805 (Ky. Ct. App. 1977).

The vote of the board of education to demote a school principal need not be held in public. Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980).

This section, as amended in 1990 to eliminate principals' right to a hearing before demotion while protecting lesser administrators, did not deny equal protection where one basis for eliminating the right of principals to the cumbersome procedural safeguards of other administrators was to permit the swift removal of principals who may be in a unique position to hinder easy implementation of the Kentucky Education Reform Act (KERA); therefore, there was a legitimate distinction between principals and other administrators supporting the sweep of the tenure statute. Arney v. Campbell, 856 F. Supp. 1203, 1994 U.S. Dist. LEXIS 9120 (W.D. Ky. 1994).

In suit by principal who was demoted to teacher, alleging that denial of his right to the pre-demotion hearing provided for administrators in this section deprived him of equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution and an exercise of arbitrary

power prohibited by Ky. Const., § 2, since "administrators" as defined by subsection (8) of KRS 161.720 as it existed prior to its 1992 amendment did not include "principals" as "administrators", the court employing the "rational basis scrutiny" held that since there were several distinctions between "principals" and "administrators", there was a rational basis for the exclusion of "principals" from the definition of "administrators" and thus such exclusion did violate the Fourteenth Amendment of the U.S. Constitution or Ky. Const., § 2. 902 S.W.2d 842, 1995 Ky. App. LEXIS 77.

14. Appeal.

Where a teacher received unequivocal notice that she would be demoted from an administrative position and reassigned as a special education teacher, and she failed to appeal the school board's action for approximately 15 months, her claim was properly dismissed. Frisby v. Board of Education, 707 S.W.2d 359, 1986 Ky. App. LEXIS 1097 (Ky. Ct. App. 1986).

At best, this section gives an administrator with at least three years experience an additional procedural opportunity to convince the board of the lack of merit in the superintendent's recommendation of demotion, or that it violates a constitutional or statutory right. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

Trial court erred in dismissing an assistant principal's claim regarding this section because the addition of the State Evaluation Appeals Panel as a defendant did not substantively change the assistant's position that the Board of Education failed to comply with this section when demoting the assistant, and the assistant presented an adequate claim that his rights had been violated. Hardin v. Jefferson Cnty. Bd. of Educ., 673 S.W.3d 437, 2023 Ky. App. LEXIS 57 (Ky. Ct. App. 2023).

Cited in:

Bradshaw v. Board of Education, 607 S.W.2d 427, 1979 Ky. App. LEXIS 541 (Ky. Ct. App. 1979); Fayette County Education Asso. v. Hardy, 626 S.W.2d 217, 1980 Ky. App. LEXIS 438 (Ky. Ct. App. 1980); Board of Education v. Rothfuss, 639 S.W.2d 545, 1982 Ky. LEXIS 297 (Ky. 1982); Shepherd v. Boysen, 849 F. Supp. 1168, 1994 U.S. Dist. LEXIS 5330 (E.D. Ky. 1994); Painter v. Campbell County Bd. of Educ., 417 F. Supp. 2d 854, 2006 U.S. Dist. LEXIS 7920 (E.D. Ky. 2006).

OPINIONS OF ATTORNEY GENERAL.

This section has no application to personnel action taken before June 21, 1974. OAG 74-370.

This section deals only with demotion and not with dismissal. OAG 75-2.

Although this section applies to guidance counselors, where a counselor is reassigned as a teacher at the same salary he is not entitled to a hearing under this section since, in view of KRS 161.720, he has not been demoted within the meaning of the law. OAG 75-368.

An individual, who has completed one (1) year as an assistant principal and who for ten (10) years just prior to said year was not employed in education and prior to the ten-year period, was a teacher on tenure and had had at least three (3) years' experience as an administrator comes under this section and cannot be demoted without following the procedures of this section. OAG 75-413; 76-99.

An athletic director would be an administrator for the purposes of this section. OAG 77-114, 1977 Ky. AG LEXIS 665.

Inasmuch as administrative service in another school system is of no consequence whatsoever as concerns this section, a certified employee who has in excess of three (3) years of administrative experience but who has served only two (2) years as a principal in the school system where presently employed would not be entitled to a hearing if demoted by the board. OAG 77-157, 1977 Ky. AG LEXIS 649.

The assignment of an administrator with at least three (3) years' administrative service in the same school system to a teaching position or any position not having administrative responsibilities would be a demotion, irrespective of the similarity of salary. OAG 77-328, 1977 Ky. AG LEXIS 477.

Since years of service as superintendent of schools would not be counted for purposes of this section, a school business administrator who has completed two (2) years of service following a four-year term as superintendent could be demoted. OAG 77-493, 1977 Ky. AG LEXIS 293.

A board of education could reduce the term of an elementary school principal's contract from 12 months to a lesser number of months, but could not reduce his salary without giving written notice as required by subsection (2) of this section. OAG 78-148, 1978 Ky. AG LEXIS 568.

An elementary school principal could not be demoted to a classroom teacher with a reduction in salary unless the procedures of this section were followed. OAG 78-148, 1978 Ky. AG LEXIS 568.

It would appear that a demotion involves at least two positions and, accordingly, when a school board changes only contract characteristics, specifically duration of the contract, of a single administrative position, this action does not constitute a demotion for the purposes of this section. OAG 78-148, 1978 Ky. AG LEXIS 568.

While upon timely recommendation by the superintendent and approval by the board of education (before May 15), an administrator serving a school system protected under the provisions of this section may still be assigned to a different administrative position in the school system, the new administrative position may not subject the individual to a substantial alteration in pay received for performing administrative services in the school system. OAG 78-793, 1978 Ky. AG LEXIS 53.

A demotion can be made, after a full following of the procedures mandated in the statute, on strictly economic and nonpersonal grounds. OAG 79-111, 1979 Ky. AG LEXIS 511.

If the reasons for the reduction in expenditures are fully given, the requirements of subdivision (2)(b) of this section will have been met. OAG 79-111, 1979 Ky. AG LEXIS 511.

This section does not give one protected by its provisions any right to a particular administrative position in the school system. OAG 79-111, 1979 Ky. AG LEXIS 511.

This section is not a "tenure" statute. OAG 79-111, 1979 Ky. AG LEXIS 511.

This section provides administrative procedural due process which must be complied with before a certified employee who has been an administrator in a school system for three years may be demoted. OAG 79-111, 1979 Ky. AG LEXIS 511.

For individuals who have failed to hold administrative positions in a school district for at least three years, the school district is not required to implement the due process procedures including a hearing outlined in this section, but must only follow KRS 161.760. OAG 82-135, 1982 Ky. AG LEXIS 504.

For those administrators who have the requisite three (3) years or more administrative experience in a school district, which years need not be in the same administrative position, the detailed due process procedures of subsection (2) of this section must be followed before a school district may demote them back into the classroom. OAG 82-135, 1982 Ky. AG LEXIS 504.

Seniority is not required by statute to come into play in deciding which administrative employees to transfer as a result of reductions; however, school districts may adopt a procedure of considering seniority as a factor in a reduction of administrators situation. OAG 82-135, 1982 Ky. AG LEXIS 504.

Since the Court of Appeals has concluded that an administrator protected by this section should also have the benefit of the procedural safeguards of KRS 161.760(2), if a school

district, with the recommendation of the local superintendent, intends to demote an administrator with three or more years administrative service, the written notice of demotion and the opportunity for a due process hearing must be completed before May 15. OAG 82-135, 1982 Ky. AG LEXIS 504.

Teachers and administrators, even those with more than three (3) years of administrative service, do not have a statutorily protected right to a particular teaching or administrative position. OAG 82-135, 1982 Ky. AG LEXIS 504.

The demotion process under this section was not intended by the general assembly to be available solely as a disciplinary measure to be taken only if an administrator was not adequately performing expected administrative services. "Grounds" can also be premised upon budgetary problems. OAG 82-135, 1982 Ky. AG LEXIS 504.

A teacher may take an unpaid leave of absence for maternity, which may properly include time for care of a newborn infant, even if there is no disability, and this maternity leave shall be granted by the local board of education for a reasonable period of time on an individual basis, considering individual circumstances. OAG 86-66, 1986 Ky. AG LEXIS 20.

Effective July 13, 1990, the Kentucky Education Reform Act, House Bill 940, Acts Chapter 476, removed responsibility for personnel decisions from the local school board and placed that responsibility with the superintendent. Accordingly, the superintendent may legally demote a principal who has served three or more years in administrative service only upon fully abiding by this section. Similarly, the superintendent may legally demote a central office administrator (such as an assistant superintendent, general supervisor, director of pupil personnel, etc.) only upon fully abiding by this section. OAG 91-119, 1991 Ky. AG LEXIS 120.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Wolnitzek, The Fair Demotion Act, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 23.

161.770. Leaves of absence.

(1) Upon written request of a teacher or superintendent, a board of education may grant a leave of absence for a period of not more than two (2) consecutive school years for educational or professional purposes, and shall grant such leave where illness, maternity, adoption of a child or children, or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. A board of education may pay a sum of money equivalent to all or any portion of salary to a teacher or superintendent who has been granted leave for educational or professional purposes if the person taking said leave agrees in writing to return to employment with the board for no less than two (2) years.

(2) Without request, a board of education may grant leave of absence and renewals thereof to any teacher or superintendent because of physical or mental disability, but such teacher or superintendent shall have the right to a hearing and appeal on such unrequested leave of absence or its renewal in accordance with the provisions for hearing and appeal in KRS 161.790.

(3) Any action taken under subsection (1) or (2) of this section shall not violate the Americans with Disabilities Act of 1990, the Health Insurance Portability and Accountability Act of 1996, or any other applicable federal law. A board of education:

(a) May only request medical information necessary to decide whether to grant a leave of absence;

(b) Shall not request or retain unnecessary medical information; and

(c) Shall not disclose any medical information received, except as permitted by state and federal law.

(4) Upon the return to service of a teacher or superintendent at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave.

(5) Payments to any teacher or superintendent under this section by a local district are intended and presumed to be for and in consideration of services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school funds as established in KRS Chapter 157.

History.

Enact. Acts 1942, ch. 113, § 6; 1944, ch. 98; 1976, ch. 158, § 1; 1986, ch. 395, § 2, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 247, effective July 13, 1990; 2019 ch. 30, § 1, effective June 27, 2019.

NOTES TO DECISIONS

1. Construction With Other Laws.

Phrase "three years of administrative service, not including leave granted under Ky. Rev. Stat. Ann. § 161.770" in Ky. Rev. Stat. Ann. § 161.765 plainly means exactly what it appears to mean: the three-year prerequisite period of § 161.765 does not include any time an administrator spends on leave pursuant to Ky. Rev. Stat. Ann. § 161.770. Hardin v. Jefferson Cty. Bd. of Educ., 558 S.W.3d 1, 2018 Ky. App. LEXIS 217 (Ky. Ct. App. 2018).

Cited in:

Estill County Board of Education v. Rose, 518 S.W.2d 341, 1974 Ky. LEXIS 14 (Ky. 1974).

OPINIONS OF ATTORNEY GENERAL.

It is not an abuse of discretion for the board to grant a leave of absence to a teacher who, while unable to perform his duties because of illness, did not make a written request for leave until about seven (7) or eight (8) months after the inception of the illness, when the teacher had previously advised the superintendent orally of his illness. OAG 60-472.

A local board of education may not grant a teacher leave of absence with pay to serve on a committee appointed by the Commission on Public Education. OAG 60-1152.

The provisions of this section concerning the granting of leave of absence for illness are mandatory and the board must grant the leave on written request. OAG 61-633.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

The fact that a teacher has taught for several years possessing a disability which is actually sufficient to impair his teaching services does not estop the teacher from requesting a leave of absence because of that disability. OAG 68-586.

The phrase "other disability" as used in this section encompasses any disability which would substantially impair the effective performance by a teacher of the full scope of duties involved in the teaching assignments for which he is qualified and the fact that a teacher is able to perform satisfactorily in some other line of work which may be more sedentary and less strenuous, specifically having been elected to the office of county judge (now county judge/executive), would not in and of

itself be conclusive as to lack of disability for teaching. OAG 68-586.

Maternity leave is not "sick leave" within the meaning of KRS 161.155 but a "leave of absence" under this section and as such it results in a cessation of salary benefits during the period of absence. OAG 70-730.

This section is to be regarded as exclusive and takes precedence over KRS 160.290. OAG 70-771.

Within the purview of this section, a district board of education may, in its discretion, grant a leave of absence to a superintendent for the purpose of his seeking and/or accepting the office of state superintendent of public instruction. OAG 70-771.

A board of education has discretion in granting leave for professional or educational purposes, but it has no discretion and must grant leave where illness, maternity, or other disability is the reason, if the request is the first request. OAG 71-303.

Where a teacher neither resigned nor requested maternity leave but merely informed the board that she could not teach the following year and was subsequently employed by the board on a continuing contract which provided that the teacher was entitled to accumulated leave, the board waived any contention that the teacher did not request maternity leave in writing. OAG 71-303.

A teacher on leave of absence could not be paid for "calamity days" which were granted during the time of his leave. OAG 72-554.

A school board may grant a leave of absence, without loss of tenure, to an employee who takes employment with another educationally related system even though the teacher states that he may not return to employment in the school district at the end of his leave of absence, but such a statement could very well have an influence on the board's decision as to whether or not to grant the leave of absence. OAG 73-377.

A school board would not be authorized to grant a leave of absence to a teacher who is going to work outside of the educational field, as this section which permits the granting of a privilege to a public employee should be narrowly construed in the interest of the public and the board would not be authorized to grant a leave of absence for any purpose except an "educational or professional purpose." OAG 73-377.

When a teacher taught for four (4) consecutive years in a school district, took a leave of absence for three (3) years, returned from her leave and taught two (2) consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received, unless her contract is terminated for cause or her contract is suspended. OAG 73-486.

As a leave of absence from the school system can only be granted for illness, maternity or other disability, and educational or professional purposes and as operating a garbage service is not one of these statutory reasons, the school board should not have granted a leave of absence but should have required the teacher to resign or continue working and, if the teacher is on a bona fide leave of absence, he would be violating KRS 156.480 by selling his garbage service to the school system. OAG 73-651.

The board of education should deal with requests for maternity leave on an individual basis considering the time of the year in which the birth occurs and the physical condition of the teacher as reported by the teacher and her doctor, and keeping in mind that the only statutory purposes for leave are educational or professional purposes and where illness, maternity or other disability is the reason for the request. OAG 73-665.

Board of education may not grant a leave of absence to a teacher for one semester for the purpose of attending a professional baseball umpires school. OAG 74-157.

Although accumulated sick leave may not be granted for child care following childbirth, a leave of absence is appropriate for that purpose. OAG 75-259 (withdrawing OAG 73-585 and 74-274).

A board of education is not required to grant leave for child rearing as such is not a disability. OAG 76-18.

It would be a reasonable board requirement to have a teacher submit a statement of disability from a personal doctor when requesting disability leave although a board probably cannot require examination by a board appointed doctor. OAG 76-18.

A continued absence for disability not supported by a doctor's statement is neglect of duty by a teacher. OAG 76-18.

A local board of education, in its reasonable exercise of discretion to grant a leave of absence for educational or professional reasons, may include working elsewhere in the teaching profession. OAG 79-106, 1979 Ky. AG LEXIS 522.

A local board of education may grant a leave of absence under this section without the local superintendent's recommendation. OAG 79-106, 1979 Ky. AG LEXIS 522.

Where a teacher talked about resigning, or requesting a leave of absence, less than a month before school was to open, so as to accept a teaching position elsewhere, but eventually just left to accept that position, and where the local board of education, upon learning of this, at first voted to terminate her, but then, before notifying her, reversed itself and voted to grant her an unrequested leave of absence for the year, although there was no legally supportable reason why the teacher should not be denied a teaching position for the following year, since she never requested a leave as required by subsection (1) of this section, nevertheless the board's action in granting the leave meant that the teacher would be entitled to resume her original status, at the end of the year, if she elected to return. OAG 79-106, 1979 Ky. AG LEXIS 522.

A teacher seeking benefits under KRS 161.661(1) while on leave of absence under this section has in effect terminated his or her tenure contract status and accompanying rights with the board of education when the teachers' retirement system approves that teacher's application for disability retirement, which means the teacher has "retired" for the purposes of KRS 161.720 to 161.810; and if the teacher, who has been granted leave of absence and accepted by the teachers' retirement system for disability retirement benefits, then becomes able to return to work, the board of education no longer has to afford to that teacher his or her former tenure rights. OAG 79-157, 1979 Ky. AG LEXIS 474.

While participation as a representative in the General Assembly does not fall within the exact perimeters of this section, a local board of education could not legally deny an individual board employee a leave to serve in the General Assembly. OAG 80-18, 1980 Ky. AG LEXIS 624.

A board of education may require a physician's certificate of medical disability for purposes of this section so long as such certificate is required of all persons requesting leave for "illness, maternity or other disability." OAG 80-151, 1980 Ky. AG LEXIS 640.

A father is not eligible for leave under this section to care for a newborn child. OAG 80-151, 1980 Ky. AG LEXIS 640.

A request for leave by reason of "illness, maternity or other disability" may continue so long as a disability continues to exist and there is no two-year limit. OAG 80-151, 1980 Ky. AG LEXIS 640.

A teacher is not entitled to a maternity leave under this section if the teacher simply wants to stay home to take care of a child since a maternity leave is only available for a medical disability condition; when the teacher is no longer disabled from the pregnancy, childbirth and recovery therefrom, the teacher's leave of absence without pay should terminate, and she should commence her teaching duties. OAG 80-151, 1980 Ky. AG LEXIS 640.

Although KRS 161.155 will not permit a school board requirement of a physician's certificate of an employee's disability to work in that an affidavit of the teacher will suffice,

there is nothing in this section to preclude a board of education from requiring a physician's certificate; a school board could adopt such a policy pursuant to KRS 160.340(2)(e) which requires the board to adopt personnel policies that apply to certified employees. OAG 80-151, 1980 Ky. AG LEXIS 640.

This section places no duration limitation on a request for a leave due to "illness, maternity or other disability" since the two-year language is germane only to the educational or professional leave request as is the renewal language. OAG 80-151, 1980 Ky. AG LEXIS 640.

When a teacher has been approved to go on an unpaid leave of absence pursuant to this section for disability reasons, he or she is no longer entitled to use accumulated sick leave days, and is not entitled to pay for any holidays occurring during that absence. OAG 83-457, 1983 Ky. AG LEXIS 40.

The teacher on a leave of absence is subject to the usual application of school laws as to his or her employment contract status. OAG 84-43, 1984 Ky. AG LEXIS 343.

Subsection (3) of this section may not be construed so as to place a limited contract teacher on leave of absence in a different position than every other limited contract teacher in a school system; therefore, a nontenured teacher on leave of absence at the time renewal of his or her contract comes under consideration (before April 30th), may be recommended by a superintendent for nonrenewal the same as all other limited contract teachers in the school system. OAG 84-43, 1984 Ky. AG LEXIS 343.

The language in subsection (3) of this section is applicable and limited to a return to education responsibilities from a leave of absence during a given contract period, which, for a limited contract teacher is for a one year period only. OAG 84-43, 1984 Ky. AG LEXIS 343.

Payment by a board of education for the sabbatical leave of a teacher or superintendent is constitutional so long as the teacher or superintendent agrees to extend at least two years of future services to the school board. OAG 88-29, 1988 Ky. AG LEXIS 29.

When subsection (1) of this section authorizes a leave of absence for not more than "two (2) consecutive school years," that period of time encompasses two consecutive time periods beginning on July 1 and ending on June 30. Therefore, this language does not authorize the granting of a leave of absence that spans three consecutive school years, although the leave may only last two consecutive calendar years. OAG 91-134, 1991 Ky. AG LEXIS 133.

Both this section and KRS 158.782(2) provide for the granting of a leave for a period of not more than two (2) consecutive school years; however, both statutes authorize renewal of a leave of absence, upon approval. OAG 91-134, 1991 Ky. AG LEXIS 133.

A school board may grant an unpaid leave of absence only if it determines that the leave of absence falls within one or more of the statutory categories, i.e., educational or professional purposes, illness, maternity, adoption of a child, or other disability. OAG 01-9, 2001 Ky. AG LEXIS 11.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Teacher disciplinary hearings, 701 KAR 5:090.

Kentucky Bench & Bar.

Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

161.780. Termination of contract by teacher or superintendent — Resignation binding as of date of acceptance.

(1) No teacher shall be permitted to terminate his or her contract within fifteen (15) days prior to the first instructional day of the school term at a school to which the teacher is assigned or during the school term without the consent of the superintendent. No superintendent shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the employing board of education. A teacher shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing superintendent. A superintendent shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing board of education. Upon complaint by the employing board or superintendent to the Education Professional Standards Board, the certificate of a teacher or superintendent terminating his contract in any manner other than provided in this section may be suspended for not more than one (1) year, pursuant to the hearing procedures set forth in KRS 161.120.

(2) If a teacher voluntarily resigns his contract during the school term, the resignation shall be in writing and shall become binding on the date the resignation is accepted by the superintendent. No further action by the employing board is necessary. The resignation is effective on the date specified in the letter of resignation. A resignation, once accepted, may be withdrawn only with the approval of the employing board of education. Nothing in this subsection shall release the teacher from liability to the local board of education for breach of contract.

History.

Enact. Acts 1942, ch. 113, § 7; 1944, ch. 98; 1978, ch. 57, § 1, effective June 17, 1978; 1990, ch. 56, § 1, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 248, effective July 13, 1990; 1992, ch. 326, § 1, effective July 14, 1992; 2000, ch. 269, § 2, effective July 14, 2000; 2008, ch. 113, § 7, effective April 14, 2008.

Compiler's Notes.

Section 2 of Acts 1990, ch. 56 provided that the provisions of KRS 161.780 shall apply to any litigation in progress on July 13, 1990.

NOTES TO DECISIONS

Cited in:

Commonwealth ex rel. Funk v. Robinson, 314 Ky. 344, 235 S.W.2d 780, 1950 Ky. LEXIS 1092 (Ky. 1950).

OPINIONS OF ATTORNEY GENERAL.

KRS 161.760(1) and this section are not in conflict since KRS 161.760(1) concerns termination of employment only and this section concerns refusal of an assignment. OAG 64-576.

Although neither this section nor the regulation governing the procedure for suspending a certificate after a breach of contract provides any guidelines for when the complaint is to be made by the employing board, a local board of education should present the matter to the superintendent of public instruction within a reasonable period following the occurrence of the wrongful termination; the board would not be acting conscionably to delay its complaint since the one-year suspension period was meant to coincide with the school year prior to which the wrongful termination took place. OAG 80-120, 1980 Ky. AG LEXIS 525.

The provisions of this section do not apply to terminations by teachers of their contracts while schools are in session during the regular school term. OAG 80-120, 1980 Ky. AG LEXIS 525.

161.790. Termination of contract by board — Administrative hearing tribunal — Sanctions.

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, the Education Professional Standards Board, or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability; or

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsection (1)(a) and (d) of this section shall be supported by a written record of the actions of the teacher upon which the charge is based, provided by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the commissioner of education and the superintendent of his or her intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4)(a) Except as provided in KRS 163.032, upon receiving the teacher's notice of his or her intention to answer the charge, the commissioner of education shall appoint a three (3) member tribunal, consisting of one (1) teacher, who may be retired, one (1) administrator, who may be retired, and one (1) attorney to serve as hearing officer and chairperson of the tribunal, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. Priority for selection as a teacher or administrator tribunal member shall be from a pool of potential tribunal members who have been designated and trained to serve as tribunal members on a regular and ongoing basis, pursuant to administrative regulations promulgated by the Kentucky Board of Education. Funds appropriated to the Department of Education for professional development may be used to provide tribunal member training. The commissioner of education shall set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge unless an extension is granted by the hearing officer or otherwise agreed to by the parties.

(b) The hearing officer shall be appointed from a pool of hearing officers who have received in-depth training in the law related to employment of teachers and in the conduct of due process hearings pursuant to KRS Chapter 13B, and who hold other qualifications as determined by the Kentucky Board of Education.

(c) The hearing officer training shall be designed and conducted by the Kentucky Department of Education.

(d) The Kentucky Board of Education shall adopt administrative regulations to implement the due process provisions required by this section. Persons serving as hearing officers shall be paid or reimbursed as provided in KRS 13B.030.

(5) The hearing officer shall schedule a mandatory prehearing conference with the parties, which may be held in person or electronically through the use of technology. Prehearing motions may be disposed of at the conference. The hearing officer shall have the authority to mediate settlement and to enter an agreed order if the matter is resolved by the parties. A hearing officer shall have final authority to rule on dispositive prehearing motions.

(6) If the matter is not settled or dismissed as a result of the prehearing conference, a tribunal hearing shall be conducted. The hearing may be public or private at the discretion of the teacher. At the hearing, the hearing officer appointed by the commissioner of education shall preside with authority to rule on procedural matters, but the tribunal as a whole shall be the ultimate trier of fact. The local board shall pay each teacher and administrator member of the tribunal a per diem of one hundred dollars ($100) and travel expenses.

(7) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. The decision, written in a recommended order, shall be limited to upholding or overturning the decision of the superintendent. The hearing officer shall then within fifteen (15) days submit to the parties the written recommended order in a form complying with the requirements of KRS 13B.110(1). Each party may file written exceptions no later than fifteen (15) days from receipt of the recommended order. Upon consideration of the exceptions filed by the parties, the hearing officer may order a settlement conference between the parties. Within ten (10) days after either the consideration of the exceptions or a settlement conference, whichever occurs later, the hearing officer shall enter a final order. If there is no settlement reached, the final order shall affirm the recommended order. If a settlement is reached, the final order shall approve the terms of a written settlement as an agreed order. Provisions of KRS Chapter 13B notwithstanding, the hearing officer's decision shall be a final order.

(8) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his or her judgment, the character of the charge warrants the action. If the contract termination is overturned by the final order, the suspended teacher shall be paid his or her full salary for any period of suspension.

(9) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B. The review of the final order shall be conducted by the Circuit Court as required by KRS 13B.150.

(10) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply if the teacher is suspended without pay or publicly reprimanded. The teacher may appeal the action of the superintendent if these sanctions are imposed in the same manner as established in subsections (4) to (9) of this section. Upon completion of a suspension period, the teacher may be reinstated.

History.

Enact. Acts 1942, ch. 113, § 8; 1944, ch. 98; 1964, ch. 41, § 6; 1988, ch. 370, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 85, effective July 13, 1990; 1996, ch. 318, § 53, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 16, effective April 14, 1998; 2000, ch. 200, § 1, effective July 14, 2000; 2002, ch. 141, § 1, effective July 15, 2002; 2006, ch. 208, § 3, effective July 12, 2006; 2019 ch. 30, § 2, effective June 27, 2019.

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1. Constitutionality.

Termination of a "tenured teacher" does not deprive the teacher of property interests and contract rights without procedural due process merely because the school board is cast into and occupies the roles of employer, accuser, investigator, prosecutor, judge and jury. Board of Education v. Burkett, 525 S.W.2d 747, 1975 Ky. LEXIS 108 (Ky. 1975).

Where the teacher had a 15-year-old student show a controversial, highly suggestive, and somewhat sexually explicit movie to a group of high school students aged 14 to 17, she did not preview the movie, despite the fact that she had been warned that portions were unsuitable for viewing in this context, and she made no attempt at any time to explain the meaning of the movie or to use it as an educational tool, this section proscribing "conduct unbecoming a teacher" gave her adequate notice that such conduct would subject her to discipline; accordingly, this section was not unconstitutionally vague as applied to her conduct. Fowler v. Board of Education, 819 F.2d 657, 1987 U.S. App. LEXIS 6912 (6th Cir. Ky.), cert. denied, 484 U.S. 986, 108 S. Ct. 502, 98 L. Ed. 2d 501, 1987 U.S. LEXIS 5177 (U.S. 1987).

2. Power of Board.

It was the intention of the legislature in enacting this section to allow the local board of education to make the final determination of dismissal and once the board's hearing is commenced, the superintendent may not attempt to terminate the proceedings by withdrawing his recommendation. Bell v. Board of Education, 557 S.W.2d 433, 1977 Ky. App. LEXIS 836 (Ky. Ct. App. 1977).

This section does not require that the board's deliberations and decision on termination must be held at a public meeting and, accordingly, a decision to dismiss two (2) teachers was not void because it was taken during a closed session. Bell v. Board of Education, 557 S.W.2d 433, 1977 Ky. App. LEXIS 836 (Ky. Ct. App. 1977); Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978).

The power of the board of education to discipline teachers is not based on personal moral judgments by board members; it exists only because of the legitimate interests of the government in protecting the school community and the students from harm. Board of Education v. Wood, 717 S.W.2d 837, 1986 Ky. LEXIS 306 (Ky. 1986).

It was not the intention of the legislature to subject every teacher to discipline or dismissal for private shortcomings that might come to the attention of the board of education but have no relation to the teacher's involvement or example to the school community. Board of Education v. Wood, 717 S.W.2d 837, 1986 Ky. LEXIS 306 (Ky. 1986).

County board of education had an inherent right to appeal decision of tribunal's that teacher should not have been terminated on grounds that tribunal decision was arbitrary even though the board did not have a liberty interest at stake. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880, 1996 Ky. LEXIS 130 (Ky. 1996).

Although no express right of appeal was given board of education under subsection (8) of this section, since the three-member tribunal created in subsection (4) of this section is a separate and distinguishable entity from the county board of education and thus the tribunal is not an agent of the board, the board is not barred from appealing the tribunal's decision that a teacher's contract should not be terminated. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880, 1996 Ky. LEXIS 130 (Ky. 1996).

Although a ban that prohibited a teacher from attending a local teachers' meeting made by a school principal and a director of employee relations violated his free association rights, the unconstitutional acts were not made by final policymakers under KRS 161.790, 160.370, and 160.340 and thus could not give rise to school board liability. Baar v. Jefferson County Bd. of Educ., 666 F. Supp. 2d 701, 2009 U.S. Dist. LEXIS 100066 (W.D. Ky. 2009), modified, 686 F. Supp. 2d 699, 2010 U.S. Dist. LEXIS 14570 (W.D. Ky. 2010).

3. —Constitutional Protection.

County board of education is a political body with a corporate structure and is entitled to the protection of Ky. Const., § 2. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880, 1996 Ky. LEXIS 130 (Ky. 1996).

4. Notice.

This section does not require greater exactitude than a civil complaint and fair notice of the essential notice and bases is sufficient. Board of Education v. Chattin, 376 S.W.2d 693, 1964 Ky. LEXIS 471 (Ky. 1964), overruled, Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607, 1967 Ky. LEXIS 325 (Ky. 1967).

Where formal notice of termination of contract referred to a supervisor's report for details of charges against teacher and it gave adequate notice of such details, the notice was sufficient. Knox County Board of Education v. Willis, 405 S.W.2d 952, 1966 Ky. LEXIS 277 (Ky. 1966).

Requirement of a very particular statement is a prerequisite to termination of an existing contract but does not apply to failure to renew a contract. Sparks v. Board of Education, 549 S.W.2d 323, 1977 Ky. App. LEXIS 664 (Ky. Ct. App. 1977).

Where a charge of insubordination specified that a tenured teacher failed to obey the instruction of the superintendent that he cease and desist all forms of physical and mental punishment of students and where the charge of conduct unbecoming a teacher specified abusive treatment of young students, the charges and specifications coupled with the information furnished appellant as to the nature of anticipated testimony were sufficiently specific as to inform him of the acts which he had to defend against. Mavis v. Board of Education, 563 S.W.2d 738, 1977 Ky. App. LEXIS 906 (Ky. Ct. App. 1977).

The allegations made against a teacher were not in sufficient detail to satisfy the statutory requirements, and they did not afford him the notice to adequately prepare a defense where he was not told the names, dates, occurrences or other data upon which his supervisor relied to prove his inefficiency as a classroom teacher. Blackburn v. Board of Education, 564 S.W.2d 35, 1978 Ky. App. LEXIS 495 (Ky. Ct. App. 1978).

The giving of mere notice of a general grounds for termination in the language used in the statute, such as inefficiency or incompetency, is not sufficient to inform a teacher of the specific nature of the charges against him, so as to permit the preparation of an adequate defense. Blackburn v. Board of Education, 564 S.W.2d 35, 1978 Ky. App. LEXIS 495 (Ky. Ct. App. 1978).

As neither a superintendent nor a school commissioner received a teacher's response within 10 days of the teacher's receipt of a termination letter, the teacher failed to strictly comply with the notice requirements of KRS 161.790(3). The teacher's failure to meet the notice requirement denied the appellate court jurisdiction to consider the teacher's defense to charges of insubordination and conduct unbecoming a teacher. Sajko v. Jefferson County Bd. of Educ., 2008 Ky. App. LEXIS 297 (Ky. Ct. App. 2008), aff'd in part and rev'd in part, 314 S.W.3d 290, 2010 Ky. LEXIS 160 (Ky. 2010).

Administrative tribunal erred in holding that KRS 161.790(3) did not require actual receipt, rather than mere mailing, of a teacher's notice of intent to answer charges within ten days of the teacher's receipt of a superintendent's dismissal letter; where the method of notice was not specified, actual receipt was required. Sajko v. Jefferson County Bd. of Educ., 314 S.W.3d 290, 2010 Ky. LEXIS 160 (Ky. 2010).

Failure of a teacher to exhaust the specific, applicable administrative process under the statute prevented any argument as to the impropriety of his suspension and thus removed any basis for his breach of contract claim. Bd. of Educ. of Paris v. Earlywine, 2023 Ky. App. LEXIS 16 (Ky. Ct. App. 2023), rev'd in part, aff'd, 719 S.W.3d 1, 2025 Ky. LEXIS 13 (Ky. 2025).

5. Charges.

Where written charges against teacher were so vague and indefinite so that they did not furnish teacher sufficient information upon which he could base a defense such charges were not sufficient to support order of dismissal. Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607, 1967 Ky. LEXIS 325 (Ky. 1967).

A tenured teacher has the right to contest the truth of the grounds alleged for termination in a hearing before the school board and, if successful, in a trial de novo before the Circuit Court. Bowlin v. Thomas, 548 S.W.2d 515, 1977 Ky. App. LEXIS 654 (Ky. Ct. App. 1977).

Where the school board did not make any written findings indicating which charge it found to be grounds for termination but the record showed that the charges were proven by ample evidence, the dismissal was supported by the evidence and written findings were not required. Bell v. Board of Education, 557 S.W.2d 433, 1977 Ky. App. LEXIS 836 (Ky. Ct. App. 1977).

The board was not required to issue findings as to the particular charges of which a tenured teacher was deemed guilty, where there were only two (2) charges, and the evidence supported a finding of guilt on each charge. Mavis v. Board of Education, 563 S.W.2d 738, 1977 Ky. App. LEXIS 906 (Ky. Ct. App. 1977).

The charges against a teacher were not supported by written records of teacher performance, as required by this section, where the teacher had been employed in the school system for nine (9) years and no written evaluation of his performance had been prepared during those years until only a few weeks before his discharge. Blackburn v. Board of Education, 564 S.W.2d 35, 1978 Ky. App. LEXIS 495 (Ky. Ct. App. 1978).

A petition signed by parents of children in a teacher's class complaining of corporal punishment she inflicted on the children is not "written records" within subsection (2)(a) (deleted by 1990 amendment) of this section. Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978).

One purpose of the requirements of subsection (2)(a) (deleted by 1990 amendment) of this section is to make the teacher aware of deficiencies so that she or he may correct same before being terminated. Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978).

Tape recordings and notes of student interviews made by the school superintendent of which a teacher was uninformed prior to a hearing to determine whether to continue her services are not "written records" within the meaning of subsection (2)(a) (deleted by 1990 amendment) of this section. Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978).

6. Particular Grounds.

7. —Absence Due to Illness.

Where a teacher had frequently been unable to attend classes because of his illnesses, and had been granted a leave of absence to allow psychiatric care on at least one occasion and where he would be able to work only on a part-time basis and was still a patient in the University of Kentucky Medical Center, such evidence supported the board's decision to terminate his contract. Kelly v. Board of Education, 566 S.W.2d 165, 1977 Ky. App. LEXIS 916 (Ky. Ct. App. 1977).

Ky. Rev. Stat. Ann. § 161.790 is the more specific statute in that it addresses itself exclusively addresses itself exclusively to contract disputes between a teacher and their local board involving charges of insubordination or misconduct within the school setting; immoral or unlawful conduct within and without the school setting; mental or physical disability; or incompetence and neglect of duties; Ky. Rev. Stat. Ann. § 45A.245(1) is a general provision which does not conflict with § 161.790. Bd. of Educ. of Paris v. Earlywine, 719 S.W.3d 1, 2025 Ky. LEXIS 13 (Ky. 2025).

8. —Incompetency.

When the charges upon which the teacher is to be dismissed involve inefficiency, incompetency or neglect of duty, a written statement identifying the problem or problems must have been previously furnished to the teacher and it is clear that

some opportunity for the teacher to correct the problem should be permitted. Blackburn v. Board of Education, 564 S.W.2d 35, 1978 Ky. App. LEXIS 495 (Ky. Ct. App. 1978).

Written charges, furnished to the teacher at the time of a termination, do not fulfill the requirement of a written statement identifying the problem when incompetency, inefficiency or neglect of duty are the grounds for such termination. Blackburn v. Board of Education, 564 S.W.2d 35, 1978 Ky. App. LEXIS 495 (Ky. Ct. App. 1978).

Where a year had passed since a teacher had been transferred, and she had subsequently been rehired, whatever notice of problems and difficulties she may have had then had dissipated, since the rehiring indicated the board was not too dissatisfied by her performance. Carter v. Craig, 574 S.W.2d 352, 1978 Ky. App. LEXIS 626 (Ky. Ct. App. 1978).

9. —Insubordination.

Where teacher was denied reemployment after taking an unauthorized leave of absence, which demonstrated rank insubordination and amounted to neglect of duty on his part, his allegation that the defendants were motivated by political considerations was an unsupported legal conclusion and was insufficient to withstand the motion for summary judgment. Miller v. Board of Education, 54 F.R.D. 393, 1971 U.S. Dist. LEXIS 14508 (D. Ky.), aff'd, 452 F.2d 894, 1971 U.S. App. LEXIS 6457 (6th Cir. Ky. 1971).

10. —Misconduct.

This section applies only where there is an element of misconduct on the part of the teacher which gives rise to the termination. Harlan County Board of Education v. Stagnolia, 555 S.W.2d 828, 1977 Ky. App. LEXIS 805 (Ky. Ct. App. 1977).

Contracts of tenured teachers may be terminated for conduct unbecoming a teacher or immoral conduct involving off-campus activities involving students, notwithstanding written records indicating a satisfactory teacher performance. Board of Education v. Wood, 717 S.W.2d 837, 1986 Ky. LEXIS 306 (Ky. 1986).

Great care must be taken to ensure that proof of conduct of an immoral nature or conduct unbecoming a teacher which is sufficient to merit discharge of a tenured teacher should be of the same quality as required by other subsections of this section, that is, written documentation from impartial sources to substantiate the charges or its substantial equivalent. Board of Education v. Wood, 717 S.W.2d 837, 1986 Ky. LEXIS 306 (Ky. 1986).

Conduct of an immoral nature or conduct unbecoming a teacher which is sufficient to merit discharge of a tenured teacher, when it occurs in a context other than professional competency in the classroom, should have some nexus to the teacher's occupation, as was true where the defendant smoked marijuana with two (2) students. Board of Education v. Wood, 717 S.W.2d 837, 1986 Ky. LEXIS 306 (Ky. 1986).

A teacher is held to a standard of personal conduct which does not permit the commission of immoral or criminal acts because of the harmful impression made on the students. Board of Education v. McCollum, 721 S.W.2d 703, 1986 Ky. LEXIS 302 (Ky. 1986).

Where the teacher deliberately and intentionally took sick leave from his employment for the purpose of driving a coal truck to another state, he executed a false affidavit in regard to the sick day, and he failed to visit a homebound student for the minimum required time, there was substantial evidence supporting the termination of the teacher for conduct unbecoming a teacher under subdivision (1)(b) of this section. Board of Education v. McCollum, 721 S.W.2d 703, 1986 Ky. LEXIS 302 (Ky. 1986).

Where the teacher introduced a controversial and sexually explicit movie into a classroom of adolescents without preview, preparation, or discussion, her conduct constituted "conduct unbecoming a teacher" within the meaning of subdivision (1)(b) of this section. Fowler v. Board of Education, 819 F.2d 657, 1987 U.S. App. LEXIS 6912 (6th Cir. Ky.), cert. denied, 484 U.S. 986, 108 S. Ct. 502, 98 L. Ed. 2d 501, 1987 U.S. LEXIS 5177 (U.S. 1987).

Statements made by education association, its representative and teacher at public meetings and hearings were protected by the First Amendment to the United States Constitution, where association and teacher at school board meetings called for the termination of principal accused of using a racial epithet to introduce a school employee. Eaton v. Newport Bd. of Educ., 975 F.2d 292, 1992 U.S. App. LEXIS 22220 (6th Cir. Ky. 1992), cert. denied, 508 U.S. 957, 113 S. Ct. 2459, 124 L. Ed. 2d 674, 1993 U.S. LEXIS 3851 (U.S. 1993).

It was not arbitrary and capricious for Commissioner of Education to require acting county school superintendent to dismiss former school superintendent who had been reassigned as an at-will employee and against whom serious charges of financial misconduct had been brought while formerly employed as superintendent. Shepherd v. Boysen, 849 F. Supp. 1168, 1994 U.S. Dist. LEXIS 5330 (E.D. Ky. 1994).

Because the school employee had not presented evidence from which a reasonable jury could conclude that the employer's proffered reason for firing her was pretextual, and because the employee had forfeited her retaliation claims and state-law claims, the appellate court affirmed the judgment of the district court. Macy v. Hopkins County Sch. Bd. of Educ., 484 F.3d 357, 2007 FED App. 0133P, 2007 U.S. App. LEXIS 8382 (6th Cir. Ky. 2007), cert. denied, 552 U.S. 826, 128 S. Ct. 201, 169 L. Ed. 2d 37, 2007 U.S. LEXIS 9127 (U.S. 2007), overruled, Lewis v. Humboldt Acquisition Corp., 681 F.3d 312, 2012 FED App. 155P, 2012 U.S. App. LEXIS 10618 (6th Cir. Tenn. 2012), abrogated as stated in, Esparza v. Pierre Foods, 923 F. Supp. 2d 1099, 2013 U.S. Dist. LEXIS 18624 (S.D. Ohio 2013).

Where a teacher was discharged after being charged with assault, violating a domestic violence order, carrying a concealed weapon, and stalking, she was ineligible to receive unemployment benefits under KRS 341.370 because she engaged in disqualifying misconduct in engaging in conduct unbecoming a teacher under KRS 161.790. Hutchison v. Ky. Unemployment Ins. Comm'n, 329 S.W.3d 353, 2010 Ky. App. LEXIS 222 (Ky. Ct. App. 2010).

Trial court properly reversed an administrative decision from a tribunal hearing regarding the discipline of a teacher who was charged with conduct unbecoming a teacher, in violation of KRS 161.790(1)(b), as the tribunal's factual findings provided no indication that the teacher exhibited any such conduct. "Conduct unbecoming a teacher" meant more than one incident of physically coercing an unruly child to the office; the grouping of "conduct unbecoming a teacher" in the same section as "immoral character" implied that the former conduct was the type of conduct that had the suggestion of immorality or similarly egregious conduct. Bd. of Educ. v. Hurley-Richards, 2011 Ky. App. LEXIS 147 (Ky. Ct. App. Sept. 2, 2011), aff'd, 396 S.W.3d 879, 2013 Ky. LEXIS 88 (Ky. 2013).

Teacher's conduct, as found by the Tribunal and described in its final order, did not constitute "conduct unbecoming a teacher" within the meaning of KRS 161.790(1)(b), and did not justify the termination or suspension of her contract; the teacher's conduct was entirely reasonable under the circumstances and did not offend the sensibilities of a reasonable person. Bd. of Educ. v. Hurley-Richards, 396 S.W.3d 879, 2013 Ky. LEXIS 88 (Ky. 2013).

School principal's termination for conduct unbecoming a teacher was justified because the principal's attempts to hide evidence and influence witnesses during investigations into security breaches in standardized student testing procedures used at the principal's school was conduct which offended the sensibilities of reasonable persons under the circumstances. Mike v. Dep't of Educ., 529 S.W.3d 781, 2017 Ky. App. LEXIS 44 (Ky. Ct. App. 2017).

11. —Voluntary Leave of Absence.

Where a teacher took an indeterminate voluntary leave of absence without the consent of the school board, an act of resignation occurred and the school board was under no obligation to take the teacher back. Miller v. Noe, 432 S.W.2d 818, 1968 Ky. LEXIS 358 (Ky. 1968).

12. Resignation.

Where plaintiff, a teacher, was employed in one school district for six successive years, resigned, taught in another school system the following year, again resigned, took a year off and then taught for three years in a third school district before being released, he was entitled to no hearing under this section, since, although he had achieved tenure at his first position, when he resigned he lost his tenure by reason of subsection (4) of KRS 161.720 and subdivision (1)(c) of KRS 161.740 is inapplicable. Carpenter v. Board of Education, 582 S.W.2d 645, 1979 Ky. LEXIS 265 (Ky. 1979).

13. Transfer to Noncertified Position.

Where a high school principal was transferred, at the same pay level, to a newly created position as supervisor of transportation for the school system, the transfer from a certified to a noncertified position amounted to "termination" as a "teacher" under subsections (1) and (4) of KRS 161.720; accordingly, the principal was entitled to a hearing as required by this section. Crawley v. Board of Education, 658 F.2d 450, 1981 U.S. App. LEXIS 18054 (6th Cir. Ky. 1981).

14. Undesirable Reassignment.

The statutory method of terminating a teacher's tenure contract under this section and KRS 161.800 should be used rather than the indirect means of unworthy or undesirable reassignment. Lewis v. Board of Education, 348 S.W.2d 921, 1961 Ky. LEXIS 42 (Ky. 1961).

15. Written Records of Teacher Performance.

Where the charge for termination of a tenured teacher is based on evidence of immoral character or conduct unbecoming a teacher, the requirement of former subdivision (2)(a) of this section, that the charge be supported by written records of teacher performance, did not require an evaluation of the teacher during the tenure of employment. Board of Education v. McCollum, 721 S.W.2d 703, 1986 Ky. LEXIS 302 (Ky. 1986).

In connection with KRS 161.790, a charge of insubordination must be supported by a written record of teacher performance, which cannot be based solely on statutes, regulations, local board of education policies, or teacher contracts, but must be specific to the individual teacher and the circumstances leading up to the charge; thus, where a superintendent failed to support his charge of insubordination against a teacher who was absent without leave while she served a 90-day federal prison term for trespass on federal property, dismissal of the charge against the teacher was required. James v. Sevre-Duszynska, 173 S.W.3d 250, 2005 Ky. App. LEXIS 188 (Ky. Ct. App. 2005).

16. Reviewing Tribunal.

Although a tribunal established pursuant to this section had authority to modify penalty imposed by superintendent, it did not have the authority to reduce teacher's termination to a lesser sanction where the tribunal made specific findings that the teacher's insubordination and conduct unbecoming a teacher merited termination, made no mitigating findings on behalf of teacher or any findings that superintendent had acted arbitrarily, and gave no reason for its reduction of the penalty. Gallatin County Bd. of Educ. v. Mann, 971 S.W.2d 295, 1998 Ky. App. LEXIS 50 (Ky. Ct. App. 1998).

Substantial evidence in the record supported the hearing tribunal's conclusion that the school employee's two (2) violations of the teacher tenure statute warranted a reprimand and suspension, and not the termination recommended by superintendent; the tribunal alone had the right under the statute to decide the appropriate sanction, thus, its other finding that denied the school employee's motion for directed verdict on the issue of the termination of her contract as a teacher also had to be upheld since substantial evidence supported that decision as well. Fankhauser v. Cobb, 2002 Ky. App. LEXIS 587 (Ky. Ct. App. 2002), aff'd, 163 S.W.3d 389, 2005 Ky. LEXIS 155 (Ky. 2005).

17. Job Protection.

The ordinary duties of a school principal differ greatly from those of a school teacher, as administrative personnel have either fiscal management duties and educational supervisory duties, or both, with responsibilities which are quite different from those of classroom teachers. The role of an administrator in carrying out policy and in formulating overall policy is also quite different from that of a teacher, and it is certainly not beyond reason that the legislature would deem it advisable not to give one whose supervisory and policy role is so different the same kind of job protection given to a classroom teacher. Hooks v. Smith, 781 S.W.2d 522, 1989 Ky. App. LEXIS 151 (Ky. Ct. App. 1989).

18. Liability of Board Members.

The individual members of a school board are liable in damages for breaching a contract with a teacher employed by them. Race v. Humphrey, 301 Ky. 10, 190 S.W.2d 686, 1945 Ky. LEXIS 680 (Ky. 1945).

19. Civil Rights Challenge.

Where a second state administrative tribunal upheld a teacher's termination eight years after the first tribunal found that the teacher had engaged in conduct unbecoming a teacher within the meaning of KRS 161.790(1)(b) by taking topless photographs of a female student, the teacher failed to comply with the applicable one-year statute of limitations under KRS 413.140(1)(a) when he filed an action under 42 U.S.C.S. § 1983 after the second hearing and alleged that a principal and school attorney violated his due process rights by allowing "faked" photographs to be submitted against him at the original hearing; the alleged violation of due process was not an ongoing or continuing violation through the time of the second tribunal hearing. Dixon v. Clem, 2007 FED App. 0255P, 2007 U.S. App. LEXIS 16247 (6th Cir. Ky.), amended, 492 F.3d 665, 2007 FED App. 0296A, 2007 U.S. App. LEXIS 18614 (6th Cir. Ky. 2007).

20. Appeal.

The findings of the court on review should be given the same consideration as in the cases where the court acts in place of a properly instructed jury and unless the decision is flagrantly or palpably against the evidence the Court of Appeals will not set it aside. Hapner v. Carlisle County Board of Education, 305 Ky. 858, 205 S.W.2d 325, 1947 Ky. LEXIS 892 (Ky. 1947).

The Circuit Court is not confined to the record of the administrative body nor bound by its decision but may require a trial de novo especially where due process has not been observed in the administrative proceedings. Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607, 1967 Ky. LEXIS 325 (Ky. 1967). See Story v. Simpson County Board of Education, 420 S.W.2d 578, 1967 Ky. LEXIS 120 (Ky. 1967).

Provision authorizing court on appeal to hear additional evidence is valid, (overruling holding to contrary in Board of Educ. v. Chattin, 376 S.W.2d 693, 1964 Ky. LEXIS 471 (Ky. Ct. App. 1964)).Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607, 1967 Ky. LEXIS 325 (Ky. 1967). See Story v. Simpson County Board of Education, 420 S.W.2d 578, 1967 Ky. LEXIS 120 (Ky. 1967).

The opportunity for a de novo hearing at the Circuit Court level with the right to offer additional evidence, if so desired, was intended by the legislature to cure any deficiencies in the due process hearing at the board level. Kelly v. Board of

Education, 566 S.W.2d 165, 1977 Ky. App. LEXIS 916 (Ky. Ct. App. 1977).

Where a teacher received unequivocal notice that she would be demoted from an administrative position and reassigned as a special education teacher, and she failed to appeal the school board's action for approximately 15 months, her claim was properly dismissed. Frisby v. Board of Education, 707 S.W.2d 359, 1986 Ky. App. LEXIS 1097 (Ky. Ct. App. 1986).

Although no express right of appeal was given board of education under subsection (8) of this section, under the Constitution it had such right to appeal three-member tribunal's decision that teacher's contract should not have been terminated. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880, 1996 Ky. LEXIS 130 (Ky. 1996).

Circuit court properly dismissed a petition for a writ of prohibition where a teacher had a fully executed continuing contract of employment that entitled her to a tribunal hearing under Ky. Rev. Stat. Ann. § 161.790. Miracle v. Duncan, 568 S.W.3d 358, 2018 Ky. App. LEXIS 241 (Ky. Ct. App. 2018).

Cited in:

Redding v. Fincel, 311 Ky. 534, 224 S.W.2d 671, 1949 Ky. LEXIS 1179 (Ky. 1949); Board of Education v. Justice, 268 S.W.2d 648, 1954 Ky. LEXIS 921 (Ky. 1954); Taylor v. Hampton, 271 S.W.2d 887, 1954 Ky. LEXIS 1057 (Ky. 1954); Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1959); Moore v. Babb, 343 S.W.2d 373, 1960 Ky. LEXIS 105 (Ky. 1960); Bates v. Dause, 502 F.2d 865, 1974 U.S. App. LEXIS 6898 (6th Cir. 1974); Ford v. Jones, 372 F. Supp. 1187, 1974 U.S. Dist. LEXIS 9572 (E.D. Ky. 1974); Settle v. Camic, 552 S.W.2d 693, 1977 Ky. App. LEXIS 736 (Ky. Ct. App. 1977); Singleton v. Board of Education, 553 S.W.2d 848, 1977 Ky. App. LEXIS 751 (Ky. Ct. App. 1977); Burkett v. Board of Education, 558 S.W.2d 626, 1977 Ky. App. LEXIS 852 (Ky. Ct. App. 1977); Hart County Board of Education v. Broady, 577 S.W.2d 423, 1979 Ky. App. LEXIS 376 (Ky. Ct. App. 1979); Miller v. Board of Educ., 610 S.W.2d 935, 1980 Ky. App. LEXIS 414 (Ky. Ct. App. 1980); Fayette County Education Asso. v. Hardy, 626 S.W.2d 217, 1980 Ky. App. LEXIS 438 (Ky. Ct. App. 1980); Board of Education v. Rothfuss, 639 S.W.2d 545, 1982 Ky. LEXIS 297 (Ky. 1982); Banks v. Board of Education, 648 S.W.2d 542, 1983 Ky. App. LEXIS 281 (Ky. Ct. App. 1983); Evans v. Montgomery County Bd. of Education, 712 S.W.2d 358, 1986 Ky. App. LEXIS 1125 (Ky. Ct. App. 1986); Wicker v. Board of Education, 826 F.2d 442, 1987 U.S. App. LEXIS 10768 (6th Cir. 1987); Behanan v. Cobb, 2007 Ky. App. LEXIS 37 (Ky. Ct. App. 2007).

NOTES TO UNPUBLISHED DECISIONS

1. Civil Rights Challenge.

Unpublished decision: Defendant board of education was not liable for plaintiff teacher's claim of constitutional violation, as his reprimand was ordered by other defendant school officials who acted without a policy or custom of the board, and under KRS 161.790, 160.370, 160.340, the officials who reprimanded the teacher had no final policymaking authority. Baar v. Jefferson County Bd. of Educ., 476 Fed. Appx. 621, 2012 FED App. 0262N, 2012 U.S. App. LEXIS 5019 (6th Cir. Ky. 2012).

OPINIONS OF ATTORNEY GENERAL.

A school employee could not without the permission of the board and superintendent sign a letter in his capacity as an employee of the school system recommending that an individual be reelected to the General Assembly. OAG 63-572.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

A teacher under a continuing service contract may not be dismissed without cause and without following the provisions of this section. OAG 72-363.

This section does not apply to the assignment of duties and reduction in salary but it applies only to the termination of a contract for one of the causes specified in the statute as authorizing termination. OAG 73-342.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three years, returned from her leave and taught two (2) consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received, unless her contract is terminated for cause or her contract is suspended. OAG 73-486.

Since, under this section, the only way the continuing contract of tenured personnel can be terminated is by resignation, retirement or for cause, it is not necessary for the board of education to take any formal action at a board meeting relative to the continuing employment of tenured personnel, although there is no objection to incorporating into the minutes of the board the designation of names and positions of all tenured personnel in the school district for the ensuing school year. OAG 73-523.

Where a teacher was dismissed by the school board and accepted such termination voluntarily by not demanding or receiving a hearing upon notification of termination, if such teacher's civil rights were violated, not just contractual rights, any action for redress would have to be made in the courts but the present board would not be authorized to make a decision on such a matter or to grant tenure or restore sick leave. OAG 73-697.

An individual, who has completed one year as an assistant principal, who for ten years just prior to said year was not employed in education and prior to the ten-year period, was a teacher on tenure and has had at least three years' experience as an administrator, cannot be demoted without following the procedures of KRS 161.765 but under KRS 161.740 does not have tenure or a continuing contract and could be dismissed upon recommendation of the superintendent at the end of the school year without going through the procedures of KRS 161.790. OAG 75-413.

A board of education may not pay a suspended teacher any salary accumulated during his suspension unless it is determined at a hearing that the teacher's contract will not be terminated. OAG 76-102.

An order requesting a teacher to search for a bomb or other such device would be both unreasonable and dangerous and therefore a teacher's refusal to obey such an order would not be insubordination. OAG 77-254, 1977 Ky. AG LEXIS 527.

A local board of education may terminate the employment of a teacher under this section within the protected 40-70 age range based upon individual assessment of the teacher's ability, capabilities, etc. OAG 79-204, 1979 Ky. AG LEXIS 432.

If a superintendent determines that grounds exist for cause for contract termination, the procedures specified in this section are to be followed. OAG 83-362, 1983 Ky. AG LEXIS 138.

The term "teacher" in this statute embraces all certified employees in a school system below the superintendent. A principal or other administrator, in the context of school law, is first a teacher; in other words, the school administrator is a teacher assigned to administrative responsibilities in a school system. OAG 83-362, 1983 Ky. AG LEXIS 138.

As with the other listed discharge for cause categories, there are no definitions in subdivision (1)(b) of this section to guide a local superintendent and board of education relative to the scope of the terms "immoral" or "conduct unbecoming a teacher"; obviously then there is some discretion to be exercised in a fair and reasonable manner by a superintendent and subsequently by a board of education in commencing and conducting a proceeding to terminate a teacher's contract

based upon one or more of these general legal cause categories. It is not believed the lack of definitions or need for exercising such discretion presents a problem of vagueness in this section. OAG 83-362, 1983 Ky. AG LEXIS 138.

A single act showing immoral character or conduct unbecoming a teacher may be sufficiently serious enough on its own to stand as the basis for termination of teacher contract proceedings under subdivision (1)(b) of this section; the fulfillment of the requirements of subdivision (2)(a) (deleted by 1990 amendment) in situations of this sort would be accomplished by some supervisory personnel of the board, superintendent or principal, preparing in writing the manner in which it is believed the teacher's performance will be compromised or in whatever way adversely affected by the act showing immoral character or unbecoming conduct. OAG 83-362, 1983 Ky. AG LEXIS 138.

Since a trait of character is the issue under subdivision (1)(b) of this section, one method of proving character would be by a showing of a specific act or acts; thus, a charge of "immoral character," as used in that subdivision, may be based upon a specific act inimical to the public welfare and perhaps more importantly the welfare of a community school system. OAG 83-362, 1983 Ky. AG LEXIS 138.

Acts involving dishonesty, sexual misconduct or criminal action may be considered as either immoral conduct or conduct unbecoming a teacher within the scope of the causes for discharge; however, not every act involving dishonesty, sexual misconduct or criminal action can be deemed to impair the services of the teacher or administrator in instructing and supervising students or other school employees. School officials must be able to show that a nexus, or as it is sometimes referred to "rational connection," exists between the conduct and school purposes such as to justify the discharge of a school employee. OAG 83-362, 1983 Ky. AG LEXIS 138.

The tapes of the hearing concerning a teacher contract termination proceeding conducted pursuant to this section were available for public inspection under the Open Records Law, even though the tapes were in the possession of the reporter-transcriber rather than the Board of Education, as the teacher requested a public hearing and the matter had not reached the courts. OAG 87-62, 1987 Ky. AG LEXIS 23.

A recommendation of dismissal of a certified staff member from a distinguished educator is binding on the superintendent. Upon receiving the recommendation, the superintendent is required to notify the staff member pursuant to this section. OAG 92-135, 1992 Ky. AG LEXIS 211.

A tribunal is required to be appointed under subsection (4) of this section upon receipt of the teacher's notice of intention to answer the charge. OAG 92-135, 1992 Ky. AG LEXIS 211.

Teachers dismissed upon recommendation of a distinguished educator continue to have a statutory right to be given cause for their dismissal and a right of appeal. OAG 92-135, 1992 Ky. AG LEXIS 211.

Teachers retain the right to an individual determination of competence and compliance with school laws. The fact that the teachers are evaluated by the distinguished educator does not change the fact that, utlimately, dismissal occurs under this section for the reasons set forth therein. OAG 92-135, 1992 Ky. AG LEXIS 211.

Termination of a teacher who is placed on probation under the criteria of KRS 158.6455(5) constitutes termination for cause under this section, and accordingly invokes a right of appeal. OAG 92-135, 1992 Ky. AG LEXIS 211.

When a distinguished educator makes a dismissal recommendation to the superintendent pursuant to KRS 158.6455, that recommendation is binding on the superintendent. The recommendation is based on an individual evaluation of the teacher by the distinguished educator after a minimum of six months of evaluation. In view of the fact that the termination is for cause, based on an evaluation of the teacher, some documentation or evidence is required. OAG 92-135, 1992 Ky. AG LEXIS 211.

One time payments to teachers to induce retirement are constitutional under Ky. Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23, 1996 Ky. AG LEXIS 35.

A school district's denial of access to a settlement agreement with a former employee could not be justified by KRS 61.878(1)(l), operating in tandem with subsection (5) of this section, since the latter statute does not shield from disclosure a settlement agreement entered into by a teacher and a school district. OAG 00-ORD-5, 2000 Ky. AG LEXIS 52.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Drug testing of teachers involved in illegal use of controlled substances, 701 KAR 5:130.

Teacher disciplinary hearings, 701 KAR 5:090.

Kentucky Bench & Bar.

Wolnitzek, The Fair Demotion Act, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 23.

Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

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Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Kentucky Law Survey, Rogers and Sims, Administrative Law, 69 Ky. L.J. 489 (1980-81).

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Northern Kentucky Law Review.

Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process —Wells v. Board of Regents, 545 F.2d 15, 1976 U.S. App. LEXIS 6054 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716, 1977 U.S. App. LEXIS 13918 (6th Cir. 1977), 5 N. Ky. L. Rev. 141 (1978).

Wright, Fowler v. Board of Education: The Scope of Teachers' Free Speech Rights, 15 N. Ky. L. Rev. 279 (1988).

Edmondson and Rylee, Termination of the Tenured Teacher in Kentucky: Does K.R.S. 161.790

161.795. Investigation of and records that school employee acted improperly relating to statewide assessment program — Certain records to be expunged.

(1) In cases where a decision or judgment was tendered in an administrative or judicial proceeding before July 15, 1998, in an investigation of allegations that a teacher, administrator, or other school employee acted improperly relating to the statewide assessment program required by KRS 158.6453, all references relating to the investigation, findings, and disciplinary actions shall be expunged from the individual's personnel file by the local school district, and the Kentucky Department of Education and the Education Professional Standards Board shall expunge any references to the

investigation and findings in all agency files. This shall apply to all affected persons found not guilty of the allegations.

(2) After July 15, 1998, allegations that a teacher, administrator, or other school employee has acted improperly relating to the statewide assessment program required by KRS 158.6453 shall be investigated. If the individual is found not guilty of the allegations, all references to the charges shall be immediately expunged from the individual's personnel file in the local school district, and the Kentucky Department of Education and the Education Professional Standards Board shall expunge all references to the investigation from all agency files.

History.
Enact. Acts 1998, ch. 465, § 1, effective July 15, 1998.

161.800. Suspension of contracts on reducing number of teachers.

When by reason of decreased enrollment of pupils, or by reason of suspension of schools or territorial changes affecting the district, a local superintendent decides that it shall be necessary to reduce the number of teachers, he shall have full authority to make reasonable reduction. But, in making such reduction, the local superintendent shall, within each teaching field affected, give preference to teachers on continuing contracts and to teachers who have greater seniority. Teachers whose continuing contracts are suspended shall have the right of restoration in continuing service status in the order of seniority of service in the district if teaching positions become vacant or are created for which any of the teachers are or become qualified.

History.
Enact. Acts 1942, ch. 113, § 9; 1944, ch. 98; 1990, ch. 476, Pt. IV, § 249, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Pre-Suspension Hearing.

1. Construction.
This section deals with seniority only as it affects employment and not as it affects position. Marshall v. Conley, 258 S.W.2d 911, 1953 Ky. LEXIS 893 (Ky. 1953).

2. Pre-Suspension Hearing.
Tenured school teachers who were suspended because of decreased enrollment did not have a property right in continued employment and its benefits to entitle them to a pre-suspension hearing. Downs v. Henry County Bd. of Education, 769 S.W.2d 49, 1988 Ky. App. LEXIS 190 (Ky. Ct. App. 1988).

Cited in:
Taylor v. Hampton, 271 S.W.2d 887, 1954 Ky. LEXIS 1057 (Ky. 1954); Moore v. Babb, 343 S.W.2d 373, 1960 Ky. LEXIS 105 (Ky. 1960); Settle v. Camic, 552 S.W.2d 693, 1977 Ky. App. LEXIS 736 (Ky. Ct. App. 1977); Harlan County Board of Education v. Stagnolia, 555 S.W.2d 828, 1977 Ky. App. LEXIS 805 (Ky. Ct. App. 1977).

OPINIONS OF ATTORNEY GENERAL.

Under this section a teacher with a lifetime certificate based on 64 college hours and ten years' experience has seniority over the teacher who possesses a temporary certificate with 120 college hours and only three years' experience. OAG 61-528.

This section is applicable to both teachers with limited contracts and teachers with continuing contracts. OAG 61-528.

Seniority gives no special preference on nontenure teachers. OAG 73-383; 73-702.

When a shortage of funds necessitates the reduction of teaching personnel the only statutory preference granted is to teachers with a continuing contract, and the school board upon the recommendation of the superintendent may reemploy or not reemploy such teachers as have a limited contract provided those not to be reemployed are notified by May 15th. OAG 73-383; 73-702.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three years, returned from her leave and taught two consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received, unless her contract is terminated for cause or her contract is suspended. OAG 73-486.

The suspension of contracts under this section must be based upon continuing contracts and seniority and further, the certification of the teacher must be taken into account. OAG 80-150.

The term "qualified" at the end of this section must be construed as equivalent to certification, thus, if a teacher suspended from the teaching field affected is properly certified to teach in another teaching field in the school system and the suspended teacher has greater seniority than teachers in the field for which he or she is also qualified, then the continuing contract status teacher with the least seniority in that teaching field may be suspended under this section and so on. OAG 80-150.

Seniority is not required by statute to come into play in deciding which administrative employees to transfer as a result of reductions; however, school districts may adopt a procedure of considering seniority as a factor in a reduction of administrators situation. OAG 82-135, 1982 Ky. AG LEXIS 504.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Cross-References.
Conversion charter school petition, conversion, and operation, 701 KAR 8:040.

161.810. Continuance of status in case of annexation or consolidation of schools.

If an entire school district or that part of a school district which comprises the territory in which a school or schools are situated is transferred to any other district, or if the schools in an independent or county school district are consolidated or centralized, the teachers in such consolidated or centralized schools employed on continuing contracts immediately prior to such transfer, consolidation, or centralization shall, subject to the limitations imposed by KRS 161.800, have continuing service status in the newly centralized or consolidated school, or in the district to which the territory is transferred.

History.
Enact. Acts 1942, ch. 113, § 10; 1944, ch. 98; repealed and

reenact., Acts 1990, ch. 476, Pt. V, § 547, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:
Taylor v. Hampton, 271 S.W.2d 887, 1954 Ky. LEXIS 1057 (Ky. 1954).

CIVIL SERVICE FOR NONINSTRUCTIONAL EMPLOYEES OF BOARD OF EDUCATION OF CITY OF SECOND CLASS

161.821. Definitions for KRS 161.822 to 161.837. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 1) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.822. Board of education in city of second class authorized to establish civil service system for noninstructional employes — Petition — Resolution — Creation of commission. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 2) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.823. Civil service commission — Membership — Appointment — Term — Vacancies — Compensation — Meetings — Quorum. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 3) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.824. Employes of commission — Appropriation for expenses. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 4) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.825. Noninstructional employes of board of education to be appointed from eligibility lists. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 4) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.826. Rules and regulations governing civil service system. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 5; 1966, ch. 239, § 147) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.827. Emergency appointments — Promotions — Classification of present employes. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 6) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.828. Tenure of employes — Dismissal or suspension. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 7) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.829. Prohibition against solicitation or assessment, political activity or acceptance of compensation other than salary. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, §§ 8 and 12) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.830. Political or religious opinions not to be given consideration. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 9) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.831. Manual of instructions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 11) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.832. Annual notice to employes of salary for coming year — Increase or decrease of salary. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 13) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.833. Leave of absence. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 14) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.834. Transfer of employes to other positions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 15) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.835. Corrupt action, impersonation or giving of false information forbidden. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 16) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.836. Giving consideration for appointment or promotion forbidden. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 17) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.837. Prosecution of violations of KRS 161.821 to 161.836. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1946, ch. 201, § 18) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.841. Retirement plan for noninstructional school employees. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1950, ch. 197) was repealed by Acts 1990, ch. 476, § 616, effective July 13, 1990.

PENALTIES

161.990. Penalties.

(1) Any person who violates subsections (1) to (4) of KRS 161.164 shall be guilty of a Class A misdemeanor. Any school board candidate or school board member who willfully violates subsections (1) to (4) of KRS 161.164 shall also be disqualified from holding the office of school board member.

(2) Any teacher or employee of a district who willfully violates subsections (1) to (4) of KRS 161.164 shall be ineligible for employment in the common schools for a period of five (5) years.

(3) Any person who violates any of the provisions of KRS 161.190 shall be guilty of a Class A misdemeanor.

(4) Any teacher who violates any of the provisions of subsection (2) of KRS 161.210 shall be subject to a fine of fifty dollars ($50) and upon conviction his certificate shall be revoked.

(5) A violation of any of the provisions of KRS 161.661 or 161.690 is a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000).

History.
4503-6, 4503-8, 4506b-50; amend. Acts 1946, ch. 201, § 10; 1962, ch. 244, Art. IV, § 3; 1972, ch. 82, § 24; 1978, ch. 274, § 1, effective June 17, 1978; 1982, ch. 36, § 1, effective July 15, 1982; 1986, ch. 255, § 3, effective July 15, 1986; 1990, ch. 476, Pt. II, § 87, effective July 13, 1990; 2022 ch. 228, § 2, effective July 14, 2022.

NOTES TO DECISIONS

1. Purpose.
Constitution § 183 places a duty on the General Assembly to establish an efficient common school system free from political influence and this section and KRS 161.164 were enacted by the General Assembly in an effort to comply with this directive. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 1992 Ky. LEXIS 85 (Ky. 1992).

Cited in:
Cooksey v. Board of Education, 316 S.W.2d 70, 1957 Ky. LEXIS 3 (Ky. 1957).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

CHAPTER 162

SCHOOL PROPERTY AND BUILDINGS

School Property.

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162.010. Title to school property.
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162.065. Administrative regulations for use by local school boards when constructing schools using construction managers — Items considered equal to specifications may be furnished.
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162.290. Alternative methods — Other procedure not required.
162.300. Certain boards may obtain school buildings as provided in KRS 162.120 to 162.290.
162.310. State educational institution may convey building site.
162.320. Contract for erection of building.
162.330. Lease of building — Option to purchase.
162.340. Governing bodies of state educational institutions may erect buildings.
162.350. Method of erection of buildings by state educational institutions.
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162.385. School district finance corporation — Definitions — Construction bonds.
162.387. School district finance corporations may lease land for school construction — Issuance of bonds.
162.390. [Repealed.]
162.400. [Repealed.]
162.410. [Repealed.]
162.420. [Repealed.]
162.430. [Repealed.]
162.431. [Repealed.]
162.432. [Repealed.]
162.433. [Repealed.]
162.434. [Repealed.]
162.435. [Repealed.]

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162.440. Insurance fund for board of education in a designated city or county containing a designated city.
162.450. Payments into fund — Replacement of expenditures — Use of interest.
162.460. Investment and care of insurance fund.
162.470. Insurance inspector to examine buildings annually.
162.480. Proof of loss — Appropriations of fund.
162.490. Insurance fund may be used in case of delay in payment under insurance policy.
162.500. Prohibited appropriations.
162.510. [Repealed.]

State Property and Buildings Commission.

162.520. Definitions for KRS 162.520 to 162.620.
162.530. [Repealed.]
162.540. Interpretation of terms in KRS 162.120 to 162.300 when applied to KRS 162.520 to 162.620.
162.550. Ownership of certain moneys determined.
162.560. [Repealed.]
162.570. [Repealed.]
162.580. Duty of authority as to each bond issue.
162.590. Duty of department on request of authority.
162.600. Bonds to issue in name of authority — Identification — Investment designation.
162.610. [Repealed.]
162.620. Sale of bonds — Conditions.

Penalties.

162.990. Penalties.

SCHOOL PROPERTY

162.010. Title to school property.

The title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education. In the acquisition of land for school purposes, whether by purchase or condemnation, or otherwise, the title obtained shall be in fee simple, except that title to land received from the federal government or any agency thereof can be received in other than fee simple with the approval of the Attorney General of the Commonwealth. Any reversionary interest in any land held by boards of education on June 14, 1934, shall not deprive such boards of the ownership of the buildings or other improvements thereon.

History.

4399-19; amend. Acts 1954, ch. 20, § 1; 1958, ch. 136, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 548, effective July 13, 1990.

Compiler's Notes.

This section (4399-19; amend. Acts 1954, ch. 20, § 1; 1958, ch. 136, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 548, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Purpose of Acquisition.
2. Title in Commonwealth.
3. Abolishment of School District.
4. Conveyance.
5. —Warranty Deed.
6. Reversionary Interest.
7. —Creation.
8. —Trustee As Grantor.
9. —Buildings and Improvements.
10. Decisions Made by Local School Board.
11. Adverse Possession.

1. Purpose of Acquisition.

The board of education had no power under this section to acquire any land except for school purposes. Ford v. Pike County Board of Education, 310 Ky. 177, 220 S.W.2d 389, 1949 Ky. LEXIS 876 (Ky. 1949).

The phrase "school purposes" was broad and comprehensive and included building living quarters for teachers and custodial employes, where conditions warranted. Ford v. Pike County Board of Education, 310 Ky. 177, 220 S.W.2d 389, 1949 Ky. LEXIS 876 (Ky. 1949).

2. Title in Commonwealth.

Where property conveyed to private trustees in trust "for school purposes" was operated for many years by county board of education under agreement with trustees, the law vesting title to all school property in the Commonwealth operated to transfer title to the property from the trustees to the Commonwealth. Subsequent legislation requiring city independent district in which property was located to provide school service of the type being furnished in the school located on the property did not affect the title, which remained in the Commonwealth. Board of Education v. Board of Education, 292 Ky. 261, 166 S.W.2d 295, 1942 Ky. LEXIS 69 (Ky. 1942).

3. Abolishment of School District.

When a district was abolished, title to its property passed to the successor district. Breathitt County Board of Education v.

Back, 214 Ky. 284, 283 S.W. 99, 1926 Ky. LEXIS 328 (Ky. 1926) (decided under prior law).

When duty to provide school service for colored children in cities of fifth and sixth classes was transferred from county board to city board, city board was entitled to use school building formerly used by county board for colored children. Board of Education v. Board of Education, 292 Ky. 261, 166 S.W.2d 295, 1942 Ky. LEXIS 69 (Ky. 1942).

4. Conveyance.

Boards of education had statutory authority to convey property. Bellamy v. Board of Education, 255 Ky. 447, 74 S.W.2d 920, 1934 Ky. LEXIS 259 (Ky. 1934) (decided under prior law).

A board of education could not rescind a conveyance made five years earlier by a former board on the mere ground that it was a bad bargain. Trustees of Congregational Church v. Evarts Graded Common School Dist., 230 Ky. 94, 18 S.W.2d 887, 1929 Ky. LEXIS 25 (Ky. 1929) (decided under prior law).

Law that provided for acquisition of land for school in fee simple in school board while binding on the school board, did not bind the grantor and his privies, and did not invest a school board with better title than the deed purported to convey. Webster County Board of Education v. Gentry, 233 Ky. 35, 24 S.W.2d 910, 1930 Ky. LEXIS 486 (Ky. 1930) (decided under prior law).

5. —Warranty Deed.

Where grantor, who had only a life estate, conveyed land to a school district under a general warranty deed, subsequent acquisition of the fee by the grantor inured to the benefit of the school district. Hollon v. Wolfe County Board of Education, 307 Ky. 671, 212 S.W.2d 129, 1948 Ky. LEXIS 815 (Ky. 1948).

6. Reversionary Interest.

A conveyance "for school purposes" did not, in and of itself, create a reversionary interest. Binder v. County Board of Education, 224 Ky. 143, 5 S.W.2d 903, 1928 Ky. LEXIS 549 (Ky. 1928) (decided under prior law).

When the grantor of a lot to a school district was also one of the trustees, and received a valuable consideration, a clause of reversion could not have been enforced by him or a grantee without consideration. Terry v. Rose, 251 Ky. 314, 64 S.W.2d 909, 1933 Ky. LEXIS 857 (Ky. 1933) (decided under prior law).

This section did not bar operation of a reversionary clause in deed conveying land to school district for school purposes. Lykins v. Wolfe County Board of Education, 307 Ky. 24, 209 S.W.2d 717, 1948 Ky. LEXIS 672 (Ky. 1948).

Reversionary interest in school property will be enforced. Board of Education v. Society of Alumni, etc., 239 S.W.2d 931, 1951 Ky. LEXIS 907 (Ky. 1951).

7. —Creation.

A deed to school district containing a clause of reversion created in the trustees a determinable or qualified fee. Fayette County Board of Education v. Bryan, 263 Ky. 61, 91 S.W.2d 990, 1936 Ky. LEXIS 133 (Ky. 1936).

A conveyance to be held so long as the property was used for school purposes did create a reversionary interest. Fayette County Board of Education v. Bryan, 263 Ky. 61, 91 S.W.2d 990, 1936 Ky. LEXIS 133 (Ky. 1936).

Title to land should have reverted to grantor's descendants where deed to school district, by describing land as that on which new school house "now stands," and by providing that it was not to be conveyed for use of individual, created limitation or condition, and school district thereafter abandoned land and conveyed it to individual. Devine v. Isham, 284 Ky. 587, 145 S.W.2d 529, 1940 Ky. LEXIS 546 (Ky. 1940).

8. —Trustee As Grantor.

Provision in deed of land made by grantor, who was member of trustees of school district, that land should revert to donors, their heirs and assigns, as soon as school site was changed, was void, since it was duty of trustees under this section to acquire title to school sites in fee simple, and hence successors of grantor could not recover land notwithstanding trustees had abandoned land for school purposes. Keeton v. Wayne County Board of Education, 287 Ky. 174, 152 S.W.2d 595, 1941 Ky. LEXIS 518 (Ky. 1941).

9. —Buildings and Improvements.

Where county board of education in violation of statute took title to school lot with a reversion to grantors or their legal heirs when it ceased to be used for school purposes and later sold original school building which was removed from land after suit was filed by grantors' successors, there was an abandonment or cessation of use in the absence of affirmative showing of plan to erect a new building within a reasonable time and grantors' successors could have recovered land and building. Webster County Board of Education v. Wynn, 303 Ky. 110, 196 S.W.2d 983, 1946 Ky. LEXIS 801 (Ky. 1946).

While lands might have reverted to heirs or grantees of the original grantor, the title to buildings and other improvements remained in the Commonwealth for the benefit of the proper school district authorities. Cole v. Shockley, 309 Ky. 313, 217 S.W.2d 649, 1949 Ky. LEXIS 695 (Ky. 1949).

Statute in existence at time a deed of land to school district was executed, and reading substantially as this section, was construed to prevent title to abandoned school building or equipment from passing to owner of reversionary interest in the land. Cole v. Shockley, 309 Ky. 313, 217 S.W.2d 649, 1949 Ky. LEXIS 695 (Ky. 1949).

Provision providing that any reversionary interest in land used for school purposes should not deprive board of education of buildings or other improvements thereon, was not applicable to deed executed prior to passing of statute. Barren County Board of Education v. Jordan, 249 S.W.2d 814, 1952 Ky. LEXIS 879 (Ky. 1952).

10. Decisions Made by Local School Board.

The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990).

11. Adverse Possession.

Title to property for school purposes may have been acquired by adverse possession. County Board of Education v. Mill Creek Methodist Church, 242 Ky. 147, 45 S.W.2d 1026, 1932 Ky. LEXIS 231 (Ky. 1932) (decided under prior law).

Cited in:

Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 1940 Ky. LEXIS 514 (Ky. 1940); Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949); Hopkins County Fiscal Court v. Commonwealth, 252 S.W.2d 875, 1952 Ky. LEXIS 1032 (Ky. 1952); Employers Liability Assurance Corp. v. Johnson County, 262 S.W.2d 367, 1953 Ky. LEXIS 1088 (Ky. 1953); Robertson v. Danville, 291 S.W.2d 816, 1956 Ky. LEXIS 400 (Ky. 1956).

OPINIONS OF ATTORNEY GENERAL.

Under this section, the title to land acquired for school purposes is required to be in fee simple, and the acquisition of land by deed of easement is not permitted. OAG 60-423.

A municipality may not erect a water tank on school premises without the consent of the board of education and the payment of fair compensation for the use of school property. OAG 63-1060.

The right of the grantor to place and use mining entries through the surface of the land adjacent to school buildings

and near which school children might be playing would violate the statute. OAG 65-345.

The intent and purpose of the statute are satisfied if title is taken in fee simple only to the surface rights which are unlimited as to duration and descendibility. OAG 65-345.

Purchases of athletic equipment of over $1,000 by a district school board would have to be made by the bidding procedure even though the purchase money was derived from admissions to athletic exhibitions. OAG 69-327.

A school board is not required to obtain prior approval of the local planning unit in order to construct a new school building. OAG 69-659.

The exemption for schools contained in KRS 100.361(2) would not apply until the property is acquired. OAG 69-659.

A city could not require a contractor to obtain a building permit for the construction of a county school within the city limits. OAG 70-636.

A city could legally deed property for $1.00 to the Commonwealth for the benefit of the school board, with a reverter provision which would give a fee simple title subject to a right of entry (reverter), unless construction of a school building has begun within five years of the date of the deed's execution, but if construction has begun within five years, the title would become a fee simple absolute. OAG 70-797.

Where a school board bought land, the deed to which contained a covenant running with the land that the buyer would maintain a fence for the benefit of the adjoining tract, the covenant did not violate this section. OAG 71-407.

Where title to property conveyed by the United States to a local board of education was a fee simple title, the transaction did not require the specific approval of the Attorney General even though the deed to the United States by its grantor contained a special warranty. OAG 72-316.

It would be allowable for a transfer of property from the federal government to a Commonwealth school board to contain a right of entry clause so long as that right of entry is not carried beyond the 30-year limit set out in KRS 381.219. OAG 72-477.

Subsection (1) of KRS 156.070 does not give the State Board of Education the authority to enact an administrative regulation requiring that surplus property be disposed of either through sealed bids or by public auction, as the legal obligation of a school board in selling property is to get the fair market value for the property sold in order that its value will not be lost to the district and to school purposes and a school board has the legal authority to convey good title under this section to the surplus property it has agreed to sell. OAG 73-204.

Since public common school buildings and school property are public property, no alcoholic beverages may be consumed in public school buildings or on public school property at any time. OAG 76-266.

Once approval to sell school property as surplus is given by the Superintendent of Public Instruction, there is no legal requirement that a board of education must dispose of the property by public auction or advertisement of sealed bids and the board may establish a price for the land and sell to any purchaser willing and able to meet that price if the figure represents at least the appraised fair market value of the property. OAG 76-291.

A deed of property to a local school board, subject to the grant of a prior 20-year lease of a portion of the property, to a local community action agency, at an annual rental of $1.00 but with the requirement that the lessee keep the leasehold in good repair, does not destroy or impair severely the fee title received. OAG 79-543, 1979 Ky. AG LEXIS 94.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Commonwealth to be named as grantee in deed of land to state agency or to land paid for from state funds, KRS 56.030.

Flag of Commonwealth, flying at public schools, KRS 2.030.

Gifts and devises, acceptance of, KRS 160.580.

Proceeds of sale of school property may be credited to building funds, KRS 160.476.

School building fund taxes, KRS 160.476.

State support of education, KRS Ch. 157.

Textbooks are property of state, KRS 157.150.

Building sites; inspection, approval, 702 KAR 4:050.

Kentucky Law Journal.

Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.020. Transfer of property from one district to another — Title not affected — District may own school in another district.

(1) The title to school property in territory transferred from one (1) school district to another shall not be affected by the transfer. In case of the sale of such property the board of education to which the property belongs may allow a credit on the sale price of the property in proportion to the ratio which the school population of the transferred territory is to the total school population of the district from which the territory was transferred before the transfer was made.

(2) A board of education owning and operating a school plant in another district on June 14, 1934, may continue to own and operate the plant, and a county board of education may establish and maintain a school in an independent school district. Any independent school district may purchase school sites and establish and maintain schools outside the limits of the independent district, but independent districts containing cities of the first class or designated cities shall not purchase school sites or establish or maintain schools outside the county in which the independent district is located.

(3) As used in this section, "designated city" means a city classified as a city of the second class as of January 1, 2014, under the city classification system in effect prior to January 1, 2015. The Department of Education shall, on or before January 1, 2015, create an official registry listing the cities that qualify as a "designated city" under this section and shall publish that registry on its Web site.

History.

4399-5; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 549, effective July 13, 1990; 2014, ch. 92, § 227, effective January 1, 2015.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Merger with Two Districts.

1. Construction.

This section contemplates a situation in which the district from which territory was transferred would continue to operate as a school district. Board of Education v. Board of Education, 284 Ky. 774, 146 S.W.2d 30, 1940 Ky. LEXIS 581 (Ky. 1940).

2. Merger with Two Districts.

Where town independent school district was dissolved and part of it went to city district and part to county district

resulting in merger with those districts, equitable disposition of property of former town district would be to divide it between city and county districts in proportion of population which became part of city district to that which became part of county district; liabilities of former town district being assumed by city and county districts in same proportion. Board of Education v. Board of Education, 284 Ky. 774, 146 S.W.2d 30, 1940 Ky. LEXIS 581 (Ky. 1940).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Liability for indebtedness on transfer or annexation of school property, KRS 160.065.

162.030. Condemnation of property for school purposes.

Each board of education may, when unable to make a contract satisfactory to the board with the owner for the purchase of real estate to be used for school purposes, initiate condemnation proceedings pursuant to the Eminent Domain Act of Kentucky (KRS 416.540 to 416.670), and the title to land so obtained shall be vested in fee simple.

History.
4399-21; amend. Acts 1954, ch. 20, § 2; 1976, ch. 140, § 67; 1990, ch. 476, Pt. IV, § 250, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Future Needs.
2. Resolution of Board.
3. Negotiations.
4. School Purposes.
5. Compensation.

1. Future Needs.
Authority of school board to condemn is not limited to immediate needs only, but it may, and indeed should give consideration to future needs and the fact that a portion of the land taken will continue to be put to private use by a public utility holding a lease thereon until the needs of the board require its use does not destroy the right of eminent domain. Pike County Board of Education v. Ford, 279 S.W.2d 245, 1955 Ky. LEXIS 521 (Ky. 1955).

2. Resolution of Board.
Technical strictness in the language of resolution adopted by board of education in condemnation proceedings is not required. Pike County Board of Education v. Ford, 279 S.W.2d 245, 1955 Ky. LEXIS 521 (Ky. 1955).

3. Negotiations.
Where board made an inadequate offer but left the matter open to further negotiation by "if they feel that they can make some offer with some degree of reasonableness attached thereto, we shall be happy to receive and consider their offer" there was a good faith effort to negotiate and the board's offer was not a "take it or leave it" offer. Pike County Board of Education v. Ford, 279 S.W.2d 245, 1955 Ky. LEXIS 521 (Ky. 1955).

Where the board offered $150,000 for a 43.3-acre parcel when the owner had assessed the value of the entire 103-acre tract at $122,600, the condemnor made all the effort required by this section. Usher & Gardner, Inc. v. Mayfield Independent Board of Education, 461 S.W.2d 560, 1970 Ky. LEXIS 641 (Ky. 1970).

4. School Purposes.
Where the approval of the proposed site by the Superintendent of Public Instruction and the State Department of Education was clearly proved, there was ample evidence to support the finding of the trial judge that the proposed acquisition was for school purposes. Usher & Gardner, Inc. v. Mayfield Independent Board of Education, 461 S.W.2d 560, 1970 Ky. LEXIS 641 (Ky. 1970).

5. Compensation.
The landowner was entitled to receive as just compensation the difference in the fair market value of the total tract of land immediately before and immediately after the taking of a portion of the land for school purposes. Usher & Gardner, Inc. v. Mayfield Independent Board of Education, 461 S.W.2d 560, 1970 Ky. LEXIS 641 (Ky. 1970).

Cited in:
Crawford v. Murphy, 296 S.W.2d 738, 1956 Ky. LEXIS 235 (Ky. 1956); Commonwealth, Dep't of Highways v. McGeorge, 369 S.W.2d 126, 1963 Ky. LEXIS 68 (Ky. 1963).

OPINIONS OF ATTORNEY GENERAL.

A city cannot require a subdivider to dedicate certain lands, shown or not shown on the master plan of current adoption, to the public for use as a site for schools and/or parks. OAG 65-417.

The discretion in the matter of the use of a school house is given to the board of education and not the principal, but, unless there is some good reason to refuse the use of the property to a particular organization, the board should allow requesting organizations the use of the property under uniform conditions. OAG 74-362.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Eminent Domain Act of Kentucky, KRS 416.540 to 416.680.

162.040. Escheated property.

So much property in each school district as escheats to the state, and is not required by the provisions of KRS Chapter 393 to be disposed of in some other manner, shall vest in the state for the use and benefit of the public schools in the district. The board of education of the district may, in the name of the state and for the use and benefit of the schools of the district, by its chairman or other officer designated by it, enter upon and take possession of the property, or sue for and recover the property by action at law or in equity. The board may sell and convey any of the property by warranty deed or otherwise.

History.
4399-56; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 550, effective July 13, 1990.

Compiler's Notes.
This section (4399-56) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 550, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Undevised Property.
2. Property Owned by Alien.

1. Undevised Property.

In the case of undevised property, the eight-year (now three-year) waiting period prescribed by KRS 393.020 is not necessary. Commonwealth use of Board of Education v. Schultz's Unknown Heirs, 268 Ky. 806, 105 S.W.2d 1067, 1937 Ky. LEXIS 537 (Ky. 1937).

2. Property Owned by Alien.

The board of education of the school district in which property owned by an alien is situated may institute an action in the name of the Commonwealth to escheat the property. If the board has authorized the action, it is proper for the action to be brought by the Attorney General as relator. Commonwealth ex rel. Attorney Gen. v. Tamer, 293 Ky. 357, 169 S.W.2d 19, 1943 Ky. LEXIS 626 (Ky. 1943).

Cited in:

Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949).

OPINIONS OF ATTORNEY GENERAL.

Where escheated property formerly owned by a noncitizen of the United States is auctioned by the state with the state retaining the proceeds therefrom, the proceeds from the sale of the land are applied for the use and benefit of the public schools in the district in which the property is located, pursuant to this section. OAG 81-248, 1981 Ky. AG LEXIS 184.

162.050. Use of schoolhouse by public assembly.

The board of education of any school district may permit the use of the schoolhouse, while school is not in session, by any lawful public assembly of educational, religious, agricultural, political, civic, or social bodies under rules and regulations which the board deems proper.

History.

4399-53; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 551, effective July 13, 1990.

Compiler's Notes.

This section (4399-53) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 551, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949); Hall v. Shelby County Bd. of Educ., 472 S.W.2d 489, 1971 Ky. LEXIS 197 (Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

The utterance of prayers or the reading of the Bible can continue in PTA meetings and voluntary Bible classes held without the regular school hours or school curriculum. OAG 64-111.

An independent school district can construct an auditorium-gymnasium and, after its completion, use the money which the city wishes to contribute as rent for the times when the building could be leased to the city. OAG 64-475.

A district school board could not give approval to a ministerial association to distribute New Testaments to pupils in their classrooms. OAG 68-452.

This section envisions occasional or spasmodic usage for short periods of time. OAG 71-212.

Under this section school students who voluntarily out of spontaneous wishes hold prayer sessions outside of regular school hours on school property may be permitted to continue to do so, as the school board is not violating constitutional principles in allowing this specific activity. OAG 72-386.

The use of school facilities is subject to the determination of a local board of education and it is paramount that the board adopt rules and regulations regarding the permitting of the use of school property so that such use does not in any way interfere with the conducting of any school program, curricular or co-curricular. OAG 79-321, 1979 Ky. AG LEXIS 307.

A local board of education has the lawful authority and duty to prescribe the manner in which school buildings and facilities may be used by groups during nonschool hours. OAG 80-78, 1980 Ky. AG LEXIS 564.

162.055. Use of school property by public for recreational, sporting, academic, literary, artistic, or community uses — Limited civil immunity.

(1) As used in this section:

(a) "Nonschool hours" refers to those times occurring during the school week which precede or follow regular classroom instruction and also includes weekends, holidays, and vacation breaks;

(b) "Public members of the community" includes, in addition to ordinary community members, both students who are not involved in a school-sanctioned curricular or extracurricular activity during nonschool hours and school staff when not working as employees of the school;

(c) "Recreation" includes any indoor or outdoor game or physical activity, either organized or unorganized, undertaken for exercise or sport;

(d) "School property" includes all indoor or outdoor school structures, facilities, and land, whether owned, rented, or leased by the school or school district; and

(e) "Sport" means an activity requiring physical exertion and skill, and which by its nature and organization is competitive, includes a set of rules, and is generally accepted in the community as a sport.

(2) A local school board may authorize the use of school property by public members of the community during nonschool hours for the purpose of recreation, sport, academic, literary, artistic, or community uses pursuant to policies adopted by the local school board.

(3) A school district and its board members, officers, and employees shall retain the same immunities for any claim for loss or injury arising from use of indoor or outdoor school property or facilities during nonschool hours allowed under this section as would otherwise apply or be available had the use occurred during school hours or for school-related activities.

(4) Nothing in this section shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property;

(b) Relieve any person using the school property for recreation from any obligation which he or she may have in the absence of this section to exercise care in his or her use of the school property and his or her activities thereon, or from the legal consequences of failure to employ such care;

(c) Ripen into a claim for adverse possession, absent a claim of title or legal right; or

(d) Limit the liability protections available under KRS 411.190 or other law.

History.
Enact. Acts 2012, ch. 133, § 1, effective July 12, 2012.

SCHOOL BUILDINGS

162.060. Plans for school buildings to be approved.

The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the Kentucky Board of Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the Department of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

History.
4384-23; amend. Acts 1978, ch. 117, § 17, effective February 28, 1980; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 251, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2010, ch. 24, § 211, effective July 15, 2010.

NOTES TO DECISIONS

Analysis

1. Discretion of Board and Superintendent.
2. Contract for Construction.
3. Decisions Made by Local School Board.

1. Discretion of Board and Superintendent.
When the board has obtained the approval of the Superintendent of Public Instruction of its plans for a new building, courts will not interfere with the proposed plans unless there is positive proof of fraud, collusion or a clear abuse of discretion since the obligation of locating school sites rests with the county board of education and it is not for the courts to say whether the board has acted wisely or unwisely in determining where the school should be located but the only question for the court's determination is whether the board is exceeding its authority or is acting arbitrarily. Perry County Board of Education v. Deaton, 311 Ky. 227, 223 S.W.2d 882, 1949 Ky. LEXIS 1100 (Ky. 1949).

2. Contract for Construction.
A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

3. Decisions Made by Local School Board.
The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159, 1990 U.S. Dist. LEXIS 18321 (E.D. Ky. 1990).

Cited in:
Pike County Board of Education v. Ford, 279 S.W.2d 245, 1955 Ky. LEXIS 521 (Ky. 1955); Kentucky State Board of Education v. Isenberg, 421 S.W.2d 81, 1967 Ky. LEXIS 52 (Ky. 1967); Usher & Gardner, Inc. v. Mayfield Independent Board of Education, 461 S.W.2d 560, 1970 Ky. LEXIS 641 (Ky. 1970).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Sanitary and protective construction of school buildings to be regulated by State Board of Education, KRS 156.160.
Building sites; inspection, approval, 702 KAR 4:050.
Capital construction process, 702 KAR 4:160.
Facility programming and construction criteria, 702 KAR 4:170.

Kentucky Law Journal.
Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

162.062. Plans for new public school buildings required to provide sufficient water bottle filling stations and drinking fountains — Specifications for design and maintenance of water bottle filling stations and drinking fountains. [Repealed]

History.
2019 ch. 197, § 6, effective June 27, 2019; 2020 ch. 22, § 1, effective March 17, 2020; repealed by 2022 ch. 66, § 3, effective July 14, 2022.

162.065. Administrative regulations for use by local school boards when constructing schools using construction managers — Items considered equal to specifications may be furnished.

The State Board of Education shall promulgate administrative regulations for use by local school boards when constructing school buildings using construction managers. A construction manager is an experienced and qualified construction contracting organization that is paid a fee for its professional management and supervision services. The regulations shall include, but not be limited to:

(1) A standard "Request for Proposal" form, including appropriate criteria for use by local school boards to ensure only qualified construction managers are considered:

(a) A list of successfully completed projects or a demonstrated capability to perform projects of a similar type;

(b) A descriptive detail of projects showing the experience and the ability to perform budget estimating, value engineering, and scheduling; and

(c) A list of experienced and qualified personnel with a track record of achieved quality and the capability to provide bidder solicitation;

(2) Adequate public notice of the invitation for proposals shall be given a sufficient time prior to the date set for the opening of proposals;

(3) A requirement for bids, when requested by a construction manager, be submitted to the architect or owner and opened in public;

(4) A requirement that all bids for school construction projects be advertised in newspapers with the largest local circulation;

(5) A sample fee schedule for construction manager services shall be developed by recommendation of a diversified committee consisting of Department of Education personnel, architects, and construction managers for the guidance of local school boards;

(6) A requirement that established qualifications-based selection procedures be implemented by local boards when selecting firms to provide architectural and engineering services; and

(7) A requirement that specifications in every invitation for bids or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished. The specifications may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards. An item shall be considered equal to the item named or described if, in the opinion of the local board and the design professional responsible for the specifications:

(a) It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;

(b) It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and

(c) It conforms substantially to the detailed requirements for the item in the specifications.

History.
Enact. Acts 1992, ch. 379, § 1, effective July 14, 1992; 2008, ch. 47, § 5, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Capital construction process, 702 KAR 4:160.

162.066. Restriction on award of contracts by construction manager.

When a construction manager is utilized in construction, maintenance, repairs, or renovation or expansion of school facilities the construction manager shall not award construction contracts to any company which the manager owns or in which the manager has a financial interest if less than two (2) bids are accepted.

History.
Enact. Acts 1992, ch. 379, § 2, effective July 14, 1992.

162.067. Application of KRS 162.065 and 162.066.

KRS 162.065 and 162.066 shall apply to all construction of new school facilities, maintenance, and repair of existing school facilities, renovation of existing school facilities, or expansion of existing school facilities.

History.
Enact. Acts 1992, ch. 379, § 3, effective July 14, 1992.

162.070. Contracts for buildings, improvements, and materials to be let on competitive bidding — When advertisements not required.

The contracts for the erection of new school buildings, additions and repairs to old buildings, except additions or repairs not exceeding seven thousand five hundred dollars ($7,500), shall be made by the board of education with the lowest and best responsible bidder complying with the terms of the letting, after advertisement for competitive bids pursuant to KRS Chapter 424, but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work. The board shall advertise for bids on all supplies and equipment that it desires to purchase, except where the amount of the purchase does not exceed seven thousand five hundred dollars ($7,500), and shall accept the bid of the lowest and best bidder taking into consideration the price and the reciprocal preference for resident bidders under KRS 45A.494, but the board may reject any and all bids.

History.
Enact. Acts 1980, ch. 250, § 1, effective April 9, 1980; 1990, ch. 476, Pt. IV, § 252, effective July 13, 1990; 2010, ch. 162, § 20, effective July 15, 2010.

Compiler's Notes.
A former identical section (4399-48; amend. Acts 1954, ch. 172; 1966, ch. 239, § 148; 1976, ch. 185, § 1; 1978, ch. 58, § 1) was repealed by Acts 1978, ch. 110, § 106, effective January 1, 1980.

OPINIONS OF ATTORNEY GENERAL.

Under the wording "lowest and best responsible bidder," as set forth in this section, it means not only the lowest monetary bid, but it means that the factors of business judgment, capacity, skill, and responsibility of the bidder must be carefully assessed in awarding the bid. OAG 80-396, 1980 Ky. AG LEXIS 298.

Although site work can be and is usually interpreted to be a part of a project involving school building construction or remodeling, site work unrelated to school building construction does not come within the scope of this section. Thus, where a school district wished to correct a drainage problem at one of its schools, KRS 424.260 and the $7,500 "small purchases" ceiling was applicable to the contract for drainage site work. OAG 82-407, 1982 Ky. AG LEXIS 239.

To the extent this section and KRS 424.260 are in conflict, the provisions and therefore the $7,500 amount found in KRS 424.260, as amended in 1982, must be deemed to prevail over the lower $5,000 amount remaining in this section. OAG 82-407. (The amount now specified by KRS 424.260 is $20,000.)

A Labor Agreement between a local Board of Education and a Labor Union in a school construction project is not prohibited provided the terms of the labor agreement do not offend or violate the Kentucky Model Procurement Code (KRS Chapter 45A) or the public school construction statute found at KRS 162.070. OAG 10-006, 2010 Ky. AG LEXIS 158.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Capital construction process, 702 KAR 4:160.

162.075. Compliance with code not necessary on purchases from federal government.

The provisions of KRS Chapter 45A and KRS 162.070

shall not apply to purchases made by the boards of education within the Commonwealth of Kentucky from the United States of America, or any agency thereof.

History.
Enact. Acts 1946, ch. 187, § 1; 1978, ch. 110, § 104, effective January 1, 1980; 1980, ch. 250, § 18, effective April 9, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 552, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1946, ch. 187, § 1; 1978, ch. 110, § 104, effective January 1, 1980; 1980, ch. 250, § 18, effective April 9, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 552, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Political subdivision may purchase from federal government without taking bids, KRS 66.470.

162.080. Bond issues for school sites and buildings — Authorization — Election.

(1) Whenever a board of education deems it necessary for the proper accommodation of the schools of its district to enlarge sites for school buildings, to purchase new sites, which in the case of independent districts may be not more than two (2) miles without the boundary lines of the district, to improve, remodel, or restore school buildings, to erect or equip new school buildings, or for any or all of these purposes, and the annual funds raised from other sources are not sufficient to accomplish the purpose, the board shall make a careful estimate of the amount of money required for the purpose and shall determine the amount of money for which bonds shall be issued and the purpose to which the proceeds shall be applied. Upon request of the board of education of any district, the county clerk shall submit to the qualified voters of the district, the question as to whether bonds shall be issued for the purpose. The question shall be so framed that the voter may by his vote answer "for" or "against."

(2) The request shall be accompanied by an ordinance or resolution which shall fix the time the bonds shall run and, if a serial issue, the amount to mature at each time. It shall limit the rate of interest to be permitted on the bonds, which shall not exceed the amount permitted by law, and the total amount of bonds to be issued, and shall provide for the levy of a tax to pay the interest and to create a sinking fund to retire them at their maturity.

(3) The election shall be held not less than fifteen (15) nor more than thirty (30) days from the time the request of the board of education is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws, and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

History.
4399-47; amend. Acts 1962, ch. 180, § 1; 1976, ch. 127, § 20; 1990, ch. 48, § 86, effective July 13, 1990; 1990, ch. 476, Pt. V, § 553, effective July 13, 1990.

Legislative Research Commission Notes.
(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

NOTES TO DECISIONS

Analysis

1. Authority of Board.
2. Stadium.
3. Application of Proceeds.
4. Resolution.
5. Time of Maturity.
6. Voting in Accordance with Ordinance.
7. Submission.
8. Election.
9. —Time for Holding.
10. —Notice.

1. Authority of Board.
The kind and cost of a school building are matters to be determined by the board of education. Boll v. Ludlow, 234 Ky. 812, 29 S.W.2d 547, 1930 Ky. LEXIS 274 (Ky. 1930) (decided under prior law).

Where school board was renting school building constructed under holding company plan, and one of buildings was destroyed by fire, school board had no authority to issue funding bonds to enable building to be reconstructed. Stith v. Board of Education, 292 Ky. 91, 166 S.W.2d 58, 1942 Ky. LEXIS 53 (Ky. 1942).

2. Stadium.
A board is not authorized to expend funds for a high school stadium, as the latter is not a "school building" within the meaning of this statute. Board of Education v. Williams, 256 S.W.2d 29, 1953 Ky. LEXIS 714 (Ky. 1953) (decided under prior law).

3. Application of Proceeds.
When the question submitted concerns only sites and buildings, no part of the bond proceeds may be used to equip buildings. Hager v. Board of Education, 254 Ky. 791, 72 S.W.2d 475, 1934 Ky. LEXIS 160 (Ky. 1934).

4. Resolution.
Omissions in the resolution of the school board may be supplied by the ordinance or resolution of the taxing authority. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

Where resolution of board provided for issuance of serial bonds and ordinance provided for issuance of bonds in the amount of $1,000 each to mature in not exceeding 40 years the bonds were invalid as the resolution did not comply with the ordinance. Suratt v. Board of Education, 313 Ky. 343, 231 S.W.2d 88, 1950 Ky. LEXIS 894 (Ky. 1950).

5. Time of Maturity.
The question as to whether school improvement bonds should be callable before maturity is one of time of payment as dealt with in this section and not merely a mechanical detail as dealt with in KRS 162.090. Howard v. Board of Education, 311 Ky. 130, 223 S.W.2d 721, 1949 Ky. LEXIS 1076 (Ky. 1949).

6. Voting in Accordance with Ordinance.
All of the authority vested in the board as to the sale and handling of the bonds and their payment is predicated upon the manner in which they are voted, which must be in accordance with the ordinance of the fiscal court providing for

the bond election. Howard v. Board of Education, 311 Ky. 130, 223 S.W.2d 721, 1949 Ky. LEXIS 1076 (Ky. 1949).

7. Submission.

Where board of education followed the procedure of this section and certified its action to the board of aldermen of city of first class, the proper tax levying authority, it was the duty of the board of aldermen to provide for the submission of the question of their issuance to the people and take other consistent proceedings. Louisville v. Board of Education, 302 Ky. 647, 195 S.W.2d 291, 1946 Ky. LEXIS 725 (Ky. 1946).

8. Election.

Provision of law requiring election to be held in not less than 15 nor more than 30 days after filing of certificate, was merely directory, and an election held 33 days thereafter was a substantial compliance with the law and was valid. Davidson v. Board of Education, 225 Ky. 165, 7 S.W.2d 1056, 1928 Ky. LEXIS 738 (Ky. 1928) (decided under prior law).

9. —Time for Holding.

The date of school elections is not controlled by Ky. Const., § 148. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

Although polling hours are from six a.m. to four p.m., when an election is held at different hours it must be shown that such hours affected the result of the election. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

It will be presumed that the election was held at the proper hours, even though call and notice provided otherwise. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

10. —Notice.

Publication of notice of election in one issue of a newspaper of general circulation in the district, and posting in six public places 15 days before the election, constituted sufficient notice. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

Cited in:

Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440, 1937 Ky. LEXIS 135 (Ky. 1937); Caddell v. Board of Educ., 282 Ky. 646, 139 S.W.2d 739, 1940 Ky. LEXIS 231 (1940); Gill v. Board of Education, 288 Ky. 790, 156 S.W.2d 844, 1941 Ky. LEXIS 142 (Ky. 1941); Cole v. McCracken County, 297 Ky. 797, 181 S.W.2d 461, 1944 Ky. LEXIS 835 (Ky. 1944); Louisville v. Kesselring, 257 S.W.2d 599, 1953 Ky. LEXIS 801 (Ky. 1953).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School building funds may be established with special taxes, KRS 160.476, 160.477.

Bond issue approval, 702 KAR 3:020.

Restructuring revenue bond issues, 702 KAR 3:260.

162.085. Issuance of bonds sold directly to banks, private investors, and financial institutions — Authorization.

For the purpose of defraying the cost of constructing or acquiring any school buildings and appurtenances for common school purposes, any school district may issue a bond sold directly to banks, private investors, and financial institutions.

History.

2024 ch. 126, § 1, effective July 15, 2024.

162.090. Issuance and sale of bonds — Proceeds — Tax to pay.

(1) If two-thirds (⅔) of those voting on the question vote in favor of the proposition, the bonds shall be issued. The bonds shall be designated "school improvement bonds." They shall be placed under the control of the board of education, and the board shall determine when, at what price and how the bonds shall be sold, the date, number of bonds, denomination, whether coupon or registered, the rate of interest, the frequency and place of payment of principal and interest, and other details as desired, embodied in the bonds or in the request providing for their issue. The board shall at once adopt a resolution in conformity therewith. The bonds shall be signed by the chairman and secretary of the board of education. As the bonds are sold, their proceeds shall be placed to the credit of the board of education in a depository designated by the board of education, and shall be kept in a separate account. The depository shall be required to execute proper bond covering the funds.

(2) The board of education of the district shall, in addition to the levy made for the maintenance of schools, levy annually a tax sufficient to raise a sum for the payment of the interest and to create a sinking fund for the payment of the bonds at maturity. The bonds shall be a charge upon the school district.

History.

4399-47; amend. Acts 1976, ch. 127, § 21; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 554, effective July 13, 1990.

Compiler's Notes.

This section (4399-47; amend. Acts 1976, ch. 127, § 21) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 554, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Sale and Issuance.
2. —Ordinance.
3. —Time.
4. Obligations.
5. —School District.
6. —Board of Education.
7. —City.
8. Competitive Bidding.
9. Tax Levy.
10. Misapplication of Sinking Fund.

1. Sale and Issuance.

All of the authority vested in the board as to the sale and handling of the bonds and their payment is predicated upon the manner in which they are voted, which must be in accordance with the ordinance of the fiscal court providing for the bond election. Howard v. Board of Education, 311 Ky. 130, 223 S.W.2d 721, 1949 Ky. LEXIS 1076 (Ky. 1949).

2. —Ordinance.

Absence of details in ordinance is not fatal in absence of showing that they were also omitted from bonds. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

3. —Time.

It is unnecessary that all bonds voted be issued and sold at the same time. Hager v. Board of Education, 254 Ky. 791, 72

S.W.2d 475, 1934 Ky. LEXIS 160 (Ky. 1934). See Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440, 1937 Ky. LEXIS 135 (Ky. 1937).

Lapse of more than four years from date of election authorizing a bond issue does not preclude issuance of part or all of said issue. Hager v. Board of Education, 254 Ky. 791, 72 S.W.2d 475, 1934 Ky. LEXIS 160 (Ky. 1934). See Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440, 1937 Ky. LEXIS 135 (Ky. 1937).

4. Obligations.

5. —School District.

The provisions of this section, making school bonds the obligation of the city in cases where the city school district embraces the city, cannot constitutionally be applied where the city boundaries extend beyond those of the school district, therefore the bonds constitute obligations of the school district, for which only property within the district may be taxed and for which only voters in the district may vote on the question of issuance of bonds. Board of Education v. Louisville, 258 S.W.2d 707, 1953 Ky. LEXIS 877 (Ky. 1953).

6. —Board of Education.

This section expressly makes the bonds a charge or obligation of the board of education except where the school district embraces a city of the first or second class. Louisville v. Board of Education, 302 Ky. 647, 195 S.W.2d 291, 1946 Ky. LEXIS 725 (Ky. 1946).

7. —City.

In independent districts embracing a city of the second class the bonds are bonds of the city. Hager v. Board of Education, 254 Ky. 791, 72 S.W.2d 475, 1934 Ky. LEXIS 160 (Ky. 1934). See Hager v. Cisco, 256 Ky. 708, 76 S.W.2d 614, 1934 Ky. LEXIS 446 (Ky. 1934).

8. Competitive Bidding.

Bonds can be sold only upon competitive bidding after public and reasonable advertisement or a proposal to receive bids or offers for bonds proposed to be issued and sold; however, this decision is not retroactive, and applies only to future transactions. Eagle v. Corbin, 275 Ky. 808, 122 S.W.2d 798, 1938 Ky. LEXIS 507 (Ky. 1938).

Where contract of board of education to issue bonds to purchaser was made before the effective date of Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798, 1938 Ky. LEXIS 507 (1938), such contract was not invalidated by failure to advertise bonds for competitive bidding, since the decision in Eagle v. Corbin does not have retroactive effect. Ebert v. Board of Education, 277 Ky. 633, 126 S.W.2d 1111, 1939 Ky. LEXIS 706 (Ky. 1939).

The decision in Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798, 1938 Ky. LEXIS 507 (1938), does not prohibit the sale of bonds upon competitive bids upon interest rates, as long as the ordinance states the maximum rate of interest. Funk v. Strathmoor Village, 278 Ky. 627, 129 S.W.2d 151, 1939 Ky. LEXIS 477 (Ky. 1939).

9. Tax Levy.

An attempt by school board to levy tax for retirement of bonds will be deemed a request to the tax levying authority to levy such a tax. Mollette v. Board of Education, 260 Ky. 737, 86 S.W.2d 990, 1935 Ky. LEXIS 562 (Ky. 1935).

10. Misapplication of Sinking Fund.

The fact that board had been enjoined, in suit by taxpayers, from further collection of original tax for bonds, was no defense where board had misapplied from sinking fund more than enough to pay the bonds. Board of Education v. Highland Cemetery, 292 Ky. 374, 166 S.W.2d 854, 1942 Ky. LEXIS 99 (Ky. 1942) (decided under prior law).

Where school subdistrict used, for general school purposes, the proceeds of a tax levied to pay bonds, which proceeds would have been sufficient to pay bonds in full, bondholders were entitled to judgment requiring school board to pay bonds out of board's general fund, and to levy a tax to pay the balance of the bonds if the amount in the general fund was not sufficient to pay the bonds in full. Board of Education v. Highland Cemetery, 292 Ky. 374, 166 S.W.2d 854, 1942 Ky. LEXIS 99 (Ky. 1942) (decided under prior law).

Cited in:

Suratt v. Board of Education, 313 Ky. 343, 231 S.W.2d 88, 1950 Ky. LEXIS 894 (Ky. 1950).

OPINIONS OF ATTORNEY GENERAL.

Local boards of education must assume all administrative responsibility concerning bond issues for school sites and buildings; however, since school financing is done almost exclusively through school building revenue bonds pursuant to KRS 162.210 through 162.300 and KRS 58.010 through 58.120 inclusive, there is no authority for any change in the preexisting procedure used for school revenue bonds and the fiscal courts and county treasurers must continue to perform the customary functions heretofore served by them in that regard. OAG 76-711, modified by OAG 77-139, 1977 Ky. AG LEXIS 646.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Liability for indebtedness on transfer or annexation of school property, KRS 160.065.

Bond issue approval, 702 KAR 3:020.

Restructuring revenue bond issues, 702 KAR 3:260.

162.100. Limitation on amount of bond issue — Effect of bonds issued under former laws.

(1) The bond issue of any district shall not exceed the limits provided in the Constitution, such limitation to be estimated upon the assessment next before the last assessment previous to the incurring of the indebtedness.

(2) All of the bonds voted by the various types of school districts and subdistricts prior to June 14, 1934, shall be retired and the interest paid thereon in accordance with the laws under which they were voted, and nothing in KRS 162.080 to 162.100 shall in any way impair any of such bond obligations or the interest thereon.

History.

4399-47; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 555, effective July 13, 1990.

Compiler's Notes.

This section (4399-47) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 555, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Application.
2. Districts for Debt Limit.
3. Exceeding Debt Limit.
4. Basis of Indebtedness.
5. Refunding Bonds.

6. Time of Sale.

1. Application.
Subsection (2) applies to all bonds theretofore voted, even though not issued until after its passage. Hager v. Cisco, 256 Ky. 708, 76 S.W.2d 614, 1934 Ky. LEXIS 446 (Ky. 1934).

2. Districts for Debt Limit.
Although boundaries of city and school district are coterminous, each constitutes a separate taxing district as far as constitutional debt limits are concerned. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321, 1941 Ky. LEXIS 10 (Ky. 1941).

3. Exceeding Debt Limit.
If a bond issue exceeded the constitutional limits only the excess was void. Boll v. Ludlow, 234 Ky. 812, 29 S.W.2d 547, 1930 Ky. LEXIS 274 (Ky. 1930) (decided under prior law).
When a portion of the bond issue voted was in excess of the constitutional limitation, the excess is void, and the district cannot postpone issuance of the excess bonds until part of the issue has been retired. Nelson v. Williamsburg Independent Graded School Dist., 265 Ky. 792, 97 S.W.2d 814, 1936 Ky. LEXIS 579 (Ky. 1936).

4. Basis of Indebtedness.
Estimates of future assessments are not competent evidence to determine limitation on indebtedness. Nelson v. Williamsburg Independent Graded School Dist., 265 Ky. 792, 97 S.W.2d 814, 1936 Ky. LEXIS 579 (Ky. 1936).

5. Refunding Bonds.
Where three independent school districts merged with county school district prior to enactment of KRS 160.040 county board of education could issue refunding bonds to pay off indebtedness of merged districts and county was not required to levy a tax on properties in the districts to pay off the indebtedness. Webster County Board of Education v. Hocket, 267 Ky. 498, 102 S.W.2d 1018, 1937 Ky. LEXIS 352 (Ky. 1937).

6. Time of Sale.
The time of the sale of the bonds and not the time of election determined whether Ky. Const., § 158 was violated. Boll v. Ludlow, 234 Ky. 812, 29 S.W.2d 547, 1930 Ky. LEXIS 274 (Ky. 1930) (decided under prior law).

Cited in:
Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943); Board of Education v. Louisville, 258 S.W.2d 707, 1953 Ky. LEXIS 877 (Ky. 1953).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Constitutional limits on indebtedness, Ky. Const., §§ 157, 158.
Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.
Morrow, County Debt Difficulties in Kentucky, 31 Ky. L.J. 122 (1942).

162.110. Bonds of subdistricts. [Repealed.]

Compiler's Notes.
This section (4399-13) was repealed by Acts 1966, ch. 255, § 283.

162.120. Independent district in city may convey property to city to provide buildings.

To provide buildings for school purposes, boards of education of school districts embracing a city of any class may convey to the city a fee simple title with covenant of general warranty to a site now held or hereafter acquired by the boards of education.

History.
4421-1; amend. Acts 1990, ch. 476, § 253, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Conveyance and Lease Back.
2. Selection of Site.
3. School Building.
4. Merger with County after Conveyance to City.
5. Acquisition of Property and Buildings.
6. Liability for Tax.
7. Revenue Bonds.
8. Contract for Construction.
9. —Unenforceable.

1. Conveyance and Lease Back.
Bonds issued by a city as a conduit of independent school district pursuant to KRS 162.120 to 162.300 to pay costs of school auditorium-gymnasium to be erected on site conveyed by county board of education to the independent school district which was to convey it to the city which was to lease it back to school district until retirement of the bonds would not constitute direct obligations of the city or of the independent school district but would be secured by a first lien upon the auditorium-gymnasium and the right of the bondholders to enforce the lien would in no way be affected by a merger of independent school district and county school district. Ranier v. Board of Education, 273 S.W.2d 577, 1954 Ky. LEXIS 1190 (Ky. 1954).
The school board had the right to convey a school site to the city and then lease back the site and improvements thereon. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).
The school board is authorized to convey a building site to the city and lease it back with improvements financed by city's bonds. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).
The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

2. Selection of Site.
The selection of the site is to be made by the board of education. Franklin County v. Franklin County Board of Education, 267 Ky. 554, 102 S.W.2d 1024, 1937 Ky. LEXIS 355 (Ky. 1937).

3. School Building.
An auditorium-gymnasium is a school building within the meaning of KRS 162.120 to 162.300. Ranier v. Board of Education, 273 S.W.2d 577, 1954 Ky. LEXIS 1190 (Ky. 1954).

4. Merger with County after Conveyance to City.
The fact that after conveyance to the city, the independent district was merged with the county district does not affect the right of the city to consummate the original plan. Piggott v. Kasey, 271 Ky. 651, 113 S.W.2d 5, 1938 Ky. LEXIS 33 (Ky. 1938).

5. Acquisition of Property and Buildings.
A county or city may acquire property on which school buildings have already been erected and finance the cost of

acquisition under the provisions of KRS 162.120 to 162.300. Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

6. Liability for Tax.

Regardless of time or amount, the voting of a tax to pay revenue bonds issued for school construction does not impose a tax in futuro but merely grants authority to the taxing power to increase the amount of annual tax that the law otherwise authorized to be levied and property transferred by county school board to city school district is not liable for county school building tax voted prior to the transfer. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

7. Revenue Bonds.

Revenue bonds issued under KRS 162.120 to 162.300 did not constitute an indebtedness of county school district so city school district to which territory was transferred from county school district after voters of county district authorized a special school building tax to pay rentals for the school buildings to be erected and financed by the bonds was not liable for any part of the revenue bonds under proportional assumption statute KRS 160.065. Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

City is required to cooperate with independent school district in the issuance and sale of bonds but it is merely a conduit through which the board of education acts to have the bonds issued and sold and has no discretion in the matter. Ranier v. Board of Education, 273 S.W.2d 577, 1954 Ky. LEXIS 1190 (Ky. 1954).

8. Contract for Construction.

A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

9. —Unenforceable.

Where a construction company was attempting to maintain an action on the basis that it had a valid contract with the school board, the contract was unenforceable because the approval of the voters of the county was not obtained, as required by § 157 of the Kentucky Constitution; on the other hand, if the construction company was attempting to maintain the action on the basis that the revenue bond methods provided for in KRS 162.120 to 162.290 were followed, the contract was unenforceable because the only government agency possessing the power and authority to execute such a contract failed to do so. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

Cited in:

Cole v. McCracken County, 297 Ky. 797, 181 S.W.2d 461, 1944 Ky. LEXIS 835 (Ky. 1944); Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947); Bell v. Board of Education, 308 Ky. 848, 215 S.W.2d 1007, 1948 Ky. LEXIS 1065 (Ky. 1948); Fendley v. Board of Education, 240 S.W.2d 837, 1951 Ky. LEXIS 1023 (Ky. 1951); Wagner v. Fiscal Court of Jessamine County, 306 S.W.2d 288, 1957 Ky. LEXIS 39 (Ky. 1957); Stuff v. Webster County Board of Education, 339 S.W.2d 189, 1960 Ky. LEXIS 443 (Ky. 1960); Fosson v. Fiscal Court of Boyd County, 369 S.W.2d 108, 1963 Ky. LEXIS 58 (Ky. 1963).

OPINIONS OF ATTORNEY GENERAL.

Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Although, under this section through KRS 162.300, a certificate from the trustee stating certain bonds and coupons were redeemed and canceled is sufficient evidence that the bonds and coupons have been paid and properly canceled, the school board treasurer should normally visually inspect the bonds and coupons before incineration. OAG 72-487.

Under the provisions of this section through KRS 162.300 a school board may not relieve itself of liability for the bonds and coupons by a transfer of the "rental" money to a trustee since the board is contractually responsible for taking steps to insure that the debt service and liquidation of coupons and bonds for the benefit of bondholders is effectively secured. OAG 72-487.

Under the provisions of this section through KRS 162.300 the school board should require the trustee to make an accounting each year of money received and bonds and coupons paid. OAG 72-487.

Under this section through KRS 162.300 any excess money left after liability for the bonds has ceased would revert to the school board treasury. OAG 72-487.

Under this section through KRS 162.300 if a paying agent or trustee pays a wrong bond or coupon the improper payment is the liability of the trustee and not the school as the board does not insure the trustee's acts in this regard; therefore, the trustee is liable to the board but the board is liable to the holder. OAG 72-487.

Under this section through KRS 162.300 when bonds or coupons are not presented at maturity liability for these items would continue subject to the applicable statute of limitations. OAG 72-487.

Since financing of school bonds is done almost exclusively through the authority of KRS 162.120 through 162.300 and KRS 58.010 through 58.120, there is no authority for any change in the preexisting administration procedure used for school building revenue bonds and fiscal courts and county treasurers must continue to perform the customary functions heretofore served by them in that regard. OAG 77-139, modifying OAG 76-711.

The Kentucky School Facilities Construction Commission Act, KRS 157.611 to 157.640, does not give the Commission unilateral power to choose whether that Act or KRS 162.120 to 162.300 will be used to finance school building construction. OAG 86-50, 1986 Ky. AG LEXIS 39.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

City of first class may set apart land for municipal university, KRS 165.060.

Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.

Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

162.130. City to contract for erection of building.

Every city to which a site for a building has been conveyed, as provided in KRS 162.120, shall enter into

a contract or contracts with some person for the erection on the site of a building with the necessary appurtenances, according to plans and specifications adopted by the city and approved by the board of education and the chief state school officer.

History.
4421-2; amend. Acts 1990, ch. 476, § 254, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Financing Improvements.
2. Contract for Construction.

1. Financing Improvements.
The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

2. Contract for Construction.
A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

Cited in:
Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.140. Lease of building by board of education.

Immediately upon the approval of the plans and specifications as provided in KRS 162.130, the board of education shall offer to lease the building for a term of one (1) year from the time the building is completed and ready for occupancy. The lease by its terms shall give the lessee the right and option to extend the term of the lease from year to year, for periods of one (1) year, until the original term of the lease has been extended for a total number of years, acceptable to the city, not exceeding thirty (30) years, at a rental which, if paid for the original term and for each of the full number of years for which the term is extended, will amortize the total cost of the erection of the building and appurtenances, provide an adequate maintenance fund and, in addition thereto, a sum sufficient to pay the cost of insuring the building against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereto.

History.
4421-3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 556, effective July 13, 1990.

Compiler's Notes.
This section (4421-3) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 556, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Authority to Lease.
2. Abuse of Board's Discretion.
3. Lease for Thirty Years Invalid.

1. Authority to Lease.
The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

The school board had the right to convey a school site to the city and then lease back the site and improvements thereon. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

The school board is authorized to convey a building site to the city and lease it back with improvements financed by city's bonds. Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

2. Abuse of Board's Discretion.
Where county had existing bonded debt of $225,000 and the county board of education a debt of nearly $100,000 and estimates of future revenue indicated there would be available $2,000 to $5,600 more than necessary for servicing existing debts and meeting obligations incurred in building proposed new school, approval of plan by which county board of education and fiscal court proposed to erect a new high school and issue $250,000 in bonds payable from rents received annually from school board over 20-year period was not an abuse of discretion. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601, 1950 Ky. LEXIS 896 (Ky. 1950).

3. Lease for Thirty Years Invalid.
A lease for one year with annual renewal option is valid, when rental involved does not result in violation of Const., § 157. However a 30-year lease is invalid since it does result in a violation of said constitutional section. Davis v. Board of Education, 260 Ky. 294, 83 S.W.2d 34, 1935 Ky. LEXIS 396 (Ky. 1935).

Cited in:
Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947); Fosson v. Fiscal Court of Boyd County, 369 S.W.2d 108, 1963 Ky. LEXIS 58 (Ky. 1963).

OPINIONS OF ATTORNEY GENERAL.

The school board has broad discretion under KRS 160.160 and 160.290 in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the the school board under this section, as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building, unless the county could negotiate to purchase the property from the school board. OAG 74-221.

A school board should not tie up school property for a period exceeding a year but should, instead, provide for an extension of the term of the lease from year to year, for periods of one year, for a specified number of total years. OAG 77-771, 1977 Ky. AG LEXIS 30.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.150. City may erect school buildings.

Any city may establish and erect school buildings and necessary appurtenances within the corporate limits under the provisions of KRS 162.160 to 162.280, for the purpose of supplying the board of education of the independent district embracing the city with adequate buildings necessary to carry out its duties and powers.

History.
4421-5; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 557, effective July 13, 1990.

Compiler's Notes.
This section (4421-5) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 557, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Acquisition of Property and Buildings.
2. Contract for Construction.

1. Acquisition of Property and Buildings.
A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300 and several buildings or properties may be included in one mortgage and bond issue. Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

2. Contract for Construction.
A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

Cited in:
Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

OPINIONS OF ATTORNEY GENERAL.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

A city may establish and erect school buildings within its corporate limits for the purpose of supplying the board of education of an independent school district embracing the city with adequate buildings necessary to carry out its powers and duties. OAG 72-796.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
City of first class may set apart land for municipal university, KRS 165.060.
Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.
Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

162.160. Plans and specifications for buildings — Boards of education must offer to lease buildings before construction contract is made.

(1) When any city desires to construct a school building, under the provisions of KRS 162.150, the governing body of the city shall, by ordinance, cause plans and specifications for the building to be duly made and filed in the office of the city clerk. The plans and specifications shall give a full description of the building to be constructed, the details thereof and the manner of construction. The plans and specifications shall be prepared by an architect selected by the city and approved by the board of education of the school district, and shall be submitted to the board of education of the school district and to the chief state school officer for approval.

(2) If the plans and specifications are approved, and if the board of education of the school district offers to lease the building under a lease of the kind provided in KRS 162.140, the city governing body shall cause the city clerk to advertise for bids, and thereafter the city governing body, through the mayor, may contract for the construction of the building.

History.
4421-12; amend. Acts 1986, ch. 23, § 11, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 255, effective July 13, 1990.

NOTES TO DECISIONS

1. Contract for Construction.
A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

Cited in:
Bell v. Board of Education, 308 Ky. 848, 215 S.W.2d 1007, 1948 Ky. LEXIS 1065 (Ky. 1948); Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Public works involving engineering to be under supervision of registered engineer or architect, KRS 322.360.
Bond issue approval, 702 KAR 3:020.
Capital construction process, 702 KAR 4:160.

162.170. Financing construction of buildings.

For the purpose of defraying the cost of constructing or acquiring any school buildings and appurtenances for common school purposes under the provisions of KRS 162.150, any city may borrow money and issue negotiable revenue bonds. No bonds for common school purposes shall be issued until the conditions of KRS 162.160 have been complied with, and until authorized by an ordinance specifying the proposed undertaking, the amount of bonds to be issued, and the maximum rate of interest the bonds are to bear. The ordinance

shall further provide that the buildings and appurtenant facilities are to be constructed or acquired under the provisions of KRS 162.150 to 162.280.

History.
4421-6, 4421-12; amend. Acts 1970, ch. 137, § 1; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 558, effective July 13, 1990; 1996, ch. 274, § 34, effective July 15, 1996.

Compiler's Notes.
This section (4421-6, 4421-12; amend. Acts 1970, ch. 137, § 1; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 558, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Sale of Bonds.
2. Sources of Loans.

1. Sale of Bonds.
Bonds issued hereunder may be sold directly to private individual by the city. J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936). See Piggott v. Kasey, 271 Ky. 651, 113 S.W.2d 5, 1938 Ky. LEXIS 33 (Ky. 1938). But see Eagle v. Corbin, 275 Ky. 808, 122 S.W.2d 798, 1938 Ky. LEXIS 507 (Ky. 1938).

2. Sources of Loans.
Counties and cities, in financing construction of school buildings, may borrow money from sources other than the federal government. Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

OPINIONS OF ATTORNEY GENERAL.

The Kentucky statutes do not authorize the expending of bonds proceeds to renovate school buildings presently existing and already acquired. OAG 71-107.

The statutory sections relating to acquisition of existing buildings in this chapter and KRS Chapter 58 are broad enough to include, by reasonable implication, whatever may be properly spent for the functional adaptation of purchased buildings to school purposes. OAG 71-107.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Governmental agency may issue revenue bonds for any public project, KRS 58.010 to 58.120.
Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.
Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.180. Bonds — Interest on — When payable — How sold.

All bonds issued under the provisions of KRS 162.170 for common school purposes may bear interest at a rate or rates or method of determining rates, payable at least annually, and shall be executed in a manner and be payable at times, not exceeding thirty (30) years from the date of issue, and at a place as the governing body of the city determines. The bonds shall be sold in a manner and upon terms as the governing body of the city deems for the best interest of the city.

History.
4421-7, 4421-8; amend. Acts 1970, ch. 137, § 2; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 559, effective July 13, 1990; 1996, ch. 274, § 35, effective July 15, 1996.

Compiler's Notes.
This section (4421-7, 4421-8; amend. Acts 1970, ch. 137, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 559, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:
Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943); Bowling Green v. Board of Education, 443 S.W.2d 243, 1969 Ky. LEXIS 244 (Ky. 1969).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.
Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.185. Applicability of KRS 162.170 and 162.180.

Nothing contained in KRS 162.170 or 162.180 is intended to or shall be construed to make interest rates applicable to revenue bonds issued by the governing bodies of state institutions of higher learning under KRS 162.340 to 162.380, inclusive, subject to regulation, establishment, limitation, or approval by the Kentucky Board of Education.

History.
Enact. Acts 1970, ch. 137, § 3; 1978, ch. 155, § 82, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 560, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.
This section (Enact. Acts 1970, ch. 137, § 3; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 560, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.190. Bonds negotiable — Tax-exempt — Signatures — Not city debt.

All bonds issued under the provisions of KRS 162.170 shall have all of the qualities of negotiable instruments, and shall not be subject to taxation. If any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds, the signatures shall nevertheless be valid for all purposes the same as if the officers had remained in office until delivery. The bonds shall be payable solely from the revenue derived from the school building as provided in

KRS 162.230, and shall not constitute an indebtedness of the city within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of each bond that it was issued under the provisions of KRS 162.150 to 162.280 and that it does not constitute an indebtedness of the city.

History.
4421-8; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 561, effective July 13, 1990.

Compiler's Notes.
This section (4421-8) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 561, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.
The tax exemption feature does not violate Const., §§ 3, 170 or 171. J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936).

Cited in:
Pulaski County v. Ben Hur Life Ass'n, 286 Ky. 119, 149 S.W.2d 738, 1941 Ky. LEXIS 210 (Ky. 1941); Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947); Board of Education v. Board of Education, 250 S.W.2d 1017, 1952 Ky. LEXIS 897 (Ky. 1952).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.200. Use of funds — Lien on building.

All money received from any bonds issued pursuant to KRS 162.170 shall be used solely for the establishment or erection of the school building and necessary appurtenances, except that the money may be used also to advance the payment of the interest on bonds during the first three (3) years following the date of the bonds. There shall be a statutory mortgage lien upon the school building and appurtenances in favor of the holders of the bonds and coupons.

History.
4421-9; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 562, effective July 13, 1990.

Compiler's Notes.
This section (4421-9) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 562, effective July 13, 1990.

NOTES TO DECISIONS

1. Lien on Reversionary Interest.
The lien created by this section is only as good as the title to the property offered as security and subject to the terms of that title and where deed to school board provided it was not to be sold to anyone for residence purposes but was to remain a part of the colored school property so long as the school remained where then located and the colored school was abandoned and the property offered for sale by the board, the board's title terminated and the ownership of the property reverted to the grantor since the deed was a fee simple with special limitation or a determinable fee and the possibility of reverter remained in grantor. Fleming County Board of Education v. Hall, 380 S.W.2d 273, 1964 Ky. LEXIS 311 (Ky. 1964).

OPINIONS OF ATTORNEY GENERAL.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.
Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.210. Rights of bondholders to enforce lien.

The school building and appurtenances shall remain subject to the statutory lien provided by KRS 162.200 until the payment in full of the principal and interest of the bonds. Any holder of the bonds or of any of the coupons may, either at law or in equity, protect and enforce the lien, and may by action enforce and compel performance of all duties required by KRS 162.150 to 162.280, including the making and collecting of sufficient rents, the segregation of the income and revenue, and the application thereof.

History.
4421-10; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 563, effective July 13, 1990.

Compiler's Notes.
This section (4421-10) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 563, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:
Burkhart v. Blanton, 635 S.W.2d 328, 1982 Ky. App. LEXIS 222 (Ky. Ct. App. 1982).

OPINIONS OF ATTORNEY GENERAL.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.220. Receiver in case of default.

If there is any default in the payment of the principal or interest on any of the bonds, any court having jurisdiction of the action may appoint a receiver to administer the school building on behalf of the city, with power to charge and collect rentals sufficient to provide for the payment of any bonds or obligations outstanding against the school building and for the payment of the operating expenses, and to apply the income and revenues in conformity with KRS 162.150 to 162.280, and the ordinance referred to in KRS 162.170 and 162.230.

History.
4421-11; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 564, effective July 13, 1990.

Compiler's Notes.
This section (4421-11) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 564, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.230. Rent — Disposition to be fixed by ordinance.

At or before the issuance of the bonds, the governing body of the city shall, by ordinance, set aside and pledge the income of the building into a special fund to be used and applied in payment of the cost and maintenance of the building. The ordinance shall definitely fix the amount of revenue necessary to be set aside and applied for the payment of the principal and interest of the bonds. The balance of the income shall be set aside for the reasonable and proper maintenance of the building, including a sufficient sum to pay the cost of insurance. The city governing body may provide by ordinance any provision and stipulation it deems necessary for the administration of the income for the security of the bondholders.

History.
4421-13, 4421-17; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 565, effective July 13, 1990.

Compiler's Notes.
This section (4421-13, 4421-17) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 565, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.240. Deposit and investment of sinking fund.

The sinking fund shall be deposited in a depository selected by the governing body of the city. The deposit, where practicable, shall be continuously secured by a pledge to the city of direct obligations of the United States, exclusive of accrued interest, at all times at least equal to the balance on deposit in the account, or in some other manner acceptable to the purchasers or holders of the bonds. The securities shall be deposited with the city or held by a trustee or agent satisfactory to the governing body of the city. The sinking fund may be invested in direct obligations of the United States.

History.
4421-17; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 566, effective July 13, 1990.

Compiler's Notes.
This section (4421-17) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 566, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Boards of education may place their general funds in banks designated as depositories pursuant to KRS 160.570 and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

The "school building revenue bond and interest redemption fund" mentioned on the face of the specimen copy of a typical school bond is really a part and parcel of the "sinking fund" mentioned in this section, and the transfer of such funds finally to the trustee of the bonds does not automatically relieve the board of education of liability, since the board is contractually responsible for taking steps to insure that the debt service and liquidation of coupons and bonds for the benefit of bondholders is effectively secured. OAG 73-188.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Sinking funds may be invested in bonds secured by credit of United States, KRS 386.050.
Bond issue approval, 702 KAR 3:020.

162.250. Maintenance fund surplus to be transferred to sinking fund.

If a surplus is accumulated in the maintenance fund equal to the cost of maintaining the building during the remainder of the calendar or fiscal year, as may be provided by the ordinance required by KRS 162.230, and the cost of maintaining and operating the building for the succeeding like calendar or fiscal year, the excess over such amount shall be transferred to the sinking fund.

History.
4421-14; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 567, effective July 13, 1990.

Compiler's Notes.
This section (4421-14) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 567, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.260. Refunding bonds may be issued.

The city may issue refunding bonds to provide funds for the payment of any outstanding bonds, in accordance with the procedure prescribed for the issuance of the original bonds. The refunding bonds shall be secured to the same extent and shall have the same source of payment as the bonds which are refunded.

History.
4421-15; amend. Acts 1990, ch. 476, § 256, effective July 13, 1990.

NOTES TO DECISIONS

1. New Obligations.
Refunding bonds always create a new obligation, but the issue, if otherwise proper, is authorized by this section. Hemlepp v. Aronberg, 369 S.W.2d 121, 1963 Ky. LEXIS 65 (Ky. 1963).

Cited in:
Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

OPINIONS OF ATTORNEY GENERAL.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.270. Additional bonds authorized.

If the governing body of the city finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued subject to the same procedure.

History.
4421-16; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 568, effective July 13, 1990.

Compiler's Notes.
This section (4421-16) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 568, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.280. When city to convey property to board.

When the board of education of the school district has paid rent, as provided in KRS 162.160, sufficient to amortize the cost of erection of the building and appurtenances and to maintain the building and pay the cost of insurance, the city shall thereupon convey the premises to the board, and shall transfer any balance remaining in the funds provided for in KRS 162.230 to 162.250 to the account of the board of education.

History.
4421-18; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 569, effective July 13, 1990.

Compiler's Notes.
This section (4421-18) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 569, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.290. Alternative methods — Other procedure not required.

KRS 162.120 to 162.140 and KRS 162.150 to 162.280 are additional and alternate methods for the acquisition of school buildings by boards of education of independent districts embracing cities of any class, and do not include, alter, amend, or repeal any other statute. No proceeding shall be required for the acquisition of any school building or the issuance of bonds under KRS 162.150 to 162.280 except such as are prescribed by those sections.

History.
4421-4, 4421-19; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 570, effective July 13, 1990.

Compiler's Notes.
This section (4421-4, 4421-19) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 570, effective July 13, 1990.

NOTES TO DECISIONS

1. Contract for Construction.
A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Education, 590 S.W.2d 897, 1979 Ky. App. LEXIS 493 (Ky. Ct. App. 1979).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.300. Certain boards may obtain school buildings as provided in KRS 162.120 to 162.290.

County boards of education and boards of education of independent districts not embracing a city of any class may obtain buildings for school purposes by proceeding under the provisions of KRS 162.120 to 162.290. When applied to such boards of education, KRS 162.120 to 162.290 shall be so read that the term:

(1) "City" means "county," including a county containing a consolidated local government, or "urban-county," as the case may be;

(2) "City clerk" means "county clerk" or the appropriate recordkeeping officer in an urban-county government or a consolidated local government;

(3) "Governing body of the city" means "fiscal court" or the governing body of an urban-county government or a consolidated local government, as the case may be;

(4) "Mayor" means "county judge/executive," "chief executive officer of the urban-county government," or "mayor of a consolidated local government," as the case may be; and

(5) "Ordinance" means either "ordinance" or "resolution."

History.
4421-20 to 4421-38; amend. Acts 1974, ch. 367, § 1; 1986, ch. 23, § 12, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 571, effective July 13, 1990; 2002, ch. 346, § 176, effective July 15, 2002.

Compiler's Notes.
This section (4421-20 to 4421-38; amend. Acts 1974, ch. 367, § 1; 1986, ch. 23, § 12, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 571, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Authority of Board.
2. Determination of Site.
3. Acquisition of School Buildings.
4. Borrowing Money.
5. Lease of School Building.
6. Power of Fiscal Court.
7. Bondholders' Rights.

1. Authority of Board.
The authority vested in the school board is clearly a general and comprehensive power, given it without limitation, express or implied, effective to forbid it from making its financing plan of a group conveyance of three school properties and providing for a refund of all taxes paid by holders of its school bonds where amount was within its annual income. Scott County Board of Education v. McMillen, 270 Ky. 483, 109 S.W.2d 1201, 1937 Ky. LEXIS 100 (Ky. 1937).

County board of education is vested with the broad power and authority to control, buy and sell real estate for school sites, and to control and manage all public school property of its district and to use such school funds and property to promote public education in such ways as it deems necessary and proper in the exercise of its judgment and discretion. Scott County Board of Education v. McMillen, 270 Ky. 483, 109 S.W.2d 1201, 1937 Ky. LEXIS 100 (Ky. 1937).

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weaks v. Board of Education, 282 Ky. 241, 137 S.W.2d 1094, 1940 Ky. LEXIS 132 (Ky. 1940).

Board of education is naked trustee of school property and the real beneficiaries are the pupils for whose benefit school property is donated and the board could not appropriate the proceeds of fire policy taken out by it on colored schoolhouse which had been donated to it for exclusive benefit of the colored school district to the public school funds for the benefit of all public schools within its jurisdiction. Board of Education v. Todd County Board of Education, 289 Ky. 803, 160 S.W.2d 170, 1942 Ky. LEXIS 645 (Ky. 1942).

Where school board was renting school building constructed under holding company plan, and one of buildings was destroyed by fire, school board had no authority to issue funding bonds to enable building to be reconstructed. Stith v. Board of Education, 292 Ky. 91, 166 S.W.2d 58, 1942 Ky. LEXIS 53 (Ky. 1942).

2. Determination of Site.
Board of education and not the fiscal court has both the power and the duty to determine the site upon which school building will be erected. Franklin County v. Franklin County Board of Education, 267 Ky. 554, 102 S.W.2d 1024, 1937 Ky. LEXIS 355 (Ky. 1937).

3. Acquisition of School Buildings.
A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300. Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

County had authority to acquire school buildings from private holding company, and issue bonds in exchange for outstanding bonds of holding company and in such case several buildings or properties may be included in one mortgage and bond issue. Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

4. Borrowing Money.
Counties and cities, in financing construction of school buildings, may borrow money from sources other than the federal government. Morgan v. Fayette County Board of Education, 294 Ky. 597, 172 S.W.2d 64, 1943 Ky. LEXIS 480 (Ky. 1943).

5. Lease of School Building.
Provision that lease of school building by fiscal court to school district would continue from year to year for a rental sufficient to pay interest on the bonds and eventually retire the bonds violated the constitutional limitation on indebtedness but it could be changed to one year with the privilege of renewal and the school board would not be presently bound for the entire period required for the rentals to liquidate the proposed indebtedness but would be bound only for one year at a time as renewed which would be within the income of the board for each particular year. Fiscal Court of Jackson County v. Board of Education, 268 Ky. 336, 104 S.W.2d 1103, 1937 Ky. LEXIS 466 (Ky. 1937).

6. Power of Fiscal Court.
When the legislature enacted this section it did not intend that the acts of a county board of education might be vetoed by the fiscal court. Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947).

Fiscal court must comply with request of county board of education for issuance of revenue bonds for school buildings under this section, and cannot question need for buildings or use its own judgment as to whether bonds shall be issued. Fyfe v. Hardin County Board of Education, 305 Ky. 589, 205 S.W.2d 165, 1947 Ky. LEXIS 880 (Ky. 1947).

7. Bondholders' Rights.
Where county had issued revenue bonds pursuant to this section under a plan where the school board conveyed a tract of land to the fiscal court which issued revenue bonds and constructed a school building and then leased the building to the school board for one year with option to renew for successive one year periods and when sufficient rentals were paid over a period of years to retire the bonds the land and building were to be conveyed by the fiscal court to the school board, one of the bondholders could not attack a proposed new bond issue on the same plan for an entirely separate school to be erected on a separate tract of land on the basis the board did not have enough finances since under the plan the bondholder was not concerned with the future soundness of the school system but took the risk that the school board could abandon the school building at the end of any year. Wagner v. Fiscal Court of Jessamine County, 306 S.W.2d 288, 1957 Ky. LEXIS 39 (Ky. 1957).

Cited in:
Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949); Fosson v. Fiscal Court of Boyd County, 369 S.W.2d 108, 1963 Ky. LEXIS 58 (Ky. 1963).

OPINIONS OF ATTORNEY GENERAL.

Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Where the construction of a school building and later lease back to the school district was to be assumed by the county, a company in which the county judge (now county judge/executive) was the principal stockholder would be prohibited from selling materials to private contractors building the school. OAG 66-564.

After merger, an urban-county government would stand in the place of the fiscal court as far as the agency to contract with the county board of education in connection with the construction of school facilities in the county and the issuance of bonds for such construction. OAG 74-187.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Governmental agency may issue revenue bonds for any public project, KRS 58.010 to 58.120.

Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal.

Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

162.310. State educational institution may convey building site.

For the purpose of providing buildings to be used in connection with any state educational institution, the governing body of the institution may convey to any person complying with KRS 162.320 and 162.330 a fee simple title, with covenant of general warranty of title, to real estate held by or for the institution, as a site for the buildings.

History.

4535cc-1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 572, effective July 13, 1990.

Compiler's Notes.

This section (4535cc-1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 572, effective July 13, 1990.

NOTES TO DECISIONS

1. Constitutionality.

This section and KRS 162.320 and 162.330 do not violate Ky. Const., § 51, or any other constitutional provision. McDonald v. University of Kentucky, 225 Ky. 205, 7 S.W.2d 1046, 1928 Ky. LEXIS 734 (Ky. 1928).

State educational institutions are not within the purview of Ky. Const., § 157. McDonald v. University of Kentucky, 225 Ky. 205, 7 S.W.2d 1046, 1928 Ky. LEXIS 734 (Ky. 1928). See Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550, 1934 Ky. LEXIS 341 (Ky. 1934); J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936).

Cited in:

Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.320. Contract for erection of building.

Every person to whom a site for a building is conveyed pursuant to KRS 162.310 shall immediately enter into a written contract with some person approved by the governing body of the state educational institution, for the immediate erection on the site of a building with the necessary appurtenances, according to plans and specifications approved by the governing body of the state educational institution. The contract shall provide the time when the building shall be completed. The contractor shall enter into bond with the Commonwealth for the benefit of the state educational institution in the penal sum of not less than twenty-five percent (25%) of the contract price for the completion of the work in the manner and within the time set out in the contract.

History.

4535cc-2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 573, effective July 13, 1990.

Compiler's Notes.

This section (4535cc-2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 573, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:

Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949).

162.330. Lease of building — Option to purchase.

Immediately upon the execution of the contract provided for by KRS 162.320, the person to whom the site is conveyed shall execute, acknowledge, and deliver to the governing body of the state educational institution, a lease of the site and the building to be erected thereon, for a term of one (1) year from the time the building is completed and ready for occupancy, with an option in the lessee to extend the term of the lease for a term of one (1) year from the expiration of the original term of the lease and for one (1) year from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years to be agreed upon by the parties at a rental which, if paid for the original term and for each of the full number of years for which the term of the lease may be extended, will amortize the total cost of the erection of the building and appurtenances. The rent shall be paid at such times as the parties to the lease agree upon. The lease shall provide that the lessee may, at the expiration of the original or any extended term, purchase the leased premises at a

stated price, which shall be the balance of the total cost of the erection of the building and appurtenances not amortized by the payments of rent previously made by the lessee. The lease shall provide that in the event of the exercise of the option to purchase the leased premises or in the event the lease has been extended for the full number of years which it is agreed the same may be extended, and all rents and payments provided for in the lease have been made, the lessor shall convey the premises to the lessee in fee simple with covenant of general warranty of title. The lease may provide that the lessee shall, as additional rent for the leased premises, pay all taxes assessed against the leased premises, and the cost of insuring the building erected thereon against loss or damage by fire and windstorm in such sum as may be agreed by the parties thereto.

History.
4535cc-3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 574, effective July 13, 1990.

Compiler's Notes.
This section (4535cc-3) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 574, effective July 13, 1990.

NOTES TO DECISIONS

Cited in:
Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13, 1949 Ky. LEXIS 813 (Ky. 1949).

162.340. Governing bodies of state educational institutions may erect buildings.

The governing body of any state educational institution may, under the provisions of KRS 162.350 to 162.380, erect buildings and appurtenances to be used in connection with the institution for educational purposes.

History.
4535m-1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 575, effective July 13, 1990.

Compiler's Notes.
This section (4535m-1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 575, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Limitation on Indebtedness.
3. Utility Plant Authorized.

1. Constitutionality.
State educational institutions are not within the purview of Ky. Const., § 157 regarding limitation on indebtedness. Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550, 1934 Ky. LEXIS 341 (Ky. 1934). See J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936).

2. Limitation on Indebtedness.
State educational institutions were not within the purview of Ky. Const., § 157. McDonald v. University of Kentucky, 225 Ky. 205, 7 S.W.2d 1046, 1928 Ky. LEXIS 734 (Ky. 1928) (decided under prior law).

This section did not violate Ky. Const., §§ 49, 50, or 51. J. D. Van Hooser & Co. v. University of Kentucky, 262 Ky. 581, 90 S.W.2d 1029, 1936 Ky. LEXIS 76 (Ky. 1936).

3. Utility Plant Authorized.
This act authorizes the erection of a water, heating, power and lighting plant. Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550, 1934 Ky. LEXIS 341 (Ky. 1934).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
City of second class may follow KRS 162.340 to 162.380 to issue bonds for municipal college, KRS 165.165.

Kentucky Law Journal.
Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).
Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.350. Method of erection of buildings by state educational institutions.

The governing body of a state educational institution erecting a building or buildings pursuant to KRS 162.340 is subject to the provisions of KRS 162.170 to 162.240, KRS 162.260, 162.270, and 162.290, except that part of KRS 162.190 that provides that the bonds shall be payable solely from the revenue derived from the particular building or buildings erected. When so applied these sections shall be so read that:

(1) "City" means "state educational institution";
(2) "Ordinance" means "resolution";
(3) "Governing body of the city" means "governing body of the institution";
(4) "School buildings" means the type of buildings contemplated by KRS 162.340;
(5) "Thirty (30) years" in KRS 162.180 means "forty (40) years";
(6) "KRS 162.230" in KRS 162.190 and 162.220, means "KRS 162.230, 162.360, and 162.370";
(7) "KRS 162.150 to KRS 162.280" means "KRS 162.350 to 162.380."

History.
4535m-2 to 4535m-8, 4535m-10 to 4535m-12, 4535m-14; amend. Acts 1958, ch. 147, § 1; 1968, ch. 110, § 20; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 576, effective July 13, 1990; 1996, ch. 274, § 36, effective July 15, 1996.

Compiler's Notes.
This section (4535m-2 to 4535m-8, 4535m-10 to 4535m-12, 4535m-14; amend. Acts 1958, ch. 147, § 1; 1968, ch. 110, § 20) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 576, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Even though housing bond revenues are required to go into the State Treasury, subject to payment out to the trustee for sinking fund purposes, KRS 56.873 has no application to university housing revenue bonds, since the act (Ch. 96 of 1980) requires legislative approval only where state general fund expenditures are involved. OAG 80-592, 1980 Ky. AG LEXIS 61.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.360. Revenues from building — Determination and use.

The governing body of a state educational institution erecting a building or buildings and appurtenances under the provisions of KRS 162.340 shall, by resolution, provide that the bonds shall be payable, solely from the revenues of such building or buildings, provided, said governing body may in its discretion, by said resolution, also provide that the bonds shall be payable from the revenues of any other building or buildings theretofore or as may be thereafter erected and used, in connection with the institution for educational purposes provided, further, any such provision for the payment of the bonds from the revenues of such other building or buildings theretofore erected shall be subject to and in all respects in full conformity and compliance with the rights of the holders of any bonds or obligations payable from the revenues of such other building or buildings theretofore issued by the governing body then outstanding. The resolution shall fix the initial minimum rents, tolls, fees, and other charges to be imposed in connection with the services furnished by the building or buildings to be erected and may also provide that the governing body of the institution shall monthly as the service accrues pay from the current funds of the institution or from student fees, or both, into the special fund provided by KRS 162.230, as that section is made applicable by KRS 162.350, a minimum amount representing the reasonable cost and value of any service rendered to the educational institution by such building or buildings in furnishing any educational facilities in the operation of the educational institution. The resolution shall fix the extent of the pledge of revenues from such other building or buildings toward the payment of the bonds and interest thereon and may specify the terms and conditions upon which additional bonds may be thereafter issued and sold ranking on a parity with and payable from the same source as the bonds authorized by such resolution, and such additional parity bonds may thereafter be so issued and sold to pay all or any part of the cost of building or buildings and appurtenances. The resolution shall definitely fix the minimum amount of revenues necessary to be set apart on or before stated intervals and applied to the payment of the principal and interest on the bonds and the balance of the income and revenues shall be set aside as a proper operation and maintenance fund, including a sufficient sum to pay the cost of insuring the building or buildings against loss or damage by fire and windstorm or other calamity as may have been stipulated in the resolution or resolutions authorizing the bonds. The charges for the services from the building or buildings, together with the available revenues of any other building or buildings pledged to the payment of said bonds and interest thereon, shall be sufficient at all times to provide for the payment of such interest and to create a sinking fund to accomplish retirement of such bonds at or before maturity, and to pay the current operation and maintenance expenses of the building or buildings to the extent such expenses are not otherwise provided. The charges shall be revised from time to time so as to produce these amounts.

History.

4535m-8; amend. Acts 1958, ch. 147, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 577, effective July 13, 1990.

Compiler's Notes.

This section (4535m-8; amend. Acts 1958, ch. 147, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 577, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.370. Maintenance fund surplus.

If a surplus is accumulated in the maintenance fund equal to the cost of maintaining the building or buildings during the remaining portion of the calendar or fiscal year, as may be provided by the resolution adopted under KRS 162.360 and the cost of maintaining and operating the building or buildings the succeeding like calendar or fiscal year, the excess over such amount may be transferred at any time by the governing body to the sinking fund or may be used for any improvements, extensions, or additions to the building or buildings.

History.

4535m-9; amend. Acts 1958, ch. 147, § 3; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 578, effective July 13, 1990.

Compiler's Notes.

This section (4535m-9; amend. Acts 1958, ch. 147, § 3) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 578, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Goldman, The University and the Liberty of Its Students — A Fiduciary Theory, 54 Ky. L.J. 643 (1966).

162.380. Bonds are obligations of governing body — Resolution constitutes contract.

The bonds issued under authority of KRS 162.350 shall be obligations only of the governing body of the institution, payable as to both principal and interest from the revenues as pledged for that purpose. In no event shall they be considered a debt for which the credit of the state is pledged. Any resolution adopted under the provisions of KRS 162.350 or 162.360 shall constitute a contract between the governing body of the institution and the holder of any bond or coupon and shall be binding in all respects upon the governing body of the institution and its successors.

History.

4535m-13; amend. Acts 1958, ch. 147, § 4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 579, effective July 13, 1990.

Compiler's Notes.

This section (4535m-13; amend. Acts 1958, ch. 147, § 4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 579, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.385. School district finance corporation — Definitions — Construction bonds.

(1) Any board of education may obtain buildings for school purposes by proceeding under the provisions of KRS 162.120 to 162.290 utilizing a nonprofit finance corporation established pursuant to the provisions of KRS 273.161 to 273.390, inclusive, and KRS 58.180 as an issuing agency for the bonds instead of a city or county. When applied to such boards of education, KRS 162.120 to 162.290 shall be so read that the term:

(a) "City" means a finance corporation acting as an agency and instrumentality of the board pursuant to KRS 58.180;

(b) "City clerk" means the secretary of the finance corporation;

(c) "Governing body of the city" means the board of directors of the finance corporation or other governing body thereof;

(d) "Mayor" means president or chief executive officer of the finance corporation; and

(e) "Ordinance" means an ordinance, resolution, or trust indenture or a similar document.

(2) In order to promote uniformity in the financing of school facilities, each finance corporation shall include the identity of the school district for which it acts in its title and shall be designated as "..... School District Finance Corporation."

(3) Bonds issued by a finance corporation on behalf of a board of education shall constitute "bonds" within the meaning of KRS 157.615(3) and the School Facilities Construction Commission shall be authorized to assist qualified boards in meeting rental payments due under a lease from the finance corporation to the board which shall constitute a "lease" within the meaning of KRS 157.615(8).

History.
Enact. Acts 1988, ch. 301, § 1, effective April 9, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 580, effective July 13, 1990; 1992, ch. 195, § 13, effective April 3, 1992.

Compiler's Notes.
This section (Enact. Acts 1988, ch. 301, § 1, effective April 9, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 580, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bond issue approval, 702 KAR 3:020.

162.387. School district finance corporations may lease land for school construction — Issuance of bonds.

(1) Notwithstanding any other statute or administrative regulation to the contrary, any nonprofit finance corporation formed under KRS 162.385 may lease land from any government entity or agency for the purposes of constructing a school building on the site. The nonprofit finance corporation shall offer to lease the land for one (1) year and the lease by its terms shall give the lessee the right and option to extend the term from year to year, for periods of one (1) year, for a minimum of fifty (50) years.

(2) In the event a finance corporation leases property from a governmental agency as set forth in subsection (1) of this section, the finance corporation may issue school building revenue bonds on behalf of a school district in accordance with KRS 162.120 to 162.300 just as if the finance corporation held fee simple title to the leased property.

History.
Enact. Acts 2010, ch. 69, § 1, effective July 15, 2010.

162.390. School building fund in cities of first class; tax for. [Repealed.]

Compiler's Notes.
This section (2978e-1) was repealed by Acts 1946, ch. 36, § 3.

162.400. Taxes go to school board; may be accumulated; building fund. [Repealed.]

Compiler's Notes.
This section (2978e-2) was repealed by Acts 1946, ch. 36, § 3.

162.410. Deposit or investment of building fund. [Repealed.]

Compiler's Notes.
This section (2978e-3) was repealed by Acts 1946, ch. 36, § 3.

162.420. Expenditures from building fund. [Repealed.]

Compiler's Notes.
This section (2978e-2, 2978e-4) was repealed by Acts 1946, ch. 36, § 3.

162.430. Report of condition of building fund. [Repealed.]

Compiler's Notes.
This section (2978e-5) was repealed by Acts 1946, ch. 36, § 3.

162.431. School building fund in cities of second class and in counties containing such a city; tax for; other assets of. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 27, § 1; 1944, ch. 31) was repealed by Acts 1946, ch. 36, § 3.

162.432. Taxes go to school board; accumulation and use of fund. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 27, § 2) was repealed by Acts 1946, ch. 36, § 3.

162.433. Deposit or investment of fund. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 27, § 3) was repealed by Acts 1946, ch. 36, § 3.

162.434. Expenditures from fund. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 27, § 4) was repealed by Acts 1946, ch. 36, § 3.

162.435. Audit of fund. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1942, ch. 27, § 5; 1944, ch. 31, § 1) was repealed by Acts 1946, ch. 36, § 3.

INSURANCE FUNDS

162.440. Insurance fund for board of education in a designated city or county containing a designated city.

(1) The board of education of any designated city or of a county containing a designated city may, by resolution, establish a fund to be known as the "insurance fund" after written approval of the plan to administer the fund has been secured from the chief state school officer. The resolution shall fix the maximum limit of the fund. The fund shall be maintained separate from the other funds and moneys of the board, and shall be used exclusively for replacing or repairing any injury or destruction to any of the buildings owned by the board or to their contents when caused by fire, tornado, windstorm, cyclone, casualty, explosion, riot, or flood, but not when caused by wear and tear or the natural processes of decadence or deterioration.

(2) As used in this section, "designated city" means a city classified as a city of the second class as of January 1, 2014, under the city classification system in effect prior to January 1, 2015. The Department of Education shall, on or before January 1, 2015, create an official registry listing the cities that qualify as a "designated city" under this section and shall publish that registry on its Web site.

History.
3219a-1; amend. Acts 1944, ch. 31; 1990, ch. 476, Pt. IV, § 257, effective July 13, 1990; 2014, ch. 92, § 228, effective January 1, 2015.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Insurance of state property, KRS 56.070 to 56.185.

162.450. Payments into fund — Replacement of expenditures — Use of interest.

The board of education authorized to establish an insurance fund pursuant to KRS 162.440 may raise the maximum limit of the insurance fund from time to time as it deems best. Until the amount in the fund equals the maximum limit, the board of education shall each year, from the revenues under its control, set apart to the fund a sum equal to from one-twentieth ($^1/_{20}$) to one-tenth ($^1/_{10}$) of the maximum limit of the sum. When any portion of the fund is used, payments to restore the fund shall at once be begun and be continued until the restoration is complete. When the fund is, for any reason, below the maximum limit, the interest derived from the investment thereof shall be accumulated and added to the fund; otherwise the interest may be transferred to the general funds of the board.

History.
3219a-2; amend. Acts 1944, ch. 31; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 581, effective July 13, 1990; 2014, ch. 92, § 229, effective January 1, 2015.

162.460. Investment and care of insurance fund.

The insurance fund shall be kept on deposit with the treasurer of the board of education, unless by order of the board it is invested in United States, state, county, or city bonds that are not payable from assessments, and are registered, if practicable. If the bonds are coupon bonds, they shall be kept deposited in a safe deposit vault and be opened only by the business manager or secretary of the board in the presence of a member of the board authorized to represent it. Every vote upon the use or investment of any portion of the fund shall be by call of the yeas and nays and the record shall show how each member voted.

History.
3219a-3, 3219a-5; amend. Acts 1944, ch. 31; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 582, effective July 13, 1990.

Compiler's Notes.
This section (3219a-3, 3219a-5; amend. Acts 1944, ch. 31) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 582, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Investment of sinking funds in United States bonds authorized, KRS 386.050.

162.470. Insurance inspector to examine buildings annually.

The board of education shall cause every building to be carefully examined annually by a competent insurance inspector. The inspector shall make a written report of the result of his examination with recommendations.

History.
3219a-4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 583, effective July 13, 1990.

Compiler's Notes.
This section (3219a-4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 583, effective July 13, 1990.

162.480. Proof of loss — Appropriations of fund.

When an injury occurs to any building or its contents from fire, tornado, windstorm, cyclone, casualty, explosion, riot, or flood, the business director or secretary of the board of education shall, within thirty (30) days thereafter, prepare and file with the board a sworn

written proof of loss, showing in detail the items of injury, and in detail an estimate of the extent of the financial loss and whether and to what extent the loss is covered by insurance, with the names of the companies, the number of the policies, and names of the agents. Before the board of education may appropriate any portion of the insurance fund, a committee appointed by the board shall report to the board in writing, making recommendations and answering in detail the following questions:

(1) What is the entire loss on the building? When and what caused it?

(2) What deduction should be made for wear and tear and the natural processes of decadence or deterioration?

(3) What portion of the loss proposed to be made good from this fund resulted from causes covered by this fund?

(4) Will it be practicable to make the restoration from the general fund and the proceeds of any insurance policies without assistance from this fund?

(5) If assistance is needed from this fund, how much? How will the portion so used be returned to the fund?

(6) Does the committee recommend an appropriation from this fund to aid in the restoration proposed? If so, how much?

History.
3219a-5; amend. Acts 1944, ch. 31; 1990, ch. 476, Pt. IV, § 258, effective July 13, 1990.

162.490. Insurance fund may be used in case of delay in payment under insurance policy.

If any insurance company delays in paying to the board of education the amount of any loss under a policy, the board may, on the recommendation of its building and finance committee, appropriate from the insurance fund a sum not exceeding the amount of the probable loss under the policy to aid in the prompt restoration of the loss. The amount drawn from the insurance fund shall not exceed the amount collectible from the policy. A resolution shall be adopted setting over to the insurance fund the proceeds of the policy or sufficient thereof to replace the amount so used, and the proceeds when collected shall be so used and not otherwise.

History.
3219a-6; amend. Acts 1990, ch. 476, Pt. IV, § 259, effective July 13, 1990.

162.500. Prohibited appropriations.

No member of the board of education shall vote for, and no officer of the board shall certify to or draw a check for, an appropriation in violation of KRS 162.440 to 162.490.

History.
3219a-7; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 584, effective July 13, 1990.

Compiler's Notes.
This section (3219a-7) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 584, effective July 13, 1990.

162.510. Kentucky Public School Authority; public corporation. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1960, ch. 81, § 1) was repealed by Acts 1964, ch. 7, § 8.

STATE PROPERTY AND BUILDINGS COMMISSION

162.520. Definitions for KRS 162.520 to 162.620.

As used in KRS 162.520 to 162.620, the following terms and words have the following respective meanings, unless another meaning is clearly indicated by the context:

(1) As used in KRS 162.540, 162.550, 162.580, 162.590, 162.600, and 162.620 "authority" means "State Property and Buildings Commission;"

(2) "Department" means the State Department of Education;

(3) "Board of education" means the governing body of a county school district, or of an independent school district, for which the authority issues its revenue bonds pursuant to KRS 162.520 to 162.620;

(4) "Project" means any undertaking to provide for a board of education any school buildings, facilities, improvements, and appurtenances authorized in KRS 162.120 to 162.300;

(5) "Lease" or "lease instrument" means a written instrument for the leasing of one (1) or more school projects executed by the authority as lessor and a board of education as lessee, conforming to the specifications set forth in KRS 162.140;

(6) "Bonds" or "bonds of the authority" means bonds issued by the authority under KRS 162.520 to 162.620, payable as to principal and interest solely from rentals received from a board of education pursuant to a lease.

History.
Enact. Acts 1960, ch. 81, § 2; 1964, ch. 7, § 9; 1990, ch. 476, Pt. IV, § 260, effective July 13, 1990; 1996, ch. 87, § 6, effective July 15, 1996.

162.530. Membership; succession; quorum; compensation; offices; register of membership; official records; regulations; meetings. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1960, ch. 81, § 3) was repealed by Acts 1964, ch. 7, § 12.

162.540. Interpretation of terms in KRS 162.120 to 162.300 when applied to KRS 162.520 to 162.620.

Upon receiving a request in writing from a board of education, the authority may, in its discretion, assist such board of education in financing any project by acting in the capacity and manner authorized to be performed by cities under KRS 162.120 to 162.290, and by counties under KRS 162.300. When applied to the authority, KRS 162.120 to 162.300 shall be so read that

the following terms and passages have the following respective meanings or interpretations:

(1) "City" or "county" means "authority";

(2) "City clerk" or "county clerk" means "secretary or assistant secretary of the authority";

(3) "Governing body of the city" or "fiscal court" means "authority";

(4) "Mayor" or "county judge/executive" means "chairman or vice chairman of the authority";

(5) "Ordinance" in the case of a city, or "resolution" in the case of a county, means a resolution of the authority;

(6) "Building and appurtenances" means "project" as defined in subsection (4) of KRS 162.520;

(7) The last sentence of KRS 162.190 shall read, "It shall be plainly stated on the face of each bond that it was or is issued under the provisions of KRS 162.520 to 162.620 (omitting reference to KRS 162.150 to 162.280 as such), and that it does not constitute an indebtedness of the authority or of the Commonwealth";

(8) KRS 162.200 is modified to permit use of money received from bonds for the additional purpose of paying reasonable expenses incurred in the authorization, advertising, preparation, sale, and delivery of bonds, and may include a fee contracted to be paid to a fiscal agent for financial advice and services if the contract or agreement therefor shall have been approved by the board of education and by the authority;

(9) As used in KRS 162.140, "lease" shall have the meaning defined in subsection (5) of KRS 162.520, and the same shall be recorded or filed for recording in the office of the county clerk of the county in which the project is situated, as evidenced by a written receipt or acknowledgment of filing issued by such clerk, or by a copy of the lease attested or certified by such clerk as being of record in his office. It shall be the duty of the secretary of the authority to obtain such evidence before delivery of the bonds to a purchaser thereof; but failure to obtain the same shall not affect the validity of the bonds in the hands of any purchaser or holder;

(10) KRS 162.240 shall not apply; and the following provisions shall govern in lieu thereof:

"One (1) or more depositories and paying agents may be selected and designated by the board of education, subject to the approval of the authority, which approval shall not unreasonably be withheld; but each depository and paying agent shall be a financial institution, within or without the Commonwealth, which is a member of the Federal Deposit Insurance Corporation. All deposits of sinking funds and of bond proceeds shall continuously be secured by a pledge to the authority of direct obligations of the United States, exclusive of accrued interest, at all times at least equal to the balance on deposit in the fund or account, such securities to be deposited with the authority or held by a trustee or agent designated by the authority; provided, however, in lieu of requiring such security the authority may in its discretion invest, or cause to be invested and reinvested, any moneys in direct obligations of the United States until such time as cash funds may be needed, and the authority may prescribe for the custody and safekeeping of such securities. When cash funds are needed, the authority shall direct the conversion into cash of such securities, or a sufficient portion thereof, and may require that the same be secured until disbursement, as herein provided. All income from such securities shall accrue to the board of education, but may be retained by the authority and credited upon any rental obligation of the board of education under the lease, or applied to supplement bond proceeds if the same should for any reason turn out to be insufficient to defray the costs and expenses of the project."

History.

Enact. Acts 1960, ch. 81, § 4, effective June 16, 1960; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 293, effective June 17, 1978; 1986, ch. 23, § 13, effective July 15, 1986; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 585, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 81, § 4, effective June 16, 1960; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 293, effective June 17, 1978; 1986, ch. 23, § 13, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 585, effective July 13, 1990.

NOTES TO DECISIONS

1. Escrow.

Designation of an out-of-state bank as escrow agent whose duties were to protect bondholders rather than city does not invalidate revenue bond financing plan. Gregory v. Lewisport, 369 S.W.2d 133, 1963 Ky. LEXIS 70 (Ky. 1963).

162.550. Ownership of certain moneys determined.

Moneys received by the authority as rentals under any lease, and from the sale of bonds, are declared not to be funds of the Commonwealth but shall be corporate funds of the authority to be held, administered, invested, and disbursed as trust funds under the terms, provisions, pledges, covenants, and agreements set forth in its leases and bond resolutions and bonds.

History.

Enact. Acts 1960, ch. 81, § 5, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 586, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 81, § 5, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 586, effective July 13, 1990.

162.560. Officers of authority to be bonded. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1960, ch. 81, § 6) was repealed by Acts 1964, ch. 7, § 12.

162.570. Authority required to record all financial transactions; report to Governor. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1960, ch. 81, § 7) was repealed by Acts 1964, ch. 7, § 12.

162.580. Duty of authority as to each bond issue.

In connection with each bond issue of the authority, it shall be the duty of the authority:

(1) To require the board of education to insure the project to its full insurable value, or to the amount of the bonds outstanding from time to time, whichever is the less, against the hazards covered by the standard fire insurance policy with standard endorsement of "extended coverage"; and to require that a copy of each policy be delivered to the authority for inspection and for its records;

(2) To require periodic accounting from all depositories of funds, the same to be submitted on forms prepared and supplied by the authority;

(3) To furnish to the auditing staff of the department a summary identification and description of each issue, and to request that the financial records of the board of education relating thereto be audited as a part of the annual audit of the board of education, and that a separate statement or report thereof be filed with the authority;

(4) To send to each board of education, at least thirty (30) days before the due date of any rental payment, a notice of the amount of rental to become due, and the date thereof, and to require acknowledgment thereof;

(5) In the event of failure to receive from the board of education satisfactory evidence that sufficient funds have been transmitted to the authority, or will be so transmitted, for paying bond principal and/or interest when due, as provided in the lease, to notify and request that the department withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated to it, and to request that the department transfer the required amount thereof to the authority for the account of the board of education.

History.

Enact. Acts 1960, ch. 81, § 8, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 587, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 81, § 8, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 587, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Approval of contracts payable from revenue bonds, KRS 56.470.

162.590. Duty of department on request of authority.

It shall be the duty of the department, upon written request of the authority:

(1) To cause its auditing staff to audit the financial records of a board of education relating to any identified and described bond issue of the authority, as an incident to the department's next ensuing annual audit of such board of education, and each subsequent annual audit thereof; and to provide to the authority a statement or report thereof;

(2) Upon receiving a notification and request from the authority as described in KRS 162.580, to ascertain whether the lease of the board of education has been renewed and is in force in accordance with its terms; and if the same is ascertained to be in force, to withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated by the department for the board of education, and to comply with the terms of the notification and request of the authority, for the account of said board of education.

History.

Enact. Acts 1960, ch. 81, § 9, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 588, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1960, ch. 81, § 9, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 588, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Department of Education, KRS 156.010.

162.600. Bonds to issue in name of authority — Identification — Investment designation.

(1) Bonds of the authority shall be issued in the name of the authority, shall be designated "school building revenue bonds," or, if appropriate, "school building revenue refunding bonds," and shall additionally be identified by the name of the board of education executing the lease. If the authority shall issue more than one (1) series of bonds for the same lessee from time to time, each series, including the first or subsequent to the first, shall additionally be identified distinctly by alphabetical or chronological designation, by date of the bonds, or otherwise as the authority may determine.

(2) For the purposes of determining any limit prescribed by any law for investment of any public funds, or funds of banks, trust companies, insurance companies, building and loan associations, credit unions, pension and retirement funds, and fiduciaries, in obligations of a single obligor, bonds issued by the authority pursuant to KRS 162.520 to 162.620 shall not be deemed to be bonds or obligations of the same obligor except to the aggregate of all series of bonds involving leases of a single board of education.

(3) Bonds issued by the authority under the provisions of KRS 162.520 to 162.620 are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or munici-

pal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

History.
Enact. Acts 1960, ch. 81, § 10, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 589, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1960, ch. 81, § 10, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 589, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
State Property and Buildings Commission, KRS 56.440 to 56.580.

162.610. Transactions of authority exempt from other control. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1960, ch. 81, § 11) was repealed by Acts 1964, ch. 7, § 12.

162.620. Sale of bonds — Conditions.

Bonds of the authority shall be sold only upon the basis of sealed bids or proposals, publicly solicited, received, opened and acted upon. The "publication area," as that term is used in KRS Chapter 424, shall not be deemed to be the area within which the office of the authority is situated, but shall be deemed to be the "publication area" of the board of education executing the lease. Each sale shall be publicly advertised by means of a notice conforming to the provisions of KRS 424.140(3), and the same shall be published at least one (1) time, at least seven (7) days in advance of the date set forth for opening bids, in a daily newspaper having bona fide general circulation throughout the Commonwealth. If such publication is made, it shall be sufficient for publication in the "publication area" to be made only one (1) time, at least seven (7) days in advance of the date set forth for the opening of bids, notwithstanding provisions for publication more often as provided in KRS Chapter 424. If a copy of the sale notice be delivered or transmitted in good faith to the qualified newspaper of the "publication area" in time for publication in an issue thereof published seven (7) days or more in advance of the date set forth for the opening of bids, and with direction for publication therein, any failure of such newspaper to make publication as directed shall not invalidate the sale of the bonds by the authority on the designated date, nor require postponement or cancellation thereof.

History.
Enact. Acts 1960, ch. 81, § 12, effective June 16, 1960; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 590, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1960, ch. 81, § 12, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 590, effective July 13, 1990.

PENALTIES

162.990. Penalties.

Any person who violates any of the provisions of KRS 162.500 is liable to the board of education, in an action brought by the board of education, or by any citizen of the district, or by the chief state school officer, for the restoration of the wrongful appropriation. In addition, he is guilty of malfeasance in office and upon conviction shall forfeit his office, and may for each offense be fined not less than fifty dollars ($50) nor more than one thousand dollars ($1,000), or imprisoned from one (1) to five (5) years, or both so fined and imprisoned. One-half (½) of the fine shall be paid to the board of education by the collecting officer.

History.
3219a-7; amend. 1990, ch. 476, Pt. IV, § 261, effective July 13, 1990.

CHAPTER 163

VOCATIONAL EDUCATION AND REHABILITATION

General Provisions.

Section
163.010. [Repealed.]
163.020. [Repealed, reenacted and amended.]
163.030. [Repealed, reenacted and amended.]
163.032. Salary schedule for teachers and administrators in schools for deaf and blind — Employment status and benefits — Hiring process — Work location assignments — Accrued leave.
163.035. [Repealed.]
163.036. [Repealed.]
163.038. [Repealed.]
163.040. [Repealed.]
163.050. [Repealed.]
163.060. [Repealed.]
163.070. [Repealed, reenacted and amended.]
163.080. [Repealed.]

Vocational Schools.

163.085. [Repealed, reenacted and amended.]
163.086. [Repealed.]
163.087. [Repealed, reenacted and amended.]
163.088. [Repealed, reenacted and amended.]
163.089. [Repealed, reenacted and amended.]
163.090. [Repealed.]
163.095. Application of bequests or donations.
163.098. Establishment of base salaries for principals.
163.100. [Repealed.]

State Vocational Rehabilitation Agency.

163.110. [Repealed, reenacted and amended.]
163.120. [Repealed, reenacted and amended.]
163.130. [Renumbered].
163.140. [Repealed, reenacted and amended.]
163.150. [Repealed.]
163.160. [Repealed, reenacted and amended.]
163.170. [Repealed, reenacted and amended.]
163.180. [Repealed, reenacted and amended.]
163.220. [Repealed.]
163.230. [Repealed.]
163.240. [Repealed.]

Section
163.310. [Repealed.]
163.320. [Repealed.]
163.330. [Repealed.]
163.340. [Repealed.]
163.350. [Repealed.]
163.360. [Repealed.]
163.370. [Repealed.]
163.380. [Repealed.]
163.390. [Repealed.]

Rehabilitation Services for the Blind and Visually Impaired.

163.450. Purpose.
163.460. Definitions for chapter.
163.470. Office for Vocational Rehabilitation responsible for services for the blind and visually impaired.
163.475. Legislative findings and provisions relating to transition of operation of Kentucky Industries for the Blind.
163.480. Office's authority to contract with nonprofit corporation for employment services.

Accessible Electronic Information.

163.485. Legislative findings and declarations relating to accessible electronic information for the disabled.
163.487. Definitions for KRS 163.485 to 163.489.
163.489. Creation of Accessible Electronic Information Service Program — Access provided — Use of funding.

Commission on Deaf and Hard of Hearing.

163.500. Definitions of "deaf" and "hard of hearing.".
163.505. [Repealed.]
163.506. Commission on the Deaf and Hard of Hearing — Membership — Terms — Compensation.
163.510. Duties of commission.
163.515. Executive director — Duties.
163.520. Providing data to commission.
163.525. Telecommunications Access Program — Distribution of specialized telecommunications equipment — Authority for administrative regulations.
163.527. Annual report on Telecommunications Access Program.
163.990. [Repealed.]

GENERAL PROVISIONS

163.010. Definitions. [Repealed.]

Compiler's Notes.

This section (4526-5) was repealed by Acts 1956, ch. 165, § 1.

163.020. Federal acts relating to vocational education accepted. [Repealed, reenacted and amended.]

Compiler's Notes.

This section (4526-1; amend. Acts 1956, ch. 165, § 2) was repealed, reenacted and amended as KRS 151B.145 by Acts 1990, ch. 470, § 28, effective July 1, 1990, which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 591, effective July 13, 1990.

163.030. State board for vocational-technical, adult education and vocational rehabilitation services authorized to carry out vocational education program. [Repealed, reenacted and amended.]

Compiler's Notes.

This section (4526-2; amend. Acts 1956, ch. 165, § 3; 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.150 by Acts 1990, ch. 470, § 29, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 262, effective July 13, 1990.

163.032. Salary schedule for teachers and administrators in schools for deaf and blind — Employment status and benefits — Hiring process — Work location assignments — Accrued leave.

(1) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind. The salary schedule shall be the same as salary schedules in effect in local school districts in counties containing a city of the first class and shall conform to the requirements for a single salary schedule as defined in KRS 157.320, except the salary schedule shall not limit the number of years of experience for a certified employee who transfers to the school.

(2)(a) Certified teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind shall have the same statutory employment status and benefits as certified teachers in the public schools.

(b) If a teacher qualifies for and requests a tribunal under KRS 161.790, the Attorney General shall appoint the members.

(3) Once a teacher has been selected for hiring at the Kentucky School for the Blind or the Kentucky School for the Deaf, the Department of Education and the Personnel Cabinet shall complete the hiring process within two (2) weeks.

(4) A certified teacher employed at one (1) of the schools on July 12, 2006, whose job description does not include outreach responsibilities shall not be involuntarily assigned to work on a permanent basis outside the county in which the employing school is located.

(5) Nothing in KRS 18A.115 or 163.032 shall result in a loss of any leave accrued by a certified teacher employed prior to July 12, 2006, by one (1) of the schools. Accrued leave may be taken in accordance with the policy of the school.

(6) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for administrators for the Kentucky School for the Deaf and the Kentucky School for the Blind. In considering the rate of pay and the requirements of KRS 18A.110(7)(b), the department and the cabinet shall consider rates that are based upon the duties and responsibilities of the positions and that are competitive with rates for similar or comparable services in Kentucky school districts. The salary schedule, which shall be computed prior to September 1 of each year, shall be based on two hundred sixty (260) days per year.

History.
Enact. Acts 1980, ch. 277, § 1, effective July 15, 1980; 1986, ch. 219, § 1, effective July 15, 1986; 1988, ch. 361, § 16, effective July 15, 1988; 1990, ch. 233, § 1, effective July 13, 1990; 1990, ch. 470, § 55, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 263, effective July 13, 1990; 1998, ch. 154, § 80, effective July 15, 1998; 2006, ch. 208, § 2, effective July 12, 2006; 2011, ch. 103, § 1, effective June 8, 2011.

Legislative Research Commission Notes.
(7/13/90). This section was amended by three 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. IV, 2 at 2165.

OPINIONS OF ATTORNEY GENERAL.

There is a reasonable distinction which justifies the separate treatment given to the salaries of beginning teachers in the state-supported vocational schools, the State School for the Deaf, and the State School for the Blind; therefore, this section is not "special" legislation in violation of either § 59 or § 60 of the Constitution. OAG 85-86, 1985 Ky. AG LEXIS 64.

163.035. Business enterprises program for the blind. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1948, ch. 56, § 1) was repealed by Acts 1956, ch. 165, § 1; 1956, ch. 172, § 9.

163.036. Kentucky industries for blind established. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, §§ 4, 5; 1966, ch. 255, § 153) was repealed by Acts 1976, ch. 377, § 6.

163.038. Computer Services for the Blind Corporation. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 76, § 1; 1978, ch. 384, § 569, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 592, effective July 13, 1990) was repealed by Acts 1994, ch. 363, § 11, effective July 15, 1994.

Legislative Research Commission Notes.
(7/15/94). Under KRS 446.260, the repeal of this section in 1994 Ky. Acts ch. 363 prevails over its amendment in 1994 Ky. Acts chs. 209 and 469.

163.040. Acceptance and expenditure of appropriations and other funds. [Repealed.]

Compiler's Notes.
This section (4526-3; amend. Acts 1956, ch. 165, § 4) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

163.050. Personnel — Traveling expenses — Rules and regulations. [Repealed.]

Compiler's Notes.
This section (4526-4; amend. Acts 1956, ch. 165, § 5) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

163.060. Residence requirement for eligibility for rehabilitation. [Repealed.]

Compiler's Notes.
This section (4526-6) was repealed by Acts 1956, ch. 165, § 1.

163.070. State treasurer custodian of funds. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (4526-7; amend. Acts 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.155 by Acts 1990, ch. 470, § 30, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 264, effective July 13, 1990.

163.080. Donations may be received. [Repealed.]

Compiler's Notes.
This section (4526-8) was repealed by Acts 1956, ch. 165, § 1.

VOCATIONAL SCHOOLS

163.085. Buildings for state vocational schools, acquisition or construction. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1964, ch. 145, § 1; 1976, ch. 327, § 4; 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.160 (now repealed) by Acts 1990, ch. 470, § 31, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 472, Pt. IV, § 265, effective July 13, 1990.

163.086. Governor's Council on Vocational Education. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 327, § 6; 1978, ch. 154, § 42, effective June 17, 1978; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 295, § 42, effective July 15, 1980; 1986, ch. 24, § 1, effective July 15, 1986; 1990, ch. 373, § 9, effective July 13, 1990; 1990, ch. 470, § 56, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 266, effective July 13, 1990; 1994, ch. 405, § 30, effective July 15, 1994; 1998, ch. 426, § 118, effective July 15, 1998) was repealed by Acts 2000, ch. 156, § 5, effective July 14, 2000.

163.087. Tuition and fees in vocational schools. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1976, ch. 327, § 5; 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.165 by Acts 1990, ch. 470, § 32, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 267, effective July 13, 1990.

163.088. Liability insurance for motor vehicles owned or operated by department in vocational schools. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1986, ch. 416, § 1, effective April 10, 1986) was repealed, reenacted and amended as KRS

151B.170 by Acts 1990, ch. 470, § 33, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 268.

163.089. Medical and accident insurance for students. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 289, § 1, effective July 15, 1988) was repealed, reenacted and amended as KRS 151B.175 by Acts 1990, ch. 470, § 34, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 269.

163.090. Mayo State Vocational School. [Repealed.]

Compiler's Notes.
This section (4526-10, 4526-11; amend. Acts 1966, ch. 184, § 3) was repealed by Acts 1976, ch. 327, § 8.

163.095. Application of bequests or donations.

All bequests or donations made for a specified use with regard to the state vocational education program, vocational education facilities, vocational education personnel, or present or prospective vocational education pupils shall be applied to that use and no other so long as it is consistent with appropriate Kentucky Revised Statutes and the state plan for vocational education.

History.
Enact. Acts 1976, ch. 327, § 7; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 593, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1976, ch. 327, § 7) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 593, effective July 13, 1990.

163.098. Establishment of base salaries for principals.

The principal of an area vocational education center or state vocational technical school shall be paid a base monthly salary, which is at least equal to the highest paid teacher supervised by the principal, when the education and experience of the principal is equal to or greater than that of the supervised employee.

History.
Enact. Acts 1988, ch. 267, § 1, effective July 15, 1988; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 594, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1988, ch. 267, § 1, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 594, effective July 13, 1990.

163.100. Northern Kentucky State Vocational School. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1944, ch. 75, § 1) was repealed by Acts 1976, ch. 327, § 8.

STATE VOCATIONAL REHABILITATION AGENCY

163.110. Declaration of intent for KRS 163.110 to 163.180. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 1; 1984, ch. 316, § 1, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.180 by Acts 1990, ch. 470, § 35, effective July 1, 1990, which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 595, effective July 13, 1990.

163.120. State vocational rehabilitation agency. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 2; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 121, effective July 15, 1980; 1984, ch. 316, § 2, effective July 13, 1984; 1988, ch. 361, § 15, effective July 15, 1988) was repealed, reenacted and amended as KRS 151B.185 by Acts 1990, ch. 470, § 36, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, § 270, effective July 13, 1990.

163.130. Vocational rehabilitation services, persons entitled to receive. [Renumbered]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 3; 1984, ch. 316, § 3, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.190 by Acts 1990, ch. 470, § 37, effective July 1, 1990, which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 596, effective July 13, 1990.

163.140. Authority of state board for vocational-technical, adult education and vocational rehabilitation services. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 4; 1976, ch. 377, § 5; 1978, ch. 155, § 83, effective June 17, 1978; 1984, ch. 316, § 4, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.195 by Acts 1990, ch. 470, § 38, effective July 1, 1990 which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 271, effective July 13, 1990.

163.150. Business enterprise program for the blind. [Repealed.]

Compiler's Notes.
This section (Acts 1956, ch. 172, § 5; 1958, ch. 12, § 3; 1962, ch. 60) was repealed by Acts 1976, ch. 377, § 6.

163.160. Federal acts relating to vocational rehabilitation accepted. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 6, effective May 18, 1956; 1980, ch. 266, § 1, effective July 15, 1980; 1984, ch. 316, § 5, effective July 13, 1984) was repealed, reenacted and

amended as KRS 151B.200 by Acts 1990, ch. 470, § 39, effective July 1, 1990 which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 597, effective July 13, 1990.

163.170. State treasurer designated as custodian of funds; disbursements. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 7, effective May 18, 1956; 1984, ch. 316, § 6, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.205 by Acts 1990, ch. 470, § 40, effective July 1, 1990 which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 272, effective July 13, 1990.

163.180. Gifts may be received. [Repealed, reenacted and amended.]

Compiler's Notes.
This section (Enact. Acts 1956, ch. 172, § 8, effective May 18, 1956; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 122, effective July 15, 1980) was repealed, reenacted and amended as KRS 151B.210 by Acts 1990, ch. 470, § 41, effective July 1, 1990 which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 273, effective July 13, 1990.

163.220. Division of services for the blind. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1958, ch. 12, § 1) was repealed by Acts 1976, ch. 377, § 6.

163.230. Advisory committee for division of services for the blind. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1958, ch. 12, § 2) was repealed by Acts 1976, ch. 377, § 6.

163.240. Budget and appropriations for vocational rehabilitation services for the blind. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1958, ch. 12, § 4) was repealed by Acts 1976, ch. 377, § 6.

163.310. Title and intent of KRS 163.310 to 163.390. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, §§ 1, 2) was repealed by Acts 1976, ch. 363, § 13.

163.320. Definitions. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 3) was repealed by Acts 1976, ch. 363, § 13.

163.330. Agent's permit. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 4; 1974, ch. 315, § 18) was repealed by Acts 1976, ch. 363, § 13.

163.340. Proprietary school certificate of approval. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 5; 1974, ch. 315, § 19) was repealed by Acts 1976, ch. 363, § 13.

163.350. Fees; deposit. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 6) was repealed by Acts 1976, ch. 363, § 13.

163.360. Minimum standards; certificate of approval. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 8) was repealed by Acts 1976, ch. 363, § 13.

163.370. Revocation of agent's permit and certificate of approval. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 9) was repealed by Acts 1976, ch. 363, § 13.

163.380. Rules and regulations. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 10) was repealed by Acts 1976, ch. 363, § 13.

163.390. Certificate of approval; agent's permit; time to comply. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1972, ch. 340, § 11) was repealed by Acts 1976, ch. 363, § 13.

REHABILITATION SERVICES FOR THE BLIND AND VISUALLY IMPAIRED

163.450. Purpose.

The purpose of KRS 163.450 to 163.470 is to provide for a separate and specialized agency for the blind to provide for and improve the rehabilitation of the blind and visually impaired citizens of the Commonwealth of Kentucky in order that they may increase their social and economic well-being and the productive capacity of the Commonwealth and the nation.

History.
Enact. Acts 1976, ch. 377, § 1.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Appeal procedures, 782 KAR 1:040.

163.460. Definitions for chapter.

As used in this chapter unless the context otherwise requires:

(1) "Office" means the Office of Vocational Rehabilitation, or the duly authorized division within the Office of Vocational Rehabilitation;

(2) "Legally blind" means a visual acuity of 20/200 or less in the better eye with correction or a visual field of 20 degrees or less;

(3) "Visually impaired" means a condition of the eye with correction which constitutes or progressively results for the individual in a substantial disability to employment; and

(4) "Executive director" means the executive director of the Office of Vocational Rehabilitation or the director of the duly authorized division within the Office of Vocational Rehabilitation.

History.

Enact. Acts 1976, ch. 377, § 2; 1982, ch. 353, § 1, effective July 15, 1982; 1994, ch. 49, § 1, effective July 15, 1994; 1994, ch. 405, § 31, effective July 15, 1994; 2006, ch. 211, § 92, effective July 12, 2006; 2019 ch. 146, § 32, effective June 27, 2019.

Legislative Research Commission Notes.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 49 and 405. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 405, which was last enacted by the General Assembly, prevails under KRS 446.250.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeal procedures, 782 KAR 1:040.

163.470. Office for Vocational Rehabilitation responsible for services for the blind and visually impaired.

(1) The executive director shall be appointed by the secretary of the Education and Labor Cabinet pursuant to KRS 12.050.

(2) The office shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The office shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Education and Labor Cabinet is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the executive director.

(3) The office shall establish and implement policies and procedures for the carrying out of the program of services for the blind.

(4) At the close of each biennium, the office shall prepare a financial report and present it to the secretary of the Education and Labor Cabinet and to the Governor. The biennial report shall be published. The biennial report shall also contain a precise review of the work of the office and contain necessary suggestions for improvement.

(5) The office shall coordinate its functions with other appropriate public and private agencies.

(6) The office shall perform all other duties as required of it by law.

(7) The executive director shall hire personnel as necessary to carry out the work of the office and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons.

(8) The Office of Vocational Rehabilitation shall provide intake and rehabilitation counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, independent living, and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.

(9) There shall be established under the authority of the office, to be directed by a director appointed by the secretary pursuant to KRS 12.050, the Division of Kentucky Business Enterprise. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the office shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The office shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.

(10) The office, at all times, shall be authorized to provide industrial evaluation, training, and employment. The office shall provide staff services which shall include staff development and training, program development and evaluation, and other staff services as may be deemed necessary.

(11) The provisions of any other statute notwithstanding, the executive director is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the

Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

History.

Enact. Acts 1976, ch. 377, § 3; 1982, ch. 353, § 2, effective July 15, 1982; 1982, ch. 381, § 9, effective July 15, 1982; 1988, ch. 265, § 1, effective July 15, 1988; 1990, ch. 470, § 57, effective July 1, 1990; 1994, ch. 49, § 2, effective July 15, 1994; 1994, ch. 126, § 3, effective July 15, 1994; 1994, ch. 363, § 10, effective July 15, 1994; 1994, ch. 469, § 37, effective July 15, 1994; 1998, ch. 33, § 2, effective July 15, 1998; 2000, ch. 125, § 1, effective July 14, 2000; 2006, ch. 211, § 93, effective July 12, 2006; 2009, ch. 11, § 53, effective June 25, 2009; 2019 ch. 146, § 33, effective June 27, 2019; 2022 ch. 236, § 80, effective July 1, 2022.

Compiler's Notes.

The Rehabilitation Act of 1973 referred to herein is compiled generally as 29 USCS § 701 et seq.

NOTES TO DECISIONS

1. Application.

By virtue of the provision of the state government vending facility program for blind vendors, subsection (11) of this section, and guided by federal law and regulations, authority for supervision and control of vending services operations must be deemed to reside in the state licensing agency and this supervisory authority includes a correlative right of product control; thus, state university could not extend to cola company an exclusive contract to sell its drink products on campus. Kentucky State Univ. v. Kentucky Dep't for the Blind, 923 S.W.2d 296, 1996 Ky. App. LEXIS 93 (Ky. Ct. App. 1996).

While provisions of the state government vending facility program for blind vendors did not prohibit state university from competing in any way with blind vendor in the area of food service, university was required to negotiate a fair agreement to protect blind vendor from unreasonable competition; this protection did not require extending to blind vendor a right of first refusal with every expansion of the university's food service line. Kentucky State Univ. v. Kentucky Dep't for the Blind, 923 S.W.2d 296, 1996 Ky. App. LEXIS 93 (Ky. Ct. App. 1996).

With respect to whether experts fell within treating physician exception to requirement for written expert report disclosure, employees from Kentucky Office for the Blind could not be perfunctorily excluded from consideration merely because their statutorily imposed duties focused on providing assistive devices, mobility training and work evaluation services. Barnes v. CSXT Transp., Inc., 2017 U.S. Dist. LEXIS 53650 (W.D. Ky. Apr. 7, 2017).

OPINIONS OF ATTORNEY GENERAL.

Where the Bureau (now Department) for the Blind, pursuant to subsection (14) (now (11)) of this section, operates a concession stand within the Louisville post office, the concession operation is subject to audit by the auditor of public accounts pursuant to KRS 43.050(2)(a); since the state auditor has the responsibility for auditing the Bureau for the Blind, there is nothing in the statutes that would permit him to accept an audit of the concession stand done by a Bureau for the Blind employee. OAG 80-155, 1980 Ky. AG LEXIS 480.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeal procedures, 782 KAR 1:040.
Definitions for 782 KAR Chapter 1, 782 KAR 1:020.
Kentucky Business Enterprises, 782 KAR 1:010.
Scope and nature of services, 782 KAR 1:030.

163.475. Legislative findings and provisions relating to transition of operation of Kentucky Industries for the Blind.

(1) The General Assembly finds that the provision of industrial evaluation, training, and employment opportunities for individuals who are blind or visually impaired is a valuable and necessary component of vocational rehabilitation services. The office has sole responsibility for and the obligation to operate and manage a Division of the Kentucky Industries for the Blind. This facility has struggled to meet these mandates but, faced with declining available state revenues, expects a continual diminishment to a submarginal operation with respect to providing viable long-term employment opportunities that are self-sustaining and sufficiently diversified for individuals who are blind or visually impaired.

(2) The General Assembly finds that increased flexibility in contract negotiation, purchasing, and hiring will enhance the competitiveness of the Kentucky Industries for the Blind, resulting in additional production contracts thereby guaranteeing continued and expanded jobs and other opportunities for individuals who are blind or visually impaired. This flexibility and competitiveness can be achieved through the operation of the Kentucky Industries for the Blind by a nonprofit corporation, the members of which have expertise in management skills and background pertaining to sound business practices and rehabilitation philosophy.

(3) The General Assembly finds that a transition period from state division to a nonprofit operation is necessary to ensure the success and continuation of the important functions of the Kentucky Industries for the Blind. Therefore, the General Assembly shall continue to support the Division of the Kentucky Industries for the Blind through appropriations to the office for six (6) years in order to eliminate eventually the necessity for annual state appropriations. The office shall monitor and safeguard the expenditure of those public moneys for the use and benefit of the Kentucky Industries for the Blind and citizens who are blind and visually impaired in the Commonwealth.

(4) The General Assembly finds that the continued employment of current employees of the Division of the Kentucky Industries for the Blind is a necessary and important outcome. The office shall ensure through contractual provisions that the nonprofit corporation it contracts with pursuant to KRS 163.480(2) offers employment to every employee of the Kentucky Industries for the Blind at the time the nonprofit corporation assumes total responsibility for the operation of the workshop. The office shall maximize the retirement benefits for each current employee of the Division of Kentucky Industries for the Blind at the time the office contracts for total operation by the nonprofit corporation through the parted employer provisions of KRS 61.510 to 61.705.

(5) The General Assembly finds that at the time the Kentucky Industries for the Blind is operated totally by the nonprofit corporation, the office shall have the authority to convey ownership of the workshop to any

nonprofit corporation with which it contracts pursuant to KRS 163.480(2) without financial consideration, including real and personal property, inventory of materials, and stores for resale. The instrument of conveyance to such nonprofit corporation shall provide that the real property and production equipment conveyed, or sufficient remuneration therefor, shall revert to the state at any time the nonprofit corporation or its successor shall cease operating the Kentucky Industries for the Blind for the benefit of individuals who are blind or visually impaired.

History.
Enact. Acts 1994, ch. 126, § 1, effective July 15, 1994; 2006, ch. 211, § 94, effective July 12, 2006; 2019 ch. 146, § 34, effective June 27, 2019.

163.480. Office's authority to contract with nonprofit corporation for employment services.

(1) The office may contract, to the extent funds are available under this chapter and under conditions and standards established by the office, with any nonprofit corporation able to provide expertise in the operation of workshops for and rehabilitation of individuals who are blind or visually impaired and whose objectives are to carry out the purposes of KRS 163.470(10).

(2) The office shall contract with a nonprofit corporation, effective July 1, 2000, to provide industrial evaluation, training, and employment opportunities for individuals who are blind or visually impaired.

History.
Enact. Acts 1994, ch. 126, § 2, effective July 15, 1994; 2006, ch. 211, § 95, effective July 12, 2006; 2019 ch. 146, § 35, effective June 27, 2019.

ACCESSIBLE ELECTRONIC INFORMATION

163.485. Legislative findings and declarations relating to accessible electronic information for the disabled.

The General Assembly finds and declares that:

(1) Approximately eight hundred seventy-four thousand (874,000) Kentuckians have disabilities and, of this number, approximately three hundred thousand (300,000) are blind or visually impaired or have other print impairments that prevent them from using conventional print material;

(2) Kentucky fulfills an important responsibility by providing books and magazines prepared in Braille, audio, and large-type formats to eligible blind and disabled persons;

(3) The technology, transcription methods, and means of distribution used for these materials are labor-intensive and cannot support rapid dissemination to individuals in rural and urban areas throughout the state;

(4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational, employment, and independent opportunities, literacy, and full participation in society by blind and disabled persons;

(5) This limitation can be overcome through the use of high-speed computer, radio, and telecommunications technology, combined with customized software, providing a practical cost-effective way to convert electronic text-based information into human or synthetic speech suitable for statewide distribution and accessible through radio, a touch-tone telephone, and modern telecommunications technology;

(6) Radio, telecommunications, and voice-based information systems are cost-efficient information delivery systems for this state;

(7) Federal funds have been used to develop the technology and infrastructure needed for statewide toll-free access to daily newspapers and other timely information of local, state, and national interests, providing an efficient and cost-effective means of reader registration, content acquisition, and intrastate telecommunications support; and

(8) Use of this accessible electronic information service will enhance Kentucky's efforts to meet the needs of blind and disabled citizens for access to information that is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals.

History.
Enact. Acts 2004, ch. 129, § 1, effective July 13, 2004.

Legislative Research Commission Notes.
(7/13/2004). 2004 Ky. Acts ch. 129, sec. 4, provides that 2004 Ky. Acts ch. 129, which creates KRS 163.485, 163.487, and 163.489, is to be known as the Accessible Electronic Information Acts.

163.487. Definitions for KRS 163.485 to 163.489.

As used in KRS 163.485 to 163.489, unless the context requires otherwise:

(1) "Accessible electronic information service" means news and other timely information, including but not limited to magazines, newsletters, schedules, announcements, and newspapers, provided to eligible individuals using high-speed computers, radios, and telecommunications technology for acquisition of content and rapid distribution in a form appropriate for use by those individuals; and

(2) "Blind and disabled persons" means those individuals who are eligible for library loan services through the Library of Congress and the office pursuant to 36 C.F.R. sec. 701.10(b).

History.
Enact. Acts 2004, ch. 129, § 2, effective July 13, 2004; 2006, ch. 211, § 96, effective July 12, 2006; 2019 ch. 146, § 36, effective June 27, 2019.

163.489. Creation of Accessible Electronic Information Service Program — Access provided — Use of funding.

(1) The Accessible Electronic Information Service Program is created and shall be provided by the office. The program shall include:

(a) Intrastate access for eligible persons to read audio editions of newspapers, magazines, newslet-

ters, schedules, announcements, and other information using a touch-tone telephone, radio, or other technologies that produce audio editions by use of computer; and

(b) A means of program administration and reader registration on the Internet, or by mail, telephone, or any other method providing consumer access.

(2) The program shall:

(a) Provide accessible electronic information services for all eligible blind and disabled persons as defined by KRS 163.487(2); and

(b) Make maximum use of available state, federal, and other funds by obtaining grants or in-kind support from appropriate programs and securing access to low-cost interstate rates for telecommunications by reimbursement or otherwise.

(3) The office shall review new technologies and current service programs in Kentucky for the blind and visually impaired that are available to expand audio communication if the office determines that these new technologies will expand access to consumers in a cost-efficient manner. The office may implement recommendations from the Statewide Council for Vocational Rehabilitation for improving the program.

History.

Enact. Acts 2004, ch. 129, § 3, effective July 13, 2004; 2006, ch. 211, § 97, effective July 12, 2006; 2019 ch. 146, § 37, effective June 27, 2019.

COMMISSION ON DEAF AND HARD OF HEARING

163.500. Definitions of "deaf" and "hard of hearing."

The "deaf" and "hard of hearing" are persons who have hearing disorders. They are people who cannot hear and understand speech clearly through the ear alone, with or without hearing aids.

History.

Enact. Acts 1982, ch. 160, § 1, effective July 15, 1982; 1984, ch. 111, § 101, effective July 13, 1984; 1992, ch. 144, § 1, effective July 14, 1992.

163.505. Commission on the deaf and hearing impaired — Membership — Terms — Compensation. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1982, ch. 160, § 2, effective July 15, 1982; 1988, ch. 263, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 68, § 3, effective July 13, 1990.

163.506. Commission on the Deaf and Hard of Hearing — Membership — Terms — Compensation.

(1) The Commission on the Deaf and Hard of Hearing shall consist of:

(a) Seven (7) members appointed by the Governor as follows:

1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;

2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;

3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;

4. One (1) hard of hearing or deaf person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term; and

5. One (1) deaf, late-deafened, or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;

(b) One (1) representative of the Cabinet for Health and Family Services appointed by the secretary;

(c) The secretary of the Education and Labor Cabinet or his designee;

(d) The president of the Kentucky Association for the Deaf or his designee;

(e) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and

(f) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(e) of this section, appointed as follows:

1. One (1) parent of a hard of hearing or deaf child;

2. One (1) representative of a public or private organization providing consistent services to the deaf and hard of hearing; and

3. One (1) member at large.

(2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsection (1)(a)2. through (1)(a)5. and subsection (1)(f) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.

(3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

History.

Enact. Acts 1990, ch. 68, § 1, effective July 13, 1990; 1992, ch. 144, § 2, effective July 14, 1992; 1994, ch. 209, § 15, effective July 15, 1994; 1998, ch. 32, § 1, effective July 15, 1998; 1998, ch. 426, § 119, effective July 15, 1998; 2005, ch. 99, § 23, effective June 20, 2005; 2006, ch. 211, § 98, effective July 12, 2006; 2009, ch. 11, § 54, effective June 25, 2009; 2022 ch. 236, § 81, effective July 1, 2022.

Legislative Research Commission Notes.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 32 and 426. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 426, which was last enacted by the General Assembly, prevails under KRS 446.250.

163.510. Duties of commission.

(1) The commission shall advise the Governor and the General Assembly concerning policy and programs to enhance the quality and coordination of services for the deaf and hard of hearing.

(2) The commission shall cooperate with and assist local, state and federal governments and public and private agencies in the development of programs for the deaf and hard of hearing.

(3) The commission shall review legislative programs relating to services to deaf and hard of hearing persons and shall conduct studies of conditions affecting the health and welfare of the deaf and hard of hearing.

(4) The commission shall oversee the provision of interpreter services to the deaf and hard of hearing, and may provide services if necessary.

History.

Enact. Acts 1982, ch. 160, § 3, effective July 15, 1982; 1992, ch. 144, § 3, effective July 14, 1992.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions for 735 KAR Chapter 2, 735 KAR 2:010.

Grievance procedures, 735 KAR 2:060.

Interpreter protocols, 735 KAR 2:040.

Interpreter qualifications, 735 KAR 2:030.

KCDHH Interpreter Referral Services Program parameters, 735 KAR 2:020.

Processing of requests for services, 735 KAR 2:050.

Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment, 735 KAR 1:020.

163.515. Executive director — Duties.

(1) The commission shall employ an executive director who shall serve at the pleasure of the commission. The executive director shall be familiar with the problems of the deaf and hard of hearing.

(2) Subject to the approval of the commission, the executive director shall:

(a) Employ clerical and other staff assistance;

(b) Prepare an annual report on the status of services to the deaf and hard of hearing;

(c) Promote the training of interpreters for the deaf and hard of hearing;

(d) Identify public and private agencies that provide services to the deaf and hard of hearing and cooperate in the coordination and development of these services;

(e) Survey the needs and compile a census of the deaf and hard of hearing.

History.

Enact. Acts 1982, ch. 160, § 4, effective July 15, 1982; 1992, ch. 144, § 4, effective July 14, 1992.

163.520. Providing data to commission.

All departments, divisions, boards, bureaus, commissions, or agencies of state government shall provide the commission data necessary to carry out its duties under KRS 163.510 and 163.515.

History.

Enact. Acts 1982, ch. 160, § 5, effective July 15, 1982; 1990, ch. 68, § 2, effective July 13, 1990.

163.525. Telecommunications Access Program — Distribution of specialized telecommunications equipment — Authority for administrative regulations.

(1) As used in this section and KRS 163.527:

(a) "Specialized telecommunications equipment" means devices such as, but not limited to, telecommunications devices for the deaf, amplified phones, loud ringers, visual alert signalers, tactile signalers, captioned telephones, and appropriate wireless devices; and

(b) "Telecommunications Access Program" means the program to furnish specialized telecommunications equipment to deaf, hard-of-hearing, and speech-impaired persons in order that they may have equal access to telecommunications services through the telecommunications relay service established pursuant to KRS 278.548. The program shall include maintenance and repair of the equipment.

(2)(a) On or before July 1, 1995, the Commission on the Deaf and Hard of Hearing shall establish a program to distribute specialized telecommunications equipment to any deaf, hard-of-hearing, or speech-impaired person qualified to receive the equipment pursuant to subsection (3) of this section.

(b) Prior to the establishment of the Telecommunications Access Program, the Commission on the Deaf and Hard of Hearing shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of deaf, hard-of-hearing, and speech-impaired persons and the organizations serving them.

(c) The Commission on the Deaf and Hard of Hearing may contract with any person, public, or private organization to provide part or all components of the Telecommunications Access Program, if applicable statutory procurement provisions are followed. The Commission on the Deaf and Hard of Hearing may use assistance from public agencies of the state or federal government or from private organizations to accomplish the purposes of this section. The Kentucky Commission on the Deaf and Hard of Hearing shall enter into memoranda of agreement with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of this section and KRS 278.5499. The Commission on the Deaf and Hard of Hearing may also enter into memoranda of agreement with other state agencies to accomplish the purposes of this section.

(3) Factors to determine a person's eligibility to receive specialized telecommunications equipment shall include, but not be limited to:

(a) Kentucky residency;

(b) Attainment of at least five (5) years of age; and

(c) Certification as deaf, hard of hearing, or severely speech-impaired by a licensed physician, audiologist, speech pathologist, advanced practice registered nurse, or by any other method recognized by the Commission on the Deaf and Hard of Hearing.

Certification implies that the individual cannot use the telephone for communication without adaptive equipment.

(4) No more than one (1) piece of specialized telecommunications equipment shall be provided to a person qualified to receive the equipment pursuant to subsection (3) of this section. However, a malfunctioning piece of specialized telecommunications equipment originally distributed by the program may be returned for repair or replacement. The Commission on the Deaf and Hard of Hearing may prioritize distribution of the specialized telecommunications equipment on the basis of need.

(5) The Commission on the Deaf and Hard of Hearing shall establish procedures for application and distribution of specialized telecommunications equipment by the promulgation of administrative regulations in accordance with provisions of KRS Chapter 13A.

History.

Enact. Acts 1994, ch. 237, § 5, effective July 15, 1994; 2006, ch. 23, § 1, effective July 12, 2006; 2010, ch. 85, § 70, effective July 15, 2010.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired, 735 KAR 1:010.

Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment, 735 KAR 1:020.

163.527. Annual report on Telecommunications Access Program.

The Commission on the Deaf and Hard of Hearing shall provide to the General Assembly an annual report on the operation of the Telecommunications Access Program. The report shall be due on July 1 of each year, beginning July 1, 1995, and, at a minimum, provide:

(1) The number of persons served and the number of pieces of specialized telecommunications equipment distributed;

(2) The revenues and expenditures of the program;

(3) Discussion of any major policy or operational issues;

(4) Any changes the commission plans to make in the program that does not require legislative action; and

(5) Any proposals for legislative changes in the program.

History.

Enact. Acts 1994, ch. 237, § 6, effective July 15, 1994; 2006, ch. 23, § 2, effective July 12, 2006.

163.990. Penalty. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1972, ch. 340, § 7) was repealed by Acts 1976, ch. 363, § 13.

CHAPTER 164

STATE UNIVERSITIES AND COLLEGES — COUNCIL ON POSTSECONDARY EDUCATION — HIGHER EDUCATION ASSISTANCE

Section

164.002. Definitions for chapter.
164.006. [Repealed and reenacted.]
164.0062. [Repealed, reenacted and amended.]
164.0064. [Repealed, reenacted and amended.]
164.007. [Repealed, reenacted and amended.]

Council on Postsecondary Education.

164.020. Powers and duties of council.
164.0203. Strategic agenda — Strategic implementation plan — Benchmarks.
164.0206. Public postsecondary education institution's program in speech-language pathology and teacher education.
164.0207. Statewide reading research center — Duties — Report — Selection of administrator.
164.0211. Board of Student Body Presidents.
164.023. [Repealed, reenacted and amended.]
164.0232. [Repealed, reenacted and amended.]
164.0234. [Repealed, reenacted and amended.]
164.0284. Annual compilation of data concerning in-demand jobs, college costs, student loan debt, graduation rates, and student and graduate employment — Administrative regulations.
164.0285. Definitions for KRS 164.0285 to 164.0288. [Repealed].
164.0286. STEM Initiative Task Force — Purpose — Membership — Steering committee oversight and coordination — Administrative attachment — Contracting — Funding. [Repealed].
164.0287. Duties of STEM Initiative Task Force — Strategic plan — Business plan. [Repealed].
164.0288. Kentucky STEM Initiative fund. [Repealed].
164.033. Local P-16 councils. [Repealed].
164.035. Needs assessment for adult education and workforce development.
164.036. Council for Educational Research — Duty to advise on data needed by colleges of education — Service by deans of colleges of education.
164.0401. Definitions for KRS 164.0401 to 164.0407.
164.0402. Legislative intent — Kentucky healthcare workforce investment fund — Administrative regulations.
164.0403. Healthcare training scholarships — Partnership proposal requirements — Partnership contract — Scholarship contract — Restrictions — Recoupment — Prohibitions.
164.0404. Healthcare program incentive — Administrative regulations — Incentive application process and requirements.
164.0405. Annual report to Interim Joint Committees by Council on Postsecondary Education.
164.0406. Annual report to Interim Joint Committees by public postsecondary education institutions.
164.0407. Sunset of KRS 164.0401 to 164.0407. [Effective until July 1, 2030].
164.041. [Repealed, reenacted and amended.]
164.097. Certification of postsecondary institutions to receive funds for teacher education or model program.
164.098. Duties of Council on Postsecondary Education relating to advanced placement, dual enrollment, and dual credit programs.

Institutions of Higher Learning.

Section
164.281. Public institution of postsecondary education criminal history background checks — Initial hires, contractors, employees, volunteers, visitors — Disclosures — Termination.
164.2815. Student identification badges must contain hotline number contact information relating to domestic violence, sexual assault, and suicide prevention — Posting of information on sexual extortion in residential and instructional buildings — Requirements.
164.2845. Tuition-free courses for supervising teachers and resource teachers.
164.2847. Waiver of tuition and mandatory student fees for Kentucky foster or adopted children.
164.2849. Legislative finding.

State Colleges and Universities.

164.304. Teacher preparation programs for elementary and secondary regular education to include instruction on dyslexia and other learning disabilities and core elements of multitiered system of supports.
164.3061. Teacher preparation programs for elementary regular education to include instructional strategies and resources for mathematics instruction — List of approved teacher preparation assessments and evaluation rubric — Reports.

Professional Development for Child-Care Workers.

164.518. Scholarships and awards for persons who are employed or provide training in child-care and early childhood settings.

Irredeemable Bond.

164.525. Center for Mathematics — Creation, duties, and location — Annual report.

Athlete Agents and Agency Contracts.

164.6901. Short title.
164.6903. Definitions for KRS 164.6901 to 164.6935.
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164.6907. Certificate of registration required.
164.6909. Contents of application — Certificate from other state — Cooperation with other organizations.
164.6911. Office may refuse to issue certificate — Renewal of registration.
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164.6921. Cancellation of agency contract by student-athlete.
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164.6927. Penalties.
164.6929. Right of action of educational institution or student-athlete for damages caused by violation of KRS 164.6901 to 164.6935.
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Higher Education Assistance.

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164.7534. Endowment trust for student financial assistance benefits — Authority to establish corporation to administer — Annual report.
164.757. District teacher certification loan fund.
164.769. Teacher scholarships for eligible persons agreeing to render qualified teaching service in Kentucky — Definitions — Cancellation or repayment of notes — Annual report.
164.771. Teacher Recruitment Student Loan Forgiveness Pilot Program — Procedures — Repayment obligations — Reporting requirements — Fund.
164.773. Student Teacher Stipend Program — Definitions — Procedures — Reporting requirements.
164.785. Qualifications for state assistance — Calculation — Adjustment for scholarship.
164.786. Dual Credit Scholarship Program.
164.7870. Optometry Scholarship Program.

Kentucky Educational Excellence Scholarship.

164.7871. Legislative declaration.
164.7874. Definitions for KRS 164.7871 to 164.7885.
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164.7879. Calculation of educational excellence scholarship awards — Inclusion of certain out-of-state educational experience in grade point average calculation — Graduation after three years — Supplemental award eligibility and calculation of amounts.
164.7881. Eligibility for educational excellence scholarship and supplemental awards — Time limits for receiving aid — Adjustment of amounts and loss of award — Extension of time limits — Senator Jeff Green Scholars.
164.7882. Kentucky educational excellence scholarship moneys to be awarded to students enrolled in comprehensive transition and postsecondary program — Amounts — Terms — Administrative regulations.
164.7883. Use of scholarship and supplemental award at out-of-state institution.
164.7884. Definitions — Eligibility of student in registered apprenticeship program, qualified workforce training program, qualified proprietary school program, approved workforce solutions training program, or college of art and design for Kentucky educational excellence scholarship.
164.7885. Annual submission by high schools of list of eligible students — Data in list — Verification of eligibility — Reduction of award — Students ineligible for awards — Administrative regulations.

Miscellaneous Programs and Trust Funds.

164.7890. Coal county scholarship program for pharmacy students.
164.7892. Early graduation scholarship trust fund.
164.7894. Kentucky Coal County College Completion Program.

164.002. Definitions for chapter.

As used in KRS Chapter 164, unless the context requires otherwise:

(1) "Advanced placement" or "AP" means a college-level course that incorporates all topics and instructional strategies specified by the College Board on its

standard syllabus for a given subject area and is licensed by the College Board;

(2) "Cambridge Advanced International" means the Cambridge Advanced International Certificate of Education Diploma program, an international preuniversity curriculum and examination system offered by Cambridge International Examinations at the University of Cambridge;

(3) "College Board Advanced Placement examination" means the advanced placement test administered by the College Entrance Examination Board;

(4) "College Board" means the College Entrance Examination Board, a national nonprofit association that provides college admission guidance and advanced placement examinations;

(5) "Dual credit" means a college-level course of study developed in accordance with KRS 164.098 in which a high school student receives credit from both the high school and postsecondary institution in which the student is enrolled upon completion of a single class or designated program of study, including participating in the Gatton Academy of Mathematics and Science in Kentucky or the Craft Academy for Excellence in Science and Mathematics;

(6) "Dual enrollment" means a college-level course of study developed in accordance with KRS 164.098 in which a student is enrolled in a high school and postsecondary institution simultaneously, including participating in the Gatton Academy of Mathematics and Science in Kentucky or the Craft Academy for Excellence in Science and Mathematics; and

(7) "International Baccalaureate" or "IB" means the International Baccalaureate Organization's Diploma Programme, a comprehensive two (2) year program designed for highly motivated students.

History.
Enact. Acts 2002, ch. 97, § 4, effective July 15, 2002; 2003, ch. 4, § 1, effective June 24, 2003; 2008, ch. 134, § 19, effective July 15, 2008; 2015 ch. 15, § 2, effective June 24, 2015; 2015 ch. 112, § 1, effective April 2, 2015.

Legislative Research Commission Notes.
(4/2/2015). 2015 Ky. Acts ch. 112, sec. 6 provides that the amendments made to this statute in Section 1 of that Act shall be applied retroactively beginning with the 2013-2014 academic year.

(6/24/2015). This statute was amended by 2015 Ky. Acts chs. 15 and 112, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

1. Dual-credit and Dual-enrollment Courses.
Individuals with Disabilities Education Act did not apply to a high school student who needed support accommodations while attending a residential program at a dual-credit, dual-enrollment school located on a state university campus because it was a postsecondary school and thus not included in a free appropriate public education, although Kentucky's secondary school curriculum includes dual-credit and dual-enrollment courses and the student remained enrolled at the district high school. Bradley v. Jefferson Cnty. Pub. Sch., 88 F.4th 1190, 2023 FED App. 276P, 2023 U.S. App. LEXIS 33938 (6th Cir. Ky. 2023).

164.006. Legislative findings. [Repealed and reenacted.]

History.
Enact. Acts 1994, ch. 487, § 1, effective July 15, 1994; repealed and reenact., Acts 2006, ch. 211, § 167, effective July 12, 2006; repealed and reenacted by 2019 ch. 146, was repealed and amended as KRS 151B.401 by Acts 2019, ch. 146, § 38, effective June 27, 2019.

Compiler's Notes.
This section was formerly compiled as KRS 151B.400.

164.0062. Legislative findings relating to need for High School Equivalency Diplomas — Incentives — Administrative regulations — Learning contracts — Tuition discounts — Tax credit for employers. [Repealed, reenacted and amended.]

History.
Enact. Acts 2000, ch. 526, § 12, effective July 14, 2000; 2006, ch. 211, § 37, effective July 12, 2006; 2006 (1st Ex. Sess.), ch. 2, § 38, effective June 28, 2006; repealed and reenact. Acts 2013, ch. 59, § 33, effective June 25, 2013; 2017 ch. 63, § 2, effective June 29, 2017; 2019 ch. 146, was repealed and amended as KRS 151B.402 by Acts 2019, ch. 146, § 39, effective June 27, 2019.

Compiler's Notes.
This section was former compiled as KRS 151B.127.

Legislative Research Commission Notes.
(6/28/2006). 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

164.0064. Adult education programs aligned with federal college and career readiness standards — High School Equivalency Diploma — Programs and examinations — Previously issued equivalency or external diploma to be considered High School Equivalency Diploma — Validity of diplomas after changes in test selection. [Repealed, reenacted and amended.]

History.
Enact. Acts 1972, ch. 192, § 1; 1986, ch. 311, § 1, effective July 15, 1986; 1988, ch. 361, § 12, effective July 15, 1988; repealed, reenact. and amend. Acts 1990, ch. 470, § 23, effective July 1, 1990; 1990, 476, § 167; 1994, ch. 363, § 6, effective July 15, 1994; 1994, ch. 469, § 23, effective July 15, 1994; 1996, ch. 145, § 1, effective July 15, 1996; 1998, ch. 63, § 2, effective July 15, 1998; 2003, ch. 29, § 13, effective June 24, 2003; 2006, ch. 211, § 36, effective July 12, 2006; repealed and reenact., Acts 2013, ch. 59, § 32, effective June 25, 2013; 2017 ch. 63, § 1, effective June 29, 2017; 2019 ch. 146, was repealed and amended as KRS 151B.403 by Acts 2019, ch. 146, § 40, effective June 27, 2019.

Compiler's Notes.
This section (Enact. Acts 1972, ch. 192, § 1; 1986, ch. 311, § 1, effective July 15, 1986; 1988, ch. 361, § 12, effective July 15, 1988) was formerly compiled as KRS 156.485 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 23, effective July 1, 1990.

This section was former compiled as KRS 151B.125.

Legislative Research Commission Notes.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 363 and 469. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 469, which was last enacted by the General Assembly, prevails under KRS 446.250.

(7/13/90). This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

164.007. Definitions. [Repealed, reenacted and amended.]

History.

Enact. Acts 1994, ch. 487, § 2, effective July 15, 1994; 2000, ch. 526, § 9, effective July 14, 2000; repealed and reenact., Acts 2006, ch. 211, § 168, effective July 12, 2006; 2013, ch. 59, § 36, effective June 25, 2013; 2019 ch. 146, was repealed and amended as KRS 151B.404 by Acts 2019, ch. 146, § 41, effective June 27, 2019.

Compiler's Notes.

This section was formerly compiled as KRS 151B.405.

Legislative Research Commission Notes.

(7/12/2006). This statute defines terms for a range of statutes, KRS 151B.400 to 151B.410. Under 2006 Ky. Acts ch. 211, §§ 167 and 168, two of the three KRS sections within that range were repealed, reenacted, and given new KRS numbers. KRS 151B.400 has been renumbered as KRS 164.006, and KRS 151B.405 has been renumbered as KRS 164.007.

COUNCIL ON POSTSECONDARY EDUCATION

164.020. Powers and duties of council.

The Council on Postsecondary Education in Kentucky shall:

(1) Develop and implement the strategic agenda. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;

(2) Revise the strategic agenda and strategic implementation plan;

(3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the Governor and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;

(4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;

(5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;

(6) Engage in analyses and research to determine the overall needs of postsecondary education and adult education in the Commonwealth;

(7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

(8)(a) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In defining residency, the council shall classify a student as having Kentucky residency if the student met the residency requirements at the beginning of his or her last year in high school and enters a Kentucky postsecondary education institution within two (2) years of high school graduation. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent, except that the Kentucky Community and Technical College System may assess a mandatory student fee not to exceed eight dollars ($8) per credit hour to be used exclusively for debt service on amounts not to exceed seventy-five percent (75%) of the total projects cost of the Kentucky Community and Technical College System agency bond projects included in 2014 Ky. Acts ch. 117, Part II, J., 11.

(b) The Kentucky Community and Technical College System mandatory fee established in this subsection shall only be used for debt service on agency bond projects.

(c) Any fee established as provided by this subsection shall cease to be assessed upon the retirement of the project bonds for which it services debt.

(d) Prior to the issuance of any bonds, the Kentucky Community and Technical College System shall certify in writing to the secretary of the Finance and Administration Cabinet that sufficient funds have been raised to meet the local match equivalent to twenty-five percent (25%) of the total project cost;

(9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appro-

priations to the universities, the Kentucky Community and Technical College System, and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes. The council has sole discretion, with advice of the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;

(10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48;

(11)(a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.

(b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;

(12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;

(13) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions. Receive and consider an annual report prepared by the Association of Independent Kentucky Colleges and Universities stating the condition of independent institutions, listing opportunities for more collaboration between the state and independent institutions and other information as appropriate;

(14) Establish course credit, transfer, and degree components as required in KRS 164.2951;

(15)(a) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall not approve a new degree, certificate, or diploma program that includes a requirement for a course or training of which the primary purpose is to indoctrinate participants with a discriminatory concept.

(b) The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;

(16) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:

(a) Consistency with the institution's mission and the strategic agenda;

(b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;

(c) Elimination of unnecessary duplication of programs within and among institutions;

(d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery; and

(e) Alignment with KRS 164.2895, including the elimination of any program that includes a requirement for a course or training of which the primary purpose is to indoctrinate participants with a discriminatory concept;

(17) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;

(18) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;

(19) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;

(20) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;

(21) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes but is not limited to contractual arrangements for programs of research, specialized training, and cultural enrichment;

(22) Maintain procedures for the approval of a designated receiver to provide for the maintenance of

student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;

(23) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Interim Joint Committee on Families and Children;

(24)(a) Develop in cooperation with each public university and the Kentucky Community and Technical College System a comprehensive orientation and education program for new members of the council and the governing boards and continuing education opportunities for all council and board members. For new members of the council and institutional governing boards, the council shall:

1. Ensure that the orientation and education program comprises six (6) hours of instruction time and includes but is not limited to information concerning the roles of the council and governing board members, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget and finances, strategic plans and priorities, institutional policies and procedures, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, ethical considerations arising from board membership, and the board member removal and replacement provisions of KRS 63.080;

2. Establish delivery methods by which the orientation and education program can be completed in person or electronically by new members within one (1) year of their appointment or election;

3. Provide an annual report to the Governor and Legislative Research Commission of those new board members who do not complete the required orientation and education program; and

4. Invite governing board members of private colleges and universities licensed by the Council on Postsecondary Education to participate in the orientation and education program described in this subsection;

(b) Offer, in cooperation with the public universities and the Kentucky Community and Technical College System, continuing education opportunities for all council and governing board members; and

(c) Review and approve the orientation programs of each public university and the Kentucky Community and Technical College System for their governing board members to ensure that all programs and information adhere to this subsection;

(25) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;

(26) Select and appoint a president of the council under KRS 164.013;

(27) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;

(28) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;

(29) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor and the Legislative Research Commission;

(30) Consider the role, function, and capacity of independent institutions of postsecondary education in developing policies to meet the immediate and future needs of the state. When it is found that independent institutions can meet state needs effectively, state resources may be used to contract with or otherwise assist independent institutions in meeting these needs;

(31) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;

(32) Develop a statewide policy to promote employee and faculty development in state and locally operated secondary area technology centers through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a state or locally operated secondary area technology center may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term. The employee shall complete the Free Application for Federal Student Aid to determine the level of need and eligibility for state and federal financial aid programs. The amount of tuition waived shall not exceed the cost of tuition at the institution less any state or federal grants received, which shall be credited first to the student's tuition;

(33) Participate with the Kentucky Department of Education, the Kentucky Board of Education, and postsecondary education institutions to ensure that academic content requirements for successful entry into postsecondary education programs are aligned with high school content standards and that students who master the high school academic content standards shall not need remedial courses. The council shall monitor the results on an ongoing basis;

(34) Cooperate with the Kentucky Department of Education and the Education Professional Standards Board in providing information sessions to selected postsecondary education content faculty and teacher educators of the high school academic content standards as required under KRS 158.6453(2)(*l*);

(35) Cooperate with the Office of the Kentucky Center for Statistics and ensure the participation of the public institutions as required in KRS 151B.133;

(36) Pursuant to KRS 63.080, review written notices from the Governor or from a board of trustees or board of regents concerning removal of a board member or the entire appointed membership of a board, investigate the member or board and the conduct alleged to support removal, and make written recommendations to the Governor and the Legislative Research Commission as to whether the member or board should be removed;

(37)(a) Establish a common online application to be used by prospective students applying to public postsecondary institutions pursuant to KRS 164.099; and

(b) Maintain a website for students to apply to Kentucky public postsecondary institutions through the common application implemented pursuant to KRS 164.099(3)(b. The website shall embed or link to the information required to be published pursuant to KRS 164.0284; and

(38) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

History.

4527-1, 4527-3; amend. Acts 1956, ch. 163, § 1; 1966, ch. 6, § 2; 1968, ch. 152, § 118; 1972, ch. 39, § 2; 1974, ch. 74, Art. II, § 9(2); 1978, ch. 155, §§ 41, 106, effective June 17, 1978; 1978, ch. 295, § 1, effective June 17, 1978; 1980, ch. 71, § 1, effective July 15, 1980; 1982, ch. 379, § 4, effective April 9, 1982; 1990, ch. 443, § 39, effective July 13, 1990; 1992, ch. 10, § 2, effective February 20, 1992; 1992, ch. 315, § 1, effective July 14, 1992; 1994, ch. 31, § 6, effective July 15, 1994; 1996, ch. 184, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 74, effective May 30, 1997; 2000, ch. 192, § 1, effective July 14, 2000; 2000, ch. 526, §§ 3, 27, effective July 14, 2000; 2002, ch. 37, § 3, effective July 15, 2002; 2004, ch. 42, § 1, effective July 13, 2004; 2006, ch. 211, § 101, effective July 12, 2006; 2009, ′ch. 101, § 13, effective March 25, 2009; 2010, ch. 108, § 2, effective July 15, 2010; 2014, ch. 26, § 3, effective July 15, 2014; 2016 ch. 136, § 2, effective July 15, 2016; 2017 ch. 101, § 3, effective March 21, 2017; 2017 ch. 156, § 14, effective April 10, 2017; 2018 ch. 171, § 16, effective April 14, 2018; 2018 ch. 200, § 4, effective April 26, 2018; 2018 ch. 207, § 16, effective April 27, 2018; 2019 ch. 146, § 42, effective June 27, 2019; 2019 ch. 154, § 5, effective June 27, 2019; 2023 ch. 25, § 3, effective June 29, 2023; 2025 ch. 120, § 7, effective June 27, 2025; 2026 ch. 35, § 3, effective July 15, 2026; 2026 ch. 171, § 3, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 35 and 171, which do not appear to be in conflict and have been codified together.

(7/15/2026). 2026 Ky. Acts ch. 35, sec. 6, provides that the Act, which amended this statute and created KRS 164.099 and 151B.136, may be cited as the My Kentucky Future Act.

NOTES TO DECISIONS

1. Tuition and Fees.

Because state university students received a contractual financial obligation together with a document setting out tuition and fee rates as determined under this section and there was shared mutuality of subject matter, incorporation by reference applied. The students could maintain a claim for breach of contract seeking refunds for in-person classroom instruction and services not provided during the COVID-19 pandemic because a written contract sufficient to waive governmental immunity existed. Univ. of Ky. v. Regard, 670 S.W.3d 903, 2023 Ky. LEXIS 167 (Ky. 2023).

164.0203. Strategic agenda — Strategic implementation plan — Benchmarks.

(1) The Council on Postsecondary Education shall adopt a strategic agenda that identifies specific short-term objectives in furtherance of the long-term goals of postsecondary education in the Commonwealth.

(2)(a) The purpose of the strategic agenda is to create high-quality, relevant, postsecondary education and adult education opportunities in the Commonwealth. The strategic agenda shall:

1. Serve as the public agenda for postsecondary education and adult education for the citizens of the Commonwealth, providing statewide priorities and a vision for long-term economic growth;

2. State those important issues and aspirations of the Commonwealth's students, employers, and workforce reflecting high expectations for their performance and the performance of the educational institutions and providers that serve them; and

3. Sustain a long-term commitment for constant improvement, while valuing market-driven responsiveness, accountability to the public, technology-based strategies, and incentive-based motivation.

(b) The council shall develop a strategic implementation plan, which may be periodically revised, to achieve the strategic agenda. The strategic agenda shall serve as a guide for institutional plans and missions.

(3) The framework for the strategic implementation plan of the strategic agenda shall include the following elements:

(a) A mission statement;

(b) Goals;

(c) Principles;

(d) Strategies and objectives;

(e) Benchmarks; and

(f) Incentives to achieve desired results.

(4) The implementation plan for the strategic agenda shall take into consideration the value to society of a quality liberal arts education and the needs and concerns of Kentucky's employers.

(5) The council shall develop benchmarks using criteria that shall include but not be limited to:

(a) Use of the statistical information commonly provided by governmental and regulatory agencies or specific data gathered by authorization of the council;

(b) Comparison of regions and areas within the Commonwealth and comparisons of the Commonwealth to other states and the nation; and

(c) Measures of educational attainment, effectiveness, and efficiency, including but not limited to those set forth in KRS 164.095.

(6) In developing the strategic agenda, the council shall actively seek input from the Department of Education and local school districts to create necessary

linkages to assure a smooth and effective transition for students from the elementary and secondary education system to the postsecondary education system. Upon completion of the strategic agenda and strategic implementation plan, the council shall distribute copies to each local school district.

(7) The strategic agenda shall include a long-term strategy, developed in partnership with the Office of Adult Education, for raising the knowledge and skills of Kentucky's adult population, and ensuring lifelong learning opportunities for all Kentucky adults, drawing on the resources of all state government cabinets and agencies, business and civic leadership, and voluntary organizations.

History.

Enact. Acts 1997 (1st Ex. Sess.), ch. 1, § 6, effective May 30, 1997; 2000, ch. 526, § 4, effective July 14, 2000; 2006, ch. 211, § 102, effective July 12, 2006; 2019 ch. 146, § 43, effective June 27, 2019; 2026 ch. 171, § 11, effective July 15, 2026.

164.0206. Public postsecondary education institution's program in speech-language pathology and teacher education.

A public postsecondary education institution with a degree program in speech-language pathology and a teacher education program, under the direction of the Council on Postsecondary Education, and in consultation with the Education Professional Standards Board and the Kentucky Board of Speech-Language Pathology and Audiology, shall:

(1) Align the programs of studies for speech-language pathology and teacher education to permit a student to successfully prepare for licensure as a speech-language pathology assistant and certification as a bachelor's level teacher of exceptional children/communication disorders;

(2) Increase the number of qualified students accepted into programs leading to licensure as a speech-language pathologist or speech-language pathology assistant and certification as a teacher of exceptional children/communication disorders, subject to:

(a) Requirements for program certification by national certifying bodies, including, but not limited to, student to faculty ratios;

(b) The strategic plans of the Council on Postsecondary Education and the postsecondary education institution; and

(c) The budgetary considerations of the postsecondary education institution.

(3) Provide expanded opportunities for speech-language pathology assistants working in public schools to pursue licensure as a speech-language pathologist and certification as a teacher of exceptional children/communication disorders, which may include:

(a) Expanded opportunities for admission to on-campus programs;

(b) The development and expansion of distance learning opportunities in collaboration with the Kentucky Commonwealth Virtual University; and

(c) Admissions requirements that take into account successful professional experience as a speech-language pathology assistant in lieu of other admissions requirements.

History.

Enact. Acts 2000, ch. 375, § 2, effective July 14, 2000.

164.0207. Statewide reading research center — Duties — Report — Selection of administrator.

(1) A statewide reading research center shall be established under this section to support educators in implementing reliable, replicable evidence-based reading programs, and to promote literacy development, including cooperating with other entities that provide family literacy services. The center shall be responsible for:

(a) Developing and implementing a clearinghouse for information about programs addressing reading and literacy from early childhood and the elementary grades (P-5) through adult education;

(b) Providing advice to the Kentucky Board of Education regarding matters relating to reading;

(c) Collaborating with the Kentucky Department of Education to assist districts with students functioning at low levels of reading skills to assess and address identified literacy needs;

(d) Providing research and data on evidence-based, high-yield instructional practices and coaching strategies for early childhood educators and classroom teachers, including adult education teachers, implementing selected reliable, replicable evidence- based reading programs;

(e) Developing and implementing a comprehensive research agenda evaluating early reading models, instructional resources, and evidence- based practices needed to accelerate student performance toward proficiency in reading;

(f) Assisting middle and high schools in the development of comprehensive adolescent reading plans and maintaining a repository of instructional materials or summary materials that identify comprehension best practices in the teaching of each subject area and a list of classroom-based diagnostic reading comprehension assessments that measure student progress in developing students' reading comprehension skills; and

(g) Evaluating the reading and literacy components of the model adult education programs funded under the adult education and literacy initiative fund created under KRS 151B.409.

(2) The center shall review national research and disseminate appropriate research abstracts, when appropriate, as well as conduct ongoing research of reading programs throughout the state. Research activities undertaken by the center shall consist of descriptive as well as empirical studies.

(a) The center may contract for research studies to be conducted on its behalf.

(b) The research agenda should, at a minimum, consider the impact of various reading and intervention programs:

1. In eliminating academic achievement gaps among students with differing characteristics, including subpopulations of students with disabilities, students with low socioeconomic status, students from racial minority groups, students with

limited English proficiency, and students of different gender;

2. In schools with differing characteristics, such as urban versus rural schools, poverty versus nonpoverty schools, schools with strong library media center programs versus schools with weak library media center programs, and schools in different geographic regions of the state;

3. In terms of their costs and effectiveness; and

4. In maintaining positive student progress over a sustained period of time.

(3) The center, in conjunction with the Kentucky Department of Education, shall establish annual goals and performance objectives related to the functions described in this section. The center shall submit an annual report of its activities, the effects of those activities on state performance levels in reading and writing, and the outcomes of all annual goals and performance objectives to the Kentucky Department of Education no later than September 1 of each year. Based on the annual outcomes, the Kentucky Department of Education shall make programming and funding recommendations to the Governor, the Legislative Research Commission, and the Interim Joint Committee on Education by October 1 of each year.

(4) The Kentucky Department of Education shall, through a competitive request for proposals process, select the administrator of the statewide reading research center for approval by the Kentucky Board of Education. The selected administrator shall be contracted for five (5) years, unless funding is not available or the administrator requests to discontinue the contract. For each five (5) year period thereafter, contingent upon funding, the Kentucky Department of Education shall issue a new request for proposals for the administration of the center.

History.

Enact. Acts 1998, ch. 580, § 3, effective July 15, 1998; 2000, ch. 526, § 29, effective July 14, 2000; 2005, ch. 127, § 5, effective March 18, 2005; 2010, ch. 42, § 3, effective July 15, 2010; 2019 ch. 146, § 44, effective June 27, 2019; 2020 ch. 112, § 14, effective July 15, 2020; 2022 ch. 40, § 7, effective March 29, 2022; 2023 ch. 55, § 1, effective July 1, 2024.

Legislative Research Commission Notes.

(3/29/2022). 2022 Ky. Acts ch. 40, sec. 10, provides that the Act, which amended this statute, may be cited as the Read to Succeed Act.

(3/18/2005). 2005 Ky. Acts ch. 127, which included an amendment to this section, KRS 164.0207, provides that the Act shall be cited as the "Read to Achieve Act of 2005."

164.0211. Board of Student Body Presidents.

(1) The student body president of each four (4) year public university, the student member of the board of regents of the Kentucky Community and Technical College System, and one (1) student body president representing the members of the Association of Independent Kentucky Colleges and Universities shall serve on an advisory board to be known as the Board of Student Body Presidents. The student body president representing the independent colleges and universities shall be selected under a process established by the Association of Independent Kentucky Colleges and Universities.

(2) The Board of Student Body Presidents shall advise the legislative and executive branches regarding postsecondary education issues and concerns of students.

(3) At least once each year, the Board of Student Body Presidents shall meet with the Council on Postsecondary Education and the Advisory Conference of Presidents.

(4) The Board of Student Body Presidents shall submit the names of three (3) nominees to the Governor for consideration in the appointment of a student member to the Council on Postsecondary Education pursuant to KRS 164.011.

History.

Enact. Acts 2013, ch. 124, § 4, effective June 25, 2013; 2026 ch. 164, § 10, effective July 15, 2026.

164.023. Kentucky Adult Education Program — Educational strategy and responsibilities — Organization — Sole agency for developing and approving state plans. [Repealed, reenacted and amended.]

History.

Enact. Acts 2006, ch. 211, § 98, effective July 12, 2006; 2019 ch. 146, was repealed and amended as KRS 151B.406 by Acts 2019, ch. 146, § 45, effective June 27, 2019.

164.0232. Foundation for Adult Education. [Repealed, reenacted and amended.]

History.

Enact. Acts 1986, ch. 209, § 1, effective July 15, 1986; repealed, reenact. and amend. Acts 1990, ch. 470, § 24, effective July 1, 1990; 1996, ch. 217, § 3, effective July 15, 1996; 2003, ch. 29, § 14, effective June 24, 2003; 2006, ch. 211, § 38, effective July 12, 2006; 2009, ch. 11, § 19, effective June 25, 2009; 2013, ch. 15, § 4, effective June 25, 2013; repealed, reenact. and amend., Acts 2013, ch. 59, § 34, effective June 25, 2013; 2017 ch. 63, § 20, effective June 29, 2017; 2019 ch. 146, was repealed and amended as KRS 151B.407 by Acts 2019, ch. 146, § 46, effective June 27, 2019.

Compiler's Notes.

This section (Enact. Acts 1986, ch. 209, § 1, effective July 15, 1986) was formerly compiled as KRS 156.486 and was repealed, reenacted and amended as this section by Acts 1990, ch. 170, § 24, effective July 1, 1990.

This section was formerly compiled as KRS 151B.130.

Legislative Research Commission Notes.

(6/25/2013). This statute was amended by 2013 Ky. Acts chs. 15 and 59, which do not appear to be in conflict and have been codified together.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

KRS 151B.130 formerly codified as KRS 156.486.

164.0234. Adult education learning system — Services — Duties and responsibilities of the Kentucky Adult Education Program. [Repealed, reenacted and amended.]

History.

Enact. Acts 1994, ch. 487, § 3, effective July 15, 1994; 1996,

ch. 143, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 54, effective May 30, 1997; 2000, ch. 526, § 10, effective July 14, 2000; 2006, ch. 211, § 55, effective July 12, 2006; 2008, ch. 113, § 2, effective July 15, 2008; repealed and reenact., Acts 2013, ch. 59, § 35, effective June 25, 2013; 2017 ch. 63, § 21, effective June 29, 2017; 2019 ch. 146, was repealed and amended as KRS 151B.408 by Acts 2019, ch. 146, § 47, effective June 27, 2019.

Compiler's Notes.

Section 6 of Acts 1994, ch. 487 provides that: "Effective July 1, 1994, the federal Job Training Partnership Act program and all personnel, funds, equipment, and property related to this program shall transfer from the Cabinet for Human Resources to the Workforce Development Cabinet."

This section was formerly compiled as KRS 151B.410.

164.0284. Annual compilation of data concerning in-demand jobs, college costs, student loan debt, graduation rates, and student and graduate employment — Administrative regulations.

(1) In order to help prospective students make more informed decisions about their futures and ensure that they are adequately aware of the cost of college and other career paths, the Council on Postsecondary Education shall compile on an annual basis the following information:

(a) The most in-demand jobs in the state along with the starting salary, the median salary, and the typical education level for those jobs;

(b) For the University of Kentucky, the University of Louisville, each comprehensive university, and each college within the Kentucky Community and Technical College System:

1. The average cost;
2. The average three (3) year student loan default rate;
3. The average student loan debt for students who have attended the institution;
4. The percentage of students taking out student loans;
5. The average graduation rate and average time to completion;
6. The number of students completing high school credential programs and career and technical education programs, and, as available, the number of students completing apprenticeship programs; and
7. The median and range of starting salaries for graduates; and

(c) For each college within the Kentucky Community and Technical College System, the percentage of students employed by program area and, as data becomes available, the rate of students gainfully employed in the recognized occupation for which the student was trained or in a related comparable recognized occupation.

(2) The Council on Postsecondary Education shall maintain and ensure access to the information by prospective students in the state. The council shall work with the Kentucky Center for Statistics, the Kentucky Department of Education, the Education and Labor Cabinet, and the Kentucky Higher Education Assistance Authority and other stakeholders the council determines necessary to develop a delivery method to carry out the objectives of this section.

(3) The council may promulgate administrative regulations necessary to carry out this section and may require and compile information for specific programs within the postsecondary institutions identified in subsection (1)(b) of this section.

History.

2020 ch. 105, § 1, effective July 1, 2021; 2022 ch. 236, § 82, effective July 1, 2022.

Legislative Research Commission Notes.

(7/1/2021). 2020 Ky. Acts ch. 105, sec. 2, provides that this statute may be cited as the Students' Right to Know Act.

164.0285. Definitions for KRS 164.0285 to 164.0288. [Repealed]

History.

Enact. Acts 2008, ch. 134, § 8, effective July 15, 2008; repealed by 2026 ch. 171, § 23, effective July 15, 2026.

164.0286. STEM Initiative Task Force — Purpose — Membership — Steering committee oversight and coordination — Administrative attachment — Contracting — Funding. [Repealed]

History.

Enact. Acts 2008, ch. 134, § 9, effective July 15, 2008; repealed by 2026 ch. 171, § 23, effective July 15, 2026.

164.0287. Duties of STEM Initiative Task Force — Strategic plan — Business plan. [Repealed]

History.

Enact. Acts 2008, ch. 134, § 10, effective July 15, 2008; repealed by 2026 ch. 171, § 23, effective July 15, 2026.

164.0288. Kentucky STEM Initiative fund. [Repealed]

History.

Enact. Acts 2008, ch. 134, § 11, effective July 15, 2008; repealed by 2026 ch. 171, § 23, effective July 15, 2026.

164.033. Local P-16 councils. [Repealed]

History.

Enact. Acts 2001, ch. 76, § 2, effective June 21, 2001; repealed by 2026 ch. 171, § 23, effective July 15, 2026.

164.035. Needs assessment for adult education and workforce development.

The Council on Postsecondary Education, in consultation with the Office of Adult Education and the statewide reading research center established under KRS 164.0207, shall assess the need for technical assistance, training, and other support to assist in the development of adult education and workforce development that support the state strategic agenda and that include a comprehensive coordinated approach to education and training services. The council shall promote the involvement of universities; colleges; technical in-

stitutions; elementary and secondary educational agencies; labor, business, and industry representatives; community-based organizations; citizens' groups; and other policymakers in the development of the regional strategies.

History.
Enact. Acts 1997 (1st Ex. Sess.), ch. 1, § 23, effective May 30, 1997; 2000, ch. 526, §§ 5, 28, effective July 14, 2000; 2006, ch. 211, § 103, effective July 12, 2006; 2019 ch. 146, § 48, effective June 27, 2019; 2023 ch. 55, § 9, effective July 1, 2024.

164.036. Council for Educational Research — Duty to advise on data needed by colleges of education — Service by deans of colleges of education.

(1) The Council for Educational Research is hereby established.

(2) At least once each year, the council shall advise the Board of the Kentucky Center for Statistics and the Office of the Kentucky Center for Statistics on the data needed by colleges of education for conducting education research.

(3) The deans of the colleges of education at each public research and comprehensive university shall serve on the council or appoint a designee from the research faculty in the college of education.

History.
Enact. Acts 2013, ch. 18, § 7, effective June 25, 2013; 2013, ch. 90, § 7, effective June 25, 2013; 2019 ch. 154, § 6, effective June 27, 2019.

Legislative Research Commission Notes.
(6/25/2013). This statute was created by 2013 Ky. Acts chs. 18 and 90, which were companion bills and are substantively identical. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 90 prevails under KRS 446.250 as the Act which passed the General Assembly last.

164.0401. Definitions for KRS 164.0401 to 164.0407.

For the purposes of KRS 164.0401 to 164.0407:

(1) "Council" means the Council on Postsecondary Education;

(2) "Dedicated funds" means a gift, grant, or donation to the fund that is subject to restrictions imposed by a private grantor under KRS 164.0401 to 164.0407;

(3) "Eligible healthcare credential" means:

(a) An alcohol and drug counselor license, clinical alcohol and drug counselor license, clinical alcohol and drug counselor associate license, professional art therapist license, professional art therapist associate license, or community health worker certificate issued pursuant to KRS Chapter 309;

(b) Any emergency medical services license or certificate issued pursuant to KRS Chapter 311A;

(c) Any medical imaging, radiation, or other license issued pursuant to KRS Chapter 311B;

(d) A dental hygienist or dental assistant license issued pursuant to KRS Chapter 313;

(e) Any nursing license or certificate issued pursuant to KRS Chapter 314 or registration as a state registered nursing aide with the Kentucky Board of Nursing;

(f) A respiratory care practitioner certificate issued pursuant to KRS Chapter 314A;

(g) Any psychology license or certificate issued pursuant to KRS Chapter 319;

(h) Any occupational therapy license issued pursuant to KRS Chapter 319A;

(i) Any behavior analyst license issued pursuant to KRS Chapter 319C;

(j) Any physical therapy certificate or license issued pursuant to KRS Chapter 327;

(k) Any social worker, marriage and family therapist, or professional counselor certificate or license issued pursuant to KRS Chapter 335;

(*l*) A physician assistant license issued pursuant to KRS Chapter 311;

(m) A dietitian license or nutritionist certificate issued pursuant to KRS Chapter 310; and

(n) A speech-language pathology or audiology license issued pursuant to KRS Chapter 334A;

(4) "Grantor" means an individual or an entity that gifts, grants, or donates moneys to the Kentucky healthcare workforce investment fund established in KRS 164.0402;

(5) "Healthcare partner" means a grantor to the Kentucky healthcare workforce investment fund that is:

(a) A healthcare provider as defined in KRS 367.4081;

(b) A healthcare facility licensed by and operating in Kentucky;

(c) A qualified mental health professional as defined in KRS 202A.011; or

(d) Any healthcare or healthcare-related association, individual, or corporation doing business in and incorporated under the laws of the Commonwealth;

(6) "Healthcare program" means an education or training program that is a specific requirement to an eligible healthcare credential, including but not limited to a high school healthcare vocational program;

(7) "Historically underserved county" means a county of the Commonwealth with enhanced workforce demands, as demonstrated by:

(a) Objective healthcare workforce data that demonstrates needs and demands upon its healthcare workforce that exceed the statewide average; and

(b) Final unemployment figures calculated by the Department of Workforce Development demonstrating a countywide rate of unemployment that exceeds the statewide unemployment rate of the Commonwealth:

1. In the most recent five (5) consecutive calendar years; or

2. By two hundred percent (200%) in the most recent calendar year; and

(8) "Kentucky resident" is a Kentucky resident as defined by the council pursuant to KRS 164.020(8).

History.
2023 ch. 65, § 1, effective March 22, 2023; 2025 ch. 150, § 1, effective June 27, 2025; 2026 ch. 29, § 1, effective July 15, 2026.

164.0402. Legislative intent — Kentucky healthcare workforce investment fund — Administrative regulations.

(1) It is the intent of the General Assembly to address Kentucky's persistent shortage of a broad spectrum of certified and licensed healthcare professionals, including nurses, mental health professionals, and emergency medical services professionals, by incentivizing collaboration between healthcare programs, healthcare industry partners, and the Commonwealth to grow and strengthen the education and training pipeline of healthcare professionals within Kentucky to better serve patients across the Commonwealth by:

(a) Improving the ability of a broad variety of Kentucky's healthcare programs to meet the workforce demands and capacity of the Commonwealth, including the workforce demands of historically underserved counties;

(b) Raising awareness of and interest in a broad variety of healthcare occupations and reducing the barriers of access to the healthcare programs necessary to pursue these occupations, including financial barriers;

(c) Increasing knowledge and awareness of opportunities in high-need areas of healthcare, including but not limited to geriatrics and neurology;

(d) Improving pathways between high school career and technical programs and other healthcare programs; and

(e) Developing strategies for healthcare organizations to support career growth and development for their employees.

(2) There is hereby created the Kentucky healthcare workforce investment fund to be administered by the council for the purpose of funding:

(a) Public and private partnerships to provide healthcare training scholarships in accordance with KRS 164.0403 to reduce the financial barriers of Kentucky residents seeking high-demand eligible healthcare credentials;

(b) Healthcare program incentives in accordance with KRS 164.0404 to reward performance and excellence among the Commonwealth's healthcare programs; and

(c) The council's administrative, research, consulting, fundraising, planning, and analysis costs of KRS 164.0401 to 164.0407.

(3)(a) It is the intent of the General Assembly to encourage private financial and philanthropic support of the Kentucky healthcare workforce investment fund, as the healthcare industry directly benefits from a well-trained workforce capable of meeting its employment needs and the needs of patients. To the extent allowed by applicable laws, the fund may directly accept gifts, grants, or donations subject to restrictions imposed by a grantor.

(b) Notwithstanding KRS 45.229, any moneys appropriated to the fund by the General Assembly remaining in the fund at the end of any fiscal year prior to the 2029-2030 fiscal year shall not lapse.

(c) Any moneys appropriated to the fund by the General Assembly remaining in the fund at the end of the 2029-2030 fiscal year shall be forfeited and shall lapse to the general fund.

(d) Any moneys contributed by grantors remaining in the fund at the end of the 2029-2030 fiscal year shall be returned to each grantor proportionally based on the amount donated by the grantor in relation to the total amount donated by all grantors.

(4) Subject to available funds, the Kentucky healthcare workforce investment fund shall consist of any:

(a) Appropriations designated for the fund;

(b) Funds, grants, and receipts from the council's fundraising activities on behalf of the fund; and

(c) Other moneys made available for the purposes of the fund.

(5) Any interest earnings of the fund shall become a part of the fund and shall lapse only as provided in subsection (3) of this section, except that interest on moneys contributed by a grantor shall not lapse. Moneys in the fund are hereby appropriated for the purposes set forth in this section.

(6) The portion of the fund expended towards the council's costs of administering KRS 164.0401 to 164.0407 shall not exceed four percent (4%) of all gross moneys in the fund or one million five hundred thousand dollars ($1,500,000) annually, whichever is less.

(7)(a) The council shall promulgate administrative regulations by July 1, 2023, in accordance with this subsection and KRS Chapter 13A to administer KRS 164.0401 to 164.0407.

(b) At least thirty (30) days before filing an administrative regulation with the regulations compiler, the council shall first submit the draft administrative regulation, a detailed implementation plan, and other documents required to be filed by KRS Chapter 13A to the members of the Interim Joint Committee on Education and the Interim Joint Committee on Health Services for review and comment.

(c) The council shall consider any comments and recommendations provided by the members of the Interim Joint Committee on Education and the Interim Joint Committee on Health Services before filing the administrative regulation.

History.

2023 ch. 65, § 2, effective March 22, 2023.

Legislative Research Commission Notes.

(3/22/2023). Pursuant to 2023 Ky. Acts ch. 65, sec. 9, references to the Interim Joint Committee on Health, Welfare, and Family Services in subsection (7) of this section have been changed in codification to the Interim Joint Committee on Health Services.

164.0403. Healthcare training scholarships — Partnership proposal requirements — Partnership contract — Scholarship contract — Restrictions — Recoupment — Prohibitions.

(1) The council shall reserve at least sixty-five percent (65%) of all net moneys in the Kentucky healthcare workforce investment fund for partnership proposals between healthcare programs and healthcare partners to provide healthcare training scholarships to Kentucky residents enrolled in healthcare programs in Kentucky.

(2) In accepting partnerships, the council shall evaluate each partnership proposal to determine if the

proposal meets the requirements of this section and administrative regulations promulgated by the council. The administrative regulations shall create a process to prioritize accepting partnerships to proposals:

(a) Targeted to address the specific needs of a historically underserved county or to improve racial and ethnic diversity within a specific designated healthcare credential targeted by the partnership;

(b) Targeted to reduce the workforce demand of a specific eligible healthcare credential that is determined by the council, based on objective criteria, to be among the highest in demand in the Commonwealth; or

(c) From healthcare partners with fifty (50) or fewer employees.

(3) A partnership shall require a written partnership contract between a healthcare program, healthcare partner, and the council. The partnership contract shall:

(a) Prohibit any disbursement of moneys from the Kentucky healthcare workforce investment fund until the moneys appropriated by the General Assembly to be distributed are matched, at least dollar for dollar, with moneys deposited to the fund by the healthcare partner;

(b) Require the healthcare program to use all moneys distributed to the healthcare program pursuant to the partnership contract to issue direct healthcare training scholarships to Kentucky students enrolled in the healthcare program;

(c) If applicable to a healthcare program, require that the healthcare training scholarship application process encourage applicants to complete the Free Application for Federal Student Aid; and

(d) Meet all other requirements set forth in this section and administrative regulation, including but not limited to any reporting requirements to the council.

(4) Disbursements of moneys from the Kentucky healthcare workforce investment fund to support healthcare training scholarships shall be made directly to a healthcare program pursuant to the terms of the partnership contract.

(5) A healthcare program that enters a partnership contract shall solicit, accept, and review healthcare training scholarship applications submitted by students enrolled in the healthcare program. A partnership contract may require that a healthcare program do so in collaboration with the healthcare partner. The healthcare program shall award healthcare training scholarships pursuant to any scholarship criteria set forth in the partnership contract, this section, and administrative regulations. The decisions of the healthcare program in the issuance of scholarships shall be final.

(6) A healthcare training scholarship issued by a healthcare program pursuant to a partnership contract shall be made directly to a recipient pursuant to a written scholarship contract between the recipient and the healthcare program. The scholarship contract shall not restrict the recipient's ability to utilize the scholarship for the total cost of attendance. Each recipient of a scholarship shall:

(a) Agree in the written contract to practice as a licensed or certified medical professional in the Commonwealth for a contract period of one (1) year for each academic year funded by the scholarship up to a maximum of two (2) total years; and

(b) Sign a promissory note as evidence of the scholarship and the obligation to repay the scholarship amount upon failure to complete terms of the contract.

(7) A grantor may place restrictions upon a contribution to the Kentucky healthcare workforce investment fund requiring specific criteria for a healthcare training scholarship or scholarships funded by the grantor's dedicated funds to students who agree in the scholarship contract required by subsection (6)(a) of this section to practice as a certified or licensed healthcare professional, including but not limited to criteria restricting:

(a) Except as provided in subsection (9) of this section, employment by the healthcare partner for the contract period; or

(b) Employment at a location within a designated geographic area of the Commonwealth for the contract period.

(8) The healthcare training scholarship contract shall grant the healthcare program, the Commonwealth, or the healthcare partner the authority to initiate recoupment proceedings for the recovery of the total amount of all healthcare training scholarships awarded to an individual that fails to complete the terms of a contract entered into in accordance with subsection (6) of this section, together with reasonable attorney fees and interest at a compound rate not to exceed eight percent (8%) per annum from the date of disbursement from the fund.

(9)(a) A healthcare training scholarship shall not be awarded to an applicant enrolled in a state registered nursing aide training and competency evaluation program who is:

1. Not charged for any portion of the program pursuant to 42 C.F.R. sec. 483.152(c)(1); or

2. Eligible for reimbursement for the costs of the program pursuant to 42 C.F.R. sec. 483.152(c)(2) prior to entering the scholarship contract.

(b) A healthcare training scholarship awarded to applicants enrolled in a state registered nursing aide training and competency evaluation program shall not include an employment restriction that would restrict the recipient to be employed by a specific healthcare partner for the contract period required by subsection (6) of this section or that would otherwise constitute an offer of employment in accordance with 42 C.F.R. sec. 483.152(c)(1).

(10) An applicant who has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property shall not be eligible for a healthcare training scholarship.

History.

2023 ch. 65, § 3, effective March 22, 2023; 2025 ch. 150, § 2, effective June 27, 2025.

164.0404. Healthcare program incentive — Administrative regulations — Incentive application process and requirements.

(1) The council shall reserve up to thirty-five percent (35%) of all net moneys in the Kentucky healthcare

workforce investment fund for healthcare program incentives to reward performance and excellence among eligible healthcare programs. Any appropriation applied towards the amount of a healthcare program incentive award shall be matched, at least dollar for dollar, with moneys deposited to the fund by the healthcare partner.

(2) The council shall promulgate administrative regulations to establish criteria for issuing healthcare program incentives. The criteria shall consider the following factors:

(a) The workforce demands and capacity for a specific eligible healthcare credential;

(b) The workforce demands and capacity for a specific eligible healthcare credential within historically underserved counties;

(c) The percentage of increase over a baseline standard in the number of students completing the healthcare program;

(d) The passage rate and first-time passage rate of graduates of the healthcare program on the healthcare credential examination; and

(e) Any other objective factors determined by the council to be relevant to the evaluation of the performance and excellence of the healthcare programs and the ability of the healthcare programs to meet the workforce needs of the communities they serve.

(3)(a) The council, or its designee, shall solicit, accept, and review applications for healthcare program incentives by healthcare programs located in Kentucky. The council, or its designee, shall select the healthcare programs to receive healthcare program incentives and the amount thereof based on the criteria established by this section, administrative regulations, and a grantor of dedicated funds, if applicable.

(b) A healthcare partner that is the grantor of dedicated funds may reserve the right to require the council, or its designee, to collaborate with the healthcare partner in fulfilling the duties assigned under paragraph (a) of this subsection for any healthcare program incentive funded by the grantor's dedicated funds, except an incentive shall not be:

1. Awarded to a healthcare program that has gifted, granted, or donated any moneys to the fund that are dedicated funds reserved for the purpose of issuing incentives under this section; or

2. Restricted to a specific healthcare program or pursuant to criteria which would have the impact of effectively excluding all but a single healthcare program from qualification.

(c) Decisions of the council, or its designee, in these matters shall be final.

(4) The council shall require the healthcare program to submit proof that the entire amount of the incentive is invested in the continued excellence of the program awarded by funding the:

(a) Education, recruitment, and training of the healthcare program's faculty and staff; or

(b) Maintenance and acquisition of medical equipment utilized by the healthcare program.

A healthcare program that fails to submit the proof required by the council shall return the entire amount of the incentive to the Kentucky healthcare workforce investment fund.

History.

2023 ch. 65, § 4, effective March 22, 2023.

164.0405. Annual report to Interim Joint Committees by Council on Postsecondary Education.

(1) The council shall submit a written report to the Interim Joint Committee on Education, the Interim Joint Committee on Health Services, and the Interim Joint Committee on Appropriations and Revenue Budget Review Subcommittee on Education no later than December 1 of each year. The report shall include:

(a) A detailed summary of the council's costs throughout the year;

(b) Legislative recommendations to help grow and strengthen the education and training pipeline of healthcare professions within Kentucky;

(c) A detailed overview of the Kentucky healthcare workforce investment fund, including an accounting of all moneys raised and expended;

(d) A detailed analysis of healthcare training scholarships awarded pursuant to KRS 164.0403, including but not limited to:

1. The criteria used to award the scholarships;

2. The number of scholarships awarded and the amount of each scholarship;

3. An overview of the demographic information of scholarship recipients, including the county of residence;

4. The names of the healthcare programs with scholarship recipients and the type of eligible healthcare credential corresponding to each program; and

5. To the extent available, student and program outcomes, including but not limited to:

a. Graduation rates of the healthcare program overall and of scholarship recipients as compared to an established baseline within any such program;

b. Employment and employment retention rates of the healthcare program overall and scholarship recipients; and

c. The workforce participation of program graduates practicing in Kentucky under an eligible healthcare credential in relation to the workforce demand and capacity for that specific eligible healthcare credential; and

(e) A detailed analysis of the number of the healthcare program incentives awarded pursuant to KRS 164.0404, including but not limited to:

1. The criteria used by the council to award the incentives;

2. The number of incentives awarded;

3. The name of each healthcare program that received an incentive, the corresponding eligible healthcare credential, and the amount of the incentive; and

4. The qualifications of each healthcare program that received an incentive in relation to the criteria identified by the council for awarding the incentives.

(2) If the report required by subsection (1) of this section is not filed by December 14 of each year, or a later date approved by the Interim Joint Committee on

Education and the Interim Joint Committee on Health Services, any appropriations to the fund shall be forfeited and any remaining moneys in the fund appropriated by the General Assembly shall lapse to the general fund. The council shall return any remaining private moneys to its grantor, prorated as necessary.

History.
2023 ch. 65, § 5, effective March 22, 2023.

Legislative Research Commission Notes.
(3/22/2023). Pursuant to 2023 Ky. Acts ch. 65, sec. 9, references to the Interim Joint Committee on Health, Welfare, and Family Services in this section have been changed in codification to the Interim Joint Committee on Health Services.

164.0406. Annual report to Interim Joint Committees by public postsecondary education institutions.

Each public postsecondary education institution shall review the cost of its healthcare programs, as defined in KRS 164.0401, in relation to the realistic earning potential and employability of the institution's graduates and submit a written report to the Interim Joint Committees on Health Services and Education no later than September 1 of each year. The report shall include:

(1) The current tuition of each healthcare program at the institution for in-state and out-of-state students;

(2) The student capacity of each healthcare program;

(3) The number of total applications for enrollment, in-state applications for enrollment, and out-of-state applications for enrollment for each healthcare program;

(4) The total number of students, in-state students, and out-of-state students admitted to each healthcare program;

(5) The minimum number of years required to complete the healthcare program and the average number of years graduates of each healthcare program were enrolled;

(6) The average amount of student loans of the graduates of each healthcare program;

(7) The graduation rate of each healthcare program and the graduation rate of in-state and out-of-state students;

(8) The passage rate and first-time passage rate of graduates of each healthcare program on the healthcare credential examination;

(9) The employment rate of graduates of each healthcare program within twelve (12) months after graduation; and

(10) A summary of all new actions taken by the institution during the reporting year to reduce the financial barriers to healthcare professions.

History.
2023 ch. 65, § 6, effective March 22, 2023.

Legislative Research Commission Notes.
3/22/2023). Pursuant to 2023 Ky. Acts ch. 65, sec. 9, a reference to the Interim Joint Committee on Health, Welfare, and Family Services in this section has been changed in codification to the Interim Joint Committee on Health Services.

164.0407. Sunset of KRS 164.0401 to 164.0407. [Effective until July 1, 2030]

KRS 164.0401 to 164.0407 shall expire on and have no force or effect after June 30, 2030, unless extended by an act of the General Assembly.

History.
2023 ch. 65, § 7, effective March 22, 2023.

164.041. Adult education and literacy initiative fund. [Repealed, reenacted and amended.]

History.
Repealed and reenact., Acts 2000, ch. 526, § 7, effective July 14, 2000; 2006, ch. 211, § 104, effective July 12, 2006; 2019 ch. 146, was repealed and amended as KRS 151B.409 by Acts 2019, ch. 146, § 49, effective June 27, 2019.

Compiler's Notes.
This section was formerly compiled as KRS 151B.142.

Legislative Research Commission Notes.
(7/7/97). Although designated to be created as a new section of KRS Chapter 164 by 1997 (1st Extra. Sess.) Ky. Acts ch. 1, § 150, this statute has been codified into KRS Chapter 151B under KRS 7.136(1)(a) and (h) because its subject matter clearly belongs within that chapter.

164.097. Certification of postsecondary institutions to receive funds for teacher education or model program.

No postsecondary education institution shall receive funds from the Council on Postsecondary Education from any trust fund for the purposes of teacher education or model programs of teaching and learning unless the Education Professional Standards Board has certified to the council that the institution has met the following conditions:

(1) The college or university has developed viable partnerships with local school districts and schools;

(2) There is evidence of ongoing dialogue and collaboration among liberal arts and sciences faculty and administrators with faculty and administrators in the department, school, or college of education;

(3) The college or university has demonstrated a commitment to participate in teacher academies;

(4) The college or university has an active recruitment plan for attracting and retaining minority faculty as well as students, and particularly in the department, school, or college of education;

(5) The college or university has initiated the development of incentives or rewards for faculty across the institution to participate in service activities to local schools;

(6) The department, school, or college of education has developed at least one (1) accelerated alternative plan for teacher education or nontraditional program of teacher preparation, or commits to developing an accelerated alternative or nontraditional program;

(7) The department, school, or college of education provides consistent and quality classroom and field

experiences, including early practicums and student teaching experience for all students;

(8) The department, school, or college of education has, as an element of its curriculum, substantial course work and classroom and field experiences directly addressing teacher training in classroom management;

(9) There are no major accreditation deficiencies; and

(10) The institution has demonstrated at least one (1) or more innovations in teacher education.

History.
Enact. Acts 2000, ch. 527, § 8, effective July 14, 2000.

164.098. Duties of Council on Postsecondary Education relating to advanced placement, dual enrollment, and dual credit programs.

(1) The Council on Postsecondary Education shall promulgate administrative regulations that require public postsecondary educational institutions to grant credit toward graduation to a student who scores at least "3" on a College Board Advanced Placement examination.

(2) The Council on Postsecondary Education shall publish information, in print and electronic format, about the scores required on College Board Advanced Placement examinations at which credit toward graduation and completion of degree requirements will be granted at all Kentucky public and private postsecondary educational institutions.

(3) The Council on Postsecondary Education, in conjunction with the Kentucky Board of Education and the Education Professional Standards Board, shall develop guidelines for content knowledge and teacher training in dual enrollment and dual credit programs offered in Kentucky.

History.
Enact. Acts 2002, ch. 97, § 5, effective July 15, 2002; 2008, ch. 134, § 20, effective July 15, 2008.

INSTITUTIONS OF HIGHER LEARNING

164.281. Public institution of postsecondary education criminal history background checks — Initial hires, contractors, employees, volunteers, visitors — Disclosures — Termination.

(1) Each public institution of postsecondary education shall require a criminal history background check on all initial hires.

(a) The background check shall consist of a state criminal history background check and a national criminal history background check.

(b) Applications shall authorize the appropriate agency to search police records for convictions and make results known to the institution, and the institution may require the applicant to bear the cost of the criminal history background check.

(2) Each public institution of postsecondary education may require a criminal history background check on a contractor, employee of a contractor, volunteer for the institution or a program of the institution, or visitor, subject to the same terms and conditions as in subsection (1) of this section.

(3) If, upon review of the results of the criminal history background check, a public institution of postsecondary education finds that the applicant, contractor, employee of a contractor, volunteer, or visitor has been convicted of, pled guilty to, or entered an Alford plea to a sex crime as specified in KRS 17.500 or a violent offense as specified in KRS 439.3401, the institution may:

(a) Deny employment or modify the conditions of employment to provide for appropriate supervision;

(b) Deny a contractor or a contractor's employee a permit to enter the institution or its grounds, or modify the contract to provide for appropriate supervision;

(c) Prohibit a person from volunteering or require the person to agree to appropriate supervision; or

(d) Prohibit a person from visiting the institution or its grounds, or require that person to agree to appropriate supervision.

(4) Each application or renewal form, provided by the institution to an applicant for employment, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."

(5) If the institution requires a criminal history background check for contractors, employees of contractors, volunteers, or visitors, the institution shall provide to the prospective person or organization the following statement: "FOR THIS TYPE OF CONTRACT OR FOR BEING AN EMPLOYEE OF A CONTRACTOR, A VOLUNTEER FOR THE INSTITUTION OR AN INSTITUTIONAL PROGRAM, OR A VISITOR OF THE INSTITUTION, THIS INSTITUTION REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK."

(6) If an employee of the public institution of postsecondary education is convicted of, pleads guilty to, enters an Alford plea to, or is adjudicated guilty of an offense specified in subsection (3) of this section, the employment of that person may, at the discretion of the institution, be terminated as of the date of the conviction.

(7) A private college or university located in the Commonwealth may utilize at its discretion any of the provisions of this section, providing that it does so in a written institutional document.

History.
Enact. 2006, ch. 182, § 19, effective July 12, 2006.

164.2815. Student identification badges must contain hotline number contact information relating to domestic violence, sexual assault, and suicide prevention — Posting of information on sexual extortion in residential and instructional buildings — Requirements.

(1) Any student identification badge issued by a public or private postsecondary education institution,

vocational school, or any other institution that offers a postsecondary degree, certificate, or licensure shall contain the contact information for:

(a) A national domestic violence hotline;

(b) A national sexual assault hotline; and

(c) A national suicide prevention hotline.

(2) Beginning August 1, 2025, a public or private postsecondary education institution, vocational school, or any other institution that offers a postsecondary degree, certificate, or licensure shall post in a prominent location in every residential facility and buildings containing instructional spaces, student services, or academic support services, a legible printed sign in English and Spanish at least eight and one-half (8.5) inches by eleven (11) inches in size that shall contain:

(a) A description of sexual extortion consistent with the definition in KRS 531.125;

(b) Contact information for state or local law enforcement for reporting or seeking assistance relating to sexual extortion;

(c) Contact information for federal law enforcement for reporting or seeking assistance relating to sexual extortion;

(d) Contact information for a national suicide prevention hotline; and

(e) The Uniform Resource Locator (URL), a Quick Response (QR) code, or similar resource to identify the website address for informational and support resources regarding sexual extortion provided by the National Center for Missing and Exploited Children or any federally funded successor entity.

History.

2020 ch. 54, § 2, effective July 15, 2020; 2025 ch. 9, § 6, effective June 27, 2025.

164.2845. Tuition-free courses for supervising teachers and resource teachers.

(1) In recognition of valuable service to the preparation of teachers and the need for all teachers to have continual professional growth, a supervising teacher or a resource teacher for teacher interns may, with prior approval of the course-offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution and pay no tuition. The postsecondary institution shall waive the tuition up to a maximum of six (6) credit hours.

(2) The teachers covered in this section may exercise the tuition-free course option only if there is available space within a given course offering. A postsecondary institution shall not be required to establish a course to meet teacher requests.

(3) The tuition-free courses may be used to partially satisfy requirements for an advanced degree.

(4) Each public postsecondary education institution shall establish the procedures for implementing the provisions of this section, effective August 1, 2000.

History.

Enact. Acts 2000, ch. 527, § 9, effective July 14, 2000.

164.2847. Waiver of tuition and mandatory student fees for Kentucky foster or adopted children.

(1) Tuition and mandatory student fees for any undergraduate or graduate program of any Kentucky public postsecondary institution, including all four (4) year universities and colleges and institutions of the Kentucky Community and Technical College System, shall be waived for a Kentucky foster or adopted child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution, and if:

(a) The student's family receives state-funded adoption assistance under KRS 199.555;

(b) The student is currently committed to the Cabinet for Health and Family Services under KRS 610.010(5) and placed in a family foster home or is placed in accordance with KRS 605.090(3);

(c) The student is in an independent living program and the placement is funded by the Cabinet for Health and Family Services;

(d) The student who is an adopted child was in the permanent legal custody of and placed for adoption by the Cabinet for Health and Family Services. A student who meets the eligibility criteria of this paragraph and lives outside of Kentucky at the time of application to a Kentucky postsecondary institution may apply for the waiver up to the amount of tuition for a Kentucky resident;

(e) The Cabinet for Health and Family Services was the student's legal custodian on his or her eighteenth birthday; or

(f) The student was adjudicated dependent, neglected, or abused under KRS Chapter 620, removed from parental custody, and subsequently adopted by a relative.

(2) Tuition and mandatory student fees for any undergraduate program of any Kentucky public postsecondary institution, including all four (4) year universities and colleges and institutions of the Kentucky Community and Technical College System, shall be waived for a Department of Juvenile Justice foster child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution and obtains a recommendation for participation from an official from the Department of Juvenile Justice, and if:

(a) The student has not been sentenced to the Department of Juvenile Justice under KRS Chapter 640;

(b) The student has been committed to the Department of Juvenile Justice for a period of at least twelve (12) months;

(c) The student is in an independent living program and placement is funded by the Department of Juvenile Justice;

(d) The parental rights of the student's biological parents have been terminated; or

(e) The student was committed to the Cabinet for Health and Family Services prior to a commitment to the Department of Juvenile Justice.

(3) Upon request of the postsecondary institution, the Cabinet for Health and Family Services shall confirm the eligibility status under subsection (1) of this section and the Department of Juvenile Justice shall confirm the eligibility status and recommendations under subsection (2) of this section of the student

seeking to participate in the waiver program. Release of this information shall not constitute a breach of confidentiality required by KRS 199.570, 610.320, or 620.050.

(4) The student shall complete the Free Application for Federal Student Aid to determine the level of need and eligibility for state and federal financial aid programs. If the sum of the tuition waiver plus other student financial assistance, except loans and the work study program under 42 U.S.C. secs. 2751-2756b, from all sources exceeds the student's total cost of attendance, as defined in 20 U.S.C. sec. 1087ll, the tuition waiver shall be reduced by the amount exceeding the total cost of attendance.

(5) Except when extended in accordance with subsection (6) of this section, the student shall be eligible for the tuition waiver:

(a) For entrance to the institution for a period of no more than four (4) years after the date of graduation from high school or obtaining a high school equivalency diploma; and

(b) For one hundred fifty (150) consecutive or nonconsecutive credit hours earned, after first admittance to any Kentucky institution if satisfactory progress is achieved or maintained up to age twenty-eight (28).

(6) The expiration of a student's eligibility under subsection (5)(a) of this section shall be extended by the number of academic terms the institution determines the student was unable to enroll for or complete due to serving:

(a) On active duty status in the United States Armed Forces;

(b) As an officer in the Commissioned Corps of the United States Public Health Service; or

(c) On active service in the Peace Corps Act or the Americorps. The original age limitation under subsection (5)(b) of this section shall be extended by the total number of years during which the student was on active duty status. The number of months served on active duty status shall be rounded up to the next higher year to determine the maximum length of eligibility extension allowed.

(7) The Council on Postsecondary Education shall report nonidentifying data on graduation rates of students participating in the tuition waiver program by November 30 each year to the Legislative Research Commission.

(8) Nothing in this section shall be construed to:

(a) Guarantee acceptance of or entrance into any postsecondary institution for a foster or adopted child;

(b) Limit the participation of a foster or adopted student in any other program of financial assistance for postsecondary education;

(c) Require any postsecondary institution to waive costs or fees relating to room and board; or

(d) Restrict any postsecondary institution, the Department of Juvenile Justice, or the Cabinet for Health and Family Services from accessing other sources of financial assistance, except loans, that may be available to a foster or adopted student.

History.

Enact. Acts 2001, ch. 48, § 1, effective June 21, 2001; 2002, ch. 279, § 2, effective July 15, 2002; 2005, ch. 99, § 137, effective June 20, 2005; 2008, ch. 87, § 16, effective July 15, 2008; 2013, ch. 70, § 1, effective June 25, 2013; 2014, ch. 132, § 16, effective July 15, 2014; 2017 ch. 80, § 27, effective June 29, 2017; 2020 ch. 111, § 1, effective July 15, 2020; 2026 ch. 161, § 125, effective July 15, 2026.

164.2849. Legislative finding.

The General Assembly of the Commonwealth of Kentucky finds and declares that it is in the best interests of the Commonwealth to encourage and support adults to adopt and provide foster care for children in the custody of the state. The General Assembly recognizes that a child whose care, custody, and control has been assumed by the Commonwealth as evidenced by termination of the rights of the biological parents and adoption from state custody or a custodial commitment to the Cabinet for Health and Family Services or the Department of Juvenile Justice is a special ward of the state and faces particular challenges in pursuing higher education. Because it is the intent of the General Assembly to support adoption, foster parenting, and educational advancement, the purpose of KRS 164.2847 is to provide postsecondary education advancement opportunity for foster and adopted children who are or were wards of the state.

History.

Enact. Acts 2002, ch. 279, § 1, effective July 15, 2002; 2005, ch. 99, § 138, effective June 20, 2005.

STATE COLLEGES AND UNIVERSITIES

164.304. Teacher preparation programs for elementary and secondary regular education to include instruction on dyslexia and other learning disabilities and core elements of multitiered system of supports.

By the 2027-2028 academic year, postsecondary institutions offering teacher preparation programs for elementary and secondary regular education shall include instruction on:

(1) The definition and characteristics of dyslexia;

(2) Processes for identifying dyslexia;

(3) Evidence-based interventions and accommodations for dyslexia and other disorders defined in KRS 158.305 and related literacy and learning challenges; and

(4) Core elements of a response-to-intervention framework addressing reading, writing, mathematics, and behavior, including;

(a) Universal screening;

(b) Evidence-based research interventions;

(c) Progress monitoring of the effectiveness of interventions on student performance;

(d) Data-based decision-making procedures related to:

1. Determining intervention effectiveness on student performance; and

2. Determining the need to continue, alter, or discontinue interventions or conduct further evaluation of student needs; and

(e) Application and implementation of a multi-tiered system of supports and dyslexia instructional practices in the classroom setting.

History.
2018 ch. 88, § 3, effective July 14, 2018; 2026 ch. 74, § 3, effective April 10, 2026.

Legislative Research Commission Notes.
(7/14/2018). 2018 Ky. Acts ch. 88, sec. 4 provides that 2018 Ky. Acts ch. 88 shall be known and may be cited as the "Ready to Read Act." This statute was created in Section 3 of that Act.

164.3061. Teacher preparation programs for elementary regular education to include instructional strategies and resources for mathematics instruction — List of approved teacher preparation assessments and evaluation rubric — Reports.

(1) As used in this section, "department" means the Kentucky Department of Education.

(2) Beginning with the 2025-2026 school year, post-secondary institutions offering teacher preparation programs for elementary regular education shall include kindergarten through grade three (3) evidence-based instructional strategies, department-identified valid and reliable high-quality resources for mathematics instruction related to KRS 158.8402, and:

(a) Evidence-based instructional strategies determined by the department to be effective at improving student learning for the range of students in their classrooms, including students needing to make progress toward proficiency, exceptional students, and students who are multilingual learners;

(b) High-quality instructional resources as determined by the department to be effective at improving student learning for the range of students in their classrooms, including students needing to make progress toward proficiency, exceptional students, and students who are multilingual learners;

(c) The use of a range of assessment data for designing instruction and intervention;

(d) Progress monitoring of student performance; and

(e) Field experience and student teaching placements with teachers that model, and supervisors with knowledge of, paragraphs (a) to (d) of this subsection.

(3) By January 1, 2025, the Education Professional Standards Board shall:

(a) Develop and maintain a list of approved teacher preparation assessments that are determined by the board to be an effective evaluation of mathematics instruction, content and practice standards, and skills; and

(b) Develop an evaluation rubric for observing teacher candidates with focus on mathematics content and pedagogical knowledge.

(4) The Education Professional Standards Board shall report program data to an external evaluator for analysis of postsecondary teacher preparation programs with the goal of using the results to help increase the success of new teacher candidates in demonstrating mathematics instruction, content knowledge, and skills.

(5) The Education Professional Standards Board shall report to the Legislative Research Commission for referral to the Interim Joint Committee on Education the results provided by the external evaluator's analysis and data on all assessments required for certification, including the number of students testing, the number of students passing, and the number of times an individual student takes a test prior to passing.

History.
2024 ch. 222, § 7, effective July 15, 2024.

Legislative Research Commission Notes.
(7/15/2024). 2024 Ky. Acts ch. 222, sec. 8, provides that the Act, which created this statute and KRS 158.8401, 158.8402, and 158.843 and amended KRS 158.791, 158.840, and 158.842, may be cited as the Kentucky Numeracy Counts Act.

PROFESSIONAL DEVELOPMENT FOR CHILD-CARE WORKERS

164.518. Scholarships and awards for persons who are employed or provide training in child-care and early childhood settings.

(1) It is the intent of the General Assembly to create a seamless system to upgrade the professional development of persons who are employed or provide training in a child-care or early childhood setting through scholarships, merit awards, and monetary incentives, to assist these persons in obtaining a child development associate credential, post-secondary certificate, diploma, degree, or specialty credential in an area of study determined by the Early Childhood Advisory Council.

(2) Eligibility for scholarship funds shall be for individuals who do not have access to professional development funds from other education programs that receive state or federal funds, and who are:

(a) Employed at least twenty (20) hours per week providing services in a child-care or early childhood setting; or

(b) Involved in providing professional development training for teachers in an early childhood setting.

(3) The Kentucky Higher Education Assistance Authority, after consultation with the Early Childhood Advisory Council and the Cabinet for Health and Family Services, shall promulgate administrative regulations, including a system of monetary incentives for scholarship program participants for completing classes, in accordance with KRS Chapter 13A as necessary to implement this section.

History.
Enact. Acts 2000, ch. 308, § 13, effective July 14, 2000; 2005, ch. 99, § 140, effective June 20, 2005; 2013, ch. 57, § 2, effective June 25, 2013.

2022-2024 Budget Reference.
See State/Executive Branch Budget, 2024 Ky. Acts ch. 175, Pt. I, J, 2, (10) at 1873.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Student aid applications, 11 KAR 4:080.

IRREDEEMABLE BOND

164.525. Center for Mathematics — Creation, duties, and location — Annual report.

(1) The Center for Mathematics is hereby created to make available professional development for teachers in reliable, research-based diagnostic assessment and intervention strategies, coaching and mentoring models, and other programs in mathematics. The center shall be headed by an executive director and administered by Northern Kentucky University. The center shall:

(a) Act as a clearinghouse for information about professional development programs for teachers that address mathematics diagnostic assessment, intervention programs, coaching and mentoring programs, and other instructional strategies to address students' needs;

(b) Collaborate with Kentucky's other public and private postsecondary institutions to develop teachers' mathematical knowledge needed for teaching and help teachers improve students' mathematical concepts, thinking, problem-solving, and skills, with an emphasis on diagnostic assessment and intervention programs for students in the primary program;

(c) Provide teacher training to develop teacher leaders and teaching specialists in primary programs who have skills in diagnostic assessment and intervention services to assist struggling students or those who are at risk of failure in mathematics. The center may contract for services in order to carry out this responsibility;

(d) Maintain a demonstration and training site for mathematics located at each of the public universities;

(e) Advise the Kentucky Department of Education and Kentucky Board of Education regarding:

1. Early mathematics content, diagnostic assessment practices, and intervention programs;

2. Costs and effectiveness of various mathematics intervention programs;

3. Coaching and mentoring models that help improve student achievements;

4. Trends and issues relating to mathematics programs in schools throughout the state; and

5. The establishment and implementation of the Middle School Mathematics and Science Scholars Program established under KRS 158.848; and

(f) Disseminate information to teachers, administrators, and policymakers on an ongoing basis.

(2) On or before October 1 of each year, Northern Kentucky University shall submit a report to the Council on Postsecondary Education and the Legislative Research Commission, for referral to the appropriate interim joint committee, on the operation of the center and the impact of the center on student achievement.

History.
Enact. Acts 2005, ch. 164, § 4, effective March 18, 2005; 2008, ch. 134, § 21, effective July 15, 2008; 2026 ch. 171, § 18, effective July 15, 2026.

Legislative Research Commission Notes.
(3/18/2005). 2005 Ky. Acts ch. 164, sec. 4, contained one reference to the Mathematics Achievement Committee. The correct name for this entity is the Committee for Mathematics Achievement. The Statute Reviser, under the authority of KRS 7.136, has changed this reference to be consistent with sec. 2 of this Act, which created the Committee for Mathematics Achievement and was codified as KRS 158.842.

ATHLETE AGENTS AND AGENCY CONTRACTS

164.6901. Short title.

KRS 164.6901 to 164.6935 may be cited as the Revised Uniform Athlete Agents Act.

History.
Enact. Acts 2003, ch. 172, § 1, effective June 24, 2003; 2018 ch. 205, § 1, effective July 14, 2018.

164.6903. Definitions for KRS 164.6901 to 164.6935.

As used in KRS 164.6901 to 164.6935, unless the context requires otherwise:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract; a name, image, and likeness agreement as defined in KRS 164.6941; or an endorsement contract;

(2) "Athlete agent":

(a) Means an individual, whether registered under KRS 164.6901 to 164.6935 or not, who:

1. Directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student-athlete as a professional athlete or member of a professional sports team or organization;

2. For compensation or in anticipation of compensation related to a student-athlete's participation in athletics:

a. Serves the student-athlete in an advisor capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

b. Manages the business affairs of the student-athlete by providing assistance with bills, payments, contracts or taxes; or

3. In anticipation of representing a student-athlete for a purpose related to the student-athlete's participation in athletics:

a. Gives consideration to the student-athlete or another person;

b. Serves the student-athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or

c. Manages the business affairs of the student-athlete by providing assistance with bills, payments, contracts, or taxes; and

(b) Does not include an individual who:

1. Acts solely on behalf of a professional sports team or organization; or

2. Is a licensed, registered, or certified professional and offers or provides services to a student-athlete customarily provided by members of the profession, unless the individual:

a. Also recruits or solicits the student-athlete to enter into an agency contract;

b. For compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the student-athlete as a professional athlete or member of a professional sports team or organization; or

c. Receives consideration for providing the services calculated using a different method than for an individual who is not a student-athlete; or

3. Is a parent or guardian of a student-athlete, unless the parent or guardian for compensation, or any form of valuable consideration or reasonable expectation thereof, influences or attempts to influence the student-athlete to enter into an agency contract, or procures employment or offers, promises, attempts, or negotiates to obtain employment for the student-athlete as a professional athlete or member of a professional sports team or organization;

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

(5) "Department" means the Department of Professional Licensing in the Public Protection Cabinet;

(6) "Educational institution" includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university;

(7) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(8) "Enrolled" means registered for courses and attending athletic practice or class;

(9) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association that promotes or regulates collegiate athletics;

(10) "Interscholastic sport" means a sport played between educational institutions that are not community colleges, colleges, or universities;

(11) "Licensed, registered, or certified professional" means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession other than that of an athlete agent who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing;

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity;

(13) "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(15) "Recruit or solicit" means to attempt to influence the choice of an athlete agent by a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete. The term does not include giving advice on the selection of a particular agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent;

(16) "Registration" means registration as an athlete agent pursuant to KRS 164.6901 to 164.6935;

(17) "Sign" means with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process;

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(19) "Student-athlete" means an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport. "Student-athlete" does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.

History.

Enact. Acts 1998 ch. 259, § 1, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 2, effective June 24, 2003; 2009, ch. 12, § 43, effective June 25, 2009; 2010, ch. 24, § 214, effective July 15, 2010; 2017 ch. 178, § 9, effective April 11, 2017; 2018 ch. 205, § 2, effective July 14, 2018; 2022 ch. 12, § 7, effective March 9, 2022.

Compiler's Notes.

This section was formerly compiled as KRS 164.680.

164.6905. Role of Department of Professional Licensing.

(1) By acting as an athlete agent in this state, a nonresident individual appoints the department as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(2) The department may issue subpoenas for any material that is relevant to the administration of KRS 164.6901 to 164.6935.

(3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to carry out the provisions of KRS 164.6901 to 164.6935.

History.

Enact. Acts 1998, ch. 259, § 2, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 3, effective June 24, 2003; 2010, ch. 24, § 215, effective July 15, 2010; 2017 ch. 178, § 10, effective April 11, 2017.

Compiler's Notes.

This section was formerly compiled as KRS 164.681.

164.6907. Certificate of registration required.

(1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under KRS 164.6901 to 164.6935.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within seven (7) days after an initial act that requires the individual to register as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under contract.

History.

Enact. Acts 2003, ch. 172, § 4, effective June 24, 2003; 2018 ch. 205, § 3, effective July 14, 2018.

164.6909. Contents of application — Certificate from other state — Cooperation with other organizations.

(1) An applicant for registration as an athlete agent shall submit an application for registration to the department in a form prescribed by the department. An application filed under this section is a public record. The applicant shall be an individual, and the application shall be signed by the applicant under penalty of perjury. The application shall contain at least the following:

(a) The name and date and place of birth of the applicant and the following contact information for the applicant:

1. The address of the applicant's principal place of business;

2. Work and mobile telephone numbers; and

3. Any means of communicating electronically, including a facsimile number, electronic mail address, and personal and business or employer Web sites;

(b) The name of the applicant's business or employer, if applicable, including for each business or employer, the mailing address, telephone number, organization form, and the nature of the business;

(c) Each social media account with which the applicant or the applicant's business or employer is affiliated;

(d) Each business or occupation engaged in by the applicant for the five (5) years before the date of the application, including self-employment and employment by others, and any professional or occupational license, registration, or certification held by the applicant during that time;

(e) A description of the applicant's:

1. Formal training as an athlete;

2. Practical experience as an athlete agent; and

3. Educational background relating to the applicant's activities as an athlete agent;

(f) The name of each student-athlete for whom the applicant acted as an athlete agent within five (5) years before the date of the application or, if the student-athlete is a minor, the name of the parent or guardian of the minor, together with the student-athlete's sport and last known team;

(g) The name and address of each person that:

1. Is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent (5%) or more of the athlete agent's business if it is not a corporation; and

2. Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent (5%) or more in the corporation;

(h) A description of the status of any application by the applicant or any person named pursuant to paragraph (g) of this subsection for a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license;

(i) Whether the applicant or any person named pursuant to paragraph (g) of this subsection has been convicted of, or has charges pending for, a crime that would involve sexual misconduct, has dishonesty as a necessary element, or would be a felony if committed in this state, and, if so, identification of:

1. The crime;

2. The law enforcement agency involved; and

3. If applicable, the date of the conviction and the fine or penalty imposed;

(j) Whether, within fifteen (15) years before the date of the application, the applicant or any person named pursuant to paragraph (g) of this subsection has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of legal incompetence, and if so, the date and a full explanation of each proceeding;

(k) Whether the applicant or any person named pursuant to paragraph (g) of this subsection has an unsatisfied judgment of continuing effect, including

alimony or a domestic order in the nature of child support, which is not current at the date of the application;

(*l*) Whether, within ten (10) years before the date of the application, the applicant or any person named pursuant to paragraph (g) of this subsection was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

(m) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;

(n) Each instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate, or professional athletic event on a student-athlete or a sanction on an educational institution;

(o) Each sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subsection arising out of occupational or professional conduct;

(p) Whether there has been any denial of an application for, suspension or revocation of, refusal to renew, or abandonment of the registration of the applicant or any person named pursuant to paragraph (g) of this subsection as an athlete agent in any state;

(q) Each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent; and

(r) If the applicant is certified or registered by a professional league or players association:

1. The name of the league or association;

2. The date of certification or registration, and the date of expiration of the certification or registration, if any; and

3. If applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of registration; and

(s) Any additional information required by the department.

(2) Instead of proceeding under subsection (1) of this section, an individual registered as an athlete agent in another state, may apply for registration as an athlete agent in this state by submitting to the department:

(a) A copy of the application for registration in the other state;

(b) A statement that identifies any material change in the information on the application or verifies that there is no material change in the information, signed under penalty of perjury; and

(c) A copy of the certificate of registration from the other state.

(3) The department shall issue a certificate of registration to an individual who applies for registration under subsection (2) of this section if the department determines:

(a) The application and registration requirements of the other state are substantially similar to or more restrictive than the Commonwealth's; and

(b) The registration has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

(4) For purposes of implementing subsection (3) of this section, the department shall:

(a) Cooperate with national organizations concerned with athlete agent issues and agencies in other states which register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than the Commonwealth's; and

(b) Exchange information, including information related to actions taken against registered agents or their registrations, with those organizations and agencies.

History.

Enact. Acts 1998, ch. 259, § 3, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 5, effective June 24, 2003; 2010, ch. 24, § 216, effective July 15, 2010; 2017 ch. 178, § 11, effective April 11, 2017; 2018 ch. 205, § 4, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 164.682.

164.6911. Office may refuse to issue certificate — Renewal of registration.

(1) Except as otherwise provided in subsection (2) of this section, the department shall issue a certificate of registration to an individual who complies with KRS 164.6909(1).

(2) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

(a) Pleaded guilty or no contest to, been convicted of, or has charges pending for a crime that involves sexual misconduct, has dishonesty as a necessary element, or is a felony if committed in this state;

(b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) Engaged in conduct prohibited by KRS 164.6925;

(e) Had a registration as an athlete agent suspended, revoked, or denied in any state;

(f) Been refused renewal of registration or licensure as an athlete agent in any state;

(g) Engaged in conduct resulting in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student-athlete or a sanction on an educational institution; or

(h) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2) of this section, the department shall consider:

(a) How recently the conduct occurred;

(b) The nature of the conduct and the context in which it occurred; and

(c) Any other relevant conduct of the applicant.

(4) An athlete agent registered under subsection (1) of this section may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. An application filed under this section is a public record. The applicant shall sign the application for renewal under penalty of perjury and include current information on all matters required in an original registration.

(5) An athlete agent registered under KRS 164.6909(3) may renew the registration by proceeding under subsection (4) of this section or, if the registration in the other state has been renewed, by submitting to the department copies of the application for renewal in the other state and the renewed registration from the other state. The department shall renew the registration if the department determines:

(a) The registration requirements of the other state are substantially similar to or more restrictive than the Commonwealth's; and

(b) The renewed registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

(6) A certificate of registration or a renewal of registration is valid for two (2) years.

History.

Enact. Acts 2003, ch. 172, § 6, effective June 24, 2003; 2010, ch. 24, § 217, effective July 15, 2010; 2018 ch. 205, § 5, effective July 14, 2018.

164.6913. Limitation, suspension, revocation, or nonrenewal of certificate.

(1) The department may limit, suspend, revoke, or refuse to renew a registration for conduct that would have justified refusal to issue a certificate of registration under KRS 164.6911(2).

(2) The department may suspend or revoke the registration of an individual registered under KRS 164.6909(3) or renewed under KRS 164.6911(5) for any reason for which the department could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration under KRS 164.6911(2).

History.

Enact. Acts 1998, ch. 259, § 8, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 7, effective June 24, 2003; 2010, ch. 24, § 218, effective July 15, 2010; 2017 ch. 178, § 13, effective April 11, 2017; 2018 ch. 205, § 6, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 164.687.

164.6914. Temporary certificate of registration.

The department may issue a temporary certificate of registration as an athlete agent while an application for registration or renewal of registration is pending.

History.

2018 ch. 205, § 7, effective July 14, 2018.

164.6915. Fees.

An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

(1) An initial application for registration fee determined by the department, not to exceed three hundred dollars ($300);

(2) A renewal fee determined by the department, not to exceed three hundred dollars ($300);

(3) An application for registration fee based upon certification of registration or licensure issued by another state determined by the department, not to exceed two hundred fifty dollars ($250); or

(4) An application for renewal of registration based on a renewal of registration in another state, not to exceed two hundred fifty dollars ($250).

History.

Enact. Acts 2003, ch. 172, § 8, effective June 24, 2003; 2010, ch. 24, § 219, effective July 15, 2010; 2017 ch. 178, § 14, effective April 11, 2017; 2018 ch. 205, § 8, effective July 14, 2018.

164.6917. Requirements for agency contract.

(1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract shall contain:

(a) A statement that the athlete agent is registered as an athlete agent in this state and a list of other states in which the agent is registered as an athlete agent;

(b) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or may receive from any other source for entering into the contract or for providing the services;

(c) The name of any person not listed in the athlete agent's application for registration or renewal of registration who will be compensated because the student-athlete signed the contract;

(d) A description of any expenses that the student-athlete agrees to reimburse;

(e) A description of the services to be provided to the student-athlete;

(f) The duration of the contract; and

(g) The date of execution.

(3) Subject to subsection (7) of this section, an agency contract shall contain a conspicuous notice in boldface type and in substantially the following form:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER SIGNING THE CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO

THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT-ATHLETE IN YOUR SPORT.

(4) An agency contract shall be accompanied by a separate record signed by the student-athlete or, if the athlete is a minor, the parent or guardian of the student-athlete acknowledging that signing the contract may result in the loss of the student-athlete's eligibility to participate in the student-athlete's sport.

(5) A student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.

(6) At the time an agency contract is executed, the athlete agent shall give the student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete a copy in a record of the contract and the separate acknowledgement required by subsection (4) of this section.

(7) If a student is a minor, an agency contract shall be signed by the parent or guardian of the minor and the notice required by subsection (3) of this section shall be revised accordingly.

History.

Enact. Acts 1998, ch. 259, § 5, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 9, effective June 24, 2003; 2018 ch. 205, § 9, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 164.684.

164.6919. Notice to athletic director — Responsibilities of student-athlete, athlete agent, and educational institution.

(1) In this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

(2) Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(3) Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract and the name and contact information of the athlete agent.

(4) If an athlete agent enters into an agency contract with a student-athlete and the student-athlete subsequently enrolls at an educational institution, the agent shall notify the athletic director of the institution of the existence of the contract not later than seventy-two (72) hours after the agent knew or should have known the student-athlete enrolled.

(5) If an athlete agent has a relationship with a student-athlete before the student-athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the athlete agent shall notify the institution of the relationship not later than ten (10) days after the enrollment if the agent knows or should have known of the enrollment and:

(a) The relationship was motivated in whole or in part by the intention of the athlete agent to recruit or solicit the athlete to enter an agency contract in the future; or

(b) The athlete agent directly or indirectly recruited or solicited the student-athlete to enter an agency contract before the enrollment.

(6) An athlete agent shall give notice in a record to the athletic director of any educational institution at which a student-athlete is enrolled before the agent communicates or attempts to communicate with:

(a) The student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete, to influence the student-athlete or parent or guardian to enter into an agency contract; or

(b) Another individual to have that individual influence the student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete to enter into an agency contract.

(7) If a communication or attempt to communicate with an athlete agent is initiated by a student-athlete or another individual on behalf of the student-athlete, the athlete agent shall notify in a record the athletic director of any educational institution at which the student-athlete is enrolled. The notification shall be made not later than ten (10) days after the communication or attempt.

(8) An educational institution that becomes aware of a violation of KRS 164.6901 to 164.6935 by an athlete agent shall notify the department and any professional league or players association with which the institution is aware the athlete agent is licensed or registered of the violation.

History.

Enact. Acts 1998, ch. 259, § 6, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 10, effective June 24, 2003; 2018 ch. 205, § 10, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 164.685.

164.6921. Cancellation of agency contract by student-athlete.

(1) A student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.

(2) A student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete, parent, or guardian cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return

any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

History.
Enact. Acts 2003, ch. 172, § 11, effective June 24, 2003; 2018 ch. 205, § 11, effective July 14, 2018.

164.6923. Records to be retained by athlete agent.

(1) An athlete agent shall create and retain the following records for a period of five (5) years:

(a) The name and address of each individual represented by the athlete agent;

(b) Any agency contract entered into by the athlete agent; and

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required to be retained in subsection (1) of this section are open to inspection by the department during normal business hours.

History.
Enact. Acts 2003, ch. 172, § 12, effective June 24, 2003; 2010, ch. 24, § 220, effective July 15, 2010; 2017 ch. 178, § 15, effective April 11, 2017; 2018 ch. 205, § 12, effective July 14, 2018.

164.6925. Prohibited acts — Authorization to pay certain expenses.

(1) Except as otherwise provided in subsection (3) of this section, an athlete agent, with the intent to influence a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the athlete agent:

(a) Give any materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent shall not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:

(a) Initiate contact, directly or indirectly, with a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete, to recruit or solicit the student-athlete, parent, or guardian to enter an agency contract unless registered under KRS 164.6901 to 164.6935;

(b) Fail to create or retain or permit inspection of the records required to be retained by KRS 164.6923;

(c) Fail to register when required by KRS 164.6907;

(d) Provide materially false or misleading information in an application for registration or renewal of registration;

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete, before the student-athlete, parent, or guardian signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

(3) An athlete agent registered under KRS 164.6901 to 164.6935 who is certified as an athlete agent in a particular sport by a national association that promotes or regulates intercollegiate athletics and establishes eligibility standards for participation by a student athlete in the sport may pay expenses incurred before the signing of an agency contract by a student athlete, a family member of the student athlete, and an individual who is a member of a class of individuals authorized to receive payment for the expenses by the national association that certified the agent if the expenses are:

(a) For the benefit of the athlete who is a member of a class of athletes authorized to receive the benefit by the national association that certified the agent;

(b) Of a type authorized to be paid by a certified agent by the national association that certified the agent; and

(c) For a purpose authorized by the national association that certified the agent.

History.
Enact. Acts 1998, ch. 259, § 4, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 13, effective June 24, 2003; 2018 ch. 205, § 13, effective July 14, 2018; 2019 ch. 124, § 1, effective June 27, 2019.

Compiler's Notes.
This section was formerly compiled as KRS 164.683.

164.6927. Penalties.

(1) Any person who engages in the business of an athlete agent or represents himself or herself as an athlete agent without being registered in accordance with KRS 164.6901 to 164.6935 shall be guilty of a Class A misdemeanor.

(2) Any registered athlete agent who knowingly and willfully commits a prohibited act contained in KRS 164.6925 shall be guilty of a Class D felony.

(3) Any registered athlete agent who knowingly and willfully violates any provision of KRS 164.6917 shall be guilty of a Class D felony.

(4) A student athlete who knowingly and willfully violates any provision of KRS 164.6919 shall be guilty of a Class A misdemeanor.

(5) Any registered athlete agent or athlete who fails to make restitution to a college or university that prevails in a suit brought under KRS 164.6929 shall be guilty of a Class D felony.

History.
Enact. Acts 1998, ch. 259, § 7, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 14, effective June 24, 2003.

Compiler's Notes.
This section was formerly compiled as KRS 164.686.

164.6929. Right of action of educational institution or student-athlete for damages caused by violation of KRS 164.6901 to 164.6935.

(1) An educational institution or student-athlete may bring an action for damages against an athlete agent if the institution or student-athlete is adversely affected by an act or omission of the athlete agent in violation of KRS 164.6901 to 164.6935. An education institution or student-athlete is adversely affected by an act or omission of the athlete agent only if, because of the act or omission, the institution or an individual who was a student-athlete at the time of the act or omission and enrolled in the institution:

(a) Is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(b) Suffers financial damage.

(2) Damages under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of KRS 164.6901 to 164.6935 or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A plaintiff that prevails in an action under this section may recover actual damages, costs, and reasonable attorney's fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student-athlete and shall refund any consideration paid to the agent by or on behalf of the student-athlete.

(4) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(5) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(6) The department may assess a civil penalty against an athlete agent not to exceed fifty thousand dollars ($50,000) for a violation of KRS 164.6901 to 164.6935.

(7) KRS 164.6901 to 164.6935 does not restrict rights, remedies, or defenses of any person under law or equity.

History.

Enact. Acts 1998, ch. 259, § 7, effective July 15, 1998; repealed and reenact., Acts 2003, ch. 172, § 15, effective June 24, 2003; 2010, ch. 24, § 221, effective July 15, 2010; 2017 ch. 178, § 16, effective April 11, 2017; 2018 ch. 205, § 14, effective July 14, 2018.

Compiler's Notes.

This section was formerly compiled as KRS 164.686.

164.6931. Construction of KRS 164.6901 to 164.6935.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

Enact. Acts 2003, ch. 172, § 16, effective June 24, 2003.

164.6933. Effect of federal act.

KRS 164.6901 to 164.6935 modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. sec. 7003(b).

History.

Enact. Acts 2003, ch. 172, § 17, effective June 24, 2003; 2018 ch. 205, § 15, effective July 14, 2018.

164.6935. Severability.

If any provision of KRS 164.6901 to 164.6935 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of KRS 164.6901 to 164.6935 which can be given effect without the invalid provision or application, and to this end the provisions of KRS 164.6901 to 164.6935 are severable.

History.

Enact. Acts 2003, ch. 172, § 18, effective June 24, 2003.

HIGHER EDUCATION ASSISTANCE

164.7534. Endowment trust for student financial assistance benefits — Authority to establish corporation to administer — Annual report.

(1) The board is authorized to incorporate an organization pursuant to KRS Chapter 273 for the eleemosynary, charitable, and educational purposes of administering an endowment trust. The organization so created shall be an instrumentality of the Commonwealth, but shall possess no part of the sovereign powers of the Commonwealth. The corporation shall be created to qualify as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) The endowment trust created pursuant to subsection (1) of this section shall solicit and accept gifts, grants, donations, bequests, or other endowments, including general fund appropriations from the Commonwealth and grants from any federal or other governmental agency, for the purposes of the endowment trust.

(3) The endowment trust shall provide student financial assistance benefits, including but not limited to college access programs administered by the board or grants, scholarships, or loans to pay higher education costs of Kentucky residents who enroll in an institution of higher education in Kentucky.

(4) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership or corporation to the endowment trust shall be a grant, gift, or donation for the accomplishment of a valid

public, eleemosynary, charitable, and educational purpose.

(5) The endowment trust shall submit an annual audited report to the board not later than the fifteenth of each September.

History.
1992 ch. 190, § 1, effective July 14, 1992; 2015 ch. 94, § 1, effective June 24, 2015.

Compiler's Notes.
This section was formerly codified as KRS 164A.337.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 2, (10) at 2104.

164.757. District teacher certification loan fund.

(1) For purposes of this section unless the context requires otherwise:

(a) "Critical shortage area" means an area in which there are insufficient numbers of fully certified staff in a particular subject, school, or geographic location;

(b) "Emergency certified teacher" means an individual who has not completed certification requirements but has been awarded a temporary certificate for a certification area in which no fully qualified teacher was available;

(c) "Qualified teacher" means a teacher who holds the appropriate certification for a position unless the superintendent of the employing local school district has documented evidence that the teacher is unsuitable for appointment;

(d) "Qualified teaching service" means teaching for at least seventy (70) days each semester or the equivalent in the certification area for which an individual received a forgivable loan in the Kentucky school district that recommended the individual for a loan or in another Kentucky private or public school district in the certification area for which an individual received a forgivable loan if no position was available in the recommending school district at the time when the individual completed his or her certification;

(e) "Semester" means a period which usually makes up one-half (½) of a school year or one-half (½) of a postsecondary institution's academic year; and

(f) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester at a postsecondary education institution.

(2) To increase the number of qualified teachers in local school districts and to reduce the number of emergency certified teachers, there is hereby created the district teacher certification loan fund in the State Treasury. The loans shall be used to provide forgivable loans to emergency certified personnel, fully certified teachers who are willing to seek additional certification in hard-to-fill or critical shortage areas, and paraprofessionals in local school districts to become fully certified teachers and to continue service within the local district.

(3) The fund shall be administered by the Kentucky Higher Education Assistance Authority. The authority shall promulgate administrative regulations to specify the terms and conditions of the award, cancellation, and repayment of loans, including but not limited to the maximum amount that may be loaned per term and the maximum aggregate amount per applicant, the selection process, eligibility for renewal, the specific administrative procedures for utilizing the funds, and the rate of repayment.

(4) To qualify for a forgivable loan, an applicant shall meet the following requirements:

(a) Be employed by a specific local district as a certified teacher, an emergency full-time or part-time teacher, an emergency substitute teacher, or a paraprofessional at the time he or she makes application for the loan;

(b) Be recommended by the superintendent as an individual that he or she would recommend to be employed in a teaching position for which the applicant is pursuing certification if the applicant fulfills all credentialing requirements;

(c) Be endorsed by the school-based decision making council of the school in which he or she serves to receive a loan for the purposes of obtaining teacher certification in a specific certification area; except that the endorsement shall not be construed as a commitment of securing a position in the particular school in the future;

(d) Be admitted and enrolled as an undergraduate or graduate student in a Kentucky private or public postsecondary institution that offers a teacher certification program in the area for which he or she is seeking certification; and

(e) Be enrolled in a minimum of six (6) credit hours and not more than nine (9) credit hours during each semester of an academic term while employed concurrently in the school district and in not less than six (6) credit hours during the summer term. If a school district recommends an applicant for a loan under provisions of this section and grants a leave of absence to the employee to pursue certification, the employee shall be enrolled as a full-time undergraduate or graduate student as defined by the institution in which he or she is enrolled.

(5) A participant in a local district alternative certification program as defined in KRS 161.048(2) may be eligible for a loan under provisions of this section to offset costs associated with the program. The authority shall establish by administrative regulation the specific requirements, notwithstanding requirements in subsection (4) of this section.

(6) A loan shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(7) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term for which a loan was received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate portion of the promissory notes.

(8) If the recipient of a loan fails to complete the certification at a participating institution or fails to

render qualified teaching service in any semester following certification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of loans under this subsection shall be liable for interest accruing from the dates on which the loans were disbursed.

(9) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's certification, subject to the procedures set forth in KRS 161.120.

(10) All moneys repaid to the authority under this section shall be added to the fund in this section. Any fund balance at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated for the purposes specified in this section.

(11) The authority may execute appropriate contracts and promissory notes for administering this section.

(12) If available funds are insufficient for all requested loans for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received loans. If funds are insufficient to make all requested renewal loans to eligible applicants, the authority shall reduce all loans to the extent necessary to provide loans to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, priority shall be given to loans for those applicants who are seeking certification in critical shortage areas.

History.
Enact. Acts 2002, ch. 135, § 3, effective April 2, 2002.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 2, (10) at 2104.

164.769. Teacher scholarships for eligible persons agreeing to render qualified teaching service in Kentucky — Definitions — Cancellation or repayment of notes — Annual report.

(1) It is the intent of the General Assembly to establish a teacher scholarship program to assist highly qualified individuals to become certified Kentucky teachers and render teaching service in Kentucky schools.

(2) For purposes of this section, the terms listed below shall have the following meanings:

(a) "Critical shortage area" means an understaffing of teachers in particular subject matters at the secondary level, in grade levels, or in geographic locations at the elementary and secondary level, as determined by the commissioner of education in consultation with the authority. The commissioner and the authority may use any source considered reliable, including but not limited to local education agencies, to identify the critical shortage areas;

(b) "Dual credit" has the same meaning as in KRS 158.007;

(c) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to teacher certification;

(d) "Participating institution" means an institution of higher education located in Kentucky which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program;

(e) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school of the Commonwealth or a private school certified pursuant to KRS 156.160(2), except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. sec. 12131 et seq., or serious and extended illness, whose disability or illness, certified by a licensed physician, prevents that individual from teaching a major portion of each school day, shall be deemed to perform qualified teaching service by teaching the maximum time permitted by the attending physician;

(f) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year; and

(g) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.

(3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, award teacher scholarships to persons eligible under subsection (4) of this section, who initially demonstrate financial need in accordance with standards and criteria established by the authority or received teacher scholarships pursuant to this section prior to July 1, 1996. Each teacher scholarship shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.

(4) Kentucky residents who are United States citizens and enrolled or accepted for enrollment in an eligible program of study at a participating institution shall be eligible to apply for and be awarded teacher scholarships. Teacher scholarships shall first be awarded to highly qualified eligible students who meet standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program at a participating institution in pursuit of initial teacher certification. If funds are not depleted after awarding teacher scholarships to students who meet the preceding criteria, then awards shall be made to any otherwise eligible students.

(5) The authority shall establish, by administrative regulation, the maximum amount of scholarship to be awarded for each semester and summer term under this section. The amount of each scholarship to be awarded shall not exceed the applicant's total cost of education minus other financial assistance received or expected to be received by the applicant during the academic period.

(6)(a) The authority shall disburse teacher scholarships to eligible students who agree to render qualified teaching service as certified teachers, and are

unconditionally admitted and enrolled in an eligible program of study.

(b) A teacher scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(c) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area designated by the authority or teach dual credit coursework in a certified Kentucky high school shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate number of promissory notes.

(d) If the recipient of a teacher scholarship fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of scholarships under this paragraph shall be liable for interest accruing from the dates on which the teacher scholarships were disbursed.

(e) Recipients who have outstanding loans or scholarships under KRS 156.611, 156.613, 164.768, or 164.770 respectively, and who render qualified teaching service, shall have their notes canceled in accordance with subsection (6)(c) of this section.

(f) The authority shall establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, but not limited to, the selection criteria, eligibility for renewal awards, amount of scholarship payments, deferments, the rate of repayment, and the interest rate thereon.

(g) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be eight percent (8%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher scholarship.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.

(9) All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.

(10) The authority may execute appropriate contracts and promissory notes for administering this section.

(11) Notwithstanding any other statute to the contrary, if available funds are insufficient for all requested scholarships for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher scholarships and, until June 30, 2018, to loan forgiveness for teachers who have outstanding loan balance eligibility for Best in Class loans issued prior to June 30, 2008. If funds are insufficient to make all requested renewal scholarships to eligible applicants, the authority shall reduce all scholarship awards to the extent necessary to provide scholarships to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria, which may include application date, and awards shall be made to highly qualified applicants until funds are depleted.

(12) The authority shall submit a report on the number of teacher scholarships provided in each fiscal year, the program of study in which recipients are enrolled, recipient retention rates, total number of applications, and scholarship recruitment strategies to the Interim Joint Committee on Education by December 1 of each year.

History.

1994 ch. 163, Enact. Acts 1994, ch. 163, § 1, effective July 15, 1994, effective July 15, 1994; 1996, ch. 125, § 1, effective July 15, 1996; 1998, ch. 111, § 1, effective July 15, 1998; 2003, ch. 115, § 2, effective June 24, 2003; 2009, ch. 93, § 1, effective March 24, 2009; 2017 ch. 40, § 2, effective June 29, 2017; 2023 ch. 164, § 4, effective June 29, 2023; 2025 ch. 43, § 2, effective June 27, 2025; 2025 ch. 113, § 10, effective June 27, 2025.

Compiler's Notes.

KRS 156.611, 156.613, 164.768 and 164.770, referred to in this section, are repealed.

The reference to 20 USCS § 1087vv in subsection (2)(c) above does not exist. The referenced provisions are found as 20 USCS §§ 1087kk to 1087w.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 43 and 113, which do not appear to be in conflict and have been codified together.

(6/29/2017). In subsection (5) of this statute, reference is made to a process for awarding a prorated scholarship amount to a student who is enrolled on a less than full-time basis "in accordance with subsection (6)(a) of this section." However, in 2017 Ky. Acts ch. 40, sec. 2, this statute was amended to delete the language in subsection (6)(a) relating to the prorated disbursement, but the reference to it in subsection (5) was not deleted to conform. The Reviser of Statutes has determined that striking "in accordance with subsection (6)(a) of this section" is beyond the authority given in KRS 7.136(1)(h) to correct manifest clerical or typographical errors, so that language is retained for further legislative action.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions pertaining to 11 KAR Chapter 5, 11 KAR 5:001.
Student aid applications, 11 KAR 4:080.
Teacher scholarships, 11 KAR 8:030.

164.771. Teacher Recruitment Student Loan Forgiveness Pilot Program — Procedures — Repayment obligations — Reporting requirements — Fund.

(1) The General Assembly hereby establishes the Teacher Recruitment Student Loan Forgiveness Pilot Program to encourage and assist individuals in becoming certified teachers in Kentucky public schools.

(2) As used in this section:

(a) "Authority" means the Kentucky Higher Education Assistance Authority;

(b) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to teacher certification, as determined by the authority;

(c) "Eligible student" means a student who:

1. Is a citizen or permanent resident of the United States;

2. Is a Kentucky resident, as determined by the participating institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

3. Is enrolled at a participating institution; and

4. Meets any other criteria established in administrative regulation promulgated by the authority;

(d) "Participating institution" means an institution of higher education located in Kentucky that offers an eligible program of study and has an agreement in force with the authority providing for administration of the pilot program established by this section;

(e) "Qualified teaching service" means teaching in a classroom the majority of each school day for at least eighty (80) days each semester in a public school of the Commonwealth while satisfying a one (1) year contract, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. sec. 12131 et seq., or serious and extended illness, whose disability or illness, certified by a licensed physician, prevents that individual from teaching a major portion of each school day, shall be deemed to perform qualified teaching service by teaching the maximum time permitted by the attending physician;

(f) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year; and

(g) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.

(3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, provide teacher recruitment awards to eligible students pursuant to subsection (4) of this section, who initially demonstrate financial need in accordance with standards and criteria established by the authority. Each teacher recruitment award shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.

(4) Teacher recruitment awards shall first be provided to eligible students accepted into an eligible program of study and then to eligible students who have declared a major that is an eligible program of study in pursuit of initial teacher certification.

(5) To the extent funds are available, the authority shall provide to eligible students:

(a) Accepted into an eligible program of study, a maximum award of up to five thousand dollars ($5,000) per semester or summer term; or

(b) Having declared a major that is an eligible program of study, a maximum award of up to two thousand five hundred dollars ($2,500) per semester or summer term.

(6)(a) The authority shall disburse teacher recruitment awards to eligible students who agree to render qualified teaching service as certified teachers, are unconditionally admitted and enrolled in a participating institution, and have declared a major that is an eligible program of study.

(b) A teacher recruitment award shall not be provided, or a promissory note cancellation shall not be granted, to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.7891 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(c) Recipients shall render one (1) year of qualified teaching service for each semester of award received. The authority shall cancel a promissory note upon completion of each year of qualified teacher service beginning with the oldest promissory note.

(d) If the recipient of a teacher recruitment award fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of awards under this paragraph shall be liable for interest accruing from the dates on which the teacher recruitment awards were disbursed.

(e) The authority shall establish, by administrative regulation, the terms and conditions for the award and cancellation and repayment of teacher recruitment awards, including but not limited to the selection criteria, eligibility for renewal awards, amount of award payments, deferments, the rate of repayment, and the interest rate thereon.

(f) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be eight percent (8%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher recruitment award.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.

(9) All moneys repaid to the authority under this section shall be deposited into the Teacher Recruitment Student Loan Forgiveness Pilot Program fund created in subsection (13) of this section.

(10) The authority may execute appropriate contracts and promissory notes for administering this section.

(11)(a) Notwithstanding any other statute to the contrary, if available funds are insufficient for all requested awards for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher recruitment awards.

(b) If funds are insufficient to make all requested renewal awards to eligible applicants, the authority shall reduce all awards to the extent necessary to provide awards to all qualified renewal applicants.

(c) If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria, and awards shall be made to eligible applicants until funds are depleted.

(12) The authority shall submit a report on the number of teacher awards provided in each fiscal year, the program of study in which recipients are enrolled, recipient retention rates, total number of applications, and award recruitment strategies to the Legislative Research Commission for referral to the Interim Joint Committee on Education by December 1 of each year.

(13)(a) The Teacher Recruitment Student Loan Forgiveness Pilot Program fund is hereby created as a revolving account in the State Treasury to be administered by the authority for the purpose of providing loan repayment as described in this section.

(b) The fund shall consist of state general fund appropriations, gifts and grants from public and private sources, and federal funds. All moneys included in the fund shall be appropriated for the purposes set forth in this section.

(c) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the fund.

(d) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section.

History.
2024 ch. 139, § 1, effective April 9, 2024.

164.773. Student Teacher Stipend Program — Definitions — Procedures — Reporting requirements.

(1) The General Assembly hereby establishes the Student Teacher Stipend Program to reduce financial barriers to students in completing educator preparation programs and entering the educator workforce.

(2) As used in this section:

(a) "Academic term" means a fall or spring academic semester;

(b) "Approved educator preparation program" means a program approved by the Education Professional Standards Board for the preparation of teachers and other professional school personnel;

(c) "Authority" means the Kentucky Higher Education Assistance Authority;

(d) "Eligible student" means a student who:

1. Is a citizen or permanent resident of the United States;

2. Is a Kentucky resident as determined by the authority;

3. Is enrolled in an approved educator preparation program at a participating institution;

4. Is approved for student teaching by the participating institution;

5. Is student teaching at a Kentucky public school or nonpublic school certified by the Kentucky Board of Education under KRS 156.160, except as provided in subsection (7) of this section;

6. Has not previously received a student teacher stipend under this section; and

7. Meets any other criteria established in administrative regulation promulgated by the authority;

(e) "Participating institution" means an institution of higher education located in Kentucky that offers an approved educator preparation program and executes an agreement with the authority on terms the authority deems necessary or appropriate for the administration of the Student Teacher Stipend Program; and

(f) "Student teacher" has the same meaning as in KRS 161.010.

(3) The Kentucky Higher Education Assistance Authority shall administer the Student Teacher Stipend Program and shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for administration of the program.

(4)(a) Beginning with the 2024-2025 academic year, to the extent funds are available, the authority may award a student teacher stipend of up to five thousand dollars ($5,000) to an eligible student during the academic term in which the student is a student teacher.

(b) If funds are not sufficient to award stipends to all eligible students, awards shall be determined in accordance with administrative regulations promulgated by the authority.

(5) For each academic term, by the deadline established by the authority, a participating institution shall submit to the authority a report of all eligible students for that academic term. The authority shall disburse stipend funds to eligible students directly or through the participating institution, in accordance with the distribution process determined by the authority.

(6) The participating institution shall notify the authority within five (5) days of the withdrawal of a previously eligible student from the program and no additional distributions shall be made to or on behalf of the student.

(7) The authority may establish criteria for approving a student teacher stipend for a student who is

student teaching outside of Kentucky but is otherwise an eligible student under subsection (2)(d) of this section.

(8) Funds awarded to an eligible student under this section shall not be considered student financial aid in the year the funds are received.

(9) By November 1, 2025, and each November 1 thereafter, the authority shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committee on Education on the utilization and effectiveness of the Student Teacher Stipend Program. The Kentucky Center for Statistics shall assist in developing the report which shall include but not be limited to:

(a) The total number of eligible students and stipend recipients, and the total award amount by participating institution and program;

(b) The demographic data of stipend recipients, including but not limited to:

1. School district of high school graduation;

2. County and city of residence prior to postsecondary enrollment;

3. The participating institution in which the eligible student is enrolled while a student teacher; and

4. The school and district in which the eligible student is a student teacher; and

(c) The data correlation between stipend recipients and nonrecipients entering and remaining in the educator workforce, including but not limited to student teaching location and teaching position location.

History.

2024 ch. 139, § 2, effective April 9, 2024; 2025 ch. 43, § 1, effective June 27, 2025.

164.785. Qualifications for state assistance — Calculation — Adjustment for scholarship.

(1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:

(a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education; and

(b)1. Has been accepted by or is enrolled as a full-time student in a program of study leading to a postsecondary degree at a Kentucky independent college or university which is accredited by a regional accrediting association recognized by the United States Department of Education and whose institutional programs are not composed solely of sectarian instruction;

2. Has been accepted by or is enrolled as a full-time student in a program of study leading to a postsecondary degree at an out-of-state postsecondary education institution licensed by the Council on Postsecondary Education to operate in Kentucky which is accredited by a regional accrediting association recognized by the United States Department of Education and whose institutional programs are not composed solely of sectarian instruction; or

3. Has been accepted or is enrolled as a student in a comprehensive transition and postsecondary program at an institution described in subparagraph 1. of this paragraph. For purposes of this section, a student enrolled in a comprehensive transition and postsecondary program shall be considered a part-time student, and the grant amount shall be adjusted accordingly by the Kentucky Higher Education Assistance Authority.

An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. secs. 12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full- time because of the disability may also qualify under this paragraph; and

(c) Has not previously attended college or university more than the maximum number of academic terms established by the authority in administrative regulations.

(2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.

(3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.

(4) The need of each applicant shall be determined by acceptable need analysis such as use of the free application for federal student aid in conjunction with Part E of the federal act, 20 U.S.C. secs. 1087kk through 1087vv, and such other analyses as the authority may determine, subject to the approval by the United States Secretary of Education.

(5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.

(6) Accepted or enrolled students qualifying under the provisions of subsection (1)(b) of this section prior to the 2011-2012 academic year shall be under those provisions and continue under those provisions until June 30, 2014.

(7) Beginning with the 2011-2012 academic year, and each year thereafter:

(a) A student may enroll and receive a Kentucky tuition grant at any Kentucky independent college or university whose institutional programs are not composed solely of sectarian instruction and is accredited by:

1. The Southern Association of Colleges and Schools; or

2.a. A national accreditation agency that is recognized by the United States Department of Education; and

b. Is a college or university eligible to receive federal funding under 20 U.S.C. secs. 1061 to 1063;

(b) Programs or campuses of any out-of-state postsecondary education institution that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction shall be accredited by the Southern Association of Colleges

and Schools in order to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant, except as provided in paragraph (c) of this subsection; and

(c) Programs or campuses of any out-of-state postsecondary education institution that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction, but in which accreditation by the Southern Association of Colleges and Schools is not an option, shall be reviewed and approved by the Council on Postsecondary Education based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant. All costs associated with the institutional reviews shall be the responsibility of the institution seeking approval by the council. The Council on Postsecondary Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this paragraph.

History.

Enact. Acts 1972, ch. 114, § 2; 1976, ch. 215, § 4, effective March 29, 1976; 1978, ch. 155, § 104, effective June 17, 1978; 1982, ch. 403, § 7, effective July 15, 1982; 1997 (1st Ex. Sess.), ch. 1, § 122, effective May 30, 1997; 1998, ch. 317, § 1, effective July 15, 1998; 2003, ch. 115, § 3, effective June 24, 2003; 2003, ch. 180, § 2, effective June 24, 2003; 2004, ch. 111, § 5, effective July 13, 2004; 2008, ch. 86, § 1, effective July 15, 2008; 2013, ch. 42, § 3, effective June 25, 2013; 2021 ch. 204, § 2, effective June 29, 2021.

Compiler's Notes.

The reference to 20 USCS § 1087vv in subsection (4) above does not exist. The referenced provisions are found as 20 USCS §§ 1087kk to 1087w.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions for 11 KAR Chapter 15, 11 KAR 15:010.
Definitions pertaining to 11 KAR Chapter 5, 11 KAR 5:001.
Disbursement procedures, 11 KAR 5:160.
Dual enrollment under consortium agreement, 11 KAR 15:030.
Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure, 11 KAR 15:060.
KTG award determination procedure, 11 KAR 5:140.
KTG student eligibility requirements, 11 KAR 5:033.
Notification of award, 11 KAR 5:150.
Records and reports, 11 KAR 5:180.
Records and reports, 11 KAR 15:070.
Refund and repayment policy, 11 KAR 5:170.
Student aid applications, 11 KAR 4:080.
Student application, 11 KAR 5:130.

164.786. Dual Credit Scholarship Program.

(1) For purposes of this section:

(a) "Academic term" means the fall or spring academic semester;

(b) "Academic year" means July 1 through June 30 of each year;

(c) "Approved dual credit course" means a dual credit course developed in accordance with KRS 164.098 and shall include:

1. General education courses that meet the criteria outlined in the statewide general education core approved by the Council on Postsecondary Education; and

2. Career and technical education courses within a career pathway approved by the Kentucky Department of Education that leads to an industry-recognized credential;

(d) "Authority" means the Kentucky Higher Education Assistance Authority;

(e) "Dual credit" has the same meaning as in KRS 158.007;

(f) "Dual credit tuition rate ceiling" means one-third (1/3) of the per credit hour tuition amount, rounded down to the nearest whole dollar, charged by the Kentucky Community and Technical College System for in-state students;

(g) "Eligible high school student" means a student who:

1. Is a Kentucky resident;

2. Is enrolled in a Kentucky high school;

3. Has completed a thirty (30) minute college success counseling session; and

4. Is enrolled, or accepted for enrollment, in an approved dual credit course at a participating institution;

(h) "Participating institution" means a postsecondary institution that:

1. Has an agreement with the authority for the administration of the Dual Credit Scholarship Program;

2. Charges no more than the dual credit tuition rate ceiling per credit hour, including any additional fees, for any approved dual credit course it offers to any Kentucky public or nonpublic high school student;

3. Does not charge any tuition or fees to an eligible high school student for an approved dual credit course beyond what is paid by the Dual Credit Scholarship Program when the course is not successfully completed; and

4. Is a:

a. Kentucky Community and Technical College System institution;

b. Four (4) year Kentucky public college or university; or

c. Four (4) year private college or university that is accredited by the Southern Association of Colleges and Schools and whose main campus is located in Kentucky; and

(i) "Successfully completed" means a student receiving both secondary and postsecondary credit upon completion of an approved dual credit course.

(2) To promote dual credit coursework opportunities at no cost to eligible Kentucky high school students, the General Assembly hereby establishes the Dual Credit Scholarship Program.

(3) In consultation with the Council on Postsecondary Education and the Kentucky Department of Education, the authority shall administer the Dual Credit Scholarship Program and shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for the administration of the program.

(4)(a) Each high school shall apply to the authority for dual credit scholarship funds for each eligible high school student.

(b) The authority may award a dual credit scholarship to an eligible high school student for an academic term on a first-come, first-served basis by application date, to the extent funds are available for that purpose.

(c) An eligible high school student may receive a dual credit scholarship for a maximum of:

1. Two (2) career and technical education dual credit courses per academic year; and

2. Two (2) general education dual credit courses over the junior and senior year.

(d) The dual credit scholarship award amount shall be equal to the amount charged by a participating institution, not to exceed the dual credit tuition rate ceiling for each dual credit hour.

(e) Dual credit scholarship funds shall not be used for remedial or developmental coursework.

(5) Each participating institution shall submit information each academic term to the authority required for the administration of the scholarship as determined by the authority.

(6) The authority shall provide an annual report to the secretary of the Education and Labor Cabinet, the president of the Council on Postsecondary Education and the commissioner of the Kentucky Department of Education to include:

(a) The number of students, by local school district and in total, served by the Dual Credit Scholarship Program; and

(b) The number of general education and career and technical education dual credits earned by students by high school and in total.

(7) By May 31 of each year, the Kentucky Center for Statistics, in collaboration with the authority, shall publish data on the Dual Credit Scholarship Program's academic and workforce outcomes. The center shall annually provide a report on the data to the Interim Joint Committee on Education.

(8)(a) The Dual Credit Scholarship Program trust fund is hereby created as a trust fund in the State Treasury to be administered by the Kentucky Higher Education Assistance Authority for the purpose of providing scholarships described in this section.

(b) The trust fund shall consist of state general fund appropriations, gifts and grants from public and private sources, and federal funds.

(c) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund.

(d) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.

History.

2017 ch. 165, § 1, effective April 10, 2017; 2022 ch. 236, § 85, effective July 1, 2022; 2025 ch. 44, § 1, effective June 27, 2025.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 2, (6) at 2103.

164.7870. Optometry Scholarship Program.

(1) The General Assembly hereby establishes the Optometry Scholarship Program to provide eligible Kentucky students the opportunity to attend an accredited school of optometry to become certified practitioners rendering medical service in the Commonwealth.

(2) For purposes of this section:

(a) "Authority" means the Kentucky Higher Education Assistance Authority;

(b) "Eligible institution" means an accredited school of optometry that:

1. Is the Kentucky College of Optometry; or

2.a. Has a main campus outside the Commonwealth; and

b. Executes an agreement with the authority on terms the authority deems necessary or appropriate for administration of the program;

(c) "Eligible program of study" means a program accredited by the Accreditation Council on Optometric Education that leads to a Doctor of Optometry degree;

(d) "Eligible student" means any person who:

1. Is a United States citizen;

2. Is a Kentucky resident as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

3. Is enrolled or accepted for enrollment at an eligible institution in an eligible program of study on a full-time basis;

4. Completes and submits an optometry scholarship application to the authority; and

5. Is not in default on any program under Title IV of the federal act or any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 or 164.7894, except that ineligibility for this reason may be waived by the authority for cause; and

(e) "Optometry Scholarship Committee" means a group of individuals selected in accordance with regulations promulgated by the authority whose membership shall be composed of:

1. A representative from the Kentucky Optometric Association;

2. A representative from the Kentucky College of Optometry;

3. Two (2) at-large members with optometric education experience; and

4. One (1) representative from an eligible institution located outside the Commonwealth.

(3) The authority shall administer the Optometry Scholarship Program and shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for the administration of the program.

(4) Beginning with the 2021-2022 academic year, the authority may award an optometry scholarship under this section, to the extent funds are available for that purpose, to any eligible student who is selected by the Optometry Scholarship Committee to be a recipient.

(5) A minimum of one-third (⅓) of the amount appropriated for scholarships under this section shall be awarded to eligible students attending an eligible institution located in the Commonwealth.

(6) Should funds be insufficient to award all eligible students, those previously receiving tuition assistance through the optometry contract spaces program administered by the Council on Postsecondary Education shall receive priority until such time they complete or withdraw from an eligible program of study or have received assistance for four (4) years of study.

(7) The authority shall provide an annual report on the Optometry Scholarship Program to the General Assembly that includes the:

(a) Number of students served by the scholarship, the total amount disbursed, and distribution by institution;

(b) Number of recipients completing an eligible program and the number practicing in Kentucky following program completion; and

(c) Geographic distribution and occupational demand of optometrists in the state.

(8)(a) The Optometry Scholarship Program fund is hereby created as a trust fund in the State Treasury to be administered by the authority for the purpose of providing scholarships described in this section.

(b) The trust fund shall consist of state general fund appropriations, gifts and grants from public and private sources, and federal funds. All moneys included in the fund shall be appropriated for the purposes set forth in this section.

(c) Any unalloted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund.

(d) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section.

History.
2020 ch. 58, § 1, effective July 15, 2020.

KENTUCKY EDUCATIONAL EXCELLENCE SCHOLARSHIP

164.7871. Legislative declaration.

(1) The General Assembly of the Commonwealth of Kentucky hereby declares that the best interest of the Commonwealth mandates that financial assistance be provided to ensure access of Kentucky citizens to public and private postsecondary education at the postsecondary educational institutions of the Commonwealth.

(2) It is the intent and purpose of the General Assembly that the enactment of KRS 164.7871 to 164.7885 shall be construed as a long-term financial commitment to postsecondary education and that the funding provided by KRS 154A.130(3) and (4) shall not be diverted from the purposes described in KRS 164.7871 to 164.7885 and KRS 164.7889.

History.
Enact. Acts 1998, ch. 575, § 1, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Definitions for 11 KAR Chapter 15, 11 KAR 15:010.

Dual enrollment under consortium agreement, 11 KAR 15:030.

Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.

Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure, 11 KAR 15:060.

Records and reports, 11 KAR 15:070.

164.7874. Definitions for KRS 164.7871 to 164.7885.

As used in KRS 164.7871 to 164.7885:

(1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the authority;

(2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;

(3) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date or the college admissions examination administered statewide under KRS 158.6453(5)(b)3. if the exam is the ACT, or an equivalent score, as determined by the authority, on the SAT administered by the College Board, Inc.;

(4) "Authority" means the Kentucky Higher Education Assistance Authority;

(5) "Award period" means the fall and spring consecutive academic terms within one (1) academic year;

(6) "Council" means the Council on Postsecondary Education created under KRS 164.011;

(7) "Eligible high school student" means any person who:

(a) Is a citizen, national, or permanent resident of the United States and Kentucky resident;

(b) Was enrolled after July 1, 1998:

1. In a Kentucky high school for at least one hundred forty (140) days of the minimum school term unless exempted by the authority's executive director upon documentation of extreme hardship, while meeting the KEES curriculum requirements, and was enrolled in a Kentucky high school at the end of the academic year;

2. In a Kentucky high school for the fall academic term of the senior year and who:

a. Was enrolled during the entire academic term;

b. Completed the high school's graduation requirements during the fall academic term; and

c. Was not enrolled in a secondary school during any other academic term of that academic year; or

3. In the Gatton Academy of Mathematics and Science in Kentucky, the Craft Academy for Excellence in Science and Mathematics, or in high school at a model and practice school under KRS 164.380 while meeting the Kentucky educational excellence scholarship curriculum requirements;

(c) Has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, or at the end of the fall academic term for a student eligible under paragraph (b) 2. of this subsection; and

(d) Is not a convicted felon;

(8) "Eligible postsecondary student" means a citizen, national, or permanent resident of the United States and Kentucky resident, as determined by the participating institution in accordance with criteria established by the council for the purposes of admission and tuition assessment, who:

(a) Earned a KEES award;

(b) Has the required postsecondary GPA and credit hours required under KRS 164.7881;

(c) Has remaining semesters of eligibility under KRS 164.7881;

(d) Is enrolled in a participating institution as a part-time or full-time student; and

(e) Is not a convicted felon;

(9) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;

(10) "Grade point average" or "GPA" means the grade point average earned by an eligible student and reported by the high school or participating institution in which the student was enrolled based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;

(11) "High school" means any Kentucky public high school, the Gatton Academy of Mathematics and Science in Kentucky, the Craft Academy for Excellence in Science and Mathematics, a high school of a model and practice school under KRS 164.380, and any private, parochial, or church school located in Kentucky that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;

(12) "KEES" or "Kentucky educational excellence scholarship" means a scholarship provided under KRS 164.7871 to 164.7885;

(13) "KEES award" means:

(a) For an eligible high school student, the sum of the KEES base amount for each academic year of high school plus any KEES supplemental amount, as adjusted pursuant to KRS 164.7881; and

(b) For a student eligible under KRS 164.7879(3)(e), the KEES supplemental amount as adjusted pursuant to KRS 164.7881;

(14) "KEES award maximum" means the sum of the KEES base amount earned in each academic year of high school plus any KEES supplemental amount earned;

(15) "KEES base amount" or "base amount" means the amount earned by an eligible high school student based on the student's GPA pursuant to KRS 164.7879;

(16) "KEES curriculum" means five (5) courses of study, except for students who meet the criteria of subsection (7)(b)2. of this section, in an academic year as determined in accordance with an administrative regulation promulgated by the authority;

(17) "KEES supplemental amount" means the amount earned by an eligible student based on the student's ACT score pursuant to KRS 164.7879;

(18) "KEES trust fund" means the Wallace G. Wilkinson Kentucky educational excellence scholarship trust fund;

(19) "On track to graduate" means the number of cumulative credit hours earned as compared to the number of hours determined by the postsecondary education institution as necessary to complete a bachelor's degree by the end of eight (8) academic terms or ten (10) academic terms if a student is enrolled in an undergraduate program that requires five (5) years of study;

(20) "Participating institution" means an "institution" as defined in KRS 164.001 that is eligible to participate in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:

(a)1. Is publicly operated;

2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates, recipients of a High School Equivalency Diploma, or students transferring from another accredited degree granting institution; or

3. Is designated by the authority as an approved out-of-state institution that offers a degree program in a field of study that is not offered at any institution in the Commonwealth; and

(b) Continues to commit financial resources to student financial assistance programs; and

(21) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours, or the equivalent for an institution that does not use credit hours.

History.

Enact. Acts 1998, ch. 575, § 2, effective July 15, 1998; 2000, ch. 13, § 1, effective July 14, 2000; 2000, ch. 198, § 1, effective July 14, 2000; 2000, ch. 382, § 11, effective July 14, 2000; 2002, ch. 51, § 1, effective July 15, 2002; 2003, ch. 115, § 4, effective June 24, 2003; 2003, ch. 180, § 8, effective June 24, 2003; 2005, ch. 117, § 1, effective June 20, 2005; 2008, ch. 134, § 22, effective July 15, 2008; 2008, ch. 137, § 1, effective July 15, 2008; 2009, ch. 101, § 14, effective March 25, 2009; 2015 ch. 15, § 3, effective June 24, 2015; 2015 ch. 112, § 3, effective April 2, 2015; 2016 ch. 136, § 8, effective July 15, 2016; 2019 ch. 186, § 1, effective June 27, 2019; 2020 ch. 66, § 2, effective July 15, 2020; 2017 ch. 63, § 22, effective June 29, 2017; 2017 ch. 156, § 15, effective June 29, 2017; 2026 ch. 138, § 5, effective July 15, 2026.

Legislative Research Commission Notes.

(3/25/2009). In subsection (3) of this statute, a reference to "KRS 158.6453(12)(a)3." has been changed to read "KRS 158.6453(11)(a)3." When Section 2 of 2009 Ky. Acts ch. 101 [KRS 158.6453] was renumbered, the reference to subsection (12) of KRS 158.6453 in subsection (3) of this statute was not changed. The Reviser of Statutes has made a conforming change under the authority of KRS 7.136.

(7/15/2008). A reference to "KRS 164.7879(3)(c)" in subsection (13)(b) of this statute has been changed in codification to "KRS 164.7879(3)(d)" by the Reviser of Statutes under the authority of KRS 7.136(1) to reflect the insertion of a new paragraph in KRS 164.7879(3) and change the designation of succeeding paragraphs in 2008 Ky. Acts ch. 134, sec. 23.

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 13, 198, and 382. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 198, which was last enacted by the General Assembly, prevails under KRS 446.250.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 2, (4) at 2103.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.

164.7877. Kentucky educational excellence scholarship trust fund — Funding sources, including lottery revenues.

(1) There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" to which shall be credited net lottery revenues transferred in accordance with KRS 154A.130; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.

(2) The moneys in the fund are hereby continuously appropriated only for the purposes set forth in KRS 164.7871 to 164.7885 and KRS 164.7889.

(3) The authority shall administer the Kentucky educational excellence scholarship trust fund.

History.

Enact. Acts 1998, ch. 575, § 3, effective July 15, 1998; 2000, ch. 13, § 2, effective July 14, 2000; 2000, ch. 198, § 2, effective July 14, 2000; 2005, ch. 117, § 2, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.

164.7879. Calculation of educational excellence scholarship awards — Inclusion of certain out-of-state educational experience in grade point average calculation — Graduation after three years — Supplemental award eligibility and calculation of amounts.

(1) Kentucky educational excellence scholarship awards shall be based upon an established base scholarship amount and an eligible high school student's grade point average. The base scholarship amount for students attaining a grade point average of at least 2.5 for the 1998-1999 academic year shall be as follows:

GPA	Amount	GPA	Amount
2.50	$125.00	3.30	$325.00
2.60	$150.00	3.40	$350.00
2.70	$175.00	3.50	$375.00
2.75	$187.00	3.60	$400.00
2.80	$200.00	3.70	$425.00
2.90	$225.00	3.75	$437.00
3.00	$250.00	3.80	$450.00
3.10	$275.00	3.90	$475.00
3.20	$300.00	4.00	$500.00
3.25	$312.00		

The authority shall review the base amount of the Kentucky educational excellence scholarship each academic year and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(2)(a) The authority shall commit to provide to each eligible high school student the base amount of the Kentucky educational excellence scholarship for each academic year of high school study in the Kentucky educational excellence scholarship curriculum that the high school student has attained at least a 2.5 grade point average. The award shall be based upon the eligible high school student's grade point average at the close of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible high school student, regardless of any subsequent increases made to the base amount of the Kentucky educational excellence scholarship through the promulgation of an administrative regulation by the authority.

(b) Notwithstanding the definitions of "eligible high school student" and "high school" in KRS 164.7874, any high school student who maintains Kentucky residency and completes the academic courses that are required for a Kentucky educational excellence scholarship while participating in an approved educational high school foreign exchange program or participating in the United States Congressional Page School may apply his or her grade point average for that academic year toward the base as described in paragraph (a) of this subsection. The grade point average shall be reported by the student's Kentucky home high school, based on an official transcript from the school that the student attended during the out-of-state educational experience. The authority shall promulgate administrative regulations that describe the approval process for the educational exchange programs that qualify under this paragraph. The provisions in this paragraph shall likewise apply to any Kentucky high school student who participated in an approved educational exchange program or in a Congressional Page School since the 1998-99 school year and maintained his or her Kentucky residency throughout.

(c)1. Notwithstanding the definitions of "eligible high school student" and "high school" in KRS 164.7874 and the requirement that a student graduate from a Kentucky high school, a high school student who completes the KEES curriculum while attending an accredited out-of-state high school or Department of Defense school may apply the grade point average for any applicable academic year toward the base as described in paragraph (a) of this subsection and shall also

qualify for a supplemental award under subsection (3) of this section when:

a. His or her custodial parent or guardian is in active service of the Armed Forces of the United States;

b. The student attended an accredited out-of-state high school or a Department of Defense school as a result of the custodial parent's or guardian's military transfer outside of Kentucky; and

c. The student earned a KEES base amount at a Kentucky high school prior to the custodial parent's or guardian's military transfer outside of Kentucky.

2. The student or parent shall arrange for the out-of-state school to report the student's grade point average each academic year and the student's highest ACT score to the authority as required under KRS 164.7885. The authority shall promulgate administrative regulations implementing the requirements in this paragraph, including:

a. The documentation that the parent shall submit to the authority establishing the student's eligibility for the scholarship; and

b. The assurances that an out-of-state institution shall submit to the authority for submission of the student grade point average.

3. The provisions in this paragraph shall apply to the 2001-2002 school year and thereafter.

(d) Beginning with the 2013-2014 academic year, a student who meets the Kentucky core academic standards for high school graduation established in administrative regulation and graduates after completing three (3) years of high school shall receive a Kentucky educational excellence scholarship award equivalent to completing high school in four (4) years. The award shall be determined by dividing the total actual KEES scholarship earned under subsection (1) of this section by three (3) and multiplying that number by four (4). The resulting number shall be the annual award the student is eligible for under subsection (1) of this section.

(3)(a) The authority shall commit to provide to each eligible high school student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test, a supplemental award for the award period beginning in the fall of 1999, based on the eligible high school student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Annual Bonus	ACT Score	Annual Bonus
15	$21	22	$171
16	$43	23	$193
17	$64	24	$214
18	$86	25	$236
19	$107	26	$257
20	$129	27	$279
21	$150	28 or above	$300

Subsequent supplemental awards for eligible high school students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

(b) The authority shall commit to provide to each eligible high school student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible high school student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Amount	ACT Score	Amount
15	$36	22	$286
16	$71	23	$321
17	$107	24	$357
18	$143	25	$393
19	$179	26	$428
20	$214	27	$464
21	$250	28 and above	$500

The authority shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(c) Beginning with the 2008-2009 academic year, the authority shall commit to provide a supplemental award for achievement on examinations for Advanced Placement or International Baccalaureate as defined in KRS 164.002 to an eligible high school student whose family was eligible for free or reduced-price lunch for any year during high school enrollment.

1. The supplemental award for AP examination scores are as follows:

a. Two hundred dollars ($200) for each score of three (3);

b. Two hundred fifty dollars ($250) for each score of four (4); and

c. Three hundred dollars ($300) for each score of five (5).

2. The supplemental award for IB examination scores are as follows:

a. Two hundred dollars ($200) for each score of five (5);

b. Two hundred fifty dollars ($250) for each score of six (6); and

c. Three hundred dollars ($300) for each score of seven (7).

(d) Beginning with the 2013-2014 academic year, the authority shall commit to provide a supplemental award for achievement on examinations for Cambridge Advanced International as defined in KRS 164.002 to an eligible high school student whose family was eligible for free or reduced-priced lunch for any year during high school enrollment. The supplemental award for Cambridge Advanced International examination scores are as follows:

1. Two hundred dollars ($200) for each score of "e";

2. Two hundred fifty dollars ($250) for each score of "c" or "d"; and

3. Three hundred dollars ($300) for each score of "a*", "a", or "b".

(e) The authority shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who are citizens, nationals, or permanent residents of the United States and who graduate from a nonpublic secondary school not certified by the Kentucky Board of Education and Kentucky residents who are citizens, nationals, or permanent residents of the United States and who obtain a High School Equivalency Diploma within five (5) years of their high school graduating class, and students under subsection (2)(c) of this section who do not attend an accredited high school.

History.

Enact. Acts 1998, ch. 575, § 4, effective July 15, 1998; 2000, ch. 13, § 3, effective July 14, 2000; 2000, ch. 198, § 3, effective July 14, 2000; 2001, ch. 25, § 1, effective June 21, 2001; 2002, ch. 278, § 1, effective July 15, 2002; 2005, ch. 117, § 3, effective June 20, 2005; 2008, ch. 134, § 23, effective July 15, 2008; 2013, ch. 104, § 5, effective June 25, 2013; 2013, ch. 105, § 1, effective June 25, 2013; 2015 ch. 112, § 2, effective April 2, 2015; 2017 ch. 63, § 23, effective June 29, 2017; 2023 ch. 67, § 2, effective June 29, 2023.

Legislative Research Commission Notes.

(4/2/2015). 2015 Ky. Acts ch. 112, sec. 6 provides that the amendments made to this statute in Section 2 of that Act shall be applied retroactively beginning with the 2013-2014 academic year.

(11/1/2006). Due to a manifest clerical or typographical error by the drafter of 2005 Ky. Acts ch. 117, the words "for submission" following "to the authority" in subsection (2)(b)2.b. of this statute were inadvertently deleted from the text as created in 2002 Ky. Acts ch. 278, sec. 1. Those words have been reinserted by the Reviser of Statutes under the authority of KRS 7.136.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 2, (4) at 2103.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.

164.7881. Eligibility for educational excellence scholarship and supplemental awards — Time limits for receiving aid — Adjustment of amounts and loss of award — Extension of time limits — Senator Jeff Green Scholars.

(1) Eligible high school students who have graduated from high school and eligible postsecondary students who have earned a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and a supplemental award, or a supplemental award only pursuant to KRS 164.7879(3)(e), shall be eligible to receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or a supplemental award only for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsections (5) and (6) of this section.

(2) To receive the Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, an eligible high school or postsecondary student shall:

(a) Enroll in and attend a participating institution as a full-time student or a part-time student; and

(b) Maintain eligibility as provided in subsection (3) of this section.

(3) Eligibility for a Kentucky educational excellence scholarship or a Kentucky educational excellence scholarship and supplemental award shall terminate upon the earlier of:

(a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or

(b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, for a cumulative total of eight (8) academic terms if the student enrolls as at least a part-time student in a four (4) year program.

(4)(a) The maximum award amount shall be determined by the authority and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible postsecondary student for an award period shall be delivered by the authority to the participating institution for disbursement to the eligible postsecondary student.

(b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible postsecondary student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible postsecondary student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible postsecondary student, except if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period.

(c)1. An eligible postsecondary student who is enrolled full-time in an undergraduate program of study, in the pharmacy program at the University of Kentucky, or in a program of study designated as an equivalent undergraduate program of study by the authority in an administrative regulation, shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study.

2. To retain the maximum award for the second award period, an eligible postsecondary student

shall have at least a 2.5 grade point average at the end of the first award period. If the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this subsection, retain the maximum award for the award period in which he or she resumes enrollment.

3. To retain the maximum award amount for subsequent award periods, an eligible postsecondary student shall have:

a. A cumulative grade point average of 3.0 or greater at the end of the prior award period. If the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this subsection, retain the same award for the award period in which he or she resumes enrollment as he or she received in the award period in which enrollment was interrupted; or

b. A cumulative grade point average of 2.5 or greater but less than 3.0 at the end of the prior award period and be on track to graduate. If the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this subsection, retain the same award for the award period in which he or she resumes enrollment as he or she received in the award period in which enrollment was interrupted.

4. Any eligible full-time postsecondary student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 but is not on track to graduate at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.

5. Any eligible postsecondary student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.

6.a. Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each Kentucky educational excellence scholarship recipient enrolled as a full-time or part-time student at the participating institution.

b. In addition to reporting the grade point average, beginning with the 2010-2011 academic year, each participating institution shall certify to the authority at the close of each award period whether a Kentucky educational excellence scholarship recipient who initially enrolled in college in 2009-2010 or thereafter is on track to graduate.

7. Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.

(5) The expiration of a student's eight (8) academic terms and five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:

(a) A serious and extended illness or injury of the student, certified by an attending physician;

(b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;

(c) Natural disasters that would render a student unable to attend classes; or

(d)1. Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for the total number of years during which the student was on active duty status. The number of months served on active duty status shall be rounded up to the next higher year to determine the maximum length of eligibility extension allowed.

2. A student whose eligibility expired prior to July 15, 2008, due to the three (3) year time limit on eligibility extensions imposed by this paragraph prior to July 15, 2008, shall have his or her eligibility reinstated for the number of years beyond the three (3) years during which he or she was on active duty status. The number of months served on active duty status shall be rounded up to the next higher year to determine the maximum length of eligibility extension allowed.

(6) An eligible postsecondary student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the authority shall be eligible to receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or the supplemental award only for a maximum of ten (10) academic terms. The expiration of an eligible postsecondary student's five (5) year eligibility shall be extended to six (6) years for eligible postsecondary students meeting the requirements of this subsection.

(7) Each participating institution shall notify its students of their terms of eligibility.

(8) Each eligible high school student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Senator Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District, and shall be recognized by the high school in a

manner consistent with recognition given by the high school to other high levels of academic achievement.

History.
Enact. Acts 1998, ch. 575, § 5, effective July 15, 1998; 2000, ch. 13, § 4, effective July 14, 2000; 2000, ch. 198, § 4, effective July 14, 2000; 2002, ch. 278, § 2, effective July 15, 2002; 2002, ch. 326, § 2, effective July 15, 2002; 2004, ch. 111, § 6, effective July 13, 2004; 2005, ch. 117, § 4, effective June 20, 2005; 2008, ch. 134, § 24, effective July 15, 2008; 2008, ch. 137, § 2, effective July 15, 2008; 2015 ch. 112, § 4, effective April 2, 2015.

Legislative Research Commission Notes.
(4/2/2015). 2015 Ky. Acts ch. 112, sec. 6 provides that the amendments made to this statute in Section 4 of that Act shall be applied retroactively beginning with the 2013-2014 academic year.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.
Kentucky Educational Excellence Scholarship award determination procedure, 11 KAR 15:040.

164.7882. Kentucky educational excellence scholarship moneys to be awarded to students enrolled in comprehensive transition and postsecondary program — Amounts — Terms — Administrative regulations.

(1) Notwithstanding any other statute to the contrary, a student shall be eligible for a Kentucky educational excellence scholarship who:

(a)1. Received an alternate high school diploma described in KRS 158.140(2)(b) after June 30, 2012;

2. Received a modified high school diploma under KRS 156.160(1)(e); or

3. Attended a Kentucky public high school after June 30, 2008, and is a student with an intellectual disability as defined in 34 C.F.R. sec. 668.231; and

(b) Enrolls in a comprehensive transition and postsecondary program at a participating institution located in Kentucky.

(2) A student enrolled in credit-bearing or noncredit-bearing courses as part of a comprehensive transition and postsecondary program prior to the 2016-2017 academic year shall receive:

(a) Two hundred fifty dollars ($250) for enrollment in at least six (6) hours in an academic term; and

(b) One hundred twenty-five dollars ($125) for enrollment in less than six (6) hours in an academic term.

(3) A student enrolled in credit-bearing or noncredit-bearing courses as part of a comprehensive transition and postsecondary program beginning with the 2016-2017 academic year shall receive:

(a) Five hundred dollars ($500) for enrollment in at least six (6) hours in an academic term; and

(b) Two hundred fifty dollars ($250) for enrollment in less than six (6) hours in an academic term.

(4) A student shall be eligible for a scholarship under this section for a maximum of eight (8) academic terms.

(5) The authority shall promulgate administrative regulations establishing the procedures for making awards under this section.

History.
Enact. Acts 2013, ch. 42, § 4, effective June 25, 2013; 2016 ch. 139, § 1, effective July 15, 2016; 2026 ch. 15, § 5, effective July 15, 2026.

164.7883. Use of scholarship and supplemental award at out-of-state institution.

An eligible student who has earned a Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award, and who is enrolled in an out-of-state institution shall be eligible to receive the Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award, if he or she is enrolled in a degree program in a field of study that is not available at any participating institution in the Commonwealth. The authority shall promulgate administrative regulations to establish procedures to designate an out-of-state institution as an approved participating institution as defined in KRS 164.7874 and to transfer to the out-of-state institution the amount of the scholarship and supplemental award earned by the eligible student.

History.
Enact. Acts 2000, ch. 382, § 12, effective July 14, 2000; 2005, ch. 117, § 5, effective June 20, 2005.

164.7884. Definitions — Eligibility of student in registered apprenticeship program, qualified workforce training program, qualified proprietary school program, approved workforce solutions training program, or college of art and design for Kentucky educational excellence scholarship.

(1) As used in this section:

(a) "Academic year" means July 1 through June 30 of each year;

(b) "Apprentice" has the same meaning as in KRS 343.010;

(c) "Approved workforce solutions training program" means a local high-demand work sector training program that is approved by the authority and is offered by the Kentucky Community and Technical College System through consultation with representatives of the local workforce development area and the local Kentucky Community and Technical College System campus where the program will be offered;

(d) "Eligible college of art and design" means a college that:

1. Qualifies as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code:

2. Is conditionally or unconditionally licensed by the Council on Postsecondary Education;

3. Is a candidate for accreditation by a regional accrediting association recognized by the United States Department of Education;

4. Has its main campus physically located in Kentucky;

5. Limits its degree program offerings to the area of fine arts; and

6. Does not qualify as a participating institution as defined in KRS 164.7874;

(e) "Eligible student" means an eligible high school student who has graduated from high school or a student eligible under KRS 164.7879(3)(e);

(f) "Proprietary school" means a school that:

1. Is licensed by the Kentucky Commission on Proprietary Education;

2. Has operated for at least five (5) years;

3. Has its headquarters or main campus physically located in Kentucky; and

4. Does not qualify as a participating institution under KRS 164.7874(20);

(g) "Qualified proprietary school program" means a program offered by a proprietary school that is in the field of agriculture as defined in KRS 246.010 or is in one (1) of Kentucky's top five (5) high-demand work sectors as determined by the Kentucky Workforce Innovation Board;

(h) "Qualified workforce training program" means a program that is in one (1) of Kentucky's top five (5) high-demand work sectors as determined by the Kentucky Workforce Innovation Board;

(i) "Registered apprenticeship program" means an apprenticeship program that:

1. Is established in accordance with the requirements of KRS Chapter 343;

2. Requires a minimum of two thousand (2,000) hours of on-the-job work experience;

3. Requires a minimum of one hundred forty-four (144) hours of related instruction for each year of the apprenticeship; and

4. Is approved by the Education and Labor Cabinet;

(j) "Related instruction" has the same meaning as in KRS 343.010; and

(k) "Sponsor" has the same meaning as in KRS 343.010.

(2) Notwithstanding KRS 164.7881, an eligible student who earned a KEES award shall be eligible for a Kentucky educational excellence scholarship if the student meets the requirements of this section and is:

(a) An apprentice in a registered apprenticeship program;

(b) Enrolled in a qualified workforce training program that has a current articulation agreement for postsecondary credit hours with a participating institution;

(c) Enrolled in a qualified proprietary school program;

(d) Enrolled in an approved workforce solutions training program; or

(e) Enrolled in an eligible college of art and design.

(3)(a) Beginning with the 2018-2019 academic year, an eligible student enrolled in a registered apprenticeship program or, for the academic year beginning July 1, 2020, an eligible student enrolled in a qualified workforce training program or, for the academic year beginning July 1, 2023, an eligible student enrolled in a qualified proprietary school program, an approved workforce solutions training program, or an eligible college of art and design, may receive reimbursement of tuition, books, required tools, and other approved expenses required for participation in the program, upon certification by the sponsor, school, or college and approval by the authority.

(b) The reimbursement amount an eligible student may receive in an academic year shall not exceed the student's KEES award maximum.

(c) The total reimbursement amount an eligible student may receive under this section shall not exceed the student's KEES award maximum multiplied by four (4).

(4) Eligibility for a KEES scholarship under this section shall terminate upon the earlier of:

(a) The expiration of five (5) years following the eligible student's graduation from high school or receiving a High School Equivalency Diploma, except as provided in KRS 164.7881(5); or

(b) The eligible student's successful completion of the registered apprenticeship program, qualified workforce training program, qualified proprietary school program, or approved workforce solutions training program.

(5) The authority shall promulgate administrative regulations establishing the procedures for making awards under this section in consultation with the Kentucky Education and Labor Cabinet and the Kentucky Economic Development Cabinet.

History.

2017 ch. 165, § 2, effective April 10, 2017; 2019 ch. 173, § 10, effective June 27, 2019; 2019 ch. 186, § 2, effective June 27, 2019; 2022 ch. 236, § 87, effective July 1, 2022; 2023 ch. 67, § 1, effective June 29, 2023.

164.7885. Annual submission by high schools of list of eligible students — Data in list — Verification of eligibility — Reduction of award — Students ineligible for awards — Administrative regulations.

(1) Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the authority, a compiled list of all high school students during the academic year. A high school shall report the grade point average of an eligible high school student pursuant to KRS 164.7874 by January 15 following the end of the fall academic term in which the student completed the high school graduation requirements. The list shall identify the high school and shall contain each high school student's name, Social Security number, address, grade point average for the academic year, expected or actual graduation date, highest ACT score, family eligibility status for free or reduced-price lunch, and each AP, Cambridge Advanced International, or IB examination score. The Gatton Academy of Mathematics and Science in Kentucky, the Craft Academy for Excellence in Science and Mathematics, and the high school of a model and practice school under KRS 164.380 shall report the data on its students to the authority. The list need not contain the ACT, AP, Cambridge Advanced International, or IB if the authority receives the scores directly from the testing services. The authority shall notify each eligible high

school student of his or her Kentucky educational excellence scholarship award earned each academic year. The authority shall determine the final Kentucky educational excellence scholarship and supplemental award based upon the actual final grade point average, highest ACT score, and qualifying AP, Cambridge Advanced International, or IB scores and shall notify each eligible twelfth-grade high school student of the final determination. The authority shall make available a list of eligible high school and postsecondary students to participating institutions.

(2) The authority shall provide data access only to the Kentucky Longitudinal Data System and to those participating institutions that have either received an admission application from an eligible high school or postsecondary student or have been listed by the eligible high school or postsecondary student on the Free Application For Federal Student Aid.

(3) For each eligible postsecondary student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:

(a) The student's initial eligibility for a Kentucky educational excellence scholarship, Kentucky educational excellence scholarship and supplemental award, or supplemental award only pursuant to KRS 164.7879(3)(d) through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;

(b) The student's highest ACT score attained by the date of graduation from high school, provided that the participating institution need not report the ACT score if the authority receives the ACT score directly from the testing services;

(c) The eligible postsecondary student's full-time or part-time enrollment status at the beginning of each academic term; and

(d) The eligible postsecondary student's cumulative grade point average after the completion of each award period.

(4) Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible postsecondary students enrolled for that academic term. Kentucky educational excellence scholarships and supplemental awards shall be disbursed by the authority to each eligible postsecondary student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.

(5) The Kentucky educational excellence scholarship and the supplemental award shall not be reduced, except as provided in KRS 164.7881(4).

(6) Kentucky educational excellence scholarships and supplemental awards shall not be awarded or disbursed to any eligible postsecondary students who are:

(a) In default on any loan under Title IV of the federal act; or

(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act; or

(c) Liable for overpayment of any grant or loan under Title IV of the federal act; or

(d) In default on any obligation to the authority under any programs administered by the authority until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.

(7) Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of Kentucky educational excellence scholarships and supplemental awards under the provisions of KRS 164.7871 to 164.7885 and KRS 164.7889.

History.

Enact. Acts 1998, ch. 575, § 6, effective July 15, 1998; 2000, ch. 13, § 5, effective July 14, 2000; 2000, ch. 198, § 5, effective July 14, 2000; 2002, ch. 51, § 2, effective July 15, 2002; 2005, ch. 117, § 6, effective June 20, 2005; 2008, ch. 134, § 25, effective July 15, 2008; 2013, ch. 18, § 6, effective June 25, 2013; 2013, ch. 90, § 6, effective June 25, 2013; 2015 ch. 15, § 4, effective June 24, 2015; 2015 ch. 112, § 5, effective April 2, 2015; 2020 ch. 66, § 3, effective July 15, 2020.

Legislative Research Commission Notes.

(6/25/2013). This statute was amended with identical text in 2013 Ky. Acts chs. 18 and 90, which were companion bills. These Acts have been codified together.

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 13 and 198. Where these Acts are not in conflict, they have been codifiedtogether. Where a conflict exists, Acts ch. 198, which was last enacted by the General Assembly, prevails under KRS 446.250.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions for 11 KAR Chapter 15, 11 KAR 15:010.

Disbursement, 11 KAR 15:050.

Dual enrollment under consortium agreement, 11 KAR 15:030.

Kentucky Educational Excellence Scholarship (KEES) Program, 11 KAR 15:090.

Kentucky Educational Excellence Scholarship award determination procedure, 11 KAR 15:040.

Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure, 11 KAR 15:060.

Records and reports, 11 KAR 15:070.

Student eligibility report, 11 KAR 15:020.

MISCELLANEOUS PROGRAMS AND TRUST FUNDS

164.7890. Coal county scholarship program for pharmacy students.

(1) To ensure the public health purpose of access to pharmaceutical services in the coal-producing counties of the Commonwealth, which have been traditionally underserved for pharmaceutical services due to a shortage of pharmacists in the Commonwealth, the General Assembly hereby establishes a coal county scholarship program to provide eligible Kentucky students the opportunity to attend an accredited school of pharmacy or a provisionally accredited school of pharmacy in the Commonwealth, and to become certified pharmacists in the Commonwealth, provided that the scholarship recipient agrees to practice pharmacy in a coal-producing county for each year a scholarship is provided.

(2) "Coal-producing county" as used in this section has the same meaning as in KRS 42.4592(1)(c).

(3) The authority may award scholarships, to the extent funds are available for that purpose, to any person who:

(a) Is a Kentucky resident;

(b) Is considered a permanent resident of a coal-producing county for at least one (1) year immediately preceding July 1 of the academic year in which the scholarship is made for students who first receive a scholarship under this section on or after July 1, 2014;

(c) Is a United States citizen as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

(d) Is enrolled or accepted for enrollment in a Pharm.D. program at an accredited institution or a provisionally accredited institution in the Commonwealth on a full-time basis, or is a student who has a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability;

(e) Agrees to render one (1) year of qualified service in a coal-producing county of the Commonwealth for each year the scholarship was awarded. "Qualified service" means a full-time practice in a coal-producing county of the Commonwealth of Kentucky as a licensed pharmacist for a majority of the calendar year, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., whose disability, certified by another licensed physician, prevents him or her from practicing full-time, shall be deemed to perform qualified service by practicing the maximum time permitted by the attending physician, in the coal-producing county; and

(f) Agrees to sign a promissory note as evidence of the scholarship awarded and the obligation to repay the scholarship amount or render pharmacy service as agreed in lieu of payment.

(4)(a) Notwithstanding KRS 164.753(3), the amount of the scholarship shall not exceed forty percent (40%) of the approximate average of first professional year in-state tuition for all pharmacy schools in the United States. The authority shall establish, by administrative regulation a procedure for awarding scholarships which shall give preference to students residing in coal-producing counties and which shall establish procedures to award scholarships should funding be insufficient to award scholarships to all eligible students. The authority may also, by administrative regulation, establish scholarship amounts based on demonstration of initial financial need by eligible students.

(b) The actual amount of the scholarship awarded to each eligible student by the authority for each semester shall be based on the amount of funds available and the criteria established under paragraph (a) of this subsection.

(5)(a) The authority shall require each student receiving a scholarship to execute a promissory note as evidence of the obligation.

(b) The recipient shall render one (1) year of qualified service in a coal-producing county for each year the scholarship was awarded. Upon completion of each year of qualified service in a coal-producing county, the authority shall cancel the appropriate number of promissory notes. Promissory notes shall be canceled by qualified service in the order in which the promissory notes were executed. Service credit shall not include residency service.

(c) If a recipient fails to complete an eligible program of study, or fails to render service as a pharmacist as agreed in this subsection, the recipient shall be liable for the total repayment of the sum of all outstanding promissory notes and accrued interest.

(6) Any person who is in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 shall not be awarded a scholarship or have a promissory note canceled until all financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of executing the promissory note.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of the scholarship recipient's license to practice pharmacy, subject to the procedures set forth in KRS Chapter 311.

(9) Notwithstanding KRS 164.753(3), the authority shall establish by administrative regulation procedures for the administration of this program, including but not limited to the execution of appropriate contracts and promissory notes, cancellation of obligations, the rate of repayment, and deferment of repayment of outstanding debt.

(10) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(11)(a) The coal county pharmacy scholarship fund is hereby created as a revolving fund in the State Treasury to be administered by the Kentucky Higher Education Assistance Authority for the purpose of providing scholarships to qualifying students studying pharmacy in schools in the Commonwealth.

(b) The fund shall consist of amounts transferred from coal severance tax receipts as provided in paragraph (c) of this subsection and any other proceeds from grants, contributions, appropriations, or other moneys made available for the fund.

(c)1. Receipts from the coal severance tax levied under KRS 143.020 shall be transferred to the fund on an annual basis in an amount not to exceed the lesser of:

a. Four percent (4%) of the total annual coal severance tax revenues collected under KRS 143.020; or

b. The amount necessary to provide full funding for all students who qualify for a scholarship under this section, considering all other resources available.

2. Transfers required by subparagraph 1. of this paragraph shall be made as follows:

a. On or before August 1 of each year, sixty-five percent (65%) of the amount of funding provided for in this paragraph shall be transferred to the fund; and

b. The remaining thirty-five percent (35%) shall be transferred on or before December 1 of each year.

3. The amount transferred shall be based upon the prevailing revenue estimate for coal severance tax receipts at the time each transfer is made.

(d) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9).

(e) Income earned from the investments shall be credited to the trust fund.

(f) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be transferred to the Osteopathic Medicine Scholarship Program described in KRS 164.7891 within ninety (90) days of the end of the fiscal year.

(g) All amounts included in the fund shall be continuously appropriated only for the purposes specified in this section.

(h) A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this action.

(i) All moneys repaid to the authority under this section shall be added to the fund.

History.

Enact. Acts 2010 (1st Ex. Sess.), ch. 2, § 20, effective June 4, 2010; 2012, ch. 110, § 16, effective April 11, 2012; 2013, ch. 84, § 1, effective June 25, 2013; 2014, ch. 133, § 2, effective April 25, 2014.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, A, 11, (2) at 2055.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, KI, 2, (10) at 2104.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Coal County Scholarship Program for Pharmacy Students, 11 KAR 19:010.

Deferment of repayment of Coal County Scholarships for Pharmacy Students, 11 KAR 19:030.

Service cancellation and repayment of Coal County Pharmacy Scholarship, 11 KAR 19:020.

Student aid applications, 11 KAR 4:080.

164.7892. Early graduation scholarship trust fund.

(1) The early graduation scholarship trust fund is created as a separate restricted fund to be administered by the Kentucky Higher Education Assistance Authority. The trust fund shall consist of funds from grants, contributions, appropriations, or other moneys made available for the purposes of the trust fund.

(2) Funds allocated by the General Assembly under provisions of KRS 157.360(3) shall be deposited into the trust fund.

(3) Notwithstanding KRS 45.229, trust fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(4) Any interest earned on moneys in the trust fund shall become a part of the trust fund and shall not lapse.

(5) Trust fund moneys shall be used for Early Graduation Scholarship Certificate awards as described in KRS 158.142. Funds shall be distributed by the Kentucky Higher Education Assistance Authority in accordance with KRS 158.142.

History.

Enact. Acts 2013, ch. 104, § 2, effective June 25, 2013.

164.7894. Kentucky Coal County College Completion Program.

(1) The General Assembly recognizes that the bachelor degree attainment rate in the coal-producing counties of Kentucky is lower than the state average. It is the intent of the General Assembly to establish the Kentucky Coal County College Completion Program to assist residents of coal-producing counties who are attending postsecondary education institutions located in coal-producing counties by providing:

(a) Scholarships to:

1. Decrease the financial barriers to bachelor's degree completion; and

2. Encourage students to remain in the area; and

(b) Grants to community colleges located in coal-producing counties to enhance the extent and quality of student support services and program offerings necessary to increase student success and degree production in the area.

(2) For purposes of this section:

(a) "District" means the Kentucky Coal County District consisting of coal-producing counties as defined in KRS 42.4592(1)(c);

(b) "High school" means a Kentucky public high school or a private, parochial, or church school located in Kentucky that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;

(c) "Kentucky Coal County College Completion scholarship" or "KCCCC scholarship" means a scholarship described in subsection (1)(a) of this section;

(d) "Kentucky Coal County College Completion student services grant" or "KCCCC student services grant" means a grant described in subsection (1)(b) of this section; and

(e) "Tuition" means the in-state tuition and mandatory fees charged to all students as a condition of enrollment in an undergraduate program.

(3) A participating institution shall:

(a) Be physically located in the district;

(b) Offer bachelor's degree programs; and be:

(c)1. A regionally accredited, independent nonprofit Kentucky college or university licensed by the Council on Postsecondary Education whose main campus is based in the district, including a work-college as determined by the Kentucky Higher Education Assistance Authority;

2. A four (4) year public university extension campus; or

3. A regional postsecondary education center, including the University Center of the Mountains.

(4) A participating institution may establish extension campuses within the district to offer bachelor degree programs for purposes of this section.

(5) A nonparticipating institution shall:

(a) Have its main campus located in Kentucky but not in the district;

(b) Offer a bachelor's degree program not offered at any participating institution;

(c) Be accredited by the Southern Association of Colleges and Schools; and

(d) Be a public or independent, nonprofit college or university that is licensed by the Council on Postsecondary Education.

(6) The Kentucky Higher Education Assistance Authority shall administer the Kentucky Coal County College Completion Program and shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for the administration of the program.

(7) The authority may award a KCCCC scholarship under this section, to the extent funds are available for that purpose, to any person who:

(a) Is considered a permanent resident of the district for at least one (1) year immediately preceding July 1 of the academic year in which the scholarship is made;

(b) Is a United States citizen;

(c) Is a Kentucky resident as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

(d) Completes and submits the Free Application for Federal Student Aid for the academic year in which the grant is made;

(e) Has earned at least sixty (60) credits or the equivalent of completed coursework toward a bachelor's degree;

(f) Is enrolled at least half-time at a participating institution, or a nonparticipating institution in accordance with subsection (8) of this section, in upper division courses in a program of study that leads to a bachelor's degree;

(g) Is in good academic standing in accordance with the institution's policy; and

(h) Is not in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the authority for cause.

(8) A student otherwise eligible for the KCCCC scholarship who is enrolled in a nonparticipating institution shall be eligible to receive the KCCCC scholarship if he or she is enrolled in a bachelor's degree program in a field of study that is not offered at any participating institution. A program shall be clearly unlike any degree program offered by a participating institution to be eligible. The authority shall promulgate administrative regulations to establish procedures to designate the approved programs of study at nonparticipating institutions for which an eligible student can receive the KCCCC scholarship, which shall include a program review process that requires fifty percent (50%) or more of the courses offered in a program to be different from courses available in a program offered by a participating institution. The maximum annual total of KCCCC scholarships expended for this purpose, to the extent funds are available, shall not exceed five percent (5%) of the amount appropriated for KCCCC scholarships.

(9)(a) The KCCCC scholarship amount provided to a student may be applied to the student's cost of attendance and shall be forty percent (40%), up to the maximum amount defined in subsections (10) and (11) of this section, of the amount remaining after subtracting the student's federal and state grants and scholarships from the institution's published tuition and mandatory fees amount that is used for purposes of packaging federal student aid. Work study and student loan funds shall not be included in the calculation.

(b) For purposes of this subsection, the tuition amount for a work-college, as described in subsection (3)(c)1. of this section, shall be the average tuition and mandatory fees amount of the participating institutions that are described in subsection (3)(c)1. of this section and are not work-colleges.

(c) Students attending less than full-time shall receive a pro rata amount as determined by the authority.

(10) The maximum KCCCC scholarship award amount for the 2014-2015 academic year shall not exceed:

(a) Six thousand eight hundred dollars ($6,800) per academic year for a student attending a participating institution that is a nonprofit, independent college or university;

(b) Two thousand three hundred dollars ($2,300) per academic year for a student attending a participating institution that is a public university extension campus or a regional postsecondary education center; or

(c) Three thousand four hundred dollars ($3,400) per academic year for a student attending a nonparticipating institution as prescribed in subsection (8) of this section.

(11) The authority shall calculate the average annual percentage increase in tuition for the six (6) comprehensive universities as defined in KRS 164.001. The maximum KCCCC scholarship amounts in subsection (10) of this section shall be increased for each subsequent academic year by the total average percentage increase since the 2014-2015 academic year.

(12) The authority shall award KCCCC scholarships chronologically based on when applicants submit the Free Application for Federal Student Aid until funds are exhausted, except prior recipients shall be awarded before any new KCCCC scholarship recipients. Applicants who received a KCCCC scholarship in the immediately preceding academic semester and apply by the deadline established by the authority shall be awarded first.

(13) A student may receive a KCCCC scholarship for a maximum of five (5) full-time fall or spring academic semesters, or their equivalent under a trimester or

quarter system, or until the completion of a first bachelor's degree, whichever occurs first. The authority shall determine the equivalent usage of academic semester eligibility for students enrolled less than full-time.

(14) The authority may award KCCCC student services grants under this section, to the extent funds are available for that purpose, to a Kentucky Community and Technical College System institution that is physically located in the district.

(15) The maximum annual KCCCC student services grant shall be one hundred fifty thousand dollars ($150,000) per institution.

(16) KCCCC student services grants shall be used for the following purposes:

(a) To expand outreach services in high schools, in coordination with outreach services provided by the authority, to advise students of the advantages and importance of seeking a bachelor's degree and the opportunities to attain a bachelor's degree within the district;

(b) To expand advising resources to encourage completion of associate degree programs and transfer into bachelor's degree programs;

(c) To expand career advising resources to better link baccalaureate academic pursuits to career opportunities, especially within the district; and

(d) To provide multifaceted retention and student transfer initiatives to encourage associate degree completion leading to bachelor's degree programs.

(17) Beginning November 1, 2015, and each year thereafter, the authority shall make an annual report to the Interim Joint Committee on Education on the status of the Kentucky Coal County College Completion Program.

(18) Every four (4) years after implementation of the Kentucky Coal County College Completion Program, the authority shall evaluate the program to ensure the policy objectives are being realized and to suggest adjustments to maximize the increase in bachelor's degree completion rates.

(19) Each participating institution, nonparticipating institution, and recipient of a KCCCC student services grant shall make data available to the authority for the report and evaluation described in subsections (17) and (18) of this section.

(20) If any participating institution, nonparticipating institution, or recipient of a KCCCC student services grant does not demonstrate improved performance in student performance metrics, including but not limited to graduation and transfer rates, the authority may revoke the institution's eligibility for participation in the KCCCC scholarship or KCCCC student services grant.

(21)(a) The coal county college completion scholarship fund is hereby created as a trust fund in the State Treasury to be administered by the Kentucky Higher Education Assistance Authority for the purpose of providing scholarships described in subsection (1)(a) of this section.

(b) The trust fund shall consist of amounts appropriated annually from coal severance tax receipts to the extent that the enacted biennial budget of the Commonwealth includes such appropriations. The trust fund may also receive gifts and grants from public and private sources and federal funds. No general fund moneys shall be appropriated for this purpose.

(c) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund.

(d) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section.

(22)(a) The coal county college completion student services grant fund is hereby created as a trust fund in the State Treasury to be administered by the Kentucky Higher Education Assistance Authority for the purpose of providing grants described in subsection (1)(b) of this section.

(b) The trust fund shall consist of amounts appropriated annually from coal severance tax receipts to the extent that the enacted biennial budget of the Commonwealth includes such appropriations. The trust fund may also receive gifts and grants from public and private sources and federal funds. No general fund moneys shall be appropriated for this purpose.

(c) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund.

(d) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section.

History.

Enact. Acts 2014, ch. 133, § 1, effective July 15, 2014.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, K, 2, (10) at 2104.

CHAPTER 164A

HIGHER EDUCATION FINANCE

Kentucky Educational Savings Plan Trust.

Section

164A.300. Legislative findings and intent.
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164A.337. Endowment trust for student financial assistance benefits — Authority to incorporate corporation to administer — Annual report. [Repealed].
164A.340. [Repealed.]
164A.345. [Repealed.]
164A.350. Ownership of contributions and interest — Cancellation of participation agreement — Transfer of ownership rights — Penalty on earnings refunded due to cancellation or nondistribution — Exemption from creditor's execution.
164A.355. Effect of payments on determination of need and eligibility for student aid.
164A.360. Borrowing from the trust. [Repealed].
164A.365. Annual audited financial report to Governor, General Assembly, and State Auditor.
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Commonwealth Postsecondary Education Prepaid Tuition Trust Fund.

164A.700. Definitions for KRS 164A.700 to 164A.709.
164A.701. Commonwealth postsecondary education prepaid tuition trust fund — Prepaid postsecondary tuition administrative account.
164A.703. Board of directors. [Repealed.]
164A.704. Duties of board.
164A.705. Obligations of fund and of purchaser or qualified beneficiary — Limitation of liability — Use of tuition account.
164A.707. Prepaid tuition contracts — Amendments — Accounts not subject to creditors or taxes — No guarantee of attendance at institution — Payment of contracts — Beneficiaries — Investments and earnings — Contracts not securities or annuities — Contracts subject to amendment by subsequent change to statute, regulation, or policy.
164A.708. Prepaid tuition contracts entered into before and after April 25, 2006 — Obligations of the Commonwealth.
164A.709. Termination of prepaid tuition contract or account — Transfer of funds — Operations of Commonwealth postsecondary education prepaid tuition trust fund and the Tuition Account Program Office to end on June 30, 2030.

KENTUCKY EDUCATIONAL SAVINGS PLAN TRUST

164A.300. Legislative findings and intent.

(1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.

(2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education costs in the Commonwealth and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use.

(3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS 164A.300 to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.

(4) It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on contributions expended by the trust for the higher education costs of a beneficiary.

History.

Enact. Acts 1988, ch. 88, § 1, effective July 15, 1988; 1992, ch. 190, § 2, effective July 14, 1992; 1998, ch. 132, § 1, effective March 26, 1998; 2000, ch. 382, § 1, effective July 14, 2000.

164A.305. Definitions for KRS 164A.300 to 164A.380.

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

(1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;

(2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;

(3) "Beneficiary" means:

(a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for education costs at an educational institution;

(b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330(4); or

(c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;

(4) "Benefits" means the payment of education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an educational institution;

(5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;

(6) "Educational institution" means an eligible educational institution under 26 U.S.C. sec. 529(e)(5) or an elementary or secondary public, private, or religious school;

(7) "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;

(8) "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;

(9) "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of educational costs on behalf of a beneficiary;

(10) "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;

(11) "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;

(12) "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;

(13) "Qualified educational expenses" means:

(a) With regard to higher education expenses, the costs specified in 26 U.S.C. sec. 529(e)(3) for attendance at an institution of higher education;

(b) With regard to elementary and secondary education expenses, tuition of up to ten thousand dollars ($10,000) per year in connection with enrollment or attendance at an elementary or secondary public, private, or religious school;

(c) With regard to qualified education loan repayments, the amounts paid as principal or interest on any qualified education loan, as defined in 26 U.S.C. sec. 221(d), of the beneficiary or his or her sibling, not to exceed an aggregate amount of ten thousand dollars ($10,000) per person; and

(d) With regard to registered apprenticeship programs, expenses for fees, books, supplies, and equipment for participation in an apprenticeship program registered and certified with the United States Secretary of Labor;

(14) "Tuition" means the quarterly or semester charges imposed to attend an educational institution and required as a condition of enrollment; and

(15) "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

History.

Enact. Acts 1988, ch. 88, § 2, effective July 15, 1988; 1992, ch. 190, § 3, effective July 14, 1992; 1996, ch. 11, § 1, effective July 15, 1996; 1998, ch. 132, § 3, effective March 26, 1998; 2000, ch. 382, § 2, effective July 14, 2000; 2018 ch. 137, § 1, effective July 14, 2018; 2020 ch. 65, § 1, effective July 15, 2020.

164A.310. Kentucky Educational Savings Plan Trust — Powers of board.

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educational Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

(1) Sue and be sued;

(2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;

(3) Adopt a corporate seal and to change and amend it from time to time;

(4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;

(5) Enter into agreements with any educational institution, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;

(7) Enter into participation agreements with participants;

(8) Make payments to an educational institution pursuant to participation agreements on behalf of beneficiaries;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;

(10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;

(11) Delegate to the program administrator general supervision and direction over the administrative function of the trust and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;

(12) Make provision for the payment of costs of administration and operation of the savings plan trust;

(13) Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; and

(14) Promulgate administrative regulations to implement the provisions of KRS 164A.300 to

164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.

History.
Enact. Acts 1988, ch. 88, § 3, effective July 15, 1988; 1990, ch. 321, § 9, effective July 13, 1990; 1992, ch. 190, § 4, effective July 14, 1992; 1998, ch. 132, § 2, effective March 26, 1998; 2000, ch. 382, § 3, effective July 14, 2000; 2018 ch. 137, § 2, effective July 14, 2018.

Compiler's Notes.
Section 13 of Acts 2000, ch. 382, effective July 14, 2000, read: "Moneys held by the Kentucky Educational Savings Plan Trust on June 30, 2000, as an endowment for purposes of distributing investment earnings to beneficiaries enrolled in an institution of higher education in Kentucky may, at the discretion of the board of directors of the Kentucky Higher Education Assistance Authority in its capacity of trustee, be distributed as follows:
"(1) The investment earnings on the endowment fund accrued as of June 30, 2000, shall be allocated and proportionally added to each participant's account in the program fund; and
"(2) The remainder of the moneys held in the endowment fund on June 30, 2000, including, but not limited to, any contributions to the endowment, may be distributed in any amount and combination of the following dispositions:
"(a) Proportionally added to each participant's account in the program fund; or
"(b) Transferred to the administrative fund."

164A.315. Office facilities, clerical and administrative support for endowment trust. [Repealed]

History.
Enact. Acts 1988, ch. 88, § 4, effective July 15, 1988; 1992, ch. 190, § 5, effective July 14, 1992; repealed by 2015 ch. 94, § 2, effective June 24, 2015.

Compiler's Notes.
This section (Enact. Acts 1988, ch. 88, § 4, effective July 15, 1988; 1992, ch. 190, § 5, effective July 14, 1992) was repealed by Acts 2015, ch. 94, § 2, effective June 24, 2015.

164A.320. Board of the trust — Membership — Terms — Meetings. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1988, ch. 88, § 5, effective July 15, 1988) was repealed by Acts 1992, ch. 190, § 13, effective July 14, 1992.

164A.325. Additional powers of board as to savings plan trust.

In addition to effectuating and carrying out all of the powers granted by KRS 164A.300 to 164A.380, the board, as trustee, shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of KRS 164A.300 to 164A.380 pertaining to the savings plan trust, including, but not limited to, the power to:

(1) Engage investment advisors to assist in the investment of savings plan trust assets;

(2) Carry out studies and projections in order to advise participants regarding present and estimated future education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;

(3) Contract, in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343, for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;

(4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;

(5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;

(6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;

(7) Administer the funds of the savings plan trust;

(8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and

(9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

History.
Enact. Acts 1988, ch. 88, § 6, effective July 15, 1988; 1990, ch. 321, § 10, effective July 13, 1990; 1992, ch. 190, § 6, effective July 14, 1992; 2000, ch. 382, § 4, effective July 14, 2000; 2018 ch. 137, § 3, effective July 14, 2018.

164A.330. Participation agreements for savings plan trust — Confidentiality of information.

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

(1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;

(2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;

(3) Execution of a participation agreement by the trust shall not guarantee in any way that educational costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:

(a) Be admitted to an educational institution;

(b) Be allowed to continue attendance at the educational institution following admission;

(c) Graduate from the educational institution; or

(d) With regard to an institute of higher education, if admitted, be determined to be a resident for tuition purposes by the institution, unless the participation agreement is vested;

(4) Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant provided, however, that the substitute beneficiary shall be eligible;

(5) Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;

(6) Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky;

(7) Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;

(8) The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated education costs of the beneficiary;

(9) The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;

(10) Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:

(a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;

(b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;

(c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and

(d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

History.

Enact. Acts 1988, ch. 88, § 7, effective July 15, 1988; 1992, ch. 190, § 7, effective July 14, 1992; 1996, ch. 11, § 2, effective July 15, 1996; 1998, ch. 132, § 4, effective March 26, 1998; 2000, ch. 382, § 5, effective July 14, 2000; 2018 ch. 137, § 4, effective July 14, 2018.

164A.335. Program and administrative funds for savings plan trust — Investment and payments from funds.

The board, as trustee, shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Contributions shall be accounted for separately for each beneficiary. Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education.

History.

Enact. Acts 1988, ch. 88, § 8, effective July 15, 1988; 1992, ch. 190, § 8, effective July 14, 1992; 1998, ch. 132, § 5, effective March 26, 1998; 2000, ch. 382, § 6, effective July 14, 2000.

164A.337. Endowment trust for student financial assistance benefits — Authority to incorporate corporation to administer — Annual report. [Repealed]

(1) The board is authorized to incorporate an organization pursuant to KRS Chapter 273 for the eleemosynary, charitable, and educational purposes of administering an endowment trust. The organization so created shall be an instrumentality of the Commonwealth, but shall possess no part of the sovereign powers of the Commonwealth. The corporation shall be created to qualify as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) The endowment trust created pursuant to subsection (1) of this section shall solicit and accept gifts, grants, donations, bequests, or other endowments, including general fund appropriations from the Commonwealth and grants from any federal or other governmental agency, for the purposes of the endowment trust.

(3) The endowment trust shall provide student financial assistance benefits, including, but not limited to, grants, scholarships, or loans to pay higher education costs of members of the public, designated as beneficiaries of participation agreements under the Kentucky Educational Savings Plan Trust, who enroll in an institution of higher education in Kentucky.

(4) The board is authorized to transfer to the endowment trust, after its qualification under Section 501(c)(3) of the Internal Revenue Code, any funds or

assets then held in the endowment fund initially established pursuant to KRS 164A.335.

(5) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership or corporation to the endowment trust shall be a grant, gift, or donation for the accomplishment of a valid public, eleemosynary, charitable, and educational purpose.

(6) The endowment trust shall submit an annual audited report, in accordance with KRS 164A.365(1) and (2), to the program administrator not later than the fifteenth of each September.

History.

Enact. Acts 1992, ch. 190, § 1, effective July 14, 1992; repealed by 2015 ch. 94, § 1, effective June 24, 2015.

Compiler's Notes.

Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (4) of this section, is compiled as 26 USCS § 501(c)(3).

This section (Enact. Acts 1992, ch. 190, § 1, effective July 14, 1992) was repealed, reeancted and amended as KRS 164.7534 by Acts 2015, ch. 94, § 1, effective June 24, 2015.

164A.340. Substitution of beneficiaries. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1988, ch. 88, § 8, effective July 15, 1988) was repealed by Acts 1992, ch. 190, § 13, effective July 14, 1992.

164A.345. Cancellation of participation agreements. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1988, ch. 88, § 10, effective July 15, 1988; 1992, ch. 190, § 9, effective July 14, 1992) was repealed by Acts 1998, ch. 132, § 7, effective March 26, 1998.

164A.350. Ownership of contributions and interest — Cancellation of participation agreement — Transfer of ownership rights — Penalty on earnings refunded due to cancellation or nondistribution — Exemption from creditor's execution.

For all purposes of Kentucky law, the following shall be applicable:

(1) The trust shall exercise ownership of all contributions made under any participation agreement and all interest derived from the investment of the contributions made by the participant up to the date of utilization for payment of educational costs for the beneficiary. All contributions made under any participant agreement and interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;

(2) Any participant may cancel a participation agreement at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee. In the event the participation agreement is terminated in part, the trust shall retain ownership of all contributions made under the participation agreement not previously expended for the qualified educational expenses of the beneficiary and not returned to the participant. The participant shall retain a reversionary right to receive upon termination the actual market value of the participant's account at the time of the cancellation, including interest, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (6) of this section;

(3) The educational institution shall obtain ownership of the distributions made from the participant's account for the qualified educational expenses paid to the institution at the time each payment is made to the institution;

(4) Any amounts received by the trust pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section shall be owned by the trust;

(5) A participant may transfer the participant's rights to another eligible participant, including, but not limited to, a gift of the participant's rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be effected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;

(6) Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's qualified educational expenses, the board may charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:

(a) The death, permanent disability, or mental incapacity of the beneficiary; or

(b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and

(7) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

History.

Enact. Acts 1988, ch. 88, § 11, effective July 15, 1988; 1992, ch. 190, § 10, effective July 14, 1992; 1998, ch. 132, § 6,

effective March 26, 1998; 2000, ch. 163, § 10, effective July 14, 2000; 2000, ch. 382, § 7, effective July 14, 2000; 2003, ch. 180, § 5, effective June 24, 2003; 2004, ch. 111, § 9, effective July 13, 2004; 2018 ch. 137, § 5, effective July 14, 2018.

164A.355. Effect of payments on determination of need and eligibility for student aid.

No student loan program, student grant program or other program administered by any agency of the Commonwealth, except as may be otherwise provided by federal law or the provisions of any specific grant applicable thereto, shall take into account and consider amounts available for the payment of higher education costs pursuant to the Kentucky Educational Savings Plan Trust in determining need and eligibility for student aid.

History.
Enact. Acts 1988, ch. 88, § 12, effective July 15, 1988.

164A.360. Borrowing from the trust. [Repealed]

History.
Enact. Acts 1988, ch. 88, § 13, effective July 15, 1988; 2000, ch. 382, § 8, effective July 14, 2000; repealed by 2018 ch. 137, § 7, effective July 14, 2018.

164A.365. Annual audited financial report to Governor, General Assembly, and State Auditor.

(1) The board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the savings plan trust by the first day of November to the Governor, the General Assembly, and the Auditor of Public Accounts. The annual audit shall be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by the following information prepared by the board:

(a) Any studies or evaluations prepared in the preceding year;

(b) A summary of the benefits provided by the trusts including the number of participants and beneficiaries in the trust; and

(c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the savings plan trust and the endowment trust.

History.
Enact. Acts 1988, ch. 88, § 14, effective July 15, 1988; 1992, ch. 190, § 11, effective July 14, 1992.

164A.370. Tax exemption.

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. Investment income earned on contributions paid by any participant and used for qualified educational expenses defined in KRS 164A.305(13) or refunded under KRS 164A.350 shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the investment income was accrued being deemed and declared to be entirely public in nature. Earnings that are not used for qualified educational expenses as defined in KRS 164A.305(13) and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350.

History.
Enact. Acts 1988, ch. 88, § 15, effective July 15, 1988; 2000, ch. 382, § 9, effective July 14, 2000; 2003, ch. 150, § 2, effective June 24, 2003; 2003, ch. 180, § 6, effective June 24, 2003; 2018 ch. 137, § 6, effective July 14, 2018.

164A.375. Property rights to assets in trust.

The assets of the trust, including the program fund, shall at all times be preserved, invested and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

History.
Enact. Acts 1988, ch. 88, § 16, effective July 15, 1988; 2000, ch. 382, § 10, effective July 14, 2000.

164A.380. Liberal construction.

KRS 164A.300 to 164A.380 shall be construed liberally in order to effectuate its legislative intent. The purposes of KRS 164A.300 to 164A.380 and all provisions of KRS 164A.300 to 164A.380 with respect to powers granted shall be broadly interpreted to effectuate such intent and purposes and not as to any limitation of powers.

History.
Enact. Acts 1988, ch. 88, § 17, effective July 15, 1988.

COMMONWEALTH POSTSECONDARY EDUCATION PREPAID TUITION TRUST FUND

164A.700. Definitions for KRS 164A.700 to 164A.709.

As used in KRS 164A.700 to 164A.709, unless the context requires otherwise:

(1) "Academic year" means the time period specified by each eligible educational institution;

(2) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority acting in the capacity of the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;

(3) "Eligible educational institution" means an institution defined in the Internal Revenue Code of 1986, as amended, 26 U.S.C. sec. 529(e)(5);

(4) "Fund" means the prepaid tuition payment fund created in KRS 164A.701 and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund" or "Kentucky's Affordable Prepaid Tuition" (KAPT);

(5) "Prepaid tuition" means the amount of tuition estimated by the board for the tuition plan under the prepaid tuition contract;

(6) "Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;

(7) "Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;

(8) "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;

(9) "Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any eligible educational institution as provided in KRS 164A.700 to 164A.709;

(10) "Prepaid tuition conversion" means the difference between the value of a prepaid tuition account and the tuition at an eligible educational institution;

(11) "Prepaid tuition conversion shortfall" means the amount by which the actual tuition cost at an eligible educational institution exceeds the amount of the value of a prepaid tuition account;

(12) "Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;

(13) "Qualified beneficiary" means a designated beneficiary, as defined in 26 U.S.C. sec. 529(e)(1), who is:

(a) A Kentucky resident designated as beneficiary at the time a purchaser enters into a prepaid tuition contract; or

(b) A nonresident designated at the time a purchaser enters into a prepaid tuition contract who intends to attend an eligible institution in Kentucky; or

(c) A new beneficiary, in the case of a change of beneficiaries under provisions of KRS 164A.707; or

(d) An individual receiving a scholarship in the case of a prepaid tuition contract purchased by a state or local government or agency or instrumentality thereof or an organization described in 26 U.S.C. sec. 501(c)(3), and exempt from federal income taxation pursuant to 26 U.S.C. sec. 501(a) as part of a scholarship program offered by the government entity or the organization;

(14) "Qualified postsecondary education expenses" means qualified higher education expenses as defined in 26 U.S.C. sec. 529(e)(3);

(15) "Tuition" means the prevailing tuition and all mandatory fees charged as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend an eligible educational institution;

(16) "Tuition Account Program Office" or "office" means the office in the Kentucky Higher Education Assistance Authority that is responsible for administering the prepaid tuition program and its accounts;

(17) "Tuition plan" means a tuition plan approved by the board and provided under a prepaid tuition contract;

(18) "Utilization period" means:

(a) For a prepaid tuition account depleted or terminated prior to June 27, 2019, the period of time in which a prepaid tuition contract is to be used beginning with the projected college entrance year and continuing for the number of prepaid tuition years purchased; or

(b) For a prepaid tuition account not depleted or terminated as of June 27, 2019, the period of time in which a prepaid tuition contract is to be used beginning with the projected college entrance year and continuing for eight (8) years; and

(19) "Value of a prepaid tuition account" means the amount which the fund is obligated to pay for a prepaid tuition contract, when a purchaser has paid it in full, that is calculated by multiplying the plan tuition amount for the academic period by the number of prepaid tuition years purchased, less any portion previously paid; except, under a tuition plan for private colleges and universities, tuition shall be calculated based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment.

History.

Enact. Acts 2000, ch. 163, § 1, effective July 14, 2000; 2002, ch. 25, § 1, effective July 15, 2002; 2005, ch. 162, § 3, effective July 1, 2005; Acts 2006, ch. 252, Pt. XXXI, § 1, effective April 25, 2006; 2014, ch. 34, § 1, effective July 15, 2014; 2019 ch. 9, § 1, effective June 27, 2019.

OPINIONS OF ATTORNEY GENERAL.

The Kentucky Postsecondary Education Prepaid Trust Fund is a public instrumentality of the Commonwealth of Kentucky for purposes of the Securities Act of 1933, Securities Exchange Act of 1934, and Trust Indenture Act of 1939. OAG 01-3, 2001 Ky. AG LEXIS 6.

164A.701. Commonwealth postsecondary education prepaid tuition trust fund — Prepaid postsecondary tuition administrative account.

(1)(a) There is hereby created an instrumentality of the Commonwealth to be known as the "Commonwealth postsecondary education prepaid tuition trust fund", to be governed by the board and administered by the Tuition Account Program Office. The fund shall be attached to the Kentucky Higher Education Assistance Authority for administrative and reporting purposes, and shall be governed, managed, and administered as a separate and distinct instrumentality of the Commonwealth under the provisions of KRS 164A.700 to 164A.709.

(b) The fund shall consist of payments received from prepaid tuition contracts under KRS 164A.700 to 164A.709. Payments received relating to contracts in existence on April 25, 2006, and income earned from the investment of those payments shall be maintained separately from payments received relating to contracts entered into after April 25, 2006, and

income earned from the investment of those payments. Income earned from the investment of payments to the fund shall remain in the fund and be credited to it.

(c) Notwithstanding any other statute to the contrary, all moneys received under the authority of KRS 164A.700 to 164A.709 shall be deemed to be trust funds to be held and applied solely for payment to qualified beneficiaries and purchasers and to meet the expenses necessary for the administration and maintenance of the fund as provided in KRS 164A.700 to 164A.709.

(d) The fund shall not constitute an investment company as defined in KRS 291.010.

(e) Obligations under a prepaid tuition contract incurred in accordance with the provisions of KRS 164A.700 to 164A.709 shall not be deemed to constitute a debt, liability, or obligation of the Kentucky Higher Education Assistance Authority, but shall be payable solely from the fund. Each prepaid tuition contract shall contain a statement that the obligation shall be payable solely from the fund.

(2) The purposes of the fund are:

(a) To provide affordable access to participating institutions for the qualified beneficiaries; and

(b) To provide students and their parents economic protection against rising tuition costs.

(3) The Tuition Account Program Office and the facilities of the Kentucky Higher Education Assistance Authority shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the employment of staff to assist in the administration of the fund, the management of accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments.

(4)(a) Assets of the fund shall be invested in any of the following security types that are deemed appropriate by the board:

1. Government and agency bonds;

2. Investment grade asset-backed securities and corporate bonds;

3. Mortgages, excluding interest-only (IO), principal-only (PO), and inverse floaters; and

4. Equities.

(b) Equities shall constitute no greater than sixty percent (60%) of the entire portfolio, including up to ten percent (10%) in equities from outside the United States.

(c) The duration of the fixed-income portion of the portfolio shall reflect the future liability of the fund for tuition payments.

(d) Assets may be pooled for investment purposes with any other investment of the Commonwealth that is eligible for asset pooling.

(e) Leveraging is strictly prohibited.

(5) The board may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board together with funds that are obtained from sources legally available and determined by the board to be applicable for the purposes of KRS 164A.700 to 164A.709.

(6) There is created a separate account within the Kentucky Higher Education Assistance Authority to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the fund.

(a) Moneys shall be transferred from the fund to the administrative account to meet the expenses necessary for the administration and maintenance of the fund. Expenses incurred by the board and the Tuition Account Program Office in carrying out the provisions of KRS 164A.700 to 164A.709 shall be made payable from the fund through the administrative account, and no administrative expenses shall be incurred by the Kentucky Higher Education Assistance Authority beyond those for which moneys are provided by the fund.

(b) The board may establish administrative fees for handling prepaid tuition contracts and deposit the funds attributable to the fees in the administrative account.

History.

Enact. Acts 2000, ch. 163, § 2, effective July 14, 2000; 2002, ch. 25, § 2, effective July 15, 2002; 2005, ch. 162, § 4, effective July 1, 2005; 2006, ch. 252, Pt. XXXI, § 3, effective April 25, 2006; 2018 ch. 163, § 88, effective July 14, 2018.

164A.703. Board of directors. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 2000, ch. 163, § 3, effective July 14, 2000; 2002, ch. 25, § 3, effective July 15, 2002) was repealed by 2005, ch. 162, § 10, effective July 1, 2005.

Legislative Research Commission Notes.

(7/1/2005). Under KRS 446.260, the repeal of this section in 2005 Ky. Acts ch. 162 prevails over its amendment in 2005 Ky. Acts ch. 85.

164A.704. Duties of board.

The board shall:

(1) Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of KRS 164A.700 to 164A.709;

(2) Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

(3) Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by KRS 164A.701(4) and deemed appropriate by the board;

(4) Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;

(5) Make arrangements with eligible educational institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend an eligible educational institution in which the beneficiary is admitted and enrolled;

(6) Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including but not limited to, the termination, withdrawal, or transfer of payments under a prepaid tuition contract; tuition shortfalls; number of participants; time

limitations for prepaid tuition contracts and the use of tuition benefits; tuition conversions; payment schedules; payroll deductions; penalties for failure of purchasers to adhere to contracts; and transfer of prepaid tuition credits towards private education in the Commonwealth or for out-of-state institutions;

(7) Have the actuarial soundness of the fund evaluated by a nationally recognized independent actuary annually, by October 1 of each year, to determine:

(a) The amount of prepaid tuition for each tuition plan; and for each eligible educational institution for specific academic years, the corresponding value;

(b) Whether additional assets are necessary to defray the obligations of the portion of the fund relating to contracts entered into before April 25, 2006, and when those funds will be needed.

1. For purposes of this paragraph, a "real liability expected to accrue during the next biennium" exists if the amount in the fund representing contracts entered into before April 25, 2006, is not sufficient to meet all anticipated distributions under contracts entered into before April 25, 2006, and the expense of maintaining and operating the fund for the upcoming biennium.

2. If the report of the actuary submitted in an odd-numbered year reflects that there will be a real liability expected to accrue during the next biennium, the secretary of the Finance and Administration Cabinet shall include in the budget request for the cabinet an appropriation to the board in an amount necessary to meet the real liability in each fiscal year of the biennium, and the General Assembly shall appropriate the necessary funds; and

(c) Whether additional assets are necessary to defray the obligations of the portion of the fund relating to contracts entered into after April 25, 2006, and when those funds will be needed. If the assets of the portion of the fund relating to contracts entered into after April 25, 2006, are insufficient to ensure the actuarial soundness of that portion of the fund, as reported by the actuary, the board shall adjust the price of subsequent purchases of prepaid tuition contracts to the extent necessary to restore the actuarial soundness of the fund. The board may suspend the sale of prepaid tuition contracts until the next annual actuarial evaluation is completed if the board determines the action is needed to restore the actuarial soundness of the fund. During a suspension of sales of contracts, the board and Tuition Account Program Office shall continue to service existing contract accounts and meet all obligations under existing prepaid tuition contracts; and

(8) Make an annual report each year by November 1 to the Legislative Research Commission and the Governor showing the fund's condition, and whether additional assets will be necessary to defray the obligations of the fund.

History.

Enact. Acts 2000, ch. 163, § 4, effective July 14, 2000; 2002, ch. 25, § 4, effective July 15, 2002; 2005, ch. 162, § 5, effective July 1, 2005; 2006, ch. 252, Pt. XXXI, § 4, effective April 25, 2006.

164A.705. Obligations of fund and of purchaser or qualified beneficiary — Limitation of liability — Use of tuition account.

(1) The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at an eligible educational institution in accordance with the tuition plan purchased.

(2) A board member or any employee of the Tuition Account Program Office or the Kentucky Higher Education Assistance Authority shall not be subject to any personal liability by reason of his or her issuance or execution of a prepaid tuition contract under KRS 164A.700 to 164A.709.

(3) Under a tuition plan for private colleges and universities, tuition shall be paid based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment.

(4) The purchaser or qualified beneficiary shall pay to the eligible educational institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.

(5) A qualified beneficiary attending an eligible educational institution may apply the value of a prepaid tuition account to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.

(6) The value of a prepaid tuition account remaining after tuition is paid may be used for other qualified educational expenses under administrative regulations promulgated by the board in compliance with 26 U.S.C. sec. 529. The board may permit the use of the value of a prepaid tuition account for part-time undergraduate enrollment or graduate programs at eligible educational institutions.

(7) During an account's utilization period, the value of the prepaid tuition account shall increase consistent with tuition rates for the applicable tuition plan and academic year. If all tuition benefits have not been used at the conclusion of this period, no additional value shall be added to the prepaid tuition account, except that, for an account with a utilization period defined in KRS 164A.700(18)(a), the account value shall increase at a rate of three percent (3%) per annum or the applicable tuition plan value increase, whichever is less, for a period not to exceed two (2) additional years.

(8) If a qualified beneficiary attends an eligible educational institution for which payment of tuition is not guaranteed by the fund in whole or in part, and if the cost of tuition exceeds the value of a prepaid tuition account, the fund shall have no responsibility to pay the difference. If the value of a prepaid tuition account exceeds the cost of tuition, the excess may be used for other qualified postsecondary education expenses as directed by the purchaser.

(9) The value of a prepaid tuition account shall not be used in calculating personal asset contribution for

determining eligibility and need for student loan programs, student grant programs, or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by federal law.

History.

Enact. Acts 2000, ch. 163, § 5, effective July 14, 2000; 2002, ch. 25, § 5, effective July 15, 2002; 2005, ch. 162, § 6, effective July 1, 2005; 2006, ch. 252, Pt. XXXI, § 5, effective April 25, 2006; 2014, ch. 34, § 2, effective July 15, 2014; 2019 ch. 9, § 2, effective June 27, 2019.

NOTES TO DECISIONS

1. Amendment.

Changing the Kentucky Affordable Prepaid Tuition Fund (KAPT) plan in a way that impairs the benefits of participants seeking to educate their children violates the covenant of good faith and fair dealing, and the legislature does not intend the statutes to be interpreted in a way that undermines the Commonwealth's "irrevocable pledge"; subsection (1) is the legislature's imprimatur of respect for KAPT's obligations. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the 2014 amendments did not address a broad and general social or economic problem; the fact that the KAPT program's costs of performing its contractual obligations exceeded its own expectations did not justify altering the obligations so they more closely conformed to its faulty expectations. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the 2014 amendments were neither reasonable nor necessary; the State cannot escape an unfavorable contract with retroactive legislation that substantially impairs the State's contractual obligations because this result is prohibited by the respective Contract Clauses of the United States and Kentucky Constitutions. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Kentucky Affordable Prepaid Tuition Fund (KAPT) contract a parent executed did not provide for retroactive amendments because the changes did not fit within the limited category set forth in the contract; the language of the contract reflected the agreement of the parent to accept future amendments of the governing statutes only to the extent they were necessary to assure compliance with applicable state or federal law or regulations or to preserve favorable tax treatment of the KAPT program. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the amendments fundamentally altered her contractual right to use, for her children, her KAPT funds for graduate school and directly curtailed the financial value of the benefit by capping future growth so that the promised tuition might not be paid; those changes were imposed retroactively, significantly devaluing the benefit promised to the parent. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

164A.707. Prepaid tuition contracts — Amendments — Accounts not subject to creditors or taxes — No guarantee of attendance at institution — Payment of contracts — Beneficiaries — Investments and earnings — Contracts not securities or annuities — Contracts subject to amendment by subsequent change to statute, regulation, or policy.

(1) Purchasers buying prepaid tuition for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of a tuition plan for prepaid tuition for the qualified beneficiary from one (1) to five (5) specific academic years.

(2) Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:

(a) The qualified beneficiary, in accordance with 26 U.S.C. sec. 529;

(b) The projected college entrance year for which prepaid tuition is purchased. Beginning July 15, 2014, if the amendment extends the projected college entrance year, the utilization period shall begin with the initial projected college entrance year;

(c) A tuition plan designation to another tuition plan designation;

(d) The number of years for which prepaid tuition is purchased; or

(e) Other provisions of the prepaid tuition contract as permitted by the board.

(3) A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary. Prepaid tuition accounts shall be exempt from all state and local taxes including, but not limited to, intangible personal property tax levied under KRS 132.020, individual income tax levied under KRS 141.020, and the inheritance tax levied under KRS Chapter 140. Payments from a prepaid tuition account used to pay qualified postsecondary education expenses, or disbursed due to the death or disability of the beneficiary, or receipt of a scholarship by the beneficiary shall be exempt from tax liabilities.

(4) Nothing in KRS 164A.700 to 164A.709 or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted, or be graduated from an eligible educational institution.

(5) Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in a lump sum or installments.

(6) The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract, except for a prepaid tuition contract purchased in accordance with KRS 164A.700(13)(d). In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.

(7) The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.

(8) A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.

(9) Each prepaid tuition contract is subject to, and shall incorporate by reference, all operating procedures and policies adopted by the board, the statutes governing prepaid tuition contracts in KRS 164A.700 to 164A.709, and administrative regulations promulgated thereunder. Any amendments to statutes, administrative regulations, and operating procedures and policies shall automatically amend prepaid tuition contracts, with retroactive or prospective effect, as applicable.

History.

Enact. Acts 2000, ch. 163, § 6, effective July 14, 2000; 2002, ch. 25, § 6, effective July 15, 2002; 2005, ch. 162, § 7, effective July 1, 2005; 2005, ch. 173, Pt. XXI, § 1, effective March 20, 2005, 2006, ch. 252, Pt. XXXI, § 7, effective April 25, 2006; 2014, ch. 34, § 3, effective July 15, 2014; 2018 ch. 163, § 89, effective July 14, 2018.

NOTES TO DECISIONS

1. Amendment.

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the 2014 amendments did not address a broad and general social or economic problem; the fact that the KAPT program's costs of performing its contractual obligations exceeded its own expectations did not justify altering the obligations so they more closely conformed to its faulty expectations. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the 2014 amendments were neither reasonable nor necessary; the State cannot escape an unfavorable contract with retroactive legislation that substantially impairs the State's contractual obligations because this result is prohibited by the respective Contract Clauses of the United States and Kentucky Constitutions. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Changing the Kentucky Affordable Prepaid Tuition Fund plan in a way that impairs the benefits of participants seeking to educate their children violates the covenant of good faith and fair dealing; the legislature does not intend the statutes to be interpreted in a way that undermines the Commonwealth's "irrevocable pledge." Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Kentucky Affordable Prepaid Tuition Fund (KAPT) contract a parent executed did not provide for retroactive amendments because the changes did not fit within the limited category set forth in the contract; the language of the contract reflected the agreement of the parent to accept future amendments of the governing statutes only to the extent they were necessary to assure compliance with applicable state or federal law or regulations or to preserve favorable tax treatment of the KAPT program. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the amendments fundamentally altered her contractual right to use, for her children, her KAPT funds for graduate school and directly curtailed the financial value of the benefit by capping future growth so that the promised tuition might not be paid; those changes were imposed retroactively, significantly devaluing the benefit promised to the parent. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

164A.708. Prepaid tuition contracts entered into before and after April 25, 2006 — Obligations of the Commonwealth.

(1)(a) All prepaid tuition contracts in existence on April 25, 2006, shall be supported by the full faith and credit of the Commonwealth.

(b) If the report of the actuary submitted under KRS 164A.704(7) reflects that there will be a real liability expected to accrue for contracts in existence on April 25, 2006, during the next biennium, the secretary of the Finance and Administration Cabinet shall include in the budget request for the cabinet an appropriation to the board in an amount necessary to meet the real liability in each fiscal year of the biennium, and the General Assembly shall appropriate the necessary funds to meet the liability.

(2)(a) New contracts entered into after April 25, 2006, for a tuition plan approved by the board shall contain actuarially sound premiums sufficient to prevent their contribution to a program fund deficit.

(b) Payments received from contracts entered into after April 25, 2006, shall be maintained separately from contracts in existence on April 25, 2006.

(c) The Commonwealth shall have no obligation to support contracts entered into after April 25, 2006, with appropriations if a shortfall occurs.

History.

Enact Acts 2006, ch. 252, Pt. XXXI, § 2, effective April 25, 2006.

164A.709. Termination of prepaid tuition contract or account — Transfer of funds — Operations of Commonwealth postsecondary education prepaid tuition trust fund and the Tuition Account Program Office to end on June 30, 2030.

(1) A purchaser may terminate a prepaid tuition contract at any time upon written request to the office.

(2) Upon termination of a prepaid tuition contract at the request of a purchaser, the office shall pay from the fund to the purchaser:

(a) The value of the prepaid tuition account or, if the contract has not been paid in full, a pro rata amount calculated according to the portion of the plan that had been paid, if the contract is terminated for the death of the qualified beneficiary or the disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the

beneficiary at an eligible educational institution impossible or unreasonably burdensome;

(b) The amounts paid on the purchaser's prepaid tuition contract if the contract is terminated and a request for refund is made before July 1 of the qualified beneficiary's projected college entrance year. The board may determine a rate of interest to accrue for payment on the amount otherwise payable under this paragraph;

(c) For a prepaid tuition account terminated after June 30 of the qualified beneficiary's projected college entrance year and prior to June 27, 2019:

1. The value of the prepaid tuition account for the 2014-2015 academic year for accounts with a utilization period end date prior to 2012; or

2. The value of the prepaid tuition account at the end of the account's utilization period plus three percent (3%) per annum for a maximum of two (2) years thereafter, or the applicable tuition plan value increase, whichever is less, for accounts with a utilization period end date of 2012 or later; or

(d) For a prepaid tuition account terminated after June 30 of the qualified beneficiary's projected college entrance year and on or after June 27, 2019, the value of the prepaid tuition account at the time of termination.

(3) All refunds paid shall be less any benefits previously paid from the plan and any administrative fees as determined by the board. The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.

(4) If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser may request a refund consisting of the amount of the value of the prepaid tuition account, not to exceed the amount of the scholarship.

(5) If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board and the board of directors of the Kentucky Educational Savings Plan Trust under KRS 164A.325. The transfer amount shall be calculated in the same way a refund is determined in accordance with this section.

(6) If the purchaser wishes to transfer funds from the prepaid tuition account to another qualified tuition program as defined in 26 U.S.C. sec. 529(b)(1), the purchaser may do so under administrative regulations promulgated by the board. The transfer amount shall be calculated in the same way a refund is determined in accordance with this section.

(7) The board may terminate a prepaid tuition contract at any time due to the fraud or misrepresentation of a purchaser or qualified beneficiary with respect to the prepaid tuition contract.

(8) All operations of the Commonwealth postsecondary education prepaid tuition trust fund and the Tuition Account Program Office shall end on June 30, 2030. On or before that date, any remaining prepaid tuition account funds that have not been utilized, transferred to another qualified tuition program, or refunded upon the request of the purchaser shall be refunded to the purchaser in accordance with subsection (2) of this section.

History.

Enact. Acts 2000, ch. 163, § 7, effective July 14, 2000; 2002, ch. 25, § 7, effective July 15, 2002; 2005, ch. 162, § 8, effective July 1, 2005; 2006, ch. 252, Pt. XXXI, § 7, effective April 25, 2006; 2014, ch. 34, § 4, effective July 15, 2014; 2019 ch. 9, § 3, effective June 27, 2019.

NOTES TO DECISIONS

Analysis

2. Amendment.
14. Particular Statutes.

2. Amendment.

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the amendments fundamentally altered her contractual right to use, for her children, her KAPT funds for graduate school and directly curtailed the financial value of the benefit by capping future growth so that the promised tuition might not be paid; those changes were imposed retroactively, significantly devaluing the benefit promised to the parent. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

Retroactive imposition of the Kentucky Affordable Prepaid Tuition Fund (KAPT) amendments upon a parent unlawfully impaired her contract because the 2014 amendments did not address a broad and general social or economic problem; the fact that the KAPT program's costs of performing its contractual obligations exceeded its own expectations did not justify altering the obligations so they more closely conformed to its faulty expectations. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

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Kentucky Affordable Prepaid Tuition Fund (KAPT) contract a parent executed did not provide for retroactive amendments because the changes did not fit within the limited category set forth in the contract; the language of the contract reflected the agreement of the parent to accept future amendments of the governing statutes only to the extent they were necessary to assure compliance with applicable state or federal law or regulations or to preserve favorable tax treatment of the KAPT program. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

14. Particular Statutes.

Kentucky Affordable Prepaid Tuition Fund (KAPT) contract a parent executed did not provide for retroactive amendments because the changes did not fit within the limited category set forth in the contract; the language of the contract reflected the agreement of the parent to accept future amendments of the governing statutes only to the extent they were necessary to assure compliance with applicable state or federal law or

regulations or to preserve favorable tax treatment of the KAPT program. Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund, 559 S.W.3d 354, 2018 Ky. LEXIS 447 (Ky. 2018).

CHAPTER 165A

PROPRIETARY EDUCATION

Commercial Driver's License Training.

Section
165A.515. Application of chapter.

COMMERCIAL DRIVER'S LICENSE TRAINING

165A.515. Application of chapter.

(1) This chapter shall not apply to:

(a) Any school or educational institution which offers to full-time, regularly enrolled students as a part of its curriculum a course in driving instruction for the purposes of obtaining a Kentucky Class D driver's license issued under KRS Chapter 186;

(b) Automobile dealers and their salesmen who give instruction without charge to purchasers of motor vehicles; or

(c) Employers who give instruction without charge to their employees.

(2) This chapter shall not apply to any college within the Kentucky Community and Technical College System which offers to part-time students a course in driver's instruction where there is not a school licensed pursuant to this chapter in the county.

History.

Repealed, reenact. and amend. Acts 2002, ch. 280, § 14, effective April 9, 2002.

Compiler's Notes.

This section was formerly compiled as KRS 332.110.

CHAPTER 167

EDUCATION OF THE PHYSICALLY HANDICAPPED

Section
167.010. [Repealed.]
167.015. Management for Kentucky School for the Blind and School for the Deaf — Extramural services and programs.
167.017. Appointment of superintendent of Kentucky School for the Deaf.
167.020. [Repealed.]
167.025. [Repealed.]
167.030. [Repealed.]
167.035. Kentucky School for the Blind Advisory Board.
167.037. Kentucky School for the Deaf Advisory Board.
167.040. [Repealed.]
167.050. [Repealed.]
167.060. [Repealed.]
167.070. [Repealed.]
167.080. [Repealed.]
167.090. [Repealed.]
167.100. [Repealed.]
167.110. [Repealed.]
167.120. [Repealed.]
167.130. [Repealed.]
167.140. [Repealed.]
167.150. Admission policies, curriculum, and rules for Kentucky School for the Blind and Kentucky School for the Deaf.
167.160. [Repealed.]
167.170. Expulsion of students.
167.180. [Repealed.]
167.190. [Repealed.]
167.210. Definition of "deaf-blind children" for KRS 167.210 to 167.240.
167.220. Authority of Department of Education.
167.230. [Repealed.]
167.240. Authority to adopt rules and regulations.
167.250. Liability insurance for drivers of motor vehicles transporting specified students.
167.990. [Repealed.]

167.010. School for deaf; name, nature and location of. [Repealed.]

Compiler's Notes.

This section (273a-1, 297, 298f-1) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.015. Management for Kentucky School for the Blind and School for the Deaf — Extramural services and programs.

(1) The Kentucky School for the Blind at Louisville, Kentucky, and the Kentucky School for the Deaf at Danville, Kentucky, shall be managed and controlled by the Kentucky Board of Education. The board shall have possession and the responsibility and authority for preservation, repair, and control of the buildings and grounds belonging to the state and dedicated to the schools. The board may, except as provided in KRS 45A.045, sell any property held for the use and benefit of the schools, and purchase other property deemed by the board to be suitably and conveniently located, and erect buildings necessary for carrying out the purposes of the schools. The board may promulgate administrative regulations to carry into effect its powers with respect to the schools, and may require from the superintendent of the schools any reports and information it desires as to the condition of the schools.

(2) In addition to being recognized as a school providing quality, full-time educational services to students who are deaf and hard of hearing or who are blind or visually impaired, the Kentucky School for the Deaf and the Kentucky School for the Blind shall also serve as the Statewide Educational Resource Center on Deafness and as the Statewide Educational Resource Center on Blindness, respectively. They shall provide technical assistance and resource services to local school districts, parents, and other agencies or organizations serving children and youth who are deaf and hard of hearing or who are blind or visually impaired. Depending on the availability of funding, services may include, but not be limited to, assessments; consultations on curriculum; language and communication; orientation and mobility; classroom devices, including telecommunication devices for the deaf and hard of hearing and

Braille for the blind and visually impaired; assistive technology; professional development; and program development and implementation. The Kentucky School for the Deaf and the Kentucky School for the Blind may enter into collaborative agreements with local school districts and other public and private agencies to provide for regional or satellite programs for children and youth who are deaf and hard of hearing or who are blind or visually impaired.

History.

Enact. Acts 1960, ch. 68, Art. IV, § 1; 1966, ch. 255, § 154; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 9, effective July 15, 1980; 1990, ch. 476, Pt. V, § 598, effective July 13, 1990; 1990, ch. 496, § 52, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 219, § 1, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Administrative regulations, KRS Ch. 13A.

Department for the Blind, KRS 163.450 to 163.470.

Property and Building Commission, powers and duties, KRS 56.450.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:002.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

167.017. Appointment of superintendent of Kentucky School for the Deaf.

(1) The superintendent of the Kentucky School for the Deaf shall be appointed by the chief state school officer. The appointment shall be made upon recommendation of a search committee which shall be appointed by the Kentucky Board of Education whenever appointment of a superintendent becomes necessary.

(2) The search committee for the superintendent of the Kentucky School for the Deaf shall consist of the representative of the State Department of Education selected by the chief state school officer, one (1) representative of the Kentucky Association of the Deaf, Inc., one (1) representative of the Kentucky School for the Deaf Alumni Association, Inc., one (1) representative of the Kentucky School for the Deaf faculty, one (1) parent of a student at the Kentucky School for the Deaf, and one (1) representative of the Kentucky School for the Deaf advisory board. The search committee's recommendation must be approved by a majority of the Kentucky Board of Education members.

(3) The superintendent of the Kentucky School for the Deaf may be removed from office by the Kentucky Board of Education only by a majority vote of the Kentucky Board of Education.

History.

Enact. Acts 1982, ch. 267, § 3, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 274, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

167.020. Board of commissioners of school for deaf; membership; terms; organization and powers; quorum. [Repealed.]

Compiler's Notes.

This section (273, 274, 280, 281; amend. Acts 1948, ch. 222, § 2) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.025. School staff — Qualifications of superintendent. [Repealed.]

Compiler's Notes.

This section (Acts 1960, ch. 68, Art. IV, § 2; 1978, ch. 155, § 82) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.030. Records and reports of board. [Repealed.]

Compiler's Notes.

This section (278) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.035. Kentucky School for the Blind Advisory Board.

(1) There may be established a Kentucky School for the Blind Advisory Board composed of five (5) members appointed by the Kentucky Board of Education upon recommendation by the chief state school officer for terms of four (4) years and until their successors are appointed. The board shall elect from its membership a chairman. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) The board shall act in an advisory capacity to assist the superintendent in conducting the activities of the school.

History.

Enact. Acts 1960, ch. 68, Art. IV, § 3; 1978, ch. 155, § 82, effective June 17, 1978; June 1980, ch. 286, § 10, effective July 15, 1980; 1982, ch. 267, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 275, effective July 13, 1990; 1996, ch. 362, § 6, effective July 10, 1996.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky School for Deaf Advisory Board as division of Department of Education, KRS 156.010.

167.037. Kentucky School for the Deaf Advisory Board.

(1) There shall be established a Kentucky School for the Deaf Advisory Board, composed of nine (9) members appointed by the Kentucky Board of Education upon recommendation of the chief state school officer. At the first regular meeting in each fiscal year, the board shall elect a chairman and vice chairman. A member may serve no more than two (2) consecutive years as chairman. Members shall be appointed for regular terms of four (4) years. Members of the board shall serve with-

out compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) Advisory board members for the Kentucky School for the Deaf shall be selected from nominations submitted by the Kentucky Association of the Deaf Inc., the Parent-Teacher-Cottage Parent Association, the Kentucky School for the Deaf Alumni Association Inc., the Kentucky Association of School Administrators, and the chief state school officer. Membership on the board shall be statewide and shall consist of two (2) parents of deaf children, one (1) professional in education of the deaf, one (1) former student of the Kentucky School for the Deaf, one (1) member of the Kentucky Association for the Deaf, two (2) members who shall represent school districts, and two (2) members at large. A majority of the board's membership shall be persons who are deaf or hard of hearing.

(3) The board shall act in an advisory capacity to assist the school superintendent in conducting the activities of the school. The board shall also make recommendations to the chief state school officer concerning all areas relating to the effective operation of the school, including but not limited to:

(a) Goals and objectives,
(b) Budget requests,
(c) Student services,
(d) Public relations,
(e) Construction and maintenance, and
(f) Program evaluation.

History.
Enact. Acts 1982, ch. 267, § 2, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 276, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1997; 2000, ch. 204, § 3, effective July 14, 2000.

Compiler's Notes.
The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

167.040. Purchase and sale of property. [Repealed.]

Compiler's Notes.
This section (277a-1) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.050. Donations. [Repealed.]

Compiler's Notes.
This section (276, 277) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.060. Control of property. [Repealed.]

Compiler's Notes.
This section (277) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.070. Superintendent, teachers and officers; appointment and removal of. [Repealed.]

Compiler's Notes.
This section (280) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.080. Black deaf; provisions concerning school for. [Repealed.]

Compiler's Notes.
This section (282, 283, 283a) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.090. Attendance of deaf children at school compulsory. [Repealed.]

Compiler's Notes.
This section (298f-1, 298f-2) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.100. Children exempt from compulsory attendance. [Repealed.]

Compiler's Notes.
This section (298f-2) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.110. False statement as to child's age prohibited. [Repealed.]

Compiler's Notes.
This section (298f-4) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.120. Failure to send child excused when schools are full. [Repealed.]

Compiler's Notes.
This section (298f-5) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.130. Public schools for deaf to receive children — Exception. [Repealed.]

Compiler's Notes.
This section (298f-8: amend. Acts 1960, ch. 68, Art. IV, § 4) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.140. School for blind — Management — Property. [Repealed.]

Compiler's Notes.
This section (301, 301b, 4618-80; amend. Acts 1966, ch. 255, § 155; 1978, ch. 155, § 82) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.150. Admission policies, curriculum, and rules for Kentucky School for the Blind and Kentucky School for the Deaf.

The Kentucky Board of Education upon recommendation of the chief state school officer may prescribe admission policies, curriculum, and rules for the government and discipline of pupils who attend the Kentucky School for the Blind or the Kentucky School for the Deaf and fix and regulate tuition fees and terms of admission of pupils into the facilities from other states, but no charge shall be made for the admission of pupils from this state.

History.
300, 301a, 4618-80; amend. Acts 1978, ch. 155, § 82, effective

June 17, 1978; 1980, ch. 286, § 11, effective July 15, 1980; 1990, ch. 476, Pt. IV, § 277, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.

NOTES TO DECISIONS

Cited in:
Eva N. v. Brock, 741 F. Supp. 626, 1990 U.S. Dist. LEXIS 8111 (E.D. Ky. 1990), aff'd, 943 F.2d 51, 1991 U.S. App. LEXIS 25854 (6th Cir. Ky. 1991).

OPINIONS OF ATTORNEY GENERAL.

Teachers at the Kentucky School for the Blind are protected by the tenure law set forth in KRS 161.720 to 161.810. OAG 60-1043.

167.160. Advisory committee for school for blind. [Repealed.]

Compiler's Notes.
This section (4618-80; 1978, ch. 155, § 82) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.170. Expulsion of students.

The Kentucky Board of Education shall alone have the power to expel a pupil from the Kentucky School for the Blind or the Kentucky School for the Deaf. The board may delegate that power to a three (3) member panel of the board.

History.
305, 4618-80; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 12, effective July 15, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 599, effective July 13, 1990; 1996, ch. 13, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.

Compiler's Notes.
This section (305, 4618-80; amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 12, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 599, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

167.180. Black blind children. [Repealed.]

Compiler's Notes.
This section (311) was repealed by Acts 1966, ch. 184, § 8.

167.190. Adult blind. [Repealed.]

Compiler's Notes.
This section (312) was repealed by Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 8.

167.210. Definition of "deaf-blind children" for KRS 167.210 to 167.240.

As used in KRS 167.210 to 167.240, unless the context otherwise requires, "deaf-blind children" are those children who are deaf or hard of hearing and have visual impairments, the combination of which causes such severe communication, developmental, and educational problems that they cannot profit satisfactorily from educational programs provided solely for the child with a visual disability or for the child with a hearing disability.

History.
Enact. Acts 1962, ch. 87, § 1; 1980, ch. 286, § 13, effective July 15, 1980; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 600, effective July 13, 1990; 1992, ch. 144, § 11, effective July 14, 1992; 1994, ch. 405, § 32, effective July 15, 1994.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 87, § 1; 1980, ch. 286, § 13, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 600, effective July 13, 1990.

167.220. Authority of Department of Education.

The State Department of Education is hereby authorized to expend available funds for the purpose of sending children who are deaf-blind to any facility, school, or institution, within or without the Commonwealth, which provides a qualified program of education for such children. Such funds may be spent for evaluation and diagnosis, room, board, tuition, transportation, and other items which are necessarily relevant to the education of such children.

History.
Enact. Acts 1962, ch. 87, § 2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 601, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 87, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 601, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

In determining whether the State Department of Education can utilize a particular school to provide education for blind-deaf pupils, the criteria is not who owns and operates the school but in what manner and to what purpose is the school being conducted and if religion is part of the school program, the State Department of Education cannot utilize such a school to provide education for blind-deaf pupils. OAG 74-660.

Although this section does not authorize a school district to contract with an approved out-of-state school for special educational services for exceptional pupils who are not blind and deaf, it may do so under KRS 157.280. OAG 74-742.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Vocational education and rehabilitation, KRS Ch. 163.

167.230. Authority of bureau of education for exceptional children. [Repealed.]

Compiler's Notes.
This section (Acts 1962, ch. 87, § 3; 1978, ch. 155, § 82; 1978, ch. 384, § 50) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.240. Authority to adopt rules and regulations.

The State Department of Education is hereby authorized to adopt and promulgate such rules and regula-

tions as it deems necessary and proper for carrying out the purposes of KRS 167.210 to 167.240.

History.
Enact. Acts 1962, ch. 87, § 4; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 602, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 87, § 4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 602, effective July 13, 1990.

167.250. Liability insurance for drivers of motor vehicles transporting specified students.

The chief state school officer may provide liability insurance or an indemnity bond against the negligence of drivers of motor vehicles owned or operated by the Department of Education for the transportation of members of the student bodies of the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Carl D. Perkins Vocational Training Center. If the transportation of members of the student bodies is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence in such amounts as the chief state school officer designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any student or other person, or death or injury of any student or other person.

History.
Enact. Acts 1984, ch. 348, § 1, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 278, effective July 13, 1990; 2007, ch. 45, § 2, effective June 26, 2007.

167.990. Penalties. [Repealed.]

Compiler's Notes.
This section (298f-3, 298f-4, 298f-6; amend. Acts 1960, ch. 68, Art. IV, § 5; 1976 (Ex. Sess.), ch. 14, § 164) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

CHAPTER 168

EDUCATIONAL TELEVISION

Section
168.010. Declaration of purpose.
168.015. Legislative recognition of importance of education technology.
168.020. Definitions for KRS 168.010 to 168.100.
168.030. Kentucky Authority for Educational Television.
168.040. Membership of authority.
168.050. Terms of members — Vacancies — Reelection or reappointment.
168.060. Meetings — Notice — Quorum — Organization.
168.070. Executive committee.
168.080. Employees.
168.090. Compensation and expenses of members.
168.100. Powers of authority.

168.010. Declaration of purpose.

It is declared to be the legislative purpose of KRS 168.010 to 168.100, and the public policy of the Commonwealth, that there be established, developed, and utilized in the public interest a network of educational television production and related facilities and transmission and relay stations such as will ultimately make available to students in public schools and state-supported institutions of higher education in the Commonwealth, and to any others who may choose to utilize the same, television programs and related services in aid of education, and for incidental use in other proper functions; and that the same be managed, controlled, and operated in the public interest by an independent corporate agency and instrumentality of the Commonwealth having membership such as to be representative of the general public as well as public educational bodies at all levels.

History.
Enact. Acts 1962, ch. 16, § 1; 1970, ch. 204, § 1; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 603, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 16, § 1; 1970, ch. 204, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 603, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
State Property and Buildings Commission, acquisition of educational television facilities, duties, KRS 56.440, 56.550.

Kentucky Bench & Bar.
Mitchell, Beyond McCall: Toward a Neutral Reportage Privilege in Kentucky, Volume 55, No. 1, Winter 1991 Ky. Bench & B. 32.

168.015. Legislative recognition of importance of education technology.

The General Assembly of the Commonwealth of Kentucky recognizes that technology plays an important role in enlarging and enriching the school experiences of students and is vital to an efficient system of public schools.

History.
Enact. Acts 1990, ch. 476, Pt. I, § 20, effective July 13, 1990.

168.020. Definitions for KRS 168.010 to 168.100.

As used in KRS 168.010 to 168.100, the following words and terms have the following meanings, unless in any instance, the context shall clearly indicate another meaning, in which event the context shall be controlling:

(1) "Authority" means the Kentucky Authority for Educational Television;

(2) "Board" means the Kentucky Board of Education;

(3) "Department" means the Kentucky Department of Education;

(4) "Public schools" means the state-supported schools of the elementary and secondary levels, as defined in KRS 157.320;

(5) "Commission" means the State Property and Buildings Commission of Kentucky;

(6) "Council" means the Council on Postsecondary Education in Kentucky;

(7) "University of Kentucky" means the University of Kentucky as one (1) entity, including its present and future extensions;

(8) "State colleges and universities" means and includes Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, Western Kentucky University, and the University of Louisville, and institutions in the Kentucky Community and Technical College System;

(9) "Educational television" means and includes the production of television programs, the filming or taping thereof, the purchase or lease of filmed or taped programs produced by others, and the transmission or relaying of them for utilization:

(a) Which may be used in aid of education in the public schools and public institutions of higher education; and

(b) For limited and incidental use in furtherance of other proper public functions;

(10) "Television facilities" means and includes sites, buildings, structures, machinery, equipment, and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of educational television;

(11) "Related functions" or "related services" means and includes the use of facilities operated or leased by the authority, or which may be added or connected to such facilities as permitted by applicable statutes, and to prepare, transmit, or enable the exchange of nontelevision programs, services, or functions for and among the public schools, public institutions of higher education, and other state agencies:

(a) In aid of education; and

(b) For use in other proper public functions; provided, however, that such related functions or related services may include, but are not limited to, the following examples: computer-assisted instruction, data for teaching or administrative purposes, and educational noncommercial radio;

(12) "Related facilities" means and includes sites, buildings, structures, machinery, equipment, and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of related functions or services.

History.

Enact. Acts 1962, ch. 16, § 3; 1970, ch. 204, § 3; 1972, ch. 181, § 1; 1978, ch. 155, §§ 82, 104, effective June 17, 1978; 1978, ch. 276, § 1, effective June 17, 1978; 1990, ch. 60, § 3, effective July 13, 1990; 1990, ch. 476, Pt. V, § 604, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 142, effective May 30, 1997.

168.030. Kentucky Authority for Educational Television.

An independent agency and instrumentality of the Commonwealth is hereby created and established to be known as "The Kentucky Authority for Educational Television," the same being a public body corporate and politic, with perpetual succession, the power in its own name to contract and be contracted with, sue and be sued, to adopt and use a corporate seal, to adopt bylaws for the orderly conduct of its affairs and to alter the same from time to time, to prescribe and enforce regulations governing the use of educational television and television facilities and related functions and facilities, and generally to have and use all powers of private corporations as set forth in KRS Chapter 271B, except as the same may be inconsistent with the provisions of KRS 168.010 to 168.100.

History.

Enact. Acts 1962, ch. 16, § 2; 1970, ch. 204, § 2; 1972, ch. 274, § 147; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 605, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1962, ch. 16, § 2; 1970, ch. 204, § 2; 1972, ch. 274, § 147) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 605, effective July 13, 1990.

168.040. Membership of authority.

(1) The authority shall consist of nine (9) members, as follows:

The chief state school officer, ex officio, who shall initially serve as temporary chairman and shall call and preside over the organizational meeting or meetings until the members of the authority shall elect a chairman from among their number; a member of the staff or personnel of the department elected by the board upon recommendation of the chief state school officer as being qualified to serve as liaison and coordinator between the authority and the department on matters of curriculum, and his term shall be the same as that of the chief state school officer by whom he is recommended, but terminable by the board in the event he is transferred to other duties in the department, and automatically terminated in the event of his severance from the department for any reason; a representative of the University of Kentucky and a representative of the state universities to be elected by the Council on Postsecondary Education; and five (5) additional members appointed by the Governor who need possess no special or prescribed qualifications except that they shall be citizens of Kentucky.

(2) Effective at 11:59 p.m. on June 30, 1994, all terms of gubernatorial appointees to the authority shall expire. Effective July 1, 1994, five (5) appointees nominated pursuant to KRS 164.005 and appointed by the Governor shall become members of the authority.

History.

Enact. Acts 1962, ch. 16, § 4 (1st par.); 1970, ch. 204, § 4; 1978, ch. 59, § 1, effective June 17, 1978; 1984, ch. 315, § 2, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 279, effective July 13, 1990; 1994, ch. 91, § 2, effective March 22, 1994; 1997 (1st Ex. Sess.), ch. 1, § 143, effective May 30, 1997.

168.050. Terms of members — Vacancies — Re-election or reappointment.

(1) Effective July 1, 1994, the terms of the members other than the chief state school officer and the member appointed from the staff or personnel of the department shall be originally, two (2) members for a term of four (4) years; two (2) members for a term of three (3) years;

two (2) members for a term of two (2) years; and one (1) member for a term of one (1) year, to be determined by the Governor. Thereafter the terms shall be for four (4) years.

(2) In addition to vacancies from death or resignation, vacancies shall occur upon removal of permanent residence from the Commonwealth; in the case of the elected member representing the department and the board, by change of assignment or by severance from relationship with the department or the board for any reason; and, in the cases of the members representing the University of Kentucky and the state colleges, by termination of the member's membership on the council for any reason. Vacancies during the term of any member shall be filled for the unexpired portion of the term only; and vacancies of elected or appointed members by reason of the expiration of the term shall be for terms of four (4) years each, in the same manner as the initial election or appointment, as the case may be.

(3) Elected or appointed members shall be eligible for reelection or reappointment for any number of terms, as long as the prescribed qualifications prevail.

History.

Enact. Acts 1962, ch. 16, § 4 (2nd, 3rd pars.); 1970, ch. 204, § 5; 1990, ch. 476, Pt. IV, § 280, effective July 13, 1990; 1994, ch. 91, § 3, effective March 22, 1994.

168.060. Meetings — Notice — Quorum — Organization.

(1) The authority shall meet not less frequently than quarterly, and otherwise as often as necessary for the orderly conduct of its affairs. If it sees fit to do so, it may establish in its bylaws, or by resolution, four (4) or more fixed dates for regular meetings at one (1) or more specified places, in which event any proper business may come before the authority on such occasions, and it shall not be necessary that the members be given notice thereof unless the chairman shall deem it necessary or desirable that the day, place, or hour be changed, whereupon notice to such effect shall be mailed to each member by the chairman or secretary, by ordinary first-class mail, postage prepaid, not less than one (1) week in advance. Regular meetings may be adjourned to convene again at another time and place, if the facts are shown in a motion or resolution adopted by a majority of those present and entered upon the minutes; and if such be done, the adjourned session shall constitute a continuation of the regular session without notice to absent members; but the motion or resolution of adjournment may specify that every reasonable effort be made to give such notice to absent members as time and circumstances may permit, whereupon the secretary (or in his absence the chairman or any designated member) shall make such effort and report the same and the success or failure thereof as to each member, at the occasion of the adjourned session of the regular meeting. Special meetings may be called by the chairman, vice chairman, secretary, or any two (2) members upon notice of the time, place and business to be transacted, similarly given; and special meetings may be adjourned in like manner as in the case of regular meetings, except that the matters considered shall be limited to such as are set forth in the notice of the special meeting.

(2) Any member may waive notice orally or in writing at any time before, at, or after any meeting; and the presence of a member at any meeting shall constitute a waiver of notice unless such member tenders at such meeting a written protest on the ground of want of sufficient notice.

(3) Five (5) or more members shall constitute a quorum for the transaction of business at any meeting, and a majority vote thereof shall be sufficient to transact any business properly before the meeting. Any lesser number may adjourn to reconvene at another time for failure to muster a quorum.

(4) Immediately upon receiving notice of the election or appointment of all other members, the chief state school officer shall call a meeting for organizational purposes, to be held at Frankfort, Kentucky, at a time and place set forth in a written notice mailed to each member, as set forth above. At this meeting, the chief state school officer shall preside as temporary chairman, and the authority shall elect from among the members a chairman, a vice chairman, a secretary, and a treasurer, and define the duties thereof; or it may combine the office of treasurer with any other office of the authority or with any position created pursuant to KRS 168.080.

History.

Enact. Acts 1962, ch. 16, § 5; 1964, ch. 120; 1990, ch. 476, Pt. IV, § 281, effective July 13, 1990.

168.070. Executive committee.

At such organizational meeting, or at any subsequent meeting, the authority may elect an executive committee, not less than three (3) in number, of which the chairman or vice chairman of the authority shall be a member and the presiding officer. The powers of the executive committee to transact business between meetings of the authority shall be defined, and may be limited, but it shall not be provided that actions of the executive committee within its defined powers and limitations are subject to review, or not final and binding as actions of the authority. The executive committee shall preserve minutes of its proceedings, and file a written copy thereof with the secretary at or before the next ensuing regular meeting of the authority.

History.

Enact. Acts 1962, ch. 16, § 5 (5th par.); repealed and reenact., Acts 1990, ch. 476, Pt. V, § 606, effective July 13, 1990.

Compiler's Notes.

This section (Enact. Acts 1962, ch. 16, § 5 (5th par.)) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 606, effective July 13, 1990.

168.080. Employees.

Subject only to availability of funds from any source, the authority may employ and prescribe the qualifications and duties of such persons as it may deem necessary to the proper performance of its purposes and functions, including an executive director to serve as the principal executive of the authority, and a chief engineer to supervise its engineering staff. Compensa-

tion shall be such as may be fixed in accordance with the standards established by the State secretary of the Personnel Cabinet, except that the compensation for those officers and employees exempt from classified services as provided in KRS 18A.115 shall be determined by the authority not to exceed the maximum established by KRS 64.640(2).

History.
Enact. Acts 1962, ch. 16, § 6; 1980, ch. 98, § 2, effective July 15, 1980; 1982, ch. 52, § 4, effective July 15, 1982; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 607, effective July 13, 1990; 1998, ch. 154, § 83, effective July 15, 1998.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 16, § 6; 1980, ch. 98, § 2, effective July 15, 1980; 1982, ch. 52, § 4, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 607, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

Since under KRS 64.640 the Governor sets the compensation payable out of the State Treasury to each officer of an independent agency, the Authority for Educational Television can only recommend to the Governor the annual compensation of the agency's chief executive. OAG 77-707, 1977 Ky. AG LEXIS 100.

The statutes do not grant sole authority to Kentucky Authority for Educational Television to determine who may be exempt from KRS Chapter 18 (repealed, see KRS Chapter 18A); at most, they exclude from the commissioner of personnel's determination of salary those positions exempted by the merit system under KRS 18.140 (now see KRS 18A.115); Kentucky Educational Television was not given authority to exempt other positions not so listed, nor was it given the sole right to determine the salary of nonexempted positions. OAG 80-537, 1980 Ky. AG LEXIS 190.

168.090. Compensation and expenses of members.

(1) Members of the authority who are otherwise compensated by the Commonwealth on a full-time basis shall receive no additional compensation as members of the authority, or for attendance at meetings. Members who are not otherwise compensated by the Commonwealth on a full-time basis shall receive a per diem of fifty dollars ($50) for attendance at each meeting, including reasonable travel time necessarily required.

(2) All members may be reimbursed for actual travel and other proper expenses according to reasonable rules and regulations of the authority. The scope of travel shall not be limited to the confines of the Commonwealth; but may extend to any place outside the Commonwealth if specifically authorized by the authority by motion, resolution, or directive reciting the occasion, necessity, and persons authorized to travel.

History.
Enact. Acts 1962, ch. 16, § 7; 1978, ch. 154, § 11, effective June 17, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 608, effective July 13, 1990.

Compiler's Notes.
This section (Enact. Acts 1962, ch. 16, § 7; 1978, ch. 154, § 11, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 608, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Bonds of state officers and employees, KRS 62.170.

168.100. Powers of authority.

The authority shall have no power of taxation, nor is it vested with the police power of the Commonwealth, except insofar as the exercise of the power of eminent domain may be deemed a part thereof. Otherwise, in general terms, it shall have and is hereby given all such constitutional powers as are necessary to its accomplishment of the purpose and implementation of the public policy set forth in KRS 168.010. Without limiting the generality of the foregoing, but only for assurance to parties transacting business with the authority, and who may demand and be entitled to assurance, the following specific powers are hereby vested in the authority:

(1) To receive and use in the furtherance of its lawful objectives state funds as may be appropriated or allotted to it, any funds received for services rendered under contract or from the sale of property owned by it, and contributions, matching funds, gifts, bequests, and devises from any source, whether state or federal, and whether public or private; unless the same be tendered subject to one (1) or more conditions which are inconsistent with KRS 168.010 to 168.100, or otherwise unlawful;

(2) To make contracts and agreements whereunder the authority may undertake to provide educational television facilities and related functions and facilities to or for any public body of the state or federal government in furtherance of educational television or in aid of any other public function. However, it shall be an express provision of every such contract that the authority will not undertake to transmit or relay, and will not permit any other party to transmit or relay, in the use of the authority's television facilities, any subversive matter, any political propaganda, or any image or message in the interests of any political party or candidate for public office; or be used by, or in aid of, any church, sectarian, or denominational school; but this proviso is not intended and shall not be construed to be a limitation upon dissemination by the authority of legitimate objective instructional material which is properly related to the study of history or of current events, or which is no more than factually informative, of current issues of government, or of various political ideologies;

(3) To produce, prepare, transmit, and relay, either from life or by recording on tape or films, educational television programs and related services coordinated with the curricula prescribed or approved for the public schools of the Commonwealth by the department or the board pursuant to KRS 158.6451;

(4) To purchase or lease from others, or to contract with others for the use of, or the right to transmit or relay, similar educational television programs and related services, whenever in the opinion of the authority the same are suitable and cannot be produced as effectively or economically through the use of its own facilities;

(5) To purchase, lease, or otherwise acquire, and to operate, television and related facilities deemed by the authority to be necessary in the furtherance of its lawful objectives; and in this connection to acquire property by the exercise of the power of eminent domain, in the manner authorized for the Department of Highways by the Eminent Domain Act of Kentucky, whenever the same cannot be purchased, leased, or otherwise acquired at a reasonable price after reasonable negotiations with the owner or owners. In all such matters, the authority shall be subject to the provisions of KRS Chapters 45A and 56;

(6) To prescribe standards for receiving instruments which are purchased in the future for use in the public schools, in order that reception of educational television programs and related services may be acceptable and in conformity with the manner of transmission thereof; and to disseminate such standards, together with technical information with regard to installations and use of receiving instruments, to all of the public school districts, or to such as may request the same;

(7) In its discretion and within the limitation of availability of funds from any sources, to:

(a) Establish a program of matching funds as an inducement to public school districts to purchase and install proper facilities for receiving and utilizing educational television programs and related services, especially in situations where by reason of topographical difficulties of reception, special antennas, or other equipment may be required, and

(b) If so requested by the boards of education of a sufficient number of public school districts, to purchase through the Finance and Administration Cabinet, subject to the provisions of KRS Chapter 45A, receiving instruments on their behalf on a wholesale basis for the purposes of economy, any such purchases to be on a public competitive basis after due advertisement according to law, but restricted to such receiving instruments as meet the standards prescribed by the authority.

History.

Enact. Acts 1962, ch. 16, § 8; 1970, ch. 204, § 6; 1974, ch. 74, Art. II, § 9(1); 1974, ch. 74, Art. IV, § 20(1); 1976, ch. 140, § 73; 1990, ch. 476, Pt. I, § 24, effective July 13, 1990; 1990, ch. 496, § 53, effective July 13, 1990.

Legislative Research Commission Notes.

(7/13/90). This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled together.

OPINIONS OF ATTORNEY GENERAL.

A private college could not legally be permitted to erect an FM antenna on a tower built as an educational television facility. OAG 71-354.

KRS 168.010 to 168.100 expressly prohibit educational television facilities from being used in any way by or in aid of any church, sectarian or denominational school. OAG 71-354.

KRS 168.100(2) and 156.070 restrict the furnishing of educational television facilities and related functions and facilities to and for public bodies of state and federal government. OAG 71-354.

An employee of the Kentucky Authority for Educational Television under the state merit system who receives no profit from her work other than her regular salary may legally become a candidate for and serve, if elected, as a member of the local school board and at the same time retain her employment with the Kentucky Authority for Educational Television. OAG 76-394.

If this section was interpreted to prohibit Kentucky Educational Television from providing time for legally qualified candidates for public office it would conflict with the Federal Communications Act of 1934. OAG 79-465, 1979 Ky. AG LEXIS 162.

No provisions of state law prohibit Kentucky Educational Television (KET) from providing time for political candidates in programs produced, purchased or leased by KET for general broadcast purposes. OAG 79-465, 1979 Ky. AG LEXIS 162.

Subsection (2) of this section purports to proscribe the broadcast of, among other things, "political propaganda" or "any image or message in the interests of any political party or candidate for public office," only where such material is broadcast pursuant to a contract or agreement to provide educational television services or facilities "to or for any public body of the state or federal governments," and if the authority chooses to produce programming presenting political candidates not pursuant to any such contract or agreement, the statutory prohibition would be inapplicable. OAG 79-465, 1979 Ky. AG LEXIS 162.

The "political broadcast" limitation of subsection (2) of this section was imposed to protect the authority from any pressure to broadcast presentations of political candidates at the request of legislative or other governmental bodies, and was not designed to restrict its discretion in the production and selection of programming not broadcast under such an arrangement. OAG 79-465, 1979 Ky. AG LEXIS 162.

The legislative intent is that the Kentucky Authority for Educational Television is the state agency charged with operating the educational television network, and should be the licensee for the television transmitters; accordingly, licenses issued to the State Board of Education could be transferred to the Authority either by joint or separate resolutions of the boards or by executive order. OAG 80-511, 1980 Ky. AG LEXIS 134.

The decision to rent space on a tower belonging to the authority should be decided on the principles of good business. OAG 83-85, 1983 Ky. AG LEXIS 412.

There is no constitutional or statutory impediment against the authority renting tower space for fair market value to a religious organization since such a business transaction is neutral as to the purposes of the private organization which is the lessee and does not involve the issue of separation of church and state. OAG 83-85, 1983 Ky. AG LEXIS 412.

Under this section, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of Const., §§ 171, 184, 186, and 189. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71, 1991 Ky. AG LEXIS 72.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Disposition of private funds and contributions to state agencies, KRS 41.290.

Eminent Domain Act of Kentucky, KRS 416.540 to 416.680.

State Board of Education may acquire facilities for educational television, KRS 156.070.

Educational television equipment purchases, 702 KAR 3:170.

TITLE XIV

LIBRARIES AND ARCHIVES

Chapter
171. State Libraries — Librarians — State Archives and Records — Historical Affairs.

CHAPTER 171

STATE LIBRARIES — LIBRARIANS — STATE ARCHIVES AND RECORDS — HISTORICAL AFFAIRS

Department for Libraries and Archives.

Section
171.130. Department for Libraries and Archives — Commissioner.
171.140. General powers and duties.
171.145. Authority to provide library services for qualified readers with disabilities.
171.223. Delivery to Attorney General of written information concerning retention and management of public records.

State Archives and Records.

171.410. Definitions for KRS 171.420 to 171.740.
171.420. State Libraries, Archives, and Records Commission.
171.430. Expenses of commission members.
171.440. Commission meetings.
171.450. Department procedures and regulations.
171.460. Records management survey.
171.470. Records management promotion — Reports.
171.480. Buildings and facilities.
171.490. [Repealed.]
171.500. Central depository.
171.510. Advisory groups for commission.
171.520. Supervision of state and local agencies — Plan for comprehensive records management system for state government — Rules and regulations.
171.530. Retention and recovery of records — Preservation and availability of certain records for Governor-elect.
171.540. Inspection of agency records.
171.550. Processing and servicing records.
171.560. Transfer of records.
171.570. Extension of agency retention period.
171.580. Historical records.
171.590. Public nature of records in department's custody.
171.600. Servicing records.
171.610. Facilities for public inspection.
171.620. Private documents of public interest.
171.630. Reproduction fee.
171.640. Documentation of agency matters — Standards, rules and regulations.
171.650. [Repealed.]
171.660. Authorized reproductions — Disposal of originals.
171.670. Destruction of records.
171.680. Records management by agencies.
171.690. Storage of agency records.
171.700. Certification of records.
171.710. Safeguarding agency records.
171.720. Agency recovery of records.
171.730. Effect on public accounting and confidential nature of agency records.
171.740. General Assembly records.

Penalties.

Section
171.990. Penalties.

DEPARTMENT FOR LIBRARIES AND ARCHIVES

171.130. Department for Libraries and Archives — Commissioner.

The Department for Libraries and Archives is established. The department shall be headed by a commissioner whose title shall be state librarian who shall be appointed by and serve at the pleasure of the Governor, and who shall have had technical training in the field of library science.

History.

Enact. Acts 1954, ch. 41, § 1; 1962, ch. 106, Art. VIII, § 2; 1980, ch. 188, § 127, effective July 15, 1980; 1982, ch. 381, § 6, effective July 15, 1982.

171.140. General powers and duties.

(1) The department shall give assistance and advice to all state institutional and public libraries, and to all counties in the state which propose to establish public libraries, as to the best means of their establishment and operation and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

(2) It may receive gifts which may be used or held for the purpose given, and may purchase and operate traveling libraries under such conditions and rules as it thinks necessary to protect the interests of the state and best increase the efficiency of its service to the public.

(3) The department may issue printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state library commissions and libraries, in order to secure the more economical administration of the work for which it was formed. It may provide for library educational opportunities in various parts of the state.

(4) The department shall perform such other service in behalf of public libraries as it considers for the best interests of the state.

(5) The department shall maintain a strong central collection of library materials in a variety of formats and assure access to those materials and to other information resources throughout the state and nation for the purposes of providing information and reference services to state government agencies and of supplementing the resources of local libraries.

History.

2438c-4; 1990, ch. 62, § 2, effective July 13, 1990.

OPINIONS OF ATTORNEY GENERAL.

The Department for Libraries and Archives does not have the power to retrieve the various copies of the Register of Births and Deaths from public libraries for no statute gives such broad supervisory authority to the Department for Libraries and Archives over local public libraries. OAG 91-25, 1991 Ky. AG LEXIS 25.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Private contributions to be deposited in State Treasury, KRS 41.290.

171.145. Authority to provide library services for qualified readers with disabilities.

For the benefit of qualified readers with disabilities of Kentucky, the Department for Libraries and Archives may make available books and other reading matter in Braille, talking books or any other medium of reading used by qualified readers with disabilities. To this end, the department is authorized to provide library services for qualified citizens with disabilities of the Commonwealth through contract, agreement or otherwise with the Library of Congress or any regional library thereof.

History.
Enact. Acts 1960, ch. 58; 1974, ch. 8, § 1; 1974, ch. 74, Art. VIII, B, § 1; 1994, ch. 405, § 33, effective July 15, 1994.

171.223. Delivery to Attorney General of written information concerning retention and management of public records.

The Department for Libraries and Archives shall, within sixty (60) days of June 20, 2005, and thereafter, within sixty (60) days of the effective date of any legislation amending the provisions of the Open Meetings Act, KRS 61.805 to 61.850, or the Open Records Act, KRS 61.870 to 61.884, deliver to the Office of the Attorney General written information that explains proper retention and management of public records, which information shall be included in the Office of the Attorney General's distributions as specified in KRS 15.257.

History.
Enact. Acts 2005, ch. 45, § 2, effective June 20, 2005.

STATE ARCHIVES AND RECORDS

171.410. Definitions for KRS 171.420 to 171.740.

As used in KRS 171.420 to 171.740:

(1) "Public record or record" means all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings, and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned by a private person or corporation that are not related to functions, activities, programs or operations funded by state or local authority;

(2) "Department" means the Department for Libraries and Archives;

(3) "Commission" means the State Archives and Records Commission; and

(4) "Public agency" means every state or local office, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority and which derives at least twenty-five percent (25%) of its funds from state or local authority.

History.
Enact. Acts 1958, ch. 49, § 1; 1962, ch. 106, Art. V, § 2; 1966, ch. 255, § 159; 1970, ch. 92, § 32; 1974, ch. 74, Art. VIII, B, § 2; 1982, ch. 245, § 1, effective July 15, 1982; 1986, ch. 150, § 3, effective July 15, 1986.

OPINIONS OF ATTORNEY GENERAL.

Fiscal court claims which have been paid would come within the definition of "records" as used in KRS 171.410 to 171.740. OAG 61-831.

Fiscal court claims which have been paid and tax rolls come within the definition of "records." OAG 61-831.

Neither the interested person nor his representative has the right to reproduce the records of a district board of education by any photostatic means whatsoever. OAG 68-291.

Neither an interested person nor his representative has the absolute right to take the original records of a district board of education into a private room without the secretary or the secretary's representative being present. OAG 68-291.

Where the necessary interest is present, the interested person or his representative is entitled to obtain a certified copy of the contract between the board of education and the secretary upon payment of such reasonable fee therefor as may be prescribed by regulation of the district board. OAG 68-291.

Information concerning textbook titles and course enrollment requested by a private bookstore would be a part of the university's records and would be subject to the statutory privilege of inspection by any interested person. OAG 69-24.

Disposal of municipal records is subject to the rules and regulations of the Archives and Records Commission. OAG 69-108.

As the daily "minute sheets" of the clerks of the circuit Court contain no information which is not being permanently preserved elsewhere in the Circuit Court's records, their destruction, once the official orders have been taken from them, would constitute neither a criminal act under KRS 519.060 nor an infringement on the authority of the State Archives and Records Commission under this section. OAG 75-103.

It is apparent from the 1982 amendment to subdivision (1) of this section, which added cards, tapes, disks and recordings to the definition of "records," that it was the intent of the legislature to facilitate the maintenance of public records by modernizing the means of preserving those records; therefore, it appears that Kentucky law does permit Kentucky State University to maintain its records via microfilm microfiche. OAG 83-161, 1983 Ky. AG LEXIS 334.

The fiscal court should provide sufficient space to store case reports, evidence from death scenes, photographs and autopsy reports for the period of usefulness to the coroner in carrying out his work; since there is no statute expressly dealing with the retention time or final disposal, in the absence of a court order, or the applicable storage of such records by State Archives, the coroner should use his good judgment in disposing of items no longer needed. OAG 84-246, 1984 Ky. AG LEXIS 143.

A housing authority established and operating pursuant to KRS Chapter 80 is required to comply with KRS 171.410 through 171.990, dealing with state archives and records. OAG 84-375, 1984 Ky. AG LEXIS 10.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Court records, control by Supreme Court, KRS 26A.200, 26A.210.
Open records law, KRS 61.870 to 61.884.

171.420. State Libraries, Archives, and Records Commission.

(1) The State Libraries, Archives, and Records Commission is hereby created and shall be a seventeen (17) member body constituted as follows:

(a) The state librarian or his or her designee, who shall be the chairperson of the commission;

(b) The secretary of the Education and Labor Cabinet or his or her designee, who shall serve as vice chairperson;

(c) The Auditor of Public Accounts or his or her designee;

(d) The state law librarian or his or her designee;

(e) The director of the Legislative Research Commission or his or her designee;

(f) The Attorney General or his or her designee;

(g) The executive director of the Kentucky Military Heritage Commission or a designee of the commission;

(h) The executive director of the Commonwealth Office of Technology or his or her designee;

(i) The president of the Kentucky Association of School Librarians or his or her designee;

(j) The executive director of the Kentucky Historical Society or his or her designee;

(k) The executive director of the Kentucky Library Association or his or her designee;

(*l*) The president of the Council on Postsecondary Education or his or her designee;

(m) Four (4) citizens at large appointed by the Governor, including one (1) member representing library users with disabilities, one (1) member representing disadvantaged persons, and two (2) members representing library users; and

(n) One (1) member, who shall not be an elected official, appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators.

(2) Vacancies for appointed members shall be filled by the Governor in the same manner as initial appointments are made. All appointed members shall serve for a term of three (3) years, except when making the appointments under subsection (3) of this section, two (2) shall be for a term of three (3) years, two (2) for two (2) years, and one (1) for one (1) year.

(3) On July 14, 2018, all terms of gubernatorial appointees made prior to July 14, 2018, shall expire, and the Governor shall appoint five (5) members to the commission in accordance with paragraphs (m) and (n) of subsection (1) of this section.

(4) The commission shall be the state advisory council on libraries and shall advise the Department for Libraries and Archives on matters relating to federal and state library development issues, archives and records management, federal and state funding, public library standards, and other federal and state library service issues. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify its actions upon the agreement of a simple majority of the membership present and voting.

History.
Enact. Acts 1958, ch. 49, § 2; 1962, ch. 106, Art. V, § 3; 1970, ch. 92, § 33; 1974, ch. 74, Art. II, § 9(2); 1974, ch. 257, § 5; 1976, ch. 242, § 1; 1978, ch. 384, § 120, effective June 17, 1978; 1982, ch. 245, § 2, effective July 15, 1982; 1992, ch. 185, § 1, effective July 14, 1992; 1994, ch. 209, § 18, effective July 15, 1994; 2000, ch. 506, § 20, effective July 14, 2000; 2000, ch. 536, § 20, effective July 14, 2000; 2005, ch. 85, § 602, effective June 20, 2005; 2006, ch. 211, § 111, effective July 12, 2006; 2009, ch. 11, § 56, effective June 25, 2009; 2018 ch. 176, § 3, effective July 14, 2018; 2022 ch. 236, § 90, effective July 1, 2022.

Legislative Research Commission Notes.
(7/12/2006). Under the authority of KRS 7.136(1)(c) and for the sake of clarity, the Reviser of Statutes has divided this statute as contained in 2006 Ky. Act ch. 211, sec. 111, into numbered subsections and paragraphs.

OPINIONS OF ATTORNEY GENERAL.

State agencies should not destroy public records, such as the Register of Births and Deaths, without the authority of the Archives and Records Commission, except under specific circumstances and therefore, such an order sent by the Cabinet for Human Resources without the approval of the Archives and Records Commission was invalid. OAG 91-25, 1991 Ky. AG LEXIS 25.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Records retention schedules; authorized schedules, 725 KAR 1:061.
Transfer of public records, 725 KAR 1:025.

171.430. Expenses of commission members.

Members of the commission shall serve without compensation other than actual expense of attending meetings of the commission or while in the performance of their official duties in connection with the business of the commission.

History.
Enact. 1958, ch. 49, § 3, effective June 19, 1958.

171.440. Commission meetings.

The commission shall meet in the City of Frankfort, but the commission may, by majority vote, hold special or regular meetings in other locations when the work of the commission would be facilitated thereby. The commission shall hold not less than four (4) meetings during each calendar year and may hold such special meetings as may be necessary to transact the business of the commission. All meetings shall be called by the chairman, or when requested in writing by any two (2) members of the commission.

History.
Enact. Acts 1958, ch. 49, § 4; 1982, ch. 245, § 3, effective July 15, 1982.

171.450. Department procedures and regulations.

(1) The department shall establish:

(a) Procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal;

(b) Procedures for the disposal or destruction of public records authorized for disposal or destruction, including appropriate procedures to protect against unauthorized access to or use of personal information as defined by KRS 61.931;

(c) Standards and procedures for recording, managing, and preserving public records and for the reproduction of public records by photographic or microphotographic process; and

(d) Procedures for collection and distribution by the central depository of all reports and publications, except the Kentucky Revised Statutes editions, issued by any department, board, commission, officer or other agency of the Commonwealth for general public distribution after July 1, 1958.

(2) The department shall enforce the provisions of KRS 171.410 to 171.740 by appropriate rules and regulations.

(3) The department shall make copies of such rules and regulations available to all officials affected by KRS 171.410 to 171.740 subject to the provisions of KRS Chapter 13A.

(4) Such rules and regulations when approved by the department shall be binding on all state and local agencies, subject to the provisions of KRS Chapter 13A. The department shall perform any acts deemed necessary, legal and proper to carry out the duties and responsibilities imposed upon it pursuant to the authority granted herein.

History.
Enact. Acts 1958, ch. 49, § 5; 1970, ch. 92, § 34; 1982, ch. 245, § 4, effective July 15, 1982; 1984, ch. 353, § 1, effective July 13, 1984; 2014, ch. 74, § 8, effective January 1, 2015.

Legislative Research Commission Notes.
(10/5/90). Pursuant to KRS 7.136(1), KRS Chapter 13A has been substituted for the prior reference to KRS Chapter 13 in this statute. The sections in KRS Chapter 13 were repealed by 1984 Ky. Acts ch. 417, § 36 and KRS Chapter 13A was created in that same chapter of the 1984 Ky. Acts.
(1/1/2015). 2014 Ky. Acts ch. 74, sec. 10 provided that "the provisions of this Act shall not impact the provisions of KRS 61.870 to 61.884." That proviso applies to this statute as amended in Section 8 of that Act.

OPINIONS OF ATTORNEY GENERAL.

Requests for disposal or destruction of the records of the office of county treasurer must be submitted to the State Archives and Records Commission for determination and the request must be initially channeled through the Director of State Archives and Records Service. OAG 65-207.

Disposal of municipal records is subject to the rules and regulations of the Archives and Records Commission. OAG 69-108.

There is no statutory authority to permit a delegation of the function of making the final decision as to the inclusion or exclusion of documents to be deposited with the Department of Library and Archives (now Department for Libraries and Archives) to the Director of the Department. OAG 75-114.

The state's departments, boards, and agencies cannot be themselves required to distribute to depository libraries, copies of their reports and publications issued for general public distribution since this function is specifically reserved to the Department of Library and Archives (now Department for Libraries and Archives) as the central depository for state records but can be required to deposit a sufficient number for distribution. OAG 75-114.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Collection and distribution of reports and publications, 725 KAR 1:040.
Recording and reproducing public records, 725 KAR 1:020.
Records management program, 725 KAR 1:050.
Records officers; duties, 725 KAR 1:010.
Records retention schedules; authorized schedules, 725 KAR 1:061.
Scheduling public records for retention and disposal; procedure, 725 KAR 1:030.

171.460. Records management survey.

In order for proper planning to be accomplished, the department shall cause a records management survey to be conducted in accordance with the regulations issued by the department.

History.
Enact. Acts 1958, ch. 49, § 6; 1970, ch. 92, § 35.

171.470. Records management promotion — Reports.

The department is authorized to make continuing surveys of government records and records management and disposal practices and to obtain reports thereon from state and local agencies; to promote, in cooperation with the various state and local agencies, improved records management practices and controls in such agencies, including the central storage or disposition of records not needed by such agencies for their current use; and to report to the Governor semiannually. The department shall submit a biennial report to the General Assembly.

History.
Enact. Acts 1958, ch. 49, § 7; 1970, ch. 92, § 36.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Transfer of public records, 725 KAR 1:025.

171.480. Buildings and facilities.

The secretary of the Finance and Administration Cabinet, at the request of the commission, shall have authority to design, build, purchase, lease, maintain, operate, protect, and improve buildings or facilities, including a state archives and records center building, used for the storage of noncurrent records of state and local agencies. The cabinet shall have custody and

control of all such buildings and facilities and their contents.

History.
Enact. Acts 1958, ch. 49, § 8; 1970, ch. 92, § 37.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Transfer of public records, 725 KAR 1:025.

171.490. Archives and Records Service. [Repealed.]

Compiler's Notes.
This section (Enact. Acts 1958, ch. 49, § 9) was repealed by Acts 1962, ch. 106, Art. V, § 11.

171.500. Central depository.

The department is hereby constituted the central depository for public records. It shall be the duty of all departments, boards, commissions, officers or other agencies of the Commonwealth to supply to the central depository copies of each of their reports and publications issued for general public distribution after July 1, 1958, in the number and in the manner prescribed by rule or regulation promulgated by the department pursuant to KRS 171.450. College, university, and public libraries may be constituted depository libraries by written order of the department. The central depository shall supply copies to such depository libraries in the number and in the manner prescribed by rule or regulation promulgated by the department pursuant to KRS 171.450.

History.
Enact. Acts 1958, ch. 49, § 10; 1970, ch. 92, § 38.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Collection and distribution of reports and publications, 725 KAR 1:040.
Transfer of public records, 725 KAR 1:025.

171.510. Advisory groups for commission.

The commission may from time to time appoint advisory groups to more effectively obtain the best professional thinking of the bar, historians, political scientists, accountants, genealogists, patriotic groups, and associations of public officials on the steps to be taken with regard to any particular group or type of records.

History.
Enact. Acts 1958, ch. 49, § 11, effective June 19, 1958.

171.520. Supervision of state and local agencies — Plan for comprehensive records management system for state government — Rules and regulations.

(1) The department shall, with due regard to the program activities of the state and local agencies concerned, prescribe the policies and principles to be followed by state and local agencies in the conduct of their records management programs, and make provisions for the economical and efficient management of records by state and local agencies by analyzing, developing, promoting, and coordinating standards, procedures, and techniques designed to improve the management of records, to insure the maintenance and security of records deemed appropriate for preservation, and to facilitate the segregation and disposal of records of temporary value and by promoting the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaining, storing, and servicing records. The department may accept, administer and grant any money appropriated or granted to it, in addition to appropriations from the general fund, for providing and improving records management programs of state and local agencies.

(2) To effect the purposes of subsection (1) of this section, the department shall prepare a plan for a comprehensive records management system for Kentucky state government. This plan shall include a proposal for funding through cost allocation or other methods in lieu of a general fund appropriation. The plan shall provide for a records management certification program, to identify state agencies in compliance with records management practices implemented by the department, and shall be completed by July 1, 1987. The plan shall be submitted to the Office of Policy and Management and the Legislative Research Commission for evaluation.

(3) The department shall promulgate necessary rules and regulations for the furtherance of this section.

History.
Enact. Acts 1958, ch. 49, § 12; 1970, ch. 92, § 39; 1984, ch. 172, § 1, effective July 13, 1984; 1986, ch. 66, § 1, effective July 15, 1986.

OPINIONS OF ATTORNEY GENERAL.

A county desiring to destroy or dispose of records must do so in accordance with the rules and regulations of the Archives and Records Commission, and in the absence of such rule or regulation must secure prior approval of the Commission. OAG 60-835.

Disposal of municipal records is subject to the rules and regulations of the Archives and Records Commission. OAG 69-108.

The preservation or disposal of election records would be controlled by the State Division of Archives and Records. OAG 72-385.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Records management program, 725 KAR 1:050.
Transfer of public records, 725 KAR 1:025.

171.530. Retention and recovery of records — Preservation and availability of certain records for Governor-elect.

(1) Except as provided in subsection (2) of this section, the commission shall establish standards for the selective retention of records of continuing value, and the department shall assist state and local agencies in applying such standards to records in their custody. The department shall notify the head of any such

agency of any actual, impending, or threatening unlawful removal, defacing, alteration, or destruction of records in the custody of such agency that has come to its attention, and initiate action through the agency head or Attorney General for the recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.

(2)(a) For a period of twelve (12) months prior to the date of a gubernatorial inauguration, all documents that are public records as defined in KRS 61.870 shall be preserved for the Governor-elect and his or her gubernatorial transition team if the subject matter includes:

1. Contracts that have been granted, altered, or amended;
2. Appointments to boards and commissions;
3. Permits and licenses granted and revoked;
4. Pardons;
5. Pay raises, promotions, and grade level changes of executive branch employees;
6. Litigation; or
7. Any record relating to campaign donations of any kind.

(b) On the day after the Governor-elect is determined, the Governor shall make available to the Governor-elect and his or her gubernatorial transition team all public records pertaining to the subjects referenced in paragraph (a) of this subsection.

History.
Enact. Acts 1958, ch. 49, § 13; 1970, ch. 92, § 40; 1982, ch. 245, § 5, effective July 15, 1982; 2026 ch. 178, § 15, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

A county desiring to destroy or dispose of records must do so in accordance with the rules and regulations of the Archives and Records Commission, and in the absence of such rule or regulation must secure prior approval of the Commission. OAG 60-835.

Disposal of municipal records is subject to the rules and regulations of the archives and Records Commission. OAG 69-108.

Where records have not been unlawfully removed but are threatened with an unauthorized transfer, the department may enjoin their removal. OAG 78-519.

Since the Open Records Act does not regulate management practices of keeping public records and since the Attorney General's decisions are limited to whether a requested document is in the possession of a public agency and whether such document is subject to public inspection, the request that university, in not identifying one person as the official custodian in charge of enforcing proper records keeping practices, be charged with violating the Open Records Act, as well as the request for provision of a copy of the contract of the person thought to be the official custodian of the university's records, were denied. OAG 94-ORD-8, 1994 Ky. AG LEXIS 5.

Although the Attorney General may be called on to intervene in the recovery of records when it comes to the attention of the Department for Library and Archives that those records are threatened with unlawful removal, defacing, alteration, or destruction pursuant to this section, he is not empowered to issue a legally enforceable decision relative to those acts; his decisions under the Open Records Act are limited to the question of whether the agency violated the provisions of KRS 61.870 to 61.884. OAG 94-ORD-12, 1994 Ky. AG LEXIS 16.

171.540. Inspection of agency records.

The department is authorized to inspect or survey the records of any state or local agency, as well as to make surveys of records management and records disposal practices in such agencies, and shall be given full cooperation of officials and employees of agencies in such inspection and surveys; provided, that records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, shall be inspected or surveyed only in accordance with law, and the rules and regulations of the department.

History.
Enact. Acts 1958, ch. 49, § 14; 1970, ch. 92, § 41.

171.550. Processing and servicing records.

The department is authorized to establish an interim records center or centers for the storage, processing, and servicing of records of state and local agencies pending their deposit in the State Archives and Records Center or their disposition in any other manner authorized by law, and to establish, maintain and operate centralized microfilming, photostating, indexing, decontamination and lamination and any other records repair and rehabilitation services for state and local agencies.

History.
Enact. Acts 1958, ch. 49, § 15; 1970, ch. 92, § 42.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Transfer of public records, 725 KAR 1:025.

171.560. Transfer of records.

Subject to applicable provisions of law, the department shall promulgate rules and regulations governing the transfer of records from the custody of one (1) state or local agency to that of another.

History.
Enact. Acts 1958, ch. 49, § 16; 1970, ch. 92, § 43.

OPINIONS OF ATTORNEY GENERAL.

Neither this section nor regulation 725 KAR 1:030 § 3 gives authority to any person or agency to transfer records without the approval of the department. OAG 78-519.

The Department of Library and Archives (now Department for Libraries and Archives) has plenary authority under this section to prohibit the transfer of any public record as defined in KRS 171.410 (1) from state or local government offices to the University of Louisville. OAG 78-519.

Should the Department for Libraries and Archives elect to authorize the transfer of copies of the Register of Births and Deaths to other agencies, a disclaimer should be placed inside each of the volumes of the Register which would indicate that the information contained in the Register may not be accurate and that the Register does not represent an update-to-date listing of Kentucky births and deaths. OAG 91-25, 1991 Ky. AG LEXIS 25.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Transfer of public records, 725 KAR 1:025.

171.570. Extension of agency retention period.

The department may empower any state or local agency, upon the submission of evidence of the need therefor, to retain records for a longer period than that specified in any approved disposal schedule, or by law but the agency shall report all such actions to the commission at its next meeting for approval or disapproval.

History.
Enact. Acts 1958, ch. 49, § 17; 1966, ch. 255, § 160; 1970, ch. 92, § 44.

OPINIONS OF ATTORNEY GENERAL.

Disposal of municipal records is subject to the rules and regulations of the Archives and Records Commission. OAG 69-108.

171.580. Historical records.

The department, whenever it appears to be in the public interest, is authorized:

(1) To accept for deposit in the State Archives and Records Center the records of any state or local agency or of the General Assembly that are determined by the department to have sufficient historical or other value to warrant their continued preservation;

(2) To direct and effect the transfer to the department of any records that have been in existence for more than fifty (50) years and that are determined by the department to have sufficient historical or other value to warrant their continued preservation, unless the head of the state or local agency which has custody of them certifies in writing to the department that they must be retained in his custody for use in the conduct of the regular current business of the said agency;

(3) To direct and effect, with the approval of the head of the originating agency, or its successor, if any, the transfer of records deposited, or approved for deposit, in the State Archives and Records Center to public or educational institutions for special research or exhibit purposes; provided that title to such records shall remain vested in the Commonwealth of Kentucky unless otherwise authorized by law, and provided further such records may be recalled after reasonable notice in writing;

(4) To direct and effect the transfer of materials from private sources authorized to be received by the State Archives and Records Center by the provisions of KRS 171.620.

History.
Enact. Acts 1958, ch. 49, § 18; 1970, ch. 92, § 45.

OPINIONS OF ATTORNEY GENERAL.

Should the Department for Libraries and Archives elect to authorize the transfer of copies of the Register of Births and Deaths to other agencies, a disclaimer should be placed inside each of the volumes of the Register which would indicate that the information contained in the Register may not be accurate and that the Register does not represent an update-to-update listing of Kentucky births and deaths. OAG 91-25, 1991 Ky. AG LEXIS 25.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Scheduling public records for retention and disposal; procedures, 725 KAR 1:030.
Transfer of public records, 725 KAR 1:025.

171.590. Public nature of records in department's custody.

The department shall be responsible for the custody, use, and withdrawal of records transferred to it. All papers, books, and other records of any matters so transferred are public records and shall be open to inspection by any interested person subject to reasonable rules as to time and place of inspection established by the department; provided that whenever any records, the use of which is subject to statutory limitations and restrictions, are so transferred, the department shall enforce such limitations. Restrictions shall not remain in effect after the records have been in existence for fifty (50) years.

History.
Enact. Acts 1958, ch. 49, § 19; 1970, ch. 92, § 46.

NOTES TO DECISIONS

1. Statutory Restrictions.
Under law providing that information acquired in tax administration is not to be divulged, the annual reports filed in the auditor's office under law requiring annual reports from corporations, and other documents based upon them, are not "public records," so as to be subject to the inspection of any party needing the information for purposes of suit, but "confidential reports," to be divulged only in accordance with the statute. Fayette County v. Martin, 279 Ky. 387, 130 S.W.2d 838, 1939 Ky. LEXIS 299 (Ky. 1939), overruled, St. Matthews v. Voice of St. Matthews, Inc., 519 S.W.2d 811, 1974 Ky. LEXIS 12 (Ky. 1974) (decided under prior law).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Open Records Law, KRS 61.870 to 61.884.
Transfer of public records, 725 KAR 1:025.

171.600. Servicing records.

The department shall make provisions for the preservation, management, repair and rehabilitation, duplication and reproduction, description, and exhibition of records or related documentary material transferred to it as may be needful or appropriate, including the preparation and duplication of inventories, indexes, catalogs, and other finding aids or guides facilitating their use.

History.
Enact. Acts 1958, ch. 49, § 20; 1970, ch. 92, § 47.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Recording and reproducing public records, 725 KAR 1:020.

171.610. Facilities for public inspection.

The department shall make such provision and maintain such facilities as it deems necessary or desir-

able for servicing records in its custody that are not exempt from examination by statutory provisions or other restrictions.

History.
Enact. Acts 1958, ch. 49, § 21; 1970, ch. 92, § 48.

171.620. Private documents of public interest.

The department is authorized, whenever it is deemed to be in the public interest, to accept for deposit:

(1) The papers and other historical materials of any Governor of the Commonwealth of Kentucky, or of any other official or former official of the state or its subdivisions, and other papers relating to and contemporary with any Governor or former Governor of Kentucky, subject to restrictions agreeable to the department and the donor;

(2) Documents, including motion picture films, still pictures, sound recordings, maps, and papers, from private sources that are appropriate for preservation by the state government as evidence of its organization, functions, policies, and transactions or those of its subdivisions.

History.
Enact. Acts 1958, ch. 49, § 22; 1970, ch. 92, § 49.

171.630. Reproduction fee.

The department may charge a fee not in excess of ten percent (10%) above the costs or expenses for making or authenticating copies or reproductions of materials transferred to its custody. All such fees shall be paid into a revolving fund for the continuation of such services on as self-sustaining a basis as possible. There shall be no charge for making or authenticating copies or reproductions of such materials for official use by the government of the Commonwealth of Kentucky; provided that reimbursement may be accepted to cover the cost of furnishing such copies or reproductions that could not otherwise be furnished.

History.
Enact. Acts 1958, ch. 49, § 23; 1970, ch. 92, § 50.

171.640. Documentation of agency matters — Standards, rules and regulations.

The head of each state or local agency shall cause to be made and preserved records containing adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities. Such documentation shall be created, managed, and preserved in accordance with standards, rules and regulations prescribed by the department under the provisions of KRS 171.410 to 171.740.

History.
Enact. Acts 1958, ch. 49, § 24; 1986, ch. 66, § 2, effective July 15, 1986.

OPINIONS OF ATTORNEY GENERAL.

Since the Open Records Act does not regulate management practices of keeping public records and since the Attorney General's decisions are limited to whether a requested document is in the possession of a public agency and whether such document is subject to public inspection, the request that university, in not identifying one person as the official custodian in charge of enforcing proper records keeping practices, be charged with violating the Open Records Act as well as the request for provision of a copy of the contract of the person thought to be the official custodian of the university's records were denied. OAG 94-ORD-8, 1994 Ky. AG LEXIS 5.

While there is certainly an essential relationship between KRS Chapter 61, the Open Records Act, and KRS Chapter 171, state archives and records, insofar as effective records management facilitates efficient governmental operation and public accountability, KRS 61.876 requires each public agency to adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 which provision is aimed at insuring that each agency will educate the public on its particular policies and practices relative to open records; the records retention and disposal schedule envisioned by KRS Chapter 171 does not correspond to the rules and regulations for public agencies mandated by KRS 61.876, nor are agencies required to formulate these rules and regulations under the direction of the Department for Libraries and Archives. OAG 94-ORD-12, 1994 Ky. AG LEXIS 16.

Because teacher council member election records are scheduled public records for purposes of records retention and management, the school's inability to produce these records for inspection and copying because it does not maintain them constituted a subversion of the intent of both the Open Records Act and the State Archive and Records Act. OAG 01-ORD-94, 2001 Ky. AG LEXIS 188.

171.650. Public nature of agency records. [Repealed.]

Compiler's Notes.
This section (Acts 1958, ch. 49, § 25) was repealed by Acts 1976, ch. 273, § 10. For present law see KRS 61.870 to 61.884.

171.660. Authorized reproductions — Disposal of originals.

When the Governor, Lieutenant Governor, or any state agency or subdivision or the principal officer thereof shall reproduce and preserve for record any records or papers by photographic, microphotographic, nonerasable optical image, or other process which accurately reproduces the original records, which forms a durable medium, and which is performed in accordance with rules and regulations promulgated by the department, the original may be disposed of or destroyed.

History.
Enact. Acts 1958, ch. 49, § 26; 1970, ch. 92, § 51; 1986, ch. 223, § 1, effective July 15, 1986; 1990, ch. 37, § 1, effective July 13, 1990; 1990, ch. 88, § 82, effective July 1, 1992.

Compiler's Notes.
This section was amended by § 82 of Acts 1990, ch. 88 to contingently become effective as provided by § 93 of Acts 1990, ch. 88. However, § 93 of Acts 1990, ch. 88 was repealed by § 30 of Acts 1992, ch. 324, effective July 1, 1992. Therefore the amendment of this section by § 82 of Acts 1990, ch. 88 became effective July 1, 1992.

Legislative Research Commission Notes.
(7/13/90). This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Recording and reproducing public records, 725 KAR 1:020.

171.670. Destruction of records.

When there is a question whether a particular record or group of records should be destroyed, the commission shall have exclusive authority to decide whether or not the record or group of records are to be destroyed.

History.
Enact. Acts 1958, ch. 49, § 27; 1962, ch. 106, Art. V, § 4; 1970, ch. 92, § 52; 1982, ch. 245, § 6, effective July 15, 1982.

OPINIONS OF ATTORNEY GENERAL.

A county desiring to destroy or dispose of records must do so in accordance with the rules and regulations of the Archives and Records Commission, and in the absence of such rule or regulation must secure prior approval of the Commission. OAG 60-835.

Requests for disposal or destruction of the records of the office of county treasurer must be submitted to the State Archives and Records Commission for determination and the request must be initially channeled through the Director of State Archives and Records Service. OAG 65-207.

Where records are not deemed to have any current or practical value, the State Archives and Records Commission determines whether or not the particular set of records in question is to be destroyed. OAG 65-490.

The county court clerk can microfilm documents presented for recording in the deed, mortgage or will books and use the microfilm in lieu of his original record. OAG 67-460.

The county court clerk can microfilm the deed, mortgage and will books thus making microfilms the original record provided it is accomplished in accordance with the rules and regulations promulgated by the State Archives and Records Commission. OAG 67-460.

Disposal of municipal records is subject to the rules and regulations of the Archives and Records Commission. OAG 69-108.

Where a community hospital was closed and the new hospital did not want the old patient records, permission would have to be obtained from the State Archives and Records Commission before the old records could be destroyed. OAG 71-89.

KRS 382.290 and 382.360 providing for marginal releases and assignments of mortgages and notes or marginal notations by the clerk do not preclude the microfilming, under the authority of KRS 171.660 and this section, of original instruments lodged for record by the county clerk, which microfilm would constitute the clerk's record, providing the microfilming of the clerk's records is accomplished in accordance with the rules and regulations of the State Archives and Records Commission. OAG 75-386.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Recording and reproducing public records, 725 KAR 1:020.

171.680. Records management by agencies.

(1) The head of each state and local agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

(2) Such program shall provide for:

(a) Effective controls over the creation, maintenance, and use of records in the conduct of current business;

(b) Cooperation with the department in applying standards, procedures, and techniques designed to improve the management of records;

(c) Promotion of the maintenance and security of records deemed appropriate for preservation, and facilitation of the segregation and disposal of records of temporary value;

(d) Compliance with the provisions of KRS 171.410 to 171.740 and the rules and regulations of the department; and

(e) Compliance with the provisions of KRS 61.931 to 61.934.

History.
Enact. Acts 1958, ch. 49, § 28; 1970, ch. 92, § 53; 2014, ch. 74, § 9, effective January 1, 2015.

Legislative Research Commission Notes.
(1/1/2015). 2014 Ky. Acts ch. 74, sec. 10 provided that "the provisions of this Act shall not impact the provisions of KRS 61.870 to 61.884." That proviso applies to this statute as amended in Section 9 of that Act.

OPINIONS OF ATTORNEY GENERAL.

The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop an adequate program for ensuring records management through agency oversight of employee records handling practices; and by failing to develop a coherent scheme for the organized maintenance of records at identified maintenance locations. OAG 94-ORD-121, 1994 Ky. AG LEXIS 95.

Since July 15, 1994, when the amendments to the Open Records Act took effect, there is a higher standard of review relative to denials based on the nonexistence, or the destruction, of the requested records. In order to satisfy its statutory burden of proof, a public agency must, at a minimum, document what efforts were made to locate the missing records. Because the agency failed to provide even a minimal explanation for the loss of the requested records, the agency failed to adequately manage its records. OAG 94-ORD-141, 1994 Ky. AG LEXIS 123.

171.690. Storage of agency records.

Whenever the head of a state or local agency determines that substantial economies or increased operating efficiency can be effected thereby, he shall provide for the storage, processing and servicing of records that are appropriate therefor in the records center maintained and operated by the department or, when approved by the department in such location maintained and operated by the head of such agency.

History.
Enact. Acts 1958, ch. 49, § 29; 1970, ch. 92, § 54.

OPINIONS OF ATTORNEY GENERAL.

A county clerk may not store any records with a private storage firm without approval from the Department for Libraries and Archives, and even with such approval, can only store records with a private firm if the local agency maintains and operates the storage space. OAG 82-283, 1982 Ky. AG LEXIS 373.

171.700. Certification of records.

Any official who is authorized to certify to facts on the basis of records in his custody is authorized to certify to facts on the basis of records that have been transferred by him or his predecessors to the department, further provided, that any fee due any official of the state or its subdivisions shall not be eliminated by KRS 171.410 to 171.740.

History.

Enact. Acts 1958, ch. 49, § 30; 1970, ch. 92, § 55.

171.710. Safeguarding agency records.

The head of each state and local agency shall establish such safeguards against removal or loss of records as he shall deem necessary and as may be required by rules and regulations issued under authority of KRS 171.410 to 171.740. Such safeguards shall include making it known to all officials and employees of the agency that no records are to be alienated or destroyed except in accordance with law, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records.

History.

Enact. Acts 1958, ch. 49, § 31, effective June 19, 1958.

OPINIONS OF ATTORNEY GENERAL.

The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop an adequate program for ensuring records management through agency oversight of employee records handling practices. OAG 94-ORD-121, 1994 Ky. AG LEXIS 95.

171.720. Agency recovery of records.

The head of each state and local agency shall notify the department of any actual, impending or threatened unlawful removal, defacing, alteration or destruction of records in the custody of the agency that shall come to his attention, and with the assistance of the department shall initiate action through the Attorney General for recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.

History.

Enact. Acts 1958, ch. 49, § 32; 1970, ch. 92, § 56.

171.730. Effect on public accounting and confidential nature of agency records.

Nothing in KRS 171.410 to 171.740 shall be construed as limiting the authority of the State Auditor, or other officers charged with prescribing accounting systems, forms, or procedures or of lessening the responsibility of collecting and disbursing officers for rendering of their accounts for settlement. Nothing in KRS 171.410 to 171.740 shall be construed as changing, modifying or affecting the present law or laws concerning confidential records of any state agency and the use thereof. All such laws remain in full force and effect.

History.

Enact. Acts 1958, ch. 49, § 33.

171.740. General Assembly records.

The Legislative Research Commission shall, unless otherwise directed by the Senate or House of Representatives obtain at the close of each session of the General Assembly all of the noncurrent records of the General Assembly and of each committee thereof and transfer them to the State Archives and Records Center for preservation.

History.

Enact. Acts 1958, ch. 49, § 34.

PENALTIES

171.990. Penalties.

(1) Any person or library board violating any of the provisions of KRS 171.240 to 171.300 shall be fined not less than ten ($10) nor more than one hundred dollars ($100) for each offense.

(2) The board for certification of librarians may revoke the certificate of any person violating any of the provisions of KRS 171.240 to 171.300, or any of the regulations as established by the board for certification.

(3) Any person knowingly violating the rules and regulations of the department pursuant to the provisions of KRS 171.450, 171.530(2), 171.560, 171.670, 171.710, or 171.720 is guilty of a Class A misdemeanor and is also liable for damages or losses incurred by the Commonwealth. Any state employee who knowingly violates these provisions shall also be subject to dismissal from state employment upon a determination of fact, at a hearing, that a serious violation did occur. The employee's right to appeal to the state personnel board shall not be abridged or denied. In the event of an appeal, the decision of the state personnel board is final. The Attorney General shall have concurrent original jurisdiction to enforce this subsection.

(4) State employees dismissed under the provision of subsection (3) of this section shall have the right to reapply for state employment in accordance with state personnel rules governing dismissal. Such individuals shall have the full rights and privileges accorded under applicable equal opportunity laws.

History.

4618-130i, 4618-130k; amend. Acts 1972, ch. 223, § 5; 1982, ch. 245, § 7, effective July 15, 1982; 2026 ch. 178, § 16, effective July 15, 2026.

TITLE XV

ROADS, WATERWAYS, AND AVIATION

Chapter
175. Turnpike Authority.
178. County Roads — Grade Crossing Elimination.

CHAPTER 175

TURNPIKE AUTHORITY

Section
175.525. Toll-road identification card — Exemptions from tolls.

175.525. Toll-road identification card — Exemptions from tolls.

(1) The authority or the cabinet shall establish by administrative regulation promulgated pursuant to KRS Chapter 13A a toll-road identification card to be provided to paying and nonpaying users of toll facilities. The toll-road identification cards shall be issued through an application process. A fee that shall not exceed five dollars ($5) may be established for the issuance of each card.

(2) Upon application, nonpaying accounts shall be established for:

(a) State police, local police, and fire department vehicles while the vehicles are being operated in an official capacity on a turnpike project;

(b) Emergency vehicles operated by an ambulance service while the vehicles are being operated in an official capacity, in both emergency and nonemergency situations on a turnpike project;

(c) Funeral processions on turnpike projects; and

(d) School district vehicles while the vehicles are being operated in an official capacity on turnpike projects.

(3) To receive the exemption contained in subsection (2) of this section, an ambulance service shall be licensed by the Cabinet for Health and Family Services.

History.

Enact. Acts 1996, ch. 249, § 1, effective July 15, 1996; 1998, ch. 426, § 122, effective July 15, 1998; 2005, ch. 99, § 143, effective June 20, 2005; 2005, ch. 130, § 1, effective June 20, 2005.

Legislative Research Commission Note.

(6/20/2005). This section was amended by 2005 Ky. Acts chs. 99 and 130, which do not appear to be in conflict and have been codified together.

CHAPTER 178

COUNTY ROADS — GRADE CROSSING ELIMINATION

Section

178.200. Tax levy to retire bonds and pay interest.
178.210. Special tax for construction of roads — Submission to vote — Short-term bonds.
178.290. Construction of sidewalks along public roads — School bus turn-around areas.

Penalties.

178.990. Penalties.

178.200. Tax levy to retire bonds and pay interest.

(1) If bonds are sold to enable the fiscal court to construct roads and bridges, the fiscal court shall levy a tax of not over twenty cents ($0.20) on the one hundred dollars ($100) of the assessed valuation of the county. The tax shall be collected as other county taxes and allocated, first, to the payment of the interest on the bonds, and the balance placed to the credit of a sinking fund for the redemption of the bonds.

(2) Any accumulation in the sinking fund may be loaned by the fiscal court on first mortgage real estate security, on the basis of fifty percent (50%) of its value, at the legal rate of interest, which shall accrue to the sinking fund, but before the loan is made all titles shall be looked up and papers approved by the county attorney.

(3) For the 1966 tax year and for all subsequent years the rate levied by the levying authority under the provisions of this section for levies which were approved prior to December 16, 1965, shall be the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section.

(4) Notwithstanding the limitations contained in subsection (3) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness.

History.

4308: amend. Acts 1965 (1st Ex. Sess.), ch. 2, § 9.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Maximum Road Tax.
3. Appropriation from General Taxes.
4. Application of Funds.
5. Powers of Fiscal Court.
6. Refunding Bond Issue.
7. Loan of Sinking Fund.
8. Collection Fee.

1. Constitutionality.

The levy of tax provided for in this section is valid under Const., § 157a to the extent of 20¢. Mitchell v. Knox County Fiscal Court, 165 Ky. 543, 177 S.W. 279, 1915 Ky. LEXIS 557 (Ky. 1915). See Cleary v. Pieper, 169 Ky. 434, 184 S.W. 4, 1916 Ky. LEXIS 707 (Ky. 1916); Houston v. Boltz, 169 Ky. 640, 185 S.W. 76, 1916 Ky. LEXIS 754 (Ky. 1916).

The provision of law which authorized maximum tax rate of 30¢ violated Ky. Const., § 157a, which fixes maximum rate at 20¢. Pulaski County v. Ben Hur Life Ass'n, 286 Ky. 119, 149 S.W.2d 738, 1941 Ky. LEXIS 210 (Ky. 1941) (decision prior to 1965 amendment).

2. Maximum Road Tax.

The 20¢ tax levy provided for in this section may be made in addition to the tax of 50¢ for general purposes provided for by Const., § 157. Smith v. Livingston County, 195 Ky. 382, 242 S.W. 612, 1922 Ky. LEXIS 337 (Ky. 1922).

Constitution, § 157a limits the rate of county taxation for road purposes to 20¢, and whether the proceeds from such a levy are realized at once by the issue of bonds under KRS 178.170, or whether the levy is an annual one to be spent each year on roads as and when collected under KRS 178.210, the adoption of either statutory plan has no enlarging effect on the authority of the fiscal court to impose the tax and levies made under either provision may not run concurrently. Anderson v. Gillis, 242 Ky. 404, 46 S.W.2d 508, 1932 Ky. LEXIS 282 (Ky. 1932). See Gillis v. Anderson, 256 Ky. 472, 76 S.W.2d 279, 1934 Ky. LEXIS 433 (Ky. 1934).

3. Appropriation from General Taxes.

A fiscal court may supplement a 20¢ road tax, levied under either this section or KRS 178.210, by appropriating for road purposes so much as it may desire out of its ordinary county tax of 50¢ for general purposes. Smith v. Livingston County, 195 Ky. 382, 242 S.W. 612, 1922 Ky. LEXIS 337 (Ky. 1922). See

Gillis v. Anderson, 256 Ky. 472, 76 S.W.2d 279, 1934 Ky. LEXIS 433 (Ky. 1934).

4. Application of Funds.
All money raised by a 20¢ tax for road purposes must be applied to payment of indebtedness created under Const., § 157a until this indebtedness has been satisfied in full, and if any part is appropriated or used by fiscal court for any other purpose the members of the court become subject to civil and criminal liability. Bird v. Asher, 170 Ky. 726, 186 S.W. 663, 1916 Ky. LEXIS 129 (Ky. 1916). See Collier v. Bourbon Fiscal Court, 188 Ky. 491, 223 S.W. 149, 1920 Ky. LEXIS 307 (Ky. 1920).

5. Powers of Fiscal Court.
A fiscal court has no authority to lend the proceeds of bonds, or sell bonds on credit, since the court has only the powers expressly granted by this statute. Webster County v. Hall, 275 Ky. 54, 120 S.W.2d 756, 1938 Ky. LEXIS 367 (Ky. 1938).

6. Refunding Bond Issue.
Where county was in default on issue of road and bridge bonds, and plan was worked out to refund issue by exchanging a new issue bearing a lower rate of interest, county had authority to agree to pay, out of road and bridge sinking fund, reasonable compensation to agent who perfected plan, the costs of publishing call notices, and service charges to an agency for handling interest and principal payments. Governor v. Wolfe County, 291 Ky. 267, 163 S.W.2d 485, 1942 Ky. LEXIS 213 (Ky. 1942).

7. Loan of Sinking Fund.
Where fiscal court did not require county treasurer to obtain security for loan of sinking fund for road bonds, treasurer is not liable for loss of funds on closing of bank. Edwards v. Logan County, 244 Ky. 296, 50 S.W.2d 83, 1932 Ky. LEXIS 393 (Ky. 1932).

Fiscal court had no power to cancel interest on note and mortgage representing investment of sinking fund under this section where there was no dispute as to amount due, maker was financially responsible, and mortgage security was ample. Ward v. Roberts, 281 Ky. 418, 136 S.W.2d 549, 1940 Ky. LEXIS 50 (Ky. 1940).

8. Collection Fee.
The sheriff is entitled to four percent commission for collecting tax levied to pay interest and provide a sinking fund for payment of county road bonds issued under KRS 178.170. Caldwell County v. Farmer, 231 Ky. 200, 21 S.W.2d 244, 1929 Ky. LEXIS 238 (Ky. 1929). See Bailey v. Magoffin County, 238 Ky. 805, 38 S.W.2d 923, 1931 Ky. LEXIS 314 (Ky. 1931).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Property Tax Revenue Assessment Levels and Taxing Rate: The Kentucky Rollback Law, 60 Ky. L.J. 105 (1971).

178.210. Special tax for construction of roads — Submission to vote — Short-term bonds.

(1) The fiscal court of any county may submit to the voters at a special election to be held for that purpose, the question of voting a tax of any sum not exceeding twenty cents ($0.20) on the hundred dollars ($100) on all property subject by law to local taxation, for the construction of the public roads and bridges of the county, as the fiscal court directs. The order of the fiscal court calling the election shall specify the amount of the tax to be levied each year and the number of years for which the tax may be imposed, not exceeding ten (10) years, and shall also provide that no money in excess of the amount that can be raised by the levy in any one (1) year shall be expended in that year.

(2) The fiscal court may borrow money and issue bonds therefor in advance of the collection of the tax for any year, but the amount borrowed shall not exceed eighty percent (80%) of the estimated tax for the year. The amount of the tax shall be estimated according to the assessment and collection of the preceding year. Any money so borrowed shall be paid out of the money raised from the tax in the year in which the money is borrowed.

(3) For the 1966 tax year and for all subsequent years the rate levied by the levying authority under the provisions of this section for levies which were approved prior to December 16, 1965, shall be the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section.

(4) Notwithstanding the limitations contained in subsection (3) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness.

History.
4307b-1, 4307b-2: amend. Acts 1965 (1st Ex. Sess.), ch. 2, § 10.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Voting Tax Levy.
4. Twenty Cent Limit.
5. Funds.
6. — Use.
7. Enjoining Collection.

1. Constitutionality.
This section is valid as authorized by Const., § 157a. Collier v. Bourbon Fiscal Court, 188 Ky. 491, 223 S.W. 149, 1920 Ky. LEXIS 307 (Ky. 1920).

2. Construction.
Constitution, § 157a limits the rate of county taxation for road purposes to 20¢ and whether the proceeds from such a levy are realized at once by the issue of bonds under KRS 178.170, or whether the levy is an annual one to be spent each year on roads as and when collected under this section, the adoption of either statutory plan has no enlarging effect on the authority of the fiscal court to impose the tax and levies made under either provision may not run concurrently. Anderson v. Gillis, 242 Ky. 404, 46 S.W.2d 508, 1932 Ky. LEXIS 282 (Ky. 1932). See Gillis v. Anderson, 256 Ky. 472, 76 S.W.2d 279, 1934 Ky. LEXIS 433 (Ky. 1934).

3. Voting Tax Levy.
The question of tax levy provided for in this section may be voted on at a special election called for that purpose or on day of regular election. Collier v. Bourbon Fiscal Court, 188 Ky. 491, 223 S.W. 149, 1920 Ky. LEXIS 307 (Ky. 1920).

The question of voting this 20¢ tax may be voted on at the same election as the road bond issue under KRS 178.170, whether it be a special or regular election. Collier v. Bourbon Fiscal Court, 188 Ky. 491, 223 S.W. 149, 1920 Ky. LEXIS 307 (Ky. 1920).

No actual existing indebtedness is required but only a good faith purpose to undertake and accomplish specified road and bridge construction or improvement, in order to warrant submission of question of whether tax shall be levied and the levying of the tax if voted. Hughes v. Eison, 190 Ky. 661, 228 S.W. 676, 1921 Ky. LEXIS 509 (Ky. 1921).

4. Twenty Cent Limit.

Where levy of 20¢ road tax was still in effect on unpaid part of county road bond issue, the county could not make an additional tax levy under Const., § 157a or this section. Rockcastle County v. Louisville & N. R. Co., 232 Ky. 439, 23 S.W.2d 276, 1929 Ky. LEXIS 447 (Ky. 1929).

The total amount for road purposes is limited to 20¢ per $100 of assessed valuation, not to 20¢ for current expenditures and 20¢ for payment of outstanding bonds. Anderson v. Gillis, 242 Ky. 404, 46 S.W.2d 508, 1932 Ky. LEXIS 282 (Ky. 1932).

5. Funds.

6. — Use.

A sufficient part of special road tax of 20¢ voted under this section on same day road bonds were voted under KRS 178.170, must be set aside to pay interest on and liquidate bonds, but such part as annually remains may be used in building roads and bridges. Collier v. Bourbon Fiscal Court, 188 Ky. 491, 223 S.W. 149, 1920 Ky. LEXIS 307 (Ky. 1920).

Special road tax of 20¢ voted under this section prior to voting of road bonds under KRS 178.170 must be appropriated first as needed for bond issue, and what is left over may then be devoted to purposes provided for by this section. Smith v. Livingston County, 195 Ky. 382, 242 S.W. 612, 1922 Ky. LEXIS 337 (Ky. 1922). See Gillis v. Anderson, 256 Ky. 472, 76 S.W.2d 279, 1934 Ky. LEXIS 433 (Ky. 1934).

Fiscal court has no discretion, in determining whether funds realized from tax levy may be spent for purpose other than specified statutory purpose, as this section is mandatory insofar as purpose for which money must be used is concerned. Thompson v. Bracken County, 294 S.W.2d 943, 1956 Ky. LEXIS 153 (Ky. 1956).

A distinction in the use of the words "improvement" and "construct" and "repair" and "maintain" has been recognized in statutes concerning highways and roads; improvement and construct mean to make better the original status while maintain and repair mean to preserve or remedy the original condition. Thompson v. Bracken County, 294 S.W.2d 943, 1956 Ky. LEXIS 153 (Ky. 1956).

Since the purpose of this section is to improve and construct rather than to repair and maintain, the diversion or expenditure of the funds realized from the collection of the special tax levy for repair or maintenance of county roads or bridges was improper and illegal and as such expenditures were not within the purview of the specified purpose of this section they were in violation of Const., § 180 and KRS 68.110. Thompson v. Bracken County, 294 S.W.2d 943, 1956 Ky. LEXIS 153 (Ky. 1956).

To hold that the words "improve and construct," when used in this section, include maintenance and repair of roads would be giving these ordinary words a strained and unwarranted meaning, a meaning not contemplated by the legislators. Thompson v. Bracken County, 294 S.W.2d 943, 1956 Ky. LEXIS 153 (Ky. 1956).

Where fiscal court used funds from special tax levy, levied for purpose of improving and constructing county roads and bridges, for the purposes of repairing and maintaining roads and bridges, the funds were being improperly used and court erred in failing to grant a permanent injunction to prevent them from expending such proceeds in such improper manner. Thompson v. Bracken County, 294 S.W.2d 943, 1956 Ky. LEXIS 153 (Ky. 1956).

7. Enjoining Collection.

In action to enjoin collection of illegal county road tax, both the county and a representative of bondholders should be made parties to the litigation. Anderson v. Gillis, 242 Ky. 404, 46 S.W.2d 508, 1932 Ky. LEXIS 282 (Ky. 1932). See Gillis v. Anderson, 256 Ky. 472, 76 S.W.2d 279, 1934 Ky. LEXIS 433 (Ky. 1934).

DECISIONS UNDER PRIOR LAW

1. Use of Funds.

A fiscal court may supplement a 20¢ road tax, levied under either KRS 178.200 or this section, by appropriating for road purposes so much as it may desire out of its ordinary county tax of 50¢ for general purposes. Russell County v. Hill, 164 Ky. 360, 175 S.W. 988, 1915 Ky. LEXIS 396 (Ky. 1915); Mitchell v. Knox County Fiscal Court, 165 Ky. 543, 177 S.W. 279, 1915 Ky. LEXIS 557 (Ky. 1915); Houston v. Boltz, 169 Ky. 640, 185 S.W. 76, 1916 Ky. LEXIS 754 (Ky. 1916).

All money raised by a 20¢ tax for road purposes must be applied to payment of indebtedness created under Const., § 157a until this indebtedness has been satisfied in full, and if any part was appropriated or used by fiscal court for any other purpose the members of the court become subject to civil and criminal liability. Bird v. Asher, 170 Ky. 726, 186 S.W. 663, 1916 Ky. LEXIS 129 (Ky. 1916).

OPINIONS OF ATTORNEY GENERAL.

The question of levying a special tax of 20¢ on each $100 of taxable property for the construction of roads authorized under KRS 178.210 to 178.240 can be voted on in the May primary provided a separate ballot is used. OAG 62-218.

If equipment purchased from special levy funds is used for any purpose other than the construction or improvement of the county's roads, it must definitely be shown what part of its cost can be attributed to that use and that cost must be paid from funds other than those of the special tax levy. OAG 66-368.

A county could legally purchase equipment from special levy funds if that equipment was to be used for the construction or improvement of the county's roads. OAG 66-368.

The compensating tax rate is not applicable to any tax approved by the voters after December 16, 1965. OAG 66-749.

If the county taxes and special district taxes, excluding school taxes and excluding a special road tax, charged to the sheriff for the year are less than $150,000, the sheriff will be allowed, by the county treasurer for collecting such taxes, 10% on the first $10,000 and 4% on the remainder but if the amount is $150,000 or more, the sheriff will be allowed 10% upon the first $5,000 and 4% on the residue and the sheriff's fee for collecting the special road tax is 1% of the amount collected. OAG 74-64.

It is proper and legal to place on an election ballot, other than the general election ballot, a question to the voters on whether they would be in favor of a special road tax (authorized under Const., § 157a and this section) which could be used for new construction of roads and bridges. OAG 82-602, 1982 Ky. AG LEXIS 41.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Additional tax for road purposes, Const., § 157a.

178.290. Construction of sidewalks along public roads — School bus turn-around areas.

(1) Any person may build a sidewalk composed of gravel, concrete, or other suitable material along the

side of any public road in this state. The sidewalk shall not exceed sixty (60) inches in width and the construction and repair and the use of the sidewalk shall be without expense of any kind to any other person who may want to use it. All persons who desire shall be permitted to use the sidewalk, and it shall be so constructed as not to interfere with the traveling public on any public road. The governing body of each city, county, urban-county, consolidated local government, and charter county may build and repair sidewalks along public roads where the need exists for the safety of school children. Before the beginning of construction of the sidewalk, written approval must be obtained from the governmental agency having jurisdiction over the public road.

(2) The fiscal court may, where needed, build and maintain suitable areas for the safe turning around of school buses.

History.

4318: amend. Acts 1964, ch. 51, § 1; 1970, ch. 250, § 1; 2006, ch. 236, § 2, effective July 12, 2006.

NOTES TO DECISIONS

1. Condemnation by County.

This section could not be construed as prohibiting county from condemning property. Jones v. Cook, 378 S.W.2d 795, 1964 Ky. LEXIS 204 (Ky. 1964).

OPINIONS OF ATTORNEY GENERAL.

The fiscal court can, in its sound discretion, and where such construction is needed, build and maintain suitable areas for the safe turning around of school buses, but the county would have to acquire at least an easement right from affected landowners for such areas sufficient to justify the cost to the county. OAG 72-134.

Where a school bus must travel two-tenths or three-tenths of a mile from a county road over a private drive to reach an area maintained as a turn around pursuant to subsection (2) of this section, the county must acquire the private drive interval by agreement or condemnation, since this section strongly suggests that a turn around is part of the county road system and does not contemplate a private ownership or interval between the county's road holdings. OAG 81-428, 1981 Ky. AG LEXIS 8.

The fiscal court could, with written permission of the city having jurisdiction over a road or street as a city street, construct sidewalks alongside the road or street where needed for school children. Where the public road is not under the jurisdiction of a city or other governmental agency, the fiscal court would have to procure the appropriate easement rights. OAG 82-136, 1982 Ky. AG LEXIS 505.

The only exceptions to the basic rule that formal acceptance of a road into the county road system is a prerequisite to a fiscal court's authority to spend county money on a road or to improve or maintain it, relate to sidewalks and bus turnarounds for school children, as treated under this section. OAG 82-136, 1982 Ky. AG LEXIS 505.

Under this section, a fiscal court may, where needed, build and maintain suitable areas for the safe turning around of school buses. However, the fiscal court would have to acquire at least an easement right from affected landowners for such areas sufficient to justify the cost to the county; neither the school board nor the private owner is responsible for such construction. OAG 82-136, 1982 Ky. AG LEXIS 505.

There does not appear to be any statute permitting the fiscal court to place county gravel on school parking lots, even though the gravel would be on public property and the school system would pay the cost of the materials. OAG 83-398, 1983 Ky. AG LEXIS 99.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of this section. OAG 93-63, 1993 Ky. AG LEXIS 298.

Fiscal court was not authorized to expend funds for the construction or maintenance of a private driveway needed to accommodate the parking of a school bus on property owned by a school bus driver. OAG 94-21, 1994 Ky. AG LEXIS 249.

PENALTIES

178.990. Penalties.

(1) Any county road engineer who fails to comply with the provisions of KRS 178.050 shall be fined not less than ten ($10) nor more than one hundred dollars ($100) for each offense.

(2) Any county road engineer who makes a change in the location of a road without complying with the provisions of this chapter shall be fined not less than twenty-five dollars ($25).

(3) Any person who injures a sidewalk constructed under the provisions of KRS 178.290 and fails to repair or replace the sidewalk shall be fined not less than four ($4) nor more than fifty dollars ($50).

(4) Any owner or occupier of a dam who fails to comply with the provisions of KRS 178.300 shall be fined two dollars ($2) for every twenty-four (24) hours of noncompliance. Where a milldam is carried away or destroyed, the owner or occupier shall not be subject to the fine until one (1) month after the mill has been put in operation.

(5) If a fiscal court or county judge/executive willfully fails to perform any duty required of it by the provisions of this chapter, except KRS 178.170 and 178.210 to 178.240, every member of such court concurring in the failure shall be fined not less than ten ($10) nor more than one hundred dollars ($100) by the Circuit Court of the county.

(6) All fines imposed by this chapter shall be paid into the county road fund, except that in case of a privately owned road or bridge, the fines shall accrue to the owner.

(7) No fines imposed by this chapter shall bar action for damages for breach of contract.

History.

4299, 4304, 4318, 4320, 4322, 4346, 4349: amend. Acts 1978, ch. 384, § 315, effective June 17, 1978.

OPINIONS OF ATTORNEY GENERAL.

While the grand jury and courts cannot disturb the fiscal court when it is properly performing its ministerial duties in keeping the courthouse and county roads in proper repair, the members of the fiscal court would be subject to indictment and prosecution where charges are properly drawn alleging misfeasance or malfeasance in office, or wilful neglect in discharge of official duties. OAG 72-88.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Penalty for failure of county engineer to prosecute, KRS 179.990.

Kentucky Law Journal.
Moreland, Criminal Jurisdiction of the Kentucky Courts: A Tentative Codification. 47 Ky. L.J. 7 (1958).

TITLE XVI

MOTOR VEHICLES

Chapter
186. Licensing of Motor Vehicles, Operators, and Trailers.
189. Traffic Regulations — Vehicle Equipment and Storage.

CHAPTER 186

LICENSING OF MOTOR VEHICLES, OPERATORS, AND TRAILERS

Motor Vehicle Licenses.

Section
186.060. Motor vehicles leased or owned by governmental units or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government — Use of official plates on motor vehicles leased by governmental entity.

Operator's Licenses and Personal Identification Cards.

186.440. Persons ineligible for operator's license — Reinstatement fee.

Penalties.

186.990. Penalties.

MOTOR VEHICLE LICENSES

186.060. Motor vehicles leased or owned by governmental units or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government — Use of official plates on motor vehicles leased by governmental entity.

(1) Applications for registration of motor vehicles leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state or by the state or federal government shall be submitted to the county clerk, who shall enter the application into AVIS and issue a registration receipt and the official license plate described in KRS 186.240. If the cabinet subsequently determines the registration should not have processed under this section, it may revoke the registration. For providing the services, the entity requesting the registration under this section shall pay the fees described in KRS 186.040.

(2) After the issuance of a license plate under subsection (1) of this section, no subsequent registration or renewal shall be necessary so long as the vehicle is leased or owned by the governmental unit, except in the case of loss or destruction of the license plate. In the event of loss or destruction of the license plate, the license plate shall be replaced in the same manner as if no plate had ever been issued.

(3) When a motor vehicle leased or owned by an entity allowed to use an official plate under this section is transferred or sold to another governmental unit, a new license plate shall be issued for the vehicle in the same manner as provided for in subsection (1) of this section and shall have the same effect as given to such license plates in subsection (2) of this section.

(4) A person shall not use any license plate that has been issued for use on a motor vehicle leased or owned by a governmental unit on a motor vehicle that is not leased or owned by an entity allowed to use an official plate under this section.

(5) Notwithstanding the provisions of KRS 186.020 and 186.050, a governmental entity which leases a motor vehicle may have that vehicle equipped with an official plate under this section. Upon termination of the lease agreement, if ownership of the motor vehicle does not revert to an entity allowed to use an official plate under this section, the owner of the motor vehicle shall surrender the official plates and apply for registration under the provisions of KRS 186.050.

History.
2739g-7: amend. Acts 1946, ch. 122; 1948, ch. 126, §§ 1, 2, 3; 1964, ch. 148, § 1; 1974, ch. 72, § 1; 1986, ch. 419, § 3, effective July 15, 1986; 1990, ch. 296, § 2, effective July 13, 1990; 1990, ch. 498, § 2, effective July 13, 1990; 1994, ch. 428, § 9, effective July 15, 1994; 1996, ch. 36, § 1, effective July 15, 1996; 2013, ch. 33, § 1, effective June 25, 2013; 2021 ch. 53, § 3, effective June 29, 2021; 2024 ch. 123, § 21, effective July 15, 2024.

NOTES TO DECISIONS

Cited:
Georgetown v. Morrison, 362 S.W.2d 289, 1962 Ky. LEXIS 256 (Ky. 1962).

OPINIONS OF ATTORNEY GENERAL.

A school board was without authority to authorize the use of its buses by a civic organization in the absence of a showing of some specific connection between the proposed trip and regular school functions. OAG 60-690.

So long as motor vehicles are owned exclusively by a board of education they need not be re-registered after the initial registration and the license tags will be permanent. OAG 65-421.

The LKLP Council, a private nonprofit corporation whose general objective is the social, individual, and economic growth of Leslie, Knott, Letcher and Perry Counties, is not a governmental agency as defined in this section and is not entitled to an official license tag. OAG 67-257.

Community Action Lexington-Fayette County, Inc. (CALF) is not qualified to obtain state license plates for its vehicles. OAG 71-467.

A city may not equip a motor vehicle with an official license if the vehicle is leased rather than purchased. OAG 73-6.

A fire truck owned by a nonstock, nonprofit corporation for the purpose of offering fire protection, said corporation not having been created under KRS chapter 75 does not constitute a political subdivision or governmental unit and, as provided by this section, would not be entitled to a governmental license plate. OAG 73-145.

A residential manpower center is not entitled to receive official license plates for automobiles acquired under a Gen-

eral Motors lending agreement and used in its driver's education program as it is not a governmental unit and the automobiles are not owned and used exclusively by it. OAG 74-363.

The driver education vehicles owned by an independent school district and operated exclusively for the conduct of a school program by a residential manpower center as an agency of the school district qualify for official license plates under this section. OAG 74-395.

A governmental agency may not use official license plates on leased cars. OAG 74-456.

KRS 186.060(4), as amended in 1996, allows federal, state, and local governmental units to use official license plates on vehicles leased or owned by them; prior opinions to the contrary are abrogated insofar as they rely on prior statutory language. OAG 12-001, 2012 Ky. AG LEXIS 25.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

"Cabinet" defined, KRS 186.010(1).

Kentucky Law Journal.

Notes, Economic, Social and Legal Aspects of Coal Transportation in Kentucky, 64 Ky. L.J. 601 (1975-76).

Garrison and Martin, Kentucky Commercial Motor Vehicle Transportation Tax Legislation, 33 Ky. L.J. 3 (1944).

OPERATOR'S LICENSES AND PERSONAL IDENTIFICATION CARDS

186.440. Persons ineligible for operator's license — Reinstatement fee.

An operator's license shall not be granted to:

(1) Any person who is not a resident of Kentucky;

(2) Any person under the age of sixteen (16);

(3) Any person under the age of eighteen (18) who holds a valid Kentucky instruction permit issued pursuant to KRS 186.450, but who has not graduated from high school or who is not enrolled and successfully participating in school or who is not being schooled at home, except those persons who satisfy the District Court of appropriate venue pursuant to KRS 159.051(3) that revocation of their license would create an undue hardship. Persons under the age of eighteen (18) shall present proof of complying with the requirements of KRS 159.051;

(4) Any person whose operator's license has been suspended, during the period of suspension, subject to the limitations of KRS 186.442;

(5) Any person whose operator's license has been revoked, nor to any nonresident whose privilege of exemption under KRS 186.430 has been refused or discontinued, until the expiration of the period for which the license was revoked, or for which the privilege was refused or discontinued;

(6) Any applicant adjudged incompetent by judicial decree;

(7) Any person who in the opinion of the Department of Kentucky State Police, after examination, is unable to exercise reasonable and ordinary control over a motor vehicle upon the highways;

(8) Any person who is unable to understand highway warnings or direction signs in the English language;

(9) Any person required by KRS 186.480 to take an examination who has not successfully passed the examination;

(10) Any person required by KRS Chapter 187 to deposit proof of financial responsibility, who has not deposited that proof;

(11) Any person who has not filed a correct and complete application attested to in the presence of a person authorized to administer oaths;

(12) Any person who cannot meet the requirements set forth in KRS 186.411(1) or (3); or

(13) Any person whose operator's license has been suspended or revoked under the provisions of KRS Chapter 186, 187, or 189A who has not paid the reinstatement fee required under KRS 186.531.

History.

2739m-37: amend. Acts 1966, ch. 78, § 1; 1966, ch. 255, § 170; 1974, ch. 306, § 2; 1978, ch. 92, § 8, effective June 17, 1978; 1980, ch. 88, § 1, effective July 15, 1980; 1986, ch. 123, § 1, effective July 15, 1986; 1990, ch. 63, § 1, effective July 13, 1990; 1990, ch. 234, § 2, effective July 13, 1990; 1994, ch. 267, § 1, effective July 15, 1994; 1994, ch. 416, § 7, effective July 15, 1994; 1994, ch. 455, § 3, effective July 15, 1994; 1996, ch. 341, § 10, effective July 15, 1996; 1996, ch. 198, § 4, effective October 1, 1996; 1998, ch. 442, § 5, effective July 15, 1998; 2002, ch. 264, § 6, effective July 15, 2002; 2003, ch. 189, § 2, effective June 24, 2003; 2007, ch. 85, § 193, effective June 26, 2007; 2017 ch. 100, § 24, effective January 1, 2019; 2020 ch. 51, § 13, effective March 27, 2020.

Legislative Research Commission Note.

(7/15/94). This section was amended by 1994 Ky. Acts chs. 267, 416, and 455. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 416, which was last enacted by the General Assembly, prevails under KRS 446.250.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Nonresident.
3. Clearance Letter Requirement.

1. Constitutionality.

This section does not violate equal protection of the law on the theory that it treats driver's license applicants with suspended out-of-state licenses differently from driver's license applicants with suspended Kentucky licenses; this section is rationally related to the two legitimate purposes of protecting the public from drivers whose licenses have been suspended for DUI offenses and of preventing "license shopping" by nonresidents with suspended out-of-state licenses. Commonwealth Transp. Cabinet v. Hobson, 870 S.W.2d 228, 1993 Ky. App. LEXIS 158 (Ky. Ct. App. 1993).

2. Nonresident.

This section compels denial of a Kentucky license to a nonresident during such time as his license remains revoked in the issuing state; the word "nonresident" refers to the status of the driver at the time of revocation and that an individual who moves to Kentucky cannot successfully avoid the provisions of the statute by the simple expedient of changing his residence. Commonwealth Transp. Cabinet v. Hobson, 870 S.W.2d 228, 1993 Ky. App. LEXIS 158 (Ky. Ct. App. 1993).

3. Clearance Letter Requirement.

Failure to produce a clearance letter from another state which showed that the license issued to driver by that state was no longer suspended was sufficient grounds for this state's refusal to issue an operator's license under the provisions of this section and 601 KAR 12:020, even though the requirement of a clearance letter was the only one of several license reinstatement conditions the driver had not met. Transportation Cabinet v. Feige, 889 S.W.2d 52, 1994 Ky. App. LEXIS 147 (Ky. Ct. App. 1994).

Cited:

Ingram's Adm'r v. Advance Motor Co., 283 Ky. 87, 140 S.W.2d 840, 1940 Ky. LEXIS 300 (Ky. 1940); Estes v. Gibson, 257 S.W.2d 604, 1953 Ky. LEXIS 802, 36 A.L.R.2d 729 (Ky. 1953); Scott v. Massachusetts Bonding & Ins. Co., 273 S.W.2d 350, 1954 Ky. LEXIS 1154 (Ky. 1954); Cruse v. Commonwealth, 712 S.W.2d 356, 1986 Ky. App. LEXIS 1122 (Ky. Ct. App. 1986); Commonwealth v. Mullins, 812 S.W.2d 164, 1991 Ky. App. LEXIS 37 (Ky. Ct. App. 1991), rehearing denied, 1991 Ky. App. LEXIS 160 (Ky. Ct. App. 1991); Commonwealth v. Howard, 969 S.W.2d 700, 1998 Ky. LEXIS 95 (Ky. 1998).

OPINIONS OF ATTORNEY GENERAL.

A peace officer has authority to stop the operator of a motor bike for the purpose of determining whether or not the operator has the required license where it appears the operator is under the age of 16. OAG 65-354.

Since a person under 16 cannot obtain a license to operate a motor vehicle, if a person sells a car to a person under 16 knowingly, then such seller could be prosecuted for causing the juvenile to be charged with a crime. OAG 67-360.

Operation of a motor vehicle in disregard of valid restrictions on a motor vehicle operator's license is operation without a license in violation of KRS 186.410 for which a person may be convicted and fined or imprisoned or both pursuant to KRS 186.990(3), and for which a peace officer may issue a citation if the offense is committed in his presence. OAG 67-530.

Juvenile offenders sixteen years of age or older charged with operating a motorcycle without an operator's license must, in view of KRS 208.020 (now repealed), be proceeded against as adult offenders and the juvenile court has no jurisdiction in such cases, but juvenile offenders under sixteen years of age in such cases must be proceeded against in juvenile court. OAG 75-563.

The lawful minimum age of a moped operator is 16. OAG 84-176, 1984 Ky. AG LEXIS 212.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Loss of license or permit by student for dropping out of school or for academic deficiency, 159.051.

Treatises

Petrilli, Kentucky Family Law, Minors, § 30.17.

PENALTIES

186.990. Penalties.

(1) Any person who violates any of the provisions of KRS 186.020, 186.030, 186.040, 186.045(4), 186.050, 186.056, 186.060, 186.073, 186.110, 186.130, 186.140, 186.160, 186.170, 186.180(1) to (4), 186.210(1), 186.230, or KRS 186.655 to 186.680 shall be guilty of a violation.

(2) Any person who violates any of the provisions of KRS 138.465, 186.072, 186.190, 186.200, or 186.210(2) shall be guilty of a Class A misdemeanor.

(3) A person who violates the provisions of KRS 186.450(4), (5), or (6) or 186.452(3), (4), or (5) shall be guilty of a violation. A person who violates any of the other provisions of KRS 186.400 to 186.640 shall be guilty of a Class B misdemeanor.

(4) Any clerk or judge failing to comply with KRS 186.550(1)shall be guilty of a violation.

(5) If it appears to the satisfaction of the trial court that any offender under KRS 186.400 to 186.640 has a driver's license but in good faith failed to have it on his or her person or misplaced or lost it, the court may, in its discretion, dismiss the charges against the defendant without fine, imprisonment, or cost.

(6) Any person who steals a motor vehicle registration plate, temporary tag, or renewal decal shall be guilty of a Class D felony. Displaying a canceled registration plate or temporary tag on a motor vehicle shall be prima facie evidence of guilt under this section.

(7) Any person who violates the provisions of KRS 186.1911 shall be guilty of a Class A misdemeanor.

(8) Any person who makes a false affidavit to secure a license plate under KRS 186.172 shall be guilty of a Class A misdemeanor.

(9) Any person who violates any provision of KRS 186.070 or 186.150 shall be guilty of a Class A misdemeanor.

(10) Any person who operates a vehicle bearing a dealer's plate upon the highways of this Commonwealth with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(11) Any person, other than a licensed dealer or manufacturer, who procures a dealer's plate with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class D felony.

(12) Any resident who unlawfully registers, titles, or licenses a motor vehicle in any state other than Kentucky with intent to evade the motor vehicle usage tax or the registration fee shall be guilty of a Class A misdemeanor if the amount of tax due is less than one hundred dollars ($100), or of a Class D felony if the amount of tax due is more than one hundred dollars ($100), and in addition shall be liable for all taxes so evaded with applicable interest and penalties.

History.

2739g-5c, 2739g-6, 2739g-7, 2739g-65, 2739g-103, 2739g-104, 2739m-36, 2739m-48, 2739m-59, 2739m-69: amend. Acts 1946, ch. 208, § 4; 1958, ch. 70, § 28; 1960, ch. 37, § 5; 1966, ch. 83, § 2; 1970, ch. 92, § 58; 1978, ch. 101, § 1, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7, § 2, effective July 1, 1979; 1980, ch. 296, § 5, effective July 15, 1980; 1982, ch. 303, § 2, effective July 15, 1982; 1984, ch. 373, § 7(1) to (9), effective July 13, 1984; 1986, ch. 118, § 104, effective July 1, 1987; 1986, ch. 431, § 14, effective July 15, 1986; 1986, ch. 498, § 6, effective April 1, 1987; 1992, ch. 463, § 20, effective July 14, 1992; 1996, ch. 198, § 17, effective October 1, 1996; 2000, ch. 441, § 3, effective July 14, 2000; 2003, ch. 103, § 5, effective June 24, 2003; 2006, ch. 65, § 8, effective July 12, 2006; 2008, ch. 15, § 3, effective July 15, 2008; 2008, ch. 176, § 3, effective July 15, 2008; 2025 ch. 39, § 8, effective June 27, 2025; 2025 ch. 70, § 6, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). This statute was amended by 2025 Ky. Acts chs. 39 and 70, which do not appear to be in conflict and have been codified together.

(6/24/2003). 2000 Ky. Acts ch. 408, sec. 178, renumbered the former subsection (2) of KRS 186.045 as subsection (1), but that Act failed to include a conforming amendment to change the reference to that subsection in subsection (1) of this statute. Under KRS 7.136(1)(e), that change has now been made.

NOTES TO DECISIONS

Analysis

1. Evidence of Fine Admissible.
2. Failure to Illuminate License Plates.
3. Possessing Stolen Plates.

1. Evidence of Fine Admissible.

Evidence of conviction of violation of KRS 186.190 and fine under this section was admissible in action to recover on an alleged breach of contract of sale and of a claimed warranty of a used automobile. Harlow v. Dick, 245 S.W.2d 616, 1952 Ky. LEXIS 601 (Ky. 1952).

2. Failure to Illuminate License Plates.

Police officers were entitled to summary judgment on the issue of qualified immunity in a 42 USCS § 1983 suit alleging an illegal arrest in violation of plaintiff's Fourth Amendment rights because, although the officers initially began their pursuit because plaintiff did not have his license plate illuminated as required by KRS 186.170 and 186.990, they arrested plaintiff for fleeing in violation of KRS 520.095 and 520.100 and there was no dispute as to the officers' assertion that plaintiff failed to stop once they were in pursuit. Nelson v. Riddle, 217 Fed. Appx. 456, 2007 FED App. 0129N, 2007 U.S. App. LEXIS 3592 (6th Cir. Ky. 2007).

3. Possessing Stolen Plates.

In investigating a stolen vehicle registration plate allegedly belonging to defendant's mother, because exigent circumstances existed when law enforcement found an active methamphetamine lab in the trunk of the car which had the stolen license plate affixed to it, suppression of the lab was properly denied. Bishop v. Commonwealth, 237 S.W.3d 567, 2007 Ky. App. LEXIS 365 (Ky. Ct. App. 2007).

Cited:

Commonwealth v. Mitchell, 355 S.W.2d 686, 1962 Ky. LEXIS 83 (Ky. 1962); Johnson v. Commonwealth, 443 S.W.2d 20, 1968 Ky. LEXIS 139 (Ky. 1968); McKenzie v. Oliver, 571 S.W.2d 102, 1978 Ky. App. LEXIS 586 (Ky. Ct. App. 1978); Boone v. Commonwealth, 2021 Ky. App. LEXIS 90 (Ky. Ct. App. Aug. 13, 2021); Spears v. Commonwealth, 710 S.W.3d 488, 2025 Ky. App. LEXIS 27 (Ky. Ct. App. 2025); (April 4, 2025).

NOTES TO UNPUBLISHED DECISIONS

1. Search and Seizure.

Unpublished decision: Where defendant dropped a baggie of crack cocaine in anticipation of a strip-search at a jail, suppression was not warranted, because, inter alia, the police did not need reasonable suspicion or probable cause of defendant's commission of any other crime to take defendant into custody and search defendant incident to arrest since police could properly arrest defendant for driving on a suspended license. United States v. Warfield, 404 Fed. Appx. 994, 2011 FED App. 0002N, 2011 U.S. App. LEXIS 55 (6th Cir. Ky. 2011).

2. Evidence.

Unpublished decision: Trial court did not err in denying a directed verdict to defendant on a charge of theft of a license plate. Although defendant provided an explanation of why he had the plate, the placement of the plate on his truck was prima facie evidence of his guilt and provided the jury with sufficient evidence from which to determine defendant's guilt on the charge. Casey v. Commonwealth, 2012 Ky. App. Unpub. LEXIS 1054 (Ky. Ct. App. Sept. 21, 2012), review denied, ordered not published, 2013 Ky. LEXIS 495 (Ky. Aug. 21, 2013).

OPINIONS OF ATTORNEY GENERAL.

No officer, agent or employee of the Commonwealth has authority to confiscate license plates issued by another state to a person who drives a car bearing those plates into Kentucky regardless of the fact that the person's driver's license was revoked by the Commonwealth of Kentucky. OAG 60-1055.

If the registrant is a bona fide resident of the county wherein the vehicle is registered, the registration is valid for that year even though the registrant should become a resident of another county during that year. OAG 61-219.

In an action brought against a person believed to be in violation of KRS 186.020 or KRS 186.210, the burden of proof would be on the prosecuting attorney to show that the registrant was not a bona fide resident of the county of registration. OAG 61-219.

Registrations are valid where a vendee purchases a vehicle from an individual-vendor or dealer-vendor who registered the vehicle in a county other than the county of residence of the purchaser. OAG 61-219.

Since a person under 16 cannot obtain a license to operate a motor vehicle, if a person sells a car to a person under 16 knowingly, then such seller could be prosecuted for causing the juvenile to be charged with a crime. OAG 67-360.

Operation of a motor vehicle in disregard of valid restrictions on a motor vehicle operator's license is operation without a license in violation of KRS 186.410 for which a person may be convicted and fined or imprisoned or both pursuant to this section, and for which a peace officer may issue a citation if the offense is committed in his presence. OAG 67-530.

The fact that subsection (6) of this section includes the penalty in the same subsection as the violation does not violate Ky. Const., § 51. OAG 72-90.

A moped operator must be licensed or face a $12 to $500 fine and six months in jail. OAG 84-176, 1984 Ky. AG LEXIS 212.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Fitzgerald, Special Comment — The Crazy Quilt of Commercial Law: A Study In Legislative Patchwork, The Nature of the Latest Patch, 54 Ky. L.J. 85 (1965).

CHAPTER 189

TRAFFIC REGULATIONS — VEHICLE EQUIPMENT AND STORAGE

Vehicle Operation.

Section
189.292. Use of personal communication device prohibited while operating motor vehicle in motion on traveled portion of roadway — Exclusions — Administrative regulations.
189.294. Use of personal communication device by minor prohibited while operating motor vehicle, motorcycle, or moped in motion on traveled portion of roadway — Exclusions — Administrative regulations.

Section
189.336. Installation of flasher lights near schools — Speed limits.
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189.375. School or church bus signaling device — Use — Stopping regulated.
189.380. Signals.
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189.450. Stopping, standing, parking, or repairing vehicle on roadway or shoulders of highway.

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189.540. Regulations for school buses — Operator required to have commercial driver's license with school bus endorsement.
189.550. Vehicles used for transporting children to stop at railroad crossings.

Penalties.

189.990. Penalties.
189.993. Penalties.

VEHICLE OPERATION

189.292. Use of personal communication device prohibited while operating motor vehicle in motion on traveled portion of roadway — Exclusions — Administrative regulations.

(1) As used in this section, "personal communication device" means a device capable of two (2) way audio or text communication that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers communication to the possessor, including but not limited to a paging device and a cellular telephone.

(2) Except as provided in subsection (3) of this section, no person shall, while operating a motor vehicle that is in motion on the traveled portion of a roadway, write, send, or read text-based communication using a personal communication device to manually communicate with any person using text-based communication, including but not limited to communications referred to as a text message, instant message, or electronic mail.

(3) Subsection (2) of this section shall not apply to:

(a) The use of a global positioning system feature of a personal communication device;

(b) The use of a global positioning or navigation system that is physically or electronically integrated into the motor vehicle;

(c) The reading, selecting, or entering of a telephone number or name in a personal communication device for the purpose of making a phone call;

(d) An operator of an emergency or public safety vehicle, when the use of a personal communication device is an essential function of the operator's official duties; or

(e) The operator of a motor vehicle who writes a text message on a personal communication device to:

1. Report illegal activity;
2. Summon medical help;
3. Summon a law enforcement or public safety agency; or
4. Prevent injury to a person or property.

(4) The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to updates or advances in the automotive and information technology industries.

History.

Enact. Acts 2010, ch. 110, § 2, effective July 15, 2010; 2011, ch. 59, § 3, effective June 8, 2011.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Cell Phones Pose a Distraction to Drivers but Legislative Ban Is Not the Answer, 98 Ky. L.J. 177 (2009/2010).

189.294. Use of personal communication device by minor prohibited while operating motor vehicle, motorcycle, or moped in motion on traveled portion of roadway — Exclusions — Administrative regulations.

(1) As used in this section, "personal communication device" shall have the same meaning as defined in KRS 189.292.

(2) Any person under the age of eighteen (18) who has been issued an instruction permit, intermediate license, or operator's license shall not operate a motor vehicle, motorcycle, or moped that is in motion on the traveled portion of a roadway while using a personal communication device, except to summon medical help or a law enforcement or public safety agency in an emergency situation.

(3) Use of a personal communication device does not include a stand-alone global positioning system, a global positioning or navigation system that is physically or electronically integrated into the motor vehicle, or an in-vehicle security, diagnostics, and communications system, but does include manually entering information into the global positioning system feature of a personal communication device.

(4) This section shall not apply to the use of a citizens band radio or an amateur radio by a motor vehicle operator.

(5) The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to updates or advances in the automotive and information technology industries.

History.

Enact. Acts 2010, ch. 110, § 3, effective July 15, 2010; 2011, ch. 59, § 4, effective June 8, 2011.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Cell Phones Pose a Distraction to Drivers but Legislative Ban Is Not the Answer, 98 Ky. L.J. 177 (2009/2010).

189.336. Installation of flasher lights near schools — Speed limits.

(1) Fiscal courts, with respect to school zones situated in unincorporated areas, may authorize by reso-

lution installation at county expense of school flasher lights and other traffic control devices on highways in school zones as they deem reasonable and necessary.

(2) Cities, with respect to school zones within their incorporated areas, may authorize by ordinance installation at city expense of school flasher lights and other traffic control devices on highways in school zones as they deem reasonable and necessary.

(3) The speed limit on all highways where school flasher lights are in operation shall be determined by the governmental unit having control of the highway where a school flasher light is in operation. Flasher lights shall be placed one-eighth (⅛) of a mile on each side of the principal school building where practical. The governmental unit having control of the highway where the lights are in operation shall erect signs notifying motorists of the speed limit.

(4) "Highways" as used in this section shall mean any public road or street maintained by a city, county or the state.

(5) Any traffic control devices erected by any governmental unit shall conform to standards and specifications authorized by KRS 189.337.

History.

Enact. Acts 1972, ch. 49, § 1; 1974, ch. 27, § 1; 1978, ch. 227, § 1, effective June 17, 1978.

OPINIONS OF ATTORNEY GENERAL.

Fiscal courts, and cities by ordinance, may authorize the installation of traffic devices that conform to the standards and specifications of KRS 189.337 on highways in school zones as they deem reasonable and necessary with or without authorization from the bureau (now department) of highways, except where federal aid highways are involved, since any traffic control devices placed thereon must be approved by the bureau (now department) of highways as required by 23 USCS, § 109(d). OAG 74-774.

A board of education in making reasonable rules for the control and management of the schools may establish student safety patrols for street traffic instructional purposes inside the limits of school property but may not make or enforce traffic regulations on roads or driveways within or outside the limits of school property. OAG 75-614.

A city ordinance making school crossing guards, who are sworn peace officers with authority to issue citations and place and remove traffic control devices, employes of the school board rather than the city is invalid under KRS 94.360 (now repealed), giving a city exclusive control over its streets, this section, giving a city exclusive authority to place traffic control devices, and Ky. Const., § 184 requiring school board funds be used only for the purpose of education. OAG 79-107, 1979 Ky. AG LEXIS 516.

The city has authority to employ school crossing guards to regulate traffic, while the local school board does not; due to the city's exclusive control over its streets, no other governmental entity has similar control. OAG 92-6, 1992 Ky. AG LEXIS 6.

The city school board does not have the authority to regulate traffic, as the city has exclusive control over traffic and traffic control devices. OAG 92-6, 1992 Ky. AG LEXIS 6.

There is no statutory authority allowing the city to abdicate its responsibility and jurisdiction over existing city streets and in fact, subsection (2) of this section expressly authorizes a city, by ordinance, to install, at city expense, school flasher lights in school zones, as necessary. OAG 92-6, 1992 Ky. AG LEXIS 6.

189.370. Passing stopped school or church bus prohibited — Application to properly marked vehicles — Rebuttable presumption as to identity of violator.

(1) If any school or church bus used in the transportation of children is stopped upon a highway for the purpose of receiving or discharging passengers, with the stop arm and signal lights activated, the operator of a vehicle approaching from any direction shall bring the vehicle to a stop and shall not proceed until the bus has completed receiving or discharging passengers and has been put into motion. The stop requirement provided for in this section shall not apply to vehicles approaching a stopped bus from the opposite direction upon a highway of four (4) or more lanes divided by an elevated barrier or unpaved median.

(2) This section shall be applicable only when the bus displays the markings and equipment required by Kentucky minimum specifications for school buses.

(3) If any vehicle is witnessed to be in violation of this section and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person in whose name the vehicle is registered or leased was the operator of the vehicle at the time of the alleged violation and is subject to the penalties as provided for in KRS 189.990(5).

History.

2739g-46a, 2739g-69*l*: amend. Acts 1950, ch. 96, § 1; 1960, ch. 123, § 2; 1964, ch. 65, § 3; 1986, ch. 443, § 1, effective July 15, 1986; 1988, ch. 262, § 1, effective July 15, 1988; 2026 ch. 62, § 7, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Bus Driver.
3. — Duty.
4. — Negligence.
5. Negligence of Motorist.
6. Involuntary Manslaughter.
7. "In use."

1. Purpose.

The Constitution, statute and case law of this state reflect a policy of special protection of minors from injury. Pike v. George, 434 S.W.2d 626, 1968 Ky. LEXIS 235 (Ky. 1968).

2. Bus Driver.

3. — Duty.

School bus driver owes other motorists duty of operating his bus in a careful manner with respect to their safety under KRS 189.290. Greyhound Corp. v. White, 323 S.W.2d 578, 1958 Ky. LEXIS 21 (Ky. 1958).

4. — Negligence.

Where a school bus driver stopped in his left lane a few feet behind a commercial bus which was stopped partially in the right lane and the school bus driver could easily have pulled completely off of the road, the question of whether the school bus driver was negligent should have been submitted to the jury and were it not for the requirement that all motorists stop before passing a school bus and the possibility that the school bus driver, therefore, reasonably thought that any motorist behind him would be prepared to stop when he did, there should have been a directed verdict against the school bus

driver in favor of a passenger in a car which hit both buses from behind on slick road. Greyhound Corp. v. White, 323 S.W.2d 578, 1958 Ky. LEXIS 21 (Ky. 1958).

5. Negligence of Motorist.

Where a motorist was following a school bus on a slick road, the school bus pulled into the left lane revealing a commercial bus stopped partially in the right lane, the school bus then stopped in the left lane a few feet behind the commercial bus to pick up children, and the motorist slid into both buses, the issue of the motorist's negligence should have been submitted to the jury in an action by passengers in his automobile. Greyhound Corp. v. White, 323 S.W.2d 578, 1958 Ky. LEXIS 21 (Ky. 1958).

6. Involuntary Manslaughter.

Driver who failed to bring his automobile to a complete stop as he approached school bus which had stopped on highway for the purpose of discharging passengers and who passed bus while it was discharging passengers was guilty of involuntary manslaughter when he struck and killed child who had alighted from the bus. Commonwealth v. Mullins, 296 Ky. 190, 176 S.W.2d 403, 1943 Ky. LEXIS 137 (Ky. 1943).

7. "In use."

Where truck passed school bus on the left and struck the child, child's death arose out of the "use" of the school bus, and insurer of the school bus had a duty to defend; until the child had reached the other side of the street safely the school bus had not stopped operating as a school bus in relation to the child. Hartford Ins. Cos. of Am. v. Kentucky Sch. Bds. Ins. Trust, 17 S.W.3d 525, 1999 Ky. App. LEXIS 124 (Ky. Ct. App. 1999).

Cited:

OPINIONS OF ATTORNEY GENERAL.

Regardless of whether a bus was marked "school bus" or "church bus" when it was being used to carry children to a church function, a motorist passing such a bus while the bus was stopped for receiving or disembarking passengers, whether or not the bus was "upon a highway," would be in violation of subsection (1) of this section. OAG 60-1237.

The provisions of subsection (1) of this section were intended primarily to apply to the passing of a bus which was loading or unloading passengers on the highway. OAG 60-1237.

Painted stripes between opposite traffic lanes would not fall within the definition of a mountable median. OAG 65-120.

When a school bus driver has seen a vehicle pass a stopped school bus loading or unloading children, has noted the license number of the vehicle, and has ascertained the name of the registered owner, he has sufficient information to justify making a complaint before a judge against the registered owner and the complaint should not be dismissed without a trial, but unless the prosecution has obtained additional evidence, either direct or circumstantial, identifying the driver of the vehicle at the time of the violation, the court would be justified in dismissing the case without requiring the defendant to make any defense. OAG 79-263, 1979 Ky. AG LEXIS 381.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Murray, Instructions In Regard to the Speed of Motor Trucks, A Study In Statutory Interpretation, 34 Ky. L.J. 85 (1946).

189.375. School or church bus signaling device — Use — Stopping regulated.

No school or church bus shall be licensed or operated for the transportation of school children unless it is equipped with bus alternating flashing signal lamps and a stop arm folding sign. The bus body shall be equipped with a system of four (4) red signal lamps, two (2) on the front and two (2) on the rear of the bus, and four (4) amber signal lamps. Each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. The bus body shall be equipped with a stop arm folding sign on the driver's side with letters at least six (6) inches in height displaying the word "stop" on both sides. Prior to stopping the school bus for the purpose of receiving or discharging school children, the driver shall activate the amber flashing signal lamps. Once the bus comes to a complete stop, the driver shall extend the stop arm and activate the red flashing signal lights prior to opening the door so it shall be plainly visible to traffic approaching from both directions that the bus is in the process of receiving or discharging passengers. No driver shall stop a school or church bus for receiving or discharging passengers in a no passing zone which does not afford reasonable visibility to approaching motor vehicles from both directions unless a "School Bus Stop Ahead" sign has been installed a reasonable distance before that spot in the roadway. No driver shall stop a school or church bus for the purpose of receiving passengers from or discharging passengers to the opposite side of the road on a highway of four (4) or more lanes; provided, that this provision does not prohibit the discharging of passengers at a marked pedestrian crossing.

History.

Enact. Acts 1956, ch. 41; 1958, ch. 110, § 1; 1964, ch. 65, § 4; 1986, ch. 443, § 2, effective July 15, 1986; 1988, ch. 262, § 2, effective July 15, 1988; 2006, ch. 173, § 18, effective July 12, 2006.

NOTES TO DECISIONS

1. Bus Driver's Standard of Care.

A school bus driver is required to exercise the highest degree of care for a child's safety until the child is on the side of the street where his home is located and is out of danger of injury from passing traffic. Croghan v. Hart County Board of Education, 549 S.W.2d 306, 1977 Ky. App. LEXIS 658 (Ky. Ct. App. 1977).

Where child was allowed to disembark from school bus on side of highway opposite his home and bus driver failed to use flashing signals or operate stop sign, bus driver and county school board were negligent as a matter of law. Croghan v. Hart County Board of Education, 549 S.W.2d 306, 1977 Ky. App. LEXIS 658 (Ky. Ct. App. 1977).

OPINIONS OF ATTORNEY GENERAL.

A school bus may not stop to receive or discharge passengers in a no passing area as defined in KRS 189.340(4) (now KRS 189.340(5)). OAG 64-23.

189.380. Signals.

(1) A person shall not turn a vehicle or move right or left upon a roadway until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

(2) A signal indicating the intention to turn right or left shall be given continuously for not less than the last one hundred (100) feet traveled by the motor vehicle before the turn.

(3) A bus driver shall not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to traffic following the bus.

(4) All signals required for a motor vehicle shall be given by signal lamps or mechanical signal devices.

(5) A signal required for a vehicle that is not a motor vehicle may be given by either hand signals, signal lamps, or mechanical signal devices. The signal shall be given intermittently for the last fifty (50) feet traveled by the vehicle before the turn.

(6) Hand signals shall be executed in the following manner when operating a vehicle that is not a motor vehicle:

(a) The hand and arm shall be extended horizontally from the left side of the vehicle to indicate a left turn;

(b) The left arm shall be extended horizontally with the hand and arm extended upward from the elbow or the right arm and hand shall be extended horizontally to indicate a right turn;

(c) Either arm shall be extended horizontally with the hand and arm extended downward from the elbow to indicate a stop or decrease in speed.

History.

2739g-50, 2739g-69p: amend. Acts 1950, ch. 54; 1954, ch. 142, § 1; 1960, ch. 123, § 3; 1978, ch. 46, § 6, effective June 17, 1978; 1988, ch. 262, § 3, effective July 15, 1988; 1994, ch. 203, § 2, effective July 15, 1994; 1996, ch. 327, § 2, effective July 15, 1996.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Duties of Driver.
3. —Turns.
4. — —Left Turn.
5. — — —Failure to Signal.
6. — — —Reasonable Safety.
7. — —Right Turn.
8. — —U-turn.
9. — —Control of Vehicle.
10. — —Reasonable Space.
11. Duties of Other Drivers.
12. Traveling in Own Lane.
13. Pedestrians.
14. Failure to Signal.
15. Stopping.
16. Decreasing Speed.
17. Methods of Signalling.
18. Instructions.
19. Standard of Care.

1. Purpose.

Signal required of operator of turning vehicle is not only for protection of vehicles in rear, but also of all vehicles whose movements may reasonably be affected by change in direction. Lindig v. Breen, 268 Ky. 153, 103 S.W.2d 941, 1937 Ky. LEXIS 423 (Ky. 1937).

A turn signal can have but one legally-recognized meaning for a vehicle in motion, and that is a turn. Campbell v. Markham, 426 S.W.2d 431, 1968 Ky. LEXIS 644 (Ky. 1968).

2. Duties of Driver.

While a vehicle proceeding in a straight course should be given priority, the plaintiff, as he approached the highway junction intending to follow a straight course, had a duty to keep his automobile under reasonable control, to drive at a reasonable speed, to maintain a lookout for other automobiles and signals and to exercise ordinary care to avoid a collision with a vehicle turning at the junction. Moskowitz v. Peariso, 458 F.2d 240, 1972 U.S. App. LEXIS 10221 (6th Cir. Ky. 1972).

A motorist following another motorist at a distance of about 25 feet at a speed of 20 to 25 miles per hour had a reasonable right to assume that the preceding motorist would, in the event the latter decided to stop or turn, observe his duty under this section to properly indicate his intention. Berry v. Jorris, 303 Ky. 799, 199 S.W.2d 616, 1947 Ky. LEXIS 562 (Ky. 1947).

Subsection (1) of this section imposes a double duty on a driver who wants to change the direction of his vehicle. He must first ascertain that his movement can be made with reasonable safety and then he must give a signal to drivers of other vehicles of his intention to change direction. Kentucky Bus Lines, Inc. v. Wilson, 258 S.W.2d 486, 1953 Ky. LEXIS 843 (Ky. 1953).

Once a driver had signaled a left turn and then changed his mind and swerved back on to his right side of the road and stopped or slowed almost to a stop, it was necessary that he make known his change of intention in compliance with this section. McCoy v. Carter, 323 S.W.2d 210, 1959 Ky. LEXIS 323 (Ky. 1959).

An instruction that the plaintiff driver should have his motor vehicle under reasonable control and should keep a reasonable lookout ahead, although irrelevant because negligence claim was predicated on violation of other statutory duties, was not error. Lockridge v. Mercer, 438 S.W.2d 486, 1968 Ky. LEXIS 151 (Ky. 1968).

Drivers are under a duty not to turn their vehicles from a direct course upon the highway by changing lanes until such movement can be made with reasonable safety. Yellow Cab Co. v. Crume, 552 S.W.2d 662, 1977 Ky. App. LEXIS 727 (Ky. Ct. App. 1977).

Drivers have a duty to maintain a lookout ahead and to the rear in attempting to change from the left to the right lane of traffic and it is up to the jury to determine whether a driver was acting in a reasonably prudent manner when he looked in his rearview mirror rather than looking out ahead immediately before a collision. Yellow Cab Co. v. Crume, 552 S.W.2d 662, 1977 Ky. App. LEXIS 727 (Ky. Ct. App. 1977).

3. —Turns.

Instruction imposing on truck driver duty to give signals in any and all events regardless of whether movement of car might reasonably affect operation of another, imposed greater burden upon truck driver than statute required. Lehr v. Fenton Dry Cleaning & Dyeing Co., 258 Ky. 663, 80 S.W.2d 831, 1935 Ky. LEXIS 220 (Ky. 1935).

Operator contemplating turn or change of course must look, and if he sees anyone to whom to give signal, he must do so; but he need not give signal if contemplated turn or change of course will not affect anyone. Cook v. Gillespie, 259 Ky. 281, 82 S.W.2d 347, 1935 Ky. LEXIS 307 (Ky. 1935).

This section places a duty upon a driver about to change the course of his vehicle to see that there is sufficient space for the turn to be made in safety and to give a proper signal if it appears that the movement of another vehicle may reasonably be affected. Stockdale v. Eads, 314 Ky. 384, 235 S.W.2d 998, 1951 Ky. LEXIS 661 (Ky. 1951).

The driver of a vehicle is under no duty to give a signal under this section if no vehicle is in sight which might reasonably be affected by the change in direction. Stockdale v. Eads, 314 Ky. 384, 235 S.W.2d 998, 1951 Ky. LEXIS 661 (Ky. 1951).

Where cars approach an intersection from opposite directions and the one which reaches the intersection first intends to make a left turn, the right of way of the car turning and the duty of the other car to yield the right-of-way are secondary to the duty of the turning car to signal his intent to turn. Zogg v. O'Bryan, 314 Ky. 821, 237 S.W.2d 511, 1951 Ky. LEXIS 757 (Ky. 1951).

Signals required under this statute need not be given unless the movement of another vehicle might reasonably be affected by the failure to do so and if an approaching vehicle is not in sight when a turn to the right or left on a highway is made, the flashing of the turn indicator would be a futile gesture. Adams v. Feck, 303 S.W.2d 287, 1957 Ky. LEXIS 247 (Ky. 1957).

This section requires a driver to ascertain whether a turn can be made with reasonable safety and to give a proper signal for distance of 100 feet before turning. Riley v. Thomas, 310 S.W.2d 49, 1958 Ky. LEXIS 370 (Ky. 1958).

An implicit requirement in this section is that the operator keep a lookout ahead in order to ascertain if he can make his turn with reasonable safety. Jackson v. Shipley, 312 S.W.2d 627, 1958 Ky. LEXIS 237 (Ky. 1958).

Where instruction as to duties under subsections (1) and (2) of this section was given with respect to driver of lead car it was not error to refuse to give the same instruction as to driver of following car since the requirement to signal before changing lanes has no application to the following car. Ford v. Robinson, 428 S.W.2d 772, 1968 Ky. LEXIS 725 (Ky. 1968).

The statute imposes a continuing duty on a motorist, after giving his signal, to observe traffic conditions both fore and aft up to the time of actual turning. Lockridge v. Mercer, 438 S.W.2d 486, 1968 Ky. LEXIS 151 (Ky. 1968).

4. — —Left Turn.

Arm signal for left-hand turn is for benefit of other vehicles and does not apply where automobile making left turn struck pedestrian. Jefferson's Adm'x v. Baker, 232 Ky. 98, 22 S.W.2d 448, 1929 Ky. LEXIS 399 (Ky. 1929).

Driver of automobile was not liable for making left turn into side road without having sufficient space therefor, where uncontradicted evidence was that there was sufficient space and evidence indicated that collision occurred because driver of trailing car disregarded signal given by driver of leading car and sought to pass to his left. White v. McClintock-Field Co., 242 Ky. 688, 47 S.W.2d 527, 1932 Ky. LEXIS 346 (Ky. 1932).

Motorist was entitled to make left turn across highway when other car was approaching, and could assume that other car was not being driven at speed greater than was reasonable and proper. Rutherford v. Smith, 284 Ky. 592, 145 S.W.2d 533, 1940 Ky. LEXIS 548 (Ky. 1940).

Evidence that plaintiff was driving at more than 40 miles per hour in a congested area justified finding by jury that he was contributorily negligent in collision with approaching automobile which turned to the left across the road in front of plaintiff's car. Hilsenrad v. Bowling, 292 Ky. 368, 166 S.W.2d 847, 1942 Ky. LEXIS 96 (Ky. 1942).

Where a driver approaching an intersection through which he had the right-of-way saw a bus about 80 feet from the intersection coming toward the intersection from the opposite direction and also having the right-of-way, thought the bus was going to stop at the intersection, and made a left turn in the intersection colliding with the bus which was about in the middle of the intersection at the time of impact, the driver was contributorily negligent as a matter of law. Louisville Transit Co. v. Gipe, 277 S.W.2d 52, 1955 Ky. LEXIS 464 (Ky. 1955).

Where one motorist attempted to pass another within 100 feet of an intersection, the other attempted a left turn at the intersection, and they collided, both were guilty of negligence contributing to the accident and neither should recover. Garnett v. Hicks, 333 S.W.2d 509, 1960 Ky. LEXIS 193 (Ky. 1960), overruled, Dr. Pepper Bottling Co. v. Ricks, 376 S.W.2d 299, 1964 Ky. LEXIS 443 (Ky. 1964).

When there is nothing to prevent a left turning driver from observing the imminent approach of a vehicle which is traveling in a straight course, the left turning driver is negligent as a matter of law when a collision results. Covington v. Friend Tractor & Motor Co., 547 S.W.2d 771, 1977 Ky. App. LEXIS 634 (Ky. Ct. App. 1977).

The driver of an automobile seeking to make a left turn across the projected path of oncoming traffic must yield the right-of-way unless and until it appears to him in the exercise of ordinary care that the left turn can be made in reasonable safety. Covington v. Friend Tractor & Motor Co., 547 S.W.2d 771, 1977 Ky. App. LEXIS 634 (Ky. Ct. App. 1977).

5. — — —Failure to Signal.

Driver who signaled intention only 50 feet before making left turn across highway was guilty of negligence per se. Rutherford v. Smith, 284 Ky. 592, 145 S.W.2d 533, 1940 Ky. LEXIS 548 (Ky. 1940).

Whether motorist making left turn to enter intersecting street was guilty of negligence proximately causing collision was jury question, where evidence showed that he was going about 12 miles per hour and extended arm when about 50 feet before making turn and that oncoming car was going about 70 miles an hour and struck rear of his automobile. Rutherford v. Smith, 284 Ky. 592, 145 S.W.2d 533, 1940 Ky. LEXIS 548 (Ky. 1940).

In action against motorist for alleged negligence in making left turn across highway, in which motorist filed counterclaim, favorable verdict on counterclaim showed that his negligence in not giving signal at proper distance before making turn was not proximate cause of collision. Rutherford v. Smith, 284 Ky. 592, 145 S.W.2d 533, 1940 Ky. LEXIS 548 (Ky. 1940).

Contributory negligence of driver of automobile following other car barred recovery as matter of law, where driver was going at 35 to 50 miles per hour when following other car which was slowing down to turn into side street, and where, without slackening speed, he attempted to pass it, and collided with oncoming truck, despite some evidence that motorist in other car did not give signal of intention to turn. Peden's Adm'r v. Reynolds, 287 Ky. 641, 154 S.W.2d 708, 1941 Ky. LEXIS 595 (Ky. 1941).

Where the evidence established that the defendant's driver turned to left across highway without maintaining a proper lookout or proper signal, and at a time when plaintiff's oncoming car was but 80 feet away, the proximate cause of the collision with the approaching car was the negligence of the defendant's driver, notwithstanding plaintiff's possible violation of the federal speed limit. Davis v. Kunkle, 302 Ky. 258, 194 S.W.2d 513, 1946 Ky. LEXIS 653 (Ky. 1946).

In an action for personal injuries, where motorist coming over crest of hill struck defendant's automobile making a left turn across highway into private driveway, and subsequently struck plaintiff's automobile following defendant, conflicting evidence as to whether defendant gave proper signal for making turn and whether his failure, if any, to give signal was the proximate cause of the collision, was for the jury. Wilburn v. Simons, 302 Ky. 752, 196 S.W.2d 356, 1946 Ky. LEXIS 744 (Ky. 1946).

Where a motorist turned left in front of another motorist trying to pass him from the rear, resulting in a collision, the trial court erred in instructing the jury that the passing motorist could fulfill his duty under KRS 189.340 by notice other than sounding his horn, such as by signaling with his lights. However, this was not reversible error, because the evidence that the turning motorist's failure to signal for the required distance before turning was the proximate cause of the accident and was sufficient to sustain the verdict for the passing motorist. Victory Cab Co. v. Watson, 238 S.W.2d 1004, 1951 Ky. LEXIS 831 (Ky. 1951).

Instruction that if defendant manifested an intention to make a left turn by getting over on the left side of the road and

then abandoned making such a movement and returned wholly to his right side, he was obligated under this section to give the statutory signal before turning back to the right, and, also, not to stop his vehicle abruptly immediately in front of another vehicle was not error. McCoy v. Carter, 323 S.W.2d 210, 1959 Ky. LEXIS 323 (Ky. 1959).

In an action for personal injuries and property damage by automobile driver and her passenger, defendant truck driver was entitled to a directed verdict where the automobile driver had stopped on the right-hand side of the road directly opposite a private driveway and then turned left across the highway directly in front of the truck approaching from the opposite direction since the truck driver had the right to assume that the automobile driver would give a signal if she was going to turn left and would not violate this section by turning until she could do so with reasonable safety. Hollar v. Harrison, 323 S.W.2d 219, 1959 Ky. LEXIS 324 (Ky. 1959).

Question of contributory negligence in observing presence of motorist and giving left turn signal was for jury where plaintiff truck driver was making left turn into junk yard and motorist who was attempting to pass truck collided with it. Collett v. Taylor, 383 S.W.2d 692, 1964 Ky. LEXIS 59 (Ky. 1964).

6. — — —Reasonable Safety.

Although he has signaled his intention to make a left turn, a motorist may make such a turn only when it may be done in reasonable safety, thus where a motorist so signaled then turned in front of a truck which hit his car and then ran into a building damaging both vehicles, the building, and injuring an occupant of the building and the only negligence alleged against the truck driver was his failure to steer around the motorist, the trial court erred in not directing the verdict in favor of the truck driver and owner as against the motorist and other injured parties. Smith v. Sizemore, 300 S.W.2d 225, 1957 Ky. LEXIS 442 (Ky. 1957).

Where driver testified he first observed approaching car when it came over a rise 1,000 feet away and that it then looked to him to be going at a "pretty fast rate of speed" he must have known he could not venture a left turn with reasonable safety. Wandling v. Wandling, 357 S.W.2d 857, 1962 Ky. LEXIS 150 (Ky. 1962).

In action based on collision between car passing another which was making left turn, instruction requiring that operator refrain from turning vehicle until turn could be made with reasonable safety, should be given. Salyer v. Booher, 419 S.W.2d 533, 1967 Ky. LEXIS 152 (Ky. 1967).

The plaintiff was negligent as a matter of law in turning across the defendant's lane of traffic when the defendant was so close that the turn could not be made with reasonable safety. Hall v. King, 432 S.W.2d 394, 1968 Ky. LEXIS 324 (Ky. 1968).

The defendant driver was negligent where he began a left turn, stopped because a car following him started to pass him and then completed the turn although he knew a car was approaching him when he first began the turn. Gentry v. Peak, 436 S.W.2d 785, 1969 Ky. LEXIS 488 (Ky. 1969).

Where testimony of witnesses indicated that left-turning motorist's view of oncoming vehicle was obstructed by other vehicles in left-hand lane of oncoming traffic and that oncoming automobile was in that left-hand lane until it neared the intersection at which time it moved to the right-hand lane, left-turning motorist did not breach her duty to see that her turn could be made with reasonable safety. Compton v. Johnson, 522 S.W.2d 448, 1975 Ky. LEXIS 135 (Ky. 1975).

Although subsection (1) of this section enjoins a driver from turning a vehicle to the right or left "until such movement can be made with reasonable safety," this duty is not absolute in the sense that any collision itself proves conclusively that the turn could not be made with reasonable safety. Mason v. Keltner, 854 S.W.2d 780, 1992 Ky. App. LEXIS 199 (Ky. Ct. App. 1992).

7. — —Right Turn.

Holding out right arm from jeep 25 feet before right turn could not be considered to have complied with this section and to have been sufficient to have given overtaking vehicle clear chance to avoid collision with turning vehicle. Riley v. Thomas, 310 S.W.2d 49, 1958 Ky. LEXIS 370 (Ky. 1958).

The law requires turn signals for 100 feet before any turn without exceptions. When an officer observed a driver fail to signal continuously for 100 feet before turning right from a street and the district court found the officer's testimony credible based on the officer's training and experience, the circuit court erred in substituting the court's judgment about exact distances for the district court's factual findings that were supported by substantial evidence. Commonwealth v. McCuiston, 729 S.W.3d 197, 2026 Ky. App. LEXIS 13 (Ky. Ct. App. 2026).

8. — —U-turn.

Under subsection (2) of this section motorist before making U-turn should see that movement could be made in safety and, if it appeared that operation of other car might reasonably be affected, should give plainly visible signals by use of arm or of electrical or mechanical device. Marsee v. Bates, 235 Ky. 60, 29 S.W.2d 632, 1930 Ky. LEXIS 310 (Ky. 1930).

9. — —Control of Vehicle.

The jury could determine from the evidence, although certain portions of it were in conflict, that plaintiff acted as an ordinarily prudent man in the operation of his vehicle in the face of the extraordinary hazard with which he was confronted when he drove into a curve and was suddenly confronted by an automobile stopped for highway construction. Adams Constr. Corp. v. Short, 324 S.W.2d 118, 1959 Ky. LEXIS 352 (Ky. 1959) (decided under prior law).

10. — —Reasonable Space.

Before turning his automobile driver must see that there is sufficient space to make such turn in safety, and, if jury believes that operation of another vehicle would reasonably be affected, he must give visible signal of intention to turn by extending arm. Mendel v. Dorman, 202 Ky. 29, 258 S.W. 936, 1924 Ky. LEXIS 659 (Ky. 1924) (decision prior to 1950 amendment).

11. Duties of Other Drivers.

In rear-end collision, where leading automobile started to pass car ahead but desisted and sought to regain position, following bus driver was not exculpated as matter of law, since, even if motorist checked speed, and did not signal before turning back, bus driver was required to operate carefully, including regulation of speed. Consolidated Coach Corp. v. Saunders, 229 Ky. 284, 17 S.W.2d 233, 1929 Ky. LEXIS 758 (Ky. 1929).

Where statute imposes duties upon operators to give signals relative to turning, stopping, or changing course, the operators of trailing or approaching vehicles must heed such signals. Wright v. Clausen, 253 Ky. 498, 69 S.W.2d 1062, 1934 Ky. LEXIS 712 (Ky. 1934). See Cook v. Gillespie, 259 Ky. 281, 82 S.W.2d 347, 1935 Ky. LEXIS 307 (Ky. 1935).

A driver is under no duty to foresee that the driver directly ahead may suddenly slow down or stop without first giving the statutory signal, but he must use ordinary care to avoid striking the automobile ahead. Vinson v. Kissinger's Adm'r, 274 Ky. 606, 119 S.W.2d 628, 1938 Ky. LEXIS 296 (Ky. 1938).

12. Traveling in Own Lane.

Under this section and KRS 189.300 a driver is not authorized by law to travel in other than his own lane without showing that he was passing or forced out and instruction that

"It was his (Sensen, the truck driver's) duty not to pull to the left of the highway after James H. Devore in driving his car had started to pass until said Devore had passed, if you believe he did so attempt to pass" was not erroneous. Carnation Co. v. Devore, 252 S.W.2d 860, 1952 Ky. LEXIS 1026 (Ky. 1952).

An instruction authorizing plaintiff's recovery, if the plaintiff, who turned into the left lane to pass a tractor and was hit from behind by defendant, had been driving in the left lane for a sufficient distance for the defendant in the exercise of ordinary care to avoid him, properly presented the question of whether the plaintiff had made his move to the left lane with reasonable safety. Weaver v. Caudill, 375 S.W.2d 712, 1964 Ky. LEXIS 432 (Ky. 1964).

Even if this section was intended to cover deviations of direction in one's own lane of traffic, an instruction given under subsections (1) and (2) of this section requiring a minor bicycle rider "to exercise ordinary care not to turn his bicycle from a direct course upon the highway unless and until such movement could be made with reasonable safety and not to turn his bicycle to the left if any other vehicle could be affected by such movement without giving a signal to turn left by extending his hand and arm horizontally for at least the last 100 feet traveled by his bicycle before turning" was prejudicial where the bicycle rider admittedly was in his own lane of traffic, close to the shoulder of the road and had no statutory warning of the approach of automobile when accident happened. Lareau v. Trader, 403 S.W.2d 265, 1965 Ky. LEXIS 7 (Ky. 1965).

13. Pedestrians.

Where a plaintiff pedestrian was struck by defendant's motor vehicle as it made a left turn while he was crossing the street in compliance with the automatic traffic signal, a verdict should have been directed for the plaintiff. Railway Express Agency v. Bailey, 310 Ky. 781, 220 S.W.2d 997, 1949 Ky. LEXIS 946 (Ky. 1949).

Where pedestrian was not guilty of any negligence nor was accident unavoidable he was entitled to a directed verdict except as to damages and on appeal, court could not consider lower court's instructions concerning hand signals and sounding horn. Railway Express Agency v. Bailey, 310 Ky. 781, 220 S.W.2d 997, 1949 Ky. LEXIS 946 (Ky. 1949).

Operator of motor vehicle was not required to sound his horn before making a left turn where no pedestrian would be affected. Victory Cab Co. v. Watson, 238 S.W.2d 1004, 1951 Ky. LEXIS 831 (Ky. 1951).

14. Failure to Signal.

Failure of driver to signal continuously for the last 100 feet before turning to the left across the highway was negligence, but where there was evidence that approaching car with which she collided was 600 feet away when she started the turn, and that the approaching car was traveling at an excessive rate of speed, the question whether her negligence was the proximate cause of the collision was for the jury. Hilsenrad v. Bowling, 292 Ky. 368, 166 S.W.2d 847, 1942 Ky. LEXIS 96 (Ky. 1942).

Technical negligence of defendant driver in failing to comply with the requirement of this section of giving left-turn signal a full 100 feet before reaching intersection was not the proximate cause of truck jackknifing into front of store. Sanders Trucking Co. v. King, 313 Ky. 29, 230 S.W.2d 87, 1950 Ky. LEXIS 801 (Ky. 1950).

Where truck driver was attempting to pass defendant's automobile within 100 feet of an intersection when defendant signalled her intent to turn left about 15 to 20 feet before reaching the intersection, the truck driver sounded his horn and attempted to return to the right-hand lane, thus losing control of the truck causing it to crash into a building, and the defendant continued straight through the intersection, the negligence of the truck driver was the primary cause of the accident. Sanders Trucking Co. v. King, 313 Ky. 29, 230 S.W.2d 87, 1950 Ky. LEXIS 801 (Ky. 1950).

Circuit court erred in granting defendant's motion to suppress evidence of marijuana and cocaine seized during a traffic stop, because a police officer had probable cause for the traffic stop based upon defendant's failure to signal a lane change in violation of KRS 189.380. Commonwealth v. Fowler, 409 S.W.3d 355, 2012 Ky. App. LEXIS 187 (Ky. Ct. App. 2012).

15. Stopping.

Stopping automobile without first ascertaining whether movement of other vehicles, including following truck, would reasonably be affected would be negligence, precluding recovery unless driver of following truck, who owed duty of lookout, saw or should have seen the peril to car ahead in time to avoid injuring it by exercising ordinary care. Jellico Grocery Co. v. Biggs, 252 Ky. 827, 68 S.W.2d 429, 1934 Ky. LEXIS 870 (Ky. 1934).

Where defendant brought her car to abrupt stop on highway, at point where there had been a wreck and a car overturned on the edge of the highway, without any signal of her intention to do so and plaintiff's truck being unable to go to the left of defendant's car as another vehicle was approaching from the opposite direction was forced in order to avoid a collision to run off the right side of the road thereby overturning the truck facts did not show emergency requiring defendant to stop suddenly without giving signal. Fahrenholtz v. Loomis, 280 Ky. 9, 132 S.W.2d 307, 1939 Ky. LEXIS 49 (Ky. 1939).

Where plaintiff's claim was that defendant backed his truck into plaintiff's auto after stopping on hill, trial court had no duty to instruct jury as to defendant's duty to signal his intention to stop, since failure to signal could not have been cause of collision. Vale v. Illinois Pipe Line Co., 281 Ky. 1, 134 S.W.2d 940, 1939 Ky. LEXIS 2 (Ky. 1939).

In action for injuries arising out of a motor vehicular accident allegedly caused by the defendant operating his car from the berm of a highway into the path of the plaintiff's car causing the plaintiff to lose control, the trial court erred in directing the verdict against the defendant where he testified that he was 700 feet in front of the plaintiff's car when he pulled onto the traveled portion of the highway and the driver of the plaintiff's car admitted seeing defendant's car by the road and that she knew that he would drive back onto the road after he picked up a passenger. Hargis v. Noel, 310 Ky. 542, 221 S.W.2d 94, 1949 Ky. LEXIS 969 (Ky. 1949).

Where there was conflict in the evidence as to whether a "stop" signal was flashed on the rear of defendant's car as it was brought to a stop, an instruction requiring defendant to stop for bus could not have been prejudicial to plaintiff. Davis v. McFarland, 265 S.W.2d 66, 1954 Ky. LEXIS 718 (Ky. 1954).

Taillights activated by the sudden application of brakes are not an appropriate warning of the intention to stop suddenly for the sole purpose of aiding a pedestrian. Hainline v. Hukill, 383 S.W.2d 353, 1964 Ky. LEXIS 35 (Ky. 1964).

Where motorist on approaching heavily traveled expressway stopped, then moved forward a short distance before stopping again, he was not required to give a hand signal, and operator of vehicle colliding with rearend of auto when so stopped was negligent. Massingille v. Meridith, 408 S.W.2d 209, 1966 Ky. LEXIS 92 (Ky. 1966).

16. Decreasing Speed.

In sudden emergencies, acts which might violate normal duties are not always negligent acts and where automobile made a sudden right turn without a signal and car behind it slowed down and pulled into passing lane to avoid striking it and car behind second car suddenly slowed without giving a signal as required by subsection (3) of this section and was struck in the rear by a tractor-trailer the truck driver was not negligent as a matter of law and the question of whether there was causative negligence should have been submitted to the

jury. Lucas v. Davis, 409 S.W.2d 297, 1966 Ky. LEXIS 54 (Ky. 1966).

17. Methods of Signalling.

Fines paid by truck operator for failing to have truck equipped with turn signals were deductible from gross income as ordinary and necessary business expense where statute was later construed as not requiring the mechanical device if truck driver gave a hand signal since the allowance would not frustrate any clearly defined public policy. Hoover Motor Express Co. v. United States, 135 F. Supp. 818, 1955 U.S. Dist. LEXIS 2659 (M.D. Tenn. 1955), aff'd, 241 F.2d 459, 1957 U.S. App. LEXIS 4296 (6th Cir. Tenn. 1957).

Signals required by this section may be given either by hand or by automatic signals, thus the trial court erred in giving an instruction that a hand signal was required without also stating that an automatic light signal was sufficient. Ellis v. McCubbins, 312 Ky. 837, 229 S.W.2d 992, 1950 Ky. LEXIS 787 (Ky. 1950).

The signal to turn or stop required by this section may be given by either hand and arm or by an electrical device; both are not required. Anderson v. Shields, 314 Ky. 228, 234 S.W.2d 739, 1950 Ky. LEXIS 1064 (Ky. 1950).

18. Instructions.

In head-on collision case where evidence whether accident happened on curve was conflicting, instruction following words of statute and imposing duty on driver to give warning if he was approaching a curve or obstruction to view of distance ahead of at least 150 feet was proper. Berryman v. Worthington, 240 Ky. 756, 43 S.W.2d 5, 1931 Ky. LEXIS 490 (Ky. 1931) (decided under prior law).

If defendant wished instruction upon statute requiring certain signals before turning if movement of other vehicles would reasonably be affected, he should have requested it, in view of plaintiff's evidence that no car was in sight when turn was made. Sweazy v. King, 248 Ky. 432, 58 S.W.2d 659, 1933 Ky. LEXIS 255 (Ky. 1933).

In action involving overtaking and passing cars instruction on turning signals by leading car was erroneous, where it assumed that leading car had commenced to turn, but did not submit issue that turn had not started when collision occurred. Perkins v. Stevenson, 268 Ky. 692, 105 S.W.2d 832, 1937 Ky. LEXIS 518 (Ky. 1937).

Where the instruction qualified the statutory designation of acceptable signals by the phrase "other than the stop lights on the rear of an automobile which are normally activated by pressure upon the brake pedal," such qualification was too restrictive and not proper. Sorg v. Purvis, 487 S.W.2d 943, 1972 Ky. LEXIS 97 (Ky. 1972).

The words, "unless and until" in subsection (1) of this section should be phrased in the instructions as "unless and until it appeared to him in the exercise of ordinary care that such movement could be made with reasonable safety". Compton v. Johnson, 522 S.W.2d 448, 1975 Ky. LEXIS 135 (Ky. 1975).

In action brought by passenger in oncoming vehicle against left-turning motorist for injuries sustained in automobile accident, instruction to the jury that left-turning motorist's duty was not to make the turn if it reasonably appeared that the movement might affect the movement of the oncoming vehicle was not erroneous. Compton v. Johnson, 522 S.W.2d 448, 1975 Ky. LEXIS 135 (Ky. 1975).

19. Standard of Care.

Whether a change of course can be executed by the motorist with reasonable safety is to be judged by the standard of ordinary care. Compton v. Johnson, 522 S.W.2d 448, 1975 Ky. LEXIS 135 (Ky. 1975).

Cited:

OPINIONS OF ATTORNEY GENERAL.

A city could install "traffic bumps" on residential streets as a traffic measure so long as they do not constitute a nuisance or a traffic hazard. OAG 60-69.

189.394. Fines for speeding — Doubling of fines in school areas with flashing lights.

(1) The fines for speeding in violation of KRS 189.390 shall be:

Mph. Over	Prima Facie or Maximum Speed												
Limit	15	20	25	30	35	40	45	50	55	60	65	70	Fine
1	16	21	26	31	36	41	46	51	56	61	66	71	$1
2	17	22	27	32	37	42	47	52	57	62	67	72	2
3	18	23	28	33	38	43	48	53	58	63	68	73	3
4	19	24	29	34	39	44	49	54	59	64	69	74	4
5	20	25	30	35	40	45	50	55	60	65	70	75	5
6	21	26	31	36	41	46	51	56	61	66	71	76	16
7	22	27	32	37	42	47	52	57	62	67	72	77	17
8	23	28	33	38	43	48	53	58	63	68	73	78	18
9	24	29	34	39	44	49	54	59	64	69	74	79	19
10	25	30	35	40	45	50	55	60	65	70	75	80	20
11	26	31	36	41	46	51	56	61	66	71	76	81	22
12	27	32	37	42	47	52	57	62	67	72	77	82	24
13	28	33	38	43	48	53	58	63	68	73	78	83	26
14	29	34	39	44	49	54	59	64	69	74	79	84	28
15	30	35	40	45	50	55	60	65	70	75	80	85	30
16	31	36	41	46	51	56	61	66	71	76	81		32
17	32	37	42	47	52	57	62	67	72	77	82		34
18	33	38	43	48	53	58	63	68	73	78	83		36
19	34	39	44	49	54	59	64	69	74	79	84		38
20	35	40	45	50	55	60	65	70	75	80	85		40
21	36	41	46	51	56	61	66	71					43
22	37	42	47	52	57	62	67	72					46
23	38	43	48	53	58	63	68	73					49
24	39	44	49	54	59	64	69	74					52
25	40	45	50	55	60	65	70	75					55

(2) For speeding in excess of the speeds shown on the specific fine schedule the fine shall be not less than sixty dollars ($60) nor more than one hundred dollars ($100).

(3) For any violation shown on the chart for which a specific fine is prescribed, the defendant may elect to pay the fine and court costs to the circuit clerk before the date of his trial or to be tried in the normal manner. Payment of the fine and court costs to the clerk shall be considered as a plea of guilty for all purposes.

(4) If the offense charged shows a speed in excess of the speeds shown on the specific fine schedule the defendant shall appear for trial and may not pay the fine to the clerk before the trial date.

(5) If the offense occurred in an area near a school where flasher lights have been installed and are flashing, and a speed limit has been set pursuant to KRS 189.336, the fine established by subsection (1) or (2) of this section shall be doubled.

History.

Enact. Acts 1976 (Ex. Sess.), ch. 36, § 1, effective January 2, 1978; 1978, ch. 101, § 3, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7, § 4, effective July 1, 1979; 1988, ch. 177, § 2, effective July 15, 1988; 1994, ch. 403, § 3, effective July 15, 1994; 1996, ch. 37, § 3, effective July 15, 1996; 1998, ch. 124, § 7, effective July 15, 1998; 2002, ch. 183, § 17, effective August

1, 2002; 2004, ch. 98, § 1, effective July 13, 2004; 2011, ch. 59, § 2, effective June 8, 2011; 2019 ch. 40, § 3, effective June 27, 2019.

NOTES TO DECISIONS

Cited in:

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

An Overview of Kentucky's New Court System, Vol. 41, No. 2, April 1977 Ky. Bench & B. 15.

Treatises

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 4 Offenses Relating to Firearms and Destructive Devices, §§ 8.70A, 8.70B.

189.450. Stopping, standing, parking, or repairing vehicle on roadway or shoulders of highway.

(1) No person shall stop a vehicle, leave it standing, or cause it to stop or to be left standing upon any portion of the roadway; provided, however, that this section shall not be construed to prevent parking in front of a private residence off the roadway or street in a city or suburban area where such parking is otherwise permitted, as long as the vehicle so parked does not impede the flow of traffic. This subsection shall not apply to:

(a) A vehicle that has been disabled on the right-of-way of such a highway in such a manner and to such extent that it is impossible to avoid the occupation of the shoulder of a state-maintained highway or impracticable to remove it from the shoulder of the highway until repairs have been made or sufficient help obtained for its removal. In no event shall a disabled vehicle remain on the shoulder of a state-maintained highway for twenty-four (24) hours or more;

(b) Motor vehicles when required to stop in obedience to the provisions of any section of the Kentucky Revised Statutes or any traffic ordinance, regulation, or sign or the command of any peace officer;

(c) Vehicles operating as common carriers of passengers for hire and school buses taking passengers on such vehicle or discharging passengers therefrom; provided, that no such vehicle shall stop for such purposes at a place on the highway which does not afford reasonable visibility to approaching motor vehicles from both directions;

(d) Vehicles which are stopped for a period of not more than fifteen (15) minutes at a time for the purpose of collecting and transporting solid waste as defined in KRS 224.1-010(30) (a), and which are operated by a:

1. Collection service registered in accordance with KRS 224.43-315; or

2. Person or organization actively participating in the Adopt-a-Highway Program; or

(e) Any vehicle required to stop by reason of an obstruction to its progress.

(2) When any police officer finds a vehicle standing upon such a highway in violation of this section, he may move or cause to be moved the vehicle or require the operator or other person in charge of the vehicle to move it. The police officer may cause the vehicle to be removed by ordering any person engaged in the business of storing or towing motor vehicles to remove the vehicle to a site chosen by such person. Ownership of the vehicle shall be determined by the police officer's enforcement agency through the vehicle's license plates, serial number, or other means of determining ownership. As soon as practicable, the police officer's enforcement agency shall notify the owner by mail that the vehicle was illegally upon public property; the name and address of the storage facility where the vehicle is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to the provisions of KRS 376.275 if not claimed within sixty (60) days. No notification shall be required if ownership cannot be determined. In the event of a sale pursuant to KRS 376.275, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.

(3) No vehicle shall be parked, stopped, or allowed to stand on the shoulders of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto, nor shall any vehicle registered at a gross weight of over forty-four thousand (44,000) pounds be parked, stopped, or allowed to stand on the shoulders of any state-maintained highway, except that, in the case of emergency or in response to a peace officer's signal, vehicles shall be permitted to stop on the shoulders to the right of the traveled way with all wheels and projecting parts of the vehicles, including the load, completely clear of the traveled way. Parking of any vehicle which is disabled on the shoulders of a toll road, interstate highway, other fully controlled access highway, including ramps thereto, or any state-maintained highway not mentioned in this section for twenty-four (24) hours continuously is prohibited and vehicles violating this provision may be towed away at the cost of the owner.

(4) When any police officer finds a vehicle unattended upon any bridge or causeway or in a tunnel where the vehicle constitutes an obstruction to traffic, the officer may provide for the removal of the vehicle to the nearest garage or other place of safety as provided in subsection (2) of this section.

(5) No person shall stop or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in the following places:

(a) On a sidewalk;

(b) In front of sidewalk ramps provided for persons with disabilities;

(c) In front of a public or private driveway;

(d) Within an intersection or on a crosswalk;

(e) At any place where official signs prohibit stopping or parking;

(f) Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway;

(g) On any controlled access highway;

(h) Within a highway tunnel;

(i) Within fifteen (15) feet of a fire hydrant; or

(j) In an area between the roadways of a divided highway.

(6) No person shall move a vehicle not lawfully under his control into any such prohibited area.

(7) The restrictions in subsection (5)(e) of this section shall not apply to sheriffs and their deputies or police officers when operating properly identified vehicles during performance of their official duties.

History.

2739g-48: amend. Acts 1952, ch. 206, § 3; 1954, ch. 235; 1962, ch. 288, § 2; 1964, ch. 25, § 1; 1970, ch. 93, § 11; 1974, ch. 405, § 1; 1980, ch. 163, § 1, effective July 15, 1980; 1982, ch. 318, § 1, effective July 15, 1982; 1986, ch. 322, § 1, effective July 15, 1986; 1988, ch. 80, § 1, effective July 15, 1988; 1994, ch. 405, § 39, effective July 15, 1994; 2006, ch. 173, § 19, effective July 12, 2006; 2016 ch. 19, § 1, effective July 15, 2016; 2017 ch. 117, § 21, effective June 29, 2017.

NOTES TO DECISIONS

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1. Purpose.

Although this section related to stopping of motor vehicles to make repairs or for passengers, its purpose was to prevent a person from leaving a motor vehicle standing on a main traveled portion of a public highway. Bradley v. Clarke, 219 Ky. 438, 293 S.W. 1082, 1927 Ky. LEXIS 391 (Ky. 1927).

Apparently this section relates to the stopping of a motor vehicle for the purpose of making repairs or taking on or discharging passengers, but the purpose of the statute undoubtedly was to prevent any person from stopping a motor vehicle and leaving it standing on a main traveled portion of any public highway. Hendricks v. Garst, 314 Ky. 49, 234 S.W.2d 160, 1950 Ky. LEXIS 1009 (Ky. 1950).

Purpose of this section was to prevent any person from stopping a motor vehicle and leaving it standing on main traveled portion of a highway and one who parks his car in such a position has burden of showing that he is within the exceptions stated in the statute. Bosshammer v. Lawton, 237 S.W.2d 520, 1951 Ky. LEXIS 759 (Ky. 1951).

The purpose of this section is to prevent the highway from being obstructed by stationary vehicles, and one leaving a vehicle standing on the highway has the burden of showing that he comes within one of the exceptions enumerated therein. Banner Transfer Co. v. Morse, 274 S.W.2d 380, 1954 Ky. LEXIS 1226 (Ky. 1954).

2. Construction.

Subsection (1) of this section is not limited by subsection (4) (now (5)). The latter subsection is aimed primarily at stopping or parking off the main traveled portion of a highway. Jack Cole Co. v. Hoff, 274 S.W.2d 658, 1954 Ky. LEXIS 1236 (Ky. 1954).

3. Application.

This section does not apply to state highway within residential district of city. Cottrell v. Martin A. Ceder, Inc., 376 S.W.2d 536, 1964 Ky. LEXIS 457 (Ky. 1964).

Although this section does not apply to city streets, the exemption does not extend to counties even though they contain suburban areas. Evans v. Lorenz, 454 S.W.2d 691, 1969 Ky. LEXIS 10 (Ky. 1969).

This section is applicable to suburban streets in unincorporated areas. Wheeler v. Creekmore, 469 S.W.2d 559, 1971 Ky. LEXIS 304 (Ky. 1971).

Police officer was not exempt pursuant to KRS 189.450(7) from the requirements of KRS 189.430 that required all motor vehicle operators to stop the engine and take the keys to the ignition when exiting the vehicle. Fact that the officer was investigating an accident scene did not exempt him from this duty imposed on all drivers. Pile v. City of Brandenburg, 215 S.W.3d 36, 2006 Ky. LEXIS 322 (Ky. 2006).

State statute prohibiting parking on a roadway under KRS 189.450 prevailed over a municipal ordinance pursuant to KRS 82.082 because the ordinance conflicted with the state provision. Norton v. Canadian Am. Tank Lines, 2009 U.S. Dist. LEXIS 2184 (W.D. Ky. 2009).

4. Stopping on Highway.

While stopping a vehicle on the main traveled portion of a highway is negligence per se, it does not create liability unless such stopping was a proximate cause of the injury. Michael v. United States, 338 F.2d 219, 1964 U.S. App. LEXIS 3861 (6th Cir. Ky. 1964).

Truck driver forced to stop truck on highway in order to make switch to auxiliary gasoline tank was not negligent in stopping on right-hand side of highway which, though having a slight upgrade, was straight at that point. Freeman v. W. T. Sistrunk & Co., 312 Ky. 438, 227 S.W.2d 979, 1950 Ky. LEXIS 665 (Ky. 1950), overruled in part, Mitchell v. Doolittle, 429 S.W.2d 862, 1968 Ky. LEXIS 765 (Ky. 1968), but see, Mitchell v. Doolittle, 429 S.W.2d 862, 1968 Ky. LEXIS 765 (Ky. 1968).

Where plaintiff was driving 30 to 35 miles per hour at night in heavy fog and struck defendant's automobile which was stopped in the plaintiff's lane with the lights burning, the trial court erred in directing the verdict for the plaintiff and should have submitted the question to the jury on the question of proximate cause. Burnett v. Yurt, 247 S.W.2d 227, 1952 Ky. LEXIS 683 (Ky. 1952).

Questions of whether the taillights of car rammed in the rear were on and of contributory negligence of motorist hitting the car in the rear were for the jury where the evidence was conflicting and the driver of the car hit in the rear denied he was stopped on the highway in violation of this section and that his taillights were not on but testified he was traveling very slowly hunting a place to stop for he had noticed a car in the ditch along his right side of the highway. Richardson v. Baker, 251 S.W.2d 858, 1952 Ky. LEXIS 939 (Ky. 1952).

Where a vehicle operator stopped his car on the traveled portion of the highway because the hood flew up and obstructed his vision and he remained on highway for 15 minutes or longer when the evidence showed that the car could have been driven off the traveled portion of the road with a minimum of care, he was negligent as a matter of law. Mullins v. Bullens, 383 S.W.2d 130, 1964 Ky. LEXIS 15 (Ky. 1964).

Where highway employe stopped highway truck on traveled portion of the highway and failed to put out signs and by reason thereof an injury was occasioned to a traveler on the highway, the highway employe was liable for negligence. Dixie

Transport Co. v. Reed, 386 S.W.2d 735, 1964 Ky. LEXIS 177 (Ky. 1964).

Where the plaintiff struck a state police car that had slowed in the driving lane to signal to an approaching wrecker to direct him to a disabled vehicle, the wrecker did not come under the exceptions to the prohibition against stopping on a highway because the wrecker was not "at the scene of" an accident. Williams v. Chilton, 427 S.W.2d 586, 1968 Ky. LEXIS 687 (Ky. 1968), overruled in part, Hilen v. Hays, 673 S.W.2d 713, 1984 Ky. LEXIS 261 (Ky. 1984) (decision prior to 1970 amendment).

Owner of taxi was not liable for injuries to motorist and his car where driver of taxi without owner's knowledge or consent and outside the scope of his duties stopped the taxi in violation of this section to assist the motorist from a ditch and in so doing partially blocked the highway and another automobile struck motorist's automobile and even if it had been in the scope of taxi driver's duties the motorist was grossly negligent where he was present and did not himself place signals warning other travelers of the danger. Brock v. Bennett, 304 Ky. 338, 200 S.W.2d 745, 1947 Ky. LEXIS 635 (Ky. 1947).

A motorist is absolved from his duty not to voluntarily stop on the main traveled portion of the road if his car becomes disabled and it becomes impossible or impracticable not to occupy that portion of the highway. Floyd v. Gray, 657 S.W.2d 936, 1983 Ky. LEXIS 273 (Ky. 1983), limited, Hardin v. Action Graphics, Inc., 57 S.W.3d 844, 2001 Ky. App. LEXIS 7 (Ky. Ct. App. 2001).

Because a truck driver violated KRS 189.450 by parking with his truck extended into a roadway as defined under KRS 189.010, he was negligent as a matter of law under KRS 446.070 and his employer was vicariously liable for plaintiff's injuries resulting from that negligence. Norton v. Canadian Am. Tank Lines, 2009 U.S. Dist. LEXIS 2184 (W.D. Ky. 2009).

5. — Last Clear Chance.

Open violation of this section and KRS 189.030 and 189.040 in bringing unlighted automobile to rest on left side of center of highway obstructing the entire portion of the right traffic lane would have precluded any recovery plaintiff 's estate might otherwise have been entitled to on account of defendant's negligent operation of car with vision restricted by use of lights on low beam driving at a maximum lawful rate of speed at nighttime on a highway known to be heavily traveled except for the last clear chance doctrine but where it was undisputed that no approaching traffic was observed and that no traffic was closely following, defendant could have passed from right traffic lane to the left and avoided the collision. Johnson v. Hunt, 122 F. Supp. 816, 1954 U.S. Dist. LEXIS 3318 (D. Ky. 1954).

Where a driver stopped on the main traveled portion of a highway so that she could back up onto the shoulder of the road and was struck by a following driver after two cars had gone by her in the passing lane, her stopping in violation of this section was a direct and proximate cause of the accident as a matter of law, with the result that she could recover against the following driver only under the last clear chance doctrine while the following driver could recover on his counterclaim if he was not contributorily negligent. Woosley v. Smith, 471 S.W.2d 737, 1971 Ky. LEXIS 262 (Ky. 1971).

6. — Command of Police Officer.

Where a state police officer signaled for an approaching wrecker to slow down so the officer could direct the wrecker to a disabled vehicle, the signal given by the officer was a command within the meaning of the statute but such a signal did not relieve the driver of the wrecker from exercising ordinary care. Williams v. Chilton, 427 S.W.2d 586, 1968 Ky. LEXIS 687 (Ky. 1968), overruled in part, Hilen v. Hays, 673 S.W.2d 713, 1984 Ky. LEXIS 261 (Ky. 1984).

7. Parking.

No liability should be imposed upon truck owners who parked their trucks near curb on city street, in absence of ordinance controlling subject or of evidence of negligent parking. Kimble v. Standard Oil Co., 235 Ky. 169, 30 S.W.2d 890, 1930 Ky. LEXIS 324 (Ky. 1930), limited, Evans v. Lorenz, 454 S.W.2d 691, 1969 Ky. LEXIS 10 (Ky. 1969).

One transporting seven-year-old boy for hire from school to home who stopped on opposite side of city street from home, thus requiring boy to cross street, was negligent as to selecting place to discharge boy, since driver could have stopped on left side next to home. Taylor v. Patterson's Adm'r, 272 Ky. 415, 114 S.W.2d 488, 1938 Ky. LEXIS 131 (Ky. 1938).

Where bus driver, on coming over rise 500 feet from the point where car was parked, sounded his horn and slowed his speed to about 25 miles per hour, but did not sound his horn again until he was within 15 or 20 feet of parked car, second sounding of horn was not sufficient to warn person who was standing beside parked car, and it was a jury question as to whether bus driver used proper diligence in approaching the parked car. Short Way Lines, Inc. v. Sutton's Adm'r, 291 Ky. 541, 164 S.W.2d 809, 1942 Ky. LEXIS 239 (Ky. 1942).

Evidence that truck was parked partly on pavement, on wrong side of road and without lights, was sufficient to take case to jury, notwithstanding some evidence of contributory negligence on part of driver of car that struck truck. Midland Baking Co. v. Kitchen, 293 Ky. 160, 168 S.W.2d 372, 1942 Ky. LEXIS 8 (Ky. 1942).

When a motorist collided with rear of defendant's wrecker which was parked without flares on traveled portion of highway on rainy, foggy night in front of a private driveway and less than 150 feet from brow of a hill in violation of this section and the motorist saw lights on rear of wrecker before accident occurred, question of proximate cause of collision should have been submitted to jury. Carpenter v. Page Bros. Motor Co., 242 S.W.2d 993, 1951 Ky. LEXIS 1094 (Ky. 1951) (decision prior to 1970 amendment).

Where wrecker was parked on straight level stretch of highway and no brow of a hill or other obstruction interfered with driver's view, instruction on this section presented false issue unrelated to facts of the case. Harry Holder Motor Co. v. Davidson, 243 S.W.2d 926, 1951 Ky. LEXIS 1188 (Ky. 1951) (decision prior to 1970 amendment).

A sixth-class city may by ordinance properly prohibit parking in front of a bus station from 15 minutes before a bus is due until it leaves, may require the bus company to post signs showing the times at which buses arrive, and allow a bus to protrude into an intersection when parked where the bus company is required to have someone at the intersection to direct traffic when a bus is so protruding. Gibson v. Hardinsburg, 247 S.W.2d 31, 1952 Ky. LEXIS 662 (Ky. 1952).

Under this section in the absence of a city ordinance or lawful police regulation, authorized by ordinance prohibiting parking, a person may lawfully park in a proper manner on a city street in the daytime. Duff v. Lykins, 306 S.W.2d 252, 1957 Ky. LEXIS 21 (Ky. 1957), limited, Evans v. Lorenz, 454 S.W.2d 691, 1969 Ky. LEXIS 10 (Ky. 1969).

In litigation growing out of collision of two trucks allegedly caused by parking of a third truck on the highway on a curve in ice and snow in violation of this section, which was admitted, and questions of negligence, contributory negligence and unavoidable accident under the circumstances were submitted to the jury and not complained of by motorist violating the section, court on appeal concluded the proof supported the jury's finding and award. Peck v. Hickman, 321 S.W.2d 395, 1959 Ky. LEXIS 277 (Ky. 1959).

Where the driver of defendant's truck stopped the truck partially in the eastbound lane of a two-lane road and another agent of the defendant parked a car in the middle of the road beside the truck so that the car lights blinded approaching eastbound drivers, the parking of the car was negligent as a

matter of law. Duncan v. Wiseman Baking Co., 357 S.W.2d 694, 1961 Ky. LEXIS 27 (Ky. 1961).

Although party was clearly negligent in having his auto parked partly on traveled portion of highway, contributory negligence of one colliding with it would prevent recovery. Russell v. Prater, 419 S.W.2d 764, 1967 Ky. LEXIS 193 (Ky. 1967).

8. — Near Highway.

One who in nighttime was working on his automobile which was not standing on paved, traveled portion of county highway and had lights burning was not contributorily negligent as matter of law when struck by rapidly moving truck. Glasgow Ice Cream Co. v. Fults' Adm'r, 268 Ky. 447, 105 S.W.2d 135, 1937 Ky. LEXIS 472 (Ky. 1937).

Presence of parked car on side of road is notice or warning to other vehicle operators that someone might be about the car and in a place of danger. Short Way Lines, Inc. v. Sutton's Adm'r, 291 Ky. 541, 164 S.W.2d 809, 1942 Ky. LEXIS 239 (Ky. 1942).

Where a highway divided to form a "v," the middle of which was customarily used as a parking area although not officially so marked, and the traveled portions of the highway were well defined on either side of this middle area, the parking of a bus in this middle area well off of the traveled portions of the highway was not negligent. Howard v. Fowler, 306 Ky. 567, 207 S.W.2d 559, 1947 Ky. LEXIS 1016 (Ky. 1947).

If a motorist lawfully may park a vehicle at a particular place in the daytime he reasonably assumes he may leave it there after dark as a parked vehicle. Duff v. Lykins, 306 S.W.2d 252, 1957 Ky. LEXIS 21 (Ky. 1957), limited, Evans v. Lorenz, 454 S.W.2d 691, 1969 Ky. LEXIS 10 (Ky. 1969).

Where the plaintiff had parked his truck one half on the highway and one half on the grass, he had violated this section even though the county had not designated the area as a "no parking area." Evans v. Lorenz, 454 S.W.2d 691, 1969 Ky. LEXIS 10 (Ky. 1969).

Where the plaintiff parked her car in the left-hand lane of a highway and was hit head-on by an approaching car, her actions were a probable cause of the accident. Wheeler v. Creekmore, 469 S.W.2d 559, 1971 Ky. LEXIS 304 (Ky. 1971).

Where trucker parked his truck on shoulder of road in violation of subsection (3) of this section and driver of car who fell asleep at wheel of his car ran into the truck, since evidence was uncontradicted that truck driver's parking on the shoulder created a situation harmless unless acted upon by other forces for which trucker was not responsible, jury was free to conclude that car driver's own negligence was so overwhelming as to negate trucker's negligence. Tennyson v. Brower, 823 F. Supp. 421, 1993 U.S. Dist. LEXIS 8612 (E.D. Ky. 1993).

9. — At Curb.

Operator of "curb service" gasoline service station was not liable for injuries sustained by customer whose auto, parked at curb to receive gasoline, was struck by another auto. Gates v. Kuchle, 281 Ky. 13, 134 S.W.2d 1002, 1939 Ky. LEXIS 19 (Ky. 1939).

Operator of "curb service" gasoline station had no control over street and was not a guarantor of the safety of the street; his operation of station was not an obstruction of the street and he had no duty to warn customer of dangers of parking at curb to receive gasoline, since dangers were equally apparent to customer. Gates v. Kuchle, 281 Ky. 13, 134 S.W.2d 1002, 1939 Ky. LEXIS 19 (Ky. 1939).

If parking at curb to receive gasoline from "curb service" gasoline station was a violation of this section, the negligence arising therefrom could not form the basis of liability on the part of the operator of the station. Gates v. Kuchle, 281 Ky. 13, 134 S.W.2d 1002, 1939 Ky. LEXIS 19 (Ky. 1939).

10. — Wrong Side of Highway.

Truck driver was guilty of negligence where he parked truck on wrong side of country highway with headlights burning and because of fog and darkness oncoming motorist could not locate side of highway on which it was located and believed it was moving. Padgett v. Brangan, 228 Ky. 440, 15 S.W.2d 277, 1929 Ky. LEXIS 569 (Ky. 1929).

11. — Driveway.

A property owner may not park on a public street so as to block his own drive. Allsmiller v. Johnson, 309 Ky. 695, 218 S.W.2d 28, 1949 Ky. LEXIS 738 (Ky. 1949).

12. Backing in Emergency Lane.

Where a driver traveling on an interstate highway realized he had missed his exit, pulled to the emergency lane, began backing his automobile, backed onto the highway and was hit from behind by an approaching automobile, he was negligent as a matter of law. Ferguson v. Stevenson, 427 S.W.2d 822, 1968 Ky. LEXIS 698 (Ky. 1968).

13. Ordinary Care.

A mere compliance with the statute or ordinance does not absolve a motorist from negligence if he has failed to exercise ordinary care. O'Donley v. Shelby, 262 S.W.2d 362, 1953 Ky. LEXIS 1085 (Ky. 1953).

14. Passengers.

One who merely accompanied owner of truck, but had nothing to do with its operation and who alighted when it broke down to assist in repairing it, had status of pedestrian, required to use due care for own safety but not responsible for violation, if any, of this section. Tate v. Hall, 247 Ky. 843, 57 S.W.2d 986, 1933 Ky. LEXIS 454 (Ky. 1933).

15. Disabled Vehicles.

This section does not apply where traveling automobile becomes disabled on highway making it impossible to avoid occupying part of road or impracticable to remove car therefrom while being repaired. Tate v. Hall, 247 Ky. 843, 57 S.W.2d 986, 1933 Ky. LEXIS 454 (Ky. 1933).

Heavily loaded truck whose rear wheel came off on highway was within exception against leaving vehicle standing on main traveled portion of highway, and was not liable for rear-end collision with automobile, where truck's rear lights were left burning and flares were placed on highway while operator sought aid for repairs. Stevens' Adm'r v. Watt, 266 Ky. 608, 99 S.W.2d 753, 1936 Ky. LEXIS 717 (Ky. 1936).

Where car had already gotten out of ditch and was moving under its own power at time of collision, there was no reason for instruction relating to disabled cars. Tucker v. Ragland-Potter Co., 285 Ky. 533, 148 S.W.2d 691, 1941 Ky. LEXIS 422 (Ky. 1941).

Under this section it is not negligence to leave a car temporarily upon the main traveled portion of the highway if it is disabled. American Fidelity & Casualty Co. v. Patterson, 243 S.W.2d 472, 1951 Ky. LEXIS 1127 (Ky. 1951).

Where automobile overturned on right side of main traveled portion of highway and driver and passengers went to nearby house, action of driver of automobile in leaving the automobile on the highway was not such negligence as to make her responsible for damages resulting when bus crashed into automobile and caused automobile to strike bystanders. American Fidelity & Casualty Co. v. Patterson, 243 S.W.2d 472, 1951 Ky. LEXIS 1127 (Ky. 1951).

Where a motorist struck a vehicle stopped in the other lane of a two-lane highway for repairs while he was temporarily blinded by the lights of another vehicle, the question of which motorist's negligence was the proximate cause of the collision was properly submitted to the jury. Ashton v. Roop, 244 S.W.2d 727, 1951 Ky. LEXIS 1231 (Ky. 1951).

A disabled vehicle must be removed from the highway unless it is impracticable to do so. Banner Transfer Co. v. Morse, 274 S.W.2d 380, 1954 Ky. LEXIS 1226 (Ky. 1954).

This section does not prevent a vehicle which is disabled from stopping on the main traveled portion of a highway. Smith v. Collins, 277 S.W.2d 38, 1955 Ky. LEXIS 460 (Ky. 1955).

If stopping a motor vehicle on the highway is necessary for the safe operation of the vehicle (or in compliance with law) it is not prohibited. Clardy v. Robinson, 284 S.W.2d 651, 1955 Ky. LEXIS 29 (Ky. 1955).

Where a disabled truck had been stopped partially on a road at least 15 minutes and two men had had time to set out a flare 100 feet in front of the truck and start connecting jumper cables, the failure to place a warning flare behind the truck was negligence as a matter of law. Duncan v. Wiseman Baking Co., 357 S.W.2d 694, 1961 Ky. LEXIS 27 (Ky. 1961).

A disabled vehicle must be removed from the highway unless it is impractical to do so and whether failure to remove vehicle constituted negligence was jury question under evidence. Service Lines, Inc. v. Mitchell, 419 S.W.2d 525, 1967 Ky. LEXIS 150 (Ky. 1967).

16. — Repairing Flat.

This section does not allow a motorist to leave his car on a road when it has only minor damage and is movable, but, where the decedent had stopped his car partially on a road in order to repair a flat tire, it was for the jury to determine whether the decedent was negligent in stopping his car on the road. Sears v. Frost's Adm'r, 279 S.W.2d 776, 1955 Ky. LEXIS 539 (Ky. 1955).

Violation of this section in leaving car parked on highway did not constitute a breach of any duty owed to garage employee who was killed by passing automobile while changing a tire on the automobile and even if it should be considered that a violation of this section was negligence as to the garage employe the violation did not constitute a proximate cause of the accident since the garage employee, knowing the danger involved in changing a tire on a heavily traveled highway, assumed the risk. Lanzner v. Wentworth, 315 S.W.2d 622, 1958 Ky. LEXIS 330 (Ky. 1958).

Where a bus had a flat tire and the driver stopped it after pulling off the road as far as possible to the right, partially on the road, but there was a graveled strip along the left side of the road that was wide enough for the bus to occupy without protruding onto the road, the bus driver testified that the bus could not practically be stopped on that graveled strip, and another person familiar with the operation of buses testified that the bus could have easily been stopped on such strip, the question of the bus driver's negligence should have been submitted to the jury, if it had been relevant. Greyhound Corp. v. White, 323 S.W.2d 578, 1958 Ky. LEXIS 21 (Ky. 1958).

Where a commercial bus stopped partially in the right traffic lane of a road in order to repair a flat tire, a school bus traveling in the same direction was then stopped in the left lane a few feet behind it, and a car also traveling in the same direction then hit both buses in an attempt to stop on the slick road, the parking of the school bus so as to materially obstruct the road was so unusual and extraordinary that the commercial bus driver could not have foreseen it and therefore the parking of the school bus was an intervening cause of the accident so as to relieve the commercial bus driver of liability even if his stopping was negligent. Greyhound Corp. v. White, 323 S.W.2d 578, 1958 Ky. LEXIS 21 (Ky. 1958).

The pure assumption of risk doctrine under which a plaintiff is barred even though he acted reasonably should no longer be recognized or applied because reasonableness of conduct should be the basic consideration of all negligence cases and whether plaintiff was contributorily negligent in failing to observe the standard of care of the ordinarily prudent man or the statutory standard of care is a question for the jury but a man who stopped to change a tire on a woman's automobile illegally parked under this section and who was injured when the car was struck in the rear by a passing motorist did not himself violate the section and is not chargeable with statutory negligence and he could be found guilty of common-law negligence only if he failed to act as an ordinarily prudent man, which was a question for the jury. Parker v. Redden, 421 S.W.2d 586, 1967 Ky. LEXIS 71 (Ky. 1967).

17. Emergency Vehicle.

The legislature intended the term "emergency vehicle" to include ambulances, fire trucks and similar vehicles which ordinarily are equipped with flashing lights and other warning devices. Jack Cole Co. v. Hoff, 274 S.W.2d 658, 1954 Ky. LEXIS 1236 (Ky. 1954) (decision prior to 1970 amendment).

The legislature did not intend the term "emergency vehicle" to apply to the ordinary motorist who stops to assist a fellow motorist in distress. Jack Cole Co. v. Hoff, 274 S.W.2d 658, 1954 Ky. LEXIS 1236 (Ky. 1954) (decision prior to 1970 amendment).

Where the plaintiff struck a state police car that had slowed in the driving lane to signal an approaching wrecker to direct him to a disabled vehicle, the police car's statutory exemption from the prohibition against stopping on a highway did not relieve the officer from exercising ordinary care. Williams v. Chilton, 427 S.W.2d 586, 1968 Ky. LEXIS 687 (Ky. 1968), overruled in part, Hilen v. Hays, 673 S.W.2d 713, 1984 Ky. LEXIS 261 (Ky. 1984) (decision prior to 1970 amendment).

Where the plaintiff struck a state police car that had slowed in the driving lane to signal to an approaching wrecker to direct him to a disabled vehicle, the exceptions apply to the state police officer because a "police vehicle" is an emergency vehicle "at all times." Williams v. Chilton, 427 S.W.2d 586, 1968 Ky. LEXIS 687 (Ky. 1968), overruled in part, Hilen v. Hays, 673 S.W.2d 713, 1984 Ky. LEXIS 261 (Ky. 1984) (decision prior to 1970 amendment).

18. Instructions.

Where owner of a pharmacy noticed one of his employes waiting at a bus stop and stopped on a four-lane highway to pick her up and take her to work and his automobile was struck in the rear by a truck and there was a conflict in the evidence as to signals, how far the stopped automobile was on the highway and whether there was another automobile present and the circuit judge gave instruction that it was the duty of the owner of the pharmacy not to stop or leave his automobile standing upon the main traveled portion of the highway and upon the request of the jury for clarification refused to clarify the instruction on the ground that it followed a statute and was stated in understandable words and no objection was made to his refusal, the objection was not properly preserved for appeal. Jackson v. Louisville Asphalt Co., 308 S.W.2d 790, 1957 Ky. LEXIS 139 (Ky. 1957).

It is not the duty of the trial court to instruct the jury that violation of this section is negligence as a matter of law but the plaintiff should have presented the question to the trial court by a motion to direct the jury to find a verdict in favor of plaintiff on the liability of defendant for damages thus leaving the amount of damages to be determined by the jury if the motion was sustained and after an adverse ruling and verdict the plaintiff should have presented the question again by a motion for judgment notwithstanding the verdict and in absence of proper motions the trial court had no duty to make such rulings and the verdict could not be attacked on appeal as being contrary to the law and evidence. Thacker's Adm'r v. Salyers, 290 S.W.2d 830, 1956 Ky. LEXIS 348 (Ky. 1956).

The trial court did not err in giving an instruction that the plaintiff had a duty not to stop her car and leave it standing on the main portion of the highway. Wheeler v. Creekmore, 469 S.W.2d 559, 1971 Ky. LEXIS 304 (Ky. 1971).

Whether the plaintiff stopped her car in the left-hand lane and was hit head-on by an approaching car, the plaintiff was entitled to a last clear chance instruction conditioned on whether the jury did or did not believe her lights were on so

that her plight could be readily seen by the defendant. Wheeler v. Creekmore, 469 S.W.2d 559, 1971 Ky. LEXIS 304 (Ky. 1971).

Cited:

OPINIONS OF ATTORNEY GENERAL.

A school bus may not stop to receive or discharge passengers in a no passing area as defined in KRS 189.340(4) (now KRS 189.340(5)). OAG 64-23.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Glass dropped from damaged vehicle on highway to be removed by person removing vehicle, KRS 189.754.

State and federal highways, KRS ch. 177.

Treatises

Kentucky Instructions To Juries (Civil), 5th Ed., Automobiles, §§ 16.30, 16.32 — 16.37.

GENERAL PROVISIONS

189.540. Regulations for school buses — Operator required to have commercial driver's license with school bus endorsement.

(1)(a) The Kentucky Board of Education shall promulgate administrative regulations to govern the design and operation of all Kentucky school buses and to govern the operation of passenger vehicles owned, leased, or privately contracted by the district that transport students under KRS 156.153(3).

(b) The board shall, with the advice and aid of the Department of Kentucky State Police and the Transportation Cabinet, enforce the administrative regulations governing the operation of all school buses, whether owned by a school district or privately contracted, and all passenger vehicles owned, leased, or privately contracted by the district that transport students under KRS 156.153(3).

(c) The administrative regulations covering the operation shall by reference be made a part of any contract with a school district. Every school district and private contractor referred to under this subsection shall be subject to those regulations.

(2)(a) The administrative regulations promulgated by the Kentucky Board of Education under subsection (1) of this section or under KRS 156.160 may include requirements for regular instruction of pupils in school bus safety.

(b) A school district shall be exempt from the pupil instruction requirements authorized in paragraph (a) of this subsection if:

1. The school district had a gross average daily attendance of transported pupils under KRS 157.370 for the previous school year of forty-eight (48) pupils or fewer without any additional factors included;

2. The school district's local board of education adopts a policy for instructing pupils on school bus safety prior to the pupil's use of a district-owned or privately contracted school bus; and

3. The local board of education submits a copy of the district's policy to the Kentucky Department of Education.

(c) A school district's failure to implement an instruction policy adopted under paragraph (b) of this subsection shall be grounds for the Kentucky Board of Education to revoke the school district's pupil instruction exemption until the school district implements the policy.

(3) Any employee of any school district who violates any of the administrative regulations in any contract executed on behalf of a school district shall be subject to removal from office. Any person operating a school bus or passenger vehicle to transport students under contract with a school district who fails to comply with any of the administrative regulations shall be guilty of breach of contract and the contract shall be canceled after proper notice and a hearing by the responsible officers of such school district.

(4)(a) Any person who operates a school bus shall be required to possess a commercial driver's license issued pursuant to KRS 281A.170 with a school bus endorsement as described in KRS 281A.175.

(b) Any person who operates a passenger vehicle that is owned, leased, or privately contracted by the district to transport students shall be required to possess a valid Class D operator's license in accordance with KRS 156.153(3)(c).

History.

2739g-69m: corrected, Acts. 1958, ch. 126, § 24; 1988, ch. 262, § 4, effective July 15, 1988; 1990, ch. 455, § 32, effective July 13, 1990; 1990, ch. 476, § 609, effective July 13, 1990; 1996, ch. 216, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2004, ch. 22, § 2, effective July 13, 2004; 2005, ch. 165, § 9, effective June 20, 2005; 2007, ch. 85, § 209, effective June 26, 2007; 2025 ch. 151, § 1, effective April 1, 2025.

Legislative Research Commission Note.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

(6/17/78). This section was amended by 1978 Ky. Acts chs. 83 and 434, part of which are in conflict and cannot be compiled together. Effect has been given to all provisions except for the conflicting provision in subsection (3), in which the later amendment by 1978 Ky. Acts ch. 434, sec. 7, prevails.

NOTES TO DECISIONS

1. Authority to Regulate.

Where language of KRS 156.160 and this section was clear and unambiguous and authorized the Department of Transportation to regulate the operation of school buses, which necessarily included those persons operating the buses, there was no room for construction of the statutes and they must be accepted as they were written. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

Statutory grant of authority under KRS 156.160 and this section to Department of Transportation to adopt regulations to govern the design and operation of school buses was not unconstitutional special legislation because it applied only to public and not to private or parochial school bus drivers; the statutes apply equally to a class and further a legitimate state interest in safe transportation of public school children. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

It was not the case that KRS Chapter 281A set forth a comprehensive scheme of regulating the same matter which was being regulated by an administrative agency, in violation of KRS 13A.120, as the administrative regulation was more detailed, comprehensive and pertinent regarding school bus drivers than was the statute, which dealt with commercial driver's licenses. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bus drivers' qualifications; responsibilities, and training, 702 KAR 5:080.

Pupil transportation: technical assistance and monitoring, 702 KAR 5:010.

Transportation of preschool children, 702 KAR 5:150.

189.550. Vehicles used for transporting children to stop at railroad crossings.

Operators of all buses and motor vehicles used for transporting children shall stop their vehicles before crossing any railroad when tracks are at the same level of the roadway. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track over which the highway crosses, except where the crossing is protected by gates or a flagman employed by the railroad. After making the stop, the operator shall open the service door and carefully look in each direction and listen for approaching trains or other on-track equipment before proceeding. If visibility is impaired at the required distance for stopping under this section, the operator may allow the vehicle to slowly roll forward for the purpose of gaining the visibility necessary to safely cross the railroad tracks.

History.

1376r-10: amend. Acts. 1960, ch. 123, § 4; 1988, ch. 262, § 5, effective July 15, 1988; 2003, ch. 147, § 1, effective March 18, 2003; 2018 ch. 101, § 1, effective July 14, 2018.

PENALTIES

189.990. Penalties.

(1)(a) Any person who violates any of the provisions of KRS 189.020 to 189.040, 189.050(1) or (4), 189.060 to 189.080, 189.090(1) to (3), 189.100, 189.110, 189.130 to 189.160, 189.190(2) to (4), 189.195, 189.200, 189.285, 189.290(1) or (2), 189.300 to 189.360, 189.380, 189.400 to 189.430, 189.450 to 189.458, 189.4595 to 189.480, 189.520(1), 189.540, 189.570 to 189.590, except 189.580(1)(b) or (6)(b), 189.345, 189.456(6), and 189.960 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(b) Any person who violates KRS 189.580(1)(a) shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both, unless the accident involved death or serious physical injury and the person knew or should have known of the death or serious physical injury, in which case the person shall be guilty of a Class D felony.

(c) Any person who violates KRS 189.390(5)(c) shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating KRS 189.390(5)(c).

(2)(a)1. Except as provided in subparagraph 2. of this paragraph, any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.2713 shall be fined two cents ($0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents ($0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars ($100) and shall not be more than five hundred dollars ($500).

2. Any person who violates a posted bridge weight limit on a state-maintained bridge that is more than seventy-five (75) years old shall be fined:

a. Five hundred dollars ($500) for the first offense;

b. One thousand dollars ($1,000) for the second offense within a one (1) year period; and

c. Two thousand dollars ($2,000) for any subsequent offense within a one (1) year period.

The Transportation Cabinet shall erect signs warning drivers of the increased fines in this subparagraph. Signs erected under this subparagraph shall be placed in such a manner that drivers are given adequate warning in order to exit the road prior to crossing the bridge. If warning signs are not erected in accordance with this subparagraph, the fines in this subparagraph shall not apply and violators shall be fined under subparagraph 1. of this paragraph.

(b) Any person who violates any provision of KRS 189.050(2) or (3), 189.090(4), 189.221 to 189.230, 189.270, 189.2713, 189.280, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c)1. Any person who violates the provisions of KRS 177.985 while operating on a route designated in KRS 177.986 shall be fined one hundred dollars ($100).

2. Any person who operates a vehicle with a permit under KRS 177.985 in excess of eighty thousand (80,000) pounds while operating on a route not designated in KRS 177.986 shall be fined one thousand dollars ($1,000).

(d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3)(a) Any person who violates KRS 189.190(1) shall be fined not more than fifteen dollars ($15).

(b) Any person who violates KRS 189.190(5) shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4)(a) Any person who violates KRS 189.210(1) shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates KRS 189.520(2) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9)(a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates KRS 189.560(3) shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by subsection (3)(a) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates KRS 189.231(2) shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to KRS 189.231(3) shall, upon first offense, be fined one hundred dollars ($100) and, upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17)(a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who operates a bicycle in violation of the administrative regulations promulgated pursuant to KRS 189.287 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100).

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3)(a) shall be fined fifty dollars ($50). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.

(25) Any person who violates the provisions of KRS 189.125(3)(b) shall be fined thirty dollars ($30). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, a fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs. A person who has not been previously charged with a violation of KRS 189.125(3)(b) may elect to acquire a booster seat meeting the requirements of KRS 189.125. Upon presentation of sufficient proof of the acquisition, the charge shall be dismissed and no fees or costs shall be imposed.

(26) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed

twenty-five dollars ($25). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.

(27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.020 and 534.060.

(28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

(29) A person who violates the provisions of KRS 189.459(2) or (3) shall be fined two hundred fifty dollars ($250). The fines and costs for a violation of KRS 189.459(2) or (3) shall be collected and disposed of in accordance with KRS 24A.180. Once deposited into the State Treasury, ninety percent (90%) of the fine collected under this subsection shall immediately be forwarded to the personal care assistance program under KRS 205.900 to 205.920. Ten percent (10%) of the fine collected under this subsection shall annually be returned to the county where the violation occurred and distributed equally to all law enforcement agencies within the county.

(30) Any person who violates KRS 189.292 or 189.294 shall be fined twenty-five dollars ($25) for the first offense and fifty dollars ($50) for each subsequent offense.

(31) Any person who violates KRS 189.281(5) or (7)(b) shall be subject to a fine of two hundred fifty dollars ($250). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.

(32) Any person who violates KRS 189.290(3) or (4) and causes physical injury to a person shall be fined five hundred dollars ($500).

(33) Any person who violates KRS 189.632 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000), or imprisoned in the county jail for not more than one (1) year, or both.

History.

1376r-2, 1376r-10, 2739g-34a, 2739g-34b, 2739g-46a, 2739-53b, 2739g-65, 2739g-69ee, 2739g-93, 2739i-2, 2896a-15, 4345, 4345a-6, 4346, 4346a-5, 4348, 4353b-4: amend. Acts 1946, ch. 96; 1948, ch. 171, § 2; 1950, ch. 48, § 4; 1950, ch. 96, § 2; 1950, ch. 97, §§ 2, 3; 1950, ch. 115, § 9; 1952, ch. 206, § 1; 1956, ch. 23, § 1, 1956, ch. 35, § 2; 1956, ch. 125, § 3; 1970, ch. 92, § 60; 1972, ch. 128, § 2; 1972, ch. 203, § 38; 1972, ch. 299, § 2(4); 1974, ch. 101, § 7; 1974, ch. 217, § 2; 1974, ch. 258 § 5; 1974, ch. 335, § 2; 1974, ch. 345, § 1(3); 1976 (Ex. Sess.), ch. 36, § 2, effective January 2, 1978; 1978, ch. 46, § 11, effective June 17, 1978, ch. 101, § 4, effective June 17, 1978; 1978, ch. 384, § 54, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7 § 5, effective July 1, 1979; 1980, ch. 49, § 5, effective July 15, 1980; 1980, ch. 305, § 2, effective July 15, 1980; 1984, ch. 165, § 20(1) to (24), effective July 13, 1984; 1988, ch. 72, § 1, effective July 15, 1988; 1988, ch. 232, § 2, effective July 15, 1988; 1988, ch. 262, § 6, effective July 15, 1988; 1988, ch. 293, § 1, effective July 15, 1988; 1988, ch. 347, § 2, effective April 10, 1988; 1990, ch. 400, § 3, effective July 13, 1990; 1992, ch. 143, § 4, effective July 14, 1992; 1992, ch. 229, § 4, effective July 14, 1992; 1994, ch. 39, § 2, effective July 15, 1994; 1998, ch. 21, § 3, effective July 15, 1998; 1998, ch. 124, § 6, effective July 15, 1998; 1998, ch. 179, § 4, effective July 15, 1998; 1998, ch. 484, § 4, effective July 15, 1998; 1998, ch. 606, § 69, effective July 15, 1998; 2000, ch. 319, § 3, effective July 14, 2000; 2000, ch. 449, § 1, effective April 21, 2000; 2000, ch. 467, § 25, effective October 1, 2000; 2000, ch. 481, § 2, effective July 14, 2000; 2000, ch. 512, § 6, effective July 14, 2000; 2002, ch. 183, § 18, effective August 1, 2002; 2004, ch. 131, § 3, effective July 13, 2004; 2006, ch. 109, § 2, effective July 12, 2006; 2006, ch. 110, § 2, effective July 12, 2006; 2006, ch. 173, § 32, effective July 12, 2006; 2006, ch. 180, § 10, effective July 12, 2006; 2008, ch. 108, § 2, effective July 15, 2008; 2008, ch. 141, § 1, effective July 15, 2008; 2010, ch. 110, § 4, effective July 15, 2010; 2013, ch. 21, § 4, effective June 25, 2013; 2017 ch. 146, § 4, effective June 29, 2017; 2017 ch. 158, § 9, effective June 29, 2017; 2018 ch. 63, § 4, effective July 14, 2018; 2019 ch. 126, § 5, effective June 27, 2019; 2021 ch. 186, § 8, effective June 29, 2021; 2023 ch. 183, § 2, effective June 29, 2023; 2024 ch. 198, § 19, effective July 15, 2024; 2026 ch. 31, § 2, effective July 15, 2026; 2026 ch. 62, § 8, effective July 15, 2026; 2026 ch. 71, § 2, effective July 15, 2026; 2026 ch. 135, § 26, effective July 15, 2026.

Compiler's Notes.

Former subsections (19) and (20) (Enact. Acts 1956, ch. 125, § 3) were repealed by Acts 1966, ch. 115, § 12 and former subsection (21) (Enact. Acts 1966, ch. 142, § 2) was repealed by implication by Acts 1968, ch. 152, § 123.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 31, 62, 71, and 135, which do not appear to be in conflict and have been codified together.

(6/29/2021). This statute was created by Section 6 of 2021 Ky. Acts ch. 186. Section 9 of that Act provides that "Sections 6 to 8 of this Act are part of a pilot program and shall sunset on July 1, 2024."

(7/12/2006). Because of typographical error, in 2006 Ky. Acts ch. 173, sec. 32, which amended KRS 189.990, an erroneous reference to a nonexistent KRS section, KRS 189.599, appears in subsection (1). The correct citation is KRS 189.590. Under the authority of KRS 7.136(1), the Reviser of Statutes has inserted the correct citation.

NOTES TO DECISIONS

Analysis

1. Reduction of Maximum Fine.
2. Permitting Prisoner to Obtain Attorney.
3. Leaving Scene of Accident.
4. Failure to Render Aid.
5. Voluntary Manslaughter.
6. Revocation of Operator's License.
7. Fine Not Debt.
8. Indictment.
9. Evidence.

10. Appeal.
11. Imposition of Fine.

1. Reduction of Maximum Fine.
A city ordinance fixing maximum fine of $50 for exceeding speed limit of 15 miles per hour is not consistent with statute and therefore repugnant to Ky. Const., § 168 where KRS 189.390 authorizes municipalities to fix speed limits within their boundaries when conditions warrant but the penalty provided for violation of KRS 189.390 is set forth in this section as a fine of not less than $10 or more than $100. Murphy v. Lake Louisvilla, 303 S.W.2d 307, 1957 Ky. LEXIS 257 (Ky. 1957).

2. Permitting Prisoner to Obtain Attorney.
Two hour delay by arresting officer and jailer in permitting motorist arrested for driving a motor vehicle while intoxicated to call her attorney was not unreasonable or prejudicial where the delay was due to her conduct. Sharp v. Commonwealth, 414 S.W.2d 902, 1967 Ky. LEXIS 372 (Ky. 1967).

3. Leaving Scene of Accident.
The defendant's flight from the scene of a fatal automobile accident, and his subsequent attempts at concealment or suppression of evidence, proved at most that he believed he was at fault, which was just as consistent with ordinary negligence or recklessness as it is with "wanton" conduct. Fugate v. Commonwealth, 445 S.W.2d 675, 1969 Ky. LEXIS 169 (Ky. 1969), overruled, Commonwealth v. Sawhill, 660 S.W.2d 3, 1983 Ky. LEXIS 303 (Ky. 1983).

The act of leaving the scene of the accident without stopping to render aid, though it may have amounted to gross and wanton misconduct in itself, was a separate crime from the manslaughter charged as a result of the original striking. Fugate v. Commonwealth, 445 S.W.2d 675, 1969 Ky. LEXIS 169 (Ky. 1969), overruled, Commonwealth v. Sawhill, 660 S.W.2d 3, 1983 Ky. LEXIS 303 (Ky. 1983).

4. Failure to Render Aid.
The maximum fine provided for the offense of failing to render aid and assistance after an accident in violation of KRS 189.580(1) is $2,000.00 rather than the $500.00 maximum set for a class A misdemeanor. Commonwealth v. Schindler, 685 S.W.2d 544, 1984 Ky. LEXIS 298 (Ky. 1984).

5. Voluntary Manslaughter.
Where driver intentionally drove his automobile at a speed that was excessive in view of the topography of the highway and in so doing committed a misdemeanor in failing to operate his vehicle in a careful manner in violation of KRS 189.290 and this section and perhaps in violation of KRS 189.300 by failing to keep to the right he was negligent per se but without any evidence of how excessive it was or what other conditions led up to it, it did not necessarily forecast a sufficient likelihood or probability of accident and injury to support a verdict of voluntary manslaughter. Agee v. Hammons, 335 S.W.2d 732, 1960 Ky. LEXIS 279 (Ky. 1960).

6. Revocation of Operator's License.
The revocation of operator's license for operating a motor vehicle while intoxicated in violation of KRS 189.580 is not by the magistrate but merely recommended by him and is not a punishment in addition to the fine and confinement provided by this section which would deprive the magistrate of jurisdiction. Commonwealth v. Burnett, 274 Ky. 231, 118 S.W.2d 558, 1938 Ky. LEXIS 257 (Ky. 1938).

7. Fine Not Debt.
Person brought before county court on a criminal charge of violating KRS 189.222 and who pleaded guilty and was fined $500 under this section and placed in jail on failure to pay the fine could not be released on surrender of his estate for benefit of creditors under Ky. Const., § 18 for he was not a "debtor" to the Commonwealth within the meaning of Ky. Const., § 18. Wilson v. Commonwealth, 240 S.W.2d 587, 1951 Ky. LEXIS 982 (Ky. 1951).

8. Indictment.
Wilful and wanton failure of motorist injuring person to stop and render assistance does not constitute voluntary manslaughter even though the person dies as a result and an indictment charging voluntary manslaughter for wilful and wanton failure to stop and render assistance violates the criminal code by combining two offenses in one indictment, one a charge of voluntary manslaughter under KRS 435.020 (now repealed) carrying a penalty of confinement in penitentiary for not less than 2 or more than 21 years and the other a violation of KRS 189.580 carrying the penalty provided in subsection (1) of this section. Commonwealth v. Nevius, 249 S.W.2d 717, 1952 Ky. LEXIS 840 (Ky. 1952).

9. Evidence.
Where automobile driver violated KRS 189.330 and this section by failing to stop at caution light for which officers were authorized to make an arrest and after the arrest the driver disclosed he had illegal whiskey in the automobile, the evidence of finding the liquor in the car was competent in charge of transporting intoxicating liquor for purpose of sale in local option territory and the trial court committed error in directing a verdict of acquittal. Commonwealth v. Bentley, 259 S.W.2d 441, 1953 Ky. LEXIS 946 (Ky. 1953).

10. Appeal.
Where offense is a misdemeanor punishable by fine only under this section the Commonwealth may appeal and upon reversal have a new trial, notwithstanding the former judgment of acquittal. Commonwealth v. Abell, 275 Ky. 802, 122 S.W.2d 757, 1938 Ky. LEXIS 498 (Ky. 1938).

11. Imposition of Fine.
Circuit court properly imposed a $100 fine for excessive window tinting and allowed a deferred payment of that fine because the fine was not subject to waiver inasmuch as both the offense and the fine were defined outside of the penal code. Fultz v. Commonwealth, 554 S.W.3d 385, 2018 Ky. App. LEXIS 214 (Ky. Ct. App. 2018).

Cited:
Pinkleton v. Lueke, 265 Ky. 84, 95 S.W.2d 1103, 1936 Ky. LEXIS 435 (Ky. 1936); Newcomb v. Commonwealth, 276 Ky. 362, 124 S.W.2d 486, 1939 Ky. LEXIS 532 (Ky. 1939); National Linen Supply Co. v. Snowden, 288 Ky. 374, 156 S.W.2d 186, 1941 Ky. LEXIS 114 (Ky. 1941); Garner v. Shouse, 292 Ky. 798, 168 S.W.2d 42, 1943 Ky. LEXIS 747 (Ky. 1943); Hovious v. Riley, 403 S.W.2d 17, 1966 Ky. LEXIS 313 (Ky. 1966), overruled, Commonwealth v. Hager, 702 S.W.2d 431, 1986 Ky. LEXIS 225 (Ky. 1986), overruled in part, Commonwealth v. Hager, 702 S.W.2d 431, 1986 Ky. LEXIS 225 (Ky. 1986); Smith v. Commonwealth, 424 S.W.2d 835, 1967 Ky. LEXIS 27 (Ky. 1967); North v. Russell, 427 U.S. 328, 96 S. Ct. 2709, 49 L. Ed. 2d 534, 1976 U.S. LEXIS 76 (1976); Luna v. Commonwealth, 571 S.W.2d 88, 1977 Ky. App. LEXIS 929 (Ky. Ct. App. 1977); Sizemore v. District Court, 50th Judicial Dist., 735 F.2d 204, 1984 U.S. App. LEXIS 21937 (6th Cir. 1984).

OPINIONS OF ATTORNEY GENERAL.

If an arrest is made by a local peace officer for a violation under KRS 189.221, 189.222 or 189.270, the fines recovered as well as the taxes levied must all be sent by the collecting court directly within 30 days after they are imposed and collected. OAG 62-815.

If an arrest for a violation of KRS 189.221, 189.222 or 189.270 is made by a state trooper, state highway agent or

department of motor transportation (now transportation cabinet) agent, the fines and taxes are treated as any other fines and are sent to the circuit court clerk who reports and forwards them to the state treasury. OAG 62-815.

The fine applicable to a violation of an order entered pursuant to KRS 189.230 is found in subsection (2)(b) (now (2)(c)) of this section, and the fact that the county judge (now county judge/executive) in entering that order may have referred to subsection (2)(a) is of no significance. OAG 66-380.

All fines collected under violations of KRS 189.210 and as mentioned in subsection (5)(a), (b) and (c) (now (4)(a), (b) and (c)) of this section, after payment of commissions to officers entitled thereto, mandatorily go to the county road fund if the offense is committed in the county. OAG 72-204.

Under subsection (5) (now (4)) of this section, 15% of fines collected in the quarterly court for violations of KRS 189.210 will go to the county road fund which is the amount available after payment of the requisite percentages of the fines to the commonwealth's attorney, the county attorney, and the circuit clerk. OAG 72-237.

To the extent that a fiscal court cannot agree not to enforce hauling and weight restrictions governing the use of public roads, a contract whereby a coal company would pay a fee to the county, based on the tonnage hauled, to compensate for future expected damages to county roads would be impermissible. OAG 76-170.

As between legislation of broad and general nature on one hand and legislation dealing minutely with specific matter on the other hand, the specific will prevail over the general, and, accordingly, the specific prohibition of this section against imposing of costs in parking violations prevails over the generality of KRS 24A.175, which purports to require payment of costs in all criminal prosecutions upon conviction. OAG 78-328, 1978 Ky. AG LEXIS 396.

Where two statutes enacted at the same session are destructively repugnant, the law last enacted must be regarded as the final expression of the legislative will and permitted to prevail; since amended subsection (1) of this section and KRS 24A.175 are destructively repugnant, this section, as the last enacted, prevails. OAG 78-328, 1978 Ky. AG LEXIS 396.

KRS 346.185, which imposes an additional cost of ten dollars for all offenses for which imprisonment may be imposed, only applies to traffic offenses for which a term of imprisonment may be imposed for a violation. OAG 82-332, 1982 Ky. AG LEXIS 306.

A driving under the influence (DUI) conviction entered prior to June 21, 1974 may be used to enhance the penalty for a subsequent DUI conviction pursuant to KRS 189.520(2) and subdivision (9)(a) (deleted by 1984 amendment) of this section. OAG 84-175, 1984 Ky. AG LEXIS 211.

KRS 189.520(2) and subsection (9) (now subsection (8)) of this section must be construed by the express or literal language contained therein; accordingly, any previous conviction under KRS 189.520(2) may be used for enhancement purposes under subsection (9) (now subsection (8)) of this section. If proof of previous convictions cannot be obtained from the Transportation Cabinet due to a destruction of records which are over five years old or have occurred prior to June 21, 1974, proof by any other means is acceptable so long as introduction of such proof complies with the rules on evidence. OAG 84-175, 1984 Ky. AG LEXIS 211.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Mann, Legislation — A Proposed Dangerous Driving Statute for Kentucky, 36 Ky. L.J. 82 (1947).

Comments, Long Overdue-Process: California And The Lay Judge, 63 Ky. L.J. 490 (1974-1975).

Notes, Economic, Social and Legal Aspects of Coal Transportation in Kentucky, 64 Ky. L.J. 601 (1975-76).

Kentucky Law Survey, Fortune, Criminal Rules, 70 Ky. L.J. 395 (1981-82).

Treatises

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 4 Offenses Relating to Firearms and Destructive Devices, §§ 8.67, 8.68 — 8.73B.

189.993. Penalties.

(1) Any person who violates KRS 189.045 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(2) Any person convicted of violating any of the provisions of KRS 189.095 shall be fined sixty dollars ($60) and costs of prosecution.

(3) Any person who violates any provision of KRS 189.205 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100).

(4) Any person who violates any provision of KRS 189.375 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100).

(5) Any person who violates KRS 189.505 shall be fined not less than sixty dollars ($60) nor more than two hundred dollars ($200) or be imprisoned for not more than thirty (30) days, or both.

(6) Any person found violating any provision of KRS 189.820 or 189.830 is guilty of a misdemeanor and shall be fined not less than twenty dollars ($20) nor more than thirty-five dollars ($35).

(7) Any person who violates KRS 189.920 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned in the county jail for not more than thirty (30) days, or both. In the case of a private vehicle not authorized to use emergency lights under KRS 189.920, all lighting and other equipment used in violation of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in which the offense occurred.

(8) Any person who violates KRS 189.930 shall be fined not less than sixty dollars ($60) nor more than five hundred dollars ($500), or be imprisoned in the county jail for not more than thirty (30) days, or both.

(9) Any person who violates KRS 189.940 shall be fined not less than sixty dollars ($60) nor more than one thousand dollars ($1,000) or be imprisoned in the county jail for not more than six (6) months, or both. In the case of a private vehicle, except as outlined in subsection (11) of this section, all lighting and other equipment used in violation of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in which the offense occurred.

(10) If a member of a regular or volunteer fire department, ambulance service, or rescue squad violates any provisions of subsection (6) of KRS 189.940, he shall, in addition to any other penalty provided under KRS 189.990 or this section, be immediately dismissed from his membership or employment with the fire department, ambulance service, or rescue squad and shall be disqualified from being employed by or being a member of any fire department, ambulance service, or rescue squad in the Commonwealth for a period of three (3) years. Upon conviction of a second offense he shall be permanently barred from employment or membership in any fire department, ambu-

lance service, rescue squad, police department, or sheriff's office in the Commonwealth, nor shall he be permitted to operate any public safety vehicle as defined in KRS 189.910.

(11)(a) Any person who violates KRS 189.950(3)shall be fined one hundred dollars ($100) for the first offense, two hundred dollars ($200) for the second offense, and one thousand dollars ($1,000) for each subsequent offense.

(b) Except as provided in paragraph (a) of this subsection, any person who violates KRS 189.950 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or be imprisoned in the county jail for not more than thirty (30) days, or both. In the case of a privately owned vehicle, all lighting and other equipment used or installed in violation of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in which the offense occurred.

(12) Any person who violates any provision of this chapter for which no penalty is otherwise provided shall, upon conviction, be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense, except that no penalty shall be assessed for a violation of KRS 189.580(1)(b) or (6)(b).

(13) No producer or processor of natural resources shall allow the transporting of natural resources over the highways of the Commonwealth in excess of the weight limits without possessing a resource recovery road hauling permit. Violation for hauling in excess of prescribed limits without possession of a permit or transporting natural resources over prescribed limits of the resource recovery road hauling permit shall be not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for each violation and shall be deposited in the resource recovery road fund.

History.

Enact. Acts 1966, ch. 18, § 2; 1966, ch. 113, § 3; 1968, ch. 152, § 123; 1970, ch. 45, § 4; 1970, ch. 92, § 61; 1970, ch. 93, § 6; 1970, ch. 117, § 1; 1972, ch. 203, § 39; 1978, ch. 101, § 5, effective June 17, 1978; 1978, ch. 102, § 5, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7, § 6, effective July 1, 1979; 1982, ch. 203, § 12(5), effective July 15, 1982; 1986, ch. 220, § 3, effective July 15, 1986; 2006, ch. 109, § 3, effective July 12, 2006; 2006, ch. 110, § 3, effective July 12, 2006; 2006, ch. 173, § 33, effective July 12, 2006; 2017 ch. 79, § 3, effective June 29, 2017.

OPINIONS OF ATTORNEY GENERAL.

KRS 346.185, which imposes an additional cost of ten dollars for all offenses for which imprisonment may be imposed, only applies to traffic offenses for which a term of imprisonment may be imposed for a violation. OAG 82-332, 1982 Ky. AG LEXIS 306.

TITLE XVII

ECONOMIC SECURITY AND PUBLIC WELFARE

Chapter
194A. Cabinet for Health and Family Services.
195. Manpower Services.
198B. Housing, Buildings, and Construction — Building Code.
199. Protective Services — Adoption — Child Care.
200. Assistance to Children.
207. Aid to the Needy Blind — Equal Opportunities.

CHAPTER 194A

CABINET FOR HEALTH AND FAMILY SERVICES

Section
194A.115. Statewide Independent Living Council.

Strategic Planning for Children in Placement.

194A.145. Legislative findings and declarations. [Repealed].
194A.146. Statewide Strategic Planning Committee for Children in Placement — Membership — Plans — Review — Information Systems — Study of changes in child welfare delivery — Annual report. [Repealed].

Autism Spectrum Disorder.

194A.620. Legislative findings — Purpose — Definition. [Repealed].
194A.622. Kentucky Commission on Autism Spectrum Disorders — Membership — Administrative support — Meetings — Comprehensive state plan on training, treatments, and services — Advisory and monitoring functions. [Repealed].
194A.623. Office of Autism.
194A.624. Advisory Council on Autism Spectrum Disorders — Administration of funds — Annual report — Administrative regulations.

194A.115. Statewide Independent Living Council.

(1) The Statewide Independent Living Council is hereby created and attached to the Cabinet for Health and Family Services in accordance with 42 U.S.C. sec. 3515e for administrative purposes to accomplish the purposes enumerated in 29 U.S.C. sec. 796d (Title VII, Part A, Section 705 of the Rehabilitation Act Amendments of 1998). Members of the council shall be appointed by the Governor from recommendations submitted by the Department for Aging and Independent Living consistent with the federal mandate to include a majority of individuals with disabilities representing geographical and disability diversity, as well as representatives from identified service providers and other entities. The composition, qualifications, and terms of service of the council shall conform to the federal law.

(2)(a) Except as provided in paragraph (b) of this subsection, any vacancy occurring in the membership of the Statewide Independent Living Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.

(b) The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.

(3) Each member of the Statewide Independent Living Council may receive a per diem of one hundred

dollars ($100), not to exceed six hundred dollars ($600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Statewide Independent Living Council. The per diem and expenses shall be paid out of the federal funds appropriated under 29 U.S.C. ch. 16.

History.
Enact. Acts 1994, ch. 469, § 3, effective July 15, 1994; 2000, ch. 211, § 1, effective July 14, 2000; 2006, ch. 211, § 50, effective July 12, 2006; repealed, reenacted, renumbered, and amended, 2016, ch. 32, § 2, effective July 15, 2016.

Compiler's Notes.
KRS 194A.115 was formerly codified as KRS 151B.240.

STRATEGIC PLANNING FOR CHILDREN IN PLACEMENT

194A.145. Legislative findings and declarations. [Repealed]

History.
Repealed, reenact. and amend., Acts 2005, ch. 99, § 31, effective June 20, 2005; repealed by 2020 ch. 36, § 44, effective July 15, 2020.

194A.146. Statewide Strategic Planning Committee for Children in Placement — Membership — Plans — Review — Information Systems — Study of changes in child welfare delivery — Annual report. [Repealed]

History.
Repealed, reenact. and amend., Acts 2005, ch. 85, § 617, effective June 20, 2005; 2005, ch. 99, § 32, effective June 20, 2005; 2012, ch. 146, § 23, effective July 12, 2012; 2012, ch. 158, § 18, effective July 12, 2012; 2018 ch. 159, § 50, effective July 14, 2018; repealed by 2020 ch. 36, § 44, effective July 15, 2020.

AUTISM SPECTRUM DISORDER

194A.620. Legislative findings — Purpose — Definition. [Repealed]

History.
Enact. Acts 2005, ch. 138, § 1, effective July 20, 2005; repealed by 2016 ch. 18, § 4, effective July 15, 2016.

194A.622. Kentucky Commission on Autism Spectrum Disorders — Membership — Administrative support — Meetings — Comprehensive state plan on training, treatments, and services — Advisory and monitoring functions. [Repealed]

History.
Enact. Acts 2005, ch. 138, § 2, effective July 20, 2005; 2007, ch. 24, § 6, effective June 26, 2007; 2010, ch. 24, § 242, effective July 15, 2010; 2012, ch. 146, § 24, effective July 12, 2012; 2012, ch. 158, § 20, effective July 12, 2012; repealed by 2016 ch. 18, § 4, effective July 15, 2016.

194A.623. Office of Autism.

(1) The Office of Autism is hereby created within the Cabinet for Health and Family Services.

(2) The Office of Autism may be housed at the University of Louisville and the University of Kentucky, by agreement of the parties.

History.
2016 ch. 18, § 2, effective July 15, 2016.

194A.624. Advisory Council on Autism Spectrum Disorders — Administration of funds — Annual report — Administrative regulations.

(1) The Advisory Council on Autism Spectrum Disorders is hereby created and shall be attached to the Office of Autism within the Cabinet for Health and Family Services for administrative purposes.

(2) The Advisory Council on Autism Spectrum Disorders shall consist of the following members appointed by the Governor:

(a) One (1) representative from the Department for Public Health;

(b) One (1) representative from the Department for Medicaid Services;

(c) One (1) representative from the Department for Community Based Services;

(d) One (1) representative from the Department of Public Advocacy;

(e) One (1) representative from the Department of Education;

(f) One (1) representative from the Department of Juvenile Justice;

(g) One (1) representative from the Department for Behavioral Health, Developmental and Intellectual Disabilities;

(h) One (1) representative from the Office for Children with Special Health Care Needs;

(i) One (1) parent or youth representative from the Commonwealth Council on Developmental Disabilities;

(j) One (1) representative from the Kentucky Autism Training Center;

(k) One (1) representative from the Office of Vocational Rehabilitation;

(*l*) One (1) representative from the University of Louisville;

(m) One (1) representative from the University of Kentucky Human Development Institute;

(n) One (1) representative from the University of Kentucky;

(o) One (1) representative from the Center for Autism Spectrum Evaluation, Service, and Research;

(p) One (1) representative from the Education Professional Standards Board;

(q) One (1) pediatrician representative;

(r) One (1) representative from the Weisskopf Child Evaluation Center;

(s) One (1) representative from the First Steps Program;

(t) One (1) representative from the Arc of Kentucky;

(u) The director of the Office of Autism;

(v) At least one (1) consumer representative, an adult with a diagnosis on the autism spectrum; and

(w) Five (5) citizen-at-large members.

(3) The co-chairs of the Advisory Council on Autism Spectrum Disorders shall be the representatives appointed by the Governor from the University of Kentucky and the University of Louisville.

(4) The Advisory Council on Autism Spectrum Disorders may invite individuals who are not members to serve on committees and workgroups.

(5) Appointed members of the Advisory Council on Autism Spectrum Disorders shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of duties in accordance with KRS 45.101 and administrative regulations promulgated thereunder. Members of the council shall initially be appointed to serve staggered terms and thereafter shall be appointed to serve a term of four (4) years.

(6) The Cabinet for Health and Family Services, the Personnel Cabinet, the Finance and Administration Cabinet, and the Office of the State Budget Director shall take all necessary actions to effectuate this section.

(7) The Advisory Council on Autism Spectrum Disorders shall be responsible for:

(a) Promoting the vision for Kentucky's services and supports to persons on the autism spectrum and their families and advocating for improved quality and evidence-based practices for persons on the autism spectrum and their families;

(b) Promoting the early screening, identification, early intervention, and appropriate use of evidence-based practices and standards of care for persons on the autism spectrum across the lifespan;

(c) Strengthening state, regional, and local level collaboration and coordination with families, self-advocates, support groups, and state agencies to further coordinate, develop, and enhance the service delivery system for persons on the autism spectrum across the lifespan;

(d) Gathering and analyzing research and data to assess the quality and availability of programs and services for persons on the autism spectrum and providing recommendations on assessments, interventions, and treatment modalities across the lifespan;

(e) Developing recommendations for:

1. Increasing participation in existing federal, state, and local programs that serve children, youth, and adults on the autism spectrum;

2. Enhancing the current professional development and planning for future workforce development to incorporate research and evidence-based practices;

3. Establishing standards of care and undertaking efforts to ensure promotion of these standards statewide; and

4. Promoting the development of services and supports to transition youth and adults on the autism spectrum;

(f) Assessing the capacity and effectiveness of institutes of higher education in the state toward supporting the development of the workforce for persons on the autism spectrum;

(g) Requesting and utilizing federal, state, and private funds, including funds from philanthropic sources;

(h) Improving procedures for ensuring accountability and measuring success of programs that receive state, federal, and philanthropic funds;

(i) Obtaining reports and issuing progress updates on state and federally funded services that impact the quality of Kentucky's system of care for persons on the autism spectrum;

(j) Completing a biennial report with the Office of Autism and submitting it to the Commonwealth Council on Developmental Disabilities, the Governor, and the Legislative Research Commission. The first report shall be due on or before September 30, 2017, and subsequent reports shall be due each September 30 in odd-numbered years thereafter; and

(k) Other duties and responsibilities as designated by the Governor.

(8) The Advisory Council on Autism Spectrum Disorders shall:

(a) Administer and distribute funds from the autism spectrum disorder trust fund created in KRS 194A.625;

(b) Develop a written plan for the use of funds made available under KRS 194A.625. The initial plan shall be completed on or before October 1, 2026, and shall be updated on an annual basis on or before October 1 of each year thereafter. The plan shall at a minimum include the following:

1. A summary of existing autism spectrum disorder research, awareness, treatment, and funding programs provided to individuals in Kentucky;

2. A needs assessment for individuals with autism spectrum disorder in Kentucky that identifies additional research funding needs by disorder type and geographic area, with support for why the identified programs are needed; and

3. A prioritized list of programs and research projects that the advisory council will address with funding available through the competitive grant program established under subsection (9) of this section; and

(c) Provide to the Governor and the Legislative Research Commission an annual report by October 1 of each year. The report shall include:

1. The plan developed under this subsection for the use of funds for the current and next fiscal year;

2. A summary of the use and impact of prior year funds;

3. A summary of the activities of the advisory council during the prior fiscal year; and

4. Any recommendations for future initiatives or actions regarding autism spectrum disorder research funding.

(9)(a) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish a competitive, open grant program to provide funding to nonprofit entities, academic medical

centers, and government agencies offering research funding and services for autism spectrum disorder services to individuals in Kentucky impacted by the disorder.

(b) The grant program shall provide funding to research projects and programs in accordance with the priorities established in the plan developed under subsection (8) of this section.

(c) The administrative regulations shall at a minimum:

1. Establish an application process and requirements;

2. Set forth program and outcome measurement requirements;

3. Establish an application review and award process; and

4. Provide monitoring, oversight, and reporting requirements for funded programs.

History.

2016 ch. 18, § 1, effective July 15, 2016; 2017 ch. 167, § 13, effective June 29, 2017; 2026 ch. 19, § 2, effective April 3, 2026.

Legislative Research Commission Notes.

(7/14/2018). Under the authority of KRS 7.136(2), one or more references to the "Commission for Children with Special Health Care Needs" in this statute have been changed in codification to the "Office for Children with Special Health Care Needs" to reflect the renaming of the commission by the General Assembly in 2018 Ky. Acts ch. 114.

CHAPTER 195

MANPOWER SERVICES

Section

195.105. Training program authorized — Research assignment — Classification — Compensation — Contract.

195.105. Training program authorized — Research assignment — Classification — Compensation — Contract.

(1) The secretary for health and family services in coordination with the Personnel Cabinet is authorized to establish formal training programs within the Cabinet for Health and Family Services or within any of the departments, divisions, or sections of the cabinet for the training of necessary personnel for the administration of the programs of the cabinet. When courses of study, applicable to the program processes of the cabinet, are not available through instruction within the cabinet, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose, and this training shall be deemed to be a part of the cabinet's training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, these assignments to relate directly to the work assignment of the employee. After consulting with the Personnel Cabinet, position classifications in the research series shall be established for employees on work study assignments, and funds of the cabinet may be used to pay salaries commensurate with the appropriate classification while the employee is receiving such training.

(2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of such training, the state will hold a claim against that person for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

History.

Enact. Acts 1962, ch. 85, § 1; 1974, ch. 74, Art. VI, § 107; 1998, ch. 154, § 85, effective July 15, 1998; 1998, ch. 426, § 126, effective July 15, 1998; 2005, ch. 99, § 42, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

State personnel generally, KRS Chapter 18A.

CHAPTER 198B

HOUSING, BUILDINGS, AND CONSTRUCTION — BUILDING CODE

Section

198B.010. Definitions for chapter.

198B.092. Licensed proprietary schools — Articulation agreements — Recognition — Licensing.

198B.010. Definitions for chapter.

As used in this chapter, unless otherwise provided:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) Armories;
(b) Assembly halls;
(c) Auditoriums;
(d) Bowling alleys;
(e) Broadcasting studios;
(f) Chapels;
(g) Churches;
(h) Clubrooms;
(i) Community buildings;
(j) Courthouses;
(k) Dance halls;
(*l*) Exhibition rooms;
(m) Gymnasiums;
(n) Hotels;
(o) Lecture rooms;
(p) Lodge rooms;
(q) Motels;
(r) Motion picture theaters;
(s) Museums;
(t) Night clubs;
(u) Opera houses;

(v) Passenger stations;
(w) Pool rooms;
(x) Recreation areas;
(y) Restaurants;
(z) Skating rinks;
(aa) Television studios; and
(bb) Theaters.

(2) "Attic" means the space between the ceiling beams of the top habitable story and the roof rafters.

(3) "Basement" means that portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, and ventilating facilities, but which is not ordinarily used for purposes of general household habitation.

(4) "Building" means any combination of materials, whether portable or fixed, which comprises a structure or nonmine underground area affording facilities or shelter for any human occupancy, whether infrequent or regular, and also means single-family dwellings, including those sold or constructed under a trade or brand name. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a manufactured home governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if the farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products.

(5) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling, or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard, including among others:

(a) Banks;
(b) Barber shops;
(c) Beauty parlors;
(d) Department stores;
(e) Garages;
(f) Markets;
(g) Service stations;
(h) Offices;
(i) Stores;
(j) Radio stations;
(k) Telephone exchanges; and
(*l*) Television stations.

(6) "Certified building inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state building inspector within the Commonwealth.

(7) "Certified plans and specifications inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state plans and specifications inspector within the Commonwealth.

(8) "Certified plumbing inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 and 318.140, or 318.090 to practice as a city, county, or state plumbing inspector within the Commonwealth.

(9) "Commissioner" means the commissioner of the department.

(10) "Committee" means the Housing, Buildings and Construction Advisory Committee established by KRS 198B.032.

(11) "Construction" means the erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein, but shall not include the ordinary repair of a building or structure.

(12) "Controlled environment agriculture facility":

(a) Means a facility that utilizes a technologically advanced form of hydroponic or soilless-based production that includes a combination of engineering, plant science, and computer-managed greenhouse control technologies in growing spaces and all connected sorting, packing, and storage areas to allow complete and stable control of the plant environment, including temperature, light, and carbon dioxide;

(b) Includes the immediate sorting, packing, and shipping of fresh, ready-to- consume produce; and

(c) Shall not be used for retail sales or allow open access to the public.

(13) "Department" means the Department of Housing, Buildings and Construction.

(14) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction. "Educational occupancy" shall not include a building for occupancy or use by thirty-five (35) persons or less assembled to receive religious and educational instruction. "Educational occupancy" includes but is not limited to:

(a) Academies;
(b) Care centers;
(c) Colleges;
(d) Kindergartens;
(e) Libraries;
(f) Preschools;
(g) Relocatable classroom units;
(h) Schools;
(i) Seminaries; and
(j) Universities.

(15) "Equipment" means facilities or installations, including but not limited to heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations.

(16) "High hazard occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable, or explosive materials or which has inherent characteristics that constitute a special fire hazard, including among others:

(a) Aluminum powder factories;
(b) Charging or filling stations;
(c) Distilleries;
(d) Dry cleaning plants;
(e) Dry dyeing plants;
(f) Explosive-manufacture, sale or storage;
(g) Flour and feed mills;
(h) Gasoline bulk plants;
(i) Grain elevators;
(j) Lacquer factories;
(k) Liquefied petroleum gas;
(*l*) Mattress factories;
(m) Paint factories;
(n) Pyroxylin-factories, or warehouses; and
(o) Rubber factories.

(17) "Industrial occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, except for occupancies of high hazard, including among others:

(a) Assembly plants;
(b) Creameries;
(c) Electrical substations;
(d) Factories;
(e) Ice plants;
(f) Laboratories;
(g) Laundries;
(h) Manufacturing plants;
(i) Mills;
(j) Power plants;
(k) Processing plants;
(*l*) Pumping stations;
(m) Repair garages;
(n) Smokehouses; and
(o) Workshops.

(18) "Industrialized building system" means any structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site.

(19) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment, or by persons involuntarily detained, including among others:

(a) Asylums;
(b) Homes for the aged;
(c) Hospitals;
(d) Houses of correction;
(e) Infirmaries;
(f) Jails;
(g) Nursing homes;
(h) Orphanages;
(i) Penal institutions;
(j) Reformatories;
(k) Sanitariums; and
(*l*) Nurseries.

(20) "Mobile home" means mobile home as defined in KRS 227.550.

(21) "Ordinary repair" means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance, or decoration, and shall include but not be limited to the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to, or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring, or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.

(22) "Story" means that part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.

(23) "Person with a physical disability" means a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary, or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he or she is insecure or exposed to danger; a person whose hearing is so impaired that he or she is unable to hear warning signals; and a person whose mobility, flexibility, coordination, and perceptiveness are significantly reduced by aging.

(24) "Facility for persons with physical disabilities" means any convenience or device which facilitates the health, safety, or comfort of a person with a disability, including, but not limited to, ramps, handrails, elevators, and doors.

(25) "Manufactured home" is defined as in KRS 227.550.

History.

Enact. Acts 1978, ch. 117, § 1, effective June 17, 1978; 1980, ch. 361, § 1, effective July 15, 1980; 1982, ch. 189, § 1, effective July 15, 1982; 1982, ch. 308, § 1, effective July 15, 1982; 1994, ch. 405, § 49, effective July 15, 1994; 1996, ch. 340, § 15, effective July 15, 1996; 1998, ch. 9, § 1, effective July 15, 1998; 2006, ch. 223, § 2, effective April 22, 2006; 2010, ch. 24, § 245, effective July 15, 2010; 2017 ch. 169, § 2, effective June 29, 2017; 2022 ch. 108, § 4, effective April 8, 2022.

OPINIONS OF ATTORNEY GENERAL.

The Uniform State Building Code, as it relates to the National Electric Code and the state plumbing code, applies to single-family dwellings; however, farm dwellings are not "buildings" for purposes of the Uniform State Building Code and are not subject to the National Electric Code and the State Plumbing Code for purposes of this chapter. OAG 82-172, 1982 Ky. AG LEXIS 461.

This chapter does not intend to treat farm dwellings the same as single-family dwellings because it refers to both types separately and those terms are not synonymous for purposes

of the application of sections of the Uniform State Building Code. OAG 82-172, 1982 Ky. AG LEXIS 461.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Groves and Hill, The New Statewide Uniform Building Code, Vol. 42, No. 4, October, 1978, Ky. Bench & Bar 18.

198B.092. Licensed proprietary schools — Articulation agreements — Recognition — Licensing.

The department shall recognize and honor articulation agreements executed between licensed proprietary schools and public school districts or state area technology centers to allow for academic or training equivalencies needed to obtain licensure in a profession regulated by the department, including but not limited to electrician, plumbing, and heating, ventilation, and air conditioning licenses. The licensed proprietary school shall:

(1) Be a department-approved education provider; or

(2) Have a training course acceptable to the department.

History.
2024 ch. 22, § 1, effective July 15, 2024.

CHAPTER 199

PROTECTIVE SERVICES — ADOPTION — CHILD CARE

Child Care and Placement Agencies.

Section
199.642. Staff members of child-caring facilities must submit to background checks in accordance with federal law and regulations — Administrative regulations.

Placement Coordination.

199.800. Definitions for KRS 199.800 to 199.801.
199.801. Procedure for placement of children who are in custody of department — State-level and regional placement coordinators — Type of placement — Cases of unmet need — Recruitment and reporting.
199.802. Consideration of best interest of child in placing child within same or different school district — Transportation to be provided as needed — Timely record and information sharing — Confidentiality of information.
199.803. Limitation on purpose of release of child's educational records.
199.805. Inventory of placements. [Repealed].

Child Care.

199.891. Definitions for section — Certified Child Care Community Designation Program — Powers and duties of cabinet — Applicant requirements — Report required — Provision of list of communities that have obtained designation.
199.8911. Definitions for section — Legislative intent for licensed child-care microcenters — Kentucky Child-Care Microcenter Program — Administrative regulations — Standards for operation — Required reporting.
Section
199.8912. Required annual training hours — Conditions for child in support program.
199.8913. Required monthly reporting — Information required.
199.8914. Voluntary designation process for faith-based program — Conditions.
199.8915. Required annual reporting by Office of State Budget Director.
199.8916. Cabinet to submit approval request — Kentucky Child Care Advisory Council to review.
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199.990. Penalties.

CHILD CARE AND PLACEMENT AGENCIES

199.642. Staff members of child-caring facilities must submit to background checks in accordance with federal law and regulations — Administrative regulations.

(1) As used in this section, "staff member" means:

(a) An individual who is employed by a child-caring facility or child-placing agency for compensation;

(b) A contract employee or a self-employed individual whose employment directly involves the care or supervision of children or unsupervised access to children placed with the child-caring facility or child-placing agency; or

(c) A volunteer or intern whose activities on behalf of a child-caring facility or child-placing agency involve the care or supervision of children or unsupervised access to children.

(2) The cabinet shall require a staff member of a child-caring facility or child-placing agency to submit to background checks in accordance with 42 U.S.C. sec. 671(a)(20)(D) and the implementing federal rules, including national and state fingerprint-supported criminal background checks by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(3) The child-caring facility or child-placing agency staff member shall provide the staff member's fingerprints to the Department of Kentucky State Police for submission to the Federal Bureau of Investigation after a state criminal background check is conducted.

(4) The results of the national and state criminal background checks shall be sent to the cabinet.

(5) The cabinet shall provide notice to a child-caring facility or child-placing agency if a staff member is eligible for employment not to exceed seven (7) business days after the date the staff member submitted fingerprints through a means approved by the cabinet to the Department of Kentucky State Police. The cabinet shall reissue notice of the staff member's eligibility for employment subsequent to the cabinet's receipt of additional information about the staff member, including a result from the rap back.

(6) The cabinet may register a child-caring facility or child-placing agency staff member in the rap back system.

(7) The request for background checks shall be in a manner approved by the Justice and Public Safety Cabinet, and the Cabinet for Health and Family Services may charge a fee to be paid by a child-caring facility or child-placing agency not to exceed the actual cost of processing the request.

(8) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

(9) The requirements of this section shall apply to a child-placing agency only if a background check required under subsection (2) of this section can be accomplished electronically, pursuant to KRS 17.185.

History.

Enact. Acts 2019, ch. 33, § 1, effective March 19, 2019; renumbered from § 199.8966 by 2020 ch. 53, § 2, effective July 15, 2020.

Compiler's Notes.

This section was formerly compiled as KRS 199.8966.

PLACEMENT COORDINATION

199.800. Definitions for KRS 199.800 to 199.801.

For the purposes of KRS 199.800 to 199.801:

(1) "Department" means the Department for Community Based Services;

(2) "Home county" means the county in which the child's natural parents, adoptive parents, or guardian reside. If the parents are divorced, the home county is the county of residence of the parent with legal custody. If the child is committed, the home county is the county of original commitment or case responsibility;

(3) "Home region" means the Department for Community Based Services region in which the child's home county is located;

(4) "Type of placement" means the living arrangement, including family foster home, child-caring facility, or other residential alternative that is deemed appropriate for a child as determined by the department; and

(5) "Unmet need" means the type of facility or placement needed to serve the child's needs which is unavailable at the time placement is being sought for the child.

History.

Enact. Acts 1998, ch. 395, § 3, effective July 15, 1998; 2000, ch. 14, § 23, effective July 14, 2000; 2018 ch. 159, § 6, effective July 14, 2018.

199.801. Procedure for placement of children who are in custody of department — State-level and regional placement coordinators — Type of placement — Cases of unmet need — Recruitment and reporting.

(1) The department shall establish a procedure throughout the state that is designed to determine and

expedite the placement of children who are in the custody of or committed to the department. The procedure shall utilize state-level and regional placement coordinators who may be state employees or employees of a contracted entity.

(2) The type of placement selected for a child in the custody of or committed to the department shall be the best alternative for the child that is in closest proximity to the child's home county, including considerations of the child's current early care and education provider or school, in order to promote educational stability for the child to the extent practicable in accordance with KRS 199.802 and the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95.

(3) If the type of placement that best suits the child's needs is not available in the child's home county, the regional placement coordinator shall document the circumstance as an unmet need and may seek a placement in surrounding counties, regions, and the state, in that order.

(4) If the type of placement that best suits the child's needs is not available within the state, the regional placement coordinator shall contact the commissioner of the department or the commissioner's designee to explore out-of-state placement.

(5) The department shall develop a diligent recruitment plan and reporting to support the recruitment and retention of family foster homes that are responsive to the needs of children in care, areas of unmet need, and strategies to meet the need. The plan and reporting shall be used as a guide in the establishment and modification of agreements with placements for the care of children in the custody of or committed to the cabinet and shall be made available upon request.

(6) The department shall ensure that placement provisions exist to ensure that:

(a) Safe and adequate foster care placements designed to meet the individual needs of all children, including in prevention, safety, ongoing, and adoptive services are occurring; and

(b) Placements are the least restrictive, most family-like setting consistent with the child's specific individual needs.

History.

Enact. Acts 1998, ch. 395, § 4, effective July 15, 1998; 2000, ch. 14, § 60, effective July 14, 2000; 2005, ch. 99, § 46, effective June 20, 2005; 2018 ch. 159, § 7, effective July 14, 2018; 2020 ch. 64, § 5, effective July 15, 2020; 2026 ch. 68, § 2, effective July 15, 2026.

199.802. Consideration of best interest of child in placing child within same or different school district — Transportation to be provided as needed — Timely record and information sharing — Confidentiality of information.

(1) As used in this section:

(a) "Best interest of the child" means the determination regarding the enrollment of a child made when considering all factors relating to the best interest of a child, as outlined in 20 U.S.C. secs. 6301 et seq., including but not limited to:

1. The benefits to the child of maintaining educational stability;

2. The appropriateness of the current educational setting;

3. The child's attachment and meaningful relationships with staff and peers at the current educational setting;

4. The influence of the school's climate on the child;

5. The safety of the child; and

6. The proximity of the placement to the school of origin, and how the length of a commute would impact the child;

(b) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided, that is in the care of the department;

(c) "Educational stability" means the maintenance of the enrollment of a child in a particular school upon a transition to a different placement or living arrangement when such maintenance is in the best interest of the child, and if not, the enrollment of the child in a new school in a time and manner that ensures the child experiences a minimal lapse in school attendance; and

(d) "School of origin" means the public school in which the child was enrolled immediately prior to placement.

(2) In determining the placement of a child under KRS 199.801, the department shall, if practicable, locate a placement within the same school district where the child was most recently enrolled to allow the child to remain enrolled in the school of origin.

(3)(a) The department, in consultation with the local education agency, shall make the determination on whether the child shall remain enrolled in the school of origin based on the best interest of the child, weighing the promotion of educational stability as a primary factor.

(b) In accordance with 20 U.S.C. secs. 6301 et seq., the cost of transportation shall not be a factor in determining the best interest of a child for an enrollment decision.

(4) If the department finds it is in the best interest of a child to remain in the school of origin upon placement of the child in a new school district, reasonable transportation shall be offered from the location of placement to the school of origin in which the child is enrolled for any regularly scheduled school day. In accordance with 20 U.S.C. secs. 6301 et seq., costs incurred by a school district, foster parent, child-placing agency, or child-caring facility for transportation to the school shall be reimbursed by the department upon request.

(5) Upon the determination that changing a child's school of enrollment is in the best interest of the child:

(a) The department, any applicable child-caring facility, child-placing agency, school, and local school district, and the child's state agency caseworker shall collaborate to ensure the immediate and appropriate enrollment of the child;

(b)1. The child's state agency caseworker shall immediately contact the receiving district to inform the district of the pending enrollment changes.

2. The child's state agency caseworker or child-caring facility or child- placing agency case man-

ager shall either accompany the child and the foster parent to the new school to enroll the child or contact applicable staff at the new school via telephone during the day of enrollment, to assist with the enrollment, to share information relating to the child's unique needs and prior experiences that may impact their education, and to identify and prevent disruptions in any instructional or support services that the child may have been receiving prior to that time, including but not limited to medical and behavioral health history and individual service plans;

(c) In accordance with 20 U.S.C. secs. 6301 et seq., the new school shall immediately enroll the child, even if the child is unable to produce records required for enrollment, including but not limited to:

1. Academic records;
2. Medical records; and
3. Proof of residency;

(d) The new school shall immediately request the records of the child from the child's previous school;

(e) The previous school shall provide the new school:

1. Notwithstanding KRS 159.170, all records within the student information system maintained by the Kentucky Department of Education regarding the child by the end of the working day on the day of receipt of a request made under this subsection. If a record provided to the new school is incomplete, the previous school shall provide the completed record within three (3) working days of the original request; and

2. In accordance with KRS 159.170, all remaining records regarding the child within ten (10) working days of receipt of a request made under this subsection;

(f) In accordance with 20 U.S.C. sec. 1232g, the department responsible for the child, and the child's state agency caseworker, or child-caring facility or child-placing agency case manager shall be granted access to all educational records on a confidential basis in order to facilitate the proper transfer, enrollment, and educational placement of the child;

(g) In accordance with KRS 158.140(1), promotions or credits earned in attendance in any approved public school shall be accepted as valid at the new school;

(h) The department, child-caring facilities, child-placing agencies, child's state agency caseworkers, school districts, and foster parents shall each collaborate with one another to ensure the educational stability of each child, and to assist one another with meeting the educational needs of each child in furtherance of the rights enumerated in KRS 620.363; and

(i)1. The department, child-caring facilities, child-placing agencies, and a child's state agency caseworker, may share information regarding a child and facts learned about a child and his or her unique needs and prior experiences, as necessary, with staff of the new school district in which the child is enrolling in order to identify and serve the educational needs of the child.

2. All information regarding a child or facts learned about a child by the department, any child-caring facility or child-placing agency licensed by the cabinet, or a child's state agency caseworker, and shared with staff of a school district pursuant to this section, shall be deemed confidential in the same manner and subject to the same provisions as similar records of the cabinet. The information thus obtained shall not be published or be open for public inspection, except to authorized employees of the school district in performance of their duties and to identify and serve the educational needs of the child.

(6) The school district in which the child is enrolled upon his or her successful completion of all high school graduation requirements shall issue a diploma indicating graduation from high school to the child.

History.
2018 ch. 147, § 1, effective July 14, 2018; 2020 ch. 64, § 6, effective July 15, 2020.

Legislative Research Commission Notes.
(7/14/2018). 2018 Ky. Acts ch. 147, sec. 2 provides that this statute created in 2018 Ky. Acts ch. 147, sec. 1 may be cited as the Uninterrupted Scholars Act of Kentucky.

199.803. Limitation on purpose of release of child's educational records.

In accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, when a statute within this chapter refers to the release of educational records, the purpose of the release shall be limited to providing the department with the ability to effectively serve the needs of the child whose records are sought, and any educational records shall only be released to persons authorized by statute and shall not be released to any other person without the written consent of the parent of the child.

History.
2020 ch. 64, § 2, effective July 15, 2020.

199.805. Inventory of placements. [Repealed]

History.
Enact. Acts 1998, ch. 395, § 5, effective July 15, 1998; repealed by 2018 ch. 159, § 58, effective July 14, 2018.

CHILD CARE

199.891. Definitions for section — Certified Child Care Community Designation Program — Powers and duties of cabinet — Applicant requirements — Report required — Provision of list of communities that have obtained designation.

(1) As used in this section:

(a) "Cabinet" means the Cabinet for Health and Family Services;

(b) "Child care service" means a child care service licensed or certified by the cabinet; and

(c) "Local government" has the same meaning as in KRS 65.230.

(2) The cabinet shall establish a Certified Child Care Community Designation Program. The purpose of the

program shall be to create new opportunities for local governments to help increase the supply of child care services in their communities through voluntary actions related to land use and zoning reform and programming at the local level. Participation in the program by local governments shall be optional.

(3) To administer the program, the cabinet may:

(a) Delegate authority to a subsidiary department;

(b) Coordinate and share information with other executive branch agencies;

(c) Enter into contracts with third parties to administer the program or specific parts of the program; and

(d) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement the program.

(4) By January 1, 2028, the cabinet shall make publicly available a standardized application for certification and instructions for the Certified Child Care Community Designation Program. In preparing these materials, the cabinet shall solicit feedback from and engage with the Kentucky Child Care Advisory Council and individuals and associations representing local governments, land use and planning and design professionals, public health officials, licensed and certified child-care providers, business leaders, economic development professionals, and education professionals.

(5) The cabinet shall:

(a) Begin receiving and approving applications from local governments no earlier than January 1, 2028; and

(b) Send notice of approval or denial to applicants no later than thirty (30) days after receiving an application. If the cabinet denies an application, the cabinet shall include the reason for the denial in its notice and shall invite the applicant to resubmit.

(6)(a) To attain certification by the cabinet, applicants shall be required to demonstrate that the local government has:

1. Established or joined a community-wide child care task force that includes representatives from local government, the business community, education, health care, nonprofits, and providers of licensed and certified child care services;

2. Developed a strategic plan through its task force to address identified child care challenges and increase access to child care services in the local community; and

3. Analyzed local ordinances, regulations, and land use rules that could create barriers to the availability of child care services and developed an action plan to implement reforms. To comply with this subparagraph, the applicant shall demonstrate that it has:

a. Gathered community input from child care providers and child care organizations, local residents and homeowners, local elementary and secondary school officials, the business community, civic and nonprofit organizations, and economic developers through meetings, listening sessions, or surveys;

b. Conducted a comprehensive analysis of the jurisdiction's ordinances, regulations, and land use rules that may pertain to the provision of child care services and identified ordinances, regulations, and land use rules that create barriers to the availability of child care services in the community; and

c. Established a clear and specific action plan to amend ordinances, regulations, and land use rules that create barriers to the availability of child care services in the community as identified through the comprehensive analysis in subdivision b. of this subparagraph.

(b) As used in paragraph (a)3. of this subsection, "ordinances, regulations, and land use rules that create barriers to the availability of child care services" in the community means local ordinances, regulations, or land use rules that local officials and community stakeholders have determined to be overly restrictive or unnecessary and have the effect of discouraging or limiting the availability of child care services without meaningfully supporting safety or preserving the character of the community.

(c) In fulfilling the requirements of paragraph (a)3. of this subsection, an applicant shall demonstrate that it has, to the greatest extent possible, reviewed and incorporated into its action plan recommendations and best practices for local ordinances, regulations, and land use rules pertaining to child care made available by the cabinet. This demonstration shall include a detailed explanation of where the applicant's local policies do and do not align with recommended best practices. If the cabinet determines that the applicant did not adequately consider recommended best practices in its analysis and action plan, it may deny certification to the applicant.

(d) If the applicant has not adopted land use rules pursuant to KRS Chapter 100, it may exclude, and the cabinet shall not consider, land use rules and zoning ordinances from its analysis and action plan.

(e) The cabinet shall permit local governments to partner together and submit joint applications. Under a joint application, the community-wide child care task force shall include representatives from all local governments in the application, and the strategic plan shall take into account child care needs across all applicant communities. All local governments that are party to the joint application shall demonstrate compliance with requirements related to analysis and modification of local ordinances, regulations, and land use rules that could create barriers to the availability of child care services.

(7) The cabinet shall:

(a) Make publicly available a list of communities that have obtained the certified child care community designation; and

(b) Transmit, on a quarterly basis, a full list of certified communities to the Cabinet for Economic Development.

(8) By December 1, 2028, the cabinet shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committees on Families and Children and State and Local Government specifying the communities that have obtained the designation, a summary of the different strategies used by local communities to expand access to child care and remove

barriers, and recommendations for improvements to the program.

(9) When the Cabinet for Economic Development engages with a company regarding participation in an incentive or funding program administered by one (1) or more of that cabinet's agencies, including when it initially communicates with, receives an application from, and approves funding to, any company, the Cabinet for Economic Development shall provide to the company information regarding the Certified Child Care Community Designation Program, including a list of communities that have obtained the designation.

(10) By November 1 of each year, the Cabinet for Economic Development shall prepare and post to its website as required in KRS 154.12-2035 a report containing a list of communities that have obtained the designation, information regarding its engagement with companies as outlined in this section, and information regarding its actions under KRS 199.888.

History.

Enact. Acts. 2024 ch. 88, § 1, effective July 15, 2024; 2026 ch. 146, § 2, effective April 14, 2026.

199.8911. Definitions for section — Legislative intent for licensed child-care microcenters — Kentucky Child-Care Microcenter Program — Administrative regulations — Standards for operation — Required reporting.

(1) As used in this section:

(a) "Child-care microcenter" means a category of regulated child care supervised by the cabinet that serves between four (4) and twenty-four (24) children in a nonresidential setting for more than three (3) hours per day;

(b) "Eligible applicant" means a provider of a child-care program that:

1. Has been licensed or certified by the cabinet for at least three (3) years at the time of application;

2. Is in good standing with the cabinet; and

3. Participates in the quality-based graduated early care and education rating system established under KRS 199.8943;

(c) "Nontraditional work hours" means hours of employment that generally but not exclusively occur between 7 p.m. to 5 a.m. Monday to Friday, or between 7 p.m. on Friday to 5 a.m. on Monday;

(d) "Opportunity zones" means a population census tract that is a low-income community and designated as a qualified opportunity zone under Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code; and

(e) "Rural areas" means a county with a population of less than fifty thousand (50,000) residents.

(2) It is the intent of the General Assembly to allow for licensed child-care microcenters in order to encourage innovative child-care services in high-need areas and underserved populations, including but not limited to rural areas, workers with nontraditional hours, opportunity zones, parents in need of emergency or drop-in services, and postsecondary students and campuses. Child-care microcenters shall provide quality services, operate under setting-aligned health and safety standards, and be permitted to request and receive special variances from established standards and administrative regulations at the discretion of the cabinet.

(3) The Kentucky Child-Care Microcenter Program is hereby established within the cabinet to regulate the standards and operations of child-care microcenters. To administer the program, the cabinet may enter into contracts with third parties to administer the program or specific parts of the program.

(4) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A by July 1, 2027, to implement this section and determine appropriate standards under which child-care microcenters may be licensed and operated in Kentucky.

(5) The cabinet shall establish standards for operations, including but not limited to staff background checks, adult-to-child ratios, health and safety standards, facility requirements, teacher and director training, and required paperwork for employees and enrolled children. In developing these standards, the cabinet shall solicit feedback from key stakeholders, including licensed and certified child-care providers, early childhood experts, local child care resource and referral agencies, the Kentucky Child Care Advisory Council, and other relevant stakeholders.

(6)(a) The cabinet shall establish a process by which a child-care microcenter provider may apply for and receive a variance from established standards and administrative regulations for child-care microcenters. Applications shall demonstrate that the requested variance will not, in any way, jeopardize the health and safety of children receiving care at the child-care microcenter.

(b) Approved variances shall only apply to the specific child-care microcenter for which a variance is requested.

(c) Denials of applications for variances are not contestable.

(d) An eligible applicant for the program may request a variance in its initial program application.

(e) An approved child-care microcenter provider or eligible applicant may request a variance only once in a calendar year and shall not be allowed to operate with more than one (1) approved variance in place at a time.

(7) Child-care microcenters shall not be required to provide meals or transportation to children enrolled in the program.

(8) Playgrounds shall be optional for child-care microcenters, but a program shall have a plan for gross motor activity.

(9) Child-care microcenters may utilize mixed age group child care, but the licensed capacity of the child-care microcenter shall be based on the youngest child served in the center.

(10) The cabinet shall ensure that the application and approval process for child-care microcenters is efficient and streamlined, and the application fee for a child-care microcenter shall be cost-effective.

(11) Only eligible applicants may be approved to operate a child-care microcenter.

(12) The cabinet shall begin accepting and approving child-care microcenter applications from eligible applicants no earlier than July 1, 2027.

(13) The cabinet shall approve or deny an application within ninety (90) days of receipt. If an application is denied, the cabinet shall notify the applicant and explain its reasoning.

(14) In reviewing and approving applications, the cabinet shall prioritize applications from eligible applicants that:

(a) Seek to provide services in an opportunity zone or rural area;

(b) Seek to provide services to parents of children with nontraditional work hours; or

(c) Involve community partnerships with entities including but not limited to employers, schools, or faith-based organizations.

(15) The cabinet shall authorize no more than ten (10) child-care microcenters to operate in the state at one (1) time, with no more than two (2) child-care microcenters allowable within a single county.

(16) The cabinet shall develop an outreach plan to raise awareness of the program. This plan shall include partnerships with nonprofits and local child care resource and referral agencies in different parts of the state.

(17)(a) By December 1, 2027, the cabinet shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committee on Families and Children detailing the number of applications received, the number of applications approved, the locations of approved and denied applications, the number of children being served, and the number and nature of approved and denied variances.

(b) By December 1, 2028, the cabinet shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committee on Families and Children containing updated information on all components in paragraph (a) of this subsection, and also include commentary from the cabinet on the efficacy of the program in achieving the legislative intent of the program outlined in this section.

History.
2026 ch. 146, § 4, effective April 14, 2026.

199.8912. Required annual training hours — Conditions for child in support program.

(1) Of the required hours of cabinet-approved early care and education training that shall be completed each year between July 1 and June 30 for:

(a) Licensed child-care providers, at least three (3) of those training hours shall focus on working with children with special needs. This requirement shall begin the first year of employment in a licensed child-care program and continue each subsequent year; and

(b) Certified family child-care home providers, at least two (2) of those training hours shall focus on working with children with special needs. This requirement shall begin in the first year of employment in a certified family child-care home program and continue each subsequent year.

(2)(a) If a child in a licensed or certified child-care program is offered support programs, such as developmental therapy or academic intervention, through an individualized family service plan or an individualized education program created in accordance with the Individuals with Disabilities Education Act, Part B or C, and the child's parent or caregiver has submitted written notification describing the support program to the licensed or certified childcare provider, then a licensed or certified child-care provider shall not prevent the diagnostician, therapist, or interventionist from being present on the premises of the child-care center or family child-care home for the purpose of providing services to that child.

(b) This subsection shall not be construed to require personnel of a local school district to provide support programs on the premises of a licensed or certified child-care program.

History.
2026 ch. 146, § 5, effective April 14, 2026.

199.8913. Required monthly reporting — Information required.

(1) Beginning December 1, 2026, and every month thereafter, the Education and Labor Cabinet, in coordination with the Cabinet for Health and Family Services, shall compile and produce a monthly report providing a comprehensive snapshot of all licensed and certified child-care providers, Head Start services, child care services regulated by the United States Department of Defense, and state-funded public preschool services operating within the Commonwealth.

(2) The report shall include statewide and regional counts of the number of each of these services at the time of the snapshot, and to the greatest extent possible provide additional information, including but not be limited to:

(a) The name and physical address of each service provider;

(b) The type of licensure or certification held by each service provider;

(c) The licensed capacity of each service provider;

(d) The number of child care and early childhood education professionals at each service provider, and in total on a statewide and regional basis;

(e) Whether or not a program's services are half-day or full-day;

(f) The actual enrollment by age group of each service provider, if available; and

(g) If actual enrollment is unavailable, an estimated actual capacity reflecting the number of children the provider can accommodate based on operational considerations, including staffing levels and available physical space.

(3) The report shall be organized at both the statewide and regional or county level.

(4) The Education and Labor Cabinet shall make the report publicly available through a searchable, user-friendly online database. The database shall:

(a) Be updated monthly;

(b) Include a historical archive of past reports; and

(c) Be maintained in a manner that supports access and use by the public, policymakers, and researchers.

(5) This section shall not be construed to authorize the release of personally identifiable information of enrolled children or staff.

(6) As part of the first report on December 1, 2026, the cabinet shall include a historical analysis of the availability of child care and early childhood education services on both a statewide and regional basis to illustrate how the availability of child care services in the Commonwealth has changed over time.

(7) By July 1, 2027, or earlier if determined feasible, the Cabinet for Health and Family Services shall develop and implement processes to track the real capacity of licensed and certified child care services in the Commonwealth. The cabinet shall ensure that its processes are minimally burdensome on licensed and certified child-care providers. To the greatest extent possible, the cabinet shall collect and report real capacity information for individual age groups of children.

(8) The cabinet shall make information on real capacity available to the public and shall report this information to the Education and Labor Cabinet on at least a quarterly basis.

(9) Beginning July 1, 2027, the Education and Labor Cabinet, in coordination with the Cabinet for Health and Family Services, shall develop and publish an objective quarterly report comparing the supply of licensed and certified child care services in the Commonwealth to the potential need for child care services. This information shall be made available on a statewide, regional, and county-level basis and is intended to help policymakers and individual communities understand gaps between available child care services and the potential need.

(10) As used in this section:

(a) "Potential need for child care services" means children under the age of six (6) with all available parents in the labor force according to the American Community Survey;

(b) "Real capacity" means the number of children that a child care service is actively enrolling in its program at the time in which the analysis of real capacity is being conducted; and

(c) "Supply of licensed and certified child care services" means the total number of children under the age of six (6) that child care services within a geographic area are actively enrolling at the time in which the analysis is being conducted. If this information is not available, the total licensed capacity for licensed and certified services may be used, provided that capacity is restricted to services for children under the age of six (6). The report shall also include an accounting of services provided by the United States Department of Defense, the Office of Head Start, and state-funded public preschool programs.

(11) The report shall utilize a distance-based methodology to account for cross-state and cross-county interactions between children and licensed and certified child-care providers. The report shall be made publicly available.

History.
2026 ch. 146, § 6, effective April 14, 2026.

199.8914. Voluntary designation process for faith-based program — Conditions.

(1) The Cabinet for Health and Family Services shall establish a voluntary designation process through which any licensed or certified child-care provider may identify as a faith-based program.

(2) The faith-based designation shall be displayed in all public-facing child-care databases maintained or overseen by the Commonwealth. The cabinet shall work to ensure that nonprofits, organizations, and local communities in Kentucky that maintain public-facing child-care databases are aware of this designation process.

(3) Participation in the designation process shall be optional and open to all licensed and certified child-care providers.

(4) The presence or absence of a faith-based designation shall not be used by the cabinet or any other state agency to confer preferential treatment, impose limitations, or otherwise discriminate for or against any child-care provider.

History.
2026 ch. 146, § 7, effective April 14, 2026.

199.8915. Required annual reporting by Office of State Budget Director.

(1) By October 1, 2026, and annually thereafter, the Office of State Budget Director shall produce a comprehensive report outlining all state and federal spending on child care and early childhood education services in the prior state fiscal year, including but not limited to licensed and certified child-care providers and preschool services. The report shall include:

(a) All federal dollars that were received, appropriated, and allocated and shall clarify what federal programs provided funding, how much funding was provided, and what Kentucky programs these funds supported;

(b) All state dollars, including but not limited to general fund and tobacco settlement dollars, that were appropriated and allocated to child care and early childhood education programs in Kentucky;

(c) An explanation of instances where federal dollars were braided or combined with other federal funding streams to support programs, including instances where federal dollars for child care were rolled into other programs or where federal dollars not intended for child care were rolled into child-care programs;

(d) An explanation of any budget allotment modifications concerning child-care services or early childhood education services; and

(e) An inventory of all state programs receiving state or federal funding, or a combination thereof, and list their total funding amounts along with a breakdown of the specific funding sources for each program.

(2) To produce the annual report, the Office of State Budget Director shall:

(a) Consult with the Cabinet for Health and Family Services, the Education and Labor Cabinet, the Department of Education, the Governor's Office of Early Childhood, and the Department of Revenue; and

(b) Work collaboratively with the Interim Joint Committees on Families and Children and Appropriations and Revenue.

(3) The Office of State Budget Director shall submit the report to the Legislative Research Commission for referral to the Interim Joint Committees on Families and Children and Appropriations and Revenue. The report shall be made available to the public.

History.
2026 ch. 146, § 8, effective April 14, 2026.

199.8916. Cabinet to submit approval request — Kentucky Child Care Advisory Council to review.

(1) The Cabinet for Health and Family Services shall submit an approval request to the federal Administration for Children and Families to utilize a cost estimation model to inform payment rates beginning with the federal fiscal year 2028-2030 Child Care and Development Fund state plan. The cost-estimation model shall incorporate program factors, including but not limited to provider type; hours and seasons of operation; child age range served; geography; level of quality; staff salaries and benefits; facilities, including utilities, maintenance, and insurance; training and professional development; curricula; and supplies.

(2) In developing the approval request, the cabinet shall consult regularly with the Kentucky Child Care Advisory Council, and the council shall have an opportunity to review the request before the cabinet submits it.

(3) It is the intent of the General Assembly to ensure that the state's methodology for setting rates for reimbursement to licensed and certified child-care providers serving children under the Child Care and Development Fund program accounts for the costs incurred by providers to serve these children in addition to estimated market rates.

(4)(a) As used in this section, "Child Care Assistance Program" means Kentucky's child-care subsidy program providing families who meet eligibility requirements established by the cabinet, with the financial resources to find and afford quality child care in accordance with the Child Care and Development Fund as defined in 45 C.F.R. sec. 98.2.

(b) To the extent funds are available and to the extent allowable under federal law, the cabinet shall exclude all earned and unearned income from the eligibility determination for the Child Care Assistance Program if an applicant:

1. Meets all nonincome-related requirements for program eligibility as determined by the cabinet; and

2.a. Has verified employment in a regulated licensed Type I or licensed Type II child-care program, a child-care microcenter program, or a certified family child-care home; or

b. Is the owner or operator of a certified family child-care home or licensed Type II child-care program.

History.
2026 ch. 146, § 9, effective April 14, 2026.

199.892. Declaration of legislative intent.

In enacting legislation relating to the regulation of day-care centers, it is the intention of the General Assembly to enable the Cabinet for Health and Family Services to qualify to receive federal funds under provisions of the Federal Social Security Act and to provide for effective regulation of day-care centers.

History.
Enact. Acts 1962, ch. 196, § 1; 1974, ch. 74, Art. VI, § 107(1), (13); 1998, ch. 426, § 155, effective July 15, 1998; 2005, ch. 99, § 192, effective June 20, 2005.

OPINIONS OF ATTORNEY GENERAL.

A day-care center for mentally retarded children who are considered "educable" or "trainable," which is operated by a regional mental health board established pursuant to KRS 203.450 (renumbered KRS 210.410), must comply with the licensing requirements for day-care centers. OAG 67-345.

A regional mental health board, established pursuant to KRS 203.450 (renumbered KRS 210.410), that operates a day-care center for mentally retarded children who are considered "educable" or "trainable" must be licensed as a day-care center under KRS 199.892 to 199.896, but, since any education of the children would only be incidental to their care, need not be licensed as a kindergarten or nursery school under KRS 158.300 (repealed). OAG 67-345.

199.894. Definitions for KRS 199.892 to 199.896.

As used in KRS 199.892 to 199.896, unless the context otherwise requires:

(1) "Cabinet" means the Cabinet for Health and Family Services;

(2) "Secretary" means secretary for health and family services;

(3) "Child-care center" means any child-care center that provides full-or part-time care, day or night, to four (4) or more children in a nonresidential setting who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator. "Child-care center" shall not include any child-care facility operated by a religious organization while religious services are being conducted, or a youth development agency. For the purposes of this section, "youth development agency" means a program with tax-exempt status under 26 U.S.C. sec. 501(c)(3), which operates continuously throughout the year as an outside-school-hours center for youth who are six (6) years of age or older, and for which there are no fee or scheduled-care arrangements with the parent or guardian of the youth served;

(4) "Department" means the Department for Community Based Services; and

(5) "Family child-care home" means a private home that is the primary residence of an individual who provides full or part-time care day or night for six (6) or fewer children who are not the children, siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.

History.
Enact. Acts 1962, ch. 196, § 2; 1974, ch. 74, Art. VI, § 107(1), (13), (21) and (30); 1992, ch. 57, § 3, effective July 14, 1992; 1996, ch. 81, § 1, effective July 15, 1996; 1998, ch. 426, § 156, effective July 15, 1998; 2000, ch. 308, § 17, effective July 14, 2000; 2005, ch. 99, § 193, effective June 20, 2005; 2020 ch. 36, § 10, effective July 15, 2020.

OPINIONS OF ATTORNEY GENERAL.

The Attorney General cannot categorically state whether a

facility operated by a particular organization, association or individual and caring for four or more children comes within the definition of "day-care center" since such determination is the duty of the Department for Human Resources (now Cabinet for Families and Children). OAG 74-736.

199.8941. Monetary incentives for child-care facilities — Professional development.

(1) To the extent that funds are available, the Cabinet for Health and Family Services, in consultation with the Early Childhood Advisory Council, shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish a program of monetary incentives including but not limited to an increased child-care subsidy and a one-time merit achievement award for child-care centers and certified family child-care homes that are tied to a quality rating system for child care as established under KRS 199.8943.

(2) The monetary incentive program shall be reviewed annually by the cabinet, in consultation with the council, for the purpose of determining future opportunities to provide incentives.

(3) Participation in the program of monetary incentives and in the quality rating system by public-funded child-care centers and certified family child-care homes is mandatory.

(4) The Cabinet for Health and Family Services shall encourage the professional development of persons who are employed or provide training in a child-care or early childhood setting by facilitating their participation in the scholarship program for obtaining a child development associate credential, postsecondary certificate, diploma, degree, or specialty credential as established under KRS 164.518.

History.

Enact. Acts 2000, ch. 308, § 14, effective July 14, 2000; 2005, ch. 99, § 194, effective June 20, 2005; 2013, ch. 57, § 3, effective June 25, 2013; 2015 ch. 16, § 2, effective June 24, 2015; 2018 ch. 112, § 2, effective July 14, 2018.

199.8943. Quality-based graduated early care and education program rating system — Administrative regulations.

(1) As used in this section:

(a) "Federally funded time-limited employee" has the same meaning as in KRS 18A.005;

(b) "Primary school program" has the same meaning as in KRS 158.031(1); and

(c) "Public-funded" means a program which receives local, state, or federal funding.

(2) The Early Childhood Advisory Council shall, in consultation with early care and education providers, the Cabinet for Health and Family Services, and others, including but not limited to child-care resource and referral agencies and family resource centers, Head Start agencies, and the Kentucky Department of Education, develop a quality-based graduated early care and education program rating system for public-funded licensed child-care and certified family child-care homes, public-funded preschool, and Head Start, based on but not limited to:

(a) Classroom and instructional quality;

(b) Administrative and leadership practices;

(c) Staff qualifications and professional development; and

(d) Family and community engagement.

(3)(a) The Cabinet for Health and Family Services shall, in consultation with the Early Childhood Advisory Council, promulgate administrative regulations in accordance with KRS Chapter 13A to implement the quality-based graduated early childhood rating system for public-funded child-care and certified family child-care homes developed under subsection (2) of this section.

(b) The Kentucky Department of Education shall, in consultation with the Early Childhood Advisory Council, promulgate administrative regulations in accordance with KRS Chapter 13A to implement the quality-based graduated early childhood rating system, developed under subsection (2) of this section, for public-funded preschool.

(c) The administrative regulations promulgated in accordance with paragraphs (a) and (b) of this subsection shall include:

1. Agency time frames of reviews for rating;

2. An appellate process under KRS Chapter 13B; and

3. The ability of providers to request reevaluation for rating.

(4) The quality-based early childhood rating system shall not be used for enforcement of compliance or in any punitive manner.

(5) The Early Childhood Advisory Council, in consultation with the Kentucky Center for Education and Workforce Statistics, the Kentucky Department of Education, and the Cabinet for Health and Family Services, shall report by October 1 of each year to the Interim Joint Committee on Education on the implementation of the quality-based graduated early childhood rating system. The report shall include the following quantitative performance measures as data becomes available:

(a) Program participation in the rating system;

(b) Ratings of programs by program type;

(c) Changes in student school-readiness measures;

(d) Longitudinal student cohort performance data tracked through student completion of the primary school program; and

(e) Long-term viability recommendations for sustainability at the end of the Race to the Top-Early Learning Challenge grant.

(6) By November 1, 2017, the Early Childhood Advisory Council and the Cabinet for Health and Family Services shall report on recommendations and plans for sustaining program quality after the depletion of federal Race to the Top-Early Learning Challenge grant funds.

(7) Any federally funded time-limited employee personnel positions created as a result of the federal Race to the Top-Early Learning Challenge grant shall be eliminated upon depletion of the grant funds.

History.

Enact. Acts 2000, ch. 308, § 15, effective July 14, 2000; 2005, ch. 99, § 195, effective June 20, 2005; 2013, ch. 57, § 4, effective June 25, 2013; 2015 ch. 16, § 1, effective June 24, 2015; 2018 ch. 112, § 3, effective July 14, 2018; 2018 ch. 159, § 52, § 52, effective July 14, 2018; 2022 ch. 211, § 25, effective January 1,

2023; 2022 ch. 223, § 9, effective January 1, 2023; 2023 ch. 25, § 8, effective June 29, 2023.

Legislative Research Commission Notes.

(7/14/2018). This statute was amended by 2018 Ky. Acts chs. 112 and 159, which do not appear to be in conflict and have been codified together.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky All STARS for Preschool Programs, 704 KAR 3:015.

199.8944. Definition of "program" — Legislative intent for program — Express authorization from General Assembly required for administrative or regulatory change — Requirements for plan — Consultation with Kentucky Child Care Advisory Council — Report required.

(1) As used in this section, "program" means the quality-based graduated early care and education program rating system established under KRS 199.8943.

(2) It is the intent of the General Assembly that the program shall meaningfully and effectively support voluntary participation by licensed and certified child-care providers in building and maintaining high-quality early learning services for children across the Commonwealth. To that end, the General Assembly intends for the program to:

(a) Feature objective and measurable intended outcomes;

(b) Include long-term strategies for empirically assessing and validating the efficacy of the program and routinely studying it to ensure continuous improvement;

(c) Be predicated upon proven methods and standards that reflect the consensus of the highest-quality academic research on early childhood development;

(d) Align with state licensing and certification requirements and avoid duplication between those requirements and the program to the greatest extent possible;

(e) Offer effective financial incentives to encourage and enable providers to participate in the program and to strive for the highest possible rating under the program;

(f) Offer accessible and high-impact training opportunities for child-care providers and their staff to ensure that they are able to successfully participate in the program and advance their services to higher rating levels;

(g) Utilize digital administrative tools that are easy to use and minimize compliance burdens associated with participating in the program;

(h) Be accompanied by a robust outreach program that involves partnerships with community-based stakeholders to ensure that providers, parents, and employers are fully aware of the program and its benefits to children;

(i) Be simple and easy to understand for parents;

(j) Include a digital, public-facing data system that is accessible to the general public and researchers;

(k) Provide streamlined compliance processes for multisite operators to reduce administrative burdens; and

(*l*) Allow for flexibility within rating levels in order to accommodate different approaches to providing high-quality services, provided that these approaches are informed by research and the consensus of early childhood education professionals.

(3)(a) On or after April 14, 2026, the Cabinet for Health and Family Services shall not make any administrative or regulatory changes to the program unless explicitly authorized to do so by the General Assembly or unless a change is required to conform with federal law or to access federal funding. If the cabinet determines that administrative or regulatory changes to the program are necessary in accordance with this paragraph, the cabinet shall first notify the Interim Joint Committee on Families and Children before initiating any changes.

(b) Notwithstanding paragraph (a) of this subsection, the cabinet shall, in consultation with the Family Child Care Network of Kentucky, promulgate administrative regulations in accordance with KRS Chapter 13A to incorporate setting-aligned quality standards under the program for certified family child-care homes and licensed Type II child-care centers by October 1, 2026.

(4) Any established metrics or intended outcomes associated with the program, or strategies to evaluate the efficacy of the program, shall respect the privacy of children, families, and licensed and certified child-care providers, and shall account for programs for children with special needs, children in the welfare system, and children from economically disadvantaged households.

(5) This section shall not be construed to limit or prohibit aspects of the program that are not mentioned in this section.

(6) By October 1, 2026, the cabinet shall submit to the Legislative Research Commission a written plan outlining a process through which it will develop recommendations to modernize the program and align it with the General Assembly's intent as expressed in this section for referral to the Interim Joint Committees on Families and Children, Education, and Appropriations and Revenue and the Tobacco Settlement Agreement Fund Oversight Committee.

(7) The modernization process plan submitted by the cabinet shall include but not be limited to:

(a) Strategies for robust engagement with impacted stakeholders, including but not limited to licensed and certified child-care providers, early childhood educators employed in regulated child-care programs, parents of young children, parents of children with special needs, parents of children benefiting from the Child Care and Development Fund as defined in 45 C.F.R. sec. 98.2, elementary school teachers, special education teachers, school district superintendents, and school principals;

(b) Strategies for robust engagement with outside experts, including but not limited to early childhood education professionals and experts, faculty at Kentucky-based colleges and universities, economists

and statisticians, the federal Administration for Children and Families, and Child Care and Development Fund administrators in other states;

(c) Strategies for utilizing the Kentucky Child Care Advisory Council as a source for feedback and guidance;

(d) Strategies for utilizing technical assistance, financial, and programmatic support from the federal government where applicable;

(e) Strategies for updating and seeking feedback from the General Assembly and other executive branch agencies;

(f) Clear timelines, including expected project milestones, with the intention of producing final recommendations to the Legislative Research Commission for modernization and alignment by no later than December 1, 2027; and

(g) Estimates of projected costs to successfully carry out the modernization process plan, including potential costs for third-party contractors.

(8) In developing the modernization process plan, the cabinet shall consult regularly and consistently with the Kentucky Child Care Advisory Council. The council shall provide feedback and guidance to the cabinet throughout the process. Prior to the submission of the plan to the Legislative Research Commission, the cabinet shall submit the plan to the council for a review and shall communicate comments and feedback from the council regarding the plan to the Commission.

(9) By December 1, 2027, the cabinet shall submit its final recommendations for modernizing the program and aligning it with the General Assembly's intent, as expressed in this section, to the Legislative Research Commission for referral to the Interim Joint Committees on Families and Children, Education, and Appropriations and Revenue and the Tobacco Settlement Agreement Fund Oversight Committee.

History.

2026 ch. 146, § 1, effective April 14, 2026.

199.8945. Healthy Start in Child Care Program — Technical assistance for child-care providers.

(1) The secretary of the Cabinet for Health and Family Services shall work to achieve the goals of the Healthy Start in Child Care Program as follows:

(a) To train and educate child-care providers in health and safety;

(b) Provide nutrition consultation to parents;

(c) Increase awareness of methods for the prevention of communicable diseases in child-care settings; and

(d) Provide information to parents of children who attend child care.

(2) The Cabinet for Health and Family Services shall establish technical assistance positions dedicated to child care within the Kentucky child-care resource and referral agencies in order to offer technical assistance to child-care providers to upgrade quality in early child-care and education facilities.

History.

Enact. Acts 2000, ch. 308, § 16, effective July 14, 2000; 2005, ch. 99, § 47, effective June 20, 2005.

199.895. Evacuation plan required for child-care centers and family child-care homes — Annual updating of plan — Provision of plan to local emergency management officials and parents.

(1) A child-care center licensed under KRS 199.896 and a family child-care home certified under KRS 199.8982 shall have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the center or home. The plan shall include but not be limited to:

(a) A designated relocation site and evacuation route;

(b) Procedures for notifying parents of the relocation and ensuring family reunification;

(c) Procedures to address the needs of individual children including children with special needs;

(d) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(e) Coordination with local emergency management officials; and

(f) A program to ensure that appropriate staff are familiar with the plan's components.

(2) A child-care center and a family child-care home shall update the evacuation plan by December 31 each year.

(3) A child-care center and a family child-care home shall retain an updated copy of the plan for evacuation, provide an updated copy to appropriate local emergency management officials, and provide a copy to each parent, custodian, or guardian of the child at the time of the child's enrollment in the program and whenever the plan is updated.

History.

Enact. Acts 2011, ch. 69, § 3, effective December 31, 2011; 2012, ch. 102, § 1, effective July 12, 2012.

199.8951. Use of epinephrine auto-injectors in child-care centers and family child-care homes — Administrative regulations.

(1) A child-care center licensed under KRS 199.896 and a family child-care home certified under KRS 199.8982 may comply with KRS 311.646 and obtain a prescription for epinephrine auto-injectors. These epinephrine auto-injectors shall be stored in a secure, accessible, readily available location not accessible to children, for quick administration.

(2) The cabinet shall promulgate administrative regulations governing epinephrine auto-injectors in licensed child-care centers and certified family child-care homes, including:

(a) Any center- or home-specific requirements that the cabinet deems necessary for the safe and proper storage, administration, and disposal of epinephrine auto-injectors;

(b) A written plan of action in case of an emergency necessitating the administration of an epinephrine auto-injector in a center or home; and

(c) A written notice that is provided to a child's parents, custodians, or guardians stating that the center or home has epinephrine auto-injectors at the

center or home and that the center or home will notify a child's parents, custodians, or guardians when a epinephrine auto-injector is used on their child.

History.
2016 ch. 122, § 1, effective July 15, 2016.

199.896. License requirement — Application — Fee — Emergency action — Use of information — Hearing — Disposition of receipts — Advertisement — Unannounced inspections — Orientation and training requirements — Prohibition against use of corporal physical discipline — Partial and full exemption from regulation — Criminal record check — Probationary employment status — Alleged violation of an administrative regulation by a child-care center, procedures — Preliminary license — Permissive actions — Cabinet's powers during state of emergency.

(1) A person, association, or organization shall not conduct, operate, maintain, or advertise any child-care center without obtaining a license as provided in KRS 199.892 to 199.896.

(2) The cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A relating to license fees and may, in the administrative regulations, establish standards of care and service for a child-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties which are not in contravention of this section.

(3) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee that shall not exceed administrative costs of the program to the cabinet and shall be renewable annually upon expiration and reapplication when accompanied by a renewal fee that shall not exceed administrative costs of the program to the cabinet. Regular licenses and renewals thereof shall expire one (1) year from their effective date.

(4) A child-care center shall not be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.

(5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations promulgated in accordance with KRS Chapter 13A by the cabinet, the inspector general shall issue a statement of deficiency to the center containing:

(a) A statement of fact;

(b) A statement of how an administrative regulation was violated; and

(c) The timeframe, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.

(6) The Cabinet for Health and Family Services, in consultation with the Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.

(7) A child-care center shall have the right to appeal to the Cabinet for Health and Family Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.

(8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:

(a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;

(b) The number and type of previous violations of the child-care center;

(c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and

(d) The amount of assessment necessary to assure immediate and continued compliance.

(9) Upon a child-care center's failure to take action to correct a violation contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:

(a) Institute proceedings to obtain an order compelling compliance with the administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A;

(b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;

(c) Institute action to discontinue payment of child-care subsidies; or

(d) Suspend or revoke the license or impose other penalties provided by law.

(10) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child-care center license of the operator. Identifying information regarding children and their families shall remain confidential.

(11) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child-care center upon the parent's, custodian's, guardian's, or other interested person's request.

(12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.

(13) Any advertisement for child-care services shall include the address of where the service is being provided.

(14) All inspections of licensed and unlicensed child-care centers by the Cabinet for Health and Family Services shall be unannounced.

(15) All employees and owners of a child-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse; and

(c) Developmentally appropriate child-care practice.

(16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to:

(a) One and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric head trauma approved by the secretary of the Cabinet for Health and Family Services; and

(b) One (1) hour one (1) time every three (3) years of continuing education in the recognition and prevention of pediatric ingestion or inhalation of controlled substances.

The continuing education required under this subsection shall be included in the current number of required continuing education hours.

(17) The Cabinet for Health and Family Services shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (15) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (15) of this section.

(18) Child-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact that is intended to protect a child from immediate danger.

(19) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than fifteen (15) hours per week shall:

(a) Notify the cabinet in writing that the center is operating;

(b) Meet all child-care center licensure requirements and administrative regulations related to employee background checks;

(c) Meet all child-care center licensure requirements and administrative regulations related to tuberculosis screenings; and

(d) Be exempt from all other child-care center licensure requirements and administrative regulations.

(20) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than ten (10) hours per week shall be exempt from all child-care licensure requirements and administrative regulations.

(21) Instructional programs for school-age children that offer, whether free or for a fee, recreational, educational, sports training, or vacation programs that include but are not limited to martial arts and dance programs to children under eighteen (18) years of age, that a child attends outside the presence of his or her parent or legal guardian, shall be exempt from all child-care licensure administrative regulations if the following criteria are met:

(a) The program provides primary instruction in a skill, talent, ability, expertise, or proficiency;

(b) The program operates outside the time period when school is in session, including before or after school hours, holidays, school breaks, teaching planning days, or summer vacation;

(c) The program does not advertise or otherwise represent that the program is a licensed child-care center or that the program offers child-care services;

(d) The program informs the parent or guardian:

1. That the program is not licensed by the cabinet; and

2. About the physical risks a child may face while participating in the program; and

(e) The program conducts the following background checks for all program employees and volunteers who work with children:

1. Check of the child abuse and neglect records maintained by the cabinet; and

2. In-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts.

(22) Directors and employees of child-care centers in a position that involves supervisory or disciplinary

power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with KRS 199.8965.

(23) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(24) In determining whether to issue a plan of correction, directed plan of correction, or suspension or revocation of a child-care center license in response to any alleged violation of an administrative regulation by a child-care center, in addition to any other required considerations under this section the cabinet shall consider the following factors:

(a) If the child-care center self-reported the incident in question and if the child-care center had a history of self-reporting incidents;

(b) If the incident was the result of the child-care center failing in any way related to policy, training, enforcement, or supervision;

(c) If the incident was the result of an independent act or failure to follow administrative regulations or center policy on the part of a child-care center applicant for licensure, a child-care center director, or any staff person;

(d) Actions taken by the child-care center in addition to those required by administrative regulation, including but not limited to installing cameras, providing extra training for staff, implementing facility improvements, enacting safety policies stricter than those required by administrative regulation, and improving staff-to-child ratios; and

(e) If the child-care center appropriately responded to the violation by holding the party responsible accountable for the violation and correcting or initiating correction of any condition that contributed to the violation.

(25) A violation of a directed plan of correction shall not result in a suspension or revocation of a child-care center's license unless the violation is solely determined by the cabinet to be serious enough to justify the suspension or revocation.

(26) A child-care center shall be permitted to provide requested documentation to the cabinet up to five (5) business days following a request when any routine review or audit related to an alleged violation of administrative regulation occurs.

(27)(a) A child-care center that has been granted a preliminary license with a six (6) month probationary period by the cabinet shall receive a minimum of two (2) weekly support contacts a week by the cabinet or the cabinet's designee, with at least one (1) contact being in person for each week of a six (6) month probationary period in order to assist the center owner, supervisors, and staff in understanding, implementing, and practicing administrative regulations properly.

(b) During the six (6) month probationary period, the cabinet shall not issue a violation against a child-care center unless the cabinet determines that a violation was knowingly committed after the cabinet had provided clear instructions, or the violation created an immediate threat to the health, safety, or welfare of the children in the child-care center.

(28) The cabinet may allow but shall not require the inspector general, the inspector general's designee, or other cabinet representative to:

(a) Take emergency action in accordance with subsection (4) of this section by issuing an emergency order that suspends a child-care center's license;

(b) Revoke a child-care center's license if an emergency order has been issued and the:

1. Child-care center has not requested a hearing within the timeframes required in subsection (7) of this section; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of an emergency order;

(c) Revoke a child-care center's license if:

1. A representative of the child-care center interferes with a cabinet or other agency representative's ability to perform an official duty;

2. A cabinet representative, a representative from another agency with regulatory authority, or a parent is denied access during operating hours to a child, the child-care center, or child-care center staff;

3. The child-care center is discontinued or disqualified from participation in Kentucky's child-care subsidy program or another governmental assistance program as a result of fraud, abuse, or criminal conviction related to the center;

4. The child-care center fails to meet a condition of, or violates a requirement of, a directed plan of correction;

5. The child-care center applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

6. The child-care center is the subject of more than two (2) directed plans of correction during a three (3) year period; or

7. The child-care center has failed to comply with required payment provisions; and

(d) Suspend a child-care center's license if:

1. A violation of an administrative regulation is found to pose an immediate threat to the health, safety, and welfare of the children in care, as permitted in subsection (4) of this section; or

2. The child-care center fails to comply with the approved plan of correction.

(29) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to identify emergency care providers who provide essential child-care services during an identified state of emergency.

History.

Enact. Acts 1962, ch. 196, § 3; 1974, ch. 74, Art. VI, § 107(21); 1978, ch. 203, § 1, effective June 17, 1978; 1980, ch. 188, § 187, effective July 15, 1980; 1982, ch. 247, § 5, effective July 15, 1982; 1992, ch. 57, § 4, effective July 14, 1992; 1994, ch. 131, § 1, effective July 15, 1994; 1996, ch. 318, § 90, effective July 15, 1996; 1998, ch. 426, § 157, effective July 15, 1998; 1998, ch. 524, § 2, effective July 15, 1998; 2000, ch. 308, § 18, effective July 14, 2000; 2005, ch. 99, § 48, effective June 20, 2005; 2010, ch. 171, § 7, effective July 15, 2010; 2015 ch. 16, § 3, effective June 24, 2015; 2017 ch. 135, § 5, effective March 27, 2017;

2018 ch. 136, § 5, effective July 1, 2019; 2020 ch. 36, § 11, effective July 15, 2020; 2021 ch. 172, § 1, effective March 30, 2021; 2024 ch. 87, § 1, effective April 5, 2024; 2026 ch. 146, § 18, effective April 14, 2026; 2026 ch. 68, § 18, effective July 15, 2026.

Legislative Research Commission Notes.

(4/14/2026). 2026 Ky. Acts ch. 146, sec. 19, provides that, "[t]he provisions of Section 18 of this Act [this statute] shall apply:

(1) To any pending and not yet final action related to licensed child-care centers that is under consideration by the Cabinet for Health and Family Services on the effective date of this Act [April 14, 2026]; and

(2) To any action related to licensed child-care centers that occurs on or after the effective date of this Act [April 14, 2026]."

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 68 and 146, which do not appear to be in conflict and have been codified together.

OPINIONS OF ATTORNEY GENERAL.

The Attorney General cannot categorically state whether a facility operated by a particular organization, association or individual and caring for four or more children must be licensed as a "day-care center" since such determination is the duty of the Department for Human Resources (now Cabinet for Families and Children). OAG 74-736.

199.8962. Required standards for child-care centers licensed under KRS 199.896 — Administrative regulations.

(1) Child-care centers licensed pursuant to KRS 199.896 shall have the following standards:

(a) Nutrition standards, if the child-care center provides food, that are consistent with the meal and snack patterns of the most recent version of the United States Department of Agriculture's Food and Nutrition Service standards for the Child and Adult Care Food Program. These nutrition standards do not apply to food that is brought from a child's home;

(b) Physical activity standards;

(c) Screen time standards; and

(d) Sugary drink standards.

(2) The cabinet shall, within ninety (90) days of July 15, 2020, promulgate administrative regulations, in consultation with the Kentucky Early Childhood Advisory Council established pursuant to KRS 200.700, the Kentucky Child Care Advisory Council established pursuant to KRS 199.8983, and state and national organizations that have expertise in nutrition, physical activity, screen time, and sugary drink standards, to establish the requirements and procedures for the implementation of the standards established in this section.

History.

2020 ch. 8, § 1, effective July 15, 2020.

199.8965. Child care staff members must submit to background checks in accordance with federal law and regulations — Administrative regulations.

(1) For the purposes of this section, "child care staff member" has the same meaning as in 42 U.S.C. sec. 9858f and the implementing federal rules.

(2) The cabinet shall require a child care staff member to submit to background checks in accordance with 42 U.S.C. sec. 9858f and the implementing federal rules, including national and state fingerprint-supported criminal background checks by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(3) The child care staff member shall provide the member's fingerprints to the Department of Kentucky State Police for submission to the Federal Bureau of Investigation after a state criminal background check is conducted.

(4) The results of the national and state criminal background checks shall be sent to the cabinet.

(5) The cabinet may register a child care staff member in the rap back system.

(6) The request for background checks shall be in a manner approved by the Justice and Public Safety Cabinet, and the cabinet may charge a fee to be paid by a child care staff member for the actual cost of processing the request.

(7) Any fee charged by the Department of Kentucky State Police or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the criminal background check and rap back system ongoing status notification.

(8) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

History.

2017 ch. 135, § 4, effective March 27, 2017.

199.8966. Staff members of child-caring facilities must submit to background checks in accordance with federal law and regulations — Administrative regulations. [Renumbered]

History.

2019 ch. 33, § 1, effective March 19, 2019; renumbered to § 199.642 by 2020 ch. 53, § 4, effective July 15, 2020.

199.897. Notification concerning Kentucky Consumer Product Safety Program.

(1) The Cabinet for Health and Family Services shall notify licensed child-care centers and certified family child-care homes on an ongoing basis, including during the license or certification application process and any monitoring visits, of the Kentucky Consumer Product Safety Program and the program's Web site. Licensed child-care centers shall post in a prominent location a notice of the existence of the Consumer Product Safety Program and the program's Web site.

(2) The Cabinet for Health and Family Services may promulgate administrative regulations to carry out this section.

(3) This section may be cited as The Child Safety Act of 2009.

History.

Enact. Acts 2009, ch. 51, § 1, effective June 25, 2009.

199.898. Rights for children in child-care programs and their parents, custodians, or guardians — Posting and distribution requirements.

(1) All children receiving child-care services in a day-care center licensed pursuant to KRS 199.896, a family child-care home certified pursuant to KRS 199.8982, or from a provider or program receiving public funds shall have the following rights:

(a) The right to be free from physical or mental abuse;

(b) The right not to be subjected to abusive language or abusive punishment; and

(c) The right to be in the care of adults who shall meet their health, safety, and developmental needs.

(2) Parents, custodians, or guardians of children specified in subsection (1) of this section shall have the following rights:

(a) The right to have access to their children at all times the child is in care and access to the provider caring for their children during normal hours of provider operation and whenever the children are in the care of the provider;

(b) The right to be provided with information about child-care regulatory standards, if applicable; where to direct questions about regulatory standards; and how to file a complaint;

(c) The right to file a complaint against a child-care provider without any retribution against the parent, custodian, guardian, or child;

(d) The right to obtain information from the cabinet regarding any type of licensure denial, suspension, or revocation of an operator, and cabinet reports that have found abuse or neglect by any child-care provider or any employee of a child care provider. Identifying information regarding children and their families shall remain confidential;

(e) The right to obtain information from the cabinet regarding the inspections and plans of correction of the day-care center, the family child-care home, or the provider or program receiving public funds within the past year; and

(f) The right to review and discuss with the provider any state reports and deficiencies revealed by such reports.

(3) The child-care provider who is licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 shall post these rights in a prominent place and shall provide a copy of these rights to the parent, custodian, or guardian of the child at the time of the child's enrollment in the program.

History.

Enact. Acts 1992, ch. 57, § 1, effective July 14, 1992; 1998, ch. 524, § 3, effective July 15, 1998.

199.8982. Family child-care home certification program — When required — Requirements for certification — Unannounced inspection — Use of information — Authority to promulgate administrative regulations — Hearing — Emergency action — Training — Powers of local government in regulation of certified family child-care homes — Exemptions.

(1)(a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;

2. Provide a written statement from a physician or advanced practice registered nurse that the applicant is in good health;

3. Submit to a criminal record check in accordance with KRS 199.8965;

4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;

5. Provide a copy of the results of a tuberculosis risk assessment and the results of any appropriate follow-up with skin testing or chest X-ray for applicants who are determined to be at risk for developing tuberculosis in accordance with the recommendations of the Centers for Disease Control and Prevention within thirty (30) days of the date of application for certification; and

6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:

a. Basic health, safety, and sanitation;

b. Recognizing and reporting child abuse; and

c. Developmentally appropriate child-care practice.

(b) Initial applications for certification shall be made to the department. The cabinet may promulgate administrative regulations to establish fees that shall not exceed costs of the program to the cabinet, for proper administration of the certification. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee that shall not exceed costs of the program to the cabinet for renewal.

(c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.

(d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.

(e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.

(f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an easy-to-read guide containing the following information to a family child-care provider seeking certification of his or her home:

1. Certification requirements and procedures;

2. Information about available child-care training; and

3. Child-care food sponsoring organizations.

(2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to:

(a) One and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services; and

(b) One (1) hour one (1) time every three (3) years of continuing education in the recognition and prevention of pediatric ingestion or inhalation of controlled substances.

The continuing education required under this subsection shall be included in the current number of required continuing education hours.

(3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.

(4)(a) As used in this subsection "local government" means a city, county, charter county, urban-county government, consolidated local government, or unified local government.

(b) The provisions of this section shall supersede all local government ordinances or regulations pertaining to the certification, licensure, and training requirements related to the operation of family child-care homes and a local government shall not adopt or enforce any additional licensure, certification, or training requirements specifically applicable to family child-care homes in addition to those provided in this section. This subsection shall not be interpreted or construed to exempt family child-care homes from compliance with local government ordinances and regulations that apply generally within the jurisdiction.

(c) Because the availability of adequate child-care as an essential business is vital to the Commonwealth's state and local economies, a local government that has adopted land use regulations pursuant to KRS Chapter 100 shall specifically name family child-care homes in the text of its zoning regulations to authorize the board of adjustments to separately consider the applications of proposed family child-care homes for conditional use permits within the residential zones of the planning unit where they are not a fully permitted use pursuant to KRS 100.237.

(5) Notwithstanding any state law or administrative regulation to the contrary:

(a) A child-care provider located on a military installation or military facility that is licensed or certified as a family child-care provider by the United States Department of Defense (DOD), any branch of the Armed Forces as defined in KRS 40.010, the National Guard, or reserve component thereof shall be exempt from the requirements of this section;

(b) For a pilot period of two (2) years, beginning July 1, 2026, through June 30, 2028, a family child-care home shall be exempt from the requirements of this section if it is:

1. Located outside of the boundaries of a military installation of any branch of the Armed Forces as defined in KRS 40.010;

2. Providing child care exclusively to children eligible for care under the DOD Instruction 6060.02;

3. Has a certificate issued by the DOD to provide child care; and

4. Has completed background screening by the DOD pursuant to 34 U.S.C. sec. 20351 and 32 C.F.R. pt. 86 and has received a favorable suitability and fitness determination;

(c) During the pilot period established in paragraph (b) of this subsection:

1. The regulatory authority having oversight of family child care-homes for each respective military installation shall:

a. Be responsible for registering each DOD-certified family child-care home with the cabinet by providing, upon certification:

i. Name of the family child-care home operator;

ii. Address of the family child-care home;

iii. Military installation providing oversight over the family child-care home;

iv. Number of children permitted to be served by the family child-care home; and

v. Number of children actively enrolled in the family child-care home;

b. Provide the cabinet with updates to its registrations on a quarterly basis; and

c. Immediately notify the department when the DOD adds or removes a family child-care home operating under this subsection from its registry or closes a family child-care home for cause;

2. In the event the program's DOD certification as a family child-care home operator is suspended or terminated due to noncompliance with the health, safety, or licensing standards or there is substantiated evidence of child abuse, neglect, or endangerment, the operator shall be ineligible to apply for a child-care license or certification pursuant to this chapter and, if voluntarily certified by the cabinet under this chapter, shall be subject to an administrative action revoking its child-care certification; and

3. If the DOD substantiates child abuse, neglect, or endangerment, the operator shall have the operator's name placed on the Kentucky Child Abuse and Neglect Central Registry and shall not be employed at any state-regulated child care program; and

(d) The Cabinet for Health and Family Services shall provide two (2) reports on the registration data required in paragraph (c) of this subsection to the Legislative Research Commission for referral to the Interim Joint Committee on Families and Children, with the first due by December 1, 2026, and the second due by December 1, 2027.

History.

Enact. Acts 1992, ch. 57, § 2, effective July 14, 1992; 1996, ch. 318, § 91, effective July 15, 1996; 1998, ch. 426, § 158, effective July 15, 1998; 1998, ch. 524, § 4, effective July 15, 1998; 2000, ch. 14, § 24, effective July 14, 2000; 2000, ch. 308, § 19, effective July 14, 2000; 2008, ch. 144, § 1, effective July 15, 2008; 2010, ch. 85, § 71, effective July 15, 2010; 2010, ch. 171, § 8, effective July 15, 2010; 2017 ch. 135, § 6, effective March 27, 2017; 2018 ch. 136, § 6, effective July 1, 2019; 2021 ch. 172, § 2, effective March 30, 2021; 2026 ch. 146, § 15, effective April 14, 2026; 2026 ch. 68, § 19, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 68 and 146, which do not appear to be in conflict and have been codified together.

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 14 and 308, which are in conflict. Under KRS 446.250, Acts ch. 308, which was last enacted by the General Assembly, prevails.

199.8983. Kentucky Child Care Advisory Council — Membership — Duties — Annual report.

(1) There is hereby created the Kentucky Child Care Advisory Council to be composed of thirty-four (34) members. The members appointed by the Governor shall serve a term of three (3) years. The appointed members of the council shall be geographically and culturally representative of the population of the Commonwealth and shall be no less than proportionally representative of the two (2) leading political parties of the Commonwealth based on the state's voter registration and the political affiliation of each appointee as of December 31 of the year preceding the date of his or her appointment. For administrative purposes, the council shall be attached to the department. The members shall be as follows:

(a) The commissioner of the department, or designee;

(b) Four (4) members appointed by the Governor representing child-care center providers licensed pursuant to this chapter;

(c) Two (2) members appointed by the Governor representing family child-care home providers licensed pursuant to this chapter;

(d) Three (3) members appointed by the Governor who are parents, de facto custodians, guardians, or legal custodians of children receiving services from child-care centers or family child-care homes licensed pursuant to this chapter;

(e) Two (2) members appointed by the Governor representing local child-care resource and referral agencies;

(f) One (1) member appointed by the Governor with a professional background in economics from a list of names provided by the president of the Council on Postsecondary Education;

(g) Two (2) members appointed by the Governor with professional backgrounds in, or specialized knowledge of, child care and early childhood issues from a list of names provided by the President of the Senate;

(h) Two (2) members appointed by the Governor with professional backgrounds in, or specialized knowledge of, child care and early childhood issues from a list of names provided by the Speaker of the House of Representatives;

(i) One (1) member appointed by the Governor with a professional background in, or specialized knowledge of, child care and early childhood issues from a list of names provided by the Minority Floor Leader of the Senate;

(j) One (1) member appointed by the Governor with a professional background in, or specialized knowledge of, child care and early childhood issues from a list of names provided by the Minority Floor Leader of the House of Representatives;

(k) Three (3) members appointed by the Governor from the private sector who are knowledgeable about education, health, and development of children;

(l) The director of the Division of Child Care within the department, or designee, as a nonvoting ex officio member;

(m) The commissioner of education, Education and Labor Cabinet, or designee, as a nonvoting ex officio member;

(n) The executive director of the Governor's Office of Early Childhood, or designee, as a nonvoting ex officio member;

(o) The commissioner of the Department for Public Health within the cabinet, or designee, as a nonvoting ex officio member;

(p) The state fire marshal, Public Protection Cabinet, or designee, as a nonvoting ex officio member;

(q) The executive director of the Kentucky Center for Statistics, or designee;

(r) The two (2) co-chairs of the Interim Joint Committee on Families and Children who shall be nonvoting members;

(s) The two (2) co-chairs of the Interim Joint Committee on Appropriations and Revenue's Budget Review Subcommittee on Health and Family Services who shall be nonvoting members; and

(t) The two (2) co-chairs of the Interim Joint Committee on Education who shall be nonvoting members.

(2) The council shall have two (2) co-chairpersons. One (1) co-chairperson shall be the commissioner of the department, or designee, and one (1) co-chairperson shall be elected by the voting members of the council.

(3) Members shall serve until a successor has been appointed. If a vacancy on the council occurs, the Governor shall appoint a replacement for the remainder of the unexpired term.

(4) Members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses in accordance with state travel expenses and reimbursement administrative regulations.

(5) The council shall meet at least quarterly and at other times upon call of the co-chairpersons.

(6) The council shall advise the cabinet on matters affecting the operations, funding, and licensing of child-care centers, child-care microcenters as defined in KRS 199.8911, family child-care homes, and other matters as directed by the General Assembly. The council shall provide input and recommendations for ways to improve quality, access, and outcomes.

(7) The council shall make an annual report by December 1 each year that provides summaries of its actions and discussions from that year and recommendations to address the availability, affordability, accessibility, and quality of child care in the Commonwealth. A copy of the annual report shall be posted on the cabinet's website and provided to the secretary, the Governor, and the Legislative Research Commission for referral to the Interim Joint Committee on Families and Children.

History.

Enacted. Acts 2015 ch. 49, § 1, effective June 24, 2015; 2018 ch. 159, § 53, effective July 14, 2018; 2022 ch. 236, § 98, effective July 1, 2022; 2022 ch. 211, § 26, effective January 1, 2023; 2022 ch. 223, § 10, effective January 1, 2023; 2026 ch. 146, § 3, effective April 14, 2026.

199.8984. Child-Care Policy Council. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1992, ch. 57, § 5, effective July 14, 1992; 1994, ch. 486, § 29, effective July 15, 1994; 1998, ch. 426, § 159, effective July 15, 1998) was repealed by Acts 2000, ch. 308, § 28, effective July 14, 2000. For present law, see KRS 200.700 et seq.

Legislative Research Commission Notes.

(7/14/2000). Under KRS 446.260, the repeal of this section in 2000 Ky. Acts ch. 308 prevails over its amendment in 2000 Ky. Acts ch. 14.

199.899. Market-rate survey to determine rates for child-care services receiving public funds.

(1) The Cabinet for Health and Family Services shall conduct a market-rate survey at least biennially to set the minimum rates paid by the cabinet for child-care services receiving public funds in the Commonwealth. The market-rate survey shall:

(a) Survey all child-care programs in the Commonwealth licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982;

(b) Determine market rates; and

(c) Make public its findings.

(2) In counties containing no more than two (2) child-care programs of the same type regulated by the cabinet, the cabinet shall pay the rate charged by the program up to the maximum allowable market rate, set in accordance with federal regulations, paid to a program of the same type in that area development district.

(3) The Cabinet for Health and Family Services shall evaluate, at least annually, the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care.

History.

Enact. Acts 1992, ch. 57, § 6, effective July 14, 1992; 1998, ch. 426, § 160, effective July 15, 1998; 2000, ch. 308, § 20, effective July 14, 2000; 2005, ch. 99, § 196, effective June 20, 2005.

199.8992. Development of statewide network of community-based child-care resource and referral services — Awarding of contracts. [Repealed]

History.

Enact. Acts 1992, ch. 57, § 7, effective July 14, 1992; 1998, ch. 426, § 161, effective July 15, 1998; 2000, ch. 308, § 21, effective July 14, 2000; 2005, ch. 99, § 197, effective June 20, 2005; repealed by 2020 ch. 36, § 44, effective July 15, 2020.

199.8994. Uniform administration of child-care funds — Dedicated child-care licensing surveyors.

(1) All child-day-care funds administered by the cabinet, including Title XX of the Social Security Act, shall be administered by the Cabinet for Health and Family Services to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. To the extent permitted by federal law or regulations, requirements relating to application, eligibility, provider agreements, and payment for child-care services shall be the same regardless of the source of public funding.

(2) The cabinet shall, to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served, develop a system which provides a single intake point in each county through which parents seeking public subsidies for child-care services can make application.

(3) The cabinet shall, subject to the extent funds are available, cooperate with the Cabinet for Health and Family Services to fund and establish dedicated child-care licensing surveyor positions within the Division of Licensed Child Care to conduct all the cabinet's child-care licensing activities. The cabinet shall have the authority to request the transfer of funds to establish these positions. Where possible, dedicated child-care surveyors shall have expertise or experience in child-care or early childhood education.

(4) The targeted ratio of dedicated child-care licensing surveyor positions shall be one (1) surveyor for each fifty (50) child-care facilities in order to allow for the provision of an expedient, constructive, and thorough licensing visit.

(5) The cabinet shall, in cooperation with the Division of Licensed Child Care, Cabinet for Health and Family Services, provide appropriate specialized training for child-care surveyors.

(6)(a) The cabinet shall evaluate ways to improve the monitoring of unregulated child-care providers that receive a public subsidy for child care, and promulgate administrative regulations in accordance with KRS Chapter 13A that establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child-care provider that receives a child-care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care.

(b) If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, it may take emergency action to deny a public subsidy for child-care services under KRS 13B.125.

History.

Enact. Acts 1992, ch. 57, § 8, effective July 14, 1992; 1998, ch. 426, § 162, effective July 15, 1998; 2000, ch. 308, § 22, effective July 14, 2000; 2001, ch. 81, § 2, effective June 21, 2001; 2005, ch. 99, § 198, effective June 20, 2005.

Compiler's Notes.

Title XX of the Social Security Act, referred to in subsection (1), is compiled as 42 USCS § 1397 et seq.

199.8996. Reports on child-care program activity.

(1) The Cabinet for Health and Family Services shall prepare the following reports on child-care programs, and shall make them available upon request:

(a) State and federally mandated reports on the child-care funds administered by the Department for Community Based Services; and

(b) Reports on the child-care subsidy programs, training, resource and referral, and similar activities upon request by the public, the Early Childhood Advisory Council, or the Child Care Advisory Council, to the extent resources are available within the cabinet and as permitted under the Kentucky Open Records Act, KRS 61.870 to 61.884, and state and federal laws governing the protection of human research subjects.

(2) The cabinet shall include the number of dedicated child-care licensing surveyor positions and the ratio of surveyors to child-care facilities within its half-year block grant status reports.

(3) By November 1, 2017, the Cabinet for Health and Family Services and the Early Childhood Advisory Council shall report on recommendations and plans for sustaining the quality-based graduated early care and education program after the depletion of federal Race to the Top-Early Learning Challenge grant funds.

History.

Enact. Acts 1992, ch. 57, § 9, effective July 14, 1992; 1998, ch. 426, § 163, effective July 15, 1998; 2000, ch. 308, § 23, effective July 14, 2000; 2005, ch. 99, § 199, effective June 20, 2005; 2013, ch. 57, § 5, effective June 25, 2013; 2015 ch. 16, § 4, effective June 24, 2015; 2017 ch. 80, § 54, effective June 29, 2017; 2023 ch. 25, § 9, effective June 29, 2023.

199.8998. Definitions for section — Kentucky Kindergarten Readiness Performance-Based Child Care Incentive Pilot Program — Reporting required.

(1) As used in this section:

(a) "Cabinet" means the Cabinet for Health and Family Services;

(b) "Type I child-care center" means a child-care center licensed by the cabinet to regularly provide child care services for:

1. Four (4) or more children in a nonresidential setting; or

2. Thirteen (13) or more children in a designated space separate from the primary residence of a licensee;

(c) "Type II child-care center" means a child-care center that is the primary residence of the licensee in which child care is regularly provided for at least seven (7) but not more than twelve (12) children, including children related to the licensee; and

(d) "University" means the University of Kentucky.

(2) By August 1, 2026, the university shall establish and operate the Kentucky Kindergarten Readiness Performance-Based Child Care Incentive Pilot Program, which shall operate from August 1, 2027, until July 31, 2029.

(3) The pilot program shall:

(a) Determine how to provide performance-based incentives to diverse types of early childhood education providers, child-care providers, and low-income parents in order to increase the number of children in the Commonwealth who are assessed as kindergarten ready;

(b) Determine how to best assess applicants and distribute moneys;

(c) Develop a written plan and implement assessment processes to determine kindergarten readiness for children in the Commonwealth. The university shall convene a working group to assist in the development of the written plan and assessment processes;

(d) Ensure that participants in the pilot program represent geographically and socioeconomically diverse areas of the Commonwealth;

(e) Evaluate the impact of performance-based incentives implemented through the pilot program

using a rigorous design framework that supports causal inferences;

(f) Design, identify, and make available resources for parents to assist them in preparing children for kindergarten readiness;

(g) Determine how to award funds, including but not limited to direct payments or refundable tax credits, to licensed Type I and Type II child-care centers; cabinet-regulated early childhood education providers, certified child-care homes, and registered providers; and single or married parents who qualify for the child-care subsidy administered by the cabinet pursuant to KRS 199.8994. To be eligible for funds:

1. A provider or a home shall maintain services for infants and toddlers at a ratio established by the Division of Child Care within the cabinet;

2. A provider or a home shall maintain and submit accurate and detailed records of care for any child; and

3. A parent shall submit records to verify he or she meets the requirements to receive child care subsidy funds under KRS 199.8994;

(h) Establish a standard for awarding a two thousand dollar ($2,000) one (1) time award, including but not limited to direct payments or refundable tax credits, per child once a child is designated by the assessment processes as kindergarten ready as follows:

1. A full award to a licensed Type I or Type II child-care center or cabinet-regulated early childhood education provider, certified child-care home, or registered provider who meets the requirements of paragraph (g) of this subsection if the kindergarten-ready child received full-time services from the center or provider the two (2) years prior to the assessment;

2. A full award to a single or married parent who meets the requirements of paragraph (g) of this subsection if the kindergarten-ready child was cared for in the home the two (2) years prior to the assessment, regardless of the utilization of a babysitter;

3. A full award to a licensed Type I or Type II child-care center or cabinet-regulated early childhood education provider, certified child-care home, or registered provider who meets the requirements of paragraph (g) of this subsection if the child cannot be properly assessed as a kindergarten-ready child because of a formal diagnosis of a disability and the child received full-time services from the provider the two (2) years prior to the assessment;

4. A half award to a licensed Type I or Type II child-care center or cabinet-regulated early childhood education provider, certified child-care home, or registered provider who meets the requirements of paragraph (g) of this subsection if the kindergarten-ready child received half-day services from the center and attended public preschool the two (2) years prior to the assessment; and

5. Split awards may be granted to individuals or providers based on who provided full-time services or cared for the child in the two (2) years prior to the assessment; and

(i) Ensure compliance with federal regulations, including but not limited to the Quality Rating and Improvement Systems as established under 45 C.F.R. pt. 98.

(4) By June 1, 2027, and by June 1 annually thereafter for the duration of the pilot program, the university shall annually report on the establishment and operations of the pilot program to the Interim Joint Committee on Families and Children.

(5) By January 1, 2030, the university shall submit a report to the cabinet and the Legislative Research Commission for referral to the Interim Joint Committees on Families and Children, Education, and Appropriations and Revenue that:

(a) Details the findings of the pilot program;

(b) If the pilot program proves successful:

1. Identifies specific mechanisms for change, including but not limited to educational curricula and family practices to best prepare preschool-age children for kindergarten readiness;

2. Includes recommendations based on the pilot program's results for optimizing performance-based child care incentives in the Commonwealth; and

3. Includes recommendations and potential obstacles for implementing the program at scale;

(c) Details the assessment processes used to determine kindergarten readiness;

(d) Identifies the rates of kindergarten readiness at the end of the pilot program; and

(e) Includes all data generated from the pilot program, which shall be made available for public review and use in accordance with applicable federal, state, and institutional review board policies.

History.

2026 ch. 146, § 16, effective April 14, 2026.

PERSONNEL TRAINING

199.900. Training programs authorized — Research assignment — Classification — Compensation — Contract.

(1) The secretary for health and family services in coordination with the Personnel Cabinet is authorized to establish formal training programs within the Cabinet for Health and Family Services or within any of the divisions or sections of the cabinet for the training of necessary personnel for the administration of the programs of the cabinet. When courses of study, applicable to the program processes of the cabinet, are not available through cabinet instruction, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose, and such training shall be deemed to be a part of the cabinet training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, and these assignments are to relate directly to the work assignment of the employee. After consulting with the Personnel Cabinet, position classifications in the research series shall be established for employees on such work study assignments, and funds of the cabinet may

be used to pay salaries commensurate with the appropriate classification while the employee is receiving training.

(2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of training, the state will hold a claim against him for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

History.

Enact. Acts 1962, ch. 85, § 2; 1974, ch. 74, Art. VI, § 107(1), (13) and (30); 1998, ch. 154, § 86, effective July 15, 1998; 1998, ch. 426, § 164, effective July 15, 1998; 2005, ch. 99, § 200, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Personnel of cabinet may be appointed as peace officers to enforce KRS Chapters 600 to 645, KRS 605.050.

State personnel generally, KRS Chapter 18A.

PENALTIES

199.990. Penalties.

(1) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570, 199.572, and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under such sections the violation of which is made unlawful shall be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.

(2) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections, or in any other applicable statute, shall be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned for not more than thirty (30) days, or both.

(3) Any violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars ($1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the Early Childhood Scholarship Program created in accordance with KRS 164.518. The balance of the fund shall not lapse to the general fund at the end of each biennium.

(4) A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 shall be fined not less than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

(5) Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

(6) Any person who knowingly or intentionally registers false information under KRS 199.503(4) shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

(7) Any person who knowingly or intentionally releases or requests confidential information in violation of KRS 199.503(8) or (9) or in violation of KRS 199.505 shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court. It is a defense under this subsection if the cabinet releases confidential information while acting in good faith and with reasonable diligence.

(8) Any person who intentionally registers false information under KRS 199.881 to 199.888 with the cabinet in pursuit of the benefits of this program shall be subject to a civil penalty of no more than five hundred dollars ($500) per violation. All money collected as a result of penalties assessed under KRS 199.881 to 199.888 shall be paid into the State Treasury and credited to the Employee Child Care Assistance Partnership fund.

History.

326, 327, 330, 331c-1, 331c-3, 331e-4, 331g-1 to 331g-3: amend. Acts 1944, ch. 77, § 1; 1946, ch. 13, § 5; 1950, ch. 125, § 31; 1952, ch. 161, § 61; 1962, ch. 196, § 4; 1962, ch. 211, § 6; 1962, ch. 212, § 12; 1964, ch. 85, § 5; 1970, ch. 270, § 1; 1976, ch. 142, § 3; 1978, ch. 66, § 3, effective June 17, 1978; 1980, ch. 188, effective July 15, 1980; 1986, ch. 423, § 196, effective July 1, 1987; 1994, ch. 242, § 13, effective July 15, 1994; 2000, ch. 308, § 24, effective July 14, 2000; 2004, ch. 186, § 10, effective July 13, 2004; 2022 ch. 184, § 9, effective April 8, 2022.

Compiler's Notes.

The amendment of this section by Acts 1980, ch. 280, § 147, which was to have taken effect on July 15, 1984, was itself repealed by Acts 1984, ch. 184, § 1, effective July 13, 1984.

Section 1 of Acts 1984, ch. 184, provided: "It is the intent of the General Assembly that the amendments and repealers of Acts 1980, ch. 280 not become effective and that the statutes affected thereby remain as not amended or not repealed except as affected by legislation other than Acts 1980, Chapter 280 and Acts 1982, Chapter 284 passed during the 1980 or 1982 session, or this Act."

Legislative Research Commission Notes.

(4/8/2022). This statute was amended in 2022 Ky. Acts ch. 184, sec. 9. Under Section 10 of that Act, the Act may be cited as the Employee Child Care Assistance Partnership.

NOTES TO DECISIONS

Cited in:

Smith v. Commonwealth, 358 S.W.2d 521, 1962 Ky. LEXIS 189 (Ky. 1962).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Probation and parole, KRS Chapter 439.

Sentence of imprisonment for felony, KRS 532.060.

Kentucky Law Journal.

Smith, Medical and Psychotherapy Privileges and Confidentiality: On Giving With One Hand and Removing With the Other, 75 Ky. L.J. 473 (1986-87).

Note, The Unwed Father and the Right to Know of His Child's Existence, 76 Ky. L.J. 949 (1987-88).

Treatises

Petrilli, Kentucky Family Law, Termination of Parental Rights and Adoption, §§ 29.6, 29.14.

CHAPTER 200
ASSISTANCE TO CHILDREN

Early Intervention Services.

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EARLY INTERVENTION SERVICES

200.650. Legislative findings.

The General Assembly hereby finds and declares that there is an urgent and substantial need:

(1) To enhance the development of all infants and toddlers with disabilities in the Commonwealth of Kentucky in order to minimize developmental delay, and to maximize individual potential for adult independence;

(2) To enhance the capacity of families to meet the needs of their infants and toddlers with disabilities;

(3) To reduce the educational costs by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(4) To reduce future social services costs and to minimize the likelihood of institutionalization of individuals with disabilities;

(5) To prevent secondary impairments and disabilities by improving the health of infants and toddlers, thereby reducing health costs for the families and the state; and

(6) To comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

History.

Enact. Acts 1994, ch. 313, § 1, effective July 15, 1994.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Early Intervention System, 902 KAR 30:001 through 902 KAR 30:200.

200.652. Legislative declaration of policy.

It is the intent of the General Assembly that the policy of the Commonwealth of Kentucky shall be:

(1) To reaffirm the importance of the family in all areas of the child's development and to reinforce the role of the family in the decision making processes regarding their children;

(2) To provide assistance and support to the family of an infant or toddler with a disability that addresses the individual needs of that family;

(3) To develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for all infants and toddlers with disabilities and their families;

(4) To enhance the capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities;

(5) To facilitate the coordination of payment for early intervention services from federal, state, local, and private insurance coverage, and the use of sliding fee scales; and

(6) To coordinate and provide individualized early intervention services to infants and toddlers with disabilities and their families.

History.

Enact. Acts 1994, ch. 313, § 2, effective July 15, 1994.

200.654. Definitions for KRS 200.650 to 200.676.

As used in KRS 200.650 to 200.676, unless the context requires otherwise:

(1) "Awards and contracts" means the state and federal funds designated by the cabinet for projects relating to planning, resource development, or provision of direct early intervention services, as defined in this section, to infants and toddlers with disabilities and their families;

(2) "Cabinet" means the Cabinet for Health and Family Services;

(3) "Child find" means a system to identify, locate, and evaluate all infants and toddlers with disabilities who are eligible for early intervention services, determine which children are receiving services, and coordinate the effort with other state agencies and departments;

(4) "Council" means the Kentucky Early Intervention System Interagency Coordinating Council;

(5) "District" means one (1) of the fifteen (15) area development districts;

(6) "District early intervention committee" means an interagency coordinating committee established within each of the fifteen (15) area development districts to facilitate interagency coordination at the district level;

(7) "Early intervention services" means services for infants and toddlers with disabilities and their families delivered according to an individualized family service plan developed by the child multidisciplinary team to meet the developmental needs of eligible children, as defined in this section, and provided by entities receiving public funds using qualified personnel. The individualized family services plan is developed and the services are provided in collaboration with the families and, to the maximum extent appropriate, in natural environments, including home and community settings in which infants and toddlers without disabilities would participate. These services are necessary to enable the child to reach maximum potential. Services to be made available shall include but not be limited to the following:

(a) Screening services;

(b) Evaluation services;

(c) Assessment services;

(d) Service coordination;

(e) Transportation and related costs for accessing early intervention services;

(f) Family services including counseling, psychological, and social work services;

(g) Health services including medical services for diagnostic and evaluation purposes only;

(h) Nutrition services;

(i) Occupational therapy services;

(j) Physical therapy services;

(k) Communication development services;

(*l*) Sensory development services;

(m) Developmental intervention services;

(n) Assistive technology services; and

(o) Respite services;

(8) "Early intervention system" means the management structure established in KRS 200.654 to 200.670 and which is comprised of the interdependent array of services and activities for the provision of a statewide, comprehensive, coordinated, multidisciplinary, interagency program for infants and toddlers with disabilities and their families;

(9) "Individual family service plan" means the singular comprehensive written service plan developed by the child's multidisciplinary team, with the child's parents serving as fully participating members of the team, to be followed by all agencies and other entities involved in providing early intervention services to an infant or toddler with disabilities and the child's family;

(10) "Infants and toddlers with disabilities" and "eligible children" mean children from birth to thirty-six (36) months of age in need of early intervention services as a result of one (1) of the following circumstances:

(a) The child is experiencing developmental delays, as measured by diagnostic instruments and procedures in one (1) or more of the following skill areas: physical; cognitive; communication; social or emotional; or adaptive development;

(b) The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; or

(c) The child has a diagnosis of pervasive developmental disorder;

(11) "Multidisciplinary team" means the child-specific group responsible for determining the services needed by the infant or toddler with disabilities and the child's family, and development of the individualized family services plan. The team for each child shall include the parent or guardian of the child and individuals representing at least two (2) applicable disciplines which may include but need not be limited to the following: physical therapy; speech therapy; social work; nursing; or education;

(12) "Point of entry" means an easily identifiable, highly accessible nonstigmatized entry into services; and

(13) "Qualified service provider" means an entity, including but not limited to an individual, program, department, or agency, responsible for the delivery of early intervention services to eligible infants and toddlers with disabilities and their families who has met the highest minimum standards of state-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the entity is providing early intervention services.

History.

Enact. Acts 1994, ch. 313, § 3, effective July 15, 1994; 1998, ch. 426, § 174, effective July 15, 1998; 2002, ch. 162, § 2, effective July 15, 2002; 2005, ch. 99, § 210, effective June 20, 2005.

200.656. Kentucky Early Intervention System.

There is hereby created in state government the Kentucky Early Intervention System to provide services for infants and toddlers with a disability and their families. For administrative purposes, the Kentucky Early Intervention System shall be attached to the Cabinet for Health and Family Services.

History.

Enact. Acts 1994, ch. 313, § 4, effective July 15, 1994; 1998, ch. 426, § 175, effective July 15, 1998; 2005, ch. 99, § 211, effective June 20, 2005.

200.658. Kentucky Early Intervention System Interagency Coordinating Council — Membership — Duties — Annual report — Conflict of interest to bar voting.

(1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council

to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Early Childhood Advisory Council. Pursuant to federal law and regulations, the membership shall be as follows:

(a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;

(b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;

(c) At least one (1) member shall be a member of the Kentucky General Assembly;

(d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;

(e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;

(f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;

(g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Behavioral Health, Developmental and Intellectual Disabilities;

(h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Community Based Services;

(i) At least one (1) member shall be the commissioner or designee of the Department of Education;

(j) At least one (1) member shall be the commissioner or designee of the Department of Insurance;

(k) At least one (1) member shall be a representative of the Office for Children with Special Health Care Needs;

(*l*) At least one (1) member shall be a representative for the Head Start program; and

(m) At least one (1) member shall be a representative of the Education of Homeless Children and Youth program.

(2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas, including but not limited to the following:

(a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;

(b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;

(c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;

(d) Resolution of disputes, to the extent deemed appropriate by the cabinet;

(e) Provision of appropriate services for children from birth to three (3) years of age;

(f) Identifying sources of fiscal and other support services for early intervention programs;

(g) Preparing applications to Part C of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications;

(h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education; and

(i) Developing performance measures to assess the outcomes for children receiving services.

(3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System, including recommendations of ways to improve quality and cost effectiveness, and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.

(4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

History.

Enact. Acts 1994, ch. 313, § 5, effective July 15, 1994; 1998, ch. 426, § 176, effective July 15, 1998; 2000, ch. 14, § 30, effective July 14, 2000; 2000, ch. 308, § 7, effective July 14, 2000; 2003, ch. 69, § 5, effective June 24, 2003; 2006, ch. 180, § 7, effective July 12, 2006; 2010, ch. 24, § 302, effective July 15, 2010; 2012, ch. 146, § 30, effective July 12, 2012; 2012, ch. 158, § 23, effective July 12, 2012.

Compiler's Notes.

Parts C and B of the Federal Individuals with Disabilities Education Act (IDEA), referred to in subsections (2)(g) and (2)(h), are compiled as 20 USCS, § 1431 et seq. and 20 USCS § 1411 et seq., respectively.

Legislative Research Commission Notes.

(7/14/2018). Under the authority of KRS 7.136(2), one or more references to the "Commission for Children with Special Health Care Needs" in this statute have been changed in codification to the "Office for Children with Special Health Care Needs" to reflect the renaming of the commission by the General Assembly in 2018 Ky. Acts ch. 114.

(6/25/2013). A reference to the "Early Childhood Development Authority" in this statute has been changed in codification to the "Early Childhood Advisory Council" to reflect the reorganization of certain parts of the Executive Branch, as set

forth in Executive Order 2012-586 and confirmed by the General Assembly in 2013 Ky. Acts ch. 57.

(7/12/2012). This statute was amended by 2012 Ky. Acts chs. 146 and 158, which do not appear to be in conflict and have been codified together.

200.660. Duties of the cabinet — Authority for administrative regulations.

The cabinet shall:

(1) Administer all funds appropriated to implement the provisions of KRS 200.650 to 200.676;

(2) Identify and coordinate all available financial resources for early intervention within the Commonwealth from federal, state, local, and private sources, including but not limited to:

(a) Title V of the Federal Social Security Act relating to maternal and child health;

(b) Title XIX of the Federal Social Security Act relating to Medicaid and the Early Periodic Screening Diagnostic and Treatment (EPSDT) program;

(c) The Federal Head Start Act;

(d) The Federal Individuals with Disabilities Education Act, Parts B and H;

(e) The Federal Elementary and Secondary Education Act of 1964 Title I, Chapter I, Part B, Subpart 2 as amended;

(f) The Federal Developmentally Disabled Assistance and Bill of Rights Act, P.L. 100-146;

(g) Other federal programs; and

(h) Private insurance.

(3) Develop a sliding fee scale of the cost of early intervention services to families, including those circumstances where no fee shall be required;

(4) Make available, in addition to the services specified in KRS 200.654(7), social skill development and behavioral therapy services to infants and toddlers with a diagnosis of pervasive developmental disorders;

(5) Enter into contracts with service providers within a local community aided by the district committee in identifying providers;

(6) Develop procedures to monitor and evaluate services that are provided to infants and toddlers with disabilities and their families;

(7) Develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner pending resolution of any disputes among public agencies or service providers; and

(8) In conjunction with the council and district early intervention committees, promulgate administrative regulations, pursuant to KRS Chapter 13A, necessary to implement the provisions of KRS 200.650 to 200.676.

History.

Enact. Acts 1994, ch. 313, § 6, effective July 15, 1994; 2002, ch. 162, § 3, effective July 15, 2002.

Compiler's Notes.

Title V of the federal Social Security Act, referred to in subsection (2)(a), is compiled as 42 USCS § 701 et seq. Title XIX of the Federal Social Security Act, referred to in subsection (2)(b), is compiled as 42 USCS § 1396 et seq. The Federal Head Start Act, referred to in subsection (2)(c), is compiled as 42 USCS § 9831 et seq. The Federal Individuals with Disabilities Education Act, Parts B and H, referred to in subsection (2)(d), is compiled as 20 USCS § 1411 et seq. and former § 1471 et seq. (A prior § 1471 et seq., P.L. 91-230, Title VI, Part H, § 671, et seq., was repealed, effective July 1, 1998, by Act June 4, 1997, P.L. 105-17, Title II, § 203(b), 111 Stat. 157. Such section set out congressional findings and policy with respect to infants and toddlers with disabilities.) The Federal Developmentally Disabled Assistance and Bill of Rights Act, P.L. 100-146, referred to in subsection (2)(f), was formerly compiled as 42 USCS § 6000 et seq. (now repealed).

The Federal Elementary and Secondary Education Act of 1964, Title I, Chapter I, Part B, Subpart 2, referred to in subsection (2)(e), was formerly compiled as 20 USCS § 2741 et seq., but those sections were omitted from the 1994 general revision of the Elementary and Secondary Education Act of 1964. For similar provisions, see 20 USCS § 6361 et seq.

200.662. District early intervention committee — Membership — Duties. [Repealed]

History.

Enact. Acts 1994, ch. 313, § 7, effective July 15, 1994; 2000, ch. 14, § 31, effective July 14, 2000; 2012, ch. 146, § 31, effective July 12, 2012; repealed by 2020 ch. 36, § 44, effective July 15, 2020.

200.664. Individualized family services plans.

(1) Upon identification of an eligible infant or toddler with disabilities, representatives of the entity serving as point of entry shall cause a multidisciplinary team, as defined in KRS 200.654, to be created for the child and family.

(2) The multidisciplinary team shall develop an individualized family service plan, as defined in KRS 200.654, for the child and family.

(3) The individualized family services plan shall include:

(a) A comprehensive multidisciplinary evaluation of the present level of development of and services needed by the child and an assessment of and plan to address the resources, priorities, and concerns of the family;

(b) An explanation of the multidisciplinary evaluation and all service options to be made available in the family's cultural language, in their primary mode of communication, or through a speech or language interpreter, whichever is necessary to facilitate comprehension.

(4) The plan shall be developed within forty-five (45) days of the referral date of the child and family to the point of entry. If the completion of the initial evaluation and assessment is delayed and will not be completed within the forty-five (45) day time period due to the request of the child's parent, illness of the child, or other reasonable circumstances beyond the control of the multidisciplinary team, the point of entry shall document the reason for the delay and shall develop and implement an interim individualized family service plan.

(5) The informed written consent of the parent or guardian is required prior to the implementation of the plan. The parent may reject some services contained in the plan, however, no services to which the parent

consents shall be withheld if the parent does not consent to all services in the plan.

(6) The parent or guardian shall sign an agreement to accept responsibility for being an active participant in the child's plan and for learning skills from providers so that the intensity and frequency of services may decline as the child reaches appropriate developmental levels and the family is able to do more for the child.

(7) The plan shall be reviewed by members of the child's current multidisciplinary team or other appropriate entities at no more than six (6) month intervals or more frequently if deemed appropriate based on the needs of the infant or toddler and the family. The child shall be evaluated at least annually to determine continuing program eligibility and the effectiveness of services provided to the child.

History.
Enact. Acts 1994, ch. 313, § 8, effective July 15, 1994; 2003, ch. 69, § 6, effective June 24, 2003.

200.666. Cabinet's monitoring of personnel standards for service providers — Personnel development.

(1) The cabinet shall monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

(2) The cabinet shall provide the components of a comprehensive system of personnel development which shall include:

(a) Preservice and inservice training conducted on an interdisciplinary basis to the extent appropriate; and

(b) Training provided for a variety of entities, including but not limited to, public and private providers, primary referral sources, parents, paraprofessionals, and persons who serve as professional service coordinators or case managers.

(3) Training may include:

(a) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(b) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention;

(c) Training personnel to work in rural areas; and

(d) Recruiting and training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.

(4) The cabinet shall coordinate with other agencies in the provision of the comprehensive system of personnel development activities.

History.
Enact. Acts 1994, ch. 313, § 9, effective July 15, 1994.

200.668. Identification of eligible infants and toddlers.

The cabinet shall attempt to identify all infants and toddlers eligible for Kentucky Early Intervention System services through implementation of an aggressive child find effort to be coordinated with the child find efforts of the Department of Education as set forth in administrative regulations promulgated pursuant to KRS 156.070, 156.160, 157.220, 157.260, 167.015, and KRS Chapter 13A.

History.
Enact. Acts 1994, ch. 313, § 10, effective July 15, 1994.

200.670. Public awareness effort.

In order to ensure access to early intervention services, the cabinet shall establish an effective and continuous public awareness effort. The effort shall:

(1) Be directed at a number of primary referral sources, utilizing a means and language which is understandable, accessible, responsive, and cognizant of the referral sources' needs and their abilities to respond to those needs;

(2) Reinforce the coordinated and family-centered nature of all early intervention programs within the comprehensive statewide system of services; and

(3) Be relevant and meaningful to parents and to the general public.

History.
Enact. Acts 1994, ch. 313, § 11, effective July 15, 1994.

200.672. Rights of disabled child, parent, or guardian being served by the system.

Kentucky's participation in Part C of the Federal Individuals with Disabilities Education Act requires that an infant or toddler with a disability who is being served by the Kentucky Early Intervention System and the parent or guardian of that child shall have the following rights:

(1) To a timely, multidisciplinary evaluation and assessment;

(2) To appropriate early intervention services for children and families;

(3) To refuse evaluation, assessment, or services;

(4) To written notice before a change is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;

(5) To written notice before a refusal of services is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;

(6) To confidentiality of personally identifiable information, including the right of the parent or guardian to be provided written notice of, and written consent to, the exchange of information among agencies, consistent with federal and state laws;

(7) To determine if any family member will accept or decline an early intervention service under KRS 200.650 to 200.676, in accordance with state law, without jeopardizing other early intervention services under KRS 200.650 to 200.676;

(8) To review all records and, if appropriate, to amend records;

(9) To bring an advocate or attorney into any and all dealings with the early intervention system; and

(10) To administrative process and judicial review in accordance with KRS Chapter 13B to resolve complaints.

History.
Enact. Acts 1994, ch. 313, § 12, effective July 15, 1994; 1996, ch. 318, §§ 92, 95, effective July 15, 1996; 2000, ch. 10, § 1, effective July 14, 2000.

Compiler's Notes.
Part C of the Federal Individuals with Disabilities Education Act, referred to in the introductory language, is compiled as 20 USCS § 1431 et seq.

Legislative Research Commission Notes.
(7/15/96). This statute was amended by 1996 Ky. Acts ch. 318, secs. 92 and 95, which are in conflict. Section 95 prevails as the last section in order of position. See Home Folks Mobile Homes, Inc. v. Revenue Cabinet, 700 SW2d 75 (Ky. Ct. App. 1985).

200.674. Restriction of use of early intervention funds — Maintenance of July 1, 1993 funding level.

The use of early intervention funds provided under KRS 200.650 to 200.676 shall not be used to supplant existing funds from other sources. All local and state programs for infants and toddlers with disabilities and their families shall maintain the funding which supported programs for infant and toddler and their families at levels as of July 1, 1993.

History.
Enact. Acts 1994, ch. 313, § 13, effective July 15, 1994.

200.676. Construction of KRS 200.650 to 200.676.

Nothing in KRS 200.650 to 200.676 shall be construed to permit the following:

(1) The reduction of local, state, or federal medical or other assistance available for infants and toddlers with disabilities and their families;

(2) The alteration of eligibility under Title V of the Federal Social Security Act relating to maternal and child health;

(3) The alteration of eligibility under Title XIX of the Federal Social Security Act relating to Medicaid for infants and toddlers with disabilities; or

(4) The reduction of early intervention services provided by any state department or agency.

History.
Enact. Acts 1994, ch. 313, § 14, effective July 15, 1994.

Compiler's Notes.
Title V of the federal Social Security Act, referred to in subsection (2), is compiled as 42 USCS § 701 et seq. Title XIX of the federal Social Security Act, referred to in subsection (3), is compiled as 42 USCS § 1396 et seq.

EARLY CHILDHOOD SERVICES

200.700. Early Childhood Advisory Council — Membership — Meetings.

(1) The Early Childhood Advisory Council is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to perform its functions including but not limited to employing other persons, consultants, attorneys, and agents. The council shall be attached to the Education and Labor Cabinet for administrative purposes and shall establish necessary advisory councils. The secretary of the Education and Labor Cabinet or the secretary's designee shall be the appointing authority for the council pursuant to KRS Chapter 18A. The council shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.

(2) The council shall be headed by an executive director appointed by the Governor pursuant to KRS 12.040. The executive director shall report to the secretary of the Education and Labor Cabinet or the secretary's designee.

(3) The council shall consist of the following twenty-six (26) members:

(a) The state director of Head Start Collaboration;

(b) The secretary of the Education and Labor Cabinet or designee;

(c) The secretary of the Cabinet for Health and Family Services or designee;

(d) One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;

(e) One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;

(f) Six (6) private sector members knowledgeable about the health, mental health, education, and development of prenatal to school entry children who shall be appointed by the Governor. One (1) private sector member shall be appointed from each congressional district;

(g) Seven (7) citizens at large of the Commonwealth who shall be appointed by the Governor;

(h) One (1) early childhood development advocate who shall be appointed by the Governor;

(i) One (1) member representing higher education with expertise in early childhood who shall be appointed by the Governor; and

(j) Six (6) members appointed by the Governor, including one (1) member from a Head Start program located in the state, one (1) member from a local education agency, one (1) member from the state agency responsible for education, one (1) member from the state agency responsible for child care, one (1) member from the state agency responsible for Part C of the Individuals with Disabilities Education Act (IDEA), and one (1) member from the state agency for health and mental health.

(4)(a) The initial terms of the private sector and citizen-at-large members of the council shall be for:

1. One (1) year for five (5) of the initial terms;
2. Two (2) years for five (5) of the initial terms;
3. Three (3) years for six (6) of the initial terms; and
4. Four (4) years for five (5) of the initial appointments.

(b) All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment. The private and citizen-at-large members shall serve no more than two (2) full successive

terms. A term shall expire on June 30 in the appropriate year.

(c) Members shall serve until a successor has been appointed. If a vacancy on the council occurs, the Governor shall appoint a replacement for the remainder of the unexpired term except for the members appointed by the Speaker of the House and President of the Senate.

(d) The members and nonmember appointees of the council shall comply with the gift and conflict of interest statutes in KRS Chapter 11A. Any conflict of interest issue shall be submitted to the Executive Branch Ethics Commission for resolution.

(e) The Governor shall appoint the chair of the council from the private sector or citizen-at-large membership.

(f) The chair may appoint nonmembers of the council to committees or workgroups.

(5) Private sector and citizen-at-large members and nonmembers appointed to a committee or workgroup shall serve without compensation but shall be reimbursed for reasonable and necessary expenses in accordance with state travel expenses and reimbursement administrative regulations.

(6) In making appointments to the council, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the council of broad constituencies of Kentucky's early childhood development community.

(7) The council shall meet at least quarterly and at other times upon call of the chair or a majority of the council.

(8) Members of the council shall serve on a voluntary basis and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

History.

Enact. Acts 2000, ch. 308, § 1, effective July 14, 2000; 2005, ch. 99, § 49, effective June 20, 2005; 2006, ch. 211, § 119, effective July 12, 2006; 2009, ch. 11, § 61, effective June 25, 2009; 2013, ch. 57, § 6, effective June 25, 2013; 2021 ch. 99, § 3, effective June 29, 2021; 2022 ch. 236, § 99, effective July 1, 2022.

Compiler's Notes.

Section 29 of Acts 2000, ch. 308, effective July 14, 2000, read: "As used in subsection (1) of Section 1 of this Act [this section], 'early childhood development fund' means the fund with that name created in House Bill 583 of this 2000 Regular Session from a distribution of moneys in the tobacco settlement agreement fund established by KRS 248.654, or created in other legislation of this 2000 Regular Session."

Section 30 of Acts 2000, ch. 308, effective July 14, 2000, read: "This Act may be cited as the Early Childhood Development Act."

200.703. Duties of Early Childhood Advisory Council — Implementation of programs — Plan for identification of early childhood development funding priorities — Disbanding or suspension of councils — Expiration of authority, councils, and initiatives — Requests for proposals.

(1) The Early Childhood Advisory Council is responsible for the following:

(a) Promoting the vision for Kentucky's early childhood system;

(b) Advocating for improved quality of early childhood services;

(c) Promoting the definition of school readiness and the expanded and appropriate use of the early childhood standards;

(d) Strengthening state, regional, and local level coordination and collaboration among the various sectors and settings of early childhood programs in the state;

(e) Identifying opportunities and strategies to reduce barriers to coordination and collaboration among existing private, federal, and state-funded early childhood programs;

(f) Developing and implementing recommendations for:

1. Increasing overall participation of children in existing federal, state, and local child care and early education programs, including outreach to underrepresented and special populations;

2. Establishing or improving core elements of the state early childhood system;

3. Enhancing the professional development system and career ladder for early childhood educators and caregivers; and

4. Promoting high-quality state early learning standards and undertaking efforts to ensure the development and use of high-quality comprehensive early learning standards, as appropriate;

(g) Assessing the capacity and effectiveness of institutes of higher education in the state toward supporting the development of early childhood educators;

(h) Facilitating the development or enhancement of high-quality systems of early childhood care and education designed to improve school readiness through one (1) or more of the following activities:

1. Promoting school preparedness of children from birth through school entry;

2. Supporting professional development, recruitment, and retention initiatives for early childhood educators and caregivers;

3. Enhancing existing early childhood education and development programs and services;

4. Carrying out other activities consistent with the state's plan and application; and

5. Establishing priorities for programs and the expenditure of funds that include but are not limited to the following:

a. Implementation of public health initiatives identified by the General Assembly, including those listed in KRS 211.690 and 199.8945;

b. Provision of preconception and prenatal vitamins, with priority for folic acid for the prevention of neural tube defects;

c. Voluntary immunization for children not covered by public or private health insurance;

d. Expanding availability of high-quality, affordable early child-care and education options; and

e. Increasing public awareness of the importance of the early childhood years for the well-being of all of Kentucky's citizens;

(i) Requesting reports and issuing progress updates on state and federally funded services that impact the quality of Kentucky's early childhood system;

(j) Receiving, requesting, and utilizing, consistent with this section, federal, state, and private funds, including from philanthropic sources;

(k) Involving the corporate community, county judge/executives, and mayors in supporting issues of importance to working families with young children in the Commonwealth;

(*l*) Collecting and disseminating information about the various ways business and local government can become involved in supporting early childhood; and

(m) Other duties and responsibilities as designated by the Governor.

(2) The council shall develop a state plan on a biennial basis that identifies early childhood development funding priorities. Every two (2) years the council shall review its priorities and make necessary adjustments to its state plan. The state plan shall incorporate priorities included in the final report and recommendations of the Governor's Task Force on Early Childhood Development and Education, November 2010, and recommendations identified by the community early childhood councils. The council shall file a report on the state plan with the Governor and the Legislative Research Commission by July 15 of odd-numbered years.

(3) Programs funded by the council shall be implemented by the appropriate agencies within the Cabinet for Health and Family Services, the Education and Labor Cabinet, the Finance and Administration Cabinet, or other appropriate administrative agency.

(4) The council shall assure that a public hearing is held on the expenditure of funds. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing.

(5) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to:

(a) Coordinate and improve early childhood development services, outcomes, and policies;

(b) Establish procedures that relate to its governance;

(c) Designate service areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve;

(d) Establish procedures that relate to the monitoring of grants, services, and activities of the community early childhood councils and their governance;

(e) Establish procedures for accountability and measurement of the success of programs that receive funds from the council; and

(f) Establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. These standards shall include requirements relating to:

1. The financial management of funds paid to grantees;

2. The maintenance of records; and

3. An independent audit of the use of grant funds.

(6) The council may disband or suspend a community early childhood council, and may remove one (1) or more members for nonperformance or malfeasance. The council may also recover funds that have been determined by the council to have been misappropriated or misspent in relation to a grant award.

(7) An appeal to the council may be made by a community early childhood council as to a decision made by the council on the disbanding or suspension of a community early childhood council, service provider, or grantee on a determination that funds have been misappropriated or misspent and are subject to recovery. The appeal shall be conducted in accordance with KRS Chapter 13B.

(8) The council, community early childhood councils established by the council, and initiatives funded by the council with expenditures from the early childhood development fund shall expire when:

(a) Funds are no longer designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states or related federal legislation; or

(b) Funds are no longer designated to the early childhood development fund from gifts, grants, or federal funds to fund the council, the community early childhood councils established by the council, or any programs that had been funded by the council with expenditures from the early childhood development fund.

(9) The council shall develop a request for proposal process by which local early childhood councils may request any funding appropriated to the council for use by the councils.

History.

Enact. Acts 2000, ch. 308, § 2, effective July 14, 2000; 2005, ch. 127, § 7, effective March 18, 2005; 2005, ch. 99, § 50, effective June 20, 2005; 2006, ch. 211, § 120, effective July 12, 2006; 2009, ch. 11, § 62, effective June 25, 2009; 2013, ch. 57, § 7, effective June 25, 2013; 2022 ch. 236, § 100, effective July 1, 2022.

Legislative Research Commission Notes.

(6/20/2005) 2005 Ky. Acts ch. 127, which included an amend-

ment to this section, KRS 200.703, provides that the Act shall be cited as the "Read to Achieve Act of 2005."

200.705. Duties of Department of Education to early childhood entities.

The Department of Education shall provide staffing and administrative support to:

(1) The Early Childhood Advisory Council;

(2) The Early Childhood Professional Development Council; and

(3) The Kentucky Early Intervention System Interagency Coordinating Council.

History.

Enact. Acts 2000, ch. 308, § 3, effective July 14, 2000; 2006, ch. 211, § 121, effective July 12, 2006.

Legislative Research Commission Notes.

(6/25/2013). In codification, a reference to the Early Childhood Business Council has been removed from the list in this statute of agencies the Department of Education must provide staffing and administrative support to because the statute creating the Early Childhood Business Council (KRS 200.709) was repealed in 2013 Ky. Acts ch. 57, sec. 10. The Reviser of Statutes has corrected this manifest clerical or typographical error under the authority of KRS 7.136(1)(h).

(6/25/2013). A reference to the "Early Childhood Development Authority" in this statute has been changed in codification to the "Early Childhood Advisory Council" to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Order 2012-586 and confirmed by the General Assembly in 2013 Ky. Acts ch. 57.

200.707. Community early childhood councils.

(1) The Early Childhood Advisory Council may recognize and fund a community early childhood council. A council shall be composed of no fewer than seven (7) and no more than twenty-seven (27) members. Each council shall be composed of at least one (1) member representing local agencies or organizations from profit, nonprofit, or family child care, Head Start or Early Head Start, and each school district in its designated service area. Other members may be appointed who represent local agencies and organizations, including, but not limited to, the organizations or agencies listed:

(a) Early childhood advocate;

(b) Faith community;

(c) Family resource center;

(d) Military establishment;

(e) Child-care resource and referral agency or child-care subsidy agent;

(f) Child-care consumer or parent;

(g) County cooperative extension service;

(h) Department for public health;

(i) University, college, or technical school;

(j) United Way;

(k) Kentucky Early Intervention System;

(*l*) Agency administering services to children with disabilities;

(m) Home visitation agency;

(n) Family literacy agency;

(o) Civic organization;

(p) Public library;

(q) Regional training center;

(r) Community action agency;

(s) Government;

(t) Business community;

(u) Home schooling association;

(v) Health care professional;

(w) Foster care parent; or

(x) Adoptive parent.

(2) Members shall serve on a community early childhood council on a voluntary basis and receive no compensation or expense reimbursement for their service.

(3)(a) Members shall serve for a term of two (2) years and until their successors are appointed, except that for those members initially appointed, the terms shall be as follows:

1. One-third (⅓) of the members shall be appointed for three (3) years;

2. One-third (⅓) shall be appointed for two (2) years; and

3. One-third (⅓) shall be appointed for one (1) year.

(b) Vacancies shall be appointed for unexpired terms in the same manner as original appointments.

(4) A community early childhood council shall collaborate with the District Early Intervention Committee, the Preschool Interagency Planning Council, and other existing interagency groups in the service area.

(5) A community early childhood council may apply for a competitive grant from the Early Childhood Advisory Council, consistent with a state plan for grant participation as established by the Early Childhood Advisory Council. Grant proposals shall:

(a) Include a needs assessment and budget proposal for the respective service area served by a community early childhood council;

(b) Not include administrative costs that exceed five percent (5%); and

(c) Contain a signed statement from each member of the community early childhood council certifying that no program, agency, or individual that may receive part of an award would constitute a conflict of interest under KRS Chapter 11A for the council member. Issues concerning conflicts of interest shall be submitted to the Executive Branch Ethics Commission for resolution.

(6) A community early childhood council shall submit an annual report to the Early Childhood Advisory Council that details the activities and services of the community early childhood council, including the progress that the community early childhood council has made toward addressing the early childhood development and school readiness goals for its designated service area and recommendations that may be included in the state plan.

(7) Any records that are in the custody of a community early childhood council, a designated service provider, or a grantee that contain personal and identifying information relating to a family or children receiving services through the council shall be confidential and not subject to public disclosure, except as otherwise authorized by law.

History.

Enact. Acts 2000, ch. 308, § 4, effective July 14, 2000; 2013, ch. 57, § 8, effective June 25, 2013.

CHAPTER 207

AID TO THE NEEDY BLIND — EQUAL OPPORTUNITIES

Equal Opportunities Act.

Section
207.135. Protections available to persons with HIV — Employment discrimination prohibited.

EQUAL OPPORTUNITIES ACT

207.135. Protections available to persons with HIV — Employment discrimination prohibited.

(1) Any person with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to individuals with disabilities under KRS 207.130 to 207.240 and Section 504, Public Law No. 93-112, the Rehabilitation Act of 1973.

(2)(a) No person may require an individual to take a human immunodeficiency virus related test as a condition of hiring, promotion, or continued employment, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and

2. There exists no means of reasonable accommodation short of requiring the test.

(3)(a) A person shall not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance shall not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the liklihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) No person shall fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional who treats or provides patient care to persons infected with human immunodeficiency virus.

History.
Enact. Acts 1990, ch. 443, § 49, effective July 13, 1990; 1994, ch. 405, § 63, effective July 15, 1994.

Compiler's Notes.
Section 504 of P.L. 93-112, The Rehabilitation Act of 1973, referred to in subsection (1), is compiled as 29 USCS § 794.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.
Braden, Aids: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992).

Treatises
Larson, Employment Screening, Ch. 11, § 11.18 (Matthew Bender).

TITLE XVIII

PUBLIC HEALTH

Chapter
211. State Health Programs.
212. Local Health Programs.
213. Vital Statistics.
214. Diseases.
216. Health Facilities and Services.
217. Foods, Drugs, and Poisons.
218B. Medicinal Cannabis.
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224. Environmental Protection.

CHAPTER 211

STATE HEALTH PROGRAMS

Cabinet for Health and Family Services.

Section
211.287. Funding by Department for Public Health of position relating to student health services.

CABINET FOR HEALTH AND FAMILY SERVICES

211.287. Funding by Department for Public Health of position relating to student health services.

(1) The Department for Public Health shall provide fifty percent (50%) of the costs for the position created in KRS 156.501(2). The Department for Public Health may enter into a contractual arrangement, such as a

Memorandum of Agreement, with the Department of Education to share the costs.

(2) The Department for Public Health shall provide access, information, assistance, and support to the education school nurse consultant necessary to assist and support the Department of Education to fulfill the duties specified in KRS 156.501.

(3) It is the intent of the General Assembly that there be no duplication of services or duties between the Department of Education and the Department for Public Health relating to school health services and that the position created in KRS 156.501(2) serve as a technical advisor and liaison among state agencies, local school districts, and local health departments.

History.

Enact. Acts 2002, ch. 294, § 3, effective July 15, 2002.

CHAPTER 212
LOCAL HEALTH PROGRAMS

General Provisions.

Section
212.210. Powers and duties of the Cabinet for Health and Family Services and local health boards.

Penalties.

212.990. Penalties.

GENERAL PROVISIONS

212.210. Powers and duties of the Cabinet for Health and Family Services and local health boards.

(1) The Cabinet for Health and Family Services and the local boards of health may examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants in any county in this state, or in any vessel within any harbor or port in any county in this state. Whenever any such nuisance, source of filth, or cause of sickness is found to exist on any private property, or in any vessel within any port or harbor in any county in this state, or upon any watercourse in this state, the Cabinet for Health and Family Services or the local board of health may order, in writing, the owner or occupant thereof, at his own expense, to remove the same within twenty-four (24) hours, or within such reasonable time thereafter as the board may order.

(2) If drinking water used by school children is found to be dangerous to their health, the local board of health or Cabinet for Health and Family Services may order that a supply of pure water be furnished at the expense of the county or city board of education.

(3) If in the opinion of the local board of health or Cabinet for Health and Family Services a school building is constructed in violation of law and is found to be unsanitary or unsafe for the housing of children, the local board of health or Cabinet for Health and Family Services may institute an action in the Circuit Court of the county where the building is situated, and the court, after due hearing and verifying the facts, may order a safe and sanitary school building to be erected within a reasonable time by the county or city board of education in accordance with the laws of the state governing the erection of schoolhouses and the control of disease, and the rules and regulations of the Cabinet for Health and Family Services.

(4) Any local board of health shall, for the purpose of controlling and eradicating rats and other unsanitary nuisances, require the owner or possessor of any building designed for human habitation and containing two (2) or more apartment units, to provide, where a specific area has been designated for the depositing of refuse on the premises, waste receptacles approved by the board. The board may further require that the design, construction, and maintenance of the area in which the waste receptacles are kept meet reasonable standards set by the board.

History.

2054a-14, 2057: amend. Acts 1970, ch. 281, § 1; 1974, ch. 74, Art. VI, § 107(3); 1998, ch. 426, § 353, effective July 15, 1998; 2005, ch. 99, § 402, effective June 20, 2005.

NOTES TO DECISIONS

Analysis

1. Impure Water.
2. Abatement of Nuisances.
3. Regulations.

1. Impure Water.

Although State Board of Health (now Cabinet for Health and Family Services), in abating nuisance, could stop the supply of impure water to a community, it could not direct water company to install particular plant; company could adopt any system which produced pure water. Purnell v. Maysville Water Co., 193 Ky. 85, 234 S.W. 967, 1921 Ky. LEXIS 189 (Ky. 1921).

State Board of Health (now Cabinet for Health and Family Services) could not order installation of filtration plant by water company where formerly impure water had been rendered pure by sedimentation basin and chlorination. Purnell v. Maysville Water Co., 193 Ky. 85, 234 S.W. 967, 1921 Ky. LEXIS 189 (Ky. 1921).

2. Abatement of Nuisances.

State Board of Health (now Cabinet for Health and Family Services) may abate any nuisance in state caused by filth which produces sickness; its power is broad but not unlimited and must be exercised with sound discretion and not capriciously. Purnell v. Maysville Water Co., 193 Ky. 85, 234 S.W. 967, 1921 Ky. LEXIS 189 (Ky. 1921).

County board of health may require persons responsible for unsanitary condition to abate the nuisance under its regulations. Jefferson County v. Jefferson County Fiscal Court, 269 Ky. 535, 108 S.W.2d 181, 1937 Ky. LEXIS 635 (Ky. 1937).

Requirement that fiscal court maintain health department does not include power to appropriate funds to abate nuisances specifically directed to be discontinued by individuals responsible therefor. Jefferson County v. Jefferson County Fiscal Court, 269 Ky. 535, 108 S.W.2d 181, 1937 Ky. LEXIS 635 (Ky. 1937).

Since this section did not abrogate the common law concerning nuisances, it was proper to bring charge for offense of maintaining a common nuisance under the common law. Old Lewis Hunter Distillery Co. v. Commonwealth, 273 Ky. 316, 116 S.W.2d 647, 1938 Ky. LEXIS 635 (Ky. 1938).

3. Regulations.

Legislature may create local boards of health and authorize them to make reasonable regulations for health of community. Board of Health v. Kollman, 156 Ky. 351, 160 S.W. 1052, 1913 Ky. LEXIS 424 (Ky. 1913).

Cited in:

Commonwealth v. Wiman, 308 Ky. 565, 215 S.W.2d 283, 1948 Ky. LEXIS 1004 (Ky. 1948); Sanitation Dist. v. Campbell, 249 S.W.2d 767, 1952 Ky. LEXIS 860 (Ky. 1952); Radcliff Homes, Inc. v. Jackson, 766 S.W.2d 63, 1989 Ky. App. LEXIS 19 (Ky. Ct. App. 1989).

OPINIONS OF ATTORNEY GENERAL.

Although a city-county board of health would be authorized to adopt a regulation requiring the cutting and removal of weeds if the board finds that an accumulation of weeds does in fact constitute a public health nuisance or a health menace, it is not authorized to have the work done and assess the cost against the owner as a property tax. OAG 63-981.

A local board of health does not have the power to order a water company, private or public, to discontinue water services to a customer who is responsible for a public health nuisance. OAG 63-1078.

When a local health board acts to abate a nuisance injurious to the public health, it must do so pursuant to the provisions of this section and of KRS 212.245(6) and 212.990(1). OAG 63-1078.

A local health department is not confined by any statute as to the frequency or bases for inspection of a school building and grounds or facilities. OAG 77-138, 1977 Ky. AG LEXIS 645.

Despite transfer of the Division of Water Patrol from the Natural Resources and Environmental Protection Cabinet to the Department of Fish and Wildlife, the Natural Resources and Environmental Protection Cabinet retains jurisdiction for enforcement of statutes relating to marine toilets found in KRS Chapter 235. OAG 95-19, 1995 Ky. AG LEXIS 17.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Foods and drugs, powers and duties of local health boards with respect to, KRS 217.380.

Hotel and restaurant inspection and regulation, duty of local health boards with respect to, KRS Chapter 219.

Mattresses, manufacture of regulated by local health boards, KRS 214.290.

Quarantine, actions to prevent introduction and spread of disease within state, KRS 214.020.

PENALTIES

212.990. Penalties.

(1) Any owner or occupant who fails to comply with an order made under the provisions of subsection (1) of KRS 212.210 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.

(2) Any person who violates KRS 212.715 or any rule or regulation adopted by any consolidated local government, city, county, or city-county board of health, except as otherwise provided by subsection (3) of this section for counties containing cities of the first class or consolidated local government, shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) for each day the violation continues.

(3) The violation of any health regulation promulgated by the city-county board of health or of any order made by the board under KRS 212.350 to 212.620, directing the abatement of a nuisance, source of filth, or cause or probable cause of sickness, is hereby declared to be a misdemeanor, and any person, firm, or corporation, or member of a firm or officer or director of a corporation, upon conviction thereof shall be fined not less than five dollars ($5) nor more than one hundred dollars ($100) for each such offense. If any offense is continued for more than one (1) day, each day upon which such offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed therefor.

(4) Any physician who fails to comply with the provisions of KRS 212.343, upon conviction thereof shall be fined not more than five hundred dollars ($500).

(5) Failure to procure the informed consent of those required to give their consent pursuant to KRS 212.345, prior to performing a nontherapeutic sterilization shall be punishable by imprisonment in the county jail not to exceed one (1) year or a fine not to exceed one thousand dollars ($1,000), or both.

(6) Any physician violating KRS 212.347 shall be imprisoned in the county jail not to exceed one (1) year or shall pay a fine not to exceed one thousand dollars ($1,000), or both.

History.

2055, 2057: amend. Acts 1942, ch. 41, § 21; 1958, ch. 96, § 9; 1974, ch. 352, § 6; 1984, ch. 111, § 179, effective July 13, 1984; 2002, ch. 346, § 210, effective July 15, 2002.

NOTES TO DECISIONS

Cited in:

Old Lewis Hunter Distillery Co. v. Commonwealth, 273 Ky. 316, 116 S.W.2d 647, 1938 Ky. LEXIS 635 (Ky. 1938); Henry v. Parrish, 307 Ky. 559, 211 S.W.2d 418, 1948 Ky. LEXIS 764 (Ky. 1948); Commonwealth v. Wiman, 308 Ky. 565, 215 S.W.2d 283, 1948 Ky. LEXIS 1004 (Ky. 1948).

OPINIONS OF ATTORNEY GENERAL.

A local board of health does not have the power to order a water company, private or public, to discontinue water services to a customer who is responsible for a public health nuisance. OAG 63-1078.

When a local health board acts to abate a nuisance injurious to the public health, it must do so pursuant to the provisions of KRS 212.210, 212.245(6), and subsection (1) of this section. OAG 63-1078.

CHAPTER 213
VITAL STATISTICS

Section
213.031. Duties of state registrar.

213.031. Duties of state registrar.

The state registrar, under the supervision of the commissioner of health, shall:

(1) Administer and enforce the provisions of this chapter and the administrative regulations issued hereunder; issue instructions for the efficient administration of the system of vital statistics; direct the system and Vital Statistics Branch and be custodian of its records; supervise the activities of all persons when they are engaged in the operation of the system; and conduct training programs to promote uniformity of the system's policy and procedures throughout the Commonwealth;

(2) With the approval of the cabinet, design, furnish, and distribute forms required by this chapter and the administrative regulations issued hereunder, or prescribe other means for transmission of data to accomplish the purpose of complete and accurate reporting and registration;

(3) Assist in preparing and publishing reports of vital statistics of the Commonwealth and other reports as required;

(4) Provide to local health departments copies of or data derived from certificates and reports required under this chapter. The state registrar shall establish a schedule with each local health department for transmittal of the copies or data. The copies shall remain the property of the Vital Statistics Branch, and the uses which may be made of them and the period of their retention in the county shall be governed by the state registrar;

(5) Prepare and maintain a complete continuous index of all vital records registered under this chapter and provide, at not more than two (2) year intervals, a copy of the index to each local registrar; and

(6) Investigate cases of irregularity or violation of this chapter and when the cabinet deems it necessary, report violations to the Commonwealth's attorney of the proper county for prosecution.

History.

Enact. Acts 1990, ch. 369, § 5, effective July 13, 1990; 1992, ch. 195, § 11, effective July 14, 1992; 2005, ch. 99, § 431, effective June 20, 2005; 2020 ch. 36, § 22, effective July 15, 2020.

OPINIONS OF ATTORNEY GENERAL.

Private or public institutions which own copies of the Register of Births and Deaths are under no legal obligation to return this property to the Cabinet for Human Resources (now Health and Family Services) but if the institution is in possession of copies of the Register under a loan agreement with the Cabinet, the Cabinet as the owner might request that they be promptly returned depending upon the specifications of the loan agreement. OAG 91-25, 1991 Ky. AG LEXIS 25.

The Department for Libraries and Archives does not have the power to retrieve the various copies of the Register of Births and Deaths from public libraries, for no statute gives such broad supervisory authority to the Department for Libraries and Archives over local public libraries. OAG 91-25, 1991 Ky. AG LEXIS 25.

The Department for Libraries and Archives does not have to comply with a request from the Cabinet for Human Resources (now Health and Family Services) that copies of the index books stored at the archives be removed from public inspection. The statutes provide little direction as to who becomes the legal custodian of records which are transferred to the Kentucky Department for Libraries and Archives, for under KRS 61.870 either the state archives or the official custodian of the agency might be legally deemed to be the custodian of the records, and since the copies of the Register are open to public inspection the Department for Libraries and Archives need not comply with the request of the Cabinet to restrict access to the records. OAG 91-25, 1991 Ky. AG LEXIS 25.

The microfilm copies of the Register of Births and Deaths now in the possession of the university libraries are private publications which they obtained from the Latter Day Saints, and the Cabinet for Human Resources (now Health and Family Services) has no legal authority to replevin these materials. OAG 91-25, 1991 Ky. AG LEXIS 25.

CHAPTER 214
DISEASES

General Provisions.

Section
214.032. Definition for KRS 158.035, 214.010, 214.020, and 214.032 to 214.036.
214.034. Immunization of children — Testing and treatment of children for tuberculosis — Requirement for reception and retention of current immunization certificate by schools and child-care facilities.
214.036. Exceptions to testing or immunization requirement.
214.185. Diagnosis and treatment of disease, addictions, or other conditions of minor — Provision of outpatient mental health counseling — Effective consent.

Blood Donation.

214.468. Donation of blood to nonprofit voluntary program by person age seventeen or older — Criteria for donation by person sixteen years of age.

Penalties.

214.990. Penalties.

GENERAL PROVISIONS

214.032. Definition for KRS 158.035, 214.010, 214.020, and 214.032 to 214.036.

As used in KRS 158.035, 214.010, 214.020, and 214.032 to 214.036 the term "child" means a person under eighteen (18) years of age.

History.

Enact. Acts 1962, ch. 95, § 1; 1968, ch. 87, § 1.

214.034. Immunization of children — Testing and treatment of children for tuberculosis — Requirement for reception and retention of current immunization certificate by schools and child-care facilities.

Except as otherwise provided in KRS 214.036:

(1) All parents, guardians, and other persons having care, custody, or control of any child shall have the child immunized against diphtheria, tetanus, poliomyelitis, pertussis, measles, rubella, mumps, hepatitis B, and haemophilis influenzae disease in accordance with testing and immunization schedules established by regulations of the Cabinet for Health and Family Services. Additional immunizations may

be required by the Cabinet for Health and Family Services through the promulgation of an administrative regulation pursuant to KRS Chapter 13A if recommended by the United States Public Health Service or the American Academy of Pediatrics. All parents, guardians, and other persons having care, custody, or control of any child shall also have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health and Family Services promulgated under KRS Chapter 13A. The persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for Health and Family Services.

(2) A local health department may, with the approval of the Department of Public Health, require all first-time enrollees in a public or private school within the health department's jurisdiction to be tested for tuberculosis prior to entering school. Following the first year of school, upon an epidemiological determination made by the state or local health officer in accordance with administrative regulations promulgated by the Cabinet for Health and Family Services, all parents, guardians, and other persons having care, custody, or control of any child shall have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health and Family Services. Nothing in this section shall be construed to require the testing for tuberculosis of any child whose parent or guardian is opposed to such testing, and who objects by a written sworn statement to the testing for tuberculosis of the child on religious grounds. However, in a suspected case of tuberculosis, a local health department may require testing of this child.

(3) All public or private primary or secondary schools, and preschool programs shall require a current immunization certificate for any child enrolled as a regular attendee, as provided by administrative regulation of the Cabinet for Health and Family Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.

(4) All public or private primary schools shall require a current immunization certificate for hepatitis B for any child enrolled as a regular attendee in the sixth grade, as provided by administrative regulation of the Cabinet for Health and Family Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.

(5) For each child cared for in a day-care center, certified family child-care home, or any other licensed facility which cares for children, a current immunization certificate, as provided by administrative regulation of the Cabinet for Health and Family Services, promulgated under KRS Chapter 13A, shall be on file in the center, home, or facility within thirty (30) days of entrance into the program or admission to the facility.

(6) Any forms relating to exemption from immunization requirements shall be available at public or private primary or secondary schools, preschool programs, day-care centers, certified family child-care homes, or other licensed facilities which care for children.

History.

Enact. Acts 1962, ch. 95, § 2; 1968, ch. 87, § 2; 1972, ch. 341, § 2; 1974, ch. 74, Art. VI, § 107(1), (3); 1976, ch. 14, § 1; 1976, ch. 128, § 4; 1982, ch. 271, § 1, effective July 15, 1982; 1996, ch. 306, § 1, effective July 15, 1996; 1998, ch. 302, § 1, effective July 15, 1998; 1998, ch. 426, § 395, effective July 15, 1998; 2000, ch. 349, § 1, effective July 14, 2000; 2005, ch. 99, § 448, effective June 20, 2005; 2008, ch. 124, § 1, effective July 15, 2008.

Legislative Research Commission Notes.

(7/15/98). A reference in this statute to the former Department of Health Services has been changed to the Department of Public Health under 1998 Ky. Acts ch. 426, sec. 629, and KRS 7.136(2).

NOTES TO DECISIONS

1. Constitutionality.

Since the primary effect of the state immunization program was to improve and protect the health and well-being of citizens, the exemption for members of a religious denomination, the teachings of which are opposed to medical immunization against disease, did not make this statute unconstitutional as being in violation of the establishment clause of the First Amendment. Kleid v. Board of Education, 406 F. Supp. 902, 1976 U.S. Dist. LEXIS 16997 (W.D. Ky. 1976).

OPINIONS OF ATTORNEY GENERAL.

A certificate stating that a child has been tested for tuberculosis is required for initial enrollment in any public or private elementary or secondary school system irrespective of age or grade of the child. OAG 76-255.

The county board of health is authorized to enforce the immunization requirements of this section and KRS 158.035 by entering an order under KRS 212.245 or by proceeding directly against the parent, guardian, or custodian of the child who fails to have him immunized by having a criminal complaint sworn out against the offending adult. OAG 78-24, 1978 Ky. AG LEXIS 717.

Although it is principally no longer required that a child be tested for tuberculosis as a condition to be met before enrolling in school, and the state board could so recognize this fact by appropriate regulation, the law clearly still requires under this section that all children are to be tested for tuberculosis. Even absent a required schedule for tuberculosis testing, children should be so tested before enrolling in school for the first time. OAG 82-131, 1982 Ky. AG LEXIS 517.

It is mandatory by law that children are to be tested for tuberculosis and, of course, treated if the child is found to be infected with tuberculosis. OAG 82-131, 1982 Ky. AG LEXIS 517.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Preschool education program for four (4) year old children, 704 KAR 3:410.

School health services, 702 KAR 1:160.

Kentucky Law Journal.

Hodge and Gostin, School Vaccination Requirements: Historical, Social, and Legal Perspectives, 90 Ky. L.J. 831 (2001-02).

Note: The Difficult Road to Compelling Vaccination for Sexually Transmitted Diseases-How Gardasil and Those to

Follow Will Change the Way that States Require Inoculation, 97 Ky. L.J. 697 (2008/2009).

214.036. Exceptions to testing or immunization requirement.

(1) Nothing contained in KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 shall be construed to require:

(a) The testing for tuberculosis or the immunization of any child at a time when, in the written opinion of his or her attending health care provider, such testing or immunization would be injurious to the child's health;

(b) The immunization of any child whose parents or guardian are opposed to medical immunization against disease, and who object by a written sworn statement to the immunization of such child based on religious grounds; or

(c) The immunization of any emancipated minor or adult who is opposed to medical immunization against disease, and who objects by a written sworn statement to the immunization based on religious grounds.

(2) In the event of an epidemic in a given area, the Cabinet for Health and Family Services may require the immunization of all persons within the area of epidemic, against the disease responsible for such epidemic, except that any administrative regulation promulgated pursuant to KRS Chapter 13A, administrative order issued by the cabinet or a local public health department, or executive order issued pursuant to KRS Chapter 39A requiring such immunization shall not include:

(a) The immunization of any child or adult for whom, in the written opinion of his or her attending health care provider, such testing or immunization would be injurious to his or her health;

(b) The immunization of any child whose parents or guardians are opposed to medical immunization against disease and who object by a written sworn statement to the immunization based on religious grounds or conscientiously held beliefs; or

(c) The immunization of any emancipated minor or adult who is opposed to medical immunization against disease, and who objects by a written sworn statement to the immunization based on religious grounds or conscientiously held beliefs.

(3) The cabinet shall:

(a) Develop and make available on its Web site a standardized form relating to exemptions in this section from the immunization requirements; and

(b) Accept a completed standardized form when submitted.

History.

Enact. Acts 1962, ch. 95, § 4; 1968, ch. 87, § 4; 1974, ch. 74, Art. VI, § 107(3); 1976, ch. 128, § 4; 1980, ch. 55, § 1, effective July 15, 1980; 1998, ch. 426, § 396, effective July 15, 1998; 2005, ch. 99, § 449, effective June 20, 2005; 2021 1st Ex. Sess. ch. 5, § 9, effective September 9, 2021.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Children's Best Interests.

1. Constitutionality.

Since the primary effect of the state immunization program was to improve and protect the health and well-being of citizens, this statute was not unconstitutional as being in violation of the establishment clause of the First Amendment. Kleid v. Board of Education, 406 F. Supp. 902, 1976 U.S. Dist. LEXIS 16997 (W.D. Ky. 1976).

2. Children's Best Interests.

Requiring children to be vaccinated despite the mother's religious objection was proper because the parents, as joint custodians, failed to agree on the issue and a hearing was conducted where it was found to be in the children's best interest to be vaccinated based on pediatric advice and CDC guidelines. Burch v. Lipscomb, 638 S.W.3d 460, 2021 Ky. App. LEXIS 130 (Ky. Ct. App. 2021).

Cited in:

Piatt v. Louisville & Jefferson County Board of Education, 556 F.2d 809, 1977 U.S. App. LEXIS 12994 (6th Cir. 1977).

OPINIONS OF ATTORNEY GENERAL.

A chiropractor is not a physician within the meaning of the statute authorizing physicians under certain circumstances by written opinion to exempt children from immunization otherwise required nor was his certification "the best interests of their health" sufficient to meet the statutory requirement that "such immunization would be injurious to the child's health." OAG 74-758.

Unless a child is excepted from immunization or testing for tuberculosis under this section, a child who does not comply with immunization and testing requirements cannot enroll in any public or private school system, and the child's failure to attend school will subject the parents or the custodians to the penalties set forth in KRS 159.990. OAG 76-256.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certificate of immunization required to enroll student in school, KRS 158.035.

School health services, 702 KAR 1:160.

Kentucky Law Journal.

Hodge and Gostin, School Vaccination Requirements: Historical, Social, and Legal Perspectives, 90 Ky. L.J. 831 (2001-02).

214.185. Diagnosis and treatment of disease, addictions, or other conditions of minor — Provision of outpatient mental health counseling — Effective consent.

(1) Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for venereal disease, pregnancy, or substance use disorder and may advise, prescribe for, and treat such minor regarding venereal disease, substance use disorder, contraception, pregnancy, or childbirth, all without the consent of or notification to the parent, parents, or guardian of such minor patient, or to any other person having custody of such minor patient. Treatment under this section does not include inducing of an abortion or performance of a sterilization operation. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered

such treatment, but such immunity shall not apply to any negligent acts or omissions.

(2) Any physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child.

(3) Any qualified mental health professional, as defined by KRS 202A.011, may provide outpatient mental health counseling to any child who is age sixteen (16) or older and is an unaccompanied youth, as defined by 42 U.S.C. sec. 11434a(6), upon request of such child without the consent of a parent, parents, or guardian of such child.

(4) Notwithstanding any other provision of the law, and without limiting cases in which consent may be otherwise obtained or is not required, any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental, or surgical care to his or her child or himself or herself and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such married or emancipated minor shall not be necessary in order to authorize such care. For the purpose of this section only, a subsequent judgment of annulment of marriage or judgment of divorce shall not deprive the minor of his or her adult status once obtained. The provider of care may look only to the minor or spouse for payment for services under this section unless other persons specifically agree to assume the cost.

(5) Medical, dental, and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.

(6) The consent of a minor who represents that he or she may give effective consent for the purpose of receiving medical, dental, or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.

(7) The consent of a minor who represents that he or she may give effective consent for the purpose of receiving outpatient mental health counseling from a qualified mental health professional, but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian if the person rendering the service relied in good faith upon the representations of the minor after a reasonable attempt to obtain parental consent or to verify the minor's age and status as an unaccompanied youth.

(8) The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient.

(9) Except as otherwise provided in this section, parents, the Cabinet for Health and Family Services, or any other custodian or guardian of a minor shall not be financially responsible for services rendered under this section unless they are essential for the preservation of the health of the minor.

History.

Enact. Acts 1970, ch. 104, § 1; 1972, ch. 163, paras. (1) to (6); 1974, ch. 74, Art. VI, § 107(1), (13); 1988, ch. 283, § 2, effective July 15, 1988; 1998, ch. 426, § 402, effective July 15, 1998; 2005, ch. 99, § 455, effective June 20, 2005; 2019 ch. 128, § 8, effective June 27, 2019; 2021 ch. 32, § 4, effective June 29, 2021.

NOTES TO DECISIONS

1. Consent to Abortion.

During that stage of pregnancy before viability of the fetus parental consent to a minor's abortion is not required since such a regulation would interfere with pregnant minor's right of privacy in abortion decision at a time when the state's interest in protecting the potentiality of human life is not compelling. Wolfe v. Schroering, 388 F. Supp. 631, 1974 U.S. Dist. LEXIS 5712 (W.D. Ky. 1974), aff'd in part and rev'd in part, 541 F.2d 523, 1976 U.S. App. LEXIS 7513 (6th Cir. Ky. 1976).

OPINIONS OF ATTORNEY GENERAL.

Under the 1972 amendment to this section by Chapter 163, paragraph (1), a health department would not be liable in the event that contraceptive services were refused to a minor who had requested them and the minor subsequently became pregnant as a result of the failure to provide such services, as the provisions of this section are permissive rather than mandatory. OAG 72-185.

Under the 1972 amendment to this section by Chapter 163, paragraph (1), a health department would not be liable for suit where contraceptive services were provided to a minor without the permission of or in spite of objections by the parent or legal guardian of the minor. OAG 72-490.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Comment, The Distribution of Contraceptives to Unemancipated Minors: Does a Parent have a Constitutional Right to be Notified? 69 Ky. L.J. 436 (1980-81).

Smith, Medical and Psychotherapy Privileges and Confidentiality: On Giving With One Hand and Removing With the Other, 75 Ky. L.J. 473 (1986-87).

Northern Kentucky Law Review.

Comments, The Constitutionality of Mandatory Parental Consent in the Abortion Decision of a Minor, Bellotti II in Perspective, 4 N. Ky. L. Rev. 323 (1977).

Treatises

Petrilli, Kentucky Family Law, Minors, § 30.20.

BLOOD DONATION

214.468. Donation of blood to nonprofit voluntary program by person age seventeen or older — Criteria for donation by person sixteen years of age.

(1) Any person seventeen (17) years of age or older may donate blood in a voluntary blood program, which is not operated for profit, without consent of the person's parent or legally authorized representative.

(2) Any person sixteen (16) years of age and weighing at least one hundred ten (110) pounds may donate blood in a voluntary blood program, which is not

operated for profit, with the written consent of the person's parent or legally authorized representative.

(3) The parent or legally authorized representative of a person who donates blood pursuant to subsection (1) or (2) of this section shall not be held financially responsible for any medical complications arising from the blood donation.

(4) Before soliciting blood donations from students in high schools, joint vocational schools, or technical schools, a blood program, in cooperation with school authorities, shall make reasonable efforts to notify the parents or legally authorized representatives of the students that the students will be requested to donate blood.

History.

Enact. Acts 1992, ch. 70, § 1, effective July 14, 1992; 1994, ch. 325, § 7, effective July 15, 1994; 2008, ch. 9, § 1, effective July 15, 2008.

PENALTIES

214.990. Penalties.

(1) Every head of a family who willfully fails or refuses and every physician who fails or refuses to comply with KRS 214.010 shall be guilty of a violation for each day he neglects or refuses to report. Repeated failure to report is sufficient cause for the revocation of a physician's certificate to practice medicine in this state.

(2) Any person who willfully violates any administrative regulation promulgated under KRS Chapter 13A by the Cabinet for Health and Family Services under KRS 214.020 shall be guilty of a Class B misdemeanor.

(3) Any physician or other person legally permitted to engage in attendance upon a pregnant woman during pregnancy or at delivery who fails to exercise due diligence in complying with KRS 214.160 and 214.170 shall be guilty of a violation.

(4) Any person who violates any of the provisions of KRS 214.280 to 214.310 shall be guilty of a Class A misdemeanor.

(5) Any person who violates any provision of KRS 214.034 or KRS 158.035 shall be guilty of a Class B misdemeanor.

(6) Any person who violates any provision of KRS 214.420 shall be guilty of a violation. Each violation shall constitute a separate offense.

(7) Any person who knowingly violates any provision of KRS 214.452 to 214.466 shall be guilty of a Class D felony. Each violation shall constitute a separate offense.

History.

2049, 2055a, 2056, 2062b-3, 2062b-8, 2062d-9, 2635c-12, 3909, 4615, G.S., ch. 102, Art. II, § 8: amend. Acts 1954, ch. 223, § 5; 1962, ch. 95, § 5; 1968, ch. 87, § 7; 1974, ch. 74, Art. VI, § 107(3); 1978, ch. 384, § 65, effective June 17, 1978; 1984, ch. 113, § 5, effective July 13, 1984; 1986, ch. 294, § 4, effective July 15, 1986; 1988, ch. 76, § 10, effective July 15, 1988; 1992, ch. 463, § 23, effective July 14, 1992; 1998, ch. 426, § 415, effective July 15, 1998; 2005, ch. 99, § 470, effective June 20, 2005; 2021 ch. 7, § 23, effective February 2, 2021.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Children entering school to present certificate of immunization, KRS 158.035.

Sentence of imprisonment for felony, KRS 532.060.

Sentence of imprisonment for misdemeanor, KRS 532.090.

Northern Kentucky Law Review.

Braden, Aids: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992).

CHAPTER 216

HEALTH FACILITIES AND SERVICES

Miscellaneous Health Care Provisions.

Section
216.2970. Auditory screening of infants at health facilities — Forwarding of reports.

MISCELLANEOUS HEALTH CARE PROVISIONS

216.2970. Auditory screening of infants at health facilities — Forwarding of reports.

(1) As a condition of licensure or relicensure, all health facilities offering obstetric or midwifery services shall provide an auditory screening for all infants using one (1) of the methods approved by the Office for Children with Special Health Care Needs by administrative regulation promulgated in accordance with KRS Chapter 13A.

(2) An auditory screening report that indicates a finding of potential hearing loss shall be forwarded by the health facility within twenty-four (24) hours of receipt to the:

(a) Attending physician or health care provider;

(b) Parents;

(c) Office for Children with Special Health Care Needs for evaluation or referral for further evaluation in accordance with KRS 211.647; and

(d) Audiological assessment and diagnostic center approved by the office if a follow-up assessment has been scheduled prior to the infant's discharge from the hospital.

(3) An auditory screening report that does not indicate a potential hearing loss shall be forwarded within one (1) week to the Office for Children with Special Health Care Needs with no information that personally identifies the child.

History.

Enact. Acts 2000, ch. 308, § 11, effective July 14, 2000; 2009, ch. 102, § 3, effective June 25, 2009; 2025 ch. 121, § 14, effective June 27, 2025.

Legislative Research Commission Notes.

(6/27/2025). 2025 Ky. Acts ch. 121, sec. 24, provides that the Act, which amended this statute, may be cited as the Mary Carol Akers Birth Centers Act.

(8/23/2019). In 2018 Ky. Acts ch. 114, sec. 1, the General Assembly renamed the "Commission for Children with Special Health Care Needs" as the "Office for Children with Special

Health Care Needs." A reference to that "commission" was changed to "Office" in subsection (2)(d) of this statute. This name correction should have been addressed when 2018 Ky. Acts ch. 114 was codified, but it wasn't. This change is being made now under the authority of KRS 7.136(2).

(7/14/2018). Under the authority of KRS 7.136(2), one or more references to the "Commission for Children with Special Health Care Needs" in this statute have been changed in codification to the "Office for Children with Special Health Care Needs" to reflect the renaming of the commission by the General Assembly in 2018 Ky. Acts ch. 114.

CHAPTER 217
FOODS, DRUGS, AND POISONS

Food, Drug and Cosmetic Act.

Section

217.125. Authority of secretary and cabinet to promulgate administrative regulations — Permits required for food establishment, service, processing, storage, and distribution operations — Fees.

FOOD, DRUG AND COSMETIC ACT

217.125. Authority of secretary and cabinet to promulgate administrative regulations — Permits required for food establishment, service, processing, storage, and distribution operations — Fees.

(1) The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is hereby vested in the secretary. The secretary may make the regulations promulgated under KRS 217.005 to 217.215 consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits. The authority to promulgate regulations pursuant to KRS 217.005 to 217.205 is restricted to the Cabinet for Health and Family Services.

(2) No person shall operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant without having obtained an annual permit to operate from the cabinet. An application for the permit to operate shall be made to the cabinet upon forms provided by it and shall be accompanied by the required fee as shall be provided by regulation. The secretary shall promulgate administrative regulations to establish a fee schedule not to exceed costs of the program to the cabinet. Fees collected by the cabinet shall be deposited in the State Treasury and credited to a revolving fund account for use by the cabinet in carrying out the provisions of KRS 217.025 to 217.390 and the regulations adopted by the secretary pursuant thereto. The balance of the account shall lapse to the general fund at the end of each biennium.

(3) No person shall operate a retail food establishment without having obtained a permit to operate from the cabinet. An application for a permit to operate any retail food establishment shall be made to the cabinet upon forms provided by it and shall contain the information the cabinet may reasonably require.

(4)(a) Except as otherwise provided in subsection (11) of this section, each application for a temporary food service establishment or for an annual permit to operate a retail food establishment shall be accompanied by the required fee. The secretary shall promulgate administrative regulations to establish a fee schedule not to exceed costs to the cabinet.

(b) The total fees for permitting and inspection:

1. Shall be the total of the operational and administrative costs of the programs to the cabinet and to agencies as defined in KRS 211.185;

2. Beginning on March 17, 2020, until December 31, 2020, shall not increase more than twenty-five percent (25%) of the fee amount on March 17, 2020; and

3. Beginning on or after January 1, 2021, shall not increase more than five percent (5%) for each year thereafter.

(5) Except as otherwise provided in subsection (11) of this section, each application for a farmers market temporary food service establishment shall be accompanied by the required fee of at least fifty dollars ($50). The secretary shall establish a fee schedule by promulgation of administrative regulation. Fees collected by the cabinet shall be used to carry out duties related to farmers market temporary food service establishments, including but not limited to inspections and the issuance of permits.

(6) An applicant for a permit to operate a farmers market temporary food service establishment must provide documentation of successful completion of a food safety training program offered by either the state, a local health department, or other entity approved by the cabinet to conduct food safety training. Each certification of food safety training shall expire after a period of twenty-four (24) months from the date of issuance. Permits issued shall be posted in a conspicuous place in the establishment, and a person who has completed the food safety training for farmers market temporary food service establishments shall be present at all times during the operation of the establishment.

(7) Upon expiration of a temporary food service establishment permit, any subsequent permits shall not be issued to the same operator to operate at the same location until a period of thirty (30) days has elapsed.

(8) Upon receipt of an application for a permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment accompanied by the required fee, the cabinet shall issue a permit if the establishment meets the requirements of KRS 217.005 to 217.215 and regulations adopted by the cabinet. Retail food establishments holding a valid and effective permit on January 1, 1973, even though not fully meeting the construction requirements of KRS 217.005 to 217.215 and the regulations adopted pursuant thereto, may continue to be eligible for permit renewal if in good repair and capable of being maintained in a safe and sanitary manner.

(9) Permits shall not be issued to operate a temporary food service establishment and a farmers market

temporary food service establishment simultaneously at the same location and by the same operator.

(10) In all instances of permit issuance for either a temporary food service establishment permit or a farmers market temporary food service establishment permit, any subsequent permits shall not be issued until a period of thirty (30) days has elapsed.

(11) Private, parochial, and public school cafeterias or lunchroom facilities through the twelfth grade, charitable food kitchens, and all facilities operated by the Cabinet for Health and Family Services or Department of Corrections shall be exempt from the payment of fees, but shall comply with all other provisions of KRS 217.005 to 217.215 and the state retail food establishment code. For this subsection, the term "charitable food kitchens" means a not-for-profit, benevolent food service establishment where more than one-half (1/2) of the employees are volunteers.

(12) Each annual permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment, unless previously suspended or revoked, shall expire on December 31 following its date of issuance, and be renewable annually upon application accompanied by the required fee, except as otherwise provided in subsection (11) of this section, and if the establishment is in compliance with KRS 217.005 to 217.215 and regulations of the cabinet.

(13) Each permit to operate a food processing establishment, food storage warehouse, salvage distributor, salvage processing plant, or a retail food establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

History.

Enact. Acts 1960, ch. 247, § 13, effective June 16, 1960; 1974, ch. 74, Art. VI, § 107 (22); 1978, ch. 292, § 7, effective June 17, 1978; 1982, ch. 247, § 11, effective July 15, 1982; 1990, ch. 458, § 2, effective July 13, 1990; 1992, ch. 211, § 79, effective July 14, 1992; 1998, ch. 7, § 2, effective February 19, 1998, retroactive to January 1, 1998; 1998, ch. 426, § 457, effective July 15, 1998; 2005, ch. 99, § 62, effective June 20, 2005; 2007, ch. 97, § 2, effective March 23, 2007; 2018 ch. 136, § 12, effective July 1, 2019; 2020 ch. 21, § 8, effective March 17, 2020.

Compiler's Notes.

The federal Fair Packaging and Labeling Act, referred to in subsection (1), is compiled as 15 USCS § 1451 et seq.

Section 3 of Acts 1998, ch. 7, reads: "This Act is retroactive to January 1, 1998."

NOTES TO DECISIONS

Cited in:

Dumon v. Commonwealth, 488 S.W.2d 343, 1972 Ky. LEXIS 40 (Ky. 1972), cert. denied, Dumon v. Kentucky, 412 U.S. 928, 93 S. Ct. 2752, 37 L. Ed. 2d 156, 1973 U.S. LEXIS 2199 (1973), cert. denied, Dumon v. Kentucky, 412 U.S. 928, 93 S. Ct. 2752, 37 L. Ed. 2d 156, 1973 U.S. LEXIS 2199 (1973).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Administrative regulations, KRS ch. 13A.

CHAPTER 218B
MEDICINAL CANNABIS

Section

218B.035. Criminal prosecution and disciplinary actions not precluded — Driving under the influence.
218B.045. Patient rights under state and local law — Visitation and parenting time — Medical care — Schools — Local board of education to establish policies.
218B.095. Requirements for licensed businesses — Prohibited activities — Recordkeeping — Transporting cannabis on behalf of business — Cultivation in enclosed, locked facility — Persons under age eighteen.
218B.135. Cabinet to maintain confidential list of cardholders — Exemptions from Open Records Act — Certain information not exempt — Penalty.

218B.035. Criminal prosecution and disciplinary actions not precluded — Driving under the influence.

(1) This chapter does not authorize any person to engage in, and shall not prevent the imposition of any civil, criminal, or other penalties, including but not limited to criminal prosecution or disciplinary action by the cabinet or an occupational or professional licensing board, for engaging in the following conduct:

(a) Operating, navigating, or being in actual physical control of any aircraft, vehicle, vessel, or any other device known, or hereafter invented, that is powered by machinery and that is or may be used to transport persons or property while under the influence of medicinal cannabis;

(b) Consuming medicinal cannabis while operating, navigating, or being in actual physical control of an aircraft, vehicle, vessel, or any other device known, or hereafter invented, that is powered by machinery and that is or may be used to transport persons or property;

(c) Possessing medicinal cannabis that is within the operator's arm's reach or requires less than a two (2) step process to access while operating, navigating, or being in actual physical control of an aircraft, vehicle, vessel, or any other device known, or hereafter invented, that is powered by machinery and that is or may be used to transport persons or property;

(d) Undertaking any task under the influence of medicinal cannabis, when doing so would constitute negligence or professional malpractice;

(e) Possessing medicinal cannabis, or otherwise engaging in the use of medicinal cannabis:

1. On the grounds of any preschool or primary or secondary school, except as permitted in accordance with policies enacted pursuant to KRS 218B.045(4);

2. In any correctional facility; or

3. On any property of the federal government;

(f) Using marijuana, if that person is not a registered qualified patient or visiting qualified patient;

(g) Using or consuming marijuana by smoking;

(h) Using or consuming marijuana by vaping while on any form of public transportation, in any public place as defined in KRS 525.010, or in any

place of public accommodation, resort, or amusement as defined in KRS 344.130; or

(i) Cultivating marijuana unless that person is licensed by the cabinet as a cannabis cultivator or cannabis producer pursuant to KRS 218B.080, 218B.085, and 218B.090 or is a cultivator or producer agent.

(2) The penalty for a violation of subsection (1)(a) or (b) of this section shall be the same as those established for operating a motor vehicle under the influence of alcohol or any other substance in KRS 189A.010.

(3)(a) An individual who violates subsection (1)(g) or (h) of this section shall not be considered to be in possession of medicinal cannabis or engaged in the use of medicinal cannabis and shall not benefit from the legal protections afforded by this chapter.

(b) The odor or smell of uncombusted raw plant material shall not constitute evidence of use or consumption of cannabis by smoking.

(c) If an individual uses or consumes marijuana by smoking or vaping while on any form of public transportation, in any public place as defined in KRS 525.010, or in any place of public accommodation, resort, or amusement as defined in KRS 344.130:

1. The cabinet may revoke the individual's registry identification card; and

2. The individual may be subject to prosecution under KRS 218A.1421 and 218A.1422.

(4) Nothing in this chapter supersedes statutory laws relating to driving while under the influence of intoxicants. This chapter shall not prevent the enforcement of current laws pertaining to driving while intoxicated, including KRS 183.061, 189.520, 189A.010, and 235.240.

(5) As used in this section:

(a) "Aircraft" has the same meaning as in KRS 183.011;

(b) "Vehicle" has the same meaning as in KRS 189.010; and

(c) "Vessel" has the same meaning as in KRS 235.010.

History.

2023 ch. 146, § 6, effective January 1, 2025; 2024 ch. 195, § 3, effective January 1, 2025.

218B.045. Patient rights under state and local law — Visitation and parenting time — Medical care — Schools — Local board of education to establish policies.

(1) A registered qualified patient or visiting qualified patient who uses medicinal cannabis shall be afforded all the same rights under state and local law, including those guaranteed under KRS Chapter 344, as the individual would have been afforded if he or she were solely prescribed pharmaceutical medications as they pertain to drug testing required by any state or local law.

(2) A cardholder otherwise entitled to custody of, or visitation time or parenting time with, a minor child shall not be denied that right, and there shall be no presumption of abuse, neglect, or dependency for conduct permitted under this chapter unless the person's actions in relation to medicinal cannabis created an unreasonable danger to the safety of the minor child as established by clear and convincing evidence.

(3)(a) For the purposes of medical care, including organ transplants, a patient's authorized use of medicinal cannabis is the equivalent of the authorized use of any other medication used at the direction of a practitioner.

(b) A health facility as defined in KRS 216B.015 may develop policies to allow a patient who is a registered qualified patient or visiting qualified patient to use medicinal cannabis on the premises of the health facility.

(4)(a) A school shall not refuse to enroll, or otherwise penalize, a person solely for his or her status as a cardholder, unless failing to do so would violate federal law or regulations and cause the school to lose a monetary or licensing-related benefit under federal law or regulations.

(b) A school shall not be penalized or denied any benefit under state law for enrolling a cardholder.

(c) Each local board of education, each board of directors of a public charter school, and the governing body of each certified nonpublic school shall, no later than December 1, 2024, establish policies related to the use of medicinal cannabis by a pupil who is a registered qualified patient on school property. Policies enacted pursuant to this paragraph shall either prohibit the use of medicinal cannabis on school property or permit the use of medicinal cannabis on school property by a pupil who is a registered qualified patient as deemed necessary by the pupil's parent or legal guardian. If a local board of education, the board of directors of a public charter school, or the governing body of a certified nonpublic school enacts a policy to permit the use of medicinal cannabis by a pupil who is a registered qualified patient, that policy shall:

1. Require medicinal cannabis be administered:

a.i. By a school nurse or under the supervision of appropriate school staff; or

ii. By the parent or legal guardian of the pupil who is a registered qualified patient; and

b. Out of view of other students; and

2. Include a process by which a school nurse or other school staff member may refuse to administer or supervise the administration of medicinal cannabis.

History.

2023 ch. 146, § 8, effective January 1, 2025; 2024 ch. 195, § 4, effective January 1, 2025.

218B.095. Requirements for licensed businesses — Prohibited activities — Recordkeeping — Transporting cannabis on behalf of business — Cultivation in enclosed, locked facility — Persons under age eighteen.

(1) A cannabis business licensed under this chapter shall:

(a) Comply with this chapter and any administrative regulations promulgated thereunder by the cabinet;

(b) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work. A cannabis business shall not employ, accept as a volunteer, or have as a board member, principal officer, or agent any person who:

1. Was convicted of a disqualifying felony offense; or

2. Is younger than twenty-one (21) years of age;

(c) Implement appropriate security measures to deter and prevent the theft of medicinal cannabis and unauthorized entrance into areas containing medicinal cannabis;

(d) Demonstrate sufficient capital such that it can establish its business and meet the needs for its type of cannabis business;

(e) Display its license on the premises at all times; and

(f) Only acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, or dispense medicinal cannabis:

1. For the purposes of distributing medicinal cannabis to cardholders who possess a valid registry identification card issued by the cabinet, or for visiting qualified patients, a valid out-of-state registry identification card and documentation of having been diagnosed with a qualifying medical condition; and

2. From a cannabis business licensed under this chapter.

(2) A cannabis business licensed under this chapter shall not:

(a) Be located within one thousand (1,000) feet of an existing elementary or secondary school or a daycare center;

(b) Acquire, possess, cultivate, process, manufacture, deliver, transfer, transport, supply, dispense, or sell:

1. Raw plant material with a delta-9 tetrahydrocannabinol content of more than thirty-five percent (35%);

2. Medicinal cannabis products intended for oral consumption as an edible, oil, or tincture with more than ten (10) milligrams of delta-9 tetrahydrocannabinol per serving;

3. Any medicinal cannabis product not described in subparagraph 1. or 2. of this paragraph with a delta-9 tetrahydrocannabinol content of more than seventy percent (70%); or

4. Any medicinal cannabis product that contains vitamin E acetate;

(c) Permit a person under eighteen (18) years of age to enter or remain on the premises of a cannabis business;

(d) Permit a person who is not a cardholder to enter or remain on the premises of a cannabis business, except in accordance with subsection (6) of this section;

(e) Employ, have as a board member, or be owned by, in part or in whole, a medicinal cannabis practitioner; or

(f) Advertise medicinal cannabis sales in print, broadcast, online, by paid in-person solicitation of customers, or by any other advertising device as defined in KRS 177.830, except that this paragraph shall not prevent appropriate signs on the property of a licensed cannabis business, listings in business directories including phone books, listings in trade or medical publications, or sponsorship of health or not-for-profit charity or advocacy events.

(3) The operating documents of a cannabis business shall include procedures for its oversight and procedures to ensure accurate recordkeeping and inventory control.

(4) When transporting medicinal cannabis on behalf of a cannabis business that is permitted to transport it, a cannabis business agent shall have:

(a) A copy of the cannabis business license for the business that employs the agent;

(b) Documentation that specifies the amount of medicinal cannabis being transported and the date on which it is being transported; and

(c) The cannabis business license number and telephone number of any other cannabis business receiving or otherwise involved in the transportation of the medicinal cannabis.

(5) The cultivation of medicinal cannabis for cannabis businesses licensed in this state shall only be done by cultivators and producers licensed under this chapter and shall only take place in an enclosed, locked facility which can only be accessed by cultivator agents working on behalf of the cultivator or producer at the physical address or global positioning system coordinates provided to the cabinet during the license application process.

(6) A person who is at least eighteen (18) years of age but not a cardholder may be allowed to enter and remain on the premises of a cannabis business if:

(a) The person is present at the cannabis business to perform contract work, including but not limited to electrical, plumbing, or security maintenance, that does not involve handling medicinal cannabis; or

(b) The person is a government employee and is at the cannabis business in the course of his or her official duties.

History.

2023 ch. 146, § 18, effective July 1, 2024.

Legislative Research Commission Notes.

(4/17/2024). The effective date of the creation of this statute in 2023 Ky. Acts ch. 146, sec. 18, was changed from January 1, 2025, to July 1, 2024, in 2024 Ky. Acts ch. 195, sec. 24.

218B.135. Cabinet to maintain confidential list of cardholders — Exemptions from Open Records Act — Certain information not exempt — Penalty.

(1) The cabinet shall maintain a confidential list of the persons to whom the cabinet has issued registry identification cards and their addresses, telephone numbers, and registry identification numbers.

(2) The cabinet shall, only at a cardholder's request, confirm his or her status as a registered qualified patient, visiting qualified patient, or designated caregiver to a third party, such as a landlord, employer, school, medical professional, or court.

(3) The following information received and records kept pursuant to the cabinet's administrative regulations promulgated for purposes of administering this chapter shall be confidential and exempt from the Open Records Act, KRS 61.870 to 61.884, and shall not be subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the cabinet to perform official duties pursuant to this chapter:

(a) Applications and renewals, their contents, and supporting information submitted by qualified patients, visiting qualified patients, and designated caregivers in compliance with KRS 218B.055, including information regarding their designated caregivers and medicinal cannabis practitioners;

(b) The individual names and other information identifying persons to whom the cabinet has issued registry identification cards;

(c) Any dispensing information required to be kept under KRS 218B.110 or the cabinet's administrative regulations which shall only identify cardholders by their registry identification numbers and shall not contain names or other personal identifying information; and

(d) Any cabinet hard drives or other data-recording media that are no longer in use and that contain cardholder information. These hard drives and other media shall be destroyed after a reasonable time or after the data is otherwise stored.

Data subject to this section shall not be combined or linked in any manner with any other list or database maintained by the cabinet and shall not be used for any purpose not provided for in this chapter.

(4) Nothing in this section shall preclude the following:

(a) Notification by the cabinet's employees to state or local law enforcement about falsified or fraudulent information submitted to the cabinet or of other apparently criminal violations of this chapter if the employee who suspects that falsified or fraudulent information has been submitted has conferred with his or her supervisor and both agree that circumstances exist that warrant reporting;

(b) Notification by the cabinet's employees to a state licensing board if the cabinet has reasonable suspicion to believe a medicinal cannabis practitioner did not have a bona fide practitioner-patient relationship with a patient for whom he or she signed a written certification, if the cabinet has reasonable suspicion to believe the medicinal cannabis practitioner violated the standard of care, or for other suspected violations of this chapter by a medicinal cannabis practitioner;

(c) Notification by dispensary agents to the cabinet of a suspected violation or attempted violation of this chapter or the administrative regulations promulgated thereunder;

(d) Verification by the cabinet of registry identification cards issued pursuant to KRS 218B.055, 218B.060, and 218B.065; and

(e) The submission of the report required by KRS 218B.020 to the General Assembly.

(5) It shall be a misdemeanor punishable by up to one hundred eighty (180) days in jail for any person, including an employee or official of the cabinet or another state agency or local government, to knowingly breach the confidentiality of information obtained pursuant to this chapter.

History.
2023 ch. 146, § 26, effective June 29, 2023.

CHAPTER 223

SANITARIANS, WATER PLANT OPERATORS, AND WATER WELL CONSTRUCTION PRACTICES

Water Plant Operators.

Section
223.160. Operators of water treatment plant to have certificate of competency — Limited certificate of competency.

WATER PLANT OPERATORS

223.160. Operators of water treatment plant to have certificate of competency — Limited certificate of competency.

(1) It is the intent of KRS 223.160 to 223.220, 223.991, and 224.10-024 that every operator in responsible charge of a water treatment plant or water distribution system be required to hold a valid and effective certificate of competency issued by the Energy and Environment Cabinet in a class equal to or higher than the class of the particular treatment plant or distribution system where he is currently employed in order to protect the public health. Operators other than those in responsible charge of such facilities shall also be eligible to apply for certification.

(2) An operator of a water treatment facility for a school and for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility provided he has demonstrated that he has the knowledge and experience required to operate properly the particular water treatment facility for which he is responsible. A limited certificate of competency so issued is not transferable to any other water treatment facility, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (1) of this section.

History.
Enact. Acts 1966, ch. 156, § 1; 1972 (1st Ex. Sess.), ch. 3, § 37; 1974, ch. 74, Art. VI, § 107(1), (11); 1976, ch. 299, § 44; 1984, ch. 387, § 2, effective July 13, 1984; 2010, ch. 24, § 336, effective July 15, 2010; 2024 ch. 206, § 2, effective July 15, 2024.

CHAPTER 224

ENVIRONMENTAL PROTECTION

Subchapter 20. Air Quality.

Asbestos Control.

224.20-300. Purpose.

224.20-310. Fee.

Subchapter 99. Penalties.

Section
224.99-010. Penalties.

SUBCHAPTER 20.
AIR QUALITY
ASBESTOS CONTROL

224.20-300. Purpose.

For the purpose of adopting the Asbestos Hazard Emergency Response Act, called AHERA, Public Law (99-519), as amended, the cabinet may develop, adopt, and maintain a comprehensive statewide asbestos assessment and response program and an accreditation program that shall replicate the federal environmental protection agency model plan issued April 30, 1987 and the provisions of Title 40 of the Code of Federal Regulations, Part 763, Subpart E. The programs shall include but not be limited to:

(1) Identifying and controlling asbestos hazards in public and private schools, grades K-12;

(2) Providing for accreditation of asbestos inspectors, management planners, abatement project designers, abatement contractors, supervisors, and abatement workers;

(3) Reviewing training courses to determine if they are approvable under the criteria established in the April 30, 1987 model plan and any other criteria adopted by the cabinet; and

(4) Reviewing school asbestos management plans and inspecting school buildings for compliance with this section.

History.

Enact. Acts 1988, ch. 413, § 1, effective April 8, 1988; 1992, ch. 204, § 1, effective July 14, 1992; 2006, ch. 125, § 1, effective July 12, 2006.

Compiler's Notes.

This section was formerly compiled as KRS 224.550.

The Asbestos Hazard Emergency Response Act (P.L. 99-519), referred to in the introductory paragraph of this section, is compiled primarily as 15 USCS § 2641 et seq.

224.20-310. Fee.

The cabinet may charge a fee necessary to recover all costs incurred by the implementation and operation of the asbestos programs required under KRS 224.20-300.

History.

Enact. Acts 1988, ch. 413, § 2, effective April 8, 1988; 1992, ch. 204, § 2, effective July 14, 1992.

Compiler's Notes.

This section was formerly compiled as KRS 224.560.

SUBCHAPTER 99.
PENALTIES

224.99-010. Penalties.

(1) Any person who violates KRS 224.10-110(2) or (3), 224.70-110, 224.73-120, 224.20-050, 224.20-110, 224.46-580, 224.1-400, or who fails to perform any duties imposed by these sections, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

(2) Any person who violates KRS 224.10-110(4) or (5), or KRS 224.40-100, 224.40-305, or any provision of this chapter relating to noise, or who fails to perform any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of five thousand dollars ($5,000) for said violation and an additional civil penalty not to exceed five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

(3)(a) Any person who shall knowingly violate any of the provisions of this chapter relating to noise or any determination or order of the cabinet promulgated pursuant to those sections which have become final shall be guilty of a Class A misdemeanor. Each day upon which the violation occurs shall constitute a separate violation.

(b) For offenses by motor vehicles, a person shall be guilty of a violation.

(4) Any person who knowingly violates KRS 224.70-110, 224.73-120, 224.40-100, 224.20-110, 224.20-050, 224.40-305, or 224.10-110(2) or (3), or any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant to those sections which have become final, or who knowingly provides false information in any document filed or required to be maintained under this chapter, or who knowingly renders inaccurate any monitoring device or method, or who tampers with a water supply, water purification plant, or water distribution system so as to knowingly endanger human life, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000), or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

(5) If any person engages in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of the hazardous waste management provisions of this chapter or contrary to a permit, order, or rule issued or promulgated under this chapter, or fails to provide information or to meet reporting requirements required by terms and conditions of a permit or administrative regulations promulgated pursuant to this chapter, the secretary may issue an order requiring compliance within a specified time period or may commence a civil action in a court of appropriate jurisdiction. The violator shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars

($25,000) for each day during which the violation continues, and in addition, may be enjoined from any violations in a court of appropriate jurisdiction.

(6) Any person who knowingly is engaged in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of this chapter or contrary to a permit, order, or administrative regulation issued or promulgated under this chapter, or knowingly makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

(7) Nothing contained in subsections (4) or (5) of this section shall abridge the right of any person to recover actual compensatory damages resulting from any violation.

(8) Any person who violates any provision of this chapter to which no express penalty provision applies, except as provided in KRS 211.995, or who fails to perform any duties imposed by those sections, or who violates any determination or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of one thousand dollars ($1,000) for said violation and an additional civil penalty not to exceed one thousand dollars ($1,000) for each day during which the violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

(9) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil, criminal, and injunctive actions instituted by the cabinet or by the Attorney General on its behalf for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto, except for any actions arising from or related to KRS 278.710(3), (4), or (5) or subsection (16) of this section, which shall be brought in the Circuit Court in any county in which the merchant electric generating facility is located.

(10) Any person who deposits leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with permission of the owner of the receptacle, or who places litter into a receptacle in such a manner that the litter may be carried away or deposited by the elements upon any property or water not owned by him or her is guilty of a Class B misdemeanor. Penalties imposed under this subsection shall be, when collected, transferred to the county treasurer where the offense occurred and placed into a fund for solid waste cleanup. This subsection shall not be construed to divert any other fines assessed and collected by the cabinet or funds available to the cabinet for the purpose of remediation of open dumps.

(11) In addition to or in lieu of the penalties set forth in this section or in KRS Chapters 532 and 534, any person found guilty of a second or subsequent offense related to littering may be ordered by the court to pick up litter for not less than four (4) hours.

(12) Any person who violates KRS 224.20-300, 224.20-310, any other provision of this chapter, or any determination, permit, administrative regulation, or order of the cabinet relating to the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Public Law 99-519, as amended, shall be liable to the Commonwealth of Kentucky for a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation. Each day a violation continues shall, for purposes of this subsection, constitute a separate violation of provisions of this chapter relating to AHERA.

(13) A violation of KRS 224.50-413 shall be subject to a fifty dollar ($50) fine for each day the violation continues.

(14) Any person who removes a methamphetamine contamination notice posted under KRS 224.1-410(9) contrary to the administrative regulations governing methamphetamine contamination notice removal shall be guilty of a Class A misdemeanor.

(15) Any person who leases, rents, or sells a property that has been determined to be contaminated property under KRS 224.1-410(4) to a lessee, renter, or buyer without giving written notice that the property is a contaminated property pursuant to KRS 224.1-410(10) shall be guilty of a Class D felony.

(16) Any person who violates KRS 278.710(3), (4), or (5) may be subject to civil penalties not to exceed two thousand five hundred dollars ($2,500) per day. In determining the civil penalty to be imposed under this subsection, the cabinet shall consider all relevant circumstances including but not limited to the extent of harm or potential harm caused by the violation, the nature and duration of the violation, the number of past violations, and any corrective action taken by the merchant electric generating facility owner. If a merchant electric generating facility fails to pay any civil penalty for noncompliance under this subsection for a period of three hundred sixty-five (365) days after a final determination of the assessment of the civil penalty, or fails to post a bond or replacement bond in compliance with KRS 278.710(3), (4), or (5) within ninety (90) days of a final determination that the bond or replacement bond is required, the cabinet may order suspension of its operations until it is brought back into compliance and all civil penalties have been paid or the bond or replacement bond is posted. If after a final determination that the cabinet's order suspending operations of the facility is valid, and the merchant electric generating facility fails to bring the facility back into compliance by paying all outstanding civil penalties or posting the bond or replacement bond within ninety (90) days of that final determination, the cabinet may order the decommissioning of the facility to commence.

History.

Enact. Acts 1974, ch. 355, §§ 8, 10; 1978, ch. 113, § 12, effective June 17, 1978; 1978, ch. 119, § 14, effective June 17, 1978; 1978, ch. 257, § 3, effective June 17, 1978; 1980, ch. 264, § 12, effective July 15, 1980; 1982, ch. 22, § 2, effective July 15, 1982; 1982, ch. 74, § 19, effective July 15, 1982; 1982, ch. 145, § 2, effective July 15, 1982; 1984, ch. 369, § 1, effective July 13, 1984; 1986, ch. 331, § 39, effective July 15, 1986; 1988, ch. 413,

§ 3, effective April 8, 1988; 1990, ch. 84, § 3, effective July 13, 1990; 1990, ch. 434, § 1, effective July 13, 1990; 1992, ch. 204, § 3, effective July 14, 1992; 1992, ch. 463, § 25, effective July 14, 1992; 1994, ch. 162, § 2, effective July 15, 1994; 1994, ch. 403, § 2, effective July 15, 1994; 2008, ch. 161, § 2, effective July 15, 2008; 2021 ch. 137, § 4, effective June 29, 2021; 2023 ch. 140, § 8, effective June 29, 2023.

Compiler's Notes.

The Asbestos Hazard Emergency Response Act of 1986, referred to in subsection (12) of this section, is compiled primarily as 15 USCS § 2641 et seq.

This section was formerly compiled as KRS 224.994.

This section is set out above to reflect a correction to the section reference appearing in subsection (1) from 224.01-400 to 224.1-400, subsection (14) from 224.01-410(9) to 224.1-410(9), and subsection (15) from 224.01-410(4) to 224.1-410(4) and 224.01-410(10) to 224.1-410(10) due to renumbering by the state reviser effective in 2013.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. —Concurrent Jurisdiction.
3. Consent Decree.

1. Constitutionality.

2. —Concurrent Jurisdiction.

Concurrent criminal jurisdiction provided by subsection (9) of this section is violative of Ky. Const., § 11 in situations where there is no valid connection between the criminal activity and Franklin County; judgments asserting defendant's entitlement to venue in county where dumping violations of KRS 224.40-100(2) and 224.40-305 occurred were affirmed. Commonwealth v. Crider & Rogers, 929 S.W.2d 179, 1996 Ky. LEXIS 77 (Ky. 1996).

3. Consent Decree.

Metropolitan sewer district was not entitled to employ the dispute resolution provision of a consent decree arising from an action under 33 USCS § 1319 of the Clean Water Act and KRS 224.99-010 and 224.70-110, because the U.S. Environmental Protection Agency's request for information under 33 USCS § 1318 did not generate a dispute arising under or with respect to the consent decree. Kentucky v. Louisville & Jefferson County Metro. Sewer Dist., 542 F. Supp. 2d 668, 2008 U.S. Dist. LEXIS 11319 (W.D. Ky. 2008).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Designation of offenses; penalties, see KRS 532.020.

Northern Kentucky Law Review.

Elliot, Kentucky's Environmental Self-Audit Privilege: State Protection Or Increased Federal Scrutiny?, 23 N. Ky. L. Rev. 1 (1995).

TITLE XIX

PUBLIC SAFETY AND MORALS

Chapter
227. Fire Prevention and Protection — Electricians.
236. Boiler and Pressure Vessel Safety.
237. Firearms and Destructive Devices.
238. Charitable Gaming.

CHAPTER 227

FIRE PREVENTION AND PROTECTION — ELECTRICIANS

Fire Prevention and Protection.

Section
227.220. Duties of state fire marshal and chief state building official relating to fire loss.

Penalties.

227.990. Penalties.

FIRE PREVENTION AND PROTECTION

227.220. Duties of state fire marshal and chief state building official relating to fire loss.

(1) The state fire marshal shall enforce or aid in the enforcement of all laws, administrative regulations, and ordinances of the state and its political subdivisions relating to fire loss as defined in KRS 227.200:

(a) The prevention or reduction of loss by fire or by other hazard or risk insured by property or casualty insurance companies doing business in this state, except as to disability insurance and workers' compensation, and shall enforce any other regulations or methods adopted for the prevention of loss from such hazards or risks in order to promote the safety of persons or property;

(b) The manufacture, transportation, storage, sale, or use of combustibles, explosives, and hazardous materials or equipment;

(c) The design, construction, and maintenance of property which has a direct bearing on safety to life and property;

(d) The construction, installation, maintenance, or equipment of fire alarm systems, fire protection and extinguishing equipment, and fire escapes and other means of access to or exit from property; and

(e) Arson and related offenses.

(2) The chief state building official shall enforce and administer all applicable provisions of the Kentucky Building Code, including all the provisions designed for the prevention of fire loss, and shall have all the powers and duties awarded by KRS Chapter 198B and the Kentucky Building Code.

(3) The state fire marshal is authorized to:

(a) Investigate the cause, origin, and circumstances of fires and explosions for the purpose of detecting and suppressing arson and related offenses, or for the purpose of minimizing or preventing fire loss;

(b) Supervise and make periodic inspections of all property within the state, and assist cities having fire departments in making like periodic inspections

of all property in cities, except occupied private dwellings;

(c) Issue and enforce reasonable emergency orders and orders in accordance with KRS 227.330 for the prevention of fire loss, and for the adoption, approval, and installation of safety measures, remodeling, and equipment as will minimize fire loss;

(d) Provide technical and engineering advice and assistance to state and local governmental agencies in relation to fire prevention or fire protection;

(e) Direct and assist owners of educational institutions, places of public assembly, institutional buildings, public buildings, factories, business buildings, or other places where persons congregate, in the instruction of fire prevention, and the holding of fire drills;

(f) Conduct fire prevention and educational campaigns;

(g) Conduct examinations into the cause, origin, or circumstances of fire losses;

(h) Hold administrative hearings in accordance with the KRS Chapter 13B, as may be required by law or deemed by the state fire marshal necessary or desirable as to any matter within the scope of this chapter. All administrative hearings shall be public, unless the state fire marshal, or an authorized designee, determines that a private hearing would be in the public interest, in which case, and only with the consent of all parties to the hearing, the hearing shall be private;

(i) Direct research in the field of fire protection and accept gifts and grants for these purposes;

(j) Appoint deputy fire marshals to be fire investigators; and

(k) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.

(4) The state fire marshal shall head the Division of Fire Prevention in the department.

History.

Enact. Acts 1954, ch. 201, § 3; 1978, ch. 305, § 3, effective June 17, 1978; 1980, ch. 295, § 71, effective July 15, 1980; 1996, ch. 318, § 138, effective July 15, 1996; 2010, ch. 24, § 392, effective July 15, 2010; 2018 ch. 128, § 10, effective January 1, 2019.

Compiler's Notes.

For this section as effective until January 1, 2019, see the bound volume.

NOTES TO DECISIONS

Analysis

1. Hearsay.
2. Closing of Public Building.
3. Delegation of Power.

1. Hearsay.

The fact that the Legislature in this section recognizes the magnitude of arson problems and directs investigation and enforcement of laws concerning it does not enhance or broaden the hearsay rule exception that an expert witness may express a testimonial opinion that is based in part upon hearsay evidence. Therefore, it was not error for the trial court to prohibit state police officers from directly testifying and relating hearsay testimony in question, the effect of which would have been that they had statements from the persons who allegedly did the actual burning who told them that the person allegedly hired by the insureds to burn the building told the person who allegedly did the actual burning that the insured hired him to hire them to burn the premises and its contents for a certain sum of money and that they did so. American Hardware Mut. Ins. Co. v. Fryer, 692 S.W.2d 278, 1984 Ky. App. LEXIS 574 (Ky. Ct. App. 1984).

2. Closing of Public Building.

Law providing procedures for fire prevention and protection conferred no express authority to close a theater or public building. Foster v. Goodpaster, 290 Ky. 410, 161 S.W.2d 626, 1942 Ky. LEXIS 418 (Ky. 1942) (decided under prior law).

3. Delegation of Power.

The Legislature could not delegate to the director of insurance the power to enact under the guise of a standard of safety, a law prohibiting the operation of a movie theater in a building, the main floor of which was more than four feet above the adjoining grade level in view of the sweeping and confiscatory effect of such law and in absence of any standards or limitations fixed for its operation. Goodpaster v. Foster, 296 Ky. 614, 178 S.W.2d 29, 1944 Ky. LEXIS 597 (Ky. 1944) (decided under prior law).

Cited in:

United States v. Gargotto, 476 F.2d 1009, 1973 U.S. App. LEXIS 10330 (6th Cir. 1973).

OPINIONS OF ATTORNEY GENERAL.

Neither this section nor KRS 227.300 grants authority for the Fire Marshal to require retroactive application of any new standards of safety to existing structures. OAG 78-185, 1978 Ky. AG LEXIS 557.

The fact that deficiencies had been noted in the courthouse building by the Fire Marshal's office would not necessarily preclude the county from proceeding to remodel the courtroom of the courthouse, presuming, however, that the county adhered to the requirements of the administrative regulations adopted on behalf of the State Fire Marshal's office by submitting, to the State Fire Marshal's office for inspection and approval by that office, the plans and specifications involving the proposed remodeling project; even if the county complied with the requirements of the regulation and obtained a permit to remodel the courtroom, it would not be relieved of its obligation to correct all the other deficiencies in the courthouse discovered by the State Fire Marshal's office during the course of its authorized inspections. OAG 78-187, 1978 Ky. AG LEXIS 575.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Acts creating fire hazards in forests prohibited, KRS 149.370.

Blasting regulations, KRS 351.310 et seq.

Explosives, vehicles transporting to be marked, KRS 189.160.

Explosives, vehicles transporting to carry fire extinguishers, KRS 189.160.

Fire hazard seasons, KRS 149.400.

Insurance violations, enforcement, KRS 304.2-140.

Right-of-way of railroad company to be clear of combustible material, KRS 149.385.

Spark arresters, railroad engines to have, KRS 149.385.

Tax on amounts paid to stock and mutual other than life insurance companies to defray cost of enforcing laws for prevention of losses insured against, KRS 136.350, 136.360.

PENALTIES

227.990. Penalties.

(1) Except for manufactured homes manufactured under the federal act, any person who violates any provision of this chapter or any provision of a lawful order, rule, or regulation made under the provisions of this chapter, or who induces another to violate any provisions of this chapter or of any lawful order, rule, or regulation made thereunder, upon conviction thereof shall be fined not less than twenty-five dollars ($25) nor more than one thousand dollars ($1,000), or confined in the county jail for not more than sixty (60) days, or both. Each day such violations exist shall, in the discretion of the courts, be considered as a separate offense.

(2) Any person who, for manufactured homes manufactured under the federal act, violates any provision of the federal act or of KRS 227.550 to 227.660 or any regulation or final order issued thereunder shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each such violation. Each violation of a provision of KRS 227.550 to 227.660 or of the federal act or any regulation or order issued thereunder shall constitute a separate violation with respect to each manufactured home or mobile home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

(3) Any individual, or a director, officer, or agent of a corporation who knowingly and willfully violates the federal act or KRS 227.550 to 227.660 in a manner which threatens the health or safety of any purchaser shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one (1) year in the county jail, or both.

(4) Any person violating the provisions of KRS 227.702 to 227.750, the regulations issued thereunder, or any order issued thereunder, or who knowingly induces another, directly or indirectly, to violate the provisions of those sections, shall be fined not more than one thousand dollars ($1,000), or imprisoned in the county jail for not more than thirty (30) days, or both.

History.

Enact. Acts 1954, ch. 201, § 22; 1978, ch. 305, § 16, effective June 17, 1978; 1979 (Ex. Sess.), ch. 19, § 4, effective May 12, 1979; 1980, ch. 49, § 19, effective July 15, 1980; 1980, ch. 200, § 10, effective July 15, 1980; 1982, ch. 436, § 10, effective July 15, 1982; 1996, ch. 340, § 13, effective July 15, 1996.

Compiler's Notes.

A former section KRS 227.990 (762b-24, 1376L-2) was repealed by Acts 1954, ch. 201, § 23.

NOTES TO DECISIONS

1. Closing Buildings.

Although the director could, after hearing, order remedied or removed, defects and hazards violating the standards of safety and could inaugurate prosecutions and invoke the penalties prescribed in this section, he had no express authority to order buildings closed. Foster v. Goodpaster, 290 Ky. 410, 161 S.W.2d 626, 1942 Ky. LEXIS 418 (Ky. 1942) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

Although the concept of sovereign immunity would generally preclude an action from being brought against the State, a city or a county for violations of the State Fire Marshal's regulations relating to the minimum requirements for facilities for physically handicapped persons in public buildings, a mandamus action could be maintained against the governmental entity and those officers responsible for the operation and maintenance of the buildings to compel them to conform to the requirements of the regulations. OAG 77-58, 1977 Ky. AG LEXIS 750.

CHAPTER 236

BOILER AND PRESSURE VESSEL SAFETY

Section

236.005. Title.
236.010. Definitions for chapter.
236.020. Board of Boiler and Pressure Vessel Rules. [Repealed].
236.030. Administrative regulations.
236.040. Conformity required of boilers, pressure vessels, and connecting piping — Inspections.
236.050. Maximum working pressure allowed — Construction of chapter.
236.060. Application of chapter and KRS 236.005 to 236.150.
236.070. Boiler inspectors.
236.080. Special boiler inspectors — State salary prohibited — Duties — Report.
236.090. Examination.
236.095. Owner-user inspectors — Issuance of commission — Requirements — Reports — State salary prohibited.
236.097. Owner facility license — Owner's piping inspector license — Independent inspection agency license — Application of licensing requirements.
236.100. Suspension or revocation of appointment or commission — Notice and hearing — Reinstatement — Penalty for falsification of application or inspection report.
236.110. Inspection of boilers and pressure vessels required — Certificate of inspection — Periods of inspection — Penalty for falsifying certificate of inspection.
236.120. Certificate of inspection — Fee — Term — Posting — Termination — Suspension — Reissuance.
236.130. Inspection fees — Administrative regulations — Fund.
236.140. Inspector's bond. [Repealed.]
236.150. Appeal to commissioner — Judicial review.
236.210. License required for installing, erecting, or repairing boilers or pressure vessels — Issuance — Renewal — Exception.
236.220. Procedure for suspension or revocation of license.
236.230. Reissue of lost or destroyed license.
236.240. Permit required for installation, erection, or repair — Fees.
236.250. Exceptions to permit requirements — Payment of permit to repair fees — Emergency repairs.
236.260. Access to premises.
236.990. Penalties.

236.005. Title.

This chapter shall be known and may be cited as the Boiler and Pressure Vessel Safety Act, and, except as

otherwise provided herein, shall apply to all boilers and pressure vessels.

History.
Enact. Acts 1962, ch. 89, § 1; 1980, ch. 207, § 1, effective July 15, 1980.

Compiler's Notes.
The functions, powers and duties of the Commission on Fire Protection Personnel Standards and Education and the Department of Public Safety regarding boiler safety in this chapter have been transferred and vested in the department of Housing, Buildings, and Construction.

236.010. Definitions for chapter.

As used in this chapter:

(1) "Boiler" or "boilers" means and includes a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use externally to itself, by the direct application of energy from the combustion of fuels, or from electricity, solar or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves:

(a) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch gauge;

(b) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty (160) pounds per square inch gauge or temperatures exceeding two hundred fifty (250) degrees Fahrenheit;

(c) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding fifteen (15) pounds per square inch gauge or a hot water boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch gauge or temperatures not exceeding two hundred fifty (250) degrees Fahrenheit; and

(d) "Portable boiler" means a boiler which is primarily intended for a temporary location, construction and usage of which allows the boiler to be readily removed from one (1) location to another;

(2) "Pressure vessel" means a vessel in which the pressure is obtained from an external source or by the application of heat other than those vessels defined in subsection (1) of this section;

(3) "Commissioner" means the commissioner of Department of Housing, Buildings and Construction;

(4) "Department" means the Department of Housing, Buildings and Construction;

(5) "ASME" means American Society of Mechanical Engineers;

(6) "Committee" means the Housing, Buildings and Construction Advisory Committee created by KRS 198B.032;

(7) "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to determine whether or not a certificate, as provided by subsection (1) of KRS 236.120, may be issued;

(8) "Administrative regulation" means an administrative regulation adopted by the department and filed and approved in accordance with KRS Chapter 13A that is designed to ensure the safety of boilers and pressure vessels that affects or may affect property rights of a designated class of owners, or designed for the prevention of loss or damage to property, loss of life, or personal injury from boiler or pressure vessel explosion or from certain indicated hazards related thereto;

(9) "Order" or "emergency order" means an order of the department, chief boiler inspector, or boiler inspector issued in accordance with this chapter for the prevention of:

(a) Loss or damage to property;

(b) Loss of life from boiler or pressure vessel malfunction or explosion; or

(c) Personal injury from boiler or pressure vessel malfunction or explosion;

(10) "Division" means the Division of Plumbing in the department;

(11) "Qualified welder" means a welder or welding machine operator who has successfully passed the tests required by the appropriate ASME boiler, pressure vessel, or piping code;

(12) "Person" or "firm" means any individual, firm, partnership, or corporation;

(13) "Chief boiler inspector" means the person employed by the department who shall serve as the boiler section supervisor within the Division of Plumbing;

(14) "Boiler inspector" means a duly authorized employee of the department who is charged with the responsibility of inspecting boilers and pressure vessels and with the enforcement of the state boiler laws;

(15) "Special boiler inspector" means any person employed by an insurance company authorized to insure boilers and pressure vessels in the Commonwealth and who holds a commission as provided in KRS 236.080. This term shall apply to both in-service inspectors and authorized inspectors of repairs, alterations, and shop work;

(16) "Domestic water" means potable water delivered by a piping system for personal use or consumption;

(17) "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Division of Water or the administrative regulations of the department;

(18) "Cryogenic service" means a fluid held under pressure and having a boiling point below one hundred degrees below zero (-100) Fahrenheit at one (1) atmospheric pressure, which upon release results in auto-refrigeration or cooling effect;

(19) "Oil refinery" means a facility used primarily for the refinement of petroleum products;

(20) "Qualified welding procedure" means a welding procedure that has passed tests required by the applicable ASME boiler, pressure vessel, or piping code;

(21) "Boiler external piping" means boiler piping as defined by ASME;

(22) "Non-boiler external piping" means boiler piping and boiler proper connections as defined in ASME Section I and applicable figures, and shall conform to either ASME B31.1 or ASME B31.3, including steam, boiler feedwater, blowdown, vents and drains, and chemical injection piping outside the boiler boundary;

(23) "MAWP" means the maximum allowable working pressure for a boiler, pressure vessel, or piping system;

(24) "Owner facility" means any facility licensed pursuant to KRS 236.097(1);

(25) "Owner's piping inspector" means any person licensed pursuant to KRS 236.097(2);

(26) "Independent inspection agency" means a person or company licensed under KRS 236.097(3) who is retained by an owner facility to conduct inspections under KRS 236.097(1); and

(27) "Owner-user facility" means any facility that operates pressure vessels and is accredited as an owner-user inspection organization by the national board.

History.

Enact. Acts 1962, ch. 89, § 1; 1974, ch. 209, § 1; 1978, ch. 117, § 31, effective July 1, 1978; 1980, ch. 207, § 2, effective July 15, 1980; 2010, ch. 24, § 514, effective July 15, 2010; 2012, ch. 14, § 1, effective July 12, 2012; 2017 ch. 169, § 90, effective June 29, 2017.

236.020. Board of Boiler and Pressure Vessel Rules. [Repealed]

History.

Enact. Acts 1962, ch. 89, § 2; 1970, ch. 246, § 1; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 32, effective July 1, 1978; 1980, ch. 207, § 3, effective July 15, 1980; 1990, ch. 284, § 2, effective July 13, 1990; 2010, ch. 24, § 515, effective July 15, 2010; 2012, ch. 14, § 2, effective July 12, 2012; repealed by 2017 ch. 169, § 114, effective June 29, 2017.

Compiler's Notes.

This section (Enact. Acts 1962, ch. 89, § 2; 1970, ch. 246, § 1; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 32, effective July 1, 1978; 1980, ch. 207, § 3, effective July 15, 1980; 1990, ch. 284, § 2, effective July 13, 1990; 2010, ch. 24, § 515, effective July 15, 2010; 2012, ch. 14, § 2, effective July 12, 2012) was repealed by Acts 2017, ch. 169, § 114, effective June 29, 2017.

236.030. Administrative regulations.

(1) After reasonable notice and opportunity to be heard in accordance with KRS Chapter 13A, the commissioner, upon advisement and subject to comment by the committee under the requirements of KRS 198B.030(8) shall, by administrative regulation, fix reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping in this state. Administrative regulations shall be enforced by the Department of Housing, Buildings and Construction, Division of Plumbing.

(2) The department may adopt any other administrative regulation necessary to administer this chapter if the regulation has been subject to review and comment by the committee under the requirements of KRS 198B.030(8).

History.

Enact. Acts 1962, ch. 89, § 3; 1970, ch. 246, § 2; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 33, effective July 1, 1978; 1980, ch. 207, § 4, effective July 15, 1980; 2006, ch. 256, § 8, effective July 12, 2006; 2010, ch. 24, § 516, effective July 15, 2010; 2011, ch. 100, § 19, effective June 8, 2011; 2012, ch. 14, § 3, effective July 12, 2012; 2017 ch. 169, § 91, effective June 29, 2017.

Legislative Research Commission Notes.

Technical corrections to this section have been made by the Reviser of Statutes under authority of KRS 7.136.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Regulations, requisites of filing, KRS 13A.220.

236.040. Conformity required of boilers, pressure vessels, and connecting piping — Inspections.

(1) No boiler or pressure vessel which fails to conform to the rules and regulations formulated by the commissioner governing new construction and installation shall be installed and operated in this state.

(2) Subject to exemptions established in this chapter, all new connecting piping subjected to pressure emanating from a power boiler, heating boiler, hot water supply boiler, or pressure vessel shall be considered part of the boiler or pressure vessel installation, subject to the same boiler or pressure vessel code requirements, and shall be designed in accordance with the rules of ASME piping codes B31.1, B31.3, B31.5, B31.9, or B31.12 or their subsequent revisions, and ASME boiler and pressure vessel code Sections I, III, IV, VIII (Division 1, 2, or 3), or X or subsequent revisions of each. Inspection of such piping shall be performed by an inspector qualified under KRS 236.070, 236.080, or 236.097.

(3) Pressure vessels for human occupancy shall comply with subsection (2) of this section and ASME requirements for pressure vessels for human occupancy. Inspection of such piping shall be performed by a boiler inspector qualified under KRS 236.070, 236.080, and 236.097.

History.

Enact. Acts 1962, ch. 89, § 4; 1970, ch. 246, § 3; 1980, ch. 207, § 5, effective July 15, 1980; 2010, ch. 24, § 517, effective July 15, 2010; 2012, ch. 14, § 4, effective July 12, 2012.

236.050. Maximum working pressure allowed — Construction of chapter.

(1) The maximum allowable working pressure of a boiler or pressure vessel carrying the ASME code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(2) The maximum allowable working pressure of a boiler or pressure vessel which does not carry the ASME code symbol shall be computed in accordance with the American Petroleum Institute 579/ASME FFS-1 (Fitness for Service) evaluation as adopted by the department and the regulations adopted in accordance with KRS 236.030.

(3) This chapter shall not be construed as in any way preventing the use or sale of a boiler referred to in this

section, provided it has been made to conform to the rules and regulations of the commissioner governing existing installations; and provided, further, it has not been found upon inspection to be in an unsafe condition.

History.

Enact. Acts 1962, ch. 89, § 5; 1980, ch. 207, § 6, effective July 15, 1980; 2010, ch. 24, § 518, effective July 15, 2010; 2012, ch. 14, § 5, effective July 12, 2012.

236.060. Application of chapter and KRS 236.005 to 236.150.

(1) This chapter applies to all boilers, pressure vessels, and related piping in the Commonwealth unless statutorily exempted.

(2) KRS 236.005 to 236.150 shall not apply to boilers or pressure vessels or related piping under federal control.

(3) KRS 236.005 to 236.150 shall not apply to the following:

(a) Portable boilers or pressure vessels located on land dedicated to agricultural use, as defined in KRS 100.111, and used solely for agricultural purposes;

(b) Boilers or pressure vessels located at any oil refineries;

(c) Steam or vapor boilers used for heating purposes carrying a pressure of not more than fifteen (15) pounds per square inch gauge, and which are located in private residences;

(d) Hot water heating boilers carrying a pressure of not more than thirty (30) pounds per square inch gauge or hot water heaters which are located in private residences;

(e) Any pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the Department of Housing, Buildings and Construction under KRS Chapter 234;

(f) Pressure vessels used for transportation of compressed gases if constructed and operated in compliance with specifications and regulations of another state or federal authority;

(g) Pressure vessels containing air located on vehicles operating under the regulations of another state or federal authority;

(h) Pressure vessels having an internal or external operating pressure of fifteen (15) PSI or less;

(i) Single wall pressure vessels having an inside diameter, width, height, or cross-section diagonal not exceeding six (6) inches;

(j) Any combination unit having an internal or external pressure in each chamber not exceeding fifteen (15) PSI and differential pressure on the common element not exceeding fifteen (15) PSI;

(k) Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or less, to be used for domestic supply purposes, for containing water under pressure, including those containing air, the compression of which serves only as a cushion;

(*l*) Pressure vessels not exceeding the design pressure at the top of the vessel and with no limitation in size, not exceeding the following:

1. Vessels having an internal or external pressure of fifteen (15) PSI (100 kilopascals); or

2. Combination units having an internal or external pressure in each chamber of fifteen (15) PSI (100 kilopascals) and differential pressure on the common elements not exceeding fifteen (15) PSI (100 kilopascals);

(m) Pressure vessels containing water heated by steam or other indirect means when none of the following are exceeded:

1. Heat input of two hundred thousand (200,000) BTU/Hr.;

2. Water temperature of two hundred ten (210) degrees Fahrenheit; or

3. Water storage capacity of one hundred twenty (120) gallons;

(n) Coil type hot water boilers without a steam space and where no steam is generated within the confines of the unit but where water flashes into steam when released to atmospheric pressure by the operation of a manually operated nozzle, unless one (1) of the following is exceeded:

1. Three quarter (¾) inch inside diameter tubing or pipe size with no drum or header attached;

2. Six (6) gallon water containing capacity; or

3. Three hundred fifty (350) degrees Fahrenheit water temperature;

(o) Water heaters, hot water supply boilers, or hot water storage tanks, which are directly fired with oil, gas, or electricity, when none of the following limitations are exceeded:

1. Heat input of two hundred thousand (200,000) BTU/Hr.;

2. A water temperature of two hundred ten (210) degrees Fahrenheit; or

3. A water containing capacity of one hundred twenty (120) gallons;

(p) Pressure vessels which may be classified as:

1. Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines, and hydraulic or pneumatic cylinders where the primary design considerations, stresses, or both are derived from the functional requirements of the device; or

2. Structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, that is, piping system;

(q) Pressure vessels ASME "UM" stamped and which do not exceed the following:

1. One and one-half (1-½) cubic feet in volume and six hundred (600) PSI MAWP;

2. Three (3) cubic feet in volume and three hundred fifty (350) PSI MAWP; or

3. Five (5) cubic feet in volume and two hundred fifty (250) PSI MAWP; or

(r) Compressed air receivers of one hundred twenty (120) gallons or less.

(4) This chapter shall apply only to piping associated with boilers and pressure vessels operating in the Commonwealth in the following applications and fluid services:

(a) All boiler external piping, conforming to ASME B31.1;

(b) Non-boiler external piping, including steam, boiler feedwater, blowdown, vents, drains, and

chemical injection outside the boiler boundary conforming to ASME B31.1 or B31.3;

(c) All building services piping conforming to ASME B31.9;

(d) All compressed air piping emanating from a pressure vessel conforming to ASME B31.1, B31.3, or B31.9;

(e) All hot oil piping conforming to ASME B31.1 or B31.3; and

(f) All anhydrous ammonia piping conforming to ASME B31.3 or B31.5.

(5) Piping associated with boilers and pressure vessels exempted in subsection (2) of this section shall conform to the appropriate ASME piping code. The owner of the piping shall assume all oversight and responsibilities as established in the appropriate ASME piping code.

History.

Enact. Acts 1962, ch. 89, § 6; 1970, ch. 246, § 4; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 34, effective July 1, 1978; 1980, ch. 207, § 7, effective July 15, 1980; 1990, ch. 284, § 1, effective July 13, 1990; 1994, ch. 89, § 1, effective July 15, 1994; 2000, ch. 415, § 1, effective July 14, 2000; 2003, ch. 77, § 1, effective June 24, 2003; 2010, ch. 24, § 519, effective July 15, 2010; 2012, ch. 14, § 6, effective July 12, 2012; 2018 ch. 59, § 1, effective July 14, 2018.

OPINIONS OF ATTORNEY GENERAL.

While the legislature exempted boilers under federal control from meeting the standards prescribed in the Boiler Safety Act, federal agencies can voluntarily comply with the act and request an inspection by state officials, provided the inspection fees are paid. OAG 67-558.

236.070. Boiler inspectors.

The department shall employ boiler inspectors who have at the time of appointment not less than five (5) years of practical experience in the construction, maintenance, repair, or operation of high pressure boilers and pressure vessels as a mechanical engineer, practical steam operating engineer, boilermaker, pressure vessel inspector or boiler inspector, and who shall have passed the examination required by KRS 236.090.

History.

Enact. Acts 1962, ch. 89, § 7; 1980, ch. 207, § 8, effective July 15, 1980; 2010, ch. 24, § 520, effective July 15, 2010; 2012, ch. 14, § 7, effective July 12, 2012; 2017 ch. 169, § 92, effective June 29, 2017.

236.080. Special boiler inspectors — State salary prohibited — Duties — Report.

(1) In addition to the boiler inspectors authorized by KRS 236.070, the department shall, upon the request of any company authorized to insure against loss from explosion of boilers and pressure vessels in this state, issue to any boiler inspectors of said company commissions as special boiler inspectors, provided that each such special boiler inspector before receiving such commission, shall satisfactorily pass the examination provided for in KRS 236.090, or, in lieu of such examination, shall hold a commission or certificate of competency as an inspector of boilers and pressure vessels for a state that has a standard of examination substantially equal to that of this Commonwealth or a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors.

(2) Such special boiler inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of an insurance company duly authorized as aforesaid and upon his or her maintenance of the standards imposed by this chapter.

(3) Such special boiler inspectors shall inspect all boilers and pressure vessels insured by their respective companies, and, when so inspected and reported as required, the owners and users of such insured boilers and pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in KRS 236.120 and 236.130.

(4) Each company employing such special boiler inspectors shall within thirty (30) days following each certificate inspection made by such inspectors, file a report of such inspection with the division upon appropriate forms prescribed by the division. Other than the certificate inspection report, no reporting of other inspections shall be required except when such inspections disclose that the boiler or pressure vessel is in a dangerous condition.

History.

Enact. Acts 1962, ch. 89, § 8; 1980, ch. 207, § 9, effective July 15, 1980; 2010, ch. 24, § 521, effective July 15, 2010; 2012, ch. 14, § 8, effective July 12, 2012.

236.090. Examination.

Examination for a certificate of competency or a national board commission for boiler inspectors or special boiler inspectors shall be in writing and shall be given and monitored by the boiler inspection section of the division. Examinations are given on the first Wednesday and Thursday of the months of March, June, September and December of each year. The record of an applicant's examination shall be accessible to said applicant and his employer.

History.

Enact. Acts 1962, ch. 89, § 9; 1980, ch. 207, § 10, effective July 15, 1980; 2010, ch. 24, § 522, effective July 15, 2010.

236.095. Owner-user inspectors — Issuance of commission — Requirements — Reports — State salary prohibited.

(1) In addition to boiler inspectors authorized by KRS 236.070, the department shall issue an owner-user inspector commission to any inspector commissioned by a company operating a pressure vessel within the Commonwealth if:

(a) The company has an established and regular inspection program;

(b) The company is listed as an accredited Owner-User Inspection Organization in compliance with the National Board of Boiler and Pressure Vessel Inspectors Accreditation of Owner-User Inspection Organizations;

(c) The inspection program, personnel, equipment, and supervision meet the requirements established by the department; and

(d)1. The owner-user inspector applicant has successfully passed the examination required by KRS 236.090; or

2. The owner-user inspector applicant holds a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors.

(2) A commission as an owner-user inspector shall be issued only if, in addition to meeting the requirements of this section, the inspector is continuously employed by the company for the purpose of making inspections of pressure vessels used or to be used by the company, not of pressure vessels to be resold.

(3) A licensed owner-user inspector may not inspect boilers within the Commonwealth.

(4) A licensed owner-user inspector may inspect only pressure vessels insured by the inspector's employing company. When the vessels are inspected and reported as required, the owners and users of insured pressure vessels shall be exempt from payment to the state of inspection fees as provided in KRS 236.130.

(5) Each company employing a licensed owner-user inspector shall, within thirty (30) days following each certificate of inspection, file a report of inspection with the department. Reports shall be submitted upon forms prescribed by the department.

(6) No reporting of inspections other than the certificate of inspection reports shall be required unless an inspection reveals that the pressure vessel is in a dangerous condition.

(7) A licensed owner-user inspector shall receive no salary from, nor shall any expenses be paid by, the Commonwealth.

(8) Continuance of an owner-user inspector's commission shall be conditioned upon the inspector continuing employment for an owner-user company meeting requirements of subsection (1) of this section.

History.

Enact. Acts 2012, ch. 14, § 9, effective July 12, 2012; 2017 ch. 169, § 93, effective June 29, 2017.

236.097. Owner facility license — Owner's piping inspector license — Independent inspection agency license — Application of licensing requirements.

(1) An owner facility subject to piping inspection by the department under this chapter may apply for a license from the department to allow the facility to conduct its own site piping inspections, other than for boiler external piping, in lieu of an inspection by the department.

(a) No piping inspections shall be conducted under an owner facility license unless the owner's piping inspector is licensed pursuant to subsection (2) of this section, or the contracted independent inspection agency is licensed pursuant to subsection (3) of this section. The department shall be notified of the owner facility's retention of the owner's piping inspector or independent inspection agency.

(b)1. The department shall develop and make available on the department's Web site an application for a license described in this subsection.

2. The application shall require the owner facility to:

a. List all owner's piping inspectors retained by the facility;

b. List all independent inspection agencies retained by the facility; and

c. Provide evidence that the facility has employees who hold, or retains a contractor who holds, a license issued under KRS 236.210 for the facility and the facility has general liability insurance through a company permitted to transact insurance in Kentucky.

3. The list of owner's piping inspectors and independent inspection agencies shall be updated and provided to the department within thirty (30) days of a change.

(c) The department shall issue or deny a license under this subsection within forty-five (45) days of receiving a complete application.

(d) With the application, the applicant shall submit a fee of one thousand dollars ($1,000). If the application is denied by the department, the department shall refund five hundred dollars ($500) of the application fee to the applicant.

(e) An owner facility license shall be issued for a period of two (2) years.

(f) To renew a license the applicant shall submit a completed renewal application no later than sixty (60) days prior to license expiration with a nonrefundable renewal fee of five hundred dollars ($500).

(g) Prior to renewal, the department shall conduct an audit of piping at owner-licensed facilities. The audit shall verify that the piping conforms to standards prescribed by the ASME adopted by the department. An owner facility license shall continue in effect until approved or denied by the department so long as a renewal application is submitted as required by paragraph (f) of this subsection.

(h) Each licensed owner facility shall maintain records of all piping inspections, including identification of the owner's piping inspector or independent inspection agency, for a period of five (5) years following the inspection. Records of inspections shall be made available to the department upon request.

(2) An owner's piping inspector shall be licensed by the department prior to conducting piping inspections, other than for boiler external piping.

(a) The department shall develop and make available on the department's Web site an application for an owner's piping inspector license.

(b) The department shall issue or deny a license under this subsection upon review of a completed application demonstrating that the applicant meets the following criteria:

1. For inspections of piping repairs, the applicant is certified as defined under American Petroleum Institute Standard 570, Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems; or

2. For all other inspections of piping, the applicant qualifies under owner inspection requirements pursuant to ASME piping code B31.1 or B31.3, as applicable, or the applicant holds a commission from the National Board of Boiler and Pressure Vessel Inspectors.

(c) With the application, the applicant shall submit an initial nonrefundable license application fee of one hundred dollars ($100) for a two (2) year license.

(d) The initial license fee may be prorated for not less than thirteen (13) months or more than thirty-six (36) months.

(e) An initial owner's piping inspector license shall expire on the final day of the applicant's birth month in the second year following the issue date.

(f) To renew a license, the applicant shall submit a completed renewal application and a nonrefundable renewal fee of fifty dollars ($50) to the department.

(3) Any independent inspection agency that employs licensed owner's piping inspectors shall be licensed by the department as an independent inspection agency.

(a) The department shall develop and make available on the department's Web site an independent inspection agency license application.

(b) With the application, the applicant shall submit a fee of one thousand dollars ($1,000) and a list of all owner's piping inspectors employed by the independent inspection agency. If the application is denied, five hundred dollars ($500) shall be refunded to the applicant.

(c) The list of owner's piping inspectors employed by the independent inspection agency shall be updated and provided to the department within thirty (30) days of change.

(d) An independent inspection agency license shall be effective for a period of two (2) years following the date of issuance.

(e) To renew a license, the applicant shall submit a completed renewal application and a nonrefundable renewal fee of five hundred dollars ($500).

(f) Each licensed independent inspection agency shall maintain a record of all piping inspections for a period of five (5) years following the inspection, including identification of the owner's piping inspectors. Records of inspections shall be made available to the department upon request.

(4) The licensing requirements of this section shall only apply to piping otherwise required to be inspected by a boiler inspector employed by the department pursuant to this chapter.

History.

Enact. Acts 2012, ch. 14, § 10, effective July 12, 2012.

236.100. Suspension or revocation of appointment or commission — Notice and hearing — Reinstatement — Penalty for falsification of application or inspection report.

(1) Any boiler inspector's, special inspector's, owner-user inspector's, or owner's piping inspector's appointment or commission may be suspended or revoked by the department, after due investigation and hearing thereon, for the incompetence or untrustworthiness of the holder thereof, or for willful falsification of any matter or statement contained in his or her application or in a report of any inspection made by him or her. Written notice of and an opportunity for a hearing on any suspension or revocation under this subsection shall be given by the department to the inspector, and in the case of a special boiler inspector, also to his or her employer in accordance with the provisions of KRS Chapter 13B.

(2) A person whose appointment or commission has been suspended shall be entitled to apply to the commissioner, after ninety (90) days from the date of the suspension, for reinstatement of the appointment or commission.

(3) Any willful falsification of an application or inspection report shall constitute a misdemeanor and shall subject the inspector or special inspector to the penalties provided in KRS 236.990.

History.

Enact. Acts 1962, ch. 89, § 10; 1980, ch. 207, § 11, effective July 15, 1980; 1996, ch. 318, § 154, effective July 15, 1996; 2010, ch. 24, § 523, effective July 15, 2010; 2012, ch. 14, § 11, effective July 12, 2012.

236.110. Inspection of boilers and pressure vessels required — Certificate of inspection — Periods of inspection — Penalty for falsifying certificate of inspection.

(1) Each boiler or pressure vessel used or proposed to be used within this state, except boilers or pressure vessels exempt under KRS 236.060, shall be thoroughly inspected as to their construction, installation, and condition as follows:

(a) Power boilers shall receive a certificate of inspection annually which shall be an internal inspection where construction permits; otherwise it shall be as complete an inspection as possible. Such boilers shall also be externally inspected while under pressure if possible;

(b) Low pressure steam or vapor heating boilers, hot water heating boilers, and hot water supply boilers shall receive a certificate of inspection biennially; said inspection shall include internal inspection where construction permits. External inspections shall be required where construction does not permit internal inspection;

(c) Pressure vessels shall be inspected at time of installation to ascertain that they are in conformance with KRS 236.040. Subsequent reinspections, if any, shall be set by administrative regulation of the department;

(d) A grace period of two (2) months beyond the periods specified in paragraphs (a), (b), and (c) of this subsection may elapse between inspections;

(e) The department may at its discretion permit longer periods between inspections;

(f) All new boiler or pressure vessel installations to be used within this state, excepting boilers or pressure vessels exempted under KRS 236.060, shall be inspected during the installation period to ascertain that all pressure piping conforms to the requirements of KRS 236.040. A certificate of inspection may not be issued on any new installation until these requirements are fulfilled;

(g) It shall be the responsibility of the installing contractor to request the above inspection by notifying the boiler inspection section that the installation is ready for inspection. Notification shall be accomplished prior to covering of any welded or mechanical joints on pressure piping or valves by insulation, paint, or structural materials. The contractor shall

provide ready access for the inspector to all parts of the piping system;

(h) Inspection of pressure piping shall apply only to new boiler, pressure vessel, or new pressure piping system installations, or reinstallations, or installation of secondhand boilers (as defined under "Boiler Rules and Regulations"). No annual or biennial reinspection shall be required once the system has been approved;

(i) "Existing installations," as applied to inspection of piping systems is defined as any boiler and piping system completed and approved for operation prior to July 1, 1970, or pressure vessels and associated piping systems completed and approved for operation prior to July 15, 1980. These existing installations shall not be subject to the foregoing piping inspection unless adjudged patently unsafe for operation by a boiler inspector holding a commission issued by the National Board of Boiler and Pressure Vessel Inspectors, or by an owner's piping inspector, when authorized. If an existing installation is so adjudged, the owner or user shall be granted full rights of appeal as set forth under KRS 236.150;

(j) If an existing installation undergoes extensive overhaul or more than fifty (50) linear feet of pressure piping requires renewal or is added to the existing system, the entire system of piping carrying pressure emanating from the boilers shall be subject to inspection and shall be brought up to standards required by KRS 236.040;

(k) The installing contractor of a piping system carrying pressure emanating from a boiler or pressure vessel subject to inspection under provisions of this chapter, shall pay to the department, upon completion of inspection, fees in accordance with a schedule established by the department;

(*l*) Operation of a pressure piping system in conjunction with a boiler or pressure vessel, either of which has not been inspected and approved as set forth above, shall be subject to fines and penalties as set forth in KRS 236.990; and

(m) For any boiler or pressure vessel used by a utility to generate power, and operating under a certificate issued pursuant to KRS 278.020, if the boiler or pressure vessel is inspected by a special boiler inspector pursuant to this section, the inspection interval shall be extended to eighteen (18) months.

(2) The inspections required in this section shall be made by a boiler inspector or by a special boiler inspector, except that all new installations shall be inspected by a boiler inspector employed by the department. However, an owner's piping inspector may inspect new, repaired, and replaced ASME standard process piping.

(3) If at any time a hydrostatic, pneumatic, or any other nondestructive test shall be deemed necessary for ascertaining acceptability of a boiler, pressure vessel, or associated piping, the same shall be made by the contractor or owner-user, whoever is responsible for the condition, and be witnessed by a boiler inspector, special boiler inspector, or owner's piping inspector in authorized locations.

(4) All boilers to be installed in this state after July 1, 1970, and all pressure vessels installed in this state after July 15, 1980, shall be inspected during construction as required by the applicable rules and regulations of the department by a boiler inspector authorized to inspect boilers and pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a commission from the national board as an inspector of boilers and pressure vessels.

(5) No person shall willfully falsify any statement designed to secure the issuance, renewal or reinstatement of a certificate of inspection. Violation of this subsection shall subject such a person to the penalties stated in KRS 236.990.

History.

Enact. Acts 1962, ch. 89, § 11; 1970, ch. 246, § 5; 1978, ch. 384, § 98, effective June 17, 1978; 1980, ch. 207, § 12, effective July 15, 1980; 2010, ch. 24, § 524, effective July 15, 2010; 2012, ch. 14, § 12, effective July 12, 2012; 2017 ch. 169, § 94, effective June 29, 2017.

236.120. Certificate of inspection — Fee — Term — Posting — Termination — Suspension — Reissuance.

(1) If, upon inspection, a boiler or pressure vessel is found to comply with the administrative regulations of the department, the owner, user, or insurance company of it shall pay to the department the sum of fifteen dollars ($15). When the inspection is made by a special inspector, the inspector shall attach the certificate fee to his or her report. The chief boiler inspector, or his or her duly authorized representative, shall issue to the owner or user a certificate of inspection for the boiler or pressure vessel bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. An inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers, and twenty-six (26) months in the case of low pressure steam or vapor heating boilers, hot water heating boilers, or hot water supply boilers. The most recently issued certificate of inspection shall be posted in the room containing the boiler inspected or, in the case of a portable boiler, shall be kept in a tool box accompanying the boiler. The most recently issued certificate of inspection for each pressure vessel shall be kept in the owner's files.

(2) No certificate of inspection issued for an insured boiler, inspected by a special inspector, shall be valid after the insurance on the boiler for which it was issued terminates. Boilers shall be insured by a company duly authorized by this state to carry the insurance.

(3) The commissioner or his or her authorized representative may at any time suspend a certificate of inspection if, in his or her opinion, the boiler or pressure vessel for which it was issued cannot be operated without menace to the public safety, or if the boiler or pressure vessel is found not in compliance with this chapter or the administrative regulations of the department. A special boiler inspector shall have corresponding powers with respect to suspending certificates of inspection for boilers or pressure vessels insured by the company employing him or her. The suspension of a certificate of inspection shall continue in effect until the

boiler or pressure vessel conforms to this chapter and administrative regulations of the department, and until the inspection certificate is reinstated.

(4) A suspended certificate of inspection shall be reissued on the recommendation of the boiler inspector or special boiler inspector who first caused the suspension or at the discretion of the chief boiler inspector.

History.

Enact. Acts 1962, ch. 89, § 12; 1980, ch. 207, § 13, effective July 15, 1980; 1994, ch. 2, § 1, effective July 15, 1994; 2010, ch. 24, § 525, effective July 15, 2010; 2012, ch. 14, § 13, effective July 12, 2012; 2017 ch. 169, § 95, effective June 29, 2017.

236.130. Inspection fees — Administrative regulations — Fund.

(1) The owner or user of a boiler or pressure vessel required by this chapter to be inspected shall pay to the department, upon completion of inspection, reasonable fees not to exceed the cost of inspection as established by the commissioner in an administrative regulation promulgated in accordance with KRS Chapter 13A.

(2) All other inspections, including shop inspections and inspection of secondhand or used boilers made by the boiler inspector shall be charged for at the rate set by administrative regulation promulgated by the commissioner in accordance with KRS Chapter 13A.

(3) All fees received by the department shall be held in a trust and agency fund from which the expenses of administering this chapter and other department responsibilities may be paid, and no portion of the fund shall lapse into the general fund at the end of each fiscal year.

History.

Enact. Acts 1962, ch. 89, § 14; 1980, ch. 207, § 14, effective July 15, 1980; 1986, ch. 127, § 1, effective July 15, 1986; 2010, ch. 24, § 526, effective July 15, 2010; 2017 ch. 169, § 96, effective June 29, 2017.

236.140. Inspector's bond. [Repealed.]

Compiler's Notes.

This section (Enact. Acts 1962, ch. 89, § 15) was repealed by Acts 1980, ch. 207, § 23, effective July 15, 1980.

236.150. Appeal to commissioner — Judicial review.

(1) Any person aggrieved by an order or act of a boiler inspector, under this chapter, may, within fifteen (15) days of notice thereof, appeal from the order or act to the commissioner who shall schedule and conduct an administrative hearing in accordance with KRS Chapter 13B.

(2) Any person aggrieved by a final order of the commissioner may file a petition in the Franklin Circuit Court for judicial review in accordance with KRS Chapter 13B.

History.

Enact. Acts 1962, ch. 89, § 16; 1968, ch. 152, § 128; 1980, ch. 207, § 15, effective July 15, 1980; 1996, ch. 318, § 155, effective July 15, 1996; 2010, ch. 24, § 527, effective July 15, 2010; 2012, ch. 14, § 14, effective July 12, 2012.

236.210. License required for installing, erecting, or repairing boilers or pressure vessels — Issuance — Renewal — Exception.

(1) A person shall not engage in the business of installing, erecting, or repairing boilers or pressure vessels unless that person first obtains a license from the commissioner.

(2) Each person, firm, or corporation shall pass an examination prepared and administered by the department.

(3) A license shall be issued by the commissioner or the chief boiler inspector to qualified applicants upon payment of a reasonable fee not to exceed the cost of examination and other expenses involved as established by the commissioner in an administrative regulation promulgated in accordance with KRS Chapter 13A.

(4) The license shall be renewable annually, not later than the first of the month following the expiration date, upon payment of a reasonable fee not to exceed the costs involved in such renewal as established by the commissioner in an administrative regulation promulgated in accordance with KRS Chapter 13A.

(5) All individuals in the employ of a licensee shall not be required to be licensed.

History.

Enact. Acts 1974, ch. 209, § 2; 1980, ch. 207, § 16, effective July 15, 1980; 1986, ch. 127, § 2, effective July 15, 1986; 2003, ch. 77, § 2, effective June 24, 2003; 2010, ch. 24, § 528, effective July 15, 2010; 2012, ch. 14, § 15, effective July 12, 2012; 2017 ch. 169, § 97, effective June 29, 2017.

236.220. Procedure for suspension or revocation of license.

(1) A license issued under KRS 236.210 to 236.260 may be suspended or revoked for falsification of any information contained in the application. Written notice of a suspension shall be given to the licensee by the chief boiler inspector within ten (10) days of the first notification of the violation. A person whose license has been suspended may appeal to the department, and a hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If the department has reason to believe that a licensee is no longer qualified to hold a license, the department shall hold a hearing to be conducted in accordance with KRS Chapter 13B. If, as a result of the hearing, the department finds that the licensee is no longer qualified to hold a license, the department shall state in a final order that the license is revoked or suspended.

(3) A person whose license has been suspended may apply for reinstatement of the license after ninety (90) days from the date of the suspension.

History.

Enact. Acts 1974, ch. 209, § 3; 1980, ch. 207, § 17, effective July 15, 1980; 1996, ch. 318, § 156, effective July 15, 1996; 2017 ch. 169, § 98, effective June 29, 2017.

236.230. Reissue of lost or destroyed license.

If a license is lost or destroyed, a new license shall be issued in its place, without submitting another appli-

cation, upon request and payment of a fee of five dollars ($5).

History.
Enact. Acts 1974, ch. 209, § 4.

236.240. Permit required for installation, erection, or repair — Fees.

(1) A person shall not install, erect, or make repairs affecting the strength of a boiler or pressure vessel without first securing a permit from the department. Permits shall be issued only to a person licensed under KRS 236.210 to 236.260.

(2) No work shall be performed except by or under the supervision of a licensed person. The permit fees shall be set by the department.

(3) The permit fees shall include one (1) interim inspection and one (1) final inspection for issuance of a boiler or pressure vessel certificate of inspection.

(4) Special inspections and more than two (2) inspections requested by the licensee for each permit shall be charged fees in accordance with KRS 236.130.

History.
Enact. Acts 1974, ch. 209, § 5; 1980, ch. 207, § 18, effective July 15, 1980; 2010, ch. 24, § 529, effective July 15, 2010; 2012, ch. 14, § 16, effective July 12, 2012; 2017 ch. 169, § 99, effective June 29, 2017.

236.250. Exceptions to permit requirements — Payment of permit to repair fees — Emergency repairs.

(1) A person shall not make repairs affecting the strength or safety of boilers or pressure vessels without first securing a permit from the department unless repairs have been authorized by a boiler inspector or special boiler inspector pending issuance of the permit or unless such repairs are emergency repairs authorized by the department, a special boiler inspector or a boiler inspector pending issuance of the permit. A permit shall not be required for emergency items not affecting the strength of the boiler or pressure vessel, when performed by qualified welders regularly employed by firms utilizing properly qualified welding procedures. Permits shall only be issued to persons licensed under this chapter. A permit fee shall be paid directly to the department, and shall accompany the repair application.

(2) Payment of permit to repair fees shall be required from operating companies performing pressure vessel repairs in accordance with the National Board of Boiler and Pressure Vessel Inspectors inspection code and utilizing properly qualified welding procedures and regularly employing qualified welders to weld on boilers owned and operated by such firm.

(3) For emergency repairs authorized by a boiler inspector or special boiler inspector, a repair permit shall be obtained and filed with the department within thirty (30) days of repair completion.

History.
Enact. Acts 1974, ch. 209, § 6; 1980, ch. 207, § 19, effective July 15, 1980; 2010, ch. 24, § 530, effective July 15, 2010; 2012, ch. 14, § 17, effective July 12, 2012; 2017 ch. 169, § 100, effective June 29, 2017.

236.260. Access to premises.

The commissioner, the chief boiler inspector, any boiler inspector, or any special boiler inspector shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed, operated, installed, or repaired for the purpose of ascertaining whether the work being performed is in accordance with the provisions of KRS Chapter 236 or any orders or regulations made thereunder.

History.
Enact. Acts 1974, ch. 209, § 7; 1980, ch. 207, § 20, effective July 15, 1980; 2010, ch. 24, § 531, effective July 15, 2010; 2012, ch. 14, § 18, effective July 12, 2012.

236.990. Penalties.

(1) It shall be unlawful for any person, firm, partnership, or corporation to operate in this state a boiler or pressure vessel without a valid certificate of inspection. The operation of a boiler or pressure vessel without a valid certificate, or at a pressure exceeding that specified in an inspection certificate, shall constitute a Class B misdemeanor on the part of the owner, user, or operator. Each day of unlawful operation shall constitute a separate offense.

(2) Any person who violates any provision of KRS 236.040(1); 236.080(4); 236.110(1), (4) and (5); 236.210(1); 236.220(1); 236.240(1) and (2); 236.250(1); or any proper order or administrative regulation made or promulgated thereunder; or who hinders or obstructs an authorized inspector in the performance of his or her duties under this chapter, shall be subject to the penalties in subsection (1) of this section.

(3) Any person who willfully violates any provision of this chapter, or any administrative regulation, emergency order, order of the state fire marshal, order of an authorized deputy state fire marshal, order of the chief boiler inspector, or order of any authorized boiler inspector, promulgated or made pursuant to this chapter, shall be subject to suspension or revocation of any appointment, commission, certification, registration, license, or permit made or issued by the department and held by that person, in accordance with the procedures specified in KRS 236.220, or in lieu of a suspension or revocation, shall be subject to an administrative fine of not less than ten dollars ($10) and not exceeding five hundred dollars ($500) after notice and hearing by the department in accordance with KRS 236.220. Each day these violations exist shall, in the discretion of the department, be considered as a separate violation.

(4) As an aid to enforcement of this chapter, or of any administrative regulation or order relating thereto, the department or chief boiler inspector may take any administrative action or bring any authorized legal action designed to prevent or correct any condition constituting or threatening to constitute a violation of any provision of this chapter.

History.
Enact. Acts 1962, ch. 89, § 13; 1980, ch. 207, §§ 21, 22, effective July 15, 1980; 1996, ch. 318, § 157, effective July 15, 1996; 2010, ch. 24, § 532, effective July 15, 2010; 2012, ch. 14, § 19, effective July 12, 2012; 2017 ch. 169, § 101, effective June 29, 2017.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Designation of offenses; penalties, see KRS 532.020.

CHAPTER 237

FIREARMS AND DESTRUCTIVE DEVICES

Section
237.109. Authorization to carry concealed deadly weapons without a license.

Carrying Concealed Deadly Weapon.

237.110. License to carry concealed deadly weapon — Criteria — Training — Paper or electronic application — Issuance and denial of licenses — Automated listing of license holders — Suspension or revocation — Renewal — Prohibitions — Reciprocity — Reports — Requirements for training classes.
237.115. Construction of KRS 237.110 — Prohibition by local government units of carrying concealed deadly weapons in governmental buildings — Restriction on criminal penalties.

237.109. Authorization to carry concealed deadly weapons without a license.

(1) Persons age twenty-one (21) or older, and otherwise able to lawfully possess a firearm, may carry concealed firearms or other concealed deadly weapons without a license in the same locations as persons with valid licenses issued under KRS 237.110.

(2) Nothing in this section shall be construed to allow the carrying or possession of any deadly weapon where it is prohibited by federal law.

History.
2019 ch. 10, § 1, effective June 27, 2019.

CARRYING CONCEALED DEADLY WEAPON

237.110. License to carry concealed deadly weapon — Criteria — Training — Paper or electronic application — Issuance and denial of licenses — Automated listing of license holders — Suspension or revocation — Renewal — Prohibitions — Reciprocity — Reports — Requirements for training classes.

(1) The Department of Kentucky State Police is authorized to issue and renew licenses to carry concealed firearms or other deadly weapons, or a combination thereof, to persons qualified as provided in this section.

(2) An original or renewal license issued pursuant to this section shall:

(a) Be valid throughout the Commonwealth and, except as provided in this section or other specific section of the Kentucky Revised Statutes or federal law, permit the holder of the license to carry firearms, ammunition, or other deadly weapons, or a combination thereof, at any location in the Commonwealth;

(b) Unless revoked or suspended as provided by law, be valid for a period of five (5) years from the date of issuance;

(c) Authorize the holder of the license to carry a concealed firearm or other deadly weapon, or a combination thereof, on or about his or her person; and

(d) Authorize the holder of the license to carry ammunition for a firearm on or about his or her person.

(3) Prior to the issuance of an original or renewal license to carry a concealed deadly weapon, the Department of Kentucky State Police, upon receipt of a completed application, applicable fees, and any documentation required by this section or administrative regulation promulgated by the Department of Kentucky State Police, shall conduct a background check to ascertain whether the applicant is eligible under 18 U.S.C. sec. 922(g) and (n), any other applicable federal law, and state law to purchase, receive, or possess a firearm or ammunition, or both. The background check shall include:

(a) A state records check covering the items specified in this subsection, together with any other requirements of this section;

(b) A federal records check, which shall include a National Instant Criminal Background Check System (NICS) check;

(c) A federal Immigration Alien Query if the person is an alien who has been lawfully admitted to the United States by the United States government or an agency thereof; and

(d) In addition to the Immigration Alien Query, if the applicant has not been lawfully admitted to the United States under permanent resident status, the Department of Kentucky State Police shall, if a doubt exists relating to an alien's eligibility to purchase a firearm, consult with the United States Department of Homeland Security, United States Department of Justice, United States Department of State, or other federal agency to confirm whether the alien is eligible to purchase a firearm in the United States, bring a firearm into the United States, or possess a firearm in the United States under federal law.

(4) The Department of Kentucky State Police shall issue an original or renewal license if the applicant:

(a) Is not prohibited from the purchase, receipt, or possession of firearms, ammunition, or both pursuant to 18 U.S.C. 922(g), 18 U.S.C. 922(n), or applicable federal or state law;

(b)1. Is a citizen of the United States who is a resident of this Commonwealth;

2. Is a citizen of the United States who is a member of the Armed Forces of the United States who is on active duty, who is at the time of application assigned to a military posting in Kentucky;

3. Is lawfully admitted to the United States by the United States government or an agency thereof, is permitted by federal law to purchase a firearm, and is a resident of this Commonwealth; or

4. Is lawfully admitted to the United States by the United States government or an agency

thereof, is permitted by federal law to purchase a firearm, is, at the time of the application, assigned to a military posting in Kentucky, and has been assigned to a posting in the Commonwealth;

(c) Is twenty-one (21) years of age or older;

(d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances, within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding the date on which the application is submitted, or having been committed as an alcoholic pursuant to KRS Chapter 222 or similar laws of another state within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Does not owe a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, if the Department of Kentucky State Police has been notified of the arrearage by the Office of the Attorney General;

(g) Has complied with any subpoena or warrant relating to child support or paternity proceedings. If the Department of Kentucky State Police has not been notified by the Office of the Attorney General that the applicant has failed to meet this requirement, the Department of Kentucky State Police shall assume that paternity and child support proceedings are not an issue;

(h) Has not been convicted of a violation of KRS 508.030 or 508.080 within the three (3) years immediately preceding the date on which the application is submitted. The commissioner of the Department of Kentucky State Police may waive this requirement upon good cause shown and a determination that the applicant is not a danger and that a waiver would not violate federal law;

(i) Demonstrates competence with a firearm by successful completion of a firearms safety or training course that is conducted by a firearms instructor who is certified by a national organization with membership open to residents of any state or territory of the United States, which was created to promote firearms education, safety, and the profession of firearms use and training, and to foster professional behavior in its members. The organization shall require members to adhere to its own code of ethics and conduct a program which certifies firearms instructors and includes the use of written tests, in person instruction, and a component of live-fire training. These national organizations shall include but are not limited to the National Rifle Association, the United States Concealed Carry Association, and the National Shooting Sports Foundation. The training requirement may also be fulfilled through any firearms safety course offered or approved by the Department of Criminal Justice Training. The firearms safety course offered or approved by the Department of Criminal Justice Training shall:

1. Be not more than eight (8) hours in length;

2. Include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, and handgun marksmanship principles;

3. Include actual range firing of a handgun in a safe manner, and the firing of not more than twenty (20) rounds at a full-size silhouette target, during which firing, not less than eleven (11) rounds must hit the silhouette portion of the target; and

4. Include information on and a copy of laws relating to possession and carrying of firearms, as set forth in KRS Chapters 237 and 527, and the laws relating to the use of force, as set forth in KRS Chapter 503; and

(j) Demonstrates knowledge of the law regarding the justifiable use of force by including with the application a copy of the concealed carry deadly weapons legal handout made available by the Department of Criminal Justice Training and a signed statement that indicates that applicant has read and understands the handout.

(5)(a) A legible photocopy or electronic copy of a certificate of completion issued by a firearms instructor certified by a national organization or the Department of Criminal Justice Training shall constitute evidence of qualification under subsection (4)(i) of this section.

(b) Persons qualifying under subsection (6)(d) of this section may submit with their application:

1. At least one (1) of the following paper or electronic forms or their successor forms showing evidence of handgun training or handgun qualifications:

a. Department of Defense Form DD 2586;

b. Department of Defense Form DD 214;

c. Coast Guard Form CG 3029;

d. Department of the Army Form DA 88-R;

e. Department of the Army Form DA 5704-R;

f. Department of the Navy Form OPNAV 3591-1; or

g. Department of the Air Force Form AF 522; or

2.a. Documentary evidence of an honorable discharge; and

b. A notarized affidavit on a form provided by the Department of Kentucky State Police, signed under penalty of perjury, stating the person has met the training requirements of subsection (6)(d) of this section.

(6)(a) Peace officers who are currently certified as peace officers by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404 and peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be deemed to have met the training requirement.

(b) Current and retired peace officers of the following federal agencies shall be deemed to have met the training requirement:

1. Any peace officer employed by a federal agency specified in KRS 61.365;

2. Any peace officer employed by a federal civilian law enforcement agency not specified above who has successfully completed the basic law enforcement training course required by that agency;

3. Any military peace officer of the United States Army, Navy, Marine Corps, or Air Force, or a reserve component thereof, or of the Army National Guard or Air National Guard who has successfully completed the military law enforcement training course required by that branch of the military;

4. Any member of the United States Coast Guard serving in a peace officer role who has successfully completed the law enforcement training course specified by the United States Coast Guard.

(c) Corrections officers who are currently employed by a consolidated local government, an urban-county government, or the Department of Corrections who have successfully completed a basic firearms training course required for their employment, and corrections officers who were formerly employed by a consolidated local government, an urban-county government, or the Department of Corrections who are retired, and who successfully completed a basic firearms training course required for their employment, and are members of a state-administered retirement system or other retirement system operated by or for a city, county, or urban-county government in Kentucky shall be deemed to have met the training requirement.

(d) Active or honorably discharged service members in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, or a reserve component thereof, or of the Army National Guard or Air National Guard shall be deemed to have met the training requirement if these persons:

1. Successfully completed handgun training which was conducted by the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, or a reserve component thereof, or of the Army National Guard or Air National Guard; or

2. Successfully completed handgun qualification within the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, or a reserve component thereof, or of the Army Guard or Air Force National Guard.

(7)(a)1. A paper application for a license, or renewal of a license, to carry a concealed deadly weapon shall be obtained from and submitted to the office of the sheriff in the county in which the person resides.

2. An applicant, in lieu of a paper application, may submit an electronic application for a license, or renewal of a license, to carry a concealed deadly weapon to the Department of Kentucky State Police.

3. Persons qualifying under subsection (6)(d) of this section shall be supplied the information in subsection (4)(i)4. of this section upon obtaining an application.

(b)1. The completed paper application and any documentation required by this section plus an application fee or renewal fee, as appropriate, of sixty dollars ($60) shall be presented to the office of the sheriff of the county in which the applicant resides.

2. The sheriff shall transmit the paper application and accompanying material to the Department of Kentucky State Police within five (5) working days.

3. Twenty dollars ($20) of the paper application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars ($20) shall be sent to the Department of Kentucky State Police with the application. Ten dollars ($10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons.

(c)1. A completed electronic application submitted in lieu of a paper application, any documentation required by this section, and an application fee or renewal fee, as appropriate, of seventy dollars ($70) shall be presented to the Department of Kentucky State Police.

2. If an electronic application is submitted in lieu of a paper application, thirty dollars ($30) of the electronic application fee shall be retained by the Department of Kentucky State Police. Twenty dollars ($20) shall be sent to the office of the sheriff of the applicant's county of residence for official expenses of the office. Ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapon carry permits.

(d) A full-time or part-time peace officer who is currently certified as a peace officer by the Kentucky Law Enforcement Council and who is authorized by his or her employer or government authority to carry a concealed deadly weapon at all times and all locations within the Commonwealth pursuant to KRS 527.020, or a retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or other retirement system operated by or for a city, county, or urban-county government in Kentucky, shall be exempt from paying the paper or electronic application or renewal fees.

(e) The application, whether paper or electronic, shall be completed, under oath, on a form or in a manner promulgated by the Department of Kentucky State Police by administrative regulation which shall include:

1.a. The name, address, place and date of birth, citizenship, gender, Social Security number of the applicant; and

b. If not a citizen of the United States, alien registration number if applicable, passport number, visa number, mother's maiden name, and other information necessary to determine the

immigration status and eligibility to purchase a firearm under federal law of a person who is not a citizen of the United States;

2. A statement that, to the best of his or her knowledge, the applicant is in compliance with criteria contained within subsections (3) and (4) of this section;

3. A statement that the applicant, if qualifying under subsection (6)(d) of this section, has provided:

a. At least one (1) of the forms listed in subsection (5) of this section; or

b.i. Documentary evidence of an honorable discharge; and

ii. A notarized affidavit on a form provided by the Department of Kentucky State Police stating the person has met the training requirements of subsection (6)(d) of this section;

4. A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;

5. A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

6. A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.

(8) The applicant shall submit to the sheriff of the applicant's county of residence or county of military posting if submitting a paper application, or to the Department of Kentucky State Police if submitting an electronic application:

(a) A completed application as described in subsection (7) of this section;

(b) A recent color photograph of the applicant, as prescribed by administrative regulation;

(c) A paper or electronic certificate or an affidavit or document as described in subsection (5) of this section;

(d) A paper or electronic document establishing the training exemption as described in subsection (6) of this section; and

(e) For an applicant who is not a citizen of the United States and has been lawfully admitted to the United States by the United States government or an agency thereof, an affidavit as prescribed by administrative regulation concerning his or her immigration status and his or her United States government issued:

1. Permanent Resident Card I-551 or its equivalent successor identification;

2. Other United States government issued evidence of lawful admission to the United States which includes the category of admission, if admission has not been granted as a permanent resident; and

3. Evidence of compliance with the provisions of 18 U.S.C. sec. 922(g)(5), 18 U.S.C. sec. 922(d)(5), or 18 U.S.C. sec. 922(y)(2), and 27 C.F.R. pt. 178, including, as appropriate, but not limited to evidence of ninety (90) day residence in the Commonwealth, a valid current Kentucky hunting license if claiming exemption as a hunter, or other evidence of eligibility to purchase a firearm by an alien which is required by federal law or regulation.

If an applicant presents identification specified in this paragraph, the sheriff shall examine the identification, may record information from the identification presented, and shall return the identification to the applicant.

(9) The Department of Kentucky State Police shall, within sixty (60) days after the date of receipt of the items listed in subsection (8) of this section if the applicant submitted a paper application, or within fifteen (15) business days after the date of receipt of the items listed in subsection (8) of this section if the applicant applied electronically, either:

(a) Issue the license; or

(b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (3) or (4) of this section. If the Department of Kentucky State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of Kentucky State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his or her place of residence within ninety (90) days from the date of the letter advising the applicant of the denial.

(10) The Department of Kentucky State Police shall maintain an automated listing of license holders and pertinent information, and this information shall be available upon request, at all times to all Kentucky, federal, and other states' law enforcement agencies. A request for the entire list of licensees, or for all licensees in a geographic area, shall be denied. Only requests relating to a named licensee shall be honored or available to law enforcement agencies. Information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of Kentucky State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of Kentucky State Police, shall provide any information to any requester not entitled to it by law.

(11) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss, theft, or destruction of a license, the licensee shall notify the Department of Kentucky State Police of the loss, theft, or destruction. Failure to notify the Department of Kentucky State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25) payable to the clerk of the District Court. No court

costs shall be assessed for a violation of this subsection. When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of Kentucky State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.

(12) If a license is lost, stolen, or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars ($15) for a paper request, or twenty-five dollars ($25) for an electronic request submitted in lieu of a paper request, to the Department of Kentucky State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of Kentucky State Police that the license has been lost, stolen, or destroyed.

(13)(a) The commissioner of the Department of Kentucky State Police, or his or her designee in writing, shall revoke the license of any person who becomes permanently ineligible to be issued a license or have a license renewed under the criteria set forth in this section.

(b) The commissioner of the Department of Kentucky State Police, or his or her designee in writing, shall suspend the license of any person who becomes temporarily ineligible to be issued a license or have a license renewed under the criteria set forth in this section. The license shall remain suspended until the person is again eligible for the issuance or renewal of a license.

(c) Upon the suspension or revocation of a license, the commissioner of the Department of Kentucky State Police, or his or her designee in writing, shall:

1. Order any peace officer to seize the license from the person whose license was suspended or revoked; or

2. Direct the person whose license was suspended or revoked to surrender the license to the sheriff of the person's county of residence within two (2) business days of the receipt of the notice.

(d) If the person whose license was suspended or revoked desires a hearing on the matter, the person shall surrender the license as provided in paragraph (c)2. of this subsection and petition the commissioner of the Department of Kentucky State Police to hold a hearing on the issue of suspension or revocation of the license.

(e) Upon receipt of the petition, the commissioner of the Department of Kentucky State Police shall cause a hearing to be held in accordance with KRS Chapter 13B on the suspension or revocation of the license. If the license has not been surrendered, no hearing shall be scheduled or held.

(f) If the hearing officer determines that the licensee's license was wrongly suspended or revoked, the hearing officer shall order the commissioner of the Department of Kentucky State Police to return the license and abrogate the suspension or revocation of the license.

(g) Any party may appeal a decision pursuant to this subsection to the District Court in the licensee's county of residence in the same manner as for the denial of a license.

(h) If the license is not surrendered as ordered, the commissioner of the Department of Kentucky State Police shall order a peace officer to seize the license and deliver it to the commissioner.

(i) Failure to surrender a suspended or revoked license as ordered is a Class A misdemeanor.

(j) The provisions of this subsection relating to surrender of a license shall not apply if a court of competent jurisdiction has enjoined its surrender.

(k) When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

(14)(a) Not less than one hundred twenty (120) days prior to the expiration date of the license, the Department of Kentucky State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of Kentucky State Police. The outside of the envelope containing the license renewal notice shall bear only the name and address of the applicant. No other information relating to the applicant shall appear on the outside of the envelope sent to the applicant. The licensee may renew his or her license on or before the expiration date by filing with the sheriff of his or her county of residence the paper renewal form, or by filing with the Department of Kentucky State Police an electronic renewal form in lieu of a paper renewal form, stating that the licensee remains qualified pursuant to the criteria specified in subsections (3) and (4) of this section, and the required renewal fee set forth in subsection (7) of this section. The sheriff shall issue to the applicant a receipt for the paper application for renewal of the license and shall date the receipt. The Department of Kentucky State Police shall issue to the applicant a receipt for an electronic application for renewal of the license submitted in lieu of a paper application for renewal and shall date the receipt.

(b) A license which has expired shall be void and shall not be valid for any purpose other than surrender to the sheriff in exchange for a renewal license.

(c) The license shall be renewed to a qualified applicant upon receipt of the completed renewal application, records check as specified in subsection (3) of this section, determination that the renewal

applicant is not ineligible for a license as specified in subsection (4), and appropriate payment of fees. Upon the issuance of a new license, the old license shall be destroyed by the sheriff. A licensee who fails to file a renewal application on or before its expiration date may renew his or her license by paying, in addition to the license fees, a late fee of fifteen dollars ($15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (7), (8), and (9) of this section.

(15) The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25), payable to the clerk of the District Court, but no court costs shall be assessed.

(16) Except as provided in KRS 527.020, no license issued pursuant to this section shall authorize any person to carry a concealed firearm into:

(a) Any police station or sheriff's office;

(b) Any detention facility, prison, or jail;

(c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding;

(d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he or she is a member;

(e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;

(f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;

(g) An area of an airport to which access is controlled by the inspection of persons and property; or

(h) Any place where the carrying of firearms is prohibited by federal law.

(17) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons, or ammunition, or both in a vehicle on the premises shall not be a criminal offense so long as the weapons, or ammunition, or both are not removed from the vehicle or brandished while the vehicle is on the premises. A private but not a public employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employee, except that the Justice and Public Safety Cabinet may prohibit an employee from carrying any weapons, or ammunition, or both other than the weapons, or ammunition, or both issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction. Carrying of a concealed weapon, or ammunition, or both in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

(18) All moneys collected by the Department of Kentucky State Police pursuant to this section shall be used to administer the provisions of this section and KRS 237.138 to 237.142. By March 1 of each year, the Department of Kentucky State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section, KRS 237.138 to 237.142, and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section, KRS 237.138 to 237.142, and KRS 237.115, 244.125, 527.020, and 527.070.

(19) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of Kentucky State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

(20)(a) A person who is not a resident of Kentucky and who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his or her license shall be considered as valid in Kentucky.

(b) If a person with a valid license to carry a concealed deadly weapon issued from another state

that has entered into a reciprocity agreement with the Department of Kentucky State Police becomes a resident of Kentucky, the license issued by the other state shall be considered as valid for the first one hundred twenty (120) days of the person's residence in Kentucky, if within sixty (60) days of moving to Kentucky, the person completes a form promulgated by the Department of Kentucky State Police which shall include:

1. A signed and notarized statement averring that to the best of his or her knowledge the person's license to carry a concealed deadly weapon is valid and in compliance with applicable out-of-state law, and has not been revoked or suspended for any reason except for valid forfeiture due to departure from the issuing state;

2. The person's name, date of birth, citizenship, gender, Social Security number if applicable, proof that he or she is a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, former out-of-state address, current address within the state of Kentucky, date on which Kentucky residence began, state which issued the concealed carry license, the issuing state's concealed carry license number, and the state of issuance of license; and

3. A photocopy of the person's out-of-state license to carry a concealed deadly weapon.

(c) Within sixty (60) days of moving to Kentucky, the person shall deliver the form and accompanying documents by registered or certified mail, return receipt requested, to the address indicated on the form provided by the Department of Kentucky State Police pursuant to this subsection.

(d) The out-of-state concealed carry license shall become invalid in Kentucky upon the earlier of:

1. The out-of-state person having resided in Kentucky for more than one hundred twenty (120) days; or

2. The person being issued a Kentucky concealed deadly weapon license pursuant to this section.

(e) The Department of Kentucky State Police shall, not less than once every twelve (12) months, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of Kentucky State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of Kentucky State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon license or that will issue a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each twelve (12) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies.

(21) By March 1 of each year, the Department of Kentucky State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

(22) The following provisions shall apply to concealed deadly weapon training classes conducted by the Department of Criminal Justice Training or any other agency pursuant to this section:

(a) No concealed deadly weapon instructor trainer shall have his or her certification as a concealed deadly weapon instructor trainer reduced to that of instructor or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;

(b) No concealed deadly weapon instructor shall have his or her certification as a concealed deadly weapon instructor license suspended or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;

(c) The department shall not require prior notification that an applicant class or instructor class will be conducted by a certified instructor or instructor trainer;

(d) Each concealed deadly weapon instructor or instructor trainer who teaches a concealed deadly weapon applicant or concealed deadly weapon instructor class shall supply the Department of Criminal Justice Training with a class roster indicating which students enrolled and successfully completed the class, and which contains the name and address of each student, within five (5) working days of the completion of the class. The information may be sent by mail, facsimile, email, or other method which will result in the receipt of or production of a hard copy of the information. The postmark, facsimile date, or email date shall be considered as the date on which the notice was sent. Concealed deadly weapon class applicant, instructor, and instructor trainer information and records shall be confidential. The department may release to any person or organization the name, address, and telephone number of a concealed

deadly weapon instructor or instructor trainer if that instructor or instructor trainer authorizes the release of the information in writing. The department shall include on any application for an instructor or instructor trainer certification a statement that the applicant either does or does not desire the applicant's name, address, and telephone number to be made public;

(e) An instructor trainer who assists in the conduct of a concealed deadly weapon instructor class or concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her certification. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon instructor or concealed deadly weapon class;

(f) An instructor who assists in the conduct of a concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her license. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon class;

(g) If the Department of Criminal Justice Training believes that a firearms instructor trainer or certified firearms instructor has not in fact complied with the requirements for teaching a certified firearms instructor or applicant class by not teaching the class as specified in KRS 237.126, or who has taught an insufficient class as specified in KRS 237.128, the department shall send to each person who has been listed as successfully completing the concealed deadly weapon applicant class or concealed deadly weapon instructor class a verification form on which the time, date, date of range firing if different from the date on which the class was conducted, location, and instructor of the class is listed by the department and which requires the person to answer "yes" or "no" to specific questions regarding the conduct of the training class. The form shall be completed under oath and shall be returned to the Department of Criminal Justice Training not later than forty-five (45) days after its receipt. A person who fails to complete the form, to sign the form, or to return the form to the Department of Criminal Justice Training within the time frame specified in this section or who, as a result of information on the returned form, is determined by the Department of Criminal Justice Training, following a hearing pursuant to KRS Chapter 13B, to not have received the training required by law shall have his or her concealed deadly weapon license revoked by the Department of Kentucky State Police, following a hearing conducted by the Department of Criminal Justice Training pursuant to KRS Chapter 13B, at which hearing the person is found to have violated the provisions of this section or who has been found not to have received the training required by law;

(h) The department shall annually, not later than December 31 of each year, report to the Legislative Research Commission:

1. The number of firearms instructor trainers and certified firearms instructors whose certifications were suspended, revoked, denied, or who were otherwise disciplined;

2. The reasons for the imposition of suspensions, revocations, denials, or other discipline; and

3. Suggestions for improvement of the concealed deadly weapon applicant training program and instructor process;

(i) If a concealed deadly weapon license holder is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon license shall be forthwith revoked by the Department of Kentucky State Police as a matter of law;

(j) If a concealed deadly weapon instructor or instructor trainer is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon instructor certification or concealed deadly weapon instructor trainer certification shall be revoked by the Department of Criminal Justice Training as a matter of law; and

(k) The following shall be in effect:

1. Action to eliminate the firearms instructor trainer program is prohibited. The program shall remain in effect, and no firearms instructor trainer shall have his or her certification reduced to that of certified firearms instructor;

2. The Department of Kentucky State Police shall revoke the concealed deadly weapon license of any person who received no firearms training as required by KRS 237.126 and administrative regulations, or who received insufficient training as required by KRS 237.128 and administrative regulations, if the person voluntarily admits nonreceipt of training or admits receipt of insufficient training, or if either nonreceipt of training or receipt of insufficient training is proven following a hearing conducted by the Department of Criminal Justice Training pursuant to KRS Chapter 13B.

History.

Enact. Acts 1996, ch. 119, § 1, effective October 1, 1996; 1998, ch. 417, § 1, effective July 15, 1998; 1998, ch. 494, § 1, effective July 15, 1998; 1998, ch. 606, § 136, effective July 15, 1998; 2000, ch. 455, § 1, effective July 14, 2000; 2002, ch. 368, § 2, effective July 15, 2002; 2004, ch. 86, § 1, effective July 13, 2004; 2005, ch. 99, § 565, effective June 20, 2005; 2005, ch. 182, § 15, effective March 31, 2005; 2006, ch. 240, § 2, effective July 12, 2006; 2007, ch. 85, § 266, effective June 26, 2007; 2008, ch. 96, § 2, effective July 15, 2008; 2013, ch. 32, § 5, effective June 25, 2013; 2013, ch. 73, § 1, effective June 25, 2013; 2014, ch. 120, § 5, effective July 15, 2014; 2015 ch. 60, § 1, effective June 24, 2015; 2015 ch. 60, § 1, effective June 24, 2015; 2015 ch. 126, § 3, effective June 24, 2015; 2017 ch. 182, § 2, effective June 29, 2017; 2025 ch. 59, § 7, effective July 1, 2025.

Legislative Research Commission Notes.

(7/15/2014). The Reviser of Statutes has changed references in subsections (5)(b)2. and (7)(e)3. of this statute from "subsection (6)(c) of this section" as they appeared in 2014 Ky. Acts ch. 120, sec. 5, to "subsection (6)(d) of this section" in order to correct an oversight that occurred when a new paragraph (c) was inserted in subsection (6) and the paragraph dealing with Armed Services handgun training requirements and qualifications of Armed Services members was changed to "(d)" in

2014 HB 128, which became 2014 Ky. Acts ch. 120. The Reviser of Statutes has corrected these manifest clerical or typographical errors under the authority of KRS 7.136(1).

(7/15/2008). 2008 House Bill 639, sec. 2, which became 2008 Ky. Acts ch. 96, sec. 2, amended KRS 237.110. The Senate Committee Substitute for HB 639 changed all references except one, which was inadvertently omitted, in this section from "handgun" to "firearm." To achieve consistency, the Reviser of Statutes has changed the reference in KRS 237.110(4)(b) 4. from "handgun" to "firearm" under the authority of KRS 7.136.

(7/12/2006). 2006 Ky. Acts ch. 240, sec. 2, subsec. (13), contains a reference in paragraph (d) to surrender of a license "as provided in paragraph (c)1. of this subsection." Because only paragraph (c)2. of subsection (13) contains the provision setting forth surrender of a license,the reference has been changed in codification to "paragraph (c)2. of this subsection" under KRS 7.136(1)(h).

(3/21/2005). 1996 Ky. Acts ch. 119, § 6, provides, "With respect to the training requirements of KRS 237.110, KRS 237.110 shall be deemed to be retroactive, and training completed prior to [October 1, 1996] may be used and shall be deemed to satisfy the training requirements of KRS 237.110."

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. I, H, 4, (2) at 2096.

NOTES TO DECISIONS

Analysis

1. In General.
2. Termination of Employment.

1. In General.

The statute does not require that any employee who carries a concealed weapon on the premises be terminated; instead, it actually creates a right to carry concealed weapons upon proper licensing, and subsection (14) (see now (17)) is an exception to that general right. Service Welding v. International Bhd. Boilermakers, Local 40, 2000 U.S. App. LEXIS 15970 (6th Cir. Ky. July 5, 2000).

2. Termination of Employment.

University employee established that his discharge was contrary to a fundamental and well-defined public policy, i.e., the right to bear arms, as evidenced by the Kentucky Revised Statutes. Further, an explicit legislative statement prohibited the employee's discharge, and the reason for the employee's discharge was his exercise of a right conferred by well-established legislative enactments. Mitchell v. Univ. of Ky., 366 S.W.3d 895, 2012 Ky. LEXIS 47 (Ky. 2012).

NOTES TO UNPUBLISHED DECISIONS

2. Termination of Employment.

Unpublished decision: Where former employee alleged he was illegally fired because of his lawful possession of a concealed firearm on his employer's property, the employee's actions were not protected because he removed his handgun from his vehicle and had a subordinate store the gun in his vehicle. Holly v. UPS Supply Chain Solutions, Inc., 680 Fed. Appx. 458, 2017 FED App. 0135N, 2017 U.S. App. LEXIS 3899 (6th Cir. Ky. 2017).

OPINIONS OF ATTORNEY GENERAL.

By enacting former KRS 237.110(8) (now see (10)), the General Assembly expressly restricted disclosure of the public records requested to "hard copy form only." Since KRS 61.878(1)(l) exempts from disclosure public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, the Kentucky State Police properly denied the request to produce the requested list of names of concealed permit holders in electronic format. OAG 03-ORD-222, 2003 Ky. AG LEXIS 80.

Because any identifying information relating to concealed deadly weapon license holders other than a list naming all CCDW license holders (in hard copy format only) is exempt from disclosure pursuant to KRS 237.110(8) (see now (10)), incorporated into the Open Records Act by operation of KRS 61.878(1)(l), the State Police properly relied upon KRS 237.110(8) (see now (10)) in denying the request. OAG 04-ORD-60, 2004 Ky. AG LEXIS 216.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Required content and conduct of applicant training course, 503 KAR 4:050E.

237.115. Construction of KRS 237.110 — Prohibition by local government units of carrying concealed deadly weapons in governmental buildings — Restriction on criminal penalties.

(1) Except as provided in KRS 527.020, nothing contained in KRS 237.109 or 237.110 shall be construed to limit, restrict, or prohibit in any manner the right of a college, university, or any postsecondary education facility, including technical schools and community colleges, to control the possession of deadly weapons on any property owned or controlled by them or the right of a unit of state, city, county, urban-county, or charter county government to prohibit the carrying of concealed deadly weapons in that portion of a building actually owned, leased, or occupied by that unit of government.

(2) Except as provided in KRS 527.020, the legislative body of a state, city, county, or urban-county government may, by statute, administrative regulation, or ordinance, prohibit or limit the carrying of concealed deadly weapons in that portion of a building owned, leased, or controlled by that unit of government. That portion of a building in which the carrying of concealed deadly weapons is prohibited or limited shall be clearly identified by signs posted at the entrance to the restricted area. The statute or ordinance shall exempt any building used for public housing by private persons, highway rest areas, firing ranges, and private dwellings owned, leased, or controlled by that unit of government from any restriction on the carrying or possession of deadly weapons. The statute, administrative regulation, or ordinance shall not specify any criminal penalty for its violation but may specify that persons violating the statute or ordinance may be denied entrance to the building, ordered to leave the building, and if employees of the unit of government, be subject to employee disciplinary measures for violation of the provisions of the statute or ordinance. The provisions of this section shall not be deemed to be a violation of KRS 65.870 if the requirements of this section are followed. The provisions of this section shall not apply to any other unit of government.

(3) Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried.

History.
Enact. Acts 1996, ch. 119, § 5, effective October 1, 1996; 2005, ch. 182, § 16, effective March 31, 2005; 2019 ch. 10, § 3, effective June 27, 2019.

2026-2028 Budget Reference.
See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. III, 36 at 2164.

OPINIONS OF ATTORNEY GENERAL.

Neither a fiscal court nor its county judge executive, or any other local official, can ban the possession or carrying in a public park the open or concealed carrying of firearms, except the fiscal court, which if it properly passes an ordinance, may prohibit or limit the carrying of concealed firearms in park buildings or portions thereof owned, leased or controlled by it. OAG 96-39, 1996 Ky. AG LEXIS 79.

While subsection (1) of this section recognizes the right of colleges and universities to control possession of deadly weapons, generally, on their properties, subsection (1) of this section limits other units of state government, city governments, county governments, urban-county governments, and charter county governments to prohibiting only the carrying of concealed deadly weapons. The Kentucky General Assembly, therefore, has recognized that the governing board of a college or university of this Commonwealth has a right to control the possession of all deadly weapons on its properties, regardless of whether the weapons are concealed or carried openly. OAG 96-40, 1996 Ky. AG LEXIS 80.

CHAPTER 238
CHARITABLE GAMING

Section
238.535. Licensing of charitable organizations conducting charitable gaming — Exemptions — Qualifications — Application process — Required information — Special event raffle license — Fees — Escrow.
238.550. Standards for management and accounting of funds — Reports — Charitable gaming expenses.

238.535. Licensing of charitable organizations conducting charitable gaming — Exemptions — Qualifications — Application process — Required information — Special event raffle license — Fees — Escrow.

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the corporation. A charitable organization qualifying under subsection (12) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:

(a) Bingo in which the gross receipts do not exceed a total of twenty-five thousand dollars ($25,000) per year;

(b) A raffle or raffles for which the gross receipts do not exceed twenty-five thousand dollars ($25,000) per year; and

(c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed twenty-five thousand dollars ($25,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed twenty-five thousand dollars ($25,000).

(2)(a) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the office in writing, on a simple form issued by the office, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section consents to the jurisdiction of the corporation and shall comply with all other provisions of this chapter relating to the conduct of charitable gaming, except:

1. Payment of the fee imposed under the provisions of KRS 238.570; and

2. The quarterly reporting requirements imposed under the provisions of KRS 238.550(7), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (9) of this section.

(b) Before January 31 of the year immediately following the year of exemption, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file a financial report with the office, on a form issued by the office, that contains the following information:

1. The type of gaming activity in which it engaged during that year;

2. The total gross receipts derived from gaming;

3. The amount of charitable gaming expenses paid;

4. The amount of net receipts derived; and

5. The disposition of those net receipts.

(3) An exemption that has been granted to a charitable organization for the preceding calendar year shall be automatically renewed on January 1 of the following year.

(4) If upon receipt of the financial report the office determines that the information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the office shall notify the charitable organization that its exemption is rescinded. The organization may request an appeal of this rescission pursuant to KRS 238.565.

(5) If the annual financial report is not received by January 31, the exemption is automatically rescinded unless an extension of no more than thirty (30) days is granted by the office. The organization may request an appeal of this rescission pursuant to KRS 238.565.

(6) If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (7) of this section.

(7) If an organization exceeds the limit imposed by any subsection of this section it shall:

(a) Report the amount to the office; and

(b) Apply for a retroactive charitable gaming license.

(8) Upon receipt of a report and application for a retroactive charitable gaming license, the office shall investigate to determine if the organization is otherwise qualified to hold the license.

(9) If the office determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.

(10) If the office determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.

(11) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.

(12)(a) In order to qualify for licensure, a charitable organization shall:

1.a. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or

b. Be organized within the Commonwealth of Kentucky as a local school district, as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290. A common school, a program or organization affiliated with a common school, or any combination of common schools and programs affiliated with common schools located within a local school district may conduct charitable gaming under the local school district's charitable gaming license;

2. Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure. For purposes of this paragraph, an applicant shall demonstrate establishment and continuous operation in Kentucky by its conduct of charitable activities from an office physically located within Kentucky both during the three (3) years immediately preceding its application for licensure and at all times during which it possesses a charitable gaming license. However, a charitable organization that operates for charitable purposes in more than ten (10) states and whose principal place of business is physically located in a state other than Kentucky may satisfy the requirements of this paragraph if it can document that it has:

a. Been actively engaged in charitable activities and has made reasonable progress, as defined in subparagraph 3. of this paragraph, in the conduct of charitable activities or the expenditure of funds within Kentucky for a period of three (3) years prior to application for licensure; and

b. Operated for charitable purposes from an office or place of business in the Kentucky county where it proposes to conduct charitable gaming for at least one (1) year prior to application for licensure, in accordance with subparagraph 4. of this paragraph and paragraph (c) of this subsection;

3. Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the office, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "reasonable progress in accomplishing its charitable purposes" means the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(10). In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the office a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph;

4. Have maintained an office or place of business, other than for the conduct of charitable gaming, for at least one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the Office of Charitable Gaming; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space; and

5. Comply with administrative regulations imposed by the corporation in accordance with KRS Chapter 13A.

(b)1. A charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing or a charity fundraising event, including special limited charity fundraising events, in a Kentucky county other than that in which the organization's office or place of business is located.

2. For raffles, the organization shall notify the Office of Charitable Gaming in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification:

a. May be transmitted in any commercially reasonable means, authorized by the office, including facsimile and electronic mail; and

b. Shall set out the place and the county in which the drawing will take place.

Approval by the office shall be received prior to the conduct of the raffle drawing at the new location.

(c) Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy the requirement contained in paragraph (a)4. of this subsection if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered.

(13) In applying for a license, the information to be submitted shall include but not be limited to the following:

(a) The name and address of the charitable organization;

(b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county or counties in which charitable gaming is to be conducted;

(c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

(d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations' bylaws shall satisfy this requirement;

(e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;

(f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;

(g) The names, addresses, dates of birth, employment information if applicable, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

(h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;

(i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

(j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;

(k) An agreement that the charitable organization's records may be released by the Federal Internal Revenue Service to the office; and

(*l*) Any other information the office deems appropriate.

(14)(a) An organization or a group of individuals that does not meet the licensing requirements of subsection (12) of this section may hold a raffle if:

1. The gross receipts do not exceed five hundred dollars ($500);

2. All proceeds from the raffle are distributed to a charitable organization; and

3. The organization or group of individuals holds no more than three (3) raffles each year;

and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (13) of this section.

(b) An organization or a group of individuals that does not meet the licensing requirements of subsection (12) of this section may hold a raffle if:

1. The organization holds a special event raffle license issued by the office and complies with the regulatory requirements in this chapter, including but not limited to the quarterly reporting requirements of KRS 238.550(7), the retention requirements of KRS 238.536, and payment of the fee imposed by KRS 238.570;

2. The organization possesses a tax-exempt status under 26 U.S.C. sec. 501(c)(7);

3. The organization holds no more than twelve (12) raffles per year;

4. Each raffle complies with the office's raffle standards in KRS 238.545 and administrative regulations promulgated thereunder and is approved by the office in writing prior to the sale of the first raffle ticket;

5. The gross receipts of each raffle do not exceed five hundred thousand dollars ($500,000); and

6. One hundred percent (100%) of the net receipts of each raffle shall be distributed to a charitable organization licensed by the office pursuant to subsection (12) of this section to conduct charitable gaming as follows:

a. All distributed net receipts shall be maintained by the recipient licensed charitable organization in a separate account to be designated as the "raffle recipient account";

b. All distributed net receipts shall be expended by the recipient licensed charitable organization to further the charitable purpose of the recipient licensed charitable organization as required by KRS 238.550(4); and

c. All distributed net receipts, and the expenditure thereof, shall be reported to the office and be subject to the office's auditing and investigative authority consistent with the provisions of this chapter.

(c) An applicant qualifying under paragraph (b) of this subsection shall submit an application for a special event raffle license, and the information to be submitted shall include but not be limited to the following:

1. The name and address of the organization;

2. The date of the organization's establishment in the Commonwealth of Kentucky and the date of the organization's establishment in the county or counties in which charitable gaming is to be conducted;

3. A statement of the purpose or purposes for which the organization was organized and identification of the licensed charitable organization to which the applicant will distribute its net receipts. If the organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

4. A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organization's bylaws shall satisfy this requirement;

5. The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;

6. The names, addresses, dates of birth, and Social Security numbers of all employees and members of the organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

7. The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the organization;

8. A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

9. A statement signed by the presiding or other responsible officer of the organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;

10. An agreement that the organization's records may be released by the federal Internal Revenue Service to the office; and

11. Any other information as determined by the corporation through the promulgation of administrative regulations.

(15) The office may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(16) The office shall charge a fee for each license issued and renewed, not to exceed one thousand dollars ($1,000). Specific fees to be charged may be prescribed in a graduated scale promulgated by administrative regulations of the corporation and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

(17)(a) A licensed charitable organization may place its charitable gaming license in escrow if:

1. The licensee notifies the office in writing that it desires to place its license in escrow; and

2. The license is in good standing and the office has not initiated disciplinary action against the licensee.

(b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under KRS 238.536.

(c) A charitable organization may apply for reinstatement of its active license and the license may be reinstated provided:

1. The charitable organization continues to qualify for licensure;

2. The charitable organization has not engaged in charitable gaming during the escrow period; and

3. The charitable organization pays a reinstatement fee established by the office.

(18)(a) At least sixty (60) days prior to the expiration of its existing license or its first expected date of gaming, facility operation, or business operations in Kentucky during the license period, an applicant shall submit a complete, accurate, and documented application. The office shall review the application and notify the applicant in writing of any deficiencies in the application within thirty (30) days. An application shall not be considered complete until all deficiencies are resolved.

(b) If the applicant does not file a written response to a deficiency request, provide requested information and documents, or otherwise cure the identified deficiency within thirty (30) days of the written notice, the application shall be deemed withdrawn.

(c) If the applicant files a written response to a deficiency request within thirty (30) days of the written notice, but the response does not cure the identified deficiency, the office shall issue a subsequent deficiency notice within thirty (30) days. If the deficiency is incapable of being cured, the office shall deny the license.

(d) Once the office has received a complete application, it shall grant or deny the license within sixty (60) days of receipt. The office may issue a temporary license to an applicant that has submitted a complete and accurate license application form, and has complied with all other licensing requirements in this section, until the office makes a final decision to grant or deny the annual license.

History.

Enact. Acts 1994, ch. 66, § 8, effective March 16, 1994; 1996, ch. 331, § 7, effective April 10, 1996; 1998, ch. 232, § 6, effective April 1, 1998; 1998, ch. 434, § 4, effective July 15, 1998; 2000, ch. 165, § 1, effective July 14, 2000; 2000, ch. 374, § 8, effective July 14, 2000; 2002, ch. 346, § 238, effective July 15, 2002; 2007, ch. 120, § 7, effective June 26, 2007; 2010, ch. 24, § 540, effective July 15, 2010; 2015 ch. 45, § 2, effective June 24, 2015; 2015 ch. 59, § 2, effective June 24, 2015; 2018 ch. 84, § 1, effective January 1, 2019; 2024 ch. 171, § 18, effective July 1, 2025; 2025 ch. 124, § 28, effective July 1, 2025; 2026 ch. 184, § 28, effective July 15, 2026.

Legislative Research Commission Notes.

(7/1/2025). Under the authority of KRS 7.136, the reviser of statutes has corrected a reference in subsection (12) of this statute after the definitions in KRS 238.505 were placed in alphabetical order during codification.

(6/24/2015). This statute was amended by 2015 Ky. Acts chs. 45 and 59, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

1. Constitutionality.

This section does not create arbitrary distinctions among charitable organizations but is designed to further a state

interest in ensuring that only established charities operate charitable gaming facilities. Commonwealth v. Louisville Atlantis Community/Adapt, 971 S.W.2d 810, 1997 Ky. App. LEXIS 86 (Ky. Ct. App. 1997).

238.550. Standards for management and accounting of funds — Reports — Charitable gaming expenses.

(1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.

(2) Except as authorized by subsection (11) of this section, within five (5) business days after the completion of a charitable gaming event or session, all gross receipts and adjusted gross receipts shall be deposited into one checking account devoted exclusively to charitable gaming. This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. Other funds shall not be deposited or transferred into the charitable gaming account.

(3) All payments for charitable gaming expenses, payments made for prizes purchased, and any charitable donations from charitable gaming receipts shall be made from the charitable gaming account and the payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations. The corporation may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.

(4) A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a local school district, a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.

(5) Accurate records and books shall be maintained by each organization exempt from licensure under KRS 238.535(1) and each licensed charitable organization for a period of three (3) years. Office staff shall have access to these records at reasonable times. Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or applications for exempt status. An exempt organization shall submit a yearly financial report in accordance with KRS 238.535(2), and failure to file this report shall constitute grounds for revocation of the organization's exempt status.

(6) All licensed charitable organizations that have annual gross receipts of two hundred thousand dollars ($200,000) or less and do not have a weekly bingo session shall report to the office annually at the time and on a form established in administrative regulations promulgated by the corporation.

(7) All other licensed charitable organizations shall submit reports to the office at least quarterly at the time and on a form established in administrative regulations promulgated by the corporation.

(8) Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with KRS 238.560(4). Reports filed by a licensed charitable organization shall include but shall not be limited to the following information:

(a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;

(b) The names and addresses of all persons who are winners of prizes having a fair market value of six hundred dollars ($600) or more;

(c) All expenses paid and the names and addresses of all persons to whom expenses were paid;

(d) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and

(e) Any other information the office deems appropriate.

(9) A licensed charitable organization shall not incur charitable gaming expenses, except as provided in this chapter. A licensed charitable organization shall not be permitted to expend amounts in excess of prevailing market rates for the following charitable gaming expenses:

(a) Charitable gaming supplies and equipment;

(b) Rent;

(c) Utilities;

(d) Insurance;

(e) Advertising;

(f) Janitorial services;

(g) Bookkeeping and accounting services;

(h) Security services;

(i) Membership dues for its participation in any charitable gaming trade organization; and

(j) Any other expenses the corporation may determine by administrative regulation to be legitimate.

(10) A licensed charitable organization shall not expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.

(11) For the purposes of deposits under subsection (2) of this section, a licensed charitable organization

conducting charitable gaming events or sessions shall only be required to deposit its gross receipts and adjusted gross receipts one (1) time per week if the following conditions are met:

(a) The charitable gaming involves only games using charity game tickets;

(b) The charitable gaming is not part of a charity fundraising event; and

(c) The licensed charitable organization's deposits of gross receipts and adjusted gross receipts from charitable gaming total less than two thousand five hundred dollars ($2,500) in the week prior to the deposit.

History.

Enact. Acts 1994, ch. 66, § 11, effective March 16, 1994; 1996, ch. 331, § 10, effective April 10, 1996; 1998, ch. 232, § 11, effective April 1, 1998; 2000, ch. 374, § 12, effective July 14, 2000; 2007, ch. 120, § 1, effective June 26, 2007; 2010, ch. 24, § 544, effective July 15, 2010; 2023 ch. 32, § 1, effective June 29, 2023; 2024 ch. 171, § 24, effective July 1, 2025; 2025 ch. 124, § 47, effective July 1, 2025; 2026 ch. 184, § 44, effective July 15, 2026.

NOTES TO DECISIONS

1. Constitutionality.

Provisions of this section requiring gross receipts from charitable gambling to be handled only by bona fide officers and employees of the charitable organization and limiting rent and other expenses are rationally related to the state's interest in ensuring that receipts from charitable gaming are actually applied to charitable works and are therefore constitutional; nor is subsection (5) overbroad, since no constitutionally protected conduct is prohibited. Commonwealth v. Louisville Atlantis Community/Adapt, 971 S.W.2d 810, 1997 Ky. App. LEXIS 86 (Ky. Ct. App. 1997).

The requirement to retain 40% of adjusted gross receipts is not clearly unreasonable because the Commonwealth has an express and legitimate interest in insuring that gaming receipts are used for solely charitable purposes and that they are not unwisely or improperly diverted, and the requirement that a significant portion of adjusted gross gaming receipts be retained and accounted for by the charity is rationally related to this state objective. Pigeons' Roost v. Commonwealth, 10 S.W.3d 133, 1999 Ky. App. LEXIS 56 (Ky. Ct. App. 1999).

TITLE XXI

AGRICULTURE AND ANIMALS

Chapter
247. Promotion of Agriculture and Horticulture.
259. Strays and Animals Running at Large.

CHAPTER 247

PROMOTION OF AGRICULTURE AND HORTICULTURE

Experiment Station and Extension Work.

Section
247.080. Boards of education may aid extension work.

EXPERIMENT STATION AND EXTENSION WORK

247.080. Boards of education may aid extension work.

County boards of education may appropriate such sums of money out of their annual funds as in their wisdom are necessary to aid in carrying on extension work in agriculture and home economics in their respective counties, in connection with the University of Kentucky.

History.

4636g-2; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 610, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. County Agent.
2. Extension Work.

1. County Agent.

County agent, for whom salary is appropriated under this section, is not a necessary county officer, and county may not become indebted in making such appropriation in violation of Ky. Const., § 157. Carman v. Hickman County, 185 Ky. 630, 215 S.W. 408, 1919 Ky. LEXIS 351 (Ky. 1919); Knott County v. Michael, 264 Ky. 36, 94 S.W.2d 44, 1936 Ky. LEXIS 271 (Ky. 1936).

County farm agent is not such a necessary county officer as to authorize his employment where to do so would carry county indebtedness beyond limit fixed by Ky. Const., § 157. Adair County Farm Bureau v. Fiscal Court of Adair County, 263 Ky. 23, 91 S.W.2d 537, 1936 Ky. LEXIS 122 (Ky. 1936).

County agent, for whom a salary is appropriated under this section, is agent of university but not agent of county and appropriations for such purpose must be made from "annual" funds of county. Knott County v. Michael, 264 Ky. 36, 94 S.W.2d 44, 1936 Ky. LEXIS 271 (Ky. 1936).

2. Extension Work.

Appropriations for extension work in agriculture and home economics are not authorized under this section unless the work is done jointly or in connection with University of Kentucky. Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court, 269 Ky. 444, 107 S.W.2d 320, 1937 Ky. LEXIS 625 (Ky. 1937).

OPINIONS OF ATTORNEY GENERAL.

Appropriations for extension work under KRS 247.300 and this section shall not exceed the current revenues as provided in Ky. Const., §§ 157 and 158. OAG 63-494.

If adequate funds were available, there would be no liability on the part of the members of the fiscal court for appropriating funds for extension work under this section in excess of the maximum specified in KRS 247.300 (2). OAG 63-494.

The appropriation for extension work under KRS 247.300 is mandatory; any appropriation under this section is permissive. OAG 63-494.

The limit of the appropriation by the fiscal court of a county under KRS 247.300 (1) and (2) is $5,000 per year, but under this section, the court may appropriate additional funds of the county out of their annual funds as may be necessary for extension work in agriculture and home economics. OAG 63-494.

A fiscal court has no statutory authority to appropriate money out of its annual funds toward the purchase of land to be used as a county fairground. OAG 63-643.

The county agent is not an employee or official of the county. OAG 70-110.

The purchase of land by a county through its fiscal court for the purpose of leasing the same to the 4-H Association of the county who in turn would sublet the property to the United States department of agriculture would not be within the powers of the fiscal court under KRS 67.080(2), nor under this section which provides that the court may aid extension work in agriculture in connection with the University of Kentucky, nor under KRS 247.300 authorizing the fiscal court to appropriate money for the farm bureau but not for the purchase and lease of property under the subject arrangement and the subject purposes. OAG 72-53.

Where a fiscal court considered a motion to employ a full time 4-H agent and such motion was defeated, the fiscal court, in dealing with this legislative function of appropriation, could reconsider at another meeting the matter of making an appropriation for the 4-H agent employment. OAG 77-515, 1977 Ky. AG LEXIS 259.

CHAPTER 259

STRAYS AND ANIMALS RUNNING AT LARGE

Section
259.200. Trespassing on park, camp grounds or floodwalls prohibited.
259.990. Penalties.

259.200. Trespassing on park, camp grounds or floodwalls prohibited.

No person shall permit any cattle to run or trespass upon any state or national parks, encampment grounds, scout camps, grounds dedicated to religious, educational or recreational purposes or floodwalls erected at public expense.

History.
4645n-2: amend. Acts 1954, ch. 229, § 1.

OPINIONS OF ATTORNEY GENERAL.

The legislature has seen fit to impose fines on persons who permit cattle to run or trespass on certain public lands but apparently no broader criminal liabilty for trespassing animals has been imposed. OAG 82-262, 1982 Ky. AG LEXIS 392.

259.990. Penalties.

(1) Any person who violates KRS 259.200 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100), and each head of cattle trespassing shall constitute a separate offense.

(2) Any person who violates KRS 259.210 shall be fined not less than five dollars ($5) nor more than twenty-five dollars ($25).

History.
4645m-4, 4645n-2, 4656: amend. Acts 1950, ch. 20, § 5; 1954, ch. 229, § 2; 2010, ch. 92, § 6, effective July 15, 2010.

Compiler's Notes.
Original subsection (1) (4658) of this section was repealed by Acts 1950, ch. 20, § 6.

OPINIONS OF ATTORNEY GENERAL.

The legislature has seen fit to impose fines on persons who permit cattle to run or trespass on certain public lands but apparently no broader criminal liability for trespassing animals has been imposed. OAG 82-262, 1982 Ky. AG LEXIS 392.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Kentucky Instructions To Juries (Civil), 5th Ed., Animals, § 15.03.

TITLE XXIII

PRIVATE CORPORATIONS AND ASSOCIATIONS

Chapter
271B. Business Corporations.
273. Religious, Charitable, and Educational Societies — Nonstock, Nonprofit Corporations.

CHAPTER 271B

BUSINESS CORPORATIONS

Subtitle 3. Purposes and Powers.

Section
271B.3-020. General powers.

SUBTITLE 3.

PURPOSES AND POWERS

271B.3-020. General powers.

(1) Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:

(a) Sue and be sued, complain and defend in its corporate name;

(b) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(c) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(d) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(e) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with

shares or other interests in, or obligations of, any other entity;

(g) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(i) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(j) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(k) Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(*l*) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(n) Transact any lawful business that will aid governmental policy; and

(o) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

(2) Notwithstanding the provisions of subsection (1)(b) of this section, the presence or absence of a corporate seal on or from a writing shall neither add to nor detract from the legality thereof nor affect its validity in any manner or respect.

History.

Enact. Acts 1988, ch. 23, § 23, effective January 1, 1989.

NOTES TO DECISIONS

Cited in:

Telamarketing Communications, Inc. v. Liberty Partners, 798 S.W.2d 462, 1990 Ky. LEXIS 109 (Ky. 1990).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Campbell, Corporate Fiduciary Duties in Kentucky., 93 Ky. L.J. 551 (2004/2005).

ALR

Architecture, corporation practice of. 56 A.L.R.2d 726.

Partnership of or joint venture, corporation's power to enter into. 60 A.L.R.2d 917.

Power of a business corporation to donate to a charitable or similar institution. 39 A.L.R.2d 1192.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

CHAPTER 273

RELIGIOUS, CHARITABLE, AND EDUCATIONAL SOCIETIES — NONSTOCK, NONPROFIT CORPORATIONS

Religious, Charitable and Educational Societies.

Section
273.070. Incorporated college may establish adjunct schools and colleges.
273.080. Power over adjunct school or college.
273.130. Disposition of property in case of dissolution of religious society.

RELIGIOUS, CHARITABLE AND EDUCATIONAL SOCIETIES

273.070. Incorporated college may establish adjunct schools and colleges.

Any incorporated college or university in this state may establish adjunct schools and colleges in any part of the state to be operated in connection with it. In order to establish and operate any adjunct school or college the institution establishing it may solicit and receive subscriptions and donations.

History.

4756; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 611, effective July 13, 1990.

273.080. Power over adjunct school or college.

All property procured for any adjunct school or college shall be held and applied by the governing body of the institution establishing it for the purpose of establishing and maintaining the adjunct school. The governing body may procure grounds and erect buildings for its use and occupation, appoint and remove its teachers, prescribe a course of study for its students, confer degrees of graduation from it, and exercise the same general supervision and control over it that they may exercise over their own institution.

History.

4757; amended 1976 (1st Ex. Sess.), ch. 14, § 260, effective January 2, 1978; repealed and reenact., Acts 1990, ch. 476, Pt. V, § 612, effective July 13, 1990.

273.130. Disposition of property in case of dissolution of religious society.

If any religious society holding land dissolves, the title shall vest in the trustees of the county seminary in which the land lies for the use of that seminary, and if there is no such seminary, then in the county judge/executive, for the benefit of common schools in the county.

History.

323; 1978, ch. 384, § 448, effective June 17, 1978; repealed

and reenact., Acts 1990, ch. 476, Pt. V, § 613, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Application.
2. Cessation of Presbyterial Church.

1. Application.
This section does not apply when the original instrument provided for a reversion. Stanford College v. Board of Education, 145 Ky. 838, 141 S.W. 386, 1911 Ky. LEXIS 947 (Ky. 1911).

2. Cessation of Presbyterial Church.
The cessation of a local church under the presbyterial form of government is not such a dissolution of a religious body as to cause its real estate to escheat under the conditions set forth in this section. Trustees of Transylvania Presbytery, U. S. A., Inc. v. Garrard County Board of Education, 348 S.W.2d 846, 1961 Ky. LEXIS 38 (Ky. 1961).

Cited in:
Webb v. Boggs, 310 S.W.2d 58, 1958 Ky. LEXIS 373 (Ky. 1958).

TITLE XXIV
PUBLIC UTILITIES

Chapter
281. Motor Carriers.
281A. Commercial Driver's Licenses.

CHAPTER 281
MOTOR CARRIERS

Department of Vehicle Regulation.

Section
281.605. Exemption of motor vehicles used for certain purposes.

DEPARTMENT OF VEHICLE REGULATION

281.605. Exemption of motor vehicles used for certain purposes.

The provisions of this chapter shall not apply, except as to safety regulations, to:

(1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;

(2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:

(a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill. As used in this paragraph and in paragraph (b) of this subsection, "livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species;

(b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;

(c) For both the purposes described in paragraphs (a) and (b) of this subsection;

(d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or

(e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;

(3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;

(4) Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;

(5) Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;

(6) Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;

(7) Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tipple where the railhead or tipple is located at a point not more than fifty (50) air miles from the point at which the coal is mined;

(8) Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in KRS 311A.010;

(9) Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities, through contractual agreement, shall be

included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;

(10) Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself or herself is on his way to or from his or her place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his or her spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;

(11) Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;

(12) Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and- ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section;

(13) Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet in accordance with 49 C.F.R. Title VI;

(14) Motor vehicles used to transport children to educational events or conservation camps run by, or sponsored by, the Department of Fish and Wildlife;

(15) Motor vehicles used to transport children to events or camps run by, or sponsored by, the Kentucky Sheriffs Association; or

(16)(a) Motor vehicles used in the transportation of persons who are eighteen (18) years of age or older, if the motor vehicles are owned by a nonprofit organization or being used on behalf of a nonprofit organization that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

(b) Motor vehicles owned and operated by a nonprofit organization that are exempt under this subsection shall be subject to liability insurance coverage as established by KRS 281.655.

(c) Motor vehicles owned privately but operated on behalf of a nonprofit organization that are exempt under this subsection shall be subject to liability insurance coverage as established by KRS 304.39-110.

History.

Enact. Acts 1950, ch. 63, § 8, effective June 15, 1950; 1954, ch. 188, § 2; 1958, ch. 123, § 1; 1958, ch. 130, § 6; 1962, ch. 96, § 1; 1964, ch. 95, § 6; 1968, ch. 152, § 135; 1972, ch. 269, § 1; 1974, ch. 138, § 3; 1978, ch. 62, § 1, effective June 17, 1978; 1978, ch. 232, § 5, effective June 17, 1978; 1980, ch. 349, § 1, effective July 15, 1980; 1984, ch. 238, § 1, effective July 13, 1984; 1990, ch. 403, § 1, effective July 13, 1990; 1994, ch. 448, § 1, effective July 15, 1994; 1996, ch. 233, § 2, effective July 15, 1996; 1998, ch. 607, § 5, effective July 15, 1998; 2000, ch. 343, § 15, effective July 14, 2000; 2002, ch. 211, § 38, effective July 15, 2002; 2002, ch. 318, § 1, effective July 15, 2002; 2008, ch. 146, § 1, effective July 15, 2008; repealed and reenact., Acts 2009, ch. 19, § 1, effective June 25, 2009; 2015 ch. 19, § 5, effective June 24, 2015; 2017 ch. 129, § 28, effective June 29, 2017; 2022 ch. 225, § 1, effective July 14, 2022.

Legislative Research Commission Notes.

(7/15/2008). The internal numbering of subsection (16) of this section has been altered by the Reviser of Statutes from the numbering in 2008 Ky. Acts ch. 146, sec. 1, under the authority of KRS 7.136.

NOTES TO DECISIONS

Analysis

1. Legislative Intent.
2. Nonresident Property Carriers.
3. Agricultural and Dairy Products.
4. Nonprofit Cooperative Associations.
5. Operation Within City Limits or Suburban Area.

1. Legislative Intent.

The legislature specifically exempted school buses from the provisions of this section, except as to safety regulations. Cornette v. Commonwealth, 899 S.W.2d 502, 1995 Ky. App. LEXIS 108 (Ky. Ct. App. 1995).

2. Nonresident Property Carriers.

Provision of this section which exempted vehicles registered in Kentucky for which the registration fee imposed by law had been paid and vehicles owned by nonresidents and registered under laws of another state from weight tax permitted a nonresident to operate in a specific urban area and no other regardless of whether the vehicle was used in interstate commerce or only within the designated urban area of Kentucky. Blackburn v. Maxwell Co., 305 S.W.2d 112, 1957 Ky. LEXIS 297 (Ky. 1957) (decision prior to 1958 amendment).

Where provisions of this section permitted weight tax exemption to nonresident property carriers for a specific vehicle in a specific urban area and no other, no vested rights accrued to carriers where department of motor transportation (now Department of Vehicle Regulation) failed to change its regulation to conform to the change made in law by amendment, for the law controlled and not the regulation. Blackburn v. Maxwell Co., 305 S.W.2d 112, 1957 Ky. LEXIS 297 (Ky. 1957) (decision prior to 1958 amendment).

3. Agricultural and Dairy Products.

After title to agricultural products passed from producer to another, the producer had no right to transport them in a truck owned by him under a private contract unless he obtained a certificate and paid excise tax. Blanton v. Noel, 289

Ky. 105, 158 S.W.2d 9, 1941 Ky. LEXIS 24 (Ky. 1941) (decided under prior law).

Transportation of lumber from a mill for the producer of the lumber, in whom the title to the lumber remained during the transportation, was not exempt as agricultural or dairy products where it was not shown the producer of the lumber owned the land on which the timber was grown. Brown v. Blanton, 297 Ky. 389, 180 S.W.2d 288, 1944 Ky. LEXIS 741 (Ky. 1944) (decided under prior law).

4. Nonprofit Cooperative Associations.

Exemption of vehicles used by nonprofit cooperative associations was constitutional as permissible classification. Baker v. Glenn, 2 F. Supp. 880, 1933 U.S. Dist. LEXIS 1816 (D. Ky. 1933) (decided under prior law).

5. Operation Within City Limits or Suburban Area.

Exemption, from state regulation, of bus lines "wholly within corporate limits of any city" included bus lines running between connected cities. Monmouth St. Merchants' Bus Ass'n v. Ryan, 247 Ky. 162, 56 S.W.2d 963, 1933 Ky. LEXIS 370 (Ky. 1933) (decided under prior law).

Division of motor transportation (now department of vehicle regulation) could not issue motor carrier a certificate covering operation exclusively within city limits. Ashland v. Fannin, 271 Ky. 270, 111 S.W.2d 420, 1937 Ky. LEXIS 187 (Ky. 1937) (decided under prior law).

The exemption of motor vehicles transporting passengers for hire operating exclusively within a city or ten miles of its limits did not embrace cars licensed or registered in any city outside of Kentucky except cars temporarily in the state. Reeves v. Deisenroth, 288 Ky. 724, 157 S.W.2d 331, 1941 Ky. LEXIS 197 (Ky. 1941) (decided under prior law).

The fact that the operations of motor trucks were always within ten miles of some city did not bring them within the exemption granted by statute, such exemption applying only to operations in and near the city in which the owner's permanent place of business is located. Rogers v. Blanton, 292 Ky. 681, 167 S.W.2d 818, 1942 Ky. LEXIS 148 (Ky. 1942) (decided under prior law).

The provision of law exempting motor vehicles operating exclusively within the limits of a city or within ten miles of its limits was intended to exempt only those vehicles operated within the limits of the city constituting the permanent place of business of the owner, or within ten miles of the limits of that city. A permanent change of business location to another city, or the establishment of bona fide permanent places of business in several cities, would carry the exemption with it, but the establishment of a temporary focal point for operations in a city other than the city in which the permanent place of business is located will not carry the exemption. Rogers v. Blanton, 292 Ky. 681, 167 S.W.2d 818, 1942 Ky. LEXIS 148 (Ky. 1942) (decided under prior law).

Where common carrier had exemption permit for vehicles used exclusively within city limits and suburban areas and a distilled spirit and transporter's license which did not designate any points or routes, but was conditioned upon the holding of a common carrier certificate, such license authorized transportation of distilled spirits only between the points and over the routes designated in the common carrier certificate. Medley v. Edward Torstrick Transfer Co., 267 S.W.2d 534, 1954 Ky. LEXIS 843 (Ky. 1954) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

A truck used by a mine owner to transport coal from his mine to a coal yard does not qualify for the tax exemption provided for coal trucks by this section since it makes no mention of motor vehicles used to transport coal to coal yards, and the words of a statute must be given their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion. OAG 62-442.

RESEARCH REFERENCES AND PRACTICE AIDS

ALR

Car pool or "share-the-expenses" arrangement as subjecting vehicle operator to regulations applicable to carriers. 51 A.L.R.2d 1193.

CHAPTER 281A

COMMERCIAL DRIVER'S LICENSES

Section

281A.175. Requirements for school bus endorsement.
281A.190. Disqualification — Suspension, revocation, or cancellation — Right to appeal.
281A.205. Operation of school bus while using cellular telephone prohibited — Exceptions.

281A.175. Requirements for school bus endorsement.

(1) An applicant for a school bus endorsement shall satisfy the following requirements:

(a) Qualify for a passenger vehicle endorsement by passing the knowledge and skills test for obtaining a passenger vehicle endorsement;

(b) Demonstrate knowledge of loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and safety devices required for school buses by state or federal law or regulation;

(c) Demonstrate knowledge of emergency exits and procedures for safely evacuating passengers in an emergency;

(d) Demonstrate knowledge of state and federal laws and regulations related to safely traversing highway rail grade crossings; and

(e) Submit to a physical examination at least every twenty-four (24) months in accordance with 49 C.F.R. pt. 391, completed by a medical examiner as defined by 49 C.F.R. pt. 390.

(2) An applicant for a school bus endorsement shall take a driving skills test in a school bus of the same vehicle group as the school bus the applicant will drive.

History.

Enact. Acts 2005, ch. 165, § 1, effective June 20, 2005; 2013, ch. 21, § 5, effective June 25, 2013; 2023 ch. 121, § 1, effective June 29, 2023.

281A.190. Disqualification — Suspension, revocation, or cancellation — Right to appeal.

(1) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if convicted of:

(a) Driving or being in physical control of a motor vehicle under the influence of alcohol or a controlled substance;

(b) Driving or being in physical control of a motor vehicle while the alcohol concentration of the per-

son's blood or breath or urine is four hundredths (0.04) or more;

(c) Leaving the scene of an accident involving a motor vehicle driven by a person who holds or is required to hold a CDL;

(d) Using a motor vehicle in the commission of any felony listed in KRS 186.560;

(e) Refusing to submit to testing as required by KRS 281A.220 when driving a motor vehicle;

(f) Committing a first violation of driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or when the person is disqualified from operating a commercial motor vehicle; or

(g) Causing a fatality through negligent or criminal operation of a commercial motor vehicle.

(2) A person who holds or is required to hold a CDL shall be disqualified for life if convicted of two (2) or more violations of any of the offenses specified in subsection (1) of this section or any combination of those offenses arising from two (2) or more separate incidents. The provisions of this subsection shall only apply to convictions that occurred after the disqualification dates established by the Federal Motor Carrier Safety Administration. The Transportation Cabinet shall set forth those dates in an administrative regulation promulgated in accordance with KRS Chapter 13A.

(3) If any violation specified in subsection (1) of this section occurred while transporting a hazardous material required to be placarded, the person who holds or is required to hold a CDL shall be disqualified for a period of three (3) years.

(4) Notwithstanding any other provisions of law, a period of suspension, revocation, or disqualification imposed under the provisions of this chapter shall not be reduced. However, in accordance with the provisions of 49 C.F.R. pt. 383, the cabinet may establish guidelines including conditions under which a disqualification of not less than ten (10) years may be imposed.

(5) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for life if the person is convicted of any felony in which a commercial motor vehicle was used and that involved:

(a) The manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance; or

(b) An act or practice of severe forms of trafficking in persons.

(6) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days consecutively if convicted of three (3) serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period.

(7) A person who holds or is required to hold a CDL shall be disqualified for the first offense from driving a commercial motor vehicle for six (6) months if the person has been convicted of committing any of those offenses enumerated in KRS 186.610 involving a commercial motor vehicle, commercial driver's license, or application for that license. For the second and each subsequent offense, the person shall be disqualified from operating a commercial motor vehicle for a period of one (1) year.

(8) The cabinet shall deny a person a commercial driver's license or shall suspend, revoke, or cancel his or her commercial driving privilege, subject to a hearing conducted in accordance with KRS 189A.107, when the cabinet has reason to believe that the person refused to submit to a test to determine his or her alcohol concentration while driving a commercial motor vehicle.

(9) If a person who holds or is required to hold a CDL is convicted of any of the railroad crossing offenses or conduct enumerated in KRS 189.500, 189.560, and 189.565, then the person shall be disqualified from operating a commercial motor vehicle for a period of:

(a) Sixty (60) days for the first offense;

(b) One hundred twenty (120) days for the second offense within a three (3) year period; and

(c) One (1) year for the third or subsequent offense within a three (3) year period.

(10) If a person who holds or is required to hold a CDL violates an out-of-service order while transporting nonhazardous materials, then the person shall be disqualified from operating a commercial motor vehicle for a period of:

(a) One hundred eighty (180) days for the first offense;

(b) Two (2) years for the second offense in a separate incident within a ten (10) year period; and

(c) Three (3) years for the third or subsequent offense in a separate incident within a ten (10) year period.

(11) If a person who holds or is required to hold a CDL violates an out-of-service order while transporting hazardous materials required to be placarded under the 49 U.S.C. sec. 5101 et seq., or operating a commercial motor vehicle designed to transport sixteen (16) or more passengers, including the driver, then the person shall be disqualified from operating a commercial motor vehicle for a period of:

(a) One hundred eighty (180) days for the first offense; and

(b) Three (3) years for the second or subsequent offense in a separate incident within a ten (10) year period.

(12) A person who violates the provisions of KRS 281A.205 shall be fined fifty dollars ($50) for the first offense. For a subsequent offense, a violator shall be fined one hundred dollars ($100) and shall have his or her school bus endorsement suspended for a period of six (6) months.

(13) After disqualifying a commercial driver's license holder or suspending, revoking, or canceling a commercial driver's license, the Transportation Cabinet shall update its records to reflect that action within ten (10) days of receipt. After disqualifying a commercial driver's license holder or suspending, revoking, or canceling an out-of-state commercial driver's license holder's privilege to operate a commercial motor vehicle for at least sixty (60) days, the Transportation Cabinet shall notify the licensing authority of the state

which issued the commercial driver's license or commercial learner's permit with this information within ten (10) days. The notification shall include both the disqualification and the violation that resulted in the disqualification, suspension, cancellation, or revocation.

(14) Upon notice from the Federal Motor Carrier Safety Administration that a driver has been determined to be an imminent hazard and has been disqualified from operating a commercial motor vehicle, the cabinet shall act in accordance with the provisions of 49 C.F.R. sec. 383.52. The cabinet shall notify the driver of the disqualification, which shall not exceed one (1) year in duration, and of the right to appeal to the Federal Motor Carrier Safety Administration in accordance with 49 C.F.R. sec. 383.52.

History.

Enact. Acts 1990, ch. 455, § 19, effective July 1, 1991; 1992, ch. 274, § 6, effective April 7, 1992; 1996, ch. 318, § 210, effective July 15, 1996; 2005, ch. 165, § 8, effective June 20, 2005; 2007, ch. 28, § 7, effective June 26, 2007; 2007, ch. 138, § 2, effective June 26, 2007; 2024 ch. 123, § 7, effective July 15, 2024.

Compiler's Notes.

Section 37 of Acts 1990, ch. 455 provided that: "Sections 5, 7, 8, 9, 10, 12, 13, 17, 18, 19, 21, 22, 23, 24, and 25 of this Act shall become effective on July 1, 1991, notwithstanding the Transportation Cabinet may delay implementation until the automated commercial records system is on-line and operational."

281A.205. Operation of school bus while using cellular telephone prohibited — Exceptions.

(1) As used in this section, "cellular telephone" means a cellular, analog, wireless, or digital telephone.

(2) A person shall not operate a school bus, as defined in KRS 281A.010, on any highway while using a cellular telephone while the bus is in motion and transporting one (1) or more children, except for communications made to and from a central dispatch, school transportation department, or its equivalent when the bus is not equipped with a functioning two (2) way radio.

(3) Notwithstanding subsection (2) of this section, a person operating a school bus shall be allowed to use a cellular telephone in the event of a bona fide emergency.

History.

Enact. Acts 2007, ch. 138, § 1, effective June 26, 2007.

TITLE XXV

BUSINESS AND FINANCIAL INSTITUTIONS

Chapter
286. Kentucky Financial Services Code.
304. Insurance Code.

CHAPTER 286

KENTUCKY FINANCIAL SERVICES CODE

Subtitle 3. Banks and Trust Companies.

Section
286.3-280. Maximum debt of persons to bank or trust company.
286.3-290. Exceptions to maximum debt to banks.
286.3-330. Assets may be pledged or surety bonds provided as collateral security — Security not required if deposit insured.

SUBTITLE 3.

BANKS AND TRUST COMPANIES

286.3-280. Maximum debt of persons to bank or trust company.

(1) Except as provided in subsection (2) of this section:

(a) Subject to paragraph (b) of this subsection, a bank or trust company shall not permit any person to become indebted to it or become obligated as guarantor or surety to it in an amount exceeding twenty percent (20%) of the bank's or trust company's capital stock actually paid in and actual amount of surplus, unless the person pledges, for any amount that exceeds the twenty percent (20%) limit, good collateral security or a mortgage upon real or personal property, which at the time is of more than the cash value of the indebtedness or obligation required to be secured under this paragraph above all other encumbrances;

(b) In no event shall the indebtedness or obligation of any person exceed thirty percent (30%) of a bank's or trust company's capital stock actually paid in and actual amount of surplus; and

(c) When computing the total of a bank's or trust company's capital stock actually paid in and actual amount of surplus, any negative balance of a bank's or trust company's undivided profits account shall be deducted.

(2) A bank or trust company may, in lieu of complying with subsection (1) of this section, elect to comply with the legal lending limits applicable to national banks, as set forth in 12 U.S.C. sec. 84 and 12 C.F.R. pt. 32, as amended.

(3) A bank or trust company shall not permit any of its directors or executive officers to become indebted to it or become obligated as guarantor or surety to it in an amount that exceeds the amount that any other person is authorized by this section to become indebted or obligated to the bank or trust company.

(4) In computing the indebtedness of any person:

(a) The liability of any partnership in which the person acts as a general partner, and any obligation entered into for the benefit of a person, partnership, or association, shall be included in the total liabilities of the person, partnership, or association; and

(b)1. Any credit exposure arising from a derivative transaction, repurchase agreement, reverse pur-

chase agreement, securities lending transaction, or securities borrowing transaction shall be included.

2. For the purposes of this paragraph, the term "derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one (1) or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(5) Except as otherwise provided in this section, the same security, both in kind and amount, shall be required from stockholders as from nonstockholders.

(6) The discount of bills of exchange drawn against actually existing value, and the purchase or discounting of commercial or business paper actually owned by the person negotiating the paper, shall not be considered as borrowed money within the meaning of this section in fixing the limit of indebtedness or obligation of any person selling or negotiating the paper to a bank.

(7)(a) Except as provided in paragraph (b) of this subsection, a bank shall not make any loan or discount on the security of, or be the purchaser or holder of, the shares of its own capital stock, or the shares of stock of a bank holding company that controls the bank, in an amount that exceeds the amounts permitted by 12 U.S.C. sec. 371c, as that section read on July 15, 1986.

(b) A bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business.

(c) Any stock purchased or acquired under paragraph (b) of this subsection that exceeds the amount permitted under paragraph (a) of this subsection shall, within six (6) months from the time of purchase or acquisition, be sold or disposed of at public or private sale.

(d) This subsection shall not be construed to affect or modify KRS 386.025.

History.

581, 583, 609, 610: amend. Acts 1986, ch. 444, § 9, effective July 15, 1986; 1986, ch. 472, § 1, effective July 15, 1986; 1992, ch. 77, § 3, effective July 14, 1992; 2006, ch. 183, § 9, effective July 12, 2006; renum. 2006, ch. 247, § 38, effective July 12, 2006; 2010, ch. 28, § 15, effective July 15, 2010; 2012, ch. 77, § 1, effective July 12, 2012; 2023 ch. 101, § 1, effective June 29, 2023; 2024 ch. 152, § 26, effective July 15, 2024.

Compiler's Notes.

This section was formerly compiled as KRS 287.280 and was renumbered as this section effective July 12, 2006.

Legislative Research Commission Note.

(7/12/2006). This section was amended in 2006 Ky. Acts ch. 183. In that same session, 2006 Ky. Acts ch. 247, sec. 38 required that all sections of KRS Chapters 287, 288, 290, 291, 294, 366, 366A, and 368 be renumbered as sections of a single KRS chapter entitled the "Kentucky Financial Services Code." Therefore, the Statute Reviser, acting under KRS 7.136(1), has changed the number of this section and codified it as a section of KRS Chapter 286.

This section was amended by two 1986 Acts which do not appear to be in conflict and have been compiled together. However, in combining the amendments it was necessary to retain the words "in an amount" in subsection (2) of this section which had been deleted by Acts 1986, ch. 472, § 1.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Indebtedness.
3. Purchase of Paper.
4. Liability of Directors and Officers.
5. Piercing the Corporate Veil.

1. Applicability.

Subsection (3) of this section applies only to persons primarily liable, and does not apply to guarantors. Petition of Hawesville Deposit Bank, 226 Ky. 236, 10 S.W.2d 819, 1928 Ky. LEXIS 60 (Ky. 1928).

2. Indebtedness.

Indebtedness to a bank does not include paper which has been rediscounted by the bank to another person or firm. Commonwealth v. Morton, 145 Ky. 521, 140 S.W. 685, 1911 Ky. LEXIS 890 (Ky. 1911).

3. Purchase of Paper.

This section includes the purchase of paper by bank from another. Wickliffe v. Turner, 154 Ky. 571, 157 S.W. 1125, 1913 Ky. LEXIS 126 (Ky. 1913).

4. Liability of Directors and Officers.

An indictment under former subsection (11) of KRS 287.990 (now 286.3-990) for making a false report as to indebtedness of individuals needed not state the actual amount of indebtedness but merely negative the maximum recited in the report. Anderson v. Commonwealth, 117 S.W. 364, 1909 Ky. LEXIS 497 (Ky. 1909).

Bank president is not liable to it for a loan made by its cashier in violation of this section. First State Bank v. Morton, 146 Ky. 287, 142 S.W. 694, 1912 Ky. LEXIS 75 (Ky. 1912).

Directors who consented to loans violating this section were liable under subsection (7) of KRS 287.990 (now 286.3-990) for the loss occasioned by the lending of the excess. Wickliffe v. Turner, 154 Ky. 571, 157 S.W. 1125, 1913 Ky. LEXIS 126 (Ky. 1913). See Cunningham v. Shellman, 164 Ky. 584, 175 S.W. 1045, 1915 Ky. LEXIS 419 (Ky. 1915); Scott's Ex'rs v. Young, 231 Ky. 577, 21 S.W.2d 994, 1929 Ky. LEXIS 328 (Ky. 1929).

Actions hereunder against directors are upon a statutory liability and the cause of action arises at the latest at the time the bank suspends business. The period of limitations applicable is that prescribed by KRS 413.120. Purcell v. Baker, 270 Ky. 772, 110 S.W.2d 1079, 1937 Ky. LEXIS 162 (Ky. 1937).

5. Piercing the Corporate Veil.

Although the limits contained in this section do not apply to corporations, only persons, the corporate shell may be disregarded when the corporation is used for fraudulent purposes. Federal Deposit Ins. Corp. v. Reliance Ins. Corp., 716 F. Supp. 1001, 1989 U.S. Dist. LEXIS 9354 (E.D. Ky. 1989).

Cited in:

Liberty Nat'l Bank & Trust Co. v. Foster, 737 S.W.2d 704, 1987 Ky. App. LEXIS 531 (Ky. Ct. App. 1987); Enzweiler v. Peoples Deposit Bank, 742 S.W.2d 569, 1987 Ky. App. LEXIS 607 (Ky. Ct. App. 1987); Security Finance Group, Inc. v. Northern Kentucky Bank & Trust, Inc., 858 F.2d 304, 1988 U.S. App. LEXIS 12863 (6th Cir. 1988); First State Bank v. City & County Bank, 872 F.2d 707, 1989 U.S. App. LEXIS 4493 (6th Cir. 1989).

OPINIONS OF ATTORNEY GENERAL.

Subsection (1) of KRS 287.290 (now 286.3-290) applies where the borrower is the United States or the state of Kentucky and has no application to reduce the amount of

security required of bank directors or officers by subsection (2) of this section. OAG 67-77.

In a transaction whereby a tobacco warehouse sells the tobacco of a particular farmer to a tobacco company and draws an order or bearer draft on the company which it takes to a bank to be discounted, such a draft is a bill of exchange within the meaning of subsection (6) of this section and the discount of such draft drawn against actual existing value shall not be considered as indebtedness within the meaning of this section. OAG 73-41.

The restrictions of this section and KRS 287.290 (now 286.3-290) do not apply to federal fund transactions since they are basically in the nature of time deposits and not loans, so that the commissioner of banking (now financial institutions) would have the authority to repeal or rescind regulation BR 70-2, since the legal basis thought to have existed does not exist and said commissioner could, by a new regulation, define federal fund transactions as being time deposits rather than loans. OAG 73-289.

The lending limits of subsection (6) of this section are not applicable to transactions where a bank acquires personal property and leases it to a customer for a term of years. OAG 74-16.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Banks and Hoskins, Liability and Responsibility of Bank Directors: Being Alert to Troubled Times, 72 Ky. L.J. 639 (1983-84).

286.3-290. Exceptions to maximum debt to banks.

In the case of obligations to banks and trust companies, the limitations and restrictions of KRS 286.3-280 shall not apply to:

(1) Obligations of the United States or of the State of Kentucky;

(2) Obligations guaranteed as to principal and interest by the United States or the State of Kentucky; or all obligations to the extent secured or covered by guarantees or by commitments or agreements to take over or to purchase the same made by any federal reserve bank or by the United States or by any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or consolidated bonds issued by or for federal land banks or consolidated debentures issued by or for federal intermediate credit banks under the Act of Congress known as the "Federal Farm Loan Act," and amendments thereto; or consolidated debentures issued by or for banks for cooperatives under the Act of Congress known as the "Farm Credit Act of 1933," and amendments thereto; or obligations issued by the federal home loan banks; or obligations which are insured by the federal housing administrator pursuant to Title 12, Section 12, Section 1713, United States Code, if the debentures to be issued in payment of such insured obligations are guaranteed as to the principal and interest by the United States; or obligations of national mortgage associations; except that the commissioner may make, alter and repeal regulations respecting the total liabilities of any person which:

(a) Are secured by direct obligations of the United States or the State of Kentucky, and

(b) Have a face value at least equal to the amount of such liabilities, and

(c) Will mature within five (5) years from the date such liabilities were incurred;

(3) Obligations of Kentucky counties and school districts incurred through borrowing in anticipation of the current year's tax receipts as authorized by KRS 68.320 and 160.540; and

(4) Loans secured by a segregated deposit account in the lending bank if the lending bank has a perfected security interest in the segregated deposit account and if the security interest is clearly documented in the bank's books and records.

History.

583: amend. Acts 1944, ch. 15; 1946, ch. 177; 1960, ch. 152; 1970, ch. 209, § 7; renum. 2006, ch. 247, § 38, effective July 12, 2006; 2010, ch. 24, § 634, effective July 15, 2010; 2010, ch. 28, § 16, effective July 15, 2010.

Compiler's Notes.

This section was formerly compiled as KRS 287.290 and was renumbered as this section effective July 12, 2006.

The Federal Farm Loan Act referenced in subsection (2) above was classified as 12 USCS §§ 641 et seq. and was repealed by Act Dec. 10, 1971, P.L. 92-181, § 26(a), 85 Stat. 624. For similar provisions, see 12 §§ USCS 2001 et seq.

The Farm Credit Act of 1933 referenced in subsection (2) above was classified as 12 USCS 1131 et seq. and was repealed by Act Dec. 10, 1971, P.L. 92-181. For similar provisions, see 12 §§ USCS 2001 et seq.

Legislative Research Commission Note.

(7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 28, which do not appear to be in conflict and have been codified together.

(7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286, and KRS references within this statute have been adjusted to conform with the 2006 renumbering of that code.

OPINIONS OF ATTORNEY GENERAL.

Subsection (1) of this section applies where the borrower is the United States or the state of Kentucky and has no application to reduce the amount of security required of bank directors or officers by subsection (2) of KRS 287.280 (now 286.3-280). OAG 67-77.

Under subsection (3) of KRS 287.280 (now 286.3-280) a bank may not loan more than 30 percent of its capital and surplus to any one borrower and this section does not create an exception for loans that are secured by obligations of the United States government where the loans have not been guaranteed as to principal and interest by the United States government. OAG 69-551.

The restrictions of this section and KRS 287.280 (now 286.3-280) do not apply to federal fund transactions since they are basically in the nature of time deposits and not loans, so that the commissioner of banking (now financial institutions) would have the authority to repeal or rescind regulation BR 70-2, since the legal basis thought to have existed does not exist and said commissioner could, by a new regulation, define federal fund transactions as being time deposits rather than loans. OAG 73-289.

Subsection (3) of this section is broad enough to embrace loans made to cities by banks in anticipation of revenue for that fiscal year, which means that if a city borrows money from a bank in anticipation of revenue for that fiscal year, and the loan does not exceed, when considering total financial obliga-

tions of the city for the particular fiscal year, the anticipated current revenue of the city for that fiscal year, the loan comes under the exception of subsection (3) of this section. OAG 78-572, 1978 Ky. AG LEXIS 272.

If a county borrows money from a bank in anticipation of revenue for that fiscal year, and the loan does not exceed, when considering total financial obligations of the county for the particular fiscal year, the anticipated current revenue of the county for that fiscal year, the loan comes under the exception of subsection (3) of this section. OAG 79-226, 1979 Ky. AG LEXIS 413.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Authorized investments for banks and trust companies, KRS 386.030, 386.050.

286.3-330. Assets may be pledged or surety bonds provided as collateral security — Security not required if deposit insured.

(1) A bank may, subject to statutory or charter limitations, pledge a portion of its assets or provide surety bonds as may be required by law as collateral security for government deposits made with it by or under the authority of the United States or for any other deposit required by law to be secured.

(2) Notwithstanding any law requiring security for deposits in the form of collateral, surety bond, or in any other form, security for deposits shall not be required to the extent the deposit is an insured deposit as defined in 12 U.S.C. sec. 1813, as amended.

(3) If a bank proposes to sell its assets and transfer its deposit liability to another bank and the purchasing bank is unwilling to accept a sufficient amount of the assets to cover the liability to depositors and other creditors, the selling bank may, with the consent of the commissioner, pledge all or a part of its remaining or unacceptable assets to secure a loan for an amount sufficient to cover the remaining liability to the depositors and other creditors.

History.

579: amend. Acts 1984, ch. 324, § 27, effective July 13, 1984; 1998, ch. 554, § 4, effective July 15, 1998; renum. 2006, ch. 247, § 38, effective July 12, 2006; 2010, ch. 24, § 635, effective July 15, 2010; 2024 ch. 152, § 27, effective July 15, 2024.

Compiler's Notes.

Section 12B of the Federal Reserve Act, referred to in subsection (2), was originally compiled as 12 USCS § 264, but was withdrawn as part of the Federal Reserve Act by Act Sept. 21, 1950, ch. 967, § 1 (64 Stat. 873), and made a separate Act known as the Federal Deposit Insurance Act, which may be found as 12 USCS § 1811 et seq.

This section was formerly compiled as KRS 287.330 and was renumbered as this section effective July 12, 2006.

Legislative Research Commission Note.

(7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286.

NOTES TO DECISIONS

Analysis

1. Pledge of Assets.
2. Securing Public Funds.
3. Liquidation.

1. Pledge of Assets.

Except in instances specifically authorized by statute a bank has no authority to pledge its assets as security for deposits. Commercial Banking & Trust Co. v. Citizens' Trust & Guaranty Co., 153 Ky. 566, 156 S.W. 160, 1913 Ky. LEXIS 901 (Ky. 1913). See Louisville v. Fidelity & Columbia Trust Co., 245 Ky. 704, 54 S.W.2d 40, 1932 Ky. LEXIS 661 (Ky. 1932).

2. Securing Public Funds.

Federal reserve members may secure public funds by transferring such deposits to its commercial department and transferring specific and readily marketable securities to its trust department to secure the repayment of same. Louisville Bridge Com. v. Louisville Trust Co., 258 Ky. 846, 81 S.W.2d 894, 1935 Ky. LEXIS 254 (Ky. 1935).

Revenues of the Louisville Bridge Commission are public funds, the deposits of which may be secured by a pledge of specific collateral. Louisville Bridge Com. v. Louisville Trust Co., 258 Ky. 846, 81 S.W.2d 894, 1935 Ky. LEXIS 254 (Ky. 1935).

3. Liquidation.

A bank has no authority to contract with a secured depositor that in the event of the bank's liquidation the depositor may receive its pro rata distributable share upon its debt before applying the security, such a contract was in violation of KRS 287.610 (now repealed). Louisville v. Fidelity & Columbia Trust Co., 245 Ky. 704, 54 S.W.2d 40, 1932 Ky. LEXIS 661 (Ky. 1932).

CHAPTER 304
INSURANCE CODE

Subtitle 12. Trade Practices and Frauds.

Section
304.12-260. Prohibition against refusal of liability insurer to pay on policy for school's posting of Ten Commandments.

Subtitle 13. Rates and Rating Organizations.

304.13-167. Workers' compensation insurers — Uniform classification and experience rating systems — Reporting — Subclassifications, rating plans, and other variations from manual rules — Credit for drug-free workplace program.

SUBTITLE 12.
TRADE PRACTICES AND FRAUDS

304.12-260. Prohibition against refusal of liability insurer to pay on policy for school's posting of Ten Commandments.

Because the posting of the Ten Commandments in a public school building is a lawful posting of a historical document under KRS 158.195, no liability insurer shall refuse to pay under the terms of the policy an insured who is sued for posting the Ten Commandments in compliance with KRS 158.195 in a public school building on the grounds that this act by the insured constitutes an illegal act for which the insurer is not liable to pay under the terms of the policy.

History.
Enact. Acts 2000, ch. 237, § 1, effective July 14, 2000.

SUBTITLE 13.

RATES AND RATING ORGANIZATIONS

304.13-167. Workers' compensation insurers — Uniform classification and experience rating systems — Reporting — Subclassifications, rating plans, and other variations from manual rules — Credit for drug-free workplace program.

(1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the commissioner by an advisory organization designated by the commissioner.

(2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the commissioner.

(3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.

(4) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.

(5) The commissioner shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.

(6) The commissioner shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program pursuant to administrative regulations adopted by the Department of Workers' Claims. The plans shall take effect January 1, 2008, shall be actuarially sound, and shall state the savings anticipated to result from such drug-free workplace programs. The credit shall be at least five percent (5%) unless the commissioner determines that five percent (5%) is actuarially unsound. The commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that contain certain criteria for safety programs. The commissioner shall consult with the commissioner of the Department of Workers' Claims in setting such criteria. A drug-free workplace credit under this subsection shall not be available to employers who receive a credit under KRS 304.13-412 or KRS Chapter 351.

History.
Enact. Acts 2000, ch. 380, § 11, effective July 14, 2000; 2007, ch. 93, § 3, effective March 23, 2007; 2010, ch. 24, § 1134, effective July 15, 2010; 2022 ch. 236, § 109, effective July 1, 2022; 2026 ch. 61, § 15, effective April 9, 2026.

TITLE XXVI

OCCUPATIONS AND PROFESSIONS

Chapter
309. Miscellaneous Occupations and Professions.
319. Psychologists.
322. Professional Engineers and Land Surveyors.
323. Architects.
334A. Speech-Language Pathologists and Audiologists.

CHAPTER 309

MISCELLANEOUS OCCUPATIONS AND PROFESSIONS

Interpretation for the Deaf and Hard of Hearing.

Section
309.300. Definitions for KRS 309.300 to 309.319.
309.301. Licensing for interpreters required — Exceptions.
309.302. Kentucky Board of Interpreters for the Deaf and Hard of Hearing.
309.304. Powers and duties of board — Administrative regulations.
309.306. Fees credited to revolving fund.
309.308. Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.
309.310. Duties of policy committee.
309.312. Eligibility for license and temporary license.
309.314. Renewal and reinstatement of license — Continuing education.
309.316. Classification of offenses — Investigation of wrongdoing — Hearing — Sanctions — Hearing for denial of application.
309.318. Board's disciplinary powers — Reasons for sanctions — Appeal to Franklin Circuit Court.
309.319. Penalty.

INTERPRETATION FOR THE DEAF AND HARD OF HEARING

309.300. Definitions for KRS 309.300 to 309.319.

As used in KRS 309.300 to 309.319, unless the context otherwise requires:

(1) "Board" means Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

(2) "Committee" means Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.

(3) "Consumer" means a person who is deaf, hard of hearing, or who requires special communication techniques in order to communicate.

(4) "Interpreter" means a person who engages in the practice of interpreting.

(5) "Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or the translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabularies include, but are not limited to, American Sign Language, English-based sign language, cued speech, and oral interpreting.

(6) "Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include, but are not limited to, the Registry of Interpreters for the Deaf, the National Association of the Deaf, and the National Training, Evaluation, and Certification Unit.

History.
Enact. Acts 1998, ch. 11, § 1, effective July 15, 1998.

309.301. Licensing for interpreters required — Exceptions.

(1) Effective July 1, 2003, no person shall represent himself or herself as an interpreter or engage in the practice of interpreting as defined in KRS 309.300 unless he or she is licensed in accordance with the provisions of KRS 309.300 to 309.319.

(2) The provisions of KRS 309.300 to 309.319 shall not apply to:

(a) Nonresident interpreters working in the Commonwealth less than twenty (20) days per year;

(b) Interpreters working at religious activities;

(c) Interpreters working as volunteers without compensation. However, all volunteers interpreting for state agencies must be eligible for licensure as described in KRS 309.312;

(d) Interpreters working in an emergency. An emergency is a situation where the consumer decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer; or

(e) The activities and services of an interpreter intern or a student in training who is:

1. Enrolled in a program of study in interpreting at an accredited institution of higher learning;

2. Interpreting under the supervision of a licensed interpreter as part of a supervised program of study; and

3. Identified as an interpreter intern or student in training.

History.
Enact. Acts 1998, ch. 11, § 2, effective July 15, 1998.

309.302. Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

(1) There is hereby created a board to be known as the "Kentucky Board of Interpreters for the Deaf and Hard of Hearing."

(2) The board shall consist of seven (7) members appointed by the Governor as follows:

(a) Five (5) practicing interpreters who hold current nationally recognized certification and have at least five (5) years interpreting experience;

(b) One (1) deaf interpreter with past or current nationally recognized certification; and

(c) One (1) consumer with knowledge about interpreter issues.

(3) After the initial term of each appointment, all members shall be appointed for a term of four (4) years.

(4) Board members shall not be allowed to succeed themselves but a former member may be reappointed to the board if that member has not served in the preceding four (4) years.

(5) The members of the board shall receive no compensation for their services on the board, but they shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(6) The board shall annually elect a chairman, a vice chairman, and a secretary-treasurer from the members of the board.

(7) The board shall hold at least one (1) meeting annually and additional meetings as the board may deem necessary. The additional meetings may be held upon call of the chairman or upon written request of a quorum. Four (4) members of the board shall constitute a quorum to conduct business.

(8) Upon recommendation of the board, the Governor may remove any member of the board for neglect of duty or malfeasance in office.

History.
Enact. Acts 1998, ch. 11, § 3, effective July 15, 1998.

309.304. Powers and duties of board — Administrative regulations.

(1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure and the issuance of licenses.

(2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter.

(3) The board shall promulgate necessary and reasonable administrative regulations in accordance with KRS Chapter 13A and this chapter to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, including regulations to establish authorized fees. Fees shall not exceed amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 309.300 to 309.319.

(4) The board may conduct hearings in accordance with KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 309.300 to 309.319.

(5) The board may renew licenses and require continuing education as a condition for renewal.

(6) The board may suspend or revoke licenses, or impose supervisory or probationary conditions upon licensees, or impose administrative disciplinary fines, issue written reprimands, or any combination thereof.

(7) The board may seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of interpreting by unlicensed persons.

(8) The board may employ any persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.

(9) Beginning in 1999, on October 1 of each year, the board shall submit a report to the Legislative Research Commission indicating:

(a) The current number of licensed interpreters; and

(b) The number of complaints received against interpreters and any disciplinary action taken within the previous calendar year.

History.
Enact. Acts 1998, ch. 11, § 4, effective July 15, 1998.

309.306. Fees credited to revolving fund.

(1) All fees and other moneys received by the board under the provisions of KRS 309.300 to 309.319 shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.

(2) No part of this revolving fund shall revert to the general fund of this Commonwealth.

(3) This revolving fund shall pay for the reimbursement of board members for actual and necessary expenses incurred in the performance of their official duties, the compensation of all of the employees of the board, and those operational expenses incurred in fulfilling the board's duties as described in administrative regulation.

History.
Enact. Acts 1998, ch. 11, § 5, effective July 15, 1998.

309.308. Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.

(1) There is hereby created a committee to be known as the "Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee."

(2) The committee shall consist of ten (10) members as follows:

(a) The president or a designee of:

1. Kentucky Association of the Deaf; and

2. Kentucky Registry of Interpreters for the Deaf;

(b) A representative from:

1. Kentucky Commission on the Deaf and Hard of Hearing (KCDHH);

2. Eastern Kentucky University Interpreter Training Program;

3. Kentucky Department of Education;

4. Kentucky Office of Vocational Rehabilitation;

5. Kentucky School for the Deaf; and

6. Cabinet for Health and Family Services; and

(c) Two (2) members at large, who are consumers, appointed by the board.

(3) The members of the committee shall receive no compensation for their services on the committee. The member from the Kentucky Association of the Deaf, the member from the Kentucky Registry of Interpreters for the Deaf, and the at-large members shall be reimbursed for actual and necessary expenses incurred in the performance of their committee duties.

History.
Enact. Acts 1998, ch. 11, § 6, effective July 15, 1998; 2005, ch. 99, § 65, effective June 20, 2005; 2006, ch. 211, § 129, effective July 12, 2006.

309.310. Duties of policy committee.

(1) The committee shall provide ongoing advice and input to the board regarding the criteria for licensure and the ratio between consumer demand and the existing supply of licensed interpreters or those eligible for licensure.

(2) The committee shall make recommendations to the board regarding the content of relevant administrative regulations.

(3) The committee shall provide ongoing review of professional development and support systems for interpreters including existing public and private education programs and training resources within the Commonwealth.

History.
Enact. Acts 1998, ch. 11, § 7, effective July 15, 1998.

309.312. Eligibility for license and temporary license.

(1) To be eligible for licensure by the board as an interpreter, the applicant shall submit an application which includes:

(a) An application fee; and

(b) Current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board and promulgated by administrative regulation.

(2) The board shall issue an interpreter license to an applicant who fulfills these requirements. The front of the license shall clearly list all certifications held by the licensee.

(3) The board may issue a temporary license as an interpreter to an applicant who is certified at a level below that required for licensure in subsection (1) of this section. A temporary license shall be available for a person who is training under the supervision of a licensed interpreter under circumstances defined by the board in administrative regulation. A temporary license is valid for only a certain period until the licensee achieves the minimum level of certification required for licensure under subsection (1) of this section. A temporary license is not renewable although extensions may be granted under circumstances defined by administrative regulation.

(a) For graduates of a baccalaureate interpreter training program, a temporary license shall be valid for up to one (1) year.

(b) For graduates of an associate of arts interpreter training program, a temporary license shall be valid for up to two (2) years.

(c) For nondegree applicants, a temporary license shall be valid for up to two (2) years.

(4) Upon payment of the application fee, the board shall grant licensure to an applicant holding a valid license, certificate, or equivalent issued by another state if it is based upon standards equivalent to or exceeding the standards required by KRS 309.300 to 309.319.

History.
Enact. Acts 1998, ch. 11, § 8, effective July 15, 1998.

309.314. Renewal and reinstatement of license — Continuing education.

(1) Each person licensed as an interpreter shall annually, on or before July 1, submit to the board

current proof of nationally recognized certification and pay a fee for the renewal of the interpreter license. The amount of the fee shall be promulgated by administrative regulation of the board. All licenses not renewed by July 1 of each year shall expire.

(2) A sixty (60) day grace period shall be allowed after July 1, during which time individuals may continue to practice and may renew their licenses upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the board.

(3) All licenses not renewed by August 31 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.

(4) After the sixty (60) day grace period, but before five (5) years from the date of termination, individuals with a terminated license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the board.

(5) A suspended license is subject to expiration and termination and may be renewed as provided in KRS 309.300 to 309.319. Renewal shall not entitle the licensee to engage in the practice of interpreting until the suspension has ended or is otherwise removed by the board and the right to practice is restored by the board.

(6) A revoked license is subject to expiration and termination but shall not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (4) of this section and the renewal fee as set forth in subsection (1) of this section.

(7) The board may require that a person applying for renewal or reinstatement of licensure show evidence of completion of continuing education as prescribed by the board by administrative regulation.

History.

Enact. Acts 1998, ch. 11, § 9, effective July 15, 1998.

309.316. Classification of offenses — Investigation of wrongdoing — Hearing — Sanctions — Hearing for denial of application.

(1) The board shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in KRS 309.300 to 309.319 or under other provisions of law.

(2) The board may investigate allegations of wrongdoing upon complaint or upon its own volition. The board shall establish procedures for receiving and investigating complaints by administrative regulation.

(3) If the board's investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before suspending, revoking, imposing probationary or supervisory conditions or an administrative fine, issuing a written reprimand, or any combination of actions regarding any license under the provisions of this chapter.

(4) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

(5) After denying an application under the provisions of KRS 309.300 to 309.319, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.

History.

Enact. Acts 1998, ch. 11, § 10, effective July 15, 1998.

309.318. Board's disciplinary powers — Reasons for sanctions — Appeal to Franklin Circuit Court.

(1) The board may refuse to issue a license or suspend, revoke, impose probationary conditions upon, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee has:

(a) Been convicted of a crime as described in KRS 335B.010(4) that directly relates to the occupation of interpreter, if in accordance with KRS Chapter 335B. A plea of "no contest" may be treated as a conviction for purposes of disciplinary action;

(b) Knowingly misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(c) Committed any fraudulent act or practice;

(d) Been incompetent or negligent in the practice of interpreting;

(e) Violated any state statute or administrative regulation governing the practice of interpreting;

(f) Violated the code of ethics of the national organization issuing the licensee's certification as incorporated in administrative regulation; or

(g) Violated any federal or state law considered by the board to be applicable to the practice of interpreting.

(2) When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.

(3) At any time during the investigative or hearing processes, the board may accept an assurance of voluntary compliance from the licensee which effectively deals with the complaint.

(4) The board may reconsider, modify, or reverse its probation, suspensions, or other disciplinary action.

(5) Five (5) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to competently engage in the practice of interpreting.

(6) Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.

History.
Enact. Acts 1998, ch. 11, § 11, effective July 15, 1998; 2017 ch. 158, § 43, effective June 29, 2017.

309.319. Penalty.

Any person who shall violate or aid in the violation of any of the provisions of KRS 309.301 shall be guilty of a Class B misdemeanor.

History.
Enact. Acts 1998, ch. 11, § 12, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Designation of offenses, see KRS 532.020.
Sentence of imprisonment for misdemeanor, KRS 532.090.

CHAPTER 319
PSYCHOLOGISTS

Section
319.010. Definitions.
319.015. Activities not included in practice of psychology.

319.010. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "Association" means the Kentucky Psychological Association;

(2) "Board" means the Kentucky Board of Examiners of Psychology;

(3) "Credential holder" means any person who is regulated by the board;

(4) "EPPP" means the Examination for Professional Practice in Psychology developed by the Association of State and Provincial Psychology Boards;

(5) "IPC" means the Interjurisdictional Practice Certificate developed by the Association of State and Provincial Psychology Boards;

(6) "License" means the credential issued by the board to a licensed psychologist, licensed psychological practitioner, certified psychologist with autonomous functioning, certified psychologist, or a licensed psychological associate;

(7) "Practice of psychology" means rendering to individuals, groups, organizations, or the public any psychological service involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and psychotherapy; and psychological testing in constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The application of said principles in testing, evaluation, treatment, use of psychotherapeutic techniques, and other methods includes, but is not limited to: diagnosis, prevention, and amelioration of adjustment problems and emotional, mental, nervous, and addictive disorders and mental health conditions of individuals and groups; educational and vocational counseling; the evaluation and planning for effective work and learning situations; and the resolution of interpersonal and social conflicts;

(8) "Psychotherapy" means the use of learning, conditioning methods, and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes, and behavior which are intellectually, socially, or emotionally maladjustive or ineffectual; and

(9) "Psychologist" means any person who holds himself or herself out by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," "psychopractice," or any other term or terms that imply he or she is trained, experienced, or an expert in the field of psychology.

History.
Enact. Acts 1948, ch. 169, § 1; 1964, ch. 154, § 1; 1986, ch. 128, § 2, effective July 15, 1986; 2001, ch. 80, § 2, effective June 21, 2001; 2010, ch. 50, § 1, effective July 15, 2010.

NOTES TO DECISIONS

1. Practice of Psychology.
Kentucky State Board of Examiners of Psychology had subject matter jurisdiction over administrative complaint alleging that a psychologist violated KRS 319.082(1)(c), (d), and (f) by rendering a formal, professional opinion about a child without direct and substantial professional contact with, or a formal assessment of, the child because while the evaluation of the child was in the context of a judicial proceeding, the conduct still constituted the practice of psychology under KRS 319.010(6) (now (7)). Maggard v. Commonwealth, 282 S.W.3d 301, 2008 Ky. LEXIS 237 (Ky. 2008).

Cited in:
Mosley v. Commonwealth, 420 S.W.2d 679, 1967 Ky. LEXIS 130 (Ky. 1967).

OPINIONS OF ATTORNEY GENERAL.

This section exempts from the definition of psychology and, therefore, from the licensing requirements of KRS Chapter 319, "the teaching of principles of psychology for accredited educational institutions," a fortiori, the teaching of the principles of psychotherapy for accredited educational institutions is similarly exempted and no further licensing would be required. OAG 80-326, 1980 Ky. AG LEXIS 333.

A practitioner of "thanatology," which is described as the counseling and helping of families to cope with the news that a loved one is terminally ill and to help said families after the death of the loved one, should either be a licensed physician or a licensed social worker. A licensed psychologist is also probably legally qualified to practice "thanatology." OAG 83-402, 1983 Ky. AG LEXIS 95.

319.015. Activities not included in practice of psychology.

Nothing in this chapter shall be construed to limit:

(1) The activities, services, and use of title on the part of a person in the employ of the federal government;

(2) Persons from engaging in the teaching of psychology, the conduct of psychological research, the provision of consultation services to organizations or institutions, or the provision of expert testimony, provided that such activities do not involve the delivery or supervision of direct psychological services to individuals or groups;

(3) Persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes from rendering services consistent with the laws regulating their professional practice and the ethics of their profession. The use of written or computerized interpretations of any psychological testing or the administration and use of symptomatic and behavioral assessments by a practitioner of the healing arts as defined in KRS 311.271(2), clinical social worker, marriage and family therapist, professional art therapist, advanced practice registered nurse, physician, physical therapist, or occupational therapist who uses these interpretations or administers and uses these assessments shall not be limited. They shall not represent themselves to be psychologists or use the term "psychological" in describing their services;

(4) The activities of a student, intern, or resident in psychology, pursuing a course of study approved by the department of psychology of an educational institution rated acceptable by the board for qualifying training and experience, provided such activities are recognized by transcript as a part of his or her supervised course of study;

(5) The recognized educational activities of teachers in accredited public and private schools, the authorized duties of guidance counselors who are certified by the Education Professional Standards Board, or the activities of persons using psychological techniques in business and industrial organizations for employment placement, promotion, or job adjustment of their own officers and employees;

(6) Persons who are credentialed as school psychologists by the Education Professional Standards Board from using the title "school psychologist" and practicing psychology as defined in KRS 319.010, if their practice is restricted to regular employment within a setting under the purview of the Education Professional Standards Board. These individuals shall be employees of the educational institution and not independent contractors providing psychological services to educational institutions;

(7) A duly ordained minister, priest, rabbi, Christian Science practitioner, or other clergyman from carrying out his or her responsibilities while functioning in a ministerial capacity within a recognized religious organization serving the spiritual needs of its constituency, if he or she does not hold himself or herself out as a psychologist; or

(8) Any nonresident temporarily employed in this state from rendering psychological services for not more than thirty (30) days every two (2) years, if he or she holds a valid current license or certificate as a psychologist in his or her home state or country and registers with the board prior to commencing practice in the Commonwealth or if he or she holds a valid current IPC.

History.

Enact. Acts 1964, ch. 154, § 15; 1986, ch. 128, § 3, effective July 15, 1986; 1992, ch. 104, § 2, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 80, § 3, effective June 21, 2001; 2002, ch. 79, § 10, effective July 15, 2002; 2010, ch. 50, § 2, effective July 15, 2010.

Legislative Research Commission Notes.

(7/15/2010). 2010 Ky. Acts ch. 85, sec. 52, changed the designation of "advanced registered nurse practitioner" to "advanced practice registered nurse" in KRS 314.011, the definitions section for KRS Chapter 314 relating to nursing. A change has been made in the text of this statute to conform.

OPINIONS OF ATTORNEY GENERAL.

A person employed as a school psychologist is not within the group of school personnel excluded from the provisions of this chapter by subsection (4) (now (5)) of this section and must be licensed under this chapter in order to be employed as a school psychologist. OAG 67-180.

The members of the staff of the Reading Research Institute of Berea College are not required to be licensed as psychologists under KRS Chapter 319 in order to be authorized to administer tests to students to carry on the work of the institute, since such work is not against the public interest and constitutes the conduct of research in problems of human behavior and subsection (1) of this section exempts from licensure the activities of a person in the employ of an accredited institution of higher education to the extent that such activities are a part of such person's official duties. OAG 68-209.

Unless the Board of Examiners of Psychologists grants an exception or the statute is amended, a school psychologist must have both a psychologist's license and a state Department of Education certificate. OAG 74-5.

CHAPTER 322

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Engineers and Surveyors.

Section
322.010. Definitions for chapter.
322.020. Practice of engineering or land surveying without license prohibited.
322.360. Public work required to be done under professional engineer or licensed architect.

Penalties.

322.990. Penalties.

ENGINEERS AND SURVEYORS

322.010. Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the State Board of Licensure for Professional Engineers and Land Surveyors;

(2) "Engineer" means a person who is qualified to engage in the practice of professional engineering by reason of special knowledge and use of:

(a) The mathematical, physical, and engineering sciences; and

(b) The principles and methods of engineering analysis and design, acquired by engineering education and practical engineering experience;

(3) "Professional engineer" means a person who is licensed as a professional engineer by the board;

(4) "Engineering" means any professional service or creative work, the adequate performance of which requires engineering education, training, and experience as an engineer.

(a) "Engineering" shall include:

1. Consultation, investigation, evaluation, planning, certification, and design of engineering works and systems;

a. Engineering design and engineering work associated with design/build projects;

b. Engineering works and systems which involve earth materials, water or other liquids, and gases;

c. Planning the use of land, air, and waters; and

d. Performing engineering surveys and studies;

2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces this service or work, either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when that professional service or work requires the application of engineering principles and data;

3. The teaching of engineering design courses in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board;

4. The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering:

a. Are residents of this state;

b. Have their principal place of business in this state; or

c. Are in responsible charge of the engineering services performed; and

5. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.

(b) "Engineering" shall not include the professional services performed by persons who:

1. Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or

2. Only operate or maintain machinery or equipment;

(5) "Practice of engineering" means the performance of any professional service included in subsection (4)(a) of this section;

(6) "Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;

(7) "Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;

(8) "Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;

(9) "Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;

(10) "Land surveying" means any professional service or work, the adequate performance of which requires the education, training, and experience as a land surveyor.

(a) "Land surveying" shall include but not be limited to the following:

1. Measuring and locating, establishing, or reestablishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:

a. Determination or establishment of the facts of size, shape, topography, and acreage;

b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;

c. Subdivision, division, and consolidation of lands;

d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;

e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;

f. Preparation of subdivision record plats;

g. Determination of existing grades and elevations of roads and land;

h. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and

i. Certification of documents;

2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:

a. Are residents of this state;

b. Have their principal office or place of business in this state; or

c. Are in responsible charge of the land surveying services or work performed; and

3. The preparation of survey descriptions for use in legal instruments affecting real property or property rights. "Land surveying" does not include the preparation of a physical description that identifies and describes the tract, parcel, or lot by reference to the tract, parcel, lot, block, or unit number of any subdivision, or other summary identifier appearing on a properly recorded plat of record, or by reference to a deed of record.

(b) "Land surveying" shall not include:

1. The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;

2. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or

3. The design of grades and elevations of roads and land;

(11) "Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;

(12) "Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;

(13) "Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;

(14) "Business entity" means a corporation, partnership, limited liability company, limited partnership, or firm;

(15) "Offer to practice" means:

(a) A promise or commitment to engage in any act directly related to engineering or land surveying;

(b) Undertaking to engage in the practice of engineering or land surveying; or

(c) Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;

(16) "Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;

(17) The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;

(18) The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;

(19) The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and

(20) The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying.

History.

1599e-2: amend. Acts 1966, ch. 68, § 1; 1972, ch. 148, § 1; 1974, ch. 308, § 55; 1974, ch. 350, § 1; 1980, ch. 332, § 1, effective July 15, 1980; 1982, ch. 273, § 1, effective July 15, 1982; 1986, ch. 291, § 1, effective July 15, 1986; 1992, ch. 96, § 1, effective July 14, 1992; 1998, ch. 214, § 1, effective January 1, 1999; 2007, ch. 137, § 140, effective June 26, 2007; 2008, ch. 149, § 1, effective July 15, 2008; repealed and reenact., Acts 2010, ch. 51, § 140, effective July 15, 2010.

Legislative Research Commission Notes.

(7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Practice of Engineering.

1. Purpose.

This chapter, KRS Chapter 322, is designed to control and regulate the licensing and practice of professional engineering and to prescribe certain times and conditions when the services of a licensed engineer are required; the legislature never intended that every contractor be, or employ, a licensed engineer or architect for every type of design and construction project; the legislation was primarily intended to prevent individuals from holding themselves out as professional engineers without a license. Thomas v. Surf Pools, Inc., 602 S.W.2d 437, 1980 Ky. App. LEXIS 343 (Ky. Ct. App. 1980).

2. Practice of Engineering.

A professional engineer was not performing services "incident to the practice of engineering", within the meaning of KRS 322.370, in drawing the preliminary plans and specifications for a nursing home and such act constituted practicing architecture without a license. Dahlem Constr. Co. v. State Board of Examiners & Registration of Architects, 459 S.W.2d 169, 1970 Ky. LEXIS 130 (Ky. 1970).

Cited in:

Kentucky State Bd. of Registration for Professional Engineers & Land Surveyors v. Performance Engineering, Inc., 758 S.W.2d 48, 1988 Ky. App. LEXIS 141 (Ky. Ct. App. 1988).

OPINIONS OF ATTORNEY GENERAL.

The legislature, in defining land surveying and its practice, is speaking of the actual surveying of land by metes and bounds through the taking of linear and angular measure-

ments, in applying the principles of geometry and trigonometry, by means of engineering or surveying equipment designed to enable a surveyor to make such calculations. OAG 66-575.

A land surveyor can legally prepare a map showing contours and elevations for planning and facilities. OAG 67-385.

A land surveyor cannot make original and final cross sections for pay quantities in earthwork excavation. OAG 67-385.

A land surveyor or any other person would be prohibited from acting as an advisor to a planning commission on matters involving planning of subdivision streets and construction if the advice required the application of engineering principles and data as outlined in the statute unless such person was licensed as a professional engineer. OAG 67-385.

Land surveying includes the location of boundary lines, acreage and the inevitable and concomitant plats depicting on paper just precisely what the surveyor did on the ground in locating boundaries and land boundary corners and includes maps showing roads, streets and rights of way. OAG 67-385.

It is not a violation of KRS 322.020 for a person or a corporation performing engineering services of the type described and defined in subdivisions (4) and (5) (now subdivisions (3) and (4)) of this section to use a business name which includes the phrase "engineering company" where the owner is engaged in the business, although not licensed as a professional engineer, and has licensed engineer associates or employees who are also engaged in the business on a substantially full-time basis; there is no violation if at least some members are licensed professional engineers and if the engineering services are performed by licensed professional engineers in their own names. OAG 81-356, 1981 Ky. AG LEXIS 109.

The preparation of sprinkler plans involves the practice of engineering and such plans should have the seal of a registered professional engineer. OAG 82-3, 1982 Ky. AG LEXIS 617.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Liens for services performed, KRS 376.075.

Public library facilities construction., 725 KAR 2:015.

Kentucky Law Journal.

Rutledge, The 2007 Amendments to the Kentucky Business Entity Statutes, 97 Ky. L.J. 229 (2008).

322.020. Practice of engineering or land surveying without license prohibited.

(1) Unless licensed as a professional engineer, no person shall:

(a) Engage in the practice of engineering;

(b) Offer to practice engineering; or

(c) Use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a professional engineer.

(2) Unless licensed as a professional land surveyor, no person shall:

(a) Engage in the practice of land surveying;

(b) Offer to practice land surveying; or

(c) Use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a professional land surveyor.

History.

1599e-1, 1599e-12, 1599e-21: amend. Acts 1972, ch. 148, § 2; 1986, ch. 291, § 2, effective July 15, 1986; 1998, ch. 214, § 3, effective January 1, 1999.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Contract.
3. Use of Term "Engineering."
4. Limitations.

1. Purpose.

This section is designed to protect the public from being imposed upon by persons not qualified to render a professional service. Kennoy v. Graves, 300 S.W.2d 568, 1957 Ky. LEXIS 462 (Ky. 1957).

This chapter, KRS Chapter 322, is designed to control and regulate the licensing and practice of professional engineering and to prescribe certain times and conditions when the services of a licensed engineer are required; the legislature never intended that every contractor be, or employ, a licensed engineer or architect for every type of design and construction project; the legislation was primarily intended to prevent individuals from holding themselves out as professional engineers without a license. Thomas v. Surf Pools, Inc., 602 S.W.2d 437, 1980 Ky. App. LEXIS 343 (Ky. Ct. App. 1980).

2. Contract.

The technical requirements of this section play no part in the determination of just claims between persons in the same business field who have contracted with knowledge of each other's respective professional qualifications. Kennoy v. Graves, 300 S.W.2d 568, 1957 Ky. LEXIS 462 (Ky. 1957).

When a statute requires a license to practice a particular profession, a contract for those professional services entered into with one not licensed is void and unenforceable. Kennoy v. Graves, 300 S.W.2d 568, 1957 Ky. LEXIS 462 (Ky. 1957).

3. Use of Term "Engineering."

The automotive machine shop's use of the term "engineering" in its corporate name did not violate this section, where there was no evidence that anyone had been given the impression that the shop was engaged in the profession of engineering, and there was no proof that anyone had come to the business seeking engineering services or that any complaints had been asserted by consumers. Kentucky State Bd. of Registration for Professional Engineers & Land Surveyors v. Performance Engineering, Inc., 758 S.W.2d 48, 1988 Ky. App. LEXIS 141 (Ky. Ct. App. 1988).

4. Limitations.

Factual issues as to whether any licensed engineer oversaw or delegated the allegedly negligent work of a non-engineer under KRS 322.020(1), 322.030 and whether the company held itself out as an engineering firm precluded summary judgment on the professional services statute of limitations under KRS 413.243, 413.245. ISP Chems. LLC v. Dutchland, Inc., 2011 U.S. Dist. LEXIS 7675 (W.D. Ky. Jan. 25, 2011).

OPINIONS OF ATTORNEY GENERAL.

A county surveyor need not be licensed as a land surveyor pursuant to this chapter, as it is a constitutionally created office and licensing requirements applicable to other land surveyors are not applicable to the county surveyor in the absence of a constitutional provision to that effect and, as a license is not required, the legislature cannot impose such a requirement. OAG 73-763.

If a county surveyor engages in a private surveying project and he is not a licensed surveyor under this chapter, and he does not fall within any of the exceptions to this law under KRS 322.450, then he would be proceeding illegally. OAG 74-284.

This section is violated when a person or corporation which is performing engineering services described or defined in subdivisions (4) and (5) (now subdivisions (3) and (4)) of KRS 322.010 under a name which includes the term "engineering company" where neither the owner nor any other person connected with that particular business is licensed as a professional engineer. OAG 81-356, 1981 Ky. AG LEXIS 109.

It is not a violation of this section for a person or a corporation performing engineering services of the type described and defined in subdivisions (4) and (5) (now subdivisions (3) and (4)) of KRS 322.010 to use a business name which includes the phrase "engineering company" where the owner is engaged in the business, although not licensed as a professional engineer, and has licensed engineer associates or employees who are also engaged in the business on a substantially full-time basis; there is no violation if at least some members are licensed professional engineers and if the engineering services are performed by licensed professional engineers in their own names. OAG 81-356, 1981 Ky. AG LEXIS 109.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Architects, KRS Chapter 323.

322.360. Public work required to be done under professional engineer or licensed architect.

(1) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving engineering, unless the plans, specifications, and estimates have been prepared and the construction executed under the direct supervision of a professional engineer or a licensed architect.

(2) Subsection (1) of this section shall not apply to any public work, including a highway or capital project under KRS 56.491, that involves only maintenance or repair of the facility. Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design.

History.
1599e-18: amend. Acts 1972, ch. 247, § 2; 1974, ch. 74, Art. II, § 9(1); 1986, ch. 291, § 31, effective July 15, 1986; 1998, ch. 214, § 31, effective January 1, 1999.

NOTES TO DECISIONS

1. Municipal Swimming Pool.
Under this section, if there is a requirement of an on-site engineer or architect during the construction of a municipal swimming pool, it is the duty of the city, not the swimming pool builder, to provide one. Thomas v. Surf Pools, Inc., 602 S.W.2d 437, 1980 Ky. App. LEXIS 343 (Ky. Ct. App. 1980).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Capital construction process, 702 KAR 4:160.

PENALTIES

322.990. Penalties.

Any person who violates any provision of this chapter shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned not more than three (3) months, or both.

History.
1599e-21: amend. Acts 1986, ch. 291, § 38, effective July 15, 1986; 1998, ch. 214, § 40, effective January 1, 1999.

CHAPTER 323
ARCHITECTS

Section
323.010. Definitions.
323.020. License required.
323.031. Applicability of chapter.
323.033. Buildings requiring services of licensed architect — Exemptions.
323.040. Preparing plans and specifications, when permitted by others than architects. [Repealed.]
323.050. Qualifications for license — Examinations.
323.060. Persons who may be licensed without examination.
323.080. Fees.

Penalties.

323.990. Penalties.

323.010. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Kentucky Board of Architects;

(2) An "architect" is any person who engages in the practice of architecture as hereinafter defined;

(3) The "practice of architecture" is the rendering or offering to render certain services, hereinafter described, in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. The services referred to in the previous sentence include planning, providing preliminary studies, designs, drawings and specifications, and administration of construction contracts;

(4) A "building" is a structure which has as its principal purpose human habitation or use;

(5) "Use group" is the classification of a building or structure based on the purpose for which it is used, as set forth in the Kentucky Building Code;

(6) "Consultant" is an individual, partnership, or firm acting subordinately and in a position of service to an architect engaged in the practice of architecture as defined; and

(7) "Administration of construction contracts" means:

(a) Conducting periodic site visits;

(b) Reviewing shop drawings and reviewing other submittals required of the contractor by the terms of the construction contract documents;

(c) Reporting to the owner any violations of applicable building codes and any substantial deviations from the contract documents that the architect observes; or

(d) Reporting to the building official any violations of applicable building codes that the architect observes.

History.
Enact. Acts 1960, ch. 218, § 1; 1980, ch. 332, § 3, effective July 15, 1980; 2002, ch. 111, § 1, effective July 15, 2002.

NOTES TO DECISIONS

Cited in:
Board of Education v. Elliott, 276 Ky. 790, 125 S.W.2d 733, 1939 Ky. LEXIS 598 (Ky. 1939); Baker v. Commonwealth, 272 S.W.2d 803, 1954 Ky. LEXIS 1130 (Ky. 1954); Old Mason's Home v. Mitchell, 892 S.W.2d 304, 1995 Ky. App. LEXIS 15 (Ky. Ct. App. 1995).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Architect may perform engineering work incidentally, KRS 322.030.
Public library facilities construction., 725 KAR 2:015.

323.020. License required.

Except as otherwise provided hereinafter, no person shall practice architecture in the Commonwealth of Kentucky without first obtaining a license under the provisions of this chapter, it being the purpose of this chapter to safeguard the life, health, property and welfare of the public.

History.
73-1: amend. Acts 1960, ch. 218, § 2.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Contracts.

1. Purpose.
The purpose of this chapter is to safeguard life, health and property and to promote public welfare, and for that reason an unlicensed architect cannot enforce a contract for services as an architect. Board of Education v. Elliott, 276 Ky. 790, 125 S.W.2d 733, 1939 Ky. LEXIS 598 (Ky. 1939).

2. Contracts.
Where an act requiring a license to engage in an occupation is intended as a police measure, a contract without a license is void, but where the license is for revenue purposes, the contract is usually not void. Board of Education v. Elliott, 276 Ky. 790, 125 S.W.2d 733, 1939 Ky. LEXIS 598 (Ky. 1939).

Cited in:
Old Mason's Home v. Mitchell, 892 S.W.2d 304, 1995 Ky. App. LEXIS 15 (Ky. Ct. App. 1995).

323.031. Applicability of chapter.

(1) If the drawings and specifications are signed by the author thereof with the true titles of their occupations as may be required by law, this chapter does not apply to:

(a) Any building which is to be used for farm purposes only;

(b) Any residential structure that does not require the services or seal of an architect or engineer either under the Uniform State Building Code pursuant to KRS 198B.050 or under KRS 323.033;

(c) Any building classified by use group other than those listed under KRS 323.033 so long as the services or seal of an architect or engineer as applicable is not required for such other use group under the Uniform State Building Code pursuant to KRS 198B.050 or;

(d) Any structure not classified as a building by KRS 323.010(4).

(2) Provisions of this chapter shall not apply to:

(a) Any individual, partnership, or firm acting solely as a consultant to an architect licensed in the Commonwealth;

(b) An architect or other person acting solely as an officer or employee of the United States government.

(3) A licensed professional engineer may prepare plans and specifications for and supervise the construction of structures as an incident to the practice of his own profession.

History.
Enact. Acts 1980, ch. 332, § 5, effective July 15, 1980; 1990, ch. 190, § 1, effective July 13, 1990; 2006, ch. 53, § 1, effective July 12, 2006.

323.033. Buildings requiring services of licensed architect — Exemptions.

(1) Except as otherwise provided in this section, the following buildings, or additions to existing buildings, classified by use group shall require the services of an architect licensed in the Commonwealth of Kentucky;

(a) Assembly use group having a capacity of one hundred (100) persons or more, except church buildings having a capacity of four hundred (400) persons or less or six thousand (6,000) square feet or less;

(b) Business use group having a capacity of one hundred (100) persons or more;

(c) Institutional use group, regardless of capacity;

(d) Mercantile use group having a capacity of one hundred (100) persons or more;

(e) Residential use group of more than twelve (12) dwelling units or having a capacity of fifty (50) persons or more;

(f) Educational use groups regardless of capacity; and

(g) Mixed use group containing one (1) or more of the use group classifications and capacities listed under paragraphs (a) to (f) of this subsection.

(2) Alterations or new construction requiring compliance with the Kentucky Building Code for any building containing one (1) or more of the use group classifications and capacities listed under subsection (1) of this section shall require the services of an architect licensed in the Commonwealth of Kentucky; except that, when such alterations or new construction predominantly involve primarily structural components or mechanical or electrical systems, services may be performed by one (1) or more licensed professional engineers.

(3) Buildings, or additions to existing buildings, containing one (1) or more of the use group classifications and capacities listed under subsection (1) of this section shall require, in addition to the services of an architect, the services of one (1) or more licensed engineers.

(4) The following buildings and additions to existing buildings, classified by use group, shall require the

services of either an architect or a professional engineer registered in the Commonwealth of Kentucky:

(a) Factory and industrial use group having a capacity of one hundred (100) persons or more;

(b) High hazard use group, regardless of capacity;

(c) Storage use group having a capacity of one hundred (100) persons or more; and

(d) Utility and miscellaneous use groups having a capacity of one hundred (100) persons or more.

(5) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving the practice of architecture or engineering unless the plans, specifications, and estimates have been prepared and the administration of construction contracts executed under the direct supervision of a licensed architect or a professional engineer. This subsection shall not apply to:

(a) Any public work, including a building or capital project under KRS 56.491, that involves only maintenance or repair of the facility. Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design;

(b) Any residential dwelling that falls under the Kentucky Residential Code; or

(c) Facilities used in the furtherance of security or defense contracts, grants, or agreements with the United States of America located on property owned by the Commonwealth that are industrial or storage areas measuring twenty thousand (20,000) square feet or less or a business area measuring ten thousand (10,000) square feet or less, provided work is in compliance with the United States Department of Defense Building Code.

(6) The services required in subsections (1) to (5) of this section shall include the administration of construction contracts.

History.

Enact. Acts 1980, ch. 332, § 4, effective July 15, 1980; 1990, ch. 190, § 2, effective July 13, 1990; 2002, ch. 111, § 8, effective July 15, 2002; 2008, ch. 59, § 8, effective July 15, 2008; 2021 ch. 183, § 1, effective June 29, 2021.

OPINIONS OF ATTORNEY GENERAL.

Under this section, an expenditure for architectural design plans is a necessary, proper and legitimate expenditure of public moneys. OAG 84-378, 1984 Ky. AG LEXIS 5.

323.040. Preparing plans and specifications, when permitted by others than architects. [Repealed.]

Compiler's Notes.

This section (73-7) was repealed by Acts 1960, ch. 218, § 23.

323.050. Qualifications for license — Examinations.

(1) Except as otherwise provided in this chapter, an applicant seeking to obtain a license to practice architecture in Kentucky shall satisfactorily pass the examination that is prescribed by the board.

(2) Every applicant for examination shall:

(a) Be of good moral character; and

(b) Hold a professional degree in architecture accredited by the National Architectural Accrediting Board (NAAB), or its equivalent as determined by administrative regulations promulgated by the board, with such additional experience as the board may prescribe and approve.

(3) Examinations shall be available on a regular basis at a place identified by the testing service and shall be given in accordance with the terms and conditions agreed upon by the board and the testing service. Procedures concerning the examination shall be set out in administrative regulations promulgated by the board.

History.

73-5: amend. Acts 1960, ch. 218, § 4; 1972, ch. 201, § 1; 1990, ch. 190, § 3, effective July 13, 1990; 1996, ch. 23, § 1, effective July 15, 1996; 2002, ch. 111, § 2, effective July 15, 2002.

323.060. Persons who may be licensed without examination.

Any person who is a licensed architect in another state or country where the qualifications prescribed at the time of licensing were, in the opinion of the board, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the board are granted to licensees of the Commonwealth, may be granted a license without an examination.

History.

73-5: amend. Acts 1960, ch. 218, § 5.

NOTES TO DECISIONS

1. Construction.

This section means that the board shall form an opinion as to the applicant's qualifications on the basis of the data submitted with the application and such independent investigation as the board may consider necessary to establish the truth of the facts stated in the application concerning the extent, nature, and quality of the work the applicant has performed. Baker v. Commonwealth, 272 S.W.2d 803, 1954 Ky. LEXIS 1130 (Ky. 1954).

323.080. Fees.

(1) The board shall promulgate administrative regulations that establish fees for the following services. These fees shall not exceed the following:

(a) For processing the application for the examination $200

(b) For a license certificate upon satisfactorily passing the examination 50

(c) For the restoration of a voluntarily surrendered license 300

(d) For a license to an architect satisfactorily licensed in another state or country 250

(e) For reinstatement of a license revoked for failure to pay the

annual renewal fee or suspended by the board, in addition to application and arrears as determined by the board 300

(f) Renewal certificate 250

(2) The proper fee as prescribed above shall be paid to the board, and shall not be refunded in whole or in part.

(3) The cost of taking the examination shall be borne by the applicant.

History.
73-11, 73-13: amend. Acts 1960, ch. 218, § 6; 1972, ch. 201, § 2; 1990, ch. 190, § 4, effective July 13, 1990; 1996, ch. 23, § 2, effective July 15, 1996; 2006, ch. 53, § 2, effective July 12, 2006.

PENALTIES

323.990. Penalties.
(1) Whoever violates KRS 323.020 or 323.230 is guilty of a Class A misdemeanor.
(2) Whoever violates KRS 323.050(2)(b) or 323.120(1) by falsifying an application for certification or renewal as an architect is guilty of a Class A misdemeanor, and the architect's license shall be revoked for two (2) years.
(3) In addition to the sanctions provided in this chapter, the board may direct any licensee found guilty of violating any provision of this chapter to pay to the board a sum not to exceed the actual and reasonable costs of investigation and prosecution of the case, which shall be paid to the board's trust and agency account.

History.
73-14: amend. Acts 1960, ch. 218, § 22; 1990, ch. 190, § 14, effective July 13, 1990; 2006, ch. 53, § 7, effective July 12, 2006; 2008, ch. 59, § 6, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Designation of offenses, see KRS 532.020.
Fines for misdemeanors, see KRS 534.040.
Sentence of imprisonment for misdemeanors, see KRS 532.090.

CHAPTER 334A

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Section
334A.020. Definitions for chapter.
334A.030. License required for speech-language pathology or audiology.
334A.033. License for speech-language pathology assistant — Requirements for licensure — Supervision requirements.
334A.035. Interim license requirement — Exemption for public school speech-language pathologists with teacher certification in communication disorders.
334A.050. Qualifications of applicant for license.
334A.060. Licensure without examination.
334A.160. Maximum fees prescribed for licenses.
334A.170. Renewal of licenses — Fees.
334A.190. Caseload limitations for speech-language pathologists in the public schools.
334A.990. Penalty.

334A.020. Definitions for chapter.
As used in this chapter, unless the context otherwise requires:

(1) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of an appropriately qualified supervisor;
(2) "Audiologist" means one who is licensed to practice audiology. An audiologist may describe himself or herself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," "aural rehabilitationist," or "hearing conservationist";
(3) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;
(4) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide professional services in their areas of training that are based on current research and best practices;
(5) "Interim license" means a license issued by the board pursuant to KRS 334A.035 to a person for the purpose of completing the supervised postgraduate professional experience required under that section prior to an application for licensure as a speech-language pathologist or a speech-language pathology assistant;
(6) "Person" means any individual, organization, or corporate body, except that only individuals can be licensed under this chapter;
(7) "Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, prescribing, ordering the use of, selling and fitting hearing instruments, including the selling and fitting of both prescription hearing aids and over-the-counter hearing aids, auditory training, or speech reading;
(8) "Practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction, and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensorimotor competencies for the purpose of designing and implementing programs for the amelioration of these disorders and conditions. Any representation to the public by title or by description of

services, methods, or procedures for the evaluation, counseling, remediation, consultation, measurement, testing, audiometric screening, identification, appraisal, instruction, and research of persons diagnosed with conditions or disorders affecting speech, voice, verbal, and written language, cognition/communication, or oral and pharyngeal sensorimotor competencies shall be considered to be the practice of speech-language pathology;

(9) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself or herself to the public by any title or description of services incorporating the words "speech- language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "speech pathologist," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatrist," "communication disorders," or "verbal therapist";

(10) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech-language pathology services provided without appropriate supervision or outside the public school system shall be deemed to be the unlicensed practice of speech-language pathology and shall subject the offending party to penalties established in KRS 334A.990;

(11) "Supervisor" means a person who holds a Kentucky license as a speech- language pathologist or who holds Education Professional Standards Board master's level certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation; and

(12) "Temporary license" means a license that may be issued by the board administrator pursuant to KRS 334A.181 to any applicant who has met all the requirements for permanent licensure in accordance with that section.

History.

Enact. Acts 1972, ch. 236, § 2; 1986, ch. 483, § 2, effective July 15, 1986; 1994, ch. 32, § 1, effective July 15, 1994; 2000, ch. 375, § 4, effective July 14, 2000; 2008, ch. 165, § 1, effective July 15, 2008; 2022 ch. 46, § 3, effective July 14, 2022; repealed and reenacted by 2023 ch. 53, § 3, effective June 29, 2023.

OPINIONS OF ATTORNEY GENERAL.

The import of KRS 334.200(2) is that no so-called hearing center, hospital, etc., can employ a licensed hearing aid dealer solely for the purpose of engaging in the fitting or sale of hearing aids for profit; a licensed audiologist cannot sell or fit hearing aids, and his practice is limited by subsection (7) (now (6)) of this section, by which he can only make "hearing aid recommendations and evaluation." OAG 85-27, 1985 Ky. AG LEXIS 122.

To be eligible for Medicaid reimbursement for speech pathology services under federal regulations, a provider must either be or work under the direction of a speech pathologist. A speech pathologist under federal regulations must have American Speech and Hearing Association certification or its equivalent or have a master's degree in speech-language pathology and be in the process of acquiring the necessary work experience for such certification. The application of this standard to persons certified by the Education Professional Standards Board must be determined on a case-by-case basis. OAG 2008-04, 2008 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

334A.030. License required for speech-language pathology or audiology.

(1) Licensure shall be granted as a speech-language pathologist, speech-language pathology assistant, or audiologist independently. A person may be licensed in more than one (1) area if he meets the respective qualifications.

(2) No person shall practice or represent himself as a speech-language pathologist, speech-language pathology assistant, or audiologist in this state unless he is licensed in accordance with the provisions of this law.

(3) A licensed speech-language pathology assistant employed by a public school shall receive the same salary and benefits available to certified teachers with Rank III and the corresponding years of experience.

History.

Enact. Acts 1972, ch. 236, § 3; 1986, ch. 483, § 3, effective July 15, 1986; 1994, ch. 32, § 2, effective July 15, 1994.

NOTES TO DECISIONS

1. Deceptive Practices.

Private trade organization engaged in scheme of certifying people as "certified hearing aid audiologist" knew or should have known that customers would be deceived by use of this term in reference to people who had not met the statutory requirements for audiologist, and thus violated the Consumer Protection Act by the use of false, misleading and deceptive practices. National Hearing Aid Soc. v. Commonwealth, 551 S.W.2d 247, 1977 Ky. App. LEXIS 716 (Ky. Ct. App. 1977).

OPINIONS OF ATTORNEY GENERAL.

Speech pathologists and audiologists employed at comprehensive care centers operated by the various regional mental health-mental retardation boards must be licensed pursuant to this section as they are not state employees entitled to exemption under KRS 334A.040(3)(b). OAG 74-384.

To be eligible for Medicaid reimbursement for speech pathology services under federal regulations, a provider must either be or work under the direction of a speech pathologist. A speech pathologist under federal regulations must have American Speech and Hearing Association certification or its equivalent or have a master's degree in speech-language pathology and be in the process of acquiring the necessary work experience for such certification. The application of this standard to persons certified by the Education Professional

Standards Board must be determined on a case-by-case basis. OAG 2008-04, 2008 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Requirements for licensure as a Speech-Language Pathology Assistant, 201 KAR 17:034E.

Requirements for licensure for an audiologist, 201 KAR 17:036E.

334A.033. License for speech-language pathology assistant — Requirements for licensure — Supervision requirements.

(1) The board may issue a license to practice as a speech-language pathology assistant under the following conditions:

(a) The practice shall be limited to the public schools and shall be under the supervision of an appropriately qualified supervisor;

(b) The requirements for supervision shall be set forth in administrative regulations promulgated by the board and shall include requirements that:

1. A person holding an interim license as a speech-language pathology assistant shall receive no less than three (3) hours per week of documented direct supervision and three (3) hours per week of indirect supervision from an appropriate supervisor as determined by the board;

2. A person holding a license as a speech-language pathology assistant with less than three (3) years of full-time experience shall receive no less than two (2) hours per week of documented direct supervision and two (2) hours per week of indirect supervision from an appropriate supervisor as determined by the board;

3. A person holding a license as a speech-language pathology assistant with three (3) or more years of full-time experience shall receive no less than one (1) hour per week of documented direct supervision and one (1) hour per week of indirect supervision, unless, in the professional judgment of the supervisor, the ability of the speech-language pathology assistant requires a higher level of supervision in order to avoid compromising the quality of services provided to students; and

4. Supervision shall be adjusted proportionally for less than full-time employment;

(c) An individual shall not supervise or be listed as the supervisor for more than two (2) speech-language pathology assistants; and

(d) The supervisor shall delegate to the assistant the appropriate tasks pursuant to KRS 334A.020 and the supervisor and assistant shall work together to provide the appropriate services to all assigned pupils taking into account the severity and complexity of the needs of individual students and the respective workloads of the supervisor and assistant. The maximum number of pupils served by each speech-language pathology assistant shall not exceed the direct service caseload of the speech-language pathologist as established in KRS 334A.190.

(2) To be eligible for licensure by the board as a speech-language pathology assistant, the applicant shall meet the following requirements:

(a) A baccalaureate degree in the area of speech-language pathology as defined by administrative regulation;

(b) Completion of postgraduate professional experience deemed appropriate by the board by administrative regulation; and

(c) List on the application the name of the appropriately qualified supervisor who has agreed to provide supervision as set forth by the board by administrative regulation.

History.

Enact. Acts 1994, ch. 32, § 4, effective July 15, 1994; 1996, ch. 219, § 1, effective July 15, 1996; 2000, ch. 375, § 7, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Application, education, and requirements[Requirements] for licensure as a speech-language pathologist, 201 KAR 17:012E.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Requirements for licensure as a Speech-Language Pathology Assistant, 201 KAR 17:034E.

Temporary licensure for speech-language pathologist, speech language pathology assistant, and audiologist, 201 KAR 17:014E.

334A.035. Interim license requirement — Exemption for public school speech-language pathologists with teacher certification in communication disorders.

(1)(a) A person who has a Master's degree in the area of speech-language pathology or communication disorders, or is currently enrolled in a doctoral degree program with emphasis in speech-language pathology or communication disorders, or has substantive equivalent course work as defined by the board's administrative regulations and who has completed supervised direct clinical practicum with individuals presenting a variety of disorders of communication and swallowing, the experience being obtained with a training institution or in one (1) of its cooperating programs, shall apply for an interim license during the time that person is completing postgraduate professional experience deemed necessary by the board. The postgraduate professional experience shall be completed under the supervision of a speech-language pathologist who holds a Kentucky license or certification by other accrediting bodies, at the discretion of the board.

(b) A person with interim licensure shall make every effort to take and pass a national examination in speech-language pathology approved by the board

at the time of the application for licensure. If unsuccessful with the examination, the licensee shall submit documentation of the applicant's preparation to take the national examination and continue to practice under supervision in accordance with this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A to establish the documentation required under this paragraph.

(c) Upon completion of postgraduate professional experience deemed necessary by the board, the speech-language pathologist shall make an application to the board within thirty (30) days for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(d) An interim license shall not exceed a period of twenty-four (24) months without board approval.

(2)(a) A person who has a baccalaureate degree in the area of speech-language pathology or communication disorders as defined by administrative regulation shall apply for an interim license as a speech-language pathology assistant during the time that person is completing his or her professional experience as established by the board by administrative regulation. The postgraduate professional experience shall be completed under the supervision of an appropriately qualified supervisor.

(b) Upon completion of the postgraduate professional experience, the speech-language pathology assistant shall make immediate application to the board within thirty (30) days for permanent licensure if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(c) An interim license shall not exceed a period of twenty-four (24) months without board approval.

(3)(a) A speech-language pathologist employed solely by the public schools in a certified position who holds a teacher certification in communication disorders issued by the Education Professional Standards Board shall be exempt from holding a license issued by the board.

(b) A speech-language pathologist in a classified position who does not hold a teacher certification in communication disorders issued by the Education Professional Standards Board shall apply for and maintain appropriate licensure.

(c) The public school speech-language pathologist shall determine from the local school board how his or her position is categorized.

History.

Enact. Acts 1988, ch. 152, § 1, effective March 31, 1988; 1994, ch. 32, § 3, effective July 15, 1994; 2000, ch. 375, § 5, effective July 14, 2000; 2008, ch. 165, § 2, effective July 15, 2008.

OPINIONS OF ATTORNEY GENERAL.

To be eligible for Medicaid reimbursement for speech pathology services under federal regulations, a provider must either be or work under the direction of a speech pathologist. A speech pathologist under federal regulations must have American Speech and Hearing Association certification or its equivalent or have a master's degree in speech-language pathology and be in the process of acquiring the necessary work experience for such certification. The application of this standard to persons certified by the Education Professional Standards Board must be determined on a case-by-case basis. OAG 2008-04, 2008 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Application, education, and requirements[Requirements] for licensure as a speech-language pathologist, 201 KAR 17:012E.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

Education, experience, and application requirements for interim licensure as a speech language pathologist, 201 KAR 17:011E.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

334A.050. Qualifications of applicant for license.

To be eligible for licensure by the board as a speech-language pathologist or audiologist, the applicant must:

(1) Be a citizen of the United States or have declared his intention to become a citizen. A statement by the applicant under oath that he is a citizen or that he intends to apply for citizenship when he becomes eligible to make application shall be sufficient proof of compliance with this subsection;

(2) Show evidence of meeting the following professionally accepted academic and practicum standards:

(a) Master's degree in the area of speech-language pathology or audiology or substantive equivalent. The specific course work for this requirement is to be determined by the board and delineated in the administrative regulations;

(b) Completion of supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with the training institution or in one (1) of its cooperating programs; and

(c) Completion of postgraduate professional experience as deemed necessary by the board; and

(3) Pass the national examinations in speech-language pathology or audiology which are approved by the American Speech and Hearing Association and in effect at the time of application for licensure. Written examinations may be supplemented by such oral examinations as the board shall determine. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another licensing fee.

History.

Enact. Acts 1972, ch. 236, § 5; 1978, ch. 384, § 109, effective June 17, 1978; 1986, ch. 483, § 5, effective July 15, 1986; 1988, ch. 152, § 3, effective March 31, 1988.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Application, education, and requirements[Requirements]

for licensure as a speech-language pathologist, 201 KAR 17:012E.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

Education, experience, and application requirements for interim licensure as a speech language pathologist, 201 KAR 17:011E.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

Requirements for licensure for an audiologist, 201 KAR 17:036E.

Temporary licensure for speech-language pathologist, speech language pathology assistant, and audiologist, 201 KAR 17:014E.

334A.060. Licensure without examination.

(1) The board may waive the examination and grant a license to applicants who present proof of current licensure in a state which has standards that are at least equivalent to those of this state.

(2) The board may waive the examination and grant a license to those who hold the Certificate of Clinical Competence of the American Speech and Hearing Association in the area for which they are applying for licensure.

History.

Enact. Acts 1972, ch. 236, § 6; 1986, ch. 483, § 6, effective July 15, 1986; 1988, ch. 152, § 4, effective March 31, 1988; 1994, ch. 32, § 5, effective July 15, 1994; 2000, ch. 375, § 6, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

Emergency certification and out-of-field teaching, 16 KAR 2:120.

334A.160. Maximum fees prescribed for licenses.

The amount of fees prescribed in connection with a license as a speech-language pathologist, speech-language pathology assistant, or audiologist shall be as follows:

(1) The initial license fee for licensure as a speech-language pathologist or an audiologist shall not exceed two hundred dollars ($200);

(2) The delinquency fee for all credentials shall not exceed forty dollars ($40);

(3) The application fee for all credentials shall not exceed fifty dollars ($50);

(4) The initial and renewal fees for an inactive license shall not exceed twenty dollars ($20);

(5) The speech-language pathology assistant license fee shall not exceed one hundred fifty dollars ($150); and

(6) The interim license fee shall not exceed one hundred fifty dollars ($150).

History.

Enact. Acts 1972, ch. 236, § 16; 1986, ch. 483, § 11, effective July 15, 1986; 1988, ch. 152, § 6, effective March 31, 1988; 1994, ch. 32, § 6, effective July 15, 1994; 2008, ch. 165, § 10, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

License fees, renewal, reinstatement, and inactive license requirements, 201 KAR 17:030E.

334A.170. Renewal of licenses — Fees.

(1) Each licensed speech-language pathologist, speech-language pathology assistant, or audiologist shall biennially, on or before January 31, pay to the board a renewal fee not to exceed one hundred fifty dollars ($150) for a renewal of his or her license. A thirty (30) day grace period shall be allowed after January 31, during which time licenses may be renewed on payment of a renewal fee plus grace period fee which combined shall not exceed one hundred eighty dollars ($180). After expiration of the grace period, the board may renew each license upon payment of a renewal fee plus a delinquency fee which combined shall not exceed two hundred fifty dollars ($250). No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, if the renewal application is made within five (5) years from the date of expiration.

(2) A suspended license is subject to expiration and shall be renewed as provided in this chapter, but the renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order of judgment by which the license was suspended. A license revoked on disciplinary grounds shall be subject to expiration as provided in this chapter, but it shall not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(3) A person who fails to renew his or her license within the five (5) years after its expiration may not renew it, and it shall not be restored, reissued, or reinstated thereafter. The person may apply for and obtain a new license if the person meets the requirements of this chapter.

(4) A person applying for renewal of licensure shall show evidence of completion of continuing professional education in speech-language pathology or audiology as prescribed by the board by administrative regulation.

History.

Enact. Acts 1976, ch. 305, § 7; 1980, ch. 280, § 15, effective July 1, 1982; 1986, ch. 423, § 192, effective July 1, 1987; 1988, ch. 152, § 7, effective March 31, 1988; 1994, ch. 32, § 7, effective July 15, 1994; 2008, ch. 165, § 11, effective July 15, 2008.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

License fees, renewal, reinstatement, and inactive license requirements, 201 KAR 17:030E.

334A.190. Caseload limitations for speech-language pathologists in the public schools.

(1) The caseload limitations for speech-language pathologists in the public schools shall not exceed sixty-five (65) pupils.

(2) The total caseload of speech-language pathologists who supervise assistants may be increased by no more than one-half (½) of the amount set forth in subsection (1) of this section for each speech-language pathology assistant working under their supervision.

History.

Enact. Acts 1996, ch. 219, § 2, effective July 15, 1996; 2000, ch. 375, § 8, effective July 14, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Certificates for teachers of exceptional children/communication disorders, 16 KAR 2:050.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

334A.990. Penalty.

(1) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(2) When any person other than a licensed speech-language pathologist, speech-language pathology assistant, or audiologist has engaged in any act or practice which constitutes an offense against this chapter, the Franklin Circuit Court, on application of the board, may issue an injunction or other appropriate order restraining the conduct.

History.

Enact. Acts 1972, ch. 236, § 19; 1986, ch. 483, § 13, effective July 15, 1986; 1994, ch. 32, § 8, effective July 15, 1994.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Definitions and abbreviations for 201 KAR Chapter 17, 201 KAR 17:005.

Designation of offenses, see KRS 532.020.

Sentence of imprisonment for misdemeanor, see KRS 532.090.

TITLE XXVII
LABOR AND HUMAN RIGHTS

Chapter
337. Wages and Hours.
339. Child Labor.
342. Workers' Compensation.
344. Civil Rights.

CHAPTER 337
WAGES AND HOURS

Section
337.010. Definitions for chapter.

Employment and Volunteer Firefighting.

337.100. Volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or emergency management agency member absent from employment due to emergency or injury incurred in the line of duty.

Wages and Hours.

337.275. Minimum wage.

Penalties.

337.990. Civil penalties.

337.010. Definitions for chapter.

(1) As used in this chapter, unless the context requires otherwise:

(a) "Commissioner" means the commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Education and Labor Cabinet;

(b) "Department" means the Department of Workplace Standards in the Education and Labor Cabinet;

(c)1. "Wages" includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States, checks on banks, direct deposits, or payroll card accounts convertible into cash on demand at full face value, subject to the allowances made in this chapter. However, an employee may not be charged an activation fee and the payroll card account shall provide the employee with the ability, without charge, to make at least one (1) withdrawal per pay period for any amount up to and including the full account balance.

2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(8), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(9), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;

(d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm

acting directly or indirectly in the interest of an employer in relation to an employee; and

(e) "Employee" is any person employed by or suffered or permitted to work for an employer, except that:

1. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter; and

2. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.

For purposes of this paragraph, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1.

(2) As used in KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405, unless the context requires otherwise:

(a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:

1. Any individual employed in agriculture;

2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;

3. Any individual employed by the United States;

4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;

5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;

6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars ($95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his or her employer's immediate family;

7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;

8. Any individual engaged in the delivery of newspapers to the consumer;

9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;

10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than two hundred ten (210) days in any calendar year;

11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670;

12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver, family home provider, or adult foster care provider and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community board for mental health or individuals with an intellectual disability established under KRS 210.370 to 210.460 or through a contractual relationship with a certified waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care;

13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code of 1986;

14. Any individual whose function is to provide behavior support services, behavior programming services, case management services, community living support services, positive behavior support services, or respite services through a contractual relationship with a certified waiver provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver program, as defined in 907 KAR 7:005 sec. 1(2); or

15. Any individual employed to play baseball who is compensated pursuant to the terms of a contract and a collective bargaining agreement that expressly provides for wages and working conditions;

(b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

(c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;

(d) "Tipped employee" means any employee engaged in an occupation in which he or she:

1. Customarily and regularly receives more than thirty dollars ($30) per month in tips; and

2. Performs work that:

a. Directly supports or is itself the service function for which a customer would tip, regardless of whether the employee performs the service function; or

b. Directly supports the service function that involves any amount of direct customer interaction or is performed in the direct line of sight of customers; and

(e) "U.S.C." means the United States Code.

History.

1599c-4, 1599c-39, 2290c-1, 2290c-2, 4767a-1, 4767a-17: amend. Acts 1966, ch. 158, § 1; 1968, ch. 100, § 6; 1970, ch. 33, § 1; 1974, ch. 341, § 1; 1974, ch. 391, § 1; 1976, ch. 223, § 1; 1978, ch. 141, § 1, effective June 17, 1978; 1978, ch. 340, § 1, effective June 17, 1978; 1982, ch. 54, § 1, effective July 15, 1982; 1984, ch. 414, § 12, effective July 13, 1984; 1986, ch. 208, § 2, effective July 15, 1986; 1994, ch. 405, § 85, effective July 15, 1994; 1994, ch. 492, § 1, effective July 15, 1994; 1996, ch. 48, § 1, effective July 15, 1996; 1996, ch. 100, § 1, effective July 15, 1996; 1996, ch. 115, § 1, effective July 15, 1996; 1998, ch. 154, § 92, effective July 15, 1998; 1998, ch. 426, § 558, effective July 15, 1998; 1998, ch. 606, § 113, effective July 15, 1998; 2003, ch. 166, § 3, effective June 24, 2003; 2005, ch. 99, § 67, effective June 20, 2005; 2009, ch. 33, § 4, effective March 20, 2009; 2010, ch. 24, § 1727, effective July 15, 2010; 2012, ch. 146, § 113, effective July 12, 2012; 2017 ch. 3, § 5, effective January 9, 2017; 2020 ch. 2, § 1, effective July 15, 2020; 2021 ch. 153, § 1, effective June 29, 2021; 2022 ch. 236, § 115, effective July 1, 2022; 2017 ch. 24, § 1, effective June 29, 2017; 2017 ch. 96, § 1, effective June 29, 2017; 2017 ch. 134, § 3, effective June 29, 2017; 2025 ch. 22, § 1, effective March 17, 2025; 2026 ch. 72, § 6, effective April 10, 2026.

Legislative Research Commission Notes.

(3/25/19). 2019 Ky. Acts ch. 67, sec. 1, amended KRS 95A.210 to add new subsections and to change the internal numbering of others. KRS 337.010(1) cites KRS 95A.210(5) and 95A.210(6). It is clear from the context that in this section KRS 95A.210(5) should have been changed to KRS 95A.210(8) to conform, and that KRS 95A.210(6) should have been changed to KRS 95A,210(9) to conform. These errors have been corrected in codification under the authority of KRS 7.136.

NOTES TO DECISIONS

Analysis

1. Public Authority.
2. Public Works.
3. Medical Director.
4. Sovereign Immunity.
5. Recoupment of Commissions.
6. Preemption of Contract Claims.
7. Employees.
8. Payment of "Earned Bonuses."
9. Judicial estoppel.
10. Municipal Corporations.
11. Employer.
12. Wages.

1. Public Authority.

Where the hospital on which renovation work was to be done, was owned by the county, was built on property owned by the county, and was run on a day-to-day basis by a nonprofit corporation whose board of directors was appointed by and served at the pleasure of the county fiscal court, the nonprofit corporation was merely an alter ego of the county fiscal court and therefore constituted a public authority which was required to pay the prevailing wage rates on the renovation project. Hardin Memorial Hospital, Inc. v. Land, 645 S.W.2d 711, 1983 Ky. App. LEXIS 277 (Ky. Ct. App. 1983).

2. Public Works.

Although a municipal water company was wholly owned by the city, its managing board was appointed by the mayor and elected officials of the city, and it paid no income taxes or property taxes and it furnished water to the city free of charge, the water company was not a "city" within the meaning of subdivision (3)(e) of this section; therefore, the water company was not exempt from paying the prevailing wage rates. Louisville Water Co. v. Wells, 664 S.W.2d 525, 1984 Ky. App. LEXIS 464 (Ky. Ct. App. 1984).

Where the jail construction moneys were not derived from any Commonwealth appropriation or Commonwealth trust or agency account, revenue generated by the sale of bonds by the Local Correctional Facilities construction Authority to construct detention facilities were not Commonwealth funds, thus eliminating the application of the prevailing wage law to the construction contract pursuant to subdivision (3)(e) of this section. Wells v. Kentucky Local Correctional Facilities Constr. Authority, 730 S.W.2d 951, 1987 Ky. App. LEXIS 499 (Ky. Ct. App. 1987).

3. Medical Director.

A medical director of a medical health plan was not excepted from recovery under KRS 337.385 because he was "employed in a bona fide executive, administrative, supervisory or professional capacity," under subdivision (2) of this section because the context "required otherwise;" it is just as unlawful to fail to pay or to withhold a part of the salary of an executive, administrative, supervisory or professional employee as it would be to do so in the case of any other type of employee. Healthcare of Louisville v. Kiesel, 715 S.W.2d 246, 1986 Ky. App. LEXIS 1214 (Ky. Ct. App. 1986).

4. Sovereign Immunity.

Where county employees alleged that the county violated the Fair Labor Standards Act, 29 USCS § 201 et seq., and the Kentucky Wages and Hours Act, KRS ch. 337, their state law claims were barred by sovereign immunity, which was not waived by KRS 337.010(2)(a)(9). Crawford v. Lexington-Fayette Urban County Gov't, 2007 U.S. Dist. LEXIS 2567 (E.D. Ky. 2007), abrogated as stated in, Ivey v. McCreary County Fiscal Court, 939 F. Supp. 2d 762, 2013 U.S. Dist. LEXIS 45215 (E.D. Ky. 2013).

5. Recoupment of Commissions.

Judgment ordering an employer to return recouped commissions to its employees was improper because, although the possibility that the commissions could later have been recouped under certain circumstances did not transform them into advances, the employees had agreed that the commissions would be debited if an account stopped paying within a 12 month period; the wages agreed upon included this charge back provision. Therefore, the recoupment was not of wages "agreed upon," and did not violate KRS 337.060. AT&T Corp. v. Fowler, 2007 Ky. App. LEXIS 339 (Ky. Ct. App. Sept. 14, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 209 (Ky. Ct. App. Sept. 14, 2007).

6. Preemption of Contract Claims.

In the absence of any Kentucky decision indicating that the Kentucky Wages and Hours Act, KRS 337.010 et seq., pre-

empted contract claims, the court was reluctant to predict that such a significant restriction upon the common law of contract was in the offing. Dodd v. Dyke Indus., 2008 U.S. Dist. LEXIS 34786 (W.D. Ky. 2008).

7. Employees.

Defendant was entitled to partial summary judgment on plaintiffs' claims for overtime wages under the Fair Labor Standards Act, 29 U.S.C.S. § 207, and the Kentucky Wages and Hours Act (KWHA), KRS 337.285(1), because plaintiffs were employed in a "bona fide administrative capacity," and fell within the overtime wage exemption of 29 U.S.C.S. § 213(a)(1), and outside of the scope of "employee" under KRS 337.010(2)(a)(2). Because it appeared that the protections of KRS 337.385(1) and 337.055 might not apply to plaintiffs because they fell outside of the scope of "employee" as defined in the KWHA, the court reserved ruling on plaintiffs' claims for unpaid wages and liquidated damages under KRS 337.385(1) and 337.055 and requested briefing on the issue. Fox v. Lovas, 2012 U.S. Dist. LEXIS 27908 (W.D. Ky. 2012).

Store managers were properly considered supervisors under KRS 337.010(2) and 803 Ky. Admin. Regs. 1:070 § 5 where they regularly and customarily set employees' schedules, ensured that employees unloaded weekly truck shipments, directed at least four half-time employees, their most important duties were ensuring that the retail store ran smoothly and that company policies were followed, and they were relatively free from direct personal supervision. Barker v. Family Dollar, Inc., 2012 U.S. Dist. LEXIS 153331 (W.D. Ky. 2012).

Trial court did not err in denying the employee's motion for a directed verdict where there was conflicting testimony as to the qualifications and knowledge needed, and thus, the issue of whether he was a bona fide professional was properly before the jury. Hunziker v. AAPPTec, LLC, 603 S.W.3d 277, 2020 Ky. App. LEXIS 49 (Ky. Ct. App. 2020).

8. Payment of "Earned Bonuses."

Employee's wage payment claim was properly dismissed because the employer had paid the employees all monies owed to him as of the date his employment terminated, the employee's claims for short-term and long-term incentive compensation and vacation and holiday pay failed, and because the employee's temporary-living-expenses claim was connected to his relocation, not his continued employment, it did not fall within the meaning of "wages." Vogel v. E.D. Bullard Co., 597 Fed. Appx. 817, 2014 FED App. 0949N, 2014 U.S. App. LEXIS 24665 (6th Cir. Ky. 2014).

9. Judicial estoppel.

Partial summary judgment was denied to two employers in several employees' claims under the Fair Labor Standards Act, 29 U.S.C.S. § 201 et seq., and the Kentucky Wages and Hours Act, KRS 337.010 et seq., because a failure to identify the claims in bankruptcy filings did not mean that they were precluded by judicial estoppel. Two employees could not have been charged with having known of their claims at the time they filed for bankruptcy, and a third employee's swift amendment of his bankruptcy filings worked in his favor. Finney v. Free Enter. Sys., 2011 U.S. Dist. LEXIS 33858 (W.D. Ky. 2011).

10. Municipal Corporations.

Both cities and counties were subject to the wage and hour requirements of Kentucky law, including the pay that local firefighters received as part of an incentive to upgrade their training. Municipal corporations were included under that law and did not have immunity from it since the definition of "employer" found in KRS 337.010(1)(d) expressly included corporations and a municipal corporation was a corporation. Madison County Fiscal Court v. Ky. Labor Cabinet, 352 S.W.3d 572, 2011 Ky. LEXIS 114 (Ky. 2011).

Case was remanded because plaintiffs' state law claims were not preempted by § 301 of the Labor Management Relations Act of 1947 because their claims were based solely on rights created by state law under KRS 336.700(2), 337 and did not require substantial interpretation of the collective bargaining agreement. Defendants' removal was also procedurally defective because the removal was untimely under 28 U.S.C.S. § 1446(b), and defendants waived the right to removal by affirmatively seeking relief in state court. Hughes v. UPS Supply Chain Solutions, Inc., 815 F. Supp. 2d 993, 2011 U.S. Dist. LEXIS 112770 (W.D. Ky. 2011).

11. Employer.

Plain language of Ky. Rev. Stat. Ann. § 337.010(1)(d) supported the employee's position that an LLC member was an employer for purposes of the Kentucky Wages and Hours Act, Ky. Rev. Stat. Ann. § 337.010 et seq. A remand was warranted as the trial court did not consider the language of the statute, and a conflict with LLC law was not a valid reason to grant a directed verdict in favor of the LLC member. Hunziker v. AAPPTec, LLC, 603 S.W.3d 277, 2020 Ky. App. LEXIS 49 (Ky. Ct. App. 2020).

Trial court erred by dismissing the wage and hours complaint under the Kentucky Wage and Hour Act (KWHA) on the erroneous premise that any such claims belonged to the limited liability company (LLC) because the allegations were sufficient to survive a motion to dismiss. The trial court needed to apply the economic realities test and examine the true nature of plaintiff's working relationship with the purported employer, rather than relying on the contractual label or structures applied to the relationship and nothing in the Franchise Agreement precluded a wage and hour claim by plaintiff who was neither the Franchisee nor the Franchisee's employee. Mouanda v. Jani-King Int'l, 653 S.W.3d 65, 2022 Ky. LEXIS 234 (Ky. 2022).

12. Wages.

Because a police officer's claim rested on an incorrect classification, his entitlement to retirement hazardous duty pay as wages failed as a matter of law; retirement benefits are "fringe benefits," not "wages" within the meaning of subsection (1)(c)(1). Wheeler v. City of Pioneer Vill., 723 S.W.3d 764, 2025 Ky. LEXIS 205 (Ky. 2025).

Kentucky law distinguishes between fringe benefits and wages, and the statutory language of subsection (1)(c) is consistently interpreted to exclude retirement benefits from the definition of wages; without an enforceable contractual entitlement, this interpretation aligns with the broader statutory scheme reserving "wages" for direct monetary compensation for services rendered, while treating retirement and similar benefits as additional, non-wage compensation. Wheeler v. City of Pioneer Vill., 723 S.W.3d 764, 2025 Ky. LEXIS 205 (Ky. 2025).

Cited in:

Burrow v. Kapfhammer, 284 Ky. 753, 145 S.W.2d 1067, 1940 Ky. LEXIS 577 (Ky. 1940); Charos v. Jent, 293 Ky. 50, 168 S.W.2d 334, 1943 Ky. LEXIS 553 (Ky. 1943); Young v. Willis, 305 Ky. 201, 203 S.W.2d 5, 1947 Ky. LEXIS 773 (Ky. 1947); Baughn v. Gorrell & Riley, 311 Ky. 537, 224 S.W.2d 436, 1949 Ky. LEXIS 1155 (Ky. 1949); Middlekamp v. Willis, 253 S.W.2d 631, 1952 Ky. LEXIS 1123 (Ky. 1952); Chumley v. Cox, 311 S.W.2d 185, 1958 Ky. LEXIS 177 (Ky. 1958); Kerth v. Hopkins County Board of Education, 346 S.W.2d 737, 1961 Ky. LEXIS 328 (Ky. 1961); Board of Trustees v. Public Employees Council No. 51 American Federation of States, etc, 571 S.W.2d 616, 1978 Ky. LEXIS 393 (Ky. 1978); Commonwealth v. Gussler, 278 S.W.3d 153, 2008 Ky. App. LEXIS 251 (Ky. Ct. App. 2008); Wheeler v. City of Pioneer Vill., 723 S.W.3d 764, 2025 Ky. LEXIS 205 (Ky. 2025); (September 18, 2025).

NOTES TO UNPUBLISHED DECISIONS

Analysis

1. Employees.
2. Payment of "earned bonuses".
7. Employees.

1. Employees.

Unpublished decision: In a given case, an otherwise exempt employee can recover under KRS 337.385 notwithstanding the limitations stated in KRS 337.010 if the context requires otherwise, but there was no evidence of a unique context that warranted an exception from the statutory provisions in the case of a professional electrical engineer who, in performing his tasks as a corporate quality manager, used his engineering skills, his analytic skills and considerable independent judgment to succeed in his work. He supervised others and made employment decisions. Whitewood v. Robert Bosch Tool Corp., 323 Fed. Appx. 397, 2009 FED App. 0227N, 2009 U.S. App. LEXIS 6227 (6th Cir. Ky. 2009).

2. Payment of "earned bonuses".

Unpublished decision: Where plaintiff former employee sued defendant former employer alleging a failure to pay an earned bonus under KRS 337.055, while the term "wages" included "earned bonuses" within its definition under KRS 337.010(1)(c), because the bonus plan awarded bonuses if the company reached certain target levels of performance, which referred to the employer's performance during each fiscal year, and the employee had worked for only four months of the fiscal year, and the employer offered evidence that it did not award, and had never awarded, pro rata bonuses, summary judgment in favor of the employer was affirmed. Guagenti v. James N. Gray Co., 105 Fed. Appx. 717, 2004 U.S. App. LEXIS 14350 (6th Cir. Ky. 2004).

7. Employees.

Unpublished decision: On an employee's claim that his employer violated Ky. Rev. Stat. Ann. § 337.385 when it failed to pay him severance and benefits, the employee did not identify context and equities of his particular case which would overcome this statute's exclusion of individuals employed in a bona fide executive, administrative, supervisory, or professional capacity. Because the employee failed to show that the "context required otherwise," the district court did not err in granting the employer summary judgment on this claim. Hackney v. Lincoln Nat'l Fire Ins. Co., 657 Fed. Appx. 563, 2016 FED App. 0592N, 2016 U.S. App. LEXIS 19989 (6th Cir. Ky. 2016).

OPINIONS OF ATTORNEY GENERAL.

A water commission of a county would be governed by the terms of KRS Chapter 337. OAG 65-312.

Minimum wage and maximum hour provisions do not apply to county jail deputies. OAG 67-333.

If the federal government has not set a prevailing wage on a project, the Kentucky prevailing wage would apply. Common sense does not allow the conclusion that the General Assembly would establish these elaborate procedures and safeguards to insure a fair wage for laborers and mechanics and then disregard this idea simply because federal funds are involved. OAG 68-362.

Since the contract between the public authority and the contractor provides that if the Kentucky prevailing wage rate is higher than the federal government's, the Kentucky rate will be paid, and the Department of Labor is given the duty of administering and enforcing KRS 337.510 to 337.550 by the statute, the Department of Labor has jurisdiction to enforce a contract that agrees to adopt the provisions of KRS 337.510 to 337.550 rather than the lower federal prevailing rate. OAG 68-362.

Since they do not perform work which aids in enhancing or completing the actual construction of a project, night watchmen and guards employed by a contractor engaged in public works projects are not included under provisions of the prevailing wage law. OAG 73-429.

Since the federal basic minimum wage is higher than the state minimum wage under KRS 337.275, the federal law applies to state and local employees, but since the state law has a lower workweek before overtime provisions apply to state and local employees, including policemen, firemen, and security officers under KRS 337.285, the state law as to overtime is applicable and, pursuant to KRS 337.050, state and local employees who work seven (7) days in any one (1) work week must be paid time and a half for the seventh day. OAG 74-532.

The Kentucky Minimum Wage Law covers all state and local governmental agencies regardless of the number of employees as there is no exclusion in the law for governmental units employing less than a certain number of people. OAG 74-559.

This law does not apply to volunteer firemen as they are not considered employees. OAG 74-559.

If a fire chief is paid a salary and supervises no employee, he must be paid the state or federal minimum wage, whichever is higher, unless he meets the criteria of an executive, administrative, supervisory or professional category under subdivision (2)(c)(ii) (now subdivision (2)(a) 2.) of this section, in which case he would not have to be paid overtime. OAG 74-559.

If a city chief of police on 24-hour call seven (7) days a week and receiving $400 per month plus the use of a city apartment meets the definition of an executive, administrative, supervisory or professional employee under subdivision (2)(c)(ii) (now subdivision (2)(a)2.) of this section, he should be excluded from the Kentucky minimum wage law, and by implication from the overtime provisions, but if he does not meet the definition, then he must be paid minimum wages and be covered for overtime. OAG 74-602.

All automobile dealerships which do $95,000 gross annual sales, exclusive of excise taxes, are covered under the state minimum wage law. Automobile salesmen are excluded both from the state minimum wage and the overtime section of the law. Parts managers are covered by the minimum wage but are excluded from the overtime provisions, and mechanics are neither excluded from the minimum wage nor the overtime provisions and must be paid time and a half their regular rate of pay for all hours worked in excess of forty hours per workweek. OAG 74-777.

Tobacco workers employed not by farmers but by warehousemen and engaged in stripping, grading, buying, stemming, sorting, redrying, packing and storing tobacco are not "employed in agriculture" within the exemption provision of subdivision (2)(c)(i) (now subdivision (2)(a)2.) of this section and are entitled to the minimum wage and overtime provisions of KRS 337.275 and 337.285. OAG 75-55.

An election officer is not an "employee" pursuant to subdivision (2)(c) (now subdivision (2)(a)) of this section and therefore is not subject to KRS 337.275 which would require payment of a minimum wage. OAG 75-664.

Part-time deputy marshals of a city are entitled to the state minimum wage as there is no exclusion for part-time employees. OAG 75-692.

A police officer's hourly wage rate and what he receives through the city's participation in the K.L.E.F.P.F. program must both be included in the officer's total compensation in order to arrive at a rate upon which overtime compensation can be computed. OAG 76-361.

Although the Council of State Governments is exempt from taxes of Kentucky, the Council is not exempt from the Ken-

tucky minimum wage law and employees who do not fall in exempt categories would be subject to Kentucky's minimum wage and overtime provisions. OAG 76-530.

The Elizabethtown Public Properties Holding Company, Inc. does not fall within the definition of public authority as that term is defined in subsection (3)(d) of this section and any construction performed under its jurisdiction is not required to meet the requirements of the prevailing wage law. OAG 76-638.

Housemothers and housefathers in dormitories or homes operated by an alternative residential program and owned by the local school board would not be exempt from state minimum and overtime wages as domestic servants or babysitters in the private home of the employer. OAG 77-782, 1977 Ky. AG LEXIS 8.

In order for the Preservation Alliance of Louisville and Jefferson County to be involved in prevailing wage work, it must act as an agency and instrumentality of the government and the construction must be of public building facilities; in the activity of restoring private homes to private individuals, there is no construction of public building facilities essential to the definition of "public authority." OAG 78-604, 1978 Ky. AG LEXIS 236.

A companion to a sick and elderly person need not be the employee of the sick and elderly person, but must actually live in the same domicile that the sick and elderly person resides in; merely staying 24 hours with that person will not constitute "living in." OAG 78-699, 1978 Ky. AG LEXIS 732.

If X company hires the babysitter, pays the wages and receives a fee from the homeowner (which is greater than the employee's wages), decides what hours the employee works, and how much he is paid, X company is the employer, and the employee does not babysit in the employer's home but in the home of the employer's client or customer, then the exclusion for babysitters does not apply; if X company is merely a broker, a properly licensed private employment agency who merely refers babysitters to employing homeowners, has no control over wages or hours worked, nor pays the employee, the exclusion can apply to the wages of the employee because there the employer is the householder. OAG 78-699, 1978 Ky. AG LEXIS 732.

In the case of a babysitter, the exclusion to the general requirement of payment of minimum wages or overtime pay is allowable only where the babysitter is employed in the home of the employer and if the employer is the supplying company and not the person for whom the babysitter sits, no exclusion is permitted. OAG 78-699, 1978 Ky. AG LEXIS 732.

There is no legal distinction under the wording of the statute between an individual third party who hires the companion to the sick or elderly or a corporation who furnishes such companion, even though the companion is the employee of the corporation, rather than an employee of the sick and elderly person. OAG 78-699, 1978 Ky. AG LEXIS 732.

The minimum wage law does not affect teachers and other certified school personnel since they are exempted as "professional" employees. OAG 79-337, 1979 Ky. AG LEXIS 293.

Where a prospective babysitter for handicapped children is placed in training by the council for retarded citizens before inclusion on the council's registry, that would constitute a student-teacher situation not an employment situation, and such a training period would not constitute employment subject to the state minimum wage law. OAG 80-196, 1980 Ky. AG LEXIS 470.

Where babysitting takes place in the babysitter's home rather than the employer's, the exclusion in subdivision (2)(a)(vii) (now subdivision (2)(a)7.) of this section does not apply; however, the babysitter becomes an independent contractor of a business and falls under the retail service situation so that as long as the babysitter does not have gross sales of $95,000 per year, the babysitter would not have to be paid the state minimum wage. OAG 80-196, 1980 Ky. AG LEXIS 470.

The term "employer" applied in KRS 337.060 includes all employers in Kentucky, as encompassed in this section rather than being limited to employers covered by state or federal minimum wage laws. OAG 81-14, 1981 Ky. AG LEXIS 409.

Police officers, including the chief of police, are considered employees under the wage and hour law, particularly subdivision (2)(a)(ii) (now subdivision (2)(a)2.) of this section; however, the fact that these officers are considered "employees" insofar as the wage and hour law is concerned does not mean that they are to be considered for all other purposes, municipal employees rather than officers. OAG 81-48, 1981 Ky. AG LEXIS 378.

Moneys paid to firemen under the Professional Fire Fighters Foundation Program Fund on a regular basis as incentive pay are "wages" under this section since it is an advantage agreed upon by the employee or employer as an established policy; accordingly, these moneys would be part of his regular base pay and utilized in determining the amount of his overtime pay when he works over 40 hours per week. OAG 81-260, 1981 Ky. AG LEXIS 169.

The manufacture of products by prisoners in a private production center on the prison grounds would not constitute public works or public construction within the meaning of subsection (3) of this section which would entitle the prisoners to the prevailing wage pursuant to KRS 337.505. OAG 81-411, 1981 Ky. AG LEXIS 34.

Deputy sheriffs are subject to time and a half for employment in excess of 40 hours. OAG 82-118, 1982 Ky. AG LEXIS 526.

This section does not exclude county employees. OAG 82-118, 1982 Ky. AG LEXIS 526.

Acts 1982, ch. 54, amending KRS 337.505, 337.520, 337.530, and this section, relating to prevailing wages, is applicable to construction projects carried on by the Kentucky Local Correctional Facilities Construction Authority. OAG 82-314, 1982 Ky. AG LEXIS 315.

The prevailing wage law in effect on the date of advertisement is the applicable law for that project and governmental entity. OAG 82-368, 1982 Ky. AG LEXIS 281.

Any attempt to avoid the prevailing wage provisions in building a facility (not a learning building) by simply including it in a learning building project, would violate the prevailing wage law. OAG 82-480, 1982 Ky. AG LEXIS 165.

By the plain language of subdivision (3)(e) of this section defining "public works," source of funds is not germane to the determination of whether buildings constructed as institutions of learning are exempt so long as the public works construction project is for a learning building. OAG 82-480, 1982 Ky. AG LEXIS 165.

Under the 1982 amendments of the definitions of "construction" and "public works," prevailing wages need not be paid on a public works construction project that will cost less than $250,000; with a public works construction project in the form of buildings to be used as institutions of learning, irrespective of costs and irrespective of source of funds utilized, prevailing wages need not be paid. With a public works construction project, other than for buildings to be used as institutions of learning, in an amount exceeding $250,000, prevailing wages need be paid only if 50 percent or more of the project is being financed with state funds. OAG 82-480, 1982 Ky. AG LEXIS 165.

Under the 1982 amendments to this section, "buildings constructed as institutions of learning" are excluded from the definition of "public works" with the result being that prevailing wages need not be paid in constructing such buildings; such buildings could include adjunct facilities when such adjunct facilities are all a part of the "learning building" project and are all a part of one (1) contract. The General Assembly did not intend that support facilities such as sewers,

sewage disposal plants, access roads and the like necessary for the complete utilization of the learning buildings are to be treated differently than the learning building structure itself. OAG 82-480, 1982 Ky. AG LEXIS 165.

Since a county housing authority is a separate governmental entity and not part of a county itself, it is not exempted under subsection (3)(e) of this section and is required to pay the prevailing wage. Further, KRS 80.500 still requires the payment of minimum wages in contracts. OAG 82-560, 1982 Ky. AG LEXIS 101.

The jailer is the "employer" of the jail matron under subsection (1)(d) of this section, since he employs the "employees," who are the jail deputies, including the matron; county deputies to constitutional officers, including jailer deputies, are not listed in the exceptions to the definition of "employee," for purpose of the wages and hours law, provided under subsection (2)(a) of this section. OAG 82-625, 1982 Ky. AG LEXIS 11.

If a county jailer employs a matron who is of no relation to the jailer, he must carefully determine whether the time in excess of a 40 hour week is "actually necessary"; where the overtime is not shown to be actually necessary in the exercise of the deputy's or matron's public function, such overtime would not be valid against the "jail" budget or the general county budget. Where overtime is not shown to be in the "public good," this is equivalent to saying that the extra time is not necessary. OAG 82-625, 1982 Ky. AG LEXIS 11.

KRS 337.285, providing for time and a half for employment in excess of 40 hours, applies to the jailer as employer and the jail matron as an employee of the jailer; however, if the jail matron is the wife of the jailer, then under subdivision (2)(a)(vi) (now subdivision (2)(a) 6.) of this section, such a spouse of the employer would be exempt from the operation of KRS Chapter 337 since, under that subsection a spouse of the employer is expressly exempt. OAG 82-625, 1982 Ky. AG LEXIS 11.

The determination of whether overtime is actually necessary is a responsibility of the jailer and lies within his sound discretion. OAG 82-626, 1982 Ky. AG LEXIS 12.

The jailer should authorize work in excess of 40 hours (per week) only where necessary; where it is shown that a jailer is guilty of mismanagement in authorizing an "overtime situation," he would be personally liable, and liable on his bond for the payment of the overtime to the deputy or matron and the claim would not be payable from the jail fund or county treasury. Where the overtime is necessary, the claim for overtime must now be paid from the jail fund, or from the county treasury generally, where there are no jail budget funds to pay it. OAG 82-626, 1982 Ky. AG LEXIS 12.

A deputy jailer and matron are public officers, generally, as well as being employees under KRS Chapter 337. OAG 82-626, 1982 Ky. AG LEXIS 12.

Even prior to the effective date of Acts 1982, c. 385, the jailer was the "employer" and the deputy jailer was the "employee" under subsection (1)(d) and (e) of this section; the deputy jailer is not exempt from KRS Chapter 337, unless the deputy jailer (matron) was the wife, child or other member of the jailer's immediate family. OAG 82-626, 1982 Ky. AG LEXIS 12.

The term "state funds" as formerly used in subdivision (3)(e) of this section includes any funds which come from the state treasury even though the moneys may be earmarked by statute for a particular agency, state or county; if a local project has received a 50% or more contribution from the state treasury for construction of a prevailing wage project, the prevailing wage law is applicable. OAG 83-374, 1983 Ky. AG LEXIS 123.

Where employer initiated a pay system wherein all payroll checks are directly deposited in a local banking institution without the express permission of the involved employees and monthly service charges were assessed by the bank in the event the employee/depositor failed to maintain a certain minimum balance such plan would violate subdivision (1)(c) of this section, KRS 337.020, and 337.060 because the employee would be required to pay a fee to the bank should he wish to withdraw his entire balance as such withdrawal would give him less than the required minimum balance at the end of the month. The present plan was illegal, because the employee was not receiving his full pay, but must pay a charge to the bank in order to obtain his entire pay for the affected pay period. OAG 83-459, 1983 Ky. AG LEXIS 37.

County constitutional officers with deputies have the authority to authorize their deputies to work in excess of a 40-hour workweek, where it is reasonably necessary to carry out the statutory duties of the constitutional officer. OAG 84-183, 1984 Ky. AG LEXIS 204.

The actual determination of whether overtime work is necessary rests with the employer, i.e., the constitutional officer who appointed the deputy and who pays the deputy's salary out of the fees of his office. OAG 84-183, 1984 Ky. AG LEXIS 204.

The fiscal court has no authority to require its approval for overtime work of deputies of local constitutional officers where the deputy's salary is paid out of the sheriff's fees. OAG 84-183, 1984 Ky. AG LEXIS 204.

In the event that the salary of the deputy sheriff is paid out of the county treasury, the fiscal court would not become the "employer" under KRS Chapter 337, but it would have the authority to approve or disapprove of overtime payment of such deputy, where the overtime pay is to come out of the county treasury; the fiscal court, under its powers given in KRS 67.080, would have the authority, in passing on such expenditure from the county treasury, to use its sound judgment as to whether the overtime was lawfully authorized by the sheriff. The employer in this situation is the constitutional officer, i.e., the sheriff, who is the actual employer under subdivision (1)(d) of this section; the actual employer, as such, hires, fires, and directs the deputy in his statutory duties. OAG 84-183, 1984 Ky. AG LEXIS 204.

For purposes of the Prevailing Wage Law, the Lexington-Fayette Urban County Airport Board was not excluded or exempted from the payment of prevailing wages pursuant to subdivision (3)(e) of this section, because it was not a city, not a county, and not an urban county government. OAG 86-73, 1986 Ky. AG LEXIS 17.

In order to comply with Kentucky's prevailing wage laws, the estimated cost of a public construction project must be determined by the notification of the project's estimated cost submitted by the public authority to the Department of Workplace Standards. OAG 10-008, 2010 Ky. AG LEXIS 213.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Apprenticeship, KRS Chapter 343.

Child labor, KRS Chapter 339.

Contracts, KRS Chapters 371, 372.

Drivers of carriers, regulation of working hours, KRS 281.730.

General Assembly not to pass special acts to regulate labor, trade, mining or manufacturing, Ky. Const., § 59(24).

Health of employees, KRS Chapter 338.

Housing commissions may require contractors to comply with wage and hour rules, KRS 80.500.

Labor Cabinet, KRS Chapter 336.

Liens for wages, KRS 376.150 to 376.190, 376.360.

Occupations and professions, KRS Chapters 309 to 335B.

Person not to deprive another of employment because of membership in national guard, KRS 38.460.

Safety of employees, KRS Chapter 338.

Commissioner to administer wage law, KRS 336.050.

Unemployment compensation based on wages, KRS 341.260 et seq.

Workers' compensation, KRS Chapter 342.

Kentucky Bench & Bar.
Gilliland and McCormick, Minimum Wage and Overtime Pay, Vol. 56, No. 4, Fall 1992 Ky. Bench & B. 32.

Kentucky Law Journal.
Nowka and Taylor, Kentucky Employees' Wage Liens: A Sneak Attack on Creditors, but Beware of the Bankruptcy Trustee, 84 Ky. L.J. 317 (1995-96).

Northern Kentucky Law Review.
Zielke, Public Sector Labor Law in Kentucky, 6 N. Ky. L. Rev. 327 (1979).
General Law Issue: Note: Front Pay Under the FMLA, 38 N. Ky. L. Rev. 259 (2011).

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Work and Labor Provisions Under KRS 337, § 280.00.

EMPLOYMENT AND VOLUNTEER FIREFIGHTING

337.100. Volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or emergency management agency member absent from employment due to emergency or injury incurred in the line of duty.

(1) No employer shall terminate an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency because that employee, when acting as a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency, is absent or late to the employee's employment in order to respond to an emergency prior to the time the employee is to report to his or her place of employment.

(2) No employer shall terminate an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency because that employee, when acting as a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency, takes leave following a critical incident pursuant to KRS 15.518 and 95A.292.

(3) An employer may charge any time that an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency loses from employment because of the employee's response to an emergency against the employee's regular pay.

(4) An employer may request an employee who loses time from the employee's employment to respond to an emergency to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer fire department, rescue squad, emergency medical services agency, law enforcement agency, or the director of the emergency management agency stating that the employee responded to an emergency and listing the time and date of the emergency.

(5) No employer shall terminate an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or member of an emergency management agency who is absent for a period of no more than twelve (12) months from the employee's employment because of injuries incurred in the line of duty. The volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or member of an emergency management agency shall provide, at the request of his or her employer:

(a) A written statement from the supervisor, acting supervisor, or director of the volunteer fire department, rescue squad, emergency medical services agency, law enforcement agency, or emergency management agency under whose command the employee was on active duty and on assignment with that fire department, rescue squad, emergency medical services agency, law enforcement agency, or emergency management agency when the injury occurred; and

(b) A written statement from at least one (1) licensed and practicing physician stating that the volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or member of an emergency management agency is injured and a date for the employee's return to work.

(6) Any employee that is terminated in violation of the provisions of this section may bring a civil action against his or her employer. The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and where seniority rights are granted, the reinstatement of seniority rights. In order to recover, the employee shall file this action within one (1) year of the date of the violation of this section.

History.
Enact. Acts 2001, ch. 162, § 1, effective June 21, 2001; 2002, ch. 17, § 1, effective July 15, 2002; 2006, ch. 30, § 1, effective July 12, 2006; 2022 ch. 94, § 3, effective July 14, 2022.

WAGES AND HOURS

337.275. Minimum wage.

(1) Except as may otherwise be provided by this chapter, every employer shall pay to each of his employees wages at a rate of not less than five dollars and eighty-five cents ($5.85) an hour beginning on June 26, 2007, not less than six dollars and fifty-five cents ($6.55) an hour beginning July 1, 2008, and not less than seven dollars and twenty-five cents ($7.25) an hour beginning July 1, 2009. If the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in excess of the minimum hourly wage in effect under this subsection, the minimum hourly wage under this subsection shall be increased to the same amount, effective on the same date as the federal minimum hourly wage rate. If the state minimum hourly wage is increased to the federal minimum hourly wage, it shall include only the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall not include other wage rates or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, the increase to the federal

minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this chapter.

(2) Notwithstanding the provisions of subsection (1) of this section, for any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars ($30) per month in tips from patrons or others, the employer may pay as a minimum not less than the hourly wage rate required to be paid a tipped employee under the federal minimum hourly wage law as prescribed by 29 U.S.C. sec. 203. The employer shall establish by his records that for each week where credit is taken, when adding tips received to wages paid, not less than the minimum rate prescribed in 29 U.S.C. sec. 203 was received by the employee. No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum hourly wage as required by 29 U.S.C. sec. 203. Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.

History.

Enact. Acts 1974, ch. 391, § 2; 1978, ch. 198, § 1, effective June 17, 1978; 1982, ch. 249, § 1, effective July 15, 1982; 1986, ch. 208, § 1, effective July 15, 1986; 1990, ch. 421, § 1, effective July 13, 1990; 1996, ch. 115, § 3, effective July 15, 1996; 1998, ch. 240, § 1, effective July 15, 1998; 2007, ch. 69, § 1, effective June 26, 2007.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.

1. Constitutionality.

The requirement under this section that municipalities pay their fire fighters a minimum wage did not per se constitute the exercise of absolute or arbitrary power over the municipalities in violation of Const., § 2. Kentucky Municipal League v. Commonwealth, 530 S.W.2d 198, 1975 Ky. LEXIS 48 (Ky. 1975).

2. Application.

Though the provision for minimum wages was invalid as to municipal employees who are engaged in work of purely local concern, under the theory of severability the provision remained applicable to fire fighters engaged in work of statewide concern. Kentucky Municipal League v. Commonwealth, 530 S.W.2d 198, 1975 Ky. LEXIS 48 (Ky. 1975).

Former employers' motion for reconsideration of court's class certification decision on former employees' wage and hour claims was denied because (1) court thoroughly addressed class certification requirements in original memorandum opinion and order and would not revisit those decisions; (2) if employees proved employers' liability, they would be able to demonstrate that their damages stemmed from employers' actions that created legal liability; (3) presence of individualized damages could not defeat class certification; and (4) evidence demonstrated that class certification was superior method to adjudicate case fairly and efficiently. Whitlock v. FSL Mgmt., 2013 U.S. Dist. LEXIS 148747 (W.D. Ky. 2013).

Cited:

Snyder v. Owensboro, 555 S.W.2d 246, 1977 Ky. LEXIS 499 (Ky. 1977).

OPINIONS OF ATTORNEY GENERAL.

Since the federal basic minimum wage is higher than state minimum wage under this section, the federal law applies to state and local employees, but since the state law has a lower workweek before overtime provisions apply to state and local employees, including policemen, firemen and security officers under KRS 337.285, the state law as to overtime is applicable and, pursuant to KRS 337.050, state and local employees who work seven days (7) in any one (1) workweek must be paid time and a half for the seventh day. OAG 74-532.

The Kentucky minimum wage law merely sets the minimum wage for the first 40 hours of work per week and does not preclude an employer from employing his employees beyond 40 hours per week or eight hours per day. OAG 74-593.

If a city chief of police on 24-hour call seven (7) days a week and receiving $400 per month plus the use of a city apartment meets the definition of an executive, administrative, supervisory or professional employee, he should be excluded from the Kentucky minimum wage law, and by implication from the overtime provisions, but if he does not meet the definition, then he must be paid minimum wages and be covered for overtime. OAG 74-602.

Based upon the Department of Labor's regulations LAB-7, 8 and 13, regular recurring compensation such as hazardous duty pay, specialist pay, regular incentive pay and educational allowances are includable in determining a policeman's base hourly rate, but not court pay which is not regularly paid and comes within the exclusions of section 2(5) of LAB-13. OAG 74-629.

The Kentucky minimum wage law, which has been found constitutional, uses the Department of Labor's regulation LAB-7, § 8 in computing the hourly rate of various municipal employees who had previously been paid on a monthly basis by multiplying the monthly salary by 12 to get the yearly salary, dividing by 52 to get the weekly salary, dividing by the number of hours worked per week to give the base rate per hour for the first 40 hours, and then multiplying by 1½ for all hours worked over 40. OAG 74-906.

Tobacco workers employed not by farmers but by warehousemen and engaged in stripping, grading, buying, stemming, sorting, redrying, packing and storing tobacco are not "employed in agriculture" within the exemption provision of KRS 337.010 and are entitled to the minimum wage and overtime provisions of this section and KRS 337.285. OAG 75-55.

As an election officer is not an "employee" pursuant to KRS 337.010(2)(c) (now KRS 337.010 (2)(a)), he is not covered by this section. OAG 75-664.

The state minimum wage law does not exempt part-time or seasonal employees from its orbit. OAG 76-377.

The Kentucky Department of Labor has the authority to enforce the Kentucky minimum wage and overtime provisions, this section and KRS 337.285, as to trucking companies employing "over the road" truck drivers who are engaged in interstate commerce. OAG 76-572.

The state minimum wage law does not exclude part-time or seasonal city employees from coverage under its terms. OAG 82-183, 1982 Ky. AG LEXIS 456.

While members of the city auxiliary police force must be paid at least the state minimum wage rate for those hours actually worked, even though they are part-time employees, they are not entitled to pay for that portion of time spent "on call" as opposed to hours actually worked. OAG 82-183, 1982 Ky. AG LEXIS 456.

The state minimum wage statute, this section, as amended in 1982, applies to the jailer deputy and matron. OAG 82-626, 1982 Ky. AG LEXIS 12.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Board, lodging, gratuities, and other allowances, 803 KAR 1:081E.

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Work and Labor Provisions Under KRS 337, § 280.00.

ALR

Validity of minimum wage statutes relating to private employment. 39 A.L.R.2d 740.

PENALTIES

337.990. Civil penalties.

The following civil penalties shall be imposed by the Education and Labor Cabinet, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:

(1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. Each failure to pay an employee the wages when due him under KRS 337.020 shall constitute a separate offense.

(2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation. Each failure to pay an employee the wages as required by KRS 337.055 shall constitute a separate offense.

(4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.

(5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation.

(6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and each day that the failure continues shall be deemed a separate offense.

(7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the commissioner or the commissioner's authorized representative in the performance of his or her duties under KRS 337.295, or fails to keep and preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the commissioner or the commissioner's authorized representative shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). A civil penalty of not less than one thousand dollars ($1,000) shall be assessed for any subsequent violation of KRS 337.285(4) to (9) and each day the employer violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.

(8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his or her employer, to the commissioner, or to the commissioner's authorized representative that he or she has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to KRS 337.385, or because the employee has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(11) A person shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) when that person discharges or in any other manner discriminates against an employee because the employee has:

(a) Made any complaint to his or her employer, the commissioner, or any other person; or

(b) Instituted, or caused to be instituted, any proceeding under or related to KRS 337.420 to 337.433; or

(c) Testified, or is about to testify, in any such proceedings.

History.

576a-2, 1350, 1599c-19, 1599c-20, 2290c-4, 2290c-7, 4767a-16, 4866b-7: amend. Acts 1944, ch. 63, § 2; 1960, ch. 56, § 4, effective June 16, 1960; 1970, ch. 33, § 11; 1974, ch. 391, § 13; 1976, ch. 222, § 2; 1980, ch. 188, § 262, effective July 15, 1980; 1990, ch. 42, § 3, effective July 13, 1990; 2002, ch. 329, § 2, effective July 15, 2002; 2004, ch. 122, § 2, effective July 13, 2004; 2010, ch. 24, § 1750, effective July 15, 2010; 2017 ch. 3, § 6, effective January 9, 2017; 2022 ch. 236, § 118, effective July 1, 2022.

Legislative Research Commission Notes.

(10/23/90). Through an apparent clerical or typographical error, the reference to KRS 337.505 to 337.550 in the first sentence of what is now subsection (13) of this statute was transformed into "KRS 337.505 or 337.550." Compare 1970 Ky. Acts ch. 33, sec. 11, with 1974 Ky. Acts ch. 391, sec. 13. Pursuant to KRS 7.136(1), 446.270, and 446.280. The prior wording has been restored.

NOTES TO DECISIONS

Analysis

1. Employee's Right of Action.
2. Wages Wrongfully Withheld.

1. Employee's Right of Action.

Employee could assert a retaliatory termination claim for being discharged for complaining the employee was unlawfully denied overtime pay because (1) the employee was among the class of persons protected by the Kentucky Wage and Hour Act, and (2) Ky. Rev. Stat. Ann. § 337.990(9) did not provide the employee with a civil remedy. Williams v. King Bee Delivery, LLC, 199 F. Supp. 3d 1175, 2016 U.S. Dist. LEXIS 104001 (E.D. Ky. 2016), dismissed, 2017 U.S. Dist. LEXIS 36195 (E.D. Ky. Mar. 14, 2017).

2. Wages Wrongfully Withheld.

Circuit court correctly determined there was no basis for setting aside the Cabinet's order that the employer wrongfully withheld wages belonging to a former employee where the employer had no policy beyond the requirement of submitting a timesheet that required the employee to prove the number of hours he worked while out of the office, the employee verified the timesheets' accuracy, the employer approved them, and they showed the employee was owed outstanding wages representing 58 hours of annual leave. Vogt Power Int'l, Inc. v. Labor Dep't of Workplace Stds., 588 S.W.3d 169, 2019 Ky. App. LEXIS 186 (Ky. Ct. App. 2019).

Cited:

Barker v. Stearns Coal & Lumber Co., 287 Ky. 340, 152 S.W.2d 953, 1941 Ky. LEXIS 534 (Ky. 1941); Hardin Memorial Hospital, Inc. v. Land, 645 S.W.2d 711, 1983 Ky. App. LEXIS 277 (Ky. Ct. App. 1983).

OPINIONS OF ATTORNEY GENERAL.

It was the clear intent of the legislature under KRS 337.020 to require firms, individuals, and partnerships as well as corporations to pay employees at least as frequently as semimonthly and, under subsection (1) of this section, to penalize those who fail to comply. OAG 70-830.

Where the primary factor in the failure to pay pursuant to the prevailing wage rate provisions for a public works project was the fiscal court's failure to observe the mandatory requirements of KRS 337.510 and 337.512 in that the fiscal court failed to obtain the prevailing wage rate schedules and to incorporate them into the bid specifications and the contract, the fiscal court was not only responsible for making sufficient payments to the contractors and their employees to comply with the applicable prevailing wage provisions, but the fiscal court and its members faced a potential liability for damages, injury or loss sustained by any person as a result of their negligence in failing to comply with the requirements of KRS 337.505 to 337.550. OAG 80-547, 1980 Ky. AG LEXIS 145.

CHAPTER 339
CHILD LABOR

Section
339.205. "Commissioner" defined.
339.210. Definition of "gainful occupation.".
339.220. Minor under fourteen not to be employed — Exception.
339.230. Restrictions on employment of minor between fourteen and eighteen.
339.250. Furnishing or selling articles to minors for illegal sale.
339.270. Lunch and rest periods.
339.360. Issuance of age certificates.
339.370. Age certificate as evidence of age in other proceedings.
339.400. Employer's register — Posting copy of law and working hours.
339.430. Machinery used in school courses.
339.450. Enforcement of law — Right to enter and inspect premises and records.
339.990. Penalties.

339.205. "Commissioner" defined.

As used in this chapter, "commissioner" shall mean the commissioner of the Department of Workplace Standards, under the direction and supervision of the secretary of the Education and Labor Cabinet.

History.

Enact. Acts 1984, ch. 414, § 24, effective July 13, 1984; 2010, ch. 24, § 1769, effective July 15, 2010; 2022 ch. 236, § 127, effective July 1, 2022.

339.210. Definition of "gainful occupation."

As used in KRS 339.210 to 339.450:

(1) "Gainful occupation" does not include employment in farm work or in domestic service in a private home, nor occasional employment by a householder in connection with the household and not in connection with the householder's business or occupation, such as grass cutting or carrying ashes or similar casual domestic tasks, nor the delivery of newspapers on regularly scheduled routes, nor to employment as an actor or performer in motion pictures or theatrical productions, or in radio or television productions, nor to employment of minors by their own parents or persons standing in the place of a parent in occupations other than manufacturing, mining, or those found by the commissioner of the Department of Workplace Standards to be particularly hazardous;

(2) "Gainful occupation" does not include a minor who is at least twelve (12) years of age working as a referee, umpire, or official in a youth athletic program, subject to the following:

(a) The minor is a referee, umpire, or official for an age bracket younger than the minor's own age;

(b) An adult representing the youth athletic program is on the premises where the athletic event is occurring; and

(c) The minor has on file with the person responsible for assigning the minor to officiate for the youth athletic program the original or a copy of a written consent to the child's employment as a referee, umpire, or official signed by the minor's parent or guardian; and

(3) "Gainful occupation" does not include participation in a work program established under KRS 339.335 by a minor who is twelve (12) or thirteen (13) years of age.

History.

Enact. Acts 1948, ch. 107, § 1; 1984, ch. 256, § 1, effective July 13, 1984; 2005, ch. 123, § 41, effective June 20, 2005; 2010, ch. 24, § 1770, effective July 15, 2010; 2014, ch. 108, § 1, effective April 10, 2014; 2024 ch. 119, § 2, effective July 15, 2024.

NOTES TO DECISIONS

Cited:

Wright v. O'Neal, 320 S.W.2d 606, 1959 Ky. LEXIS 236 (Ky. 1959).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Alcoholic beverage licensee not to employ person under 21, except in bottling house or office, KRS 244.090.

Compulsory school attendance, KRS Chapter 159.

General Assembly to fix minimum age of employment in certain occupations, Ky. Const., § 243.

Workers' compensation, minor of 16 is sui juris for purposes of; effect of age certificate on right to receive compensation, KRS 342.065.

Kentucky Law Journal.

Segal, An Historical Analysis of the Kentucky Workmen's Compensation Law, 47 Ky. L.J. 279 (1959).

Treatises

Petrilli, Kentucky Family Law, Minors, §§ 30.27, 30.29.

339.220. Minor under fourteen not to be employed — Exception.

No minor under fourteen (14) years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation at any time, except for employment in connection with an employment program supervised and sponsored by the school or school district such child attends, which program has been approved by the Department of Education and subject to the regulations of the commissioner of the Department of Workplace Standards.

History.

Enact. Acts 1948, ch. 107, § 2; 1970, ch. 143, § 1; 1984, ch. 414, § 25, effective July 13, 1984; 2010, ch. 24, § 1771, effective July 15, 2010.

NOTES TO DECISIONS

1. Special Protection of Minors.

The Constitution, statute and case law of this state reflect a policy of special protection of minors from injury. Pike v. George, 434 S.W.2d 626, 1968 Ky. LEXIS 235 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

If a golf club specifically employs caddies, provides specific space for their congregation on the premises of the club, regulates caddies' hours of being on the premises, such as requiring them to attend at specific times, or engages in any activity which indicates such control over the caddie as to create a relationship of employment, even though the club does not directly pay the caddie, such caddie must not be below 14 years of age. However, if the club does not exercise any control over such persons and they come on the course as guests of members or golfers so as to demonstrate that no relationship of employment exists between the club and the caddies, the club would not be in violation of this section. OAG 69-101.

RESEARCH REFERENCES AND PRACTICE AIDS

ALR

Lawn mowing by minors as violation of child labor statutes. 56 A.L.R.3d 1166.

Fair labor practices: Validity, construction, application, and effect of child labor provisions of Fair Labor Standards Act (29 USCS § 212 and related sections). 21 A.L.R. Fed. 391.

339.230. Restrictions on employment of minor between fourteen and eighteen.

A minor who has passed his or her fourteenth birthday but is under eighteen (18) years of age may be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except:

(1) If he or she is under sixteen (16) years of age, he or she may not be employed during regular school hours, unless:

(a) The school authorities have made arrangements for him or her to attend school at other than the regular hours, in which event he or she may be employed subject to regulations of the commissioner of workplace standards during such of the regular school hours as he or she is not required to be in attendance under the arrangement; or

(b) He or she has graduated from high school.

(2) A minor who has passed his or her fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted, or suffered to work:

(a) In any place of employment or at any occupation, that the commissioner of workplace standards shall determine to be hazardous or injurious to the life, health, safety, or welfare of such minor unless:

1. The minor is at least sixteen (16) years of age;

2. The minor is employed by his or her parent or a person standing in place of a parent and works under adult supervision; and

3. The minor is engaged in nonhazardous aspects of the electrical trades, including but not limited to activities such as pulling wire, setting boxes, or bending conduit;

(b) More than the number of days per week, nor more than the number of hours per day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he or she make them less restrictive;

(c) During the hours of the day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he or she make them less restrictive; and

(d) In, about, or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption, or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except that he or she may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.

(3) The commissioner of workplace standards shall promulgate regulations to properly protect the

life, health, safety, or welfare of minors. He or she may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment, and other pertinent factors. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he or she make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the commissioner with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for Health and Family Services, the Department of Education, the Kentucky Commission on Human Rights and the Personnel Cabinet. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the commissioner of workplace standards.

History.
Enact. Acts 1948, ch. 107, § 3; 1950, ch. 105; 1952, ch. 178, § 1; 1970, ch. 143, § 2; 1974, ch. 74, Art. VI, § 94; 1984, ch. 256, § 2, effective July 13, 1984; 1984, ch. 414, § 27, effective July 13, 1984; 1998, ch. 154, § 93, effective July 15, 1998; 1998, ch. 426, § 561, effective July 15, 1998; 2005, ch. 99, § 609, effective June 20, 2005; 2010, ch. 24, § 1773, effective July 15, 2010; 2011, ch. 74, § 20, effective June 8, 2011.

NOTES TO DECISIONS

Analysis

1. Owner Not Employer.
2. Service Station.

1. Owner Not Employer.
Where owner of filling station has nothing to do with the employment of an injured party by station lessee and is not shown to have knowledge of the employment, the owner is not liable under this section. Totten v. Parker, 428 S.W.2d 231, 1967 Ky. LEXIS 523 (Ky. 1967).

2. Service Station.
Under this section, a service station is not necessarily a hazardous place of employment. Totten v. Parker, 428 S.W.2d 231, 1967 Ky. LEXIS 523 (Ky. 1967).

Cited:
Riddell's Adm'r v. Berry, 298 S.W.2d 1, 1956 Ky. LEXIS 31 (Ky. 1956); Blue Ridge Mining Co. v. Dobson, 310 S.W.2d 52, 1958 Ky. LEXIS 371 (Ky. 1958); Peters v. Frey, 429 S.W.2d 847, 1968 Ky. LEXIS 758 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

A minor 18 or 19 years of age may be lawfully employed in a business establishment holding a restaurant license and a license for the sale of alcoholic beverages for consumption on the premises, provided, however, that the duties of such employee must be strictly confined to operation of the restaurant and no duties shall be performed by such an employee in connection with the handling, sale or serving of alcoholic beverages in such an establishment. OAG 62-172.

Substantially all the operations of a county rescue squad composed of volunteers who assist in cases involving drownings, lost children, fires or any other type of emergency would be hazardous and the employment of anyone under age 18 would be proscribed. OAG 69-41.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Alcoholic beverage licensee not to employ person under 21, except in bottling house or office, KRS 244.090.
Safety and health of employees, KRS Chapter 338.

Treatises

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Complaint for Injuries to Child — Parent's Loss of Consortium, Form 256.02.

Collateral References.

ALR
Fair labor practices: Validity, construction, application, and effect of child labor provisions of Fair Labor Standards Act (29 USCS § 212 and related sections. 21 A.L.R. Fed. 391.

339.250. Furnishing or selling articles to minors for illegal sale.

No person shall furnish or sell to any minor any article of any description with the knowledge that the minor intends to sell said article in violation of KRS 339.210 to 339.450. No person shall continue to furnish or sell articles of any description to a minor after having received written notice from any officer charged with the enforcement of KRS 339.210 to 339.450, that the minor is not permitted to sell such articles.

History.
Enact. Acts 1948, ch. 107, § 5; 1984, ch. 256, § 3, effective July 13, 1984.

339.270. Lunch and rest periods.

(1) No minor under eighteen (18) years of age shall be permitted to work for more than five (5) hours continuously without an interval of at least thirty (30) minutes for a lunch period, and no period of less than thirty (30) minutes shall be deemed to interrupt a continuous period of work.

(2) No employer shall require any minor under eighteen (18) years of age to work without a rest period of at least ten (10) minutes during each four (4) hours worked. This shall be in addition to the regularly scheduled lunch period. No reduction in compensation shall be made for hourly or salaried employees.

History.
Enact. Acts 1948, ch. 107, § 7; 2020 ch. 48, § 2, effective March 27, 2020.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Complaint for Injuries to Child — Parent's Loss of Consortium, Form 256.02.

339.360. Issuance of age certificates.

Upon request, it shall be the duty of the local board of education through its superintendent or other authorized agent to issue to any minor under the age of eighteen (18) years desiring to enter employment a certificate of age upon presentation of proof of age. Every employer shall be required to obtain from any employee proof of age that the employee is at least eighteen (18) years of age.

History.

Enact. Acts 1948, ch. 107, § 15; 1984, ch. 256, § 4, effective July 13, 1984.

339.370. Age certificate as evidence of age in other proceedings.

A certificate of age duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workers' compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance.

History.

Enact. Acts 1948, ch. 107, § 16; 1984, ch. 256, § 5, effective July 13, 1984.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Effect of age certificate on right to recover worker's compensation, KRS 342.065.

339.400. Employer's register — Posting copy of law and working hours.

Every person employing minors under eighteen (18) years of age shall keep a separate register containing the names, ages, and addresses of such employees, and the time of commencing and stopping of work for each day, and the time of the beginning and ending of the daily meal period, and shall post and keep conspicuously posted in the establishment wherein any such minor is employed, permitted, or suffered to work, a printed abstract of KRS 339.210 to 339.450, and a list of the occupations prohibited to such minors, together with a notice stating the working hours per day for each day in the week required of them. These records and files shall be open at all times to the inspection of the school directors of pupil personnel and probation officers, and representatives of the Education and Labor Cabinet.

History.

Enact. Acts 1948, ch. 107, § 19; 1966, ch. 89, § 14; 2010, ch. 24, § 1774, effective July 15, 2010; 2022 ch. 236, § 128, effective July 1, 2022.

339.430. Machinery used in school courses.

Nothing in KRS 339.210 to 339.450 shall prevent the use of suitable machinery for instruction in schools where the mechanical arts are taught in connection with and as part of the usual school curriculum. The use of such machinery in any public or private school shall be subject to the approval of the board of education of the district where the school is situated, and shall be subject to the general industrial safety standards as to supplying safeguards for the protection of those using such machinery.

History.

Enact. Acts 1948, ch. 107, § 22.

339.450. Enforcement of law — Right to enter and inspect premises and records.

(1) It shall be the duty of the Department of Workplace Standards and of the inspectors and agents of said department, with the assistance of the school directors of pupil personnel, police officers and juvenile session of District Court probation officers, to enforce the provisions of KRS 339.210 to 339.450, to make complaints against persons violating the provisions of those sections, and to prosecute violations thereof. The Department of Workplace Standards, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by KRS 339.210 to 339.450, and to have access to age certificates kept on file by the employer and such other records as may aid in the enforcement of KRS 339.210 to 339.450. School directors of pupil personnel are likewise empowered to visit and inspect places where minors may be employed, and shall report any cases of employment that they find in violation of KRS 339.210 to 339.450 to the Department of Workplace Standards.

(2) Any person authorized to enforce KRS 339.210 to 339.450 may require an employer of a minor for whom an age certificate is not on file either to furnish him or her within ten (10) days the evidence showing that the minor is at least eighteen (18) years of age or to cease to employ or permit or suffer such minor to work. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of KRS 339.210 to 339.450, that such minor is under eighteen (18) years of age and is unlawfully employed.

History.

Enact. Acts 1948, ch. 107, § 24; 1966, ch. 89, § 15; 1980, ch. 188, § 178, effective July 15, 1980; 1984, ch. 256, § 6, effective July 13, 1984; 1984, ch. 414, § 32, effective July 13, 1984; 2010, ch. 24, § 1775, effective July 15, 2010.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School attendance officers may investigate places where children are employed, KRS 159.130.

339.990. Penalties.

Anyone who employs or permits or suffers any minor to be employed or to work in violation of KRS 339.210 to 339.450, or of any order or ruling issued under the provisions thereof, or obstructs the Department of Workplace Standards, its officers, or agents, or any other person authorized to inspect places of employment under KRS 339.210 to 339.450, or anyone who, having under his or her control or custody any minor, permits or suffers him or her to be employed or to work in violation of KRS 339.210 to 339.450, or who sells to a minor any article with the knowledge that the minor intends to sell the article in violation of KRS 339.210 to 339.450, shall be assessed a civil penalty, in accordance

with the provisions of KRS 336.985, of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). Every employer who continues to employ a minor in violation of KRS 339.210 to 339.450 after he has been notified by the Department of Workplace Standards, its officers or agents, shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of one hundred dollars ($100) for each day the violation continues and the employment of any minor in violation of KRS 339.210 to 339.450 shall with respect to each minor so employed constitute a separate and distinct offense.

History.

Enact. Acts 1948, ch. 107, § 25; 1984, ch. 256, § 7, effective July 13, 1984; 1984, ch. 414, § 33, effective July 13, 1984; 1990, ch. 42, § 4, effective July 13, 1990; 2010, ch. 24, § 1776, effective July 15, 2010.

NOTES TO DECISIONS

1. Violation by One Parent.

Violation of Child Labor Law by one (1) parent does not bar recovery by other parent who was not guilty of similar violation. Kentucky Utilities Co. v. McCarty's Adm'r, 170 Ky. 543, 186 S.W. 150, 1916 Ky. LEXIS 79 (Ky. 1916).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Parent responsible for violation of school attendance law by child after notice of violation, KRS 159.180.

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Complaint for Injuries to Child — Parent's Loss of Consortium, Form 256.02.

CHAPTER 342

WORKERS' COMPENSATION

Section

342.340. Employer to insure or provide security against liability to workers.
342.630. Coverage of employers.
342.640. Coverage of employees.

Penalties.

342.990. Penalties — Restitution.

342.340. Employer to insure or provide security against liability to workers.

(1) Every employer under this chapter shall:

(a) Insure and keep insured its liability for compensation in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state; or

(b) Furnish to the commissioner satisfactory proof of its financial ability to pay directly the compensation in the amount and manner and when due as provided in this chapter. In this case, the commissioner shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the commissioner directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.

(2) Every employer subject to this chapter shall file, or have filed on its behalf, with the department, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the commissioner, evidence of the employer's compliance with this chapter. Evidence of compliance filed with the department may include a named additional insured who has been provided proof of workers' compensation insurance coverage by the employer. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage. Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved self-insured group, as the case may be, shall immediately notify, or have notice given on its behalf to the department of the cancellation, the date, and the reasons; and every insurance carrier or self-insured group shall in like manner notify the commissioner upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or self-insured group need not set forth its reasons unless requested by the commissioner. The above filings are to be made on the forms prescribed by the commissioner. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the commissioner unless the employer has obtained other insurance and the commissioner is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the commissioner shall promptly notify interested government agencies of this failure and, with particular reference to employers engaged in coal mining, the commissioner shall promptly report any failures to the Department for Natural Resources so that appropriate action may be undertaken pursuant to KRS 351.175.

History.

4946: amend. Acts 1970, ch. 16, § 4; 1982, ch. 426, § 2, effective July 15, 1982; 1990, ch. 16, § 1, effective July 13, 1990; 1994, ch. 181, Part 11, § 36, effective April 4, 1994; 2005, ch. 7, § 41, effective March 1, 2005; 2007, ch. 93, § 1, effective March 23, 2007; 2008, ch. 38, § 1, effective July 15, 2008; 2010, ch. 24, § 1820, effective July 15, 2010; 2014, ch. 80, § 3, effective July 15, 2014.

2026-2028 Budget Reference.

See State/Executive Branch Budget, 2026 Ky. Acts ch. 168, Pt. III, 21 at 2161.

NOTES TO DECISIONS

Analysis

1. In General.
2. Coverage.
3. Applicability of KRS 342.760.
4. Notice of Cancellation.

1. In General.

While the words "secure payment of compensation as provided by this chapter" appearing in KRS 342.760 and 342.690 obviously refer to the providing of insurance or security as required by KRS 342.340, the obligation to so provide is not conditioned on any election by an employer but is automatically imposed on all employers mandatorily made subject to the act by this section, and accordingly, if a subject employer simply ignores the act, in every respect he fails to secure the payment of compensation the same as an employer who has publicly proclaimed his intent to be under the act but who has not provided insurance or security. Davis v. Turner, 519 S.W.2d 820, 1975 Ky. LEXIS 178 (Ky. 1975).

KRS 342.340(1), 342.365, and 342.375 require employers to be fully covered by their insurance carriers to ensure adequate compensation for employees and to prevent employers' funds from depletion before adequate compensation is recovered. AIG/AIU Ins. Co. v. S. Akers Mining Co., 2004 Ky. App. LEXIS 338 (Ky. Ct. App. 2004), aff'd, 192 S.W.3d 687, 2006 Ky. LEXIS 8 (Ky. 2006).

Employer's workers' compensation insurance carrier was liable for any increase in benefits under KRS 342.165(1) despite a contractual term to the contrary since the legislature has determined that an employer's entire liability for benefits must be secured as a matter of public policy under KRS 342.340, 342.365, and 342.375. AIG/AIU Ins. Co. v. South Akers Mining Co., LLC, 192 S.W.3d 687, 2006 Ky. LEXIS 8 (Ky. 2006).

Workers' Compensation Board erred in concluding insurers lacked standing to raise coverage certification because both insurers had a direct financial interest in the certification decision—one that would determine which entity was obligated to pay a retired teacher's benefits under the Workers' Compensation Act; it was not a contractual dispute between insurers, but an ongoing, dispositive issue for the disposition of the teacher's claim under the Act. Encova Mut. Ins. Grp. Formerly Brickstreet Mut. Ins. Co. v. Ky. Employers' Mut. Ins., 724 S.W.3d 720, 2025 Ky. LEXIS 222 (Ky. 2025).

2. Coverage.

Where employer had executed forms required under this section for accepting provisions of the compensation law and insuring his liability thereunder and had lodged them with his insurance carrier with the express understanding that it would file same with compensation board but insurer negligently failed to do so, insurer was estopped to claim that employer was not operating under the law because, at time of employee's death, such forms had not been filed. Ramey v. Broady, 209 Ky. 279, 272 S.W. 740, 1925 Ky. LEXIS 482 (Ky. 1925).

A policy of insurance taken out by employer under this section to cover his liability for compensation to employees, listing his business as that of "junk dealer," did not cover claims of employees injured in wrecking a building. Kelly v. Nussbaum, 218 Ky. 330, 291 S.W. 754, 1926 Ky. LEXIS 120 (Ky. 1926).

Utility presented sufficient evidence to establish it secured workers' compensation coverage under this section. The utility presented the trial court with a certificate of compliance from the Department of Workers' Claims certifying compliance with this section and a copy of its insurance policy. Louisville Gas & Elec. Co. v. Galvan, 2020 Ky. App. LEXIS 115 (Ky. Ct. App. Oct. 16, 2020), vacated, 2021 Ky. LEXIS 260 (Ky. Aug. 18, 2021), review denied, ordered not published, 2021 Ky. App. Unpub. LEXIS 541 (Ky. Ct. App. Sept. 10, 2021).

Where a substitute teacher developed mesothelioma after using a breakroom in a building that contained asbestos, the Workers' Compensation Board abandoned its duty to mandate coverage and bind the proper insurer by finding that it could not address these issues because the carriers were not parties; the ALJ erred by refusing to determine the appropriate carrier because both insurers had filed notices of representation before the Board. That decision wrongfully permitted an insurer of compensation benefits to refuse to fulfill its obligations under the Workers' Compensation Act which the court found to be inconsistent with the intent and purpose of the Act. Ky. Employers' Mut. Ins. v. Hall, 734 S.W.3d 325, 2024 Ky. App. LEXIS 100 (Ky. Ct. App. 2024), aff'd, 724 S.W.3d 720, 2025 Ky. LEXIS 222 (Ky. 2025).

3. Applicability of KRS 342.760.

KRS 342.760 does not apply when an employer has satisfied this section by providing a workers' compensation insurance policy or by being certified by the board as a qualified, self-insured employer. Whitehead v. Davis, 692 S.W.2d 801, 1985 Ky. LEXIS 242 (Ky. 1985).

4. Notice of Cancellation.

Workers' compensation insurance policy, which lapsed by its own terms prior to the date of the worker's injury, was still in full force and effect on the date of the injury because insurer failed to comply with its duty to provide notice of cancellation as required by subsection (2) of this section. Travelers Ins. Co. v. Duvall, 884 S.W.2d 665, 1994 Ky. LEXIS 96 (Ky. 1994).

Cited in:

Lawrence Coal Co. v. Boggs, 309 Ky. 646, 218 S.W.2d 670, 1949 Ky. LEXIS 781 (Ky. 1949); Old Republic Ins. Co. v. Begley, 314 S.W.2d 552, 1958 Ky. LEXIS 309 (Ky. 1958); Young v. Baldwin, 456 S.W.2d 44, 1970 Ky. LEXIS 222 (Ky. 1970); Davis v. Comer, 532 S.W.2d 12, 1975 Ky. LEXIS 22 (Ky. 1975); Beth-Elkhorn Corp. v. Ross, 552 S.W.2d 656, 1977 Ky. LEXIS 469 (Ky. 1977); Lynch v. Lear Seating Corp., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 13452 (W.D. Ky. 2002); Travelers Indem. Co. v. Reker, 100 S.W.3d 756, 2003 Ky. LEXIS 86 (Ky. 2003); McDonald's Corp. v. Ogborn, 309 S.W.3d 274, 2009 Ky. App. LEXIS 236 (Ky. Ct. App. 2009).

NOTES TO UNPUBLISHED DECISIONS

1. Coverage.

Unpublished decision: Manufacturing company could not simply invoke the exclusivity provision of the workers' compensation statute by obtaining workers' compensation coverage; rather, it could only invoke the exclusivity provision if the workers of the contractor were performing the kind of work that was a regular or recurrent part of the work of the manufacturing company and since the evidence did not show that to be the case, the trial court erred in granting summary judgment to the manufacturing company on the workers' and spouses' premises liability claims against the manufacturing company based on asbestos-related illnesses the workers incurred while performing various jobs for various contractors at the manufacturing company's park. Cain v. GE, 2003 Ky. App. LEXIS 325 (Ky. Ct. App. 2003), aff'd in part and rev'd in part, 236 S.W.3d 579, 2007 Ky. LEXIS 173 (Ky. 2007).

OPINIONS OF ATTORNEY GENERAL.

Where an employer who has elected to operate under the Worker's Compensation Act fails to keep insured as provided by this section, the Worker's Compensation Board has authority to terminate his election and such termination should be

reported to the Commissioner of the Department of Labor. OAG 69-306.

The formerly semiannual filing with the Worker's Compensation Board of proof of insurance form 14 is mandatory since subsection (2) of this section uses the word "shall," and under KRS Chapter 446, construction of statutes, particularly KRS 446.010(24) (now (36)), "shall" is mandatory and therefore until the legislature qualifies subsection (2), any proposal to modify the reporting form by eliminating the semiannual filing would be illegal. OAG 73-258.

Where company failed to comply with this section from July 6, 1986, to January 15, 1993, claims made against it for that period may be payable through the Uninsured Employers' Fund. OAG 93-18, 1993 Ky. AG LEXIS 30.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Patterson, Workmen's Compensation, 64 Ky. L.J. 307 (1975-76).

Underwood, Part-Time Prosecutors and Conflicts of Interest: A Survey and Some Proposals, 81 Ky. L.J. 1 (1993).

342.630. Coverage of employers.

The following shall constitute employers mandatorily subject to, and required to comply with, the provisions of this chapter:

(1) Any person, other than one engaged solely in agriculture, that has in this state one (1) or more employees subject to this chapter.

(2) The state, any agency thereof, and each county, city of any class, school district, sewer district, drainage district, tax district, public or quasipublic corporation, or any other political subdivision or political entity of the state that has one (1) or more employees subject to this chapter.

History.

Enact. Acts 1972, ch. 78, § 3.

NOTES TO DECISIONS

Analysis

1. In General.
2. Constitutionality.
3. Contractor.
4. Agriculture.
5. Quantity of Business.
6. State Agency.
7. Nonresident Employer.
8. Governmental Entities.

1. In General.

The effect of this section is to subject all employers, except for employers of exempt employees, to the Workers' Compensation Law with no option of election not to come under the law. Davis v. Turner, 519 S.W.2d 820, 1975 Ky. LEXIS 178 (Ky. 1975).

While the words "secure payment of compensation as provided by this chapter" appearing in KRS 342.760 and 342.690 obviously refer to the providing of insurance or security as required by KRS 342.340, the obligation to so provide is not conditioned on any election by an employer but is automatically imposed on all employers mandatorily made subject to the act by this section, and accordingly, if a subject employer simply ignores the act, in every respect he fails to secure the payment of compensation the same as an employer who has publicly proclaimed his intent to be under the act but who has not provided insurance or security. Davis v. Turner, 519 S.W.2d 820, 1975 Ky. LEXIS 178 (Ky. 1975).

2. Constitutionality.

The agriculture exclusion contained in the Workers' Compensation Act is not violative of the equal protection clauses of the state and federal constitutions because of discriminatory classification of workers. Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44, 1978 Ky. App. LEXIS 678 (Ky. Ct. App. 1978).

3. Contractor.

A contractor which had no immediate employees was not an employer under this section. Mills v. Arthur Constr. Co., 559 S.W.2d 742, 1977 Ky. App. LEXIS 873 (Ky. Ct. App. 1977).

Where a contractor had taught an assistant the electric wiring trade by instructing him on the job, the contractor procured the home improvement jobs, he only decided whether he needed aid after he had begun an electrical project, the contractor determined whether the assistant worked at all, and the assistant served as a helper to the contractor and followed his instructions, no other inference can be drawn than that the assistant was an employee. Wright v. Fardo, 587 S.W.2d 269, 1979 Ky. App. LEXIS 467 (Ky. Ct. App. 1979).

City was not liable as a contractor under KRS 342.610(2); KRS 342.630 considers persons and governmental entities to be separate classes of employers subject to KRS Chapter 342, and although KRS 342.630 requires both classes to provide workers' compensation coverage to direct employees, KRS 342.610(2) considers only persons to be contractors subject to up-the-ladder liability. Uninsured Employers' Fund v. City of Salyersville, 260 S.W.3d 773, 2008 Ky. LEXIS 148 (Ky. 2008).

4. Agriculture.

For the courts to declare that boarding horses is covered by the act would impose an unexpected hardship, primarily upon persons operating smaller farms, who have had no legislative notice nor opportunity to obtain insurance coverage. Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44, 1978 Ky. App. LEXIS 678 (Ky. Ct. App. 1978).

In order to qualify for the so-called agricultural exemption, provided for in subdivision (1) of this section, a person must be engaged solely in agriculture and not merely engaged principally in agriculture. Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44, 1978 Ky. App. LEXIS 678 (Ky. Ct. App. 1978).

Operator of farm on which tobacco, hay, cattle and thoroughbred yearlings were raised but on which 73 percent of the gross receipts came from boarding mares owned by others was excluded from the operation of the Workers' Compensation Law since such operation was agriculture. Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44, 1978 Ky. App. LEXIS 678 (Ky. Ct. App. 1978).

The mere fact that a farm owner runs a farm operation caring for the horses of others for compensation does not convert an agricultural enterprise into an industrial one for the purposes of this section. Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44, 1978 Ky. App. LEXIS 678 (Ky. Ct. App. 1978).

The usual practice of animal husbandry is included within the general term "agriculture." Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44, 1978 Ky. App. LEXIS 678 (Ky. Ct. App. 1978).

Because sale of quail to hunting preserves to be hunted was an agricultural use under 342.0011(18), quail farm which sold the birds was entitled to the agricultural exemption of subsection (1) of this section and 342.650(5); case involving worker injured at farm was remanded back to Workers' Compensation Board with directions to dismiss. Stidham v. Duncan, 931 S.W.2d 463, 1996 Ky. App. LEXIS 140 (Ky. Ct. App. 1996).

Injured employee was covered by the Kentucky Workers' Compensation Act because the work the employee was performing was logging, which was not "agriculture" as that term was defined by KRS 342.0011(18). Although the work occurred

on the employer's farm, the logging was not connected to the day to day operations of the farm itself as the cut timber was commercially sold by the employer for profit. Commonwealth v. Gussler, 278 S.W.3d 153, 2008 Ky. App. LEXIS 251 (Ky. Ct. App. 2008).

5. Quantity of Business.

There is no judicial exception to coverage of workers' compensation brought on by the infrequency of the employer's business or by the difficulty of obtaining workers' compensation insurance at a rate profitable to the business. Wright v. Fardo, 587 S.W.2d 269, 1979 Ky. App. LEXIS 467 (Ky. Ct. App. 1979).

6. State Agency.

Where claimant worked twenty hours per week at a state training facility as part of the federally-funded "Foster Grandparents" program, where she performed tasks in keeping with the goal of the facility and was paid at an hourly rate, and where the program was administered by an employee of the Department (now Cabinet) of Human Resources, which is a state agency, such claimant was an "employee" entitled to receive the benefits for work-related injuries provided by the Workers' Compensation Act. Sears v. Oakwood Training Facility Dep't of Human Resources, 623 S.W.2d 232, 1980 Ky. App. LEXIS 436 (Ky. Ct. App. 1980).

7. Nonresident Employer.

Out-of-state employers, insured or uninsured, are not exempted from coverage of the Workers' Compensation Act; therefore, a nonresident employee of a nonresident, uninsured employer is covered by this state's Workers' Compensation Act when the employee sustains an injury by virtue of the employment in this state, and such nonresident is entitled to benefits from the uninsured employers' fund. Bryant v. Jericol Mining, Inc., 758 S.W.2d 45, 1988 Ky. App. LEXIS 90 (Ky. Ct. App. 1988).

8. Governmental Entities.

KRS 342.0011(16), did not include governmental entities within the definition of a "person" because KRS 342.630 made it clear that the legislature intended not to include governmental entities within the term "person;" KRS 342.630 considers persons and governmental entities to be separate classes of employers subject to KRS Chapter 342. Davis v. Hensley, 256 S.W.3d 16, 2008 Ky. LEXIS 149 (Ky. 2008).

County officials had no immunity as to an employee's claim of termination for filing a workers' compensation claim because (1) Ky. Rev. Stat. Ann. § 342.197(1) waived immunity as a matter of law, (2) the employee was a covered employee, (3) the county was a covered employer required to comply with applicable statutes, and (4) the Kentucky General Assembly broadly intended for there to be no distinction between government and private employees. Fields v. Benningfield, 2018 Ky. App. LEXIS 83 (Ky. Ct. App. 2018), rev'd in part, aff'd, 584 S.W.3d 731, 2019 Ky. LEXIS 371 (Ky. 2019).

Ky. Rev. Stat. Ann. § 342.197 implicitly waived immunity for a county fiscal court, a county jailer in his official capacity, and another jailer in his official capacity because only the county fiscal court qualified as a deputy jailer's employer; the county jailer and the other jailer were entitled to the same immunity, to the extent they were sued in their official capacities, and the waiver, therefore, applied to them as well. Benningfield v. Fields, 584 S.W.3d 731, 2019 Ky. LEXIS 371 (Ky. 2019).

Cited:

Vater v. Newport Board of Education, 511 S.W.2d 670, 1974 Ky. LEXIS 506 (Ky. 1974); Himes v. United States, — F.3d —, 645 F.3d 771, 2011 U.S. App. LEXIS 14293 (6th Cir. 2011).

OPINIONS OF ATTORNEY GENERAL.

Any employer, including a governmental unit, may become a self-insurer provided the employer shall present satisfactory proof of its solvency and ability to pay claims. OAG 72-810.

Local officials considered to be in the service of the state for purposes of workers' compensation coverage include: (1) property valuation administrators, (2) Circuit Court clerks and their deputies, (3) Circuit judges, (4) Commonwealth attorney, (5) master commissioners and receivers, and (6) sheriff, jailer and county court clerk in counties of 75,000 or more. OAG 72-830.

The office of county judge (now county judge/executive), magistrate, county commissioner, county clerk, jailer, and sheriff are the responsibility of the county for workers' compensation except for sheriffs, jailers and county court clerks in counties having a population of 75,000 or more. OAG 72-830.

The state is required to pay awards or judgments in favor of state employees regardless of whether the state carries insurance or whether it acts as a self-insurer. OAG 73-28.

The Workers' Compensation Act does not exempt a religious organization from being an employer, if it has at least one covered employee, so that a church that pays a minister, a janitor or any other person who is employed by the religious or charitable organization would be required to cover such personnel under the Workers' Compensation Act. OAG 73-73.

Pursuant to this section and KRS 342.640, the coverages of employer and employee of governmental entities are rather all-encompassing so that the Kentucky State Bar Association should be considered a state agency and the executive director and other employees are covered under the Workers' Compensation Act. OAG 73-304.

All officers and employees of Beechwood Village, whether part or full-time, whether elected or appointed, whether paid or volunteer, are required to be covered under the Workers' Compensation Law and if they are injured in the scope of their employment and do not have coverage, the employer's insurance fund would be responsible for the payment and it could then recover against the employer. OAG 73-511.

The fiscal court of a county is mandatorily required to provide workers' compensation insurance to cover the sheriff's deputies who have been lawfully appointed and salaried. OAG 76-694.

A city is mandatorily required to have workers' compensation for all of its officers and employees whether they are paid by the city or not and the basis for determining their compensation would be the average weekly wage in their regular employment as set out in KRS 342.140. OAG 77-642, 1977 Ky. AG LEXIS 139.

A riverport authority organized and existing pursuant to KRS 65.510 to 65.650 is a covered employer under this section and mandatorily subject to the requirements of the Kentucky Workers' Compensation Act and under 33 USCS § 903(a) (2) not subject to the provisions of the Longshoremen's and Harbor Workers' Compensation Act when its specific though limited powers of government as a body politic and an autonomous public corporation acting pursuant to clearly defined public purposes are considered. OAG 79-277, 1979 Ky. AG LEXIS 362.

A constable would be considered to be in the service of the county for purposes of workers' compensation coverage. OAG 82-628, 1982 Ky. AG LEXIS 14.

A county or fiscal court is required to carry insurance on constables where expressly required to do so by statute, for example, to carry workers' compensation coverage for constables under this section, 342.640(3), and 64.530(2). OAG 95-11, 1995 Ky. AG LEXIS 168.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Joiner, Should Kentucky Student Athletes Be Covered by the Workers' Compensation Statutes?, Vol. 50, No. 2, Spring 1986 Ky. Bench & B. 16.

Fogle, Workplace Injuries: Exclusive Remedy in the New Millennium, Vol. 72, No. 5, September 2008, Ky. Bench & Bar 31.

Kentucky Law Journal.

Kentucky Law Survey, Patterson, Workmen's Compensation, 64 Ky. L.J. 307 (1975-76).

Kentucky Law Survey, Basil, Workers' Compensation, 69 Ky. L.J. 687 (1980-81).

Northern Kentucky Law Review.

Jackson and Crase, A Survey of Kentucky Workers' Compensation Law, 30 N. Ky. L. Rev. 31 (2003).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Master and Servant, § 282.00.

342.640. Coverage of employees.

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(2) Every executive officer of a corporation;

(3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of an emergency management agency, as established under KRS Chapters 39A to 39E, shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state; and

(4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury.

History.

Enact. Acts 1972, ch. 78, § 4, effective January 1, 1973; 1976, ch. 161, § 3; 1986, ch. 271, § 1, effective July 15, 1986; 1987 (Ex. Sess.), ch. 1, § 52, effective October 26, 1987; 1992, ch. 307, § 11, effective April 9, 1992; 1996 (1st Ex. Sess.), ch. 1, § 28, effective December 12, 1996; 1998, ch. 226, § 110, effective July 15, 1998; 2014, ch. 23, § 1, effective July 15, 2014.

Legislative Research Commission Notes.

(12/12/96). 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 28 stated that it is was amending this statute, but the proposed changes to the statute were eliminated by legislative action on this Act although the statute itself was not delected from the bill.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Applicability.
3. Employee.
4. Compensable Employment.
5. No Judicial Exception.
6. National Guard.
7. County Jail Personnel.
8. Nonresident Employee.
9. Prisoner.
10. Student Trainees.
11. Retirement of Employee.
12. Agriculture.

1. Construction.

KRS 342.316(3)(b) is not in conflict with KRS 342.610(1), 342.640(1), and 342.690(1) Mullins v. Manning Coal Corp., 938 S.W.2d 260, 1997 Ky. LEXIS 1 (Ky.), cert. denied, 521 U.S. 1119, 117 S. Ct. 2511, 138 L. Ed. 2d 1014, 1997 U.S. LEXIS 4077 (U.S. 1997).

KRS 342.395 does not draw a distinction between so-called innocent employees and executive officers who are employees pursuant to KRS 342.640(2). For any employee, including executive officers/owners, to validly reject the Workers' Compensation Act, KRS 342.395 and 803 KAR 25:130, § 1 must be satisfied. Ky. Employers' Mut. Ins. v. J & R Mining, Inc., 2008 Ky. App. LEXIS 51 (Ky. Ct. App. Mar. 7, 2008), aff'd, 279 S.W.3d 513, 2009 Ky. LEXIS 77 (Ky. 2009).

2. Applicability.

KRS 342.640 specifically deals with the definition of an employee within the context of the Workers' Compensation Act; therefore, it prevails over provisions regarding employees in the Kentucky Education Reform Act, KRS ch. 160. Pike County Bd. of Educ. v. Mills, 260 S.W.3d 366, 2008 Ky. App. LEXIS 245 (Ky. Ct. App. 2008).

KRS 342.640(1) was not applicable as KRS 342.615(5) deemed a temporary help service to be a temporary employee's employer, KRS 342.690(1) would not deem an injured permanent employee and the temporary employee to be co-employees, and therefore immunize the subcontractor and temporary employee from the permanent employee's tort claim. Labor Ready, Inc. v. Johnston, 289 S.W.3d 200, 2009 Ky. LEXIS 153 (Ky. 2009).

3. Employee.

An unpaid officer of a nonprofit trade association is not an "employee" within the purview of this section. Kentucky Farm & Power Equipment Dealers Asso. v. Fulkerson Bros., Inc., 631 S.W.2d 633, 1982 Ky. LEXIS 241 (Ky. 1982).

The threshold requirement in a compensation claim is that the claimant must be an employee for hire, as the essence of compensation protection is the restoration of a part of wages which are assumed to have existed. Kentucky Farm & Power Equipment Dealers Asso. v. Fulkerson Bros., Inc., 631 S.W.2d 633, 1982 Ky. LEXIS 241 (Ky. 1982).

The workers' compensation concept of employee is narrower than the common-law concept of "servant," in the master and servant relationship, and implies that the service to be performed is under a contract of hire, express or implied. Compensation decisions uniformly excluded from the definition "employees" workers who neither receive nor expect to receive any kind of pay for their services. Kentucky Farm & Power

Equipment Dealers Asso. v. Fulkerson Bros., Inc., 631 S.W.2d 633, 1982 Ky. LEXIS 241 (Ky. 1982).

The proper legal analysis with regard to whether one is an employee requires consideration of at least four predominant factors: (1) the nature of the work as related to the business generally carried on by the alleged employer; (2) the extent of control exercised by the alleged employer; (3) the professional skill of the alleged employee; and (4) the true intent of the parties. The proper legal conclusions may not be drawn from consideration of one or two of these factors. Uninsured Employers' Fund v. Garland, 805 S.W.2d 116, 1991 Ky. LEXIS 22 (Ky. 1991).

Newspaper carrier was an employee of newspaper within the meaning of Kentucky's Workers' Compensation Statute, despite a purchase agreement which attempted to render this section inapplicable, because an employer cannot by contrivance force an employee to work outside the protection of the Workers' Compensation Statute, even if the employee acquiesces to the employer's terms. Evansville Printing Corp. v. Sugg, 817 S.W.2d 455, 1991 Ky. App. LEXIS 116 (Ky. Ct. App. 1991).

Where claimant and employer entered into a specific written contract of employment containing clear and concise language that successful passage of a pre-employment physical was a prerequisite to the beginning of an employment relationship and where claimant procured the services of another individual to take his pre-employment physical examination, the terms of the agreement were not complied with, and the contract of employment was not consummated; therefore, claimant was precluded from maintaining a claim for workers' compensation for an injury sustained while at work. Honaker v. Duro Bag Mfg. Co., 851 S.W.2d 481, 1993 Ky. LEXIS 70 (Ky. 1993).

Administrative law judge erred in dismissing a claim for workers' compensation benefits based upon a finding that the claimant had misrepresented her educational level on the employment application, thereby precluding the formation of a contract of employment. Clarion Mfg. Corp. of Am. v. Justice, 971 S.W.2d 288, 1998 Ky. LEXIS 43 (Ky. 1998).

A participant in an apprenticeship program conducted by a plumbers' union was not an "employee," notwithstanding that he was paid for the on-the-job part of his apprenticeship program, where he was injured while being instructed in the classroom, an activity for which he received no remuneration. Jecker v. Plumbers' Local 107, 2 S.W.3d 107, 1999 Ky. App. LEXIS 117 (Ky. Ct. App. 1999).

Where it was undisputed that a claimant, during a tryout for a job with a logger, cut trees throughout the day of his injury; that the logger would owe him nothing if dissatisfied with his work; and that the logger did not indicate that he was dissatisfied with the claimant's work or would not have hired him had he not been injured, the claimant was the logger's employee under KRS 342.640(4). Hubbard v. Henry, 231 S.W.3d 124, 2007 Ky. LEXIS 169 (Ky. 2007).

Trial court's finding that an auction business had up-the ladder immunity in a claim brought by a worker allegedly injured by the negligence of a temporary employee working for the auction business was error because the auction business was a contractor and the temporary service was a subcontractor, and as a contractor, the auction business was liable to the temporary service's employees for workers' compensation, but was immune from civil suit by those employees. Johnston v. Labor Ready, Inc., 2007 Ky. App. Unpub. LEXIS 250 (Ky. Ct. App. 2007), aff'd, 289 S.W.3d 200, 2009 Ky. LEXIS 153 (Ky. 2009).

Band instructor who began working for a board of education under an oral contract and who was injured in the course of his duties was an "employee" under KRS 342.640 for purposes of workers' compensation benefits even though the formalities of KRS 160.380 regarding his hiring (in particular, a contract signed by the board superintendent) were not completed until three months after the injury. Pike County Bd. of Educ. v. Mills, 260 S.W.3d 366, 2008 Ky. App. LEXIS 245 (Ky. Ct. App. 2008).

Because the decedent was a corporate officer of the employer, he was an employee pursuant to KRS 342.640 regardless of whether he was also a shareholder; further, KRS 342.375 required every workers' compensation policy to cover an employer's entire liability, and, as the administrative law judge found that the insurer failed to show that the employer filed a waiver of coverage with the Office of Workers' Claims (now Department of Workers' Claims) as required by KRS 342.395(1) and 803 KAR 25:130, § 1 before the injury, a policy endorsement that excluded the decedent from coverage was ineffective. Ky. Employers' Mut. Ins. v. J & R Mining, Inc., 279 S.W.3d 513, 2009 Ky. LEXIS 77 (Ky. 2009).

Workers' compensation claimant was properly found to be an employee of a construction company pursuant to KRS 342.640(1) because the tasks the claimant performed were within the scope of the employer's business and did not require any special skill, the employer controlled the details of the claimant's work, and the tasks the claimant performed, including sweeping and picking up trash, were necessary on construction sites. Abel Verdon Constr. v. Rivera, 2010 Ky. App. LEXIS 194 (Ky. Ct. App. 2010), aff'd, 348 S.W.3d 749, 2011 Ky. LEXIS 116 (Ky. 2011).

In a workers' compensation case, there was no error in determining that an unauthorized minor alien was an employee where the minor was paid cash for picking up trash at a construction site during vacation. An administrative law judge determined that an employment relationship existed based on findings that the work as a site maintenance person was within the scope of the employer's business constructing homes, the employer controlled the work being performed, and the work did not require any particular skill. Abel Verdon Constr. v. Rivera, 348 S.W.3d 749, 2011 Ky. LEXIS 116 (Ky. 2011).

4. Compensable Employment.

The basic ingredient of compensable employment under this act being contract of hire, express or implied, an inmate is not entitled to workers' compensation benefits for injury suffered while working in the prison because a convict could not and did not enter into a true contract of hire with authorities by whom he was confined. Tackett v. Lagrange Penitentiary, 524 S.W.2d 468, 1975 Ky. LEXIS 110 (Ky. 1975).

Where three employees were instructed by their foreman to detour from their customary route of travel to work in order to pick up a company truck to be driven to the work site, a disabling injury suffered by one employee as a result of an accident during the business detour was work related and compensable. N. H. Stone Co. v. Harris, 531 S.W.2d 513, 1975 Ky. LEXIS 42 (Ky. 1975).

Where a contractor had taught an assistant the electric wiring trade by instructing him on the job, the contractor procured the home improvement jobs, he only decided whether he needed aid after he had begun an electrical project, the contractor determined whether the assistant worked at all, and the assistant served as a helper to the contractor and followed his instructions, no other inference can be drawn than that the assistant was an employee. Wright v. Fardo, 587 S.W.2d 269, 1979 Ky. App. LEXIS 467 (Ky. Ct. App. 1979).

Where claimant worked twenty hours per week at a state training facility as part of the federally-funded "Foster Grandparents" program, where she performed tasks in keeping with the goal of the facility and was paid at an hourly rate, and where the program was administered by an employee of the Department (now Cabinet) of Human Resources, which is a state agency, such claimant was an "employee" entitled to receive the benefits for work-related injuries provided by the Workers' Compensation Act. Sears v. Oakwood Training Facil-

ity Dep't of Human Resources, 623 S.W.2d 232, 1980 Ky. App. LEXIS 436 (Ky. Ct. App. 1980).

Before there can be an employer-employee relationship there must be a contract of hire, expressed or implied. The fact that claimant signed employment documents for general contractor and received his paycheck from general contractor negates any contract of hire on the bypass job between claimant and subcontractor; general contractor retained the right of control by having on the job its general superintendent, who had complete overall authority over the job, and by virtue of the fact that its right to cease paying claimant gave effective control over claimant. Smith Concerete, Inc. v. Mountain Enterprises, Inc., 833 S.W.2d 808, 1992 Ky. LEXIS 70 (Ky. 1992).

Remuneration is an essential element if an apprentice is to be provided with compensation protection. Salvation Army v. Mathews, 847 S.W.2d 751, 1993 Ky. App. LEXIS 19 (Ky. Ct. App. 1993).

"Training" and "control" are sufficiently dissimilar from the advantages set out in KRS 342.0011(17) as to remove individuals receiving such aid from the definition of a compensable employee or apprentice. Salvation Army v. Mathews, 847 S.W.2d 751, 1993 Ky. App. LEXIS 19 (Ky. Ct. App. 1993).

Claimant, who was injured while participating in a national volunteer program, was not exempt from workers' compensation coverage under KRS 342.650(3) because the value of in cash and in kind payment for his work far exceeded what was necessary for him to subsist; thus, the claimant was covered under KRS 342.640(4). Anderson v. Homeless & Housing COA, 135 S.W.3d 405, 2004 Ky. LEXIS 123 (Ky. 2004).

Because a worker and a logger agreed that the worker would be paid for the worker's service if it proved to be satisfactory, KRS 342.640(2) provided workers' compensation coverage for the worker's injury during the trial period even though an employment agreement had not been executed and wages had not been fixed. Hubbard v. Henry, 2006 Ky. App. Unpub. LEXIS 47 (Ky. Ct. App. 2006), aff'd, 231 S.W.3d 124, 2007 Ky. LEXIS 169 (Ky. 2007).

5. No Judicial Exception.

There is no judicial exception to coverage of workers' compensation brought on by the infrequency of the employer's business or by the difficulty of obtaining workers' compensation insurance at a rate profitable to the business. Wright v. Fardo, 587 S.W.2d 269, 1979 Ky. App. LEXIS 467 (Ky. Ct. App. 1979).

6. National Guard.

Notwithstanding the provisions of this statute, member of national guard who at time of injury was entitled to receive federal pay was not on "active state service" nor entitled to receive workers' compensation benefits. Kentucky Nat'l Guard v. Bayles, 535 S.W.2d 234, 1976 Ky. LEXIS 90 (Ky. 1976).

7. County Jail Personnel.

It is implicit in the provision of this section that the "executive officer of a corporation" referred to is an employee for hire, and the reference does not apply to a volunteer or honorary employee. Kentucky Farm & Power Equipment Dealers Asso. v. Fulkerson Bros., Inc., 631 S.W.2d 633, 1982 Ky. LEXIS 241 (Ky. 1982).

County officials had no immunity as to an employee's claim of termination for filing a workers' compensation claim because (1) Ky. Rev. Stat. Ann. § 342.197(1) waived immunity as a matter of law, (2) the employee was a covered employee, (3) the county was a covered employer required to comply with applicable statutes, and (4) the Kentucky General Assembly broadly intended for there to be no distinction between government and private employees. Fields v. Benningfield, 2018 Ky. App. LEXIS 83 (Ky. Ct. App. 2018), rev'd in part, aff'd, 584 S.W.3d 731, 2019 Ky. LEXIS 371 (Ky. 2019).

Ky. Rev. Stat. Ann. § 342.197 implicitly waived immunity for a county fiscal court, a county jailer in his official capacity, and another jailer in his official capacity because only the county fiscal court qualified as a deputy jailer's employer; the county jailer and the other jailer were entitled to the same immunity, to the extent they were sued in their official capacities, and the waiver, therefore, applied to them as well. Benningfield v. Fields, 584 S.W.3d 731, 2019 Ky. LEXIS 371 (Ky. 2019).

8. Nonresident Employee.

A nonresident employee of a nonresident, uninsured employer is covered by this state's Workers' Compensation Act when the employee sustains an injury by virtue of the employment in this state, and such nonresident is entitled to benefits from the uninsured employers' fund. Bryant v. Jericol Mining, Inc., 758 S.W.2d 45, 1988 Ky. App. LEXIS 90 (Ky. Ct. App. 1988).

9. Prisoner.

It is implicit that subdivision (4) of this section refers to service for an employer for hire; a prisoner of the Commonwealth, even though he or she performs some work for the Commonwealth, is not an employee of the Commonwealth. Commonwealth, Dep't of Education, Div. of Surplus Properties v. Smith, 759 S.W.2d 56, 1988 Ky. LEXIS 52 (Ky. 1988).

10. Student Trainees.

Workers' compensation benefits are not available to unremunerated student trainees. Salvation Army v. Mathews, 847 S.W.2d 751, 1993 Ky. App. LEXIS 19 (Ky. Ct. App. 1993).

11. Retirement of Employee.

Voluntary retirement and removal from the labor market in no way extinguishes or limits the right to workers' compensation benefits. Inland Steel C. v. Terry, 464 S.W.2d 284, 1970 Ky. LEXIS 102 (Ky. 1970) (decided under prior law).

12. Agriculture.

Injured employee was covered by the Kentucky Workers' Compensation Act because the work the employee was performing was logging, which was not "agriculture" as that term was defined by KRS 342.0011(18). Although the work occurred on the employer's farm, the logging was not connected to the day to day operations of the farm itself as the cut timber was commercially sold by the employer for profit. Commonwealth v. Gussler, 278 S.W.3d 153, 2008 Ky. App. LEXIS 251 (Ky. Ct. App. 2008).

Cited:

M.J. Daly Co. v. Varney, 695 S.W.2d 400, 1985 Ky. LEXIS 226 (Ky. 1985), overruled, United States Fid. & Guar. Co. v. Technical Minerals, 934 S.W.2d 266, 1996 Ky. LEXIS 117 (Ky. 1996), overruled in part as stated, Labor Ready, Inc. v. Johnston, 289 S.W.3d 200, 2009 Ky. LEXIS 153 (Ky. 2009); Sublett v. Tennessee Valley Authority, 726 F. Supp. 1077, 1989 U.S. Dist. LEXIS 15284 (W.D. Ky. 1989).

OPINIONS OF ATTORNEY GENERAL.

County road employees, county hospital employees and volunteers of the fire district are covered employees unless they choose to be excluded under subsection (6) of KRS 342.650. OAG 72-832.

A mayor and members of a city council would be covered while performing their official duties. OAG 72-834.

An autonomous fire protection district organized under the provisions of KRS Chapter 75 is an autonomous taxing district within the meaning of Const., § 157 and, therefore, for purposes of this section such a district would be the "political subdivision" rather than the county in which the district is located. OAG 72-835.

This section would cover a county rescue squad which operates as a nonprofit organization and does volunteer fire fighting and emergency work and which is funded primarily from private donations. OAG 72-836.

A merchant policeman employed by an association of merchants and property to guard the various properties of the membership would be eligible to be covered under workers' compensation. OAG 73-19.

All volunteer firemen are included in workers' compensation coverage, the premium cost of which is borne by the state, but such benefits may be supplemented by additional private insurance up to or in excess of their average earnings in regular employment. OAG 73-72.

Where a real estate salesman receives his salary as a commission on each sale, obtains a license from the real estate commission in order to operate, has no fixed hours of work, is not controlled as to whom he does or does not see, and splits his commission with his broker in return for office space, telephone, and advertising, the salesman is not an employee of the broker but an independent contractor and is not required to be covered under the Workers' Compensation Act. OAG 73-112.

Pursuant to this section and KRS 342.630, the coverages of employer and employee of governmental entities are rather all-encompassing so that the Kentucky State Bar Association should be considered a state agency and the executive director and other employees are covered under the Workers' Compensation Act. OAG 73-304.

All officers and employees of Beechwood Village, whether part or full-time, whether elected or appointed, whether paid or volunteer, are required to be covered under the Workers' Compensation Law and if they are injured in the scope of their employment and do not have coverage, the employer's insurance fund would be responsible for the payment and it could then recover against the employer. OAG 73-511.

It seems clear that for workers' compensation purposes the state is the employer of civil defense workers, whether fully or partially paid or unpaid, and the cost of such coverage should be borne by the state. OAG 73-633.

Workers' compensation must be maintained on a chief of police, mayor, councilman or any other person in the employ of a city, whether full or part time. OAG 74-602.

It is mandatory for elected county officials to be covered under workers' compensation unless they elect to exclude themselves pursuant to KRS 342.650(6). OAG 74-610, withdrawing OAG 60-989.

A "person" would include a woman as well as a man, and therefore volunteer firewomen are also covered by workers' compensation if the personnel belonging to the rescue unit are employees of the volunteer fire department. OAG 75-515.

Those classes of volunteers not enumerated in subsection (3), such as volunteer ambulance personnel, are not covered by workers' compensation. OAG 76-21.

Vocational and industrial arts students are not employees and therefore are not required to be covered under the Kentucky Workers' Compensation Act. OAG 76-388.

A legally appointed deputy sheriff who is filling a deputy position authorized by the fiscal court, and who incurs a work connected injury or disability or medical expenses, should file a claim within the framework of the workers' compensation provisions rather than receiving a direct payment from the general funds of the county for expenses incurred as a result of a work connected injury. OAG 77-140, 1977 Ky. AG LEXIS 647.

The Workers' Compensation Board could not issue a certificate of compliance for an employer who has no workers' compensation coverage, either with an insurance company or as a self insurer, even though that employer's present employees chose not to be covered since such an employer would need coverage for such contingencies as new employees not rejecting the act, old employees rescinding prior rejections and employees whose rejection was subsequently adjudicated as not having been given voluntarily or effectively pursuant to KRS 342.395 and persons adjudicated employees that the employer considered to be independent contractors. In such case where there has been noncompliance the Board could utilize procedures set out in KRS 342.402 seeking a temporary restraining order or temporary and/or permanent injunction against the employer in the Franklin Circuit Court. OAG 77-527, 1977 Ky. AG LEXIS 304.

A fire fighter in the employ of a fire protection district is automatically covered under workers' compensation; if the employee had an active prior disability at the time of his hiring by the fire district, then under KRS 342.120(3) the fire district is only responsible for the degree of injury which results while in its employ and is not responsible for that part of the employee's disability which is attributable to his prior injury, and the fire fighter cannot sue the district at common law for his job-related injury because of KRS 342.690, unless the district fails to secure compensation insurance or be a self-insurer, or the fire fighter opts out of workers' compensation under KRS 342.650(6) and rules of the Workers' Compensation Board. OAG 80-370, 1980 Ky. AG LEXIS 305.

All fire fighters, whether they are city, county, fire district, paid or volunteer fire personnel, are subject to the provisions of the Workers' Compensation Act (KRS Chapter 342). OAG 80-635, 1980 Ky. AG LEXIS 32.

Where the firemen are volunteer and receive no regular salary or hourly rate, but do receive an expense allowance of $11 per run, the receipt of an expense allowance does not preclude the volunteer firemen from being covered by the state workers' compensation insurance program for volunteer firemen; however, the program does not cover the chief and assistant chief, who are regularly paid members of the fire district. OAG 80-635, 1980 Ky. AG LEXIS 32.

For the purpose of obtaining employee fringe benefits, the county is responsible for paying on behalf of jail personnel, as county employees, social security payments (KRS Ch. 61), workers' compensation premiums (KRS Ch. 342), unemployment insurance premiums (KRS Ch. 341) and medical insurance coverage (KRS Ch. 67). OAG 82-346, 1982 Ky. AG LEXIS 289.

A constable is clearly a covered "employee" under workers' compensation and would be considered to be in the service of the county. OAG 82-628, 1982 Ky. AG LEXIS 14.

Pursuant to subdivision (3) of this section, workers' compensation applies to special deputy sheriffs, appointed under KRS 70.045 during emergencies, since they are in the service of a political subdivision, i.e., the county, although a special deputy could elect not to be covered; the fiscal court is responsible for providing workers' compensation insurance coverage, unless it elects to be a self-insurer, the premium being paid as properly budgeted under the procedure outlined in KRS Ch. 68. OAG 83-301, 1983 Ky. AG LEXIS 195.

The employees of the Disaster and Emergency Services, Department of Military Affairs, are covered by the workers' compensation program at all times while acting under the direction of the Disaster and Emergency Services chain of command; however, if, for example, one city or county, not under direct state supervision furnishes aid to another city or county and an employee of the furnishing unit of government is injured, the receiving unit of government would be liable for the worker's compensation under KRS 39.415, 39.417, and 39.418. OAG 83-426, 1983 Ky. AG LEXIS 69.

Persons employed by a housing agency on a voluntary work release program are not subject to workers' compensation. OAG 84-120, 1984 Ky. AG LEXIS 266.

A county or fiscal court is required to carry insurance on constables where expressly required to do so by statute, for example, to carry workers' compensation coverage for constables under KRS 342.630(2), this section, and 64.530(2). OAG 95-11, 1995 Ky. AG LEXIS 168.

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PENALTIES

342.990. Penalties — Restitution.

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he or she deems sufficient to determine that a violation of this chapter has occurred, he or she shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he or she intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he or she intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense;

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(4) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense;

(c) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice;

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense;

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation;

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be

fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation;

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both; and

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both;

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both; and

(c) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.

(11) In addition to the penalties provided in this section, the commissioner and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

History.

4944, 4945, 4958, 4962, 4968-5: amend. Acts 1946, ch. 61, § 4; 1960, ch. 147, § 18; 1966, ch. 255, § 283; 1972, ch. 78, § 31; 1980, ch. 188, § 276, effective July 15, 1980; 1984, ch. 96, § 2, effective July 13, 1984; 1987 (Ex. Sess.), ch. 1, § 71, effective October 26, 1987; 1994, ch. 181, Part 13, § 64, effective April 4, 1994; 1996, ch. 318, § 315, effective July 15, 1996; 1996, ch. 355, § 16, effective July 15, 1996; 1996 (1st Ex. Sess.), ch. 1, § 48, effective December 12, 1996; 2000, ch. 514, § 36, effective July 14, 2000; 2006, ch. 245, § 2, effective July 12, 2006; 2010, ch. 24, § 1862, effective July 15, 2010; 2018 ch. 40, § 18, effective July 14, 2018; 2022 ch. 50, § 13, effective July 14, 2022.

Legislative Research Commission Note.

(12/12/96). The reference to "subparagraphs (7), (8), and (9) above" in subsection (9)(d) of this statute is how this text read in 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 48. The normal hierarchy of subdivision in a section of the Kentucky Revised Statutes is, in descending order, subsections (indicated by Hindu-Arabic numerals in parentheses), paragraphs (indicated by lowercase letters in parentheses), subparagraphs (indicated by Hindu-Arabic numerals followed by a period), and subdivisions of subparagraphs (indicated by lowercase letters followed by a period). This statute contains no subparagraphs 7., 8., and 9., but the type of numbering used suggests that "subsections" may have been meant in this phrase instead of "subparagraphs."

(7/15/96). This section was amended by 1996 Ky. Acts chs. 318 and 355. Where these Acts are not in conflict they have been codified together. Where a conflict exists, Acts ch. 355, which was last enacted by the General Assembly prevails under KRS 446.250.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.

1. Constitutionality.

Former subsection (7) of this section conflicted with Kentucky Constitution, section 111(2). The review of these decisions must be initiated by an original action in a Circuit Court. Orange Ventures v. Workers' Compensation Bd., 923 S.W.2d 909, 1996 Ky. App. LEXIS 80 (Ky. Ct. App. 1996).

2. Application.

KRS 342.197 does not preempt an employee's right to bring a wrongful discharge action against her employer since this section does not provide a civil remedy. Pike v. Harold (Chubby) Baird Gate Co., 705 S.W.2d 947, 1986 Ky. App. LEXIS 1050 (Ky. Ct. App. 1986).

Although KRS 342.990 provided civil and criminal penalties for an employer's failure to comply with KRS 342.040(1) regarding the payment of workers' compensation benefits, KRS chapter 342 provided no remedy for affected workers like the employee, who was not notified that the employee was required to apply for temporary total disability benefits within two years after the payment of such benefits ended or be barred from receiving them. Thus, the employer was estopped from asserting a statute of limitations defense where the employer's failure to promptly and properly inform the Office of Workers' Claims (now Department of Workers' Claims) that

the employer had terminated the employee's temporary total disability benefits meant that the Office did not notify the employee that the employee only had two (2) years from the date of termination to file an application for such benefits. Ky. Container Serv. v. Ashbrook, 265 S.W.3d 793, 2008 Ky. LEXIS 185 (Ky. 2008).

Although KRS 342.990 provided civil and criminal penalties for an employer's failure to comply strictly with KRS 342.040(1), KRS ch. 342 provided no remedy for a workers' compensation claimant who, unaware of the applicable limitations period, failed to file a timely claim. Hitachi Auto. Prods. USA, Inc. v. Craig, 279 S.W.3d 123, 2008 Ky. LEXIS 238 (Ky. 2008).

Cited:

May v. James H. Drew Shows, Inc., 576 S.W.2d 524, 1978 Ky. App. LEXIS 662 (Ky. Ct. App. 1978); Lanier v. Commonwealth, Fish & Wildlife Div., 605 S.W.2d 18, 1979 Ky. App. LEXIS 539 (Ky. Ct. App. 1979); Zurich Ins. Co. v. Mitchell, 712 S.W.2d 340, 1986 Ky. LEXIS 275 (Ky. 1986); Newberg v. Hudson, 838 S.W.2d 384, 1992 Ky. LEXIS 129 (Ky. 1992); Travelers Indem. Co. v. Reker, 100 S.W.3d 756, 2003 Ky. LEXIS 86 (Ky. 2003).

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CHAPTER 344
CIVIL RIGHTS

Unlawful Discrimination.

Section
344.030. Definitions for KRS 344.030 to 344.110.

Sex Equity in Education.

344.550. Definitions for KRS 344.550 to 344.575.
344.555. Prohibition against sex discrimination under any education program receiving state financial assistance — Exceptions.
344.560. Agencies and departments required to effectuate KRS 344.555.
344.565. Judicial review.
344.570. Effect of KRS 344.550 to 344.575 on existing contractual rights.
344.575. Separate living facilities for the two sexes not prohibited.

UNLAWFUL DISCRIMINATION

344.030. Definitions for KRS 344.030 to 344.110.

For the purposes of KRS 344.030 to 344.110:

(1) "Qualified individual with a disability" means an individual with a disability as defined in KRS 344.010 who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's disability without undue hardship on the conduct of the employers' business. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(2) "Employer" means a person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, except for purposes of determining accommodations for an employee's own limitations related to her pregnancy, childbirth, or related medical conditions, employer means a person who has fifteen (15) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and any agent of the person, and, except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that, for two (2) years following July 14, 1992, an employer means a person engaged in an industry affecting commerce who has twenty-five (25) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year, and any agent of that person. For the purposes of determining discrimination based on disability, employer shall not include:

(a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 1986;

(3) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person;

(4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization;

(5)(a) "Employee" means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.

(b) Notwithstanding any voluntary agreement entered into between the United States Depart-

ment of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.

(c) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.

(d) For purposes of this subsection, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1;

(6) "Reasonable accommodation":

(a) Means making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities; and

(b) For an employee's own limitations related to her pregnancy, childbirth, or related medical conditions, may include more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, appropriate seating, temporary transfer to a less strenuous or less hazardous position, job restructuring, light duty, modified work schedule, and private space that is not a bathroom for expressing breast milk;

(7) "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business;

(8)(a) The terms "because of sex" and "on the basis of sex" include but are not limited to because of or on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

(b) "Related medical condition" includes but is not limited to lactation or the need to express breast milk for a nursing child and has the same meaning as in the Pregnancy Discrimination Act, 42 U.S.C. sec. 2000e(k), and shall be construed as that term has been construed under that Act; and

(9) "Undue hardship," for purposes of disability discrimination or limitations due to pregnancy, childbirth, or related medical conditions as described in KRS 344.040(1)(c), means an action requiring significant difficulty or expense, when considered in light of the following factors:

(a) The nature and cost of the accommodation needed;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; and the number, type, and location of its facilities;

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity; and

(e) In addition to paragraphs (a) to (d) of this subsection, for pregnancy, childbirth, and related medical conditions, the following factors:

1. The duration of the requested accommodation; and

2. Whether similar accommodations are required by policy to be made, have been made, or are being made for other employees due to any reason.

History.

Enact. Acts 1966, ch. 2, Art. 3, § 301; 1974, ch. 187, § 1; 1980, ch. 245, § 3, effective July 15, 1980; 1992, ch. 282, § 4, effective July 14, 1992; 1994, ch. 378, § 3, effective July 15, 1994; 2017 ch. 24, § 5, effective June 29, 2017; 2019 ch. 200, § 1, effective June 27, 2019.

Compiler's Notes.

Section 501(c) of the Internal Revenue Code 1986 referred to in subsection (2)(b) of this section is compiled as 26 USCS § 501(c).

Legislative Research Commission Notes.

(6/27/2019). 2019 Ky. Acts ch. 200, sec. 3, provides that 2019 Ky. Acts ch. 200 may be cited as the Kentucky Pregnant Workers Act. This statute was amended in Section 1 of that Act.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Religion.
3. Heart Attack.
4. Employer.
5. Reasonable Accomodation.
6. Qualified Individual.
7. Employee.
8. Individual.
9. Sex Discrimination.
10. Pregnancy.

1. Constitutionality.

KRS 344.040 and subsection (5) (now subsection (7)) of this section prohibiting employers from discriminating on the basis of religion unless the employer is unable to reasonably accommodate to the employee's religious observance do not violate the establishment clauses of the federal or state constitutions since the statutes have a secular purpose to promote equal employment opportunity, do not have a primary effect which either advances or inhibits religion and do not involve excessive entanglement of the government in religion.

Kentucky Com. on Human Rights v. Kerns Bakery, Inc., 644 S.W.2d 350, 1982 Ky. App. LEXIS 277 (Ky. Ct. App. 1982), cert. denied, 462 U.S. 1133, 103 S. Ct. 3115, 77 L. Ed. 2d 1369, 1983 U.S. LEXIS 635 (U.S. 1983).

2. Religion.

This section requires employers to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship. Kentucky Com. on Human Rights v. Commonwealth, Dep't for Human Resources, Hazelwood Hospital, 564 S.W.2d 38, 1978 Ky. App. LEXIS 496 (Ky. Ct. App. 1978).

Where a state hospital made no attempts at accommodating the religious beliefs of a would-be employee, while the employee made a genuine attempt at a solution, the hospital and its parent agency did not perform their duty to make reasonable accommodations short of undue hardship. Kentucky Com. on Human Rights v. Commonwealth, Dep't for Human Resources, Hazelwood Hospital, 564 S.W.2d 38, 1978 Ky. App. LEXIS 496 (Ky. Ct. App. 1978).

The claims of an employee for religious discrimination, under KRS 344.030, and hostile work environment were dismissed on summary judgment where the employee was allegedly terminated for an outburst at her place of employment; her claim for retaliation presented material issues of fact. Gibson v. Finish Line, Inc., 261 F. Supp. 2d 785, 2003 U.S. Dist. LEXIS 6942 (W.D. Ky. 2003).

3. Heart Attack.

Pursuant to subsection (6) of this section and KRS 344.040(1), an employer did not discriminate against an employee who suffered a heart attack and who was considered to have resigned when he was unable to return to work within the 90-day leave period afforded to those who suffer from illness or nonwork related injuries, where said employer allowed a period of up to one year for the return of employees taking leave for maternity related reasons. Harness v. Hartz Mountain Corp., 877 F.2d 1307, 1989 U.S. App. LEXIS 9181 (6th Cir. Ky. 1989), cert. denied, 493 U.S. 1024, 110 S. Ct. 728, 107 L. Ed. 2d 747, 1990 U.S. LEXIS 45 (U.S. 1990).

4. Employer.

Court of Appeals properly sustained the decision to grant summary judgment on the charge of unlawful discrimination because none of the defendants qualified as an employer pursuant to the definition in subsection (2) of this section. Palmer v. International Ass'n of Machinists, 882 S.W.2d 117, 1994 Ky. LEXIS 54 (Ky. 1994).

In considering whether a parent company or union my be joined together with other entities or subsidiaries to meet the minimum number of employees under the statute to be defined as an "employer," four factors have been applied in several federal jurisdictions: 1) interrelation of operations, 2) common management, 3) centralized control of labor relations, and 4) common ownership or financial control. Palmer v. International Ass'n of Machinists, 882 S.W.2d 117, 1994 Ky. LEXIS 54 (Ky. 1994).

The International Association of Machinists (IAM), its district lodges, and its local lodges were not one employer as contemplated by subsection (2) of this section and KRS 344.040(1) where the operations of the IAM, the district lodges, and the local lodges were distinct. Palmer v. International Ass'n of Machinists, 882 S.W.2d 117, 1994 Ky. LEXIS 54 (Ky. 1994).

Supervisor did not qualify as an employer as defined by the Kentucky Civil Rights Act, and could not be held individually liable with regard to discriminatory actions of sexual harassment allegedly taken against an employee. Effinger v. Philip Morris, Inc., 984 F. Supp. 1043, 1997 U.S. Dist. LEXIS 22151 (W.D. Ky. 1997).

Under Kentucky Civil Rights Act, discriminatory actions by individuals acting in their official capacity as agents of their employer do not create individual liability, rather, similar to Title VII of the Civil Rights Act of 1964, 42 USCS section 2000e, the Kentucky Act is properly fulfilled by holding employers ultimately responsible for the discriminatory acts of their employees and agents. Effinger v. Philip Morris, Inc., 984 F. Supp. 1043, 1997 U.S. Dist. LEXIS 22151 (W.D. Ky. 1997).

As defined under subsection (2) and KRS 344.010(1), a county and its officials are a political subdivision of the state, and if they employ eight or more persons, they are not immune from suit under this chapter. Lococo v. Barger, 958 F. Supp. 290, 1997 U.S. Dist. LEXIS 4262 (E.D. Ky. 1997), aff'd in part and rev'd in part, 234 F.3d 1268, 2000 U.S. App. LEXIS 35187 (6th Cir. Ky. 2000).

A county is considered to be the employer of the assistant county attorney even if the county did not have any say in the hiring decision; the county attorney who hired the employee is an agent of the county, and the county would still be considered the employer. Lococo v. Barger, 958 F. Supp. 290, 1997 U.S. Dist. LEXIS 4262 (E.D. Ky. 1997), aff'd in part and rev'd in part, 234 F.3d 1268, 2000 U.S. App. LEXIS 35187 (6th Cir. Ky. 2000).

Since county and its officials as political subdivisions of the state are employers and are not immune from suit by employees under KRS Chapter 344. Lococo v. Barger, 958 F. Supp. 290, 1997 U.S. Dist. LEXIS 4262 (E.D. Ky. 1997), aff'd in part and rev'd in part, 234 F.3d 1268, 2000 U.S. App. LEXIS 35187 (6th Cir. Ky. 2000).

An organization for disabled American veterans was a bona fide private membership club and, therefore, was not an employer within the meaning of the statute as its core purpose was to provide social opportunities for its members. Kreate v. Disabled American Veterans, 33 S.W.3d 176, 2000 Ky. App. LEXIS 150 (Ky. Ct. App. 2000).

The explicit inclusion of the state as an employer for purposes of KRS Chapter 344 constitutes a waiver of sovereign immunity by overwhelming implication. Kentucky Dep't of Corrections v. McCullough, 2000 Ky. App. LEXIS 57 (Ky. Ct. App. May 26, 2000), aff'd in part and rev'd in part, 123 S.W.3d 130, 2003 Ky. LEXIS 180 (Ky. 2003).

Because Kentucky prohibits retaliation by a "person," liability for unlawful retaliation under KRS 344.280 does not depend on the person's status as an "employer" under subsection (2). Lewis v. Quaker Chem. Corp., 2000 U.S. App. LEXIS 22321 (6th Cir. Ky. Aug. 24, 2000).

An individual supervisory employee is not an "employer" within the meaning of the statute. Boone v. Kent Feeds, Inc., 2001 U.S. Dist. LEXIS 9616 (W.D. Ky. 2001).

In an employment discrimination case in which a deputy sheriff asserted racial discrimination and retaliation claims against the sheriff pursuant to Title VII of the Civil Rights Act of 1964, 42 USCS § 2000e et seq., and KRS Ch. 344, the district court granted the sheriff and sheriff's department's Fed. R. Civ. P. 56 summary judgment motion on those claims since pursuant to United States Court of Appeals for the Sixth Circuit precedent an individual employee/supervisor, who did not otherwise qualify as an employer could not be personally held liable under Title VII and Ch. 344 mirrored Title VII. Moore v. Thomas, 2000 U.S. Dist. LEXIS 22606 (W.D. Ky. 2000).

In an employment discrimination case in which a deputy sheriff asserted racial discrimination and retaliation claims against the sheriff pursuant to Title VII of the Civil Rights Act of 1964, 42 USCS § 2000e et seq., and KRS ch. 344, the District Court granted the sheriff and sheriff's department's Fed. R. Civ. P. 56 summary judgment motion on those claims since pursuant to United States Court of Appeals for the Sixth Circuit precedent an individual employee/supervisor, who did not otherwise qualify as an employer could not be personally held liable under Title VII and ch. 344 mirrored Title VII.

Moore v. Thomas, 2000 U.S. Dist. LEXIS 22606 (W.D. Ky. 2000).

Since the elected officials of the city, including the mayor and the commissioners, were considered employees under the Kentucky Civil Rights Act, the city could be categorized as an employer because it had eight or more employees. Thus, a wrongful termination lawsuit brought by the former director of parks and recreation should not have been dismissed based on the city's argument that it did not have enough employees to be considered an employer. Kearney v. City of Simpsonville, 209 S.W.3d 483, 2006 Ky. App. LEXIS 218 (Ky. Ct. App. 2006).

Terminated employee's claims under the Kentucky Civil Rights Act (KCRA) failed because the KCRA did not apply since no reasonable juror could find that the employer had eight or more employees in Kentucky during the relevant time period. Baker v. Becton, Dickinson & Co., 2011 U.S. Dist. LEXIS 116194 (E.D. Ky. 2011), rev'd, 532 Fed. Appx. 601, 2013 FED App. 673N, 2013 U.S. App. LEXIS 15072 (6th Cir. Ky. 2013) (E.D. Ky. Oct. 6, 2011), rev'd, 532 Fed. Appx. 601, 2013 FED App. 673N, 2013 U.S. App. LEXIS 15072 (6th Cir. Ky. 2013).

Employer was entitled to summary judgment as to a Kentucky Civil Rights Act age discrimination claim because nothing showed the employer could be combined with another employer to meet the minimum employee requirement in Ky. Rev. Stat. Ann. § 344.030(2), as neither had an ownership interest in or authority to control the other. Starr v. Louisville Graphite, Inc., 2016 Ky. App. LEXIS 58 (Ky. Ct. App. 2016).

Nurse claimed the doctor's office discriminated against her on the basis of sex, but she failed to prove that the office qualified as an employer, given that the office had six employees, not eight as required, and the jury determined that two other individuals the nurse argued were employees were not. Smith v. Lewis, 2019 Ky. App. LEXIS 115 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 903 (Ky. Ct. App. July 5, 2019), review denied, ordered not published, 2019 Ky. LEXIS 489 (Ky. Dec. 13, 2019).

Trial court correctly held that the nurse did not need to prove that the doctor and his office had eight or more employees for the jury to decide the retaliation claim; retaliation is not confined by the "employer" definition, and instead, the retaliation statute permits a "person" to be individually liable for retaliation. Smith v. Lewis, 2019 Ky. App. LEXIS 115 (Ky. Ct. App. 2019), sub. op., 2019 Ky. App. Unpub. LEXIS 903 (Ky. Ct. App. July 5, 2019), review denied, ordered not published, 2019 Ky. LEXIS 489 (Ky. Dec. 13, 2019).

5. Reasonable Accomodation.

In suit for the wrongful discharge where the overwhelming weight of the evidence showed that plaintiff could not have returned to his job as extension press crew leader without exceeding the pyhsical limitations as described by his own doctor and others in the medical community and his own admissions on Social Security application, district court did not abuse its discretion in finding plaintiff could not perform the essential functions of his job. Blanton v. Inco Alloys Int'l, 108 F.3d 104, 1997 FED App. 0083P, 1997 U.S. App. LEXIS 3737 (6th Cir. Ky. 1997).

6. Qualified Individual.

To be eligible under the statute one must be a qualified individual as defined in subsection (1) of this section. Blanton v. Inco Alloys Int'l, 108 F.3d 104, 1997 FED App. 0083P, 1997 U.S. App. LEXIS 3737 (6th Cir. Ky. 1997).

Subsection (1), which defines a "qualified person with a disability," places the initial burden of showing a proposed accommodation is reasonable on the employee. Noel v. Elk Brand Mfg. Co., 53 S.W.3d 95, 2000 Ky. App. LEXIS 27 (Ky. Ct. App. 2000).

Denial of tenure was not shown to be disability discrimination based on a university professor's bipolar disorder since there was no evidence that anyone involved in the tenure decision was aware of the professor's diagnosis, and criticism of the professor's disorganization was recognition of a lack of effectiveness rather than a perceived disability. Frieder v. Morehead State Univ., 770 F.3d 428, 2014 U.S. App. LEXIS 20554 (6th Cir. Ky. 2014).

Circuit court properly dismissed an employee's complaint for damages resulting from the employer's termination of his employment because the employee failed to state a claim supported by the Kentucky Civil Rights Act where, while he was absent from work attending his disabled wife, the stated purpose of the Act was intended to protect those individuals with disabilities, not individuals associated with those suffering disabilities; such as a family member or spouse; and other related statutes made no mention of an associational disability, and there was nothing indicating the General Assembly had shown any intent to extend protection to those who associated with persons with disabilities. Barnett v. Cent. Ky. Hauling, LLC, 2018 Ky. App. LEXIS 320 (Ky. Ct. App. 2018), aff'd, 617 S.W.3d 339, 2021 Ky. LEXIS 24 (Ky. 2021).

7. Employee.

Assistant county attorney was an employee of county under the Kentucky Civil Rights Act since county attorneys and their assistants are constitutionally county officers and county attorney as agent for the county hired assistant county attorney. Lococo v. Barger, 958 F. Supp. 290, 1997 U.S. Dist. LEXIS 4262 (E.D. Ky. 1997), aff'd in part and rev'd in part, 234 F.3d 1268, 2000 U.S. App. LEXIS 35187 (6th Cir. Ky. 2000).

Independent contractors are not "employees" for purposes of actions asserting violations of the Kentucky Civil Rights Act, KRS ch. 344. Steilberg v. C2 Facility Solutions, LLC, 275 S.W.3d 732, 2008 Ky. App. LEXIS 246 (Ky. Ct. App. 2008).

A marketing specialist who was an independent contractor was not an employee under KRS 344.030(5); the independent contractor could not assert a sexual harassment claim against the company and its chief operating officer. Steilberg v. C2 Facility Solutions, LLC, 275 S.W.3d 732, 2008 Ky. App. LEXIS 246 (Ky. Ct. App. 2008).

8. Individual.

Individuals are not liable for their actions under Title VII or this chapter. Woodrum v. Lane Bryant The Ltd., 964 F. Supp. 243, 1997 U.S. Dist. LEXIS 7168 (W.D. Ky. 1997).

9. Sex Discrimination.

A plaintiff's status as an unwed mother is sufficiently within the statutory definition of discrimination on the basis of sex to afford coverage, assuming the requisite burden of proof can be met. Tiller v. University of Kentucky, 55 S.W.3d 846, 2001 Ky. App. LEXIS 15 (Ky. Ct. App. 2001).

10. Pregnancy.

Former employee's prima facie case of pregnancy discrimination failed as she could not establish either that she was qualified for her job as an infant teacher or a nexus between her pregnancy and the termination of her employment; her termination was based on the fact that she physically could not perform her job duties, not her pregnancy status. After her surgery, she was physically limited to working only half-days and no lifting for the four (4) months remaining in her pregnancy and these restrictions would have precluded anyone, not just a pregnant employee, from working as a full-time infant teacher. Bergman v. Baptist Healthcare Sys., 344 F. Supp. 2d 998, 2004 U.S. Dist. LEXIS 23407 (W.D. Ky. 2004), aff'd, 167 Fed. Appx. 441, 2006 FED App. 0052N, 2006 U.S. App. LEXIS 1426 (6th Cir. Ky. 2006).

Even if the former employee set forth a prima facie case of pregnancy discrimination, the former employer offered a legitimate, nondiscriminatory reason for termination: the employee could not perform the required duties of an infant teacher. Because the employee admitted she was physically

restricted from performing her job duties, she could not prove the proffered reason had no basis in fact or was insufficient to warrant the employer's belief that she could not perform the required work and the employee introduced no evidence that the real reason for her termination might have been her pregnancy as compared to her inability to perform her job. Bergman v. Baptist Healthcare Sys., 344 F. Supp. 2d 998, 2004 U.S. Dist. LEXIS 23407 (W.D. Ky. 2004), aff'd, 167 Fed. Appx. 441, 2006 FED App. 0052N, 2006 U.S. App. LEXIS 1426 (6th Cir. Ky. 2006).

Cited:

NOTES TO UNPUBLISHED DECISIONS

1. Qualified Individual.

Unpublished decision: Employee was not "qualified" under the Kentucky Civil Rights Act, KRS 344.010 et seq., where she rejected a reasonable accommodation — one that she herself had initially proposed. McGuire v. Bd. of Educ. of Racland-Worthington Indep. Schs., 116 Fed. Appx. 599, 2004 U.S. App. LEXIS 24104 (6th Cir. Ky. 2004).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Appeals and hearings, 780 KAR 3:120

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Complaint for Employment Discrimination — Race; Hiring Preference or Disparate Impact Claim, Alleging Violation of KRS 344.36, Form 284.01.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Employment Discrimination, § 284.00.

SEX EQUITY IN EDUCATION

344.550. Definitions for KRS 344.550 to 344.575.

For purposes of KRS 344.550 to 344.575:

(1) "Educational institution" means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one (1) school, college, or department which are administratively separate units, the term means each school, college, or department.

(2) "Funding recipient" means any department, agency, special purpose district, instrumentality of state or local government, college, university, post-secondary institution, public system of higher education, local educational agency, system of vocational education, corporation, partnership, private organization or sole proprietorship receiving state financial assistance for any education program or activity.

History.

Enact. Acts 1990, ch. 462, § 1, effective July 13, 1990.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

General Law Issue: Article: De-Clothing Sex-Based Classifications - Same-Sex Marriage is Just the Beginning: Achieving Formal Sex Equality in the Modern Era, 36 N. Ky. L. Rev. 1 (2009).

344.555. Prohibition against sex discrimination under any education program receiving state financial assistance — Exceptions.

(1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving state financial assistance, except that:

(a) In regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(b) This section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of the organization;

(c) This section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marines;

(d) In regard to admissions, this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one (1) sex;

(e) This section shall not apply to membership practices of a social fraternity or social sorority which is exempt under Section 501(a) of the Federal Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are exempt under Section 501(a) of the Federal Internal Revenue Code, the membership of which has traditionally been limited to persons of one (1) sex and principally to persons of less than nineteen (19) years of age;

(f) This section shall not apply to any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or any program or activity of any secondary school or educational institution specifically for the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or the selection of students to attend any such conference;

(g) This section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one (1) sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(h) This section shall not apply to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received the award in any pageant in which the attainment of the award is based

upon a combination of factors related to the personal appearance, poise, and talent of the individual and in which participation is limited to individuals of one (1) sex only, so long as the pageant is in compliance with other nondiscrimination provisions of state and federal law.

(2) Nothing contained in subsection (1) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one (1) sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any state supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, state, section, or other area. However, nothing in this subsection shall be construed to prevent the consideration in any hearing or proceeding under KRS 344.550 to 344.575 of statistical evidence tending to show that an imbalance exists with respect to the participation in, or receipt of the benefits of, any program or activity by the members of one (1) sex.

History.
Enact. Acts 1990, ch. 462, § 2, effective July 13, 1990.

Compiler's Notes.
Section 501(a) of the Federal Internal Revenue code of 1954 referenced herein is compiled at 26 USCS § 501(a).

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.
Bales and Korb, A Survey of Kentucky Employment Compensation Law: A Look At Employment Discrimination Claims Brought Under the Kentucky Civil Rights Act, 30 N. Ky. L. Rev. 71 (2003).

344.560. Agencies and departments required to effectuate KRS 344.555.

Each state department and agency which is empowered to extend state financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, shall effectuate the provisions of KRS 344.555 with respect to such program or activity by promulgating administrative regulations of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. This section shall not apply to a state department or agency which extends state financial assistance to an education institution if the amount of state financial assistance extended by the state department or agency represents less than two percent (2%) of the total state financial assistance received by the education institution. Compliance with any requirement adopted pursuant to this section shall be effected:

(1) By the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found; or

(2) By any other means authorized by law.

However, no action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the chief officer of the state department or agency shall file with the committees of the House of Representatives and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty (30) days have elapsed after the filing of such report.

History.
Enact. Acts 1990, ch. 462, § 3, effective July 13, 1990.

344.565. Judicial review.

Any final action taken by a department or agency pursuant to KRS 344.560 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by the department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to KRS 344.560, any funding recipient aggrieved may obtain judicial review of the action in the Franklin Circuit Court.

History.
Enact. Acts 1990, ch. 462, § 4, effective July 13, 1990.

344.570. Effect of KRS 344.550 to 344.575 on existing contractual rights.

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which state financial assistance is extended by way of a contract of insurance or guaranty.

History.
Enact. Acts 1990, ch. 462, § 5, effective July 13, 1990.

344.575. Separate living facilities for the two sexes not prohibited.

Nothing contained in KRS 344.550 to 344.575 shall be construed to prohibit any educational institution receiving funds under KRS 344.550 to 344.575 from maintaining separate living facilities for the different sexes.

History.
Enact. Acts 1990, ch. 462, § 6, effective July 13, 1990.

TITLE XXIX
COMMERCE AND TRADE

Chapter
365. Trade Practices.
369. Information Technology.

CHAPTER 365
TRADE PRACTICES

Records Containing Personally Identifiable Information.

Section
365.734. Prohibited uses of personally identifiable student information by cloud computing service provider — Administrative regulations.

RECORDS CONTAINING PERSONALLY IDENTIFIABLE INFORMATION

365.734. Prohibited uses of personally identifiable student information by cloud computing service provider — Administrative regulations.

(1) As used in this section:

(a) "Cloud computing service" means a service that provides, and that is marketed and designed to provide, an educational institution with account-based access to online computing resources;

(b) "Cloud computing service provider" means any person other than an educational institution that operates a cloud computing service;

(c) "Educational institution" means any public, private, or school administrative unit serving students in kindergarten to grade twelve (12);

(d) "Person" means an individual, partnership, corporation, association, company, or any other legal entity;

(e) "Process" means to use, access, collect, manipulate, scan, modify, analyze, transform, disclose, store, transmit, aggregate, or dispose of student data; and

(f) "Student data" means any information or material, in any medium or format, that concerns a student and is created or provided by the student in the course of the student's use of cloud computing services, or by an agent or employee of the educational institution in connection with the cloud computing services. Student data includes the student's name, e-mail address, e-mail messages, postal address, phone number, and any documents, photos, or unique identifiers relating to the student.

(2) A cloud computing service provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. However, a cloud computing service provider may assist an educational institution to conduct educational research as permitted by the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g. A cloud computing service provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.

(3) A cloud computing service provider that enters into an agreement to provide cloud computing services to an educational institution shall certify in writing to the educational institution that it will comply with subsection (2) of this section.

(4) The Kentucky Board of Education may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to carry out the requirements of this section.

History.

Enact. Acts 2014, ch. 84, § 2, effective July 15, 2014.

CHAPTER 369
INFORMATION TECHNOLOGY

Uniform Electronic Transactions Act.

Section
369.101. Short title for KRS 369.101 to 369.120.
369.102. Definitions for KRS 369.101 to 369.120.
369.103. Scope of KRS 369.101 to 369.120.
369.104. Prospective application of KRS 369.101 to 369.120.
369.105. Use of electronic records and electronic signatures — Variation by agreement.
369.106. Construction and application of KRS 369.101 to 369.120.
369.107. Legal recognition of electronic records, electronic signatures, and electronic contracts.
369.108. Provision of information in writing — Presentation of records.
369.109. Attribution and effect of electronic record and electronic signature.
369.110. Effect of change or error.
369.111. Notarization and acknowledgment.
369.112. Retention of electronic records — Originals.
369.113. Admissibility in evidence.
369.114. Automated transaction.
369.115. Time and place of sending and receipt.
369.116. Transferable records.
369.117. Creation and retention of electronic records by governmental agencies — Conversion of written records by governmental agencies.
369.118. Acceptance and distribution of electronic records by governmental agencies.
369.119. Interoperability.
369.120. Severability of provisions.

UNIFORM ELECTRONIC TRANSACTIONS ACT

369.101. Short title for KRS 369.101 to 369.120.

KRS 369.101 to 369.120 may be cited as the Uniform Electronic Transactions Act.

History.

Enact. Acts 2000, ch. 301, § 1, effective August 1, 2000.

Compiler's Notes.

Section 22 of Acts 2000, ch. 301, effective August 1, 2000, read: "Sections 1 to 20 of this Act [KRS 369.101 to 369.120]

applies to contracts created or renegotiated on and after the effective date of this Act. To the extent that Sections 1 to 20 of this Act may be inconsistent, and notwithstanding the repeal of KRS 369.010 to 369.030 contained in Section 21 of this Act, contracts based on those statutes shall continue in force under their terms until they expire or are renegotiated, and the application of those statutes to such contracts shall continue as if the specified statutes had not been repealed."

369.102. Definitions for KRS 369.101 to 369.120.

As used in KRS 369.101 to 369.120, unless the context requires otherwise:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts of records of one (1) or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by KRS 369.101 to 369.120 and other applicable law;

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual;

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means;

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state;

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like;

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information;

(12) "Person" means an individual, corporation, business or statutory trust, estate, trust, partnership, limited partnership, limited liability company, association, limited cooperative association, joint venture, governmental agency, public corporation, or any other legal or commercial entity;

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and

(16) "Transaction" means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial, or governmental affairs.

History.

Enact. Acts 2000, ch. 301, § 2, effective August 1, 2000; 2015 ch. 34, § 62, effective June 24, 2015.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Bishop & Arvin, Equine Law: Agent Beware., Vol. 71, No. 3, May 2007, Ky. Bench & Bar 21.

369.103. Scope of KRS 369.101 to 369.120.

(1) Except as otherwise provided in subsection (2) of this section, KRS 369.101 to 369.120 applies to electronic records and electronic signatures relating to a transaction.

(2) KRS 369.101 to 369.120 does not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(b) KRS Chapter 355 other than KRS 355.1-107 and 355.1-206, and Articles 2 and 2A of KRS Chapter 355; and

(c) A law governing the creation or transfer of any negotiable instrument or any instrument establishing title or an interest in title to a motor vehicle and governed by KRS Chapter 186 or 186A.

(3) KRS 369.101 to 369.120 applies to an electronic record or electronic signature otherwise excluded from the application of KRS 369.101 to 369.120 under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.

(4) A transaction subject to KRS 369.101 to 369.120 is also subject to other applicable substantive law.

History.

Enact. Acts 2000, ch. 301, § 3, effective August 1, 2000; 2019 ch. 86, § 38, effective January 1, 2020.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Bishop & Arvin, Equine Law: Agent Beware., Vol. 71, No. 3, May 2007, Ky. Bench & Bar 21.

369.104. Prospective application of KRS 369.101 to 369.120.

KRS 369.101 to 369.120 applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after August 1, 2000.

History.
Enact. Acts 2000, ch. 301, § 4, effective August 1, 2000.

369.105. Use of electronic records and electronic signatures — Variation by agreement.

(1) KRS 369.101 to 369.120 does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) KRS 369.101 to 369.120 applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in KRS 369.101 to 369.120, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of KRS 369.101 to 369.120 of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by KRS 369.101 to 369.120 and other applicable law.

History.
Enact. Acts 2000, ch. 301, § 5, effective August 1, 2000.

369.106. Construction and application of KRS 369.101 to 369.120.

KRS 369.101 to 369.120 must be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of KRS 369.101 to 369.120 among states enacting it.

History.
Enact. Acts 2000, ch. 301, § 6, effective August 1, 2000.

369.107. Legal recognition of electronic records, electronic signatures, and electronic contracts.

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

History.
Enact. Acts 2000, ch. 301, § 7, effective August 1, 2000.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Bishop & Arvin, Equine Law: Agent Beware., Vol. 71, No. 3, May 2007, Ky. Bench & Bar 21.

369.108. Provision of information in writing — Presentation of records.

(1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than KRS 369.101 to 369.120 requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in subsection (4)(b) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than KRS 369.101 to 369.120 requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than KRS 369.101 to 369.120 to send, communicate, or transmit a record by United States mail may be varied by agreement to the extent permitted by the other law.

History.
Enact. Acts 2000, ch. 301, § 8, effective August 1, 2000.

369.109. Attribution and effect of electronic record and electronic signature.

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

History.

Enact. Acts 2000, ch. 301, § 9, effective August 1, 2000.

369.110. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one (1) party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subsection (1) of this section nor subsection (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subsections (2) and (3) of this section may not be varied by agreement.

History.

Enact. Acts 2000, ch. 301, § 10, effective August 1, 2000.

369.111. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History.

Enact. Acts 2000, ch. 301, § 11, effective August 1, 2000.

369.112. Retention of electronic records — Originals.

(1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) of this section by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1) of this subsection.

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1) of this subsection.

(6) A record retained as an electronic record in accordance with subsection (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after August 1, 2000, specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

History.

Enact. Acts 2000, ch. 301, § 12, effective August 1, 2000.

369.113. Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

History.

Enact. Acts 2000, ch. 301, § 13, effective August 1, 2000.

369.114. Automated transaction.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agency and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

History.
Enact. Acts 2000, ch. 301, § 14, effective August 1, 2000.

369.115. Time and place of sending and receipt.

(1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (4) of this section.

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or recipient has more than one (1) place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) of this section even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1) of this section, or purportedly received under subsection (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

History.
Enact. Acts 2000, ch. 301, § 15, effective August 1, 2000.

369.116. Transferable records.

(1) In this section, "transferable record" means an electronic record that:

(a) Would be a note under Article 3 of KRS Chapter 355 or a document under Article 7 of KRS Chapter 355 if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f) of this subsection, unalterable;

(b) The authoritative copy identifies the person asserting control as:

1. The person to which the transferable record was issued; or

2. If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies of revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4)(a) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in KRS 355.1-201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under KRS Chapter 355, including, if the applicable statutory requirements under KRS 355.3-302(1), 355.7-501, or 355.9-330 are satisfied, the rights and defenses of a holder

in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively.

(b) Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writing under KRS Chapter 355.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

History.

Enact. Acts 2000, ch. 301, § 16, effective August 1, 2000; 2000, ch. 301, § 23, effective July 1, 2001; 2024 ch. 10, § 112, effective January 1, 2025.

369.117. Creation and retention of electronic records by governmental agencies — Conversion of written records by governmental agencies.

Each governmental agency of this Commonwealth shall determine whether, and the extent to which, it will create electronic records. The Kentucky Department for Libraries and Archives shall determine whether, and the extent to which, the Commonwealth will retain electronic records and convert written records to electronic records.

History.

Enact. Acts 2000, ch. 301, § 17, effective August 1, 2000.

369.118. Acceptance and distribution of electronic records by governmental agencies.

(1) Except as otherwise provided in KRS 369.112(6), each governmental agency of this state, in compliance with standards established by the Commonwealth Office of Technology, shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1) of this section:

(a) The Commonwealth Office of Technology, giving due consideration to security, may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) If electronic records must be signed by electronic means, each governmental agency, giving due consideration to security, may specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) The Commonwealth Office of Technology and the Department for Libraries and Archives, giving due consideration to security, may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) Each governmental agency, giving due consideration to security, may specify any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in KRS 369.112(6), KRS 369.101 to 369.120 does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

History.

Enact. Acts 2000, ch. 301, § 18, effective August 1, 2000; 2005, ch. 85, § 693, effective June 20, 2005.

369.119. Interoperability.

The Commonwealth Office of Technology, which adopts standards pursuant to KRS 369.118(2)(a), may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

History.

Enact. Acts 2000, ch. 301, § 19, effective August 1, 2000; 2005, ch. 85, § 694, effective June 20, 2005.

369.120. Severability of provisions.

If any provision of KRS 369.101 to 369.120 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of KRS 369.101 to 369.120 which can be given effect without the invalid provision or application, and to this end the provisions of KRS 369.101 to 369.120 are severable.

History.

Enact. Acts 2000, ch. 301, § 20, effective August 1, 2000.

TITLE XXX

CONTRACTS

Chapter

371. Formality and Assignability of Contracts — Installment Sales Contracts.

CHAPTER 371

FORMALITY AND ASSIGNABILITY OF CONTRACTS — INSTALLMENT SALES CONTRACTS

General Provisions.

Section
371.180. Construction services contracts.

Kentucky Fairness in Construction Act.

371.400. Definitions for KRS 371.400 to 371.425.
371.405. Conditions governing enforceability of construction contracts — Payment of amounts due.
371.410. Retainage that may be withheld — Release of retainage — Substantial completion.
371.415. Award of costs and attorney's fees in action to enforce KRS 371.400 to 371.425.
371.420. Short title for KRS 371.400 to 371.425 — Filing of mechanic's lien by contractor.
371.425. Applicability of KRS 371.400 to 371.425.

GENERAL PROVISIONS

371.180. Construction services contracts.

(1) As used in this section:

(a) "Construction services contract" means:

1. A contract or agreement relating to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition connected therewith; or

2. A contract or agreement relating to the planning, design, administration, study, evaluation, consulting, or other professional and technical support services provided in connection with any of the work or activities described in subparagraph 1. of this paragraph.

(b) "Contractor" means the person offering a contract for services provided.

(c) "Contractee" means the person providing services under a contract.

(2) Any provision contained in any construction services contract purporting to indemnify or hold harmless a contractor from that contractor's own negligence or from the negligence of his or her agents, or employees is void and wholly unenforceable.

(3) This section does not apply to construction bonds or affect the validity of insurance contracts.

(4) This section does not affect contracts or agreements entered into before June 20, 2005.

History.

Enact. Acts 2005, ch. 156, § 1, effective June 20, 2005.

KENTUCKY FAIRNESS IN CONSTRUCTION ACT

371.400. Definitions for KRS 371.400 to 371.425.

As used in KRS 371.400 to 371.425:

(1) "Construction" means the process of building, altering, repairing, improving, or demolishing any structures or buildings, or other improvements of any kind to any real property, but does not include processing equipment used for the process of manufacturing or the routine maintenance of existing structures, buildings, or real property;

(2) "Contract" means a contract or agreement concerning construction made and entered into by and between a contracting entity and a contractor, a contractor and a subcontractor, or a subcontractor and another subcontractor;

(3) "Contracting entity" means an owner of real property; a trustee or agent of an owner of real property; or a public official, public authority, or other public entity authorized to contract under the Kentucky Revised Statutes;

(4) "Contractor" means a person performing construction and having a contract with a contracting entity;

(5) "Disputed amount" means to question in good faith the validity, either in whole or part, of a request for payment asserted by any party;

(6) "Owner" means a person who holds an ownership interest in real property;

(7) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity;

(8) "Processing equipment" means equipment which uses physical or chemical methods to increase the value of a raw material or product and is installed by the person contractually responsible to the contracting entity for the design, purchase, installation, and performance of that equipment;

(9) "Retainage" means money earned by a contractor or subcontractor but withheld to ensure proper performance by the contractor or subcontractor and that shall be paid upon completion of contractual obligations;

(10) "Subcontractor" means any person performing construction covered by a contract between a contracting entity and a contractor who does not have a contract with the contracting entity; and

(11) "Undisputed amount" means a good faith, valid, accurate, timely request for payment which has been submitted to any entity owing money, that the recipient of the request for payment has reviewed and agrees that the money is due and owing.

History.

Enact. Acts 2007, ch. 136, § 1, effective June 26, 2007.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.

Glover, The Fairness in Construction Act, Vol. 71, No. 5, Sept. 2007, Ky. Bench & Bar 20.

Northern Kentucky Law Review.

2012 General Law Issue: Article: One Small Step in Mindset, One Giant Leap for the Construction Law Industry: How the Judicial Stage is Set for IPD and the Only Thing Missing is Willing Participants, 39 N. Ky. L. Rev. 557 (2012).

371.405. Conditions governing enforceability of construction contracts — Payment of amounts due.

(1) All payments on construction contracts entered

into after June 26, 2007, shall be made pursuant to the terms of the contract and as required in this section and KRS 371.410.

(2) The following provisions in a contract for construction shall be against the public policy of this Commonwealth and shall be void and unenforceable:

(a) A provision that purports to waive, release, or extinguish the right to resolve disputes through litigation in court or substantive or procedural rights in connection with such litigation, except that a contract may require binding arbitration as a substitute for litigation or require nonbinding alternative dispute resolution as a prerequisite to litigation;

(b) A provision that purports to waive, release, or extinguish rights provided by KRS Chapter 376, with the exception of partial waivers of lien rights provided by the contractor or subcontractor for progress payments;

(c) A provision that purports to waive, release, or extinguish any of the requirements of KRS 371.160; or

(d) A provision that purports to waive, release, or extinguish the right of a contractor or subcontractor to recover costs, additional time, or damages, or obtain an equitable adjustment of the contract, for delays in performing the contract that are, in whole or part, within the control of the contracting entity. Unusually bad weather that cannot be reasonably anticipated, fire, or other act of God shall not automatically entitle the contractor to additional compensation under this paragraph.

(3) Subsection (2)(d) of this section shall not render null, void, and unenforceable a contract provision that:

(a) Permits a contractor or subcontractor to recover that portion of delay costs caused by acts or omissions of the contracting entity;

(b) Requires notice of any delay by the party affected by the delay;

(c) Provides for reasonable liquidated damages;

(d) Provides for arbitration or any other procedure designed to resolve contract disputes; or

(e) Specifies which costs are recoverable by a contractor or subcontractor for delay.

(4) If a provision of a construction contract is found to be null and unenforceable, that provision shall not affect other provisions of the contract that are in compliance with this section and, to this end, the provisions of the contract are severable.

(5) Except as provided in subsection (7) of this section, all contracts for construction shall provide that payment of amounts due a contractor from a contracting entity, except retainage, shall be made within thirty (30) business days after the contracting entity receives a timely, properly completed, undisputed request for payment.

(6) Except as provided in subsection (7) of this section, if the contracting entity fails to pay a contractor within thirty (30) business days following receipt of a timely, properly completed, undisputed request for payment, the contracting entity shall pay interest to the contractor beginning on the thirty-first business day after receipt of the request for payment, computed at the rate of twelve percent (12%) per annum on the unpaid amount. Twenty-five (25) business days following the submission of a timely, properly completed, undisputed request for payment, the contractor shall notify the contracting entity by certified mail if payment has not been received. The notice shall also include the date on which interest shall begin to accrue.

(7) For purposes of subsections (5) and (6) of this section, a postsecondary institution and a board of education shall have forty-five (45) business days to make the payment required by those subsections. For purposes of payments by a board of education, the Department of Education shall have ten (10) business days, including the day the undisputed request for payment is received, to complete the final approval and application for payment and return it to the board of education. The ten (10) business days shall be included in the forty-five (45) business days. If the contracting entity fails to pay a contractor within forty-five (45) business days after receipt of the timely, properly completed, undisputed request for payment, the contracting entity shall, beginning on the forty-sixth day after receipt of the request, pay interest to the contractor computed at the rate of twelve percent (12%) per annum on the unpaid amount.

(8) A contractor shall pay its subcontractors any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, including payment of retainage if retainage is released by the contracting entity, if the subcontractor has provided a timely, properly completed, and undisputed request for payment to the contractor.

(9) If a contractor fails to pay a subcontractor any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, the contractor shall pay interest to the subcontractor beginning on the sixteenth business day after receipt of payment by the contractor, computed at the rate of twelve percent (12%) per annum on the unpaid amount.

(10) Subsections (8) and (9) of this section shall apply to all payments from subcontractors to their subcontractors.

History.

Enact. Acts 2007, ch. 136, § 2, effective June 26, 2007; 2025 ch. 156, § 2, effective June 27, 2025.

NOTES TO DECISIONS

Analysis

1. Allowed Damages.
2. Interest.

1. Allowed Damages.

Equipment rendered idle by a delay attributable to the owner who is determined to have breached the contract is a proper element of damages. Ford Contr., Inc. v. Ky. Transp. Cabinet, 429 S.W.3d 397, 2014 Ky. App. LEXIS 22 (Ky. Ct. App. 2014).

2. Interest.

Award of interest was proper because the amounts owed were not disputed by the managing contractor. D. W. Wilburn, Inc. v. Painting Co., 577 S.W.3d 782, 2019 Ky. App. LEXIS 66 (Ky. Ct. App. 2019).

371.410. Retainage that may be withheld — Release of retainage — Substantial completion.

(1) Notwithstanding any provision of the Kentucky

Revised Statutes to the contrary, until fifty percent (50%) of the construction project has been completed in accordance with the contract, a contracting entity, contractor, or subcontractor may withhold no more than ten percent (10%) retainage from the amount of any undisputed payment due, and retainage held after fifty-one percent (51%) of the construction project has been completed shall not be more than five percent (5%) of the total contract amount.

(2) Within thirty (30) days after substantial completion of a construction project, the contracting entity or contractor shall release the retainage less an amount equal to two hundred percent (200%) of the contracting entity's reasonably estimated cost of the balance of any contractor's or subcontractor's contractually obligated, yet uncompleted, work remaining. The contracting entity's agent shall determine the reasonably estimated cost due under this subsection. The contracting entity, contractor, and any subcontractor with work yet to be completed shall mutually agree with the schedule for completion of the work necessary for release of final payment. Within fifteen (15) business days after the retainage has been released by the contracting entity to the contractor, the contractor shall release to the subcontractors their proportional shares of the retainage. For purposes of this subsection, "substantial completion" is the point at which, as certified in writing by the contracting entity, a project is at the level of completion, in strict compliance with the contract, where:

(a) Necessary approval by public regulatory authorities has been given;

(b) The owner has received all required warranties and documentation; and

(c) The owner may enjoy beneficial use or occupancy and may use, operate, and maintain the project in all respects, for its intended purpose.

Partial use or occupancy shall not necessarily result in the project being deemed substantially complete and shall not be evidence of substantial completion.

(3) If a contracting entity, contractor, or subcontractor fails to pay retainage, if any, pursuant to the terms of a contract or as required in this section, the contracting entity, contractor, or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at the rate of twelve percent (12%) per annum.

History.
Enact. Acts 2007, ch. 136, § 3, effective June 26, 2007.

371.415. Award of costs and attorney's fees in action to enforce KRS 371.400 to 371.425.

In any action to enforce KRS 371.400 to 371.425, including arbitration, the court or arbitrator shall award costs and reasonable attorney's fees to the prevailing party if the losing party is deemed to have acted in bad faith. For public construction contracts, recovery of attorney's fees under this section shall be limited to the public contract rate for attorney's fees. Venue of such an action shall be within the Commonwealth of Kentucky.

History.
Enact. Acts 2007, ch. 136, § 4, effective June 26, 2007.

NOTES TO DECISIONS

1. Bad Faith.
Evidence in the record supported the finding of bad faith because the circuit court made numerous and specific references to a managing contractor's bad faith in its failure to compensate subcontractors for extra work performed at the job site. D. W. Wilburn, Inc. v. Painting Co., 577 S.W.3d 782, 2019 Ky. App. LEXIS 66 (Ky. Ct. App. 2019).

371.420. Short title for KRS 371.400 to 371.425 — Filing of mechanic's lien by contractor.

(1) KRS 371.400 to 371.425 shall be known and may be cited as the Kentucky Fairness in Construction Act.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, after a judgment for the contractor against a contracting entity is entered by a court of competent jurisdiction, a contractor has sixty (60) days to file a mechanic's lien as provided in KRS Chapter 376. The filing of this lien shall not preclude the contractor from seeking additional relief. This subsection shall not apply to public construction contracts with lien rights governed under KRS 376.250.

History.
Enact. Acts 2007, ch. 136, § 5, effective June 26, 2007.

371.425. Applicability of KRS 371.400 to 371.425.

(1) Except as provided in subsections (3), (4), and (5) of this section, KRS 371.400 to 371.425 shall apply to public construction and public works projects, and to private construction, excluding residential construction.

(2) KRS 371.400 to 371.425 shall apply to construction contracts entered into after June 26, 2007.

(3) KRS 371.400 to 371.425 shall not apply to contracts entered into by a borrower of funds that are provided, insured, or guaranteed by the United States Department of Agriculture's Rural Utilities Service, or financed under a lien accommodation by the Rural Utilities Service.

(4) KRS 371.400 to 371.425 shall not apply to any contract for construction of or relating to any facility as defined in KRS Chapter 278.

(5) In the event of a conflict between KRS 371.400 to 371.425 and KRS 367.620 to 367.628, KRS 367.620 to 367.628 shall control.

History.
Enact. Acts 2007, ch. 136, § 6, effective June 26, 2007; 2025 ch. 15, § 9, effective June 27, 2025.

Legislative Research Commission Notes.
(6/27/2025). 2025 Ky. Acts ch. 15, sec. 10, provides that the amendments to this statute in that Act shall apply to contracts entered on or after June 27, 2025.

TITLE XXXIII

ADMINISTRATION OF TRUSTS AND ESTATES OF PERSONS UNDER DISABILITY

Chapter
386. Administration of Trusts — Legal Investments — Uniform Principal and Income Act.

CHAPTER 386

ADMINISTRATION OF TRUSTS — LEGAL INVESTMENTS — UNIFORM PRINCIPAL AND INCOME ACT

Administration — Investments.

Section
386.050. Housing authority obligations — Authorized investments — Security for public deposits — Negotiable — United States bonds.

ADMINISTRATION — INVESTMENTS

386.050. Housing authority obligations — Authorized investments — Security for public deposits — Negotiable — United States bonds.

(1) This state and all public officers, cities, political subdivisions and public bodies, all banks, trust companies, savings institutions, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, and other persons carrying on an insurance business and all fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Municipal Housing Authority Act or the Rural Housing Authority Act, and any additional amendments thereto, or issued by any public housing authority or agency in the United States, when these bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States or any agency thereof, or in any electric revenue bonds or other obligations issued by the Tennessee Valley Authority.

(2) These bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state.

(3) Nothing in this section with regard to legal investments shall relieve any individual or corporation from any duty of exercising reasonable care in selecting securities.

(4) Any county, municipality, or other taxing district may legally invest its sinking funds, money, or other funds belonging to it or within its control in United States Defense Bonds or any other bonds or obligations for the payment of which the faith and credit of the United States Government is pledged.

History.

4706-11: amend. Acts 1942, ch. 57, §§ 1, 2; 1960, ch. 188, § 2; 1968, ch. 152, § 160.

NOTES TO DECISIONS

1. Generally.

Kentucky's public policy of protecting trust beneficiaries against self-dealing trustees is so strong that Kentucky has enacted this separate statutory provision. Osborn v. Griffin, 865 F.3d 417, 2017 FED App. 0168P, 2017 U.S. App. LEXIS 13721 (6th Cir. Ky. 2017).

OPINIONS OF ATTORNEY GENERAL.

KRS 386.020 has no application to the public funds governed by the specific statutes, KRS 66.480, subsection (2) of KRS 386.030 and this section. OAG 88-52. Modifying OAG 82-124, 1982 Ky. AG LEXIS 523.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bank investments, limit on, not applicable to housing commission obligations, KRS 286.3-290.

Scope of subtitle, KRS 304.7-010 et seq.

TITLE XXXV

DOMESTIC RELATIONS

Chapter
402. Marriage.
405. Parent and Child.
406. Uniform Act on Paternity.

CHAPTER 402

MARRIAGE

Licensing and Recording.

Section
402.205. Petition to court by seventeen year old for permission to marry — Evidentiary hearing — Reasons for denying petition — Effect of pregnancy — Emancipation of minor — Other court-imposed conditions — Fee.

LICENSING AND RECORDING

402.205. Petition to court by seventeen year old for permission to marry — Evidentiary hearing — Reasons for denying petition — Effect of pregnancy — Emancipation of minor — Other court-imposed conditions — Fee.

(1) A minor who is seventeen (17) years of age may petition the family court in the county in which the minor resides, or the District Court in that county if a family court division has not been established in that county, for an order granting permission to marry. The petition shall contain the following:

(a) The petitioner's name, gender, age, date of birth, address, and how long the petitioner has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;

(b) The intended spouse's name, gender, age, date of birth, address, and how long the intended spouse has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;

(c) An affidavit attesting to the consent to marry signed by:

1. The father or the mother of the petitioner, if the parents are married, the parents are not legally separated, no legal guardian has been appointed for petitioner, and no court order has been issued granting custody of petitioner to a party other than the father or mother;

2. Both the father and the mother, if both are living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the petitioner has been issued and is in effect;

3. The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the petitioner was issued prior to the death of either the father or mother, which order remains in effect;

4. The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the petitioner has not been ordered; or

5. Another person having lawful custodial charge of the petitioner;

(d) A statement of the reasons why the petitioner desires to marry, how the parties came to know each other, and how long they have known each other;

(e) Evidence of the petitioner's maturity and capacity for self-sufficiency independent of the petitioner's parents and the intended spouse, including but not limited to:

1. Proof that the petitioner has maintained stable housing or employment for at least three (3) consecutive months prior to the petition; and

2. Proof that the petitioner has completed high school, obtained a High School Equivalency Diploma, or completed a vocational training or certificate program;

(f) Copies of any criminal records of either party to be married; and

(g) Copies of any domestic violence order or interpersonal protective order involving either party to be married.

(2) Upon the filing of the petition for permission to marry, the court shall set a datefor an evidentiary hearing on the petition that is no sooner than thirty (30) days but not later than sixty (60) days from the date of the filing.

(3) The petitioner may be represented by counsel in court proceeding pertaining to the petition to marry.

(4) The court shall take reasonable measures to ensure that any representations made by a minor party are free of coercion, undue influence, or duress. Reasonable measures shall include but are not limited to in camera interviews.

(5) Following an evidentiary hearing, the court shall grant the minor's petition for permission to marry unless:

(a) The age difference between the parties is more than four (4) years;

(b) The intended spouse was or is a person in a position of authority or a position of special trust as defined in KRS 532.045 in relation to the minor;

(c) The intended spouse has previously been enjoined by a domestic violence order or interpersonal protective order, regardless of whether or not the person to be protected by the order was the minor petitioner;

(d) The intended spouse has been convicted of or entered into a diversion program for a criminal offense against a victim who is a minor as defined in KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531;

(e) The court finds by a preponderance of the evidence that the minor was a victim and that the intended spouse was the perpetrator of a sexual offense against the minor under KRS 510.040, 510.050, 510.060, 510.110, 510.120, or 510.130;

(f) The court finds by a preponderance of the evidence that abuse, coercion, undue influence, or duress is present; or

(g) The court finds that it would otherwise not be in the minor party's best interest to grant the petition to marry.

(6) A past or current pregnancy of the minor or the intended spouse shall not be sufficient evidence to establish that the best interests of the minor would be served by granting the petition for marriage.

(7) The granting of a petition for permission to marry filed under subsection (1) of this section shall remove the disabilities of minority. A minor emancipated by the petition shall be considered to have all the rights and responsibilities of an adult, except for specific constitutional or statutory age requirements, including but not limited to voting, the use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age.

(8) The minor shall be advised by the court of the rights and responsibilities of parties to a marriage and of emancipated minors. The minor shall be provided with a fact sheet on these rights and responsibilities to be developed by the Office of the Attorney General and the Cabinet for Health and Family Services. The fact sheet shall include referral information for legal aid agencies in the Commonwealth and national hotlines for domestic violence and sexual assault.

(9) The court may make any other orders that the court deems appropriate for the minor's protection and may impose any other condition on the grant of the petition that the court determines is reasonable under the circumstances for the minor's protection.

(10) The court may set a fee not to exceed twenty dollars ($20) to file a petition for permission to marry under this section.

History.

2018 ch. 36, § 7, effective July 14, 2018.

CHAPTER 405
PARENT AND CHILD

Parent and Child.

Section
405.023. Centralized statewide information and referral program for grandparents and other caregivers caring for minors who are not their biological children.
405.024. Adult caregiver with whom minor resides may, by affidavit, establish authority to make health care treatment and school-related decisions for minor — Conditions — Authority may be revoked or superseded — Obligations and liability of health care provider — Penalty.

PARENT AND CHILD

405.023. Centralized statewide information and referral program for grandparents and other caregivers caring for minors who are not their biological children.

(1) The Cabinet for Health and Family Services shall create a centralized statewide service program that provides information and referrals through a statewide toll-free telephone number to grandparents and other caregivers who are caring for minors who are not their biological children.

(2) The program shall provide information on a wide variety of services, including but not limited to:

(a) Kentucky Transitional Assistance Program;

(b) Health care and services, including the Kentucky Children's Health Insurance Program;

(c) Educational services;

(d) Child care;

(e) Child support;

(f) Support groups;

(g) Housing assistance;

(h) Legal services; and

(i) Respite care for low-income kinship or fictive kin caregivers.

As used in this paragraph, "fictive kin" has the same meaning as in KRS 600.020.

(3) The cabinet may coordinate this program with the KyCARES Program.

(4) This program shall be known as the KinCare Support Program.

History.

Enact. Acts 2006, ch. 198, § 1, effective July 12, 2006; 2014, ch. 69, § 1, effective July 15, 2014; 2019 ch. 73, § 2, effective June 27, 2019.

405.024. Adult caregiver with whom minor resides may, by affidavit, establish authority to make health care treatment and school-related decisions for minor — Conditions — Authority may be revoked or superseded — Obligations and liability of health care provider — Penalty.

(1) As used in this section:

(a) "Cabinet" means the Cabinet for Health and Family Services;

(b) "Caregiver" means an adult person with whom a minor resides, including a grandparent, stepgrandparent, stepparent, aunt, uncle, or any other adult relative of the minor;

(c) "De facto custodian" has the same meaning as defined in KRS 403.270;

(d) "Department" means the Department of Education;

(e) "Health care provider" means any licensed medical, surgical, dental, psychological, or osteopathic practitioner; nurse practitioner; occupational, physical, or speech therapist; hospital; public or private health clinic; or their agents or employees; and

(f) "Health care treatment":

1. Means any necessary medical and dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, immunizations recommended by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, well-child care, blood testing, and occupational, physical, and speech and language therapies; and

2. Does not mean any procedure to terminate a pregnancy, pregnancy determination testing, HIV or AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law.

(2) The caregiver shall create an affidavit establishing the caregiver's ability to authorize health care treatment for a minor and to make school-related decisions for a minor. The affidavit shall include but not be limited to the following information:

(a) The name and address of the caregiver;

(b) The caregiver's relationship to the minor to whom the affidavit applies;

(c) A statement that the caregiver is over the age of eighteen (18);

(d) The name and date of birth of the minor to whom the affidavit applies;

(e) A statement that the minor resides in the caregiver's home;

(f) A statement that the caregiver shall be allowed to authorize the provision of health care treatment to the minor, or to withhold such authorization;

(g) A statement that the caregiver shall be the person responsible for enrolling the minor in school and acting as the minor's legal contact with the school for the purposes of making decisions on enrollment, attendance, extracurricular activities, discipline, and all other school-related activities;

(h) A statement identifying the minor's parents, de facto custodian, guardian, or legal custodian and describing the caregiver's relationship to the parents, de facto custodian, guardian, or legal custodian;

(i) A statement that no other party has legal standing in custody issues for the minor other than those parties identified in paragraph (h) of this subsection;

(j) The dated signatures of the minor's parents, de facto custodian, guardian, or legal custodian indicating their approval of the caregiver's ability to authorize the provision of health care treatment to the minor and to make school-related decisions for the minor. If a parent or parents, de facto custodian, guardian, or legal custodian are unavailable to sign the affidavit, the affidavit shall include a statement describing the circumstances of their unavailability and a statement of the caregiver's reasonable efforts to locate them;

(k) The dated signature of the caregiver;

(*l*) A statement that acknowledges that a person making false statements in the affidavit shall be subject to criminal penalties;

(m) A statement that acknowledges that execution of the affidavit does not confer upon the caregiver the status of a de facto custodian, guardian, or legal custodian of the minor; and

(n) A statement that acknowledges the requirement for the caregiver to notify any health care provider or school to which the affidavit was presented if the minor ceases to reside with the caregiver or the affidavit is revoked by the minor's parent or parents, de facto custodian, guardian, legal custodian, or caregiver.

(3) The health care authorization portion of the affidavit described in subsection (2) of this section shall be valid for one (1) year and may be renewed annually thereafter unless it is revoked by the minor's parent or parents, de facto custodian, guardian, legal custodian, or caregiver, or if the minor no longer resides with the caregiver. Execution or revocation of the health care authorization portion of the affidavit shall not operate as a complete execution or revocation of the entire affidavit.

(4) The education authorization portion of the affidavit described in subsection (2) of this section shall be valid for one (1) year and may be renewed annually thereafter unless it is revoked by the minor's parent or parents, de facto custodian, guardian, legal custodian, or caregiver, or if the minor no longer resides with the caregiver. Execution or revocation of the education authorization portion of the affidavit shall not operate as a complete execution or revocation of the entire affidavit.

(5) A caregiver may authorize the provision of health care treatment or may refuse the provision of health care treatment to a minor residing with the caregiver if the caregiver presents to a health care provider a duly executed affidavit as described in subsection (2) of this section.

(6) The decision of a caregiver to authorize or refuse health care treatment for a minor shall be superseded by a decision of a parent, de facto custodian, guardian, or legal custodian of the minor.

(7) A health care provider shall honor a caregiver's authorization to provide health care treatment to a minor, or the caregiver's decision to withhold such authorization, if the caregiver presents to the provider a duly executed affidavit described in subsection (2) of this section. A health care provider shall refuse to honor the caregiver's decision to seek or refuse health care treatment if the provider has actual knowledge that a parent, de facto custodian, legal custodian, or guardian has made a superseding decision to authorize or refuse health care treatment for the minor. The provisions of this subsection shall not be construed to prohibit a health care provider from providing health care treatment for a condition that, left untreated, could reasonably be expected to substantially threaten the health or life of the minor.

(8) A person who relies in good faith on a duly executed affidavit as described in subsection (2) of this section in providing or refusing health care treatment shall:

(a) Be under no obligation to undertake further investigation into the circumstances forming the basis of the caregiver's authorization to the provision or refusal of health care treatment; and

(b) Not be subject to criminal or civil liability or professional disciplinary action because of that reliance.

(9) The provisions of this section shall not be construed to relieve any health care provider from liability for negligence in the provision of health care treatment.

(10) An affidavit described in subsection (2) of this section may be revoked by the minor's parent, de facto custodian, guardian, legal custodian, or caregiver, and shall be revoked if the minor to whom it applies ceases to reside with the caregiver. If an affidavit is revoked, the caregiver shall give written notice of revocation to any health care provider to which the affidavit was presented for the purpose of obtaining health care for the minor.

(11) A person who knowingly makes a false statement in an affidavit described in subsection (2) of this section shall be guilty of a Class A misdemeanor.

History.

Enact. Acts 2014, ch. 69, § 2, effective July 15, 2014.

CHAPTER 406

UNIFORM ACT ON PATERNITY

Section

406.011. Obligations of father — Presumption of paternity.
406.021. Determination of paternity — Liability of noncustodial parent.
406.025. Rebuttable presumption of voluntary acknowledgment-of-paternity affidavit — Temporary support order if paternity is indicated — Continuation of child support until final determination of paternity.
406.031. Limitation of action.
406.051. Remedies — District Court's concurrent jurisdiction for child custody and visitation in paternity cases.

406.011. Obligations of father — Presumption of paternity.

The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child. A child born during lawful wedlock, or within ten (10) months

thereafter, is presumed to be the child of the husband and wife. However, a child born out of wedlock includes a child born to a married woman by a man other than her husband where evidence shows that the marital relationship between the husband and wife ceased ten (10) months prior to the birth of the child.

History.
Enact. Acts 1964, ch. 37, § 1; 1972, ch. 159, § 1.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Application.
3. Construction.
4. Presumption of Legitimacy.
5. Duty of Support.
6. Rebuttal of Presumption.
7. Jurisdiction.
8. Minor Father.

1. Purpose.
The Uniform Paternity Act is designed to give the mother a remedy to compel the putative father to contribute to the support of his illegitimate child. Sweat v. Turner, 547 S.W.2d 435, 1976 Ky. LEXIS 146 (Ky. 1976).

2. Application.
Uniform Paternity Act had no application where man claiming to be natural father of child born out of wedlock brought custody action after mother's death. Sweat v. Turner, 547 S.W.2d 435, 1976 Ky. LEXIS 146 (Ky. 1976).

Trial court erred in finding there was no legal justification for ordering an ex-husband to pay half the funeral expenses for his only son as it would offend equity not to have the ex-husband pay half of the funeral expenses after collecting death benefits based upon his son's death. Jewell v. Jewell, 255 S.W.3d 522, 2008 Ky. App. LEXIS 162 (Ky. Ct. App. 2008).

3. Construction.
KRS chapters 406 and 407 are not incompatible since chapter 406 provides a means for identifying the biological parents, while chapter 407 provides the locomotion operandi for enforcing an award of child support. Locke v. Zollicoffer, 608 S.W.2d 54, 1980 Ky. LEXIS 265 (Ky. 1980).

4. Presumption of Legitimacy.
The legislature did not intend to bar an action to establish paternity within three years of birth of a child born with the presumption of legitimacy. Department of Economic Sec. v. Shanklin, 514 S.W.2d 682, 1974 Ky. LEXIS 325 (Ky. 1974).

A 1972 action by the department of economic security to require the father of a child born in 1968, eight months after the parents were divorced, to contribute to the support of the child was not barred by the three year statute of limitations applicable to children born out of wedlock. Department of Economic Sec. v. Shanklin, 514 S.W.2d 682, 1974 Ky. LEXIS 325 (Ky. 1974).

5. Duty of Support.
Agreement entered into by parents of illegitimate child by which father acknowledged paternity and agreed to pay set amount in support and mother agreed to "forbear continued proceedings" unless father failed to meet his support obligations did not prevent mother from bringing subsequent action to increase support payments. Mayfield v. Commonwealth, 546 S.W.2d 433, 1976 Ky. LEXIS 121 (Ky. 1976), cert. denied, 434 U.S. 828, 98 S. Ct. 107, 54 L. Ed. 2d 87, 1977 U.S. LEXIS 2887 (U.S. 1977).

The father of a child born out of wedlock has the same duty of support as the father of a child born in wedlock. Mayfield v. Commonwealth, 546 S.W.2d 433, 1976 Ky. LEXIS 121 (Ky. 1976), cert. denied, 434 U.S. 828, 98 S. Ct. 107, 54 L. Ed. 2d 87, 1977 U.S. LEXIS 2887 (U.S. 1977).

In a case where a legal father was equitably estopped from setting aside an agreed paternity order, it was an abuse of discretion to set aside the father's child support obligation based on the fact that he was not the biological father of two children who were born out of wedlock; the children were statutorily entitled to support, and the court was permitted to deviate from the child support guidelines where their application would have been unjust or inappropriate. K.W. v. J.S., 459 S.W.3d 399, 2015 Ky. App. LEXIS 21 (Ky. Ct. App. 2015).

6. Rebuttal of Presumption.
In a paternity action, the trial court could reasonably view the evidence as sufficient to remove the question from the realm of reasonable doubt and rebut the presumption of paternity of the husband under this section where the human leukocyte antigens test confirmed the paternity of the defendant, the wife's lover, within a 99.93% degree of accuracy, there was evidence of access, the defendant contributed toward support, and he shared a similar genetic characteristic with the child. Bartlett v. Commonwealth, 705 S.W.2d 470, 1986 Ky. LEXIS 241 (Ky. 1986), overruled in part, J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008).

Testimony by parents as to nonaccess is inadmissible to bastardize an innocent child presumed to have been born legitimate. Drake v. Drake, 721 S.W.2d 728, 1986 Ky. App. LEXIS 1480 (Ky. Ct. App. 1986).

The parties could not, with the trial court's assistance, illegitimatize a child born during the marriage by means of the agreed order acknowledging that the husband was not the natural father of the wife's young son. Drake v. Drake, 721 S.W.2d 728, 1986 Ky. App. LEXIS 1480 (Ky. Ct. App. 1986).

Although the spouses' marital relationship did not fall into the category of having ceased ten months prior to child's birth, it is uncontroverted that the husband was found in an earlier Circuit Court proceeding to not be the child's father; that being so, the trial court certainly did not err by concluding that the presumption of legitimacy had been overcome by evidence so clear, distinct and convincing as to remove the question from the realm of reasonable doubt. Montgomery v. McCracken, 802 S.W.2d 943, 1990 Ky. App. LEXIS 181 (Ky. Ct. App. 1990), overruled in part, J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008).

Equitable estoppel required the denial of the CR 60.02 motion to set aside the parentage finding made at the time of the divorce, as the father was unable to overcome the presumption of legitimacy under KRS 406.011; although the mother told the father that the child might not have been the father's, the father represented to the child that he was the child's father, the child was unaware of the mother's statement, the father intended for the child to consider the father as her father, and the child relied on this to the child's detriment. S.R.D. v. T.L.B., 174 S.W.3d 502, 2005 Ky. App. LEXIS 220 (Ky. Ct. App. 2005).

Where the husband was listed on the birth certificate as the father and had supported the child, while the DNA results may have rebutted the presumption of paternity, such a determination did not mean that the husband was without custody rights in the divorce action. Hinshaw v. Hinshaw, 2006 Ky. App. LEXIS 275 (Ky. Ct. App. Sept. 1, 2006), aff'd, 237 S.W.3d 170, 2007 Ky. LEXIS 216 (Ky. 2007).

Family court erred by equitably estopping the father from denying his paternity because the child was not born during the marriage so there existed no presumption of paternity under KRS 406.011, the child knew that appellant was not her biological or natural father and, while he might have acted as the child's natural father, the child, as well as he and the

mother, knew that he was not, and, as such, he made no material misrepresentation to the child. J.R.A. v. G.D.A., 314 S.W.3d 764, 2010 Ky. App. LEXIS 103 (Ky. Ct. App. 2010).

KRS 406.011 set forth standing requirements for a third party to assert paternity of a child born during the lawful wedlock of a husband and wife; the mother did not challenge the biological father's right to bring the action for nearly two years after he brought the paternity petition, and the mother waived any objection to the father's standing to assert paternity. Draper v. Commonwealth ex rel. Heacock, 2011 Ky. App. LEXIS 10 (Ky. Ct. App. 2011), sub. op., 2011 Ky. App. Unpub. LEXIS 1012 (Ky. Ct. App. Jan. 21, 2011).

Mother was estopped from arguing that KRS 406.180 limited jurisdiction to children born "out of wedlock." The mother and her husband judicially admitted that another man was the father of a child born during the marriage, and diagnostic testing confirmed the other man's paternity; the mother's judicial admissions were sufficient to rebut the presumption that her husband was the father of the child. S.B. v. M.C., 352 S.W.3d 345, 2011 Ky. App. LEXIS 151 (Ky. Ct. App. 2011).

Trial court properly required genetic testing under KRS 406.081, .091(2) because the man with whom the mother had an affair presented sufficient evidence of access to the mother to make him the child's father under KRS 406.011, .021; the court properly entered an order of contempt against the mother for refusing to submit to testing because the court gave the mother four opportunities to submit to testing. J. K. v. N.J.A., 397 S.W.3d 916, 2013 Ky. App. LEXIS 59 (Ky. Ct. App. 2013).

Circuit court properly dismissed an adult son's complaint for determination of heirship following the death of his former stepfather because the blood tests taken in a prior child support action precluded the stepfather from being the son's father, that conclusion was res judicata as to the son's right to inherit from the stepfather's estate based on being the stepfather's natural child, and the stepfather did not seek a judgment of adoption. Tucker v. Tucker, 623 S.W.3d 142, 2021 Ky. App. LEXIS 60 (Ky. Ct. App. 2021).

7. Jurisdiction.

Where a child was found by the Circuit Court to have been born out of wedlock to a married woman and fathered by a man other than her husband, the District Court was clearly vested with subject matter jurisdiction to determine paternity. Montgomery v. McCracken, 802 S.W.2d 943, 1990 Ky. App. LEXIS 181 (Ky. Ct. App. 1990), overruled in part, J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008).

While KRS 406.051 provided a District Court with subject matter jurisdiction over an action to establish support for children born out of wedlock, that statutory provision did not apply in a case where the alleged father petitioned the Family Court for custody and support of child born to a wife of another. Kentucky paternity statutes did not apply and, thus, the Family Court did not have jurisdiction, because no evidence was presented to show that the child was born out of wedlock, which would have required a showing that the husband and wife's marital relationship had ceased 10 months before the child's birth, as set forth in KRS 406.011. J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008), overruled in part, J.A.S. v. Bushelman, 342 S.W.3d 850, 2011 Ky. LEXIS 76 (Ky. 2011).

Family court had jurisdiction over an action to establish paternity to a child that was conceived while the married couple was legally separated and pursuing a divorce; the presumption of paternity applied under KRS 406.011, because the couple remarried the day before the child was born. Given the unusual facts of this case and the inherent rights of biological parents, the grant of joint custody to appellant former husband could not prevent appellee alleged biological father from pursuing his paternity action under the Uniform Act on Paternity, KRS ch. 406; the allegations and evidence of separation satisfied the jurisdictional requirements of KRS 406.011. Smith v. Garber, 2010 Ky. LEXIS 142 (Ky. June 17, 2010, sub. op., 2010 Ky. Unpub. LEXIS 115 (Ky. June 17, 2010), modified, 2011 Ky. LEXIS 105 (Ky. June 16, 2011).

Trial court had subject matter jurisdiction over the putative father's paternity action, not under KRS 406.011 because that statute did not define "child born out of wedlock," but under KRS 406.051 and KRS 406.180 because the putative father's action was one to determine the paternity of a child whose alleged biological parents were not married to each other as "marriage" was defined under Kentucky law. The putative father himself had standing to file the paternity action because the allegations contained in the putative father's paternity complaint were sufficient to confer standing on the putative father under KRS 426.021, which allowed putative father's to file a complaint to determine paternity. J.A.S. v. Bushelman, 342 S.W.3d 850, 2011 Ky. LEXIS 76 (Ky. 2011).

8. Minor Father.

Father of an illegitimate child, although lacking the statutorily-defined capacity to consent to sexual relations on the date a child is conceived, may be adjudged liable in a civil paternity action for the years subsequent to the date upon which the father reaches the age of majority. Commonwealth ex rel. Rush v. Hatfield, 929 S.W.2d 200, 1996 Ky. App. LEXIS 148 (Ky. Ct. App. 1996).

Cited in:

Boone v. Ballinger, 228 S.W.3d 1, 2007 Ky. App. LEXIS 133 (Ky. Ct. App. 2007).

OPINIONS OF ATTORNEY GENERAL.

Paternity cases cannot be maintained in Kentucky where the child was born out of the state after the effective date of the uniform act on paternity. OAG 64-516.

Action for paternity of child may be maintained if the child was less than three at the commencement of the action and was born before the effective date of the uniform act on paternity. OAG 64-794.

If a child was born after the effective date of the uniform act on paternity, a bastardy action may not be maintained in Kentucky unless the child was born in the state and was born out of wedlock to an unmarried woman. OAG 64-794.

Considering this chapter as a whole and noting that KRS 406.051 provides in part that all remedies under KRS Ch. 407 are available for enforcement of duties of support under this chapter, the county court has a continuing jurisdiction over paternity actions for the purpose of the child's support as well as the future education of the child and thus the court can modify the original judgment as it pertains to the education of the child. OAG 73-354.

Where the husband has been in prison for two and one-half years without physical access to his wife and where the wife was pregnant on the filing of the divorce petition the court should continue the action and not terminate it as provided by subsection (7) of KRS 403.150 since the wife anticipated having a baby of a man extrinsic to the subject marital relationship while the husband is in prison goes a long way toward establishing the "irretrievable breakdown" proposition provided for in KRS 403.170 and since this section permits the court to make a determination of whether the evidence shows that the marital relationship between the husband and wife ceased at least ten months prior to the medically expected birth of the child. OAG 76-465.

Since a paternity judgment of a county is a personal judgment, unless the defendant is personally served in Kentucky in the precise manner indicated in CR 4.04 or unless the defendant enters a voluntary appearance in the action, the judgment would be void for lack of jurisdiction. OAG 77-229, 1977 Ky. AG LEXIS 575.

Essentially a bastardy proceeding is a civil proceeding, and the Kentucky Rules of Civil Procedure govern. OAG 79-635.

The determination of whether the defendant is the actual father constitutes a condition precedent in judicially applying the remedy set out in KRS 406.011 et seq., i.e., in imposing a financial obligation on the alleged father, defendant. OAG 79-635.

There is no explicit provision as relates to subject costs in this chapter. OAG 79-654, 1979 Ky. AG LEXIS 1.

Although a surrogate parenting contract would be illegal and unenforceable in Kentucky, certain noncontractual remedies exist including a custody proceeding by the natural father under KRS 403.270 or, if the natural father and his wife decided that they did not want custody or to adopt the child, the surrogate mother could institute a paternity action under KRS 406.021, and if the presumption under this section, that the child was born to the natural father and his wife, is overcome, the surrogate mother could have liability for certain expenses imposed upon the father. OAG 81-18, 1981 Ky. AG LEXIS 399.

In the absence of contractual provisions between a natural father and a surrogate mother in a surrogate parenting contract providing that the surrogate and her husband agree to assume all risks, including death, incident to the pregnancy and the natural father provides term life insurance and medical insurance for the surrogate, a natural father would not be liable for injuries done to the surrogate mother because of her pregnancy, unless the surrogate establishes his paternity and he becomes liable for the reasonable expense of the surrogate's pregnancy and confinement under this section. OAG 81-18, 1981 Ky. AG LEXIS 399.

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Petrilli, Kentucky Family Law, Illegitimacy and Paternity Proceedings, §§ 31.2, 31.4, 31.9, 31.10, 31.20, 31.25.

Petrilli, Kentucky Family Law, Support of the Family, § 16.12.

406.021. Determination of paternity — Liability of noncustodial parent.

(1) Paternity may be determined upon the complaint of the mother, putative father, child, person, or agency substantially contributing to the support of the child. The action shall be brought by the county attorney or by the Office of the Attorney General or its designee upon the request of complainant authorized by this section.

(2) Paternity may be determined by the District Court when the mother and father of the child, either:

(a) Submit affidavits in which the mother states the name and Social Security number of the child's father and the father admits paternity of the child; or

(b) Give testimony before the District Court in which the mother states the name and Social Security number of the child's father and the father admits paternity of the child.

(3) If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the noncustodial parent may be enforced in the same or other proceedings by the mother, child, person, or agency substantially contributing to the cost of pregnancy, confinement, education, necessary support, or funeral expenses. Bills for testing, pregnancy, and childbirth without requiring third party foundation testimony shall be regarded as prima facie evidence of the amount incurred. An action to enforce the liabilities of the noncustodial parent shall be brought by the county attorney upon the request of such complainant authorized by this section. An action to enforce the liabilities of the cost of pregnancy, birthing costs, child support, and medical support shall be brought by the county attorney or by the Office of the Attorney General or its designee.

(4) Voluntary acknowledgment of paternity pursuant to KRS 213.046 shall create a rebuttable presumption of paternity.

(5) Upon a showing of service of process on the defendant and if the defendant has made no pleading to the court or has not moved to enter evidence pursuant to KRS 406.091, the court shall order paternity to be established by default.

History.

Enact. Acts 1964, ch. 37, § 2; 1968, ch. 200, § 11; 1972, ch. 159, § 2; 1976 (Ex. Sess.), ch. 14, § 410, effective January 2, 1978; 1990, ch. 272, § 1, effective July 13, 1990; 1994, ch. 330, § 17, effective July 15, 1994; 1998, ch. 255, § 26, effective July 15, 1998; 1998, ch. 426, § 587, effective July 15, 1998; 2005, ch. 99, § 636, effective June 20, 2005; 2005, ch. 149, § 2, effective June 20, 2005; 2025 ch. 59, § 16, effective July 1, 2025.

NOTES TO DECISIONS

Analysis

1. Jurisdiction.
2. Parties.
3. Prior Paternity Action.
4. Action by County Attorney.
5. Blood Tests.
6. Genetic Testing Required.
7. Standard of Proof.
8. Statute of Limitations.
9. Res Judicata.

10. Paternity and Custody Statutes Distinguished.
11. Void Judgment.

1. Jurisdiction.

The Uniform Paternity Act vests the county juvenile court with exclusive jurisdiction to determine paternity actions. Sweat v. Turner, 547 S.W.2d 435, 1976 Ky. LEXIS 146 (Ky. 1976).

Because jurisdiction over paternity determinations was exclusively with the District Court, the Circuit Court lacked jurisdiction to render a paternity judgment. Boone v. Ballinger, 228 S.W.3d 1, 2007 Ky. App. LEXIS 133 (Ky. Ct. App. 2007).

Despite the fact that KRS 406.021 stated that a paternity complaint may be filed by a "putative father," the Family Court did not obtain jurisdiction over the alleged father's petition for custody and support in a case where the alleged father asserted bioloigical father status regarding a child born to a wife of another. Kentucky paternity statutes did not apply where no showing was made that the marital relationship ceased to exist 10 months before the child was born, as set forth in KRS 406.011. J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008), overruled in part, J.A.S. v. Bushelman, 342 S.W.3d 850, 2011 Ky. LEXIS 76 (Ky. 2011).

2. Parties.

Where the county attorney did not have the possibility of obtaining a child support order from the putative father's estate, he lacked standing to bring a paternity action. Commonwealth ex rel. Walker v. Estate of Sullivan, 997 S.W.2d 499, 1999 Ky. App. LEXIS 92 (Ky. Ct. App. 1999).

Where the estate of a decedent filed a complaint for determination of paternity of a child allegedly fathered by the decedent, although the Family Court did not have jurisdiction over a paternity action under KRS 406.021 or KRS 406.180, as the estate was not the proper party to file such a suit, and neither the child nor mother ever lived in the United States, the court had jurisdiction under KRS 418.040 to enter a declaratory judgment as to the child's paternity. Uninsured Employers' Fund v. Bradley, 244 S.W.3d 741, 2007 Ky. App. LEXIS 403 (Ky. Ct. App. 2007).

When, in a divorce, a trial court entered an order determining a subject child's paternity, based on an acknowledgment of paternity submitted by the person found to be the child's father and the child's mother, and DNA tests subsequently showed this person was not the child's father, it was error to conclude that the father committed fraud by alleging paternity because (1) the father's knowledge of a "remote possibility" that the father was not the child's father was insufficient to show fraud, and (2) any concealment of non-paternity did not bar others involved in a neglect case concerning the child from fully presenting those parties' sides of the case, since those parties were not parties to the divorce. Ipock v. Ipock, 403 S.W.3d 580, 2013 Ky. App. LEXIS 100 (Ky. Ct. App. 2013).

3. Prior Paternity Action.

Prior paternity action is not required to petition the circuit court for custody of a child where father can produce reliable evidence that he is the father and that the best interest of the child would result. Sweat v. Turner, 547 S.W.2d 435, 1976 Ky. LEXIS 146 (Ky. 1976).

Trial court had subject matter jurisdiction over the putative father's paternity action, not under KRS 406.011 because that statute did not define "child born out of wedlock," but under KRS 406.051 and KRS 406.180 because the putative father's action was one to determine the paternity of a child whose alleged biological parents were not married to each other as "marriage" was defined under Kentucky law. The putative father himself had standing to file the paternity action because the allegations contained in the putative father's paternity complaint were sufficient to confer standing on the putative father under KRS 426.021, which allowed putative father's to file a complaint to determine paternity. J.A.S. v. Bushelman, 342 S.W.3d 850, 2011 Ky. LEXIS 76 (Ky. 2011).

When, in a divorce, a trial court entered an order determining a subject child's paternity, based on an acknowledgment of paternity submitted by the person found to be the child's father and the child's mother, and DNA tests subsequently showed this person was not the child's father, it was not error to amend the order because the conclusive paternity tests were a circumstance rendering the order subject to amendment. Ipock v. Ipock, 403 S.W.3d 580, 2013 Ky. App. LEXIS 100 (Ky. Ct. App. 2013).

4. Action by County Attorney.

A prosecutor from one county in a multi-county judicial district could bring an action pursuant to this section to determine the paternity of children from another county in the same judicial district, since paternity actions may be brought by and prosecuted by the mother, child, person or agency substantially contributing to the support of the child, through an attorney of their choosing, with the county attorney only entering the case when requested to do so by the complainant, and because, in this case, the Department for Human Resources contracted with the county attorney to represent the complainant pursuant to KRS 407.190 and subsection (3) of KRS 407.250. Commonwealth ex rel. Stumbo v. Wilson, 622 S.W.2d 912, 1981 Ky. LEXIS 281 (Ky. 1981).

5. Blood Tests.

The trial court's failure to provide an indigent putative father blood tests at no expense to him violated that individual's Fourteenth Amendment rights. Shaw v. Seward, 689 S.W.2d 37, 1985 Ky. App. LEXIS 573 (Ky. Ct. App. 1985).

6. Genetic Testing Required.

Trial court properly required genetic testing under KRS 406.081, .091(2) because the man with whom the mother had an affair presented sufficient evidence of access to the mother to make him the child's father under KRS 406.011; the court properly entered an order of contempt against the mother for refusing to submit to testing because the court gave the mother four opportunities to submit to testing. J. K. v. N.J.A., 397 S.W.3d 916, 2013 Ky. App. LEXIS 59 (Ky. Ct. App. 2013).

7. Standard of Proof.

In an action to establish paternity, the "preponderance of evidence" standard satisfies due process. Shaw v. Seward, 689 S.W.2d 37, 1985 Ky. App. LEXIS 573 (Ky. Ct. App. 1985).

8. Statute of Limitations.

KRS 406.031, which formerly provided for a four-year statute of limitations in paternity actions pursuant to subsection (1) of this section, violated the Equal Protection Clause of the 14th Amendment of the United States Constitution and was therefore unconstitutional. Alexander v. Commonwealth, 708 S.W.2d 102, 1986 Ky. App. LEXIS 1111 (Ky. Ct. App. 1986) (decision prior to 1986 amendment of KRS 406.031).

The invalidation of KRS 406.031 leaves this commonwealth without a statute of limitations in paternity actions; therefore, as a paternity action is a cause of action created by statute, in the absence of any other time limit fixed by statute, the five-year time limit set out in subdivision (2) of KRS 413.120 shall apply to actions brought pursuant to subsection (1) of this section. Alexander v. Commonwealth, 708 S.W.2d 102, 1986 Ky. App. LEXIS 1111 (Ky. Ct. App. 1986) (decision prior to 1986 amendment of KRS 406.031).

The five-year time limit of subdivision (2) of KRS 413.120 does not run during the minority of any person entitled to bring an action pursuant to subsection (1) of this section. Alexander v. Commonwealth, 708 S.W.2d 102, 1986 Ky. App. LEXIS 1111 (Ky. Ct. App. 1986) (decision prior to 1986 amendment of KRS 406.031).

9. Res Judicata.

If an action has been brought under the Uniform Act on Paternity, and prosecuted to judgment on the merits, the outcome is conclusive on the issue of paternity since such determination is essential to an adjudication of a duty of support; if the issue of paternity is litigated and determined as an element of an action for support, the result is res judicata as to other legal rights which exist by virtue of paternity. Ellis v. Ellis, 752 S.W.2d 781, 1988 Ky. LEXIS 47 (Ky. 1988).

10. Paternity and Custody Statutes Distinguished.

Putative grandparents have standing to pursue reasonable visitation rights under KRS 405.021; there is no requirement that they obtain a court order establishing father's paternity prior to seeking visitation. Posey v. Powell, 965 S.W.2d 836, 1998 Ky. App. LEXIS 27 (Ky. Ct. App. 1998).

Family court erred by concluding that appellant was the legal father of the child because, although the affidavit of paternity under KRS 213.046 created a rebuttable presumption of paternity under KRS 406.021, the father and the mother had acknowledged that his sworn affidavit of paternity was false and they admitted that he was not the child's biological father; thus, the presumption of paternity was clearly rebutted. J.R.A. v. G.D.A., 314 S.W.3d 764, 2010 Ky. App. LEXIS 103 (Ky. Ct. App. 2010).

11. Void Judgment.

Agreed-upon paternity judgment, which established only non-paternity, was void and set aside because the family court did not follow the mandate of the applicable statute since it did not name the father, provide affidavits to prove his status as father, or order genetic testing. Commonwealth v. B.N.T., 651 S.W.3d 745, 2022 Ky. LEXIS 124 (Ky. 2022).

Cited in:

Department of Economic Sec. v. Shanklin, 514 S.W.2d 682, 1974 Ky. LEXIS 325 (Ky. 1974); Perry v. Commonwealth, 652 S.W.2d 655, 1983 Ky. LEXIS 255 (Ky. 1983); Commonwealth ex rel. Lepard v. Young, 666 S.W.2d 735, 1983 Ky. LEXIS 310 (Ky. 1983); Kuprion v. Fitzgerald, 888 S.W.2d 679, 1994 Ky. LEXIS 135 (Ky. 1994).

OPINIONS OF ATTORNEY GENERAL.

It is the county attorney's duty to prepare the complaint, the clerk's duty to prepare the summons, and the sheriff's duty to serve same upon the alleged father, the defendant. OAG 65-472.

A judgment by default may be entered in a proceeding under this chapter. OAG 66-762.

A judgment for child support may be entered in a paternity action, even when a default has been entered against the putative father only after the court hears evidence on which to base an award. OAG 66-762.

It is within the discretion of the court in which the paternity action is pending to decline to take the issue of paternity as admitted by default and to require proof on behalf of plaintiff on that issue. OAG 66-762.

The court may, if the defendant in the paternity action is within the subpoena power of the court, subpoena him in as a witness at the hearing in spite of his failure to answer the complaint. OAG 66-762.

There is no statutory basis for the county attorney's getting any fee for his services in filing such an action either before or after the action is begun. OAG 71-90.

The act of filing a paternity action is not discretionary with the county attorney. OAG 71-426.

The county attorney may not refuse to file a paternity action on the grounds he thinks it is unfounded if the other conditions of this chapter are met. OAG 71-426.

The county attorney is the proper person to initiate paternity actions upon the request of a proper party, but the county attorney is vested with the discretion to not prosecute such an action if he believes there is no chance of success. OAG 74-63.

Since a paternity judgment of a county is a personal judgment, unless the defendant is personally served in Kentucky in the precise manner indicated in CR 4.04 or unless the defendant enters a voluntary appearance in the action, the judgment would be void for lack of jurisdiction. OAG 77-229, 1977 Ky. AG LEXIS 575.

There is nothing in this section authorizing the county court to consider paternity cases in juvenile session of county court. OAG 78-104, 1978 Ky. AG LEXIS 612.

Although a surrogate parenting contract would be illegal and unenforceable in Kentucky, certain noncontractual remedies exist including a custody proceeding by the natural father under KRS 403.270 or, if the natural father and his wife decided that they did not want custody or to adopt the child, the surrogate mother could institute a paternity action under this section, and if the presumption under KRS 406.011, that the child was born to the natural father and his wife, is overcome, the surrogate mother could have liability for certain expenses imposed upon the father. OAG 81-18, 1981 Ky. AG LEXIS 399.

RESEARCH REFERENCES AND PRACTICE AIDS

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Davies, Children Born Out of Wedlock: Their Time Has Come, Volume 49, No. 2, April 1985 Ky. Bench & B. 10.

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Underwood, Part-Time Prosecutors and Conflicts of Interest: A Survey and Some Proposals, 81 Ky. L.J. 1 (1993).

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May, Social Reform for Kentucky's Judicial System: The Creation of Unified Family Courts, 92 Ky. L.J. 571 (2003).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Acknowlegment of Paternity, Form 255.02.

Caldwell's Kentucky Form Book, 5th Ed., Affidavit, Form 255.01.

Caldwell's Kentucky Form Book, 5th Ed., Complaint, Form 255.03.

Caldwell's Kentucky Form Book, 5th Ed., Default Judgment, Form 255.05.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Paternity, § 255.00.

Petrilli, Kentucky Family Law, Illegitimacy and Paternity Proceedings, §§ 31.9, 31.11, 31.12.

Petrilli, Kentucky Family Law, Forms, Family Offenses, Form 4.3.

Petrilli, Kentucky Family Law, Forms, Paternity, Form 7.1, Form 7.4.

406.025. Rebuttable presumption of voluntary acknowledgment-of-paternity affidavit — Temporary support order if paternity is indicated — Continuation of child support until final determination of paternity.

(1) Upon completion of a signed, notarized, voluntary acknowledgment-of-paternity affidavit by the mother and alleged father, obtained through the hospital-based paternity program, and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for the earlier of sixty (60) days or

the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order.

(2) Upon completion of a signed, notarized, voluntary acknowledgment-of-paternity affidavit by the mother and alleged father obtained outside of the hospital and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order following the date of signatures on the notarized affidavit.

(3) Pending an administrative or judicial determination of parentage, or upon a signed, notarized, voluntary acknowledgment-of-paternity form having been transmitted by the local registrar and received by the Vital Statistics Branch, a temporary support order shall be issued upon motion of any party if paternity is indicated by genetic testing or other clear and convincing evidence.

(4) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(5) The court shall, within fourteen (14) days from the filing of the motion, order an amount of temporary child support based upon the child support guidelines as provided by KRS 403.212 or 403.2122. The ordered child support shall be retroactive to the date of the filing of the motion to move the court to enter an order for temporary child support without written or oral notice to the adverse party. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by KRS 403.160(2)(a). Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.

(6) Unless good cause is shown, court or administratively ordered child support shall continue until final judicial or administrative determination of paternity.

History.

Enact. Acts 1996, ch. 365, § 12, effective July 15, 1996; 1998, ch. 255, § 27, effective July 15, 1998; 2005, ch. 99, § 637, effective June 20, 2005; 2022 ch. 122, § 9, effective July 14, 2022; 2024 ch. 219, § 10, effective July 15, 2024.

NOTES TO DECISIONS

1. Applicability.

Pursuant to Ky. Rev. Stat. Ann. § 406.025(5), attorney's fees were allowed on remand where the judgment specifically invoked and utilized Ky. Rev. Stat. Ann. § 403.212 to resolve the child support claims. Seeger v. Lanham, 2016 Ky. App. LEXIS 188 (Ky. Ct. App. Nov. 18, 2016), aff'd in part and rev'd in part, 542 S.W.3d 286, 2018 Ky. LEXIS 132 (Ky. 2018).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Acknowlegment of Paternity, Form 255.02.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context Parent and Child, § 256.00.

406.031. Limitation of action.

(1) The determination of paternity under the provisions of KRS 406.021(1) shall be commenced within eighteen (18) years after the birth, miscarriage or stillbirth of a child. However, in such cases, liability for child support shall not predate the initiation of action taken to determine paternity as set forth in KRS 406.021 if the action is taken two (2) years or more from the date of birth.

(2) Any person for whom paternity has not yet been established and who had not reached eighteen (18) years of age as of August 16, 1984, including those persons for whom a paternity action was brought but dismissed because a statute of limitations of less than eighteen (18) years was then in effect, may bring an action to establish paternity.

History.

Enact. Acts 1964, ch. 37, § 3; 1972, ch. 159, § 3; 1984, ch. 379, § 6, effective July 13, 1984; 1986, ch. 487, § 17, effective July 15, 1986; 1990, ch. 418, § 15, effective July 13, 1990; 2021 ch. 47, § 4, effective June 29, 2021.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Application.
4. Action Barred.
5. Inheritance.
6. Time Limitation.

1. Constitutionality.

The three-year statute of limitations formerly set out in this section failed to afford equal protection to illegitimate children and was therefore unconstitutional. Commonwealth ex rel. Lepard v. Young, 666 S.W.2d 735, 1983 Ky. LEXIS 310 (Ky. 1983) (Decision prior to 1984 amendment).

This section which formerly provided for a four-year statute of limitations in paternity actions pursuant to subsection (1) of KRS 406.021 violated the Equal Protection Clause of the 14th Amendment of the United States Constitution and was therefore unconstitutional. Alexander v. Commonwealth, 708 S.W.2d 102, 1986 Ky. App. LEXIS 1111 (Ky. Ct. App. 1986) (decision prior to 1986 amendment of this section).

2. Construction.

Court of Appeals of Kentucky holds that a trial court may, in its discretion, apply excess social security retirement dependent benefits as a credit against the pre-petition child support liabilities a father incurs when a paternity action is initiated before a child turns four years old. Seeger v. Lanham, 2016 Ky. App. LEXIS 188 (Ky. Ct. App. Nov. 18, 2016), aff'd in part and rev'd in part, 542 S.W.3d 286, 2018 Ky. LEXIS 132 (Ky. 2018).

3. Application.

Where a district court's opinion which awarded arrearages in child support in a paternity suit was entered in the interim after the prior version of this section was held unconstitutional and before the passage of the current version of this

section, but the appeal to the circuit court was decided after the current version became effective, the circuit court properly ruled that current version could not be retroactively applied. See Wigginton v. Commonwealth, 760 S.W.2d 885, 1988 Ky. App. LEXIS 166 (Ky. Ct. App. 1988).

Trial court erred in holding that excess social security retirement benefits could only be applied as a credit toward the pre-petition child support liabilities from the date that the benefits began accruing where the father's pre-petition child support liability was not established until a judgment, and the child began receiving social security retirement dependent benefits before the judgment date. Seeger v. Lanham, 2016 Ky. App. LEXIS 188 (Ky. Ct. App. Nov. 18, 2016), aff'd in part and rev'd in part, 542 S.W.3d 286, 2018 Ky. LEXIS 132 (Ky. 2018).

4. Action Barred.

Where infant was 10 years and 10 months old at the time an action to establish paternity was initially filed, the three-year (now four-year) statute of limitations provided for in this section served as a bar to the suit. Locke v. Zollicoffer, 608 S.W.2d 54, 1980 Ky. LEXIS 265 (Ky. 1980). (Decision prior to 1984 amendment.).

5. Inheritance.

An illegitimate's claim to the putative father's estate was not barred by this section, which merely places a time limitation upon the bringing of paternity actions for the purpose of establishing a duty of support during the minority of a child. Ellis v. Ellis, 752 S.W.2d 781, 1988 Ky. LEXIS 47 (Ky. 1988).

6. Time Limitation.

This section allows 18 years for the "person substantially contributing to the support" to bring an action to determine paternity; but it prohibits parties who unreasonably delay in bringing such actions from recovering large amounts in arrearages; in effect, this section codifies the common law doctrine of laches, and laches can be a valid defense in paternity actions which seek past support. Wigginton v. Commonwealth, 760 S.W.2d 885, 1988 Ky. App. LEXIS 166 (Ky. Ct. App. 1988).

A retroactive support award against an itinerant worker was appropriate where (1) the child at issue was born in September, 1990, (2) an action to establish paternity and for support was commenced in December, 1990, but service was not effectuated because the defendant had left the state and his whereabouts were unknown, and (3) in 1993, the mother learned that the defendant was working in Maryland and the case was referred to the State Parent Locator Service, but he was not located and served until 1997. Ramirez v. Commonwealth ex rel. Brooks, 44 S.W.3d 800, 2000 Ky. App. LEXIS 138 (Ky. Ct. App. 2000).

Cited in:

Department of Economic Sec. v. Shanklin, 514 S.W.2d 682, 1974 Ky. LEXIS 325 (Ky. 1974); Commonwealth ex rel. Floyd v. Mack, 764 S.W.2d 639, 1988 Ky. App. LEXIS 163 (Ky. Ct. App. 1988).

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Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Answer, Form 255.06.

Petrilli, Kentucky Family Law, Illegitimacy and Paternity Proceedings, §§ 31.9, 31.10; 1991 Supp., § 31.9.

Petrilli, Kentucky Family Law, Forms, Paternity, Form 7.1.

406.051. Remedies — District Court's concurrent jurisdiction for child custody and visitation in paternity cases.

(1) The District Court has jurisdiction of an action brought under this chapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for children born out of wedlock. An appeal may be had to the Circuit Court if prosecuted within sixty (60) days from the date of judgment. The court has continuing jurisdiction to modify or revoke a judgment for future education. All remedies under the uniform reciprocal enforcement of support act are available for enforcement of duties of support under this chapter.

(2) The District Court may exercise jurisdiction, concurrent with that of the Circuit Court, to determine matters of child custody and visitation in cases where paternity is established as set forth in this chapter. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to child custody and visitation. The District Court may decline jurisdiction if it finds the circumstances of any case require a level of proceedings more appropriate to the Circuit Court.

History.

Enact. Acts 1964, ch. 37, § 5; 1976 (Ex. Sess.), ch. 14, § 412, effective January 2, 1978; 1984, ch. 16, § 9, effective July 13, 1984; 1996, ch. 314, § 1, effective July 15, 1996.

Compiler's Notes.

The uniform reciprocal enforcement of support act referred to in this section is now the Uniform Interstate Family Support Act, compiled at KRS 407.5101 to 407.5902.

NOTES TO DECISIONS

Analysis

1. Appeal.
2. Standard of Proof.
3. Paternity Matters.
4. Jurisdiction.

1. Appeal.

The trial court erroneously assumed that the appellant had only 30 days to appeal under CR 72.02, but the controlling bastardy statute allowed 60 days. Commonwealth ex rel. Hafley v. Hernandez, 434 S.W.2d 811, 1968 Ky. LEXIS 251 (Ky. 1968).

The date of the county (now district) court judgment for appeal purposes was the date when the order book was actually signed by the judge. Blanton v. Castle, 450 S.W.2d 818, 1970 Ky. LEXIS 464 (Ky. 1970).

A District Court could have exercised concurrent jurisdiction with that of the Circuit Court and adjudicated an action for sole custody, adjudication of paternity, award of child support, award of pregnancy and confinement expenses, attorney's fees and costs and, therefore, an appeal from the District Court Order should have been taken to the Circuit Court, rather than to the Court of Appeals. Elery v. Martin, 4 S.W.3d 550, 1999 Ky. App. LEXIS 123 (Ky. Ct. App. 1999).

2. Standard of Proof.

In an action to determine paternity, where putative father has died intestate, the clear and convincing evidence standard of persuasion is to be applied by the trier of the fact in a trial setting; if applied to a summary judgment proceeding, "clear

and convincing" evidence must demonstrate an impossibility under CR 56.03. Hibbs v. Chandler, 684 S.W.2d 310, 1985 Ky. App. LEXIS 509 (Ky. Ct. App. 1985).

3. Paternity Matters.

Where a child was found by the circuit court to have been born out of wedlock to a married woman and fathered by a man other than her husband, the district court was clearly vested with subject matter jurisdiction to determine paternity. Montgomery v. McCracken, 802 S.W.2d 943, 1990 Ky. App. LEXIS 181 (Ky. Ct. App. 1990), overruled in part, J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008).

While KRS 406.051 provided a District Court with subject matter jurisdiction over an action to establish support for children born out of wedlock, that statutory provision did not apply in a case where the alleged father petitioned the Family Court for custody and support of child born to a wife of another. Kentucky paternity statutes did not apply and, thus, the Family Court did not have jurisdiction, because no evidence was presented to show that the child was born out of wedlock, which would have required a showing that the husband and wife's marital relationship had ceased 10 months before the child's birth, as set forth in KRS 406.011. J.N.R. v. O'Reilly, 264 S.W.3d 587, 2008 Ky. LEXIS 115 (Ky. 2008), overruled in part, J.A.S. v. Bushelman, 342 S.W.3d 850, 2011 Ky. LEXIS 76 (Ky. 2011).

Trial court had subject matter jurisdiction over the putative father's paternity action, not under KRS 406.011 because that statute did not define "child born out of wedlock," but under KRS 406.051 and KRS 406.180 because the putative father's action was one to determine the paternity of a child whose alleged biological parents were not married to each other as "marriage" was defined under Kentucky law. The putative father himself had standing to file the paternity action because the allegations contained in the putative father's paternity complaint were sufficient to confer standing on the putative father under KRS 426.021, which allowed putative father's to file a complaint to determine paternity. J.A.S. v. Bushelman, 342 S.W.3d 850, 2011 Ky. LEXIS 76 (Ky. 2011).

4. Jurisdiction.

Mother was estopped from arguing that KRS 406.180 limited jurisdiction to children born "out of wedlock." The mother and her husband judicially admitted that another man was the father of a child born during the marriage, and diagnostic testing confirmed the other man's paternity; the mother's judicial admissions were sufficient to rebut the presumption that her husband was the father of the child. S.B. v. M.C., 352 S.W.3d 345, 2011 Ky. App. LEXIS 151 (Ky. Ct. App. 2011).

Cited in:

Commonwealth ex rel. Stumbo v. Wilson, 622 S.W.2d 912, 1981 Ky. LEXIS 281 (Ky. 1981); Wood v. Wingfield, 816 S.W.2d 899, 1991 Ky. LEXIS 70 (Ky. 1991).

OPINIONS OF ATTORNEY GENERAL.

Where the complainant in a paternity suit is allowed to proceed as a pauper, upon the establishment of paternity against the defendant, the filing fee or other court costs can be recovered from the defendant as part of the judgment. OAG 65-212.

Where the complaining mother, under the uniform paternity act, is a pauper, she should file a pauper's oath and move the court to be permitted to proceed without paying of filing fees or other court costs after which the court can permit her to proceed. OAG 65-212.

Bastardy cases may be tried by juries consisting of six persons. OAG 71-425.

Considering this chapter as a whole and noting that this section provides in part that all remedies under KRS Ch. 407 are available for enforcement of duties of support under this chapter, the county court has a continuing jurisdiction over paternity actions for the purposes of the child's support as well as the future education of the child and thus the court can modify the original judgment as it pertains to the education of the child. OAG 73-354.

The county court has jurisdiction to adjudicate the issue of the putative father's visitation rights. OAG 76-47.

Although this section does not expressly provide that the county attorney must represent the complainant on an appeal to the circuit court, if the complainant's action is to mean anything ultimately the county attorney must be required to prosecute the appeal where the complainant wishes to avail herself of that remedy. OAG 77-52, 1977 Ky. AG LEXIS 748.

Since the court in a paternity action is precluded from assessing the costs, including the blood tests, against the mother under this section and former KRS 407.220 (now repealed), and since the defendant is not responsible for such costs if he is a pauper under KRS 453.190, and since there is no statute imposing the costs on some other person or a governmental unit, there is simply no statutory basis for imposing such costs on any person or governmental unit in such a case. OAG 79-654, 1979 Ky. AG LEXIS 1.

The district court has jurisdiction to deal with issue of putative father's visitation rights and child's correlative right to see father. OAG 85-28, modifying OAG 76-47.

There are no restrictions or limitations found in KRS 509.070 as to its applicability to different classes of persons or orders of a court; instead, it is general in nature and provides a defense to custodial interference if the person is returned voluntarily and before an arrest or issuance of an arrest warrant. Therefore, if paternity has been established under this chapter and a custody and visitation order had been entered pursuant to that finding, a copy of which is received by the putative father, then KRS 509.070 should be applicable to a father who violates that visitation order. OAG 90-18, 1990 Ky. AG LEXIS 18.

One who knowingly violates a properly established custody and visitation order entered pursuant to this chapter should be subject to prosecution under KRS 509.070; to differentiate between those visitation orders entered under this chapter from those entered under Chapter 403 or other chapters would establish an improper distinction between the children whom these orders cover. OAG 90-18, 1990 Ky. AG LEXIS 18.

Any individual who knowingly violates a child custody and visitation order entered pursuant to this chapter may be prosecuted for violation of that order under KRS 509.070, and OAG 76-147 is modified accordingly. OAG 90-18, 1990 Ky. AG LEXIS 18.

An individual may be prosecuted under KRS 509.070 where a district court has entered a child custody and visitation order under this chapter and the father has notice of said order. OAG 90-18, 1990 Ky. AG LEXIS 18.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Graham, Implementing Custody Mediation in Family Court: Some Comments on the Jefferson County Family Court Experience, 81 Ky. L.J. 1107 (1992-93).

Northern Kentucky Law Review.

Kentucky Survey Issue: Article: A Biological Father's Rights Extinguished, 37 N. Ky. L. Rev. 343 (2010).

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Appeals from Kentucky District Courts to Circuit Court, § 100.00.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Paternity, General Note.

Petrilli, Kentucky Family Law, Illegitimacy and Paternity Proceedings, §§ 31.10, 31.25, 31.26, 31.29, 31.30.

Petrilli, Kentucky Family Law, Forms, Paternity, Form 7.1.

TITLE XXXVI

STATUTORY ACTIONS AND LIMITATIONS

Chapter

411. Rights of Action and Survival of Actions.
415. Repeal or Vacation of Charters — Usurpation.

CHAPTER 411

RIGHTS OF ACTION AND SURVIVAL OF ACTIONS

Section

411.025. Action against terrorist for injury to person or property — Damages.
411.215. Action for failure to remove sexually explicit image from Web site, online service or application, or mobile application upon request — Damages — Statute of limitations.

411.025. Action against terrorist for injury to person or property — Damages.

(1) As used in this section:

(a) "Act of terror" means an activity that:

1. Involves violent acts or acts dangerous to human life that violate federal or state law;

2. Appears to be intended to:

a. Intimidate or coerce a civilian population;

b. Influence the policy of a government by intimidation or coercion; or

c. Affect the conduct of a government by mass destruction, assassination, or kidnapping; and

3. Occurs primarily within the Commonwealth; and

(b) "Terrorist" means a person who commits an act of terror, including a person who acts as an accessory before or after the fact, aids or abets, solicits, or conspires to commit an act of terror or who lends material support to an act of terror.

(2) Any person whose property or person is injured by a terrorist may file a claim for and recover damages from the terrorist.

(3) Any person who files an action under this section is entitled to recover three (3) times the actual damages sustained or fifty thousand dollars ($50,000), whichever is greater, as well as court costs and attorney's fees in the trial and appellate courts if the person prevails in the claim.

(4) A civil action brought under this section is remedial and does not limit any other civil or criminal action provided by law. Civil remedies provided under this section are supplemental and not exclusive.

History.

2018 ch. 111, § 1, effective July 14, 2018.

Legislative Research Commission Notes.

(7/14/2018). 2018 Ky. Acts ch. 111, sec. 3 provided that this statute as created in Section 1 of that Act shall be known and may be cited as Andy's Law.

411.215. Action for failure to remove sexually explicit image from Web site, online service or application, or mobile application upon request — Damages — Statute of limitations.

(1) A civil action may be maintained under this section against any person who, in violation of KRS 531.120(3), does not remove a sexually explicit image upon the request of the person depicted in the image.

(2) A civil action may be maintained under this section whether or not the individual who is alleged to have violated KRS 531.120(3) has been charged or convicted under KRS 531.120. Liability under this section shall include damages of one thousand dollars ($1,000) for each sexually explicit image for each day the image remains on the Web site after receipt of the request.

(3) An action under this section shall be brought within two (2) years of the last act of conduct in violation of KRS 531.120(3).

History.

2018 ch. 50, § 3, effective July 14, 2018.

CHAPTER 415

REPEAL OR VACATION OF CHARTERS — USURPATION

Section

415.050. Duties of the Attorney General.
415.060. Proceedings for usurpation against person holding office.
415.070. Judgment against usurper — Enforcement.

415.050. Duties of the Attorney General.

For usurpation of other than county offices or franchises, the action by the Commonwealth shall be instituted and prosecuted by the Attorney General.

History.

C.C. 485: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Power of Attorney General.
3. Usurpation of Franchise.
4. State Office.
5. —School Board.
6. —County School Superintendent.
7. —School Trustee.
8. City Offices.
9. —Attorney.
10. —Councilman.
11. —Mayor and Commissioners.
12. —Marshal.

1. Construction.

The language "for usurpation of other than county offices," refers to all offices save county offices, whether state, city or town. Wheeler v. Commonwealth, 98 Ky. 59, 32 S.W. 259, 17 Ky. L. Rptr. 636, 1895 Ky. LEXIS 14 (Ky. 1895).

An ouster proceeding under this section and KRS 415.040 must be brought by one who is entitled to the office by the Commonwealth's Attorney if a county office is at stake, or by the Attorney General if a state office is at stake. Williamson v. Hughes, 303 Ky. 735, 199 S.W.2d 125, 1947 Ky. LEXIS 540 (Ky. 1947).

In deciding whether the Attorney General has authority to bring ouster proceedings for usurpation of a public office, it is the governmental level of the office, rather than the nature of the usurpation for which ouster is sought which is controlling and since county school board members are state officers it is clear that usurpation of the office is to be attacked through actions brought by the Attorney General under this section. Commonwealth ex rel. Buckman v. Mason, 284 S.W.2d 825, 1955 Ky. LEXIS 53 (Ky. 1955).

Courts should be slow to invoke estoppel against the state in its efforts to enforce a statute the purpose of which is to prevent "conflict of interest" situations and to prevent self-interest in the deliberation of public servants, and fact that county school board member was re-elected to a new term after the acts complained of did not "whitewash" him or furnish a defense. Stringer v. Commonwealth, 428 S.W.2d 203, 1968 Ky. LEXIS 709 (Ky. 1968).

Courts should not be deterred in giving "conflict of interest" statute its full measure of legislative intendment by other public school authorities who may be instrumental in invoking the statute for purely selfish reasons. Stringer v. Commonwealth, 428 S.W.2d 203, 1968 Ky. LEXIS 709 (Ky. 1968).

2. Power of Attorney General.

The Attorney General had the power to give authority to an attorney to institute ouster proceedings, in the Attorney General's name, against members of school board who were allegedly disqualified from holding the office. Commonwealth v. Begley, 273 Ky. 636, 117 S.W.2d 599, 1938 Ky. LEXIS 692 (Ky. 1938).

If the private citizen does not claim the office himself, the Attorney General is the only one who may institute an action for usurpation of offices other than county offices and franchises, and a private citizen may not compel the Attorney General by a writ of mandamus or otherwise to institute ouster proceedings, for the words "shall be" in this section simply provide, in essence, that if the right of action which rests in the Commonwealth is to be asserted in such a case, the Attorney General is the only one who may do so. Hermann v. Morlidge, 298 Ky. 632, 183 S.W.2d 807, 1944 Ky. LEXIS 968 (Ky. 1944).

The Attorney General is invested with a discretion which a private citizen may not coerce, nor a court control, whatever the motives activating the private citizen. Hermann v. Morlidge, 298 Ky. 632, 183 S.W.2d 807, 1944 Ky. LEXIS 968 (Ky. 1944).

A public officer may not be ousted or enjoined from the performance of his duties, except as the result of an action brought by a person who claims the office, or in the case of a state officer, in an ouster action brought by the Attorney General. Griffey v. Board of Education, 385 S.W.2d 319, 1964 Ky. LEXIS 157 (Ky. 1964).

3. Usurpation of Franchise.

The Attorney General has the authority to institute proceedings, in the name of the Commonwealth, against a usurper of the offices of a private or public franchise or corporation; therefore in an action instituted by the Attorney General to prevent the exercising or usurpation of lottery privileges, if the defendants fail to plead to the merits, judgment should be rendered against them by default. Commonwealth v. Frankfort, Simmons & Dickinson, 76 Ky. 185, 1877 Ky. LEXIS 27 (Ky. 1877).

4. State Office.

An action under this section to oust usurpers of state offices, if filed in the name of the Commonwealth, must be filed on relation of, and by authority of, Attorney General; however, where the action is purportedly filed by that official as the plaintiff, and all pleadings refer to Commonwealth, on his relation, as a party to suit, there is a presumption that proper authority to file action was given, and one who would dispute that fact must come forward and affirmatively establish that no such authority was given; in no event will a party be permitted to raise the issue, for the first time on appeal, where his inaction at the trial foreclosed all opportunities to examine the facts concerning the claim. Brooks v. Commonwealth, 286 S.W.2d 913, 1956 Ky. LEXIS 436 (Ky. 1956).

5. —School Board.

A member of the county board of education is not a county official but an official of the state; therefore, an action to oust a member of the county board of education, alleging he is a usurper of the office, should have been brought by the Attorney General and not by the Commonwealth's attorney. Tipton v. Commonwealth, 238 Ky. 111, 36 S.W.2d 855, 1931 Ky. LEXIS 188 (Ky. 1931).

The Attorney General has the authority through local counsel to institute an action to have a member of the board of education of a county declared a usurper, alleging that he has forfeited his office because of interest in contracts entered into with school board for purchase of coal. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 1936 Ky. LEXIS 594 (Ky. 1936).

The Attorney General by an ordinary action may remove a member of a county board of education from office for wrongful acts. Richardson v. Commonwealth, 275 Ky. 486, 122 S.W.2d 156, 1938 Ky. LEXIS 472 (Ky. 1938).

A member of the county board of education is a state officer and a suit to oust him as a usurper must be brought by the Attorney General. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280, 1941 Ky. LEXIS 182 (Ky. 1941).

A superintendent of schools, not claiming office of school board member, could not bring an action to oust school board member because of illegal transactions with the board in violation of KRS 160.180, but the Attorney General, under this section and KRS 415.060, had to bring the action since the board of education is a state and not a county office. Jones v. Browning, 298 Ky. 467, 183 S.W.2d 38, 1944 Ky. LEXIS 923 (Ky. 1944).

A county board of education cannot declare office of one of its members vacant because of forfeiture due to the ineligibility of the member, and appoint another to serve in his stead under KRS 160.180; proper procedure is for an action to be brought by the Attorney General to have the office declared vacant for the office is a state office. Salyers v. Lyons, 304 Ky. 320, 200 S.W.2d 749, 1947 Ky. LEXIS 637 (Ky. 1947).

An action to prevent usurpation of office by an elected member of county board of education, based on ineligibility because he did not possess an eighth grade education as required by KRS 160.180, which was filed after his election and oath of office but two days before the expiration of the term of his predecessor, was properly dismissed since a usurper is one who intrudes himself into an office that is vacant or without color of title or right, ousts the incumbent and assumes to act as an officer by exercising some of the functions of the office; thus, the term must have begun and the defendant have assumed, usurped or taken possession of the office prior to the filing of a petition for ouster, and the later assumption of the office and amendment of petition cannot

give life to a premature petition. Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52, 1949 Ky. LEXIS 826 (Ky. 1949).

If alleged misconduct by local school board members is not considered by the superintendent of public instruction, in the exercise of a fair discretion, to be such as to warrant action by the state board of education, the local citizens may still obtain a remedy through removal proceedings by the Attorney General under KRS 415.030 and this section. Hogan v. Kentucky State Board of Education, 329 S.W.2d 563, 1958 Ky. LEXIS 6 (Ky. 1958).

In ouster proceeding by Attorney General under authority of this section and KRS 415.060 against school board member based on his lack of qualifications, member's failure to respond properly to request for admission that he lacked such qualifications constituted an admission of such lack, and judgment of ouster should have been granted. Commonwealth ex rel. Matthews v. Rice, 415 S.W.2d 618, 1966 Ky. LEXIS 10 (Ky. 1966).

The State Board for Elementary and Secondary Education, under the Kentucky Education Reform Act, has the authority to remove members from a county board of education for misconduct in office; there is no language in either KRS 156.132 or KRS 160.180 which suggests, let alone mandates, that the Attorney General has the exclusive power to remove district board members for violations of KRS 160.180. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743, 1993 Ky. LEXIS 46 (Ky. 1993).

6. —County School Superintendent.

A county school superintendent is not a county officer and thus an action against him for usurpation of office must be brought against him by the Attorney General, not by a Commonwealth's attorney. Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931). See Tipton v. Commonwealth, 238 Ky. 111, 36 S.W.2d 855, 1931 Ky. LEXIS 188 (Ky. 1931).

Where a county school superintendent has accepted another state office that is incompatible with the office of school superintendent he has forfeited the office, and, since the county school superintendent is an official of the state, the Attorney General is the only one who can proceed against him for usurping the office. Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931).

7. —School Trustee.

Where one is in possession of the office of school trustee, though he be a usurper, he cannot be deprived of it at the suit of a claimant of the same office, unless the latter shows himself entitled thereto, and since petition shows on its face that plaintiff did not have title, the petition was properly dismissed. Only one who could bring action against usurper was the Attorney General or the Commonwealth's attorney. Morgan v. Adams, 250 Ky. 441, 63 S.W.2d 479, 1933 Ky. LEXIS 709 (Ky. 1933).

8. City Offices.

Only the person entitled to the office or the Attorney General may bring an action either to remove a person usurping a municipal office or to test the claim of a potential usurper to such office. Jenkins v. Congleton, 242 Ky. 46, 45 S.W.2d 456, 1932 Ky. LEXIS 209 (Ky. 1932).

9. —Attorney.

Although the office of city attorney of a third-class city is filled by the action of the council, an action may be maintained in the name of the Commonwealth and by the Attorney General to prevent the usurpation of the office, it being an office other than a county office. Wheeler v. Commonwealth, 98 Ky. 59, 32 S.W. 259, 17 Ky. L. Rptr. 636, 1895 Ky. LEXIS 14 (Ky. 1895).

Proceeding by Attorney General under this section to oust city attorney was not authorized by the law where the council of a city of the fourth class had the power under its charter to remove the city attorney at any time, and the council prescribed by ordinance for what cause they would remove such officer, since the council and not the circuit court had the authority to remove him for a violation of the ordinance. Commonwealth v. Willis, 42 S.W. 1118, 19 Ky. L. Rptr. 962 (1897).

A city attorney in a city of the fourth class is an "officer" with the meaning of Section 234 of the Kentucky Constitution and is, therefore, subject to removal under the provisions of this section, is he is not a resident of the city. Hirschfeld v. Commonwealth, 256 Ky. 374, 76 S.W.2d 47, 1934 Ky. LEXIS 416 (Ky. 1934).

10. —Councilman.

The Attorney General has the authority to institute an action against one who is usurping the office of councilman of a city. Stack v. Commonwealth, 118 Ky. 481, 81 S.W. 917, 26 Ky. L. Rptr. 343, 1904 Ky. LEXIS 76 (Ky. 1904).

Proceedings for usurpation of a city office under KRS 425.030 (now repealed) and this section must be instituted by a person claiming title to it or by the Commonwealth in an action instituted by the Attorney General, and some of the members of a city council could not maintain an action against another member of the council to declare his office vacant on the ground a corporation of which he was the principal stockholder sold an automobile to the utility commission, as this would have constituted a forfeiture under KRS 415.060 and not an abandonment of office which is a voluntary renouncement of the office. Jones v. Robinson, 351 S.W.2d 185, 1961 Ky. LEXIS 154 (Ky. 1961).

11. —Mayor and Commissioners.

A municipal officer who accepts an incompatible office, thereby vacating his office as city commissioner, is a usurper and may be proceeded against by the Commonwealth on the relation of the Attorney General for a forfeiture of his office. Commonwealth ex rel. Steller v. Livingston, 171 Ky. 52, 186 S.W. 916, 1916 Ky. LEXIS 298 (Ky. 1916).

The question of eligibility of the mayor and commissioners of a second-class city to hold the offices cannot be tested in an action brought by a taxpayer and citizen; the action can only be instituted by one claiming the office or by the Commonwealth's attorney. Jenkins v. Congleton, 242 Ky. 46, 45 S.W.2d 456, 1932 Ky. LEXIS 209 (Ky. 1932).

12. —Marshal.

An action to enjoin payment of salary to city marshal, alleging that he was ineligible to hold the office, cannot be maintained by a citizen and taxpayer. Such action can only be brought by the Commonwealth or one entitled to the office. Spurlock v. Lafferty, 214 Ky. 333, 283 S.W. 124, 1926 Ky. LEXIS 338 (Ky. 1926).

Cited in:

Milliken v. Harrod, 275 Ky. 597, 122 S.W.2d 148, 1938 Ky. LEXIS 471 (Ky. 1938); Commonwealth ex rel. Stephens v. Stephenson, 574 S.W.2d 328, 1978 Ky. App. LEXIS 619 (Ky. Ct. App. 1978); Noble v. Meagher, 686 S.W.2d 458, 1985 Ky. LEXIS 207 (Ky. 1985).

OPINIONS OF ATTORNEY GENERAL.

Under this section it is the duty of the Attorney General to institute ouster proceedings when a vacancy is created on a county board of education by the unexcused absence of a member from three consecutive meetings. OAG 60-1135.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying

himself would be valid until the school board member resigned or was removed from office. OAG 65-211.

The Attorney General only is authorized to remove state and municipal officers for usurpation of office, i.e., where they are not qualified or where an act on their part constitutes by law a vacation of office. OAG 67-146.

Evidence submitted to the Attorney General considered sufficient to warrant authorization by the Attorney General to attorney representing citizens' group to initiate ouster proceedings in the name of the Attorney General to remove a mayor from office for alleged violation of the provisions of KRS 61.270 (now repealed) by reason of his alleged interest as a stockholder in a corporation holding the contract for collection and disposal of garbage within the city. OAG 69-33.

A school board member is a legal member of the board until he resigns or is removed in an ouster action. OAG 70-757.

The actions of a duly elected police judge acting under color of legal title would be considered valid until an ouster proceeding is instituted challenging his statutory qualifications. OAG 73-805; 73-816.

Where candidate for police judge was duly elected by the people and took the oath of office knowing that he did not possess the qualifications for the office, the only remedy was an ouster action brought on relation of the Attorney General. OAG 73-805; 73-816.

This section provides the proper procedure for removal from office of a mayor who has ceased to qualify as such by reason of nonresidency. OAG 74-402.

A motion to dismiss an action instituted by a citizen in the nature of an ouster proceeding was well taken, as only a claimant to the office or the Attorney General have the necessary standing to commence the action. OAG 74-794.

The power to authorize an ouster proceeding is purely discretionary with the Attorney General. OAG 76-14.

Failing to meet the qualifications or doing that which is proscribed in KRS 160.180 constitutes cause for consideration for removal of a board of education member from office for usurpation of that office by the Attorney General. OAG 78-159, 1978 Ky. AG LEXIS 570.

The Office of Attorney General, which has the sole responsibility and authority for bringing an ouster or quo warranto action against a school board member pursuant to this section, is not required to accept as conclusive any affidavits as to eighth grade completion which are provided pursuant to subdivision (1)(c) of KRS 160.180. OAG 82-53, 1982 Ky. AG LEXIS 580.

KRS 83A.040(3) requires all members of the city legislative body as well as the mayor to reside within the city and be a qualified voter therein; the procedure for removing a person, who in fact no longer lives in the city and thus becomes a usurper, is for a request to be filed with the Attorney General. Under this section and case law, documented evidence must be presented to the Attorney General for consideration and he has discretion in authorizing an ouster proceeding to be brought in his name by an attorney designated by the requesting party or parties. OAG 83-467, 1983 Ky. AG LEXIS 35.

Ouster proceedings may be taken by the Attorney General pursuant to this section and KRS 415.060 against school board members who fail to obtain the required in-service training pursuant to KRS 160.180(5). OAG 85-145, 1985 Ky. AG LEXIS 4.

This section does not prevent the Attorney General from having assistance of other counsel in cases that he brings when other counsel, with his consent, volunteer their services without any expense to the state. OAG 90-141, 1990 Ky. AG LEXIS 164.

Persons who are ineligible to serve on school board should resign; however, unless a private citizen is claiming the office for himself, there is no proceeding short of an Attorney General ouster complaint which could prevent such individuals from taking the oath of office. OAG 92-160, 1992 Ky. AG LEXIS 275.

Where school board members were ineligible to serve on the board due to the employment of a relative by the school system and members refused to resign, the Office of the Attorney General could instigate ouster proceedings against them. OAG 92-160, 1992 Ky. AG LEXIS 275.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Complaint to Oust Member of School Board for Conflict of Interests, Form 333.02.

415.060. Proceedings for usurpation against person holding office.

A person who continues to exercise an office after having committed an act, or omitted to do an act, the commission or omission of which, by law, creates a forfeiture of his office, may be proceeded against for usurpation thereof.

History.

C.C. 486: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Application.
3. Acts Creating Forfeitures.
4. Person Who Must Bring Proceedings.

1. Construction.

This section relates to offenses and conditions which may not affect the legal eligibility to hold office defined by KRS 160.180, and the Attorney General may bring an action to remove member of county board of education. Richardson v. Commonwealth, 275 Ky. 486, 122 S.W.2d 156, 1938 Ky. LEXIS 472 (Ky. 1938).

2. Application.

Where a candidate for the office of mayor of a city received a majority of the votes at an election, received a certificate of election, qualified according to law and entered upon the discharge of his duties, the question of whether he received fraudulent and illegal votes at the election cannot be determined in an action brought by another candidate alleging usurpation of the office. Stine v. Berry, 96 Ky. 63, 27 S.W. 809, 16 Ky. L. Rptr. 279, 1894 Ky. LEXIS 81 (Ky. 1894).

The Commonwealth's Attorney is a constitutional officer, and where removal of such officer is sought on grounds of misbehavior and the method of removal is provided in the Kentucky Constitution, such mode is exclusive and methods provided by KRS 415.030 to 415.080 will not apply in seeking a forfeiture of his office. Commonwealth ex rel. Attorney Gen. v. Howard, 297 Ky. 488, 180 S.W.2d 415, 1944 Ky. LEXIS 763 (Ky. 1944).

3. Acts Creating Forfeitures.

An officer of a city who accepts an office that is incompatible, thereby vacates his first office and is a usurper and may be proceeded against to have the office forfeited, but until such a proceeding is instituted and adjudicated he should be treated as a de facto officer. Commonwealth ex rel. Steller v. Livingston, 171 Ky. 52, 186 S.W. 916, 1916 Ky. LEXIS 298 (Ky. 1916).

Evidence was insufficient to establish wrongful conduct by school board member which would constitute him a usurper in

the office although his son was named truant officer and his daughter, a teacher, was transferred from the district high school to county high school at in increased salary. Richardson v. Commonwealth, 275 Ky. 486, 122 S.W.2d 156, 1938 Ky. LEXIS 472 (Ky. 1938).

Under statute prescribing qualifications of members of county school board of education and specifying disqualification which will operate as a forfeiture of office, a member of county board of education who cannot prove his educational qualifications in the manner prescribed is a usurper of the office and a forfeiture will be declared in a direct proceeding. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280, 1941 Ky. LEXIS 182 (Ky. 1941).

4. Person Who Must Bring Proceedings.

A superintendent of schools, not claiming office of school board member, could not bring an action to oust school board member because of illegal transactions with the board in violation of KRS 160.180, but the Attorney General, under KRS 415.050 and this section, had to bring the action since the board of education is a state and not a county office. Jones v. Browning, 298 Ky. 467, 183 S.W.2d 38, 1944 Ky. LEXIS 923 (Ky. 1944).

A suit for forfeiture of office under this section could not be brought by three (3) of six (6) members of a city council of a fourth-class city against another member for the sale of automobile to city utility commission by a corporation in which was the principal stockholder, because the action must be brought by the Commonwealth or a person claiming title to the office. Jones v. Robinson, 351 S.W.2d 185, 1961 Ky. LEXIS 154 (Ky. 1961).

Cited in:

Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857, 1931 Ky. LEXIS 623 (Ky. 1931); McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605, 1939 Ky. LEXIS 723 (Ky. 1939); Commonwealth ex rel. Matthews v. Rice, 415 S.W.2d 618, 1966 Ky. LEXIS 10 (Ky. 1966); Commonwealth ex rel. Stephens v. Stephenson, 574 S.W.2d 328, 1978 Ky. App. LEXIS 619 (Ky. Ct. App. 1978).

OPINIONS OF ATTORNEY GENERAL.

The Attorney General only is authorized to remove state and municipal officers for usurpation of office, i.e., where they are not qualified or where an act on their part constitutes by law a vacation of office. OAG 67-146.

Any justice of the peace that becomes disqualified by moving from his district would, if he refused to vacate his office by resignation, be subject to removal as a usurper by the Commonwealth's Attorney. OAG 67-373.

Under Ky. Const., § 142, a magistrate who moves his residence from the district he was elected to serve becomes disqualified for office and, if he refuses to vacate his office by resignation, would be subject to removal as a usurper pursuant to this section. OAG 67-396.

Evidence submitted to the Attorney General considered sufficient to warrant his authorization to attorney representing citizens' group to initiate ouster proceedings in the name of the Attorney General to remove the mayor from office for alleged violation of the provisions of KRS 61.270 (now repealed), by reason of the mayor's alleged interest as a stockholder in a corporation holding the contract for the collection and disposal of garbage within the city. OAG 69-33.

Members of the city council who were duly elected were entitled to take the oath of office and enter upon the duties of office even though they may not have possessed the qualifications of office if they were not challenged before the election, and the acts of such councilmen would be valid until ouster proceedings were instituted on relation of the Attorney General. OAG 73-863.

Ouster proceedings may be taken by the Attorney General pursuant to KRS 415.050 and this section against school board members who fail to obtain the required in-service training pursuant to KRS 160.180(5). OAG 85-145, 1985 Ky. AG LEXIS 4.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Charges for Removal of Officer, Form 10.10.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Complaint to Oust Member of School Board for Conflict of Interests, Form 333.02.

415.070. Judgment against usurper — Enforcement.

A person adjudged to have usurped an office or franchise shall be deprived thereof by the judgment of the court, and the person adjudged entitled thereto shall be placed in possession thereof; but no one shall be adjudged entitled thereto, unless the action be instituted by him. And the court shall have power to enforce its judgment by causing the books and papers, and all other things pertaining to the office or franchise, to be surrendered by the usurper; and by preventing him from further exercising or using the same; and may enforce its orders by fine and imprisonment until obeyed.

History.

C.C. 487: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953.

NOTES TO DECISIONS

Analysis

1. Application.
2. Claimant Must Show Title.
3. Judgment for Possession.
4. Appeal.
5. Indictment.

1. Application.

Where persons were elected to office of city commissioner in a void election, there being no such office, statutes regarding actions for usurpation of office were inapplicable as a defense to suit brought by mayor, administrative officers appointed by him, and a taxpayer, to restrain the elected commissioners from assuming the management of the city's affairs. Goin v. Smith, 202 Ky. 486, 260 S.W. 10, 1924 Ky. LEXIS 738 (Ky. 1924).

2. Claimant Must Show Title.

A superintendent of common schools of a county, in possession of the office, though he was an usurper, cannot be deprived of it at the suit of another claimant of the office who cannot show himself entitled thereto. Wilson v. Tye, 126 Ky. 34, 102 S.W. 856, 31 Ky. L. Rptr. 491, 1907 Ky. LEXIS 18 (Ky. 1907).

One who vacates the office of commissioner of a second-class city by the acceptance of an incompatible office of employment and then continues in possession of the first office is a usurper, and may be ousted at the suit of the person who is entitled to the office, but the individual seeking to recover it must show that he is lawfully entitled to the office. Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122, 1917 Ky. LEXIS 306 (Ky. 1917).

3. Judgment for Possession.

A person who was legally entitled to the office of councilman of a city of the fourth class could bring suit for its possession

against the person who was wrongfully holding it, although such person was elected or appointed by the council of the city which believed it had the authority to elect or appoint him, and this section fully authorized judgment for possession. Powell v. Hambrick, 164 Ky. 340, 175 S.W. 633, 1915 Ky. LEXIS 374 (Ky. 1915).

4. Appeal.

Where judgment was entered holding that offices of members of county board of education were vacant because the members holding said offices were usurpers, the offices became immediately vacant and the judgment could not be suspended pending a final determination on appeal. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605, 1939 Ky. LEXIS 723 (Ky. 1939).

A judgment in ouster proceedings against deputy sheriff who had been indicted for murder was not void but only voidable where it had jurisdiction of the subject matter and the parties, and if it committed error the only remedy was by an appeal from the judgment and not by mandatory writ to compel clerk to receive, accept and file his tendered supersedeas bond and to issue a supersedeas thereon. Baker v. Wilson, 310 Ky. 692, 221 S.W.2d 690, 1949 Ky. LEXIS 1272 (Ky. 1949).

5. Indictment.

Where one elected to the office of county attorney, for which office he was ineligible, exercised the functions and received the emoluments of the office, he is guilty of usurpation of the office, and may be prosecuted by indictment to recover the fine imposed by statute. Commonwealth v. Adams, 60 Ky. 6, 1860 Ky. LEXIS 4 (Ky. 1860) (decided under prior law).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Official misconduct in first and second degree, KRS 522.020, 522.030.

TITLE XXXVII
SPECIAL PROCEEDINGS

Chapter
416. Eminent Domain.

CHAPTER 416
EMINENT DOMAIN

Eminent Domain Act of Kentucky (1976).

Section
416.540. Definitions for KRS 416.540 to 416.670.
416.550. Right to condemn — Requirements and restrictions regarding agreement to acquire property rights prior to condemnation proceedings.
416.560. Initiation of condemnation proceedings — Costs — Right of entry — Notice to property owner — Damages.
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416.580. Commissioners — Appointment — Report — Compensation — Vacancy — Majority required — Eminent domain proceedings.
416.590. Issuing summons.
416.600. Filing answer.
416.610. Trial by court on pleadings — Interlocutory judgment.
416.620. Trial of exceptions to interlocutory judgment — Questions as to compensation to be tried by jury — Appeals.
416.630. Money paid into court.
416.640. Conflicting claimants to condemned land.
416.650. Proceedings governed by Rules of Civil Procedure.
416.660. Standards for determining compensation — Changes in value — Taking date.
416.670. Limitations on condemnation powers — Rights of current landowner.
416.675. Public use required — No condemnation for indirect benefit — Exemption.
416.680. Short title.

Penalties.

416.990. Penalties.

EMINENT DOMAIN ACT OF KENTUCKY (1976)

416.540. Definitions for KRS 416.540 to 416.670.

As used in KRS 416.540 to 416.670:

(1) "Condemn" means to take private property for a public use under the right of eminent domain;

(2) "Condemnor" shall mean and include any person, corporation or entity, including the Commonwealth of Kentucky, its agencies and departments, county, municipality and taxing district authorized and empowered by law to exercise the right of eminent domain;

(3) "Condemnee" means the owner of the property interest being taken;

(4) "Court" means the Circuit Court;

(5) "Eminent domain" means the right of the Commonwealth to take for public use and shall include the right of private persons, corporations, or business entities to do so under authority of law;

(6) "Government lien" means any lien established by or in favor of the Commonwealth or a local government under KRS Chapter 65, 82, 91, 91A, or 134;

(7) "Local government" means any city, county, urban-county government, consolidated local government, unified local government, or charter county; and

(8) "Property" means real or personal property, or both, of any nature or kind that is subject to condemnation.

History.

Enact. Acts 1976, ch. 140, § 2; 2006, ch. 73, § 2, effective July 12, 2006; 2016 ch. 127, § 9, effective July 15, 2016.

NOTES TO DECISIONS

Analysis

1. Power to Condemn.
2. —Denial.
3. Federal Licensee.
4. Exemption.
5. Fair Market Value.
6. Condemnation Not Necessary.

7. Title Acquired.

1. Power to Condemn.
Where land was condemned to expand a utility's existing electrical transmission system, the selection of the transmission lines route and the purpose for which they were built was for a public use and therefore proper and well within the power of condemnor. Ratliff v. Fiscal Court of Caldwell County, 617 S.W.2d 36, 1981 Ky. LEXIS 252 (Ky. 1981).

2. —Denial.
In eminent domain proceedings a court will deny the right to take only where there has been gross abuse or manifest fraud. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

3. Federal Licensee.
State law does not affect a federal licensee's power to acquire land necessary to effectuate its license. Greenup County v. Utilities Com. of Vanceburg, 632 S.W.2d 463, 1982 Ky. App. LEXIS 211 (Ky. Ct. App. 1982).

4. Exemption.
A cemetery's exemption from taking by condemnation, specifically granted to its property by an 1888 act of the General Assembly, was not invalidated by later general provisions, KRS 177.081 and KRS 416.540 to 416.680, relating to the Department of Highways' power of eminent domain. Mother of God Cemetery Asso. v. Commonwealth, Transp. Cabinet, Dep't of Highways, 759 S.W.2d 69, 1988 Ky. App. LEXIS 128 (Ky. Ct. App. 1988).

5. Fair Market Value.
The Eminent Domain Act provides for condemnation of real property upon payment of the difference in the fair market value of the condemnee's property immediately before and immediately after the taking; fair market value of the property condemned is the test, and even where the building upon the property is to be torn down, a city should not be required to pay more for the property because it had a building upon it than the amount by which the building upon it added to the fair market value of the property at the time of the taking. Ford v. Bowling Green, 780 S.W.2d 613, 1989 Ky. LEXIS 104 (Ky. 1989).

6. Condemnation Not Necessary.
Condemnation of farmland near airport by fee simple title was not necessary for the intended public purpose of serving as a buffer zone for airport where landowner offered to restrict the land to agricultural use, to give the airport a noise easement and/or an easement prohibiting trees, residential development, and the erection of any structures on the property up to the airport's building restriction line. City of Bowling Green v. Cooksey, 858 S.W.2d 190, 1992 Ky. App. LEXIS 227 (Ky. Ct. App. 1992).

7. Title Acquired.
Circuit court erred ruling that a county had the right to condemn an owner's property under the state constitution and the Eminent Domain Act for a permanent easement for the construction of a large box culvert and drainage system because the interest that the county proposed to take was neither in proportion to the 95% utility it would take from the property nor consistent with the "pass through" function of an easement, the owner could make no physical use of the property if a permanent easement was taken, regardless of what the county stated was necessary for the project, and to take less than a fee simple interest in the property was arbitrary and in excess of the county's authority under the Act. Moore v. Lexington-Fayette Urban Cty. Gov't, 2017 Ky. App. LEXIS 515 (Ky. Ct. App. Sept. 15, 2017), rev'd, 559 S.W.3d 374, 2018 Ky. LEXIS 448 (Ky. 2018).

Cited in:
Stidham v. Commonwealth, Dep't of Transp., Bureau of Highways, 579 S.W.2d 372, 1978 Ky. App. LEXIS 671 (Ky. Ct. App. 1978); Martin v. Commonwealth, 199 S.W.3d 195, 2006 Ky. App. LEXIS 67 (Ky. Ct. App. 2006).

OPINIONS OF ATTORNEY GENERAL.

The Eminent Domain Act of Kentucky of 1976 (KRS 416.540 to 416.680) does not authorize the condemnation of a passageway over private property by a private individual and since the statutes authorizing such a proceeding were repealed there is no statute in Kentucky authorizing such procedure. OAG 78-297, 1978 Ky. AG LEXIS 432.

Oil and gas companies cannot condemn public property. OAG 79-346, 1979 Ky. AG LEXIS 269.

The city of Covington could not acquire title to vacant city lots for private disposition by its general condemnation authority or by utilizing the condemnation authority under the Urban Renewal Act unless it elected to operate thereunder. OAG 80-62, 1980 Ky. AG LEXIS 581.

A library district can qualify to issue revenue bonds under KRS ch. 58, since it is a special taxing district under Const., § 157 and is a "governmental agency" under KRS 58.010(3). If it issues revenue bonds for a proposed project, the library district board can exercise the power to condemn real estate pursuant to KRS 58.140. OAG 82-343, 1982 Ky. AG LEXIS 302.

A library district which planned to use mortgage financing for library improvements had no power to condemn the real estate needed. OAG 82-343, 1982 Ky. AG LEXIS 302.

RESEARCH REFERENCES AND PRACTICE AIDS

Journal of Energy, Natural Resources & Environmental Law.
Daugherty, 2006 Eminent Domain Ballot Initiatives: Citizens' Voice or Crying Wolf?, 21 J. Energy, Nat. Res. & Env'l L. 99 (2007).

Kentucky Law Journal.
Comments, A Challenge to Historic Preservation in Kentucky, 65 Ky. L.J. 895 (1976-77).

Leathers, Rethinking Jurisdiction and Notice in Kentucky, 71 Ky. L.J. 755 (1982-83).

Northern Kentucky Law Review.
Ruh & Lockaby, Balancing Private Property Rights with "Public Use": A Survey of Kentucky Courts' Interpretation of the Power of Eminent Domain., 32 N. Ky. L. Rev. 743 (2005).

Treatises
Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

416.550. Right to condemn — Requirements and restrictions regarding agreement to acquire property rights prior to condemnation proceedings.

(1) Whenever any condemnor cannot, by agreement with the owner thereof, acquire the property right, privileges or easements needed for any of the uses or purposes for which the condemnor is authorized by law, to exercise its right of eminent domain, the condemnor may condemn such property, property rights, privileges or easements pursuant to the provisions of KRS 416.540 to 416.670.

(2) In obtaining an agreement under subsection (1) of this section:

(a) The condemnor and its employees or agents shall not make any materially false statements or engage in intimidating or misleading negotiating tactics;

(b) Any offer for the purchase of property shall be in writing and delivered to the property owner via:

1. Certified mail, return receipt requested; or

2. Hand delivery, verified by government-issued identification and accompanied by the signature of the property owner; and

(c)1.a. The property owner shall be afforded the opportunity to obtain an independent appraisal of the property, conducted by an appraiser certified or licensed under KRS Chapter 324A, within sixty (60) days of the receipt of the initial offer for purchase under paragraph (b) of this subsection.

b. If the property owner refuses to take delivery of the initial offer for purchase under paragraph (b) of this subsection, the independent appraisal period shall be reduced to thirty (30) days from the date of the refusal. The condemnor shall certify the refusal in a sworn affidavit.

2. The condemnor and property owner may continue to negotiate following the initial offer for the purchase of property. Subsequent offers following negotiation between the property owner and the condemnor shall not be subject to the independent appraisal period described in subparagraph 1. of this paragraph.

3. The condemnor shall:

a. Take into consideration the property value indicated by the independent appraisal obtained by the property owner under subparagraph 1. of this paragraph at all stages of negotiation for purchase of the property; and

b. If it conducts its own appraisals on the property, use an appraiser certified or licensed under KRS Chapter 324A unless the value of the portion of the property to be condemned is reasonably estimated by the condemnor to be less than twenty-five thousand dollars ($25,000), in which case the condemnor may use in-house appraisal services.

4. The condemnor shall not file a petition for the initiation of a condemnation action until after the independent appraisal period described in subparagraph 1. of this paragraph has expired.

A violation of any requirement in this section shall result in a dismissal of the condemnation action pursuant to KRS 416.610(4). A violation of subsection (2)(a) of this section shall, in addition to dismissal of the action, entitle the property owner to recovery of costs, expenses, and reasonable attorney's fees in the action.

(3) It is not a prerequisite to an action to attempt to agree with an owner who is unknown or who, after reasonable effort, cannot be found within the state or with an owner who is under a disability.

History.

Enact. Acts 1976, ch. 140, § 3; 2026 ch. 112, § 3, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Condemnation Not Necessary.
2. Illustrative Cases.
3. Right of Agency to Condemn.

1. Condemnation Not Necessary.

Condemnation of farmland near airport by fee simple title was not necessary for the intended public purpose of serving as a buffer zone for airport where landowner offered to restrict the land to agricultural use, to give the airport a noise easement and/or an easement prohibiting trees, residential development, and the erection of any structures on the property up to the airport's building restriction line. City of Bowling Green v. Cooksey, 858 S.W.2d 190, 1992 Ky. App. LEXIS 227 (Ky. Ct. App. 1992).

Appellate court erred in finding that the land at issue was left essentially valueless to the owner after the condemning authority took possession of the land by easement rather than fee simple because the appellate court failed to give appropriate deference to the circuit court's finding that the authority acted in good faith, at the time the authority negotiated its taking with the owner, the authority a duty to pursue the taking of an interest less than fee simple ownership if its public purpose could be so achieved. Lexington-Fayette Urban Cty. Gov't v. Moore, 559 S.W.3d 374, 2018 Ky. LEXIS 448 (Ky. 2018).

2. Illustrative Cases.

Condemnation of an historic theatre was necessary for a valid public purpose, that the condemnor's desire to acquire a fee simple interest (instead of the easement offered by the condemnee) was not unreasonable, that the condemnor did not abuse its discretion, and that it had negotiated in good faith before filing suit. God's Ctr. Found., Inc. v. Lexington-Fayette Urban County Gov't, 125 S.W.3d 295, 2002 Ky. App. LEXIS 2315 (Ky. Ct. App. 2002).

Telecommunications company did not have the power to condemn the entirety of an owner's property, nor to condemn the owner's property for the purpose of expanding its "Point of Presence" facility, which was not a "telephone line" for purposes of KRS 278.540(2); the telecommunications company abused its discretion in pursuing a condemnation action against the owner's entire property, and a trial court erred in entering summary judgment in favor of the telecommunications company on the owner's counterclaim for abuse of process. Leggett v. Sprint Communs. Co., L.P., 2005 Ky. App. LEXIS 255 (Ky. Ct. App. 2005), aff'd in part and rev'd in part, 307 S.W.3d 109, 2010 Ky. LEXIS 64 (Ky. 2010).

Easement was properly granted to a gathering pipeline operator because the operator engaged in good faith negotiations prior to filing a condemnation petition; the proper corporate entity conducted the negotiations, and good faith negotiations were undertaken based on the written correspondence. Milam v. Viking Energy Holdings, LLC, 370 S.W.3d 530, 2012 Ky. App. LEXIS 99 (Ky. Ct. App. 2012).

3. Right of Agency to Condemn.

If, prior to the entry of an interlocutory judgment, the issue of the right of the agency to condemn was timely and properly raised, it should have been heard and determined before entry of a judgment awarding the agency the possession, use and control of the property being condemned. Idol v. Knuckles, 383 S.W.2d 910, 1964 Ky. LEXIS 64 (Ky. 1964) (decided under prior law).

The landowner had no appeal to challenge the right of the condemning agency to take the property being condemned. Anderson v. Urban Renewal & Community Development Agency, 436 S.W.2d 533, 1968 Ky. LEXIS 187 (Ky. 1968), appeal denied, 395 U.S. 823, 89 S. Ct. 2133, 23 L. Ed. 2d 738,

1969 U.S. LEXIS 1170 (1969), appeal dismissed, Anderson v. Urban Renewal & Community Development Agency, 395 U.S. 823, 89 S. Ct. 2133, 23 L. Ed. 2d 738, 1969 U.S. LEXIS 1170 (1969) (decided under prior law).

An appeal testing the propriety of the circuit court's ruling upholding the agency's right to take is precluded once the circuit court affords a hearing and renders a judgment sustaining the agency's right to condemn. Cartmell v. Urban Renewal & Community Development Agency, 432 S.W.2d 445, 1968 Ky. LEXIS 343 (Ky. 1968) (decided under prior law).

If the issue of the right of the agency to condemn was properly presented it had to be adjudicated before the court awards the interlocutory judgment. Cartmell v. Urban Renewal & Community Development Agency, 432 S.W.2d 445, 1968 Ky. LEXIS 343 (Ky. 1968) (decided under prior law).

Fact that the commissioners placed a substantially higher value on the property did not necessarily indicate that the Department of Highway's offer was unreasonable; thus, the trial court did not clearly err in finding that the Department negotiated in good faith in regard to the condemnation action. Rabourn v. Commonwealth, 2006 Ky. App. Unpub. LEXIS 137 (Ky. Ct. App. 2006).

Cited in:

Hicks v. City of Hopkinsville, 2022 Ky. App. LEXIS 32 (Ky. Ct. App. 2022).

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Ruh & Lockaby, Balancing Private Property Rights with "Public Use": A Survey of Kentucky Courts' Interpretation of the Power of Eminent Domain., 32 N. Ky. L. Rev. 743 (2005).

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Order Appointing Commissioners, Form 307.07.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Petition for Condemnation (Temporary and Permanent Easement), Form 307.01.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

416.560. Initiation of condemnation proceedings — Costs — Right of entry — Notice to property owner — Damages.

(1) Notwithstanding any other provision of law, a department, instrumentality or agency of a consolidated local government, city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class or a consolidated local government, having a right of eminent domain under other statutes shall exercise such right only by requesting the governing body of the consolidated local government, city, county, or urban-county government to institute condemnation proceedings on its behalf. If the governing body of the consolidated local government, city, county, or urban-county government agrees, it shall institute condemnation proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality, or agency requesting the condemnation.

(2) If any department, instrumentality, or agency of a consolidated local government, city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class or a consolidated local government, operates in more than one (1) governmental unit, it shall request the governing body of the consolidated local government, city, county, or urban-county government wherein the largest part of the individual tract of the property sought to be condemned lies, to institute condemnation proceedings on its behalf.

(3) A department, instrumentality, or agency of the Commonwealth of Kentucky, other than the Transportation Cabinet and local boards of education, having a right of eminent domain under other statutes shall exercise that right only by requesting the Finance and Administration Cabinet to institute condemnation proceedings on its behalf. If the Finance and Administration Cabinet agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality, or agency requesting the condemnation.

(4)(a) Prior to the filing of the petition to condemn, the condemnor or its employees or agents shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, sounding, and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified in accordance with paragraph (b) of this subsection no later than ten (10) days prior to entry on the property.

(b) Notification under paragraph (a) of this subsection shall:

1. Be delivered to the property owner by:

a. Certified mail, return receipt requested, to the last known address of the property owner listed on the real property tax rolls of the county; or

b. Hand delivery to the property owner, verified by government-issued identification and accompanied by the signature of the property owner; and

2. Include the following information:

a. That all or a portion of the property is necessary for a public project;

b. The nature of the project for which the property is considered necessary and the parcel designation of the property to be acquired. If disclosure of specific project details is restricted by a legally binding nondisclosure agreement entered into in connection with an economic development project, the condemnor may describe the project in general terms sufficient to identify the public purpose without disclosing confidential or proprietary information;

c. A copy of the provision of law granting the condemnor the power of eminent domain;

d. The estimated timeline for completion of the portion of the project for which the property is to be taken;

e. That, within fifteen (15) business days after receipt of a request by the property owner, the condemnor will provide copies, to the extent prepared, of:

i. Right-of-way maps or other documents that depict the proposed taking; and

ii. Nonconfidential construction plans that depict project improvements to be constructed

on the property taken and improvements to be constructed adjacent to the remaining property, including but not limited to plan, profile, cross-section, drainage, pavement marking sheets, and driveway connection detail;

f. That the property owner may obtain an independent appraisal of the property as described in KRS 416.550(2); and

g. That the property owner has the right to request one (1) public meeting under subsection (6)(a) of this section if a public meeting regarding the proposed project, of which the property owner was notified, has not previously been held.

(c) Surveys and appraisals conducted under paragraph (a) of this subsection shall be:

1. Conducted using only up-to-date data; and

2. Provided to the property owner within fifteen (15) days of completion.

(d) Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or the court may refer the matter to commissioners to ascertain and assess the damages sustained by the condemnee, which award shall be subject to appeal.

(5) The condemnor shall notify the property owner of a material change to the information disclosed under subsection (4)(b)2. of this section via:

(a) Certified mail, return receipt requested; or

(b) Hand delivery, verified by government-issued identification and accompanied by the signature of the property owner;

within fifteen (15) days of the condemnor's determination to proceed with the material change.

(6)(a)1. After receiving notification under subsection (4)(b) or (5) of this section, the property owner may, within thirty (30) days of receipt, request that the condemnor host a public meeting regarding the proposed taking if a public meeting regarding the proposed taking, of which the property owner was notified, has not previously been held. The public meeting shall be held in the county where the property needed for the project is located and at a site secured by the condemnor.

2. The meeting shall be held within thirty (30) days of the request, and the condemnor shall attend the meeting.

3. The sole purpose of the meeting shall be to accept comments from the public regarding the proposed project.

(b) Failure to provide notification under subsection (4)(b) or (5) of this section shall result in a dismissal of the condemnation action pursuant to KRS 416.610(4).

History.

Enact. Acts 1976, ch. 140, § 4; 1982, ch. 239, § 1, effective July 15, 1982; 2000, ch. 45, § 1, effective July 14, 2000; 2002, ch. 346, § 230, effective July 15, 2002; 2026 ch. 112, § 4, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Watershed Conservancy District.
2. Sanitation District.
3. Evidence.
4. City or County Participation.
5. Costs.
6. Waterfront Development Corporation.
7. Damages.

1. Watershed Conservancy District.

A watershed conservancy district was not a branch or instrumentality of state government so as to require it to proceed through the Department of Finance in all condemnation suits, pursuant to subsection (3) of this section. Fearin v. Fox Creek Valley Watershed Conservancy Dist., 667 S.W.2d 389, 1983 Ky. App. LEXIS 380 (Ky. Ct. App. 1983).

2. Sanitation District.

Sanitation district did not lack authority to initiate condemnation proceedings on its own behalf under KRS 416.560(1) because it was not a department, instrumentality or agency of local government, but rather, an autonomous political subdivision under KRS 220.110(1) with fully authority within its boundaries as to the construction and operation of sanitation improvements. Garriga v. Sanitation Dist. No. 1, 2003 Ky. App. LEXIS 305 (Ky. Ct. App. 2003).

3. Evidence.

Where the landowner in condemnation proceeding demonstrated no exceptional circumstances preventing it from obtaining facts or opinions on the same subject by other means, the trial court properly excluded admission of the appraisal report of transportation cabinet employee since such report was an expert opinion pursuant to CR 26.02(4)(b). Commonwealth, Dep't of Transp., Bureau of Highways v. Crafton-Duncan, Inc., 668 S.W.2d 62, 1984 Ky. App. LEXIS 486 (Ky. Ct. App. 1984).

4. City or County Participation.

Under subsection (5) of KRS 183.133, the county air board must comply with the procedure for condemnation set out in this section; the board does not have authority to condemn absent county participation. Bernard v. Russell County Air Bd., 718 S.W.2d 123, 1986 Ky. LEXIS 297 (Ky. 1986).

5. Costs.

The fee of the condemnee's expert appraisal witness was not a court cost and, therefore, the Commonwealth was not required to pay the fee. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

6. Waterfront Development Corporation.

Waterfront Development Corporation (WDC) is a state instrumentality, but it is also a city and a county agency; as a city agency, the WDC is required to request the city's governing body to institute condemnation proceedings on its behalf. Martingale, LLC v. City of Louisville, 151 S.W.3d 829, 2004 Ky. App. LEXIS 203 (Ky. Ct. App. 2004), cert. denied, 545 U.S. 1115, 125 S. Ct. 2913, 162 L. Ed. 2d 295, 2005 U.S. LEXIS 4688 (U.S. 2005).

"Costs" are the amounts paid to the court system or to officers of the court, not incidental or indirect fees which are at best colored as costs. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

7. Damages.

When it has been proven that the owner of property, on which land is being taken by the power of eminent domain, has purchased such property with knowledge of that fact, he is not entitled, for the purpose of assessing damages, to have it considered a part of other property previously acquired by him. Commonwealth, Dep't of Highways v. Raybourn, 359 S.W.2d 611, 1962 Ky. LEXIS 200 (Ky. 1962).

Where condemnee's property was wrecked pursuant to an order authorizing possession and prior to a second order setting aside the authorizing order condemnees could not recover damages from the wreckers since the court had the power under former statute to authorize possession upon payment into court of the award of commissioners. Dinwiddie v. Urban Renewal & Community Development Agency, 393 S.W.2d 872, 1965 Ky. LEXIS 247 (Ky. 1965) (decided under prior law).

OPINIONS OF ATTORNEY GENERAL.

The Department of Transportation does not, under this section, have the right to enter upon private property which has not as yet been acquired for highway right of way to make excavations for archaeological search. OAG 78-10, 1978 Ky. AG LEXIS 706.

An air board is not a department, instrumentality or agency of such a government within the meaning of subsection (1) of this section. OAG 78-526, 1978 Ky. AG LEXIS 733.

An air board need not proceed with a condemnation proceeding through the governing bodies of the city and county as suggested by subsection (1) of this section, and such a proceeding may be initiated by the board itself. OAG 78-526, 1978 Ky. AG LEXIS 733.

Under the associated words doctrine, the word "instrumentality" appearing in subsection (1) of this section must be of the same class as the categories "department" and "agency," and since the riverport authority provided for in KRS 65.510 et seq., although lacking taxing power, possesses power to contract, borrow, and finance its own projects, it is not a department, instrumentality or agency of any county or city within the meaning of subsection (1) and may initiate condemnation proceedings on its own behalf. OAG 79-133, 1979 Ky. AG LEXIS 536.

Assuming that a riverport authority is an instrumentality or agency of the county, subsection (1) of this section and subsections (4) and (5) of KRS 65.530 are irreconcilable with respect to condemnation of property which the authority has been unable to purchase, since the first statute provides that the fiscal court would condemn and the second statute provides the riverport authority may, itself, condemn the property; however, since the legislature republished KRS 65.530 after the enactment of this section, it intended, as relates to the specific subject of riverport authorities, to impliedly repeal subsection (1) of this section to that extent since, whenever there are apparent irreconcilable conflicts in statutes, the later statute controls; thus, the riverport authority may proceed, with the consent of the fiscal court, to condemn the land under its own name. OAG 81-244, 1981 Ky. AG LEXIS 196.

The Louisville Water Company, which is an agency and municipally-owned utility of the city of Louisville but which also operates outside the city and in Jefferson and Oldham Counties, including several small cities, would be subject to the requirements of this section before condemnation proceedings can be instituted. OAG 81-314, 1981 Ky. AG LEXIS 125.

Although KRS 416.130(2) provides that a power company may condemn in the manner provided in the Eminent Domain Act and subsection (4) of this section, which is part of that act, does not contain any requirement of a bond in connection with a precondemnation survey of the land, the provision of KRS 416.130(1), requiring such a bond is controlling as being the later and more specific statute on the subject of prefile survey and damage to land; accordingly, a rural power cooperative was required to post bond before making a survey and appraisal of private property for the purpose of constructing a transmission line and prior to the filing of a petition for condemnation. OAG 81-383, 1981 Ky. AG LEXIS 58.

Although KRS 416.130(2) provides that condemnation shall be brought in the manner provided in the Eminent Domain Act of Kentucky and subsection (1) provides for a bond to cover prefile damages, subsection (4) of this section merely declares a cause of action for any prefile damages, and thus there is no basic disharmony or real conflict, since the bond merely guarantees recovery for any damages under the terms of the bond. OAG 81-383, 1981 Ky. AG LEXIS 58.

A watershed conservancy district existing pursuant to KRS 262.700 et seq., with its defined though limited powers of government, including the authority to tax, borrow money, issue bonds, purchase land and construct necessary structures, is a separate entity and not a department, instrumentality or agency of a city or county or of the Commonwealth in the sense contemplated by subsections (1), (2) and (3) of this section. A watershed conservancy district may, therefore, initiate condemnation proceedings on its own behalf, since subsections (1), (2) and (3) of this section have no application, assuming, of course, that the watershed conservancy district has received prior approval from the board of supervisors of the soil conservation district pursuant to KRS 262.745. OAG 82-272, 1982 Ky. AG LEXIS 360.

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Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Petition for Condemnation of Underground Storage Reservoir, Form 354.04.

416.570. Filing of petition.

Except as otherwise provided in KRS 416.560, a condemnor seeking to condemn property or the use and occupation of the property, shall file a verified petition in the Circuit Court of the county in which all or the greater portion of the property sought to be condemned is located, which petition shall state that it is filed under the provisions of KRS 416.540 to 416.670 and shall contain, in substance:

(1) Allegations sufficient to show that the petitioner is entitled, under the provisions of applicable law, to exercise the right of eminent domain and to condemn the property, or the use and occupation thereof, sought to be taken in such proceedings;

(2) A particular description of the property and the use and occupation thereof sought to be condemned; and

(3) An application to the court to appoint commissioners to award the amount of compensation the owner of the property sought to be condemned is entitled to receive therefor.

History.

Enact. Acts 1976, ch. 140, § 5; 2026 ch. 112, § 7, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Procedure.

3. Bad Faith or Fraud.
4. Denial of Right to Take.
5. Defective Description.
6. Description Adequate.

1. Constitutionality.

This section is not unconstitutionally vague on the theory that the requirements of a condemnation petition are insufficient to permit the public service commissioners to make a proper award. Duerson v. East Kentucky Power Coop., Inc., 843 S.W.2d 340, 1992 Ky. App. LEXIS 238 (Ky. Ct. App. 1992).

2. Procedure.

In an eminent domain case, the trial court erred in not disposing of all the claims concerning the right to take before the jury aspect of the case and in allowing a claim for damages to go to the jury. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

In eminent domain proceedings there are no statutory provisions or other authority for allowing the taking but limiting damages to monetary sums, for bifurcation of the jury trial, or for deciding if fraud exists in the negotiations if the jury award exceeds the commissioners' recommendation. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

3. Bad Faith or Fraud.

The Eminent Domain statutes make no provisions for the jury to consider bad faith or fraud; any allegation of bad faith or fraud would necessarily have to come before the judge who would decide if it affects the state's right to take. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

4. Denial of Right to Take.

In eminent domain proceedings a court will deny the right to take only where there has been gross abuse or manifest fraud. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

5. Defective Description.

Where defective description in original complaint of property sought to be condemned was cured by correct description in amended complaint and commissioners did in fact view and appraise the actual property condemned and properly described the property in their amended report, circuit court did not err in refusing to appoint new commissioners or to dismiss the original complaint without prejudice, where no exceptions were taken to the original complaint and motion to permit filing of exceptions after the time had expired was overruled. Whitesburg Municipal Housing Com. v. Hale, 371 S.W.2d 482, 1963 Ky. LEXIS 99 (Ky. 1963) (decided under prior law).

6. Description Adequate.

In a case involving a pipeline easement, a trial court did not err by granting such because the property was adequately described in a condemnation petition; a trial court found that the testimony of a surveyor was sufficient where it located the centerline of the easement and location of the gas pipeline buried in the easement. Milam v. Viking Energy Holdings, LLC, 370 S.W.3d 530, 2012 Ky. App. LEXIS 99 (Ky. Ct. App. 2012).

Cited in:

Ratliff v. Fiscal Court of Caldwell County, 617 S.W.2d 36, 1981 Ky. LEXIS 252 (Ky. 1981); Commonwealth, Dep't of Transp., Bureau of Highways v. Catlett, 568 S.W.2d 759, 1978 Ky. App. LEXIS 553 (Ky. Ct. App. 1978); City of Bowling Green v. Cooksey, 858 S.W.2d 190, 1992 Ky. App. LEXIS 227 (Ky. Ct. App. 1992).

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Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Petition for Condemnation of Underground Storage Reservoir, Form 354.04.

416.580. Commissioners — Appointment — Report — Compensation — Vacancy — Majority required — Eminent domain proceedings.

(1)(a) The Circuit Court, or in the absence of the Circuit Judge from the county, the Circuit Court Clerk, shall appoint as commissioners three (3) impartial housekeepers of the county who are owners of land. They shall be sworn to faithfully and impartially discharge their duties under this section. The commissioners shall view the land or material sought to be condemned and award to the owner or owners such a sum as will fairly represent the reduction in the market value of the entire property, all of or a portion of which is sought to be condemned, said sum being the difference between the market value of the entire property immediately before the taking and the market value of the remainder of the property immediately after the taking thereof, together with the fair rental value of any temporary easements sought to be condemned. Within fifteen (15) days from the date of their appointment they shall return a written report to the office of the Circuit Court, stating the above values in their award and shall describe in their report the property sought to be condemned. They shall be allowed a reasonable fee which shall be taxed as costs.

(b) If any person appointed to serve as commissioner fails, refuses or becomes incapable of acting, the court, or judge thereof shall forthwith appoint a qualified person to fill the vacancy. A majority of the commissioners appointed and qualified have the power to act and to make and sign the award and report. If a majority of the commissioners do not agree on a decision, three (3) new commissioners shall be appointed by the court on application by any of the parties to the action.

(2) In eminent domain proceedings instituted pursuant to KRS 99.700 to 99.730, in determining the market of value blighted or deteriorated property, the commissioners shall consider:

(a) The estimated cost of repairs necessary to bring the property up to the minimum standards of the local housing or nuisance code as determined by an independent appraiser, general building or residential contractor or inspector; or

(b) The cost of demolition of the property, if the commissioners determine that demolition would be the most cost-effective manner of addressing the blighted or deteriorated structures on the property.

History.
Enact. Acts 1976, ch. 140, § 6; 2016 ch. 127, § 10, effective July 15, 2016.

NOTES TO DECISIONS

Analysis

1. Report As Evidence.
2. Valuation.
3. Appointment.
4. Valuation.

1. Report As Evidence.
The commissioners' report, executed while they were duly sworn, was sufficient evidence to support the jury's award to landowners after condemnation of two easements, even though the commissioners later made inconsistent statements in court indicating a different value than the value quoted in the report. Lake Village Water Ass'n v. Sorrell, 815 S.W.2d 418, 1991 Ky. App. LEXIS 105 (Ky. Ct. App. 1991).

2. Valuation.
Commissioners did not err in determining the value of a bridge taken by a city in condemnation proceedings based only on the Kentucky portion of the bridge as the predecessor of the limited liability company (LLC) that owned the bridge purchased the bridge at a sheriff's sale; as the sheriff could only levy on property located in Kentucky, the LLC did not purchase the portion of the bridge located in Indiana. Martingale, LLC v. City of Louisville, 151 S.W.3d 829, 2004 Ky. App. LEXIS 203 (Ky. Ct. App. 2004), cert. denied, 545 U.S. 1115, 125 S. Ct. 2913, 162 L. Ed. 2d 295, 2005 U.S. LEXIS 4688 (U.S. 2005).

3. Appointment.
Although the county court record did not contain an order appointing or reappointing commissioners but contained the revised report of the commissioners which was signed by each of them and in which it was stated that they were duly sworn it must be assumed by the reviewing court from the language of the report and from the judgment approving the report that the commissioners were properly appointed and sworn according to law. Price v. Commonwealth, Dep't of Highways, 385 S.W.2d 670, 1964 Ky. LEXIS 160 (Ky. 1964) (decided under prior law).

4. Valuation.
Circuit court properly denied an owner's motion for an evidentiary hearing and entered an interlocutory judgment to a public utility because the utility had the right to condemn the easement in the owner's real property and was permitted to take possession of the easement upon payment of the compensation awarded, there was no need for, nor a right to, another hearing, the utility did not act arbitrarily when it petitioned the court to condemn the modified, but overlapping, easement in order to avoid a small cemetery found along the original route, and the owner did not seek an injunction or post a supersedeas bond to stay enforcement of the interlocutory judgment. Allard v. Big Rivers Elec. Corp., 602 S.W.3d 800, 2020 Ky. App. LEXIS 61 (Ky. Ct. App. 2020).

Cited in:
Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

OPINIONS OF ATTORNEY GENERAL.

An employee of a city or county can act as a court commissioner appointed to appraise real estate pursuant to this section and receive compensation therefor, since the court commissioner position is an office of the court at most and thus not a state, county or municipal office; the holding of both positions does not violate KRS 61.080 or Ky. Const., § 165. OAG 81-368, 1981 Ky. AG LEXIS 60.

The appointment by a Circuit Court judge of a city comptroller to the position of court commissioner to appraise real estate pursuant to this section would at most constitute appointment to an office of the court which is not a state, county or municipal office; accordingly, the holding of both offices would violate neither KRS 61.080 nor Ky. Const., § 165. OAG 81-368, 1981 Ky. AG LEXIS 60.

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Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Petition for Condemnation (Temporary and Permanent Easement), Form 307.01.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Interlocutory Order and Judgment, Easement, Form 307.05.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Report of Commissioners in Condemnation Proceeding, Form 354.05.

416.590. Issuing summons.

Upon the application of the petitioner, and the filing of any necessary affidavits, the clerk of the court shall issue process against the owner to show cause why the petitioner does not have the right to condemn the lands, or the use and occupation thereof sought to be condemned. The summons shall contain a statement of the amount of the award and shall state that an answer or other pleading, if any, must be filed within twenty (20) days from date of service. The clerk shall make such orders as to nonresidents and persons under disability as are required by the statutes and Rules of Civil Procedure in actions against them in Circuit Courts.

History.
Enact. Acts 1976, ch. 140, § 7.

NOTES TO DECISIONS

1. Defective Summons.
Oral notification concerning defective summons was not tantamount to a pleading for extension of time in which to file exceptions and exceptions to award not filed by condemnor within 20 days after report was filed were properly stricken where defendants failed to file an answer or other pleading or exceptions to the report. Whitesburg Mun. Hous. Comn'n v. Caudill, 369 S.W.2d 124, 1963 Ky. LEXIS 66 (Ky. 1963) (decided under prior law).

Cited in:
Kentucky Utilities Co. v. Brashear, 726 S.W.2d 321, 1987 Ky. App. LEXIS 452 (Ky. Ct. App. 1987).

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Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

416.600. Filing answer.

Any answer or other pleading filed by the owner in response to the summons shall be filed on or before the twenty (20) days after date of service and shall be confined solely to the question of the right of the petitioner to condemn the property sought to be condemned, but without prejudice to the owner's right to except from the amount of the compensation awarded in the manner provided in KRS 416.540 to 416.670.

History.
Enact. Acts 1976, ch. 140, § 8; 2026 ch. 112, § 8, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Failure to File Answer.
2. Bad Faith or Fraud.

1. Failure to File Answer.
Since subsection (3) of KRS 416.610 confines any exception to the amount of compensation awarded, the condemnees' statement which accepted the commissioners' award, but requested a legal entrance to the remainder of their property was not an exception to the award; the condemnees should have filed an answer to the condemnation petition to challenge their remaining access, and failure to file an answer precluded them from raising the issue as an exception. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

2. Bad Faith or Fraud.
The Eminent Domain statutes make no provisions for the jury to consider bad faith or fraud; any allegation of bad faith or fraud would necessarily have to come before the judge who would decide if it affects the state's right to take. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

Cited in:
Ratliff v. Fiscal Court of Caldwell County, 617 S.W.2d 36, 1981 Ky. LEXIS 252 (Ky. 1981); Stidham v. Commonwealth, Dep't of Transp., Bureau of Highways, 579 S.W.2d 372, 1978 Ky. App. LEXIS 671 (Ky. Ct. App. 1978).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Answer to Petition for Condemnation and Exception to Report of Commissioners, Form 354.06.

416.610. Trial by court on pleadings — Interlocutory judgment.

(1) After the owner has been summoned twenty (20) days, the court shall examine the report of the commissioners to determine whether it conforms to the provisions of KRS 416.580. If the report of the commissioners is not in the proper form, the court shall require the commissioners to make such corrections as are necessary.

(2) If no answer or other pleading is filed by the owner or owners putting in issue the right of the petitioner to condemn the property or the use and occupation of the property sought to be condemned, the court shall enter an interlocutory judgment which shall contain, in substance:

(a) A finding that the petitioner has the right, under the provisions of KRS 416.540 to 416.670 and other applicable law to condemn the property or the use and occupation of the property;

(b) A finding that the report of the commissioners conforms to the provisions of KRS 416.580;

(c) An authorization to take possession of the property for the purposes and under the conditions and limitations, if any, set forth in the petition upon payment to the owner or to the clerk of the court the amount of the compensation awarded by the commissioners;

(d) Proper provision for the conveyance of the title to the land and material, to the extent condemned, as adjudged therein in the event no exception is taken as provided in KRS 416.620(1); and

(e) In cases where only a portion of the property has been condemned, a requirement that the condemnor take appropriate measures to ensure reasonable, direct access to the property for the duration of the on-site work for the project.

(3) Any exception from the interlocutory judgment by either party or both parties shall be confined solely to exceptions to the amount of compensation awarded by the commissioners.

(4) If the owner has filed an answer or pleading putting in issue the right of the petitioner to condemn the property or use and occupation thereof sought to be condemned, the court shall, without intervention of a jury, proceed immediately to hear and determine whether the petitioner has that right. If the court determines that petitioner has condemnation rights, an interlocutory judgment, as provided for in subsection (2) of this section, shall be entered. If the court determines that petitioner does not have that right, it shall enter a final judgment which shall contain, in substance:

(a) A finding that the report of the commissioners conforms to KRS 416.580;

(b) A finding that the petitioner is not authorized to condemn the property or the use and occupation of the property for the purposes and under the conditions and limitations set forth in the petition, stating the particular ground or grounds on which the petitioner is not so authorized; and

(c) An order dismissing the petition and directing the petitioner to pay all costs.

History.
Enact. Acts 1976, ch. 140, § 9; 2026 ch. 112, § 5, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Answer and Exceptions.
2. Expedited Appeal.
3. Appealable Order.
4. All Costs.
5. Exception to Award.
6. Improper Procedure.
7. Denial of Right To Take.
8. Dismissal.

1. Answer and Exceptions.

Where the homeowner's exceptions to the commissioners' report were incorporated in his answer, the whole could be considered a pleading, and since the Commonwealth did not file its motion to strike within the 20 days required by CR 12.06, after the homeowner filed his answer and exceptions, the exceptions should not have been stricken. Stidham v. Commonwealth, Dep't of Transp., Bureau of Highways, 579 S.W.2d 372, 1978 Ky. App. LEXIS 671 (Ky. Ct. App. 1978).

Even if the landowners' attorneys were not present at the judgment nor notified of its entry, the property owners should have made inquiry of the progress of the eminent domain proceedings, as subsection (4) of this section required the court to "proceed forthwith" to hear and determine whether or not the Commonwealth utilities had a right to condemn; therefore, the 30-day time period for filing exceptions ran against the property owners. Kentucky Utilities Co. v. Brashear, 726 S.W.2d 321, 1987 Ky. App. LEXIS 452 (Ky. Ct. App. 1987).

2. Expedited Appeal.

The provisions of subsection (4) of this section allow a condemnee an immediate, expedited appeal on the question of the condemnor's right to take, despite the absence of an express statutory right to appeal; Ky. Const., § 115, of which the Legislature was aware when this section was enacted, mandates an appeal in all civil and criminal cases, and moreover, in the absence of an immediate appeal, the condemnee cannot be returned to its original position because the condemnor is given the right of immediate possession and can proceed to achieve whatever construction or destruction was the purpose of the petition for condemnation. Ratliff v. Fiscal Court of Caldwell County, 617 S.W.2d 36, 1981 Ky. LEXIS 252 (Ky. 1981).

3. Appealable Order.

An interlocutory judgment made pursuant to this section, which adjudged that a utility had the right to condemn an easement across the condemnees' land for the purpose of constructing and maintaining electricity transmission lines and authorized the utility to take possession of the easement, was final and appealable as to the issue of the right to condemn and the right to immediate entry; accordingly, where the condemnees filed neither a timely notice of appeal nor a timely motion to set aside or vacate the judgment, the trial court was powerless to enlarge the time period allowed for the filing of such motions. Hagg v. Kentucky Utilities Co., 660 S.W.2d 680, 1983 Ky. App. LEXIS 363 (Ky. Ct. App. 1983).

Where the Circuit Court entered an interlocutory order and judgment pursuant to subsection (2) of this section holding that the Commonwealth had the right to condemn certain real property for use in a highway project, where property owner and Commonwealth objected to the award of the commissioners of $110,000, but neither contested the Commonwealth's right to take the subject real property, where the Commonwealth paid the amount of the commissioners' award into court, property owner withdrew the amount of the award and the highway project was completed, and where in 1987, the Commonwealth determined that it took only 3.895 acres, not the 4.884 acres of said property as described in the interlocutory judgment, the Commonwealth, pursuant to Civil Rule 15.01, was entitled to leave to amend its petition and for an order entering an amended interlocutory judgment, as the condemning authority should not have to pay for more land than it actually took. Hamilton v. Commonwealth Transp. Cabinet, Dep't of Highways, 799 S.W.2d 39, 1990 Ky. LEXIS 140 (Ky. 1990).

While the word "interlocutory" normally implies a non-appealable order, a KRS 416.610(2)(c) order can be appealed if a matter is finally litigated by the judgment, or if it operates to divest some right in such manner as to put it out of the power of the court to place the parties in their original condition; if the right of immediate possession is exercised, in many instances, even if an appellate court later reverses the trial court's determination of the condemnor's right to take, the condemnee cannot be returned to his same position. Kipling v. City of White Plains, 80 S.W.3d 776, 2001 Ky. App. LEXIS 1167 (Ky. Ct. App. 2001).

Circuit court properly denied an owner's motion for an evidentiary hearing and entered an interlocutory judgment to a public utility because the utility had the right to condemn the easement in the owner's real property and was permitted to take possession of the easement upon payment of the compensation awarded, there was no need for, nor a right to, another hearing, the utility did not act arbitrarily when it petitioned the court to condemn the modified, but overlapping, easement in order to avoid a small cemetery found along the original route, and the owner did not seek an injunction or post a supersedeas bond to stay enforcement of the interlocutory judgment. Allard v. Big Rivers Elec. Corp., 602 S.W.3d 800, 2020 Ky. App. LEXIS 61 (Ky. Ct. App. 2020).

4. All Costs.

The phrase "all costs" in subdivision (4)(c) of this section does not include an award of attorney's fees; as a general rule, attorney's fees are not allowed in the absence of a statute or contract expressly providing therefor, and there is no statute or contract expressly providing for an award of attorney's fees in a proceeding involving eminent domain. Commonwealth, Dep't of Transp., Bureau of Highways v. Knieriem, 707 S.W.2d 340, 1986 Ky. LEXIS 238 (Ky. 1986).

5. Exception to Award.

Since subsection (3) of this section confines any exception to the amount of compensation awarded, the condemnees' statement which accepted the commissioners' award, but requested a legal entrance to the remainder of their property was not an exception to the award; the condemnees should have filed an answer to the condemnation petition to challenge their remaining access, and failure to file an answer precluded them from raising the issue as an exception. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

6. Improper Procedure.

In an eminent domain case, the trial court erred in not disposing of all the claims concerning the right to take before the jury aspect of the case and in allowing a claim for damages to go to the jury. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

In eminent domain proceedings there are no statutory provisions or other authority for allowing the taking but limiting damages to monetary sums, for bifurcation of the jury trial, or for deciding if fraud exists in the negotiations if the jury award exceeds the commissioners' recommendation. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

7. Denial of Right To Take.

In eminent domain proceedings a court will deny the right to take only where there has been gross abuse or manifest

fraud. Commonwealth v. Cooksey, 948 S.W.2d 122, 1997 Ky. App. LEXIS 60 (Ky. Ct. App. 1997).

8. Dismissal.

In a condemnation case, a trial court erred when it dismissed a case for lack of prosecution because a statute was silent on the specific amount of time in which a trial on the exceptions and compensation was to be held, even though a property owner was entitled to a prompt trial on the issue of the condemnation itself. The property owner did not contest the right to take the property, but instead contested the valuation, and the trial court should have set the matter for a jury trial on compensation or made an interlocutory order and judgment final and appealable. Commonwealth v. Guess, 2015 Ky. App. LEXIS 63 (Ky. Ct. App. May 15, 2015), review denied, ordered not published, 2016 Ky. LEXIS 216 (Ky. Apr. 27, 2016).

Cited in:

Northern Kentucky Port Authority, Inc. v. Cornett, 625 S.W.2d 104, 1981 Ky. LEXIS 298 (Ky. 1981); Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977); Kentucky Utilities Co. v. Brashear, 726 S.W.2d 321, 1987 Ky. App. LEXIS 452 (Ky. Ct. App. 1987); Bush v. Commonwealth, Dep't of Highways, Transp. Cabinet, 777 S.W.2d 608, 1989 Ky. App. LEXIS 132 (Ky. Ct. App. 1989); 2022 Ky. App. LEXIS 32.

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Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Judgment in Condemnation Action, Form 354.07.

416.620. Trial of exceptions to interlocutory judgment — Questions as to compensation to be tried by jury — Appeals.

(1) Within thirty (30) days from the date of entry of an interlocutory judgment authorizing the petitioner to take possession of the property, exceptions may be filed by either party or both parties by filing with the clerk of the Circuit Court and serving upon the other party or parties a statement of exceptions, which statement shall contain any exceptions the party has to the award made by the commissioners. The statement of exceptions shall be tried, but shall be limited to the questions which are raised in the original statements of the exceptions, or as amended, but the owner shall not be permitted to raise any question, nor shall the court reconsider any question so raised, concerning the right of the petitioner to condemn the property. All questions of fact pertaining to the amount of compensation to the owner, or owners, shall be determined by a jury, which jury on the motion of either party shall be sent by the court, in the charge of the sheriff, to view the land and material. After a jury trial, and if possession previously has not been taken by the condemnor of the land and material condemned, it may do so upon the payment to the owner or to the clerk of the Circuit Court the amount of the compensation adjudged by the Circuit Court to be due the owner.

(2) Appeals may be taken to the Court of Appeals from the final judgment of the Circuit Court as in other cases except that an appeal by the owner shall not operate as a supersedeas.

(3) The payment by the condemnor of the amount of compensation awarded and the taking possession of the lands and material condemned shall not prejudice its right to except from the award of the commissioners or the judgment of any court, nor shall the acceptance by the owner of the amount of the compensation awarded prejudice his right to except from the award of the commissioners or the judgment of any court.

(4) All costs in the Circuit Court shall be adjudged against the condemnor.

(5) If the condemnor takes possession of the property condemned and the amount of compensation is thereafter increased over that awarded by the commissioners, the condemnor shall pay interest to the owner at the rate of six percent (6%) per annum upon the amount of such increase from the date the condemnor took possession of the property. If the condemnor takes possession of the property condemned and the amount of compensation is thereafter decreased below that awarded by the commissioners, the condemnor shall be entitled to a personal judgment against the owner for the amount of the decrease plus interest at the rate of six percent (6%) per annum from the date the owner accepted the amount of compensation the condemnor paid into court or to the owner. If the owner at all times refuses to accept the payment tendered by the condemnor, no interest shall be allowed in the judgment against the owner for the amount of the decrease.

(6) Upon the final determination of exceptions, or upon expiration of thirty (30) days from entry of the interlocutory judgment if no exceptions are filed, the Circuit Court shall make such orders as may be proper for the conveyance of the title to the extent condemned, to the property, and shall enter such final judgment as may be appropriate.

History.

Enact. Acts 1976, ch. 140, § 10.

NOTES TO DECISIONS

Analysis

1. In General.
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1. In General.

Because the owner had lost the right of possession of the property being taken upon the payment of the commissioner's award into court and had no right to interest on the amount of the commissioner's award, the Legislature clearly contemplated that the owner could immediately withdraw the amount of the award except where there are conflicting claimants to the condemned property. Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

Where the Commonwealth failed to develop condemned property within the eight-year period specified in KRS 416.670, the condemnees could not recover monetary damages for a delay in notifying them of their right to repurchase the property; the delay was not a continued taking compensable under KRS 416.620 because the condemnees retained no interest in the property. Martin v. Commonwealth, 199 S.W.3d 195, 2006 Ky. App. LEXIS 67 (Ky. Ct. App. 2006).

2. Interest.

This section recognizes the owner's right to interest in the event of delay in the payment of compensation beyond the date of taking, but once the condemnor pays the amount of the commissioner's award to the clerk of the court, the condemnor has no further liability for interest on that sum. Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

The statutory interest provision of subsection (5) of this section controls when in conflict with the general statutory interest provision of KRS 360.040; consequently, six percent (6%) and not 12 percent, therefore, was the proper interest rate on judgment in condemnation suit. Commonwealth, Dep't of Transp., Bureau of Highways v. Crafton-Duncan, Inc., 668 S.W.2d 62, 1984 Ky. App. LEXIS 486 (Ky. Ct. App. 1984).

In a condemnation action, subsection (5) of this section requires that the interest rate of six percent (6%) shall apply to the amount of increase or decrease after entry of the final judgment as well as before the final judgment. Bush v. Commonwealth, Dep't of Highways, Transp. Cabinet, 777 S.W.2d 608, 1989 Ky. App. LEXIS 132 (Ky. Ct. App. 1989).

3. Filing of Exceptions.

This section is a limitations statute which prohibits the filing of exceptions at any time after 30 days from the date of interlocutory judgment but does not prohibit the filing of exceptions before the 30-day period. Stidham v. Commonwealth, Dep't of Transp., Bureau of Highways, 579 S.W.2d 372, 1978 Ky. App. LEXIS 671 (Ky. Ct. App. 1978).

The Circuit Court did not have discretion to permit the late filings of exceptions and deny the Commonwealth utilities' motion for final judgment pursuant to subsection (6) of this section, resulting in a jury determination of an award in excess of the award of the commissioners. Kentucky Utilities Co. v. Brashear, 726 S.W.2d 321, 1987 Ky. App. LEXIS 452 (Ky. Ct. App. 1987).

4. Appealable Order.

An interlocutory judgment made pursuant to KRS 416.610, which adjudged that a utility had the right to condemn an easement across the condemnees' land for the purpose of constructing and maintaining electricity transmission lines and authorized the utility to take possession of the easement, was final and appealable as to the issue of the right to condemn and the right to immediate entry; accordingly, where the condemnees filed neither a timely notice of appeal nor a timely motion to set aside or vacate the judgment, the trial court was powerless to enlarge the time period allowed for the filing of such motions. Hagg v. Kentucky Utilities Co., 660 S.W.2d 680, 1983 Ky. App. LEXIS 363 (Ky. Ct. App. 1983).

5. Costs.

"Costs" are the amounts paid to the court system or to officers of the court, not incidental or indirect fees which are at best colored as costs. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

The fee of the condemnee's expert appraisal witness was not a court cost and, therefore, the Commonwealth was not required to pay the fee. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

6. Statement Not Exception.

Since subsection (3) of KRS 416.610 confines any exception to the amount of compensation awarded, the condemnees' statement which accepted the commissioners' award, but requested a legal entrance to the remainder of their property was not an exception to the award; the condemnees should have filed an answer to the condemnation petition to challenge their remaining access, and failure to file an answer precluded them from raising the issue as an exception. Commonwealth, Transp. Cabinet, Dep't of Highways v. Wireman, 714 S.W.2d 159, 1986 Ky. App. LEXIS 1189 (Ky. Ct. App. 1986).

7. Writ of Prohibition Granted.

Statutory authority rests solely with the court-appointed commissioners to award just compensation to the owners of land being condemned; therefore, when the Circuit Court Judge ordered a mineral expert's reevaluation report incorporated into the commissioners' original report, even though the commissioners had reported to the court their decision to stand by their original report and award, the Circuit Court Judge usurped the statutory power and authority reserved by the legislature to the commissioners, and the Court of Appeals properly issued a writ of prohibition to prevent the Circuit Court from exceeding its lawful power and authority. Corns v. Transportation Cabinet, Dep't of Highways, 814 S.W.2d 574, 1991 Ky. LEXIS 116 (Ky. 1991).

8. Evidence.

Evidence of plans and specifications of highway department, the condemnor, for particular project is admissible to permit jury to determine to what extent remaining land will be affected, but plans are not conclusive as to future uses of property that may be made by condemnor. Commonwealth, Dep't of Highways v. Lyons, 364 S.W.2d 336, 1963 Ky. LEXIS 205 (Ky. 1963) (decided under prior law).

Topography of ground and susceptibility of land for use as a subdivision could be shown by a plat with lines marking proposed lots on tract purchased for a subdivision and half developed at time of condemnation for interstate highway. Commownealth, Dep't of Highways v. McCready, 371 S.W.2d 485, 1963 Ky. LEXIS 101 (Ky. 1963) (decided under prior law).

Evidence of purchase price paid five (5) years and two (2) months before condemnation action was admissible. Commonwealth, Dep't of Highways v. Whitledge, 406 S.W.2d 833, 1966 Ky. LEXIS 220 (Ky. 1966) (decided under prior law).

Evidence of formula used by gasoline industry based on gallons of gasoline sold to determine value of service station property was admissible. Standard Oil Co. v. Commonwealth, Dep't of Highways, 414 S.W.2d 570, 1966 Ky. LEXIS 14 (Ky. 1966) (decided under prior law).

9. —Burden of Proof.

Where both parties appeal to the Circuit Court in a condemnation proceeding, the burden of proof upon a trial of the issue of damages before a jury is upon the condemnor. Commonwealth, Dep't of Highways v. Snyder, 309 S.W.2d 351, 1958 Ky. LEXIS 352 (Ky. 1958) (decided under prior law).

Burden of proving bad faith of abandonment was on condemnee asserting such claim as affirmative defense. Commonwealth, Dep't of Highways v. Fultz, 360 S.W.2d 216, 1962 Ky. LEXIS 220 (Ky. 1962) (decided under prior law).

The burden of proving the value of the land condemned for highway purposes and that damages were less than the sum awarded in county court was on Commonwealth on its appeal to Circuit Court. Commonwealth, Dep't of Highways v. Berryman, 363 S.W.2d 525, 1962 Ky. LEXIS 279 (Ky. 1962) (decided under prior law).

10. —Value of Testimony.

It was improper to testify to "per lot" value of property not actually subdivided although the property was suitable for subdivision. Commonwealth, Dep't of Highways v. Evans, 361 S.W.2d 766, 1962 Ky. LEXIS 252 (Ky. 1962) (decided under prior law).

Witness may testify that he acted as commissioner and as to character of inspection that he made of premises, and then he may be interrogated as any other witness as to damages, and if he gives higher value at trial than award in which he acquiesced in county court, his testimony may be impeached by inquiring into amount of award. Commonwealth, Dep't of Highways v. Evans, 361 S.W.2d 766, 1962 Ky. LEXIS 252 (Ky. 1962) (decided under prior law).

Testimony of witness on value was not without probative value where it was plain from his testimony that he knew the type of coal seams that were under land, and average tons per acre of each seam in area where both seams were present. West Kentucky Coal Co. v. Commownealth, Dep't of Highways, 368 S.W.2d 738, 1963 Ky. LEXIS 52 (Ky. 1963) (decided under prior law).

Testimony as to value of land condemned should be stricken when witness makes it unmistakably clear on cross-examination that his estimates are based entirely on incompetent and improper factors, but it cannot be stricken or ignored merely because he flounders a little. Commonwealth, Dep't of Highways v. McGeorge, 369 S.W.2d 126, 1963 Ky. LEXIS 68 (Ky. 1963) (decided under prior law).

It was not error to permit condemnee's witnesses to testify to the value of the land for subdivision purposes and make appropriate allowances for developing it by taking into account the number of lots that could be produced, comparable sales in similar subdivisions, allowance of a reasonable time in which to sell the lots and cost of development of the subdivision including installation of utilities and paved streets which testimony was similar to that used by condemnor's witnesses who treated the land as subdivision lots instead of as farm land. Commownealth, Dep't of Highways v. McCready, 371 S.W.2d 485, 1963 Ky. LEXIS 101 (Ky. 1963) (decided under prior law).

Witness, to be qualified to testify as to value of realty, must know property to be valued and value of property in vicinity, must understand standard of value, and must be possessed of ability to make a reasonable inference. Commonwealth, Dep't of Highways v. Slusher, 371 S.W.2d 851, 1963 Ky. LEXIS 114 (Ky. 1963) (decided under prior law).

Appraisal witnesses on direct examination may, after proper qualification as to competence, testify to the before and after market value of property involved, and may relate any pertinent factors considered by them in arriving at values to which they have testified; in so doing they may state their estimate of amount by which a major structure enhances "before" value of land to which it is affixed, and in support of that estimate may testify as to the cost, original or reproduction, less depreciation, of the structure under certain conditions and limitations but it is not proper for appraisal witnesses to ascribe an itemized price tag to "damage" factors. Commonwealth, Dep't of Highways v. Cardinal Hill Nursery, Inc., 380 S.W.2d 249, 1964 Ky. LEXIS 299 (Ky. 1964) (decided under prior law).

An expert witness may not separate the taking damages from the resulting damages in a condemnation suit. Commonwealth, Dep't of Highways v. Swift, 375 S.W.2d 691, 1964 Ky. LEXIS 425 (Ky. 1964) (decided under prior law).

Estimate of a witness based solely or primarily on an improper factor is invalid and subject to a motion to strike but where other factors which are proper are employed that rule does not necessarily follow. Commonwealth, Dep't of Highways v. York, 390 S.W.2d 190, 1965 Ky. LEXIS 348 (Ky. 1965) (decided under prior law).

Where witness arrived at the before value by improperly breaking down the component parts of the property but also relied on other proper factors to determine his before value estimate of that portion of his evidence which was based on proper factors was competent and was properly admitted to stand. Commonwealth, Dep't of Highways v. York, 390 S.W.2d 190, 1965 Ky. LEXIS 348 (Ky. 1965) (decided under prior law).

11. —Expert Witnesses.

Admissibility and weight of opinion of expert valuation witness depends on his background and experience and thoroughness of his investigation. Commonwealth, Dep't of Highways v. Citizens Ice & Fuel Co., 365 S.W.2d 113, 1963 Ky. LEXIS 218 (Ky. 1963), overruled, Louisville v. Allen, 385 S.W.2d 179, 1964 Ky. LEXIS 142 (Ky. 1964) (decided under prior law).

Comment of trial judge as expert witness was leaving stand that he ought to have been the professor instead of the student where it had been revealed in his testimony that he had attended two (2) night classes in appraisal problems conducted by the assistant director of the division of right-of-way and had taught appraisal at the University of Kentucky for five (5) years where he was referred to as "professor" indicated to the jury that he regarded the testimony of the expert witness more highly than that of the assistant director of the division of right-of-way and this was an improper invasion of the jury function of evaluating the evidence. Commonwealth, Dep't of Highways v. Eubank, 369 S.W.2d 15, 1963 Ky. LEXIS 57 (Ky. 1963) (decided under prior law).

Cross-examination of expert witness for state concerning why he had placed a higher evaluation on comparable adjacent land just a week before was proper in order to test the witness' knowledge of the land and to determine his qualifications as an expert witness. Commonwealth, Dep't of Highways v. Eubank, 369 S.W.2d 15, 1963 Ky. LEXIS 57 (Ky. 1963) (decided under prior law).

Witnesses in condemnation suit need not be expert land appraisers in order to state their opinions as to real estate values. Commonwealth, Dep't of Highways v. Slusher, 371 S.W.2d 851, 1963 Ky. LEXIS 114 (Ky. 1963) (decided under prior law).

Court of appeals properly affirmed a circuit court order awarding a group of mineral parcel owners $550,000 as just compensation for the Transportation Cabinet's condemnation of their real property because the circuit court did not abuse its discretion by allowing appraisal evidence that accounted for the owners' anticipated royalty income or the "royalty rate" established in their coal lease. The income capitalization approach was an accepted method for valuing the property, and the testimony of the owners' expert did not improperly rely on a simplistic "price per unit" calculation, but accounted for contingencies and uncertainties of the mining business. Commonwealth v. Atkinson, 706 S.W.3d 110, 2024 Ky. LEXIS 406 (Ky. 2024).

11.5. Right to Jury.

Since KRS 416.650 provides that all proceedings under the eminent domain statutes are governed by the Kentucky Rules of Civil Procedure except where those statutes specifically or by necessary implication provide otherwise, CR 38.02 applies to eminent domain proceedings and requires a party to an

eminent domain case to obtain a trial by jury by serving a timely demand, failing which, the party waives the right to a jury trial under CR 38.04. Louisville & Jefferson County Metro. Sewer Dist. v. Bischoff, 248 S.W.3d 533, 2007 Ky. LEXIS 265 (Ky. 2007).

In an eminent domain proceeding, as the property owner did not file his demand for a jury trial until almost three months past the last pleading directed to the issue of compensation and 11 months after he filed his first pleading in this case, under CR 38.04, his failure to serve a timely demand under CR 38.02 constituted a waiver of his right to a jury trial. Louisville & Jefferson County Metro. Sewer Dist. v. Bischoff, 248 S.W.3d 533, 2007 Ky. LEXIS 265 (Ky. 2007).

12. Jurors.

In condemnation proceedings implied bias of juror was not an absolute disqualification and the trial court was possessed of discretion in determining whether a prospective juror could render a fair and impartial verdict notwithstanding the existence of implied bias by reason of a blood relationship to one of the parties. Commonwealth v. Hall, 258 S.W.2d 479, 1953 Ky. LEXIS 840 (Ky. 1953) (decided under prior law).

13. —View.

The word "shall" used in former statute was mandatory. Commonwealth v. Farra, 338 S.W.2d 696, 1960 Ky. LEXIS 407 (Ky. 1960) (decided under prior law).

It was improper for court to send a material witness for the state along with the jury with directions to show the jury the vital points developed in his evidence and to permit the jurors to ask such witness question and request to see particular points of the property out of the courtroom and in absence of judge and counsel particularly since former statute required that the sheriff accompany the jury to view the land and material. Keeney v. Commonwealth, Dep't of Highways, 345 S.W.2d 481, 1961 Ky. LEXIS 269 (Ky. 1961) (decided under prior law).

Because of much confusion in the record as to the size and shape of the land involved, the jury should have been given a view of the premises. Commonwealth, Dep't of Highways v. Raleigh, 375 S.W.2d 384, 1964 Ky. LEXIS 410 (Ky. 1964) (decided under prior law).

Where residence building on condemned lot after taking was sold to landowners and then moved to another site 2,000 feet away, it was error to refuse jury view of premises. Commonwealth, Dep't of Highways v. Hackworth, 383 S.W.2d 372, 1964 Ky. LEXIS 44 (Ky. 1964) (decided under prior law).

That the sheriff was a defendant in a pending condemnation action did not disqualify him to take the jury to view the premises in another case where there was no suggestion that he did not duly observe the court's directions. Commonwealth, Dep't of Highways v. Conley, 386 S.W.2d 750, 1964 Ky. LEXIS 181 (Ky. 1964) (decided under prior law).

Trial court had discretion to overrule motion for jury view of premises where route to farm was rough and inaccessible and some of jurors were physically unable to make the journey. Commonwealth, Dep't of Highways v. Jewell, 405 S.W.2d 678, 1966 Ky. LEXIS 259 (Ky. 1966) (decided under prior law).

Where residence was taken by state and sold back to owner and then removed to another location, it was error to refuse request for jury view of remainder of property as it appeared after taking. Commonwealth, Dep't of Highways v. Bates, 408 S.W.2d 424, 1966 Ky. LEXIS 97 (Ky. 1966) (decided under prior law).

In the exercise of its discretion the court may properly deny a view where the premises have been adequately described in the testimony and where visual evidence has been introduced which the court deems to be sufficient. In determining whether a jury view should or should not be permitted the court may properly consider whether there have been such changes in the premises as to impair the value of the view. Fisher v. Urban Renewal & Community Development Agency, 425 S.W.2d 744, 1968 Ky. LEXIS 435 (Ky. 1968) (decided under prior law).

Where a jury was charged with determining the before and after value of land on which a building had been destroyed and a motion was made for the jury to view the property, it could not be said that a view would not be beneficial in making the determination and should be permitted. Commonwealth, Dep't of Highways v. Eberenz, 435 S.W.2d 753, 1968 Ky. LEXIS 212 (Ky. 1968) (decided under prior law).

Where the premises had been substantially changed by the project, the trial court did not commit reversible error by permitting the jury to view the premises upon request by one of the parties. Commonwealth, Dep't of Highways v. Walker, 496 S.W.2d 344, 1973 Ky. LEXIS 381 (Ky. 1973) (decided under prior law).

The fact that the property to be taken was not marked by stakes, that a jury view of the property would require a five-mile trip over a partially unpaved road, and that a jury view of the property would cause inconvenience and delay in the trial did not constitute unusual or extreme circumstances such as to justify the trial judge's refusal to permit the jury to view the property. Commonwealth, Dep't of Highways v. Caudill, 523 S.W.2d 880, 1975 Ky. LEXIS 122 (Ky. 1975) (decided under prior law).

In a condemnation action, reversal was required because the Transportation Cabinet clearly requested a viewing, and the trial court's analysis was insufficient to invoke the narrow grounds of exception to the mandatory statutory language in this section. The trial court's conclusion that the viewing was unnecessary because jurors were familiar with the location, and there were good descriptions of the property were hardly unusual factors. Commonwealth v. PTL Warehousing, LLC, 620 S.W.3d 883, 2021 Ky. App. LEXIS 55 (Ky. Ct. App. 2021).

14. Exceptions.

The provision relating to the filing of exceptions is construed as a requirement that the party appealing to the Circuit Court file his grounds for appeal. Commonwealth ex rel. Curlin v. Moyers, 280 S.W.2d 513, 1955 Ky. LEXIS 167 (Ky. 1955) (decided under prior law).

Filing of exceptions to report of commissioners in county court on ground of inadequacy of compensation was not authorized. Commonwealth, Dep't of Highways v. Prather, 369 S.W.2d 118, 1963 Ky. LEXIS 64 (Ky. 1963) (decided under prior law).

In condemnation proceeding only those issues raised in statement of appeal, or in original exceptions, may be considered by the Circuit Court. Robinette v. Commonwealth, Dep't of Highways, 380 S.W.2d 78, 1964 Ky. LEXIS 271 (Ky. 1964) (decided under prior law).

In condemnation suit where exception by condemnor was to the award of commissioners for land taken and damages to the remainder on the ground that the award was excessive, it was not within the province of the Circuit Court to interpret the unchallenged items of residence and house to include all of the land taken and limit recovery to those items plus damages to the remaining strip of land. Davis v. Commonwealth, Dep't of Highways, 374 S.W.2d 513, 1963 Ky. LEXIS 181 (Ky. 1963) (decided under prior law).

15. Appeals.

16. —Parties.

Upon failure of condemnees to appeal they lost the right to contest either the state's right to condemn or the adequacy of the award and as their fractional interest in property was severable from other tenants in common who appealed, they were not necessary parties to the appeal. Riley v. Commonwealth, Dep't of Highways, 375 S.W.2d 245, 1963 Ky. LEXIS 185 (Ky. 1963) (decided under prior law).

One of several codefendants in highway condemnation proceeding may appeal without joining all his codefendants as parties to appeal. Commonwealth, Dep't of Highways v. Kelley, 376 S.W.2d 539, 1964 Ky. LEXIS 458 (Ky. 1964) (decided under prior law).

Construction company holding a long term lease of mineral rights and lien holders by sale contract and deed from condemnee, the fee simple owner, were proper parties at the commencement of condemnation proceedings and where no reason indicated that their presence could operate in any prejudicial manner the proceedings should not have been dismissed as to them. Commonwealth, Dep't of Highways v. Cardinal Hill Nursery, Inc., 380 S.W.2d 249, 1964 Ky. LEXIS 299 (Ky. 1964) (decided under prior law).

17. —Dismissal.

Failure of appellants to file a copy of condemnation judgment with clerk of Circuit Court within 30 days from date of judgment and unreasonable eight-year lapse between time judgment was entered and time original appeal was filed warranted dismissal of appeal. Thompson v. Kentucky Power Co., 551 S.W.2d 815, 1977 Ky. App. LEXIS 704 (Ky. Ct. App. 1977) (decided under prior law).

18. Interest.

Where condemnor deposited in the county clerk's office the amount of the commissioner's award, the condemnor was under no duty to instruct the county court clerk to pay the amount to the owners of the land pending further litigation of the matter on appeal and consequently the condemnor was not required to pay interest on the amount so deposited notwithstanding the refusal of the county court clerk to pay it over. Commonwealth, Dep't of Highways v. Citizens Ice & Fuel Co., 394 S.W.2d 903, 1965 Ky. LEXIS 219 (Ky. 1965) (decided under prior law).

Where damages awarded on appeal to Circuit Court were less than amount paid to landowner pursuant to county court judgment, condemnor was entitled to interest on the amount of the excess. Sloan v. Commonwealth, Dep't of Highways, 405 S.W.2d 294, 1966 Ky. LEXIS 253 (Ky. 1966) (decided under prior law).

19. Attorney's Fees.

Metropolitan sewer district acted in bad faith during condemnation negotiations by making an inadequate last offer to the condemnee of $4,000 when it had previously offered $60,000. However, the trial court did not abuse its discretion in finding that the district's conduct was not so prejudicial as to justify award of counsel fees to the condemnee. Golden Foods, Inc. v. Louisville & Jefferson County Metro. Sewer Dist., 240 S.W.3d 679, 2007 Ky. App. LEXIS 459 (Ky. Ct. App. 2007).

Although attorney fees are generally not recoverable without a specific contractual provision or a fee-shifting statute, after the successful defense of a condemnation proceeding, a trial court may award attorney fees if the court determines that the condemnor has acted in bad faith or caused unreasonable delay. If a trial court finds such improper conduct, it should determine the extent that the condemnee has been prejudiced and whether he can be made reasonably whole by the imposition of costs and fees. Golden Foods, Inc. v. Louisville & Jefferson County Metro. Sewer Dist., 240 S.W.3d 679, 2007 Ky. App. LEXIS 459 (Ky. Ct. App. 2007).

20. Repayment of Excess.

Order pursuant to KRS 416.620 directing owners to repay the Commonwealth the difference of approximately $357,000 between the property value found in an interlocutory order and the property value as later found by a jury paid to the owners' predecessor in interest was proper because the owners had agreed to be substituted for predecessor, and although the predecessor had spent all of the money and owners received none of it, the owners had accepted the burdens of the litigation. Hunsaker v. Commonwealth, 239 S.W.3d 68, 2007 Ky. LEXIS 237 (Ky. 2007).

21. Dismissal.

In a condemnation case, a trial court erred when it dismissed a case for lack of prosecution because a statute was silent on the specific amount of time in which a trial on the exceptions and compensation was to be held, even though a property owner was entitled to a prompt trial on the issue of the condemnation itself. The property owner did not contest the right to take the property, but instead contested the valuation, and the trial court should have set the matter for a jury trial on compensation or made an interlocutory order and judgment final and appealable. Commonwealth v. Guess, 2015 Ky. App. LEXIS 63 (Ky. Ct. App. May 15, 2015), review denied, ordered not published, 2016 Ky. LEXIS 216 (Ky. Apr. 27, 2016).

Cited in:

Ratliff v. Fiscal Court of Caldwell County, 617 S.W.2d 36, 1981 Ky. LEXIS 252 (Ky. 1981); Withers v. Commonwealth, Dep't of Transp., Bureau of Highways, 656 S.W.2d 747, 1983 Ky. App. LEXIS 357 (Ky. Ct. App. 1983); Potter v. Breaks Interstate Park Com., 701 S.W.2d 403, 1985 Ky. LEXIS 284 (Ky. 1985).

OPINIONS OF ATTORNEY GENERAL.

The Commonwealth, except for the provisions of this section, pertaining to proceedings for eminent domain, is exempt from paying costs, although it may, pursuant to KRS 453.010, pay costs when such costs are approved and allowed by the judge of the court in which the case was filed. OAG 78-343, 1978 Ky. AG LEXIS 412.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Comments, A Challenge to Historic Preservation in Kentucky, 65 Ky. L.J. 895 (1976-77).

Northern Kentucky Law Review.

Ruh & Lockaby, Balancing Private Property Rights with "Public Use": A Survey of Kentucky Courts' Interpretation of the Power of Eminent Domain., 32 N. Ky. L. Rev. 743 (2005).

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Final Judgment (Amount Decreased, but Not Withdrawn by Respondent), Form 307.06.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Final Judgment (Amount Decreased; Commissioners' Award Withdrawn), Form 307.07.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

416.630. Money paid into court.

All money paid into court or paid or transferred to the clerk of a court under the provisions of KRS 416.540 to 416.670 shall be received by the clerk of the court and held subject to the order of the court, for which the clerk and his sureties on his official bond shall be responsible to the persons entitled thereto.

History.

Enact. Acts 1976, ch. 140, § 11; 2026 ch. 112, § 9, effective April 13, 2026.

NOTES TO DECISIONS

Cited in:
Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

416.640. Conflicting claimants to condemned land.

Where there are conflicting claimants to the land sought to be condemned and all such parties are before the court, each claimant, for the purposes of the condemnation proceeding only, shall be deemed to be an owner, and the procedure for the condemnation of the land shall be as provided in KRS 416.540 to 416.670 except that, before the condemnor shall be entitled to take possession of the land, it shall be required to pay the compensation awarded therein to the Circuit Court clerk to be held for the benefit of, and paid over to such persons as may thereafter be determined to be entitled to receive it. In such cases, the claimants may have their rights determined in a separate action, but the filing of such action or its pendency shall in no wise stay or delay said condemnation proceedings.

History.
Enact. Acts 1976, ch. 140, § 12; 2026 ch. 112, § 10, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Application.
2. Interest.
3. Conflicting Claimants.

1. Application.
This section does not deal with the situation in which there are multiple owners of different interests in the land being condemned and the dispute is over the value of their respective interests. Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

2. Interest.
Where there was a possible dispute over the priority of lien debts, but not over ownership of the condemned property or the leasehold interests therein and there had been no allocation of the commissioner's award between tracts devoted to separate uses, the payment of the award into court did not relieve the Commonwealth of its obligation to pay interest between the date it took possession and the date that ultimate compensation was determined and paid and, accordingly, the trial court erred in refusing to require interest. Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

3. Conflicting Claimants.
If separate interests of different persons in a single tract can be readily determined or if separate tracts are devoted to unrelated uses, there should be an allocation of the award, but if the interests in a tract of land are so numerous and complex as to be "conflicting claimants" there is no burden on the condemnor to have the award allocated and the condemnor would not be liable for interest because of the delay required for a judicial determination of each owner's share in the award. Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

If there is a genuine issue with respect to the priority or validity of certain liens upon the property to be condemned, there would be "conflicting claimants" under this section, and to the extent there were such issues in a case the trial court did not err in refusing to pay out the entire amount of the award to the landowners or in refusing to pay specific lien claims. Foster v. Sanders, 557 S.W.2d 205, 1977 Ky. App. LEXIS 827 (Ky. Ct. App. 1977).

416.650. Proceedings governed by Rules of Civil Procedure.

All proceedings under KRS 416.540 to 416.670 shall be governed by the provisions of the Rules of Civil Procedure except where the provisions of KRS 416.540 to 416.670 specifically or by necessary implication provide otherwise.

History.
Enact. Acts 1976, ch. 140, § 13; 2026 ch. 112, § 11, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Costs and Attorney Fees.
2. Jury Demand.

1. Costs and Attorney Fees.
Costs and attorney fees may be awarded in a voluntary dismissal of an attempted condemnation, pursuant to CR 41.01, upon a finding of bad faith or unreasonable delay by the condemnor. If a trial court should determine that the condemnor has acted in bad faith, it should also determine the extent to which the condemnee has been prejudiced by a dismissal and whether he could be made reasonably whole by the imposition of costs and fees as a term or condition to the granting of the dismissal. Northern Kentucky Port Authority, Inc. v. Cornett, 700 S.W.2d 392, 1985 Ky. LEXIS 258 (Ky. 1985).

2. Jury Demand.
Since KRS 416.650 provides that all proceedings under the eminent domain statutes are governed by the Kentucky Rules of Civil Procedure except where those statutes specifically or by necessary implication provide otherwise, CR 38.02 applies to eminent domain proceedings and requires a party to an eminent domain case to obtain a trial by jury by serving a timely demand, failing which, the party waives the right to a jury trial under CR 38.04. Louisville & Jefferson County Metro. Sewer Dist. v. Bischoff, 248 S.W.3d 533, 2007 Ky. LEXIS 265 (Ky. 2007).

Cited in:
Kentucky Utilities Co. v. Brashear, 726 S.W.2d 321, 1987 Ky. App. LEXIS 452 (Ky. Ct. App. 1987).

416.660. Standards for determining compensation — Changes in value — Taking date.

(1) In all actions for the condemnation of lands under the provisions of KRS 416.540 to 416.670, except temporary easements, there shall be awarded to the landowners as compensation a sum that will fairly represent the difference between the fair market value of the entire tract, including improvements existing at the time of the filing of the action, all or a portion of which is sought to be condemned, immediately before the taking and the fair market value of the remainder immediately after the taking, including in the remainder all rights which the landowner may retain in the

lands sought to be condemned where less than the fee simple interest is taken, together with the fair rental value of any temporary easements sought to be condemned.

(2) Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation or the construction of the project shall be disregarded in determining fair market value. The taking date for valuation purposes shall be either the date the condemnor takes the land, or the date of the trial of the issue of just compensation, whichever occurs first.

(3) The value of agricultural infrastructure improvements, including but not limited to drainage tile, water systems, livestock fencing, and permanent on-farm structures, shall be considered in determining the fair market value of property actively used for farm or agricultural purposes.

History.

Enact. Acts 1976, ch. 140, § 14; 2026 ch. 112, § 6, effective April 13, 2026.

NOTES TO DECISIONS

Analysis

1. Loss Caused by Damage.
2. Fair Market Value.
3. Maintenance Costs.
4. Practice And Procedure.
5. Measure of Compensation.
6. —Difference in Market Value.
7. —Assessed Value.
8. —Enhancement in Value from Improvement.
9. —Comparable Sales.
10. —Leasehold.
11. Evidence of Value.
12. Date of Taking.

1. Loss Caused by Damage.

Where a city instituted proceedings to condemn landowner's property and where between the time the report of the appraisers was filed and the date of the entry of an interlocutory judgment authorizing the city to take possession of the property, the property was vandalized or salvaged and was stripped of numerous items, thereby rendering the value of the building to be considerably less when the interlocutory judgment was entered than it was when appraised by the court-appointed appraisers, since the damage to the building had occurred prior to the trial of the issue of just compensation, the loss caused by damage to the building must be borne by the landowner unless he can establish that the city had actually taken his property before the damage occurred. Ford v. Bowling Green, 780 S.W.2d 613, 1989 Ky. LEXIS 104 (Ky. 1989).

Trial court erred by allowing condemnees to recover trespass damages based on the condemnor's entering their land before its amended condemnation petition was granted; as the land that was trespassed on was eventually taken through condemnation, only "reverse condemnation" damages were proper. Big Rivers Elec. Corp. v. Barnes, 147 S.W.3d 753, 2004 Ky. App. LEXIS 85 (Ky. Ct. App. 2004).

2. Fair Market Value.

The Eminent Domain Act provides for condemnation of real property upon payment of the difference in the fair market value of the condemnee's property immediately before and immediately after the taking; fair market value of the property condemned is the test, and even where the building upon the property is to be torn down, a city should not be required to pay more for the property because it had a building upon it than the amount by which the building added to the fair market value of the property at the time of the taking. Ford v. Bowling Green, 780 S.W.2d 613, 1989 Ky. LEXIS 104 (Ky. 1989).

When the state highway department condemned crossing easements across a railroad, the railroad's expert's measure of the diminution in the fair market value of the railroad's right-of-way was improperly based on non-compensable expenses for maintaining and operating the crossings and speculative litigation and clean-up costs for predicted accidents at the crossings over the next 20 years, and, as a result, the railroad presented no competent valuation evidence showing the damages it was entitled to, so the highway department was entitled to summary judgment. Commonwealth v. R.J. Corman R.R. Company/Memphis Line, 116 S.W.3d 488, 2003 Ky. LEXIS 211 (Ky. 2003).

When the state highway department condemned crossing easements across a railroad, even if the railroad was entitled to compensation for the costs of maintaining and operating the crossings and for future litigation costs related to accidents at the crossings, its expert impermissibly determined the damages to which the railroad was entitled by fixing prices for these individual items of damage and totaling them for a claim against the state, rather than focusing on how these harms affected the fair market value of the railroad's property. Commonwealth v. R.J. Corman R.R. Company/Memphis Line, 116 S.W.3d 488, 2003 Ky. LEXIS 211 (Ky. 2003).

Where land had 4.17 million tons of coal beneath it, which the condemnees' expert opined could be mined economically in 10 to 20 years, the jury was entitled to accept this testimony, though the condemnor's experts disputed it; therefore, the jury's finding that the "highest and best use" of the land was as a coal reserve was supported by the evidence, and the $67,000 condemnation award was not excessive. Big Rivers Elec. Corp. v. Barnes, 147 S.W.3d 753, 2004 Ky. App. LEXIS 85 (Ky. Ct. App. 2004).

In a condemnation action, references by a property owner's counsel to and questions concerning the effect of an airport runway project on development in the condemned area did not violate KRS 416.660 as the evidence was relevant for two reasons: (1) it provided a reason other than the property's alleged unsuitability for the fact that the owner's property had not been industrially developed, and (2) it explained why the owner's appraiser had not been able to refer to comparable sales in the immediate vicinity of the owner's property but had to look for comparable sales at other points along the airport's perimeter. Baston v. County of Kenton ex rel. Kenton County Airport Bd., 319 S.W.3d 401, 2010 Ky. LEXIS 211 (Ky. 2010).

KRS 416.660 does not require that increases or decreases in market value caused by the announcement of a government project be disregarded in the sense of being completely ignored. It requires, rather, that the announcement's effect on the market be disregarded in the sense of being corrected for, of being removed, in determining the fair market value of the property. Baston v. County of Kenton ex rel. Kenton County Airport Bd., 319 S.W.3d 401, 2010 Ky. LEXIS 211 (Ky. 2010).

3. Maintenance Costs.

When the state highway department condemned crossing easements across a railroad, the railroad was not entitled to compensation for the costs of maintaining and operating the crossings, as railroads had to acquiesce to safety regulations, though burdensome, as part of the consideration required for the railroad's right to exercise the power of eminent domain and other franchises and privileges enjoyed. Commonwealth v. R.J. Corman R.R. Company/Memphis Line, 116 S.W.3d 488, 2003 Ky. LEXIS 211 (Ky. 2003).

4. Practice And Procedure.

Condemnees' attorney's and expert's intentional injection of evidence of a third-party purchase offer for the land, despite the trial court's ruling that this evidence was inadmissible, had entitled the condemnor to a mistrial. Big Rivers Elec. Corp. v. Barnes, 147 S.W.3d 753, 2004 Ky. App. LEXIS 85 (Ky. Ct. App. 2004).

5. Measure of Compensation.

Difference between fair market of whole premises before taking and fair market value of remainder immediately afterwards was true measure of compensation to be awarded landowner and one was not permitted to slice off part of tract and value it without regard to entire tract. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

Where lots had possible uses other than their present use and were not absolutely essential to the conduct of owner's business and similar property for the same use could be acquired by purchase or rental the fair market value furnished a fair measure of just compensation and the adaptability of the lots to the owner's use was but a factor to consider in determining market value. Newport Municipal Housing Com. v. Turner Advertising, Inc., 334 S.W.2d 767, 1960 Ky. LEXIS 231 (Ky. 1960) (decided under prior law).

Doctrine of additur could not be invoked to raise judgment for property condemned for urban renewal purposes to previous alleged offer by condemnor. Dinwiddie v. Urban Renewal & Community Development Agency, 393 S.W.2d 872, 1965 Ky. LEXIS 247 (Ky. 1965) (decided under prior law).

Interrogatories of executive director of urban renewal agency and other purchases by the urban renewal agency in the area were inadmissible to show the selling or offering price of a condemned tract. Dinwiddie v. Urban Renewal & Community Development Agency, 393 S.W.2d 872, 1965 Ky. LEXIS 247 (Ky. 1965) (decided under prior law).

The landowner was entitled to receive as just compensation the difference in the fair market value of the total tract of land immediately before and immediately after the taking of a portion of the land for school purposes. Usher & Gardner, Inc. v. Mayfield Independent Board of Education, 461 S.W.2d 560, 1970 Ky. LEXIS 641 (Ky. 1970) (decided under prior law).

6. —Difference in Market Value.

Evidence of factors bearing on diminution of value should be addressed to how they will affect market value and not how they will hurt the owner or make less advantageous the use of the property for his particular purposes, or create conditions that he would like to remedy and no price should be put on the individual factors. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

Jury should be instructed to find the fair market value immediately before the taking, the fair market value after the taking, and the difference between the two. Commonwealth, Dep't of Highways v. Howard, 405 S.W.2d 20, 1966 Ky. LEXIS 238 (Ky. 1966) (decided under prior law).

In determining the value of land, the proper method is to deduct the after value of the whole tract from its before value if the latter were larger, rather than by determining the before value and deducting the value of the part taken. The latter method does not permit the jury to credit the state with any increase in value attributable to the improvement. Commonwealth, Dep't of Highways v. Howard, 405 S.W.2d 20, 1966 Ky. LEXIS 238 (Ky. 1966) (decided under prior law).

Landowners were not entitled to compensation for the loss in value of properties that neighbored their condemned parcels of land under an alternative method of valuing partial takings, whereby "taking damages," the value of the part taken, were assessed apart from and then added to "resulting damages," the value of the "harm" to the remainder; the landowners' "lost value" claim would amount to a revival of the disallowed "taking damages-resulting damages" approach. Bianchi v. City of Harlan, 274 S.W.3d 368, 2008 Ky. LEXIS 128 (Ky. 2008).

7. —Assessed Value.

Where landowner signed assessment list containing evaluation of his property which was later condemned, landowner would not be heard to say that he had not fixed value of his property. Commonwealth, Dep't of Highways v. Lanter, 364 S.W.2d 652, 1963 Ky. LEXIS 208 (Ky. 1963) (decided under prior law).

If the landowner had turned in a value for assessment, evidence of the assessed value was admissible in condemnation proceedings and it was not necessary that the landowner made a computation and employ a formula to independently determine value. West Kentucky Coal Co. v. Commowealth, Dep't of Highways, 368 S.W.2d 738, 1963 Ky. LEXIS 52 (Ky. 1963) (decided under prior law).

8. —Enhancement in Value from Improvement.

Circuit court erred in instructing jury in condemnation action that measure of damages was difference in value of remaining land immediately before and after taking, less any enhancement resulting from improvement, since difference in market value of entire tract before and after taking less any enhancement in value from improvement, was proper measure of damages. Commonwealth, Dep't of Highways v. King, 375 S.W.2d 688, 1964 Ky. LEXIS 424 (Ky. 1964) (decided under prior law).

In highway condemnation suit increase in value of the condemned property by nearness to interchanges of proposed highway was admissible in evidence. Cincinnati, N. O. & T. P. R. Co. v. Commonwealth, Dep't of Highways, 376 S.W.2d 307, 1964 Ky. LEXIS 445 (Ky. 1964) (decided under prior law).

9. —Comparable Sales.

Cross-examination of state's witness by counsel for landowner with respect to prices paid other property owners for rights of way would have been improper and prejudicial and questions directed not to sales prices but to appraisals the witness had made of other property in the area without a showing that the other places mentioned by counsel in the cross-examination were comparable with the property being condemned were incompetent but under the circumstances answers did not have enough meaning or significance to be prejudicial. Commonwealth, Dep't of Highways v. Evans, 361 S.W.2d 766, 1962 Ky. LEXIS 252 (Ky. 1962) (decided under prior law).

If witness was qualified as expert on real estate valuation it was not always absolutely essential to either admissibility or sufficiency of his opinion that it be supported by comparable sales. Commonwealth, Dep't of Highways v. Citizens Ice & Fuel Co., 365 S.W.2d 113, 1963 Ky. LEXIS 218 (Ky. 1963), overruled, Louisville v. Allen, 385 S.W.2d 179, 1964 Ky. LEXIS 142 (Ky. 1964) (decided under prior law).

Knowledge of comparable sales was not the sole acceptable basis for estimate of land value. Commonwealth, Dep't of Highways v. Elizabethtown Amusements, Inc., 367 S.W.2d 449, 1963 Ky. LEXIS 24 (Ky. 1963) (decided under prior law).

Evidence of voluntary sales of other property in neighborhood of condemned property and of somewhat similar nature, such transactions having been consummated within a year or two (2) of institution of condemnation was competent and admissible on issue of value. Commonwealth, Dep't of Highways v. Taylor, 368 S.W.2d 732, 1963 Ky. LEXIS 50 (Ky. 1963) (decided under prior law).

Evidence of comparable sales may be offered on either one (1) of two (2) theories: (1) As independent substantive evidence of the value of the property to which the comparison relates; or (2) As foundation evidence supporting the opinion of the expert witness and where the evidence comes in under the

second theory, there is less reason for being strict in regard to similarity, because the evidence serves the purpose only of supporting the credibility of the estimate of value given by the witness. West Kentucky Coal Co. v. Commownealth, Dep't of Highways, 368 S.W.2d 738, 1963 Ky. LEXIS 52 (Ky. 1963) (decided under prior law).

Testimony of two (2) witnesses as to before-and-after-taking value of property partially condemned for highway purposes was not inadmissible because the witnesses did not have knowledge of comparable sales where they were well acquainted with property values in the county. Commonwealth, Dep't of Highways v. Prather, 369 S.W.2d 118, 1963 Ky. LEXIS 64 (Ky. 1963) (decided under prior law).

It was the general rule that transaction involving potential condemnor was inadmissible as comparable sale because it lacked element of voluntariness and freedom from compulsion. Commonwealth, Dep't of Highways v. McGeorge, 369 S.W.2d 126, 1963 Ky. LEXIS 68 (Ky. 1963) (decided under prior law).

The exclusionary rule against comparable sales where purchaser had power of eminent domain amounted to conclusive presumption that prices paid do not reflect free and voluntary transactions. Commonwealth, Dep't of Highways v. McGeorge, 369 S.W.2d 126, 1963 Ky. LEXIS 68 (Ky. 1963) (decided under prior law).

Where it was condemnors who offered evidence of sale of comparable land to school board, question was not whether school board's power of condemnation had influenced price but whether board's freedom of choice as to location had been so restricted that it was caused to pay more than land was worth. Commonwealth, Dep't of Highways v. McGeorge, 369 S.W.2d 126, 1963 Ky. LEXIS 68 (Ky. 1963) (decided under prior law).

In condemnation suit where landowners were permitted to show for comparative valuation purposes a fairly recent transaction in which school board had purchased property the question of whether the school board transaction was free and voluntary from the standpoint of the purchaser was a matter for the consideration of the jury. Commonwealth, Dep't of Highways v. McGeorge, 369 S.W.2d 126, 1963 Ky. LEXIS 68 (Ky. 1963) (decided under prior law).

A recent sale of so-called comparable land in the same locale to that condemned was competent evidence in a condemnation suit. Commonwealth, Dep't of Highways v. Slusher, 371 S.W.2d 851, 1963 Ky. LEXIS 114 (Ky. 1963) (decided under prior law).

The reasoning which forbids consideration of forced sales generally, renders it incompetent for either party to put in evidence the amount paid by the condemnor to the owners of neighboring lands taken at the same time, and as part of the same proceedings however similar they may be to that in controversy and whether the payment was made as the result of voluntary settlement, an award, or the verdict of a jury. Commonwealth, Dep't of Highways v. Slusher, 371 S.W.2d 851, 1963 Ky. LEXIS 114 (Ky. 1963) (decided under prior law).

It was not error to permit expert witness to cite for comparative purposes three (3) sales of property located in an adjacent county at distances of six (6), ten (10) and 12 miles from property subject to condemnation. Commonealth, Dep't of Highways v. Finley, 371 S.W.2d 854, 1963 Ky. LEXIS 115 (Ky. 1963) (decided under prior law).

Comparable sales are extremely valuable evidence in condemnation cases and are not lightly to be excluded. Commonwealth, Dep't of Highways v. Oakland United Baptist Church, 372 S.W.2d 412, 1963 Ky. LEXIS 136 (Ky. 1963) (decided under prior law).

It was reversible error to reject testimony of state's witnesses in condemnation proceedings as to the sale prices of the property described as being comparable property. Commonwealth, Dep't of Highways v. Lemar, 375 S.W.2d 678, 1964 Ky. LEXIS 420 (Ky. 1964) (decided under prior law).

Landowners' valuation evidence was not rendered incompetent or insufficient for not resting upon comparable sales. Commonwealth, Dep't of Highways v. Brubaker, 375 S.W.2d 404, 1964 Ky. LEXIS 417 (Ky. 1964) (decided under prior law).

It was reversible error for court to refuse to admit prices paid at recent sales of comparable property and where there was no evidence that sales had been made under compulsion there was a rebuttable presumption that the prices were freely fixed and the sales were voluntary. Commonwealth, Dep't of Highways v. Shackleford, 380 S.W.2d 77, 1964 Ky. LEXIS 270 (Ky. 1964) (decided under prior law).

Use of improper factor of income in determining value of property before taking was not error where expert witness used proper factor of comparable sales as another factor by which he determined the before value. Commonwealth, Dep't of Highways v. Howard, 405 S.W.2d 20, 1966 Ky. LEXIS 238 (Ky. 1966) (decided under prior law).

10. —Leasehold.

"Loss of business" through condemnation of leasehold did not constitute proper item of recovery. Compensable loss of tenant was "amount by which fair market value of unexpired term of lease exceeds rent reserved for same period." Commonwealth, Dep't of Highways v. Fultz, 360 S.W.2d 216, 1962 Ky. LEXIS 220 (Ky. 1962) (decided under prior law).

In cases involving condemnation of leased property all of the issues may be tried together because the major fact determinations will relate to the value of the property as a whole, before and after the taking, and the allocation between landlord and tenant will be mainly a matter of mathematical computation by the court. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

Proper measure for determining damages to a leasehold interest in condemnation proceedings was to determine the fair market value of the leasehold by subtracting the fair market value of the land as a whole if sold subject to the lease from the fair market value of the land as a whole if sold free and clear of the lease. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

Where lessee was carrying on restaurant business and a portion of the land was condemned so that it was no longer suitable for restaurant purposes he could not claim damages for the loss of his restaurant business but could only claim the depreciation in market value of the lease which would be the difference between the former market value of the lease and the after market value. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

Where only part of the leased property was condemned the landowner was not entitled to loss of profits, he was limited to loss of market value of land not condemned. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

If owner of land negotiated lease at rental higher than fair rental value, with result that property would sell for more than normal market value, excess over normal value had to be considered profit for which owner was not to be compensated, and such owner had to be restricted in recovery to fair market value. Commonwealth, Dep't of Highways v. Sherrod, 367 S.W.2d 844, 1963 Ky. LEXIS 33 (Ky. 1963) (decided under prior law).

Court of appeals properly affirmed a circuit court order awarding a group of mineral parcel owners $550,000 as just compensation for the Transportation Cabinet's condemnation of their real property because the circuit court did not abuse its discretion by allowing appraisal evidence that accounted for the owners' anticipated royalty income or the "royalty rate" established in their coal lease. The income capitalization approach was an accepted method for valuing the property,

and the testimony of the owners' expert did not improperly rely on a simplistic "price per unit" calculation, but accounted for contingencies and uncertainties of the mining business. Commonwealth v. Atkinson, 706 S.W.3d 110, 2024 Ky. LEXIS 406 (Ky. 2024).

11. Evidence of Value.

Where an easement was condemned on a farm that had sold for $431 per acre and the farm had good subdivision potential, a verdict of $446 an acre for the easement would be within the evidence. East Kentucky Rural Electric Cooperative Corp. v. Bowles, 469 S.W.2d 763, 1971 Ky. LEXIS 310 (Ky. 1971) (decided under prior law).

Where a witness as to before and after valuation of land condemned for an easement was not aware that houses could be built on the easement but, after the fact was called to his attention, took it into consideration but did not change the valuation, the situation did not justify striking the testimony of the witness. East Kentucky Rural Electric Cooperative Corp. v. Bowles, 469 S.W.2d 763, 1971 Ky. LEXIS 310 (Ky. 1971) (decided under prior law).

12. Date of Taking.

Day on which public hearing was held to inform community of public improvement to be undertaken constituted date of taking upon which jury should fix the "before" value of the property to arrive at total amount of recovery. Commonwealth, Dep't of Highways v. Wood, 380 S.W.2d 73, 1964 Ky. LEXIS 266 (Ky. 1964), overruled, Commonwealth, Dep't of Highways v. Claypool, 405 S.W.2d 674, 1966 Ky. LEXIS 258 (Ky. 1966) (decided under prior law).

NOTES TO UNPUBLISHED DECISIONS

1. Evidence of Value.

Unpublished decision: In a condemnation case where the amount of compensation due was at issue, an owner made a prima facie showing that the taking caused it to suffer a permanent injury to its remaining property; in analyzing the unity of use/purpose question, it was error to consider only the present use of the property by a short-term tenant. A prior transfer between interrelated companies of a three parcel tract was not competent or reliable evidence of the present fair market value of a single parcel tract nine years later. Putnam & Sons, LLC v. Paducah Indep. Sch. Dist., 2015 Ky. App. Unpub. LEXIS 876 (Ky. Ct. App. 2015), rev'd, 520 S.W.3d 367, 2017 Ky. LEXIS 282 (Ky. 2017).

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Ruh & Lockaby, Balancing Private Property Rights with "Public Use": A Survey of Kentucky Courts' Interpretation of the Power of Eminent Domain, 32 N. Ky. L. Rev. 743 (2005).

Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

416.670. Limitations on condemnation powers — Rights of current landowner.

(1) Development shall be started on any property which has been acquired through condemnation within a period of eight (8) years from the date of the deed to the condemnor or the date on which the condemnor took possession, whichever is earlier, for the purpose for which it was condemned. The failure of the condemnor to so begin development shall entitle the current landowner to repurchase the property at the price the condemnor paid to the landowner for the property. The current owner of the land from which the condemned land was taken may reacquire the land as aforementioned.

(2) Any condemnor who fails to develop property acquired by condemnation or who fails to begin design on highway projects pursuant to KRS Chapter 177 within a period of eight (8) years after acquisition, shall notify the current landowner of the provisions of subsection (1) of this section. If the current landowner refuses to purchase property described in this section, public notice shall be given in a manner prescribed in KRS Chapter 424 within thirty (30) days of the refusal, and the property shall be sold at auction. Provided, however, that this section shall not apply to property acquired for purposes of industrial development pursuant to KRS Chapter 152 or a project of a transportation improvement district under KRS 184.350 to 184.395.

(3) If there are two (2) or more current owners of the land from which the condemned land was taken because the remaining land was subdivided, and if they have a common boundary with the condemned land, the condemned land shall be reacquired by allowing all owners of a parcel of the remaining land with a common boundary and from which the condemned land was taken to offer sealed bids for the condemned land within thirty (30) days of notification by the condemnor. The condemnor shall accept the highest and best sealed bid equal to or greater than the price paid at the time of condemnation. If there are no sealed bids or if all sealed bids are below the original price paid by the condemnor for the property, the property shall be sold at auction.

History.

Enact. Acts 1976, ch. 140, § 15; 1978, ch. 384, § 117, effective June 17, 1978; 1980, ch. 231, § 1, effective July 15, 1980; 2022 ch. 180, § 20, effective July 14, 2022.

NOTES TO DECISIONS

Analysis

1. Condemning Authority Acting As Land Broker.
2. Calculation of Price.
3. Right to Repurchase.
4. —Monetary Damages.
5. Commencement of Development.
6. Statute of Limitation.
7. Abandonment of Condemnation.

1. Condemning Authority Acting As Land Broker.

Mere convenience is not a sufficient justification for the condemning authority to act as a land broker for private interests. Miles v. Dawson, 830 S.W.2d 368, 1991 Ky. LEXIS 191 (Ky. 1991).

2. Calculation of Price.

The pertinent part of the statute states that condemnee landowner is entitled to repurchase the property at the price the state paid to the landowner for the property. Implicit in this calculation is a pro rata method of determining the repurchase price. This section of the statute further supports the legislative intent to return unused property to its original owners. Miles v. Dawson, 830 S.W.2d 368, 1991 Ky. LEXIS 191 (Ky. 1991).

The calculation of repurchase price is a matter of law, not a finding of fact. City of Covington v. Hardebeck, 883 S.W.2d 499, 1994 Ky. App. LEXIS 53 (Ky. Ct. App. 1994).

3. Right to Repurchase.

Prior private property owner has a statutory right of redemption pursuant to this section to repurchase that part of real property originally condemned but not developed for the purpose for which it was condemned. Miles v. Dawson, 830 S.W.2d 368, 1991 Ky. LEXIS 191 (Ky. 1991).

Where this section provides that development must be started on "any property" which has been acquired through condemnation within a period of eight (8) years, and if not, the land owner is entitled to repurchase, does not mean "all," and landowner is entitled to repurchase that portion of the property which has not been developed, even though another portion of the property acquired has been developed. Miles v. Dawson, 830 S.W.2d 368, 1991 Ky. LEXIS 191 (Ky. 1991).

Original owners of property acquired by city through eminent domain were entitled to repurchase a portion of the property containing a billboard which had not been committed to a public use within eight (8) years of its condemnation. City of Covington v. Hardebeck, 883 S.W.2d 499, 1994 Ky. App. LEXIS 53 (Ky. Ct. App. 1994).

There was no improper retroactive application of this section where the court allowed the former owners of property condemned by the Transportation Cabinet to repurchase the unused part of condemned property, notwithstanding that the condemnation occurred prior to the amendment of the statute which allowed such repurchase; it was the failure of the Transportation Cabinet to begin development within eight (8) years, and not the condemnation, which entitled the former owners the opportunity to repurchase the surplus property. Kelly v. Thompson, 983 S.W.2d 457, 1998 Ky. LEXIS 128 (Ky. 1998).

The right to repurchase does not apply where property is sold by agreement, notwithstanding that such sale is completed under threat of condemnation. Coleman v. City of Pikeville, 994 S.W.2d 524, 1999 Ky. App. LEXIS 69 (Ky. Ct. App. 1999).

The plaintiffs did not have a right to repurchase property that they sold to an urban renewal agency after the agency was dissolved, the property was transferred to the defendant city and the project for which the property was acquired was abandoned. Coleman v. City of Pikeville, 994 S.W.2d 524, 1999 Ky. App. LEXIS 69 (Ky. Ct. App. 1999).

Failure to begin development, not the condemnation, triggered the redemption right, so where the eight (8) year development period ended after the 1980 amendment to KRS 416.670, the condemnees acquired the right to redeem property condemned by the Kentucky Transportation Cabinet. Vandertoll v. Commonwealth, 110 S.W.3d 789, 2003 Ky. LEXIS 118 (Ky. 2003).

4. —Monetary Damages.

Where the Commonwealth failed to develop condemned property within the eight-year period specified in KRS 416.670, the condemnees could not recover monetary damages for a delay in notifying them of their right to repurchase the property; the delay was not a continued taking compensable under KRS 416.620 because the condemnees retained no interest in the property. Martin v. Commonwealth, 199 S.W.3d 195, 2006 Ky. App. LEXIS 67 (Ky. Ct. App. 2006).

5. Commencement of Development.

The trial court's determination that the dumping of 66,000 cubic feet of fill material on a 1.348 acre parcel constituted the starting of development was not clearly erroneous. Coleman v. City of Pikeville, 994 S.W.2d 524, 1999 Ky. App. LEXIS 69 (Ky. Ct. App. 1999).

Where an airport board removed structures, trees, and junk from condemned property, it timely began development that precluded repurchase by the former owner; therefore, summary judgment was properly granted. Yahnig v. City of Somerset, 129 S.W.3d 846, 2003 Ky. App. LEXIS 93 (Ky. Ct. App. 2003).

6. Statute of Limitation.

An action to repurchase condemned property is an action upon a liability created by KRS 416.670; the right to bring an action to repurchase condemned property accrues upon the condemnor's failure to begin development within eight (8) years, and the appropriate period of limitations is the five (5) year period in KRS 413.120(2). Martin v. Commonwealth, 2001 Ky. App. LEXIS 1245 (Ky. Ct. App. Nov. 30, 2001), aff'd sub nom. Vandertoll v. Commonwealth, 110 S.W.3d 789, 2003 Ky. LEXIS 118 (Ky. 2003).

KRS 416.670(2) clearly places the duty on the condemning authority to give notice to the former landowner that development of condemned property has occurred. Martin v. Commonwealth, 2001 Ky. App. LEXIS 1245 (Ky. Ct. App. Nov. 30, 2001), aff'd sub nom. Vandertoll v. Commonwealth, 110 S.W.3d 789, 2003 Ky. LEXIS 118 (Ky. 2003).

KRS 413.120(2) five-year statute of limitations applied to enforcement of the condemnees' right to redeem property condemned by the Kentucky Transportation Cabinet, but did not begin to run until the Kentucky Transportation Cabinet had effected required statutory notice of to the condemnees of their redemption rights. Vandertoll v. Commonwealth, 110 S.W.3d 789, 2003 Ky. LEXIS 118 (Ky. 2003).

7. Abandonment of Condemnation.

Where commissioners, in making award, took into consideration property adjoining the property sought to be condemned, which adjoining property had been omitted from the description in the condemnation complaint, the condemnor could abandon the proceedings, even after judgment, so long as possession had not been taken or the award paid and the property owner, in absence of bad faith or unreasonable delay, could not collect damages by reason of the abandonment. Handy v. Hazard, 408 S.W.2d 455, 1966 Ky. LEXIS 110 (Ky. 1966) (decided under prior law).

Cited in:

Fearin v. Fox Creek Valley Watershed Conservancy Dist., 667 S.W.2d 389, 1983 Ky. App. LEXIS 380 (Ky. Ct. App. 1983).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Bratt, Property, 73 Ky. L.J. 459 (1984-85).

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Treatises

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Order Appointing Commissioners, Form 307.07.

Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Petition for Condemnation (Temporary and Permanent Easement), Form 307.01.

416.675. Public use required — No condemnation for indirect benefit — Exemption.

(1) Every grant of authority contained in the Kentucky Revised Statutes to exercise the power of eminent domain shall be subject to the condition that the authority be exercised only to effectuate a public use of the condemned property.

(2) "Public use" shall mean the following:

(a) Ownership of the property by the Commonwealth, a political subdivision of the Commonwealth, or other governmental entity;

(b) The possession, occupation, or enjoyment of the property as a matter of right by the Commonwealth, a political subdivision of the Commonwealth, or other governmental entity;

(c) The acquisition and transfer of property for the purpose of eliminating blighted areas, slum areas, or substandard and insanitary areas in accordance with KRS Chapter 99;

(d) The use of the property for the creation or operation of public utilities or common carriers; or

(e) Other use of the property expressly authorized by statute.

(3) No provision in the law of the Commonwealth shall be construed to authorize the condemnation of private property for transfer to a private owner for the purpose of economic development that benefits the general public only indirectly, such as by increasing the tax base, tax revenues, or employment, or by promoting the general economic health of the community. However, this provision shall not prohibit the sale or lease of property to private entities that occupy an incidental area within a public project or building, provided that no property may be condemned primarily for the purpose of facilitating an incidental private use.

(4) The exercise of the power of eminent domain for the acquisition of property financed by state road funds or federal highway funds shall be exempt from the provisions of this section.

History.
Enact. Acts 2006, ch. 73, § 1, effective July 12, 2006.

416.680. Short title.
KRS 416.540 to 416.670 shall be known as the "Eminent Domain Act of Kentucky."

History.
Enact. Acts 1976, ch. 140, § 1.

PENALTIES

416.990. Penalties.
Any person who places any obstruction, including poles, wires, signboards, fences, gas, water, sewerage, oil or other pipelines, on any part of the right-of-way of any state highway, or under any such highway, before obtaining the permit required by subsection (3) of KRS 416.140, or who fails to remove any obstruction when given notice as provided in that subsection, shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100), and each day the obstruction is continued without a permit or after such notice to remove shall constitute a separate offense.

History.
1599c-1.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Condemnation (Eminent Domain), § 307.00.

TITLE XXXVIII

WITNESSES, EVIDENCE, NOTARIES, COMMISSIONERS OF FOREIGN DEEDS, AND LEGAL NOTICES

Chapter
424. Legal Notices.

CHAPTER 424

LEGAL NOTICES

General Provisions.

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Penalties.

424.990. Penalties.

GENERAL PROVISIONS

424.110. Definitions for KRS 424.110 to 424.370.
As used in KRS 424.110 to 424.370:

(1) "Advertisement" means any matter required by law to be published;

(2) "Publication area" means the city, county, district, or other local area for which an advertisement is required by law to be made. An advertisement shall be deemed to be for a particular city, county, district, or other local area if it concerns an official activity of the city, county, district, or other area or of any governing body, board, commission, officer, agency, or court thereof, or if the subject of the advertisement concerns particularly the people of the city, county, district, or other area;

(3) "Time" means the time of day, stated in both eastern standard time and central standard time; and

(4) "Zoned edition" means a newspaper edition published at least once a week, distributed in a specific geographic region of the newspaper's circulation area, and containing reporting and advertising of interest to subscribers in that geographic region.

History.

Enact. Acts 1958, ch. 42, § 1; 1960, ch. 168, § 1; 1992, ch. 9, § 1, effective July 14, 1992; 2026 ch. 198, § 38, effective April 27, 2026.

Legislative Research Commission Notes.

(4/27/2026). Under the authority of KRS 7.136(1), the reviser of statutes has altered the internal numbering of this statute during codification to place the terms in alphabetical order. The words in the text were not changed.

NOTES TO DECISIONS

1. Commencement of Incorporation Action.

Although there must be a public notice, KRS 81.050(2) does not require that it be filed concurrently with the petition, but only demands that the notice be published as required by this chapter; thus, there need be only a petition for incorporation filed with the circuit clerk which commences the action, thereby constituting the first step. Jeffersontown v. Hurstbourne, 684 S.W.2d 23, 1984 Ky. App. LEXIS 584 (Ky. Ct. App. 1984).

Cited in:

Board of Education v. Hall, 353 S.W.2d 194, 1962 Ky. LEXIS 8 (Ky. 1962).

OPINIONS OF ATTORNEY GENERAL.

Under this section and KRS 424.120, where no newspaper was published in a city and a newspaper in an adjoining city claiming to have the largest circulation in the city concerned but not in the county claimed to be qualified to accept legal advertising under KRS 424.120, such newspaper could not qualify and the qualified newspaper was that newspaper published in the entire county which had the largest bona fide circulation in that county. OAG 73-419.

In view of this section and KRS 424.120, a city could not legally place its required advertisement in a weekly newspaper that did not maintain its office within the corporate limits of the city even though it had the largest circulation therein. OAG 73-663.

For extensive zoning changes and map amendments, only the publication requirements of KRS Chapter 424 must be followed; individual notices need not be given all property owners. OAG 78-74, 1978 Ky. AG LEXIS 660.

For the purpose of legal advertisements, the "publication area" for the Kenton County airport board is Kenton County, inasmuch as the operation of the Kenton County airport, though conducted in the main in Boone County, is an official activity of the airport board, which was created by Kenton County and which is derivatively a board of Kenton County. OAG 80-584, 1980 Ky. AG LEXIS 100.

This chapter applies only to those publications required by law to be published. However, an exception under this act is the list of uncollectible delinquent taxes, which must be published pursuant to KRS 424.330. OAG 82-128, 1982 Ky. AG LEXIS 512.

Under the home rule authority it is possible that a city could, pursuant to appropriate ordinance, require the publication of the names of those persons who are delinquent in paying their sewer and water bills. However, the power to do so would remain questionable pending litigation. OAG 82-128, 1982 Ky. AG LEXIS 512.

"Publication pursuant to KRS Chapter 424," as provided by KRS 426.560 means (1) publication in a particular "publication area" and (2) publication in a qualified newspaper. OAG 94-9, 1994 Ky. AG LEXIS 306.

Under the language of subsection (1) of this section, the "publication area" within which an advertisement is required by law to be made by a master commissioner, is the particular county in which circuit court a master commissioner serves, is located. OAG 94-9, 1994 Ky. AG LEXIS 306.

The circulation of a newspaper, as reflected in the "statement of ownership," is not controlling in determining the "bona fide paid circulation" in the publication area; therefore, a fiscal court, in a county with two (2) or more newspapers that meet the requirements of KRS 424.120, must solicit affidavits from otherwise qualified newspapers as to their "bona fide paid circulation" within the publication area, in order to determine which newspaper is entitled to receive statutorily required advertising of governmental notices. OAG 95-28, 1995 Ky. AG LEXIS 69.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Fish and wildlife resources, department of, rules and regulations as to game and fish, nonapplication of chapter to, KRS 150.025.

Kentucky Law Journal.

Tarlock, Kentucky Planning and Land Use Controls Enabling Legislation: An Analysis of the 1966 Revision of KRS Chapter 100, 56 Ky. L.J. 556 (1968).

424.120. Qualifications of newspapers.

(1) Except as provided in subsections (2) and (4) of this section, if an advertisement for a publication area is required by law to be published in a newspaper, the publication shall be made in a newspaper that meets the following requirements:

(a) It shall be published in the publication area. A newspaper shall be deemed to be published in the area if it maintains its principal office in the area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publications, and has a periodicals class mailing permit issued for that office. A newspaper published outside of Kentucky shall not be eligible to carry advertisements for any county or publication area within the county, other than for the city in which its main office is located, if there is a newspaper published in the county that has a substantial general circulation throughout the county and that otherwise meets the requirements of this section;

(b) It shall be of regular issue and have a bona fide circulation in the publication area. A newspaper shall be deemed to be of regular issue if it is published at least once a week, for at least fifty (50) weeks during the calendar year as prescribed by its mailing permit, and has been so published in the area for the immediately preceding two (2) year period. A newspaper meeting all the criteria to be of regular issue, except publication in the area for the immediately preceding two (2) year period, shall be deemed to be of regular issue if it is the only qualified paper in the county. A newspaper shall be deemed to be of bona fide circu-

lation in the publication area if it is circulated generally in the area, and maintains a definite price or consideration not less than fifty percent (50%) of its published price, and is paid for by not less than fifty percent (50%) of those to whom distribution is made;

(c) It shall bear a title or name, consist of not less than four (4) pages without a cover, and be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements, and other notices. The news content shall be at least twenty-five percent (25%) of the total column space in more than one-half (1/2) of its issues during any twelve (12) month period;

(d) If, in a publication area there is more than one (1) newspaper which meets the above requirements, the newspaper having the largest bona fide paid circulation as shown by the average number of paid copies of each issue as shown in its published statement of ownership as filed on October 1 for the publication area shall be the newspaper where advertisements required by law to be published shall be carried; and

(e) For the purposes of KRS Chapter 424, publishing shall be considered as the total recurring processes of producing the newspaper, embracing all of the included contents of reading matter, illustrations, and advertising enumerated in paragraphs (a) to (d) of this subsection. A newspaper shall not be excluded from qualifying for the purposes of legal publications as provided in this chapter if its printing or reproduction processes take place outside the publication area.

(2)(a) If, in the case of a publication area smaller than the county in which it is located, there is no newspaper published in the area, the publication shall be made in a newspaper published in the county that is qualified under this section to publish advertisements for the county. If the qualified newspaper publishes a zoned edition which is distributed to regular subscribers within the publication area, any advertisement required by law to be published in the publication area may be published in the zoned edition distributed in that area.

(b) If, in any county there is no newspaper meeting the requirements of this section for publishing advertisements for that county, any advertisements required to be published for the county or for any publication area within the county shall be published in a newspaper of the largest bona fide circulation in that county published in and qualified to publish advertisements for an adjoining county in Kentucky. This subsection is intended to supersede any statute that provides or contemplates that newspaper publication may be dispensed with if there is no newspaper printed or published or of general circulation in the particular publication area.

(3) If a publication area consists of a district, other than a city, which extends into more than one (1) county, the part of the district in each county shall be considered to be a separate publication area for the purposes of this section, and an advertisement for each separate publication area shall be published in a newspaper qualified under this section to publish advertisements for the area.

(4) If an advertisement for a publication area is required by law to be published in a newspaper, the publication may, alternatively, be made in a digital newspaper that:

(a) Maintains an active news gathering office in the publication area;

(b) Has been actively publishing for at least one (1) year, and is updated on at least a weekly basis;

(c) Has as its primary purpose reporting on matters of import to the public, and contains regular reporting regarding local and community issues in the publication area;

(d) Is easily accessible to the public through common Internet search engines or other Internet search means;

(e) Contains conspicuous links or headings on its landing page that direct members of the public to public notices; and

(f) Distributes, or has ownership interest in another entity that distributes, newspapers printed in Kentucky, and is capable of circulating printed newspapers throughout the publication area.

For purposes of satisfying publication requirements of this chapter, an advertisement is deemed to be published on the date that it is posted on the website of the digital newspaper. Any other statute requiring newspaper publication that contains requirements related to the physical dimensions, typesetting, font, or other aspects particular to a printed newspaper are not applicable where the advertisement is made in a digital newspaper that qualifies under this subsection.

History.

Enact. Acts 1958, ch. 42, § 2; 1960, ch. 168, § 1; 1982, ch. 180, § 1, effective July 15, 1982; 1982, ch. 430, § 3, effective July 15, 1982; 1984, ch. 201, § 1, effective July 13, 1984; 1992, ch. 9, § 2, effective July 14, 1992; 2006, ch. 8, § 3, effective July 12, 2006; 2023 ch. 27, § 2, effective June 29, 2023.

NOTES TO DECISIONS

Analysis

1. Circulation.
2. Substantial Compliance.

1. Circulation.

Statement that newspaper had largest circulation was, standing alone, insufficient to prove such newspaper's qualifications. Williams v. Commonwealth, 392 S.W.2d 454, 1965 Ky. LEXIS 286 (Ky. 1965).

The newspaper with the greatest bona fide paid circulation in the county is entitled to publish the county treasurer's report and not the paper which has the largest overall circulation which includes a number of counties. Whitley Whiz, Inc. v. Whitley County, 812 S.W.2d 149, 1991 Ky. LEXIS 46 (Ky. 1991).

2. Substantial Compliance.

An urban county government's failure to strictly comply with the legal publication requirements of subdivision (1)(b) of this section, by publishing their ordinance concerning a sewer project in a newspaper that did not have the largest bona fide circulation in the area, was not reversible error where substantial compliance with the notification requirements had

been achieved, in that the notice was published in the newspaper with the second largest circulation, individual notices were mailed to the affected property owners, and there was considerable publicity about the initiation of the sewer project by means of radio, television and newspaper coverage. Conrad v. Lexington-Fayette Urban County Government, 659 S.W.2d 190, 1983 Ky. LEXIS 274 (Ky. 1983).

OPINIONS OF ATTORNEY GENERAL.

Where two newspapers satisfy all of the other requirements of paragraphs (b) and (c) of subsection (1) of this section but neither will admit the greater circulation of the other in the independent school district, the board should secure affidavits from both newspapers as to the number of paid subscribers each has within the independent school district. OAG 61-1055.

Where a newspaper company owned more than one newspaper within a publication area, it could not combine the circulation of two or more papers to qualify as having the largest bona fide circulation. OAG 62-231.

Subsection (2) of this section supersedes KRS 87.050 (repealed) and would require ordinances to be published in a qualified newspaper even though there was no newspaper published in the city. OAG 62-546.

The sale of real property for delinquent taxes must be at a public sale, advertised in a newspaper of local publication, with anyone having the right to bid on such property before a purchase of any of the property is valid. OAG 63-56.

Newspapers claiming to have the largest circulation should be required to file with the fiscal court certified statements as to their circulation after which the court can make its selection from the best information available. OAG 64-399.

The phrase "bona fide circulation" includes copies of newspapers sold on newsstands as well as those delivered by newsboys and free copies sent to correspondents, advertisers or advertising agencies within the publication area as defined in this section. OAG 64-399.

A judgment in a court of law finding one newspaper to the largest bona fide circulation in the publication area as against a rival newspaper is good only so long as the statutory qualification is met. OAG 65-859.

Free newspapers distributed can be counted in the circulation number so long as the circulation price is paid by not less than 50 percent of those to whom distribution is made. OAG 65-859.

Where the mayor owned and operated the newspaper having the largest bona fide circulation, legal notices would be required to be published in that paper regardless of the other disqualifying factors. OAG 66-18.

The fiscal court must strictly follow the provisions of this section in making a determination of which newspaper has the largest bona fide circulation from time to time during the year. OAG 69-173.

If a newspaper meets the qualifications set forth in this section and KRS 424.110, it should be utilized to publish all city ordinances. OAG 69-688.

KRS 424.340 does not refer to KRS 424.130, but does refer to this section. OAG 70-523.

Under this section a newspaper is not necessarily required to be printed in the county or state if the company publishing the newspaper maintains an office in the publication area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publication and has a second-class mailing permit issued for that office. OAG 72-312.

Where a member of the city council is the owner and publisher of the only county newspaper or printing concern, he would be prohibited from signing a contract with the city for commercial printing by KRS 61.270 and 86.050 (repealed), but if the newspaper is the only one published in the city that qualifies pursuant to this section for publishing notices, financial statements and other material required by law to be published within the city, there would be no conflict of interest with respect to such publication. OAG 73-88.

Under this section and KRS 424.110, where no newspaper was published in a city and a newspaper in an adjoining city claiming to have the largest circulation in the city concerned but not in the county claimed to be qualified to accept legal advertising from that city, such newspaper could not qualify and the qualified newspaper was that newspaper published in the entire county which had the largest bona fide circulation in that county. OAG 73-419.

Where a member of a county board of education and her husband owned a weekly newspaper, the only newspaper in that county, school financial statements and legal notices could pursuant to this section and KRS 424.220 be published in such newspaper without violating KRS 160.180. OAG 73-438.

In view of this section and KRS 424.110, a city could not legally place its required advertisement in a weekly newspaper that did not maintain its office within the corporate limits of the city, even though it had the largest circulation therein. OAG 73-663.

No conflict of interests would exist if the wife of a publisher of a paper qualified pursuant to this section to publish legal advertisements for the county board of education is elected to the board of education. OAG 74-516.

A legal notice of a city ordinance published in a newspaper that has not been published for one year as required by this section is considered published and would be enforceable under KRS 87.050 (repealed) since it is presumed that it was legally published until the courts say otherwise. OAG 75-428.

Although all county election publications must be published in the newspaper qualifying as the one having the largest circulation within the county as prescribed in this section, the contract for the printing of election supplies is not required to be given to the newspaper having the largest circulation and may be given to any other newspaper as long as it is located in the county in conformance with KRS 57.285. OAG 75-711.

If both of the papers in a county are qualified in every other respect, the county should make its legal advertising in the newspaper with the largest circulation in the publication area and the proper way to make the determination is by evidence submitted in affidavit form from the publishers. OAG 78-202, 1978 Ky. AG LEXIS 522.

For the purpose of legal advertisements, the "publication area" for the Kenton County airport board is Kenton County, inasmuch as the operation of the Kenton County airport, though conducted in the main in Boone County, is an official activity of the airport board, which was created by Kenton County and which is derivatively a board of Kenton County. OAG 80-584, 1980 Ky. AG LEXIS 100.

Where a county contains several cities which require publication of legal notices, but only one newspaper serves the entire county, those cities cannot satisfy the publication requirements of subsection (2) of this section by publishing the legal notices in special zoned editions of the single newspapers, which are separate newspapers distributed weekly within a specific geographic area of the county and contain local reporting and advertising, since they would not qualify on their own under subsection (2) of this section; however, the single parent newspaper would qualify because it is published in the county and has the largest bona fide circulation throughout the county. OAG 81-321, 1981 Ky. AG LEXIS 112.

A fiscal court, in determining administratively which newspaper in the county has the greatest bona fide circulation in order to effect county legal advertising, may use any reasonable means to elicit evidence necessary to make such administrative determination; this may include a hearing, upon proper notice, and the taking of sworn testimony of witnesses and the filing of affidavits and, thus, sworn testimony may be introduced which may have the effect of challenging so-called

factual data contained in affidavits of publishers previously filed. OAG 82-90, 1982 Ky. AG LEXIS 628.

The annual financial statement of a county cannot be carried by a newspaper other than the one having the greatest bona fide circulation since this section explicitly requires the ad to be carried by the newspaper having the greatest bona fide circulation. OAG 82-117, 1982 Ky. AG LEXIS 530.

Under the express terms of KRS 424.220, the officer responsible for the county financial statement must, within 60 days after the close of the fiscal year, cause the statement to be published in full in a newspaper qualified under this section to publish ads for the county (largest bona fide circulation, etc.), regardless of the financial burden imposed on the county by the cost of placing the full statement in the newspaper. OAG 82-117, 1982 Ky. AG LEXIS 530.

Acts 1982, ch. 430, which amends this section and several other statutes relating to publication requirements of cities, is basically an amendment of the municipal publication requirements and does not affect the city budget process, financial matters in cities or matters relating to the administration of city finances. It gives a city a choice as to which of two devices relating to finances and expenditures must be published annually rather than requiring that they both be published and affects what a city publishes after the completion of the fiscal year, but does not affect the activities of a city during the fiscal year; it does not impair any vested rights. OAG 82-353, 1982 Ky. AG LEXIS 267.

As to its publication provisions for municipal governments, Acts 1982, ch. 430, effective July 15, 1982, is applicable to those municipal governments for the fiscal year July 1, 1981 to June 30, 1982. OAG 82-353, 1982 Ky. AG LEXIS 267.

Under subdivision (1)(d) of this section, if there is, in the publication area, more than one newspaper which meets the requirements of subdivisions (1)(a), (b), and (c) of this section, the greater bona fide circulation controls; in the event the two newspapers should, in their published statement of ownership, show an identical number relating to bona fide circulation, the fiscal court could request the two newspapers to submit affidavits relating to the precise bona fide circulation in the county, but should the affidavits contain identical figures as to the bona fide circulation, only the courts could resolve the question of which paper has the right to print county advertisements. OAG 83-247, 1983 Ky. AG LEXIS 250.

Where KRS 88.060 (repealed) which required newspaper publication of city ordinances was in effect both when a city enacted an ordinance and when it subsequently amended that ordinance, and the city failed to publish both the original ordinance and the amendment, neither ordinance was legally enacted and both ordinances were therefore unenforceable. OAG 83-372, 1983 Ky. AG LEXIS 122.

Where there is more than one newspaper qualifying under this section to run mandated county advertising, then the newspaper with the largest bona fide circulation should get the county's advertising; in speaking of the largest bona fide circulation, it is the circulation shown by the published statement of ownership for the publication area. However, where two county newspapers each claim that it has the largest circulation, the fiscal court in making the determination of which newspaper actually does have the highest bona fide circulation in the county may use any reasonable means to elicit evidence necessary to make such determination. OAG 84-30, 1984 Ky. AG LEXIS 356.

KRS 158.690 (repealed) requires the school district's annual performance report to be published annually in the newspaper with the largest circulation in the county; a district is to determine which paper is the largest circulation by applying the criteria of subdivision (1)(d) of this section. OAG 86-72, 1986 Ky. AG LEXIS 16.

Since the annual performance report required by KRS 158.690 (repealed) to be published is a matter required by law to be published, it is an "advertisement" within the meaning of KRS Chapter 424, and this section is applicable to the school district's duty to publish the annual performance report pursuant to KRS 158.690 (repealed). OAG 86-72, 1986 Ky. AG LEXIS 16.

A newspaper distributed for free may not be considered for publication of the school district's annual performance report required by KRS 158.690 (repealed). OAG 86-72, 1986 Ky. AG LEXIS 16.

The master commissioner of the Campbell Circuit Court is required to advertise master commissioner sales in the Campbell County Recorder newspaper unless otherwise agreed upon by the parties, or unless the appraised value of the property to be sold is less than $100. OAG 94-9, 1994 Ky. AG LEXIS 306.

"Publication pursuant to KRS Chapter 424," as provided by KRS 426.560 means (1) publication in a particular "publication area" and (2) publication in a qualified newspaper. OAG 94-9, 1994 Ky. AG LEXIS 306.

The circulation of a newspaper, as reflected in the "statement of ownership," is not controlling in determining the "bona fide paid circulation" in the publication area; therefore, a fiscal court, in a county with two (2) or more newspapers that meet the requirements of this section, must solicit affidavits from otherwise qualified newspapers as to their "bona fide paid circulation" within the publication area, in order to determine which newspaper is entitled to receive statutorily required advertising of governmental notices. OAG 95-28, 1995 Ky. AG LEXIS 69.

RESEARCH REFERENCES AND PRACTICE AIDS

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Kentucky Law Journal.

Kentucky Law Survey, Morris, Municipal Law, 70 Ky. L.J. 287 (1981-82).

424.130. Times and periods of publication — Posting of delinquent tax lists.

(1) Except as otherwise provided in KRS 424.110 to 424.370 and notwithstanding any provision of existing law providing for different times or periods of publication, the times and periods of publications of advertisements required by law to be made in a newspaper shall be as follows:

(a) When an advertisement is of a completed act, such as an ordinance, resolution, regulation, order, rule, report, statement, or certificate and the purpose of the publication is not to inform the public or the members of any class of persons that they may or shall do an act or exercise a right within a designated period or upon or by a designated date, the advertisement shall be published one (1) time only and within thirty (30) days after completion of the act. However, a failure to comply with this paragraph shall not invalidate any ordinance or resolution or subject a person to any of the penalties provided by KRS 424.990 unless such failure continues for a period of fifteen (15) days after notice to comply has been given him by registered letter.

(b) When an advertisement is for the purpose of informing the public or the members of any class of persons that on or before a certain day they may or shall file a petition or exceptions or a remonstrance or protest or objection, or resist the granting of an application or petition, or present or file a claim, or

submit a bid, the advertisement shall be published at least once, but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the occurrence of the act or event.

(c) When an advertisement is for the purpose of informing the public and the advertisement is a notice of delinquent taxes, or notice of the sale of tax claims, the advertisement shall be published either:

1. Once a week for three (3) consecutive weeks; or

2. One (1) time, preceded by a one-half (½) page notice of advertisement the preceding week. The one-half (½) page advertisement shall include notice that a list of uncollectible delinquent taxes is also available for public inspection in accordance with KRS 424.330 during normal business hours at the business address of the city or county and on an identified Internet Web site. The advertisement shall include the business address of the city or county and the Uniform Resource Locator (URL) for the Internet Web site where the document can be viewed. The Internet Web site shall be affiliated with the city or county and contain other information about the city or county government. The delinquent tax list shall be posted on the Internet Web site for a minimum of thirty (30) days and shall be updated weekly.

The provisions of this paragraph shall not be construed to require the advertisement of notice of delinquent state taxes which are collected by the state.

(d) Any advertisement not coming within the scope of paragraph (a), (b), or (c) of this subsection, such as one for the purpose of informing the public or the members of any class of persons of the holding of an election, or of a public hearing, or of an examination, or of an opportunity for inspection, or of the due date of a tax or special assessment, shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the occurrence of the act or event, or in the case of an inspection period, the inspection period commences.

(e) If the particular statute requiring that an advertisement be published provides that the day upon or by which, or the period within which, an act may or shall be done or a right exercised, or an event may or shall take place, is to be determined by computing time for the day of publication of an advertisement, the advertisement shall be published at least once, promptly, in accordance with the statute, and the computation of time shall be from the day of initial publication.

(2) This section is not intended to supersede or affect any statute providing for notice of the fact that an adversary action in court has been commenced.

History.

Enact. Acts 1958, ch. 42, § 3; 1960, ch. 168, § 1; 1988, ch. 32, § 1, effective July 15, 1988; 2002, ch. 346, § 231, effective July 15, 2002; 2006, ch. 8, § 4, effective July 12, 2006; 2011, ch. 46, § 1, effective June 8, 2011; 2019 ch. 35, § 7, effective June 27, 2019.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Publication.
3. —Sufficiency.
4. —Insufficiency.
5. Ordinances.
6. Protest or Objection.
7. Elections.
8. —Special.

1. Applicability.

Combined effect of KRS 424.130(1)(d) and KRS 103.2101 was a requirement of at least two notices of the Kentucky Private Action Bond Allocation Committee's public hearings, one not less than 30 days and another between seven (7) and 21 days prior to the hearing. 2007 Ky. App. Unpub. LEXIS 309 (Ky. Ct. App. May 4, 2007).

2. Publication.

3. —Sufficiency.

Facts that notice was published three (3) times in only 11 days and that last publication was only two days before advertised event did not constitute insufficient notice. Pierson Trapp Co. v. Peak, 340 S.W.2d 456, 1960 Ky. LEXIS 42 (Ky. 1960).

Since KRS 243.360 does not require that the date of the filing of the application be made a part of the advertisement, and such date was not included, the provision of this section fixing the time within which publication is required did not apply to the publication of a notice of intention to apply for a license but the notice had to afford interested parties an opportunity to protest. S. W. Palmer-Ball v. Esquire Liquors, Inc., 490 S.W.2d 472, 1973 Ky. LEXIS 626 (Ky. 1973).

Since the purpose of the notice of filing petition for annexation requirement is to inform citizens that within a certain time they have a right to respond to the petition, the notice of filing is a form of constructive service of process and unless statutory form is strictly complied with, service is bad. St. Matthews v. Beha, 549 S.W.2d 842, 1977 Ky. App. LEXIS 677 (Ky. Ct. App. 1977).

Where notice of filing petition for annexation was published more than 21 days before the date fixed in the advertisement as the last day to remonstrate, the annexation was invalid. St. Matthews v. Beha, 549 S.W.2d 842, 1977 Ky. App. LEXIS 677 (Ky. Ct. App. 1977).

The publication of the entire notice of annexation statute (KRS 81A.420) does not reasonably inform the general public of the time frame for protesting an annexation proposal; in preference to giving the public notice by publishing KRS 81A.420 in its entirety, a simple "notice" publication conforming to subdivision (1)(b) of this section and KRS 424.140, informing the interested public of their right to protest would have been sufficient and not reasonably susceptible to misinterpretation. Merritt v. Campbellsville, 678 S.W.2d 788, 1984 Ky. App. LEXIS 625 (Ky. Ct. App. 1984).

The verbatim publication of the entire notice of annexation statute (KRS 81A.420) did not constitute sufficient notice of a city's proposed annexation in light of KRS 424.140(4) and this section, so as to give interested parties a fair opportunity to oppose the annexation, and for that reason the annexation was invalid. Merritt v. Campbellsville, 678 S.W.2d 788, 1984 Ky. App. LEXIS 625 (Ky. Ct. App. 1984).

4. —Insufficiency.

Where the publication failed to give proper notice as to the time for filing objection to the proposed incorporation and failed to give proper notice of the incorporation hearing, the deficient publication divested the trial court of jurisdiction and

dismissal of the case was proper. Okolona v. Lindsey, 706 S.W.2d 835, 1986 Ky. LEXIS 251 (Ky. 1986).

When the Kentucky Private Activity Bond Allocation Committee considered a city's application for approval of industrial revenue bonds to develop certain property, notice of the hearing before the Committee, pursuant to KRS 424.130(d), was insufficient because its description of the hearing's purpose was inadequate when it merely referred to "50 acres of variable use land," thus failing to identify specifically the proposed development property. 2007 Ky. App. Unpub. LEXIS 309 (Ky. Ct. App. May 4, 2007).

When the Kentucky Private Activity Bond Allocation Committee considered a city's application to approve the city's issuance of industrial revenue bonds, the notice of that hearing did not comply with the combined effect of KRS 424.130(1)(d) and KRS 103.2101, because those statutes required at least two (2) notices of such hearings, and only one notice was given. 2007 Ky. App. Unpub. LEXIS 309 (Ky. Ct. App. May 4, 2007).

5. Ordinances.

Ordinance of a second-class city proposing annexation of certain territory was invalid as it was not published three times as required by paragraph (b) of subsection (1) of this section prior to its amendment in 1960. Vincent v. Bowling Green, 349 S.W.2d 694, 1961 Ky. LEXIS 60 (Ky. 1961).

6. Protest or Objection.

Where zoning board granted permission to erect television tower after notice was published in newspaper on Sunday, a property owner whose residence was near to tower four months later was estopped, after tower was partially erected, to complain. Oeth v. Felty, 421 S.W.2d 860, 1967 Ky. LEXIS 90 (Ky. 1967).

7. Elections.

In regard to whether or not this section regarding time and period of publication has been complied with in determining whether what was done was sufficient compliance, more liberal regard for the term substantial compliance should be had where there is a particular matter to be voted upon at regular or general election fixed by law for choosing public officers than where there will be special or called election at time not fixed by law to vote upon particular proposal, for voters are likely to attend a general election but not a special election. Lyon v. County of Warren, 325 S.W.2d 302, 1959 Ky. LEXIS 41 (Ky. 1959).

Where notice of election on proposal to issue bonds for purpose of remodeling, enlarging and equipping county hospital was not published once a week for two consecutive weeks as required by this section but there was evidence that there had been a vigorous campaign waged for and against the proposal, that there were many feature articles and publicly sponsored advertisements published in local newspapers and several editorials were written concerning the bond issue, that there were numerous radio broadcasts during the period and 20,000 cards and explanatory folders were distributed and 150 signs were posted and that numerous speaking rallies were held boosting the project, in such circumstances notice of advertisement of election was deemed a substantial compliance with the requirement of this section as the object thereof was fully accomplished. Lyon v. County of Warren, 325 S.W.2d 302, 1959 Ky. LEXIS 41 (Ky. 1959) (decision prior to 1960 amendment).

Where this section regarding time and periods of publication of notice of vote on particular proposal has not been complied with in determining whether or not there has been substantial compliance, court often has considered whether voters otherwise had full and actual notice of election and of question submitted and, while official notice is mandatory and cannot be omitted, courts may consider extrinsic material or unofficial notices as supplemental to official notice. Lyon v. County of Warren, 325 S.W.2d 302, 1959 Ky. LEXIS 41 (Ky. 1959).

8. —Special.

Statutory provisions with reference to publicizing a special election or a special proposition to be voted on at a regular election are for the purpose of informing the electorate a sufficient length of time to enable them to arrange to attend the election and make up their minds on how to vote upon the proposition; where that purpose appears to have been accomplished by a substantial compliance with statutory provisions as to times and period of publication, the election ought not and will not be voided. Lyon v. County of Warren, 325 S.W.2d 302, 1959 Ky. LEXIS 41 (Ky. 1959).

Cited in:

Robinson v. Ehrler, 691 S.W.2d 200, 1985 Ky. LEXIS 249 (Ky. 1985).

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The provisions of this section supersede the publication provisions of KRS 66.070 (repealed) and the publication of a special election held pursuant to that section should be made in the manner provided in this section. OAG 60-563.

For a sixth-class city, KRS 81.240 (repealed) controls the publication of an annexation ordinance and where there was no daily or weekly newspaper in the city, the annexation ordinance would have to be published by posting. OAG 63-983.

The county budget must be published in full and synopsis would not be sufficient. OAG 65-131.

Times and periods of publishing judicial sales are determined by paragraph (c) of subsection (1) of this section. OAG 66-769.

The notice to be given to the public under KRS 66.070 (repealed) must comply with paragraph (d) of subsection (1) of this section. OAG 67-400.

In publishing an annexation ordinance, the requirements of this section should be followed. OAG 68-152.

Every ordinance of a fourth-class city council (except those relating to a housing commission) must be published pursuant to subsection (4) of KRS 86.090 (repealed) and paragraph (a) of subsection (1) of this section. OAG 68-323.

In view of the conflicting provisions between this section and KRS 118.430 (repealed), a proposed constitutional amendment should be published in the manner provided in both sections. OAG 69-309.

This section requires that ordinances must be published one time only and within 30 days after their passage. OAG 69-688.

Under paragraph (c) of subsection (1) of this section, notice of judicial sale must be published once a week for three successive weeks and if, through an error, the notice was omitted from the paper, the advertisement of the notice would have to begin anew and the error could not be corrected by printing the notice twice in one issue or by printing an extra handbill. OAG 70-29.

In order to determine which newspaper has the largest bona fide circulation, the fiscal court should require each paper to submit a certified statement concerning its total circulation within the county. OAG 70-43.

The publication required under KRS 116.190 (repealed) is to be made after the entry of the order ordering alteration of a voting precinct, pursuant to paragraph (a) of subsection (1) of this section. OAG 70-87.

Paragraph (c) of subsection (1) of this section requiring the publication of certain legal notices one each week for three successive weeks must be substantially complied with, and the publication of two issues in one week with one of the issues being backdated one week is not substantial compliance. OAG 70-120.

KRS 424.340 as amended contemplates only one publication and this section does not apply. OAG 70-523.

KRS 424.340 does not refer to this section, but does refer to KRS 424.120. OAG 70-523.

A resolution authorizing a mayor to contract with the bureau of transportation for the resurfacing of city streets is not an ordinance within the meaning of KRS 86.090 (repealed) and its publication is not required by that or this section. OAG 74-710.

The full text of a proposed zoning ordinance need not be published since KRS 100.207 provides an exception to the normal publication requirements as set forth in this section. OAG 75-141.

A suitable advertisement of forfeiture of a deadly weapon for "official state use" should be made in compliance with subdivision (1)(b) of this section and should contain a description of the weapon and its serial number and such notice should be published in an appropriate newspaper that has circulation within the jurisdiction of the circuit court having the contraband material. OAG 75-585.

Inasmuch as the publication requirement of this section applies to individual ordinances as they are adopted by a particular city, several cities which have adopted the same ordinance could not meet the requirement by one publication of the ordinance. OAG 77-385, 1977 Ky. AG LEXIS 407.

This section would be applicable to a special election, however, since KRS 118.740 requires at least a 15-day minimum deadline for publishing the notice, the seven-day minimum requirement under this section would not be applicable, so the publication should, if possible, be made between the 15th and the 21st day before the election. OAG 79-12. (opined prior to 1990 amendment to KRS 118.740)

Advertisements for bids for franchises as required by Ky. Const., § 164, must be published in accordance with subdivision (1)(b) of this section, while notice of the enactment of the franchise ordinance must follow subdivision (1)(a) of this section. OAG 79-303, 1979 Ky. AG LEXIS 327.

If reasonably detailed specifications describing the scope of a project are first prepared, such that competing potential bidders can know with particularity the product for which a bid might be tendered, and bids are solicited in relation to those specifications in conformity with this section and KRS 424.140, the design/build approach to construction procurement might be utilized by a county. OAG 92-143.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Comments, Fuentes v. Shevin: The Application of Constitutional Due Process to the Garageman's Lien in Kentucky, 62 Ky. L.J. 1133 (1973-1974).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Enforcement of Mortgage Liens, § 301.00.

Caldwell's Kentucky Form Book, 5th Ed., Judgment and Order of Sale, Plaintiff is First Lien Holder, Form 301.07.

Caldwell's Kentucky Form Book, 5th Ed., Petition to County Judge/Executive for Establishment of Sewer Construction, District (KRS Ch. 76), Form 338.05.

424.140. Contents or form of advertisements.

(1) Any advertisement of a hearing, meeting or examination shall state the time, place and purpose of the same.

(2) Any advertisement of an election shall state the time and purpose of the election, and if the election is upon a public question the advertisement shall state the substance of the question.

(3) Any advertisement for bids or of a sale shall describe what is to be bid for or sold, the time and place of the sale or for the receipt of bids, and any special terms of the sale.

(4) Where any statute provides that, within a specified period of time after action by any governmental agency, unit or body, members of the public or anyone interested in or affected by such action shall or may act, and it is provided by statute that notice of such governmental action be published, the advertisement shall state the time and place when and where action may be taken.

History.

Enact. Acts 1958, ch. 42, § 4; 1960, ch. 168, § 1.

NOTES TO DECISIONS

Analysis

1. Election.
2. Publication.
3. —Insufficiency.
4. Time Limitation.
5. Notice.

1. Election.

Where day, date and hour of election were included in notice as well as statement that issue was continuation or not of alcohol sales, such notice was sufficient. McDonald v. Whallen, 415 S.W.2d 840, 1967 Ky. LEXIS 335 (Ky. 1967).

2. Publication.

Where notice of filing petition for annexation was published more than 21 days before the date fixed in the advertisement as the last day to remonstrate, the annexation was invalid. St. Matthews v. Beha, 549 S.W.2d 842, 1977 Ky. App. LEXIS 677 (Ky. Ct. App. 1977).

3. —Insufficiency.

In the absence of a showing of prejudice to the remonstrants, a defect in the publication of the notice of the commencement of the annexation proceeding should have only one consequence, namely, that no defense to the annexation proceeding need be filed until after a proper notice is published. Wakefield v. Shelbyville, 563 S.W.2d 756, 1978 Ky. App. LEXIS 491 (Ky. Ct. App. 1978).

The publication of the entire notice of annexation statute (KRS 81A.420) does not reasonably inform the general public of the time frame for protesting an annexation proposal; in preference to giving the public notice by publishing KRS 81A.420 in its entirety, a simple "notice" publication conforming to KRS 424.130(1)(b) and this section, informing the interested public of their right to protest would have been sufficient and not reasonably susceptible to misinterpretation. Merritt v. Campbellsville, 678 S.W.2d 788, 1984 Ky. App. LEXIS 625 (Ky. Ct. App. 1984).

The verbatim publication of the entire notice of annexation statute (KRS 81A.420) did not constitute sufficient notice of a city's proposed annexation in light of KRS 424.130 and subsection (4) of this section, so as to give interested parties a fair opportunity to oppose the annexation, and for that reason the annexation was invalid. Merritt v. Campbellsville, 678 S.W.2d 788, 1984 Ky. App. LEXIS 625 (Ky. Ct. App. 1984).

4. Time Limitation.

Although the period set for remonstrance is vague, notification of the time to remonstrate is not required; a city can simply ask the court to fix by order the last day for remon-

strance. St. Matthews v. Beha, 549 S.W.2d 842, 1977 Ky. App. LEXIS 677 (Ky. Ct. App. 1977).

In the absence of any reference to the time within which a remonstrant could respond to the petition for annexation, a fourth-class city's notice of the commencement of annexation of litigation did not substantially comply with KRS 81.210 (repealed) and subsection (4) of this section. Wakefield v. Shelbyville, 563 S.W.2d 756, 1978 Ky. App. LEXIS 491 (Ky. Ct. App. 1978).

5. Notice.

The notice requirement of KRS 412.070 may be fulfilled by taking out an advertisement pursuant to KRS 424. Barrett v. Reynolds, 817 S.W.2d 439, 1991 Ky. LEXIS 146 (Ky. 1991).

Cited in:

Cole v. Stephens, 582 S.W.2d 657, 1979 Ky. App. LEXIS 419 (Ky. Ct. App. 1979); Robinson v. Ehrler, 691 S.W.2d 200, 1985 Ky. LEXIS 249 (Ky. 1985).

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There is no legal requirement that a planning commission publish, in its notice of proposed zoning change, the legal description of the property based upon recent surveys or the deed of the property involved, unless the commission has so required in rules and regulations enacted pursuant to KRS 100.167; accordingly, a brief, concise description of the property and the purpose of the hearing as well as the time and place of the hearing, as required by this section, would be legally sufficient notice since it would give the average newspaper reader reasonable warning that the property is the subject of a rezoning request. OAG 81-301, 1981 Ky. AG LEXIS 130.

If reasonably detailed specifications describing the scope of a project are first prepared, such that competing potential bidders can know with particularity the product for which a bid might be tendered, and bids are solicited in relation to those specifications in conformity with KRS 424.130, and this section, the design/build approach to construction procurement might be utilized by a county. OAG 92-143.

424.145. Alternative Internet and newspaper publication procedures for local governments.

(1) As used in this section:

(a) "Local government" means:

1. Any urban-county government;
2. Any consolidated local government;
3. Any charter county;
4. Any unified local government; and
5. In any county containing a population of eighty thousand (80,000) or more based upon the most recent federal decennial census, the county itself or any:
   a. City within the county;
   b. Special district within the county;
   c. School district within the county; or
   d. Special purpose governmental entity within the county; and

(b) "Notice website" means a website that is maintained by a local government or a third party under contract with the local government, which contains links to the legal advertisements or notices electronically published by the local government.

(2) Local governments may satisfy the requirements of this chapter or any other provision of law requiring the publication of an advertisement in a newspaper by following the alternative procedures established in this section.

(3) In lieu of newspaper publication, a local government may post the required advertisement online on a notice website operated by the local government that is accessible to the public at all times in accordance with subsections (4) to (9) of this section. Publication of an advertisement shall be deemed to have occurred on the date the advertisement is posted on the local government's notice website.

(4)(a) In conjunction with an alternative Internet posting, the local government shall publish a newspaper advertisement one (1) time providing notice that the public may view the full advertisement on the notice website. The newspaper advertisement shall:

1. Be not more than six (6) column inches and meet the technical requirements of KRS 424.160(1);
2. Be published within ten (10) days of the alternative posting on the notice website when the purpose of the posting is to inform the public of a completed act, including those acts specified in KRS 424.130(1)(a), or within three (3) days of the posting when the purpose of the posting is to inform the public of the right to take a certain action, including the events specified in KRS 424.130(1)(b) and (d);
3. Inform the public of the subject matter of the alternative posting, inform the public of its right to inspect any documents associated with the Internet posting by contacting the local government, and provide a mailing and a physical address where a copy of the document may be obtained and the web address if the document is available online; and
4. Provide the full Uniform Resource Locator (URL) of the notice website address and the full Uniform Resource Locator (URL) of the address where the full advertisement may be directly viewed along with a telephone number for the local government.

(b) A local government may, alternatively, publish an advertisement one (1) time providing notice that the public may view the full advertisement on the notice website in a digital newspaper that meets the qualifications discussed in KRS 424.120, so long as the advertisement complies with paragraph (a) 2., 3., and 4. of this subsection.

(5) In addition to specific legal requirements applicable to a particular type of advertisement:

(a) The contents of each alternative Internet posting shall meet the minimum requirements of KRS 424.140; and

(b) The local government shall make the alternative Internet posting in accordance with the times and periods established by KRS 424.130, and shall actively maintain the alternative Internet posting on its public website:

1. Until the deadline passes or the event occurs if the substance of the advertisement is intended to advise the public of a time to take action or the occurrence of a future event;
2. For at least ninety (90) days if the substance of the advertisement is to inform the public of an

action taken by the local government, such as the enactment of an ordinance; or

3. For one (1) year or until updated or replaced with a more recent version if the substance of the advertisement is intended to inform the public about the financial status of the local government, such as annual audits or the budget.

(6) The local government shall display access to any and all alternative Internet postings made pursuant to this section prominently on the homepage or first page of the notice website. The section of the notice website containing any postings and the actual advertisement shall be made in a manner where the public can readily and with minimal effort identify the location of and easily retrieve the advertisements.

(7) The local government shall provide a conspicuous statement on its notice website that individuals who have difficulty in accessing the contents of posted advertisements may contact the local government for information regarding alternative methods of accessing advertisements, which shall include the telephone number of the local government.

(8) As proof of an alternative Internet posting to satisfy any newspaper publication requirement, the local government shall memorialize the posting by capturing the posting in electronic or paper format and shall complete an affidavit signed by the person responsible for causing publications under KRS 424.150, stating that the local government satisfied the publication requirement by alternative Internet posting. The affidavit shall specify the active dates of the notice website posting, the specific statutory requirements being satisfied by the alternative Internet posting, and the notice website address where the alternative posting was located, including the full Uniform Resource Locator (URL) used for the posting. The local government shall retain the captured posting and the affidavit by the person responsible for publication for a period of three (3) years. Together, the captured posting and the affidavit shall constitute prima facie evidence that the posting was made and occurred as stated within the affidavit.

(9) The failure to cause the newspaper advertisement required in subsection (4) of this section shall not void the action of the local government or negate the enforceability of the matter advertised by alternative Internet posting. Any person who violates the requirements of subsection (4) of this section shall be subject to the penalties provided in KRS 424.990.

History.

2020 ch. 87, § 1, effective July 15, 2020; 2023 ch. 27, § 1, effective June 29, 2023.

Legislative Research Commission Notes.

(7/15/2020). 2020 Ky. Acts ch. 91, sec. 73, which applies to fiscal years 2020-2021 and 2021-2022 and expires June 30, 2022 (see 2020 Ky. Acts ch. 91, sec. 80), states the following:

"Publishing Requirements: Notwithstanding KRS 83A.060, 91A.040, and Chapter 424, a county containing a population of more than 90,000 or any city within a county containing a population of more than 90,000, as determined by the 2010 United States Census, may publish enacted ordinances, audits, and bid solicitations by posting the full ordinance, the full audit report including the auditor's opinion letter, or the bid solicitation on an Internet Web site maintained by the county or city government for a period of at least one (1) year. If a county or city publishes ordinances, audits, or bid solicitations on an Internet Web site, the county or city shall also publish an advertisement, in a newspaper qualified in accordance with KRS 424.120, with a description of the ordinances, audits, or bid solicitations published on the Internet Web site, including the Uniform Resource Locator (URL) where the documents can be viewed. Any advertisement required to be published in a newspaper under KRS Chapter 424 shall contain the following statement at the end of the advertisement:

"This advertisement was paid for by [insert the name of the governmental body required to advertise in a newspaper] using taxpayer dollars in the amount of $[insert the amount paid for the advertisement].".

424.147. Local government posting on Internet if newspaper makes error in publication or fails to publish.

(1) If a newspaper qualified under KRS 424.120 either makes an error or fails in time or substance to make a publication in accordance with KRS 424.130 or 424.140 after receiving the information to be published, a city or county affected thereby may, after it has notice of the error or failure and to avoid undue delay of governmental process and procedure, remedy the error or failure by causing the publication to occur on a notice Web site as defined in KRS 424.145.

(2) Notwithstanding the time requirements imposed by KRS 424.130, a city or county publishing to remedy an error or failure of a newspaper under subsection (1) of this section shall immediately cause the publication of the matter on a notice Web site, and this remedial Web site publication shall be deemed in full compliance with the requirements of this chapter.

History.

2020 ch. 87, § 2, effective July 15, 2020.

424.150. Person responsible for publishing.

When any statute providing for newspaper publication of an advertisement does not designate the person responsible for causing the publication to be made, the responsible person shall be:

(1) Where the advertisement is of the filing of a petition or application, the person by whom the same is filed;

(2) Where the advertisement is of an activity or action of:

(a) An individual public officer, the officer himself;

(b) A city, the city clerk if there be one; if not, the mayor;

(c) A county, the county clerk;

(d) A district, or a board, commission or agency of a city, county or district, the chief administrative or executive officer or agent thereof;

(e) A court, the clerk thereof;

(f) A state department or agency, the head thereof.

History.

Enact. Acts 1958, ch. 42, § 5; 1960, ch. 168, § 1; 1978, ch. 384, § 525, effective June 17, 1978; 1986, ch. 23, § 15, effective July 15, 1986.

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The city legislative body would have the responsibility of

publishing notice of a special election to be held on general election day concerning an indebtedness that would exceed the city's annual income. OAG 67-400.

If the advertisement is of an activity or action of the county generally, the county clerk is responsible for placing the advertisement and making the decision as to the qualifying newspaper. OAG 75-215.

The decision as to the qualifying newspaper should be made by the official immediately responsible for placing the advertisement, where said advertisement is of an activity or action of such officer. OAG 75-215.

The county clerk was given the duty of procuring publication of matters of fiscal court action because the county clerk was generally clerk of the fiscal court, but now it is possible that in any county, except Jefferson, the county clerk may decide to not be clerk of fiscal court, in which case the logical reason for performing this clerical duty would no longer exist, and, therefore, the clerical duty of looking after publication of county ordinances was really intended to be imposed upon the clerk of fiscal court. OAG 78-521.

424.160. Rates for newspaper advertising required by law.

(1) For all newspaper advertising required by law, the publisher is entitled to receive payment for each insertion at a rate per column inch. The advertisement shall be set in no larger than seven (7) point type on solid leading. The rate shall not exceed the lowest noncontract classified rate paid by advertisers. The terms and conditions of any volume discounts given to commercial customers shall be extended to public agencies of the Commonwealth of Kentucky. Newspapers shall give all local public agencies a written notice of at least thirty (30) days of an advertising rate increase.

(2) If by law or by the nature of the matter to be published, a display form of advertisement is required, or if the person or officer responsible for causing an advertisement to be published determines in his discretion that a display form is practicable or feasible, and so directs the newspaper, the advertisement shall be published in display form and the newspaper shall be entitled to receive its established display rate.

(3) If it is provided by statute that an advertisement shall be published of the filing of a petition or application seeking official action, the filing, if required by other than a governmental official or agency, shall not be deemed complete unless there is deposited with the petition or application an amount sufficient to pay the cost of publication.

(4) The expense of advertisements in judicial proceedings shall be taxed as costs by the clerk of the court.

History.

Enact. Acts 1958, ch. 42, § 6; 1960, ch. 168, § 1; 1982, ch. 430, § 4, effective July 15, 1982; 1992, ch. 396, § 1, effective July 14, 1992; 2006, ch. 8, § 5, effective July 12, 2006.

NOTES TO DECISIONS

Analysis

1. Rates.
2. —Liability.
3. —Federal Receivership.

1. Rates.

Where law required certain publication to be made in newspaper having largest general circulation in county, publication in such paper was mandatory although competing paper offered to publish at a lower rate. Shelby County Fiscal Court v. Cosine, 174 Ky. 504, 192 S.W. 626, 1917 Ky. LEXIS 211 (Ky. 1917) (decided under prior law).

Compensation was allowed for solid printing, eight-point measure, and hence, if advertisement is displayed by giving extra space and using larger type, amount allowed should be reduced to amount allowable if printing had been done as provided by law. Cornett v. Muncy, 228 Ky. 390, 15 S.W.2d 251, 1929 Ky. LEXIS 557 (Ky. 1929) (decided under prior law).

2. —Liability.

Under law which provides for the advertisement in a newspaper of sheriff's sale of property under execution, the sheriff is not personally liable to the publisher for the cost of the advertisement in the absence of an agreement to that effect; the publisher must look to the party for whose benefit the advertisement is made. Ellis v. Casey, 12 Ky. L. Rptr. 508 (1890) (decided under prior law).

3. —Federal Receivership.

In federal equity receiverships, reasonable allowance for publication of notices of sale of realty would be fairly fixed by this statute, notwithstanding provisions of federal law fixed inadequate rates for printers' fees. Thornton v. Gault, 18 F. Supp. 112, 1937 U.S. Dist. LEXIS 2064 (D. Ky. 1937) (decided under prior law).

Cited in:

Vincent v. Bowling Green, 349 S.W.2d 694, 1961 Ky. LEXIS 60 (Ky. 1961).

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Under this section regarding material required to be advertised, such material should not be printed in newspapers in a point type smaller than eight-point type and the actual rate for publishing such material must be based upon the space required by eight-point type, even if a larger type is used. OAG 77-141, 1977 Ky. AG LEXIS 651.

Although the face of a sample ballot could be printed with a smaller or larger type, the rate charged for the newspaper advertising must be based on the rate for an eight-point type. OAG 77-405, 1977 Ky. AG LEXIS 374.

Acts 1982, ch. 430, which amends this section and several other statutes relating to publication requirements of cities, is basically an amendment of the municipal publication requirements and does not affect the city budget process, financial matters in cities or matters relating to the administration of city finances. It gives a city a choice as to which of two devices relating to finances and expenditures must be published annually rather than requiring that they both be published and affects what a city publishes after the completion of the fiscal year, but does not affect the activities of a city during the fiscal year; it does not impair any vested rights. OAG 82-353, 1982 Ky. AG LEXIS 267.

As to its publication provisions for municipal governments, Acts 1982, ch. 430, effective July 15, 1982, is applicable to those municipal governments for the fiscal year July 1, 1981 to June 30, 1982. OAG 82-353, 1982 Ky. AG LEXIS 267.

424.170. Proof of publication.

(1) The affidavit of the publisher or proprietor of a newspaper, stating that an advertisement has been published in his newspaper and the times it was published, attached to a copy of the advertisement, constitutes prima facie evidence that the publication was made as stated in the affidavit.

(2) The affidavit of the person responsible for publishing as described in KRS 424.150, stating that an

advertisement has been delivered by first class mail to each residence within the publication area, attached to a copy of the advertisement, constitutes prima facie evidence that the publication was made as stated in the affidavit and that the expenditure for the cost of postage, all supplies, and reproduction of the advertisement did not exceed the cost of newspaper publication of the advertisement.

History.
Enact. Acts 1958, ch. 42, § 7; 1982, ch. 430, § 5, effective July 15, 1982.

NOTES TO DECISIONS

Cited in:
Vincent v. Bowling Green, 349 S.W.2d 694, 1961 Ky. LEXIS 60 (Ky. 1961).

OPINIONS OF ATTORNEY GENERAL.

Acts 1982, ch. 430, which amends this section and several other statutes relating to publication requirements of cities, is basically an amendment of the municipal publication requirements and does not affect the city budget process, financial matters in cities or matters relating to the administration of city finances. It gives a city a choice as to which of two devices relating to finances and expenditures must be published annually rather than requiring that they both be published and affects what a city publishes after the completion of the fiscal year, but does not affect the activities of a city during the fiscal year; it does not impair any vested rights. OAG 82-353, 1982 Ky. AG LEXIS 267.

As to its publication provisions for municipal governments, Acts 1982, ch. 430, effective July 15, 1982, is applicable to those municipal governments for the fiscal year July 1, 1981 to June 30, 1982. OAG 82-353, 1982 Ky. AG LEXIS 267.

424.195. Supplementation of printed notice by broadcast in certain cases.

(1) Any official of the Commonwealth of Kentucky or any of its political subdivisions who is required by law to publish any legal notice or notice of event may supplement, not to exceed twelve (12) publications unless otherwise ordered by a court of competent jurisdiction thereof by use of radio or television spot announcements, or both, when, in his judgment, the public interest will be served thereby; except, that notices by political subdivisions may be made only by stations having a broadcast studio within the county of origin of the legal notice, and that broadcast notices shall call attention solely to published or posted notices required by statute.

(2) Each radio or television station broadcasting a legal notice or notice of event shall for a period of three (3) months subsequent to such broadcast retain at its office a copy of the transcript of the text of the notices actually broadcast and such shall be available for public inspection.

(3) The radio or television station which broadcasts the legal notice authorized by this section shall be entitled to receive payment of an amount equal to the customary charges of such station for such service.

(4) The publication of legal notices under this section shall be restricted to legal notices relating to those official acts of public officers requiring a final determination by order of any court of competent jurisdiction in the Commonwealth.

History.
Enact. Acts 1970, ch. 100, § 1.

MATTERS REQUIRED TO BE PUBLISHED

424.220. Financial statements — Contents — Publication requirements — Exempted officers.

(1) Excepting officers who are exempted under subsection (8) of this section, every public officer of any city, county, or district less than a county, or of any board, commission, or other authority of a city, county, or district whose duty it is to collect, receive, have the custody, control, or disbursement of any funds collected from the public in any form shall, at the expiration of each fiscal year, prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by him or her during the fiscal year just closed, unless he or she has complied with KRS 424.230.

(2) The statement shall show:

(a) The total amount of funds collected and received during the fiscal year from each individual source; and

(b) The total amount of funds disbursed during the fiscal year to each individual payee. The list shall include only aggregate amounts to vendors exceeding one thousand dollars ($1,000).

(3) Only the totals of amounts paid to each individual as salary or commission and public utility bills shall be shown. The amount of salaries paid to all nonelected county employees shall be shown as lump-sum expenditures by category, including but not limited to road department, jails, solid waste, public safety, and administrative personnel.

(4) The financial reporting and publishing requirements for a school district are provided in KRS 160.463.

(5) The officer shall procure and include in or attach to the financial statement, as a part thereof, a certificate from the cashier or other proper officer of the banks in which the funds are or have been deposited during the past year, showing the balance, if any, of funds to the credit of the officer making the statement.

(6) To provide notice to the public that the city's financial statement has been completed as required by this section, the appropriate officer of a city that has not conducted an annual audit for the fiscal year under one (1) of the exceptions provided in KRS 91A.040(2) or (3) shall publish a legal display advertisement of not less than six (6) column inches in a newspaper qualified under KRS 424.120 that the statement required by subsection (1) of this section has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio and television station which has on file with the city a written request to be provided a statement. The advertisement shall be published within thirty (30) days after the submission of the financial statement to the Department for Local Government under KRS 91A.040(2)(b) or (3)(a).

(7) To provide notice to the public that the county's financial statement has been completed as required by this section, the appropriate officer of a county shall publish the county's audit, prepared in accordance with KRS 43.070 or 64.810, in the same manner that city audits are published in accordance with KRS 91A.040(8).

(8) The provisions of this section shall not apply to officers of:

(a) A city of the first class;

(b) A county containing a city of the first class;

(c) A consolidated local government;

(d) An urban-county government;

(e) A city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census;

(f) A city that has completed an audit pursuant to the provisions of KRS 91A.040(1) or (2)(a);

(g) A city that has completed an agreed-upon procedures engagement in accordance with KRS 91A.044;

(h) A public agency or joint public agency of a:

1. City of the first class;
2. Consolidated local government; or
3. County containing a city of the first class; or

(i) A school district of a:

1. City of the first class;
2. Consolidated local government; or
3. County containing a city of the first class.

History.

Enact. Acts 1958, ch. 42, § 12; 1960, ch. 168, § 1; 1962, ch. 170, § 1; 1976, ch. 71, § 1; 1978, ch. 384, § 526, effective June 17, 1978; 1982, ch. 430, § 7, effective July 15, 1982; 1984, ch. 277, § 1, effective July 13, 1984; 1988, ch. 32, § 2, effective July 15, 1988; 1990, ch. 52, § 3, effective July 13, 1990; 1998, ch. 69, § 79, effective July 15, 1998; 2002, ch. 346, § 232, effective July 15, 2002; 2006, ch. 8, § 6, effective July 12, 2006; 2011, ch. 46, § 2, effective June 8, 2011; 2014, ch. 92, § 309, effective January 1, 2015; 2018 ch. 171, § 8, effective April 14, 2018; 2018 ch. 207, § 8, effective April 27, 2018; 2018 ch. 10, § 2, effective July 14, 2018; 2019 ch. 91, § 2, effective June 27, 2019; 2025 ch. 153, § 6, effective June 27, 2025; 2026 ch. 91, § 3, effective July 15, 2026.

Legislative Research Commission Notes.

(8/19/2022). The Reviser of Statutes has corrected an error that occurred during codification of this statute following the enactment of 2018 Ky. Acts chs. 10, 171, and 207.

NOTES TO DECISIONS

Analysis

1. Standing to Sue.
2. Circulation.

1. Standing to Sue.

Allegation in plaintiff's complaint that city board of trustees did not publish financial statements for city pursuant to this section had statutory remedy provided by the legislature which conferred standing on citizens of the governmental unit to bring actions to compel adherence to the law. Fish v. Elliott, 554 S.W.2d 94, 1977 Ky. App. LEXIS 756 (Ky. Ct. App. 1977).

2. Circulation.

The newspaper with the greatest bona fide paid circulation in the county is entitled to publish the county treasurer's report and not the paper which has the largest overall circulation which includes a number of counties. Whitley Whiz, Inc. v. Whitley County, 812 S.W.2d 149, 1991 Ky. LEXIS 46 (Ky. 1991).

Cited in:

Vincent v. Bowling Green, 349 S.W.2d 694, 1961 Ky. LEXIS 60 (Ky. 1961); Williams v. Commonwealth, 392 S.W.2d 454, 1965 Ky. LEXIS 286 (Ky. 1965).

OPINIONS OF ATTORNEY GENERAL.

The statute relating to the publication of financial statements would not be applicable to municipal housing commissions established under KRS Chapter 80. OAG 60-486.

The financial statement must be published in detail and the publication of a copy of the audit would not be sufficient. OAG 60-794.

The financial report on the city's waterworks should be published in accordance with the provisions of the statute. OAG 61-477.

A city in its financial statement must show the amount of funds collected and received, from what sources received, the amount disbursed, the date of each disbursement, for what purpose expended, and to whom paid, the only exception being the totals of amounts paid to any individual as salary or commission and public utility bills. OAG 64-129.

Funds of a county or city-county health department contributed by the state government or funds derived from the federal government for which the state acts as a conduit and retains custody would be exempt from the annual publication requirements of the statute. OAG 64-330.

Money of a county or city-county health department which is raised locally and derived from a taxing district, the fiscal court, or city government, or from various voluntary contributions, would require the local health department to publish a financial statement. OAG 64-330.

The county treasurer is the officer required to publish the financial statement of the county and the fiscal court is under a corresponding duty to make funds available to pay for the publication. OAG 64-627.

The express requirements of the statute cannot be dispensed with by filing a statement with the fiscal court, the county judge and the county clerk. OAG 64-627.

There is no authorization for additional compensation to the county treasurer for preparing and causing to be published the annual financial statement. OAG 65-100.

A municipal water commission is required to comply with the provisions of this section relating to the publication of an itemized financial statement of a municipally owned water company. OAG 67-219.

Under this section, the appropriate officer of a board or commission operating a municipally owned waterworks of a city of the fifth class as a separate entity of the city is required to publish a financial statement. OAG 67-233.

A school district must publish the financial statement required by this section relative to the receipt and disbursement of funds received under the elementary and secondary education act, title I, even though the source of the funds is entirely federal money. OAG 67-422.

The publication of the auditor's report required in KRS 92.405 (repealed) is in lieu of the publication requirements of this section. OAG 68-314.

The northern Kentucky area planning commission is a "subdivision" within the meaning of this section and is required to comply with the requirements of this section relating to the publication of financial statements. OAG 69-396.

This section does not permit the publication of disbursements by listing each vendor's name and the total amount paid to each during the year. OAG 69-396.

In a county containing a city of the third class as its largest city, the Circuit Court clerk, county court clerk, sheriff, county judge, and county treasurer must all publish the financial statement required by this section, and there is no provision for the consolidation of reports. OAG 69-582.

A member of the city council and chairman of the finance committee would be authorized to review the payroll tax records in the city treasurer's office. OAG 70-353.

Cities of the fifth class are required to publish a financial statement pursuant to the provisions of this section. OAG 70-371.

This section must be followed by the county treasurer as it directs. OAG 70-786.

In a fifth-class city, the police judge's records are not outside the scope of a regular audit of the city's records. OAG 71-57.

The name of the teacher must be reflected along with the gross or total salary paid. OAG 71-128.

Although for libraries formed by the petition method the reports required under both subdivision (2) of KRS 173.770 and this section are necessary, the library board, in making its report under subdivision (2) of KRS 173.770 need only show the totals of amounts paid to each individual as salary and public utility bills with any other expenditures shown by individual voucher. OAG 71-438.

The publication requirements do not apply to a mental health and mental retardation center which is largely supported through federal, state and county aid but which is a charitable, nonstock, nonprofit corporation. OAG 71-468.

Cities of the fifth class are required to publish an annual financial statement pursuant to the terms of this section. OAG 72-45.

This section does not require a fifth- or sixth-class city to have its books audited by a certified public accountant. OAG 72-185.

As the county health, library, and extension districts are all taxing units entrusted with the custody and control of public funds, they come within the scope of this section and must file the appropriate financial statements. OAG 72-479.

This section applies to the Union County air board, the Union County planning commission and to the Morganfield Airport, as all are entrusted with the control and custody of public funds. OAG 72-479.

This section does not apply to the Morganfield municipal housing authority, as a city housing commission is a state agency. OAG 72-479.

Since the hospital board of Hardin Memorial Hospital is owned and operated by Hardin County pursuant to KRS 216.040 (repealed), the board has the duty to publish the financial statement called for by this section. OAG 73-297.

Where a member of a county board of education and her husband own a weekly newspaper, the only newspaper in the county, school financial statements and legal notices could be published in such newspaper pursuant to this section and KRS 424.120 without violating KRS 160.180. OAG 73-438.

Cities of the third class are not required to publish a detailed financial statement but in lieu thereof may publish an audit report as provided by KRS 92.403 and 92.405 (both repealed). OAG 74-89; 74-214.

A utility commission created by a city would be required to publish a statement of its receipts and disbursements as required by this section, independent of the city's obligation to publish a statement of funds under its control. OAG 74-121.

As the annual audit of the financial affairs of a third-class city need not comply with the requirements of this section, the 60-day publication requirement following the close of the fiscal year would not be applicable. OAG 74-173.

An ordinance to establish an Industrial Development Authority which requires an annual audit of the Authority is valid under this section and KRS 152.900. OAG 74-864.

This section is not applicable to a police judge in a third-class city. OAG 75-173.

An annual financial statement is required of the northern Kentucky convention and visitors commission but not the northern Kentucky convention and visitors bureau which is the commission's staff arm and a nonlegal entity. OAG 75-651.

Under the expressed provisions of this section, as amended in 1976, only the lump sum of salaries paid to teachers and other employees of the school district must be shown in the published financial statement. OAG 76-393; 76-415.

A county cannot comply with the requirements of this section by publishing a condensed financial statement under general headings and filing a detailed statement with the county court clerk. OAG 77-142, 1977 Ky. AG LEXIS 648.

Under this section a qualified newspaper may, at its expense, publish as a news item the individual salaries of school employees. OAG 77-418, 1977 Ky. AG LEXIS 349.

Where a court clerk is causing the publication of financial statements in a newspaper other than one which has the largest bona fide circulation in the county, a mandamus action would be an appropriate remedy to compel compliance with this section. OAG 77-550, 1977 Ky. AG LEXIS 233.

Where a city is operating its gas and water system as a separate agency of the city government, the utility system must publish a detailed financial statement as required under this section even though the utility system is not operated out of the general fund. OAG 78-51, 1978 Ky. AG LEXIS 658.

The publication of a letter of transmittal under KRS 43.090 or even an auditor's report of audit in no way serves to cancel out the county treasurer's duty to publish his or her report under this section. OAG 79-103, 1979 Ky. AG LEXIS 533.

The public officer required to prepare and publish the financial statement for a fire protection district involved in this section cannot escape his statutory duty by publishing a copy of the certified public accountant's audit. OAG 80-240, 1980 Ky. AG LEXIS 474.

The supervision of local health departments by the department for human resources does not relieve the public officer of the local health department from his duty under this section to collect, receive, have custody, control or disbursement of funds, and the local health department is required to publish under this section as to the funds it receives and disburses unless it falls within an exception to this section. OAG 80-325, 1980 Ky. AG LEXIS 360.

Where a local health department is co-extensive with a public health taxing district with all its income and disbursements recorded in the district's financial records, the recently enacted KRS 65.070(1)(c) demonstrates an intention to substitute publishing information as to the availability of financial records for publishing the previously-required detailed financial statement; therefore, as to these local health departments, there is to be an exception to the publishing requirements of this section, however, where the local health department is not co-extensive with a public health taxing district with the same financial records, it will have to publish in accordance with this section. OAG 80-325, 1980 Ky. AG LEXIS 360.

Since a city-county air board is entrusted with the control and custody of public funds, the officers of the air board must comply with the provisions of this section concerning the preparation and publication of an annual financial statement. OAG 80-577, 1980 Ky. AG LEXIS 77.

A fire protection district now is required to publish an annual financial statement consistent with the requirements of KRS 65.070(1)(c) in place of the annual financial statement formerly required by this section. OAG 80-627, 1980 Ky. AG LEXIS 35.

The fact that the 1980 legislature placed new requirements on cities with respect to accounting records and financial reports, directed each city to operate under an annual budget ordinance and repealed two preexisting statutes which had required the publishing of a summary of an annual audit, resulted in making the law such that each city must publish a

summary of the audit report, KRS 91A.040, and also fully follow the publication requirements for a financial statement set out in this section. OAG 81-37, 1981 Ky. AG LEXIS 385.

The county attorneys of Kentucky are not required to publish a financial statement pursuant to this section since the auditing of the county attorney's books pursuant to KRS 43.070 and KRS 64.810 is ample to disclose the specifics of his official operation. OAG 81-168, 1981 Ky. AG LEXIS 270.

The annual financial statement of a county cannot be carried by a newspaper other than the one having the greatest bona fide circulation since KRS 424.120 explicitly requires the ad to be carried by the newspaper having the greatest bona fide circulation. OAG 82-117, 1982 Ky. AG LEXIS 530.

Under the express terms of this section, the officer responsible for the county financial statement must, within 60 days after the close of the fiscal year, cause the statement to be published in full in a newspaper qualified under KRS 424.120 to publish ads for the county (largest bona fide circulation, etc.), regardless of the financial burden imposed on the county by the cost of placing the full statement in the newspaper. OAG 82-117, 1982 Ky. AG LEXIS 530.

Acts 1982, ch. 430, which amends several statutes relating to publication requirements of cities, including KRS 91A.040 and this section, is basically an amendment of the municipal publication requirements and does not affect the city budget process, financial matters in cities or matters relating to the administration of city finances. It gives a city a choice as to which of two devices relating to finances and expenditures must be published annually rather than requiring that they both be published and affects what a city publishes after the completion of the fiscal year, but does not affect the activities of a city during the fiscal year; it does not impair any vested rights. OAG 82-353, 1982 Ky. AG LEXIS 267.

As to its publication provisions for municipal governments, Acts 1982, ch. 430, effective July 15, 1982, is applicable to those municipal governments for the fiscal year July 1, 1981 to June 30, 1982. OAG 82-353, 1982 Ky. AG LEXIS 267.

A city of the sixth class must continue to prepare an audit and publish it under the terms of subsections (7), (8) or (9) of KRS 91A.040 unless the city qualifies under the provisions of KRS 91A.040, in which case it may in lieu of preparing an audit publish a financial statement pursuant to this section. OAG 82-384, 1982 Ky. AG LEXIS 255.

A county hospital must make a paid publication of its financial statement showing the aggregate sums received according to category and the aggregate sums paid out according to each payee. A newspaper may publish other information from the records of the hospital as news items without cost to the hospital. OAG 82-608, 1982 Ky. AG LEXIS 72.

It is necessary, in order to comply with this section, that a school district include in its financial statement receipts and disbursements for a cafeteria account. OAG 82-622, 1982 Ky. AG LEXIS 8.

A hospital district organized and functioning pursuant to the terms and provisions of KRS 216.310 to 216.360 is required to publish an annual statement consistent with the requirements of KRS 65.070(1)(c) in lieu of the annual financial statement required by this section. OAG 82-631, 1982 Ky. AG LEXIS 17.

This section conflicts with KRS 91A.040 and 91A.041 (repealed) in that it requires the publication of the financial statement within 60 days after the close of the fiscal year; since KRS 91A.040(8) is more specific in nature, in that it applies solely to cities, and since it is new legislation, it would prevail in its time requirement which is tied in with the 270-day time leeway permitted in KRS 91A.040(1) with regard to the preparation of the city's audit. Of course, all other requirements of KRS Chapter 424 must be complied with in respect to such publication. OAG 83-56, 1983 Ky. AG LEXIS 440.

As a political subdivision, a city-county parks and recreation board created pursuant to KRS 97.035 would be subject to the requirements of this section relative to the publication of an annual financial statement. OAG 83-327, 1983 Ky. AG LEXIS 170.

In reading all of subsection (1) of this section together, under the doctrine of in pari materia, it appears that this section does not apply to a district health department; this section emphasizes that those units of government which extract rates, charges, assessments or taxes from the public are brought under the statute. Thus, it would not apply to a district health department which received its funding from state, federal, county, and public health taxing district sources, and imposed no taxes or charges upon the public. OAG 84-335, 1984 Ky. AG LEXIS 52.

KRS 65.070, relating to publication of financial statements, has no application to a district health department; however, the financial statement provisions of this section do apply to a district health department. OAG 85-45, modifying OAG 84-335, 1984 Ky. AG LEXIS 52.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Morris, Municipal Law, 70 Ky. L.J. 287 (1981-82).

424.230. Optional monthly or quarterly statements.

Any officer who is subject to the provisions of KRS 424.220 may elect to prepare and publish monthly or quarterly statements, in lieu of the annual statements required by KRS 424.220. All of the provisions of KRS 424.220 shall be applicable to such a monthly or quarterly statement except that (1) the statement shall cover only the preceding month or quarter, as the case may be, and (2) the publication shall be made within thirty (30) days after the end of the month or quarter, as the case may be. Any officer who has elected to proceed under this section shall not be exempted from the requirements of KRS 424.220 for any fiscal year unless he has caused to be prepared and published, in accordance with this section, a proper statement for each month or quarter of the fiscal year.

History.

Enact. Acts 1958, ch. 42, § 13.

424.250. Advertisement of school district budget.

At the same time that copies of the budget of a school district are filed with the clerk of the tax levying authority for the district, as provided in KRS 160.461, the board of education of the district shall cause the budget to be advertised for the district by publishing a copy of the budget in a newspaper and on the district's website.

History.

Enact. Acts 1958, ch. 42, § 15; 2025 ch. 86, § 6, effective June 27, 2025; 2026 ch. 129, § 12, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

While the amending of KRS 160.470 and the making of each school district their own tax levying authority repeals that part of this section as to filing the budget with a clerk, the other part of the statute calling for the budget to be published

in a newspaper is capable of being observed. OAG 82-603, 1982 Ky. AG LEXIS 30.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
School districts, KRS ch. 160.

424.260. Bids for materials, supplies, equipment, or services — Exceptions.

(1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, a city, county, or district, or board or commission of a city or county, or sheriff or county clerk, shall not make a contract, lease, or other agreement for:

(a) Materials;

(b) Supplies, except for supplies that are:

1. Perishable foods such as meat, poultry, fish, egg products, fresh vegetables, and fresh fruits; or

2. Sold at public auction;

(c) Equipment, except used vehicles and used equipment if the purchase price does not exceed seventy-five percent (75%) of the manufacturer's suggested retail price for the model year for a vehicle or date of manufacture for equipment for the same or similar vehicles or equipment; or

(d) Contractual services other than professional;

involving an expenditure of more than fifty thousand dollars ($50,000) without first making newspaper advertisement for bids. This subsection shall not apply to the transfer of property between governmental agencies as authorized in KRS 82.083(4)(a).

(2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than fifty thousand dollars ($50,000), the fiscal court requirement shall prevail.

(3)(a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Office of Material and Procurement Services in the Office of the Controller within the Finance and Administration Cabinet or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.

(b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.

(4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

(5) The provisions of subsection (1) of this section shall not apply for the purchase of wholesale electric power for resale to the ultimate customers of a municipal utility organized under KRS 96.550 to 96.900.

(6) Subsection (1) of this section shall not apply to purchases for products or services made pursuant to KRS 82.084.

(7) Beginning in calendar year 2030, the small purchase maximum amount set out in subsections (1) and (2) of this section shall be increased by ten thousand dollars ($10,000) every five (5) years effective on January 1 of each year. The Finance and Administration Cabinet shall, through a technical advice memorandum or other official means of communication, announce the small purchase maximum amount in effect for the current year, and shall also prominently post that information on its website.

History.
Enact. Acts 1958, ch. 42, § 16; 1960, ch. 168, § 1; 1972, ch. 147, § 1; 1974, ch. 97, § 1; 1978, ch. 197, § 12, effective June 17, 1978; 1982, ch. 282, § 4, effective April 2, 1982; 1990, ch. 95, § 1, effective July 13, 1990; 1992, ch. 178, § 1, effective July 14, 1992; 1996, ch. 89, § 5, effective July 15, 1996; 2000, ch. 5, § 11, effective July 14, 2000; 2000, ch. 225, § 3, effective July 14, 2000; 2000, ch. 510, § 3, effective July 14, 2000; 2005, ch. 85, § 696, effective June 20, 2005; 2016 ch. 22, § 5, effective July 15, 2016; 2019 ch. 79, § 4, effective June 27, 2019; 2022 ch. 150, § 2, effective July 14, 2022; 2023 ch. 152, § 2, effective June 29, 2023; 2026 ch. 39, § 5, effective July 15, 2026; 2026 ch. 90, § 4, effective July 15, 2026.

Legislative Research Commission Notes.
(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 39 and 90, which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Purpose.
3. Purchases.
4. —Amount.
5. Contractual Services.
6. Standing.
7. Applicability.

1. Construction.
Since the provisions of former law regarding the maximum amounts that could be expended by school boards for buildings, improvements and materials before being required to

advertise for competitive bids were less than the amount provided for in this section as enacted in 1958, such former law was to that extent repealed and superseded by this section. Board of Education v. Hall, 353 S.W.2d 194, 1962 Ky. LEXIS 8 (Ky. 1962).

This section contains no language that the lowest and best bidder, or for that matter any bidder, must be awarded the contract and where the record was devoid of any charge that defendants, county fiscal court and hospital acted fraudulently, collusively, arbitrarily, capriciously or in abuse of discretion in refusing the lowest bid, action against them was properly dismissed. Handy v. Warren County Fiscal Court, 570 S.W.2d 663, 1978 Ky. App. LEXIS 582 (Ky. Ct. App. 1978).

2. Purpose.

The requirement for advertisement by publication and competitive bidding satisfies the public goals of (a) an offering to the public, (b) an opportunity for competition and (c) a basis for exact comparison of bids, notwithstanding that this section makes no provision for the award of contracts to the lowest and best bidder. Handy v. Warren County Fiscal Court, 570 S.W.2d 663, 1978 Ky. App. LEXIS 582 (Ky. Ct. App. 1978).

3. Purchases.

4. —Amount.

Since items purchased fell within several categories, no one of which involved more than $500, advertising for competitive bidding was not required. Board of Education v. Hall, 353 S.W.2d 194, 1962 Ky. LEXIS 8 (Ky. 1962).

5. Contractual Services.

City need not solicit bids before contracting for banking and insurance services. McCloud v. Cadiz, 548 S.W.2d 158, 1977 Ky. App. LEXIS 646 (Ky. Ct. App. 1977).

The contractual services for which this section requires the solicitation of bids are those involving personal services of a manual or mechanical nature. McCloud v. Cadiz, 548 S.W.2d 158, 1977 Ky. App. LEXIS 646 (Ky. Ct. App. 1977).

6. Standing.

Allegation in plaintiff's complaint that city board of trustees had not advertised for bids to obtain facilities for the city hall pursuant to this section had a statutory remedy provided by the Legislature which conferred standing on citizens of the governmental unit to bring actions to compel adherence to the law. Fish v. Elliott, 554 S.W.2d 94, 1977 Ky. App. LEXIS 756 (Ky. Ct. App. 1977).

7. Applicability.

Circuit court properly concluded that a contract for fire protection services between a fire district and a fire department did not require advertisements for public bidding under Ky. Rev. Stat. Ann. § 424.260(1) because fighting fires required professional skill. Se. Bullitt Fire Prot. Dist. v. Se. Bullitt Fire & Rescue Dep't, 537 S.W.3d 828, 2017 Ky. App. LEXIS 397 (Ky. Ct. App. 2017).

Cited in:

Fosson v. Fiscal Court of Boyd County, 369 S.W.2d 108, 1963 Ky. LEXIS 58 (Ky. 1963); Massey v. Franklin, 384 S.W.2d 505, 1964 Ky. LEXIS 105 (Ky. 1964); McGovney & McKee, Inc. v. Berea, 448 F. Supp. 1049, 1978 U.S. Dist. LEXIS 18932 (E.D. Ky. 1978).

OPINIONS OF ATTORNEY GENERAL.

The statute would not be applicable to municipal housing commissions established under KRS Chapter 80. OAG 60-486.

The sales tax and other costs such as transportation and professional fees should be included by the city in determining the total cost of a contract and whether or not such costs would require advertising for bids pursuant to this section. OAG 60-518.

Where the sheriff's office was being moved but the safe could not be moved, if the chief executive officer of the county certified that an emergency existed and filed a copy with the chief financial officer of the county, a new safe could be purchased without advertising for bids. OAG 60-822.

If a board of education buys oil and gasoline for school buses in bulk and the purchase price exceeds $1,000, the purchasing of these supplies should be done through bid advertising. OAG 60-1217.

A board of education is not required to advertise for bids in the selection of school bus drivers. OAG 61-634.

The employment of school bus drivers is not within the purview of either KRS 162.070 or this section. OAG 61-634.

Change orders as provided for in a contract for the construction of public school buildings are proper when they do not substantially alter the nature of the contract or may be regarded as matters incidental to or which relate to an integral part of the original contract and specifications, but if they are so great as to constitute a new construction contract or to deal with an unrelated matter, this proposition would not apply. OAG 62-845.

The question of whether competitive bids are required for a change order depends more on the nature of the change order than the amount of money involved. OAG 62-845.

If records of the school board indicate that in prior years the annual cost of paint totals $1,000 or more, the board should advertise for bids on all paint purchased, unless the board is certain that the amount will not exceed $1,000. OAG 62-901.

Where the school board ordered several pieces of related school equipment and furniture from a single vendor and the total amount exceeded $1,000, bids should have been taken. OAG 62-901.

Where the school board is going to make two purchases of the same type of supplies within a span of three or four months and the total amount would exceed $1,000, the amount of supplies needed should be estimated and bids taken. OAG 62-901.

A city is not legally required to advertise for bids in connection with the execution of insurance contracts. OAG 62-1082.

The employment of a fiscal agent by a board of education would constitute a contractual relationship for professional services and advertisement for professional services and advertisement for bids for this service is not required. OAG 63-938.

The statute would apply to purchases or contracts for services of a county hospital commission. OAG 63-1098.

The basic issue in each instance of severability is whether the governmental unit acted in good faith or whether the purchases were split up for the purpose of evading the bidding statute. OAG 64-510.

Even though partially funded with money from the federal government, a county building commission would be required to follow the bidding provisions of this section. OAG 65-746.

If the individual students exercise their own initiative in the purchase of class rings, senior portraits and senior invitations and the school has no control and does not use its accounting procedures in the purchase, bids do not have to be taken and the individual choices must be respected. OAG 66-228.

An ordinance leasing certain city property to an individual was not illegal for failure to execute the lease on a bid basis. OAG 66-728.

A district school board is not required to advertise for bids for the satisfaction of its insurance requirements. OAG 67-66.

If after readvertisement no firm bids are received and there is every indication that none can be obtained, the council would be authorized to privately negotiate for the best contract obtainable for the performance of required work. OAG 67-119.

The city must make every effort to let those contracts coming within the purview of this section on a bid basis even though the public authorities believe in good faith and as a result of inquiries that no firm bids will be received, or that no one other than the one to whom a contract has previously been let would be willing to undertake the job. OAG 67-119.

A school board member is prohibited from contracting with the board of which he is a member, despite the fact that the contract is let pursuant to sealed bids. OAG 67-212.

The local share of the funds for an area public library, or a portion thereof, cannot be segregated from the other government funds going into the project to be supervised by the department of libraries, because it would be impossible for the department to insure full compliance with bidding procedures. OAG 69-65.

Purchases of athletic equipment of over $1,000 by a district school board would have to be made by the bidding procedure even though the purchase money was derived from admissions to athletic exhibitions. OAG 69-327.

Emergencies may be excluded under this section and where the purchases are actually severable on a bona fide basis, the statute would not be offended. OAG 69-515.

Where a school board had no gasoline storage facilities, it should have conducted competitive bidding for retail gasoline rates. OAG 70-74.

Where coal purchases exceeding $1,000 were made at various times by a school board without competitive bidding, the contracts were void, the public funds paid out pursuant to such a transaction were recoverable, and the acceptance of benefits would not permit recovery on a quantum meruit basis. OAG 70-74.

Where the fiscal court advertised a request for bids on the operation and lease of the county rest home and then accepted a bid of 18 percent of gross receipts, the bid was valid as the leasing of the rest home did not require the application of this section. OAG 70-96.

This section is applicable to public utility franchises sold pursuant to KRS 96.010. OAG 70-136.

A contract between the fiscal court and a private individual for property and equipment for a sanitary landfill operation where the fiscal court guaranteed a monthly fee to the operator from which additional fees for private dumping would be deducted would come within the purview of this section requiring that advertisement be made and bids be received. OAG 70-191.

Even though a sanitation or health emergency is deemed to exist, before a franchise for a dumping facility can be granted, it must be advertised and bids received. OAG 70-191.

The fiscal court could legally award a franchise covering a specifically designated portion of the county for the dumping of garbage at a landfill site pursuant to Const., § 164, after advertisement was made and bids received for a site. OAG 70-191.

A lease between a local bank and the county under which the county would lease a dump truck from the bank on a one-year lease, renewable until the truck was paid for, at which time the title would be transferred to the county would be valid if the annual rental did not cause the county to exceed its debt limitation, if the county was only obligated for a one-year lease and if the lease-purchase agreement was let out on competitive bids with the bank the assignee of the successful bidder. OAG 70-233.

Where a district board of education desires to pay all or any part of the premiums on group policies for district employees, the advertising and competitive bid procedure of this section should be followed where the amount to be paid by the board is in excess of $1,000. OAG 70-687.

The electric plant board of a city organized pursuant to the little TVA act would be considered a municipal board or commission referred to in this section and would be required to comply with the bidding requirements of this section. OAG 70-798.

So long as the specifications are reasonable, clear, and identical to all bidders, and if they estimate as definitely as practicable the specific work and work performance level required and the time period required, the specifications would be adequate for bidding for the hiring of special heavy equipment and operators on an hourly basis. OAG 71-27.

Where road repair work was under the constant supervision of the county road supervisor and under adequate time checks, an award of the hiring of special heavy equipment and operators on an hourly rate basis, after bids were let, would be adequate. OAG 71-27.

It is necessary to take competitive bids in accordance with this section for the purchase of office supplies for a county attorney's office when they are purchased out of the excess fee fund. OAG 71-171.

The fiscal court could award a contract for certain items of hospital equipment and furnishings for a new hospital to the lowest bidder after it had made clarifications in the specifications, since the basic pricing device was not altered and because the cost change from manual beds to electric beds did not produce a substantial change in the specifications. OAG 72-162.

Under this section professional services are exempt from competitive bidding; therefore, professional engineers need not engage in competitive bidding for professional services. OAG 72-228.

Under this section a city must let contracts for street improvements on a bid basis if the anticipated expense would exceed the statutory amount, even though there may be only one company within the city or county that has the necessary equipment. OAG 72-231.

While there are no statutes prohibiting the "turnkey" method of construction of a city-county hospital, the bidding provisions of this section must nevertheless be complied with. OAG 72-233.

The advertising requirements of this section would not apply to a contract by a city for the purchase of real estate for use as a city building. OAG 72-609.

The competitive bidding procedure for insurance contracts set forth in this section should be utilized where the amount to be expended is more than $2,500, except in those situations where the premium rates and benefits are fixed by statute or ordinance, so as to eliminate any possible variation in rates, group life, disability and medical coverage insurance contracts, and other types of insurance contracts in which the premium rates and benefits may be competitive and vary from company to company, are not excepted from the bidding requirements as contracts for professional services. OAG 73-367.

Where a county's needs for the application of bituminous materials in repairing its roads exceeded $2,500, the requirement of this section that bids be taken after advertisement could not be circumvented by splitting the total amount into several "rental" payments to the contractor. OAG 73-415.

This section would not apply to a contract by the fiscal court to purchase a private law library and office equipment for the total sum of $2,500 and therefore it would not be required to advertise for bids before executing such contract. OAG 73-433.

If the cost of printing general election ballots exceeds the statutory amount referred to in this section, the contract for printing such ballots must be let on a bid basis as the county clerk acts on behalf of the county or other governmental unit. OAG 73-615.

Where without observing this section the local school board was presented with claims for $281,207 for work on the construction of a new school building which was performed on the basis of an oral agreement between the contractor and the then school superintendent, none of the county's revenue-sharing money can be legally spent in replacing the capital

outlay fund money and school building fund money, which funds were illegally spent on a void contract, as this would be a violation of this section. OAG 73-684.

The state board of education has enacted regulations for bidding on the purchase of school equipment and any bidding not conforming to these regulations can be reported to the superintendent of public instruction who is empowered by KRS 156.132 to make written charges against any superintendent or board member who is guilty of misconduct or unlawful acts. OAG 73-740.

Where a school district advertised for bids and opened them at the specified time but delayed awarding a contract until some time not more than 90 days later, during which period of time a new wage rate was issued, since no changes were made in the contract price or work specifications and no justification was shown for an "emergency" authorizing waiver of the bidding statutes under this section, the wage rate to be paid by the contractor should be that in effect on the date of advertisement for bids and not the new rate that was in effect at the time bids were awarded. OAG 73-744; 74-8.

The purchase by a fiscal court of a county vehicle to be used by a senior citizens organization for an amount in excess of $2,500 is void unless it is let out on advertised newspaper bids stating the specifications desired. OAG 74-107.

This section's requirement that local boards of education solicit bids for the purchase of gasoline need not be complied with during the effective duration of the federal petroleum allocation and price regulations which mandated that each school district retain its current gasoline supplier. OAG 74-285; 76-600.

No pre-qualifications are necessary as to professional engineers and architects as they are exempt and should not be required to respond to bidding procedure. OAG 74-379.

The authority to use "fast track" bidding is not prohibited by this section as long as competitive bidding is afforded. OAG 74-379.

This section applies to urban-county government or a governmental corporation created under KRS ch. 273 which is merely the agent or instrumentality of urban county government. OAG 74-379.

There was no need for the board of education to advertise for bids on office space as the words "lease or other agreement for materials, supplies or equipment" do not cover such space. OAG 74-404.

A proposed contract for addition to a hospital would not be valid under this section where the construction manager, if there were no other bids or all bids were in excess of the manager's budgeted cost, would automatically end up with the contract. OAG 74-420.

Since certified, public accounting services are professional, a city is not required to request proposals from various firms to conduct an annual audit of the city's books of account and record. OAG 74-698.

Purchase of housing for a fire engine did not constitute an emergency that would, under this section, waive the necessity for use of the bidding procedure. OAG 74-778.

The Board of Trustees of the Fire Protection District, rather than the chief of the fire department of the district under KRS 75.031, has the authority to contract for the purchase of fire equipment and the requirements of this section must be met if the contract involves an expenditure of more than $2,500 so that the Fire Protection District may legally purchase fire equipment from manufacturers for which the full-time fire chief of the Fire Protection District sells equipment when no commission or other remuneration is received by the chief in connection with purchase by the district and assuming that the statutory bidding requirements, if applicable, are observed. OAG 74-880.

Where hospital's liability insurance has been cancelled the hospital if it desires to continue with liability insurance cannot accept the bid of the next lowest bidder but should let out a new contract by advertising for bids anew, pursuant to this section. OAG 75-19.

When a school district purchases textbooks and materials under the provisions of KRS 156.400 to 156.476, the statutory bidding procedures required by this section are not applicable. OAG 75-27.

Where a city in advertising bids for a sanitary landfill specified a cutoff time and date for the receipt of bids and after that time a city councilman turned over to the city clerk a bid on behalf of the bidder, it was improper for the councilman to deliver the bid and the bid could not be properly accepted by the city after the specified time, since, although not spelled out therein, this section by implication requires strict compliance by a city with its advertised bidding procedures. OAG 75-97.

Where a city in advertising bids specifies a cutoff time and date for the receipt of bids, the city clerk should time stamp all bids showing the precise time of receipt to document compliance with the advertised requirement. OAG 75-97.

A fiscal court may, without advertising for bids, purchase from the county clerk materials and supplies not in excess of $2,500, providing this limitation in amount is not circumvented by splitting a larger purchase into "dribbles and dabs" of separate purchases. OAG 75-98.

An arrangement whereby a political subdivision enters into a negotiated price agreement for the construction of facilities is invalid where the bidding requirements of this section were not complied with prior to the commencement of construction. OAG 75-117.

The agent of the fiscal court, in letting a contract for construction of county hospital facilities would have to comply with the bidding requirements of this section, regardless of the statutory financing method or methods employed, since a negotiated contract would be strictly illegal and void. OAG 75-482.

The services rendered by an auditor are professional services and therefore a board of education may employ an auditor without advertising for bids while "cleaning services" do not fall within the meaning of "professional" services and advertisement for bids involving an expenditure of more than $2,500 for cleaning services is statutorily required. OAG 75-488.

If the cost of services in connection with the production of a school yearbook are as much as $2,500, then, in accordance with this section and Regulations 702 KAR 3:130 and 3:140, schools should advertise for bids and the expenditures must be supervised by the board of education which has the ultimate responsibility. OAG 75-618 (affirming OAG 66-51, 66-228 and 66-417).

A contract for the printing of supplies for county elections is not required to be given to the newspaper having the largest circulation and, therefore, may be given to any other newspaper as long as it is located in the county in conformance with KRS 57.285, but if the printing costs exceed $2,500 then the contract must be let on a bid basis. OAG 75-711.

The bidding requirement cannot be avoided by buying a small amount each month where it is known that certain supplies will be needed over a period of several months, and in such a case, the fiscal court should estimate aggregate needs in advance. OAG 76-9.

The fiscal court has the power to purchase all property for the county out of the county treasury including any equipment purchased for the use of the office of sheriff or for any other county constitutional office and where necessary official purchases are made out of excess fees of county constitutional officers for use of those offices, the fiscal court has the authority to require that such purchases be made by the central purchasing officer established by the fiscal court to effect county purchases after such purchases are authorized by fiscal court orders. OAG 76-390.

Where the county court clerk caused an advertisement to be placed in a local paper stating that the fiscal court was seeking

bids on gasoline, fuel oil and labor for repairing county equipment, but no mention was made of the fiscal court's right to reject any and all bids and the fiscal court had not expressed an intent to seek bids and bid specifications were not prepared by them, but in response to the advertisement, two service stations submitted bids, one of which was accepted by the fiscal court even though they were unaware of the clerk's advertisement, the county court clerk acted in absence of any instructions or directions from the fiscal court when he placed the advertisement, and the fiscal court, even though it initially accepted one of the bids, may, after discovering the improper act of the county court clerk and its own failure to authorize the purchase of the items bid upon, revoke the contract if one was made or reject the bids submitted. OAG 76-476.

This section has no application to KRS 117.145 since the latter statute provides for special purchases of election supplies by the county clerk and contains no express provisions for competitive bidding. OAG 76-496.

This section was intended to supersede any similar bidding provisions for local governmental units. OAG 76-496.

In determining whether a contract involving backhoe work is for more than $2,500 and thus subject to the bidding requirement, a city cannot add the value of other services and materials not related to that work such as wages of city employees or materials obtained through other contracts. OAG 76-521.

A local public school district must advertise for bids on each categorically separate food commodity it desires to purchase where the cost of procurement will exceed twenty-five hundred dollars over the period of a school year. OAG 76-556.

A procedure followed by a board of education in awarding contracts for construction, repair and maintenance services that may develop in the future would not comply with this section which contemplates contracts where job specifications are advertised for a specific project and bids are received containing a firm total cost figure. OAG 76-661.

A nonprofit corporation organized for the sole purpose of financing and constructing public projects on behalf of displaced residents would not be required to comply with the bidding statutes. OAG 77-74, 1977 Ky. AG LEXIS 704.

Where a contract relating to the purchase of class rings by students at a county public school would in no way involve school funds, bidding would be unnecessary. OAG 77-255, 1977 Ky. AG LEXIS 539.

A city which has been issued a license to construct a hydroelectric plant could invite bids which specify alternate methods of construction and equipment. OAG 77-265, 1977 Ky. AG LEXIS 514.

This section does not apply to the sale of surplus property by a water district. OAG 77-399, 1977 Ky. AG LEXIS 384.

In receiving bids for construction of a branch library, a public library district could not award the contracts on the basis of the base bids only and then automatically accept the alternates desired at the prices submitted by the chosen low base bidder, but instead must award the specific contracts on the basis of the sum of the base bid plus the desired alternates. OAG 77-428, 1977 Ky. AG LEXIS 397.

A city may hire the necessary personnel and lease the needed equipment to install waterlines, but if the equipment to be leased involves an expenditure of more than $2,500 the city must follow the bidding requirements set forth in this section. OAG 77-458, 1977 Ky. AG LEXIS 368.

Inasmuch as insurance contracts involve a "professional" service rather than a personal service of a manual or mechanical nature, a city may obtain insurance coverage without making a newspaper advertisement for bids. OAG 77-599, 1977 Ky. AG LEXIS 180.

The bidding requirements of this section do not apply to insurance procured for the county, regardless of the amount. OAG 78-12, 1978 Ky. AG LEXIS 707.

A sewer and water board is an agency of the city and would be required to advertise for bids pursuant to this section where the contract involved more than $5,000. OAG 78-95, 1978 Ky. AG LEXIS 630.

This section requiring competitive bidding is mandatory and where applicable it must be observed in good faith by the local governmental authorities so that the legislative body responsible for letting bids cannot circumvent the statute by buying needed supplies in "dribbles and dabs." OAG 78-121, 1978 Ky. AG LEXIS 598.

Under this section, the fiscal court has discretion in applying this section during the duration of awarded bid contract; however, it cannot, in considering the purpose of the bidding statute, act arbitrarily, capriciously or unreasonably and where the fiscal court desired to continue under an existing petroleum contract, whether or not they were acting arbitrarily or capriciously in failing to relet the bids on petroleum products would be determined by the courts. OAG 78-121, 1978 Ky. AG LEXIS 598.

It is illegal for a city to figure its gasoline needs for one day and thus avoid advertising for bids; rather, a city should calculate its gasoline needs for at least a one-year period and advertise for bids if the costs will exceed $5,000. OAG 78-166, 1978 Ky. AG LEXIS 537.

The fact that roads are in poor condition as the result of a bad winter was not unforeseeable and was not of emergency status so as to justify the purchasing of trucks for the county road system without a letting of bids if the cost exceeds $5,000. OAG 78-280, 1978 Ky. AG LEXIS 490.

Where a city offered to pay to blacktop the driveway of leased premises in exchange for such lease, if the city itself was responsible for blacktopping the driveway, making it necessary for it to obtain by contract the necessary materials and equipment to do the job, then this section would be applicable since it applies to all purchases of material and equipment by a city. OAG 78-357, 1978 Ky. AG LEXIS 402.

KRS 45A.385 and this section as amended in 1978 are pari materia and both are to be given effect by construing the $2,500 limitation to be an oversight by the Legislature that it was increasing the limitation of this section to $5,000. OAG 78-357, 1978 Ky. AG LEXIS 402.

The term "professional services" as used in this section refers to those services furnished by a physician, lawyer, engineer, artist, architect, etc. OAG 78-725, 1978 Ky. AG LEXIS 123.

The term "professional services" could in no way include the furnishing of computer billing services contemplated by an electric plant board and, as a consequence, the board would be required to advertise for bids for this type of service in compliance with this section, assuming of course that the cost of such services will exceed $5,000. OAG 78-725, 1978 Ky. AG LEXIS 123.

Under this section the fiscal court would have to observe an accepted bid for the time period agreed upon under the specifications. OAG 79-138, 1979 Ky. AG LEXIS 472.

Where a fiscal court sought bids for both 12- and 18-inch steel, and got bids from one bidder of $2.00 and $3.00 respectively, and of $2.25 and $2.90 respectively from another, it would be necessary to reject both bids and ask for new and separate bids, since under the initial bids it would be impractical to determine a low bidder. OAG 79-138, 1979 Ky. AG LEXIS 472.

Whether or not a fiscal court could reimburse a private citizen for money he spent for work on a public way would depend on whether the cost of the work exceeded $5,000; if it did, this section would have required a bid which did not take place, thus preventing reimbursement; but if it was less than $5,000, then it is in the discretion of the fiscal court to do so. OAG 79-138, 1979 Ky. AG LEXIS 472.

Nothing prevents the delegation of authority to make purchases, up to a certain level less than $5,000, to the county

judge/executive, subject to final fiscal court approval, being placed in the administrative code. OAG 79-179, 1979 Ky. AG LEXIS 462.

Where a city-county office building was in dire need of a new roof and bids were twice advertised for with no one making a bid, a resolution declaring an emergency could properly be passed and noncompetitive negotiations entered into despite the fact that such work would involve an expenditure substantially more than $5,000. OAG 79-304, 1979 Ky. AG LEXIS 329.

Where a county is contracting for hospital management services, the bidding statute does not apply. OAG 79-377.

The provisions of the Model Procurement Code (KRS 45A.385) must govern over this section as amended since the Procurement Code is a detailed, comprehensive and specific kind of legislation as contrasted with the short, skeletal and general provisions of this section. OAG 79-429; 79-447.

A firm selected as construction manager for a project could also bid competitively on other phases of the construction work, since the services and work to be performed legitimately can be broken down into various parts or phases. OAG 79-501, 1979 Ky. AG LEXIS 145.

A local school board may directly purchase items or equipment, for a construction project, by competitive bidding, which it would then have installed by others under separate competitive bids. OAG 79-501, 1979 Ky. AG LEXIS 145.

The position of a construction manager over a construction project constitutes professional services and would therefore not be subject to competitive bidding. OAG 79-501, 1979 Ky. AG LEXIS 145.

There is no express provision in KRS Chapter 273 or in this section that required a nonprofit, nonstock corporation to observe the bidding process. OAG 79-577, 1979 Ky. AG LEXIS 62.

Where a county fiscal court has formally adopted the Model Procurement Code, the provisions of that code apply to the construction of a personal care home on behalf of a tenant, which will be a Kentucky nonprofit corporation, the funding of which construction will be effected by a revenue bond issue of fiscal court pursuant to KRS 103.200; however, where the fiscal court has taken no formal action to come under the Model Procurement Code, the code does not apply, and this section, requiring bidding on the construction contract, would apply. OAG 80-297, 1980 Ky. AG LEXIS 345.

If a county has not adopted the Model Procurement Code, the procurement of the services of a public accountant or certified public accountant, in order to audit the county's funds, would not require formal bidding procedure. OAG 80-624, 1980 Ky. AG LEXIS 43.

A county metropolitan sewer district may, whether operating under this section, the bidding statute, or KRS 45A.345, the model procurement code, adopt a "Buy American" clause, which requires a contractor or supplier to furnish only goods manufactured in America, as a standard procurement policy, included in all purchasing contracts and bid specifications. OAG 81-34, 1981 Ky. AG LEXIS 408.

The fiscal court of a county may lease a portion of the tobacco base owned by the county to individuals, since the power of the court under KRS 67.080 to sell real property includes the power to lease, and the lease of county property does not come under the competitive bidding requirements of this section and the Model Procurement Code, KRS Chapter 45A, since the bidding principle applies only to governmental acquisitions, not situations where the government is the lessor; however, the lease must contain the precise consideration given, since the fiscal court must make full public disclosure of its transactions. OAG 81-107, 1981 Ky. AG LEXIS 329.

Where a fiscal court has specifically adopted the Kentucky Model Procurement Code, pursuant to KRS 45A.350 (repealed), it must, under subdivision (23) of KRS 45A.345, purchase insurance under a competitive bidding system, even though this section excepts professional services such as insurance from competitive bidding. OAG 81-109, 1981 Ky. AG LEXIS 327.

A county fiscal court, in a county which has not adopted the Kentucky Model Procurement Code under KRS 45A.350 (repealed), may participate in a self-insuring workers' compensation trust in connection with a workers' compensation benefits program for hospital workers without letting out the insurance contracts under a competitive bidding procedure, since failure to adopt the procurement code leaves the fiscal court free under this section to let the contract without bidding. OAG 81-117, 1981 Ky. AG LEXIS 310.

Assuming that a county fiscal court has not adopted KRS 45A.345 to 45A.460 of the Kentucky Model Procurement Code, then this section applies to the purchase of its gasoline, petroleum, and other supplies used by the county road department. OAG 82-125, 1982 Ky. AG LEXIS 515.

A statutory requirement of advertisement for bids is "jurisdictional," and a fiscal court is without power to enter into a contract without such advertisement, where the purchase requires bidding. Further, a party deals with a public agency at its peril if it contracts with an agency and fails to inquire into the power of the agency to execute such contract. OAG 82-125, 1982 Ky. AG LEXIS 515.

Number of months' supply of any needed commodity which must be considered for bidding purposes is, because of its nature, a matter that must be left to the sound administrative discretion of the fiscal court. OAG 82-125, 1982 Ky. AG LEXIS 515.

The matter of letting out for bids the gasoline and oil needed for the county road department is left to the good business judgment of the fiscal court in terms of the period of consumption, price fluctuations, availability of the commodity for a definite period, etc. However, a fiscal court should not deliberately buy the needed commodities in "dribbles and dabs" merely to circumvent advertised bidding. OAG 82-125, 1982 Ky. AG LEXIS 515.

The three important benefits of the bidding process are: (a) an offering to the public, (b) an opportunity for competition and (c) a basis for an exact comparison of bids. OAG 82-125, 1982 Ky. AG LEXIS 515.

There is no conflict between this section and the model Procurement Code, KRS Chapter 45A, concerning the necessity of school boards taking competitive bids for general liability insurance since local school districts, as local public agencies, have a choice whether to operate with respect to their procurement needs under either the local Model Procurement Code or this section. OAG 82-170, 1982 Ky. AG LEXIS 478.

This section does not require general liability insurance for school districts to be competitively bid. OAG 82-170, 1982 Ky. AG LEXIS 478.

The emergency clause of Acts 1982, ch. 282, which amended this section among others, related solely to § 3 of the act which amended KRS 45A.335 to exclude members of state boards and commissions from the term "officer or employee," as used in the conflict of interest statute, KRS 45A.340(5); it not only did not relate to the other sections of the bill, which were separable, but it gave no reason to justify that an emergency existed with respect to these sections. In view of the fact that the Ky. Const., § 55 requires an act to express in plain language what the emergency is in order for it to be effective only § 3 became effective on April 2, 1982, upon the passage of the act and approval of the governor, and the remaining sections of the act became effective as ordinary legislation on July 15, 1982. OAG 82-308, 1982 Ky. AG LEXIS 335.

A fiscal court, governed by this section (that is, any fiscal court not adopting KRS 45A.345 to 45A.460), may effect purchases up to $7,500 without formal bidding procedure. OAG 82-324, 1982 Ky. AG LEXIS 314.

Any fiscal court adopting KRS 45A.345 to 45A.460 may, under KRS 45A.385, effect purchases not exceeding $5,000 without formal bidding procedures, while those fiscal courts, under current law, which have not adopted such sections, are governed by this section. OAG 82-324, 1982 Ky. AG LEXIS 314.

Although site work can be, and is usually interpreted to be, a part of a project involving school building construction or remodeling, site work unrelated to school building construction does not come within the scope of KRS 162.070. Thus, where a school district wished to correct a drainage problem at one of its schools, this section and the $7,500 "small purchases" ceiling was applicable to the contract for drainage site work. OAG 82-407, 1982 Ky. AG LEXIS 239.

To the extent that KRS 162.070 and this section are in conflict, the provisions and therefore the $7,500 amount found in this section, as amended in 1982, must be deemed to prevail over the lower $5,000 amount remaining in KRS 162.070. OAG 82-407, 1982 Ky. AG LEXIS 239.

Under this section, a cafeteria plan of insurance coverage for school teachers need not be bid; under the Model Procurement Code if a contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance, the contract may be noncompetitively negotiated. OAG 83-151, 1983 Ky. AG LEXIS 346.

This section has no application to a county sheriff. OAG 83-249, 1983 Ky. AG LEXIS 248.

A fiscal court resolution requiring that tiles and tires be purchased from the cheapest places in the county is in restrictive conflict with this section and KRS 45A.365(5) and is invalid. OAG 83-258, 1983 Ky. AG LEXIS 239.

If the reconstructing or paving of separate county road segments could involve unified specifications and work performance of such nature that bids on the total number of projects as a total package could be obtained, the total work should be let under advertisement for bids, pursuant to this section or KRS Chapter 45A, whichever is applicable to the county; however, if the fiscal court determines upon investigation that lump sum bids upon the total projects cannot be obtained from the road construction trade, then the various road segments should be treated as legally and factually separate and bidding would be necessary for any of the projects if they exceed for a single project the sum of $5,000 (if the Model Procurement Code applies in the county) or exceeds $7,500 (if this section applies in the county). OAG 83-316, 1983 Ky. AG LEXIS 181.

No county fee officer can engage in a bidding contract of purchase of supplies or equipment, i.e., binding on the county where the money for the purchase is to come directly out of the county treasury; the fiscal court is the authority in contracting for county supplies or equipment, payable out of the county treasury. OAG 83-448, 1983 Ky. AG LEXIS 49.

Should a fee officer have to purchase items of equipment or personal property that are not consumable but will have a reasonable life span, such as motor vehicles, the title would be taken in the name of the county and the purchases would be subject to the county's handling of the purchases and applicable provisions relating to bidding law under this section or KRS Chapter 45A (where the fiscal court has adopted the provisions of KRS 45A.345 through 45A.460). Where the county clerk or sheriff has adopted KRS 45A.345 through 45A.460, such officer could handle the purchase under the applicable bidding law in KRS Chapter 45A, but only with the approval of the fiscal court; and the title to the nonconsumable property or property of any reasonable life span would be in the name of the county. OAG 83-448, 1983 Ky. AG LEXIS 49.

KRS 42.355(4) (now subsection (2)), in mentioning the bidding law of this chapter, specifically adopts this section to the extent that this section requires formal bidding. OAG 84-57, 1984 Ky. AG LEXIS 329.

A unit of government, in connection with the demands of a bidding statute, cannot divide the work and let it under several contracts so as to circumvent the bidding requirement, thus where the transactions are not legally and factually severable, they cannot be manipulated to circumvent the declared bidding policy of this section. OAG 84-57, 1984 Ky. AG LEXIS 329.

Even though a riverport authority is created jointly by a city and county, the created authority is still a body politic and corporate, it is still a special district and, thus, the district, i.e., the riverport authority, is subject to the bidding principle under this section, or the Model Procurement Code if adopted by the authority. OAG 84-196, 1984 Ky. AG LEXIS 193.

The bidding statute, this section, applies to a riverport authority created pursuant to KRS 65.510 et seq., unless the authority has specifically adopted the Model Procurement Code (KRS 45A.345 to 45A.460), in which latter case the Model Procurement Code, with its bidding requirements, applies to the riverport authority. OAG 84-196, 1984 Ky. AG LEXIS 193.

A city's expenditure of $10,000 for the services of a professional engineer to survey and engineer a sewer line installation project falls within the category of professional services exempt from bidding under the terms of this section. OAG 84-274, 1984 Ky. AG LEXIS 109.

Where a riverport authority, created pursuant to KRS 65.510 et seq., has chosen to not adopt provisions of the Model Procurement Code under KRS 45A.343, such riverport authority automatically comes under the mandatory terms of the bidding statute, this section. OAG 84-297 (modifying OAG 80-71).

If reasonably detailed specifications describing the scope of a project are first prepared, such that competing potential bidders can know with particularity the product for which a bid might be tendered, and bids are solicited in relation to those specifications in conformity with KRS 424.130, and 424.140, the design/build approach to construction procurement might be utilized by a county. OAG 92-143.

Where the construction inspector hired by the board of education is merely inspecting the building constructed by the general contractor and reporting back to the board, and the contract specifically releases the construction inspector from any responsibility for the actual construction of the school, these activities did not constitute professional services. The construction inspector lacked the necessary decision-making responsibility. Since the construction inspector was not considered to be supplying professional services, he was not exempt from the bidding requirements of this section. OAG 92-144.

Where self-insured groups of Kentucky Association of Counties contracted with third party administrators to provide professional services involving the use of training, discretion, and judgment in the field of insurance, such professional services contracts may be entered into without any type of open bid. OAG 94-1, 1994 Ky. AG LEXIS 236.

Where bid invitation contained no indication of either the quantity of materials to be purchased nor the projects for which the materials would be used, the bid invitation did not grant reasonable notice of county's intentions and did not comply with the statute. OAG 94-20, 1994 Ky. AG LEXIS 248.

Documents tendered as part of competitive sealed bidding become open public records at the time the bids are opened, even if the bids are rejected. Public disclosure of bid documents associated with a competitive sealed bid cannot be delayed until the contracting public agency determined whether to move to competitive negotiation, and if a determination is made to proceed into competitive negotiation, the original bid documents cannot be considered part of the negotiation process and remain closed until a contract is awarded or negotiations are cancelled. OAG 05-ORD-001, 2005 Ky. AG LEXIS 147.

A local public agency that has not adopted the Model Procurement Code is not required to follow competitive bidding procedures for insurance, and may contract with an insurance broker to solicit and receive bids for insurance, although competitive bidding remains preferred. A local public agency that has adopted the Model Procurement Code must follow all applicable provisions in seeking contracts with insurance brokers. OAG 13-006, 2013 Ky. AG LEXIS 36.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Model Procurement Code, KRS 45A.005 to 45A.990.
Bidding procedures, 702 KAR 3:135.
Internal accounting, 702 KAR 3:130.

424.270. Local administrative regulations.

No general regulation of uniform application throughout the publication area promulgated by any officer, board or commission of a city, county, or district, which is intended to impose liabilities or restrictions upon the public shall be valid unless and until it, or a notice of such promulgation, together with a statement where the original regulation may be examined by the public, has been advertised by newspaper publication.

History.
Enact. Acts 1958, ch. 42, § 17; 1960, ch. 168, § 1.

NOTES TO DECISIONS

1. Application.
This section deals with the regulations of local administrative agencies and not with municipal legislative enactments of the dignity of an ordinance. Miller v. Louisville, 321 S.W.2d 237, 1959 Ky. LEXIS 269 (Ky. 1959).

OPINIONS OF ATTORNEY GENERAL.

This chapter would not be applicable to municipal housing commissions established under KRS Chapter 80. OAG 60-486.

Subdivision regulations adopted by the planning commission must be published in full and as a consequence cannot be published by reference or by abstract. OAG 67-466.

Generally, the ordinances of a fifth-class city must be published in full in a newspaper meeting the qualifications set out in KRS ch. 424, however, a zoning ordinance adopted by a fifth class city need not be published in full in the newspaper, since it is governed by the exception to the publication requirement set forth in KRS 100.207. OAG 75-141.

This section deals solely with the regulations of local administrative agencies and has no application with respect to the municipal legislative enactment and publication of ordinances. OAG 77-385, 1977 Ky. AG LEXIS 407.

424.290. Publication of ballots and supplementary material.

(1) Not less than three (3) days before any primary or regular election the county clerk shall cause to be published in a newspaper a copy of the ballots or supplementary material on which appear the names of candidates or issues to be voted upon. Where the lists of candidates or issues to be voted upon differ for various precincts within the county, the county clerk shall cause to be published only one (1) set of data with appropriate notations showing the differences in the various precincts. If supplemental paper ballots have been approved as provided in KRS 118.215, the supplemental paper ballot shall be published at the same time as other material required to be published by this subsection. The cost of publication shall be paid by the county, except that the cost of publishing any voting data required to be published by this subsection that is limited to a city election or a district election other than a school district election shall be paid by the city or the district as the case may be.

(2) "Copy," as used in subsection (1) of this section, means a summary of candidates and issues to be voted upon showing all the pertinent information that will appear, upon which the voters will cast their votes at a particular polling place.

History.
Enact. Acts 1958, ch. 42, § 19; 1960, ch. 168, § 1; 1962, ch. 213, § 1; 1972, ch. 188, § 67, June 16, 1972; 1976 (Ex. Sess.), ch. 1, § 15; 1978, ch. 384, § 527, effective June 17, 1978; 1982, ch. 360, § 84, effective July 15, 1982; 2021 ch. 197, § 71, effective June 29, 2021.

OPINIONS OF ATTORNEY GENERAL.

This section does not require the publication of a facsimile of the ballot in a special election. OAG 60-255.

This section requires the publication of the face of the voting machine but does not require publication of a copy of the absentee ballots. OAG 66-295.

An abstract or condensed content of the ballot face showing all pertinent or necessary information would be sufficient. OAG 67-203.

In the published ballot abstract, the type might be reduced so long as it is sufficiently legible. OAG 67-203.

Where the ballot face will differ in various precincts, this section requires the publication of at least separate summaries of each ballot face. OAG 69-319.

Where the clerk's instructions regarding the publication of the election ballot were in error and the printer proceeded with a publication that complied with the provisions of this section, the fiscal court was legally obligated to pay any reasonable printing cost resulting from the publication. OAG 69-319.

Subsection (1) of this section does not repeal by implication the provisions of KRS 242.060. OAG 71-313.

424.330. Publication of lists of delinquent taxes by cities — Fee allowance.

Cities may publish a list of uncollected delinquent taxes levied under Section 181 of the Kentucky Constitution, showing the name of and the amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee equal to the prorated cost of publication per taxpayer per publication may be added to the amount of each tax claim published as publication costs.

History.
Enact. Acts 1958, ch. 42, § 23; 1988, ch. 32, § 3, effective July 15, 1988; 1992, ch. 73, § 1, effective July 14, 1992; 1994, ch. 73, § 2, effective July 15, 1994; 2006, ch. 8, § 7, effective July 12, 2006; 2009, ch. 10, § 69, effective January 1, 2010; 2014, ch. 5, § 4, effective July 15, 2014.

OPINIONS OF ATTORNEY GENERAL.

Newspapers claiming to have the largest circulation should be required to file with the fiscal court certified statements as

to their circulation after which the court can make its selection from the best information available. OAG 64-399.

This section does not contemplate the readvertising of tax claims involved in certificates of delinquency, but contemplates the publication of only those delinquent taxes for which no certificates of delinquency were issued and filed. OAG 67-312.

The publication requirements of this section are not applicable to delinquent city taxes. OAG 78-420; 78-449.

This chapter applies only to those publications required by law to be published. However, an exception under this act is the list of uncollectible delinquent taxes, which must be published pursuant to this section. OAG 82-128, 1982 Ky. AG LEXIS 512.

424.360. Invitation to bid on municipal bonds.

(1) Except in the case of:

(a) Bonds issued for the purpose of facilitating the construction, renovation, or purchase of new or existing housing as provided by KRS 58.125; or

(b) Bonds issued and sold pursuant to any section of the Constitution or the Kentucky Revised Statutes providing for the sale of bonds at a private, negotiated sale;

no sale of general obligation bonds or revenue bonds of any governmental unit, political subdivision, or agency thereof shall be made until advertisements for bids are publicized.

(2) Advertisements for bids may be publicized by:

(a) Newspaper publication in the area constituted by the political subdivision or governmental unit and published to afford statewide notice; or

(b) Posting a notice of sale to a nationally recognized electronic bidding system.

History.

Enact. Acts 1958, ch. 42, § 26; 1960, ch. 168, § 1; 1984, ch. 157, § 1, effective July 13, 1984; 1986, ch. 259, § 2, effective July 15, 1986; 1992, ch. 210, § 1, effective July 14, 1992; 2019 ch. 35, § 4, effective June 27, 2019.

NOTES TO DECISIONS

Cited in:

Haney v. Somerset, 530 S.W.2d 377, 1975 Ky. LEXIS 54 (Ky. 1975).

424.380. Failure to comply with publication requirements.

Any resolution, regulation, ordinance or other formal action of any public agency which is required to be published, that is adopted without compliance with the publication requirements of this chapter, shall be voidable by a court of competent jurisdiction. The Circuit Courts of this state shall have the jurisdiction to enforce the purposes of this chapter, by injunction or other appropriate order, upon application by any citizen of this state. The cost of all proceedings, including a reasonable fee for the attorney of the citizen bringing the action, shall be assessed against the unsuccessful party.

History.

Enact. Acts 1982, ch. 430, § 8, effective July 15, 1982.

OPINIONS OF ATTORNEY GENERAL.

Acts 1982, ch. 430, which amends this section and several other statutes relating to publication requirements of cities, is basically an amendment of the municipal publication requirements and does not affect the city budget process, financial matters in cities or matters relating to the administration of city finances. It gives a city a choice as to which of two devices relating to finances and expenditures must be published annually rather than requiring that they both be published and affects what a city publishes after the completion of the fiscal year, but does not affect the activities of a city during the fiscal year; it does not impair any vested rights. OAG 82-353, 1982 Ky. AG LEXIS 267.

As to its publication provisions for municipal governments, Acts 1982, ch. 430, effective July 15, 1982, is applicable to those municipal governments for the fiscal year July 1, 1981 to June 30, 1982. OAG 82-353, 1982 Ky. AG LEXIS 267.

PENALTIES

424.990. Penalties.

Any person who violates any provision of KRS 424.110 to 424.370 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500). In addition, any officer who fails to comply with any of the provisions of KRS 424.145(4), 424.220, 424.230, 424.240, 424.250, 424.290, or 424.330 shall, for each such failure, be subject to a forfeiture of not less than fifty dollars ($50) nor more than five hundred dollars ($500), in the discretion of the court, which may be recovered only once, in a civil action brought by any citizen of the local government for which the officer serves. The costs of all proceedings, including a reasonable fee for the attorney of the citizen bringing the action, shall be assessed against the unsuccessful party.

History.

Enact. Acts 1958, ch. 42, § 28; 1960, ch. 168, § 1; 2020 ch. 87, § 3, effective July 15, 2020.

NOTES TO DECISIONS

1. Standing.

Allegations in plaintiff's complaint that city board of trustees did not publish financial statements for the city pursuant to KRS 424.220, that they had not adopted and published a budget pursuant to KRS 424.240, that they had enacted an ordinance providing for a license fee which did not conform to the requirements of KRS 92.330, and that they had not advertised for bids to obtain facilities for the city hall pursuant to KRS 424.260 had statutory remedy provided by the legislature which conferred standing on citizens of the governmental unit to bring actions to compel adherence to the law. Fish v. Elliott, 554 S.W.2d 94, 1977 Ky. App. LEXIS 756 (Ky. Ct. App. 1977).

Since recovery for violation may be had only once, the certainty of plaintiff's citizenship and consequent standing should appear on the face of the pleading. Fish v. Elliott, 554 S.W.2d 94, 1977 Ky. App. LEXIS 756 (Ky. Ct. App. 1977).

OPINIONS OF ATTORNEY GENERAL.

It is the duty of the county clerk to see that the ballot is printed according to the provisions of KRS 424.290 and, if the printer followed the clerk's instructions when printing the ballot, the clerk alone would be subject to the penalties imposed by this section; if, however, the printer disregarded the clerk's instructions and as a consequence the ballot was not printed in conformity with the requirements of the statute,

the publisher would be subject to the penalty provisions of this section. OAG 69-578.

TITLE XXXIX

PROVISIONAL REMEDIES, ENFORCEMENT OF JUDGMENTS, AND EXEMPTIONS

Chapter
427. Exemptions.

CHAPTER 427

EXEMPTIONS

Section
427.130. Salaries of public officials and employees and sums due from governmental agencies are subject to attachment or garnishment — Service of process.

427.130. Salaries of public officials and employees and sums due from governmental agencies are subject to attachment or garnishment — Service of process.

(1) Salaries or sums due state, county, city and school board officers and employees shall be subject to attachment or garnishment.

(2) All sums due any person from the Commonwealth of Kentucky, or any agency or department thereof, and all sums due from any county school board, city or county, shall be subject to attachment or garnishment.

(3) Service of attachments or garnishments upon the Commonwealth of Kentucky shall be made by serving the secretary of the finance and administration cabinet, and the state treasurer. No attachment or garnishment served upon the Commonwealth shall be valid unless the process shall specify the name of the employee, or other creditor, and the budget unit and division thereof through which the sum alleged to be due is payable.

History.

1701b: amend. Acts 1942, ch. 102, §§ 1, 2; 1948, ch. 188, § 1.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. Assignment of Salaries.
4. Attachment.
5. Public Officers.
6. Poor Farm.

1. Constitutionality.

This section does not contravene Ky. Const., § 133 or § 235. Batesville Casket Co. v. Fields, 288 Ky. 104, 155 S.W.2d 743, 1941 Ky. LEXIS 63 (Ky. 1941) (decision prior to 1942 amendment).

2. Application.

This section applies to both constitutional and elective officers. Batesville Casket Co. v. Fields, 288 Ky. 104, 155 S.W.2d 743, 1941 Ky. LEXIS 63 (Ky. 1941) (decision prior to 1942 amendment).

3. Assignment of Salaries.

This section does not alter the rule that assignment of the salary of a public officer before it is due is against public policy. Batesville Casket Co. v. Fields, 288 Ky. 104, 155 S.W.2d 743, 1941 Ky. LEXIS 63 (Ky. 1941) (decision prior to 1942 amendment).

4. Attachment.

Salary of a state officer may not be attached until the end of the month. Batesville Casket Co. v. Fields, 288 Ky. 104, 155 S.W.2d 743, 1941 Ky. LEXIS 63 (Ky. 1941) (decision prior to 1942 amendment).

5. Public Officers.

In enactment of this section, legislature did not intend to include "public officers" within its terms, as opposed to "public employees." Varden v. Ridings, 20 F. Supp. 495, 1937 U.S. Dist. LEXIS 1650 (D. Ky. 1937) (decision prior to 1942 amendment).

6. Poor Farm.

Inmate maintenance funds payable to county poor farm keeper were exempt from garnishment or attachment. Miracle v. Hopkins, 260 Ky. 712, 86 S.W.2d 681, 1935 Ky. LEXIS 545 (Ky. 1935) (decided under prior law).

Cited in:

Knox County v. Melton, 268 Ky. 649, 105 S.W.2d 816, 1937 Ky. LEXIS 513 (Ky. 1937); Main Line Engineering Constr. Service, Inc. v. Hutcheson, 428 S.W.2d 775, 1968 Ky. LEXIS 726 (Ky. 1968).

OPINIONS OF ATTORNEY GENERAL.

Where a state employee wrongfully used a gasoline credit card, furnished to him by the Commonwealth, to purchase personal gasoline and groceries in the amount of $436.74 and the employee had accrued wages of $407.83 which were unpaid, the Commonwealth could withhold the pay of the employee as an offset against his improper expenditure. OAG 61-834.

The use of the term "employer" in the 1970 amendment to KRS 425.210 (now repealed) does not affect the requirements of this section relative to the service of attachments or garnishments on the wages of employees of the Commonwealth which, pursuant to the provisions of this section, will continue to be made by serving the commissioner of finance or the state treasurer. OAG 70-246.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Complaint Against Resident Defendant, Form 150.01.

TITLE XL

CRIMES AND PUNISHMENTS

Chapter
431. General Provisions Concerning Crimes and Punishments.
432. Offenses Against the State and Public Justice.

Chapter
434. Offenses Against Property by Fraud.
438. Offenses Against Public Health and Safety.

CHAPTER 431

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS

Kentucky Multidisciplinary Commission on Child Sexual Abuse.

Section
431.650. Kentucky Multidisciplinary Commission on Child Sexual Abuse.

KENTUCKY MULTIDISCIPLINARY COMMISSION ON CHILD SEXUAL ABUSE

431.650. Kentucky Multidisciplinary Commission on Child Sexual Abuse.

(1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.

(2) The commission shall be composed of the following members:

(a) The commissioner of the Department for Community Based Services or a designee;

(b) The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities or a designee;

(c) One (1) social service worker who is employed by the Department for Community Based Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Health and Family Services;

(d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Health and Family Services;

(e) The commissioner of the Department of Kentucky State Police or a designee;

(f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice and Public Safety Cabinet;

(g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;

(h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;

(i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;

(j) The commissioner of the Department of Education or a designee;

(k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;

(*l*) One (1) representative of a children's advocacy center who shall be appointed by the Governor;

(m) One (1) physician appointed by the Governor; and

(n) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.

(3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) The commission shall elect a chairperson annually from its membership.

History.

Enact. Acts 1994, ch. 308, § 1, effective July 15, 1994; 1996, ch. 18, § 2, effective July 15, 1996; 1998, ch. 426, § 602, effective July 15, 1998; 2000, ch. 14, § 55, effective July 14, 2000; 2000, ch. 144, § 2, effective July 14, 2000; 2005, ch. 99, § 70, effective June 20, 2005; 2007, ch. 85, § 314, effective June 26, 2007; 2012, ch. 146, § 116, effective July 12, 2012; 2012, ch. 158, § 74, effective July 12, 2012.

Legislative Research Commission Notes.

(7/12/2012). This statute was amended by 2012 Ky. Acts chs. 146 and 158, which do not appear to be in conflict and have been codified together.

(6/26/2007). A technical correction has been made in this section by the Reviser of Statutes pursuant to KRS 7.136.

CHAPTER 432

OFFENSES AGAINST THE STATE AND PUBLIC JUSTICE

Section
432.350. Giving and taking bribes.

432.350. Giving and taking bribes.

Any member of the General Assembly or any other executive, judicial, ministerial or legislative officer of this state or of any county or city, including members of boards of education and subdistrict trustees, who takes or agrees to take any bribe to do or omit to do any act in his official capacity shall forfeit his office and be disqualified from the right of suffrage for ten (10) years.

History.

1366: amend. Acts 1974, ch. 406, § 317.

NOTES TO DECISIONS

Analysis

1. Bribery.
2. —Officer.
3. —Members of Legislature.
4. —Disbarment.
5. —Punishment.
6. Evidence.
7. Indictment.

1. Bribery.

There was no violation of the defendant's right to equal protection of the law where he was convicted of accepting a bribe, although the person claimed to have given the bribe was only to be tried for attempted bribery. Fanelli v. Commonwealth, 423 S.W.2d 255, 1968 Ky. LEXIS 479 (Ky. 1968) (decision prior to 1975 amendment).

2. —Officer.

In order to violate this section, the bribe must be taken or agreed to while the person is an officer and, therefore, any agreement made prior to the officer's election does not violate this section. Tharp v. Nolan, 119 Ky. 870, 84 S.W. 1168, 27 Ky. L. Rptr. 326, 1905 Ky. LEXIS 49 (Ky. 1905) (decision prior to 1975 amendment).

A water commissioner is an officer within the meaning of this section. Commonwealth v. Howard, 379 S.W.2d 475, 1964 Ky. LEXIS 247 (Ky. 1964) (decision prior to 1975 amendment).

3. —Members of Legislature.

Section 39 of the Kentucky Constitution does not exclusively vest in the General Assembly the power to try those charged with bribery or attempted bribery of members of the legislature. Campbell v. Commonwealth, 229 Ky. 264, 17 S.W.2d 227, 1929 Ky. LEXIS 756 (Ky. 1929) (decision prior to 1975 amendment).

4. —Disbarment.

Where the defendant attorney was convicted of accepting a bribe, the offense involved moral turpitude warranting his disbarment. Kentucky State Bar Asso. v. Howard, 437 S.W.2d 171, 1969 Ky. LEXIS 423 (Ky. 1969) (decision prior to 1975 amendment).

5. —Punishment.

A Commonwealth's attorney accused of accepting a bribe to quash indictments may be prosecuted either for the common-law offense of malfeasance in office or under this section, but the punishment assessed is limited to that prescribed under this section. Commonwealth v. Rowe, 112 Ky. 482, 66 S.W. 29, 23 Ky. L. Rptr. 1718, 1902 Ky. LEXIS 183 (Ky. 1902) (decision prior to 1975 amendment).

6. Evidence.

Court erred in directing verdict of acquittal on bribery charge where there was evidence that director of building and housing had agreed on payment of a certain sum to a third party in return for dropping condemnation proceedings against certain property even though defendant had never touched the money himself. Commonwealth v. Hillebrand, 508 S.W.2d 566, 1974 Ky. LEXIS 613 (Ky. 1974) (decision prior to 1975 amendment).

7. Indictment.

An indictment which alleged that defendant accepted money for an election committee with intent to influence mayor, but which failed to allege that the mayor received the money or had knowledge of and assented to the illegal intent did not charge a violation of this section. Commonwealth v. Smith, 536 S.W.2d 457, 1976 Ky. LEXIS 77 (Ky. 1976), appeal denied, Smith v. Kentucky, 423 U.S. 909, 96 S. Ct. 210, 46 L. Ed. 2d 137, 1975 U.S. LEXIS 3017 (1975) (decision prior to 1974 amendment).

Cited in:

Commonwealth v. Fanelli, 445 S.W.2d 126, 1969 Ky. LEXIS 145 (Ky. 1969).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Bribery and corrupt influences, Penal Code, KRS 521.010 to 521.040.

Official misconduct in the first degree, KRS 522.020.

School system, bribery in, KRS 156.465.

State purchasing, bribery in, felony, KRS 45A.990.

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Charges for Removal of Officer, Form 10.10.

Caldwell's Kentucky Form Book, 5th Ed., Indictment for Malfeasance, Accepting Bribe, Form 10.05.

CHAPTER 434

OFFENSES AGAINST PROPERTY BY FRAUD

Section

434.441. Definitions for KRS 434.441 and 434.442.
434.442. Fraudulent use of an educational record — Penalty.

434.441. Definitions for KRS 434.441 and 434.442.

As used in this section and KRS 434.442, unless the context otherwise requires:

(1) "Educational institutions" means those schools providing postsecondary education including technical, community and junior colleges, and colleges and universities;

(2) "Governmental agency" means any agency of the state or local government; and

(3) "Secondary school" means a school with grades nine (9) through twelve (12).

History.

Enact. Acts 1996, ch. 170, § 1, effective July 15, 1996.

434.442. Fraudulent use of an educational record — Penalty.

(1) A person is guilty of fraudulent use of an educational record when that person, knowingly:

(a) Falsely makes, completes, alters, or procures to be falsely made or altered, or assists in falsely making or altering, a diploma, certificate, license, or transcript indicating academic achievement in an educational program issued by a secondary school, a postsecondary educational institution, or a governmental agency;

(b) Sells, gives, buys, or obtains, or procures to be sold, given, bought or obtained, or assists in selling, giving, buying, or obtaining, a diploma, certificate, license, or transcript which he knows is false, indicating educational achievement in an educational program issued by a secondary school, postsecondary educational institution, or a governmental agency;

(c) Presents or uses as genuine a falsely made or altered diploma, certificate, license, or transcript indicating educational achievement in an educational program in a secondary school, postsecondary educational institution, or a governmental agency; or

(d) Makes a false written representation of fact that he has received a degree or other certification indicating merit, educational achievement, or completion of an educational program involving study, experience, or testing from a secondary school, a postsecondary educational institution, or governmental agency in an application for:

1. Employment;
2. Admission to an educational program;
3. An award; or
4. The purpose of inducing another to issue a diploma, certificate, license, or transcript indicating educational achievement in an educational

program of a secondary school, postsecondary educational institution, or a governmental agency.

(2) Fraudulent use of an educational record is a Class A misdemeanor.

History.

Enact. Acts 1996, ch. 170, § 2, effective July 15, 1996.

CHAPTER 438

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

438.047. Prohibition against certain billboard advertising of tobacco products within five hundred feet of school — Fine.

438.050. Use of alternative nicotine products, tobacco products, and vapor products on school premises — Exception.

Sale and Distribution of Tobacco, Nicotine, and Vapor Products.

438.310. Sale of tobacco products or alternative nicotine products to persons under age 21 prohibited — Penalties.

438.313. Distribution of cigarettes, tobacco products, or alternative nicotine products to persons under age 21 prohibited — Distribution of alternative nicotine products, tobacco products, or vapor products to retailer with revoked license prohibited — Penalty — Issuance of uniform citation.

438.345. Use of tobacco products, alternative nicotine products, and vapor products on school property and during school activities — Written policies — Penalties — Board may opt out. [Transferred].

438.047. Prohibition against certain billboard advertising of tobacco products within five hundred feet of school — Fine.

(1) No cigarette or tobacco products advertising shall be posted on a billboard with display space larger than fifty (50) square feet located within five hundred (500) feet of any elementary or secondary school building or adjacent school-owned property.

(2) Any person who violates the provisions of this section shall be fined not less than one hundred dollars ($100) for each offense.

History.

Enact. Acts 1992, ch. 164, § 2, effective July 14, 1992.

438.050. Use of alternative nicotine products, tobacco products, and vapor products on school premises — Exception.

(1) Any person, except adult employees of the school system who smoke in a room on the school premises designated by the superintendent or principal for the purpose, who uses alternative nicotine products, tobacco products, or vapor products in any school building or any part of any building used for school purposes, or upon school grounds, while children are assembled there for lawful purposes, except in areas in secondary schools designated and supervised by the superintendent or principal for the purpose, shall be fined not less than one dollar ($1) nor more than five dollars ($5).

(2) The exception granted for smoking areas designated by the superintendent or principal shall extend to all schools.

History.

1277a-4: amend. Acts 1972, ch. 19, § 1; 1976, ch. 72, § 1; 1988, ch. 435, § 2, effective July 15, 1988; 2019 ch. 198, § 2, effective June 27, 2019.

OPINIONS OF ATTORNEY GENERAL.

This is a penal statute which must be literally and strictly construed so there would be no violation if a person smokes a cigar or pipe but it would be a violation for anyone to smoke cigarettes in a school corridor or auditorium while children are present for lawful purposes, regardless of whether it is during or after school hours, or for a spectator to smoke cigarettes at a school football game being played on school grounds, but a person may smoke cigarettes during a summer tennis or baseball program conducted by a local recreation board and where no children are assembled. OAG 73-175.

Violation of this section is a misdemeanor and any peace officer may make an arrest or issue a citation for a misdemeanor committed in his presence or a citizen who witnesses a misdemeanor may go before a judge or magistrate and file a sworn complaint whereupon a warrant will be issued for the arrest of the misdemeanant. OAG 73-175.

As it is against the law to smoke on school property, cigarettes may not be sold on such property nor may the school designate an area outside building but on school grounds for student smoking. OAG 74-862.

Every school in the state can have a designated smoking room for the adult employees of the school system pursuant to this section; however, under this section, only secondary schools located in counties containing a city of the first or second class, as set forth in KRS 81.010, or an urban-county government, can have a designated smoking area for both adults and students; accordingly, a county which does not contain a city of the first or second class or an urban-county government may only designate a smoking room for adult employees of the school system, since designating such an area by regulation for the benefit of non-employee adults and students would violate this section. OAG 81-295, 1981 Ky. AG LEXIS 138.

The county board of education in a county not containing a first or second class city or an urban-county government has no legal authority to designate a smoking area for non-employee adults or for school students since the geographical scope of this section goes to "any part of any school building used for school purposes, or upon school grounds, while children are assembled there for lawful purposes"; accordingly, this section precludes smoking in a school corridor or auditorium or even at a football game on school grounds while children are present for lawful purposes regardless of whether it is during or after school hours. OAG 81-295, 1981 Ky. AG LEXIS 138.

This section, as it is written, proscribes only the smoking of tobacco products; however, the board of education, under the authority of KRS 160.290 and KRS 160.340, may regulate the use of tobacco products including the use of snuff or chewing tobacco in ways other than smoking by its employees, other adults or students. OAG 81-295, 1981 Ky. AG LEXIS 138.

Under the current statutes, every school may have a designated smoking room for adult employees of the school system, and every secondary school may have a designated smoking area for all individuals, adults and students. OAG 91-119, 1991 Ky. AG LEXIS 120.

This section does not grant authority to superintendents or principals beyond that authority granted to those officials by

the Board, and, as currently written, does not forbid smoking of tobacco products at outdoor athletic events, depending on what smoking areas are to be designated in the schools. OAG 91-137, 1991 Ky. AG LEXIS 127.

Authority concerning the use of all tobacco products by employees, students and visitors in school buildings, on school grounds or on field trips rests with the local board of education, not with superintendents and principals, unless that authority is delegated to them by the board. OAG 91-137, 1991 Ky. AG LEXIS 127.

This section dealing with smoking on school premises directly conflicts with KRS 61.165 which requires governmental buildings that have adopted a policy limiting smoking to provide an indoor smoking room. This section controls because it is the more specific statute; therefore, KRS 61.165, which requires that indoor smoking areas be provided in governmental buildings where smoking is restricted, does not apply to school districts. OAG 94-52, 1994 Ky. AG LEXIS 283.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

SALE AND DISTRIBUTION OF TOBACCO, NICOTINE, AND VAPOR PRODUCTS

438.310. Sale of tobacco products or alternative nicotine products to persons under age 21 prohibited — Penalties.

(1) A person shall not sell or cause to be sold any tobacco product or alternative nicotine product at retail to any person under the age of twenty-one (21), or solicit any person under the age of twenty-one (21) to purchase any tobacco product or alternative nicotine product at retail.

(2) Any person who sells tobacco products or alternative nicotine products at retail shall cause to be posted in a conspicuous place in his or her establishment a notice stating that it is illegal to sell tobacco products, alternative nicotine products, or vapor products to persons under age twenty-one (21).

(3) Any person selling tobacco products, alternative nicotine products, or vapor products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of twenty-one (21).

(4) A person who violates subsection (1) or (2) of this section shall be subject to a:

(a) One hundred dollar ($100) fine to the retail sales clerk for a first citation and a notice to the owner of a retail establishment which details the violation;

(b) One hundred dollar ($100) fine to the retail sales clerk and an additional five hundred dollar ($500) fine to the owner of a retail establishment for a second citation;

(c) One hundred dollar ($100) fine to the retail sales clerk and an additional one thousand dollar ($1,000) fine to the owner of a retail establishment for a third citation; and

(d) On or after July 1, 2026, revocation of the tobacco, nicotine, or vapor product license upon a fourth citation. Revocation for any fourth and subsequent citation within a two (2) year period shall result in the inability to reapply for a license for two (2) years.

(5) Each citation shall be specific to the premises of the retail establishment where the violation occurred.

(6) The fine shall be imposed and collected by the department using a civil enforcement procedure.

(7) A retailer shall be prohibited from renewing its license until all fines incurred under KRS 438.305 to 438.350 as they relate to the regulation of alternative nicotine products, tobacco products, and vapor products are paid.

History.

Enact. Acts 1990, ch. 388, § 1, effective July 13, 1990; 1992, ch. 164, § 3, effective July 14, 1992; 1994, ch. 480, § 9, effective July 15, 1994; 1996, ch. 38, § 3, effective March 5, 1996; 2000, ch. 423, § 2, effective July 14, 2000; 2010, ch. 24, § 1925, effective July 15, 2010; 2014, ch. 111, § 2, effective April 10, 2014; 2020 ch. 35, § 2, effective March 26, 2020; 2024 ch. 111, § 9, effective January 1, 2025; 2025 ch. 78, § 11, effective June 27, 2025; 2026 ch. 3, § 8, effective March 13, 2026; 2026 ch. 70, § 8, effective April 10, 2026.

Compiler's Notes.

This section was formerly compiled as KRS 438.045 and was renumbered by the Reviser of Statutes effective July 15, 1994 pursuant to KRS 7.136(1).

Editor's Notes

Acts 2026, SB 245, § 17 states that this section shall not modify, invalidate, or otherwise negatively affect a tobacco, nicotine, or vapor product license that:

(1) Was issued by the department prior to July 1, 2026; and

(2) Remains in good standing with the department on July 1, 2026.

Acts 2026, SB 245, § 16 states that any licensee who has obtained a tobacco, nicotine, and vapor product license under KRS 438.305 to 438.350 in calendar year 2025 shall have the licensing fee of five hundred dollars ($500) paid in calendar year 2025 credited to the licensee's upcoming licensing fee payment for licensure renewal in calendar year 2026. Licensees not seeking renewal shall not receive a refund or credit and the licensing fee paid in calendar year 2025 shall be retained by the department.

Acts 2026, SB 245, § 15 states that notwithstanding any law to the contrary:

(1) Within 60 days of the effective date of this Act, any retailer selling tobacco, nicotine, or vapor products in Kentucky that does not hold a tobacco, nicotine, or vapor product license required by this Act shall remit the initial application form and the licensing fee required in Section 5 of this Act to the department to obtain an initial license;

(2) If a retailer is approved, the department shall issue a license within 14 business days; and

(3) If a retailer is licensed pursuant to subsection (1) of this section, the retailer shall renew annually on the date of issuance unless the retailer elects to renew by batch license pursuant to Section 5 of this Act.

Legislative Research Commission Notes.

(3/13/2026). 2026 Ky. Acts ch. 3, sec. 13, reads as follows:

"The amendments to KRS 438.3061, 438.3063, 438.3065, 438.3067, 438.3069, 438.310, 438.312, 438.316, and 438.337 contained in Sections 3 to 11 of this Act shall be retroactive to January 1, 2026."

(4/10/2026). This statute was amended by 2026 Ky. Acts chs. 3 and 70, which do not appear to be in conflict and have been codified together.

(4/10/2026). 2026 Ky. Acts ch. 3, sec. 13, and ch. 70, sec. 18, provide that the amendments to this statute in those Acts shall be retroactive to January 1, 2026.

(4/10/2026). 2026 Ky. Acts ch. 70, sec. 14, provides that, notwithstanding any laws to the contrary, that Act shall not be construed to delay enforcement of this statute.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Business Enterprises, 804 KAR 13:011E.

Provisional license., 804 KAR 13:025E.

Tobacco, nicotine, and vapor product enforcement and administration, 782 KAR 1:010.

438.313. Distribution of cigarettes, tobacco products, or alternative nicotine products to persons under age 21 prohibited — Distribution of alternative nicotine products, tobacco products, or vapor products to retailer with revoked license prohibited — Penalty — Issuance of uniform citation.

(1) A wholesaler, retailer, or manufacturer of cigarettes, tobacco products, or alternative nicotine products shall not distribute cigarettes, tobacco products, or alternative nicotine products, including samples thereof, free of charge or otherwise, to any person under the age of twenty-one (21).

(2) A distributor or wholesaler shall not distribute alternative nicotine products, tobacco products, or vapor products to any retailer whose license has been revoked.

(3) Any person who distributes cigarettes, tobacco products, or alternative nicotine products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of twenty-one (21).

(4) Any person who violates the provisions of this section shall be fined not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500) for each offense. The fine shall be administered by the department using a civil enforcement procedure for persons eighteen (18) years of age or older.

(5) All peace officers with general law enforcement authority and investigators of the department may issue a uniform citation, but may not make an arrest or take a child into custody, for a violation of this section.

History.

Enact. Acts 1992, ch. 164, § 1, effective July 14, 1992; repealed, reenact., and amend. Acts 1994, ch. 480, § 10, effective July 15, 1994; 1996, ch. 38, § 5, effective March 5, 1996; 1998, ch. 477, § 2, effective July 15, 1998; 2000, ch. 423, § 4, effective July 14, 2000; 2010, ch. 24, § 1927, effective July 15, 2010; 2014, ch. 111, § 4, effective April 10, 2014; 2020 ch. 35, § 4, effective March 26, 2020; 2024 ch. 111, § 10, effective January 1, 2025; 2025 ch. 78, § 13, effective January 1, 2026.

Compiler's Notes.

This section was formerly compiled as KRS 365.395 and was repealed, reenacted, and amended as this section by Acts 1994, ch. 480, § 10, effective July 15, 1994.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Provisional license., 804 KAR 13:025E.

Tobacco, nicotine, and vapor product enforcement and administration, 782 KAR 1:010.

438.345. Use of tobacco products, alternative nicotine products, and vapor products on school property and during school activities — Written policies — Penalties — Board may opt out. [Transferred]

History.

2019 ch. 198, § 1, effective June 27, 2019; transferred to KRS § 158.149 by 2024 ch. 149, § 1, effective July 15, 2024.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Provisional license., 804 KAR 13:025E.

Tobacco, nicotine, and vapor product enforcement and administration, 782 KAR 1:010.

TITLE L

KENTUCKY PENAL CODE

Chapter
503. General Principles of Justification.
506. Inchoate Offenses.
508. Assault and Related Offenses.
518. Miscellaneous Crimes Affecting Businesses, Occupations, and Professions.
525. Riot, Disorderly Conduct, and Related Offenses.
527. Offenses Relating to Firearms and Weapons.
530. Family Offenses.
531. Pornography.
532. Classification and Designation of Offenses — Authorized Disposition.

CHAPTER 503

GENERAL PRINCIPLES OF JUSTIFICATION

Section
503.110. Use of force by person with responsibility for care, discipline, or safety of others.

503.110. Use of force by person with responsibility for care, discipline, or safety of others.

(1) The use of physical force by a defendant upon another person is justifiable when the defendant is a parent, guardian, or other person entrusted with the care and supervision of a minor or an incompetent person or when the defendant is a teacher or other person entrusted with the care and supervision of a minor, for a special purpose, and:

(a) The defendant believes that the force used is necessary to promote the welfare of a minor or mentally disabled person or, if the defendant's re-

sponsibility for the minor or mentally disabled person is for a special purpose, to further that special purpose or maintain reasonable discipline in a school, class, or other group; and

(b) The force that is used is not designed to cause or known to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain, or extreme mental distress.

(2) The use of physical force by a defendant upon another person is justifiable when the defendant is a warden or other authorized official of a correctional institution, and:

(a) The defendant believes that the force used is necessary for the purpose of enforcing the lawful rules of the institution;

(b) The degree of force used is not forbidden by any statute governing the administration of the institution; and

(c) If deadly force is used, its use is otherwise justifiable under this code.

(3) The use of physical force by a defendant upon another person is justifiable when the defendant is a person responsible for the operation of or the maintenance of order in a vehicle or other carrier of passengers and the defendant believes that such force is necessary to prevent interference with its operation or to maintain order in the vehicle or other carrier, except that deadly physical force may be used only when the defendant believes it necessary to prevent death or serious physical injury.

(4) The use of physical force by a defendant upon another person is justifiable when the defendant is a doctor or other therapist or a person assisting him at his direction, and:

(a) The force is used for the purpose of administering a recognized form of treatment which the defendant believes to be adapted to promoting the physical or mental health of the patient; and

(b) The treatment is administered with the consent of the patient or, if the patient is a minor or a mentally disabled person, with the consent of the parent, guardian, or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the defendant believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

History.

Enact. Acts 1974, ch. 406, § 36, effective January 1, 1975; 1982, ch. 141, § 135, effective July 1, 1982.

Compiler's Notes.

This section was amended by § 147 of Acts 1980, ch. 396, which would have taken effect July 1, 1982; however, Acts 1982, ch. 141, § 146, effective July 1, 1982, repealed Acts 1980, ch. 396.

NOTES TO DECISIONS

Analysis

1. Parental Discipline.
2. Teacher Discipline.
4. Jury Instructions.

1. Parental Discipline.

It may well be there are situations where using a wire coat hanger to correct a child's behavior, if not appropriate, is at least within the legal limits of parental discretion in raising their children; nevertheless, beatings administered by defendant were sufficient to sustain the charges of torture or cruel punishment to a person under 12 years of age because the children testified to circumstances proving the nature of the beatings to have been cruel and indiscriminate, and far different in character from normal parental discipline. Stoker v. Commonwealth, 828 S.W.2d 619, 1992 Ky. LEXIS 45 (Ky. 1992).

2. Teacher Discipline.

A teacher is justified in the use of physical force within certain bounds. The privilege to use force is unavailable as a defense if the teacher is wanton or reckless in believing the use of any force, or the degree of force used, to be necessary. Holbrook v. Commonwealth, 925 S.W.2d 191, 1995 Ky. App. LEXIS 227 (Ky. Ct. App. 1995).

Circuit court did not err in determining that appellee in-school security monitor had qualified official immunity against appellant student's battery claim because the student's inebriation and decision to go to the parking lot and enter his vehicle, contrary to the school officials' reasonable verbal instruction to enter the assistant principals' offices, compelled the security monitor to exercise the discretion afforded to him under the law to physically secure the student's cooperation in the interest of school safety and chose increasing degrees of physical restraint. Carpenter v. Goodall, 686 S.W.3d 251, 2024 Ky. App. LEXIS 9 (Ky. Ct. App. 2024).

4. Jury Instructions.

Trial court did not abuse its discretion by failing to instruct the jury on justifiable force because consideration of the facts simply did not allow a reasonable inference that the force used by defendant on the victim was not designed to cause or known to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain, or extreme mental distress. Breazeale v. Commonwealth, 600 S.W.3d 682, 2020 Ky. LEXIS 125 (Ky. 2020).

NOTES TO UNPUBLISHED DECISIONS

1. Parental Discipline.

Unpublished decision: In a 42 U.S.C.S. § 1983 case in which a plaintiff appealed district court's grant of summary judgment in favor of a police officer based on qualified immunity, the record presented no material dispute of fact whether the officer knew conclusively that the parental-discipline statute protected plaintiff's use of force; the undisputed facts tracked the elements of fourth-degree assault, and nothing required the officer to inquire further to discover plaintiff's affirmative defense. Harvey v. Carr, 616 Fed. Appx. 826, 2015 FED App. 0472N, 2015 U.S. App. LEXIS 11019 (6th Cir. Ky. 2015).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Corporal punishment., 704 KAR 7:170.

Discipline of school children, KRS 161.180.

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Defenses, Part 2 Justification, §§ 11.23 — 11.27.

CHAPTER 506
INCHOATE OFFENSES

Gang Violence Prevention Act.

Section

506.135. Definitions for chapter.

Section
506.140. Criminal gang recruitment.
506.150. Criminal gang activity or recruitment — Actions not constituting defenses.
506.160. Minimum service of sentence required if convicted defendant was member of criminal gang acting for the purpose of benefitting, promoting, or furthering the interest of criminal gang.
506.170. Enhancement of penalty and minimum service of sentence for conviction of criminal gang-related felonies resulting in risk of physical injury, serious physical injury, or death — Application to juveniles and persistent felony offenders.
506.180. Cause of action by victim of criminal gang incident against defendant for damages.
506.190. Criminal gang-related property subject to forfeiture under same criteria and process as set out in KRS 218A.405 to 218A.460.

GANG VIOLENCE PREVENTION ACT

506.135. Definitions for chapter.

As used in this chapter:

(1) "Criminal gang" means any alliance, network, conspiracy, or group that:

(a) Consists of three (3) or more persons who have any of the following in common:

1. Name;
2. Identifying hand signal or sign;
3. Colors;
4. Symbols;
5. Geographical location; or
6. Leader;

(b) Has been identified or prosecuted as a gang by the Commonwealth, or another state or any federal law enforcement agency; and

(c) Has two (2) or more members who, individually or collectively, through its members or actions of its members engage in or have engaged in a pattern of criminal activity.

"Criminal gang" does not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity; and

(2) "Pattern of criminal gang activity" means acts performed on separate occasions within a five (5) year period by any member or members of a criminal gang for the commission, attempt, or solicitation of, or conspiracy to commit:

(a) Two (2) or more felony offenses;

(b) Three (3) or more of the misdemeanor offenses enumerated in KRS 506.160; or

(c) A combination of at least:

1. One (1) felony offense; and
2. One (1) of the misdemeanor offenses enumerated in KRS 506.160.

History.

2018 ch. 202, § 1, effective April 26, 2018.

506.140. Criminal gang recruitment.

(1)(a) Any person who is age eighteen (18) or older is guilty of criminal gang recruitment in the first degree if he or she:

1. Solicits or entices any person under the age of fifteen (15) to join a criminal gang; and
2. Requires as a condition of membership the commission of a crime.

(b) Criminal gang recruitment in the first degree is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

(2)(a) Any person over the age of eighteen (18) is guilty of criminal gang recruitment in the second degree if he or she entices or solicits another person to join a criminal gang or intimidates or threatens another person because the other person:

1. Refuses to join a criminal gang;
2. Has withdrawn or is attempting to withdraw from a criminal gang; or
3. Refuses to submit to a demand made by a criminal gang.

(b) Criminal gang recruitment in the second degree is a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

(3)(a) Any person under the age of eighteen (18) is guilty of criminal gang recruitment in the third degree when he or she intentionally encourages or solicits another person to join a criminal gang.

(b) Criminal gang recruitment in the third degree is a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.

(4) It shall be no defense to prosecution under this section that the other person never intended to or did not commit the crime.

History.

Enact. Acts 1998, ch. 606, § 83, effective July 15, 1998; amend, Acts 2000, ch. 431, § 1, effective July 14, 2000; repealed and reenacted by 2018 ch. 202, § 2, effective April 26, 2018.

506.150. Criminal gang activity or recruitment — Actions not constituting defenses.

(1) To establish the existence of a "criminal gang" as defined in KRS 506.135, competent evidence that is probative of the existence of or membership in a criminal gang shall be admissible, including two (2) or more of the following:

(a) Self-proclamation, either at the time of arrest or any time before or thereafter;

(b) A common name, insignia, flag, or means of recognition;

(c) Common identifying hand or body signs, signals, graffiti, or code;

(d) A common identifying mode, style, or color of dress;

(e) An identifying tattoo or body marking;

(f) Membership, age, or other qualifications;

(g) Creed of belief;

(h) An organizational or command structure, overt or covert;

(i) A de facto claim of territory or jurisdiction;

(j) Participation, whether present or under direction, in an initiation ritual;

(k) Directing or ordering participation in an initiation ritual;

(*l*) A concentration or specialty;

(m) A method of operation or criminal enterprise;

(n) Identification as a gang member by a reliable informant;

(o) Identification as a criminal gang member by the alleged gang member's parent or guardian;

(p) Self-proclamation of association, whether for business or enjoyment, with criminal gang members;

(q) Identification through criminal gang publications, rosters, or bylaws;

(r) Participation in some form of verbal or written communication indicating the commission of a crime by the criminal gang;

(s) Participation in photos or social media interaction with criminal gang members promoting or furthering criminal activity; or

(t) Having committed or planning to commit crime or a criminal activity to target a rival criminal gang.

(2) It is no defense to prosecution under KRS 506.120, 506.140, 506.160, or 506.170 that:

(a) One (1) or more members of the gang are not criminally responsible for the offense;

(b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;

(c) A person has been charged with, acquitted, or convicted of any offense under KRS 506.120, 506.140, 506.160, or 506.170;

(d) The participants may not know each other's identity;

(e) The membership in the criminal gang may change from time to time; or

(f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.

(3) Once the initial combination of three (3) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as two (2) or more persons in the gang, excluding the defendant, are involved in a continuing pattern of criminal gang activity constituting a violation of KRS 506.120, 506.140, 506.160, or 506.170.

History.

Enact. Acts 1998, ch. 606, § 84, effective July 15, 1998; 2000, ch. 431, § 2, effective July 14, 2000; 2018 ch. 202, § 4, effective April 26, 2018.

506.160. Minimum service of sentence required if convicted defendant was member of criminal gang acting for the purpose of benefitting, promoting, or furthering the interest of criminal gang.

(1) If a defendant is alleged by the prosecuting attorney to have been a member of a criminal gang as defined in KRS 506.135, at the time of the commission of the offense, upon conviction of the offense there shall be a separate proceeding from that proceeding which resulted in the defendant's conviction if the defendant was convicted of:

(a) Assault in the fourth degree under KRS 508.030;

(b) Menacing under KRS 508.050;

(c) Wanton endangerment in the second degree under KRS 508.070;

(d) Terroristic threatening in the third degree under KRS 508.080;

(e) Unlawful imprisonment in the second degree under KRS 509.030;

(f) Criminal coercion under KRS 509.080;

(g) Criminal mischief in the second degree under KRS 512.030;

(h) Obstructing governmental operations under KRS 519.020;

(i) Resisting arrest under KRS 520.090;

(j) Riot in the second degree under KRS 525.030;

(k) Inciting to riot under KRS 525.040;

(*l*) Harassment under KRS 525.070;

(m) Harassing communications under KRS 525.080;

(n) The misdemeanor offense of carrying a concealed deadly weapon in violation of KRS 527.020; or

(o) Possession of a handgun by a minor as a first offense under KRS 527.100.

(2) The proceeding described in subsection (1) of this section shall be conducted before the court sitting with the jury that found the defendant guilty of the offense unless the court for good cause discharges that jury and impanels a new jury for that purpose. If the jury determines beyond a reasonable doubt that the defendant is or was a member of a criminal gang, acting for the purpose of benefitting, promoting, or furthering the interest of a criminal gang at the time he or she committed the offense, he or she shall not be released for a minimum of seventy-six (76) to ninety (90) days of the sentence imposed if the offense he or she is convicted of is classified as a Class B misdemeanor, or for a minimum of three hundred eleven (311) to three hundred sixty-five (365) days if the offense he or she is convicted of is classified as a Class A misdemeanor.

(3) This section shall not apply to a juvenile unless he or she has been transferred to Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least one (1) prior separate occasion been adjudicated a public offender for a felony offense.

History.

2018 ch. 202, § 5, effective April 26, 2018; 2024 ch. 174, § 13, effective August 1, 2025; 2026 ch. 67, § 13, effective July 15, 2026.

506.170. Enhancement of penalty and minimum service of sentence for conviction of criminal gang-related felonies resulting in risk of physical injury, serious physical injury, or death — Application to juveniles and persistent felony offenders.

(1) Other provisions of law notwithstanding, a person shall be penalized one (1) class more severely than provided in the penalty provision pertaining to that felony offense, unless the reclassification would move the offense to a capital offense, and shall not be released on parole until he or she has served at least eighty-five percent (85%) of the sentence imposed, if that person:

(a) Is convicted of an offense classified as a felony under any provision of the Kentucky Revised Statutes and for which the commission of the felony or felonies could or did place a member of the public at

risk of physical injury, serious physical injury, or death; and

(b) At the time of the commission of the offense or offenses was a member of a criminal gang as defined in KRS 506.135 and acting for the purpose of benefitting, promoting, or furthering the interests of a criminal gang or any individual member of a criminal gang.

(2) This section shall not apply to a juvenile unless:

(a) He or she has been transferred to Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least one (1) prior separate occasion been adjudicated a public offender for a felony offense; or

(b) He or she is a violent offender, as defined in KRS 439.3401.

(3) This section shall not apply in cases where the defendant is found to be a persistent felony offender under KRS 532.080.

History.
2018 ch. 202, § 6, effective April 26, 2018.

506.180. Cause of action by victim of criminal gang incident against defendant for damages.

(1) If a person alleges that he or she was a victim of a criminal act by:

(a) An organization, which at the time the incident or incidents were alleged to take place was a criminal gang as defined in KRS 506.135; or

(b) A person, who at time the incident or incidents were alleged to take place was a member of a criminal gang as defined in KRS 506.135;

that person may bring a cause of action against the defendant or defendants for damages.

(2) In an action brought under this section:

(a) If the plaintiff prevails, he or she shall be entitled to reasonable costs and attorney's fees;

(b) Any award of nominal damages to the plaintiff shall support an award of attorney's fees and costs; and

(c) Punitive damages as well as compensatory damages shall be awardable.

(3) This section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or any statutory or common law right of action, but shall be construed as ancillary and supplemental thereto.

History.
2018 ch. 202, § 7, effective April 26, 2018.

506.190. Criminal gang-related property subject to forfeiture under same criteria and process as set out in KRS 218A.405 to 218A.460.

All property used in connection with or acquired by a criminal gang as defined in KRS 506.135 or any of its members in committing, attempting to commit, or facilitating the commission of a criminal offense shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460.

History.
2018 ch. 202, § 8, effective April 26, 2018.

CHAPTER 508

ASSAULT AND RELATED OFFENSES

Section
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508.010. Assault in the first degree.

(1) A person is guilty of assault in the first degree when:

(a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.

(2) Assault in the first degree is a Class B felony.

History.
Enact. Acts 1974, ch. 406, § 65, effective January 1, 1975.

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1. Construction.

This chapter was intended to include vehicular accidents within the meaning of "assaults." Martin v. Commonwealth, 873 S.W.2d 832, 1993 Ky. App. LEXIS 181 (Ky. Ct. App. 1993).

Inmate's guilty plea to charges of first-degree assault, KRS 508.010, necessarily meant that his victims suffered serious physical injury, and thus the inmate was properly considered a violent offender for sentencing purposes pursuant to KRS 439.3401(1); even though the inmate's final judgment did not expressly state that he had been convicted of a class B felony involving the death or serious injury of the victim, the inmate was still properly considered a "violent offender," and the inmate's mandamus petition was properly dismissed. Jackson v. Taylor, 153 S.W.3d 842, 2004 Ky. App. LEXIS 36 (Ky. Ct. App. 2004).

2. Double Jeopardy.

The evidence of shooting an officer in a patrol wagon at another location would not support a conviction under this section for maliciously shooting an officer at another place, hence, a conviction for shooting the officer in the patrol wagon was not a bar to the prosecution under this section for shooting the other officer. (Decided under prior law) Wallace v. Commonwealth, 207 Ky. 122, 268 S.W. 809, 1925 Ky. LEXIS 30 (Ky. 1925).

Prior conviction for stabbing victim is no defense to prosecution for malicious shooting at a later time than stabbing. The length of time intervening between two offenses is wholly immaterial. (Decided under prior law) Dilley v. Commonwealth, 243 Ky. 464, 48 S.W.2d 1070, 1932 Ky. LEXIS 110 (Ky. 1932).

A prosecution for malicious assault was barred as double jeopardy by a prior acquittal of unlawfully and maliciously assaulting another with intent to rob where the shooting relied on in each indictment was the same act. (Decided under prior law) Rogers v. Commonwealth, 257 Ky. 495, 78 S.W.2d 340, 1935 Ky. LEXIS 43 (Ky. 1935).

Where under three indictments and separate trials defendant was convicted of maliciously striking and wounding another with a deadly weapon with intent to kill, and in the last of the cases for which he was tried, he entered a plea of former jeopardy on the ground he had been convicted of conspiracy in the previous trials and the crime proven was that of maliciously striking and wounding another by his own hand or by acting in concert with others who committed the specific act, each assault constituted a separate crime and plea of former jeopardy was unfounded. (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

In a prosecution for maliciously cutting and wounding a police officer, where record did not show defendant requested an instruction or an admonition on prior convictions admitted by defendant in court, it was not prejudicial error for the court to fail to admonish the jury that testimony concerning prior convictions, admitted by defendant in open court, could only be considered for purpose of affecting his credibility as a witness. (Decided under prior law) Patton v. Commonwealth, 273 S.W.2d 841, 1954 Ky. LEXIS 1216 (Ky. 1954).

Where defendant was prosecuted for malicious shooting under an original indictment in Circuit Court and two years after conviction applied for a writ of habeas corpus, his retrial under the same indictment did not constitute double jeopardy, since upon grant of habeas corpus defendant was in same position as if there had been no trial at all. (Decided under prior law) Rice v. Commonwealth, 387 S.W.2d 4, 1965 Ky. LEXIS 452 (Ky. 1965).

In a prosecution for both first-degree assault under this section and first-degree escape under KRS 520.020 there was no violation of the defendants' protection against double jeopardy, despite the showing of the common element of the use of force, since first-degree assault does not require proof of escape from custody and first-degree escape does not require proof of physical injury. McClain v. Commonwealth, 607 S.W.2d 421, 1980 Ky. LEXIS 261 (Ky. 1980).

It was not improper for state to prosecute defendant on both charge of possession of a handgun by a convicted felon under KRS 527.040 and on first-degree assault charge under this section even though a single course of conduct establishes the commission of both offenses because of KRS 505.020; and conviction for both crimes is not double jeopardy under Ky. Const., § 13 because neither offense is necessarily included within the other and each requires proof of an element not required by the other. Boulder v. Commonwealth, 610 S.W.2d 615, 1980 Ky. LEXIS 288 (Ky. 1980), overruled, Dale v. Commonwealth, 715 S.W.2d 227, 1986 Ky. LEXIS 284 (Ky. 1986).

Escape from a detention facility or custody is not an element of this section which defines assault in the first degree; thus, double jeopardy did not prohibit punishing the defendant for escape from a detention facility as well as for an assault he committed during the escape. Cope v. Commonwealth, 645 S.W.2d 703, 1983 Ky. LEXIS 215 (Ky. 1983).

Where defendant was first tried on a charge of first degree robbery, that trial ending in a mistrial because the jury could not agree on a verdict, no aspect of the double jeopardy doctrine precluded his retrial on the lesser included offenses of assault in the first and second degree, since he could have been retried on the greater crime of robbery in the first degree. Commonwealth v. Varney, 690 S.W.2d 758, 1985 Ky. LEXIS 211 (Ky. 1985), overruled, Goodman v. Commonwealth, 2015 Ky. Unpub. LEXIS 19 (Ky. Feb. 19, 2015).

Criminal contempt conviction for violating domestic violent order prohibiting defendant from committing further acts of violence upon his wife did not bar action against him for first degree assault; double jeopardy did not attach because the contempt conviction required proof of an element unnecessary to convict him of burglary. Commonwealth v. Burge, 1996 Ky. LEXIS 82 (Ky. Aug. 29, 1996), modified, sub. op., 1997 Ky. LEXIS 76 (Ky. June 19, 1997).

In a prosecution for assault under KRS 508.010, the trial court did not violate the double jeopardy ban or KRS 505.020 by submitting the case to the jury with instructions for three (3) counts of first-degree assault as defendant shot an officer three (3) separate times and inflicted three (3) separate wounds. Welborn v. Commonwealth, 157 S.W.3d 608, 2005 Ky. LEXIS 92 (Ky. 2005).

Applying the *Blockburger* test, codified at KRS 505.020, first-degree rape under KRS 510.040, premised on serious physical injury, and first-degree assault under KRS 508.010 were separate offenses, as each contained an element that the other did not. First-degree rape requires sexual intercourse and assualt does not; first-degree assault requires that the serious physical injury was obtained by use of a deadly weapon or dangerous instrument, but first-degree rape involving serious physical injury to the victim contains no such deadly weapon or dangerous instrument requirement. Dixon v. Commonwealth, 263 S.W.3d 583, 2008 Ky. LEXIS 138 (Ky. 2008).

Defendant's convictions for both attempted murder and first-degree assault, in violation of KRS 508.010(1), from the shooting of one victim resulted in a double jeopardy violation under KRS 505.020(1)(b); to convict defendant of both attempted murder and assault, the jury had to conclude that defendant intended to kill the victim and, at the same instant, intended not to kill the victim but only to injure the victim. Kiper v. Commonwealth, 399 S.W.3d 736, 2012 Ky. LEXIS 190 (Ky. 2012), reprinted, 2012 Ky. LEXIS 409 (Ky. Nov. 21, 2012), modified, 2013 Ky. LEXIS 145 (Ky. Apr. 25, 2013).

Defendant's convictions for both attempted murder and first-degree assault for shooting the same alleged victim did not violate the protections against double jeopardy under U.S. Const. amend. V and Ky. Const. § 13 because each crime contained an element that the other did not; the convictions did result in a double jeopardy violation of KRS 505.020(1)(b) because there were inconsistent and mutually exclusive findings of fact regarding defendant's mens rea at the moment he fired the shots when the jury had to conclude that defendant intended to kill the alleged victim and, at the same instant, intended not to kill him but only to injure him. Kiper v. Commonwealth, 2012 Ky. LEXIS 409 (Ky. Nov. 21, 2012).

3. Due Process.

In prosecution for malicious shooting denial of continuance, under the circumstances, was denial of defendant's constitutional right to counsel. (Decided under prior law) Perkins v. Commonwealth, 305 S.W.2d 937, 1957 Ky. LEXIS 356 (Ky. 1957).

In prosecution for malicious striking and wounding, refusal of trial court to permit defendant to change his plea of guilty to not guilty before the judgment had been finally pronounced was within the discretion of the trial court and was not a matter of right. (Decided under prior law) Hurt v. Commonwealth, 333 S.W.2d 951, 1960 Ky. LEXIS 217 (Ky. 1960).

Defendant, who was not afforded effective assistance of counsel at his trial for malicious shooting at which no transcript of evidence was made, was entitled to full and complete hearing on writ of habeas corpus. (Decided under prior law) Rice v. Davis, 366 S.W.2d 153, 1963 Ky. LEXIS 4 (Ky. 1963).

Where on cross-examination the defendant's wife was asked to strike the barrel of the shotgun against the car door in a manner simulating the way the gun was struck by the door at the scene of the incident, the reenactment was proper and was not error. (Decided under prior law) Stevens v. Commonwealth, 462 S.W.2d 182, 1970 Ky. LEXIS 649 (Ky. 1970).

Since the arraignment it had been patent to the defendant and his counsel that the first charge, first-degree assault, would require proof of the element of intent therefore, the Commonwealth's failure to file a bill of particulars was not proper justification in support of a motion for continuance and there was no error in denying it. Abbott v. Commonwealth, 822 S.W.2d 417, 1992 Ky. LEXIS 1 (Ky. 1992).

There was no error in a trial court's refusal to exclude a potential juror for cause. While the juror indicated that he might have had trouble acquitting defendant, if the jury found that he had committed the assault and unlawful imprisonment crimes with which he was charged but was so voluntarily intoxicated that he did not know what he was doing, the decision to exclude a juror was within the court's sound discretion, the court was eventually satisfied that the juror had adequately indicated his ability to follow the jury instructions, and if there was any error, it did not rise to the level of an abuse of discretion. Arnold v. Commonwealth, 192 S.W.3d 420, 2006 Ky. LEXIS 141 (Ky. 2006).

4. —Change of Venue.

On second trial for malicious shooting and wounding there was no abuse of discretion in overruling motion for change of venue where publicity given the case was of facts and circumstances which are ordinarily reported by the press and radio in cases of that character. (Decided under prior law) Claypoole v. Commonwealth, 355 S.W.2d 652, 1962 Ky. LEXIS 71 (Ky. 1962).

5. —Prosecutor Comments.

In prosecution for maliciously shooting and wounding companion of defendant's wife, there was no evidence to indicate that there was any contract or writing of any sort between defendant and his wife and there was no basis in the record for statement of Commonwealth's attorney regarding such contract but although such statement was irrelevant it was not prejudicial to the rights of defendant since there was strong evidence against him. (Decided under prior law) Harris v. Commonwealth, 303 Ky. 769, 199 S.W.2d 445, 1947 Ky. LEXIS 554 (Ky. 1947).

In prosecution for malicious cutting and wounding prosecuting witness with intent to kill, statement of prosecuting attorney in closing argument to jury that he was familiar with records of defendant and his wife was not prejudicial to defendant where on cross-examination defendant admitted he had been convicted of a felony and his wife also testified that she had been convicted of a felony. (Decided under prior law) Carnes v. Commonwealth, 306 Ky. 55, 206 S.W.2d 44, 1947 Ky. LEXIS 941 (Ky. 1947).

Where the special counsel who conducted the prosecution, during argument, made a number of highly improper statements, all drawn from outside the record, and the court overruled the objection of the defendant to each statement, the effect was to produce a prejudicial result at the hands of the

jury, and judgment of conviction was reversible because of misconduct of counsel for Commonwealth in his argument before the jury. (Decided under prior law) Adams v. Commonwealth, 263 S.W.2d 103, 1953 Ky. LEXIS 1232 (Ky. Ct. App. 1953).

In prosecution for shooting and wounding with pistol, there was no prejudice resulting from prosecutor's remarks relating to alleged unsavory reputation of defendant's restaurant, allegedly made without specific proof. (Decided under prior law) Mills v. Commonwealth, 300 S.W.2d 787, 1957 Ky. LEXIS 471 (Ky. 1957).

In prosecution for malicious shooting and wounding with intent to kill, argument of prosecuting attorney during his summation to jury that defendant had left tavern with intention in his mind of hunting down victim and shooting him like you would a dog, and that as victim lay in dirt with blood flowing out of him he looked up to defendant and asked him not to shoot again, was not inflammatory or prejudicial under the circumstances. (Decided under prior law) Claypoole v. Commonwealth, 355 S.W.2d 652, 1962 Ky. LEXIS 71 (Ky. 1962).

In prosecution for shooting and wounding with intent to kill and with being an habitual criminal where, in his closing argument, the Commonwealth's attorney referred to a penitentiary sentence of 21 years which was the punishment the Commonwealth sought on the principal charge, no prejudicial error was committed in overruling the defendant's objection to such statement. (Decided under prior law) Taylor v. Commonwealth, 449 S.W.2d 208, 1969 Ky. LEXIS 28 (Ky. 1969).

Where the verdict was fully justified under the evidence and the punishment that the jury imposed showed that it was not arrived at as a result of passion or prejudice since the proof established all elements of the crime, remarks concerning the "draft" or "Vietnam" in the prosecution's closing argument did not constitute prejudicial error. (Decided under prior law) Webb v. Commonwealth, 451 S.W.2d 397, 1970 Ky. LEXIS 385 (Ky. 1970).

Where in his closing argument the Commonwealth attorney charged that if the police were removed in two weeks people wouldn't be able to go to church, such argument was not prejudicially improper. (Decided under prior law) Clemons v. Commonwealth, 462 S.W.2d 919, 1971 Ky. LEXIS 562 (Ky. 1971).

A prosecutor calling the defendant's conduct "bizarre" during argument was not cause for a mistrial in defendant's trial for first degree assault under KRS 508.010 and first degree unlawful imprisonment under KRS 509.020. The prosecutor's comments did not imply that defendant should have been convicted because he was abnormal. Arnold v. Commonwealth, 192 S.W.3d 420, 2006 Ky. LEXIS 141 (Ky. 2006).

4. Complicity.

Evidence that defendant assisted codefendants in restraining the victim, throwing her against a kitchen counter twice and possibly kicking her in the head, and stowing her in a bathroom supported defendant's conviction for complicity to first degree assault. McCoy v. Commonwealth, 553 S.W.3d 816, 2018 Ky. LEXIS 281 (Ky. 2018).

6. Elements.

This section brings together two distinct culpable mental states (intent and wantonness manifesting extreme indifference to the value of human life) and punishes them equally under specified circumstances; either mental state will support a conviction of assault in the first degree and punishment for such crime. Wells v. Commonwealth, 561 S.W.2d 85, 1978 Ky. LEXIS 314 (Ky. 1978).

There are three elements which comprise the crimes of assault: the assailant's mental state, the means of attack, and the resultant injury. Commonwealth v. Hammond, 633 S.W.2d 73, 1982 Ky. App. LEXIS 214 (Ky. Ct. App. 1982).

Defendant's conviction for assault in the first degree was affirmed because the evidence was sufficient to convict defendant for the assault under either a theory that defendant intended to cause injury to the victim or that defendant acted wantonly by manifesting an extreme indifference for human life. The evidence established that defendant hit the victim over the head with a glass beer mug, causing defendant to be hospitalized and to receive over 400 stitches. Johnson v. Commonwealth, 2006 Ky. App. LEXIS 295 (Ky. Ct. App. 2006).

Defendant who caused an auto accident that killed three people and injured a third, and who tested positive for prescription drugs and marijuana in his urine, was improperly convicted of first-degree assault under KRS 508.010. As he did not drive erratically and there was no evidence he was under the influence of drugs, he lacked the necessary mental state; his actions did not occur under circumstances manifesting extreme indifference to human life. Ison v. Commonwealth, 271 S.W.3d 533, 2008 Ky. App. LEXIS 301 (Ky. Ct. App. 2008).

7. —Dangerous Instrument.

An assault with one's fists could not be considered an assault with a dangerous instrument so as to constitute assault in the first degree, where it was not clear whether the General Assembly intended that fists be considered to be a dangerous instrument as that term is used in this section. Roney v. Commonwealth, 695 S.W.2d 863, 1985 Ky. LEXIS 267 (Ky. 1985).

8. —Deadly Weapon.

The physical strength of the person using the instrument or weapon, such as rock or club, is also to be considered by the jury in determining whether it is a deadly weapon and instruction embodying these essential elements should be given. (Decided under prior law) Cosby v. Commonwealth, 115 Ky. 221, 72 S.W. 1089, 24 Ky. L. Rptr. 2050, 1903 Ky. LEXIS 89 (Ky. 1903).

A weapon is *per se* deadly when it is made and designated for offensive or defensive purposes only. (Decided under prior law) Perry v. Commonwealth, 286 Ky. 587, 151 S.W.2d 377, 1941 Ky. LEXIS 299 (Ky. 1941).

What constitutes dangerous or deadly missile must often depend on type of missile and manner in which it is used. (Decided under prior law) Harrison v. Commonwealth, 373 S.W.2d 156, 1963 Ky. LEXIS 153 (Ky. 1963).

9. — —Ax Handle.

An ax handle is a deadly weapon. (Decided under prior law) Moore v. Commonwealth, 35 S.W. 283, 18 Ky. L. Rptr. 129 (1896).

10. — —Bottle.

If it should turn out that the bottle used was not a deadly weapon, defendant might still be found guilty of assault and battery. (Decided under prior law) Commonwealth v. Yarnell, 68 S.W. 136, 24 Ky. L. Rptr. 144, 1902 Ky. LEXIS 256 (Ky. Ct. App. 1902).

A bottle may be a deadly weapon, for not only the character of the weapon used, but the manner of its use, is to be considered, and the question of whether it be a deadly weapon left with the jury, unless its deadly character be beyond question. (Decided under prior law) Commonwealth v. Yarnell, 68 S.W. 136, 24 Ky. L. Rptr. 144, 1902 Ky. LEXIS 256 (Ky. Ct. App. 1902).

11. — —Cane.

Whether walking cane which defendant used was a deadly weapon, was question for determination of jury from size and manner of use, it being error to assume cane was a deadly weapon. (Decided under prior law) Ward v. Commonwealth, 218 Ky. 217, 291 S.W. 47, 1927 Ky. LEXIS 135 (Ky. 1927).

12. — —Hands and Feet.

Hands and feet are not "deadly weapons" within the meaning of law that provided a penalty for malicious and willful cutting or stabbing with a deadly weapon. (Decided under prior law) Lyon v. Commonwealth, 194 Ky. 570, 239 S.W. 1046, 1922 Ky. LEXIS 188 (Ky. 1922); McIntosh v. Commonwealth, 275 Ky. 126, 120 S.W.2d 1031, 1938 Ky. LEXIS 383 (Ky. 1938); Bradley v. Commonwealth, 314 Ky. 457, 236 S.W.2d 266, 1951 Ky. LEXIS 678 (Ky. 1951); Reed v. Commonwealth, 248 S.W.2d 911, 1952 Ky. LEXIS 768 (Ky. 1952); Jones v. Commonwealth, 256 S.W.2d 520, 1953 Ky. LEXIS 751 (Ky. 1953); Crumbaugh v. Commonwealth, 259 S.W.2d 67, 1953 Ky. LEXIS 934 (Ky. 1953).

13. — —Knife.

An indictment alleging the act was committed with a knife, need not allege that the knife used by the defendant was a deadly weapon. (Decided under prior law) Sprague v. Commonwealth, 58 S.W. 430, 22 Ky. L. Rptr. 519, 1900 Ky. LEXIS 665 (Ky. 1900).

Under law that referred to knife as a deadly weapon, a very small knife worn on a watch chain and customarily used for paring and cleaning fingernails was not a deadly weapon *per se*. (Decided under prior law) Philpot v. Commonwealth, 247 S.W.2d 499, 1952 Ky. LEXIS 704 (Ky. 1952).

Where victim's throat was cut by ordinary pocket knife, blood gushed from wound and there was left a scar five or six inches long on victim's throat, the pocket knife which inflicted such wound was a deadly weapon *per se*. (Decided under prior law) Philpot v. Commonwealth, 247 S.W.2d 499, 1952 Ky. LEXIS 704 (Ky. 1952).

In a prosecution for malicious cutting and wounding, where the knife allegedly used by the defendant was described as a pocket knife with a one and one half inch blade, such knife could produce death and a definition of "deadly weapon" in the instruction was unnecessary. (Decided under prior law) Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

14. — —Knucks.

Metallic knucks constitute a deadly weapon. (Decided under prior law) Martin v. Commonwealth, 257 Ky. 591, 78 S.W.2d 786, 1935 Ky. LEXIS 59 (Ky. 1935); Perry v. Commonwealth, 286 Ky. 587, 151 S.W.2d 377, 1941 Ky. LEXIS 299 (Ky. 1941).

15. — —Lug Wrench.

In prosecution for allegedly maliciously striking and wounding another with a deadly weapon with intent to kill, it was reversible error for court to fail to submit to jury question of whether or not lug wrench, considering the manner of its use, was a deadly weapon. (Decided under prior law) Broaddus v. Commonwealth, 339 S.W.2d 154, 1960 Ky. LEXIS 426 (Ky. 1960).

16. — —Pistol.

A jury could determine that a pistol used in striking another was a deadly weapon. (Decided under prior law) Riggs v. Commonwealth, 33 S.W. 413, 17 Ky. L. Rptr. 1015 (1895); Smallwood v. Commonwealth, 40 S.W. 248, 19 Ky. L. Rptr. 344 (1897).

Where a pistol is used as a bludgeon it is not necessarily a deadly weapon; its deadly character depends upon the manner and circumstances of its use and the question is one of fact for the jury. (Decided under prior law) Angel v. Commonwealth, 289 Ky. 281, 158 S.W.2d 640, 1942 Ky. LEXIS 546 (Ky. 1942).

Where a pistol is used as a firearm, it is a deadly weapon *per se*. (Decided under prior law) Angel v. Commonwealth, 289 Ky. 281, 158 S.W.2d 640, 1942 Ky. LEXIS 546 (Ky. 1942).

Where pistol was allegedly used as a club, question as to its deadly character should have been left to jury. (Decided under prior law) Delph v. Commonwealth, 300 Ky. 722, 190 S.W.2d 340, 1945 Ky. LEXIS 642 (Ky. 1945).

17. — —Shoes.

In a prosecution for assault with intent to kill, an instruction with respect to whether shoes on defendant's feet, used by him in stomping and kicking victim, constituted a deadly weapon was proper. (Decided under prior law) Jones v. Commonwealth, 256 S.W.2d 520, 1953 Ky. LEXIS 751 (Ky. 1953).

Shoes may be regarded as within the term "deadly weapon" when employed in such a manner as may be reasonably calculated to produce great bodily injury or death. (Decided under prior law) Jones v. Commonwealth, 256 S.W.2d 520, 1953 Ky. LEXIS 751 (Ky. 1953).

18. — —Stick.

In order to convict defendant of malicious wounding, the jury should have been required to find that the stick used was, as used, a deadly weapon. (Decided under prior law) Parrott v. Commonwealth, 47 S.W. 452, 20 Ky. L. Rptr. 761 (1898).

19. — —Tobacco Hook.

Any club, stick or instrument with which a person strikes another comes within the definition of a deadly weapon, if, as applied to the facts of the case, the jury believes beyond a reasonable doubt it was such a weapon as was reasonably calculated to produce death or great bodily harm. A piece of round iron, with horn and handle, known as tobacco hook, may be a deadly weapon. (Decided under prior law) Burgess v. Commonwealth, 176 Ky. 326, 195 S.W. 445, 1917 Ky. LEXIS 35 (Ky. 1917); Payne v. Commonwealth, 255 Ky. 533, 75 S.W.2d 14, 1934 Ky. LEXIS 289 (Ky. 1934).

20. —Intent.

Intent to kill is not a part of the crime of maliciously shooting at another without wounding, hence, court did not err in omitting that element from the instructions. (Decided under prior law) Keys v. Commonwealth, 260 Ky. 465, 86 S.W.2d 121, 1935 Ky. LEXIS 483 (Ky. 1935).

Intent to kill is an essential element of offense of willfully and maliciously striking another with a deadly weapon with intent to kill. (Decided under prior law) Delph v. Commonwealth, 300 Ky. 722, 190 S.W.2d 340, 1945 Ky. LEXIS 642 (Ky. 1945).

Every man is presumed to intend the natural and probable consequence of his acts, thus, intent may be presumed from nature and consequence of act and a specific or expressed intent or preparation is not required to be proven. (Decided under prior law) Powell v. Commonwealth, 313 Ky. 532, 233 S.W.2d 113, 1950 Ky. LEXIS 937 (Ky. 1950).

In prosecution for feloniously shooting and wounding another with intent to kill, whether shooting of town marshal was accidental as claimed by defendant or was done maliciously or feloniously was for jury. (Decided under prior law) Powell v. Commonwealth, 313 Ky. 532, 233 S.W.2d 113, 1950 Ky. LEXIS 937 (Ky. 1950).

Felonious intent may be presumed from nature and consequences of act and specific or express intent is not required to be shown in prosecution for shooting and wounding. (Decided under prior law) Mills v. Commonwealth, 300 S.W.2d 787, 1957 Ky. LEXIS 471 (Ky. 1957).

In prosecution for malicious shooting and wounding another with intent to kill, since a necessary element of the crime is that the act must have been done with intent to kill, testimony tending to establish that fact is admissible. (Decided under prior law) Claypoole v. Commonwealth, 337 S.W.2d 30, 1960 Ky. LEXIS 359 (Ky. 1960).

In prosecution for willfully and maliciously shooting and wounding wife, the question of whether defendant maliciously fired with intent to kill his wife was for the jury. (Decided under prior law) Davidson v. Commonwealth, 340 S.W.2d 243, 1960 Ky. LEXIS 28 (Ky. 1960).

Seriousness of injury was factor to be considered in determining whether injury was inflicted with intent to kill. (De-

cided under prior law) Claypoole v. Commonwealth, 355 S.W.2d 652, 1962 Ky. LEXIS 71 (Ky. 1962).

The intent to kill is not an element of the offense of maliciously shooting at another without wounding him and there was no error in omitting the requirement of intent to kill from the instructions. (Decided under prior law) Stevens v. Commonwealth, 462 S.W.2d 182, 1970 Ky. LEXIS 649 (Ky. 1970).

Because defendant juvenile's conduct did not amount to wantonness, he was not criminally liable for assault or wanton endangerment; none of the passengers testified that defendant acted wantonly, and there was no evidence that violating a license restriction was wanton conduct. B. B. v. Commonwealth, 2014 Ky. App. LEXIS 77 (Ky. Ct. App. 2014).

21. —Malice.

Malice may be inferred from the actions of the accused, the circumstances of the crime, and the manner of its commission. (Decided under prior law) Crawford v. Commonwealth, 279 Ky. 224, 130 S.W.2d 17, 1939 Ky. LEXIS 244 (Ky. 1939).

"Malice" means a predetermination to commit an act without legal justification or excuse; it is immaterial at what time before the act the determination was formed, and malice may be inferred from the circumstances attending the act. (Decided under prior law) Harrison v. Commonwealth, 279 Ky. 510, 131 S.W.2d 454, 1939 Ky. LEXIS 306 (Ky. 1939).

"Malice" in its legal sense is the intentional doing of a wrongful act toward another without legal justification or excuse; it may be inferred or implied from any cruel or injurious act, and it is not required that malice in esse be proven. (Decided under prior law) Childers v. Commonwealth, 279 Ky. 737, 132 S.W.2d 81, 1939 Ky. LEXIS 353 (Ky. 1939).

Malice may be inferred from the act of shooting another with a deadly weapon after the person shot berated and abused the defendant without just cause. (Decided under prior law) Childers v. Commonwealth, 279 Ky. 737, 132 S.W.2d 81, 1939 Ky. LEXIS 353 (Ky. 1939).

Not only is a failure to submit the question of malice to the jury prejudicial error, but an indictment not containing the word "maliciously" will not support a conviction. (Decided under prior law) Pack v. Commonwealth, 282 Ky. 835, 140 S.W.2d 626, 1940 Ky. LEXIS 267 (Ky. 1940).

Malice aforethought may be shown by proof of threats, or may be inferred from actions of the accused, from the circumstances of the crime, and the manner of its commission. (Decided under prior law) Stevens v. Commonwealth, 286 Ky. 511, 151 S.W.2d 404, 1941 Ky. LEXIS 305 (Ky. 1941).

"Malice aforethought" means the doing of an unlawful act without justification or excuse. (Decided under prior law) Powell v. Commonwealth, 313 Ky. 532, 233 S.W.2d 113, 1950 Ky. LEXIS 937 (Ky. 1950).

In prosecution for malicious assault with deadly weapon with intent to kill, in view of the age and condition of three year old stepdaughter, the nature of the weapon used and the manner and frequency with which it was used, and the serious injuries that were inflicted, both malice and intent could reasonably be inferred. (Decided under prior law) Taylor v. Commonwealth, 302 S.W.2d 378, 1957 Ky. LEXIS 191 (Ky. 1957).

In prosecution for malicious assault with deadly weapon with intent to kill, malice may be inferred from a wilfully cruel or injurious act and intent to kill may be presumed from the nature and consequences of the act. (Decided under prior law) Taylor v. Commonwealth, 302 S.W.2d 378, 1957 Ky. LEXIS 191 (Ky. 1957).

Evidence of the Commonwealth, if accepted as true, that the defendant acted intentionally and cut victim without legal excuse, inferred the existence of malice. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

"Malice" in its legal sense means the intentional doing of a wrongful act towards another without legal justification or excuse. It may be inferred from actions of accused and from the manner in which the crime is committed. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

The very act of shooting a pistol at or into a moving automobile, which defendant must have known was occupied, constituted evidence of malice, which may be manifested or inferred from the circumstances. (Decided under prior law) Neely v. Commonwealth, 325 S.W.2d 79, 1959 Ky. LEXIS 36 (Ky. 1959).

For conviction, it is sufficient if malice existed at time of offense, and malice may instantly form in mind of accused at time he acts, and pre-existing hatred and malevolence toward victim need not be shown. (Decided under prior law) Wright v. Commonwealth, 335 S.W.2d 930, 1960 Ky. LEXIS 302 (Ky. 1960).

"Malice" means intentional doing of a wrong act without legal justification or excuse. (Decided under prior law) Wright v. Commonwealth, 335 S.W.2d 930, 1960 Ky. LEXIS 302 (Ky. 1960).

22. —Serious Physical Injury.

Defendant was not entitled to a directed verdict on the assault charge because there was sufficient evidence for a reasonable juror to have found that the victim suffered a serious physical injury sustained in the collision caused by defendant's wanton conduct of driving under the influence. The Commonwealth presented medical testimony and testimony from the victim herself about the extent and duration of her injuries. Young v. Commonwealth, 718 S.W.3d 698, 2025 Ky. LEXIS 182 (Ky. 2025).

Defendant was lawfully charged with first-degree assault for neglecting her disabled son because the statute outlawed not a particular sort of overt act but rather the infliction of a serious physical injury. Bartley v. Commonwealth, 400 S.W.3d 714, 2013 Ky. LEXIS 291 (Ky. 2013).

22. —Serious Physical Injury.

Trial court did not err in denying defendant's motion for a directed verdict on assault in the first degree because the evidence was sufficient for a reasonable jury to find serious physical injury; the victim testified to sharp pain and decreased mobility approximately five years after the assault, and her attending physician testified that she presented with a gunshot wound on the side of her leg and another wound on the back side of her calf. Hunter v. Commonwealth, 587 S.W.3d 298, 2019 Ky. LEXIS 434 (Ky. 2019).

23. Evidence.

Malice may be shown by proof of threats, or may be inferred from actions of accused and circumstance of crime and manner of commission. (Decided under prior law) Perkins v. Commonwealth, 218 Ky. 802, 292 S.W. 498, 1927 Ky. LEXIS 261 (Ky. 1927).

Evidence relative to three previous difficulties between defendant and injured person served the purpose of aiding jury to determine purpose parties may have had, malice they may have entertained, and which was the aggressor, and their admission was not prejudicial error. (Decided under prior law) Hamilton v. Commonwealth, 230 Ky. 207, 18 S.W.2d 995, 1929 Ky. LEXIS 57 (Ky. 1929).

Exhibiting wound to the jury was not prejudicial error. (Decided under prior law) Abdon v. Commonwealth, 237 Ky. 21, 34 S.W.2d 742, 1931 Ky. LEXIS 533 (Ky. 1931); Davidson v. Commonwealth, 261 Ky. 158, 87 S.W.2d 119, 1935 Ky. LEXIS 604 (Ky. 1935).

Where there is sufficient proof to indicate guilt of willfully and feloniously striking another with a deadly weapon, the court must pass the case to the jury. (Decided under prior law)

Turner v. Commonwealth, 267 Ky. 74, 101 S.W.2d 214, 1937 Ky. LEXIS 284 (Ky. 1937).

It is not necessary for the state to prove that any ill will had existed between defendant and victim previous to the attack. (Decided under prior law) Harrison v. Commonwealth, 279 Ky. 510, 131 S.W.2d 454, 1939 Ky. LEXIS 306 (Ky. 1939).

In prosecution for malicious shooting and wounding, the Commonwealth may prove the nature and extent, and future disabling effect, of the wound inflicted. (Decided under prior law) Gambrell v. Commonwealth, 282 Ky. 620, 139 S.W.2d 454, 1940 Ky. LEXIS 225 (Ky. 1940).

In prosecution for malicious shooting with intent to kill, testimony of young woman that accused had insulted her in presence of other men in cafe was admissible, since it bore on fact that accused and victim, young woman's uncle, who resented the insult, left the cafe and were together on street when shooting occurred. (Decided under prior law) McClain v. Commonwealth, 284 Ky. 359, 144 S.W.2d 816, 1940 Ky. LEXIS 500 (Ky. 1940).

Evidence of cutting in scuffle between boys at dance justified submission of case either as malicious and willful cutting or as cutting in sudden affray. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

In prosecution for willfully and maliciously cutting, testimony of Commonwealth's witness referring to an irrelevant and collateral matter was reversible error. (Decided under prior law) Coomer v. Commonwealth, 288 Ky. 598, 157 S.W.2d 97, 1941 Ky. LEXIS 168 (Ky. 1941).

The fact that husband of wounded woman, on the night of the shooting, had made the statement that he supposed he was the one who shot his wife does not have the effect of disproving his testimony as a matter of law and it was proper for the jury to consider this testimony for the effect, if any it had, upon his credibility as a witness. (Decided under prior law) Newsom v. Commonwealth, 289 Ky. 677, 160 S.W.2d 4, 1942 Ky. LEXIS 623 (Ky. 1942).

In action for maliciously cutting and stabbing, the testimony and proof made out a clear case where the jury had the right to accept testimony of one side in preference to that of the other, and the appellate court would not disturb the finding by encroaching on the functions of the jury. (Decided under prior law) Johnson v. Commonwealth, 299 Ky. 147, 184 S.W.2d 882, 1945 Ky. LEXIS 383 (Ky. 1945).

In joint prosecution of four defendants for malicious and willful cutting, failure of specific identification of the one or the other as having done the cutting in each case was immaterial so far as their joint guilt was concerned as they were acting in concert and all participated in the assault. (Decided under prior law) Maloney v. Commonwealth, 305 Ky. 549, 204 S.W.2d 939, 1947 Ky. LEXIS 855 (Ky. 1947).

Evidence as to improper remarks made by victim to defendant's wife, three months before the attack, was too remote to constitute provocation, and properly was excluded. (Decided under prior law) Carnes v. Commonwealth, 306 Ky. 55, 206 S.W.2d 44, 1947 Ky. LEXIS 941 (Ky. 1947).

In prosecution for maliciously shooting and wounding another with intent to kill, it is not necessary to show previous ill will or animosity and the absence of evidence pertaining to motive did not preclude a finding of guilty. (Decided under prior law) Teeters v. Commonwealth, 310 Ky. 546, 221 S.W.2d 85, 1949 Ky. LEXIS 965 (Ky. 1949).

Conflicting evidence justified acceptance of the persuasive evidence of the prosecution, rather than the word of the defendant, and sustained conviction for willfully and maliciously shooting and wounding another with a pistol with intent to kill. (Decided under prior law) Nolan v. Commonwealth, 311 Ky. 852, 226 S.W.2d 27, 1950 Ky. LEXIS 566 (Ky. 1950).

Where conflict in evidence could have been intentional or due to faulty memory, possibly induced by "Election Day spirits" or otherwise, credibility of witnesses and weight to be given evidence was function of the jury. (Decided under prior law) Shepherd v. Commonwealth, 277 S.W.2d 42, 1955 Ky. LEXIS 461 (Ky. 1955).

In prosecution for malicious shooting, the contrariety in the evidence made the question one for the jury. (Decided under prior law) Daniels v. Commonwealth, 404 S.W.2d 446, 1966 Ky. LEXIS 294 (Ky. 1966).

It is in the province of the jury to believe or disbelieve the testimony of the accused with respect to justification. (Decided under prior law) Bagby v. Commonwealth, 424 S.W.2d 119, 1968 Ky. LEXIS 441 (Ky. 1968).

Where evidence was presented by the Commonwealth tending to show that defendant committed the act and he denied his guilt and presented alibi evidence, the question of whether it was defendant or someone else who cut the girl was an issue of fact for the jury. (Decided under prior law) Meekey v. Commonwealth, 467 S.W.2d 360, 1971 Ky. LEXIS 374 (Ky. 1971).

24. —Deadly Weapon.

When the weapon was of such a character as to admit of but one conclusion in that respect, the question whether or not it was deadly, within the meaning of the law that provided a penalty for malicious and willful shooting, was one of law, but where the weapon employed was such that its deadly character depended upon the manner and circumstances of its use, the question was one of fact for the jury. (Decided under prior law) Owens v. Commonwealth, 187 Ky. 207, 218 S.W. 719, 1920 Ky. LEXIS 103 (Ky. 1920).

The question of whether chair was used in such a manner and under such circumstances as to constitute a deadly weapon should have been submitted to jury. (Decided under prior law) McIntosh v. Commonwealth, 275 Ky. 126, 120 S.W.2d 1031, 1938 Ky. LEXIS 383 (Ky. 1938).

Where testimony of two witnesses, if true, clearly showed defendant guilty of attack with deadly weapon, fact that defendant's witnesses far outnumbered those for the Commonwealth would not authorize setting aside verdict as palpably against the evidence. (Decided under prior law) Gillenwater v. Commonwealth, 291 Ky. 493, 165 S.W.2d 35, 1942 Ky. LEXIS 271 (Ky. 1942).

In prosecution for malicious cutting, the court properly submitted to the jury the issue of whether hands, feet and bunch of jail keys used in assaulting jailer were deadly weapons. (Decided under prior law) Vogg v. Commonwealth, 308 Ky. 212, 214 S.W.2d 86, 1948 Ky. LEXIS 895 (Ky. 1948).

Where weapon is of such character as to make it deadly per se, there is nothing to submit to jury, but where deadly character of weapon depends on manner and circumstances in which it was used, a question of fact arises for jury to determine whether it is a deadly weapon. (Decided under prior law) Philpot v. Commonwealth, 247 S.W.2d 499, 1952 Ky. LEXIS 704 (Ky. 1952); Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

In a prosecution for malicious cutting and wounding, where Commonwealth, over objection of defendant, introduced and exhibited a knife to the jury, but evidence failed to show how the Commonwealth acquired possession of the knife, or who had possession of it from the date of the fight to the date of the trial, or actually whose knife it was, or that it was the knife used by defendant, the knife was introduced in evidence without proper identification and its introduction was erroneous. (Decided under prior law) Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

Question of whether particular bottle allegedly thrown by defendant was a dangerous or deadly missile should have been submitted to jury. (Decided under prior law) Harrison v. Commonwealth, 373 S.W.2d 156, 1963 Ky. LEXIS 153 (Ky. 1963).

25. —Force and Physical Injury.

A charge of malicious shooting without wounding is supported by proof of a shooting with wounding, and neither the fact that an unnecessary element was proved, nor an instruction authorizing a conviction, whether the person shot at was wounded or not, can be regarded as prejudicial. (Decided under prior law) Martin v. Commonwealth, 207 Ky. 519, 269 S.W. 556, 1925 Ky. LEXIS 126 (Ky. 1925).

In prosecution under law that provided a penalty for malicious and willful shooting, cutting or stabbing, the use of a deadly weapon, not in self-defense, was evidence of malice. (Decided under prior law) Crawford v. Commonwealth, 279 Ky. 224, 130 S.W.2d 17, 1939 Ky. LEXIS 244 (Ky. 1939).

In order to prove an assault, the evidence must show that the defendant used force and caused physical injury. McClain v. Commonwealth, 607 S.W.2d 421, 1980 Ky. LEXIS 261 (Ky. 1980).

In a prosecution for first degree assault, evidence of the victim's medical bills was relevant since such evidence tended to make the fact that he suffered serious physical injuries more probable. Justice v. Commonwealth, 987 S.W.2d 306, 1998 Ky. LEXIS 164 (Ky. 1998).

Where the Commonwealth proved multiple acts of assault and multiple injures, some occurring in different time frames, the evidence was sufficient to prove that defendant's conduct caused the victim's injuries. Schrimsher v. Commonwealth, 190 S.W.3d 318, 2006 Ky. LEXIS 104 (Ky. 2006).

One of the elements necessary to prove an assault in the first degree is that the behavior caused serious physical injury, and the indictment in this case for this offense erroneously cited a broken leg for this element, but it was changed to soft tissue damage, and the court was not persuaded that there had been harmful error as a result of the amendment, as the leg was only mentioned in the indictment form and was a clerical error, and there was enough evidence for the jury to have found that the victim suffered a serious physical injury, but the jury found that an assault in the fourth degree had occurred; an element of assault in the fourth degree is that physical injury occurred, not the serious physical injury required for a conviction of assault in the first degree, for purposes of KRS 508.030, and the jury was not presented with evidence about a broken leg, such that the court could not find appellant suffered any prejudice from the indictment. Moran v. Commonwealth, 399 S.W.3d 35, 2013 Ky. App. LEXIS 71 (Ky. Ct. App. 2013).

26. —Insanity.

In a trial for murder and assault in which the defendant claimed insanity, the rule that only past felony convictions that relate to the issue of credibility, i.e., past felony convictions involving dishonesty are admissible for the purposes of impeachment, was not applicable to an expert witness (a physician) for the reason that the conviction in no way related to his expertise as a physician. Burgess v. Commonwealth, 564 S.W.2d 532, 1978 Ky. LEXIS 377 (Ky. 1978).

27. —Intoxication.

In a prosecution for first degree assault arising from a motor vehicle accident, evidence of the defendant's intoxication was relevant to prove the wantonness of his conduct at the time of the accident. Johnson v. Commonwealth, 36 S.W.3d 763, 2001 Ky. App. LEXIS 9 (Ky. Ct. App. 2001).

Where a trial court failed to instruct the jury on voluntary intoxication, such was found to be harmless error pursuant to RCr 9.24 with respect to defendant's conviction for wanton murder, in violation of KRS 507.020, as the intoxication would not have negated the mens rea of "wantonness" pursuant to KRS 501.020(3); however, the failure to give the instruction caused reversible error for defendant's conviction of assault under extreme emotional disturbance in violation of KRS 508.010, as the intoxication would have negated the necessary element of specific intent. Nichols v. Commonwealth, 142 S.W.3d 683, 2004 Ky. LEXIS 148 (Ky. 2004).

No abuse of discretion occurred when a trial court permitted the Commonwealth to introduce the testimony of its own expert witness to rebut defendant's defense of mental illness or defect, which was based on his claim that he was in an alcoholic blackout when he allegedly assaulted a woman with a hammer in a parking lot and tried to drag her away from her car. RCr 7.24(3)(B)(ii) allowed a rebuttal of the evidence that defendant had introduced, which could have reduced his criminal culpability, so that the expert's testimony was not outside the scope of rebuttal testimony allowed. Arnold v. Commonwealth, 192 S.W.3d 420, 2006 Ky. LEXIS 141 (Ky. 2006).

Because voluntary intoxication was a mental condition within the confines of Ky. R. Crim. P. 7.24(3)(B)(ii), as it bore on the issue of his guilt or punishment, the Commonwealth of Kentucky had a right to introduce the testimony of its own expert witness to rebut defendant's defense of mental illness or defect, which was based on his claim that he was in an alcoholic blackout when he allegedly assaulted a woman with a hammer in a parking lot and tried to drag her away from her car. Once defendant introduced evidence as to his defense, which could have reduced his criminal culpability, the Commonwealth had a right and a duty to rebut that defense, which rebuttal necessarily included obtaining its own expert to examine defendant. Arnold v. Commonwealth, 192 S.W.3d 420, 2006 Ky. LEXIS 141 (Ky. 2006).

28. —Photographs.

In prosecution for maliciously shooting and wounding with intent to kill, it was proper for witness to point out on photograph taken of premises a window from which he looked, and locations of participants in shooting when he saw them. (Decided under prior law) Nolan v. Commonwealth, 311 Ky. 852, 226 S.W.2d 27, 1950 Ky. LEXIS 566 (Ky. 1950).

In prosecution for maliciously shooting and wounding with intent to kill, photographs of the premises taken immediately after shooting were relevant and were not inadmissible on the grounds that they did not show the entire premises or particular place where participants said they were when incident began. (Decided under prior law) Nolan v. Commonwealth, 311 Ky. 852, 226 S.W.2d 27, 1950 Ky. LEXIS 566 (Ky. 1950).

Photographs showing persons posing in what they claim were the precise positions of the parties or of an automobile or other moving objects at time of occurrence upon which the action was based are not admissible because they are self-serving and are hearsay on part of photographer. (Decided under prior law) Nolan v. Commonwealth, 311 Ky. 852, 226 S.W.2d 27, 1950 Ky. LEXIS 566 (Ky. 1950).

Where a defendant was charged with assault by recklessly driving an automobile onto the median of a four-lane road, striking his victim and dragging him for several hundred feet, photographs of the car and of the clothing of the victim, though gruesome, were competent evidence to depict the scene of the crime and show how the victim sustained his injuries. Moore v. Commonwealth, 556 S.W.2d 161, 1977 Ky. App. LEXIS 809 (Ky. Ct. App. 1977).

29. —Prior Assaults.

Evidence of prior assaults by the defendant against his children was incompetent in a prosecution charging the defendant with murdering his wife and assaulting her companion. Raeber v. Commonwealth, 558 S.W.2d 609, 1977 Ky. LEXIS 541 (Ky. 1977).

In a trial for defendant's assault on his wife, there was no error in admitting evidence of prior bad acts against the victim to show the absence of accident, given that the victim was minimizing the significance of the violence. However, it was error to admit evidence of prior bad acts against defendant's former wife that occurred 12 years prior to the charged violent

acts. Driver v. Commonwealth, 361 S.W.3d 877, 2012 Ky. LEXIS 22 (Ky. 2012).

30. —Prior Convictions.

Where the trial court did not admonish the jury that evidence of a former conviction should not be considered by them unless they first found the defendant guilty of the principal offense of which he was charged, but the defendant did not request such an admonition, no error was committed that was preserved for review. (Decided under prior law) Taylor v. Commonwealth, 449 S.W.2d 208, 1969 Ky. LEXIS 28 (Ky. 1969).

Evidence in the penalty phase of defendant's trial that defendant's prior convictions were for gun-related crimes complied with KRS 532.055(2)(a)1-2; defendant's history of gun-related convictions was relevant to the appropriate punishment for a gun-related assault. Warfield v. Commonwealth, 2004 Ky. App. LEXIS 330 (Ky. Ct. App. Nov. 12, 2004, sub. op., 2004 Ky. App. Unpub. LEXIS 931 (Ky. Ct. App. Nov. 12, 2004), review denied, ordered not published, 2005 Ky. LEXIS 217 (Ky. Aug. 17, 2005).

31. —Self-defense.

Where defendant contended that he shot victim because victim had previously threatened to kill him and was advancing upon him in a hostile manner with something shiny in his hand which he "guessed" to be a knife, defendant was entitled to introduce testimony of witness that she found a knife near the place of the shooting the next morning, with the result that the refusal to admit such testimony was prejudicial error, although the evidence in the record did not justify introducing the knife found by the witness as an exhibit. (Decided under prior law) Claypoole v. Commonwealth, 355 S.W.2d 652, 1962 Ky. LEXIS 71 (Ky. 1962).

32. —Serious Physical Injury.

In prosecution for malicious shooting and wounding with intent to kill, testimony of physician that injury could have caused death, and testimony of victim that he was hospitalized for 48 ½ days was competent as tending to show seriousness of injury. (Decided under prior law) Claypoole v. Commonwealth, 355 S.W.2d 652, 1962 Ky. LEXIS 71 (Ky. 1962).

Police officer who was shot in the chest did not suffer injury so serious as to support conviction of first-degree assault. Luttrell v. Commonwealth, 554 S.W.2d 75, 1977 Ky. LEXIS 482 (Ky. 1977).

Although assault in the first degree is also a class B felony and requires proof of "serious physical injury," it is not a violation of equal protection rights to convict on the class B felony of robbery on a showing of physical injury alone as opposed to serious physical injury; assault in the first degree only requires injury to the victim, robbery in the first degree requires both a theft and a physical injury, with the injury being an aggravating factor. Hubbard v. Commonwealth, 932 S.W.2d 381, 1996 Ky. App. LEXIS 90 (Ky. Ct. App. 1996).

Defendant's motion for a directed verdict on a charge of first degree assault under KRS 508.010 was properly denied because the evidence was sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the victim had suffered "serious physical injury," as that term was defined in KRS 500.080(15). Defendant, in assaulting a woman in a parking lot and struck her on the head with a hammer, and the woman suffered a concussion and a loss of blood, she needed five staples to close her wound she continued to suffer vertigo and dizziness, and she had a permanent dent in her head where her hair did not grow properly. Arnold v. Commonwealth, 192 S.W.3d 420, 2006 Ky. LEXIS 141 (Ky. 2006).

Injury suffered by the victim after being shot did not amount to a "serious physical injury," as the only proof was the victim's testimony that it took "a couple of months" to get her hand back to full strength using a therapy ball, but she did not describe her exercises with any particularity or mention seeking a physical therapist. McDaniel v. Commonwealth, 415 S.W.3d 643, 2013 Ky. LEXIS 645 (Ky. 2013).

Defendant's conviction for first-degree assault was reversed as the prosecution did not prove the serious physical injury prong of the assault charge because the Commonwealth only presented evidence through the victim's testimony that he had been shot, that he had headaches off and on, and that he had a small scar; although the Commonwealth presented evidence that the victim might suffer from twitchy and watery eyes from time to time, no evidence was presented establishing the frequency of the alleged eye twitch or watering, the amount of water that ran from his eye, or how he was affected by the eye twitching and watering; and there was no evidence presented connecting the headaches, eye watering, and eye twitching to the gunshot. Forte v. Commonwealth, 2016 Ky. App. LEXIS 182 (Ky. Ct. App. Nov. 4, 2016).

33. —Sufficient.

Even though a number of witnesses corroborated the defendant's story that the victim fired the first shot there were others who stated that the defendant fired first and, therefore, there was sufficient evidence to sustain a conviction. (Decided under prior law) Childers v. Commonwealth, 279 Ky. 737, 132 S.W.2d 81, 1939 Ky. LEXIS 353 (Ky. 1939).

Evidence, although conflicting, was sufficient to sustain conviction where it showed, that although victim was aggressor in earlier difficulty, accused left scene, obtained gun, hid behind rock, and, as victim who was also carrying a gun, approached on road leading to his home, accused stepped from behind rock and shot him. (Decided under prior law) Combs v. Commonwealth, 284 Ky. 546, 145 S.W.2d 36, 1940 Ky. LEXIS 510 (Ky. 1940).

Conspiracy between two persons accused of malicious wounding was shown by evidence that one of them remained with other during flight from law and that he stated he had been in shooting match with officers and, after arrest, showed officers where part of officer's car, which had been removed therefrom, was thrown. (Decided under prior law) Hurst v. Commonwealth, 284 Ky. 599, 145 S.W.2d 520, 1940 Ky. LEXIS 543 (Ky. 1940).

Conviction of maliciously shooting and wounding victim was sustained by evidence for Commonwealth showing that both prior to and at time of shooting accused was not provoked by indignities which victim allegedly offered to accused's wife, credibility of witnesses giving conflicting evidence being solely for jury. (Decided under prior law) Higgins v. Commonwealth, 287 Ky. 767, 155 S.W.2d 209, 1941 Ky. LEXIS 637 (Ky. 1941), overruled, Woodard v. Commonwealth, 147 S.W.3d 63, 2004 Ky. LEXIS 244 (Ky. 2004).

Evidence of prosecuting witness and his wife that defendant, after altercation with prosecuting witness, came out of his house with a gun and sat on railroad tracks across from prosecuting witness's house for 20 or 30 minutes, and then shot into latter's house, was sufficient to take to jury question of defendant's guilt of willfully and maliciously shooting into a dwelling house, defendant's claim being only that gun accidentally discharged when he was holding it across his lap. (Decided under prior law) Grigsby v. Commonwealth, 299 Ky. 32, 184 S.W.2d 77, 1944 Ky. LEXIS 991 (Ky. 1944).

In prosecution for maliciously shooting and wounding companion of defendant's wife, questions asked defendant concerning fact that he had been placed under a peace bond by his wife were competent to prove motive, common scheme, or intent, and in view of the minimum sentence given defendant, such evidence would not have been prejudicial had it been incompetent. (Decided under prior law) Harris v. Commonwealth, 303 Ky. 769, 199 S.W.2d 445, 1947 Ky. LEXIS 554 (Ky. 1947).

Evidence that defendant began affray and that final melee, wherein plaintiff was stabbed in a dozen places about the chest and back, was a mutual combat, was sufficient to sustain

conviction. (Decided under prior law) Williams v. Commonwealth, 304 Ky. 359, 200 S.W.2d 926, 1947 Ky. LEXIS 653 (Ky. 1947).

Testimony by the victims, which was corroborated by other witnesses, that the defendants had assaulted the victims without provocation was sufficient to sustain a conviction. (Decided under prior law) Maloney v. Commonwealth, 305 Ky. 549, 204 S.W.2d 939, 1947 Ky. LEXIS 855 (Ky. 1947).

Testimony by the victim which was corroborated by other witness that the defendant had hit and kicked him during a jail escape was sufficient to sustain a conviction. (Decided under prior law) Vogg v. Commonwealth, 308 Ky. 212, 214 S.W.2d 86, 1948 Ky. LEXIS 895 (Ky. 1948).

Where four police officers testified that they went to the defendant's residence to investigate reported shooting and that they found the defendant on the landing and that the defendant fired repeatedly at them, this was sufficient evidence to sustain a conviction. (Decided under prior law) Helton v. Commonwealth, 312 Ky. 268, 226 S.W.2d 939, 1949 Ky. LEXIS 1260 (Ky. 1949).

The evidence was insufficient to take the case to the jury where testimony indicated that the prosecuting witness and the defendant became engaged in a hand scuffle during which the defendant's brother struck the prosecuting witness several times with a gun and there was no indication that the defendant had ever asked his brother for such assistance. (Decided under prior law) Smiddy v. Commonwealth, 240 S.W.2d 565, 1951 Ky. LEXIS 974 (Ky. 1951).

Testimony by the victim that either the defendant or his brother struck him with a chair was sufficient to take the case to the jury. (Decided under prior law) Lee v. Commonwealth, 244 S.W.2d 163, 1951 Ky. LEXIS 1205 (Ky. 1951).

In prosecution of police officer for maliciously striking and wounding with intent to kill in arresting prosecuting witness for public drunkenness there was sufficient evidence to support conviction for common-law offense of assault and battery. (Decided under prior law) Palmer v. Commonwealth, 252 S.W.2d 677, 1952 Ky. LEXIS 1013 (Ky. 1952).

There was ample evidence to take case to jury and support conviction for maliciously striking and wounding a victim with intent to kill. (Decided under prior law) Parsley v. Commonwealth, 273 S.W.2d 372, 1954 Ky. LEXIS 1165 (Ky. 1954).

The testimony of the prosecuting witness, although confused, indefinite and uncertain on various points, was sufficient to sustain a conviction. (Decided under prior law) Shepherd v. Commonwealth, 277 S.W.2d 42, 1955 Ky. LEXIS 461 (Ky. 1955).

In prosecution for assault with a deadly weapon with intent to kill, wherein son of complaining witness was permitted, in rebuttal, to testify that he had cut defendant with a knife taken from him shortly after difficulty between complaining witness and defendant, testimony sought to be introduced by defendant in surrebuttal to show that he had his knife at hospital and that it had no blood stains on it was properly refused since it related to a later occurrence and shed no light on the first trouble. (Decided under prior law) Charles v. Commonwealth, 321 S.W.2d 253, 1959 Ky. LEXIS 274 (Ky. 1959).

Although victim, who was cut in back by defendant while holding defendant in bear hug to prevent defendant from participating in fight, could not say who had dangerously cut victim in stomach immediately after he released defendant, evidence sustained conviction of defendant for malicious cutting and wounding of victim. (Decided under prior law) Wright v. Commonwealth, 335 S.W.2d 930, 1960 Ky. LEXIS 302 (Ky. 1960).

That defendant and victim had quarreled violently shortly before defendant fired two shots at him, one of which caused serious wound, was sufficient evidence from which jury could infer that shooting was done maliciously and with intent to kill. (Decided under prior law) Claypoole v. Commonwealth, 355 S.W.2d 652, 1962 Ky. LEXIS 71 (Ky. 1962).

All the evidence warranted the jury in finding defendant guilty of the felony of maliciously shooting and wounding with intent to kill, rather than the misdemeanor of shooting in sudden heat and passion. (Decided under prior law) Combs v. Commonwealth, 356 S.W.2d 761, 1962 Ky. LEXIS 101 (Ky. 1962).

Testimony of the prosecuting witness that the defendant fired a shotgun blast that hit her house after he had threatened to kill the witness and had broken a window with the barrel of the gun was sufficient to sustain a conviction. (Decided under prior law) Lewis v. Commonwealth, 357 S.W.2d 31, 1962 Ky. LEXIS 106 (Ky. 1962).

In prosecution for malicious cutting and wounding with intent to kill, evidence sustained conviction for lesser degree of offense of cutting in a sudden affray or in sudden heat and passion. (Decided under prior law) Watkins v. Commonwealth, 378 S.W.2d 614, 1964 Ky. LEXIS 190 (Ky. 1964).

Evidence pointed unerringly to the guilt of defendant, and sustained conviction for willfully shooting and wounding brother with intent to kill. (Decided under prior law) Stephens v. Commonwealth, 382 S.W.2d 397, 1964 Ky. LEXIS 346 (Ky. 1964).

In prosecution for maliciously striking and wounding with a deadly weapon evidence that first defendant hit victim with a pistol and that while victim was unconscious second defendant beat him with a club was sufficient to hold second defendant guilty, and first defendant guilty of aiding and abetting him. (Decided under prior law) Miller v. Commonwealth, 395 S.W.2d 598, 1965 Ky. LEXIS 158 (Ky. 1965).

The testimony of the sheriff that the defendant fired one shot at him and attempted to fire the second shot combined with the evidence that the defendant had threatened to shoot the officer who sought to arrest him was a sufficient showing of malice and intent. (Decided under prior law) Stevens v. Commonwealth, 462 S.W.2d 182, 1970 Ky. LEXIS 649 (Ky. 1970).

Testimony of witnesses for the Commonwealth that defendant had shot at and hit an occupied automobile was sufficient to present a jury question. (Decided under prior law) Estep v. Commonwealth, 481 S.W.2d 93, 1972 Ky. LEXIS 232 (Ky. 1972).

Law that provided penalty for maliciously and willfully shooting at or into dwelling house was sufficiently broad to convict a defendant who was physically within a dwelling house when he fired a shot into the floor. (Decided under prior law) Gaines v. Commonwealth, 505 S.W.2d 174, 1974 Ky. LEXIS 767 (Ky. 1974).

Where the defendant participated in the planning of an armed robbery in which a .357 Magnum was used, the participants "cased" the store, there was a plan to steal weapons, and the participants used drugs and alcohol immediately prior to the robbery, there were sufficient circumstances surrounding the felony to submit this case to the jury and the determination of wanton murder and first degree assault by the jury under these circumstances was not contrary to the evidence. Kruse v. Commonwealth, 704 S.W.2d 192, 1985 Ky. LEXIS 303 (Ky. 1985).

Evidence was sufficient to convict defendant of wanton first-degree assault as defendant fired from 50 to 75 feet away while the victim was standing with a number of people near the front door of a tavern, defendant fired several shots in the direction of the people, and defendant never testified as to why or at whom he was shooting. Warfield v. Commonwealth, 2004 Ky. App. LEXIS 330 (Ky. Ct. App. Nov. 12, 2004, sub. op., 2004 Ky. App. Unpub. LEXIS 931 (Ky. Ct. App. Nov. 12, 2004), review denied, ordered not published, 2005 Ky. LEXIS 217 (Ky. Aug. 17, 2005).

Trial court properly denied defendant's motion for a directed verdict on the charge of first-degree assault under KRS

508.010(1)(b), in light of the evidence that defendant, while driving at a high rate of speed, ignored road conditions and other vehicles and made no effort to swerve or slow down before ramming another vehicle. This conduct manifested an extreme indifference to human life, and provided a sufficient basis for the jury to find that defendant had engaged in wanton conduct. Berryman v. Commonwealth, 237 S.W.3d 175, 2007 Ky. LEXIS 206 (Ky. 2007).

Evidence was sufficient to sustain defendant's murder, first-degree assault, and first-degree criminal abuse convictions because the medical evidence concerning the force required to inflict the injuries, the obviously battered state of the victim's body, and defendant's police statement admitting instances of "discipline" were sufficient to permit a reasonable juror to conclude that she intentionally abused the child, and that she murdered and assaulted him, either directly or by lending aid to the co-defendant. Peacher v. Commonwealth, 391 S.W.3d 821, 2013 Ky. LEXIS 11 (Ky. 2013).

34. —Insufficient.

The failure to use the words "with a deadly weapon" in accusatory part of indictment was not erroneous where the words were used in the descriptive part of the indictment. (Decided under prior law) Easterling v. Commonwealth, 216 Ky. 541, 287 S.W. 972, 1926 Ky. LEXIS 944 (Ky. 1926).

An indictment charging the defendant in the accusatory part with malicious shooting, and using no other words to describe the offense, charged no offense in the accusatory part, and was bad on demurrer although descriptive part alleged malicious shooting and wounding with intent to kill. (Decided under prior law) Puckett v. Commonwealth, 264 Ky. 577, 95 S.W.2d 242, 1936 Ky. LEXIS 369 (Ky. 1936).

Failure of accusatory part of indictment to allege crime was willful did not render indictment defective where facts showing the crime was willful and committed with intent to kill were stated in descriptive part. (Decided under prior law) Hensley v. Commonwealth, 264 Ky. 718, 95 S.W.2d 564, 1936 Ky. LEXIS 387 (Ky. 1936).

Indictment charging defendant in accusatory part with malicious shooting and wounding with intent to kill was not at variance with descriptive part making same charge but omitting words "with intent to kill." (Decided under prior law) McClain v. Commonwealth, 284 Ky. 359, 144 S.W.2d 816, 1940 Ky. LEXIS 500 (Ky. 1940).

Conviction of malicious wounding and conspiracy to commit it was not sustained against one of three persons jointly indicted, where there was no evidence that he fired the shots or conspired with others to do so, but shortly after shooting got out of car from which shots had been fired and went home. (Decided under prior law) Hurst v. Commonwealth, 284 Ky. 599, 145 S.W.2d 520, 1940 Ky. LEXIS 543 (Ky. 1940).

Malicious shooting and wounding with intent to kill, by three of indictees, was not shown by evidence that four men were in highway and refused to step aside until automobile reached them and that shots were fired from one pistol into passing automobile, wounding driver, but evidence did not show that the three indictees, directly or indirectly, instigated, aided, or encouraged act of man who fired shots. (Decided under prior law) Carpenter v. Commonwealth, 284 Ky. 629, 145 S.W.2d 833, 1940 Ky. LEXIS 555 (Ky. 1940).

Defect in accusatory part of indictment, consisting of omission of words "wilfully" and "maliciously" before "cutting," and "another" after "kill," was not fatal where crime was sufficiently charged in descriptive part of indictment. (Decided under prior law) Adkins v. Commonwealth, 292 Ky. 67, 165 S.W.2d 983, 1942 Ky. LEXIS 33 (Ky. 1942).

Where descriptive part of indictment charged defendant with felony defined by law that provided penalty for malicious and willful shooting, cutting or poisoning of another, but accusatory part omitted the word "maliciously" and thus alleged only the common-law offense of assault and battery, the indictment was good to extent it charged a misdemeanor. (Decided under prior law) Armstrong v. Commonwealth, 289 Ky. 758, 160 S.W.2d 159, 1942 Ky. LEXIS 640 (Ky. 1942).

In prosecution for shooting into railroad car, indictment which did not contain word "maliciously" in accusatory part, nor in proper place in descriptive part, but which did, in one place in descriptive part, state that shooting was "with malicious intent," was improper but not fatally defective. (Decided under prior law) Deaton v. Commonwealth, 303 Ky. 5, 196 S.W.2d 742, 1946 Ky. LEXIS 775 (Ky. 1946).

Evidence that defendants were seen outside dwelling house with a shotgun, and that after two or three shots were heard the glass fell from a window, was not sufficient to take case to jury, where physical evidence showed that no shot had passed through the window and there was no evidence that the defendants had shot the gun at the house, or at all. (Decided under prior law) Deaton v. Commonwealth, 303 Ky. 5, 196 S.W.2d 742, 1946 Ky. LEXIS 775 (Ky. 1946).

Circumstantial evidence relative to motive and opportunity was sufficient to create a suspicion that defendant was guilty of shooting into dwelling house, but was insufficient to exclude every reasonable hypothesis of innocence, the presumption of which must be accorded defendant throughout the trial. (Decided under prior law) Johnson v. Commonwealth, 312 Ky. 674, 229 S.W.2d 445, 1950 Ky. LEXIS 730 (Ky. 1950).

Evidence was insufficient to support conviction under law that provided a penalty for maliciously and willfully shooting and wounding another with intent to kill as no intent to kill was proven, nor was there any testimony that defendant used a deadly weapon. (Decided under prior law) Reed v. Commonwealth, 248 S.W.2d 911, 1952 Ky. LEXIS 768 (Ky. 1952).

Where evidence indicated defendant had been beaten by prosecuting witness, and after defendant and his companions had left, prosecuting witness discovered he had been cut on the left arm and shoulder but no description of the nature of the cut was given, the bare statement alone was of no value in determining what might have caused the wound and trial court should have directed a verdict for defendant. (Decided under prior law) Bradley v. Commonwealth, 314 Ky. 457, 236 S.W.2d 266, 1951 Ky. LEXIS 678 (Ky. 1951).

Where it was stated in the descriptive part of the indictment that the shooting was done willfully, maliciously and not in self-defense or the defense of the defendant's son, and that the shotgun so used was loaded with lead and shots or other hard substance, but the accusatory part of the indictment omitted the word "willfully" and the phrase "loaded with a leaden bullet or other hard substance," the indictment was not defective, since it fully notified the defendant of the offense with which he was charged. (Decided under prior law) Turner v. Commonwealth, 260 S.W.2d 646, 1953 Ky. LEXIS 978 (Ky. 1953).

Where the evidence was merely cumulative and in the main attacked the credibility of complaining witness and his wife and in no way actually refuted the circumstances of the shooting, the court did not commit error in overruling motion for new trial. (Decided under prior law) Chambers v. Commonwealth, 264 S.W.2d 61, 1953 Ky. LEXIS 1255 (Ky. Ct. App. 1953).

Where defendant, who was under a domestic violence emergency protective order regarding his wife which order did not contain a no contact provision, sought admission to wife's apartment and was admitted after wife had her male visitor wait in locked bedroom and defendant hearing a noise in the bedroom, went to investigate, forced the door and observed the friend diving out the window, whereupon the defendant proceeded to break several items and grab his wife by the neck, the facts do not support a finding that an assault occurred since no weapon or dangerous instrument was used and since there was no serious injury, and as the facts did not support a finding of assault and therefore the "intent to commit a crime" element of KRS 511.030(1) cannot be satisfied court's overrul-

ing of defendant's motion for directed verdict on burglary charge was error. Hedges v. Commonwealth, 937 S.W.2d 703, 1996 Ky. LEXIS 122 (Ky. 1996).

There was insufficient evidence of a "serious physical injury" to convict defendant of first degree assault in violation of KRS 508.010 where the only proof of victim's injury was that he had a laceration on the jaw line, was given IV medication for an elevated heart rate, the laceration was sutured and then he was sent home. Anderson v. Commonwealth, 352 S.W.3d 577, 2011 Ky. LEXIS 115 (Ky. 2011).

35. —Prejudicial.

In prosecution for maliciously shooting at and wounding prosecution witness, trial court did not err in excluding statement of defendant's witness, who had testified that he had done the shooting, that he had been run off the road and "they," identified as two individuals who were with prosecution witness, had threatened to kill him and used abusive language, and, further, court did not err in admonishing jury not to consider statement. (Decided under prior law) Whitaker v. Commonwealth, 302 S.W.2d 601, 1957 Ky. LEXIS 203 (Ky. 1957).

Because the trial court's failure to hold a *Daubert* hearing pursuant to KRE 702 before admitting shaken baby syndrome opinion evidence was not harmless error under RCr 9.24, it erred in finding defendant guilty of wanton first-degree assault. Hamilton v. Commonwealth, 293 S.W.3d 413, 2009 Ky. App. LEXIS 138 (Ky. Ct. App. 2009).

36. —Nonprejudicial.

In prosecution for willfully and maliciously shooting into an occupied dwelling house, trial court did not err in permitting deputy sheriff to testify as to acts and conduct of defendant when he was arrested. (Decided under prior law) Grigsby v. Commonwealth, 299 Ky. 32, 184 S.W.2d 77, 1944 Ky. LEXIS 991 (Ky. 1944).

In prosecution for malicious assault with deadly weapon with intent to kill three year old stepdaughter, there was no error in permitting lay witnesses to give their opinions that a fall from a high chair could not have caused all of injuries suffered by the child. (Decided under prior law) Taylor v. Commonwealth, 302 S.W.2d 378, 1957 Ky. LEXIS 191 (Ky. 1957).

In prosecution for shooting and wounding with pistol, it was proper to permit the Commonwealth to introduce as an exhibit the shirt which such victim had worn at time he was shot to show that the shirt was free of powder burns and thus rebut defendant's contention that victim was close upon him with a knife at the time he was shot by defendant. (Decided under prior law) Mills v. Commonwealth, 300 S.W.2d 787, 1957 Ky. LEXIS 471 (Ky. 1957).

Evidence that defendant left the country after the grand jury met, and stayed away for almost a year, was admissible to establish presumption of guilt, though defendant had sent word to the sheriff that he was leaving to earn money to employ a lawyer and he voluntarily surrendered later. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

Where defendant testified his son hit victim with a knife but qualified it by saying he did not see him do it, his son testified that he drew his pocket knife and cut victim, and the prosecution had no one who definitely said they saw defendant use a knife, but their version of the happening was such that if their testimony was believed no one but defendant could have done the cutting, the question of whether defendant or his son cut victim with a knife was for the jury. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

Permitting victim to testify concerning the limited use of his hand because of the wound was not improper. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

Question asking whether witness was present when defendant stabbed at the brother of witness was not prejudicial on the ground that it assumed that defendant had stabbed the brother, although it could have been in better form. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

In prosecution for willfully and maliciously shooting at and into occupied motor vehicle, evidence that defendant had been placed under bond to keep the peace, because of threats of violence he had made toward driver of automobile, was clearly for the purpose of proving threats and animosity, and, hence, failure to admonish jury to consider evidence only for such purpose was not error. (Decided under prior law) Neely v. Commonwealth, 325 S.W.2d 79, 1959 Ky. LEXIS 36 (Ky. 1959).

In prosecution for willfully and maliciously shooting into dwelling house, court properly overruled defendant's objection to testimony of his victim relating to the threat defendant had made against her life, and correctly admonished jury to consider her testimony for sole purpose of determining whether principal offense had been maliciously perpetrated. (Decided under prior law) Perkins v. Commonwealth, 342 S.W.2d 102, 1960 Ky. LEXIS 88 (Ky. 1960).

In prosecution for malicious cutting with intent to kill, it was not prejudicial error to introduce into evidence the dress worn by the prosecuting witness, to show the location and number of cuts inflicted, where there was sufficient other evidence to support the charges and where no attempt was made by the prosecutor to dramatize the introduction of the dress for the purpose of inflaming the jury. (Decided under prior law) McClure v. Commonwealth, 344 S.W.2d 382, 1961 Ky. LEXIS 222 (Ky. 1961).

In prosecution for malicious wounding, testimony by witness for prosecution that defendant was the man who shot him immediately prior to the shooting of the person for whom defendant was charged with malicious wounding, which contradicted the contention of defendant that another and not defendant shot the witness and a few seconds later also shot the person with whom defendant was charged with maliciously wounding, was admissible as tending to identify the person who did the shooting. (Decided under prior law) Moore v. Commonwealth, 346 S.W.2d 39, 1961 Ky. LEXIS 291 (Ky. 1961).

Trial court was under no affirmative duty to admonish jury to consider evidence of the shooting of witness only for purpose of identifying person who shot another, where no objection and no request for admonition was made. (Decided under prior law) Moore v. Commonwealth, 346 S.W.2d 39, 1961 Ky. LEXIS 291 (Ky. 1961).

Where the Commonwealth introduced evidence of the defendant's reputation for killing people to which the defendant objected and which objection was sustained, but the defendant did not move for a mistrial or ask the court to take other action, the trial court did not commit any error which, under RCr 9.22, was preserved for appellate review. (Decided under prior law) Taylor v. Commonwealth, 449 S.W.2d 208, 1969 Ky. LEXIS 28 (Ky. 1969).

There was harmless error in failing to exclude a shotgun shell found in the defendant's car as an exhibit in his trial on a charge of shooting and wounding. (Decided under prior law) Jackson v. Commonwealth, 450 S.W.2d 244, 1970 Ky. LEXIS 435 (Ky. 1970).

Where the identification evidence in a prosecution for robbery and assault was not impermissibly suggestive, denial of a pretrial motion for a suppression hearing on such evidence was not prejudicial and did not deny defendant a fair trial. Watkins v. Commonwealth, 565 S.W.2d 630, 1978 Ky. LEXIS 356 (Ky. 1978).

Where the testimony relating to other offenses was activity unrelated to the defendant but was that of other individuals

not on trial, admission of such evidence was not error. Watkins v. Commonwealth, 565 S.W.2d 630, 1978 Ky. LEXIS 356 (Ky. 1978).

The failure of the Commonwealth to furnish defendant with two of the cartridges found at the scene of the shooting and robbery was not prejudicial where neither cartridge was admitted as evidence. Brewster v. Commonwealth, 568 S.W.2d 232, 1978 Ky. LEXIS 371 (Ky. 1978).

Defendant's convictions of second-degree manslaughter, KRS 507.040, and second-degree assault, KRS 508.010, stemming from an automobile accident were affirmed; the trial court properly allowed a doctor to testify as to the effects of methadone and promethazine, which defendant had taken at the time of an automobile accident, as the doctor was qualified, the evidence was relevant under KRE 401, as the Commonwealth's entire case was based on the argument that defendant was aware of and consciously disregarded, as defined in KRS 501.020, the risk of driving while taking methadone and promethazine, the evidence of the risks and adverse effects of those drugs was not outweighed by any undue prejudice pursuant to KRE 403, and the expert opinion testimony would assist the trier of fact under KRE 702, as the effects of the drugs were not within the common knowledge of the jury. Smith v. Commonwealth, 181 S.W.3d 53, 2005 Ky. App. LEXIS 256 (Ky. Ct. App. 2005).

Trial court did not err when it permitted the Commonwealth to introduce evidence of illicit drugs during defendant's trial on charges of wanton murder under KRS 507.020(1)(b), and first-degree assault under KRS 508.010(1)(b). The evidence was relevant and admissible because it helped the jury fully understand defendant's misconduct in that he was so engrossed by his passenger counting illicit pills that he was not paying attention to his driving; any prejudice suffered by defendant due to the admission of the evidence was cured by the trial court's limiting admonition to the jury. Berryman v. Commonwealth, 237 S.W.3d 175, 2007 Ky. LEXIS 206 (Ky. 2007).

37. Indictment.

Where indictment in accusatory part charged defendant with offense of cutting "with intent to kill him," it need not in descriptive part again charge that cutting was done "with intent to kill." (Decided under prior law) Shouse v. Commonwealth, 95 Ky. 621, 26 S.W. 814, 16 Ky. L. Rptr. 142, 1894 Ky. LEXIS 71 (Ky. 1894).

Where body of indictment charges defendant with willfully and maliciously cutting "with intent to kill," but introductory part merely charges defendant with crime of malicious cutting and wounding, the indictment is sufficient. (Decided under prior law) Clark v. Commonwealth, 38 S.W. 489, 18 Ky. L. Rptr. 758 (1896).

An indictment charging that the shooting and wounding was from ambush and a place of concealment, with intent to kill, charged an offense under law that provided a penalty for the malicious and willful shooting of another, even though another law made shooting from ambush or place of concealment a crime. (Decided under prior law) Collins v. Commonwealth, 70 S.W. 187, 24 Ky. L. Rptr. 884 (1902).

The indictment was not bad for duplicity where it charged three defendants with shooting and wounding a named person with a pistol, and striking and wounding him with a shotgun, and striking and stabbing him with a knife all with intent to kill though alleged in separate counts, there being but one offense charged, the malicious wounding with intent to kill. (Decided under prior law) Greenwell v. Commonwealth, 125 Ky. 192, 100 S.W. 852, 30 Ky. L. Rptr. 1282, 1907 Ky. LEXIS 269 (Ky. 1907); Commonwealth v. Lawson, 165 Ky. 4, 176 S.W. 359, 1915 Ky. LEXIS 471 (Ky. 1915).

The indictment need not have charged that defendant, when he fired, was at such distance that death or serious bodily harm could have resulted from his shooting, since the offense was a statutory one, fully described in the statute, and was complete when a person shot at another with the intent of killing him although he may not have wounded him, and the question of whether the person doing the shooting was close enough to the person shot at to wound and kill him was for the jury. (Decided under prior law) Wrist v. Commonwealth, 110 S.W. 849, 33 Ky. L. Rptr. 718 (1908).

Any error committed by the trial court, in not sustaining demurrer to an indictment which charged two persons with the single act of shooting and wounding another with intent to kill, was cured by a dismissal before trial of the indictment as to one of the persons charged. (Decided under prior law) Hemphill v. Commonwealth, 178 Ky. 843, 200 S.W. 2, 1918 Ky. LEXIS 461 (Ky. 1918).

Indictment not containing the word "maliciously" will not support conviction. (Decided under prior law) Coates v. Commonwealth, 235 Ky. 683, 32 S.W.2d 34, 1930 Ky. LEXIS 443 (Ky. 1930).

Joint indictment was valid since aider and abettor was punishable as principal. (Decided under prior law) Short v. Commonwealth, 240 Ky. 477, 42 S.W.2d 696, 1931 Ky. LEXIS 427 (Ky. 1931).

Indictment charging defendant and his codefendants with the malicious shooting of two named persons stated two offenses. (Decided under prior law) Canada v. Commonwealth, 242 Ky. 71, 45 S.W.2d 834, 1932 Ky. LEXIS 221 (Ky. 1932).

Indictment properly charged offense where accusatory part charged that accused unlawfully shot and wounded another with intent to kill, but descriptive part merely charged that accused unlawfully shot and wounded victim omitting words "with intent to kill." (Decided under prior law) Smith v. Commonwealth, 284 Ky. 80, 143 S.W.2d 859, 1940 Ky. LEXIS 441 (Ky. 1940).

Indictment that charged offenses of malicious and willful cutting, and of cutting in sudden affray, which was degree of former offense, was not duplicitous. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

Indictment may jointly charge two persons with commission of an offense. (Decided under prior law) Deaton v. Commonwealth, 288 Ky. 246, 156 S.W.2d 94, 1941 Ky. LEXIS 89 (Ky. 1941).

Indictment charging the stabbing of two persons was subject to demurrer, but Commonwealth had privilege of electing which offense it would try. (Decided under prior law) Deaton v. Commonwealth, 288 Ky. 246, 156 S.W.2d 94, 1941 Ky. LEXIS 89 (Ky. 1941).

An indictment within the words of the statute is sufficient. (Decided under prior law) Watkins v. Commonwealth, 290 Ky. 416, 161 S.W.2d 625, 1942 Ky. LEXIS 417 (Ky. 1942).

A variance between the indictment charging defendant with shooting a pistol, and the proof showing the defendant shot a shoulder weapon is immaterial as long as the weapon discharged a deadly missile. (Decided under prior law) Campbell v. Commonwealth, 295 Ky. 511, 174 S.W.2d 778, 1943 Ky. LEXIS 280 (Ky. 1943).

Where first count in indictment charged defendant with maliciously striking and wounding another with deadly weapons with intent to kill, and second count charged him with entering into a conspiracy for the purpose of maliciously striking and wounding, two separate and distinct offenses were not charged, but the second count described a different means by which crime of maliciously striking and wounding was committed as authorized by former criminal rule that provided that if the offense could have been committed in different means the indictment could allege such means. (See RCr 6.10.) (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

Where the indictment accused the defendant of maliciously striking and wounding another with intent to kill and recited that the act was done with a shotgun, but the evidence

established that a .22 caliber rifle was employed in the assault, there was not a fatal variance between the offense charged and the evidence introduced. (Decided under prior law) Oliver v. Commonwealth, 262 S.W.2d 693, 1953 Ky. LEXIS 1123 (Ky. 1953).

Words "intent to kill" in indictment charging accused with shooting at another without wounding with "intent to kill," were purely surplusage. (Decided under prior law) Profitt v. Commonwealth, 281 S.W.2d 898, 1955 Ky. LEXIS 207 (Ky. 1955).

Indictment which charged in part that defendant "with force and arms, unlawfully, willfully, maliciously and feloniously did, strike and wound .... [another] with his fist, which in manner used, considering defendant's size, build in relation to .... [other person's] size, was, a deadly weapon, on and upon the head, body, arms, limbs and person .... with the felonious and malicious intent to kill him, but from which striking and wounding death did not ensue" was insufficient to charge crime of assault with a deadly weapon, since the fist has been held not to constitute a deadly weapon, but was sufficient to sustain a conviction on the lesser offense of assault and battery. (Decided under prior law) Charles v. Commonwealth, 321 S.W.2d 253, 1959 Ky. LEXIS 274 (Ky. 1959).

Indictment following the statute and charging that defendant and another, maliciously and with intent to kill, shot and wounded named person adequately notified defendant of offense charged. (Decided under prior law) Moore v. Commonwealth, 346 S.W.2d 39, 1961 Ky. LEXIS 291 (Ky. 1961).

An indictment which charged that the shooting was done with the intent to kill and that the victim did not die from his wounds was sufficient. (Decided under prior law) Cavitt v. Commonwealth, 397 S.W.2d 54, 1965 Ky. LEXIS 58 (Ky. 1965).

Amendment of the indictment at the close of the evidence in a trial for robbery and assault so as to change the name of robbery victim, did not prejudice the defendant or expose him to double jeopardy. Watkins v. Commonwealth, 565 S.W.2d 630, 1978 Ky. LEXIS 356 (Ky. 1978).

38. —Completeness.

The omission of word "willful" in accusatory part of indictment, where descriptive part alleges that it was "willfully and maliciously" done, does not render the indictment insufficient; it is not necessary to allege shooting was "feloniously" done. (Decided under prior law) Gregory v. Commonwealth, 187 Ky. 188, 218 S.W. 999, 1920 Ky. LEXIS 97 (Ky. 1920).

39. —Bill of Particulars.

Where defendant and another were indicted jointly for maliciously cutting and wounding with intent to kill, and defendant would have been called upon to make the same defense regardless of whether he was tried as principal offender or as one who had aided or abetted the principal, overruling of defendant's motion for bill of particulars was not abuse of discretion. (Decided under prior law) Chaplin v. Commonwealth, 274 S.W.2d 55, 1954 Ky. LEXIS 1222 (Ky. 1954).

40. Instructions.

Assault and battery by cutting with a knife is punished by statute, and instructions under the statutes are all that are necessary. (Decided under prior law) Lewis v. Commonwealth, 156 Ky. 336, 160 S.W. 1061, 1913 Ky. LEXIS 428 (Ky. 1913); Noral v. Commonwealth, 202 Ky. 318, 259 S.W. 706, 1924 Ky. LEXIS 713 (Ky. 1924); Muncy v. Commonwealth, 265 Ky. 730, 97 S.W.2d 606, 1936 Ky. LEXIS 566 (Ky. 1936).

Where evidence warranted the conclusion that defendant wounded another in a reckless shooting, and not in sudden affray, an instruction on common-law offense should have been given. (Decided under prior law) Balle v. Commonwealth, 153 Ky. 558, 156 S.W. 147, 1913 Ky. LEXIS 896 (Ky. 1913).

Defendant was not entitled to instruction under malicious assault law or on shooting and wounding in sudden affray since a defendant is not entitled to specific instruction on intent unless the nature of the evidence is such as to make specific issue as to intent. (Decided under prior law) Luttrell v. Commonwealth, 250 Ky. 334, 63 S.W.2d 292, 1933 Ky. LEXIS 698 (Ky. 1933).

Instruction that defendant should be acquitted if shooting was accidental, defining "accident" as an unusual and unexpected happening, was sufficient, together with self-defense instruction, without adding that gun might have been discharged while defendant was attempting to frighten another person. (Decided under prior law) Crawford v. Commonwealth, 279 Ky. 224, 130 S.W.2d 17, 1939 Ky. LEXIS 244 (Ky. 1939).

In prosecution for willful and malicious shooting, an instruction on shooting and wounding in sudden affray or in sudden heat and passion should be given, where the evidence justifies it. (Decided under prior law) Eve v. Commonwealth, 278 Ky. 123, 128 S.W.2d 616, 1939 Ky. LEXIS 414 (Ky. 1939).

Where defendant, in prosecution for willful and malicious shooting, relied upon an alibi, a lower degree instruction was not authorized. (Decided under prior law) Eve v. Commonwealth, 278 Ky. 123, 128 S.W.2d 616, 1939 Ky. LEXIS 414 (Ky. 1939).

Where the indictment named defendant and charged him with having fired shots into a church, an instruction charging that jury should find defendant guilty if it believed he aided and abetted another in firing the shots is erroneous as one may not be convicted of aiding and abetting unless so charged or the indictment names two or more persons as the perpetrators. (Decided under prior law) Cupp v. Commonwealth, 296 Ky. 464, 177 S.W.2d 581, 1944 Ky. LEXIS 566 (Ky. 1944).

In a prosecution for cutting or striking another with a knife or other deadly weapon, where the proof showed that the weapon used was an ordinary pocket knife, it was not necessary for the instructions to define "deadly weapon." (Decided under prior law) Williams v. Commonwealth, 304 Ky. 359, 200 S.W.2d 926, 1947 Ky. LEXIS 653 (Ky. 1947).

Where defendant, while drunk and without apparent motive, drew a gun on two brothers who grappled with him, and in the struggle the gun was discharged, wounding one of the brothers, in a subsequent prosecution for maliciously shooting and wounding with intent to kill, defendant was entitled to an instruction on accidental shooting. (Decided under prior law) Teeters v. Commonwealth, 310 Ky. 546, 221 S.W.2d 85, 1949 Ky. LEXIS 965 (Ky. 1949).

In prosecution for maliciously shooting a pistol at another with intent to kill, conflicting evidence as to whether or not accused did the actual shooting and whether or not shots were fired at prosecuting witness put in issue the lesser offense, making the drawing, pointing or flourishing a deadly weapon on a public highway a misdemeanor, so as to require that a misdemeanor instruction be included. (Decided under prior law) Johnson v. Commonwealth, 310 Ky. 621, 221 S.W.2d 440, 1949 Ky. LEXIS 974 (Ky. 1949).

In maliciously shooting prosecution failure to instruct on accidental killing, where there is evidence to establish such a theory, is reversible error. (Decided under prior law) Burkhart v. Commonwealth, 312 Ky. 448, 227 S.W.2d 988, 1950 Ky. LEXIS 669 (Ky. 1950).

In prosecution for shooting and wounding with intent to kill, an instruction defining the terms maliciously and willfully is not necessary. (Decided under prior law) Stringer v. Commonwealth, 240 S.W.2d 638, 1951 Ky. LEXIS 1015 (Ky. 1951).

In prosecution for maliciously shooting at another without wounding him, wherein defendant testified that he shot in self-defense of his family and admitted that he was shooting at prosecuting witness, not to kill him, but only to bluff him, defendant was not entitled to instruction on reckless use of deadly weapon. (Decided under prior law) Profitt v. Commonwealth, 281 S.W.2d 898, 1955 Ky. LEXIS 207 (Ky. 1955).

In prosecution for malicious cutting and wounding, in view of the conflicting testimony concerning the incident and the circumstances peculiar to the case, the court should have defined the term "sudden affray." (Decided under prior law) Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

In prosecution for malicious shooting at and wounding an individual, trial court did not err in failing to give an affirmative instruction covering defendant's special defense of alibi, where instruction in submitting Commonwealth's theory of the case was couched in language the ordinary juror could easily understand, and its negative completely and adequately covered the defense of defendant. (Decided under prior law) Whitaker v. Commonwealth, 302 S.W.2d 601, 1957 Ky. LEXIS 203 (Ky. 1957).

In prosecution for willfully and maliciously shooting another with intent to kill, evidence that defendants were intoxicated entitled them to an instruction on the lesser offense of shooting and wounding in sudden affray or heat and passion without previous malice. (Decided under prior law) Cummins v. Commonwealth, 344 S.W.2d 611, 1961 Ky. LEXIS 238 (Ky. 1961).

When instructions embrace all three degrees of shooting and wounding, and defense of accidental shooting as well, accidental shooting instruction must contain proviso that act was neither willful nor result of wanton, reckless, or grossly careless handling of weapons. (Decided under prior law) Bentley v. Commonwealth, 354 S.W.2d 495, 1962 Ky. LEXIS 40 (Ky. 1962).

Failure to give an instruction for recklessly throwing a missile at a motor vehicle was not erroneous where there was no factual basis upon which to predicate such an instruction. (Decided under prior law) Harrison v. Commonwealth, 373 S.W.2d 156, 1963 Ky. LEXIS 153 (Ky. 1963).

Where the only instruction on reasonable doubt instructed the jury to find the defendant guilty of the lesser offense if they had reasonable doubt of his guilt of the primary offense, it was error not to give a separate instruction on reasonable doubt. (Decided under prior law) Medley v. Commonwealth, 450 S.W.2d 811, 1970 Ky. LEXIS 460 (Ky. 1970).

Although assault in the first degree is an included offense of the crime of murder, an instruction on this issue need not be given unless the evidence leaves room for some doubt as to whether the act of the accused was the cause of death and, at the same time, all elements necessary to prove an assault in the first degree are present. Muse v. Commonwealth, 551 S.W.2d 564, 1977 Ky. LEXIS 452 (Ky. 1977).

Where trial instructions provided, as alternative grounds for a finding of guilt, either that defendant intended to cause serious physical injury or that he wantonly engaged in conduct which created risk of death to victim, and the state of the evidence was such that it would clearly be unreasonable for a juror to believe that defendant's conduct was other than intentional, the conviction for first-degree assault under this section was reversed with instructions for a new trial because it could not be ascertained whether all jurors based their decision on the first theory, which was the only one supported by the evidence; thus, the Supreme Court could not say that the verdict was unanimous as required by RCr 9.82. Boulder v. Commonwealth, 610 S.W.2d 615, 1980 Ky. LEXIS 288 (Ky. 1980), overruled, Dale v. Commonwealth, 715 S.W.2d 227, 1986 Ky. LEXIS 284 (Ky. 1986).

Where the evidence showed that injury to victim for which defendant was on trial was caused by a gunshot wound, the Circuit Court in order to differentiate instructions on first and second-degree assault, should have adopted Commonwealth's tendered Instruction No. II, which permitted a guilty verdict on second-degree assault upon a finding that defendant intentionally shot the victim with a pistol, resulting in nonserious physical injury, or that defendant wantonly shot the victim with a pistol, resulting in serious physical injury. Commonwealth v. Hammond, 633 S.W.2d 73, 1982 Ky. App. LEXIS 214 (Ky. Ct. App. 1982).

The trial court did not commit error by instructing the jury on first degree assault, where the Commonwealth failed to prove that the victim received serious physical injury, but the defendant was found guilty of second degree assault; conviction of a lesser-included offense renders the instruction of the greater offense harmless error. Russell v. Commonwealth, 720 S.W.2d 347, 1986 Ky. App. LEXIS 1456 (Ky. Ct. App. 1986).

The trial court properly gave an instruction under KRS 508.040 without defendant's consent which mitigated a conviction for assault under this section, KRS 508.020, and 508.030; there was enough proof in the record to justify the giving of the instruction in question and it was not sufficiently prejudicial to compel a reversal of the trial court. Commonwealth v. Elmore, 831 S.W.2d 183, 1992 Ky. LEXIS 93 (Ky. 1992).

41. —Dangerous Weapon.

In appeal from prosecution for throwing deadly missile into storehouse, Court of Appeals must assume that trial court properly instructed the jury where appellant contended the trial court's failure to instruct on what constituted a dangerous or felonious missile or to instruct or define what constituted a stone or dangerous or deadly missile was erroneous, but appellant failed to meet the burden of proof by setting forth statements of fact necessary to determine the question in compliance with RCA 1.210(a)(3). (Decided under prior law) Snell v. Commonwealth, 420 S.W.2d 127, 1967 Ky. LEXIS 100 (Ky. 1967).

Omission of the requirement that the jury find that the car with which defendant hit the victim was a dangerous instrument in the assault instruction was harmless error where there was no reasonable doubt that the jury would have found the car to be a dangerous instrument when he used it to run down the victim in the course of stealing another's purse. McNeil v. Commonwealth, 468 S.W.3d 858, 2015 Ky. LEXIS 1764 (Ky. 2015).

42. —Deadly Weapon.

In a prosecution for assault with a deadly weapon, court ought to have left it to the jury to decide, considering the character and size of the rock or stone with which the striking was done and the manner of its use, whether or not it was a deadly weapon, and an instruction, that if defendant struck and wounded "with rock or other hard substance, deadly weapon or weapons" the jury should find defendant guilty, was erroneous. (Decided under prior law) McWilliams v. Commonwealth, 35 S.W. 538, 18 Ky. L. Rptr. 92 (1896).

Where weapon used was a stick, an instruction which only required the jury to believe death could have been produced by the stick used, without regard to the manner of use, was erroneous. (Decided under prior law) Honaker v. Commonwealth, 76 S.W. 154, 25 Ky. L. Rptr. 675 (1903).

An instruction that if the defendant "struck and wounded S with a rock, a deadly weapon," he should be found guilty, was erroneous in assuming that the rock was a deadly weapon. (Decided under prior law) Owens v. Commonwealth, 187 Ky. 207, 218 S.W. 719, 1920 Ky. LEXIS 103 (Ky. 1920).

In a prosecution for murder, where blow on head with a bottle was sufficient to cause death, instruction under law that provided a penalty for malicious and willful assault on another, defining "deadly weapon" was not required, notwithstanding another hit deceased with a rock, since accused could be found guilty of murder though he only contributed to or hastened death in some minor way. (Decided under prior law) Landrum v. Commonwealth, 266 Ky. 655, 99 S.W.2d 787, 1936 Ky. LEXIS 731 (Ky. 1936).

The most correct instruction defining a deadly weapon is a submission to the jury as to whether the instrument with which the striking was done was reasonably calculated to

produce death when used by a person of defendant's physical strength, and in the manner in which it was used by him on the occasion mentioned in the indictment. (Decided under prior law) Perry v. Commonwealth, 286 Ky. 587, 151 S.W.2d 377, 1941 Ky. LEXIS 299 (Ky. 1941).

When weapon employed is not definitely identified, or when it is not per se a deadly weapon, the question of whether it is a deadly weapon is for the jury, and an instruction defining "deadly weapon" should be given. (Decided under prior law) Perry v. Commonwealth, 286 Ky. 587, 151 S.W.2d 377, 1941 Ky. LEXIS 299 (Ky. 1941).

When weapon employed is per se deadly, an instruction defining "deadly weapon" is not necessary. (Decided under prior law) Perry v. Commonwealth, 286 Ky. 587, 151 S.W.2d 377, 1941 Ky. LEXIS 299 (Ky. 1941).

Failure of court, in instruction under law that provided a penalty for willfully and maliciously shooting, to include the words, "with a gun or other instrument loaded with a leaden bullet or other hard substance," which were contained in such law was not prejudicial error. (Decided under prior law) Kelley v. Commonwealth, 300 Ky. 136, 187 S.W.2d 796, 1945 Ky. LEXIS 804 (Ky. 1945).

Hands and feet are not deadly weapons and instruction that it was the duty of the jury to convict defendant if he did willfully and maliciously and not in self-defense or self-defense of any of his codefendants assault, strike, beat and kick named person with poker or other deadly weapon upon or over her head, or both, with intent to then and there kill her, was reversible error. (Decided under prior law) Reed v. Commonwealth, 248 S.W.2d 911, 1952 Ky. LEXIS 768 (Ky. 1952).

In prosecution for striking and wounding wife with a deadly weapon with intent to kill her, the evidence was sufficient to warrant instruction on use of a deadly weapon, a telephone which defendant jerked from the wall when his wife attempted to call the police, although defendant testified he struck her with his hands. (Decided under prior law) Crumbaugh v. Commonwealth, 259 S.W.2d 67, 1953 Ky. LEXIS 934 (Ky. 1953).

In prosecution for maliciously striking and wounding with a knife, a deadly weapon, with intent to kill, failure to define the phrases "deadly weapon" and "sudden affray" was not erroneous. (Decided under prior law) Damron v. Commonwealth, 313 S.W.2d 854, 1958 Ky. LEXIS 274 (Ky. 1958).

Giving of instruction following the form of the usual instruction for malicious striking and wounding, which embodied the language of the indictment concerning the use of the fist as a deadly weapon, and instruction defining the fist as a deadly weapon, constituted reversible error since the fist is not a deadly weapon and the indictment was insufficient to charge a felony. (Decided under prior law) Charles v. Commonwealth, 321 S.W.2d 253, 1959 Ky. LEXIS 274 (Ky. 1959).

43. —Intent.

In prosecution for cutting and wounding with a knife, under law that provided a penalty for maliciously and willfully cutting or striking another with intent to kill, an instruction omitting "with intention to kill" was reversible error although that idea was contained in another instruction. (Decided under prior law) Bailey v. Commonwealth, 70 S.W. 838, 24 Ky. L. Rptr. 1114 (1902).

The words "feloniously" and "with malice aforethought" were improperly used in instruction that jury was to find defendant guilty of malicious cutting and wounding if the same was done feloniously and with malice aforethought and with intent to kill. (Decided under prior law) Brown v. Commonwealth, 79 S.W. 1193, 25 Ky. L. Rptr. 2076 (1904).

Instruction under law that provided a penalty for malicious and willful shooting that if defendant shot at one person with intention of killing him or shot at second person with the intention of killing him but wounding first person, was not erroneous as submitting two offenses for jury's consideration, where evidence was doubtful whether accused intentionally shot at first person but it was admitted he shot at second person, since the instruction referred to the same act of shooting. (Decided under prior law) Tall v. Commonwealth, 110 S.W. 425, 33 Ky. L. Rptr. 541 (1908).

One of the essential elements of malicious assault is malice and an instruction which authorizes conviction without requiring the jury to believe the shooting at with intent to kill was done maliciously, clearly is erroneous and prejudicial. (Decided under prior law) Hall v. Commonwealth, 219 Ky. 446, 293 S.W. 961, 1927 Ky. LEXIS 360 (Ky. 1927); Crabtree v. Commonwealth, 227 Ky. 65, 11 S.W.2d 1000, 1928 Ky. LEXIS 464 (Ky. 1928).

In a prosecution for malicious shooting and wounding with intent to kill, it was not erroneous for the court to fail to define in its instruction the words "willfully" and "maliciously." (Decided under prior law) Falls v. Commonwealth, 268 Ky. 696, 105 S.W.2d 828, 1937 Ky. LEXIS 517 (Ky. 1937).

Failure to define the terms "willfully," "feloniously," and "maliciously" in instructions is not prejudicially erroneous. (Decided under prior law) Eve v. Commonwealth, 278 Ky. 123, 128 S.W.2d 616, 1939 Ky. LEXIS 414 (Ky. 1939).

Instructions, which when read together told jury they could not convict accused of felony charge unless they believed cutting was done maliciously, thus making malice distinguishing element between felony and misdemeanor, were not prejudicial to accused's substantive rights, notwithstanding one instruction told jury to convict if they believed beyond reasonable doubt that accused "unlawfully, willfully, and feloniously" cut victim, but omitted word "maliciously." (Decided under prior law) Smith v. Commonwealth, 284 Ky. 468, 145 S.W.2d 51, 1940 Ky. LEXIS 517 (Ky. 1940).

Instruction which defined "willfully," and also defined "maliciously" as "a determination to do the act of cutting, stabbing or wounding without legal excuse," was proper, being more favorable to accused than instructions which have been approved. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

Where accusatory part of indictment omitted word "maliciously," the court should have instructed only on common-law misdemeanor of assault and battery, and it was error to instruct on felony of malicious assault. (Decided under prior law) Armstrong v. Commonwealth, 289 Ky. 758, 160 S.W.2d 159, 1942 Ky. LEXIS 640 (Ky. 1942).

In prosecution for willfully and maliciously shooting into dwelling house, instruction that omitted the words "willfully and maliciously" was prejudicially erroneous. (Decided under prior law) Denham v. Commonwealth, 300 Ky. 531, 189 S.W.2d 738, 1945 Ky. LEXIS 592 (Ky. 1945).

The omission of the words "with intent to kill" after the words "a deadly weapon," in instruction, or at some appropriate place before advice to the jury to find defendants guilty of striking with a deadly weapon with intent to kill, was erroneous. (Decided under prior law) Delph v. Commonwealth, 300 Ky. 722, 190 S.W.2d 340, 1945 Ky. LEXIS 642 (Ky. 1945).

In prosecution for shooting into house, instruction authorizing conviction if jury believed defendant "shot at or into the dwelling house," without any language describing the purpose and intent with which the shooting was done, was erroneous. (Decided under prior law) Deaton v. Commonwealth, 303 Ky. 5, 196 S.W.2d 742, 1946 Ky. LEXIS 775 (Ky. 1946).

Common-law misdemeanor of assault and battery is made a felony where it is accompanied by an intent to kill and instruction must condition the verdict of guilt upon the finding of criminal intent as that is the gravamen of the crime. (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

In prosecution for maliciously striking and wounding another with a deadly weapon with the intent to kill him, instruction which authorized jury to find defendant guilty as a principal, or as an aider and abettor, was fatally defective

where it omitted necessary element of intent to kill, and this omitted element was not sufficiently covered by clause which predicated guilt upon assault with a pistol, a deadly weapon, or other instrument reasonably calculated to cause death in manner in which the same was used. (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

Instruction was prejudicially erroneous which omitted the words "willfully" and "maliciously" in prosecution for willful and malicious throwing of dangerous or deadly missile at occupied automobile. (Decided under prior law) Harrison v. Commonwealth, 373 S.W.2d 156, 1963 Ky. LEXIS 153 (Ky. 1963).

Instruction in appellant's first-degree assault trial permitted the jury to find that appellant acted intentionally, wantonly, or recklessly, for purposes of KRS 501.020, and counsel was adamant that he did not believe the jury had to distinguish the specific state of mind under which the jury found appellant acted; thus, even if the instruction was erroneous and prevented appellant from receiving a unanimous verdict, case law precluded further analysis due to counsel's waiver of the argument. Moran v. Commonwealth, 399 S.W.3d 35, 2013 Ky. App. LEXIS 71 (Ky. Ct. App. 2013).

Trial court did not abuse its discretion in instructing the jury on first-degree assault nor did it err in denying defendant's motion for a directed verdict on that charge because he acted wantonly when, by attempting to parallel park a vehicle while intoxicated, he hit the gas pedal rather than the brake, which caused the vehicle accelerated in reverse and crush an individual against a building, crushing his pelvis, breaking his femurs, and damaging his internal organs. McCargo v. Commonwealth, 551 S.W.3d 439, 2017 Ky. App. LEXIS 498 (Ky. Ct. App. 2017).

44. —Lesser Degree.

In prosecution for malicious shooting, jury should have been instructed not only under law that provided a penalty for malicious shooting, but also for shooting in sudden affray or in sudden heat and passion without malice, where defendant shot at the person with whom he was having a quarrel but did not hit him. (Decided under prior law) Wilhelm v. Commonwealth, 28 S.W. 783, 16 Ky. L. Rptr. 428 (1894).

Where prosecutrix testified that at conclusion of the difficulty defendant cut her with edge of mason's hatchet, it being a deadly weapon, defendant was entitled to an instruction on cutting in sudden affray, or in sudden heat and passion, it being a degree of the offense under law that provided a penalty for malicious cutting and wounding. (Decided under prior law) Barnes v. Commonwealth, 107 S.W. 806, 32 Ky. L. Rptr. 1152 (1908).

Where authorized by evidence, failure to instruct on assault and battery is error. (Decided under prior law) Cruise v. Commonwealth, 226 Ky. 831, 11 S.W.2d 925, 1928 Ky. LEXIS 168 (Ky. 1928).

Where defendant, charged with murder, was convicted of manslaughter, instruction under laws that provided penalties for willful and malicious assault and assault without previous malice and not in self-defense was not prejudicial, even if it was erroneous, as it was more favorable to defendant than he was entitled to. (Decided under prior law) Martin v. Commonwealth, 223 Ky. 762, 4 S.W.2d 419, 1928 Ky. LEXIS 404 (Ky. 1928).

The weapon charged hereunder was a baseball bat, and since jury might have concluded he did not intend to kill, when defendant struck his wife with the bat, and found him guilty of only assault and battery, failure to instruct on assault and battery was prejudicial error. (Decided under prior law) Marks v. Commonwealth, 223 Ky. 692, 4 S.W.2d 711, 1928 Ky. LEXIS 429 (Ky. 1928).

The giving of the general "reasonable doubt" instruction does not relieve the court of the duty to give the "lesser degree" instruction. (Decided under prior law) Turner v. Commonwealth, 267 Ky. 74, 101 S.W.2d 214, 1937 Ky. LEXIS 284 (Ky. 1937).

In prosecution for willful murder defendant was not entitled to instruction under willful and malicious assault and sudden affray laws, although there was some evidence that codefendant had struck deceased on the head with a pistol and that this might have been the cause of his death. (Decided under prior law) Morris v. Commonwealth, 268 Ky. 768, 105 S.W.2d 1036, 1937 Ky. LEXIS 528 (Ky. 1937).

Where defendant testified that gun fired accidentally and at no place did he claim that he was shooting at something else other than house of prosecuting witness, defendant was not entitled to an instruction on a law that made it a misdemeanor for flourishing or use in a boisterous manner of a deadly weapon. (Decided under prior law) Grigsby v. Commonwealth, 299 Ky. 32, 184 S.W.2d 77, 1944 Ky. LEXIS 991 (Ky. 1944).

Although, in prosecution for willful and malicious shooting with intent to kill, evidence clearly showed a deliberate and unprovoked attack by the accused, and there was no evidence to indicate that the shooting occurred in sudden affray or heat, accused was not prejudiced by giving of sudden affray instructions. (Decided under prior law) Kelley v. Commonwealth, 300 Ky. 136, 187 S.W.2d 796, 1945 Ky. LEXIS 804 (Ky. 1945).

Where, in prosecution for willful and malicious cutting or striking, the court gave a felony instruction, a misdemeanor instruction for cutting in sudden affray, without previous malice not in self-defense and a general self-defense instruction, and the self-defense instruction correctly stated the elements of that defense, the misdemeanor instruction, in requiring the jury to find that the cutting was "not in self-defense," was not prejudicially erroneous in omitting the words "necessary or apparently necessary self-defense." (Decided under prior law) Williams v. Commonwealth, 304 Ky. 359, 200 S.W.2d 926, 1947 Ky. LEXIS 653 (Ky. 1947).

In prosecution for willfully and maliciously shooting into a dwelling house, the mere act of defendant in shooting through window of house from distance of 50 feet indicated deliberateness and showed such indifference to the consequences as to impute willfulness and maliciousness or the evil intent to do the wrongful act without just cause or excuse, and, in view of such facts, failure to instruct on the misdemeanor of discharging a deadly weapon on a public highway was not error. (Decided under prior law) Smiddy v. Commonwealth, 311 Ky. 850, 226 S.W.2d 22, 1950 Ky. LEXIS 564 (Ky. 1950).

Instruction was properly given on malicious shooting and wounding with intent to kill, a lower degree of crime, where defendant was indicted and tried for murder but Commonwealth failed to prove the death of the person who was shot by defendant. (Decided under prior law) Clark v. Commonwealth, 243 S.W.2d 52, 1951 Ky. LEXIS 1119 (Ky. 1951).

In prosecution for malicious striking and wounding, where evidence authorized it, an instruction on the common-law misdemeanor of assault and battery should have been given, as striking with a deadly weapon without malice or intent to kill was not embraced in law that provided a penalty for shooting, wounding or cutting without malice and not in self-defense. (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

In prosecution for maliciously cutting another with a deadly weapon with intent to kill, defendant was not entitled to an instruction on cutting in sudden heat of passion where pistol had been taken from him by the victim some four or more years previously and defendant testified before judge in chambers that he had worried over this imaginative wrong until he "flew mad" and cut victim, and there was no provocation on the occasion of the cutting to cause accused to "fly mad." (Decided under prior law) Philpot v. Commonwealth, 247 S.W.2d 499, 1952 Ky. LEXIS 704 (Ky. 1952).

In prosecution for willful murder of decedent, it was unnecessary to give an instruction on malicious shooting and

wounding, because the wounded person died. (Decided under prior law) Jones v. Commonwealth, 281 S.W.2d 920, 1955 Ky. LEXIS 215 (Ky. 1955).

In a prosecution for malicious cutting and wounding, where the defendant and his witnesses had testified that a knife was not used, an instruction on the offense of common-law assault and battery should have been given. (Decided under prior law) Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

The use of the words "in sudden heat and passion" in an instruction on sudden affray was not a sufficient definition of the term sudden affray, since affray means a mutual combat voluntarily engaged in between two (2) or more persons. (Decided under prior law) Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

In prosecution for maliciously shooting into occupied motor vehicle, where trial court instructed only on the charge of maliciously shooting into an occupied motor vehicle, which was justified by the evidence of the prosecution, there was reversible error since defendant was entitled to have his theory of the case presented by instruction, where testimony of witness that car was unoccupied was corroborated by several witnesses and the court should have instructed on recklessly shooting into an unoccupied motor vehicle, a lesser offense. (Decided under prior law) Smallwood v. Commonwealth, 303 S.W.2d 293, 1957 Ky. LEXIS 249 (Ky. 1957).

In prosecution for malicious shooting into occupied motor vehicle where instruction was given only on such offense, trial court, under evidence, should have instructed on recklessly shooting into unoccupied motor vehicle and on lesser offense of reckless use of deadly weapon. (Decided under prior law) Smallwood v. Commonwealth, 303 S.W.2d 293, 1957 Ky. LEXIS 249 (Ky. 1957).

In prosecution for willfully and maliciously shooting at and into a motor vehicle occupied by a person, where defendant fired at and struck a passing automobile, it was not error to fail to instruct on misdemeanors of recklessly shooting at or into a motor vehicle and on discharging a deadly weapon on a public highway, although defendant did not know who was in the automobile and had no malice toward him. (Decided under prior law) Neely v. Commonwealth, 325 S.W.2d 79, 1959 Ky. LEXIS 36 (Ky. 1959).

In prosecution for willfully and maliciously shooting at and into a motor vehicle occupied by a person, it was not error to omit instructions on misdemeanors of recklessly shooting at or into a motor vehicle and discharging a deadly weapon on a public highway, since the very evidence of shooting the pistol at passing automobile was evidence of maliciousness as defendant knew the automobile had to be occupied by some person and it was not necessary that defendant know the person or have malice toward the person. (Decided under prior law) Neely v. Commonwealth, 325 S.W.2d 79, 1959 Ky. LEXIS 36 (Ky. 1959).

In prosecution for allegedly maliciously striking and wounding another with a deadly weapon with intent to kill, it was error for the court to fail to instruct on assault and battery where from the character of the wounds the jury might well have concluded that defendant did not have the intent to kill. (Decided under prior law) Broaddus v. Commonwealth, 339 S.W.2d 154, 1960 Ky. LEXIS 426 (Ky. 1960).

In prosecution for willfully and maliciously shooting at or into a dwelling house evidence that accused and a companion were walking by prosecuting witness' house, that her dog attacked them, that he struck dog with a stick and prosecuting witness fired several pistol shots at him and that he did not have a gun and did not shoot at the house did not furnish any basis for instruction on simple assault. (Decided under prior law) Lewis v. Commonwealth, 357 S.W.2d 31, 1962 Ky. LEXIS 106 (Ky. 1962).

In prosecution for malicious and willful throwing of a missile at occupied motor vehicle, where there was no factual basis upon which to predicate instruction for recklessly throwing missile at motor vehicle, the trial court did not err in failing to give one. (Decided under prior law) Harrison v. Commonwealth, 373 S.W.2d 156, 1963 Ky. LEXIS 153 (Ky. 1963).

In prosecution under law that provided a penalty for throwing a missile or shooting into train, station or motor vehicle "calculated to produce death or great bodily harm," it was proper to give no instruction under law that provided a penalty for throwing a stone or missile into a "motor vehicle occupied by a person," for the more specific offense was under the first mentioned law for such a throwing when the vehicle was "stationary or traveling upon a public highway." (Decided under prior law) Cook v. Commonwealth, 401 S.W.2d 51, 1966 Ky. LEXIS 395 (Ky. 1966).

When a person shoots at or into a structure or vehicle with the intention of striking or frightening some specific person or persons there present or thought to be present, his action is as close to shooting at the other person or persons themselves as if it was done in a sudden affray or in sudden heat of passion without previous malice. (Decided under prior law) Williams v. Commonwealth, 464 S.W.2d 806, 1971 Ky. LEXIS 500 (Ky. 1971).

In a prosecution for malicious and willful shooting where there was testimony that the defendant had no malice toward the officers and that he was attempting to protect himself from them as they accosted him in his residence, he was entitled to an instruction on the lesser crime of wounding in sudden affray without previous malice. (Decided under prior law) Clemons v. Commonwealth, 462 S.W.2d 919, 1971 Ky. LEXIS 562 (Ky. 1971).

In a trial for defendant's assault on his wife, defendant was not entitled to an instruction on assault under extreme emotional disturbance because there was no evidence that he first learned of his wife's affair immediately preceding the altercation, or even on the same day; the wife's testimony was only that they were fighting about her affair, not that she first told him about the affair that night. Driver v. Commonwealth, 361 S.W.3d 877, 2012 Ky. LEXIS 22 (Ky. 2012).

In defendant's first-degree assault case, the court erred by failing to give a lesser included offense instruction on second-degree assault because the evidence established injuries that fell somewhere in the gray area between mere physical injury and serious physical injury. The decision as to which type of injury actually occurred required close observation of the victims' behavior, attention to their testimony, and overall interpretation of the evidence; that function could only be carried out by the jury, not the judge. Swan v. Commonwealth, 2012 Ky. LEXIS 498 (Ky. Aug. 23, 2012).

45. —Proper.

Where defendant's testimony was to the effect the pistol was accidentally discharged in surrendering it to the officer, who knocked it up when extended, defendant was entitled to an instruction on this theory and not on self-defense. (Decided under prior law) Mann v. Commonwealth, 110 S.W. 243, 33 Ky. L. Rptr. 269 (1908); Caperton v. Commonwealth, 189 Ky. 652, 225 S.W. 481, 1920 Ky. LEXIS 492 (Ky. 1920).

Where wounded man was before the jury and testified, an instruction omitting the words "did not thereby die" or words of similar import was not erroneous. (Decided under prior law) Hall v. Commonwealth, 229 Ky. 646, 17 S.W.2d 751, 1929 Ky. LEXIS 821 (Ky. 1929).

In prosecution for malicious shooting without wounding, it was not prejudicial error to fail to instruct on accidental shooting, since, if defendant did not fire the pistol, she was entitled to an acquittal, not on the ground of accidental shooting, but on the ground that she did not shoot at another either with or without malice, and her rights were fully protected by the instruction on reasonable doubt. (Decided

under prior law) Stephenson v. Commonwealth, 264 Ky. 390, 94 S.W.2d 1002, 1936 Ky. LEXIS 336 (Ky. 1936).

In prosecution for malicious shooting without wounding, it was not prejudicial error for the court to fail to instruct on misdemeanor of drawing, flourishing or using a deadly weapon, where the court did instruct on misdemeanor of shooting, wounding or cutting in sudden affray, heat or passion without previous malice. (Decided under prior law) Stephenson v. Commonwealth, 264 Ky. 390, 94 S.W.2d 1002, 1936 Ky. LEXIS 336 (Ky. 1936).

Under indictment for malicious shooting and wounding with intent to kill, failure to instruct on assault and battery was not error, since lesser offense of this crime was shooting and wounding without malice or in sudden affray. (Decided under prior law) Caldwell v. Commonwealth, 265 Ky. 402, 96 S.W.2d 1041, 1936 Ky. LEXIS 496 (Ky. 1936).

Where jury administered a penalty of only two years, court's failure to give instruction, carrying the penalty of from two to 21 years was not prejudicial error. (Decided under prior law) Krone v. Commonwealth, 265 Ky. 389, 96 S.W.2d 1052, 1936 Ky. LEXIS 500 (Ky. 1936).

Omission of word "previous" before word "malice" in an instruction for malicious assault was not error. (Decided under prior law) Allison v. Commonwealth, 273 Ky. 538, 117 S.W.2d 184, 1938 Ky. LEXIS 666 (Ky. 1938).

Failure to instruct whether victim lived or died did not prejudice accused's substantial rights where victim testified at trial. (Decided under prior law) Smith v. Commonwealth, 284 Ky. 468, 145 S.W.2d 51, 1940 Ky. LEXIS 517 (Ky. 1940).

In malicious wounding prosecution, it was not error not to instruct on lower degrees of crime, where evidence showed cold-blooded attempt at assassination, without any evidence to justify inference of shooting in sudden affray or as result of sudden heat and passion or in reckless use of firearms. (Decided under prior law) Hurst v. Commonwealth, 284 Ky. 599, 145 S.W.2d 520, 1940 Ky. LEXIS 543 (Ky. 1940).

Since the jury might have found defendant guilty of the lesser offense of shooting in sudden heat and passion, rather than of malicious shooting and wounding with intent to kill, it was not prejudicial to fail to instruct on reckless handling of firearms where defendant's testimony made it appear he fired to defend himself and that defense was appropriately presented to jury. (Decided under prior law) Jones v. Commonwealth, 289 Ky. 59, 156 S.W.2d 865, 1941 Ky. LEXIS 8 (Ky. 1941).

Where court instructed jury on malicious and willful shooting and also on shooting and wounding in sudden affray or sudden heat and passion, a misdemeanor, defendant's rights were not prejudiced by failure to instruct on shooting at without wounding in sudden affray or sudden heat and passion, since there was not evidence from which it could reasonably be inferred that any person other than defendant shot and wounded the prosecuting witness. (Decided under prior law) Mullins v. Commonwealth, 285 Ky. 804, 149 S.W.2d 725, 1941 Ky. LEXIS 478 (Ky. 1941).

In prosecution for malicious shooting and wounding, the addition of words "feloniously" and "with the felonious intent to kill" to instruction was advantageous and not prejudicial to defendant's substantial rights. (Decided under prior law) Pack v. Commonwealth, 287 Ky. 192, 152 S.W.2d 600, 1941 Ky. LEXIS 520 (Ky. 1941).

It was not error for the court to fail to define "maliciously," "self-defense," and "reasonable doubt." (Decided under prior law) Pack v. Commonwealth, 287 Ky. 192, 152 S.W.2d 600, 1941 Ky. LEXIS 520 (Ky. 1941).

Failure to give an assault and battery instruction, in prosecution for maliciously shooting and wounding, was not erroneous. (Decided under prior law) Pack v. Commonwealth, 287 Ky. 192, 152 S.W.2d 600, 1941 Ky. LEXIS 520 (Ky. 1941).

In prosecution for malicious shooting, instruction for the jury to find defendant guilty as charged in indictment, of shooting at another without wounding upon his personal plea of guilty in open court, and to fix his punishment at confinement in state penitentiary for period of not less than two nor more than twenty-one years, the maximum and minimum limits under law that provided a penalty for malicious shooting, was not erroneous. (Decided under prior law) Hobbs v. Commonweatlh, 308 Ky. 268, 214 S.W.2d 274, 1948 Ky. LEXIS 914 (Ky. 1948).

Instruction following language of indictment in describing offense charged as maliciously and feloniously shooting at another with intent to kill but without wounding, to which the court added "but from which shooting at, death did not ensue," was not prejudicial in view of the fact that the offenses of shooting at another without wounding with intent to kill, and shooting and wounding another with intent to kill, but from which he does not die, were both contained in the same subsection of the former law and the same punishment was prescribed therefor. (Decided under prior law) Helton v. Commonwealth, 312 Ky. 268, 226 S.W.2d 939, 1949 Ky. LEXIS 1260 (Ky. 1949).

An instruction which lumped the degrees of the offense, and made it more difficult for the jury to understand, but which was not likely to mislead the jury, was not prejudicial. (Decided under prior law) Turner v. Commonwealth, 260 S.W.2d 646, 1953 Ky. LEXIS 978 (Ky. 1953).

In a prosecution for malicious shooting and wounding, the court did not err in giving instructions on shooting and wounding and shooting in sudden affray. (Decided under prior law) Cravens v. Commonwealth, 262 S.W.2d 466, 1953 Ky. LEXIS 1100 (Ky. 1953).

Where, in a prosecution for malicious shooting and wounding, the court gave an instruction covering the common-law offense of assault and battery with a firearm, but set as the penalty for that offense the penalty provided for flourishing a deadly weapon, the defendant was not prejudiced as the jury not only found the defendant guilty of malicious shooting and wounding, but fixed his sentence at more than the minimum for that offense, so that a correct instruction on the lesser offense would have been of no benefit to him. (Decided under prior law) Cravens v. Commonwealth, 262 S.W.2d 466, 1953 Ky. LEXIS 1100 (Ky. 1953).

In a prosecution for maliciously cutting and wounding with intent to kill, defense that certain testimony revealed circumstances amounting to an avoidance of the charge was adequately covered by an instruction that the jurors were authorized to find the defendant not guilty if they did not believe beyond a reasonable doubt that the defendant had cut and wounded the alleged victim. (Decided under prior law) Chaplin v. Commonwealth, 274 S.W.2d 55, 1954 Ky. LEXIS 1222 (Ky. 1954).

In prosecution for malicious cutting and wounding, an instruction on malicious cutting and wounding was proper where there was evidence to show defendant was the aggressor in the affray and that defendant struck the first blow and later cut victim with a knife. (Decided under prior law) Hall v. Commonwealth, 276 S.W.2d 441, 1955 Ky. LEXIS 418 (Ky. 1955).

In a prosecution for maliciously shooting at and wounding another with intent to kill, failure to instruct on defendant's theory of accidental killing was not reversible error where there was no evidence of accidental shooting but the shooting was plainly intentional since defendant said he shot victim to "scare him." (Decided under prior law) Bowling v. Commonwealth, 279 S.W.2d 238, 1955 Ky. LEXIS 515 (Ky. 1955).

In joint prosecution of two defendants for the malicious cutting and wounding of another, instructions expressly authorizing either conviction or acquittal of both defendants or conviction of either defendant and acquittal of the other, supplied omission of any such provision from other instructions given, and omission from such instructions did not result in such prejudice as would constitute reversible error. (De-

cided under prior law) Gibson v. Commonwealth, 287 S.W.2d 163, 1956 Ky. LEXIS 448 (Ky. 1956).

In prosecution for maliciously shooting and wounding with intent to kill, and charging defendant with having been convicted of two prior felonies, instruction of court referring to second one as having been of "the offense of malicious striking and wounding of another, a felony," but omitting the words "with intent to kill," was not erroneous, since the particular nature of the previous offenses were not important; it was enough that the convictions were identified as felony convictions and they were not required to even state what the particular previous offenses were, much less to state their elements with exactitude. (Decided under prior law) Lee v. Commonwealth, 306 S.W.2d 258, 1957 Ky. LEXIS 23 (Ky. 1957).

In prosecution for shooting and wounding another with intent to kill, defendant was not entitled to an instruction on accidental shooting where he testified that he intended to scare the prosecuting witness by shooting at his feet but he raised his pistol a little too high when he fired, since a defendant may be entitled to an accidental shooting instruction if his shot strikes a person whose presence is not known or anticipated or if his gun may have fired accidentally but not if he intentionally fires a weapon in the direction of a person known to be within range of his shot. (Decided under prior law) Blackburn v. Commonwealth, 306 S.W.2d 268, 1957 Ky. LEXIS 29 (Ky. 1957).

Failure to instruct on lesser offense of reckless shooting into a motor vehicle was not prejudicial error in prosecution for malicious shooting at without wounding another with intent to kill, although defendant denied he shot at the driver and said he merely shot at the automobile, since the shooting was not reckless but intentional, and since the penalties are the same, it made no practical difference whether defendant shot at the car or at the driver so far as prejudicial error in the instruction was concerned. (Decided under prior law) Thacker v. Commonwealth, 306 S.W.2d 292, 1957 Ky. LEXIS 41 (Ky. 1957).

In prosecution for willfully and maliciously shooting and wounding another with intent to kill him, defendant was not entitled to claim that the shooting was accidental and to have an instruction on that theory, where he testified that he and the prosecuting witness voluntarily engaged in a mutual fight and denied he had a weapon or had fired the pistol, undertaking to have the jury believe that prosecuting witness had shot himself. (Decided under prior law) Bell v. Commonwealth, 309 S.W.2d 163, 1958 Ky. LEXIS 336 (Ky. 1958).

In prosecution for malicious cutting and wounding, the giving of a definition of "sudden affray" in the instructions was permissible but not necessary. (Decided under prior law) Medley v. Commonwealth, 450 S.W.2d 811, 1970 Ky. LEXIS 460 (Ky. 1970).

Where fellow inmate was cut and stabbed with a knife by defendant, the court properly refused to instruct that assault and battery was a lesser degree of the offense charged as long as there was an actual cutting and not just a striking. (Decided under prior law) Smith v. Commonwealth, 507 S.W.2d 165, 1974 Ky. LEXIS 670 (Ky. 1974).

First-degree assault combination instruction was proper because the officer testified that, as he chased defendant, defendant pulled something from his waistband, and he turned and shot toward the officer. A reasonable juror might have inferred that defendant fired the gun not for the purpose of causing serious physical injury, but only to stop the pursuit, or that by shooting toward the officer, defendant manifested an extreme indifference toward the value of human life. Buchanan v. Commonwealth, 399 S.W.3d 436, 2012 Ky. App. LEXIS 181 (Ky. Ct. App. 2012).

Where defendant, acting alone or in complicity with others, stabbed the victim with a knife following a heated telephone argument and washed the blood evidence from the knife to prevent the police from using it as evidence, he was convicted of second-degree assault and tampering with physical evidence. Defendant was precluded from seeking reversal of his conviction on the basis of an alleged improper jury instruction regarding self defense, as he tendered proposed instructions that included the identical language used by the trial court. Spencer v. Commonwealth, 2013 Ky. App. LEXIS 123 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 268 (Ky. June 19, 2014).

46. —Improper.

Evidence that accused, when prosecuting witness was about to pass him in an automobile as he was walking along the highway, fired two shots from shotgun at the prosecuting witness, which shots missed the witness but struck the automobile, supported verdict finding accused guilty of willful and malicious shooting with intent to kill, and fixing punishment at imprisonment for 15 years, as against contention that verdict was result of passion and prejudice. (Decided under prior law) Kelley v. Commonwealth, 300 Ky. 136, 187 S.W.2d 796, 1945 Ky. LEXIS 804 (Ky. 1945).

In prosecution for willful and malicious shooting, admission of testimony of sheriff, that at time he arrested accused for the offense he also arrested him on a warrant charging desertion from the Army, was prejudicial error, but accused could not avail himself of the error on appeal where he failed to mention it in his motion and grounds for new trial. (Decided under prior law) Kelley v. Commonwealth, 300 Ky. 136, 187 S.W.2d 796, 1945 Ky. LEXIS 804 (Ky. 1945).

A person indicted under law that provided a penalty for willful and malicious shooting, cutting or poisoning must be tried for the statutory offense and not as a common-law offense, and instruction hereunder is erroneous when there is added thereto the words "and under circumstances reasonably calculated to excite his passion beyond his power of self-control." (Decided under prior law) Hardin v. Commonwealth, 114 Ky. 722, 71 S.W. 862, 24 Ky. L. Rptr. 1540, 1903 Ky. LEXIS 26 (Ky. 1903).

In prosecution for maliciously and feloniously shooting at and wounding with intent to kill where no witness testified as to who fired the shot which struck prosecuting witness, and two or three persons were present in addition to prosecuting witness and the two codefendants, there was nothing to submit to the jury and an instruction on the lesser offense of shooting in sudden affray without malice was reversible error. (Decided under prior law) Reynolds v. Commonwealth, 271 Ky. 674, 113 S.W.2d 54, 1938 Ky. LEXIS 48 (Ky. 1938).

Where the evidence indicated that the defendant shot at the victim's house while passing and there had been no prior confrontation, an instruction under law that provided a penalty for shooting in sudden affray or heat of passion without malice was not warranted. (Decided under prior law) Mullins v. Commonwealth, 276 Ky. 555, 124 S.W.2d 788, 1939 Ky. LEXIS 556 (Ky. 1939).

Instruction, in prosecution for malicious shooting and wounding, that defendant was to be acquitted if shooting was not willful and malicious, or not reckless and careless, was erroneous, since jury was, by implication, authorized to convict the defendant of a common-law misdemeanor (wounding by reckless and careless use of a pistol), but in fixing the penalty was required to look to the instruction as to a felony (malicious shooting and wounding). (Decided under prior law) Gambrell v. Commonwealth, 282 Ky. 620, 139 S.W.2d 454, 1940 Ky. LEXIS 225 (Ky. 1940).

In a prosecution where the evidence showed the defendant shot at no one and, at most, may have been guilty of reckless use of firearms, produced by his intoxicated condition, the court erred in not instructing the jury to acquit. (Decided under prior law) Campbell v. Commonwealth, 295 Ky. 511, 174 S.W.2d 778, 1943 Ky. LEXIS 280 (Ky. 1943).

Omission of words "with intent to kill" from instruction defining offense of willfully and maliciously cutting and wounding another, was reversible error. (Decided under prior law) Anglin v. Commonwealth, 310 Ky. 15, 219 S.W.2d 972, 1949 Ky. LEXIS 844 (Ky. 1949).

Where, under the evidence presented in prosecution for willfully and maliciously shooting at another without wounding, the jury could have found the defendant guilty of the crime of reckless use of firearms, failure of court to give instruction on the latter offense required a reversal. (Decided under prior law) Johnson v. Commonwealth, 313 Ky. 17, 230 S.W.2d 69, 1950 Ky. LEXIS 793 (Ky. 1950).

In prosecution for willfully and maliciously shooting at another without wounding, court's instruction which omitted the word "maliciously," was a reversible error. (Decided under prior law) Johnson v. Commonwealth, 313 Ky. 17, 230 S.W.2d 69, 1950 Ky. LEXIS 793 (Ky. 1950).

In prosecution for malicious striking and wounding, it was reversible error for the court to fail to give instruction on reasonable doubt of guilt of defendant where it gave a proper instruction on reasonable doubt as to proof of guilt of the degrees of the charge, felony or assault and battery. (Decided under prior law) Moore v. Commonwealth, 313 Ky. 505, 232 S.W.2d 1021, 1950 Ky. LEXIS 923 (Ky. 1950).

In prosecution for maliciously striking and wounding another with a deadly weapon with intent to kill him and for entering into conspiracy for purpose of maliciously striking and wounding, instruction which predicated guilt of defendant upon a conspiracy with some one who did actual striking and wounding and which omitted essential elements of malice and willfulness and element of intent to kill and did not state necessity that deadly weapon must have been used in commission of assault, was prejudicially erroneous. (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

In prosecution for malicious assault with deadly weapon with intent to kill three year old stepdaughter, instruction authorizing a conviction if the jury believed beyond a reasonable doubt that defendant "unlawfully, willfully and feloniously" struck the child "with a club or stick or other instrument, which used by a person of defendant's build and age, and upon a child of the age of two years would be reasonably calculated to cause death" was erroneous in omitting the words "maliciously" and "with intent to kill" and also in omitting the manner of its use as it concerned the question of whether the stick or switch was a deadly weapon, where the presence of the elements of malice and intent to kill was a close question in the case. (Decided under prior law) Taylor v. Commonwealth, 302 S.W.2d 378, 1957 Ky. LEXIS 191 (Ky. 1957).

Failure to instruct, in prosecution for malicious shooting and wounding, that jury should find defendant guilty of lesser offense of shooting and wounding in a sudden affray, if it had reasonable doubt about degree of offense committed, was prejudicial error, where evidence was sufficient to justify an instruction on sudden affray, and court had so instructed jury. (Decided under prior law) Partin v. Commonwealth, 351 S.W.2d 162, 1961 Ky. LEXIS 143 (Ky. 1961).

In prosecution for malicious shooting and wounding, failure to instruct on misdemeanor of shooting and wounding unintentionally but as a result of defendant's wanton, reckless or grossly careless handling of shotgun was error, but it was not prejudicial in view of the form of the instruction given on the defense of accidental shooting which required acquittal if act was not willful or intentional. (Decided under prior law) Bentley v. Commonwealth, 354 S.W.2d 495, 1962 Ky. LEXIS 40 (Ky. 1962).

47. —Duty.

Defendant was not entitled to a jury instruction asking the jury to decide if she owed her son a duty of care because the existence of such a duty was a question of law for the court and not one of fact for the jury. Bartley v. Commonwealth, 400 S.W.3d 714, 2013 Ky. LEXIS 291 (Ky. 2013).

48. Lesser Included Offenses.

Where defendant willfully fired at a passenger train, made up of passenger coaches, in which passengers and employees of the railroad company were at the time riding and the evidence showed it was not accidental or unintentional and the purpose of firing the shot was without excuse or provocation, the jury may well have found the firing was malicious and defendant was guilty of malicious shooting offense under which he was indicted, and not the offense of shooting at vehicles. (Decided under prior law) Burkhart v. Commonwealth, 119 Ky. 317, 83 S.W. 633, 26 Ky. L. Rptr. 1245, 1904 Ky. LEXIS 170 (Ky. 1904).

There can be no conviction of a felony for throwing a missile into a railroad car unless it is shown that the thing thrown is calculated to produce death or great bodily harm, and a person or passenger in the car is injured or wounded. (Decided under prior law) Robinson v. Commonwealth, 144 Ky. 111, 137 S.W. 833, 1911 Ky. LEXIS 550 (Ky. 1911).

Offenses of malicious assault and assault in sudden affray are included in charge of murder, and should be instructed upon when evidence authorizes it. (Decided under prior law) Lyons v. Commonwealth, 216 Ky. 202, 287 S.W. 534, 1926 Ky. LEXIS 856 (Ky. 1926); Gill v. Commonwealth, 235 Ky. 351, 31 S.W.2d 608, 1930 Ky. LEXIS 370 (Ky. 1930).

The throwing of an object in front of a pursuing police car driven at high speed did not constitute an offense under law that provided a penalty for reckless throwing of a missile at a motor vehicle in order to cause death or bodily harm. (Decided under prior law) Cook v. Commonwealth, 401 S.W.2d 51, 1966 Ky. LEXIS 395 (Ky. 1966).

In a prosecution for maliciously shooting into an occupied motor vehicle where record indicated that objections to the instructions were first presented by the motion for new trial, which did not mention statutory offense of recklessly shooting, failure to instruct on lesser charge would not be reviewed. (Decided under prior law) Williams v. Commonwealth, 464 S.W.2d 806, 1971 Ky. LEXIS 500 (Ky. 1971).

Reversal was not required where court gave instruction on malicious striking and wounding with intent to kill which was unauthorized by the evidence, but jury convicted of lesser included offense of assault and battery, which was authorized by the evidence. (Decided under prior law) Wills v. Commonwealth, 502 S.W.2d 60, 1973 Ky. LEXIS 63 (Ky. 1973).

As a general rule, assault in the first degree is a lesser included offense of robbery in the first degree. Commonwealth v. Varney, 690 S.W.2d 758, 1985 Ky. LEXIS 211 (Ky. 1985), overruled, Goodman v. Commonwealth, 2015 Ky. Unpub. LEXIS 19 (Ky. Feb. 19, 2015).

Theft and assault are lesser included offenses within the charge of robbery, and a person cannot be convicted of both robbery and assault. Commonwealth v. Varney, 690 S.W.2d 758, 1985 Ky. LEXIS 211 (Ky. 1985), overruled, Goodman v. Commonwealth, 2015 Ky. Unpub. LEXIS 19 (Ky. Feb. 19, 2015).

An assault committed by the defendants, upon a robbery victim, merged into the offense of first-degree robbery. O'Hara v. Commonwealth, 781 S.W.2d 514, 1989 Ky. LEXIS 110 (Ky. 1989), overruled in part, McNeil v. Commonwealth, 468 S.W.3d 858, 2015 Ky. LEXIS 1764 (Ky. 2015).

Trial court did not err in denying a jury instruction on facilitation as a lesser-included offense to the complicity charges for robbery, burglary, and assault because, although the jury might choose to disbelieve part of the testimony of the two accomplices, that did not constitute evidence of the lesser mental state required for a facilitation instruction; and because defendant presented no evidence demonstrating that he was wholly indifferent to the completion of the crime. Forte v.

Commonwealth, 2016 Ky. App. LEXIS 182 (Ky. Ct. App. Nov. 4, 2016).

Defendant's first degree assault charge merged into defendant's reckless homicide charge because the evidence did not establish that the victim's head wound was a serious physical injury that could have formed the basis of defendant's first degree assault conviction, when defendant hit the victim in the head with a police baton, while one or both of defendant's co-perpetrators held the victim in a choke-hold, and the medical examiner testified that the cause of the victim's death was asphyxiation, most likely a result of the choke-hold. Hammond v. Commonwealth, 504 S.W.3d 44, 2016 Ky. LEXIS 626 (Ky. 2016).

49. Verdict.

A verdict is not palpably against the evidence when it is reasonable for the jury to find from the facts and circumstances that the defendant is guilty, although such facts and circumstances are entirely opposite to the testimony of the witnesses for the defendant. The function of determining the ultimate fact from conflicting testimony is imposed by law upon the jury, and if there is any substantial testimony which, if believed, would determine the guilt of the defendant, it is the duty of the court to render a decision sustaining the verdict. (Decided under prior law) Shepherd v. Commonwealth, 236 Ky. 290, 33 S.W.2d 4, 1930 Ky. LEXIS 739 (Ky. 1930); Newsom v. Commonwealth, 289 Ky. 677, 160 S.W.2d 4, 1942 Ky. LEXIS 623 (Ky. 1942).

Where evidence is conflicting, Court of Appeals will not disturb jury's verdict unless it is flagrantly against evidence, in which event verdict should be directed for defendant. (Decided under prior law) Shepherd v. Commonwealth, 277 S.W.2d 42, 1955 Ky. LEXIS 461 (Ky. 1955).

50. —Directed.

In prosecution for maliciously shooting at and wounding an individual, where there was direct and positive proof of defendant's guilt, the rule that where evidence is as consistent with innocence as with guilt a directed verdict should be granted in defendant's favor did not apply, and trial court correctly refused to grant a directed verdict. (Decided under prior law) Whitaker v. Commonwealth, 302 S.W.2d 601, 1957 Ky. LEXIS 203 (Ky. 1957).

Where there were two contradictory accounts of how the shooting occurred and the defendant admitted he had previously been convicted of a felony which could have had a bearing on his credibility, the defendant was not entitled to a directed verdict. (Decided under prior law) Taylor v. Commonwealth, 444 S.W.2d 725, 1969 Ky. LEXIS 219 (Ky. 1969).

51. —Shooting at Without Wounding.

Where, pursuant to agreement with defendant before entry of plea of guilty to charge of shooting at another without wounding, Commonwealth's attorney recommended punishment of two years to jury but verdict of jury fixed punishment at ten years, the Court of Appeals could not reverse the judgment on that ground although the trial court would have been justified in granting a new trial on the ground of personal bias and prejudice against defendant. (Decided under prior law) Hobbs v. Commonweatlh, 308 Ky. 268, 214 S.W.2d 274, 1948 Ky. LEXIS 914 (Ky. 1948).

52. —Shooting and Wounding With Intent to Kill.

Punishment of ten years' imprisonment for maliciously wounding a police officer was not excessive where evidence overwhelmingly established the deliberate and willful shooting of an officer of the law engaged in the performance of his duties and if the jury had inflicted the limit of punishment of 21 years the punishment would not have been excessive under the circumstances shown. (Decided under prior law) Crawford v. Commonwealth, 279 Ky. 224, 130 S.W.2d 17, 1939 Ky. LEXIS 244 (Ky. 1939).

Verdict of two years' imprisonment for malicious shooting was not so extreme as to shock the conscience of the court, where there was no other evidence of passion or prejudice on the part of the jury. (Decided under prior law) Childers v. Commonwealth, 279 Ky. 737, 132 S.W.2d 81, 1939 Ky. LEXIS 353 (Ky. 1939).

Sentence of 21 years for maliciously shooting and wounding policeman with intent to kill is not excessive. (Decided under prior law) Mullins v. Commonwealth, 285 Ky. 804, 149 S.W.2d 725, 1941 Ky. LEXIS 478 (Ky. 1941).

In prosecution for malicious shooting and wounding, where, according to evidence for Commonwealth, shooting resulted from slight provocation, defendant's intention to kill was obvious, victim, an able bodied man of 29 years of age, had a miraculous escape from death and at the time of trial, nearly six months later, was an invalid as a result of the shooting, although defendant was only 17 years of age, a sentence of eight (8) years was not excessive where there was nothing in the record to show he was not responsible for his acts. (Decided under prior law) Spurlock v. Commonwealth, 311 Ky. 238, 223 S.W.2d 910, 1949 Ky. LEXIS 1114 (Ky. 1949).

In prosecution for shooting and wounding with intent to kill where there was testimony that defendant was behind car at time he shot victim and that defendant was not firing in self-defense as he claimed, where court permitted affidavit as to what defendant's companion would have testified to had he been present and where defendant offered no satisfactory explanation for being on the highway with a gun the verdict was not against the law and the evidence. (Decided under prior law) Stringer v. Commonwealth, 240 S.W.2d 638, 1951 Ky. LEXIS 1015 (Ky. 1951).

Where the evidence was sufficient to sustain the verdict of the jury in finding the defendant guilty of maliciously shooting and wounding another with intent to kill, and there were no mitigating circumstances in favor of the defendant, if the testimony of the Commonwealth's witnesses was accepted as true, the maximum sentence of 21 years did not indicate passion and prejudice on the part of the jury. (Decided under prior law) Adams v. Commonwealth, 263 S.W.2d 103, 1953 Ky. LEXIS 1232 (Ky. Ct. App. 1953).

Judgment, after defendant pleaded guilty to willful and malicious shooting with intent to kill, of 21 years imprisonment, denoting on its face that it was imposed by the court under an agreement with petitioner and with the advice of counsel, could not be reached by review under RCr 11.42. (Decided under prior law) Perry v. Commonwealth, 407 S.W.2d 714, 1966 Ky. LEXIS 183 (Ky. 1966), cert. denied, Perry v. Kentucky, 386 U.S. 968, 87 S. Ct. 1052, 18 L. Ed. 2d 121, 1967 U.S. LEXIS 2134 (1967). (See RCr 9.84.).

53. —Cutting and Wounding.

In prosecution for malicious cutting and wounding where the evidence was conflicting as to how the difficulty arose and what took place and testimony of the prosecution was sufficient to establish the elements of the offense charged, verdict of guilty of malicious cutting and wounding was justified. (Decided under prior law) Gibbs v. Commonwealth, 293 S.W.2d 714, 1956 Ky. LEXIS 84 (Ky. 1956).

54. —Striking and Wounding.

Where defendant, in attempting to arrest another for being drunk, struck him with a blackjack when he resisted, and evidence was conflicting as to whether defendant had made known his intention to make the arrest and the offense charged, verdict finding defendant guilty of malicious striking and wounding was sustained. (Decided under prior law) Harrison v. Commonwealth, 279 Ky. 510, 131 S.W.2d 454, 1939 Ky. LEXIS 306 (Ky. 1939).

In prosecution for striking another with a poker, a deadly weapon, verdict was not flagrantly against the evidence although defendant pleaded self-defense. (Decided under prior

law) Caswell v. Commonwealth, 285 Ky. 394, 147 S.W.2d 1045, 1941 Ky. LEXIS 391 (Ky. 1941); Gillenwater v. Commonwealth, 291 Ky. 493, 165 S.W.2d 35, 1942 Ky. LEXIS 271 (Ky. 1942).

Sentence of three (3) years' imprisonment upon conviction of assault with intent to kill was not so severe as to indicate that it resulted from passion and prejudice. (Decided under prior law) Jones v. Commonwealth, 256 S.W.2d 520, 1953 Ky. LEXIS 751 (Ky. 1953).

Cited in:

Houston v. Commonwealth, 554 S.W.2d 89, 1977 Ky. App. LEXIS 754 (Ky. Ct. App. 1977); Timmons v. Commonwealth, 555 S.W.2d 234, 1977 Ky. LEXIS 496 (Ky. 1977); Sherley v. Commonwealth, 558 S.W.2d 615, 1977 Ky. LEXIS 545 (Ky. 1977); Prince v. Commonwealth, 576 S.W.2d 244, 1978 Ky. App. LEXIS 656 (Ky. Ct. App. 1978); Engler v. Commonwealth, 627 S.W.2d 582, 1982 Ky. LEXIS 229 (Ky. 1982); Pace v. Commonwealth, 636 S.W.2d 887, 1982 Ky. LEXIS 280 (Ky. 1982); Perry v. Commonwealth, 839 S.W.2d 268, 1992 Ky. LEXIS 138 (Ky. 1992); Commonwealth v. Rank, 494 S.W.3d 476, 2016 Ky. LEXIS 325 (Ky. 2016).

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Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, §§ 3.32 — 3.37, 3.42, 3.47, 3.58.

Kentucky Instructions to Juries (Criminal), 5th Ed., General Principles, Part 1 Matters of Substance, § 1.05.

508.020. Assault in the second degree.

(1) A person is guilty of assault in the second degree when:

(a) He intentionally causes serious physical injury to another person; or

(b) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(c) He wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

(2) Assault in the second degree is a Class C felony.

History.

Enact. Acts 1974, ch. 406, § 66, effective January 1, 1975.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Double Jeopardy.
3. Elements.
4. —Dangerous Instrument.
5. —Deadly Weapon.
6. —Serious Physical Injury.
7. Indictment.
8. Instructions.
9. Separate Offenses.
10. Evidence.
11. —Admissibility.
12. —Prior Convictions.

1. Construction.

The provisions of maiming statute were an enlargement and broadening of the common-law crime of mayhem. (Decided under prior law) Coleman v. Commonwealth, 280 Ky. 410, 133 S.W.2d 555, 1939 Ky. LEXIS 144 (Ky. 1939).

Defendant's conviction for second degree assault under this section qualified as a "crime of violence" for purposes of determining his federal career offender status; the U.S. Supreme Court's opinion in Johnson v. United States, 135 S. Ct. 2551 (2015), did not invalidate defendant's sentence. United States v. Collins, 799 F.3d 554, 2015 FED App. 0206P, 2015 U.S. App. LEXIS 14825 (6th Cir. Ky.), cert. denied, 577 U.S. 1037, 136 S. Ct. 601, 193 L. Ed. 2d 480, 2015 U.S. LEXIS 7796 (U.S. 2015).

District court did not plainly err in treating defendant's Kentucky second-degree assault conviction as a crime of violence for the purposes of enhancing his sentence for illegal reentry; no binding precedent of the court of appeals contradicted the conclusion that the Kentucky second-degree assault statute matched the generic aggravated assault offense. United States v. Alvarado-Martinez, 713 Fed. Appx. 259, 2017 U.S. App. LEXIS 22469 (5th Cir. Tex. 2017).

2. Double Jeopardy.

The conviction of the defendant for first-degree riot and second-degree assault did not constitute double jeopardy because the same use of force was not used to establish assault and then elevate riot to a higher offense. Commonwealth v. Cook, 739 S.W.2d 541, 1987 Ky. LEXIS 255 (Ky. 1987).

Since to be convicted of second-degree assault, one must cause physical injury, and no such requirement exists for first-degree rape, and similarly, for a first-degree rape conviction, sexual intercourse must be proven, and, there is no such requirement for second-degree assault, neither offense is included in the other, and it was not double jeopardy to convict the defendant of both second-degree assault and first-degree rape. Wager v. Commonwealth, 751 S.W.2d 28, 1988 Ky. LEXIS 29 (Ky. 1988).

Defendant can only be convicted of promoting contraband in the first degree for possessing dangerous contraband in a detention facility or penitentiary; that element is not required to support a conviction for second-degree assault and there was no double jeopardy violation where defendant was convicted of both. Tyler v. Commonwealth, 805 S.W.2d 126, 1991 Ky. LEXIS 16 (Ky. 1991).

Criminal contempt conviction for violating domestic violent order prohibiting defendant from committing further acts of violence upon his wife did not bar action against him for second degree assault; double jeopardy did not attach because the contempt conviction required proof of an element unnecessary to convict him of burglary. Commonwealth v. Burge,

1996 Ky. LEXIS 82 (Ky. Aug. 29, 1996), modified, sub. op., 1997 Ky. LEXIS 76 (Ky. June 19, 1997).

Actual infliction of physical injury to the victim by a dangerous instrument was not required to convict defendant of complicity to robbery in the first degree under KRS 515.020, nor was the theft required for conviction of complicity to second degree assault under KRS 508.020; both of the statutes had different elements that had to be proved in finding guilt under the respective instructions. Thus, the double jeopardy rule was not violated. Fields v. Commonwealth, 219 S.W.3d 742, 2007 Ky. LEXIS 92 (Ky. 2007).

Because there was insufficient evidence to support a finding that defendant's fists caused serious physical injury to the victim, reversal of defendant's conviction for second-degree assault under KRS 508.020 was the equivalent of an acquittal; accordingly, the double jeopardy clauses in U.S. Const. amend. V, and Ky. Const. § 13 barred a retrial. Commonwealth v. Davidson, 277 S.W.3d 232, 2009 Ky. LEXIS 24 (Ky. 2009).

3. Elements.

Word "bite" as used in maiming statute meant severance produced by means of teeth. (Decided under prior law) Hemphill v. Commonwealth, 265 Ky. 194, 96 S.W.2d 586, 1936 Ky. LEXIS 461 (Ky. 1936).

Under maiming statute, offense could be committed during a fight or when perpetrator was not engaged in a fight. (Decided under prior law) Hemphill v. Commonwealth, 265 Ky. 194, 96 S.W.2d 586, 1936 Ky. LEXIS 461 (Ky. 1936).

There are three elements which comprise the crime of assault: the assailant's mental state, the means of attack, and the resultant injury. Commonwealth v. Hammond, 633 S.W.2d 73, 1982 Ky. App. LEXIS 214 (Ky. Ct. App. 1982).

Defendant was not entitled to a directed verdict of acquittal on a charge of second-degree assault because there was sufficient evidence to find him guilty of the lesser included offense of fourth-degree assault, under KRS 508.030(1), because he intentionally inflicted physical injury on the victim. Davidson v. Commonwealth, 2006 Ky. App. LEXIS 32 (Ky. Ct. App. 2006), sub. op., 2006 Ky. App. Unpub. LEXIS 1224 (Ky. Ct. App. Feb. 3, 2006).

Defendant's attorney was not ineffective in failing to object to the career-offender designation under U.S. Sentencing Guidelines Manual § 4B1.1 because any such objection would have been unsuccessful as his conviction for assault in the second degree under KRS 508.020 satisfied the definition of a crime of violence under U.S. Sentencing Guidelines Manual § 4B1.2(a). United States v. Rhodes, 2011 U.S. Dist. LEXIS 87088 (E.D. Ky. 2011).

Trial court did not err by failing to grant defendant's motion for directed verdict on the charge of second-degree assault against the second child because the second child's injury was a physical injury as the second child told the first child that she had been stabbed; and a photograph introduced into evidence showed that the second child had a cut about an inch long and a half centimeter wide on her mid-back. Exantus v. Commonwealth, 612 S.W.3d 871, 2020 Ky. LEXIS 458 (Ky. 2020).

4. —Dangerous Instrument.

Steel-toed work shoes and scissors were "dangerous instruments" where defendant kicked victim in side while he was wearing steel-toed work shoes and stabbed victim in the thigh and pelvic/vaginal area with the scissors. Commonwealth v. Potts, 884 S.W.2d 654, 1994 Ky. LEXIS 106 (Ky. 1994), overruled in part, Doneghy v. Commonwealth, 410 S.W.3d 95, 2013 Ky. LEXIS 290 (Ky. 2013).

Trial court did not abuse its discretion by failing to grant defendant's motion for directed verdict for the second-degree assault of the first child because a butter knife was used to cut the first child's nose, resulting in physical injury; and the butter knife was a dangerous instrument as it was used, attempted to be used, or threatened to be used in a way that was readily capable of causing death or serious physical injury. Exantus v. Commonwealth, 612 S.W.3d 871, 2020 Ky. LEXIS 458 (Ky. 2020).

5. —Deadly Weapon.

When a deadly weapon or dangerous instrument is used intentionally, the requirements of subsection (1)(b) of this section are met when any injury results; the words "impairment of physical condition" in KRS 500.080(13) simply means "injury." Meredith v. Commonwealth, 628 S.W.2d 887, 1982 Ky. App. LEXIS 201 (Ky. Ct. App. 1982).

Where defendant, who was under a domestic violence emergency protective order regarding his wife which order did not contain a no contact provision, sought admission to wife's apartment and was admitted after wife had her male visitor wait in locked bedroom and defendant hearing a noise in the bedroom, went to investigate, forced the door and observed the friend diving out the window, whereupon the defendant proceeded to break several items and grab his wife by the neck, the facts do not support a finding that an assault occurred since no weapon or dangerous instrument was used and since there was no serious injury, and as the facts did not support a finding of assault and therefore the "intent to commit a crime" element of KRS 511.030(1) cannot be satisfied court's overruling of defendant's motion for directed verdict on burglary charge was error. Hedges v. Commonwealth, 937 S.W.2d 703, 1996 Ky. LEXIS 122 (Ky. 1996).

6. —Serious Physical Injury.

Where defendant's wife testified to assaults on her vagina and rectum by her husband with carrot, friend's daughter testified that wife of defendant had screamed for defendant to stop and medical examination nine (9) days later showed swelling, vaginal abrasions, dried blood and slight bleeding, evidence of physical injury was sufficient to convict defendant under this section for second-degree assault with deadly weapon or dangerous instrument. Smith v. Commonwealth, 610 S.W.2d 602, 1980 Ky. LEXIS 284 (Ky. 1980).

A photograph of the victim shown to the jury was not prejudicially gruesome, where all the damage done to the victim was by the defendant. Wager v. Commonwealth, 751 S.W.2d 28, 1988 Ky. LEXIS 29 (Ky. 1988).

Victim was struck in back with a ball bat which knocked the wind out of him and bruised his ribs. The requirements of subdivision (1)(b) are met when any injury results. A victim is competent to testify about his own injuries and medical proof is not an absolute requisite to prove physical injury. Key v. Commonwealth, 840 S.W.2d 827, 1992 Ky. App. LEXIS 126 (Ky. Ct. App. 1992).

Second-degree assault does not require infliction of a serious physical injury when one intentionally injures another by means of a deadly weapon, or by means of a dangerous instrument. Commonwealth v. Potts, 884 S.W.2d 654, 1994 Ky. LEXIS 106 (Ky. 1994), overruled in part, Doneghy v. Commonwealth, 410 S.W.3d 95, 2013 Ky. LEXIS 290 (Ky. 2013).

Pain is an "impairment of health;" if the pain is substantial, but not prolonged, it constitutes a "physical injury" under KRS 500.080(13), but if it is prolonged, then it is a "serious physical injury" under KRS 500.080(15). Thus, a trial judge did not err when it instructed the jury on both the Class C felony of assault 2nd (wanton), KRS 508.020(1)(c), and the Class A misdemeanor of assault in the fourth degree (wanton), KRS 508.030(1)(a), where the evidence established that the victim's injuries resulted not only in headaches and neck pain, but also muscle spasms and numbness of her right arm and where the jury could have found that the duration of those effects constituted a "prolonged impairment of health." Parson v. Commonwealth, 144 S.W.3d 775, 2004 Ky. LEXIS 158 (Ky. 2004).

Where a reasonable jury could have concluded that two months of healing time was "prolonged" with respect to the life of a six-month old infant, the evidence was sufficient for the jury to conclude that the leg fractures caused a "prolonged impairment of health" supporting defendant's convictions for second-degree assault. Schrimsher v. Commonwealth, 190 S.W.3d 318, 2006 Ky. LEXIS 104 (Ky. 2006).

Where the Commonwealth proved multiple acts of assault and multiple injures, some occurring in different time frames, the evidence was sufficient to prove that defendant's conduct caused the victim's injuries. Schrimsher v. Commonwealth, 190 S.W.3d 318, 2006 Ky. LEXIS 104 (Ky. 2006).

Trial court did not err by denying defendant's directed verdict for second-degree assault because the Commonwealth presented more than a mere scintilla of evidence that a physical injury resulted from defendant's intentional use of a deadly weapon or dangerous instrument where the sergeant testified that he felt a sharp trust under his arm and realized immediately that he had been cut and his medical records showed that he sustained a small wound. Doneghy v. Commonwealth, 410 S.W.3d 95, 2013 Ky. LEXIS 290 (Ky. 2013).

Circuit court erred in sentencing defendant to 10 years' imprisonment after a jury convicted him of second-degree assault because there was not sufficient evidence to support a conviction where the Commonwealth fail to introduce evidence that the victim had sustained a serious physical injury, and the prosecutor admitted that the victim had only sustained a physical injury, not a serious physical injury, when he argued before the court. Farmer v. Commonwealth, 606 S.W.3d 641, 2020 Ky. App. LEXIS 60 (Ky. Ct. App. 2020).

7. Indictment.

An indictment, for maiming, alleging that defendant did "bite of" instead of "bite off" the ear of a person named sufficiently clear to indicate the offense charged and language used was not fatal to the indictment. (Decided under prior law) Commonwealth v. Shelby, 38 S.W. 490, 18 Ky. L. Rptr. 781 (1897).

Where indictment charged violation of maiming statute both by biting and striking, but Commonwealth elected to prosecute for biting and prosecution proceeded on that theory only, error, if any, in charging two offenses in same indictment was immaterial. (Decided under prior law) Coleman v. Commonwealth, 280 Ky. 410, 133 S.W.2d 555, 1939 Ky. LEXIS 144 (Ky. 1939).

8. Instructions.

In the prosecution of a police officer for assault and battery where the officer made no claim that he had to use force in making an arrest but denied having used any at all, the trial court's omission of an instruction on the right of the police officer to use force in effecting an arrest was not error. (Decided under prior law) Phillips v. Commonwealth, 528 S.W.2d 940, 1974 Ky. LEXIS 1 (Ky. 1974).

Where proof of the facts charged in the indictment would establish the commission of both attempted murder and assault in the second degree, assault in the second degree is a lesser included offense and, where the evidence raised the question of whether defendant intended to kill or to injure police officer, failure to give requested instruction on lesser included offense was reversible error. Luttrell v. Commonwealth, 554 S.W.2d 75, 1977 Ky. LEXIS 482 (Ky. 1977).

In a prosecution for assault, the trial court erred when it refused to give an instruction on the mitigating defense of extreme emotional disturbance, where in view of the evidence presented it would not have been unreasonable for a juror to believe beyond a reasonable doubt that the defendant was not acting in self-defense or in defense of his brother, yet still believe that he was acting in a state of extreme emotional disturbance for which there was a reasonable justification or excuse under the circumstances as he believed them to be. Engler v. Commonwealth, 627 S.W.2d 582, 1982 Ky. LEXIS 229 (Ky. 1982).

Defendant was not entitled to an instruction on third degree assault where the evidence as to the seriousness of the injury was that buckshot from the shotgun blast had gone through the victim's elbow and forearm, requiring 29 days of hospitalization and five operations and the replacement of three inches of his bone by a steel plate, and where as a result of the shot, he also sustained muscle and nerve damage and could not move his fingers. Trent v. Commonwealth, 606 S.W.2d 386, 1980 Ky. App. LEXIS 369 (Ky. Ct. App. 1980).

Where the evidence showed that injury to victim for which defendant was on trial was caused by a gunshot wound, the Circuit Court in order to differentiate instructions on first and second-degree assault, should have adopted Commonwealth's tendered Instruction No. II, which permitted a guilty verdict on second-degree assault upon a finding that defendant intentionally shot the victim with a pistol, resulting in nonserious physical injury, or that defendant wantonly shot the victim with a pistol, resulting in serious physical injury. Commonwealth v. Hammond, 633 S.W.2d 73, 1982 Ky. App. LEXIS 214 (Ky. Ct. App. 1982).

The trial court did not commit error by instructing the jury on first degree assault, where the Commonwealth failed to prove that the victim received serious physical injury, but the defendant was found guilty of second degree assault; conviction of a lesser-included offense renders the instruction of the greater offense harmless error. Russell v. Commonwealth, 720 S.W.2d 347, 1986 Ky. App. LEXIS 1456 (Ky. Ct. App. 1986).

Trial court did not err by refusing to give instruction on fourth-degree assault in a prosecution for second-degree assault where the defendant pointed a gun at the victim and shot her three times; the defendant's behavior was more compatible with the definition of "intentional" than with "reckless." Adkins v. Commonwealth, 787 S.W.2d 272, 1990 Ky. App. LEXIS 46 (Ky. Ct. App. 1990).

The trial court properly gave an instruction under KRS 508.040 without defendant's consent which mitigated a conviction for assault under KRS 508.010, this section, and KRS 508.030; there was enough proof in the record to justify the giving of the instruction in question and it was not sufficiently prejudicial to compel a reversal of the trial court. Commonwealth v. Elmore, 831 S.W.2d 183, 1992 Ky. LEXIS 93 (Ky. 1992).

In a capital murder case, defendant was not entitled to an instructions on second degree assault, under KRS 508.020, as a lesser included offense of attempted murder, based on voluntary intoxication, because the evidence did not show not only that defendant was under the influence, but that he was so under the influence that he did not know what he was doing, as he walked three miles to the victims' residence, hid in a tool shed to escape immediate detection, concealed the victims' bodies and the weapon used to kill them, lay in wait for his next victim, had the presence of mind to flee the scene after shooting her and to conceal the weapon in a creek, and was able to find another person's residence which he had not visited in almost three (3) years. Soto v. Commonwealth, 139 S.W.3d 827, 2004 Ky. LEXIS 93 (Ky. 2004), cert. denied, 544 U.S. 931, 125 S. Ct. 1670, 161 L. Ed. 2d 495, 2005 U.S. LEXIS 2608 (U.S. 2005).

Where the defendant first started beating the victim and eventually the co-defendant started beating the victim with a lug wrench while defendant threatened to kill the victim and encouraged the co-defendant to get the victim's wallet, the later assault is the action for which defendant was charged with complicity; a jury could not reasonably have found that defendant was not guilty of complicity to the second degree assault, but guilty of only the preceding fourth degree assault, and, thus, the jury instruction on lesser-included offenses was properly denied. Fields v. Commonwealth, 219 S.W.3d 742, 2007 Ky. LEXIS 92 (Ky. 2007).

Because the complicity charge required proof that co-defendant caused the victim's physical injury, and the fourth degree assault instruction required an inconsistent finding that defendant caused the physical injury, defendant's fourth degree assault could not be a lesser-included charge of complicity to assault in the second degree. Thus, a lesser-included offense jury instruction was properly denied. Fields v. Commonwealth, 219 S.W.3d 742, 2007 Ky. LEXIS 92 (Ky. 2007).

In defendant's first-degree assault case, the court erred by failing to give a lesser included offense instruction on second-degree assault because the evidence established injuries that fell somewhere in the gray area between mere physical injury and serious physical injury. The decision as to which type of injury actually occurred required close observation of the victims' behavior, attention to their testimony, and overall interpretation of the evidence; that function could only be carried out by the jury, not the judge. Swan v. Commonwealth, 2012 Ky. LEXIS 498 (Ky. Aug. 23, 2012).

For purposes of the second-degree assault convictions, the trial court's failure to instruct on the definition of dangerous instrument was harmless error because the evidence was uncontroverted that defendant cut the first child's nose with a butter knife and that he stabbed the second child with either a butcher knife or a butter knife, resulting in a laceration on her mid-back; and there was simply no basis upon which to conclude that being provided with the definition of dangerous instrument would have somehow changed the jury's verdict. Exantus v. Commonwealth, 612 S.W.3d 871, 2020 Ky. LEXIS 458 (Ky. 2020).

9. Separate Offenses.

Convictions for both conspiracy to commit first degree robbery and accomplice to second degree assault did not violate defendant's constitutional and statutory right against double jeopardy. Wilson v. Commonwealth, 695 S.W.2d 854 (Ky. 1985).

Convictions for both conspiracy to commit first degree robbery and accomplice to second degree assault did not violate the prohibition in KRS 506.110(1) against conviction for both conspiracy to commit a crime and the actual commission of that crime. Wilson v. Commonwealth, 695 S.W.2d 854 (Ky. 1985).

Where defendant approached a co-worker whom he believed had stolen drugs and money from him, where the co-worker gave defendant money and a cellular phone, where defendant kept the money, which he claimed to rightfully be his, and because he believed that the co-worker still had the drugs, kicked the co-worker between the legs and in the face while wearing steel toe shoes, and where defendant was charged with first-degree robbery, the trial court erred in instructing the jury that second-degree assault under KRS 508.020(1)(b) was a lesser-included offense of first-degree robbery under KRS 515.020(1)(a) because (1) the existence of the use of a deadly weapon had to be established by proof of more of the facts required to establish the commission of robbery; (2) the offense of assault was not the offense of attempted robbery; and (3) assault, under the circumstances of the case, required the completely separate element of the use of a deadly weapon; thus, it did not differ from robbery only in the respect that a lesser kind of culpability suffices to establish its commission, or in the respect that a less serious injury or risk of injury to the same person, property, or public interest suffices to establish its commission. Howell v. Commonwealth, 296 S.W.3d 430, 2009 Ky. App. LEXIS 149 (Ky. Ct. App. 2009).

10. Evidence.

In prosecution under maiming statute, where defendant pleaded self-defense, jury's verdict of guilty of common-law misdemeanor of assault and battery was not palpably against evidence. (Decided under prior law) Ewing v. Commonwealth, 390 S.W.2d 651, 1965 Ky. LEXIS 361 (Ky. 1965).

On prosecution under maiming statute, prosecuting witness was competent to testify that he had always had normal vision in his eye until struck there by defendant, and that thereafter his vision was gone. (Decided under prior law) Ewing v. Commonwealth, 390 S.W.2d 651, 1965 Ky. LEXIS 361 (Ky. 1965).

Where defendant was indicted and tried under maiming statute for putting out eye of prosecuting witness, but was convicted by jury of assault and battery, admission of evidence of such loss of sight did not taint jury's verdict with reversible error. (Decided under prior law) Ewing v. Commonwealth, 390 S.W.2d 651, 1965 Ky. LEXIS 361 (Ky. 1965).

Evidence was sufficient to support a conviction where (1) the victim suffered at least two (2) cuts on her arms from scissors, as well as several other scrapes and contusions; (2) one defendant admitted in his statement that another defendant had cut locks of the victim's hair while she was bound with duct tape; and (3) there was testimony that at the time the defendants left the victim's house, they believed she might die as a result of severe bleeding from a cut on her arm. Murphy v. Commonwealth, 50 S.W.3d 173, 2001 Ky. LEXIS 81 (Ky. 2001).

Evidence was suffiicient to support second degree assault conviction where an argument started in a bar between defendant, a victim, and defendant's girlfried, where defendant flashed a gun at the victim, pointed it at the crowd and shot the victim in the abdomen, where the victim stated that after the shots he ran outside and saw defendant getting into a vehicle that was waiting outside, where another victim testified that after the initial argument defendant and his girlfriend entered from the rear of the bar and made their way to the front of the bar, where, as they walked through the bar they looked around at the faces of each patron, looking for a particular person, where the other victim observed defendant pointing a gun at the crowd, heard shots and felt a pain in his leg, and where defendant was positively identified by one of the victims from a police photo lineup. Woodard v. Commonwealth, 147 S.W.3d 63, 2004 Ky. LEXIS 244 (Ky. 2004).

Because an appellate court had to consider the same evidence as the trial court in its best light in favor of the Commonwealth, there was sufficient evidence of wantonness to support defendant's convictions for second-degree manslaughter and assault after defendant caused a fatal head-on collision; there was evidence that defendant crossed the center line and evidence of defendant's impairment from a drug recognition expert who did not personally observe defendant. Burton v. Commonwealth, 300 S.W.3d 126, 2009 Ky. LEXIS 253 (Ky. 2009).

11. —Admissibility.

Where the victim was 87 years old and had been severely traumatized, and her identification of the defendant was somewhat confused, the testimony of a detective regarding the victim's identification of her assailant one and one-half days after the crime should not have been admitted, even though the victim had since died, and there were no eyewitnesses. Wager v. Commonwealth, 751 S.W.2d 28, 1988 Ky. LEXIS 29 (Ky. 1988).

12. —Prior Convictions.

In a prosecution for assault and battery evidence of defendant's prior felony convictions for detaining a woman against her will and for driving a motor vehicle without the owner's consent were inadmissible to impeach his testimony, since the prior offenses had no bearing on the question of defendant's veracity. (Decided under prior law) Phillips v. Commonwealth, 528 S.W.2d 940, 1974 Ky. LEXIS 1 (Ky. 1974).

Cited in:

Moore v. Commonwealth, 597 S.W.2d 155, 1979 Ky. App. LEXIS 527 (Ky. Ct. App. 1979); Jones v. Commonwealth, 623 S.W.2d 226, 1981 Ky. LEXIS 283 (Ky. 1981); Souder v. Com-

monwealth, 719 S.W.2d 730, 1986 Ky. LEXIS 303 (Ky. 1986); Jones v. Commonwealth, 737 S.W.2d 466, 1987 Ky. App. LEXIS 574 (Ky. Ct. App. 1987); Dick v. Scroggy, 882 F.2d 192, 1989 U.S. App. LEXIS 12120 (6th Cir. 1989); Commonwealth v. Harrell, 3 S.W.3d 349, 1999 Ky. LEXIS 117 (Ky. 1999); Grundy v. Commonwealth, 25 S.W.3d 76, 2000 Ky. LEXIS 107 (Ky. 2000).

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508.022. Certain assault convictions operate as applications for protective orders.

(1) The entering of a judgment of conviction for assault in the first degree or assault in the second degree, or for a felony criminal attempt, conspiracy, facilitation, or solicitation to commit assault in the first degree or assault in the second degree, shall operate as an application for an order of protection issued under KRS Chapter 403 or an interpersonal protective order issued under KRS Chapter 456, as applicable, if the relationship between the defendant and the victim meets the definition of:

(a) Family member or member of an unmarried couple as defined in KRS 403.720; or

(b) Dating relationship as defined in KRS 456.010;

unless the victim requests otherwise.

(2) Notwithstanding the provisions of KRS Chapter 403 or 456, as applicable:

(a) An order of protection or an interpersonal protective order requested under this section may be issued by the court that entered the judgment of conviction;

(b) The judgment of conviction shall constitute sufficient cause for entry of the order without the necessity of further proof being taken; and

(c) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

History.
2026 ch. 49, § 1, effective July 15, 2026.

508.025. Assault in the third degree.

(1) A person is guilty of assault in the third degree when the actor:

(a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:

1. A state, county, city, or federal peace officer;

2. An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;

3. A healthcare provider as defined in KRS 311.821 or other person employed by or under contract with a health clinic, doctor's office, dental office, long-term care facility, hospital, or a hospital-owned or affiliate outpatient facility, if the event occurs in or on the premises of a jail, penitentiary, local or state correctional or detention facility, including a facility which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, health clinic, doctor's office, dental office, long-term care facility, hospital, or a hospital- owned or affiliate outpatient facility;

4. An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;

5. Paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A, if the event occurs while personnel are performing job-related duties;

6. A paid or volunteer member of an organized fire department, if the event occurs while the member is performing job-related duties;

7. Paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster and emergency services organization pursuant to KRS Chapter 39F, if the event occurs while personnel are performing job-related duties;

8. A probation and parole officer;

9. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;

10. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment; or

11. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district;

(b) Being a person confined in a detention facility, or a juvenile in a state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility; or

(c) Intentionally causes a person, whom the actor knows or reasonably should know to be a peace officer discharging official duties, to come into contact with saliva, vomit, mucus, blood, seminal fluid, urine, or feces without the consent of the peace officer.

(2)(a) For a violation of subsection (1)(a) of this section, assault in the third degree is a Class D felony, unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class C felony.

(b) For a violation of subsection (1)(b) of this section, assault in the third degree is a Class D felony.

(c) For violations of subsection (1)(c) of this section, assault in the third degree is a Class B misdemeanor, unless the assault is with saliva, vomit, mucus, blood, seminal fluid, urine, or feces from an adult who knows that he or she has a serious communicable disease and competent medical or epidemiological evidence demonstrates that the specific type of contact caused by the actor is likely to cause transmission of the disease or condition, in which case it is a Class A misdemeanor.

(d) As used in paragraph (c) of this subsection, "serious communicable disease" means a non-airborne disease that is transmitted from person to person and determined to have significant, long-term consequences on the physical health or life activities of the person infected.

History.

Enact. Acts 1982, ch. 429, § 1, effective July 15, 1982; 1990, ch. 380, § 1, effective July 13, 1990; 1994, ch. 397, § 1, effective July 15, 1994; 1996, ch. 345, § 1, effective July 15, 1996; 2000, ch. 14, § 56, effective July 14, 2000; 2000, ch. 193, § 17, effective July 14, 2000; 2000, ch. 345, § 7, effective July 14, 2000; 2002, ch. 208, § 1, effective July 15, 2002; 2002, ch. 360, § 1, effective July 15, 2002; 2005, ch. 128, § 1, effective June 20, 2005; 2018 ch. 189, § 1, effective July 14, 2018; 2022 ch. 151, § 2, effective July 14, 2022; 2023 ch. 109, § 4, effective June 29, 2023; 2024 ch. 80, § 1, effective July 15, 2024; 2026 ch. 28, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

(6/20/2005.) 2005 Ky. Acts ch. 128, sec. 1, which is included in an amendment to this statute, provides that the Act shall be known as the "Brenda D. Cowan Act."

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Culpable Mental State.
4. Dangerous Instrument.
5. Defenses.
6. Evidence.
7. Instructions.
8. Probable Cause for Arrest.
9. Sentence.

1. Constitutionality.

This section is not unconstitutional because it removes any degree of culpable mental state, and when coupled with KRS 508.040, it fails to allow the defendant any mitigation for the offense due to an extreme emotional disturbance. In enacting these sections, the General Assembly was seeking to protect those individuals who serve this Commonwealth in law enforcement capacities. Wyatt v. Commonwealth, 738 S.W.2d 832, 1987 Ky. App. LEXIS 548 (Ky. Ct. App. 1987).

Subdivision (1)(b) of this section is not void-for-vagueness because it is sufficiently definite that it can be understood by ordinary people, while providing the minimal guidelines necessary to govern law enforcement. Covington v. Commonwealth, 849 S.W.2d 560, 1992 Ky. App. LEXIS 218 (Ky. Ct. App. 1992).

2. Construction.

Subdivision (1)(b) of this section is not overbroad because no constitutionally permissible conduct is prohibited. Covington v. Commonwealth, 849 S.W.2d 560, 1992 Ky. App. LEXIS 218 (Ky. Ct. App. 1992).

3. Culpable Mental State.

The culpable mental state required for assault in the third degree is written into subdivision (1)(b) of this section by KRS 501.040: a prison inmate confined in a detention facility must inflict physical injury upon an employee of the detention center which necessarily requires an inmate to intentionally or wantonly inflict physical injury upon a prison employee. Covington v. Commonwealth, 849 S.W.2d 560, 1992 Ky. App. LEXIS 218 (Ky. Ct. App. 1992).

Subdivision (1)(b) of this section does require a culpable mental state, although not expressly stated, and therefore is not invalid. Covington v. Commonwealth, 849 S.W.2d 560, 1992 Ky. App. LEXIS 218 (Ky. Ct. App. 1992).

Subdivision (1)(a)1. cannot be interpreted as imposing absolute liability with respect to any element of the defined offense. Love v. Commonwealth, 55 S.W.3d 816, 2001 Ky. LEXIS 28 (Ky. 2001).

A defendant can be convicted of third degree assault of a police officer under subdivision (1)(a)1. only if he knew at the time of the assault that the victim was a peace officer. Love v. Commonwealth, 55 S.W.3d 816, 2001 Ky. LEXIS 28 (Ky. 2001).

Two (2) of three (3) convictions against defendant for third-degree assault arising out of shooting involving three (3) police officers had to be reversed as the evidence only showed that defendant intended to injure one (1) of the officers by firing his gun at him, and, thus, the lack of evidence showing intent as to the other two (2) officers meant those convictions were not supported by the evidence. Clay v. Commonwealth, 2002 Ky. App. LEXIS 1920 (Ky. Ct. App. Sept. 6, 2002).

4. Dangerous Instrument.

A vehicle may be used in such a manner as to constitute a dangerous instrument. Wyatt v. Commonwealth, 738 S.W.2d 832, 1987 Ky. App. LEXIS 548 (Ky. Ct. App. 1987).

5. Defenses.

Trial court erred in dismissing defendant's indictment for the third-degree assault of a police officer because the unlawfulness of the officer's entry into the residence where defendant was sleeping was not a defense to the assault on the officer; moreover, the evidence regarding the alleged assault by was not tainted by the officer's unlawful entry and was admissible at trial. Commonwealth v. Johnson, 245 S.W.3d 821, 2008 Ky. App. LEXIS 26 (Ky. Ct. App. 2008).

Like KRS 520.090, which precludes the unlawfulness of an arrest as a defense to a prosecution for resisting arrest, the unlawfulness of an entry or search is not a defense to an assault on a police officer under KRS 508.025. Commonwealth v. Johnson, 245 S.W.3d 821, 2008 Ky. App. LEXIS 26 (Ky. Ct. App. 2008).

6. Evidence.

Where prison guard testified that he suffered a bruised face and a scratch below his eye and where he also testified that his injuries inflicted by an inmate caused him pain and required medical attention at the local hospital, there was sufficient proof to establish a "physical injury." Covington v. Common-

wealth, 849 S.W.2d 560, 1992 Ky. App. LEXIS 218 (Ky. Ct. App. 1992).

Trial court erred in denying defendant's directed verdict motion as to two (2) of the three (3) third-degree charges filed against defendant as the evidence only showed that defendant intended to injure one (1) police officer, and not all three (3) officers who tracked defendant to defendant's apartment. Clay v. Commonwealth, 2002 Ky. App. LEXIS 1920 (Ky. Ct. App. Sept. 6, 2002).

Circuit court did not err in denying defendant's motions for directed verdict on a third-degree assault charge given a trooper's testimony that defendant was charging toward him with a raised baseball bat. Montgomery v. Commonwealth, 505 S.W.3d 274, 2016 Ky. App. LEXIS 198 (Ky. Ct. App. 2016).

Commonwealth produced sufficient evidence to survive defendant's directed verdict motion for three counts of assault in the third degree, given that defendant, while an inmate, threw a smock covered in toilet water towards three officers, they testified that the substance smelled strongly of urine, and the jury could have found the substance was urine despite the officers not seeing defendant urinate. Evans v. Commonwealth, 544 S.W.3d 166, 2018 Ky. App. LEXIS 89 (Ky. Ct. App. 2018).

Defendant was not entitled to a directed verdict of acquittal on the charge of third degree assault because the Commonwealth of Kentucky presented satisfactory evidence that defendant intentionally or wantonly spit on a corrections officer as the officer testified that defendant was "raising hell" and "cussing" while in the restraint chair at a detention center and spit on the officer, while other officers substantiated the testimony. Madden v. Commonwealth, 582 S.W.3d 54, 2019 Ky. App. LEXIS 4 (Ky. Ct. App. 2019).

7. Instructions.

The court erred in failing to instruct the jury on the defendant's culpable mental state where the defendant presented evidence that he was basically unconscious during the episode; although extreme emotional disturbance may not mitigate a reckless assault on a policeman, even recklessness requires some intent, and if there were insufficient mental capacity or no intent, there could be no violation of this section. Wyatt v. Commonwealth, 738 S.W.2d 832, 1987 Ky. App. LEXIS 548 (Ky. Ct. App. 1987).

8. Probable Cause for Arrest.

Arrestee's malicious prosecution claim against police officers, a city, and the police department failed because the officers had probable cause to arrest the arrestee for assault on a police officer in violation of KRS 508.025; the arrestee passively resisted the officers' attempts to subdue him and place him in a police car, a scuffle between one officer and the arrestee ensued during the process of placing the arrestee in the car, and the officer suffered trauma to his face during that scuffle. Hubbard v. Gross, 199 Fed. Appx. 433, 2006 U.S. App. LEXIS 24558 (6th Cir. Ky. 2006).

9. Sentence.

Sentence of ten (10) years received by an inmate for assaulting a prison guard and being a persistent felony offender in the second degree (PFO II) was not so grossly disproportionate to the seriousness of the underlying crime and prior felonies as to constitute cruel and unusual punishment. Covington v. Commonwealth, 849 S.W.2d 560, 1992 Ky. App. LEXIS 218 (Ky. Ct. App. 1992).

Defendant's twenty-year sentence for the Class D felony of assaulting a police officer invoked no sense of fundamental unfairness and did not constitute an exercise of absolute and arbitrary power as proscribed by the Kentucky Constitution because he offered nothing that indicated that he had been arbitrarily singled out for severe punishment, and because nothing in the record suggested that he had been subjected to unequal, disparate, or arbitrary treatment; defendant himself conceded that the sentencing evidence showed that he was almost always in trouble with the law. Thornton v. Commonwealth, 421 S.W.3d 372, 2013 Ky. LEXIS 401 (Ky. 2013).

Prosecutor stated in his sentencing phase closing argument that defendant was only going to serve three years even if the jury gave him the maximum sentence for three counts of third degree assault, but this was an improper statement and a misstatement of the law that affected the jury, as the jury asked how much time defendant would actually serve; palpable error resulted and remand was required. Evans v. Commonwealth, 544 S.W.3d 166, 2018 Ky. App. LEXIS 89 (Ky. Ct. App. 2018).

Cited in:

Washington v. Commonwealth, 6 S.W.3d 384, 1999 Ky. App. LEXIS 71 (Ky. Ct. App. 1999).

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Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, §§ 3.47 — 3.49A.

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public and Judicial Administration, Part 3 Escape and Offenses Related to Custody, § 7.35.

508.030. Assault in the fourth degree.

(1) A person is guilty of assault in the fourth degree when:

(a) He intentionally or wantonly causes physical injury to another person; or

(b) With recklessness he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

(2) Assault in the fourth degree is a Class A misdemeanor.

History.

Enact. Acts 1974, ch. 406, § 67, effective January 1, 1975; 1982, ch. 429, § 2, effective July 15, 1982.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Double Jeopardy.
3. Evidence.
4. —Physical Injury.
5. Witnesses.
8. Instructions.
9. Lesser Included Offenses.

1. Applicability.

This chapter was intended to include vehicular accidents within the meaning of "assaults." Martin v. Commonwealth, 873 S.W.2d 832, 1993 Ky. App. LEXIS 181 (Ky. Ct. App. 1993).

2. Double Jeopardy.

The double jeopardy clause required vacating an appellant's conviction for fourth degree assault because the physical injury proven as one of the elements of that charge was the same alleged and proven as an element of a first degree

burglary charge against him. Butts v. Commonwealth, 953 S.W.2d 943, 1997 Ky. LEXIS 93 (Ky. 1997), overruled in part, Commonwealth v. McCombs, 304 S.W.3d 676, 2009 Ky. LEXIS 61 (Ky. 2009), abrogated in part, Elery v. Commonwealth, 368 S.W.3d 78, 2012 Ky. LEXIS 87 (Ky. 2012).

Defendant's convictions for first-degree burglary under KRS 511.020 and fourth-degree assault under KRS 508.030 did not violate double jeopardy principles under U.S. Const. amend. V. and Ky. Const. § 13 as assault required a specific finding of an intentional, wanton, or reckless mental state, and the physical injury element of burglary did not require such a finding; to the extent of a conflict, *Butts v. Commonwealth,* 953 S.W.2d 943, 1997 Ky. LEXIS 93 (Ky. 1997), was overruled. Commonwealth v. McCombs, 304 S.W.3d 676, 2009 Ky. LEXIS 61 (Ky. 2009), modified, 2010 Ky. LEXIS 139 (Ky. Mar. 18, 2010).

Given that a jury convicted defendant of both fourth-degree assault under KRS 508.030 and first-degree burglary under KRS 511.020, and because the appellate court was unable to tell if the jury predicated both convictions on the same physical injury to the victim, a remand was necessary. If the same physical injury was the basis of both convictions, the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Ky. Const. § 13 were both violated. McCombs v. Commonwealth, 2006 Ky. App. LEXIS 180 (Ky. Ct. App. June 23, 2006, sub. op., 2006 Ky. App. LEXIS 397 (Ky. Ct. App. June 23, 2006), sub. op., 2006 Ky. App. Unpub. LEXIS 330 (Ky. Ct. App. June 23, 2006), modified, 2007 Ky. App. LEXIS 3 (Ky. Ct. App. Jan. 12, 2007).

Conviction upon first-degree burglary and fourth-degree assault violated the prohibition against double jeopardy when the same physical injury was used to satisfy the physical injury elements of both KRS 511.020(1)(b) and 508.030(1)(a); fourth-degree assault did not contain an element different from first-degree burglary because if the jury believed defendant acted intentionally to cause the physical injury as to fourth-degree assault, it had to, likewise, have believed defendant acted intentionally to cause the physical injury as to first-degree burglary. McCombs v. Commonwealth, 2006 Ky. App. LEXIS 397 (Ky. Ct. App. June 23, 2006, sub. op., 2006 Ky. App. Unpub. LEXIS 330 (Ky. Ct. App. June 23, 2006).

A defendant who was convicted in a Kentucky state court for assault in the fourth degree in violation of KRS 508.030 could be subsequently prosecuted for a violation of 18 USCS § 922(g)(9) for possessing a weapon after being convicted of a misdemeanor involving domestic violence. Fact that a domestic relationship was not an element of the state court conviction was not grounds for dismissal of the prosecution under § 922(g)(9), and the Government would be given the opportunity to prove the existence of the domestic relationship. United States v. Watkins, 407 F. Supp. 2d 825, 2006 U.S. Dist. LEXIS 1634 (E.D. Ky. 2006).

3. Evidence.

Where defendant, who was under a domestic violence emergency protective order regarding his wife which order did not contain a no contact provision, sought admission to wife's apartment and was admitted after wife had her male visitor wait in locked bedroom and defendant hearing a noise in the bedroom, went to investigate, forced the door and observed the friend diving out the window, whereupon the defendant proceeded to break several items and grab his wife by the neck, the facts do not support a finding that an assault occurred since no weapon or dangerous instrument was used and since there was no serious injury, and as the facts did not support a finding of assault and therefore the "intent to commit a crime" element of KRS 511.030(1) cannot be satisfied court's overruling of defendant's motion for directed verdict on burglary charge was error. Hedges v. Commonwealth, 937 S.W.2d 703, 1996 Ky. LEXIS 122 (Ky. 1996).

Evidence was sufficient to support a conviction for fourth degree assault. Washington v. Commonwealth, 6 S.W.3d 384, 1999 Ky. App. LEXIS 71 (Ky. Ct. App. 1999).

Defendant was not entitled to a directed verdict of acquittal on a charge of second-degree assault because there was sufficient evidence to find him guilty of the lesser included offense of fourth-degree assault, under KRS 508.030(1), because he intentionally inflicted physical injury on the victim. Davidson v. Commonwealth, 2006 Ky. App. LEXIS 32 (Ky. Ct. App. 2006), sub. op., 2006 Ky. App. Unpub. LEXIS 1224 (Ky. Ct. App. Feb. 3, 2006).

4. —Physical Injury.

Pain is an "impairment of health;" if the pain is substantial, but not prolonged, it constitutes a "physical injury" under KRS 500.080(13), but if it is prolonged, then it is a "serious physical injury" under KRS 500.080(15). Thus, a trial judge did not err when it instructed the jury on both the Class C felony of assault 2nd (wanton), KRS 508.020(1)(c), and the Class A misdemeanor of assault in the fourth degree (wanton), KRS 508.030(1)(a), where the evidence established that the victim's injuries resulted not only in headaches and neck pain, but also muscle spasms and numbness of her right arm and where the jury could have found that the duration of those effects constituted a "prolonged impairment of health." Parson v. Commonwealth, 144 S.W.3d 775, 2004 Ky. LEXIS 158 (Ky. 2004).

One of the elements necessary to prove an assault in the first degree is that the behavior caused serious physical injury, and the indictment in this case for this offense erroneously cited a broken leg for this element, but it was changed to soft tissue damage, and the court was not persuaded that there had been harmful error as a result of the amendment, as the leg was only mentioned in the indictment form and was a clerical error, and there was enough evidence for the jury to have found that the victim suffered a serious physical injury, but the jury found that an assault in the fourth degree had occurred; an element of assault in the fourth degree is that physical injury occurred, not the serious physical injury required for a conviction of assault in the first degree, for purposes of KRS 508.030, and the jury was not presented with evidence about a broken leg, such that the court could not find appellant suffered any prejudice from the indictment. Moran v. Commonwealth, 399 S.W.3d 35, 2013 Ky. App. LEXIS 71 (Ky. Ct. App. 2013).

5. Witnesses.

Where defendant was accused of assault and rape, denial of his right to cross-examine the prosecutrix about her psychiatric history constitutes reversible error since proffered testimony tended to impeach her credibility. Wagner v. Commonwealth, 581 S.W.2d 352, 1979 Ky. LEXIS 262 (Ky. 1979), overruled, Estep v. Commonwealth, 663 S.W.2d 213, 1983 Ky. LEXIS 316 (Ky. 1983), overruled in part, Estep v. Commonwealth, 663 S.W.2d 213, 1983 Ky. LEXIS 316 (Ky. 1983), overruled on other grounds, sub nom. Estep v. Commonwealth, 663 S.W.2d 213, 1983 Ky. LEXIS 316 (Ky. 1983).

8. Instructions.

Defendant was not entitled to an instruction on third degree assault where the evidence as to the seriousness of the injury was that buckshot from the shotgun blast had gone through the victim's elbow and forearm, requiring 29 days of hospitalization and five operations and the replacement of three (3) inches of his bone by a steel plate, and where as a result of the shot, he also sustained muscle and nerve damage and could not move his fingers. Trent v. Commonwealth, 606 S.W.2d 386, 1980 Ky. App. LEXIS 369 (Ky. Ct. App. 1980).

Since there was no evidence adduced that the injury caused by the defendant could be classified as anything less than serious, or that his mental state at the time of the assault was anything other than intentional or wanton, there was no basis

for the court to give an instruction on assault in the fourth degree. Jones v. Commonwealth, 737 S.W.2d 466, 1987 Ky. App. LEXIS 574 (Ky. Ct. App. 1987).

Trial court did not err by refusing to give instruction on fourth-degree assault in a prosecution for second-degree assault where the defendant pointed a gun at the victim and shot her three times; the defendant's behavior was more compatible with the definition of "intentional" than with "reckless." Adkins v. Commonwealth, 787 S.W.2d 272, 1990 Ky. App. LEXIS 46 (Ky. Ct. App. 1990).

The trial court properly gave an instruction under KRS 508.040 without defendant's consent which mitigated a conviction for assault under KRS 508.010, 508.020, and this section; there was enough proof in the record to justify the giving of the instruction in question and it was not sufficiently prejudicial to compel a reversal of the trial court. Commonwealth v. Elmore, 831 S.W.2d 183, 1992 Ky. LEXIS 93 (Ky. 1992).

In instructing a jury on fourth degree assault under KRS 508.030 and first degree burglary under KRS 511.020, the trial court erroneously inserted the term "crowbar" for the terms "dangerous instrument" and/or "deadly weapon," thereby committing reversible error. A crowbar, as a matter of law, was not a deadly weapon, it was a tool, and whether the crowbar constituted a dangerous instrument was, in view of the disputed testimony, a fact question for the jury to decide. McCombs v. Commonwealth, 2006 Ky. App. LEXIS 180 (Ky. Ct. App. June 23, 2006, sub. op., 2006 Ky. App. LEXIS 397 (Ky. Ct. App. June 23, 2006), sub. op., 2006 Ky. App. Unpub. LEXIS 330 (Ky. Ct. App. June 23, 2006), modified, 2007 Ky. App. LEXIS 3 (Ky. Ct. App. Jan. 12, 2007).

Insertion of the term "crowbar" in the jury instructions where the terms "deadly weapon" and "dangerous instrument" were used by the burglary and assault statutes (KRS 511.020 and 508.030) was harmless error as a deadly weapon included a billy, nightstick, or club under KRS 500.080(4)(d), and a crowbar was very similar to a nightstick or billyclub when wielded as a weapon; there was substantial evidence that defendant used the crowbar as a metal club in defendant's attack on the victim. Commonwealth v. McCombs, 304 S.W.3d 676, 2009 Ky. LEXIS 61 (Ky. 2009), modified, 2010 Ky. LEXIS 139 (Ky. Mar. 18, 2010).

Any lack of clarity in a jury instruction as to the mental state required for fourth-degree assault was not palpable error because defendant's substantial rights were not affected, as the jury did not consider the instruction once the jury found defendant guilty of second-degree assault. Burke v. Commonwealth, 506 S.W.3d 307, 2016 Ky. LEXIS 631 (Ky. 2016).

9. Lesser Included Offenses.

Wanton endangerment is not a lesser-included offense of misdemeanor assault as assault in the fourth degree requires a finding of physical injury, whereas wanton endangerment does not, and wanton endangerment requires conduct which creates a substantial danger of death or serious physical injury to another, whereas fourth-degree assault does not. Matthews v. Commonwealth, 44 S.W.3d 361, 2001 Ky. LEXIS 24 (Ky. 2001).

Because the complicity charge required proof that the co-defendant caused the victim's physical injury, and the fourth degree assault instruction required an inconsistent finding that defendant caused the physical injury, defendant's fourth degree assault could not be a lesser-included charge of complicity to assault in the second degree. Thus, a lesser-included offense jury instruction was properly denied. Fields v. Commonwealth, 219 S.W.3d 742, 2007 Ky. LEXIS 92 (Ky. 2007).

Where the defendant first started beating the victim and eventually the co-defendant started beating the victim with a lug wrench while defendant threatened to kill the victim and encouraged the co-defendant to get the victim's wallet, the later assault is the action for which defendant was charged with complicity; a jury could not reasonably have found that defendant was not guilty of complicity to the second degree assault, but guilty of only the preceding fourth degree assault, and, thus, the jury instruction on lesser-included offenses was properly denied. Fields v. Commonwealth, 219 S.W.3d 742, 2007 Ky. LEXIS 92 (Ky. 2007).

Defendant's assertion that the jury could have believed he was not legally impaired when he hit three victims, and thus his conduct was merely reckless, was refuted by the evidence. Defendant's conduct was beyond reckless, and thus an instruction on the lesser-included offense of fourth-degree assault was unwarranted. Iraola-Lovaco v. Commonwealth, 586 S.W.3d 241, 2019 Ky. LEXIS 428 (Ky. 2019).

Trial court did not err by failing to instruct the jury on the lesser included offense of fourth-degree assault for defendant's attacks on the two children because conspicuously absent from defendant's tendered instruction was a required finding that defendant caused physical injury to them with a dangerous instrument as the first child testified that defendant cut her nose with a butter knife, and the second child told the first child that defendant had stabbed her; and no evidentiary basis existed upon which the jury could have had reasonable doubt that defendant did not use a dangerous instrument to inflict the girls' physical injuries. Exantus v. Commonwealth, 612 S.W.3d 871, 2020 Ky. LEXIS 458 (Ky. 2020).

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Alcorn v. Commonwealth, 557 S.W.2d 624, 1977 Ky. LEXIS 534 (Ky. 1977).

NOTES TO UNPUBLISHED DECISIONS

Analysis

1. Lesser Included Offenses.
3. Evidence.

1. Lesser Included Offenses.

Unpublished decision: First-degree robbery conviction was affirmed because the trial court did not err in refusing to instruct the jury on theft by unlawful taking over $ 300.00 and fourth-degree assault as lesser-included offenses of robbery, as the jury could not have reasonably doubted defendant's guilt of robbery, and yet believed beyond a reasonable doubt that the defendant was guilty of the two lesser crimes. Mack v. Commonwealth, 136 S.W.3d 434, 2004 Ky. LEXIS 150 (Ky. 2004).

3. Evidence.

Unpublished decision: In a 42 U.S.C.S. § 1983 case in which a plaintiff appealed district court's grant of summary judgment in favor of a police officer, the officer was entitled to qualified immunity because he had probable cause to arrest plaintiff for fourth-degree assault; plaintiff, his son, and a pool employee all confirmed that plaintiff slapped his son, and the officer knew that the slap hurt plaintiff's son. Harvey v. Carr, 616 Fed. Appx. 826, 2015 FED App. 0472N, 2015 U.S. App. LEXIS 11019 (6th Cir. Ky. 2015).

Unpublished decision: In a 42 U.S.C.S. § 1983 case in which a plaintiff appealed district court's grant of summary judgment in favor of a police officer based on qualified immunity, the record presented no material dispute of fact whether the officer knew conclusively that the parental-discipline statute protected plaintiff's use of force; the undisputed facts tracked the elements of fourth-degree assault, and nothing required the officer to inquire further to discover plaintiff's affirmative defense. Harvey v. Carr, 616 Fed. Appx. 826, 2015 FED App. 0472N, 2015 U.S. App. LEXIS 11019 (6th Cir. Ky. 2015).

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Kentucky Instructions to Juries (Criminal), 5th Ed., Offenses Against Public and Judicial Administration, Escape and Offenses Related to Custody, § 7.35.

508.032. Assault of family member or member of an unmarried couple — Enhancement of penalty.

(1) If a person commits a third or subsequent offense of assault in the fourth degree under KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.

(2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

History.
Enact. Acts 1996, ch. 345, § 2, effective July 15, 1996; 2000, ch. 401, § 39, effective July 14, 2000.

NOTES TO DECISIONS

Analysis

1. Sufficiency of the Evidence.
2. Conduct of Trial.

1. Sufficiency of the Evidence.
Because the Commonwealth failed to prove that there was a prior conviction for the assault of a family member or member of an unmarried couple, as required by KRS 508.032, the trial court erred in denying defendant's motion for a directed verdict. Lisle v. Commonwealth, 290 S.W.3d 675, 2009 Ky. App. LEXIS 113 (Ky. Ct. App. 2009).

Since there was no proof of the identity of the victims and the nature of the relationship between defendant and the victims, the trial court erred in failing to grant defendant's motion for a directed verdict on the fourth-degree assault, third offense, charge. Galloway v. Commonwealth, 424 S.W.3d 921, 2014 Ky. LEXIS 97 (Ky. 2014).

2. Conduct of Trial.
Ky. Rev. Stat. Ann. § 508.032, as well as misdemeanor-sentencing and non-delegation case law, required trifurcation for a conviction under § 508.032. Brewer v. Commonwealth, 478 S.W.3d 363, 2015 Ky. LEXIS 1856 (Ky. 2015).

Under Ky. Rev. Stat. Ann. § 508.032, the first phase of the trifurcated process was the guilt phase where no prior-conviction evidence was admissible, and if the jury found guilt, it fixed punishment. Brewer v. Commonwealth, 478 S.W.3d 363, 2015 Ky. LEXIS 1856 (Ky. 2015).

Under Ky. Rev. Stat. Ann. § 508.032, the second phase was the § 508.032 guilt phase where prior-conviction evidence was admissible, but only prior convictions of fourth-degree assault involving a family member or member of an unmarried couple and if the jury found defendant not guilty in the second phase, judgment was entered imposing the misdemeanor sentence fixed by the jury on the first phase. Brewer v. Commonwealth, 478 S.W.3d 363, 2015 Ky. LEXIS 1856 (Ky. 2015).

Under Ky. Rev. Stat. Ann. § 508.032, the third phase, enhanced sentencing for fourth-degree assault, third or subsequent offense within five years, was conducted in accordance with Ky. Rev. Stat. Ann. § 532.055. Brewer v. Commonwealth, 478 S.W.3d 363, 2015 Ky. LEXIS 1856 (Ky. 2015).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Bench & Bar.
Gagne with Grandon, Across the Great Divide: A Sociological Analysis of Domestic Violence from Two Perspectives, Vol. 67, No. 5, Sept. 2003, Ky. Bench & Bar 7.

Treatises
Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, § 3.50.

508.040. Assault under extreme emotional disturbance.

(1) In any prosecution under KRS 508.010, 508.020 or 508.030 in which intentionally causing physical injury or serious physical injury is an element of the offense, the defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020.

(2) An assault committed under the influence of extreme emotional disturbance is:

(a) A Class D felony when it would constitute an assault in the first degree or an assault in the second degree if not committed under the influence of an extreme emotional disturbance; or

(b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of an extreme emotional disturbance.

History.
Enact. Acts 1974, ch. 406, § 68, effective January 1, 1975; 1984, ch. 111, § 198, effective July 13, 1984.

NOTES TO DECISIONS

Analysis

1. In General.
2. Construction.
3. Purpose.
4. Elements.
5. —Extreme Emotional Disturbance.
6. Evidence.
7. Indictment.
8. Instructions.
9. —Extreme Emotional Disturbance.
10. —Intent.
11. —Lesser Offenses.
12. —Proper.
13. —Improper.
14. —Properly Denied.
15. Lesser Included Offenses.

1. In General.

Since word "strike" did not appear in law that provided penalty for shooting, wounding, or cutting in sudden affray or heat and passion without previous malice and not in self-defense, such law did not cover lower degree of offense of striking with deadly weapon with intent to kill, under law that provided penalty for malicious and willful shooting, cutting or poisoning. (Decided under prior law) McIntosh v. Commonwealth, 275 Ky. 126, 120 S.W.2d 1031, 1938 Ky. LEXIS 383 (Ky. 1938).

Malice is the distinguishing element between the offense defined by law that provided penalty for malicious and willful shooting, cutting or poisoning and the misdemeanor defined by law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Combs v. Commonwealth, 298 Ky. 481, 183 S.W.2d 486, 1944 Ky. LEXIS 932 (Ky. 1944); Kelley v. Commonwealth, 300 Ky. 136, 187 S.W.2d 796, 1945 Ky. LEXIS 804 (Ky. 1945).

Law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense did not include the offense of "striking" with a deadly weapon with an intent to kill. (Decided under prior law) Reed v. Commonwealth, 248 S.W.2d 911, 1952 Ky. LEXIS 768 (Ky. 1952).

At common law, intentional wounding, by shooting or otherwise, was assault and battery. (Decided under prior law) Bentley v. Commonwealth, 354 S.W.2d 495, 1962 Ky. LEXIS 40 (Ky. 1962).

Where defendants all participated in a brawl and acted in concert, the failure to identify the one who did the actual stabbing was immaterial as to their joint guilt for assault. Houston v. Commonwealth, 554 S.W.2d 89, 1977 Ky. App. LEXIS 754 (Ky. Ct. App. 1977).

2. Construction.

Distinction between offense under law that provided penalty for shooting, wounding or cutting in sudden affray or heat of passion without previous malice and not in self-defense and one under law that provided penalty for malicious and willful shooting, cutting or poisoning is in principle the difference between murder and voluntary manslaughter. (Decided under prior law) Perkins v. Commonwealth, 218 Ky. 802, 292 S.W. 498, 1927 Ky. LEXIS 261 (Ky. 1927).

Offense denounced by law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense was degree of crime defined in law that provided penalty for malicious and willful shooting, cutting or poisoning. (Decided under prior law) Hensley v. Commonwealth, 264 Ky. 718, 95 S.W.2d 564, 1936 Ky. LEXIS 387 (Ky. 1936); Mullins v. Commonwealth, 276 Ky. 555, 124 S.W.2d 788, 1939 Ky. LEXIS 556 (Ky. 1939); Rice v. Commonwealth, 288 Ky. 152, 155 S.W.2d 757, 1941 Ky. LEXIS 68 (Ky. 1941).

To be an offense under law that provided penalty for malicious and willful shooting, cutting or poisoning the act must have been with malice so that if death had ensued it would have been murder, while under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, the same act without malice and not in self-defense is a misdemeanor and would have been manslaughter if death had ensued. (Decided under prior law) Pack v. Commonwealth, 282 Ky. 835, 140 S.W.2d 626, 1940 Ky. LEXIS 267 (Ky. 1940).

In prosecution under law that provided penalty for malicious and willful cutting, striking or stabbing another with a knife or other deadly weapon where evidence authorized it, an instruction on the common-law misdemeanor of assault and battery should have been given, as striking with a deadly weapon without malice or intent to kill was not embraced in law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Helton v. Commonwealth, 244 S.W.2d 762, 1951 Ky. LEXIS 1248 (Ky. 1951).

The offense denounced by law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense was not a degree of the one denounced by law that provided penalty for malicious and willful cutting, striking or stabbing another with a knife or other deadly weapon. (Decided under prior law) Reed v. Commonwealth, 248 S.W.2d 911, 1952 Ky. LEXIS 768 (Ky. 1952).

3. Purpose.

KRS 508.025 is not unconstitutional because it removes any degree of culpable mental state, and when coupled with this section, it fails to allow the defendant any mitigation for the offense due to an extreme emotional disturbance. In enacting these sections, the General Assembly was seeking to protect those individuals who serve this Commonwealth in law enforcement capacities. Wyatt v. Commonwealth, 738 S.W.2d 832, 1987 Ky. App. LEXIS 548 (Ky. Ct. App. 1987).

4. Elements.

In prosecution under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense for shooting an officer, where shooting is done in sudden heat and passion or sudden affray and without previous malice, the court should define the word "affray," which is the mutual combat of two or more persons in a public place of the terror of the people. (Decided under prior law) Wallace v. Commonwealth, 207 Ky. 122, 268 S.W. 809, 1925 Ky. LEXIS 30 (Ky. 1925).

Drunkenness of defendant was a factor to be considered by jury in determining whether defendant acted with malice, so as to be guilty of felony under law that provided penalty for malicious and willful shooting, cutting or poisoning rather than misdemeanor under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Abbott v. Commonwealth, 305 Ky. 620, 205 S.W.2d 348, 1947 Ky. LEXIS 901 (Ky. 1947).

Assault under extreme emotional disturbance in Kentucky remained crime of violence under United States Sentencing Guidelines' elements clause because it required proving that someone used physical force against another. United States v. Maynard, 894 F.3d 773, 2018 FED App. 0130P, 2018 U.S. App. LEXIS 18104 (6th Cir. Ky. 2018).

5. —Extreme Emotional Disturbance.

Because defendant was prosecuted for attempted murder, and not for assault, KRS 508.040 was inapplicable. Keeling v.

Commonwealth, 381 S.W.3d 248, 2012 Ky. LEXIS 160 (Ky. 2012).

Whereas self-protection requires justification for the injurious act itself, the element of extreme emotional disturbance requires reasonable justification only for the emotional disturbance, this distinction being the ground for the fact that one calls for an acquittal and the other merely reduces the degree of the offense. Engler v. Commonwealth, 627 S.W.2d 582, 1982 Ky. LEXIS 229 (Ky. 1982).

Although defendant was not entitled to use deadly force against two (2) unarmed men, a jury could believe that defendant acted in retaliation for the beating the victims inflicted; consequently, the trial court erred in refusing to instruct the jury on the lesser-included offense of assault under extreme emotional disturbance under KRS 508.040 and 507.020(1)(a), and RCr 9.54(1). Thomas v. Commonwealth, 170 S.W.3d 343, 2005 Ky. LEXIS 310 (Ky. 2005).

6. Evidence.

When, under an indictment for murder, the proof shows death was not due to the wound inflicted, a conviction may be had under law that provided penalty for malicious and willful shooting, cutting or poisoning for malicious cutting and wounding, or under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Housman v. Commonwealth, 128 Ky. 818, 110 S.W. 236, 33 Ky. L. Rptr. 311, 1908 Ky. LEXIS 100 (Ky. 1908).

Where there was evidence that defendant provoked the conflict during which he stabbed the person with whom he was fighting, this was sufficient to sustain a conviction. (Decided under prior law) Watkins v. Commonwealth, 378 S.W.2d 614, 1964 Ky. LEXIS 190 (Ky. 1964).

In the absence of other evidence, the mere fact that a woman is driving down a public road in broad daylight with a man other than her husband could hardly constitute justification or excuse for a knife attack upon the man. Thomas v. Commonwealth, 587 S.W.2d 264, 1979 Ky. App. LEXIS 465 (Ky. Ct. App. 1979).

Trial court properly refused to instruct the jury on assault under extreme emotional disturbance because no reasonable person would consider the ordinary stresses of childrearing a reasonable explanation for a temporary state of mind so enraged, inflamed, or disturbed as to overcome one's judgment, and to cause one to act uncontrollably from the impelling force of the extreme emotional disturbance rather than from evil or malicious purposes. Schrimsher v. Commonwealth, 190 S.W.3d 318, 2006 Ky. LEXIS 104 (Ky. 2006).

7. Indictment.

Where on trial of one indicted under law that provided penalty for malicious and willful shooting, cutting or poisoning there was evidence that there was no malice, but shooting in sudden heat and passion, it was error not to charge under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense where the crime was a misdemeanor and not a felony. (Decided under prior law) Sapp v. Commonwealth, 28 S.W. 158, 16 Ky. L. Rptr. 336 (1894).

Indictment charging offense of malicious and willful cutting, and of cutting in sudden affray, which is degree of former offense, is not duplicitous. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

Under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, the shooting at another must not be in self-defense and instruction should follow the law; moreover instruction that did not refer to shooting in sudden affray as well as in sudden heat and passion was prejudicial. (Decided under prior law) Violett v. Commonwealth, 72 S.W. 1, 24 Ky. L. Rptr. 1720, 1903 Ky. LEXIS 479 (Ky. Ct. App. 1903); Greer v. Commonwealth, 85 S.W. 166, 27 Ky. L. Rptr. 333 (1905).

Where conviction was not under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense but for malicious striking and wounding, an instruction under such law, though error, was not prejudicial. (Decided under prior law) Cruise v. Commonwealth, 226 Ky. 831, 11 S.W.2d 925, 1928 Ky. LEXIS 168 (Ky. 1928).

8. Instructions.

The omission of word "previous" in an instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense before "malice" is not prejudicial and it is better to omit the words "without malice." (Decided under prior law) Howard v. Commonwealth, 71 S.W. 446, 24 Ky. L. Rptr. 1301 (1903).

Where defendant shot at boys to keep them from stealing his beans, and with no intent to kill, he is not entitled to an instruction on shooting in sudden affray, but is entitled to instruction on shooting in sudden heat and passion, without previous malice, "sudden affray" being a difficulty or fight suddenly resulting from mutual agreement of parties. (Decided under prior law) Gibbons v. Commonwealth, 253 Ky. 72, 68 S.W.2d 753, 1934 Ky. LEXIS 597 (Ky. 1934).

Defendant was entitled to instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense where he was indicted and tried under law that provided penalty for malicious and willful shooting, cutting or poisoning. (Decided under prior law) Hensley v. Commonwealth, 264 Ky. 718, 95 S.W.2d 564, 1936 Ky. LEXIS 387 (Ky. 1936).

Evidence of cutting in scuffle between boys at dance justified submission of case either as malicious and willful cutting or as cutting in sudden affray. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

The term "sudden affray" should be defined in instruction to jury, but failure to do so is not prejudicial error. (Decided under prior law) Edwards v. Commonwealth, 289 Ky. 318, 158 S.W.2d 377, 1941 Ky. LEXIS 29 (Ky. 1941).

Direction by Court of Appeals that upon retrial court should define term "sudden affray" was inappropriate, inopportune, and not in accord with decisions that failure of court to define that term in instruction was not prejudicial error. (Decided under prior law) Pack v. Commonwealth, 287 Ky. 192, 152 S.W.2d 600, 1941 Ky. LEXIS 520 (Ky. 1941).

Where defendant stated he was not at the scene of shooting and that he did not fire the shots, there was no basis for instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Tipton v. Commonwealth, 250 S.W.2d 1015, 1952 Ky. LEXIS 896 (Ky. 1952).

When instructions embrace all three degrees of shooting and wounding, and defense of accidental shooting as well, accidental shooting instruction must contain proviso that act was neither willful nor result of wanton, reckless, or grossly careless handling of weapon. (Decided under prior law) Bentley v. Commonwealth, 354 S.W.2d 495, 1962 Ky. LEXIS 40 (Ky. 1962).

Two separate factors are necessary for entitlement to an instruction under this section; first, there must be evidence of extreme emotional disturbance, and, second, there must be a reasonable justification or excuse under the circumstances as the accused believes them to be. Creamer v. Commonwealth, 629 S.W.2d 324, 1981 Ky. App. LEXIS 319 (Ky. Ct. App. 1981).

9. —Extreme Emotional Disturbance.

It is of no consequence which witnesses place into evidence the circumstances justifying an instruction on extreme emotional disturbance; thus even though the defendant denies such mitigation or defense as drunkenness, insanity, extreme emotional disturbance, etc., if the evidence as a whole, from any source, warrants an instruction embodying such a defense or mitigation, that instruction must be given. Thomas v. Commonwealth, 587 S.W.2d 264, 1979 Ky. App. LEXIS 465 (Ky. Ct. App. 1979).

Although an instruction of the defense of insanity should not have included a statement that the law presumes every man sane until the contrary is shown by the evidence, it was not error to convict a defendant of assault under extreme emotional disturbance where the instruction was tendered to the trial court by the defendant herself. Commonwealth v. Southwood, 623 S.W.2d 897, 1981 Ky. LEXIS 291 (Ky. 1981).

Where in an assault prosecution there was expert testimony that on the date of the offense the defendant was, in fact, seriously emotionally disturbed or out of contact with reality, the defendant was entitled to an instruction on assault under extreme emotional disturbance and the jury should have been permitted to examine the reasonableness of the defendant's excuse or justification through the eyes of the accused. Creamer v. Commonwealth, 629 S.W.2d 324, 1981 Ky. App. LEXIS 319 (Ky. Ct. App. 1981).

In a prosecution for assault, the trial court erred when it refused to give an instruction on the mitigating defense of extreme emotional disturbance, where in view of the evidence presented it would not have been unreasonable for a juror to believe beyond a reasonable doubt that the defendant was not acting in self-defense or in defense of his brother, yet still believe that he was acting in a state of extreme emotional disturbance for which there was a reasonable justification or excuse under the circumstances as he believed them to be. Engler v. Commonwealth, 627 S.W.2d 582, 1982 Ky. LEXIS 229 (Ky. 1982).

In a trial for defendant's assault on his wife, defendant was not entitled to an instruction on assault under extreme emotional disturbance because there was no evidence that he first learned of his wife's affair immediately preceding the altercation, or even on the same day; the wife's testimony was only that they were fighting about her affair, not that she first told him about the affair that night. Driver v. Commonwealth, 361 S.W.3d 877, 2012 Ky. LEXIS 22 (Ky. 2012).

Kentucky felony assault under extreme emotional disturbance, a violation of Ky. Rev. Stat. Ann. § 508.040, was a crime of violence as it required the specific intent to cause physical injury. United States v. Knox, 593 Fed. Appx. 536, 2015 FED App. 0128N, 2015 U.S. App. LEXIS 2343 (6th Cir. Ky. 2015).

10. —Intent.

Although law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense did not condemn "willfully" shooting another in sudden affray, instruction under such law using word "willfully" was not prejudicial, since such word meant intentionally as opposed to accidentally or involuntarily, and such instruction was favorable to defendant. (Decided under prior law) Muncy v. Commonwealth, 265 Ky. 730, 97 S.W.2d 606, 1936 Ky. LEXIS 566 (Ky. 1936).

Where evidence indicated there was no intention to shoot wounded person, but shooting was result of wanton, reckless or careless handling of pistol or shooting it at random, instructions should have been given embracing offense of recklessly or carelessly shooting without intention to wound. (Decided under prior law) Sumpter v. Commonwealth, 251 S.W.2d 852, 1952 Ky. LEXIS 936 (Ky. 1952).

11. —Lesser Offenses.

Where defendant shot at, without hitting, a person with whom he was having a quarrel, the jury should be instructed under law that provided penalty for shooting, wounding and cutting in sudden affray or heat and passion without previous malice and not in self-defense as well as for malicious shooting. (Decided under prior law) Wilhelm v. Commonwealth, 28 S.W. 783, 16 Ky. L. Rptr. 428 (1894).

The offense defined in law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense is a degree of the offense of malicious shooting and wounding with intent to kill described in law that provided penalty for malicious and willful shooting, cutting or poisoning and instruction thereunder is authorized. (Decided under prior law) Barnes v. Commonwealth, 107 S.W. 806, 32 Ky. L. Rptr. 1152 (1908); Williams v. Commonwealth, 102 Ky. 381, 43 S.W. 455, 19 Ky. L. Rptr. 1427, 1897 Ky. LEXIS 115 (Ky. 1897); Gillum v. Commonwealth, 121 S.W. 445 (Ky. 1909); Austin v. Commonwealth, 201 Ky. 615, 258 S.W. 86, 1924 Ky. LEXIS 609 (Ky. 1924).

Where in a prosecution for maliciously shooting a policeman, the defense was that upon demand he turned to surrender the pistol to the officer, who knocked it up and it was discharged, defendant was entitled to an instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense and also for accidental shooting, and also on lesser offense if a reasonable doubt as to degree of offense. (Decided under prior law) Mann v. Commonwealth, 110 S.W. 243, 33 Ky. L. Rptr. 269 (1908).

Where evidence justified an instruction both under law that provided penalty for malicious and willful shooting, cutting or poisoning and law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, it was reversible error for court to fail to instruct that if jury had a reasonable doubt as to the degree of the offense, he should have only been convicted of lower degree. (Decided under prior law) Breeden v. Commonwealth, 151 Ky. 217, 151 S.W. 407, 1912 Ky. LEXIS 786 (Ky. 1912).

Where there was evidence warranting the conclusion that defendant wounded another in a reckless shooting, and not in sudden affray, an instruction submitting the common-law offense should have been given. (Decided under prior law) Balle v. Commonwealth, 153 Ky. 558, 156 S.W. 147, 1913 Ky. LEXIS 896 (Ky. 1913).

The offense of shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense and one under law that provided penalty for malicious and willful shooting, cutting or poisoning were included in charge of murder, and should have been instructed upon when evidence authorized it. (Decided under prior law) Lyons v. Commonwealth, 216 Ky. 202, 287 S.W. 534, 1926 Ky. LEXIS 856 (Ky. 1926); Harris v. Commonwealth, 218 Ky. 798, 292 S.W. 467, 1927 Ky. LEXIS 257 (Ky. 1927); Gill v. Commonwealth, 235 Ky. 351, 31 S.W.2d 608, 1930 Ky. LEXIS 370 (Ky. 1930).

Court erred in not giving instructions under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense and law that provided penalty for malicious and willful shooting, cutting or poisoning where, in murder case, there was evidence that deceased was shot prior to infliction of wounds on him by defendant. (Decided under prior law) Noble v. Commonwealth, 217 Ky. 556, 290 S.W. 330, 1927 Ky. LEXIS 19 (Ky. 1927).

Failure to instruct under law that provided penalty for malicious and willful shooting, cutting or poisoning and law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense was not prejudicial where the conviction was for manslaughter. (Decided under prior law) Martin

v. Commonwealth, 223 Ky. 762, 4 S.W.2d 419, 1928 Ky. LEXIS 404 (Ky. 1928).

Defendant in murder prosecution is not entitled to an instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense where deceased died from wounds inflicted by defendant. (Decided under prior law) Luttrell v. Commonwealth, 250 Ky. 334, 63 S.W.2d 292, 1933 Ky. LEXIS 698 (Ky. 1933); Pelfry v. Commonwealth, 255 Ky. 442, 74 S.W.2d 913, 1934 Ky. LEXIS 256 (Ky. 1934); Morris v. Commonwealth, 268 Ky. 768, 105 S.W.2d 1036, 1937 Ky. LEXIS 528 (Ky. 1937).

Shooting and wounding with malice was the felony governed by law that provided penalty for malicious and willful shooting, cutting or poisoning, and malice was one of the essential elements of the offense but where there was no malice, the offense was a misdemeanor, and was governed by law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Childers v. Commonwealth, 279 Ky. 737, 132 S.W.2d 81, 1939 Ky. LEXIS 353 (Ky. 1939).

In prosecution for willful and malicious shooting, an instruction on shooting and wounding in sudden affray or in sudden heat and passion should be given, where the evidence justifies it. (Decided under prior law) Eve v. Commonwealth, 278 Ky. 123, 128 S.W.2d 616, 1939 Ky. LEXIS 414 (Ky. 1939).

In prosecution under law that provided penalty for malicious and willful shooting, cutting or poisoning for willful and malicious shooting, an instruction on assault and battery under law that provided penalty for drawing, flourishing or recklessly using a deadly weapon was not authorized, since shooting and wounding in sudden affray or in sudden heat and passion was the only lower degree of the offense charged. (Decided under prior law) Eve v. Commonwealth, 278 Ky. 123, 128 S.W.2d 616, 1939 Ky. LEXIS 414 (Ky. 1939).

Where defendant, in prosecution for willful and malicious shooting, relied upon an alibi, a lower degree instruction was not authorized. (Decided under prior law) Eve v. Commonwealth, 278 Ky. 123, 128 S.W.2d 616, 1939 Ky. LEXIS 414 (Ky. 1939).

Where court instructed jury under law that provided penalty for malicious and willful shooting, cutting or poisoning and also on shooting and wounding in sudden affray or sudden heat and passion, a misdemeanor defined by law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, defendant's rights were not prejudiced by failure to instruct on shooting at without wounding in sudden affray or sudden heat and passion, the other misdemeanor defined by that law since there was no evidence from which it could reasonably be inferred that any person other than defendant shot and wounded the prosecuting witness. (Decided under prior law) Mullins v. Commonwealth, 285 Ky. 804, 149 S.W.2d 725, 1941 Ky. LEXIS 478 (Ky. 1941).

Although, in prosecution for malicious shooting evidence clearly showed a deliberate and unprovoked attack by the accused, and there was no evidence to indicate that the shooting occurred in sudden heat or affray, accused was not prejudiced by giving of sudden affray instruction, under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Kelley v. Commonwealth, 300 Ky. 136, 187 S.W.2d 796, 1945 Ky. LEXIS 804 (Ky. 1945).

In a prosecution for malicious shooting and wounding, the court did not err in giving instructions on shooting and wounding and shooting in sudden affray. (Decided under prior law) Cravens v. Commonwealth, 262 S.W.2d 466, 1953 Ky. LEXIS 1100 (Ky. 1953).

Defendants prosecuted for willfully and maliciously shooting another with intent to kill were entitled, under the evidence of intoxication, to an instruction on the lesser offense of shooting and wounding in sudden affray or heat and passion without previous malice. (Decided under prior law) Cummins v. Commonwealth, 344 S.W.2d 611, 1961 Ky. LEXIS 238 (Ky. 1961).

Where the record of the trial for malicious shooting did not contain any objection to the failure of the court to instruct upon the lesser offenses of shooting in sudden affray or recklessly using a deadly weapon and the point was not raised in the motion for a new trial, the issue was not preserved for review. (Decided under prior law) Stevens v. Commonwealth, 462 S.W.2d 182, 1970 Ky. LEXIS 649 (Ky. 1970).

In a prosecution under law that provided penalty for malicious and willful shooting, cutting or poisoning, where there was testimony that the defendant had no malice toward the officers and that he was attempting to protect himself from them as they accosted him in his residence, he was entitled to an instruction on the lesser crime under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Clemons v. Commonwealth, 462 S.W.2d 919, 1971 Ky. LEXIS 562 (Ky. 1971).

12. —Proper.

An instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense including words "willfully and feloniously" was not erroneous, in that it was more favorable to defendant than he was entitled to. (Decided under prior law) Hall v. Commonwealth, 229 Ky. 646, 17 S.W.2d 751, 1929 Ky. LEXIS 821 (Ky. 1929).

The omission of word "previous" before "malice" in instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense was not error. (Decided under prior law) Allison v. Commonwealth, 273 Ky. 538, 117 S.W.2d 184, 1938 Ky. LEXIS 666 (Ky. 1938).

Although better practice would have required instruction to define "sudden affray," failure to define it was not prejudicial error in view of simple state of facts, involving cutting in scuffle between boys at dance. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

Since law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense did not contain condition that "sudden heat and passion" must be upon provocation reasonably calculated to excite passions of defendant beyond his control, instruction merely following language of statute without such condition was proper. (Decided under prior law) Ewers v. Commonwealth, 284 Ky. 780, 146 S.W.2d 1, 1940 Ky. LEXIS 578 (Ky. 1940).

Court did not err in giving instructions and in failing to properly define technical terms used therein, "maliciously," "sudden affray," "self-defense," and "reasonable doubt," where it denied term "sudden affray," as used in one of its instructions as "a fight or difficulty in excessive rage or anger arising from a temporary provocation," and where court also gave instructions on "self-defense" and upon "reasonable doubt." (Decided under prior law) Pack v. Commonwealth, 287 Ky. 192, 152 S.W.2d 600, 1941 Ky. LEXIS 520 (Ky. 1941).

The trial court properly gave an instruction under this section without defendant's consent which mitigated a conviction for assault under KRS 508.010, 508.020, and 508.030; there was enough proof in the record to justify the giving of the instruction in question and it was not sufficiently prejudicial to compel a reversal of the trial court. Commonwealth v. Elmore, 831 S.W.2d 183, 1992 Ky. LEXIS 93 (Ky. 1992).

13. —Improper.

An instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, which required the shooting in sudden heat and passion to be "upon a provocation reasonably calculated to excite the passion of defendant beyond his power of control," was erroneous and prejudicial; it was properly applicable to a case of voluntary manslaughter, but improper under the offense covered by the first mentioned law. (Decided under prior law) Tall v. Commonwealth, 110 S.W. 425, 33 Ky. L. Rptr. 541 (1908); Hardin v. Commonwealth, 114 Ky. 722, 71 S.W. 862, 24 Ky. L. Rptr. 1540, 1903 Ky. LEXIS 26 (Ky. 1903).

In absence of evidence of a substantial nature to support a felony indictment under law that provided penalty for malicious and willful shooting, cutting or poisoning, giving a felony instruction was error, but inasmuch as conviction was for a misdemeanor under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, error did not authorize a reversal. (Decided under prior law) Edwards v. Commonwealth, 233 Ky. 356, 25 S.W.2d 746, 1930 Ky. LEXIS 557 (Ky. 1930).

Accused cannot complain that instruction defining offense added words "feloniously," and also "with felonious intent to kill," since such added words were advantageous rather than prejudicial to him, and "feloniously" was at most only superfluous. (Decided under prior law) Pack v. Commonwealth, 287 Ky. 192, 152 S.W.2d 600, 1941 Ky. LEXIS 520 (Ky. 1941).

14. —Properly Denied.

Although cutting with a knife is an assault and battery, defendant is not entitled to an instruction on assault and battery, as this offense is fully covered by law that provided penalty for malicious and willful shooting, cutting or poisoning and law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Lewis v. Commonwealth, 156 Ky. 336, 160 S.W. 1061, 1913 Ky. LEXIS 428 (Ky. 1913); Caldwell v. Commonwealth, 265 Ky. 402, 96 S.W.2d 1041, 1936 Ky. LEXIS 496 (Ky. 1936); Muncy v. Commonwealth, 265 Ky. 730, 97 S.W.2d 606, 1936 Ky. LEXIS 566 (Ky. 1936).

Under an indictment for malicious striking under law that provided penalty for malicious and willful shooting, cutting or poisoning where malice was in issue defendant was not entitled to an instruction under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense which does not embrace striking, but was entitled to an instruction for assault and battery. (Decided under prior law) Caperton v. Commonwealth, 189 Ky. 652, 225 S.W. 481, 1920 Ky. LEXIS 492 (Ky. 1920).

Where the offense of malicious shooting and wounding was committed by defendants in attempt to commit a felony by breaking in a store, and complaining witness interrupted defendants by shooting at them, which fire they returned, defendants were not entitled to an instruction for shooting in sudden heat and passion without malice. (Decided under prior law) Brewington v. Commonwealth, 200 Ky. 276, 254 S.W. 917, 1923 Ky. LEXIS 84 (Ky. 1923).

Person who shot at someone with deadly weapon was not entitled to instruction on breach of peace. (Decided under prior law) Noral v. Commonwealth, 202 Ky. 318, 259 S.W. 706, 1924 Ky. LEXIS 713 (Ky. 1924).

Where circumstances in case and actions of defendant in fight were such as to warrant jury's conclusion that defendant acted with malice, defendant's argument that he was guilty, if at all, only under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense was without merit. (Decided under prior law) Stevens v. Commonwealth, 286 Ky. 511, 151 S.W.2d 404, 1941 Ky. LEXIS 305 (Ky. 1941).

Defendant, in prosecution under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense, was not entitled to instruction on his right to evict wounded person from his premises, since defendant had fired gun, not to evict such person, but to defend himself from number of disorderly persons. (Decided under prior law) Small v. Commonwealth, 257 S.W.2d 906, 1953 Ky. LEXIS 814 (Ky. 1953).

15. Lesser Included Offenses.

A conviction before a justice of the peace for breach of the peace is a bar to a prosecution under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense when the indictment is based on same facts as in the breach of peace charge. (Decided under prior law) Commonwealth v. Gill, 90 S.W. 605, 28 Ky. L. Rptr. 879 (1906).

Shooting in sudden affray under law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and battery are degrees of the offense denounced by law that provided penalty for malicious and willful shooting, cutting or poisoning. (Decided under prior law) Pack v. Commonwealth, 282 Ky. 835, 140 S.W.2d 626, 1940 Ky. LEXIS 267 (Ky. 1940).

Offense of shooting in sudden affray or heat and passion and offense of drawing, flourishing, and recklessly using deadly weapon are lower degrees of crime of malicious and willful wounding under law that provided penalty for malicious and willful shooting, cutting or poisoning. (Decided under prior law) Hurst v. Commonwealth, 284 Ky. 599, 145 S.W.2d 520, 1940 Ky. LEXIS 543 (Ky. 1940).

In a prosecution under law that provided penalty for malicious and willful cutting, striking or stabbing another with a knife or other deadly weapon where the evidence clearly disclosed the violation of that law the court properly refused to reduce the charge to that contained in law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense. (Decided under prior law) Mayberry v. Commonwealth, 296 Ky. 471, 177 S.W.2d 594, 1944 Ky. LEXIS 568 (Ky. 1944).

The offense covered by law that provided penalty for shooting, wounding or cutting in sudden affray or heat and passion without previous malice and not in self-defense was not a degree of the one denounced by law that provided penalty for malicious and willful cutting, striking or stabbing another with a knife or other deadly weapon. (Decided under prior law) Delph v. Commonwealth, 300 Ky. 722, 190 S.W.2d 340, 1945 Ky. LEXIS 642 (Ky. 1945).

Cited in:

Gossage v. Roberts, 904 S.W.2d 246, 1995 Ky. App. LEXIS 149 (Ky. Ct. App. 1995); Commonwealth v. Rank, 494 S.W.3d 476, 2016 Ky. LEXIS 325 (Ky. 2016).

NOTES TO UNPUBLISHED DECISIONS

1. Construction.

Unpublished decision: In a case in which defendant appealed his 235-month sentence for violating 18 U.S.C.S. §§ 922(g)(1) and 924(e)(1), he unsuccessfully argued that the district court erred when it sentenced him as an armed career criminal because his Kentucky conviction for assault under extreme emotional disturbance under KRS 508.040 did not qualify as a violent felony under the Armed Career Criminal Act. Section 508.040 incorporated the elements of KRS Ann, §§ 508.010, 508.020, or 508.030, and it operated only to reduce the applicable sentence. United States v. Colbert, 525

Fed. Appx. 364, 2013 FED App. 0462N, 2013 U.S. App. LEXIS 9555 (6th Cir. Ky. 2013).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.
Kentucky Law Survey, Sellars, Criminal Law, 71 Ky. L.J. 355 (1982-83).

Northern Kentucky Law Review.
Drogin, To the Brink of Insanity: 'Extreme Emotional Disturbance' in Kentucky Law, 26 N. Ky. L. Rev. 99 (1999).

Treatises
Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, §§ 3.56, 3.57.

508.050. Menacing.

(1) A person is guilty of menacing when he intentionally places another person in reasonable apprehension of imminent physical injury.

(2) Menacing is a Class B misdemeanor.

History.
Enact. Acts 1974, ch. 406, § 69, effective January 1, 1975.

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Elements.

1. Purpose.
This section was designed to replace common law simple assault, but was also intended to reach certain conduct which could not be reached under common law assault in some jurisdictions, such as threatening with an unloaded weapon. Dobrowolskyj v. Jefferson County, 823 F.2d 955, 1987 U.S. App. LEXIS 9181 (6th Cir. Ky. 1987), cert. denied, 484 U.S. 1059, 108 S. Ct. 1012, 98 L. Ed. 2d 978, 1988 U.S. LEXIS 681 (U.S. 1988).

2. Elements.
An allegation that a gun had been waved at someone would form the basis of a criminal violation of this section. Graham v. Commonwealth, 667 S.W.2d 697, 1983 Ky. App. LEXIS 396 (Ky. Ct. App. 1983).

Cited in:
United States v. Sturgill, 563 F.2d 307, 1977 U.S. App. LEXIS 11273 (6th Cir. 1977).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.
Harrassment, KRS 525.070.

Treatises
Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, §§ 3.60, 3.61.

508.060. Wanton endangerment in the first degree.

(1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he or she wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person.

(2) Wanton endangerment in the first degree is a Class D felony, unless the person discharges a firearm in the commission of the offense, in which case it is a Class C felony.

History.
Enact. Acts 1974, ch. 406, § 70, effective January 1, 1975; 2024 ch. 174, § 40, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Applicability.
3. Purpose.
4. Double Jeopardy.
5. Defenses.
6. Elements.
7. Evidence.
8. Indictment.
9. Instructions.
10. Lesser Included Offense.
11. Sufficiency of the Evidence.
12. Relationship with Other Laws.

1. Constitutionality.
This section is constitutional; its terms are not vague or incapable of being comprehended. Hardin v. Commonwealth, 573 S.W.2d 657, 1978 Ky. LEXIS 415 (Ky. 1978).

The application of the statute to the conduct of the defendant in engaging in sexual intercourse with the victim with knowledge that he was HIV positive did not constitute an unconstitutional application of the statute. Hancock v. Commonwealth, 998 S.W.2d 496, 1998 Ky. App. LEXIS 130 (Ky. Ct. App. 1998).

Because *Commonwealth v. Morris,* 142 S.W.3d 654, 2004 Ky. LEXIS 153 (Ky. 2004), which held that all viable fetuses were "persons" protected under the penal statutes, was decided a year and half before defendant ingested the cocaine that served as the basis for a wanton endangerment charge under KRS 508.060(1), she had fair notice that her conduct could result in criminal charges. Therefore, the rights afforded her by Ky. Const. §§ 2 and 11 were not violated. Commonwealth v. Cochran, 2008 Ky. App. LEXIS 8 (Ky. Ct. App. Jan. 11, 2008), sub. op., 2008 Ky. App. Unpub. LEXIS 733 (Ky. Ct. App. Jan. 11, 2008), rev'd, 315 S.W.3d 325, 2010 Ky. LEXIS 157 (Ky. 2010).

Where defendant's newborn child testified positive for cocaine, trying her for first degree wanton endangerment of her unborn child under KRS 508.060(1) did violate her due process and equal protection rights under Ky. Const. §§ 2, 3, and 11; abortion laws did not grant a woman the unfettered guarantee to an abortion at any time and certainly not to one on the day a woman gave birth. Commonwealth v. Cochran, 2008 Ky. App. LEXIS 8 (Ky. Ct. App. Jan. 11, 2008), sub. op., 2008 Ky. App. Unpub. LEXIS 733 (Ky. Ct. App. Jan. 11, 2008), rev'd, 315 S.W.3d 325, 2010 Ky. LEXIS 157 (Ky. 2010).

2. Applicability.
Although the wanton conduct in this case led to a death, there is no restriction disallowing a charge of wanton endangerment when a death occurs, and under the circumstances of the case at bar, the Commonwealth attorney did not abuse his discretion in determining to bring a charge of wanton endangerment rather than one of criminal homicide. Commonwealth v. Self, 802 S.W.2d 940, 1990 Ky. App. LEXIS 95 (Ky. Ct. App. 1990).

KRS 508.060 is designed to protect each and every person from each act coming within the definition of the statute and is not a statute designed to punish a continuous course of conduct; thus, where seven lives were endangered in three shooting incidents, defendant was properly convicted on seven, rather than three charges of wanton endangerment. West v. Commonwealth, 161 S.W.3d 331, 2004 Ky. App. LEXIS 121 (Ky. Ct. App. 2004).

Woman could not have been charged with wanton endangerment of the woman's child under KRS 508.060 for ingesting illegal drugs while pregnant, as Kentucky's General Assembly expressly precluded such a prosecution by the Maternal Health Act of 1992. Cochran v. Commonwealth, 315 S.W.3d 325, 2010 Ky. LEXIS 157 (Ky. 2010).

3. Purpose.

This section was designed to protect each and every person from each act coming within the definition of the statute, not to punish a continuous course of conduct. Hennemeyer v. Commonwealth, 580 S.W.2d 211, 1979 Ky. LEXIS 243 (Ky. 1979).

4. Double Jeopardy.

Where the evidence which supported defendant's wanton endangerment conviction arose out of his unsuccessful attempt to start a fire, while his arson conviction arose out of the successful effort about three hours later to burn the building, defendant's convictions for second degree arson and first degree wanton endangerment did not violate defendant's right against double jeopardy. Crayton v. Commonwealth, 846 S.W.2d 684, 1992 Ky. LEXIS 198 (Ky. 1992), cert. denied, 510 U.S. 856, 114 S. Ct. 165, 126 L. Ed. 2d 125, 1993 U.S. LEXIS 5563 (U.S. 1993).

Defendant's prosecution in Kentucky for wanton endangerment was not for the same conduct for which he was convicted in Tennessee, despite notification by Kentucky troopers that they were in pursuit of defendant, where the two crimes of wanton endangerment in Kentucky were completed in Kentucky against two Kentucky victims before defendant ever entered Tennessee and where there was no evidence that defendant was prosecuted in the state of Tennessee for his conduct in Kentucky. Hash v. Commonwealth, 883 S.W.2d 892, 1994 Ky. App. LEXIS 56 (Ky. Ct. App. 1994).

Because the offenses of driving under the influence and wanton endangerment, found in KRS 189A.010(c)(1) and 508.060(1) respectively, were included in the offense of fleeing or evading police, found in KRS 520.095(1)(a), defendant's conviction for all three (3) offenses constituted double jeopardy in violation of Ky. Const. § 12 and KRS 505.020. Pinkston v. Commonwealth, 2003 Ky. App. LEXIS 92 (Ky. Ct. App. 2003), vacated, 2004 Ky. LEXIS 48 (Ky. Feb. 11, 2004).

Defendant's convictions for first-degree fleeing or evading under KRS 520.095(1)(a)(4) and first-degree wanton endangerment under KRS 508.060 were not prohibited by double jeopardy as each offense contained at least one element not present in the other. Eberenz v. Commonwealth, 2008 Ky. App. LEXIS 184 (Ky. Ct. App. 2008).

Convictions on both first-degree fleeing or evading under KRS 520.095(1)(a)(4) and first-degree wanton endangerment under KRS 508.060 will not trigger double jeopardy, as fleeing and eluding requires operation of a motor vehicle and disobeying a direction to stop given by one recognized to be a police officer, while wanton endangerment does not; to prove wanton endangerment, the Commonwealth has to prove that a defendant manifested an extreme indifference to the value of human life, while fleeing or evading does not contain this element. Eberenz v. Commonwealth, 2008 Ky. App. LEXIS 184 (Ky. Ct. App. 2008).

Defendant's convictions for first-degree fleeing or evading police, KRS 520.095(1), and first-degree wanton endangerment, KRS 508.060(1), did not constitute double jeopardy because as with first-degree wanton endangerment, the three elements of operating a motor vehicle, having intent to elude or flee, and disobeying a police officer's direction to stop were required of the fleeing or evading charge but not of the wanton endangerment charge; consequently, each provision required proof of a fact that the other did not. Brown v. Commonwealth, 297 S.W.3d 557, 2009 Ky. LEXIS 256 (Ky. 2009).

Under a proper Blockburger analysis, double jeopardy does not occur when a person is charged with two crimes arising from the same course of conduct, as long as each statute requires proof of an additional fact which the other does not. Properly applying the Blockburger analysis, the Supreme Court of Kentucky overrules its precedent holding that convictions on both wanton endangerment under KRS 508.060 and terroristic threatening under KRS 508.080 involving the same victim are barred under the double jeopardy clause. Mullikan v. Commonwealth, 341 S.W.3d 99, 2011 Ky. LEXIS 89 (Ky. 2011).

Terroristic threatening requires a threat to commit a crime, but wanton endangerment does not require such a threat, and wanton endangerment requires actual conduct placing others at serious risk, but terroristic threatening does not require such actual conduct or such actual serious risk. Consequently, convictions on both offenses do not violate KRS 505.020 because terroristic threatening is not included within wanton endangerment since terroristic threatening is not established by proof of the same or less than all the facts required to establish the commission of wanton endangerment. Mullikan v. Commonwealth, 341 S.W.3d 99, 2011 Ky. LEXIS 89 (Ky. 2011).

5. Defenses.

Defendant was not guilty of first-degree wanton endangerment where defendant sitting in driver's seat of one truck fired past driver of second truck, killing passenger who had previously threatened defendant and who made sudden downward move to floor of truck before being shot, since presence of second driver between defendant and victim did not diminish defendant's apprehension of serious injury or impending death and did not modify his right to protect himself, where jury accepted his defense of self-protection. Justice v. Commonwealth, 608 S.W.2d 74, 1980 Ky. App. LEXIS 387 (Ky. Ct. App. 1980).

6. Elements.

The offense of wanton endangerment is not dependent upon intent. Hennemeyer v. Commonwealth, 580 S.W.2d 211, 1979 Ky. LEXIS 243 (Ky. 1979).

Where a gun used by defendant was never pointed directly at robbery victim, the essential elements of wanton endangerment were not present. Gilbert v. Commonwealth, 637 S.W.2d 632, 1982 Ky. LEXIS 282 (Ky. 1982), cert. denied, 459 U.S. 1149, 103 S. Ct. 794, 74 L. Ed. 2d 998, 1983 U.S. LEXIS 3135 (U.S. 1983).

The pointing of a gun, whether loaded or unloaded (provided there is reason to believe the gun may be loaded) at any person constitutes conduct that "creates a substantial danger of death or serious physical injury to another person" in violation of this section. In the instant case, the wanton conduct also included the shooting of the gun near the victims. Either conduct, independent of the other, was sufficient to meet the requirements of this section. Key v. Commonwealth, 840 S.W.2d 827, 1992 Ky. App. LEXIS 126 (Ky. Ct. App. 1992).

Wanton endangerment is not susceptible to the single impulse or act analysis. Hash v. Commonwealth, 883 S.W.2d 892, 1994 Ky. App. LEXIS 56 (Ky. Ct. App. 1994).

Because there were three independently targeted victims and three independent acts of shooting and killing one patron, shooting and wounding another, and struggling with other patrons, that occurred in the diner that gave rise to the three charges against defendant for which he was convicted of

intentional murder but mentally ill, attempted murder but mentally ill, and first-degree wanton endangerment but mentally ill, the verdict did not involve inconsistent mental states nor violate double jeopardy principles. Port v. Commonwealth, 906 S.W.2d 327, 1995 Ky. LEXIS 79 (Ky. 1995).

One is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person. Ramsey v. Commonwealth, 157 S.W.3d 194, 2005 Ky. LEXIS 2 (Ky. 2005).

Where defendant and her newborn child tested positive for cocaine, since under KRS 500.080(12), all viable fetuses were "persons" protected under Kentucky's penal statutes, the trial court erred in dismissing an indictment charging defendant with first degree wanton endangerment of her unborn child pursuant to KRS 508.060(1). Commonwealth v. Cochran, 2008 Ky. App. LEXIS 8 (Ky. Ct. App. Jan. 11, 2008), sub. op., 2008 Ky. App. Unpub. LEXIS 733 (Ky. Ct. App. Jan. 11, 2008), rev'd, 315 S.W.3d 325, 2010 Ky. LEXIS 157 (Ky. 2010).

Defendant who caused an auto accident that killed three people and injured a third, and who tested positive for prescription drugs and marijuana in his urine, was improperly convicted of two counts of first-degree wanton endangerment under KRS 508.060. As he did not drive erratically and there was no evidence he was under the influence of drugs, he lacked the necessary mental state; his actions did not occur under circumstances manifesting extreme indifference to human life. Ison v. Commonwealth, 271 S.W.3d 533, 2008 Ky. App. LEXIS 301 (Ky. Ct. App. 2008).

Because defendant juvenile's conduct did not amount to wantonness, he was not criminally liable for assault or wanton endangerment; none of the passengers testified that defendant acted wantonly, and there was no evidence that violating a license restriction was wanton conduct. B. B. v. Commonwealth, 2014 Ky. App. LEXIS 77 (Ky. Ct. App. 2014).

Trial court properly denied defendant's motion for a directed verdict on the wanton murder and wanton endangerment charges because a reasonable jury could have concluded that defendant had reason to know that a shoot-out was rendered substantially more probable by his firing the initial, and multiple, shots into the air amid a late-night crowd gathered in a parking lot to socialize. Taylor v. Commonwealth, 617 S.W.3d 321, 2020 Ky. LEXIS 392 (Ky. 2020).

7. Evidence.

Where the evidence tended to show that defendant had set two fires in a house, but that the house was empty at the time and neither fire got beyond the room in which they were set, there was insufficient evidence to warrant a first-degree wanton endangerment charge. Sweatt v. Commonwealth, 586 S.W.2d 289, 1979 Ky. App. LEXIS 454 (Ky. Ct. App. 1979).

Drunk driving may be a circumstance manifesting indifference to human life. The extreme nature of a defendant's intoxication is sufficient evidence from which a jury could infer wantonness so extreme as to manifest extreme indifference to human life. Ramsey v. Commonwealth, 157 S.W.3d 194, 2005 Ky. LEXIS 2 (Ky. 2005).

Drunk driving with his 10-year-old child as a passenger in a car created a substantial and unjustifiable risk to that child which supported defendant's conviction for first-degree wanton endangerment. Ramsey v. Commonwealth, 157 S.W.3d 194, 2005 Ky. LEXIS 2 (Ky. 2005).

Whether a defendant's wanton conduct manifests extreme indifference to human life is a question to be decided by the trier of fact. Ramsey v. Commonwealth, 157 S.W.3d 194, 2005 Ky. LEXIS 2 (Ky. 2005).

Where three defendants were jointly indicted and convicted for the wanton endangerment of the same two victims but the evidence showed that only one defendant engaged in conduct constituting the crime, the conviction of the others who were merely present at the scene would have to be reversed. McIntosh v. Commonwealth, 582 S.W.2d 54, 1979 Ky. App. LEXIS 412 (Ky. Ct. App. 1979).

Defendant was not entitled to a directed verdict of acquittal on the first-degree wanton endangerment charge because the jury was not unreasonable to conclude that defendant's conduct, which included driving late at night, sometimes down the middle of the road, at perhaps triple the speed limit, created a substantial danger of death or serious physical injury to his passenger; defendant nearly caused two high-speed, head-on collisions and barely avoided crashing into a tree and telephone pole, and although he avoided getting into a catastrophic accident, the evidence supported that he repeatedly foisted the risk of catastrophic injury onto his passenger. Brown v. Commonwealth, 297 S.W.3d 557, 2009 Ky. LEXIS 256 (Ky. 2009).

In defendant's trial on charges of capital murder, burglary, and wanton endangerment, the trial court did not err in denying defendant's motion for a judgment of a directed verdict on the endangerment charge because the evidence established that defendant shot his estranged wife while her grandchild, an infant, was in a bassinet in the room where the murder occurred and was in close proximity to the wife when she was shot. Two bullets were found in the vicinity of the bassinet, indicating that they flew within a matter of feet of her; because it was well-known that bullets could ricochet and because evidence established that defendant was intoxicated when he fired the gun, the evidence supported the denial of his motion for a directed verdict. Hunt v. Commonwealth, 2009 Ky. LEXIS 292 (Ky. Nov. 25, 2009), sub. op., 304 S.W.3d 15, 2009 Ky. LEXIS 346 (Ky. 2009), modified, 2010 Ky. LEXIS 138 (Ky. Mar. 18, 2010).

Defendant's convictions for murder, DUI, first-degree wanton endangerment, and first-degree criminal mischief were supported by the evidence; before the collision, which killed a child, defendant admitted that defendant had consumed around six beers and was under the influence of alcohol. Baumia v. Commonwealth, 2012 Ky. LEXIS 191 (Ky. 2012), sub. op., 402 S.W.3d 530, 2012 Ky. LEXIS 503 (Ky. 2012), modified, op. withdrawn, sub. op., 402 S.W.3d 530, 2013 Ky. LEXIS 247 (Ky. 2013).

Evidence was sufficient to sustain defendant's conviction for first-degree wanton endangerment because defendant sat on a horse, deliberately fired a shot to the side of the porch where people were seated, and even though his horse began to buck defendant continued firing. Smith v. Commonwealth, 410 S.W.3d 160, 2013 Ky. LEXIS 404 (Ky. 2013).

8. Indictment.

An indictment, which alleged that the defendant engaged in sexual intercourse with the victim with knowledge that he was HIV positive, was sufficient to state an offense under the statute, notwithstanding his contention that the victim knew of his HIV positive status and nevertheless consented to sexual intercourse with him, as such assertion more properly related to a defense, rather than to the sufficiency of the indictment. Hancock v. Commonwealth, 998 S.W.2d 496, 1998 Ky. App. LEXIS 130 (Ky. Ct. App. 1998).

9. Instructions.

Where the conduct of defendant clearly could have caused others who perceived his conduct to engage in action which would create a substantial danger of death, serious physical injury or physical injury, defendant's assertion that because the pistol was inoperable he was not guilty of wanton endangerment was rejected; the trial court, however, should have instructed the jury on second-degree, as well as first-degree, wanton endangerment. Thomas v. Commonwealth, 567 S.W.2d 299, 1978 Ky. LEXIS 367 (Ky. 1978), overruled in part, Ray v. Commonwealth, 611 S.W.3d 250, 2020 Ky. LEXIS 403 (Ky. 2020).

Where the evidence showed that the defendant had fired two shots, one of which missed the head of the complainant by less than two feet from a distance of 30 to 35 feet there was no error in instructing the jury only on first-degree wanton endangerment and denying a request for an instruction for second-degree wanton endangerment. McIntosh v. Commonwealth, 582 S.W.2d 54, 1979 Ky. App. LEXIS 412 (Ky. Ct. App. 1979).

There was no need for new trial upon reversal for failure to instruct jury on self-protection defense to first-degree wanton endangerment charge under this section, since the jury had found on the murder charge against the defendant that defendant acted in his own self-protection, thus precluding a conviction for wanton endangerment. Justice v. Commonwealth, 608 S.W.2d 74, 1980 Ky. App. LEXIS 387 (Ky. Ct. App. 1980).

An instruction on a lesser included offense is not required unless the evidence is such that a reasonable juror could doubt that the defendant is guilty of the crime charged but yet conclude that he is guilty of a lesser included offense; accordingly, the trial court in a prosecution for wanton endangerment in the first degree did not err when it refused to give an instruction on wanton endangerment in the second degree, where a reasonable juror could not doubt that the defendant acted wantonly under circumstances which manifested an extreme indifference to the value of human life, and, likewise, a reasonable juror could not doubt that his conduct created a substantial danger of death or serious physical injury to another person. Combs v. Commonwealth, 652 S.W.2d 859, 1983 Ky. LEXIS 258 (Ky. 1983).

Where the defendant pointed a loaded firearm at two Commonwealth police officers who were in the performance of their official duties, the trial court properly instructed the jury under both wanton endangerment statutes. Commonwealth v. Clemons, 734 S.W.2d 459, 1987 Ky. LEXIS 216 (Ky. 1987).

Where the instruction submitted to the jury on a first-degree wanton endangerment charge stated that in order to find defendant guilty it must find beyond a reasonable doubt that he conspired to apply an accelerant to a certain building or to disable the fire alarm systems at the building, and that he thereby wantonly created a substantial danger of death or serious physical injury to various occupants, and that under these circumstances his conduct manifested an extreme indifference to the value of human life, from the evidence, it was clearly sufficient to support a conviction on this charge. Hicks v. Commonwealth, 805 S.W.2d 144, 1990 Ky. App. LEXIS 170 (Ky. Ct. App. 1990).

Simply that defendant started driving recklessly in Kentucky and continued on, putting several other drivers at risk in two states, did not require the conclusion that defendant committed but one crime. Hash v. Commonwealth, 883 S.W.2d 892, 1994 Ky. App. LEXIS 56 (Ky. Ct. App. 1994).

10. Lesser Included Offense.

Defendant who held policemen and other hostages at gunpoint and fired at them as they fled could not be convicted of both terroristic threatening and wanton endangerment since the former is included in the latter. Watson v. Commonwealth, 579 S.W.2d 103, 1979 Ky. LEXIS 233 (Ky. 1979).

Where a defendant pointed a pistol at a person during the course of a robbery, the act of wanton endangerment merged with the act of robbery of which it is an included offense under KRS 505.020; accordingly, convictions for both first-degree robbery and first-degree wanton endangerment arising out of the same robbery violated the constitutional and statutory prohibitions against double jeopardy and the wanton endangerment charge must be dismissed. Marshall v. Commonwealth, 625 S.W.2d 581, 1981 Ky. LEXIS 306 (Ky. 1981).

The possession and use of the pistol did not constitute an offense separate from the first-degree robbery charge for which the defendant was being tried and was convicted. One of the elements elevating robbery to the highest degree, being armed with a deadly weapon, cannot be separate and also used to convict on a separate offense such as wanton endangerment. Gilbert v. Commonwealth, 637 S.W.2d 632, 1982 Ky. LEXIS 282 (Ky. 1982), cert. denied, 459 U.S. 1149, 103 S. Ct. 794, 74 L. Ed. 2d 998, 1983 U.S. LEXIS 3135 (U.S. 1983).

Terroristic threatening is a lesser included offense of wanton endangerment and a defendant cannot be convicted of both charges when they concern the same victim. Commonwealth v. Black, 907 S.W.2d 762, 1995 Ky. LEXIS 121 (Ky. 1995).

Wanton endangerment is not a lesser-included offense of misdemeanor assault as assault in the fourth degree requires a finding of physical injury, whereas wanton endangerment does not, and wanton endangerment requires conduct which creates a substantial danger of death or serious physical injury to another, whereas fourth-degree assault does not. Matthews v. Commonwealth, 44 S.W.3d 361, 2001 Ky. LEXIS 24 (Ky. 2001).

11. Sufficiency of the Evidence.

Evidence was insufficient to sustain defendant conviction for wanton-endangerment because there was no proof or reasonable inference that showed that defendant pointed a gun at the complainant or fired a shot near her when defendant went into her room. Merely being in the presence of guns, even when wielded by persons who were intent on harming and terrorizing, was not sufficient by itself to create a wanton-endangerment crime. Swan v. Commonwealth, 384 S.W.3d 77, 2012 Ky. LEXIS 111 (Ky. 2012), sub. op., modified, 2012 Ky. LEXIS 498 (Ky. Aug. 23, 2012), modified, 2012 Ky. LEXIS 492 (Ky. Dec. 20, 2012).

Court should have directed a verdict on defendant's first-degree wanton-endangerment conviction because there was no proof or reasonable inference that showed that defendant pointed a gun at the complainant or fired a shot near her when he went into her room. Merely being in the presence of guns, even when wielded by persons who wee intent on harming and terrorizing, was not sufficient by itself to create a wanton-endangerment crime. Swan v. Commonwealth, 2012 Ky. LEXIS 498 (Ky. Aug. 23, 2012).

Defendant was not entitled to a directed verdict as to wanton endangerment in the first degree, under KRS 508.060(1), because (1) a jury reasonably concluded defendant showed extreme indifference to human life and possessed the required wanton mental state, when defendant continued to operate defendant's vehicle despite knowing a victim was pinned under defendant's tires, and (2) it was not unreasonable to conclude defendant also created a substantial danger of death or serious injury to others. Hurt v. Commonwealth, 409 S.W.3d 327, 2013 Ky. LEXIS 397 (Ky. 2013).

Trial court did not err in denying defendant's motion for directed verdict because it would be reasonable for a jury to find him guilty of first-degree wanton endangerment; the Commonwealth provided more than a mere scintilla of evidence and could allow a fact-finder to infer that defendant was the driver of the car that led police on a high-speed chase because his friend testified that defendant was known to drive a car of the same make and model. Culver v. Commonwealth, 2017 Ky. App. LEXIS 534 (Ky. Ct. App. Sept. 22, 2017, sub. op., 2017 Ky. App. Unpub. LEXIS 952 (Ky. Ct. App. Sept. 22, 2017).

Trial court did not err in denying defendant's motion for directed verdict because it would be reasonable for a jury to find him guilty of first-degree wanton endangerment; Police officers' testimony that they broke off their pursuit during a high-speed chase because they felt unsafe driving at that speed on those roads was enlightening as to how dangerous defendant was driving, given that the trained officers considered it too dangerous to pursue him any further. Culver v. Commonwealth, 2017 Ky. App. LEXIS 534 (Ky. Ct. App. Sept.

22, 2017, sub. op., 2017 Ky. App. Unpub. LEXIS 952 (Ky. Ct. App. Sept. 22, 2017).

Evidence was sufficient for the jury to find that defendant's conduct in a high speed car chase caused or created a substantial risk of serious physical injury or death to the police officers who pursued defendant in separate police cars because the pursuit happened in the dark on a highway and curvy side roads, the officers' speed reached 10-25 m.p.h. over the speed limit, and both officers testified that the officers felt in danger in pursuing defendant until breaking off the pursuit. Culver v. Commonwealth, 590 S.W.3d 810, 2019 Ky. LEXIS 535 (Ky. 2019).

Trial court did not err when it failed to grant directed verdict motions for first-degree wanton endangerment and first-degree fleeing or evading because a sergeant testified that he was 100% certain defendant was the driver of the pickup truck, and defense counsel thoroughly cross-examined the sergeant; the deputy's police cruiser blocking a single-lane road with its emergency lights on was a visible, non-verbal direction to approaching drivers, including defendant, to stop their vehicles, but defendant accelerated, and the deputy was forced to drive his cruiser out of the way and into a ditch to avoid a head-on collision; and defendant's actions created a substantial risk of serious physical injury or death. Eversole v. Commonwealth, 600 S.W.3d 209, 2020 Ky. LEXIS 121 (Ky. 2020).

Trial court did not err in denying defendant's motion for directed verdict on the wanton endangerment charge, as the evidence was sufficient to conclude that raising a hammer at the victim created a substantial danger of physical injury or death, as that excitement could have easily caused the victim, who had a pacemaker and had had five surgeries in three months, to have a heart attack or defendant could have accidentally dropped the hammer on the victim's head which also could have caused serious physical injury or death. Ray v. Commonwealth, 611 S.W.3d 250, 2020 Ky. LEXIS 403 (Ky. 2020), cert. denied, 142 S. Ct. 168, 211 L. Ed. 2d 65, 2021 U.S. LEXIS 4011 (U.S. 2021).

Where defendant was found guilty of two counts of intentional murder and four counts of wanton endangerment, the trial court did not err in denying defendant's motion for a directed verdict on the wanton endangerment charges, because four children were inside of the small residence at the time of the shooting; defendant's actions created a substantial danger of death or serious physical injury to the children. Hall v. Commonwealth, 645 S.W.3d 383, 2022 Ky. LEXIS 125 (Ky. 2022).

Evidence was sufficient to support the charge of wanton endangerment because defendant wielded a 9-millimeter handgun, waving it around in manner that increased the probability that discharge may occur. Kelly v. Commonwealth, 655 S.W.3d 154, 2022 Ky. LEXIS 338 (Ky. 2022).

Trial court properly denied motions for directed verdicts as to wanton endangerment charges related to children who were in a home when defendant fired shots into it. Defendant fired a multitude of shots indiscriminately into an occupied home, and bullet holes found throughout the home indicated that defendant likely fired in the direction of the children's hiding place, so the danger to the children was substantial. Shackles v. Commonwealth, 730 S.W.3d 832, 2025 Ky. LEXIS 203 (Ky. 2025).

12. Relationship with Other Laws.

Because defendant's prior Kentucky convictions for first degree wanton endangerment was categorically a "crime of violence" for purposes of U.S. Sentencing Guidelines Manual § 4B1.1, the district court properly sentenced defendant as a career offender. United States v. Meeks, 664 F.3d 1067, 2012 FED App. 0003P, 2012 U.S. App. LEXIS 159 (6th Cir. Ky. 2012).

Because wanton endangerment involves conduct that creates a substantial danger of death or serious physical injury, it necessarily involves a serious potential risk of violence akin to the level of risk associated with the listed crimes, and is categorically a "crime of violence" for purposes of U.S. Sentencing Guidelines Manual § 4B1.1. United States v. Meeks, 664 F.3d 1067, 2012 FED App. 0003P, 2012 U.S. App. LEXIS 159 (6th Cir. Ky. 2012).

District court did not err in finding that KRS 508.060, Kentucky's wanton endangerment offense, constituted a violent felony under the Armed Career Criminal Act, 18 U.S.C.S. § 924(e), because the offense included a substantial danger of death or serious physical injury to another and a conscious disregard of the risk. United States v. Clark, 458 Fed. Appx. 512, 2012 FED App. 0130N, 2012 U.S. App. LEXIS 2215 (6th Cir. Ky. 2012), cert. denied, 567 U.S. 911, 132 S. Ct. 2755, 183 L. Ed. 2d 625, 2012 U.S. LEXIS 4437 (U.S. 2012), dismissed, 2015 U.S. Dist. LEXIS 131021 (E.D. Ky. Sept. 29, 2015).

Defendant's federal sentence for being a felon in possession of a firearm was properly enhanced based on use of a firearm in connection with another felony offense, as evidence that defendant fired a gun multiple times in a densely populated area while intoxicated and engaged in an argument was sufficient to find that his conduct satisfied the elements of first-degree wanton endangerment under Kentucky law. United States v. Kelley, 585 Fed. Appx. 310, 2014 FED App. 0751N, 2014 U.S. App. LEXIS 18975 (6th Cir. Ky. 2014).

Cited in:

Zachery v. Commonwealth, 580 S.W.2d 220, 1979 Ky. LEXIS 245 (Ky. 1979), overruled, Commonwealth v. Hinton, 678 S.W.2d 388, 1984 Ky. LEXIS 288 (Ky. 1984), overruled in part, Commonwealth v. Hinton, 678 S.W.2d 388, 1984 Ky. LEXIS 288 (Ky. 1984); Cain v. Smith, 686 F.2d 374, 1982 U.S. App. LEXIS 17651 (6th Cir. 1982); United States v. Christopher, 956 F.2d 536, 1991 U.S. App. LEXIS 29783 (6th Cir. 1991); Bell v. Commonwealth, 122 S.W.3d 490, 2003 Ky. LEXIS 236 (Ky. 2003); Kelly v. Commonwealth, 655 S.W.3d 154, 2022 Ky. LEXIS 338 (Ky. 2022); Pons v. Commonwealth, 673 S.W.3d 813, 2023 Ky. App. LEXIS 66 (Ky. Ct. App. 2023).

NOTES TO UNPUBLISHED DECISIONS

Analysis

1. Double Jeopardy.
2. Sufficiency of the Evidence.
3. Relationship with Other Laws.
6. Elements.

1. Double Jeopardy.

Unpublished decision: There was no double jeopardy violation of the Fifth Amendment in habeas petitioner's convictions, because each of the two statutes under which he was convicted, KRS 515.020 (first-degree robbery) and KRS 508.060 (first-degree wanton endangerment) required proof of an element that the other did not. Groves v. Meko, 2013 FED App. 0213N, 2013 U.S. App. LEXIS 4327 (6th Cir. Ky.), amended, 516 Fed. Appx. 507, 2013 FED App. 0298N, 2013 U.S. App. LEXIS 6324 (6th Cir. Ky. 2013).

Unpublished decision: In a case in which a state inmate appealed a district court's denial of his petition for a writ of habeas corpus, his convictions for first-degree robbery, in violation of KRS 515.020, and first-degree wanton endangerment, in violation of KRS 508.060, did not, as he argued, violate his constitutional right not to be subjected to double jeopardy. He had unsuccessfully argued that the first-degree wanton endangerment charges were based on the same conduct that gave rise to the first-degree robbery charge--pointing a gun at restaurant employees--and thus, the wanton endangerment charges should have merged into the robbery charge.

Groves v. Meko, 516 Fed. Appx. 507, 2013 FED App. 0298N, 2013 U.S. App. LEXIS 6324 (6th Cir. Ky. 2013).

2. Sufficiency of the Evidence.

Unpublished decision: Defendant contended that the evidence was insufficient to support his conviction; however, the Commonwealth met its burden in proving each of the necessary elements of first degree wanton endangerment. Fister v. Commonwealth, 133 S.W.3d 480, 2003 Ky. App. LEXIS 170 (Ky. Ct. App. 2003).

3. Relationship with Other Laws.

Unpublished decision: Sentencing enhancement was proper because the court properly enhanced the sentence when the self-defense justification under Kentucky law was not available, and evidence tampering provided an alternative basis. United States v. Sweat, 688 Fed. Appx. 352, 2017 FED App. 0257N, 2017 U.S. App. LEXIS 8092 (6th Cir. Ky. 2017).

6. Elements.

Unpublished decision: After defendant discharged a firearm inside a hotel room where defendant and other people were present, application sentencing enhancement for wanton endangerment was appropriate following defendant's guilty plea to a felon-in-possession charge because the circumstances surrounding the discharge—defendant's erratic behavior while handling the gun in the presence of the other people—sufficiently demonstrated danger of death serious or physical injury to others to qualify as wanton under Kentucky law. United States v. Harris, 2023 FED App. 459N, 2023 U.S. App. LEXIS 29352 (6th Cir. Ky. 2023), cert. denied, 144 S. Ct. 860, 218 L. Ed. 2d 52, 2024 U.S. LEXIS 729 (U.S. 2024).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Patterson, Juvenile Code, 70 Ky. L.J. 343 (1981-82).

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 2 Homicide, § 3.23.

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, §§ 3.58, 3.60.

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 5 Kidnapping and Related Offenses, § 3.79E.

508.070. Wanton endangerment in the second degree.

(1) A person is guilty of wanton endangerment in the second degree when he wantonly engages in conduct which creates a substantial danger of physical injury to another person.

(2) Wanton endangerment in the second degree is a Class A misdemeanor.

History.

Enact. Acts 1974, ch. 406, § 71, effective January 1, 1975.

NOTES TO DECISIONS

Analysis

1. Evidence.
2. Instructions.
3. Intoxication.
4. Prosecutor's Comments.
5. Double Jeopardy.

1. Evidence.

Where the evidence tended to show defendant had set two fires in a wood house, with other houses within 20 feet, at a time when people were normally home from work or school and eating dinner, and that at the very least the firemen answering the alarm were in danger, there was ample evidence to justify a second-degree wanton endangerment instruction. Sweatt v. Commonwealth, 586 S.W.2d 289, 1979 Ky. App. LEXIS 454 (Ky. Ct. App. 1979).

The court did not err in failing to grant the defendant's motion for a directed verdict, where the defendant failed to stop his car when so instructed and failed to pull his car over while being chased by a police officer, and there was also testimony that the defendant swerved from side-to-side on the road, forcing pedestrians and other vehicles off the road and endangering their lives. Wyatt v. Commonwealth, 738 S.W.2d 832, 1987 Ky. App. LEXIS 548 (Ky. Ct. App. 1987).

While an arrestee's statements criticizing conservation officers were protected by the First Amendment, because probable cause supported the arrestee's indictment, arrest, and prosecution for interfering with a conservation officer in violation of KRS 150.090(6), the arrestee's 42 U.S.C.S. § 1983 claims for retaliatory arrest and prosecution failed as a matter of law; pointing a gun at an officer in a manner that created a substantial danger of injury clearly established probable cause for a charge under KRS 150.090(6). Barnes v. Wright, 449 F.3d 709, 2006 FED App. 0187P, 2006 U.S. App. LEXIS 13610 (6th Cir. Ky. 2006).

Circuit court erred in denying defendant's motion for a directed verdict of acquittal on a wanton endangerment in the second degree charge where the sole instance of the child running ahead of defendant's mother was not similar to him escaping from the house while his mother and brother slept, thus not probative of the instant incident, and it was not a gross deviation from the standard of conduct for defendant to be sleeping while her child slept. Deville v. Commonwealth, 534 S.W.3d 802, 2017 Ky. App. LEXIS 383 (Ky. Ct. App. 2017).

2. Instructions.

Where the conduct of defendant clearly could have caused others who perceived his conduct to engage in actions which would create a substantial danger of death, serious physical injury or physical injury, defendant's assertion that because the pistol was inoperable he was not guilty of wanton endangerment was rejected, the trial court, however, should have instructed the jury on second-degree, as well as first-degree, wanton endangerment. Thomas v. Commonwealth, 567 S.W.2d 299, 1978 Ky. LEXIS 367 (Ky. 1978), overruled in part, Ray v. Commonwealth, 611 S.W.3d 250, 2020 Ky. LEXIS 403 (Ky. 2020).

An instruction on a lesser included offense is not required unless the evidence is such that a reasonable juror could doubt that the defendant is guilty of the crime charged but yet concluded that he is guilty of a lesser included offense; accordingly, the trial court in a prosecution for wanton endangerment in the first degree did not err when it refused to give an instruction on wanton endangerment in the second degree, where a reasonable juror could not doubt that the defendant acted wantonly under circumstances which manifested an extreme indifference to the value of human life, and, likewise, a reasonable juror could not doubt that his conduct created a substantial danger of death or serious physical injury to another person. Combs v. Commonwealth, 652 S.W.2d 859, 1983 Ky. LEXIS 258 (Ky. 1983).

Where the defendant pointed a loaded firearm at two (2) Commonwealth police officers who were in the performance of their official duties, the trial court properly instructed the jury under both wanton endangerment statutes. Commonwealth v. Clemons, 734 S.W.2d 459, 1987 Ky. LEXIS 216 (Ky. 1987).

Trial court did not commit reversible error in specifying in its second-degree wanton endangerment instruction that the

victim was a high school student because the error, if any, was not palpable as no manifest injustice resulted; the jury already knew that defendant's passenger was a high school student, and defendant was convicted of wantonly endangering the victim under an instruction that did not refer to her age. Brown v. Commonwealth, 297 S.W.3d 557, 2009 Ky. LEXIS 256 (Ky. 2009).

3. Intoxication.

On a charge of wanton endangerment, the condition of the accused as to intoxication is relevant as a part of the surrounding circumstances. Wilcher v. Commonwealth, 566 S.W.2d 812, 1978 Ky. App. LEXIS 537 (Ky. Ct. App. 1978).

4. Prosecutor's Comments.

Where, after court excluded evidence of blood test, the prosecutor remarked "Okay, if they don't want it to come out," such remark was nonprejudicial given the weight of the evidence supporting a conviction for wanton endangerment in the second degree. Wilcher v. Commonwealth, 566 S.W.2d 812, 1978 Ky. App. LEXIS 537 (Ky. Ct. App. 1978).

5. Double Jeopardy.

Defendant's convictions for first-degree fleeing or evading police, KRS 520.095(1), and second-degree wanton endangerment, KRS 508.070(1), constituted double jeopardy because once the Commonwealth proved the specific conduct required to convict defendant of first-degree fleeing or evading police, it necessarily proved the general conduct necessary to convict him of second-degree wanton endangerment; both statutes were satisfied by proof of wantonly engaging in certain conduct that creates a substantial danger of serious physical injury to another person, and for second-degree wanton endangerment, the conduct is general and open-ended, and for first-degree fleeing or evading police, the conduct is specified as intentionally fleeing from police while operating a motor vehicle. Brown v. Commonwealth, 297 S.W.3d 557, 2009 Ky. LEXIS 256 (Ky. 2009).

Cited in:

Commonwealth v. Hillhaven Corp., 687 S.W.2d 545, 1984 Ky. App. LEXIS 638 (Ky. Ct. App. 1984); Bell v. Commonwealth, 122 S.W.3d 490, 2003 Ky. LEXIS 236 (Ky. 2003), rehearing denied, 2004 Ky. LEXIS 21 (Ky. 2004); Jones v. Commonwealth, 279 S.W.3d 522, 2009 Ky. LEXIS 65 (Ky. 2009).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, § 3.59.

508.075. Terroristic threatening in the first degree.

(1) A person is guilty of terroristic threatening in the first degree when he or she:

(a) Intentionally makes false statements that he or she or another person has placed a weapon of mass destruction on:

1. The real property or any building of any public or private elementary or secondary school, vocational school, or institution of postsecondary education;

2. A school bus or other vehicle owned, operated, or leased by a school;

3. The real property or any building public or private that is the site of an official school-sanctioned function;

4. The real property or any building owned or leased by a government agency;

5. The real property or any building owned or leased by a domestic violence shelter as defined in KRS 511.085;

6. Any workplace; or

7. The real property or any building public or private that is the site of any gathering of three (3) or more persons; or

(b) Intentionally and without lawful authority, places a counterfeit weapon of mass destruction at any location or on any object specified in paragraph (a) of this subsection.

(2) A counterfeit weapon of mass destruction is placed with lawful authority if it is placed, with the written permission of the chief officer of the school or other institution, as a part of an official training exercise and is placed by a public servant, as defined in KRS 522.010.

(3) A person is not guilty of commission of an offense under this section if he or she, innocently and believing the information to be true, communicates a threat made by another person to school personnel, domestic violence shelter personnel, a peace officer, a law enforcement agency, a public agency involved in emergency response, or a public safety answering point and identifies the person from whom the threat was communicated, if known.

(4) Terroristic threatening in the first degree is a Class C felony.

History.

Enact. Acts 2001, ch. 113, § 1, effective June 21, 2001; 2022 ch. 163, § 1, effective July 14, 2022; 2024 ch. 174, § 34, effective July 15, 2024.

NOTES TO DECISIONS

1. In General.

Defendant was a driver employee of a trucking company and complained about the weather and driving conditions and refused to drive; the employer then ordered him to drive; defendant refused, said he was going to hire an attorney, and the attorney was going to come to the employer's business and fire all the employees; Kentucky Supreme Court indicated that terroristic threatening, KRS 508.075, 508.078, or 508.080, was sufficiently pled. Commonwealth v. Isham, 98 S.W.3d 59, 2003 Ky. LEXIS 19 (Ky. 2003).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, § 3.61A.

508.078. Terroristic threatening in the second degree.

(1) A person is guilty of terroristic threatening in the second degree when, other than as provided in KRS 508.075, he or she intentionally:

(a) With respect to any scheduled, publicly advertised event open to the public, any place of worship, any school function, any workplace, or any gathering of three (3) or more persons, threatens to commit by any means, including by use of a firearm, any act likely to result in death or serious physical injury to

any person. A threat directed at a person or persons at a scheduled, publicly advertised event open to the public, place of worship, school, workplace, or gathering of three (3) or more persons does not need to identify a specific person or persons or school in order for a violation of this section to occur;

(b) Makes false statements by any means, including by electronic communication, indicating that an act likely to result in death or serious physical injury is occurring or will occur for the purpose of:

1. Causing evacuation of a school building, school property, or school-sanctioned activity;

2. Causing cancellation of school classes or school-sanctioned activity; or

3. Creating fear of death or serious physical injury among students, parents, or school personnel;

(c) Makes false statements that he or she has placed a weapon of mass destruction at any location other than one specified in KRS 508.075; or

(d) Without lawful authority places a counterfeit weapon of mass destruction at any location other than one specified in KRS 508.075.

(2) A counterfeit weapon of mass destruction is placed with lawful authority if it is placed as part of an official training exercise by a public servant, as defined in KRS 522.010.

(3) A person is not guilty of commission of an offense under this section if he or she, innocently and believing the information to be true, communicates a threat made by another person to school personnel, a peace officer, a law enforcement agency, a public agency involved in emergency response, or a public safety answering point and identifies the person from whom the threat was communicated, if known.

(4) Except as provided in subsection (5) of this section, terroristic threatening in the second degree is a Class D felony.

(5) Terroristic threatening in the second degree is a Class C felony when, in addition to violating subsection (1) of this section, the person intentionally engages in substantial conduct required to prepare for or carry out the threatened act, including but not limited to gathering weapons, ammunition, body armor, vehicles, or materials required to manufacture a weapon of mass destruction.

History.

Enact. Acts 2001, ch. 113, § 2, effective June 21, 2001; 2019 ch. 5, § 20, effective March 11, 2019; 2019 ch. 96, § 1, effective June 27, 2019; 2020 ch. 5, § 12, effective February 21, 2020; 2024 ch. 174, § 35, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. In General.
2. Evidence.

1. In General.

Where defendant was a driver of a trucking company and complained about the weather and driving conditions and refused to drive, and the employer then ordered him to drive, defendant refused, said he was going to hire an attorney, and the attorney was going to come to the employer's business and fire all the employees, terroristic threatening, KRS 508.075, 508.078, or 508.080, was sufficiently pled. Commonwealth v. Isham, 98 S.W.3d 59, 2003 Ky. LEXIS 19 (Ky. 2003).

2. Evidence.

Judgment finding juvenile defendant guilty of terroristic threatening in the second degree was supported by sufficient evidence, including defendant's admission to several witnesses that he had written a note which contained the names of persons on a "hit list," and which was properly admitted into evidence; although defendant's father testified some of the names on the "hit list" did not appear to be in his son's writing, other names appeared to have been written by defendant, and thus, defendant's argument that no actual threat existed was without merit. The fact that the note included a "hit list," in and of itself, constituted a threat of death or serious physical injury as the term indicated. S.D.O. v. Commonwealth, 255 S.W.3d 517, 2008 Ky. App. LEXIS 139 (Ky. Ct. App. 2008).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, § 3.61B.

508.080. Terroristic threatening in the third degree.

(1) Except as provided in KRS 508.075 or 508.078, a person is guilty of terroristic threatening in the third degree when:

(a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or

(b) He intentionally makes false statements for the purpose of causing evacuation of a building, place of assembly, or facility of public transportation.

(2) Terroristic threatening in the third degree is a Class A misdemeanor.

History.

Enact. Acts 1974, ch. 406, § 72, effective January 1, 1975; 2001, ch. 113, § 3, effective June 21, 2001.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Complaint.
4. Double Jeopardy.
5. Elements.
6. Instructions.
7. Lesser Included Offenses.
9. Serious Physical Injury.

1. Constitutionality.

This section is not unconstitutionally vague and overbroad since the conduct proscribed, "threaten[ing] to commit a crime likely to result in death or serious physical injury" is not protected under either the Kentucky or United States Constitutions, and the language of the statute is sufficiently explicit to put the average citizen on notice as to the nature of the conduct so proscribed. Thomas v. Commonwealth, 574 S.W.2d 903, 1978 Ky. App. LEXIS 633 (Ky. Ct. App. 1978).

2. Construction.

This section does not require that the victim be placed in reasonable apprehension of immediate injury. Thomas v. Com-

monwealth, 574 S.W.2d 903, 1978 Ky. App. LEXIS 633 (Ky. Ct. App. 1978).

While this section does not apply in the case of idle talk or jesting, the defendant's intent to commit the crime of "terroristic threatening" can be plainly inferred from the defendant's own words (a threat to behead his wife and daughter) and the circumstances surrounding them, since all this section requires is that the defendant threaten "to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person." Thomas v. Commonwealth, 574 S.W.2d 903, 1978 Ky. App. LEXIS 633 (Ky. Ct. App. 1978).

Language of 101 Ky. Admin. Regs. 2:095, § 9(1)(b) differs substantially from that of the terroristic threatening statute, KRS 508.080, by specifically adding the requirement that threatening statement or behavior "give a state employee or member of the general public reasonable cause to believe that his health or safety is at risk;" therefore, a hearing officer for the Kentucky Racing Commission's (KRC's) Personnel Board did not misconstrue the actual language of subparagraph (1)(b) when he concluded that a KRC employee had not violated the regulation because the threat he made did not actually make a fellow employee apprehensive for his own safety at any time. Hughes v. Ky. Horse Racing Auth., 179 S.W.3d 865, 2004 Ky. App. LEXIS 106 (Ky. Ct. App. 2004).

3. Complaint.

Where defendant was a driver of a trucking company and complained about the weather and driving conditions and refused to drive, and the employer then ordered him to drive, defendant refused, said he was going to hire an attorney, and the attorney was going to come to the employer's business and fire all the employees, terroristic threatening, KRS 508.075, 508.078, or 508.080, was sufficiently pled. Commonwealth v. Isham, 98 S.W.3d 59, 2003 Ky. LEXIS 19 (Ky. 2003).

District court properly granted summary judgment to the police officer on the arrestee's claim for false arrest because officer acted pursuant to legal process, and although it was later determined that arrest warrant lacked probable cause, district court had authority to issue the warrant based on a charge of terroristic threatening. Juillerat v. Mudd, 735 Fed. Appx. 887, 2018 U.S. App. LEXIS 14238 (6th Cir. Ky. 2018).

4. Double Jeopardy.

Under a proper Blockburger analysis, double jeopardy does not occur when a person is charged with two crimes arising from the same course of conduct, as long as each statute requires proof of an additional fact which the other does not. Properly applying the Blockburger analysis, the Supreme Court of Kentucky overrules its precedent holding that convictions on both wanton endangerment under KRS 508.060 and terroristic threatening under KRS 508.080 involving the same victim are barred under the double jeopardy clause. Mullikan v. Commonwealth, 341 S.W.3d 99, 2011 Ky. LEXIS 89 (Ky. 2011).

Terroristic threatening requires a threat to commit a crime, but wanton endangerment does not require such a threat, and wanton endangerment requires actual conduct placing others at serious risk, but terroristic threatening does not require such actual conduct or such actual serious risk. Consequently, convictions on both offenses do not violate KRS 505.020 because terroristic threatening is not included within wanton endangerment since terroristic threatening is not established by proof of the same or less than all the facts required to establish the commission of wanton endangerment. Mullikan v. Commonwealth, 341 S.W.3d 99, 2011 Ky. LEXIS 89 (Ky. 2011).

5. Elements.

The criminal offense of terroristic threatening can be committed even if the victim has no knowledge of the threat, thus victim statements to his mother that he was going to kill defendant was terroristic threatening. Brock v. Commonwealth, 947 S.W.2d 24, 1997 Ky. LEXIS 18 (Ky. 1997).

6. Instructions.

In prosecution for first-degree robbery, the defendant's evidence did not justify giving an instruction on terroristic threatening as a lesser included offense of robbery, where the defendant claimed that he told the victim that "me and you are going to fight, if you don't give me my money," and then left the scene, returning with a gun which he concealed beneath his clothes; however, he claimed that before he could remove the gun from his clothing or make any threats, the victim suddenly appeared and shot him. Blankenship v. Commonwealth, 740 S.W.2d 164, 1987 Ky. App. LEXIS 587 (Ky. Ct. App. 1987).

Where it would be "reasonable" for a juror to have a "reasonable doubt" as to whether the defendant committed first degree wanton endangerment and still find him guilty of the lesser charge of terroristic threatening, the jury should be instructed on first degree wanton endangerment, and in the alternative, terroristic threatening as a lesser included offense. Commonwealth v. Black, 907 S.W.2d 762, 1995 Ky. LEXIS 121 (Ky. 1995).

7. Lesser Included Offenses.

Defendant who held policemen and other hostages at gunpoint and fired at them as they fled could not be convicted of both terroristic threatening and wanton endangerment since the former is included in the latter. Watson v. Commonwealth, 579 S.W.2d 103, 1979 Ky. LEXIS 233 (Ky. 1979).

Terroristic threatening is a lesser included offense of wanton endangerment and a defendant cannot be convicted of both charges when they concern the same victim. Commonwealth v. Black, 907 S.W.2d 762, 1995 Ky. LEXIS 121 (Ky. 1995).

Because terroristic threatening in the third degree requires proof of a threat to commit a crime likely to result in death or serious physical injury while intimidation of a participant in the legal process does not require proof of such a threat but requires proof simply that physical force or a threat of any nature be used, terroristic threatening in the third degree is, therefore, not a lesser included offense of intimidating a participant in the legal process. Cecil v. Commonwealth, 297 S.W.3d 12, 2009 Ky. LEXIS 245 (Ky. 2009).

9. Serious Physical Injury.

Court reversed defendant's conviction of first-degree assault pursuant to Ky. Rev. Stat. Ann. § 508.010(1) because the Commonwealth failed to introduce sufficient evidence that the victim suffered a serious physical injury as defined by Ky. Rev. Stat. Ann. § 500.080(15). The Commonwealth did not present any evidence of the victim facing a substantial risk of death from wounds that stopped bleeding before emergency responders arrived. Lamotte v. Commonwealth, 2023 Ky. App. LEXIS 58 (Ky. Ct. App. Aug. 4, 2023).

Cited in:

Commonwealth v. Ashcraft, 691 S.W.2d 229, 1985 Ky. App. LEXIS 554 (Ky. Ct. App. 1985); Commonwealth v. Arnette, 701 S.W.2d 407, 1985 Ky. LEXIS 296 (Ky. 1985).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Criminal coercion, KRS 509.080.

False reporting of fire or other emergency, KRS 519.040.

Northern Kentucky Law Review.

Vaughn and Moore, Battered Spouse Defense In Kentucky, 10 N. Ky. L. Rev. 399 (1983).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Police Officer's Answer to Claim of Unlawful Arrest, Form 121.02.

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, §§ 3.61, 3.62.

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 5 Kidnapping and Related Offenses, § 3.83.

508.090. Definitions for KRS 508.100 to 508.120.

As used in KRS 508.100 to 508.120, unless the context requires otherwise:

(1) "Abuse or neglect" means:

(a) The infliction of:

1. Physical pain or injury, including ingestion or inhalation of a controlled substance; or

2. Mental injury; or

(b) The deprivation of services by a person which are necessary to maintain the health and welfare of a person, or a situation in which an adult, living alone, is unable to provide or obtain for himself or herself the services which are necessary to maintain his or her health or welfare;

(2) "Controlled substance" has the same meaning as in KRS 218A.010; and

(3) "Physically helpless" and "mentally helpless" means a person who lacks substantial capacity to defend himself or herself or solicit protection from law enforcement agencies.

History.

Enact. Acts 1982, ch. 168, § 4, effective July 15, 1982; 2026 ch. 68, § 11, effective July 15, 2026.

NOTES TO DECISIONS

1. Evidence.

Evidence was sufficient to sustain a conviction for first-degree criminal abuse because the victim was uninjured when defendant entered the victim's room alone, he was the victim's primary caregiver, and a doctor testified that defendant's story did not match the type of fracture the victim suffered, and it was not common in a two-year old. Mason v. Commonwealth, 331 S.W.3d 610, 2011 Ky. LEXIS 3 (Ky. 2011).

Persons walking into defendant's trailer and surveying the scene could have reasonably concluded that his children were being abused, as defined in KRS 508.090(1), because they were locked in their rooms on one of the hottest days of the summer, clad in urine-soaked clothing, and speckled with feces; one child was hungry to the point of eating his own feces. Commonwealth v. O'Conner, 372 S.W.3d 855, 2012 Ky. LEXIS 42 (Ky. 2012), modified, 2012 Ky. LEXIS 661 (Ky. Aug. 23, 2012).

Mother's conviction for first-degree criminal abuse was erroneous because the trial court erred in instructing the jury as to direct abuse by her, as defined in KRS 508.090(1); she could retried under the alternative theory of permitting the abuse of her child because the jury never reached that question, and she was not entitled to a directed verdict of acquittal. Acosta v. Commonwealth, 391 S.W.3d 809, 2013 Ky. LEXIS 5 (Ky. 2013), overruled in part, Ray v. Commonwealth, 611 S.W.3d 250, 2020 Ky. LEXIS 403 (Ky. 2020).

Cited in:

Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Sellars, Criminal Law, 71 Ky. L.J. 355 (1982-83).

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Definitions, §§ 3.14, 3.15.

508.100. Criminal abuse in the first degree.

(1) A person is guilty of criminal abuse or neglect in the first degree when he or she intentionally abuses or neglects another person or permits another person of whom he or she has actual custody to be abused or neglected and thereby:

(a) Causes serious physical injury;

(b) Places him or her in a situation that creates a substantial and unjustifiable risk of serious physical injury; or

(c) Causes torture, cruel confinement, or cruel punishment; to a person under thirteen (13) years old, or who is physically helpless or mentally helpless.

(2) Criminal abuse or neglect in the first degree is a Class C felony unless the victim is under thirteen (13) years old, in which case it is a Class B felony.

History.

Enact. Acts 1982, ch. 168, § 1, effective July 15, 1982; 2022 ch. 31, § 1, effective July 14, 2022; 2026 ch. 68, § 12, effective July 15, 2026.

Legislative Research Commission Notes.

(7/14/2022). 2022 Ky. Acts ch. 31, sec. 2, provides that the Act, which amended this statute, may be cited as Kami's Law.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Applicability.
3. Purpose.
4. Legislative Intent.
5. Elements.
6. Evidence.
7. Instructions.
8. Joinder of Defendants.
9. Lesser-Included Offense.

1. Constitutionality.

This section is not unconstitutionally void for vagueness. Carpenter v. Commonwealth, 771 S.W.2d 822, 1989 Ky. LEXIS 56 (Ky. 1989).

Subdivision (1)(c) of this section was not unconstitutionally vague; a severe spanking that does not result in serious physical injury, or permanent scarring, may constitute "torture, cruel confinement or cruel punishment" as statutorily prohibited. Canler v. Commonwealth, 870 S.W.2d 219, 1994 Ky. LEXIS 3 (Ky. 1994).

2. Applicability.

Where the injury is the result of the use of a deadly weapon or a dangerous instrument, the proper charge is first or second-degree assault, not criminal abuse, regardless of whether the victim is related to the assailant. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

This section does not apply to every situation where a child is injured but only to those instances where abuse is involved. Carpenter v. Commonwealth, 771 S.W.2d 822, 1989 Ky. LEXIS 56 (Ky. 1989).

3. Purpose.

The purpose of the statutes on criminal abuse, this section, and KRS 508.110 and 508.120, is to criminalize serious

physical abuse of children twelve (12) or less by a custodial person, although their scope includes others who are "physically helpless or mentally helpless". Commonwealth v. Welch, 864 S.W.2d 280, 1993 Ky. LEXIS 128 (Ky. 1993).

4. Legislative Intent.

This section is constitutionally proper if the word "intentionally" is construed to modify both abuse and permits. This is a logical construction because the legislature intended to impose criminal liability only if the accused were mentally culpable and because the internal structure of the three degrees of the offense of criminal abuse is the same. Carpenter v. Commonwealth, 771 S.W.2d 822, 1989 Ky. LEXIS 56 (Ky. 1989).

5. Elements.

Criminal abuse involves a situation where a person inflicts serious physical injury on another person of whom he or she has actual custody. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

While first-degree criminal abuse is committed where having custody of a person allows another to abuse that person, the offense established by KRS 209.990(2) appears to contemplate either the infliction of physical pain or injury on the adult victim by the caretaker himself, or by someone acting at his instigation, or the deliberate deprivation by the caretaker of services necessary to maintain the health and welfare of the victim. Morris v. Commonwealth, 783 S.W.2d 889, 1990 Ky. App. LEXIS 24 (Ky. Ct. App. 1990).

Jury instruction incorporating "actual custody" element was not error; such custody, as used in this section, was not intended to apply only to those with legal custody or guardianship rights, but also to persons such as defendant, who reside in the same household and stand in loco parentis to the child. Davis v. Commonwealth, 967 S.W.2d 574, 1998 Ky. LEXIS 44 (Ky. 1998), modified, 1998 Ky. LEXIS 101 (Ky. June 18, 1998).

6. Evidence.

It may well be there are situations where using a wire coat hanger to correct a child's behavior, if not appropriate, is at least within the legal limits of parental discretion in raising their children; nevertheless, beatings administered by defendant were sufficient to sustain the charges of torture or cruel punishment to a person under 12 years of age because the children testified to circumstances proving the nature of the beatings to have been cruel and indiscriminate, and far different in character from normal parental discipline. Stoker v. Commonwealth, 828 S.W.2d 619, 1992 Ky. LEXIS 45 (Ky. 1992).

Supreme Court had no difficulty in holding the bizarre misconduct involved in charges of criminal abuse generated by tying up children, putting tape over their mouths, and forcing them to watch pornographic movies, could reasonably and appropriately be deemed by a jury to constitute "torture, cruel confinement or cruel punishment to a person 12 years of age or less." Stoker v. Commonwealth, 828 S.W.2d 619, 1992 Ky. LEXIS 45 (Ky. 1992).

Circumstantial evidence presented, including testimony evidence that the child died of forcible asphyxiation that was an inflicted death and that defendant had the opportunity commit the acts of abuse, was adequate to survive defendant's motion for directed verdicts of acquittal. Ratliff v. Commonwealth, 194 S.W.3d 258, 2006 Ky. LEXIS 170 (Ky. 2006).

Evidence was sufficient to sustain a conviction for first-degree criminal abuse because the victim was uninjured when defendant entered the victim's room alone, he was the victim's primary caregiver, and a doctor testified that defendant's story did not match the type of fracture the victim suffered, and it was not common in a two-year old. Mason v. Commonwealth, 331 S.W.3d 610, 2011 Ky. LEXIS 3 (Ky. 2011).

Court erred in overturning defendant's convictions for criminal abuse of his children, in violation of KRS 508.100(1) because the court did not properly defer to the jury its proper fact-finding role; it was not unreasonable for the jury to conclude that the abuse was intentional as the children were locked in their rooms on one of the hottest days of the summer, clad in urine-soaked clothes, and speckled with feces. Commonwealth v. O'Conner, 372 S.W.3d 855, 2012 Ky. LEXIS 42 (Ky. 2012), modified, 2012 Ky. LEXIS 661 (Ky. Aug. 23, 2012).

Evidence was sufficient to sustain defendant's murder, first-degree assault, and first-degree criminal abuse convictions because the medical evidence concerning the force required to inflict the injuries, the obviously battered state of the victim's body, and defendant's police statement admitting instances of "discipline" were sufficient to permit a reasonable juror to conclude that she intentionally abused the child, and that she murdered and assaulted him, either directly or by lending aid to the co-defendant. Peacher v. Commonwealth, 391 S.W.3d 821, 2013 Ky. LEXIS 11 (Ky. 2013).

Evidence was sufficient to sustain defendant's criminal abuse charge because the acts occurred during the time that defendant was the child's primary caregiver, and the evidence could be perceived to show that defendant, rather than someone else, committed the abusive acts that resulted in the leg fractures. Johnson v. Commonwealth, 405 S.W.3d 439, 2013 Ky. LEXIS 92 (Ky. 2013), overruled in part, 676 S.W.3d 405, 2023 Ky. LEXIS 166 (Ky. 2023).

7. Instructions.

This case did not present a situation where a parent has placed a child in harm's way with no particular desire that harm ensue; rather the evidence strongly indicates that father struck and injured child, and permitted step-mother to do so, with the conscious and express goal of inflicting severe pain. Accordingly, because the jury could not rationally find father guilty of second-degree criminal abuse yet not guilty of first-degree criminal abuse, the District Court did not err in denying father's request for an instruction on second-degree criminal abuse. United States v. Phillip, 948 F.2d 241, 1991 U.S. App. LEXIS 25714 (6th Cir. Ky. 1991), cert. denied, 504 U.S. 930, 112 S. Ct. 1994, 118 L. Ed. 2d 590, 1992 U.S. LEXIS 3012 (U.S. 1992).

In defendant's criminal abuse case, there was no "real possibility" that a juror voted to convict defendant under the cruel confinement theory when there was no evidence to support that theory, but there was ample evidence to support the other theories of guilt. So there was no probability that the result of the action was altered by the addition of the superfluous theories of guilt in the criminal abuse instruction, and therefore, the erroneous criminal abuse instruction failed to constitute palpable error. Mason v. Commonwealth, 331 S.W.3d 610, 2011 Ky. LEXIS 3 (Ky. 2011).

Mother's conviction for first-degree criminal abuse, in violation of KRS 508.100(1), was erroneous because the trial court erred in instructing the jury as to direct abuse by her; she could retried under the alternative theory of permitting the abuse of her child because the jury never reached that question, and she was not entitled to a directed verdict of acquittal. Acosta v. Commonwealth, 391 S.W.3d 809, 2013 Ky. LEXIS 5 (Ky. 2013), overruled in part, Ray v. Commonwealth, 611 S.W.3d 250, 2020 Ky. LEXIS 403 (Ky. 2020).

8. Joinder of Defendants.

Trial court did not err in joining trials of codefendants in child's death; severance was not required merely because defendants were likely to cast blame on each other. Davis v. Commonwealth, 967 S.W.2d 574, 1998 Ky. LEXIS 44 (Ky. 1998), modified, 1998 Ky. LEXIS 101 (Ky. June 18, 1998).

9. Lesser-Included Offense.

Criminal abuse is not a lesser-included offense of first or second degree assault. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

Cited in:

Knox v. Commonwealth, 735 S.W.2d 711, 1987 Ky. LEXIS 229 (Ky. 1987), overruled, Lane v. Commonwealth, 956 S.W.2d 874, 1997 Ky. LEXIS 68 (Ky. 1997), overruled, Lane v. Commonwealth, 949 S.W.2d 604 (Ky. 1997), overruled in part, Tharp v. Commonwealth, 40 S.W.3d 356, 2000 Ky. LEXIS 200 (Ky. 2000); United States v. Phillip, 948 F.2d 241, 1991 U.S. App. LEXIS 25714 (6th Cir. 1991); Lane v. Commonwealth, 956 S.W.2d 874, 1997 Ky. LEXIS 68 (Ky. 1997); Bartley v. Commonwealth, 400 S.W.3d 714, 2013 Ky. LEXIS 291 (Ky. 2013).

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Kentucky Law Survey, Sellars, Criminal Law, 71 Ky. L.J. 355 (1982-83).

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 4 Abuse, §§ 3.65A — 3.67B.

Kentucky Instructions to Juries (Criminal), 5th Ed., Complicity and Inchoate Offenses, Part 2 Complicity, § 10.16.

508.110. Criminal abuse in the second degree.

(1) A person is guilty of criminal abuse or neglect in the second degree when he or she wantonly abuses or neglects another person or permits another person of whom he or she has actual custody to be abused or neglected and thereby:

(a) Causes serious physical injury; or

(b) Places him or her in a situation that creates a substantial and unjustifiable risk of serious physical injury; or

(c) Causes torture, cruel confinement, or cruel punishment; to a person under thirteen (13) years old, or who is physically helpless or mentally helpless.

(2) Criminal abuse or neglect in the second degree is a Class D felony.

History.

Enact. Acts 1982, ch. 168, § 2, effective July 15, 1982; 2026 ch. 68, § 13, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. In General.
2. Applicability.
3. Purpose.
4. Cruel Punishment.
5. Instructions.
6. Lesser-Included Offense.

1. In General.

Criminal abuse involves a situation where a person inflicts serious physical injury on another person of whom he or she has actual custody. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

Defendant failed to preserve his claim that the Commonwealth improperly obtained a conviction based on a theory of wanton criminal abuse that was not specifically set forth in the indictment as it was not raised at trial, and there was no manifest injustice or prejudice to defendant as his counsel addressed the theory in closing; the evidence that defendant fed a child a mixture of milk and castor oil from a bottle that contained cocaine supported the conviction, even though no witness testified that defendant knew that the bottle contained cocaine. Thomas v. Commonwealth, 153 S.W.3d 772, 2004 Ky. LEXIS 275 (Ky. 2004).

2. Applicability.

Where the injury is the result of the use of a deadly weapon or a dangerous instrument, the proper charge is first or second-degree assault, not criminal abuse, regardless of whether the victim is related to the assailant. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

This section did not apply to the abuse of a fetus by a woman who was drug dependent and who took drugs during her pregnancy where child was born with neonatal abstinence syndrome. Commonwealth v. Welch, 864 S.W.2d 280, 1993 Ky. LEXIS 128 (Ky. 1993).

3. Purpose.

The purpose of the statutes on criminal abuse, KRS 508.100, this section and KRS 508.120, is to criminalize serious physical abuse of children twelve (12) or less by a custodial person, although their scope includes others who are "physically helpless or mentally helpless". Commonwealth v. Welch, 864 S.W.2d 280, 1993 Ky. LEXIS 128 (Ky. 1993).

4. Cruel Punishment.

Consistent with KRS 446.080's directive that ordinary words in statutes shall be given their ordinary meaning, cruel punishment outside the criminal arena is defined as "heartless and unfeeling." Cutrer v. Commonwealth, 697 S.W.2d 156, 1985 Ky. App. LEXIS 621 (Ky. Ct. App. 1985).

Although reasonable minds might differ as to the precise degree of misconduct that constitutes cruel punishment, the due process clause does not require this section to meet impossible standards of specificity; the plain language of this section is sufficiently clear to apprise ordinary sensible persons of the type of acts it sanctions. Cutrer v. Commonwealth, 697 S.W.2d 156, 1985 Ky. App. LEXIS 621 (Ky. Ct. App. 1985).

5. Instructions.

This case did not present a situation where a parent has placed a child in harm's way with no particular desire that harm ensue; rather the evidence strongly indicates that father struck and injured child, and permitted step-mother to do so, with the conscious and express goal of inflicting severe pain. Accordingly, because the jury could not rationally find father guilty of second-degree criminal abuse yet not guilty of first-degree criminal abuse, the District Court did not err in denying father's request for an instruction on second-degree criminal abuse. United States v. Phillip, 948 F.2d 241, 1991 U.S. App. LEXIS 25714 (6th Cir. Ky. 1991), cert. denied, 504 U.S. 930, 112 S. Ct. 1994, 118 L. Ed. 2d 590, 1992 U.S. LEXIS 3012 (U.S. 1992).

6. Lesser-Included Offense.

Criminal abuse is not a lesser-included offense of first or second degree assault. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

Cited in:

Lane v. Commonwealth, 956 S.W.2d 874, 1997 Ky. LEXIS 68 (Ky. 1997), cert. denied, Lane v. Kentucky, 522 U.S. 1123, 118 S. Ct. 1067, 140 L. Ed. 2d 127, 1998 U.S. LEXIS 1074 (1998), review or rehearing denied, — S.W.2d —, 1997 Ky. LEXIS 97 (Ky. 1997).

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Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 4 Abuse, §§ 3.68A — 3.70B.

Kentucky Instructions to Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 2 Riot, Disorderly Conduct, and Related Offenses, §§ 8.51, 8.52A.

508.120. Criminal abuse in the third degree.

(1) A person is guilty of criminal abuse or neglect in the third degree when he or she recklessly abuses or neglects another person or permits another person of whom he or she has actual custody to be abused or neglected and thereby:

(a) Causes serious physical injury; or

(b) Places him or her in a situation that creates a substantial and unjustifiable risk of serious physical injury; or

(c) Causes torture, cruel confinement, or cruel punishment; to a person under thirteen (13) years old, or who is physically helpless or mentally helpless.

(2) Criminal abuse or neglect in the third degree is a Class A misdemeanor unless the person is under thirteen (13) years old and the person has suffered serious physical injury by the ingestion or inhalation of a controlled substance, in which case it is a Class D felony.

History.

Enact. Acts 1982, ch. 168, § 3, effective July 15, 1982; 2026 ch. 68, § 14, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Purpose.
3. Cruel Punishment.
4. Elements.
5. Instructions.
6. Lesser-Included Offense.

1. Applicability.

Where the injury is the result of the use of a deadly weapon or a dangerous instrument, the proper charge is first or second-degree assault, not criminal abuse, regardless of whether the victim is related to the assailant. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

2. Purpose.

The purpose of the statutes on criminal abuse, KRS 508.100, 508.110 and this section, is to criminalize serious physical abuse of children twelve (12) or less by a custodial person, although their scope includes others who are "physically helpless or mentally helpless". Commonwealth v. Welch, 864 S.W.2d 280, 1993 Ky. LEXIS 128 (Ky. 1993).

3. Cruel Punishment.

Although reasonable minds might differ as to the precise degree of misconduct that constitutes cruel punishment, the due process clause does not require this section to meet impossible standards of specificity; the plain language of this section is sufficiently clear to apprise ordinary sensible persons of the type of acts it sanctions. Cutrer v. Commonwealth, 697 S.W.2d 156, 1985 Ky. App. LEXIS 621 (Ky. Ct. App. 1985).

Consistent with KRS 446.080's directive that ordinary words in statutes shall be given their ordinary meaning, cruel punishment outside the criminal arena is defined as "heartless and unfeeling." Cutrer v. Commonwealth, 697 S.W.2d 156, 1985 Ky. App. LEXIS 621 (Ky. Ct. App. 1985).

4. Elements.

Criminal abuse involves a situation where a person inflicts serious physical injury on another person of whom he or she has actual custody. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

Reasonable juror could find that the significant impairment of the use of an 11-month-old victim's arm for a four-week period, because it was broken, constituted either "prolonged impairment of health" or "prolonged loss or impairment of the function of a bodily organ," for purposes of a conviction of third degree criminal abuse, under the definition of "serious physical injury" in KRS 500.080(15). Clift v. Commonwealth, 105 S.W.3d 467, 2003 Ky. App. LEXIS 89 (Ky. Ct. App. 2003).

Actual custody must necessarily include the direct care or the direct control of a child by a defendant. Evidence indicated that defendant never exercised direct care or direct control over the children. She did not work within the confines of the daycare and was not involved in the caretaking aspect of the children on a daily basis. She did not have actual custody of the abused children within the meaning of Ky. Rev. Stat. Ann. § 508.120. Williams v. Commonwealth, 706 S.W.3d 285, 2024 Ky. App. LEXIS 71 (Ky. Ct. App. 2024).

5. Instructions.

Where there was no evidence that the defendant's stabbing his son in the right eye with a karate sword was anything other than intentional or wanton, and the defendant presented no evidence of a reckless mental state required for third-degree criminal abuse, he was not entitled to an instruction on criminal abuse. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

Trial court properly determined that a third-degree criminal abuse instruction could properly be given because the evidence could fairly support an inference that defendant, intending to discipline the child, caused the child to suffer unintended injuries; and that defendant was surprised at the extent of the injuries he had inflicted upon the child based upon his texted reactions to the picture the child's mother sent him of the child's bruises. Green v. Commonwealth, 2021 Ky. App. Unpub. LEXIS 154 (Ky. Ct. App. 2021).

6. Lesser-Included Offense.

Criminal abuse is not a lesser-included offense of first or second degree assault. Commonwealth v. Chandler, 722 S.W.2d 899, 1987 Ky. LEXIS 186 (Ky. 1987).

Cited in:

Lane v. Commonwealth, 956 S.W.2d 874, 1997 Ky. LEXIS 68 (Ky. 1997), cert. denied, Lane v. Kentucky, 522 U.S. 1123, 118 S. Ct. 1067, 140 L. Ed. 2d 127, 1998 U.S. LEXIS 1074 (1998), review or rehearing denied, — S.W.2d —, 1997 Ky. LEXIS 97 (Ky. 1997).

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Gormley and Hartman, The Kentucky Bill of Rights: A Bicentennial Celebration, 80 Ky. L.J. 1 (1990-91).

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 4 Abuse, §§ 3.71A — 3.73B.

508.125. Female genital mutilation.

(1) As used in this section, "female genital mutilation" means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including but not limited to:

(a) A clitoridectomy;

(b) The partial or total removal of the clitoris or the prepuce;

(c) The excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;

(d) The infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning of the labia minora or the labia majora, with or without the excision of the clitoris;

(e) Pricking, piercing, incising, scraping, or cauterizing the genital area; or

(f) Any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

(2) A person is guilty of female genital mutilation when:

(a) The person knowingly performs female genital mutilation on another person under eighteen (18) years of age;

(b) The person is a parent, guardian, or has immediate custody or control of a person under eighteen (18) years of age and knowingly consents to or permits female genital mutilation of such person; or

(c) The person knowingly removes or causes or permits the removal of a person under eighteen (18) years of age from Kentucky for the purposes of performance of female genital mutilation of the person.

(3) It is not a defense to female genital mutilation that the conduct under subsection(2) of this section is:

(a) Required as a matter of religion, custom, ritual, or standard practice; or

(b) Consented to by the individual on whom it is performed or the individual's parent or guardian.

(4) A surgical procedure is not a violation of subsection (1) of this section if the procedure is:

(a) Necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a health care provider; or

(b) Performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place of its performance as a health care provider.

(5) Female genital mutilation is a Class B felony.

History.

2020 ch. 74, § 1, effective April 2, 2020.

508.130. Stalking.

(1) As used in this section, unless the context requires otherwise:

(a)1. "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose.

2. One (1) or more of these acts may include:

a. Those by which a person, directly or indirectly, by any means or method:

i. Follows, monitors, observes, surveils, or threatens another person; or

ii. Interferes with another person's property; or

b. The use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including but not limited to:

i. Computers;

ii. The internet, internet applications, social media platforms, email, text messages, instant messages, or any other electronic network;

iii. Cameras or other recording devices;

iv. Telephones or other personal communications devices;

v. Scanners or other copying devices; and

vi. Any device that enables the use of a transmitting device.

3. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he or she was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence;

(b) "Protective order" means:

1. An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

2. A foreign protective order, as defined in KRS 403.720 and 456.010;

3. An order issued under KRS 431.064;

4. An interpersonal protective order issued in accordance with KRS 508.155 or 510.037;

5. An order of protection as defined in KRS 403.720 and 456.010;

6. A civil restraining order issued by a court of this Commonwealth or any other state on the basis of domestic violence and abuse as defined in KRS 403.720 or dating violence and abuse as defined in KRS 456.010; or

7. Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender; and

(c) "Social media platform" means a website or application that is open to the public, allows a user to create an account, and enables users to do all of the following:

1. Interact socially with other users within the confines of the website or application;

2. Construct a public or semipublic profile for the purpose of signing into and using the website or application;

3. Populate a list of other users with whom an individual shares or has the ability to share a social connection within the website or application; and

4. Create or post content viewable by others, including on message boards, chat rooms, video channels, direct or private messages, or chats, or

on a landing page or main feed that presents the user with content generated by other users.

(2) A person is guilty of stalking when he or she:

(a) Intentionally engages in a course of conduct directed at another person or persons that:

1. Seriously alarms, annoys, intimidates, or harasses the other person or persons;

2. Serves no legitimate purpose; and

3. Causes the other person or persons to suffer substantial mental distress, including but not limited to interference with the person's sense of safety or well-being; and

(b) Consciously disregards a substantial and unjustifiable risk that the course of conduct would cause the other person or persons to suffer substantial mental distress.

(3) Stalking is a Class D felony unless:

(a) A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice;

(b) A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice;

(c) The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims;

(d) The act or acts were committed while the defendant had a deadly weapon on or about his or her person; or

(e) The defendant's act or acts place the victim or victims in reasonable fear of:

1. Sexual contact as defined in KRS 510.010;

2. Physical injury; or

3. Death;

in which case it is a Class C felony.

History.

Enact. Acts 1992, ch. 443, § 1, effective July 14, 1992; 2000, ch. 401, § 13, effective July 14, 2000; 2002, ch. 119, § 1, effective July 15, 2002; 2009, ch. 100, § 2, effective June 25, 2009; 2015 ch. 102, § 45, effective January 1, 2016; 2026 ch. 67, § 1, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). Under the authority of KRS 7.136(1)(c) and (h), the reviser of statutes has rearranged subsection (1) of this statute during codification to correct a manifest clerical or typographical error. The words in the text were not changed.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Constitutionally Protected Activity.
3. Evidence.
4. Instructions.
5. Generally.

1. Constitutionality.

Since when read in conjunction with this section, KRS 508.140 defines the offense of stalking with sufficient definiteness that ordinary people can determine what conduct is prohibited, such statute is not unconstitutionally vague. Monhollen v. Commonwealth, 947 S.W.2d 61, 1997 Ky. App. LEXIS 33 (Ky. Ct. App. 1997).

2. Constitutionally Protected Activity.

The trial court did not err when it did not hold a hearing to determine whether the defendant was engaged in constitutionally protected activity. A defendant can knowingly and voluntarily waive even the most fundamental constitutional rights. In this case, no fundamental right was waived; rather, it was the waiver of a hearing to determine whether that right existed, i.e., freedom of speech. Since defendant twice rejected the hearing, it was waived. The use of "shall" in KRS 508.130(2) cannot mandate a hearing when the defendant waives it. Johnson v. Commonwealth, 2008 Ky. App. LEXIS 34 (Ky. Ct. App. 2008), sub. op., 2008 Ky. App. Unpub. LEXIS 1219 (Ky. Ct. App. Feb. 15, 2008).

3. Evidence.

Where the Commonwealth did not introduce sufficient evidence that defendant engaged in a pattern of conduct composed of two (2) or more acts that evidenced a continuity of purpose, the evidence was not sufficient for purposes of convicting him of stalking, in violation of KRS 508.150, and the trial court erred in not directing the verdict on that charge in his favor; the definition of "stalk" under KRS 508.130 required two (2) or more acts. Morgan v. Commonwealth, 189 S.W.3d 99, 2006 Ky. LEXIS 12 (Ky. 2006), overruled, Shane v. Commonwealth, 243 S.W.3d 336, 2007 Ky. LEXIS 262 (Ky. 2007), abrogated as stated in Grubb v. Norton Hosps., 401 S.W.3d 483, 2013 Ky. LEXIS 227 (Ky. 2013), overruled in part, Roe v. Commonwealth, 2015 Ky. LEXIS 2080 (Ky. Sept. 24, 2015).

Because defendant carried signs and a gun outside of the victim's office for two (2) months, defendant was engaged in first-degree stalking under KRS 508.130 and not a constitutionally-protected activity; because defendant carried a gun, there was no evidentiary foundation for giving a lesser-included instruction on second-degree stalking. Johnson v. Commonwealth, 2008 Ky. App. LEXIS 34 (Ky. Ct. App. 2008), sub. op., 2008 Ky. App. Unpub. LEXIS 1219 (Ky. Ct. App. Feb. 15, 2008).

Circuit court clearly erred in entering an interpersonal protective order against appellant where appellee's alleged fear that appellant would intentionally go to places where he was in order to have him arrested for violating a domestic violence order and his jealousy of appellant's new relationship did not meet the elements of stalking. Halloway v. Simmons, 532 S.W.3d 158, 2017 Ky. App. LEXIS 564 (Ky. Ct. App. 2017).

Trial court did not err in denying appellant's petition for an interpersonal protection order where the statutory elements of stalking under Kentucky law were not satisfied because the only proof that appellant provided about the second alleged stalking incident was that appellee knocked on his door a few days later, but he offered no proof that appellee did so with the intent to threaten him or that such action would cause a reasonable person to suffer substantial emotional distress. Additionally, there was no evidence in the record that appellant subjectively suffered emotional distress. Strong v. Gary, 673 S.W.3d 77, 2023 Ky. App. LEXIS 54 (Ky. Ct. App. 2023).

Court affirmed grant of an interpersonal protection order to appellee; appellee told appellant that she wanted no further contact with him, yet he stalked her by showing up at a soccer game, sending flowers to her house, following her in a car, and anonymously texting her saying he had been watching her house, plus he made an implicit threat to put her in fear as he did not hesitate to abuse his position as a police officer in order to obtain intimidating information about her. Allen v. Eder, 682 S.W.3d 32, 2023 Ky. App. LEXIS 78 (Ky. Ct. App. 2023).

Unpublished decision: Extension of a protective order was not supported by sufficient evidence because the family court

simply checked a box finding that stalking had occurred but did not provide written findings of fact and did not indicate that there were any threats made to appellee, as defined by Ky. Rev. Stat. Ann. § 508.130 or § 508.150. Taylor v. Fitzpatrick, 659 S.W.3d 745, 2023 Ky. App. LEXIS 5 (Ky. Ct. App. 2023).

4. Instructions.

Trial court failure to instruct the jury on all of the elements of stalking was reversible error, as the definition of "course of conduct" was required in the definition of "stalk" in order for the jury to have been aware that the pattern of conduct necessary to have proved the offense required inclusion of at least two intentional acts. Morgan v. Commonwealth, 189 S.W.3d 99, 2006 Ky. LEXIS 12 (Ky. 2006), overruled, Shane v. Commonwealth, 243 S.W.3d 336, 2007 Ky. LEXIS 262 (Ky. 2007), abrogated as stated in Grubb v. Norton Hosps., 401 S.W.3d 483, 2013 Ky. LEXIS 227 (Ky. 2013), overruled in part, Roe v. Commonwealth, 2015 Ky. LEXIS 2080 (Ky. Sept. 24, 2015).

5. Generally.

For an individual to be granted an interpersonal protective order for stalking, he or she must at a minimum prove by a preponderance of the evidence that, an individual intentionally engaged in two or more acts directed at the victim that seriously alarmed, annoyed, intimidated, or harassed the victim, that served no legitimate purpose, and would have caused a reasonable person to suffer substantial mental distress, and that these acts may occur again. Ky. Rev. Stat. Ann. §§ 508.130 and 456.060. Additionally, the individual must prove that there was an implicit or explicit threat by the perpetrator that put the victim in reasonable fear of sexual contact, physical injury, or death. Ky. Rev. Stat. Ann. § 508.150. Halloway v. Simmons, 532 S.W.3d 158, 2017 Ky. App. LEXIS 564 (Ky. Ct. App. 2017).

Cited in:

Holloman v. Commonwealth, 37 S.W.3d 764, 2001 Ky. LEXIS 29 (Ky. 2001).

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.

Lotz, A Survey of Criminal Law Statutes Enacted in 1992, 20 N. Ky. L. Rev. 745 (1993).

Treatises

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 1 Definitions, §§ 3.10 — 3.11.

Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, § 3.64.

508.140. Stalking in the first degree. [Repealed]

History.

Enact. Acts 1992, ch. 443, § 2, effective July 14, 1992; 2000, ch. 401, § 14, effective July 14, 2000; repealed by 2026 ch. 67, § 16, effective July 15, 2026.

508.150. Stalking in the second degree. [Repealed]

History.

Enact. Acts 1992, ch. 443, § 3, effective July 14, 1992; repealed by 2026 ch. 67, § 16, effective July 15, 2026.

508.152. Unlawful use of a tracking device.

(1) As used in this section:

(a) "Motor vehicle" has the same meaning as "vehicle" in KRS 186.010(8)(a);

(b) "Protective order" has the same meaning as in KRS 508.130; and

(c) "Tracking device" means an electronic or mechanical device that is designed or intended to allow a person to remotely determine or track the position or movement of another person or an object, regardless of whether that information is recorded.

(2) A person is guilty of unlawful use of a tracking device when he or she intentionally:

(a) Installs or places a tracking device, or causes a tracking device to be installed or placed, in or on a motor vehicle without the knowledge and consent of the owner of the motor vehicle or, if the motor vehicle is leased, the lessee or authorized operator of the motor vehicle;

(b) Tracks the location of a motor vehicle with a tracking device without the knowledge and consent of either the owner or the authorized operator of the motor vehicle or, if the motor vehicle is leased, either the lessee or authorized operator of the motor vehicle;

(c) While being the restrained party under a protective order, uses a tracking device to track the location of a motor vehicle operated or occupied by an individual protected under the order; or

(d) While on probation or parole for a crime defined in KRS Chapter 508, uses a tracking device to track the location of a motor vehicle operated or occupied by a victim of the crime or by a family member of the victim of the crime without the knowledge and consent of the victim or family member.

(3) Unlawful use of a tracking device is a Class A misdemeanor.

(4) Subsection (2) of this section does not apply to the installation or use of any:

(a) Device providing vehicle tracking for purposes of providing mechanical, operational, directional, navigation, weather, or traffic information to the operator of the vehicle;

(b) Device for providing emergency assistance to the operator or passengers of the vehicle under the terms and conditions of a subscription service, including any trial period of that subscription service;

(c) Device for providing missing vehicle assistance for the benefit of the owner or operator of the vehicle;

(d) Device providing diagnostic services regarding the mechanical operation of a vehicle under the terms and conditions of a subscription service, including any trial period of the subscription service;

(e) Device or service providing the lessee of the vehicle with clear notice that the vehicle may be tracked. For a lessor who installs a tracking device subsequent to the original vehicle manufacture, the notice shall be provided in writing with an acknowledgment signed by the lessee, regardless of whether the tracking device is original equipment, a retrofit, or an aftermarket product. The requirement for written acknowledgment placed upon the lessor is not imposed upon the manufacturer of the tracking device or the manufacturer of the vehicle;

(f) Tracking device by the parent or guardian of a minor on any vehicle owned or leased by that parent

or guardian of the minor, and operated by the minor; or

(g) Tracking device by a police officer while lawfully performing his or her duties as a police officer.

History.
2023 ch. 163, § 1, effective June 29, 2023.

508.155. Interpersonal protective order to be issued upon violation of KRS 508.130.

A verdict of guilty or a plea of guilty to KRS 508.130 shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

(1) An interpersonal protective order requested under this section may be issued by the court that entered the judgment of conviction;

(2) The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and

(3) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

History.
Enact. Acts 2002, ch. 119, § 2, effective July 15, 2002; 2015 ch. 102, § 46, effective January 1, 2016; 2026 ch. 67, § 14, effective July 15, 2026.

Legislative Research Commission Notes.
(7/15/2026). 2026 Ky. Acts ch. 67, sec. 17, provides that "This Act shall not affect the validity of:

(1) A restraining order or interpersonal protective order issued under KRS 508.155 prior to the effective date of this Act [July 15, 2026]. All such orders shall retain the full force of law for the 10-year period following the date of issuance. Upon renewal of a restraining order issued under Section 14 of this Act [this statute], it shall be converted to an interpersonal protective order under KRS Chapter 456; or

(2) A domestic violence order issued under KRS Chapter 403 or an interpersonal protective order issued under KRS Chapter 456 prior to the effective date of this Act [July 15, 2026] where the basis of the petition was stalking."

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Police Officer's Answer to Claim of Unlawful Arrest, Form 121.02.

508.160. Disarming a peace officer — Penalty — Applicability.

(1) A person is guilty of disarming a peace officer when he intentionally:

(a) Removes a firearm or other deadly weapon from the person of a peace officer when the peace officer is acting within the scope of his official duties; or

(b) Deprives a peace officer of the officer's use of a firearm or deadly weapon when the peace officer is acting within the scope of his official duties.

(2) Disarming a peace officer is a Class D felony.

(3) The provisions of this section shall not apply when:

(a) The defendant does not know or could not reasonably have known that the person disarmed was a peace officer; or

(b) The peace officer was, at the time of the disarming or incident thereto, engaged in felonious conduct.

History.
Enact. Acts 1998, ch. 606, § 123, effective July 15, 1998.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Kentucky Instructions to Juries (Criminal), 5th Ed., Assaults and Restraints of Persons, Part 3 Assault, § 3.49B.

508.170. Strangulation in the first degree.

(1) A person is guilty of strangulation in the first degree when the person, without consent, intentionally impedes the normal breathing or circulation of the blood of another person by:

(a) Applying pressure on the throat or neck of the other person; or

(b) Blocking the nose or mouth of the other person.

(2) Strangulation in the first degree is a Class C felony.

History.
2019 ch. 183, § 1, effective June 27, 2019.

NOTES TO DECISIONS

1. Evidence.

2. —Sufficient.
Evidence was sufficient to support defendant's conviction for strangulation because the victim testified that the victim could not breathe and that the victim felt that the victim would pass out as a result of defendant squeezing the victim's neck with defendant's hand and forearm. Saxton v. Commonwealth, 671 S.W.3d 1, 2022 Ky. LEXIS 379 (Ky. 2022).

508.175. Strangulation in the second degree.

(1) A person is guilty of strangulation in the second degree when the person, without consent, wantonly impedes the normal breathing or circulation of the blood of another person by:

(a) Applying pressure on the throat or neck of the other person; or

(b) Blocking the nose or mouth of the other person.

(2) Strangulation in the second degree is a Class D felony.

History.
2019 ch. 183, § 2, effective June 27, 2019.

NOTES TO DECISIONS

1. Directed Verdict.
Trial court did not err when it denied defendant's motion for directed verdict where multiple witnesses presented evidence indicating defendant strangled the victim, and a nurse detailed her extensive physical examination of the victim at the hospital and concluded that the victim's injuries were consistent with strangulation. Based on the ample testimony, videos, and images presented, a reasonable juror could have found

that defendant strangled the victim. Bandy v. Commonwealth, 701 S.W.3d 553, 2024 Ky. App. LEXIS 44 (Ky. Ct. App. 2024).

HAZING

508.180. Definitions for KRS 508.180 to 508.186.

As used in KRS 508.180 to 508.186, unless the context requires otherwise:

(1) "Hazing" means a direct action which substantially endangers the physical health of a minor or student for the purpose of recruitment, initiation into, affiliation with, or enhancing or maintaining membership or status within any organization, including but not limited to actions which coerce or force a minor or a student to:

(a) Violate federal or state criminal law;

(b) Consume any food, liquid, alcoholic liquid, drug, tobacco product, or other controlled substance which subjects the minor or student to a risk of serious physical injury;

(c) Endure brutality of a physical nature, including whipping, beating or paddling, branding, or exposure to the elements;

(d) Endure brutality of a sexual nature; or

(e) Endure any other activity that creates a reasonable likelihood of serious physical injury to the minor or student;

(2) "Organization":

(a) Means a number of persons who are associated with a school or postsecondary education institution and each other, including a student organization, fraternity, sorority, association, corporation, order, society, corps, club, or similar group; and

(b) Includes any student organization registered pursuant to the policies of the school or postsecondary education institution at any time during the previous five (5) years; and

(3) "Student" means an individual enrolled in a public or private school or postsecondary program of study.

History.

2023 ch. 110, § 1, effective June 29, 2023.

Legislative Research Commission Notes.

(12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools'." Commonwealth ex rel. Cameron v. Johnson, et al., 2021-SC-0518-TG.

508.182. Hazing in the first degree — Defenses — Sentencing.

(1) A person is guilty of hazing in the first degree when he or she intentionally or wantonly engages in an act of hazing that results in serious physical injury or death to a minor or student.

(2) It shall be a defense under this section that the act was part of reasonable and customary:

(a) Interscholastic or intercollegiate athletic practices, competitions, or events;

(b) Law enforcement training; or

(c) Military training.

(3) Hazing in the first degree is a Class D felony. Any sentence imposed on a defendant under this section shall run concurrently with any sentence imposed under KRS 508.060 or 508.070 arising from the same act or occurrence.

History.

2023 ch. 110, § 2, effective June 29, 2023.

508.184. Hazing in the second degree — Defenses — Sentencing.

(1) A person is guilty of hazing in the second degree when he or she recklessly engages in an act of hazing.

(2) It shall be a defense under this section that the act was part of reasonable and customary:

(a) Interscholastic or intercollegiate athletic practices, competitions, or events;

(b) Law enforcement training; or

(c) Military training.

(3) Hazing in the second degree is a Class A misdemeanor. Any sentence imposed on a defendant under this section shall run concurrently with any sentence imposed under KRS 508.060 or 508.070 arising from the same act or occurrence.

History.

2023 ch. 110, § 3, effective June 29, 2023.

508.186. Construction of KRS 508.180 to 508.186.

Nothing in KRS 508.180 to 508.186 shall be construed to create or imply a new cause of action against any educational institution.

History.

2023 ch. 110, § 4, effective June 29, 2023.

CHAPTER 518

MISCELLANEOUS CRIMES AFFECTING BUSINESSES, OCCUPATIONS, AND PROFESSIONS

Section

518.090. Assault of sports official.

518.090. Assault of sports official.

(1) A person is guilty of assault of a sports official when he intentionally causes physical injury to a sports official:

(a) Who was performing sports official duties at the time the physical injury was perpetrated; or

(b) If the physical injury occurs while the sports official is arriving at or departing from the athletic facility at which the athletic event occurred.

(2) For the purposes of this section, "sports official" means an individual who serves as a referee, umpire, linesman, or in a similar capacity that may be known by another title, and who is duly registered as or is a member of a national, state, regional, or local organization engaged, in part, in providing education and training to sports officials.

(3) A person who is guilty of assault of a sports official shall, for a first offense, be guilty of a Class A misdemeanor, unless the defendant assembles with five (5) or more persons for the purpose of assaulting a sports official, in which case it is a Class D felony.

(4) A person who is guilty of assault of a sport official shall, for a second or subsequent offense, be guilty of a Class D felony.

History.
Enact. Acts 1998, ch. 508, § 1, effective July 15, 1998.

CHAPTER 525

RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

Section
525.015. Obstructing an emergency responder.
525.045. Terrorism.
525.070. Harassment.
525.080. Harassing communications.
525.085. Dissemination of personally identifying information.
525.090. Loitering.

525.015. Obstructing an emergency responder.

(1) As used in this section, "emergency responder" means state or local law enforcement personnel, fire department personnel, corrections officers, and emergency medical personnel and those contracted for official use by emergency responders.

(2) No person shall intentionally obstruct or disrupt an emergency responder from performing his or her official duties.

(3) Obstructing an emergency responder is a violation for a first offense, and a Class B misdemeanor for a second or subsequent offense.

History.
2018 ch. 26, § 3, effective July 14, 2018.

525.045. Terrorism.

(1) A person is guilty of the separate offense of terrorism if conviction of the underlying offense committed would classify the person as a violent offender under KRS 439.3401(1)(a) or (b), or the underlying offense was an offense under KRS 527.200, 527.205, or 527.210 and the person had the intent to:

(a) Intimidate the civilian population at large, or an identifiable group of the civilian population; or

(b) Influence, through intimidation, the conduct or activities of the government of the United States, the Commonwealth, any other state, or any unit of local government.

(2) A conviction of terrorism shall be punishable by a term of imprisonment for life without benefit of probation or parole. An offense under this section is a separate offense from the underlying offense and shall not merge with other offenses.

(3) A person convicted under this section shall not be released on probation, shock probation, parole, conditional discharge, or any other form of conditional release.

(4)(a) All real and personal property used or intended for use in the course of, derived from, or realized through an offense punishable pursuant to this section shall be subject to lawful seizure and forfeiture to the Commonwealth as set forth in KRS 218A.405 to 218A.460, except that any property seized and forfeited to the Commonwealth under this section that was used in an act of terror, as defined in KRS 411.025, shall be held for at least five (5) years for the purposes of paying any damages awarded under KRS 411.025.

(b) Notwithstanding paragraph (a) of this subsection, any real or personal property:

1. Taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law;

2. Of an owner who made a bona fide purchase of the property; or

3. Of a person with rightful possession of the property; shall not be subject to forfeiture unless the lender, owner, or person had knowledge of an offense under this section.

(5) Damages awarded pursuant to a successful claim under KRS 411.025 may be paid by property lawfully seized and forfeited under this section.

History.
2018 ch. 111, § 2, effective July 14, 2018; 2024 ch. 174, § 33, effective July 15, 2024.

Legislative Research Commission Notes.
(7/14/2018). 2018 Ky. Acts ch. 111, sec. 3 provided that this statute as created in Section 2 of that Act shall be known and may be cited as Andy's Law.

525.070. Harassment.

(1) A person is guilty of harassment when, with intent to intimidate, harass, annoy, or alarm another person, he or she:

(a) Strikes, shoves, kicks, or otherwise subjects him to physical contact;

(b) Attempts or threatens to strike, shove, kick, or otherwise subject the person to physical contact;

(c) In a public place, makes an offensively coarse utterance, gesture, or display, or addresses abusive language to any person present;

(d) Follows a person in or about a public place or places;

(e) Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose; or

(f) Being enrolled as a student in a local school district, and while on school premises, on school-sponsored transportation, or at a school-sponsored event:

1. Damages or commits a theft of the property of another student;

2. Substantially disrupts the operation of the school; or

3. Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause

another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment.

(2)(a) Except as provided in paragraph (b) of this subsection, harassment is a violation.

(b) Harassment, as defined in paragraph (a) of subsection (1) of this section, is a Class B misdemeanor.

History.

Enact. Acts 1974, ch. 406, § 217, effective January 1, 1975; 1996, ch. 345, § 3, effective July 15, 1996; 2008, ch. 125, § 4, effective July 15, 2008.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Coarse or Abusive Language.
3. Standing.
4. Unlawful Imprisonment.
6. Instructions.
6.5. Physical Contact.
7. Sufficiency of Evidence.

1. Constitutionality.

A conviction under subdivision (1) (b) of this section was reversed because of the unconstitutional overbreadth of the prohibition against "offensively coarse" utterances, gestures or displays or "abusive language," and because of the absence of any state court decision narrowing the application of the statute so as to eliminate the potential for interference with rights guaranteed by U.S. Const., amend. 1. United States v. Sturgill, 563 F.2d 307, 1977 U.S. App. LEXIS 11273 (6th Cir. Ky. 1977).

As written, subdivision (1)(b) of this section is unconstitutionally vague and overbroad; this subdivision has no such measuring stick, so that, in a broad range of cases persons could be found guilty of its violation in circumstances that would infringe constitutional guarantees of free speech. Musselman v. Commonwealth, 705 S.W.2d 476, 1986 Ky. LEXIS 242 (Ky. 1986).

2. Coarse or Abusive Language.

One person cannot escape the consequences of his commission of the offense of using abusive language by showing that the person to whom insulting language was used was at the same time guilty of a violation of the same offense. (Decided under prior law) Bruce v. Scully, 162 Ky. 296, 172 S.W. 530, 1915 Ky. LEXIS 57 (Ky. 1915).

The words "God damn sons-of-bitches," as applied to others, are reasonably calculated to invoke violent resentment and constitute a "breach of the peace." (Decided under prior law) Jones v. Commonwealth, 307 Ky. 286, 210 S.W.2d 956, 1948 Ky. LEXIS 1093 (Ky. Ct. App. 1948).

Subdivision (1)(b) of this section as written punishes coarse or abusive language, per se; the court cannot add to it a phrase restricting it to language likely to cause violence. Musselman v. Commonwealth, 705 S.W.2d 476, 1986 Ky. LEXIS 242 (Ky. 1986).

Former employee's harassment claim failed because a supervisor's two comments regarding a woman in heels and a dress and one hourglass gesture did not rise to the level of actionable harassment. Montell v. Diversified Clinical Servs., 969 F. Supp. 2d 798, 2013 U.S. Dist. LEXIS 120598 (E.D. Ky. 2013), aff'd in part and rev'd in part, 757 F.3d 497, 2014 FED App. 0135P, 2014 U.S. App. LEXIS 12125 (6th Cir. Ky. 2014).

3. Standing.

Because KRS 446.070 allowed a private cause of action for damages to any person injured by the violation of any statute, and KRS 525.070 and 525.080 prohibited harassment and harassing communications, the court did not dismiss the harassment and intentional infliction of emotional distress claims alleged by plaintiff in connection with the alleged reporting of adverse credit information by the bank. Massey v. MBNA Am. Bank, N.A., 2005 U.S. Dist. LEXIS 28756 (W.D. Ky. 2005).

4. Unlawful Imprisonment.

Actual or threatened physical contact made with the intent to harass so as to restrain another would constitute evidence that supports convictions for both harassment and unlawful imprisonment and, if the Commonwealth actually relies on and seeks to prove the defendant's commission of the offense of harassment as the act, that accomplished the victim's restraint, then it might be said that, under this unique set of facts, harassment is a lesser included offense of unlawful imprisonment. Hart v. Commonwealth, 768 S.W.2d 552, 1989 Ky. App. LEXIS 170 (Ky. Ct. App. 1989).

Harassment is not a lesser offense necessarily included in the offense of unlawful imprisonment in the first or second degree. Although evidence of actual or threatened physical force or contact by the accused certainly can be relied on to prove an element of each offense, proof of these offenses does not always involve such evidence. More importantly, both offenses of unlawful imprisonment require proof of the additional fact of substantial interference with liberty of another whereas the offense of harassment requires proof of the additional fact of intent to harass, annoy or alarm another person. Hart v. Commonwealth, 768 S.W.2d 552, 1989 Ky. App. LEXIS 170 (Ky. Ct. App. 1989).

6. Instructions.

Trial court did not err in failing to issue a harassment instruction because the evidence did not support one; the record was void of any evidence that defendant touched the victim and intended to harass or annoy her, and he denied touching the victim in any manner. Boone v. Commonwealth, 2013 Ky. App. LEXIS 152 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 407 (Ky. Aug. 13, 2014).

6.5 Physical Contact.

County sheriff's refusal to return a gun owner's firearms did not violate the Second Amendment because the owner's Kentucky harassment conviction qualified as a misdemeanor crime of domestic violence because "physical contact" met the physical force element. Laubis v. Witt, 597 Fed. Appx. 827, 2015 U.S. App. LEXIS 594 (6th Cir. Ky. 2015).

7. Sufficiency of Evidence.

Dismissal of a subdivision lot owner's harassment counterclaim against the developer of the subdivision was appropriate when the developer sought to enforce restrictive covenants because the trial court found a lack of intent to annoy or alarm and a legitimate purpose. All of the communications between the residents of the subdivision were appropriate given the concerns of the residents, and all were directed toward the proper enforcement of the restrictions. Hensley v. Gadd, 560 S.W.3d 516, 2018 Ky. LEXIS 503 (Ky. 2018).

Cited in:

Craft v. Rice, 671 S.W.2d 247, 1984 Ky. LEXIS 254 (Ky. 1984); Singleton v. Commonwealth, 740 S.W.2d 159, 1986 Ky. App. LEXIS 1484 (Ky. Ct. App. 1986); Yates v. Commonwealth, 753 S.W.2d 874, 1988 Ky. App. LEXIS 56 (Ky. Ct. App. 1988).

NOTES TO UNPUBLISHED DECISIONS

1. Probable cause.

Unpublished decision: Where a juvenile was arrested after being found by a police officer randomly ringing doorbells at a

condominium complex, allegedly trying to find her friend's condominium, the officer did not violate her constitutional rights because the officer had probable cause to arrest her for disorderly conduct and harassment. Straub v. Kilgore, 100 Fed. Appx. 379, 2004 U.S. App. LEXIS 10668 (6th Cir. Ky. 2004).

OPINIONS OF ATTORNEY GENERAL.

A passenger in a car would be guilty of harassment if he interfered with an officer who has stopped the car to give the driver a verbal warning or citation. OAG 75-8.

Since in defining a "public place" KRS 525.010 excludes rooms or apartments designed for actual residence, a private home does not become a public place because one of the owners summons police there and where an owner there uses offensive or abusive gestures to a policeman he may not be charged with harassment unless he uses language containing a threat to the physical well being of the officer in addition to merely commenting on his ancestry or family relationship. OAG 75-63.

A peace officer, in whose presence a "violation" is committed, has the option of issuing the violator a citation or making a full custodial arrest. OAG 76-166.

If a bicyclist is physically or vocally harassed by persons in a motor vehicle he could make a criminal complaint under this section. OAG 78-25, 1978 Ky. AG LEXIS 713.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Challenge to duel, accepting and delivering challenge, KRS 437.030.

Menacing, KRS 508.050.

Kentucky Bench & Bar.

Davis and Davis, Recovery for Wrongful Deprivation of Child Custody: A Civil Remedy for Kentucky, Volume 51, No. 2, Spring 1987 Ky. Bench & B. 20.

Grandon, Recent Changes in Kentucky Laws Related to Domestic Violence, Winter 1998, Vol. 62, No. 1, Ky. Bench & Bar 10.

Chenoweth and Chenoweth, Education Law: I'm Going to Beat You Up!: Reporting Student Conduct Under "the Bullying Bill", Vol. 72, No. 6, November 2008, Ky. Bench & Bar 10.

Kentucky Law Journal.

Kentucky Law Survey, Malone and Malone, Criminal Law, 69 Ky. L.J. 545 (1980-81).

Kentucky Law Survey, Fortune, Criminal Rules, 70 Ky. L.J. 395 (1981-82).

Kentucky Law Survey, Vinson, Torts, 72 Ky. L.J. 457 (1983-84).

Gormley and Hartman, The Kentucky Bill of Rights: A Bicentennial Celebration, 80 Ky. L.J. 1 (1990-91).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Police Officer's Answer to Claim of Unlawful Arrest, Form 121.02.

Kentucky Instructions To Juries (Criminal), 5th Ed., Restraints and Assaults of Persons, Part 3 Assault, § 3.64.

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 2 Riot, Disorderly Conduct and Related Offenses, § 8.42.

525.080. Harassing communications.

(1) A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she:

(a) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of electronic or written communication in a manner which causes annoyance or alarm and serves no purpose of legitimate communication;

(b) Makes a telephone call, whether or not conversation ensues, with no purpose of legitimate communication; or

(c) Communicates, while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.

(2) Harassing communications is a Class B misdemeanor.

History.

Enact. Acts 1974, ch. 406, § 218, effective January 1, 1975; 2008, ch. 125, § 5, effective July 15, 2008; 2016 ch. 99, § 1, effective July 15, 2016.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Applicability.
3. Indictment.
4. Jurisdiction.
5. Threatening Letter.

1. Constitutionality.

This section does not violate the First Amendment of the United States Constitution because it does not concern face to face communication in a public place where confrontations could arise, but rather it relates to protecting one's right to privacy; no individual whose intention is to annoy, alarm, or harass has the right to impose his ideas on an unwilling listener not in a public forum. Yates v. Commonwealth, 753 S.W.2d 874, 1988 Ky. App. LEXIS 56 (Ky. Ct. App. 1988).

This section is not unconstitutionally vague and overbroad, because it does not regulate speech but rather the intentional use of private communication to annoy, alarm, or harass the receiver, and the meaning of this section is clear and provides reasonable opportunity to know what actions are prohibited. Yates v. Commonwealth, 753 S.W.2d 874, 1988 Ky. App. LEXIS 56 (Ky. Ct. App. 1988).

2. Applicability.

Because KRS 446.070 allowed a private cause of action for damages to any person injured by the violation of any statute, and KRS 525.070 and 525.080 prohibited harassment and harassing communications, the court did not dismiss the harassment and intentional infliction of emotional distress claims alleged by plaintiff in connection with the alleged reporting of adverse credit information by the bank. Massey v. MBNA Am. Bank, N.A., 2005 U.S. Dist. LEXIS 28756 (W.D. Ky. 2005).

3. Indictment.

An indictment under law that provided penalty for sending a threatening letter should have set out the letter, or its substance. (Decided under prior law) Commonwealth v. Pat-

rick, 127 Ky. 473, 105 S.W. 981, 32 Ky. L. Rptr. 343, 1907 Ky. LEXIS 157 (Ky. 1907).

4. Jurisdiction.

Where a threatening letter was written and placed in a post office in one county, and addressed to and received by the person threatened at his post office in another county, the courts of both counties had jurisdiction of the offense, as it was a violation to send such a letter or circulate, exhibit or post it. (Decided under prior law) Commonwealth v. Morton, 140 Ky. 628, 131 S.W. 506, 1910 Ky. LEXIS 340 (Ky. 1910).

5. Threatening Letter.

A threatening letter is any letter or writing that is calculated to alarm, disturb, intimidate or injure, without reference to whether it designates, describes or mentions any offense that has been committed by the person referred to, or contains any statement showing why it is written or posted. (Decided under prior law) Commonwealth v. Morton, 140 Ky. 628, 131 S.W. 506, 1910 Ky. LEXIS 340 (Ky. 1910).

Cited in:

Kentucky Bar Ass'n v. Davis, 819 S.W.2d 317, 1991 Ky. LEXIS 183 (Ky. 1991); Littrell v. Bosse, 581 S.W.3d 584, 2019 Ky. App. LEXIS 128 (Ky. Ct. App. 2019).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Emergency telephone calls, KRS 438.160 to 438.190.

Kentucky Bench & Bar.

Chenoweth and Chenoweth, Education Law: I'm Going to Beat You Up!: Reporting Student Conduct Under "the Bullying Bill", Vol. 72, No. 6, November 2008, Ky. Bench & Bar 10.

Kentucky Law Journal.

Kentucky Law Survey, Malone and Malone, Criminal Law, 69 Ky. L.J. 545 (1980-81).

Note: The Facebook Frontier: Responding to the Changing Face of Privacy on the Internet, 97 Ky. L.J. 541 (2008/2009).

Treatises

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 2 Riot, Disorderly Conduct and Related Offenses, § 8.43.

525.085. Dissemination of personally identifying information.

(1) For the purposes of this section:

(a) "Dissemination" means electronically publishing, posting, or otherwise disclosing information to a public Internet site or public forum;

(b) "Household member" means a person who regularly resides in the household or who within the six (6) months preceding the conduct of the offense regularly resided in the household;

(c) "Immediate family member" means a parent, grandparent, spouse, child, stepchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, or grandchild; and

(d) "Personally identifying information" means information that identifies or reasonably can be used to identify an individual, including but not limited to:

1. Social Security number or other government-issued identifier;
2. Date of birth;
3. Home or physical address;
4. Electronic-mail address or telephone number;
5. Financial account number or credit or debit card number;
6. Biometric, health, or medical data, or insurance information; or
7. School or employment locations.

(2) A person is guilty of disseminating personally identifying information about another person when, with the intent to intimidate, abuse, threaten, harass, or frighten a person who resides in the Commonwealth, he or she:

(a) Intentionally disseminates the personally identifying information of the person or a person's immediate family member or household member; and

(b) The dissemination would cause a reasonable person to be in fear of physical injury to himself or herself, or to his or her immediate family member or household member.

(3) This section shall apply to electronic communications originating within or accessible within the Commonwealth.

(4) Disseminating personally identifying information is a Class A misdemeanor, unless the dissemination results in:

(a) Physical injury to the victim or to a victim's immediate family member or household member, in which case it is a Class D felony;

(b) Serious physical injury to the victim or to a victim's immediate family member or household member, in which case it is a Class C felony; or

(c) Death of the victim or of a victim's immediate family member or household member, in which case it is a Class B felony.

(5) Nothing in this section shall be construed to impose liability on a broadband Internet access service provider, a telecommunications service provider, an interconnected VoIP provider, or a mobile service provider as defined in 47 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec. 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its capacity as a provider of those services.

History.

2021 ch. 199, § 1, effective June 29, 2021.

525.090. Loitering.

(1) A person is guilty of loitering when the person:

(a) Loiters or remains in a public place for the purpose of gambling with cards, dice, or other gambling paraphernalia, except that the provisions of this section shall not apply if the person is participating in charitable gaming defined by KRS 238.505, or is engaged in sports wagering, fantasy contests, fixed-odds wagering, or wagering on live horse races and historical horse races licensed under KRS Chapter 230;

(b) Loiters or remains in a public place for the purpose of unlawfully using a controlled substance;

(c) Loiters or remains in or about a school, college, or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there and not having

written permission from anyone authorized to grant the same; or

(d) Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade, or commercial transactions involving the sale of merchandise or services.

(2) Loitering is a violation.

History.

Enact. Acts 1974, ch. 406, § 219, effective January 1, 1975; 1980, ch. 267, § 8, effective July 15, 1980; 1984, ch. 102, § 2, effective July 13, 1984; 1994, ch. 66, § 18, effective March 16, 1994; 2023 ch. 147, § 19, effective June 29, 2023; 2026 ch. 184, § 37, effective July 15, 2026.

OPINIONS OF ATTORNEY GENERAL.

A peace officer, in whose presence a "violation" is committed, has the option of issuing the violator a citation or making a full custodial arrest. OAG 76-166.

The adoption of a proposed loitering ordinance which would prohibit loitering for the purpose of engaging in "an unlawful drug transaction" is prohibited by KRS 67A.070, because such an enactment would be in conflict with existing state legislation by attempting to redefine statutory crimes. OAG 91-27, 1991 Ky. AG LEXIS 27.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Kentucky Instructions To Juries (Civil), 5th Ed., False Imprisonment, § 30.05.

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 2 Riot, Disorderly Conduct and Related Offenses, §§ 8.35, 8.36.

CHAPTER 527

OFFENSES RELATING TO FIREARMS AND WEAPONS

Section

527.070. Unlawful possession of a weapon on school property — Posting of sign — Exemptions.

Minors and Juveniles.

527.100. Possession of handgun by minor.

527.070. Unlawful possession of a weapon on school property — Posting of sign — Exemptions.

(1) A person is guilty of unlawful possession of a weapon on school property when he knowingly deposits, possesses, or carries, whether openly or concealed, for purposes other than instructional or school-sanctioned ceremonial purposes, or the purposes permitted in subsection (3) of this section, any firearm or other deadly weapon, destructive device, or booby trap device in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field, or any other property owned, used, or operated by any board of education, school, board of trustees, regents, or directors for the administration of any public or private educational institution. The provisions of this section shall not apply to institutions of postsecondary or higher education.

(2) Each chief administrator of a public or private school shall display about the school in prominent locations, including, but not limited to, sports arenas, gymnasiums, stadiums, and cafeterias, a sign at least six (6) inches high and fourteen (14) inches wide stating:

UNLAWFUL POSSESSION OF A WEAPON ON SCHOOL PROPERTY IN KENTUCKY IS A FELONY PUNISHABLE BY A MAXIMUM OF FIVE (5) YEARS IN PRISON AND A TEN THOUSAND DOLLAR ($10,000) FINE.

Failure to post the sign shall not relieve any person of liability under this section.

(3) The provisions of this section prohibiting the unlawful possession of a weapon on school property shall not apply to:

(a) An adult who is not a pupil of any secondary school and who possesses a firearm, if the firearm is contained within a vehicle operated by the adult and is not removed from the vehicle, except for a purpose permitted herein, or brandished by the adult, or by any other person acting with expressed or implied consent of the adult, while the vehicle is on school property;

(b) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a school club or team, to the extent they are required to carry arms or weapons in the discharge of their official class or team duties;

(c) Any peace officer or police officer authorized to carry a concealed weapon pursuant to KRS 527.020;

(d) Persons employed by the Armed Forces of the United States or members of the National Guard or militia when required in the discharge of their official duties to carry arms or weapons;

(e) Civil officers of the United States in the discharge of their official duties. Nothing in this section shall be construed as to allow any person to carry a concealed weapon into a public or private elementary or secondary school building;

(f) Any other persons, including, but not limited to, exhibitors of historical displays, who have been authorized to carry a firearm by the board of education or board of trustees of the public or private institution;

(g) A person hunting during the lawful hunting season on lands owned by any public or private educational institution and designated as open to hunting by the board of education or board of trustees of the educational institution;

(h) A person possessing unloaded hunting weapons while traversing the grounds of any public or private educational institution for the purpose of gaining access to public or private lands open to hunting with the intent to hunt on the public or private lands, unless the lands of the educational institution are posted prohibiting the entry; or

(i) A person possessing guns or knives when conducting or attending a "gun and knife show" when the program has been approved by the board of education or board of trustees of the educational institution.

(4) Unlawful possession of a weapon on school property is a Class D felony.

History.
Enact. Acts 1994, ch. 391, § 1, effective July 15, 1994; 1996, ch. 119, § 4, effective October 1, 1996; 2019 ch. 111, § 1, effective June 27, 2019.

NOTES TO DECISIONS

1. Duty to Warn of Violation.
There is no duty imposed by this section to report to school officials alleged violations of KRS 527.070. James v. Wilson, 95 S.W.3d 875, 2002 Ky. App. LEXIS 770 (Ky. Ct. App. 2002).

Cited in:
Darden v. Commonwealth, 52 S.W.3d 574, 2001 Ky. LEXIS 135 (Ky. 2001).

OPINIONS OF ATTORNEY GENERAL.

The fact that the legislature in enacting subsection (1) of this section has elected not to criminalize the carrying of those weapons on the property of institutions of postsecondary or higher education, does not preclude the governing boards of public institutions of higher education from otherwise controlling the possession of deadly weapons on their properties. OAG 96-40, 1996 Ky. AG LEXIS 80.

RESEARCH REFERENCES AND PRACTICE AIDS

Northern Kentucky Law Review.
The Three R's: Reading, Writing, and Rifles? How the Kentucky Supreme Court Lessened Penalties for Students Who Bring Guns to School in Darden v. Commonwealth, 29 N. Ky. L. Rev. 877 (2002).

Treatises
Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 4 Offenses Relating to Firearms and Destructive Devices, § 8.63A.

MINORS AND JUVENILES

527.100. Possession of handgun by minor.

(1) A person is guilty of possession of a handgun by a minor when, being under the age of eighteen (18) years, he possesses, manufactures, or transports a handgun as defined by KRS 527.010, except when the person is:

(a) In attendance at a hunter's safety course or a firearms safety course;

(b) Engaging in practice in the use of a firearm, or target shooting at an established firing range, or any other area where the discharge of a firearm is not prohibited;

(c) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by a group organized under Section 501(c)(3) of the Internal Revenue Code or any successor thereto which uses firearms as a part of the performance;

(d) Hunting or trapping pursuant to a valid license issued to him pursuant to the statutes or administrative regulations of this Commonwealth;

(e) Traveling to or from any activity described in paragraphs (a) to (d) of this subsection with any unloaded handgun in his possession;

(f) On real property which is under the control of an adult and has the permission of that adult and his parent or legal guardian to possess a handgun; or

(g) At his residence and with the permission of his parent or legal guardian possesses a handgun and is justified under the principles of justification set forth in KRS Chapter 503 in using physical force or deadly physical force.

(2) For the purposes of subsection (1) of this section, a handgun is "loaded" if:

(a) There is a cartridge in the chamber of the handgun; or

(b) There is a cartridge in the cylinder of the handgun, if the handgun is a revolver; or

(c) There is a cartridge in the magazine of a semiautomatic handgun, if the magazine is attached to the handgun; or

(d) The handgun and the ammunition for the handgun, are carried on the person of one under the age of eighteen (18) years or are in such close proximity to him that he could readily gain access to the handgun and the ammunition and load the handgun.

(3) Possession of a handgun by a minor is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

History.
Enact. Acts 1994, ch. 30, § 1, effective July 15, 1994.

Compiler's Notes.
Section 501(c)(3) of the Internal Revenue Code, referred to in (1)(c), may be found as 26 USCS § 501(c)(3).

NOTES TO DECISIONS

1. Sufficiency of Evidence.
Evidence was sufficient to support a conviction for possession of a handgun by a minor where the defendant admitted that he was 17 years of age on the date in question, that he took possession of a .38 handgun shortly after arriving at a residence and that he retained possession of it until shortly before his apprehension. Taylor v. Commonwealth, 995 S.W.2d 355, 1999 Ky. LEXIS 73 (Ky. 1999).

Cited in:
T & M Jewelry, Inc. v. Hicks, 189 S.W.3d 526, 2006 Ky. LEXIS 102 (Ky. 2006).

OPINIONS OF ATTORNEY GENERAL.

House Bill 359 (Acts 1994, ch. 30, § 1; codified as KRS 527.100) which restricts possession of handguns by minors is constitutional under both the Second Amendment to the Constitution of the United States and Ky. Const., § 7. OAG 94-14, 1994 Ky. AG LEXIS 241.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 4 Offenses Relating to Firearms and Destructive Devices, §§ 8.63G — 8.63I.

CHAPTER 530
FAMILY OFFENSES

Section
530.070. Unlawful transaction with minor in the third degree.

530.070. Unlawful transaction with minor in the third degree.

(1) A person is guilty of unlawful transaction with a minor in the third degree when:

(a) Acting other than as a retail licensee, he knowingly sells, gives, purchases or procures any alcoholic or malt beverage in any form to or for a minor. The defendant may prove in exculpation that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he was of legal age to purchase alcoholic beverages. This subsection does not apply to a parent or guardian of the minor;

(b) He knowingly induces, assists, or causes a minor to engage in any other criminal activity;

(c) He knowingly induces, assists or causes a minor to become a habitual truant; or

(d) He persistently and knowingly induces, assists or causes a minor to disobey his parent or guardian.

(2) Unlawful transaction with a minor in the third degree is a Class A misdemeanor.

History.
Enact. Acts 1974, ch. 406, § 263, effective January 1, 1975; 1978, ch. 219, § 11, effective June 17, 1978; 1984, ch. 382, § 21, effective July 13, 1984; 1986, ch. 289, § 7, effective July 15, 1986.

NOTES TO DECISIONS

Analysis

1. In General.
2. Instructions.

1. In General.

Department of Alcoholic Beverage Control officer's arrest for supplying alcohol to a minor in violation of this section, which arrest was found to be defective for failing to comply with KRS 431.005, as officer did not witness each element of the offense, did not support an action under 42 USCS § 1983, because § 1983 action depended only on whether the officer had probable cause for the arrest under the Fourth Amendment of the U.S. Constitution. Pyles v. Raisor, 60 F.3d 1211, 1995 FED App. 0228P, 1995 U.S. App. LEXIS 20249 (6th Cir. Ky. 1995).

A finding of malicious prosecution by a school administrator against a father was reversed because the administrator alleged in his criminal complaint merely that the father had failed to send the child to school, not that he had induced the child to engage in sexual activity; the sexual misconduct charges were rather filed by the County Attorney. Collins v. Williams, 10 S.W.3d 493, 1999 Ky. App. LEXIS 94 (Ky. Ct. App. 1999).

2. Instructions.

In the prosecution of a mother for unlawful transaction with a minor in the third degree as a result of her children's habitual truancy, the failure of the court to include a formal definition of the term "habitual truancy" was harmless error as "truant" was a term of common usage which the jury could be expected to understand without a formal definition and the jury did not evidence any lack of understanding of the term "habitual truant." Commonwealth v. Hager, 35 S.W.3d 377, 2000 Ky. App. LEXIS 121 (Ky. Ct. App. 2000).

Cited in:

Board of Education v. Wood, 717 S.W.2d 837, 1986 Ky. LEXIS 306 (Ky. 1986).

NOTES TO UNPUBLISHED DECISIONS

1. Negligence per se.

Unpublished decision: Neither a national social fraternity nor individual local chapter members were negligent per se under KRS 530.070 and § 244.085 in connection with the death of a college student by a drunk fraternity member because there was no evidence that the national fraternity knowingly induced, assisted, or caused the drunk member to possess alcohol, and none of the members of the fraternity gave the drunk member alcohol. Shaheen v. Yonts, 394 Fed. Appx. 224, 2010 FED App. 0581N, 2010 U.S. App. LEXIS 18461 (6th Cir. Ky. 2010).

OPINIONS OF ATTORNEY GENERAL.

In a prosecution of an adult under this section, it is not necessary to establish that the minor involved has committed delinquent acts, has been adjudged a delinquent, or has been charged with a crime but only that the adult has committed any of the prohibited acts of this section. OAG 75-330.

An adult who permits a juvenile to operate a motor vehicle without an operator's license may be proceeded against directly under KRS 186.620 or under this section in juvenile court for having an unlawful transaction with a minor and it is not necessary that the juvenile have been proceeded against in juvenile court. OAG 75-563.

A charge under subsection (1)(c) of this section requires proof of habitual truancy that is not required to be proved to establish a charge under KRS 159.990(1) and therefore a parent or legal guardian could be charged and punished under KRS 159.990(1) and also under this section and a prosecution under one of these sections would not be a bar to a prosecution under the other. OAG 77-514, 1977 Ky. AG LEXIS 262.

Not only can the director of pupil personnel be directed to institute proceedings charging the parents of a child who has been habitually truant from public schools and the parents of a child who has been attending an unapproved private or parochial school under subsection (1) (c) of this section, but he can also be directed by the local superintendent, the local board of education, or the State Board of Education to institute proceedings under such subsection against those individuals in charge of the public or parochial school the child is attending and the burden of proof would be to show beyond a reasonable doubt that the individual or individuals in charge of the unapproved school "knowingly induced, assisted or caused" the child attending such school to become habitually truant from the public common schools. OAG 77-514, 1977 Ky. AG LEXIS 262.

A minor may be charged with unlawful transaction with another minor under this section. OAG 82-624, 1982 Ky. AG LEXIS 10.

Even though confidentiality of proceedings against a juvenile is the rule when the matter is to be adjudicated under the provisions of KRS 208.060 (repealed), if a juvenile charged with violating this section would desire a trial by jury, KRS 208.020(6) (repealed) mandates that a trial by jury be provided. OAG 82-624, 1982 Ky. AG LEXIS 10.

Violation of this section is a Class A misdemeanor; however, a juvenile adjudicated beyond a reasonable doubt of having committed an unlawful transaction with a minor must be dealt with by the juvenile court under KRS 208.200 (repealed), which may include subsections (4), (5) and (6) if the child adjudicated of violating this section is 16 years of age or older. OAG 82-624, 1982 Ky. AG LEXIS 10.

A parent, legal guardian, or other person exercising custodial control or supervision may be charged with the misdemeanor of unlawful transaction with a minor pursuant to this section if the situation of habitual truancy of the child develops. OAG 87-40, 1987 Ky. AG LEXIS 43.

KRS 244.080 appears to be directed more toward retail businesses, while this section appears to be directed toward private persons acting in their private capacities. OAG 91-51, 1991 Ky. AG LEXIS 52.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Distribution of obscene matter to and by minors, KRS 531.030, 531.040.

Pawnbrokers not to receive articles from minors, KRS 226.030.

Sale of alcoholic beverages to minors by retailer, KRS 244.080.

Northern Kentucky Law Review.

Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context Parent and Child, § 256.00.

Kentucky Instructions To Juries (Criminal), 5th Ed., Controlled Substances, Part 5 Alcoholic Beverages, § 9.39.

Kentucky Instructions To Juries (Criminal), 5th Ed., General Principles, Part 1 Matters of Substance, §§ 1.03, 1.16.

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Against Public Order, Safety and Morals, Part 8 Family Offenses, §§ 8.108 — 8.113.

Petrilli, Kentucky Family Law, Illegitimacy and Paternity Proceedings, § 31.8.

Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.14, 32.31.

CHAPTER 531
PORNOGRAPHY

Section

531.010. Definitions.
531.120. Distribution of sexually explicit images without consent.

Sexual Exploitation of Minors.

531.305. Treatment in criminal or civil proceeding of property or material portraying child pornography or a sexual performance by a minor.

531.010. Definitions.

As used in this chapter:

(1) "Child sex doll" means an anatomically correct or anatomically precise doll, mannequin, or robot that may consist of an entire body, pelvis, or any other body part, with features of, or with features that resemble, those of a minor and intended for use in sexual acts;

(2) "Computer" means electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, including but not limited to personal computers, laptops, computer software, computer servers, processors, coprocessors, memory devices, storage devices, and input and output devices;

(3) "Computer-generated image" means any visual depiction, including any photograph, film, video, or picture, where the depiction has been created, adapted, or modified by a computer to appear to be an identifiable person;

(4) "Distribute" means to transfer possession of, whether with or without consideration;

(5) "Identifiable person" means a person who is recognizable by the person's face, likeness, or other distinguishing characteristic;

(6) "Matter" means any:

(a) Book, magazine, newspaper, or other printed or written material;

(b) Picture, drawing, photograph, motion picture, live image transmitted over the internet or other electronic network, other pictorial representation, or computer-generated image;

(c) Statue, child sex doll, or other figure; or

(d) Recording, transcription, or mechanical, chemical, or electrical reproduction, or any other articles, equipment, machines, or materials;

(7) "Obscene" means:

(a) To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct;

(b) The matter depicts or describes the sexual conduct in a patently offensive way; and

(c) The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(8) "Private erotic matter" means an obscene visual image, including a photograph, film, video recording, computer-generated image, or digital reproduction, of an identifiable person, depicting sexual conduct or the exposure of uncovered human genitals, buttocks, or nipple of the female breast. A person may be identifiable from the image itself or from information distributed in connection with the visual image; and

(9) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviate sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification.

History.

Enact. Acts 1974, ch. 406, § 265, effective January 1, 1975; 2009, ch. 100, § 3, effective June 25, 2009; 2018 ch. 50, § 1, effective July 14, 2018; 2024 ch. 15, § 2, effective July 15, 2024.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Destruction of Obscene Material.
4. Freedom of Speech and Press.
5. Indictment.

6. Newspapers.
7. Obscene.
8. —Contemporary Standards.

1. Constitutionality.

Although the definition of obscenity contained in former obscenity law did not explicitly require that the material be utterly without redeeming social value, it conformed to the definition of obscenity approved by U.S. Supreme Court and was constitutional on its face. (Decided under prior law) Cambist Films, Inc. v. Tribell, 293 F. Supp. 407, 1968 U.S. Dist. LEXIS 8099 (E.D. Ky. 1968).

Former obscenity law was not constitutionally infirm by reason of its failure to require that material be "utterly without redeeming social value" before falling within its proscription. (Decided under prior law) Smith v. Commonwealth, 465 S.W.2d 918, 1971 Ky. LEXIS 470 (Ky. 1971); Hayes v. Commonwealth, 470 S.W.2d 601, 1971 Ky. LEXIS 278 (Ky. 1971).

The former obscenity law was not unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution since the defendant was forewarned in sufficiently specific terms that the depiction of actual sexual conduct in the film "Deep Throat" was proscribed as hard core pornography. (Decided under prior law) Western Corp. v. Commonwealth, 558 S.W.2d 605, 1977 Ky. LEXIS 540 (Ky. 1977).

2. Construction.

Even though the constitutional standards defining obscenity were not literally incorporated into the former obscenity law, those standards are to be implied whenever the statute is applied. (Decided under prior law) Smith v. Commonwealth, 465 S.W.2d 918, 1971 Ky. LEXIS 470 (Ky. 1971).

Under the former obscenity law, each proven occurrence of the showing of an obscene motion picture was a separate violation of law and was punishable as such. (Decided under prior law) Western Corp. v. Commonwealth, 558 S.W.2d 605, 1977 Ky. LEXIS 540 (Ky. 1977).

3. Destruction of Obscene Material.

Under the former statute, the trial judge properly ordered the destruction of an obscene film after the accused theater owner was convicted of violating the obscenity law. (Decided under prior law) Western Corp. v. Commonwealth, 558 S.W.2d 605, 1977 Ky. LEXIS 540 (Ky. 1977).

4. Freedom of Speech and Press.

Conviction for offering obscene literature for sale affirmed by Kentucky Court of Appeals was reversed as offending the First and Fourteenth Amendments of the federal Constitution. (Decided under prior law) Austin v. Commonwealth, 386 S.W.2d 270, 1965 Ky. LEXIS 498 (Ky. 1965), rev'd, 386 U.S. 767, 87 S. Ct. 1414, 18 L. Ed. 2d 515, 1967 U.S. LEXIS 1571 (U.S. 1967).

5. Indictment.

Indictment must set out the writing on which the indictment is founded, unless lost or destroyed or in possession of accused, or is too obscene to be perpetuated as a record of the court, in which case the indictment must so allege. (Decided under prior law) Kinnaird v. Commonwealth, 134 Ky. 575, 121 S.W. 489, 1909 Ky. LEXIS 422 (Ky. 1909).

Indictment charging defendant with offense of having in his possession with intent to sell, lend, give away or show obscene magazines of an indecent character in violation of former obscenity statute charged but one offense. (Decided under prior law) King v. Commonwealth, 313 Ky. 741, 233 S.W.2d 522, 1950 Ky. LEXIS 977 (Ky. 1950).

6. Newspapers.

However clean and pure the matter contained in a newspaper may generally be, yet, if it should in a single issue print an indecent or filthy article, it would be subject to indictment. (Decided under prior law) Commonwealth v. Herald Pub. Co., 128 Ky. 424, 108 S.W. 892, 32 Ky. L. Rptr. 1293, 1908 Ky. LEXIS 79 (Ky. 1908).

The same strict rule should not be applied to a daily newspaper as to printed publication in form of books or pamphlets wholly or in greater part devoted to treatment of lewd or scandalous subjects, or to single or isolated articles designed to call public attention to indecent transactions. (Decided under prior law) Commonwealth v. Herald Pub. Co., 128 Ky. 424, 108 S.W. 892, 32 Ky. L. Rptr. 1293, 1908 Ky. LEXIS 79 (Ky. 1908).

7. Obscene.

The dissemination of a particular work which is alleged to be obscene should be completely undisturbed until an independent determination of obscenity has been made by a judicial officer, including an adversary hearing. (Decided under prior law) Cambist Films, Inc. v. Tribell, 293 F. Supp. 407, 1968 U.S. Dist. LEXIS 8099 (E.D. Ky. 1968).

Where publication is of such character as to raise a doubt in the mind of an ordinary upright, well-balanced person as to whether it is obscene or indecent within meaning of former obscenity statute, the question should be submitted to jury. (Decided under prior law) King v. Commonwealth, 313 Ky. 741, 233 S.W.2d 522, 1950 Ky. LEXIS 977 (Ky. 1950).

The court properly overruled the defendant's motion for a directed verdict of acquittal at the close of the prosecution's evidence where the court determined as a matter of law that the publication demonstrated on its face that it possessed no redeeming social value. (Decided under prior law) Smith v. Commonwealth, 465 S.W.2d 918, 1971 Ky. LEXIS 470 (Ky. 1971).

Magazines containing photographs of females in various states of undress with primary emphasis in each photograph upon the naked female pubic area were obscene. (Decided under prior law) Hayes v. Commonwealth, 470 S.W.2d 601, 1971 Ky. LEXIS 278 (Ky. 1971).

The movie, "Deep Throat," which contained repeated scenes of actual sexual intercourse, anal sodomy, fellatio and cunnilingus, had no serious literary, artistic, political or scientific value and was therefore obscene and violative of contemporary community standards. (Decided under prior law) Western Corp. v. Commonwealth, 558 S.W.2d 605, 1977 Ky. LEXIS 540 (Ky. 1977).

8. —Contemporary Standards.

There was no need for a prior adversary hearing in the area to determine contemporary standards applied by the average person in the community. (Decided under prior law) Smith v. Commonwealth, 465 S.W.2d 918, 1971 Ky. LEXIS 470 (Ky. 1971).

OPINIONS OF ATTORNEY GENERAL.

The general assembly has, by enacting KRS Chapter 531, preempted the field of legislation on pornography and the fiscal courts cannot enact pornography or obscenity laws. OAG 81-417, 1981 Ky. AG LEXIS 11.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Kentucky Law Survey, Ashdown, Criminal Law, 64 Ky. L.J. 337 (1975-76).

Notes, The Civil Rights Pornography Ordinances — An Examination Under the First Amendment, 73 Ky. L.J. 1081 (1984-85).

Treatises

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Related to Sex and Pornography, Part 1 Definitions, §§ 4.11 — 4.13A.

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Related to Sex and Pornography, Part 8 Obscenity, §§ 4.82, 4.83, 4.84E.

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Related to Sex and Pornography, Part 9 Sexual Exploitation of Minors, §§ 4.93, 4.96E, 4.98.

531.120. Distribution of sexually explicit images without consent.

(1) A person is guilty of distribution of sexually explicit images without consent when:

(a) He or she intentionally distributes to any third party private erotic matter without the written consent of the person depicted, and does so with the intent to profit, or to harm, harass, intimidate, threaten, or coerce the person depicted; and

(b) The disclosure would cause a reasonable person to suffer harm.

(2) This section shall not apply to:

(a) Images involving voluntary nudity or sexual conduct in public, commercial settings, or in a place where a person does not have a reasonable expectation of privacy;

(b) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment;

(c) Disclosures of materials that constitute a matter of public concern; or

(d) Internet service providers or telecommunications services, or interactive computer services, as defined in 47 U.S.C. sec. 230(f)(2), for content solely provided by another person.

(3) A person who maintains an Internet Web site, online service, online application, or mobile application that distributes private erotic matter shall remove any such image if requested by a person depicted, and shall not solicit or accept a fee or other consideration to remove the visual image.

(4) Distribution of sexually explicit images without consent is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense, unless the person distributes the private erotic matter for profit or gain, in which case it is a Class D felony for the first offense and a Class C felony for each subsequent offense.

(5) In this section, "consent" means the consent to transmission of images to a specific recipient or recipients. Consent to the creation of the visual image does not, by itself, constitute consent to the distribution of the visual image.

(6) Notwithstanding KRS 17.500 to 17.580, a conviction under this section shall not result in the offender being deemed a registrant or being required to register as a sex offender.

History.

2018 ch. 50, § 2, effective July 14, 2018.

SEXUAL EXPLOITATION OF MINORS

531.305. Treatment in criminal or civil proceeding of property or material portraying child pornography or a sexual performance by a minor.

(1) In a criminal or civil proceeding, any property or material that portrays child pornography or a sexual performance by a minor as defined in this chapter shall remain secured or locked in the care, custody, and control of a law enforcement agency, or the prosecutor. Any property or material that portrays child pornography or a sexual performance by a minor shall not be filed with or stored by the court unless introduced as an exhibit for trial. Storage of trial court exhibits portraying child pornography or a sexual performance by a minor shall be in accordance with a court order.

(2) Notwithstanding any other law or rule of court, a court shall deny, in any proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays a sexual performance by a minor or constitutes child pornography so long as law enforcement, the prosecutor, or the court, if the matter was introduced as an exhibit at trial, makes the property or material reasonably available to the defendant.

(3) For the purposes of this section, property or material shall be deemed reasonably available to the defendant if the prosecutor provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays a sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during either the discovery process or a court proceeding.

History.

2018 ch. 23, § 1, effective July 14, 2018.

CHAPTER 532

CLASSIFICATION AND DESIGNATION OF OFFENSES — AUTHORIZED DISPOSITION

Section

532.045. Persons prohibited from probation or postincarceration supervision — Procedure when probation or postincarceration supervision not prohibited.

532.045. Persons prohibited from probation or postincarceration supervision — Procedure when probation or postincarceration supervision not prohibited.

(1) As used in this section:

(a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.050, 510.080, 529.040, 529.070, 529.100 where the offense involves commercial sexual activity, 530.020, 531.310, 531.320, or 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

(a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years' postincarceration supervision required by KRS 532.043.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

History.

Enact. Acts 1984, ch. 382, § 23, effective July 13, 1984; 1994, ch. 94, § 3, effective July 15, 1994; 1996, ch. 300, § 3, effective July 15, 1996; 1998, ch. 293, § 1, effective July 15, 1998; 1998, ch. 606, § 118, effective July 15, 1998; 2000, ch. 401, §§ 9, 34, effective July 14, 2000; 2006, ch. 182, § 43, effective July 12, 2006; 2007, ch. 19, § 16, effective June 26, 2007; 2011, ch. 2, §

94, effective June 8, 2011; 2014, ch. 132, § 22, effective July 15, 2014.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction.
3. Construction with Other Laws.
4. Position of Authority or Special Trust.
5. Probation Improper.
6. Sentencing Alternatives.
7. Extending Probation.

1. Constitutionality.

There is a reasonable basis in the General Assembly's contrasting sexual offenders who are strangers or mere acquaintances of the abused child from those who abuse not only the child, but their advantageous position as a person who society teaches the child to regard as an adult role model; therefore, this section does not violate Ky. Const., § 59 as being class legislation. Owsley v. Commonwealth, 743 S.W.2d 408, 1987 Ky. App. LEXIS 589 (Ky. Ct. App. 1987).

This section, as it pertains to persons convicted of violating KRS 510.110, does not violate Ky. Const., § 51. Owsley v. Commonwealth, 743 S.W.2d 408, 1987 Ky. App. LEXIS 589 (Ky. Ct. App. 1987).

This section does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it punishes males but not females who engage in "substantial sexual conduct" with a minor under the age of fourteen (14) years, as this section clearly condemns penetration by any foreign object as well as other kinds of sexual conduct capable of being performed by males or females. Owsley v. Commonwealth, 743 S.W.2d 408, 1987 Ky. App. LEXIS 589 (Ky. Ct. App. 1987).

2. Construction.

Whether a defendant is a person in a position of authority or special trust is a question of fact for the jury, the jury is not limited to the list of persons contained in the statute, and the definitions of position of authority and position of special trust are not mutually exclusive at all; a person occupying a position of special trust is one who is in a position to exercise authority over a minor, and the position need not be an official one, and it is enough that a jury make an objective determination that the defendant is a person in a trustful position of power over the minor. Boone v. Commonwealth, 2013 Ky. App. LEXIS 152 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 407 (Ky. Aug. 13, 2014).

Court sees nothing that would require a finding of a personal, intimate, or meaningful relationship; the statute requires no regularity, frequency, or duration of contact between the perpetrator and the victim, and the court sees no reason to impose one upon it. Boone v. Commonwealth, 2013 Ky. App. LEXIS 152 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 407 (Ky. Aug. 13, 2014).

Definitions of position of authority and position of special trust are not mutually exclusive, and rather, one defines the other; the jury was not presented with alternate theories of guilt in this first-degree sexual abuse case and defendant's unanimity argument failed. Boone v. Commonwealth, 2013 Ky. App. LEXIS 152 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 407 (Ky. Aug. 13, 2014).

Defendant, who was 15 years old when when charged with various sexual offenses including incest under Ky. Rev. Stat. Ann. § 530.020, was subject to the provisions of this section, as it applied to render a juvenile convicted as a youthful offender of sexual offenses ineligible for probation. Bloyer v. Commonwealth, 647 S.W.3d 219, 2022 Ky. LEXIS 136 (Ky. 2022).

3. Construction with Other Laws.

KRS 500.095, which allows a trial judge to create innovative and effective sentencing alternatives, does not overrule the sentencing prohibition set forth in this section. Porter v. Commonwealth, 841 S.W.2d 166, 1992 Ky. LEXIS 169 (Ky. 1992).

KRS 510.110(1)(d) is not unconstitutionally vague under U.S. Const. amend. XIV; although 16-17 year olds could have legally consented to sexual activity, the Kentucky General Assembly has recognized that certain persons may be able to abuse a position of authority or influence to obtain sexual contact with minors, and the legislature has a rational basis to impose a higher standard on persons who have an advantageous position of authority or influence over minors in their care. Even if the statutory definitions of "position of authority" and "position of special trust" were potentially vague in some situations, they clearly applied to appellant, who was exercising parental authority over a child staying at his house, and a dismissal of the indictment for first-degree sexual abuse was not appropriate. Stinson v. Commonwealth, 2011 Ky. App. LEXIS 161 (Ky. Ct. App. 2011).

Trial court did not err by denying defendant's motion for a directed verdict after determining that the phrase "with whom he or she comes into contact as a result of that position" of KRS 510.110(d) merely required proof that defendant came into contact with the child victim as a result of his position of authority, but that the contact could, though did not have to be, the initial contact or the sexual contact. Sprague v. Commonwealth, 2011 Ky. App. LEXIS 242 (Ky. Ct. App. 2011), sub. op., 2011 Ky. App. Unpub. LEXIS 984 (Ky. Ct. App. Dec. 16, 2011).

Element of lack of consent under KRS 510.110(1)(d) was satisfied by the fact that the victim was unable to consent, as she was 17 and was subjected to sexual contact by a person in a position of authority or special trust within the meaning of KRS 532.045(1)(b); defendant was the victim's uncle and the head of her household at the time of the offense. Stinson v. Commonwealth, 396 S.W.3d 900, 2013 Ky. LEXIS 87 (Ky. 2013).

Requirement under KRS 510.110(1)(d) that the perpetrator be in a "position of authority" and/or "position of special trust" does not render the statute unconstitutionally void for vagueness, as those terms are defined by KRS 532.045. Stinson v. Commonwealth, 396 S.W.3d 900, 2013 Ky. LEXIS 87 (Ky. 2013).

4. Position of Authority or Special Trust.

It was not defendant's mere status as an adult that categorized him as a person in a position of authority or special trust, and the evidence showed more than that and was sufficient to support a factual finding that he fit the definitions, as he had been a household member for two years and was engaged to the mother of the victim's friend. Boone v. Commonwealth, 2013 Ky. App. LEXIS 152 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 407 (Ky. Aug. 13, 2014).

There was sufficient evidence from which the jury could have found that defendant occupied a position of authority and special trust in relation to the victim, and came into contact with the victim as a result of that position, and thus the denial of defendant's motion for a directed verdict for his charge of first degree sexual abuse was proper. Boone v. Commonwealth, 2013 Ky. App. LEXIS 152 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 407 (Ky. Aug. 13, 2014).

Because appellee could be properly considered as a person in a position of authority or a person in position of special trust as she was often the only adult supervising several small

children in the afterschool program, she had the ability to punish them by putting them in time out and was responsible for reporting any disciplinary incidents that occurred between the children, and she could, theoretically, use her position of authority to exercise undue influence on those children, the Department for Community Based Services, Cabinet for Health and Family Services had a statutory duty to investigate reports that a child had been neglected. Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

5. Probation Improper.

Defendant, who pled guilty to sodomizing and sexually abusing his three (3) year-old daughter, was not entitled to shock probation. Porter v. Commonwealth, 869 S.W.2d 48, 1993 Ky. App. LEXIS 177 (Ky. Ct. App. 1993).

The mere fact that the trial judge mentioned the possibility of probation in the future during juvenile defendant's initial sentencing for sodomy in the first degree does not put the matter of probation in issue, and the Commonwealth was not barred from appealing a later grant of probation bestowed on defendant after his completion of the sexual offender program. Commonwealth v. Taylor, 945 S.W.2d 420, 1997 Ky. LEXIS 35 (Ky. 1997).

Defendant who was convicted of first degree sodomy and sexual abuse upon his sister who was the age of 14 when the act occurred was a person who occupied a position of special trust, and thus, subsection (2) of this section prohibited the granting of probation to defendant. Commonwealth v. Taylor, 945 S.W.2d 420, 1997 Ky. LEXIS 35 (Ky. 1997).

6. Sentencing Alternatives.

Where the charges against defendant were no greater than Class D felonies, the trial court may and should have at least considered sentencing alternatives other than incarceration. Corman v. Commonwealth, 822 S.W.2d 421, 1991 Ky. App. LEXIS 143 (Ky. Ct. App. 1991).

Where defendant was convicted of sexual abuse in violation of KRS 510.110, the trial court erred in holding that he was ineligible for probation due to the constraints of KRS 532.045(b) because he was in a "position of authority" with the victim, as the more lenient language of KRS 533.030(6) indicated the legislative intent to allow probation in such situations in order to reduce prison overcrowding; however, as the trial court also relied on other more traditional reasons for denying probation, any error was harmless. Ebertshauser v. Commonwealth, 2005 Ky. App. Unpub. LEXIS 47 (Ky. Ct. App. 2005).

7. Extending Probation.

Trial court improperly extended appellant's probationary term beyond the two-year period set forth in KRS 533.020(4) based on his failure to complete a sex offender treatment program; appellant did not request the extension, KRS 532.045 only authorized the revocation of probation, and the last-minute citation to KRS 532.045 was problematic. On remand, jurisdiction was not lost in this case because the Commonwealth initiated probation revocation proceedings prior to the expiration of the two-year probationary period; appellant was on notice and litigating his probation revocation proceeding prior to October 27, 2008, the date probation was set to expire. Miller v. Commonwealth, 2010 Ky. App. LEXIS 227 (Ky. Ct. App. 2010), sub. op., 2010 Ky. App. Unpub. LEXIS 1001 (Ky. Ct. App. Dec. 10, 2010), aff'd in part and rev'd in part, 391 S.W.3d 801, 2013 Ky. LEXIS 6 (Ky. 2013).

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Treatises

Kentucky Instructions To Juries (Criminal), 5th Ed., Offenses Related to Sex and Pornography, Part 1 Definitions, §§ 4.21B, 4.21C.

Kentucky Instructions To Juries (Criminal), 5th Ed., Penalty Phase Instructions, Part 5 Persistent Felony Offenders, § 12.28.

TITLE LI
UNIFIED JUVENILE CODE

Chapter
600. Introductory Matters.
605. Administrative Matters.
610. Procedural Matters.
620. Dependency, Neglect, and Abuse.
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CHAPTER 600
INTRODUCTORY MATTERS

Section
600.020. Definitions for KRS Chapters 600 to 645.
600.060. No diminishment of court's inherent contempt power — Exception.
600.070. Release of educational records.

600.020. Definitions for KRS Chapters 600 to 645.

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to

a substance use disorder as defined in KRS 222.005;

4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

7. Abandons or exploits the child;

8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being when financially able to do so or offered financial or other means to do so. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months; or

10. Commits or allows female genital mutilation as defined in KRS 508.125 to be committed; or

(b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age;

(2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec. 675(11);

(3) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:

(a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;

(b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;

(c) The parent has sexually abused the child and has refused available treatment;

(d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or

(e) The parent has caused the child serious physical injury;

(4) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;

(5) "Beyond the control of the school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;

(6) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(7) "Cabinet" means the Cabinet for Health and Family Services;

(8) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(9) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;

(10) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(11) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(12) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(13) "Commitment" means an order of the court which places a child under the custodial control or supervision of the cabinet, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless otherwise provided by law;

(14) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(15) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(16) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(17) "Court-designated worker" means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(18) "Deadly weapon" has the same meaning as in KRS 500.080;

(19) "Department" means the Department for Community Based Services;

(20) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(21) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted or closely supervised environment for his or her own or the community's protection;

(22) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

(23) "Diversion agreement" means a mechanism designed to hold a child accountable for his or her behavior and, if appropriate, securing services to serve the best interests of the child and to provide redress for that behavior without court action and without the creation of a formal court record;

(24) "Eligible youth" means a person who:

(a) Is or has been committed to the cabinet as dependent, neglected, or abused;

(b) Is eighteen (18) years of age to no older than twenty (20) years and six (6) months of age; and

(c) Is requesting to extend or reinstate his or her commitment to the cabinet in order to participate in state or federal educational programs or to establish independent living arrangements;

(25) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(26) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;

(27) "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;

(28) "Fictive kin" means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child, or an emotionally significant relationship with a biological parent, siblings, or half-siblings of the child in the case of a child from birth to twelve (12) months of age, prior to placement;

(29) "Firearm" has the same meaning as in KRS 237.060;

(30) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(31) "Graduated sanction" means any of a continuum of accountability measures, programs, and sanctions, ranging from less restrictive to more restrictive in nature, that may include but are not limited to:

(a) Electronic monitoring;

(b) Drug and alcohol screening, testing, or monitoring;

(c) Day or evening reporting centers;

(d) Reporting requirements;

(e) Community service; and

(f) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment;

(32) "Habitual runaway" means any child who has been found by the court to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least three (3) days during a one (1) year period;

(33) "Habitual truant" means any child who is alleged to be or has been found by the court to be a habitual truant as defined in KRS 159.150(3);

(34) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(35) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(36) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interests of the child would be served without formal adjudication and disposition;

(37) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(38) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is:

(a) No more harsh, hazardous, or intrusive than necessary;

(b) Involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury or protection of the community; and

(c) Conducted at the suitable available facility closest to the child's place of residence to allow for appropriate family engagement;

(39) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(40) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(41) "Needs of the child" means necessary food, clothing, health, shelter, and education;

(42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;

(43) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(44) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

(45) "Out-of-home placement" means a placement other than in the home of a parent, relative, or guardian, in a boarding home, clinical treatment facility, community-based facility, detention facility, emergency shelter, fictive kin home, foster family home, hospital, nonsecure facility, physically secure facility, residential treatment facility, or youth alternative center;

(46) "Parent" means the biological or adoptive mother or father of a child;

(47) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(48) "Petition" means a verified statement setting forth allegations in regard to the child which initiates formal court involvement in the child's case;

(49) "Physical injury" means substantial physical pain or any impairment of physical condition;

(50) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(51) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(52) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;

(d) A licensed registered nurse with:

1. A master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons; or

2. A bachelor's degree in nursing from an accredited institution who:

a. Is certified as a psychiatric and mental health nurse by the American Nurses Association;

b. Has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing; and

c. Is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional comprehensive care center;

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional comprehensive care center;

(f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional comprehensive care center;

(g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional comprehensive care center; or

(h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:

1. Provides documentation that he or she has completed a psychiatric residency program for physician assistants;

2. Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and:

a. Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or

b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or

4. Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:

a. Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or

b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;

(53) "Reasonable and prudent parent standard" has the same meaning as in 42 U.S.C. sec. 675(10);

(54) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(55) "Responsive Interventions to Support and Empower team" or "RISE team" means the interdisciplinary team established by a school participating in the SOAR Program under KRS 610.033;

(56) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(57) "Risk and needs assessment" means an actuarial tool scientifically proven to identify specific factors and needs that are related to delinquent and noncriminal misconduct;

(58) "Safety plan" means a written agreement developed by the cabinet and agreed to by a family that clearly describes the protective services that the cabinet will provide the family in order to manage risks to a child's safety;

(59) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(60) "Secretary" means the secretary of the Cabinet for Health and Family Services;

(61) "Secure juvenile detention facility" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;

(62) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(63) "Sexual abuse" includes but is not limited to any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as those terms are defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(64) "Sexual exploitation" includes but is not limited to a situation in which a parent, guardian, person in a position of authority or special trust, as those terms are defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust, as those terms are defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided under Kentucky law;

(65) "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(66) "Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(67) "Statewide reporting system" means a system for making and compiling reports of child dependency, neglect, and abuse in Kentucky made via telephone call or in writing by a member of the public;

(68)(a) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such chil-

dren shall be termed status offenders. Status offenses shall include:

1. Beyond the control of the school or beyond the control of parents;

2. Habitual runaway;

3. Habitual truant; and

4. Alcohol offenses as provided in KRS 244.085.

(b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew;

(69) "Supporting Opportunities for Accountability and Restoration Program" or "SOAR Program" means the pilot program established under KRS 610.033;

(70) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(71) "Transitional living support" means all benefits to which an eligible youth is entitled upon being granted extended or reinstated commitment to the cabinet by the court;

(72) "Transition plan" means a plan that is personalized at the direction of the youth that:

(a) Includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services; and

(b) Is as detailed as the youth may elect;

(73) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:

(a) Who was brought before the court and made subject to the order;

(b) Whose future conduct was regulated by the order;

(c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and

(d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States;

(74) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(75) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and

(76) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

History.

Enact. Acts 1986, ch. 423, § 2, effective July 1, 1987; 1988, ch. 350, § 1, effective April 10, 1988; 1994, ch. 30, § 4, effective July 15, 1994; 1994, ch. 368, § 2, effective July 15, 1994; 1994, ch. 498, § 15, effective July 15, 1994; 1996, ch. 358, § 9, effective in part July 1, 1997, and in part July 15, 1997; 1996, ch. 369, § 21, effective July 15, 1996; 1998, ch. 57, § 2, effective March 17, 1998; 1998, ch. 303, § 1, effective July 15, 1998; 1998, ch. 426, § 611, effective July 15, 1998; 1998, ch. 538, § 13, effective April 13, 1998; 2000, ch. 14, § 57, effective July 14, 2000; 2000, ch. 60, § 1, effective July 14, 2000; 2000, ch. 193, § 1, effective July 14, 2000; 2000, ch. 534, § 6, effective July 14, 2000; 2002, ch. 99, § 4, effective March 28, 2002; 2004, ch. 116, § 16, effective July 13, 2004; 2005, ch. 99, § 659, effective June 20, 2005; 2005, ch. 172, § 3, effective June 20, 2005; 2008, ch. 87, § 1, effective July 15, 2008; 2012, ch. 143, § 1, effective July 12, 2012; 2012, ch. 148, § 1, effective July 12, 2012; 2014, ch. 132, § 24, effective July 15, 2014; 2016 ch. 115, § 3, effective July 15, 2016; 2017 ch. 10, § 3, effective June 29, 2017; 2018 ch. 159, § 13, effective July 14, 2018; 2018 ch. 165, § 2, effective July 14, 2018; 2019 ch. 128, § 28, effective June 27, 2019; 2020 ch. 35, § 10, effective March 26, 2020; 2020 ch. 74, § 6, effective April 2, 2020; 2021 ch. 61, § 1, effective June 29, 2021; 2022 ch. 75, § 17, effective April 1, 2022; 2024 ch. 144, § 1, effective July 15, 2024; 2025 ch. 149, § 4, effective June 27, 2025; 2026 ch. 68, § 3, effective July 15, 2026; 2026 ch. 69, § 9, effective July 15, 2026.

Legislative Research Commission Notes.

7/15/2026). This statute was amended by 2026 Ky. Acts chs. 68 and 69, which do not appear to be in conflict and have been codified together.

(7/12/2012). Under the authority of KRS 7.136(1), the Reviser of Statutes has inserted paragraph designations into subsections (23) and (63) of this statute. The words in the text were not changed.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 57, 303, 426, and 538. Where these Acts are not in conflict, they have been codified together. A conflict exists between ch. 538, which is nonrevisory and substantive in nature, and ch. 426, which is a revisory amendment to reflect an agency name change. In codification of this conflict, ch. 538 has been allowed to prevail. Cf. KRS 7.136(3).

NOTES TO DECISIONS

Analysis

1. In General.
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8. Qualified Mental Health Professional.
9. Abused and Neglected Child.
10. Informal Adjustment.
11. Guilty Pleas.
12. Valid Court Order.
13. De Facto Custodian.
14. Governmental Immunity.

1. In General.

Language of this section does not include an element of intent. Commonwealth v. K.S., 585 S.W.3d 202, 2019 Ky. LEXIS 382 (Ky. 2019).

2. Separate Dispositions Required.

It is statutorily forbidden for any one child to be adjudged both dependent and abused or neglected in the same disposition. J.H. v. Commonwealth, 767 S.W.2d 330, 1988 Ky. App. LEXIS 204 (Ky. Ct. App. 1988).

Court erred in terminating a mother's parental rights because the removal petition was based upon a single incident

of the children being exposed to drug use in a shed occupied by their maternal grandmother in which the mother was allegedly involved, and since that time, almost all of the mother's fifty drug screens were negative, and there was no evidence that the state provided reasonable efforts to reunite the family. K.D.H. v. Commonwealth, 630 S.W.3d 729, 2021 Ky. App. LEXIS 82 (Ky. Ct. App. 2021).

3. Exclusion of Public and Press.

Although this section provides that the Unified Juvenile Code applies to matters conducted in the juvenile session of district court, in light of KRS 610.070(3), KRS 610.340, and Ky. Const., § 115, the public and press are to be excluded not only from all juvenile proceedings at the district court level, but from all appellate proceedings stemming therefrom. F.T.P. v. Courier-Journal, 774 S.W.2d 444, 1989 Ky. LEXIS 48 (Ky. 1989).

4. Status Offenses.

5. —Curfew Ordinances Excluded.

The legislature expressly excluded curfew ordinances from the definition of status offenses. Covington v. Court of Justice, 784 S.W.2d 180, 1990 Ky. LEXIS 13 (Ky. 1990).

The Administrative Office of the Courts (AOC) is not authorized to require its court designated workers to process juvenile curfew violators as public offenders under KRS 610.010(1)(a); therefore, respondent city was expressly prohibited from requiring its court designated workers to process juvenile curfew violators as status offenders under the definition in this section. Covington v. Court of Justice, 784 S.W.2d 180, 1990 Ky. LEXIS 13 (Ky. 1990).

6. Juvenile Court Authority.

The juvenile court did not have the authority to sentence an eighteen (18) year-old defendant to confinement in a juvenile facility for a car theft committed prior to the defendant's eighteenth birthday. Jefferson County Dep't for Human Services v. Carter, 795 S.W.2d 59, 1990 Ky. LEXIS 73 (Ky. 1990).

Circuit court finding that a father neglected or abused his minor child because the father completed the case plan to the satisfaction of the Cabinet for Health and Family Services, there was no allegation that the father ever engaged in any neglectful act directed toward the child, merely that his substance abuse in the past put the newborn child at risk of physical harm, and even more troubling was the disparate treatment received by the mother—against whom the Cabinet moved to dismiss the allegations—in spite of the fact that she had placed the child in actual, physical harm by substance abuse while pregnant with the child. C.B. v. Cabinet for Health & Family Servs., 2018 Ky. App. LEXIS 54 (Ky. Ct. App. 2018), sub. op., 2018 Ky. App. Unpub. LEXIS 279 (Ky. Ct. App. Jan. 26, 2018).

7. Least Restrictive Alternative.

In a juvenile proceeding in which the juvenile argued that the trial court erred because commitment was not the least restrictive alternative since an aunt was willing to take her and that the trial court should have made findings as to why commitment was the only option, the trial court's failure to make written findings or state during the hearings what alternatives had been tried was not fatal to the commitment. The record was full of second chances, house confinement, foster care, and other alternatives that the Cabinet for Families and Children and the court tried in order to help the juvenile. K.F. v. Commonwealth, 274 S.W.3d 457, 2008 Ky. App. LEXIS 376 (Ky. Ct. App. 2008).

Commitment of the juvenile was necessary to protect him from physical injury, and to the extent less restrictive alternatives were available, they were considered by the family court and determined unfeasible, KRS 600.010(2)(c), 600.020(35). J.S. v. Commonwealth, 304 S.W.3d 67, 2009 Ky. App. LEXIS 216 (Ky. Ct. App. 2009).

8. Qualified Mental Health Professional.

1996 amendment to the definition of "qualified mental health professional" in KRS 600.020 merely modified the existing definition to include a licensed clinical social worker and did not indicate the General Assembly's intention to qualify such a person as an expert for all purposes. R.C. v. Commonwealth, 101 S.W.3d 897, 2002 Ky. App. LEXIS 1401 (Ky. Ct. App. 2002).

9. Abused and Neglected Child.

Order terminating a father's parental rights was affirmed where, inter alia, father had no contact with the child for several years, and provided no financial support for 31 months; while the father claimed he did not know where to send support payments, the parties' agreement included the proper address. B.T.R. v. J.W., 148 S.W.3d 294, 2004 Ky. App. LEXIS 290 (Ky. Ct. App. 2004).

Evidence that the residences parents and children lived in were unsanitary and unsafe for human habitation, and that the older child had been sexually abused by his uncles and parents, was sufficient to establish that the children were abused and neglected as defined in KRS 600.020(1) and to support the family court's termination order. Cabinet for Health and Family Servs. v. A.G.G., 190 S.W.3d 338, 2006 Ky. LEXIS 97 (Ky. 2006).

Pre-trial order excluding evidence of sexual abuse on one of the child's siblings that resulted in the removal of the siblings from the home was vacated as the disputed evidence was not barred under the doctrine of issue preclusion since the identity of the perpetrator was not established in a prior proceeding; the identity of the perpetrator was not material to the finding that the siblings were abused or neglected since KRS 600.020(1) required only a finding that a parent or guardian had created or allowed to be created a risk that the child would be the victim of sexual abuse or exploitation. Cabinet for Health & Family Servs. v. R.H., 199 S.W.3d 201, 2006 Ky. App. LEXIS 259 (Ky. Ct. App. 2006).

Because there was no substantial evidence to support a finding under either KRS 625.090(1)(a)1. or (a)2., and there was no allegation of criminal charges under KRS 625.090(1)(a)3., the family court erred in finding that a child was abused or neglected; thus, as there was no ground supporting termination, the family court abused its discretion in terminating a mother's parental rights to her daughter. T.G. v. Commonwealth, 2007 Ky. App. LEXIS 158 (Ky. Ct. App. May 18, 2007, sub. op., 2007 Ky. App. Unpub. LEXIS 816 (Ky. Ct. App. May 18, 2007), rev'd, 2008 Ky. Unpub. LEXIS 150 (Ky. Aug. 21, 2008).

Cabinet for Health and Family Services did not present substantial evidence that a parent's children were abused and neglected as required under KRS 600.020(1). It was not shown that the children suffered any direct, emotional or physical injury from the parent, and the Cabinet witnesses testified that the parent was a nurturing parent and that the children were well-cared for by the parent. M.E.C. v. Commonwealth, 254 S.W.3d 846, 2008 Ky. App. LEXIS 158 (Ky. Ct. App. 2008).

To find that KRS 620.030 does not apply, there must be a finding that the act committed upon the child is not an act of sexual abuse. For purposes of KRS Chapter 600, the definition of a neglected or abused child is set forth at KRS 600.020. If sexual abuse has occurred, then the mandatory reporting requirement in KRS 620.030 would have required the teacher to report this incident and such mandatory reporting would result in this being considered a ministerial rather than a discretionary act which would preclude the teacher from claiming qualified official immunity. Nelson v. Turner, 256 S.W.3d 37, 2008 Ky. App. LEXIS 177 (Ky. Ct. App. 2008).

Finding that the father abused only one of the four children did not preclude the court from ordering the father to refrain from contact with all four children because KRS 600.020(1) permitted such a finding where a risk of abuse existed and did not require actual abuse. Z.T. v. M.T., 258 S.W.3d 31, 2008 Ky. App. LEXIS 206 (Ky. Ct. App. 2008).

Family court properly found that a child was an abused or neglected child as defined in KRS 600.020(1) and terminated the parental rights of the child's minor mother under KRS 625.090 without receiving expert testimony as to the mother's parenting potential upon adulthood because § 625.090(2)(e), (g) did not require proof that the minor parent would be unable to effectively parent the child when the parent reached the age of majority. Commonwealth v. T.N.H., 302 S.W.3d 658, 2010 Ky. LEXIS 5 (Ky. 2010).

Finding that a child was abused or neglected under KRS 600.020 was not supported by substantial evidence because a family court failed to determine the truth or falsity of all the allegations in a complaint under KRS 620.100, and it relied upon information outside the record that was neither raised as an allegation in the complaint nor presented as evidence during a hearing; also, a dependency, neglect, or abuse adjudication hearing was not the appropriate forum for rehashing custody issues. Even though judicial notice of a prior case involving the mother and father could have been taken, the family court's consideration of the evidence it heard in the earlier action was improper; moreover, there was no notice or opportunity to be heard relating to the taking of judicial notice. S.R. v. J.N., 307 S.W.3d 631, 2010 Ky. App. LEXIS 62 (Ky. Ct. App. 2010).

Under the plain language of KRS 600.020(1), the definition of an abused child is limited to a scenario in which his or her parent, guardian, or other person exercising custodial control or supervision inflicted or committed abuse, allowed abuse to be inflicted or committed, or created or allowed to be created a risk of abuse. As a result, the mandatory reporting requirement of KRS 620.030(1) does not apply when a child inappropriately touches another child unless a parent, guardian, or other person exercising custodial control or supervision allows such inappropriate touching to be committed or creates or allows such a risk of abuse. Turner v. Nelson, 342 S.W.3d 866, 2011 Ky. LEXIS 96 (Ky. 2011).

Evidence that was based on compounded inferences was insufficient to support a finding of a mother's neglect of her children under KRS 600.020(1)(f); her failure to sign an "Aftercare Plan" to keep the father away from the children, without evidence that he posed a risk to them, was insufficient. K.H. v. Cabinet for Health & Family Servs., 358 S.W.3d 29, 2011 Ky. App. LEXIS 248 (Ky. Ct. App. 2011).

KRS 600.020(1)(a)(2) allowed a finding by a court of neglect or abuse where the risk of abuse existed, and in this termination case, the child tested positive for marijuana at birth and the parents admitted to using such before and during the pregnancy, such that there was sufficient evidence to remove the child from the home in order to ensure her safety. C.J.M. v. Cabinet for Health and Family Servs., 389 S.W.3d 155, 2012 Ky. App. LEXIS 301 (Ky. Ct. App. 2012).

Parents conceded that the child was neglected or abused since they did not contest such. C.J.M. v. Cabinet for Health and Family Servs., 389 S.W.3d 155, 2012 Ky. App. LEXIS 301 (Ky. Ct. App. 2012).

Trial court did not err by determining that the children were abused and/or neglected under KRS 600.020, 625.090 because the parents admitted that their children were neglected as a result of their substance abuse issues and admitted that because of their lack of supervision of one child she was injured and sustained a bruise to her face. C.A.W. v. Cabinet for Health & Family Servs., 391 S.W.3d 400, 2013 Ky. App. LEXIS 24 (Ky. Ct. App. 2013).

Substantial evidence supported conclusion that son was abused or neglected under this section, including evidence that the father had not seen his son since his removal from his mother in June 2009, he refused to provide documentation that he had a steady job or was making child support payments, and he had a very limited understanding of his son's psychological needs. Cabinet for Health and Family Servs. v. K.H., 423 S.W.3d 204, 2014 Ky. LEXIS 13 (Ky. 2014).

Informal adjustment requiring a juvenile to live with the juvenile's father in another state was improper because the informal adjustment, (1) in effect, changed custody without a hearing on the father's propriety as a custodian, and (2) did not provide for the child's possible inability to live with the father. Q.M. v. Commonwealth, 459 S.W.3d 360, 2015 Ky. LEXIS 1613 (Ky. 2015).

When a juvenile returned to Kentucky, contrary to an informal adjustment requiring the juvenile to live with the juvenile's father in another state, it was error to subject the juvenile to formal proceedings because once the child and other interested parties agreed to an informal process waiving constitutional safeguards, it was error to shift to a formal process, especially when there was a factual question as to whether the juvenile violated the informal adjustment's sole term. Q.M. v. Commonwealth, 459 S.W.3d 360, 2015 Ky. LEXIS 1613 (Ky. 2015).

When a juvenile returned to Kentucky, contrary to an informal adjustment requiring the juvenile to live with the juvenile's father in another state, the juvenile's subsequent commitment to the Department of Juvenile Justice as a juvenile sexual offender erred because (1) it was error to subject the juvenile to formal proceedings, once an informal adjustment was agreed to, and (2) the juvenile's admission was defective. Q.M. v. Commonwealth, 459 S.W.3d 360, 2015 Ky. LEXIS 1613 (Ky. 2015).

Termination of a mother's parental rights was appropriate because a child was found to be abused and neglected based on the infliction of an emotional injury; the child suffered from Reactive Attachment Disorder, and the mother's mental illness made it incapable for her to care for the child. Moreover, the mother inflicted emotional injury to the child, failed to provide adequate parental care and supervision, and failed to provide the essentials of life for the child's overall well-being; termination was in the best interest of the child, reunification efforts were made, and the child's welfare would have improved if termination was ordered. B.E.K. v. Cabinet for Health & Family Servs., 487 S.W.3d 457, 2016 Ky. App. LEXIS 40 (Ky. Ct. App. 2016).

Termination of a father's parental rights on the ground of abandonment was inappropriate because, although the father did not visit with and support the child after the child was placed in foster care, the failures by the Kentucky Cabinet for Health and Family Services denied the father an opportunity to maintain contact with the child and to work toward a court-approved case plan to regain custody. Furthermore, the oral parenting plan given to the father was so lacking in formality and detail that it did not constitute a plan. H.M.R. v. Cabinet, 521 S.W.3d 221, 2017 Ky. App. LEXIS 157 (Ky. Ct. App. 2017).

Circuit court erred in requiring that a father's contact with his two sons in the family home be supervised where joint stipulations showed only that he twice pled guilty to sex crimes more than a decade ago, was assessed a low risk sex offender and required to register for life, and completed only the first of three phases of sex offender treatment program, there was no evidence that he had done anything to harms his sons, the sparse record did not show a proclivity to harm them, the father and mother had cooperated with authorities, and during 18 months of scrutiny, nothing had happened. R.S. v. Cabinet for Health & Family Servs., 2017 Ky. App. LEXIS 562 (Ky. Ct. App. 2017), rev'd, 570 S.W.3d 538, 2018 Ky. LEXIS 534 (Ky. 2018).

For a parent to neglect a child, he or she must intend to do so, and dependency is different than neglect, because while

dependency may occur in circumstances similar to neglect, it lacks the requisite intent on the part of the parent; a child who suffers harm as a result of a parent's intentional acts is neglected or abused, and in contrast, a child is dependent if the harm results from a parent's unintentional acts, or from a cause unrelated to parental culpability. K.S. v. Commonwealth, 2018 Ky. App. LEXIS 224 (Ky. Ct. App. 2018), rev'd, 585 S.W.3d 202, 2019 Ky. LEXIS 382 (Ky. 2019).

Abused or neglected child means a child whose health or welfare is harmed or threatened with harm and some would interpret "threatened with harm" as implicating a risk of neglect; although this interpretation may be sound in some cases, it does not obviate the necessity of intent for neglect or abuse. K.S. v. Commonwealth, 2018 Ky. App. LEXIS 224 (Ky. Ct. App. 2018), rev'd, 585 S.W.3d 202, 2019 Ky. LEXIS 382 (Ky. 2019).

Termination of the mother's parental rights was improper because the evidence did not show that the child was neglected; while a doctor stated that the mother's limited intellect gave rise to a risk of neglect, that is not the same as neglect but rather indicates a child is dependent. The mother never had custody of the child, never neglected the child, and complied with her case plan, and while she had developmental disabilities, that alone was insufficient to render her behavior as neglectful. K.S. v. Commonwealth, 2018 Ky. App. LEXIS 224 (Ky. Ct. App. 2018), rev'd, 585 S.W.3d 202, 2019 Ky. LEXIS 382 (Ky. 2019).

Neglect finding was proper because a father did not have to exercise control or supervision over the child, as "exercising custodial control or supervision" modified "other person." Cabinet for Health & Family Servs. v. C.B., 556 S.W.3d 568, 2018 Ky. LEXIS 365 (Ky. 2018).

Trial court did not abuse its discretion when it found children to be neglected and requiring in-home supervision because the father had a history of criminal convictions for sexually abusing his underage half-brother and failed to comply with conditions of probation; the dispositional order was not unreasonable because the father was convicted of sexually abusing an underage male family member, violated his probation, and was classified as a risk, albeit low, to reoffend. Cabinet for Health & Family Servs. v. R.S., 570 S.W.3d 538, 2018 Ky. LEXIS 534 (Ky. 2018), cert. denied, 589 U.S. 972, 140 S. Ct. 242, 205 L. Ed. 2d 130, 2019 U.S. LEXIS 5735 (U.S. 2019).

Subsection (1)(a)(2) does not calibrate for the judiciary the tolerable degree of risk when considering a potential finding of neglect, and it is a matter for judicial discretion; if psychosexual assessment standards do not contain a category of "no risk" in evaluating an offender's chances for reoffending, then a risk for reoffending necessarily exists, and that risk of reoffending surely must be taken into account considering the offender's initial offenses and subsequent history. Cabinet for Health & Family Servs. v. R.S., 570 S.W.3d 538, 2018 Ky. LEXIS 534 (Ky. 2018), cert. denied, 589 U.S. 972, 140 S. Ct. 242, 205 L. Ed. 2d 130, 2019 U.S. LEXIS 5735 (U.S. 2019).

Trial court did not abuse its discretion in finding that children were at risk because the father had prior criminal acts, committed against an underage family member, and he was unable to complete probation supervision successfully. Cabinet for Health & Family Servs. v. R.S., 570 S.W.3d 538, 2018 Ky. LEXIS 534 (Ky. 2018), cert. denied, 589 U.S. 972, 140 S. Ct. 242, 205 L. Ed. 2d 130, 2019 U.S. LEXIS 5735 (U.S. 2019).

Nothing in the plain language of Ky. Rev. Stat. Ann. § 600.020(1) or in judicial precedent requires a trial court to find that a parent intentionally abused or neglected her child. Cabinet for Health & Fam. Servs. v. P.W., 582 S.W.3d 887, 2019 Ky. LEXIS 481 (Ky. 2019).

Court of Appeals of Kentucky held that for a parent to abuse or neglect a child under Ky. Rev. Stat. Ann. § 600.020(1), she must intend to do so. This is requiring an intentional result, i.e., that the parent intend that the result of their actions be that the child is abused or neglected. The Supreme Court of Kentucky is explicitly overruling that holding today. Cabinet for Health & Fam. Servs. v. P.W., 582 S.W.3d 887, 2019 Ky. LEXIS 481 (Ky. 2019).

Substantial evidence supported a neglect finding in the termination of parental rights where the mother knew the father's history of violence, failed to take any action to protect the child, and she could have prevented the child's injury if she had been honest about the domestic violence that was occurring, had accepted services to address the violence, or been able to apply the skills she learned through multiple case plans. Cabinet for Health & Fam. Servs. v. P.W., 582 S.W.3d 887, 2019 Ky. LEXIS 481 (Ky. 2019).

While no evidence showed that a second child was subjected to physical abuse, the evidence of abuse and neglect as to the other child provided sufficient evidence of a risk of harm. Cabinet for Health & Fam. Servs. v. P.W., 582 S.W.3d 887, 2019 Ky. LEXIS 481 (Ky. 2019).

Family court acted properly in determining that the Commonwealth could not establish a prima facie case for educational neglect where the child was only five years old when she was enrolled in kindergarten and incurred the absences which provided the basis for the temporary removal petition, pursuant to Ky. Rev. Stat. Ann. § 158.030(2), her enrollment and attendance were optional, and there could be no educational neglect of a child for excessive absenteeism who was not required by law to attend school. Commonwealth v. H. K., 595 S.W.3d 498, 2019 Ky. App. LEXIS 218 (Ky. Ct. App. 2019).

Termination of the mother's parental rights was proper because the child was neglected as she was born with amphetamines in her system that came from the mother's use of amphetamines prescribed to her, but she did not inform her physician of her pregnancy; she continuously abused drugs over the two-year period after the child had been removed; she went from one abusive relationship to another and did not complete her protective parenting class; and she did not pay child support; because there was no reasonable expectation of improvement in the mother's situation within a reasonable amount of time; and because the child had been in foster care for 15 of the most recent 22 months preceding the filing of the petition to terminate. T.R.W. v. Cabinet for Health & Family Servs., 599 S.W.3d 455, 2019 Ky. App. LEXIS 223 (Ky. Ct. App. 2019).

Department for Community Based Services, Cabinet for Health and Family Services failed to prove its allegation of neglect by appellee by showing that it was more likely than not that appellee failed to provide a child adequate supervision necessary for the child's well-being in the afterschool program as the only evidence presented by the Cabinet that the boys touched each other sexually was unreliable and inconsistent hearsay; and no witness testified that the touching was ever reported to appellee. Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

Family court erred in finding that a father neglected his children because there was simply no evidence to support a finding that his drinking subjected his children (aged 13 and 15 and largely capable of looking after themselves) to an actual and reasonable potential for harm or that his substance use disorder rendered him incapable of caring for them or meeting their needs. M.C. v. Commonwealth, 614 S.W.3d 915, 2021 Ky. LEXIS 9 (Ky. 2021).

Family court erred in terminating the father's parental rights because the Interstate Compact for the Placement of Children home study should not be required for a noncustodial parent who was not the subject of allegations or findings of child abuse or neglect; no evidence of domestic violence was proven; no witness testified at the trial to establish that any domestic violence occurred between the parties; although the court found that the father had abandoned the child for more

than 90 days, the social worker testified that the father maintained appropriate contact with her, and the child testified that he and the father spoke on the phone every week; and there was no proof that the state ever sought child support from either parent. A.G. v. Cabinet for Health & Family Servs., 621 S.W.3d 424, 2021 Ky. LEXIS 130 (Ky. 2021).

Court of Appeals properly affirmed the trial court's orders found that the natural, minor children of were abused or were at risk of being abused while in his care because, although the testimony of the child's treating therapist identifying the father as the child's abuser was error, as it was not necessary for the specific abuser to be identified, the trial court properly relied upon the remainder of the therapist's testimony, in conjunction with other testimony, to find by a preponderance of the evidence that acts of sexual abuse were committed upon the child when she was in the father's care and custody, and that her siblings were also at risk of sexual abuse. B.B. v. Commonwealth, 635 S.W.3d 802, 2021 Ky. LEXIS 241 (Ky. 2021).

Findings supported the termination of father's parental rights; he had previously stipulated to the neglect of the two other children, plus ample evidence supported the family court's conclusion that he abused or neglected each of the children, as father failed to make sufficient progress on his case plan, failed to consistently pay child support during the six months preceding trial, and was discharged from his drug treatment program for being noncompliant. D.H. v. Cabinet for Health & Family Servs., 640 S.W.3d 736, 2022 Ky. App. LEXIS 7 (Ky. Ct. App. 2022).

court erred under Ky. Rev. Stat. Ann. § 600.020 by finding that the children were abused or neglected because the family court never informed the parties of its intent to take judicial notice of domestic violence proceedings, and the mother could not present evidence to counter those allegations, and while there was evidence that mother drank alcohol, that was not grounds for finding abuse or neglect. C.L. v. Commonwealth, 653 S.W.3d 599, 2022 Ky. App. LEXIS 81 (Ky. Ct. App. 2022).

Trial court did not err in finding that the child had been medically neglected by the mother because the agency was able to prove by a preponderance of the evidence that the other neglected Child by not following the directions of child's doctors. It was understandable that the mother might have balked at the idea of giving the child food and medicine that would cause him to vomit; however, the doctors treating the child wanted her to continue to do so, and the treatment plan provided by the child's doctors was determined by the trial court to be the correct course of action. S.S. v. Commonwealth, 682 S.W.3d 39, 2023 Ky. App. LEXIS 82 (Ky. Ct. App. 2023).

Substantial evidence supported a family court's finding of child abuse by a father because the child's bruising was photographed immediately after a visit with the father and the photographs were admitted into evidence along with the mother's testimony that established the timeline of that visit relative to the bruising, the mother's testified that the child withdrew from the father after that visit, and there was evidence of the father's periodic violent tendencies and of the child suffering injuries during a prior visit with the father. J.P.T. v. Commonwealth, 689 S.W.3d 149, 2024 Ky. App. LEXIS 32 (Ky. Ct. App. 2024).

Substantial evidence supported the family court's determination that a parent neglected a child by smoking marijuana while caring for the child, in an enclosed vehicle with the child, and while driving the child to school. The parent created a risk of physical injury by operating a vehicle while impaired and endangering the child's safety, and the family court did not have to wait for actual harm to occur before finding neglect. Commonwealth v. K.O., 721 S.W.3d 124, 2025 Ky. LEXIS 3 (Ky. 2025).

Cabinet for Health and Family Services failed to prove by a preponderance of the evidence that the mother created or allowed to be created a risk of physical injury to her child(ren) by other than accidental means because the Cabinet presented no evidence that the ingestion of medication by one of the children was anything other than an accident as the Cabinet did not show the mother knew the medication was within reach, that the uncle was incapable of watching the children briefly, or that the mother was inattentive to the children's needs. S.H. v. Cabinet for Health, 717 S.W.3d 749, 2025 Ky. App. LEXIS 51 (Ky. Ct. App. 2025).

10. Informal Adjustment.

In a proceeding in which a juvenile was charged with first degree sexual assault, under KRS 600.020(31), the trial court's approval for the parties' agreement for an informal adjustment was required, and as it was in the best position to make that assessment, its decision not to approve the agreement would not be reversed. W.D.B. v. Commonwealth, 2006 Ky. App. LEXIS 346 (Ky. Ct. App. Nov. 22, 2006), sub. op., 2006 Ky. App. Unpub. LEXIS 1108 (Ky. Ct. App. Nov. 22, 2006), aff'd, 246 S.W.3d 448, 2007 Ky. LEXIS 241 (Ky. 2007).

11. Guilty Pleas.

Defendant juvenile was wrongly designated as a status offender after a family court found him in contempt because the court did not engage defendant in any sort of meaningful discussion concerning the consequences of his guilty plea, nor did it determine or assure whether he made it voluntarily. The court did not ask defendant about his state of mind or if anyone had pressured him to make the plea, it did not explain to defendant that he had the option of pleading not guilty and thus becoming entitled to a hearing, and it did not ascertain whether he was aware of the constitutional rights that he waived as a result of his admission. D.G. v. Commonwealth, 355 S.W.3d 476, 2011 Ky. App. LEXIS 228 (Ky. Ct. App. 2011).

12. Valid Court Order.

Standard School Attendance Order (SSAO) was a valid court order and therefore the trial court properly held the minor in contempt, because she received the full due process rights to which she was entitled at that stage of the proceedings. The SSAO was entered after the minor was initially brought into court for her arraignment on the beyond control of parent charge and entered a plea of not true, she was made subject to the SSAO, and it regulated her future conduct. B.H. v. Commonwealth, 2013 Ky. App. LEXIS 164 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 423 (Ky. Aug. 13, 2014).

13. De Facto Custodian.

Circuit court properly committed a father's 31-month-old child to the Cabinet for Health and Family Services because there was an emergency where the father was arrested on drug charges and drugs and a handgun were seized from a child's bedroom, the stepmother did not meet the requirements of a de facto custodian where it was not established that the POA the father purportedly executed made her the child's legal guardian, the father's three blood relatives were eliminated from consideration as either living with, or being, drug traffickers, and the least restrictive appropriate placement available was the foster mother with whom the child has spent the majority of his life. G. P. v. Cabinet for Health and Family Servs., 572 S.W.3d 484, 2019 Ky. App. LEXIS 34 (Ky. Ct. App. 2019).

14. Governmental Immunity.

Family court properly denied the motions to dismiss three dependency/neglect/abuse (DNA) petitions filed by the Cabinet for Health and Family Services that arose from its actions involving the custody and care of three children previously committed to its care because, while the Cabinet was clearly entitled to the protection of governmental immunity, the petitions were statutorily authorized, and the Cabinet was not immune from a DNA petition. Commonwealth v. K.T., 2021 Ky.

App. LEXIS 63 (Ky. Ct. App. 2021), vacated, 645 S.W.3d 411, 2022 Ky. LEXIS 116 (Ky. 2022).

Cited in:

Crum v. Cabinet for Human Resources, 928 S.W.2d 355, 1996 Ky. App. LEXIS 134 (Ky. Ct. App. 1996); Commonwealth v. G.C.W., 139 S.W.3d 172, 2004 Ky. App. LEXIS 215 (Ky. Ct. App. 2004); B.C. v. B.T., 182 S.W.3d 213, 2005 Ky. App. LEXIS 281 (Ky. Ct. App. 2005); Commonwealth v. S.K., 253 S.W.3d 486, 2008 Ky. LEXIS 6 (Ky. 2008); Commonwealth v. C.L.H., 2015 Ky. App. LEXIS 17 (Feb. 13, 2015); Cabinet for Health & Family Servs. v. J.M.G., 2015 Ky. LEXIS 2013 (Dec. 17, 2015); J.R.E. v. Cabinet for Health & Fam. Servs., 667 S.W.3d 589, 2023 Ky. App. LEXIS 31 (Ky. Ct. App. 2023).

OPINIONS OF ATTORNEY GENERAL.

A married child under the age of 16 has a legal responsibility to attend school, but once a child marries, the parent or guardian no longer has a legal obligation to ensure that the child attends school; however, if the spouse of a minor who is under the age of 16 and who is an habitual truant, is found to be a person exercising custodial control or supervision as defined by this section, the spouse may be subject to penalties under the Juvenile Code. OAG 87-40, 1987 Ky. AG LEXIS 43.

It is clear from the language of this section and KRS 610.010(1)(c) that a student under the age of 18 years who is failing to attend school in violation of KRS 159.010 is subject to a delinquency prosecution in accordance with the Juvenile Code. OAG 90-106, 1990 Ky. AG LEXIS 151.

While the two definitions of "habitual truant" in KRS 159.150 and in this section cannot be reconciled in terms of their language, it may be possible to reconcile them in their application. KRS 159.140 gives Directors of Pupil Personnel authority to enforce compulsory attendance laws, including KRS 159.150. Penalties are set forth under KRS 159.990 and are enforced by the District Court. Through exclusive jurisdiction over habitual truants the District Court has discretion in enforcement. The court may either rely on a Director of Pupil Personnel to initiate proceedings for violations of KRS 159.150, or the court may order a Director of Pupil Personnel to enforce this section, in which case the director would have authority to apply the definition found therein. OAG 91-79, 1991 Ky. AG LEXIS 79.

A married female under 16 years of age is a "child" as defined in this section. OAG 93-37, 1993 Ky. AG LEXIS 90.

This section controls over KRS 159.150 in ascertaining the number of days a child must have unexcused absences prior to being found habitually truant under the Unified Juvenile Code. OAG 93-37, 1993 Ky. AG LEXIS 90.

A child who does not receive necessary medical care due to his parents' religious belief may be considered an abused or neglected child; accordingly, the reporting requirements of KRS 620.030(1) and the investigation requirements of KRS 620.050(3) are mandatory and must be followed in cases involving the religious exemption contained in subsection (1) of this section. OAG 93-84, 1993 Ky. AG LEXIS 231.

RESEARCH REFERENCES AND PRACTICE AIDS

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Essays, "Are Kentucky's Children 'At Risk' as a Result of J.H. v. Commonwealth?", 86 Ky. L.J. 999 (1997-98).

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Tapp and Tincher, Of Innocents and Offenders: A Survey of Children's Law in Kentucky, 30 N. Ky. L. Rev. 131 (2003).

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Juvenile Code Proceedings, § 258.00.

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Termination of Parental Rights and Adoption, § 266.00.

Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.9, 32.14.

Petrilli, Kentucky Family Law, Minors, § 30.34.

Petrilli, Kentucky Family Law, Forms, Family Offenses, Form 4.6.

600.060. No diminishment of court's inherent contempt power — Exception.

Notwithstanding any other provision of KRS Chapter 600 to 645, the inherent contempt power of the court shall not be diminished, except that an order of detention for a child found in contempt shall not exceed thirty (30) days.

History.

Enact. Acts 2000, ch. 193, § 18, effective July 14, 2000; 2014, ch. 132, § 25, effective July 1, 2015.

NOTES TO DECISIONS

Analysis

1. Juvenile Proceedings.
2. Contempt Sentence.
3. Restitution Proceedings.
4. Criminal Contempt.

1. Juvenile Proceedings.

Although a juvenile was only 15-years old, a District Court had authority under KRS 600.060 to sentence the juvenile to 60-days detention for criminal contempt. C.G. v. Commonwealth, 2003 Ky. App. LEXIS 57 (Ky. Ct. App. Mar. 14, 2003, sub. op., 2003 Ky. App. Unpub. LEXIS 1383 (Ky. Ct. App. Mar. 14, 2003), review denied, ordered not published, 2005 Ky. LEXIS 212 (Ky. Aug. 17, 2005).

Both of the family court's contempt orders violated Ky. Rev. Stat. Ann § 600.060 as ordered the juvenile to be detained for more than 30 days. C.S. v. Commonwealth, 559 S.W.3d 857, 2018 Ky. App. LEXIS 203 (Ky. Ct. App. 2018).

2. Contempt Sentence.

KRS 635.060(4) provided that a juvenile offender who was older than age 14 but younger than age 16 could be confined for a period not to exceed 45 days but KRS 600.060 stated that notwithstanding any other provision of KRS Chs. 600 to 645, the inherent contempt power of the court was not diminished, so, because KRS 600.060 specifically addressed the juvenile court's contempt powers, it controlled over the more general limitation on sentencing of public offenders contained in KRS 635.060(4), and a juvenile court was allowed to sentence a public offender to 60 days in detention for being in contempt of court. A.W. v. Commonwealth, 2003 Ky. App. LEXIS 91 (Ky. Ct. App. 2003), aff'd, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

3. Restitution Proceedings.

Juvenile court retained jurisdiction over an offender to enforce a restitution order entered by the juvenile court after the offender turned 18 because KRS 600.060 authorized the use of contempt powers to enforce the restitution order. Commonwealth v. S.K., 253 S.W.3d 486, 2008 Ky. LEXIS 6 (Ky. 2008).

4. Criminal Contempt.

Family court erred in imposing criminal contempt sanctions against the Kentucky Cabinet for Health and Family Services because the court held the Cabinet in contempt for having disregarded a procedural rule which the court itself acknowledged regularly disregarding and the court failed to find willful disobedience by a case worker in the failure to file a required report. Cabinet for Health & Family Servs. v. J.M.G., 475 S.W.3d 600, 2015 Ky. LEXIS 2013 (Ky. 2015).

NOTES TO UNPUBLISHED DECISIONS

1. Contempt Sentence.

Unpublished decision: KRS 600.060 did not restrict a juvenile court's imposition of contempt sanctions, for violations of conditions of probation, as the juvenile court had the inherent authority to impose the sanctions; further, KRS 635.060 did not act as a limitation on the length of sentence imposed under a contempt order. A.W. v. Commonwealth, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

600.070. Release of educational records.

Pursuant to the authority granted to the Commonwealth under the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, when a statute within KRS Chapters 600 to 645 refers to the release of educational records, the purpose of the release shall be limited to providing the juvenile justice system with the ability to effectively serve, prior to adjudication, the needs of the student whose records are sought. The authorities to which the data are released shall certify that any educational records obtained pursuant to a statute within KRS Chapters 600 to 645 shall only be released to persons authorized by statute and shall not be released to any other person without the written consent of the parent of the child.

History.

Enact. Acts 2013, ch. 124, § 7, effective June 25, 2013; 2014, ch. 132, § 55, effective July 15, 2014.

CHAPTER 605

ADMINISTRATIVE MATTERS

Section

605.110. Smoking cessation services, medical care, and educational programs for committed children — Kentucky Educational Collaborative for State Agency Children — Personnel — Financing.

605.115. Access to Medicaid funding for local school districts providing funding matches for services for eligible children with disabilities.

605.110. Smoking cessation services, medical care, and educational programs for committed children — Kentucky Educational Collaborative for State Agency Children — Personnel — Financing.

(1)(a) Any child committed to or in the custody of the cabinet or the Department of Juvenile Justice who is not placed in a location where smoking cessation services are provided may participate in smoking cessation services offered by local health departments or their contracted agents at no cost.

(b) Unless provided otherwise, when any child committed to or in the custody of the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, at a cost not to exceed the Medicaid reimbursement rate, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Health and Family Services, residential, day treatment, clinical, and group home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Health and Family Services and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Health and Family Services, Department for Community Based Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.

(b) Teachers and other staff shall be hired on contract through a local school district or if a local school district is not willing to participate, teachers may be hired by the Kentucky Educational Collaborative for State Agency Children or a contract may be entered into with a private provider of educational services. All certified educational staff hired by the Kentucky Educational Collaborative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;

2. A per-pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children;

3. A per-pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;

4. A per-pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;

5. The funding for school services for state agency children authorized by KRS 158.135; and

6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.

(d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Health and Family Services shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:

1. Provide for the development and implementation of interagency agreements that:

a. Define the financial responsibility of each state and local agency for providing services to state agency children;

b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Health and Family Services.

(e) When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

(f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Health and Family Services and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

History.

Enact. Acts 1986, ch. 423, § 14, effective July 1, 1987; 1988, ch. 350, § 9, effective April 10, 1988; 1988, ch. 357, § 12, effective July 15, 1988; 1992, ch. 357, § 3, effective July 14, 1992; 1994, ch. 376, § 3, effective July 15, 1994; 1996, ch. 358, § 16, effective July 1, 1997; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 398, § 4, effective July 15, 1998; 1998, ch. 426, § 613, effective July 15, 1998; 1998, ch. 433, § 2, effective July 15, 1998; 1998, ch. 538, § 5, effective April 13, 1998; 1998, ch. 609, § 4, effective July 15, 1998; 2000, ch. 14, § 58, effective July 14, 2000; 2000, ch. 534, § 19, effective July 14, 2000; 2002, ch. 257, § 10, effective July 15, 2002; 2005, ch. 99, § 661, effective June 20, 2005; 2006, ch. 17, § 2, effective July 12, 2006.

NOTES TO DECISIONS

1. Jurisdiction.

Trial court had jurisdiction to enter custody orders as to a child who was originally presented to a hospital in Kentucky with life-threatening injuries, and who was transferred to a hospital in Tennessee, by air lift on that same date; however, an order permitting the Cabinet to terminate life sustaining treatment for the child was improper because the best interests of the child were secondary to the overriding and paramount right of the mother to a due process adjudication of termination. Until those rights were formally adjudicated, the Cabinet was not permitted to terminate treatment. D.K. v. Commonwealth, 221 S.W.3d 382, 2007 Ky. App. LEXIS 93 (Ky. Ct. App. 2007).

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

Kentucky Educational Collaborative for State Agency Children, 505 KAR 1:080.

605.115. Access to Medicaid funding for local school districts providing funding matches for services for eligible children with disabilities.

The commissioner of the Department of Juvenile Justice and the secretary of the Cabinet for Health and Family Services, with the cooperation of the Kentucky Board of Education and the commissioner of education, shall implement policies to assure that local school districts providing a funding match shall have direct access to Medicaid funding as Medicaid providers for the provision of health-related services to eligible chil-

dren with disabilities under the age of twenty-one (21) years of age. They shall develop policies and procedures so the Department of Education can transfer the local school districts' matching funds to the Department for Medicaid Services. They shall also review state and federal statutes and regulations to determine the eligibility of local school districts to receive Medicaid reimbursement for health-related services identified on a child's individual education plan.

History.

Enact. Acts 1994, ch. 376, § 1, effective July 15, 1994; 1996, ch. 358, § 17, effective July 1, 1997; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 426, § 614, effective July 15, 1998; 2005, ch. 99, § 662, effective June 20, 2005.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross-References.

School district Medicaid providers, 702 KAR 3:285.

CHAPTER 610
PROCEDURAL MATTERS

Section

610.010. District Court jurisdiction of juvenile matters.
610.100. Investigation.
610.220. Permitted purposes for holding child in custody — Time limitation — Extension — Separation from adult prisoners — Prohibition against attaching child to stationary object.
610.265. Detention of children in specified facilities — Time frame for holding detention hearing — Release of child required if hearing not held as specified.
610.280. Considerations for and findings from detention hearing.
610.290. Rights of juvenile.
610.295. Detention costs — Assessment against parent after hearing — Payments when adjudication based on status offense or public offense — Payment schedule and discharge.

610.010. District Court jurisdiction of juvenile matters.

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly has committed a public offense prior to his or her eighteenth birthday, except a motor vehicle offense involving a child fifteen (15) years of age or older. A child fifteen (15) years of age or older taken into custody upon the allegation that the child has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him or her as an adult. A child taken into custody upon the allegation that he or she has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his or her appearance before the District Court, in a facility as defined in KRS 15A.067. Children fifteen (15) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a facility for that period of confinement preceding their eighteenth birthday and an adult detention facility for that period of confinement subsequent to their eighteenth birthday. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

(2) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county or the family division of the Circuit Court shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday and who allegedly:

(a) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;

(b) Is an habitual truant from school;

(c) Is an habitual runaway from his or her parent or other person exercising custodial control or supervision of the child;

(d) Is dependent, neglected, or abused;

(e) Has committed an alcohol offense in violation of KRS 244.085; or

(f) Is mentally ill.

(3) Actions brought under subsection (1) of this section shall be considered to be public offense actions.

(4) Actions brought under subsection (2)(a), (b), (c), and (e) of this section shall be considered to be status offense actions.

(5) Actions brought under subsection (2)(d) of this section shall be considered to be nonoffender actions.

(6) Actions brought under subsection (2)(f) of this section shall be considered to be mental health actions.

(7) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.

(8) The court shall have no jurisdiction to make permanent awards of custody of a child except as provided by KRS 620.027.

(9) If the court finds an emergency to exist affecting the welfare of a child, or if the child is eligible for the relative or fictive kin caregiver assistance as established in KRS 620.142, it may make temporary orders for the child's custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the

Circuit Court of jurisdiction over cases filed in Circuit Court.

(10) The court of each county wherein a public offense, as defined in subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of the case, or in its discretion may make an order transferring the case to the court of the county of the child's residence or the county wherein the offense was committed, as the case may be.

(11) Nothing in this chapter shall prevent the court from holding a child in contempt of court to enforce valid court orders previously issued by the court, subject to the requirements contained in KRS 610.265 and 630.080.

(12) Except as provided in KRS 630.120(5), 635.060(4), or 635.090, nothing in this chapter shall confer upon the District Court or the family division of the Circuit Court, as appropriate, jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or committed to or in the custody of the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or committed to or in the custody of the cabinet.

(13) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

(14) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct permanency hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his or her parents with all the court imposed conditions terminated, completes a disposition pursuant to KRS 635.060, or reaches the age of eighteen (18) years.

History.

Enact. Acts 1986, ch. 423, § 20, effective July 1, 1987; 1988, ch. 350, § 14, effective April 10, 1988; 1994, ch. 226, § 2, effective July 15, 1994; 1994, ch. 318, § 1, effective July 15, 1994; 1994, ch. 489, § 1, effective July 15, 1994; 1996, ch. 358, § 18, effective July 15, 1997; 1998, ch. 443, § 13, effective July 15, 1998; 2000, ch. 60, § 2, effective July 14, 2000; 2000, ch. 193, § 2, effective July 14, 2000; 2000, ch. 306, § 2, effective July 14, 2000; 2002, ch. 257, § 12, effective July 15, 2002; 2008, ch. 87, § 3, effective July 15, 2008; 2014, ch. 132, § 35, effective July 1, 2015; Enact. Acts 2019, ch. 73, § 4, effective June 27, 2019; 2020 ch. 35, § 11, effective March 26, 2020; 2025 ch. 160, § 3, effective April 4, 2025.

Compiler's Notes

Section 5 of Acts 2025, ch. 160, provides: "Whereas portions of this Act relate to the effective implementation of 2025 RS HB 15, 2025 Ky. Acts ch. 81, which took effect March 25, 2025, an emergency is declared to exist, and Section 3 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law."

Section 6 of Acts 2025, ch. 160, provides: "This Act may be cited as the Jared Lee Helton Act of 2025."

NOTES TO DECISIONS

Analysis

1. Legislative Intent.
2. Curfew Violation Not Status Offense.
3. Juvenile Court Authority.
4. Federal Jurisdiction.
5. Appellate Jurisdiction.
6. Circuit Court Jurisdiction.
7. Removal From Home State.
8. Guilty Pleas.
9. Valid Court Order.
10. Jurisdiction.

1. Legislative Intent.

The intent of this section in giving the District Court the ability to review any information it may require regarding one of its orders is to safeguard the interests of the child, considering its welfare as being too precious a commodity to jeopardize by an incomplete or inadequate judicial review. Cabinet for Human Resources v. McDonald, 765 S.W.2d 581, 1988 Ky. App. LEXIS 175 (Ky. Ct. App. 1988).

Because the Kentucky Legislature conferred sole and exclusive authority upon the Cabinet for Health and Family Services to determine the appropriate placement of a child committed to its care in KRS 610.010(11) (now (12)), pursuant to Ky. Const., §§ 27, 28, the trial court erred in restricting where the Cabinet could place two (2) children. Cabinet for Health & Family Servs. ex rel. A.W. v. Huddleston, 185 S.W.3d 222, 2006 Ky. App. LEXIS 47 (Ky. Ct. App. 2006).

2. Curfew Violation Not Status Offense.

The Administrative Office of the Courts (AOC) is not authorized to require its court designated workers to process juvenile curfew violators as public offenders under this section; therefore, respondent city was expressly prohibited from requiring its court designated workers to process juvenile curfew violators as status offenders under the definition in KRS 600.020. Covington v. Court of Justice, 784 S.W.2d 180, 1990 Ky. LEXIS 13 (Ky. 1990).

3. Juvenile Court Authority.

The juvenile court did not have the authority to sentence an eighteen (18) year-old defendant to confinement in a juvenile facility for a car theft committed prior to the defendant's eighteenth birthday. Jefferson County Dep't for Human Services v. Carter, 795 S.W.2d 59, 1990 Ky. LEXIS 73 (Ky. 1990).

Express statutory authority anticipated that a juvenile court had the power to hold a child in contempt as KRS 610.010(10) (now (11)) specifically provided that nothing in "this chapter" would prevent a District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court, KRS 610.265(1), 610.265(5) (now (3)) and 635.055 each set out provisions for the detention of a juvenile who was charged with being in contempt of court, and KRS 635.083(1) gave a juvenile court continuing jurisdiction over a juvenile who was convicted or adjudged delinquent of three (3) or more offenses, this jurisdiction continued even after the service of incarceration or other court-ordered punishment in the form of conditional discharge, and violation of the terms and conditions of conditional discharge could be punished as contempt of court. A.W. v. Commonwealth, 2003 Ky. App. LEXIS 91 (Ky. Ct. App. 2003), aff'd, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

Juvenile court had the authority to hold a public offender in contempt for violating the terms of her probation, but the court should refrain from using its contempt authority to

punish violations of probation unless it found that other options were either inappropriate or unavailable. A.W. v. Commonwealth, 2003 Ky. App. LEXIS 91 (Ky. Ct. App. 2003), aff'd, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

When a public offender was found in contempt for violating the terms of her probation, significant due process considerations came into play, and, while her counsel's stipulation to a violation of probation was adequate to establish a violation, it could not serve as the basis for finding the offender guilty of contempt of court. A.W. v. Commonwealth, 2003 Ky. App. LEXIS 91 (Ky. Ct. App. 2003), aff'd, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

KRS 610.010(11) (now (12)), restricting the trial court's authority over the actions of the Cabinet concerning the placement, care, or treatment of a child committed to it, did not restrict the trial court's authority to order the Cabinet to pay for drug abuse treatment for the mother because the mother's treatment did not relate to the child's treatment. Cabinet for Health & Family Servs. v. Evans, 2006 Ky. App. LEXIS 52 (Ky. Ct. App. Feb. 17, 2006, sub. op., 2006 Ky. App. Unpub. LEXIS 831 (Ky. Ct. App. Feb. 17, 2006).

Order modifying the amount of restitution that a juvenile was directed to pay was affirmed because KRS 610.010(13) (now (14)) granted the juvenile court continuing jurisdiction to review a previously entered restitution order. Further, the order was not untimely as CR 59.05 did not apply to the entry of the dispositional order. D.F. v. Commonwealth, 2006 Ky. App. LEXIS 81 (Ky. Ct. App. Mar. 17, 2006, sub. op., 2006 Ky. App. Unpub. LEXIS 499 (Ky. Ct. App. Mar. 17, 2006).

Since there was precedent and a clear statement in KRS 610.010(13) (now (14)) that as a general rule juvenile court jurisdiction did not extend to adults, a circuit court erred when it inferred such an extension with respect to outstanding restitution orders to former juveniles who had turned 18. Nothing in KRS 413.090 conveyed jurisdiction. S.K. v. Commonwealth, 2006 Ky. App. LEXIS 154 (Ky. Ct. App. 2006), rev'd, 253 S.W.3d 486, 2008 Ky. LEXIS 6 (Ky. 2008).

As a general rule, KRS 610.010(13) (now (14)) limits juvenile court jurisdiction to minors. Neither the court's contempt power nor the limitations period for an action on a judgment implies an exception to that rule for restitution obligors. S.K. v. Commonwealth, 2006 Ky. App. LEXIS 154 (Ky. Ct. App. 2006), rev'd, 253 S.W.3d 486, 2008 Ky. LEXIS 6 (Ky. 2008).

4. Federal Jurisdiction.

Federal District Court and not state District Court had jurisdiction over juvenile for crimes committed on Fort Knox military reservation since by KRS 3.030 the Kentucky Legislature has expressly granted jurisdiction to federal courts for matters occurring on the premises of Fort Knox and such statute does not conflict with this section. United States v. Juvenile Male, 939 F.2d 321, 1991 U.S. App. LEXIS 15266 (6th Cir. Ky. 1991).

5. Appellate Jurisdiction.

Once a Circuit Court enters a judgment terminating parental rights to a child who was previously committed to the Cabinet for Human Resources, the District Court loses its jurisdiction to review the earlier commitment order. (Decided under prior law) Cabinet for Human Resources v. D.S., 746 S.W.2d 87, 1988 Ky. App. LEXIS 30 (Ky. Ct. App. 1988).

The Court of Appeals lacked jurisdiction over and, therefore, properly dismissed a juvenile's appeal from an order of an elected Circut Court judge sitting in Family Court which required the juvenile to cooperate in counseling, undergo a drug and alcohol screening, and to schedule a gynecological examination before the next hearing date; the juvenile should have taken her appeal to the Circuit Court pursuant to the Family Court rules of practice. T.A. v. Byer, 13 S.W.3d 629, 2000 Ky. LEXIS 27 (Ky. 2000).

6. Circuit Court Jurisdiction.

Trial court had jurisdiction to enter custody orders as to a child who was originally presented to a hospital in Kentucky with life-threatening injuries, and who was transferred to a hospital in Tennessee by air lift on that same date; however, an order permitting the Cabinet to terminate life sustaining treatment for the child was improper because the best interests of the child were secondary to the overriding and paramount right of the mother to a due process adjudication of termination. Until those rights were formally adjudicated, the Cabinet was not permitted to terminate treatment. D.K. v. Commonwealth, 221 S.W.3d 382, 2007 Ky. App. LEXIS 93 (Ky. Ct. App. 2007).

Firearm enhanced drug offense is actually charged at the higher level regardless of the procedural circumstances. Therefore, a circuit court properly acquired jurisdiction in a juvenile case because transfer order was facially valid where a district court found probable cause that appellant committed the offense of drug trafficking with a firearm enhancement; moreover, the trial court made two sets of findings, one concerning mandatory findings and one about the discretionary factors. Jackson v. Commonwealth, 363 S.W.3d 11, 2012 Ky. LEXIS 25 (Ky. 2012).

7. Removal From Home State.

The trial court abused its discretion in relieving the Cabinet for Human Resources of its responsibility, under an original order, to return the children to their home state of New York from where they had been removed from proper custody. (Decided under prior law) Waters v. Cabinet for Human Resources, 736 S.W.2d 365, 1987 Ky. App. LEXIS 565 (Ky. Ct. App. 1987).

8. Guilty Pleas.

Defendant juvenile was wrongly designated as a status offender after a family court found him in contempt because the court did not engage defendant in any sort of meaningful discussion concerning the consequences of his guilty plea, nor did it determine or assure whether he made it voluntarily. The court did not ask defendant about his state of mind or if anyone had pressured him to make the plea, it did not explain to defendant that he had the option of pleading not guilty and thus becoming entitled to a hearing, and it did not ascertain whether he was aware of the constitutional rights that he waived as a result of his admission. D.G. v. Commonwealth, 355 S.W.3d 476, 2011 Ky. App. LEXIS 228 (Ky. Ct. App. 2011).

Entry of a guilty plea did not preclude the consideration of whether a transfer order in a juvenile case was facially invalid, and a waiver rule did not apply to a facially insufficient transfer order. Jackson v. Commonwealth, 363 S.W.3d 11, 2012 Ky. LEXIS 25 (Ky. 2012).

9. Valid Court Order.

Standard School Attendance Order (SSAO) was a valid court order and therefore the trial court properly held the minor in contempt, because she received the full due process rights to which she was entitled at that stage of the proceedings. The SSAO was entered after the minor was initially brought into court for her arraignment on the beyond control of parent charge and entered a plea of not true, she was made subject to the SSAO, and it regulated her future conduct. B.H. v. Commonwealth, 2013 Ky. App. LEXIS 164 (Ky. Ct. App. 2013), review denied, ordered not published, 2014 Ky. LEXIS 423 (Ky. Aug. 13, 2014).

Court may only hold a child in contempt of court to enforce a valid court order previously issued by the court. Ky. Rev. Stat. Ann. § 610.010(11). It is manifestly unjust to subject a juvenile to sanctions for contempt, especially confinement in a detention facility, when the status offense case against her was effectively terminated without the entry of a valid written order regulating her future conduct. C.S. v. Commonwealth, 559 S.W.3d 857, 2018 Ky. App. LEXIS 203 (Ky. Ct. App. 2018).

10. Jurisdiction.

District court lacked particular case jurisdiction when it ordered the Department for Community Based Services of the Kentucky Cabinet for Health and Family Services—which investigated and found no substantiation for a parent's claims that the other abused their child—to open a case and further assess the family needs. T.C. v. M.E., 603 S.W.3d 663, 2020 Ky. App. LEXIS 54 (Ky. Ct. App. 2020).

NOTES TO UNPUBLISHED DECISIONS

1. Juvenile Court Authority.

Unpublished decision: Juvenile court's imposition of contempt sanctions, because of a juvenile's violations of conditions that were placed on her probation, did not violate KRS 610.010(10), as the contempt power existed for the purpose of compelling the juvenile to comply with the court's orders and to enable the court to help the juvenile become a productive citizen. A.W. v. Commonwealth, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

OPINIONS OF ATTORNEY GENERAL.

It is clear from the language of KRS 600.020(24) and subdivision (1)(c) of this section that a student under the age of 18 years who is failing to attend school in violation of KRS 159.010 is subject to a delinquency prosecution in accordance with the Juvenile Code. OAG 90-106, 1990 Ky. AG LEXIS 151.

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Petrilli, Kentucky Family Law, Custody of Children, § 26.8.

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Petrilli, Kentucky Family Law, Minors, § 30.18.

Petrilli, Kentucky Family Law, Support of Children (On Dissolution), § 27.13.

Petrilli, Kentucky Family Law, Termination of Parental Rights and Adoption, § 29.1.

Petrilli, Kentucky Family Law, Forms, Juvenile Court, Form 5.1, Form 5.3, Form 5.5.

610.100. Investigation.

(1) Unless there is a suitable prior disposition investigation report or unless waived by the child who is represented by counsel, before making disposition of the case of a child brought before the court under the provisions of KRS Chapters 630 or 635, whether by complaint pursuant to KRS 610.020, or by reason of having been taken into custody pursuant to KRS 610.190, the judge shall cause an investigation to be made concerning the nature of the specific act complained of and any surrounding circumstances which suggest the future care and guidance which should be given the child. The investigation shall include an inquiry into the child's age, habits, school record, general reputation, and everything that may pertain to his or her life, and character. The investigation shall also include an inquiry into the home conditions, life, and character of the person having custody of the child. The investigation shall also include an assessment of the parent or guardian's ability to pay all or part of the cost of the child's care and treatment should the child be ordered into a treatment program or placed on supervised probation. The result of the investigation, including the result of the validated risk and needs assessment, shall be reported in writing to the court and to counsel for the parties three (3) days prior to the child's dispositional hearing and shall become a part of the record of the proceedings. The child may waive the three (3) day requirement. Objections by counsel at the dispositional hearing to portions of the dispositional report shall be noted in the record.

(2) The investigation shall be conducted by a suitable public or private agency. The cabinet and the Department of Juvenile Justice may furnish investigation services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county government may enter into a contract on behalf of his or her county with the Department of Juvenile Justice or the cabinet for the furnishings of such services.

History.

Enact. Acts 1986, ch. 423, § 29, effective July 1, 1987; 1988, ch. 350, § 21, effective April 10, 1988; 1996, ch. 358, § 23, effective in part July 1, 1997, and in part July 15, 1997; 1998, ch. 443, § 16, effective July 15, 1998; 2000, ch. 193, § 3, effective July 14, 2000; 2014, ch. 132, § 37, effective July 1, 2015.

Compiler's Notes.

For this section as effective until July 1, 2015, see the preceding section also numbered KRS 610.100.

For this section as effective until July 1, 2015, see the bound volume.

NOTES TO DECISIONS

1. No Appeal Available.

By its plain language, an informal adjustment was not a final or appealable order adjudicating all the rights of all the parties in an action or proceeding, and no appeal from an informal juvenile adjustment pursuant to KRS 610.100(3) was available. Commonwealth v. C.J., Commonwealth v. C.J., 156 S.W.3d 296, 2005 Ky. LEXIS 47 (Ky. 2005).

610.220. Permitted purposes for holding child in custody — Time limitation — Extension — Separation from adult prisoners — Prohibition against attaching child to stationary object.

(1) Except as otherwise provided by statute, if an officer takes or receives a child into custody on an allegation of committing a public offense or into protective custody on being a suspected runaway, the child may be held at a police station, secure juvenile detention facility, youth alternative center, a nonsecure fa-

cility, or, as necessary, in a hospital or clinic for the following purposes:

(a) Identification and booking;

(b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, other responsible person, or the cabinet;

(c) Photographing;

(d) Fingerprinting;

(e) Physical examinations, including examinations for evidence;

(f) Evidence collection, including scientific tests;

(g) Records checks;

(h) Determining whether the child is subject to trial as an adult; and

(i) Other inquiries of a preliminary nature.

(2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200 (6)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.

(3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location, and shall not be handcuffed to or otherwise securely attached to any stationary object.

History.

Enact. Acts 1986, ch. 423, § 41, effective July 1, 1987; 1988, ch. 350, § 29, effective April 10, 1988; 1996, ch. 358, § 31, effective July 15, 1997; 2000, ch. 193, § 4, effective July 14, 2000; 2000, ch. 534, § 9, effective July 14, 2000; 2004, ch. 160, § 2, effective April 21, 2004; 2014, ch. 132, § 42, effective July 1, 2015.

Compiler's Notes.

For this section as effective until July 1, 2015, see the preceding section also numbered KRS 610.220.

For this section as effective until July 1, 2015, see the bound volume.

NOTES TO DECISIONS

Analysis

1. Rights of Minors.
2. Separation from Adults.

1. Rights of Minors.

A system of selective placement of juveniles in the county jail for dispositional and predispositional purposes, although for limited periods of time, constituted a violation of the Fourteenth Amendment in that it was treating, for punitive purposes, the juveniles as adults and yet not according them, for due process purposes, the rights accorded to adults. (Decided under prior law) Baker v. Hamilton, 345 F. Supp. 345, 1972 U.S. Dist. LEXIS 14032 (W.D. Ky. 1972).

Trial courts should treat a violation of KRS 610.220 as an important factor in the overall determination of whether a juvenile defendant gave his statement voluntarily. Shepherd v. Commonwealth, 251 S.W.3d 309, 2008 Ky. LEXIS 30 (Ky. 2008).

Sixteen-year old defendant's claim that his police interview was coercive as a matter of law because he was held in custody longer than the statutory limit set forth in KRS 610.220(2) failed because defendant properly understood his *Miranda* rights, was not under the influence of any substance that would impair his judgment, and was not physically abused or coerced by the police; a possible technical violation of KRS 610.220(2) did not necessarily require the suppression of an otherwise voluntary statement. Shepherd v. Commonwealth, 251 S.W.3d 309, 2008 Ky. LEXIS 30 (Ky. 2008).

Analysis that requires compliance with the provisions of KRS 610.200 as an important variable in determining whether a juvenile's confession was given voluntarily should also apply to violations of KRS 610.220. Shepherd v. Commonwealth, 251 S.W.3d 309, 2008 Ky. LEXIS 30 (Ky. 2008).

As the police complied with KRS 610.220(2) in acquiring the necessary extensions to hold defendant in custody beyond the two-hour limit, the defendant answered the detective's questions voluntarily, and there was no evidence of coercion, there were no grounds to suppress defendant's taped statements. Taylor v. Commonwealth, 276 S.W.3d 800, 2008 Ky. LEXIS 313 (Ky. 2008), cert. denied, 558 U.S. 865, 130 S. Ct. 175, 175 L. Ed. 2d 110, 2009 U.S. LEXIS 5366 (U.S. 2009).

2. Separation from Adults.

There was no legal authority for the detention of a thirteen (13) year-old child in any portion of a county jail that is not physically separated from sight and sound of all other portions of the jail. (Decided under prior law) Skeans v. Vanhoose, 512 S.W.2d 520, 1974 Ky. LEXIS 404 (Ky. 1974).

OPINIONS OF ATTORNEY GENERAL.

This section statutorily authorizes the fingerprinting and photographing of juveniles taken or received into custody by an officer without the requirement of a court order. OAG 88-34, 1988 Ky. AG LEXIS 34.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Petrilli, Kentucky Family Law, Juvenile Court, § 32.20.

610.265. Detention of children in specified facilities — Time frame for holding detention hearing — Release of child required if hearing not held as specified.

(1)(a) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in accordance with KRS 630.095 for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing.

(b) Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or a nonsecure setting approved by the Department of Juvenile Justice for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending a detention hearing.

(2) Any child accused of committing a public offense that would be considered a violent felony offense as defined in KRS 532.200 shall be detained in a secure juvenile detention facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends

and holidays, pending a detention hearing, unless the detention hearing can be held within the time allotted to peace officers to retain custody of the child pursuant to KRS 610.200 or 610.220. This subsection shall not apply to any child ten (10) years of age or younger.

(3)(a) Any child detained pursuant to subsection (2) of this section shall be assessed by a mental health professional, whose communications with the child shall be confidential in conformity with the Kentucky Rules of Evidence, to determine if the child exhibits behavior that indicates the child could benefit from cognitive behavioral therapy, other evidence-based behavioral health programs, substance use disorder treatment, or treatment in a psychiatric facility for serious mental illness.

(b) Any treatment recommended under this subsection shall be provided by the Department of Juvenile Justice and may be provided pursuant to a contract between the Justice and Public Safety Cabinet and a behavioral health services organization.

(c) If the child is released upon a detention hearing, a court may order the child to complete any recommended treatment. The Department of Juvenile Justice shall refer the child to an existing contractor or to other resources for the treatment.

(4) Any child detained pursuant to subsection (2) of this section shall be permitted visitation from individuals representing organizations including nonprofit organizations, faith-based organizations, or community organizations, to connect them with, expose them to, or minister to them through programs including but not limited to trades, arts, sports, mentoring, counseling, support programs, or community-based programs. These organizations may offer transition services to any child who is released from detention.

(5) Within the period of detention described in subsections (1) and (2) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(6) If the court orders a child detained further, that detention shall be served as follows:

(a) If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in a secure juvenile detention facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance;

(b) Except as provided in KRS 630.080(2), if it is alleged that the child is a status offender, the child may be detained in accordance with KRS 630.095 pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance;

(c) If a status offender or a child alleged to be a status offender is charged with violating a valid court order, the child may be detained in accordance with KRS 630.095 for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending the child's next court appearance;

(d) Prior to ordering a status offender or alleged status offender who is subject to a valid court order detained in accordance with KRS 630.095 because the child violated the valid court order, the court shall:

1. Affirm that the requirements for a valid court order were met at the time the original order was issued;

2. Make a determination during the adjudicatory hearing that the child violated the valid court order; and

3. Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, receive and review a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than detention have been exhausted or are inappropriate. If a prior written report is included in the child's file, that report shall not be used to satisfy this requirement. The child may be detained in accordance with KRS 630.095 for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court. The hearing shall be conducted in accordance with KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure or nonsecure detention of a status offender; and

(e) If the child is charged with a public offense or contempt on a public offense, and the county in which the case is before the court is served by a state-operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

(7) If, at the hearing conducted under subsection (5) of this section, the court conducts an adjudicatory hearing on the merits of a violation of a valid court order, that hearing shall conform to the requirements of KRS 630.080.

(8) If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in KRS 610.290.

(9) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult, and the Department of Juvenile Justice or the cabinet, as appropriate.

History.

Enact. Acts 1988, ch. 350, § 32, effective April 10, 1988; 1998, ch. 606, § 4, effective July 15, 1998; 2000, ch. 193, § 5, effective July 14, 2000; 2004, ch. 160, § 3, effective April 21, 2004; 2008, ch. 87, § 5, effective July 15, 2008; 2014, ch. 132, § 43, effective July 1, 2015; 2023 ch. 105, § 4, effective June 29, 2023; 2026 ch. 69, § 15, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2008). 2008 Ky. Acts ch. 87, sec. 5 amended KRS 610.265. This amendment inserted the following phrase at the

beginning of subsection (4) of this section: "If, at the hearing conducted under subsection (3) paragraph (c) of this section, ...". It appears that this reference is not correct. Subsection (3)(c) of this section does not mention hearings. It appears that the reference should have been to subsection (2) of KRS 610.265, which does deal with hearings. The Reviser of Statutes has made this change under the authority of KRS 7.136(1)(e).

NOTES TO DECISIONS

Analysis

1. Rights of Minors.
2. Separation from Adults.

1. Rights of Minors.

A system of selective placement of juveniles in the county jail for dispositional and predispositional purposes, although for limited periods of time, constituted a violation of the Fourteenth Amendment in that it was treating, for punitive purposes, the juveniles as adults and yet not according them, for due process purposes, the rights accorded to adults. Baker v. Hamilton, 345 F. Supp. 345, 1972 U.S. Dist. LEXIS 14032 (W.D. Ky. 1972) (decided under prior law).

Express statutory authority anticipated that a juvenile court had the power to hold a child in contempt as KRS 610.010(10) (now (11)) specifically provided that nothing in "this chapter" would prevent a District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court, KRS 610.265(1), 610.265(5) (now (3)) and 635.055 each set out provisions for the detention of a juvenile who was charged with being in contempt of court, and KRS 635.083(1) gave a juvenile court continuing jurisdiction over a juvenile who was convicted or adjudged delinquent of three (3) or more offenses, this jurisdiction continued even after the service of incarceration or other court-ordered punishment in the form of conditional discharge, and violation of the terms and conditions of conditional discharge could be punished as contempt of court. A.W. v. Commonwealth, 2003 Ky. App. LEXIS 91 (Ky. Ct. App. 2003), aff'd, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

2. Separation from Adults.

There is no legal authority for the detention of a thirteen (13) year-old child in any portion of a county jail that is not physically separated from sight and sound of all other portions of the jail. Skeans v. Vanhoose, 512 S.W.2d 520, 1974 Ky. LEXIS 404 (Ky. 1974) (decided under prior law).

Cited in:

C.G. v. Commonwealth, 2003 Ky. App. LEXIS 57 (Ky. Ct. App. 2003), review denied and ordered not published, 2005 Ky. LEXIS 212 (Ky. 2005); A.C. v. Commonwealth, 314 S.W.3d 319, 2010 Ky. App. LEXIS 98 (Ky. Ct. App. 2010).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Juvenile Code Proceedings, § 258.00.

Petrilli, Kentucky Family Law, Juvenile Court, § 32.20.

610.280. Considerations for and findings from detention hearing.

(1) At the detention hearing held pursuant to KRS 610.265, the court shall make separate findings as follows:

(a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof, and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case;

(b) In determining whether a child should be further detained, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child.

(2) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

History.

Enact. Acts 1986, ch. 423, § 47, effective July 1, 1987; 1988, ch. 350, § 33, effective April 10, 1988; 1994, ch. 489, § 5, effective July 15, 1994; 1998, ch. 606, § 5, effective July 15, 1998; 2000, ch. 193, § 6, effective July 14, 2000; 2002, ch. 257, § 14, effective July 15, 2002.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Petrilli, Kentucky Family Law, Juvenile Court, § 32.20.

Petrilli, Kentucky Family Law, Forms, Juvenile Court, Form 5.5.

610.290. Rights of juvenile.

(1) Unless a hearing is held within the time frame established by KRS 610.265, and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case.

(2) The child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.

(3) Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

History.

Enact. Acts 1986, ch. 423, § 48, effective July 1, 1987; 1988,

ch. 350, § 34, effective April 10, 1988; 2000, ch. 193, § 7, effective July 14, 2000; 2004, ch. 160, § 4, effective April 21, 2004.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.5, 32.20.

610.295. Detention costs — Assessment against parent after hearing — Payments when adjudication based on status offense or public offense — Payment schedule and discharge.

(1) Any statute to the contrary notwithstanding, detention costs shall not be assessed by a court against a parent unless the court has conducted a hearing and has determined:

(a) That the child has previously been adjudicated as a habitual truant under KRS Chapter 630, a public offender under KRS Chapter 635, or a youthful offender under KRS Chapter 640, and now stands adjudicated guilty of a subsequent habitual truancy or public offense, or is now being considered for transfer to the Circuit Court for trial as a youthful offender; and

(b) That the failure or neglect of the parent to properly supervise or control the child is a substantial contributing factor of the act or acts of the child upon which the proceeding is based; and

(c) That the parent has the financial ability to pay any fees ordered.

(2) Any orders for payment shall direct that payments be made to the fiscal court or legislative body of a consolidated local government, urban-county government, or charter government if detention is based upon adjudication related to a status offense and to the Department of Juvenile Justice if the adjudication is based upon a public offense or transfer as a youthful offender.

(3) The fiscal court or legislative body of a consolidated local government, urban-county government, or charter government or the Department of Juvenile Justice, as appropriate, shall establish a payment schedule for parents against whom detention costs have been assessed, and may discharge any remaining portion of the debt upon proof of substantial change in circumstances of the parent.

(4) The authority granted under subsection (3) of this section may be applied to all pre-existing court orders assessing detention costs in effect on July 15, 2002.

History.

Enact. Acts 2002, ch. 263, § 5, effective July 15, 2002.

CHAPTER 620

DEPENDENCY, NEGLECT, AND ABUSE

Section

620.030. Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation — Husband-wife and professional-client/patient privileges not grounds for refusal to report — Statewide reporting system — Exceptions — Penalties.
620.040. Duties of prosecutor, police, and cabinet — Prohibition as to school personnel — Procedures — Military status of parent or legal guardian — Multidisciplinary teams.
620.050. Immunity for good-faith actions or reports — Investigations — Confidentiality of reports — Exceptions — Parent's access to records — Sharing of information by children's advocacy centers — Confidentiality of interview with child — Exceptions — Confidentiality of identifying information regarding reporting individual — Internal review and report — Waiver — Medical diagnostic procedures — Sharing information with relatives — Interaction among siblings who are not jointly placed.
620.051. Background check of child abuse and neglect records — Fee — Central registry — Administrative regulations.
620.055. External child fatality and near fatality review panel — Creation — Members — Meetings — Duties — Responsibilities — Information required to be provided to members — Report and response — Annual reports — Confidentiality — Destruction of information following conclusion of panel's examination — Application of open records and open meetings law — Limitation of liability — Proceedings are privileged — Annual evaluation of panel's work.
620.072. Unannounced home visits concerning abused or neglected child — Conditions requiring — Request for assistance in gaining access to child.
620.146. Notice to be given to school personnel of persons authorized to contact or remove a child of whom the cabinet has custody from school grounds.
620.363. Rights of foster child.

Penalty.

620.990. Penalty.

620.030. Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation — Husband-wife and professional-client/patient privileges not grounds for refusal to report — Statewide reporting system — Exceptions — Penalties.

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or

abused shall immediately cause an oral or written report, including but not limited to electronic submissions, to be made to a local law enforcement agency or to the Department of Kentucky State Police, the cabinet or its designated representative, the Commonwealth's attorney, or the county attorney by telephone or otherwise. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

(2)(a) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed to have caused the dependency, neglect, or abuse is a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties, shall:

1. Immediately make an oral or written report, including but not limited to electronic submissions, in accordance with subsection (1) of this section;

2. Immediately notify the supervisor of the institution, school, facility, agency, or designated agent of the person in charge; and

3. If requested, in addition to the report required in subsection (1) or (3) of this section, file with the local law enforcement agency or the Department of Kentucky State Police, the cabinet or its designated representative, the Commonwealth's attorney, or county attorney within forty-eight (48) hours of the original report a written report, including but not limited to electronic submissions, containing:

a. The names and addresses of the child and his or her parents or other persons exercising custodial control or supervision;

b. The child's age;

c. The nature and extent of the child's alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or his or her siblings;

d. The name and address of the person allegedly responsible for the abuse or neglect; and

e. Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

(b) Upon notification, the supervisor or the designated agent, if any, shall facilitate the cooperation of the institution, school, facility, or agency with the investigation of the report.

(c) Any person who knowingly causes intimidation, retaliation, or obstruction in the investigation of the report shall be guilty of a Class A misdemeanor.

(d) This section shall not require more than one (1) report from any institution, school, facility, or agency.

(3) Any person who knows or has reasonable cause to believe that a child is a victim of human trafficking as defined in KRS 529.010 shall immediately cause an oral or written report, including but not limited to electronic submissions, to be made to a local law enforcement agency or the Department of Kentucky State Police; or the cabinet or its designated representative; or the Commonwealth's attorney or the county attorney; by telephone or otherwise. This subsection shall apply regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision.

(4) Any person who knows or has reasonable cause to believe that a child is a victim of female genital mutilation as defined in KRS 508.125 shall immediately cause an oral or written report, including but not limited to electronic submissions, to be made by telephone or otherwise to:

(a) A local law enforcement agency or the Department of Kentucky State Police;

(b) The cabinet or its designated representative; or

(c) The Commonwealth's attorney or the county attorney.

This subsection shall apply regardless of whether the person believed to have caused the female genital mutilation of the child is a parent, guardian, or person exercising custodial control or supervision.

(5) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(6) The cabinet shall establish and operate a statewide reporting system for the public to make reports of child dependency, neglect, and abuse via telephone call or written report, including but not limited to electronic submissions. The statewide reporting system shall operate a twenty-four (24) hour on-call response system that includes but is not limited to a child abuse hotline for the receipt of emergency and nonemergency reports of child dependency, neglect, and abuse during and after normal office hours. The cabinet may use contract employees to operate the system.

(7) The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.

(8) Nothing in this section shall limit the cabinet's investigatory authority under KRS 620.050 or any other obligation imposed by law.

(9) Any person who intentionally violates the provisions of this section shall be guilty of a:

(a) Class B misdemeanor for the first offense;

(b) Class A misdemeanor for the second offense; and

(c) Class D felony for each subsequent offense.

History.

Enact. Acts 1986, ch. 423, § 64, effective July 1, 1987; 1988, ch. 258, § 2, effective July 15, 1988; 1988, ch. 350, § 43, effective April 10, 1988; 2007, ch. 85, § 330, effective June 26, 2007; 2008, ch. 72, § 4, effective July 15, 2008; 2013, ch. 25, § 2, effective June 25, 2013; 2019 ch. 33, § 9, effective June 27, 2019; 2020 ch. 74, § 7, effective April 2, 2020; 2023 ch. 107, § 2, effective June 29, 2023; 2024 ch. 144, § 3, effective July 15, 2024.

Legislative Research Commission Notes.

The 1988 amendments to this section are effective April 10, 1988, except for the second sentence of subsection (1), which is effective July 15, 1988.

NOTES TO DECISIONS

Analysis

1. Duty of Trial Court.
2. Immunity.
3. —Intent.
4. Affirmative Duty.
5. Sufficiency of Report.
6. Negligence per se.
7. Summary Judgment.

1. Duty of Trial Court.

In cases involving alleged abuse of children, and where there is reason to believe such abuse has occurred, a trial court must take an active role in assuring that the child's physical and emotional wellbeing have been protected and is required, under this section, to report suspected abuse or neglect where the proper authorities or investigating agency have not been notified. Fugate v. Fugate, 896 S.W.2d 621, 1995 Ky. App. LEXIS 78 (Ky. Ct. App. 1995).

Nothing exempts a trial judge, under this section, of the duty to report dependency, neglect or abuse. Fugate v. Fugate, 896 S.W.2d 621, 1995 Ky. App. LEXIS 78 (Ky. Ct. App. 1995).

2. Immunity.

Where a hospital employee allegedly made a false report to authorities that a newborn child's meconium stool sample tested positive for drugs, which led to the child's being placed in foster care, a doctor was immune from civil liability for the report under KRS 620.030(1) and KRS 620.050(1), because there was no allegation that she acted in bad faith. Garrison v. Leahy-Auer, 220 S.W.3d 693, 2006 Ky. App. LEXIS 151 (Ky. Ct. App. 2006).

To find that KRS 620.030 does not apply, there must be a finding that the act committed upon the child is not an act of sexual abuse. For purposes of KRS Chapter 600, the definition of a neglected or abused child is set forth at KRS 600.020. If sexual abuse has occurred, then the mandatory reporting requirement in KRS 620.030 would have required the teacher to report this incident and such mandatory reporting would result in this being considered a ministerial rather than a discretionary act which would preclude the teacher from claiming qualified official immunity. Nelson v. Turner, 256 S.W.3d 37, 2008 Ky. App. LEXIS 177 (Ky. Ct. App. 2008).

Trial court did not err in granting a neighbor's motion to dismiss an action filed by a mother and father alleging that their child was removed from their home based on a false report because the neighbor was entitled to immunity under KRS 620.030(1) when the mother and father failed to demonstrate that the neighbor acted in bad faith in reporting suspected child neglect; the neighbor reported the suspected neglect to her local law enforcement agency, and it did not matter that the police officer she spoke with was her son because he was a member of her local law enforcement agency. Morgan v. Bird, 289 S.W.3d 222, 2009 Ky. App. LEXIS 68 (Ky. Ct. App. 2009).

Reporter may be acting under KRS 620.030 to 620.050 in good faith if the reporter subjectively believed he or she was discharging the duty imposed by KRS 620.030; therefore, a reporter's good faith belief that he or she is discharging the lawful duty to report under KRS 620.030, even if such a belief is ultimately determined to be erroneous, is all that is required under KRS 620.050(1). As a result, several health care providers were immune from liability under KRS 620.050(1) because they acted in good faith under KRS 620.030 in making a report of a new mother's suspected child abuse, even though a blood alcohol report was erroneous. Norton Hosps., Inc. v. Peyton, 381 S.W.3d 286, 2012 Ky. LEXIS 165 (Ky. 2012).

Custody evaluator was immune for a report to the Cabinet for Health and Family Services of a father's gun possession because no bad faith or lack of a subjective belief that the evaluator discharged the evaluator's duty to report was shown. J.S. v. Berla, 456 S.W.3d 19, 2015 Ky. App. LEXIS 14 (Ky. Ct. App. 2015).

Because a doctor who treated a minor child prior to the child's death did not report suspected abuse of the child while in foster care to the proper authorities, the doctor was not entitled to statutory immunity from civil suit. A.A. v. Shutts, 516 S.W.3d 343, 2017 Ky. App. LEXIS 34 (Ky. Ct. App. 2017).

School officials were entitled to qualified immunity as to the student's claims regarding their failure to report the teacher after becoming aware of his texting relationship with another student because this section's reporting requirement involved a discretionary action when a school official was determining whether there was reasonable cause to believe that a child had been or was being abused. Ritchie v. Turner, 559 S.W.3d 822, 2018 Ky. LEXIS 434 (Ky. 2018).

Appellees, school principal and school superintendent, were properly granted qualified official immunity as a defense and bar to the various negligence and outrageous conduct claims asserted by appellants, a parent and minor child, in their action arising out of allegations of sexual assault against the child by a coach because there was no basis to conclude that the principal acted in bad faith during the conduct of his investigation, which had not been completed when the parent sought another course of action, and the superintendent did not act in bad faith as he was not required to take an active role in the investigation and had the discretion to rely upon the principal to perform that task. J.A. v. McCracken Cnty. Sch. Dist., 704 S.W.3d 690, 2024 Ky. App. LEXIS 39 (Ky. Ct. App. 2024).

3. —Intent.

Because parents could not show doctor had bad intent when, after performing a series of tests on their baby including a CT scan showing a subarachnoid hemorrhage he noted was consistent with "Shaken Baby Syndrome," he reported the baby's injury to social services, the doctor was afforded the immunity granted by KRS 620.050; because doctor could not be held liable, neither could hospital. Hazlett v. Evans, 943 F. Supp. 785, 1996 U.S. Dist. LEXIS 16769 (E.D. Ky. 1996).

In a report of child neglect to the Kentucky Cabinet of Health and Family Services' Department of Community Based Services based on a four-year-old student wandering away from a school, who was found approximately one-half mile away, the trial court did not err in dismissing appellant's claims against her employer alleging wrongful discharge, negligence and vicarious liability, and defamation as the record did not support any allegations that the employer's

report of neglect was done in bad faith as appellant did not dispute that the child wandered away from the school while she was working; and, although appellant was ultimately exonerated from having committed neglect, an erroneous belief regarding neglect did not constitute bad faith. Collins v. KCEOC Cmty. Action P'ship, 455 S.W.3d 421, 2015 Ky. App. LEXIS 9 (Ky. Ct. App. 2015).

4. Affirmative Duty.

This chapter has created an affirmative duty to prevent physical injury to children; prosecution for such conduct can fall either under the assault provisions of the statute or under the abuse provision of the statute. Lane v. Commonwealth, 956 S.W.2d 874, 1997 Ky. LEXIS 68 (Ky. 1997), modified, 1997 Ky. LEXIS 97 (Ky. Sept. 4, 1997), cert. denied, 522 U.S. 1123, 118 S. Ct. 1067, 140 L. Ed. 2d 127, 1998 U.S. LEXIS 1074 (U.S. 1998).

Under former KRS 199.335, diocese had duty to take action when it discovered that a teacher in its employ was sexually abusing students; failure to do so was a violation of the aforementioned section, and constituted concealment and obstruction under KRS 413.090, so as to toll the applicable statute of limitations for an action based on negligence on the part of the Diocese. Roman Catholic Diocese v. Secter, 966 S.W.2d 286, 1998 Ky. App. LEXIS 31 (Ky. Ct. App. 1998).

Trial court did not err in granting a police officer summary judgment in an action filed by a mother and father alleging that their child was removed from their home based on a false report because the officer properly followed the guidelines outlined in KRS 620.030 for reporting a claim of neglect to the Cabinet for Health and Family Services; in light of finding no bad faith by the officer, it followed that the claims against a city and its council members based on failure to properly supervise and/or train the officer were also properly dismissed. Morgan v. Bird, 289 S.W.3d 222, 2009 Ky. App. LEXIS 68 (Ky. Ct. App. 2009).

Under the plain language of KRS 600.020(1), the definition of an abused child is limited to a scenario in which his or her parent, guardian, or other person exercising custodial control or supervision inflicted or committed abuse, allowed abuse to be inflicted or committed, or created or allowed to be created a risk of abuse. As a result, the mandatory reporting requirement of KRS 620.030(1) does not apply when a child inappropriately touches another child unless a parent, guardian, or other person exercising custodial control or supervision allows such inappropriate touching to be committed or creates or allows such a risk of abuse. Turner v. Nelson, 342 S.W.3d 866, 2011 Ky. LEXIS 96 (Ky. 2011).

In civil rights suit, defendants could not assert indemnity against plaintiff's parents, based upon plaintiff's claim of failing to report child abuse because, if defendants had knowledge of potential child abuse, failing to exercise their affirmative duty to report would preclude them from claiming they were passive tortfeasors. Compton v. City of Harrodsburg, 2013 U.S. Dist. LEXIS 142306 (E.D. Ky. 2013).

5. Sufficiency of Report.

A report by a teacher or counselor to his or her supervisor does not satisfy the statutory duty to report. Commonwealth v. Allen, 980 S.W.2d 278, 1998 Ky. LEXIS 148 (Ky. 1998).

6. Negligence per se.

District court refused to grant the city's motion to dismiss plaintiff's claim for failure to report child abuse, because the court was persuaded that a negligence per se claim could be brought under KRS 446.070 for a violation of KRS 620.030 for failure to report child abuse. Compton v. City of Harrodsburg, 2013 U.S. Dist. LEXIS 68690 (E.D. Ky. 2013).

7. Summary Judgment.

Doctor who treated a minor child prior to the child's death was not entitled to an award of summary judgment on the issue of breach of duty for failing to report the possible abuse of the child because a jury could reasonably have concluded that the doctor should have been on heightened awareness to suspected abuse, thus triggering a duty to report the child's head injury, especially when the physical evidence and medical records left unanswered questions about the story given by the child's relative as to the child's injury. A.A. v. Shutts, 516 S.W.3d 343, 2017 Ky. App. LEXIS 34 (Ky. Ct. App. 2017).

Cited in:

Nave v. Feinberg, 539 S.W.3d 685, 2017 Ky. App. LEXIS 374 (Ky. Ct. App. 2017); Coursey v. Commonwealth, 593 S.W.3d 64, 2019 Ky. App. LEXIS 25 (Ky. Ct. App. 2019); T.C. v. M.E., 603 S.W.3d 663, 2020 Ky. App. LEXIS 54 (Ky. Ct. App. 2020); Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

OPINIONS OF ATTORNEY GENERAL.

Although subsection (3) (now (4)) of this section provides that agencies providing services to children, such as schools, must cooperate with the Cabinet for Human Resources (CHR) and provide assistance and information, such interviews should be conducted in a manner that causes the least disruption to the students' school schedule and the procedures vary if the allegations of student abuse are against school personnel. OAG 92-138, 1992 Ky. AG LEXIS 215.

If the police desire to talk with a student who is a victim of a crime, then the school authorities should use their best judgment in determining whether the parents should be contacted. In the event that the officer is investigating allegations of dependency, neglect or abuse, the school should allow the interview to occur at school. The school should consult with the officer before the school officials inform the parents that an interview has taken place. OAG 92-138, 1992 Ky. AG LEXIS 215.

School officials should use their discretion and confer with the police officer in deciding whether to be present when the court designated worker or the police questions a student. If the child is a victim of abuse, then the child should have input on choosing a trusted adult to sit in during the interview. OAG 92-138, 1992 Ky. AG LEXIS 215.

Since the school is not required to notify the parents before the Cabinet for Human Resources talks with the students, the fact that the parents cannot be reached is immaterial. OAG 92-138, 1992 Ky. AG LEXIS 215.

The school system is required pursuant to this section to permit social workers from the Cabinet for Human Resources (CHR) to come into the school and talk with students regarding investigations of dependency, neglect or abuse. OAG 92-138, 1992 Ky. AG LEXIS 215.

Whether school personnel should be present when the social workers question the students is a decision that is best left to the discretion of the Cabinet for Human Resources' social worker conducting the interview. OAG 92-138, 1992 Ky. AG LEXIS 215.

A child who does not receive necessary medical care due to his parents' religious belief may be considered an abused or neglected child; accordingly, the reporting requirements of subsection (1) of this section and the investigation requirements of KRS 620.050(3) are mandatory and must be followed in cases involving the religious exemption contained in KRS 600.020(1). OAG 93-84, 1993 Ky. AG LEXIS 231.

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Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Juvenile Code Proceedings, § 258.00.

Petrilli, Kentucky Family Law, Actions, § 17.15.

Petrilli, Kentucky Family Law, Minors, § 30.34.

Petrilli, Kentucky Family Law, Personal Rights and Privileges Resulting from Marriage, § 12.11.

620.040. Duties of prosecutor, police, and cabinet — Prohibition as to school personnel — Procedures — Military status of parent or legal guardian — Multidisciplinary teams.

(1)(a) Upon receipt of a report alleging abuse or neglect of a child as defined in KRS 600.020 by a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), or a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3), the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or the Department of Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report. If any agency listed above is the reporting source, the recipient shall immediately notify the cabinet or its designated representative, the local law enforcement agency, the Department of Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency. If the:

1. Cabinet's initial determination is that there is risk of harm and immediate safety concerns for the child, the cabinet shall physically locate the child within fourteen (14) days of the initial determination;

2. Child is under the age of five (5) years or has other developmental or cognitive delays or a significant medical or mental health condition, the cabinet shall physically locate the child within five (5) working days of the initial determination; and

3. Cabinet does not physically locate the child according to the timeline established in this paragraph, the cabinet shall contact local law enforcement to assist in locating the child.

(c) In making the initial determination as to the risk of harm and immediate safety of the child pursuant to paragraph (b) of this subsection, the cabinet shall at a minimum:

1. Consider the age and vulnerability of a child, particularly for ages five (5) years of age and under, when assessing allegations of abuse and neglect;

2. Accept for investigation a subsequent report from a professional reporting source, who makes a report pursuant to the requirements in KRS Chapter 620 that a child is abused or neglected and identifies himself or herself by name, title, and employer, when the same or similar allegation has been reported by one (1) or more unique professional reporting sources within the past thirty (30) days. For the purposes of this subparagraph "professional reporting source" means an individual who is a social worker, therapist, medical professional, educator, judge, attorney, law enforcement officer, or any other individual holding a degree or position in a field related to the safety and care of children; and

3. Automatically accept for investigation a report from a court of appropriate jurisdiction that makes a report pursuant to the requirements in KRS Chapter 620 that a child is abused or neglected or identifies that the child is an alleged victim of domestic violence and abuse as defined in KRS 403.720 or sexual assault as defined in KRS 456.010 in an active emergency protective order or temporary interpersonal protection order case.

(d) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report, including but not limited to electronic submissions, to the Commonwealth's or county attorney and the local law enforcement agency or the Department of Kentucky State Police concerning the action that has been taken on the investigation.

(e) If the report alleges abuse or neglect by someone other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, or the human trafficking of a child, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or the Department of Kentucky State Police.

(2)(a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient

shall immediately notify the cabinet or its designated representative.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency. If the:

1. Cabinet's initial determination is that there is risk of harm and immediate safety concerns for the child, the cabinet shall physically locate the child within fourteen (14) days of the initial determination;

2. Child is under the age of five (5) years or has other developmental or cognitive delays or significant medical or mental health condition, the cabinet shall physically locate the child within five (5) working days of the initial determination; and

3. Cabinet does not physically locate the child according to the timeline established in this paragraph, the cabinet shall contact local law enforcement to assist in locating the child.

(c) In making the initial determination as to the risk of harm and immediate safety of the child pursuant to paragraph (b) of this subsection, the cabinet shall at a minimum:

1. Consider the age and vulnerability of a child, particularly for ages five (5) years of age and under, when assessing allegations of dependency;

2. Accept for investigation a subsequent report from a professional reporting source, who makes a report pursuant to the requirements in KRS Chapter 620 that a child is dependent and identifies himself or herself by name, title, and employer, when the same or similar allegation has been reported by one (1) or more unique professional reporting sources within the past thirty (30) days. For the purposes of this subparagraph "professional reporting source" means an individual who is a social worker, therapist, medical professional, educator, judge, attorney, law enforcement officer, or any other individual holding a degree or position in a field related to the safety and care of children; and

3. Automatically accept for investigation a report from a court of appropriate jurisdiction that makes a report pursuant to the requirements in KRS Chapter 620 that a child is dependent or identifies that the child is an alleged victim of domestic violence and abuse as defined in KRS 403.720 or sexual assault as defined in KRS 456.010 in an active emergency protective order or temporary interpersonal protection order case.

(d) The cabinet need not notify the local law enforcement agency or the Department of Kentucky State Police or Commonwealth's or county attorney of reports made under this subsection unless the report involves the human trafficking of a child, in which case the notification shall be required.

(3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or the Department of Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents, and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Department of Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse or human trafficking of a child.

(4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5)(a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant, a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he or she is returned to the persons having custody of him or her, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury, is being sexually abused, or is a victim of human trafficking and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(e)1. If a report includes a child fatality or near fatality, and the law enforcement officer has rea-

sonable grounds to believe any parent or person exercising custodial control or supervision of the child was under the influence of alcohol or drugs at the time the fatality or near fatality occurred, the law enforcement officer shall request a test of blood, breath, or urine from that person.

2. If, after making the request, consent is not given for the test of blood, breath, or urine, a search warrant shall be requested from and may be issued by the judge to the appropriate law enforcement official upon probable cause that a child fatality or near fatality has occurred and that the person exercising custodial control or supervision of the child at the time of the fatality or near fatality was under the influence.

3. Any test requested under this section shall be conducted pursuant to the testing procedures and requirements in KRS 189A.103.

(6) The cabinet shall make efforts as soon as practicable to determine any military status of a parent or legal guardian of a child who is the subject of an investigation or assessment pursuant to this section. If the cabinet determines that the parent or legal guardian is a member of the United States Armed Forces, the cabinet shall notify the Department of Defense family advocacy program operating within the service member's assigned installation of the investigation or assessment and provide case information.

(7) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.

(8)(a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include but shall not be limited to social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates including advocates for victims of human trafficking, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team shall review child sexual abuse cases and child human trafficking cases involving commercial sexual activity referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse or child human trafficking cases involving commercial sexual activity are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases and child human trafficking cases involving commercial sexual activity.

(f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

(i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

(9) Nothing in this section shall limit the cabinet's investigatory authority under KRS 620.050 or any other obligation imposed by law.

History.

Enact. Acts 1986, ch. 423, § 65, effective July 1, 1987; 1988, ch. 258, § 3, effective July 15, 1988; 1988, ch. 350, § 44, effective April 10, 1988; 1990, ch. 39, § 1, effective July 13, 1990; 1992, ch. 434, § 2, effective July 14, 1992; 1994, ch. 217, § 1, effective July 15, 1994; 1996, ch. 18, § 5, effective July 15, 1996; 1998, ch. 426, § 617, effective July 15, 1998; 2000, ch. 14, § 63, effective July 14, 2000; 2000, ch. 144, § 6, effective July 14, 2000; 2000, ch. 164, § 1, effective July 14, 2000; 2005, ch. 99, § 665, effective June 20, 2005; 2007, ch. 85, § 331, effective June 26, 2007; 2013, ch. 25, § 3, effective June 25, 2013; 2019 ch. 33, § 10, effective June 27, 2019; 2022 ch. 139, § 1, effective July 14, 2022; 2023 ch. 107, § 3, effective June 29, 2023; 2024 ch. 133, § 1, effective July 15, 2024; 2025 ch. 149, § 6, effective June 27, 2025.

NOTES TO DECISIONS

Analysis

1. Due Process.
2. Separation of Powers.

1. Due Process.

Although this section and KRS 620.050 and 200.100 require the Cabinet for Human Resources to take action regarding abused, neglected and dependent children, these sections do not mandate any particular substantive result; they merely provide a plaintiff with an expectation that a certain procedure will be followed by the Cabinet, and this is not sufficient to give rise to a state-created due process liberty interest, which requires a plaintiff to have an expectation that a particular result will follow from a particular required action. ""Tony" L. v. Childers, 71 F.3d 1182, 1995 FED App. 0369P, 1995 U.S. App. LEXIS 35928 (6th Cir. Ky. 1995), cert. denied, 517 U.S. 1212, 116 S. Ct. 1834, 134 L. Ed. 2d 938, 1996 U.S. LEXIS 3341 (U.S. 1996).

2. Separation of Powers.

When a district court ordered the Department for Community Based Services of the Kentucky Cabinet for Health and Family Services—which investigated and found no substantiation for a parent's claims that the other abused their child—to open a case and further assess the family needs, it violated the separation of powers doctrine. The district court usurped the Cabinet's authority to the benefit of the complaining parent who presented nothing in the case except two unsworn petitions in two different emergency protective order cases. T.C. v. M.E., 603 S.W.3d 663, 2020 Ky. App. LEXIS 54 (Ky. Ct. App. 2020).

Cited in:

Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

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Petrilli, Kentucky Family Law, Actions, § 17.15.
Petrilli, Kentucky Family Law, Juvenile Court, § 32.3.
Petrilli, Kentucky Family Law, Minors, § 30.34.
Petrilli, Kentucky Family Law, Termination of Parental Rights and Adoption, § 29.1.

620.050. Immunity for good-faith actions or reports — Investigations — Confidentiality of reports — Exceptions — Parent's access to records — Sharing of information by children's advocacy centers — Confidentiality of interview with child — Exceptions — Confidentiality of identifying information regarding reporting individual — Internal review and report — Waiver — Medical diagnostic procedures — Sharing information with relatives — Interaction among siblings who are not jointly placed.

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.

(2) Any employee or designated agent of a children's advocacy center shall be immune from any civil liability arising from performance within the scope of the person's duties as provided in KRS 620.030 to 620.050. Any such person shall have the same immunity with respect to participation in any judicial proceeding. Nothing in this subsection shall limit liability for negligence. Upon the request of an employee or designated agent of a children's advocacy center, the Attorney General shall provide for the defense of any civil action brought against the employee or designated agent as provided under KRS 12.211 to 12.215.

(3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(4) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation or assessment of family needs, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care. If an oral or written report, including but not limited to electronic submissions, alleging that a child is dependent, neglected, or abused is made pursuant to this section, and the cabinet determines that the report does not meet criteria for an investigation, the cabinet shall refer the family to appropriate community-based child and family service agencies for services to preserve and strengthen family life in accordance with the requirements in 42 U.S.C. sec. 5106a.

(5) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, except for those records provided for in subsection (6) of this section, shall only be divulged to:

(a) Persons suspected of causing dependency, neglect, or abuse;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) A licensed child-caring facility or child-placing agency evaluating placement for or serving a child who is believed to be the victim of an abuse, neglect, or dependency report;

(e) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(f) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(g) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600;

(h) Employees or designated agents of a children's advocacy center;

(i) Those persons so authorized by court order;

(j) The external child fatality and near fatality review panel established by KRS 620.055;

(k) A person, agency, or organization engaged in a bona fide research, quality improvement, or evaluation project having value as determined by the cabinet. This paragraph shall not limit the authority of the cabinet to decline to share data in cases where it deems a research, quality improvement, or evalua-

tion project lacks sufficient merit or value, or where it deems the perceived risks to be unacceptably high. Data sharing shall be driven by the aims of advancing human knowledge, complying with federal requirements, and facilitating future planning for programs that support families, serve maltreated children, or inform the development of policy. Data may be shared under this paragraph only when the following conditions are met:

1. The person, agency, or organization enters into a data-use agreement with the cabinet and complies with the data security and privacy conditions outlined by the Office of Data Analytics within the cabinet;

2. Any confidential information provided for a research, quality improvement, or evaluation project under this paragraph shall not be redisclosed. The cabinet shall not share personally identifiable information under this paragraph, except in cases where the information is essential to the completion of the project. As used in this subparagraph, "personally identifiable information" means the current definition promulgated by the United States National Institute of Standards and Technology at the time of data sharing; and

3. If a research, quality improvement, or evaluation project results in the publication or public dissemination of related material, confidential information provided for a research, quality improvement, or evaluation project under this subparagraph shall not be disclosed in the results; or

(*l*) The Commonwealth Office of the Ombudsman established pursuant to KRS 43.035.

(6)(a) Files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by a children's advocacy center in providing services under this chapter are confidential and shall not be disclosed except to the following persons:

1. Staff employed by the cabinet, law enforcement officers, and Commonwealth's and county attorneys who are directly involved in the investigation or prosecution of the case, including a cabinet investigation or assessment of child abuse, neglect, and dependency in accordance with this chapter;

2. Medical and mental health professionals listed by name in a release of information signed by the guardian of the child, provided that the information shared is limited to that necessary to promote the physical or psychological health of the child or to treat the child for abuse-related symptoms;

3. The court and those persons so authorized by a court order;

4. The external child fatality and near fatality review panel established by KRS 620.055;

5. The Commonwealth Office of the Ombudsman established pursuant to KRS 43.035; and

6. The parties to an administrative hearing conducted by the cabinet or its designee in accordance with KRS Chapter 13B in an appeal of a cabinet-substantiated finding of abuse or neglect. The children's advocacy center may, in its sole discretion, provide testimony in lieu of files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by the center if the center determines that the release poses a threat to the safety or well-being of the child, or would be in the best interests of the child. Following the administrative hearing and any judicial review, the parties to the administrative hearing shall return all files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by the children's advocacy center to the center.

(b) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

(7) Nothing in this section shall prohibit a parent or guardian from accessing records for his or her child providing that the parent or guardian is not currently under investigation by a law enforcement agency or the cabinet relating to the abuse or neglect of a child.

(8) Nothing in this section shall prohibit employees or designated agents of a children's advocacy center from disclosing information during a multidisciplinary team review of a child sexual abuse case as set forth under KRS 620.040. Persons receiving this information shall sign a confidentiality statement consistent with statutory prohibitions on disclosure of this information.

(9) Employees or designated agents of a children's advocacy center may confirm to another children's advocacy center that a child has been seen for services. If an information release has been signed by the guardian of the child, a children's advocacy center may disclose relevant information to another children's advocacy center.

(10)(a) An interview of a child recorded at a children's advocacy center shall not be duplicated, except that the Commonwealth's or county attorney prosecuting the case may:

1. Make and retain one (1) copy of the interview; and

2. Make one (1) copy for the defendant's or respondent's counsel that the defendant's or respondent's counsel shall not duplicate.

(b) The defendant's or respondent's counsel shall file the copy with the court clerk at the close of the case.

(c) Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.

(d) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

(11) Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:

(a) To law enforcement officials that have a legitimate interest in the case;

(b) To the agency designated by the cabinet to investigate or assess the report;

(c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600;

(d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report; or

(e) The external child fatality and near fatality review panel established by KRS 620.055.

(12)(a) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.

(b) The cabinet shall conduct an internal review of any case where child abuse or neglect has resulted in a child fatality or near fatality and the cabinet had prior involvement with the child or family. The cabinet shall prepare a summary that includes an account of:

1. The cabinet's actions and any policy or personnel changes taken or to be taken, including the results of appeals, as a result of the findings from the internal review; and

2. Any cooperation, assistance, or information from any agency of the state or any other agency, institution, or facility providing services to the child or family that were requested and received by the cabinet during the investigation of a child fatality or near fatality.

(c) The cabinet shall submit a report by September 1 of each year containing an analysis of all summaries of internal reviews occurring during the previous year and an analysis of historical trends to the Governor, the General Assembly, and the state child fatality review team created under KRS 211.684.

(13) When an adult who is the subject of information made confidential by subsection (5) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (5) of this section is presumed voluntarily waived, and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.

(14)(a) As a result of any report of suspected child abuse or neglect:

1. Photographs and X-rays;

2. A comprehensive urine drug screen using confirmatory methodology that shall include the following synthetic opioids:

a. Buprenorphine;

b. Fentanyl;

c. Methadone; and

d. Xylazine; or

3. Other appropriate medical diagnostic procedures; may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of these reports.

(b) These photographs and X-rays, comprehensive drug screens, or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings or an administrative hearing conducted by the cabinet or its designee in accordance with KRS Chapter 13B in an appeal of a cabinet-substantiated finding of child abuse or neglect.

(c) The person performing the diagnostic procedures, taking photographs or X-rays, or administering the comprehensive drug screen shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

(15) In accordance with 42 U.S.C. sec. 671, the cabinet shall share information about a child in the custody of the cabinet with a relative or a parent of the child's sibling for the purposes of:

(a) Evaluating or arranging a placement for the child;

(b) Arranging appropriate treatment services for the child; or

(c) Establishing visitation between the child and a relative, including a sibling of the child.

(16) In accordance with 42 U.S.C. sec. 671, the cabinet shall, in the case of siblings removed from their home who are not jointly placed, provide for frequent visitation or other ongoing interaction between the siblings, unless the cabinet determines that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

(17) This section shall not be interpreted as prohibiting the Commonwealth Office of the Ombudsman from reporting pursuant to KRS 43.035 on de-identified information made confidential by this section.

History.

1986 ch. 423, Enact. Acts 1986, ch. 423, § 66, effective July 1, 1987, effective July 1, 1987; 1988, ch. 350, § 45, effective April 10, 1988; 1996, ch. 18, § 6, effective July 15, 1996; 1996, ch. 347, § 7, effective July 15, 1996; 1998, ch. 57, § 19, effective March 17, 1998; 1998, ch. 303, § 2, effective July 15, 1998; 2000, ch. 144, § 7, effective July 14, 2000; 2000, ch. 164, § 2, effective July 14, 2000; 2002, ch. 87, § 2, effective July 15, 2002; 2004, ch. 169, § 1, effective July 13, 2004; 2013, ch. 39, § 2, effective June 25, 2013; 2016 ch. 115, § 6, effective July 15, 2016; 2018 ch. 159, § 19, effective July 14, 2018; 2019 ch. 3, § 1, effective June 27, 2019; 2024 ch. 144, § 7, effective July 15, 2024; 2025 ch. 14, § 1, effective June 27, 2025; 2025 ch. 117, § 30, effective March 27, 2025; 2026 ch. 68, § 6, effective July 15, 2026.

NOTES TO DECISIONS

Analysis

1. In General.
2. Due Process.
3. Intent.
4. Marital Privilege.
5. Immunity.
6. Duty to Investigate.

Cited in:

1. In General.

A report by a teacher or counselor to his or her supervisor does not entitle him or her to immunity from prosecution since such a report is not a report within the meaning of KRS 620.030. Commonwealth v. Allen, 980 S.W.2d 278, 1998 Ky. LEXIS 148 (Ky. 1998).

Commonwealth of Kentucky, Cabinet for Health and Family Services' (Cabinet) failure to disclose the requested records constituted a "willful" violation of the Open Records Act, KRS 61.871; the Cabinet failed to make particularized analysis and instead relied on an all-encompassing policy of nondisclosure despite the purpose of the Act and despite the acknowledged applicability of KRS 620.050(12)(a) under these circumstances, and the circuit court concluded that these denials were made in "bad faith." Commonwealth v. Lexington H-L Servs., 382 S.W.3d 875, 2012 Ky. App. LEXIS 216 (Ky. Ct. App. 2012).

2. Due Process.

Although this section and KRS 620.040 and 200.100 require the Cabinet for Human Resources to take action regarding abused, neglected and dependent children, these sections do not mandate any particular substantive result; they merely provide a plaintiff with an expectation that a certain procedure will be followed by the Cabinet, and this is not sufficient to give rise to a state-created due process liberty interest, which requires a plaintiff to have an expectation that a particular result will follow from a particular required action. " "Tony" L. v. Childers, 71 F.3d 1182, 1995 FED App. 0369P, 1995 U.S. App. LEXIS 35928 (6th Cir. Ky. 1995), cert. denied, 517 U.S. 1212, 116 S. Ct. 1834, 134 L. Ed. 2d 938, 1996 U.S. LEXIS 3341 (U.S. 1996).

3. Intent.

Because parents could not show doctor had bad intent when, after performing a series of tests on their baby including a CT scan showing a subarachnoid hemorrhage he noted was consistent with "Shaken Baby Syndrome," he reported the baby's injury to social services, the doctor was afforded the immunity granted by KRS 620.050; because doctor could not be held liable, neither could hospital; motions to dismiss granted. Hazlett v. Evans, 943 F. Supp. 785, 1996 U.S. Dist. LEXIS 16769 (E.D. Ky. 1996).

Where a hospital employee allegedly made a false report to authorities that a newborn child's meconium stool sample tested positive for drugs, which led to the child's being placed in foster care, a doctor was immune from civil liability for the report under KRS 620.030(1) and KRS 620.050(1), because there was no allegation that she acted in bad faith. Garrison v. Leahy-Auer, 220 S.W.3d 693, 2006 Ky. App. LEXIS 151 (Ky. Ct. App. 2006).

4. Marital Privilege.

The marital privilege, which courts construe strictly and narrowly, is inapplicable in a case regarding an abused, neglected, or dependent child; thus, neither a husband charged with third degree sodomy against a fourteen (14) year old girl, nor his wife, who reported the act to the police, could claim the marital privilege. This section does not conflict with Rule 504, nor does its application violate Rule 1102. Mullins v. Commonwealth, 956 S.W.2d 210, 1997 Ky. LEXIS 147 (Ky. 1997).

Defendant was not allowed to invoke spousal privilege under Ky. R. Evid. 504 to prevent his ex-wife from testifying about a conversation they had while married where the charges involved the rape and sodomy of a teenage girl, and thus, marital privilege was abrogated under Ky. Rev. Stat. Ann. § 620.050. Kays v. Commonwealth, 505 S.W.3d 260, 2016 Ky. App. LEXIS 177 (Ky. Ct. App. 2016).

5. Immunity.

Custody evaluator was immune for a report to the Cabinet for Health and Family Services of a father's gun possession because no bad faith or lack of a subjective belief that the evaluator discharged the evaluator's duty to report was shown. J.S. v. Berla, 456 S.W.3d 19, 2015 Ky. App. LEXIS 14 (Ky. Ct. App. 2015).

Reporter may be acting under KRS 620.030 to 620.050 in good faith if the reporter subjectively believed he or she was discharging the duty imposed by KRS 620.030; therefore, a reporter's good faith belief that he or she is discharging the lawful duty to report under KRS 620.030, even if such a belief is ultimately determined to be erroneous, is all that is required under KRS 620.050(1). As a result, several health care providers were immune from liability under KRS 620.050(1) because they acted in good faith under KRS 620.030 in making a report of a new mother's suspected child abuse, even though a blood alcohol report was erroneous. Norton Hosps., Inc. v. Peyton, 381 S.W.3d 286, 2012 Ky. LEXIS 165 (Ky. 2012).

Relative who reported suspected abuse was entitled to immunity since she had reasonable cause to make the allegations. The relative reported that the mother and children were living with her father, who was suspected of abusing the mother as a child; moreover, the relative alleged that the mother had engaged in bizarre behavior and reported similar allegations made by the mother's pastor. Leamon v. Phillips, 423 S.W.3d 759, 2014 Ky. App. LEXIS 8 (Ky. Ct. App. 2014).

In a report of child neglect to the Kentucky Cabinet of Health and Family Services' Department of Community Based Services based on a four-year-old student wandering away from a school, who was found approximately one-half mile away, the trial court did not err in dismissing appellant's claims against her employer alleging wrongful discharge, negligence and vicarious liability, and defamation as the record did not support any allegations that the employer's report of neglect was done in bad faith as appellant did not dispute that the child wandered away from the school while she was working; and, although appellant was ultimately exonerated from having committed neglect, an erroneous belief regarding neglect did not constitute bad faith. Collins v. KCEOC Cmty. Action P'ship, 455 S.W.3d 421, 2015 Ky. App. LEXIS 9 (Ky. Ct. App. 2015).

Because a doctor who treated a minor child prior to the child's death did not report suspected abuse of the child while in foster care to the proper authorities, the doctor was not entitled to statutory immunity from civil suit. A.A. v. Shutts, 516 S.W.3d 343, 2017 Ky. App. LEXIS 34 (Ky. Ct. App. 2017).

6. Duty to Investigate.

Because appellee could be properly considered as a person in a position of authority or a person in position of special trust as she was often the only adult supervising several small children in the afterschool program, she had the ability to punish them by putting them in time out and was responsible for reporting any disciplinary incidents that occurred between the children, and she could, theoretically, use her position of authority to exercise undue influence on those children, the Department for Community Based Services, Cabinet for Health and Family Services had a statutory duty to investigate reports that a child had been neglected. Dep't for Cmty. Based Servs., Cabinet for Health & Family Servs. v. Baker, 613 S.W.3d 1, 2020 Ky. LEXIS 459 (Ky. 2020).

Cited in:

Morgan v. Bird, 289 S.W.3d 222, 2009 Ky. App. LEXIS 68 (Ky. Ct. App. 2009).

OPINIONS OF ATTORNEY GENERAL.

This section requires schools to continue to allow the Cabinet for Human Resources (CHR) to interview children on school premises without consent of parents in the course of an abuse investigation if that is the course of action determined appropriate by the CHR. OAG 87-33, 1987 Ky. AG LEXIS 50.

The Department for Social Services acted properly when it refused to make available for inspection to the alleged perpetrator of child abuse the names of informants and those portions of the statements of a judge and an informant

wherein those parties set forth personal opinions, observations, and recommendations not related to the child abuse investigation and the findings resulting from that investigation. OAG 87-82, 1987 Ky. AG LEXIS 3.

The public agency's refusal to furnish records and documents to the requesting party relative to an investigation of an alleged instance of child abuse and neglect was supported by subdivision (1)(j) of KRS 61.878 and subsection (4) of this section. OAG 88-4, 1988 Ky. AG LEXIS 4.

Cabinet for Human Resources acted consistently with the Open Records Laws to the extent that it withheld from inspection the names of informants which spawned its investigation pursuant to KRS 61.878(1)(a) and (j) and subdivision (4)(a) of this section, and to the extent that it denied inspection of the verbal complaint or oral allegations made by an individual to an employee of the cabinet. However, the cabinet acted inconsistently with the Open Records Law to the extent that it denied inspection of the written complaint which initially spawned the investigation, although, the names of informants contained within the written complaint may properly be withheld. OAG 91-33, 1991 Ky. AG LEXIS 33.

Where person requesting documents regarding detention of student at a school and the report and findings of an investigation conducted by the Department for Social Services did not demonstrate that he fell under any of the statutorily recognized classifications of this section or KRS 61.878 or that his particular situation warranted the release of the requested material, his request was properly denied. OAG 91-93, 1991 Ky. AG LEXIS 93.

Subsection (4) is applicable to information obtained as a result of a joint investigation by the Cabinet for Human Resources and the Kentucky State Police. OAG 91-173, 1991 Ky. AG LEXIS 173.

This section clearly requires that the Cabinet for Human Resources and the Department for Social Services withhold from all persons information acquired as a result of an investigation conducted pursuant to this section, unless the requesting party can demonstrate that he or she satisfies one of the requirements set forth in subsection (4)(a) through (4)(f) of this section. Thus where, although the requesting party was currently involved in a custody dispute with his former wife, she was the custodial parent, and the allegations of abuse were not substantiated, the requesting party could not be said to have satisfied the requirements of subsection (4)(e) of this section and his open records request was properly denied. OAG 92-53, 1992 Ky. AG LEXIS 53.

Subsection (4) of this section KRS 61.878(1)(k) and KRS 610.320(3) are aimed at protecting juveniles, and not adults who are criminally prosecuted for victimizing juveniles. OAG 93-ORD-42, 1993 Ky. AG LEXIS 72.

The Kentucky State Police improperly relied on subsection (4) of this section, KRS 61.878(1)(a) and (k), and KRS 610.320(3) in denying a request to inspect the files generated in the course of its investigation into a candidate for county sheriff who was charged with sodomy, sexual abuse and unlawful transaction with a minor. Although the privacy interests of the juveniles whose names appeared in those records were superior to the public's interest in disclosure of their identities, that interest could be protected by redaction of the juveniles' names and personally identifiable information. The candidate's privacy interests, however, were outweighed by the public's interest in assessing his fitness to serve as county sheriff, and the public's interest in evaluating the performance of the Kentucky State Police in investigating the case. OAG 93-ORD-42, 1993 Ky. AG LEXIS 72.

Unless the Kentucky State Police is acting as the Cabinet for Human Resources' designated representative in conducting a joint investigation into allegations of dependency, neglect, or abuse, as opposed to independently conducting an investigation into possible criminal charges against an adult, subsection (4) of this section does not operate to authorize nondisclosure of the records it compiles. OAG 93-ORD-42, 1993 Ky. AG LEXIS 72.

The Department of Social Services improperly denied the Kentucky Board of Nursing's request for medical records referenced in a report prepared by the Department in the course of an investigation into suspected child abuse pursuant to subsection (4) of this section, which is incorporated into the Open Records Act by operation of subdivision (1)(k) of KRS 61.878. OAG 93-ORD-132, 1993 Ky. AG LEXIS 213.

A child who does not receive necessary medical care due to his parents' religious belief may considered an abused or neglected child; accordingly, the reporting requirements of KRS 620.030 (1) and the investigation requirements of subsection (3) of this section are mandatory and must be followed in cases involving the religious exemption contained in KRS 600.020 (1). OAG 93-84, 1993 Ky. AG LEXIS 231.

Since the shroud of secrecy mandated by KRS 620.050(4) is "not intended to protect the identities of adults and employees of a public agency charged with violations of the criminal laws," but is instead intended to protect the affected families, and in particular, the affected children, the Cabinet for Human Resources could not persuasively argue that it was bound by the confidentiality provision found at KRS 620.050(4) in witholding unsubstantiated complaints of abuse against its employees, and, at the same time, that it was free to release most, if not all, of the remaining records it compiled in its investigation of alleged employee misconduct. OAG 94-ORD-76 (overruling OAG 88-4 where inconsistent).

Cabinet for Health Service properly relied on KRS 61.872(6) and 61.878(1)(a), (k) and (*l*) and various confidentiality provisions found in both state (KRS 209.140, 210.235, 214.420, 214.625 and 620.050) and federal law, in denying request for inspection of all nursing facility licensure inspection reports for a two year period where the Cabinet sustained the burden of showing that such request was an unreasonable burden on the Cabinet in describing with specificity the actual volumes of records implicated by the request and where the exemptions to disclosure provided by the state and federal law were mandatory and the difficulty of separation of confidential from releasable information constituted an unreasonable burden. 97-ORD-88.

The Cabinet for Families and Children properly relied on KRS 61.878(1)(a), in addition to KRS 194B.060 and subsection (4) of this section, which are incorporated into the Open Records Act by operation of KRS 61.878(1)(l), in denying a request for a copy of the Children's Protective Services Report relating to two (2) children identified in the request and their mother. OAG 99-ORD-197, 1999 Ky. AG LEXIS 192.

Although the requester has established that she has "relative placement" of at least one of her grandchildren, she has not established that she is the children's custodial parent or legal guardian within the meaning of KRS 620.050(5)(b) or that she otherwise falls within one of the remaining statutorily recognized classifications. A letter prepared by a social worker does not invest her with the status of custodial parent or legal guardian. Nor has she produced a court order directing disclosure of the disputed records to her. Insofar as none of the criteria found in KRS 620.050(5) are satisfied, the requester is not entitled to receive a copy of those records pursuant to KRS 61.878(1)(l). OAG 03-ORD-70, 2003 Ky. AG LEXIS 6.

RESEARCH REFERENCES AND PRACTICE AIDS

Kentucky Law Journal.

Smith, Medical and Psychotherapy Privileges and Confidentiality: On Giving With One Hand and Removing With the Other, 75 Ky. L.J. 473 (1986-87).

Northern Kentucky Law Review.

Jones, Kentucky Tort Liability for Failure to Report Family Violence, 26 N. Ky. L. Rev. 43 (1999).

Note, Commonwealth v. Allen: An Eye-Opener for Kentucky's Teachers, 27 N. Ky. L. Rev. 447 (2000).

Treatises

Petrilli, Kentucky Family Law, Minors, § 30.34.

Petrilli, Kentucky Family Law, Personal Rights Privilege Resulting from Marriage, § 12.11.

Petrilli, Kentucky Family Law, Support of the Family, § 16.16.

620.051. Background check of child abuse and neglect records — Fee — Central registry — Administrative regulations.

(1) The cabinet may charge a fee of ten dollars ($10) per background check of the cabinet's child abuse and neglect records when those services are requested by a person for professional, trade, or commercial purposes or for personal use.

(2) The cabinet shall promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records.

History.

2018 ch. 159, § 18, effective July 14, 2018.

NOTES TO DECISIONS

1. Child Abuse Registry.

Even if the father's plea in the DNA proceeding was disregarded, that alone would not require the removal of his name from the Child Abuse Registry because, in the separate emergency protective order/domestic violence order proceedings, the father similarly stipulated to acts of domestic violence, leading the court to find that domestic violence had occurred. Because the same underlying facts supported both the protection order and DNA cases, even in the absence of the DNA action, the Cabinet could have properly included and maintained the father's name on the Registry. F.M. v. Cabinet for Health & Fam. Servs., 725 S.W.3d 552, 2025 Ky. App. LEXIS 104 (Ky. Ct. App. 2025).

620.055. External child fatality and near fatality review panel — Creation — Members — Meetings — Duties — Responsibilities — Information required to be provided to members — Report and response — Annual reports — Confidentiality — Destruction of information following conclusion of panel's examination — Application of open records and open meetings law — Limitation of liability — Proceedings are privileged — Annual evaluation of panel's work.

(1) An external child fatality and near fatality review panel is hereby created and established for the purpose of conducting comprehensive reviews of child fatalities and near fatalities, reported to the Cabinet for Health and Family Services, suspected to be a result of abuse or neglect. The panel shall be attached to the Justice and Public Safety Cabinet for staff and administrative purposes.

(2) The external child fatality and near fatality review panel shall be composed of the following five (5) ex officio nonvoting members and seventeen (17) voting members:

(a) Two (2) members of the Kentucky General Assembly, one (1) appointed by the President of the Senate and one (1) appointed by the Speaker of the House of Representatives, who shall be ex officio nonvoting members;

(b) The commissioner of the Department for Community Based Services, who shall be an ex officio nonvoting member;

(c) The commissioner of the Department for Public Health, who shall be an ex officio nonvoting member;

(d) A family court judge selected by the Chief Justice of the Kentucky Supreme Court, who shall be an ex officio nonvoting member;

(e) A pediatrician from the University of Kentucky's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Kentucky School of Medicine;

(f) A pediatrician from the University of Louisville's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Louisville School of Medicine;

(g) The state medical examiner or designee;

(h) A court-appointed special advocate (CASA) program director to be selected by the Attorney General from a list of three (3) names provided by the Kentucky CASA Network;

(i) A peace officer with experience investigating child abuse and neglect fatalities and near fatalities to be selected by the Attorney General from a list of three (3) names provided by the commissioner of the Kentucky State Police;

(j) A representative from Prevent Child Abuse Kentucky, Inc. to be selected by the Attorney General from a list of three (3) names provided by the president of the Prevent Child Abuse Kentucky, Inc. board of directors;

(k) A practicing local prosecutor to be selected by the Attorney General;

(*l*) The executive director of the Kentucky Domestic Violence Association or the executive director's designee;

(m) The chairperson of the State Child Fatality Review Team established in accordance with KRS 211.684 or the chairperson's designee;

(n) A practicing social work clinician to be selected by the Attorney General from a list of three (3) names provided by the Board of Social Work;

(o) A practicing addiction counselor to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Addiction Professionals;

(p) A representative from the family resource and youth service centers to be selected by the Attorney General from a list of three (3) names submitted by the Cabinet for Health and Family Services;

(q) A representative of a community mental health center to be selected by the Attorney General from a list of three (3) names provided by the Kentucky

Association of Regional Mental Health and Mental Retardation Programs, Inc.;

(r) A member of a citizen foster care review board selected by the Chief Justice of the Kentucky Supreme Court;

(s) An at-large representative who shall serve as chairperson to be selected by the Secretary of State;

(t) The president of the Kentucky Coroners Association; and

(u) A practicing medication-assisted treatment provider to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Board of Medical Licensure.

(3)(a) The appointing authority or the appointing authorities, as the case may be, shall have appointed panel members. Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Initial appointments shall be: five (5) members for terms of one (1) year, five (5) members for terms of two (2) years, and five (5) members for terms of three (3) years, these terms to expire, in each instance, on June 30 and thereafter until a successor is appointed and accepts appointment.

(b) Upon the expiration of these initial staggered terms, successors shall be appointed by the respective appointing authorities for terms of two (2) years and until successors are appointed and accept their appointments. Members shall be eligible for reappointment. Vacancies in the membership of the panel shall be filled in the same manner as the original appointments.

(c) At any time, a panel member shall recuse himself or herself from the review of a case if the panel member believes he or she has a personal or private conflict of interest.

(d) If a voting panel member is absent from two (2) or more consecutive, regularly scheduled meetings, the member shall be considered to have resigned and shall be replaced with a new member in the same manner as the original appointment.

(e) If a voting panel member is proven to have violated subsection (13) of this section, the member shall be removed from the panel, and the member shall be replaced with a new member in the same manner as the original appointment.

(4) The panel shall meet at least quarterly and may meet upon the call of the chairperson of the panel.

(5) Members of the panel shall receive no compensation for their duties related to the panel, but may be reimbursed for expenses incurred in accordance with state guidelines and administrative regulations.

(6) Each panel member shall be provided copies of all information set out in this subsection, including but not limited to records and information, upon request, to be gathered, unredacted, and submitted to the panel within thirty (30) days by the Cabinet for Health and Family Services from the Department for Community Based Services or any agency, organization, or entity involved with a child subject to a fatality or near fatality:

(a) Cabinet for Health and Family Services records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons supervising the child at the time of the incident that include all records and documentation set out in this paragraph:

1. All prior and ongoing investigations, services, or contacts;

2. All records of services to the family provided by agencies or individuals contracted by the Cabinet for Health and Family Services; and

3. All documentation of actions taken as a result of child fatality internal reviews conducted pursuant to KRS 620.050(12)(b);

(b) Licensing reports from the Cabinet for Health and Family Services, Office of Inspector General, if an incident occurred in a licensed facility;

(c) All available records regarding protective services provided out of state;

(d) All records of services provided by the Department for Juvenile Justice regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident;

(e) Autopsy reports;

(f) Emergency medical service, fire department, law enforcement, coroner, and other first responder reports, including but not limited to photos and interviews with family members and witnesses;

(g) Medical records regarding the deceased or injured child, including but not limited to all records and documentation set out in this paragraph:

1. Primary care records, including progress notes; developmental milestones; growth charts that include head circumference; all laboratory and X-ray requests and results; and birth record that includes record of delivery type, complications, and initial physical exam of baby;

2. In-home provider care notes about observations of the family, bonding, others in home, and concerns;

3. Hospitalization and emergency department records;

4. Dental records;

5. Specialist records; and

6. All photographs of injuries of the child that are available;

(h) Educational records of the deceased or injured child, or other children residing in the home where the incident occurred, including but not limited to the records and documents set out in this paragraph:

1. Attendance records;

2. Special education services;

3. School-based health records; and

4. Documentation of any interaction and services provided to the children and family.

The release of educational records shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g and its implementing regulations;

(i) Head Start records or records from any other child care or early child care provider;

(j) Records of any Family, Circuit, or District Court involvement with the deceased or injured child and his or her caregivers, residents of the home and persons involved with the child at the time of the incident that include but are not limited to the juvenile and family court records and orders set out

in this paragraph, pursuant to KRS Chapters 199, 403, 405, 406, and 600 to 645:

1. Petitions;

2. Court reports by the Department for Community Based Services, guardian ad litem, court-appointed special advocate, and the Citizen Foster Care Review Board;

3. All orders of the court, including temporary, dispositional, or adjudicatory; and

4. Documentation of annual or any other review by the court;

(k) Home visit records from the Department for Public Health or other services;

(*l*) All information on prior allegations of abuse or neglect and deaths of children of adults residing in the household;

(m) All law enforcement records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident;

(n) Mental health records regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident; and

(o) All supervisory consult notes, documents, and information related to all fatal and near fatal cases.

(7) The panel may seek the advice of experts, such as persons specializing in the fields of psychiatric and forensic medicine, nursing, psychology, social work, education, law enforcement, family law, or other related fields, if the facts of a case warrant additional expertise.

(8) The panel shall have full access to The Workers Information System, known as TWIST, and the internet The Workers Information System, known as iTWIST, that are maintained by the Cabinet for Health and Family Services.

(9) The panel shall be provided with the quarterly System Safety Review Report that is submitted to the Safety Action Group (SAG) and with any additional reports, minutes, and recommendations from the SAG meetings that are not part of the recommendations incorporated in the Cabinet for Health and Family Services Annual Fatality Report.

(10) The panel shall post updates after each meeting to the website of the Justice and Public Safety Cabinet regarding case reviews, findings, and recommendations.

(11) The panel chairperson, or other requested persons, shall report a summary of the panel's discussions and proposed or actual recommendations to the Interim Joint Committee on Families and Children of the Kentucky General Assembly monthly or at the request of a committee co-chair. The goal of the committee shall be to ensure impartiality regarding the operations of the panel during its review process.

(12)(a) The panel shall publish an annual report by February 1 of each year consisting of case reviews, findings, and recommendations for system and process improvements to help prevent child fatalities and near fatalities that are due to abuse and neglect. The report shall be submitted to the Governor, the secretary of the Cabinet for Health and Family Services, the Chief Justice of the Supreme Court, the Attorney General, the State Child Abuse and Neglect Prevention Board established pursuant to KRS 15.905, and the director of the Legislative Research Commission for distribution to the Interim Joint Committee on Families and Children and the Interim Joint Committee on Judiciary.

(b) The panel shall determine which agency is responsible for implementing each recommendation, and shall forward each recommendation in writing to the appropriate agency.

(c) Any agency that receives a recommendation from the panel shall, within ninety (90) days of receipt:

1. Respond to the panel with a written notice of intent to implement the recommendation, an explanation of how the recommendation will be implemented, and an approximate time frame of implementation; or

2. Respond to the panel with a written notice that the agency does not intend to implement the recommendation, and a detailed explanation of why the recommendation cannot be implemented.

(13)(a) Information and record copies that are confidential under state or federal law and are provided to the external child fatality and near fatality review panel by the Cabinet for Health and Family Services, the Department for Community Based Services, or any agency, organization, or entity for review shall not become the information and records of the panel and shall not lose their confidentiality by virtue of the panel's access to the information and records.

(b) The original information and records used to generate information and record copies provided to the panel in accordance with subsection (6) of this section shall be maintained by the appropriate agency in accordance with state and federal law and shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

(c) All open records requests shall be made to the appropriate agency, not to the external child fatality and near fatality review panel or any of the panel members.

(d) Information and record copies provided to the panel for review shall be exempt from the Kentucky Open Records Act, KRS 61.870 to 61.884.

(e) At the conclusion of the panel's examination, all copies of information and records provided to the panel involving an individual case shall be destroyed by the Justice and Public Safety Cabinet.

(14)(a) Notwithstanding any provision of law to the contrary, the portions of the external child fatality and near fatality review panel meetings during which an individual child fatality or near fatality case is reviewed or discussed by panel members may be a closed session and subject to the provisions of KRS 61.815(1) and shall only occur following the conclusion of an open session. At the conclusion of the closed session, the panel shall immediately convene an open session and give a summary of what occurred during the closed session.

(b) The external child fatality and near fatality review panel shall develop a procedure for discussion of cases that are being reviewed by the panel with the agency that was responsible for the investigation of

the case and shall include the following requirements:

1. Any discussions about a case shall be held in a closed session;

2. Anything said by an employee of the investigating agency shall not be used as evidence in any civil, criminal, or administrative hearing;

3. Any employee of the investigating agency may attend with the employee or employees who investigated the case being discussed; and

4. The investigating agency shall not be asked to attend until after final judgment was entered by the court in that case or the Commonwealth declined to prosecute the case.

(15) Each member of the external child fatality and near fatality review panel, any person attending a closed panel session, and any person presenting information or records on an individual child fatality or near fatality shall not release information or records not available under the Kentucky Open Records Act, KRS 61.870 to 61.884 to the public.

(16) A member of the external child fatality and near fatality review panel shall not be prohibited from making a good-faith report to any state or federal agency of any information or issue that the panel member believes should be reported or disclosed to facilitate effectiveness and transparency in Kentucky's child protective services.

(17) A member of the external child fatality and near fatality review panel shall not be held liable for any civil damages or criminal penalties pursuant to KRS 620.990 as a result of any action taken or omitted in the performance of the member's duties pursuant to this section and KRS 620.050, except for violations of subsection (13), (14), or (15) of this section.

(18) The proceedings, records, opinions, and deliberations of the external child fatality and near fatality review panel shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil or criminal actions in any manner that would directly or indirectly identify specific persons or cases reviewed by the panel. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the panel.

(19) The Legislative Oversight and Investigations Committee of the Kentucky General Assembly shall conduct an annual evaluation of the external child fatality and near fatality review panel established pursuant to this section to monitor the operations, procedures, and recommendations of the panel and shall report its findings to the General Assembly.

History.

Enact. Acts 2013, ch. 39, § 1, effective June 25, 2013; 2018 ch. 159, § 55, effective July 14, 2018; 2021 ch. 14, § 10, effective March 12, 2021; 2022 ch. 75, § 18, effective April 1, 2022; 2022 ch. 139, § 2, effective July 14, 2022; 2022 ch. 211, § 30, effective January 1, 2023; 2022 ch. 223, § 14, effective January 1, 2023; 2023 ch. 25, § 36, effective June 29, 2023; 2026 ch. 53, § 3, effective July 15, 2026; 2026 ch. 68, § 8, effective July 15, 2026.

Legislative Research Commission Notes.

(7/15/2026). This statute was amended by 2026 Ky. Acts chs. 53 and 68, which do not appear to be in conflict and have been codified together.

620.072. Unannounced home visits concerning abused or neglected child — Conditions requiring — Request for assistance in gaining access to child.

(1) If the cabinet's initial determination as to the risk of harm to and immediate safety of an alleged abused or neglected child as defined in KRS 600.020 requires an investigation or assessment pursuant to administrative regulations promulgated by the cabinet, including consideration of information on the nature and extent of a present danger or threat of danger to the child or cabinet staff, and if:

(a) The investigation requires a visit to the residence or location where the reported abuse or neglect occurred, the cabinet shall make the visit unannounced; or

(b) The assessment requires a visit to the residence or location where the reported abuse or neglect occurred, the cabinet shall make the visit announced or unannounced;

in addition to any other actions taken to protect the child.

(2) If the initial visit is necessary, after it is completed, the cabinet shall incorporate unannounced visits with any necessary scheduled visits until the welfare of the child has been safeguarded in accordance with administrative regulations promulgated by the cabinet.

(3) If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS 620.040(5)(a).

(4) A school or a child-care provider shall provide the cabinet access to a child subject to an investigation or assessment without parental consent.

History.

2017 ch. 188, § 1, effective June 29, 2017; 2023 ch. 107, § 4, effective June 29, 2023.

Legislative Research Commission Notes.

(6/29/2017). 2017 Ky. Acts ch. 188, sec. 2 provided that this statute created in 2017 Ky. Acts ch. 188, sec. 1 may be cited as the Tucker Act.

620.146. Notice to be given to school personnel of persons authorized to contact or remove a child of whom the cabinet has custody from school grounds.

(1) If, as a result of dependency, neglect, or abuse, custody of a child is granted to the cabinet through an emergency, temporary, or permanent court order, the cabinet shall notify the principal or any assistant principal of the school in which the child is enrolled, and the school district's director of pupil personnel, of the names of persons authorized to contact the child at school, in accordance with school visitation or communication policy, or remove the child from school grounds.

(2) The notification required by this section shall be provided by the Cabinet for Health and Family Services to the school:

(a) By written notice via electronic mail or facsimile on the day that a court order is entered and again on any day that a change is made with regard to persons authorized to contact or remove the child from school. The verbal notification shall occur on the next school day immediately following the day a court order is entered or a change is made if the court order or change occurs after the end of the current school day; and

(b) By electronic mail, facsimile, or hand delivery of a copy of the court order within ten (10) calendar days following the Cabinet for Health and Family Services' receipt of the court order of a change of custody or change in contact or removal authority.

(3) The cabinet's mandate to provide the information required by this section shall cease when the court order under which the cabinet acts is rescinded or otherwise expires.

History.
2017 ch. 159, § 1, effective June 29, 2017; 2018 ch. 159, § 44, effective July 14, 2018.

620.363. Rights of foster child.

A child who is placed in foster care shall be considered a primary partner and member of a professional team. A foster child, as the most integral part of the professional team, shall have the following rights to:

(1) Adequate food, clothing, and shelter;

(2) Freedom from physical, sexual, or emotional injury or exploitation;

(3) Develop physically, mentally, and emotionally to his or her potential;

(4) A safe, secure, and stable family;

(5) Individual educational needs being met;

(6) Remain in the same educational setting prior to removal, whenever possible;

(7) Placement in the least restrictive setting in close proximity to his or her home that meets his or her needs and serves his or her best interests to the extent that such placement is available;

(8) Information about the circumstances requiring his or her initial and continued placement;

(9) Receive notice of, attend, and be consulted in the development of case plans during periodic reviews;

(10) Receive notice of and participate in court hearings;

(11) Receive notice of and explanation for changes in placement or visitation agreements;

(12) Visit the family in the family home, receive visits from family and friends, and have telephone conversations with family members, when not contraindicated by the case plan or court order;

(13) Participate in extracurricular, social, cultural, and enrichment activities, including but not limited to sports, field trips, and overnights;

(14) Express opinions on issues concerning his or her placement, care, or treatment;

(15) Three (3) additional rights if he or she is age fourteen (14) years or older. These additional three (3) rights are the right to:

(a) Designate two (2) additional individuals to participate in case planning conferences or periodic reviews, who are not the foster parent or his or her worker, and who may advocate on his or her behalf. The cabinet, child-caring facility, or child-placing agency may reject an individual with reasonable belief that the individual will not act appropriately on the child's behalf;

(b) Receive a written description of the programs and services that will help prepare him or her for the transition from foster care to successful adulthood; and

(c) Receive a consumer report yearly until discharged from care and to receive assistance in interpreting and resolving any inaccuracies in the report, pursuant to 42 U.S.C. sec. 675(5)(I);

(16) Receive, free of charge when he or she is eighteen (18) years or older and preparing to exit foster care by reason of attaining the age of eighteen (18) years old, the following:

(a) An official birth certificate;

(b) A Social Security card;

(c) Health insurance information;

(d) A state-issued identification; and

(e) A copy of the child's cabinet case history, including:

1. Family medical history;

2. Placement history records; and

3. The child's medical records, including physical, dental, vision, and mental health records;

(17) Request placement be made where he or she feels the most safe and accepted;

(18) Participate in a sibling or half-sibling's court hearing if deemed appropriate by the cabinet, court of jurisdiction, and guardian ad litem, if applicable; and

(19) Raise his or her child and make decisions on behalf of his or her child unless a health or safety risk is determined by the cabinet or due to the treatment needs of the youth.

History.
2019 ch. 33, § 7, effective June 27, 2019; 2022 ch. 75, § 20, effective April 1, 2022.

NOTES TO DECISIONS

2. Placement with Relatives.
Order awarding custody of the twins to the Grandmother and Uncle was not proper because they lacked standing to pursue custody, which made the custody order entered by the court voidable and the circuit court's sua sponte use of equitable estoppel to disallow the Cabinet for Health and Family Services' lack-of-standing defense was an abuse of discretion and its application was erroneous as a matter of law. Commonwealth v. Batie, 645 S.W.3d 452, 2022 Ky. App. LEXIS 48 (Ky. Ct. App. 2022).

Cited in:
Commonwealth v. Batie, 645 S.W.3d 452, 2022 Ky. App. LEXIS 48 (Ky. Ct. App. 2022).

PENALTY

620.990. Penalty.

(1) Except as otherwise provided in this chapter, any person intentionally violating the provisions of this chapter shall be guilty of a Class B misdemeanor.

(2) The use of information by public officers and by defense counsel for purposes of investigation and trial of cases or other proceedings under the provisions of KRS Chapters 600 to 645 or in any criminal prosecution or appeal shall not constitute a violation of this chapter.

History.
Enact. Acts 1986, ch. 423, § 96, effective July 1, 1987; 1988, ch. 350, § 62, effective April 10, 1988; 2008, ch. 72, § 5, effective July 15, 2008.

NOTES TO DECISIONS

Cited in:
Hazlett v. Evans, 943 F. Supp. 785, 1996 U.S. Dist. LEXIS 16769 (E.D. Ky. 1996).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Juvenile Code Proceedings, § 258.00.
Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.3, 32.5.
Petrilli, Kentucky Family Law, Minors, § 30.34.

CHAPTER 630
STATUS OFFENDERS

Section
630.010. Purposes of chapter regarding status offenders.
630.020. Jurisdiction of court.
630.040. Duties of person taking child into custody.
630.070. Violated court order — Placement in secure facility.
630.080. Detention in secure juvenile detention facility or juvenile holding facility — Limitation on detention of child.
630.100. Detention of adjudicated status offender. [Repealed].
630.120. Conduct of dispositional hearings — Prohibition against commitment for certain alcohol and tobacco offenses.
630.160. Escape charge not to be filed in certain circumstances.

630.010. Purposes of chapter regarding status offenders.

In addition to those purposes set forth in KRS 600.010, this chapter shall be interpreted and construed to effectuate the following purposes regarding status offenders:

(1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;

(2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;

(3) A status offender accused of or adjudicated for the violation of a valid court order may be securely detained in accordance with KRS 630.095 for up to forty-eight (48) hours, exclusive of weekends and holidays, pending receipt of the written report required under KRS 630.080(4). Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;

(4) Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and

(5) Status offenders accused of or found guilty of violating a valid court order shall not be converted into public offenders by virtue of this conduct.

History.
Enact. Acts 1986, ch. 423, § 109, effective July 1, 1987; 1988, ch. 350, § 80, effective April 10, 1988; 1998, ch. 538, § 9, effective April 13, 1998; 2000, ch. 193, § 8, effective July 14, 2000; 2008, ch. 87, § 7, effective July 15, 2008; 2026 ch. 69, § 17, effective July 15, 2026.

Legislative Research Commission Notes.
Acts 1986, ch. 423, § 199 read: "KRS 446.250 to 446.320 to the contrary notwithstanding, Acts 1986, ch. 423 shall prevail in the event of a conflict between Acts 1986, ch. 423 and other Acts passed by the 1986 regular session of the General Assembly."

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises
Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Juvenile Code Proceedings, § 258.00.
Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.3, 32.14, 32.18.
Petrilli, Kentucky Family Law, Termination of Parental Rights and Adoption, § 29.1.
Petrilli, Kentucky Family Law, Forms, Juvenile Court, Form 5.8.

630.020. Jurisdiction of court.

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

(1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;

(2) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;

(3) Has been an habitual truant from school; or

(4) Has committed an alcohol offense under KRS 244.085.

History.
Enact. Acts 1986, ch. 423, § 110, effective July 1, 1987; 1988, ch. 350, § 81, effective April 10, 1988; 2000, ch. 193, § 9, effective July 14, 2000; 2008, ch. 87, § 8, effective July 15, 2008; 2020 ch. 35, § 12, effective March 26, 2020.

NOTES TO DECISIONS

Analysis

1. Right to Counsel.
2. Due Process.

1. Right to Counsel.
A juvenile is entitled to counsel where juvenile court is making decision whether or not to waive jurisdiction. (Decided under prior law) Smith v. Commonwealth, 412 S.W.2d 256, 1967 Ky. LEXIS 421 (Ky.), cert. denied, 389 U.S. 873, 88 S. Ct. 162, 19 L. Ed. 2d 155, 1967 U.S. LEXIS 933 (U.S. 1967).

2. Due Process.

It was error for the family court to adjudicate the juvenile's status as an habitual truant from school and to place the juvenile under the authority of the Department of Community Based Services when the juvenile was not present at the adjudication or the disposition hearing. Determinations in the juvenile's absence violated his due process rights. B.J. v. Commonwealth, 2006 Ky. App. Unpub. LEXIS 111 (Ky. Ct. App. 2006), rev'd, 241 S.W.3d 324, 2007 Ky. LEXIS 259 (Ky. 2007).

OPINIONS OF ATTORNEY GENERAL.

KRS 600.020(24) [now (28)] controls over KRS 159.150 in ascertaining the number of days a child must have unexcused absences prior to being found habitually truant under the Unified Juvenile Code. OAG 93-37, 1993 Ky. AG LEXIS 90.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Caldwell's Kentucky Form Book, 5th Ed., Practice Context for Juvenile Code Proceedings, § 258.00.

Petrilli, Kentucky Family Law, Custody of Children, § 26.8.

630.040. Duties of person taking child into custody.

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

(1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;

(2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);

(3) If the court designated worker determines that the placements designated in KRS 610.200(5) and subsection (1) of this section have been exhausted or are not appropriate, a child may be delivered to a secure juvenile detention facility, a juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice, in accordance with KRS 630.095, pending the detention hearing;

(4) When the child has not been released to his or her parents or person exercising custodial control or supervision, the person taking the child into custody shall make a reasonable effort promptly to give oral notice to the parent or person exercising custodial control or supervision of the child;

(5) In all instances the peace officer taking a child into custody shall provide a written statement to the court designated worker of the reasons for taking the child into custody;

(6) If the child is placed in an emergency shelter or medical facility, during the adjudication and disposition of his case, the court may order his or her parents to be responsible for the expense of his care; and

(7) The peace officer taking the child into custody shall within three (3) hours of taking a child into custody file a complaint with the court, stating the basis for taking the child into custody and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility. Pending further disposition of the case, the court or the court designated worker may release the child to the custody of any responsible adult who can provide adequate care and supervision.

History.

Enact. Acts 1986, ch. 423, § 112, effective July 1, 1987; 1988, ch. 350, § 82, effective April 10, 1988; 2000, ch. 193, § 10, effective July 14, 2000; 2026 ch. 69, § 18, effective July 15, 2026.

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Petrilli, Kentucky Family Law, Juvenile Court, § 32.17.

630.070. Violated court order — Placement in secure facility.

A status offender shall not be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except in accordance with KRS 630.095, following a finding that the status offender has violated a valid court order.

History.

Enact. Acts 1986, ch. 423, § 115, effective July 1, 1987; 1988, ch. 350, § 85, effective April 10, 1988; 2000, ch. 193, § 11, effective July 14, 2000; 2008, ch. 87, § 9, effective July 15, 2008; 2026 ch. 69, § 20, effective July 15, 2026.

630.080. Detention in secure juvenile detention facility or juvenile holding facility — Limitation on detention of child.

(1)(a) In order for the court to detain a child after the detention hearing, the Commonwealth shall establish probable cause at the detention hearing that the child is a status offender and that further detention of the child is necessary for the protection of the child or the community.

(b) If the Commonwealth fails to establish probable cause that the child is a status offender, the complaint shall be dismissed and the child shall be released.

(c) If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child.

(d) If grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice.

(2) Notwithstanding KRS 630.095, a status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615.

(3) The appropriate public agency shall:

(a) Within twenty-four (24) hours, exclusive of weekends and holidays, of receiving notification, as provided in KRS 15A.305(3), that a status offender or

alleged status offender has been detained on the allegation that the child has violated a valid court order, meet with and interview the child; and

(b) Within forty-eight (48) hours, exclusive of weekends and holidays, of the detention hearing required under KRS 610.265, prepare and deliver to the court the completed written report required by subsection (4) of this section and KRS 610.265 if the child remains in detention after the detention hearing, and prior to the disposition hearing if the child has not been detained.

(4)(a) A status offender or alleged status offender who is subject to a valid court order may be detained in accordance with KRS 630.095 upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:

1. Affirms that the requirements for a valid court order were met at the time the original order was issued;

2. Makes a determination during the adjudicatory hearing that the child violated the valid court order; and

3.a. Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, the court:

i. Receives and reviews a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the child was brought before the court;

ii. Determines the reasons for the child's behavior; and

iii. Determines whether all dispositions other than detention in accordance with KRS 630.095 have been exhausted or are inappropriate.

b. If a prior written report is included in the child's file, that report shall not be used to satisfy this requirement.

(b) The child may be detained in accordance with KRS 630.095 for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court under paragraph (a)3. of this subsection.

(c) The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the detention of a status offender.

History.

Enact. Acts 1986, ch. 423, § 116, effective July 1, 1987; 1988, ch. 350, § 86, effective April 10, 1988; 2000, ch. 193, § 12, effective July 14, 2000; 2008, ch. 87, § 10, effective July 15, 2008; 2026 ch. 69, § 21, effective July 15, 2026.

630.100. Detention of adjudicated status offender. [Repealed]

History.

Enact. Acts 1986, ch. 423, § 118, effective July 1, 1987; 1988, ch. 350, § 88, effective April 10, 1988; 2000, ch. 193, § 13, effective July 14, 2000; 2008, ch. 87, § 11, effective July 15, 2008; repealed by 2026 ch. 69, § 22, effective July 15, 2026.

630.120. Conduct of dispositional hearings — Prohibition against commitment for certain alcohol and tobacco offenses.

(1) All dispositional hearings conducted under this chapter shall be conducted in accordance with the provisions of KRS 610.060 and 610.070. In addition, the court shall, at the time the dispositional order is issued:

(a) Give the child adequate and fair written warning of the consequences of the violation of the order; and

(b) Provide the child and the child's attorney, and parent, or legal guardian a written statement setting forth the conditions of the order and the consequences for violating the order.

An order issued pursuant to this section is a valid court order and any child violating that order may be subject to the provisions of KRS 630.080(4).

(2) The court shall consider all appropriate local remedies to aid the child and the child's family subject to the following conditions:

(a) Residential and nonresidential treatment programs for status offenders shall be community-based and nonsecure; and

(b) With the approval of the education agency, the court may place the child in a nonsecure public or private education agency accredited by the Department of Education.

(3) At the disposition of a child adjudicated on a petition brought pursuant to this chapter, all information helpful in making a proper disposition, including oral and written reports, shall be received by the court provided that the child, the child's parents, their counsel, the prosecuting attorney, the child's counsel, or other interested parties as determined by the judge shall be afforded an opportunity to examine and controvert the reports. For good cause, the court may allow the admission of hearsay evidence.

(4) The court shall affirmatively determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.

(5) The court may order the child and the child's family to participate in any programs which are necessary to effectuate a change in the child and the family.

(6) When all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and the child's family, the court may, except as provided in subsection (7) of this section, commit the child to the cabinet for such services as may be necessary. The cabinet shall consider all appropriate local remedies to aid the child and the child's family subject to the following conditions:

(a) Treatment programs for status offenders shall be, unless excepted by federal law, community-based and nonsecure;

(b) The cabinet may place the child in a nonsecure public or private education agency accredited by the department of education;

(c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the parents fail to participate in the cabinet's treatment programs; and

(d) The cabinet may discharge the child from commitment after providing ten (10) days' prior written notice to the committing court which may object to

such discharge by holding court review of the commitment under KRS 610.120.

(7) No child adjudicated guilty of an alcohol offense under KRS 244.085 or a tobacco offense under KRS 438.305 to 438.350 shall be committed as a result of that adjudication.

History.

Enact. Acts 1986, ch. 423, § 120, effective July 1, 1987; 1988, ch. 350, § 90, effective April 10, 1988; 2000, ch. 193, § 14, effective July 14, 2000; 2008, ch. 87, § 12, effective July 15, 2008; 2025 ch. 78, § 27, effective June 27, 2025.

NOTES TO DECISIONS

1. Due Process.

Juvenile's disposition was reversed because, when the trial court rejected a recommendation to continue the juvenile's dispositional hearing and committed the juvenile over counsel's objection, (1) the juvenile did not receive a dispositional hearing that satisfied statutory requirements or the due process right to a meaningful and fair proceeding, even though the juvenile was before the court for habitual truancy, as due process attached to status offenses, and (2) the denial was not harmless beyond a reasonable doubt. C.F. v. Commonwealth, 560 S.W.3d 528, 2018 Ky. App. LEXIS 246 (Ky. Ct. App. 2018).

RESEARCH REFERENCES AND PRACTICE AIDS

Treatises

Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.23, 32.24.

630.160. Escape charge not to be filed in certain circumstances.

Notwithstanding any provision of KRS Chapter 520 to the contrary, no child accused of being or who has been adjudicated as a status offender or who has been accused of or held in contempt of court based upon an underlying finding that the child is a status offender who is absent without leave from a nonsecure detention option or home detention, or who fails to comply with the conditions of supervised placement, shall be charged with escape for being absent without leave or failing to comply with the conditions of supervised placement.

History.

Enact. Acts 2000, ch. 193, § 16, effective July 14, 2000.

CHAPTER 635
PUBLIC OFFENDERS

Section

635.055. Detention of child found in contempt of court.

635.055. Detention of child found in contempt of court.

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility, youth alternative center, an alternative to detention program approved by the Department of Juvenile Justice, or a nonsecure detention alternative. An order of detention for a child found in contempt shall not exceed thirty (30) days.

History.

Enact. Acts 1988, ch. 350, § 97, effective April 10, 1988; 1998, ch. 538, § 10, effective April 13, 1998; 2000, ch. 193, § 15, effective July 14, 2000; 2000, ch. 534, § 13, effective July 14, 2000; 2014, ch. 132, § 46, effective July 1, 2015.

Compiler's Notes.

For this section as effective until July 1, 2015, see the preceding section also numbered KRS 635.055.

For this section as effective until July 1, 2015, see the bound volume.

NOTES TO DECISIONS

1. Contempt.

Express statutory authority anticipated that a juvenile court had the power to hold a child in contempt as KRS 610.010(10) [now (11)] specifically provided that nothing in "this chapter" would prevent a District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court, KRS 610.265(1), 610.265(5) and 635.055 each set out provisions for the detention of a juvenile who was charged with being in contempt of court, and KRS 635.083(1) gave a juvenile court continuing jurisdiction over a juvenile who was convicted or adjudged delinquent of three (3) or more offenses, this jurisdiction continued even after the service of incarceration or other court-ordered punishment in the form of conditional discharge, and violation of the terms and conditions of conditional discharge could be punished as contempt of court. A.W. v. Commonwealth, 2003 Ky. App. LEXIS 91 (Ky. Ct. App. 2003), aff'd, 163 S.W.3d 4, 2005 Ky. LEXIS 88 (Ky. 2005).

RESEARCH REFERENCES AND PRACTICE AIDS

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Athlete agents, §164.6903.
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Knowingly.
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Land surveyor, §322.010.
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Licensing authority.
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Local governmental entity.
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Major economic impact.
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Mathematics coach, §158.8401.
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Student achievement in math and reading, §158.842.
Mathematics improvement plan, §158.8401.
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Student achievement in math and reading, §158.842.
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Minors, power of attorney for medical treatment and school-related decisions, §27A.095.
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Meeting.
Open meetings, §61.805.
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Member.
Open meetings, §61.805.
Teachers' retirement, §161.220.
Member state.
Interstate teacher mobility compact, §161.135.
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Mental disability.
Special educational programs, §157.200.
Mental health services, §158.191.
Mentally helpless.
Criminal abuse, §508.090.
Mentor.
National board certification of teachers, §161.132.
Teachers, §161.031.
Middle school.
Academic achievement, §156.551.
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Military-connected student.
Purple star school program, §160.153.
Military duty.
Offices and officers, §61.371.
Military installation.
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Minorities.
School, §160.352.
School councils for school-based decision making, §160.345.
Mobile business.
Sex offender registration system, §17.545.
Mobile home.
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Working group on facial recognition technology, §61.9305.
Modified gross income.
Income taxes, §141.900.
Modular home.
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State and county employees' retirement, §61.702.

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Criminal law and procedure, §508.152.
Motor vehicle offense.
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Moving motor vehicle offense.
District court jurisdiction of juvenile matters, §610.010.
Multichannel video programming service.
Communications service providers, taxation, §136.602.
Multidisciplinary team.
Early intervention services, §200.654.
Multiple disability.
Special educational programs, §157.200.
Multitiered system of supports.
Mathematics, §158.8401.
Multi-unit rental housing.
Property taxes, §132.010.
Municipal interlocal gas utility.
Interlocal cooperation, §65.230.
National board certification.
Teachers, §161.132.
National board certification salary supplement.
Educational excellence fund, §157.320.
National board for professional teaching standards.
National board certification of teachers, §161.132.
Nationally recognized certification.
Interpreters for the deaf and hard of hearing, §309.300.
Near fatality.
Juvenile code, §600.020.
Needs of the child.
Child abuse and neglect, §600.020.
Negotiation.
Procurement codes, §45A.345.
Net assessment growth.
Property taxes, §132.010.
Net income.
Income taxes, §141.900.
Net profit.
Taxation of businesses, §67.750.
Net zero building.
Efficient school design, §157.455.
New property.
Property taxes, §132.010.
New teacher.
Teachers' retirement, §161.220.
New teacher induction and mentor program.
Teachers, §161.031.
Next regular election.
Property taxes, §132.017.
Nonacademic factors.
School accountability, §158.6457.
Nonaffiliated third party.
Personal information security and breach investigations, §61.931.
Non-boiler external piping.
Boiler safety, §236.010.
Nonbusiness income.
Income taxes, §141.901.
Noncompetitive negotiation.
Procurement codes, §45A.345.
Non-core services independent contractor.
Public employees' retirement, §61.5991.
Noninstructional teachers aid, §161.044.
Non-member state.
Military children's educational opportunity, compact, §156.730.
Nonoffender.
Juvenile code, §600.020.
Nonpecuniary factor.
Teachers' retirement system, §161.430.

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Nonresident.
Income taxes, §141.900.
Nonretail service and technology entity.
Property and buildings commission, §56.440.
Nonretail service and technology project.
Property and buildings commission, §56.440.
Nonsecure facility.
Juvenile code, §600.020.
Nonsecure setting.
Juvenile code, §600.020.
Nonuniversity member.
Teachers' retirement, §161.220.
Note.
Local government borrowing, §65.7701.
Notice website.
Alternative to newspaper publication of notices, §424.145.
Number of withholding exemptions claimed.
Income taxes, §141.900.
Number sense.
Mathematics, §158.8401.
Numeracy.
Mathematics, §158.8401.
Student achievement in math and reading, §158.842.
Objective measurable criteria.
Procurement codes, §45A.345.
Obscene, §531.010.
Occupation.
Teachers' retirement, §161.661.
Offer to practice.
Professional engineers, §322.010.
Office.
Administrative hearings, §13B.010.
Officer.
Procurement codes, §45A.335.
Official custodian.
Open records, §61.870.
Official responsibility.
Procurement codes, §45A.445.
Oil refinery.
Pressure vessel safety, §236.010.
On duty, §158.193.
On the basis of sex.
Employment discrimination, §344.030.
On track to graduate.
Kentucky educational excellence scholarships, §164.7874.
Optional component.
Education, §156.4975.
Optometry scholarship committee, §164.7870.
Order.
Boiler safety, §236.010.
Ordinance.
School buildings.
Certain boards obtaining, §162.300.
Method of erection by state educational institutions, §162.350.
School district finance corporation, §162.385.
State property and buildings commission, §162.540.
Ordinary administrative regulation, §13A.180.
Ordinary repair.
Building code, §198B.010.
Organization.
Hazing, §508.180.
Originating state.
Interstate agreement on qualification of educational personnel, §161.124.
Other health impairment.
Special educational programs, §157.200.
Other severely handicapped individuals.
Procurement codes, §45A.465.

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Out-of-state.
Public employees' retirement, §61.552.
Out-of-state service.
Teachers' retirement, §161.515.
Owned or constructively owned.
Income taxes, §141.900.
Owner facility.
Boiler and pressure vessel safety, §236.010.
Owners.
Construction contracts, fairness in construction act, §371.400.
Owner's piping inspector.
Boiler and pressure vessel safety, §236.010.
Owner-user facility.
Boiler and pressure vessel safety, §236.010.
Parent, §§158.191, 160.145.
Charter schools, §160.1590.
Education opportunity account program, §141.502.
Juvenile code, §600.020.
School councils for school-based decision making, §160.345.
Parent or guardian, §158.148.
Participant.
Kentucky educational savings plan trust, §164A.305.
Teachers' retirement, §161.220.
Participating colleges or universities.
Mathematics testing program, §158.801.
Participating institution.
Dual credit scholarship program, §164.786.
Kentucky educational excellence scholarships, §164.7874.
Student teacher stipend program, §164.773.
Teacher recruitment student loan forgiveness pilot program, §164.771.
Teacher scholarships, §164.769.
Participation agreement.
Kentucky educational savings plan trust, §164A.305.
Part-time student.
Kentucky educational excellence scholarships, §164.7874.
Party.
Administrative hearings, §13B.010.
Pass-through entity.
Income taxes, §141.900.
Past service.
Public employees' retirement, §61.552.
Pattern of criminal gang activity.
Gang violence prevention act, §506.135.
Payroll period.
Income taxes, §141.900.
Pecuniary factor.
Teachers' retirement system, §161.430.
Penalization.
Career and technical education office, §156.800.
Pension plans, profit-sharing plans, retirement plans, or employee savings plans.
Income taxes, §141.900.
Percentage discount.
School facilities construction, §157.615.
Percentage of attendance.
Educational excellence fund, §157.320.
Percentage of earnings from mining.
Local government economic development program, §42.4592.
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Local government economic development program, §42.4592.
Perinatal.
Perinatal palliative care, §216.2975.
Permanent, fixed foundation.
Property taxes.
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Permanent center.
Educational excellence fund, §157.420.
Person.
Athlete agents, §164.6903.
Boiler safety, §236.010.
Communications service providers, taxation, §136.602.
Construction contracts, fairness in construction act, §371.400.
Electronic transactions, §369.102.
Governmental leasing, §65.940.
Income taxes, §141.900.
Personally identifiable student information, §365.734.
Procurement codes, §45A.345.
Speech-language pathologists and audiologists, §334A.020.
Personal communication device.
Use while operating a motor vehicle, §189.292.
Personal information.
Personal information security and breach investigations, §61.931.
Personally identifying information.
Criminal law and procedure, §525.085.
Personal property.
Governmental leasing, §65.940.
Property taxes, §132.010.
Taxation.
Supervision, equalization and review of assessments, §133.010.
Personal telecommunications device, §158.165.
Person exercising custodial control or supervision.
Juvenile code, §600.020.
Petition.
Juvenile code, §600.020.
Phonemic awareness.
Students having difficulty in reading, writing, mathematics or behavior, §158.307.
Physical injury.
Juvenile code, §600.020.
Physically disabled or orthopedically impaired.
Special educational programs, §157.200.
Physically handicapped person.
Building code, §198B.010.
Physically helpless.
Criminal abuse, §508.090.
Physically secure facility.
Juvenile code, §600.020.
Place of primary use.
Communications service providers, taxation, §136.602.
Place value understanding.
Mathematics, §158.8401.
Plant facility.
Utility gross receipts license tax for schools, §160.6131.
Point of entry.
Early intervention services, §200.654.
Political subdivision.
Communications service providers, taxation, §136.602.
Public employees' social security, §61.420.
Pollutant or contaminant.
Property tax levy and assessment, §132.010.
Position.
Career and technical education office, §156.800.
Offices and officers, §61.371.
Position of authority.
Persons prohibited from probation, parole or postincarceration supervision, §532.045.
Position of special trust.
Persons prohibited from probation, parole or postincarceration supervision, §532.045.

DEFINED TERMS —Cont'd
Postpaid calling services.
Multichannel video programming and communications services tax, sourcing of communications services, §136.605.
Postvention.
School personnel, §156.095.
Suicide prevention, §156.095.
Potable water.
Boiler safety, §236.010.
Power boiler.
Safety, §236.010.
Practice of architecture, §323.010.
Practice of audiology, §334A.020.
Practice of engineering.
Professional engineers, §322.010.
Practice of land surveying, §322.010.
Practice of psychology, §319.010.
Practice of speech-language pathology, §334A.020.
Prefabricated home.
Property taxes, §132.010.
Premises.
Alcoholic beverages, §132.140.
Premium.
Life insurance for public employees, §18A.205.
Prepaid calling services.
Multichannel video programming and communications services tax, sourcing of communications services, §136.605.
Prepaid wireless calling services.
Multichannel video programming and communications services tax, sourcing of communications services, §136.605.
Present teacher.
Teachers' retirement, §161.220.
Pressure vessel.
Safety, §236.010.
Primary school program, §158.031.
Principles and practice of engineering examination.
Professional engineers, §322.010.
Principles and practice of land surveying examination.
Professional engineers, §322.010.
Prior service.
Teachers' retirement, §161.220.
Private communications services.
Multichannel video programming and communications services tax, sourcing of communications services, §136.605.
Private electronic communication.
Schools and education, §160.145.
Private erotic matter.
Pornography, §531.010.
Process.
Personally identifiable student information, §365.734.
Processing equipment.
Construction contracts, fairness in construction act, §371.400.
Procurement, §45A.345.
Product.
Procurement codes, §45A.465.
Professional certificate.
School employees, §161.010.
Professional engineer, §322.010.
Professional land surveyor.
Professional engineers, §322.010.
Professional malfeasance.
Law enforcement officers, §15.391.
Professional nonfeasance.
Law enforcement officers, §15.391.

DEFINED TERMS —Cont'd
Professional-sports-services contract.
Athlete agents, §164.6903.
Professional support team.
School employees, §161.049.
Program.
Mathematics testing program, §158.801.
Program administrator.
Kentucky educational savings plan trust, §164A.305.
Program fund.
Kentucky educational savings plan trust, §164A.305.
Project.
School facilities construction, §157.615.
State property and buildings commission, §162.520.
Prominent location, §158.195.
Promotion.
Career and technical education office, §156.800.
Promotional probation.
Career and technical education office, §156.800.
Promulgated.
Administrative regulations, §13A.010.
Property.
Eminent domain, §416.540.
Proportionate per pupil basis.
Charter schools, §160.1590.
Proposed administrative regulation, §13A.010.
Proprietary school.
Kentucky educational excellence scholarships, §164.7884.
Protective order.
Criminal law and procedure, §508.152.
Stalking, §508.130.
Provider.
Communications service providers, taxation, §136.602.
Provisional certificate.
School employees, §161.010.
Proxy adviser.
Public employees' retirement, §61.650.
Teachers' retirement system, §161.430.
Psychologist, §319.010.
Psychotherapy.
Psychologists, §319.010.
Public agency.
Interlocal cooperation, §65.230.
Local governments, §65.230.
Open meetings, §61.805.
Open records, §61.870.
Public works, §45A.487.
State archives and records, §171.410.
Publication area.
Legal notices, §424.110.
Sale of bonds.
School facilities construction, §157.630.
Public body.
Interest rates on public bonds, §58.410.
Public charter school, §160.1590.
Public charter school authorizer, §160.1590.
Public employee.
Life insurance for public employees, §18A.205.
Offices and officers, §61.371.
Public employer.
Life insurance for public employees, §18A.205.
Public entity.
Local governments, §65.310.
Public funded.
Child care, §199.8943.
Public obligation.
Interest rates on public bonds, §58.410.
Public offense action.
Juvenile code, §600.020.
Public property.
Special law enforcement officers, §61.900.

DEFINED TERMS —Cont'd
Public record.
Open records, §61.870.
Personal information security and breach investigations, §61.931.
State archives and records, §171.410.
Public school fund, §157.320.
Public school officer.
Education department, §156.132.
Public schools.
Educational television, §168.020.
School prayer and other religious activities, §158.182.
Teachers' retirement, §161.220.
Public service.
Offices and officers, §61.371.
Public service company.
Income taxes, §141.901.
Public use.
Eminent domain, §416.675.
Public works, §45A.487.
Purchaser.
Communications service providers, taxation, §136.602.
Purple star school, §160.153.
Qualified borrower.
Assistive technology loan corporation, §151B.450.
Qualified domestic relations order.
Teachers' retirement, §161.220.
Qualified educational expenses.
Kentucky educational savings plan trust, §164A.305.
Qualified heavy equipment.
Property taxes, §132.010.
Qualified lender.
Assistive technology loan corporation, §151B.450.
Qualified mental health professional.
Juvenile code, §600.020.
Qualified nonprofit agency for the severely handicapped.
Procurement codes, §45A.465.
Qualified postsecondary education expenses.
Commonwealth postsecondary education prepaid tuition trust fund, §164A.700.
Qualified proprietary school program.
Kentucky educational excellence scholarships, §164.7884.
Qualified provider, §45A.345.
Qualified school volunteer.
Schools and education, §160.145.
Traceable communication system, §160.145.
Qualified service provider.
Early intervention services, §200.654.
Qualified teacher.
Charter schools, §160.1590.
District teacher certification loan fund, §164.757.
Qualified teaching service.
District teacher certification loan fund, §164.757.
Teacher recruitment student loan forgiveness pilot program, §164.771.
Teacher scholarships, §164.769.
Qualified welder.
Boiler safety, §236.010.
Qualified welding procedure.
Pressure vessel safety, §236.010.
Qualified workplace training program.
Kentucky educational excellence scholarships, §164.7884.
Qualifying voluntary environmental remediation property.
Property taxes, §132.010.
Racetrack extension.
Occupational license tax, §68.182.
Rate of interest.
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DEFINED TERMS —Cont'd
Reading diagnostic assessment.
Reading diagnostic and intervention fund, §158.792.
Students having difficulty in reading, writing, mathematics or behavior, §158.305.
Reading improvement plan.
Students having difficulty in reading, writing, mathematics or behavior, §158.305.
Reading improvement team.
Students having difficulty in reading, writing, mathematics or behavior, §158.305.
Reading intervention program.
Reading diagnostic and intervention fund, §158.792.
Real estate.
Property and buildings commission, §56.440.
Real property.
Governmental leasing, §65.940.
Property taxes, §132.010.
Taxation.
Supervision, equalization and review of assessments, §133.010.
Real property additions.
Property taxes, §132.010.
Reasonable accommodation.
Employment discrimination, §344.030.
Reasonable and prudent parent standard.
Juvenile code, §600.020.
Reasonable security and breach investigation procedures and practices.
Personal information security and breach investigations, §61.931.
Receiving state.
Interstate agreement on qualification of educational personnel, §161.124.
Interstate teacher mobility compact, §161.135.
Military children's educational opportunity, compact, §156.730.
Recommended order.
Administrative hearings, §13B.010.
Record.
Athlete agents, §164.6903.
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Teachers' retirement systems, §161.585.
Recreational vehicle.
Property taxes, §132.010.
Recruit or solicit.
Athlete agents, §164.6903.
Reemployment.
Career and technical education office, §156.800.
Reemployment list.
Career and technical education office, §156.800.
Regional development agency.
TVA act, §96.895.
Registered apprenticeship program.
Kentucky educational excellence scholarships, §164.7884.
Registration.
Athlete agents, §164.6903.
Regular interest.
Teachers' retirement, §161.220.
Regular teacher, supervisor or administrator.
Teachers' retirement, §161.220.
Regulation.
Law enforcement officers, §15.391.
Regulatory impact analysis.
Administrative regulations, §13A.010.
Reinstatement.
Career and technical education office, §156.800.
Related facilities.
Educational television, §168.020.
Related functions.
Educational television, §168.020.

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Related instruction.
Kentucky educational excellence scholarships, §164.7884.
Related medical condition.
Employment discrimination, §344.030.
Related services.
Educational television, §168.020.
Special educational programs, §157.200.
Relationships.
Student achievement in math and reading, §158.842.
Relative.
School boards of education, §160.180.
School employee appointments promotions and transfers, §160.380.
Releases.
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Reliable, replicable evidence.
Reading diagnostic and intervention fund, §158.792.
Reliable, replicable research.
Education, §156.551.
Religion.
Employment discrimination, §344.030.
Request for proposals.
Procurement codes, §45A.345.
Resale.
Communications service providers, taxation, §136.602.
Resident.
Income taxes, §141.900.
Property taxes, §132.010.
Residential treatment facility.
Juvenile code, §600.020.
Residential unit.
Property taxes, §132.010.
Resident of the commonwealth.
Open records, §61.870.
Resolution.
State property and buildings commission, §162.540.
Resources.
Property taxes, §132.017.
Responsible bidder or offeror.
Procurement codes, §45A.345.
Responsible charge of engineering.
Professional engineers, §322.010.
Responsible charge of land surveying.
Professional engineers, §322.010.
Responsive bidder.
Procurement codes, §45A.345.
Responsive interventions to support and empower team.
Juvenile code, §600.020.
Retail purchase.
Communications service providers, taxation, §136.602.
Retainage.
Construction contracts, fairness in construction act, §371.400.
Retain in custody.
Juvenile code, §600.020.
Retirement allowance.
Teachers' retirement, §161.220.
Retirement system.
Teachers' retirement, §161.220.
Revenue.
Governmental leasing, §65.940.
Local government borrowing, §65.7701.
Revenue bond-financed warehouse.
Alcoholic beverages, §132.140.
Reverse auction.
Procurement codes, §45A.345.
Ring tones.
Communications service providers, taxation, §136.602.
Utility gross receipts license tax for schools, §160.6131.

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RISE team.
Juvenile code, §600.020.
Rule.
Interstate teacher mobility compact, §161.135.
Military children's educational opportunity, compact, §156.730.
Safe area.
Earthquake emergency procedure, §158.163.
Safety plan.
Juvenile code, §600.020.
Salary reduction contribution.
State personnel.
Flexible benefits plan, §18A.227.
Sale.
Communications service providers, taxation, §136.602.
Income taxes, §141.901.
Sales price.
Communications service providers, taxation, §136.602.
Sales revenue.
Taxation of businesses, §67.750.
Satellite broadcast and wireless cable service.
Communications service providers, taxation, §136.602.
Utility gross receipts license tax for schools, §160.6131.
Savings plan trust.
Kentucky educational savings plan trust, §164A.305.
School.
Gender, §158.189.
School councils for school-based decision making, §160.345.
School activities.
School safety, §158.441.
School-based mental health services provider.
School safety, §158.4416.
School building.
Method of erection by state educational institutions, §162.350.
School bus.
Education department, §156.153.
School calendar, §158.070.
School counselor.
Center for school safety, §158.4416.
School day.
Food sold outside of school lunch program, §158.854.
School-day-approved beverage.
Food sold outside of school lunch program, §158.854.
School district.
Communications service providers, taxation, §136.602.
Governmental leasing, §65.940.
School district calendar committee, §158.070.
School district employee.
Traceable communication system, §160.145.
School employees.
Health services, §156.502.
Personal leave days for school employees, §161.154.
School facilities construction commission, §157.615.
School facilities plan.
Construction, §157.615.
School mapping data.
Kentucky 911 services board, §158.4433.
School official.
Family education rights, §160.700.
School of origin.
School placement, educational stability considerations, §199.802.
School or educational facility.
Child placement, §158.137.
School personnel.
Emergency leave for school employees, §161.152.
Juvenile code, §600.020.
Suspension or expulsion from school, §158.150.

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School property.
School safety, §158.441.
School psychologist.
Center for school safety, §158.4416.
School resource officer.
School safety, §158.441.
School safety, §158.441.
School security.
School safety, §158.441.
School security officer.
School safety, §158.441.
School social worker.
Center for school safety, §158.4416.
School term or year, §158.070.
S corporation.
Income taxes, §141.900.
Seasonal employees.
Career and technical education office, §156.800.
Secondary area center.
Career and technical education, §158.810.
Secondary area technology center.
Career and technical education, §158.810.
Secondary school.
Educational excellence fund, §157.320.
Fraudulent use of educational records, §434.441.
Secondary vocational education.
Career and technical education, §158.810.
Secondary vocational study.
Career and technical education, §158.810.
Section 504 plan.
Students with disabilities, §156.027.
Secure juvenile detention facility, §600.020.
Security breach.
Personal information security and breach investigations, §61.931.
Security procedure.
Electronic transactions, §369.102.
Seizure action plan.
Administration of medication in schools, §158.832.
Self-administration.
Administration of medication in schools, §158.832.
Semester.
District teacher certification loan fund, §164.757.
Teacher recruitment student loan forgiveness pilot program, §164.771.
Teacher scholarships, §164.769.
Sending state.
Military children's educational opportunity, compact, §156.730.
Seniority.
Offices and officers, §61.371.
School employees, §161.011.
Serious physical injury.
Juvenile code, §600.020.
Service.
Procurement codes, §§45A.345, 45A.465.
Service address.
Multichannel video programming and communications services tax, sourcing of communications services, §136.605.
Sexual abuse.
Juvenile code, §600.020.
Sexual conduct.
Pornography, §531.010.
Sexual exploitation.
Juvenile code, §600.020.
Shall.
Procurement codes, §45A.345.
Shareholder-sponsored proposal.
Public employees' retirement, §61.650.

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Shareholder-sponsored proposal —Cont'd
Teachers' retirement system, §161.430.
Sick leave bank.
Sick leave for school employee or teacher, §161.155.
Sign.
Athlete agents, §164.6903.
Signature.
Administrative regulations, §13A.010.
Single salary schedule.
Educational excellence fund, §157.320.
Skills.
Student achievement in math and reading, §158.842.
Small business.
Administrative regulations, §13A.010.
SOAR program.
Juvenile code, §600.020.
Social media platform.
Stalking, §508.130.
Social security act.
Public employees, §61.420.
Social service worker.
Juvenile code, §600.020.
Software.
Open records, §61.870.
Solely in the interest of the members and beneficiaries.
Teachers' retirement system, §161.430.
Spatial reasoning.
Mathematics, §158.8401.
Special benefits.
Property taxes, §132.010.
Special boiler inspector.
Boiler safety, §236.010.
Special classes.
Special education, §157.200.
Special district.
Communications service providers, taxation, §136.602.
Governmental leasing, §65.940.
Special education, §157.200.
Special education facilities, §157.200.
Specialized telecommunications equipment.
Deaf persons, §163.525.
Special law enforcement officer, §61.900.
Specifications.
Procurement codes, §45A.345.
Specific learning disability.
Special educational programs, §157.200.
Speech-language pathologists, §334A.020.
Speech-language pathology assistant, §334A.020.
Sponsor.
Kentucky educational excellence scholarships, §164.7884.
Sports official, §518.090.
SRO.
School safety, §158.441.
Staff member.
Child care facilities, §199.642.
Staff secure facility for residential treatment.
Juvenile code, §600.020.
Standard certificate.
Teachers' tenure, §161.720.
Standard college or university.
School employees, §161.010.
Standard college or university work of graduate grade.
School employees, §161.010.
State.
Athlete agents, §164.6903.
Electronic transactions, §369.102.
Income taxes, §141.901.

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State —Cont'd
Interstate agreement on qualification of educational personnel, §161.124.
Interstate teacher mobility compact, §161.135.
Military children's educational opportunity, compact, §156.730.
T.V.A. act, §96.820.
State accumulation fund.
Teachers' retirement system, §161.552.
State agency.
Procurement codes, §45A.465.
Property and buildings commission, §56.440.
Public employees' social security, §61.420.
State personnel.
Sick leave sharing program, §18A.196.
State agency child.
Child placement, §158.137.
Education, §158.135.
State-approved list.
Textbooks, §156.395.
State colleges and universities.
Educational television, §168.020.
State employee.
Health insurance coverage, §18A.225.
State local finance officer.
Governmental leasing, §65.940.
Local government borrowing, §65.7701.
Statement of consideration.
Administrative regulations, §13A.010.
State-operated area technology center.
Career and technical education, §157.069.
State practice laws.
Interstate teacher mobility compact, §161.135.
State property and buildings commission, §162.520.
State specific requirements.
Interstate teacher mobility compact, §161.135.
Statewide reporting system.
Juvenile code, §600.020.
Status offense action.
Juvenile code, §600.020.
STEM.
Colleges and universities, §164.0285.
Student achievement in STEM disciplines, §158.845.
Story.
Building code, §198B.010.
Student.
Charter schools, §160.1590.
Hazing, §508.180.
Interstate compact on educational opportunity for military children.
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